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10–1–03
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# Presidential Documents

**Title 3—**

**The President**

## Proclamation 7710 of September 26, 2003

## Minority Enterprise Development Week, 2003

**By the President of the United States of America**

**A Proclamation**

America's more than 3 million minority-owned businesses represent one of the fastest-growing segments of our Nation's economy. Through skill, hard work, and determination, these businesses are strengthening our Nation and our economy. During Minority Enterprise Development Week, we recognize these businesses, their owners, and their employees for their commitment to free enterprise and equal opportunity.

Most businesses in America—including those that are minority-owned—are small businesses. Small businesses are a path to the American Dream and must be accessible to all of our citizens. Through the Department of Commerce's Minority Business Development Agency and the Small Business Administration, we are promoting both the growth of minority-owned businesses and equal access to Federal contracts, capital, and management and technical assistance.

Small businesses also create most of the new jobs in our economy, and my Administration is acting to create an environment where small businesses grow and thrive. On May 28, I signed the Jobs and Growth Tax Relief Reconciliation Act of 2003, allowing entrepreneurs to keep more of their hard-earned money. My Administration is also pursuing an ambitious trade agenda. This year, I signed legislation implementing Free Trade Agreements with Chile and Singapore. These new Free Trade Agreements, and others that my Administration is seeking, not only will provide cheaper goods for consumers, but also will create new high-wage jobs for American workers.

I encourage all Americans to recognize the strength and importance of our country's minority entrepreneurs and their employees. The talents, skills, and dedication of these citizens enrich our communities, and we honor their contributions to our Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 28 through October 4, 2003, as Minority Enterprise Development Week. I encourage all Americans to celebrate this week with appropriate programs, ceremonies, and activities to recognize the many contributions of our Nation's minority enterprises.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-six day of September, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.

[FR Doc. 03–25035
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# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

**5 CFR Parts 890 and 892**

**RIN 3206–AJ34**

### Federal Employees Health Benefits Children's Equity

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing interim regulations to implement the Federal Employees Health Benefits Children's Equity Act of 2000, which was enacted October 30, 2000. This law mandates the enrollment of a Federal employee for self and family coverage in the Federal Employees Health Benefits (FEHB) Program, if the employee is subject to a court or administrative order requiring him/her to provide health benefits for his/her child(ren) and the employee does not provide documentation of compliance with the order.

**DATES:** Interim rules are effective October 31, 2003. OPM must receive comments on or before December 1, 2003.

**ADDRESSES:** Send written comments to Abby L. Block, Senior Advisor for Employee and Family Support, Strategic Human Resources Policy Division, Office of Personnel Management, 1900 E Street NW., Washington DC 20415–3666; or deliver to OPM, Room 3425, 1900 E Street NW., Washington, DC; or FAX to (202) 606–0633.

**FOR FURTHER INFORMATION CONTACT:** Nataya Battle (202) 606–0004.

**SUPPLEMENTARY INFORMATION:** On October 30, 2000, Public Law 106–394, 114 Stat. 1629, was enacted. This law, the Federal Employees Health Benefits Children's Equity Act of 2000, mandates compliance with court or administrative orders requiring Federal employees to provide health benefits for their children. The law was effective upon enactment.

Before the enactment of Public Law 106–394, a court or State administrative agency could issue an order for an individual to provide health benefits for his or her child(ren); however, there was nothing in the FEHB law to require compliance. While the issuance of such an order was an event that allowed an employee to enroll or to change from self only to self and family, the enrollment was voluntary on the employee's part.

The law now makes compliance with the court or administrative order mandatory. A Federal employee subject to such an order must enroll for self and family coverage in a health plan that provides full benefits in the area where the children live or provide documentation to the agency that he or she has obtained other health benefits for the children. If the employee does not do so, the agency will enroll the employee involuntarily as follows: (1) If the employee has no FEHB coverage, the agency will enroll him or her for self and family coverage in the option of the Blue Cross and Blue Shield Service Benefit Plan that provides the lower level of coverage; (2) if the employee has a self only enrollment in a fee-for-service plan or in an HMO that serves the area where the children live, the agency will change his or her enrollment to self and family in the same option of the same plan; (3) if the employee is enrolled in an HMO that does not serve the area where the children live, the agency will change his or her enrollment to self and family in the lower option of the Blue Cross and Blue Shield Service Benefit Plan.

As long as the court or administrative order is in effect, and the employee has at least one child identified in the order who is still eligible under the FEHB Program, the employee cannot cancel his or her enrollment, change to self only, or change to a plan that does not serve the area in which the child or children live, unless he or she provides documentation that he or she has other coverage for the children. If the court or administrative order is still in effect at the time the employee retires, and if at least one child is still eligible for FEHB, the employee must continue FEHB into retirement (if eligible) and cannot make any of these changes after retirement for as long as the order remains in effect and the child continues to be eligible under 5 U.S.C. 8901(5).

If such an employee goes into a nonpay status, or if his or her salary becomes insufficient to make the premium withholdings, he or she cannot choose to terminate the enrollment. Instead, the employee must continue the coverage and either make direct premium payments or incur a debt to the Government. (By law, an employee's enrollment still terminates after 1 year in nonpay status.) If the annuity of an employee who remained subject to such a court or administrative order upon retirement becomes insufficient to make the premium withholdings, the annuitant cannot choose to terminate the enrollment. Instead, he or she must continue the coverage and make direct premium payments for as long as the order remains in effect and the child continues to be eligible under 5 U.S.C. 8901(5).

### Waiver of Notice of Proposed Rulemaking

In accordance with § 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. Notice is being waived to implement currently effective legislation. There is an immediate need for implementation of an interim regulation in order to expand the processing of child medical support court orders for children of Federal employees who become annuitants. Public Law 106–394 does not address what happens to the child medical support court order once the employee retires. As a result, the children of retirees are being harmed without regulation to authorize OPM to enforce the court orders that began while the parent was an employee. Public Law 106–394 has been in effect for three years and any further delay in effecting this regulation would be unnecessary and contrary to the public interest.

### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect health benefits of certain Federal employees and retirees.

### Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

### List of Subjects

*5 CFR Part 890*

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Retirement.

*5 CFR Part 892*

Administrative practice and procedure, Government employees, Health insurance, Taxes, Wages.

U.S. Office of Personnel Management.
**Kay Coles James,**
*Director.*

■ Accordingly, OPM is amending 5 CFR parts 890 and 892 as follows:

## PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

■ 1. The authority citation for part 890 revised to read as follows:

**Authority:** 5 U.S.C. 8913; § 890.303 also issued under 50 U.S.C. 403(p), 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061 unless otherwise noted.

■ 2. In § 890.301 revise paragraphs (e)(1) and (f)(3) and add new paragraphs (g)(3) and (g)(4) to read as follows:

### § 890.301 Opportunities for employees who are not participants in premium conversion to enroll or change enrollment; effective dates.

* * * * *

(e) *Change to self only.* (1) Subject to two exceptions, an employee may change the enrollment from self and family to self only at any time. *Exceptions:*

(i) An employee participating in health insurance premium conversion may change to self only during an open season or because of and consistent with a qualifying life event as defined in Part 892 of this chapter.

(ii) An employee who is subject to a court or administrative order as discussed in § 890.301(g)(3) cannot make this change as long as the court or administrative order is still in effect and the employee has at least one child identified in the order who is still eligible under the FEHB Program, unless the employee provides documentation to the agency that he or she has other coverage for the child(ren).

* * * * *

(f) * * *

(3) With one exception, during an open season, an eligible employee may enroll and an enrolled employee may change his or her existing enrollment from self only to self and family, may change from one plan or option to another, or may make any combination of these changes. *Exception:* An employee who is subject to a court or administrative order as discussed in § 890.301(g)(3) cannot cancel his or her enrollment, change to self only, or change to a comprehensive medical plan that does not serve the area where his or her child or children live as long as the court or administrative order is still in effect and the employee has at least one child identified in the order who is still eligible under the FEHB Program, unless the employee provides documentation to the agency that he or she has other coverage for the child(ren).

* * * * *

(g) * * *

(3)(i) If an employing office receives a court or administrative order on or after October 30, 2000, requiring an employee to provide health benefits for his or her child or children, the employing office will determine if the employee has a self and family enrollment in a health benefits plan that provides full benefits in the area where the child or children live. If the employee does not have the required enrollment, the agency must notify him or her that it has received the court or administrative order and give the employee until the end of the following pay period to change his or her enrollment or provide documentation to the employing office that he or she has other coverage for the child or children. If the employee does not comply within these time frames, the employing office must enroll the employee involuntarily as stated in paragraph (g)(3)(ii) of this section.

(ii) If the employee is not enrolled or does not enroll, the agency must enroll him or her for self and family coverage in the option that provides the lower level of coverage in the Service Benefit Plan. If the employee has a self only enrollment, the employing office must change the enrollment to self and family in the same option and plan, as long as the plan provides full benefits in the area where the child or children live. If the employee is enrolled in a comprehensive medical plan that does not serve the area in which the child or children live, the employing office must change the enrollment to self and family in the option that provides the lower level of coverage in the Service Benefit Plan.

(4) Subject to two exceptions, the effective date of an involuntary enrollment under paragraph (g)(3) of this section is the 1st day of the pay period that begins after the date the employing office completes the enrollment request. *Exceptions:*

(i) If the court or administrative order requires an earlier effective date, the effective date will be the 1st day of the pay period that includes that date. Retroactive effective dates cannot be to a date that is more than 2 years earlier, or prior to October 30, 2000,

(ii) If after an involuntary enrollment becomes effective and the employing office finds that circumstances beyond the employee's control prevented him or her from enrolling or changing the enrollment within the time limits in this section, the employee may change the enrollment prospectively within 60 days after the employing office advises the employee of its finding.

* * * * *

■ 3. In § 890.304 revise paragraph (d)(1) and the section heading to read as follows:

### § 890.304 Termination of enrollment.

* * * * *

(d) *Cancellation or suspension.* (1)(i) An employee who participates in health insurance premium conversion as provided in Part 892 of this chapter may cancel his or her enrollment only during an open season or because of and consistent with a qualifying life event defined in § 892.101 of this chapter.

(ii) Subject to the provisions of paragraph (d)(iii) of this section, an enrollee who does not participate in premium conversion may cancel his or her enrollment at anytime by filing an appropriate request with the employing office. The cancellation is effective at the end of the last day of the pay period in which the employing office receives the appropriate request canceling the enrollment.

(iii) An employee who is subject to a court or administrative order as discussed in § 890.301(g)(3), or an annuitant who was subject to such a court or administrative order at the time of his or her retirement, cannot cancel or suspend his or her enrollment as long as the court or administrative order is still in effect and the enrollee has at least one child identified in the order who is still eligible under the FEHB Program, unless the employee or annuitant provides documentation to the agency that he or she has other coverage for the child or children.

* * * * *

■ 4. In § 890.306 revise paragraphs (e)(1) and (f)(1)(i) to read as follows:

**§ 890.306 Opportunities for annuitants to change enrollment or to reenroll; effective dates.**

* * * * *

(e) *Enrollment change to self only.* (1) With one exception, an annuitant may change the enrollment from self and family to self only at any time. *Exception:* An annuitant who, as an employee, was subject to a court or administrative order as discussed in § 890.301(g)(3) at the time he or she retired cannot change to self only after retirement as long as the court or administrative order is still in effect and the annuitant has at least one child identified in the order who is still eligible under the FEHB Program, unless the annuitant provides documentation to the retirement system that he or she has other coverage for the child or children.

* * * * *

(f) * * *

(1) * * *

(i) With one exception, an enrolled annuitant may change the enrollment from self only to self and family, may change from one plan or option to another, or may make any combination of these changes. *Exception:* An annuitant who, as an employee, was subject to a court or administrative order as discussed in § 890.301(g)(3) at the time he or she retired cannot cancel or suspend his or her enrollment, change to self only, or change to a comprehensive medical plan that does not serve the area where his or her children live after retirement as long as the court or administrative order is still in effect and the annuitant has at least one child identified in the order who is still eligible under the FEHB Program, unless the annuitant provides documentation to the retirement system that he or she has other coverage for the child or children.

* * * * *

■ 5. In § 890.502 add a new sentence after the first sentence in paragraph (b)(2), redesignate paragraph (b)(4) as paragraph (b)(4)(i), and add a new paragraph (b)(4)(ii) to read as follows:

**§ 890.502 Employee withholdings and contributions.**

* * * * *

(b) * * *

(2) * * * *Exception:* An employee who is subject to a court or administrative order as discussed in § 890.301(g)(3) cannot elect to terminate his or her enrollment as long as the court/administrative order is still in effect and the employee has at least one child identified in the order who is still eligible under the FEHB Program, unless the employee provides documentation that he or she has other coverage for the child or children. * * *

* * * * *

(4)(ii) If the employee is subject to a court or administrative order as discussed in § 890.301(g)(3), the coverage cannot terminate. If the employee does not return the signed form, the coverage will continue and the employee will incur a debt to the Government as discussed in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

* * * * *

## PART 892—FEDERAL FLEXIBLE BENEFITS PLAN: PRE-TAX PAYMENT OF HEALTH BENEFITS PREMIUMS

■ 6. The authority citation for part 892 continues to read as follows:

**Authority:** 5 U.S.C. 8913; 26 U.S.C. 125.

■ 7. Amend by revising § 892.207 to read as follows:

**§ 892.207 Can I make changes to my FEHB enrollment while I am participating in premium conversion?**

(a) Subject to the exceptions described in paragraphs (b) and (c) of this section, you can make changes to your FEHB enrollment for the same reasons and with the same effective dates listed in § 890.301 of this chapter.

(b) However, if you are participating in premium conversion there are two exceptions: you must have a qualifying life event to change from self and family enrollment to self only enrollment or to drop FEHB coverage entirely. (*See* § 892.209 and § 892.210.) Your change in enrollment must be consistent with and correspond to your qualifying life event as described in § 892.101. These limitations apply only to changes you may wish to make outside open season.

(c) If you are subject to a court or administrative order as discussed in § 890.301(g)(3) of this chapter, your employing agency can limit a change to your enrollment as long as the court or administrative order is still in effect and you have at least one child identified in the order who is still eligible under the FEHB Program, unless you provide documentation to your agency that you have other coverage for your child or children. See also § 892.208 and § 892.209.

■ 8. Revise the section heading and add a new paragraph (c) to § 892.208 to read as follows:

**§ 892.208 Can I change my enrollment from self and family to self only at any time?**

* * * * *

(c) If you are subject to a court or administrative order as discussed in § 890.301(g)(3) of this chapter, you cannot change your enrollment to self only as long as the court or administrative order is still in effect and you have at least one child identified in the order who is still eligible under the FEHB Program, unless you provide documentation to your agency that you have other coverage for your child or children. See also § 892.207 and § 892.209.

■ 9. Add a new paragraph (c) to § 892.209 to read as follows:

**§ 892.209 Can I cancel FEHB coverage at any time?**

* * * * *

(c) If you are subject to a court or administrative order as discussed in § 890.301(g)(3) of this chapter, you cannot cancel your coverage as long as the court or administrative order is still in effect and you have at least one child identified in the order who is still eligible under the FEHB Program, unless you provide documentation to your agency that you have other coverage for your child or children.

[FR Doc. 03–24792 Filed 9–30–03; 8:45 am]
BILLING CODE 6325–50–P

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## OFFICE OF PERSONNEL MANAGEMENT

## 5 CFR Part 892

**RIN 3206–AJ17**

## Health Insurance Premium Conversion

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations on health benefits premium conversion. Premium conversion enables employees to pay Federal Employees Health Benefits (FEHB) premiums with pre-tax dollars, as provided in the Internal Revenue Code.

**EFFECTIVE DATE:** October 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Laurie Bodenheimer, (202) 606–0004, or e-mail to lrbodenh@opm.gov.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 19, 2000, OPM issued interim final regulations in the **Federal Register**

(65 FR 44644) to implement a health insurance premium conversion plan for employees participating in the FEHB Program. These interim regulations were effective on September 18, 2000, and are located at part 892.

The premium conversion plan is part of a "cafeteria plan" under section 125 of the Internal Revenue Code. OPM executed a separate plan document to comply with section 125 requirements, which is available on OPM's Web site: *http://www.opm.gov/insure/health*. OPM also issued separate instructions to personnel and payroll offices.

The premium conversion plan took effect on October 1, 2000. Under the plan, employees' health benefit premium withholdings are treated as a pre-tax salary deduction. Because premium conversion lowers employees' taxable income, it reduces their tax burden. The reduction in taxable income reduces the base for Federal income tax, Social Security and Medicare taxes, and, in most States and localities, State and local taxes based on income.

While most Federal employees are now covered by OPM's premium conversion plan, the Federal Judiciary, the United States Postal Service, and some smaller Executive Branch agencies with independent compensation-setting authority previously implemented their own premium conversion plans. Employees of those entities are not covered by the premium conversion plan described here.

All other employees in the Executive Branch of the Federal government who are participating in the FEHB Program, and whose pay is issued by an Executive Branch agency, automatically have their salary reduced (through a Federal allotment) and their FEHB premiums paid under the premium conversion plan. Also, individuals enrolled in the FEHB Program who are employed outside the Executive Branch, or whose pay is not issued by an Executive Branch agency, have their salaries reduced and their FEHB premiums paid under our premium conversion plan if their employer, in coordination with their payroll office, agreed to offer participation in the plan. However, any individual enrolled in the FEHB Program who does not want to participate in premium conversion may waive participation, subject to the limitations in these regulations.

To ensure that the premium conversion plan qualifies for pre-tax treatment of health insurance premiums, OPM amended its allotment regulations at 5 CFR part 550, subpart C. Each employee participating in premium conversion makes an allotment to his or her employing agency in the amount of the employee share of the FEHB insurance premium. The agency then uses that amount to pay the employee's premium. The allotment is automatic unless the employee elects to waive premium conversion.

We received comments from three Federal agencies and one Federal employee. One Federal agency had several questions and comments concerning consequences of employee failure to pay union dues when enrolled in a plan that requires such, the availability of belated open season enrollments, LWOP, insufficient pay, early plan termination, and part-time reemployed annuitants. Each of these issues (except reemployed annuitants) was addressed in the final regulation under *Qualifying Life Events* and on the Table of Permissible Changes for Premium Conversion Election. OPM has already provided guidance to agencies on issues relating to reemployed annuitants and will continue to do so through Benefits Administration Letters and the FEHB Handbook. Another commenter asked what the effective date would be for changes from self and family to self only or for cancellations. This document incorporates the change in effective dates for FEHB changes in enrollment first published on August 31, 1998. The answer to this question now would depend upon the employee's premium conversion status, as follows:

For employees participating in premium conversion, a change to self only or cancellation can be made only during the annual open season or because of the occurrence of a qualifying life event as described in section 892.101. A change to self only made during the annual open season is effective on the same date as any other open-season change. A cancellation made during the annual open-season is effective at midnight of the day before the first day of the first pay period that begins in the next year. As of 12:00:01 a.m. on the first day of the first pay period that begins on or after January 1 of the next following year, the enrollee is no longer covered.

A change to self only related to a qualifying life event is effective on the first day of the first pay period that begins after the date the employing office receives the employee's appropriate request. A cancellation made because of a qualifying life event is effective at midnight of the last day of the pay period in which the employing office receives the appropriate request to cancel the enrollment. For convenience, we have located all information on changes to self only and cancellation in part 892, which specifically applies to employees under premium conversion. Information on changes to self only is in section 892.208, and information on cancellation is in section 892.209.

For enrollees who are not participating in premium conversion (including employees who waived this benefit, annuitants, former spouses, and Temporary Continuation of Coverage (TCC) enrollees), a cancellation or change to self only is not considered an open-season change, even if it is submitted during open season. For effective dates *see* § 890.301(e)(2), or § 890.304(d)(ii).

Another commenter noted that premium conversion does affect Federal retirement plan benefits, specifically Social Security. The commenter correctly stated that the Federal Employees Retirement System (FERS) is a three-tiered retirement plan made up of Social Security Benefits, a Basic Benefit Plan, and Thrift Savings Plan Benefits. Since employee contributions to FEHB premiums are withheld pre-tax under premium conversion, the employee's taxable income is reduced. This is turn reduces the employee's Social Security taxes, which reduces career earnings, and thus reduces an individual's future Social Security benefits. The commenter requested that we disclose, discuss, and analyze this information so Federal employees make an informed decision. Our actuaries extensively analyzed the effect of premium conversion on future Social Security benefits. Based on that analysis, we concluded that most employees realize far greater savings than they lose in benefits. We provided information to agencies, in Benefits Administration Letters (BALs), and included several worksheets for employees to use to individually calculate savings and reductions in benefits. We also added a series of questions and answers on our Web site (http://www.opm.gov/insure) several of which specifically address the impact of premium conversion on Social Security benefits. A third commenter wondered why the rules for switching or canceling under premium conversion should be any different from current time frames in section 890.301. In order for employees to enjoy the tax benefit of premium conversion, our premium conversion plan must comply with Internal Revenue Service rules requiring an election to be irrevocable except during open season, or when a covered person experiences a qualifying life event. With this important exception, there is otherwise a great deal of similarity between FEHB opportunities to change enrollment found at section 890.301 and premium conversion qualifying life events.

We have made editorial changes to section 892.101 to regroup and clarify qualifying life events. Within subpart B, we revised sections 892.203, 892.207, 892.208, 892.209, and 892.211. We amended the title for subpart D and revised 892.401(b) and added section 892.402 to include more specific information for employees who participate in premium conversion.

### Regulatory Planning and Review

This regulation has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866, "Regulatory Planning and Review." Because this regulation has an economic impact exceeding $100 million annually, it is defined by that Executive Order as being "economically significant." It is classified as a major rulemaking in accordance with the Congressional Review Act because of its economic impact.

### Analysis of Costs and Benefits

In OPM's view, the benefits of this regulation substantially outweigh the costs. Under this regulation, Federal employees with health insurance through the FEHB Program are now paying their insurance premiums with pre-tax dollars, similar to how millions of private sector employees currently pay their health insurance premiums. The benefits of this change in tax status are significant: the Federal Government has become a more competitive employer and the tax liability of Federal employees decreased.

Costs of this regulation included a start-up cost in the first year to implement the program. In fiscal year 2003, the tax benefit to employees is estimated to be $848 million: $692 million in Federal income taxes; $113 million in Social Security taxes; and $43 million Social Security taxes. We expect that these estimates will increase by 7 percent a year in subsequent years.

### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a rule is not likely to have a significant economic impact on a substantial number of small entities, the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the rulemaking describing the impact of the rule on small entities and must also seek public comment on such impact. Small entities include small businesses, organizations, and governmental jurisdictions.

OPM has determined that this rule will not have a significant economic impact on a substantial number of small entities. The regulation does not impact small entities.

### Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this final rule does not include any Federal mandate that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more.

### Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this final rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or Tribal governments.

### List of Subjects in 5 CFR Part 892

Administrative practice and procedure, Government employees, Health insurance, Wages, and Taxes.

U.S. Office of Personnel Management

**Kay Coles James,**

*Director.*

■ Accordingly, OPM is adopting the interim rule (65 FR 44644) published on July 19, 2000, amending 5 CFR part 892:

## PART 892—FEDERAL FLEXIBLE BENEFITS PLAN: PRE-TAX PAYMENT OF HEALTH BENEFITS PREMIUMS

■ 1. The authority citation for part 892 is revised to read as follows:

**Authority:** 5 U.S.C. 8913; 5 U.S.C. 1103(a)(7); 26 U.S.C. 125.

■ 2. In § 892.101 the definition of Qualifying life event is revised to read as follows:

### § 892.101 Definitions.

* * * * *

*Qualifying life event* means an event that may permit changes to your FEHB enrollment as well as changes to your premium conversion election as described in Treasury regulations at 26 CFR 1.125–4 and includes the following:

(1) Change in family status that results in an increase or decrease in the number of eligible family members as follows:

(i) Marriage, divorce, annulment, legal separation;

(ii) Birth, adoption, acquiring a foster child that meets the definition in § 890.101(a) or a stepchild, issuance of a court order requiring an employee to provide coverage for a child;

(iii) Last dependent child loses coverage, for example, the child reaches age 22 or marries, stepchild moves out of employee's home, disabled child becomes capable of self support, child acquires other coverage by court order; and

(iv) Death of a spouse or dependent.

(2) Any change in employment status that could result in entitlement to coverage; for example:

(i) Reemployment after a break in service of more than 3 days;

(ii) Return to pay status from non-pay status if employee previously elected to terminate coverage (if employee did not elect to terminate see § 892.101 (5);

(iii) Return to receiving pay sufficient to cover premium withholdings if coverage terminated;

(iv) Your spouse or dependent changes hours from either full-time to part-time status, or the reverse, which significantly affects their eligibility for coverage;

(v) Start or end of a period of unpaid leave of absence (leave without pay [LWOP], or other non-pay status) by you or your spouse. A period of unpaid leave is a continuous unpaid leave of absence of more than one pay period; and

(vi) Start or end of your spouse's employment that affects you or your spouse's eligibility for coverage.

(3) Any change in employment status that could affect the cost of insurance, including:

(i) Change from temporary appointment with eligibility for coverage under 5 U.S.C. 8906a to an appointment that permits receipt of government contribution; and

(ii) Change from full-time to part-time status or the reverse.

(4) An employee is restored to a civilian position after serving in uniformed services as described in § 890.304 (a)(vi)(vii).

(5) Start of non-pay status and end of non-pay status if employee did not terminate coverage (if coverage terminated see § 892.101 (2)(ii)).

(6) An employee enrolled in a health maintenance organization (HMO) or a covered family member moves or becomes employed outside the geographic area from which the carrier accepts enrollments, or if already lives

or works outside the area, moves further from this area.

(7) Transfer from a post of duty within the United States to a post of duty outside the United States, or the reverse.

(8) Separation from Federal employment when the employee or employee's spouse is pregnant.

(9) An employee becomes entitled to Medicare. (For change to self only, cancellation, or change in premium conversion status see § 892.101 (11)).

(10) An employee or eligible family member loses coverage under FEHB or another group insurance coverage including the following:

(i) Loss of coverage due to termination of membership in an employee organization sponsoring the FEHB plan;

(ii) Loss of coverage of employee or eligible family member due to discontinuance in whole or part of FEHB plan;

(iii) Loss of coverage under another Federally-sponsored health benefits program, including, TRICARE, Medicare, or Indian Health Service;

(iv) Loss of coverage under Medicaid or similar State-sponsored program of medical assistance for the needy: and

(v) Loss of coverage under a non-Federal health plan, including foreign, State or local government, or private sector group health plan as described in § 890.301 (i)(6).

(11) An employee or eligible family member gains coverage under FEHB or another group insurance plan, including the following:

(i) Another Federally-sponsored health benefits program, including, TRICARE, Medicare, or Indian Health Service;

(ii) Medicaid or similar State-sponsored program of medical assistance for the needy; and

(iii) A non-Federal health plan, including foreign, State or local government, or private sector group plan.

(12) A change in an employee's spouse or dependent's coverage options, for example:

(i) Employer starts offering a different type of coverage;

(ii) Employer stops offering the type of coverage that the employee's spouse or dependent has (if no other coverage is available);

(iii) A health maintenance organization (HMO) adds a geographic service area that now makes the employee's spouse eligible to enroll in that HMO;

(iv) Employee's spouse is enrolled in an HMO that removes a geographic area that makes the spouse ineligible for coverage under that HMO, but other health plans or options are available (if no other coverage is available see § 892.101 (10); and

(v) Change in the cost of coverage.

## Subpart B—Eligibility and Participation

■ 3. Section 892.203 is revised to read as follows:

### § 892.203 When will my premium conversion begin?

If you are newly employed or newly eligible for FEHB in a covered Executive Branch agency (as described in § 892.201(a)), your salary reduction (through a Federal allotment) and pre-tax benefit will be effective on the 1st day of the first pay period beginning on or after your employing agency receives your enrollment.

■ 4. Section 892.207 is revised to read as follows:

### § 892.207 Can I make changes to my FEHB enrollment while I am participating in premium conversion?

(a) Subject to the exceptions described in paragraphs (b) and (c) of this section, you can make changes to your FEHB enrollment for the same reasons and with the same effective dates listed in § 890.301 of this chapter.

(b) However, if you are participating in premium conversion there are two exceptions: you must have a qualifying life event to change from self and family enrollment to self only enrollment or to drop FEHB coverage entirely. (See § 892.209 and § 892.210). Your change in enrollment must be consistent with and correspond to your qualifying life event as described in § 892.101. These limitations apply only to changes you may wish to make outside open season.

■ 5. Section 892.208 is revised to read as follows:

### § 892.208 Can I change my enrollment from self and family to self only at any time?

If you are participating in premium conversion you may change your FEHB enrollment from self and family to self only under either of the following circumstances:

(a) During the annual open season. A change to self only made during the annual open season takes effect on the 1st day of the first pay period that begins in the next year.

(b) Within 60 days after you have a qualifying life event. A change to self only made because of a qualifying life event takes effect on the first day of the first pay period that begins after the date your employing office receives your appropriate request. Your change in enrollment must be consistent with and correspond to your qualifying life event. For example, if you get divorced and have no dependent children, changing to self only would be consistent with that qualifying life event. If both you and your spouse are Federal employees, and your youngest dependent turns age 22, changing from a self and family to two self only enrollments would be consistent and appropriate for that event.

■ 6. Section 892.209 is amended by revising paragraphs (a) and (b) as follows:

### § 892.209 Can I cancel FEHB coverage at any time?

If you are participating in premium conversion you may cancel your FEHB coverage:

(a) During the annual open season. A cancellation made during the annual open season is effective at midnight of the day before the first day of the first pay period that begins in the next year.

(b) Within 60 days after you have a qualifying life event. A cancellation made because of a qualifying life event takes effect at midnight of the last day of the pay period in which your employing office receives your appropriate request to cancel your enrollment. Your cancellation of coverage must be consistent with and correspond to your qualifying life event. For example, if you get married and you gain other insurance coverage because your spouse's employer provides health insurance for your spouse and you, then canceling FEHB coverage would be consistent with that qualifying life event. If you add an eligible family member, canceling coverage would generally not be consistent with that qualifying life event.

7. Section 892.211 is revised to read as follows:

### § 892.211 What options are available to me if I go on a period of leave without pay (LWOP) or other types of non-pay status?

(a) Your commencement of a period of LWOP is a qualifying life event as described in § 892.101. You may change your premium conversion election (waive if you now participate, or participate if you now waive). (b)(1) You may continue your FEHB coverage by agreeing in advance of LWOP to one of the payment options described in paragraph (b)(2), (b)(3), or (b)(4) of this section.

(2) Pre-pay. Prior to commencement of your LWOP you may allot through payroll deduction the amount that will be due for your share of your FEHB premium during your LWOP period, if your employing agency, at its discretion, allows you to do so. Contributions under the pre-pay option may be made through premium conversion on a pre-

tax basis. Alternatively, you may prepay premiums for the LWOP period on an after-tax basis.

(3) Direct pay. Under the direct pay option, you may pay your share of your FEHB premium on the same schedule of payments that would be made if you were not on LWOP, as described in § 890.502(b) of this chapter. You must make the premium payments directly to your employing agency. The payments you make under the direct pay option are not subject to premium conversion, and are made on an after-tax basis.

(4) Catch-up. Under the catch-up option, you must agree in advance of the LWOP period that: you will continue FEHB coverage while on LWOP; your employer will advance your share of your FEHB premium during your LWOP period; and you will repay the advanced amounts when you return from LWOP. (Described in § 890.502(b) of this chapter.) Your catch-up contributions may be made through premium conversion.

(5) If you remain in FEHB upon your return from LWOP, your catch-up premiums and current premiums will be paid at the same time.

(c) Your return from LWOP constitutes a qualifying life event as described in § 892.101. You may change your premium conversion election (waive if you now participate, or participate if you now waive). The election you choose upon return from LWOP will apply to your current as well as your catch-up premiums.

■ 8. The title for Subpart D and paragraph (b)(1) of § 892.401 are revised to read as follows:

### Subpart D—Reemployed Annuitants and Survivor Annuitants

**§ 892.401 Am I eligible for premium conversion if I retire and then come back to work for the Federal Government?**

* * * * *

(b)(1) If you do not waive premium conversion, your FEHB coverage will be transferred to your employing agency, and your employing agency will assume responsibility for contributing the Government share of your FEHB coverage. Your coverage, including what FEHB plans you are eligible to enroll in, will be based on your status as an active employee and your employing agency will deduct your premiums from your salary.

* * * * *

■ 9. A new § 892.402 is added to read as follows:

**§ 892.402 I am a survivor annuitant as well as an active Federal employee; am I eligible for premium conversion?**

(a) If you are a survivor annuitant enrolled in FEHB who is receiving an annuity and you are employed in a position that conveys FEHB eligibility and is covered by the premium conversion plan, you are eligible to participate in premium conversion.

(b)(1) If you wish to participate in premium conversion, you must notify your employing agency. Your employing agency will transfer in your FEHB coverage from the retirement system, and your employing agency will assume responsibility for contributing the government share of your FEHB coverage. Your coverage, including what FEHB plans you are eligible to enroll in, will be based on your status as an active employee and your employing agency will deduct your premiums from your salary.

(2) If you do not notify your employing agency that you wish to participate in premium conversion, you will keep your FEHB coverage as a survivor annuitant, but your contributions towards your FEHB premiums will be made on an after-tax basis. Your status as an annuitant under the retirement regulations and your right to continue FEHB as a survivor annuitant following your period of employment is unaffected.

[FR Doc. 03–24793 Filed 9–30–03; 8:45 am]

BILLING CODE 6325–50–P

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## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

## 7 CFR Part 301

**[Docket No. 02–037–2]**

## Karnal Bunt; Regulated Areas

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the Karnal bunt regulations by adding certain areas in Arizona and Texas to the list of regulated areas either because they were found during detection and delineating surveys to contain a bunted wheat kernel, or because they fell within the 3-mile-wide buffer zone around fields or areas affected with Karnal bunt. The interim rule also removed certain individual fields and other areas in Arizona, New Mexico, and Texas from the list of regulated areas, either because detection and delineating surveys showed them to be free of Karnal bunt, or because they had not been used to produce Karnal bunt host crops within the last 5 years, or because they had been used to produce Karnal bunt host crops in 1 or more years following initial regulation and the crops have been tested and found free of Karnal bunt. The interim rule was necessary to help prevent the spread of Karnal bunt into noninfected areas of the United States and to relieve restrictions that are no longer warranted.

**EFFECTIVE DATE:** The interim rule became effective on October 3, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert G. Spaide, Senior Program Manager, Surveillance and Emergency Programs Planning and Coordination, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–7819.

**SUPPLEMENTARY INFORMATION:**

### Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum X Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread primarily through the movement of infected seed. Some countries in the international wheat market regulate Karnal bunt as a fungal disease requiring quarantine; therefore, without measures taken by the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture, to prevent its spread, the presence of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets.

Upon detection of Karnal bunt in Arizona in March of 1996, Federal quarantine and emergency actions were imposed to prevent the interstate spread of the disease to other wheat producing areas in the United States. The quarantine continues in effect, although it has since been modified, both in terms of its physical boundaries and in terms of its restrictions on the production and movement of regulated articles from regulated areas. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–16 (referred to below as the regulations).

In an interim rule effective and published in the **Federal Register** on October 3, 2002 (67 FR 61975–61980, Docket No. 02–037–1), we amended the regulations by adding certain areas in

Arizona and Texas to the list of regulated areas in § 301.89–3(f), either because they were found during detection and delineating surveys to contain a bunted wheat kernel, or because they fell within the 3-mile-wide buffer zone around fields or areas affected with Karnal bunt. We also removed certain individual fields and other areas in Arizona, New Mexico, and Texas from the list of regulated areas in § 301.89–3(f), either because recently completed detection and delineating surveys showed them to be free of Karnal bunt, or because they had not been used to produce Karnal bunt host crops within the last 5 years, or because they had been used to produce Karnal bunt host crops in 1 or more years following initial regulation and the crops have been tested and found free of Karnal bunt. The interim rule was necessary to help prevent the spread of Karnal bunt into noninfected areas of the United States and to relieve restrictions that are no longer warranted.

Comments on the interim rule were required to be received on or before December 2, 2002. We received two comments by that date. The comments were from State departments of agriculture. Both commenters supported the interim rule. However, one commenter stated that it was important for APHIS to communicate the deregulation of the areas as described in the interim rule through immediate updates to all Karnal bunt fact sheets, maps, manuals, Web sites, and other resources for information.

Currently, APHIS has procedures in place for ensuring that this type of information is updated promptly. APHIS uses its Internet site, on which we make available materials such as press releases, maps, and fact sheets, to communicate the type of information noted by the commenter, and such updates are routinely communicated to APHIS personnel involved in regulatory programs. While it is perhaps most important that the deregulated areas be removed from the list of regulated areas in § 301.89–3(f), we do make every effort to ensure that related materials such as fact sheets, etc., are updated promptly.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

### List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

## PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 67 FR 61975–61980 on October 3, 2002.

**Authority:** 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 25th day of September, 2003.

**Peter Fernandez,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 03–24874 Filed 9–30–03; 8:45 am]

BILLING CODE 3410–34–P

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## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### 12 CFR Part 3

**[Docket No. 03–21]**

**RIN 1557–AC76**

## FEDERAL RESERVE SYSTEM

### 12 CFR Parts 208 and 225

**[Regulations H and Y; Docket No. R–1156]**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 325

**RIN 3064–AC74**

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### 12 CFR Part 567

**[No. 2003–48]**

**RIN 1550–AB79**

# Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Interim Capital Treatment of Consolidated Asset-Backed Commercial Paper Program Assets

**AGENCIES:** Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

**ACTION:** Interim final rule with a request for comments.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and Office of Thrift Supervision (OTS) (collectively, the agencies) are amending their risk-based capital standards by providing an interim capital treatment for assets in asset-backed commercial paper (ABCP) programs that are consolidated onto the balance sheets of sponsoring banks, bank holding companies, and thrifts (collectively, sponsoring banking organizations) as a result of a recently issued accounting interpretation, Financial Accounting Standards Board Interpretation No. 46, Consolidation of Variable Interest Entities (FIN 46). The interim capital treatment allows sponsoring banking organizations to remove the

consolidated ABCP program assets from their risk-weighted asset bases for the purpose of calculating their risk-based capital ratios. Sponsoring banking organizations must continue to hold risk-based capital against all other risk exposures arising in connection with ABCP programs, including direct credit substitutes, recourse obligations, residual interests, long-term liquidity facilities, and loans, in accordance with each agency's existing risk-based capital standards. In addition, any minority interests in ABCP programs that are consolidated as a result of FIN 46 are to be excluded from sponsoring banking organizations' minority interest component of tier 1 capital and, hence, from total risk-based capital.

This interim capital treatment will be applicaable only for the regulatory reporting periods ending September 30 and December 31, 2003, and March 31, 2004. In addition, this interim capital treatment does not alter the accounting rules for balance sheet consolidation nor does it affect the denominator of the tier 1 leverage capital ratio calculation, which continues to be based primarily on on-balance sheet assets as reported under generally accepted accounting principles (GAAP). Thus, as a result of FIN 46, banking organizations must include all assets of consolidated ABCP programs in on-balance sheet assets for purposes of calculating the tier 1 leverage capital ratio.

The agencies also have issued a related notice of proposed rulemaking published elsewhere in today's **Federal Register**, in which the agencies are soliciting comments on a permanent risk-based capital treatment for the risks arising from ABCP programs.

**DATES:** This interim final rule is effective October 1, 2003. Comments on the interim final rule must be received by November 17, 2003.

**ADDRESSES:** Comments should be directed to:

*OCC:* You should send comments to the Public Information Room, Office of the Comptroller of the Currency, Mailstop 1–5, Attention: Docket No. 03–21, 250 E Street, SW., Washington, DC 20219. Due to delays in the delivery of paper mail in the Washington area and at the OCC, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov*. You can make an appointment to inspect and photocopy the comments by calling the Public Information Room at (202) 874–5043.

*Board:* Comments should refer to Docket No. R–1156 and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202/452–3819 or 202/452–3102. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

*FDIC:* Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments also may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

*OTS:* Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2003–48.

*Delivery:* Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2003–48.

*Facsimiles:* Send facsimile transmissions to FAX Number (202) 906–6518, Attention: No. 2003–48.

*E-Mail:* Send e-mails to *regs.comments@ots.treas.gov*, Attention: No. 2003–48 and include your name and telephone number. Due to temporary disruptions in mail service in the Washington, DC area, commenters are encouraged to send comments by fax or e-mail, if possible.

*Availability of comments:* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755. (Please identify the materials you would like to inspect to assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the business day after the date we receive a request.

**FOR FURTHER INFORMATION CONTACT:**

*OCC:* Amrit Sekhon, Risk Expert, Capital Policy Division, (202) 874–5211; Mauricio Claver-Carone, Attorney, or Ron Shimabukuro, Special Counsel, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

*Board:* Thomas R. Boemio, Senior Supervisory Financial Analyst, (202) 452–2982, David Kerns, Supervisory Financial Analyst, (202) 452–2428, Barbara Bouchard, Assistant Director, (202) 452–3072, Division of Banking Supervision and Regulation; or Mark E. Van Der Weide, Counsel, (202) 452–2263, Legal Division. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

*FDIC:* Jason C. Cave, Chief, Policy Section, Capital Markets Branch, (202) 898–3548, Robert F. Storch, Chief Accountant, Division of Supervision and Consumer Protection, (202) 898–8906; Michael B. Phillips, Counsel, Supervision and Legislation Branch, Legal Division, (202) 898–3581, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

*OTS:* Michael D. Solomon, Senior Program Manager for Capital Policy, (202) 906–5654, David W. Riley, Project Manager, Supervision Policy, (202) 906–6669; or Teresa A. Scott, Counsel (Banking and Finance), (202) 906–6478, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:**

## I. Background

An asset-backed commercial paper (ABCP) program typically is a program through which a banking organization provides funding to its corporate customers by sponsoring and administering a bankruptcy-remote special purpose entity that purchases asset pools from, or extends loans to, those customers. The asset pools in an ABCP program may include, for example, trade receivables, consumer loans, or asset-backed securities. The ABCP program raises cash to provide funding to the banking organization's customers through the issuance of commercial paper into the market. Typically, the sponsoring banking organization provides liquidity and credit enhancements to the ABCP program, which aids the program in obtaining high quality credit ratings that facilitate the issuance of the commercial paper.[1]

In January 2003, the Financial Accounting Standards Board (FASB) issued interpretation No. 46, "Consolidation of Variable Interest Entities" (FIN 46), requiring the consolidation of variable interest entities (VIEs) onto the balance sheets of companies deemed to be the primary beneficiaries of those entities.[2] FIN 46 may result in the consolidation of many ABCP programs onto the balance sheets of banking organizations beginning in the third quarter of 2003. In contrast, under pre-FIN 46 accounting standards, banking organizations normally have not been required to consolidate the assets of these programs. Banking organizations that are required to consolidate ABCP program assets will have to include all of these program assets (mostly receivables and securities) and liabilities (mainly commercial paper) on their September 30, 2003 balance sheets for purposes of the bank Reports of Condition and Income (Call Report), the Thrift Financial Report (TFR), and the bank holding company financial statements (FR Y–9C Report). If no changes were made to regulatory capital standards, the resulting increase in the asset base would lower both the tier 1 leverage and risk-based capital ratios of banking organizations that must consolidate the assets held in ABCP programs.

The agencies believe that the consolidation of ABCP program assets onto the balance sheets of sponsoring banking organizations could result in risk-based capital requirements that do not appropriately reflect the risks faced by banking organizations that sponsor these programs. The agencies believe that sponsoring banking organizations generally face limited risk exposure to ABCP programs, which generally is confined to the credit enhancements and liquidity facility arrangements that they provide to these programs. In addition, operational controls and structural provisions, along with overcollateralization or other credit enhancements provided by the companies that sell assets into ABCP programs can further mitigate the risk to which sponsoring banking organizations are exposed. Because of the limited risks, the agencies believe that it is appropriate to provide an interim risk-based capital treatment that permits sponsoring banking organizations to exclude from risk-weighted assets, on a temporary basis, assets held by ABCP programs that must be consolidated onto the balance sheets of sponsoring banking organizations as a result of FIN 46.

The period during which the interim rule is in effect will provide the agencies with additional time to develop the appropriate risk-based capital requirements for banking organizations' sponsorship and other involvement with ABCP programs and to receive comments from the industry on a related proposal also published in today's **Federal Register**.

## II. Interim Risk-Based Capital and Regulatory Reporting Treatment

The agencies are amending their risk-based capital standards to permit sponsoring banking organizations to exclude the assets of ABCP programs that must be consolidated under FIN 46 from risk-weighted assets when they calculate their tier 1 and total risk-based capital ratios for the quarters ending September 30, 2003, December 31, 2003, and March 31, 2004. Sponsoring banking organizations must continue to assess risk-based capital against any credit enhancements or long-term liquidity facilities that they provide to such ABCP programs. For example, banking organizations that sponsor ABCP programs generally assign any investment-grade equivalent credit enhancements that they provide to these programs to the 100 percent risk weight category.[3] Most liquidity facilities currently provided to ABCP programs are structured with a maturity of less than one year and, under the agencies' current risk-based capital rules, do not incur a capital charge.

Under this interim rule, for the third and fourth quarters of 2003, as well as for the first quarter of 2004, when reporting items 34 through 43 on Schedule RC–R (*Regulatory Capital*) of the Call Report and Schedule HC–R (*Regulatory Capital*) of the FR Y–9C, any consolidated ABCP program assets resulting from application of FIN 46 are to be reported in column A, "Totals (*from Schedule RC*)," as well as in column B, "Items not Subject to Risk-Weighting." With respect to the TFR, thrifts should not include the subject program assets in any of the lines for assets to risk weight on Schedule CCR that comprise the subtotal on line CCR64.

Reporting in this manner will exclude the ABCP program assets from incorporation into the calculation of the risk-based capital ratios. Banking organizations should continue to report the notional amounts of any credit enhancements and liquidity facilities provided to ABCP programs in the risk-based capital schedule line items in which these exposures would be properly reported as of the June 30, 2003 reporting date. In addition, credit enhancements and liquidity facilities that sponsoring banking organizations provide to their ABCP programs are to be reported in Memorandum items 3.a.(1) and 3.b.(1) of Schedule RC–S (*Servicing, Securitization, and Asset Sale Activities*) of the Call Report and Schedule HC–S (*Servicing, Securitization, and Asset Sale Activities*) of the FR Y–9C consolidated reports, respectively. Thrifts should include any related credit enhancements on Schedule CC, lines CC455, CC465, or CC468, as appropriate.

In addition, any minority interests in ABCP programs that are consolidated as a result of FIN 46 are to be excluded from sponsoring banking organizations' minority interest component of tier 1 capital and, hence, also from total risk-based capital. Exclusion from capital of any minority interests associated with consolidated ABCP programs is required when the programs' assets are not included in an organization's risk-weighted asset base and, thus, are not assessed a risk-based capital charge. When sponsoring banking organizations report item 6, "Qualifying minority interest in consolidated subsidiaries," of

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[1] For the purposes of this rulemaking, a banking organization is considered the sponsor of an ABCP program if it establishes the program, approves the sellers permitted to participate in the program; approves the asset pools to be purchased by the program; or administers the ABCP program by monitoring the assets, arranging for debt placement, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

[2] Under FIN 46, the FASB broadened the criteria for determining when one entity is deemed to have a controlling financial interest in another entity and, therefore, when an entity must consolidate another entity in its financial statements. An entity generally does not need to be analyzed under FIN 46 if it is designed to have "adequate capital" as described in FIN 46 and its shareholders control the entity with their share votes and are allocated its profits and losses. If the entity fails these criteria, it typically is deemed a VIE and each stakeholder in the entity (a group that can include, but is not limited to, legal-form equity holders, creditors, sponsors, guarantors, and servicers) must access whether it is the entity's "primary beneficiary" using the FIN 46 criteria. This analysis considers whether effective control exists by evaluating the entity's risks and rewards. The stakeholder who holds the majority of the entity's risks or rewards is the primary beneficiary and must consolidate the VIE.

[3] Under the agencies' risk-based capital standards, banking organizations may, subject to supervisory approval, use their internal risk ratings system to assess the credit quality of non-rated direct credit substitutes provided to ABCP programs in order to determine the appropriate risk-based capital charge. Direct credit substitutes provided to ABCP programs that are the equivalent of nono-investment grade are assigned to either the 200 percent risk weight category or effectively deducted from risk-based capital.

Schedule RC–R of the Call Report and Schedule HC–R of the FR Y–9C, they should exclude the amount of minority interest associated with such consolidated ABCP programs. With respect to the TFR, when sponsoring savings associations report on line CCR125, "Minority Interest in Includable Consolidated Subsidiaries," of Schedule CCR, they should exclude the amount of minority interest associated with such consolidated ABCP programs.

This interim risk-based capital (and the associated regulatory capital reporting) treatment will expire on April 1, 2004. If the agencies have not implemented an alternative risk-based capital approach for banking organizations that sponsor ABCP programs prior to the expiration of the interim treatment, then sponsoring banking organizations will be required to subject ABCP program assets that are consolidated under FIN 46 to the applicable risk-based capital treatment for on-balance sheet assets. The agencies reserve the authority to require sponsoring banking organizations to hold an alternative amount of risk-based capital against ABCP program assets at any time during the period this interim treatment is in effect in the event that an agency determines that the application of these risk-based capital requirements does not adequately address the risks present in a sponsoring banking organization's involvement with an ABCP program.

This interim risk-based capital treatment has no bearing on the accounting requirements as established by GAAP or the manner in which banking organizations report consolidated on-balance sheet assets. In addition, the interim capital treatment does not affect the denominator of the tier 1 leverage capital ratio calculation, which will continue to be based primarily on on-balance sheet assets as reported under GAAP. Thus, in accordance with FIN 46, banking organizations must include all assets of consolidated ABCP programs in on-balance sheet assets for purposes of calculating the tier 1 leverage capital ratio. In addition, in contrast to many other cases where minority interest in consolidated subsidiaries may be included as a component of tier 1 capital and, hence, incorporated into the tier 1 leverage capital ratio calculation, minority interest related to sponsoring banking organizations' ABCP program assets consolidated as a result of FIN 46 are not included in tier 1 capital. Thus, the reported tier 1 leverage capital ratio for a sponsoring banking organization will be lower than if only its ABCP program assets were consolidated. However, the agencies anticipate that the exclusion of minority interests related to consolidated ABCP program assets will not significantly affect the tier 1 leverage capital ratio of sponsoring banking organizations because the equity in ABCP programs generally is small relative to the capital levels of sponsoring banking organizations.

The agencies seek comment on all aspects of the interim rule. In a related notice of proposed rulemaking published elsewhere in today's **Federal Register**, the agencies are soliciting comments on the removal of the April 1, 2004 sunset provision contained in this interim final rule so that assets of ABCP programs consolidated under FIN 46 and any associated minority interest would continue to be excluded from risk-weighted assets and tier 1 capital, respectively, of sponsoring banking organizations for purposes of calculating the risk-based capital ratios. The proposed elimination of the sunset provision is conditional upon the agencies implementing appropriate risk-based capital requirements for all risk exposures arising from ABCP programs.

Thus, the agencies also have proposed that liquidity facilities with an original maturity of one year or less that banking organizations provide to ABCP programs be converted to on-balance sheet credit equivalent amounts using the 20 percent credit conversion factor (as opposed to the existing zero percent credit conversion factor) and assigned to the appropriate risk weight category according to the underlying assets or obligor, after consideration of any guarantees or collateral, or external credit ratings if the risk exposure is an asset-or mortgage-backed security. In general, this capital requirement on short-term liquidity facilities would be in addition to existing risk-based capital requirements for credit enhancements provided to ABCP programs.

### *Regulatory Flexibility Act Analysis*

Pursuant to section 605(b) of the Regulatory Flexibility Act, the agencies have determined that this interim rule would not have a significant impact on a substantial number of small entities in accordance with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Accordingly, a regulatory flexibility analysis is not required. In addition, the interim rule would reduce regulatory burden with respect to the agencies' risk-based capital standards.

### *Administrative Procedure Act*

Pursuant to section 553 of the Administrative Procedure Act, 5 U.S.C. 553, the agencies find good cause for issuing this interim rule in advance of the receipt of comments from interested parties. The agencies believe that it is important to make this interim final rule effective before banking organizations must calculate their regulatory risk-based capital ratios at the end of the third quarter 2003. If ABCP program assets are consolidated under FIN 46, then the resulting capital requirement might not be commensurate with the risk inherent in sponsoring banking organizations' involvement with such programs. The agencies are seeking public comment on the interim final rule and, in a related notice of proposed rulemaking, are seeking comment on an alternative risk-based capital treatment for the risk exposures arising from this activity.

In addition, under section 553(d)(3) of the Administrative Procedure Act, an agency may issue an interim rule or a final rule without delaying its effective date for 30 days from the date of publication if the agency finds good cause and publishes its finding with the rule. The agencies have determined that the issuance of this interim rule without delaying its effective date for 30 days from the date of publication will provide certainty for banking organizations in calculating their regulatory capital ratios for the third quarter 2003.

### *Paperwork Reduction Act*

The agencies have determined that this interim rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### *Unfunded Mandates Reform Act of 1995*

*OCC:* Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. This interim rule is designed to temporarily offset the effect on risk-based capital ratios of FIN 46 with respect to ABCP programs. The OCC has determined that this interim rule will not result in expenditures by state, local, or tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, Section 202 of the Unfunded Mandates Act does not require the OCC to prepare a budgetary impact statement for this rule.

*OTS:* Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that this interim rule will not result in expenditures by state, local, or tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, section 202 of the Unfunded Mandates Act does not require the OTS to prepare a budgetary impact statement for this rule.

### *Plain Language*

Section 722 of the Gramm-Leach-Bliley (GLB) Act requires the Federal banking agencies to use "plain language" in all proposed and final rules published after January 1, 2000. In light of this requirement, the agencies have sought to present the interim final rule in a simple and straightforward manner. The agencies invite comments on whether there are additional steps the agencies could take to make the rule easier to understand.

### List of Subjects

*12 CFR Part 3*

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

*12 CFR Part 208*

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

*12 CFR Part 225*

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

*12 CFR Part 325*

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

*12 CFR Part 567*

Capital, Reporting and recordkeeping requirements, Savings associations.

## Department of the Treasury

## Office of the Comptroller of the Currency

## 12 CFR Chapter 1

## Authority and Issuance

■ For the reasons set out in the joint preamble, part 3 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

## PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

■ 1. The authority citation for part 3 continues to read as follows:

**Authority:** 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

■ 2. In Appendix A to part 3:

■ a. In section 1, paragraphs (c)(3) through (c)(35) are redesignated as paragraphs (c)(4) through (c)(36); newly redesignated paragraphs (c)(30) through (c)(36) are redesignated (c)(31) through (c)(37); and two new paragraphs (c)(3) and (c)(30) are added;

■ b. In section 2, paragraph (a)(3) is revised; and

■ c. In section 4, two new paragraphs (j) and (k) are added.

### Appendix A to Part 3—Risk-Based Capital Guidelines

*Section 1. Purpose, Applicability of Guidelines, and Definitions.*

* * * * *

(c) * * *

(3) *Asset-backed commercial paper program* means a program that issues commercial paper backed by assets or other exposures held in a bankruptcy-remote special purpose entity.

* * * * *

(30) *Sponsor* means a bank that:

(i) Establishes an asset-backed commercial paper program;

(ii) Approves the sellers permitted to participate in the asset-backed commercial paper program;

(iii) Approves the asset pools to be purchased by the asset-backed commercial paper program; or

(iv) Administers the asset-backed commercial paper program by monitoring the assets, arranging for debt placement, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

* * * * *

*Section 2. Components of Capital.*

* * * * *

(a) * * *

(3) Minority interests in the equity accounts of consolidated subsidiaries, except that the following are not included in Tier 1 capital or total capital:

(i) Minority interests in a small business investment company or investment fund that holds nonfinancial equity investments and minority interests in a subsidiary that is engaged in nonfinancial activities and is held under one of the legal authorities listed in section 1(c)(21) of this appendix A.

(ii) Minority interests in consolidated asset-backed commercial paper programs sponsored by a bank if the consolidated assets are excluded from risk-weighted assets pursuant to section 4(j)(1) of this appendix A. This section 2(a)(3)(ii) of this appendix A is effective from July 1, 2003 to April 1, 2004.

* * * * *

*Section 4. Recourse, Direct Credit Substitutes and Positions in Securitizations*

* * * * *

(j) *Asset-backed commercial paper programs subject to consolidation.* (1) A bank that qualifies as a primary beneficiary and must consolidate an asset-backed commercial paper program as a variable interest entity under generally accepted accounting principles may exclude the consolidated asset-backed commercial paper program assets from risk-weighted assets if the bank is the sponsor of the consolidated asset-backed commercial paper program.

(2) If a bank excludes such consolidated asset-backed commercial paper program assets from risk-weighted assets, the bank must assess the appropriate risk-based capital charge against any risk exposures of the bank arising in connection with such asset-backed commercial paper programs, including direct credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans, in accordance with sections 3 and 4(b) of this appendix A.

(3) If a bank either elects not to exclude such consolidated asset-backed commercial paper program assets from its risk-weighted assets in accordance with section 4(j)(1) of this appendix A, or is not permitted to exclude consolidated asset-backed commercial paper program assets, the bank must assess risk-based capital charge based on the appropriate risk weight of the consolidated asset-backed commercial paper program assets in accordance with section 3(a) of this appendix A. In such case, direct credit substitutes and recourse obligations (including residual interests), and loans that sponsoring banks provide to such asset-backed commercial paper programs are not subject to any capital charge under section 4 of this appendix A.

(4) This section (4)(j) of this appendix A is effective from July 1, 2003 until April 1, 2004.

(k) *Other variable interest entities subject to consolidation.* (1) If a bank that is required to consolidated the assets of a variable interest entity under generally accepted accounting principles, the bank must assess risk-based capital charge based on the appropriate risk weight of the consolidated assets in accordance with section 3(a) of this appendix A. In such case, direct credit substitutes and recourse obligations (including residual interests), and loans that sponsoring banks provide to such asset-backed commercial paper programs are not subject to any capital charge under section 4 of this appendix A.

(2) This section 4(k) of this appendix A is effective from July 1, 2003 until April 1, 2004.

* * * * *

Dated: September 4, 2003.

**John D. Hawke, Jr.**

*Comptroller of the Currency.*

## Federal Reserve System

## 12 CFR Chapter II

## Authority and Issuance

■ For the reasons set forth in the joint preamble, the Board of Governors of the Federal Reserve System amends parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations as follows:

## PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 1. The authority citation for part 208 continues to read as follows:

**Authority:** 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

■ 2. In Appendix A to part 208, the following amendments are made:
■ a. In section II.A.1.c., *Minority interest in equity accounts of consolidated subsidiaries,* two new sentences are added at the end of the paragraph.
■ b. In section III.B—
■ i. In paragraph 3.a., paragraphs xiv. and xv. are redesignated xv. and xvi.;
■ ii. In paragraph 3.a., a new paragraph xiv., *Sponsor,* is added; and
■ iii. A new paragraph 6 is added at the end of section II. B.

### Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *

II. * * *
A. * * *
1. * * *

c. * * * In addition, minority interests in consolidated asset-backed commercial paper programs (as defined in section III.B.6. of this appendix) that are sponsored by a bank are not to be included in the bank's Tier 1 or total capital base if the bank excludes the consolidated assets of such programs from risk-weighted assets pursuant to section III.B.6. of this appendix. This capital treatment for minority interests in consolidated asset-backed commercial paper programs will be effective from July 1, 2003 and will expire on April 1, 2004.

* * * * *

III. * * *
B. * * *
3. * * *
a. * * *

xiv. *Sponsor* means a bank that establishes an asset-backed commercial paper program; approves the sellers permitted to participate in the program; approves the asset pools to be purchased by the program; or administers the asset-backed commercial paper program by monitoring the assets, arranging for debt placement, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

* * * * *

6. *Asset-backed commercial paper programs.* a. An asset-backed commercial paper (ABCP) program typically is a program through which a bank provides funding to its corporate customers by sponsoring and administering a bankruptcy-remote special purpose entity that purchases asset pools from, or extends loans to, the bank's customers. The ABCP program raises the cash to provide the funding through the issuance of commercial paper in the market.

b. A bank that qualifies as a primary beneficiary and must consolidate an ABCP program that is defined as a variable interest entity under GAAP may exclude the consolidated ABCP program assets from its risk-weighted assets provided that the bank is the sponsor of the consolidated ABCP program. If a bank excludes such consolidated ABCP program assets, the bank must apply the appropriate risk-based capital charge against any risk exposures of the bank arising in connection with such ABCP programs, including direct credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans, in accordance with sections III.B.3., III.C. and III.D. of this appendix.

c. This capital treatment for consolidated assets of certain ABCP programs will be effective from July 1, 2003 and will expire on April 1, 2004.

* * * * *

## PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 1. The authority citation for part 225 continues to read as follows:

**Authority:** 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909; 15 U.S.C. 6801 and 6805.

■ 2. In Appendix A to part 225, the following amendments are made:
■ a. In section II.A.1.c., *Minority interest in equity accounts of consolidated subsidiaries,* two new sentences are added at the end of the paragraph.
■ b. In section III.B.—
■ i. In paragraph 3.a., paragraphs xiv. and xv. are redesignated xv. and xvi.;
■ ii. In paragraph 3.a., a new paragraph xiv., *Sponsor,* is added; and
■ iii. A new paragraph 6 is added at the end of section III.B.

### Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

II. * * *
A. * * *
1. * * *

c. * * * In addition, minority interests in consolidated asset-backed commercial paper programs (as defined in section III.B.6. of this appendix) that are sponsored by a banking organization are not to be included in the organization's Tier 1 or total capital base if the organization excludes the consolidated assets of such programs from risk-weighted assets pursuant to section III.B.6. of this appendix. This capital treatment for minority interests in consolidated asset-backed commercial paper programs will be effective from July 1, 2003 and will expire on April 1, 2004.

* * * * *

III. * * *
B. * * *
3. * * *
a. * * *

xiv. *Sponsor* means a bank holding company that establishes an asset-backed commercial paper program; approves the sellers permitted to participate in the program; approves the asset pools to be purchased by the program; or administers the asset-backed commercial paper program by monitoring the assets, arranging for debt placement, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

* * * * *

6. *Asset-backed commercial paper programs.* a. An asset-backed commercial paper (ABCP) program typically is a program through which a banking organization provides funding to its corporate customers by sponsoring and administering a bankruptcy-remote special purpose entity that purchases asset pools from, or extends loans to, the organization's customers. The ABCP program raises the cash to provide the funding through the issuance of commercial paper in the market.

b. A banking organization that qualifies as a primary beneficiary and must consolidate an ABCP program that is defined as a variable interest entity under GAAP may exclude the consolidated ABCP program assets from its risk-weighted assets provided that the bank holding company is the sponsor of the consolidated ABCP program. If a banking organization excludes such ABCP program assets, the banking organization must apply the appropriate risk-based capital charge against any risk exposures of the organization arising in connection with such ABCP programs, including direct credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans, in accordance with sections III.B.3., III.C. and III.D. of this appendix.

c. This capital treatment for consolidated assets of certain ABCP programs will be effective from July 1, 2003 and will expire on April 1, 2004.

* * * * *

By order of the Board of Governors of the Federal Reserve System, September 12, 2003.

**Jennifer J. Johnson,**

*Secretary of the Board.*

## Federal Deposit Insurance Corporation

## 12 CFR Chapter III

## Authority and Issuance

■ For the reasons set forth in the joint preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends part 325 of chapter III of title 12 of the Code of Federal Regulations as follows:

## PART 325—CAPITAL MAINTENANCE

■ 1. The authority citation for part 325 continues to read as follows:

**Authority:** 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note).

■ 2. In Appendix A to part 325, the following amendments are made:

■ a. In section I.A.1.iii, the four undesignated paragraphs are designated (a), (b), (c), and (d), and a new paragraph (e) is added to that section.

■ b. In section II.B—

■ i. In paragraph 5.a., paragraphs (15) and (16) are redesignated (16) and (17);

■ ii. In paragraph 5.a., a new paragraph (15), *Sponsor,* is added; and

■ iii. A new paragraph 6 is added at the end of section II.B.

## Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

I. * * *

A. * * *

1. * * *

iii. * * *

(e) Minority interests in consolidated asset-backed commercial paper programs (as defined in section II.B.6. of this appendix) that are sponsored by a bank are not to be included in the bank's tier 1 or total capital base if the bank excludes the consolidated assets of such programs from risk-weighted assets pursuant to section II.B.6. of this appendix. This capital treatment for minority interests in consolidated asset-backed commercial paper programs will be effective from July 1, 2003 and will expire on April 1, 2004.

* * * * *

II. * * *

B. * * *

5. * * *

a. * * *

(15) *Sponsor* means a bank that establishes an asset-backed commercial paper program; approves the sellers permitted to participate in the program; approves the asset pools to be purchased by the program; or administers the asset-backed commercial paper program by monitoring the assets, arranging for debt placement, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

* * * * *

6. *Asset-backed commercial paper programs.* a. An asset-backed commercial paper (ABCP) program typically is a program through which a bank provides funding to its corporate customers by sponsoring and administering a bankruptcy-remote special purpose entity that purchases asset pools from, or extends loans to, the bank's customers. The ABCP program raises the cash to provide the funding through the issuance of commercial paper in the market.

b. A bank that qualifies as a primary beneficiary and must consolidate an ABCP program that is defined as a variable interest entity under generally accepted accounting principles may exclude the consolidated ABCP program assets from risk-weighted assets provided that the bank is the sponsor of the consolidated ABCP program. If a bank excludes such consolidated ABCP program assets, the bank must assess the appropriate risk-based capital charge against any risk exposures of the bank arising in connection with such ABCP programs, including direct credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans, in accordance with sections II.B.5., II.C., and II.D. of this appendix.

c. This capital treatment for consolidated assets of certain ABCP programs will be effective from July 1, 2003 and will expire on April 1, 2004.

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 5th day of September 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

*Executive Secretary.*

## DEPARTMENT OF THE TREASURY

## Office of Thrift Supervision

## 12 CFR Chapter V

## Authority and Issuance

■ For the reasons set out in the preamble, part 567 of chapter V of title 12 of the Code of Federal Regulations is amended as follows:

## PART 567—CAPITAL

■ 1. The authority citation for part 567 continues to read as follows:

**Authority:** 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

■ 2. Section 567.1 is amended by adding a definition of "asset backed commercial paper program" to read as folows:

### § 567.1 Definitions

* * * * *

*Asset backed commercial paper program.* The term *asset backed commercial paper program* (ABCP) means a program that issues commercial paper backed assets or exposures held in a bankruptcy-remote special purpose entity. The term *sponsor* of an ABCP means a savings association that either:

(1) Establishes an ABCP program;

(2) Approves the sellers permitted to participate in the program;

(3) Approves the asset pools to be purchased by the program; or

(4) Administers the ABCP by monitoring the assets, arranging for debt placement, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

* * * * *

■ 3. Section 567.5 is amended by revising paragraph (a)(1)(iii) to read as follows:

### § 567.5 Components of capital.

(a) * * *

(1) * * *

(iii) Minority interests in the equity accounts of subsidiaries that are fully consolidated. However, minority interests in consolidated ABCP programs sponsored by a savings association are excluded from the association's core capital or total capital base if the consolidated assets are excluded from risk-weighted assets pursuant to § 567.6 (a)(3). This capital treatment for minority interests in consolidated ABCP programs will be effective from July 1, 2003 to April 1, 2004.

* * * * *

■ 4. Amend § 567.6 by adding new paragraphs (a)(3) and (4) to read as follows:

### § 567.6 Risk-based capital credit risk-weight categories.

(a) * * *

(3) *Asset-backed commercial paper programs.* (i) A savings association that qualifies as a primary beneficiary and must consolidate an ABCP program that is defined as a variable interest entity

under generally accepted accounting principles may exclude the consolidated ABCP program assets from risk-weighted assets, provided that the savings association is the sponsor of the ABCP.

(ii) If a savings association excludes such consolidated ABCP program assets from risk-weighted assets, the savings association must assess the appropriate risk-based capital requirement against any risk exposures of the institution arising in connection with such ABCP programs, including direct credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans, in accordance with paragraphs (a)(1) and (2) and (b) of this section.

(iii) If a savings association either elects not to exclude consolidated ABCP program assets from its risk-weighted assets in accordance with paragraph (a)(3)(i) of this section, or otherwise is not permitted to exclude consolidated ABCP program assets, the savings association must assess a risk-based capital charge based on the appropriate risk weight of the consolidated ABCP program assets in accordance with paragraph (a)(1) of this section. Direct credit substitutes and recourse obligations (including residual interests), and loans that sponsoring savings associations provide to ABCP programs are not subject to any capital charge under paragraphs (a)(2) and (b) of this section.

(iv) This capital treatment for consolidated assets of certain ABCP programs will be effective from July 1, 2003 to April 1, 2004.

(4) *Other variable interest entities subject to consolidation.* (i) A savings association that is required to consolidate the assets of a variable interest entity under generally accepted accounting principles must assess a risk-based capital charge based on the appropriate risk weight of the consolidated assets in accordance with paragraph (a)(1) of this section. Direct credit substitutes and recourse obligations (including residual interests), and loans that sponsoring savings associations provide to ABCP programs are not subject to any capital charge under paragraphs (a)(2) and (b) of this section.

(ii) This capital treatment for other variable interest entities subject to consolidation will be effective from July 1, 2003 to April 1, 2004.

* * * * *

Dated: September 9, 2003.

By the Office of Thrift Supervision.

**James E. Gilleran,**
*Director.*

[FR Doc. 03–23756 Filed 9–30–03; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P 6720–01–P

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## NATIONAL CREDIT UNION ADMINISTRATION

## 12 CFR Parts 702, 704, 712, 723, 742

## Prompt Corrective Action; Corporate Credit Unions; Credit Union Service Organizations; Member Business Loans; Regulatory Flexibility Program

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** NCUA is amending its member business loan (MBL) regulations to provide greater flexibility to credit unions to meet the business loan needs of their members within statutory limits and appropriate safety and soundness parameters. Major changes include: (1) Reducing construction and development loan equity requirements; (2) allowing RegFlex credit unions to make their own decisions whether to require personal guarantees by principals; (3) allowing well-capitalized credit unions to make unsecured MBLs within certain limits; (4) providing that purchases of nonmember loans and nonmember participation interests do not count against a credit union's aggregate MBL limit, subject to an application and approval process; (5) allowing 100% financing on certain business purpose loans secured by vehicles; (6) providing that loans to credit unions and credit union service organizations (CUSOs) are not MBLs for purposes of the rule; and (7) simplifying MBL documentation requirements. Other provisions in the MBL regulation are simplified and unnecessary provisions are removed. In addition, NCUA is amending the prompt corrective action (PCA) rule regarding the risk weighting of MBLs and the CUSO rule to permit CUSOs to originate business loans.

**DATES:** This rule is effective October 31, 2003.

**ADDRESSES:** National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

**FOR FURTHER INFORMATION CONTACT:** David M. Marquis, Director, Office of Examination and Insurance, at the above address or telephone (703) 518–6360; Robert M. Fenner, General Counsel, or Chrisanthy J. Loizos, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

**SUPPLEMENTARY INFORMATION:**

### A. Background

On March 27, 2003, the NCUA Board issued a Notice of Proposed Rulemaking to amend the MBL rule and other rules as they relate to business lending. 68 FR 16450, Apr. 4, 2003. In the proposed rule, the Board provided some parity for federal credit unions (FCUs) with federally insured, state-chartered credit unions (FISCUs) that are exempt from NCUA's MBL rule because the Board had determined that their chartering states had developed MBL rules that minimize risk and accomplish the overall objectives of NCUA's rule. The parity provisions in the proposed rule addressed construction and development loan equity requirements, personal guarantees by principals, and unsecured MBLs. The proposed rule also revised certain provisions that have created unnecessary regulatory burden and clarified certain provisions that have caused confusion. These proposed amendments related to: the dollar amount that triggers compliance with the rule, the loans to one borrower limit, the aggregate MBL limit, loan-to-value (LTV) requirements, MBL documentation requirements, and the loan loss reserve requirements. The Board also proposed that credit unions that purchase participation interests in MBLs made to credit union members need not count the purchase against the credit union's own limit. Finally, the proposed rule expanded the current standard risk-based net worth (RBNW) component for MBLs in the PCA rule and authorized CUSOs to originate business loans.

In the preamble to the proposed rule, the Board noted that the proposed amendments to the MBL rule would allow credit unions greater opportunities to meet the small business loan needs of their members without creating undue risk to the National Credit Union Share Insurance Fund. The Board cautions, however, that MBLs are not suitable for all credit unions. Credit union management must demonstrate a higher standard in planning, policies, procedures, controls, monitoring, credit risk, and diversification to safely establish a long-term strategy in member business lending.

### B. Comments

*General*

NCUA received three hundred and ninety timely comment letters on the proposed rule. NCUA staff, however, credited multiple comment letters from the same commenting organization as one comment letter for a total of three hundred and fifty-one letters. NCUA received comments from two hundred and seventy-six credit unions, twenty-five credit union trade organizations, one CUSO, two corporate credit unions, one corporate CUSO, one CUSO trade organization, two law firms, two consultants, one journalist, fourteen bank trade organizations, twenty banks, one federal agency, one association of state supervisors, three credit union members, and one letter from two members of the U.S. House of Representatives.

Two hundred and ninety-two commenters generally supported the Board's proposal. Many of these commenters stated the changes would improve the ability of credit unions to meet the small business loan needs of their members. Others noted that credit union members need an affordable source of funds to finance and grow their small businesses. They said the proposed rule allows credit unions the ability to serve all of their members' financial needs. Some commenters stated small business owners need every available resource to continue to operate in a competitive economy and that low cost MBLs would allow many businesses to continue their efforts at economic success. They also noted small businesses are the backbone of our nation's economy and are often owned and operated by credit union members. One commenter stated that, as an ex-banker, he felt strongly that many small businesses face unmet credit needs today due to minimum loan amount requirements by large banks and bank holding companies.

Commenters also found that the proposed rules reduce some of the expense burden associated with the current regulations and provide a more manageable solution to business lending. These commenters stated credit unions, their members, and small businesses will benefit from these changes. Several commenters said the current rules are overly restrictive vis-à-vis the competitive marketplace and that the restrictions have forced members to take their small business loan needs to other financial institutions, although they would prefer to do business with the credit union. One commenter stated that the need for small business capital is a niche that credit unions should be allowed and encouraged to fill. This commenter also noted that as not-for-profit cooperatives, credit unions exist to fulfill the legitimate demands of their members, including their demand for MBLs.

NCUA also received a letter from two members of Congress on the House Financial Services Committee stating that, as authors of the Credit Union Membership Access Act (CUMAA), they were pleased to see that the NCUA Board used the latitude that was appropriately conferred upon the agency by law in preparing these beneficial changes. 12 U.S.C. 1757a, Public Law 105–219, 112 Stat. 913 (1998). The congressional representatives urged the Board to fully utilize the discretionary authority conferred on it by Congress to facilitate credit union lending in this important and oftentimes underserved area, and to refrain from imposing any limitations upon credit union member business lending not explicitly called for by Congress when it enacted CUMAA.

Thirty-three bank-affiliated commenters strongly opposed the proposed changes to NCUA's MBL rule, stating the proposed amendments are contrary to congressional intent to limit business lending by credit unions. These commenters stated the proposed amendments significantly erode congressional intent when it adopted CUMAA and that Congress made it perfectly clear that credit unions should be focused on consumer lending, not commercial lending. These commenters also stated the proposed rule will divert credit union resources to financing commercial enterprises, while relaxing safety and soundness regulations associated with MBLs.

Three bank commenters stated it is a tremendous mistake to encourage the growth of tax-exempt businesses, particularly when that growth comes at the expense of tax-paying businesses. One commenter stated its organization does not oppose the liberalization of the current MBL rule but does oppose continued tax exempt status for credit unions engaged in commercial lending. Three bank commenters stated the rule creates additional unfair competition with America's small community banks because small business loans are an essential part of their loan portfolio and are what they call their "bread and butter" loans. They noted that, without business loans, their existence is jeopardized. Two bank commenters stated credit unions should not be in commercial lending at all.

The U.S. Department of Treasury submitted a comment letter supporting the commitment of credit unions to their members through MBL programs, but objecting to certain provisions of the proposed rule. The Treasury Department objected to the proposed treatment of participation interests, suggesting that the proposal would undermine the intent of Congress with respect to limitations on credit union business lending. The Treasury Department also commented that the proposed removal of the personal guarantee requirement and the proposed authority to make unsecured MBLs may raise safety and soundness concerns by eliminating key provisions that have limited credit risk on MBLs.

*Other Suggestions*

Commenters offered numerous suggestions to amend the MBL rule that are outside the scope of the issues on which the Board sought comment. The most significant comments dealt with altering the MBL rule so that it could be better aligned with lending programs offered by the Small Business Administration (SBA); changing the LTV definition; and clarifying other provisions in the current MBL rule. NCUA is reviewing these comments and will assess whether to amend the MBL rule further at a future date, in compliance with its responsibilities under the Administrative Procedure Act, 5 U.S.C. 553, to offer the public the opportunity to review and comment on any proposed amendments.

### C. Section-by-Section Analysis

*Loans to Credit Unions and CUSOs, Sections 723.1(c), 704.11(b)*

Paragraph (c) of § 723.1 clarifies that loans made by federal, natural person credit unions to other natural person credit unions and CUSOs are not MBLs because the Federal Credit Union Act grants FCUs express authority to lend to credit unions and CUSOs, in addition to their authority to make MBLs. 12 U.S.C. 1757(5)(C), (D). It also permits FISCUs to exclude loans to credit unions and CUSOs in calculating their aggregate MBL limit if the state supervisory authority determines that FISCUs have authority to lend to credit unions and CUSOs separately from the general authority to grant loans to members. In the absence of authority similar to that in the Federal Credit Union Act, a FISCU's loans to credit unions and CUSOs are subject to the MBL rule.

The final rule includes a corresponding amendment to NCUA's corporate credit union rule to conform to the MBL rule regarding loans to corporate CUSOs by removing the requirement that a corporate credit union's loans to corporate CUSOs be included in the MBL rule's aggregate loan limit, 12 CFR 704.11(b)(4).

Forty-six commenters specifically supported the clarification that loans to credit unions and CUSOs are not MBLs. Two of these commenters supported this exclusion from the MBL limit because they stated a credit union should be allowed to use the entire percentage of its MBL cap to make MBLs, as intended. Many of the commenters stated the clarification eliminates confusion when calculating MBL caps. They noted credit unions are already restricted in the aggregate amount they can lend to a CUSO by law or regulation and are permitted by law to make loans to other credit unions. One commenter noted many smaller credit unions receive deposits from larger credit unions and many credit unions make loans to each other. This commenter stated these loans represent the cooperative spirit of credit unions and are not MBLs. Three commenters stated credit unions may lend to other credit unions or CUSOs for investment purposes; excluding such loans from the MBL rule preserves those investment options while affording a credit union more opportunity to grow a business loan portfolio aimed at the commercial or agricultural needs of the membership.

Two commenters stated the language in the proposed rule wrongly provided for FISCUs to exclude loans to credit unions and CUSOs only if there is independent authority for such loans under state law. They noted the state's authority may be statutorily specific, statutorily implied, by regulation, or by agency interpretation and that the provision should be revised accordingly. The Board agrees and revised the language in the final rule to address this concern by removing the requirement that there be independent authority in state law.

Ten commenters agreed that corporate credit union loans to corporate CUSOs should not be subject to the aggregate MBL limits. Some of these commenters supported the change because these loans serve as investments for corporate credit unions and corporate credit unions are the liquidity providers for the credit union movement. The Board notes that, while they need not include loans to corporate CUSOs in calculating their aggregate MBL loan limit, corporate credit unions remain subject to § 704.11(c), which specifically requires them to comply with certain due diligence requirements in the MBL rule for loans to corporate CUSOs.

*Loan Participations, Section 723.1(d), (e)*

Paragraph (d) of § 723.1 requires a credit union to subject purchased business loans or participation interests in business loans that another lender made to members of the purchasing credit union to parts 723 and 702 as if the credit union had originated the loans to its members. Paragraph (e) of § 723.1 permits a credit union to exclude purchased business loans or participation interests in business loans that another lender made to nonmembers of the purchasing credit union from the MBL aggregate limit under the conditions set forth in § 723.16.

Section 723.1(d) of the proposed rule provided that any interest obtained in a participation loan would be excluded in determining the purchasing credit union's aggregate MBL limit but that the participation interest would otherwise be treated the same as a business loan made by the credit union. The effect of this proposal was to subject purchased participation interests in business loans to all of the safety and soundness requirements of NCUA's rules, without requiring the purchasing credit union to count participation interests in loans originated by other lenders against its aggregate MBL limit. While the proposal did not specifically address purchases of whole loans, authorized for RegFlex credit unions pursuant to 12 CFR part 742, the same logic would apply to those purchases.

Credit union commenters were largely supportive of the proposal, although some questioned the basis for distinguishing between loans originated by a credit union and those purchased from another lender. Banks and their representatives argued that the proposal was inconsistent with congressional intent to limit business lending by credit unions, and that it presented unfair competition to community bankers. The U.S. Treasury Department commented that the proposed treatment of participation interests would create a "loophole" to escape the aggregate limit on individual credit unions established by Congress. On the other hand, two congressional sponsors of the CUMAA urged NCUA to use its maximum flexibility to enable credit unions to meet their members' business loan needs.

The Board has made two changes from the proposed rule to address the concerns raised by the commenters and ensure that the treatment of loan purchases and participation interests does not result in circumvention of the aggregate limit. First, the final rule provides that, if a credit union holds an interest in a business purpose loan of its member, the interest will be treated the same irrespective of whether it was made by the credit union or purchased from another lender. If a loan is to a credit union's own member for more than $50,000, and not otherwise excluded from the definition of an MBL, the credit union must treat it as an MBL for all purposes, including the aggregate limit. This change is accomplished by adding a new subsection (d) to § 723.1, "What is a Member Business Loan?" The new subsection clarifies that purchased member loans and member participation interests are MBLs for all purposes under the final rule.[1] Second, with respect to nonmember loans and nonmember participation interests, the final rule provides that they will be treated the same as an MBL for all purposes except the aggregate MBL limit. The total of such nonmember loans, when added to member loans, may exceed the aggregate limit on member loans only if approved by the NCUA Regional Director pursuant to an application and review process. Section 723.1(e) reflects this change and contains a cross reference to new § 723.16(b) that establishes the application process. The reasons for this treatment of nonmember loans are addressed in detail in the discussion of § 723.16 below.

*Construction and Development Lending, Section 723.3*

Section 723.3 sets a new borrower equity requirement and establishes exceptions to the limits imposed on construction and development MBLs. This section requires a borrower to have a minimum of a 25%, rather than a 35%, equity interest in any construction or land development project. It also creates specialized standards for financing the construction of single-family residential properties by professional homebuilders by excluding these MBLs from the aggregate construction and development MBL aggregate limit and the borrower equity requirement under certain circumstances.

Ninety-four commenters welcomed the reduced borrower equity requirement of 25%. Many of these commenters stated this minimum equity interest requirement should provide sufficient collateral for a credit union and adequate incentive for a borrower to complete a project. Some commenters stated the lowered equity interest requirement will help credit unions assist more small business owners and put credit unions on equal footing with other financial institutions. Twenty-two commenters said the revision will provide flexibility for both the borrower and the credit union without negatively impacting safety and soundness. One commenter noted that lowering the equity requirement reduces the additional burden on credit unions to secure a waiver from the 35% equity interest requirement.

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[1] In addition to the provisions of part 723, credit unions may also be subject to the requirements or authorities granted in other applicable regulations governing loan participations, eligible obligations, and loan purchases by RegFlex designated credit unions. 12 CFR 701.22, 701.23, 742.5.

Eight commenters recommended an even lower percentage for the mandatory equity requirement to be competitive with the market. One stated the requirement should be set at 20% and another suggested that the rule permit waivers to 20%. One commenter asked that the rule allow for a lower percentage when a government agency has provided a guarantee or advance commitment on the loan. Another stated that the proposal was a step in the right direction but would prefer if the minimum equity requirement was lowered to 10% if principals give their personal liability and guarantee. A few commenters raised concerns about the equity requirement in relation to the current rule's definition of LTV. They suggested that the agency adopt the FFIEC Interagency Guidelines for Real Estate Lending that establish supervisory limits on LTV ratios on construction and development MBLs. 12 CFR part 34, subpart D, appendix A.

The final rule retains the equity requirement as proposed. The Board continues to regard the borrower equity interest in construction and development projects and the MBL rule's LTV section, § 723.6, as important tools for safe and sound business lending, just as it did when the Board first adopted these requirements in 1991. "Collateral requirements are imposed as a hedge against the potential for borrower default. Additionally, LTV ratios implicitly produce powerful incentives to encourage borrowers to repay, *e.g.*, to protect the borrower's equity interest in the property. These incentives do not exist with high LTV ratios, where the borrower has little, if any, equity at risk. Accordingly it is critical that sufficient equity be available to protect the lender's interest." 56 FR 48421, 48423, Sep. 25, 1991. The Board also continues to view construction and development loans as containing the largest overall risks to business lending. *See id.* at 48424. It believes, therefore, that the requirement for a borrower to have a 25% equity interest in a construction or land development project is appropriate. A credit union, however, may apply for a waiver of this requirement. 12 CFR 723.10.

The FFIEC Interagency Guidelines for Real Estate may provide more flexibility for other financial institutions because, for example, the Guidelines do not require any equity interest but establish LTV limits for certain transactions. Some of the relevant FFIEC supervisory limits are set as follows: 65% LTV for raw land; 75% LTV for land development; and 80% LTV for commercial construction loans. 12 CFR part 34, subpart D, appendix A. As noted above, however, comments directed at the rule's LTV definition are not relevant to this current rulemaking because the Board did not seek public comment on any changes to that definition. These comments, as well as the suggestion to review the FFIEC Interagency Guidelines for Real Estate Lending, remain under consideration and may be addressed by future rulemaking.

Finally, commenters asked for clarification about the borrower's equity requirement and whether it is based on the cost amount of the project or the appraised value of the project upon completion. In NCUA legal opinion 01–0422, dated June 7, 2001, the Office of the General Counsel stated that a borrower's equity interest in a project may include down-payment money and the value of land owned by the borrower on which the project is to be built, less any liens. The legal opinion letter also states that, because construction and development projects are typically very speculative in nature, appraisals that attempt to determine the future market value of the completed project tend to be unreliable. Accordingly, NCUA believes it is more prudent to use the market value of the project at the time the loan is made to determine the value of the financed project. This includes the appraised value of land owned by the borrower on which the project is to be built, less any liens, plus the cost to build the project. To adopt the agency's position and clarify this issue for commenters, the final rule states that credit unions must use the current market value of the project in determining its value.

Section 723.3 reduces the regulatory burden for members engaged in the business of constructing single-family residential properties. First, in the case of a loan to finance the construction of a single-family residence where a contract already exists between the builder, who is a member-borrower, and a prospective homeowner, the final rule provides that such a loan is not subject to the aggregate 15% of net worth limit of § 723.3(a) or the 25% equity interest requirement. These loans need only comply with the LTV requirements of § 723.7. Second, the final rule grants this same relief from the aggregate net worth limit and the equity interest requirement for one construction or development loan per member-borrower or group of associated member-borrowers for a single-family residence, irrespective of the existence of a contract with a prospective homeowner.

When making construction and development loans that are exempt from the equity requirements in § 723.3 but subject to the LTV requirements of § 723.7, credit unions must use the market value of the project at the time the loan is made, as discussed above, when determining the appropriate LTV limits.

Eleven commenters supported the exemptions for the financing of single-family residential properties. Several of these commenters stated that the Federal Credit Union Act charges credit unions to extend credit for provident purposes. They found the exclusions for the construction of single family residences enable credit unions to assist their members in achieving home ownership because increased credit union construction financing will enhance the marketplace for readily saleable homes in every community. In short, they stated this regulation opens a door for credit unions to increase the types of service they can offer to their communities.

Two commenters asked for clarification on these provisions because they were unclear as to the number of loans a member homebuilder may have with the credit union under these exclusions. The final rule allows the homebuilder to have as many loans as it has sales contracts with future homeowners, plus one loan for a home for which the homebuilder does not yet have a sales contract, subject to the loans to one borrower limit in § 723.8. When the credit union applies the rule's exceptions to its first speculative-type loan made to a homebuilder, that loan remains exempt from the 25% equity requirements and excluded from the 15% net worth limit of § 723.3 until the builder pays off the loan. Once it is fully paid, the credit union may exclude a new speculative loan made to the builder from the 15% net worth limitation and subject the loan to the LTV requirements of § 723.7. This is contrasted with an outstanding speculative loan to the builder. The credit union cannot exclude an outstanding speculative loan it made during the time the builder was repaying the first exempt loan because any additional speculative loans to the builder during that time must have been made under all of the conditions of § 723.3.

Three commenters noted that the proposed § 723.3(b) excluded certain construction loans if the prospective homeowner contracted to purchase and reside in the property, but that typically prospective homeowners do not contract to reside in a property. They asked, therefore, that this wording be removed. The Board agrees and amended the final rule accordingly. These commenters also asked the Board to expand the exclusion to one-to-four family dwellings. The final rule maintains the more restrictive provision as proposed, limiting the exclusions to single-family residences. The Board has determined not to extend the exclusion to multi-family dwellings as these dwellings have an investment component for the purchaser.

### *Direct Experience Requirement, Section 723.5*

The final rule amends this section by requiring that the person meeting the rule's mandatory two years of direct experience requirement have sufficient experience given the complexity and risk exposure of the credit union's MBLs. It also requires that a third party meeting the experience requirement be independent from the transaction, but establishes three exceptions from this standard.

Seventy-four commenters supported the agency's intent for this proposal. Most of these commenters stated that the rule would make it easier to find individuals qualified to act as an MBL officer by allowing credit unions to engage the services of a third party with direct experience in MBLs under certain conditions so as to avoid potential conflict of interest. They also stated that it allows credit unions to make MBLs without creating a costly infrastructure to meet the experience requirement. The Board wants to clarify that credit unions have been able to use third parties to meet the experience requirement since the 1991 final MBL rule. 56 FR 48421, Sept. 25, 1991. This rulemaking bolsters the experience requirement by ensuring that the individual's experience is relevant to the types of MBLs the credit union makes and that the individual does not have interests that conflict with the credit union's interests.

Six commenters asked for clarification regarding the agency's standard for the requisite lending experience. In 1999, the Board stated that the "experience requirement can be met by either general business lending experience or experience with granting loans for a particular purpose or secured by a particular collateral." 64 FR 28721, 28723, May 27, 1999. The final rule has a more specific standard requiring a credit union to obtain the services of someone with experience tailored to the credit union's needs. Individuals who meet the requirements of this section must have lending experience directly related to the type of MBLs the credit union intends to offer. These individuals must be familiar with the proper underwriting, analysis, and origination of loans of a particular type in order to understand their complexity and risk exposure. For example, an individual with experience solely in taxi cab loans does not have the requisite experience necessary to underwrite a loan to the taxi company for a gas station, because the individual will be unfamiliar with related issues that may impact the loan, such as environmental laws applicable to underground storage tanks. Likewise, an individual who only has experience with financing residential real estate for homebuilders does not have sufficient lending experience for the land development and construction, or purchase, of a commercial strip center.

Thirty-three commenters found the prohibition against a third party having an interest or involvement in the transaction too restrictive. Most of these commenters stated that the proposal limited a credit union's ability to use third-party service providers and should not be adopted in the final rule. They stated that, while improper personal financial gain cannot be tolerated, a paid third party's interest and involvement is necessary to provide the assistance many credit unions need to make MBLs. One commenter opposed the requirement stating that it would preclude smaller credit unions from having agreements with larger credit unions that have experience underwriting MBLs and then selling participations to that credit union. Two commenters suggested that, in any transaction in which a third party is retained, a credit union should obtain written disclosures of actual or potential relationships and fee arrangements the third party may have in the transaction. Another commenter stated that the proposal was worded too broadly. The Board agrees that the proposal required some revision. The final rule amends the proposed language to more accurately reflect the Board's concerns by establishing a general conflicts of interest standard and exceptions to the standard.

In order for a credit union to engage in business lending in a safe and sound manner, it is crucial for the credit union to maintain strong internal controls and to have independent, experienced personnel involved in making lending decisions that are in the best interests of the credit union. The credit union must perform its own due diligence, both when the credit union makes MBLs and when it purchases MBLs or MBL participation interests, through the services of an individual who meets the requirements in § 723.5. The final rule does not prevent a third party who has the direct experience necessary for a credit union to make MBLs from providing services to the credit union such as document preparation, annual reviews, or loan servicing.

The final rule generally prevents a credit union from relying on a seller's due diligence and experience when the credit union is purchasing MBLs or participation interests in MBLs from the seller. Regardless of whether the seller is, for instance, another credit union or CUSO, the purchasing credit union cannot meet the direct experience requirements of § 723.5 by depending on the advice of the experienced individual(s) who performed the underwriting for the originating lender unless: (1) Staff for the purchasing credit union performed the loan analysis for the originating credit union; or (2) the CUSO exception in § 723.5(b)(3) applies. The final rule bars a credit union from using a third party who has an interest in either the sale of the loan or the collateral securing the loan. It does not bar a smaller credit union from subsequently selling participations to a larger credit union that had advised the credit union when it originated the MBL.

Under the CUSO exception in paragraph (b)(3), a credit union may comply with § 723.5 when purchasing a participation interest or eligible obligation from a CUSO, if the experienced individual is employed by a CUSO in which the credit union has a "controlling financial interest" as determined under the Generally Accepted Accounting Principles, even though the CUSO is both the originator and underwriter of the loan.

### *Member Business Loan Policy, Section 723.6*

This section is amended to require credit unions to adopt analysis and documentation requirements within their MBL policies that are consistent with appropriate underwriting and due diligence standards for the types of MBLs the credit union makes, without detailing required documents. Documentation and underwriting criteria for an MBL may vary depending on the type of business requesting the loan and type of loan requested. The final rule also makes a technical amendment to 12 CFR 704.11(c) to reflect the redesignation of paragraphs in § 723.6.

One hundred and twelve commenters supported the proposal. The vast majority of these commenters noted it would greatly expedite the MBL process by eliminating unnecessary documentation and reducing staff time spent on MBL documentation. Many commenters stated it is appropriate for a credit union to adopt documentation requirements in its own policy relative to the types of loans being made. They said that simpler transactions should be subject to fewer documentation requirements than more complex ones, as long as reasonable standards of safety and soundness are met. The final rule adopts the revisions to § 723.6 as proposed.

### *Loan-to-Value Ratio, Section 723.7*

The final rule makes several amendments to this section. First, the final rule uses plain English to describe the LTV requirements instead of a chart. Second, the final rule retains the personal liability and guarantee requirement but no longer requires RegFlex credit unions to obtain these guarantees from principals. Third, the final rule permits credit unions to make unsecured MBLs, in addition to credit card line of credit programs offered to nonnatural person members, if: (1) The credit union is "well-capitalized" as defined in 12 CFR 702.102(a)(1); (2) the aggregate of unsecured MBLs to one borrower does not exceed the lesser of $100,000 or 2.5% of the credit union's net worth; (3) the aggregate of all of the credit union's unsecured MBLs does not exceed 10% of the credit union's net worth; and (4) the credit union addresses unsecured loans in its written MBL policy. The final rule reorganizes the waiver provisions of § 723.10 and permits credit unions to apply for waivers from the unsecured MBLs to one borrower limitation and the aggregate unsecured loan limitation under this section. Finally, § 723.7 excludes MBLs made for the purchase of consumer-type vehicles from the rule's LTV requirements if the vehicle is a car, van, pick-up truck, or sports utility vehicle (SUV) that is used for commercial purposes.

A few commenters favored removing the LTV chart for a plain English description of the LTV requirements. One commenter stated, however, that credit unions may misunderstand the rule's clarification that government guarantees may not be used in place of the collateral requirements of § 723.7. While the Board recognizes the distinction between the rule's collateral requirements and advance commitments or loan guarantees issued by government agencies, the Board believes it is helpful to maintain this clarification in the final rule. As stated in § 723.7(a)(2), the MBL rule does not permit guarantees as replacements for collateral requirements. Borrowers must meet the LTV requirements on the total loan amount from the credit union even if a portion of the loan amount is guaranteed by a government agency. This measure provides the credit union the necessary security in the event the borrower fails to meet the terms of the government guarantee or commitment. The Board notes this provision does not introduce a new requirement but merely clarifies the existing rule. The final rule also contains a correction by replacing "minimum" with "maximum" to describe the LTV ratio limits prescribed in § 723.3(a) that are unchanged from the 1999 version of the rule.

Section 723.7(b) requires the personal guarantee of all principals in the case of an MBL to a corporate or other organizational member. The only exception is for certain not-for-profit organizations. The proposed rule would have deleted this requirement and allowed the board of directors of each credit union to determine whether to require personal guarantees through its business loan policies. The proposal noted that states that have received exemptions from the NCUA rule have not required personal guarantees and that there is no indication of increased losses or other safety and soundness problems in those states.

While most commenters supported this proposal, a number of commenters, including some credit unions, objected. The views expressed by these commenters included: (1) That the personal guarantee requirement is one of the key reasons that credit union MBLs have been less risky than those of other lenders; (2) that if the principals are not willing to stand behind an MBL, the credit union should not grant it; (3) that without the guarantee requirement future loss experience will be greater; and (4) increased loss experience will be to the detriment of credit unions generally, not just those comparatively few credit unions that choose to make MBLs. Commenters also noted that the exemptions granted to individual states are relatively new and suggested additional monitoring of those states is warranted before eliminating the requirement altogether.

In response to the comments, and after further consideration of the safety and soundness implications of the proposal, the Board has determined to remove the personal guarantee requirement only for those credit unions having RegFlex status under 12 CFR part 742. The personal guarantee requirement is removed for both federal and federally insured state-chartered credit unions meeting the standards of Part 742. RegFlex credit unions generally have a net worth ratio of 9% or more and a high supervisory rating. The Board believes there is little additional safety and soundness risk to the credit union system in allowing RegFlex credit unions that have MBL programs to make their own decisions about requiring personal guarantees. This change is reflected by amending § 723.7(b), the personal guarantee requirement, to state that it does not apply to RegFlex credit unions, and by amending NCUA's RegFlex rule, at § 742.4, to add § 723.7(b) to the list of regulatory requirements from which RegFlex are exempt. Credit unions that do not have RegFlex status may apply for a waiver from the personal guarantee requirement, as permitted in § 723.10(e).

The Board notes the Office of the Comptroller of the Currency and the Office of Thrift Supervision do not impose a legal requirement on national banks and savings associations to obtain principals' personal guarantees before extending credit to a business, but that personal guarantees are nonetheless an industry practice. The Board also notes that the SBA requires personal guarantees under its microloan, 7(a), and 504 loan programs. The Board, therefore, encourages RegFlex credit unions to consider personal guarantees as a risk mitigation tool.

Thirty-seven commenters supported the provision on unsecured MBLs as proposed. Some of these commenters thought the proposal would enable credit unions to expand the potential number of MBL borrowers they could serve and allow them to be competitive with other financial institutions. One commenter stressed how valuable the increase in the unsecured lending authority is to credit unions that partner with the SBA because SBA guidelines allow lenders to make an SBA loan to a business with sufficient ability to repay the loan, even when there is not enough collateral to cover the whole request. Accordingly, the commenter stated, SBA lenders could often be faced with a loan amount in excess of the value of the collateral, so credit unions need sufficient unsecured lending limits to fund this uncollateralized gap.

Sixty-nine commenters stated that the provisions on unsecured MBLs are too restrictive. These commenters offered various suggestions to relax the limits placed on unsecured loans to one borrower and the aggregate amount of unsecured loans a credit union is permitted to make. Three commenters opposed allowing credit unions to make unsecured MBLs.

Section 723.7(c) of the final rule adopts the provisions on unsecured lending as proposed. While many credit unions have requested that the final rule provide greater latitude, the Board finds it prudent to maintain the proposed limits in order to monitor the manner in which credit unions engage in unsecured business lending. The Board also believes that, until it has the opportunity to evaluate the progress of credit unions with unsecured MBLs, the waiver process is sufficient for those credit unions seeking to exceed the rule's current limitations. The waiver process affords NCUA Regional Directors the opportunity to review the safety and soundness considerations of each applicant's lending program on a case-by-case basis.

Ninety-four commenters supported the exemption from the LTV requirements for consumer-type vehicle MBLs. Many of the commenters stated the change is long overdue because the distinctions between a car loan for business purposes and a car loan for consumer purposes are slim. One commenter stated it supported the proposal because the exclusion includes leases of these vehicles and more than one vehicle to an individual, association, organization or business entity. Eleven commenters asked for clarifications on the vehicles covered under the exemption or an expansion of the exemption. Nine of these commenters asked that the Board extend the exemption to any titled vehicle.

Section § 723.7(e) retains the standard proposed by the Board because it believes that the vehicles covered present little or only minimally greater risk than a comparable consumer loan. The Board opposes extending this exemption to all titled vehicles because there is not a readily available market for all types of titled vehicles as there is for consumer-type cars, vans, pick-up trucks, and SUVs. In taking advantage of this rule exception for certain vehicle MBLs, credit unions should establish lending terms, including collateral requirements, for these loans that reflect best industry practices. The Board notes that sound lending practices require that LTV ratios and the term of the loan be consistent with the depreciation schedule of any vehicle used for a particular type of business.

As stated in the proposed rule's preamble, the Board intends this exclusion to be used to finance business use or combined personal/business use vehicles and not, for example, to finance fleet purchases. One commenter asked the Board to clarify the concept of a fleet of cars. A fleet is defined as "a group of vehicles, as taxicabs * * *, owned or operated as a unit." *Webster's II New Riverside University Dictionary* (1994) at 486. The final rule clarifies that a fleet of vehicles is not included in the vehicle exception to the LTV requirements because, when a business requires the use of a fleet of vehicles, it is likely these vehicles will depreciate far more quickly than vehicles used for personal use or a combined personal/business use.

*Reserves for Classified Loans, Sections 723.14 and 723.15*

The final rule deletes and reserves §§ 723.14 and 723.15, which addressed the classification of MBLs for losses and reserving requirements, because NCUA's Interpretive Ruling and Policy Statement on Allowance for Loan and Lease Losses Methodologies and Documentation for Federally-Insured Credit Unions (FICUs) No. 02–3 provides FICUs the appropriate guidance. 67 FR 37445, May 29, 2002. Six commenters specifically supported the deletion of these provisions.

*Effect of Purchased Loans and Purchased Participation Interests, Section 723.16*

In the CUMAA, Congress established an aggregate limit on MBLs made by individual FICUs. A credit union is exempt from the aggregate limit if it: (1) Was chartered for the purpose of making MBLs; (2) has a history of primarily making MBLs; (3) serves predominantly low income members; or (4) is a community development financial institution. For credit unions that are not exempt, the amount of the aggregate limit is the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's assets. Thus, for credit unions with a net worth ratio of 7% or more, the limit is 12.25% of assets. Also, certain loans, such as those below $50,000 in amount and those covered by a government guarantee, are excluded from the MBL definition. 12 U.S.C. 1757A.

The statutory language establishing the aggregate limit provides that "no insured credit union may make any member business loan that would result in the total amount of such loans outstanding" in excess of the limit. 12 U.S.C. 1757a(a) (emphasis added). The Board believes that this language lends itself to several possible interpretations. The narrowest interpretation would apply the limit only to loans made by a credit union to its members and not to loans and loan interests purchased from another lender. A second interpretation would apply the limit to all business loans to a credit union's members, whether made by the credit union or purchased from another lender, but not to purchases of loans or loan interests where the borrower is not a member. The most inclusive interpretation would apply the limit to all business loans, whether made or purchased, and irrespective of whether the borrower is a member.

All FCUs are authorized to purchase participation interests in loans made by other lenders to credit union members. 12 U.S.C. 1757(5)(E); 12 CFR 701.22. The borrower need not be a member of the purchasing credit union, only a member of a participating credit union. 12 CFR 701.22(d)(2). In addition, an FCU generally may purchase eligible obligations of its members from any source if the loans are those the FCU is empowered to grant. 12 U.S.C. 1757(13); 12 CFR 701.23(b). Also, although not specifically addressed in the proposed MBL rule, credit unions eligible for NCUA's regulatory flexibility program are authorized to purchase whole loans from other FICUs, including business purpose loans, irrespective of whether the borrower is a member of the purchasing credit union. 12 CFR 742.5.

In the proposed rule, the Board requested comment on the least constraining interpretation of the aggregate limit on MBLs, that is, only business loans made by a credit union to its members would have counted against the aggregate limit. The Board believes this proposal is consistent with the plain language of the Federal Credit Union Act establishing a limit on member business loans made by a FICU. The Board also believes the proposal is consistent with the congressional intent that credit unions not make business loans at the expense of the consumer loan needs of members and that the credit union system not take on undue risk as a result of over-concentration of MBLs. *See* Senate Report 105–193 for a discussion of congressional intent.

In the proposal, the Board addressed the concern that purchasing MBLs might divert a credit union from its responsibility to extend consumer loans and minimize risk related to concentration of MBLs. The Board noted that a credit union's member-elected board of directors would meet its own members' loan demands first and purchase loans made by other lenders only as a means of placing excess funds to maximize returns to their member shareholders. The proposed rule addressed the safety and soundness concerns both by requiring that the purchasing credit union perform its own due diligence on all purchased loans and loan interests and by treating a purchase as a business loan asset for all other purposes, such as loan-to-one-borrower limits and risk-based net worth requirements.

As previously stated, credit unions and credit union related commenters were supportive of the proposal, but some questioned the basis for distinguishing between originations and purchases. Banks and their representatives argued that the proposal was inconsistent with a congressional intent to limit business lending by credit unions. The U.S. Treasury Department suggested that the proposed treatment of participation interests would create a "loophole" to escape the aggregate limit on individual credit unions established by Congress. On the other hand, two congressional sponsors of CUMAA urged NCUA to use its maximum flexibility to enable credit unions to meet their members' business loan needs.

As explained in the discussion of § 723.1(d) and (e) above, the Board has addressed the commenters concerns by making certain changes to the proposed rule. First, the Board has determined that business purpose loans to members should be included in the aggregate limit whether the loan was made by the credit union or purchased from another lender. Thus, for example, if a credit union forms a CUSO to originate business loans to the credit union's members and then purchases those loans from the CUSO, the purchased loans will count against the credit union's limit. This change is addressed in § 723.1(d) of the final rule.

On the other hand, purchases of nonmember loans and participation interests, as authorized under certain conditions in NCUA's rules and some state laws and rules, do not involve the provision of member loan services, and the acquired loan assets are not MBLs. The Board continues to believe that these purchases will be made only as a productive method of placing excess funds after member loan demands are met, and that they need not count against the purchasing credit union's aggregate MBL limit. The Board believes it is important to avoid unnecessary interference with the ability of credit unions to place their excess funds in the manner that best serves the credit union, its members, and the credit union system. A credit union that has, for example, 10% of its assets in MBLs and no further current business loan demand, should be able to place excess funds in participation interests of loans made by another credit union without being concerned that it will bar the purchasing credit union from meeting its own members' future loan needs. Purchasing participation interests, or whole loans in the case of a RegFlex credit union, provides a better rate of return for the credit union and its members as compared to a typical investment asset, provides for risk diversification within the credit union system, and fosters the cooperative spirit that has traditionally existed and continues to exist among credit unions. Purchased nonmember participation interests, however, remain as loans on the credit union's balance sheet even though, under this regulatory standard, they are not MBLs for purposes of the aggregate MBL cap.

Recognizing that a purchased business loan or participation interest of a nonmember is a business loan asset with all of the attendant risks, the final rule does adopt the proposed rule's treatment of these assets as MBLs for purposes of the safety and soundness requirements of NCUA's regulations. A participating credit union, therefore, must otherwise comply with Part 723 and subject these loans to the PCA risk-weighting standards under Part 702 for MBLs as though the credit union had originated the loans. Thus, for example, the purchasing credit union will be required to do its own independent underwriting review and treat the loan the same as an MBL for purposes such as loan-to-one-borrower limits and construction and development loan limits. This change is accomplished, as previously discussed, by adding a new subsection (e) to § 723.1, "What is a Member Business Loan?" This subsection provides that purchased nonmember loans and participation interests are treated the same as MBLs for all purposes under the rule except the aggregate limit.

With respect to the aggregate limit on MBLs for individual credit unions and to address concerns that the proposed rule would have created a loophole enabling credit unions to escape the limit, the final rule requires Regional Director approval of any transaction that would cause the total of purchased nonmember business loans and nonmember participation interests, when added to the credit union's MBLs, to result in an amount in excess of the credit union's aggregate limit on MBLs. If the credit union is a FISCU, the request must be submitted to the state supervisory authority for approval. If the state supervisory authority approves the request, the state supervisor will forward it to the regional director for approval. This is consistent with the treatment of waiver requests for FISCUs under the MBL rule. An application submitted pursuant to this requirement must include a copy of the credit union's business loan policies. The application must confirm that the credit union adheres to all aspects of NCUA's MBL rules with respect to purchases of nonmember business loans and participation interests, except the aggregate MBL limit. The application must include the credit union's proposed loan limit on nonmember loans and nonmember participation interests. Finally, the application must attest that the purchase is not being used, in conjunction with one or more other credit unions, in a manner that has the effect of trading MBLs that would otherwise exceed the aggregate limit. Upon receipt of a completed application, the Regional Director will issue a decision within thirty days. In the case of a FISCU, the regional director will issue a decision within 30 days of receipt of a completed application and the state supervisory authority's approval.

The application requirement responds to commenter concerns that some credit unions may use the authority to purchase nonmember loans as a device to swap loans and evade the aggregate limit. This process will enable NCUA and the state supervisors to ensure that the authority to purchase nonmember loans and participation interests is not used to trade loans and circumvent the aggregate limit. Further, it will ensure that purchasing credit unions have conducted their own independent review and otherwise complied with the safety and soundness requirements of the regulations. The Board notes that the final rule does not permit a credit union to seek approval to exceed the aggregate limit on MBLs for member loans or member participation interests made by the credit union or purchased from another lender. The application requirement regarding nonmember business loans and participation interests is set forth in § 723.16(b) of the final rule.

### *Net Member Business Loan Balance (NMBLB), Section 723.21*

The final rule adopts the phrase "net member business loan balance" as a new definition in § 723.21 and uses it in various sections in the rule, including §§ 723.1, 723.3, 723.8, and 723.16. The NMBLB definition is:

> [T]he outstanding loan balance plus any unfunded commitments, reduced by any portion of the loan that is secured by shares in the credit union, or by shares or deposits in other financial institutions, or by a lien on the member's primary residence, or insured or guaranteed by any agency of the federal government, a state or any political subdivision of such state, or subject to an advance commitment to purchase by any agency of the federal government, a state or any political subdivision of such state, or sold as a participation interest without recourse and qualifying for true sales

accounting under generally accepted accounting principles.

The NMBLB definition reflects NCUA's interpretation of various provisions in the MBL rule since the 1999 MBL rule was issued and incorporates several exclusions derived from CUMAA. This definition is key to determining: whether a loan qualifies as an MBL; which portion of an MBL is included in the calculation of the loans to one borrower limit; and which portion of an MBL is included in the calculation of a credit union's total aggregate MBL limit. The Board notes that, because the NMBLB definition excludes participation interests sold without recourse from the selling credit union's MBL limits, neither the originating credit union nor a participating credit union count participations against their MBL aggregate cap provided, as discussed above, the loan participation is not in a loan made to a member of the participating credit union and the participating credit union has obtained a waiver, if required under the circumstances. The Board also notes the final rule includes language clarifying that participations sold without recourse must qualify for true sales accounting under GAAP so that the rule accurately reflects the agency's interpretation over the last several years.

The proposed rule contained a substantially similar definition using a different term, "outstanding member business loan balance." Several commenters found the definition confusing because the term's use of the word "outstanding" did not accurately reflect the calculations required as part of the definition. In effect, the proposed definition required a netting of the various exclusions in the definition. The Board has changed the term to "net member business loan balance" and simplified the definition to make it easier to understand.

Seventy-four commenters approved of the proposed definition. Most of these commenters stated it will enable credit unions to easily ascertain the factors involved in calculating the MBL threshold and various limit calculations, as well as providing more flexibility in making MBLs. Three stated the new term recognizes the balances that represent true risk to a credit union. Two bank commenters opposed the new term.

One commenter asked the Board to provide examples to assist credit unions in calculating multiple business purpose loans to one borrower. This commenter asked how much a credit union reports as an MBL when it has $35,000 in business purpose loans to a member and makes a $40,000 business purpose loan to the same member—$40,000, $25,000 or $75,000? The credit union would count the $40,000 loan as an MBL and would comply with all of the requirements of Part 723 in making this loan because the loan caused the aggregate amount of business purpose loans to the member to exceed the $50,000 threshold in § 723.1(b)(3). The credit union, therefore, must comply, for example, with the rule's direct experience requirements and the LTV standards when making the loan, as well as count the MBL against the credit union's aggregate MBL limit in § 723.16. When the member pays down the amount of the total business purpose loans owed to the credit union so that the aggregate amount falls below the $50,000 threshold, the credit union is no longer required to report the $40,000 loan as an MBL.

For purposes of the loans-to-one borrower limitation under § 723.8, the same calculation applies. The $40,000 MBL applies towards the member's one borrower limit of the greater of 15% of the credit union's net worth or $100,000, until the aggregate amount of business purpose loans held by the member is less than $50,000. The member, however, is still subject to the Federal Credit Union Act's limitation on the total amount of loans made to one borrower of no more than 10% of the credit union's unimpaired capital and surplus. 12 U.S.C. 1757(5)(A)(x).

Another commenter asked for clarification on the manner in which a loan that has a partial guarantee from the SBA is analyzed with the NMBLB definition. As discussed in the 1999 final rule's preamble, a credit union only counts the amount of the loan that is not guaranteed by the SBA towards the $50,000 threshold in § 723.1(b)(3) to determine if a business purpose loan is an MBL. 64 FR 28721, 28722, May 27, 1999. Consistent with this interpretation, a credit union that makes a $100,000 business purpose loan, of which 75% of the loan amount is guaranteed by a government agency, counts only $25,000 towards the MBL threshold. 12 CFR 723.1(b)(3). Because this amount of $25,000 is less than $50,000, the loan is not an MBL and is not subject to Part 723.

This example demonstrates loan analysis for purposes of Part 723:

Loan 1 to Company in January 2003: $40,000.

Loan 2 to Company in February 2003: $80,000 with a 75% government guarantee.

- Loan 1 is not an MBL because it is under the $50,000 threshold.
- Loan 2 has an NMBLB of $20,000 (25% of $80,000) but when added to Loan 1, the amount of business purpose loans to the member exceeds $50,000, so Loan 2 is an MBL and must comply with all of the requirements of Part 723.
- FCU must obtain a lien on Company's collateral valued at $100,000 in order to make Loan 2.
- FCU counts $20,000 against its aggregate MBL limit and $20,000 towards Company's limit on loans to one borrower.
- FCU must factor the entire loan amount of Loan 2, $80,000, as an MBL into the standard RBNW calculation of the PCA rule until the loan is fully paid.

Loan 1 is paid down to $15,000 in April 2003.

- Loan 2 is no longer an MBL for purposes of Part 723 because the total amount of business purpose loans to Company is $35,000.

Loan 3 is a participation purchased in a loan made to Company on May 2003: $25,000

- Loan 3 is an MBL because combined with the NMBLBs of Loans 1 and 2, Company's aggregate NMBLBs is $60,000.

Loan 4 Unsecured Line of Credit to Company in June 2003: $15,000.

- Loan 4 is an MBL because Company's aggregate NMBLBs for all four loans totals $75,000, which exceeds the $50,000 threshold.
- As of June 2003, FCU counts Loan 3's NMBLB of $25,000 and Loan 4's NMBLB of $15,000 against its aggregate MBL cap and against Company's loans-to-one borrower limit.
- For PCA purposes, FCU calculates the standard RBNW based on the outstanding balances on Loans 2, 3, and 4 in accordance with § 702.106(b).

One commenter asked that NCUA amend its Form 5300 call report instructions to reflect the changes in the final rule. NCUA will amend the call report after the agency gives the public notice and an opportunity to comment on any proposed changes in accordance with the Administrative Procedure Act and the Paperwork Reduction Act of 1995. The Board anticipates that this process will take several months.

The final rule deletes and reserves § 723.9, which addressed calculation of the limit on loans to one borrower, because the NMBLB definition contains all of the rule's exclusions from this calculation, making § 723.9 unnecessary.

*Effect of Final Rule on Approved State Rules*

State supervisory authorities may continue to seek exemptions for their FISCUs from NCUA's MBL rule as set forth in § 723.20. The seven states that have already received an exemption from the Board will now have three options after the effective date of this rulemaking: (1) State supervisors may rescind their current MBL rules and require their charters to comply with NCUA's new rule; (2) they may maintain their rules as the Board had approved them; or (3) they may seek approval from the Board to adopt any variances from those rules the Board previously approved, in accordance with the process outlined in § 723.20. Commenters asked that the Board adopt a process for NCUA staff approval for any of the seven states that want to update their rules to the new NCUA rule. As noted in the 1999 final rule's preamble, the Board must approve a state's rule before a FISCU is exempt from NCUA's MBL rule. 64 FR 28721, 28728, May 27, 1999. The Board, therefore, is responsible for reviewing any state rule amendments to make a determination as to whether the state regulation, as a whole, minimizes the risk and accomplishes the overall objectives of NCUA's rule. The Board's intent is that any revisions to exempted state rules that simply update those rules to parallel changes in NCUA's rule will be approved on an expedited basis.

### *Section 702.106, Standard Risk-Based Net Worth Component for MBLs*

The final rule expands the standard risk-based net worth (RBNW) component for MBLs to three tiers, from the current two. The bottom tier is risk-weighted at 6% and consists of the amount of MBLs less than or equal to 15% of total assets. The middle tier is risk-weighted at 8% and consists of the amount of MBLs greater than 15%, but less than or equal to 25%, of total assets. The top tier is risk-weighted at 14% and consists of the amount of MBLs in excess of 25% of total assets.

Twenty-six commenters stated the expansion of the standard PCA RBNW component dividing the portfolio of MBLs into three tiers is justified by the consistently low loss history of MBLs since 1998 as well as their unique characteristics. Commenters stated the proposal is a reasonable way to protect the safety and soundness of a credit union and accurately reflects the true underlying risk of MBLs. Several of these commenters noted that this measure offers appropriate relief with regard to RBNW requirements. First, they noted that, those credit unions that were chartered primarily to extend business loans or that have history of primarily extending business loans will benefit from the 3-tiered risk weights by assisting such credit unions in managing the business loan portfolio and RBNW. Additionally, they stated purchased participations will be subject to PCA. Credit unions that plan to engage in significant participation activity will benefit from the new risk portfolios and may better manage participations and maintain adequate net worth. Fifty-two commenters stated the change is not useful as it could be because it overstates the risk. They offered alternatives to the proposed standards. The Board disagrees that the proposal overstates risks and incorporates the rationale articulated in the proposed rule's preamble regarding the appropriateness of the final rule's standard RBNW component into this rulemaking. 68 FR 16450, 16453, Apr. 4, 2003.

Five commenters stated that NCUA should allow for further risk reduction under PCA for MBLs that provide balloon or call provisions under which a loan matures within five years. They also asked that NCUA permit credit unions to include loans with five years or less in maturity in the lowest risk-weighted tier when calculating PCA. The suggestions of these commenters fail to take into account the credit risk of MBLs as well as their interest rate risk; regardless of a loan's maturity, credit risk still exists. The final rule, therefore, retains the provisions the Board proposed.

One commenter noted that the NMBLB definition may cause some confusion for credit unions when calculating the standard RBNW requirement under § 702.106(b) because the PCA rule requires risk-weighting of "member business loans outstanding." For purposes of Part 702, when a credit union classifies a loan as an MBL under Part 723 at the time it makes or purchases a loan or participation interest, that loan remains an MBL for calculating the RBNW requirement until the loan is paid off. This is another issue that the Board will clarify in its future amendments to the Form 5300 call report.

### *CUSO Business Loan Origination, Section 712.5*

The final rule adds business loan origination to the CUSO regulation's list of permissible activities in paragraph (c) of § 712.5.

Seventy-five commenters supported the amendment to the CUSO rule. Many of these commenters stated that by authorizing CUSOs to originate business loans, credit unions will be able to benefit from economies of scale by pooling their investments in a business lending CUSO, thus permitting them to offer MBLs to members that may otherwise be unavailable through the credit union or other lenders. Eight bank commenters opposed the proposal and stated NCUA should reject it because it circumvents the statutory aggregate MBL limit placed on credit unions.

Four commenters asked that the final rule elaborate on the word "originate." They stated it is arguably appropriate that a CUSO conduct functions such as taking business loans applications, conducting analysis, preparing documentation, arranging for title searches or similar services, loan servicing, and review and related services. They also stated that it may also be appropriate for a CUSO to fund loans. Accordingly, they asked that the Board define the term "originate" to establish what activity is permissible through a CUSO. The final rule allows CUSOs to make business purpose loans, just as CUSOs are permitted to engage in consumer mortgage loan origination, meaning to fund or make consumer mortgage loans under § 712.5(d). This is separate from the already recognized authority of CUSOs to engage in loan support services that include loan processing and servicing under § 712.5(j).

The U.S. Treasury Department stated in its comment that it did not object to allowing CUSO business loan origination in itself but expressed concern that the proposed rule excluded participation interests in CUSO-originated MBLs purchased by credit unions from counting towards the MBL cap. As detailed in the discussion regarding § 723.16 above, the final rule does not permit a credit union to exclude any participation interest it has purchased in a loan made to one of the credit union's members. This includes loan participations originated by a CUSO.

Four commenters noted that a revision to the loan participation rule, 12 CFR 701.22, was necessary to make it clear that FCUs may purchase MBL participations from their CUSOs. On June 26, 2003, the Board proposed an amendment to § 701.22(a)(4) which will clarify that CUSOs, as credit union organizations, are eligible organizations in which credit unions may enter into participation agreements. 68 FR 39866, Jul. 3, 2003. FISCUs are subject to applicable state law on this issue.

Two commenters asked the Board to clarify that CUSOs are not subject to the MBL limitations in Part 723. These commenters are correct in that CUSOs are not required to comply with the various requirements and limitations in Part 723 when originating business loans. The Board reminds FCUs that, when entering into eligible obligation or participation agreements with CUSOs or other eligible organizations, FCUs must comply with all applicable regulations, including the MBL rule. *See* 12 CFR 701.22, 701.23.

**Regulatory Procedures**

*Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (those under $10 million in assets). The final member business loan relaxes some of the rule's existing standards or clarifies current requirements. In addition, less than 5% of small credit unions grant member business loans. The NCUA Board, therefore, has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, a regulatory flexibility analysis is not required.

*Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This final rule liberalizes current requirements and standards applicable to all federally insured credit unions and will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that the final rule does not constitute a policy that has federalism implications for purposes of the executive order.

*The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

The NCUA has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

*Small Business Regulatory Enforcement Fairness Act*

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

**List of Subjects**

*12 CFR Part 702*

Credit unions, Reporting and recordkeeping requirements.

*12 CFR Part 704*

Credit unions, Reporting and recordkeeping requirements.

*12 CFR Part 712*

Credit, Credit unions.

*12 CFR Part 723*

Credit, Credit unions, Reporting and recordkeeping requirements.

*12 CFR Part 742*

Credit unions.

By the National Credit Union Administration Board on September 24, 2003.

**Becky Baker,**

*Secretary of the Board.*

■ For the reasons stated in the preamble, NCUA revises 12 CFR chapter VII as set forth below:

## PART 702—PROMPT CORRECTIVE ACTION

■ 1. The authority citation for part 702 continues to read as follows:

**Authority:** 12 U.S.C. 1766(a), 1790d.

■ 2. Amend § 702.106 as follows:

■ a. Revise paragraph (b) to read as set forth below; and

■ b. Revise Table 4 following paragraph (h) to read as set forth below:

### § 702.106 Standard calculation of risk-based net worth requirement.

* * * * *

(a) * * *

(b) *Member business loans outstanding.* The sum of:

(1) Six percent (6%) of the amount of member business loans outstanding less than or equal to fifteen percent (15%) of total assets;

(2) Eight percent (8%) of the amount of member business loans outstanding greater than fifteen percent (15%), but less than or equal to twenty-five percent (25%), of total assets; and

(3) Fourteen percent (14%) of the amount in excess of twenty-five percent (25%) of total assets;

* * * * *

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### TABLE 4 -- §702.106 STANDARD CALCULATION OF RBNW REQUIREMENT

| *Risk portfolio* | *Amount of risk portfolio (as percent of quarter-end total assets) to be multiplied by risk weighting* | *Risk weighting* |
|---|---|---|
| (a) Long-term real estate loans | 0 to 25.00%<br>over 25.00% | .06<br>.14 |
| (b) MBLs outstanding | 0 to 15.00%<br>>15.00% to 25.00%<br>over 25.00% | .06<br>.08<br>.14 |
| (c) Investments | *By weighted-average life*: 0 to 1 year<br>>1year to 3 years<br>>3 years to 10 years<br>>10 years | .03<br>.06<br>.12<br>.20 |
| (d) Low-risk assets | All % | .00 |
| (e) Average-risk assets | All % | .06 |
| (f) Loans sold with recourse | All % | .06 |
| (g) Unused MBL commitments | All % | .06 |
| (h) Allowance | Limited to equivalent of 1.50% of total loans<br>(expressed as a percent of total assets) | (1.00) |

A credit union's RBNW requirement is the sum of eight standard components. A standard component is calculated for each of the eight risk portfolios, equal to the sum of each amount of a risk portfolio times its risk weighting. A credit union is classified "undercapitalized" if its net worth ratio is less than its applicable RBNW requirement.

■ 3. Revise Appendix A to Subpart A of Part 702 to read as follows:

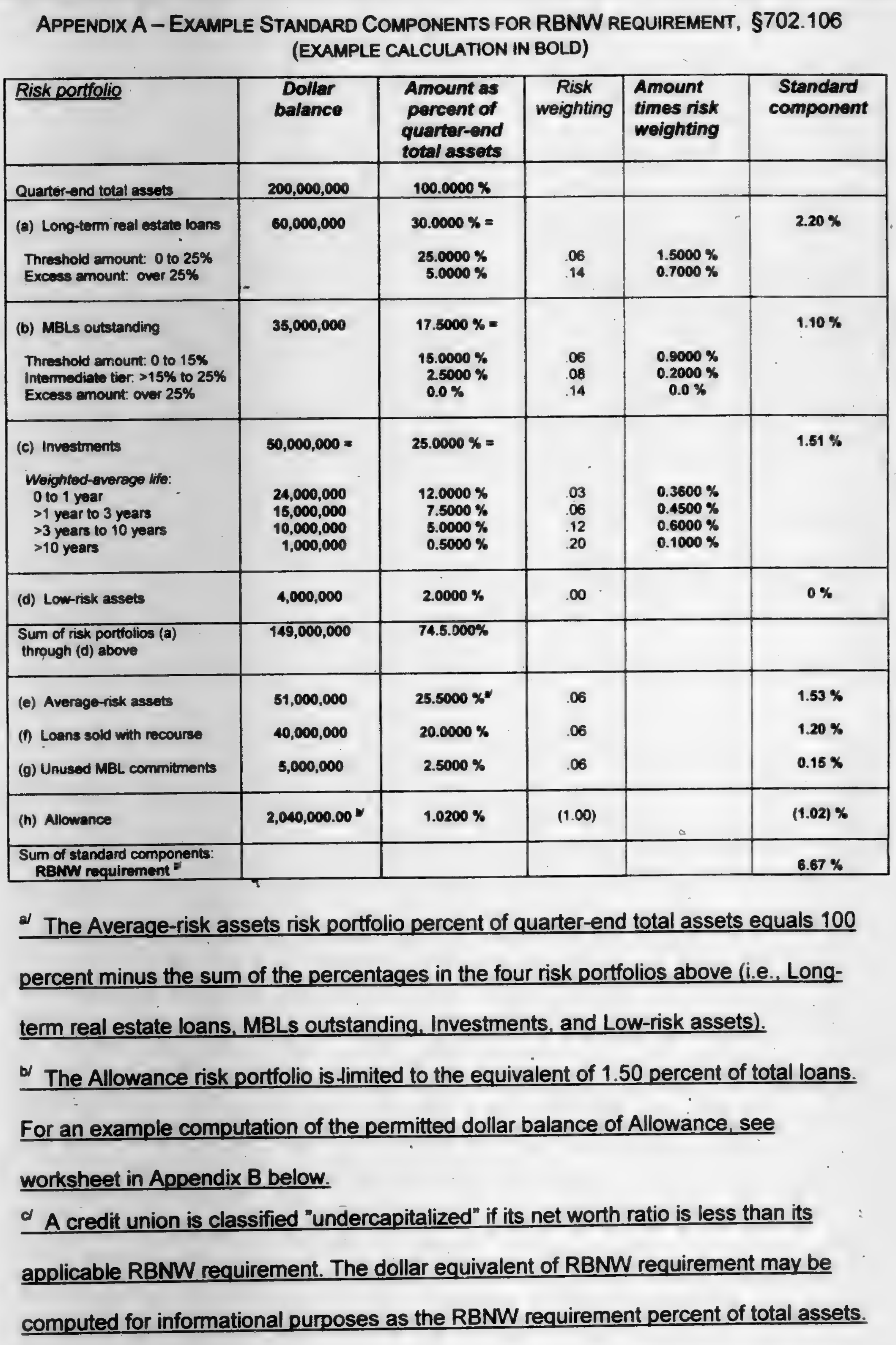

## APPENDIX A – EXAMPLE STANDARD COMPONENTS FOR RBNW REQUIREMENT, §702.106 (EXAMPLE CALCULATION IN BOLD)

| *Risk portfolio* | ***Dollar balance*** | ***Amount as percent of quarter-end total assets*** | *Risk weighting* | ***Amount times risk weighting*** | ***Standard component*** |
|---|---|---|---|---|---|
| Quarter-end total assets | **200,000,000** | **100.0000 %** | | | |
| (a) Long-term real estate loans | **60,000,000** | **30.0000 % =** | | | **2.20 %** |
| Threshold amount: 0 to 25% | | **25.0000 %** | .06 | **1.5000 %** | |
| Excess amount: over 25% | | **5.0000 %** | .14 | **0.7000 %** | |
| (b) MBLs outstanding | **35,000,000** | **17.5000 % =** | | | **1.10 %** |
| Threshold amount: 0 to 15% | | **15.0000 %** | .06 | **0.9000 %** | |
| Intermediate tier: >15% to 25% | | **2.5000 %** | .08 | **0.2000 %** | |
| Excess amount: over 25% | | **0.0 %** | .14 | **0.0 %** | |
| (c) Investments | **50,000,000 =** | **25.0000 % =** | | | **1.51 %** |
| *Weighted-average life:* | | | | | |
| 0 to 1 year | **24,000,000** | **12.0000 %** | .03 | **0.3600 %** | |
| >1 year to 3 years | **15,000,000** | **7.5000 %** | .06 | **0.4500 %** | |
| >3 years to 10 years | **10,000,000** | **5.0000 %** | .12 | **0.6000 %** | |
| >10 years | **1,000,000** | **0.5000 %** | .20 | **0.1000 %** | |
| (d) Low-risk assets | **4,000,000** | **2.0000 %** | .00 | | **0 %** |
| Sum of risk portfolios (a) through (d) above | **149,000,000** | **74.5.000%** | | | |
| (e) Average-risk assets | **51,000,000** | **25.5000 %**[a/] | .06 | | **1.53 %** |
| (f) Loans sold with recourse | **40,000,000** | **20.0000 %** | .06 | | **1.20 %** |
| (g) Unused MBL commitments | **5,000,000** | **2.5000 %** | .06 | | **0.15 %** |
| (h) Allowance | **2,040,000.00**[b/] | **1.0200 %** | (1.00) | | **(1.02) %** |
| Sum of standard components: RBNW requirement[c/] | | | | | **6.67 %** |

[a/] The Average-risk assets risk portfolio percent of quarter-end total assets equals 100 percent minus the sum of the percentages in the four risk portfolios above (i.e., Long-term real estate loans, MBLs outstanding, Investments, and Low-risk assets).

[b/] The Allowance risk portfolio is limited to the equivalent of 1.50 percent of total loans. For an example computation of the permitted dollar balance of Allowance, see worksheet in Appendix B below.

[c/] A credit union is classified "undercapitalized" if its net worth ratio is less than its applicable RBNW requirement. The dollar equivalent of RBNW requirement may be computed for informational purposes as the RBNW requirement percent of total assets.

■ 4. Revise Appendix D to Subpart A of Part 702 to read as follows:

## APPENDIX D – EXAMPLE OF MEMBER BUSINESS LOANS ALTERNATIVE COMPONENT, §702.107(b)

(EXAMPLE CALCULATION IN BOLD)

| *Remaining maturity* | ***Dollar balance of MBLs by remaining maturity*** | ***Percent of total assets by remaining maturity*** | *Alternative risk weighting* | ***Alternative component*** |
|---|---|---|---|---|
| *Fixed-rate MBLs*<br>0 to 3 years | **6,000,000** | **3.0000 %** | .06 | **0.1800 %** |
| > 3 years to 5 years | **4,000,000** | **2.0000 %** | .09 | **0.1800 %** |
| > 5 years to 7 years | **2,000,000** | **1.0000 %** | .12 | **0.1200 %** |
| > 7 years to 12 years | **0** | **0.0000 %** | .14 | **0.0000 %** |
| > 12 years | **0** | **0.0000 %** | .16 | **0.0000 %** |
| *Variable-rate MBLs*<br>0 to 3 years | **17,000,000** | **8.5000 %** | .06 | **0.5100 %** |
| > 3 years to 5 years | **4,000,000** | **2.0000 %** | .08 | **0.1600 %** |
| > 5 years to 7 years | **2,000,000** | **1.0000 %** | .10 | **0.1000 %** |
| > 7 years to 12 years | **0** | **0.0000 %** | .12 | **0.0000 %** |
| >12 years | **0** | **0.0000 %** | .14 | **0.0000 %** |
| Sum of above equals Alternative component* | | | | **1.25 %** |

* Substitute for standard component if lower.

■ 5. Revise Appendix H to Subpart A of Part 702 to read as follows:

## APPENDIX H – EXAMPLE RBNW REQUIREMENT USING ALTERNATIVE COMPONENTS

(EXAMPLE CALCULATION IN BOLD)

| *Risk portfolio* | ***Standard component*** | ***Alternative component*** | ***Lower of standard or alternative component*** |
|---|---|---|---|
| (a) Long-term real estate loans | **2.20 %** | **2.85 %** | **2.20 %** |
| (b) MBLs outstanding | **1.10 %** | **1.25 %** | **1.10 %** |
| (c) Investments | **1.51 %** | **1.37 %** | **1.37 %** |
| (f) Loans sold with recourse | **1.20%** | **1.03%** | **1.03%** |
| | | | **Standard component** |
| (d) Low-risk assets | | | **0 %** |
| (e) Average-risk assets | | | **1.53 %** |
| (g) Unused MBL commitments | | | **0.15 %** |
| (h) Allowance | | | **(1.02) %** |
| **RBNW requirement***<br>Compare to Net Worth Ratio | | | **6.53 %** |

* A credit union is "undercapitalized" if its net worth ratio is less than its applicable RBNW requirement

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## PART 704—CORPORATE CREDIT UNIONS

■ 6. The authority citation for part 704 is revised to read as follows:

**Authority:** 12 U.S.C. 1766(a), 1781, 1789.

■ 7. Amend § 704.7 paragraph (e)(2) by revising the sentence as follows:

**§ 704.7 Lending.**

* * * * *

(e) * * *

(2) Corporate CUSOs are not subject to part 723 of this chapter.

* * * * *

■ 8. Amend § 704.11 by removing paragraph (b)(4).

■ 9. Amend § 704.11(c) by revising the letter (l) to the letter (j).

## PART 712—CREDIT UNION SERVICE ORGANIZATIONS (CUSOs)

■ 10. The authority citation for part 712 continues to read as follows:

**Authority:** 12 U.S.C. 1756, 1757(5)(D) and (7)(I), 1766, 1782, 1784, 1785, and 1786.

■ 11. In § 712.5, redesignate paragraphs (c) to (q) as paragraphs (d) to (r) and add new paragraph (c) to read as follows:

* * * * *

(c) Business loan origination;

* * * * *

## PART 723—MEMBER BUSINESS LOANS

■ 12. The authority citation for part 723 continues to read as follows:

**Authority:** 12 U.S.C. 1756, 1757, 1757A, 1766, 1785, 1789.

■ 13. Amend § 723.1 as follows:

■ a. Add the phrase "the net member business loan balances are" after the word "when" in paragraph (b)(3);

■ b. Add paragraphs (c), (d), and (e).

### § 723.1 What is a member business loan?

* * * * *

(c) *Loans to credit unions and credit union service organizations.* This part does not apply to loans made by federal credit unions to credit unions and credit union service organizations. This part does not apply to loans made by a federally insured, state-chartered credit union to credit unions and credit union service organizations if the credit union's supervisory authority determines that state law grants authority to lend to these entities other than the general authority to grant loans to members.

(d) *Purchase of member loans and member loan participations.* Any interest a credit union obtains in a loan that was made by another lender to the credit union's member is a member business loan, for purposes of this rule and the risk weighting standards of part 702 of this chapter to the same extent as if made directly by the credit union to its member.

(e) *Purchases of nonmember loans and nonmember loan participations.* Any interest a credit union obtains in a nonmember loan, pursuant to § 701.22 or part 742 of this chapter or other authority, is treated the same as a member business loan for purposes of this rule and the risk weighting standards under part 702 of this chapter, except that the effect of such interest on a credit union's aggregate member business loan limit will be as set forth in § 723.16(b) of this part.

■ 14. Amend § 723.3 by revising paragraph (a) and paragraph (b) to read as follows:

### § 723.3 What are the requirements for construction and development lending?

* * * * *

(a) The aggregate of the net member business loan balances for all construction and development loans must not exceed 15% of net worth. In determining the aggregate balances for purposes of this limitation, a credit union may exclude any loan made to finance the construction of a single-family residence if a prospective homeowner has contracted to purchase the property and may also exclude a loan to finance the construction of one single-family residence per member-borrower or group of associated member-borrowers, irrespective of the existence of a contractual commitment from a prospective homeowner to purchase the property.

(b) The borrower must have a minimum of 25% equity interest in the project being financed, the value of which is determined by the market value of the project at the time the loan is made, except that this requirement will not apply in the case of a loan made to finance the construction of a single-family residence if a prospective homeowner has contracted to purchase the property and in the case of one loan to a member-borrower or group of associated member-borrowers to finance the construction of a single-family residence, irrespective of the existence of a contractual commitment from a prospective homeowner to purchase the property. Instead, the collateral requirements of § 723.7 will apply; and

* * * * *

■ 15. Revise § 723.5 as follows:

### § 723.5 How do you implement a member business loan program?

(a) *Generally.* The board of directors must adopt specific business loan policies and review them at least annually. The board must also use the services of an individual with at least two years direct experience with the type of lending the credit union will be engaging in. The experience must provide the credit union sufficient expertise given the complexity and risk exposure of the loans in which the credit union intends to engage. Credit unions do not have to hire staff to meet the requirements of this section but must ensure that the expertise is available. A credit union can meet the experience requirement through various approaches. For example, a credit union can use the services of a credit union service organization (CUSO), an employee of another credit union, an independent contractor, or other third parties. However, the actual decision to grant a loan must reside with the credit union.

(b) *Conflicts of Interest.* Any third party used by a credit union to meet the requirements of paragraph (a) of this section must be independent from the transaction and is prohibited from having a participation in the loan or an interest in the collateral securing the loan that the third party is responsible for reviewing, with the following exceptions:

(1) The third party may provide a service to the credit union related to the transaction, such as loan servicing;

(2) The third party may provide the requisite experience to the credit union and purchase a loan or a participation interest in a loan originated by the credit union that the third party reviewed; or

(3) A credit union may use the services of a CUSO that otherwise meets the requirements of paragraph (a) of this section even though the CUSO is not independent from the transaction, provided the credit union has a controlling financial interest in the CUSO as determined under Generally Accepted Accounting Principles.

### § 723.6 [Amended]

■ 16. Amend § 723.6 as follows:

■ a. Add the phrase "secured and unsecured" before the word "business" in paragraph (c);

■ b. Add "§ 723.7(c)(2) and" after the words "subject to" in paragraph (e);

■ c. Add the phrase "consistent with appropriate underwriting and due diligence standards, which also addresses the need for periodic financial statements, credit reports, and other data when necessary to analyze future loans and lines of credit, such as, borrower's history and experience, balance sheet, cash flow analysis, income statements, tax data, environmental impact assessment, and comparison with industry averages, depending upon the loan purpose" after the word "loan" in paragraph (g);

■ d. Remove paragraphs (h) and (i) and redesignate paragraphs (j) to (m) as (h) to (k).

■ 17. Revise § 723.7 to read as follows:

### § 723.7 What are the collateral and security requirements?

(a) Unless your Regional Director grants a waiver, all member business loans, except those made under paragraphs (c), (d), and (e), must be secured by collateral as follows:

(1) The maximum loan-to-value ratio for all liens must not exceed 80% unless

the value in excess of 80% is covered through private mortgage insurance or equivalent type of insurance, or insured, guaranteed, or subject to advance commitment to purchase by an agency of the federal government, an agency of a state or any of its political subdivisions, but in no case may the ratio exceed 95%;

(2) A borrower may not substitute any insurance, guarantee, or advance commitment to purchase by any agency of the federal government, a state or any political subdivision of such state for the collateral requirements of this paragraph.

(b) Principals, other than a not for profit organization as defined by the Internal Revenue Service Code (26 U.S.C. 501) or those where the Regional Director grants a waiver, must provide their personal liability and guarantee. Federal credit unions and federally insured state-chartered credit unions that meet RegFlex standards, as determined pursuant to Part 742 of this Chapter, are exempt from this requirement and may make their own determination whether to require the personal liability and guarantee of principals.

(c) You may make unsecured member business loans under the following conditions:

(1) You are well capitalized as defined by § 702.102(a)(1) of this chapter;

(2) The aggregate of the unsecured outstanding member business loans to any one member or group of associated members does not exceed the lesser of $100,000 or 2.5% of your net worth; and

(3) The aggregate of all unsecured outstanding member business loans does not exceed 10% of your net worth.

(d) You are exempt from the provisions of paragraphs (a), (b), and (c) of this section with respect to credit card line of credit programs offered to nonnatural person members that are limited to routine purposes normally made available under those programs.

(e) You may make vehicle loans under this part without complying with the loan-to-value ratios in this section, provided that the vehicle is a car, van, pick-up truck, or sports utility vehicle and not part of a fleet of vehicles.

■ 18. Revise § 723.8 to read as follows:

### § 723.8 How much may one member or a group of associated members borrow?

Unless your Regional Director grants a waiver for a higher amount, the aggregate amount of net member business loan balances to any one member or group of associated members must not exceed the greater of:

(a) 15% of the credit union's net worth; or

(b) $100,000.

■ 19. Remove and reserve § 723.9.

■ 20. Revise § 723.10 to read as follows:

### § 723.10 What waivers are available?

You may seek a waiver for a category of loans in any of the following areas:

(a) Appraisal requirements under § 722.3;

(b) Aggregate construction and development loans limits under § 723.3(a);

(c) Minimum borrower equity requirements for construction and development loans under § 723.3(b);

(d) Loan-to-value ratio requirements for business loans under § 723.7(a);

(e) Requirement for personal liability and guarantee under § 723.7(b);

(f) Maximum unsecured business loans to one member or group of associated members under § 723.7(c)(2);

(g) Maximum aggregate unsecured member business loan limit under § 723.7(c)(3); and

(h) Maximum aggregate outstanding member business loan balance to any one member or group of associated members under § 723.8.

■ 21. Remove and reserve § 723.14.

■ 22. Remove and reserve § 723.15.

■ 23. Revise § 723.16 to read as follows:

### § 723.16 What is the aggregate member business loan limit for a credit union?

(a) *General.* The aggregate limit on a credit union's net member business loan balances is the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's total assets. Net worth is all of the credit union's retained earnings. Retained earnings normally includes undivided earnings, regular reserves and any other appropriations designated by management or regulatory authorities. Loans that are exempt from the definition of member business loans are not counted for the purpose of the aggregate loan limit.

(b) *Effect of nonmember loans and nonmember participations.* If a credit union holds any nonmember loans or nonmember loan participation interests that would constitute a member business loan if made to a member, those loans will affect the credit union's aggregate limit on net member business loan balances as follows:

(1) The total of the credit union's net member business loan balances and the nonmember loan balances must not exceed the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's total assets, unless the credit union has first received approval from the NCUA regional director.

(2) To request approval from the NCUA regional director, a credit union must submit an application that:

(i) Includes a current copy of the credit union's member business loan policies;

(ii) Confirms that the credit union is in compliance with all other aspects of this rule;

(iii) States the credit union's proposed limit on the total amount of nonmember loans and participation interests that the credit union may acquire if the application is granted; and

(iv) Attests that the acquisition of nonmember loans and participations is not being used, in conjunction with one or more other credit unions, to have the effect of trading member business loans that would otherwise exceed the aggregate limit.

(3) A federal credit union must submit its request for approval to the regional director (a corporate federal credit union submits its request to the Director of the Office of Corporate Credit Unions). A state chartered federally insured credit union must submit the request to its state supervisory authority. If the state supervisory authority approves the request, the state regulator will forward the application and its decision to the regional director (or if appropriate, the Director of the Office of Corporate Credit Unions). An approved application is not effective until it is approved by the regional director (or in the case of a corporate federal credit union the Director of the Office of Corporate Credit Unions). The regional director will issue a decision within 30 days of receipt of a federal credit union's completed application or within 30 days of receipt of a completed application and the state supervisory authority's approval for a state chartered federally insured credit union.

■ 24. Add the following definition to § 723.21:

### § 723.21 Definitions.

* * * * *

Net Member Business Loan Balance means the outstanding loan balance plus any unfunded commitments, reduced by any portion of the loan that is secured by shares in the credit union, or by shares or deposits in other financial institutions, or by a lien in the member's primary residence, or insured or guaranteed by any agency of the federal government, a state or any political subdivision of such state, or subject to an advance commitment to purchase by any agency of the federal government, a state or any political subdivision of such state, or sold as a participation interest without recourse and qualifying for true sales accounting under generally accepted accounting principles.

## PART 742—REGULATORY FLEXIBILITY PROGRAM

■ 25. The authority citation for part 742 continues to read as follows:

**Authority:** 12 U.S.C. 1756 and 1766.

■ 26. Amend § 742.4(a) by removing the words "§ 703.12(c); and § 703.16(b) of this chapter" and replacing them with "§ 703.12(c), § 703.16(b), and § 723.7(b) of this chapter."

[FR Doc. 03–24760 Filed 9–30–03; 8:45 am]

**BILLING CODE 7535–01–P**

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## SMALL BUSINESS ADMINISTRATION

## 13 CFR Part 120

**RIN 3245–AF09**

## Business Loans

**AGENCY:** Small Business Administration (SBA).

**ACTION:** Direct final rule.

**SUMMARY:** Statutory amendments to the Small Business Act require changes to SBA rules concerning guarantee fees and ongoing service fees paid by SBA participating lenders in SBA's 7(a) loan program. This direct final rule implements the statutory changes.

**DATES:** This rule is effective November 17, 2003, without further action, unless adverse comment is received by October 31, 2003. If adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**.

**ADDRESSES:** Address written comments to LeAnn Oliver, Deputy Associate Administrator for Financial Assistance, Small Business Administration, 409 Third Street, SW., Washington, DC 20416 or to le.oliver@sba.gov. You also may submit comments electronically to http://www.regulations.gov.

**FOR FURTHER INFORMATION CONTACT:** Charles W. Thomas, Acting Director, Office of Loan Programs, Office of Financial Assistance, (202) 205–6656, charles.thomas@sba.gov.

**SUPPLEMENTARY INFORMATION:** The Small Business Investment Company Amendments Act of 2001, Public Law 107–100, 115 Stat. 966 (2001 Act) became effective on December 21, 2001. This direct final rule is necessary to amend SBA regulations in order to incorporate changes made by the 2001 Act to the Small Business Act (the Act) concerning SBA's 7(a) business loan program.

Section 6(b)(a)(1) of the 2001 Act adds section 7(a)(18)(C) to the Act, 15 U.S.C. 636(a)(18)(C), to provide for a temporary reduction in the guarantee fee payable to SBA by participating lenders in the 7(a) loan program for all 7(a) loans with a maturity over 12 months as set forth in this final rule.

TEMPORARY REDUCTION IN SBA GUARANTY FEE

(Effective 10/01/02–9/30/04)

| SBA loan SBA's amount | SBA's standard guaranty fee | SBA's guaranty fee under 2 year reduction |
|---|---|---|
| Up To $150,000 | 2% of SBA's Guaranty Portion | 1% of SBA's Guaranty Portion. |
| More Than $150,000 Up to $700,000 | 3% of SBA Guaranty Portion | 2.5% of SBA's Guaranty Portion. |
| More Than $700,000 | 3.5% of SBA's Guaranty Portion | 3.5% of SBA's Guaranty Portion (No Change). |

The 2001 Act does not change the existing authority of a lender to pass the guarantee fee on to the borrower pursuant to section 7(a)(18)(A) of the Act, 15 U.S.C. 636(a)(18)(A), nor does it change the provision whereby the lender can retain 25 percent of the guaranty fee for loans of $150,000 or less.

Section 6(a)(2) of the 2001 Act also amended section 7(a)(23)(A) of the Act, 15 U.S.C. 636(a)(23)(A), to provide for a temporary reduction to the annual fee (lender's annual service fee) payable to SBA by participating lenders. Pursuant to the 2001 Act, the temporary reduction to the annual service fee that the lender must pay SBA is equal to 0.25 percent (reduced from 0.5 percent) of the outstanding balance of the SBA guaranteed portion of a loan. The 2001 Act does not change the prohibition under section 7(a)(23)(B) of the Act, 15 U.S.C.636(a)(23)(B), against the lender charging the borrower for the lender's annual service fee.

These two fee reductions are temporary and are applicable only to 7(a) loans approved on or after October 1, 2002, through September 30, 2004.

SBA is revising § 120.220 of its regulations to implement these provisions. Because the 2001 Act provisions are temporary, the regulations implementing these provisions are temporary and will be promulgated as separate paragraphs in order to make clear which regulatory provisions will continue to apply after the temporary regulations sunset on September 30, 2004. Thus, paragraph (a)(2) covers the amount of the guarantee fee payable to SBA for loans approved from October 1, 2002, through September 30, 2004. Paragraph (f)(2) covers a lender's annual service fee payable to SBA for loans approved from October 1, 2002, through September 30, 2004.

### Compliance With Executive Orders 13132, 12988 and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C., Ch. 35)

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, SBA determines that this direct final rule has no federalism implications warranting preparation of a federalism assessment.

The Office of Management and Budget (OMB) has determined that this rule does not constitute a significant regulatory action under Executive Order 12866.

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

SBA has determined that this direct final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., chapter 35.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, including small businesses, small non-profit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities.

However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. If the head of the agency makes such a certification, that certification must be published along with a statement providing the factual basis for such certification. Within the meaning of RFA, and based on the following facts, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Section 6 of the 2001 Act provides for a two-year reduction in the guarantee fee paid by lenders to SBA for loans equal to or less than $700,000 and with a maturity of greater than 12 months. The SBA has determined that approximately 4,500 lenders made SBA-guaranteed 7(a) loans in FY 2002 and were thus impacted by the reduced guarantee fee.

Based on SBA's size standards, lenders with $150 million or less in assets are considered small. However, while the SBA does develop and maintain data on the number and dollar volume of SBA lending by participating lender, it does not maintain the data by the relative asset size of the lender. Thus, based on an analysis of SBA loan volume by lender, SBA, as part of its lender oversight responsibilities, generally considers lenders with SBA assets of $10 million or more as large lenders, and SBA believes that classification is reasonably consistent with SBA size standards centered on total lender assets. (SBA invites comment on the use of $10 million or more in SBA assets in this context as a reasonable determinant of lender size.) As a result of this analysis, SBA estimates that about 4,250 of its 4,500 lending participants have SBA assets of less than $10 million and, for the purposes of RFA, may be considered small lenders and could potentially benefit annually from SBA's reduced guaranty fees. However, SBA notes that these 4,250 small lenders approved only about 11,000 SBA loans in FY 2002 or an average of about 2.6 each. (SBA's analysis indicates that its 250 largest lenders accounted for approximately 41,000 loans or 84 percent of SBA's loan volume.)

For loans of $150,000 or less, SBA estimates that the one-percent reduction in SBA's guarantee fee in FY 2002 saved the 4,250 small lending entities about $3.9 million in the aggregate or an average of about $900 each. For loans greater than $150,000 up to $700,000, SBA estimates that the .5 percent reduction in SBA's guarantee fee in FY 2002 saved small lending entities about $9.3 million in the aggregate or an average of about $2,200 each. However, while the potential total savings to these entities as a result of the reductions in the SBA guarantee fee in FY 2002 was approximately $13 million, or about $3,100 each, lenders generally pass the cost of the SBA guarantee fee on to the small business borrowers. As a consequence, SBA anticipates that its reduced guarantee fee also generally is passed on to borrowers. As a result, SBA estimates the actual monetary impact on small lending entities due to the reduced SBA guarantee fee will not be significant. (The SBA estimates that approximately 47,000 of its 52,000 borrowers in FY 2002 benefited from the reduced guarantee fee with savings that ranged from less than $100 up to several thousand dollars each, depending on the size of the loan.)

Section 6 also reduces SBA's annual servicing fee from 0.5 percent to .25 percent of the outstanding balance of the SBA guaranteed portion of a loan, which is a fee paid by lenders and cannot be passed on to SBA borrowers. The SBA thus estimates that the approximately 4,250 small lending entities that approved about 11,000 SBA loans in FY 2002 saved an estimated total of $3.8 million in SBA servicing fees as a result of the reduced servicing fee, which comes to an average savings of about $900 each.

Based on this analysis, SBA certifies that within the meaning of RFA, this rule will not have a significant economic impact on a substantial number of small entities.

### List of Subjects in 13 CFR Part 120

Loan programs-business, Small businesses.

■ For the reasons stated in the preamble, SBA amends 13 CFR part 120 as follows:

## PART 120—[AMENDED]

■ 1. The authority citation for part 120 continues to read as follows:

**Authority:** 15 U.S.C. 634(b)(6), 636(a) and (h), 696(3), and 697(a)(2).

■ 2. Amend § 120.220 by redesignating paragraphs (a) and (f) as (a)(1) and (f)(1), revise newly designated paragraphs (a)(1) and (f)(1), and by adding paragraphs (a)(2) and (f)(2) to read as follows:

### § 120.220 Fees that Lender pays SBA.

* * * * *

(a) *Amount of guarantee fee.*

(1) *In general.* Except to the extent paragraph (a)(2) of this section applies, for a loan with a maturity of twelve (12) months or less, the guarantee fee which the Lender must pay to SBA is one-quarter (¼) of one percent of the guaranteed portion of the loan. For a loan with a maturity of more than twelve (12) months, the guarantee fee is:

(i) 2 percent of the guaranteed portion of a loan if the total amount of the loan is not more than $150,000,

(ii) 3 percent of the guaranteed portion of a loan if the total amount is more than $150,000 but not more than $700,000, and

(iii) 3.5 percent of the guaranteed portion of a loan if the total loan amount is more than $700,000.

(2) *For loans approved October 1, 2002, through September 30, 2004.* For a loan with a maturity of twelve (12) months or less, the guarantee fee which the Lender must pay to SBA is one-quarter (¼) of one percent of the guaranteed portion of the loan. For a loan with a maturity of more than twelve (12) months, the guarantee fee is:

(i) 1 percent of the guaranteed portion of the loan if the total loan amount is not more than $150,000,

(ii) 2.5 percent of the guaranteed portion of a loan if the total loan amount is more than $150,000, but not more than $700,000, and

(iii) 3.5 percent of the guaranteed portion if the total loan amount is more than $700,000.

* * * * *

(f) *Lender's annual service fee payable to SBA.*

(1) *In general.* Except to the extent paragraph (f)(2) of this section applies, the lender shall pay SBA an annual service fee equal to 0.5 percent of the outstanding balance of the guaranteed portion of each loan. The service fee cannot be charged to the Borrower. SBA may institute a late fee charge for delinquent payments of the annual service fee to cover administrative costs associated with collecting delinquent fees.

(2) *For loans approved from October 1, 2002, through September 30, 2004.* The lender shall pay SBA an annual service fee equal to 0.25 percent of the outstanding balance of the guaranteed portion of each loan. The service fee cannot be charged to the Borrower. SBA may institute a late fee charge for delinquent payments of the annual service fee to cover administrative costs associated with collecting delinquent fees.

Dated: September 24, 2003.

**Hector V. Barreto,**

*Administrator.*

[FR Doc. 03–24728 Filed 9–30–03; 8:45 am]

BILLING CODE 8025–01–P

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**DEPARTMENT OF THE INTERIOR**

**Office of Insular Affairs**

**15 CFR Part 303**

**[Docket No. 030707164–3230–02]**

**RIN 0625–AA63**

## Changes in the Insular Possessions Watch, Watch Movement and Jewelry Program

**AGENCIES:** Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

**ACTION:** Final rule.

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**SUMMARY:** The Departments of Commerce and the Interior (the Departments) amend their regulations governing watch duty-exemption allocations and the watch and jewelry duty-refund benefits for producers in the United States insular possessions (the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands). The rule amends existing regulations, due to changes in the industry, by updating the watch assembly requirements for purposes of the duty refund. We also amend 15 CFR part 303 to reflect the new designations that were created with the addition of the Department of Homeland Security.

**DATES:** This rule is effective October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Faye Robinson, (202) 482–3526.

**SUPPLEMENTARY INFORMATION:** The Departments of Commerce and the Interior (the Departments) issue this rule to amend their regulations governing watch duty-exemption allocations and the watch and jewelry duty-refund benefits for producers in the United States insular possessions (the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands). The background information and purpose of this rule is found in the preamble to the proposed rule (68 FR 45177, August 1, 2003) and is not repeated here.

The Departments amend the definitions for Creditable wages and Non-91/5 watches and watch movements, subpart A, 303.2(a)(13) and (14) respectively, to allow wages to be creditable towards the duty refund for watches containing preassembled movements provided (1) that the producer is unable to purchase the movements unassembled and (2) that it completes in the insular possession all other assembly operations required to make the movement into a watch (*see* discussion, below). In order for wages to be considered creditable for watch assembly operations which incorporate preassembled movements, the Departments also amend subpart A, 303.5(b)(6) to require producers who completely assemble watches in the insular possessions, with the exception of the movement, to maintain documentation that demonstrates that the preassembled movement the insular producer purchased could not have been purchased in an unassembled condition. This documentation must be available, along with other relevant company records, for review during the annual audit and verification of the data from the Annual Application (Form ITA–334P). Producers are still required to meet the Bureau of Customs and Border Protection and the Departments' assembly requirements for purposes of the duty exemption.

Finally, this rule amends 15 CFR part 303 to reflect the new designations that were created with the addition of the Department of Homeland Security.

ITA received one comment in response to the proposed rule and request for comments. The commenter expressed support in totality for the new rule without revision. Accordingly, the Departments adopt the provisions in the proposed rule without change.

### Administrative Law Requirements

Administrative Procedure Act. The Departments waives the 30-day delay in effectiveness for this rule because this rule relieves a restriction. (*See* 5 U.S.C. 553(d)(1)). This rule provides more flexibility in the types of movements that can be used in the watch assembly than was allowed prior to the adoption of this rule. Also, this rule allows a duty refund benefit for watches assembled with partially or completely assembled movements if the movement cannot be purchased unassembled. Because, this rule relieves restrictions for watch manufacturers, the 30-day delay in effectiveness is waived and this rule is effective upon publication.

Regulatory Flexibility Act. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chief Counsel for Regulation at the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published in the proposed rule and is not repeated here. No comments were received regarding the economic impact of this rule on small entities. As a result, a final regulatory flexibility analysis was not prepared.

Paperwork Reduction Act. This rulemaking contains revised collection of information requirements that have been approved by the Office of Management and Budget under control numbers 0625–0040 and 0625–0134. Send comments regarding the burden estimate or any other aspect of the collection of information to U.S. Department of Commerce, ITA Information Officer, Washington, DC 20230 and the Office of Information and Regulations Officer, Office of Management and Budget, Washington, DC 20503 (Att: OMB Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information unless it displays a currently valid OMB Control Number.

E.O. 12866. It has been determined that the rulemaking is not significant for purposes of Executive Order 12866.

### List of Subjects in 15 CFR Part 303

Administrative practice and procedure, American Samoa, Customs duties and inspection, Guam, Imports, Marketing quotas, Northern Mariana Islands, Reporting and record keeping requirements, Virgin Islands, Watches and jewelry.

■ For reasons set forth above, the Departments amend 15 CFR part 303 as follows:

## PART 303—WATCHES, WATCH MOVEMENTS AND JEWELRY PROGRAM

■ 1. The authority citation for 15 CFR part 303 continues to read as follows:

**Authority:** Pub. L. 97–446, 96 Stat. 2331 (19 U.S.C. 1202, note); Pub. L. 103–465, 108 Stat. 4991; Pub. L. 94–241, 90 Stat. 263 (48 U.S.C. 1681, note); Pub. L. 106–36, 113 Stat. 167.

■ 2. Title 15 CFR part 303 is amended by removing "U.S. Customs Service" or "Customs Service" wherever it appears and adding "Bureau of Customs and Border Protection" in its place.

■ 3. Title 15 CFR part 303 is amended by removing "Department of the Treasury" wherever it appears and adding "Department of Homeland Security" in its place.

■ 4. Section 303.2 is amended by revising the first sentence of paragraph (a)(13) and the first sentence of paragraph (a)(14) as set forth below.

**§ 303.2 Definitions and forms.**

(a) * * *

(13) *Creditable wages* means all wages, up to an amount equal to 65% of the contribution and benefit base for Social Security as defined in the Social Security Act for the year in which the wages were earned, paid to permanent residents of the territories employed in a firm's 91/5 watch and watch movement assembly operations, plus wages paid for the repair of non-91/5 watches up to an amount equal to 50% of the firm's total creditable wages, and for wages paid for the complete assembly of watches in the insular possession, with the exception of the movement, only in situations where the desired movement can not be purchased in an unassembled condition. * * *

(14) *Non-91/5 watches and watch movements* include, but are not limited to, watches and movements which are liquidated as dutiable by the Bureau of Customs and Border Protection but do not include, for purposes of the duty refund, watches that are completely assembled in the insular possessions, with the exception of a desired movement if the movement cannot be purchased in an unassembled condition; contains any material which is the product of any country with respect to which Column 2 rates of duty apply; are ineligible for duty-free treatment pursuant to law or regulation; or are units the assembly of which the Departments have determined not to involve substantial and meaningful work in the territories (as elsewhere defined in these regulations).

* * * * *

■ 5. Section 303.5(b)(6) is revised to read as set forth below.

**§ 303.5 Application for annual allocation of duty-exemptions.**

* * * * *

(b) * * *

(6) Records on purchases of components, including documentation on the purchase of any preassembled movements, which demonstrate that such movements could not have been purchased from the vendor in an unassembled condition, and records on the sales of insular watches and movements, including proof of payment; and"

* * * * *

**James J. Jochum,**

*Acting Assistant Secretary for Import Administration, Department of Commerce.*

**Nikolao Pula,**

*Director, Office of Insular Affairs, Department of the Interior.*

[FR Doc. 03–24903 Filed 9–30–03; 8:45 am]

BILLING CODES 3510–DS–P and 4310–93–P

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

[TD 9080]

RIN 1545–BC47

## Reduction of Tax Attributes Due to Discharge of Indebtedness; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Reduction of tax attributes due to discharge of indebtedness.

**SUMMARY:** This document contains corrections to temporary regulations that were published in the **Federal Register** on July 18, 2003 (68 FR 42590). These regulations relate to the reduction of tax attributes under sections 108 and 1017 of the Internal Revenue Code.

**EFFECTIVE DATE:** This correction is effective July 18, 2003.

**FOR FURTHER INFORMATION CONTACT:** Theresa M. Kolish (202) 622–7930 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

The temporary regulations that are the subject of these corrections are under sections 108 and 1017 of the Internal Revenue Code.

### Need for Correction

As published, the temporary regulations (TD 9080) contain errors that may prove to be misleading and are in need of clarification.

### Correction of Publication

■ Accordingly, the publication of the temporary regulations (TD 9080) which are the subject of FR Doc. 03–18145, is corrected as follows:

**§ 1.108–7T [Corrected]**

■ 1. On page 42592, column 3, § 1.108–7T, paragraph (a)(2), line 2 thru 7, the language "section 108(b)(5), however, to reduce first the basis of depreciable property to the extent of the excluded COD income. If the basis of depreciable property is insufficient to offset the entire amount of the excluded COD income, the" is corrected to read "section 108(b)(5), however, to apply any portion of the excluded COD income to reduce first the basis of depreciable property. To the extent the excluded COD income is not so applied, the".

■ 2. On page 42593, column 1, § 1.108–7T(d), paragraph (i) of *Example 3*, line 3, the language "trade debts of $200,000 and a depreciable" is corrected to read "debts of $200,000 and a depreciable".

■ 3. On page 42593, column 1, § 1.108–7T(d), paragraph (i) of *Example 3*, line 14, the language "trade creditors in exchange for release of" is corrected to read "creditors in exchange for release of".

■ 4. On page 42593, column 1, § 1.108–7T(d), paragraph (ii) of *Example 3*, line 19, the language "requirements of section 354(a)(1)(A) and (B)." is corrected to read "requirements of section 354(b)(1) (A) and (B).".

■ 5. On page 42593, column 1, § 1.108–7T(d), paragraph (ii) of *Example 3*, line 2, the language "to X's trade creditors, under section" is corrected to read "to X's creditors, under section".

■ 6. On page 42593, column 1, § 1.108–7T(d), paragraph (ii) of *Example 3*, line 7, the language "owed the trade creditors for $100,000, the fair" is corrected to read "owed the creditors for $100,000, the fair".

■ 7 . On page 42593, column 2, § 1.108–7T(d), paragraph (ii) of *Example 4*, line 2, the language "distribution of Y stock to X's trade creditors," is corrected to read "distribution of Y stock to X's creditors,".

**Cynthia E. Grigsby,**

*Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 03–24912 Filed 9–30–03; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

### 37 CFR Part 2

[Docket No. 2003–T–024]

RIN 0651–AB68

## Reorganization of Correspondence and Other General Provisions

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Final rule; correction.

**SUMMARY:** The United States Patent and Trademark Office ("Office") published in the **Federal Register** of August 13, 2003 (68 FR 48286), a final rule amending its rules to separate the provisions for patent matters and trademark matters with respect to filing correspondence, requesting copies of documents, payment of fees, and general information. This document corrects a typographical error in the final rule.

**EFFECTIVE DATE:** October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mary Hannon, Office of the

Commissioner for Trademarks, by telephone at (703) 308–8910, ext. 137; by e-mail to mary.hannon@uspto.gov; by facsimile transmission addressed to her at (703) 872–9280; or by mail marked to her attention and addressed to Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3514.

**SUPPLEMENTARY INFORMATION:** The United States Patent and Trademark Office ("Office") published in the **Federal Register** of August 13, 2003 (68 FR 48286), a final rule amending its rules to separate the provisions for patent matters and trademark matters with respect to filing correspondence, requesting copies of documents, payment of fees, and general information. This document corrects a typographical error in the final rule.

In FR Doc. 03–20489, published on August 13, 2003 (68 FR 48286), make the following correction:

**§ 2.198 Filing of correspondence by "Express Mail."**

■ 1. On page 48291, in the first column, in § 2.198, line 2, correct "(a)(1)(i) and (ii)" to read "(a)(1)(i) through (vii)."

Dated: September 24, 2003.

**Lynne G. Beresford,**

*Deputy Commissioner for Trademark Examination Policy.*

[FR Doc. 03–24812 Filed 9–30–03; 8:45 am]

BILLING CODE 3510–16–P

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## POSTAL SERVICE

### 39 CFR Part 111

### Indemnity Claims for Domestic Mail

**AGENCY:** Postal Service.

**ACTION:** Delay of effective date of final rule.

**SUMMARY:** The effective date of October 1, 2003, for changes to domestic indemnity claims regulations published in the **Federal Register** on September 2, 2003 (Vol. 68, No. 169, pages 52100–52104) is delayed until further notice. As a result, 39 CFR part 111 is not amended at this time.

**DATES:** This delay is effective upon publication.

**SUPPLEMENTARY INFORMATION:** The Postal Service will issue a further document regarding the effective date of these policy and procedure changes.

**Neva R. Watson,**

*Attorney, Legislative, Office of Legal Policy and Ratemaking Law.*

[FR Doc. 03–24915 Filed 9–30–03; 8:45 am]

BILLING CODE 7710–12–P

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## POSTAL SERVICE

### 39 CFR Parts 224, 261 through 268

### Release of Information and Records Management Changes

**AGENCY:** Postal Service .

**ACTION:** Final rule.

**SUMMARY:** The Postal Service revises organizational names and titles relating to the policies for the release of information and records management, and revises the fee structure relating to the furnishing of documents and records to members of the public under the Freedom of Information Act (FOIA). These revisions (1) Update organizational names and titles that changed as a result of agency restructuring, (2) reflect to whom the public should address issues relating to the release of information and records management, and (3) change the fee structure to permit the recovery of current costs incurred in the furnishing of records to the public.

**DATES:** This rule is effective September 30, 2003.

**FOR FURTHER INFORMATION CONTACT:** Robert Faruq at 202–268–2608.

**SUPPLEMENTARY INFORMATION:**

#### Background

On August 11, 2003, the Postal Service published a proposed rule in the **Federal Register** (68 FR 47527). In that notice, we proposed:

- Revising the organizational names and titles in the policies relating to releasing information and managing records.
- Revising the fee structure for furnishing documents and records to members of the public under the Freedom of Information Act (FOIA).

#### Discussion of Comments

The Postal Service received comments from one party regarding the proposed rule changes.

*Comments:* The party objected to fee increase amounts, the unification of the rate structure, and the change to half-hour assessments.

*Response:* The FOIA requires fees to be based upon direct operating costs of providing FOIA services, which recoup full allowable direct costs incurred. The Postal Service has not updated its FOIA fees since 1987, a period of 16 years. During that time, personnel costs have risen substantially.

The fee increases, along with the unification of the rate structure, are based on the weighted average salaries of employees responsible for providing FOIA services. The class of Postal Service personnel providing FOIA services is Executive and Administrative Salary Schedule (EAS) employees, levels EAS 1 through EAS 26. The administrative/clerical and professional/executive categories did not work appropriately in an EAS environment. The levels and job duties performed can vary considerably, such as between Headquarters and field units, with some positions having both administrative and professional aspects. The rate structure for providing FOIA services was unified to appropriately align with Postal Service employee classifications. In addition, this will likely reduce the FOIA fees charged, because most personnel processing FOIAs are EAS positions that more typically would be classified as professional, and thus would assess fees at the higher category.

The use of half-hour increments to assess fees will be easier to implement administratively, and is consistent with other agencies' fee regulations. In addition, on average, FOIA fees should not increase, because charges will be to the nearest half hour, as opposed to being rounded upward. Fees for computer searches were updated to reflect current costs and current technology. Certain computer fees remain charged at 15-minute increments because it is less administratively burdensome to track those time increments for computer searches than for manual searches. Computer personnel fees may involve programming necessary to retrieve data in response to specific requests. Programming varies in degrees of technical complexity, and is reflected in separate fee categories.

#### Changes to References

After issuing the proposed rule, the Postal Service identified several incorrect references. We corrected those references in this final rule.

#### List of Subjects

*39 CFR Part 224*

Organization and functions (Government agencies).

*39 CFR Parts 261, 262, and 263*

Archives and records.

*39 CFR Part 264*

Archives and records, Security measures.

*39 CFR Part 265*

Administrative practice and procedure, Courts, Freedom of information, Government employees.

*39 CFR Parts 266 and 268*

Privacy.

*39 CFR Part 267*

Archives and records, Classified information, Privacy, Security measures.

■ For the reasons stated in the preamble, the Postal Service amends 39 CFR parts 224, 261, and 262 through 268 as follows:

## PART 224—[AMENDED]

■ 1. The authority citation for part 224 continues to read as follows:

**Authority:** 5 U.S.C. App.3; 39 U.S.C. 203, 204, 401(2), 403, 404, 409, 1001; Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended).

### § 224.1 [Amended]

■ 2. Amend § 224.1, as follows:

■ a. In paragraph (a), remove the words "a Senior Assistant Postmaster General (SAPMG). The group consists of three departments, each headed by an Assistant Postmaster General and the Office of the Treasurer and the Records Office. The SAPMG, Finance, participates in the planning and budget process, and reviews and evaluates the budget requests of each region for the areas under control of the Finance Group." and add in their place the words "Chief Financial Officer and Executive Vice President. The group includes the following: Vice President, Chief Technology Officer; Vice President, Finance Controller; Vice President, Treasurer; Vice President, Supply Management; Manager, Corporate Financial Planning; Manager, Internal Control; and Manager, Finance Administration."

■ b. Remove paragraph (f).

## PART 261—[AMENDED]

■ 3. The authority citation part 261 continues to read as follows:

**Authority:** 39 U.S.C. 401.

### § 261.2 [Amended]

■ 4. In § 261.2, paragraph (b), revise the first sentence to read as follows:

### § 261.2 Authority.

(a) * * *

(b) 39 CFR 262.2 assigns to the Postal Service Records Office, located under the Privacy Office responsibility for the retention, security, and privacy of Postal Service records and the power to authorize the disclosure of such records and to order their disposal by destruction or transfer.* * *

### § 261.4 [Amended]

■ 5 Amend § 261.4 as follows:

■ a. In paragraph (a), remove the words "manager, Administration and FOIA, under the Chief Financial Officer and Senior Vice President," and add in their place the words "Manager, Records Office, under the Privacy Office,".

■ b. In paragraph (a) remove the word "finance" and add in its place the words "Consumer Affairs".

■ c. Revise paragraph (b) to read as follows:

### § 261.4 Responsibility.

(a) * * *

(b) The Chief Privacy Officer, under the Vice President and Consumer Advocate, is responsible for administering records and information management policies and for the compliance of all handbooks, directives, and instructions in support of this policy.

* * * * *

## PART 262—[AMENDED]

■ 6. The authority citation for part 262 continues to read as follows:

**Authority:** 5 U.S.C. 552, 552a; 39 U.S.C. 401.

### § 262.2 [Amended]

■ 7. Amend § 262.2 as follows:

■ a. Redesignate paragraphs (a), (c), and (d) as paragraphs (c), (d), and (e).

■ b. Add new paragraph (a).

■ c. Revise paragraph (b).

■ d. In newly redesignated paragraph (e), remove the words "Manager, Corporate Accounting" and add in their place the words "Records Office" and remove the word "official" and add in its place the words "Records Office is".

The addition and revision read as follows:

### § 262.2 Officials.

(a) Chief Privacy Officer. The Chief Privacy Officer (CPO) is responsible for the issuance of policy on the protection of privacy and the release of Postal Service records with the power to authorize the disclosure of such records and to delegate or take appropriate action if that policy is not adhered to or if questions of interpretation or procedure arise. The CPO directs the activities of the Privacy Office and the Records Office.

(b) Manager, Records Office. The Manager, Records Office, manages the Records Office, and is responsible for establishing procedures and guidelines to ensure that record management practices are in compliance with the Privacy Act and FOIA. The Manager, Records Office, may also delegate or take appropriate action if policies are not adhered to or if questions of interpretation or procedures arise.

* * * * *

### § 262.4 [Amended]

■ 8. Amend § 262.4 as follows:

■ a. In paragraph (a), remove the words "office of Corporate Accounting" and add in their place the words "Records Office".

■ b. In paragraph (b), first sentence, remove the words "office of Corporate Accounting" and add in their place the words "Records Office".

### § 262.5 [Amended]

■ 9. In § 262.5, paragraph (d)(2), last sentence, remove the words "office of Administration and FOIA" and add in their place the words "Records Office".

## PART 263—[AMENDED]

■ 10. The authority citation for 39 CFR Part 263 continues to read as follows:

**Authority:** 39 U.S.C. 401.

### § 263.3 [Amended]

■ 11. Amend § 263.3 as follows: In paragraph (a), remove the words "The Office of Corporate Accounting" and add in their place the words "Records Office".

### § 263.4 [Amended]

■ 12. In § 263.4, remove the words "Corporate Accounting" and add in their place the words "the Records Office".

### § 263.5 [Amended]

■ 13. Amend § 263.5 as follows:

■ a. Remove the words "Corporate Accounting" and add in their place the words "Records Office".

■ b. Remove the digits "5240".

■ c. Remove the words "to the Records Specialist".

■ d. Remove the digits "4869" and add in their place the digits "2608".

## PART 264—[AMENDED]

■ 14. The authority citation for part 264 continues to read as follows:

**Authority:** 39 U.S.C. 401.

### § 264.3 [Amended]

■ 15. In § 264.3, paragraph (a), remove the words "Corporate Accounting" from both the heading and the first sentence, and add in their place the words "Records Office".

## PART 265—[AMENDED]

■ 16. The authority citation for part 265 continues to read as follows:

**Authority:** 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601.

### § 265.3 [Amended]

■ 17. Amend § 265.3 as follows:

■ a. In paragraph (a), remove the words "§ 262.2 (a)" and add in their place the words "§ 262.2 (c)".

■ b. In paragraph (b), remove the words "*Freedom of Information/Privacy Acts Officer.* The USPS Freedom of Information/Privacy Acts Officer, under the Manager, Administration and FOIA" and add in their place the words "*Manager, Records Office.* The Postal Service Manager, Records Office, under the Privacy Office".

### § 265.4 [Amended]

■ 18. Amend § 265.4 as follows:
■ a. Remove the words "USPS Freedom of Information/Privacy Acts Officer" and add in their place the words "Manager, Records Office".
■ b. Remove the digits "5202".

### § 265.5 [Amended]

■ 19. In § 265.5, remove the designation ".gov" and add in its place the designation ".com/foia".

### § 265.6 [Amended]

■ 20. Amend § 265.6 as follows:
■ a. In paragraph (b), introductory text, remove the words "office of Administration and FOIA" and add in their place the words "Records Office".
■ b. In paragraph (b)(3)(ii), remove the words "940 of the *Domestic Mail Manual* (DMM)" and add in their place the words "R900 of the *Domestic Mail Manual* (DMM)".
■ c. In paragraph (d)(1), first sentence, remove the words "upon payment of the fee prescribed in § 265.9 (e)(3) and (g)(5),".
■ d. In paragraph (d)(1), first sentence, remove the reference "(d)(4)" and add in its place the reference "(d)(5)".
■ e. In paragraph (d)(1), third sentence, remove the references "(d)(4)(i), (d)(4)(iii), or (d)(4)(iv)" and add in their place the references "(d)(5)(i), (d)(5)(iii), or (d)(5)(iv)".
■ f. In paragraph (d)(1), remove last sentence.
■ g. In paragraph (d)(4)(i), remove the references "(d)(3)(iii)", "(d)(4)(i)", and "(d)(4)(iii)" and add in their place the references "(d)(4)(iii)", "(d)(5)(i)", and "(d)(5)(iii)", respectively.
■ h. In paragraph (d)(4)(ii), remove the references "(d)(3)(iii)", "(d)(4)(i)", and "(d)(4)(iii)" and add in their place the references "(d)(4)(iii)", "(d)(5)(i)", and "(d)(5)(iii)", respectively.
■ i. In paragraph (d)(5)(ii)(F), remove the references "(d)(4)(i), (d)(4)(iii), or (d)(4)(iv)" and add in their place the references "(d)(5)(i), (d)(5)(iii), or (d)(5)(iv)".
■ j. In paragraph (d)(5)(iv), remove the reference "(d)(4)(i)" and add in its place the reference "(d)(5)(i)".
■ k. In paragraph (d)(9)(i), remove the references "(d)(4)(i) and (d)(4)(iii)" and add in their place the references "(d)(5)(i) and (d)(5)(iii)".

### § 265.7 [Amended]

■ 21. Amend § 265.7 as follows:
■ a. In paragraph (a)(2), remove the words "USPS Freedom of Information/Privacy Acts Officer" and add in their place the words "Manager, Records Office".
■ b. In paragraph (a)(2), remove the digits "5202".
■ c. In paragraph (a)(2), last sentence, remove the words "office of Administration and FOIA" and add in their place the words "Records Office".

### § 265.9 [Amended]

■ 22. Amend § 265.9 as follows:
■ a. In paragraph (b)(1)(i), remove the words "each quarter hour spent by clerical personnel in searching for records is $4.40. When a search cannot be performed by clerical personnel and must be performed by professional or managerial personnel, the fee for each quarter hour in searching for records is $5.35." and add in their place the words "a manual search is $32 per hour (fractions of an hour are rounded to the nearest half hour)".
■ b. In paragraph (b)(1)(ii), first sentence, remove the words "runs and operator salary, as calculated in accordance with the Information Services Price List" and add in their place the words "and personnel cost".
■ c. In paragraph (b)(1)(ii), second sentence and last sentence, remove the words "list is" and add in their place the words "fees are".
■ d. In paragraph (b)(2)(ii), remove the words "office of Administration and FOIA" and add in their place the words "Records Office".
■ e. In paragraph (b)(2)(iii), remove the phrase "the per-page fee shall be charged" and add the phrase "the $.15 per-page fee shall be charged"; and
■ f. In paragraph (b)(2)(iii), add to the third sentence the words "or her" following the word "his".
■ g. In paragraph (b)(3), remove the first two sentences and add one new sentence in its place.
■ h. Remove paragraph (e)(3).
■ i. In paragraph (g)(1), remove the words "Fees shall not be" and add in their place the words "No fees shall be".
■ j. In paragraph (g)(1), remove the last sentence.
■ k. In paragraph (g)(2)(i), second sentence, remove the words "the standard rates set out in the Information Services Price List" and add in their place the words "fee for computer searches".
■ l. In paragraph (g)(2)(i), last sentence, remove the words "(including the cost of equipment use and operator's time) reaches the equivalent dollar amount of the operator's basic rate for two hours plus a factor to cover benefits." and add in their place the words "(including the cost of personnel and computer processing time) reaches the equivalent dollar amount of personnel fees for 2 hours."
■ m. In paragraph (g)(4), remove the words "office of Administration and FOIA" and add in their place the words "Manager, Records Office".
■ n. Revise paragraph (g)(5).

The revision reads as follows:

### § 265.9 Schedule of fees.

(b) * * *

(3) * * * The fee for reviewing records located in response to a commercial use request is $32 per hour (fractions of an hour are rounded to the nearest half hour).

* * * * *

(g) * * *

(5) Fee for other services. Waivers do not apply for fees for address correction services performed in accordance with section R900 of the *Domestic Mail Manual.*

* * * * *

### § 265.10 [Amended]

■ 23. In § 265.10, last sentence, remove the word ".gov" and add in its place the words ".com/foia".

### § 265.12 [Amended]

■ 24. Amend § 265.12 as follows:
■ a. In paragraph (b)(7), remove the words "Freedom of Information/Privacy Acts Officer" and add in their place the words "Manager, Records Office".
■ b. In paragraph (b)(7), remove the digits "5202".
■ 25. Revise Appendix A to read as follows:

## Appendix A to Part 265—Fees for Computer Searches

When requested information must be retrieved by computer, fees charged to the requester are based on rates for personnel and computer time. Estimates are provided to the requester in advance and are based on the following rates:

| | Price | Unit |
|---|---|---|
| Personnel: | | |
| High technical ...... | $120 | per hour. |
| Medium technical | 70 | per hour. |
| Low technical ....... | 50 | per hour. |
| Computer Processing: | | |
| Mainframe usage | .39 | per second. |
| Midrange server usage. | .06 | per second. |
| PC usage ............ | 7.00 | per 15 minutes. |
| Printing computer output. | .14 | per page. |
| Magnetic tape production. | 24.00 | per volume. |

## PART 266—[AMENDED]

■ 26. The authority citation for part 266 continues to read as follows:

**Authority:** 5 U.S.C. 552a; 39 U.S.C. 401.

### § 266.3 [Amended]

■ 27. Amend § 266.3 as follows:

■ a. In paragraph (a), remove the words "*Freedom of Information/Privacy Acts Officer.* The USPS Freedom of Information/Privacy Acts Officer, under the Manager, Administration and FOIA" and add in its place the words "*Records Office.* The Records Office, within the Privacy Office".

■ b. In paragraph (c) remove the words "office of Administration and FOIA" and add in their place the words "Records Office".

■ c. In paragraph (d)(2) remove the words "Manager, Administration and FOIA" and add in their place the words "Chief Privacy Officer".

■ d. Revise paragraphs (d)(2)(i) through (vi) to read as follows:

### § 266.3 Responsibility.

* * * * *

(d) * * *

(2) * * *

(i) Vice President and Consumer Advocate (Chairman).

(ii) Chief Postal Inspector.

(iii) Inspector General.

(iv) Senior Vice President, Human Resources.

(v) Vice President, General Counsel.

(vi) Chief Privacy Officer.

### § 266.4 [Amended]

■ 28. In § 266.4, paragraph (b)(6)(i),(iii) and (iv), remove the words "Freedom of Information/Privacy Acts Officer" and add in their place the words "Manager, Records Office".

### § 266.5 [Amended]

■ 29. In § 266.5, paragraph (d), remove the words "office of Administration and FOIA" and add in their place the words "Records Office".

### § 266.6 [Amended]

■ 30. Amend § 266.6 as follows:

■ a. In paragraph (a), first sentence, remove the words "Freedom of Information/Privacy Acts Officer" and add in their place the words "Manager, Records Office".

■ b. In paragraph (a), remove the digits "5202".

■ c. In paragraph (d), remove the words "Freedom of Information/Privacy Acts Officer" and add in their place the words "Manager, Records Office".

### § 266.7 [Amended]

■ 31. In § 266.7, paragraph (a)(4), last sentence, remove the words "office of Administration and FOIA" and add in their place the words "General Counsel".

### § 266.8 [Amended]

■ 32. In § 266.8, paragraph (b)(3), second sentence, remove the words "the per page fee" and add in their place the words "$.15 per page fee".

### § 266.10 [Amended]

■ 33. Amend § 266.10 as follows:

■ a. In paragraph (a), first sentence, paragraph (b), second sentence, paragraph (c), and paragraph (d)(2), remove the words "USPS Freedom of Information/Privacy Acts Officer" and add in their place the words "Postal Service Manager Records Office".

■ b. In § 266.10, paragraph (a), fourth sentence, paragraph (b), last sentence, and paragraph (d), second sentence, remove the words "Freedom of Information/Privacy Acts Officer" and add in their place the words "Manager, Records Office".

## PART 267—[AMENDED]

■ 34. The authority citation for part 267 continues to read as follows:

**Authority:** 39 U.S.C. 401; Pub. L. 93–579, 88 Stat. 1896.

### § 267.3 [Amended]

■ 35. In § 267.3, paragraph (a) introductory text, remove the words "Freedom of Information/Privacy Acts Officer" from both the heading and the first sentence, and add in their place the words "Chief Privacy Officer".

### § 267.5 [Amended]

■ 36. Amend § 267.5 as follows:

■ a. In paragraph (e)(3)(i), remove the words "Manager, Administration and FOIA" and add, in their place, the words "Manager, Records Office".

■ b. In paragraph (e)(3)(i), remove the digits "5202".

## PART 268—[AMENDED]

■ 37. The authority citation for part 268 continues to read as follows:

**Authority:** 39 U.S.C. 401; 5 U.S.C. 552a.

### § 268.1 [Amended]

■ 38. In § 268.1, paragraph (b), second sentence, remove the words "Freedom of Information/Privacy Acts Officer" and add in their place the words "Manager, Records Office".

**Neva R. Watson,**

*Attorney, Legislative.*

[FR Doc. 03–24914 Filed 9–30–03; 8:45 am]

BILLING CODE 7710–12–U

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## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 101–6

### RIN 3090–AH33

## Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, or Age in Programs or Activities Receiving Federal Financial Assistance; Correction

**AGENCY:** General Services Administration (GSA).

**ACTION:** Final rule; correction.

**SUMMARY:** The General Services Administration is issuing a correction to Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, or Age in Programs or Activities Receiving Federal Financial Assistance; Final Rule, to correct a typographical error.

**EFFECTIVE DATE:** October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ms. Laurie Duarte at (202) 501–4755, General Services Administration, Regulatory Secretariat, Washington, DC 20405.

### Correction

### § 101–6.216 [Corrected]

In the final rule FR Doc. 03–21140 appearing in the issue of August 26, 2003 (68 FR 51334):

■ On page 51373, third column, in paragraph (f)(3)(ii), fifth line, the word "nay" is corrected to read "any".

Dated: September 22, 2003.

**Laurie Duarte,**

*Regulatory Secretariat, Acquisition Policy Division.*

[FR Doc. 03–24456 Filed 9–30–03; 8:45 am]

BILLING CODE 6820–34–P

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## DEPARTMENT OF DEFENSE

### 48 CFR Parts 202, 213, and 252

## Defense Federal Acquisition Regulation Supplement; Technical Amendments

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement to update activity names, clause titles and dates, and cross-references.

**EFFECTIVE DATE:** October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

Telephone (703) 602–0311; facsimile (703) 602–0350.

**List of Subjects in 48 CFR Parts 202, 213, and 252**

Government procurement.

**Michele P. Peterson,**
*Executive Editor, Defense Acquisition Regulations Council.*

■ Therefore, 48 CFR Parts 202, 213, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 202, 213, and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR chapter 1.

## PART 202—DEFINITIONS OF WORDS AND TERMS

### 202.101 [Amended]

■ 2. Section 202.101 is amended in the definition of "Contracting activity", under the heading "NAVY", by removing "Marine Corps Materiel Command" and adding in its place "Marine Corps Systems Command".

## PART 213—SIMPLIFIED ACQUISITION PROCEDURES

### 213.301 [Amended]

■ 3. Section 213.301 is amended in paragraph (2)(ii)(B) by removing "8.001" and adding in its place "8.002".

### 213.302–5 [Amended]

■ 4. Section 213.302–5 is amended as follows:

■ a. In paragraph (d) introductory text, in the first sentence, by removing "buy American Act—Balance of Payments Program—Supplies" and adding in its place "Buy American Act—Supplies"; and

■ b. In paragraph (d)(ii), by removing "225.1101(13)" and adding in its place "225.1101(10)".

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

### 252.212–7001 [Amended]

■ 5. Section 252.212–7001 is amended in paragraph (b), in entry "252.225–7021" by removing "(APR 2003)" and adding in its place "(AUG 2003)".

[FR Doc. 03–24628 Filed 9–30–03; 8:45 am]

BILLING CODE 5001–08–P

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**DEPARTMENT OF DEFENSE**

**48 CFR Parts 226 and 252**

**[DFARS Case 2002–D033]**

# Defense Federal Acquisition Regulation Supplement; Indian Incentive Program

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8021 of the DoD Appropriations Act for Fiscal Year 2003. Section 8021 revises the criteria for application of the Indian Incentive Program to DoD contracts.

**DATES:** Effective date: October 1, 2003.

*Comment date:* Comments on the interim rule should be submitted to the address shown below on or before December 1, 2003, to be considered in the formation of the final rule.

**ADDRESSES:** Respondents may submit comments directly on the World Wide Web at http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm. As an alternative, respondents may e-mail comments to: dfars@acq.osd.mil. Please cite DFARS Case 2002–D033 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Angelena Moy, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D033.

At the end of the comment period, interested parties may view public comments on the World Wide Web at http://emissary.acq.osd.mil/dar/dfars.nsf.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angelena Moy, (703) 602–1302.

**SUPPLEMENTARY INFORMATION:**

## A. Background

The Indian Incentive Program provides for incentive payments to contractors, and subcontractors at any tier, that use Indian organizations and Indian-owned economic enterprises as subcontractors. DoD implementation of the Indian Incentive Program is in DFARS Subpart 226.1 and the clause at 252.226–7001. Section 8021 of the DoD Appropriations Act for Fiscal Year 2003 (Public Law 107–248) revises the criteria for application of the Indian Incentive Program by establishing a $500,000 threshold for contracts and subcontracts under which incentives may be paid; by authorizing incentive payments for subcontracts awarded to Native Hawaiian small business concerns; and by adding contracts and subcontracts for commercial items to the Program. This interim rule amends DFARS subpart 226.1 and the clause at 252.226–7001 to implement section 8021 of Public Law 107–248.

In addition, this interim rule incorporates changes to the clause at 252.226–7001 resulting from the proposed rule published at 67 FR 70389 on November 22, 2002, under DFARS Case 2002-D013. That proposed rule removed references to specific contract types from the clause, since the Indian Incentive Program applies to all contract types. Four sources submitted comments on the proposed rule. A discussion of the comments is provided below.

1. Comment: The rule should clarify that a contractor can receive a separate equitable adjustment in addition to the incentive payment under the clause. The equitable adjustment would apply if the cost of subcontracting with an Indian organization exceeds the cost of subcontracting with a non-Indian source. The 1996 version of the Indian Incentive clause at FAR 52.226–1 substantiates this position.

DoD Response: Do not concur. 25 U.S.C. 1544 provides that "a contractor * * * may be allowed an additional amount of compensation equal to 5 percent of the amount paid, or to be paid, to a subcontractor or supplier, in carrying out the contract if such subcontractor or supplier is an Indian organization or Indian-owned economic enterprise * * *" Section 8021 of Public Law 107–248 appropriates funds "only for incentive payments authorized by * * * 25 U.S.C. 1544 * * *" Accordingly, the clause at DFARS 252.226–7001 provides for an incentive payment of 5 percent of the amount of a subcontract awarded to an Indian organization or Indian-owned economic enterprise.

When the Indian Incentive Program was added to the FAR as an interim rule on August 22, 1991 (56 FR 41736), the clause at 52.226–1 provided that a contract adjustment under the Program would be the lesser of (1) the difference between the price of the subcontract awarded to an Indian concern and the price of the otherwise low, non-Indian offeror, or (2) 5 percent of the price of the subcontract awarded to an Indian concern. When the FAR rule was finalized on July 26, 1996 (61 FR 39210), the clause was revised to eliminate the first option and to specify the "5 percent" payment method as the sole method of incentive payment under the Program. Confusion has existed because the FAR and DFARS clauses have used the terms "incentive" and "adjustment" interchangeably. However, the statutes and the implementing clauses historically have permitted only one type of incentive payment per subcontract award. To clarify this point, DoD has replaced the term "adjustment" with the term "incentive" each place it appeared in the clause at 252.226–7001.

2. Comment: The requirement of DFARS 252.226–7001(d), that prohibits an incentive payment from being made within 50 working days of subcontract award, is arbitrary and should be deleted. The contracting officer should have the flexibility to make a case-by-case determination of when it is appropriate to make the incentive payment.

*DoD Response:* Concur. The interim rule eliminates the 50-day waiting period.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

This rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* DoD has prepared an initial regulatory flexibility analysis, which is summarized as follows:

This interim rule amends the DFARS to implement Section 8021 of the DoD Appropriations Act for Fiscal Year 2003. Section 8021 does the following: (1) Appropriates funds for implementation of the Indian Incentive Program; (2) establishes a threshold of $500,000 for contracts and subcontracts under which incentives may be paid; (3) expands the Program to permit incentive payments for subcontract awards to Native Hawaiian small business concerns; and (4) adds contracts and subcontracts for commercial items to the Program, provided the commercial items are produced or manufactured in whole or in part by an Indian organization or enterprise or Native Hawaiian small business concern. The rule will apply to contractors and subcontractors that subcontract work under DoD contracts, and will pertain to subcontract awards to Indian organizations, Indian-owned economic enterprises, and Native Hawaiian small business concerns. The net effect on small entities is unknown at this time. DoD knows of no alternatives that would meet the requirements of Section 8021 of the DoD Appropriations Act for Fiscal Year 2003.

A copy of the analysis may be obtained from the address specified herein. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D033.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 8021 of the DoD Appropriations Act for Fiscal Year 2003 (Pub. L. 107–248). Section 8021 revises the criteria for application of the Indian Incentive Program by establishing a $500,000 threshold for contracts and subcontracts under which incentives may be paid; by authorizing incentive payments for subcontracts awarded to Native Hawaiian small business concerns; and by adding contracts and subcontracts for commercial items to the Program. Section 8021 became effective upon enactment, on October 23, 2002. Comments received in response to this interim rule will be considered in the formation of the final rule.

### List of Subjects in 48 CFR Parts 226 and 252

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

■ Therefore, 48 CFR parts 226 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 226 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 226—OTHER SOCIOECONOMIC PROGRAMS

■ 2. Sections 226.103 and 226.104 are revised to read as follows:

### 226.103 Procedures.

(f) The contracting officer shall—

(i) Submit a request for funding of the Indian incentive to the Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD(AT&L)SADBU), 1777 North Kent Street, Suite 9100, Arlington, VA 22209; and

(ii) Upon receipt of funding from OUSD(AT&L)SADBU, issue a contract modification to add the Indian incentive funding for payment of the contractor's request for adjustment as described in the clause at 252.226–7001, Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns.

### 226.104 Contract clause.

Use the clause at 252.226–7001, Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns, in solicitations and contracts for supplies or services exceeding $500,000 in value for which subcontracting opportunities may exist.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Section 252.212–7001 is amended as follows:

■ a. By revising the clause date to read "(Oct 2003)"; and

■ b. In paragraph (b) by adding, in numerical order, entry "252.226–7001" to read as follows:

### 252.212–7001 Contract terms and conditions required to implement statutes or Executive orders applicable to Defense acquisitions of commercial items.

* * * * *

(b) * * *

**252.226–7001 Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (Oct 2003) (Section 8021 of Pub. L. 107–248).**

* * * * *

■ 4. Section 252.226–7001 is revised to read as follows:

### 252.226–7001 Utilization of Indian organizations, Indian-owned economic enterprises, and native Hawaiian small business concerns.

As prescribed in 226.104, use the following clause:

### Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (Oct 2003)

(a) *Definitions.* As used in this clause—

*Indian* means any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any "Native" as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

*Indian organization* means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C. chapter 17.

*Indian-owned economic enterprise* means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

*Indian tribe* means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1452(c).

*Interested party* means a contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

*Native Hawaiian small business concern* means an entity that is—

(1) A small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632) and relevant implementing regulations; and

(2) Owned and controlled by a Native Hawaiian as defined in 25 U.S.C. 4221(9).

(b) The Contractor shall use its best efforts to give Indian organizations, Indian-owned economic enterprises, and Native Hawaiian small business concerns the maximum practicable opportunity to participate in the subcontracts it awards, to the fullest extent consistent with efficient performance of the contract.

(c) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status.

(d) In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to—

(1) For matters relating to Indian organizations or Indian-owned economic enterprises: U.S. Department of the Interior, Bureau of Indian Affairs, Attn: Chief, Division of Contracting and Grants Administration, 1849 C Street NW, MS–2626–MIB, Washington, DC 20240–4000. The BIA will determine the eligibility and will notify the Contracting Officer.

(2) For matters relating to Native Hawaiian small business concerns: Department of Hawaiian Home Lands, PO Box 1879, Honolulu, HI 96805. The Department of Hawaiian Home Lands will determine the eligibility and will notify the Contracting Officer.

(e) No incentive payment will be made—

(1) While a challenge is pending; or

(2) If a subcontractor is determined to be an ineligible participant.

(f)(1) The Contractor, on its own behalf or on behalf of a subcontractor at any tier, may request an incentive payment in accordance with this clause.

(2) The incentive amount that may be requested is 5 percent of the estimated cost, target cost, or fixed price included in the subcontract at the time of award to the Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern.

(3) In the case of a subcontract for commercial items, the Contractor may receive an incentive payment only if the subcontracted items are produced or manufactured in whole or in part by an Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern.

(4) The Contractor has the burden of proving the amount claimed and shall assert its request for an incentive payment prior to completion of contract performance.

(5) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the estimated cost, target cost, or fixed price included in the subcontract awarded to the Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern.

(6) If the Contractor requests and receives an incentive payment on behalf of a subcontractor, the Contractor is obligated to pay the subcontractor the incentive amount.

(g) The Contractor shall insert the substance of this clause, including this paragraph (g), in all subcontracts exceeding $500,000 for which further subcontracting opportunities may exist.

[FR Doc. 03–24629 Filed 9–30–03; 8:45 am]

BILLING CODE 5001-08-P

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## DEPARTMENT OF DEFENSE

## 48 CFR Part 237

## [DFARS Case 2002–D024]

## Defense Federal Acquisition Regulation Supplement; Approval of Service Contracts and Task Orders

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 801(b) of the National Defense Authorization Act for Fiscal Year 2002. Section 801(b) requires DoD to establish and implement a management structure for the procurement of services.

**DATES:** Effective date: October 1, 2003.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before December 1, 2003, to be considered in the formation of the final rule.

**ADDRESSES:** Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil.* Please cite DFARS Case 2002-D024 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Mr. Steven Cohen, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002-D024.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Steven Cohen, (703) 602–0293.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This interim rule adds DFARS section 237.170, Approval of contracts and task orders for services, to implement Section 801(b) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107).

Section 801 of Public Law 107–107 established a series of requirements impacting the acquisition of services in DoD. On May 31, 2002, the Under Secretary of Defense (Acquisition, Technology, and Logistics) issued a policy memorandum that established a review structure and process for the acquisition of services in accordance with section 801(d). The policy memorandum is available on the World Wide Web at http://www.acq.osd.mil/dpap.

This interim DFARS rule implements section 801(b) of Public Law 107–107 by establishing approval requirements for contracts and task orders for services. The rule prohibits the acquisition of services through use of a DoD contract or task order that is not performance based, or through any contract or task order that is awarded by an agency other than DoD, unless certain approval requirements are met. With respect to services acquisitions through a contract or task order awarded by an agency other than DoD, the rule requires approval in accordance with department or agency procedures. Each of the three military departments has developed a "Management and Oversight of Acquisition of Services Process" to provide a review structure for services acquisitions, as required by the May 31, 2002, memorandum. The military departments are working to implement this infrastructure, which will include approval levels for services acquired through another agency's contract.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because FAR part 37 already requires the use of performance-based contracting to the maximum extent practicable. This DFARS rule establishes internal DoD approval requirements to manage compliance with the existing FAR requirements. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002-D024.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements section 801(b) of the National Defense Authorization Act for Fiscal Year 2002, which requires DoD to establish and implement a management structure for the procurement of services. Section 801(b) became effective upon enactment on December 28, 2001. Comments received in response to this interim rule will be considered in the formation of the final rule.

### List of Subjects in 48 CFR Part 237

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

■ *Therefore, 48 CFR part 237 is amended as follows:*

■ 1. The authority citation for 48 CFR Part 237 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 237—SERVICE CONTRACTING

■ 2. Sections 237.170 through 237.170–3 are added to read as follows:

**237.170 Approval of contracts and task orders for services.**

**237.1701–1 Scope.**

This section—

(a) Implements 10 U.S.C. 2330; and

(b) Applies to services acquired for DoD, regardless of whether the services are acquired through—

(1) A DoD contract or task order; or

(2) A contract or task order awarded by an agency other than DoD.

**237.170–2 Prohibition on acquisition of services.**

Unless approval is obtained in accordance with 237.170–3, do not acquire services through use of a contract or task order that'

(a) Is not performance based; or

(b) Is awarded by an agency other than DoD.

**237.170–3 Approval requirements.**

(a) Acquisition of services through a DoD contract or task order that is not performance based.

(1) For acquisitions at or below $50,000,000, obtain the approval of the official designated by the department or agency.

(2) For acquisitions exceeding $50,000,000, obtain the approval of the senior procurement executive.

(b) Acquisition of services through any contract or task order awarded by an agency other than DoD. Obtain approval in accordance with department or agency procedures.

[FR Doc. 03–24627 Filed 9–30–03; 8:45 am]

BILLING CODE 5001–08–P

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**RIN 1018–AH47**

## Endangered and Threatened Wildlife and Plants; Delisting of the *Berberis* (=*Mahonia*) *sonnei* (Truckee barberry)

**AGENCY:** Fish and Wildlife Service Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service) have determined that it is appropriate to delist or remove *Berberis* (=*Mahonia*) *sonnei* (Truckee barberry) from the List of Endangered and Threatened Plants. This determination is based on a thorough review of all available data, which indicate that this plant is not a discrete taxonomic entity and does not meet the definition of a species (which includes subspecies and varieties of plants) under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). *Berberis sonnei* has been synonymized with *B. repens*, a common and wide-ranging taxon with a distribution from California northward to British Columbia and Alberta, and eastward to the Great Plains. This rule eliminates Federal protection for *Berberis sonnei* under the Act.

**DATES:** This rule is effective October 1, 2003.

**ADDRESSES:** The administrative record for this rule is available for inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office of the U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, California 95825–1888 (telephone: 916–414–6600).

**FOR FURTHER INFORMATION CONTACT:** Kirsten Tarp or Susan Moore, at the above address (telephone: 916–414–6600; facsimile: 916–414–6713).

**SUPPLEMENTARY INFORMATION:**

### Background

*Berberis* (=*Mahonia*) *sonnei* is a small colonial evergreen shrub known only from a 280-yard (250-meter) section of the Truckee River floodplain in the town of Truckee, Nevada County, CA. LeRoy Abrams described *Berberis sonnei* as *Mahonia sonnei* in 1934. McMinn (1939) transferred *Mahonia sonnei* to the genus *Berberis*. Separation of *Berberis* and *Mahonia* at the generic level is in dispute among taxonomists. The generic name *Berberis* will be used throughout this discussion following Yoder-Williams (1985, 1986, 1987).

The collections amateur botanist Charles Sonne made from 1884 to 1886 around the Truckee River in Nevada County, CA, provided the material from which the *Berberis sonnei* type later was taken. Sonne placed his collections in *B. aquifolium*, which at the time was the only suitable name to which he could refer his specimens (Roof 1974).

LeRoy Abrams (1934) determined that Sonne's specimens were not *Berberis aquifolium* and recognized them as a new species, *B. sonnei*, in his revision of the western barberries. Abrams distinguished the new species from *B. aquifolium* by the numerous small teeth on the leaf margins, dull color of underside leaf surfaces, and presence of papillae (small round or conic projections), concluding that these characters indicated a closer relationship with *B. repens*.

Sonne's material, and an 1881 collection by Marcus Jones at Soda Springs, Nevada County, CA, were the only specimens of *Berberis sonnei* available to botanists for many years. The actual location of Jones's collection has never been determined conclusively; it possibly was the same area later collected by Sonne (U.S. Fish and Wildlife Service 1984). Howard McMinn searched unsuccessfully for *B. sonnei* for his 1939 treatment of California shrubs. A 1944 collection from an unknown site on the Truckee River was placed in *B. repens* and went unnoticed by botanists for nearly 30 years. In 1965, an examination of Sonne's field notes revealed a reference to *B. aquifolium*, which likely could have been *B. sonnei*, from Deer Creek in Placer County, CA, but the locality is undocumented by a specimen (Roof 1974). *Berberis sonnei* was not relocated until a 1973 collection by Tahoe-Truckee high school student, Cathy Kramer, from the site presumably visited by Sonne nearly 90 years earlier (Roof 1974).

Taxonomic relationships between members of the *Berberis aquifolium* complex, which includes *B. repens* and *B. sonnei*, have long been confused. Abrams (1934) and McMinn (1939) both recognized a close relationship between *B. sonnei* and *B. repens*. McMinn (1939) first questioned the validity of *B. sonnei*, observing that *B. sonnei* perhaps was "only a more upright form of" *B. repens*. Yoder-Williams (1985, 1986, 1987) attributed frequent misclassification of herbarium specimens to the use of taxonomic characters incapable of consistently separating taxa of the group because they failed to account for variability throughout the range of the complex.

Yoder-Williams (1985, 1986, 1987) evaluated the diagnostic value of *Berberis* characters, including presence of papillae, glossiness of upper and lower leaf surfaces, plant height, and leaf tooth spination. As a result of his evaluation, Yoder-Williams concluded in several unpublished manuscripts that an analysis of possible characters to separate *Berberis sonnei* from both *B. repens* and *B. aquifolium* as treated by Abrams (1934) "'failed to produce any clear distinctions,'" and that the taxon *B. sonnei* should be reduced to synonymy under *B. repens*. He recommended further field work and a comprehensive taxonomic revision of the entire group.

Michael Williams (1993) based his treatment of California *Berberis* on his taxonomic studies of selected members of the *B. aquifolium*. Williams's treatment of the California taxa followed earlier authors (Scoggan 1978) in placing *B. repens* as a variety of *B. aquifolium*, and additionally synonymized *B. sonnei* with *B. aquifolium* var. *repens*. The latter is a wide-ranging taxon with a distribution from the Peninsular Ranges of southern California northward to British Columbia and eastward to the Great Plains.

In the *Flora of North America* (Whittemore 1997), both *Berberis aquifolium* var. *repens* and *B. sonnei* are considered to be synonyms for *B. repens*. *Berberis repens* occurs in open forest, grassland, and shrubland. Whittemore (1997) notes that Sonne's collections from Truckee are considered to be an aberrant form of *B. repens*, and that subsequent collections from this population show the morphology typical of *B. repens* (Whittemore 1997). The range for *B. repens* is similar to that described for *B. aquifolium* ssp. *repens*.

### Previous Federal Action

Federal Government actions on *Berberis sonnei* began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and included *B. sonnei* as an endangered species. We published a notice on July 1, 1975 (40 FR 27823), of our acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) of the Act (petition provisions are now found in section 4(b)(3) of the Act) and our intention thereby to review the status of the plant taxa named therein. *Berberis sonnei* was included in the July 1, 1975, notice. On June 16, 1976, we published a proposal (41 FR 24523) to determine approximately 1,700 vascular plant species, including *B. sonnei*, to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and our July 1, 1975, publication.

General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, publication (43 FR 17909). We published the final rule to list *Berberis sonnei* as an endangered species on November 6, 1979 (44 FR 64246).

On February 2, 1997, we received a petition to delist Truckee barberry (*Mahonia sonnei* [*sic*]) from the National Wilderness Institute. However, in April 1995, the enactment of Public Law 104–6 (P.L. 104–6) prohibited the Service from expending any of the remaining appropriated funds for the final determinations and listing of plants and animals under the Act. Subsequent Listing Priority Guidance, published on December 5, 1996 (61 FR 64479), identified all delisting actions as Tier 4, and deferred action on all delisting packages until Fiscal Years 1998 and 1999. As a result of this guidance we were unable to address the petition to delist the species. In May 1998, the Final Listing Priority Guidance for Fiscal Years 1998 and 1999 (63 FR 25508) identified all delisting actions as Tier 2 priority actions. Beginning in 1999, funding for work on delisting actions was provided through the recovery program rather than the listing program (64 FR 57114, published October 22, 1999). The basis for the National Wilderness Institute petition was original taxonomic data error. We published a proposed rule to remove *Berberis sonnei* from the Federal List of Endangered and Threatened Plants on September 3, 2002 (67 FR 56254), based on information indicating that *B. sonnei* is not a discrete taxonomic entity and does not meet the definition of a species as defined by the Act. The proposed rule also served as our combined 90-day and 12-month finding on this petition.

### Summary of Issues and Recommendations

In the September 3, 2002, proposed rule (67 FR 56254) and associated notifications, we invited all interested parties to submit comments or information that might contribute to the final delisting determination for this species. The public comment period ended November 4, 2002. We contacted and sent announcements of the proposed rule to appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties. We established an Internet web site for electronic submittal of comments and hearing requests by any party. In addition, we solicited formal scientific peer review of the proposal in accordance with our July 1, 1994, Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (59 FR 34270). We requested three individuals with expertise in one or several fields, including familiarity with the species, familiarity with the geographic region in which the species occurs, and familiarity with the principles of conservation biology, to review the proposed rule by the close of the comment period. We received comments from two parties, including one designated peer reviewer. The comment is addressed in the following summary. We did not receive any requests for a public hearing.

*Issue:* Both commenters agreed with us that the morphological work and conclusion of both Michael Yoder-Williams and Alan Whittemore regarding the taxonomy of *Berberis sonnei* are scientifically sound as far as existing evidence, but requested that a molecular analysis of *B. sonnei* be conducted to determine if the molecular evidence correlates with the morphological evidence before delisting *B. sonnei*.

*Our Response:* We base our delisting decisions upon the best available commercial and scientific information. Currently, no one has performed a molecular analysis of *Berberis sonnei*. After a review of all available data, we have made the determination that *B. sonnei* is not a discrete taxonomic entity and does not meet the definition of a species. Therefore, our recommendation to delist *B. sonnei* remains unchanged. If new information becomes available through molecular analyses that shows that *B. sonnei* is a discrete taxonomic entity, we will reexamine the threats to determine if it should be listed again.

## Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) implementing the listing provisions of the Act set forth the procedures for listing, reclassifying, or removing species from listed status. We may list a species as endangered or threatened because of one or more of the five factors described in section 4(a)(1) of the Act; we must consider these same five factors in delisting a species. According to 50 CFR 424.11(d) of our regulations, we may delist a species if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened; and/or (3) the original scientific data used at the time the species was classified were in error.

We have carefully assessed the best scientific and commercial information available regarding the taxonomic classification of *Berberis* (=*Mahonia*) *sonnei* and have determined that previous classification of the species is not taxonomically correct and that the entity listed as *B. sonnei* does not meet the definition of "species" in the Act. Therefore, we have determined that it is appropriate to delist or remove *Berberis* (=*Mahonia*) *sonnei* from the List of Endangered and Threatened Plants.

The five factors affecting the species, as described in section 4(a)(1) of the Act, and their current application to *Berberis* (=*Mahonia*) *sonnei* (Abrams) McMinn (Truckee barberry) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Berberis repens*, with which *B. sonnei* has been combined, is a common species ranging from California northward to British Columbia and Alberta and eastward to the Great Plains (Whittemore 1997). This wide-ranging taxon is not threatened. Although urbanization and other activities may destroy or modify its habitat in localized areas, there is no evidence that habitat destruction or modification threaten the continued existence of *B. repens*.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The final rule adding *Berberis sonnei* to the endangered species list cited removal of plants from the one known population as a threat because *Berberis* species are widely used as ornamentals. Because *Berberis repens*, with which *B. sonnei* has been combined, is common and wide-ranging, removal of plants for ornamental purposes does not threaten this species.

C. *Disease or predation.* Neither disease nor predation were cited as threats in the final rule to list *Berberis sonnei* as an endangered species, and they do not threaten the common and wide-ranging taxon *B. repens*, with which *B. sonnei* has been combined.

D. *The inadequacy of existing regulatory mechanisms.* There is no evidence that the common and wide-ranging *Berberis repens*, with which *B. sonnei* has been combined, requires regulatory mechanisms to sustain it. The California Department of Fish and Game tentatively plans to prepare a proposal to delist *B. sonnei* sometime in the future (Sandra Morey, California Department of Fish and Game, pers. comm. 2001).

E. *Other natural or manmade factors affecting its continued existence.* The final rule listing *Berberis sonnei* as an endangered species cited low seed set and seed viability as threats to the one known population. Neither of these factors threatens the common and wide-ranging *B. repens*, with which *B. sonnei* has been combined.

In summary, our regulations at 50 CFR 424.11(d) state that a species may be delisted if—(1) It becomes extinct, (2) it recovers, and/or (3) the original classification data were in error. We believe current scientific information demonstrates that *Berberis sonnei* does not represent a valid taxonomic entity and, therefore, does not meet the definition of "species" in section 3(15) of the Act. In addition, we have determined that *B. repens*, with which *B. sonnei* has been combined, is not an endangered or threatened species. We, therefore, conclude that *B. sonnei* no longer warrants listing under the Act.

## Effects of the Rule

This action removes *Berberis sonnei* from the List of Endangered and Threatened Plants. The prohibitions and conservation measures provided by the Act no longer apply to this species. Therefore, interstate commerce, import, and export of *B. sonnei* are no longer prohibited under the Act. In addition, Federal agencies no longer are required to consult with us to insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of *B. sonnei*. The use of *B. sonnei* must comply with State regulations. There is no designated critical habitat for this species.

## Future Conservation Measures

There are no specific preservation or management programs for *Berberis sonnei*. Section 4(g)(1) of the Act requires us to monitor for at least 5 years species that are delisted due to recovery. Because *B. sonnei* is being delisted due to new information that demonstrates that the original classification was in error, rather than due to recovery, the Act does not require us to monitor this plant species following its delisting.

## Effective Date

This rule relieves an existing restriction. Therefore, in accordance with 5 U.S.C. 553(d), we have determined that good cause exists to make this rule effective immediately. Delay in implementation of this delisting could cost government agencies staff time and monies on conducting section 7 consultations. Relieving the existing restrictions associated with this listed species will enable Federal agencies to minimize any further delays in project planning and implementation.

## Paperwork Reduction Act

This rule does not include any collections of information that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it has a current valid OMB control number.

## National Environmental Policy Act

We have determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

## References Cited

A complete list of all references cited herein is available upon request from the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service (*see* **ADDRESSES** section).

## Author

The primary author of this document is Kirsten Tarp, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service (*see* **ADDRESSES** section).

## List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

## Regulation Promulgation

■ For the reasons set out in the preamble, we hereby amend part 17, subchapter B of chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

### § 17.12 [Amended]

■ 2. Section 17.12(h) is amended by removing the entry for *Berberis sonnei* (=*Mahonia s.*), Truckee barberry, under “FLOWERING PLANTS,” from the List of Endangered and Threatened Plants.

Dated: September 23, 2003.

**Marshall Jones,**

*Deputy Director, U.S. Fish and Wildlife Service.*

[FR Doc. 03–24858 Filed 9–30–03; 8:45 am]

**BILLING CODE 4310–55–P**

# Proposed Rules

Federal Register
Vol. 68, No. 190
Wednesday, October 1, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### 12 CFR Part 3

**[Docket No. 03–22]**

**RIN 1557–AC77**

## FEDERAL RESERVE SYSTEM

### 12 CFR Parts 208 and 225

**[Regulations H and Y; Docket No. R–1162]**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 325

**RIN 3064–AC75**

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### 12 CFR Part 567

**[No. 2003–47]**

**RIN 1550–AB81**

## Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Asset-Backed Commercial Paper Programs and Early Amortization Provisions

**AGENCIES:** Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

**ACTION:** Joint notice of proposed rulemaking.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and Office of Thrift Supervision (OTS) (collectively, the agencies) are proposing to amend their risk-based capital standards by removing a sunset provision in order to permit sponsoring banks, bank holding companies, and thrifts (collectively, sponsoring banking organizations) to continue to exclude from their risk-weighted asset base those assets in asset-backed commercial paper (ABCP) programs that are consolidated onto sponsoring banking organizations' balance sheets as a result of a recently issued accounting interpretation, Financial Accounting Standards Board Interpretation No. 46, Consolidation of Variable Interest Entities (FIN 46). The removal of the sunset provision is contingent upon the agencies implementing alternative, more risk-sensitive risk-based capital requirements for credit exposures arising from involvement with ABCP programs. See Section I of the **SUPPLEMENTARY INFORMATION** for discussion of a related joint interim final rule published concurrently with this notice of proposed rulemaking.

The agencies also are proposing to require banking organizations to hold risk-based capital against liquidity facilities with an original maturity of one year or less that organizations provide to ABCP programs, regardless of whether the organization sponsors the program or must consolidate the program under GAAP. This treatment recognizes that such facilities expose banking organizations to credit risk and is consistent with the industry's practice of internally allocating economic capital against this risk associated with such facilities. A separate capital charge on liquidity facilities provided to an ABCP program would not be required if a banking organization must or chooses to consolidate the program for purposes of risk-based capital.

In addition, the agencies are proposing a risk-based capital charge for certain types of securitizations of revolving retail credit facilities (for example, credit card receivables) that incorporate early amortization provisions. The effect of these capital proposals will be to more closely align the risk-based capital requirements with the associated risk of the exposures.

Finally, the agencies are proposing to amend their risk-based capital standards by deleting tables and attachments that summarize risk categories, credit conversion factors, and transitional arrangements.

**DATES:** Comments on the joint notice of proposed rulemaking must be received by November 17, 2003.

**ADDRESSES:** Comments should be directed to:

*OCC:* You should send comments to the Public Information Room, Office of the Comptroller of the Currency, Mailstop 1–5, Attention: Docket No. 03–22, 250 E Street, SW., Washington, DC 20219. Due to delays in the delivery of paper mail in the Washington area and at the OCC, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov*. You can make an appointment to inspect and photocopy the comments by calling the Public Information Room at (202) 874–5043.

*Board:* Comments should refer to Docket No. R–1162 and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202/452–3819 or 202/452–3102. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

*FDIC:* Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. (Fax number: (202) 898–3838; Internet address: *comments@fdic.gov*). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

*OTS:* Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G

Street, NW., Washington, DC 20552, Attention: No. 2003–47.

*Delivery:* Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2003–47.

*Facsimiles:* Send facsimile transmissions to FAX Number (202) 906–6518, Attention: No. 2003–47.

*E-Mail:* Send e-mails to *regs.comments@ots.treas.gov*, Attention: No. 2003–47 and include your name and telephone number. Due to temporary disruptions in mail service in the Washington, DC area, commenters are encouraged to send comments by fax or e-mail, if possible.

*Availability of comments:* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755. (Please identify the materials you would like to inspect to assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the business day after the date we receive a request.

**FOR FURTHER INFORMATION CONTACT:**

*OCC:* Amrit Sekhon, Risk Expert, Capital Policy Division, (202) 874–5211; Mauricio Claver-Carone, Attorney, or Ron Shimabukuro, Special Counsel, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

*Board:* Thomas R. Boemio, Senior Supervisory Financial Analyst, (202) 452–2982, David Kerns, Supervisory Financial Analyst, (202) 452–2428, Barbara Bouchard, Assistant Director, (202) 452–3072, Division of Banking Supervision and Regulation; or Mark E. Van Der Weide, Counsel, (202) 452–2263, Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

*FDIC:* Jason C. Cave, Chief, Policy Section, Capital Markets Branch, (202) 898–3548, Robert F. Storch, Chief Accountant, (202) 898–8906, Division of Supervision and Consumer Protection; Michael B. Phillips, Counsel, (202) 898–3581, Supervision and Legislation Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

*OTS:* Michael D. Solomon, Senior Program Manager for Capital Policy, (202) 906–5654, David W. Riley, Project Manager, Supervision Policy, (202) 906–6669; or Teresa A. Scott, Counsel (Banking and Finance), (202) 906–6478, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:**

## I. Asset-Backed Commercial Paper Programs

### *Background*

An asset-backed commercial paper (ABCP) program typically is a program through which a banking organization provides funding to its corporate customers by sponsoring and administering a bankruptcy-remote special purpose entity that purchases asset pools from, or extends loans to, those customers. The asset pools in an ABCP program might include, for example, trade receivables, consumer loans, or asset-backed securities. The ABCP program raises cash to provide funding to the banking organization's customers through the issuance of commercial paper into the market. Typically, the sponsoring banking organization provides liquidity and credit enhancements to the ABCP program, which aid the program in obtaining high quality credit ratings that facilitate the issuance of the commercial paper.[1]

In January 2003, the Financial Accounting Standards Board (FASB) issued interpretation No. 46, "Consolidation of Variable Interest Entities" (FIN 46), requiring the consolidation of variable interest entities (VIEs) onto the balance sheets of companies deemed to be the primary beneficiaries of those entities.[2] FIN 46 likely will result in the consolidation of many ABCP programs onto the balance sheets of banking organizations beginning in the third quarter of 2003. In contrast, under pre-FIN 46 accounting standards, the sponsors of ABCP programs normally have not been required to consolidate the assets of these programs. Banking organizations that are required to consolidate ABCP program assets will have to include all of the program assets (mostly receivables and securities) and liabilities (mainly commercial paper) on their September 30, 2003 balance sheets for purposes of the bank Reports of Condition and Income (Call Report), the Thrift Financial Report (TFR), and the bank holding company financial statements (FR Y–9C Report). If no changes were made to regulatory capital standards, the resulting increase in the asset base would lower both the tier 1 leverage and risk-based capital ratios of banking organizations that must consolidate the assets held in ABCP programs.

The agencies believe that the consolidation of ABCP program assets could result in risk-based capital requirements that do not appropriately reflect the risks faced by banking organizations involved with these programs. In the view of the agencies, banking organizations generally face limited risk exposure to ABCP programs. This risk usually is confined to the credit enhancements and liquidity facility arrangements that banking organizations provide to these programs. In addition, operational controls and structural provisions, along with overcollateralization or other credit enhancements provided by the companies that sell assets into ABCP programs mitigate the risk to which sponsoring banking organizations are exposed.

Because of the limited risks, in a related joint interim rule published elsewhere in today's **Federal Register**, the agencies amended their risk-based capital standards to permit sponsoring banking organizations to exclude ABCP program assets that must be consolidated by the organization under FIN 46 from risk-weighted assets for purposes of calculating the risk-based capital ratios through the end of the first quarter of 2004. The agencies also amended their risk-based capital rules to exclude from tier 1 and total risk-based capital any minority interest in sponsored ABCP programs that are consolidated under FIN 46. Exclusion of minority interests associated with consolidated ABCP programs is appropriate when such programs' assets are not included in a sponsoring organization's risk-weighted asset base and, thus, are not assessed a risk-based capital charge. This interim risk-based capital treatment will expire on April 1, 2004. The period during which the interim rule is in effect provides the agencies with additional time to develop appropriate risk-based capital requirements for banking organizations' sponsorship and other involvement with ABCP programs and to receive comments from the industry on this proposal.

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[1] For the purposes of this proposed rule, a banking organization is considered the sponsor of an ABCP program if it establishes the program; approves the sellers permitted to participate in the program; approves the asset pools to be purchased by the programs; or administers the ABCP progam by monitoring the assets, arranging for debt placement, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

[2] Under FIN 46, the FASB broadened the criteria for determining when one entity is deemed to have a controlling financial interest in another entity and, therefore, when an entity must consolidate another entity in its financial statements. An entity generally does not need to be analyzed under FIN 46 if it is designed to have "adequate capital," as described in FIN 46, and its shareholders control the entity with their share votes and are allocated its profits and losses. If the entity fails these criteria, it typically is deemed a VIE and each stakeholder in the entity (a group that can include, but is not limited to, legal-form equity holders, creditors, sponsors, guarantors, and servicers) must assess whether it is the entity's "primary beneficiary" using the FIN 46 criteria. This analysis considers whether effective control exists by evaluating the entity's risks and rewards. In the end, the stakeholder who holds the majority of the entity's risks or rewards is the primary beneficiary and must consolidate the VIE.

The interim risk-based capital treatment does not alter any accounting requirements as established by GAAP or the manner in which banking organizations report consolidated on-balance sheet assets. In addition, the risk-based capital treatment set forth in the interim final rule and its proposed continuation in this joint notice of proposed rulemaking does not affect the denominator of the tier 1 leverage capital ratio, which would continue to be based primarily on on-balance sheet assets as reported under GAAP. Thus, as a result of FIN 46, banking organizations must include all assets of consolidated ABCP programs in on-balance sheet assets for purposes of calculating the tier 1 leverage capital ratio.

In contrast to most other cases where minority interests in consolidated subsidiaries are included as a component of tier 1 capital and, hence, are incorporated into the tier 1 leverage capital ratio calculation, minority interests related to sponsoring banking organizations' ABCP program assets consolidated as a result of FIN 46 are not to be included in tier 1 capital. Thus, the reported tier 1 leverage capital ratio for a sponsoring banking organization would likely be lower than it would be if only the ABCP program assets were consolidated. The agencies do not anticipate that the exclusion of minority interests related to consolidated ABCP programs assets would significantly affect the tier 1 leverage capital ratio of sponsoring banking organizations because the amount of equity in ABCP programs generally is small relative to the capital levels of the sponsoring organizations.

### *Proposed Risk-Based Capital Treatment for ABCP Exposures*

In this notice of proposed rulemaking, the agencies are proposing to amend their risk-based capital standards by removing the April 1, 2004 sunset provision so that ABCP program assets consolidated under FIN 46 and any associated minority interests continue to be excluded from risk-weighted assets and tier 1 capital, respectively, when sponsoring banking organizations calculate their tier 1 and total risk-based capital ratios. The proposed removal of the sunset provision is contingent upon the agencies implementing an alternative, more risk-sensitive approach to the risk exposures arising from ABCP programs.

Accordingly, the agencies are proposing to amend their risk-based capital requirements to assess more appropriate capital charges against the credit exposures that arise from ABCP programs, including liquidity facilities with an original maturity of one year or less (that is, short-term liquidity facilities). The agencies believe that this proposal would result in a capital requirement that is more commensurate with the credit risk to which banking organizations are exposed as a result of their sponsorship and other involvement with ABCP programs. The capital charge for short-term liquidity facilities that are provided to ABCP programs generally would apply even if FIN 46 would not require the program to be consolidated.

Liquidity facilities extended to ABCP programs are commitments to lend to, or purchase assets from, the programs in the event that funds are needed to repay maturing commercial paper. Typically, this need for liquidity is due to a timing mismatch between cash collections on the underlying assets in the program and scheduled repayments of the commercial paper issued by the program. Currently, liquidity facilities with an original maturity of over one year (that is, long-term liquidity facilities) are converted to an on-balance sheet credit equivalent amount using the 50 percent credit conversion factor. Short-term liquidity facilities are converted to an on-balance sheet credit equivalent amount utilizing the zero percent credit conversion factor. As a result, such short-term facilities currently are not subject to a risk-based capital charge.

In the agencies' view, a banking organization that provides liquidity facilities to ABCP programs is exposed to credit risk regardless of the tenure of the liquidity facilities. For example, an ABCP program may draw on a liquidity facility at the first sign of deterioration in the credit quality of an asset pool to buy out the assets and remove them from the program. In such an event, a draw exposes the banking organization providing the liquidity facility to credit risk. The agencies believe that the existing risk-based capital rules do not adequately reflect the risks associated with short-term liquidity facilities extended to ABCP programs.

Although the agencies are of the view that liquidity facilities expose banking organizations to credit risk, the agencies also believe that the short tenure of commitments with an original maturity of one year or less exposes banking organizations to a lower degree of credit risk than longer tenure commitments. This difference in degree of credit risk exposure should be reflected in any potential capital requirement. The agencies, therefore, are proposing to convert short-term liquidity facilities provided to ABCP programs to on-balance sheet credit equivalent amounts utilizing the 20 percent credit conversion factor, as opposed to the 50 percent credit conversion factor applied to commitments with an original maturity of greater than one year. This amount would then be risk-weighted according to the underlying assets or the obligor, after considering any collateral or guarantees, or external credit ratings, if applicable. For example, if a short-term liquidity facility provided to an ABCP program covered an asset-backed security (ABS) externally rated AAA, then the amount of the security would be converted at 20 percent to an on-balance sheet credit equivalent amount and assigned to the 20 percent risk category appropriate for AAA-rated ABS.[3]

In many cases, a banking organization may have multiple exposures that may be drawn under varying circumstances within a single ABCP program (for example, both a credit enhancement and a liquidity facility). The agencies do not intend to subject a banking organization to duplicative risk-based capital requirements against these multiple exposures where they overlap and cover the same underlying asset pool. Rather, a banking organization must hold risk-based capital only once for the position covered by the overlapping exposures. Where the overlapping exposures are subject to different risk-based capital requirements, the banking organization must apply the risk-based capital treatment resulting in the highest capital charge to the overlapping portion of the exposures.

For example, assume a banking organization provides a program-wide credit enhancement covering 10 percent of the underlying asset pools in an ABCP program and pool-specific liquidity facilities covering 100 percent of each of the underlying asset pools. The banking organization would be required to hold capital against 10 percent of the underlying asset pools because it is providing the program-wide credit enhancement. The banking organization also would be required to hold capital against 90 percent of the liquidity facilities it is providing to each of the underlying asset pools. Moreover, if a banking organization had to consolidate ABCP program assets onto its balance sheet for risk-based capital purposes because, for example, the organization was not the sponsor of the program, the organization would not be required also to hold risk-based capital against any credit enhancements or liquidity facilities that cover those same program assets.

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[3] *See* 12 CFR part 3, appendix A, Section 4(d) (OCC); 12 CFR parts 208 and 225, appendix A, III.B.3.c. (FRB); 12 CFR part 325, appendix A, II.B.5.d. (FDIC); 12 CFR 567.6(b) (OTS).

If different banking organizations provide overlapping exposures, however, each organization must hold capital against the entire maximum amount of its exposure. As a result, while duplication of capital charges will not occur for individual banking organizations, it may occur where multiple banking organizations have overlapping exposures to the same ABCP program.

The agencies also are proposing that banking organizations that are subject to the market risk capital rules would not be permitted to apply those rules to any liquidity facilities held in the trading book. Rather, organizations will be required to convert the notional amount of all liquidity facilities to ABCP programs using the appropriate credit conversion factor to determine the credit equivalent amount for liquidity facilities that are structured or characterized as derivatives or other trading book assets. Thus, for example, all liquidity facilities to ABCP programs with an original maturity of one year or less will be subject to a 20 percent conversion factor as described above, regardless of whether the exposure is carried in the trading account or the banking book. The agencies request comment on this prohibition and its implications.

In order for a liquidity facility, either short-or long-term, provided to an ABCP program not to be considered a recourse obligation or a direct credit substitute, draws on the facility must be subject to a reasonable asset quality test that precludes funding assets that are 60 days or more past due or in default. Assets that are past due 60 days or more generally are considered ineligible for financing based upon standard industry practice and rating agency guidelines for trade receivables. The funding of assets past due 60 days or more using a liquidity facility exposes the institution to a greater degree of credit risk compared to the purchase of assets of a more current nature. It is the agencies' view that liquidity facilities that are eligible for the 20 percent or 50 percent conversion factors should not be used to fund assets with the higher degree of credit risk typically associated with seriously delinquent assets.

In addition, if the assets a banking organization would be required to fund pursuant to a liquidity facility are initially externally rated exposures, the facility can be used to fund only those exposures that are externally rated investment grade at the time of funding. Furthermore, the liquidity facility must contain provisions that, prior to any draws, reduce the banking organization's funding obligation to cover only those assets that would meet the funding criteria under the facility's asset quality tests. In other words, the amount of coverage provided by the liquidity facility must decrease as assets that meet the asset quality test decrease so that the liquidity facility would cover only those assets satisfying the asset quality test. If the asset quality tests were violated, the liquidity facility would be considered a direct credit substitute and would be converted at 100 percent as opposed to 20 or 50 percent.

### *Additional Risk-Based Capital Considerations*

The agencies recognize that FIN 46 may affect whether consolidation is required of other VIE structures in addition to ABCP programs sponsored by banking organizations. While the current proposal would permit banking organizations to exclude from risk-weighted assets only sponsored ABCP program assets, the agencies seek comment on whether other structures or asset types affected by FIN 46 should be eligible for risk-based capital treatment similar to that proposed for banking organization-sponsored ABCP program assets. In addition, the agencies request feedback on whether banking organizations expect any difficulties in tracking these consolidated ABCP program assets on an ongoing basis. The agencies also request comment on any alternative regulatory capital approaches that should be considered, beyond what has been proposed.

## II. Early Amortization Capital Charge

The Agencies also are seeking comment on the assessment of a risk-based capital charge against the risks associated with early amortization, a common feature in securitizations of revolving retail credit exposures (for example, credit card receivables). When assets are securitized, the extent to which the selling or sponsoring entity transfers the risks associated with the assets depends on the structure of the securitization and the nature of the underlying assets. The early amortization provision often present in securitizations of revolving retail credit facilities increases the likelihood that investors will be repaid before being subject to any risk of significant credit losses. For example, if a securitized asset pool begins to experience credit deterioration to the point where the early amortization provision is triggered, then the asset-backed securities begin to pay down rapidly. This occurs because, after an early amortization provision is triggered, if new receivables are generated from the accounts designated to the securitization trust, they are no longer sold to investors, but instead are retained on the sponsoring banking organization's balance sheet.

Early amortization provisions raise several distinct concerns about the risks to selling banking organizations. First, the seller's interest in the securitized assets effectively is subordinated to the interests of the investors by the payment allocation formula applied during early amortization. Investors effectively get paid first, and, as a result, the seller's residual interest likely will absorb a disproportionate share of credit losses.

Second, early amortization can create liquidity problems for selling organizations. For example, a credit card issuer must fund a steady stream of new credit card receivables when a securitization trust is no longer able to purchase new receivables due to early amortization. The selling organization must either find an alternative buyer for the receivables or else the receivables will accumulate on the seller's balance sheet, creating the need for another source of funding and potentially the need for additional regulatory capital.

Third, the first two risks to the selling banking organization can create an incentive for the seller to provide implicit support to the securitization transaction—credit enhancement beyond any pre-existing contractual obligations—to prevent an early amortization. Incentives to provide implicit support are, to some extent, present in other types of securitizations because of concerns about damage to the selling organization's reputation and its ability to securitize assets going forward if one of its transactions performs poorly. However, the early amortization provision creates additional and more direct financial incentives to prevent early amortization through the provision of implicit support.

This is not the first time that the agencies have addressed the question of whether to impose a capital charge on securitizations of revolving credit exposures incorporating early amortization provisions. On March 8, 2000, the agencies published a notice of proposed rulemaking on recourse and direct credit substitutes (65 FR 12320). In that proposal, the agencies proposed a fixed conversion factor of 20 percent to be applied to the amount of assets under management in all revolving securitizations that contained early amortization features, in recognition of the risks associated with these structures. The agencies acknowledge that the March 2000 proposal was not particularly risk sensitive and would have required the same amount of capital for all securitizations of revolving credit exposures that contained early amortization features, regardless of the risk present in the securitization transaction. In a subsequent November 2001 rulemaking (66 FR 59614), which implemented many of the proposals in the March 2000 proposal, the agencies reiterated their concerns with early amortization, indicating that the risks associated with securitization, including those posed by an early amortization feature, are not fully captured in the current capital rules.

In the interim, the Basel Committee on Banking Supervision (BSC) has set forth a more risk-sensitive proposal that would assess capital against securitizations of revolving exposures with early amortization features based on key indicators of risk, such as excess spread levels. Virtually all securitizations of revolving retail credit facilities that include early amortization provisions rely on excess spread as an early amortization trigger. For example, early amortization generally commences once excess spread falls below zero for a given period of time. International supervisors recognize that there is a connection between early amortization and excess spread levels. In a separate rulemaking, the agencies currently are seeking comment on the proposals the BSC has set forth for large, internationally active banking organizations.[4] The risk-based capital charge, on which comment is sought in this proposed rulemaking for the exposures arising from early amortization structures, is based on the proposal set forth by the Basel Supervisors Committee.[5]

The agencies believe that the risks associated with early amortization exist for all banking organizations that utilize securitizations of revolving exposures to fund their operations. Further, the agencies acknowledge that while early amortization events are infrequent, an increasing number of securitizations have been forced to unwind and repay investors earlier than planned. Given these concerns, the agencies are requesting comment on whether to impose a more risk-sensitive approach for assessing capital against securitizations of revolving retail credit exposures that incorporate early amortization provisions, which would apply to all banking organizations that use these vehicles to fund their operations.

Such an early amortization capital charge would be applied to securitizations of revolving retail credit facilities that include early amortization provisions, which are expected predominantly to be credit card securitizations. Since risk-based capital already is held against the on-balance sheet seller's interest, such a capital charge would be assessed against only the off-balance sheet investors' interest and only in the event that the excess spread in the transaction has declined to a predetermined level. The proposed capital requirement would assess increasing amounts of risk-based capital as the level of excess spread approaches the early amortization trigger (typically, a three-month average excess spread of zero). Therefore, as the probability of an early amortization event increases, the capital charge against the off-balance sheet portion of the securitization also would increase.

At this time, the agencies are only requesting comment on whether to assess risk-based capital against securitizations of revolving retail credit exposures (defined to include personal and business credit card accounts), even though there are some transactions that securitize revolving corporate exposures, such as certain collateralized loan obligations. The agencies are considering the appropriateness of applying an early amortization capital charge to securitizations of non-retail revolving credit exposures and request comment on this issue.

The maximum risk-based capital requirement that would be assessed under the proposal would be equal to the greater of (i) the capital requirement for residual interests or (ii) the capital requirement that would have applied if the securitized assets were held on the securitizing banking organization's balance sheet. The latter capital charge generally is 8 percent for credit card receivables. For example, if a banking organization, after securitizing a credit card portfolio, retains a combination of an interest-only strips receivable, a spread account, and a subordinated tranche that equaled 12 percent of the transaction, then under the agencies' risk-based capital standards the organization would be assessed a dollar-for-dollar capital charge against the 12 percent of retained, subordinated securitization exposures, net of any associated deferred tax liabilities. In this example, there would be no incremental charge for early amortization risk. Alternatively, if the amount of the retained exposures were less than 8 percent, which is the risk-based capital charge for credit card receivables held on the balance sheet, then the charge against the retained securitization exposures plus any early amortization capital charge would be limited to 8 percent. Potentially, if the exposure were limited by contract, the risk-based capital requirement could be limited to that contractual amount under the low-level exposure rule.

In order to determine whether a banking organization securitizing revolving retail credit facilities containing early amortization provisions must hold risk-based capital against the off-balance sheet portion of its securitization (that is, the investors' interest), the three-month average excess spread must be compared against the difference between (i) the point at which the securitization trust would be required by the securitization documents to trap excess spread (spread trapping point) in a spread or reserve account and (ii) the excess spread level at which early amortization would be triggered. This differential would be referred to as the excess spread differential (ESD). If the securitization documents do not require excess spread to be trapped, then for purposes of this calculation the spread trapping point is deemed to be 450 basis points higher than the early amortization trigger. If such a securitization does not employ the concept of excess spread as a transaction's determining factor of when an early amortization is triggered, then a 10 percent credit conversion factor is applied to the outstanding principal

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[4] On August 4, 2003, the agencies published an advanced notice of proposed rulemaking (ANPR) in the **Federal Register** seeking public comment on the implementation of the new Basel Capital Accord in the United States. The ANPR presents an overview of the proposed implementation in the United States of the advance, approaches to determining risk-based capital requirements for credit and operational risk.

[5] The credit conversation factors used in this proposed rulemaking mirror in the agencies' July 2003 Advanced Notice of Proposed Rulemaking for non-controlled early amortization of uncommitted retail credit lines.

balance of the investors' interest at the securitization's inception, regardless of the level of the transaction's excess spread. Once the difference between the spread trapping point and the early amortization trigger is determined, this difference must be divided into four equal segments.

For example, if the spread trapping point is 4.5 percent and the early amortization trigger is zero, then the 450 basis point difference would be divided into four equal segments of 112.5 basis points. A credit conversion factor of zero percent would be applied to the outstanding principal balance of the off-balance sheet investors' interest if a securitization's three-month average excess spread equaled or exceeded the spread trapping point (4.5 percent in the example). Credit conversion factors of 5 percent, 10 percent, 50 percent, and 100 percent are assigned to each segment in descending order beginning at the spread trapping point as the securitization approaches early amortization as follows:

EXAMPLE OF CREDIT CONVERSION FACTOR ASSIGNMENT BY SEGMENT

| Segment of excess spread differential | Credit conversion factor (percent) |
|---|---|
| 450 bp or more | 0 |
| Less than 450 bp to 337.5 bp | 5 |
| Less than 337.5 bp to 225 bp | 10 |
| Less than 225 bp to 112.5 bp | 50 |
| Less than 112.5 bp | 100 |

In this example, if the three-month average excess spread is greater than 450 or equal to basis points, the banking organization would not incur a risk-based capital charge for early amortization. However, once the three-month average excess spread declines below 450 basis points, a positive credit conversion factor would be applied against the outstanding principal balance of the off-balance sheet investors' interest to calculate the credit equivalent amount of assets that is to be risk weighted according to the asset type, typically the 100 percent risk weight category.

On the other hand, if the spread trapping point instead were 6 percent and the early amortization trigger were 2 percent, then the ESD would be 4 percent, resulting in four equal segments of 100 basis points. The 5 percent credit conversion factor would be applied to the off-balance sheet investors' interest when the three-month average excess spread declined to between 6 percent and 5 percent.

The agencies seek comment on whether to adopt such a treatment of securitization of revolving credit facilities containing early amortization mechanisms. Would such a treatment satisfactorily address the potential risks such transactions pose to originators? Are there other approaches, treatments, or factors that the agencies should consider? Comments also are invited on the interplay and timing between this proposal and the proposed capital treatment for securitization structures contained in the agencies' July 2003 advanced notice of proposed rulemaking regarding the implementation of the proposed Basel Capital Accord.

## III. Elimination of Summary Sections of Rules Text

The agencies also are proposing to amend their risk-based capital standards by deleting tables and attachments that summarize the risk categories, credit conversion factors, and transitional arrangements. These tables and attachments have become outdated and unnecessary because the substance of these summaries is included in the main text of the risk-based capital standards. Furthermore, these summary tables and attachments were originally provided to assist banking organizations unfamiliar with the new framework during the transition period when the agencies' risk-based capital requirements were initially implemented. Deleting the tables and attachments will remove unnecessary regulatory text.

## IV. Regulatory Analysis

### *Regulatory Flexibility Act Analysis*

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Agencies have determined that this proposed rule would not have a significant impact on a substantial number of small entities in accordance with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The agencies believe that this proposed rule should not impact a substantial number of small banking organizations because such organizations typically do not sponsor ABCP programs, provide liquidity facilities to such programs, or engage in securitizations of revolving retail credit facilities. Accordingly, a regulatory flexibility analysis is not required.

### *Paperwork Reduction Act*

The Agencies have determined that this proposed rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### *Unfunded Mandates Reform Act of 1995*

*OCC:* Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC believes that exclusion of consolidated ABCP program assets from risk-weighted assets for risk-based capital purposes will not result in a significant impact for national banks because the exclusion of consolidated ABCP program assets is designed to offset the effect of FIN 46 on risk-based capital. With respect to the proposed capital treatment of liquidity facilities, because national banks that provide liquidity facilities to ABCP programs currently exceed regulatory minimum capital requirements, the OCC does not believe these banks will be required to raise additional capital. Finally, while the OCC and the other Federal banking agencies do not currently collect data on the excess spread levels for individual revolving securitizations, the OCC does not believe that the proposed capital charge on revolving securitizations will have a significant impact on the capital requirements of national banks because currently, most revolving securitizations are operating with excess spread levels above the proposed capital triggers.

*OTS:* Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

### *Plain Language*

Section 722 of the Gramm-Leach-Bliley (GLB) Act requires the Federal banking agencies to use "plain language" in all proposed and final rules published after January 1, 2000. In light of this requirement, the agencies have sought to present their proposed rules in a simple and straightforward manner. The agencies invite comments on whether there are additional steps the agencies could take to make the rules easier to understand.

### List of Subjects

*12 CFR Part 3*

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

*12 CFR Part 208*

Accounting, Agriculture, Banks, Banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

*12 CFR Part 225*

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

*12 CFR Part 325*

Administrative practice and procedure, Bank deposit insurance, Banks, Banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

*12 CFR Part 567*

Capital, Reporting and recordkeeping requirements, Savings associations.

## DEPARTMENT OF THE TREASURY

## Office of the Comptroller of the Currency

## 12 CFR Chapter 1

### Authority and Issuance

For the reasons set out in the joint preamble, part 3 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to reads as follows:

**Authority:** 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

2. Appendix A to part 3 is amended as follows:

A. In section 1, paragraphs (c)(3) and (c)(30) are republished.

B. In section 2, paragraph (a)(3) is revised.

C. In section 3, paragraphs (b)(2)(ii), (b)(3)(i), and (b)(4)(i) are revised; and new paragraph (b)(3)(ii) is added.

D. In section 4:

i. Paragraphs (a)(5) through (a)(16) are redesignated as paragraphs (a)(7) through (a)(18); newly redesignated paragraphs (a)(15) through (a)(18) are redesignated as paragraphs (a)(16) through (a)(19); and new paragraphs (a)(5), (a)(6) and (a)(15) are added.

ii. Paragraphs (j) and (k) are revised;

iii. New paragraphs (l) and (m) are added.

E. In section 5, Tables 1 through 4 are removed.

### Appendix A to Part 3—Risk-Based Capital Guidelines

*Section 1. Purpose, Applicability of Guidelines and Definitions*

* * * * *

(c) * * *

(3) *Asset-backed commercial paper program* means a program that issues commercial paper backed by assets or other exposures held in a bankruptcy-remote, special-purpose entity.

* * * * *

(30) *Sponsor* means a bank that:

(i) Establishes an asset-backed commercial paper program;

(ii) Approves the sellers permitted to participate in an asset-backed commercial paper program;

(iii) Approves the asset pools to be purchased by an asset-backed commercial paper program; or

(iv) Administers the asset-backed commercial paper program by monitoring the assets, arranging for debt placement, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

* * * * *

*Section 2. Components of Capital*

* * * * *

(a) * * *

(3) Minority interests in the equity accounts of consolidated subsidiaries, except that the following are not included in Tier 1 capital or total capital:

(i) Minority interests in a small business investment company or investment fund that holds nonfinancial equity investments and minority interests in a subsidiary that is engaged in a nonfinancial activities and is held under one of the legal authorities listed in section 1(c)(21) of this appendix A.

(ii) Minority interests in consolidated asset-backed commercial paper programs sponsored by a bank if the consolidated assets are excluded from risk-weighted assets pursuant to section 4(j)(1) of this appendix A.

* * * * *

*Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items*

* * * * *

(b) * * *

(2) * * *

(ii) Unused portion of commitments, including home equity lines of credit, and eligible liquidity facilities (as defined in accordance with section 4(l)(2) of this appendix A) provided to asset-backed commercial paper programs, in form or in substance, with an original maturity exceeding one-year[17]; and

* * * * *

(3) * * * (i) Trade-related contingencies which are short-term self-liquidating instruments used to finance the movement of goods and are collateralized by the underlying shipment (an example is a commercial letter of credit); and

(ii) Unused portion of eligible liquidity facilities (as defined in accordance with section 4(l)(2) of this appendix A) provided to an asset-backed commercial paper program, in form or in substance, with an original maturity of one year or less.

(4) * * * (i) Unused portion of commitments, including liquidity facilities not provided to asset-backed commercial paper programs, with an original maturity of one year or less;

* * * * *

*Section 4. Recourse, Direct Credit Substitutes and Positions in Securitizations*

* * * * *

(a) * * *

(5) *Early amortization trigger* means a contractual requirement that, if triggered, would cause a securitization to begin repaying investors prior to the originally scheduled payment dates.

(6) *Excess spread* generally means gross finance charge collections and other income received by the trust or special purpose entity minus certificate interest, servicing fees, charge-offs, and other trust or special purpose entity expenses.

* * * * *

(15) *Revolving retail credit* means an exposure to an individual or a business where the borrower is permitted to vary both the drawn amount and the amount of repayment within an agreed limit under a line of credit (such as personal or business credit card accounts).

* * * * *

(j) *Asset-backed commercial paper programs subject to consolidation.* (1) A bank that qualifies as a primary beneficiary and must consolidate an asset-backed commercial paper program as a variable interest entity under generally accepted accounting principles may exclude the consolidated asset-backed commercial paper program assets from risk-weighted assets if the bank is the sponsor of the consolidated asset-backed commercial paper program.

(2) If a bank excludes such consolidated asset-backed commercial paper program assets from risk-weighted assets, the bank must assess the appropriate risk-based capital charge against any risk exposures of the bank arising in connection with such asset-backed commercial paper program, including direct credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans, in accordance with sections 3 and 4(b) of this appendix A.

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[17] Participations in commitments are treated in accordance with section 4 of this appendix A.

(3) If a bank either elects not to exclude consolidated asset-backed commercial paper program assets from its risk-weighted assets in accordance with section 4(j)(1) of this appendix A, or is not permitted to exclude consolidated asset-backed commercial paper program assets, the bank must assess a risk-based capital charge based on the appropriate risk weight of the consolidated asset-backed commercial paper program assets in accordance with section 3(a) of this appendix A. In such case, direct credit substitutes and recourse obligations (including residual interests), and loans that sponsoring banks provide to such asset-backed commercial paper programs are not subject to any capital charge under section 4 of this appendix A.

(k) *Other variable interest entities subject to consolidation.* If a bank is required to consolidate the assets of a variable interest entity under generally accepted accounting principles, the bank must assess a risk-based capital charge based on the appropriate risk weight of the consolidated assets in accordance with section 3(a) of this appendix A. In such case, direct credit substitutes and recourse obligations (including residual interests), and loans that sponsoring banks provide to such asset-backed commercial paper programs are not subject to any capital charge under section 4 of this appendix A.

(l) *Liquidity facility provided to an asset-backed commercial paper program.* (1) *Noneligible liquidity facilities treated as recourse or direct credit substitute.* Liquidity facilities extended to asset-backed commercial paper programs that do not meet the criteria for an eligible liquidity facility provided to an asset-backed commercial paper program in accordance with section 4(l)(2) of this appendix A must be treated as recourse or as a direct credit substitute, and assessed the appropriate risk-based capital charge in accordance to section 4 of this appendix A.

(2) *Eligible liquidity facility.* In order for a liquidity facility provided to an asset-backed commercial paper program to be eligible for either the 50 percent or 20 percent credit conversion factors under section 3(b)(2) or 3(b)(3)(ii) of this appendix A, the liquidity facility must satisfy the following criteria:

(i) At the time of draw, the liquidity facility must be subject to a reasonable asset quality test that:

(A) Precludes funding of assets that are 60 days or more past due or in default; and

(B) If the assets that a liquidity facility is required to fund are externally rated securities (at the time they are transferred into the program), the facility must be used to fund only securities that are externally rated investment grade at the time of funding. If the assets are not externally rated at the time they are transferred into the program, then they are not subject to this investment grade requirement.

(ii) The liquidity facility must provide that, prior to any draws, the bank's funding obligation is reduced to cover only those assets that satisfy the funding criteria under the asset quality test of the liquidity facility.

(m) *Early amortization.* (1) *Additional capital charge for revolving retail securitization with early amortization trigger.* A bank that originates a securitization of revolving retail credits that contains early amortization triggers must risk weight the off-balance sheet portion of such a securitization (investors' interest) by multiplying the outstanding principal amount of the investors' interest by the appropriate credit conversion factor in accordance with Table F in section 4(m)(3) of this appendix A, and then assigning the resulting credit equivalent amount to the appropriate risk weight category pursuant to section 3(a) of this appendix A. In order to determine the appropriate credit conversion factor, the bank must compare the most recent three-month average excess spread level of the securitization to the excess spread ranges in Table F of section 4(m)(3) of this appendix A, and apply the corresponding credit conversion factor.

(2) *Excess spread differential.* Before the bank can apply Table F in section 4(m)(3) of this appendix A, the bank must calculate the upper and lower bounds for each excess spread range. To calculate the upper and lower bounds, the bank must first determine the excess spread differential of the securitization. The excess spread differential is equal to the difference between the point at which the bank is required by the securitization to divert and trap excess spread (spread trapping point) in a spread or reserve account and the excess spread level at which early amortization of the securitization is triggered (early amortization trigger). If the securitization does not require excess spread to be diverted to a spread or reserve account at a certain excess spread level, the spread differential is equal to 4.5 percentage points. If the securitization does not use excess spread as an early amortization trigger, then a 10 percent credit conversion factor is applied to the outstanding principal balance of the investors' interest at the securitization's inception.

(3) *Excess spread differential segments.* Once the excess spread differential is determined, the standard excess spread differential value must be calculated by dividing the excess spread differential by 4. The upper and lower bounds for each of the excess spread differential segments is calculated using the spread trapping point and the standard excess spread differential value in accordance with the formulas provided in Table F of section 4(m)(3) of this appendix A. As provided in Table F of section 4(m)(3) of this appendix A, if the three-month excess spread level equals or exceeds the spread trapping point, the credit conversion factor is zero (resulting in no capital charge on the investors' interest). If the spread trapping point exceeds the three-month excess spread level, then the corresponding credit conversion factor applied to the investors' interest increases in steps from 5 percent to 100 percent as the three-month excess spread level approaches the early amortization trigger.

TABLE F.—CREDIT CONVERSION FACTORS FOR REVOLVING RETAIL SECURITIZATIONS WITH EARLY AMORTIZATION TRIGGERS

| Excess Spread Ranges | Credit conversion factor (percent) |
|---|---|
| Excess spread equals or exceeds the spread trapping point | 0 |
| Upper Bound < Spread Trapping Point<br>Lower Bound = Spread Trapping Point—(1 × SESDV) | 5 |
| Upper Bound < Spread Trapping Point—(1 × SESDV)<br>Lower Bound = Spread Trapping Point—(2 × SESDV) | 10 |
| Upper Bound < Spread Trapping Point—(2 × SESDV)<br>Lower Bound = Spread Trapping Point—(3 × SESDV) | 50 |
| Upper Bound < Spread Trapping Point—(3 × SESDV)<br>Lower Bound = None | 100 |

**Note:** SESDV is the standard excess spread differential value.

(5) *Limitations on risk-based capital requirements.* For a bank subject to the early amortization requirements in section 4(m) of this appendix A, the total risk-based capital requirement for all of the bank's exposures to a securitization of revolving retail credits is limited to the greater of the risk-based capital requirement for residual interests, as defined in accordance with section 4(a)(14) of this appendix A, or the risk-based capital requirement for the underlying securitized assets calculated as if the bank continued to hold the assets on its balance sheet.

* * * * *

3. Appendix B to part 3 is amended by adding a new sentence at the end of

section 2, paragraph (a) to read as follows:

### Appendix B to Part 3—Risk-Based Capital Guidelines; Market Risk Adjustment

* * * * *

*Section 2. Definitions*

* * * * *

(a) * * * Liquidity facilities provided to asset-backed commercial paper programs in a bank's trading account are excluded from covered positions, and instead, are subject to the risk-based capital requirements as provided in appendix A of this part.

Dated: September 4, 2003.

**John D. Hawke,**

*Comptroller of the Currency.*

## FEDERAL RESERVE SYSTEM

## 12 CFR Chapter II

### Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Governors of the Federal Reserve System proposes to amend parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations as follows:

## PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

**Authority:** 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In Appendix A to part 208, the following amendments are proposed:

a. Section II.A.1.c. is revised.

b. In section III.B.3—

i. Paragraph a., *Definitions*, is revised.

ii. Paragraph g., *Limitations on risk-based capital requirements*, is redesignated as paragraph h.

iii. A new paragraph g., *Early amortization triggers*, is added.

iv. A new paragraph iv., is added to the redesignated paragraph h.

c. Section III.B.6. is revised.

d. In section III.D—

i. The last sentence of the introductory paragraph is removed.

ii. In paragraph 2., *Items with a 50 percent conversion factor*, the third undesignated paragraph is revised, the fourth undesignated paragraph is removed, and the five remaining undesignated paragraphs are designated as 2.a. through 2.c.

iii. In paragraph 3, *Items with a 20 percent conversion factor*, the first undesignated paragraph is designated as 3.a. and a new paragraph 3.b. is added.

iv. The first sentence in paragraph 4., *Items with a zero percent conversion factor*, is revised.

v. Footnote 54 is removed and reserved.

e. Attachments IV, V, and VI are removed.

### Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *

II. * * *

A. * * *

1. * * *

c. *Minority interest in equity accounts of consolidated subsidiaries.* This element is included in Tier 1 because, as a general rule, it represents equity that is freely available to absorb losses in operating subsidiaries whose assets are included in a bank's risk-weighted asset base. While not subject to an explicit sublimit within Tier 1, banks are expected to avoid using minority interest in the equity accounts of consolidated subsidiaries as an avenue for introducing into their capital structures elements that might not otherwise qualify as Tier 1 capital or that would, in effect, result in an excessive reliance on preferred stock within Tier 1. Minority interests in small business investment companies, investment funds that hold nonfinancial equity investments (as defined in section II.B.5.b. of this appendix A), and subsidiaries engaged in nonfinancial activities, are not included in the bank's Tier 1 or total capital base if the bank's interest in the company or fund is held under one of the legal authorities listed in section II.B.5.b. In addition, minority interests in consolidated asset-backed commercial paper programs (as defined in section III.B.6. of this appendix) that are sponsored by a bank are not to be included in the bank's Tier 1 or total capital base when the bank excludes the consolidated assets of such programs from risk-weighted assets pursuant to section III.B.6. of this appendix.

* * * * *

III. * * *

B. * * *

a. *Definitions*—i. *Credit derivative* means a contract that allows one party (the "protection purchaser") to transfer the credit risk of an asset or off-balance sheet credit exposure to another party (the "protection provider"). The value of a credit derivative is dependent, at least in part, on the credit performance of the "reference asset."

ii. *Credit-enhancing representations and warranties* means representations and warranties that are made or assumed in connection with a transfer of assets (including loan servicing assets) and that obligate the bank to protect investors from losses arising from credit risk in the assets transferred or the loans serviced. Credit-enhancing representations and warranties include promises to protect a party from losses resulting from the default or nonperformance of another party or from an insufficiency in the value of the collateral. Credit-enhancing representations and warranties do not include:

*1.* Early default clauses and similar warranties that permit the return of, or premium refund clauses covering, 1–4 family residential first mortgage loans that qualify for a 50 percent risk weight for a period not to exceed 120 days from the date of transfer. These warranties may cover only those loans that were originated within 1 year of the date of transfer;

*2.* Premium refund clauses that cover assets guaranteed, in whole or in part, by the U.S. Government, a U.S. Government agency or a government-sponsored enterprise, provided the premium refund clauses are for a period not to exceed 120 days from the date of transfer; or

*3.* Warranties that permit the return of assets in instances of misrepresentation, fraud or incomplete documentation.

iii. *Direct credit substitute* means an arrangement in which a bank assumes, in form or in substance, credit risk associated with an on- or off-balance sheet credit exposure that was not previously owned by the bank (third-party asset) and the risk assumed by the bank exceeds the pro rata share of the bank's interest in the third-party asset. If the bank has no claim on the third-party asset, then the bank's assumption of any credit risk with respect to the third party asset is a direct credit substitute. Direct credit substitutes include, but are not limited to:

*1.* Financial standby letters of credit that support financial claims on a third party that exceed a bank's pro rata share of losses in the financial claim;

*2.* Guarantees, surety arrangements, credit derivatives, and similar instruments backing financial claims that exceed a bank's pro rata share in the financial claim;

*3.* Purchased subordinated interests or securities that absorb more than their pro rata share of losses from the underlying assets;

*4.* Credit derivative contracts under which the bank assumes more than its pro rata share of credit risk on a third party exposure;

*5.* Loans or lines of credit that provide credit enhancement for the financial obligations of an account party;

*6.* Purchased loan servicing assets if the servicer is responsible for credit losses or if the servicer makes or assumes credit-enhancing representations and warranties with respect to the loans serviced. Mortgage servicer cash advances that meet the conditions of section III.B.3.a.viii. of this appendix are not direct credit substitutes; and

*7.* Clean-up calls on third party assets. Clean-up calls that are 10 percent or less of the original pool balance that are exercisable at the option of the bank are not direct credit substitutes.

*8.* Liquidity facilities extended to ABCP programs that are not eligible liquidity facilities (as defined in section III.B.3.a. of this appendix).

iv. *Early amortization triggers* mean contractual requirements that, if triggered, would cause a securitization to begin repaying investors prior to the originally scheduled payment dates.

v. *Eligible liquidity facility* means a facility subject to a reasonable asset quality test at the time of draw that precludes funding against assets that are 60 days or more past due or in default. In addition, if the assets that an eligible liquidity facility is required to fund against are externally rated exposures at the inception of the facility, the facility can be used to fund only exposures that are externally rated investment grade at the time of funding. Furthermore, an eligible liquidity facility must contain provisions that, prior to any draws, reduces the bank's funding obligation to cover only those assets that would meet the funding criteria under the facility's asset quality tests.

vi. *Excess Spread* means gross finance charge collections and other income received by the trust or special purpose entity (SPE) minus certificate interest, servicing fees, charge-offs, and other trust or SPE expenses.

vii. *Externally rated* means that an instrument or obligation has received a credit rating from a nationally-recognized statistical rating organization.

viii. *Face amount* means the notional principal, or face value, amount of an off-balance sheet item; the amortized cost of an asset not held for trading purposes; and the fair value of a trading asset.

ix. *Financial asset* means cash or other monetary instrument, evidence of debt, evidence of an ownership interest in an entity, or a contract that conveys a right to receive or exchange cash or another financial instrument from another party.

x. *Financial standby letter of credit* means a letter of credit or similar arrangement that represents an irrevocable obligation to a third-party beneficiary:

*1.* To repay money borrowed by, or advanced to, or for the account of, a second party (the account party), or

*2.* To make payment on behalf of the account party, in the event that the account party fails to fulfill its obligation to the beneficiary.

xi. *Mortgage servicer cash advance* means funds that a residential mortgage loan servicer advances to ensure an uninterrupted flow of payments, including advances made to cover foreclosure costs or other expenses to facilitate the timely collection of the loan. A mortgage servicer cash advance is not a recourse obligation or a direct credit substitute if:

*1.* The servicer is entitled to full reimbursement and this right is not subordinated to other claims on the cash flows from the underlying asset pool; or

*2.* For any one loan, the servicer's obligation to make nonreimbursable advances is contractually limited to an insignificant amount of the outstanding principal balance of that loan.

xii. *Nationally recognized statistical rating organization (NRSRO)* means an entity recognized by the Division of Market Regulation of the Securities and Exchange Commission (or any successor Division) (Commission) as a nationally recognized statistical rating organization for various purposes, including the Commission's uniform net capital requirements for brokers and dealers.

xiii. *Recourse* means the retention, by a bank, in form or in substance, of any credit risk directly or indirectly associated with an asset it has transferred and sold that exceeds a pro rata share of the bank's claim on the asset. If a bank has no claim on a transferred asset, then the retention of any risk of credit loss is recourse. A recourse obligation typically arises when a bank transfers assets and retains an explicit obligation to repurchase the assets or absorb losses due to a default on the payment of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may also exist implicitly if a bank provides credit enhancement beyond any contractual obligation to support assets it has sold. The following are examples of recourse arrangements:

*1.* Credit-enhancing representations and warranties made on the transferred assets;

*2.* Loan servicing assets retained pursuant to an agreement under which the bank will be responsible for credit losses associated with the loans being serviced. Mortgage servicer cash advances that meet the conditions of section III.B.3.a.viii. of this appendix are not recourse arrangements;

*3.* Retained subordinated interests that absorb more than their pro rata share of losses from the underlying assets;

*4.* Assets sold under an agreement to repurchase, if the assets are not already included on the balance sheet;

*5.* Loan strips sold without contractual recourse where the maturity of the transferred loan is shorter than the maturity of the commitment under which the loan is drawn;

*6.* Credit derivatives issued that absorb more than the bank's pro rata share of losses from the transferred assets; and

*7.* Clean-up calls at inception that are greater than 10 percent of the balance of the original pool of transferred loans. Clean-up calls that are 10 percent or less of the original pool balance that are exercisable at the option of the bank are not recourse arrangements.

*8.* Liquidity facilities extended to ABCP programs that are not eligible liquidity facilities (as defined in section III.B.3.a. of this appendix).

xiv. *Residual interest* means any on-balance sheet asset that represents an interest (including a beneficial interest) created by a transfer that qualifies as a sale (in accordance with generally accepted accounting principles) of financial assets, whether through a securitization or otherwise, and that exposes the bank to credit risk directly or indirectly associated with the transferred assets that exceeds a pro rata share of the bank's claim on the assets, whether through subordination provisions or other credit enhancement techniques. Residual interests generally include credit-enhancing I/Os, spread accounts, cash collateral accounts, retained subordinated interests, other forms of over-collateralization, and similar assets that function as a credit enhancement. Residual interests further include those exposures that, in substance, cause the bank to retain the credit risk of an asset or exposure that had qualified as a residual interest before it was sold. Residual interests generally do not include interests purchased from a third party, except that purchased credit-enhancing I/Os are residual interests for purposes of this appendix.

xv. *Revolving retail credit facility* means an exposure to an individual where the borrower is permitted to vary both the drawn amount and the amount of repayment within an agreed limit under a line of credit (such as credit card accounts). Revolving retail credits include business credit card accounts.

xvi. *Risk participation* means a participation in which the originating party remains liable to the beneficiary for the full amount of an obligation (*e.g.*, a direct credit substitute) notwithstanding that another party has acquired a participation in that obligation.

xvii. *Securitization* means the pooling and repackaging by a special purpose entity of assets or other credit exposures into securities that can be sold to investors. Securitization includes transactions that create stratified credit risk positions whose performance is dependent upon an underlying pool of credit exposures, including loans and commitments.

xviii. *Sponsor* means a bank that establishes an asset-backed commercial paper program; approves the sellers permitted to participate in the program; approves the asset pools to be purchased by the program; or administers the asset-backed commercial paper program by monitoring the assets, arranging for debt placement, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

xix. *Structured finance program* means a program where receivable interests and asset-backed securities issued by multiple participants are purchased by a special purpose entity that repackages those exposures into securities that can be sold to investors. Structured finance programs allocate credit risks, generally, between the participants and credit enhancement provided to the program.

xx. *Traded position* means a position that is externally rated and is retained, assumed, or issued in connection with an asset securitization, where there is a reasonable expectation that, in the near future, the rating will be relied upon by unaffiliated investors to purchase the position; or an unaffiliated third party to enter into a transaction involving the position, such as a purchase, loan, or repurchase agreement.

* * * * *

g. *Early Amortization Triggers.* i. A bank that originates securitizations of revolving retail credit facilities that contain early amortization triggers must incorporate the off-balance sheet portion of such a securitization (that is, the investors' interest) into the bank's risk-weighted assets by multiplying the outstanding principal amount of the investors' interest by the appropriate credit conversion factor and then assigning the resultant credit equivalent amount to the appropriate risk weight category. The credit conversion factor to be applied to such a securitization generally is a function of the securitization's most recent three-month average excess spread level, the point at which excess spread in the securitization must be trapped in a spread or reserve account, and the excess spread level at which an early amortization of the securitization is triggered.

ii. In order to determine the appropriate credit conversion factor to be applied to the outstanding principal balance of the investors' interest, the originating bank must compare the securitization's most recent three-month average excess spread level against the difference between the point at which the bank is required by the securitization documents to divert and trap excess spread (spread trapping point) in a spread or reserve account and the excess spread level at which early amortization of the securitization is triggered (early amortization trigger). The difference between the spread trapping point and the early amortization trigger is referred to as the excess spread differential (ESD). In a securitization of revolving retail credit facilities that employs the concept of excess spread to determine when an early amortization is triggered but where the securitization's transaction documents do not require excess spread to be diverted to a spread or reserve account at a certain level, the ESD is deemed to be 4.5 percentage points.

iii. If a securitization of revolving retail credit facilities does not employ the concept of excess spread as the transaction's determining factor of when an early amortization is triggered, then a 10 percent credit conversion factor is applied to the outstanding principal balance of the investors' interest at the securitization's inception.

iv. The ESD must then be divided to create four equal ESD segments. For example, when the ESD is 4.5 percent, this amount is divided into 4 equal ESD segments of 112.5 basis points. A credit conversion factor of zero percent would be applied to the outstanding principal balance of the investors' interest if the securitization's three-month average excess spread equaled or exceeded the securitization's spread trapping point (4.5 percent in the example). Credit conversion factors of 5 percent, 10 percent, 50 percent, and 100 percent are then assigned to each of the four equal ESD segments in descending order beginning at the spread trapping point as the securitization approaches early amortization. For instance, when the ESD is 4.5 percent, the credit conversion factors would be applied to the outstanding balance of the investors' interest as follows:

EXAMPLE OF CREDIT CONVERSION FACTOR ASSIGNMENT BY SEGMENT OF EXCESS SPREAD DIFFERENTIAL

| Segment of excess spread differential | Credit conversion factor (percent) |
|---|---|
| 450 bp or more | 0 |
| Less than 450 bp to 337.5 bp | 5 |
| Less than 337.5 bp to 225 bp | 10 |
| Less than 225 bp to 112.5 bp | 50 |
| Less than 112.5 bp | 100 |

h. *Limitations on risk-based capital requirements.* * * *

iv. For a bank subject to the early amortization treatment in section III.B.3.g. of this appendix, the total risk-based capital requirement for all of the bank's exposures to a securitization of revolving retail credit facilities is limited to the greater of the risk-based capital requirement for residual interests, as defined in section III.B.3.a. of this appendix, or the risk-based capital requirement for the underlying securitized assets calculated as if the bank continued to hold the assets on its balance sheet.

* * * * *

6. *Asset-backed commercial paper programs.* a. An asset-backed commercial paper (ABCP) program typically is a program through which a bank provides funding to its corporate customers by sponsoring and administering a bankruptcy-remote special purpose entity that purchases asset pools from, or extends loans to, the bank's customers. The ABCP program raises the cash to provide the funding through the issuance of commercial paper in the market.

b. A bank that qualifies as a primary beneficiary and must consolidate an ABCP program that is defined as a variable interest entity under GAAP may exclude the consolidated ABCP program assets from risk-weighted assets provided that the bank is the sponsor of the consolidated ABCP program. If a bank excludes such consolidated ABCP program assets, the bank must assess the appropriate risk-based capital charge against any risk exposures of the bank arising in connection with such ABCP programs, including direct credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans, in accordance with sections III.B.3, III.C. and III.D. of this appendix.

* * * * *

III. * * *

D. * * *

2. *Items with a 50 percent conversion factor.* * * *

c. Commitments are defined as any legally binding arrangements that obligate a bank to extend credit in the form of loans or leases; to purchase loans, securities, or other assets; or to participate in loans and leases. They also include overdraft facilities, revolving credit, home equity and mortgage lines of credit, eligible liquidity facilities to asset-backed commercial paper programs,(in form or in substance), and similar transactions. Normally, commitments involve a written contract or agreement and a commitment fee, or some other form of consideration. Commitments are included in weighted-risk assets regardless of whether they contain "material adverse change" clauses or other provisions that are intended to relieve the issuer of its funding obligation under certain conditions. In the case of commitments structured as syndications, where the bank is obligated solely for its *pro rata* share, only the bank's proportional share of the syndicated commitment is taken into account in calculating the risk-based capital ratio. Banks that are subject to the market risk rules are required to convert the notional amount of long-term covered positions carried in the trading account that act as eligible liquidity facilities to ABCP programs, in form or in substance, at 50 percent to determine the appropriate credit equivalent amount for those facilities even though they are structured or characterized as derivatives or other trading book assets.

* * * * *

3. *Items with a 20 percent conversion factor.* * * *

a. * * *

b. Undrawn portions of eligible liquidity facilities with an original maturity of one year or less that banks provide to asset-backed commercial paper (ABCP) programs also are converted at 20 percent. The resulting credit equivalent amount is then assigned to the risk category appropriate to the underlying assets or the obligor, after consideration of any collateral or guarantees, or external credit ratings, if applicable. Banks that comply with the market risk rules are required to convert the notional amount of short-term covered positions carried in the trading account that act as liquidity facilities to ABCP programs, in form or in substance, at 20 percent to determine the appropriate credit equivalent amount for those facilities even though they are structured or characterized as derivatives or other trading book assets. Liquidity facilities extended to ABCP programs that do not meet the following criteria are to be considered recourse obligations or direct credit substitutes and assessed the appropriate risk-based capital requirement in accordance with section III.B.3. of this appendix. Eligible liquidity facilities must be subject to a reasonable asset quality test at the time of draw that precludes funding against assets in the ABCP program that are 60 days or more past due or in default. In addition, if the assets that eligible liquidity facilities are required to fund against are externally rated exposures, the facility can be used to fund only those exposures that are externally rated investment grade at the time of funding. Furthermore, liquidity facilities should contain provisions that, prior to any draws, reduces the bank's funding obligation to cover only those assets that would meet the funding criteria under the facilities' asset quality tests.

4. * * * These include unused portions of commitments, with the exception of eligible liquidity facilities provided to ABCP programs, with an original maturity of one year or less,[54] or which are unconditionally cancelable at any time, provided a separate credit decision is made before each drawing under the facility. * * *

* * * * *

3. Amend appendix E to part 208 by adding two new sentences at the end of section 2.(a). to read as follows:

## Appendix E to Part 208—Capital Adequacy Guidelines for State Member Banks; Market Risk Measure

* * * * *

*Section 2. Definitions* * * *

(a) *** Covered positions exclude all positions in a bank's trading account that, in form or in substance, act as eligible liquidity facilities (as defined in section III.B.3.a. of appendix A of this part) to asset-backed commercial paper programs (as defined in section III.B.6. of appendix A of this part). Such excluded positions are subject to the risk-based capital requirements set forth in appendix A of this part.

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[54] [Reserved]

* * * * *

## PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

**Authority:** 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909; 15 U.S.C. 6801 and 6805.

2. In Appendix A to part 225, the following amendments are proposed:

a. Section II.A.1.c. is revised.

b. In section III.B.3—

i. Paragraph a., *Definitions,* is revised.

ii. Paragraph g., *Limitations on risk-based capital requirements,* is redesignated as paragraph h.

iii. A new paragraph g., *Early amortization triggers,* is added.

iv. A new paragraph iv., is added to the redesignated paragraph h.

c. Section III.B.6. is revised.

d. In section III.D—

i. The last sentence of the introductory paragraph is removed.

ii. In paragraph 2., *Items with a 50 percent conversion factor,* the third undesignated paragraph is revised, the fourth undesignated paragraph is removed, and the five remaining undesignated paragraphs are designated as 2.a. through 2.e

iii. In paragraph 3, *Items with a 20 percent conversion factor,* the first undesignated paragraph is designated as 3.a. and a new paragraph 3.b. is added.

iv. The first sentence in the paragraph 4., *Items with a zero percent conversion factor,* is revised.

d. Attachments IV, V, and VI are removed.

### Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

II. * * *

A. * * *

1. * * *

c. *Minority interest in equity accounts of consolidated subsidiaries.* This element is included in Tier 1 because, as a general rule, it represents equity that is freely available to absorb losses in operating subsidiaries whose assets are included in a bank organization's risk-weighted asset base. While not subject to an explicit sublimit within Tier 1, banking organizations are expected to avoid using minority interest in the equity accounts of consolidated subsidiaries as an avenue for introducing into their capital structures elements that might not otherwise qualify as Tier 1 capital or that would, in effect, result in an excessive reliance on preferred stock within Tier 1. Minority interests in small business investment companies, investment funds that hold nonfinancial equity investments (as defined in section II.B.5.b. of this appendix A), and subsidiaries engaged in nonfinancial activities are not included in the banking organization's Tier 1 or total capital base if the organization's interest in the company or fund is held under one of the legal authorities listed in section II.B.5.b. In addition, minority interests in consolidated asset-backed commercial paper programs (as defined in section III.B.6. of this appendix) that are sponsored by a banking organization are not to be included in the organization's Tier 1 or total capital base if the bank holding company excludes the consolidated assets of such programs from risk-weighted assets pursuant to section III.B.6. of this appendix.

* * * * *

III. * * *

B. * * *

a. *Definitions*—i. *Credit derivative* means a contract that allows one party (the "protection purchaser") to transfer the credit risk of an asset or off-balance sheet credit exposure to another party (the "protection provider"). The value of a credit derivative is dependent, at least in part, on the credit performance of the "reference asset."

ii. *Credit-enhancing representations and warranties* means representations and warranties that are made or assumed in connection with a transfer of assets (including loan servicing assets) and that obligate the bank holding company to protect investors from losses arising from credit risk in the assets transferred or the loans serviced. Credit-enhancing representations and warranties include promises to protect a party from losses resulting from the default or nonperformance of another party or from an insufficiency in the value of the collateral. Credit-enhancing representations and warranties do not include:

*1.* Early default clauses and similar warranties that permit the return of, or premium refund clauses covering, 1–4 family residential first mortgage loans that qualify for a 50 percent risk weight for a period not to exceed 120 days from the date of transfer. These warranties may cover only those loans that were originated within 1 year of the date of transfer;

*2.* Premium refund clauses that cover assets guaranteed, in whole or in part, by the U.S. Government, a U.S. Government agency or a government-sponsored enterprise, provided the premium refund clauses are for a period not to exceed 120 days from the date of transfer; or

*3.* Warranties that permit the return of assets in instances of misrepresentation, fraud or incomplete documentation.

iii. *Direct credit substitute* means an arrangement in which a bank holding company assumes, in form or in substance, credit risk associated with an on- or off-balance sheet credit exposure that was not previously owned by the bank holding company (third-party asset) and the risk assumed by the bank holding company exceeds the pro rata share of the bank holding company's interest in the third-party asset. If the bank holding company has no claim on the third-party asset, then the bank holding company's assumption of any credit risk with respect to the third party asset is a direct credit substitute. Direct credit substitutes include, but are not limited to:

*1.* Financial standby letters of credit that support financial claims on a third party that exceed a bank holding company's pro rata share of losses in the financial claim;

*2.* Guarantees, surety arrangements, credit derivatives, and similar instruments backing financial claims that exceed a bank holding company's pro rata share in the financial claim;

*3.* Purchased subordinated interests or securities that absorb more than their pro rata share of losses from the underlying assets;

*4.* Credit derivative contracts under which the bank holding company assumes more than its pro rata share of credit risk on a third party exposure;

*5.* Loans or lines of credit that provide credit enhancement for the financial obligations of an account party;

*6.* Purchased loan servicing assets if the servicer is responsible for credit losses or if the servicer makes or assumes credit-enhancing representations and warranties with respect to the loans serviced. Mortgage servicer cash advances that meet the conditions of section III.B.3.a.viii. of this appendix are not direct credit substitutes; and

*7.* Clean-up calls on third party assets. Clean-up calls that are 10 percent or less of the original pool balance that are exercisable at the option of the bank holding company are not direct credit substitutes.

*8.* Liquidity facilities extended to ABCP programs that are not eligible liquidity facilities (as defined in section III.B.3.a. of this appendix).

iv. *Early Amortization Triggers* mean contractual requirements that, if triggered, would cause a securitization to begin repaying investors prior to the originally scheduled payment dates.

v. *Eligible liquidity facility* means a facility subject to a reasonable asset quality test at the time of draw that precludes funding against assets that are 60 days or more past due or in default. In addition, if the assets that an eligible liquidity facility is required to fund against are externally rated exposures at the inception of the facility, the facility can be used to fund only those exposures that are externally rated investment grade at the time of funding. Furthermore, an eligible liquidity facility must contain provisions that, prior to any draws, reduces the bank holding company's funding obligation to cover only those assets that would meet the funding criteria under the facility's asset quality tests.

vi. *Excess Spread* means gross finance charge collections and other income received by the trust or special purpose entity (SPE) minus certificate interest, servicing fees, charge-offs, and other trust or SPE expenses.

vii. *Externally rated* means that an instrument or obligation has received a credit rating from a nationally-recognized statistical rating organization.

viii. *Face amount* means the notional principal, or face value, amount of an off-balance sheet item; the amortized cost of an asset not held for trading purposes; and the fair value of a trading asset.

ix. *Financial asset* means cash or other monetary instrument, evidence of debt, evidence of an ownership interest in an entity, or a contract that conveys a right to receive or exchange cash or another financial instrument from another party.

x. *Financial standby letter of credit* means a letter of credit or similar arrangement that represents an irrevocable obligation to a third-party beneficiary:

*1.* To repay money borrowed by, or advanced to, or for the account of, a second party (the account party), or

*2.* To make payment on behalf of the account party, in the event that the account party fails to fulfill its obligation to the beneficiary.

xi. *Mortgage servicer cash advance* means funds that a residential mortgage loan servicer advances to ensure an uninterrupted flow of payments, including advances made to cover foreclosure costs or other expenses to facilitate the timely collection of the loan. A mortgage servicer cash advance is not a recourse obligation or a direct credit substitute if:

*1.* The servicer is entitled to full reimbursement and this right is not subordinated to other claims on the cash flows from the underlying asset pool; or

*2.* For any one loan, the servicer's obligation to make nonreimbursable advances is contractually limited to an insignificant amount of the outstanding principal balance of that loan.

xii. *Nationally recognized statistical rating organization (NRSRO)* means an entity recognized by the Division of Market Regulation of the Securities and Exchange Commission (or any successor Division) (Commission) as a nationally recognized statistical rating organization for various purposes, including the Commission's uniform net capital requirements for brokers and dealers.

xiii. *Recourse* means the retention, by a bank holding company, in form or in substance, of any credit risk directly or indirectly associated with an asset it has transferred and sold that exceeds a pro rata share of the banking organization's claim on the asset. If a banking organization has no claim on a transferred asset, then the retention of any risk of credit loss is recourse. A recourse obligation typically arises when a bank holding company transfers assets and retains an explicit obligation to repurchase the assets or absorb losses due to a default on the payment of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may also exist implicitly if a bank holding company provides credit enhancement beyond any contractual obligation to support assets it has sold. The following are examples of recourse arrangements:

*1.* Credit-enhancing representations and warranties made on the transferred assets;

*2.* Loan servicing assets retained pursuant to an agreement under which the bank holding company will be responsible for credit losses associated with the loans being serviced. Mortgage servicer cash advances that meet the conditions of section III.B.3.a.viii. of this appendix are not recourse arrangements;

*3.* Retained subordinated interests that absorb more than their pro rata share of losses from the underlying assets;

*4.* Assets sold under an agreement to repurchase, if the assets are not already included on the balance sheet;

*5.* Loan strips sold without contractual recourse where the maturity of the transferred loan is shorter than the maturity of the commitment under which the loan is drawn;

*6.* Credit derivatives issued that absorb more than the bank holding company's pro rata share of losses from the transferred assets; and

*7.* Clean-up calls at inception that are greater than 10 percent of the balance of the original pool of transferred loans. Clean-up calls that are 10 percent or less of the original pool balance that are exercisable at the option of the bank are not recourse arrangements.

*8.* Liquidity facilities extended to ABCP programs that are not eligible liquidity facilities (as defined in section III.B.3.a. of this appendix).

xiv. *Residual interest* means any on-balance sheet asset that represents an interest (including a beneficial interest) created by a transfer that qualifies as a sale (in accordance with generally accepted accounting principles) of financial assets, whether through a securitization or otherwise, and that exposes the bank holding company to credit risk directly or indirectly associated with the transferred assets that exceeds a pro rata share of the bank holding company's claim on the assets, whether through subordination provisions or other credit enhancement techniques. Residual interests generally include credit-enhancing I/Os, spread accounts, cash collateral accounts, retained subordinated interests, other forms of over-collateralization, and similar assets that function as a credit enhancement. Residual interests further include those exposures that, in substance, cause the bank holding company to retain the credit risk of an asset or exposure that had qualified as a residual interest before it was sold. Residual interests generally do not include interests purchased from a third party, except that purchased credit-enhancing I/Os are residual interests for purposes of this appendix.

xv. *Revolving retail credit facility* means an exposure to an individual where the borrower is permitted to vary both the drawn amount and the amount of repayment within an agreed limit under a line of credit (such as credit card accounts). Revolving retail credits include business credit card accounts.

xvi. *Risk participation* means a participation in which the originating party remains liable to the beneficiary for the full amount of an obligation (*e.g.*, a direct credit substitute) notwithstanding that another party has acquired a participation in that obligation.

xvii. *Securitization* means the pooling and repackaging by a special purpose entity of assets or other credit exposures into securities that can be sold to investors. Securitization includes transactions that create stratified credit risk positions whose performance is dependent upon an underlying pool of credit exposures, including loans and commitments.

xviii. *Sponsor* means a bank holding company that establishes an asset-backed commercial paper program; approves the sellers permitted to participate in the program; approves the asset pools to be purchased by the program; or administers the asset-backed commercial paper program by monitoring the assets, arranging for debt placement, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

xix. *Structured finance program* means a program where receivable interests and asset-backed securities issued by multiple participants are purchased by a special purpose entity that repackages those exposures into securities that can be sold to investors. Structured finance programs allocate credit risks, generally, between the participants and credit enhancement provided to the program.

xx. *Traded position* means a position that is externally rated and is retained, assumed, or issued in connection with an asset securitization, where there is a reasonable expectation that, in the near future, the rating will be relied upon by unaffiliated investors to purchase the position; or an unaffiliated third party to enter into a transaction involving the position, such as a purchase, loan, or repurchase agreement.

* * * * *

g. *Early Amortization Triggers.* i. A bank holding company that originates securitizations of revolving retail credit facilities that contain early amortization triggers must incorporate the off-balance sheet portion of such a securitization (that is, the investors' interest) into the bank's risk-weighted assets by multiplying the outstanding principal amount of the investors' interest by the appropriate credit conversion factor and then assigning the resultant credit equivalent amount to the appropriate risk weight category. The credit conversion factor to be applied to such a securitization generally is a function of the securitization's most recent three-month average excess spread level, the point at which excess spread in the securitization must be trapped in a spread or reserve account, and the excess spread level at which an early amortization of the securitization is triggered.

ii. In order to determine the appropriate credit conversion factor to be applied to the outstanding principal balance of the investors' interest, the originating bank holding company must compare the securitization's most recent three-month average excess spread level against the difference between the point at which the organization is required by the securitization documents to divert and trap excess spread (spread trapping point) in a spread or reserve account and the excess spread level at which early amortization of the securitization is triggered (early amortization trigger). The difference between the spread trapping point and the early amortization trigger is referred to as the excess spread differential (ESD). In a securitization of revolving retail credit facilities that employs the concept of excess spread to determine when an early amortization is triggered but where the securitization's transaction documents do not require excess spread to be diverted to a spread or reserve account at a certain level, the ESD is deemed to be 4.5 percentage points.

iii. If a securitization of revolving retail credit facilities does not employ the concept of excess spread as the transaction's determining factor of when an early amortization is triggered, then a 10 percent credit conversion factor is applied to the outstanding principal balance of the investors' interest at the securitization's inception.

iv. The ESD must then be divided to create four equal ESD segments. For example, when the ESD is 4.5 percent, this amount is divided into 4 equal ESD segments of 112.5 basis points. A credit conversion factor of zero percent would be applied to the outstanding principal balance of the investors' interest if the securitization's three-month average excess spread equaled or exceeded the securitization's spread trapping point (4.5 percent in the example). Credit conversion factors of 5 percent, 10 percent, 50 percent, and 100 percent are then assigned to each of the four equal ESD segments in descending order beginning with the spread trapping point as the securitization approaches early amortization. For instance, when the ESD is 4.5 percent, the credit conversion factors would be applied to the outstanding balance of the investors' interest as follows:

EXAMPLE OF CREDIT CONVERSION FACTOR ASSIGNMENT BY SEGMENT OF EXCESS SPREAD DIFFERENTIAL

| Segment of excess spread differential | Credit conversion factor (percent) |
|---|---|
| 450 bp or more | 0 |
| Less than 450 bp to 337.5 bp | 5 |
| Less than 337.5 bp to 225 bp | 10 |
| Less than 225 bp to 112.5 bp | 50 |
| Less than 112.5 bp | 100 |

h. *Limitations on risk-based capital requirements.* * * *

iv. For a bank holding company subject to the early amortization treatment in section III.B.3.g. of this appendix, the total risk-based capital requirement for all of the bank's exposures to a securitization of revolving retail credit facilities is limited to the greater of the risk-based capital requirement for residual interests, as defined in section III.B.3.a. of this appendix, or the risk-based capital requirement for the underlying securitized assets calculated as if the bank holding company continued to hold the assets on its balance sheet.

* * * * *

6. *Asset-backed commercial paper programs.* a. An asset-backed commercial paper (ABCP) program typically is a program through which a bank holding company provides funding to its corporate customers by sponsoring and administering a bankruptcy-remote special purpose entity that purchases asset pools from, or extends loans to, the banking organization's customers. The ABCP program raises the cash to provide the funding through the issuance of commercial paper in the market.

b. A bank holding company that qualifies as a primary beneficiary and must consolidate an ABCP program that is defined as a variable interest entity under GAAP may exclude the consolidated ABCP program assets from risk-weighted assets provided that the bank is the sponsor of the consolidated ABCP program. If a bank holding company excludes such consolidated ABCP program assets, the bank holding company must assess the appropriate risk-based capital charge against any risk exposures of the organization arising in connection with such ABCP programs, including direct credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans, in accordance with sections III.B.3, III.C. and III.D. of this appendix.

* * * * *

III. * * *

D. * * *

2. *Items with a 50 percent conversion factor.* * * *

c. Commitments are defined as any legally binding arrangements that obligate a banking organization to extend credit in the form of loans or leases; to purchase loans, securities, or other assets; or to participate in loans and leases. They also include overdraft facilities, revolving credit, home equity and mortgage lines of credit, eligible liquidity facilities to asset-backed commercial paper programs (in form or in substance), and similar transactions. Normally, commitments involve a written contract or agreement and a commitment fee, or some other form of consideration. Commitments are included in weighted-risk assets regardless of whether they contain "material adverse change" clauses or other provisions that are intended to relieve the issuer of its funding obligation under certain conditions. In the case of commitments structured as syndications, where the banking organization is obligated solely for its pro rata share, only the organization's proportional share of the syndicated commitment is taken into account in calculating the risk-based capital ratio. Banking organizations that are subject to the market risk rules are required to convert the notional amount of long-term covered positions carried in the trading account that act as eligible liquidity facilities to ABCP programs, in form or in substance, at 50 percent to determine the appropriate credit equivalent amount for those facilities even though they are structured or characterized as derivatives or other trading book assets.

* * * * *

3. *Items with a 20 percent conversion factor.* * * *

a. * * *

b. Undrawn portions of eligible liquidity facilities with an original maturity of one year or less, that banking organizations provide to asset-backed commercial paper (ABCP) programs also are converted at 20 percent. The resulting credit equivalent amount is then assigned to the risk category appropriate to the underlying assets or the obligor, after consideration of any collateral or guarantees, or external credit ratings, if applicable. Banking organizations that are subject to the market risk rules are required to convert the notional amount of short-term covered positions carried in the trading account that act as eligible liquidity facilities to ABCP programs, in form or in substance, at 20 percent to determine the appropriate credit equivalent amount for those facilities even though they are structured or characterized as derivatives or other trading book assets. Liquidity facilities extended to ABCP programs that do not meet the following criteria are to be considered recourse obligations or direct credit substitutes and assessed the appropriate risk-based capital requirement in accordance with section III.B.3. of this appendix. Eligible liquidity facilities must be subject to a reasonable asset quality test at the time of draw that precludes funding against assets in the ABCP program that are 60 days or more past due or in default. In addition, if the assets that eligible liquidity facilities are required to fund against are externally rated exposures, the facility can be used to fund only those exposures that are externally rated investment grade at the time of funding. Furthermore, liquidity facilities must contain provisions that, prior to any draws, reduces the banking organization's funding obligation to cover only those assets that would meet the funding criteria under the facilities' asset quality tests.

4. * * * These include unused portions of commitments, with the exception of eligible liquidity facilities provided to ABCP programs, with an original maturity of one year or less, or which are unconditionally cancelable at any time, provided a separate credit decision is made before each drawing under the facility. * * *

* * * * *

3. Amend appendix E to part 225 by adding two new sentences at the end of section 2.(a). to read as follows:

**Appendix E to Part 225—Capital Adequacy Guidelines for Bank Holding Companies; Market Risk Measure**

* * * * *

*Section 2. Definitions* * * *

(a) * * * Covered positions exclude all positions in a banking organization's trading account that, in form or in substance, act as eligible liquidity facilities (as defined in section III.B.3.a. of appendix A of this part) to asset-backed commercial paper programs (as defined in section III.B.6. of appendix A of this part). Such excluded positions are subject to the risk-based capital requirements set forth in appendix A of this part.

* * * * *

By order of the Board of Governors of the Federal Reserve System, September 12, 2003.

**Jennifer J. Johnson,**

*Secretary of the Board.*

## FEDERAL DEPOSIT INSURANCE CORPORATION

## 12 CFR Chapter III

## Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 325 of chapter III of title 12 of the Code of Federal Regulations as follows:

## PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

**Authority:** 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note).

2. In Appendix A to part 325, the following amendments are proposed:

a. Section I.A.1. is revised.

b. In section II.B.5 —

i. Paragraph (a), *Definitions*, is revised.

ii. Paragraph (h), *Limitations on risk-based capital requirements*, and paragraph (i), *Alternative Capital Calculation for Small Business Obligations*, are redesignated as paragraphs (i) and (j) respectively.

iii. A new paragraph (h), *Early amortization triggers*, is added.

iv. A new paragraph (4), is added to the redesignated paragraph (i).

c. Section II.B.6. is revised.

d. In section II.D—

i. The last sentence of the introductory paragraph is removed;

ii. In paragraph 2., *Items With a 50 Percent Conversion Factor*, the four undesignated paragraphs are designated 2.a. through 2.d. and newly designated 2.c. is revised;

iii. In paragraph 3, *Items With a 20 Percent Conversion Factor*, the first undesignated paragraph is designated as 3.a. and a new paragraph 3.b. is added;

iv. The first sentence in paragraph 4., *Items With a Zero Percent Conversion Factor*, is revised.

e. Tables III and IV are removed.

## APPENDIX A TO PART 325—STATEMENT OF POLICY ON RISK-BASED CAPITAL

* * * * *

I. * * *

A. * * *

1. *Core capital elements (Tier 1) consists of:*

i. Common stockholders' equity capital (includes common stock and related surplus, undivided profits, disclosed capital reserves that represent a segregation of undivided profits, and foreign currency translation adjustments, less net unrealized holding losses on available-for-sale equity securities with readily determinable fair values);

ii. Noncumulative perpetual preferred stock,[2] including any related surplus; and

iii. Minority interests in the equity capital accounts of consolidated subsidiaries.

(a) At least 50 percent of the qualifying total capital base should consist of Tier 1 capital. Core (Tier 1) capital is defined as the sum of core capital elements minus all intangible assets (other than mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships eligible for inclusion in core capital pursuant to § 325.5(f),[3] minus credit-enhancing interest-only strips that are not eligible for inclusion in core capital pursuant to § 325.5(f), minus any disallowed deferred tax assets, and minus any amount of nonfinancial equity investments required to be deducted pursuant to section II.B.(6) of this Appendix.

(b) Although nonvoting common stock, noncumulative perpetual preferred stock, and minority interests in the equity capital accounts of consolidated subsidiaries are normally included in Tier 1 capital, voting common stockholders' equity generally will be expected to be the dominant form of Tier 1 capital. Thus, banks should avoid undue reliance on nonvoting equity, preferred stock and minority interests.

(c) Although minority interests in consolidated subsidiaries are generally included in regulatory capital, exceptions to this general rule will be made if the minority interests fail to provide meaningful capital support to the consolidated bank. Such a situation could arise if the minority interests are entitled to a preferred claim on essentially low risk assets of the subsidiary. Similarly, although credit-enhancing interest-only strips and intangible assets in the form of mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships are generally recognized for risk-based capital purposes, the deduction of part or all of the credit-enhancing interest-only strips, mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships may be required if the carrying amounts of these assets are excessive in relation to their market value or the level of the bank's capital accounts. Credit-enhancing interest-only strips, mortgage servicing assets, nonmortgage servicing assets, purchased credit card relationships and deferred tax assets that do not meet the conditions, limitations and restrictions described in § 325.5(f) and (g) of this part will not be recognized for risk-based capital purposes.

(d) Minority interests in small business investment companies, investment funds that hold nonfinancial equity investments (as defined in section II.B.(6)(ii) of this appendix A), and subsidiaries that are engaged in nonfinancial activities are not included in the bank's Tier 1 or total capital base if the bank's interest in the company or fund is held under one of the legal authorities listed in section II.B.(6)(ii) of this appendix A. In addition, minority interests in consolidated asset-backed commercial paper programs that are sponsored by a bank are not to be included in the bank's Tier 1 or total capital base if the bank excludes the consolidated assets of such programs from risk-weighted assets pursuant to section II.B.6. of this appendix.

* * * * *

II. * * *

B. * * *

5. * * *

a. *Definitions*—(1) *Credit derivative* means a contract that allows one party (the "protection purchaser") to transfer the credit risk of an asset or off-balance sheet credit exposure to another party (the "protection provider"). The value of a credit derivative is dependent, at least in part, on the credit performance of the "reference asset."

(2) *Credit-enhancing interest only strip* is defined in § 325.2(g).

(3) *Credit-enhancing representations and warranties* means representations and warranties that are made or assumed in connection with a transfer of assets (including loan servicing assets) and that obligate the bank to protect investors from losses arising from credit risk in the assets transferred or the loans serviced. Credit-enhancing representations and warranties include promises to protect a party from losses resulting from the default or nonperformance of another party or from an insufficiency in the value of the collateral. Credit-enhancing representations and warranties do not include:

(i) Early default clauses and similar warranties that permit the return of, or premium refund clauses covering, 1–4 family residential first mortgage loans that qualify for a 50 percent risk weight for a period not to exceed 120 days from the date of transfer. These warranties may cover only those loans that were originated within 1 year of the date of transfer;

(ii) Premium refund clauses that cover assets guaranteed, in whole or in part, by the U.S. Government, a U.S. Government agency or a government-sponsored enterprise, provided the premium refund clauses are for a period not to exceed 120 days from the date of transfer; or

(iii) Warranties that permit the return of assets in instances of misrepresentation, fraud or incomplete documentation.

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[2] Preferred stock issues where the dividend is reset periodically based, in whole or in part, upon the bank's current credit standing, including but not limited to, auction rate, money market or remarketable preferred stock, are assigned to Tier 2 capital, regardless of whether the dividends are cumulative or noncumulative.

[3] An exception is allowed for intangible assets that are explicitly approved by the FDIC as part of the bank's regulatory capital on a specific case basis. These intangibles will be included in capital for risk-based capital purposes under the terms and conditions that are specifically approved by the FDIC.

(4) *Direct credit substitute* means an arrangement in which a bank assumes, in form or in substance, credit risk associated with an on-or off-balance sheet credit exposure that was not previously owned by the bank (third-party asset) and the risk assumed by the bank exceeds the pro rata share of the bank's interest in the third-party asset. If the bank has no claim on the third-party asset, then the bank's assumption of any credit risk with respect to the third party asset is a direct credit substitute. Direct credit substitutes include, but are not limited to:

(i) Financial standby letters of credit, which includes any letter of credit or similar arrangement, however named or described, that support financial claims on a third party that exceed a bank's *pro rata* share of losses in the financial claim;

(ii) Guarantees, surety arrangements, credit derivatives, and irrevocable guarantee-type instruments backing financial claims such as outstanding loans, or other financial claims, or that back off-balance-sheet items against which risk-based capital must be maintained;

(iii) Purchased subordinated interests or securities that absorb more than their *pro rata* share of credit losses from the underlying assets. Purchased subordinated interests that are credit-enhancing interest-only strips are subject to the higher capital charge specified in section II.B.5.(f) of this appendix A;

(iv) Entering into a credit derivative contract under which the bank assumes more than its *pro rata* share of credit risk on a third party asset or exposure;

(v) Loans or lines of credit that provide credit enhancement for the financial obligations of an account party;

(vi) Purchased loan servicing assets if the servicer:

(A) Is responsible for credit losses with the loans being serviced,

(B) Is responsible for making servicer cash advances (unless the advances are not direct credit substitutes because they meet the conditions specified in section II.B.5(a)(9) of this appendix A), or

(C) Makes or assumes credit-enhancing representations and warranties with respect to the loans serviced; and

(vii) Clean-up calls on third party assets. Clean-up calls that are exercisable at the option of the bank (as servicer or as an affiliate of the servicer) when the pool balance is 10 percent or less of the original pool balance are not direct credit substitutes.

(viii.) Liquidity facilities extended to ABCP programs that are not eligible liquidity facilities (as defined in section II.B.5.a. of this appendix).

(5) *Early amortization triggers* mean contractual requirements that, if triggered, would cause a securitization to begin repaying investors prior to the originally scheduled payment dates.

(6) *Eligible liquidity facility* means a facility subject to a reasonable asset quality test at the time of draw that precludes funding against assets in the ABCP program that are 60 days or more past due or in default. In addition, if the assets that an eligible liquidity facility is required to fund against are externally rated exposures at the inception of the facility, the facility can be used to fund only those exposures that are externally rated investment grade at the time of funding. Furthermore, an eligible liquidity facility must contain provisions that, prior to any draws, reduces the bank's funding obligation to cover only those assets that would meet the funding criteria under the facility's asset quality tests.

(7) *Excess spread* means gross finance charge collections and other income received by the trust or special purpose entity (SPE) minus certificate interest, servicing fees, charge-offs, and other trust or SPE expenses.

(8) *Externally rated* means that an instrument or obligation has received a credit rating from a nationally-recognized statistical rating organization.

(9) *Face amount* means the notional principal, or face value, amount of an off-balance sheet item; the amortized cost of an asset not held for trading purposes; and the fair value of a trading asset.

(10) *Financial* asset means cash or other monetary instrument, evidence of debt, evidence of an ownership interest in an entity, or a contract that conveys a right to receive or exchange cash or another financial instrument from another party.

(11) *Financial standby letter of credit* means a letter of credit or similar arrangement that represents an irrevocable obligation to a third-party beneficiary:

(i) To receive money borrowed by, or advanced to, or advanced to, or for the account of, a second party (the account party), or

(ii) To make payment on behalf of the account party, in the event that the account party fails to fulfill its obligation to the beneficiary.

(12) *Mortgage servicer cash advance* means funds that a residential mortgage servicer advances to ensure an uninterrupted flow of payments or the timely collection of residential mortgage loans, including disbursements made to cover foreclosure costs or other expenses arising from a mortgage loan to facilitate its timely collection. A mortgage servicer cash advance is not a recourse obligation or a direct credit substitute if:

(i) The mortgage servicer is entitled to full reimbursement or, for any one residential mortgage loan, nonreimbursable advances are contractually limited to an insignificant amount of the outstanding principal on that loan, and

(ii) the servicer's entitlement to reimbursement in not subordinated.

(13) *Nationally recognized statistical rating organization (NRSRO)* means an entity recognized by the Division of Market Regulation of the Securities and Exchange Commission (or any successor Division) (Commission) as a nationally recognized statistical rating organization for various purposes, including the Commission's uniform net capital requirements for brokers and dealers (17 CFR 240.15c3–1).

(14) *Recourse* means an arrangement in which a bank retains, in form or in substance, of any credit risk directly or indirectly associated with an asset it has sold (in accordance with generally accepted accounting principles) that exceeds a *pro rata* share of the bank's claim on the asset. If a bank has no claim on an asset it has sold, then the retention of any credit risk is recourse. A recourse obligation typically arises when an institution transfers assets in a sale and retains an obligation to repurchase the assets or absorb losses due to a default of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may exist implicitly where a bank provides credit enhancement beyond any contractual obligation to support assets it has sold. The following are examples of recourse arrangements:

(i) Credit-enhancing representations and warranties made on the transferred assets;

(ii) Loan servicing assets retained pursuant to an agreement under which the bank:

(A) Is responsible for losses associated with the loans being serviced,

(B) Is responsible for making mortgage servicer cash advances (unless the advances are not a recourse obligation because they meet the conditions specified in section II.B.5(a)(12) of this appendix A), or

(C) Makes or assumes credit-enhancing representations and warranties on the serviced loans;

(iii) Retained subordinated interests that absorb more than their pro rata share of losses from the underlying assets;

(iv) Assets sold under an agreement to repurchase, if the assets are not already included on the balance sheet;

(v) Loan strips sold without contractual recourse where the maturity of the transferred portion of the loan is shorter than the maturity of the commitment under which the loan is drawn;

(vi) Credit derivative contracts under which the bank retains more than its pro rata share of credit risk on transferred assets; and

(vii) Clean-up calls. Clean-up calls that are exercisable at the option of the bank (as servicer or as an affiliate of the servicer) when the pool balance is 10 percent or less of the original pool balance are not recourse arrangements.

(viii.) Liquidity facilities extended to ABCP programs that are not eligible liquidity facilities (as defined in section II.B.5.a. of this appendix).

(15) *Residual interest* means any on-balance sheet asset that represents an interest (including a beneficial interest) created by a transfer that qualifies as a sale (in accordance with generally accepted accounting principles) of financial assets, whether through a securitization or otherwise, and that exposes a bank to credit risk directly or indirectly associated with the transferred assets that exceeds a *pro rata* share of the bank's claim on the assets, whether through subordination provisions or other credit enhancement techniques. Residual interests generally include credit-enhancing I/Os, spread accounts, cash collateral accounts, retained subordinated interests, other forms of over-collateralization, and similar assets that function as a credit enhancement. Residual interests further include those exposures that, in substance, cause the bank to retain the credit risk of an asset or exposure that had qualified as a residual interest before it was sold. Residual interests generally do not include interests purchased

from a third party, except that purchased credit-enhancing I/Os are residual interests.

(16) *Revolving retail credit facility* means an exposure to an individual where the borrower is permitted to vary both the drawn amount and the amount of repayment within an agreed limit under a line of credit (such as credit card accounts). Revolving retail credits include business credit card accounts.

(17) *Risk participation* means a participation in which the originating party remains liable to the beneficiary for the full amount of an obligation (*e.g.*, a direct credit substitute) notwithstanding that another party has acquired a participation in that obligation.

(18) *Securitization* means the pooling and repackaging by a special purpose entity of assets or other credit exposures into securities that can be sold to investors. Securitization includes transactions that generally create stratified credit risk positions whose performance is dependent upon an underlying pool of credit exposures, including loans and commitments.

(19) *Sponsor* means a bank that establishes an asset-backed commercial paper program; approves the sellers permitted to participate in the program; approves the asset pools to be purchased by the program; or administers the asset-backed commercial paper program by monitoring the assets, arranging for debt placement, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

(20) *Structured finance program* means a program where receivable interests and asset-backed securities issued by multiple participants are purchased by a special purpose entity that repackages those exposures into securities that can be sold to investors. Structured finance programs allocate credit risks, generally, between the participants and credit enhancement provided to the program.

(21) *Traded position* means a position or asset-backed security that is retained, assumed or issued in connection with a securitization that is externally rated, where there is a reasonable expectation that, in the near future, the rating will be relied upon by

(i) Unaffiliated investors to purchase the position; or

(ii) An unaffiliated third party to enter into a transaction involving the position, such as a purchase, loan, or repurchase agreement.

* * * * *

(h) *Early Amortization Triggers*. i. A bank that originates securitizations of revolving retail credit facilities that contain early amortization triggers must incorporate the off-balance sheet portion of such a securitization (that is, the investors' interest) into the bank's risk-weighted assets by multiplying the outstanding principal amount of the investors' interest by the appropriate credit conversion factor and then assigning the resultant credit equivalent amount to the appropriate risk weight category. The credit conversion factor to be applied to such a securitization generally is a function of the securitizations' most recent three-month average excess spread level, the point at which excess spread in the securitization must be trapped in a spread or reserve account, and the excess spread level at which an early amortization of the securitization is triggered.

ii. In order to determine the appropriate credit conversion factor to be applied to the outstanding principal balance of the investors' interest, the originating bank must compare the securitization's most recent three-month average excess spread level against the difference between the point at which the bank is required by the securitization documents to divert and trap excess spread (spread trapping point) in a spread or reserve account and the excess spread level at which early amortization of the securitization is triggered (early amortization trigger). The difference between the spread trapping point and the early amortization trigger is referred to as the excess spread differential (ESD). In a securitization of revolving retail credit facilities that employs the concept of excess spread to determine when an early amortization is triggered but where the securitization's transaction documents do not require excess spread to be diverted to a spread or reserve account at a certain level, the ESD is deemed to be 4.5 percentage points.

iii. If a securitization of revolving retail credit facilities does not employ the concept of excess spread as the transaction's determining factor of when an early amortization is triggered, then a 10 percent credit conversion factor is applied to the outstanding principal balance of the investors' interest at the securitization's inception.

iv. The ESD must then be divided to create four equal ESD segments. For example, when the ESD is 4.5 percent, this amount is divided into 4 equal ESD segments of 112.5 basis points. A credit conversion factor of zero percent would be applied to the outstanding principal balance of the investors' interest if the securitization's three-month average excess spread equaled or exceeded a securitization's spread trapping point (4.5 percent in the example). Credit conversion factors of 5 percent, 10 percent, 50 percent, and 100 percent are then assigned to each of the four equal ESD segments in descending order beginning at the spread trapping point as the securitization approaches early amortization. For instance, when the ESD is 4.5 percent, the credit conversion factors would be applied to the outstanding balance of the investors' interest as follows:

EXAMPLE OF CREDIT CONVERSION FACTOR ASSIGNMENT BY SEGMENT OF EXCESS SPREAD DIFFERENTIAL

| Segment of excess spread differential | Credit conversion factor (percent) |
|---|---|
| 450 bp or more | 0 |
| Less than 450 bp to 337.5 bp | 5 |
| Less than 337.5 bp to 225 bp | 10 |
| Less than 225 bp to 112.5 bp | 50 |
| Less than 112.5 bp | 100 |

i. *Limitations on risk-based capital requirements.* * * *

(4) For a bank subject to the early amortization treatment in section III.B.3.g. of this appendix, the total risk-based capital requirement for all of the bank's exposures to a securitization of revolving retail credit facilities is limited to the greater of the risk-based capital requirement for residual interests, as defined in section III.B.3.a. of this appendix, or the risk-based capital requirement for the underlying securitized assets calculated as if the bank continued to hold the assets on its balance sheet.

* * * * *

6. *Asset-backed commercial paper programs.* a. An asset-backed commercial paper (ABCP) program typically is a program through which a bank provides funding to its corporate customers by sponsoring and administering a bankruptcy-remote special purpose entity that purchases asset pools from, or extends loans to, the bank's customers. The ABCP program raises the cash to provide the funding through the issuance of commercial paper in the market.

b. A bank that qualifies as a primary beneficiary and must consolidate an ABCP program that is defined as a variable interest entity under GAAP may exclude the consolidated ABCP program assets from risk-weighted assets provided that the bank is the sponsor of the consolidated ABCP program. If a bank excludes such consolidated ABCP program assets, the bank must assess the appropriate risk-based capital charge against any risk exposures of the bank arising in connection with such ABCP programs, including direct credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans, in accordance with sections II.B.5, II.C. and II.D. of this appendix.

* * * * *

II. * * *

D. * * *

2. *Items With a 50 Percent Conversion Factor.* * * *

* * * * *

c. Commitments, for risk-based capital purposes, are defined as any legally binding arrangements that obligate a bank to extend credit in the form of loans or lease financing receivables; to purchase loans, securities, or other assets; or to participate in loans and leases. Commitments also include overdraft facilities, revolving credit, home equity and mortgage lines of credit, eligible liquidity facilities to asset-backed commercial paper programs (in form and in substance), and similar transactions. Normally, commitments involve a written contract or agreement and a commitment fee, or some other form of consideration. Commitments are included in weighted-risk assets regardless of whether they contain *material adverse change* clauses or other provisions that are intended to relieve the issuer of its funding obligation under certain conditions. Banks that are subject to the market risk rules are required to convert the notional amount of long-term covered positions carried in the trading account that act as eligible liquidity facilities to ABCP programs, in form or in substance, at 50 percent to determine the appropriate credit equivalent amount for those facilities even though they are structured or characterized as derivatives or other trading book assets.

* * * * *

3. *Items with a 20 percent conversion factor.* * * *

a. * * *

b. Undrawn portions of eligible liquidity facilities with an original maturity of one year or less that banks provide to asset-backed commercial paper (ABCP) programs also are converted at 20 percent. The resulting credit equivalent amount is then assigned to the risk category appropriate to the underlying assets or the obligor, after consideration of any collateral or guarantees, or external credit ratings, if applicable. Banks that are subject to the market risk rules are required to convert the notional amount of short-term covered positions carried in the trading account that act as eligible liquidity facilities to ABCP programs, in form or in substance, at 20 percent to determine the appropriate credit equivalent amount for those facilities even though they are structured or characterized as derivatives or other trading book assets. Liquidity facilities extended to ABCP programs that do not meet the following criteria are to be considered recourse obligations or direct credit substitutes and assessed the appropriate risk-based capital requirement in accordance with section II.B.5. of this appendix. Eligible liquidity facilities must be subject to a reasonable asset quality test at the time of draw that precludes funding against assets in the ABCP program that are 60 days or more past due or in default. In addition, if the assets that eligible liquidity facilities are required to fund against are externally rated exposures, the facility can be used to fund only those exposures that are externally rated investment grade at the time of funding. Furthermore, eligible liquidity facilities must contain provisions that, prior to any draws, reduces the bank's funding obligation to cover only those assets that would meet the funding criteria under the facilities' asset quality tests. * * *

4. * * * These include unused portions of commitments, with the exception of eligible liquidity facilities provided to ABCP programs, with an original maturity of one year or less, or which are unconditionally cancelable at any time, provided a separate credit decision is made before each drawing under the facility. * * *

* * * * *

3. In appendix C to part 325, add two new sentences to the end of section 2.(a) to read as follows:

### Appendix C to Part 325—Risk-Based Capital for State Non-Member Banks; Market Risk

*Section 2. Definitions.*

(a) * * * Covered positions exclude all positions in a bank's trading account that, in form or in substance, act as eligible liquidity facilities (as defined in section II.B.5.a. of appendix A of this part), to asset-backed commercial paper programs (as defined in section II.B.6. of appendix A of this part). Such excluded positions are subject to the risk-based capital requirements set forth in appendix A of this part.

* * * * *

Dated at Washington, DC, this 5th day of September 2003.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

## DEPARTMENT OF THE TREASURY

## Office of Thrift Supervision

## 12 CFR Chapter V

## Authority and Issuance

For the reasons set out in the preamble, part 567 of chapter V of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 567—CAPITAL

1. The authority citation for part 567 continues to read as follows:

**Authority:** 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

2. Section 567.1 is amended by adding definitions of early amortization trigger, excess spread, qualifying liquidity facility, and revolving retail credit in alphabetical order to read as follows:

### § 567.1 Definitions.

* * * * *

*Early amortization trigger.* The term *early amortization trigger* means a contractual requirement that, if triggered, would cause a securitization to begin repaying investors prior to the originally scheduled payment dates.

* * * * *

*Excess spread.* The term *excess spread* means gross finance charge collections and other income received by the trust or special purpose entity minus certificate interest, servicing fees, charge-offs, and other trust or special purpose entity expenses.

* * * * *

*Qualifying liquidity facility.* The term *qualifying liquidity facility* means a liquidity facility provided to an ABCP program provided that:

(1) At the time of the draw, the liquidity facility must be subject to a reasonable asset quality test that precludes funding against or purchase of assets from the ABCP program that are 60 days or more past due or in default;

(2) If the assets that the liquidity facility is required to fund are externally rated securities, (at the time they are transferred into the program) the facility can be used to fund only exposures that are externally rated investment grade at the time of funding; and

(3) The liquidity facility must provide that, prior to any draws, the savings association's funding obligation is reduced to cover only those assets that satisfy the funding criteria under the asset quality test of the liquidity facility.

* * * * *

*Revolving retail credit.* The term *revolving retail credit* means an exposure to an individual or a business where the borrower is permitted to vary both the drawn amount and the amount of repayment within an agreed limit under a line of credit (such as personal or business credit card accounts).

* * * * *

3. Amend § 567.5 by revising paragraph (a)(1)(iii) to read as follows:

### § 567.5 Components of capital.

(a) * * *

(1) * * *

(iii) Minority interests in the equity accounts of subsidiaries that are fully consolidated. However, minority interests in consolidated ABCP programs sponsored by a savings association are excluded from the association's core capital or total capital base if the consolidated assets are excluded from risk-weighted assets pursuant to § 567.6 (a)(3);

* * * * *

4. Amend § 567.6 by:

A. Revising paragraph (a)(2)(ii)(B);

B. Redesignating paragraph (a)(2)(iii) as paragraph (a)(2)(iii)(A);

C. Adding paragraph (a)(2)(iii)(B);

D. Revising paragraph (a)(2)(iv)(A);

E. Removing paragraph (a)(3)(iv);

F. Adding paragraph (b)(9).

### § 576.6 Risk-based capital credit risk-weight categories.

(a) * * *

(2) * * *

(ii) * * *

(B) Unused portions of commitments, including home equity lines of credit and qualifying liquidity facilities with an original maturity exceeding one year except those listed in paragraph (a)(2)(iv) of this section; and

* * * * *

(iii) *20 percent credit conversion factor (Group C).* * * *

(B) Undrawn portions of qualifying liquidity facilities with an original maturity of one year or less that a savings association provides to ABCP programs.

(iv) *Zero percent credit conversion factor (Group D).* (A) Unused commitments, with the exception of liquidity facilities provided to ABCP programs, with an original maturity of one year or less.

* * * * *

(b) * * *

(9) *Early amortization.* (i) A savings association that originates a securitization of revolving retail credits that contains early amortization triggers must risk weight the off-balance sheet portion of such a securitization (investors' interest) by multiplying the outstanding principal amount of the investors' interest by the appropriate credit conversion factor as provided by paragraph (b)(9)(ii) or (iii) of this section and then assigning the resultant credit equivalent amount to the appropriate risk weight category.

(ii) *Calculation of credit conversion factor.* (A) The credit conversion factor to be applied to such a securitization generally is a function of the securitizations' most recent three-month average excess spread level, the point at which excess spread in the securitization must be trapped in a spread or reserve account (spread trapping point), and the excess spread level at which an early amortization of the securitization is triggered (early amortization trigger). This difference between the spread trapping point and the early amortization trigger is the excess spread differential.

(B) The excess spread differential must then be divided by four to create the standard excess spread differential value. This value will be used to determine the appropriate credit conversion factor in accordance with Table D of this section. The upper and lower bounds for each of the excess spread differential segments is calculated using the spread trapping point and the standard excess spread differential value in accordance with the formulas provided in Table D of this section. However, if the securitization documents do not require excess spread to be diverted to a spread or reserve account at a certain level, the excess spread differential is equal to 4.5 percentage points.

(C) *(1)* If the three-month average excess spread equals or exceeds the securitization's spread trapping point, then the credit conversion factor is equal to zero. If the three-month average excess spread is less than the spread trapping point, then the credit conversion factors (5 percent, 10 percent, 50 percent, and 100 percent) are then assigned to each of the four equal excess spread differential segments in descending order, beginning at the spread trapping point as the securitization approaches early amortization, in accordance with Table D of this section.

*(2)* If the securitization does not use the excess spread as an early amortization trigger, then a 10 percent credit conversion factor is applied to the current outstanding principal balance of the investors' interest.

TABLE D.—CALCULATION OF CREDIT CONVERSION FACTORS FOR EARLY AMORTIZATIONS

| Excess spread differential segments | Excess spread ranges | Credit Conversion factor (percent) |
|---|---|---|
| 1 | Excess spread equals or exceeds the trapping point | 0 |
| 2 | Upper Bound < Spread Trapping Point<br>Lower Bound = Spread Trapping Point—(1 × SESDV) | 5 |
| 3 | Upper Bound < Spread Trapping Point—(1 × SESDV)<br>Lower Bound = Spread Trapping Point—(2 × SESDV) | 10 |
| 4 | Upper Bound < Spread Trapping Point—(2 × SESDV)<br>Lower Bound = Spread Trapping Point—(3 × SESDV) | 50 |
| 5 | Upper Bound < Spread Trapping Point—(3 × SESDV)<br>Lower Bound = None | 100 |

**Note:** SESDV is the standard excess spread differential value.

(iii) *Limitations on risk-based capital requirements.* For a savings association subject to the early amortization requirements in paragraph (b)(9) of this section, the total risk-based capital requirement for all of the savings association's exposures to a securitization of revolving retail credits is limited to the greater of the risk-based capital requirement for residual interests or the risk-based capital requirement for the underlying securitized assets calculated as if the savings association continued to hold the assets on its balance sheet.

* * * * *

Dated: September 9, 2003.

By the Office of Thrift Supervision.

**James E. Gilleran,**

*Director.*

[FR Doc. 03–23757 Filed 9–30–03; 8:45 am]

BILLING CODE 4801–01–P; 6720–01–P; 6210–01–P; 6714–01–P

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## NATIONAL CREDIT UNION ADMINISTRATION

## 12 CFR Parts 701 and 741

## Suretyship and Guaranty; Maximum Borrowing Authority

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Proposed rule.

**SUMMARY:** NCUA is proposing to revise its rules concerning maximum borrowing authority to permit federally insured, State-chartered credit unions (FISCUs) to apply for a waiver from the maximum borrowing limitation of 50 percent of paid-in and unimpaired capital and surplus (shares and undivided earnings, plus net income or minus net loss). This amendment will provide FISCUs with more flexibility by allowing them to apply for a waiver up to the amount permitted under State law.

NCUA is also proposing adding a provision to its regulations that allows a Federal credit union (FCU) to act as surety or guarantor on behalf of its members. The proposal establishes certain requirements to ensure that FCUs, and FISCUs if permitted under state law to act as a surety or guarantor, are not exposed to undue risk.

**DATES:** The NCUA must receive comments on or before December 1, 2003.

**ADDRESSES:** Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-mail comments to *regcomments@ncua.gov. Please send comments by one method only.*

**FOR FURTHER INFORMATION CONTACT:** Mary F. Rupp, Staff Attorney, Division of Operations, Office of General

Counsel, at the above address or telephone: (703) 518–6540.

**SUPPLEMENTARY INFORMATION:**

### A. New Sections 701.20 and 741.221—Suretyship and Guaranty

The NCUA Board proposes adding a new § 701.20 to recognize that an FCU, as part of its incidental powers, may act as a guarantor or surety on behalf of a member. 12 U.S.C. 1757(17). Acting as a guarantor or surety on behalf of an FCU member meets the definition of an incidental power because it: Is convenient or useful to an FCU in extending credit to its members; is a logical extension of an FCU's authority to make loans to its members and to provide letters of credit on behalf of members; and involves risks that are similar in nature to the risks involved in an FCU's lending activity. 12 CFR 721.2.

The proposal notes that it does not apply to the guaranty of public deposits or the assumption of liability to pay member accounts. The FCU Act provides express authority for an FCU to guaranty public deposits. 12 U.S.C. 1767(b). The requirements governing the assumption of liability to pay member accounts are in the FCU Act. 12 U.S.C. 1757(b)(1)(B) and (3). Since an FCU may already engage in these activities under the authority and requirements in the FCU Act, it is not necessary to include these activities as part of this rulemaking.

The proposal defines suretyship, guaranty agreements and principal. While both a surety and a guarantor agree to be bound for the principal, there are distinctions. A principal is the "person primarily liable, for whose performance of his obligation the guaranty or surety has become bound." *Blacks Law Dictionary* 1193 (6th ed. 1990). Under a suretyship agreement, a surety is bound with its principal to pay or perform an obligation to a third party. *Id.* at 1441–42. Under a guaranty agreement, on the other hand, the guarantor agrees to satisfy the obligation of the principal to another only if the principal fails to perform. *Id.* at 705. In addition, while a surety is usually bound with the principal by the same instrument, which is executed simultaneously by both the surety and the principal, a guarantor usually enters into a separate agreement with the third party, which the principal does not join. *Id.* at 1441–42. A guaranty agreement is usually entered into before or after that of principal and is often founded on a separate consideration from that supporting the contract of the principal. *Id.*

The proposal includes three requirements designed to ensure the safety and soundness of surety and guaranty agreements. The Board has the same safety and soundness concerns for FISCUs authorized under state law to enter into surety and guaranty agreements as it does for FCUs. Accordingly, the Board proposes to apply the requirements to FISCUs through new § 741.220. The requirements are modeled after the requirements in the Office of the Comptroller of the Currency (OCC) and the Office of Thrift Supervision (OTS) rules on guaranty and suretyship. 12 CFR 7.1017 and 560.60.

The first two requirements are substantially similar to the requirements in the OTS rule. The first requires that the obligation under the agreement be limited to a fixed amount and limited in duration. Without a requirement to limit the amount and duration of the agreement, an FCU may take on more risk than it anticipated in the agreement.

The second provision requires that an FCU's performance under the agreement create a loan that is permissible under applicable law because the nature of a surety or guaranty agreement is a loan. The FCU is lending its credit and, in effect, is lending to its member. An FCU may not use a surety or guaranty agreement as a mechanism to avoid the applicable regulatory requirements for loans. These regulatory requirements are in place to ensure the safety and soundness of the transactions. For example, if an FCU will be a surety or guarantor for a member's obligation for a business loan, it must comply with the member business loan requirements. 12 CFR part 723.

This provision also highlights that an FCU must treat its obligation under the agreement as a contractual commitment to advance funds to the principal under the loans-to-one-borrower limits and loans to insider restrictions. 12 CFR 560.60(b)(3), 701.21(c)(5), (d) and 723.8. Again, these requirements are in place to ensure the safety and soundness of the transaction and should not be circumvented through the use of a surety or guaranty agreement.

The third provision addresses collateral requirements and parallels requirements in the OCC and OTS rules. Depending on the nature of the collateral, an FCU must have collateral equal to 100 or 110 percent of the obligation. The 100 percent collateral category includes cash, obligations of the United States or its agencies, obligations fully guaranteed by the United States or its agencies as to principal and interest, and notes, drafts, bills of exchange, and bankers' acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank. Because the value of some of these types of collateral can fluctuate, the proposal requires that the collateral have a market value at the close of each business day equal to 100 percent of the FCU's total potential liability.

The 110 percent collateral category includes real estate and marketable securities. If the collateral is real estate, an FCU must establish the value of the collateral by an evaluation or appraisal of the real estate consistent with NCUA's appraisal regulation. 12 CFR 722.3. If the collateral is marketable securities, an FCU must be authorized to invest in the securities and must ensure that the value of the securities is equal to 110 percent of the obligation at all times. To protect against risk of loss, an FCU must perfect its security interest in the collateral.

### B. Section 741.2—Maximum Borrowing Authority

The NCUA Board proposes to amend § 741.2 to create a waiver process for FISCUs that want to exceed the general borrowing limitations in this section provided certain requirements have been met. The FCU Act limits an FCU's maximum borrowing authority to "50 per centum of its paid-in and unimpaired capital and surplus." 12 U.S.C. 1757(9). In 1971, shortly after the passage of Title II of the FCU Act, which authorized the NCUA to provide share insurance, the Board issued regulations governing various aspects of the share insurance program. In particular, the Board, noting that some states had no limitations on borrowing, issued a regulation that made it a requirement for share insurance that all federally insured credit unions comply with the FCU Act's borrowing limitations. 36 FR 10844, June 4, 1971.

While safety and soundness concerns could potentially exist with an FISCU borrowing over the statutory limit for an FCU absent necessary safeguards to ensure due diligence by the FISCU and State and Federal supervisory review, the Board recognizes that it may be appropriate in certain circumstances and on a case-by-case basis to allow an FISCU to exceed the statutory limitation currently imposed on FCUs. The Board proposes allowing an FISCU to apply for a waiver from § 741.2 up to the amount permitted under State law or by the State regulator. Prerequisites for a waiver request include that appropriate safeguards must be in place and that either State law permits the higher limit than that specified in the FCU Act for which the FISCU seeks approval, which is verified by the State regulator, or the State regulator has duly approved a higher limit than that allowed under State law. Instances in which it would seem appropriate to seek a waiver could include a situation where, for example, the borrowing has minimal risk associated with it but the FISCU is unable to enter into the transaction because of the regulatory prohibition. Circumstances presenting minimal risk could be, for example, a transaction where the FISCU is acting as a co-borrower with a member and the member has provided collateral sufficient to cover its obligation if the member defaults on the loan. The waiver process will permit regional directors to take into consideration the circumstances of the FISCU, its community, and members, and provide additional flexibility to address particular needs or benefits on a case-by-case basis. The proposed regulation contemplates that FISCUs wishing to engage in particular transactions, programs or projects, which would otherwise take their borrowings above the regulatory limitation, will have the opportunity to apply for a waiver, which will include a thorough explanation of the business purposes and strategies the FISCU has in place to mitigate risk, so that regional directors may make an informed determination regarding safety and soundness.

To apply for a waiver, an FISCU must submit its request to the appropriate regional director. The request must include a detailed analysis of the safety and soundness implications of the waiver, a proposed aggregate dollar amount or percentage of paid-in and unimpaired capital and surplus limitation, a letter from the State regulator approving the request, and an explanation demonstrating the need for a higher limit. The regional director will approve the waiver request if he or she determines that the proposed borrowing limit will not adversely affect the safety and soundness of the FISCU.

## C. Regulatory Procedures

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities. NCUA considers credit unions having less than ten million in assets to be small for purposes of RFA. Interpretive Ruling and Policy Statement (IRPS) 87–2 as amended by IRPS 03–2. The NCUA has determined and certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. The proposal authorizes FCUs to enter into surety and guaranty agreements and permits FISCUs to request a waiver from the maximum borrowing limitation. It is unlikely that small credit unions will participate in either of these activities. Accordingly, the NCUA has determined that a Regulatory Flexibility Analysis is not required.

### *Paperwork Reduction Act*

The NCUA Board has determined that the proposal that would allow FISCUs to file for a waiver from the borrowing limitations in § 741.2 is covered under the Paperwork Reduction Act. NCUA is submitting a copy of this proposed rule to the Office of Management and Budget (OMB) for its review.

The NCUA Board estimates it will take an FISCU 8 hours on average to complete a waiver request. The NCUA Board also estimates, based on past interest in increased borrowing authority, that two FISCUs per year will request a waiver. Based on this, the NCUA Board estimates that the proposed rule will have an estimated net burden of 16 additional hours.

The Paperwork Reduction Act of 1995 and OMB regulations require that the public be provided an opportunity to comment on the paperwork requirements, including an agency's estimate of the burden of the paperwork requirements. The NCUA Board invites comment on: (1) Whether the paperwork requirements are necessary; (2) the accuracy of NCUA's estimate on the burden of the paperwork requirements; (3) ways to enhance the quality, utility, and clarity of the paperwork requirements; and (4) ways to minimize the burden of the paperwork requirements.

*Comments should be sent to:* OMB Reports Management Branch, New Executive Office Building, Room 10202, Washington, DC 20503; Attention: Joseph Lackey, Desk Officer for NCUA. Please send NCUA a copy of any comments you submit to OMB.

### *Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule will apply directly to federally insured state-chartered credit unions. NCUA has determined that the proposed amendments will not have a substantial direct effect on the States, on the connection between the National government and the States, or on the distribution of power and responsibilities among the various levels of Government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

### *The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

## D. Agency Regulatory Goal

NCUA's goal is clear, understandable regulations that impose a minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive if implemented as proposed.

## List of Subjects

### *12 CFR Part 701*

Credit unions.

### *12 CFR Part 741*

Credit unions, Requirements for insurance.

By the National Credit Union Administration Board on September 24, 2003.

**Becky Baker,**

*Secretary of the Board.*

For the reasons set forth in the preamble, the National Credit Union Administration proposes to amend 12 CFR parts 701 and 741 as follows:

## PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

**Authority:** 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789.

2. Add new § 701.20 to read as follows:

### § 701.20 Suretyship and guaranty.

(a) *Scope.* This section authorizes a Federal credit union to enter into a suretyship or guaranty agreement as an incidental powers activity. This section does not apply to the guaranty of public deposits or the assumption of liability for member accounts.

(b) *Definitions.* A suretyship binds a Federal credit union with its principal to pay or perform an obligation to a third person. Under a *guaranty* agreement, a Federal credit union agrees to satisfy the obligation of the principal only if the principal fails to pay or perform. The *principal* is the person primarily liable, for whose performance of his obligation the surety or guarantor has become bound.

(c) *Requirements.* The suretyship or guaranty agreement must be for the benefit of a principal that is a member and is subject to the following conditions:

(1) The Federal credit union limits its obligations under the agreement to a fixed dollar amount and a specified duration;.

(2) The Federal credit union's performance under the agreement creates an authorized loan that complies with the applicable lending regulations, including the limitations on loans to one member or associated members or officials for purposes of §§ 701.21(c)(5), (d); 723.2 and 723.8; and

(3) The Federal credit union obtains a segregated deposit from the member that is sufficient in amount to cover the Federal credit union's total potential liability.

(d) *Collateral.* A segregated deposit under this section includes collateral:

(1) In which the Federal credit union has perfected its security interest (for example, if the collateral is a printed security, the Federal credit union must have obtained physical control of the security, and, if the collateral is a book entry security, the Federal credit union must have properly recorded its security interest); and

(2) That has a market value, at the close of each business day, equal to 100 percent of the Federal credit union's total potential liability and is composed of:

(i) Cash;

(ii) Obligations of the United States or its agencies;

(iii) Obligations fully guaranteed by the United States or its agencies as to principal and interest; or

(iv) Notes, drafts, or bills of exchange or banker's acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank; or

(3) That has a market value equal to 110 percent of the Federal credit union's total potential liability and is composed of:

(i) Real estate, the value of which is established by a signed appraisal or evaluation in accordance with part 722 of this chapter. In determining the value of the collateral, the Federal credit union must factor in the value of any existing senior mortgages, liens or other encumbrances on the property except those held by the principal to the suretyship or guaranty agreement; or

(ii) Marketable securities that the Federal credit union is authorized to invest in. The Federal credit union must ensure that the value of the security is 110 percent of the obligation at all times during the term of the agreement.

## PART 741—REQUIREMENTS FOR INSURANCE

3. The authority citation for part 741 continues to read as follows:

**Authority:** 12 U.S.C. 1757, 1766(a), and 1781–1790; Pub. L. 101–73.

4. Amend § 741.2 by designating the existing paragraph as (a) and adding new paragraphs (b), (c) and (d) to read as follows:

### § 741.2 Maximum borrowing authority.

(a) * * *

(b) A federally insured State-chartered credit union may apply to the regional director for a waiver of paragraph (a) of this section up to the amount permitted under the applicable State law or by the State regulator. The waiver request must include:

(1) Written approval from the State regulator;

(2) A detailed analysis of the safety and soundness implications of the proposed waiver;

(3) A proposed aggregate dollar amount or percentage of paid-in and unimpaired capital and surplus limitation; and

(4) An explanation demonstrating the need to raise the limit.

(c) The regional director will approve the waiver request if the proposed borrowing limit will not adversely affect the safety and soundness of the federally insured State-chartered credit union.

5. Add new § 741.221 to read as follows:

### § 741.221 Suretyship and guaranty requirements.

Any credit union, which is insured pursuant to Title II of the Act, must adhere to the requirements in § 701.20 of this chapter. State-chartered, NCUSIF-insured credit unions may only enter into suretyship and guaranty agreements to the extent authorized under State law.

[FR Doc. 03–24761 Filed 9–30–03; 8:45 am]

BILLING CODE 7535–01–P

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## NATIONAL CREDIT UNION ADMINISTRATION

## 12 CFR Part 708a

## Conversion of Insured Credit Unions to Mutual Savings Banks

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** NCUA proposes to update its rule regarding conversion of insured credit unions to mutual savings banks. This proposal, seeking to accomplish full disclosure and transparency, would require a converting credit union to provide additional information in the notice to members of its intent to convert. Specifically, the credit union would have to disclose any economic benefit a director or senior management official of a converting credit union may receive in connection with the conversion. The proposal also would require the converting credit union to disclose that conversion to a mutual savings bank could lead to members having diminished voting rights and losing their ownership interests in the credit union if the mutual savings bank subsequently converted to a stock institution and the members do not become stockholders. NCUA believes this proposal would enhance a member's ability to make informed decisions about the conversion without increasing the regulatory burden for converting credit unions and would help converting credit unions to more fully understand what NCUA expects to be included in the notice to members.

**DATES:** Comments must be received on or before December 1, 2003.

**ADDRESSES:** Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You are encouraged to fax comments to (703) 518–6319 or e-mail comments to *regcomments@ncua.gov* instead of mailing or hand-delivering them. Whatever method you choose, *please send comments by one method only.*

**FOR FURTHER INFORMATION CONTACT:** Frank S. Kressman, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

**SUPPLEMENTARY INFORMATION:**

### Background

The Credit Union Membership Access Act (CUMAA) was enacted into law on August 7, 1998. Pub. L. 105–21. Section 202 of CUMAA amended the provisions of the Federal Credit Union Act (Act) concerning conversion of insured credit unions to mutual savings banks. 12 U.S.C. 1785(b). CUMAA required NCUA to promulgate final rules regarding charter conversions that were: (1) Consistent with CUMAA; (2) consistent with the charter conversion rules promulgated by other financial regulators; and (3) no more or less restrictive than rules applicable to charter conversions of other financial institutions. NCUA issued rules in compliance with this mandate. 63 FR 65532 (November 27, 1998); 64 FR 28733 (May 27, 1999).

It has been almost five years since NCUA first amended Part 708a to comply with CUMAA. In that time, NCUA has grown concerned that many credit union members do not fully appreciate the effect the conversion may have on their ownership interests in the credit union and voting power in the mutual savings bank.

**Discussion**

There are increasing indications that a high percentage of credit unions that convert to mutual savings banks have or will undertake a second conversion to become a stock institution. While it is certainly within the rights of the credit union membership to exercise their right to convert and change the structure of the institution, converting credit unions generally do not adequately discuss in the notice to credit union members the likelihood and ramifications of a second conversion to a stock institution.

While State laws may vary, under the Office of Thrift Supervision's regulations, there is no minimum waiting period for a newly chartered Federal mutual savings bank to convert to a stock institution. As a result, it is possible for a credit union that converts to a Federal mutual savings bank to attempt to convert to a stock institution in less than two years. In most cases, a conversion from a mutual savings bank to a stock institution will result in a loss of ownership interest for a majority of its members because most members do not purchase stock in the institution.

While CUMAA provides that an insured credit union may convert to a mutual savings bank without the prior approval of NCUA, it also requires NCUA to administer the member vote on conversion and review the methods and procedures by which the vote is taken. This is reflected in NCUA's conversion rule. The rule requires a converting credit union to provide its members with written notice of its intent to convert. 12 CFR 708a.4. It also specifies that the member notice must adequately describe the purpose and subject matter of the vote on conversion. *Id.* In addition, a converting credit union must notify NCUA of its intent to convert. 12 CFR 708a.5. The credit union must provide for NCUA's review a copy of the member notice, ballot, and all other written materials the credit union has provided or intends to provide to its members in connection with the conversion. *Id.*

A converting credit union has the option of submitting these materials to NCUA before it begins to distribute them to its members. *Id.* This enables the credit union to obtain NCUA's preliminary determination on the methods and procedures of the member vote based on NCUA's review of the written materials. The credit union can then decide whether to move forward with the often expensive, labor intensive conversion process with a full and complete understanding of NCUA's position. NCUA believes its review of these materials is a practical and unintrusive way of fulfilling, at least part of, its congressionally mandated responsibility to review the methods and procedures of the vote to ensure that all reasonable measures to accomplish full disclosure and transparency have been taken to inform the credit union membership of the potential consequences of their vote.

If NCUA disapproves of the methods and procedures of the member vote, after the vote is conducted, then NCUA is authorized to direct a new vote be taken. 12 CFR 708a.7. NCUA interprets its responsibility to review the methods and procedures of the member vote to include determining that the member notice and other materials sent to the members are accurate and not misleading, that all required notices are timely, and that the membership vote is conducted in a fair and legal manner.

NCUA believes that full and proper disclosure to members that they could potentially lose their ownership interest in their credit union if it ultimately becomes a stock institution is key to describing the purpose and subject matter of the member vote adequately. Failing to discuss this integral risk associated with the conversion adequately is tantamount to providing misleading information. Most of the conversion packets NCUA has reviewed since CUMAA went into effect have contained some information relating to this issue, but have not addressed it sufficiently to make this point clear to members.

A charter conversion is a sophisticated transaction with consequences that might not surface for a number of years and that are often not recognizable at the time of conversion to even the most astute members. As a result, few members can make a truly informed decision about how the conversion will affect their ownership interest in the credit union unless the credit union provides them with this information. Accordingly, for the reasons discussed above and in an effort to achieve full disclosure and transparency, NCUA proposes to require a converting credit union to disclose that the conversion from a credit union to a mutual savings bank could lead to members losing their ownership interests in the credit union if the mutual savings bank subsequently converted to a stock institution and the members do not become stockholders.

The Act provides that a member of a Federal credit union is entitled to only one vote irrespective of the number of shares held by that member. The "one member one vote" structure gives an equal voice to all members, even those of modest means. 12 U.S.C. 1760. Most, if not all, state credit unions also are required to follow this approach. This is not usually the case with mutual savings banks. In most instances, mutual savings banks allot votes based on the amount of a member's deposits. Commonly, one vote is granted for each $100 a member has on deposit up to a maximum of 1,000 votes. As noted above, NCUA believes that disclosing that members could have lesser voting power in the mutual savings bank than they do in the credit union is central to describing the purpose and subject matter of the member vote in an adequate and proper fashion. Accordingly, for the reasons discussed above and in an effort to achieve full disclosure and transparency, NCUA proposes to require a converting credit union to disclose that the conversion from a credit union to a mutual savings bank could lead to members having lesser voting rights in the mutual savings bank than they had in the credit union.

NCUA's conversion rule echoes CUMAA by providing that directors and senior management officials of a credit union may not receive any economic benefit from the conversion of their credit union other than compensation and benefits paid to them in the ordinary course of business. 12 CFR 708a.10. This is intended to insure that management's decision to begin the conversion process is based on sound business judgment reflecting the best interests of the members. Consistent with this statutory and regulatory limitation, NCUA believes it is appropriate to require a converting credit union to disclose in the member notice any conversion related benefits a director or senior management official may receive, including compensation not permitted in the credit union context. To be complete, this disclosure must include any foreseeable stock related benefits associated with a subsequent conversion to a stock institution. Accordingly, for the reasons discussed above and in an effort to achieve full disclosure and transparency, NCUA proposes to require a converting credit union to disclose whether it will provide any or increasing compensation or other conversion related benefits, including stock related benefits, to directors or senior management officials.

### Regulatory Procedures

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small entities. NCUA considers credit unions having less than ten million dollars in assets to be small for purposes of RFA. Interpretive Ruling and Policy Statement (IRPS) 87–2 as amended by IRPS 03–2. The proposed rule requires some revisions to the disclosures a converting credit union must provide to its members. It is unlikely that small credit unions will engage in these kinds of conversions. The proposed rule would not have a significant economic impact on a substantial number of small credit unions, and, therefore, the NCUA has determined that a regulatory flexibility analysis is not required.

*Paperwork Reduction Act*

The Office of Management and Budget control number associated with part 708a is 3133–0153. The NCUA Board has determined that the proposed rule will not increase paperwork requirements and a paperwork reduction analysis is not required.

*Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on State and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects on the States, on the connection between the National government and the States, or on the distribution of power and responsibilities among the various levels of Government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

*The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

*Agency Regulatory Goal*

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive.

### List of Subjects in 12 CFR Part 708a

Charter conversions, Credit unions.

By the National Credit Union Administration Board on September 24, 2003.

**Becky Baker,**

*Secretary of the Board.*

For the reasons stated above, NCUA proposes to amend § 708a.4 as follows:

## PART 708a—CONVERSION OF INSURED CREDIT UNIONS TO MUTUAL SAVINGS BANKS

1. The authority citation for part 708a continues to read as follows:

**Authority:** 12 U.S.C. 1766, 12 U.S.C. 1785(b).

2. Section 708a.4 is amended by adding paragraph (d) to read as follows:

**§ 708a.4 Voting procedures.**

* * * * *

(d)(1) An adequate description of the purpose and subject matter of the member vote on conversion, as required by paragraph (c) of this section, must include:

(i) A disclosure that the conversion from a credit union to a mutual savings bank could lead to members losing their ownership interests in the credit union if the mutual savings bank subsequently converts to a stock institution and the members do not become stockholders;

(ii) A disclosure that the conversion from a credit union to a mutual savings bank could lead to members having lesser voting rights in the mutual savings bank than they had in the credit union; and

(iii) A disclosure of any conversion related economic benefit a director or senior management official may receive including receipt of or an increase in compensation and any foreseeable stock related benefits associated with a subsequent conversion to a stock institution.

(d)(2) In connection with the disclosures required by paragraphs (d)(1)(i) through (iii) of this section, the converting credit union must include an affirmative statement, that at the time of conversion to a mutual savings bank, the credit union does or does not intend to:

(i) Convert to a stock institution;

(ii) Provide any compensation to previously uncompensated directors or increase compensation or other conversion related benefits, including stock related benefits, to directors or senior management officials; and

(iii) Base member voting rights on account balances.

[FR Doc. 03–24762 Filed 9–30–03; 8:45 am]

**BILLING CODE 7535–01–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–NM–125–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 767–300 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767–300 series airplanes. This proposal would require a general visual inspection for clearance between the corners of the A1 galley and the aft pressure bulkhead, and corrective actions, if necessary. This proposal would also require modification of the A1 galley. These actions are necessary to prevent interference of the A1 galley with the radial stiffener on the aft pressure bulkhead, which could result in fatigue crack propagation. Fatigue crack propagation could lead to possible rapid decompression of the airplane or to damage and/or interference with the airplane control systems that pass through the bulkhead and consequent loss of control of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by November 17, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–125–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–125–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6441; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–125–AD." The postcard will be date stamped and returned to the commenter.

## Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–125–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

## Discussion

The FAA has received reports indicating that interference between the top corners of the A1 galley and the radial stiffener on the aft pressure bulkhead could damage the aft pressure bulkhead structure of certain Boeing Model 767–300 series airplanes. It was discovered in production that for certain A1 aft galleys, the dimensions exceeded the design dimensional envelope by three inches. Investigation revealed that the top corners of these A1 galleys could cause interference with the radial stiffener on the aft pressure bulkhead. This condition, if not corrected, could result in fatigue crack propagation, leading to possible rapid decompression of the airplane or to damage and/or interference with the airplane control systems that pass through the bulkhead and consequent loss of control of the airplane.

## Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 767–53A0102, Revision 1, dated April 24, 2003, which describes procedures for performing a general visual inspection for clearance between the corners of the A1 galley and the aft pressure bulkhead, and corrective actions, if necessary. The corrective actions include completing a detailed inspection for damage to the insulation and aft pressure bulkhead structure and repairing damage if detected. This service bulletin also describes procedures for modifying the A1 galley. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Boeing Service Bulletin 767–53A0102, Revision 1, refers to BE Aerospace Service Bulletins 25–30–0079, dated April 22, 2002; and 25–30–0080, dated April 22, 2002; as additional sources of service information for accomplishment of the modification for Model 767–300 series airplanes.

## Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the Boeing service bulletin described previously, except as discussed below.

## Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the Boeing service bulletin specifies that a modification be made if the A1 galley clearance is less than 1.0 inch, this proposal would require the mandatory modification of the A1 galley. The FAA has determined that, because the A1 galley is removable and may be installed on other Model 767–300 series airplanes, all affected A1 galleys should be modified.

Operators should also note that, although the Boeing service bulletin specifies that operators may contact the manufacturer for repair instructions if damage exceeds the conditions covered in the Structural Repair Manual, this proposed AD would require operators to repair those conditions per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

## Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

### Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

### Cost Impact

There are approximately 5 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1 airplane of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed inspection and modification, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on the U.S. operator is estimated to be $520 for that airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Docket 2003–NM–125–AD.

*Applicability:* Model 767–300 series airplanes, line numbers 754, 761, 767, 775, and 776; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent interference of the A1 galley with the radial stiffener on the aft pressure bulkhead, which could result in fatigue crack propagation, leading to possible rapid decompression of the airplane or to damage and/or interference with the airplane control systems that pass through the bulkhead and consequent loss of control of the airplane; accomplish the following:

### Inspection

(a) Within 18 months after the effective date of this AD, perform a general visual inspection for clearance between the corners of the A1 galley and the aft pressure bulkhead, per the Accomplishment Instructions of Boeing Service Bulletin 767–53A0102, Revision 1, dated April 24, 2003.

**Note 1:** For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

### Corrective Action: Detailed Inspection

(b) If, during the inspection required by paragraph (a) of this AD, the clearance between the corners of the A1 galley and the aft pressure bulkhead is found to be less than 1.0 inch, before further flight, perform a detailed inspection for damage to the insulation and aft pressure bulkhead structure, per the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0102, Revision 1, dated April 24, 2003. If any damage to the insulation or cracking in the aft pressure bulkhead is detected, before further flight, repair the damage and/or cracking per the Accomplishment Instructions of the service bulletin, except where the service bulletin specifies to contact the manufacturer for repair instructions if damage exceeds the conditions covered in the Structural Repair Manual. If damage exceeds the limits specified in the Structural Repair Manual, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

**Note 2:** For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, *etc.*, may be used. Surface cleaning and elaborate access procedures may be required."

### Concurrent Modification

(c) Before or concurrent with the requirements of paragraph (a) of this AD, modify the A1 galley, per the Accomplishment Instructions of Boeing Service Bulletin 767–53A0102, Revision 1, dated April 24, 2003.

**Note 3:** Boeing Service Bulletin 767–53A0102, Revision 1, refers to BE Aerospace Service Bulletins 25–30–0079, dated April 22, 2002; and 25–30–0080, dated April 22, 2002; as additional sources of service information for accomplishment of the modification for Model 767–300 series airplanes.

### Actions Accomplished Per Previous Issue of Service Bulletin

(d) The applicable actions accomplished before the effective date of this AD per Boeing Service Bulletin 767–53A0102, dated November 21, 2002, are considered acceptable for compliance with the corresponding actions specified in this AD.

### Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on September 24, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–24848 Filed 9–30–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 2003–NM–55–AD]

RIN 2120–AA64

## Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model 717–200 airplanes. This proposal would require repetitive inspections of the electric motor of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated wiring resistance/voltage; and corrective actions, if necessary. The actions are intended to prevent various failures of the electric motor of the auxiliary hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by November 17, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–55–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–55–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 98046, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

**FOR FURTHER INFORMATION CONTACT:** Albert Lam, Aerospace Engineer; Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5346; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–55–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–55–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The FAA has received reports that, during ground operations or when powered in flight by the air driven generator, the electric motor of the auxiliary hydraulic pump and associated motor feeder cables failed on certain McDonnell Douglas Model MD–80, MD–90, DC–10, and MD–11 series airplanes. These failures consisted of a seized or difficult to turn rotor on the pump assembly, burnt and shorted motor feeder cables, and/or uncontained internal electric arcing failures with the electric motor. Investigation revealed that these failures may be caused by hydraulic fluid contamination to the electric motor portion of the pump, a failed rotor bearing, and/or degradation of the stator's encapsulation material. Failure of the electric motors of the hydraulic pump and associated motor feeder cables, if not corrected, could result in a fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure.

The subject electric motor on certain McDonnell Douglas Model MD–80, MD–90, DC–10, and MD–11 series airplanes is identical to that on the affected Model 717–200 airplanes. Therefore, all of these models may be subject to the same unsafe condition.

### Other Relevant Rulemaking

The FAA has previously issued AD 2001–22–17, amendment 39–12496 (66 FR 56753, November 13, 2001), applicable to certain McDonnell Douglas Model DC–9–81, –9–82, –9–83, and –9–87 series airplanes; Model MD–88 airplanes; and Model MD–90–30 series airplanes. We have also previously issued AD 2001–14–08, amendment 39–12319 (66 FR 36441, July 12, 2001), applicable to certain McDonnell Douglas Model DC–10 series airplanes, Model MD–10 series airplanes, and Model MD–11 series airplanes. These ADs require repetitive inspections of the electric motor of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated wiring resistance/voltage. Those ADs prevent various failures of electric motors of the auxiliary hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 717–29A0005, dated July 31, 2002, which describes procedures for repetitive inspections of the electric motor of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated wiring resistance/voltage; and corrective actions, if necessary. The corrective actions involve replacing the auxiliary hydraulic pump with a serviceable pump, troubleshooting, and repairing the wiring, as applicable.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously. Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

### Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

### Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

### Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

### Cost Impact

There are approximately 95 airplanes of the affected design in the worldwide fleet. The FAA estimates that 67 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,355, or $65 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**McDonnell Douglas:** Docket 2003–NM–55–AD.

*Applicability:* Model 717–200 airplanes, manufacturer's fuselage numbers 5002 through 5200 inclusive, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent various failures of electric motor of the auxiliary hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure, accomplish the following:

### Service Bulletin References

(a) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of Boeing Alert Service Bulletin 717–29A0005, dated July 31, 2002. Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

### Initial Inspection and Testing

(b) Prior to the accumulation of 3,000 total flight hours, or within 12 months after the effective date of this AD, whichever occurs later, do an inspection of the electric motor of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated writing resistance/voltage per the service bulletin.

### Condition 1, No Failures: Repetitive Inspections

(c) If no failures are detected during any inspection required by paragraph (b) of this AD, repeat the inspection thereafter at intervals not to exceed 5,000 flight hours.

### Condition 2, Failure of Any Pump Motor: Replacement and Repetitive Inspections

(d) If any pump motor fails during any inspection required by paragraph (b) of this AD, before further flight, replace the failed auxiliary hydraulic pump with a serviceable pump, per the service bulletin. Repeat the inspection required by paragraph (b) of this AD at intervals not to exceed 5,000 flight hours.

**Condition 3, Failure of Any Wiring: Repair and Repetitive Inspection**

(e) If any wiring fails during any inspection required by paragraph (b) of this AD, before further flight, troubleshoot and repair the failed wiring, per the service bulletin. Repeat the inspection at intervals not to exceed 5,000 flight hours.

**Alternative Methods of Compliance**

(f) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Issued in Renton, Washington, on September 24, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–24847 Filed 9–30–03; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NM–270–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. This proposal would require various inspections of the fuselage nose structure between stations 4 and 11, and corrective actions if necessary. This action is necessary to detect and correct fatigue cracking in the primary structure of the nose of the airplane at the forward avionics bay (fuselage stations 4 to 11), which could result in reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by October 31, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–270–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain "Docket No. 2001–NM–270–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–270–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–270–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. The CAA advises that during an inspection done in accordance with Jetstream Service Bulletin J41–A53–023, referenced in AD 98–24–01, amendment 39–10888 (63 FR 63975, November 18, 1998), which addresses the diaphragms in the nose cone structure, operators found damage in diaphragms 14153005–177 and –178. When those diaphragms were removed to allow for replacement, fatigue cracking was found in the primary structure of the nose of the airplane at the forward avionics bay (fuselage stations 4 to 11). Such fatigue cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity of the airplane.

### Explanation of Relevant Service Information

The manufacturer has issued Jetstream Service Bulletin J41–53–047, Revision 1, dated July 19, 2002, which describes procedures for various inspections of the fuselage nose structure between stations 4 and 11, and corrective actions, if necessary, as follows:

- Repetitive detailed visual inspections of (1) the forward avionics bay doors for damage, and repair of damage within certain limits; (2) the cho-shield conductive coating for cracking, flaking, wearing, and any uneven surface; restoration of the coating, if necessary; and surface resistance tests of the coating; (3) the forward and rear faces of the station 4 bulkhead and the attached parts for damage, and repair of damage within certain limits; (4) all the aircraft structure between the rear face of the station 4 bulkhead and station 8 for damage, and repair of damage within certain limits; and (5) all the aircraft structure between stations 8 and 11 for damage, and repair of damage within certain limits.

- Repetitive detailed visual inspections for cracks and corrosion of the surround structures for the avionics bay doors including the aft vertical closing frames, frame 8, upper gutters, corner gussets, and lower gutters.
- Repetitive radiographic and eddy current inspections for cracks and corrosion of the avionics bay doors apertures including the door frames, gutters and corner gussets.
- Repetitive radiographic and eddy current inspections of the high intensity radiated field (HIRF) seal at the avionics bay doors apertures for damage (including mechanical damage, corrosion, and exposure of the ferrex wire in the bulb of the seal), and replacement of the seal, if necessary; and surface resistance tests of the HIRF seal.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 001–06–2001 to ensure the continued airworthiness of these airplanes in the United Kingdom.

## FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

## Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

## Differences Between the Service Bulletin and This Proposed AD

Operators should note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for submitting reports of inspection findings, this proposed AD would not require those actions. The FAA does not need this information from operators.

Although the service bulletin describes a detailed visual inspection, this proposed AD would require a detailed inspection.

Also, the service bulletin specifies that operators may contact the manufacturer for disposition of repairs, this proposal would require operators to repair per a method approved by either the FAA or the CAA (or its delegated agent). In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair approved by either the FAA or the CAA (or its delegated agent) would be acceptable for compliance with this proposed AD.

The Planning Information in Jetstream Service Bulletin J41–53–047, Revision 1, dated July 19, 2002, states that operators may remove the HIRF seal and do a detailed visual inspection of the avionics bay door surround structure under the HIRF seal, or do a radiographic and eddy current inspection of the avionics bay door surround structure. The Accomplishment Instructions of the service bulletin do not specify that operators may choose which type of inspection to perform. This proposed AD clarifies that operators may choose to do either a detailed inspection or radiographic and eddy current inspections.

## Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

## Explanation of Labor Rate Increase

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

## Cost Impact

The FAA estimates that 57 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 50 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $185,250, or $3,250 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

## Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**BAE Systems (Operations) Limited** (Formerly British Aerospace Regional Aircraft): Docket 2001–NM–270–AD.

*Applicability:* All Model Jetstream 4101 airplanes, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the primary structure of the nose of the airplane at the forward avionics bay (fuselage stations 4 to 11), which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Perform detailed, radiographic, and eddy current inspections of the fuselage nose structure between stations 4 and 11 for discrepancies (including cracking, corrosion, and exposed wiring), per the Accomplishment Instructions of Jetstream Service Bulletin J41–53–047, Revision 1, dated July 19, 2002, except that reporting results of inspection findings is not required by this AD. Do the inspections at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD. Repeat the inspections thereafter at intervals not to exceed 6,000 landings.

(1) Prior to the accumulation of 10,000 total landings, but not before the accumulation of 7,000 total landings.

(2) Within 3,000 landings after the effective date of this AD, or at the next 8-year environmental (corrosion) inspection, whichever occurs first.

**Note 1:** For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) For the inspections of the surround structure for the avionics bay doors, operators may either remove the high intensity radiated field (HIRF) seal and do a detailed inspection, or do radiographic and eddy current inspections with the HIRF seal in place.

(c) If any discrepancy is found during any inspection required by this AD, before further flight, repair per Jetstream Service Bulletin J41–53–047, Revision 1, dated July 19, 2002. Where the service bulletin specifies contacting the manufacturer for disposition of repairs, before further flight, repair per a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority (or its delegated agent).

### Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance for this AD.

**Note 2:** The subject of this AD is addressed in British airworthiness directive 001–06–2001.

Issued in Renton, Washington, on September 24, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–24846 Filed 9–30–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–NM–287–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 767–400ER Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 767–400ER series airplanes. This proposal would require repetitive high frequency eddy current inspections of the aft lower lugs of the deflection control track of the outboard flap for cracks, and replacement of any cracked deflection control track with a new track assembly. This action is necessary to prevent fatigue cracking in the aft lower lug run-out region of the deflection control track. Fatigue cracking of the deflection control track, if not detected and corrected in a timely manner, could result in the loss of the secondary load path for the outboard flap, resulting in the loss of the outboard flap and consequent reduced controllability of the airplane in the event that the primary load path also fails. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by Novemeber 17, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–287–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–287–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Candice Gerretsen; Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6428; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002-NM-287-AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-287-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

### Discussion

The FAA has received several reports of cracked deflection control tracks on the outboard end of the outboard flaps on Boeing Model 767-300 series airplanes. These cracks all initiated in the aft lower lug run-out region. In one case, the crack initiated at inclusions that are typical of the slag products that are a result of the casting process. After a crack initiates, it is propagated by fatigue until the track fractures.

The deflection control track on Model 767-400 ER series airplanes is identical to that on the affected Model 767-300 series airplanes. However, on the Model 767-300 series airplanes the deflection control track does not act as a load path, so the Model 767-300 series airplanes are not subject to mandatory action for this condition at this time. Fatigue analysis for the Model 767-400ER series airplanes showed that the cracking should not occur before 12,000 total flight cycles. Fatigue cracking of the deflection control track for Model 767-400ER series airplanes, if not detected and corrected in a timely manner, could result in the loss of the secondary load path for the outboard flap resulting in the loss of the outboard flap and consequent reduced controllability of the airplane in the event that the primary load path also fails.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 767-27A0183, dated May 9, 2002, which describes procedures for repetitive high frequency eddy current inspections of the aft lower lugs of the deflection control track of the outboard flap for cracks, and replacement of any cracked deflection control track with a new track assembly.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

### Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

### Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

### Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

### Cost Impact

There are approximately 38 airplanes of the affected design in the worldwide fleet. The FAA estimates that 38 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $7,410, or $195 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Docket 2002–NM–287–AD.

*Applicability:* All Model 767–400ER series airplanes, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent fatigue cracking in the aft lower lug run-out region of the deflection control track, which could result in the loss of the secondary load path for the outboard flap, resulting in loss of the outboard flap and consequent reduced controllability of the airplane in the event that the primary load path also fails, accomplish the following:

**Initial Inspection**

(a) Before the accumulation of 12,000 total flight cycles, or within 1,200 flight cycles after the effective date of this AD, whichever occurs later, perform a high frequency eddy current (HFEC) inspection for cracks in the aft lower lug of the deflection control track on the outboard flap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0183, dated May 9, 2002.

**Repetitive Inspections**

(b) If no crack is detected during any HFEC inspection required in paragraph (a) of this AD, repeat the inspection at intervals not to exceed 1,200 flight cycles.

**Corrective Action**

(c) If any crack is detected during any HFEC inspection required by paragraph (a) of this AD, before further flight, replace the deflection control track with a new track assembly, in accordance with the Accomplishment Instructions in Boeing Alert Service Bulletin 767–27A0183, dated May 9, 2002. Within 12,000 flight cycles following the replacement, perform the HFEC inspection specified in paragraph (a) of this AD, and repeat inspections as specified in paragraph (b) of this AD.

**Alternative Methods of Compliance**

(d) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on September 25, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–24842 Filed 9–30–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 1

**[Docket Nos. 2002N–0276 and 2002N–0278]**

## Regulations Implementing Title III of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Notice of Public Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Announcement of satellite downlink public meeting.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a public meeting (via satellite downlink) to discuss final regulations implementing two sections in Title III of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Bioterrorism Act) regarding Registration of Food Facilities (Docket No. 2002N–0276) and Prior Notice of Imported Food Shipments (Docket No. 2002N–0278). FDA expects to publish shortly in the **Federal Register** final rules implementing each of these provisions. The purpose of the satellite downlink public meeting is to provide information on the rules to the public and to provide the public an opportunity to ask questions of clarification.

**DATES:** The satellite downlink public meeting will be held on Tuesday, October 28, 2003, from 1 p.m. to 3 p.m. eastern standard time. Questions submitted in advance must be received by the contact person by close of business (4:30 p.m.) on Friday, October 24, 2003.

**ADDRESSES:** See **SUPPLEMENTARY INFORMATION** for locations where the satellite downlink may be viewed. A written transcript of the meeting will be available for viewing at the Division of Dockets Management (DDM) (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and through the Web site at *http://www.fda.gov/oc/bioterrorism/bioact.html*.

A copy of the videotaped meeting may also be viewed at DDM.

**FOR FURTHER INFORMATION CONTACT:** Louis J. Carson, Center for Food Safety and Applied Nutrition (HFS–32), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2277, FAX: 301–436–2605, e-mail: *CFSAN-FSS@cfsan.fda.gov*, for general questions about the downlink, submission of advance questions, and requests for a videotaped version of the meeting. Registration for specific downlink locations should be directed to the appropriate contact person listed in table 1 in the **SUPPLEMENTARY INFORMATION** section of this document.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The events of September 11, 2001, highlighted the need to enhance the security of the U.S. food supply. Congress responded by passing the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188), which was signed into law on June 12, 2002. The Bioterrorism Act includes four provisions in Title III (Protecting Safety and Security of Food and Drug Supply), Subtitle A (Protection of Food Supply) that require the Secretary of Health and Human Services, through FDA, to develop implementing regulations on an expedited basis. These four provisions are section 305 (Registration of Food Facilities); section 307 (Prior Notice of Imported Food Shipments); section 306 (Maintenance and Inspection of Records for Foods); and section 303 (Administrative Detention). FDA expects that the agency will soon publish in the **Federal Register** final rules to implement sections 305 and 307 of the Bioterrorism Act. During the satellite downlink public meeting, FDA will explain the final rules on registration of food facilities and prior notice of imported food shipments and will answer questions. The satellite downlink public meeting will be offered in English with French and Spanish translation, and will be simulcast live in English, French, and Spanish for Mexico and North, Central, and South America (including Hawaii and Alaska).

### II. Submitting Questions

Interested persons may submit questions concerning the final rules in advance of the downlink meeting. The deadline for the submission of questions is provided in the **DATES** section of this document. Questions submitted in advance will be used by the session moderator to help clarify issues of concern and provide information about the final rules. The viewing audience may telephone or fax questions to the FDA participants during the live downlink.

FDA is planning a second satellite downlink meeting during which FDA will explain the final rules that FDA intends to publish later this year to implement sections 306 and 303 of the Bioterrorism Act. That meeting will be announced in a future **Federal Register** document.

Information about the public meetings, contact information, and the provisions of the Bioterrorism Act under FDA's jurisdiction may be found on the agency's Web site, *http://www.fda.gov/oc/bioterrorism/bioact.html*.

## III. Final Rules

The final regulations that will be addressed at the satellite downlink public meeting announced in this document concern the following provisions of the Bioterrorism Act:

Section 305: Registration of Food Facilities—The Bioterrorism Act requires the owner, operator, or agent-in-charge of domestic and foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States to register with FDA no later than December 12, 2003. Farms, restaurants, retail food establishments, non-profit food establishments that prepare or serve food directly to the consumer, and fishing vessels not engaged in processing, as defined in 21 CFR 123.3(k), are exempt from this requirement. Also exempt are foreign facilities if the food from the facility undergoes further processing or packaging of more than a de minimus nature by another facility outside of the United States. FDA must issue final regulations no later than December 12, 2003, but facilities must register by this date in accordance with the Bioterrorism Act even if the regulations are not finalized. FDA plans to publish a registration final rule by October 10, 2003.

Section 307: Prior Notice of Imported Food Shipments—The Bioterrorism Act specifies that on or after December 12, 2003, FDA must receive prior notice of each article of food imported or offered for import into the United States. FDA must issue the final regulation by December 12, 2003. If the regulation is not final by that date, the Bioterrorism Act still requires FDA to receive prior notice of not less than 8 hours and not more than 5 days until the regulation takes effect. The agency plans to publish a prior notice final rule by October 10, 2003.

## IV. Sites for Viewing the Downlink Public Meeting

A list of locations for viewing the downlink public meeting is provided in table 1 of this document.

TABLE 1.—OCTOBER 28, 2003, SATELLITE DOWNLINK PUBLIC MEETING I—SECTION 305: REGISTRATION OF FOOD FACILITIES AND SECTION 307: PRIOR NOTICE OF IMPORTED FOOD SHIPMENTS

| Locations | Contact Information |
|---|---|
| FDA New York District Office, 158–15 Liberty Ave., Jamaica, NY 11433 | Marilyn Corretto, 718–662–5461; FAX: 718–662–5434; e-mail: *mcorrett@ora.fda.gov* |
| FDA Buffalo Office, 300 Pearl St., Buffalo, NY 14202 | Robert Hart, 716–551–4461 X3142; FAX: 716–551–3813; e-mail: *Rhart@ora.fda.gov* |
| Plattsburgh Area, Angell Center, Plattsburgh Room, Plattsburgh State University of NY (PSUNY) | Todd Manning, 518–298–8240; FAX: 518–298–5538; e-mail: *tmanning@ora.fda.gov* |
| FDA Chicago District Office, 550 West Jackson, 16th floor, Chicago, IL 60661 | Darlene Bailey, 312–353–7126; FAX: 312–596–4195; e-mail: *dbailey@ora.fda.gov* |
| Ronald V. Dellums Federal Bldg., 1301 Clay St., 3d floor, North Tower, Oakland, CA 94612 | Marcia Madrigal, 510–637–3980; FAX: 510–637–3976; e-mail: *mmadriga@ora.fda.gov* |
| FDA/Southwest Import District, 4040 North Central Expressway, suite 300, Dallas, TX 75204 | Robert Deininger, 214–253–5322; FAX: 214–253–5317; e-mail: *rdeining@ora.fda.gov* |
| Memphis Marriot East, 2625 Thousand Oaks Dr., Memphis, TN 38118 | Sandra Baxter, 615–781–5385 X122; FAX: 615–781–5383; e-mail: *sbaxter@ora.fda.gov* |
| FDA Detroit District Office, 300 River Pl., suite 5900, Detroit, MI 48207 | Evelyn DeNike, 313–393–8109; FAX: 313–393–8139; e-mail: *edenike@ora.fda.gov* |
| Bishop Henry Whipple Federal Bldg., One Federal Dr., rm. G–110, Saint Paul, MN 55111–4008 | Amy C. Johnson, 612–758–7131; FAX: 612–334–4134; e-mail: *acjohnso@ora.fda.gov* |
| Florida Department of Agriculture and Consumer Services (FDACS), George Eyster Auditorium, 3125 Connor Blvd., Tallahassee, FL 32399 | Courtney Hunt, 850–942–8325; FAX: 850–942–8326; e-mail: *chunt@ora.fda.gov* |
| Tampa Port Authority, 1101 Channelside Dr., 1st Floor Board Room, Tampa, FL 33602 | Jean Peeples, 813–228–2671 X18; FAX: 813–228–2046; e-mail: *Jpeeples@ora.fda.gov* |
| Miami Free Zone, 2305 NW. 107th Ave., 1st Floor Conference Room, Miami, FL 33172 | Estela N. Brown, 786–437–4838; FAX: 786–437–4866; e-mail: *Ebrown1@ora.fda.gov* |
| FDA Atlanta District Office, 60 8th Street, NE., Atlanta, GA 30309 | JoAnn Pittman, 404–253–1272; FAX: 404–253–1202; e-mail: *jpittman@ora.fda.gov* |
| FDA Kansas City District Office, 11630 W. 80th St., Annex Conference Room, Lenexa, KS 66214 | Tywanna Paul, 913–752–2141; FAX: 913–752–2111; e-mail: *tpaul@ora.fda.gov* |
| FDA New England District Office, One Montvale Ave., Stoneham, MA 02180 | Susan Small, 781–596–7779: FAX: 781–596–7896; e-mail: *Ssmall@ora.fda.gov* |

TABLE 1.—OCTOBER 28, 2003, SATELLITE DOWNLINK PUBLIC MEETING I—SECTION 305: REGISTRATION OF FOOD FACILITIES AND SECTION 307: PRIOR NOTICE OF IMPORTED FOOD SHIPMENTS—Continued

| Locations | Contact Information |
|---|---|
| FDA Kansas City District Office, 12 Sunnen Dr., suite 122, St. Louis, MO 63143 | Don Aird, 314–645–1167; FAX: 314–645–2969; e-mail: *daird@ora.fda.gov* |
| FDA Cincinnati District Office, 6751 Steger Dr., Cincinnati, OH 45237–3097 | Bonny Carzoli, 513–679–2700 x 115.; FAX: 513–679–2771; e-mail: *bcarzoli@ora.fda.gov* |
| Portland Innovative Food Center, 1207 NW. Naito Pkwy., Portland, OR 97209 | Alan Bennett, 503–671–9332; FAX: 503–671–9445; e-mail: *abennett@ora.fda.gov* |
| Lake Washington Technical College, 11605 132d Ave., NE., Kirkland, WA 98034. | Stephanie Magill, 425–483–4953; FAX: 425–483–4996; e-mail: *stephanie.magill@fda.gov* |
| Center for Food Safety and Applied Nutrition, U.S. FDA, Auditorium, 5100 Paint Branch Pkwy., College Park, MD 20740 | Marion Allen, 301–436–2277, FAX: 301–436–2605, e-mail: *CFSAN-FSS@cfsan.fda.gov* |
| Texas A&M International University, WHTC Bldg., rm. 116, 5201 University, KL 262, Laredo TX 78041–1900<br>South Texas Community College Technology Center, 3700 West Military Hwy., McAllen, TX 78503–8807<br>Arizona Western College, College Union Bldg., Palo Verde Room, 2020 South Avenue 8E, Yuma, AZ 85364<br>PIMA Community College, 401 N. Bonita Ave., Tucson, AZ 85709<br>Health Services Complex, Rosecrans Bldg., 3851 Rosecrans St., San Diego, CA 92110<br>University of El Paso, Undergraduate Learning Center, rm. 110, 500 West University Ave., El Paso, TX 79905 | Adrian Garcia, 520–281–1100, FAX: 520–281–1190, e-mail: *agarcia@ora.fda.gov* |
| FDA/Denver District Office, Denver Federal Center, Bldg. #20, Sixth & Kipling, Lakewood, CO 80225 | Virlie Walker/Devin Koontz, 303–236–3018/3020, FAX: 303–236–3551, e-mail: *vwalker@ora.fda.gov dkoontz@ora.fda.gov* |
| VA Medical Center, 4th Floor Auditorium, 2202 Holcombe, Houston TX 77030 | Sheryl McConnell, 713–802–7534, FAX: 713–802–7503, e-mail: *smcconne@ora.fda.gov* |

The sites presented in table 1 of this document are the sites scheduled to broadcast the satellite downlink as of the publication of this document. Please check the FDA Web site at *http://www.fda.gov/oc/bioterrorism/bioact.html* for additional sites that may be added.

**V. Registration**

All attendees are asked to preregister for the satellite downlink public meeting by contacting the person listed in table 1 of this document for the site you want to attend. Space is limited and registration will be closed at each site when maximum seating capacity for that site is reached. Send registration information (including name, title, firm name, address, telephone number, e-mail address, and fax number) to the contact identified in table 1 of this document at least 2 workdays before the meeting. You may register by e-mail, fax, or telephone.

If you need special accommodations due to a disability, please notify the contact person listed in table 1 of this document at least 7 days in advance of the meeting.

In addition, any interested parties with access to a satellite dish may view the downlink meetings at the following coordinates: Live simulcast in English (channel 6.8), French (channel 5.8), and Spanish (channel 6.2).

UNITED STATES (INCLUDING ALASKA AND HAWAII) AND CANADA (C-BAND: GALAXY 3C @ 95 DEGREES WEST)

| Transponder | Polarization | Channel | Downlink Freq. | Audio |
|---|---|---|---|---|
| 3 | Horizontal | 3 | 3760 MHz | 6.8 English only<br>6.2 Spanish<br>5.8 French |

MEXICO, SOUTH & CENTRAL AMERICA (C-BAND: PAS 9 @ 58 DEGREES WEST)

| Transponder | Polarization | Channel | Downlink Freq. |
|---|---|---|---|
| Slot A Digital | Horizontal | 24 | 4164.5 MHz |

Video rebroadcasts will be played at several locations throughout the world. Dates and viewing times for the video rebroadcasts for Europe, Asia, Australia, South Africa, and New Zealand may be found on FDA's bioterrorism Web site at *http://www.fda.gov/oc/bioterrorism/bioact.html*. Information on additional video rebroadcasts in English, Spanish, and French will also be available at *http://www.fda.gov/oc/bioterrorism/bioact.html.*

### VI. Transcripts

Within 3 weeks of the satellite downlink public meeting, written transcripts in English, French, and Spanish will be available for viewing at DDM (see **ADDRESSES**) and posted on the following Web site: *http://www.fda.gov/oc/bioterrorism/bioact.html.* A written transcript of the satellite downlink meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, 3 weeks after the satellite downlink public meeting at a cost of 10 cents per page. A copy of the videotaped meeting may also be viewed at DDM. Or you may contact Lou Carson for a copy of the videotaped meeting and specify format and language.

Pre-event Test: A pre-event test for downlink sites will be provided on October 28 from 12 noon EST to 1 p.m. EST. During that hour, technical assistance will be available through a trouble line at 1–888–626–8730.

Dated: September 26, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–24921 Filed 9–26–03; 4:13 pm]

**BILLING CODE 4160–01–S**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 261

### [SW–FRL–7567–1]

### Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

**AGENCY:** The Environmental Protection Agency (the EPA).

**ACTION:** Proposed rule and request for comment.

**SUMMARY:** The EPA is proposing to grant a petition submitted by OxyVinyls, LP (OxyVinyls) to exclude (or delist) a certain solid waste generated by its Houston, TX Deer Park VCM Plant from the lists of hazardous wastes.

The EPA used the Delisting Risk Assessment Software (DRAS) in the evaluation of the impact of the petitioned waste on human health and the environment.

The EPA bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, the EPA would conclude that OxyVinyls' petitioned waste is nonhazardous with respect to the original listing criteria and that the Incinerator Offgas Treatment Scrubber Water generated from treating and neutralizing gasses generated in the firebox during the incineration process and not from a manufacturing process will adequately reduce the likelihood of migration of constituents from this waste. The EPA would also conclude that OxyVinyls' process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

**DATES:** The EPA will accept comments until November 17, 2003. The EPA will stamp comments received after the close of the comment period as late. These late comments may not be considered in formulating a final decision. Your requests for a hearing must reach the EPA by October 16, 2003. The request must contain the information prescribed in 40 CFR 260.20(d).

**ADDRESSES:** Please send three copies of your comments. You should send two copies to the Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. You should send a third copy to Nicole Bealle, Waste Team Leader, Texas Commission on Environmental Quality, 5425 Polk Avenue, Suite A, Houston, TX 77023. Identify your comments at the top with this regulatory docket number: "F–02–TX–OXYVINYLS." You may submit your comments electronically to James Harris at *harris.jamesa@epa.gov.*

You should address requests for a hearing to Steve Gilrein, Associate Director of RCRA, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

**FOR FURTHER INFORMATION CONTACT:** James A. Harris, Jr. (214) 665–8302.

**SUPPLEMENTARY INFORMATION:** The information in this section is organized as follows:

- I. Overview Information
  - A. What action is the EPA proposing?
  - B. Why is the EPA proposing to approve this delisting?
  - C. How will OxyVinyls manage the waste if it is delisted?
  - D. When would the proposed delisting exclusion be finalized?
  - E. How would this action affect states?
- II. Background
  - A. What is the history of the delisting program?
  - B. What is a delisting petition, and what does it require of a petitioner?
  - C. What factors must the EPA consider in deciding whether to grant a delisting petition?
- III. The EPA's Evaluation of the Waste Information and Data
  - A. What wastes did OxyVinyls petition the EPA to delist?
  - B. Who is OxyVinyls and what process does it use to generate the petitioned waste?
  - C. How did OxyVinyls sample and analyze the data in this petition?
  - D. What were the results of OxyVinyls' analysis?
  - E. How did the EPA evaluate the risk of delisting this waste?
  - F. What did the EPA conclude about OxyVinyls' analysis?
  - G. What other factors did the EPA consider in its evaluation?
  - H. What is the EPA's evaluation of this delisting petition?
- IV. Next Steps
  - A. With what conditions must the petitioner comply?
  - B. What happens if OxyVinyls violates the terms and conditions?
- V. Public Comments
  - A. How may I as an interested party submit comments?
  - B. How may I review the docket or obtain copies of the proposed exclusions?
- VI. Regulatory Impact
- VII. Regulatory Flexibility Act
- VIII. Paperwork Reduction Act
- IX. Unfunded Mandates Reform Act
- X. Executive Order 13045
- XI. Executive Order 13084
- XII. National Technology Transfer and Advancements Act
- XIII. Executive Order 13132 Federalism

### I. Overview Information

#### *A. What Action Is the EPA Proposing?*

The EPA is proposing:

(1) To grant OxyVinyls' delisting petition to have its Incinerator Offgas Treatment Scrubber Water generated from treating and neutralizing gasses generated in the firebox during the incineration process excluded, or delisted, from the definition of a hazardous waste; and

(2) To use a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment. The EPA would use this model to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

#### *B. Why Is the EPA Proposing To Approve This Delisting?*

OxyVinyls' petition requests a delisting from the K017, K019, and K020, waste listings under 40 CFR

260.20 and 260.22. OxyVinyls does not believe that the petitioned waste meets the criteria for which the EPA listed it, primarily because the Off-gas Scrubber Waste Water could be considered "derived from" a listed waste that has been incinerated to destroy the hazardous constituents of the listed waste. OxyVinyls also believes no additional constituents or factors could cause the waste to be hazardous. The EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)–(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the initial delisting determination, the EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, the EPA would have proposed to deny the petition.) The EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. The EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. The EPA's proposed decision to delist waste from OxyVinyls' facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Deer Park, TX facility.

### C. How Will OxyVinyls Manage the Waste if It Is Delisted?

The Incinerator Offgas Treatment Scrubber Water combines with other aqueous wastes in the chemical sewer and flows by pipe to Shell Chemical L.P.'s South Effluent Treater (SET). The SET is a TPDES-permitted wastewater treatment unit which also holds a surface impoundment retrofitting variance issued by the EPA under RCRA section 3005(j)(3) in November 1988, 42 U.S.C. § 6925(j)(3). It is RCRA permitted to manage listed hazardous waste.

### D. When Would the Proposed Delisting Exclusion Be Finalized?

RCRA section 3001(f) specifically requires the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, the EPA will not grant the exclusion until it addresses all timely public comments (including those at public hearings, if any) on this proposal.

RCRA section 3010(b)(1) at 42 USCA 6930(b)(1), allows rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

The EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

### E. How Would This Action Affect the States?

Because the EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions would be affected. This would exclude states which have received authorization from the EPA to make their own delisting decisions.

The EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than the EPA's, under section 3009 of RCRA, 42 U.S.C.6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the state. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, the EPA urges petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

The EPA has also authorized some States (for example, Louisiana, Georgia, Illinois) to administer a RCRA delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States unless that State makes the rule part of its authorized program. If OxyVinyls transports the petitioned waste to or manages the waste in any state with delisting authorization, OxyVinyls must obtain delisting authorization from that state before it can manage the waste as nonhazardous in the State.

## II. Background

### A. What Is the History of the Delisting Program?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. The EPA has amended this list several times and published it in §§ 261.31 and 261.32.

The EPA lists these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (that is, ignitability, corrosivity, reactivity, and toxicity), (2) they meet the criteria for listing contained in § 261.11(a)(2) or (a)(3), or (3) they are wastes which are mixed with or derived from the treatment, storage or disposal of such characteristic and listed wastes and which therefore become hazardous under § 261.3(a)(2)(iv) or (c)(2)(i), known as the "mixture" and "derived-from" rules, respectively.

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations or resulting from the operation of the mixture or derived-from rules generally is hazardous, a specific waste from an individual facility may not be hazardous.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that the EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

### B. What Is a Delisting Petition, and What Does It Require of a Petitioner?

A delisting petition is a request from a facility to the EPA or an authorized State to exclude wastes from the list of hazardous wastes. The facility petitions the EPA because it does not consider the wastes hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for which the waste was listed. The criteria for which the EPA lists a waste are in Part 261 and further explained in the background documents for the listed waste.

In addition, under § 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and present sufficient information for the EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (See Part 261 and the background documents for the listed waste.)

Generators remain obligated under RCRA to confirm whether their waste remains nonhazardous based on the hazardous waste characteristics even if the EPA has "delisted" the waste.

### *C. What Factors Must the EPA Consider in Deciding Whether To Grant a Delisting Petition?*

Besides considering the criteria in § 260.22(a) and § 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, the EPA must consider any factors (including additional constituents) other than those for which the EPA listed the waste if a reasonable basis exists that these additional factors could cause the waste to be hazardous.

The EPA must also consider as hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See §§ 261.3(a)(2)(iii and iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 66 FR 27266 (May 16, 2001).

## III. The EPA's Evaluation of the Waste Information and Data

### *A. What Waste Did OxyVinyls Petition the EPA To Delist?*

On October 11, 2002, OxyVinyls petitioned the EPA to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, Incinerator Offgas Treatment Scrubber Water generated from its facility located in Deer Park, Texas. The waste falls under the classification of listed waste under § 261.3.

Specifically, in its petition, OxyVinyls requested that the EPA grant a standard exclusion for 919,990 cubic yardsper year of the Incinerator Offgas Treatment Scrubber Water.

### *B. Who Is OxyVinyls and What Process Does It Use To Generate the Petitioned Waste?*

The OxyVinyls facility is located at 1000 Tidal Road Deer Park, Texas in the Shell Chemical Manufacturing Complex. OxyVinyls produces ethylene dichloride (EDC) and vinyl chloride monomer (VCM). EDC is produced only for internal use to make VCM. The primary SIC code for the facility is 2869. There are also support facilities including vent incineration, VCM storage and shipping, EDC intermediate storage, cooling towers and refrigeration and compressors. OxyVinyls utilizes two permitted, onsite RCRA incinerators to burn process vent gases, intermediate wastes generated during the production of EDC and VCM (K019 and K020), epichlorohydrin heavy ends from Resolution Performance Products LLC (K017) and waste oil. There are three wastewater streams generated from treatment of the off-gases from each of the two RCRA permitted incinerators. These three streams are components of the Incinerator Offgas Treatment Scrubber Water; (1) Rockbox Wastewater, which is neutralized scrubber water from the HCl (hydrochloric acid) absorption column, (2) Caustic Scrubber/Dehumidifier column blowdown, and (3) Wet Electrostatic Precipitator (WESP) blowdown. The HCl absorption column is designed to remove HCl from the combustion offgases, while the Caustic Scrubber is designed to remove both residual HCl and chlorine from the offgases, and is located downstream of the HCl absorption column. The further downstream WESP units are designed to remove particulate matter, semi-volatile metals (SVM) and low volatile metals (LVM) from the combustion offgases, including arsenic, beryllium, chromium, cadmium and lead. Dioxins will also be removed by the WESP units. Catalytic oxidizers follow the WESP units and are designed to destroy trace amounts of dioxins, but they do not generate a wastewater stream. The concentrations of constituents from these three units will be accounted for during sampling and analysis of the Offgas Treatment Scrubber Water.

OxyVinyls classified two waste streams (Rockbox Residue and Incinerator Offgas Treatment Scrubber Water), generated from the treatment of the offgas from the incinerators, as hazardous based on the "derived from" rule in 40 CFR 261.3(c)(2)[1]. The facility operates 24 hours per day, 7 days per week, 365 days per year with the exception of periodic planned shutdowns for routine maintenance.

The Rockbox Residue was successfully delisted from hazardous waste classification by the EPA (64 FR 42033, August 3, 1999).

OxyVinyls is now petitioning the EPA for a standard exclusion of the Incinerator Offgas Treatment Scrubber Water from the K017, K019, and K020, waste listings.

### *C. How Did OxyVinyls Sample and Analyze the Data in the Petition?*

To support its petition, OxyVinyls submitted:

(1) historical information on past waste generation and management practices;

(2) results of the total constituent list for 40 CFR Part 264 Appendix IX volatiles, semivolatiles, metals, pesticides, herbicides, dioxins and PCBs;

(3) results of the constituent list for Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals;

(4) analytical constituents of concern for K017, K019 and K020

(5) results from total oil and grease analyses

(6) multiple pH testing for the petitioned waste.

### *D. What Were the results of OxyVinyls' Analyses?*

The EPA believes that the descriptions of the OxyVinyls analytical characterization provide a reasonable basis to grant OxyVinyls' petition for an exclusion of the incinerator offgas treatment scrubber water. The EPA believes the data submitted in support of the petition show the incinerator offgas treatment scrubber water is non-hazardous. Analytical data for the incinerator offgas treatment scrubber water samples were used in the DRAS. The data summaries for detected constituents are presented in Table I. The EPA has reviewed the sampling procedures used by OxyVinyls and has determined they satisfy the EPA's criteria for collecting representative samples of the variations in constituent concentrations in the incinerator offgas treatment scrubber water. The data submitted in support of the petition show that constituents in OxyVinyls' waste are presently below health-based levels used in the delisting decision-making. The EPA believes that OxyVinyls has successfully demonstrated that the incinerator offgas treatment scrubber water is non-hazardous.

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[1] The EPA has not independently determined that the waste is hazardous based on the "derived-from" rule. Waste characterization is the responsibility of the generator of the waste. See 40 CFR 262.11. OxyVinyls made the characterization of the Incinerator Offgas Treatment Scrubber Water and requested dedisting to resolve all ambiguity about the applicability of the "derived-from" rule to the waste.

TABLE I.—MAXIMUM TCLP CONSTITUENT CONCENTRATIONS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATION OF THE INCINERATOR OFFGAS TREATMENT SCRUBBER WATER AT THE OXYVINYLS L.P. DEER PARK VCM PLANT[1]

| Constituent | TCLP constituent analyses (mg/l) | Maximum allowable delisting concentration levels (mg/l) |
|---|---|---|
| Antimony | 0.00586 | 0.0204 |
| Arsenic | 0.02 | [2]0.385 |
| Barium | 0.291 | 2.92 |
| Beryllium | 0.00279 | 0.166 |
| Cadmium | 0.00112 | 0.0225 |
| Chromium | 0.0823 | 5.0 |
| Cobalt | 0.00543 | 13.14 |
| Copper | 0.0636 | 418.00 |
| Lead | 0.011 | 5.00 |
| Nickel | 0.0437 | 1.13 |
| Mercury | 0.00038 | 0.0111 |
| Vanadium | 0.0222 | 0.838 |
| Zinc | 0.0798 | 2.61 |
| Acetone | 0.03 | 1.46 |
| Bromoform | 0.016 | 0.481 |
| Bromomethane | 0.0017 | 8.20 |
| Bromodichloromethane | 0.012 | 0.0719 |
| Chloroform | 0.0051 | 0.683 |
| Dibromochloromethane | 0.013 | 0.057 |
| Iodomethane | 0.001 | 0.19 |
| Methylene Chloride | 0.0014 | 0.029 |
| 2,3,7,8-TCDD Equivalent | 0.000000302 | 0.0000926 |

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

### *E. How Did the EPA Evaluate the Risk of Delisting This Waste?*

For this delisting determination, the EPA used such information gathered to identify plausible exposure routes (*i.e.*, groundwater, surface water, air) for hazardous constituents present in the petitioned waste. The EPA determined that disposal in a Subtitle D surface impoundment is the most reasonable, worst-case disposal scenario for OxyVinyls' petitioned waste. The EPA applied the most recent version of the Delisting Risk Assessment Software (DRAS) described in 65 FR 58015 (September 27, 2000) and 65 FR 75637 (December 4, 2000), to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and determined the potential impact of the disposal of OxyVinyls' petitioned waste on human health and the environment. A copy of this software can be found on the World Wide Web at *http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dras.htm.* In assessing potential risks to groundwater, the EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in the groundwater at a hypothetical receptor well down gradient from the disposal site. Using the risk level (carcinogenic risk of $10^{-5}$ and non-cancer hazard index of 0.1), the DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and the EPA health-based numbers. Using the maximum compliance-point concentrations and the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in groundwater.

The EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible groundwater contamination resulting from disposal of the petitioned waste in a surface impoundment, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenarios resulted in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health or the environment.

The DRAS also uses the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (*e.g.*, volatilization or wind-blown particulate from the surface impoundment). As in the above groundwater analyses, the DRAS uses the risk level, the health-based data and standard risk assessment and exposure algorithms to predict maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations (or "delisting levels").

In most cases, because a delisted waste is no longer subject to hazardous waste control, the EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, the EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. The EPA does control the type of unit where the waste is disposed. The waste must be disposed in the type of unit the fate and transport model evaluates.

The EPA also considers the applicability of groundwater monitoring data during the evaluation of delisting petitions. In this case, OxyVinyls disposes of its wastewater in an NPDES permitted facility with surface impoundments (part of the Shell South Effluent Treatment system), with existing groundwater contamination sources other than the surface impoundments impacting monitoring wells in the area. The groundwater contamination is currently being addressed and managed through a RCRA Corrective Actions Program. Consequently the groundwater data would not be relevant to this exclusion. Therefore, the EPA has determined that it would be unnecessary to request groundwater monitoring data.

The EPA believes that the descriptions of OxyVinyls' hazardous waste process and analytical characterization provide a reasonable basis to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced so that short-term and long-term threats to human health and the environment are minimized.

The DRAS results which calculate the maximum allowable concentration of chemical constituents in the waste are presented in Table I. Based on the comparison of the DRAS results and maximum TCLP concentrations found in Table I, the petitioned waste should be delisted because no constituents of concern tested are likely to be present or formed as reaction products or by products in OxyVinyls' waste. In addition, on the basis of explanations and analytical data provided by OxyVinyls, pursuant to § 260.22, the EPA concludes that the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22, and 261.23, respectively.

### *F. What Did the EPA Conclude About OxyVinyls' Analysis?*

The EPA concluded, after reviewing OxyVinyls' processes that no other hazardous constituents of concern, other than those for which tested, are likely to be present or formed as reaction products or by-products in the wastes. In addition, on the basis of explanations and analytical data provided by OxyVinyls, pursuant to §§ 260.22, the EPA concludes that the petitioned wastes do not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22 and 261.23, respectively.

### *G. What Other Factors Did the EPA Consider in Its Evaluation?*

During the evaluation of OxyVinyls' petition, the EPA also considered the potential impact of the petitioned waste via non-groundwater routes (i.e., air emission and surface runoff). With regard to airborne dispersion in particular, the EPA believes that exposure to airborne contaminants from OxyVinyls' petitioned waste is unlikely. Therefore, no appreciable air releases are likely from OxyVinyls waste under any likely disposal conditions. The EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from OxyVinyls' waste in an open surface impoundment. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from OxyVinyls' incinerator offgas treatment scrubber water. A description of the EPA's assessment of the potential impact of OxyVinyls' waste, regarding airborne dispersion of waste contaminants, is presented in the RCRA public docket for this proposed rule, F–02–TX–OxyVinyls.

The EPA also considered the potential impact of the petitioned waste via a surface water route. The EPA believes that containment structures at municipal solid waste surface impoundments can effectively control surface water runoff, as the Subtitle D regulations (See 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, the concentrations of any hazardous constituents dissolved in the runoff will tend to be lower than the levels in the TCLP leachate analyses reported in this notice due to the aggressive acidic medium used for extraction in the TCLP. The EPA believes that, in general, the incinerator offgas scrubber water is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution and attenuation of hazardous constituents will also occur. Since the waste is a liquid, the concentrations provide a direct measure of solubility of a toxic constituent in water and are indicative of the fraction of the constituent that may be mobilized in surface water as well as groundwater.

Based on the reasons discussed above, the EPA believes that the contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, the EPA evaluated the potential impacts on surface water if OxyVinyls' waste were released from a municipal solid waste surface impoundment through runoff and erosion. See the RCRA public docket for this proposed rule for further information on the potential surface water impacts from runoff and erosion. The estimated levels of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below the EPA Chronic Water Quality Criteria for aquatic organisms (USEPA, OWRS, 1987). The EPA, therefore, concluded that OxyVinyls incinerator offgas treatment scrubber water is not a present or potential substantial hazard to human health and the environment via the surface water exposure pathway.

### *H. What Is the EPA's Evaluation of This Delisting Petition?*

The descriptions of OxyVinyls' hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis for the EPA to grant the exclusion. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable leachable concentrations (*see* Table I). The EPA believes OxyVinyls' process will substantially reduce the likelihood of migration of hazardous constituents from the petitioned waste. OxyVinyls' process also minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

Thus, the EPA believes that it should grant OxyVinyls an exclusion for the incinerator offgas treatment scrubber water. The EPA believes the data submitted in support of the petition show OxyVinyls' process can render the incinerator offgas treatment scrubber water non-hazardous.

The EPA has reviewed the sampling procedures used by OxyVinyls and has determined they satisfy the EPA criteria for collecting representative samples of variable constituent concentrations in the incinerator offgas treatment scrubber water. The data submitted in support of the petition show that constituents in OxyVinyls' waste are presently below the compliance point concentrations used in the delisting decision-making and would not pose a substantial hazard to the environment. The EPA believes that OxyVinyls has successfully demonstrated that the incinerator offgas treatment scrubber water is non-hazardous.

The EPA therefore, proposes to grant an exclusion to OxyVinyls, in Deer Park, Texas, for the incinerator offgas treatment scrubber water described in its petition. The EPA's decision to exclude this waste is based on descriptions of the treatment activities associated with the petitioned waste and characterization of the incinerator offgas treatment scrubber water.

If the EPA finalizes the proposed rule, the EPA will no longer regulate the petitioned waste under Parts 262 through 268 and the permitting standards of Part 270.

## IV. Next Steps

### *A. With What Conditions Must the Petitioner Comply?*

The petitioner, OxyVinyls, must comply with the requirements in 40 CFR part 261, appendix IX, Table 1 as amended by this notice. The text below gives the rationale and details of those requirements.

(1) Delisting Levels

This paragraph provides the levels of constituents that OxyVinyls must test the incinerator offgas treatment scrubber water, below which these wastes would be considered non-hazardous.

The EPA selected the set of inorganic and organic constituents specified in Paragraph (1) of 40 CFR Part 261, Appendix IX, Table 1, based on information in the petition. The EPA compiled the inorganic and organic constituents list from the composition of the waste, descriptions of OxyVinyls' treatment process, previous test data provided for the waste, and the respective health-based levels used in delisting decision-making. These delisting levels correspond to the allowable levels measured in the total concentration analysis of the waste.

(2) Waste Holding and Handling

The purpose of this paragraph is to ensure that OxyVinyls manages and disposes of any incinerator offgas treatment scrubber water that contains hazardous levels of inorganic and organic constituents according to Subtitle C of RCRA. Managing the incinerator offgas treatment scrubber water as a hazardous waste until initial verification testing is performed will protect against improper handling of hazardous material. If EPA determines that the data collected under this Paragraph do not support the data provided for in the petition, the exclusion will not cover the petitioned waste. The exclusion is effective upon publication in the **Federal Register** but the disposal at a non-Subtitle C surface impoundment cannot begin until the verification sampling is completed.

(3) Verification Testing Requirements

OxyVinyls must complete a rigorous verification testing program on the incinerator offgas treatment scrubber water to assure that the treated incinerator offgas treatment scrubber water does not exceed the maximum levels specified in Paragraph (1). If the EPA determines that the data collected under this Paragraph does not support the data provided for in the petition, the exclusion will not cover the tested waste. This verification program operates on two levels.

The first part of the verification testing program consists of testing the incinerator offgas treatment scrubber water for specified indicator parameters as per Paragraph (1).

If the EPA determines that the data collected under this Paragraph do not support the data provided for the petition, the exclusion will not cover the generated wastes. If the data from the initial verification testing program demonstrate that the treatment process is effective, OxyVinyls may request quarterly testing. The EPA will notify OxyVinyls, in writing, if and when it may replace the testing conditions in paragraph(3)(A)with the testing conditions in (3)(B).

The second part of the verification testing program is the quarterly testing of representative samples of incinerator offgas treatment scrubber water for all constituents specified in Paragraph (1). The EPA believes that the concentrations of the constituents of concern in the incinerator offgas treatment scrubber water may vary over time. Consequently this program will ensure that OxyVinyls' treatment process can effectively handle any variation in constituent concentrations in the waste.

The proposed subsequent testing would verify that OxyVinyls operates an incinerator from which an aqueous stream is generated from treating and neutralizing gasses generated in the firebox during the incineration process as it did during the initial verification testing. It would also verify that the incinerator offgas treatment scrubber water does not exhibit unacceptable levels of toxic constituents.

The EPA is proposing to require OxyVinyls to analyze representative samples of the incinerator offgas treatment scrubber water quarterly during the first year of waste generation. OxyVinyls would begin quarterly sampling 60 days after the final exclusion as described in Paragraph (3)(B).

The EPA, per Paragraph 3(C), is proposing to end the subsequent testing conditions after the first year if OxyVinyls has demonstrated that the waste consistently meets the delisting levels. To confirm that the characteristics of the waste do not change significantly over time, OxyVinyls must continue to analyze a representative sample of the waste on an annual basis. Annual testing requires analyzing the full list of components in Paragraph 1. If operating conditions change as described in Paragraph (4); OxyVinyls must reinstate all testing in Paragraph (1). It must prove through a new demonstration that its waste meets the conditions of the exclusion.

If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, OxyVinyls must notify the EPA according to the requirements in Paragraph 6. The facility must provide sampling results that support the rationale that the delisting exclusion should not be withdrawn.

(4) Changes in Operating Conditions

Paragraph (4) would allow OxyVinyls the flexibility of modifying its processes (for example, changes in equipment or change in operating conditions) to improve its treatment process. However, OxyVinyls must prove the effectiveness of the modified process and request approval from the EPA. OxyVinyls must manage wastes generated during the new process demonstration as hazardous waste until it has obtained written approval and Paragraph (3) is satisfied.

(5) Data Submittals

To provide appropriate documentation that OxyVinyls facility is properly treating the waste, OxyVinyls must compile, summarize, and keep delisting records on-site for a minimum of five years. It should keep all analytical data obtained through Paragraph (3) including quality control information for five years. Paragraph (5) requires that OxyVinyls furnish these data upon request for inspection by any employee or representative of the EPA or the State of Texas.

If the proposed exclusion is made final, it will apply only to 919,990 cubic yards per year of incinerator offgas treatment scrubber water generated at the OxyVinyls facility after successful verification testing.

The EPA would require OxyVinyls to file a new delisting petition under any of the following circumstances:

(a) If OxyVinyls significantly alters the manufacturing process treatment system except as described in Paragraph (4).

(b) If OxyVinyls uses any new manufacturing or production process(es), or significantly change from the current process(es) described in its petition; or

(c) If OxyVinyls make any changes that could affect the composition or type of waste generated.

OxyVinyls must manage waste volumes greater than 919,990 cubic yards per year of incinerator offgas treatment scrubber water as hazardous until the EPA grants a new exclusion.

When this exclusion becomes final, OxyVinyls' management of the wastes covered by this petition would be relieved from Subtitle C jurisdiction. OxyVinyls must either treat, store, or dispose of the waste in an on-site facility. If not, OxyVinyls must ensure that it delivers the waste to an off-site storage, treatment, or disposal facility that has a State permit, license, or register to manage municipal or industrial solid waste.

(6) Reopener

The purpose of Paragraph 6 is to require OxyVinyls to disclose new or different information related to a condition at the facility or disposal of the waste if it is pertinent to the delisting. OxyVinyls must also use this procedure, if the waste sample in the annual testing fails to meet the levels found in Paragraph 1. This provision will allow the EPA to reevaluate the exclusion if a source provides new or additional information to the EPA. The EPA will evaluate the information on which it based the decision to see if it is still correct, or if circumstances have changed so that the information is no longer correct or would cause the EPA to deny the petition if presented.

This provision expressly requires OxyVinyls to report differing site conditions or assumptions used in the petition in addition to failure to meet the annual testing conditions within 10 days of discovery. If the EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

The EPA believes that it has the authority under RCRA and the Administrative Procedures Act (APA), 5 U.S.C. 551 (1978) *et seq.*, to reopen a delisting decision. The EPA may reopen a delisting decision when new information is received that calls into question the assumptions underlying the delisting.

The EPA believes a clear statement of its authority in delistings is merited in light of the EPA's experience. See Reynolds Metals Company at 62 FR 37694 and 62 FR 63458 where the delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the TCLP, thus leading the EPA to repeal the delisting. If an immediate threat to human health and the environment presents itself, the EPA will continue to address these situations case by case. Where necessary, the EPA will make a good cause finding to justify emergency rulemaking. *See* APA section 553(b).

(7) Notification Requirements

In order to adequately track wastes that have been delisted, the EPA is requiring that OxyVinyls provide a one-time notification to any State regulatory agency through which or to which the delisted waste is being carried. OxyVinyls must provide this notification within 60 days of commencing this activity.

### *B. What Happens if OxyVinyls Violates the Terms and Conditions?*

If OxyVinyls violates the terms and conditions established in the exclusion, the EPA will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, the EPA will evaluate the need for enforcement activities on a case-by-case basis. The EPA expects OxyVinyls to conduct the appropriate waste analysis and comply with the criteria explained above in Condition 1 of the exclusion.

## V. Public Comments

### *A. How May I as an Interested Party Submit Comments?*

The EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to the Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD-C), Environmental Protection Agency (EPA), 1445 Ross Avenue, Dallas, Texas 75202. Send a third copy to Nicole Bealle, Waste Team Leader, Texas Commission on Environmental Quality, 5425 Polk Avenue Suite A, Houston, TX 77023. Identify your comments at the top with this regulatory docket number: "F–02–TX–OxyVinyls." You may submit your comments electronically to James Harris at *harris.jamesa@epa.gov*.

You should submit requests for a hearing to Steven Gilrein, Associate Director of RCRA, Multimedia Planning and Permitting Division (6PD), U. S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

### *B. How May I Review the Docket or Obtain Copies of the Proposed Exclusion?*

You may review the RCRA regulatory docket for this proposed rule at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. It is available for viewing in the EPA Freedom of Information Act Review Room from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

## VI. Regulatory Impact

Under Executive Order 12866, the EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of the EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from the EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from this proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

## VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on a small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of the EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

### VIII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

### IX. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, the EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for the EPA rules, under section 205 of the UMRA the EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before the EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

The EPA finds that this delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

### X. Executive Order 13045

The Executive Order 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that the EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA. This proposed rule is not subject to E.O. 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

### XI. Executive Order 13084

Because this action does not involve any requirements that affect Indian Tribes, the requirements of section 3(b) of Executive Order 13084 do not apply.

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, the EPA must provide to the Office Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to have "meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

### XII. National Technology Transfer and Advancement Act

Under Section 12(d) of the National Technology Transfer and Advancement Act, the EPA is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by the EPA, the Act requires that the EPA provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, the EPA has no need to consider the use of voluntary consensus standards in developing this final rule.

### XIII. Executive Order 13132 Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires the EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, the EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the EPA consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one facility.

**Lists of Subjects in 40 CFR Part 261**

Environmental protection, Hazardous Waste, Recycling, Reporting and recordkeeping requirements.

**Authority:** Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: September 19, 2003.

**William Luthans,**

*Acting Director, Multimedia Planning and Permitting Division, Region 6.*

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

## PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of Appendix IX of Part 261 add the following waste stream in alphabetical order by facility to read as follows:

### Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

| Facility/Address | Waste description |
|---|---|
| • • | • • • • • |
| OxyVinyls, L.P., Deer Park, TX | Incinerator Offgas Scrubber Water (EPA Hazardous Waste Nos. K017, K019 and K020) generated at a maximum annual rate of 919,990 cubic yards per calendar year after [insert publication date of the final rule] and disposed in a Subtitle D surface impoundment.<br>For the exclusion to be valid, OxyVinyls must implement a testing program that meets the following Paragraphs:<br>(1) *Delisting Levels:* All leachable concentrations for those constituents must not exceed the following levels (mg/l). The petitioner must use the leaching specified in 40 CFR Part 261.24 to measure constituents in the incinerator offgas scrubber water.<br>Incinerator offgas treatment scrubber water (i) Inorganic Constituents Antimony-0.0204; Arsenic-0.385; Barium-2.92; Beryllium-0.166; Cadmium-0.0225; Chromium-5.0; Cobalt-13.14; Copper-418.00; Lead-5.0; Nickel-1.13; Mercury-0.0111; Vanadium-0.838; Zinc-2.61<br>(ii) Organic Constituents Acetone-1.46; Bromoform-0.481; Bromomethane-8.2; Bromodichloromethane-0.0719; Chloroform-0.683; Dibromochloromethane-0.057; Iodomethane-0.19; Methylene Chloride-0.029; 2,3,7,8-TCDD equivalents as TEQ-0.0000926<br>(2) *Waste Management:*<br>(A) OxyVinyls must manage as hazardous all incinerator offgas treatment scrubber water generated, until it has completed initial verification testing described in Paragraph (3)(A) and (B), as appropriate, and valid analyses show that paragraph (1) is satisfied.<br>(B) Levels of constituents measured in the samples of the incinerator offgas treatment scrubber water that do not exceed the levels set forth in Paragraph (1) are non-hazardous. OxyVinyls can manage and dispose the non-hazardous incinerator offgas treatment scrubber water according to all applicable solid waste regulations.<br>(C) If constituent levels in a sample exceed any of the delisting levels set in Paragraph (1), OxyVinyls can collect one additional sample and perform expedited analyses to confirm if the constituent exceeds the delisting level. If this sample confirms the exceedance, OxyVinyls must, from that point forward, treat the waste as hazardous until it is demonstrated that the waste again meets the levels.<br>(D) If the facility has not treated the waste, OxyVinyls must manage and dispose of the waste generated under Subtitle C of RCRA from the time that it becomes aware of any exceedance.<br>(E) Upon completion of the Verification Testing described in Paragraph 3(A) and (B) as appropriate and the transmittal of the results to the EPA, and if the testing results meet the requirements of Paragraph (1), OxyVinyls may proceed to manage its incinerator offgas treatment scrubber water as non-hazardous waste. If Subsequent Verification Testing indicates an exceedance of the Delisting Levels in Paragraph (1), OxyVinyls must manage the incinerator offgas treatment scrubber water as a hazardous waste until two consecutive quarterly testing samples show levels below the Delisting Levels.<br>(3) *Verification Testing Requirements:* OxyVinyls must perform sample collection and analyses, including quality control procedures, according to SW–846 methodologies. If the EPA judges the process to be effective under the operating conditions used during the initial verification testing, OxyVinyls may replace the testing required in Paragraph (3)(A) with the testing required in Paragraph (3)(B). OxyVinyls must continue to test as specified in Paragraph (3)(A) until and unless notified by the EPA in writing that testing in Paragraph (3)(A) may be replaced by Paragraph (3)(B).<br>(A) *Initial Verification Testing:* After the EPA grants the final exclusion, OxyVinyls must do the following:<br>(i) Within 60 days of this exclusion's becoming final, collect four samples, before disposal, of the incinerator offgas treatment scrubber water.<br>(ii) The samples are to be analyzed and compared against the delisting levels in Paragraph (1). |

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

| Facility/Address | Waste description |
|---|---|
| | (iii) Within sixty (60) days after this exclusion becomes final, OxyVinyls will report initial verification analytical test data, including analytical quality control information for the first thirty (30) days of operation after this exclusion becomes final of the incinerator offgas treatment scrubber water. If levels of constituents measured in the samples of the incinerator offgas treatment scrubber water that do not exceed the levels set forth in Paragraph (1) are also non-hazardous in two consecutive quarters after the first thirty (30) days of operation after this exclusion, OxyVinyls can manage and dispose of the incinerator offgas treatment scrubber water according to all applicable solid waste regulations.<br>(B) *Subsequent Verification Testing:* Following written notification by the EPA, OxyVinyls may substitute the testing conditions in (3)(B) for (3)(A). OxyVinyls must continue to monitor operating conditions, and analyze representative samples for each quarter of operation during the first year of waste generation. The samples must represent the waste generated during the quarter. After the first year of analytical sampling Verification sampling can be performed on a single annual sample of the incinerator offgas treatment scrubber water. The results are to be compared to the delisting levels in Condition (1).<br>(C) *Termination of Testing:* (i) After the first year of quarterly testing, if the Delisting Levels in Paragraph (1) are being met, OxyVinyls may then request that the EPA stop quarterly testing. After the EPA notifies OxyVinyls in writing, the oompany may end quarterly testing.<br>(ii) Following cancellation of the quarterly testing, OxyVinyls must continue to test a representative sample for all constituents listed in Paragraph (1) annually.<br>(4) *Changes in Operating Conditions:* If OxyVinyls significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could significantly affect the composition or type of waste generated as established under Paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify the EPA in writing; OxyVinyls may no longer handle the wastes generated from the new process as nonhazardous until the wastes meet the delisting levels set in Paragraph (1) and it has received written approval to do so from the EPA.<br>(5) *Data Submittals:* OxyVinyls must submit the information described below. If OxyVinyls fails to submit the required data within the specified time or maintain the required records on-site for the specified time, the EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in Paragraph 6. OxyVinyls must:<br>(A) Submit the data obtained through Paragraph 3 to the Section Chief, Region 6 Oklahoma/Texas Section, the EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD–O) within the time specified.<br>(B) Compile records of operating conditions and analytical data from Paragraph (3), summarized, and maintained on-site for a minimum of five years.<br>(C) Furnish these records and data when the EPA or the State of Texas request them for inspection.<br>(D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted:<br>Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.<br>As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.<br>If any of this information is determined by the EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by the EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.<br>(6) *Reopener*<br>(A) If, anytime after disposal of the delisted waste OxyVinyls possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data.<br>(B) If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, OxyVinyls must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data.<br>(C) If OxyVinyls fails to submit the information described in paragraphs (5),(6)(A) or (6)(B) or if any other information is received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires the EPA action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. |

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

| Facility/Address | Waste description |
|---|---|
| | (D) If the Regional Administrator or his delegate determines that the reported information does require action by the EPA's Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or his delegate's notice to present such information.<br>(E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Regional Administrator or his delegate will issue a final written determination describing the EPA actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or his delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise.<br>(7) Notification Requirements: OxyVinyls must do the following before transporting the delisted waste: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision.<br>(A) Provide a one-time written notification to any State Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities.<br>(B) Update the one-time written notification if it ships the delisted waste into a different disposal facility.<br>(C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision. |

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[FR Doc. 03–24910 Filed 9–30–03; 8:45 am]

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**48 CFR Parts 16 and 39**

**[FAR Case 2003–008]**

**RIN 9000–AJ74**

## Federal Acquisition Regulation; Share-in-Savings Contracting

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to solicit comments to assist in the implementation of section 210 of the E-Government Act of 2002, Public Law 107–347. Section 210 authorizes Governmentwide use of Share-in-Savings (SIS) contracts for information technology (IT). SIS contracts offer an innovative approach for encouraging industry to share creative technology solutions with the Government. Through a properly structured SIS contract, agencies may lower costs and improve service delivery without large "up front" investments by having the contractor provide the technology investment and allowing the contractor to share with the Government in the savings achieved. The Councils seek the public's comment on the challenges associated with SIS contracts, such as the establishment of quantifiable baselines and a reasonable return on investment (ROI) over the life-cycle of the investment, so that this tool can be applied effectively to improve mission performance.

**DATES:** Interested parties should submit comments in writing on or before October 31, 2003, to be considered in the formulation of a final rule.

**ADDRESSES:** Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to *ANPR.2003–008@gsa.gov*.

Please submit comments only and cite ANPR FAR case 2003–008 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Craig R. Goral, Procurement Analyst, at (202) 501–3856. Please cite FAR case 2003–008.

**SUPPLEMENTARY INFORMATION:**

### A. Background

Section 210 of the E–Government Act amends the Armed Services Procurement Act and the Federal Property and Administrative Services Act to authorize the use of SIS contracts for IT. Share-in-Savings is an innovative, performance-based concept that is intended to help an agency leverage its limited resources to improve or accelerate mission-related or administrative processes and lower costs for the taxpayer. Under an SIS contract, the contractor finances the work and then shares with the agency in the savings generated from contract performance. Pursuant to the authority in section 210, which sunsets at the end of fiscal year 2005, agencies are permitted to enter into SIS contracts for up to 5 years, and, with appropriate approval, up to 10 years. Agencies are obligated to pay the contractor for services performed only if savings are realized and, in such cases, only a portion of the total savings realized. The agency may retain its share of the savings, with certain exceptions.

Section 210 authorizes the Federal Government to award any number of SIS IT contracts where funds are available and sufficient to make payments with respect to the first fiscal year of the contract and cover termination or cancellation costs. Section 210 also authorizes award of up to 10 contracts (*i.e.*, 5 for DOD, NASA, and the Coast guard, and 5 for other agencies) during fiscal years 2003, 2004, and 2005 when funds are not made specifically available for the full costs of cancellation or termination of the contract—provided that the amount of unfunded contingent liability associated with cancellation and termination does not exceed the lesser of (a) 25 percent of the estimated costs of a cancellation or termination or (b) $5 million. In signing the E-Government Act into law, the President stated that the executive branch shall "limit authorized waivers for funding of potential termination costs to appropriate circumstances, so as to minimize the financial risk to the government" and ensure SIS contracts are operated according to sound fiscal policy.

This past winter, the General Accounting Office (GAO) released a report examining non-federal entities' experience with SIS contracts. See *CONTRACT MANAGEMENT: Commercial Use of Share-in-Savings Contracting*, GAO–03–327 (January 2003). The GAO found that SIS contracting can be highly effective in motivating contractors to generate savings and revenues for their clients. At the same time, the GAO cautioned that contracting parties must be "specific and in agreement in their goals and objectives as well as how to achieve them." The GAO identified several specific elements that are necessary for Share-in-Savings contracts to be successful, namely: (1) A clearly specified expected outcome, (2) defined incentives, (3) a baseline and good performance measures to gauge exactly what savings or revenues are being achieved, and (4) the commitment of senior level management. The GAO emphasized that effective planning is critical: "[Parties] need to carefully consider the potential risks and rewards of an SIS arrangement and whether the conditions that facilitate success are present—something that may not be easily achievable in Government, which is frequently unable to calculate a baseline."

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**B. Solicitation of Public Comment**

The Councils, along with the Office of Management and Budget (OMB), wish to ensure the necessary guidance is in place—in the FAR and other documents as appropriate—for agencies to effectively motivate contractors and successfully capture the benefits of an SIS contract. Given the Government's limited experience with this tool and the GAO's cautions, the Councils are soliciting public comment for consideration in drafting implementing FAR regulations. Comments received may also be shared with Federal agencies for related guidance (regulatory or nonregulatory) that they may wish to issue to address SIS contracting. Respondents are welcome to share any insights that may assist in managing the use of SIS contracts, but are especially encouraged to comment on the following issues:

- *Proposal preparation.* What type of information or guidance will vendors need in the solicitation to adequately prepare a proposal for an SIS contract?
- *Share ratios.* What criteria should be taken into account in developing an appropriate share ratio and schedule for payment? Should ROIs be market-based? In light of the generally short life cycle of IT, can the Government's interests be adequately protected if it does not share in savings each year?
- *Baselines.* What general factors or criteria should be considered in determining a quantifiable baseline?
- *Cancellation and termination costs.* How, if at all, should the determination of cancellation and termination costs differ from that used in connection with multi-year contracts (see FAR 17.106–1(c))?
- *Ownership rights.* Should ownership rights of hardware or property acquired under the SIS contract be addressed in the FAR (*e.g.*, in the coverage on cancellation costs or in a standard contract clause)?
- *Applicability of requirements.* What contract valuation method should be used to determine the applicability of various FAR requirements that are triggered by the dollar amount of the acquisitions?
- *Contract structure.* Should there be a preference for structuring SIS contracts as firm-fixed price or fixed-price with economic price adjustment? Under what, if any, circumstances would other contract types be appropriate?
- *Use of FAR 37.6.* Which, if any, of the policies pertaining to performance-based contracting in FAR Subpart 37.6 should not be applicable to an SIS contract, and why?
- *Potential projects.* What types of activities in the IT arena might be especially conducive to SIS contracting?

**C. Regulatory Amendments Under Consideration.**

The Councils are currently planning to amend FAR part 39 to establish a new subpart on SIS contracting for IT. FAR subpart 16.4, addressing incentive contracts, would also be amended to add a cross-reference both to the new subpart 39.3 as well as FAR 23.204, which provides guidance on energy-savings performance contracts, a type of Share-in-Savings contract authorized by the National Energy Conservation Policy Act, 42 U.S.C. 8287.

Although the Councils have not yet agreed upon FAR amendments, their preliminary thinking on regulatory implementation as of the publication of this notice is set forth below. The public is welcome to comment on these preliminary changes as part of their comments in response to this notice.

**List of Subjects in 48 CFR Parts 16 and 39**

Government procurement.

**Laura Auletta,**

*Director, Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 16 and 39 as set forth below:

1. The authority citation for 48 CFR parts 16 and 39 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. charger 137; and 42 U.S.C. 2473(c).

## PART 16—TYPES OF CONTRACTS

### 16.401 [Amended]

2. Amend section 16.401 by adding paragraph (e) to read as follows:

### 16.401 General.

* * * * *

(e) For related incentive concepts, refer to Subpart 39.3, Share-in-Savings Contracting, and 23.204, Energy-savings performance contracts.

## PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

### Subpart 39.3 [Added]

3. Add subpart 39.3 consisting of sections 39.300 through 39.309, to read as follows:

### Subpart 39.3—Share-in-Savings Contracting

### 39.300 Scope of subpart.

This subpart implements section 210 of the E-Government Act of 2002 (Public Law 107–347) by prescribing policies and procedures for Share-in-Savings contracts for information technology.

### 39.301 Definitions.

As used in this subpart—

*Cancellation* means the cancellation (within a contractually specified time) of the total requirements of all remaining program years. Cancellation results when the contracting officer—

(i) Notifies the contractor of nonavailability of funds for contract performance for any subsequent program year; or

(ii) Fails to notify the contractor that funds are available for performance of the succeeding program year requirement.

*Savings* means—

(1) Monetary savings to an agency; or

(2) Savings in time or other quantifiable benefits realized by the agency, including enhanced revenues (other than enhanced revenues from the collection of fees, taxes, debts, claims, or other amounts owed the Federal Government).

*Share-in-Savings contract* means a contract under which—

(1) A contractor provides solutions for improving the agency's mission-related or administrative processes or for accelerating the achievement of agency missions; and

(2) The Government pays the contractor an amount equal to a portion of the quantifiable savings derived by the agency from—

(i) Any improvements in mission-related or administrative processes that result from implementation of the solution; or

(ii) Acceleration of achievement of agency missions.

### 39.302 Authority.

The E-Government Act of 2002 (Public Law 107–347) authorizes the head of an agency to enter into a Share-in-Savings contract for information technology. This authority expires on September 30, 2005.

### 39.303 Applicability.

This subpart applies only to information technology projects that are appropriate for Share-in-Savings contracting techniques.

(a) In general, use of Share-in-Savings contracts should be considered only for projects involving significant innovation or process transformation.

(b) Agencies intending to use this subpart are encouraged to complete the "Share-in-Savings Project Screening Template" at: *http://www.gsa/gov/shareinsavings*. The information provided in this template will help the General Services Administration to assist agencies in determining the potential effectiveness of using the authority of this subpart.

(c)(1) The capital programming requirements of OMB Circular A–11 shall apply to—

(i) Share-in-Savings projects for which funds are not being made specifically available for the full costs of cancellation or termination; and

(ii) Other Share-in-Savings projects that qualify as major IT investments, as provided in the Circular.

(2) Share-in-Savings projects not covered by paragraph (c)(1) shall be the subject of a business case appropriate for the size and complexity of the project as determined by the agency and the Office of Management and Budget.

### 39.304 Limitations on Share-in-Savings contract period of performance.

(a) Except as provided in paragraph (b) of this section, a Share-in-Savings contract shall be awarded for a period of not more than 5 years.

(5) A Share-in-Savings contract may be awarded for a period greater than 5 years, but not more than 10 years, if other applicable requirements do not otherwise limit the length of the contract and the head of the agency determines in writing prior to award of the contract that—

(1) The level of risk to be assumed and the investment to be undertaken by the contractor is likely to inhibit the Government from obtaining the needed information technology competitively at a fair and reasonable price if the contract is limited in duration to a period of 5 years of less; and

(2) Use of the information technology to be acquired is likely to continue for a period of time sufficient to generate reasonable benefit for the Government.

### 39.305 Use of performance-based contracts.

Share-in-Savings contracts shall be performance-based contracts. Objective outcomes and performance standards shall be used to measure achievements and milestones that must be met before payment is made (*see* subpart 37.6).

### 39.306 Share-in-Savings baseline.

(a) Share-in-Savings contracts shall include a clause containing a quantifiable baseline that is to be the basis upon which a saving share ratio is established to govern the amount of payment a contractor is to receive under a contract.

(b) Before award of a Share-in-Savings contract, the agency senior procurement executive shall determine in writing that the terms of the baseline clause are quantifiable and will likely yield value to the Government.

### 39.307 Managing retained savings.

(a) Agencies may retain savings in excess of the total amount of savings paid to the contractor under the contract, but may not retain any portion of such savings that is attributable to a decrease in the number of civilian employees of the Federal Government performing the function. Except as provided in paragraph (b) of this section, savings shall be credited to the appropriation or fund against which charges were made to carry out the contract and shall be used for information technology.

(b) Amounts retained by the agency under this subpart shall—

(1) Without further appropriation, remain available until expended; and

(2) Be applied first to fund any cancellation or termination liabilities associated with Share-in-Savings procurements that are not fully funded.

### 39.308 Cancellation or termination.

### 39.308–1 Paying for cancellation or termination.

(a) The amount payable in the event of cancellation or termination of a Share-in-Savings contract shall be negotiated with the contractor at the time of contract award.

(b) If funds are not made available for the continuation of a Share-in-Savings contract in a subsequent fiscal year, the contract shall be cancelled or terminated. The costs of cancellation or termination may be paid out of—

(1) Appropriations available for the performance of the contract;

(2) Appropriations available for acquisition of the information technology procured under the contract, and not otherwise obligated; or

(3) Funds subsequently appropriated for payments of costs of cancellation or termination, subject to the limitations in 39.308–2.

### 39.308–2 Funding of cancellation or termination liability.

(a) Except as provided in paragraph (b) of this subsection, the funds obligated for Share-in-Savings contracts must be sufficient to cover any potential cancellation and/or termination costs.

(b)(1) The head of an agency may enter into Share-in-Savings contracts even if funds are not made specifically available for the full costs of cancellation or termination of the contract provided that—

(i) The action is approved as provided in paragraph (b)(1)(iii) of this subsection;

(ii) Funds are available and sufficient to make payments with respect to the first fiscal year of the contract; and

(iii) The following conditions are met regarding the funding of cancellation and termination liability:

(A) The amount of unfunded liability does not exceed the lesser of 25 percent of the estimated costs of a cancellation or termination, or $5 million.

(B) An unfunded cancellation or termination liability in excess of $1 million has been approved by the Director of the Office of Management and Budget.

(C) Notification has been provided to OMB in accordance with paragraph (c) of this subsection.

(2) The aggregate number of Share-in-Savings contracts that may be entered into under this paragraph may not exceed 5 in each of fiscal years 2003, 2004, and 2005 for each of the following groups of agencies:

(i) The Department of Defense, NASA, and the Coast Guard.

(ii) All other agencies.

(c) In addition to the requirements specified in paragraph (b) of this subsection, an agency planning to award a Share-in-Savings contract having an unfunded cancellation or termination liability in any amount must notify the Office of Management and Budget at least 30 days prior to solicitation issuance.

**39.309 Solicitation requirements.**

(a) Solicitations for Share-in-Savings contracts shall use competitive procedures to the maximum extent practicable. Each solicitation shall include provisions and evaluation criteria ensuring that—

(1) The contractor's share of savings reflects the risks involved and market conditions; and

(2) The Government will realize best value from the contract.

(b) Contracting officers should consider the use of a technology refreshment clause to ensure the information technology provided under the contract incorporates desired technological advancements throughout the entire period of contract performance. In developing such a clause, contracting officers should consider similar terms and conditions available on the commercial market.

(c) Contracting officers may include other appropriate clauses not specifically prescribed in the FAR to ensure that the goals of the Share-in-Savings contract are attained, provided that such clauses are consistent with applicable statutes and regulations.

[FR Doc. 03–24855 Filed 9–30–03; 8:45 am]

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# Notices

**Federal Register**
Vol. 68, No. 190
Wednesday, October 1, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### National Urban and Community Forestry Advisory Council

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The National Urban and Community Forestry Advisory Council will meet in Savannah, Georgia, October 16–18, 2003. The purpose of the meeting is to discuss emerging issues in urban and community forestry.

**DATES:** The meeting will be held October 16–18, 2003. A tour of local projects will be held October 16 from 9 a.m. to 4 p.m.

**ADDRESSES:** The meeting will be held at the Radisson Hotel Historic Savannah, 411 West Bay Street, Savannah, Georgia. Individuals who wish to speak at the meeting or to propose agenda items must send their names and proposals to Suzanne M. del Villar, Executive Assistant, National Urban and Community Forestry Advisory Council, 2000 Ascot Parkway, Unit 3816, Vallejo, California 94591. Individuals may fax their names and proposed agenda items to (707) 642–9201.

**FOR FURTHER INFORMATION CONTACT:** Suzanne M. del Villar, Urban and Community Forestry Staff, (707) 642–9201.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Council discussion is limited to Forest Service staff and Council members; however, persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided.

Dated: September 25, 2003.

**Robin L. Thompson,**

*Acting Deputy Chief, State and Private Forestry.*

[FR Doc. 03–24854 Filed 9–30–03; 8:45 am]

**BILLING CODE 3410–11–P**

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Resource Advisory Committee Meeting

**AGENCY:** Lassen Resource Advisory Committee, Susanville, California, USDA Forest Service.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lassen National Forest's Lassen County Resource Advisory Committee will meet Thursday, September 11, 2003, in Susanville, California for a field trip and field business meeting. The meetings are open to the public.

**SUPPLEMENTARY INFORMATION:** The business meeting October 9, 2003 begins at 9 a.m., at the Lassen National Forest Headquarters Office, Caribou Conference Room, 2550 Riverside Drive, Susanville, CA 96130. Agenda topics will include: Chairman Voting for Second year, Improve the Use of Proxies, Workshop Report, Fire Safe Council RAC Project Report, and Review Monitoring Updates Reports. Time will also be set aside for public comments at the beginning and end of the meeting.

**FOR FURTHER INFORMATION CONTACT:** Robert Andrews, Eagle Lake District Ranger and Designated Federal Officer, at (530) 257–4188; or RAC Coordinator, Heidi Perry, at (530) 252–6604.

**Elizabeth Norton,**

*Acting Forest Supervisory.*

[FR Doc. 03–24835 Filed 9–30–03; 8:45 am]

**BILLING CODE 3410–11–M**

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## DEPARTMENT OF AGRICULTURE

### Hood/Willamette Resource Advisory Committee (RAC)

**AGENCY:** Forest Service, USDA

**ACTION:** Action of meeting.

**SUMMARY:** The Hood/Willamette Resource Advisory Committee (RAC) will meet on Friday, October 24, 2003. The meeting and field trip is scheduled to begin at 9 a.m. and will conclude at approximately 4:30 p.m. The meeting will be held at the Oregon Community Credit Union; 2880 Chad Drive; Eugene, Oregon; (541) 681–6069. The tentative agenda includes: (1) Finalizing Recommendations on 2004 Projects; (2) Field Trip to 2002 and 2003 Projects; (3) Setting up Dates and Process for 2005 Projects; and (4) Public Forum.

The Public Forum is tentatively scheduled to begin at 9:15 p.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the October 24th meeting by sending them to Designated Federal Official Donna Short at the address given below.

**FOR FURTHER INFORMATION CONTACT:** For more information regarding this meeting, contact Designated Federal Official Donna Short; Sweet Home Ranger District; 3225 Highway 20; Sweet Home, Oregon 97386; (541) 367–9220.

Dated: September 24, 2003.

**Dallas J. Emch,**

*Forest Supervisor.*

[FR Doc. 03–24839 Filed 9–30–03; 8:45 am]

**BILLING CODE 3410–11–M**

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Meeting

**AGENCY:** Notice of Resource Advisory Committee, Sundance, Wyoming, USDA, Forest Service.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Black Hills National Forests' Crook County Resource Advisory Committee will meet Monday, October 20, 2003 in Sundance, Wyoming for a business meeting. The meeting is open to the public.

**SUPPLEMENTARY INFORMATION:** The business meeting on October 20, begins at 6:30 PM, and the US Forest Service, Bearlodge Ranger District office, 121 South 21st Street, Sundance, Wyoming. Agenda topics will include: New project proposals for fiscal year 2004, updates on previously funded projects, nominations and leadership elections for the coming year. A public forum will begin at 8:30 PM (MT).

**FOR FURTHER INFORMATION CONTACT:** Steve Kozel, Bearlodge District Ranger and Designated Federal Officer, at (307) 283–1361.

Dated: September 25, 2003.

**Steve Kozel,**

*Bearlodge District Ranger.*

[FR Doc. 03–24849 Filed 9–30–03; 8:45 am]

**BILLING CODE 3410–11–M**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2003), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

*Opportunity to Request a Review:* Not later than the last day of October 2003, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in October for the following periods:

| | Period |
|---|---|
| **Antidumping Duty Proceedings** | |
| Brazil: Carbon and Certain Alloy Steel Wire Rod, A–351–832 | 4/15/02–9/30/03 |
| Canada: Carbon and Certain Alloy Steel Wire Rod, A–122–840 | 4/10/02–9/30/03 |
| Indonesia: Carbon and Certain Alloy Steel Wire Rod, A–560–815 | 4/10/02–9/30/03 |
| Italy: Pressure Sensitive Tape, A–475–059 | 10/1/02–9/30/03 |
| Malaysia: Extruded Rubber Thread, A–557–805 | 10/1/02–9/30/03 |
| Mexico: Carbon and Certain Alloy Steel Wire Rod, A–201–830 | 4/10/02–9/30/03 |
| Moldova: Carbon and Certain Alloy Steel Wire Rod, A–841–805 | 4/10/02–9/30/03 |
| The People's Republic of China: Barium Chloride A–570–007 | 10/1/02–9/30/03 |
| The People's Republic of China: Certain Cut-to-Length Carbon Steel, A–570–849 | 10/1/02–9/30/03 |
| The People's Republic of China: Helical Spring Lock Washers, A–570–822 | 10/1/02–9/30/03 |
| The People's Republic of China: Cotton Shop Towels, A–570–003 | 10/1/02–9/30/03 |
| Trinidad and Tobago: Carbon and Certain Alloy Steel Wire Rod, A–274–804 | 4/10/02–9/30/03 |
| Ukraine: Carbon and Certain Alloy Steel Wire Rod, A–823–812 | 4/10/02–9/30/03 |

| | Period |
|---|---|
| **Countervailing Duty Proceedings** | |
| Brazil: Carbon and Certain Alloy Steel Wire Rod, C–351–833 | 8/30/02–12/31/02 |
| Canada: Carbon and Certain Alloy Steel Wire Rod, C–122–841 | 2/8/02–12/31/02 |
| Iran: Roasted In-Shell Pistachios, C–507–601 | 1/1/02–12/31/02 |
| **Suspension Agreements** | |
| Russia: Certain Cut-to-Length Carbon Steel, A–821–808 | 10/1/02–9/30/03 |
| Uranium, A–821–802 | 10/1/02–9/30/03 |
| The People's Republic of China: Certain Cut-to-Length Carbon Steel, A–570–849 | 10/1/02–9/30/03 |

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 69 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration Web site at *http://www.ia.ita.doc.gov.*

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of October 2003. If the Department does not receive, by the last day of October 2003, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: September 26, 2003.

**Melissa G. Skinner,**

*Acting Deputy Assistant Secretary, Group II, for Import Administration.*

[FR Doc. 03–24904 Filed 9–30–03; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

### International trade Administration

[A-570-880]

### Antidumping Duty Order: Barium Carbonate from the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Antidumping Duty Order.

**EFFECTIVE DATE:** October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** David Layton or Tisha Loeper-Viti at (202) 482–0371 or (202) 482–7425, respectively; AD/CVD Enforcement, Office 5, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

#### Background

On August 6, 2003, the Department of Commerce (the Department) published its final determination in the antidumping duty investigation of barium carbonate from the People's Republic of China (PRC). *See Notice of Final Determination of Sales at Less Than Fair Value: Barium Carbonate from the People's Republic of China*, 68 FR 46577 (August 6, 2003).

#### Scope of Order

The merchandise covered by this order is barium carbonate, regardless of form or grade. The product is currently classifiable under subheading 2836.60.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

#### Antidumping Duty Order

On September 19, 2003, in accordance with section 735(d) of the Tariff Act of 1930, as amended, (the Act), the International Trade Commission notified the Department of its final determination that the industry in the United States producing barium carbonate is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of imports of the subject merchandise from the PRC.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct the U.S. Bureau of Customs and Border Protection (BCBP) to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the subject merchandise exceeds the export price or constructed export price of the subject merchandise for all relevant entries of barium carbonate from the PRC. The antidumping duties will be assessed on all (1) unliquidated entries of barium carbonate subject to this order, entered, or withdrawn from warehouse, for consumption on or after March 17, 2003, the date of publication of the Department's preliminary determination in the **Federal Register**[1], and before September 13, 2003; and (2) merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination in the **Federal Register**. The Department terminated the suspension of liquidation for entries of subject merchandise, pursuant to section 733(d) of the Act, on September 13, 2003. Entries of barium carbonate from the PRC made between September 13, 2003 and the day preceding the publication of the ITC's notice of final determination in the **Federal Register**, are not liable for the assessment of antidumping duties.

On or after the date of publication of the ITC's notice of final determination in the **Federal Register**, the BCBP will require, at the same time as importers would normally deposit estimated duties, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The "PRC-Wide Rate" applies to all exporters of subject merchandise not specifically listed. The weighted-average dumping margins are as follows:

| Manufacturer/exporter | Weighted-Average Margin (percent) |
|---|---|
| Qingdao Red Star Chemical Import & Export Co., Ltd. | 34.44% |
| PRC-Wide Rate | 81.30% |

This notice constitutes the antidumping duty order with respect to barium carbonate from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736(a) of Act and 19 CFR 351.211.

Dated: September 25, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–24901 Filed 9–30–03; 8:45 am]

BILLING CODE 3510–DS–S

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–549–813]

### Notice of Decision of the Court of International Trade: Canned Pineapple Fruit From Thailand

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of decision of the Court of International Trade.

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[1] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Barium Carbonate from the People's Republic of China*, 68 FR 12664 (March 17, 2003).

**SUMMARY:** On September 15, 2003, the United States Court of International Trade (CIT) affirmed the Department of Commerce's results of redetermination on remand of the final results of the fifth administrative review of the antidumping duty order on canned pineapple fruit from Thailand. See *Maui Pineapple Company, Ltd.* v. *United States,* Slip Op. 03–120 (September 15, 2003), Court No. 01–01017 (*Maui Pineapple*). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the Department of Commerce (the Department) is notifying the public that *Maui Pineapple* and the CIT's earlier opinion in this case were "not in harmony" with the Department's original results.

**EFFECTIVE DATE:** October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** David Layton or Charles Riggle, Office 5, Group II, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0371 and (202) 482–0650, respectively.

## Background

On October 17, 2001, the Department published a notice of the final results of the fifth review of canned pineapple fruit from Thailand. *See Notice of Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part: Canned Pineapple Fruit From Thailand,* 66 FR 52744 (October 17, 2001) (Final Results). Subsequent to the Department's Final Results, Maui Pineapple Company, Ltd. filed a lawsuit challenging these results. Thereafter, the CIT issued an Order and Opinion dated April 16, 2003 in remanding two issues to the Department. See *Maui Pineapple Company, Ltd.* v. *United States,* 264 F.Supp.2d 1244 (Ct. Int'l Trade 2003) (September 15, 2003), Court No. 01–01017. Pursuant to the CIT's April 16, 2003 Order and Opinion, the Department filed its remand results on June 16, 2003. On September 15, 2003, the CIT affirmed the Department's final results of redetermination in *Maui Pineapple.*

## Timken Notice

In its decision in *Timken,* the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish notice of a decision of the CIT which is "not in harmony" with the Department's results. The CIT's decision in *Maui Pineapple* and its April 16, 2003 Order and Opinion in this case were not in harmony with the Department's final antidumping duty results of review. Therefore, publication of this notice fulfills the obligation imposed upon the Department by the decision in *Timken.* In addition, this notice will serve to continue the suspension of liquidation. If this decision is not appealed, or if appealed, if it is upheld, the Department will publish amended final antidumping duty results.

Dated: September 25, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–24905 Filed 9–30–03; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A-570–879]**

## Antidumping Duty Order: Polyvinyl Alcohol from the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of antidumping duty order.

**SUMMARY:** Pursuant to section 736(a) of the Tariff Act of 1930, as amended, the Department of Commerce is issuing an antidumping duty order on polyvinyl alcohol from the People's Republic of China.

**EFFECTIVE DATE:** October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Eastwood or Alice Gibbons, AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3874 or (202) 482–0498, respectively.

**SUPPLEMENTARY INFORMATION:**

## Scope of Order

The merchandise covered by this investigation is polyvinyl alcohol (PVA). This product consists of all PVA hydrolyzed in excess of 80 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid, except as noted below.

The following products are specifically excluded from the scope of this investigation:

(1) PVA in fiber form.

(2) PVA with hydrolysis less than 83 mole percent and certified not for use in the production of textiles.

(3) PVA with hydrolysis greater than 85 percent and viscosity greater than or equal to 90 cps.

(4) PVA with a hydrolysis greater than 85 percent, viscosity greater than or equal to 80 cps but less than 90 cps, certified for use in an ink jet application.

(5) PVA for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement, and accompanied by an end-use certification.

(6) PVA covalently bonded with cationic monomer uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

(7) PVA covalently bonded with carboxylic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, certified for use in a paper application.

(8) PVA covalently bonded with thiol uniformly present on all polymer chains, certified for use in emulsion polymerization of non-vinyl acetic material.

(9) PVA covalently bonded with paraffin uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

(10) PVA covalently bonded with silan uniformly present on all polymer chains certified for use in paper coating applications.

(11) PVA covalently bonded with sulfonic acid uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(12) PVA covalently bonded with acetoacetylate uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(13) PVA covalently bonded with polyethylene oxide uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(14) PVA covalently bonded with quaternary amine uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(15) PVA covalently bonded with diacetoneacrylamide uniformly present on all polymer chains in a concentration level greater than three mole percent, certified for use in a paper application.

The merchandise under investigation is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the*

*United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

**Antidumping Duty Order:**

On September 25, 2003, the International Trade Commission (the ITC) notified the Department of Commerce (the Department) of its final determination pursuant to section 735(b)(1)(A)(i) of the Tariff Act of 1930, as amended (the Act), that the industry in the United States producing PVA is materially injured by reason of less-than-fair-value imports of subject merchandise from the People's Republic of China (PRC). Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct the U.S. Bureau of Customs and Border Protection (Customs) to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price of the merchandise for all relevant entries of PVA from the PRC. These antidumping duties will be assessed on all unliquidated entries of PVA from the PRC entered, or withdrawn from the warehouse, for consumption on or after March 20, 2003, the date on which the Department published its *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyvinyl Alcohol From the People's Republic of China*, 68 FR 13674 (March 20, 2003).

On or after the date of publication of the ITC's notice of final determination in the **Federal Register**, Customs will require, at the same time as importers would normally deposit estimated duties on this merchandise, cash deposits for the subject merchandise equal to the estimated weighted-average antidumping duty margins listed below. The PRC-wide rate applies to all exporters of subject merchandise except for Sinopec Sichuan Vinylon Works.

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Sinopec Sichuan Vinylon Works | 6.91 |
| PRC-wide | 7.86 |

This notice constitutes the antidumping duty order with respect to PVA from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 9 CFR 351.211.

Dated: September 25, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–24899 Filed 9–30–03; 8:45 am]

BILLING CODE 3510–DS–S

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A-580–850]**

## Antidumping Duty Order: Polyvinyl Alcohol from the Republic of Korea

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of antidumping duty order.

**SUMMARY:** Pursuant to section 736(a) of the Tariff Act of 1930, as amended, the Department of Commerce is issuing an antidumping duty order on polyvinyl alcohol from the Republic of Korea.

**EFFECTIVE DATE:** October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Irina Itkin or Jill Pollack, AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0656 or (202) 482–4593, respectively.

**SUPPLEMENTARY INFORMATION:**

### Scope of Order

The merchandise covered by this investigation is polyvinyl alcohol (PVA). This product consists of all PVA hydrolyzed in excess of 80 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid, except as noted below.

The following products are specifically excluded from the scope of this investigation:

(1) PVA in fiber form.
(2) PVA with hydrolysis less than 83 mole percent and certified not for use in the production of textiles.
(3) PVA with hydrolysis greater than 85 percent and viscosity greater than or equal to 90 cps.
(4) PVA with a hydrolysis greater than 85 percent, viscosity greater than or equal to 80 cps but less than 90 cps, certified for use in an ink jet application.
(5) PVA for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement, and accompanied by an end-use certification.
(6) PVA covalently bonded with cationic monomer uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.
(7) PVA covalently bonded with carboxylic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, certified for use in a paper application.
(8) PVA covalently bonded with thiol uniformly present on all polymer chains, certified for use in emulsion polymerization of non-vinyl acetic material.
(9) PVA covalently bonded with paraffin uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.
(10) PVA covalently bonded with silan uniformly present on all polymer chains certified for use in paper coating applications.
(11) PVA covalently bonded with sulfonic acid uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.
(12) PVA covalently bonded with acetoacetylate uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.
(13) PVA covalently bonded with polyethylene oxide uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.
(14) PVA covalently bonded with quaternary amine uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.
(15) PVA covalently bonded with diacetoneacrylamide uniformly present on all polymer chains in a concentration level greater than three mole percent, certified for use in a paper application.

The merchandise under investigation is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

**Antidumping Duty Oorder:**

On September 25, 2003, the International Trade Commission (the ITC) notified the Department of Commerce (the Department) of its final determination pursuant to section 735(b)(1)(A)(i) of the Tariff Act of 1930, as amended (the Act), that the industry in the United States producing PVA is materially injured by reason of less-than-fair-value imports of subject merchandise from the Republic of Korea (Korea). Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct the U.S. Bureau of Customs and Border Protection (Customs) to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price of the merchandise for all relevant entries of PVA from Korea. These antidumping duties will be assessed on all unliquidated entries of PVA from Korea entered, or withdrawn from the warehouse, for consumption on or after March 20, 2003, the date on which the Department published its *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyvinyl Alcohol From the Republic of Korea*, 68 FR 13681 (March 20, 2003).

On or after the date of publication of the ITC's notice of final determination in the **Federal Register**, Customs will require, at the same time as importers would normally deposit estimated duties on this merchandise, cash deposits for the subject merchandise equal to the estimated weighted-average antidumping duty margins listed below. The All Others rate applies to all exporters of subject merchandise except for DC Chemical Company, Ltd.

| Manufacturer/exporter | Margin (percent) |
|---|---|
| DC Chemical Company, Ltd. | 38.74 |
| All Others | 32.08 |

This notice constitutes the antidumping duty order with respect to PVA from Korea, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 9 CFR 351.211.

Dated: September 25, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–24900 Filed 9–30–03; 8:45 am]

**BILLING CODE 3510–DS–S**

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A-580-834]**

### Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Rescission of Antidumping Duty Administrative Review.

**SUMMARY:** On August 22, 2003, in response to timely request from DaiYang Metal Corporation Ltd. ("DMC"), a Korean producer and exporter of subject merchandise, the Department of Commerce ("the Department") published a notice of initiation of an antidumping duty administrative review on stainless steel sheet and strip in coils ("SSSS") from the Republic of Korea for the period July 1, 2002 through June 30, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 50750 (August 22, 2003) ("*Initiation Notice*"). On August 27, 2003, DMC withdrew its request for an administrative review. Therefore, as DMC was the only party to request a review, the Department is rescinding this review, in accordance with 19 CFR 351.213(d)(1).

**EFFECTIVE DATE:** October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Lilit Astvatsatrian, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482–6412.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 2, 2003, the Department published a notice of opportunity to request administrative review. *See Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation*, 68 FR 39511 (July 2, 2003). On July 31, 2003, DMC requested that the Department conduct an administrative review of its sales of the subject merchandise during the period July 1, 2002 through June 30, 2003. On August 22, 2003, the Department published its *Initiation Notice* on SSSS from the Republic of Korea. On August 27, 2003, DMC withdrew its request for the administrative review and requested that the Department rescind the review. *See Letter to Withdraw DMC's Review Request* dated August 27, 2003.

### Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. DMC, the only interested party to request an administrative review for this time period, withdrew its request for review within the 90 day time limit; accordingly, we are rescinding the administrative review for the period July 1, 2002 through June 30, 2003, and will issue appropriate assessment instructions to the U.S. Bureau of Customs and Border Protection.

This determination is issued in accordance with 19 CFR 351.213(d)(4) and section 751(i)(1) of the Tariff Act of 1930, as amended.

Dated: September 25, 2003.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Import Administration, Group III.*

[FR Doc. 03–24902 Filed 9–30–03; 8:45 am]

**BILLING CODE 3510–DS–S**

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## DEPARTMENT OF COMMERCE

## International Trade Administration

### Application for Duty-Free Entry of Scientific Instrument

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–046. Applicant: Colorado State University, 200 W. Lake Street, Fort Collins, CO 80523. Instrument: Piezoelectric Scanning Stage, Model NIS–30. Manufacturer: Nanonics Imaging Ltd, Israel. Intended Use: The instrument is intended to be used for research involving deoxyribonucleic acid (DNA) and protein, often fluorescently labeled with rhodamine, and to investigate interactions among DNA, core histone proteins (H1, H2A, H3, H4), and NAP–1 (Nucleosome Assembly Protein 1) and their involvement in the assembly and disassembly of chromatin. Application accepted by Commissioner of Customs: August 28, 2003.

**Gerald A. Zerdy,**

*Program Manager, Statutory Import Programs Staff.*

[FR Doc. 03–24898 Filed 9–30–03; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

### North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Notice of Request for an Extraordinary Challenge Committee

**AGENCY:** NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of request for an Extraordinary Challenge Committee to review the binational NAFTA Panel decisions of March 27, 2002; October 15, 2002; April 28, 2003 and June 24, 2003 in the matter of Pure Magnesium from Canada—Full Sunset Review, Secretariat File No. USA/CDA–2000–1904–06.

**SUMMARY:** On September 24, 2003, the Office of the United States Trade Representative filed a Request for an Extraordinary Challenge Committee to review decisions as stated above with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Committee review was requested of the full sunset review of the antidumping duty order made by the International Trade Administration, respecting Pure Magnesium From Canada. These determinations were published in the **Federal Register**. The NAFTA Secretariat has assigned Case Number ECC–2003–1904–01USA to this request.

**FOR FURTHER INFORMATION CONTACT:** Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A Request for an Extraordinary Challenge Committee was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on September 24, 2003, requesting panel review of the full sunset review of the antidumping duty order described above.

The Rules provide that:

(a) A Party or participant in the panel review who proposes to participate in the extraordinary challenge proceeding shall file with the responsible Secretariat a Notice of Appearance within 10 days after the filing of the first Request for Extraordinary Challenge Committee (the deadline for filing a Notice of Appearance is October 6, 2003); and

(b) All briefs shall be filed within 21 days after the Request for Extraordinary Challenge Committee (the deadline for filing briefs is October 15, 2003); Dated: September 25, 2003.

Dated: September 25, 2003.

**Caratina L. Alston,**

*United States Secretary, NAFTA Secretariate.*

[FR Doc. 03–24878 Filed 9–30–03; 8:45 am]

**BILLING CODE 3510–CT–P**

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## DEPARTMENT OF COMMERCE

### Minority Business Development Agency

**[Docket No. 030910229–3240–02]**

### Minority Business Financing

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Minority Business Development Agency (MBDA) publishes this notice to extend the comment period on a notice requesting comments on the direction of minority business financing published on Monday, September 22, 2003 (68 FR 55032). MBDA extends the comment period by 15 days to provide the public more time to submit comments. The new deadline for comments is October 22, 2003.

**DATES:** All comments must be received or postmarked by October 22, 2003.

**ADDRESSES:** Comments may be mailed to the following address: Ms. Anita Cooke Wells, Chief, Office of Business Development, HCHB, Room 5063, Minority Business Development Agency, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, or e-mailed to: *awells@mbda.gov*.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact Ms. Anita Cooke Wells, Chief, Office of Business Development, at (202) 482–1940.

Dated: September 26, 2003.

**Ronald N. Langston,**

*National Director, Minority Business Development Agency.*

[FR Doc. 03–24879 Filed 9–30–03; 8:45 am]

**BILLING CODE 3510–21–P**

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## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

### Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* United States Patent and Trademark Office (USPTO).

*Title:* Admittance to Practice and Roster of Registered Patent Attorneys and Agents Admitted to Practice Before the United States Patent and Trademark Office (USPTO).

*Form Number(s):* PTO–158, PTO–158A, PTO–275, PTO–107A, PTO–1209, PTO 2125, PTO 2126, PTO 2149.

*Agency Approval Number:* 0651–0012.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 97,282 hours annually.

*Number of Respondents:* 72,280 responses per year.

*Avg. Hours per Response:* The USPTO estimates that it will take the registered practitioner or agent approximately 10 minutes (0.17 hours) to complete the forms for annual practitioner registration renewal, the request for voluntary inactive status, and the request for restoration to active status from voluntary inactive status. It is estimated to take 2 hours (2.0) to complete the continuing education program by a registered attorney or agent with delinquency. It is estimated to take and 2 hours and 10 minutes (2.17 hours) to complete the continuing education program by a registered attorney or agent with delinquency and reinstatement, and 2 hours and 15 minutes (2.25 hours) for the paper-based version of the annual practitioner registration/continuing legal education program—15 minutes (0.25 hours) to request the materials and an average of 2 hours (2.0) to complete the continuing legal education exam on paper. It is estimated to take 15 minutes (0.25 hours) for a sponsor to complete the application for pre-approval of a continuing education program. It is expected to take 6 hours (6.0) to complete the registration examination to become a registered patent practitioner. It is expected to take 40 hours (40.0) to complete the petition for reinstatement after disciplinary removal. These times include time to gather the necessary information, and prepare and submit the forms and requirements in this collection.

*Needs and Uses:* This information is required by 35 U.S.C. 2(b)(2)(D), administered by the USPTO through 37 CFR 10.5–10.11 and 10.170. The information is used by the Director of the Office of Enrollment and Discipline (OED) to determine if the applicant for registration is of good moral character and repute; has the necessary legal, scientific, and technical qualifications; and is otherwise competent to advise and assist applicants in the presentation and prosecution of applications for patent grants. The USPTO is submitting this collection in support of a proposed rulemaking, "Changes to Representation of Others Before the United States Patent and Trademark Office "(RIN 0651–AB55). In this notice of proposed rulemaking, the USPTO is proposing to update the rules and procedures regarding the enrollment and recognition of individuals to practice as attorneys and agents before the USPTO in patent, trademark, and other non-patent matters. These proposed changes are also expected to improve how the USPTO handles applications for registration and petitions.

*Affected Public:* Individuals or households; business or other for-profit; the Federal Government; and State, Local or Tribal Governments.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, (703) 308–7400, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313, Attn: CPK 3 Suite 310, or by e-mail at *susan.brown@uspto.gov*.

Written comments and recommendations for the proposed information collection should be sent on or before October 31, 2003 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: September 24, 2003.

**Susan K. Brown,**

*Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.*

[FR Doc. 03–24850 Filed 9–30–03; 8:45 am]

**BILLING CODE 3510–16–P**

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## DEPARTMENT OF ENERGY

### Nuclear Engineering Education Research (NEER) Program Solicitation Number DE–PS07–03ID14540

**AGENCY:** Idaho Operations Office, DOE.

**ACTION:** Notice of availability of solicitation for awards of financial assistance.

**SUMMARY:** The U.S. Department of Energy, Idaho Operations Office, is soliciting applications for research and development grant awards in nuclear engineering topics. It is anticipated that on September 25, 2003, a full text for Solicitation Number DE–PS07–03ID14540 for the 2004 NEER Program will be made available at the Industry Interactive Procurement System (IIPS) Web site at: *http://e-center.doe.gov:* The deadline for receipt of applications will be on November 12, 2003. Applications are to be submitted via the IIPS Web site. Directions on how to apply and submit applications are detailed under the solicitation on the Web site.

**FOR FURTHER INFORMATION CONTACT:** Seb Klein, Contract Specialist at *kleinsm@id.doe.gov*.

**SUPPLEMENTARY INFORMATION:** The solicitation will be issued in accordance with 10 CFR part 600.6(b), eligibility for awards under this program will be restricted to U.S. colleges and universities with nuclear engineering degree programs or options or an operating research reactor, because the purpose of the Nuclear Engineering Education Research (NEER) program is to (1) support basic research in nuclear engineering; (2) assist in developing nuclear engineering students; and (3) contribute to strengthening the academic community's nuclear engineering infrastructure.

The statutory authority for this program is Pub. L. 95–91.

Issued in Idaho Falls on September 22, 2003.

**Michael L. Adams,**

*Acting Director, Procurement Services Division.*

[FR Doc. 03–24873 Filed 9–30–03; 8:45 am]

**BILLING CODE 6450–01–P**

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## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Paducah

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Thursday, October 16, 2003, 5:30 p.m.–9:30 p.m.

**ADDRESSES:** 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

**FOR FURTHER INFORMATION CONTACT:** Dianna Feireisel, Deputy Designated Federal Officer (DDFO), Department of Energy Paducah Site Office, Post Office Box 1410, Paducah, Kentucky 42001, (270) 441–6812.

**SUPPLEMENTARY INFORMATION:**

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

*Tentative Agenda*

5:30 p.m. Informal Discussion
6 p.m. Call to Order; Introductions; Approve September Minutes; Review Agenda
6:10 p.m. DDFO's Comments
- ES & H Issues
- Budget Update
- Environmental Management Project Updates
- Citizen Advisory Board (CAB) Recommendation Status
- Other

6:30 p.m. Federal Coordinator Comments
6:40 p.m. Ex-officio Comments
6:50 p.m. Public Comments and Questions

7 p.m. Break
7:10 p.m. Presentation
- Depleted Uranium Hexaflouride ($DUF_6$)
- Cleanup Scope

7:55 p.m. Public Comments and Questions
8:05 p.m. Administrative Issues
- Review of Work Plan
- Review of Next Agenda

8:25 p.m. Review of Action Items
8:40 p.m. Task Force and Subcommittee Reports
- Water Task Force
- Waste Operations Task Force
- Long Range Strategy/Stewardship
- Community Concerns
- Public Involvement/Membership

9:10 p.m. Final Comments
9:30 p.m. Adjourn

Copies of the final agenda will be available at the meeting.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address listed below or by telephone at (270) 441–6819. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comments will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to David Dollins, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6819.

Issued at Washington, DC on September 25, 2003.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 03–24868 Filed 9–30–03; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Hanford

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Thursday, November 6, 2003; 9 a.m.–5 p.m., Friday, November 7, 2003; 8:30 a.m.–4 p.m.

**ADDRESSES:** Doubletree Hotel Columbia River, 1401 North Hayden Island Drive, Portland, OR; Phone: (503) 283–2111, Fax: (503) 283–4718.

**FOR FURTHER INFORMATION CONTACT:** Yvonne Sherman, Public Involvement Program Manager, Department of Energy Richland Operations Office, 825 Jadwin, MSIN A7–75, Richland, WA 99352; Phone: (509) 376–6216; Fax: (509) 376–1563.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda:*

Thursday, November 6, 2003
- Tank Waste Supplemental Technologies Workshop and Draft Advice
- DOE-Richland Operation Office Risk-Based End State Vision Discussion and Draft Advice
- Discussion of DOE Office of River Protection Baseline and DOE-Richland Operation Baseline (Fluor Hanford Work Scope)
- Briefing and Discussion of the Spent Fuel Project

Friday, November 7, 2003
- Update on the Draft Tank Waste Closure Environmental Impact Statement
- Technology Progress: Carbon Tetrachloride, N-Springs, 618–10/11 Waste Sites
- Adoption of Draft Advice:—Tank Waste Supplemental Technologies—Risk-Based End State Vision
- Committee Updates
- Identification of Topics for the February Board Meeting

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Yvonne Sherman's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Yvonne Sherman, Department of Energy Richland Operation Office, 825 Jadwin, MSIN A7–75, Richland, WA 99352, or by calling her at (509) 376–1563.

Issued at Washington, DC, on September 26, 2003.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 03–24870 Filed 9–30–03; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, October 8, 2003; 6 p.m.

**ADDRESSES:** DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, TN.

**FOR FURTHER INFORMATION CONTACT:** Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov*.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda*

The meeting presentation will feature an overview of the Federal Advisory Committee Act, Conflict of Interest Guidance and Oak Ridge Site Specific Advisory Board By-Laws.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This **Federal Register** notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

*Minutes:* Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN, between 8 a.m. and 5 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC, on September 25, 2003.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 03–24871 Filed 9–30–03; 8:45 am]

**BILLING CODE 6450–01–P**

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## DEPARTMENT OF ENERGY

## Energy Information Administration

## Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Energy Information Administration (EIA), Department of Energy (DOE).

**ACTION:** Agency information collection activities: proposed collection; comment request.

**SUMMARY:** The EIA is soliciting comments on the proposed one-year extension to the Form EIA–1605, "Voluntary Reporting of Greenhouse Gases," (long form) and the Form EIA–1605EZ, "Voluntary Reporting of Greenhouse Gases," (short form).

**DATES:** Comments must be filed by December 1, 2003. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

**ADDRESSES:** Send comments to Stephen E. Calopedis. To ensure receipt of the comments by the due date, submission by FAX (202–586–3045) or e-mail (*Stephen.calopedis@eia.doe.gov*) is recommended. The mailing address is Energy Information Administration, EI–81, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Alternatively, Stephen Calopedis may be contacted by telephone at 202–586–1156.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of any forms and instructions should be directed to Stephen Calopedis at the address listed above or can be obtained at *http://www.eia.doe.gov/oiaf/1605/forms.html.*

**SUPPLEMENTARY INFORMATION:**

**I. Background**
**II. Current Actions**
**III. Request for Comments**

### I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under section 3507(a) of the Paperwork Reduction Act of 1995.

The Voluntary Reporting of Greenhouse Gases collections are conducted pursuant to section 1605(b) of the Energy Policy Act of 1992 (Pub. L. 102–486, 42 U.S.C. 13385) under General Guidelines issued by the DOE's Office of Policy & International Affairs. These forms are designed to collect voluntarily reported data on greenhouse gas emissions, achieved reductions of these emissions, and increased carbon fixation as well as information on commitments to reduce greenhouse gas emissions and sequester carbon in future years.

Please refer to the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

### II. Current Actions

EIA will be requesting a one-year extension with no changes for the Voluntary Reporting of Greenhouse Gases Program, Forms EIA–1605 and EIA–1605EZ.

This request for a one-year extension of the expiration date of the existing Forms EIA–1605 and EIA–1605EZ is being made to ensure that a data collection instrument is in place while the Guidelines to the Voluntary Reporting of Greenhouse Gases Program are in the process of being revised . A one-year extension, rather than a three-year extension, is being proposed because EIA anticipates significant changes to the data collection forms and data elements to result from the revisions to the program guidelines.

*Revised Guidelines for the Voluntary Reporting of Greenhouse Gases Program*

On February 14, 2002, President Bush announced a series of programs and initiatives to address the issue of global climate change, including a greenhouse gas intensity reduction goal, energy technology research programs, targeted tax incentives to advance the development and adoption of new technologies, and voluntary programs to promote actions to reduce greenhouse gases. In addition, the President directed the Secretary of Energy, in consultation with the Secretary of Commerce, the Secretary of Agriculture, and the Administrator of the Environmental Protection Agency, to propose improvements to the current Voluntary Reporting of Greenhouse Gases Program required under section 1605(b) of the Energy Policy Act of 1992. These improvements are to enhance measurement accuracy, reliability, and verifiability, working with and taking into account emerging domestic and international approaches. The President also directed the Secretary of Energy to recommend reforms to ensure that businesses and individuals that register reductions are not penalized under a future climate policy and to give transferable credits to companies that can show real emissions reductions.

The purposes of the proposed revised Guidelines are to: (1) establish revised procedures and reporting requirements for filing voluntary reports, and (2) encourage corporations, Government agencies, non-profit organizations, individuals and other private and public entities to submit annual reports of their total entity-wide greenhouse gas emissions, net emission reductions, and carbon sequestration activities that are complete, reliable and consistent.

On May 6, 2002 (67 FR 30370), the Department of Energy solicited public comments on various issues relevant to its efforts to implement the President's directives. After consideration of these public comments, the Secretaries of Energy, Commerce and Agriculture, and the Administrator of the Environmental Protection Agency wrote the President on July 8, 2002, stating that improvements to the existing Voluntary Greenhouse Gas Reporting Program should:

1. Develop fair, objective, and practical methods for reporting baselines, reporting boundaries, calculating real results, and awarding transferable credits for actions that lead to real reductions.
2. Standardize widely accepted, transparent accounting methods.
3. Support independent verification registry reports.
4. Encourage reporters to report greenhouse gas intensity (emissions unit of output) as well as emissions reductions.
5. Encourage corporate or entity-wide reporting.
6. Provide credits for actions to remove carbon dioxide from the atmosphere as well as for actions to reduce emissions.
7. Develop a process for evaluating the extent to which past reductions may qualify for credits.
8. Develop a process for evaluating the extent to which past reductions may qualify for credits.
9. Factor in international strategies as well as State-level efforts.
10. Minimize transactions costs for reporters and administrative costs for the Government, where possible, without compromising the foregoing recommendations.

The DOE also held four public workshops (67 FR 64106) in the fall of 2002 to enable interested persons to discuss and provide comments on possible improvements to the program guidelines. Public comments submitted to DOE's Office of Policy and International Affairs on possible revisions to the Voluntary Reporting of Greenhouse Gases Program Guidelines are available at *http://www.pi.energy.gov/enhancingGHGregistry/index.html.*

*Process for Finalizing and Implementing Revised Program Guidelines*

DOE's Office of Policy and International Affairs plans to issue proposed revised general guidelines for public comment during the fall of 2003. In parallel with this effort, DOE's Office of Policy and International Affairs intends to issue for public comment proposed technical guidelines in the fall of 2003. The technical guidelines will specify the methods and factors to be used in measuring and estimating greenhouse gas emissions and emission reductions under the revised general guidelines. DOE plans to issue in final form all necessary guidelines during 2004. Upon finalization and issuance of the revised guidelines, EIA plans to develop and issue new reporting forms and instructions for reporting under the revised program guidelines. It is important to note here that it is not the intent of this notice to solicit comment on the guideline revision process above, but rather to merely extend the expiration date on the existing data collection, forms EIA–1605 and EIA–1605–EZ, so that EIA has an existing data collection instrument in place while the guideline revision process is on-going.

## III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments. Please indicate to which form(s) your comments apply.

*General Issues*

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

*As a Potential Respondent to the Request for Information*

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden for this collection is estimated to average 40 hours per response on Form EIA–1605 (long form) and 4 hours per response on Form EIA–1605EZ (short form). The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

*As a Potential User of the Information To Be Collected*

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

**Statutory Authority:** Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

Issued in Washington, DC, September 25, 2003.

**Nancy J. Kirkendall,**

*Director, Statistics and Methods Group, Energy Information Administration.*

[FR Doc. 03–24872 Filed 9–30–03; 8:45 am]

**BILLING CODE 6450–01–P**

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## DEPARTMENT OF ENERGY

### Energy Information Administration

### American Statistical Association Committee on Energy Statistics

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the American Statistical Association Committee on Energy Statistics, a utilized Federal Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Thursday, October 16, 2003, 8:30 a.m.–4:30 p.m. Friday, October 17, 2003, 8:30 a.m.–12 noon.

**ADDRESSES:** Department of Energy, Room 8E–089, 1000 Independence Ave., SW, Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Mr. William I. Weinig, EI–70, Committee Liaison, Energy Information Administration, U.S. Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585, Telephone: (202) 287–1709. Alternately, Mr. Weinig may be contacted by e-mail at *william.weinig@eia.doe.gov* or by FAX at (202) 287–1705.

*Purpose of the Committee:* To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's experience concerning other energy-related statistical matters.

**Tentative Agenda**

*Thursday, October 16, 2003*

A. Opening Remarks by the ASA Committee Chair, the EIA Administrator and the Director, Statistics and Methods Group, EIA. Room 8E–089

B. Major Topics (Room 8E–089 unless otherwise noted)

  1. EIA's Strategic Planning and Performance Goals

  2. Data Initiatives in Natural Gas

  A. Overview

  B. Criteria to Select and Implement Estimation Procedures: A Comparison of Texas Production Methodologies

  C. Industrial Natural Gas Prices

  D. Natural Gas Production Estimation in the Gulf of Mexico

  E. Residential and Commercial Prices for Natural Gas Data

  3. Public Questions and Comments

*Friday, October 17, 2003, Room 8E–089*

C. Major Topics

  1. Confidential Information Protection and Statistical Efficiency Act (CIPSEA)

  2. Data Edits for the EIA–906

  3. Using Relative Standard

  4. Electricity Transmission Data Needs

  5. ASA Committee Suggestions for the Spring, 2004 Meeting

  6. Public Questions and Comments

D. Closing Remarks by the Chair

*Public Participation:* The meeting is open to the public. The Chair of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Mr. William I. Weinig, EIA Committee Liaison, at the address or telephone number listed above.

A Meeting Summary and Transcript will subsequently be available through Mr. Weinig who may be contacted at (202) 287–1709 or by e-mail at *william.weinig@eia.doe.gov*.

Issued at Washington, DC, on September 25, 2003.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 03–24869 Filed 9–30–03; 8:45 am]

**BILLING CODE 6450–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EC03–120–001, et al.]**

### Virginia Electric and Power Company, et al.; Electric Rate and Corporate Filings

September 23, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

**1. Virginia Electric and Power Company**

[Docket No. EC03–120 –001]

Take notice that on September 16, 2003, Virginia Electric and Power Company (Applicant), filed a supplement to its application requesting Commission authorization for the Applicant's proposed purchase of an approximately 240 MW cogeneration facility and its appurtenant transmission facilities located in Gordonsville, Virginia.

Applicant states that copies of the filing were served upon it's wholesale requirements customers, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

*Comment Date:* September 26, 2003.

**2. Chandler Wind Partners, LLC**

[Docket Nos. EC03–137–000, Desert Southwest Power, LLC ER99–963–001, Foote Creek II, LLC ER99–2769–005, Foote Creek III, LLC ER99–3450–004, Foote Creek IV, LLC ER00–2706–002, Nevada Sun-Peak Limited Partnership ER01–390–002, Ridge Crest Wind Partners, LLC ER01–2760–002, ER02–1866–001]

Take notice that on September 12, 2003, Chandler Wind Partners, LLC (Chandler Wind), Desert Southwest Power, LLC (DSP), Foote Creek II, LLC (Foote Creek II), Foote Creek III, LLC (Foote Creek III), Foote Creek IV, LLC (Foote Creek IV), Nevada Sun-Peak Limited Partnership (Nevada Sun-Peak), Ridge Crest Wind Partners, LLC (Ridge Crest) (collectively, Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to Section 203 of the Federal Power Act and notice of change in status with respect to the transfer of indirect upstream membership interests in Applicants to Caithness Investors, LLC, a newly-formed limited liability company owned by ArcLight Energy Partners Fund I, L.P., and the owners of Caithness Energy, L.L.C. Applicants have requested privileged treatment of the contents of a portion of Exhibit B and of Exhibit I to the Section 203 application.

*Comment Date:* October 3, 2003.

**3. Mississippi Delta Energy Agency, Clarksdale Public Utilities Commission, and Public Service Commission of Yazoo City Entergy Services, Inc., as agent for Entergy Arkansas, Inc. Entergy Louisiana, Inc. Entergy Mississippi, Inc. Entergy New Orleans, Inc. Entergy Gulf States, Inc.**

[Docket No. EL03–231–000]

Take notice that on September 17, 2003, the Mississippi Delta Energy Agency (MDEA), the Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi, (Clarksdale), and the Public Service Commission of Yazoo City of the City of Yazoo City, Mississippi (Yazoo City) filed a Complaint against Entergy Services, Inc.

as agent for Entergy Arkansas, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Gulf States, Inc. (collectively, Entergy). The Complaint by MDEA, Clarksdale, and Yazoo City challenges the 2003 rate redetermination filing submitted by Entergy on May 20, 2003 in Docket No. ER03–861–000 pursuant to the procedures set forth in the partial settlement agreement filed by Entergy in Docket No. ER95–112–000 and approved by the Commission. MDEA, Clarksdale, and Yazoo City further request that the Commission consolidate proceedings on their Complaint with Docket No. ER03–861–000.

*Comment Date:* October 2, 2003.

### Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–24818 Filed 9–30–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Sunshine Act, Meetings

September 24, 2003.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

**AGENCY HOLDING MEETING:** Federal Energy Regulatory Commission.

**DATE AND TIME:** October 1, 2003, 10 a.m.

**PLACE:** Room 2C, 888 First Street, NE., Washington, DC 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda, *Note—Items Listed on the Agenda May Be Deleted Without Further Notice.

**FOR FURTHER INFORMATION CONTACT:** Magalie R. Salas, Secretary, Telephone (202) 502–8400, for a Recording Listing Items, Stricken from or Added to the Meeting, Call (202) 502–8627.

This is a List of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

**840th—Meeting October 1, 2003, Regular Meeting 10 A.M.**

### Administrative Agenda

A–1.

Docket#, AD02–1,000, Agency Administrative Matters

A–2.

Docket#, AD02–7,000, Customer Matters, Reliability, Security and Market Operations

### Markets, Tariffs and Rates—Electric

E–1.

Docket#, EL03–133,000, American Ref-Fuel Company, Covanta Energy Group, Montenay Power Corporation, and Wheelabrator Technologies Inc:

E–2.

Docket#, EL03–132,000, Entergy Services, Inc.

E–3.

Docket#, EL03–212,001, Ameren Services Company on behalf of: Union Electric Company and Central Illinois Public Service Company American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company. Dayton Power and Light Company Exelon Corporation on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. FirstEnergy Corporation on behalf of: American Transmission Systems, Inc. Illinois Power Company and Northern Indiana Public Service Company.

Other#s EL03–212,000, Ameren Services Company on behalf of: Illinois Public Service Company American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company. Dayton Power and Light Company Exelon Corporation on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. FirstEnergy Corporation on behalf of: American Transmission Systems, Inc. Illinois Power Company and Northern Indiana Public Service Company.

E–4.

Omitted

E–5.

Omitted

E–6.

Omitted

E–7.

Omitted

E–8.

Omitted

E–9.

Docket# ER03–872,000, Southern Company Services, Inc.

Other#s ER03–872,001, Southern Company Services, Inc. Corporation.

E–10.

Docket# ER01–2658,000, American Electric Power Service Corporation.

Other#s EL00–79,000, Mid-Tex G&T Electric Cooperative, Inc., Big Country Electric Cooperative, Inc., Coleman County Electric Cooperative, Inc., Concho Valley Electric Cooperative, Inc., Golden Spread Electric Cooperative, Inc., Kimble Electric Cooperative, Inc., Lighthouse Electric Cooperative, Inc., Rio Grande Electric Cooperative, Inc., Southwest Texas Electric Cooperative, Inc., and Taylor Electric Cooperative, Inc. v. AEP Texas North Company.

EL01–113,000, Mid-Tex G&T Electric Cooperative, Inc. Big Country Electric Cooperative, Inc., Coleman County Electric Cooperative, Inc., Concho Valley Electric Cooperative, Inc., Golden Spread Electric Cooperative, Inc., Kimble Electric Cooperative, Inc., Lighthouse Electric Cooperative, Inc., Rio Grande Electric Cooperative, Inc., Southwest Texas Electric Cooperative, Inc., and Taylor Electric Cooperative, Inc. v. AEP Texas North Company.

EC01–130,000, American Electric Power Service Corporation.

ER01–2658,001, American Electric Power Service Corporation.

ER01–2668,000, American Electric Power Company, Inc.

ER01–2977,000, American Electric Power Service Corporation.

ER01–2977,001, American Electric Power Service Corporation.

ER01–2980, 000, American Electric Power Company.

ER01–2980, 001, American Electric Power Company.
EL02–24, 000, Mid-Tex G&T Electric Cooperative, Inc., Big Country Electric Cooperative, Inc., Coleman County Electric Cooperative, Inc., Concho Valley Electric Cooperative, Inc., Golden Spread Electric Cooperative, Inc., Kimble Electric Cooperative, Inc., Lighthouse Electric Cooperative, Inc., Rio Grande Electric Cooperative, Inc., Southwest Texas Electric Cooperative, Inc., and Taylor Electric Cooperative, Inc. v. AEP Texas North Company.
ER02–371, 000, American Electric Power Service Corporation.
ER02–371, 001, American Electric Power Service Corporation.
ER02–371, 002, American Electric Power Service Corporation.
ER02–602, 000, American Electric Power Service Corporation.
ER02–602, 001, American Electric Power Service Corporation.
ER02–1216, 000, American Electric Power Service Corporation.
ER02–1410, 000, West Texas Utilities Company
E–11.
Omitted
E–12.
Omitted
E–13.
Omitted
E–14.
Omitted
E–15.
Omitted
E–16.
Docket# ER02–851, 005, Southern Company Services, Inc.
Other#s ER02–851, 006, Southern Company Services, Inc.
ER02–851, 007, Southern Company Services, Inc.
ER02–851, 009, Southern Company Services, Inc.
E–17.
Omitted
E–18.
Docket# ER02–1963, 000, Midwest Independent Transmission System Operator, Inc.
Other#s ER02–1963, 001, Midwest Independent Transmission System Operator, Inc.
E–19.
Docket# OA96–138, 000, Consolidated Edison Company of New York, Inc.
E–20.
Docket# EC03–110, 000, Texas-New Mexico Power Company and Southern New Mexico Electric Company.
Other#s EC03–110, 001, Texas-New Mexico Power Company and Southern New Mexico Electric Company.
E–21.
Docket# FA88–62, 003, Wisconsin Electric Power Company.
Other#s EL94–16, 002, Wisconsin Electric Power Company.
E–22.
Omitted
E–23.
Docket# EL00–111, 005, Cities of Anaheim, Azusa, Banning, Colton and Riverside, California v. California Independent System Operator Corporation.
Other#s EL00–111, 006, Cities of Anaheim, Azusa, Banning, Colton and Riverside, California v. California Independent System Operator Corporation.
EL01–84, 001, Salt River Project Agricultural Improvement and Power District v. California Independent System Operator Corporation.
EL01–84, 002, Salt River Project Agricultural Improvement and Power District v. California Independent System Operator Corporation.
ER01–607, 004, California Independent System Operator Corporation.
E–24.
Omitted
E–25.
Omitted
E–26.
Docket# ER03–753, 001, Entergy Services, Inc.
E–27.
Omitted
E–28.
Docket# ER03–355, 002, Southern Company Services, Inc.
Other#s ER03–355, 003, Southern Company Services, Inc.
E–29.
Omitted
E–30.
Docket# ER02–2233, 009, Ameren Services Company, First Energy Corp., Northern Indiana Public Service Company, National Grid USA, and Midwest Independent System Operator, Inc.
E–31.
Omitted
E–32.
Omitted
E–33.
Docket# ER03–811, 001, Entergy Services, Inc.
E–34.
Omitted
E–35.
Omitted
E–36.
Docket# ER02–2330, 015, New England Power Pool.
Other#s ER02–2330, 016, New England Power Pool.
ER02–2330, 017, New England Power Pool.
E–37.
Omitted
E–38.
Docket# EL03–51, 000, North Hartland, LLC.
E–39.
Docket# OA03–9, 000, Florida Power & Light Company.
Other#s OA03–10, 000, Florida Power & Light Company.
E–40.
Docket# EL03–218, 000, Wisconsin Energy Corporation, Wisconsin Electric Power Company, W.E. Power LLC and Port Washington Generating Station LLC.
E–41.
Omitted
E–42.
Docket# EL02–75, 000, Duke Energy Trading & Marketing, LLC v. Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Mississippi, Inc., Entergy Louisiana, Inc., Entergy New Orleans, Inc., and Entergy Services, Inc.
E–43.
Docket# EL03–215, 000, North Hartland, LLC v. Central Vermont Public Service Corporation.
E–44.
Docket# AC03–46, 000, First Energy Companies: Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company.
E–45.
Omitted
E–46.
Docket# TX96–2, 008, City of College Station, Texas.
Other#s TX96–2, 004, City of College Station, Texas.
TX96–2, 005, City of College Station, Texas.
TX96–2, 007, City of College Station, Texas.
TX96–2, 001, City of College Station, Texas.
TX96–2, 006, City of College Station, Texas.
E–47.
Docket# PA02–2, 000, Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices.
Other#s PA03–1, 000, American Electric Power Co.
PA03–2, 000, Aquila Marketing Service.
PA03–3, 000, Coral Energy Resources, L.P.
PL03–3, 000, Price Discovery in Natural Gas and Electric Markets.
PA03–4, 000, CMS Marketing Services & Trading.
PA03–5, 000, Dynegy Inc.
PA03–6, 000, Duke Energy Trading & Marketing, LLC.
AD03–7, 000, Natural Gas Price Formation.
PA03–7, 000, El Paso Merchant Energy, L.P.
PA03–8, 000, Mirant Americas Energy Marketing, LP.
PA03–9, 000, Reliant Resources, Inc.
IN03–10, 000, Investigation of Anomalous Bidding. Behavior and Practices in the Western Markets.
PA03–10, 000, Sempra Energy Trading Corp.
PA03–11, 000, Williams Energy Marketing & Trading Company.
EL03–59, 000, Reliant Energy Services, Inc.
EL03–60, 000, BP Energy Company.
EL03–77, 000, Enron Power Marketing, Inc. and Enron Energy Services, Inc.
RP03–311, 000, Bridgeline Gas Marketing L.L.C. Citrus Trading Corporation, ENA Upstream Company, LLC, Enron Canada Corp., Enron Compression Services Company, Enron Energy Services, Inc., Enron MW, LLC and Enron North America Corp.
E–48.
Docket# ER03–1048, 000, Midwest Independent Transmission System Operator, Inc.
Other#s ER03–1048, 001, Midwest Independent Transmission System Operator, Inc.

**Markets, Tariffs and Rates—Gas**

G–1.

Omitted
G–2.
Docket# RP02–74, 000, Enbridge Pipelines (KPC).
Other#s RP03–90, 000, Enbridge Pipelines (KPC).
G–3.
Docket# CP03–297, 000, Northwest Natural Gas Company.
G–4.
Docket# RP03–356, 000, Southern Star Central Gas Pipeline, Inc.
G–5.
Omitted
G–6.
Docket# RP03–47, 001, Gulf South Pipeline Company, LP.
G–7.
Docket# RP03–282, 001, Columbia Gas Transmission Corporation.
G–8.
Omitted
G–9.
Omitted
G–10.
Omitted
G–11.
Omitted
G–12.
Docket# RP03–312, 002, Calpine Energy Services, L.P. v. Southern Natural Gas Company.
G–13.
Omitted
G–14.
Docket# RP00–468, 012, Texas Eastern Transmission, LP.
Other#s RP00–468, 013, Texas Eastern Transmission, LP.
RP00–468, 011, Texas Eastern Transmission, LP.
RP01–25, 010, Texas Eastern Transmission, LP.
RP01–25, 011, Texas Eastern Transmission, LP.
RP01–25, 012, Texas Eastern Transmission, LP.
RP01–175, 005, Texas Eastern Transmission, LP.
RP03–175, 006, Texas Eastern Transmission, LP.
RP03–175, 007, Texas Eastern Transmission, LP.
G–15.
Docket# RP00–495, 006, Texas Gas Transmission Corporation.
Other#s RP00–495, 005, Texas Gas Transmission Corporation.
RP01–97, 004, Texas Gas Transmission Corporation.
RP01–97, 005, Texas Gas Transmission Corporation.
RP03–211, 001, Texas Gas Transmission Corporation.
RP03–211, 002, Texas Gas Transmission Corporation.
G–16.
Docket# TM99–6–29, 005, Transcontinental Gas Pipe Line Corporation.
Other#s TM99–6–29, 006, Transcontinental Gas Pipe Line Corporation.
RP00–209, 003, Transcontinental Gas Pipe Line Corporation.
RP00–209, 004, Transcontinental Gas Pipe Line Corporation.
RP01–253, 006, Transcontinental Gas Pipe Line Corporation.
RP01–171, 003, Transcontinental Gas Pipe Line Corporation.
RP02–171, 004, Transcontinental Gas Pipe Line Corporation.
G–17.
Omitted
G–18.
Docket# RP03–245, 000, Kinder Morgan Interstate Gas Transmission LLC.

**Energy Projects—Hydro**

H–1.
Omitted
H–2.
Omitted
H–3.
Docket# P–11899, 002, Symbiotics, LLC.
Other#s P–12058, 001, Baker County, Oregon.
H–4.
Omitted
H–5.
Docket# P–2651, 033, Indiana Michigan Power Company.
H–6.
Docket# P–2816, 021, Vermont Electric Generation & Transmission Cooperative, Inc. and North Hartland, LLC.
H–7.
Docket# P–12200, 001, McKay Hydro, LLC.
H–8.
Docket# P–344, 014, Southern California Edison Company.
H–9.
Docket# P–2942, 005, S. D. Warren Company.
H–10.
Docket# P–2931, 002, S. D. Warren Company.
H–11.
Docket# P–2932, 003, S. D. Warren Company.
H–12.
Docket# P–2941, 002, S. D. Warren Company.
H–13.
Docket# P–2897, 003, S. D. Warren Company.
Other#s P–2932, 003, S. D. Warren Company.
P–2941, 002, S. D. Warren Company.
P–2931, 002, S. D. Warren Company.
P–2942, 005, S. D. Warren Company.
H–14.
Omitted
H–15.
Docket# P–2543, 059, Clark Fork and Blackfoot, LLC.
H–16.
Docket# P–1494, 232, Grand River Dam Authority.

**Energy Projects—Certificates**

C–1.
Docket# CP03–76, 000, Norteno Pipeline Company and OkTex Pipeline Company.
Other#s CP03–99, 000, Norteno Pipeline Company and OkTex Pipeline Company.
CP03–100, 000, Norteno Pipeline Company and OkTex Pipeline Company.
C–2.
Docket# CP01–421, 000, Portland General Electric Company.
Other#s CP01–421, 001, Portland General Electric Company.
C–3.
Docket# CP03–323, 000, Pinnacle Pipeline Company.
Other#s CP03–324, 000, Pinnacle Pipeline Company.
CP03–325, 000, Pinnacle Pipeline Company.
C–4.
Docket# CP03–33, 000, Wyckoff Gas Storage Company, LLC.
Other#s CP03–34, 000, Wyckoff Gas Storage Company, LLC.
CP03–35, 000, Wyckoff Gas Storage Company, LLC.
CP03–79, 000, National Fuel Gas Supply Corporation.
C–5.
Docket# CP01–418, 000, B–R Pipeline Company.
C–6.
Docket# CP00–6, 010, Gulfstream Natural Gas System, L.L.C.
C–7.
Docket# CP03–80, 000, Eastern Shore Natural Gas Company.
C–8.
Docket# CP03–329, 000, Columbia Gas Transmission Corporation.
C–9.
Docket# CP01–415, 010, East Tennessee Natural Gas Company.
Other#s CP01–415, 011, East Tennessee Natural Gas Company.
CP01–415, 012, East Tennessee Natural Gas Company.
CP01–415, 013, East Tennessee Natural Gas Company.
CP01–415, 015, East Tennessee Natural Gas Company.

**Magalie R. Salas,**
*Secretary.*
[FR Doc. 03–24953 Filed 9–26–03; 4:23 pm]
BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Sunshine Act Meeting; Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

September 25, 2003.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

**AGENCY HOLDING MEETING:** Federal Energy Regulatory Commission.

**DATE AND TIME:** October 2, 2003, 9:30 a.m.

**PLACE:** Room 3M 4A/B, 888 First Street, NE., Washington, DC 20426.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Non-Public Investigations and Inquiries and Enforcement Related Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Wood and Commissioners Massey and Brownell voted to hold a closed meeting on October 2, 2003. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NW., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–24954 Filed 9–26–03; 4:28 pm]

**BILLING CODE 6717–01–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–FRC–7588–9]**

### Acid Rain Program: Notice of Annual Adjustment Factors for Excess Emission Penalty

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of annual adjustment factors for excess emissions penalty.

**SUMMARY:** Under the Acid Rain Program, affected units must hold enough allowances to cover their sulfur dioxide emissions and meet an emission limit for nitrogen oxides. Under 40 CFR 77.6, units that do not meet these requirements must pay a penalty without demand to the Administrator based on the number of excess tons emitted times $2000 as adjusted by an annual adjustment factor that must be published in the **Federal Register**.

The annual adjustment factor for adjusting the penalty for excess emissions of sulfur dioxide and nitrogen oxides under 40 CFR part 77 for compliance year 2003 is 1.4502. This value is derived from the Consumer Price Index for 1990 and 2003, as defined in 40 CFR part 72, and corresponds to a penalty of $2900 per excess ton of sulfur dioxide or nitrogen oxides emitted.

The annual adjustment factor for adjusting the penalty for excess emissions of sulfur dioxide and nitrogen oxides under 40 CFR part 77 for compliance year 2004 is 1.4815. This value is derived from the Consumer Price Index for 1990 and 2004, as defined in 40 CFR part 72, and corresponds to a penalty of $2963 per excess ton of sulfur dioxide or nitrogen oxides emitted.

**FOR FURTHER INFORMATION CONTACT:** Robert Miller, Clean Air Markets Division (6204N), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460 at (202) 564–9077.

Dated: September 22, 2003.

**Larry F. Kertcher,**

*Acting Director, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation.*

[FR Doc. 03–24911 Filed 9–30–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7565–7]**

### Clean Water Act Section 303(d): Availability of 3 Total Maximum Daily Loads (TMDLs)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces the availability for comment of the administrative record file for 3 TMDLs and the calculations for these TMDLs prepared by EPA Region 6 for waters listed in the state of Arkansas under section 303(d) of the Clean Water Act (CWA). These TMDLs were completed in response to the lawsuit styled *Sierra Club, et al.* v. *Browner, et al.*, No. LR–C–99–114.

**DATES:** Comments must be submitted in writing to EPA on or before October 31, 2003.

**ADDRESSES:** Comments on the 3 TMDLs should be sent to Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733, facsimile (214) 665–6490, or e-mail: *caldwell.ellen@epa.gov*. For further information, contact Ellen Caldwell at (214) 665–7513. Documents from the administrative record file for these TMDLs are available for public inspection at this address as well. Documents from the administrative record file may be viewed at *http://www.epa.gov/region6/water/artmdl.htm*, or obtained by calling or writing Ms. Caldwell at the above address. Please contact Ms. Caldwell to schedule an inspection.

**FOR FURTHER INFORMATION CONTACT:** Ellen Caldwell at (214) 665–7513.

**SUPPLEMENTARY INFORMATION:** In 1999, five Arkansas environmental groups, the Sierra Club, Federation of Fly Fishers, Crooked Creek Coalition, Arkansas Fly Fishers, and Save our Streams (plaintiffs), filed a lawsuit in Federal Court against the United States Environmental Protection Agency (EPA), styled *Sierra Club, et al.* v. *Browner, et al.*, No. LR–C–99–114. Among other claims, plaintiffs alleged that EPA failed to establish Arkansas TMDLs in a timely manner. EPA proposes these TMDLs pursuant to a consent decree entered in this lawsuit.

#### EPA Seeks Comments on 3 TMDLs

By this notice EPA is seeking comment on the following 3 TMDLs for waters located within the state of Arkansas:

| Segment-reach | Waterbody name | Pollutant |
|---|---|---|
| AR11110203–904–3. | Stone Dam Creek. | Ammonia. |
| AR11110203–904–3. | Stone Dam Creek. | Nitrates. |
| AR11110203–931–10. | Whig Creek | Copper. |

EPA requests that the public provide to EPA any water quality related data and information that may be relevant to the calculations for these 3 TMDLs. EPA will review all data and information submitted during the public comment period and revise the TMDLs where appropriate. EPA will then forward the TMDLs to the Arkansas Department of Environmental Quality (ADEQ). The ADEQ will incorporate the TMDLs into its current water quality management plan. The EPA also will revise the Arkansas 303(d) list as appropriate.

Dated: September 23, 2003.

**Miguel I. Flores,**

*Director, Water Quality Protection Division, Region 6.*

[FR Doc. 03–24777 Filed 9–30–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC, offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement No.:* 011223–028.
*Title:* Transpacific Stabilization Agreement.
*Parties:* APL Co. Pte. Ltd. and American President Lines, Ltd. (acting as one party); A.P. Moller-Maersk A/S trading under the name of Maersk Sealand; CMA CGM, S.A.; COSCO Container Lines Ltd.; Evergreen Marine Corp. (Taiwan) Ltd.; Hanjin Shipping Co., Ltd.; Hapag-Lloyd Container Line GmbH; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; P&O Nedlloyd B.V. and P&O Nedlloyd Limited (acting as one party); and Yangming Marine Transport Corp.
*Synopsis:* The amendment deletes the Indian Subcontinent from the geographic scope of the agreement and revises various communications and meeting processes under the agreement.

*Agreement No.:* 201147.
*Title:* Broward/Chiquita Lease and Operating Agreement.
*Parties:* Broward County (Florida); Chiquita Brands Company, North America.
*Synopsis:* The agreement provides for the lease of property to be used as a marine terminal. The term of the lease is through September 23, 2013.

*Agreement No.:* 201148.
*Title:* Broward/Crowley Marine Terminal Lease Agreement.
*Parties:* Broward County (Florida); Crowley Liner Services, Inc.
*Synopsis:* The agreement is a restatement of a previous agreement and provides for the lease of property to be used as a marine terminal. The term of the lease is through January 21, 2010.

Dated: September 26, 2003.

By Order of the Federal Maritime Commission.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 03–24897 Filed 9–30–03; 8:45 am]

BILLING CODE 6730–01–P

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## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 15, 2003.

**A. Federal Reserve Bank of Minneapolis** (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

*1. Robert M. Weiss*, Shorewood, Minnesota; to acquire voting shares of Excelsior Financial Services, Inc., Shorewood, Minnesota, and thereby indirectly acquire voting shares of Beacon Bank, Shorewood, Minnesota.

Board of Governors of the Federal Reserve System, September 25, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–24807 Filed 9–30–03; 8:45 am]

BILLING CODE 6210–01–S

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## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 24, 2003.

**A. Federal Reserve Bank of Boston** (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

*1. South Shore Bancorp, MHC and South Shore Bancorp, Inc.*, both of South Weymouth, Massachusetts to become bank holding companies by acquiring 100 percent of the voting shares of South Shore Savings Bank, South Weymouth, Massachusetts and Horizon Bank and Trust Company, Braintree, Massachusetts.

**B. Federal Reserve Bank of Cleveland** (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

*1. First Commonwealth Financial Corporation*, Indiana, Pennsylvania; to merge with Pittsburgh Financial Corp., and thereby indirectly acquire Pittsburgh Savings Bank, both of Wexford, Pennsylvania.

**C. Federal Reserve Bank of Kansas City** (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

*1. First Capital Corporation*, Fort Scott, Kansas; to acquire 100 percent of the voting shares of Centerville State Bank, Centerville, Kansas.

Board of Governors of the Federal Reserve System, September 25, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–24808 Filed 9–30–03; 8:45 am]

BILLING CODE 6210–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[60Day–03–124]

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer at (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

*Proposed Project:* "Reactions to Race" Module for the General Social Survey (GSS)—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

The purpose of this data collection is to understand some of the contextual, perceptual, and experiential factors associated with reactions to "race" that may contribute to racial disparities in health outcomes. CDC will fund "Reactions to Race" data collection on the 2004 General Social Survey (GSS). The Measures of Racism Working Group at CDC developed a 10-question module in the GSS.

The GSS is a biennial national population-based in-person survey conducted by the National Opinion Research Center (NORC) at the University of Chicago. GSS first data collection was in 1972. The basic purpose of the GSS is too continue "to gather data on contemporary American society in order to monitor and explain trends and constants in attitudes, behaviors, and attributes; to examine the structure and functioning of society in general as well as the role played by relevant subgroups; to compare the United States to other societies in order to place American society in comparative perspective and develop cross-national models of human society; and to make high-quality data easily accessible to scholars, students, policy makers, and others, with minimal cost and waiting" (*see http://www.norc.uchicago.edu/projects/gensoc1.asp).*

CDC is contracting with NORC through an existing agreement to administer the "Reactions to Race" module to the full GSS sample, consisting of 3,000 non-institutionalized U.S. adults, starting in June 2004. The questionnaire will be administered in-person by trained interviewers who have been "race"-matched with the predominant "race" of residents in each sampled area.

The distributions of responses to the questions on the "Reactions to Race" module will be examined across all respondents as well as compared by "race". In addition, we will look at the relationship between the responses from the "Reactions to Race" module and responses to other health, attitude, and behavior questions (including a detailed assessment of experiences at work) on the 2004 GSS. These other data will provide a rich resource to help us contextualize responses to the module.

Ultimately, the results from this data collection will be useful as we examine the causes of and design interventions to eliminate racial and ethnic health disparities. There are no costs to respondents.

| Respondent | Number of respondents | Number of responses/respondent | Avg. burden/response (in hours) | Total burden (in hours) |
|---|---|---|---|---|
| U.S. Adults | 3,000 | 1 | 5/60 | 250 |
| Total | | | | 250 |

Dated: September 25, 2003.

**Nancy E. Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.*

[FR Doc. 03–24836 Filed 9–30–03; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

## Advisory Committee on Childhood Lead Poisoning Prevention

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

*Name:* Advisory Committee on Childhood Lead Poisoning Prevention.

*Times and Dates:*

8:30 a.m.–5 p.m., October 14, 2003

8:30 a.m.–12:30 p.m., October 15, 2003.

*Place:* Embassy Suites—Atlanta at Centennial Olympic Park, 267 Marietta Street, Atlanta, Georgia 30313. Telephone 404/223 2300.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

*Purpose:* The Committee shall provide advice and guidance to the Secretary; the Assistant Secretary for Health; and the Director, CDC, regarding new scientific knowledge and technological developments and their practical implications for childhood lead poisoning prevention efforts. The Committee shall also review and report regularly on childhood lead poisoning prevention practices and recommend improvements in national childhood lead poisoning prevention efforts.

*Matters to be Discussed:* Agenda items include: Update on Primary Prevention issues, Review of Evidence for Effects at Blood Lead Levels <10 µg/dL, Building Blocks Project, the National Academy of Sciences Study, Lead Exposure at Superfund Sites, and the Update on International Lead issues.

Agenda items are subject to change as priorities dictate.

Opportunities will be provided during the meeting for oral comments. Depending on the time available and the number of requests, it may be necessary to limit the time of each presenter.

*For Further Information Contact:* Crystal M. Gresham, Program Analyst, Lead Poisoning Prevention Branch, Division of Emergency and Environmental Health Services, NCEH, CDC, 4770 Buford Hwy, NE, M/S F–30, Atlanta, Georgia 30341, telephone 770/488–7490, fax 770/488–3635.

Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the date of meeting.

The Director, Management Analysis and Services office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: September 25, 2003.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 03–24840 Filed 9–30–03; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 2003N–0404]

### Agency Information Collection Activities; Proposed Collection; Comment Request; Human Tissue Intended for Transplantation

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to FDA regulations for human tissue intended for transplantation.

**DATES:** Submit written or electronic comments on the collection of information by December 1, 2003.

**ADDRESSES:** Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

### Human Tissue Intended for Transplantation—21 CFR Part 1270 (OMB Control Number 0910–0302)—Extension

Under section 361 of the Public Health Service Act (42 U.S.C. 264), FDA issued regulations to prevent the transmission of human immunodeficiency virus (HIV), hepatitis B, and hepatitis C, through the use of human tissue for transplantation. The regulations provide for inspection by FDA of persons and tissue establishments engaged in the recovery, screening, testing, processing, storage, or distribution of human tissue. These facilities are required to meet provisions intended to ensure appropriate screening and testing of human tissue donors and to ensure that records are kept documenting that the appropriate screening and testing have been completed.

Section 1270.31(a) through (d) (21 CFR 1270.31(a) through (d)) require written procedures to be prepared and followed for the following steps: (1) All significant steps in the infectious disease testing process, (2) all significant steps in reviewing the relevant medical record of the donor, (3) designating and identifying quarantined tissue, and (4) for prevention of infectious disease contamination or cross-contamination by tissue during processing. Section 1270.31(a) and (b) also require recording and justification of any deviation from the written procedures. Section 1270.33(a) (21 CFR 1270.33(a)) requires records to be maintained concurrently with the performance of each significant step in the procedures of infectious disease screening and testing of human tissue donors. Section 1270.33(f) requires records to be retained regarding the determination of the suitability of the donors and such records required under § 1270.21 (21 CFR 1270.21). Section 1270.33(h) requires all records be retained at least 10 years beyond the date of transplantation, distribution, disposition, or expiration of the tissue, whichever is latest. Section 1270.35 (21 CFR 1270.35) requires specific records be maintained to document the following outcomes: (1) The results and interpretation of all required infectious disease tests and results, (2) the identity and relevant medical records of the donor, (3) the receipt and distribution of human tissue, and (4) the destruction or other disposition of human tissue.

Respondents to this collection of information are manufacturers of human tissue intended for transplantation. Based on information from FDA's Center for Biologics and Evaluation Research database system, the agency estimates that there are approximately 300 tissue establishments of which 166 are conventional tissue banks and 134 are eye tissue banks. Based on information provided by industry, there are an estimated total of 750,000 conventional tissue products and 94,186 eye tissue products recovered per year with an average of 25 percent of the tissue discarded due to unsuitability for transplant. In addition, there are an estimated 20,000 donors of conventional tissue and 47,796 donors of eye tissue each year.

Accredited members of the American Association of Tissue Banks (AATB) and Eye Bank Association of America (EBAA) adhere to standards of those organizations that are comparable to the recordkeeping requirement in part 1270 (21 CFR part 1270). Based on information provided by industry associations, 50 to 75 percent (average 63 percent) of the conventional tissue banks are members of AATB (166 X 63 percent = 105), and 99 percent of eye tissue banks are members of EBAA (134 X 99 percent = 133). Therefore, recordkeeping by these 238 establishments (105 + 133 = 238) is excluded from the burden estimates as usual and customary business activities (5 CFR 1320.3(b)(2)). The recordkeeping burden, thus, is estimated for the remaining 62 establishments, which is 21 percent of all establishments (300 - 238 = 62, or 62/300 = 21 percent).

Based on CBER's database system and information provided by industry, FDA estimates an average of two new tissue banks annually, which may be nonmembers of a trade association. Each new tissue bank requires an estimated 64 hours to prepare standard operating procedures (SOPs) under § 1270.31(a) through (d). The requirement for the development of these written procedures is considered an initial one-time burden. FDA assumes that all current tissue establishments have developed written procedures in compliance with part 1270. Therefore, their information collection burden is for the general review and update of written procedures estimated to take an annual average of 24 hours, and for the recording and justifying of any deviations from the written procedures for § 1270.31(a) and (b), estimated to take an annual average of 1 hour. The information collection burden for maintaining records concurrently with the performance of each significant screening and testing step and for retaining records for 10 years under § 1270.33(a), (f), and (h), include documenting the results and interpretation of all required infectious disease tests and results and the identify and relevant medical records of the donor required under § 1270.35(a) and (b). Therefore, the burden under these provisions is calculated together in table 1 of this document. The recordkeeping estimates for the number of total annual records and hours per record are based on information provided by industry and FDA experience.

FDA estimates the burden of this information collection as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

| 21 CFR Section | No. of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Record | Total Hours |
|---|---|---|---|---|---|
| 1270.31(a) through (d) | 2 | 1 | 2 | 64 | 128 |
| 1270.31(a) through (d)[2] | 62 | 1 | 62 | 24 | 1,488 |
| 1270.31(a) and (b)[3] | 62 | 2 | 124 | 1.0 | 124 |
| 1270.33(a), (f), and (h) and 1270.35(a) and (b) | 62 | 3,089 | 191,518 | 1.0 | 191,518 |
| 1270.35(c) | 62 | 5,719 | 354,578 | 1.0 | 354,578 |
| 1270.35(d) | 62 | 715 | 44,330 | 1.0 | 44,330 |
| Total | | | | | 592,166 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Review and update of SOPs.
[3] Documentation of deviations from SOPs.

Dated: September 24, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–24799 Filed 9–30–03; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

**[Docket No. 2003N–0421]**

## Determination That Trilafon Tablets and Three Other Drug Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined that the four drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. These are drug products with approved new drug applications (NDAs) to which one or more approved abbreviated new drug applications (ANDAs) refer. This determination means that the approval status of the ANDAs is unaffected by the withdrawal from sale of the reference product.

**FOR FURTHER INFORMATION CONTACT:** Mary Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20855, 301–594–2041.

**SUPPLEMENTARY INFORMATION:** In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved under an NDA. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

If a listed drug is withdrawn from sale and there are approved ANDAs that refer to that drug, under § 314.161(a)(2) (21 CFR 314.161(a)(2)), the agency must determine whether the listed drug was withdrawn from sale for reasons of safety or effectiveness. Section 314.161(d) provides that if FDA determines that the listed drug was removed from sale for safety or effectiveness reasons, the agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

The holders of the applications listed in the table in this document have informed FDA that the drug products have been withdrawn from sale. The drug products in the table are subjects of approved NDAs to which one or more approved ANDAs refer.

| NDA No. | Drug | Applicant |
|---|---|---|
| 10–775 | Trilafon (perphenazine) tablets, 2, 4, 8, and 16 milligrams (mg) | Schering Corp., 2000 Galloping Hill Rd., Kenilworth, NJ 07033 |
| 12–071 | Decadron (dexamethasone sodium phosphate) injection, 4 mg/milliliter (mL) and 24 mg/mL | Merck & Co., P.O. Box 4, West Point, GA 19486-0004 |
| 14–694 | Hexadrol (dexamethasone sodium phosphate) injection, 4 mg/mL and 10 mg/mL | Organon, Inc., 375 Mt. Pleasant Ave., West Orange, NJ 07052 |
| 19–304 | Tricor (fenofibrate) capsules, 67, 134, and 200 mg | Abbott Laboratories, 200 Abbott Park Rd., Abbott Park, IL 60064-3537 |

FDA has reviewed its records and, under § 314.161, has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. Approved ANDAs that refer to the NDAs listed in this document are unaffected by the withdrawal of these products subject to those NDAs, and accordingly, the agency will continue to list the drug products listed in this document in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness.

Dated: September 17, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–24862 Filed 9–30–03; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

### Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA).

The meeting will be open to the public.

*Name of Committee*: Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time*: The meeting will be held on October 9, 2003, from 8 a.m. to 4:30 p.m.

*Location*: Holiday Inn, Kennedy Ballroom, 8777 Georgia Ave., Silver Spring, MD.

*Contact Person*: Thomas H. Perez, Center for Drug Evaluation and Research, (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery: 5630 Fishers Lane, Rm. 1093) Rockville, MD 20857, by phone at 301–827–6758, or by e-mail at *PerezT@cder.fda.gov* or the FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

*Agenda*: The subcommittee will: (1) Consider off-patent oncology drugs for which pediatric studies are needed and discuss the availability of information concerning the safe and effective use of the drugs in the pediatric population, whether additional information is needed, and whether new pediatric studies concerning the drugs may produce health benefits in the pediatric population, as mandated by the Best Pharmaceuticals for Children Act (BPCA), and (2) discuss age-appropriate formulation changes to facilitate dosing of products used in the pediatric oncology setting.

*Procedure*: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by October 2, 2003. Oral presentations from the public will be scheduled between approximately 10 a.m. and 10:30 a.m. and 1 p.m. and 1:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 2, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets. FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please notify Thomas Perez at least 7 days in advance of the meeting.

FDA regrets that it was unable to publish this notice 15 days prior to the October 9, 2003, Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 26, 2003.

**Peter J. Pitts,**

*Associate Commissioner for External Relations.*

[FR Doc. 03–24920 Filed 9–26–03; 4:13 pm]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

### Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Director's Council of Public Representatives.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Director's Council of Public Representatives.

*Date:* October 20, 2003.

*Time:* 8:30 a.m. to 4:30 p.m.

*Agenda:* Among the topics proposed for discussions are: (1) current issues; (2) the National Research Council and Institute of Medicine Report to the NIH; and (3) a panel on Enhancing Public Trust in the Clinical Research Enterprise.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

*Contact Person:* Jennifer E. Gorman Vetter, NIH Public Liaison/COPR Coordinator, Office of Communications and Public Liaison, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Building 1, Room 344, Bethesda, MD 20892, (301) 435–4448, *gormanj@od.nih.gov*.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home page: *http://www.nih.gov/about/publicliaison/index.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency, Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: September 24, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–24825 Filed 9–30–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Phase Application Awards in Cancer Prognosis & Prediction (PAR03–089) & Cancer Prognosis and Prediction: SBIR/STTR Initiative (PAR03–099).

*Date:* October 23, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person:* Joyce C. Pegues, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892, 301/594–1286, *peguesj@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 24, 2003

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisor Committee Policy.*

[FR Doc. 03–24828 Filed 9–30–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Behavioral Research in Cancer Control.

*Date:* November 13, 2003.

*Time:* 9 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Mary Jane Slesinksi, Phd, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8045, Bethesda, MD 20892, 301/594–1566.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 24, 2003.

**LaVerne Y. Stringfield,**

*Director, Officer of Federal Advisory Committee Policy.*

[FR Doc. 03–24829 Filed 9–30–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Nursing Research Initial Review Group NRRC 28 Meeting.

*Date:* October 16–17, 2003.
*Time:* 8:15 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
*Contact Person:* Jeffrey M. Chernak, PhD, Scientific Review Administrator, Office of Review, National Institute of Nursing Research, 6701 Democracy Plaza, Suite 712, MSC 4870, Bethesda, MD 20817, (301) 402–6959, *chernak@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: September 24, 2003.

**LaVerne Y. Stringfield,**
*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–24821 Filed 9–30–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIA.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Aging, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, NIA.
*Date:* October 29–30, 2003.
*Closed:* October 29, 2003, 8 a.m. to 9 a.m.
*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.
*Place:* Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.
*Open:* October 29, 2003, 9 a.m. to 11:40 a.m.
*Agenda:* Committee Discussion.
*Place:* Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.
*Closed:* October 29, 2003, 11:40 a.m. to 12:40 p.m.
*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.
*Place:* Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.
*Open:* October 29, 2003, 12:40 p.m. to 4:30 p.m.
*Agenda:* Committee Discussion.
*Place:* Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.
*Closed:* October 29, 2003, 4:30 p.m. to 5:30 p.m.
*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.
*Place:* Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.
*Closed:* October 30, 2003, 8 a.m. to 9 a.m.
*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.
*Place:* Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.
*Open:* October 30, 2003, 9 a.m. to 12 p.m.
*Agenda:* Committee Discussion.
*Place:* Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.
*Closed:* October 30, 2003, 12 p.m. to 1 p.m.
*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.
*Place:* Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.
*Open:* October 30, 1 p.m. to 3:45 p.m.
*Agenda:* Committee Discussion.
*Place:* Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.
*Closed:* October 30, 2003, 3:45 p.m. to 4:30 p.m.
*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.
*Place:* Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.
*Contact Person:* Dan L. Longo, MD, Scientific Director, National Institute of Aging, Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825, 410–558–8110, *dl14q@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 24, 2003.

**LaVerne Y. Stringfield,**
*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–24822 Filed 9–30–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel Long-Term Colony of Calorically Restricted Rodents.
*Date:* October 23, 2003.
*Time:* 1 p.m. to 2:30 p.m.
*Agenda:* To review and evaluate contract proposals.
*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814, (Telephone Conference Call).
*Contact Person:* Ramesh Vemuri, PhD., National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Ave., Suite 2C212, Bethesda, MD 20892, 301–402–7700, *rv23r:@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 24, 2003.

**LaVerne Y. Stringfield,**
*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–24823 Filed 9–30–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel Alzheimer Patient Registry.

*Date:* October 7, 2003.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Gateway Building, 7201 Wisconsin Ave, 2C212, Bethesda, MD 20814, (Telephone Conference Call).

*Contact Person:* Ramesh Vemuri, PhD, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Ave, Suite 2C212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 24, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–24824 Filed 9–30–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel IP–RISP Applications Review.

*Date:* October 22, 2003.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

*Contact Person:* Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, (301) 443–1606, *mcarey@mail.nih.gov.*

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel Child and Adolescent Interventions Part 2.

*Date:* October 27, 2003.

*Time:* 5 p.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

*Contact Person:* David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, (301) 443–7861, *dsommers@mail.nih.gov.*

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, Cognitive Science and Neuroimaging.

*Date:* October 30, 2003.

*Time:* 10:30 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Benjamin Xu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6143, MSC 9608, Bethesda, MD 20892–9608, (301) 443–1178, *benxu1@mail.nih.gov.*

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, Mental Disorders Treatment Research.

*Date:* October 30, 2003.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Sara K. Goldsmith, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9608, Bethesda, MD 20892–9608.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel NIMH Predoctoral and Postdoctoral Institutional Research Traning.

*Date:* October 31, 2003.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Houmam H. Araj, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Healath, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892–9608, (301) 443–1340, *haraj@mail.nih.gov.*

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel STAR*D Ancillary Study.

*Date:* November 12, 2003.

*Time:* 2:30 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, (301) 443–7861, *dsommers@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS.)

Dated: September 24, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–24826 Filed 9–30–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel T32 Reviews for Service & Epidemiology Applications.

*Date:* October 9, 2003.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Sara K. Goldsmith, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9608, Bethesda, MD 20892–9608.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: September 24, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–24827 Filed 9–30–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Microbiology, Infectious Diseases and AIDS Initial Review Group, Microbiology and Infectious Diseases Research Committee.

*Date:* October 16–17, 2003.

*Time:* October 16, 2003, 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

*Time:* October 17, 2003, 8 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

*Contact Person:* Gary S. Madonna, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2149, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–3528, *gm12w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 23, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–24830 Filed 9–30–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIEHS.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual investigators conducted by the National Institute of Environmental Health Sciences, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, NIEHS.

*Date:* October 26–28, 2003.

*Closed:* October 26, 2003, 8 p.m. to 9:30 p.m.

*Agenda:* To review and evaluate programmatic and personnel issues.

*Place:* Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27713.

*Open:* October 27, 2003, 8:30 a.m. to 5 p.m.

*Agenda:* An overview of the organization and conduct of research in the Laboratory of Structural Biology.

*Place:* Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

*Closed:* October 28, 2003, 8:30 a.m. to adjournment.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

*Contact Person:* Steven K Akiyama, Phd, Division of Intramural Research, Nat. Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, MSC A2–09, Research Triangle Park, NC 27709, (919) 541–3467, *akiyama@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS).

Dated: September 23, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–24831 Filed 9–30–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 SSS8 03 SAT Member Conflict.

*Date:* October 8, 2003.

*Time:* 3 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Paul Parakkal, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–435–1176, *parakkap@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Psychiatric Genetics.

*Date:* October 14, 2003.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Room 2208, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Camilla E. Day, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1037, *dayc@csr.nih.gov.*

*Name of Committee:* Infectious Diseases and Microbiology Integrated Review Group Bacteriology and Mycology Subcommittee 2.

*Date:* October 15–16, 2003.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

*Contact Person:* Melody Mills, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7808, Room 4190, Bethesda, MD 20892, 301–435–0903.

*Name of Committee:* Brain Disorders and Clinical Neuroscience Integrated Review Group Clinical Neuroscience and Disease Study Section.

*Date:* October 20–21, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* David M. Armstrong, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 435–1253, *armstrda@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel T-Cell Immunology.

*Date:* October 21, 2003.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Calbert A. Laing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, 301–435–1221, *laingc@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel Special R01 Grant Review.

*Date:* October 21, 2003.

*Time:* 1:30 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Raya Mandler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, (301) 402–8228.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel Trudi McFarland's Member Conflicts.

*Date:* October 21, 2003.

*Time:* 4 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Karin F. Helmers, PhD, Scientific Review Administrator, Center for Scientific Review/SNEM IRG, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, 301–435–1017, *helmersk@csr.nih.gov.*

*Name of Committee:* Brain Disorders and Clinical Neuroscience Integrated Review Group Neural Basis of Psychopathology, Addictions and Sleep Disorders Study Section.

*Date:* October 23–24, 2003.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

*Contact Person:* Jay Cinque, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, 301–435–1252, *cinquej@csr.nih.gov.*

*Name of Committee:* Risk, Prevention and Health Behavior Integrated Review Group Behavioral Medicine, Interventions and Outcomes Study Section.

*Date:* October 23–24, 2003.

*Time:* 8:30 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Baltimore Marriott Waterfront Hotel, 700 Aliceanna Street, Baltimore, MD 21202.

*Contact Person:* Lee S. Mann, MA, JD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677, *mannl@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel Genetics and Psychiatric Diseases.

*Date:* October 24, 2003.

*Time:* 12 p.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

*Contact Person:* Cheryl M. Corsaro, PhD, Genetic Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

*Name of Committee:* Oncological Sciences Integrated Review Group Tumor Cell Biology Study Section.

*Date:* October 27–28, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

*Contact Person:* Angela Y. Ng, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817), Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel B-Cell Immunology.

*Date:* October 29, 2003.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Calbert A. Laing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, 301–435–1221, *laingc@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research 93.306, 93.333, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 24, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–24819 Filed 9–30–03; 8:45am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 16, 2003, 8 a.m. to October 17, 2003, 5 p.m., River Inn Hotel, 924 25th Street, NW., Washington, DC, 20037 which was published in the **Federal Register** on September 9, 2003, 68 FR 53183–53186.

The meeting will be held at the Holiday Inn Downtown, 1155 14th Street, NW., Washington, DC 20005. The meeting dates and time remain the same. The meeting is closed to the public.

Dated: September 24, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–24820 Filed 9–30–03; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HOMELAND SECURITY

### Undersecretary for Management; Human Resource Management System Senior Review Advisory Committee

**AGENCY:** Undersecretary for Management, DHS.

**ACTION:** Notice of meeting.

**SUMMARY:** The Human Resource Management System Senior Review Advisory Committee (Committee or SRC) will meet in its second session on Monday, October 20 through Wednesday, October 22, 2003. The SRC is charged with reviewing the work of the Department of Homeland Security/Office of Personnel Management (DHS/OPM) Design Team and providing options to the Secretary of DHS and the Director of OPM for their consideration in establishing the new Human Resource Management System provided for in section 841 of the Homeland Security Act. The entire meeting will be open to the public.

**DATES:** The SRC will meet October 20–October 22, 2003, from 8:30 a.m. to 5 p.m.; at the discretion of the chair the meetings may run past 5 p.m. Notice of this meeting is published well in advance of the meeting to give sufficient notice to interested parties and stakeholders. Requests by members of the public to make oral presentations at the meeting and written statements for the SRC should reach the Designated Federal Official at DHS on or before October 13, 2003. All oral presentations and written statements will become part of the Committee record and deliberations.

**ADDRESSES:** The SRC meeting will be held at the Almas Temple, 1315 K Street NW., Washington, DC. Send written statements and requests to make an oral presentation to the SRC Designated Federal Officer (DFO) at: Department of Homeland Security, Washington, DC 20528. Submission by e-mail or by delivery services such as Fedex, UPS, etc., is preferred to ensure delivery on time. The address is: Department of Homeland Security, Attn: Under Secretary for Management/CHCO/Melissa Allen, Via: Remote Delivery Site (RDS), 245 Murray Drive, Bldg 410, Washington, DC 20528.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kay Frances Dolan, Director Human Resource Policy, DHS, and Ms. Melissa Allen, Senior Human Resource Advisor, DHS, have been designated as DFOs for the SRC. They can be reached on 202–692–4272; *KayFrances.Dolan@dhs.gov* or *Melissa.Allen@dhs.gov;* and at the address listed above.

**SUPPLEMENTARY INFORMATION:**

*Objective.* The purpose of this meeting is to (1) deliberate the options developed by the HR Design Team; (2) to hold discussions on possible modifications to those options, and (3) to determine which options should be forwarded by the Senior Review Committee for consideration by the Secretary and Director. In addition to these formal agenda items, the Committee will hear from members of the public. Due to the complexity of the topics to be reviewed and the length of the meeting, the following tentative schedule is nominally established: On Monday, October 20, and Tuesday, October 21, the SRC will hear presentations on and deliberate the options. On Tuesday, October 21, the SRC will hear from members of the public who have requested time to make oral presentations. On Wednesday, October 22, the SRC will continue its deliberations on all of the options presented and determine which options should be forwarded by the Senior Review Committee for consideration by the Secretary and Director.

*Public Presentations.* Requests to make oral presentations should reach the Designated Federal Official at DHS on or before October 13, 2003. Oral presentations will be limited to approximately 5 minutes to allow sufficient time for any questions from the Committee. Oral presentations may be supplemented by written statements; written statements submitted for the record should be limited to no more than fifteen (15) pages. If there is insufficient time to honor all requests for oral presentations, the Designated Federal Official (DFO) will seek to ensure a full range of views and opinions are heard. Members of the public who wish to file a written statement with the SRC should send it to the DFO (see addresses above); written statements should be received on or before October 15, 2003. All written submissions will become part of the Committee record and deliberations.

*Information on Services for Individuals with Disabilities.* For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, please notify the Designated Federal Official as soon as possible by phone or email.

Dated: September 26, 2003.

**Janet Hale,**

*Under Secretary for Management.*

[FR Doc. 03–24906 Filed 9–30–03; 8:45 am]

BILLING CODE 4410–10–P

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## DEPARTMENT OF HOMELAND SECURITY

### Citizenship and Immigration Services

[CIS No. 2282–03]

### Introduction of Revised Form N–600 and New Form N–600K

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** The U.S. Citizenship and Immigration Services (CIS) announces implementation of the revised Form N–600, Application for Certificate of Citizenship, and a new Form N–600K, Application for Citizenship and Issuance of Certificate under Section 322. These two forms have replaced the previous edition of Form N–600 as well as Form N–643, Application for Certificate of Citizenship on Behalf of an Adopted Child, and Form N–600/N–643 Supplement A, which have been withdrawn.

**DATES:** This notice is effective October 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Gerard Casale, Business Process and Reengineering Division, U.S. Citizenship and Immigration Services, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–0788.

**SUPPLEMENTARY INFORMATION:**

#### Background

Public Law 106–395, the Child Citizenship Act of 2000, enacted on October 30, 2000, provides that foreign-born children residing in the United States who meet certain specified requirements acquire United States citizenship automatically. This process replaced prior laws that required such children to obtain citizenship through an application for naturalization. Public Law 107–273, enacted on November 2, 2002, prescribes procedures by which children born of or adopted by a United States citizen parent and residing abroad may be naturalized under section 322 of the Immigration and Nationality Act (Act), on the application of their U.S. citizen legal guardian or grandparent. Since these laws made important changes in eligibility requirements and procedures, it became necessary to amend the application forms by which qualified children may apply for naturalization or obtain documentary proof of U.S. citizenship.

To reflect these statutory changes the CIS revised Form N–600, and developed a new Form N–600K. The revision and the new form were approved for use by the Office of Management and Budget under the Paperwork Reduction Act.

The revised Form N–600 and new Form N–600K have replaced the previous Application for Certificate of Citizenship on Behalf of an Adopted Child, Form N–643, as well as Form N–600/N–643 Supplement A, Application for Transmission of Citizenship Through a Grandparent.

Accordingly, this notice advises the public that only the current Form N–600 bearing the edition date of November 15, 2002 or later, is the correct form on which to apply for a Certificate of Citizenship. In addition, the new Form N–600K, bearing an edition date of April 30, 2003 or later, is the only correct form on which to apply for naturalization benefits for a child under section 322 of the Act.

As of October 31, 2003, only the November 15, 2002 or subsequent editions of Form N–600 will be valid for the purpose of filing an application for a certificate of citizenship, and only the April 30, 2003, or subsequent editions of Form N–600K will be valid for the purpose of filing an application for a certificate of citizenship under section 322 of the Act.

*Correction of Stated Filing Fee*

The current printed editions of Form N–600 and Form N–600K bear revision dates of November 15, 2002 and April 30, 2003, respectively. The instructions on these forms display a fee amount of $195.00 for a Form N–600 or Form N–600K filed on behalf of anyone except an adopted child, and $155.00 if filed on behalf of an adopted child. Those amounts were based on a fee adjustment rulemaking pending at the time the revisions were made. Clearance of the anticipated fee adjustment rulemaking has been delayed and, as a result, until further notice, CIS has adjusted the filing fees to be as follows. For a Form N–600 or Form N–600K filed on behalf of anyone except an adopted child, the correct fee is $185.00. For a Form N–600 or Form N–600K filed on behalf of an adopted child, the correct fee is $145.00.

*Grace Period for Filing Previous Editions of Applications for a Certificate of Citizenship*

Form N–600 applications bearing the earlier edition date that are mailed, postmarked or otherwise filed on or before October 31, 2003 will be accepted for the purpose of establishing a filing date for a certificate of citizenship. However, any applicants who are subject to the amended eligibility requirements of the current laws may be required to complete and submit either additional information or a valid current Form N–600 or N–600K without additional fee, as appropriate, in order to complete the processing of their application. After October 31, 2003 no Form N–600 application bearing an edition date earlier than November 15, 2002, will be accepted for processing by CIS.

Form N–643 applications that are mailed, postmarked or otherwise filed on or before October 31, 2003 will be accepted for the purpose of establishing a filing date for a certificate, if the applicant continues to be eligible under the current law. Any applicants who are subject to the amended eligibility requirements of the current laws may be required to complete and submit either additional information or a valid Form N–600 or N–600K without additional fee, as appropriate, in order to complete the processing of their application. After October 31, 2003 no Form N–643 will be accepted for filing at CIS Field Offices.

Beginning October 31, 2003, any outdated editions of the Form N–600 application and any Form N–643 received by the CIS will be returned to the applicant with instructions to submit a current application form.

*How Can Applicants Obtain the Current Edition of Form N–600 or Form N–600K?*

Applicants can obtain copies of the current Form N–600 or N–600K by calling the CIS Forms Line at 1–800–870–3676. The current edition of Form N–600 or N–600K also can be viewed and printed electronically from the CIS Web site at *http://www.bcis.gov.*

Dated: September 15, 2003.

**Eduardo Aguirre,**

*Director, U.S. Citizenship and Immigration Services.*

[FR Doc. 03–24803 Filed 9–30–03; 8:45 am]

**BILLING CODE 4410–10–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

### Fee for Customs Services at User Fee Airports

**AGENCY:** Bureau of Customs and Border Protection, DHS.

**ACTION:** General notice.

**SUMMARY:** This document advises the public of an increase in the fees charged user fee airports by the Bureau of Customs and Border Protection (CBP) for providing customs services at these designated facilities. These fees are based on actual costs incurred by CBP for equipment, training, and one CBP inspector on a full-time basis, and, thus, merely represent reimbursement to CBP for services rendered. The fees to be increased are the initial fee charged for a user fee airport's first year after it signs a Memorandum of Agreement with CBP to become a user fee airport, and the annual fee thereafter charged user fee airports.

**EFFECTIVE DATE:** The new fees will be effective October 1, 2003, and will be reflected in quarterly, user fee airport billings issued on or after that date.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Sargent, Office of Finance (202) 927–0609.

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 236 of the Trade and Tariff Act of 1984 (Pub. L. 98–573, 98 Stat. 2992) (codified at 19 U.S.C. 58b), as amended, authorizes the provision of customs services and establishment of a fee for the use of such services at certain specified airports and at any other airport, seaport, or other facility designated pursuant to specified criteria. (The list of user fee airports is found at § 122.15 of the Customs Regulations (19 CFR 122.15)). The fee that is charged is an amount equal to the expenses incurred in providing the customs services at the designated facility, which includes the salary and expenses of individuals employed by CBP, and any necessary support costs to provide the customs services. The fees being raised are the initial fee charged for a user fee airport's first year after it signs a Memorandum of Agreement with CBP to become a user fee airport (set at $129,125 for FY 2003), and the annual fee, thereafter, charged user fee airports (set at $115,400 for FY 2003).

The user fees for user fee airports are typically set forth in Memorandum of Agreements between the user fee facility and CBP. While the amounts of these fees are agreed to be at flat rates, they are adjustable, as costs and circumstances change.

The last notice concerning fees charged user fee airports was published on September 12, 2002, in the **Federal Register** (67 FR 57866).

#### Adjustment of User Fee Airport Fees

As of July 24, 2003, CBP has determined that in order for the user fee to fully reimburse CBP for services provided, the initial fee must be increased from $129,125 to $140,874 and that the recurring annual fee subsequently charged must be increased from $115,400 to $123,438. The new fees will be effective October 1, 2003, and will be reflected in quarterly, user fee airport billings issued on or after that date.

Dated: September 26, 2003.

**John E. Eichelberger,**

*Assistant Commissioner, Office of Finance.*

[FR Doc. 03–24949 Filed 9–30–03; 8:45 am]

**BILLING CODE 4820–02–P**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4815–N–76]**

### Notice of Submission of Proposed Information Collection to OMB: Commitment to Guarantee Mortgage-Backed Securities

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Information is provided by Ginnie Mae's issuers to apply for commitment authority to guarantee mortgage-backed securities.

**DATES:** *Comments Due Date:* October 31, 2003.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2503–0001) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at *http://mf.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

*Title of Proposal:* Commitment to Guarantee Mortgage-Backed Securities.

*OMB Approval Number:* 2503–0001.

*Form Numbers:* HUD–11704.

*Description of the Need for the Information and Its Proposed Use:* Information is provided by Ginnie Mae's issuers to apply for commitment authority to guarantee mortgage-backed securities.

*Respondents:* Business or other for-profit.

*Frequency of Submission:* Quarterly.

*Reporting Burden:* Number of Respondents 300; Average responses per respondent 4; Total annual responses 1,200; Average burden per response 0.25 hrs.

*Total Estimated Burden Hours:* 300.

*Status:* Extension of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 24, 2003.

**Wayne Eddins,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 03–24810 Filed 9–30–03; 8:45 am]

**BILLING CODE 4210–72–P**

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

### Information Collection Renewal To Be Submitted to the Office of Management and Budget for Approval Under the Paperwork Reduction Act (PRA); Federal Aid Grant Application Booklet

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** The U.S. Fish and Wildlife Service (We) will submit the collection of information described below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995. You may obtain copies of the collection requirement, related forms, or explanatory material by contacting the person listed below under **FOR FURTHER INFORMATION CONTACT.**

**DATES:** Interested parties must submit comments on or before December 1, 2003.

**ADDRESSES:** Interested parties should send comments on the information collection by mail to Information Collection Officer, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203; by fax to (703) 358–2269; or by e-mail to *Anissa Craghead@fws.gov.*

**FOR FURTHER INFORMATION CONTACT:** Kim Galvan, voice (703) 358–2420, fax (703) 358–1837; or e-mail *kgalvan@fws.gov.*

**SUPPLEMENTARY INFORMATION:** OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

We will submit a request to OMB to renew its approval of the collection of information associated with the Federal Aid Grant Application Booklet. The Federal Aid Grant Application Booklet offers the public information on how to apply for certain Federal grants. This information collection is authorized by the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777l), Federal Aid in Wildlife Restoration Act (16 U.S.C. 669–669i), Partnerships for Wildlife Act (16 U.S.C. 3741), and the Coastal Wetlands Planning, Protection and Restoration Act (16 U.S.C. 3954). This information collection covers the following types of grant programs: Sport Fish Restoration, Wildlife Restoration, Coastal Wetland Restoration, Clean Vessel, Boating Infrastructure, and Partnerships for Wildlife and Endangered Species. We collect information relevant to eligibility, substantiality, relative value, and budget information from applicants in order to make awards of grants under these programs. We also collect financial and performance information to track costs and accomplishments of these grant programs. We need the information collected to support the grant work of our Division of Federal Assistance. In this renewal request, we plan to make minimal changes to the booklet to make it easier for the public to understand and use.

The current OMB control number for this information collection is 1018–0109, and the OMB approval for this collection expires on January 31, 2004. We are requesting a three-year term of approval for this information collection activity.

*Title:* Federal Aid Grant Application Booklet.

*OMB Control Number:* 1018–0109.

*Frequency of Collection:* Annually.

*Description of Respondents:* The 50 U.S. States, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Indian Tribal Governments, and not-for-profit institutions.

*Annual Burden Estimates:*

| Name | Completion time per form | Total annual number of responses | Total annual burden hours |
|---|---|---|---|
| Initial Proposal | 80 hours | 4,000 | 320,000 |
| Amendment | 2 hours | 1,750 | 3,500 |
| Totals | .................... | 5,750 | 323,500 |

We invite comments on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: September 17, 2003.

**Anissa Craghead,**

*Service Information Collection Officer.*

[FR Doc. 03–24798 Filed 9–30–03; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Receipt of Applications for Endangered Species Permits

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications for permits.

**SUMMARY:** The public is invited to comment on the following applications to conduct certain activities with endangered species. We provide this notice pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

**DATES:** We must receive written data or comments on these applications at the address given below, by October 31, 2003.

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist).

**FOR FURTHER INFORMATION CONTACT:** Victoria Davis, telephone (404) 679–4176; facsimile (404) 679–7081.

**SUPPLEMENTARY INFORMATION:** The public is invited to comment on the following applications for permits to conduct certain activities with endangered species. If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Regional Office (*see* **ADDRESSES** section) or via electronic mail (e-mail) to *"victoria_davis@fws.gov"*. Please submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation from the Service that we have received your e-mail message, contact us directly at the telephone number listed above (*see* **FOR FURTHER INFORMATION CONTACT** section). Finally, you may hand deliver comments to the Service office listed above (*see* **ADDRESSES** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**TE077175–0**

*Applicant:* Troy L. Best, Auburn University, Auburn, Alabama.

The applicant requests authorization to take (survey, capture, examine, and release) the gray bat (*Myotis grisescens*) while determining the size of the population and the age and sexual composition of the colony throughout the annual activity period. The activities would take place in Blowing Spring Cave, Lauderdale County, Alabama.

**TE077258–0**

*Applicant:* University of Florida, Dr. Frank Mazzotti, Fort Lauderdale Florida

The applicant requests authorization to take (capture, radio tag, examine, tag, measure, and monitor and disturb nest) the American crocodile (*Crocodylus acutus*) while conducting population surveys and monitoring. The proposed activities would take place throughout the state of Florida.

**TE077267–0**

*Applicant:* State of Georgia, Georgia Department of Transportation, William Bouthillier, Atlanta, Georgia

The applicant requests authorization to take (capture, identify, and release) all federally listed freshwater fishes and mollusks, identified in 50 CFR 17.11 in the State of Georgia along with the Eastern indigo snake (*Drymarchon corais couperi*). The proposed activities would take place throughout the state of Georgia while conducting surveys for transportation projects.

**TE077277–0**

*Applicant:* Carlos E. Diez and Robert P. Van Dam, Puerto Rico Department of Natural and Environmental Resources, San Juan, Puerto Rico

The applicant requests authorization to take (capture, collect, relocate, and euthanize) Hawksbill sea turtles (*Eretmochelys imbricata*), for the purposes of conducting genetic studies on 200 eggs and 420 hatchlings to determine the sex ratios of the hatchlings that are being produced on Mona Island. The proposed study consists of three phases: (1) Determination of the pivotal temperature (the incubation temperature at which both sexes are produced in equal proportion); (2) a methodological validation; and (3) the estimation of the sex ratio in hatchlings incubated on Mona Island's beaches. The proposed activities will take place on Mona Island, Puerto Rico.

Dated: September 19, 2003.

**Sam D. Hamilton,**

*Regional Director.*

[FR Doc. 03–24837 Filed 9–30–03; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Availability of the Recovery Plan for the Endangered Fat Threeridge (*Amblema neislerii*), Shinyrayed Pocketbook (*Lampsilis subangulata*), Gulf Moccasinshell (*Medionidus penicillatus*), Ochlockonee Moccasinshell (*Medionidus simpsonianus*), Oval Pigtoe (*Pleurobema pyriforme*) and the Threatened Chipola Slabshell (*Elliptio chipolaensis*), and Purple Bankclimber (*Elliptoideus sloatianus*)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** We, the Fish and Wildlife Service (Service), announce the availability of the final recovery plan for seven freshwater mussels—the endangered fat threeridge (*Amblema neislerii*), shinyrayed pocketbook (*Lampsilis subangulata*), Gulf moccasinshell (*Medionidus penicillatus*), Ochlockonee moccasinshell (*Medionidus simpsonianus*), oval pigtoe (*Pleurobema pyriforme*) and the threatened Chipola slabshell (*Elliptio chipolaensis*), and purple bankclimber (*Elliptoideus sloatianus*). These species are endemic to several river basins (Apalachicola-Chattahoochee-Flint, Ochlockonee, Suwannee, and Econfina Creek) in Alabama, Florida, and Georgia. The recovery plan includes specific recovery objectives and criteria to be met in order to downlist these mussels to threatened status or delist them under the Endangered Species Act of 1973, as amended.

**ADDRESSES:** Copies of this recovery plan are available by request from Jerry Ziewitz, U.S. Fish and Wildlife Service, Panama City Field Office, 1601 Balboa Avenue, Panama City, Florida 32405 (Telephone 850/769–0552, Ext. 223). Recovery plans approved by the Service are also available on the Internet at: *http://endangered.fws.gov/recovery/Index.html#plans*, or may also be obtained from the Fish and Wildlife Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland, 20814 (Telephone (301) 492–6403 or (800) 582–3421). The fee for the plan varies depending on the number of pages in the plan.

**FOR FURTHER INFORMATION CONTACT:** Jerry Ziewitz, at the address and telephone number given above.

**SUPPLEMENTARY INFORMATION:**

### Background

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystem is a primary goal of our endangered species program. To help guide the recovery effort, we are working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting them, and estimate time and cost for implementing necessary recovery measures.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires us to provide a public notice and an opportunity for public review and comment during recovery plan development. We developed a technical/agency draft of this recovery plan and released it for public review on September 16, 1999 (64 FR 50301). We made substantial revisions to the 1999 draft based on comments received and recently obtained biological information. Because of this, we provided an additional opportunity for stakeholders to comment by issuing an updated draft plan. We published a notice of availability of the agency draft recovery plan for these seven mussels in the **Federal Register** on July 17, 2003 (68 FR 42419). A public comment period was opened with the notice, closing on August 18, 2003. Comments and information submitted by peer reviewers and other interested parties have been considered in preparation of the final recovery plan and, where appropriate, incorporated. We and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

We listed these seven mussels, five as endangered and two as threatened species under the Act, on March 16, 1998 (63 FR 12664). The seven freshwater mussels are restricted to a few river basins (Apalachicola-Chattahoochee-Flint, Ochlockonee, Suwannee, and Econfina Creek) in Alabama, Florida, and Georgia. They were once distributed across hundreds of stream miles in these basins and now survive in a few relatively small, isolated populations scattered throughout their former range.

Habitat alteration, including impoundments, channelization, gravel mining, contaminants, sedimentation, and stream-flow depletion, is likely the principal cause of these species' decline in range and abundance. Genetic factors associated with increasingly small and isolated populations and the introduction of alien species may present additional obstacles to their recovery.

The objective of this recovery plan is to provide a framework for the recovery of these seven species so that protection under the Act is no longer necessary. As recovery criteria are met, the status of the seven species will be reviewed and they will be considered for reclassification to threatened status or for removal from the *Federal List of Endangered and Threatened Wildlife and Plants* (50 CFR part 17).

**Authority:** The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: September 5, 2003.

**Noreen Walsh,**

*Acting Regional Director, Southeast Region, U.S. Fish and Wildlife Service.*

[FR Doc. 03–24838 Filed 9–30–03; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## Concessions Contracts and Permits

**AGENCY:** National Park Service, Interior.

**ACTION:** Public notice.

**SUMMARY:** Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contract for a period of 3 years.

**EFFECTIVE DATE:** April 1, 2004.

**SUPPLEMENTARY INFORMATION:** The listed concession authorization will expire by its terms on March 31, 2004. The National Park Service has determined that the proposed extension is necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. This extension will allow the National Park Service to complete and issue a prospectus leading to the competitive selection of a concessioner for a new long-term concession contract covering this operation.

| Concessioner ID No. | Concessioner name | Park |
|---|---|---|
| STLI001–89 | Circle Line-Statue of Liberty Ferry Inc. | Statue of Liberty National Monument/ Ellis Island. |

**FOR FURTHER INFORMATION CONTACT:** Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: August 29, 2003.

**Richard G. Ring,**

*Associate Director, Administration, Business Practices and Workforce Development.*

[FR Doc. 03–24877 Filed 9–30–03; 8:45 am]

**BILLING CODE 4312–53–M**

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## Juan Bautista de Anza National Historic Trail Advisory Commission; Notice of Meeting

**SUMMARY:** Notice is given in accordance with the Federal Advisory Committee Act that the second meeting of the Juan Bautista de Anza National Historic Trail Advisory Commission will be held at the following location, dates, and times.

**DATES/TIMES:** Saturday, November 1, 8:30 a.m. to 4:30 p.m. and Sunday, November 2, 8:30 a.m. to 12 p.m. 2003.

**ADDRESSES:** The meeting will be held in the meeting room at Palm Canyon Resort, 221 Palm Canyon Drive Borrego Springs, CA 92004. A field trip to trail sites within Anza-Borrego Desert State Park will occur on the afternoon of November 1. The public is welcome, but transportation will only be provided to commission members.

**FOR FURTHER INFORMATION AND COPIES OF MEETING MINUTES CONTACT:** Meredith Kaplan, Juan Bautista de Anza National Historic Trail, 1111 Jackson Street, Suite 700, Oakland, California 94607, at 510–817–1438, or *meredith_kaplan@nps.gov.*

**SUPPLEMENTARY INFORMATION:** The Advisory Commission was established in accordance with the National Trails System Act (915 U.S.C. 1241 *et seq.*), as amended by Public Law 191–365 to consult with the Secretary of Interior on planning and other matters relating to the trail.

### Agenda

1. Welcome.
2. Review trail status.
3. Develop promotional package.
4. Approve Long Range Interpretive Plan and identify funding sources.
5. Review list of trail segments with list of constituencies and groups.
6. Discuss attracting and keeping volunteers.

The meeting is open to the public and opportunity will be provided for public comments at specific times during the meeting and prior to closing the meeting. The meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission.

Dated: September 2, 2003.

**Patricia L. Neubacher,**

*Acting Regional Director, Pacific West Region.*

[FR Doc. 03–24876 Filed 9–30–03; 8:45 am]

**BILLING CODE 4312–JA–M**

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## INTERNATIONAL TRADE COMMISSION

## Sanction for Dissemination of "ITC Questionnaire Tip Sheet"

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Sanction for dissemination of "ITC Questionnaire Tip Sheet".

**SUMMARY:** Notice is hereby given of the sanction imposed by the Commission for the dissemination of a document entitled "ITC Questionnaire Tip Sheet" by Sanford B. Ring, Esq. of the law firm of Dykema Gossett to a client and a non-client in Steel Consuming Industries: Competitive Conditions With Regard to Steel Safeguard Measures, Inv. No. 332–452. The Commission found that there was good cause to sanction Ring, pursuant to 19 CFR 201.15(a), because the tip sheet went beyond the boundaries of appropriate guidance for clients and non-clients regarding their responses to Commission questionnaires. The Commission believes it is important to maintain the integrity of its investigations and to ensure that questionnaire responses in a fact-finding Commission investigation will be accurate and not inappropriately influenced by counsel seeking to support his or her view of the facts in an investigation.

**FOR FURTHER INFORMATION CONTACT:** Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202–205–3088. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the

Commission's TDD terminal at 202–205–1810. General information concerning the Commission can also be obtained by accessing its Internet server (*http://www.usitc.gov*).

**SUPPLEMENTARY INFORMATION:** In connection with the Steel Consuming Industries investigation, Mr. Ring drafted and transmitted an "ITC Questionnaire Tip Sheet" to his client, the Motor and Equipment Manufacturers Association ("MEMA"). Ring also transmitted the tip sheet to a non-client, the National Electrical Manufacturers Association ("NEMA"). Both MEMA and NEMA acknowledge that they electronically transmitted the tip sheet to a group of firms and associations. The tip sheet is a document that aggressively and inappropriately coaches questionnaire respondents on how to complete the questionnaires in the Steel Consuming Industries investigation. We note at the outset that some information the Commission considered in this matter cannot be discussed as it has been given confidential treatment, as requested by Mr. Ring.

The Commission has found the tip sheet contains inappropriate coaching of questionnaire respondents in fact-finding investigations, such as a section 332 investigation, because it is worded in a manner that encourages misleading responses to the questionnaires. The first sentence of the tip sheet states that "the overriding goal is to tell a compelling story." The second paragraph states that "[w]e want to demonstrate that the adverse impact of the tariffs on steel users has been great, and that it will be *even worse going forward*. It is important to bear this point in mind as you answer the questions—your projections for the future should be even more bleak than what has happened to date." (Emphasis in the original). The tip sheet encourages the respondent to use estimates "if information is not readily available from your records in exactly the form requested" and to resolve estimates "in favor of a more compelling story." In addition, regarding projections in the future, the tip sheet encourages the respondent to be "creative and "extrapolative."" There is no statement in the tip sheet that reminds the respondents that their responses must be true and accurate other than to suggest that they read the ITC instruction booklets prior to completing the questionnaires.

The Commission finds the tip sheet to be an entirely inappropriate form of coaching questionnaire respondents in a fact-finding section 332 investigation.

Sanford B. Ring is reprimanded for drafting the tip sheet and disseminating it to a client and non-client in the *Steel Consuming Industries* investigation.

The authority for this action is conferred by §201.15(a) of the Commission's rules of practice and procedure (19 CFR 201.15(a)).

Issued: September 24, 2003.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary.*

[FR Doc. 03–24805 Filed 9–30–03; 8:45 am]

BILLING CODE 7020–02–P

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## DEPARTMENT OF JUSTICE

## Bureau of Alcohol, Tobacco, Firearms, and Explosives

## Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-day notice of information collection under review: National Tracing Center Trace Request and NTC Obliterated Serial Number Trace Request.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 150, page 46224 on August 5, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 31, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

### Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* National Tracing Center Trace Request and NTC Obliterated Serial Number Trace Request.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 3312.1 and ATF F 3312.2. Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal Government. Other: State, Local, or Tribal Government. Abstract: The forms are used by the Federal, State, Local, and International law enforcement Community to request that ATF trace firearms used, or suspected to have been used in crimes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 112,123 respondents, who will complete either form within approximately 6 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 22,425 total burden hours associated with this collection.

*If additional information is required contact:* Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management

Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: September 25, 2003.

**Brenda E. Dyer,**

*Deputy Clearance Officer, Department of Justice.*

[FR Doc. 03–24816 Filed 9–30–03; 8:45 am]

BILLING CODE 4410–FY–P

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## DEPARTMENT OF JUSTICE

## Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—AAF Association, Inc.

Notice is hereby given that, on September 11, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), AAF Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Agnostic Media, Seattle, WA; Automatic Duck, Inc., Snohomish, WA; Korean Broadcasting System, Seoul, REPUBLIC OF KOREA; Preview Multimedia, Hannover, GERMANY; Studio Audio & Video Ltd. (SADiE), Ely, UNITED KINGDOM; and The Walt Disney Company, Burbank, CA have been added as parties to this venture. Also, AISTM, Ampfing, GERMANY; and NOB, Hilversum, THE NETHERLANDS have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activities of the group research project. Membership in this group research project remains open, and AAF Association, Inc. intends to file additional written notification disclosing all changes in membership.

On March 28, 2000, AAF Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on June 16, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 16, 2003 (68 FR 42131).

**Dorothy B. Fountain,**

*Director Deputy of Operations, Antitrust Division.*

[FR Doc. 03–24916 Filed 9–30–03; 8:45 am]

BILLING CODE 4410–11–M

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## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day Notice of Information Collection Under Review: National Clandestine Laboratory Seizure Report.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until December 1, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Clark R. Fleming, Field Division Counsel, El Paso Intelligence Center, 11339 SSG Sims Blvd., El Paso, TX 79908.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* National Clandestine Laboratory Seizure Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: EPIC Form 143, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and Local Law Enforcement Agencies. Other: None. Records in this system are used to provide clandestine laboratory seizure information for the El Paso Intelligence Center, Drug Enforcement Administration, and other law enforcement agencies, in the discharge of their law enforcement duties and responsibilities. It is a criminal offense under Title 21, United States Code, to illegally manufacture controlled substances and their counterfeits. 21 U.S.C. 873(a) authorizes the Attorney General to, among other things, "arrange for the exchange of information between governmental officials concerning the use and abuse of controlled substances". This form provides a consistent method by which state and local authorities can report incidents relating to the seizure of clandestine laboratories for illegal drug manufacturing or of materials evidencing clandestine laboratory operations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 10,000 respondents will complete the information within 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 10,000 total annual burden hours associated with this collection.

*If additional information is required contact:* Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: September 25, 2003.

**Brenda E. Dyer,**

*Deputy Clearance Officer, Department of Justice.*

[FR Doc. 03–24815 Filed 9–30–03; 8:45 am]

BILLING CODE 4410–09–P

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## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

[Docket No. GE2003–1, GE2003–2]

### Draft Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Retail Grocery Stores; Draft Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Poultry Processing

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice of rescheduling and postponement of public meetings.

**SUMMARY:** OSHA is rescheduling a public stakeholder meeting on the draft Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Retail Grocery Stores (draft grocery guidelines) for October 2, 2003. OSHA is also postponing the public stakeholder meeting on the draft Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Poultry Processing (draft poultry processing guidelines), which had been scheduled for October 2, 2003, and will reschedule it in the near future.

**DATES:** OSHA will hold a half-day public stakeholder meeting on its draft grocery guidelines from 8:30 a.m. to 12:30 p.m., Thursday, October 2, 2003.

**ADDRESSES:** *Stakeholder meeting:* The public stakeholder meeting on the draft grocery guidelines will be held at the Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001; telephone (202) 628–2100.

*Obtaining Copies of the Draft Guidelines:* You can download the draft grocery and poultry guidelines from OSHA's Web page on the Internet at *http://www.osha.gov.* Printed copies of the draft grocery and poultry guidelines are available from OSHA, Office of Publications, U.S. Department of Labor, Room N–3101, 200 Constitution Avenue, NW., Washington, DC 20210, or by telephone at (800) 321–OSHA (6742). You also may fax your request for copies of the draft guidelines to (202) 693–2498.

**FOR FURTHER INFORMATION CONTACT:** Steven F. Witt, OSHA, Directorate of Standards and Guidance, U.S. Department of Labor, Room N–3718, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1950.

**SUPPLEMENTARY INFORMATION:**

**Draft Grocery Guidelines**

OSHA will hold a public stakeholder meeting on its draft grocery guidelines from 8:30 a.m. to 12:30 p.m., Thursday, October 2, 2003, at the Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001. The stakeholder meeting, originally set for October 18, 2003, had to be rescheduled because of the emergency closing of Federal government offices due to Hurricane Isabel.

**Draft Poultry Processing Guidelines**

OSHA is postponing the October 2, 2003, public stakeholder meeting on its draft poultry processing guidelines. OSHA will announce the time and location of the rescheduled meeting in the **Federal Register** in the near future.

This notice was prepared under the direction of John L. Henshaw, Assistant Secretary for Occupational Safety and Health. It is issued under sections 4 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 657).

Issued at Washington, DC, this 26 day of September, 2003.

**John L. Henshaw,**

*Assistant Secretary of Labor.*

[FR Doc. 03–24931 Filed 9–30–03; 8:45 am]

BILLING CODE 4510–26–M

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03–124]

### NASA Advisory Council, Biological and Physical Research Advisory Committee, Commercial Advisory Subcommittee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Meeting.

**SUMMARY:** The National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Biological and Physical Research Advisory Committee, Commercial Advisory Subcommittee (CAS).

**DATES:** Wednesday, October 22, 2003, 9 a.m. to 5 p.m.

**ADDRESSES:** NASA Headquarters, 300 E Street, SW., Room 8Q43, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Ms. Candace Livingston, Code US, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0697.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. Advance notice of attendance to the Executive Secretary is requested. The agenda for the meeting will include the following topics:

- Introduction/Remarks
- Report from the Space Station Utilization Advisory Subcommittee
- Decision Rules Status
- Legislative Issues/Research Re-planning Activities
- Independent Review Result
- SPD Development Plan
- Subcommittee Structure/Terms of Reference
- Subcommittee Discussion
- Wrap-Up/Recommendations

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: full name; gender; date/place of birth; citizenship; visa/greencard information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting Ms. Kim Butler via email at *kbutler@hq.nasa.gov* or by telephone at (202) 358–2560. Attendees will be escorted at all times. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

**June W. Edwards,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 03–24859 Filed 9–30–03; 8:45 am]

BILLING CODE 7510–01–U

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## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice.

**SUMMARY:** NARA is giving public notice that the agency proposes to request extension of a currently approved information collection, NA Form 3035, Applicant Background Survey, to obtain source of recruitment, ethnicity, race,

and disability data on job applicants. The information is used to determine if the recruitment is effectively reaching all aspects of the relevant labor pool. The information is also used to determine if there are proportionate acceptance rates at various stages of the recruitment process. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be received on or before December 1, 2003 to be assured of consideration.

**ADDRESSES:** Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–837–3213; or electronically mailed to *tamee.fechhelm@nara.gov*.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–837–3213.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways, including the use of information technology, to minimize the burden of the collection of information on respondents. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

*Title:* Applicant Background Survey.

*OMB number:* 3095–0045.

*Agency form number:* NA Form 3035.

*Type of review:* Regular.

*Affected public:* Applicants for NARA jobs.

*Estimated number of respondents:* 2,593.

*Estimated time per response:* 5 minutes.

*Frequency of response:* On occasion (when applicant wishes to apply for a job at NARA).

*Estimated total annual burden hours:* 216 hours.

*Abstract:* A diverse workforce enhances our agency by ensuring that we can draw on the widest possible variety of viewpoints and experiences to improve the planning and actions we undertake to achieve our mission and goals. By promoting and valuing workforce diversity, we create a work setting where these varied experiences contribute to a more efficient and dynamic organization and employees can develop to their full potential. To achieve these ends and in accordance with our Strategic Plan, we constantly work to improve our performance in hiring and promoting people in underrepresented groups.

This form is used to obtain source of recruitment, ethnicity, race, and disability data on job applicants to determine if the recruitment is effectively reaching all aspects of the relevant labor pool and to determine if there are proportionate acceptance rates at various stages of the recruitment process. Use of this form allows us to objectively determine the barriers to recruitment and selection that affect underrepresented groups. There is no source of this information other than directly from applicants.

Response is optional. The information is used for evaluating recruitment only, and plays no part in the selection of who is hired. The information is not provided to selecting officials and plays no part in the selection of individuals. Instead, it is used in summary form to determine trends over many selections within a given occupation or organizational area. The information is treated in a very confidential manner. No information from the form is entered into the personnel file of the individual selected and all the forms are destroyed after the conclusion of the selection process.

The format of the questions on ethnicity and race are compliant with OMB requirements and comparable to those used by other Federal agencies. This form is a further simplification and update of a similar OPM applicant background survey used by NARA for many years.

Dated: September 17, 2003.

**L. Reynolds Cahoon,**

*Assistant Archivist for Human Resources and Information Services.*

[FR Doc. 03–24800 Filed 9–30–03; 8:45 am]

**BILLING CODE 7515–01–P**

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## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice.

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**SUMMARY:** NARA is giving public notice that the agency proposes to request use of the Contractor/Agency Reviewer Identification Badge Authorization, NA Form 6000B, that will be used by employees of NARA on-site contractors and agency reviewers in order to obtain a NARA identification badge and proximity card. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be received on or before December 1, 2003 to be assured of consideration.

**ADDRESSES:** Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–837–3213; or electronically mailed to *tamee.fechhelm@nara.gov*.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–837–3213.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways, including the use of information technology, to minimize the burden of the collection of information on respondents. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

*Title:* Contractor/Agency Reviewer Identification Badge Authorization.

*OMB number:* 3095–NEW.

*Agency form number:* NA Form 6000B.

*Type of review:* Regular.

*Affected public:* Business or other for-profit, Federal government.

*Estimated number of respondents:* 600.

*Estimated time per response:* 3 minutes.

*Frequency of response:* On occasion.

*Estimated total annual burden hours:* 30 hours.

*Abstract:* The collection of information is necessary as a security measure to protect employees, information, and property in NARA facilities, and to facilitate the issuance of badges and cards. Use of the form is authorized by 44 U.S.C 2104. At the NARA College Park facility, individuals receive a proximity card with the identification badge that is electronically coded to permit access to secure zones ranging from a general nominal level to stricter access levels for classified records zones. The proximity card system is part of the security management system that meets the accreditation standards of the Government intelligence agencies for storage of classified information and serves to comply with E.O. 12958.

Dated: September 17, 2003.

**L. Reynolds Cahoon,**

*Assistant Archivist for Human Resources and Information Services.*

[FR Doc. 03–24801 Filed 9–30–03; 8:45 am]

BILLING CODE 7515–01–P

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## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** Requests for copies must be received in writing on or before November 17, 2003. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

**ADDRESSES:** To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–837–3698 or by E-mail to *records.mgt@nara.gov*. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

**FOR FURTHER INFORMATION CONTACT:** Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov*.

**SUPPLEMENTARY INFORMATION:** Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

**Schedules Pending**

1. Department of Housing and Urban Development, Office of Multifamily Housing Assistance Restructuring (N1–207–03–1, 34 items, 29 temporary items). Records relating to restructuring mortgages supported by public assistance, including such records as chronological files, working papers, asset files, grant files, contract files, contract appeal files, voucher files, a data base used for tracking properties and transactions, and web site copies of forms, publications, and other documents. Also included are electronic copies of records created using electronic mail and word processing. Recordkeeping copies of such records as program subject files, policy files, publications, reports and studies, and training records are proposed for permanent retention.

2. Department of Justice, Civil Division (N1–60–03–4, 4 items, 4 temporary items). Lists of approved annuity brokers and declarations submitted by annuity brokers seeking

approval to administer structured settlements entered into by the U.S. Government. Also included are electronic copies of records created using electronic mail and word processing.

3. Department of Justice, Drug Enforcement Administration (N1–170–03–8, 10 items, 10 temporary items). System inputs, outputs, master files, and documentation associated with the Chemical Transaction Analysis System, which is used to monitor the distribution of specified chemicals and identify suspicious transactions and relationships between chemical distributors. Also included are electronic copies of records created using electronic mail and word processing.

4. Department of the Treasury, Office of Sallie Mae Oversight (N1–56–03–8, 6 items, 3 temporary items). Work papers and electronic copies of records created using electronic mail and word processing relating to agency oversight of the Student Loan Marketing Association. Proposed for permanent retention are recordkeeping copies of examination reports, correspondence, and briefing materials.

5. Department of the Treasury, Financial Management Service (N1–425–03–6, 8 items, 8 temporary items). Records of the Financial Accounting and Services Division, including such records as courtesy disbursement files, inputs, outputs, system documentation, and master files of the Courtesy Disbursement Database, and out of balance correspondence files. Also included are electronic copies of records created using electronic mail and word processing.

6. Department of the Treasury, U.S. Mint (N1–104–03–8, 6 items, 6 temporary items). Records relating to the employee advocate program, including case files, working papers, and electronic copies of records created using electronic mail and word processing.

7. Department of Veterans Affairs, Veterans Health Administration (N1–15–03–1, 9 items, 9 temporary items). Electronic and paper records relating to health benefits and reimbursements provided to certain veterans and dependents of veterans. Included are such records as applications, requests, certifications, supporting documentation, payment information, correspondence, appeals documents, health care treatment documents, and claims for medical services. Master files, electronic indexes, system backups, internal reports, and system documentation are included as are electronic copies of records created using electronic mail and word processing.

8. Federal Energy Regulatory Commission, Agency-wide (N1–138–03–1, 5 items, 5 temporary items). Substantive and non-substantive working papers, including electronic copies of documents created using electronic mail and word processing.

9. National Aeronautics and Space Administration, Agency-wide (N1–255–03–2, 3 items, 2 temporary items). Copies and printouts of records taken to or reproduced on board the International Space Station. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such records as daily work plans, procedural checklists and updates, payload and systems operational data, malfunction and reference data, and other data concerning the operations of the Station.

10. National Archives and Records Administration, Office of Human Resources and Information Services (N1–64–03–8, 4 items, 4 temporary items). Requests for services and a tracking database relating to the Computer/Electronic Accommodations Program, which provides equipment and services for employees in accordance with Section 508 of the Rehabilitation Act of 1973. Also included are electronic copies of records created using electronic mail and word processing.

11. Nuclear Regulatory Commission, Office of Nuclear Security and Incident Response (N1–431–03–1, 105 items, 90 temporary items). Electronic records in the Commission's Agencywide Document Access and Management System (ADAMS) accumulated by the Office of Nuclear Security and Incident Response, including electronic copies of records created using office automation tools and records used to create ADAMS portable document format files. Records proposed for disposal include electronic recordkeeping copies of records related to committees and conferences for which the agency is not the sponsor, program correspondence accumulated below the office director level, safeguard status reports, and systems security records. Paper copies of these records were previously approved for disposal. Series proposed for permanent retention include recordkeeping copies of such files as significant committee and conference records, emergency planning records, program correspondence accumulated at the office director level, international safeguards program files, and security policy files.

Dated: September 24, 2003.

**Michael J. Kurtz,**

*Assistant Archivist for Record Services—Washington, DC.*

[FR Doc. 03–24802 Filed 9–30–03; 8:45 am]

BILLING CODE 7515–01–P

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## NUCLEAR REGULATORY COMMISSION

### Licensing Support System Advisory Review Panel; Notice of Amendment of Charter

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of amendment of the Charter of the Advisory committee on the medical uses of isotopes.

**SUMMARY:** The ACMUI provides advice to the NRC on policy and technical issues that arise in regulating the medical use of byproduct material for diagnosis and therapy. Responsibilities include providing guidance and comments on current and proposed NRC regulations and regulatory guidance concerning medical use; evaluating certain non-routine uses of byproduct material for medical use; and evaluating training and experience of proposed authorized users. The members are involved in preliminary discussions of major issues in determining the need for changes in NRC policy and regulation to ensure the continued safe use of byproduct material. Each member provides technical assistance in his/her specific area(s) of expertise, particularly with respect to emerging technologies. Members also provide guidance as to NRC's role in relation to the responsibilities of other Federal agencies as well as of various professional organizations and boards.

Members of this Committee have demonstrated professional qualifications and expertise in both scientific and non-scientific disciplines including nuclear medicine; nuclear cardiology; radiation therapy; medical physics; radiopharmacy; State medical regulation; patient's rights and care; health care administration; medical research; medical dosimetry, and Food and Drug Administration regulation.

The Nuclear Regulatory Commission has decided to amend the ACMUI charter to allow it to provide consultation services when requested by the Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards. This action is being taken in accordance with the Federal Advisory Committee Act after consultation with the

Committee Management Secretariat, General Services Administration.

**FOR FURTHER INFORMATION CONTACT:** Andrew L. Bates, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone: 301–504–1963.

Dated: September 25, 2003.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 03–24852 Filed 9–30–03; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Joint Meeting of the ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Human Factors; Notice of Meeting

The ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Human Factors will hold a joint meeting on October 9, 2003, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Thursday, October 9, 2003—8:30 a.m. until the conclusion of business.*

The purpose of this meeting is to discuss seismic, digital I&C, and human factors research activities. The Subcommittees will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this matter. The Subcommittees will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officials, Mr. Michael R. Snodderly (telephone: 301–415–6927) or Dr. Medhat M. El-Zeftawy (telephone: 301–415–6889) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted during the meeting.

Further information regarding this meeting can be obtained by contacting one of the Designated Federal Officials between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact one of the above named individuals at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: September 23, 2003.

**Sher Bahadur,**

*Associate Director for Technical Support, ACRS/ACNW.*

[FR Doc. 03–24851 Filed 9–30–03; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards Meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment will hold a meeting on October 10, 2003, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Friday, October 10, 2003—8:30 a.m. until the conclusion of business.*

The purpose of this meeting is to discuss the status of the probabilistic risk assessment research program. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Michael R. Snodderly (telephone: 301–415–6927) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted during the meeting.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: September 23, 2003.

**Sher Bahadur,**

*Associate Director for Technical Support, ACRS/ACNW.*

[FR Doc. 03–24853 Filed 9–30–03; 8:45 am]

BILLING CODE 7590–01–P

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27726]

### Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act"); The Connecticut Light and Power Company (70–10163)

September 25, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 20, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After October 20, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### Notice of Proposal To Amend Charter Or, Alternatively, Waive Charter Provision; Order Authorizing the Solicitation of Proxies

The Connecticut Light and Power Company ("CL&P"), 107 Selden Street, Berlin, Connecticut 06037, a wholly owned public-utility subsidiary of Northeast Utilities ("NU"), a registered holding company, has filed a declaration ("Declaration") with the Securities and Exchange Commission ("Commission") under sections 6(a)(2) and 12(e) of the Public Utility Holding Company Act of 1935, as amended ("Act") and rules 54, 62, and 65 under the Act.

Currently, the ability of CL&P to incur or assume unsecured indebtedness is limited by a provision in its Certificate of Incorporation ("Charter"). The Charter provides that, except with the consent of the holders of a majority of CL&P preferred stock then outstanding, and providing that holders of one-third of the aggregate voting rights represented by shares of CL&P preferred stock then outstanding do not dissent in writing or vote against such action, CL&P may not issue or assume any unsecured debt if, immediately after such issuance or assumption, (a) the total outstanding principal amount of all unsecured debt of CL&P will thereby exceed twenty percent of the aggregate of all outstanding secured debt and the capital stock, premium and surplus of CL&P, as stated on its books ("Capitalization"), or (b) the total outstanding principal amount of all unsecured debt of CL&P having maturities of less than ten years will then exceed ten percent of its Capitalization. This limitation is referred to as the "Unsecured Debt Restriction."

CL&P states that, as a result of utility restructuring in Connecticut, its capitalization has become smaller and its unsecured debt has become a greater proportion of its total capitalization. The company believes that eliminating the Unsecured Debt Restriction would provide more financial flexibility to lower its financing costs as it issues debt to fund its planned construction and improvement program.

CL&P requests authority to solicit proxies regarding the Proposals 1 and 2 described below, for use at a special meeting of the holders of CL&P preferred stock on November 25, 2003 ("Meeting"). The company states that it will solicit proxies by mail from holders of its preferred stock in accordance with all applicable rules under the Securities Exchange Act of 1934.

The first proposal, "Proposal 1," seeks the consent of holders of CL&P common stock and preferred stock to eliminate the Unsecured Debt Restriction. Holders of CL&P common stock and holders of CL&P preferred stock are entitled to one vote per share. Under the Charter, adoption of Proposal 1 requires the affirmative vote of two-thirds of the total number of outstanding shares of common and preferred CL&P stock, each voting as a single class.

CL&P requests authority to eliminate the Unsecured Debt Restriction from the Charter in the event it receives the necessary shareholder approvals. The elimination of the Unsecured Debt Restriction may also require approval by the Connecticut Department of Public Utility Control ("DPUC"), and the company represents that, if it obtains the necessary consents from shareholders, it will obtain DPUC approval before eliminating the Unsecured Debt Restriction from the Charter.

Additionally, if Proposal 1 is adopted, CL&P requests authority, effective upon the amendment of the Charter, to make a cash payment ("Cash Payment") of one percent of par value per share to each holder of CL&P preferred stock that properly voted at the Meeting (in person by ballot or by proxy) in favor of Proposal 1.

In the event that the required Proposal 1 shareholder approvals are not obtained, or if DPUC approval is required and not obtained, CL&P also seeks the consent of holders of CL&P preferred stock to continue the current waiver of the ten percent limit contained in the Unsecured Debt Restrictions for an additional ten-year period.[1] This alternative proposal is referred to as "Proposal 2." Under the Charter, adoption of Proposal 2 requires: (1) The affirmative vote of a majority of shares of CL&P preferred stock; and (2) that less than one-third of the aggregate voting rights represented by shares of CL&P preferred stock outstanding do not dissent in writing or vote against the proposal. Assuming that Proposal 1 cannot be implemented, and if it obtains shareholder approval to implement Proposal 2, CL&P requests authority to do so.

The company estimates that the fees, commissions and expenses to be incurred in connection with the proposed transactions will be $100,000, consisting chiefly of outside solicitation fees and expenses, brokers' fees and printing costs.

CL&P has filed its proxy solicitation materials and requests that its proposal to solicit proxies be permitted to become effective immediately, as provided in rule 62(d) under the Act. It appears to the Commission that the Declaration, with respect to the proposed solicitation of proxies, should be permitted to become effective immediately under rule 62(d).

It is ordered, under rule 62 under the Act, that the Declaration regarding the proposed solicitation of proxies from CL&P shareholders become effective immediately, subject to the terms and conditions contained in rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-24864 Filed 9-30-03; 8:45 am]

**BILLING CODE 8010-01-P**

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[1] By order dated October 20, 1993 (HCAR No. 24910), the Commission authorized CL&P to solicit proxies regarding Proposals 1 and 2. At a shareholders' meeting held on December 15, 1993, CL&P obtained the consent of the holders of the two classes of CL&P preferred stock for Proposal 2, which allowed the company to issue or assume unsecured indebtedness with a maturity of less than ten years in excess of the ten percent limitation for a ten-year period through March 31, 2004, provided that all unsecured indebtedness would not exceed twenty percent of its total capitalization. By order dated February 24, 1994 (HCAR No. 25992), the Commission authorized CL&P to implement Proposal 2.

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-48545; File No. S7-17-03]**

### Business Continuity Planning for Trading Markets

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Policy statement; request for comment.

**SUMMARY:** The Securities and Exchange Commission (Commission) is issuing a Policy Statement setting forth its view that self-regulatory organizations operating trading markets (SRO Markets) and electronic communications networks (ECNs) should apply certain basic principles in their business continuity planning within the specified implementation timeframe. The Commission also requests comments on the Policy Statement. After the comment period has closed, the Commission may re-evaluate the Policy Statement in light of the comments received.

**DATES:** Effective Date: October 1, 2003. Comments must be received on or before October 31, 2003.

**ADDRESSES:** All comments concerning the Policy Statement should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549-0609. Comments can be submitted electronically at the following E-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7-17-03; this file number should be included on the subject line if E-mail is used. To help us process and review your comments more effectively, comments should be sent by one method—U.S. mail or electronic mail only. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (*http://www.sec.gov*). The Commission does not edit personal identifying information, such as names or e-mail addresses from electronic submissions. Submit only the information you wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** Robert Colby, Deputy Director (202) 942–0094; David Shillman, Associate Director, (202) 942–0072; or Peter Chepucavage, Attorney Fellow, (202) 942–0163, Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–1001.

**SUPPLEMENTARY INFORMATION:**

## I. Background

A critical "lesson learned" from the events of September 11, 2001 is the need for more rigorous business continuity planning in the financial sector to address problems of wider geographic scope and longer duration than those previously addressed. These events made clear the possibility of a large-scale regional disaster, resulting in a broad consensus in the financial community that business continuity planning needs to adapt to plan for events of wider scope and, in general, become more robust and resilient. Since the September 11 attacks, the U.S. securities markets and market participants have taken significant steps toward this goal by demonstrably improving the robustness of their business continuity plans.

The Commission and other financial regulators also have been devoting substantial resources to efforts designed to strengthen the resilience of the financial sector. For example, the Commission, together with the Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency, recently published an Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System (Interagency Paper),[1] that identified "sound practices" relating to business continuity planning for certain key market participants. The goal of this project was to minimize the immediate systemic effects of a wide-scale disruption by assuring that the key payment and settlement systems could resume operation promptly following a wide-scale disaster, and major participants in those systems could recover sufficiently to complete pending transactions. In this way, market participants unaffected by the disaster could continue to operate with minimal disruption and, when those impacted by the event were in a position to resume operations, the critical infrastructure would be available for them to do so. The sound practices identified by the Interagency Paper include: (1) Intraday resumption or recovery goals; (2) maintenance of sufficient geographically dispersed resources to meet those goals; and (3) routine testing of business continuity arrangements. The Interagency Paper, however, focuses only on the key payment and settlement systems, and does not address the resilience of the trading markets.

Separately, Commission staff has been reviewing, on an ongoing basis, the efforts of the organized securities markets—the exchanges, Nasdaq, and ECNs—to strengthen their resilience in the post-September 11 environment. To date, these markets have taken a variety of steps to improve their physical security, information system protections, and business continuity capabilities. For example, the New York Stock Exchange (NYSE) has taken substantial measures to physically secure its Wall Street trading floor, and has established an off-site alternative trading floor that could be activated on a next-day basis if the NYSE's Wall Street trading floor was rendered inaccessible. Commission staff continues to work with the organized markets to further increase the robustness of their individual plans. In addition, Commission staff has been exploring with the markets the possibility of mutual back-up arrangements. For example, at the staff's urging, the NYSE and Nasdaq have agreed to serve as back-up trading platforms for each other's securities if a catastrophic event forced an extended closure of one market.

Earlier this year, the Government Accounting Office (GAO) issued a Report[2] recommending, among other things, that the Commission work with the securities industry to develop goals and strategies to resume trading in securities as rapidly as appropriate in the event of future disruptions, and determine sound business continuity practices that organizations would need to meet these goals. The Commission agreed with the GAO that more needs to be done to prepare the securities markets for the resumption of trading in the event of a crisis, and indicated an intent to consider identifying a time frame against which markets should plan to resume trading following a wide-scale regional disaster.[3] By establishing a specific resumption goal, the Commission would provide the securities markets with a consistent benchmark to use in developing more resilient business continuity plans.

## II. Policy Statement

In view of the importance of the trading markets to the U.S. financial system, the Commission believes it appropriate[4] for the SRO Markets and ECNs to prepare for the resumption of trading in the event of a "wide-scale disruption."[5] Among other things, the trading markets provide the means for financial institutions to adjust their cash and securities positions, and those of their customers, in order to effectively manage liquidity, market, and other risks. These markets also are critical to the capital raising process and for funding daily business operations. With over half of all U.S. households invested in the capital markets, the mechanisms for managing and valuing that wealth—the trading markets—must be highly-resilient.

That said, while there is little doubt that the trading markets collectively are critical to the U.S. financial system, the Commission is of the view that, individually, the markets present a lesser degree of systemic vulnerability than the key clearance and settlement utilities. For one, trading activity is relatively fungible across markets. In today's diverse U.S. national market system, very few securities are traded only in one market. As a result, the Commission believes that, were any single securities market to become incapacitated, trading could be shifted to one or more of the remaining markets. Accordingly, the business continuity planning principles for individual trading markets, set forth below, are somewhat less stringent than the sound practices for the key payment and settlement systems outlined in the Interagency Paper.

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[1] Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System, SEC Release No. 34–47638 (April 7, 2003).

[2] Report to Congressional Requesters of the United States General Accounting Office entitled Potential Terrorist Attacks: Additional Actions Would Better Prepare Critical Financial Market Participants (February 12, 2003).

[3] *See* Testimony of Robert L.D. Colby, Deputy Director, Division of Market Regulation, U.S. Securities and Exchange Commission, at Hearing Before the House Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, Committee on Financial Services, entitled Recovery and Renewal: Protecting the Capital Markets Against Terrorism Post 9/11 (February 12, 2003).

[4] Among other things, the Commission believes that the Policy Statement is consistent with and in furtherance of sections 2 and 11A (a) (1) (B) and (C) of the Securities Exchange Act of 1934.

[5] The term "wide-scale disruption" has the same meaning here as in the Interagency Paper. Specifically, a "wide-scale disruption" is an event that causes a severe disruption or destruction of transportation, telecommunications, power, or other critical infrastructure components across a metropolitan or other geographic area and the adjacent communities that are economically integrated with it; or that results in a wide-scale evacuation or inaccessibility of the population within normal commuting range of the disruption's origin.

Specifically, the Commission expects each SRO Market and ECN to apply the following principles in its business continuity planning:

- Each SRO Market and ECN should have a business continuity plan that anticipates the resumption of trading, in the securities traded by that market, no later than the next business day following a wide-scale disruption.[6] The resilience of the SRO Market or ECN prescribed by such plans should reflect the extent of alternative trading venues for the securities traded by that market, including the number of sole listings on the market, the market share of the market, and the number of sole members or subscribers of the market. Business continuity plans may focus on strengthening the SRO Market's or ECN's own resilience, on backup arrangements with other markets, or both.
- Assuring resumption of trading activities by a market by the next business day generally requires geographic diversity between primary and backup sites.[7] To be fully resilient, backup sites should not rely on the same infrastructure components (*e.g.*, transportation, telecommunications, water supply, and electric power) used by the primary site, and the operation of such sites should not be impaired by a wide-scale evacuation at or the inaccessibility of staff that service the primary site.
- The SRO Markets also should assure the full resilience of important shared information systems, such as the consolidated market data stream generated for the equity and options markets. The market data collection and dissemination systems, for example, are critical to the functioning of the trading markets because of their reliance on accurate and current pricing information.
- The effectiveness of back-up arrangements in recovering from a wide-scale disruption should be confirmed through testing.
- Each SRO Market and ECN should implement plans reflecting these principles as soon as practicable and strive to do so no later than the end of 2004.

The Commission staff intends to engage in an ongoing and individualized dialogue with each SRO Market and ECN to discuss application of these principles in a manner most appropriate for the particular trading market.

The Commission believes every reasonable effort should be made to assure the prompt and smooth resumption of trading following a wide-scale disruption, and that application of the principles described above is a critical step in achieving that goal. Nevertheless, the Commission notes that, depending on the facts and circumstances of a given event, it may be prudent to defer the reopening of a particular market or markets even if, from a technical standpoint, the resumption of trading is possible. In the case of a disruption of the securities markets, the Commission has a fundamental regulatory interest in assuring the prompt—yet smooth—resumption of trading. Deciding when to reopen the markets will involve an assessment of the operational capabilities of the markets and major market participants, as well as the clearance and settlement system. In a given situation, difficult judgments may be required to strike the appropriate balance between the desire to resume trading as soon as possible, and the practical necessity of waiting long enough to minimize the risk that, when trading resumes, it will be of inferior quality or interrupted by further problems.

Finally, the Commission believes that the establishment of a next-business day resumption goal for the SRO Markets and ECNs should serve as a useful resumption benchmark for securities firms as well. The decision by a broker-dealer to risk capital or provide brokerage services on an ongoing basis is, in essence, a matter of business judgment. Given the competitive nature of the securities business, however, the Commission expects there to be incentives for broker-dealers to be prepared to participate in the markets following a wide-scale disruption as soon as the markets' trading facilities become available.

## III. Conclusion

The Commission believes it important for the SRO Markets and ECNs to take concrete steps to strengthen their resilience to address the continuing, serious risks to the U.S. financial system posed by the post-September 11 environment. To date, the trading markets have made significant progress in increasing the robustness of their business continuity plans. By applying the principles outlined in this Policy Statement, the Commission believes the SRO Markets and ECNs will better assure their own resilience and that of the U.S. financial system. In so doing, they will be promoting one of the paramount objectives of the U.S. securities laws—the maintenance of fair, stable, and orderly markets.

Dated: September 25, 2003.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–24863 Filed 9–30–03; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48529; File No. SR–CBOE–2002–55]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. To Permanently Approve Its Rapid Opening System

September 24, 2003.

### I. Introduction

On September 16, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt its Rapid Opening System ("ROS") on a permanent basis. On February 6, 2003, CBOE submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on August 14, 2003.[4] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change, as amended.

### II. Description of the Proposal

On February 9, 1999, the Commission approved, on a pilot basis, the implementation of ROS.[5] ROS is a system developed by CBOE to open an entire options class, all series, as a single event, based on a single underlying value.[6] The ROS pilot program is due to expire on September 30, 2003.[7]

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[6] Consistent with the approach taken in the Interagency Paper, the next-day resumption objective should provide a concrete goal to plan for and test against. This should not be regarded as a hard and fast deadline that must be met in every emergency situation. Various external factors, such as time of day, scope of disruption, and status of critical infrastructure—particularly telecommunications—can affect actual recovery times.

[7] As in the Interagency Paper, however, the Commission does not believe it is necessary or appropriate to prescribe specific mileage requirements for geographically-dispersed backup sites.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jaime Galvan, Attorney II, Legal Division, CBOE, to Terri Evans, Assistant Director, Division of Market Regulation, dated January 17, 2003 ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 48293 (August 6, 2003), 68 FR 48650 ("ROS Notice").

### III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[9] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission notes that ROS has successfully operated since 1999 and since that time, has facilitated expedited openings of options classes on CBOE.

In the Pilot Program Approval Order, the Commission required CBOE to satisfy three conditions prior to seeking permanent approval of the ROS pilot. The first condition required CBOE to develop standards to ensure that market makers satisfy their obligation to price options fairly and to surveil for such compliance. In the Pilot Program Approval Order, the Commission recognized that certain aspects of ROS may require heightened scrutiny by the CBOE to ensure that market-makers are not permitted to use the flexibility they have to set an opening price to the disadvantage of investors and other market participants. In particular, ROS provides market-makers discretion to set certain thresholds and the AutoQuote[10] value that drives the ROS algorithm. CBOE has represented that market makers generally have set the contract and delta thresholds at a level that ensures that an options class that has orders to trade will not auto-open, to avoid openings based on erroneous prints in the underlying security or delayed updates to bid/ask information on underlying securities. CBOE further represented that it was still able to open classes within seconds of the opening of the underlying class, because ROS can open classes very quickly even if they are not set to auto-open.[11]

CBOE has also submitted surveillance procedures designed to ensure, among other things, that market-makers exercise their discretion to set certain AutoQuote values consistent with their obligation to price options fairly.[12] The Commission believes the surveillance procedures submitted by the CBOE are reasonably designed to ensure that market makers do not abuse their discretion when setting AutoQuote values in setting the ROS opening price. Furthermore, these surveillance procedures should allow CBOE to better monitor market maker adjustments to AutoQuote and enable CBOE to bring sanctions for violative conduct when appropriate. However, because CBOE market makers set the contract and delta thresholds at levels that ensure that an options class that has orders to trade will not auto-open, giving CBOE market makers an opportunity to adjust AutoQuote at most openings, the Commission expects CBOE to aggressively surveil to ensure that market makers properly adjust AutoQuote values. The Commission also expects the Exchange to assess its surveillance procedures from time to time to determine whether they are adequate to ensure that market makers do not engage in manipulative or improper trading practices. Further, the Commission expects CBOE to consider whether any additional surveillance procedures are necessary to prevent manipulative or other improper practices.

The second condition required CBOE to develop a workable plan for the electronic incorporation of non-bookable orders in ROS. On CBOE, non-bookable orders include broker-dealer and customer contingency orders. CBOE stated that few, if any, non-bookable orders are present at the open and that, based in its observations, firms consistently wait until after the ROS opening has been completed to represent non-bookable orders.[13] CBOE has developed a procedure, albeit not an electronic one, for including non-bookable orders into the opening process. This procedure has been incorporated into CBOE Rule 6.2A and has been detailed in two regulatory circulars.[14] CBOE argues a systems change to electronically incorporate non-bookable order in the ROS opening would have very little impact on ROS trading due to the few non-bookable orders present before the open.[15] Furthermore, Phase V of the Consolidated Options Audit Trail ("COATS") Plan would require that all non-electronic orders be captured electronically for audit trail purposes.[16] CBOE represents that this will facilitate its Regulatory staff's ability to investigate with more speed and efficiency any complaint regarding the execution received by a non-bookable order on the opening, in that the Exchange will now have an electronic record of the time of receipt of the order, in addition to the order information and the execution price of the order.[17] The Commission has determined at this time to waive the requirement that CBOE develop a workable plan for the electronic incorporation of non-bookable orders in ROS based on the limited number of non-bookable orders that are present at the open and CBOE's ability to record information on non-bookable orders in COATS. The Commission also expects that CBOE will use COATS to respond to complaints about non-bookable orders, as well as to actively monitor the quality of executions received by non-bookable orders. The Commission also expects CBOE to continue to explore methods to electronically incorporate non-bookable orders in the event that non-bookable orders are more actively represented in the opening.

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[5] *See* Securities Exchange Act Release No. 41033 (February 9, 1999), 64 FR 8156 (February 18, 1999) ("Pilot Program Approval Order"). ROS is governed by CBOE Rule 6.2A. CBOE Rules 6.2, 6.45, and 8.60 also reference ROS.

[6] For a detailed description of how ROS operates, *see* Pilot Program Approval Order, *supra* note 5.

[7] The Commission has extended the ROS pilot program five times. *See* Securities Exchange Act Release Nos. 42596 (March 30, 2000), 65 FR 18397 (April 7, 2000) (extending the pilot program until September 30, 2000); 43395 (September 29, 2000), 65 FR 60706 (October 12, 2000) (extending the pilot program until September 30, 2001); 44891 (October 1, 2001), 66 FR 51483 (October 9, 2001) (extending the pilot program until September 30, 2002); 46572 (September 30, 2002), 67 FR 62508 (October 7, 2002) (extending the pilot program until March 31, 2003; and 47573 (March 26, 2003), 68 FR 15780 (April 1, 2003) (extending the pilot program until September 30, 2003).

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] Under Interpretation .02 to CBOE Rule 6.2A, the term "AutoQuote" means either the Exchange's AutoQuote system or a proprietary autoquote system operated by a member of the trading crowd where the particular ROS class is traded.

[11] *See* ROS Notice, *supra* note 4.

[12] *See* letter from Jaime Galvan, Attorney II, Legal Division, CBOE, to Terri Evans, Assistant Director, Division of Market Regulation, dated August 13, 2003. CBOE requested confidential treatment for these surveillance procedures pursuant to 17 CFR 200.83.

[13] *See* ROS Notice, *supra* note 4.

[14] *See* CBOE Rule 6.2A(ii), and Regulatory Circulars RG99–35 (February 10, 1999) and RG00–40 (March 13, 2000).

[15] *See* ROS Notice, *supra* note 4.

[16] The COATS Plan is a plan that the options exchanges are required to submit to the Commission in order to comply with Section IV.B.e. of the *Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. See* In the Matter of Certain Activities of Options Exchanges, Securities Exchange Act Release No. 43268, September 11, 2000; Administrative Proceeding File No. 3–10282.

[17] *See* Amendment No. 1, *supra* note 3.

Lastly, the third condition required CBOE to study issues related to the Commission's concerns and report back to the Commission. In response, CBOE submitted a report to the Commission addressing each of the Commission's concerns. The Commission believes that CBOE has satisfied this condition.

In conclusion, the Commission notes that ROS has successfully operated since 1999 and since that time, has facilitated expedited openings of options classes on CBOE. The Commission hereby approves the ROS pilot on a permanent basis.

## IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (SR–CBOE–2002–55) and Amendment No. 1 thereto, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–24867 Filed 9–30–03; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48539; File No. SR–ISE–2003–03]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by International Securities Exchange, Inc., Relating to Market Maker Obligations

September 25, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 19, 2003, the International Securities Exchange, Inc. ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. On September 15, 2003, the Exchange amended the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend ISE Rule 803 to clarify the obligations of the ISE's Primary Market Makers ("PMMs") if they receive orders from persons who are not brokers or dealers in securities ("Public Customers") when there is a better price available on another exchange. The text of the proposed rule change, as amended, is set forth below. Proposed new language is in *italics;* proposed deletions are in [brackets].[4]

* * * * *

Rule 803. Obligations of Market Makers

* * * * *

(c) Primary Market Makers. In addition to the obligations contained in this Rule for market makers generally, for options classes to which a market maker is the appointed Primary Market Maker, it shall have the responsibility to:

(1) Assure that each disseminated market quotation in each series of options is for a minimum of ten (10) contracts, or such other minimum number as the Exchange shall set from time to time. When the best bid (offer) on the Exchange represents one or more Public Customer Orders for less than a total of ten (10) contracts at that price, the Primary Market Maker is obligated to buy (sell) at that price the number of contracts needed to make the disseminated quote firm for ten (10) contracts.

(2) *As soon as practical,* [A]*a*ddress Public Customer Orders that are not automatically executed because there is a displayed bid or offer on another exchange trading the same options contract that is better than the best bid or offer on the Exchange, *either (i) by executing a Public Customer Order at a price that matches the better price displayed or (ii) by sending to any other exchange(s) displaying a better price a Linkage Order(s) according to the Rules contained in Chapter 19.*

* * * * *

Supplementary Material to Rule 803

.01 No change.

*.02 A Primary Market Maker must act with due diligence in handling orders of Public Customers and must accord priority to such orders addressed pursuant to paragraph (c) of this Rule over the Primary Market Maker's principal orders.*

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to clarify the obligations of PMMs when they receive orders from Public Customers and there is a better price available on another exchange. When the ISE receives a Public Customer order in this situation, the ISE does not provide immediate execution of that order. Rather, the PMM is informed that the order is pending, and ISE Rule 803 requires that the PMM "address" such order. In practice, the PMM historically either has executed the order at the better price or has attempted to use whatever means the PMM had available to access the better market on behalf of the customer.

On January 31, 2003, the intermarket linkage ("Linkage") between the ISE and the other options exchanges became operational. Among other things, the Linkage permits PMMs to send Principal Acting as Agent Orders ("P/A Orders") to other exchanges. This is a vehicle that provides PMMs with much-improved access to away markets on behalf of Public Customer orders they are holding.

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[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael J. Simon, Senior Vice President and General Counsel, Exchange, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 12, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange amended the proposed rule change to be more specific in the obligations of Primary Market Makers in handling customer orders.

[4] At the request of the Exchange, Commission staff has revised the text of the proposed rule change set forth in Amendment No. 1 to (i) correct a typographical error; and (ii) make a non-substantive technical change correcting the numbering of the Supplementary Material to Rule 803. The Exchange plans to submit an amendment to the Commission to make these technical corrections. Telephone conversation among Michael J. Simon, Senior Vice President and General Counsel, Exchange, Jennifer Colihan, Special Counsel, Division, Commission, and Ann E. Leddy, Attorney, Division, Commission on September 24, 2003.

With Linkage in place, the ISE believes that it is appropriate to be more specific regarding the PMM's obligations to "address" Public Customer orders when there is a better price on another market. Accordingly, the Exchange proposes to amend ISE Rule 803 to specify that the PMM must, as soon as practical, either execute the order at the best available price or send a P/A Order through Linkage to obtain the best price for the order. Proposed Supplementary Material .02 to ISE Rule 803 states that a PMM must act with due diligence in handling such Public Customers orders and must accord such orders priority over the PMM's principal orders.

2. Statutory Basis

The ISE believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,[5] in general, and section 6(b)(5) of the Act,[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The ISE does not believe that the proposed rule change, as amended, imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on the proposed rule change, as amended. The Exchange has not received any unsolicited written comments from members or other interested parties.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change; or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2003–03 and should be submitted by October 22, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–24866 Filed 9–30–03; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48541; File No. SR–NASD–2003–122]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Proposal To Conduct Background Verification and Charge Application Fee for NASD Neutral Roster Applicants

September 25, 2003.

On August 5, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to conduct background verification and charge an application fee for NASD neutral roster applicants. NASD does not propose any textual changes to the By-Laws or Rules of NASD.

The Commission published the proposed rule change for comment in the **Federal Register** on August 14, 2003.[3] The Commission received no comments relating to the proposal. This order approves the proposed rule change.

NASD maintains a pool of approximately 7000 available arbitrators. Currently, arbitrator applicants submit biographical profile forms, together with two letters of reference. The biographical profile forms require applicants to provide detailed information on their business and employment histories, education, training, possible conflicts, experience, expertise, associations with industry members, and other matters. The application also requires a narrative background information statement in which applicants are asked to explain why they believe their experience and knowledge would benefit the process. Attorneys and accountants are further directed to provide specific details about their practices.

Arbitrator information is entered into NASD's database and is provided to parties in the form of a disclosure report during the arbitrator selection process. Arbitrators must update this biographical information on a regular basis. NASD sends frequent reminders to arbitrators about the importance of this obligation, especially after they are notified regarding possible service as an arbitrator. NASD requires arbitrators in each case to affirm that they have reviewed their disclosure report and that it is accurate, and to complete a disclosure checklist attached to the oath. NASD provides each arbitrator on a panel with the co-panelists' biographical profiles in order to facilitate peer reviews for accuracy.[4]

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[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48294 (August 6, 2003), 68 FR 48653 ("Notice of Proposal").

In addition to gathering the above information, NASD currently checks records on the Central Registration Depository (CRD) for arbitrator applicants who have been registered with NASD, most of whom would be categorized as "non-public" arbitrators under NASD Rule 10308(a)(4). NASD currently does not verify any of the information provided by arbitrator applicants who do not have CRD records, most of whom would be classified as "public" arbitrators under NASD Rule 10308(a)(5).

NASD proposes to expand its verification of background information to cover all arbitrator applicants. NASD believes this will provide additional protection to parties using the Dispute Resolution forum, raise the standards of the neutral roster, and enhance investor confidence in the integrity of the forum.[5]

Specifically, NASD Dispute Resolution has identified a vendor to provide the following verification services:

- Criminal check in the county of the applicant's residence;
- Federal criminal check;
- Employment verification; and
- Professional license verification.

The verification fee will be $80.00 per application. This fee will cover the vendor's expected charge for verification of each application, with the understanding that the actual work required to verify each application will vary. For example, some applicants will have only one employer over the past ten years, and some will have two or more. NASD believes that having a single, reasonable fee for background verification will be more practical administratively than charging different fees that vary depending on each applicant's background.[6] For this amount, the vendor will perform county and federal criminal record checks; verify any professional licenses; and check the last employer or, if the applicant has been employed for fewer than ten years by the same employer, then the last two employers. To keep the fee reasonable, NASD will assume that verification of professional licenses provides an indirect check on the applicant's education, since licensing authorities generally verify an applicant's educational history. If the applicant does not have a professional license, however, then the vendor will substitute verification of the last degree awarded.

The background verification fee will be charged for new arbitrator applications that are received by NASD after the effective date of the proposed rule change. It will not apply to arbitrators currently on NASD's arbitrator roster who wish to update information they supplied previously. Applications received after the effective date will not be processed until NASD receives the proper fee.

NASD Dispute Resolution represents that the effective date of this proposal will be October 1, 2003.[7]

The Commission finds that the proposed rule change is consistent with the provisions of section 15A(b) of the Act,[8] in general, and furthers the objectives of section 15A(b)(6),[9] in particular, which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that verifying background information and credentials for arbitrator applicants will protect investors and the general public and enhance the integrity of the arbitration process.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NASD–2003–122) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–24865 Filed 9–30–03; 8:45 am]

**BILLING CODE 8010–01–P**

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## DEPARTMENT OF STATE

**[Public Notice 4500]**

### 30-Day Notice of Proposed Information Collection: Form DS–1648, Application for A, G, or NATO Visa; OMB Control Number 1405–0100

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

*Type of Request:* Revision of Currently Approved Collection.

*Originating Office:* Bureau of Consular Affairs, Department of State (CA/VO).

*Title of Information Collection:* Application for A, G, or NATO Visa.

*Frequency:* On occasion.

*Form Number:* DS–1648.

*Respondents:* Aliens applying for A, G or NATO visas.

*Estimated Number of Respondents:* 20,000 per year.

*Average Hours Per Response:* 30 minutes.

*Total Estimated Burden:* 10,000 hours per year.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

**FOR FURTHER INFORMATION CONTACT:** Copies of the proposed information collection and supporting documents may be obtained from Brendan Mullarkey of the Office of Visa Services, U.S. Department of State, 2401 E St. NW, RM L–703, Washington, DC 20520, who may be reached on 202–663–1166. Public comments and questions should be directed to the State Department

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[4] For additional information on procedures designed to reveal potential conflicts of interest, see Professor Michael A. Perino, *Report to the SEC Regarding Arbitrator Conflict Disclosure Requirements in NASD and NYSE Securities Arbitrations* (Nov. 12, 2002), available on the Commission's Web site, Market Regulation page, at: *http://www.sec.gov/pdf/arbconflict.pdf.*

[5] *See* Notice of Proposal, *supra* note 3.

[6] *Id.*

[7] *Id.*

[8] 15 U.S.C. 78*o*–3(b)

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: September 10, 2003.

**Catherine Barry,**

*Acting Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.*

[FR Doc. 03–24896 Filed 9–30–03; 8:45 am]

BILLING CODE 4710–06–P

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## DEPARTMENT OF STATE

**[Public Notice 4483]**

### Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC), through the Working Group on Radio Communications and Search and Rescue of the Subcommittee on Safety of Life at Sea, will conduct open meetings at 9 a.m. on Thursday, October 9, November 6, December 11, and January 29, 2004. The meetings will be held at the Department of Transportation Headquarters Building, 400 Seventh Street, SW., Washington, DC 20950. Call the point of contact below for room numbers. The purpose of the meeting is to prepare for the Eighth Session of the International Maritime Organization (IMO) Subcommittee on Radiocommunications and Search and Rescue (COMSAR), which is scheduled for the week of February 16–20, 2004, at IMO headquarters in London, England.

The primary matters to be considered are:

- —Maritime Safety Information for GMDSS
- —Development of a procedure for recognition of mobile satellite systems
- —Revision of performance standards for NAVTEX equipment
- —Emergency radiocommunications, including false alerts and interference
- —Large passenger ship safety
- —Issues related to maritime security
- —Developments in maritime radiocommunication systems and technology, including long-range tracking
- —Matters concerning Search & Rescue
- —Planning for the 8th session of COMSAR

Members of the public may attend these meetings up to the seating capacity of the rooms. Interested persons may seek information, including meeting room numbers, by writing; Mr. Russell S. Levin, U.S. Coast Guard Headquarters, Commandant (G–SCT–2), Room 6509, 2100 Second Street, SW., Washington, DC 20593–0001, by calling: (202) 267–1389, or by sending Internet electronic mail to *rlevin@comdt.uscg.mil* and viewing *http://www.navcen.uscg.gov/marcomms/imo/meetings.htm.*

Dated: September 24, 2003.

**Steven D. Poulin,**

*Executive Secretary, Shipping Coordinating Committee, Department of State.*

[FR Doc. 03–25016 Filed 9–30–03; 8:45 am]

BILLING CODE 4710–07–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–15025]**

### Notice of Request for Clearance of a New Information Collection: Truck Driver Fatigue Management Survey

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice.

**SUMMARY:** The FMCSA announces that the Information Collection Request (ICR) described in this notice is being sent to the Office of Management and Budget (OMB) for review and approval pursuant to the Paperwork Reduction Act of 1995. On May 30, 2003, the FMCSA published a "Notice of Request for Clearance of a New Information Collection: Truck Driver Fatigue Management Survey" in the **Federal Register**. Comments on the proposed information collection burden were solicited. No comments regarding the ICR were received.

**DATES:** Comments must be submitted on or before October 31, 2003.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, *Attention:* DOT Desk Officer. We particularly request your comments on whether the collection of information is necessary for the FMCSA to meet its goals of reducing truck crashes, including whether the information is useful to this goal; the accuracy of the estimate of the burden of the information collection; ways to enhance the quality, utility and clarity of the information collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms on information technology.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Carroll, Transportation Specialist, (202) 385–2388, Research Division, Office of Research and Technology, Federal Motor Carrier Safety Administration, 600 Virginia Avenue, SW., Suite 600, Washington, DC 20024. Office hours are from 7:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

*Title:* Truck Driver Fatigue Management Survey.

*Background:* The Conference Report on the Department of Transportation (DOT) and Related Agencies Appropriations Act, 2002 (Pub. L. 107–87, 115 Stat. 833, December 18, 2001) noted that the conferees included $400,000 to study fatigue management techniques, as outlined in the Senate report (H.R. Rep. No. 107–308, at 94 (2001)). The Senate Report on the FY 2002 DOT Appropriations Act directed FMCSA to perform a "study to determine the fatigue management techniques used by truck drivers during overnight operations with an organization representing unionized motor carriers in cooperation with their labor organization" (S. Rep. 107–38, at 83–84 (2001)).

The Federal Highway Administration (FHWA), on FMCSA's behalf, published a Pre-solicitation Notice on July 1, 2002, on the Department of Transportation's (DOT) Federal Business Opportunities Web site, describing the anticipated sole-source award to the Motor Freight Carriers Association (MFCA), and on September 30, 2002, FMCSA awarded the MFCA a contract to conduct a Truck Driver Fatigue Management Study.

Recent research has underscored the influence of time of day on truck driver alertness. The same research has shown that there are significant individual differences in alertness during night driving, even when drivers have adequate sleep. Yet the trucking industry must operate 24 hours a day in order to meet customer demands. In addition, the highways are least congested between midnight and six a.m. The unionized less-than-truckload (LTL) segment has a long history of safe operations at night. Indeed, most of its over-the-road operations occur at night. A major reason for the safety record of MFCA companies is the professionalism of the drivers they employ—more than 8,000 of the 42,000 drivers have at least one million accident-free driving miles with the same company. This truck driver workforce offers an untapped source of knowledge about techniques and lifestyle practices that are used to manage fatigue during night operations.

Specifically, the study will randomly survey Teamster drivers in MFCA companies who regularly operate on overnight runs. The survey will collect detailed information on such items as the nature of their job, what helps them cope, what are the challenges, how much and how long they sleep, their physical condition, the use of naps, and the impact of other road users on their alertness. A control group of Teamster drivers without one million accident free driving miles will also be surveyed. A sample of drivers will be studied prospectively using unobtrusive, objective wrist actigraphy watches to confirm the sleep-wake behaviors identified in the survey as being most likely to mitigate fatigue and maintain alertness during nighttime operations.

*Respondents:* The respondents to the planned survey will include approximately 2,000 selected motor carrier truck drivers of CMVs.

*Average Burden Per Response:* The estimated average burden per response is 30 minutes. This includes time needed for reading survey instructions, searching existing data sources, completing the survey instrument and returning the information by mail.

*Estimated Total Annual Burden:* The estimated total annual burden is 1000 hours.

*Frequency:* The survey will be conducted once.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.73.

Issued on: September 23, 2003.

**Warren E. Hoemann,**

*Deputy Administator.*

[FR Doc. 03–24875 Filed 9–30–03; 8:45 am]

BILLING CODE 4910–EX–P

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## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

September 23, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

*Dates:* Written comments should be received on or before October 31, 2003 to be assured of consideration.

### Internal Revenue Service (IRS)

*OMB Number:* 1545–0118.

*Form Number:* IRS Form 1099-PATR.

*Type of Review:* Extension.

*Title:* Taxable Distributions Received From Cooperatives.

*Description:* Form 1099–PATR is used to report patronage dividends paid by cooperatives (Internal Revenue Code section 6044). The information is used by IRS to verify compliance on the part of the recipient.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 4,200.

*Estimated Burden Hours Per Respondent/Recordkeeper:* 16 minutes.

*Frequency of Response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 509,895 hours.

*OMB Number:* 1545–0717.

*Form Number:* IRS Form W–4S.

*Type of Review:* Extension.

*Title:* Request for Federal Income Tax Withholding From Sick Pay.

*Description:* Section 3402(o) of the Internal Revenue Code extends income tax withholding to sick pay payments made by third parties upon request of the payee. The information is used to determine the amount to be withheld from the third-party sick pay payment.

*Respondents:* Individuals or households.

*Estimated Number of Respondents/Recordkeepers:* 500,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—39 min.
Learning about the law or the form—10 min.
Preparing and sending the form to the IRS—41 min.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 765,000 hours.

*Clearance Officer:* Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Mary A. Able,**

*Departmental Reports, Management Officer.*

[FR Doc. 03–24880 Filed 9–30–03; 8:45 am]

BILLING CODE 4830–01–P

# Corrections

**Federal Register**
Vol. 68, No. 190
Wednesday, October 1, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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## OFFICE OF PERSONNEL MANAGEMENT

## 5 CFR Part 575

**RIN 3206–AK01**

## Extended Assignment Incentives

*Correction*

In rule document 03–23132 beginning on page 53667 in the issue of Friday, September 12, 2003 make the following correction:

### §575.511 [Corrected]

On page 53671, in the first column, in §575.511, in the first line "is voluntarily" should read "is involuntarily".

[FR Doc. C3–23132 Filed 9–30–03; 8:45 am]

**BILLING CODE 1505–01–D**

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

# Federal Register

**Wednesday,**
**October 1, 2003**

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**Part II**

## Department of Defense

## General Services Administration

## National Aeronautics and Space Administration

**48 CFR Parts 1, 2, et al.**
**Federal Acquisition Regulations; Final and Interim Rules**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Chapter 1

### Federal Acquisition Circular 2001–16; Introduction

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Summary presentation of final and interim rules, and technical amendments and corrections.

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001–16. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.arnet.gov/far*.

**DATES:** For effective dates and comment dates, *see* separate documents which follow.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001–16, and specific FAR case number(s). Interested parties may also visit our Web site at *http://www.arnet.gov/far*.

| Item | Subject | FAR case | Analyst |
|---|---|---|---|
| I | Central Contractor Registration | 2002–018 | Parnell. |
| II | Electronic Commerce in Federal Procurement | 1997–304 | Davis. |
| III | Unique Contract and Order Identifier Numbers (Interim) | 2002–025 | Zaffos. |
| IV | Procurements for Defense Against or Recovery From Terrorism or Nuclear, Biological, Chemical or Radiological Attack; and Temporary Emergency Procurement Authority. | 2002–026<br>2002–003 | Zaffos. |
| V | Notification of Overpayment, Contract Financing Payments | 2001–005 | Parnell. |
| VI | Caribbean Basin Country—Dominican Republic | 2003–006 | Davis. |
| VII | Prohibited Sources | 2001–015 | Davis. |
| VIII | Economic Planning, Employee Morale, and Travel Cost Principles | 2002–001 | Loeb. |
| IX | Technical Amendments. | | |

**SUPPLEMENTARY INFORMATION:** Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2001–16 amends the FAR as specified below:

### Item I—Central Contractor Registration (FAR Case 2002–018)

This final rule amends FAR parts 1, 2, 4, 13, 32, and 52 to require contractor registration in the Central Contractor Registration (CCR) database prior to award of any contract, basic agreement, basic ordering agreement, or blanket purchase agreement on or after October 1, 2003. In addition, the rule requires contracting officers to modify existing contracts whose period of performance extends beyond December 31, 2003, to require contractors to register in the CCR database by December 31, 2003.

### Item II—Electronic Commerce in Federal Procurement (FAR Case 1997–304)

This final rule implements section 850 of the National Defense Authorization Act for Fiscal Year 1998, Public Law 105–85, and section 810 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Public Law 106–398. Section 850 amends titles 10, 15, 40, and 41 of the United States Code to eliminate the preference for electronic commerce within Federal agencies to be conducted on the Federal Acquisition Computer Network (FACNET) computer architecture. Section 810 amends 41 U.S.C. 416 and 15 U.S.C. 637 to allow solicitation notices to be published via a single Governmentwide point of entry on the Internet designated in the FAR or via the Commerce Business Daily (CBD). The objectives of the rule are (1) to designate a single Governmentwide point of entry on the Internet, *http://www.fedbizopps.gov*, where agencies are required to provide convenient and universal public access to information on their procurement opportunities, and (2) to require electronic access to notices of solicitation through the single Governmentwide point of entry as a replacement for paper (or electronic) publication in the CBD.

### Item III—Unique Contract and Order Identifier Numbers (FAR Case 2002–025)

This interim rule amends the FAR to require each reporting agency to assign a unique procurement instrument identifier (PIID) for every contract, purchase order, BOA, Basic Agreement, and BPA reported to the Federal Procurement Data System; and to have in place, no later than October 1, 2003, a process that will ensure that each PIID reported to FPDS is unique, Governmentwide, and will remain so for at least 20 years from the date of contract award.

### Item IV—Procurements for Defense Against or Recovery From Terrorism or Nuclear, Biological, Chemical or Radiological Attack, and Temporary Emergency Procurement Authority (FAR Cases 2002–026 and 2002–003)

This rule finalizes interim rules 2002–026 and 2002–003, which increased the amount of the micro-purchase threshold and the simplified acquisition threshold and provide expanded access to streamlined procedures for procurements of supplies or services by or for an executive agency that are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack.

This final rule also amends the FAR to add the querying of commercial databases that provide information relevant to the agency acquisition as a technique for conducting market research.

### Item V—Notification of Overpayment, Contract Financing Payments (FAR Case 2001–005)

This final rule amends FAR parts 12, 32, and 52 to require the contractor to notify the contracting officer if the Government overpays when making an invoice payment or a contract financing payment under either a commercial item or a noncommercial item contract.

### Item VI—Caribbean Basin Country—Dominican Republic (FAR Case 2003–006)

This final rule amends FAR 25.003, 25.400, and the clauses at FAR 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Commercial Items, and FAR 52.225–5, Trade Agreements, to implement the direction of the USTR to reinstate the treatment of certain products of the Dominican Republic as eligible products under acquisitions subject to the Trade Agreements Act, as published by the USTR in the Federal Register at 68 FR 27883, May 21, 2003. This change will allow Government purchase of products originating in the Dominican Republic that are not excluded from duty-free treatment under 19 U.S.C. 2703(b), unless otherwise restricted by law.

### Item VII—Prohibited Sources (FAR Case 2001–015)

This final rule removes Serbia, the Taliban-controlled regions of Afghanistan, and Iraq from the list of prohibited sources and points the contracting officer to lists of entities and individuals subject to economic sanctions that are available at *http://www.epls.gov/TerList1.html*. The contracting officer is no longer authorized in unusual circumstances to acquire for use outside the United States supplies or services restricted by this section, unless specifically authorized by the OFAC. However, OFAC has granted authority to Department of Defense personnel to make emergency acquisitions in direct support of U.S. or allied forces deployed in military contingency, humanitarian, or peacekeeping operations in a country or region subject to economic sanctions administered by OFAC.

### Item VIII—Economic Planning, Employee Morale, and Travel Costs Principles (FAR Case 2002–001)

This final rule amends the FAR to revise three cost principles: (1) FAR 31.205–12, Economic planning costs; (2) FAR 31.205–13, Employee morale, health, welfare, food service, and dormitory costs and credits; and (3) FAR 31.205–46, Travel costs. The changes restructure the paragraphs and remove unnecessary and duplicative language to increase clarity and readability. The rule does not change the allowability of costs. The case was initiated to consider suggestions made at a series of public meetings. This rule is of particular interest to contractors and contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, *e.g.*, price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

### Item IX—Technical Amendments

This amendment makes editorial changes at FAR 8.404(b)(6) and 24.202(a).

Dated: September 24, 2003.

**Laura G. Auletta,**

*Director, Acquisition Policy Division.*

### Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–16 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001–16 are effective October 31, 2003, except for Items I, II, III, IV, and IX, which are effective October 1, 2003.

Dated: September 22, 2003.

**Deidre A. Lee,**

*Director, Defense Procurement and Acquisition Policy.*

Dated: September 23, 2003.

**David A. Drabkin,**

*Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.*

Dated: September 15, 2003.

**Tom Luedtke,**

*Assistant Administrator for Procurement, National Aeronautics and Space Administration.*

[FR Doc. 03–24581 Filed 9–30–03; 8:45 am]

BILLING CODE 6820–EP–P

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**48 CFR Parts 1, 2, 4, 13, 32, and 52**

**[FAC 2001–16; FAR Case 2002–018; Item I]**

**RIN 9000–AJ61**

## Federal Acquisition Regulation; Central Contractor Registration

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to require registration of contractors in the Central Contractor Registration (CCR) database prior to award of any contract, basic agreement, basic ordering agreement, or blanket purchase agreement. In addition, the rule requires contracting officers to modify existing contracts whose period of performance extends beyond December 31, 2003, to require contractors to register in the CCR database by December 31, 2003. The rule also revises the source list of supplies in the FAR (*see* Simplified Acquisition Procedures) to reflect statutory changes.

**DATES:** *Effective Date:* October 1, 2003.

*Applicability Date:* This final rule applies to contracts, basic agreements, basic ordering agreements, blanket purchase agreements, or modifications awarded on or after October 1, 2003. Existing contracts, basic agreements, basic ordering agreements, or blanket purchase agreements with a period of performance beyond December 31, 2003, are also covered by this final rule and must be modified pursuant to FAR 4.1103.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501–4082. Please cite FAC 2001–16, FAR case 2002–018.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This rule amends the FAR to require contractor registration in the Central Contractor Registration (CCR) database prior to award of any contract, basic agreement, basic ordering agreement, or blanket purchase agreement. In addition, the rule requires contracting officers to modify existing contracts whose period of performance extends beyond December 31, 2003, to require contractors to register in the CCR database by December 31, 2003.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 68 FR 16366, April 3, 2003, with a request for comments. Thirty-one respondents submitted 106 comments. The following discussion of the comments is provided:

1. The proposed rule requires registration of contractors in the CCR

database for new awards and modifications to existing contracts by September 30, 2003.

*Comment:* A number of respondents recommended some sort of transition period.

*Response:* Concur that there should be a short transition period. Departments and agencies were informed in OMB letters in mid-2001 that the CCR was a goal under the President's Management Agenda. For existing contracts and agreements, the final rule allows agencies until December 31, 2003, or sooner, to accomplish the transition to CCR so that they may still fulfill, in a timely fashion, an important objective of the integrated acquisition initiative, *i.e.*, to eliminate repetitive vendor registration.

2. Unless one of the exceptions applies, the rule applies to contractors with new contracts and existing contracts.

*Comment:* A number of respondents did not believe that it was in the best interest of the Government to require existing contracts to be modified to include the CCR registration requirement. One respondent suggested a "grandfathering" of existing contracts.

*Response:* Do not concur. Modification of current contracts benefits both the Government and contractors, by eliminating the need to maintain paper-based sources of contract information, by enabling contractors to update their information in one place via a website, and by allowing contracting officers to access contractor data and industry information less expensively, and more efficiently identify sources for contracting opportunities. Since other systems are using CCR data, modifications will ensure that the correct information provided by the vendor is used. Wholesale "grandfathering" is not considered an option as it would defeat one reason for CCR; *i.e.*, having one accurate and complete database for intergovernmental use.

3. Unless one of the exceptions applies, the rule requires small entities to register in CCR before contract award.

*Comment:* A number of respondents voiced concern regarding small businesses not having access to computers, refusing to register, not accepting payment by EFT. The possibility of an alternative procedure regarding small contractors was proposed.

*Response:* Partially concur. Language was added to the exceptions to cover micropurchases that do not use the electronic funds transfer (EFT) method and are not required to be reported. Additional changes were not considered necessary. As a general matter, this rule benefits small businesses since the CCR requirement (1) simplifies and streamlines the procurement process by eliminating redundant requirements and processes, and (2) increases visibility of contractor sources for specific supplies and services. Contractors have been encouraged for years to utilize the public resources available to them when they do not have Internet access themselves. In addition, since 1998, the DoD has required small and large businesses to register in the CCR database, with no apparent negative impact to small businesses. One respondent concluded the rule would save small business time and money by facilitating paperless procurement and payment through electronic funds transfers.

4. The rule at FAR 4.1102(a)(1) through (a)(5) provides for exceptions when CCR registration is not required.

*Comment:* A variety of suggestions were made in this area—adding exceptions for Status of Forces Agreement (SOFA) family members performing work OCONUS; contracts whose period of performance will not extend beyond September 30, 2003; waivers to recognize the occasional need to contract with a sole source; including a dollar threshold. Several respondents requested clarification of the term purchasing mechanism". While other respondents requested that the exception listed in paragraph (a)(5) concerning foreign vendors be expanded to include all awards to foreign vendors for work performed outside the U.S. In addition, two respondents pointed out that the exception in paragraph (a)(5) implies registration of foreign vendors is required after award.

*Response:* Changes were made to 4.1102(a)(1), (a)(2), and (a)(5). Paragraph (a)(1) was revised to read, "Purchases that use a Governmentwide commercial purchase card as both the purchasing and payment mechanism, as opposed to using the purchase card only as a payment method." With this change, a threshold exception was considered unnecessary as this could include many micro-purchases. Paragraph (a)(2) was revised to delete the words "or purchases" since the FAR defines "classified contracts", while paragraph (a)(5) was revised to delete the words "before award". However, the Councils believe that an attempt to register foreign vendors should be made. Many foreign vendors are currently registered.

5. The Paperwork Burden Statement in the **Federal Register** notice of the proposed rule.

*Comment:* Two respondents questioned the subject paragraph; *i.e.*, the estimated respondents are too low (54,199) and the total burden hours (54,199) are too low; and the 1 hour estimate to complete the information is too low.

*Response:* No change. When drafted, the burden for this rule was to represent only new transactions. The numbers were provided by FPDS and represent new transactions for the year 2001 over $25,000. A DoD clearance (OMB Control No. 0704–0400) provides for the current 226,000 enrolled in the CCR.

6. The Central Contractor Registration. Comments pertaining to the system, not the rule.

*Comment:* A variety of comments were received that related to the CCR and not to the rule. Examples of these comments include: Adding additional fields to the CCR; Confusion between the words Business Partner Network, CCR, and Federal Registration; Problems obtaining DUNS numbers; CCR as an unfunded mandate for agencies; Concerns that the financial community have implementing the requirement; The cost of using the CCR, both for the contractor and agency; and how agencies will be informed if contractors make changes to the information contained in the CCR.

*Response:* No change to the rule. The Councils considered these comments outside the scope of the case.

7. Individual comments and concerns that resulted in no change to the rule.

*Comment:* A variety of comments were received under this category. Examples of these comments include: Proposed revisions to the FAR clauses at 52.204–7 and 52.212–4(t) that reduces contractor liability for incorrect information; Will contractors be required to provide banking information?; Suspend rule for 90 days to convene a public meeting; Suggestion that each company elect to have a single annual renewal date for all its CCR registrations; Can COs require contractors with existing contracts to register in CCR?: What type of modification is required to amend existing contracts?; What happens if a contractor refuses to register; and who verifies the information in CCR?

*Response:* No change to the rule. The Councils did not believe the comments included under this category required changes to the rule.

8. Editorial changes to the rule.

*Comment:* A variety of comments offered editorial changes to the rule as follows:

1. A variety of editorials, including typos and updating references.

2. New telephone numbers for D&B.

3. Deletion of an incorrect e-mail address at the FAR provision at 52.204–6(c).

4. A revision to FAR 13.102 to emphasize the use of the CCR database.

5. Changes to the definitions of DUNS number and DUNS+4 at FAR 2.101 and 52.204–7(a). Changes were also made to FAR 52.204–6(b)(2), 52.204–7(c), and 52.212–1(j) to clarify and correct information related to D&B and to obtaining DUNS numbers.

6. A revision to FAR 52.204–7(c) to include a verification timeframe of "normally takes less than 48 hours."

7. A revision to FAR 13.201(d) to add a reference to 4.1104.

8. A revision to FAR 4.1104 to delete a redundant phrase.

9. A revision to FAR 52.212–4(t) to include language that addresses novation and change of name agreements included in FAR 52.204–7(g)(2).

10. A revision to FAR 4.203(e) and 4.905 to preclude furnishing information that may be required by CCR.

*Response:* The rule reflects editorial revisions.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule imposes a reporting, recordkeeping, or other compliance requirements. All small entities will be subject to the rule unless their contract, basic agreements, basic ordering agreement, or blanket purchase agreement falls within one of the six exceptions. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and is as follows:

### Final Regulatory Flexibility Analysis—FAR Case 2002–018, Central Contractor Registration

This Final Regulatory Flexibility Analysis has been prepared consistent with the criteria of 5 U.S.C. 604.

1. *Description of the reasons why action by the agency is being considered.*

In an effort to broaden use and reliance upon e-business applications, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are working with the Office of Federal Procurement Policy to eliminate the need to maintain paper-based sources of contractor information. The Central Contractor Registration (CCR) System is a centrally located, searchable database, accessible via the Internet to develop, maintain, and provide sources for future procurements. The CCR data is the most up to date and complete data available. As a single validated source of data on contractors doing business with the Government, the CCR database enables prospective contractors to update their information in one place via a web site (*http://www.CCR.gov*). The information is then available via the Internet. Contracting officers will now be able to access contractor data and industry information less expensively, and more efficiently identify sources for contracting opportunities. This rule will not create a total electronic commerce environment, but will help provide a basic framework or foundation that will allow migration to a total electronic commerce environment. There are other projects that are completed (FedBizOpps) or in the planning stages, which are complementary and will also become part of the total electronic commerce initiative.

2. *Summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.*

No comments were received in response to the Initial Regulatory Flexibility Analysis for this rule.

3. *Description of, and, where feasible, estimate of the number of small entities to which the proposed rule will apply.*

To date, no supporting data has been collected; therefore, there is no available estimate of the number of small businesses that will be subject to the rule. However, some agencies (*e.g.*, DoD) already require contractors to register in the CCR and there does not appear to be any adverse impact on small business. Based on Governmentwide data, approximately 42,675 small businesses were awarded contracts of $25,000 or more in fiscal year 2001. It is estimated that a majority of them will be subject to the rule. Many of these businesses are already among the over 200,000 registrants in CCR. Information is not available to identify the additional number of small businesses that were awarded contracts of less than $25,000, or were awarded basic agreements, basic ordering agreements, or blanket purchase agreements.

4. *Description of projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.*

This rule imposes a reporting, recordkeeping, or other compliance requirements. However, this requirement will be significantly reduced from that currently required. Existing regulations require contractors to submit duplicate information each time they enter into contracts and certain types of agreements with the Government. This rule eliminates this duplication so that information the Government needs to do business with a contractor will be collected once (with periodic update by the contractor) for use many times. All small entities will be subject to the rule unless their contract, basic agreements, basic ordering agreements, or blanket purchase agreements fall within one of the six exceptions. A contractor's administrative or financial personnel, who have general knowledge of the contractor's business, including the contractor's bank account and financial agent, may register by providing the pertinent information into the CCR database.

5. *Description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.*

There are no significant practical alternatives that will accomplish the objective of this rule. Continued reliance on a paper-based system would unnecessarily promote inefficiency associated with paper-based processes. The successful phase-out of the paper-based *Commerce Business Daily* in favor of reliance on FedBizOpps demonstrates that the Federal contracting community, including small businesses, is successfully transitioning to greater use of electronic tools and their associated efficiencies to conduct business.

The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR parts 1, 2, 4, 13, 32, and 52 in accordance with 5 U.S.C. 610.

Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001–16, FAR case 2002–018), in correspondence.

## C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the final rule contains information collection requirements. The paperwork burden analysis takes into account the burden required for information current, complete and accurate and the burden required for new registrants to review instructions, search existing data sources, gather and maintain the data needed, and completing and reviewing the collection of information. Accordingly, the FAR Secretariat has forwarded a request for approval of the increased information collection requirement, OMB Control Number 9000–0159, concerning FAR Case 2002–018, Central Contractor Registration, to the Office of Management and Budget. Public comments concerning this request will be invited through a subsequent **Federal Register** notice.

### List of Subjects in 48 CFR Parts 1, 2, 4, 13, 32, and 52

Government procurement.

Dated: September 24, 2003.

**Laura G. Auletta,**

*Director, Acquisition Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 4, 13, 32, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 2, 4, 13, 32, and 52 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

### 1.106 [Amended]

■ 2. Amend section 1.106 in the table following the introductory paragraph by adding FAR segments "52.204–7", "52.212–1(k)", and "52.212–4(t)" and corresponding OMB Control Numbers "9000–0159", respectively.

## PART 2—DEFINITIONS OF WORDS AND TERMS

■ 3. Amend section 2.101(b) by adding, in alphabetical order, the definitions "Central Contractor Registration (CCR) database", "Data Universal Numbering System (DUNS) number", "Data Universal Numbering System +4 (DUNS+4) number", and "Registered in the CCR database" to read as follows:

### 2.101 Definitions.

* * * * *

(b) * * *

*Central Contractor Registration (CCR) database* means the primary Government repository for contractor information required for the conduct of business with the Government.

* * * * *

*Data Universal Numbering System (DUNS) number* means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B), to identify unique business entities.

*Data Universal Numbering System +4 (DUNS+4) number* means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (*see* subpart 32.11) for the same concern.

* * * * *

*Registered in the CCR database* means that—

(1) The contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

(2) The Government has validated mandatory data fields and has marked the record "Active".

* * * * *

## PART 4—ADMINISTRATIVE MATTERS

■ 4. Amend section 4.203 by revising the introductory text of paragraph (e)(1) to read as follows:

### 4.203 Taxpayer identification information.

* * * * *

(e) * * *

(1) Each contracting officer that issues a basic ordering agreement or indefinite-delivery contract (other than a Federal Supply Schedule contract) shall provide to contracting officers placing orders under the agreement or contract (if the contractor is not required to provide this information to a central contractor registration database)—

* * * * *

■ 5. Amend section 4.603 by revising paragraph (a) to read as follows:

### 4.603 Solicitation provisions.

(a) Insert the provision at 52.204–6, Data Universal Numbering System (DUNS) Number, in solicitations that—

(1) Are expected to result in a requirement for the generation of an SF 279, Federal Procurement Data System (FPDS)—Individual Contract Action Report (see 4.602(c)), or a similar agency form; and

(2) Do not contain the clause at 52.204–7, Central Contractor Registration.

* * * * *

■ 6. Revise section 4.905 to read as follows:

### 4.905 Solicitation provision.

The contracting officer shall insert the provision at 52.204–3, Taxpayer Identification, in solicitations that—

(a) Do not include the clause at 52.204–7, Central Contractor Registration; and

(b) Are not conducted under the procedures of part 12.

■ 7. Add subpart 4.11 to read as follows:

## Subpart 4.11—Central Contractor Registration

Sec.
4.1100 Scope.
4.1101 Definitions.
4.1102 Policy.
4.1103 Procedures.
4.1104 Solicitation provision and contract clauses.

### 4.1100 Scope.

This subpart prescribes policies and procedures for requiring contractor registration in the Central Contractor Registration (CCR) database, a part of the Business Partner Network (BPN) to—

(a) Increase visibility of vendor sources (including their geographical locations) for specific supplies and services; and

(b) Establish a common source of vendor data for the Government.

### 4.1101 Definitions.

As used in this subpart—

*Agreement* means basic agreement, basic ordering agreement, or blanket purchase agreement.

*Business Partner Network* means an integrated electronic infrastructure the Government uses to manage (*i.e.*, collect, validate, access and maintain) the information it needs to transact business with its contractors.

### 4.1102 Policy.

(a) Prospective contractors shall be registered in the CCR database prior to award of a contract or agreement, except for—

(1) Purchases that use a Governmentwide commercial purchase card as both the purchasing and payment mechanism, as opposed to using the purchase card only as a payment method;

(2) Classified contracts (*see* 2.101) when registration in the CCR database, or use of CCR data, could compromise the safeguarding of classified information or national security;

(3) Contracts awarded by—

(i) Deployed contracting officers in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13) or humanitarian or peacekeeping operations as defined in 10 U.S.C. 2302(7); or

(ii) Contracting officers in the conduct of emergency operations, such as responses to natural or environmental disasters or national or civil emergencies, *e.g.*, Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121);

(4) Contracts to support unusual or compelling needs (*see* 6.302–2);

(5) Awards made to foreign vendors for work performed outside the United States, if it is impractical to obtain CCR registration; and

(6) Micro-purchases that do not use the electronic funds transfer (EFT) method for payment and are not required to be reported (*see* subpart 4.6).

(b) If practical, the contracting officer shall modify the contract or agreement awarded under paragraph (a)(3) or (a)(4) of this section to require CCR registration.

(c)(1)(i) If a contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the contractor shall provide the responsible contracting officer a minimum of one business day's written notification of its intention to change the name in the CCR database; comply with the requirements of Subpart 42.12; and agree in writing to the timeline and procedures specified by the responsible contracting officer. The contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the contractor fails to comply with the requirements of paragraph (g)(1)(i) of the clause at 52.204–7, Central Contractor Registration, or fails to perform the agreement at 52.204–7(g)(1)(i)(3), and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the contractor to be other than the contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the EFT clause of the contract.

(2) The contractor shall not change the name or address for electronic funds transfer payments (EFT) or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (*see* subpart 32.8, Assignment of Claims).

(3) Assignees shall be separately registered in the CCR database. Information provided to the contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of the contract.

### 4.1103 Procedures.

(a) Unless the acquisition is exempt under 4.1102, the contracting officer—

(1) Shall verify that the prospective contractor is registered in the CCR database (*see* paragraph (b) of this section) before awarding a contract or agreement;

(2) Should use the DUNS number or, if applicable, the DUNS+4 number, to verify registration—

(i) Via the Internet at *http://www.ccr.gov*;

(ii) By calling toll-free: 1–888–227–2423, commercial: (269) 961–5757, or Defense Switched Network (DSN) (used at certain Department of Defense locations): 932–5757; or

(iii) As otherwise provided by agency procedures; and

(3) Shall modify a contract or agreement that does not already include the requirement to be registered in the CCR database and maintain registration until final payment, and whose period of performance extends beyond December 31, 2003—

(i) To incorporate, as appropriate, the clause at 52.204–7, Central Contractor Registration, and its Alternate I, or, for a contract for commercial items, an addendum to 52.212–4, Contract Terms and Conditions—Commercial Items, that requires the contractor to be registered in the CCR database by December 31, 2003, and maintain registration until final payment; and

(ii) In sufficient time to permit CCR registration by December 31, 2003.

(b) Need not verify registration before placing an order or call if the contract or agreement includes the clause at 52.204–7, or 52.212–4(t), or a similar agency clause.

(c) If the contracting officer, when awarding a contract or agreement, determines that a prospective contractor is not registered in the CCR database and an exception to the registration requirements for the award does not apply (*see* 4.1102), the contracting officer shall—

(1) If the needs of the requiring activity allow for a delay, make award after the apparently successful offeror has registered in the CCR database. The contracting officer shall advise the offeror of the number of days it will be allowed to become registered. If the offeror does not become registered by the required date, the contracting officer shall award to the next otherwise successful registered offeror following the same procedures (*i.e.*, if the next apparently successful offeror is not registered, the contracting officer shall advise the offeror of the number of days it will be allowed to become registered, etc.); or

(2) If the needs of the requiring activity do not allow for a delay, proceed to award to the next otherwise successful registered offeror, provided that written approval is obtained at one level above the contracting officer.

(d) Agencies shall protect against improper disclosure of contractor CCR information.

(e) The contracting officer shall, on contractual documents transmitted to the payment office, provide the DUNS number, or, if applicable, the DUNS+4, in accordance with agency procedures.

### 4.1104 Solicitation provision and contract clauses.

Except as provided in 4.1102(a), use the clause at 52.204–7, Central Contractor Registration, in solicitations and contracts. If modifying a contract or an agreement to require registration, use the clause with its Alternate I.

## PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 8. Amend section 13.102 by revising paragraph (a) to read as follows:

### 13.102 Source list.

(a) Contracting officers should use the Central Contractor Registration database (*see* Subpart 4.11) at *http://www.ccr.gov* as their primary sources of vendor information. Offices maintaining additional vendor source files or listings should identify the status of each source (when the status is made known to the contracting office) in the following categories:

(1) Small business.

(2) Small disadvantaged business.

(3) Women-owned small business.

(4) HUBZone small business.

(5) Service-disabled veteran-owned small business.

(6) Veteran-owned small business.

* * * * *

### 13.201 [Amended]

■ 9. Amend section 13.201 in the first sentence of paragraph (d) by removing "32.1110" and adding "4.1104 and 32.1110" in its place.

## PART 32—CONTRACT FINANCING

■ 10. Amend section 32.805 by adding paragraph (d)(4) to read as follows:

### 32.805 Procedure.

* * * * *

(d) * * *

(4) The assignee is registered separately in the Central Contractor Registration unless one of the exceptions in 4.1102 applies.

* * * * *

### 32.1103 [Amended]

■ 11. Amend section 32.1103 by removing the word "where" from paragraph (d).

■ 12. Amend section 32.1110 by revising the introductory text of paragraph (a), (a)(1), and (a)(2)(i) to read as follows:

### 32.1110 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the clause at—

(1) 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration, in solicitations and contracts that include the clause at 52.204–7 or an agency clause that requires a contractor to be registered in the CCR database and maintain registration until final payment, unless—

(i) Payment will be made through a third party arrangement (*see* 13.301 and paragraph (d) of this section); or

(ii) An exception listed in 32.1103(a) through (i) applies.

(2)(i) 52.232–34, Payment by Electronic Funds TransferùOther than Central Contractor Registration, in solicitations and contracts that require EFT as the method for payment but do not include the clause at 52.204–7, Central Contractor Registration, or a similar agency clause that requires the contractor to be registered in the CCR database.

* * * * *

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 13. Revise section 52.204–6 to read as follows:

### 52.204–6 Data Universal Numbering System (DUNS) Number.

As prescribed in 4.603(a), insert the following provision:

Data Universal Numbering System (DUNS) Number (Oct 2003)

(a) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS+4" followed by the DUNS number or "DUNS+4" that identifies the offeror's name and address exactly as stated in the offer. The DUNS number is a nine-digit number assigned by Dun and Bradstreet, Inc. The DUNS+4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see Subpart 32.11) for the same parent concern.

(b) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number—

(i) If located within the United States, by calling Dun and Bradstreet at 1–866–705–5711 or via the Internet at *http://www.dnb.com;* or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

(i) Company legal business name.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company physical street address, city, state and Zip Code.

(iv) Company mailing address, city, state and Zip Code (if separate from physical).

(v) Company telephone number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

(End of provision)

■ 14. Add section 52.204–7 to read as follows:

### 52.204–7 Central Contractor Registration.

As prescribed in 4.1104, use the following clause:

Central Contractor Registration (Oct 2003)

(a) *Definitions.* As used in this clause—

*Central Contractor Registration (CCR) database* means the primary Government repository for Contractor information required for the conduct of business with the Government.

*Data Universal Numbering System (DUNS) number* means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

*Data Universal Numbering System +4 (DUNS+4) number* means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at Subpart 32.11) for the same parent concern.

*Registered in the CCR database* means that—

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

(2) The Government has validated all mandatory data fields and has marked the record "Active".

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS +4" followed by the DUNS or DUNS +4 number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number—

(i) If located within the United States, by calling Dun and Bradstreet at 1–866–705–5711 or via the Internet at *http://www.dnb.com;* or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

(i) Company legal business.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company Physical Street Address, City, State, and Zip Code.

(iv) Company Mailing Address, City, State and Zip Code (if separate from physical).

(v) Company Telephone Number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g)(1)(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12 of the FAR; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at *http://www.ccr.gov* or by calling 1–888–227–2423, or 269–961–5757.

Alternate I (Oct. 2003). As prescribed in 4.1104(a), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b)(1) The Contractor shall be registered in the CCR database by __________ [*Contracting Officer shall insert a date no later than December 31, 2003*]. The Contractor shall maintain registration during performance and through final payment of this contract.

(2) The Contractor shall enter, in the block with its name and address on the cover page of the SF 30, Amendment of solicitation/ Modification of Contract, the annotation "DUNS" or "DUNS +4" followed by the DUNS or DUNS +4 number that identifies the Contractor's name and address exactly as stated in this contract. The DUNS number will be used by the Contracting Officer to verify that the Contractor is registered in the CCR database.

■ 15. Amend section 52.212–1 by revising the date of the provision and paragraph (j); and adding paragraph (k) to read as follows:

### 52.212–1 Instructions to Offerors—Commercial Items.

* * * * *

Instructions to Offerors—Commercial Items, (Oct. 2003)

* * * * *

(j) *Data Universal Numbering System (DUNS) Number.* (Applies to all offers exceeding $25,000, and offers of $25,000 or less if the solicitation requires the Contractor to be registered in the Central Contractor Registration (CCR) database. The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS +4" followed by the DUNS or DUNS +4 number that identifies the offeror's name and address. The DUNS +4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see FAR Subpart 32.11) for the same parent concern. If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. An offeror within the United States may contact Dun and Bradstreet by calling 1–866–705–5711 or via the internet at *http://www.dnb.com.* An offeror located outside the United States must contact the local Dun and Bradstreet office for a DUNS number.

(k) *Central Contractor Registration.* Unless exempted by an addendum to this solicitation, by submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance and through final payment of any contract resulting from this solicitation. If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror. Offerors may obtain information on registration and annual confirmation requirements via the Internet at *http://www.ccr.gov* or by calling 1–888–227–2423 or 269–961–5757.

■ 16. Amend section 52.212–4 by revising the date of the clause; and adding paragraph (t) to read as follows:

### 52.212–4 Contract Terms and Conditions—Commercial Items.

* * * * *

Contract Terms and Conditions—Commercial Items, (OCT 2003)

* * * * *

(t) *Central Contractor Registration (CCR).* (1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2)(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of subpart 42.12; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at *http://www.ccr.gov* or by calling 1–888–227–2423 or 269–961–5757.

### 52.212–5 [Amended]

■ 17. Amend section 52.212–5 by revising the date of the clause to read "(OCT 2003); and in paragraph (b)(29) of the clause by removing "(MAY 1999)" and adding "(OCT 2003)" in its place.

### 52.213–4 [Amended]

■ 18. Amend section 52.213–4 by removing from the clause heading "(Aug 2003)" and in paragraph (b)(1)(ix) "(May 1999)" and adding in their places "(Oct 2003)".

■ 19. Amend section 52.232–33 by—

■ a. Revising the date of the clause;

■ b. Removing paragraph (e);

■ c. Redesignating paragraphs (f) through (j) as (e) through (i), respectively; and

■ d. Revising newly designated paragraph (g) to read as follows:

### 52.232–33 Payment by Electronic Funds Transfer—Central Contractor Registration.

* * * * *

Payment by Electronic Funds Transfer—Central Contractor Registration, (Oct 2003)

* * * * *

(g) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register separately in the CCR database and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims pursuant to subpart 32.8, is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

* * * * *

[FR Doc. 03–24582 Filed 9–30–03; 8:45 am]

**BILLING CODE 6820–EP–P**

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 2, 4, 5, 6, 7, 9, 10, 12, 13, 14, 19, 22, 25, 34, 35, and 36

**[FAC 2001–16; FAR Case 1997–304; Item II]**

**RIN 9000–AI10**

## Federal Acquisition Regulation; Electronic Commerce in Federal Procurement

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule adopted as final with changes.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to further implement section 850 of the National Defense Authorization Act for Fiscal Year 1998; and implement section 810 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001.

Section 850 calls for the use of cost-effective procedures and processes that employ electronic commerce in the conduct and administration of Federal procurement systems. This includes the designation in the FAR of a single point of universal electronic public access to Governmentwide procurement opportunities (the "Governmentwide Point of Entry" or "GPE"). Section 810 allows agencies to provide access to notices through the GPE, as designated in the FAR, instead of publishing them via the Commerce Business Daily (CBD).

This rule finalizes the interim rule that designated Federal Business Opportunities (FedBizOpps) as the GPE. In addition, this final rule makes the GPE the exclusive official source for public access to notices of procurement actions over $25,000.

**DATES:** Effective Date: October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2001–16, FAR case 1997–304.

**SUPPLEMENTARY INFORMATION:**

### A. Background

*1. Implementation of Section 850 of the Defense Authorization Act for Fiscal Year 1998*

Section 850, which is codified at section 30 of the Office of Federal Procurement Policy Act (41 U.S.C. 426), requires agencies to "establish, maintain, and use, to the maximum extent that is practicable and cost-effective, procedures and processes that employ electronic commerce in the conduct and administration of their procurement systems." Among other things, section 850 called for "any notice of agency requirements or agency solicitation for contract opportunities" to be provided in a form that allows "convenient and universal user access through a single, government-wide point of entry" (GPE). In addition, section 850 amended titles 10, 15, 40, and 41 of the United States Code to eliminate the statutory preference for the Federal Acquisition Computer Network (FACNET) computer architecture in conducting transactions electronically.

On October 30, 1998, the Councils published an interim rule (63 FR 58590), which amended FAR subpart 4.5 and made associated changes to FAR parts 2, 5, 13, 14, and 32 to implement section 850. In particular, the interim rule amended the FAR to—

- Promote the cost-effective application of electronic commerce in Federal procurement; and
- Require Federal procurement systems that employ electronic commerce to apply nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information.

Around the time that the interim rule was developed, the General Services Administration (GSA), the National Aeronautics and Space Administration (NASA), and other agencies piloted, and later began using, "FedBizOpps" (formerly known as the Electronic Posting System) to take greater advantage of electronic tools. Among other things, these efforts were designed to provide sellers with "one-stop" access to business opportunities (*i.e.*, where sellers, after identifying pre-solicitation notices of interest for actions above $25,000, could quickly access related solicitation information through a direct link). These efforts were also intended to streamline agency buyers' preparation and issuance of notices and solicitation information without disrupting, eliminating, or otherwise requiring the replacement of current agency electronic commerce software.

In the spring of 2000, the Office of Federal Procurement Policy (OFPP) recommended that FedBizOpps (*http://www.fedbizopps.gov*) be designated as the GPE. The Councils published a proposed rule in the **Federal Register** to reflect this recommendation (65 FR 50872, August 21, 2000). The preamble to the proposed rule described the Government's objectives in designating a GPE (*i.e.*, to create a central point for electronic access to business opportunities, to follow the commercial lead, and to modernize processes used by sellers and buyers) and how FedBizOpps met these objectives.

After considering public comments on the proposed rule, the Councils published an interim rule in the **Federal Register** to make the proposed designation of FedBizOpps as the GPE effective (66 FR 27406, May 16, 2001). That rule required agencies to make notices of contracting opportunities that meet the criteria in FAR 5.101 and 5.201 accessible via FedBizOpps by October 1, 2001. In addition, the rule—

- Added place of contract performance and set-aside status as two new data fields to the required notice content;
- Required agencies to make accessible through FedBizOpps other notices that were being published in the CBD, such as presolicitation notices and award notices supporting subcontracting opportunities;
- Required agencies to make accessible via FedBizOpps most solicitations and amendments associated with business opportunities listed on the FedBizOpps web site;
- Permitted contractors to publicize subcontracting opportunities with the intent of supporting achievement of subcontracting goals; and
- Permitted agencies to make accessible via FedBizOpps information that allows potential offerors to better understand how they can meet the Government's needs.

This final rule finalizes the GPE designation that was proposed at 65 FR 50872, August 21, 2000, and made effective by the interim rule published in the **Federal Register** at 66 FR 27406, May 16, 2001

### *2. Implementation of Section 810 of the Defense Authorization Act for Fiscal Year 2001*

Section 810 amends section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)). As amended, these provisions allow agencies to provide access to their notices of solicitation either by transmitting them to the GPE designated in the FAR or by publishing them in the CBD, rather than mandating notices only through the CBD as had previously been required.

To implement section 810, the interim rule that was published on May 16, 2001 (66 FR 27406), established FedBizOpps (*i.e.*, the designated GPE) as the principal venue for procurement notices. Pursuant to that rule, agencies have been required to transmit notices to FedBizOpps since October 1, 2001. The rule required duplicate notices in the CBD through January 1, 2002, using the current format prescribed for the electronic version of the CBD, Commerce Business Daily Network (CBDNet). The duplication of notices transmitted to FedBizOpps in the CBD through the end of the calendar year 2001 was designed to provide additional time for vendors to become acclimated to FedBizOpps as the GPE.

The interim rule provided that agencies need not provide duplicate notice in the CBD as of January 1, 2002, and instead may rely exclusively on the mandatory notice in FedBizOpps to satisfy the required access. Thus, the interim rule effectively laid the foundation for the phase-out of the CBD and CBDNet by making their use non-mandatory. Agencies have been relying exclusively on FedBizOpps since the beginning of January 2002.

This final rule clarifies that the GPE is the exclusive source for public access to notices of procurement actions over $25,000. Sole reliance on FedBizOpps is enabling the Government and its business partners to take advantage of the improved access to information and efficiencies made possible through electronic processes.

### *3. Public Comments*

Public comments regarding the proposed designation of FedBizOpps as the GPE were solicited and received in response to the proposed rule published in the **Federal Register** at 65 FR 50872, August 21, 2000. For this reason, the subsequent interim rule that was published in the **Federal Register** at 66 FR 27406, May 16, 2001, sought comments on the issues unique to that rule—namely, those relating to the implementation of section 810—for consideration in the formulation of this final rule.

The majority of the comments received in response to the interim rule focused on technical considerations related to the use of FedBizOpps, as opposed to the policies set forth in the rule. Those comments were referred to the FedBizOpps "users group" for consideration. The users group is comprised of agency representatives who help to manage their agency's use of FedBizOpps. The remaining comments are briefly summarized as follows:

- Two commenters suggested continuing the publication of printed synopses. This suggestion was not accepted. The Councils believe the cost of issuing printed notices would be excessive for the small number of firms that would be interested in printed copies. Continued operation of a paper-based process would force the Government to shoulder unnecessary cost and burden. By contrast, sole reliance on FedBizOpps enables the Government and its business partners to take advantage of the improved access to information and efficiencies made possible through electronic processes.
- One commenter indicated that the rule should have addressed the underlying requirements for publication of notices and the content of notices. No changes were made to the rule based on this comment. The general requirement to synopsize and the contents of synopses are already addressed in FAR subpart 5.2. This rule does not change the underlying requirement to synopsize, which is rooted in section 18 of the Office of Federal Procurement Policy Act, 41 U.S.C. 416. Agencies' internal review procedures provide the necessary oversight of contracting personnel to ensure compliance with these requirements.
- One commenter indicated that the interim FAR coverage failed to modify the timeframes for presumption of publication even though FedBizOpps will provide a near-instantaneous display of notices. FAR 5.203(g) has been amended to shorten to one day the time for presumption of publication.
- Finally, one commenter offered several editorial changes to improve the readability of the rule. These comments were accepted where possible.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA), and it is summarized as follows:

> The final rule further implements section 850 of the National Defense Authorization Act for Fiscal Year 1998, Pub. L. 105–85, and section 810 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Pub. L. 106–398. Section 850 amends titles 10, 15, 40, and 41 of the United States Code to eliminate the preference for electronic commerce within Federal agencies to be conducted on the Federal Acquisition Computer Network (FACNET) computer architecture. Section 810 amends 41 U.S.C. 416 and 15 U.S.C. 637 to allow solicitation notices to be published via a single Government point of entry (FedBizOpps) or via the CBD.
>
> The objectives of the rule are (1) designate a single Governmentwide point of entry on the Internet, *http://www.fedbizopps.gov*, where agencies are required to provide convenient and universal public access to information on their procurement opportunities, and (2) to permit electronic access to notices of solicitation through the single Governmentwide point of entry as a substitute for the previously required paper publication in the CBD.
>
> One comment was received in response to the Initial Regulatory Flexibility Analysis. The commentor recommended that the rule continue dual publishing of contracting opportunities in FedBizOpps and the CBD so that small businesses would have two sources from which to identify notices and solicitations. The IRFA should then be republished discussing Section 810 based on an interpretation that it does not preclude dual publishing of notices in the CBD and FedBizOpps. In addition, the comment suggested that the time for agencies to become fully compliant with the regulation be extended and that the rule mention the linkage between FedBizOpps and the Procurement Marketing and Access Network (PRO-Net).
>
> No changes were made to the rule based on the comment. While Section 810 does not preclude the continuation of dual publicizing vehicles, the Federal Government is currently taking steps to eliminate duplicative systems in order to reduce operating costs for the Government and to provide one face to industry. Equally, if not more importantly, sole reliance on FedBizOpps enables the Government and its business partners to take advantage of the improved access to information and efficiencies made possible through electronic processes. With regard to extending the time provided for agencies to become compliant, this extension was not considered necessary since agencies have already completed their transition to FedBizOpps, in compliance with the interim rule, which made agency use of FedBizOpps mandatory as of October 1, 2001. With regard to linkage between FedBizOpps and PRO-Net, such linkage has been made on the cover page of FedBizOpps. The Councils do not

believe this linkage needs to be the subject of a regulatory promulgation.

The final rule will apply to all large and small entities that do business or are planning to do business with the Government. FedBizOpps is designed to be sufficiently versatile to allow sellers and service providers to access and download information through different commercial electronic means, including web-based technology, bulk data feeds, and electronic mail. This versatility will enable the more than 49,101 small and 19,382 large businesses to have easy access to Government business opportunities over $25,000.

The rule imposes no reporting, recordkeeping, or other compliance requirements. There are no practical alternatives that will accomplish the objectives of this rule.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Parts 2, 4, 5, 6, 7, 9, 10, 12, 13, 14, 19, 22, 25, 34, 35, and 36

Government procurement.

Dated: September 24, 2003.

**Laura G. Auletta,**

*Director, Acquisition Policy Division.*

### Interim Rule Adopted as Final With Changes

■ Accordingly, DoD, GSA, and NASA adopt the interim rules amending 48 CFR parts 2, 4, 5, 6, 7, 9, 12, 13, 14, 19, 22, 34, 35, and 36 that were published in the **Federal Register** at 63 FR 48590, October 30, 1998, and 66 FR 27406, May 16, 2001, as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 2, 5, 9, 10, 12, 13, 14, 22, 25, and 35 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 2—DEFINITIONS OF WORDS AND TERMS

### 2.101 [Amended]

■ 2. Amend section 2.101 in paragraph (b) by removing the definition "Commerce Business Daily (CBD)".

## PART 5—PUBLICIZING CONTRACT ACTIONS

■ 3. Revise section 5.003 to read as follows:

### 5.003 Governmentwide point of entry.

For any requirement in the FAR to publish a notice, the contracting officer must transmit the notices to the GPE.

### 5.101 [Amended]

■ 4. Amend section 5.101 in paragraph (a)(1) by removing ", unless covered by 5.003"; and by removing "5.207(d) and (g)" from the introductory text of paragraph (a)(2) and paragraph (a)(2)(i) (twice) and adding "5.207(c)" in its place.

■ 5. Amend section 5.201 by removing paragraph (b)(2) and redesignating paragraph (b)(3) as (b)(2); and revising newly designated paragraph (b)(2) and paragraph (d) to read as follows:

### 5.201 General.

* * * * *

(b)(1) * * *

(2) When transmitting notices to FACNET, contracting officers must ensure the notice is forwarded to the GPE.

* * * * *

(d) The GPE may be accessed via the Internet at *http://www.fedbizopps.gov.*

■ 6. Amend section 5.203 by revising the introductory text of paragraph (a); and removing the first and second sentences from paragraph (g) and adding a sentence in its place to read as follows:

### 5.203 Publicizing and response time.

* * * * *

(a) An agency must transmit a notice of proposed contract action to the GPE (*see* 5.201). All publicizing and response times are calculated based on the date of publication. The publication date is the date the notice appears on the GPE. The notice must be published at least 15 days before issuance of a solicitation except that, for acquisitions of commercial items, the contracting officer may—

* * * * *

(g) Contracting officers may, unless they have evidence to the contrary, presume the notice was published one day after transmission to the GPE. * * *

* * * * *

### 5.205 [Amended]

■ 7. Amend section 5.205 by removing the last sentence of paragraph (b), the second and third sentences of paragraph (d)(1), the last sentence of paragraph (e), and the second sentence of paragraph (f).

### 5.206 [Amended]

■ 8. Amend section 5.206 by removing from the introductory text of paragraph (a) ", the CBD, or both"; and by removing from paragraph (b)(1) ", following the standard CBD format for items 7, 10, 11, and 17 in 5.207(b)(4)".

■ 9. Revise section 5.207 to read as follows:

### 5.207 Preparation and transmittal of synopses.

(a) *Content.* Each synopsis transmitted to the GPE must address the following data elements, as applicable:

(1) Action Code.
(2) Date.
(3) Year.
(4) Government Printing Office (GPO) Billing Account Code.
(5) Contracting Office Zip Code.
(6) Classification Code.
(7) Contracting Office Address.
(8) Subject.
(9) Proposed Solicitation Number.
(10) Opening and Closing Response Date.
(11) Contact Point or Contracting Officer.
(12) Contract Award and Solicitation Number.
(13) Contract Award Dollar Amount.
(14) Contract Line Item Number.
(15) Contract Award Date.
(16) Contractor.
(17) Description.
(18) Place of Contract Performance.
(19) Set-aside Status.

(b) *Transmittal.* Transmissions to the GPE must be in accordance with the interface description available via the Internet at *http://www.fedbizopps.gov.*

(c) *General format for "Description."* Prepare a clear and concise description of the supplies or services that is not unnecessarily restrictive of competition and will allow a prospective offeror to make an informed business judgment as to whether a copy of the solicitation should be requested including the following, as appropriate:

(1) National Stock Number (NSN) if assigned.

(2) Specification and whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and identification of the office from which additional information about the qualification requirement may be obtained (*see* subpart 9.2).

(3) Manufacturer, including part number, drawing number, etc.

(4) Size, dimensions, or other form, fit or functional description.

(5) Predominant material of manufacture.

(6) Quantity, including any options for additional quantities.

(7) Unit of issue.

(8) Destination information.

(9) Delivery schedule.

(10) Duration of the contract period.

(11) For a proposed contract action in an amount estimated to be greater than $25,000 but not greater than the simplified acquisition threshold, enter—

(i) A description of the procedures to be used in awarding the contract (*e.g.*, request for oral or written quotation or solicitation); and

(ii) The anticipated award date.

(12) For Architect-Engineer projects and other projects for which the supply or service codes are insufficient, provide brief details with respect to: location, scope of services required, cost range and limitations, type of contract, estimated starting and completion dates, and any significant evaluation factors.

(13) Numbered notes (*see* paragraph (e) of this section), including instructions for set-asides for small businesses.

(14) In the case of noncompetitive contract actions (including those that do not exceed the simplified acquisition threshold), identify the intended source (*see* paragraph (e) of this section) and insert a statement of the reason justifying the lack of competition.

(15) Insert a statement that all responsible sources may submit a bid, proposal, or quotation which shall be considered by the agency.

(16) If solicitations synopsized through the GPE will not be made available through the GPE, provide information on how to obtain the solicitation.

(17) If the solicitation will be made available to interested parties through electronic data interchange, provide any information necessary to obtain and respond to the solicitation electronically.

(18) In the case of a very small business set-aside, identify the Designated Region (see Subpart 19.9).

(19) If the technical data required to respond to the solicitation will not be furnished as part of such solicitation, identify the source in the Government, if any, from which the technical data may be obtained.

(d) *Set-asides.* When the proposed acquisition provides for a total, partial, or very small business set-aside or a HUBZone small business set-aside, the appropriate Numbered Note will be cited.

(e) *Numbered notes.* Numbered Notes are footnotes to be used by contracting officers to eliminate the unnecessary duplication of information that appears in various announcements. An explanation of the numbered notes appears at *http://www.fedbizopps.gov.*

(f) *Codes to be used in Synopses to identify services or supplies.* Contracting officers must use one of the classification codes identified at *http://www.fedbizopps.gov/* to identify services or supplies in synopses.

(g) *Cancellation of synopsis.* Contracting officers should not publish notices of solicitation cancellations (or indefinite suspensions) of proposed contract actions in the GPE. Cancellations of solicitations must be made in accordance with 14.209 and 14.404–1.

■ 10. Amend section 5.301 by revising paragraph (c) and removing paragraph (d) to read as follows:

**5.301 General.**

* * * * *

(c) With respect to acquisitions subject to the Trade Agreements Act, contracting officers must submit synopses in sufficient time to permit their publication in the GPE not later than 60 days after award.

### PART 9—CONTRACTOR QUALIFICATIONS

**9.204 [Amended]**

■ 11. Amend section 9.204 in paragraph (a)(1) by removing the last sentence.

**9.205 [Amended]**

■ 12. Amend section 9.205 in the introductory text of paragraph (a) by removing the third sentence.

### PART 10—MARKET RESEARCH

**10.002 [Amended]**

■ 13. Amend section 10.002 by removing "(*see* 5.207(e)(4))" from the end of paragraph (d)(2) and adding "(*see* 5.207(e))" in its place.

### PART 12—ACQUISITION OF COMMERCIAL ITEMS

**12.603 [Amended]**

■ 14. Amend section 12.603 in paragraph (a) by removing the last sentence; in paragraph (c)(1) by removing "for items 1–16"; and in paragraph (c)(2) by removing "item 17," and adding "the" in its place.

### PART 13—SIMPLIFIED ACQUISITION PROCEDURES

**13.104 [Amended]**

■ 15. Amend section 13.104 in the first sentence of paragraph (b) by removing "neither using FACNET nor" and adding "not using either FACNET or" in its place.

### PART 14—SEALED BIDDING

**14.503–2 [Amended]**

■ 16. Amend section 14.503–2 in paragraph (b) by removing "(see 5.207(b)(1))" and adding "(see 5.207)" in its place.

### PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

**22.1009–4 [Amended]**

■ 17. Amend section 22.1009–4 in the introductory text of paragraph (b) by removing "(see 5.207(g)(4))".

### PART 25—FOREIGN ACQUISITION

**25.408 [Amended]**

■ 18. Amend section 25.408 in paragraph (a)(2) by removing "(5.207(e)(2))" and adding "(5.207(e))" in its place.

### PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

**35.016 [Amended]**

■ 19. Amend section 35.016 in paragraph (c) by removing the last sentence.

[FR Doc. 03–24583 Filed 9–30–03; 8:45 am]

BILLING CODE 6820–EP–P

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**48 CFR Part 4**

**[FAC 2001–16; FAR Case 2002–025; Item III]**

**RIN 9000–AJ70**

## Federal Acquisition Regulation; Unique Contract and Order Identifier Numbers

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to issue an interim rule amending the Federal Acquisition Regulation (FAR) to require that Federal agencies assign a unique identifier for every contract, purchase order, BOA, Basic Agreement, and BPA reported to the Federal Procurement Data System (FPDS). Agencies must be

in compliance with this requirement no later than October 1, 2003, when the next generation of FPDS, "FPDS–NG," becomes operational.

**DATES:** *Effective Date:* October 1, 2003.

*Comment Date:* Interested parties should submit comments to the FAR Secretariat at the address shown below on or before October 31, 2003, to be considered in the formulation of a final rule.

**ADDRESSES:** Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2002-025@gsa.gov*.

Please submit comments only and cite FAC 2001–16, FAR case 2002–025, in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208–6091. Please cite FAC 2001–16, FAR case 2002–025.

**SUPPLEMENTARY INFORMATION:**

### A. Background

The Federal Government is modernizing its procurement data collection system, the Federal Procurement Data System (FPDS). As part of this modernization process, agencies are being asked to establish and use a unique contract and order identification number scheme for the information reported to FPDS. These unique identifiers will help to improve the quality of information FPDS makes available to agencies for managing their programs and to the public for better understanding how taxpayer funds are spent.

Therefore, the FAR is being amended at 4.602 to add a paragraph requiring that each agency that reports to the FPDS have in place no later than October 1, 2003, a process that will ensure that each procurement instrument identifier reported to FPDS is unique, Governmentwide, and will remain so for at least 20 years from the date of contract award; and to require that agencies submit their proposed identifier to the Federal Procurement Data Center, which will maintain a registry of identifiers and validate their use in all transactions.

The agency's identifier must comply with the contract numbering guidelines established by the Joint Financial Management Improvement Project (JFMIP). Delivery orders, task orders, and call numbers must be unique in combination with the basic reference contract vehicle identifier. When the basic reference contract is available for multi-agency use, an ordering agency must use the same agency identification prefix for its delivery orders, task orders, and call numbers as it uses for its contractual instruments. Agencies may submit their proposed identifier to *john.cochran@gsa.gov*. Agencies are encouraged to submit their proposed identifier as soon as possible. If an agency is not in compliance by October 1, 2003 (*i.e.*, the date FPDS–NG becomes operational), FPDS–NG will reject the agency's reports.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply because the rule applies to the internal process of Federal agencies. An Initial Regulatory Flexibility Analysis has, therefore, not been prepared.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### D. Determination To Issue an Interim Rule

There is no requirement to publish this rule for public comment, as it is not a significant FAR revision. This rule simply requires that agencies assign a unique identifier for contracts, purchase orders, and agreements reported to the FPDS. Even though not required to do so, the Councils would, nevertheless, like to obtain public comments and are issuing this rule as an interim rule with request for comments. Pursuant to Public Law 8–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

### List of Subjects in 48 CFR Part 4

Government procurement.

Dated: September 24, 2003.

**Laura G. Auletta,**

*Director, Acquisition Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 4 as set forth below:

## PART 4—ADMINISTRATIVE MATTERS

■ 1. The authority citation for 48 CFR part 4 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 4.602 by adding paragraph (e) to read as follows:

**4.602 Federal Procurement Data System.**

* * * * *

(e) *Unique Procurement Instrument Identifier (PIID).* (1) The FPDS requires that each reporting agency assign a unique identifier for every contract, purchase order, BOA, Basic Agreement, and BPA reported to FPDS. Such identifiers shall comply with the contract numbering guidelines established by the Joint Financial Management Improvement Project. The PIID shall consist of alpha characters in the first positions to indicate the agency, followed by alphanumeric characters identifying bureau, offices, or other administrative subdivisions. The last portion of the PIID shall be numbered sequentially. The PIID may include other elements, as appropriate, such as fiscal year. Delivery orders, task orders, and call numbers must be unique in combination with the basic reference contract vehicle identifier. When the basic reference contract is available for multi-agency use (GWAC, Federal Supply Schedule contract, etc.), an ordering agency shall use the same agency identification prefix for its delivery orders, task orders, and call numbers as it uses for its contractual instruments.

(2) Agencies are required to have in place, no later than October 1, 2003, a process that will ensure that each PIID reported to FPDS is unique, Governmentwide, and will remain so for at least 20 years from the date of contract award. To eliminate the possibility of duplication between agencies, agencies must submit their proposed identifier to the Federal Procurement Data Center, which will maintain a registry of the identifiers on the FPDC website and validate their use in all transactions.

[FR Doc. 03–24584 Filed 9–30–03; 8:45 am]

**BILLING CODE 6820–EP–P**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 2, 10, 12, 13, 19, and 25

**[FAC 2001–16; FAR Cases 2002–026 and 2002–003; Item IV]**

**RINS 9000–AJ54 and 9000–AJ40**

## Federal Acquisition Regulation; Procurements for Defense Against or Recovery From Terrorism or Nuclear, Biological, Chemical or Radiological Attack, and Temporary Emergency Procurement Authority

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement section 836 of the Fiscal Year 2002 National Defense Authorization Act and sections 852 through 856 and section 858 of the Homeland Security Act. Those sections increase the amount of the micro-purchase threshold and the simplified acquisition threshold and provide expanded access to streamlined procedures for procurements of supplies or services by or for an executive agency that are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack.

**DATES:** *Effective Date:* October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208–6091. Please cite FAC 2001–16, FAR cases 2002–026 and 2002–003.

**SUPPLEMENTARY INFORMATION:**

### A. Background

*FAR Case 2002–026, Procurements for Defense Against or Recovery From Terrorism or Nuclear, Biological, Chemical or Radiological Attack.* An interim rule implementing sections 852 through 856 and section 858 of the Homeland Security Act (Public Law 107–296) was published in the **Federal Register** at 68 FR 4048, January 27, 2003. The interim rule provided Federal emergency procurement flexibilities by increasing the amount of the micro-purchase threshold and the simplified acquisition threshold for procurements and provided expanded access to streamlined procedures for acquisitions of supplies or services by or for an executive agency that, as determined by the head of the executive agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. The special increased thresholds and authorities under the Act apply to acquisitions resulting from solicitations issued before November 25, 2003.

A total of four comments from five commentors was received in response to the interim rule. Two commentors suggested that micropurchases should be subject to the small business reservation. This comment was not accepted.

Micropurchase authority is designed to enable agencies to make purchases in a highly simplified manner, generally without application of provisions and clauses and with minimal application of Government-unique requirements. While agencies should always actively consider the products and services of small businesses, irrespective of the size of the purchase, the Councils believe that imposition of a Government-unique regulatory buying mandate is generally inconsistent with the overall purpose of micropurchase authority. The Councils note that 41 U.S.C. 428(b) states that micro-purchases not be subject to the small business reservation: "(b) Exclusion for micro-purchases. A purchase by an executive agency with an anticipated value of the micro-purchase threshold or less is not subject to section 15(j) of the Small Business Act (*15 U.S.C. 644*(j)) and the Buy American Act (*41 U.S.C. 10a*–10c)."

Two commentors suggested that orders against GSA Schedules be subject to small business set-aside. This comment was not accepted as it was outside the scope of this case.

One commentor suggested that FAR 10.001 be revised to include language from the statute requiring use of commercially available market research methods, including use of commercial databases. This comment was partially accepted and a change was made to FAR 10.002 to add querying commercial databases as a market research technique. The balance of the recommendation was not accepted because the regulation already provides for using various market research methods.

This final rule finalizes the interim rule with the one change addressed above.

*FAR Case 2002–003, Temporary Emergency Procurement Authority.* This final rule also finalizes the interim rule issued in the **Federal Register** at 67 FR 56116, August 30, 2002, to implement section 836 of the Fiscal Year 2002 National Defense Authorization Act. That interim rule increased the amount of the micropurchase threshold and the simplified acquisition threshold for procurements of supplies or services by or for DoD during Fiscal Years 2002 and 2003, where those procurements are to facilitate the defense against terrorism or biological or chemical attack against the United States. Also, the rule provided that contracting officers acquiring biotechnology supplies or biotechnology services, for use to facilitate the defense against terrorism or biological or chemical attack against the United States, may treat the supplies or services as commercial items. No comments were received in response to that interim rule.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### B. Regulatory Flexibility Act

The rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it affects the pool of acquisitions that are reserved for small businesses. We have prepared a Final Regulatory Flexibility Analysis. The analysis is summarized as follows:

> This rule finalizes two interim rules that amend the Federal Acquisition Regulation (FAR) to implement Section 836 of the Fiscal Year 2002 National Defense Authorization Act and Sections 852 through 856 and Section 858 of the Homeland Security Act (Public Law 107–296). Those sections increase the amount of the micro-purchase threshold and the simplified acquisition threshold and provide expanded access to streamlined procedures for procurements of supplies or services by or for an executive agency that are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. The rule affects the pool of acquisitions subject to the small business reservation by raising the threshold for application of the reservation for specified acquisitions to the increased micro-purchase threshold (from $2,500 to $7,500/$15,000) and correspondingly increasing the limitation to the increased simplified acquisition threshold (from $100,000 to

$200,000/$250,000). No comments were received in response to the Initial Regulatory Flexibility Analysis for either case. The increased thresholds are limited to specified procurements. In addition, the special authorities are only available for a short period of time. There are no data available on the number of procurements that will be eligible. However, we expect the number of small entities that will be impacted by the increased thresholds to this limited class of procurements to be very small.

## C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

## List of Subjects in 48 CFR Parts 2, 10, 12, 13, 19, and 25

Government procurement.

Dated: September 24, 2003.

**Laura G. Auletta,**

*Director, Acquisition Policy Division.*

## Interim Rules Adopted as Final With Changes

■ Accordingly, DoD, GSA, and NASA adopt the interim rules amending 48 CFR parts 2, 10, 12, 13, 19, and 25, which were published in the **Federal Register** at 67 FR 56116, August 30, 2002, and 68 FR 4048, January 27, 2003, as a final rule with the following change:

## PART 10—MARKET RESEARCH

■ 1. The authority citation for 48 CFR part 10 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

### 10.002 [Amended]

■ 2. Amend section 10.002 in paragraph (b)(2)(iv) by removing "Government" and adding "Government and commercial" in its place.

[FR Doc. 03–24585 Filed 9–30–03; 8:45 am]

**BILLING CODE 6820–EP–P**

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Parts 12, 32, and 52

**[FAC 2001–16; FAR Case 2001–005; Item V]**

**RIN 9000–AJ20**

# Federal Acquisition Regulation; Notification of Overpayment, Contract Financing Payments

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to require the contractor to notify the contracting officer if the Government overpays when making an invoice payment or a contract financing payment under either a commercial item or noncommercial item contract.

**DATES:** *Effective Date:* October 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501–4082. Please cite FAC 2001–16, FAR case 2001–005.

**SUPPLEMENTARY INFORMATION:**

## A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 55676, August 29, 2002, with request for comments. Two respondents submitted public comments. A discussion of the comments is provided below. Differences between the proposed and the final rule are discussed in paragraph 4 below.

1. *Comment:* There is concern that credit invoices, due to a revision of indirect billing rates, contractual actions impacting negotiated price, adjustments to progress payments as a result of change in the contract's estimated cost at completion, and authorized borrow-payback transfers will all be potentially misconstrued as overpayments because they may result in a need for the contractor to pay a sum back to the Government as a result of the normal and expected operation of contractual terms and conditions. Therefore, the following definition should be added at the beginning of each of the proposed paragraphs imposing a notification requirement:

> An overpayment is a payment of an amount greater than the value the contractor is entitled to receive at the time of the payment.

*Councils' response:* Do not concur. The intent of the rule is to require contractors to notify the Government when they become aware that an incorrect payment has been made. The Councils do not believe there is a demonstrated need for such a definition. First, the term "overpayment" is used in Government contracting in a variety of contexts, and we are concerned that establishing a definition in the payment clauses could have unintended consequences. Second, when a contract is modified to reflect the incorporation of new billing rates, or some other contract administration action, the contract modification should identify whether a credit is due the Government. The Councils do not anticipate that a contracting officer would issue a notification of overpayment in these instances. If, in the future, it becomes apparent that, in practice, contracting officers are taking an overly broad and needlessly burdensome interpretation of what constitutes an overpayment for the purposes of this notification requirement, then the Councils will revisit this issue.

2. *Comment:* A dollar threshold of $25,000, or some other reasonable threshold, should be established for the notification of overpayment requirement. The requirement for providing a notification for any overpayment, no matter how small or insignificant in amount, is not cost-effective. In addition, instead of immediate notification, DoD should give contractors thirty days to notify the contracting officer, after the overpayment has been verified to source documents. Finally, the contract should require that the disposition instructions provided by the contracting officer be broadened, *i.e.*, that the payment office be required to provide both the contractor and contracting officer with appropriation-level detail of how all overpayment refunds are posted back to the contract.

*Councils' response:* The Councils do not agree with the premise that a threshold is needed. Many, if not most, contractors now provide notice to the Government when they believe an overpayment, or any other payment error, has occurred, and there is no threshold involved. Notification helps to reinforce the public's trust that taxpayer dollars are being properly expended and is important, even for smaller dollar transactions, because there may be a mistake in the payment process that will cause future payment errors. Notification will enable the Government to identify and correct any systemic problems that may have arisen. The Councils also do not believe the rule needs to specify a notification timeframe. If it is not clear to the contractor that an overpayment has actually occurred, the contractor could double-check its records expeditiously prior to notification. On the other hand, if the contractor provides notification and later determines that it was in error, the contractor can retract the notification as easily and as swiftly as it was made. The Councils believed that further disposition instructions should be addressed on a case-by-case basis.

3. *Comment:* The analyses required by the Regulatory Flexibility Act and Paperwork Burden Act should be revised since they do not adequately address the burden that the proposed rule places on contractors, especially small businesses.

*Councils' response:* The Councils believe that it is a normal business practice for contractors to have billing systems in place that identify what is owed them, and to submit payment requests to the Government accordingly. Consequently, the inclusion of notification of overpayment language in payment and financing clauses is the formalization of a practice that normally is already followed by most contractors, *i.e.*, to inform the entity that pays you when you believe a mistake has been made. Therefore, the proposed case, and the notification requirement (already instituted in FAR case 1999–023 published in the **Federal Register** at 66 FR 65353, December 18, 2001, for most invoicing payments), would only reflect a new burden for contractors that routinely ignore payment mistakes. The Councils believe the increase in the paperwork burden, as stated in the proposed rule, adequately reflects this impact.

In addition, it is not expected that this change will impact a substantial number of small entities since the overpayments cited by GAO in its July 1999 report GAO/NSIAD–99–131, Greater Attention Needed to Identify and Recover Overpayments, were all related to large businesses.

4. *Comment:* Government inaction when overpayments occur is a major problem in addition to the overpayment itself. Therefore, it is recommended that the words "promptly" and "timely" be added to the rule, as indicated below, to emphasize the need for quick response on the part of a contracting officer to the contractor's notification of overpayment.

> "If the contractor notifies the contracting officer of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the contracting officer must promptly provide instructions to the contractor, in coordination with the cognizant payment office, regarding timely disposition of the overpayment."

*Councils' response:* Concur. The proposed rule has been changed at FAR 12.215 and FAR 32.008.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, since the overpayments cited by GAO in its report GAO/NSIAD–99–131 were all related to large businesses (*see* reconciliation of comment #3).

### C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the final rule contains information collection requirements. This final rule requires the contractor to notify the contracting officer if the contractor becomes aware that the Government has overpaid on a financing payment under a contract for noncommercial items, and on financing and invoice payments under a contract for commercial items. Although this estimated burden requires approval under the Act, it is so small (less than 1 percent increase) that it does not substantially impact the estimated total burden under Office of Management and Budget Control Number 9000–0102 (in lieu of OMB Control Number 9000–0070, which was inadvertently listed in the proposed rule). (*See* reconciliation of comment #3.)

### List of Subjects in 48 CFR Parts 12, 32, and 52

Government procurement.

Dated: September 24, 2003.

**Laura G. Auletta,**

*Director, Acquisition Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 12, 32, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 12, 32, and 52 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Add section 12.215 to read as follows:

### 12.215 Notification of overpayment.

If the contractor notifies the contracting officer of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the contracting officer must promptly provide instructions to the contractor, in coordination with the cognizant payment office, regarding timely disposition of the overpayment.

## PART 32—CONTRACT FINANCING

■ 3. Add section 32.008 to read as follows:

### 32.008 Notification of overpayment.

If the contractor notifies the contracting officer of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the contracting officer must promptly provide instructions to the contractor, in coordination with the cognizant payment office, regarding timely disposition of the overpayment.

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 52.212–4 by revising the date of the clause and paragraph (i) to read as follows (the undesignated paragraph following paragraph (i) is removed):

### 52.212–4 Contract Terms and Conditions—Commercial Items.

* * * * *

Contract Terms and Conditions—Commercial Items (Oct. 2003)

* * * * *

(i) *Payment.*—(1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and

prompt payment regulations at 5 CFR part 1315.

(3) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see 52.212–5(b) for the appropriate EFT clause.

(4) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

* * * * *

■ 5. Amend section 52.213–4 by revising the date of the clause and paragraph (a)(2)(iv) to read as follows:

### 52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (Oct. 2003).

(a) * * *

(2) * * *

(iv) 52.232–25, Prompt Payment (Oct. 2003).

* * * * *

■ 6. Amend section 52.232–25 by revising the date of the clause and paragraph (d) to read as follows:

### 52.232–25 Prompt Payment.

* * * * *

Prompt Payment (Oct. 2003).

* * * * *

(d) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(End of clause)

* * * * *

■ 7. Amend section 52.232–26 by revising the date of the clause and paragraph (c) to read as follows:

### 52.232–26 Prompt Payment for Fixed-Price Architect-Engineer Contracts.

* * * * *

Prompt Payment for Fixed-Price Architect-Engineer Contracts (Oct. 2003).

* * * * *

(c) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(End of clause)

■ 8. Amend section 52.232–27 by revising the date of the clause and paragraph (1) to read as follows:

### 52.232–27 Prompt Payment for Construction Contracts.

* * * * *

Prompt Payment for Construction Contracts (Oct. 2003).

* * * * *

(1) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

[FR Doc. 03–24586 Filed 9–30–03; 8:45 am]

BILLING CODE 6820–EP–P

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Parts 25 and 52

**[FAC 2001–16; FAR Case 2003–006; Item VI]**

**RIN 9000–AJ71**

# Federal Acquisition Regulation; Caribbean Basin Country—Dominican Republic

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to reinstate the treatment of the products of the Dominican Republic as eligible products under acquisitions subject to the Trade Agreements Act, as directed by the U.S. Trade Representative (USTR).

**DATES:** *Effective Date:* October 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2001–16, FAR case 2003–006.

**SUPPLEMENTARY INFORMATION:**

## A. Background

This final rule amends FAR 25.003, 25.400, and the clauses at 52.212–5 and 52.225–5 to implement the direction of the USTR to reinstate the treatment of certain products of the Dominican Republic as eligible products under acquisitions subject to the Trade Agreements Act (TAA), as published by the USTR in the **Federal Register** at 68 FR 27883, May 21, 2003.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Parts 25 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001–16, FAR case 2003–006), in correspondence.

## C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

## List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: September 24, 2003.

**Laura G. Auletta,**

*Director, Acquisition Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 25 and 52 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 25—FOREIGN ACQUISITION

**25.003 [Amended]**

■ 2. Amend section 25.003 in the definition "Caribbean Basin country" by adding "Dominican Republic," after "Dominica,".

**25.400 [Amended]**

■ 3. Amend section 25.400 in paragraph (a)(2) by removing "the Dominican Republic and".

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

**52.212–5 [Amended]**

■ 4. Amend section 52.212–5 by removing "(June 2003)" from the clause heading and in paragraph (b)(23) and adding "(Oct 2003)" in its place.

**52.225–5 [Amended]**

■ 5. Amend section 52.225–5 by revising the date of the clause to read "(Oct 2003)"; and in paragraph (a) of the clause, in the definition "Caribbean Basin country," by adding "Dominican Republic," after "Dominica,".

[FR Doc. 03–24587 Filed 9–30–03; 8:45 am]

**BILLING CODE 6820–EP–P**

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**48 CFR Parts 25 and 52**

**[FAC 2001–16; FAR Case 2001–015; Item VII]**

**RIN 9000–AJ35**

## Federal Acquisition Regulation; Prohibited Sources

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement recent Executive orders and to reflect the regulations of the Department of the Treasury's Office of Foreign Assets Control (OFAC).

**DATES:** *Effective Date:* October 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2001–16, FAR case 2001–015.

**SUPPLEMENTARY INFORMATION:**

### A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 13080, March 20, 2002. The proposed rule implemented Executive Order 13192, Lifting and Modifying Measures With Respect to the Federal Republic of Yugoslavia (Serbia and Montenegro), and reflected the regulations of OFAC in the Department of the Treasury.

One respondent submitted public comments. The Councils considered the public comments before agreeing to convert the proposed rule to a final rule with minor changes.

The respondent recommended that we restore the statement at FAR 25.701(a) that the restrictions apply to acquisitions of supplies and services, even for overseas use. The Councils do not concur. This statement regarding overseas use was included at FAR 25.701(a) because we were trying to make a distinction between prohibitions on import of some supplies and services into the United States and the voluntary policy of the Government not to acquire such supplies for overseas use. However, the Department of the Treasury brought to the attention of the Councils that most of the prohibitions already applied to overseas acquisition and use as well as to importation. The regulations at 31 CFR chapter V provide details as to whether the prohibitions apply to acquisition for overseas use as well as importation.

The respondent also was concerned that we should retain paragraph (c) of FAR 52.225–13, Restrictions on Certain Foreign Purchases. Paragraph (c) provides for flowdown of the restrictions to subcontractors. The proposed rule did not delete paragraph (c) from the clause. It was not reprinted in the **Federal Register** notice because no changes were proposed to that paragraph.

There are other recent directives which are relevant to subpart 25.7, which are not yet implemented in the OFAC regulations:

- Executive Order 13224, Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism;
- Executive Order 13288, Blocking Property of Persons Undermining Democratic Processes or Institutions in Zimbabwe;
- Executive Order 13268, Termination of Emergency With Respect to the Taliban and Amendment of Executive Order 13224 of September 23, 2001; and
- The general license issued on May 23, 2003, by the Department of the Treasury entitled "Iraqi Sanctions Regulations."

Contracting officers are to refer to the above directives and the most recent version of the regulations of OFAC at 31 CFR chapter V.

Except as authorized by OFAC, most transactions involving Cuba, Iran, Libya, and Sudan are prohibited, as are most imports from North Korea. This rule removes Serbia, the Taliban-controlled regions of Afghanistan, and Iraq from the list of prohibited sources and points the contracting officer to lists of entities and individuals subject to economic sanctions that are available at *http://www.epls.gov/TerList1.html.*

The contracting officer is no longer authorized in unusual circumstances to acquire for use outside the United States supplies or services restricted by this section, unless specifically authorized by OFAC. However, OFAC has granted authority to Department of Defense personnel to make emergency acquisitions in direct support of U.S. or allied forces deployed in military contingency, humanitarian, or peacekeeping operations in a country or region subject to economic sanctions administered by OFAC.

This rule also amends the legal basis for use of the clause 52.225–13, Restrictions on Certain Foreign Purchases, that is provided in the clauses at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, and 52.213–4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items). The rule replaces the list of specific Executive orders, which is incomplete and outdated, with a general reference to all proclamations, Executive orders, and statutes administered by OFAC.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only affects acquisitions from prohibited sources.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: September 24, 2003.

**Laura G. Auletta,**

*Director, Acquisition Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 25 and 52 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 25—FOREIGN ACQUISITION

■ 2. Revise section 25.701 to read as follows:

**25.701 Restrictions.**

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, agencies and their contractors and subcontractors must not acquire any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, Libya, and Sudan are prohibited, as are most imports from North Korea into the United States or its outlying areas. In addition, lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at *http://www.epls.gov/Terlist1.html.* More information about these restrictions, as well as updates, is available in OFAC's regulations at 31 CFR chapter V and/or on OFAC's Web site at *http://www.treas.gov/ofac.*

**25.702 [Amended]**

■ 3. Amend section 25.702 by removing "622–2520" and adding "622–2490" in its place.

**25.1103 [Amended]**

■ 4. Amend section 25.1103 in paragraph (a) by removing "(*see* 25.701(a)(2))".

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 52.212–5 by revising the date of the clause and paragraph (b)(24) to read as follows:

**52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.**

* * * * *

**Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Oct. 2003)**

* * * * *

(b) * * *

(24) 52.225–13, Restrictions on Certain Foreign Purchases (Oct. 2003) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

* * * * *

■ 6. Amend section 52.213–4 by revising paragraph (a)(1)(iv) to read as follows:

**52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).**

* * * * *

(a) * * *

(1) * * *

(iv) 52.225–13, Restrictions on Certain Foreign Purchases (Oct. 2003) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

* * * * *

■ 7. Amend section 52.225–13 by revising the date of the clause and paragraphs (a) and (b) to read as follows:

**52.225–13 Restrictions on Certain Foreign Purchases.**

* * * * *

**Restrictions on Certain Foreign Purchases (Oct. 2003)**

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, Libya, and Sudan are prohibited, as are most imports from North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at *http://www.epls.gov/Terlist1.html.* More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR chapter V and/or on OFAC's Web site at *http://www.treas.gov/ofac.*

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[FR Doc. 03–24588 Filed 9–30–03; 8:45 am]

**BILLING CODE 6820–EP–P**

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Part 31

**[FAC 2001–16; FAR Case 2002–001; Item VIII]**

**RIN 9000–AJ46**

## Federal Acquisition Regulation; Economic Planning, Employee Morale, and Travel Cost Principles

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) by revising three cost principles regarding economic planning costs; employee morale, health, welfare, food service, and dormitory costs and credits; and travel costs. The changes restructure the paragraphs and remove unnecessary and duplicative language to increase clarity and readability.

**DATES:** *Effective Date:* October 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb at (202) 501–0650. Please cite FAC 2001–16, FAR case 2002–001.

**SUPPLEMENTARY INFORMATION:**

### A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 55686, August 29, 2002, with request for comments. One respondent submitted comments; a discussion of the comments is provided below. Differences between the proposed rule and final rule are discussed in Section B, Comments 1 and 2, below.

*FAR 31.205–12, Economic Planning Costs*

*Comment 1: Revise proposed FAR 31.205–12(a).* The respondent agrees with the deletion of the current paragraphs (b) and (c). However, the respondent believes that by deleting the phrase "and that may take into account the eventual possibility of economic dislocation or fundamental alterations in those markets in which the contractor currently does business" from the first sentence in the current paragraph (a), the Councils may be unintentionally narrowing the allowability of economic planning costs. Specifically, the respondent stated that "costs associated with the generalized planning of possible divestitures may no longer be considered economic planning costs by auditors and ACOs but be considered unallowable organization costs instead."

*Councils' response:* Partially concur. It was not the Council's intent to change the scope of this cost principle; the Councils simply concluded that the phrase in question was unnecessary. But, since industry believes its deletion would narrow the allowability of costs under this cost principle, the phrase is reinstated to the first sentence in paragraph (a). However, the Councils also want to go on record as not agreeing with the assertion that planning costs related to divestiture efforts are economic planning costs covered by this cost principle. Efforts by a contractor to analyze future market conditions and assess the impact of those conditions on its current organization are economic planning costs. Any efforts by a contractor to analyze, initiate, or change its current organization to meet future market conditions are organization or reorganization costs covered under FAR 31.205–27, Organization costs. Contractors' general long-range planning efforts involving the contractor's organization will need to be reviewed on a case-by-case basis.

*Comment 2: Revise proposed FAR 31.205–12(a).* The respondent believes that it is not necessary to include the words "determining the allowability of" in the last sentence of paragraph (a), since there is no determination to be made under FAR 31.205–38, Selling costs, regarding the allowability of other market planning costs.

*Councils' response:* Concur. The Councils agree and have deleted the phrase from the last sentence in paragraph (a).

*FAR 31.205–13, Employee Morale, Health, Welfare, Food Service, and Dormitory Costs and Credits*

*Comment 3: Delete proposed FAR 31.205–13(d).* The respondent recommended the elimination of paragraph (d) regarding the cost allowability of food and dormitory services provided for employees. The respondent states that differing interpretations on how to apply the detailed provisions in paragraph (d) often occur. The respondent believes that the Government would still be adequately protected by FAR 31.201–3, Determining reasonableness, even if paragraph (d) is eliminated.

*Councils' response:* Nonconcur. This section of the cost principle clarifying the allowability of dining facilities costs is statutorily required by 10 U.S.C. 2324 (f)(1)(G) and 41 U.S.C. 256 (f)(1)(G). In addition, while the respondent provided some examples where they believe subjective and interpretational differences may occur, they did not cite any specific cost principle language that is problematic. The Councils believe the current cost principle language provides adequate criteria for properly determining cost allowability in their examples.

*FAR 31.205–46, Travel Costs*

*Comment 4: Revise proposed FAR 31.205–46.* The respondent has no objection to the deletion of the current paragraphs (b) and (c) to remove duplicative coverage. However, the respondent believes this cost principle can be further streamlined by removing the existing per diem ceiling limitations on the costs incurred for lodging, meals, and incidentals by allowing reimbursement of such costs on a "reasonable charge" basis. The respondent pointed out its endorsement of the Government's proposed rule associated with FAR case 1994–753, Travel Costs.

*Councils' response:* Partially concur. The Councils agreed to delete paragraphs (b) and (c) to remove duplicative coverage.

The recommendation to remove the existing per diem ceiling limitations provided in paragraph (a)(2) for lodging, meals, and incidental expenses is outside the scope of this case. During the deliberations on FAR case 1994–753, Travel Costs, several respondents raised concerns over the potential for increased costs to the Government and potential inequities between the treatment of contractor travel costs and Federal employee travel costs. The FAR Council placed the case on hold in November 2001, pending resolution of these concerns. The Councils have not identified procedures to mitigate the risks associated with the proposed change to the travel cost principle and are taking no further action on FAR case 1994–753.

*General Reformatting of FAR 31.205*

*Comment 5:* The respondent also recommended that the Councils consider a general reformatting of FAR part 31, Contract Cost Principles and Procedures. Specifically, consideration should be given to establishing a uniform structure for the selected costs detailed in FAR 31.205, which the respondent believes will increase the clarity and understanding of the cost principles and thereby reduce misinterpretation.

*Councils' response:* Nonconcur. The Councils are unaware of any significant clarity problems with the current FAR cost principles and see no benefit in this recommendation. While it is true that the cost principles do not all share an identical format, it does not follow that this makes them difficult to understand. Moreover, such a comprehensive revision of the cost principles could actually increase disputes by substituting new wording for longstanding, court-tested language.

Of the 48 current FAR cost principles, 16 are only one paragraph long, and 11 more are only two or three paragraphs long. The Councils question the need to "force-fit" such short cost principles into a uniform format, particularly in the absence of any significant clarity problems. Not only would the recommended general reformatting of the cost principles be difficult to accomplish, but it would also offer no obvious benefit to either industry or the Government.

The Councils recommend instead that industry continue to identify those individual cost principles which it views as problematic and to provide specific proposals for appropriate revisions. It should be noted that the continuing Defense Procurement and Acquisition Policy initiative to reduce accounting and administrative burdens in the cost principles, without jeopardizing the Government's interests, has resulted in significant changes or deletions involving more than 20 different cost principles to date, including the recent major revisions to the relocation cost principle (FAR 31.205–35) that made employee "tax gross-ups" and spouse employment assistance payments allowable for the first time, as well as increased the maximum allowable lump-sum amount for miscellaneous expenses from $1,000 to $5,000. In addition, cost principle streamlining cases are currently in process regarding compensation (FAR 31.205–6), training and education (FAR 31.205–44), selling (FAR 31.205–38), depreciation (FAR 31.205–11), and expanded relocation lump-sum (FAR 31.205–35). The Councils continue to believe that such a case-by-case cooperative effort with industry offers the best opportunity for meaningful change in this often controversial area.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle discussed in this rule.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Part 31

Government procurement.

Dated: September 24, 2003.

**Laura G. Auletta,**

*Director, Acquisition Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 31 as set forth below:

## PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 1. The authority citation for 48 CFR part 31 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

### 31.205–6 [Amended]

■ 2. Amend section 31.205–6 in paragraph (m)(2) by removing "(*see* 31.205–46(f))" and adding "(*see* 31.205–46(d))" in its place.

■ 3. Revise section 31.205–12 to read as follows:

### 31.205–12 Economic planning costs.

Economic planning costs are the costs of general long-range management planning that is concerned with the future overall development of the contractor's business and that may take into account the eventual possibility of economic dislocations or fundamental alterations in those markets in which the contractor currently does business. Economic planning costs are allowable. Economic planning costs do not include organization or reorganization costs covered by 31.205–27. See 31.205–38 for market planning costs other than economic planning costs.

■ 4. Amend section 31.205–13 by revising paragraphs (a), (d), and (f) to read as follows:

### 31.205–13 Employee morale, health, welfare, food service, and dormitory costs and credits.

(a) Aggregate costs incurred on activities designed to improve working conditions, employer-employee relations, employee morale, and employee performance (less income generated by these activities) are allowable, subject to the limitations contained in this subsection. Some examples of allowable activities are—

(1) House publications;

(2) Health clinics;

(3) Wellness/fitness centers;

(4) Employee counseling services; and

(5) Food and dormitory services for the contractor's employees at or near the contractor's facilities. These services include—

(i) Operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations; and

(ii) Similar types of services.

* * * * *

(d)(1) The allowability of food and dormitory losses are determined by the following factors:

(i) Losses from operating food and dormitory services are allowable only if the contractor's objective is to operate such services on a break-even basis.

(ii) Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to the accomplishment of the objective in paragraph (d)(1)(i) of this subsection are not allowable, except as described in paragraph (d)(1)(iii) of this subsection.

(iii) A loss may be allowed to the extent that the contractor can demonstrate that unusual circumstances exist such that even with efficient management, operating the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. The following are examples of unusual circumstances:

(A) The contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available.

(B) The contractor's charged (but unproductive) labor costs would be excessive if the services were not available.

(C) If cessation or reduction of food or dormitory operations will not otherwise yield net cost savings.

(2) Costs of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

* * * * *

(f) Contributions by the contractor to an employee organization, including funds from vending machine receipts or similar sources, are allowable only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if directly incurred by the contractor.

### 31.205–46 [Amended]

■ 5. Amend section 31.205–46 as follows:

■ a. Remove paragraphs (b) and (c), and redesignate paragraphs (d), (e), and (f) as (b), (c), and (d), respectively; and

■ b. In the introductory text of newly designated paragraph (c)(2), remove "paragraph (d)" each time it appears (twice) and add "paragraph (b)" in their place; and remove "subparagraph (e)(3)" and add "paragraph (c)(3)" in its place.

[FR Doc. 03–24589 Filed 9–30–03; 8:45 am]

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 8 and 24

[FAC 2001–16; Item IX]

## Federal Acquisition Regulation; Technical Amendments

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This document makes amendments to the Federal Acquisition

Regulation (FAR) in order to update references and make editorial changes.

**DATES:** *Effective Date:* October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FAC 2001–16, Technical Amendments.

### List of Subjects in 48 CFR Parts 8 and 24

Government procurement.

Dated: September 24, 2003.

**Laura G. Auletta,**

*Director, Acquisition Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 8 and 24 as set forth below:

■ 1. The authority citation for 48 CFR parts 8 and 24 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 2. Amend section 8.404 by revising the first sentence of paragraph (b)(6) to read as follows:

### 8.404 Using schedules.

* * * * *

(b) * * *

(6) * * * When conducting evaluations and before placing an order, consider including, if available, one or more small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, woman-owned small business, and/or small disadvantaged business schedule contractor(s). * * *

* * * * *

## PART 24—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

### § 24.202 [Amended]

■ 3. Amend section 24.202 by—

■ a. Removing the em dash at the end of the introductory text of paragraph (a);

■ b. Removing paragraph (a)(1); and

■ c. Removing paragraph designation "(a)(2)" and the word "Set" and adding "set" in its place.

[FR Doc. 03–24590 Filed 9–30–03; 8:45 am]

**BILLING CODE 6820–EP–P**

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Chapter 1

## Federal Acquisition Regulation; Small Entity Compliance Guide

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Small Entity Compliance Guide.

**SUMMARY:** This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2001–16 which amends the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2001–16 which precedes this document. These documents are also available via the Internet at *http://www.arnet.gov/far.*

**FOR FURTHER INFORMATION CONTACT:** Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2001–16

| Item | Subject | FAR case | Analyst |
|---|---|---|---|
| * I | Central Contractor Registration | 2002–018 | Parnell. |
| * II | Electronic Commerce in Federal Procurement | 1997–304 | Davis. |
| III | Unique Contract and Order Identifier Numbers (Interim) | 2002–025 | Zaffos. |
| * IV | Procurements for Defense Against or Recovery From Terrorism or Nuclear, Biological, Chemical or Radiological Attack; and Temporary Emergency Procurement Authority. | 2002–026<br>2002–003 | Zaffos. |
| V | Notification of Overpayment, Contract Financing Payments | 2001–005 | Parnel.l |
| VI | Caribbean Basin Country—Dominican Republic | 2003–006 | Davis. |
| VII | Prohibited Sources | 2001–015 | Davis |
| VIII | Economic Planning, Employee Morale, and Travel Cost Principles | 2002–001 | Loeb. |
| IX | Technical Amendments. | | |

### Item I—Central Contractor Registration (FAR Case 2002–018)

This final rule amends FAR parts 1, 2, 4, 13, 32, and 52 to require contractor registration in the Central Contractor Registration (CCR) database prior to award of any contract, basic agreement, basic ordering agreement, or blanket purchase agreement on or after October 1, 2003. In addition, the rule requires contracting officers to modify existing contracts whose period of performance extends beyond December 31, 2003, to require contractors to register in the CCR database by December 31, 2003.

### Item II—Electronic Commerce in Federal Procurement (FAR Case 1997–304)

This final rule implements section 850 of the National Defense Authorization Act for Fiscal Year 1998, Public Law 105–85, and section 810 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Public Law 106–398. Section 850 amends titles 10, 15, 40, and 41 of the United States Code to eliminate the preference for electronic commerce within Federal agencies to be conducted on the Federal Acquisition Computer Network (FACNET) computer architecture. Section 810 amends 41 U.S.C. 416 and 15 U.S.C. 637 to allow solicitation notices to be published via a single Governmentwide point of entry on the Internet designated in the FAR or via the Commerce Business Daily (CBD). The objectives of the rule are (1) to designate a single Governmentwide point of entry on the Internet, *http://www.fedbizopps.gov*, where agencies are required to provide convenient and universal public access to information on their procurement opportunities, and (2) to require electronic access to notices of solicitation through the single Governmentwide point of entry as a replacement for paper (or electronic) publication in the CBD.

### Item III—Unique Contract and Order Identifier Numbers (FAR Case 2002–025)

This interim rule amends the FAR to require each reporting agency to assign a unique procurement instrument identifier (PIID) for every contract, purchase order, BOA, Basic Agreement, and BPA reported to the Federal Procurement Data System; and to have in place, no later than October 1, 2003, a process that will ensure that each PIID reported to FPDS is unique, Governmentwide, and will remain so for at least 20 years from the date of contract award.

### Item IV—Procurements for Defense Against or Recovery From Terrorism or Nuclear, Biological, Chemical or Radiological Attack, and Temporary Emergency Procurement Authority (FAR Cases 2002–026 and 2002–003)

This rule finalizes interim rules 2002–026 and 2002–003, which increased the amount of the micro-purchase threshold and the simplified acquisition threshold and provide expanded access to streamlined procedures for procurements of supplies or services by or for an executive agency that are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack.

This final rule also amends the FAR to add the querying of commercial databases that provide information relevant to the agency acquisition as a technique for conducting market research.

### Item V—Notification of Overpayment, Contract Financing Payments (FAR Case 2001–005)

This final rule amends FAR parts 12, 32, and 52 to require the contractor to notify the contracting officer if the Government overpays when making an invoice payment or a contract financing payment under either a commercial item or a noncommercial item contract.

### Item VI—Caribbean Basin Country—Dominican Republic (FAR Case 2003–006)

This final rule amends FAR 25.003, 25.400, and the clauses at FAR 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, and FAR 52.225–5, Trade Agreements, to implement the direction of the USTR to reinstate the treatment of certain products of the Dominican Republic as eligible products under acquisitions subject to the Trade Agreements Act, as published by the USTR in the Federal Register at 68 FR 27883, May 21, 2003. This change will allow Government purchase of products originating in the Dominican Republic that are not excluded from duty-free treatment under 19 U.S.C. 2703(b), unless otherwise restricted by law.

### Item VII—Prohibited Sources (FAR Case 2001–015)

This final rule removes Serbia, the Taliban-controlled regions of Afghanistan, and Iraq from the list of prohibited sources and points the contracting officer to lists of entities and individuals subject to economic sanctions that are available at *http://www.epls.gov/TerList1.html*. The contracting officer is no longer authorized in unusual circumstances to acquire for use outside the United States supplies or services restricted by this section, unless specifically authorized by the OFAC. However, OFAC has granted authority to Department of Defense personnel to make emergency acquisitions in direct support of U.S. or allied forces deployed in military contingency, humanitarian, or peacekeeping operations in a country or region subject to economic sanctions administered by OFAC.

### Item VIII—Economic Planning, Employee Morale, and Travel Costs Principles (FAR Case 2002–001)

This final rule amends the FAR to revise three cost principles: (1) FAR 31.205–12, Economic planning costs; (2) FAR 31.205–13, Employee morale, health, welfare, food service, and dormitory costs and credits; and (3) FAR 31.205–46, Travel costs. The changes restructure the paragraphs and remove unnecessary and duplicative language to increase clarity and readability. The rule does not change the allowability of costs. The case was initiated to consider suggestions made at a series of public meetings. This rule is of particular interest to contractors and contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, *e.g.*, price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

### Item IX—Technical Amendments

This amendment makes editorial changes at FAR 8.404(b)(6) and 24.202(a).

Dated: September 24, 2003.

**Laura G. Auletta,**

*Director, Acquisition Policy Division.*

[FR Doc. 03–24591 Filed 9–30–03; 8:45 am]

BILLING CODE 6820–EP–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

# Federal Register

Wednesday,
October 1, 2003

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## Part III

# Securities and Exchange Commission

17 CFR Parts 275 and 279
**Custody of Funds or Securities of Clients by Investment Advisers; Final Rule**

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 275 and 279**

**[Release No. IA–2176; File No. S7–28–02]**

**RIN 3235–AH 26**

## Custody of Funds or Securities of Clients by Investment Advisers

**AGENCY:** Securities and Exchange Commission (the "Commission").

**ACTION:** Final rule.

**SUMMARY:** The Commission is adopting amendments to the custody rule under the Investment Advisers Act of 1940. The amendments modernize the rule by conforming the rule to modern custodial practices and requiring advisers that have custody of client funds or securities to maintain those assets with broker-dealers, banks, or other qualified custodians. The amended rule also provides a definition of "custody" and illustrates circumstances under which an adviser has custody of client funds or securities. The amendments are designed to enhance protections for client assets while reducing burdens on advisers that have custody of client assets.

**DATES:** *Effective Date:* November 5, 2003. *Compliance Date:* April 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Vivien Liu, Senior Counsel, or Jennifer L. Sawin, Assistant Director, at 202–942–0719 or *IArules@sec.gov*, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

**SUPPLEMENTARY INFORMATION:** The Commission is adopting amendments to rule 206(4)–2 (17 CFR 275.206(4)–2) [1] under the Investment Advisers Act of 1940 (15 U.S.C. 80b) (the "Advisers Act" or "Act") and to Part 1A, Item 9 and Part II, Item 14 of Form ADV (17 CFR 279.1).

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### Executive Summary

The Commission is amending rule 206(4)–2, the custody rule under the Advisers Act, to reflect modern custodial practices and clarify circumstances under which an adviser has custody of client assets. The amendments require advisers that have custody to maintain client funds and securities with a broker-dealer, bank, or other "qualified custodian." If the qualified custodian sends account statements directly to an adviser's clients, the adviser is relieved from sending its own account statements and from undergoing an annual surprise examination. The amendments also add a definition of "custody" to the rule and illustrate circumstances under which an adviser has custody of client funds or securities. Finally, the amendments remove the Form ADV requirement that advisers with custody include an audited balance sheet in their disclosure brochure to clients.

### I. Background

Rule 206(4)–2 regulates the custody practices of advisers registered under the Advisers Act. The rule requires advisers that have custody of client securities or funds to implement a set of controls designed to protect those client assets from being lost, misused, misappropriated or subject to the advisers' financial reverses.

Last year we proposed comprehensive amendments to rule 206(4)–2. Our proposal was designed to enhance the protections afforded to advisory clients' assets, harmonize the rule with current custodial practices, and clarify circumstances under which advisers have custody.[2] We received 49 comment letters in response to our proposed rule. Commenters strongly supported the approach of the proposal. One noted that our proposal would replace "highly detailed compliance requirements with an overall regulatory framework in order to achieve greater accountability and transparency of transactions in client accounts." [3] We are adopting the amendments to rule 206(4)–2 with certain changes that respond to commenters' recommendations.

### II. Discussion

#### *A. Definition of Custody*

We have added to the rule a definition of the term "custody." An adviser has custody of client assets, and therefore must comply with the rule, when it holds, "directly or indirectly, client funds or securities or [has] any authority to obtain possession of them."[4] We provide three examples designed to illustrate circumstances under which an adviser has custody of client funds or securities. Commenters agreed that the examples will be helpful to advisers.

The first example clarifies that an adviser has custody when it has possession of client funds or securities, even briefly.[5] An adviser that holds clients' stock certificates or cash, even temporarily, puts those assets at risk of misuse or loss. The amendments, however, expressly exclude inadvertent receipt by the adviser of client funds or securities, so long as the adviser returns them to the sender within three business days of receiving them.[6] The rule does not permit advisers to forward clients' funds and securities without having "custody," although advisers may certainly assist clients in such matters.[7] In addition, the amendments clarify that an adviser's possession of a check drawn by the client and made payable to a third party is not possession of client funds for purposes of the custody definition.[8]

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[1] Unless otherwise noted, when we refer to rule 206(4)–2 or any paragraph of the rule, we are referring to 17 CFR 275.206(4)–2 of the Code of Federal Regulations in which the rule is published.

[2] *Custody of Funds or Securities of Clients by Investment Advisers*, Investment Advisers Release No. 2044 (July 18, 2002) [67 FR 48579 (July 25, 2002)] ("Proposing Release").

[3] *See Summary of Comments* prepared by our staff, available in our Public Reference Room in File No. S7–28–02, and on our Web site at *http://www.sec.gov/rules/extra/s72802csumm.htm.*

[4] Amended rule 206(4)–2(c)(1). One commenter asked whether an adviser with multiple lines of business within the same corporation or other business entity has "custody" if its non-advisory business gives the adviser or its personnel authority to obtain customers' funds or securities. For example, an adviser might provide investment advice and also offer, separately, a bill-paying service through which the adviser's employees gain signatory power over a customer's checking account. If the customer is not an advisory client of the adviser, the adviser does not have custody of "client funds and securities." If, however, the customer is also an advisory client, the adviser has access to a client's assets, and therefore has custody, even though that access arises through a separate line of business.

The same access could also arise through an affiliate of the adviser. An adviser may, for example, have custody if its affiliate holds funds or securities of the adviser's clients under circumstances in which the adviser or its personnel have access to those client assets through the affiliate. Our staff previously has expressed similar views in *Crocker Investment Management Corp.*, SEC Staff Letter (Apr. 14, 1978).

[5] Amended rule 206(4)–2(c)(1)(i). In our proposed rule, our first example of custody referred to "possession or control" of client funds or securities, but commenters suggested that the term "control" improperly suggested that an adviser that merely has trading authority over a client's securities account has custody for purposes of the rule. *See infra* note. We believe that the definition and other examples make it clear that an adviser has custody when it can control client funds or securities for purposes other than authorized trading, and that the word "control" is therefore not needed in the first example.

[6] We had proposed requiring the adviser to return the funds and securities in one day, but commenters suggested that a longer period was needed to reduce inadvertent violations of the rule.

The second example clarifies that an adviser has custody if it has the authority to withdraw funds or securities from a client's account.[9] An adviser with power of attorney to sign checks on a client's behalf, to withdraw funds or securities from a client's account, or to dispose of client funds or securities for any purpose other than authorized trading has access to the client's assets.[10] Similarly, an adviser authorized to deduct advisory fees or other expenses directly from a client's account has access to, and therefore has custody of, the client funds and securities in that account.[11] These advisers might not have possession of client assets, but they have the authority to obtain possession.

Several commenters suggested that we change the definition of "custody" to exclude advisers' access to client funds through fee deductions. We are not adopting this suggestion. Removing this form of custody from the definition would mean that clients would not receive the quarterly account statements that are required under the rule, and which are needed so that clients may confirm that the adviser has not improperly withdrawn amounts in excess of its fees.[12] We are, however, amending Form ADV so advisers that have custody only because they deduct fees will not need to amend their registration statements.[13]

The last example clarifies that an adviser has custody if it acts in any capacity that gives the adviser legal ownership of, or access to, the client funds or securities.[14] One common instance is a firm that acts as both general partner and investment adviser to a limited partnership.[15] By virtue of its position as general partner, the adviser generally has authority to dispose of funds and securities in the limited partnership's account and thus has custody of client assets.[16]

### *B. Use of Qualified Custodians*

We are adopting, as proposed, a requirement that advisers with custody of client funds and securities maintain them with qualified custodians.[17] The qualified custodian must hold the funds or securities in an account either under the client's name or under the adviser's name as agent or trustee for its clients.[18]

"Qualified custodians" under the amended rule include the types of financial institutions that clients and advisers customarily turn to for custodial services. These include banks and savings associations[19] and registered broker-dealers.[20] In order to allow advisers that also offer futures advice to comply with Commodity Futures Trading Commission rules, "qualified custodians" also include registered futures commission merchants.[21] Finally, "qualified custodians" include foreign financial institutions that customarily hold financial assets for their customers, provided that the foreign financial institution keeps advisory clients' assets in customer accounts segregated from its proprietary assets.[22]

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[7] We understand that some advisers meet with clients to prepare or compile documents, including stock certificates, for forwarding to a custodian or third party. Nothing in the amended rule suggests that preparing these documents with a client gives the adviser "custody."

[8] Checks payable to an adviser for payment of advisory or similar fees due to the adviser also do not represent "client funds" within the meaning of the custody rule and therefore advisers would not have custody as a result of receiving those checks. An adviser would, however, have custody of client funds if it holds a check drawn by the client and made payable to the adviser with instructions to pass the funds through to a custodian or to a third party.

[9] Amended rule 206(4)–2(c)(1)(ii).

[10] An adviser's authority to issue instructions to a broker-dealer or a custodian to effect or to settle trades does not constitute "custody." Clients' custodians are generally under instructions to transfer funds (or securities) out of a client's account only upon corresponding transfer of securities (or funds) into the account. This "delivery versus payment" arrangement minimizes the risk that an adviser could withdraw or misappropriate the funds or securities in its client's custodial account.

[11] Some commenters asked whether they could, instead of complying with the amended rule, continue following procedures established under certain no-action letters, *e.g., Investment Counsel Association of America, Inc.*, SEC Staff Letter (June 9, 1982); *John B. Kennedy*, SEC Staff Letter (June 5, 1996); and *Securities America Advisers Inc.*, SEC Staff Letter (Apr. 4, 1997). The staff is withdrawing those letters. Advisers, including those firms that have relied on these letters in the past, must comply with the amended rule.

[12] *See* Section II.C. of this Release. We note, however, that rule 206(4)–2 defines "custody" broadly in order to serve the remedial purposes of the rule, and to ensure that advisory clients receive timely reports on transactions in their assets and thus can take action to protect themselves in the event of an adviser's misuse of their funds. Consequently, an adviser that has "custody" for purposes of rule 206(4)–2 may not necessarily have custody for other purposes.

[13] *See* Section II.E of this Release.

[14] Amended rule 206(4)–2(c)(1)(iii).

[15] This example applies equally to an adviser that acts as both managing member and investment adviser of a limited liability company or another type of investment vehicle, or as both trustee and investment adviser of a trust. A firm may also have custody when a supervised person fills one of these roles, such as when a portfolio manager serves as trustee of a client trust. *E.g., In the Matter of Gofen and Glossberg, Inc.*, Investment Advisers Act Release No. 1400 (Jan. 11, 1994). We understand that supervised persons may, on occasion, engage the advisory firm to advise an estate, conservatorship or personal trust for which the supervised person serves as executor, conservator or trustee. We would not view the adviser to have custody of the funds or securities of the estate, conservatorship, or trust solely because the supervised person has been appointed in these capacities as a result of family or personal relationship with the decedent, beneficiary or grantor (and not a result of employment with the adviser).

The amended rule contains a limited exception from the rule for client accounts that are limited partnerships subject to an annual audit. *See infra* Section II.D.2 of this Release. Some commenters asked whether they could, instead of complying with the amended rule, continue following procedures established under certain no-action letters, *e.g., Bennett Management Co.*, SEC Staff Letter (Feb. 26, 1990); *PIMS, Inc.*, SEC Staff Letter (Oct. 21, 1991); *Canyon Management Co.*, SEC Staff Letter (Oct. 15, 1991); *Pacific Management, Ltd.*, SEC Staff Letter (Oct. 29, 1991); *Lee Capital Management*, SEC Staff Letter (Oct. 29, 1991); *Eichler Magnin, Inc.*, SEC Staff Letter (Nov. 4, 1991); *GBU, Inc.*, SEC Staff Letter (Apr. 22, 1993). The staff is withdrawing those letters. Advisers, including those firms that have relied on these letters in the past, must comply with the amended rule.

[16] Investment advisers that also act as general partners for real estate partnerships in which their advisory clients are limited partners requested clarification about the rule's application to such partnerships. In such circumstances, the rule does not apply to the assets of the real estate partnership unless the partnership is an advisory client of the investment adviser.

[17] Amended rule 206(4)–2(a)(1). The amended rule does not prohibit an adviser from using more than one qualified custodian to hold funds and securities of a client.

[18] Under the amendments, client funds and securities must be held on behalf of the client by the qualified custodian so that the qualified custodian can provide account information to the clients. Keeping stock certificates in the adviser's bank safe deposit box, for example, would not satisfy the requirements of the rule.

[19] Amended rule 206(4)–2(c)(3)(i). A "bank" under section 202(a)(2) of the Advisers Act (15 U.S.C. 80b–202(a)(2)) includes national banks, members of the Federal Reserve System, and other banks and trust companies having similar authority to national banks and supervised by State or Federal banking agencies. A "savings association" is a financial institution as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)) and insured and supervised by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. 1811).

[20] Amended rule 206(4)–2(c)(3)(ii). "Qualified custodian" includes any broker-dealer that is registered with and regulated by us under the Securities Exchange Act of 1934 (the "Exchange Act"), holding the client assets in customer accounts.

[21] Amended rule 206(4)–2(c)(3)(iii). Futures commission merchants are registered with the Commodity Futures Trading Commission ("CFTC") under section 4f(a) of the Commodity Exchange Act (7 U.S.C. 6f(a)) and regulated by the CFTC. "Qualified custodian" includes a registered futures commission merchant holding the client assets in customer accounts. Registered investment advisers that also provide clients with advice about futures, including "security futures," may also be subject to CFTC rules; CFTC rules require that "customer funds" be custodied with a futures commission merchant. *See* rule 4.30 (17 CFR 4.30) under the Commodity Exchange Act. *See also* Commodity Futures Modernization Act (Pub. L. 106–554, 114 Stat. 2763 (2000)) (security futures are both securities and futures). The rule also allows advisers to maintain client securities with a futures commission merchant to the extent the securities are incidental to client futures transactions.

Many advisers registered with us are themselves qualified custodians under the amended rule.[23] These advisers may maintain their own clients' funds and securities, subject to the account statement requirements described below and the custody rules imposed by the regulators of the advisers' custodial functions. Advisers may also maintain client assets with affiliates that are qualified custodians.

The amended rule contains special provisions for two types of securities: mutual fund shares and private issues. Commenters noted that, at times, a client or adviser may purchase shares of a mutual fund directly from the fund's transfer agent rather than through another intermediary such as a broker-dealer. In these cases, the mutual fund's transfer agent maintains the securities for the client on the mutual fund's books. The adviser, however, may also have custody because, for example, the adviser has check-writing or fee-deduction authority over the assets.[24] The amended rule allows an adviser to use the mutual fund transfer agent in lieu of a qualified custodian with respect to those shares.[25]

Commenters also pointed out that, on occasion, a client may purchase privately-offered securities and that maintaining certain of these assets in accounts with qualified custodians poses difficulties because the client's ownership of the security is recorded only on the books of the issuer. The client may receive copies of subscription or partnership agreements that are not maintained with a custodian.[26] The amendments except advisers from the rule with respect to privately-offered uncertificated securities in their clients' accounts, if ownership of the securities is recorded only on the books of the issuer or its transfer agent, in the name of the client, and transfer of ownership is subject to prior consent of the issuer or holders of the issuer's outstanding securities.[27] These impediments to transferability provide some external safeguards against the kinds of abuse the rule seeks to prevent. These safeguards, however, may be ineffective in the case of limited partnerships (or other pooled investment vehicles). Because the private securities are held in the name of the limited partnership and the adviser acts for the partnership, the adviser has apparent authority to arrange transfers that would be recognized by the issuer of the securities. Accordingly, an adviser may use the exception for private securities with respect to the account of a limited partnership only if the limited partnership is audited annually, and the audited financial statements are distributed, as described in amended rule 206(4)–2(b)(3).[28]

### *C. Delivery of Account Statements to Clients*

Rule 206(4)-2, as amended, requires that advisers with custody of clients' funds or securities have a reasonable belief that the qualified custodian holding the assets provides periodic account statements to those clients.[29] A number of commenters asserted that some custodial accounts are on quarterly rather than monthly reporting cycles and that moving to a monthly cycle would increase expenses substantially. In response to these comments, the amended rule requires quarterly account statements rather than the monthly statements we proposed. This provision, which requires qualified custodians to deliver account statements directly to advisory clients (and not through the adviser), is designed to assure the integrity of those account statements and permit clients to identify any erroneous or unauthorized transactions or withdrawals by an adviser.[30]

As we discussed in the Proposing Release, we recognize that there may be circumstances in which an adviser would need to continue using the approach of the current rule.[31] Accordingly, if a client does not receive account statements directly from the qualified custodian, the adviser must continue sending quarterly account statements to that client and to undergo an annual surprise examination by an independent public accountant[32] to verify the funds and securities of that client.[33] The amendments require the accountant to notify our Office of Compliance Inspections and Examinations within one business day of finding any material discrepancies during an examination.[34]

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[22] Amended rule 206(4)–2(c)(3)(iv). We proposed to include foreign financial institutions only for securities whose primary trading market was in the country where the custodian was located. Some commenters urged that we permit foreign custodians to be used more broadly, arguing that some advisers, and some clients, especially those residing overseas, may at times have reason to use a foreign firm as a custodian or may have existing relationships with foreign institutions. We are modifying the rule from the proposal to avoid disrupting these existing practices. Where an adviser selects a foreign financial institution to hold clients' assets, we believe the adviser's fiduciary obligations require it either to have a reasonable basis for believing that the foreign institution will provide a level of safety for client assets similar to that which would be provided by a "qualified custodian" in the United States or to fully disclose to clients any material risks attendant to maintaining the assets with the foreign custodian.

[23] For example, Form ADVs submitted by SEC-registered advisers indicate that as of May 16, 2002, 647 advisers were broker-dealers registered with us under section 15 of the Exchange Act (15 U.S.C. 78o) and 77 advisers were banks (or separately identifiable departments or divisions of banks).

[24] Commenters were concerned that without an exception, an advisory client or adviser would have to use a qualified custodian in addition to the mutual fund transfer agent.

[25] *See* amended rule 206(4)-2(b)(1). The fund transfer agent must fulfill all aspects of the role of a qualified custodian under the rule, including sending statements directly to the client, or the adviser will be subject to annual surprise examinations. *See* discussions in Section II.C. of this Release.

[26] Commenters specifically mentioned clients' investments in limited partnerships, where clients receive only a copy of the partnership agreement as evidence of their investment. Commenters also mentioned assignment agreements for debt or equity interests in a private company, or other types of customized agreements. *See* our staff's summary of comments posted on our web site at www.sec.gov/rules/extra/s72802csumm.htm.

[27] For example, in many privately-offered limited partnerships transfer of a limited partnership interest must be approved by a majority or some other percentage of the other limited partners. The rule does not require a specific number or percentage of the other security holders that must approve the transfer; applicable partnership law or the limited partnership agreement would set that standard.

[28] *See* Section II.D.2 of this Release. Otherwise, an adviser to a limited partnership (or other types of pooled investment vehicles) will still be required to maintain custody of privately-offered securities in accordance with the requirements of the rule.

Some privately-offered securities may be difficult to value. Account statements that must be delivered to a client under the rule must report the amount of the client's securities, but the rule does not require those statements to include a valuation of the securities.

[29] Amended rule 206(4)-2(a)(3)(i). An adviser could form this reasonable belief if, for example, the qualified custodian provides the adviser with a copy of the account statement that was delivered to the client.

Account statements may be delivered electronically as well as on paper. Electronic delivery must comply with the Commission's interpretive guidelines on delivering documents electronically. *See Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information; Additional Examples under the Securities Act of 1933, Securities Exchange Act of 1934, and Investment Company Act of 1940*, Release No. 33–7288 (May 9, 1996) [61 FR 24644 (May 15, 1996)]. The guidelines are available at www.sec.gov/rules/concept/33–7288.txt. *See also* New York Stock Exchange's June 13, 1997 Information Memo (No. 97–32) entitled *"Electronic Delivery of Information to Customers by Members and Member Organizations."*

[30] We understand qualified custodians sometimes use service providers to deliver account statements. The amended rule does not prohibit a qualified custodian from doing so, as long as the statements are not routed through the adviser.

[31] *See* Section II.C. of the Proposing Release.

[32] Article 2 of Regulation S-X sets forth Commission standards for the independence of accountants. 17 CFR 210.2–01.

[33] Amended rule 206(4)-2(a)(3)(ii). If qualified custodians deliver account statements directly to

We understand that some clients may not wish to receive custodial reports. Under rule 206(4)–2, as amended, clients can choose to have an independent representative receive account statements on their behalf.[35] An "independent representative" is a person that (i) acts as agent for an advisory client and by law or contract is obligated to act in the best interest of the advisory client; (ii) does not control, is not controlled by, and is not under common control with the adviser; and (iii) does not have, and has not had within the past two years a material business relationship with the adviser.[36]

The rule requires that account statements be delivered to clients. Advisers that take legal title to the client assets they manage, such as advisers that also serve as general partner to investment pools, have asked how they should apply this provision. Because this arises most often in connection with pooled investment vehicles, rule 206(4)–2, as amended, contains a special provision clarifying that account statements (whether delivered by the qualified custodian or the adviser) must be sent directly to the investors in the pool if the adviser to the pool also acts as its general partner, managing member, or in a similar capacity and has custody of client funds or securities.[37] Delivery of account statements to the adviser but not to the limited partners would not deter the adviser's misuse of client assets.[38]

### *D. Exemptions*

### 1. Registered Investment Companies

Advisers need not comply with the rule with respect to clients that are registered investment companies.[39] Registered investment companies and their advisers must comply with the strict requirements of section 17(f) of the Investment Company Act of 1940 and the custody rules we have adopted under that section.[40]

### 2. Pooled Investment Vehicles

Advisers need not comply with the reporting requirements of the rule with respect to pooled investment vehicles, such as limited partnerships or limited liability companies, if the pooled investment vehicle (i) is audited at least annually; and (ii) distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 120 days of the end of its fiscal year.[41] We had proposed a complete exemption for audited pools, but have decided to exempt them only from the reporting requirement and to retain application of the other provisions of the rule, including the requirement that funds and securities be held with a qualified custodian; these requirements provide meaningful protections to investors in these pools for which an annual audit provides an insufficient substitute.

### 3. Registered Broker-Dealers

The amendments eliminate the exemption from the rule for advisers that are also registered broker-dealers, which are qualified custodians under the rule and for which the exemption is unnecessary.

### *E. Amendments to Form ADV*

We are revising an instruction to Item 9 of Part 1A of Form ADV, which asks whether the adviser has custody of client funds or securities. A large number of advisers registered with us deduct their fees directly from client accounts and therefore have custody, but currently answer "no" to Item 9 in

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some, but not all, of an adviser's clients (or with respect to some, but not all, of a client's funds and securities), the adviser's quarterly statements and the scope of the surprise examination could cover only the client funds and securities for which custodial statements are not delivered directly. The accountant must ensure, however, that all client funds and securities either are covered by statements sent directly from the qualified custodian or are covered by the surprise examination.

The accountant should perform the examination in accordance with U.S. Generally Accepted Auditing or Attestation Standards, except that the accountant must verify or substantiate all client funds and securities covered by the examination. The examination should include confirmation of all cash and securities held by custodians, including a physical examination of securities if applicable, and reconciliation of all such cash and securities to the books and records of client accounts maintained by the adviser, as well as confirmation of such information with the adviser's clients. *See American Institute of Certified Public Accountants, Audit and Accounting Guide: Audits of Investment Companies § 11.12 (2002); Statement of the Commission Describing Nature of Examination Required to be Made of All Funds and Securities Held by an Investment Adviser and the Content of Related Accountant's Certificate*, Investment Advisers Act Release No. 201 (May 26, 1966) (31 FR 7821). The examination must be performed at a time chosen by the accountant without prior notice or announcement to the adviser, and the timing of the examination must be irregular from year to year, so that the adviser will be unaware of the date on which it will take place.

The accountant must file a certificate on Form ADV–E with the Commission within 30 days after the completion of the examination. We would expect that, ordinarily, an accountant should be able to complete its examination and file Form ADV–E within 90 to 120 days of commencing the examination.

[34] Amended rule 206(4)-2(a)(3)(ii)(C). The independent accountant may first take reasonable steps to establish the basis for believing a material discrepancy exists. The obligation to notify the Commission arises once the accountant has a basis for believing there is a material discrepancy. Ordinarily, an accountant should be able to determine promptly whether it has a basis for believing there is a material discrepancy.

[35] Our proposed amendments permitted the use of independent representatives only for investors in pooled investment vehicles. In response to the suggestions of several commenters, we have decided to permit all advisory clients to designate independent representatives under the rule.

[36] Amended rule 206(4)–2(c)(2).

[37] Amended rule 206(4)–2(a)(3)(iii). These account statements may be sent to the investors' independent representative(s) under amended rule 206(4)–2(a)(4). However, as discussed below in more detail, the amendments provide an exemption from amended rule 206(4)–2(a)(3) for advisers with respect to pooled investment vehicles that are audited annually. *See* discussions in Section II.D.2 of this Release.

[38] Registered advisers that provide their advisory services through trusts must also ensure that account statements are delivered to their clients. Where an adviser acts as trustee for its client's trust, the investment advisory agreement often takes the form of a trust instrument. These advisers are acting in a capacity that gives them legal ownership of the client assets and thus have custody. In many cases, the advisory client is also the trust grantor and beneficiary. In other circumstances, the adviser may need to have quarterly statements delivered to an independent representative who may be a co-trustee, lead beneficiary, trust attorney, executor, or, in the case of court-supervised trusts, the court.

[39] Rule 206(4)–2(b)(4).

[40] 15 U.S.C. 80a–17(f) and rules 17f–1 through 17f–7 under the Investment Company Act of 1940 (17 CFR 270.17f–1 through 17 CFR 270.17f–7)

[41] Amended rule 206(4)–2(b)(3). We are aware that a small percentage of advisers subject to the rule advise foreign pooled investment vehicles that prepare their financial statements in accordance with International Accounting Standards or some comprehensive body of accounting standards other than U.S. Generally Accepted Accounting Principles ("U.S. GAAP"). An adviser may use such financial statements to qualify for this exception with respect to pools that have a place of organization outside the U.S. or a general partner or other manager with a principal place of business outside the U.S., if such financial statements contain information that is substantially similar to financial statements prepared in accordance with U.S. GAAP and contain a footnote reconciling any material variations between such comprehensive body of accounting standards and U.S. GAAP. To ensure such material variations are adequately described, the financial statements should discuss and quantify them in the manner described in Item 17 of Form 20–F (17 CFR 249.220f) (except that the financial statements need not provide reconciliation to Regulation S–X as required of issuers under Form 20–F). For both U.S. and foreign pooled investment vehicles, the rule provides that "audit" has the meaning under section 2(d) of Article 1 of Regulation S–X (17 CFR 210.1–02(d)), and pooled investment vehicles' financial statements must be audited in accordance with U.S. Generally Accepted Auditing Standards.

We proposed to require distribution of the audited financial statements within 90 days, but have extended that period to 120 days so that funds of funds will have enough time to complete their financial statements. Funds of funds, as pointed out by commenters, usually wait for the completion of the financial statements of the underlying investment funds before confirming their own data and finalizing their own financial statements.

reliance on no-action letters issued by our staff.[42] Commenters requested that we modify Item 9 to avoid requiring these advisers to amend their Form ADVs in this respect. The new instruction specifies that advisers that have custody only because they deduct fees may answer "no" to Item 9.[43] It will be some number of months before the NASD, which operates the IARD for us, completes reprogramming the IARD to implement this change to Item 9. In the interim, advisers registered with the Commission that have custody only because they deduct fees should answer "no" to Item 9 of current Form ADV.

Finally, we are eliminating the requirement that advisers with custody of client assets include an audited balance sheet in their disclosure statements ("brochures") sent to clients.[44] Commenters agreed that the requirement is no longer necessary due to the adoption of rule 206(4)–4, which requires every adviser to disclose to its clients any financial condition that is reasonably likely to impair the adviser's ability to meet its contractual commitments to its clients.[45]

## III. Effective Date

The effective date of the amendments is November 5, 2003. Advisers must comply with the amended rule by April 1, 2004. By this compliance date, an adviser with custody of clients' funds and securities must ensure that those assets are kept in accounts with qualified custodians. Also by this date, the adviser must have established its reasonable belief that the qualified custodians send quarterly account statements directly to the clients or to their independent representatives, or as an alternative, follow the requirements of sending quarterly statements and undergoing an annual surprise examination.[46] In addition, by this date, advisers to limited partnerships that are not currently subject to annual audits must ensure that those partnerships have become obligated to undergo annual audits if the adviser intends to rely on the exception in paragraph (b)(3) of the amended rule.[47]

## IV. Consideration of Promotion of Efficiency, Competition, and Capital Formation

Section 202(c) of the Advisers Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[48]

The amendments eliminate unnecessary burdens and thus may permit advisers to operate more efficiently. Because they apply equally to all advisers registered with us, we do not anticipate that they create any competitive disadvantages. We do not expect them to have an effect on capital formation or the capital markets.

## V. Cost-benefit Analysis

### *A. Background*

The Commission is sensitive to the costs and benefits resulting from its rules. The amendments we adopt today are designed to harmonize the custody rule with current custodial practices, enhance the protections afforded to advisory clients' assets, and reduce advisers' compliance burden. The amended rule requires advisers with custody of client funds and securities to maintain those funds and securities with broker-dealers, banks, or other "qualified custodians." The amended rule relieves advisers from sending clients quarterly account statements and undergoing an annual surprise examination if qualified custodians send account statements directly to the clients at least quarterly. The amended rule also defines "custody," incorporating a definition already used in Form ADV, and illustrates common circumstances under which an adviser has custody. Finally, the amendments make two custody-related changes to Form ADV.

In our Proposing Release, we carefully analyzed the costs and benefits of our proposed amendments and requested comment regarding the costs and benefits to individual advisers and to the industry as a whole. We estimated based on advisers' filings with us that 867 advisers registered with us (approximately 11 percent) have custody of clients' assets, that 156 of these firms were broker-dealers (123) or banks (33), that would keep custody of their own clients' assets and, in their capacity as qualified custodians, send account statements to those clients,[49] and that in 95 percent of the remaining advisers with custody[50] qualified custodians would send account statements to 99 percent of clients and the adviser would prepare account statements for the remaining 1 percent of clients.[51] We estimated that the remaining 36 advisory firms[52] would prepare their own statements for all clients.[53] Commenters strongly favored the amendments and agreed that they would ease the regulatory burden on advisers and increase investor protections.[54] We did not, however, receive specific comments on our cost benefit analyses.

We are adopting the amendments substantially as proposed, with some revisions in response to comments. We believe our original analyses regarding the benefits and costs of the amendments remain accurate. Most of the benefits and costs under the amended rule, however, are not quantifiable.

### *B. Benefits*

*Improved protection for advisory clients.* The amended rule requires advisers to maintain clients' securities, as well as clients' funds, with qualified custodians. Although most advisers with custody already maintain their clients' securities with banks or broker-dealers as a matter of practice, the rule has not previously required it. Including this requirement in the rule will ensure that all advisers with custody provide this protection to their clients.

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[42] We are, as indicated earlier, withdrawing those staff letters. *See supra* note 11.

[43] The revised instruction applies only with respect to an adviser's registration with us, and does not affect advisers registered or registering with the states. We note, also, that advisers registering with one or more states must respond separately to Part 1B of Form ADV, which specifically asks whether the adviser deducts fees from its clients' accounts.

[44] Part II, Item 14 of Form ADV.

[45] 17 CFR 275.206(4)–4. *See also* Section II.E. of the Proposing Release.

[46] Until the compliance date, advisers may rely on SEC staff letters for exemption from the surprise examination. *See* SEC staff letters listed in supra notes 11 & 15.

[47] Amended rule 206(4)–2(b)(3). Advisers to limited partnerships that are currently subject to annual audits may rely on this exception immediately upon the rule's effective date. The rule requires that the limited partnership be subject to an annual audit, but does not specify the means by which that binding commitment must be made. In most cases, we expect that the limited partnership agreement itself will require that the partnership be audited annually. In other cases, the adviser may evidence the commitment through an ongoing letter of engagement with an independent public accountant, or may use its disclosure statement to commit to the investors that the audit will be performed annually.

[48] 15 U.S.C. 80b–2(c). We are adopting amendments to Form ADV under sections 203(c)(1) and 204 of the Advisers Act. These sections authorize the Commission to prescribe rules as necessary or appropriate in the public interest or for the protection of investors.

[49] Registered broker-dealers or banks are "qualified custodians" under the amended rule and may custody their own clients' funds and securities.

[50] 867–156 = 711 advisers. 95 percent of 711 advisers = 675 advisers.

[51] We based this estimate on our experience examining investment advisers. We estimated that SEC-registered investment advisers have a mean of 670 clients each. Thus, this group of advisers would be preparing their own statements for an aggregate group of 4,725 clients (670 mean clients per adviser × 1% = 7 clients per adviser × 675 advisers = 4,725 clients).

[52] 867 − 156 − 675 = 36.

[53] We estimated that these 36 advisers would have 24,120 clients in the aggregate (36 × 670 = 24,120).

[54] *See Summary of Comments* prepared by our staff, available in our Public Reference Room in File No. S7–28–02, and on our Web site at *www.sec.gov/rules/extra/s72802csumm.htm.*

Under the amended rule, when qualified custodians send quarterly account statements directly to advisory clients, the adviser is no longer required to send its own quarterly statements and to undergo an annual surprise examination.[55] Receiving quarterly account statements directly from the qualified custodians will enable advisory clients to identify questionable transactions early and allow them to move more swiftly than relying on an annual surprise examination. Many commenters commended this new approach.

For the small group of advisers that cannot use the new approach and therefore must continue to undergo an annual surprise examination,[56] the amended rule requires the independent public accountant conducting the examination to advise the Commission of any material discrepancies it discovers in the examination. The Commission will therefore be able to act promptly to prevent further losses resulting from the adviser's malfeasance.

*Remove unnecessary regulatory requirements.* Commenters generally agreed that the new compliance requirements would reduce their compliance burden. The compliance requirements under the amended rule focus on investment advisers ascertaining whether qualified custodians are sending quarterly account statements to each of the advisers' clients. This sets forth a much simpler and less expensive compliance procedure for the adviser than sending its own quarterly account statements and undergoing an annual surprise examination.[57] As discussed above, we expect most advisers will have qualified custodians send clients' account statements directly. The amendments also eliminate the costs of complying with staff no-action letters that set out alternative procedures to the annual surprise examination; advisers previously relying on these letters must now comply with the revised rule. We did not receive comments on our estimates or on quantifying these cost reductions.[58]

The amendments eliminate the requirement set forth in Form ADV that advisers with custody must include, in their disclosure brochures sent to clients, a balance sheet prepared and audited by an independent public accountant.[59] Eliminating the balance sheet requirement will reduce advisers' compliance burden.[60] The amendments also revise the instruction to Item 9 of Part 1A of Form ADV, so that SEC-registered advisers that have custody solely because they deduct their advisory fees from clients' assets need not report custody for purposes of Part 1A. These advisers currently rely on our staff's no-action letters to report that they do not have custody; they commented that requiring them to change their response to Item 9 would confuse their clients.[61] This revision avoids requiring these advisers to amend their registration statements.[62]

*Improved clarity and transparency of the rule.* The amendments will improve the clarity and transparency of the rule by adding a definition of "custody" to the rule and by providing examples of the custodial situations most likely to be encountered by an adviser in today's securities markets. Advisers will benefit from this transparency because they (or their counsel) will no longer need to refer to other materials such as staff no-action letters for these examples. Commenters generally responded favorably to the insertion of the definition and examples.

### *C. Costs*

The amendments require that all client funds or securities be maintained with qualified custodians. This requirement may impose costs on the advisers that currently have physical possession of client assets. We estimated in the Proposing Release that the additional cost of this requirement, if any, would be minimal because most advisers already maintain client assets with banks or broker-dealers.[63] Many commenters confirmed that their custody arose through their access to their clients' funds or securities, not through any physical possession of them, and this requirement would not impose additional costs on them.

In addition, the amendments exempt advisers with custody from the costs of undergoing annual surprise examinations and sending account statements only when qualified custodians send account statements directly to the advisers' clients at least quarterly. This condition may impose costs on a small number of advisers that do not already have qualified custodians deliver account statements directly to the advisers' clients.[64] These advisers

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[55] We proposed that qualified custodians send account statements to clients monthly. A number of commenters asserted that some custodial accounts are on quarterly rather than monthly reporting cycles and that moving to a monthly cycle would increase expenses substantially. In response to these comments, the amended rule requires quarterly account statements rather than the monthly statements we proposed.

[56] As we discussed on our Proposing Release, based on information collected from Form ADVs, 867 advisers registered with the Commission—approximately 11%—report having custody. Of these, 156 are "qualified custodians" that may custody their own clients' assets; we expect these 156 firms will all send quarterly custodial account statements to their clients and thus will be exempt from annual surprise examinations. Of the remaining 711 SEC-registered advisers with custody, we expect 675 (95%) will have qualified custodians deliver account statements directly to 99% of their clients, and will need to send statements and undergo annual surprise examinations only with respect to the remaining 1%. We expect the remaining 36 advisers will continue to be subject to the annual surprise examination requirement with respect to all of their clients.

[57] In the Proposing Release, we estimated that approximately 744 advisers (those that report having custody but are not registered broker-dealers) were required to undergo annual surprise examinations under the current rule, and that on average, an adviser spends approximately 335 hours (0.5 hours per client for an average of 670 clients) and pays $8,000 annually in fees to an independent public accountant in connection with undergoing the examination. We also estimated that under the amended rule, only 36 advisers will continue to incur these full costs of an annual surprise examination with respect to all their clients; we estimated that another 675 advisers will incur these costs only with respect to one percent of their clients, spending approximately 3.5 hours and paying $1,000 annually in fees in connection with the annual surprise examination.

[58] The Commission does not collect information on the number of advisers that currently do not comply with the custody rule in reliance on SEC staff no-action letters, but that will be subject to the revised rule.

[59] This change will not, however, impair client protections. A balance sheet may give an imperfect picture of the financial health of an advisory firm, because many advisers, including very profitable firms, have few financial assets. Moreover, rule 206(4)–4, which did not exist when the balance sheet requirement was adopted, requires every adviser to disclose any financial condition that is likely to impair its ability to meet its contractual commitments to its clients; this disclosure is more useful to clients than a balance sheet.

[60] The Commission staff has estimated, in connection with Paperwork Reduction Act analyses, that an adviser not otherwise required to prepare audited financial statements presently spends approximately $15,000 annually to comply with this requirement, and that approximately 580 advisers with custody are currently incurring these costs. *See infra* note and accompanying text.

[61] Because those staff no-action letters are being withdrawn, these advisers must now comply with the amended custody rule.

[62] We have been advised by groups representing advisers registered with us that perhaps as many as 90% of SEC-registered advisers deduct fees from their clients' accounts.

[63] In our Proposing Release, we estimated that no more than 1 percent of advisers with custody keep any clients' securities in places other than accounts with qualified custodians, and even these advisers maintain almost all of their clients' assets with qualified custodians.

[64] In the Proposing Release, we have estimated that most qualified custodians are delivering account statements to advisers' clients and that less than 1% of advisory clients (excluding investors in

Continued

will have to arrange for qualified custodians to deliver account statements directly to their advisory clients, and the qualified custodians may pass any new costs on to the advisers. These costs are necessary for the protection of advisory clients and we estimated in the Proposing Release that they should be no greater, at an aggregate level, than the costs incurred under the current account statement delivery requirement. We received no specific comments on these assumption and estimates, and we believe they remain accurate.

## VI. Paperwork Reduction Act

As set forth in the Proposing Release, the amendments contain several "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.[65] The titles for the collections of information are "Rule 206(4)–2, Custody of Funds or Securities of Clients by Investment Advisers" and "Form ADV, Financial Information" under the Advisers Act. The Commission submitted the amendments to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The collection of information for the rule and the form has been approved by OMB under control numbers 3235–0241 and 3235–0049, respectively (both expire on September 30, 2005). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The collections of information under rule 206(4)–2 are necessary to ensure that clients' funds and securities in the custody of advisers are safeguarded, and information contained in the collections is used by staff of the Commission in its enforcement, regulatory, and examination programs. The respondents are investment advisers registered with us that have custody of clients' funds or securities. The collections of information under Form ADV are necessary for use by staff of the Commission in its examination and oversight program. The respondents are investment advisers seeking to register with the Commission or to update their registration. Responses provided to the Commission are not kept confidential.

### *A. Rule 206(4)–2*

We are adopting the amendments substantially as proposed. The amendments require advisers with client funds and securities to maintain those funds and securities in custodial accounts with banks, broker-dealers, or other "qualified custodians." The amendments exempt advisers with custody of client assets from the current requirements of sending their clients quarterly account statements and undergoing an annual surprise examination if qualified custodians send account statements directly to the advisory clients at least quarterly.[66] The amendments exempt advisers from the rule with respect to accounts of registered investment companies, and exempt advisers from the reporting requirement with respect to pooled investment vehicles that are audited annually and have the audit results distributed to their investors.[67] We received no comments on the collection of information burden of the amendments.

We estimated in our Proposing Release that the amendments would generally reduce the paperwork burden for advisers. We estimated the aggregate burden under the current rule at 1,246,200 hours, and the aggregate cost under the current rule at $5,952,000, assuming that an adviser would pay an independent public accountant $8,000 to conduct an annual surprise examination.

For purposes of calculating the burden hours under the amendments, we estimated in the Proposing Release that (i) of the 867 advisers reporting that they had custody of clients' assets, 156 would be fully exempted from the requirements of sending quarterly advisory account statements and undergoing an annual surprise examination,[68] (ii) 95 percent (675 advisers) of the remaining 711 advisers would be eligible for the exemption from these two requirements with respect to 99 percent of their clients, and (iii) 5 percent (36 advisers) of the remaining 711 advisers would continue to be subject to both requirements with respect to all of their clients. Assuming an average of 670 clients per adviser registered with us, we estimated that the aggregate annual burden that advisers would face under the amended rule would be 72,113 hours rather than the estimated 1,246,200 hours under the current rule.[69]

We further estimated in the Proposing Release that (i) the aggregate cost for accounting fees for the annual surprise examination would be $288,000 for the 36 advisers who would be subject to the collection of information for all of their clients;[70] and (ii) the accounting fees for the 675 advisers who would be subject to the collection of information for 1 percent of their clients would decrease to $1,000 per adviser, for an aggregate of $675,000. The aggregate cost for information collection burden under the amended rule would therefore be $963,000 rather than the estimated $5,952,000 under the current rule.[71] We received no comments on these estimates and assumptions.

As stated above, we are adopting the amendments substantially as proposed. Accordingly, our estimate of the annual aggregate burden of collection for the amended rule remains 72,113 hours and our estimate of the aggregate cost remains $963,000. This collection of information is mandatory, and responses are not kept confidential.

### *B. Form ADV*

The amended rule eliminates the requirement set forth in Part II, Item 14 of Form ADV that an adviser with custody must include in its brochure a balance sheet audited by an independent public accountant.[72] This will reduce paperwork burden for

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pooled investment vehicles) do not receive account statements directly from custodians. Many commenters indicated that their custodians do deliver account statements to their clients directly.

[65] 44 U.S.C. 3501 to 3520.

[66] We proposed that qualified custodians send account statements to clients monthly. A number of commenters noted that some custodial accounts are on quarterly rather than monthly reporting cycles and that moving to a monthly cycle would increase expenses. In response to these comments, the amended rule requires only quarterly account statements. This revision will not affect our original estimate of information collection burden, which was based on an assumption that the amendments would not result in any change in qualified custodians' reporting cycles.

[67] We had proposed a complete exemption for advisers to audited pooled investment vehicles, but are adopting an exemption from the account statement delivery requirements only. Exempting audited investment pools from the account statement delivery requirement will eliminate both the adviser's burden of sending account statements and its burden in undergoing an annual surprise examination. This modification does not affect estimate of the information collection burden.

[68] Advisers that are registered broker-dealers (123 firms) or banks (33 firms) will be "qualified custodians" under the amended rule and may keep custody of their own (and other advisers') clients' assets. We understand that broker-dealers and banks generally send account statements at least quarterly. These advisers will therefore be in compliance with the amended rule without incurring any additional burden under the rule.

[69] The 675 advisers facing this burden with respect to 1% of their clients will spend 2.5 hours per client for 7 clients annually. 675 advisers × 7 clients × 2.5 hours = 11,812.5 hours. The 36 advisers facing this burden with respect to all of their clients will spend 2.5 hours per client for 670 clients annually. 36 advisers × 670 clients × 2.5 hours = 60,300 hours. 11,812.5 hours + 60,300 hours = a total hour burden of 72,112.5 (rounded to 72,113) hours annually for all advisers in the aggregate.

[70] These 36 advisers would be subject to a surprise examination. Based on our experience examining investment advisers, we estimated that each surprise examination would cost $8,000. 36 advisers × $8,000 = $288,000.

[71] $288,000 + $675,000 = $963,000.

[72] *See supra* Section II.E. of this Release.

advisers that have custody of client assets.

In the Proposing Release, we estimated the current aggregate annual cost of this requirement at $11,460,000.[73] For purposes of calculating this cost under the amendments, we estimated the 580 advisers that are paying accountants' fees to comply with the balance sheet requirement under the current rule would no longer incur these costs. Therefore, we estimated in the Proposing Release that the number of advisers subject to this requirement would be reduced to 184, and the aggregate annual cost of this requirement would be reduced to $2,760,000, for an average annual cost for each adviser registered with us of $364.[74]

Commenters generally supported the elimination of the balance sheet requirement, but made no specific comment on our estimated numbers. We are adopting this amendment as proposed. These estimated numbers therefore remain the same.

We are also adding an instruction to Item 9 of Part 1A of Form ADV, which asks whether the adviser has custody of clients' funds or securities. Many advisers registered with us deduct fees from clients' accounts but currently answer "no" to Item 9 in reliance on no-action letters issued by our staff. The new instruction would permit advisers that have custody solely because they deduct fees to continue answering "no" to Item 9. Consequently, the new instruction does not affect the collection of information burden of Form ADV.

This collection of information is mandatory, and responses are not kept confidential.

## VII. Final Regulatory Flexibility Analysis

The Commission proposed amendments to rule 206(4)–2, the custody rule under the Advisers Act, in a release issued on July 18, 2002 ("Proposing Release").[75] An initial Regulatory Flexibility Analysis ("IRFA") was published in the Proposing Release. No comments were received on the IRFA. The Commission has prepared the following Final Regulatory Flexibility Analysis ("FRFA") regarding amendments to rule 206(4)–2 and Form ADV, in accordance with 5 U.S.C. 604.

### A. Need for the Amendments

We are adopting the amendments substantially as proposed. The amendments are necessary to harmonize the advisers' custody rule with current custodial practices, enhance the protections afforded to client assets, and clarify circumstances under which advisers have custody of client assets. The amendments require advisers to maintain client funds and securities with broker-dealers, banks, or other "qualified custodians." If the qualified custodian sends account statements directly to an adviser's clients at least quarterly, the adviser will be relieved from sending its own account statements and from undergoing an annual surprise examination of those clients' accounts. The amendments exempt advisers from the rule with respect to clients that are registered investment companies and exempt advisers to limited partnerships (or other types of pooled investment vehicles) from the account statement delivery requirement if the limited partnerships are subject to annual audit and distribute the audit results to their limited partners.

The amendments add a definition of "custody" to the rule and illustrate the circumstances under which an adviser has custody of client assets. Advisers will benefit from this transparency because they (and their counsel) will no longer need to refer to external materials such as staff no-action letters for these examples. Finally, the amendments eliminate the requirement in Form ADV that advisers with custody include an audited balance sheet in their disclosure brochures to clients; other disclosures now provide clients with information that is likely to be more helpful to them in this regard.

### B. Significant Issues Raised by Public Comment

The Commission received 49 letters from commenters in response to the Proposing Release.[76] Commenters strongly supported the proposal. As discussed in Section II of this Release, above, the Commission is adopting the amendments substantially as proposed with some changes to respond to commenters' suggestions. The Commission specifically requested comment with respect to the IRFA, but did not receive any comments concerning the IRFA.

### C. Small Entities Subject to Rule

In developing the amendments, we have considered their potential effect on small entities. Under Commission rules, for the purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is a small entity if it: (i) Has assets under management having a total value of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had $5 million or more on the last day of its most recent fiscal year.[77] The Commission estimates that approximately 28 SEC-registered investment advisers that have custody of client assets are small entities.[78]

### D. Projected Reporting, Record-keeping, and Other Compliance Requirements

The amended rule imposes no new reporting and record-keeping requirements. In addition, we believe that most advisers that maintain custody of client assets, including advisers that are small entities, already maintain these assets with qualified custodians. Therefore, the amendments will not materially increase the effort necessary on the advisers' behalf to comply with the Commission's rules. To the contrary, the amendments provide advisers with the opportunity to eliminate costs they incur complying with the present rule's requirements to send account statements to clients and undergo an annual surprise examination.[79] In addition, we are amending Form ADV to eliminate the requirement that an adviser with custody of client assets provide its clients with a copy of its audited balance sheet, thereby further reducing the advisers' compliance costs. We are also amending Form ADV to add an instruction to Item 9 of Part 1A; this instruction permits SEC-registered advisers that have custody only because they deduct their fees from their clients' assets to continue responding "no" to Item 9.[80]

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[73] We estimated that each adviser that needed an audited balance sheet in order to comply with the requirement paid approximately $15,000 on average in accounting fees. According to our records, 184 advisers registered with us require prepayment of fees, and 887 advisers registered with us provide an audited balance sheet to their clients under Part II, Item 14 of Form ADV. (Because advisers are not presently required to file Part II of ADV with the Commission, the 887 figure is from data collected before January 1, 2001.) Since 867 advisers report having custody of their clients' assets, and this number of advisers combined with those who require prepayment of fees exceeds the 887 providing balance sheets by 164, we have estimated that 164 of the advisers with custody also require prepayment of fees. Of the 703 advisers providing balance sheets because of the custody provision (867 advisers with custody − 164 also requiring prepayment of fees = 703), 123 are also broker-dealers that are required to maintain audited financial statements under other rules, and only the remaining 580 advisers incur accountants' fees to comply with the balance sheet requirement under the custody provision. $15,000 in fees × (184 advisers with advance fees + 580 additional advisers with custody) = $11,460,000.

[74] (184 × $15,000) / 7,583 = $364.

[75] *Custody of Funds or Securities of Clients by Investment Advisers*, Investment Advisers Release No. 2044 (July 18, 2002) [67 FR 48579 (July 25, 2002)].

[76] *See Summary of Comments* prepared by our staff, available in our Public Reference Room in File No. S7–28–02, and on our Web site at *http://www.sec.gov/rules/extra/s72802csumm.htm*.

[77] 17 CFR 275.0–7(a).

[78] This estimate is based on the information provided submitted by SEC-registered advisers in Form ADV, Part 1A [17 CFR 279.1] as of May 2002.

### *E. Agency Action To Minimize Effect on Small Entities*

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the amended rule, the Commission considered the following alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rule, or any part thereof, for such small entities.

The overall impact of the amendments is to decrease regulatory burdens on advisers. Small advisers, as well as large ones, will benefit from the amended rule. Moreover, the amendments achieve the rule's objectives through alternatives that are already consistent in large part with advisers' current custodial practices. Therefore, the potential impact of the amendments on small entities should not be significant. For these reasons, alternatives to the amendments, such as differing compliance or reporting requirements, simplification of compliance and reporting requirements, or the use of performance rather than design standards, are unlikely to minimize any impact that the amended rule may have on small entities. Regarding exemption from coverage of the rule amendments, or any part thereof, for small entities, such an exemption would deprive small entities of the burden relief provided by the amendments. Moreover, since the protections of the Advisers Act are intended to apply equally to clients of both large and small advisory firms, it would be inconsistent with the purposes of the Act to specify different requirements for small entities or to establish different compliance or reporting requirements for small entities with regard to this requirement.

## VIII. Statutory Authority

We are adopting amendments to rule 206(4)–2 pursuant to our authority set forth in sections 206(4) and 211(a) of the Advisers Act [15 U.S.C. 80b–6(4) and 80b–11(a)].

We are adopting amendments to Form ADV pursuant to the authority set forth in sections 203(c)(1), 204, and 211(a) of the Advisers Act [15 U.S.C. 80b–3(c)(1), 80b–4 and 80b–11(a)].

## List of Subjects in 17 CFR Parts 275 and 279

Reporting and recordkeeping requirements, Securities.

## Text of Rule

■ For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

## PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 1. The authority citation for Part 275 continues to read in part as follows:

**Authority:** 15 U.S.C. 80b–2(a)(11)(F), 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11, unless otherwise noted.

* * * * *

■ 2. Section 275.206(4)–2 is revised to read as follows:

### § 275.206(4)–2 Custody of funds or securities of clients by investment advisers.

(a) *Safekeeping required.* If you are an investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b–3), it is a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b–6(4)) for you to have custody of client funds or securities unless:

(1) *Qualified custodian.* A qualified custodian maintains those funds and securities:

(i) In a separate account for each client under that client's name; or

(ii) In accounts that contain only your clients' funds and securities, under your name as agent or trustee for the clients.

(2) *Notice to clients.* If you open an account with a qualified custodian on your client's behalf, either under the client's name or under your name as agent, you notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information.

(3) *Account statements to clients.*—(i) *By qualified custodian.* You have a reasonable basis for believing that the qualified custodian sends an account statement, at least quarterly, to each of your clients for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period; or

(ii) *By adviser.* (A) You send a quarterly account statement to each of your clients for whom you have custody of funds or securities, identifying the amount of funds and of each security of which you have custody at the end of the period and setting forth all transactions during that period;

(B) An independent public accountant verifies all of those funds and securities by actual examination at least once during each calendar year at a time that is chosen by the accountant without prior notice or announcement to you and that is irregular from year to year, and files a certificate on Form ADV-E (17 CFR 279.8) with the Commission within 30 days after the completion of the examination, stating that it has examined the funds and securities and describing the nature and extent of the examination; and

(C) The independent public accountant, upon finding any material discrepancies during the course of the examination, notifies the Commission within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the Director of the Office of Compliance Inspections and Examinations; and

(iii) *Special rule for limited partnerships and limited liability companies.* If you are a general partner of a limited partnership (or managing member of a limited liability company, or hold a comparable position for another type of pooled investment vehicle), the account statements required under paragraphs (a)(3)(i) or (a)(3)(ii) of this section must be sent to each limited partner (or member or other beneficial owner).

(4) *Independent representatives.* A client may designate an independent representative to receive, on his behalf,

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[79] Under the amended rule, an adviser will not be required to send quarterly account statements or undergo a surprise examination with respect to accounts for which a qualified custodian sends account statements directly to clients at least quarterly.

[80] These advisers, in reliance on no-action letters issued by the Commission's staff, have responded "no" to Item 9 and have not been required to comply with the custody rule. The letters are being withdrawn and these advisers must now comply with the revised rule.

notices and account statements as required under paragraphs (a)(2) and (a)(3) of this section.

(a) *Exceptions.*—(1) *Shares of mutual funds.* With respect to shares of an open-end company as defined in section 5(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–5(a)(1)) ("mutual fund"), you may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with paragraph (a) of this section;

(2) *Certain privately offered securities.* (i) You are not required to comply with this section with respect to securities that are:

(A) Acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(B) Uncertificated, and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and

(C) Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(ii) Notwithstanding paragraph (b)(2)(i) of this section, the provisions of this paragraph (b)(2) are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, and the audited financial statements are distributed, as described in paragraph (b)(3) of this section.

(3) *Limited partnerships subject to annual audit.* You are not required to comply with paragraph (a)(3) of this section with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit (as defined in section 2(d) of Article 1 of Regulation S–X (17 CFR 210.1–02(d)) at least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 120 days of the end of its fiscal year; and

(4) *Registered investment companies.* You are not required to comply with this section (17 CFR 275.206(4)–2) with respect to the account of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 to 80a–64).

(c) *Definitions.* For the purposes of this section:

(1) *Custody* means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them. Custody includes:

(i) Possession of client funds or securities, (but not of checks drawn by clients and made payable to third parties,) unless you receive them inadvertently and you return them to the sender promptly but in any case within three business days of receiving them;

(ii) Any arrangement (including a general power of attorney) under which you are authorized or permitted to withdraw client funds or securities maintained with a custodian upon your instruction to the custodian; and

(iii) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives you or your supervised person legal ownership of or access to client funds or securities.

(2) *Independent representative* means a person that:

(i) Acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership (or members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle) and by law or contract is obliged to act in the best interest of the advisory client or the limited partners (or members, or other beneficial owners);

(ii) Does not control, is not controlled by, and is not under common control with you; and

(iii) Does not have, and has not had within the past two years, a material business relationship with you.

(3) *Qualified custodian means:*

(i) A bank as defined in section 202(a)(2) of the Advisers Act (15 U.S.C. 80b–2(a)(2)) or a savings association as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)) that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. 1811);

(ii) A broker-dealer registered under section 15(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(1)), holding the client assets in customer accounts;

(iii) A futures commission merchant registered under section 4f(a) of the Commodity Exchange Act (7 U.S.C. 6f(a)), holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and

(iv) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

## PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

■ 3. The authority citation for Part 279 continues to read as follows:

**Authority:** The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*

■ 4. Form ADV (referenced in § 279.1) is amended by:

■ a. In Part 1A, Item 9, revising the introductory text to add, after the first sentence, "If you are registering or registered with the SEC and you deduct your advisory fees directly from your *clients'* accounts but you do not otherwise have *custody* of your *clients'* funds or securities, you may answer "no" to Item 9A.(1) and 9A.(2)."; and

■ b. In Part II, Item 14, adding "(unless applicant is registered or registering only with the Securities and Exchange Commission)," after the words "client funds or securities".

**Note:** The text of Form ADV does not and this amendment will not appear in the Code of Federal Regulations.

Dated: September 25, 2003.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–24813 Filed 9–30–03; 8:45 am]

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Federal Register

**Wednesday,**
**October 1, 2003**

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## Part IV

# Department of Housing and Urban Development

**Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2004; Notice**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4852–N–02]**

## Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2004

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice of Final Fiscal Year (FY) 2004 Fair Market Rents (FMRs).

**SUMMARY:** Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish FMRs annually to be effective on October 1 of each year. FMRs are used to determine payment standard amounts for the Housing Choice Voucher program, to determine initial renewal rents for some expiring project-based Section 8 contracts, and to determine initial rents for housing assistance payments (HAP) contracts in the Moderate Rehabilitation Single Room Occupancy program. Other programs may require use of FMRs for other purposes. Today's notice provides final FY 2004 FMRs for all areas that reflect the estimated 40th and 50th percentile rent levels trended to April 1, 2004.

**EFFECTIVE DATE:** The FMRs published in this notice are effective on October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, telephone (202) 708–0477, responsible for decisions on how fair market rents are used; or John Garrity, Director, Office of Special Needs Assistance Programs, telephone (202) 708–4300, responsible for administration of the Mod Rehab Single Room Occupancy program. For technical information on the methodology used to develop fair market rents or a listing of all fair market rents, please call HUD USER at 1–800–245–2691 or access the information on the HUD Web site, *http://www.huduser.org/datasets/fmr.html*. Further questions on the methodology may be addressed to Marie L. Lihn, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 708–0590, (e-mail: *marie_l._lihn@hud.gov*). Hearing- or speech-impaired persons may use the Telecommunications Device for the Deaf (TTY) at 1–800–927–7589. (Other than the "800" HUD User and TTY numbers, telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** Section 8 of the United States Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes housing assistance to aid lower income families in renting safe and decent housing. Housing assistance payments are limited by FMRs established by HUD for different areas. In the Housing Choice Voucher program, the FMR is used to determine the "payment standard amount" used to calculate the maximum monthly subsidy for an assisted family (see 24 CFR 982.503.) In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, and safe rental housing of a modest (non-luxury) nature with suitable amenities.

*Electronic Data Availability:* This **Federal Register** notice is available electronically from the HUD news page: *http://www.hudclips.org/cgi/index.cgi.* **Federal Register** notices also are available electronically from the U.S. Government Printing Office Web site: *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

### How HUD Sets FMRs

#### *HUD Standard for Setting the FMR*

FMRs are gross rent estimates that include both shelter rent paid by the tenant to the landlord, and the cost of tenant-paid utilities, except telephones. HUD sets FMRs to assure that a sufficient supply of rental housing is available to program participants. To accomplish this objective, FMRs must be both high enough to permit a selection of units in neighborhoods and low enough to serve as many families as possible.

FMRs are set at a percentile within the rent distribution of standard quality rental housing units in each FMR area (see 24 CFR 888.113). FMRs are based on the distribution of rents for units that are occupied by recent movers "renter households who moved into their units within the past 15 months. The distribution does not include rents for units less than two years old or for public housing units. Rents for subsidized housing units are adjusted by adding back the amount of the subsidy.

HUD sets FMRs either at the 40th percentile rent or at the 50th percentile rent. For most FMR areas, the FMR is set at the 40th percentile rent paid by recent movers, which means that 40 percent of all standard quality rental housing units rented within the past 18 months have rents at or below this dollar amount. For some FMR areas, the FMR is set at the 50th percentile rent or the median rent, so that 50 percent of standard units are at or below this dollar amount. An asterisk in Schedule B identifies each of the 39 FMR areas for which HUD set 50th percentile FMRs.

#### Data Sources

HUD has used the most accurate and current data available to develop the FMR estimates. The sources of survey data used for the base-year estimates are:

(1) The 1990 Census, which provides statistically reliable rent data for all FMR areas;

(2) Bureau of the Census' American Housing Surveys (AHS) conducted after 1990, which are done for the largest metropolitan areas and which have an accuracy comparable to the decennial Census;

(3) Random Digit Dialing (RDD) telephone surveys of individual FMR areas, which are based on a sampling procedure that uses computers to select statistically random samples of rental housing; and

(4) Data from the 2000 Census were used for a small number of metropolitan areas that had submitted public comments requesting higher FMRs and where 2000 Census data showed FMRs were significantly understated. [Please note that the special 2000 Census tabulations needed to develop FMR estimates were not available when proposed FY 2004 FMRs were released. In addition, the new OMB metropolitan area definitions that will determine how FMR areas are defined had not been released when proposed FMRs needed to be published. A number of analytical issues related to using the 2000 Census rent data are still being studied and need to be resolved prior to implementing the new definitions and data. A set of revised proposed FMRs for FY 2004 based on 2000 Census data and new area definitions will be published for public comment in late 2003 or early 2004.]

The base-year FMRs are updated using trending factors based on Consumer Price Index (CPI) data for rents and utilities or on HUD regional rent change factors developed from regional RDD surveys. Area-specific annual average CPI data are available for 99 metropolitan FMR areas. RDD regional rent change factors are developed annually for the metropolitan and nonmetropolitan parts of each of the 10 HUD regions. The RDD factors are used to update the base year estimates for all FMR areas that do not have their own local CPI survey.

#### State Minimum FMRs

Some FMR areas have market rents that are at or below long-term operating costs. In addition, research has shown that areas with unusually low Census-reported rents, especially nonmetropolitan areas with unusually low rents, often have unusually high levels of substandard housing and/or assisted housing that distort FMR estimates. To reduce problems associated with FMR estimates for these areas, HUD has a policy of setting a minimum FMR level for each state. FMRs are established at the higher of the local 40th percentile rent level or a state minimum FMR that is equal to the statewide 40th percentile rent for nonmetropolitan counties. The state minimum also affects a small number of metropolitan areas whose rents would otherwise fall below the state minimum.

### Bedroom Size Adjustments

FMR estimates are calculated for two-bedroom units, which are the most common rental units. Rent relationships for units with differing numbers of bedrooms are then used to set FMRs of other bedroom sizes. Bedroom rent intervals are normally based on 1990 Census data rent interval relationships for FMR areas. In FMR areas where FMRs are based on the state minimums, the FMR for each bedroom size category is set at the higher of the 40th percentile rent for the FMR area or for the statewide average for nonmetropolitan counties.

There are some areas where the bedroom intervals were adjusted because the rent intervals between bedroom sizes were above or below an acceptable range (*e.g.*, areas where efficiencies are typically furnished, luxury units with rents higher than typical one-bedroom rents). The acceptable range for intervals between bedroom intervals was based on an examination of unusually high and low bedroom rent ratio intervals for all metropolitan areas. Areas where the intervals were outside the normal range were increased or decreased to bring them back within the range. Higher ratios continue to be used for 3-bedroom and larger size units than would result from using the actual market relationships. This is done to assist the largest, most difficult to house families in finding program-eligible units. The FMRs for unit sizes larger than 4-bedroom are calculated by adding 15 percent to the 4-bedroom FMR for each extra bedroom. For example, the FMR for a 5-bedroom unit is 1.15 times the 4-bedroom FMR, and the FMR for a 6-bedroom unit is 1.30 times the 4-bedroom FMR. FMRs for single room occupancy (SRO) units are 0.75 times the 0-bedroom FMR.

### Public Comments

In response to the May 27, 2003, proposed FMRs, HUD received 15 public comments covering 21 FMR areas. Rental housing survey information of some form was provided for five of those FMR areas. All survey information submitted was evaluated. Based on that review, the FMRs for four FMR areas are being increased, and the manufactured housing FMRs for five non-metropolitan counties in West Virginia are being increased. The information submitted for the other FMR areas was not considered sufficient to provide a basis for revising the FMRs.

Most comments stated that the proposed FMRs were too low. Some (Delaware State Housing Authority, Knox County Housing Authority, and Pinnacle Housing Group) noted that their utility and rental costs increased significantly over the past year, compared to the modest increases granted in the proposed FMRs. Others (Assumption Parish Housing and Community Development, state of Hawaii, city and county of Honolulu, county of Hawaii, and the Housing Authority of the city of Corsicana, TX) noted tighter rental market conditions over the past year have increased rents significantly. Oklahoma City Housing Authority protested the proposed decrease in its FMRs resulting from a random digit dialing survey done last year. The Housing Authority of the county of Los Angeles argued that all FMRs should be set at the 50th percentile rent for all FMR areas, rather than just the select 39 metropolitan areas.

Two comments were received from Puerto Rico. One from the Puerto Rico Housing Finance Authority argued that the methodology HUD uses to calculate FMRs cannot be applied to Puerto Rico. The Housing Finance Authority did not have a proposal for a more accurate methodology but looks forward to developing one with HUD. The second comment, submitted by Hessel and Aluise, PC, was limited to the impact of the proposed FY 2004 FMRs on the Moderate Rehabilitation program. Addressing this comment would require a regulatory change, and this matter is being studied by the Office of Public and Indian Housing.

In previous years, HUD has sought to conduct surveys in areas with significant numbers of Section 8 vouchers where concerns had been expressed about the accuracy of local FMRs. HUD was able to conduct only one RDD survey this calendar year to date. HUD was, however, able to obtain 2000 Census data in time to use to review FMRs for areas that had submitted comments. These data only recently became available to the Department and are currently being used to develop a method of systemwide rebenchmarking of FMRs. After reviewing all areas that had submitted public comments requesting higher FMRs, HUD identified the following areas as eligible for increases:

Miami, FL
Honolulu, HI
Assumption Parish, LA
Navarre County, TX

Based on survey data submitted, higher manufactured housing FMRs were approved for the following areas:

Logan County, WV
McDowell County, WV
Mercer County, WV
Mingo County, WV
Wyoming County, WV

The Housing Authority of the City of Santa Barbara requested an update of its exception rent to equal 146 percent for the southern portion of the county at the FY 2004 FMR. As the housing authority was advised, exception rent requests must be made directly to the Office of Public Housing and will be acted on separately.

### RDD Surveys

The only RDD survey conducted in 2003 was for the Newburgh, NY–PA PMSA. Based on the results of this survey, no change was made in its FMRs.

### American Housing Survey

There were no AHS surveys with results that alter proposed FY 2004 FMRs.

### FMR Area Definition Changes

New OMB metropolitan area definitions came out on June 6, 2003, subsequent to the publication of the proposed FMRs. Given the number and magnitude of definitional change impacts, HUD plans to issue a revised proposed FMR schedule for FY 2004 to provide an opportunity for public comments. Revised FY 2004 FMRs will be developed to include the new metropolitan areas that also make use of the 2000 Census rent data and published late this calendar year or early next year. After the comment period, these FMRs will be published for effect.

### Manufactured Home Space Surveys

The FMR used to establish payment standard amounts for the rental of manufactured home spaces in the Housing Choice Voucher program is 40 percent of the FMR for a 2-bedroom unit. HUD will consider modification of the manufactured home space FMRs where public comments present statistically valid survey data showing the 40th percentile manufactured home space rent (including the cost of utilities) for the entire FMR area.

Manufactured home space FMR revisions are published as final FMRs in Schedule D. Once approved, the revised manufactured home space FMRs establish new base year estimates that are updated annually using the same data used to estimate the Housing Choice Voucher program FMRs. The FMR area definitions used for the rental of manufactured home spaces are the same as the area definitions used for the other FMRs.

## HUD Rental Housing Survey Guides

HUD recommends the use of professionally-conducted RDD telephone surveys to test the accuracy of FMRs for areas where there is a sufficient number of Section 8 units to justify the survey cost of $20,000–$30,000. Areas with 500 or more program units usually meet this criterion, and areas with fewer units may meet it if local rents are thought to be significantly different than the FMR proposed by HUD. In addition, HUD has developed a simplified version of the RDD survey methodology for smaller, nonmetropolitan PHAs. This methodology is designed to be simple enough to be done by the PHA itself, rather than by professional survey organizations.

PHAs in nonmetropolitan areas may, in certain circumstances, do surveys of groups of counties. All grouped county surveys must be approved in advance by HUD. PHAs are cautioned that the resulting FMRs will not be identical for the counties surveyed; each individual FMR area will have a separate FMR based on its relationship to the combined rent of the group of FMR areas.

PHAs that plan to use the RDD survey technique may obtain a copy of the appropriate survey guide by calling HUD USER on 1–800–245–2691. Larger PHAs should request "Random Digit Dialing Surveys; A Guide to Assist Larger Housing Agencies in Preparing Fair Market Rent Comments." Smaller PHAs should obtain "Rental Housing Surveys; A Guide to Assist Smaller Housing Agencies in Preparing Fair Market Rent Comments." These guides are also available on the Internet at *http://www.huduser.org/datasets/fmr.html*.

HUD prefers, but does not mandate, the use of RDD telephone surveys, or the more traditional method described in the small PHA survey guide. Other survey methodologies are acceptable if they provide statistically reliable, unbiased estimates of the 40th percentile gross rent. Survey samples should preferably be randomly drawn from a complete list of rental units for the FMR area. If this is not feasible, the selected sample must be drawn so as to be statistically representative of the entire rental housing stock of the FMR area. In particular, surveys must include units of all rent levels and be representative by structure type (including single family, duplex, and other small rental properties), age of housing unit, and geographic location. The decennial Census should be used as a starting point and means of verification for determining whether the sample is representative of the FMR area's rental housing stock. All survey results must be fully documented.

A PHA or contractor that cannot obtain the recommended number of sample responses after reasonable efforts should consult with HUD before abandoning its survey; in such situations HUD is prepared to relax normal sample size requirements.

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR part 888, are amended as follows:

Dated: September 26, 2003.

**Mel Martinez,**

*Secretary.*

## Fair Market Rents for the Housing Choice Voucher Program

### *Schedules B and D—General Explanatory Notes*

1. Geographic Coverage

a. Metropolitan Areas—FMRs are market wide rent estimates that are intended to provide housing opportunities throughout the geographic area in which rental housing units are in direct competition.

HUD uses the OMB Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions. Schedule B FMRs are issued for the metropolitan areas as defined by OMB, with the exceptions discussed in paragraph (b). The OMB-defined metropolitan areas closely correspond to housing market area definitions.

b. Exceptions to OMB Definitions—The exceptions are counties deleted from several large metropolitan areas whose revised OMB metropolitan area definitions were determined by HUD to be larger than the housing market areas. The FMRs for the following counties (shown by the metropolitan area) are calculated separately and are shown in Schedule B within their respective states under the "Metropolitan FMR Areas" listing:

*Metropolitan Area Counties Assigned County-Based FMRs*

Chicago, IL
  DeKalb, Grundy, and Kendall Counties
Cincinnati-Hamilton, OH–KY–IN
  Brown County, Ohio; Gallatin, Grant, and Pendleton Counties in Kentucky; and Ohio County, Indiana
Dallas, TX
  Henderson County
Flagstaff, AZ–UT
  Kane County, UT
New Orleans, LA
  St. James Parish
Washington, DC–MD–VA–WV
  Berkeley and Jefferson Counties in West Virginia; and Clarke, Culpeper, King George, and Warren Counties in Virginia

c. Nonmetropolitan Area FMRs—FMRs also are established for nonmetropolitan counties and for county equivalents in the United States, for nonmetropolitan parts of counties in the New England states and for FMR areas in Puerto Rico, the Virgin Islands, and the Pacific Islands.

d. Virginia independent Cities—FMRs for the areas in Virginia shown in the table below were established by combining the Census data for the nonmetropolitan counties with the data for the independent cities that are located within the county borders. Because of space limitations, the FMR listing in Schedule B includes only the name of the nonmetropolitan county. The full definitions of these areas, including the independent cities, are as follows:

VIRGINIA NONMETROPOLITAN COUNTY FMR AREA AND INDEPENDENT CITIES INCLUDED WITH COUNTY

| County | Cities |
|---|---|
| Allegheny | Covington. |
| Augusta | Staunton and Waynesboro. |
| Carroll | Galax. |
| Frederick | Winchester. |
| Greensville | Emporia. |
| Henry | Martinsville. |
| Montgomery | Radford. |
| Rockbridge | Buena Vista and Lexington. |
| Rockingham | Harrisonburg. |
| Southhampton | Franklin. |
| Wise | Norton. |

2. Bedroom Size Adjustments

Schedule B shows the FMRs for 0-bedroom through 4-bedroom units. The

FMRs for unit sizes larger than 4 bedrooms are calculated by adding 15 percent to the 4-bedroom FMR for each extra bedroom. For example, the FMR for a 5-bedroom unit is 1.15 times the 4-bedroom FMR, and the FMR for a 6-bedroom unit is 1.30 times the 4-bedroom FMR. FMRs for single-room-occupancy (SRO) units are 0.75 times the 0-bedroom FMR.

3. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedule B are listed alphabetically by metropolitan FMR area and by nonmetropolitan county within each state. The exception FMRs for manufactured home spaces in Schedule D are listed alphabetically by state.

b. The constituent counties (and New England towns and cities) included in each metropolitan FMR area are listed immediately following the listings of the FMR dollar amounts. All constituent parts of a metropolitan FMR area that are in more than one state can be identified by consulting the listings for each applicable state.

c. Two nonmetropolitan counties are listed alphabetically on each line of the nonmetropolitan county listings.

d. The New England towns and cities included in a nonmetropolitan part of a county are listed immediately following the county name.

BILLING CODE 4210-62-P

## SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING

### ALABAMA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Anniston, AL MSA | 279 | 330 | 413 | 576 | 652 | Calhoun |
| Auburn--Opelika, AL MSA | 278 | 388 | 499 | 648 | 820 | Lee |
| Birmingham, AL MSA | 425 | 481 | 559 | 758 | 840 | Blount, Jefferson, St. Clair, Shelby |
| Columbus, GA--AL MSA | 377 | 419 | 503 | 656 | 712 | Russell |
| Decatur, AL MSA | 370 | 374 | 471 | 611 | 730 | Lawrence, Morgan |
| Dothan, AL MSA | 335 | 343 | 426 | 586 | 595 | Dale, Houston |
| Florence, AL MSA | 315 | 361 | 464 | 579 | 649 | Colbert, Lauderdale |
| Gadsden, AL MSA | 279 | 341 | 393 | 511 | 629 | Etowah |
| Huntsville, AL MSA | 388 | 455 | 561 | 747 | 890 | Limestone, Madison |
| Mobile, AL MSA | 407 | 455 | 523 | 703 | 825 | Baldwin, Mobile |
| Montgomery, AL MSA | 425 | 454 | 537 | 731 | 881 | Autauga, Elmore, Montgomery |
| Tuscaloosa, AL MSA | 367 | 392 | 523 | 717 | 758 | Tuscaloosa |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Barbour | 261 | 311 | 370 | 480 | 550 | Bibb | 261 | 311 | 370 | 500 | 599 |
| Bullock | 261 | 311 | 378 | 480 | 550 | Butler | 261 | 311 | 370 | 480 | 550 |
| Chambers | 261 | 311 | 370 | 480 | 551 | Cherokee | 261 | 311 | 370 | 480 | 550 |
| Chilton | 271 | 311 | 370 | 480 | 550 | Choctaw | 261 | 311 | 370 | 480 | 550 |
| Clarke | 261 | 311 | 370 | 480 | 550 | Clay | 261 | 311 | 370 | 480 | 550 |
| Cleburne | 261 | 311 | 370 | 480 | 550 | Coffee | 261 | 367 | 477 | 663 | 744 |
| Conecuh | 261 | 311 | 370 | 480 | 550 | Coosa | 261 | 311 | 370 | 480 | 550 |
| Covington | 261 | 311 | 370 | 480 | 550 | Crenshaw | 261 | 311 | 370 | 480 | 550 |
| Cullman | 261 | 311 | 370 | 492 | 598 | Dallas | 261 | 311 | 370 | 480 | 550 |
| DeKalb | 261 | 311 | 370 | 480 | 550 | Escambia | 261 | 311 | 370 | 480 | 550 |
| Fayette | 261 | 311 | 370 | 480 | 550 | Franklin | 261 | 311 | 370 | 480 | 550 |
| Geneva | 261 | 311 | 370 | 480 | 550 | Greene | 261 | 311 | 370 | 480 | 550 |
| Hale | 261 | 311 | 370 | 480 | 550 | Henry | 261 | 311 | 370 | 480 | 550 |
| Jackson | 282 | 311 | 370 | 480 | 589 | Lamar | 261 | 311 | 370 | 480 | 550 |
| Lowndes | 261 | 311 | 370 | 480 | 550 | Macon | 285 | 320 | 427 | 535 | 599 |
| Marengo | 261 | 311 | 370 | 480 | 550 | Marion | 261 | 311 | 370 | 480 | 550 |
| Marshall | 300 | 311 | 378 | 522 | 619 | Monroe | 261 | 311 | 370 | 480 | 550 |
| Perry | 261 | 311 | 370 | 480 | 550 | Pickens | 261 | 311 | 370 | 480 | 550 |
| Pike | 313 | 364 | 434 | 563 | 656 | Randolph | 261 | 311 | 370 | 480 | 550 |
| Sumter | 261 | 311 | 370 | 480 | 550 | Talladega | 261 | 311 | 370 | 480 | 550 |
| Tallapoosa | 262 | 311 | 370 | 480 | 550 | Walker | 261 | 322 | 380 | 491 | 624 |
| Washington | 261 | 311 | 370 | 480 | 550 | Wilcox | 261 | 311 | 370 | 480 | 550 |
| Winston | 261 | 311 | 370 | 480 | 550 | | | | | | |

### ALASKA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Anchorage, AK MSA | 565 | 668 | 885 | 1231 | 1454 | Anchorage |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Aleutians East | 563 | 635 | 718 | 895 | 1172 | Aleutians West | 484 | 547 | 612 | 769 | 860 |
| Bethel | 729 | 910 | 1154 | 1445 | 1617 | Bristol Bay | 584 | 675 | 757 | 1054 | 1145 |

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING

ALASKA continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Denali | 784 | 905 | 1153 | 1533 | 1593 | Dillingham | 704 | 716 | 951 | 1190 | 1333 |
| Fairbanks North Star | 444 | 604 | 793 | 1090 | 1285 | Haines | 525 | 650 | 740 | 1006 | 1037 |
| Juneau | 784 | 905 | 1153 | 1533 | 1593 | Kenai Peninsula | 478 | 608 | 733 | 1017 | 1201 |
| Ketchikan Gateway | 576 | 705 | 943 | 1313 | 1382 | Kodiak Island | 749 | 824 | 1071 | 1338 | 1736 |
| Lake and Peninsula | 450 | 730 | 820 | 1023 | 1149 | Matanuska-Susitna | 504 | 682 | 768 | 1042 | 1231 |
| Nome | 741 | 917 | 1030 | 1434 | 1618 | North Slope | 842 | 862 | 1067 | 1482 | 1727 |
| Northwest Arctic | 892 | 1003 | 1126 | 1567 | 1848 | Prince of Wales-Outer Ketch | 393 | 625 | 720 | 998 | 1055 |
| Sitka | 620 | 737 | 827 | 1151 | 1358 | Skagway-Hoonah-Angoon | 482 | 490 | 634 | 795 | 892 |
| Southeast Fairbanks | 494 | 519 | 625 | 783 | 879 | Valdez-Cordova | 589 | 722 | 801 | 1023 | 1220 |
| Wade Hampton | 422 | 634 | 716 | 894 | 1001 | Wrangell-Petersburg | 429 | 632 | 769 | 978 | 1075 |
| Yakutat | 482 | 490 | 634 | 795 | 892 | Yukon-Koyukuk | 561 | 633 | 714 | 893 | 1033 |

ARIZONA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Flagstaff, AZ--UT MSA | 633 | 683 | 887 | 1190 | 1429 | Coconino |
| *Las Vegas, NV--AZ MSA | 606 | 719 | 856 | 1191 | 1407 | Mohave |
| *Phoenix--Mesa, AZ MSA | 549 | 664 | 835 | 1161 | 1367 | Maricopa, Pinal |
| Tucson, AZ MSA | 443 | 531 | 707 | 983 | 1159 | Pima |
| Yuma, AZ MSA | 427 | 495 | 659 | 915 | 922 | Yuma |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Apache | 402 | 422 | 537 | 701 | 833 | Cochise | 402 | 422 | 537 | 701 | 833 |
| Gila | 402 | 422 | 537 | 701 | 833 | Graham | 402 | 422 | 537 | 701 | 833 |
| Greenlee | 402 | 422 | 537 | 701 | 833 | La Paz | 402 | 422 | 537 | 701 | 833 |
| Navajo | 402 | 422 | 537 | 701 | 833 | Santa Cruz | 402 | 444 | 553 | 701 | 833 |
| Yavapai | 427 | 444 | 594 | 828 | 912 | | | | | | |

ARKANSAS

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Fayetteville--Springdale--Rogers, AR MSA | 330 | 416 | 547 | 738 | 764 | Benton, Washington |
| Fort Smith, AR--OK MSA | 359 | 363 | 479 | 639 | 671 | Crawford, Sebastian |
| Jonesboro, AR MSA | 389 | 423 | 498 | 685 | 724 | Craighead |
| Little Rock--North Little Rock, AR MSA | 406 | 451 | 538 | 742 | 867 | Faulkner, Lonoke, Pulaski, Saline |
| Memphis, TN--AR--MS MSA | 458 | 534 | 626 | 870 | 913 | Crittenden |
| Pine Bluff, AR MSA | 311 | 369 | 486 | 613 | 795 | Jefferson |
| Texarkana, TX--Texarkana, AR MSA | 331 | 404 | 495 | 652 | 692 | Miller |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Arkansas | 279 | 303 | 388 | 530 | 575 | Ashley | 255 | 303 | 388 | 514 | 608 |
| Baxter | 255 | 324 | 431 | 554 | 675 | Boone | 302 | 307 | 408 | 568 | 669 |
| Bradley | 255 | 303 | 388 | 514 | 575 | Calhoun | 255 | 303 | 388 | 514 | 575 |
| Carroll | 300 | 327 | 388 | 514 | 614 | Chicot | 255 | 303 | 388 | 514 | 575 |
| Clark | 279 | 303 | 393 | 514 | 621 | Clay | 255 | 303 | 388 | 514 | 575 |
| Cleburne | 288 | 303 | 388 | 514 | 582 | Cleveland | 255 | 303 | 388 | 514 | 575 |

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING

ARKANSAS continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Columbia | 255 | 303 | 388 | 514 | 575 |
| Cross | 265 | 335 | 388 | 521 | 615 |
| Desha | 255 | 303 | 388 | 514 | 575 |
| Franklin | 267 | 303 | 388 | 514 | 575 |
| Garland | 255 | 324 | 434 | 606 | 716 |
| Greene | 273 | 303 | 388 | 514 | 575 |
| Hot Spring | 255 | 303 | 388 | 514 | 575 |
| Independence | 268 | 310 | 388 | 514 | 575 |
| Jackson | 264 | 303 | 388 | 514 | 575 |
| Lafayette | 267 | 303 | 388 | 514 | 575 |
| Lee | 280 | 303 | 388 | 514 | 575 |
| Little River | 255 | 303 | 394 | 547 | 645 |
| Madison | 292 | 303 | 394 | 514 | 575 |
| Mississippi | 291 | 314 | 421 | 555 | 623 |
| Montgomery | 255 | 303 | 388 | 514 | 575 |
| Newton | 255 | 303 | 388 | 514 | 575 |
| Perry | 255 | 303 | 388 | 514 | 575 |
| Pike | 255 | 303 | 388 | 514 | 575 |
| Polk | 255 | 303 | 388 | 514 | 575 |
| Prairie | 256 | 303 | 388 | 514 | 575 |
| St. Francis | 255 | 309 | 388 | 525 | 617 |
| Searcy | 255 | 303 | 388 | 514 | 575 |
| Sharp | 255 | 303 | 388 | 514 | 575 |
| Union | 319 | 337 | 405 | 544 | 665 |
| White | 255 | 303 | 388 | 531 | 575 |
| Yell | 265 | 303 | 388 | 514 | 575 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Conway | 255 | 314 | 421 | 526 | 589 |
| Dallas | 255 | 303 | 388 | 514 | 575 |
| Drew | 255 | 330 | 440 | 609 | 620 |
| Fulton | 264 | 303 | 388 | 514 | 575 |
| Grant | 265 | 314 | 388 | 514 | 580 |
| Hempstead | 255 | 303 | 388 | 514 | 575 |
| Howard | 255 | 303 | 388 | 514 | 575 |
| Izard | 255 | 303 | 388 | 514 | 575 |
| Johnson | 255 | 303 | 388 | 514 | 575 |
| Lawrence | 255 | 303 | 388 | 514 | 575 |
| Lincoln | 275 | 303 | 394 | 527 | 575 |
| Logan | 267 | 303 | 388 | 514 | 575 |
| Marion | 255 | 303 | 388 | 514 | 575 |
| Monroe | 259 | 303 | 388 | 514 | 575 |
| Nevada | 255 | 303 | 388 | 531 | 575 |
| Ouachita | 298 | 303 | 388 | 535 | 631 |
| Phillips | 255 | 303 | 388 | 514 | 575 |
| Poinsett | 255 | 303 | 388 | 514 | 575 |
| Pope | 255 | 333 | 421 | 584 | 673 |
| Randolph | 255 | 303 | 388 | 514 | 575 |
| Scott | 255 | 303 | 388 | 514 | 575 |
| Sevier | 278 | 303 | 388 | 514 | 575 |
| Stone | 255 | 303 | 388 | 514 | 575 |
| Van Buren | 255 | 303 | 388 | 514 | 634 |
| Woodruff | 255 | 303 | 388 | 514 | 575 |

CALIFORNIA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Bakersfield, CA MSA | 421 | 473 | 595 | 826 | 914 | Kern |
| Chico--Paradise, CA MSA | 385 | 496 | 660 | 905 | 1082 | Butte |
| Fresno, CA MSA | 451 | 504 | 603 | 840 | 967 | Fresno, Madera |
| Los Angeles--Long Beach, CA PMSA | 674 | 807 | 1021 | 1378 | 1646 | Los Angeles |
| Merced, CA MSA | 460 | 519 | 630 | 871 | 1027 | Merced |
| Modesto, CA MSA | 549 | 589 | 719 | 1002 | 1182 | Stanislaus |
| *Oakland, CA PMSA | 936 | 1132 | 1420 | 1947 | 2325 | Alameda, Contra Costa |
| *Orange County, CA PMSA | 903 | 987 | 1220 | 1698 | 1889 | Orange |
| Redding, CA MSA | 438 | 486 | 608 | 844 | 994 | Shasta |
| Riverside--San Bernardino, CA PMSA | 535 | 596 | 729 | 1011 | 1193 | Riverside, San Bernardino |
| *Sacramento, CA PMSA | 674 | 759 | 950 | 1318 | 1554 | El Dorado, Placer, Sacramento |
| Salinas, CA MSA | 719 | 841 | 1014 | 1408 | 1478 | Monterey |
| *San Diego, CA MSA | 822 | 939 | 1175 | 1636 | 1928 | San Diego |
| San Francisco, CA PMSA | 1084 | 1405 | 1775 | 2435 | 2577 | Marin, San Francisco, San Mateo |
| *San Jose, CA PMSA | 1294 | 1475 | 1821 | 2496 | 2803 | Santa Clara |
| San Luis Obispo--Atascadero--Paso Robles, CA MSA | 641 | 724 | 917 | 1276 | 1505 | San Luis Obispo |
| Santa Barbara--Santa Maria--Lompoc, CA MSA | 721 | 800 | 1015 | 1412 | 1595 | Santa Barbara |
| Santa Cruz--Watsonville, CA PMSA | 843 | 1004 | 1341 | 1865 | 2185 | Santa Cruz |

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING

CALIFORNIA continued

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Santa Rosa, CA PMSA | 792 | 897 | 1163 | 1617 | 1909 | Sonoma |
| Stockton--Lodi, CA MSA | 522 | 589 | 757 | 1054 | 1242 | San Joaquin |
| Vallejo--Fairfield--Napa, CA PMSA | 809 | 920 | 1121 | 1557 | 1836 | Napa, Solano |
| *Ventura, CA PMSA | 785 | 902 | 1142 | 1518 | 1769 | Ventura |
| Visalia--Tulare--Porterville, CA MSA | 427 | 455 | 592 | 826 | 943 | Tulare |
| Yolo, CA PMSA | 551 | 628 | 779 | 1077 | 1274 | Yolo |
| Yuba City, CA MSA | 380 | 444 | 571 | 796 | 919 | Sutter, Yuba |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Alpine | 341 | 512 | 579 | 804 | 865 |
| Calaveras | 412 | 477 | 635 | 885 | 1041 |
| Del Norte | 348 | 478 | 635 | 886 | 1043 |
| Humboldt | 352 | 487 | 638 | 891 | 1054 |
| Inyo | 354 | 477 | 612 | 803 | 865 |
| Lake | 383 | 488 | 653 | 821 | 1070 |
| Mariposa | 369 | 469 | 602 | 789 | 930 |
| Modoc | 373 | 417 | 537 | 748 | 865 |
| Nevada | 427 | 584 | 778 | 1081 | 1252 |
| San Benito | 587 | 691 | 864 | 1205 | 1409 |
| Siskiyou | 358 | 417 | 537 | 748 | 865 |
| Trinity | 382 | 417 | 537 | 748 | 865 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Amador | 471 | 518 | 692 | 963 | 1074 |
| Colusa | 373 | 417 | 537 | 748 | 865 |
| Glenn | 341 | 417 | 537 | 748 | 865 |
| Imperial | 384 | 482 | 593 | 826 | 865 |
| Kings | 395 | 460 | 574 | 799 | 940 |
| Lassen | 417 | 422 | 549 | 748 | 865 |
| Mendocino | 472 | 568 | 698 | 971 | 979 |
| Mono | 520 | 624 | 830 | 1154 | 1364 |
| Plumas | 376 | 417 | 537 | 748 | 865 |
| Sierra | 341 | 458 | 563 | 782 | 923 |
| Tehama | 357 | 417 | 537 | 748 | 865 |
| Tuolumne | 377 | 515 | 687 | 956 | 1127 |

COLORADO

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Boulder--Longmont, CO PMSA | 640 | 767 | 983 | 1371 | 1615 | Boulder |
| Colorado Springs, CO MSA | 490 | 526 | 701 | 977 | 1153 | El Paso |
| *Denver, CO PMSA | 607 | 724 | 964 | 1337 | 1579 | Adams, Arapahoe, Denver, Douglas, Jefferson |
| Fort Collins--Loveland, CO MSA | 484 | 597 | 739 | 1026 | 1212 | Larimer |
| Grand Junction, CO MSA | 445 | 463 | 579 | 780 | 929 | Mesa |
| Greeley, CO PMSA | 536 | 592 | 745 | 1034 | 1223 | Weld |
| Pueblo, CO MSA | 469 | 486 | 608 | 818 | 976 | Pueblo |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Alamosa | 419 | 434 | 543 | 732 | 873 |
| Baca | 419 | 434 | 543 | 732 | 873 |
| Chaffee | 419 | 434 | 543 | 732 | 873 |
| Clear Creek | 419 | 489 | 552 | 769 | 905 |
| Costilla | 419 | 434 | 543 | 732 | 873 |
| Custer | 419 | 434 | 543 | 732 | 873 |
| Dolores | 419 | 434 | 543 | 732 | 873 |
| Elbert | 463 | 512 | 587 | 732 | 961 |
| Garfield | 486 | 521 | 658 | 822 | 1077 |
| Grand | 498 | 502 | 635 | 795 | 963 |
| Hinsdale | 419 | 443 | 543 | 732 | 873 |
| Jackson | 419 | 434 | 543 | 732 | 873 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Archuleta | 501 | 548 | 648 | 875 | 1040 |
| Bent | 419 | 434 | 543 | 732 | 873 |
| Cheyenne | 419 | 434 | 543 | 732 | 873 |
| Conejos | 419 | 434 | 543 | 732 | 873 |
| Crowley | 419 | 434 | 543 | 732 | 873 |
| Delta | 419 | 434 | 543 | 732 | 873 |
| Eagle | 562 | 614 | 818 | 1139 | 1343 |
| Fremont | 419 | 434 | 543 | 732 | 873 |
| Gilpin | 419 | 556 | 708 | 933 | 1032 |
| Gunnison | 419 | 434 | 543 | 732 | 873 |
| Huerfano | 419 | 434 | 543 | 732 | 873 |
| Kiowa | 419 | 434 | 543 | 732 | 873 |

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING

COLORADO continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Kit Carson | 419 | 434 | 543 | 732 | 873 | Lake | 419 | 434 | 543 | 732 | 873 |
| La Plata | 547 | 605 | 797 | 1110 | 1311 | Las Animas | 419 | 448 | 543 | 732 | 873 |
| Lincoln | 419 | 434 | 543 | 732 | 873 | Logan | 419 | 434 | 543 | 732 | 873 |
| Mineral | 419 | 434 | 543 | 732 | 873 | Moffat | 419 | 434 | 543 | 732 | 873 |
| Montezuma | 419 | 434 | 543 | 732 | 873 | Montrose | 419 | 434 | 549 | 762 | 897 |
| Morgan | 419 | 434 | 543 | 732 | 873 | Otero | 419 | 434 | 543 | 732 | 873 |
| Ouray | 419 | 434 | 549 | 732 | 889 | Park | 419 | 464 | 604 | 838 | 954 |
| Phillips | 419 | 434 | 543 | 732 | 873 | Pitkin | 628 | 860 | 1145 | 1510 | 1717 |
| Prowers | 419 | 434 | 543 | 732 | 873 | Rio Blanco | 419 | 434 | 543 | 732 | 873 |
| Rio Grande | 419 | 434 | 543 | 732 | 873 | Routt | 419 | 506 | 668 | 929 | 1095 |
| Saguache | 419 | 434 | 543 | 732 | 873 | San Juan | 419 | 434 | 543 | 732 | 873 |
| San Miguel | 770 | 1112 | 1223 | 1527 | 1972 | Sedgwick | 419 | 434 | 543 | 732 | 873 |
| Summit | 539 | 645 | 828 | 1152 | 1418 | Teller | 419 | 497 | 661 | 919 | 927 |
| Washington | 419 | 434 | 543 | 732 | 873 | Yuma | 419 | 434 | 543 | 732 | 873 |

CONNECTICUT

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Components of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Bridgeport, CT PMSA | 575 | 748 | 900 | 1126 | 1404 | Fairfield county towns of Bridgeport town, Easton town, Fairfield town, Monroe town, Shelton town, Stratford town, Trumbull town<br>New Haven county towns of Ansonia town, Beacon Falls town, Derby town, Milford town, Oxford town, Seymour town |
| Danbury, CT PMSA | 725 | 867 | 1084 | 1430 | 1649 | Fairfield county towns of Bethel town, Brookfield town, Danbury town, New Fairfield town, Newtown town, Redding town, Ridgefield town, Sherman town<br>Litchfield county towns of Bridgewater town, New Milford town, Roxbury town, Washington town |
| Hartford, CT MSA | 519 | 647 | 827 | 1037 | 1259 | Hartford county towns of Avon town, Berlin town, Bloomfield town, Bristol town, Burlington town, Canton town, East Granby town, East Hartford town, East Windsor town, Enfield town, Farmington town, Glastonbury town, Granby town, Hartford town, Manchester town, Marlborough town, New Britain town, Newington town, Plainville town, Rocky Hill town, Simsbury town, Southington town, South Windsor town, Suffield town, West Hartford town, Wethersfield town, Windsor town, Windsor Locks town<br>Litchfield county towns of Barkhamsted town, Harwinton town, New Hartford town, Plymouth town, Winchester town<br>Middlesex county towns of Cromwell town, Durham town, East Haddam town, |

CONNECTICUT continued

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Components of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| | | | | | | East Hampton town, Haddam town, Middlefield town, Middletown town, Portland town<br>New London county towns of Colchester town, Lebanon town<br>Tolland county towns of Andover town, Bolton town, Columbia town, Coventry town, Ellington town, Hebron town, Mansfield town, Somers town, Stafford town, Tolland town, Vernon town, Willington town<br>Windham county towns of Ashford town, Chaplin town, Windham town |
| New Haven--Meriden, CT PMSA | 620 | 761 | 939 | 1204 | 1395 | Middlesex county towns of Clinton town, Killingworth town<br>New Haven county towns of Bethany town, Branford town, Cheshire town, East Haven town, Guilford town, Hamden town, Madison town, Meriden town, New Haven town, North Branford town, North Haven town, Orange town, Wallingford town, West Haven town, Woodbridge town |
| New London--Norwich, CT--RI MSA | 541 | 654 | 797 | 997 | 1140 | Middlesex county towns of Old Saybrook town<br>New London county towns of Bozrah town, East Lyme town, Franklin town, Griswold town, Groton town, Ledyard town, Lisbon town, Montville town, New London town, North Stonington town, Norwich town, Old Lyme town, Preston town, Salem town, Sprague town, Stonington town, Waterford town<br>Windham county towns of Canterbury town, Plainfield town |
| Stamford--Norwalk, CT PMSA | 1046 | 1225 | 1493 | 2001 | 2210 | Fairfield county towns of Darien town, Greenwich town, New Canaan town, Norwalk town, Stamford town, Weston town, Westport town, Wilton town |
| Waterbury, CT PMSA | 526 | 711 | 881 | 1098 | 1231 | Litchfield county towns of Bethlehem town, Thomaston town, Watertown town, Woodbury town<br>New Haven county towns of Middlebury town, Naugatuck town, Prospect town, Southbury town, Waterbury town, Wolcott town |
| Worcester, MA--CT PMSA | 549 | 663 | 827 | 1033 | 1158 | Windham county towns of Thompson town |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Towns within nonmetropolitan counties |
|---|---|---|---|---|---|---|
| Hartford | 399 | 644 | 727 | 1010 | 1191 | Hartland town |
| Litchfield | 463 | 631 | 842 | 1050 | 1196 | Canaan town, Colebrook town, Cornwall town, Goshen town, Kent town, Litchfield town, Morris town, Norfolk town, North Canaan town, Salisbury town, Sharon town, Torrington town, Warren town |
| Middlesex | 686 | 777 | 1037 | 1444 | 1703 | Chester town, Deep River town, Essex town, Westbrook town |
| New London | 581 | 712 | 808 | 1042 | 1323 | Lyme town, Voluntown town |

CONNECTICUT continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Towns within nonmetropolitan counties |
|---|---|---|---|---|---|---|
| Tolland | 399 | 644 | 727 | 1010 | 1017 | Union town |
| Windham | 459 | 561 | 727 | 911 | 1142 | Brooklyn town, Eastford town, Hampton town, Killingly town, Pomfret town, Putnam town, Scotland town, Sterling town, Woodstock town |

DELAWARE

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Dover, DE MSA | 527 | 583 | 663 | 861 | 980 | Kent |
| Wilmington--Newark, DE--MD PMSA | 502 | 661 | 771 | 1048 | 1266 | New Castle |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Sussex | 460 | 489 | 624 | 820 | 876 | | | | | | |

DISTRICT OF COLUMBIA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| *Washington, DC--MD--VA--WV PMSA | 913 | 1039 | 1218 | 1660 | 2002 | District of Columbia |

FLORIDA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Daytona Beach, FL MSA | 419 | 492 | 628 | 833 | 885 | Flagler, Volusia |
| *Fort Lauderdale, FL PMSA | 567 | 668 | 827 | 1151 | 1353 | Broward |
| Fort Myers--Cape Coral, FL MSA | 450 | 518 | 625 | 874 | 911 | Lee |
| Fort Pierce--Port St. Lucie, FL MSA | 501 | 549 | 711 | 925 | 997 | Martin, St. Lucie |
| Fort Walton Beach, FL MSA | 436 | 477 | 542 | 735 | 866 | Okaloosa |
| Gainesville, FL MSA | 436 | 477 | 580 | 795 | 939 | Alachua |
| Jacksonville, FL MSA | 501 | 561 | 675 | 892 | 993 | Clay, Duval, Nassau, St. Johns |
| Lakeland--Winter Haven, FL MSA | 419 | 459 | 518 | 642 | 702 | Polk |
| Melbourne--Titusville--Palm Bay, FL MSA | 419 | 491 | 613 | 821 | 956 | Brevard |
| *Miami, FL PMSA | 577 | 726 | 904 | 1241 | 1439 | Miami-Dade |
| Naples, FL MSA | 467 | 658 | 793 | 1102 | 1227 | Collier |
| Ocala, FL MSA | 436 | 477 | 542 | 711 | 834 | Marion |
| Orlando, FL MSA | 606 | 687 | 820 | 1076 | 1312 | Lake, Orange, Osceola, Seminole |
| Panama City, FL MSA | 436 | 477 | 542 | 691 | 741 | Bay |
| Pensacola, FL MSA | 436 | 477 | 542 | 723 | 853 | Escambia, Santa Rosa |
| Punta Gorda, FL MSA | 436 | 502 | 668 | 926 | 1092 | Charlotte |
| Sarasota--Bradenton, FL MSA | 438 | 557 | 708 | 910 | 991 | Manatee, Sarasota |
| Tallahassee, FL MSA | 446 | 496 | 652 | 852 | 1027 | Gadsden, Leon |
| *Tampa--St. Petersburg--Clearwater, FL MSA | 530 | 630 | 781 | 1037 | 1257 | Hernando, Hillsborough, Pasco, Pinellas |
| *West Palm Beach--Boca Raton, FL MSA | 570 | 665 | 823 | 1092 | 1352 | Palm Beach |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Baker | 410 | 449 | 508 | 630 | 684 | Bradford | 410 | 449 | 508 | 630 | 684 |
| Calhoun | 410 | 449 | 508 | 630 | 684 | Citrus | 410 | 449 | 508 | 630 | 684 |

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING

FLORIDA continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Columbia | 410 | 449 | 508 | 630 | 684 |
| Dixie | 410 | 449 | 508 | 630 | 684 |
| Gilchrist | 410 | 449 | 508 | 630 | 684 |
| Gulf | 410 | 449 | 508 | 630 | 684 |
| Hardee | 410 | 449 | 508 | 630 | 684 |
| Highlands | 410 | 449 | 508 | 632 | 707 |
| Indian River | 410 | 513 | 660 | 826 | 924 |
| Jefferson | 410 | 449 | 508 | 630 | 684 |
| Levy | 410 | 449 | 508 | 630 | 684 |
| Madison | 410 | 449 | 508 | 630 | 684 |
| Okeechobee | 410 | 449 | 508 | 630 | 690 |
| Sumter | 410 | 449 | 508 | 630 | 684 |
| Taylor | 410 | 449 | 508 | 630 | 685 |
| Wakulla | 410 | 449 | 508 | 630 | 684 |
| Washington | 410 | 449 | 508 | 630 | 684 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| DeSoto | 410 | 449 | 508 | 630 | 684 |
| Franklin | 410 | 449 | 508 | 630 | 684 |
| Glades | 410 | 449 | 508 | 630 | 684 |
| Hamilton | 410 | 449 | 508 | 630 | 684 |
| Hendry | 410 | 449 | 523 | 656 | 735 |
| Holmes | 410 | 449 | 508 | 630 | 684 |
| Jackson | 410 | 449 | 508 | 630 | 684 |
| Lafayette | 410 | 449 | 508 | 630 | 684 |
| Liberty | 410 | 449 | 508 | 630 | 684 |
| Monroe | 588 | 663 | 852 | 1174 | 1397 |
| Putnam | 410 | 449 | 508 | 630 | 684 |
| Suwannee | 410 | 449 | 508 | 630 | 684 |
| Union | 410 | 449 | 508 | 630 | 684 |
| Walton | 410 | 449 | 508 | 654 | 818 |

GEORGIA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Albany, GA MSA | 326 | 382 | 466 | 636 | 689 | Dougherty, Lee |
| Athens, GA MSA | 401 | 432 | 560 | 764 | 921 | Clarke, Madison, Oconee |
| *Atlanta, GA MSA | 727 | 810 | 944 | 1259 | 1523 | Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Pickens, Rockdale, Spalding, Walton |
| Augusta--Aiken, GA--SC MSA | 411 | 493 | 580 | 788 | 931 | Columbia, McDuffie, Richmond |
| Chattanooga, TN--GA MSA | 393 | 460 | 552 | 713 | 814 | Catoosa, Dade, Walker |
| Columbus, GA--AL MSA | 377 | 419 | 503 | 656 | 712 | Chattahoochee, Harris, Muscogee |
| Macon, GA MSA | 421 | 469 | 546 | 752 | 775 | Bibb, Houston, Jones, Peach, Twiggs |
| Savannah, GA MSA | 392 | 489 | 568 | 765 | 796 | Bryan, Chatham, Effingham |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Appling | 298 | 359 | 439 | 569 | 648 |
| Bacon | 298 | 359 | 439 | 569 | 648 |
| Baldwin | 298 | 382 | 465 | 597 | 652 |
| Ben Hill | 298 | 359 | 439 | 569 | 656 |
| Bleckley | 298 | 359 | 439 | 569 | 648 |
| Brooks | 298 | 359 | 439 | 569 | 648 |
| Burke | 298 | 359 | 439 | 569 | 648 |
| Calhoun | 298 | 359 | 439 | 569 | 648 |
| Candler | 298 | 359 | 439 | 569 | 648 |
| Chattooga | 298 | 359 | 439 | 569 | 648 |
| Clinch | 298 | 359 | 439 | 569 | 648 |
| Colquitt | 298 | 359 | 439 | 569 | 648 |
| Crawford | 298 | 359 | 439 | 569 | 648 |
| Dawson | 298 | 389 | 516 | 647 | 796 |
| Dodge | 298 | 359 | 439 | 569 | 648 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Atkinson | 298 | 359 | 439 | 569 | 648 |
| Baker | 298 | 359 | 439 | 569 | 648 |
| Banks | 298 | 359 | 439 | 569 | 648 |
| Berrien | 298 | 359 | 439 | 569 | 648 |
| Brantley | 298 | 359 | 439 | 569 | 648 |
| Bulloch | 359 | 365 | 468 | 604 | 767 |
| Butts | 298 | 395 | 523 | 702 | 735 |
| Camden | 418 | 472 | 528 | 735 | 869 |
| Charlton | 298 | 359 | 439 | 569 | 648 |
| Clay | 298 | 359 | 439 | 569 | 648 |
| Coffee | 298 | 359 | 439 | 569 | 656 |
| Cook | 298 | 359 | 439 | 569 | 648 |
| Crisp | 302 | 359 | 439 | 569 | 648 |
| Decatur | 298 | 359 | 439 | 569 | 648 |
| Dooly | 298 | 359 | 439 | 569 | 648 |

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING

GEORGIA continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Early | 298 | 359 | 439 | 569 | 648 |
| Elbert | 298 | 359 | 439 | 569 | 648 |
| Evans | 298 | 359 | 439 | 569 | 648 |
| Floyd | 298 | 359 | 440 | 580 | 648 |
| Gilmer | 298 | 359 | 439 | 569 | 648 |
| Glynn | 416 | 465 | 526 | 708 | 867 |
| Grady | 304 | 359 | 439 | 569 | 648 |
| Habersham | 320 | 359 | 439 | 569 | 653 |
| Hancock | 298 | 359 | 439 | 569 | 648 |
| Hart | 298 | 359 | 439 | 569 | 648 |
| Irwin | 298 | 359 | 439 | 569 | 648 |
| Jasper | 298 | 359 | 445 | 604 | 648 |
| Jefferson | 298 | 359 | 439 | 569 | 656 |
| Johnson | 298 | 359 | 439 | 569 | 648 |
| Lanier | 298 | 359 | 439 | 569 | 648 |
| Liberty | 371 | 414 | 471 | 655 | 660 |
| Long | 298 | 389 | 439 | 569 | 648 |
| Lumpkin | 298 | 402 | 452 | 605 | 742 |
| Macon | 298 | 359 | 439 | 569 | 648 |
| Meriwether | 298 | 359 | 439 | 569 | 648 |
| Mitchell | 298 | 359 | 439 | 569 | 648 |
| Montgomery | 298 | 359 | 439 | 569 | 648 |
| Murray | 298 | 359 | 439 | 569 | 648 |
| Pierce | 298 | 359 | 439 | 569 | 648 |
| Polk | 298 | 359 | 439 | 595 | 648 |
| Putnam | 298 | 359 | 439 | 569 | 656 |
| Rabun | 298 | 359 | 439 | 569 | 648 |
| Schley | 298 | 359 | 439 | 569 | 648 |
| Seminole | 298 | 359 | 439 | 569 | 648 |
| Stewart | 298 | 359 | 439 | 569 | 648 |
| Talbot | 298 | 359 | 439 | 569 | 648 |
| Tattnall | 298 | 359 | 439 | 569 | 648 |
| Telfair | 298 | 359 | 439 | 569 | 648 |
| Thomas | 298 | 370 | 439 | 569 | 648 |
| Toombs | 298 | 359 | 439 | 569 | 648 |
| Treutlen | 298 | 359 | 439 | 569 | 648 |
| Turner | 298 | 359 | 439 | 569 | 648 |
| Upson | 309 | 359 | 439 | 569 | 648 |
| Warren | 298 | 359 | 439 | 569 | 648 |
| Wayne | 309 | 359 | 439 | 569 | 648 |
| Wheeler | 298 | 359 | 439 | 569 | 648 |
| Whitfield | 298 | 392 | 471 | 602 | 710 |
| Wilkes | 298 | 359 | 439 | 569 | 648 |
| Worth | 298 | 359 | 439 | 569 | 648 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Echols | 298 | 359 | 439 | 569 | 648 |
| Emanuel | 298 | 359 | 439 | 569 | 648 |
| Fannin | 298 | 359 | 439 | 569 | 648 |
| Franklin | 298 | 359 | 439 | 569 | 648 |
| Glascock | 298 | 359 | 439 | 569 | 648 |
| Gordon | 353 | 359 | 448 | 577 | 738 |
| Greene | 298 | 359 | 439 | 569 | 648 |
| Hall | 316 | 480 | 564 | 707 | 788 |
| Haralson | 298 | 359 | 439 | 569 | 648 |
| Heard | 298 | 359 | 439 | 569 | 648 |
| Jackson | 332 | 359 | 451 | 569 | 742 |
| Jeff Davis | 298 | 359 | 439 | 569 | 648 |
| Jenkins | 298 | 359 | 439 | 569 | 648 |
| Lamar | 298 | 369 | 439 | 569 | 696 |
| Laurens | 305 | 359 | 439 | 569 | 648 |
| Lincoln | 298 | 359 | 439 | 569 | 648 |
| Lowndes | 334 | 404 | 489 | 685 | 759 |
| McIntosh | 298 | 359 | 439 | 569 | 648 |
| Marion | 298 | 359 | 439 | 569 | 648 |
| Miller | 298 | 359 | 439 | 569 | 648 |
| Monroe | 298 | 359 | 439 | 578 | 648 |
| Morgan | 298 | 359 | 455 | 569 | 648 |
| Oglethorpe | 298 | 359 | 439 | 569 | 648 |
| Pike | 346 | 375 | 476 | 662 | 666 |
| Pulaski | 298 | 359 | 439 | 569 | 648 |
| Quitman | 298 | 359 | 439 | 569 | 648 |
| Randolph | 298 | 359 | 439 | 569 | 648 |
| Screven | 298 | 359 | 439 | 569 | 648 |
| Stephens | 298 | 359 | 439 | 569 | 648 |
| Sumter | 298 | 365 | 439 | 569 | 648 |
| Taliaferro | 298 | 359 | 439 | 569 | 648 |
| Taylor | 298 | 359 | 439 | 569 | 648 |
| Terrell | 298 | 359 | 439 | 569 | 648 |
| Tift | 298 | 359 | 439 | 569 | 648 |
| Towns | 298 | 359 | 439 | 569 | 648 |
| Troup | 298 | 406 | 457 | 571 | 648 |
| Union | 298 | 359 | 458 | 574 | 648 |
| Ware | 330 | 370 | 439 | 569 | 683 |
| Washington | 298 | 359 | 439 | 569 | 648 |
| Webster | 298 | 359 | 439 | 569 | 648 |
| White | 298 | 359 | 439 | 569 | 662 |
| Wilcox | 298 | 359 | 439 | 569 | 648 |
| Wilkinson | 298 | 359 | 439 | 569 | 648 |

HAWAII

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Honolulu, HI MSA | 642 | 769 | 905 | 1225 | 1325 | Honolulu |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Hawaii | 474 | 618 | 711 | 944 | 1164 | Kauai | 605 | 904 | 1102 | 1458 | 1577 |
| Maui | 765 | 950 | 1159 | 1496 | 1695 | | | | | | |

IDAHO

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Boise City, ID MSA | 428 | 487 | 593 | 822 | 973 | Ada, Canyon |
| Pocatello, ID MSA | 335 | 388 | 499 | 679 | 803 | Bannock |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Adams | 302 | 351 | 452 | 600 | 710 | Bear Lake | 302 | 351 | 452 | 600 | 710 |
| Benewah | 302 | 351 | 452 | 600 | 710 | Bingham | 323 | 351 | 452 | 600 | 710 |
| Blaine | 467 | 515 | 686 | 957 | 1127 | Boise | 302 | 390 | 452 | 600 | 710 |
| Bonner | 348 | 431 | 535 | 739 | 850 | Bonneville | 309 | 388 | 535 | 718 | 876 |
| Boundary | 302 | 351 | 452 | 600 | 710 | Butte | 302 | 351 | 452 | 600 | 710 |
| Camas | 302 | 351 | 452 | 600 | 710 | Caribou | 302 | 351 | 452 | 600 | 710 |
| Cassia | 302 | 351 | 452 | 600 | 710 | Clark | 302 | 351 | 452 | 600 | 710 |
| Clearwater | 302 | 351 | 452 | 600 | 710 | Custer | 302 | 351 | 452 | 600 | 710 |
| Elmore | 302 | 351 | 452 | 600 | 710 | Franklin | 302 | 351 | 452 | 600 | 710 |
| Fremont | 302 | 351 | 452 | 600 | 710 | Gem | 302 | 351 | 452 | 600 | 710 |
| Gooding | 302 | 351 | 452 | 600 | 710 | Idaho | 302 | 351 | 452 | 600 | 710 |
| Jefferson | 312 | 351 | 452 | 600 | 710 | Jerome | 302 | 351 | 452 | 600 | 710 |
| Kootenai | 385 | 452 | 592 | 824 | 974 | Latah | 302 | 351 | 452 | 600 | 720 |
| Lemhi | 302 | 351 | 452 | 600 | 710 | Lewis | 302 | 351 | 452 | 600 | 710 |
| Lincoln | 302 | 351 | 452 | 600 | 710 | Madison | 302 | 351 | 452 | 600 | 710 |
| Minidoka | 302 | 351 | 452 | 600 | 710 | Nez Perce | 309 | 351 | 452 | 600 | 710 |
| Oneida | 303 | 351 | 452 | 600 | 710 | Owyhee | 302 | 351 | 452 | 600 | 710 |
| Payette | 302 | 351 | 452 | 600 | 710 | Power | 302 | 351 | 452 | 600 | 710 |
| Shoshone | 302 | 351 | 452 | 600 | 710 | Teton | 330 | 351 | 452 | 612 | 725 |
| Twin Falls | 302 | 351 | 457 | 604 | 710 | Valley | 315 | 351 | 452 | 600 | 710 |
| Washington | 302 | 351 | 452 | 600 | 710 | | | | | | |

ILLINOIS

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Bloomington--Normal, IL MSA | 366 | 446 | 598 | 830 | 877 | McLean |
| Champaign--Urbana, IL MSA | 403 | 495 | 640 | 878 | 1053 | Champaign |
| *Chicago, IL PMSA | 665 | 797 | 951 | 1189 | 1330 | Cook, DuPage, Kane, Lake, McHenry, Will |
| Davenport--Moline--Rock Island, IA--IL MSA | 302 | 417 | 515 | 666 | 723 | Henry, Rock Island |
| Decatur, IL MSA | 292 | 378 | 485 | 656 | 679 | Macon |
| DeKalb County MSA** | 508 | 591 | 748 | 1041 | 1207 | DeKalb |
| Grundy County MSA** | 440 | 509 | 676 | 894 | 950 | Grundy |

## SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING

ILLINOIS continued

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Kankakee, IL PMSA | 400 | 484 | 643 | 823 | 904 | Kankakee |
| Kendall County MSA** | 614 | 699 | 843 | 1173 | 1179 | Kendall |
| Peoria--Pekin, IL MSA | 406 | 447 | 600 | 799 | 981 | Peoria, Tazewell, Woodford |
| Rockford, IL MSA | 390 | 499 | 607 | 763 | 891 | Boone, Ogle, Winnebago |
| *St. Louis, MO--IL MSA | 439 | 536 | 695 | 905 | 999 | Clinton, Jersey, Madison, Monroe, St. Clair |
| Springfield, IL MSA | 336 | 417 | 555 | 738 | 840 | Menard, Sangamon |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Adams | 277 | 311 | 400 | 525 | 638 |
| Bond | 277 | 311 | 400 | 525 | 589 |
| Bureau | 277 | 350 | 409 | 525 | 589 |
| Carroll | 277 | 311 | 400 | 525 | 589 |
| Christian | 298 | 311 | 402 | 528 | 589 |
| Clay | 277 | 311 | 400 | 525 | 589 |
| Crawford | 277 | 311 | 400 | 525 | 589 |
| De Witt | 281 | 311 | 400 | 530 | 589 |
| Edgar | 277 | 311 | 400 | 525 | 589 |
| Effingham | 277 | 320 | 400 | 525 | 589 |
| Ford | 263 | 370 | 481 | 618 | 675 |
| Fulton | 285 | 319 | 411 | 540 | 607 |
| Greene | 277 | 311 | 400 | 525 | 589 |
| Hancock | 277 | 311 | 400 | 525 | 589 |
| Henderson | 277 | 311 | 400 | 525 | 589 |
| Jackson | 335 | 336 | 426 | 604 | 676 |
| Jefferson | 278 | 326 | 407 | 555 | 589 |
| Johnson | 277 | 311 | 400 | 525 | 589 |
| La Salle | 335 | 394 | 525 | 710 | 796 |
| Lee | 308 | 317 | 425 | 531 | 595 |
| Logan | 310 | 329 | 439 | 549 | 688 |
| Macoupin | 277 | 311 | 400 | 525 | 589 |
| Marshall | 277 | 311 | 400 | 525 | 589 |
| Massac | 278 | 311 | 400 | 525 | 589 |
| Montgomery | 277 | 311 | 400 | 525 | 589 |
| Moultrie | 277 | 311 | 400 | 539 | 589 |
| Piatt | 277 | 336 | 438 | 596 | 614 |
| Pope | 277 | 311 | 400 | 525 | 589 |
| Putnam | 277 | 311 | 400 | 525 | 589 |
| Richland | 277 | 311 | 400 | 525 | 589 |
| Schuyler | 277 | 311 | 400 | 525 | 589 |
| Shelby | 277 | 311 | 400 | 525 | 589 |
| Stephenson | 292 | 334 | 424 | 530 | 593 |
| Vermilion | 277 | 354 | 441 | 551 | 618 |
| Warren | 292 | 311 | 400 | 525 | 589 |
| Wayne | 277 | 311 | 400 | 525 | 589 |
| Whiteside | 292 | 332 | 443 | 554 | 625 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Alexander | 277 | 311 | 400 | 525 | 589 |
| Brown | 277 | 311 | 400 | 525 | 589 |
| Calhoun | 277 | 311 | 400 | 525 | 589 |
| Cass | 278 | 311 | 400 | 525 | 589 |
| Clark | 277 | 311 | 400 | 525 | 589 |
| Coles | 292 | 349 | 463 | 616 | 727 |
| Cumberland | 277 | 311 | 400 | 525 | 589 |
| Douglas | 296 | 311 | 400 | 525 | 589 |
| Edwards | 277 | 311 | 400 | 525 | 589 |
| Fayette | 277 | 311 | 400 | 525 | 589 |
| Franklin | 277 | 311 | 400 | 525 | 589 |
| Gallatin | 277 | 311 | 400 | 525 | 589 |
| Hamilton | 277 | 312 | 400 | 525 | 589 |
| Hardin | 277 | 311 | 400 | 525 | 589 |
| Iroquois | 277 | 311 | 400 | 525 | 589 |
| Jasper | 277 | 313 | 400 | 525 | 589 |
| Jo Daviess | 306 | 331 | 400 | 525 | 589 |
| Knox | 277 | 311 | 400 | 525 | 610 |
| Lawrence | 277 | 311 | 400 | 525 | 589 |
| Livingston | 277 | 341 | 456 | 587 | 641 |
| McDonough | 277 | 316 | 400 | 525 | 631 |
| Marion | 282 | 311 | 400 | 525 | 589 |
| Mason | 277 | 311 | 400 | 525 | 596 |
| Mercer | 277 | 311 | 400 | 525 | 589 |
| Morgan | 277 | 352 | 466 | 622 | 655 |
| Perry | 278 | 311 | 400 | 525 | 589 |
| Pike | 277 | 311 | 400 | 525 | 589 |
| Pulaski | 277 | 311 | 400 | 525 | 589 |
| Randolph | 277 | 311 | 400 | 525 | 589 |
| Saline | 277 | 311 | 400 | 525 | 589 |
| Scott | 277 | 311 | 400 | 525 | 589 |
| Stark | 277 | 311 | 400 | 525 | 589 |
| Union | 277 | 311 | 400 | 525 | 589 |
| Wabash | 277 | 311 | 400 | 525 | 623 |
| Washington | 277 | 331 | 442 | 553 | 719 |
| White | 277 | 311 | 400 | 525 | 589 |
| Williamson | 277 | 311 | 402 | 558 | 589 |

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING

INDIANA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Bloomington, IN MSA | 398 | 514 | 684 | 952 | 1125 | Monroe |
| Cincinnati, OH--KY--IN PMSA | 392 | 503 | 672 | 901 | 973 | Dearborn |
| Elkhart--Goshen, IN MSA | 402 | 459 | 579 | 741 | 852 | Elkhart |
| Evansville--Henderson, IN--KY MSA | 344 | 410 | 532 | 664 | 744 | Posey, Vanderburgh, Warrick |
| Fort Wayne, IN MSA | 344 | 438 | 546 | 703 | 762 | Adams, Allen, DeKalb, Huntington, Wells, Whitley |
| Gary, IN PMSA | 447 | 588 | 732 | 921 | 1028 | Lake, Porter |
| Indianapolis, IN MSA | 393 | 492 | 592 | 741 | 830 | Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, Shelby |
| Kokomo, IN MSA | 370 | 437 | 571 | 734 | 799 | Howard, Tipton |
| Lafayette, IN MSA | 375 | 476 | 634 | 882 | 1042 | Clinton, Tippecanoe |
| Louisville, KY--IN MSA | 369 | 475 | 583 | 804 | 848 | Clark, Floyd, Harrison, Scott |
| Muncie, IN MSA | 386 | 480 | 570 | 772 | 911 | Delaware |
| Ohio County MSA** | 325 | 366 | 468 | 603 | 664 | Ohio |
| South Bend, IN MSA | 345 | 460 | 603 | 754 | 847 | St. Joseph |
| Terre Haute, IN MSA | 311 | 363 | 465 | 579 | 646 | Clay, Vermillion, Vigo |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Bartholomew | 425 | 457 | 551 | 688 | 906 | Benton | 299 | 336 | 432 | 554 | 611 |
| Blackford | 299 | 336 | 444 | 555 | 623 | Brown | 299 | 397 | 523 | 726 | 752 |
| Carroll | 299 | 336 | 432 | 554 | 611 | Cass | 299 | 336 | 432 | 554 | 611 |
| Crawford | 299 | 336 | 432 | 554 | 611 | Daviess | 299 | 336 | 432 | 554 | 611 |
| Decatur | 299 | 365 | 466 | 604 | 657 | Dubois | 299 | 336 | 432 | 554 | 629 |
| Fayette | 316 | 357 | 456 | 586 | 689 | Fountain | 299 | 336 | 432 | 554 | 611 |
| Franklin | 299 | 336 | 432 | 554 | 682 | Fulton | 329 | 346 | 432 | 580 | 611 |
| Gibson | 299 | 336 | 432 | 554 | 611 | Grant | 315 | 336 | 432 | 556 | 611 |
| Greene | 299 | 336 | 432 | 554 | 611 | Henry | 328 | 369 | 472 | 610 | 668 |
| Jackson | 367 | 385 | 475 | 628 | 675 | Jasper | 299 | 363 | 432 | 554 | 611 |
| Jay | 299 | 336 | 432 | 554 | 611 | Jefferson | 299 | 336 | 432 | 554 | 611 |
| Jennings | 312 | 336 | 432 | 554 | 611 | Knox | 329 | 364 | 472 | 600 | 662 |
| Kosciusko | 299 | 396 | 478 | 620 | 669 | LaGrange | 304 | 352 | 447 | 582 | 677 |
| LaPorte | 304 | 368 | 493 | 631 | 689 | Lawrence | 299 | 336 | 432 | 558 | 611 |
| Marshall | 355 | 360 | 478 | 601 | 669 | Martin | 299 | 336 | 432 | 554 | 611 |
| Miami | 299 | 336 | 432 | 554 | 611 | Montgomery | 431 | 452 | 565 | 717 | 793 |
| Newton | 312 | 336 | 432 | 554 | 611 | Noble | 346 | 353 | 438 | 565 | 625 |
| Orange | 299 | 336 | 432 | 554 | 611 | Owen | 299 | 336 | 432 | 554 | 639 |
| Parke | 299 | 336 | 432 | 554 | 638 | Perry | 299 | 336 | 432 | 554 | 611 |
| Pike | 299 | 336 | 432 | 554 | 611 | Pulaski | 299 | 336 | 432 | 554 | 611 |
| Putnam | 325 | 378 | 465 | 625 | 630 | Randolph | 299 | 336 | 432 | 554 | 611 |
| Ripley | 299 | 336 | 432 | 564 | 639 | Rush | 307 | 336 | 432 | 554 | 639 |
| Spencer | 299 | 336 | 432 | 554 | 611 | Starke | 299 | 336 | 432 | 554 | 611 |
| Steuben | 366 | 412 | 494 | 618 | 689 | Sullivan | 299 | 336 | 432 | 554 | 611 |
| Switzerland | 299 | 336 | 432 | 554 | 611 | Union | 299 | 336 | 432 | 554 | 611 |
| Wabash | 299 | 336 | 432 | 554 | 611 | Warren | 299 | 336 | 432 | 554 | 611 |
| Washington | 299 | 336 | 432 | 554 | 611 | Wayne | 361 | 405 | 520 | 668 | 734 |
| White | 299 | 336 | 432 | 554 | 674 | | | | | | |

IOWA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Cedar Rapids, IA MSA | 296 | 417 | 536 | 744 | 800 | Linn |
| Davenport--Moline--Rock Island, IA--IL MSA | 302 | 417 | 515 | 666 | 723 | Scott |
| Des Moines, IA MSA | 420 | 530 | 655 | 848 | 892 | Dallas, Polk, Warren |
| Dubuque, IA MSA | 314 | 383 | 493 | 629 | 769 | Dubuque |
| Iowa City, IA MSA | 370 | 477 | 615 | 853 | 1009 | Johnson |
| Omaha, NE--IA MSA | 362 | 496 | 626 | 821 | 922 | Pottawattamie |
| Sioux City, IA--NE MSA | 368 | 443 | 552 | 688 | 786 | Woodbury |
| Waterloo--Cedar Falls, IA MSA | 345 | 442 | 552 | 734 | 863 | Black Hawk |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Adair | 282 | 349 | 437 | 556 | 612 |
| Allamakee | 282 | 349 | 437 | 562 | 643 |
| Audubon | 282 | 349 | 437 | 556 | 612 |
| Boone | 282 | 370 | 437 | 562 | 666 |
| Buchanan | 296 | 349 | 437 | 556 | 612 |
| Butler | 299 | 349 | 437 | 556 | 612 |
| Carroll | 282 | 349 | 437 | 556 | 612 |
| Cedar | 282 | 354 | 437 | 556 | 612 |
| Cherokee | 282 | 349 | 437 | 556 | 612 |
| Clarke | 289 | 349 | 437 | 556 | 612 |
| Clayton | 282 | 349 | 437 | 556 | 612 |
| Crawford | 282 | 349 | 437 | 556 | 612 |
| Decatur | 282 | 349 | 437 | 556 | 612 |
| Des Moines | 282 | 360 | 463 | 579 | 647 |
| Emmet | 282 | 349 | 437 | 556 | 647 |
| Floyd | 307 | 349 | 437 | 556 | 612 |
| Fremont | 310 | 349 | 437 | 556 | 645 |
| Grundy | 282 | 349 | 437 | 556 | 630 |
| Hamilton | 322 | 365 | 442 | 556 | 619 |
| Hardin | 282 | 349 | 437 | 556 | 612 |
| Henry | 282 | 358 | 454 | 568 | 643 |
| Humboldt | 282 | 349 | 437 | 556 | 612 |
| Iowa | 282 | 349 | 437 | 556 | 612 |
| Jasper | 282 | 358 | 453 | 566 | 635 |
| Jones | 291 | 349 | 437 | 556 | 612 |
| Kossuth | 282 | 349 | 437 | 556 | 612 |
| Louisa | 282 | 349 | 437 | 556 | 612 |
| Lyon | 282 | 349 | 437 | 556 | 612 |
| Mahaska | 282 | 349 | 437 | 556 | 612 |
| Marshall | 311 | 385 | 482 | 611 | 676 |
| Mitchell | 282 | 349 | 437 | 556 | 612 |
| Monroe | 282 | 367 | 437 | 556 | 645 |
| Muscatine | 322 | 399 | 529 | 705 | 739 |
| Osceola | 282 | 349 | 437 | 556 | 612 |
| Palo Alto | 282 | 349 | 437 | 556 | 612 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Adams | 282 | 349 | 437 | 556 | 612 |
| Appanoose | 282 | 349 | 437 | 556 | 616 |
| Benton | 289 | 349 | 437 | 556 | 612 |
| Bremer | 282 | 349 | 437 | 556 | 651 |
| Buena Vista | 297 | 349 | 437 | 556 | 612 |
| Calhoun | 282 | 349 | 437 | 556 | 612 |
| Cass | 282 | 349 | 437 | 556 | 612 |
| Cerro Gordo | 282 | 369 | 457 | 609 | 640 |
| Chickasaw | 282 | 349 | 437 | 556 | 612 |
| Clay | 282 | 349 | 437 | 556 | 612 |
| Clinton | 282 | 349 | 444 | 556 | 621 |
| Davis | 282 | 349 | 437 | 556 | 612 |
| Delaware | 282 | 349 | 437 | 556 | 612 |
| Dickinson | 282 | 349 | 437 | 556 | 612 |
| Fayette | 282 | 349 | 437 | 556 | 612 |
| Franklin | 289 | 349 | 437 | 556 | 612 |
| Greene | 282 | 349 | 437 | 556 | 612 |
| Guthrie | 282 | 349 | 437 | 556 | 644 |
| Hancock | 282 | 349 | 437 | 556 | 612 |
| Harrison | 282 | 349 | 437 | 556 | 612 |
| Howard | 282 | 349 | 437 | 556 | 640 |
| Ida | 289 | 349 | 437 | 556 | 612 |
| Jackson | 282 | 349 | 440 | 556 | 616 |
| Jefferson | 282 | 357 | 474 | 617 | 780 |
| Keokuk | 282 | 349 | 437 | 556 | 612 |
| Lee | 282 | 349 | 451 | 565 | 634 |
| Lucas | 282 | 349 | 437 | 556 | 612 |
| Madison | 282 | 349 | 455 | 582 | 639 |
| Marion | 282 | 388 | 474 | 594 | 666 |
| Mills | 282 | 377 | 445 | 559 | 624 |
| Monona | 282 | 349 | 437 | 556 | 612 |
| Montgomery | 310 | 351 | 437 | 556 | 612 |
| O'Brien | 282 | 349 | 437 | 556 | 612 |
| Page | 282 | 349 | 437 | 556 | 612 |
| Plymouth | 282 | 349 | 457 | 571 | 640 |

IOWA continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Pocahontas | 282 | 349 | 437 | 556 | 612 |
| Ringgold | 282 | 349 | 437 | 556 | 612 |
| Shelby | 282 | 349 | 437 | 556 | 612 |
| Story | 367 | 446 | 527 | 728 | 835 |
| Taylor | 282 | 349 | 437 | 556 | 613 |
| Van Buren | 282 | 349 | 437 | 556 | 612 |
| Washington | 282 | 349 | 437 | 556 | 645 |
| Webster | 282 | 349 | 444 | 559 | 622 |
| Winneshiek | 282 | 349 | 437 | 556 | 612 |
| Wright | 282 | 349 | 437 | 556 | 612 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Poweshiek | 297 | 370 | 474 | 594 | 666 |
| Sac | 282 | 349 | 437 | 556 | 612 |
| Sioux | 282 | 349 | 437 | 556 | 612 |
| Tama | 282 | 349 | 437 | 556 | 612 |
| Union | 282 | 349 | 437 | 556 | 645 |
| Wapello | 282 | 349 | 441 | 556 | 617 |
| Wayne | 282 | 349 | 437 | 556 | 612 |
| Winnebago | 282 | 355 | 437 | 556 | 612 |
| Worth | 282 | 349 | 437 | 556 | 622 |

KANSAS

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| *Kansas City, MO--KS MSA | 471 | 592 | 713 | 987 | 1094 | Johnson, Leavenworth, Miami, Wyandotte |
| Lawrence, KS MSA | 381 | 457 | 585 | 815 | 938 | Douglas |
| Topeka, KS MSA | 357 | 412 | 536 | 724 | 816 | Shawnee |
| *Wichita, KS MSA | 373 | 448 | 599 | 811 | 876 | Butler, Harvey, Sedgwick |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Allen | 287 | 326 | 418 | 539 | 600 |
| Atchison | 287 | 326 | 418 | 539 | 643 |
| Barton | 287 | 326 | 418 | 539 | 600 |
| Brown | 287 | 326 | 418 | 539 | 600 |
| Chautauqua | 287 | 326 | 418 | 539 | 600 |
| Cheyenne | 287 | 326 | 418 | 539 | 600 |
| Clay | 287 | 326 | 418 | 539 | 600 |
| Coffey | 296 | 326 | 418 | 539 | 627 |
| Cowley | 307 | 326 | 418 | 553 | 600 |
| Decatur | 287 | 326 | 418 | 539 | 600 |
| Doniphan | 287 | 326 | 418 | 539 | 600 |
| Elk | 287 | 326 | 418 | 539 | 600 |
| Ellsworth | 287 | 326 | 418 | 539 | 600 |
| Ford | 330 | 391 | 486 | 612 | 689 |
| Geary | 354 | 371 | 465 | 600 | 650 |
| Graham | 287 | 326 | 418 | 539 | 600 |
| Gray | 287 | 326 | 418 | 539 | 600 |
| Greenwood | 287 | 326 | 418 | 539 | 600 |
| Harper | 287 | 326 | 418 | 539 | 600 |
| Hodgeman | 287 | 326 | 418 | 539 | 600 |
| Jefferson | 287 | 326 | 426 | 565 | 600 |
| Kearny | 320 | 326 | 430 | 578 | 636 |
| Kiowa | 287 | 326 | 418 | 539 | 600 |
| Lane | 287 | 326 | 418 | 539 | 600 |
| Linn | 287 | 326 | 418 | 539 | 600 |
| Lyon | 287 | 326 | 418 | 539 | 640 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Anderson | 287 | 326 | 418 | 539 | 600 |
| Barber | 287 | 326 | 418 | 539 | 600 |
| Bourbon | 287 | 326 | 418 | 539 | 600 |
| Chase | 287 | 326 | 418 | 539 | 600 |
| Cherokee | 287 | 326 | 418 | 539 | 600 |
| Clark | 287 | 326 | 418 | 539 | 600 |
| Cloud | 287 | 326 | 418 | 539 | 600 |
| Comanche | 287 | 326 | 418 | 539 | 600 |
| Crawford | 287 | 326 | 426 | 539 | 600 |
| Dickinson | 287 | 326 | 418 | 539 | 600 |
| Edwards | 287 | 326 | 418 | 539 | 600 |
| Ellis | 287 | 326 | 418 | 539 | 600 |
| Finney | 377 | 402 | 516 | 672 | 849 |
| Franklin | 323 | 339 | 437 | 560 | 682 |
| Gove | 287 | 326 | 418 | 539 | 600 |
| Grant | 297 | 378 | 433 | 593 | 646 |
| Greeley | 287 | 326 | 418 | 539 | 600 |
| Hamilton | 287 | 326 | 418 | 539 | 600 |
| Haskell | 287 | 333 | 418 | 539 | 600 |
| Jackson | 287 | 326 | 418 | 539 | 600 |
| Jewell | 287 | 326 | 418 | 539 | 600 |
| Kingman | 287 | 326 | 418 | 539 | 600 |
| Labette | 287 | 326 | 418 | 539 | 600 |
| Lincoln | 287 | 326 | 418 | 539 | 600 |
| Logan | 287 | 326 | 418 | 539 | 600 |
| McPherson | 289 | 326 | 418 | 539 | 600 |

KANSAS continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Marion | 287 | 326 | 418 | 539 | 600 |
| Meade | 287 | 326 | 418 | 539 | 600 |
| Montgomery | 287 | 326 | 418 | 539 | 600 |
| Morton | 287 | 351 | 418 | 539 | 600 |
| Neosho | 287 | 326 | 418 | 539 | 600 |
| Norton | 287 | 326 | 418 | 539 | 600 |
| Osborne | 287 | 326 | 418 | 539 | 601 |
| Pawnee | 287 | 326 | 418 | 539 | 600 |
| Pottawatomie | 287 | 326 | 418 | 539 | 613 |
| Rawlins | 287 | 326 | 418 | 539 | 600 |
| Republic | 287 | 326 | 418 | 539 | 600 |
| Riley | 357 | 393 | 523 | 652 | 793 |
| Rush | 287 | 326 | 418 | 539 | 600 |
| Saline | 376 | 389 | 512 | 708 | 716 |
| Seward | 347 | 378 | 502 | 630 | 702 |
| Sherman | 287 | 326 | 418 | 539 | 600 |
| Stafford | 287 | 326 | 418 | 539 | 600 |
| Stevens | 287 | 327 | 418 | 539 | 616 |
| Thomas | 287 | 326 | 418 | 539 | 600 |
| Wabaunsee | 287 | 326 | 418 | 539 | 600 |
| Washington | 287 | 326 | 418 | 539 | 600 |
| Wilson | 287 | 326 | 418 | 539 | 600 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Marshall | 287 | 326 | 418 | 539 | 600 |
| Mitchell | 287 | 326 | 418 | 539 | 600 |
| Morris | 287 | 326 | 418 | 539 | 600 |
| Nemaha | 287 | 326 | 418 | 539 | 600 |
| Ness | 287 | 326 | 418 | 539 | 600 |
| Osage | 287 | 326 | 418 | 539 | 600 |
| Ottawa | 287 | 326 | 418 | 539 | 600 |
| Phillips | 287 | 326 | 418 | 539 | 600 |
| Pratt | 287 | 326 | 418 | 551 | 600 |
| Reno | 287 | 326 | 418 | 539 | 651 |
| Rice | 287 | 326 | 418 | 539 | 600 |
| Rooks | 287 | 326 | 418 | 539 | 600 |
| Russell | 287 | 326 | 418 | 539 | 600 |
| Scott | 287 | 326 | 418 | 551 | 633 |
| Sheridan | 287 | 326 | 418 | 539 | 600 |
| Smith | 287 | 326 | 418 | 539 | 600 |
| Stanton | 287 | 326 | 418 | 539 | 600 |
| Sumner | 287 | 326 | 418 | 565 | 600 |
| Trego | 287 | 326 | 418 | 539 | 600 |
| Wallace | 287 | 326 | 418 | 539 | 600 |
| Wichita | 287 | 326 | 430 | 539 | 670 |
| Woodson | 287 | 326 | 418 | 539 | 600 |

KENTUCKY

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Cincinnati, OH--KY--IN PMSA | 392 | 503 | 672 | 901 | 973 | Boone, Campbell, Kenton |
| Clarksville--Hopkinsville, TN--KY MSA | 365 | 408 | 481 | 654 | 673 | Christian |
| Evansville--Henderson, IN--KY MSA | 344 | 410 | 532 | 664 | 744 | Henderson |
| Gallatin County MSA** | 292 | 397 | 487 | 611 | 797 | Gallatin |
| Grant County MSA** | 291 | 347 | 459 | 640 | 758 | Grant |
| Huntington--Ashland, WV--KY--OH MSA | 327 | 384 | 472 | 602 | 663 | Boyd, Carter, Greenup |
| Lexington, KY MSA | 370 | 461 | 565 | 769 | 869 | Bourbon, Clark, Fayette, Jessamine, Madison, Scott, Woodford |
| Louisville, KY--IN MSA | 369 | 475 | 583 | 804 | 848 | Bullitt, Jefferson, Oldham |
| Owensboro, KY MSA | 323 | 334 | 439 | 589 | 617 | Daviess |
| Pendleton County MSA** | 294 | 341 | 452 | 569 | 636 | Pendleton |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Adair | 265 | 324 | 383 | 507 | 557 |
| Anderson | 292 | 310 | 401 | 501 | 562 |
| Barren | 265 | 321 | 383 | 495 | 557 |
| Bell | 265 | 310 | 387 | 495 | 557 |
| Bracken | 265 | 310 | 383 | 495 | 557 |
| Breckinridge | 265 | 310 | 383 | 495 | 557 |
| Caldwell | 265 | 310 | 383 | 495 | 557 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Allen | 265 | 310 | 383 | 495 | 557 |
| Ballard | 265 | 310 | 383 | 495 | 557 |
| Bath | 265 | 310 | 383 | 495 | 557 |
| Boyle | 316 | 320 | 427 | 535 | 599 |
| Breathitt | 265 | 310 | 383 | 495 | 557 |
| Butler | 265 | 310 | 383 | 495 | 557 |
| Calloway | 265 | 310 | 383 | 495 | 557 |

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 16

KENTUCKY continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Carlisle | 265 | 310 | 383 | 495 | 557 | Carroll | 265 | 310 | 383 | 495 | 557 |
| Casey | 265 | 310 | 383 | 495 | 557 | Clay | 265 | 310 | 383 | 495 | 557 |
| Clinton | 265 | 310 | 383 | 495 | 557 | Crittenden | 265 | 310 | 383 | 495 | 557 |
| Cumberland | 265 | 310 | 383 | 495 | 557 | Edmonson | 265 | 310 | 383 | 495 | 557 |
| Elliott | 265 | 310 | 383 | 495 | 557 | Estill | 265 | 310 | 383 | 495 | 557 |
| Fleming | 265 | 310 | 383 | 495 | 557 | Floyd | 280 | 340 | 383 | 532 | 610 |
| Franklin | 265 | 391 | 479 | 618 | 780 | Fulton | 265 | 310 | 383 | 495 | 557 |
| Garrard | 265 | 310 | 383 | 495 | 557 | Graves | 265 | 310 | 383 | 495 | 557 |
| Grayson | 265 | 310 | 383 | 495 | 557 | Green | 265 | 310 | 383 | 495 | 557 |
| Hancock | 265 | 310 | 383 | 500 | 592 | Hardin | 330 | 339 | 424 | 570 | 676 |
| Harlan | 265 | 403 | 459 | 600 | 708 | Harrison | 265 | 311 | 393 | 495 | 606 |
| Hart | 265 | 310 | 383 | 495 | 557 | Henry | 265 | 310 | 383 | 495 | 557 |
| Hickman | 265 | 310 | 383 | 495 | 557 | Hopkins | 265 | 310 | 383 | 495 | 562 |
| Jackson | 265 | 310 | 383 | 495 | 557 | Johnson | 265 | 310 | 383 | 495 | 557 |
| Knott | 265 | 310 | 383 | 495 | 557 | Knox | 265 | 367 | 469 | 589 | 723 |
| Larue | 265 | 310 | 383 | 495 | 557 | Laurel | 346 | 392 | 464 | 626 | 650 |
| Lawrence | 265 | 310 | 383 | 495 | 557 | Lee | 265 | 310 | 383 | 495 | 557 |
| Leslie | 265 | 310 | 383 | 495 | 557 | Letcher | 265 | 310 | 383 | 495 | 557 |
| Lewis | 265 | 310 | 383 | 495 | 557 | Lincoln | 265 | 310 | 383 | 495 | 557 |
| Livingston | 307 | 310 | 412 | 573 | 577 | Logan | 265 | 310 | 383 | 505 | 557 |
| Lyon | 265 | 310 | 383 | 495 | 557 | McCracken | 301 | 323 | 404 | 517 | 664 |
| McCreary | 265 | 310 | 383 | 495 | 557 | McLean | 265 | 310 | 383 | 495 | 557 |
| Magoffin | 265 | 310 | 383 | 495 | 557 | Marion | 265 | 310 | 383 | 495 | 557 |
| Marshall | 265 | 316 | 383 | 495 | 596 | Martin | 265 | 310 | 383 | 495 | 557 |
| Mason | 265 | 310 | 383 | 495 | 557 | Meade | 275 | 341 | 393 | 518 | 647 |
| Menifee | 265 | 310 | 383 | 495 | 557 | Mercer | 265 | 310 | 383 | 505 | 557 |
| Metcalfe | 265 | 310 | 383 | 495 | 557 | Monroe | 265 | 310 | 383 | 495 | 557 |
| Montgomery | 265 | 310 | 383 | 495 | 557 | Morgan | 265 | 310 | 383 | 495 | 557 |
| Muhlenberg | 265 | 310 | 383 | 495 | 557 | Nelson | 291 | 310 | 395 | 495 | 557 |
| Nicholas | 265 | 310 | 383 | 495 | 557 | Ohio | 265 | 310 | 383 | 495 | 557 |
| Owen | 265 | 310 | 383 | 495 | 570 | Owsley | 265 | 310 | 383 | 495 | 557 |
| Perry | 297 | 310 | 399 | 499 | 559 | Pike | 285 | 325 | 395 | 495 | 585 |
| Powell | 265 | 310 | 383 | 495 | 557 | Pulaski | 291 | 310 | 393 | 496 | 557 |
| Robertson | 265 | 310 | 383 | 495 | 557 | Rockcastle | 265 | 310 | 383 | 495 | 557 |
| Rowan | 265 | 310 | 383 | 495 | 577 | Russell | 265 | 310 | 383 | 495 | 557 |
| Shelby | 266 | 350 | 393 | 548 | 557 | Simpson | 265 | 332 | 389 | 496 | 557 |
| Spencer | 265 | 316 | 383 | 495 | 557 | Taylor | 320 | 379 | 424 | 567 | 642 |
| Todd | 265 | 310 | 383 | 495 | 557 | Trigg | 265 | 310 | 383 | 495 | 557 |
| Trimble | 265 | 310 | 383 | 495 | 557 | Union | 265 | 310 | 383 | 495 | 557 |
| Warren | 265 | 343 | 458 | 572 | 662 | Washington | 265 | 314 | 383 | 495 | 557 |
| Wayne | 265 | 310 | 383 | 495 | 557 | Webster | 265 | 310 | 383 | 495 | 557 |
| Whitley | 265 | 310 | 383 | 495 | 557 | Wolfe | 265 | 310 | 383 | 495 | 557 |

LOUISIANA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Alexandria, LA MSA | 302 | 377 | 473 | 655 | 666 | Rapides |
| *Baton Rouge, LA MSA | 347 | 430 | 535 | 741 | 876 | Ascension, East Baton Rouge, Livingston, West Baton Rouge |
| Houma, LA MSA | 298 | 348 | 446 | 619 | 733 | Lafourche, Terrebonne |
| Lafayette, LA MSA | 315 | 363 | 431 | 594 | 703 | Acadia, Lafayette, St. Landry, St. Martin |
| Lake Charles, LA MSA | 347 | 403 | 512 | 670 | 839 | Calcasieu |
| Monroe, LA MSA | 326 | 365 | 487 | 656 | 681 | Ouachita |
| New Orleans, LA MSA | 463 | 531 | 661 | 899 | 1089 | Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany |
| St. James Parish MSA** | 297 | 336 | 447 | 557 | 624 | St. James |
| Shreveport--Bossier City, LA MSA | 367 | 418 | 524 | 701 | 861 | Bossier, Caddo, Webster |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Allen | 287 | 312 | 385 | 504 | 562 | Assumption | 330 | 356 | 422 | 530 | 591 |
| Avoyelles | 287 | 312 | 385 | 504 | 565 | Beauregard | 350 | 382 | 452 | 590 | 651 |
| Bienville | 287 | 312 | 385 | 511 | 604 | Caldwell | 287 | 312 | 385 | 504 | 562 |
| Cameron | 287 | 312 | 385 | 504 | 562 | Catahoula | 287 | 312 | 385 | 504 | 562 |
| Claiborne | 287 | 312 | 385 | 504 | 562 | Concordia | 287 | 312 | 385 | 504 | 562 |
| De Soto | 287 | 312 | 385 | 504 | 567 | East Carroll | 287 | 312 | 385 | 504 | 562 |
| East Feliciana | 287 | 312 | 385 | 504 | 562 | Evangeline | 287 | 312 | 385 | 504 | 562 |
| Franklin | 287 | 312 | 385 | 504 | 567 | Grant | 287 | 312 | 385 | 504 | 562 |
| Iberia | 304 | 316 | 393 | 504 | 562 | Iberville | 287 | 312 | 385 | 504 | 579 |
| Jackson | 287 | 312 | 385 | 504 | 562 | Jefferson Davis | 287 | 312 | 385 | 504 | 571 |
| La Salle | 287 | 312 | 385 | 504 | 567 | Lincoln | 338 | 340 | 424 | 582 | 698 |
| Madison | 287 | 312 | 385 | 504 | 562 | Morehouse | 287 | 312 | 385 | 504 | 562 |
| Natchitoches | 307 | 314 | 407 | 563 | 567 | Pointe Coupee | 287 | 312 | 385 | 504 | 610 |
| Red River | 287 | 312 | 385 | 504 | 567 | Richland | 287 | 312 | 385 | 504 | 567 |
| Sabine | 287 | 320 | 385 | 504 | 593 | St. Helena | 287 | 312 | 385 | 504 | 562 |
| St. Mary | 314 | 337 | 423 | 577 | 602 | Tangipahoa | 308 | 320 | 412 | 540 | 575 |
| Tensas | 287 | 312 | 385 | 504 | 562 | Union | 287 | 312 | 385 | 504 | 567 |
| Vermilion | 287 | 312 | 385 | 504 | 562 | Vernon | 330 | 368 | 419 | 543 | 641 |
| Washington | 287 | 312 | 385 | 504 | 562 | West Carroll | 287 | 312 | 385 | 504 | 562 |
| West Feliciana | 287 | 375 | 501 | 626 | 703 | Winn | 287 | 312 | 385 | 504 | 562 |

MAINE

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Components of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Bangor, ME MSA | 382 | 467 | 598 | 782 | 839 | Penobscot county towns of Bangor city, Brewer city, Eddington town, Glenburn town, Hampden town, Hermon town, Holden town, Kenduskeag town, Milford town, Old Town city, Orono town, Orrington town, Penobscot Indian Island Reservation, Veazie town<br>Waldo county towns of Winterport town |
| Lewiston--Auburn, ME MSA | 352 | 425 | 546 | 683 | 776 | Androscoggin county towns of Auburn city, |

MAINE continued

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Components of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| | | | | | | Greene town, Lewiston city, Lisbon town, Mechanic Falls town, Poland town, Sabattus town, Turner town, Wales town |
| Portland, ME MSA | 507 | 653 | 859 | 1076 | 1204 | Cumberland county towns of Cape Elizabeth town, Casco town, Cumberland town, Falmouth town, Freeport town, Frye Island town, Gorham town, Gray town, Long Island town, North Yarmouth town, Portland city, Raymond town, Scarborough town, South Portland city, Standish town, Westbrook city, Windham town, Yarmouth town<br>York county towns of Buxton town, Hollis town, Limington town, Old Orchard Beach town |
| Portsmouth--Rochester, NH--ME PMSA | 604 | 723 | 930 | 1193 | 1463 | York county towns of Berwick town, Eliot town, Kittery town, South Berwick town, York town |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Towns within nonmetropolitan counties |
|---|---|---|---|---|---|---|
| Androscoggin | 353 | 437 | 579 | 724 | 811 | Durham town, Leeds town, Livermore town, Livermore Falls town, Minot town |
| Aroostook | 353 | 415 | 531 | 675 | 778 | Allagash town, Amity town, Ashland town, Bancroft town, Blaine town, Bridgewater town, Caribou city, Cary plantation, Castle Hill town, Caswell town, Central Aroostook UT, Chapman town, Connor UT, Crystal town, Cyr plantation, Dyer Brook town, Eagle Lake town, Easton town, Fort Fairfield town, Fort Kent town, Frenchville town, Garfield plantation, Glenwood plantation, Grand Isle town, Hamlin town, Hammond town, Haynesville town, Hersey town, Hodgdon town, Houlton town, Island Falls town, Limestone town, Linneus town, Littleton town, Ludlow town, Macwahoc plantation, Madawaska town, Mapleton town, Mars Hill town, Masardis town, Merrill town, Monticello town, Moro plantation, Nashville plantation, New Canada town, New Limerick town, New Sweden town, Northwest Aroostook UT, Oakfield town, Orient town, Oxbow plantation, Penobscot Indian Island Reservation, Perham town, Portage Lake town, Presque Isle city, Reed plantation, St. Agatha town, St. Francis town, St. John plantation, Sherman town, Smyrna town, South Aroostook UT, Square Lake UT, Stockholm town, Van Buren town, Wade town, Wallagrass town, Washburn town, Westfield town, Westmanland town, Weston town, Winterville plantation, Woodland town |
| Cumberland | 517 | 527 | 702 | 953 | 1095 | Baldwin town, Bridgton town, Brunswick town, |

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING

MAINE continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Towns within nonmetropolitan counties |
|---|---|---|---|---|---|---|
| | | | | | | Harpswell town, Harrison town, Naples town, New Gloucester town, Pownal town, Sebago town |
| Franklin | 360 | 415 | 531 | 675 | 778 | Avon town, Carrabassett Valley town, Carthage town, Chesterville town, Coplin plantation, Dallas plantation, East Central Franklin UT, Eustis town, Farmington town, Industry town, Jay town, Kingfield town, Madrid town, New Sharon town, New Vineyard town, North Franklin UT, Phillips town, Rangeley town, Rangeley plantation, Sandy River plantation, South Franklin UT, Strong town, Temple town, Weld town, West Central Franklin UT, Wilton town, Wyman UT |
| Hancock | 380 | 466 | 577 | 727 | 807 | Amherst town, Aurora town, Bar Harbor town, Blue Hill town, Brooklin town, Brooksville town, Bucksport town, Castine town, Central Hancock UT, Cranberry Isles town, Dedham town, Deer Isle town, Eastbrook town, East Hancock UT, Ellsworth city, Franklin town, Frenchboro town, Gouldsboro town, Great Pond town, Hancock town, Lamoine town, Mariaville town, Mount Desert town, Northwest Hancock UT, Orland town, Osborn town, Otis town, Penobscot town, Sedgwick town, Sorrento town, Southwest Harbor town, Stonington town, Sullivan town, Surry town, Swans Island town, Tremont town, Trenton town, Verona town, Waltham town, Winter Harbor town |
| Kennebec | 367 | 459 | 551 | 693 | 778 | Albion town, Augusta city, Belgrade town, Benton town, Chelsea town, China town, Clinton town, Farmingdale town, Fayette town, Gardiner city, Hallowell city, Litchfield town, Manchester town, Monmouth town, Mount Vernon town, Oakland town, Pittston town, Randolph town, Readfield town, Rome town, Sidney town, Unity UT, Vassalboro town, Vienna town, Waterville city, Wayne town, West Gardiner town, Windsor town, Winslow town, Winthrop town |
| Knox | 353 | 454 | 590 | 788 | 829 | Appleton town, Camden town, Criehaven UT, Cushing town, Friendship town, Hope town, Isle au Haut town, Matinicus Isle plantation, North Haven town, Owls Head town, Rockland city, Rockport town, St. George town, South Thomaston town, Thomaston town, Union town, Vinalhaven town, Warren town, Washington town |
| Lincoln | 460 | 511 | 581 | 808 | 953 | Alna town, Boothbay town, Boothbay Harbor town, Bremen town, |

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING

MAINE continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Towns within nonmetropolitan counties |
|---|---|---|---|---|---|---|
| | | | | | | Bristol town, Damariscotta town, Dresden town, Edgecomb town, Hibberts gore, Jefferson town, Monhegan plantation, Newcastle town, Nobleboro town, Somerville town, South Bristol town, Southport town, Waldoboro town, Westport town, Whitefield town, Wiscasset town |
| Oxford | 353 | 415 | 531 | 675 | 778 | Andover town, Bethel town, Brownfield town, Buckfield town, Byron town, Canton town, Denmark town, Dixfield town, Fryeburg town, Gilead town, Greenwood town, Hanover town, Hartford town, Hebron town, Hiram town, Lincoln plantation, Lovell town, Magalloway plantation, Mexico town, Milton UT, Newry town, North Oxford UT, Norway town, Otisfield town, Oxford town, Paris town, Peru town, Porter town, Roxbury town, Rumford town, South Oxford UT, Stoneham town, Stow town, Sumner town, Sweden town, Upton town, Waterford town, West Paris town, Woodstock town |
| Penobscot | 353 | 415 | 531 | 675 | 778 | Alton town, Argyle UT, Bradford town, Bradley town, Burlington town, Carmel town, Carroll plantation, Charleston town, Chester town, Clifton town, Corinna town, Corinth town, Dexter town, Dixmont town, Drew plantation, East Central Penobscot UT, East Millinocket town, Edinburg town, Enfield town, Etna town, Exeter town, Garland town, Greenbush town, Howland town, Hudson town, Kingman UT, Lagrange town, Lakeville town, Lee town, Levant town, Lincoln town, Lowell town, Mattawamkeag town, Maxfield town, Medway town, Millinocket town, Mount Chase town, Newburgh town, Newport town, North Penobscot UT, Passadumkeag town, Patten town, Plymouth town, Prentiss UT, Seboeis plantation, Springfield town, Stacyville town, Stetson town, Twombly UT, Webster plantation, Whitney UT, Winn town, Woodville town |
| Piscataquis | 353 | 415 | 531 | 675 | 778 | Abbot town, Atkinson town, Beaver Cove town, Blanchard UT, Bowerbank town, Brownville town, Dover-Foxcroft town, Greenville town, Guilford town, Kingsbury plantation, Lake View plantation, Medford town, Milo town, Monson town, Northeast Piscataquis UT, Northwest Piscataquis UT, Parkman town, Sangerville town, Sebec town, Shirley town, Southeast Piscataquis UT, Wellington town, Willimantic town |
| Sagadahoc | 497 | 568 | 702 | 934 | 1152 | Arrowsic town, Bath city, Bowdoin town, Bowdoinham town, Georgetown town, Perkins UT, |

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING

MAINE continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Towns within nonmetropolitan counties |
|---|---|---|---|---|---|---|
| | | | | | | Phippsburg town, Richmond town, Topsham town, West Bath town, Woolwich town |
| Somerset | 370 | 422 | 531 | 675 | 798 | Anson town, Athens town, Bingham town, Brighton plantation, Cambridge town, Canaan town, Caratunk town, Central Somerset UT, Cornville town, Dennistown plantation, Detroit town, Embden town, Fairfield town, Harmony town, Hartland town, Highland plantation, Jackman town, Madison town, Mercer town, Moose River town, Moscow town, New Portland town, Norridgewock town, Northeast Somerset UT, Northwest Somerset UT, Palmyra town, Pittsfield town, Pleasant Ridge plantation, Ripley town, St. Albans town, Seboomook Lake UT, Skowhegan town, Smithfield town, Solon town, Starks town, The Forks plantation, West Forks plantation |
| Waldo | 353 | 415 | 531 | 675 | 778 | Belfast city, Belmont town, Brooks town, Burnham town, Frankfort town, Freedom town, Islesboro town, Jackson town, Knox town, Liberty town, Lincolnville town, Monroe town, Montville town, Morrill town, Northport town, Palermo town, Prospect town, Searsmont town, Searsport town, Stockton Springs town, Swanville town, Thorndike town, Troy town, Unity town, Waldo town |
| Washington | 353 | 415 | 531 | 675 | 778 | Addison town, Alexander town, Baileyville town, Baring plantation, Beals town, Beddington town, Calais city, Centerville town, Charlotte town, Cherryfield town, Codyville plantation, Columbia town, Columbia Falls town, Cooper town, Crawford town, Cutler town, Danforth town, Deblois town, Dennysville town, East Central Washington UT, East Machias town, Eastport city, Grand Lake Stream plantation, Harrington town, Jonesboro town, Jonesport town, Lubec town, Machias town, Machiasport town, Marshfield town, Meddybemps town, Milbridge town, Northfield town, North Washington UT, Passamaquoddy Indian Township Reservation, Passamaquoddy Pleasant Point Reservation, Pembroke town, Perry town, Princeton town, Robbinston town, Roque Bluffs town, Steuben town, Talmadge town, Topsfield town, Vanceboro town, Waite town, Wesley town, Whiting town, Whitneyville town |
| York | 437 | 499 | 668 | 836 | 936 | Acton town, Alfred town, Arundel town, Biddeford city, Cornish town, Dayton town, Kennebunk town, Kennebunkport town, |

MAINE continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Towns within nonmetropolitan counties |
|---|---|---|---|---|---|---|
| | | | | | | Lebanon town, Limerick town, Lyman town, Newfield town, North Berwick town, Ogunquit town, Parsonsfield town, Saco city, Sanford town, Shapleigh town, Waterboro town, Wells town |

MARYLAND

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Baltimore, MD PMSA | 596 | 727 | 888 | 1176 | 1345 | Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city |
| Columbia, MD MSA** | 612 | 822 | 958 | 1267 | 1583 | Columbia |
| Cumberland, MD--WV MSA | 361 | 435 | 539 | 712 | 812 | Allegany |
| Hagerstown, MD PMSA | 401 | 482 | 602 | 787 | 899 | Washington |
| *Washington, DC--MD--VA--WV PMSA | 913 | 1039 | 1218 | 1660 | 2002 | Calvert, Charles, Frederick, Montgomery, Prince George's |
| Wilmington--Newark, DE--MD PMSA | 502 | 661 | 771 | 1048 | 1266 | Cecil |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Caroline | 396 | 427 | 534 | 700 | 795 | Dorchester | 354 | 457 | 534 | 696 | 795 |
| Garrett | 354 | 474 | 534 | 696 | 877 | Kent | 358 | 441 | 589 | 735 | 886 |
| St. Mary's | 577 | 685 | 790 | 1102 | 1259 | Somerset | 422 | 473 | 534 | 740 | 876 |
| Talbot | 468 | 496 | 660 | 827 | 1084 | Wicomico | 398 | 460 | 594 | 755 | 832 |
| Worcester | 354 | 427 | 535 | 742 | 795 | | | | | | |

MASSACHUSETTS

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Components of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Barnstable--Yarmouth, MA MSA | 541 | 724 | 967 | 1212 | 1357 | Barnstable county towns of Barnstable Town city Brewster town, Chatham town, Dennis town, Eastham town, Harwich town, Mashpee town, Orleans town, Sandwich town, Yarmouth town |
| Boston, MA--NH PMSA | 1007 | 1135 | 1419 | 1775 | 2084 | Bristol county towns of Berkley town, Dighton town, Mansfield town, Norton town, Taunton city<br>Essex county towns of Amesbury town, Beverly city, Danvers town, Essex town, Gloucester city, Hamilton town, Ipswich town, Lynn city, Lynnfield town, Manchester-by-the-Sea town, Marblehead town, Middleton town, Nahant town, Newbury town, Newburyport city, Peabody city, Rockport town, Rowley town, Salem city, Salisbury town, Saugus town, Swampscott town, Topsfield town, Wenham town<br>Middlesex county towns of Acton town, Arlington town, Ashland town, Ayer town, Bedford town, Belmont town, Boxborough town, Burlington town, Cambridge city, |

MASSACHUSETTS continued

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Components of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| | | | | | | Carlisle town, Concord town, Everett city, Framingham town, Holliston town, Hopkinton town, Hudson town, Lexington town, Lincoln town, Littleton town, Malden city, Marlborough city, Maynard town, Medford city, Melrose city, Natick town, Newton city, North Reading town, Reading town, Sherborn town, Shirley town, Somerville city, Stoneham town, Stow town, Sudbury town, Townsend town, Wakefield town, Waltham city, Watertown city, Wayland town, Weston town, Wilmington town, Winchester town, Woburn city<br>Norfolk county towns of Bellingham town, Braintree town, Brookline town, Canton town, Cohasset town, Dedham town, Dover town, Foxborough town, Franklin city, Holbrook town, Medfield town, Medway town, Millis town, Milton town, Needham town, Norfolk town, Norwood town, Plainville town, Quincy city, Randolph town, Sharon town, Stoughton town, Walpole town, Wellesley town, Westwood town, Weymouth town, Wrentham town<br>Plymouth county towns of Carver town, Duxbury town, Hanover town, Hingham town, Hull town, Kingston town, Marshfield town, Norwell town, Pembroke town, Plymouth town, Rockland town, Scituate town, Wareham town<br>Suffolk county towns of Boston city, Chelsea city, Revere city, Winthrop town<br>Worcester county towns of Berlin town, Blackstone town, Bolton town, Harvard town, Hopedale town, Lancaster town, Mendon town, Milford town, Millville town, Southborough town, Upton town |
| Brockton, MA PMSA | 647 | 853 | 1046 | 1300 | 1483 | Bristol county towns of Easton town, Raynham town<br>Norfolk county towns of Avon town<br>Plymouth county towns of Abington town, Bridgewater town, Brockton city, East Bridgewater town, Halifax town, Hanson town, Lakeville town, Middleborough town, Plympton town, West Bridgewater town, Whitman town |
| Fitchburg--Leominster, MA PMSA | 441 | 620 | 805 | 1035 | 1125 | Middlesex county towns of Ashby town<br>Worcester county towns of Ashburnham town, Fitchburg city, Gardner city, Leominster city, Lunenburg town, Templeton town, Westminster town, Winchendon town |
| Lawrence, MA--NH PMSA | 639 | 771 | 971 | 1214 | 1492 | Essex county towns of Andover town, Boxford town, Georgetown town, Groveland town, Haverhill city, Lawrence city, Merrimac town, Methuen city, North Andover town, West Newbury town |
| Lowell, MA--NH PMSA | 682 | 881 | 1065 | 1334 | 1491 | Middlesex county towns of Billerica town, |

MASSACHUSETTS continued

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Components of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| | | | | | | Chelmsford town, Dracut town, Dunstable town, Groton town, Lowell city, Pepperell town, Tewksbury town, Tyngsborough town, Westford town |
| New Bedford, MA PMSA | 592 | 723 | 823 | 1029 | 1155 | Bristol county towns of Acushnet town, Dartmouth town, Fairhaven town, Freetown town, New Bedford city<br>Plymouth county towns of Marion town, Mattapoisett town, Rochester town |
| Pittsfield, MA MSA | 353 | 501 | 617 | 775 | 959 | Berkshire county towns of Adams town, Cheshire town, Dalton town, Hinsdale town, Lanesborough town, Lee town, Lenox town, Pittsfield city, Richmond town, Stockbridge town |
| Providence--Fall River--Warwick, RI--MA MSA | 414 | 564 | 678 | 851 | 1050 | Bristol county towns of Attleboro city, Fall River city, North Attleborough town, Rehoboth town, Seekonk town, Somerset town, Swansea town, Westport town |
| Springfield, MA MSA | 439 | 544 | 686 | 857 | 1055 | Franklin county towns of Sunderland town<br>Hampden county towns of Agawam city, Chicopee city, East Longmeadow town, Hampden town, Holyoke city, Longmeadow town, Ludlow town, Monson town, Montgomery town, Palmer town, Russell town, Southwick town, Springfield city, Westfield city, West Springfield town, Wilbraham town<br>Hampshire county towns of Amherst town, Belchertown town, Easthampton city, Granby town, Hadley town, Hatfield town, Huntington town, Northampton city, Southampton town, South Hadley town, Ware town, Williamsburg town |
| Worcester, MA--CT PMSA | 549 | 663 | 827 | 1033 | 1158 | Hampden county towns of Holland town<br>Worcester county towns of Auburn town, Barre town, Boylston town, Brookfield town, Charlton town, Clinton town, Douglas town, Dudley town, East Brookfield town, Grafton town, Holden town, Leicester town, Millbury town, Northborough town, Northbridge town, North Brookfield town, Oakham town, Oxford town, Paxton town, Princeton town, Rutland town, Shrewsbury town, Southbridge town, Spencer town, Sterling town, Sturbridge town, Sutton town, Uxbridge town, Webster town, Westborough town, West Boylston town, West Brookfield town, Worcester city |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Towns within nonmetropolitan counties |
|---|---|---|---|---|---|---|
| Barnstable | 526 | 722 | 960 | 1202 | 1347 | Bourne town, Falmouth town, Provincetown town, Truro town, Wellfleet town |
| Berkshire | 419 | 509 | 600 | 823 | 987 | Alford town, Becket town, Clarksburg town, |

MASSACHUSETTS continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Towns within nonmetropolitan counties |
|---|---|---|---|---|---|---|
| | | | | | | Egremont town, Florida town, Great Barrington town, Hancock town, Monterey town, Mount Washington town, New Ashford town, New Marlborough town, North Adams city, Otis town, Peru town, Sandisfield town, Savoy town, Sheffield town, Tyringham town, Washington town, West Stockbridge town, Williamstown town, Windsor town |
| Dukes | 710 | 723 | 961 | 1203 | 1350 | Aquinnah town, Chilmark town, Edgartown town, Gosnold town, Oak Bluffs town, Tisbury town, West Tisbury town |
| Franklin | 451 | 560 | 716 | 896 | 1083 | Ashfield town, Bernardston town, Buckland town, Charlemont town, Colrain town, Conway town, Deerfield town, Erving town, Gill town, Greenfield town, Hawley town, Heath town, Leverett town, Leyden town, Monroe town, Montague town, New Salem town, Northfield town, Orange town, Rowe town, Shelburne town, Shutesbury town, Warwick town, Wendell town, Whately town |
| Hampden | 455 | 622 | 829 | 1102 | 1360 | Blandford town, Brimfield town, Chester town, Granville town, Tolland town, Wales town |
| Hampshire | 639 | 646 | 862 | 1082 | 1210 | Chesterfield town, Cummington town, Goshen town, Middlefield town, Pelham town, Plainfield town, Westhampton town, Worthington town |
| Nantucket | 807 | 1082 | 1443 | 1803 | 2019 | Nantucket town |
| Worcester | 508 | 530 | 706 | 884 | 989 | Athol town, Hardwick town, Hubbardston town, New Braintree town, Petersham town, Phillipston town, Royalston town, Warren town |

MICHIGAN

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Ann Arbor, MI PMSA | 546 | 659 | 815 | 1069 | 1199 | Lenawee, Livingston, Washtenaw |
| Benton Harbor, MI MSA | 407 | 413 | 542 | 675 | 758 | Berrien |
| *Detroit, MI PMSA | 488 | 663 | 801 | 1002 | 1122 | Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne |
| Flint, MI PMSA | 426 | 483 | 607 | 774 | 849 | Genesee |
| *Grand Rapids--Muskegon--Holland, MI MSA | 445 | 520 | 636 | 796 | 892 | Allegan, Kent, Muskegon, Ottawa |
| Jackson, MI MSA | 320 | 431 | 547 | 681 | 764 | Jackson |
| Kalamazoo--Battle Creek, MI MSA | 379 | 458 | 576 | 722 | 806 | Calhoun, Kalamazoo, Van Buren |
| Lansing--East Lansing, MI MSA | 427 | 502 | 649 | 849 | 979 | Clinton, Eaton, Ingham |
| Saginaw--Bay City--Midland, MI MSA | 373 | 411 | 547 | 681 | 764 | Bay, Midland, Saginaw |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Alcona | 308 | 353 | 446 | 580 | 661 | Alger | 308 | 353 | 446 | 580 | 661 |
| Alpena | 308 | 353 | 446 | 580 | 665 | Antrim | 308 | 370 | 446 | 580 | 661 |
| Arenac | 308 | 353 | 446 | 580 | 661 | Baraga | 308 | 353 | 446 | 580 | 661 |

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING

MICHIGAN continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Barry | 308 | 380 | 506 | 636 | 712 |
| Branch | 358 | 366 | 449 | 615 | 661 |
| Charlevoix | 375 | 379 | 481 | 654 | 677 |
| Chippewa | 308 | 353 | 446 | 580 | 661 |
| Crawford | 337 | 353 | 456 | 623 | 661 |
| Dickinson | 308 | 379 | 468 | 585 | 661 |
| Gladwin | 308 | 353 | 446 | 580 | 661 |
| Grand Traverse | 408 | 438 | 584 | 730 | 830 |
| Hillsdale | 308 | 353 | 446 | 580 | 661 |
| Huron | 308 | 353 | 446 | 580 | 661 |
| Iosco | 308 | 353 | 446 | 580 | 700 |
| Isabella | 345 | 368 | 493 | 665 | 808 |
| Keweenaw | 308 | 353 | 446 | 580 | 661 |
| Leelanau | 419 | 452 | 530 | 691 | 868 |
| Mackinac | 308 | 353 | 446 | 580 | 661 |
| Marquette | 308 | 353 | 446 | 580 | 661 |
| Mecosta | 308 | 353 | 446 | 604 | 717 |
| Missaukee | 325 | 353 | 446 | 580 | 661 |
| Montmorency | 308 | 353 | 446 | 580 | 661 |
| Oceana | 329 | 353 | 446 | 530 | 661 |
| Ontonagon | 308 | 353 | 446 | 580 | 651 |
| Oscoda | 308 | 353 | 446 | 580 | 651 |
| Presque Isle | 308 | 353 | 446 | 580 | 661 |
| St. Joseph | 308 | 360 | 446 | 582 | 661 |
| Schoolcraft | 308 | 353 | 446 | 530 | 661 |
| Tuscola | 335 | 366 | 488 | 611 | 682 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Benzie | 322 | 353 | 446 | 599 | 661 |
| Cass | 308 | 353 | 448 | 613 | 661 |
| Cheboygan | 325 | 353 | 446 | 580 | 678 |
| Clare | 320 | 353 | 446 | 580 | 661 |
| Delta | 308 | 353 | 446 | 580 | 661 |
| Emmet | 346 | 412 | 488 | 641 | 682 |
| Gogebic | 308 | 353 | 446 | 580 | 661 |
| Gratiot | 322 | 353 | 446 | 580 | 661 |
| Houghton | 308 | 353 | 446 | 580 | 661 |
| Ionia | 378 | 384 | 480 | 597 | 673 |
| Iron | 308 | 353 | 446 | 580 | 661 |
| Kalkaska | 308 | 353 | 447 | 582 | 735 |
| Lake | 312 | 353 | 446 | 580 | 661 |
| Luce | 308 | 353 | 446 | 580 | 661 |
| Manistee | 308 | 353 | 446 | 580 | 661 |
| Mason | 308 | 353 | 446 | 580 | 661 |
| Menominee | 308 | 353 | 446 | 580 | 661 |
| Montcalm | 369 | 416 | 528 | 685 | 781 |
| Newaygo | 356 | 380 | 447 | 580 | 661 |
| Ogemaw | 321 | 354 | 446 | 580 | 661 |
| Osceola | 308 | 353 | 446 | 580 | 661 |
| Otsego | 316 | 384 | 483 | 672 | 777 |
| Roscommon | 341 | 353 | 446 | 580 | 661 |
| Sanilac | 308 | 363 | 446 | 582 | 661 |
| Shiawassee | 308 | 388 | 466 | 649 | 695 |
| Wexford | 308 | 357 | 462 | 606 | 717 |

MINNESOTA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Duluth--Superior, MN--WI MSA | 303 | 389 | 499 | 666 | 776 | St. Louis |
| Fargo--Moorhead, ND--MN MSA | 372 | 517 | 619 | 859 | 919 | Clay |
| Grand Forks, ND--MN MSA | 385 | 458 | 603 | 832 | 929 | Polk |
| La Crosse, WI--MN MSA | 306 | 394 | 501 | 670 | 812 | Houston |
| *Minneapolis--St. Paul, MN--WI MSA | 578 | 743 | 951 | 1286 | 1457 | Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright |
| Rochester, MN MSA | 389 | 546 | 714 | 986 | 1108 | Olmsted |
| St. Cloud, MN MSA | 349 | 453 | 535 | 674 | 861 | Benton, Stearns |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Aitkin | 287 | 372 | 496 | 622 | 693 |
| Beltrami | 383 | 363 | 485 | 636 | 679 |
| Blue Earth | 387 | 466 | 581 | 745 | 944 |
| Carlton | 283 | 346 | 438 | 548 | 627 |
| Chippewa | 293 | 346 | 438 | 548 | 627 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Becker | 283 | 406 | 457 | 572 | 641 |
| Big Stone | 283 | 346 | 438 | 548 | 627 |
| Brown | 283 | 366 | 438 | 548 | 627 |
| Cass | 283 | 346 | 438 | 548 | 627 |
| Clearwater | 283 | 346 | 438 | 548 | 627 |

MINNESOTA continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Cook | 335 | 346 | 450 | 616 | 641 |
| Crow Wing | 283 | 346 | 460 | 576 | 723 |
| Douglas | 283 | 346 | 438 | 548 | 627 |
| Fillmore | 283 | 346 | 438 | 548 | 627 |
| Goodhue | 327 | 421 | 560 | 716 | 785 |
| Hubbard | 289 | 346 | 438 | 548 | 627 |
| Jackson | 283 | 346 | 438 | 548 | 627 |
| Kandiyohi | 350 | 441 | 537 | 673 | 810 |
| Koochiching | 343 | 350 | 464 | 580 | 760 |
| Lake | 283 | 346 | 438 | 548 | 627 |
| Le Sueur | 283 | 346 | 438 | 548 | 676 |
| Lyon | 283 | 346 | 438 | 548 | 649 |
| Mahnomen | 283 | 346 | 438 | 548 | 627 |
| Martin | 283 | 346 | 438 | 548 | 627 |
| Mille Lacs | 370 | 425 | 541 | 753 | 887 |
| Mower | 283 | 346 | 438 | 548 | 627 |
| Nicollet | 356 | 379 | 505 | 670 | 710 |
| Norman | 283 | 346 | 438 | 548 | 627 |
| Pennington | 283 | 346 | 438 | 585 | 627 |
| Pipestone | 283 | 346 | 438 | 548 | 627 |
| Red Lake | 283 | 358 | 438 | 548 | 627 |
| Renville | 283 | 346 | 438 | 548 | 627 |
| Rock | 283 | 346 | 438 | 548 | 627 |
| Sibley | 283 | 346 | 438 | 548 | 627 |
| Stevens | 322 | 407 | 460 | 576 | 645 |
| Todd | 283 | 346 | 438 | 548 | 627 |
| Wabasha | 306 | 373 | 472 | 592 | 677 |
| Waseca | 369 | 405 | 514 | 645 | 737 |
| Wilkin | 283 | 346 | 438 | 548 | 627 |
| Yellow Medicine | 283 | 346 | 438 | 548 | 627 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Cottonwood | 283 | 346 | 438 | 548 | 627 |
| Dodge | 283 | 346 | 438 | 548 | 627 |
| Faribault | 283 | 346 | 438 | 548 | 627 |
| Freeborn | 283 | 346 | 446 | 587 | 629 |
| Grant | 283 | 346 | 438 | 548 | 627 |
| Itasca | 363 | 367 | 479 | 597 | 670 |
| Kanabec | 350 | 442 | 572 | 714 | 801 |
| Kittson | 283 | 346 | 438 | 548 | 627 |
| Lac qui Parle | 283 | 346 | 438 | 548 | 627 |
| Lake of the Woods | 283 | 346 | 438 | 548 | 627 |
| Lincoln | 283 | 346 | 438 | 548 | 627 |
| McLeod | 336 | 434 | 578 | 718 | 806 |
| Marshall | 283 | 346 | 438 | 548 | 627 |
| Meeker | 337 | 397 | 503 | 632 | 722 |
| Morrison | 314 | 346 | 438 | 548 | 627 |
| Murray | 283 | 346 | 438 | 548 | 627 |
| Nobles | 283 | 346 | 438 | 548 | 627 |
| Otter Tail | 283 | 346 | 438 | 548 | 627 |
| Pine | 359 | 396 | 503 | 633 | 720 |
| Pope | 283 | 346 | 438 | 548 | 627 |
| Redwood | 283 | 346 | 438 | 548 | 627 |
| Rice | 335 | 459 | 613 | 763 | 855 |
| Roseau | 343 | 350 | 458 | 590 | 643 |
| Steele | 335 | 390 | 519 | 648 | 726 |
| Swift | 283 | 346 | 438 | 548 | 627 |
| Traverse | 283 | 346 | 438 | 548 | 627 |
| Wadena | 283 | 346 | 438 | 548 | 627 |
| Watonwan | 283 | 346 | 438 | 548 | 627 |
| Winona | 330 | 431 | 545 | 681 | 763 |

MISSISSIPPI

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Biloxi--Gulfport--Pascagoula, MS MSA | 424 | 498 | 573 | 798 | 941 | Hancock, Harrison, Jackson |
| Hattiesburg, MS MSA | 320 | 391 | 480 | 644 | 768 | Forrest, Lamar |
| Jackson, MS MSA | 422 | 482 | 589 | 784 | 827 | Hinds, Madison, Rankin |
| Memphis, TN--AR--MS MSA | 458 | 534 | 626 | 870 | 913 | DeSoto |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Adams | 264 | 314 | 391 | 500 | 636 |
| Amite | 264 | 314 | 389 | 500 | 562 |
| Benton | 264 | 314 | 389 | 500 | 562 |
| Calhoun | 264 | 314 | 389 | 500 | 562 |
| Chickasaw | 264 | 314 | 389 | 500 | 562 |
| Claiborne | 264 | 314 | 389 | 500 | 562 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Alcorn | 264 | 314 | 389 | 500 | 562 |
| Attala | 264 | 314 | 389 | 500 | 562 |
| Bolivar | 301 | 314 | 404 | 505 | 576 |
| Carroll | 264 | 314 | 389 | 500 | 562 |
| Choctaw | 264 | 314 | 389 | 500 | 562 |
| Clarke | 264 | 314 | 389 | 500 | 562 |

MISSISSIPPI continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Clay | 264 | 314 | 389 | 500 | 567 |
| Copiah | 264 | 314 | 389 | 500 | 562 |
| Franklin | 267 | 314 | 389 | 500 | 562 |
| Greene | 264 | 314 | 389 | 500 | 562 |
| Holmes | 264 | 314 | 389 | 500 | 562 |
| Issaquena | 278 | 382 | 507 | 634 | 711 |
| Jasper | 264 | 314 | 389 | 500 | 562 |
| Jefferson Davis | 264 | 314 | 389 | 500 | 562 |
| Kemper | 266 | 314 | 389 | 500 | 562 |
| Lauderdale | 264 | 341 | 429 | 557 | 602 |
| Leake | 264 | 314 | 389 | 500 | 562 |
| Leflore | 264 | 314 | 389 | 501 | 601 |
| Lowndes | 326 | 351 | 418 | 522 | 590 |
| Marshall | 264 | 314 | 389 | 500 | 570 |
| Montgomery | 264 | 314 | 389 | 500 | 562 |
| Newton | 264 | 314 | 389 | 500 | 562 |
| Oktibbeha | 324 | 338 | 412 | 573 | 677 |
| Pearl River | 278 | 314 | 389 | 502 | 562 |
| Pike | 268 | 314 | 389 | 500 | 562 |
| Prentiss | 267 | 314 | 389 | 500 | 562 |
| Scott | 264 | 314 | 389 | 500 | 562 |
| Simpson | 267 | 314 | 389 | 500 | 562 |
| Stone | 264 | 314 | 389 | 500 | 562 |
| Tallahatchie | 264 | 314 | 389 | 500 | 562 |
| Tippah | 264 | 314 | 389 | 500 | 562 |
| Tunica | 264 | 314 | 389 | 500 | 562 |
| Walthall | 264 | 314 | 389 | 500 | 562 |
| Washington | 286 | 340 | 454 | 587 | 647 |
| Webster | 266 | 314 | 389 | 500 | 562 |
| Winston | 264 | 314 | 389 | 500 | 562 |
| Yazoo | 268 | 314 | 389 | 500 | 562 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Coahoma | 308 | 314 | 414 | 519 | 580 |
| Covington | 264 | 314 | 389 | 500 | 562 |
| George | 264 | 314 | 389 | 500 | 562 |
| Grenada | 264 | 315 | 389 | 531 | 562 |
| Humphreys | 264 | 314 | 389 | 500 | 562 |
| Itawamba | 264 | 314 | 389 | 500 | 562 |
| Jefferson | 264 | 314 | 389 | 500 | 562 |
| Jones | 264 | 314 | 389 | 500 | 562 |
| Lafayette | 267 | 367 | 489 | 613 | 684 |
| Lawrence | 264 | 314 | 389 | 500 | 562 |
| Lee | 331 | 355 | 429 | 537 | 602 |
| Lincoln | 264 | 314 | 389 | 500 | 562 |
| Marion | 264 | 314 | 389 | 500 | 562 |
| Monroe | 264 | 314 | 389 | 500 | 562 |
| Neshoba | 264 | 314 | 389 | 500 | 562 |
| Noxubee | 268 | 314 | 389 | 500 | 562 |
| Panola | 274 | 314 | 389 | 500 | 562 |
| Perry | 264 | 314 | 389 | 500 | 562 |
| Pontotoc | 264 | 314 | 389 | 500 | 562 |
| Quitman | 264 | 314 | 389 | 500 | 562 |
| Sharkey | 268 | 314 | 389 | 500 | 562 |
| Smith | 264 | 314 | 389 | 500 | 562 |
| Sunflower | 292 | 318 | 389 | 500 | 597 |
| Tate | 264 | 357 | 412 | 517 | 679 |
| Tishomingo | 264 | 314 | 389 | 500 | 562 |
| Union | 264 | 314 | 389 | 500 | 562 |
| Warren | 264 | 345 | 431 | 596 | 714 |
| Wayne | 264 | 314 | 389 | 500 | 562 |
| Wilkinson | 264 | 314 | 389 | 500 | 562 |
| Yalobusha | 266 | 314 | 389 | 500 | 562 |

MISSOURI

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Columbia, MO MSA | 280 | 395 | 514 | 715 | 843 | Boone |
| Joplin, MO MSA | 273 | 317 | 421 | 554 | 595 | Jasper, Newton |
| *Kansas City, MO--KS MSA | 471 | 592 | 713 | 987 | 1094 | Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray |
| St. Joseph, MO MSA | 263 | 319 | 426 | 538 | 597 | Andrew, Buchanan |
| *St. Louis, MO--IL MSA | 439 | 536 | 695 | 905 | 999 | Crawford, Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city |
| Springfield, MO MSA | 287 | 364 | 471 | 653 | 677 | Christian, Greene, Webster |

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING

MISSOURI continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Adair | 254 | 318 | 421 | 531 | 637 |
| Audrain | 272 | 292 | 377 | 509 | 589 |
| Barton | 254 | 292 | 377 | 489 | 562 |
| Benton | 286 | 292 | 390 | 489 | 562 |
| Butler | 254 | 292 | 377 | 489 | 562 |
| Callaway | 299 | 305 | 405 | 515 | 667 |
| Cape Girardeau | 262 | 322 | 428 | 570 | 699 |
| Carter | 254 | 292 | 377 | 489 | 562 |
| Chariton | 254 | 292 | 377 | 489 | 562 |
| Cole | 254 | 335 | 447 | 597 | 626 |
| Crawford | 279 | 335 | 378 | 498 | 562 |
| Dallas | 254 | 292 | 377 | 489 | 562 |
| DeKalb | 263 | 292 | 377 | 495 | 562 |
| Douglas | 254 | 292 | 377 | 489 | 562 |
| Gasconade | 254 | 292 | 377 | 489 | 562 |
| Grundy | 254 | 292 | 377 | 489 | 562 |
| Henry | 289 | 294 | 394 | 493 | 647 |
| Holt | 254 | 292 | 377 | 489 | 562 |
| Howell | 254 | 292 | 377 | 489 | 562 |
| Johnson | 306 | 341 | 445 | 590 | 697 |
| Laclede | 254 | 292 | 377 | 493 | 562 |
| Lewis | 254 | 292 | 377 | 489 | 562 |
| Livingston | 254 | 292 | 378 | 489 | 562 |
| Macon | 274 | 315 | 404 | 526 | 603 |
| Maries | 254 | 292 | 377 | 489 | 562 |
| Mercer | 254 | 292 | 377 | 489 | 562 |
| Mississippi | 254 | 292 | 377 | 489 | 562 |
| Monroe | 254 | 292 | 377 | 489 | 562 |
| Morgan | 254 | 292 | 377 | 489 | 562 |
| Nodaway | 269 | 325 | 400 | 508 | 612 |
| Osage | 254 | 292 | 377 | 489 | 562 |
| Pemiscot | 254 | 292 | 377 | 489 | 562 |
| Pettis | 273 | 320 | 428 | 538 | 644 |
| Pike | 254 | 292 | 377 | 489 | 591 |
| Pulaski | 254 | 357 | 400 | 530 | 591 |
| Ralls | 254 | 292 | 377 | 489 | 562 |
| Reynolds | 254 | 292 | 377 | 489 | 562 |
| St. Clair | 254 | 292 | 377 | 489 | 562 |
| St. Francois | 279 | 351 | 444 | 557 | 730 |
| Schuyler | 254 | 292 | 377 | 489 | 562 |
| Scott | 306 | 308 | 412 | 556 | 640 |
| Shelby | 254 | 292 | 377 | 489 | 562 |
| Stone | 294 | 314 | 391 | 498 | 562 |
| Taney | 287 | 318 | 416 | 562 | 660 |
| Vernon | 254 | 292 | 377 | 501 | 562 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Atchison | 254 | 292 | 377 | 489 | 562 |
| Barry | 254 | 303 | 377 | 489 | 562 |
| Bates | 254 | 292 | 377 | 489 | 572 |
| Bollinger | 254 | 292 | 377 | 489 | 562 |
| Caldwell | 254 | 294 | 397 | 496 | 562 |
| Camden | 334 | 338 | 451 | 627 | 737 |
| Carroll | 254 | 292 | 377 | 489 | 562 |
| Cedar | 254 | 292 | 377 | 489 | 562 |
| Clark | 254 | 292 | 377 | 489 | 562 |
| Cooper | 254 | 292 | 377 | 489 | 562 |
| Dade | 254 | 292 | 377 | 489 | 562 |
| Daviess | 254 | 292 | 377 | 489 | 562 |
| Dent | 254 | 292 | 377 | 489 | 562 |
| Dunklin | 254 | 292 | 377 | 489 | 562 |
| Gentry | 254 | 292 | 377 | 489 | 562 |
| Harrison | 254 | 292 | 377 | 489 | 562 |
| Hickory | 254 | 292 | 377 | 489 | 562 |
| Howard | 254 | 292 | 377 | 489 | 564 |
| Iron | 254 | 292 | 377 | 489 | 562 |
| Knox | 254 | 292 | 377 | 489 | 562 |
| Lawrence | 270 | 299 | 377 | 489 | 562 |
| Linn | 254 | 292 | 377 | 489 | 562 |
| McDonald | 254 | 292 | 377 | 489 | 562 |
| Madison | 254 | 292 | 377 | 489 | 562 |
| Marion | 254 | 292 | 377 | 489 | 562 |
| Miller | 279 | 335 | 377 | 493 | 582 |
| Moniteau | 254 | 292 | 377 | 489 | 562 |
| Montgomery | 270 | 310 | 398 | 518 | 594 |
| New Madrid | 254 | 292 | 377 | 489 | 562 |
| Oregon | 254 | 292 | 377 | 489 | 562 |
| Ozark | 254 | 292 | 377 | 489 | 562 |
| Perry | 308 | 313 | 418 | 557 | 586 |
| Phelps | 263 | 316 | 404 | 549 | 596 |
| Polk | 254 | 293 | 377 | 489 | 589 |
| Putnam | 254 | 292 | 377 | 489 | 562 |
| Randolph | 254 | 292 | 377 | 489 | 562 |
| Ripley | 254 | 292 | 377 | 489 | 562 |
| Ste. Genevieve | 254 | 303 | 390 | 498 | 632 |
| Saline | 254 | 292 | 388 | 489 | 562 |
| Scotland | 254 | 292 | 377 | 489 | 562 |
| Shannon | 254 | 292 | 377 | 489 | 562 |
| Stoddard | 254 | 292 | 377 | 489 | 562 |
| Sullivan | 254 | 292 | 377 | 489 | 562 |
| Texas | 254 | 292 | 377 | 489 | 562 |
| Washington | 296 | 360 | 403 | 504 | 565 |

MISSOURI continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Wayne | 254 | 292 | 377 | 489 | 562 |
| Wright | 254 | 292 | 377 | 489 | 562 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Worth | 254 | 292 | 377 | 489 | 562 |

MONTANA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Billings, MT MSA | 363 | 422 | 563 | 757 | 918 | Yellowstone |
| Great Falls, MT MSA | 363 | 420 | 553 | 719 | 856 | Cascade |
| Missoula, MT MSA | 363 | 426 | 566 | 730 | 929 | Missoula |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Beaverhead | 325 | 374 | 495 | 641 | 749 |
| Blaine | 325 | 374 | 495 | 641 | 749 |
| Carbon | 369 | 432 | 561 | 731 | 853 |
| Chouteau | 325 | 374 | 495 | 641 | 749 |
| Daniels | 325 | 396 | 495 | 641 | 749 |
| Deer Lodge | 325 | 374 | 495 | 641 | 749 |
| Fergus | 325 | 374 | 495 | 641 | 749 |
| Gallatin | 398 | 466 | 625 | 802 | 1025 |
| Glacier | 325 | 374 | 495 | 641 | 749 |
| Granite | 325 | 374 | 495 | 641 | 749 |
| Jefferson | 342 | 374 | 495 | 641 | 749 |
| Lake | 352 | 374 | 495 | 641 | 749 |
| Liberty | 325 | 374 | 495 | 641 | 749 |
| McCone | 325 | 394 | 495 | 641 | 749 |
| Meagher | 325 | 396 | 495 | 641 | 749 |
| Musselshell | 330 | 374 | 495 | 641 | 749 |
| Petroleum | 325 | 374 | 495 | 641 | 749 |
| Pondera | 325 | 395 | 495 | 641 | 749 |
| Powell | 330 | 374 | 495 | 641 | 749 |
| Ravalli | 325 | 374 | 495 | 641 | 749 |
| Roosevelt | 339 | 374 | 495 | 641 | 749 |
| Sanders | 325 | 374 | 495 | 641 | 749 |
| Silver Bow | 325 | 374 | 495 | 641 | 749 |
| Sweet Grass | 349 | 374 | 495 | 641 | 749 |
| Toole | 332 | 374 | 495 | 641 | 749 |
| Valley | 325 | 374 | 495 | 641 | 749 |
| Wibaux | 325 | 396 | 495 | 641 | 749 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Big Horn | 325 | 374 | 495 | 641 | 749 |
| Broadwater | 325 | 374 | 495 | 641 | 799 |
| Carter | 325 | 396 | 495 | 641 | 749 |
| Custer | 325 | 374 | 495 | 641 | 749 |
| Dawson | 325 | 374 | 495 | 641 | 749 |
| Fallon | 325 | 374 | 495 | 641 | 749 |
| Flathead | 325 | 375 | 502 | 701 | 823 |
| Garfield | 325 | 374 | 495 | 641 | 749 |
| Golden Valley | 325 | 395 | 495 | 641 | 749 |
| Hill | 335 | 374 | 495 | 641 | 749 |
| Judith Basin | 325 | 396 | 495 | 641 | 749 |
| Lewis and Clark | 361 | 422 | 560 | 779 | 923 |
| Lincoln | 352 | 374 | 495 | 641 | 749 |
| Madison | 332 | 374 | 495 | 641 | 749 |
| Mineral | 325 | 374 | 495 | 641 | 766 |
| Park | 325 | 374 | 495 | 641 | 758 |
| Phillips | 325 | 374 | 495 | 641 | 749 |
| Powder River | 325 | 379 | 495 | 641 | 749 |
| Prairie | 325 | 374 | 495 | 641 | 749 |
| Richland | 325 | 405 | 495 | 641 | 749 |
| Rosebud | 325 | 374 | 495 | 641 | 749 |
| Sheridan | 334 | 374 | 495 | 641 | 749 |
| Stillwater | 332 | 374 | 495 | 641 | 749 |
| Teton | 325 | 374 | 495 | 641 | 749 |
| Treasure | 325 | 374 | 495 | 641 | 749 |
| Wheatland | 325 | 374 | 495 | 641 | 749 |

NEBRASKA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Lincoln, NE MSA | 337 | 431 | 569 | 755 | 882 | Lancaster |
| Omaha, NE--IA MSA | 362 | 496 | 626 | 821 | 922 | Cass, Douglas, Sarpy, Washington |
| Sioux City, IA--NE MSA | 368 | 443 | 552 | 688 | 786 | Dakota |

NEBRASKA continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Adams | 264 | 354 | 467 | 586 | 701 |
| Arthur | 253 | 326 | 416 | 532 | 605 |
| Blaine | 253 | 326 | 416 | 532 | 605 |
| Box Butte | 275 | 326 | 416 | 533 | 629 |
| Brown | 253 | 326 | 416 | 532 | 617 |
| Burt | 253 | 326 | 416 | 532 | 605 |
| Cedar | 253 | 326 | 416 | 532 | 605 |
| Cherry | 253 | 343 | 416 | 535 | 630 |
| Clay | 253 | 326 | 416 | 532 | 605 |
| Cuming | 253 | 344 | 416 | 532 | 605 |
| Dawes | 271 | 326 | 416 | 536 | 633 |
| Deuel | 253 | 326 | 416 | 532 | 605 |
| Dodge | 253 | 326 | 429 | 565 | 605 |
| Fillmore | 253 | 326 | 416 | 532 | 605 |
| Frontier | 284 | 326 | 416 | 532 | 605 |
| Gage | 253 | 327 | 424 | 539 | 605 |
| Garfield | 253 | 326 | 416 | 532 | 605 |
| Grant | 253 | 326 | 416 | 532 | 605 |
| Hall | 304 | 400 | 533 | 701 | 786 |
| Harlan | 253 | 326 | 416 | 533 | 605 |
| Hitchcock | 253 | 326 | 416 | 532 | 605 |
| Hooker | 253 | 341 | 416 | 533 | 605 |
| Jefferson | 253 | 326 | 416 | 532 | 605 |
| Kearney | 253 | 326 | 416 | 532 | 633 |
| Keya Paha | 253 | 326 | 416 | 532 | 605 |
| Knox | 253 | 338 | 416 | 532 | 605 |
| Logan | 253 | 326 | 416 | 532 | 634 |
| McPherson | 253 | 326 | 416 | 533 | 605 |
| Merrick | 253 | 326 | 416 | 532 | 605 |
| Nance | 253 | 326 | 416 | 532 | 605 |
| Nuckolls | 253 | 326 | 416 | 532 | 605 |
| Pawnee | 253 | 326 | 416 | 536 | 605 |
| Phelps | 283 | 326 | 416 | 533 | 633 |
| Platte | 253 | 326 | 416 | 580 | 605 |
| Red Willow | 253 | 326 | 416 | 532 | 615 |
| Rock | 253 | 333 | 416 | 532 | 605 |
| Saunders | 253 | 326 | 416 | 532 | 605 |
| Seward | 314 | 326 | 425 | 532 | 605 |
| Sherman | 253 | 328 | 416 | 532 | 634 |
| Stanton | 253 | 326 | 416 | 532 | 605 |
| Thomas | 253 | 326 | 416 | 532 | 605 |
| Valley | 253 | 326 | 416 | 532 | 605 |
| Webster | 253 | 326 | 416 | 532 | 605 |
| York | 253 | 326 | 421 | 532 | 605 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Antelope | 253 | 343 | 416 | 535 | 605 |
| Banner | 253 | 326 | 416 | 533 | 605 |
| Boone | 253 | 326 | 416 | 532 | 630 |
| Boyd | 253 | 340 | 416 | 532 | 605 |
| Buffalo | 273 | 395 | 495 | 617 | 747 |
| Butler | 253 | 336 | 416 | 532 | 605 |
| Chase | 253 | 344 | 416 | 532 | 635 |
| Cheyenne | 283 | 326 | 416 | 532 | 605 |
| Colfax | 276 | 339 | 416 | 532 | 605 |
| Custer | 283 | 328 | 416 | 532 | 629 |
| Dawson | 278 | 339 | 416 | 536 | 605 |
| Dixon | 282 | 326 | 416 | 532 | 605 |
| Dundy | 253 | 326 | 416 | 532 | 605 |
| Franklin | 253 | 326 | 416 | 537 | 605 |
| Furnas | 253 | 326 | 416 | 532 | 630 |
| Garden | 253 | 339 | 416 | 535 | 633 |
| Gosper | 253 | 326 | 416 | 532 | 612 |
| Greeley | 253 | 326 | 416 | 532 | 615 |
| Hamilton | 253 | 326 | 416 | 536 | 605 |
| Hayes | 253 | 341 | 416 | 532 | 630 |
| Holt | 253 | 326 | 416 | 538 | 605 |
| Howard | 253 | 326 | 416 | 532 | 605 |
| Johnson | 253 | 330 | 416 | 532 | 605 |
| Keith | 253 | 326 | 416 | 532 | 605 |
| Kimball | 253 | 326 | 416 | 533 | 633 |
| Lincoln | 259 | 339 | 416 | 532 | 605 |
| Loup | 253 | 326 | 416 | 532 | 632 |
| Madison | 259 | 341 | 451 | 584 | 712 |
| Morrill | 253 | 328 | 416 | 532 | 630 |
| Nemaha | 253 | 326 | 416 | 532 | 605 |
| Otoe | 253 | 326 | 416 | 532 | 634 |
| Perkins | 253 | 326 | 416 | 532 | 605 |
| Pierce | 253 | 326 | 416 | 532 | 605 |
| Polk | 253 | 326 | 416 | 532 | 605 |
| Richardson | 253 | 326 | 416 | 532 | 605 |
| Saline | 253 | 340 | 416 | 532 | 605 |
| Scotts Bluff | 257 | 338 | 429 | 532 | 630 |
| Sheridan | 253 | 326 | 416 | 532 | 606 |
| Sioux | 253 | 326 | 416 | 532 | 633 |
| Thayer | 253 | 343 | 416 | 532 | 605 |
| Thurston | 253 | 326 | 416 | 532 | 605 |
| Wayne | 289 | 326 | 416 | 532 | 630 |
| Wheeler | 253 | 326 | 416 | 533 | 605 |

## NEVADA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| *Las Vegas, NV--AZ MSA | 606 | 719 | 856 | 1191 | 1407 | Clark, Nye |
| Reno, NV MSA | 556 | 644 | 828 | 1153 | 1364 | Washoe |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Churchill | 489 | 498 | 664 | 915 | 1086 | Douglas | 439 | 640 | 804 | 1116 | 1141 |
| Elko | 444 | 509 | 677 | 894 | 1113 | Esmeralda | 472 | 589 | 663 | 826 | 926 |
| Eureka | 361 | 589 | 663 | 825 | 923 | Humboldt | 530 | 557 | 671 | 881 | 941 |
| Lander | 365 | 564 | 663 | 828 | 1085 | Lincoln | 362 | 544 | 663 | 830 | 928 |
| Lyon | 431 | 516 | 663 | 922 | 1086 | Mineral | 367 | 501 | 666 | 874 | 1093 |
| Pershing | 502 | 509 | 677 | 847 | 969 | Storey | 509 | 515 | 677 | 943 | 1113 |
| White Pine | 362 | 499 | 663 | 894 | 940 | Carson | 380 | 520 | 696 | 967 | 1141 |

## NEW HAMPSHIRE

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Components of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Boston, MA--NH PMSA | 1007 | 1135 | 1419 | 1775 | 2084 | Rockingham county towns of Seabrook town, South Hampton town |
| Lawrence, MA--NH PMSA | 639 | 771 | 971 | 1214 | 1492 | Rockingham county towns of Atkinson town, Chester town, Danville town, Derry town, Fremont town, Hampstead town, Kingston town, Newton town, Plaistow town, Raymond town, Salem town, Sandown town, Windham town |
| Lowell, MA--NH PMSA | 682 | 881 | 1065 | 1334 | 1491 | Hillsborough county towns of Pelham town |
| Manchester, NH PMSA | 499 | 712 | 888 | 1110 | 1244 | Hillsborough county towns of Bedford town, Goffstown town, Manchester city, Weare town<br>Merrimack county towns of Allenstown town, Hooksett town<br>Rockingham county towns of Auburn town, Candia town, Londonderry town |
| Nashua, NH PMSA | 588 | 820 | 1016 | 1382 | 1643 | Hillsborough county towns of Amherst town, Brookline town, Greenville town, Hollis town, Hudson town, Litchfield town, Mason town, Merrimack town, Milford town, Mont Vernon town, Nashua city, New Ipswich town, Wilton town |
| Portsmouth--Rochester, NH--ME PMSA | 604 | 723 | 930 | 1193 | 1463 | Rockingham county towns of Brentwood town, East Kingston town, Epping town, Exeter town, Greenland town, Hampton town, Hampton Falls town, Kensington town, New Castle town, Newfields town, Newington town, Newmarket town, North Hampton town, Portsmouth city, Rye town, Stratham town<br>Strafford county towns of Barrington town, Dover city, Durham town, Farmington town, Lee town, Madbury town, Milton town, Rochester city, Rollinsford town, Somersworth city |

NEW HAMPSHIRE continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Towns within nonmetropolitan counties |
|---|---|---|---|---|---|---|
| Belknap | 474 | 548 | 720 | 974 | 1182 | Alton town, Barnstead town, Belmont town, Center Harbor town, Gilford town, Gilmanton town, Laconia city, Meredith town, New Hampton town, Sanbornton town, Tilton town |
| Carroll | 395 | 543 | 724 | 908 | 1131 | Albany town, Bartlett town, Brookfield town, Chatham town, Conway town, Eaton town, Effingham town, Freedom town, Hale's location, Hart's Location town, Jackson town, Madison town, Moultonborough town, Ossipee town, Sandwich town, Tamworth town, Tuftonboro town, Wakefield town, Wolfeboro town |
| Cheshire | 492 | 583 | 746 | 973 | 1152 | Alstead town, Chesterfield town, Dublin town, Fitzwilliam town, Gilsum town, Harrisville town, Hinsdale town, Jaffrey town, Keene city, Marlborough town, Marlow town, Nelson town, Richmond town, Rindge town, Roxbury town, Stoddard town, Sullivan town, Surry town, Swanzey town, Troy town, Walpole town, Westmoreland town, Winchester town |
| Coos | 340 | 415 | 531 | 694 | 820 | Atkinson and Gilmanton Academy grant, Beans grant, Beans purchase, Berlin city, Cambridge township, Carroll town, Chandlers purchase, Clarksville town, Colebrook town, Columbia town, Crawfords purchase, Cutts grant, Dalton town, Dixs grant, Dixville township, Dummer town, Errol town, Ervings location, Gorham town, Greens grant, Hadleys purchase, Jefferson town, Kilkenny township, Lancaster town, Low and Burbanks grant, Martins location, Milan town, Millsfield township, Northumberland town, Odell township, Pinkhams grant, Pittsburg town, Randolph town, Sargents purchase, Second College grant, Shelburne town, Stark town, Stewartstown town, Stratford town, Success township, Thompson and Meserves purchase, Wentworth location, Whitefield town |
| Grafton | 437 | 527 | 702 | 908 | 1146 | Alexandria town, Ashland town, Bath town, Benton town, Bethlehem town, Bridgewater town, Bristol town, Campton town, Canaan town, Dorchester town, Easton town, Ellsworth town, Enfield town, Franconia town, Grafton town, Groton town, Hanover town, Haverhill town, Hebron town, Holderness town, Landaff town, Lebanon city, Lincoln town, Lisbon town, Littleton town, Livermore town, Lyman town, Lyme town, Monroe town, Orange town, Orford town, Piermont town, Plymouth town, Rumney town, Sugar Hill town, Thornton town, |

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 34

NEW HAMPSHIRE continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Towns within nonmetropolitan counties |
|---|---|---|---|---|---|---|
| | | | | | | Warren town, Waterville Valley town, Wentworth town, Woodstock town |
| Hillsborough | 465 | 581 | 775 | 1024 | 1233 | Antrim town, Bennington town, Deering town, Francestown town, Greenfield town, Hancock town, Hillsborough town, Lyndeborough town, New Boston town, Peterborough town, Sharon town, Temple town, Windsor town |
| Merrimack | 489 | 585 | 729 | 935 | 1042 | Andover town, Boscawen town, Bow town, Bradford town, Canterbury town, Chichester town, Concord city, Danbury town, Dunbarton town, Epsom town, Franklin city, Henniker town, Hill town, Hopkinton town, Loudon town, Newbury town, New London town, Northfield town, Pembroke town, Pittsfield town, Salisbury town, Sutton town, Warner town, Webster town, Wilmot town |
| Rockingham | 508 | 594 | 796 | 1104 | 1274 | Deerfield town, Northwood town, Nottingham town |
| Strafford | 449 | 610 | 814 | 1020 | 1143 | Middleton town, New Durham town, Strafford town |
| Sullivan | 473 | 480 | 624 | 819 | 874 | Acworth town, Charlestown town, Claremont city, Cornish town, Croydon town, Goshen town, Grantham town, Langdon town, Lempster town, Newport town, Plainfield town, Springfield town, Sunapee town, Unity town, Washington town |

NEW JERSEY

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Atlantic--Cape May, NJ PMSA | 561 | 639 | 850 | 1064 | 1217 | Atlantic, Cape May |
| *Bergen--Passaic, NJ PMSA | 793 | 967 | 1133 | 1510 | 1862 | Bergen, Passaic |
| Jersey City, NJ PMSA | 772 | 911 | 1061 | 1349 | 1484 | Hudson |
| Middlesex--Somerset--Hunterdon, NJ PMSA | 851 | 932 | 1164 | 1581 | 1825 | Hunterdon, Middlesex, Somerset |
| Monmouth--Ocean, NJ PMSA | 666 | 798 | 1013 | 1346 | 1578 | Monmouth, Ocean |
| *Newark, NJ PMSA | 640 | 819 | 987 | 1242 | 1569 | Essex, Morris, Sussex, Union, Warren |
| *Philadelphia, PA--NJ PMSA | 587 | 721 | 892 | 1115 | 1399 | Burlington, Camden, Gloucester, Salem |
| Trenton, NJ PMSA | 573 | 798 | 973 | 1318 | 1591 | Mercer |
| Vineland--Millville--Bridgeton, NJ PMSA | 541 | 658 | 793 | 990 | 1113 | Cumberland |

NEW MEXICO

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| *Albuquerque, NM MSA | 451 | 539 | 673 | 928 | 1096 | Bernalillo, Sandoval, Valencia |
| Las Cruces, NM MSA | 315 | 396 | 471 | 645 | 761 | Dona Ana |
| Santa Fe, NM MSA | 457 | 646 | 798 | 1072 | 1214 | Los Alamos, Santa Fe |

NEW MEXICO continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Catron | 292 | 340 | 422 | 568 | 641 | Chaves | 292 | 331 | 436 | 601 | 641 |
| Cibola | 303 | 331 | 422 | 568 | 641 | Colfax | 292 | 338 | 422 | 568 | 641 |
| Curry | 292 | 338 | 442 | 568 | 641 | De Baca | 292 | 331 | 422 | 568 | 641 |
| Eddy | 299 | 330 | 422 | 568 | 660 | Grant | 345 | 393 | 503 | 675 | 762 |
| Guadalupe | 292 | 330 | 422 | 568 | 645 | Harding | 292 | 330 | 422 | 568 | 641 |
| Hidalgo | 292 | 330 | 422 | 568 | 641 | Lea | 292 | 330 | 422 | 568 | 641 |
| Lincoln | 330 | 338 | 446 | 587 | 735 | Luna | 320 | 352 | 451 | 605 | 683 |
| McKinley | 292 | 365 | 465 | 579 | 650 | Mora | 292 | 330 | 422 | 568 | 641 |
| Otero | 292 | 330 | 422 | 588 | 641 | Quay | 292 | 421 | 474 | 594 | 664 |
| Rio Arriba | 340 | 348 | 428 | 568 | 641 | Roosevelt | 292 | 330 | 422 | 568 | 641 |
| San Juan | 329 | 352 | 439 | 610 | 721 | San Miguel | 322 | 330 | 435 | 568 | 641 |
| Sierra | 292 | 330 | 422 | 568 | 641 | Socorro | 292 | 330 | 422 | 568 | 658 |
| Taos | 500 | 506 | 675 | 844 | 1111 | Torrance | 319 | 345 | 422 | 568 | 641 |
| Union | 292 | 355 | 422 | 568 | 641 | | | | | | |

NEW YORK

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Albany--Schenectady--Troy, NY MSA | 419 | 516 | 634 | 795 | 888 | Albany, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie |
| Binghamton, NY MSA | 376 | 422 | 527 | 668 | 752 | Broome, Tioga |
| *Buffalo--Niagara Falls, NY MSA | 437 | 517 | 624 | 778 | 873 | Erie, Niagara |
| Dutchess County, NY PMSA | 671 | 851 | 1054 | 1369 | 1599 | Dutchess |
| Elmira, NY MSA | 376 | 422 | 518 | 657 | 781 | Chemung |
| Glens Falls, NY MSA | 376 | 489 | 596 | 746 | 834 | Warren, Washington |
| Jamestown, NY MSA | 376 | 422 | 509 | 657 | 752 | Chautauqua |
| Nassau--Suffolk, NY PMSA | 901 | 1085 | 1324 | 1843 | 1974 | Nassau, Suffolk |
| New York, NY PMSA | 848 | 944 | 1073 | 1342 | 1504 | Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland |
| Westchester County MSA** | 814 | 1062 | 1294 | 1680 | 2006 | Westchester |
| Newburgh, NY--PA PMSA | 538 | 697 | 855 | 1084 | 1237 | Orange |
| Rochester, NY MSA | 405 | 527 | 639 | 820 | 895 | Genesee, Livingston, Monroe, Ontario, Orleans, Wayne |
| Syracuse, NY MSA | 403 | 485 | 600 | 766 | 849 | Cayuga, Madison, Onondaga, Oswego |
| Utica--Rome, NY MSA | 376 | 422 | 509 | 657 | 752 | Herkimer, Oneida |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Allegany | 376 | 422 | 509 | 657 | 752 | Cattaraugus | 376 | 422 | 509 | 657 | 752 |
| Chenango | 401 | 422 | 509 | 657 | 752 | Clinton | 376 | 422 | 548 | 684 | 767 |
| Columbia | 471 | 495 | 635 | 831 | 889 | Cortland | 376 | 450 | 563 | 703 | 833 |
| Delaware | 376 | 422 | 509 | 657 | 808 | Essex | 376 | 428 | 538 | 673 | 752 |
| Franklin | 376 | 422 | 509 | 657 | 752 | Fulton | 376 | 422 | 509 | 657 | 752 |
| Greene | 376 | 489 | 586 | 756 | 922 | Hamilton | 376 | 453 | 521 | 657 | 752 |
| Jefferson | 405 | 478 | 562 | 703 | 789 | Lewis | 376 | 422 | 509 | 657 | 752 |
| Otsego | 376 | 446 | 513 | 661 | 841 | St. Lawrence | 376 | 422 | 509 | 657 | 752 |
| Schuyler | 407 | 435 | 516 | 718 | 846 | Seneca | 402 | 433 | 522 | 674 | 752 |
| Steuben | 390 | 444 | 509 | 664 | 752 | Sullivan | 489 | 548 | 667 | 922 | 935 |
| Tompkins | 492 | 529 | 679 | 949 | 1118 | Ulster | 462 | 643 | 773 | 1007 | 1266 |

## SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING

NEW YORK continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Wyoming | 376 | 422 | 509 | 657 | 752 | Yates | 376 | 422 | 509 | 657 | 752 |

NORTH CAROLINA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Asheville, NC MSA | 369 | 446 | 582 | 758 | 819 | Buncombe, Madison |
| Charlotte--Gastonia--Rock Hill, NC--SC MSA | 549 | 619 | 697 | 920 | 1101 | Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union |
| Fayetteville, NC MSA | 404 | 460 | 515 | 713 | 848 | Cumberland |
| Goldsboro, NC MSA | 367 | 423 | 513 | 661 | 774 | Wayne |
| Greensboro--Winston-Salem--High Point, NC MSA | 438 | 500 | 595 | 821 | 834 | Alamance, Davidson, Davie, Forsyth, Guilford, Randolph, Stokes, Yadkin |
| Greenville, NC MSA | 454 | 461 | 597 | 805 | 984 | Pitt |
| Hickory--Morganton--Lenoir, NC MSA | 418 | 455 | 529 | 667 | 790 | Alexander, Burke, Caldwell, Catawba |
| Jacksonville, NC MSA | 378 | 440 | 499 | 691 | 818 | Onslow |
| *Norfolk--Virginia Beach--Newport News, VA--NC MSA | 562 | 632 | 748 | 1044 | 1226 | Currituck |
| Raleigh--Durham--Chapel Hill, NC MSA | 561 | 680 | 799 | 1073 | 1264 | Chatham, Durham, Franklin, Johnston, Orange, Wake |
| Rocky Mount, NC MSA | 353 | 382 | 464 | 615 | 678 | Edgecombe, Nash |
| Wilmington, NC MSA | 486 | 532 | 651 | 891 | 1063 | Brunswick, New Hanover |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Alleghany | 312 | 365 | 436 | 562 | 665 | Anson | 312 | 359 | 436 | 562 | 637 |
| Ashe | 312 | 359 | 436 | 562 | 637 | Avery | 347 | 392 | 477 | 598 | 667 |
| Beaufort | 312 | 359 | 436 | 562 | 637 | Bertie | 312 | 359 | 436 | 562 | 637 |
| Bladen | 312 | 359 | 436 | 562 | 637 | Camden | 312 | 398 | 531 | 663 | 744 |
| Carteret | 352 | 387 | 471 | 655 | 729 | Caswell | 312 | 359 | 436 | 562 | 637 |
| Cherokee | 312 | 359 | 436 | 562 | 637 | Chowan | 312 | 359 | 436 | 562 | 637 |
| Clay | 312 | 359 | 436 | 562 | 637 | Cleveland | 397 | 465 | 556 | 736 | 813 |
| Columbus | 312 | 359 | 436 | 562 | 637 | Craven | 312 | 390 | 468 | 614 | 657 |
| Dare | 323 | 512 | 590 | 809 | 827 | Duplin | 312 | 359 | 436 | 562 | 637 |
| Gates | 312 | 359 | 436 | 562 | 637 | Graham | 312 | 359 | 436 | 562 | 637 |
| Granville | 329 | 359 | 436 | 577 | 654 | Greene | 312 | 359 | 436 | 562 | 637 |
| Halifax | 312 | 359 | 436 | 562 | 637 | Harnett | 351 | 406 | 493 | 637 | 720 |
| Haywood | 324 | 369 | 449 | 603 | 656 | Henderson | 403 | 415 | 513 | 682 | 786 |
| Hertford | 312 | 359 | 436 | 562 | 637 | Hoke | 312 | 359 | 436 | 562 | 637 |
| Hyde | 312 | 359 | 436 | 562 | 637 | Iredell | 421 | 431 | 568 | 711 | 794 |
| Jackson | 383 | 442 | 537 | 751 | 981 | Jones | 312 | 359 | 436 | 562 | 637 |
| Lee | 312 | 398 | 471 | 610 | 661 | Lenoir | 312 | 359 | 436 | 562 | 637 |
| McDowell | 312 | 380 | 455 | 622 | 737 | Macon | 312 | 372 | 436 | 562 | 637 |
| Martin | 312 | 359 | 436 | 562 | 637 | Mitchell | 312 | 407 | 467 | 638 | 667 |
| Montgomery | 312 | 359 | 436 | 562 | 637 | Moore | 358 | 432 | 516 | 706 | 846 |
| Northampton | 312 | 359 | 436 | 562 | 637 | Pamlico | 312 | 359 | 436 | 562 | 637 |
| Pasquotank | 359 | 385 | 479 | 665 | 672 | Pender | 376 | 455 | 525 | 678 | 828 |
| Perquimans | 312 | 359 | 436 | 562 | 637 | Person | 312 | 359 | 467 | 610 | 715 |
| Polk | 404 | 513 | 574 | 729 | 828 | Richmond | 312 | 359 | 436 | 562 | 637 |
| Robeson | 312 | 367 | 436 | 562 | 637 | Rockingham | 312 | 359 | 436 | 562 | 637 |

NORTH CAROLINA continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Rutherford | 386 | 440 | 535 | 689 | 782 |
| Scotland | 312 | 359 | 436 | 562 | 637 |
| Surry | 312 | 359 | 436 | 562 | 637 |
| Transylvania | 360 | 386 | 488 | 647 | 690 |
| Vance | 330 | 373 | 436 | 562 | 637 |
| Washington | 312 | 359 | 436 | 562 | 637 |
| Wilkes | 353 | 399 | 449 | 621 | 697 |
| Yancey | 312 | 366 | 436 | 562 | 658 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Sampson | 312 | 359 | 436 | 562 | 637 |
| Stanly | 312 | 359 | 443 | 598 | 637 |
| Swain | 312 | 359 | 436 | 562 | 637 |
| Tyrrell | 312 | 359 | 436 | 562 | 637 |
| Warren | 312 | 359 | 436 | 562 | 637 |
| Watauga | 406 | 488 | 617 | 839 | 1012 |
| Wilson | 325 | 359 | 442 | 562 | 637 |

NORTH DAKOTA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Bismarck, ND MSA | 380 | 425 | 565 | 787 | 933 | Burleigh, Morton |
| Fargo--Moorhead, ND--MN MSA | 372 | 512 | 619 | 859 | 919 | Cass |
| Grand Forks, ND--MN MSA | 385 | 458 | 603 | 832 | 929 | Grand Forks |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Adams | 249 | 312 | 404 | 524 | 612 |
| Benson | 283 | 312 | 404 | 524 | 612 |
| Bottineau | 249 | 312 | 404 | 524 | 612 |
| Burke | 270 | 312 | 404 | 524 | 612 |
| Dickey | 270 | 312 | 404 | 524 | 612 |
| Dunn | 249 | 312 | 404 | 524 | 612 |
| Emmons | 249 | 312 | 404 | 524 | 612 |
| Golden Valley | 249 | 322 | 426 | 533 | 612 |
| Griggs | 249 | 312 | 404 | 524 | 612 |
| Kidder | 249 | 312 | 404 | 524 | 612 |
| Logan | 249 | 312 | 404 | 524 | 612 |
| McIntosh | 249 | 312 | 404 | 524 | 612 |
| McLean | 264 | 312 | 404 | 524 | 612 |
| Mountrail | 275 | 312 | 404 | 524 | 612 |
| Oliver | 249 | 312 | 404 | 524 | 612 |
| Pierce | 249 | 312 | 404 | 540 | 612 |
| Ransom | 255 | 312 | 404 | 524 | 612 |
| Richland | 262 | 312 | 412 | 524 | 612 |
| Sargent | 249 | 312 | 404 | 524 | 612 |
| Sioux | 249 | 312 | 404 | 524 | 612 |
| Stark | 249 | 312 | 404 | 524 | 612 |
| Stutsman | 297 | 312 | 408 | 567 | 669 |
| Traill | 262 | 334 | 404 | 524 | 612 |
| Ward | 249 | 343 | 457 | 618 | 736 |
| Williams | 249 | 312 | 404 | 524 | 612 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Barnes | 249 | 315 | 417 | 545 | 612 |
| Billings | 270 | 312 | 404 | 524 | 612 |
| Bowman | 249 | 312 | 404 | 524 | 612 |
| Cavalier | 249 | 323 | 428 | 534 | 659 |
| Divide | 249 | 312 | 404 | 524 | 612 |
| Eddy | 249 | 312 | 404 | 524 | 612 |
| Foster | 249 | 312 | 406 | 524 | 612 |
| Grant | 249 | 312 | 404 | 524 | 612 |
| Hettinger | 249 | 312 | 404 | 524 | 612 |
| LaMoure | 270 | 312 | 404 | 524 | 612 |
| McHenry | 249 | 312 | 404 | 524 | 612 |
| McKenzie | 249 | 312 | 404 | 524 | 612 |
| Mercer | 249 | 312 | 404 | 524 | 612 |
| Nelson | 249 | 312 | 404 | 524 | 612 |
| Pembina | 249 | 312 | 404 | 532 | 632 |
| Ramsey | 257 | 343 | 457 | 573 | 747 |
| Renville | 288 | 312 | 404 | 527 | 624 |
| Rolette | 269 | 344 | 415 | 524 | 612 |
| Sheridan | 249 | 312 | 404 | 524 | 612 |
| Slope | 249 | 312 | 404 | 524 | 612 |
| Steele | 249 | 312 | 404 | 524 | 612 |
| Towner | 285 | 322 | 426 | 533 | 703 |
| Walsh | 333 | 354 | 440 | 551 | 617 |
| Wells | 265 | 312 | 404 | 524 | 612 |

OHIO

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Akron, OH PMSA | 423 | 513 | 658 | 824 | 923 | Portage, Summit |

OHIO continued

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Brown County MSA** | 325 | 382 | 476 | 617 | 681 | Brown |
| Canton--Massillon, OH MSA | 309 | 402 | 512 | 641 | 721 | Carroll, Stark |
| Cincinnati, OH--KY--IN PMSA | 392 | 503 | 672 | 901 | 973 | Clermont, Hamilton, Warren |
| *Cleveland--Lorain--Elyria, OH PMSA | 483 | 606 | 752 | 956 | 1075 | Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina |
| Columbus, OH MSA | 423 | 499 | 640 | 813 | 935 | Delaware, Fairfield, Franklin, Licking, Madison, Pickaway |
| Dayton--Springfield, OH MSA | 415 | 462 | 589 | 760 | 854 | Clark, Greene, Miami, Montgomery |
| Hamilton--Middletown, OH PMSA | 355 | 504 | 647 | 809 | 905 | Butler |
| Huntington--Ashland, WV--KY--OH MSA | 327 | 384 | 472 | 602 | 663 | Lawrence |
| Lima, OH MSA | 309 | 370 | 486 | 621 | 680 | Allen, Auglaize |
| Mansfield, OH MSA | 309 | 370 | 471 | 588 | 658 | Crawford, Richland |
| Parkersburg--Marietta, WV--OH MSA | 329 | 395 | 452 | 586 | 635 | Washington |
| Steubenville--Weirton, OH--WV MSA | 309 | 363 | 457 | 582 | 649 | Jefferson |
| Toledo, OH MSA | 387 | 470 | 574 | 739 | 802 | Fulton, Lucas, Wood |
| Wheeling, WV--OH MSA | 337 | 369 | 457 | 582 | 649 | Belmont |
| Youngstown--Warren, OH MSA | 361 | 427 | 535 | 671 | 764 | Columbiana, Mahoning, Trumbull |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Adams | 297 | 353 | 439 | 559 | 627 |
| Athens | 410 | 463 | 544 | 714 | 875 |
| Clinton | 339 | 435 | 522 | 727 | 733 |
| Darke | 326 | 353 | 442 | 559 | 627 |
| Erie | 297 | 396 | 494 | 666 | 808 |
| Gallia | 297 | 353 | 439 | 559 | 627 |
| Hancock | 376 | 380 | 482 | 616 | 674 |
| Harrison | 297 | 353 | 439 | 559 | 627 |
| Highland | 297 | 353 | 439 | 559 | 627 |
| Holmes | 297 | 353 | 439 | 559 | 627 |
| Jackson | 297 | 353 | 439 | 559 | 627 |
| Logan | 349 | 354 | 456 | 614 | 639 |
| Meigs | 297 | 353 | 439 | 559 | 627 |
| Monroe | 297 | 353 | 439 | 559 | 627 |
| Morrow | 297 | 353 | 439 | 559 | 627 |
| Noble | 297 | 353 | 439 | 559 | 636 |
| Paulding | 297 | 353 | 439 | 559 | 627 |
| Pike | 312 | 371 | 461 | 590 | 659 |
| Putnam | 307 | 353 | 439 | 559 | 627 |
| Sandusky | 297 | 386 | 494 | 623 | 688 |
| Seneca | 298 | 353 | 439 | 565 | 627 |
| Tuscarawas | 297 | 353 | 460 | 576 | 645 |
| Van Wert | 297 | 357 | 439 | 559 | 627 |
| Wayne | 297 | 393 | 483 | 614 | 676 |
| Wyandot | 297 | 353 | 439 | 559 | 627 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Ashland | 297 | 353 | 463 | 579 | 648 |
| Champaign | 297 | 362 | 470 | 587 | 658 |
| Coshocton | 297 | 353 | 439 | 559 | 627 |
| Defiance | 353 | 401 | 529 | 666 | 739 |
| Fayette | 322 | 353 | 439 | 559 | 627 |
| Guernsey | 297 | 353 | 439 | 559 | 627 |
| Hardin | 297 | 353 | 439 | 559 | 627 |
| Henry | 342 | 378 | 472 | 611 | 693 |
| Hocking | 297 | 353 | 439 | 559 | 627 |
| Huron | 344 | 374 | 466 | 616 | 655 |
| Knox | 350 | 385 | 493 | 637 | 704 |
| Marion | 297 | 353 | 439 | 559 | 627 |
| Mercer | 297 | 353 | 439 | 559 | 645 |
| Morgan | 297 | 358 | 439 | 559 | 627 |
| Muskingum | 297 | 353 | 439 | 559 | 627 |
| Ottawa | 297 | 439 | 504 | 686 | 733 |
| Perry | 297 | 353 | 439 | 559 | 627 |
| Preble | 304 | 361 | 449 | 576 | 643 |
| Ross | 344 | 359 | 439 | 559 | 627 |
| Scioto | 297 | 353 | 439 | 559 | 627 |
| Shelby | 297 | 362 | 483 | 603 | 676 |
| Union | 297 | 410 | 542 | 678 | 784 |
| Vinton | 297 | 353 | 439 | 559 | 627 |
| Williams | 329 | 368 | 459 | 586 | 656 |

OKLAHOMA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Enid, OK MSA | 319 | 324 | 429 | 597 | 683 | Garfield |

OKLAHOMA continued

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Fort Smith, AR--OK MSA | 359 | 363 | 479 | 639 | 671 | Sequoyah |
| Lawton, OK MSA | 395 | 397 | 506 | 702 | 770 | Comanche |
| *Oklahoma City, OK MSA | 398 | 432 | 561 | 779 | 872 | Canadian, Cleveland, Logan, McClain, Oklahoma, Pottawatomie |
| *Tulsa, OK MSA | 381 | 455 | 595 | 829 | 978 | Creek, Osage, Rogers, Tulsa, Wagoner |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Adair | 266 | 305 | 381 | 506 | 580 |
| Atoka | 266 | 305 | 381 | 506 | 580 |
| Beckham | 270 | 305 | 381 | 506 | 580 |
| Bryan | 266 | 305 | 381 | 506 | 580 |
| Carter | 266 | 307 | 384 | 534 | 580 |
| Choctaw | 266 | 305 | 381 | 506 | 580 |
| Coal | 266 | 305 | 381 | 506 | 580 |
| Craig | 266 | 305 | 381 | 519 | 614 |
| Delaware | 266 | 305 | 381 | 506 | 590 |
| Ellis | 266 | 305 | 381 | 506 | 580 |
| Grady | 292 | 305 | 394 | 536 | 648 |
| Greer | 266 | 305 | 381 | 506 | 580 |
| Harper | 266 | 305 | 381 | 506 | 580 |
| Hughes | 266 | 305 | 381 | 506 | 580 |
| Jefferson | 266 | 305 | 381 | 506 | 580 |
| Kay | 295 | 311 | 410 | 571 | 668 |
| Kiowa | 266 | 305 | 381 | 506 | 580 |
| Le Flore | 266 | 305 | 381 | 506 | 580 |
| Love | 266 | 305 | 385 | 506 | 580 |
| McIntosh | 266 | 305 | 381 | 506 | 580 |
| Marshall | 266 | 305 | 381 | 506 | 580 |
| Murray | 266 | 305 | 381 | 506 | 580 |
| Noble | 266 | 305 | 381 | 506 | 580 |
| Okfuskee | 266 | 305 | 381 | 506 | 580 |
| Ottawa | 285 | 305 | 381 | 506 | 580 |
| Payne | 359 | 424 | 543 | 750 | 841 |
| Pontotoc | 266 | 305 | 381 | 506 | 580 |
| Roger Mills | 266 | 305 | 381 | 506 | 580 |
| Stephens | 270 | 305 | 381 | 506 | 604 |
| Tillman | 266 | 305 | 381 | 506 | 580 |
| Washita | 266 | 305 | 381 | 506 | 580 |
| Woodward | 266 | 305 | 381 | 506 | 580 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Alfalfa | 266 | 305 | 381 | 506 | 580 |
| Beaver | 266 | 309 | 381 | 506 | 580 |
| Blaine | 266 | 305 | 381 | 506 | 580 |
| Caddo | 266 | 305 | 381 | 506 | 580 |
| Cherokee | 278 | 314 | 381 | 506 | 588 |
| Cimarron | 266 | 305 | 381 | 506 | 580 |
| Cotton | 266 | 305 | 381 | 506 | 580 |
| Custer | 266 | 305 | 390 | 543 | 626 |
| Dewey | 266 | 305 | 381 | 506 | 580 |
| Garvin | 266 | 305 | 381 | 506 | 584 |
| Grant | 266 | 305 | 381 | 506 | 580 |
| Harmon | 266 | 305 | 381 | 506 | 580 |
| Haskell | 266 | 305 | 381 | 506 | 580 |
| Jackson | 266 | 345 | 420 | 552 | 623 |
| Johnston | 266 | 305 | 381 | 506 | 580 |
| Kingfisher | 266 | 313 | 389 | 510 | 580 |
| Latimer | 266 | 305 | 381 | 506 | 580 |
| Lincoln | 284 | 305 | 381 | 506 | 580 |
| McCurtain | 266 | 305 | 381 | 506 | 580 |
| Major | 266 | 319 | 381 | 528 | 580 |
| Mayes | 266 | 309 | 412 | 519 | 580 |
| Muskogee | 287 | 323 | 381 | 526 | 580 |
| Nowata | 266 | 305 | 381 | 506 | 580 |
| Okmulgee | 270 | 305 | 381 | 506 | 580 |
| Pawnee | 300 | 305 | 394 | 507 | 580 |
| Pittsburg | 266 | 305 | 381 | 506 | 580 |
| Pushmataha | 266 | 305 | 381 | 506 | 580 |
| Seminole | 266 | 305 | 381 | 506 | 580 |
| Texas | 266 | 315 | 381 | 507 | 580 |
| Washington | 266 | 364 | 443 | 588 | 688 |
| Woods | 266 | 305 | 381 | 506 | 580 |

OREGON

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Corvallis, OR MSA | 431 | 560 | 710 | 1068 | 1133 | Benton |
| Eugene--Springfield, OR MSA | 378 | 518 | 675 | 943 | 1089 | Lane |
| Medford--Ashland, OR MSA | 376 | 492 | 659 | 916 | 1021 | Jackson |

## OREGON continued

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Portland--Vancouver, OR--WA PMSA | 524 | 644 | 795 | 1106 | 1200 | Clackamas, Columbia, Multnomah, Washington, Yamhill |
| Salem, OR PMSA | 445 | 525 | 671 | 925 | 969 | Marion, Polk |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Baker | 338 | 400 | 520 | 716 | 797 | Clatsop | 390 | 461 | 605 | 826 | 928 |
| Coos | 338 | 412 | 548 | 763 | 797 | Crook | 338 | 400 | 520 | 716 | 797 |
| Curry | 338 | 459 | 610 | 782 | 961 | Deschutes | 417 | 481 | 642 | 895 | 1036 |
| Douglas | 338 | 400 | 520 | 716 | 851 | Gilliam | 338 | 427 | 520 | 716 | 797 |
| Grant | 338 | 400 | 520 | 716 | 797 | Harney | 338 | 400 | 520 | 716 | 797 |
| Hood River | 397 | 447 | 607 | 790 | 935 | Jefferson | 338 | 400 | 520 | 716 | 797 |
| Josephine | 338 | 410 | 528 | 716 | 834 | Klamath | 338 | 400 | 520 | 716 | 846 |
| Lake | 338 | 400 | 520 | 716 | 797 | Lincoln | 410 | 416 | 555 | 773 | 840 |
| Linn | 406 | 483 | 625 | 860 | 959 | Malheur | 338 | 400 | 520 | 716 | 797 |
| Morrow | 338 | 400 | 520 | 716 | 797 | Sherman | 338 | 400 | 520 | 716 | 797 |
| Tillamook | 338 | 400 | 520 | 716 | 797 | Umatilla | 338 | 400 | 520 | 716 | 797 |
| Union | 338 | 400 | 520 | 716 | 797 | Wallowa | 338 | 400 | 520 | 716 | 797 |
| Wasco | 411 | 510 | 571 | 777 | 874 | Wheeler | 338 | 400 | 520 | 716 | 797 |

## PENNSYLVANIA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Allentown--Bethlehem--Easton, PA MSA | 401 | 545 | 647 | 844 | 946 | Carbon, Lehigh, Northampton |
| Altoona, PA MSA | 306 | 390 | 466 | 608 | 681 | Blair |
| Erie, PA MSA | 310 | 405 | 477 | 616 | 689 | Erie |
| Harrisburg--Lebanon--Carlisle, PA MSA | 368 | 471 | 604 | 762 | 850 | Cumberland, Dauphin, Lebanon, Perry |
| Johnstown, PA MSA | 310 | 395 | 474 | 616 | 689 | Cambria, Somerset |
| Lancaster, PA MSA | 409 | 500 | 624 | 814 | 876 | Lancaster |
| Newburgh, NY--PA PMSA | 538 | 697 | 855 | 1084 | 1237 | Pike |
| *Philadelphia, PA--NJ PMSA | 587 | 721 | 892 | 1115 | 1399 | Bucks, Chester, Delaware, Montgomery, Philadelphia |
| Pittsburgh, PA MSA | 418 | 511 | 615 | 770 | 860 | Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland |
| Reading, PA MSA | 323 | 477 | 589 | 735 | 829 | Berks |
| Scranton--Wilkes-Barre--Hazleton, PA MSA | 328 | 459 | 550 | 686 | 829 | Columbia, Lackawanna, Luzerne, Wyoming |
| Sharon, PA MSA | 340 | 395 | 474 | 616 | 689 | Mercer |
| State College, PA MSA | 446 | 547 | 677 | 886 | 947 | Centre |
| Williamsport, PA MSA | 310 | 397 | 477 | 616 | 689 | Lycoming |
| York, PA MSA | 346 | 474 | 589 | 734 | 821 | York |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Adams | 304 | 409 | 542 | 703 | 889 | Armstrong | 308 | 408 | 462 | 604 | 759 |
| Bedford | 304 | 387 | 462 | 604 | 674 | Bradford | 308 | 391 | 476 | 623 | 683 |
| Cameron | 304 | 387 | 462 | 604 | 674 | Clarion | 304 | 387 | 462 | 604 | 674 |
| Clearfield | 304 | 387 | 462 | 604 | 674 | Clinton | 304 | 387 | 462 | 604 | 674 |
| Crawford | 304 | 387 | 462 | 604 | 674 | Elk | 304 | 387 | 462 | 604 | 674 |
| Forest | 304 | 387 | 462 | 604 | 674 | Franklin | 304 | 387 | 469 | 646 | 674 |

PENNSYLVANIA continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Fulton | 304 | 387 | 462 | 604 | 674 | Greene | 304 | 387 | 462 | 604 | 674 |
| Huntingdon | 304 | 387 | 462 | 604 | 674 | Indiana | 348 | 389 | 462 | 604 | 674 |
| Jefferson | 304 | 387 | 462 | 604 | 674 | Juniata | 304 | 387 | 462 | 604 | 674 |
| Lawrence | 304 | 387 | 462 | 604 | 674 | McKean | 304 | 389 | 462 | 604 | 674 |
| Mifflin | 338 | 387 | 462 | 604 | 674 | Monroe | 486 | 580 | 716 | 977 | 1092 |
| Montour | 359 | 387 | 486 | 674 | 797 | Northumberland | 320 | 406 | 496 | 658 | 733 |
| Potter | 304 | 387 | 462 | 604 | 674 | Schuylkill | 304 | 387 | 481 | 604 | 674 |
| Snyder | 365 | 387 | 463 | 604 | 674 | Sullivan | 304 | 387 | 462 | 604 | 674 |
| Susquehanna | 363 | 387 | 462 | 604 | 717 | Tioga | 304 | 387 | 462 | 604 | 674 |
| Union | 366 | 487 | 609 | 761 | 850 | Venango | 304 | 387 | 462 | 604 | 674 |
| Warren | 304 | 387 | 462 | 604 | 674 | Wayne | 305 | 471 | 555 | 707 | 909 |

RHODE ISLAND

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Components of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| New London--Norwich, CT--RI MSA | 541 | 654 | 797 | 997 | 1140 | Washington county towns of Hopkinton town, Westerly town |
| Providence--Fall River--Warwick, RI--MA MSA | 414 | 564 | 678 | 851 | 1050 | Bristol county towns of Barrington town, Bristol town, Warren town<br>Kent county towns of Coventry town, East Greenwich town, Warwick city, West Greenwich town, West Warwick town<br>Newport county towns of Jamestown town, Little Compton town, Tiverton town<br>Providence county towns of Burrillville town, Central Falls city, Cranston city, Cumberland town, East Providence city, Foster town, Glocester town, Johnston town, Lincoln town, North Providence town, North Smithfield town, Pawtucket city, Providence city, Scituate town, Smithfield town, Woonsocket city<br>Washington county towns of Charlestown town, Exeter town, Narragansett town, North Kingstown town, Richmond town, South Kingstown town |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Towns within nonmetropolitan counties |
|---|---|---|---|---|---|---|
| Newport | 614 | 715 | 918 | 1149 | 1286 | Middletown town, Newport city, Portsmouth town |
| Washington | 725 | 816 | 917 | 1182 | 1302 | New Shoreham town |

SOUTH CAROLINA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Augusta--Aiken, GA--SC MSA | 411 | 493 | 580 | 788 | 931 | Aiken, Edgefield |
| Charleston--North Charleston, SC MSA | 433 | 504 | 578 | 768 | 895 | Berkeley, Charleston, Dorchester |

SOUTH CAROLINA continued

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Charlotte--Gastonia--Rock Hill, NC--SC MSA | 549 | 619 | 697 | 920 | 1101 | York |
| Columbia, SC MSA | 465 | 512 | 588 | 779 | 895 | Lexington, Richland |
| Florence, SC MSA | 352 | 391 | 509 | 635 | 712 | Florence |
| Greenville--Spartanburg--Anderson, SC MSA | 418 | 506 | 571 | 718 | 846 | Anderson, Cherokee, Greenville, Pickens, Spartanburg |
| Myrtle Beach, SC MSA | 457 | 464 | 594 | 743 | 832 | Horry |
| Sumter, SC MSA | 372 | 413 | 468 | 640 | 761 | Sumter |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Abbeville | 307 | 357 | 434 | 558 | 637 | Allendale | 307 | 357 | 434 | 558 | 637 |
| Bamberg | 307 | 357 | 434 | 558 | 637 | Barnwell | 322 | 357 | 436 | 558 | 637 |
| Beaufort | 437 | 537 | 618 | 771 | 864 | Calhoun | 307 | 357 | 434 | 558 | 637 |
| Chester | 307 | 357 | 434 | 558 | 637 | Chesterfield | 307 | 357 | 434 | 558 | 637 |
| Clarendon | 307 | 357 | 434 | 558 | 637 | Colleton | 307 | 357 | 434 | 558 | 637 |
| Darlington | 307 | 357 | 434 | 558 | 637 | Dillon | 307 | 357 | 434 | 558 | 637 |
| Fairfield | 307 | 410 | 467 | 582 | 654 | Georgetown | 307 | 390 | 437 | 558 | 664 |
| Greenwood | 308 | 357 | 434 | 558 | 637 | Hampton | 307 | 357 | 434 | 558 | 637 |
| Jasper | 307 | 357 | 434 | 558 | 637 | Kershaw | 307 | 357 | 434 | 558 | 637 |
| Lancaster | 321 | 358 | 434 | 558 | 637 | Laurens | 307 | 357 | 434 | 558 | 637 |
| Lee | 307 | 357 | 434 | 558 | 637 | McCormick | 307 | 357 | 434 | 558 | 679 |
| Marion | 307 | 357 | 434 | 558 | 637 | Marlboro | 307 | 357 | 434 | 558 | 637 |
| Newberry | 307 | 357 | 434 | 558 | 637 | Oconee | 307 | 357 | 434 | 558 | 637 |
| Orangeburg | 307 | 357 | 434 | 558 | 637 | Saluda | 307 | 357 | 434 | 558 | 637 |
| Union | 307 | 357 | 434 | 558 | 637 | Williamsburg | 307 | 357 | 434 | 558 | 637 |

SOUTH DAKOTA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Rapid City, SD MSA | 392 | 467 | 622 | 845 | 1024 | Pennington |
| Sioux Falls, SD MSA | 380 | 524 | 665 | 841 | 967 | Lincoln, Minnehaha |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Aurora | 276 | 370 | 460 | 609 | 706 | Beadle | 276 | 367 | 460 | 609 | 706 |
| Bennett | 276 | 367 | 460 | 609 | 706 | Bon Homme | 306 | 367 | 460 | 609 | 706 |
| Brookings | 295 | 469 | 520 | 704 | 829 | Brown | 304 | 404 | 507 | 670 | 776 |
| Brule | 276 | 367 | 460 | 609 | 706 | Buffalo | 276 | 367 | 460 | 609 | 712 |
| Butte | 320 | 434 | 578 | 755 | 890 | Campbell | 276 | 367 | 460 | 609 | 706 |
| Charles Mix | 276 | 367 | 460 | 609 | 706 | Clark | 276 | 367 | 460 | 609 | 706 |
| Clay | 307 | 408 | 512 | 679 | 841 | Codington | 319 | 422 | 531 | 703 | 812 |
| Corson | 276 | 367 | 460 | 609 | 706 | Custer | 276 | 367 | 460 | 609 | 706 |
| Davison | 308 | 390 | 491 | 657 | 751 | Day | 308 | 367 | 460 | 609 | 706 |
| Deuel | 276 | 367 | 460 | 609 | 706 | Dewey | 276 | 367 | 460 | 609 | 706 |
| Douglas | 306 | 367 | 460 | 609 | 706 | Edmunds | 276 | 367 | 460 | 609 | 706 |
| Fall River | 315 | 367 | 460 | 609 | 706 | Faulk | 276 | 367 | 484 | 609 | 706 |
| Grant | 276 | 367 | 460 | 609 | 706 | Gregory | 278 | 367 | 460 | 609 | 706 |

SOUTH DAKOTA continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Haakon | 276 | 375 | 460 | 609 | 706 |
| Hand | 276 | 367 | 460 | 609 | 706 |
| Harding | 276 | 375 | 460 | 609 | 706 |
| Hutchinson | 276 | 367 | 460 | 609 | 706 |
| Jackson | 276 | 372 | 460 | 609 | 706 |
| Jones | 276 | 367 | 460 | 609 | 706 |
| Lake | 276 | 372 | 460 | 609 | 706 |
| Lyman | 276 | 367 | 460 | 609 | 706 |
| McPherson | 276 | 367 | 460 | 609 | 706 |
| Meade | 388 | 438 | 585 | 765 | 902 |
| Miner | 276 | 372 | 460 | 609 | 706 |
| Perkins | 276 | 367 | 460 | 609 | 706 |
| Roberts | 276 | 367 | 460 | 609 | 706 |
| Shannon | 276 | 372 | 460 | 609 | 706 |
| Stanley | 276 | 375 | 460 | 609 | 706 |
| Todd | 304 | 367 | 460 | 609 | 706 |
| Turner | 276 | 367 | 460 | 609 | 706 |
| Walworth | 276 | 375 | 460 | 609 | 706 |
| Ziebach | 276 | 367 | 460 | 609 | 706 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Hamlin | 276 | 367 | 460 | 609 | 706 |
| Hanson | 281 | 384 | 511 | 642 | 719 |
| Hughes | 314 | 379 | 503 | 661 | 784 |
| Hyde | 276 | 373 | 460 | 609 | 706 |
| Jerauld | 276 | 370 | 460 | 609 | 706 |
| Kingsbury | 300 | 367 | 460 | 609 | 706 |
| Lawrence | 317 | 456 | 574 | 786 | 889 |
| McCook | 276 | 367 | 460 | 609 | 706 |
| Marshall | 327 | 367 | 460 | 609 | 706 |
| Mellette | 330 | 372 | 460 | 609 | 706 |
| Moody | 276 | 367 | 460 | 609 | 706 |
| Potter | 276 | 367 | 460 | 609 | 706 |
| Sanborn | 276 | 367 | 460 | 609 | 706 |
| Spink | 299 | 367 | 468 | 609 | 706 |
| Sully | 276 | 367 | 460 | 609 | 706 |
| Tripp | 276 | 367 | 460 | 609 | 706 |
| Union | 290 | 367 | 460 | 609 | 706 |
| Yankton | 276 | 367 | 460 | 609 | 706 |

TENNESSEE

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Chattanooga, TN--GA MSA | 393 | 460 | 552 | 713 | 814 | Hamilton, Marion |
| Clarksville--Hopkinsville, TN--KY MSA | 365 | 408 | 481 | 654 | 673 | Montgomery |
| Jackson, TN MSA | 283 | 373 | 501 | 692 | 696 | Chester, Madison |
| Johnson City--Kingsport--Bristol, TN--VA MSA | 328 | 391 | 486 | 629 | 745 | Carter, Hawkins, Sullivan, Unicoi, Washington |
| Knoxville, TN MSA | 328 | 403 | 507 | 676 | 812 | Anderson, Blount, Knox, Loudon, Sevier, Union |
| Memphis, TN--AR--MS MSA | 458 | 534 | 626 | 870 | 913 | Fayette, Shelby, Tipton |
| Nashville, TN MSA | 460 | 550 | 678 | 924 | 1036 | Cheatham, Davidson, Dickson, Robertson, Rutherford, Sumner, Williamson, Wilson |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Bedford | 254 | 326 | 399 | 503 | 559 |
| Bledsoe | 254 | 297 | 375 | 494 | 553 |
| Campbell | 256 | 297 | 375 | 494 | 553 |
| Carroll | 254 | 309 | 375 | 494 | 553 |
| Clay | 258 | 297 | 375 | 494 | 553 |
| Coffee | 254 | 353 | 398 | 553 | 630 |
| Cumberland | 267 | 297 | 390 | 543 | 553 |
| DeKalb | 254 | 297 | 375 | 494 | 553 |
| Fentress | 254 | 297 | 375 | 494 | 553 |
| Gibson | 254 | 297 | 375 | 494 | 553 |
| Grainger | 258 | 297 | 375 | 494 | 553 |
| Grundy | 254 | 297 | 375 | 494 | 553 |
| Hancock | 254 | 297 | 375 | 494 | 553 |
| Hardin | 254 | 297 | 375 | 494 | 553 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Benton | 274 | 312 | 375 | 494 | 553 |
| Bradley | 254 | 320 | 427 | 577 | 703 |
| Cannon | 254 | 297 | 375 | 494 | 553 |
| Claiborne | 254 | 297 | 375 | 494 | 553 |
| Cocke | 254 | 297 | 375 | 494 | 553 |
| Crockett | 254 | 297 | 375 | 494 | 553 |
| Decatur | 254 | 297 | 375 | 494 | 553 |
| Dyer | 317 | 321 | 428 | 536 | 667 |
| Franklin | 265 | 297 | 375 | 516 | 607 |
| Giles | 254 | 323 | 400 | 501 | 560 |
| Greene | 254 | 297 | 375 | 494 | 553 |
| Hamblen | 254 | 298 | 392 | 520 | 553 |
| Hardeman | 254 | 297 | 375 | 494 | 553 |
| Haywood | 266 | 310 | 412 | 516 | 577 |

TENNESSEE continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Henderson | 254 | 297 | 375 | 494 | 553 | Henry | 254 | 297 | 375 | 494 | 553 |
| Hickman | 300 | 304 | 403 | 532 | 564 | Houston | 254 | 297 | 375 | 494 | 553 |
| Humphreys | 254 | 310 | 375 | 494 | 553 | Jackson | 254 | 297 | 375 | 494 | 553 |
| Jefferson | 277 | 297 | 386 | 494 | 613 | Johnson | 254 | 297 | 375 | 494 | 553 |
| Lake | 254 | 297 | 375 | 494 | 553 | Lauderdale | 254 | 297 | 379 | 494 | 553 |
| Lawrence | 254 | 297 | 375 | 494 | 553 | Lewis | 254 | 297 | 375 | 494 | 553 |
| Lincoln | 254 | 297 | 380 | 494 | 553 | McMinn | 254 | 297 | 375 | 496 | 553 |
| McNairy | 254 | 297 | 375 | 494 | 553 | Macon | 254 | 297 | 375 | 494 | 553 |
| Marshall | 298 | 325 | 424 | 536 | 596 | Maury | 364 | 371 | 494 | 619 | 689 |
| Meigs | 254 | 297 | 375 | 494 | 553 | Monroe | 254 | 297 | 375 | 494 | 553 |
| Moore | 254 | 297 | 375 | 494 | 553 | Morgan | 254 | 297 | 375 | 494 | 553 |
| Obion | 294 | 298 | 382 | 506 | 553 | Overton | 254 | 297 | 375 | 494 | 553 |
| Perry | 254 | 300 | 375 | 494 | 553 | Pickett | 254 | 297 | 375 | 494 | 553 |
| Polk | 254 | 297 | 375 | 494 | 553 | Putnam | 309 | 312 | 400 | 550 | 592 |
| Rhea | 254 | 317 | 375 | 500 | 553 | Roane | 274 | 297 | 375 | 505 | 607 |
| Scott | 254 | 297 | 375 | 494 | 553 | Sequatchie | 254 | 297 | 375 | 494 | 553 |
| Smith | 254 | 297 | 375 | 494 | 553 | Stewart | 254 | 297 | 375 | 494 | 553 |
| Trousdale | 254 | 312 | 414 | 519 | 680 | Van Buren | 254 | 297 | 375 | 494 | 553 |
| Warren | 282 | 297 | 385 | 494 | 553 | Wayne | 254 | 297 | 375 | 494 | 553 |
| Weakley | 275 | 297 | 375 | 494 | 553 | White | 258 | 297 | 375 | 494 | 553 |

TEXAS

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Abilene, TX MSA | 360 | 400 | 517 | 697 | 848 | Taylor |
| Amarillo, TX MSA | 305 | 385 | 479 | 667 | 787 | Potter, Randall |
| *Austin--San Marcos, TX MSA | 567 | 686 | 914 | 1269 | 1501 | Bastrop, Caldwell, Hays, Travis, Williamson |
| Beaumont--Port Arthur, TX MSA | 347 | 420 | 512 | 677 | 716 | Hardin, Jefferson, Orange |
| Brazoria, TX PMSA | 525 | 584 | 730 | 1017 | 1196 | Brazoria |
| Brownsville--Harlingen--San Benito, TX MSA | 319 | 402 | 503 | 630 | 787 | Cameron |
| Bryan--College Station, TX MSA | 405 | 472 | 596 | 832 | 981 | Brazos |
| Corpus Christi, TX MSA | 380 | 467 | 595 | 811 | 958 | Nueces, San Patricio |
| *Dallas, TX PMSA | 589 | 678 | 871 | 1205 | 1425 | Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall |
| El Paso, TX MSA | 428 | 481 | 569 | 788 | 934 | El Paso |
| *Fort Worth--Arlington, TX PMSA | 536 | 585 | 757 | 1058 | 1246 | Hood, Johnson, Parker, Tarrant |
| Galveston--Texas City, TX PMSA | 514 | 528 | 662 | 920 | 1086 | Galveston |
| Henderson County MSA** | 346 | 412 | 502 | 685 | 822 | Henderson |
| *Houston, TX PMSA | 523 | 588 | 760 | 1060 | 1248 | Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller |
| Killeen--Temple, TX MSA | 427 | 445 | 563 | 784 | 861 | Bell, Coryell |
| Laredo, TX MSA | 346 | 398 | 523 | 654 | 736 | Webb |
| Longview--Marshall, TX MSA | 343 | 387 | 474 | 646 | 705 | Gregg, Harrison, Upshur |
| Lubbock, TX MSA | 328 | 416 | 540 | 749 | 831 | Lubbock |
| McAllen--Edinburg--Mission, TX MSA | 297 | 394 | 451 | 563 | 633 | Hidalgo |
| Odessa--Midland, TX MSA | 328 | 379 | 506 | 703 | 816 | Ector, Midland |
| San Angelo, TX MSA | 305 | 389 | 472 | 647 | 764 | Tom Green |
| *San Antonio, TX MSA | 425 | 491 | 635 | 883 | 1044 | Bexar, Comal, Guadalupe, Wilson |

TEXAS continued

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Sherman--Denison, TX MSA | 305 | 417 | 503 | 642 | 769 | Grayson |
| Texarkana, TX--Texarkana, AR MSA | 331 | 404 | 495 | 652 | 692 | Bowie |
| Tyler, TX MSA | 381 | 421 | 514 | 711 | 753 | Smith |
| Victoria, TX MSA | 377 | 381 | 482 | 668 | 753 | Victoria |
| Waco, TX MSA | 331 | 405 | 535 | 710 | 748 | McLennan |
| Wichita Falls, TX MSA | 365 | 407 | 493 | 655 | 773 | Archer, Wichita |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Anderson | 355 | 400 | 448 | 624 | 630 |
| Angelina | 322 | 375 | 421 | 584 | 689 |
| Armstrong | 296 | 341 | 446 | 559 | 630 |
| Austin | 296 | 341 | 412 | 565 | 630 |
| Bandera | 316 | 341 | 412 | 559 | 630 |
| Bee | 296 | 341 | 412 | 552 | 630 |
| Borden | 296 | 341 | 412 | 552 | 630 |
| Brewster | 296 | 341 | 412 | 556 | 666 |
| Brooks | 296 | 341 | 412 | 552 | 630 |
| Burleson | 296 | 341 | 432 | 584 | 712 |
| Calhoun | 315 | 341 | 412 | 570 | 673 |
| Camp | 400 | 405 | 506 | 633 | 708 |
| Cass | 296 | 341 | 412 | 552 | 630 |
| Cherokee | 330 | 342 | 419 | 552 | 630 |
| Clay | 296 | 348 | 412 | 552 | 643 |
| Coke | 296 | 341 | 412 | 552 | 630 |
| Collingsworth | 296 | 341 | 412 | 552 | 630 |
| Comanche | 296 | 341 | 412 | 552 | 630 |
| Cooke | 320 | 341 | 433 | 588 | 654 |
| Crane | 296 | 341 | 412 | 552 | 630 |
| Crosby | 296 | 341 | 412 | 552 | 630 |
| Dallam | 296 | 341 | 412 | 552 | 630 |
| Deaf Smith | 296 | 341 | 412 | 552 | 641 |
| DeWitt | 296 | 341 | 412 | 552 | 630 |
| Dimmit | 296 | 341 | 412 | 552 | 630 |
| Duval | 296 | 341 | 412 | 552 | 630 |
| Edwards | 296 | 341 | 412 | 552 | 630 |
| Falls | 296 | 341 | 412 | 552 | 630 |
| Fayette | 296 | 341 | 412 | 552 | 630 |
| Floyd | 296 | 341 | 412 | 552 | 630 |
| Franklin | 296 | 341 | 412 | 570 | 630 |
| Frio | 296 | 341 | 412 | 552 | 630 |
| Garza | 296 | 341 | 412 | 552 | 630 |
| Glasscock | 296 | 341 | 412 | 552 | 630 |
| Gonzales | 296 | 341 | 412 | 552 | 630 |
| Grimes | 296 | 341 | 412 | 556 | 657 |
| Hall | 296 | 341 | 412 | 552 | 630 |
| Hansford | 296 | 341 | 412 | 552 | 648 |
| Andrews | 296 | 341 | 412 | 552 | 630 |
| Aransas | 296 | 363 | 485 | 673 | 679 |
| Atascosa | 296 | 341 | 412 | 552 | 630 |
| Bailey | 296 | 341 | 412 | 552 | 630 |
| Baylor | 296 | 341 | 412 | 552 | 630 |
| Blanco | 296 | 341 | 435 | 607 | 640 |
| Bosque | 296 | 341 | 412 | 552 | 630 |
| Briscoe | 296 | 341 | 412 | 552 | 630 |
| Brown | 296 | 341 | 413 | 554 | 678 |
| Burnet | 376 | 434 | 534 | 742 | 868 |
| Callahan | 296 | 341 | 412 | 552 | 630 |
| Carson | 296 | 341 | 412 | 552 | 630 |
| Castro | 298 | 341 | 412 | 552 | 630 |
| Childress | 296 | 341 | 412 | 552 | 630 |
| Cochran | 296 | 341 | 412 | 552 | 630 |
| Coleman | 296 | 341 | 412 | 552 | 630 |
| Colorado | 296 | 341 | 412 | 552 | 630 |
| Concho | 296 | 341 | 412 | 552 | 630 |
| Cottle | 296 | 341 | 412 | 552 | 630 |
| Crockett | 296 | 341 | 412 | 552 | 630 |
| Culberson | 296 | 341 | 412 | 552 | 630 |
| Dawson | 296 | 341 | 412 | 552 | 630 |
| Delta | 296 | 354 | 412 | 552 | 630 |
| Dickens | 296 | 341 | 412 | 552 | 630 |
| Donley | 296 | 341 | 412 | 552 | 630 |
| Eastland | 296 | 341 | 412 | 552 | 630 |
| Erath | 306 | 347 | 448 | 580 | 630 |
| Fannin | 300 | 341 | 412 | 554 | 630 |
| Fisher | 296 | 341 | 412 | 552 | 630 |
| Foard | 296 | 341 | 412 | 552 | 630 |
| Freestone | 296 | 341 | 412 | 552 | 630 |
| Gaines | 302 | 341 | 412 | 552 | 630 |
| Gillespie | 296 | 373 | 481 | 663 | 676 |
| Goliad | 296 | 341 | 412 | 552 | 630 |
| Gray | 323 | 341 | 438 | 552 | 652 |
| Hale | 296 | 341 | 412 | 552 | 630 |
| Hamilton | 296 | 341 | 412 | 552 | 630 |
| Hardeman | 296 | 341 | 412 | 552 | 630 |

TEXAS continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Hartley | 296 | 341 | 412 | 552 | 630 |
| Hemphill | 296 | 381 | 425 | 594 | 630 |
| Hockley | 302 | 352 | 412 | 557 | 630 |
| Houston | 296 | 341 | 412 | 552 | 630 |
| Hudspeth | 356 | 402 | 448 | 563 | 739 |
| Irion | 296 | 341 | 412 | 552 | 630 |
| Jackson | 296 | 341 | 412 | 552 | 630 |
| Jeff Davis | 296 | 341 | 412 | 552 | 630 |
| Jim Wells | 296 | 341 | 412 | 552 | 639 |
| Karnes | 296 | 341 | 412 | 552 | 630 |
| Kenedy | 296 | 341 | 412 | 552 | 630 |
| Kerr | 296 | 383 | 477 | 665 | 785 |
| King | 296 | 341 | 412 | 552 | 630 |
| Kleberg | 359 | 373 | 453 | 633 | 745 |
| Lamar | 296 | 366 | 431 | 603 | 712 |
| Lampasas | 296 | 341 | 412 | 559 | 661 |
| Lavaca | 296 | 341 | 412 | 552 | 630 |
| Leon | 296 | 380 | 424 | 552 | 699 |
| Lipscomb | 296 | 341 | 412 | 552 | 630 |
| Llano | 296 | 381 | 506 | 634 | 832 |
| Lynn | 296 | 341 | 412 | 552 | 630 |
| McMullen | 296 | 341 | 412 | 552 | 630 |
| Marion | 296 | 341 | 412 | 552 | 654 |
| Mason | 296 | 341 | 412 | 552 | 630 |
| Maverick | 296 | 341 | 412 | 552 | 630 |
| Menard | 296 | 341 | 412 | 552 | 630 |
| Mills | 296 | 341 | 412 | 552 | 630 |
| Montague | 296 | 341 | 412 | 552 | 630 |
| Morris | 296 | 341 | 412 | 552 | 630 |
| Nacogdoches | 311 | 377 | 488 | 609 | 720 |
| Newton | 296 | 341 | 412 | 552 | 630 |
| Ochiltree | 296 | 341 | 412 | 552 | 630 |
| Palo Pinto | 296 | 341 | 412 | 552 | 656 |
| Parmer | 296 | 341 | 412 | 552 | 630 |
| Polk | 330 | 360 | 419 | 565 | 685 |
| Rains | 296 | 383 | 463 | 642 | 648 |
| Real | 296 | 341 | 412 | 552 | 630 |
| Reeves | 296 | 341 | 412 | 552 | 630 |
| Roberts | 296 | 345 | 412 | 552 | 630 |
| Runnels | 296 | 341 | 412 | 552 | 630 |
| Sabine | 296 | 341 | 412 | 552 | 630 |
| San Jacinto | 309 | 349 | 412 | 552 | 645 |
| Schleicher | 296 | 341 | 412 | 552 | 630 |
| Shackelford | 296 | 341 | 412 | 552 | 630 |
| Sherman | 296 | 341 | 412 | 552 | 630 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Haskell | 296 | 341 | 412 | 552 | 630 |
| Hill | 296 | 341 | 412 | 552 | 630 |
| Hopkins | 345 | 371 | 435 | 607 | 654 |
| Howard | 314 | 341 | 412 | 556 | 630 |
| Hutchinson | 296 | 341 | 425 | 594 | 701 |
| Jack | 296 | 341 | 412 | 552 | 630 |
| Jasper | 296 | 341 | 420 | 559 | 687 |
| Jim Hogg | 296 | 341 | 412 | 552 | 630 |
| Jones | 296 | 341 | 412 | 552 | 630 |
| Kendall | 296 | 431 | 485 | 673 | 797 |
| Kent | 296 | 341 | 412 | 552 | 630 |
| Kimble | 296 | 341 | 448 | 562 | 630 |
| Kinney | 296 | 341 | 412 | 552 | 630 |
| Knox | 296 | 341 | 412 | 552 | 630 |
| Lamb | 296 | 341 | 412 | 552 | 630 |
| La Salle | 296 | 341 | 412 | 552 | 630 |
| Lee | 335 | 377 | 422 | 589 | 662 |
| Limestone | 296 | 341 | 412 | 552 | 630 |
| Live Oak | 296 | 341 | 412 | 552 | 630 |
| Loving | 296 | 341 | 412 | 552 | 630 |
| McCulloch | 304 | 341 | 412 | 552 | 630 |
| Madison | 296 | 351 | 412 | 552 | 650 |
| Martin | 296 | 341 | 412 | 552 | 630 |
| Matagorda | 341 | 374 | 463 | 642 | 648 |
| Medina | 296 | 341 | 412 | 552 | 630 |
| Milam | 296 | 341 | 412 | 552 | 630 |
| Mitchell | 296 | 341 | 412 | 552 | 630 |
| Moore | 296 | 347 | 412 | 552 | 641 |
| Motley | 296 | 341 | 412 | 552 | 630 |
| Navarro | 421 | 444 | 532 | 676 | 750 |
| Nolan | 304 | 341 | 412 | 552 | 630 |
| Oldham | 296 | 341 | 446 | 559 | 655 |
| Panola | 296 | 348 | 412 | 552 | 630 |
| Pecos | 296 | 341 | 412 | 556 | 657 |
| Presidio | 296 | 341 | 412 | 552 | 630 |
| Reagan | 377 | 383 | 508 | 639 | 835 |
| Red River | 296 | 381 | 425 | 552 | 630 |
| Refugio | 296 | 341 | 412 | 552 | 630 |
| Robertson | 296 | 391 | 436 | 552 | 630 |
| Rusk | 308 | 341 | 412 | 552 | 630 |
| San Augustine | 296 | 341 | 412 | 552 | 630 |
| San Saba | 296 | 341 | 412 | 552 | 630 |
| Scurry | 296 | 341 | 426 | 596 | 704 |
| Shelby | 296 | 341 | 412 | 552 | 630 |
| Somervell | 338 | 381 | 425 | 584 | 630 |

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING

TEXAS continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Starr | 296 | 341 | 412 | 552 | 630 | Stephens | 296 | 341 | 412 | 552 | 630 |
| Sterling | 296 | 341 | 412 | 552 | 630 | Stonewall | 296 | 341 | 412 | 552 | 630 |
| Sutton | 296 | 341 | 412 | 552 | 630 | Swisher | 296 | 341 | 412 | 552 | 630 |
| Terrell | 296 | 341 | 412 | 552 | 630 | Terry | 296 | 341 | 412 | 552 | 630 |
| Throckmorton | 296 | 341 | 412 | 552 | 630 | Titus | 313 | 390 | 441 | 610 | 630 |
| Trinity | 307 | 347 | 412 | 552 | 630 | Tyler | 296 | 341 | 439 | 552 | 724 |
| Upton | 296 | 341 | 412 | 552 | 630 | Uvalde | 296 | 341 | 412 | 552 | 630 |
| Val Verde | 296 | 392 | 462 | 576 | 680 | Van Zandt | 315 | 341 | 426 | 582 | 704 |
| Walker | 398 | 423 | 518 | 688 | 726 | Ward | 296 | 341 | 412 | 552 | 630 |
| Washington | 366 | 375 | 500 | 624 | 820 | Wharton | 296 | 341 | 412 | 552 | 630 |
| Wheeler | 296 | 341 | 412 | 552 | 630 | Wilbarger | 296 | 341 | 412 | 552 | 651 |
| Willacy | 296 | 341 | 412 | 552 | 630 | Winkler | 296 | 341 | 412 | 552 | 630 |
| Wise | 296 | 345 | 414 | 577 | 630 | Wood | 296 | 341 | 425 | 594 | 701 |
| Yoakum | 296 | 389 | 477 | 597 | 785 | Young | 296 | 341 | 412 | 552 | 639 |
| Zapata | 296 | 341 | 412 | 552 | 630 | Zavala | 296 | 341 | 412 | 552 | 630 |

UTAH

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Kane County MSA** | 344 | 424 | 529 | 710 | 854 | Kane |
| Provo--Orem, UT MSA | 476 | 503 | 622 | 862 | 1020 | Utah |
| *Salt Lake City--Ogden, UT MSA | 514 | 595 | 756 | 1052 | 1232 | Davis, Salt Lake, Weber |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Beaver | 325 | 396 | 498 | 665 | 800 | Box Elder | 362 | 399 | 502 | 670 | 809 |
| Cache | 362 | 445 | 556 | 744 | 895 | Carbon | 348 | 396 | 498 | 665 | 800 |
| Daggett | 352 | 481 | 639 | 802 | 898 | Duchesne | 325 | 396 | 498 | 665 | 800 |
| Emery | 325 | 396 | 498 | 665 | 800 | Garfield | 325 | 396 | 498 | 665 | 800 |
| Grand | 325 | 396 | 498 | 665 | 800 | Iron | 332 | 451 | 560 | 703 | 825 |
| Juab | 325 | 396 | 498 | 665 | 800 | Millard | 325 | 396 | 498 | 665 | 800 |
| Morgan | 325 | 396 | 498 | 665 | 800 | Piute | 325 | 396 | 498 | 665 | 800 |
| Rich | 325 | 396 | 498 | 665 | 800 | San Juan | 325 | 396 | 498 | 665 | 800 |
| Sanpete | 325 | 396 | 498 | 665 | 800 | Sevier | 329 | 396 | 498 | 665 | 800 |
| Summit | 479 | 592 | 738 | 997 | 1213 | Tooele | 401 | 510 | 616 | 824 | 990 |
| Uintah | 325 | 396 | 498 | 665 | 800 | Wasatch | 325 | 413 | 498 | 665 | 800 |
| Washington | 398 | 493 | 652 | 873 | 1067 | Wayne | 325 | 396 | 498 | 665 | 800 |

VERMONT

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Components of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Burlington, VT MSA | 521 | 638 | 850 | 1159 | 1400 | Chittenden county towns of Burlington city, Charlotte town, Colchester town, Essex town, Hinesburg town, Jericho town, Milton town, Richmond town, St. George town, |

VERMONT continued

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Components of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| | | | | | | Shelburne town, South Burlington city, Williston town, Winooski city<br>Franklin county towns of Fairfax town, Georgia town, St. Albans city, St. Albans town, Swanton town<br>Grand Isle county towns of Grand Isle town, South Hero town |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Towns within nonmetropolitan counties |
|---|---|---|---|---|---|---|
| Addison | 463 | 559 | 650 | 907 | 1016 | Addison town, Bridport town, Bristol town, Cornwall town, Ferrisburg town, Goshen town, Granville town, Hancock town, Leicester town, Lincoln town, Middlebury town, Monkton town, New Haven town, Orwell town, Panton town, Ripton town, Salisbury town, Shoreham town, Starksboro town, Vergennes city, Waltham town, Weybridge town, Whiting town |
| Bennington | 418 | 528 | 678 | 862 | 1006 | Arlington town, Bennington town, Dorset town, Glastenbury town, Landgrove town, Manchester town, Peru town, Pownal town, Readsboro town, Rupert town, Sandgate town, Searsburg town, Shaftsbury town, Stamford town, Sunderland town, Winhall town, Woodford town |
| Caledonia | 404 | 482 | 588 | 740 | 850 | Barnet town, Burke town, Danville town, Groton town, Hardwick town, Kirby town, Lyndon town, Newark town, Peacham town, Ryegate town, St. Johnsbury town, Sheffield town, Stannard town, Sutton town, Walden town, Waterford town, Wheelock town |
| Chittenden | 425 | 687 | 775 | 1077 | 1269 | Bolton town, Buels gore, Huntington town, Underhill town, Westford town |
| Essex | 384 | 464 | 573 | 723 | 829 | Averill town, Avery's gore, Bloomfield town, Brighton town, Brunswick town, Canaan town, Concord town, East Haven town, Ferdinand town, Granby town, Guildhall town, Lemington town, Lewis town, Lunenburg town, Maidstone town, Norton town, Victory town, Warner's grant, Warren's gore |
| Franklin | 463 | 525 | 643 | 816 | 938 | Bakersfield town, Berkshire town, Enosburg town, Fairfield town, Fletcher town, Franklin town, Highgate town, Montgomery town, Richford town, Sheldon town |
| Grand Isle | 400 | 480 | 594 | 748 | 859 | Alburg town, Isle La Motte town, North Hero town |
| Lamoille | 370 | 513 | 613 | 840 | 961 | Belvidere town, Cambridge town, Eden town, Elmore town, Hyde Park town, Johnson town, Morristown town, Stowe town, Waterville town, Wolcott town |
| Orange | 383 | 503 | 621 | 819 | 918 | Bradford town, Braintree town, Brookfield town, Chelsea town, Corinth town, Fairlee town, Newbury town, Orange town, |

VERMONT continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Towns within nonmetropolitan counties |
|---|---|---|---|---|---|---|
| | | | | | | Randolph town, Strafford town, Thetford town, Topsham town, Tunbridge town, Vershire town, Washington town, West Fairlee town, Williamstown town |
| Orleans | 356 | 430 | 531 | 669 | 768 | Albany town, Barton town, Brownington town, Charleston town, Coventry town, Craftsbury town, Derby town, Glover town, Greensboro town, Holland town, Irasburg town, Jay town, Lowell town, Morgan town, Newport city, Newport town, Troy town, Westfield town, Westmore town |
| Rutland | 423 | 549 | 670 | 842 | 941 | Benson town, Brandon town, Castleton town, Chittenden town, Clarendon town, Danby town, Fair Haven town, Hubbardton town, Ira town, Killington town, Mendon town, Middletown Springs town, Mount Holly town, Mount Tabor town, Pawlet town, Pittsfield town, Pittsford town, Poultney town, Proctor town, Rutland city, Rutland town, Shrewsbury town, Sudbury town, Tinmouth town, Wallingford town, Wells town, West Haven town, West Rutland town |
| Washington | 399 | 494 | 666 | 833 | 935 | Barre city, Barre town, Berlin town, Cabot town, Calais town, Duxbury town, East Montpelier town, Fayston town, Marshfield town, Middlesex town, Montpelier city, Moretown town, Northfield town, Plainfield town, Roxbury town, Waitsfield town, Warren town, Waterbury town, Woodbury town, Worcester town |
| Windham | 459 | 530 | 704 | 892 | 983 | Athens town, Brattleboro town, Brookline town, Dover town, Dummerston town, Grafton town, Guilford town, Halifax town, Jamaica town, Londonderry town, Marlboro town, Newfane town, Putney town, Rockingham town, Somerset town, Stratton town, Townshend town, Vernon town, Wardsboro town, Westminster town, Whitingham town, Wilmington town, Windham town |
| Windsor | 494 | 559 | 698 | 895 | 1062 | Andover town, Baltimore town, Barnard town, Bethel town, Bridgewater town, Cavendish town, Chester town, Hartford town, Hartland town, Ludlow town, Norwich town, Plymouth town, Pomfret town, Reading town, Rochester town, Royalton town, Sharon town, Springfield town, Stockbridge town, Weathersfield town, Weston town, West Windsor town, Windsor town, Woodstock town |

VIRGINIA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Charlottesville, VA MSA | 462 | 547 | 698 | 928 | 1040 | Albemarle, Fluvanna, Greene, |

VIRGINIA continued

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| | | | | | | Charlottesville city |
| Clarke County MSA** | 369 | 521 | 674 | 926 | 945 | Clarke |
| Culpeper County MSA** | 457 | 666 | 775 | 1024 | 1227 | Culpeper |
| Danville, VA MSA | 315 | 397 | 466 | 626 | 755 | Pittsylvania, Danville city |
| Johnson City--Kingsport--Bristol, TN--VA MSA | 328 | 391 | 486 | 629 | 745 | Scott, Washington, Bristol city |
| King George County MSA** | 447 | 595 | 667 | 927 | 934 | King George |
| Lynchburg, VA MSA | 374 | 414 | 476 | 626 | 755 | Amherst, Bedford, Campbell, Bedford city, Lynchburg city |
| *Norfolk--Virginia Beach--Newport News, VA--NC MSA | 562 | 632 | 748 | 1044 | 1226 | Gloucester, Isle of Wight, James, Mathews, York, Chesapeake city, Hampton city, Newport News city, Norfolk city, Poquoson city, Portsmouth city, Suffolk city, Virginia Beach city, Williamsburg city |
| *Richmond--Petersburg, VA MSA | 596 | 673 | 785 | 1091 | 1288 | Charles, Chesterfield, Dinwiddie, Goochland, Hanover, Henrico, New Kent, Powhatan, Prince George, Colonial Heights city, Hopewell city, Petersburg city, Richmond city |
| Roanoke, VA MSA | 317 | 397 | 515 | 660 | 822 | Botetourt, Roanoke, Roanoke city, Salem city |
| Warren County MSA** | 361 | 495 | 661 | 865 | 1080 | Warren |
| *Washington, DC--MD--VA--WV PMSA | 913 | 1039 | 1218 | 1660 | 2002 | Arlington, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas city, Manassas Park city |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Accomack | 365 | 395 | 461 | 613 | 738 |
| Amelia | 308 | 389 | 456 | 613 | 738 |
| Augusta | 308 | 399 | 485 | 639 | 776 |
| Bland | 308 | 389 | 456 | 613 | 738 |
| Buchanan | 308 | 389 | 456 | 613 | 738 |
| Caroline | 436 | 442 | 591 | 784 | 826 |
| Charlotte | 308 | 389 | 456 | 613 | 738 |
| Cumberland | 308 | 423 | 490 | 613 | 738 |
| Essex | 308 | 433 | 511 | 712 | 841 |
| Franklin | 308 | 389 | 456 | 613 | 738 |
| Giles | 308 | 389 | 456 | 613 | 738 |
| Greensville | 308 | 399 | 456 | 613 | 738 |
| Henry | 308 | 389 | 456 | 613 | 738 |
| King and Queen | 308 | 442 | 498 | 622 | 738 |
| Lancaster | 386 | 432 | 488 | 650 | 792 |
| Louisa | 308 | 401 | 495 | 687 | 738 |
| Madison | 309 | 459 | 516 | 648 | 848 |
| Middlesex | 308 | 391 | 456 | 613 | 738 |
| Nelson | 308 | 389 | 456 | 613 | 738 |
| Northumberland | 308 | 389 | 456 | 613 | 738 |
| Orange | 342 | 464 | 622 | 866 | 1016 |
| Patrick | 308 | 389 | 456 | 613 | 738 |
| Pulaski | 308 | 389 | 456 | 613 | 738 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Alleghany | 320 | 389 | 456 | 613 | 738 |
| Appomattox | 308 | 389 | 456 | 613 | 738 |
| Bath | 308 | 389 | 456 | 613 | 738 |
| Brunswick | 308 | 389 | 456 | 613 | 738 |
| Buckingham | 308 | 389 | 456 | 613 | 738 |
| Carroll | 308 | 389 | 456 | 613 | 738 |
| Craig | 308 | 389 | 456 | 613 | 738 |
| Dickenson | 308 | 389 | 456 | 613 | 738 |
| Floyd | 308 | 389 | 456 | 613 | 738 |
| Frederick | 419 | 483 | 581 | 795 | 952 |
| Grayson | 308 | 389 | 456 | 613 | 738 |
| Halifax | 308 | 389 | 456 | 613 | 738 |
| Highland | 308 | 389 | 456 | 613 | 738 |
| King William | 308 | 423 | 473 | 613 | 738 |
| Lee | 308 | 389 | 456 | 613 | 738 |
| Lunenburg | 308 | 389 | 456 | 613 | 738 |
| Mecklenburg | 308 | 389 | 456 | 613 | 738 |
| Montgomery | 316 | 417 | 489 | 679 | 803 |
| Northampton | 308 | 389 | 456 | 613 | 738 |
| Nottoway | 308 | 389 | 456 | 613 | 738 |
| Page | 358 | 403 | 456 | 613 | 738 |
| Prince Edward | 345 | 391 | 456 | 613 | 738 |
| Rappahannock | 312 | 506 | 570 | 790 | 932 |

VIRGINIA continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Richmond | 308 | 412 | 460 | 613 | 757 |
| Rockingham | 308 | 427 | 540 | 740 | 868 |
| Shenandoah | 406 | 417 | 512 | 710 | 807 |
| Southampton | 308 | 389 | 456 | 613 | 738 |
| Sussex | 308 | 389 | 456 | 613 | 738 |
| Westmoreland | 308 | 417 | 553 | 696 | 900 |
| Wythe | 321 | 389 | 456 | 613 | 738 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Rockbridge | 308 | 389 | 456 | 613 | 738 |
| Russell | 308 | 389 | 456 | 613 | 738 |
| Smyth | 308 | 389 | 456 | 613 | 738 |
| Surry | 319 | 389 | 456 | 613 | 738 |
| Tazewell | 308 | 389 | 456 | 613 | 738 |
| Wise | 308 | 389 | 456 | 613 | 738 |

WASHINGTON

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Bellingham, WA MSA | 433 | 562 | 747 | 1033 | 1224 | Whatcom |
| Bremerton, WA PMSA | 522 | 602 | 781 | 1053 | 1281 | Kitsap |
| Olympia, WA PMSA | 536 | 660 | 823 | 1132 | 1335 | Thurston |
| Portland--Vancouver, OR--WA PMSA | 524 | 644 | 795 | 1106 | 1200 | Clark |
| Richland--Kennewick--Pasco, WA MSA | 540 | 618 | 740 | 1031 | 1209 | Benton, Franklin |
| Seattle--Bellevue--Everett, WA PMSA | 599 | 729 | 923 | 1282 | 1515 | Island, King, Snohomish |
| Spokane, WA MSA | 346 | 471 | 569 | 773 | 865 | Spokane |
| Tacoma, WA PMSA | 463 | 553 | 736 | 1023 | 1156 | Pierce |
| Yakima, WA MSA | 390 | 480 | 596 | 798 | 833 | Yakima |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Adams | 343 | 410 | 535 | 705 | 782 |
| Chelan | 343 | 410 | 535 | 705 | 782 |
| Columbia | 343 | 410 | 535 | 705 | 782 |
| Douglas | 400 | 424 | 535 | 705 | 782 |
| Garfield | 343 | 410 | 535 | 705 | 782 |
| Grays Harbor | 350 | 410 | 540 | 727 | 839 |
| Kittitas | 343 | 410 | 535 | 705 | 782 |
| Lewis | 343 | 410 | 535 | 705 | 782 |
| Mason | 389 | 483 | 593 | 780 | 839 |
| Pacific | 343 | 410 | 535 | 705 | 782 |
| San Juan | 424 | 578 | 771 | 1015 | 1209 |
| Skamania | 343 | 410 | 535 | 705 | 782 |
| Wahkiakum | 343 | 410 | 535 | 705 | 782 |
| Whitman | 369 | 421 | 559 | 777 | 920 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Asotin | 343 | 410 | 535 | 705 | 782 |
| Clallam | 399 | 494 | 628 | 808 | 884 |
| Cowlitz | 385 | 430 | 554 | 770 | 782 |
| Ferry | 343 | 410 | 535 | 705 | 782 |
| Grant | 368 | 410 | 535 | 705 | 782 |
| Jefferson | 343 | 443 | 545 | 738 | 782 |
| Klickitat | 343 | 410 | 535 | 705 | 782 |
| Lincoln | 343 | 410 | 535 | 705 | 782 |
| Okanogan | 343 | 410 | 535 | 705 | 782 |
| Pend Oreille | 343 | 410 | 535 | 705 | 938 |
| Skagit | 466 | 571 | 674 | 841 | 940 |
| Stevens | 343 | 410 | 535 | 705 | 782 |
| Walla Walla | 343 | 410 | 535 | 714 | 844 |

WEST VIRGINIA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Berkeley County MSA** | 485 | 518 | 609 | 762 | 856 | Berkeley |
| Charleston, WV MSA | 308 | 419 | 531 | 729 | 797 | Kanawha, Putnam |
| Cumberland, MD--WV MSA | 361 | 435 | 539 | 712 | 812 | Mineral |
| Huntington--Ashland, WV--KY--OH MSA | 327 | 384 | 472 | 602 | 663 | Cabell, Wayne |
| Jefferson County MSA** | 489 | 543 | 672 | 874 | 990 | Jefferson |
| Parkersburg--Marietta, WV--OH MSA | 329 | 395 | 452 | 586 | 635 | Wood |
| Steubenville--Weirton, OH--WV MSA | 309 | 363 | 457 | 582 | 649 | Brooke, Hancock |
| Wheeling, WV--OH MSA | 337 | 369 | 457 | 582 | 649 | Marshall, Ohio |

WEST VIRGINIA continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Barbour | 274 | 347 | 389 | 500 | 582 |
| Braxton | 274 | 334 | 389 | 500 | 582 |
| Clay | 274 | 334 | 389 | 500 | 582 |
| Fayette | 274 | 334 | 389 | 500 | 582 |
| Grant | 274 | 334 | 389 | 500 | 582 |
| Hampshire | 274 | 334 | 391 | 513 | 582 |
| Harrison | 301 | 370 | 427 | 533 | 640 |
| Lewis | 274 | 365 | 389 | 500 | 582 |
| Logan | 280 | 334 | 389 | 503 | 595 |
| Marion | 274 | 345 | 426 | 545 | 629 |
| Mercer | 274 | 334 | 389 | 500 | 582 |
| Monongalia | 344 | 382 | 463 | 640 | 756 |
| Morgan | 372 | 420 | 470 | 590 | 657 |
| Pendleton | 274 | 334 | 389 | 500 | 582 |
| Pocahontas | 274 | 334 | 389 | 500 | 582 |
| Raleigh | 315 | 372 | 433 | 558 | 653 |
| Ritchie | 274 | 334 | 389 | 500 | 582 |
| Summers | 274 | 334 | 389 | 500 | 582 |
| Tucker | 274 | 334 | 389 | 500 | 582 |
| Upshur | 274 | 334 | 391 | 500 | 582 |
| Wetzel | 309 | 334 | 420 | 524 | 660 |
| Wyoming | 274 | 334 | 389 | 500 | 582 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Boone | 274 | 334 | 389 | 500 | 582 |
| Calhoun | 274 | 334 | 389 | 500 | 582 |
| Doddridge | 283 | 334 | 389 | 500 | 582 |
| Gilmer | 301 | 334 | 389 | 500 | 582 |
| Greenbrier | 274 | 377 | 402 | 502 | 582 |
| Hardy | 274 | 334 | 389 | 500 | 582 |
| Jackson | 274 | 342 | 389 | 532 | 582 |
| Lincoln | 274 | 334 | 389 | 500 | 582 |
| McDowell | 274 | 334 | 389 | 500 | 582 |
| Mason | 274 | 334 | 389 | 500 | 597 |
| Mingo | 274 | 334 | 389 | 500 | 589 |
| Monroe | 274 | 334 | 389 | 500 | 582 |
| Nicholas | 274 | 334 | 389 | 500 | 582 |
| Pleasants | 282 | 334 | 389 | 500 | 596 |
| Preston | 274 | 350 | 389 | 500 | 582 |
| Randolph | 274 | 334 | 389 | 500 | 582 |
| Roane | 274 | 334 | 389 | 500 | 582 |
| Taylor | 335 | 361 | 395 | 500 | 582 |
| Tyler | 274 | 334 | 409 | 511 | 582 |
| Webster | 274 | 334 | 389 | 500 | 582 |
| Wirt | 274 | 334 | 389 | 500 | 582 |

WISCONSIN

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Appleton--Oshkosh--Neenah, WI MSA | 344 | 424 | 540 | 678 | 783 | Calumet, Outagamie, Winnebago |
| Duluth--Superior, MN--WI MSA | 302 | 389 | 499 | 666 | 776 | Douglas |
| Eau Claire, WI MSA | 371 | 404 | 530 | 679 | 766 | Chippewa, Eau Claire |
| Green Bay, WI MSA | 407 | 448 | 576 | 800 | 805 | Brown |
| Janesville--Beloit, WI MSA | 379 | 478 | 592 | 741 | 830 | Rock |
| Kenosha, WI PMSA | 452 | 560 | 688 | 945 | 1064 | Kenosha |
| La Crosse, WI--MN MSA | 306 | 394 | 501 | 670 | 812 | La Crosse |
| Madison, WI MSA | 471 | 592 | 716 | 993 | 1172 | Dane |
| Milwaukee--Waukesha, WI PMSA | 419 | 547 | 688 | 861 | 962 | Milwaukee, Ozaukee, Washington, Waukesha |
| *Minneapolis--St. Paul, MN--WI MSA | 578 | 743 | 951 | 1286 | 1457 | Pierce, St. Croix |
| Racine, WI PMSA | 372 | 462 | 609 | 786 | 859 | Racine |
| Sheboygan, WI MSA | 328 | 423 | 515 | 644 | 800 | Sheboygan |
| Wausau, WI MSA | 403 | 418 | 520 | 712 | 788 | Marathon |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Adams | 294 | 343 | 437 | 556 | 628 |
| Barron | 294 | 343 | 437 | 556 | 628 |
| Buffalo | 294 | 343 | 437 | 556 | 628 |
| Clark | 294 | 343 | 437 | 556 | 628 |
| Crawford | 294 | 343 | 437 | 556 | 628 |
| Door | 294 | 364 | 451 | 581 | 705 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Ashland | 320 | 356 | 437 | 556 | 628 |
| Bayfield | 294 | 343 | 437 | 556 | 628 |
| Burnett | 294 | 343 | 437 | 556 | 628 |
| Columbia | 294 | 350 | 459 | 601 | 675 |
| Dodge | 372 | 377 | 496 | 622 | 693 |
| Dunn | 294 | 343 | 448 | 599 | 739 |

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING

WISCONSIN continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Florence | 294 | 343 | 437 | 556 | 628 | Fond du Lac | 341 | 462 | 547 | 745 | 767 |
| Forest | 294 | 343 | 437 | 556 | 628 | Grant | 298 | 343 | 437 | 556 | 628 |
| Green | 299 | 343 | 437 | 587 | 628 | Green Lake | 294 | 343 | 437 | 556 | 628 |
| Iowa | 304 | 343 | 437 | 574 | 628 | Iron | 294 | 343 | 437 | 556 | 628 |
| Jackson | 294 | 343 | 437 | 556 | 628 | Jefferson | 294 | 390 | 505 | 654 | 715 |
| Juneau | 300 | 343 | 437 | 556 | 628 | Kewaunee | 294 | 343 | 437 | 556 | 628 |
| Lafayette | 299 | 343 | 437 | 556 | 628 | Langlade | 294 | 343 | 437 | 556 | 628 |
| Lincoln | 294 | 343 | 437 | 556 | 628 | Manitowoc | 297 | 343 | 437 | 556 | 628 |
| Marinette | 294 | 343 | 437 | 556 | 628 | Marquette | 294 | 343 | 437 | 556 | 628 |
| Menominee | 294 | 343 | 437 | 556 | 628 | Monroe | 294 | 343 | 437 | 582 | 628 |
| Oconto | 294 | 343 | 437 | 556 | 628 | Oneida | 294 | 344 | 437 | 560 | 673 |
| Pepin | 294 | 343 | 437 | 556 | 628 | Polk | 294 | 343 | 444 | 556 | 628 |
| Portage | 358 | 377 | 489 | 612 | 756 | Price | 294 | 343 | 437 | 556 | 628 |
| Richland | 294 | 343 | 437 | 556 | 628 | Rusk | 294 | 343 | 437 | 556 | 628 |
| Sauk | 344 | 356 | 474 | 590 | 662 | Sawyer | 294 | 343 | 437 | 556 | 628 |
| Shawano | 299 | 343 | 437 | 556 | 628 | Taylor | 294 | 343 | 437 | 556 | 628 |
| Trempealeau | 294 | 343 | 437 | 556 | 628 | Vernon | 294 | 343 | 437 | 556 | 628 |
| Vilas | 294 | 343 | 437 | 556 | 628 | Walworth | 306 | 432 | 559 | 729 | 820 |
| Washburn | 294 | 343 | 437 | 556 | 628 | Waupaca | 294 | 343 | 437 | 556 | 660 |
| Waushara | 294 | 343 | 437 | 556 | 628 | Wood | 318 | 365 | 452 | 568 | 638 |

WYOMING

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Casper, WY MSA | 356 | 412 | 527 | 722 | 854 | Natrona |
| Cheyenne, WY MSA | 401 | 504 | 673 | 860 | 1045 | Laramie |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Albany | 336 | 420 | 559 | 777 | 919 | Big Horn | 320 | 367 | 470 | 624 | 717 |
| Campbell | 345 | 367 | 470 | 626 | 738 | Carbon | 320 | 367 | 470 | 624 | 717 |
| Converse | 320 | 367 | 470 | 624 | 717 | Crook | 320 | 367 | 470 | 624 | 717 |
| Fremont | 320 | 367 | 470 | 624 | 717 | Goshen | 320 | 367 | 470 | 624 | 717 |
| Hot Springs | 320 | 367 | 470 | 624 | 717 | Johnson | 320 | 367 | 470 | 624 | 717 |
| Lincoln | 320 | 367 | 470 | 624 | 717 | Niobrara | 320 | 367 | 470 | 624 | 717 |
| Park | 320 | 367 | 470 | 624 | 724 | Platte | 320 | 367 | 470 | 624 | 717 |
| Sheridan | 320 | 367 | 470 | 624 | 724 | Sublette | 354 | 398 | 470 | 624 | 717 |
| Sweetwater | 333 | 367 | 470 | 626 | 738 | Teton | 425 | 541 | 719 | 968 | 1055 |
| Uinta | 335 | 367 | 470 | 625 | 755 | Washakie | 320 | 367 | 470 | 624 | 717 |
| Weston | 320 | 367 | 470 | 624 | 717 | | | | | | |

GUAM

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Pacific Islands | 760 | 913 | 1081 | 1356 | 1524 | | | | | | |

SCHEDULE B - FAIR MARKET RENTS 2004 FOR EXISTING HOUSING

## PUERTO RICO

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Aguadilla, PR MSA | 227 | 277 | 329 | 408 | 461 | Aguada, Aguadilla, Moca |
| Arecibo, PR PMSA | 246 | 298 | 350 | 439 | 495 | Arecibo, Camuy, Hatillo |
| Caguas, PR PMSA | 288 | 345 | 407 | 513 | 571 | Caguas, Cayey, Cidra, Gurabo, San Lorenzo |
| Mayagües, PR MSA | 270 | 329 | 390 | 487 | 547 | Añasco, Cabo Rojo, Hormigueros, Mayagüez, Sabana Grande, San Germán |
| Ponce, PR MSA | 267 | 328 | 386 | 485 | 543 | Guayanilla, Juana Díaz, Peñuelas, Ponce, Villalba, Yauco |
| San Juan--Bayamón, PR PMSA | 361 | 440 | 519 | 650 | 730 | Aguas Buenas, Barceloneta, Bayamón, Canóvanas, Carolina, Cataño, Ceiba, Comerío, Corozal, Dorado, Fajardo, Florida, Guaynabo, Humacao, Juncos, Las Piedras, Loíza, Luquillo, Manatí, Morovis, Naguabo, Naranjito, Río Grande, San Juan, Toa Alta, Toa Baja, Trujillo Alto, Vega Alta, Vega Baja, Yabucoa |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Adjuntas | 213 | 263 | 309 | 390 | 431 | Aibonito | 213 | 263 | 309 | 390 | 431 |
| Arroyo | 213 | 263 | 309 | 390 | 431 | Barranquitas | 213 | 263 | 309 | 390 | 431 |
| Ciales | 213 | 263 | 309 | 390 | 431 | Coamo | 213 | 263 | 309 | 390 | 431 |
| Culebra | 213 | 263 | 309 | 390 | 431 | Guánica | 213 | 263 | 309 | 390 | 431 |
| Guayama | 213 | 263 | 309 | 390 | 431 | Isabela | 213 | 263 | 309 | 390 | 431 |
| Jayuya | 213 | 263 | 309 | 390 | 431 | Lajas | 213 | 263 | 309 | 390 | 431 |
| Lares | 213 | 263 | 309 | 390 | 431 | Las Marías | 213 | 263 | 309 | 390 | 431 |
| Maricao | 213 | 263 | 309 | 390 | 431 | Maunabo | 213 | 263 | 309 | 390 | 431 |
| Orocovis | 213 | 263 | 309 | 390 | 431 | Patillas | 213 | 263 | 309 | 390 | 431 |
| Quebradillas | 213 | 263 | 309 | 390 | 431 | Rincón | 213 | 263 | 309 | 390 | 431 |
| Salinas | 213 | 263 | 309 | 390 | 431 | San Sebastián | 213 | 263 | 309 | 390 | 431 |
| Santa Isabel | 213 | 263 | 309 | 390 | 431 | Utuado | 213 | 263 | 309 | 390 | 431 |
| Vieques | 213 | 263 | 309 | 390 | 431 | | | | | | |

## VIRGIN ISLANDS

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| St. Croix Island | 509 | 618 | 729 | 909 | 1019 | St. John/St. Thomas | 654 | 792 | 934 | 1167 | 1307 |

Note1: The FMRs for unit sizes larger then 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.
Note2: 50th percentile FMRs are indicated by an * before the MSA name.
Note3: HUD defined MSAs are followed by **

09/23/2003

### SCHEDULE D - FY 2004 FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES IN THE SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

| State | Area Name | Space Rent |
|---|---|---|
| California | Los Angeles--Long Beach, CA PMSA | $463 |
| | Orange County, CA PMSA | $562 |
| | Riverside--San Bernardino, CA PMSA | $369 |
| | San Diego, CA MSA | $579 |
| | Vallejo--Fairfield--Napa, CA PMSA | $483 |
| Colorado | Boulder--Longmont, CO PMSA | $423 |
| | Denver, CO PMSA | $402 |
| Maryland | Hagerstown, MD PMSA | $257 |
| | St. Mary's County | $376 |
| Nevada | Reno, NV MSA | $445 |
| New York | Newburgh, NY--PA PMSA | $396 |
| | Rochester, NY MSA | $258 |
| | Utica--Rome, NY MSA | $232 |
| Oregon | Deschutes County | $282 |
| | Portland--Vancouver, OR--WA PMSA | $324 |
| | Salem, OR PMSA | $401 |
| Washington | Olympia, WA PMSA | $474 |
| West Virginia | Logan County | $340 |
| | McDowell County | $340 |
| | Mercer County | $340 |
| | Mingo County | $340 |
| | Wyoming County | $340 |

[FR Doc. 03-24962 Filed 9-30-03; 8:45 am]

BILLING CODE 4210-62-C

# Federal Register

Wednesday,
October 1, 2003

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Part V

# Federal Communications Commission

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47 CFR Part 64

## Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991; Final Rule

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 64

**[CG Docket No. 02–278, DA 03–2994, FCC 03–153]**

## Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** In this document, the Commission announces that the Office of Management and Budget (OMB) has approved for three years the information collections contained in the Commission's telemarketing rules at §§ 64.1200(d)(1), (d)(3), (d)(6), (f)(3) and (g)(1). Sections 64.1200(a)(5), (a)(6) and (c)(2) are already to be effective October 1, 2003 per dates published at 68 FR 44144, July 25, 2003. OMB is continuing its review of the information collections associated with the fax advertising rules.

**DATES:** 47 CFR 64.1200(d)(1), (d)(3), (d)(6), (f)(3) and (g)(1) published at 68 FR 44144, July 25, 2003, are effective October 1, 2003.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Erica H. McMahon or Richard D. Smith at 202–418–2512, Consumer & Governmental Affairs Bureau.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Public Notice*, DA 03–2994, released on September 29, 2003, announcing OMB approval for three years of the information collections contained in §§ 64.1200(d)(1), (d)(3), (d)(6), (f)(3) and (g)(1) of the Commission's rules implementing the Telephone Consumer Protection Act (TCPA) of 1991. The information collections were approved by OMB on September 29, 2003. OMB Control No. 3060–0519. The Commission publishes this notice of the effective date of the rules. As noted in the Commission's Report and Order, 68 FR 44144, July 25, 2003, the national do-not-call rules at § 64.1200 (c)(2) and the call abandonment rules at § 64.1200 (a)(5) and (a)(6) become effective on October 1, 2003 and the caller ID rules at § 64.1601(e) go into effect on January 29, 2004. If you have any comments on these burden estimates, or how we can improve the collection(s) and reduce the burden(s) they cause you, please write to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554. Please include the OMB Control Number, 3060–0519, in your correspondence. We will also accept your comments regarding the Paperwork Reduction Act aspects of the collections via the Internet, if you send them to *Leslie.Smith@fcc.gov* or call (202) 418–0217.

### Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received approval for three years from OMB on September 29, 2003 for the collection(s) of information contained the Commission's telemarketing rules at 47 CFR 64.1200. OMB is continuing its review of the information collections associated with the fax advertising rules.

The OMB Control Number is 3060–0519. The annual reporting burden for this collection(s) of information, including the time for gathering and maintaining the collection of information, is estimated to be: 30,000 respondents, an average of 60 hours per response per annum, for a total annual hour burden of 1,728,600, and $855,000 in total annual costs.

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB Control Number. The OMB Control Number is 3060–0519.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, 44 U.S.C. 3507.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03–25064 Filed 9–30–03; 8:45 am]

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**Federal Register**

Vol. 68, No. 190

Wednesday, October 1, 2003

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## CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

## REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html.* Some laws may not yet be available.

**H.R. 3161/P.L. 108–82**

To ratify the authority of the Federal Trade Commission to establish a do-not-call registry. (Sept. 29, 2003; 117 Stat. 1006)

**H.R. 2657/P.L. 108–83**

Legislative Branch Appropriations Act, 2004 (Sept. 30, 2003; 117 Stat. 1007)

**H.J. Res. 69/P.L. 108–84**

Making continuing appropriations for the fiscal year 2004, and for other purposes. (Sept. 30, 2003; 117 Stat. 1042)

**S. 520/P.L. 108–85**

Fremont-Madison Conveyance Act (Sept. 30, 2003; 117 Stat. 1049)

**S. 678/P.L. 108–86**

Postmasters Equity Act of 2003 (Sept. 30, 2003; 117 Stat. 1052)

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John F. Kennedy

Lyndon B. Johnson

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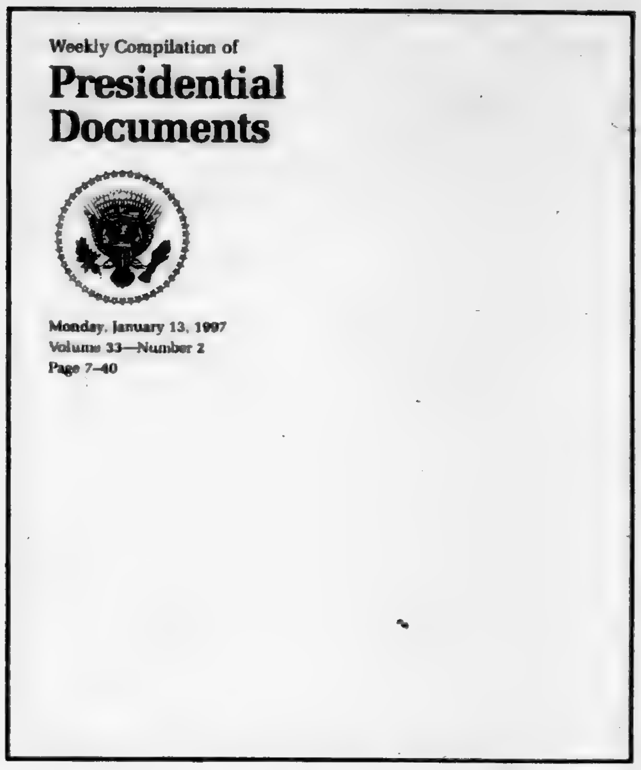

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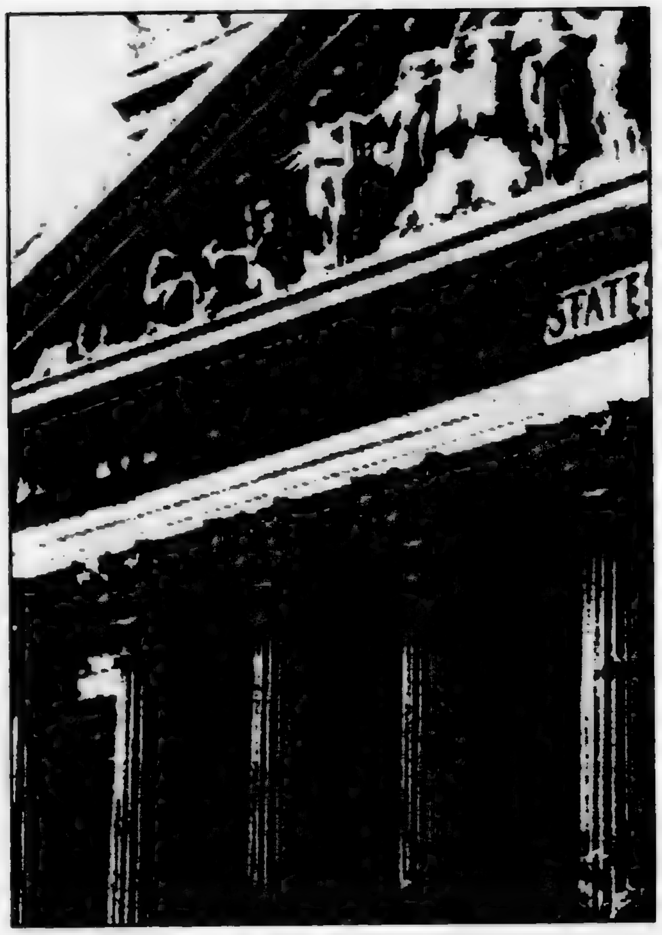

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# Rules and Regulations

**Federal Register**
Vol. 68, No. 191
Thursday, October 2, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 522

## Implantation or Injectable Dosage Form New Animal Drugs; Dexamethasone Injection

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Veterinary Laboratories, Inc. The ANADA provides for the use of dexamethasone injectable solution for the treatment of primary bovine ketosis and as an anti-inflammatory agent in cattle and horses.

**DATES:** This rule is effective October 2, 2003.

**FOR FURTHER INFORMATION CONTACT:** Lonnie W. Luther, Center for Veterinary Medicine (HFV 104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov*.

**SUPPLEMENTARY INFORMATION:** Veterinary Laboratories, Inc., 12340 Santa Fe Dr., Lenexa, KS 66215, filed ANADA 200–324 that provides for use of Dexamethasone Injection for the treatment of primary bovine ketosis and as an anti-inflammatory agent in cattle and horses. Veterinary Laboratories' Dexamethasone Injection is approved as a generic copy of Schering-Plough Animal Health's AZIUM (dexamethasone) Solution 2 Mg., approved under NADA 012–559. The ANADA is approved as of August 19, 2003, and the regulations are amended in § 522.540 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

### List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

### PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

■ 2. Section 522.540 is amended by revising paragraph (a) to read as follows:

**§ 522.540 Dexamethasone injection.**

(a)(1) *Specifications.* Each milliliter of solution contains 2 milligrams (mg) dexamethasone.

(2) *Sponsors.* See sponsors in § 510.600(c) of this chapter:

(i) Nos. 000061 and 059130 for use as in paragraph (a)(3) of this section.

(ii) No. 000857 for use as in paragraphs (a)(3)(i)(C), (a)(3)(i)(D), (a)(3)(ii)(A), and (a)(3)(iii) of this section.

(3) *Conditions of use*—(i) *Amount.* The drug is administered intravenously or intramuscularly and dosage may be repeated if necessary, as follows:

(A) *Dogs.* 0.25 to 1 mg.

(B) *Cats.* 0.125 to 0.5 mg.

(C) *Horses.* 2.5 to 5 mg.

(D) *Cattle.* 5 to 20 mg, depending on the severity of the condition.

(ii) *Indications for use.* The drug is indicated:

(A) For the treatment of primary bovine ketosis and as an anti-inflammatory agent in cattle and horses;

(B) As an anti-inflammatory agent in dogs and cats.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

* * * * *

Dated: September 11, 2003.

**Linda Tollefson,**

*Deputy Director, Center for Veterinary Medicine.*

[FR Doc. 03–24928 Filed 10–1–03; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 938

**[PA–135–FOR]**

## Pennsylvania Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We are approving a proposed amendment to the Pennsylvania regulatory program (the "Pennsylvania program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Pennsylvania proposed revisions to its rules about surface and ground water monitoring and coal refuse disposal to satisfy required program amendments. Additionally, Pennsylvania submitted new rules concerning coal refuse disposal operations. Pennsylvania intended to revise its program to be consistent with the corresponding Federal regulations and SMCRA, clarify ambiguities, and provide additional safeguards. Finally, we are removing a regulatory program amendment where we required Pennsylvania to correct

cross-section references within the Pennsylvania Surface Mining Conservation and Reclamation Act (PA SMCRA).

**EFFECTIVE DATE:** October 2, 2003.

**FOR FURTHER INFORMATION CONTACT:** George Rieger, Acting Field Office Director, Harrisburg Field Office, Telephone: 717–782–4036, Internet address: *grieger@osmre.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Background on the Pennsylvania Program
II. Submission of the Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

## I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

## II. Submission of the Proposed Amendment

By two letters, both dated December 20, 2001, Pennsylvania sent us proposed amendments to its program (Administrative Record Nos. PA 837.101 and 881.00) under SMCRA (30 U.S.C. 1201 *et seq.*). In PA 837.101, Pennsylvania revised and added regulations at 25 Pennsylvania Code (Pa. Code) Chapters 88 and 90 regarding coal refuse disposal operations to implement statutory changes made to its Coal Refuse Disposal Control Act (CRDCA). Through these revised and added regulations, Pennsylvania was also responding to required amendments codified at 30 CFR 938.16(vvv), (www), (xxx), (yyy), (zzz), (aaaa), and (bbbb). We required these amendments to the Pennsylvania program as a result of our review of Pennsylvania's amendment to the CRDCA as found in the April 22, 1998, **Federal Register** (63 FR 19802). In a May 22, 1998, letter (Administrative Record No. PA 837.72) to OSM, Pennsylvania provided clarifications in response to the required amendments. In the February 2, 2000, **Federal Register** (65 FR 4882), we responded to Pennsylvania's clarifications by indicating that we would remove the required program amendments when Pennsylvania's clarifications were incorporated into regulations and those regulations were approved by OSM. In the amendment submitted under PA 837.101, Pennsylvania has provided those regulations.

In PA 881.00, Pennsylvania submitted changes made to its regulations at 25 Pa. Code 89.59(a)(2), (3) and (b) regarding ground water monitoring. These changes were made in response to the required amendment at 30 CFR 938.16(hh) in which we required Pennsylvania to amend its program to be no less effective than 30 CFR 784.14(h)(1) regarding ground water monitoring plans. At a minimum, the plans are to contain the total dissolved solids or specific conductance, pH, total iron, total manganese, and water levels shall be monitored and data submitted to Pennsylvania at least every three months for each monitoring location.

In a third letter dated November 16, 2001 (Administrative Record No. PA 880.00), Pennsylvania sent us an explanation regarding citation of cross-references in PA SMCRA required by the program amendment at 30 CFR 938.16(kk).

We announced receipt of the proposed amendments in the January 25, 2002, **Federal Register** (67 FR 3633). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on February 25, 2002. We received comments on PA 837.101 from four Federal agencies, on PA 881.00 we received comments from two Federal agencies, and on PA 880.00 we received comments from one Federal agency.

## III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

In the proposed amendment, Pennsylvania submitted regulations that implement provisions of the CRDCA. Many of these regulations are substantively the same, or have the same meaning, as portions of the CRDCA that are already in the approved Pennsylvania program. We announced our approval of these portions of the CRDCA in the April 22, 1998, **Federal Register** (63 FR 19802). The following regulations, listed in the first column of the table below, are approved because they are substantively identical to, or have the same meaning as, the corresponding State statutory provisions (shown in the second column) that we approved on April 22, 1998:

| Regulation | Corresponding CRDCA sections that were previously approved |
|---|---|
| 25 Pa. Code 88.332 | Section 30.56a(i). |
| 25 Pa. Code 90.1 definition of "operator" | Section 30.53 Definitions (8): "operator". |
| 25 Pa. Code 90.1 definition of "public recreational impoundment" | Section 30.53 Definitions (10.1): "public recreational impoundment". |
| 25 Pa. Code 90.167(d) | Section 30.56a(i). |
| 25 Pa. Code 90.201 definition of "preferred site" | Section 30.54a(a)(1)–(5). |
| 25 Pa. Code 90.202(a) | Section 30.54a(a). |
| 25 Pa. Code 90.202(b)(1) | Section 30.54a(c). |
| 25 Pa. Code 90.202(b)(2) | Section 30.54a(d). |
| 25 Pa. Code 90.202(c) | Section 30.54a(c), (d). |
| 25 Pa. Code 90.202(d) | Section 30.54a(c), (d). |
| 25 Pa. Code 90.202(e)(1)–(7) | Section 30.54a(b). |
| 25 Pa. Code 90.204(a)(1)–(3) | Section 30.54a(c), (d). |
| 25 Pa. Code 90.204(b)(1)–(3) | Section 30.54a(c), (d). |
| 25 Pa. Code 90.205 | Section 30.54a(e). |

| Regulation | Corresponding CRDCA sections that were previously approved |
|---|---|
| 25 Pa. Code 90.302 definition of "abatement plan" | Section 30.53 Definitions (1): "abatement plan". |
| 25 Pa. Code 90.302 definition of "actual improvement" | Section 30.53 Definitions (1.1) "actual improvement". |
| 25 Pa. Code 90.302 definition of "best technology" | Section 30.53 Definitions (1.4) "best technology". |
| 25 Pa. Code 90.302 definition of "pollution abatement area" | Section 30.53 Definitions (9.1) "pollution abatement area". |
| 25 Pa. Code 90.303(a)(1) | Section 30.56b(b)(1). |
| 25 Pa. Code 90.303(a)(2)(i)–(v) | Section 30.56b(b)(2)(i)–(v). |
| 25 Pa. Code 90.305(a)(1)(i)–(ii) | Section 30.56b(c)(1)(i)–(ii). |
| 25 Pa. Code 90.305(a)(2)–(4) | Section 30.56b(c)(2)–(4). |
| 25 Pa. Code 90.305(a)(6) | Section 30.56b(c)(5). |
| 25 Pa. Code 90.305(a)(7) | Section 30.56b(c)(7). |
| 25 Pa. Code 90.305(b) | Section 30.56b(d). |
| 25 Pa. Code 90.305(c) | Section 30.56b(c)(6). |

The following section contains our evaluation of regulations that do not have substantively identical corresponding sections to those in the CRDCA. Pennsylvania has made changes to its regulations at Chapter 88 covering coal refuse disposal operations in the anthracite region as well as regulations at Chapter 90 covering operations in the bituminous region.

*Chapter 88 Anthracite Coal*

*25 Pa. Code 88.281 Requirements.* This section formerly required anthracite coal operators who conduct coal refuse disposal activities to comply with the performance standards and design requirements of this subchapter. Pennsylvania added references to the new coal refuse disposal regulations to insure that anthracite operators comply with these new standards. Although these references have no direct Federal counterparts, the Director is approving them because they do not render the Pennsylvania program inconsistent with SMCRA or the Federal regulations.

*25 Pa. Code 88.310 Coal refuse disposal: general requirements.* Pennsylvania added subsections (j) and (k) to this section. Subsection (j) requires that the system to prevent adverse impacts to the surface and groundwater shall be constructed in accordance with design schematics, test results, descriptions, plans, maps, profiles or cross-sections approved in the permit and shall function to prevent adverse impacts to surface water and groundwater. This section is essentially the same as 25 Pa. Code 90.122(g) that the Director is approving below. This section will assure that anthracite refuse disposal operations are conducted in conjunction with the same safeguards as those in the bituminous region. Although these subsections have no direct Federal counterparts, the Director is approving them because they do not render the Pennsylvania program inconsistent with SMCRA or the Federal regulations.

Subsection (k) provides the design and installation requirements of a system designed to prevent precipitation from coming in contact with the coal refuse. These requirements are essentially the same as those that the Director is approving at 25 Pa. Code 90.122(h) (see the discussion under 25 Pa. Code 90.122(h) below for more information). The addition of these requirements to Pennsylvania's anthracite regulations will insure that anthracite coal refuse disposal operations will be carried out with the same safeguards in place as those in the bituminous region. Although this subsection has no direct Federal counterpart, the Director is approving it because it does not render the Pennsylvania program inconsistent with SMCRA or the Federal regulations.

*Chapter 90 Coal Refuse Disposal*

*25 Pa. Code 90.1 Definition of "coal refuse disposal".* Pennsylvania defines "coal refuse disposal" in section 90.1 as "the storage, placement, or disposal of coal refuse." The term includes engineered features integral to the placement of the coal refuse including relocation or diversions of stream segments contained within the proposed fill area and the construction of required systems to prevent adverse impacts to surface water and groundwater and to prevent precipitation from contacting the coal refuse." While the term "coal refuse disposal" is not defined in the Federal regulations, Pennsylvania's definition is used in its regulations for meeting the requirements of 30 CFR 816.81(a)(1) which requires waste disposal areas to minimize effects of leachate and surface water runoff on surface and ground water quality and quantity. The Director finds that the definition of "coal refuse disposal" is not inconsistent with SMCRA or the Federal regulations.

*25 Pa. Code 90.5 Site selection and permitting.* Subsection (a) provides that an applicant for a permit to conduct coal refuse disposal activities shall comply with Subchapter E (relating to site selection) and shall use Pennsylvania's Technical Guidance Document number 563–2113–660, titled "Coal Refuse Disposal—Site Selection" as guidance for selecting a coal refuse disposal site. Subsection (b) provides that after Pennsylvania has approved a site in accordance with Subchapter E, the applicant may apply for a permit for coal refuse disposal activities. There is no direct Federal counterpart for this regulation. However, this section merely describes the sequence of events that an applicant must go through to secure a permit for coal refuse disposal. Because this section is not inconsistent with SMCRA or the Federal regulations, the Director is approving it.

*25 Pa. Code 90.12 Geology.* Pennsylvania rearranged this section and also added and deleted some language. This section describes the geologic information that an application for coal refuse disposal must include. Former subsection (a)(1) was combined into subsection (a). Pennsylvania also deleted language from former subsection (a)(1) that described the information on the specific geologic stratum that operators are required to put in their permit applications. The deleted information required stratum information that was tied to the lowest coal seam to be mined. This information was replaced with the phrase, "The description shall include the strata down to and including any aquifer that may be affected." Pennsylvania made these changes because coal refuse disposal operations typically do not require the mining of coal. If coal mining does occur in conjunction with the refuse disposal operations, it will be regulated under Pennsylvania's surface coal mining regulations.

The Federal regulation most comparable to this section is found at 30 CFR 780.22(b)(1). This section requires geologic information in applications to include the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining. Since no coal mining will occur in a refuse disposal operation, Pennsylvania's revised language requiring a description of the stratum down to and including the lowest aquifer that could be affected is as effective as the Federal regulations in requiring the application to contain geologic information about strata that could be affected in a coal refuse disposal operation. The Director finds that this change is no less effective than the Federal regulations and is approving the change.

Former subsection (a)(1)(i) was moved in its entirety to (a)(1). Former subsection (a)(1)(ii) is now (a)(2) and was changed from "Depth, lithology and structure of overburden or underlying strata," to "Depth, lithology and structure of near-surface bedrock." As noted earlier, coal refuse disposal operations in Pennsylvania generally are fills that do not involve the mining of coal. Therefore, the requirement to provide the depth, lithology and structure of overburden or underlying strata, is not applicable since this requirement is tied to a coal seam to be mined. The Director finds that a description of the lithology and structure of the near-surface bedrock is no less effective than the Federal regulations requiring descriptions of the strata to be affected by refuse operations. Accordingly, the Director is approving this change.

Former subsection (a)(2) has been deleted. This section provided the geologic information to be included in an application for any portion of a permit area in which the strata will be removed. As noted earlier, this provision is not applicable to refuse disposal operations because coal mining (unless otherwise authorized under Pennsylvania's surface mining regulations) does not occur on such operations. The Director is approving this change.

Former subsection (b) has been deleted. This section provided that an applicant may request that the requirements for a statement of the results of the test borings or core samplings required under subsection (a)(2) may be waived in part or in its entirety by the Department. Since former subsection (a)(2) has been deleted there is no reason to get a waiver from its requirements, therefore, the Director is approving deletion of this section.

Pennsylvania added requirements (4) through (9) to subsection (a). These sections provide the application requirements for describing the soils, geologic strata characteristics, aquifers, and mine workings below proposed refuse disposal areas. These additions do not correspond directly to any Federal regulations. However, they require operators to inform Pennsylvania of the conditions beneath and adjacent to the proposed coal refuse disposal area. Because they require additional descriptions of site conditions, they are not inconsistent with the Federal regulations, and the Director is approving them.

Pennsylvania added a new subsection (b) that provides that maps, cross-sections, and geologic descriptions required by this section shall be prepared and certified by a qualified registered professional geologist. The Director finds that this section is no less effective than the Federal regulations at 30 CFR 779/783.25(b), which provides that a professional geologist is among the professionals authorized to submit maps and cross-sections for permit information.

*25 Pa. Code 90.13 Groundwater information.* In subsection (2), Pennsylvania proposed to add the following sentence to the end of the subsection: "The application shall include a description of the groundwater flow system as it relates to the design and operation of the proposed groundwater and surface water protection system as described in § 90.50 (relating to Design criteria: groundwater and surface water protection system)." This section does not have a direct Federal counterpart. However, it is useful to provide a description of the groundwater flow system as it relates to design and operation of the groundwater and surface water protection system in the application so that Pennsylvania may evaluate the effectiveness of such systems. The information required by 25 Pa. Code 90.13(2) assists operators in meeting the requirements of, and is therefore consistent with, 30 CFR 816.81(a)(1), which requires operators to minimize adverse effects of leachate and surface water runoff on surface and ground water quality and quantity. As a result, the Director is approving this addition.

*25 Pa. Code 90.45 Prime farmland* The only change to this section was the addition of a reference to Subchapter E which now requires that a person who conducts or intends to conduct coal refuse disposal activities on prime farmlands historically used for cropland, in accordance with Subchapter E (relating to site selection), to submit a plan as part of the permit application for the disposal and restoration of the land. The addition of this language clarifies that an operator must take into account the requirements of subchapter E when proposing to conduct refuse disposal on prime farmland sites. In Subchapter E, section 90.202(e)(1) provides that Pennsylvania will not approve coal refuse disposal on, or within, prime farmlands except on preferred sites. The Director finds that because this section provides protections for prime farmlands in addition to those found in 30 CFR 785.17, it is consistent with that Federal regulation and is hereby approved.

*25 Pa. Code 90.49 Stream buffer zone variance* This is a new section added to define the conditions when Pennsylvania will allow coal refuse disposal operations to occur within 100 feet of a stream. As such, it expands upon and clarifies the statutory provisions partially approved on April 22, 1998 (63 FR 19806). Subsection (a) provides that coal refuse disposal may not occur within 100 feet of a stream, however, the Department may grant a variance under subsection (c) if the application is consistent with Subchapter E (relating to site selection). Subsection (b) provides that surface mining operations supporting coal refuse disposal must comply with 25 Pa. Code 86.102(12) relating to areas where mining is prohibited or limited. Subsection (c) provides the procedures an operator must follow to obtain a variance for disposal of coal refuse within the 100-foot stream buffer zone (SBZ) and the circumstances under which the Department will grant such a variance.

This amendment responds to the required amendment codified at 30 CFR 938.16(www). This required amendment concerns application of the SBZ rule at 30 CFR 816/817.57. The required amendment stated:

> By July 1, 1998, Pennsylvania shall amend the Pennsylvania program to authorize stream buffer zone variances for coal refuse disposal activities only where such activities will not cause or contribute to the violation of applicable State or Federal water quality standards, and will not adversely affect water quality and quantity, or other environmental resources of the stream.

Pennsylvania's submission of regulations at 25 Pa. Code 90.49(a), (b) and (c)(1), regarding coal refuse disposal activities within a SBZ, are substantially the same as the Federal regulations regarding surface mining activities within a SBZ found at 30 CFR 816/817.57. Those sections provide assurance that the activities will not cause or contribute to the violation of applicable State or Federal water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream. In addition, at 25 Pa. Code 90.49(c)(2), Pennsylvania contains regulations regarding public notice of a potential variance and a method by which the public can file an exception to the proposed variance with the aim of receiving a public hearing. These sections are no less effective than the Federal regulations and we are approving them. As a result, we will remove the required amendment at 30 CFR 938.16(www).

In 25 Pa. Code 90.49(c)(3), Pennsylvania has indicated that variances to SBZs will be issued as written orders specifying the methods and techniques to be employed to prevent or mitigate adverse impacts. Mitigation can include, but is not limited to, compensatory restoration and enhancements of nearby streams or stream segments. The first sentence of this provision is essentially identical to the statutory language previously approved on April 22, 1998, which states "The variance shall be issued as a written order specifying the methods and techniques that must be employed to prevent or mitigate adverse impacts." Therefore, there is no issue in approving that language in regulation here. The second sentence merely elaborates on the scope of that mitigation concept we have previously accepted by indicating that it may include off-site restoration or enhancement. Therefore, it is also approved.

*25 Pa. Code 90.50 Design criteria: groundwater and surface water protection system.* This entire section was added by the amendment and provides the application requirements for the performance standards of section 30.56a(i) of the CRDCA. Subsection (a) provides that the application must include a description of the system that will be installed to prevent adverse impacts to groundwater and surface water, while subsection (b) requires the application to include a description of the system that will be installed to prevent precipitation from coming in contact with the coal refuse. Subsection (c) provides that the Department's Technical Guidance Document number 563–2112–656, titled, "Liners—Impoundments, Stockpiles and Coal Refuse Disposal Areas" shall be used as guidance for designing coal refuse disposal sites incorporating earthen, admixed, or synthetic liners or caps for preventing adverse impact to groundwater and surface water and for preventing precipitation from contacting coal refuse. Subsection (d) requires the application to include a description of the measures to be taken to ensure the long-term functionality of the systems described in subsections (a) and (b). The description must address the site's susceptibility to mine subsidence and deterioration due to physical or chemical processes.

We approved Pennsylvania's use of a system to prevent adverse impacts to surface and ground water and to prevent precipitation from contacting the coal refuse, as described in section 30.56a(i) of the CRDCA, in the April 22, 1998, **Federal Register** (63 FR 19807). The requirements, as presented in the amendment, to describe such systems in the permit application including when and how the systems will be used and how they will be maintained are a logical extension of the requirements of their use. These permit application requirements, in conjunction with the requirements of previously approved sections 25 Pa. Code 90.35 concerning protection of the hydrologic balance, and 25 Pa. Code 90.101 concerning general requirements of the hydrologic balance, are consistent with the requirements of SMCRA section 515(b)(10) concerning protection of the hydrologic balance and 30 CFR 816.81(a) concerning coal mine waste, protection of surface and groundwater from leachate and surface water runoff. As a result, the Director is approving this section.

*25 Pa. Code 90.101 Hydrologic balance: general requirements.* Pennsylvania proposed only a minor change to this section. Subsection (b) previously required coal refuse disposal activities to be planned and conducted to prevent pollution of the water. In this amendment, Pennsylvania clarified that the water referred to in this section is groundwater and surface water. This clarification is consistent with the requirements of SMCRA section 515(b)(10) regarding minimizing disturbances to surface and ground water systems. As a result, the Director is approving this section.

*25 Pa. Code 90.116a Hydrologic balance: water rights and replacement.* This new section provides that an operator who conducts coal refuse disposal and adversely affects a water supply shall comply with 25 Pa. Code 87.119 (relating to water rights and replacement). Section 87.119 requires restoration or replacement of an affected water supply with an alternate source adequate in quantity and quality for the purpose served by the supply. While we are reviewing changes to 25 Pa. Code 87.119 as part of a different program amendment, the Director finds that the reference in 25 Pa. Code 90.116a to 25 Pa. Code 87.119 will insure that water supplies adversely affected by coal refuse disposal operation will be restored or replaced. Therefore, the Director is approving this section.

*25 Pa. Code 90.122 Coal refuse disposal.* In this section, Pennsylvania deleted former subsections (e) and (g), and redesignated former subsection (f) as (e) and former subsection (h) as (f). Pennsylvania then added new subsections (g) and (h). In the former subsection (e) Pennsylvania required coal refuse disposal areas to be located on the most moderately sloping and naturally stable areas available. The section further provided that fill materials suitable for disposal are to be placed on or above a natural terrace, bench or berm to provide additional stability and prevent mass movement. Former subsection (g) required coal refuse disposal areas to be located in areas where groundwater discharge and surface water flows are minimal. These sections, which have no direct Federal counterparts, were designed to provide stability to refuse disposal fills and prevent pollution to surface and groundwater, both of which are provided for under the remaining and new subsections of 25 Pa. Code 90.122. Therefore, the Director is approving the deletion of these sections.

The new subsection (g) requires refuse disposal areas to be provided with a system to prevent adverse impacts to surface water and groundwater. New subsection (h) specifies how and when the system for preventing precipitation from coming into contact with coal refuse is to be installed. These sections are derived from, and are consistent with, section 30.56a(i) of the CRDCA that we approved in the April 22, 1998, **Federal Register** notice (63 FR 19807). Therefore, the Director is approving them.

*Subchapter E. Site selection.* Pennsylvania is proposing to add a new Subchapter E titled, "Site Selection" to the Chapter 90 regulations. Subchapter E will contain 25 Pa. Code 90.201 Definitions, 25 Pa. Code 90.202 General requirements, 25 Pa. Code 90.203 Proposing a preferred site, 25 Pa. Code 90.204 Proposing an alternate site, 25 Pa. Code 90.205 Alternatives analysis, 25 Pa. Code 90.206 Disapproval of a proposed site, and 25 Pa. Code 90.207 Approval of a selected site.

*25 Pa. Code 90.201 Definitions.* This section contains definitions of the terms "search area," and "selected site." These definitions are used to implement Pennsylvania's regulations for the selection of sites for coal refuse disposal operations.

Pennsylvania has defined the term "search area" to mean the geographic area within a 1-mile radius of an existing coal preparation facility or the

25 square mile geographic area encompassing a proposed coal preparation facility. Although these terms were not specifically used in the CRDCA, the definitions were used in section 30.54a(c) and (d) regarding criteria for selecting sites for coal refuse disposal operations. We approved the use of the 1-mile radius in identifying alternative sites for new refuse disposal areas to support an existing coal mining activity and the use of the 25 square mile geographic area for alternative sites for a proposed coal preparation facility (63 FR 19806). Accordingly, the Director is approving the definition of the term "search area" in 25 Pa. Code 90.202.

The term "selected site" is defined as a location selected by the applicant and approved by the Department for which the applicant can then apply for a permit to conduct coal refuse disposal activities. This term is not used in the CRDCA and there is no comparable term in the Federal regulations. We are approving the term because we have already approved the concept of coal refuse disposal site selection set forth in the CRDCA at 52 P.S. 30.54a(a) (63 FR 19806), and because the term is not inconsistent with SMCRA or the Federal regulations.

*25 Pa. Code 90.202 General requirements.* Subsection (f) provides that as part of the site selection process, an applicant may request approval for more than one site. The applicant will have the option of choosing a selected site from those approved by the Department to be used as the site for submitting an application on which to conduct coal refuse disposal operations. While there is no comparable Federal regulation for this section, there is nothing in SMCRA or the Federal regulations to prevent an operator from examining any number of sites to conduct refuse disposal operations. Any of the sites chosen must undergo the permitting process and be approved by the Department in accordance with the counterparts to SMCRA and the Federal regulations. Accordingly, the Director is approving subsection (f) of 25 Pa. Code 90.202.

*25 Pa. Code 90.203 Proposing a preferred site.* This section provides that if an applicant proposes to use a preferred site, the Department will approve the proposed site subject to 25 Pa. Code 90.202(c) (relating to general requirements) provided the applicant demonstrates that the attendant adverse environmental impacts will not clearly outweigh the public benefits. This section relates to section 30.54a(a) of the CRDCA, which provides that preferred sites shall be used for coal refuse disposal unless the applicant demonstrates another site is more suitable; and that where the adverse environmental impacts of the preferred site clearly outweigh the public benefits, the site shall not be considered a preferred site. We approved section 30.54a(a) in the April 22, 1998, **Federal Register** (63 FR 19804). Because 25 Pa. Code 90.203 is consistent with the approved State statutory provision, the Director is approving it.

*25 Pa. Code 90.206 Disapproval of a proposed site* This section provides that if the Department disapproves the applicant's proposed site, the applicant may submit a new proposal supporting the selection of another site located within or outside the search area. There is no similar language in the CRDCA or SMCRA or the Federal regulations. However, there is no provision in SMCRA or the Federal regulations that prohibits an applicant from submitting alternative proposals if one is turned down. The Director finds this section is not inconsistent with the Federal regulations or SMCRA and is approving it.

*25 Pa. Code 90.207 Approval of a selected site.* This section provides that Pennsylvania's approval of a selected site does not indicate it will approve an application for coal refuse disposal activities on the selected site. The Director finds that this provision is consistent with Pennsylvania's permitting responsibilities under State counterparts to permitting requirements contained in SMCRA and the Federal regulations, and is therefore approving it.

*Subchapter F. Coal Refuse Disposal Activities on Areas with Preexisting Pollutional Discharges.* This is a new section added by Pennsylvania. These regulations are modeled on existing regulations regarding remining areas with preexisting pollutional discharges found in 25 Pa. Code Chapter 87, Subchapter F and approved by OSM in the February 19, 1986 **Federal Register** (51 FR 5997).

*25 Pa. Code 90.301 Scope.* This section gives a general overview of the sections that follow and notes that Chapter 86 (relating to surface and underground coal mining: General) and Subchapters A–D apply to authorizations to mine areas with preexisting pollutional discharges except as specifically modified by this chapter. The Director has approved, with some conditions, the concept of establishing coal refuse disposal areas on sites with preexisting pollutional discharges in the analysis of the amendment of the CRDCA in the April 22, 1998 **Federal Register** (63 FR 19802). Section 25 Pa. Code 90.301 introduces the concept in regulation; therefore the Director is approving this section.

*25 Pa. Code 90.302 Definitions, Baseline Pollution Load.* Pennsylvania added the definition of the term "baseline pollution load" to 25 Pa. Code 90.302. This term is defined as, "The characterization of the pollutional material being discharged from or on the pollution abatement area, described in terms of mass discharge for each parameter deemed relevant by the Department, including seasonal variations and variations in response to precipitation events. The Department will establish in each authorization the specific parameters it deems relevant for the baseline pollution load, including, at a minimum, iron and acid loadings." This term was similarly defined in the CRDCA except for the last sentence. The term, including the last sentence, was also defined in 25 Pa. Code 87.202 regarding remining on surface mining sites with pollutional discharges. We approved the definition in our evaluation of the Chapter 87 regulations in the February 19, 1986 **Federal Register** (51 FR 5997). We are approving the definition for use in coal refuse disposal operations for the same reasons.

*25 Pa. Code 90.302 Definitions, Best Professional Judgment.* Pennsylvania added the definition of the term "best professional judgment" to 25 Pa. Code 90.302. The term is defined to mean, "the highest quality technical opinion forming the basis for the terms and conditions of the treatment level required after consideration of all reasonably available and pertinent data. The treatment levels shall be established by the Department under sections 301 and 402 of the Federal Water Pollution Control Act (33 U.S.C.A. § § 1311 and 1342)." This definition is identical in substance to the definition of "best professional judgment" found at 25 Pa. Code sections 87.202 and 88.502, which was approved by OSM as part of Pennsylvania's standards for treatment of preexisting discharges on remined areas in the February 19, 1986, **Federal Register** (51 FR 5997). As a result, the Director is approving the definition at 25 Pa. Code 90.302.

*25 Pa. Code 90.302 Definitions, Coal Refuse Disposal Activities.* The term "coal refuse disposal activities" was similarly defined in the CRDCA and in this section to mean the storage, dumping or disposal of any waste coal, rock, shale, slurry, culm, gob, boney, slate, clay, underground development wastes, coal processing wastes, excess soil and related materials, associated with or near a coal seam, that are either brought above ground or otherwise removed from a coal mine in the process of mining coal or are separated from coal during the cleaning or preparation operations. The term does not include the removal or storage of overburden from surface mining activities. In our analysis of the term in the April 22, 1998, **Federal Register** (63 FR 19803), we required Pennsylvania to amend its program to clarify the meaning of the term "excess soil and related materials" as used in the definition. This requirement was codified at 30 CFR 938.16(vvv).

In the February 2, 2000, **Federal Register** (65 FR 4882), we noted that Pennsylvania submitted information in response to the required amendment at 30 CFR 938.16(vvv). As part of that response, Pennsylvania defined the term "excess soil and related material to mean rock, clay or other material located immediately above or below a coal seam and which are extracted from a coal mine during the process of mining coal. The term does not include topsoil or subsoil." In that **Federal Register** notice, we indicated that we would remove the required program amendment when the clarification is incorporated in Pennsylvania's regulations and those regulations are approved by OSM. Pennsylvania incorporated the definition of "excess soil and related materials" verbatim into its regulations at 25 Pa. Code 90.302. Therefore, the Director is approving the definition and removing the required amendment at 30 CFR 938.16(vvv).

*25 Pa. Code 90.303 Applicability.* Subsection (b) provides that:

> Notwithstanding subsection (a), authorization will not be granted under this subchapter for repermitting under §§ 86.12 and 86.14 (relating to continued operation under interim permits; and permit application filing deadlines), permit renewals under § 86.55 (relating to permit renewals: general requirements) or permit transfers under § 86.56 (relating to transfer of permit).

There is no direct Federal counterpart to this provision but the Director is approving it because it acts to limit permits where coal refuse disposal activities can occur. This section does not make Pennsylvania's coal refuse disposal regulations less effective than Federal regulations.

*25 Pa. Code 90.304 Application for authorization.* This section provides the permit application requirements for operators seeking to obtain authorization to conduct refuse disposal operations on areas with preexisting pollutional discharges. Parts of section 6.2(e) (52 P.S. 30.56b(e)) of the CRDCA are repeated in this section. Additionally, this section copies 25 Pa. Code 87.204, which contains the surface coal mining requirements for remining areas with pollutional discharges. As noted above, OSM approved 25 Pa. Code 87.204 in the February 19, 1986, **Federal Register** (51 FR 5997). The Director is approving this section for the same reasons.

*25 Pa. Code 90.305 Application approval or denial.* Subsection (a)(5) provides standards for success of revegetation on areas approved under this section. For areas previously reclaimed to the standards of Chapters 87, 88 and 90, the revegetation success standards of 25 Pa. Code 90.159 apply. OSM previously approved the revegetation standards in 25 Pa. Code 90.159. Therefore, the Director is approving this portion of the amendment.

Subsection (a)(5) also provides that for those sites not previously reclaimed to the standards of Chapters 87, 88, and 90 the standards of subsection (a)(5)(i)–(iii) apply providing the site is not a bond forfeiture. These standards are the same as those OSM approved for previously affected sites in 25 Pa. 87.205(a)(5)(i)–(iii). Therefore, the Director is approving this section.

The submission of this portion of the amendment satisfies the required amendment codified at 30 CFR 938.16(zzz). This required amendment indicates that Pennsylvania must amend its program to be no less effective than 30 CFR 816.116(b)(5), by limiting the application of the revegetation standards under subsection 6.2(k) of the CRDCA to areas that were previously disturbed by mining and that were not reclaimed to the State reclamation standards.

The submission of this portion of the amendment also allows us to remove the required amendment codified at 30 CFR 938.16(aaaa). This section required Pennsylvania to amend its program to clarify that under Subsection 6.2(l) of its Coal Refuse Disposal Act, a special authorization for coal refuse disposal operations will not be granted, when such an authorization would result in the site being reclaimed to lesser standards than could be achieved if the moneys paid into the Fund, as a result of a prior forfeiture on the area, were used to reclaim the site to the standards approved in the original permit under which the bond moneys were forfeited. Pennsylvania responded to this required amendment by including language in 25 Pa. Code 90.305(a)(5) that provides an exception to the revegetation standards for special authorization projects. The revegetation standards of that section are not applicable when such projects are conducted on bond forfeiture sites not previously reclaimed to the standards of Chapters 87, 88 and 90, where the money paid into the fund is sufficient to reclaim the forfeited site to the applicable standards. Additionally, we find that the Pennsylvania program prohibits the issuance of a special authorization where preexisting pollutional discharges would not be adequately treated where proceeds paid into the Surface Mining Conservation and Reclamation Fund as a result of a bond forfeiture on the proposed special authorization site are sufficient to pay for such treatment. In other words, treatment of pollutional discharges will not be compromised by special authorizations. Our finding is based upon two premises. First, according to PADEP, there are no currently existing sites for which the forfeited bond would be sufficient to pay for adequate discharge treatment. Second, discharge treatment costs for any future sites will be covered either by conventional bonds, or by treatment trust funds. In the event of operator default on such sites, proceeds from the conventional bonds or treatment trust funds must be expended to accomplish discharge treatment on the sites to which they are dedicated. Thus, where those proceeds are adequate to pay for discharge treatment, they must be used to that end. For these reasons, the remaining concerns that led to the imposition of 30 CFR 938.16(aaaa) have been satisfied, and we are hereby removing this required amendment.

30 CFR 816.116(b)(5) requires that vegetative cover, for areas previously disturbed by mining that were not reclaimed to the standards of Subchapter K, shall not be less than the ground cover existing before redisturbance and shall be adequate to control erosion. In Pennsylvania's amendment, 25 Pa. Code 90.305(a)(5)(ii) and (iii) contains these requirements. As a result, Pennsylvania has satisfied the conditions of the required amendment and we are removing it.

Subsection (d) provides that the authorization allowed under this subsection is only for the pollution abatement area and does not apply to other areas of the permit. The Director is approving this portion of the regulations because it limits the areas of the permit on which coal refuse disposal activities can occur. While there is no direct Federal counterpart to this provision, it does not make this portion of the regulations less effective than the Federal regulations regarding coal refuse disposal.

*25 Pa. Code 90.306 Operational requirements.* This section provides that operators must comply with Chapter 86 requirements, implement the approved water monitoring program, implement the approved abatement plan and notify the Department prior to the completion of each step of the abatement plan. In addition, this section requires a progress report be sent to the Department within 30 days of completion of each step of the abatement program. We approved the statutory authority for these regulations, contained in 52 P.S. 30.56b(f)(1)–(4), on April 22, 1998 (63 FR 19808). Section 90.306 contains the same requirements as 25 Pa. Code 87.206 that OSM approved in the February 19, 1986, **Federal Register** (51 FR 5997) except that the reporting statement signed by the operator in section (a)(4) need not be notarized in 25 Pa. Code 90.306(a). The lack of a notarized seal on the operator's statement does not lessen the reporting requirements of this section. There is no comparable Federal requirement to this section so Pennsylvania's reporting requirements are more stringent than any Federal provisions. The Director is approving this section.

*25 Pa. Code 90.307 Treatment of discharges.* This section provides that operators shall comply with the effluent standards of 25 Pa. Code 90.102 for treating discharges, except for preexisting discharges that are not encountered during coal refuse activities or implementation of the abatement plan. For preexisting discharges that are not encountered during coal refuse activities or implementation of the abatement plan, the operator must treat the discharge to comply with the effluent limits established by best professional judgment. The effluent limitations established by best professional judgment may not be less than the baseline pollution load.

This section is the same as 25 Pa. Code 87.207. OSM approved 25 Pa. Code 87.207 in the February 19, 1986, **Federal Register** (51 FR 5997). However, both 25 Pa. Code 87.207 and 90.307 contain language that Pennsylvania added after the 1986 approval. In 1989, Pennsylvania amended 25 Pa. Code 87.207(b) by adding the following language:

> If the baseline pollution load when expressed as a concentration for a specific parameter satisfies the effluent limitations at § 87.102 (relating to hydrologic balance: Effluent standards) for that parameter, the operator shall treat the preexisting discharge for that parameter to comply with either effluent limitations established by best professional judgment or the effluent limitations at § 87.102.

In our evaluation of this revision, as published in the May 31, 1991, **Federal Register** (56 FR 24657,) we noted that while the United States Environmental Protection Agency (EPA) generally concurred with the amendment package that included the above-quoted change, we asked for a specific determination by EPA as to whether the new language in section 87.207(b) is consistent with section 301(p) of the Federal Water Pollution Act, 33 U.S.C. 1311(p). Section 301(p) authorizes the issuance of National Pollutant Discharge Elimination System permits with modified effluent limitations for pH, iron and manganese on previously mined sites with preexisting discharges. We decided to defer a decision on this provision, pending specific EPA concurrence.

While we did not receive specific concurrence from EPA on revised 25 Pa. Code 87.207(b), EPA did publish a final rule on January 23, 2002 (67 FR 3370), that addresses our questions concerning the revision. Appendix B, part I d, indicates that:

> In the event that a pollutant concentration in the data used to determine baseline is lower than the daily maximum limitation established in subpart C of this part for active mine wastewater, the statistical procedures should not establish a baseline more stringent than the BPT and BAT effluent standards established in subpart C of this part.

This language, plus EPA's concurrence received for this amendment, makes 25 Pa. Code 90.307 no less effective than the Federal regulation at 30 CFR 816.42 which provides that discharges of water from areas disturbed by surface mining activities must be made in compliance with effluent limitations for coal mining promulgated by EPA.

The submission of this section also satisfies required amendments codified at 30 CFR 938.16(xxx) and (yyy) that we put into place as a result of our review of the CRDCA (63 FR 19802). The required amendment at 30 CFR 938.16(xxx) indicates that Pennsylvania shall amend its program to clarify, in regulations developed to implement the provisions of section 6.2 of the CRDCA, that preexisting discharges that are encountered must be treated to the effluent standards at 25 Pa. Code 90.102. In the February 2, 2000, **Federal Register** (65 FR 4883), we indicated that we would remove the required amendment at 30 CFR 938.16(xxx) if Pennsylvania submitted regulations that clarified that under section 6.2 of the CRDCA, preexisting discharges that are encountered must be treated to the State effluent standards at 25 Pa. Code 90.102. In its amendment, Pennsylvania submitted section 25 Pa. Code 90.307 which indicates that in subsection (a) that all discharges, except for preexisting discharges that are not encountered during coal refuse disposal activities or the implementation of the abatement plan, must comply with 25 Pa. Code 90.102. In this regulation, Pennsylvania has satisfied the conditions of the required amendment and, as a result, we are removing it.

The required amendment at 30 CFR 938.16(yyy) indicates that Pennsylvania shall amend its program to clarify that subsection 6.2(h) of the CRDCA pertains to preexisting discharges that are not encountered. In the **Federal Register** of April 22, 1998 (63 FR 19810), we approved section 6.2(h) of the CRDCA to the extent that it provides that an operator may only discontinue treating preexisting discharges that are not encountered when the operator demonstrates that the "baseline" pollution load is no longer being exceeded. Preexisting discharges must be treated to the water quality standards of 25 Pa. Code 90.102.

In this amendment, Pennsylvania submitted 25 Pa. Code 90.307(b) which provides that preexisting discharges that are not encountered must comply with effluent limitations established by best professional judgment. The best professional judgment limitations cannot be less than the baseline pollution load. Subsection (d) in describing when an operator may discontinue treating the discharges under subsection (b), indicates that treatment may be discontinued when the preexisting discharges are meeting the effluent limits established in subsection (b). Taken together, subsections (b) and (d) satisfy the conditions of the required amendment at 30 CFR 938.16(yyy) and as a result, we are removing it.

*25 Pa. Code 90.308 Request for bond release.* This section is the same as 25 Pa. Code 87.208 that OSM approved on February 19, 1986. The Director is approving this section for the same reason. We note that section 90.308 states that 25 Pa. Code subsection 86.172(d) shall not apply to the release of bonds for pollution abatement areas. Subsection 86.172(d) no longer exists; however, since the now deleted provision would not have applied to bond releases under section 90.308 anyway, the cross-reference to it is a nullity.

*25 Pa. Code 90.309 Criteria and schedule for release of bonds on pollution abatement areas.* For the most part, this section is the same as 25 Pa. Code 87.209 that OSM approved on February 19, 1986, except for two areas. In the first, the percentage of bond release is different. In 25 Pa. Code 87.209(a), the initial bond release can be up to 60% of the bond and the percentage of the phase II bond release in 25 Pa. Code 87.209(b) is not specified (subsection (b) specifies only that the Department will release an additional bond while retaining an amount sufficient to cover the cost of reestablishing vegetation if completed by a third party). In the regulations covering coal refuse disposal at 25 Pa. Code 90.309(a), the initial bond release is up to 50% of the bond and the phase II bond release specified in 25 Pa. Code 90.309(b) can be up to an additional 35% of the bond while retaining an amount sufficient to cover the cost of reestablishing vegetation if completed by a third party. The regulations at 25 Pa. Code 90.309(a) could result in retention of more of the bond after phase I release than the counterpart regulations at 25 Pa. Code Chapter 87. This would provide more funds available to complete reclamation if an operator defaults after phase I release. Therefore, the Director is approving this portion of the amendment.

The second area of difference is at 25 Pa. Code 90.309(b)(3)(ii)(A)(I). This section deals with one of the standards the operator must achieve to receive a bond release of up to 35%. The section provides that this portion of the bond can be released if the operator, among other things, has not caused degradation of the baseline pollution load for a period of twelve months from the date of the initial bond release under subsection (a), if backfilling, final grading, drainage control, placement of impermeable cover, topsoiling and establishment of revegetation to achieve the standard of success for revegetation in 25 Pa. Code 90.305(a)(5) have been completed. The similar section approved by OSM on February 19, 1986, for surface mines at 25 Pa. Code 87.209(b)(3)(ii)(A)(I) indicated that up to 35% of bonds could be released if the operator, among other things, had not caused degradation of the baseline pollution load for the twelve months prior to the date of application for bond release and until the bond release is approved under subsection (b), if final grading, drainage control, topsoiling and establishment of revegetation to achieve the standard of success for revegetation in 25 Pa. Code 87.205(a)(5) have been completed. The difference in the two sections amounts to the period of time for demonstrating that the site did not degrade the baseline pollution load. The proposed rules at 25 Pa. Code 90.309(b)(3)(ii)(A)(I) provide for a demonstration period of twelve months from the date of the initial bond release, while in the previously approved regulation at 87.209(b)(3)(ii)(A)(I) the demonstration period is for twelve months prior to the date of application for bond release and until the bond release is approved. Pennsylvania indicated that the demonstration period for the bond release on coal refuse disposal sites was set by the CRDCA which is why it is different than the surface mining regulations in Chapter 87. There is no comparable Federal regulation for this provision. However, the demonstration period is not inconsistent with the Federal regulations at 30 CFR 800.40(c)(2) regarding the release of Phase II bonds. As a result, the Director is approving it.

The remaining sections of 25 Pa. Code 90.309 are the same as the sections of 25 Pa. Code 87.209 that OSM previously approved on February 19, 1986. Therefore the Director is approving them.

### Subchapter G. Experimental Practices.

*25 Pa. Code 90.401 General.* This section provides the standards that coal refuse disposal practices must attain to be considered experimental practices. Subsection (a) is approved because it is substantively identical to, and therefore no less stringent than, the corresponding portions of section 711 of SMCRA. In addition, subsection (b) requires experimental practice permits to meet all the provisions, standards, and information requirements of 30 CFR 785.13. The Director finds that this provision will make Pennsylvania's regulations no less effective than 30 CFR 785.13 and is therefore approving it.

Submission of this portion of the amendment also satisfies the required amendment codified at 30 CFR 938.16(bbbb). This required amendment indicates that Pennsylvania must amend its program by adding implementation rules no less effective than 30 CFR 785.13 and no less stringent than SMCRA section 711. Further, Pennsylvania must clarify that experimental practices are only approved as part of the normal permit approval process and only for departures from the environmental protection performance standards, and that each experimental practice receive the approval of the Secretary. This required amendment is satisfied by subsection 90.401(a), which is substantively identical to most of section 711 of SMCRA, and by subsection (b), which requires compliance with 30 CFR 785.13, which contains the remaining applicable requirements of section 711 of SMCRA not covered by 90.401(a). Those remaining requirements are that experimental practices be approved only as departures from the performance standards in individual cases, and that such practices must also receive the approval of the Secretary of the United States Department of the Interior, as delegated to the OSM Director. Therefore, we are removing 30 CFR 938.16(bbbb).

### Removal of Required Amendments at 30 CFR 938.16(hh) and (kk)

In the required amendment codified at 938.16(hh), we required Pennsylvania to amend 25 Pa. Code 89.59(a)(1) and (2) or otherwise amend its program to be no less effective than 30 CFR 784.14(h)(1) to require the monitoring plan to specify that, at a minimum, the total dissolved solids or specific conductance, pH, total iron, total manganese, and water levels shall be monitored and data submitted to Pennsylvania at least every 3 months for each monitoring location.

In response to this required amendment, Pennsylvania submitted changes to 25 Pa. Code 89.59(a)(3). The changes include deleting the last sentence from the section that reads, "The Department will approve the nature of data, frequency of collection, reporting requirements and the duration of the monitoring programs," and adding the following two sentences to the end of the section:

> Surface water shall be monitored for parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in § 89.36 (relating to protection of hydrologic balance). At a minimum, total dissolved solids or specific conductance corrected to 250C, total suspended solids, total iron, total manganese, acidity, alkalinity, pH, sulfates and flow shall be monitored and reported to the Department at least every 3 months for each monitoring location.

Pennsylvania is also proposing to change 25 Pa. Code 89.59(b) by adding a sentence to the end of the section that reads, "The Department may also require the operator to conduct monitoring and reporting more frequently than every 3 months and to monitor additional parameters beyond the minimum specified in this section."

We find that Pennsylvania's regulatory language regarding surface and groundwater monitoring is substantively identical to the corresponding portions of the Federal requirements at 30 CFR 784.14(h)(1) and therefore satisfies the required amendment at 30 CFR 938.16(hh). We are removing the required amendment at 30 CFR 938.16(hh).

The required amendment codified at 30 CFR 938.16(kk) requires Pennsylvania to correct cross-references in two sections of PA SMCRA. In section 3.1(c), the cross-reference to section 4.2(f) was to be changed to 4(b)(f). In section 3.1(d), the cross-reference to 18.6 was to be replaced with Section 24.

In response to the required amendment, Pennsylvania submitted a letter dated November 16, 2001 (Administrative Record No. PA 880.00). Pennsylvania explained that sections 3.1(c) and 3.1(d) of PA SMCRA are part of a numbering system used by the Pennsylvania Legislative Reference Bureau. Likewise the cross-referenced Sections 4.2(f) and 18.6 are also Legislative Reference Bureau numbering. Section 4b(f) is part of a numbering system used in Purdon's Pennsylvania Statutes Annotated (Purdon's). The complete number for Section 4(b)(f) in Purdon's is 52 P.S. 1396.4b(f). Purdon's 52 P.S. 1396.4b(f) is the Legislative Reference Bureau's Section 4.2(f). Section 24 was formerly a Purdon's number. The complete number for Section 24 in Purdon's was 52 P.S. 1396.24. Section 1396.24 was renumbered to 1396.18f in 1993 as a result of amendments to PA SMCRA. Purdon's section 1396.18f is the Legislative Reference Bureau's Section 18.6. Pennsylvania believes that since the cross-references in Sections 3.1(c) and 3.1(d) of SMCRA are the appropriate Legislative Reference Bureau Numbers that should be referenced, 30 CFR 938.16(kk) should be removed.

We agree with Pennsylvania's explanation regarding the cross-references and therefore, we are removing the required amendment codified at 30 CFR 938.16(kk).

## IV. Summary and Disposition of Comments

### *Public Comments*

No public comments were received.

### *Federal Agency Comments*

Four responses were received from Federal agencies in response to Pennsylvania's submission under Administrative Record No. PA 837.101. One response was received from the United States Department of the Interior, Fish and Wildlife Service (FWS), two responses were received from the U.S. Department of Labor, Mine Safety and Health Administration's (MSHA), and one response was from the United States Department of Agriculture, Natural Resources Conservation Service (NRCS).

FWS submitted comments dated February 25, 2002 (Administrative Record No. PA 837.108). FWS indicated that 25 Pa. Code 90.49, Stream Buffer Zone Variance is inconsistent with Federal regulations. FWS indicated that the Federal regulations at 30 CFR 816.57 would prevent disturbance of a stream channel in the ephemeral portion of streams, 100 feet upstream of the intermittent zone and is therefore more protective of water quality and the stream's other environmental resources than PADEP's language. Our review of this section finds that it is similar to the stream buffer zone requirements of 25 Pa. Code 86.102(12) regarding areas not suitable for mining that we previously approved. Additionally, it appears that Pennsylvania's stream buffer zone may protect more area around streams, including the ephemeral zone upstream from an intermittent portion of a stream, because it includes areas 100 feet from an intermittent or perennial stream bank, and not just the stream itself. As a result, we have found that Pennsylvania's regulations regarding buffer zones are no less effective than the Federal regulations.

FWS further indicated that language at 25 Pa. Code 90.49(c)(1) that states that a stream buffer zone variance will only be granted if the operator demonstrates to the satisfaction of PADEP that coal refuse disposal will not adversely affect water quality or other environmental resources of the stream and will not cause or contribute to the violation of water quality standards is not as effective as the requirement of 30 CFR 816.57. FWS indicated that the Federal regulation requires that the regulatory authority must make a finding that the stream will be protected. We find that Pennsylvania's regulation does require it to make a finding that the stream will be protected because it requires that any demonstration by the operator be made to the Department's satisfaction. The Department will not be satisfied with substandard demonstrations and therefore will not allow a variance in those circumstances. We have found Pennsylvania's regulation to be no less effective than the Federal regulation.

Finally, regarding the stream buffer zone regulation at 25 Pa. Code 90.49(c)(1), FWS indicated that the words, "as a result of the variance" are also inconsistent with 30 CFR 816.57(a)(1) which states "[s]urface mining activities will not cause or contribute to * * *" We find that because both 30 CFR 816.57(a)(1) and 90.49(c)(1) are specifically written for stream buffer zones, there is no significant difference between the language of these two sections. In other words, implicit in the language of the Federal regulation is the required finding that, as a result of the variance, there will be no adverse effects on water quality or quantity or other environmental resources of the stream nor violations of the State or Federal water quality standards. Both 25 Pa. Code 90.49(c)(1) and 30 CFR 816.57(a)(1) indicate the conditions under which a buffer zone variance will be issued and Pennsylvania's language is no less effective than the Federal regulation in communicating those conditions.

FWS's other concern was with threatened and endangered species. FWS indicated that language to ensure the protection of Federally listed threatened or endangered species was removed from the on-line version of PADEP's Technical Guidance Document 563–2113–660 titled, "Coal Refuse Disposal—Site Selection." PADEP indicated that a footnote containing the referenced language was inadvertently removed from the on-line version of the Technical Guidance Document. The footnote has subsequently been restored to the on-line version of the document. The footnote, as it now appears on page 4, reads:

> PADEP's Section 4.1 (b) of CRDCA prohibits coal refuse disposal on non-preferred sites that contain federally listed threatened or endangered species. With respect to preferred sites, the Department will not approve (via the site selection process) or permit (via the permitting process) a site that is known or likely to contain Federally listed threatened or endangered species, unless the Department concludes and the U.S. Fish and Wildlife Service concurs that the proposed activity is not likely to adversely affect Federally listed threatened or endangered species or result in the "take" of federally listed threatened or endangered species in violation of Section 9 of the Endangered Species Act.

In our final rule of April 22, 1998 (63 FR 19802), we indicated that the proposed site selection provision at subsection 4.1(b) of the CRDCA was approved to the extent of the provisions contained in the above language. Consequently, we find that FWS's concern has been answered.

MSHA's Wilkes-Barre Office replied on January 14, 2002, (Administrative Record No. PA 837.104) that the amendment did not conflict with existing MSHA regulations. On January 23, 2002, MSHA's New Stanton Office (Administrative Record No. PA 837.105) replied that the amendment did not conflict with its refuse pile regulations.

NRCS replied on January 29, 2002, (Administrative Record No. PA 837.106) that it found no inadequacies with the proposed amendment.

In regard to Pennsylvania's submission under Administrative Record No. PA 881.00, there were three responses from Federal agencies: two from MSHA and one from NRCS. MSHA's New Stanton Office replied on January 11, 2002, (Administrative Record No. PA 881.03) that the amendment did not conflict with any of MSHA's regulations under 30 CFR parts 75 and 77. MSHA's Wilkes-Barre Office replied on January 14, 2002, (Administrative Record No. PA 881.04) that nothing in the amendment conflicted with existing MSHA regulations. NRCS replied on January 29, 2002, (Administrative Record No. PA 881.05) that it found no inadequacies with the proposed change.

In regard to Pennsylvania's submission under Administrative Record No. PA 880.00, we received a response from MSHA's Wilkes-Barre office on September 6, 2002 (Administrative Record No. PA 880.04), indicating that it had no comments on the amendment.

### *Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). On February 25, 2002 (Administrative Record No. PA 837.107), EPA informed us that there are no apparent inconsistencies with the Clean Water Act or other statutes or regulations under EPA's jurisdiction regarding Pennsylvania's submission under Administrative Record No. PA 837.101. EPA had three additional comments:

(1) EPA commended the portion of the amendment requiring the use of previously impacted areas for refuse disposal because of the environmental benefits of reclamation of previously impacted areas and because it would spare non-impacted areas that would otherwise be designated as refuse disposal sites.

OSM accepts the comments and also recognizes the environmental benefits of Pennsylvania's refuse disposal regulations.

(2) EPA indicated that it is apparent that some refuse disposal fills will be in headwater areas and pointed out that filling of waters of the United States requires proper authorization under Section 404 of the Clean Water Act, administered by the U.S. Army Corps of Engineers.

This comment is similar to one EPA made during its review of the changes to the CRDCA that precipitated this amendment. For a detailed discussion of OSM's response to the comment, see the final rule of April 22, 1998 (63 FR 19816–19819).

(3) Discharges from refuse disposal sites into waters of the United States require National Pollutant Discharge Elimination System (NPDES) permits from the Pennsylvania Department of Environmental Protection. NPDES permits for refuse disposal discharges must meet the more stringent of effluent guideline regulations under 40 CFR part 434 or those effluent limits necessary to comply with Pennsylvania's water quality standards for the receiving stream.

We note that one of the conditions of EPA's concurrence with the CRDCA involved the relationship between discharges and NPDES permits. For a full discussion of the Director's concurrence with this condition, see the final rule of April 22, 1998 (63 FR 19818–19819).

On September 5, 2002 (Administrative Record No. PA 880.05), EPA also responded to our request for comments on Pennsylvania's submission under Administrative Record No. PA 880.00. After reviewing Pennsylvania's submission, EPA determined that there were no apparent inconsistencies with the Clean Water Act or other statutes and regulations under its jurisdiction.

## V. OSM's Decision

Based on the above findings, we approve the amendment Pennsylvania sent us on December 20, 2001. In addition, we are removing the required amendments codified at 30 CFR 938.16(hh), (kk), (vvv), (www), (xxx), (yyy), (zzz), (aaaa), and (bbbb).

To implement this decision, we are amending the Federal regulations at 30 CFR Part 938, which codify decisions concerning the Pennsylvania program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

## VI. Procedural Determinations

### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

### *Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

### *Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and

Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian lands.

### *Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

### *National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

### *Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

### *Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

### List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 8, 2003.

**Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

■ For the reasons set out in the preamble, 30 CFR part 938 is amended as set forth below:

## PART 938—PENNSYLVANIA

■ 1. The authority citation for part 938 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

■ 2. Section 938.15 is amended in the table by adding a new entry in chronological order by "*Date of final publication*" to read as follows:

### § 938.15 Approval of Pennsylvania regulatory program amendments.

* * * * *

| Original amendment submission date | Date of final publication | Citation/description |
|---|---|---|
| * * * | * * | * * |
| December 20, 2001 | October 2, 2003 | 25 Pa. Code 88.281, 88.310, 88.332, 89.59, 90.1, 90.5, 90.12, 90.13, 90.34, 90.45, 90.49, 90.50, 90.101, 90.116a, 90.122, 90.167, 90.201–207, 90.301–309, and 90.401. |

### § 938.16 [Amended]

■ 3. Section 938.16 is amended by removing and reserving paragraphs (hh), (kk), (vvv), (www), (xxx), (yyy), (zzz), (aaaa), and (bbbb).

[FR Doc. 03–24945 Filed 10–1–03; 8:45 am]

BILLING CODE 4310–05–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 80

[FRL–7566–3]

# Regulation of Fuel and Fuel Additives: Gasoline and Diesel Fuel Test Method Update

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking action to make certain fuel testing requirements more consistent and up-to-date by having refiners and laboratories use the most current version of an American Society of Testing and Materials (ASTM) analytical test method.

Specifically, we are updating an ASTM designated analytical test method, ASTM D 1319 to the most recent 2002a version which when adopted will supersede earlier versions of this method in EPA's motor vehicle

fuel regulations. This method is designated in EPA regulations for measuring chemical compositions in reformulated gasoline (RFG), conventional gasoline (CG), and diesel fuel, specifically aromatics and olefins in CG and RFG and aromatics in diesel fuel. These updates allow for more consistent use of the same methodology across EPA motor vehicle fuel regulations and incorporate improvements in the test method procedures that will ensure better operation.

**DATES:** This direct final rule is effective December 1, 2003, unless we receive adverse comments or a request for public hearing by November 3, 2003. If the Agency receives adverse comment or a request for public hearing, we will withdraw this direct final rule by publishing a timely withdrawal notice in the **Federal Register**.

The incorporation by reference of certain publications in this rule is approved by the Director of the Office of the Federal Register as of December 1, 2003.

**ADDRESSES:** If you wish to submit comments or request a public hearing, you should send any written materials to the docket address listed and to Joe Sopata, Chemist, Transportation & Regional Programs Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. (6406J), Washington, DC 20460 or by e-mail to *sopata.joe@epa.gov*. Materials relevant to this direct final rule have been placed in docket A–2002–15 and docket A–2001–21 located at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. Dockets may be inspected from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You may reach the Air Docket by telephone at (202) 566–1742 and by facsimile at (202) 566–1741. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR Part 2. Comments and data may be submitted by email to: *a-and-r-docket@epa.gov*. All comments and data submitted in electronic form must note the docket number, A–2002–15. No confidential business information (CBI) should be submitted by e-mail.

**FOR FURTHER INFORMATION CONTACT:** If you would like further information about this rule or to request a hearing, contact Joe Sopata, Chemist, Transportation & Regional Programs Division, (202) 564–9034.

**SUPPLEMENTARY INFORMATION:** The contents of today's preamble are listed in the following outline.

I. Regulated Entities
II. Rule Changes
  A. Updating ASTM D 1319 Test Method to 2002a Year Version
III. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act (RFA)
  D. Unfunded Mandates Reform Act
  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  G. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks
  H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
  I. National Technology Transfer Advancement Act
  J. Congressional Review Act
VI. Statutory Provisions and Legal Authority

## I. Regulated Entities

Entities potentially affected by this action include those involved with the production, importation, distribution, sale and storage of gasoline motor fuel and diesel motor fuel.

The table below gives some examples of entities that may have to comply with the regulations. However, since these are only examples, you should carefully examine these and other existing regulations in 40 CFR part 80. If you have any questions, please call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

| Category | NAICSs codes [a] | SIC codes [b] | Examples of potentially regulated parties |
|---|---|---|---|
| Industry | 32411 | 2911 | Petroleum refiners. |
| Industry | 54138 | 8734 | Testing Laboratories. |

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

## II. Rule Changes

### *A. Updating ASTM D 1319 Test Method to 2002a Year Version*

Refiners, importers and oxygenate blenders producing gasoline and diesel motor vehicle fuel are required to test Reformulated Gasoline (RFG), Conventional Gasoline (CG) and diesel fuel for various fuel parameters including olefins, and aromatics. ASTM test method D1319 is currently a designated test method for measuring olefins [1] in gasoline and aromatics [2] in diesel fuel and is also allowed as an alternative test method for measuring aromatics [3] in gasoline. Because rules were adopted at different points in time, the regulations currently cite three different versions of D 1319 (published in three different years) for these applications.

On February 26, 2002, the Agency published a final rule entitled "Regulation of Fuel and Fuel Additives: Reformulated Gasoline Transition".[4] Among other things, this final rule updated certain ASTM test methods for RFG and CG, designated in EPA regulations, to their most recent ASTM version. Several designated test methods were updated to their most recent version including methods covering oxygen content, distillation properties, RVP, and aromatics. The designated test method for olefins, ASTM D 1319, was updated by EPA only to its 1998 version and not to the most recent version. This was because the 1999 version of ASTM D 1319 (the most recent version at that time) had mistakenly left out an important reference to use of another ASTM method. ASTM D 5599–00, the missing test method, measures oxygenate concentration when present in the gasoline sample. Measurement of oxygenate content when oxygenates are present is a required procedure when determining olefin content. Therefore, since ASTM D 5599–00 is EPA's designated method for oxygenate determination, omission of this procedure in the 1999 version of ASTM 1319 meant that it would not be appropriate for EPA to adopt that version of ASTM 1319. We explained in our response to comments that "unless a determination is made that ASTM D 5599–00 can be appropriately included as a method for measuring oxygen and oxygen content with ASTM D 1319–99, EPA will retain the 1998 version of D

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[1] 40 CFR 80.46(b).
[2] 40 CFR 80.2(z).
[3] 40 CFR 80.46(f)(3).
[4] February 26, 2002, (67 FR 8729).

1319 as the designated test method for olefins".[5]

Recently, David Bradley, the ASTM Director of Committee D02 for Petroleum Products and Lubricants, said in a letter to EPA that ASTM has updated test method D1319 to a 2002 year version.[6] Mr. Bradley also pointed out that this most recent version of ASTM D 1319 now includes the reference to ASTM D 5599 thus resolving the problem associated with omission of EPA's designated test method for oxygen and oxygen content. The American Petroleum Institute (API) also submitted comments to EPA in support of this test method update of ASTM D 1319 to the 2002 year version.[7] Thus, both ASTM and API support revising our motor vehicle fuels regulations to allow the use of D1319–02a for testing of olefins.

In addition to updating our regulations to allow for the use of ASTM D 1319–02a for determining olefins in gasoline (discussed above), we are also today taking action to allow use of the newest version of D1319 for determination of aromatics content in RFG and CG (as an alternative method) and in determining aromatics content in diesel motor fuel. Previous versions of ASTM D1319 were allowed for determining aromatic content under previous rulemakings.

Table 1 lists the designated analytical test methods and alternative analytical test methods which are being updated for parameters measured under RFG, CG, and diesel fuels program in today's action. We have reviewed the 2002a version of ASTM test method D 1319 and we are in agreement with its revisions. We believe that the revisions in ASTM D 1319–02a are not significant changes that would cause a user of an older version of the same method to incur significant costs. All of the revisions were deemed necessary by ASTM so that improvements in the test method's procedures would ensure better operation for the user of the test method. By updating ASTM D 1319 to the 2002a version for all three of these applications, the required analytical methodologies will be more consistent, making it easier for manufacturers of gasoline and diesel fuel to utilize the ASTM technique for all fuels and properties being tested.

TABLE 1.—DESIGNATED & ALTERNATIVE ANALYTICAL TEST METHODS UNDER RFG, CG & DIESEL FUEL PROGRAMS

| Fuel parameter | Analytical test method |
|---|---|
| Olefins | ASTM D 1319–02a, entitled, "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Absorption." |
| Aromatics (gasoline and diesel) | ASTM D 1319–02a, entitled, "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Absorption", for diesel fuel, this method is the designated test method, for gasoline, this method is an alternative test method and if used as an alternative method, its results must be correlated to ASTM D 5769–98. |

In the "Proposed Rules" section of today's **Federal Register**, we are publishing a proposed rule that matches the substance of this direct final rule. If the Agency receives adverse comment or a request for public hearing by November 3, 2003, we will withdraw the direct final rule by publishing a timely withdrawal notice in the **Federal Register**. If the Agency receives no adverse comment or a request for public hearing by November 3, 2003, these test method changes will be effective sixty (60) days after publication of this direct final rule in the **Federal Register**. We are confident that sixty(60) days is sufficient lead time for industry to become familiar and implement this most recent ASTM test method for the applications mentioned above.

## III. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this direct final rule is not a significant regulatory action.

### *B. Paperwork Reduction Act*

This action does not add any new requirements involving the collection of information as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final RFG/anti-dumping rulemaking (See 59 FR 7716, February 16, 1994) and has assigned OMB control number 2060–0277 (EPA ICR No. 1591.14). The OMB has approved the information collection requirements contained in the final Tax Exempt (Dyed) Highway Diesel Fuel rulemaking (See 66 FR 64817, December 14, 2001) and has assigned OMB control number 2060–0308 (EPA ICR No. 1718.03).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

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[5] See Air Docket # A–2001–21, Document # V–C–01.

[6] See Air Docket # A–2002–15, Document # II–D–01.

[7] See Air Docket # A–2002–15, Document # II–D–02.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's direct final rule on small entities, small entity is defined as: (1) A small business that has not more than 1,500 employees (13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's direct final rule on small entities, we believe that this action will not have a significant economic impact on a substantial number of small entities. We have determined that no small entities will experience an impact from this direct final rule. ASTM test method D 1319 is currently a designated test method for measuring olefins in gasoline and aromatics in diesel fuel and is also allowed as an alternative test method for measuring aromatics in gasoline (see citations above in Section II.A). Because rules were adopted at different points in time, the regulations currently cite three different versions of ASTM D 1319 (published in three different years) for these applications. Currently, if a small entity produces both gasoline and diesel fuel, and it relies on ASTM D 1319 for determining compliance with the fuel parameters mentioned above, it must maintain three different versions of ASTM D 1319. These updates allow for more consistent use of the same methodology across EPA motor vehicle fuel regulations, thus increasing flexibility for small entities who manufacture gasoline or diesel fuel. Thus this direct final rule is expected to reduce operating costs for all parties, including small entities.

Although this direct final rule will not have a significant impact on a substantial number of small entities, EPA has nonetheless tried to reduce the impact of this rule on small entities. If the Agency receives no adverse comment or request for public hearing on the corresponding proposed rule to this direct final rule, these test method changes will be effective sixty (60) days after publication of this direct final rule in the **Federal Register**. We are confident that sixty (60) days is sufficient lead time for small entities to become familiar and implement this ASTM test method for its applications.

### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's direct final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. The rule would impose no enforceable duty on any State, local or tribal governments or the private sector. This rule applies to gasoline refiners, blenders and importers that supply gasoline or diesel fuel.

### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This direct final rule updates an ASTM test method to its most recent version. Thus, Executive Order 13132 does not apply to this direct final rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this direct final rule's corresponding proposed rule from State and local officials.

### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This direct final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This direct final rule applies to gasoline refiners, blenders and importers that supply gasoline or diesel fuel. Today's action updates an ASTM test method to its most recent version, and does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this direct final rule.

### *G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks*

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

### *H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This direct final rule is not an economically "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it does not have a significant adverse effect on the supply, distribution, or use of energy. EPA is allowing additional flexibility and streamlining the regulations by updating an ASTM test method to its most current version for three applications under its motor vehicle programs.

### *I. National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule will update an ASTM test method which is a designated analytical test method for two applications and an alternative test method for one application to its most recent ASTM version. Today's action does not establish new technical standards or analytical test methods, although it does update an ASTM test method to its most current version. To the extent that this action would allow the use of standards developed by voluntary consensus bodies (such as ASTM) this action would further the objectives of the NTTAA.

### *J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U. S. Senate, the U. S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A "major rule" cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(a).

## VI. Statutory Provisions and Legal Authority

Statutory authority for today's direct final rule comes from sections 211(c), 211(i) and 211(k) of the CAA (42 U.S.C. 7545(c) and (k)). Section 211(c) and 211(i) allows EPA to regulate fuels that contribute to air pollution which endangers public health or welfare, or which impairs emission control equipment. Section 211(k) prescribes requirements for RFG and conventional gasoline and requires EPA to promulgate regulations establishing these requirements. Additional support for the fuels controls in today's rule comes from sections 114(a) and 301(a) of the CAA.

### List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Diesel, Imports, Incorporation by reference, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: September 24, 2003.

**Marianne Lamont Horinko,**

*Acting Administrator.*

■ For the reasons set forth in the preamble, part 80 of title 40, chapter I of the Code of Federal Regulations is amended as follows:

## PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

**Authority:** 42 U.S.C. 7414, 7545 and 7601(a).

■ 2. Section 80.2 is amended by revising paragraphs (z) to read as follows:

### § 80.2 Definitions.

* * * * *

(z) *Aromatic content* is the aromatic hydrocarbon content in volume percent as determined by ASTM standard test method D 1319–02a, entitled, "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption". ASTM test method D 1319–02a is incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428–2959. Copies may be inspected at the Air Docket Center, room B–108, U.S. Environmental Protection Agency, Docket No. A–2202–15, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or at the Office of the Federal Register, National Archives and Records Administration, 800 North Capitol Street, NW., Suite 700, Washington, DC.

* * * * *

■ 3. Section 80.46 is amended by revising paragraphs (b), (f)(3)(i), and (h) to read as follows:

**§ 80.46 Measurement of reformulated gasoline fuel parameters.**

* * * * *

(b) *Olefins.* Olefin content shall be determined using ASTM standard method D 1319–02a, entitled "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption."

* * * * *

(f) * * *

(3) (i) Prior to September 1, 2004, any refiner or importer may determine aromatics content using ASTM standard method D 1319–02a, entitled "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Flourescent Indicator Adsorption," for purposes of meeting any testing requirement involving aromatics content; provided that

* * * * *

(h) *Incorporations by reference.* ASTM standard methods D 3606–99, entitled "Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography;" D 1319–02a, entitled "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption;" D 4815–99, entitled "Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and $C_1$ to $C_4$ Alcohols in Gasoline by Gas Chromatography;" D 2622–98, entitled "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry;" D 3246–96, entitled "Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry;" D 5191–01, entitled, "Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method);" D 5599–00, entitled, "Standard Test Method for Determination of Oxygenates in Gasoline by Gas Chromatography and Oxygen Selective Flame Ionization Detection;" D 5769–98, entitled, "Standard Test Method for Determination of Benzene, Toluene, and Total Aromatics in Finished Gasolines by Gas Chromatography/Mass Spectrometry," and D 86–01, entitled, "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure;" are incorporated by reference in this section. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428–2959. Copies may be inspected at the Air Docket Center, room B–108, U.S. Environmental Protection Agency, Docket No. A–2202–15, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or at the Office of the Federal Register, National Archives and Records Administration, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[FR Doc. 03–24907 Filed 10–1–03; 8:45 am]

BILLING CODE 6560–50–P

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 52

### [CC Docket 99–200; FCC 03–140]

### Numbering Resource Optimization

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission denied the petition for forbearance filed by the Cellular Telecommunications and Internet Association (CTIA) and found that forbearance was not warranted.

**FOR FURTHER INFORMATION CONTACT:** Cara Voth, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Memorandum Opinion and Order in CC Docket No. 99–200, FCC 03–140 released on June 26, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street SW., Washington, DC 20554.

## I. Introduction

In this Order, the Commission denied the petition for forbearance filed by the Cellular Telecommunications and Internet Association (CTIA) on June 28, 2002. CTIA sought forbearance from further scheduled increases to the numbering resources utilization threshold. CTIA argued that forbearance should be granted because the projected life of the North American Numbering Plan (NANP) has been extended, and increases to the current utilization threshold will raise the cost of providing service and increase the risk that numbering resources will not be available to carriers when needed. All commenters opposed CTIA's forbearance request. The Commission denied CTIA's Petition and found that forbearance was not warranted.

## II. Discussion

1. We find that CTIA's forbearance petition does not satisfy the forbearance criteria set forth in section 10(a) of the Act. Specifically, we find that the numbering resources utilization threshold, and the scheduled increases up to the 75% cap, are necessary to ensure that carriers will obtain numbering resources in a just and reasonable manner, *i.e.*, only when and where they are needed to provide services. We further find that requiring carriers to manage their numbering inventories at increasing thresholds is a preventative measure that is necessary to protect consumers from premature area code changes and exhaust of the NANP. We also find that it is consistent with the public interest to increase the threshold because it will continue to require carriers to use numbering resources more efficiently, which will benefit carriers and consumers.

### *Charges, Practices, Classifications and Regulations*

2. The scheduled increases to the threshold ensure that carriers will obtain additional numbering resources only when they are needed and utilize their numbering inventories on an increasingly efficient basis. Such efficiency is necessary to avoid the waste of finite numbering resources that are essential to providing telecommunications service. Conversely, freezing the threshold at its current level could accelerate NANP exhaust and burden customers with premature area code changes, contrary to the public interest.

3. As the Commission first concluded in the *Numbering Resource Optimization First Report and Order*, 65 FR 43251, July 13, 2000, the utilization threshold requirement, coupled with the MTE requirement, deters carriers from stockpiling excessive inventories and helps ensure that carriers optimize the use of existing numbering resources. Due in part to these measures, the projected life of the NANP has been significantly extended. Even CTIA lauds the success of these measures. Furthermore, the Pennsylvania Commission submits that forbearance

from increasing the utilization threshold could result in the unnecessary stranding of over 1.3 million individual telephone numbers in Pennsylvania's NPAs. Thus, we find that the Commission's numbering resources utilization threshold and its scheduled increases are necessary to ensure that carrier practices with regard to numbering resources are not unjust or unreasonable.

4. We also disagree with CTIA's suggestion that scheduled increases are rendered unnecessary by the Commission's already existing authority under sections 201 and 202 of the Act to address unjust or unreasonable carrier practices. While we agree that we have authority pursuant to these sections to address matters regarding carriers' access to numbering resources, the existence of such authority does not, by itself, negate the necessity of retaining scheduled increases to the utilization threshold. Targeted rules, such as the utilization threshold and its scheduled increases, provide an additional measure to ensure that carriers optimize the use of existing numbering resources on an ongoing basis to prevent premature NANP exhaust. As mentioned above, telephone numbers are a finite resource. Therefore, we must maintain proactive and predictable measures that preserve the NANP in addition to depending on our authority to initiate case-by-case enforcement investigations. We find that because of the concerns described above, we would not be justified in forbearing now, even if we were to "revisit the issue at a later date if necessary to preserve the NANP" as CTIA suggests.

*Consumer Protection*

5. We conclude that retaining the scheduled increases to the numbering resource utilization threshold is necessary for the protection of consumers, and we disagree with CTIA that forbearance in this instance would benefit consumers. One of the overarching goals of the Commission's numbering optimization orders is to protect consumers from the expense and inconvenience resulting from frequent area code changes, and to prevent what would be a costly premature expansion of the NANP. We agree with the Pennsylvania, California and Michigan commissions that freezing the utilization threshold could burden customers with premature area code changes as a result of earlier NANP exhaust. We find that by increasing the threshold, we are minimizing the opportunity for carriers to stockpile unused numbers when other carriers are in need of such resources to serve their customers. Higher utilization levels will help to maximize the use of all available numbers which, in turn, will delay the exhaust of individual area codes.

6. Furthermore, we agree with the states that maintain that evolving technologies, as well as expanding services, could cause the demand for numbers to spike past the previous levels. For example, as voice over Internet protocol (VoIP) providers continue to penetrate the telecommunications market, the demand for numbers may increase. Such demand could burden existing numbering resources. Therefore, we find that requiring carriers to manage their numbering inventories at higher thresholds is a preventative measure that is necessary to ensure that consumers will not have to bear the burden of premature area code changes and NANP expansion.

7. We disagree with CTIA's claim that we should forbear from further increases because they will lead to increased carrier and consumer costs. CTIA has not presented any data or detailed cost-benefit analysis to support this assertion. In fact, CTIA readily concedes that it is "impossible to quantify the administrative costs carriers will incur from managing numbers at higher utilization levels." Moreover, the New York and California commissions have maintained utilization thresholds at 75% without any indication that there have been adverse effects on consumers. We are not convinced that increases to the utilization threshold would result in significantly more costs because the scheduled increases to the threshold are limited to 5% annually and are capped at 75%. We note that previously CTIA proposed and supported 5% annual increases to the utilization threshold. Moreover, in a recent *ex parte* filing, CTIA appears to depart from its position that the Commission should freeze the threshold at 65% by indicating that a 70% threshold would be an acceptable utilization level. Thus, it appears that CTIA now claims only that the difference between a 70% and 75% utilization threshold would be unnecessarily burdensome, in which case carriers would be required to use only 50 more numbers per thousands-block. We reject CTIA's claim that scheduled increases to the utilization threshold will raise costs while providing little benefit.

8. We also disagree with CTIA's claim that forbearance is warranted as a consumer benefit because it will allow carriers more time to "age" telephone numbers. We find that the numbering utilization threshold has little or no affect on the aging process. Because carriers have the flexibility to age numbers up to 90 days regardless of the utilization threshold, carriers will be able to replenish their inventories of unused numbers with numbers that have been aged on an ongoing basis. Carriers, therefore, must make a business decision as to how long to age their numbering resources. In the *Numbering Resource Optimization First Report and Order,* the Commission stated that it believes that carriers can reuse numbers in significantly less than 90 days. Certain states have maintained utilization thresholds higher than the current threshold without any indication that there have been adverse effects on the aging process or on consumers. Therefore, we find that carriers' ability to age numbers within the Commission's prescribed limits will not be negatively affected by further increases in the numbering resources utilization threshold.

9. Moreover, we believe that CTIA's claim regarding the aging process is merely another attempt at arguing that increases to the utilization threshold are burdensome because they require carriers to use numbers more efficiently. Requiring carriers to use numbering resources more efficiently, however, is the goal that increases to the utilization threshold were designed to achieve. We find that freezing the utilization threshold at its current level would have a detrimental effect on numbering resource optimization and, in turn, on consumers because it would provide opportunity for carriers to stockpile unused numbers that could be assigned to other requesting customers.

*Public Interest*

10. We conclude that it is in the public interest to retain scheduled increases to the utilization threshold because it will continue to result in more efficient use of numbering resources, further extend the life of the NANP, and facilitate impartial numbering administration by encouraging all carriers to use numbers in their existing inventory before requesting new ones. In the *Numbering Resource Optimization Second Report and Order,* the Commission adopted 60% only as an "initial" utilization threshold. The Commission chose this initial threshold because it was demonstrably achievable and it would give carriers the opportunity to transition to the 75% ceiling without compromising their ability to obtain numbering resources to serve customers. The Commission found, as we do here, that a utilization threshold ceiling of 75% was appropriate because it

balanced the Commission's goals of encouraging carriers to use numbers currently in their inventories before applying for additional resources with carriers' need to retain flexibility in managing their inventories. The Commission was concerned that many carriers were not doing enough to groom their numbering inventories to minimize waste of the NANP's finite numbering resources. Today, many areas continue to face a heightened demand for numbering resources and, therefore, a utilization threshold of 75% remains in the public interest to ensure that carriers continue to use their numbering resources more efficiently.

11. We disagree with CTIA's claim that we should forbear because doing so will bring about reduced regulatory costs that will promote competitive market conditions. As stated above, any reductions in regulatory costs that would result from forbearance are speculative, and would relate to relatively few numbers in a carrier's inventory. Thus any cost savings would only be minimal, at best. Even if we granted forbearance from further increases, carriers would still have to continue to bear the costs associated with complying with the current utilization level. We have not been shown, nor are we convinced, that the marginal costs related to compliance with increases to the utilization threshold have any effect on competitive market conditions. In fact, we find that forbearance would result in lost efficiencies in numbering resource optimization. When such costly inefficiencies are balanced against the minimal regulatory costs that may be saved by carriers as a result of freezing the current utilization threshold, it is clear that forbearance is not consistent with the public interest.

12. Finally, we find unsupportable CTIA's alternative claim that increases to the utilization threshold will result in certain carriers not having enough numbers available to them to meet customer demand. Once the utilization threshold reaches 75%, carriers will have 25% of their resources available to assign to new customers. Moreover, sufficient mechanisms, such as the safety valve, are in place to ensure that carriers with a verifiable need for additional numbers can get them even if they do not meet the utilization threshold requirements. For example, if, as CTIA suggests is the case for some carriers, a carrier has to use a large amount of numbers for E911 routing purposes, and as a result does not have a sufficient amount of telephone numbers to meet customer demand, that carrier can apply for relief via the safety valve. In addition, the state commissions note that no carriers have complained that the utilization thresholds are technically or otherwise infeasible, and that no customers have complained about being unable to obtain service because a carrier did not have enough numbers. Therefore, we reject CTIA's contention that forbearance is in the public interest, or will promote or enhance competitive market conditions among providers of telecommunications services.

## III. Ordering Clause

13. Pursuant to sections 10 and 251(e) of the Communications Act of 1934, as amended, 47 U.S.C. 160 and 251(e), that the Cellular Telecommunications and Internet Association's Petition for Forbearance From Further Increases in the Numbering Utilization Threshold, filed on June 28, 2002, is denied.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03–24941 Filed 10–1–03; 8:45 am]

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 635

**[Docket No. 030613152–3235–02; I.D. 051903B]**

**RIN 0648–AQ38**

## Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Quota Specification, General Category Effort Controls, and Permit Revisions

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final initial 2003 quota specifications, General category effort controls, permit revisions, and definition of the management boundary area.

**SUMMARY:** NMFS announces the final initial 2003 fishing year specifications for the Atlantic bluefin tuna (BFT) fishery to set BFT quotas for each of the established fishing categories, to set General category effort controls, to allocate 25 metric tons (mt) of BFT to account for incidental catch of BFT by pelagic longline vessels "in the vicinity of the management boundary area," to define the management boundary area and applicable restrictions, and to revise permit requirements to allow General category vessels to participate in registered recreational Highly Migratory Species (HMS) fishing tournaments and to allow permit applicants a 10–calendar day period to make permit category changes to correct potential errors. The final initial quota specifications, including the quota allocation to account for incidental catch of BFT by pelagic longline vessels in the vicinity of the management boundary area and the General category effort controls, are necessary to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), pursuant to the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The definition of the management boundary area is to assist management, monitoring, and enforcement of the 25 mt allocated to the Longline category. The permit revisions to allow General category permitted vessels to participate in registered recreational HMS fishing tournaments and to allow a time period for permit category changes are intended to relieve restrictions and help achieve domestic management objectives.

**DATES:** The final initial quota specifications and General category effort controls are effective November 3, 2003 through May 31, 2004. The definition of the management boundary area and applicable restrictions and the revisions to the permit requirements are effective November 3, 2003.

**ADDRESSES:** Copies of the supporting documents including the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) and the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) may be obtained from Brad McHale, Highly Migratory Species Management Division, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. These documents are also available from the Highly Migratory Species Division website at *www.nmfs.noaa.gov/sfa/hmspg.html.*

**FOR FURTHER INFORMATION CONTACT:** Brad McHale at (978) 281–9260.

**SUPPLEMENTARY INFORMATION:** Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Act and ATCA. ATCA authorizes the Secretary of Commerce (Secretary) to implement binding recommendations of ICCAT. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

**Background**

Background information about the need for the final initial BFT quota specifications, General category effort controls, and revisions to the HMS permit regulations was provided in the preamble to the proposed rule (68 FR 41103, July 10, 2003), and is not repeated here. By this final rule, NMFS announces the final initial BFT quota specifications, announces the General category effort controls, including time-period subquotas and restricted fishing days (RFDs), allocates 25 mt of BFT to account for incidental catch of BFT by pelagic longline vessels in the vicinity of the management boundary area, defines the management boundary area and applicable restrictions, revises permit requirements to allow General category vessels to participate in registered recreational HMS fishing tournaments, and revises permit requirements to allow permit applicants a 10–calendar day period to make permit category changes to correct potential errors.

**Changes From the Proposed Rule**

*2002 Underharvest / Overharvest*

The current ICCAT BFT quota recommendation allows, and U.S. regulations require, the addition or subtraction, as appropriate, of any underharvest or overharvest in a fishing year to the following fishing year, provided that such carryover does not result in overharvest of the total annual BFT quota and is consistent with all applicable ICCAT Recommendations, including restrictions on landings of school BFT. At the time of publication of the proposed initial specifications, 2002 fishing year landings had not yet been fully accounted. Therefore, NMFS adjusts these final initial 2003 fishing year quota specifications for the BFT fishery to account for underharvest and/or overharvest in the 2002 fishing year and recently available data on dead discards.

For the 2002 fishing year, NMFS has determined that General category landings were higher than the adjusted General category quota by 15.7 mt. The Reserve category contains 10.3 mt of BFT quota, and will be used to address partially the General category overharvest. Purse Seine category landings were less than the adjusted Purse Seine category quota by 110.0 mt. Regulations at 50 CFR 635.27(a)(9)(i) require that Purse Seine category underharvests or overharvests be subtracted from or added to each individual vessel's quota allocation, as appropriate. Harpoon category landings are less than the adjusted Harpoon category quota by approximately 20.4 mt. Angling category under/over harvests vary by size class for the 2002 fishing year: School BFT — 133.8 mt underharvest, large school/small medium BFT — 76.1 mt underharvest, large medium/giant BFT — 1.5 mt overharvest, and school reserve — 20.5 mt underharvest. Overharvest in the large medium/giant size class is addressed by a transfer from the large school/small medium size category underharvest. Longline category landings are less than the adjusted quota by 5.2 mt. In 2002, no landings were recorded in the Trap category, leaving 2.3 mt.

For all categories with underharvests from the 2002 fishing year, these final initial specifications include provisions to carry forward remaining quota to the same category for the 2003 fishing year. However, the unused school reserve (approximately 20.5 mt) is allocated to the Reserve category.

*Dead Discards*

As part of the BFT rebuilding program, ICCAT recommends an allowance for dead discards. The U.S. dead discard allowance is 68 mt. The 2002 calendar year preliminary estimate of U.S. dead discards, as reported in pelagic longline vessel logbooks, totaled 38.0 mt (U.S. TASK I data submitted to ICCAT in 2003). As estimates of BFT dead discards for the 2002 fishing year are not yet available, the estimate for the 2002 calendar year was used to calculate the amount to be added to, or subtracted from, the U.S. BFT landings quota for 2003 as a result of dead discards. Estimates of dead discards from other gear types and fishing sectors that do not use the pelagic longline vessel logbook are unavailable at this time and thus are not included in this calculation. As U.S. fishing activity is estimated to have resulted in less dead discards than its allowance, the ICCAT Recommendation and U.S. regulations state that the United States may add one half of the difference between the amount of dead discards and the allowance (i.e., 68.0 mt - 38.0 mt = 30.0 mt, 30.0 mt/2 = 15.0 mt) to its total allowed landings for the following fishing year, or to individual fishing categories, or to the Reserve. NMFS allocates the 15.0 mt to the Reserve category quota.

**BFT to Atlantic Tunas in General Category Tournament Exception**

When General category vessels fish in tournaments, it is NMFS' intent that HMS Angling category regulations for sharks, swordfish, and/or billfish, as well as any specific tournament rules, would apply to the General category vessels. However, when fishing for, or landing Atlantic tunas in a tournament, the General category regulations would apply, including RFDs and General category retention limits. Thus, this would not allow General category vessels to fish for or retain BFT less than 73 inches (1.85 m). This is intended to provide some relief from the current restrictions and allow General category vessels the same access to tournaments where they may have participated in the past. It is incumbent upon the General category fishermen to verify that a tournament is registered.

**2003 Final Initial Quota Specifications**

In accordance with the 2002 ICCAT Recommendation, the ICCAT Recommendation regarding the dead discard allowance, the HMS FMP percentage shares for each of the domestic categories, and regulations regarding annual adjustments at § 635.27(a)(9)(ii), NMFS announces final initial quota specifications for the 2003 fishing year as follows: General category — 684.4 mt; Harpoon category — 77.5 mt; Purse Seine category — 382.4 mt; Angling category — 497.0 mt; Longline category — 148.8 mt; and Trap category — 3.8 mt. Additionally, 72.1 mt will be allocated to the Reserve category for inseason allocations, including providing for a late season General category fishery, or to cover scientific research collection and potential overharvest in any category except the Purse Seine category. The overall final initial BFT quota for the 2003 fishing year equals 1,866.0 mt.

Based on the above final initial specifications, the Angling category quota of 497.0 mt will be further subdivided as follows: School BFT — 230.9 mt, with 130 mt to the northern area (north of 39° 18′ N. latitude), 100.9 mt to the southern area (south of 39° 18′ N. latitude), plus 22.1 mt held in reserve; large school/small medium BFT — 237.4 mt, with 127.6 mt to the northern area and 109.8 mt to the southern area; and large medium/giant BFT — 6.6 mt, with 2.2 mt to the northern area and 4.4 mt to the southern area.

The 2002 ICCAT Recommendation includes a 25 mt set-aside quota to account for bycatch of BFT related to directed longline fisheries in the vicinity of the management area boundary. This set-aside quota is in addition to the overall incidental longline quota to be subdivided in accordance to the North/South allocation percentages mentioned below. NMFS recently adjusted the boundary line between the northern and southern areas to 31°00′ N. latitude, near Jekyll Island, Georgia (an area with little longline fishing activity nearby), and adjusted the Longline quota distribution to allocate 40 percent to the northern area and 60 percent to the southern area (68 FR 32414, May 30, 2003). Thus, the Longline category quota of 148.8 mt will be subdivided as follows: 49.8 mt to longline vessels landing BFT north of 31° N. latitude and 74.0 mt to longline vessels landing BFT south of 31° N. latitude. The 25 mt allocated by ICCAT for longline vessels in the vicinity of the management boundary area will be allocated to the Longline north subcategory for a total of 74.8 mt. Accounting for landings under this additional quota will be maintained separately from other landings under the Longline north subcategory.

### General Category Effort Controls

For the last several years, NMFS has implemented General category time-period subquotas to increase the likelihood that fishing would continue throughout the entire General category season. The subquotas are consistent with the objectives of the HMS FMP and are designed to address concerns regarding allocation of fishing opportunities, to assist with distribution and achievement of optimum yield, to allow for a late season fishery, and to improve market conditions and scientific monitoring.

The HMS FMP divides the annual General category quota into three time-period subquotas as follows: 60 percent for June-August, 30 percent for September, and 10 percent for October-December. These percentages will be applied to the adjusted 2003 coastwide quota for the General category of 684.4 mt, minus 10.0 mt reserved for the New York Bight fishery. Therefore, of the available 674.4 mt coastwide quota, 404.6 mt will be available in the period beginning June 1 and ending August 31; 202.4 mt will be available in the period beginning September 1 and ending September 30; and 67.4 mt will be available in the period beginning October 1 and ending December 31, 2003.

In addition to time-period subquotas, NMFS also implements General category RFDs to extend the General category fishing season. The RFDs are designed to address the same issues addressed by time-period subquotas and provide additional fine-scale inseason flexibility. For the 2003 fishing year, NMFS implements a schedule of RFDs that would assist in extending the General category BFT fishery into the late season to provide southern Atlantic General category participants commercial fishing opportunities on large medium and giant BFT. Therefore, NMFS announces that persons aboard vessels permitted in the General category are prohibited from fishing for BFT of all sizes on the following days: November 15 through November 30 inclusive. These RFDs will improve distribution of fishing opportunities without increasing BFT mortality.

### Comments and Response

*Comment 1:* Comments expressed support for the new RFDs of November 15–30 to assist in extending the General category fishery into the late winter season. Comments also stated that implementing this block of RFDs should also provide NMFS with adequate time to account for all BFT harvests made prior to any winter fishery.

*Response:* NMFS' final action maintains the proposed block of RFDs in the final initial specifications for the Fall, from November 15 through November 31, inclusive, where no General category BFT fishing would take place. This is due primarily to the experience of the past several years when low catch rates have resulted in NMFS having to waive all previously announced RFDs mid-season, which can cause confusion and disrupt fishermen's activities. This action will allow for BFT to migrate off southern Atlantic States, assist the availability of quota late in the season, and partially address economic and social concerns from south Atlantic area fishermen.

*Comment 2:* Comments regarding the General category permit revision to allow General category vessels to participate in registered HMS recreational fishing tournaments were generally supportive. One commentor stated that General category vessels should also be allowed to land BFT in the recreational size classes while participating in a tournament. One comment received stated that the catching of shark, swordfish, and/or billfish recreationally or retaining any bycatch for personal consumption, has been a traditional component of the General category. The same comment stated that this action sets a precedent which could mean that a commercial permit holder for one species may not fish recreationally for another species.

*Response:* The final action maintains the preferred alternative that will allow General category vessels to participate in recreational HMS fisheries provided they are participating in a registered recreational HMS fishing tournament (according to HMS tournament registration and participation regulations), as well as abiding by the regulations of the tournament. NMFS' intent is to allow General category vessels to land sharks, swordfish, and/or billfish recreationally while actively participating in a tournament. However, when fishing for, or landing, Atlantic tunas in a tournament the General category regulations would apply, including RFDs and General category retention/size limits. This action is intended to provide some relief from the current restriction and allow General category vessels the same access to tournaments where they may have participated in the past. As the tournament must be registered, NMFS will also be able to collect data on catch, effort, and participants.

Recent rulemaking established a new recreational permit category for all HMS which, among other matters, means General category permit holders must choose whether to retain their commercial General category permit and forgo recreational HMS fishing opportunities or, switch permit categories to the new Atlantic HMS Angling permit and forgo their ability to sell tunas. The HMS Angling category permit completes a process that NMFS initiated several years ago to separate commercial and recreational HMS fishing activities to enhance both monitoring and management of all domestic HMS fishing categories.

*Comment 3:* Comments regarding the 10–calendar day window of opportunity to correct any errors in permit categories were generally positive. Some comments stated that the 10 calendar days should be business days to provide a more adequate time frame for permit applicants to receive and check their permit. One commentor stated that permit category changes should be allowed up until NMFS finalizes the BFT Quota Specifications for each fishing year.

*Response:* The final action establishes a 10–calendar day window of opportunity to correct any errors in permit categories (e.g., if a permit is issued on July 1, then corrections to the permit category must be made by July 10). This action is intended to address the situation where permit applicants received a permit in the wrong category, due to applicant or administrative error, and are unable to change to the intended permit category. Ten calendar days provide enough time for permit applicants to obtain their permit, check that it is the correct permit, and contact the NMFS permit contractor to affect a change. Extending the time period may begin to undermine the original intent of the regulation (i.e., restricting multiple permit category changes) if permit applicants are motivated to actively participate in more than one category per season.

*Comment 4:* Some comments stated that based on the system NMFS has in place for rapid curtailment of effort in the BFT fisheries, and due to the large amounts of inseason transfers made in the past, a large portion of the Reserve category quota for this season should be earmarked for the late season fishery off the south Atlantic states. The comments also stated this could be accomplished by changing the description of the Reserve category for this season to assure that a portion of the Reserve category quota is transferred to the General category in the late fall-early winter months.

*Response:* The final action will maintain the Reserve category description as stated in § 635.27 (a)(8). NMFS maintains the authority to transfer quota among categories or, as appropriate, subcategories throughout the fishing year. Prior to making any such transfers, NMFS has established a set of criteria that must be considered before performing an inseason transfer. The criteria are listed at § 635.27 (a)(7)(iii)(A)–(F).

### Classification

These final initial BFT quota specifications, General category effort controls, and revisions to the HMS regulations are published under the authority of the Magnuson-Stevens Act and ATCA. The Assistant Administrator for Fisheries (AA) has determined that the regulations contained in this final rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic HMS fisheries.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule and submitted it to the Chief Counsel for Advocacy of the Small Business Administration. No comments were received on the IRFA concerning the economic impact of this final rule. A summary of the Final Regulatory Flexibility Analysis (FRFA) is provided below.

The analysis for the FRFA assesses the impacts of the various alternatives on the vessels that participate in the BFT fisheries, all of which are considered small entities. In order to do this, NMFS has estimated the average impact that the alternative to establish the 2003 BFT quota for all domestic fishing categories would have on individual categories and the vessels within those categories. As mentioned above, the 2002 ICCAT Recommendation increased the BFT quota allocation to 1,489.6 mt. This increase includes 77.6 mt to be redistributed to the domestic fishing categories based on the allocation percentages established in the HMS FMP, as well as a set-aside quota of 25 mt to account for incidental catch of BFT related to directed longline swordfish and BAYS (bigeye, albacore, yellowfin, skipjack) fisheries in the vicinity of the management area boundary. In 2002, the annual gross revenues from the commercial BFT fishery were approximately $18 million. There are approximately 11,091 vessels that are permitted to land and sell BFT under four BFT quota categories. The four quota categories and their 2002 gross revenues are General ($13,948,190), Harpoon ($588,884), Purse Seine ($3,066,034), and Incidental Longline ($588,352). The analysis for the FRFA assumes that all category vessels have similar catch and gross revenues. While this may not be true, the analyses are sufficient to show the relative impact of the various final actions on vessels.

For the allocation of BFT quota among domestic fishing categories, two alternatives were considered: The final action that will allocate the ICCAT-recommended quota to domestic categories in accordance with the 2002 ICCAT Recommendation and HMS FMP and the No Action alternative. Under ATCA, the United States is authorized to promulgate regulations as necessary and appropriate to implement ICCAT-approved recommendations, except that no regulations may have the effect of increasing or decreasing any allocation or quota agreed to pursuant to an ICCAT Recommendation. The final action will increase the quota by 77.6 mt and will have positive impacts for fishermen. The No Action alternative was rejected because it was not consistent with the purpose and need for this action and the HMS FMP. The No Action alternative would maintain economic impacts to the United States and to local economies at a distribution and scale similar to 2002, but would deny fishermen additional fishing opportunities as recommended by the 2002 ICCAT Recommendation, inconsistent with ATCA. No other alternatives would meet the purpose and need for this action.

For the General category effort controls, three alternatives were considered: The final action to establish RFDs late in the season to provide a late Fall, southern Atlantic fishery, designate RFDs according to a published schedule, and the No Action (no initial RFDs and publish a schedule during the season). The final action would have positive economic impacts to those south Atlantic fishermen, but could have potentially negative economic impacts to those northern area fishermen who would have otherwise caught and sold fish earlier in the season. These negative impacts will be slightly mitigated if northern area fishermen are willing to travel south late in the season. NMFS has selected this final action because extending the season as late as possible enhances the likelihood of increasing participation by southern area fishermen and increasing overall access to the fishery over a greater range of the fish migration. The impacts of designating RFDs according to a published schedule may vary according to the pace of the fishery. If catch rates are slow as in recent years, as is expected, scheduled RFDs may need to be waived which causes confusion and disrupts fishermen's activities, thus having negative economic impacts. Therefore, this alternative is rejected. The No Action alternative could have positive economic consequences if another season of low catch rates occurs. However, even with low catch rates and no RFDs, it is unlikely that there will be enough quota in the General category to sustain a late season commercial handgear fishery off south Atlantic states, thus negatively impacting south Atlantic fishermen. Therefore, this alternative is rejected.

For the permit revision issue, four alternatives were considered: The final action which allows General category vessels to participate in registered recreational HMS fishing tournaments, a final action which allows 10 calendar days from the date of issuance of the permit to change categories, No Action (General category vessels cannot participate in recreational HMS fisheries and no permit changes are allowed once a permit has been issued), and allow dual permits and require declarations by General category vessels prior to every trip regarding which permit is to be used. The final action, which allows General category vessels to participate in registered recreational HMS tournaments, will have positive economic and social impacts by relieving a restriction on General category vessels. The final action also provides a 10–calendar day time period for permit changes due to errors which would have positive social and economic impacts. The No Action alternative would have negative social and economic impacts because General category vessels would not be able to participate fully in recreational fishing tournaments, and because it would not allow permit category changes to correct errors. Therefore, this alternative is rejected. The alternative to allow dual permits would further liberalize the restriction and alleviate any negative economic impacts by allowing General category vessels to choose on any given day whether they wish to fish commercially or recreationally. However, there would be some administrative impacts to vessel owners/operators as they would have to declare with NMFS their intent before making a trip, and difficulties in monitoring and enforcing the declarations in real-time and providing multiple permits for the same vessel may end up causing more confusion within the fishery than alleviating any perceived negative economic impacts, thus this alternative is rejected. The final action that provides a 10–calendar day time period for permit changes due to errors would have positive economic impacts by allowing permit holders to fish in the manner intended.

For the definition of the management boundary area, four alternatives were considered: the final action which defines the area as the Northeast Distant (NED) area and will allow retention of the 25 mt quota of BFT with no target catch requirements, the No Action (no definition of the area and operational procedures would account for quota allocated to the area), defining the area as 5 degrees on both sides of the management boundary line, and defining the area as east of the management boundary line. All but the No Action alternative would restrict the quota to vessels participating in the NED experimental fishery. The final action will provide slight positive economic impacts by allowing more retention of incidentally caught BFT relative to the other alternatives because no target requirements will apply. Under the No Action alternative and the other two rejected alternatives, more BFT would likely be discarded than under the final action and negative economic impacts may occur due to lost revenues from discarded BFT.

None of the final actions in this document will result in additional reporting, record keeping, compliance, or monitoring requirements for the public.

NMFS prepared an EA for this final rule, and the AA has concluded that there would be no significant impact on the human environment. The EA presents analyses of the anticipated impacts of these final actions and the alternatives considered. A copy of the EA and other analytical documents prepared for this rule, are available from NMFS (see **ADDRESSES**).

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A Biological Opinion (BiOp) issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under NMFS jurisdiction. On July 9, 2002 (67 FR 45393), NMFS implemented the reasonable and prudent alternative required by the BiOp. None of the actions in this final rule would have any additional impact on sea turtles as these actions would not likely increase or decrease pelagic longline effort, nor are they expected to shift effort into other fishing areas. A memo concluding that no adverse effect would result from this action if implemented was submitted to the Office of Protected Resources on July 18, 2003. No comments were received that would alter that conclusion. No impacts are expected from this final action that would adversely affect the implementation of the requirements of the BiOp.

NMFS has determined that the final regulations would be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of those Atlantic, Gulf of Mexico, and Caribbean coastal states that have approved coastal zone management programs. On July 15, 2003, the proposed regulations were submitted to the responsible state agencies for their review under Section 307 of the Coastal Zone Management Act. As of September 25, 2003, NOAA Fisheries has received six responses, all concurring with NOAA Fisheries' consistency determination. Because no responses were received from other states, their concurrence is presumed.

The area in which this final action is planned has been identified as Essential Fish Habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, the Caribbean Fishery Management Council, and the HMS Management Division of the Office of Sustainable Fisheries at NMFS. It is not anticipated that this action will have any adverse impacts to EFH and, therefore, no consultation is required.

**List of Subjects in 50 CFR Part 635**

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: September 25, 2003.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

## PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

**Authority:** 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.4, paragraphs (c) and (j)(3) are revised to read as follows:

### § 635.4 Permits and fees.

* * * * *

(c) *HMS Angling permits.* (1) The owner of any vessel used to fish recreationally for Atlantic HMS or on which Atlantic HMS are retained or possessed recreationally, must obtain an HMS Angling permit, except as provided in § 635.4(c)(2). Atlantic HMS caught, retained, possessed, or landed by persons on board vessels with an HMS Angling permit may not be sold or transferred to any person for a commercial purpose. A vessel issued an HMS Angling permit for a fishing year shall not be issued an HMS Charter/Headboat permit or an Atlantic Tunas permit in any category for that same fishing year, regardless of a change in the vessel's ownership.

(2) A vessel issued an Atlantic Tunas General category permit under paragraph (d) of this section may fish in a recreational HMS fishing tournament if the vessel has registered for, paid an entry fee to, and is fishing under the rules of a tournament that has notified NMFS as required under § 635.5(d). When a vessel issued an Atlantic Tunas General category permit is fishing in such a tournament, such vessel must comply with HMS Angling category regulations, except as provided in 635.4(c)(3).

(3) A vessel issued an Atlantic Tunas General category permit fishing in a tournament, as authorized under § 635.4(c)(2), shall comply with Atlantic Tunas General category regulations when fishing for, retaining, possessing, or landing Atlantic tunas.

* * * * *

(j) * * *

(3) Except for Atlantic Tunas Longline and Purse Seine category permits, a vessel owner issued a permit under paragraphs (b), (c), or (d) of this section may change the category of the vessel's permit within 10–calendar days of the date of issuance of the permit. Beyond 10 calendar days after the date of issuance of the permit, no permit category changes may be made.

* * * * *

■ 3. In § 635.23, paragraph (f)(3) is added to read as follows:

**§ 635.23 Retention limits for BFT.**

* * * * *

(f) * * *

(3) For pelagic longline vessels participating in an experimental fishery in the Northeast distant area, as defined under § 635.2 of this part, under exempted fishing permits issued under § 635.32 of this part, all BFT taken incidental to fishing for other species while in the Northeast distant area may be retained up to a maximum of 25 mt for all vessels so authorized, notwithstanding the retention limits and target catch requirements specified in paragraph (f)(1) of this section. Once the 25 mt limit is attained, the retention limits and target catch requirements specified in paragraph (f)(1) of this section or as adjusted pursuant to paragraph (f)(2) of this section will apply to such vessels.

* * * * *

■ 4. In § 635.27, paragraph (a)(3) is revised to read as follows:

**§ 635.27 Quotas.**

(a) * * *

(3) *Longline category quota.* The total amount of large medium and giant BFT that may be caught incidentally and retained, possessed, or landed by vessels for which Longline category Atlantic tunas permits have been issued is 8.1 percent of the overall U.S. BFT quota. In the initial quota specifications issued under paragraph (a) of this section, no more than 60.0 percent of the Longline category quota may be allocated for landing in the area south of 31° 00′; N. lat. In addition, 25 mt shall be allocated for incidental catch by pelagic longline vessels participating in an experimental fishery in the Northeast distant area, as defined under § 635.2 of this part, under exempted fishing permits issued under § 635.32.

* * * * *

■ 5. In § 635.71, new paragraph (b)(29) is added to read as follows:

**§ 635.71 Prohibitions.**

* * * * *

(b) * * *

(29) Participate in any HMS recreational fishing activity aboard a vessel issued an Atlantic Tunas General category permit unless, as specified at § 635.4(c)(2) and (3), the vessel has registered and paid an entry fee to, and is fishing under the rules of, a recreational HMS fishing tournament registered as required under § 635.5(d).

* * * * *

[FR Doc. 03–24930 Filed 10–1–03; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

[Docket No. 021122286–3036–02; I.D. 092403G]

## Fisheries of the Economic Exclusive Zone Off Alaska; Groundfish Fisheries by Vessels using Hook-and-Line Gear in the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NationalOceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for groundfish by vessels using hook-and-line gear in the Gulf of Alaska (GOA), except for demersal shelf rockfish in the Southeast Outside District or sablefish. This action is necessary because the 2003 bycatch mortality allowance of Pacific halibut apportioned to hook-and-line gear targeting groundfish other than demersal shelf rockfish in the Southeast Outside District or sablefish has been reached.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), September 28, 2003, until 2400 hrs, A.l.t., December 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific halibut bycatch mortality allowance for groundfish included in the other hook-and-line fishery, defined at § 679.21(d)(4)(iii)(C), was established by the final 2003 harvest specifications for groundfish of the GOA (68 FR 9924, March 3, 2003) as 290 metric tons. The other hook-and-line fishery includes all groundfish except for demersal shelf rockfish in the Southeast Outside District or sablefish.

In accordance with § 679.21(d)(7)(ii), the Administrator, Alaska Region, NMFS, has determined that the 2003 Pacific halibut bycatch mortality allowance specified for the other hook-and-line fishery has been reached. Consequently, NMFS is prohibiting directed fishing for groundfish other than demersal shelf rockfish in the Southeast Outside District or sablefish by vessels using hook-and-line gear.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2003 bycatch mortality allowance of Pacific halibut apportioned to hook-and-line gear, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 25, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–24922 Filed 9–26–03; 3:54 pm]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 697

**[Docket No. 030617155–3232–02; I.D. 051903D]**

**RIN 0648–AR11**

## Atlantic Coastal Fisheries Cooperative Management Act Provisions; Weakfish Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to increase the incidental catch allowance for weakfish caught in the Exclusive Economic Zone (EEZ) from 150 lb (67 kg) to no more than 300 lb (135 kg) per day or trip, whichever is longer in duration; to remove Connecticut from the list of states where commercially caught weakfish from the EEZ can be landed; and to add to NMFS' regulations the Director, Office of Sustainable Fisheries, as an official who can grant Exempted Fishing Permits. The intent of this final rule is to modify regulations for the Atlantic coast stock of weakfish to promote the effectiveness of the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan (ISFMP) for weakfish.

**DATES:** Effective November 3, 2003. Copies of supporting documents, including an Environmental Assessment/Regulatory Impact Review/ Final Regulatory Flexibility Analysis (EA/RIR/FRFA),

**ADDRESSES:** are available from Anne Lange, Chief, State-Federal Fisheries Division (SF8), Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Suite 13317, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Tom Meyer, 301–713–2334.

**SUPPLEMENTARY INFORMATION:**

### Background

The background and rationale for this final rule were contained in the preamble to the proposed rule, published in the **Federal Register** on July 1, 2003 (68 FR 39048), and are not repeated here. Additional background for this final rule is available and contained in a EA/RIR/FRFA prepared by NMFS. (See **ADDRESSES**).

This final rule allows vessels using a mesh size less than 3 1/4–inch (8.3 cm) square stretch mesh or 3 3/4–inch (9.5 cm) diamond stretch mesh for trawls and 2 7/8–inch (7.3 cm) stretch mesh for gillnets to possess no more than 300 lb (135 kg) of weakfish during any one day or trip, whichever is longer in duration (an increase of 150 lb (67 kg)) per day or trip over the current Federal EEZ regulation)(§ 697.7(a)(4)); removes the State of Connecticut from the list of states where weakfish caught in the EEZ for commercial purposes can be landed (§ 697.7(a)(7)); adds to NMFS' regulations the Director, Office of Sustainable Fisheries, as an official who can grant Exempted Fishing Permits (§ 697.22); and adds Atlantic Coastal Act and Director to the definition section (§ 697.2).

### Comments and Responses

There was one comment submitted by a state agency during the comment period.

1. Comment: One state agency that is currently a de minimis state under Amendment 4 to the weakfish plan commented that the regulation (§ 697.7(a)(7)) that does not allow landings of weakfish from the EEZ in a de minimis state is not enforceable and should be re-considered, because it is impossible to determine where the fish were harvested when a vessel comes to port. As an alternative to this unnecessary rule, the state suggested that it could easily adopt trip limits (300 lb) to ensure that the state does not become a destination for unlawful catches of weakfish.

*Response:* Although enforcement of the regulation pertaining to a de minimis state does create certain challenges, NMFS declines to categorize the regulation as unenforceable. This regulation was implemented in 1997, after the Commission specifically requested that the *de minimis* language be included in the EEZ rule in order to support Commission efforts in state waters. The Commission also requested in 1997 that any enforcement problems raised by this regulation be forwarded to the Commission's Weakfish Management Board (Weakfish Board); none have been. The Commission recommended in 2003 that this regulation remain in place. The present restrictions on commercial landings in a de minimis state, therefore, remain the Commission's stated regulatory preference. Given the Commission's stated preference, the lack of information and debate suggesting that an alternative approach is necessary, and NMFS's mandate under the Atlantic Coastal Act to support the Commission's interstate fishery management efforts, NMFS remains committed to the present Commission approach. However, NMFS notes the state agency may request that the Weakfish Board reconsider the enforcement concerns associated with this regulation. The adoption by any *de minimis* state of a trip limit of 300 lbs (135 kg) could be part of the discussion. NMFS would consider any additional recommendations from the Commission that may arise from such discussions.

### Changes from the Proposed Rule

In its comment letter dated July 9, 2003, the Commonwealth of Massachusetts indicated its intention to withdraw itself from *de minimis* status under the current management regime due to the difficulty that state would have in codifying and enforcing its *de minimis* status. The process of withdrawal from *de minimis* status is far less complicated than inclusion into such a category. The state would upon approval of the withdrawal be expected to comply with all regulatory responsibilities of the plan, whereas it would be exempted from some responsibilities as a de minimis state. On July 16, 2003, the Commonwealth of Massachusetts requested that the Commission remove them from *de mininis* state status. On August 29, 2003, the Weakfish Board recommended and the Commission agreed to withdraw their finding that Massachusetts be given *de minimis* status. Under either status — that is, as a de minimis state or not — the actions of Massachusetts are not expected to contribute significantly to the Commission's coastwide conservation program for the species. Accordingly, NMFS is able to support the Commission's change on this matter and add the Commonwealth of Massachusetts to the list of states where commercially caught weakfish from the EEZ can be landed in the final rule at 50 CFR 697.7(a)(7) because it is no longer considered *de minimis*.

In the proposed rule, the term Director was added as an official who can grant Exempted Fishing Permits, but the term Director was not defined. This final rule adds the term Director to the definition section (§ 697.2), and defines it as the Director, Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD 20910.

### Classification

This final rule is published under the authority of the Atlantic Coastal Act. Paragraphs (A) and (B) of section 804(b)(1) authorizes the Secretary to implement regulations in the EEZ in the absence of a Magnuson-Stevens Act FMP. Such regulations must be compatible with the effective implementation of a Commission's

ISFMP, and consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act.

The Assistant Administrator for Fisheries, NOAA (AA) has determined that these actions are compatible with the effective implementation of the Commission's ISFMP for Weakfish and consistent with the national standards of the Magnuson-Stevens Fishery Conservation and Management Act.

NMFS did not receive any comments on the economic impacts of the rule. NMFS prepared a final regulatory flexibility analysis (FRFA) that describes the impact of this final rule on small entities. A summary of the FRFA follows:

This final rule is published under the authority of section 803 of the Atlantic Coastal Act. The purpose of the rule is to improve cooperative management of the Atlantic coast weakfish fishery by supporting the Commission's Amendment 4 to the Interstate Fishery Management Plan for Weakfish, as required under the Atlantic Coastal Act. This rule will increase the permitted non-directed incidental catch of the species from 150 lb (67 kg) to no more than 300 lb (135 kg) per day or trip. Analysis of the best available data in the EA/RIR/FRFA suggests that the increase would not alter current fishing practices or effort, or increase the number of weakfish caught. The 150–lb (67 kg) increase would simply convert 150 lb (67 kg) of weakfish, which would be caught and discarded at sea as dead bycatch, into 150 lb (67 kg) of weakfish caught as incidental catch and landed. The need for the action was explained in the preamble to the proposed rule and is not repeated here.

Two alternatives were considered for this action. They were: Alternative 1: No Action; and Alternative 2 (Preferred Alternative): Allow vessels in non-directed fisheries, using mesh sizes less than 3 1/4–inch (8.3 cm) square stretch mesh or 3 3/4–inch (9.5 cm) diamond stretch mesh for trawls and 2 7/8–inch (7.3 cm) stretch mesh for gillnets to possess no more than 300 lb (135 kg) of weakfish during any one day or trip, whichever is longer in duration. Although a third alternative was identified in the environmental assessment, it would not meet the goals and objectives of the Commission's recommendation. Because the Secretary is required to develop and implement a program to support the Commission's action, analysis of this additional alternative would not meet the purpose and need for this action, or objectives of the Atlantic Coastal Act.

The preferred alternative would allow vessels in non-directed fisheries, using a mesh size less than 3 1/4–inch (8.3 cm) square stretch mesh or 3 3/4–inch (9.5 cm) diamond stretch mesh for trawls and 2 7/8–inch (7.3 cm) stretch mesh for gillnets, to possess no more than 300 lb (135 kg) of weakfish during any one day or trip, whichever is longer in duration (an increase of 150 lb (67 kg)).

NMFS is not able to estimate the number of small entities to which the action would apply because vessels most likely to be impacted are not required to hold a permit to fish for weakfish in the EEZ. In the proposed rule, NMFS requested specifically that the public comment on the number of small entities likely to be affected. However, NMFS did not receive any information pertaining to the number of small entities and is therefore not able to estimate further the number of entities to which this rule will apply. Although the number of small entities cannot be estimated, NMFS believes the action would only apply to those fishermen who capture weakfish incidentally while fishing for other species using a smaller mesh size than is allowed in the directed weakfish fishery. In addition, under Alternative 1, status quo, no additional small entities would be impacted; while implementation of Alternative 2 would apply to fishermen who use nets with smaller mesh sizes and catch over 150 lb (67 kg) of weakfish on a given day or trip. During 1998 - 2002, vessel trip reports indicated that only 1,116 small mesh otter trawl trips and 4 small mesh gillnet trips landed weakfish caught while fishing in the EEZ. The average price received by fishermen reporting weakfish catch in the EEZ in 2001 was $0.614 per lb. If an affected vessel were to land 150 lb (67 kg) of weakfish, as currently permitted (Alternative 1), $92 in revenue could be realized, per trip. If Alternative 2 were implemented, an additional $92 in revenue, for a weakfish total of $184 per trip (double the current amount) would be possible. For a more accurate picture of the expected economic impacts for the two alternatives, actual catches from individual vessel trip records, from 1998 - 2002, were multiplied by average price-per-pound of weakfish from the EEZ to determine estimated revenues per trip. Since vessels may not catch the full 150 lb (67 kg) or 300 lb (135 kg) allowed in Alternative 1 and 2, revenues for each Alternative were projected as the average for those trips that reported from 1 to 150 lb (67 kg) (Alternative 1) and from 151 to 300 lb (135 kg) (Alternative 2). Catches from trips that reported over 300 lb (135 kg) were capped at the 300 lb (135 kg) proposed limit (Alternative 2) for these calculations. Calculated revenues for sale of allowed weakfish landings under Alternative 1 averaged $22; potential revenues for Alternative 2 were estimated at $160 per trip. Based on 1998 - 2002 vessel trip data, total annual revenues for all non-directed weakfish trips, coastwide are projected to be about $6,200 under Alternative 1, and about $7,800, if Alternative 2 were to be implemented. A copy of the FRFA is available from NMFS (see ADDRESSES).

There will be no reporting and recordkeeping requirements resulting from this action.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

### List of Subjects in 50 CFR Part 697

Fisheries, Fishing.

Dated: September 24, 2003.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR chapter VI, part 697, is amended as follows:

## PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

■ 1. The authority citation for part 697 is revised to read as follows:

**Authority:** 16 U.S.C. 5101 *et seq.*

■ 2. In § 697.2, the definitions for "Atlantic Coastal Act" and "Director" are added in alphabetical order to read as follows:

### § 697.2 Definitions.

* * * * *

*Atlantic Coastal Act* means the Atlantic Coastal Fisheries Cooperative Management Act, as amended (16 U.S.C. 5101 *et seq.*).

* * * * *

*Director* means the Director of the Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD 20910

* * * * *

■ 3. Section 697.7, paragraph (a)(4) and (a)(7) are revised to read as follows:

### § 697.7 Prohibitions.

(a) * * *

(4) Possess more than 300 lb (135 kg) of weakfish during any one day or trip, whichever is longer, in the EEZ when using a mesh size less than 3 1/4–inch (8.3 cm) square stretch mesh (as measured between the centers of opposite knots when stretched taut) or

**3 3/4–inch (9.5 cm) diamond stretch mesh for finfish trawls and 2 7/8–inch (7.3 cm) stretch mesh for gillnets.**

* * * * *

(7) Land weakfish for commercial purposes caught in the EEZ in any state other than Massachusetts, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, or North Carolina.

■ 4. Section 697.22 is revised to read as follows:

**§ 697.22 Exempted fishing.**

The Regional Administrator or Director may exempt any person or vessel from the requirements of this part for the conduct of exempted fishing beneficial to the management of the American lobster, weakfish, Atlantic striped bass, Atlantic sturgeon, or horseshoe crab resource or fishery, pursuant to the provisions of § 600.745 of this chapter.

(a) The Regional Administrator or Director may not grant such exemption unless it is determined that the purpose, design, and administration of the exemption is consistent with the objectives of any applicable stock rebuilding program, the provisions of the Atlantic Coastal Act, the Magnuson-Stevens Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the American lobster, Atlantic striped bass, weakfish, Atlantic sturgeon, or horseshoe crab resource or fishery; or

(2) Create significant enforcement problems.

(b) Each vessel participating in any exempted fishing activity is subject to all provisions of this part, except those explicitly relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Administrator or Director to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking the benefit of such exemption. Exempted fishing activity shall be authorized pursuant to and consistent with § 600.745 of this chapter.

[FR Doc. 03–25025 Filed 10–1–03; 8:45 am]

BILLING CODE 3510–22–S

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# Proposed Rules

**Federal Register**
Vol. 68, No. 191
Thursday, October 2, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

**14 CFR Part 39**

**[Docket No. 2002–NM–61–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A319–113 and –114; and A320–111, –211, and –212 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A319–113 and –114; and A320–111, –211, and –212 series airplanes. This proposal would require either a review of airplane maintenance or delivery records, or one-time inspection of the hydraulic actuators located in the pivot doors of both thrust reversers to identify the part number, and eventual replacement of certain actuators with modified or new actuators. This action is necessary to prevent jamming of a thrust reverser door during operation, or inadvertent deployment of a thrust reverser door in-flight, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by November 3, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–61–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–61–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–61–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–61–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319–113 and –114; and A320–111, –211, and –212 series airplanes. The DGAC advises that certain hydraulic actuators of the thrust reverser system failed endurance testing. Some of these actuators are in-service and may be approaching or may have already exceeded the life limits established during qualification. The use of actuators that have exceeded the established life limits, if not corrected, could result in jamming of the thrust reverser door during operation, or inadvertent deployment of a thrust reverser door in-flight, which could result in reduced controllability of the airplane.

### Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–78–1020, including Appendix 01, dated March 28, 2001, which describes procedures for inspecting actuators located in the pivot doors of both thrust reversers to determine the part number, and replacing certain actuators with new or modified actuators. This service bulletin references Rohr CFM56–5A Service Bulletin RA32078–106, dated November 16, 2000, as an additional source of service information for accomplishment of the actuator modification. Accomplishment of the actions specified in the Airbus service bulletin is intended to adequately address the identified unsafe condition.

The DGAC classified the Airbus service bulletin as mandatory and issued French airworthiness directive 2001–361(B) R1, dated September 3, 2003, to ensure the continued airworthiness of these airplanes in France.

### FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

### Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the Airbus service bulletin described previously, except as discussed below.

### Differences Between the Proposed AD and the French Airworthiness Directive

Operators should note that the parallel French airworthiness directive requires replacement of certain actuators within either 250 airplane flight cycles or 500 airplane flight cycles after the part number identification, depending on whether the actuator has accumulated more than 20,000 total flight cycles or fewer than 20,000 total flight cycles, respectively. However, after consultation with Airbus and the DGAC, the FAA has determined that these actuators can be safely operated up to 20,000 total flight cycles. Therefore, we find that accomplishment of the actuator replacement prior to the accumulation of 20,000 flight cycles, or within 250 flight cycles after identification of the part number, whichever occurs later, represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety. The DGAC has been notified of this difference.

Also, the French airworthiness directive specifies the replacement times for the actuators in terms of actuator flight cycles. Operators might not track actuator flight cycles; therefore, for the purposes of this proposed AD, if operators do not have a means of obtaining information regarding actuator flight cycles, engine flight cycles must be used.

### Clarification of Applicability

Because operators can remove and install thrust reversers and engines on various airplanes in their fleet, this proposed AD would require either a review of airplane maintenance or delivery records, or a detailed inspection of the hydraulic actuators located in the pivot doors of the thrust reversers on all Airbus Model A319–113 and 114; and A320–111, -211, and -212 series airplanes, to ensure that all actuators are identified.

### Cost Impact

The FAA estimates that 108 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed inspection (1 hour per actuator × 4 actuators per thrust reverser × 2 thrust reversers per airplane), and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $56,160, or $520 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Airbus:** Docket 2002–NM–61–AD.

*Applicability:* All Model A319–113 and –114; and A320–111, –211, and –212 series airplanes; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent jamming of the thrust reverser door during operation or inadvertent deployment of a thrust reverser door in-flight, which could result in reduced controllability of the airplane, accomplish the following:

### Inspection and Follow-on Actions

(a) Within 500 airplane flight cycles after the effective date of this AD: Do a detailed inspection of the eight hydraulic actuators located in the pivot doors of the thrust reversers (one actuator per pivot door, four pivot doors per thrust reverser, two thrust reversers per airplane) to identify the part number (P/N) of each actuator, in accordance with Airbus Service Bulletin A320–78–1020, excluding Appendix 01, dated March 28, 2001. Instead of a detailed inspection of the hydraulic actuators, a review of airplane maintenance and delivery records is acceptable if the P/N of each actuator installed on the airplane can be positively determined from that review.

**Note 1:** For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) For any actuator having P/Ns D23090000–1, D23090000–2, D23090000–3, or D23090000–4: Prior to the accumulation of 20,000 total actuator flight cycles, or within 250 airplane flight cycles after accomplishment of the detailed inspection or airplane records review required by paragraph (a) of this AD, whichever occurs later, replace the actuator with a modified or new actuator having part number D23090000–5 or D23090000–6, in accordance with the service bulletin.

(2) For any actuator having P/N D23090000–5: Prior to the accumulation of 30,000 total actuator flight cycles, or within 250 airplane flight cycles after the detailed inspection or airplane records review required by paragraph (a) of this AD, whichever occurs later, replace the actuator with a modified or new actuator having P/N D23090000–6, in accordance with the service bulletin.

(3) For any actuator having P/N D23090000–6: No further action is required by this paragraph.

**Note 2:** Airbus Service Bulletin A320–78–1020 references Rohr CFM56–5A Service Bulletin RA32078–106, dated November 16, 2000, as an additional source of service information for modification of the actuators.

(b) Once all of the actuators located in the pivot doors of the thrust reversers have P/N D23090000–6, no further action is required by paragraph (a) of this AD.

(c) For operators that do not track actuator flight cycles, or do not have a means of obtaining information regarding actuator flight cycles, engine flight cycles must be used instead of actuator flight cycles.

### Parts Installation

(d) As of the effective date of this AD, no person shall install an actuator having P/N D23090000–1, D23090000–2, D23090000–3, or D23090000–4 on any airplane.

### Submission of Inspection Results to Manufacturer Not Required

(e) Although the service bulletin referenced in this AD specifies to submit information to the manufacturer, this AD does not include such a requirement.

### Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

**Note 3:** The subject of this AD is addressed in French airworthiness directive 2001–361(B) R1, dated September 3, 2003.

Issued in Renton, Washington, on September 26, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–24973 Filed 10–1–03; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2003–NM–31–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model DC9–15 Airplane

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to a McDonnell Douglas Model DC9–15 airplane. This proposal would require an inspection to detect chafing or overheat damage of the electrical wires located at fuselage station Y=110.000 bulkhead of the lower nose left tunnel; and corrective actions, if necessary. This AD also requires replacing the external power ground stud with a new ground stud using new attaching parts, torquing new attachments, and installing a nameplate. This action is necessary to prevent loose external power ground wires, which could cause arcing and overheated wire insulation and consequent smoke/fire in the cockpit. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by November 17, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–31–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain "Docket No. 2003–NM–31–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

**FOR FURTHER INFORMATION CONTACT:** Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–31–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the

FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–31–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The FAA has received reports of loose external power ground wires at the ground stud located in the lower nose left tunnel at fuselage station Y=110.00 bulkhead on certain McDonnell Douglas Model DC–9–82 airplanes. The cause of such loose wires has been attributed to ground stud buildup loosening due to normal airplane vibration. This condition, if not corrected, could result in arcing and overheated wire insulation and consequent smoke/fire in the cockpit.

**Other Relevant Rulemaking**

We have previously issued AD 2001–24–19, amendment 39–12536 (66 FR 64125, December 12, 2001), applicable to certain McDonnell Douglas airplane models, as follows:

McDonnell Douglas Models
DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes
C–9 airplanes
DC–9–81, DC–9–82, DC–9–83, and DC–9–87 airplanes
MD–88 airplanes

That AD requires an inspection to detect chafing or overheat damage of the electrical wires located at fuselage station Y=110.000 bulkhead of the lower nose left tunnel; and corrective actions, if necessary. That AD also requires replacing the external power ground stud with a new ground stud using new attaching parts, torquing new attachments, and installing a nameplate. That AD was prompted by reports of loose external power ground wires at the ground stud located in the lower nose left tunnel at fuselage station Y=110.00 bulkhead on McDonnell Douglas Model DC–9–82 series airplanes. The actions specified by that AD are intended to prevent loose external power ground wires, which could cause arcing and overheated wire insulation and consequent smoke/fire in the cockpit.

**Actions Since Issuance of Previous Rule**

Since issuance of that AD, the FAA was advised that one Model DC9–15 airplane (fuselage number 0097) was omitted inadvertently from the applicability of AD 2001–24–19 because the airplane had been excluded inadvertently from the effectivity of Section I.A. of McDonnell Douglas Alert Service Bulletin DC9–24A135, Revision 01, dated May 1, 2000, as cited in AD 2001–24–19. Therefore, the additional airplane is also subject to the same unsafe condition addressed in AD 2001–24–19.

**Explanation of Relevant Service Information**

The FAA has reviewed and approved Boeing Alert Service Bulletin DC9–24A135, Revision 02, dated January 7, 2003, which describes procedures that are essentially the same as those procedures included in McDonnell Douglas Alert Service Bulletin DC9–24A135, Revision 01, dated May 1, 2000. This revision also adds an additional airplane fuselage number to the effectivity. No more work is necessary on airplanes changed as shown in Revision 01 of the service bulletin. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Accomplishment of the actions specified in AD 2001–24–19 is acceptable for compliance with the requirements of this proposed AD.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Since this proposed AD expands the applicability of AD 2001–24–19, the FAA has considered a number of factors in determining whether to issue a new AD or to supersede the existing AD. The FAA has considered the entire fleet size that would be affected by superseding AD 2001–24–19 and the consequent workload associated with revising maintenance record entries. In light of this, the FAA has determined that a less burdensome approach is to issue a separate AD applicable only to the additional airplane. This proposed AD would not supersede AD 2001–24–19; airplanes listed in the applicability of AD 2001–24–19 are required to continue to comply with the requirements of that AD. This proposed AD is a separate AD action, and is applicable to only one McDonnell Douglas Model DC9–15 airplane (fuselage number 0097), certificated in any category.

**Changes to 14 CFR Part 39/Effect on the Proposed AD**

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

**Change to Labor Rate Estimate**

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

**Cost Impact**

The FAA estimates that 1 Model DC–9–15 airplane, having fuselage number 0097, of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost approximately $35. Based on these figures, the cost impact of the proposed AD on the U.S. operator is estimated to be $165.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**McDonnell Douglas:** Docket 2003–NM–31–AD.

*Applicability:* Model DC–9–15 airplane, fuselage number 0097; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent loose external power ground wires, which could cause arcing and overheated wire insulation and consequent smoke/fire in the cockpit, accomplish the following:

### Inspection

(a) Within 18 months after the effective date of this AD, do a general visual inspection to detect chafing or overheat damage of the electrical wires located at fuselage station Y=110.000 bulkhead of the lower nose left tunnel, per Boeing Alert Service Bulletin DC9–24A135, Revision 02, dated January 7, 2003.

**Note 1:** For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

### Condition 1 (No Chafing or Damage)

(b) If no chafing or overheat damage is detected during the inspection required by paragraph (a) of this AD, within 18 months after the effective date of this AD, do the actions specified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD per Boeing Alert Service Bulletin DC9–24A135, Revision 02, dated January 7, 2003.

(1) Replace the external power ground stud with a new ground stud using new attaching parts.

(2) Torque the new attachments.

(3) Install nameplate (includes applying silicone primer and adhesive/sealant).

### Condition 2 (Chafing or Damage Within Limits)

(c) If, during the inspection required by paragraph (a) of this AD, any chafing or damage is detected within the limits referenced in Boeing Alert Service Bulletin DC9–24A135, Revision 02, dated January 7, 2003, before further flight, repair damage; perform a continuity test to check the integrity of the wiring, and repair as applicable; and do the actions required by paragraphs (b)(1), (b)(2), and (b)(3) of this AD; per the alert service bulletin.

### Condition 3 (Chafing or Damage Beyond Limits)

(d) If, during the inspection required by paragraph (a) of this AD, any chafing or damage is detected beyond the limits referenced in Boeing Alert Service Bulletin DC9–24A135, Revision 02, dated January 7, 2003, before further flight, replace any damaged wire with a new wire; perform a continuity test to check the integrity of the wiring, and repair as applicable; and do the actions required by paragraphs (b)(1), (b)(2), and (b)(3) of this AD; per the alert service bulletin.

### Accomplishment of the Actions

(e) Accomplishment of the actions specified in AD 2001–24–19, amendment 39–12536, is acceptable for compliance with the requirements of this proposed AD.

### Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on September 26, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–24974 Filed 10–1–03; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–NM–283–AD]**

**RIN 2120–AA64**

# Airworthiness Directives; McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to McDonnell Douglas transport category airplanes listed above, that currently requires a one-time detailed inspection to determine if wire segments of the wire bundle routed through the feed-through on the aft side of the flight engineer's station are damaged or chafed, and corrective actions if necessary. That AD also requires revising the wire bundle support clamp installation at the flight engineer's station. For certain airplanes, this action would require a new revision of the wire bundle support clamp installation, and modification of a certain wire bundle. This action also would reduce the applicability in the existing AD. The actions specified by the proposed AD are intended to prevent chafing of the wire bundle located behind the flight engineer's panel caused by the wire bundle coming in contact with the lower edge of the feed-through, and consequent electrical arcing, which could result in smoke and fire in the cockpit. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by November 17, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–283–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain

"Docket No. 2002–NM–283–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–283–AD." The postcard will be date stamped and returned to the commenter.

## Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–283–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

## Discussion

On November 8, 2001, the FAA issued AD 2001–24–21, amendment 39–12538 (66 FR 64121, December 12, 2001), applicable to all McDonnell Douglas Model DC–10 series airplanes and Model MD–10–10F and –30F series airplanes, to continue to require a one-time detailed inspection to determine if wire segments of the wire bundle routed through the feed-through on the aft side of the flight engineer's station are damaged or chafed, and corrective actions if necessary. That AD also requires revising the wire bundle support clamp installation at the flight engineer's station. The requirements of that AD are intended to prevent chafing of the wire bundle located behind the flight engineer's panel caused by the wire bundle coming in contact with the lower edge of the feed-through and consequent electrical arcing, which could result in smoke and fire in the cockpit.

## Actions Since Issuance of Previous Rule

Since the issuance of AD 2001–24–21, the FAA has reviewed and approved Boeing Alert Service Bulletins DC10–24A149, Revision 03, dated September 19, 2002; and Revision 04, dated March 26, 2003. The inspection and repair procedures described in these revisions are identical to those described in Revisions 01 and 02 of the service bulletin (which were referenced in the existing AD as the appropriate sources of service information for accomplishment of the specified actions). The procedures for revising the wire bundle support clamp installation at the flight engineer's station described in Revision 02 have been changed to add procedures for installation and relocation of a new bracket when revising the wire bundle support clamp installation, and to add the revision of the wire bundle support clamp installation at the first observer's station for Group 3 airplanes, as specified in Revision 03. Revision 04 adds procedures for modification of Groups 1 and 2 airplanes on which wire bundle run (RDZ) is installed and was changed as specified in Revision 03 of the service bulletin.

The effectivity listing of Revisions 03 and 04 of the service bulletin have also been revised to remove inactive airplanes and to identify a new Group 3 (which includes the MD–10–10F and MD–10–30F airplanes), and a new Group 4, respectively.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

## Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model DC–10 airplanes, has reviewed all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed AD is one of a series of corrective actions identified during that process. We have previously issued several other ADs and may consider further rulemaking actions to address the remaining identified unsafe conditions.

## Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2001–24–21 to continue to require a one-time detailed inspection to determine if wire segments of the wire bundle routed through the feed-through on the aft side of the flight engineer's station are damaged or chafed, and corrective actions if necessary. The proposed AD also would continue to require revising the wire bundle support clamp installation at the flight engineer's station. For certain airplanes, this action would require a new revision of the wire bundle support clamp installation, and modification of a certain wire bundle. This action also would reduce the applicability in the existing AD. The actions would be required to be accomplished in accordance with the service bulletins described previously.

## Explanation of Change to Applicability

We have revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

## Explanation of Change Made To Existing Requirements

The FAA has changed all references to a "detailed visual inspection" in the existing AD to "detailed inspection" in this action.

### Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

### Change in Labor Rate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

### Cost Impact

There are approximately 412 airplanes of the affected design in the worldwide fleet. The FAA estimates that 298 airplanes of U.S. registry would be affected by this proposed AD.

The inspection that is currently required by AD 2001–24–21, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $65 per airplane.

The revision of the wire bundle support clamp installation that is currently required by AD 2001–24–21 takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $130 per airplane.

For Groups 1, 2, and 3 airplanes: It would take approximately 2 work hours per airplane to do the new revision of the wire bundle support clamp installation, at an average labor rate of $65 per work hour. Required parts cost would be minimal. Based on these figures, the cost impact of the proposed installation is estimated to be $38,740, or $130 per airplane.

For Group 4 airplanes: It would take approximately 1 work hour per airplane to do the new modification of the wire bundle, at an average labor rate of $65 per work hour. Required parts cost would be minimal. Based on these figures, the cost impact of the proposed modification is estimated to be $19,370, or $65 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12538 (66 FR 64121, December 12, 2001), and by adding a new airworthiness directive (AD), to read as follows:

**McDonnell Douglas:** Docket 2002–NM–283–AD. Supersedes AD 2001–24–21, Amendment 39–12538.

*Applicability:* Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes; as listed in Boeing Alert Service Bulletin DC10–24A149, Revision 04, dated March 26, 2003; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent chafing of the wire bundle located behind the flight engineer's panel caused by the wire bundle coming in contact with the lower edge of the feed-through, and consequent electrical arcing, which could result in smoke and fire in the cockpit, accomplish the following:

### Restatement of Requirements of AD 2001–24–21

*Inspection and Repair, If Necessary*

(a) Within 1 year after June 21, 2000 (the effective date of AD 2000–10–03, amendment 39–11727), perform a one-time detailed inspection to determine if the wire segments of the wire bundle routed through the feed-through on the aft side of the flight engineer's station are damaged or chafed, in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A149, Revision 01, dated July 28, 1999; or Boeing Alert Service Bulletin DC10–24A149, Revision 02, dated April 5, 2001; Revision 03, dated September 19, 2002; or Revision 04, dated March 26, 2003. If any damaged or chafed wire is found, prior to further flight, repair in accordance with the alert service bulletin.

**Note 1:** For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

*Revision of Wire Bundle Support Clamp Installation*

(b) Within 1 year after January 16, 2002 (the effective date of AD 2001–24–21, amendment 39–12538), revise the wire bundle support clamp installation at the flight engineer's station, per Boeing Alert Service Bulletin DC10–24A149, Revision 02, dated April 5, 2001.

### New Requirements of This AD

*New Revision of Wire Bundle Support Clamp Installation*

(c) Within 1 year after the effective date of this AD, do the applicable actions specified in paragraph (c)(1), (c)(2), or (c)(3) of this AD, per Boeing Alert Service Bulletin DC10–24A149, Revision 04, dated March 26, 2003.

(1) For Group 1 airplanes, as defined in Boeing Alert Service Bulletin DC10–24A149, Revision 04, dated March 26, 2003: Revise the wire bundle support clamp installation at the flight engineer's station.

(2) For Group 2 airplanes, as defined in Boeing Alert Service Bulletin DC10–24A149, Revision 04, dated March 26, 2003: Revise the wire bundle support clamp installation at the flight engineer's station.

(3) For Group 3 airplanes, as defined in Boeing Alert Service Bulletin DC10–24A149, Revision 04, dated March 26, 2003: Revise the wire bundle support clamp installation at the first observer's station.

*Modification*

(d) For Group 4 airplanes, as defined in Boeing Alert Service Bulletin DC10–24A149, Revision 04, dated March 26, 2003: Within 1 year after the effective date of this AD, modify the wire bundle per the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–24A149, Revision 04, dated March 26, 2003.

*Alternative Methods of Compliance*

(e) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on September 26, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–24975 Filed 10–1–03; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–NM–113–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A300 B2–1C, B2–203, B2K–3C, B4–2C, B4–103, and B4–203 Series Airplanes; Model A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); and Model A310 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Airbus Model A300 B2–1C, B2–203, B2K–3C, B4–2C, B4–103, and B4–203 series airplanes, that currently requires a one-time inspection of the space between the fuel quantity indication (FQI) probes and any adjacent structures for minimum clearance, and corrective action if necessary. This action would expand the applicability in the existing AD and would require the subject one-time inspection on the additional airplanes. The actions specified by the proposed AD are intended to prevent the possibility of electrical arcing to the fuel tank if the airplane should be struck by lightning. Such arcing could create a potential ignition source within the fuel tank and an increased risk of a fuel tank explosion and fire. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by November 3, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–113–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–113–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–113–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–113–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

On June 19, 2001, the FAA issued AD 2001–13–09, amendment 39–12289 (66 FR 34088, June 27, 2001), applicable to all Airbus Model A300 B2–1C, B2–203, B2K–3C, B4–2C, B4–103, and B4–203 series airplanes, to require a one-time inspection of the space between the fuel quantity indication (FQI) probes and any adjacent structures for minimum clearance, and corrective action if necessary. That action was prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to prevent the possibility of electrical arcing to the fuel tank if the airplane should be struck by lightning.

### Actions Since Issuance of Previous Rule

Since the issuance of AD 2001–13–09, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has mandated the one-time inspection required by the existing AD (which is applicable to Model A300 B2–1C, B2–203, B2K–3C, and A300 B4 series airplanes) for Model A310 and Model A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes, and expanded the applicability to include those airplanes.

### Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–28–0080, Revision 01, dated September 3, 2001 (the original issue of the service bulletin was referenced in the existing AD for accomplishment of the referenced actions). Revision 01 has no substantial changes from the original issue.

Airbus also has issued Service Bulletins A300–28–6065, dated March 29, 2001; Revision 01, dated August 31, 2001; and Revision 02, dated August 1, 2002 (for Model A300–600 series airplanes); and A310–28–2145, dated August 21, 2001 (for Model A310 series airplanes). The service bulletins describe procedures for inspecting the FQI probes to make sure that there is a minimum clearance of 3.0 mm (0.118 in.) between each FQI probe and any adjacent structure and/or component in the wing fuel tanks, and adjustment of the clearance space if necessary.

The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2002–170(B), dated April 3, 2002, in order to ensure the continued airworthiness of these airplanes in France.

### FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept us informed of the situation described above. We have examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 2001–13–09 to continue to require a one-time inspection of the space between the fuel quantity indication (FQI) probes and any adjacent structures for minimum clearance, and corrective action if necessary. The proposed AD also would expand the applicability in the existing AD and would require the subject one-time inspection on the additional airplanes. The actions would be required to be accomplished in accordance with the service bulletins described previously.

### Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

### Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

### Cost Impact

There are approximately 115 airplanes of U.S. registry that would be affected by this proposed AD.

The inspection that is currently required by AD 2001–13–09 takes approximately 7 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required inspection is estimated to be $455 per airplane.

It would take approximately 5 work hours per airplane to accomplish the new inspection, specified in Airbus Service Bulletin A310–28–2145, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this proposed inspection is estimated to be $325 per airplane.

It would take approximately 10 work hours per airplane to accomplish the new inspection of the wing fuel tank, and approximately 5 work hours per airplane to accomplish the new inspection of the trim fuel tank, specified in Airbus Service Bulletin A300–28–6065, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of these proposed inspections is estimated to be $650 per wing fuel tank, and $325 per trim fuel tank, per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12289 (66 FR 34088, June 27, 2001), and by adding a new airworthiness directive (AD), to read as follows:

**Airbus:** Docket 2002–NM–113–AD. Supersedes AD 2001–13–09, Amendment 39–12289.

*Applicability:* All Model A300 B2–1C, B2–203, B2K–3C, B4–2C, B4–103, and B4–203 series airplanes; Model A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes except those on which Airbus Modification 12278 has been accomplished in production; and Model A310 series airplanes except those on which Airbus Modification 12248 has been accomplished in production; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the possibility of electrical arcing to the fuel tank if the airplane should be struck by lightning, which could create a potential ignition source within the fuel tank and an increased risk of a fuel tank explosion and fire, accomplish the following:

**Restatement of Requirements of AD 2001–13–09**

*Inspection*

(a) For Model A300 B2–1C, B2–203, B2K–3C, and A300 B4 series airplanes: Within 4,000 flight hours after August 1, 2001 (the effective date of AD 2001–13–09, amendment 39–12289), inspect the clearance space from each fuel quantity indication (FQI) probe to any adjacent structure or metallic component, in accordance with Airbus Service Bulletin A300–28–0080, dated September 28, 2000; or Revision 01, dated September 3, 2001.

**New Requirements of This AD**

*Detailed Inspection*

(b) For Model A300–600 and A310 series airplanes: Within 4,000 flight hours after the effective date of this AD; do a detailed inspection of the clearance space from each FQI probe to any adjacent structure or metallic component, in accordance with Airbus Service Bulletin A300–28–6065, dated March 29, 2001; Revision 01, dated August 31, 2001; or Revision 02, dated August 1, 2002; or Airbus Service Bulletin A310–28–2145, dated August 21, 2001; as applicable.

**Note 1:** For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

*Clearance Adjustment*

(c) If, during any inspection required by this AD, the clearance between any probe and its adjacent parts is less than 3.0 mm (0.118 in.), as described in Airbus Service Bulletin A300–28–0080, dated September 28, 2000; or Revision 01, dated September 3, 2001; or A300–28–6065, dated March 29, 2001; Revision 01, dated August 31, 2001; or Revision 02, dated August 1, 2002; or A310–28–2145, dated August 21, 2001: Before further flight, adjust the position of the FQI probe in accordance with paragraph 3.C. of the Accomplishment Instructions of the applicable service bulletin.

*Alternative Methods of Compliance*

(d)(1) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance for this AD.

(2) Alternative methods of compliance, approved previously per AD 2001–13–09, amendment 39–12289, are approved as alternative methods of compliance with paragraph (a) of this AD.

**Note 2:** The subject of this AD is addressed in French airworthiness directive 2002–170(B), dated April 3, 2002.

Issued in Renton, Washington, on September 26, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–24977 Filed 10–1–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 2002–NM–87–AD]

RIN 2120–AA64

## Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain EMBRAER Model EMB–120 series airplanes, that currently requires revising the airplane flight manual (AFM), and either installing hydraulic tube assemblies incorporating a check valve, or visually inspecting the check valve if already installed and performing corrective actions if necessary. This action would add airplanes to the applicability of the existing AD. The actions specified by the proposed AD are intended to prevent the landing gear doors from becoming blocked from opening during application of emergency procedures in the event of a loss of hydraulics. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by November 3, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–87–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain "Docket No. 2002–NM–87–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–87–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–87–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

On September 26, 2000, the FAA issued AD 2000–20–05, amendment 39–11916 (65 FR 59708, October 6, 2000), applicable to certain EMBRAER Model EMB–120 series airplanes. That AD requires revising the airplane flight manual (AFM), and either installing hydraulic tube assemblies incorporating a check valve, or visually inspecting the check valve if already installed and performing corrective actions if necessary. That action was prompted by a report indicating that, in the event of the loss of pressure in the green hydraulic system, if the present AFM "free-fall" operational procedure was not followed, there was a possibility that the landing gear doors may not open. The requirements of that AD are intended to prevent the landing gear doors from becoming blocked from opening during application of emergency procedures in the event of a loss of hydraulics.

### Actions Since Issuance of Previous AD

Since the issuance of that AD, the Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, advised the FAA that additional airplanes are subject to the same unsafe condition.

### Explanation of Relevant Service Information

Since the issuance of AD 2000–20–05, Empresa Brasileira de Aeronautica S.A. (EMBRAER) has issued Service Bulletin 120–32–0077, Change 03, dated August 3, 2001, which describes the same inspection and installation procedures as those specified in Service Bulletin 120–32–0077, Change 02, dated December 23, 1997. Change 02 of the service bulletin was cited in AD 2000–20–05 as the appropriate source of service information. The relevant change in Change 03 of the service bulletin is that the effectivity listing has been changed to include new serial numbers. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 97–05–03R3, effective date October 2, 2001, to ensure the continued airworthiness of these airplanes in Brazil. The Brazilian AD also mandates incorporation of an AFM revision of abnormal landing gear extension procedures.

### FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

### Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 2000–20–05 to continue to require revising the airplane flight manual (AFM), and either installing hydraulic tube assemblies incorporating a check valve, or visually inspecting the check valve if already installed and performing corrective actions if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously. This action would also add airplanes to the applicability of the existing AD.

### Changes to the Applicability of the Existing AD

This proposed AD would expand the applicability from affected airplanes as listed in EMBRAER Service Bulletin 120–32–0077, Change 02, dated December 23, 1997, to include affected airplanes as listed in EMBRAER Service Bulletin 120–32–0077, Change 03, dated August 3, 2003.

### Explanation of Change Made to Existing Requirements

The FAA has changed all references to a "visual inspection" in the existing AD to "general visual inspection" in this action. Also, the definition of a "general visual inspection" has been included in this action.

### Cost Impact

There are approximately 219 airplanes of U.S. registry that would be affected by this proposed AD. This proposed AD adds no new requirements, but only adds airplanes to the applicability of the existing AD. This proposed AD adds no new economic burden on affected operators, but since issuance of AD 2000–20–05, the estimated labor rate has increased from $60 to $65 per work hour, and the estimated cost for required parts has increased from $2,021 to $2,129. The current costs associated with this proposed AD are otherwise reiterated in their entirety as follows for the convenience of affected operators:

The AFM revision that is currently required by AD 2000–20–05, and retained in this proposed AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required AFM revision on U.S. operators is estimated to be $14,235, or $65 per airplane.

The general visual inspection that is currently required by AD 2000–20–05, and retained in this proposed AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required general visual inspection on

U.S. operators is estimated to be $14,235, or $65 per airplane.

The installation of hydraulic tube assemblies that include check valves that is currently required by AD 2000–20–05, and retained in this proposed AD, takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts cost approximately $2,129 per airplane. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $494,921, or $2,259 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### §39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11916 (65 FR 59708, October 6, 2000), and by adding a new airworthiness directive (AD), to read as follows:

**Empresa Brasileira De Aeronautica S.A. (EMBRAER):** Docket 2002–NM–87–AD. Supersedes AD 2000–20–05, Amendment 39–11916.

*Applicability:* Model EMB–120 series airplanes as listed in EMBRAER Service Bulletin 120–32–0077, Change 03, dated August 3, 2001; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the landing gear doors from becoming blocked from opening during application of emergency procedures in the event of a loss of hydraulics, accomplish the following:

### Restatement of Requirements of AD 2000–20–05

#### *Airplane Flight Manual (AFM) Revision*

(a) For airplanes subject to AD 2000–20–05: Within 10 flight hours after November 13, 2000 (the effective date of AD 2000–20–05, amendment 39–11916), revise the "Emergency Procedures" and "Abnormal Procedures" sections of the airplane flight manual (AFM) by inserting into the AFM a copy of EMB–120 AFM 120/794, Revision 45, dated October 14, 1996.

**Note 1:** Airplanes subject to AD 2000–20–05 are those listed in EMBRAER Service Bulletin 120–32–0077, Change 02, dated December 23, 1997.

#### *Inspection and Corrective Actions*

(b) For airplanes subject to AD 2000–20–05, on which the check valve has been installed in accordance with EMBRAER Service Bulletin 120–32–0077, dated February 7, 1997: Within 100 flight hours after November 13, 2000, conduct a general visual inspection to detect the check valve flow direction in accordance with EMBRAER Service Bulletin 120–32–0077, Change 02, dated December 23, 1997; or Change 03, dated August 3, 2001. If the check valve is installed incorrectly, prior to further flight, reinstall the check valve in the proper position in accordance with Change 02 or Change 03 of the service bulletin.

**Note 2:** For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(c) For airplanes subject to AD 2000–20–05, that are not equipped with the check valve installed in accordance with EMBRAER Service Bulletin 120–32–0077, dated February 7, 1997; or Change 01, dated September 25, 1997; or Change 02, dated December 23, 1997; or Change 03, dated August 3, 2003: Within 2,000 flight hours after November 13, 2000, install hydraulic tube assemblies incorporating a check valve in accordance with Service Bulletin 120–32–0077, Change 01, dated September 25, 1997; Change 02, dated December 23, 1997; or Change 03, dated August 3, 2001.

### New Requirements of This AD

**Note 3:** Airplanes not subject to AD 2000–20–05 are those airplanes added by Change 03 of EMBRAER Service Bulletin 120–32–0077, dated August 3, 2001.

#### *Airplane Flight Manual (AFM) Revision*

(d) For airplanes not subject to AD 2000–20–05: Within 10 flight hours after the effective date of this AD, revise the "Emergency Procedures" and "Abnormal Procedures" sections of the airplane flight manual (AFM) by inserting into the AFM a copy of EMB–120 AFM 120/794, Revision 45, dated October 14, 1996.

#### *Inspection and Corrective Actions*

(e) For airplanes that are not subject to AD 2000–20–05, and on which the check valve has been installed in accordance with EMBRAER Service Bulletin 120–32–0077, dated February 7, 1997: Within 100 flight hours after the effective date of this AD, accomplish all of the applicable actions in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 120–32–0077, Change 03, dated August 3, 2001.

(f) For airplanes not subject to AD 2000–20–05, on which the check valve has not been installed in accordance with EMBRAER Service Bulletin 120–32–0077, dated February 7, 1997; or Change 01, dated September 25, 1997; or Change 02, dated December 23, 1997: Within 2,000 flight hours after the effective date of this AD, accomplish all of the applicable actions in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 120–32–0077, Change 03, dated August 3, 2001.

(g) Accomplishment of the specified actions before the effective date of this AD per EMBRAER Service Bulletin 120–32–0077, Change 01, dated September 25, 1997; or Change 02, dated December 23, 1997; is considered acceptable for compliance with the applicable requirements of paragraphs (e) and (f) of this AD.

### Alternative Methods of Compliance

(h) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

**Note 4:** The subject of this AD is addressed in Brazilian airworthiness directive 97–05–03R3, dated October 2, 2001.

Issued in Renton, Washington, on September 26, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–24978 Filed 10–1–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF HOMELAND SECURITY

## Bureau of Customs and Border Protection

## DEPARTMENT OF THE TREASURY

## 19 CFR Part 191

## RIN 1515–AD32

# Merchandise Processing Fees Eligible To Be Claimed as Certain Types of Drawback Based on Substitution of Finished Petroleum Derivatives

**AGENCY:** Customs and Border Protection, Homeland Security; Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to amend the Customs Regulations to provide that merchandise processing fees are eligible to be claimed, in limited circumstances, as drawback based on substitution of finished petroleum derivatives. The proposed amendments are consistent with a court decision in which merchandise processing fees were found to be eligible to be claimed as unused merchandise drawback. As drawback based on substitution of finished petroleum derivatives is, in limited circumstances, treated in the same manner as unused merchandise drawback, the amendments to the Customs Regulations proposed in this document reflect that merchandise processing fees are also eligible to be claimed as drawback in these circumstances.

**DATES:** Comments must be received on or before December 1, 2003.

**ADDRESSES:** Written comments may be submitted to Bureau of Customs and Border Protection, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue NW., Washington, DC 20229. Submitted comments may be inspected at Bureau of Customs and Border Protection, 799 9th Street, NW., Washington, DC, during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

**FOR FURTHER INFORMATION CONTACT:** William G. Rosoff, Chief, Duty and Refund Determinations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, Tel. (202) 572–8807.

**SUPPLEMENTARY INFORMATION:**

## Background

### *Merchandise Processing Fees*

Merchandise processing fees are fees charged and collected for the processing of merchandise that is formally entered or released into the United States. See 19 U.S.C. 58c(a)(9)(A). Merchandise processing fees are assessed as a percentage of the value of the imported merchandise, as determined under 19 U.S.C. 1401a.

### *Merchandise Processing Fees Eligible To Be Claimed as Drawback*

Section 313 of the Tariff Act of 1930, as amended, (19 U.S.C. 1313), concerns drawback and refunds. Drawback is a refund of certain duties, taxes and fees paid by the importer of record and granted to a drawback claimant under specific conditions.

In *Texport Oil* v. *United States*, 185 F.3d 1291 (Fed. Cir. 1999), the Court of Appeals for the Federal Circuit (CAFC) held that merchandise processing fees were assessed under Federal law and imposed by reason of importation and therefore eligible to be claimed as unused merchandise drawback pursuant to 19 U.S.C. 1313(j).

Subsection (p) of 19 U.S.C. 1313 authorizes drawback that is based on "substitution of finished petroleum derivatives." Subsection (p)(4)(B) of 19 U.S.C. 1313, in pertinent part, limits the amount of drawback payable under this subsection to the amount of drawback that would be attributable to the article "if imported under [subsection 1313(p)(2)(A)(iii) or (iv)] *had the claim qualified for drawback under subsection (j).*" [emphasis added]

Subsection 1313(p)(2)(A)(iii) requires that the exporter of the exported article had imported the qualified article in a quantity equal to or greater than the quantity of the exported article. Subsection 1313(p)(2)(A)(iv) requires that the exporter of the exported article had purchased or had exchanged, directly or indirectly, an imported qualified article from an importer in a quantity equal to or greater than the quantity of the exported article.

The language "had the claim qualified for drawback under subsection (j)" reflects that drawback is payable under 1313(p)(2)(A)(iii) or (iv) pursuant to the same formula set forth in subsection 1313(j), *i.e.*, the amount of drawback payable under 19 U.S.C. 1313(j) is not to exceed 99 percent of any duty, tax, or fee imposed under Federal law because of the imported article's importation. It is noted that "drawback payable" pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv) includes merchandise processing fees.

It follows, therefore, that as the CAFC has determined that merchandise processing fees are eligible to be claimed as drawback pursuant to 19 U.S.C. 1313(j), such fees are also eligible to be claimed as drawback when drawback is based on substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv).

### *Proposed Amendments to the Customs Regulations*

The *Texport Oil* decision is reflected in the Customs Regulations at §§ 191.3 and 191.51. *See* 67 FR 48547 (July 25, 2002), in which a final rule was published amending the Customs Regulations to reflect that merchandise processing fees are eligible to be claimed as unused merchandise drawback pursuant to 19 U.S.C. 1313(j).

In order to reflect that the court's holding is applicable, in limited circumstances, to drawback based on substitution of finished petroleum derivatives, this document proposes to further amend the Customs Regulations.

## Explanation of Amendments

It is proposed to amend §§ 191.3(a)(4), 191.3(b)(2), 191.51(b)(2) and 191.171 of the Customs Regulations (19 CFR 191.3, 191.51 and 191.171) to provide that merchandise processing fees are eligible to be claimed as drawback when the basis for drawback is the substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv). A more detailed explanation of the proposed amendments is set forth below.

### *Amendment to § 191.3 of the Customs Regulations*

Section 191.3(a)(4) of the Customs Regulations provides that merchandise processing fees for unused merchandise drawback pursuant to 19 U.S.C. 1313(j) are subject to drawback. As merchandise processing fees are eligible to be claimed as drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv), it is proposed to amend § 191.3(a)(4) accordingly.

Conversely, § 191.3(b)(2) of the Customs Regulations lists the types of duties and fees that are not subject to drawback, and specifically excepts merchandise processing fees where unused merchandise drawback is claimed.

For the reasons stated above, it is proposed that this provision be amended to include an exception for merchandise processing fees where drawback is claimed for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv).

*Amendment to § 191.51*

Section § 191.51(b)(2) of the Customs Regulations sets forth the apportionment calculation to be used when determining the amount of merchandise processing fee eligible for drawback. It is proposed to amend § 191.51(b)(2) to include reference to drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv).

*Amendment to § 191.171*

Finally, it is proposed to amend § 191.171 of the Customs Regulations, which describes the drawback allowance for substitution of finished petroleum derivatives, to add a new subsection (c) which sets forth the conditions when merchandise processing fees will be eligible for drawback pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv).

### Comments

Before adopting this proposal as a final rule, consideration will be given to any written comments timely submitted to CBP, including comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 103.11(b) of the Customs Regulations (19 CFR § 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 799 9th St., NW., Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

### The Regulatory Flexibility Act and Executive Order 12866

Because these proposed regulatory changes conform the Customs Regulations to reflect the full scope of a recent decision by the Court of Appeals for the Federal Circuit, pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that, if adopted, the proposed amendments will not have a significant impact on a substantial number of small entities. Further, these proposed amendments do not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

### Drafting Information

The principal author of this document was Ms. Suzanne Kingsbury, Office of Regulations and Rulings, Bureau of Customs and Border Protection. However, personnel from other offices participated in its development.

### List of Subjects in 19 CFR Part 191

Claims, Commerce, Customs duties and inspection, Drawback.

### Proposed Amendments to the Regulations

For the reasons stated above, it is proposed to amend part 191 of the Customs Regulations (19 CFR part 191) as follows:

## PART 191—DRAWBACK

1. The general authority citation for part 191 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1313, 1624.

2. Section 191.3(a)(4) and (b)(2) are revised, and the introductory texts of paragraphs (a) and (b) are republished to read as follows:

**§ 191.3 Duties and fees subject or not subject to drawback.**

(a) Duties and fees subject to drawback include:

* * * * *

(4) Merchandise processing fees (see § 24.23 of this chapter) for merchandise subject to unused merchandise drawback pursuant to 19 U.S.C. 1313(j), or merchandise subject to drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv).

(b) Duties and fees not subject to drawback include:

* * * * *

(2) Merchandise processing fees (see § 24.23 of this chapter), except where unused merchandise drawback pursuant to 19 U.S.C. 1313(j) or drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv) is claimed; and

* * * * *

3. In § 191.51, paragraph (b)(2) is revised to read as follows:

**§ 191.51 Completion of drawback claims.**

* * * * *

(b) *Drawback due.*

* * * * *

(2) *Merchandise processing fee apportionment calculation.* Where a drawback claimant seeks unused merchandise drawback pursuant to 19 U.S.C. 1313(j), or drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv), for a merchandise processing fee paid pursuant to 19 U.S.C. 58c(a)(9)(A), the claimant is required to correctly apportion the fee to that merchandise that provides the basis for drawback when calculating the amount of drawback requested on the drawback entry. This is determined as follows:

* * * * *

4. In § 191.171, a new paragraph (c) is added to read as follows:

**§ 191.171 General; Drawback allowance.**

* * * * *

(c) *Merchandise processing fees.* In cases where the requirements of paragraph (b)(1) of this section have been met, merchandise processing fees will be eligible for drawback.

**Robert C. Bonner,**

*Commissioner, Customs and Border Protection.*

Approved: September 26, 2003.

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 03–24856 Filed 10–1–03; 8:45 am]

BILLING CODE 4820–02–P

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 80

### [FRL–7566–4]

## Regulation of Fuel and Fuel Additives: Gasoline and Diesel Fuel Test Method Update

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to take action to make certain fuel testing requirements more consistent and up-to-date by having refiners and laboratories use the most current version of an American Society of Testing and Materials (ASTM) analytical test method.

Specifically, we are proposing to update an ASTM designated analytical test method, ASTM D 1319 to the most recent 2002a version which if adopted will supersede earlier versions of this method in EPA's motor vehicle fuel

regulations. This method is designated in EPA regulations for measuring chemical compositions in reformulated gasoline (RFG), conventional gasoline (CG), and diesel fuel, specifically aromatics and olefins in CG and RFG and aromatics in diesel fuel. These updates allow for more consistent use of the same methodology across EPA motor vehicle fuel regulations and incoporate improvements in the test method procedures that will ensure better operation.

**DATES:** The Agency must receive comments or a request for public hearing by November 3, 2003.

**ADDRESSES:** If you wish to submit comments or request a public hearing, you should send any written materials to the docket address listed and to Joe Sopata, Chemist, Transportation & Regional Programs Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. (6406J), Washington, DC 20460; or by e-mail to *sopata.joe@epa.gov.* All comments and materials relevant to today's action are contained in Public Docket No. A–2002–15 and docket A–2001–21 located at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. Dockets may be inspected from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You may reach the Air Docket by telephone at (202) 566–1742 and by facsimile at (202) 566–1741. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

**FOR FURTHER INFORMATION CONTACT:** If you would like further information about this rule or to request a hearing, contact Joe Sopata, Chemist, Transportation & Regional Programs Division, (202) 564–9034.

**SUPPLEMENTARY INFORMATION:** The contents of today's preamble are listed in the following outline.

I. Regulated Entities
II. Rule Changes
  A. Updating ASTM D 1319 Test Method to 2002a Year Version
III. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Reform Act
  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
  G. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks
  H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
  I. National Technology Transfer Advancement Act
IV. Statutory Provisions and Legal Authority

## I. Regulated Entities

Entities potentially affected by this action include those involved with the production, importation, distribution, sale and storage of gasoline motor fuel and diesel motor fuel.

The table below gives some examples of entities that may have to comply with the regulations. However, since these are only examples, you should carefully examine these and other existing regulations in 40 CFR part 80. If you have any questions, please call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

| Category | NAICSs codes | SIC codes | Examples of potentially regulated parties |
|---|---|---|---|
| Industry | 32411 | 2911 | Petroleum refiners. |
| Industry | 54138 | 8734 | Testing Laboratories. |

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

## II. Rule Changes

### *A. Updating ASTM D 1319 Test Method to 2002a Year Version*

Refiners, importers and oxygenate blenders producing gasoline and diesel motor vehicle fuel are required to test Reformulated Gasoline (RFG), Conventional Gasoline (CG) and diesel fuel for various fuel parameters including olefins, and aromatics. ASTM test method D1319 is currently a designated test method for measuring olefins[1] in gasoline and aromatics[2] in diesel fuel and is also allowed as an alternative test method for measuring aromatics[3] in gasoline. Because rules were adopted at different points in time, the regulations currently cite three different versions of D 1319 (published in three different years) for these applications.

On February 26, 2002, the Agency published a final rule entitled "Regulation of Fuel and Fuel Additives: Reformulated Gasoline Transition."[4] Among other things, this final rule updated certain ASTM test methods for RFG and CG, designated in EPA regulations, to their most recent ASTM version. Several designated test methods were updated to their most recent version including methods covering oxygen content, distillation properties, RVP, and aromatics. The designated test method for olefins, ASTM D 1319, was updated by EPA only to its 1998 version and not to the most recent version. This was because the 1999 version of ASTM D 1319 (the most recent version at that time) had mistakenly left out an important reference to use of another ASTM method. ASTM D 5599–00, the missing test method, measures oxygenate concentration when present in the gasoline sample. Measurement of oxygenate content when oxygenates are present is a required procedure when determining olefin content. Therefore, since ASTM D 5599–00 is EPA's designated method for oxygenate determination, omission of this procedure in the 1999 version of ASTM 1319 meant that it would not be appropriate for EPA to adopt that version of ASTM 1319. We explained in our response to comments that "unless a determination is made that ASTM D 5599–00 can be appropriately included as a method for measuring oxygen and oxygen content with ASTM D 1319–99, EPA will retain the 1998 version of D 1319 as the designated test method for olefins."[5]

Recently, David Bradley, the ASTM Director of Committee D02 for Petroleum Products and Lubricants, said in a letter to EPA that ASTM has updated test method D1319 to a 2002 year version.[6] Mr. Bradley also pointed out that this most recent version of ASTM D 1319 now includes the reference to ASTM D 5599 thus resolving the problem associated with omission of EPA's designated test method for oxygen and oxygen content. The American Petroleum Institute (API) also submitted comments to EPA in support of this test method update of ASTM D 1319 to the 2002 year version.[7] Thus, both ASTM and API support revising our motor vehicle fuels regulations to allow the use of D1319–02a for testing of olefins.

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[1] 40 CFR 80.46(b).

[2] 40 CFR 80.2(z).

[3] 40 CFR 80.46(f)(3).

[4] February 26, 2002, (67 FR 8729).

[5] *See* Air Docket #A–2001–21, Document #V–C–01.

[6] *See* Air Docket #A–2002–15, Document #II–D–01.

In addition to updating our regulations to allow for the use of ASTM D 1319–02a for determining olefins in gasoline (discussed above), we are also today proposing to allow use of the newest version of D1319 for determination of aromatics content in RFG and CG (as an alternative method) and in determining aromatics content in diesel motor fuel. Previous versions of ASTM D1319 were allowed for determining aromatic content under previous rulemakings.

Table 1 lists the designated analytical test methods and alternative analytical test methods which are being updated for parameters measured under RFG, CG, and diesel fuels program in today's action. We have reviewed the 2002a version of ASTM test method D 1319 and we are in agreement with its revisions. We believe that the revisions in ASTM D 1319–02a are not significant changes that would cause a user of an older version of the same method to incur significant costs. All of the revisions were deemed necessary by ASTM so that improvements in the test method's procedures would ensure better operation for the user of the test method. By updating ASTM D 1319 to the 2002a version for all three of these applications, the required analytical methodologies will be more consistent, making it easier for manufacturers of gasoline and diesel fuel to utilize the ASTM technique for all fuels and properties being tested.

TABLE 1.—DESIGNATED & ALTERNATIVE ANALYTICAL TEST METHODS UNDER RFG, CG & DIESEL FUEL PROGRAMS

| Fuel parameter | Analytical test method |
|---|---|
| Olefins | ASTM D 1319–02a, entitled, "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Absorption." |
| Aromatics (gasoline and diesel) | ASTM D 1319–02a, entitled, "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Absorption", for diesel fuel, this method is the designated test method, for gasoline, this method is an alternative test method and if used as an alternative method, its results, must be correlated to ASTM D 5769–98. |

In the "Final Rules" section of today's **Federal Register**, we are publishing a direct final rule that matches the substance of this proposed rule. If the Agency receives adverse comment or a request for public hearing by November 3, 2003, we will withdraw the direct final rule by publishing a timely withdrawal notice in the **Federal Register**. If the Agency receives no adverse comment or a request for public hearing by November 3, 2003, these test method changes will be effective sixty (60) days after publication of the final rule in the **Federal Register**. We are confident that sixty(60) days is sufficient lead time for industry to become familiar and implement this most recent ASTM test method for the applications mentioned above.

## III. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

Pursuant to the terms of Executive Order 12866, we have determined that this proposed rule is not a significant regulatory action.

### *B. Paperwork Reduction Act*

This action does not add any new requirements involving the collection of information as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final RFG/anti-dumping rulemaking (See 59 FR 7716, February 16, 1994) and has assigned OMB control number 2060–0277 (EPA ICR No. 1591.14). The OMB has approved the information collection requirements contained in the final Tax Exempt (Dyed) Highway Diesel Fuel rulemaking (*See* 66 FR 64817, December 14, 2001) and has assigned OMB control number 2060–0308 (EPA ICR No. 1718.03).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

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[7] *See* Air Docket #A–2002–15, Document #II–D–02.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that has not more than 1,500 employees (13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, we believe that this action will not have a significant economic impact on a substantial number of small entities. We have determined that no small entities will experience an impact from this proposal. ASTM test method D 1319 is currently a designated test method for measuring olefins in gasoline and aromatics in diesel fuel and is also allowed as an alternative test method for measuring aromatics in gasoline (see citations above in Section II.A). Because rules were adopted at different points in time, the regulations currently cite three different versions of ASTM D 1319 (published in three different years) for these applications. Currently, if a small entity produces both gasoline and diesel fuel, and it relies on ASTM D 1319 for determining compliance with the fuel parameters mentioned above, it must maintain three different versions of ASTM D 1319. These proposed updates allow for more consistent use of the same methodology across EPA motor vehicle fuel regulations, thus increasing flexibility for small entities who manufacture gasoline or diesel fuel. Thus this proposed rule is expected to reduce operating costs for all parties, including small entities.

Although this proposed rule will not have a significant impact on a substantial number of small entities, EPA has nonetheless tried to reduce the impact of this rule on small entities. If the Agency receives no adverse comment or request for public hearing on this proposed rule, these test method changes will be effective sixty (60) days after publication of this proposed rules corresponding direct final rule in the **Federal Register**. We are confident that sixty (60) days is sufficient lead time for small entities to become familiar and implement this ASTM test method for its applications. We continue to be interested in the potential impacts of the rule on small entities and welcome comments on issues related to such impacts.

### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. The rule would impose no enforceable duty on any State, local or tribal governments or the private sector. This rule applies to gasoline refiners, blenders and importers that supply gasoline or diesel fuel.

### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule updates an ASTM test method to its most recent version. Thus, Executive Order 13132 does not apply to this proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and

Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This proposed rule applies to gasoline refiners, blenders and importers that supply gasoline or diesel fuel. Today's action updates an ASTM test method to its most recent version, and does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this proposed rule.

### *G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

### *H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This proposed rule is not an economically "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it does not have a significant adverse effect on the supply, distribution, or use of energy. EPA is allowing additional flexibility and streamlining the regulations by updating an ASTM test method to its most current version for three applications under its motor vehicle programs.

### *I. National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule will update an ASTM test method which is a designated analytical test method for two applications and an alternative test method for one application to its most recent ASTM version. Today's action does not establish new technical standards or analytical test methods, although it does update an ASTM test method to its most current version. To the extent that this action would allow the use of standards developed by voluntary consensus bodies (such as ASTM) this action would further the objectives of the NTTAA.

## IV. Statutory Provisions and Legal Authority

Statutory authority for today's proposed rule comes from sections 211(c), 211(i) and 211(k) of the CAA (42 U.S.C. 7545(c) and (k)). Sections 211(c) and 211(i) allow EPA to regulate fuels that contribute to air pollution which endangers public health or welfare, or which impairs emission control equipment. Section 211(k) prescribes requirements for RFG and conventional gasoline and requires EPA to promulgate regulations establishing these requirements. Additional support for the fuels controls in today's rule comes from sections 114(a) and 301(a) of the CAA.

## List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Diesel, Imports, Incorporation by reference, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: September 24, 2003.

**Marianne Lamont Horinko,**

*Administrator.*

[FR Doc. 03–24908 Filed 10–1–03; 8:45 am]

BILLING CODE 6560–50–P

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 82**

**[FRL–7567–4]**

**RIN 2060–AK28**

## Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances-n-Propyl Bromide; Correction

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed rulemaking; correction.

**SUMMARY:** The Environmental Protection Agency (EPA) published in the **Federal Register** of June 3, 2003, a Notice of Proposed Rulemaking related to the Significant New Alternatives Policy (SNAP) program's review of n-propyl bromide. During the public comment period, members of the public requested clarification or correction of a number of statements in the preamble to the proposed rule. This document identifies, corrects, and clarifies these portions of the preamble.

**FOR FURTHER INFORMATION CONTACT:** Margaret Sheppard. Before October 16, 2003, contact Ms. Sheppard by telephone at (202) 564–9163, by fax at (202) 565–2141, by e-mail at *sheppard.margaret@epa.gov*, or by mail at U.S. Environmental Protection Agency, Mail Code 6205J, Washington, DC 20460. Overnight or courier deliveries should be sent to the office location at 501 3rd Street, NW., Washington, DC 20001. Further information can be found by calling the Stratospheric Protection Hotline at (800) 296–1996, or by viewing EPA's Ozone Depletion World Wide Web site at *http://www.epa.gov/ozone/snap/*. On and after October 16, 2003, contact Ms. Sheppard by telephone at (202) 343–9163, by e-mail at *sheppard.margaret@epa.gov*, or by mail at U.S. Environmental Protection Agency, Mail Code 6205J, Washington, DC 20460. Overnight or courier deliveries on and after October 16, 2003 should be sent to the new office location at 1310 L Street, NW., Washington, DC 20005.

**SUPPLEMENTARY INFORMATION:** The Environmental Protection Agency published in the **Federal Register** of June 3, 2003 (68 FR 33284), a Notice of Proposed Rulemaking related to the Significant New Alternatives Policy (SNAP) program's review of n-propyl bromide. During the public comment period, members of the public requested clarification or correction of certain statements in the proposal, FR Doc. 03–75043, published on June 3, 2003.

In the proposed rule, FR Doc. 03–75043, published on June 3, 2003, in the "Supplementary Information" section make the following corrections:

1. On page 33286 at the top of the third column, the chemical name for HCFC–141b is corrected to read "1,1-dichloro-1-fluoroethane."

2. On page 33286 on the 8th line down from the top of the third column, the chemical name for HCFC–225cb is corrected to read "1,3-dichloro-1,1,2,2,3-pentafluoropropane."

3. On page 33286, on the 21st line down from the top of the third column, the chemical name for HFC–365mfc is corrected to read "1,1,1,3,3-pentafluorobutane."

4. On page 33304, at the bottom of the third column, footnote 15 is corrected to read as follows:

> "The recommended AEL for nPB is lower than that for many acceptable solvents (HFEs, ketones, HFCs, HCFC–225ca/cb, hydrocarbons), but is higher or comparable to the AEL for some acceptable solvents (d-limonene, VMSs, dichlorobenzotrifluoride, HCFC–123, methylene chloride, PCBTF). However, a direct comparison between two compounds with different AELs does not necessarily mean that using a compound with a lower AEL is more risky. Actual exposure levels will vary based upon factors other than the AEL, such as emission controls in place, work practices, ventilation, rate of spraying, and vapor pressure of the solvent."

5. On page 33311, in the first column under the first bullet point, the following sentence appears beginning in the 51st line: "Recent regulations for hazardous air pollutants disallow use of methylene chloride in foam fabrication facilities." This sentence is corrected to read as follows: "Recent regulations for flexible polyurethane foam fabrication facilities that are major sources of hazardous air pollutants disallow use of methylene chloride-based adhesives at loop slitters and associated equipment used to apply adhesives to bond foam."

The National Emissions Standard for Hazardous Air Pollutants (NESHAP) for new and existing sources at flexible polyurethane foam fabrication facilities, published in the **Federal Register** of April 14, 2003 (68 FR 18062), does not generally disallow use of methylene chloride in all foam fabrication facilities. The NESHAP disallows the use of HAP-based adhesives at loop-slitter affected sources at plants that are major source of hazardous air pollutants (HAPs), in accordance with the compliance dates set forth in the NESHAP. Stationary sources emitting, or having the potential to emit, less than 10 tons per year of a particular HAP, such as methylene chloride, and less than 25 tons per year of any combination of HAPs are not regulated as major sources under the NESHAP and are thus considered "area sources." EPA has listed flexible foam fabrication operations as an area source category for further scrutiny and may address HAP emissions from area sources under section 112(k) of the Clean Air Act in the future.

Users of adhesives containing methylene chloride must comply with applicable requirements of the Methylene Chloride Standard issued by the Occupational Safety and Health Administration (29 CFR 1910.1052).

Dated: September 17, 2003.

**Jeanne Briskin,**

*Acting Director, Global Programs Division.*

[FR Doc. 03–25011 Filed 10–1–03; 8:45 am]

BILLING CODE 6560–50–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 03–2753; MB Docket No. 03–192; RM–10763]**

## Radio Broadcasting Services; Brazil and Spencer, IN

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rulemaking filed jointly by Crossroads Investments, Inc., licensee of Station WSDM–FM, Channel 249A, Brazil, Indiana, and Mid-America Radio of Indiana, Inc., licensee of Station WSKT(FM), Channel 224A, Spencer, Indiana. Parties request the substitution of Channel 224A for Channel 249A at Brazil and modification of the license for Station WSDM–FM accordingly, and the substitution of Channel 249A for Channel 224A at Spencer and modification of the license of Station WSKT(FM) accordingly. Channel 249A can be allotted to Spencer in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.5 kilometers (5.9 miles) west of the community at Station WSKT(FM)'s requested site at coordinates 39–15–18 North Latitude and 86–51–51 West Longitude. Additionally, Channel 224A can be allotted to Brazil with a site restriction of 1.8 kilometers (1.1 miles) southwest of the community at Station WSDM–FM's requested site at coordinates 39–30–43 NL and 87–08–19 WL. In accordance with Section 1.420(g)(3) of the Commission's Rules, any party expressing an interest in the respective channels should demonstrate why these proposals are not "incompatible channel swaps" such that their expressions of interest are foreclosed.

**DATES:** Comments must be filed on or before October 27, 2003, and reply comments on or before November 12, 2003.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Frank R. Jazzo, Anne Goodwin Crump, Fletcher, Heald and Hildreth, PLC, 1300 North 17th Street, Eleventh Floor, Arlington, Virginia 22209.

**FOR FURTHER INFORMATION CONTACT:** Victoria McCauley, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–192 adopted September 3, 2003, and released September 5, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Indiana, is amended by removing Channel 249A and adding Channel 224A at Brazil and by removing Channel 224A and adding Channel 249A at Spencer.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 03–24939 Filed 10–1–03; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 03–2829; MB Docket No. 03–196; RM–10626]**

### Radio Broadcasting Services; Mt. Vernon and Okawville, IL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rulemaking filed by Benjamin Stratemeyer, licensee of Station WIBV(FM), Mount Vernon, Illinois, requesting the reallotment of Channel 271B1 from Mount Vernon to Okawville, Illinois, as the community's first local aural transmission service, and modification of the license of Station WIBV(FM) to reflect the change of community. The proposal also requires the reclassification of Station KEZK–FM, St. Louis, Missouri, Channel 273C to specify operation on Channel 273C0 pursuant to the reclassification procedures adopted by the Commission. *See* Second Report and Order in MM Docket 98–93 (1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules) 65 FR 79773 (2000). An Order to Show Cause was issued to Infinity Radio Subsidiary Operations, Inc., licensee of Station KEZK(FM) (RM–10626). Channel 271B1 can be allotted at Okawville, Illinois, at Petitioner's requested site 19.0 kilometers (11.8 miles) southeast of the community. Coordinates for Channel 271B1 at Okawville are 38–21–56NL and 89–21–2 WL.

**DATES:** Comments must be filed on or before October 30, 2003, and reply comments on or before November 14, 2003. Any counterproposal filed in this proceeding need only protect Station KEZK(FM), St. Louis, Missouri, as a Class C0 allotment.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, and Station KEZK(FM) as follows: Clifford M. Harrington, Esq., Dawn M. Scarrino, Esq., Collette M. Capretz, Esq., Shaw Pittman, LLP, 2300 N Street NW., Washington, DC 20037–1128; Infinity Radio Subsidiary Operations Inc., 2000 K Street NW., Suite 725, Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Victoria McCauley, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–196 adopted September 3, 2003, and released September 8, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Illinois is amended by removing Channel 271B1 at Mount Vernon and adding Okawville, Channel 271B1.

3. Section 73.202(b), the Table of FM Allotments under Missouri is amended by removing Channel 273C and adding Channel 273C0 at St. Louis.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 03–24940 Filed 10–1–03; 8:45 am]

**BILLING CODE 6712–01–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[I.D. 092903A]**

### New England Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) will hold a special one-day Council meeting on October 21, 2003, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

**DATES:** The meeting will be held on Tuesday, October 21, 2003, and will begin at 9 a.m.

**ADDRESSES:** The meeting will be held at the Holiday Inn, One Newbury Street, Peabody, MA 01960; telephone (978) 535–4600. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

**Tuesday, October 21, 2003**

Following introductions, the Council will review, consider and respond to comments submitted in response to Draft Amendment 13 to the Northeast Multispecies Fishery Management Plan and its Draft Supplemental Environmental Impact Statement. Final decisions on the Amendment 13 alternatives are scheduled to occur on November 4–6, 2003. In addition, the Council will consider and approve recommendations for Spiny Dogfish specifications for the 2004–2005 fishing year.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

## Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: September 29, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–25027 Filed 10–1–03; 8:45 am]

**BILLING CODE 3510–22–S**

# Notices

**Federal Register**
Vol. 68, No. 191
Thursday, October 2, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Medicine Bow-Routt National Forests and Thunder Basin National Grassland Carbon County, WY; Blackhall-McAnulty Timber Sale, Prescribed Burn and Travel Management; Correction

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement; correction.

**SUMMARY:** The Forest Service published a notice of intent to prepare an environmental impact statement for the Blackhall-McAnulty Timber Sale, Prescribed Burn and Travel Management Analysis in the **Federal Register** of June 11, 2003. The original notice designated the Forest Supervisor as the Responsible Official. This correction will designate the District Ranger as the Responsible Official.

**FOR FURTHER INFORMATION CONTACT:** Terry DeLay, Brush Creek/Hayden Ranger District, P.O. Box 249, Saratoga, WY 82331, 307-326-2518.

### Correction

In the **Federal Register** of June 11, 2003, in FR Doc. 03-14672, on page 34902, in the third column, correct the "Responsible Official" caption to read:

### Responsible Official

Scott G. Armentrout, District Ranger, Brush Creek/Hayden Ranger District, Medicine Bow-Routt National Forests and Thunder Basin National Grassland, South Highway 130, Saratoga, Wyoming 82331, is the official responsible for making the decision on this action. He will document his decision and rationale in a Record of Decision.

Dated: September 25, 2003.

**Scott G. Armentrout,**
*District Ranger.*

[FR Doc. 03-24981 Filed 10-1-03; 8:45 am]

BILLING CODE 3410-11-M

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## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

### Solicitation of Nominations for Members of the Grain Inspection Advisory Committee

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Notice to solicit nominees.

**SUMMARY:** The Grain Inspection, Packers and Stockyards Administration (GIPSA) is announcing that nominations are being sought for persons to serve on GIPSA's Grain Inspection Advisory Committee.

**DATES:** Form AD-755 must be received not later than December 1, 2003.

**ADDRESSES:** Completed AD-755 forms should be submitted to GIPSA at 1400 Independence Avenue, SW., STOP 3601, Washington, DC 20250-3601. The completed form may also be faxed to GIPSA.

**SUPPLEMENTARY INFORMATION:** Under authority of section 21 of the United States Grain Standards Act (Act), as amended, the Secretary of Agriculture established the Grain Inspection Advisory Committee (Advisory Committee) on September 29, 1981, to provide advice to the Administrator on implementation of the Act. Section 109 of the Grain Standards and Warehouse Improvement Act of 2000, Pub. L. 106-472, extended the authority for the Advisory Committee through September 30, 2005.

The Advisory Committee presently consists of 15 members, appointed by the Secretary, who represent the interests of grain producers, processors, handlers, merchandisers, consumers, and exporters, and includes scientists with expertise in research related to the policies in section 2 of the Act. Members of the Advisory Committee serve without compensation. They are reimbursed for travel expenses, including per diem in lieu of subsistence, for travel away from their homes or regular places of business in performance of Advisory Committee service, as authorized under section 5703 of Title 5, United States Code. Alternatively, travel expenses may be paid by Committee members.

Nominations are being sought for persons to serve on the Advisory Committee to replace the five members and the five alternate members whose terms will expire March 2004.

Persons interested in serving on the Advisory Committee, or in nominating individuals to serve, should contact: GIPSA, by telephone (tel: 202-205-8281), fax (fax: 202-205-4714), or electronic mail (e-mail: *Terri.L.Henry@usda.gov*) and request Form AD-755. Form AD-755 may also be obtained via the Internet through GIPSA's Home page at: *http://www.usda.gov/gipsa/advcommittee/ad755.pdf.* The completed form should be sent to the address above or faxed to GIPSA.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, disability, marital status, or sexual orientation. To ensure that recommendations of the Committee take into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The final selection of Advisory Committee members and alternates will be made by the Secretary.

**Donna Reifschneider,**
*Administrator.*

[FR Doc. 03-24946 Filed 10-1-03; 8:45 am]

BILLING CODE 3410-EN-P

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## DEPARTMENT OF COMMERCE

### Census Bureau

### Title: Report of Privately-Owned Residential Building or Zoning Permits Issued (Building Permits Survey)

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to

take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before December 1, 2003.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Erica Filipek, Census Bureau, Room 2105, FOB 4, Washington, DC 20233–6900, (301) 763–5161 (or via the Internet at *erica.mary.filipek@census.gov*).

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

The Census Bureau plans to request a three year extension of a currently approved collection of the Form C–404, Building Permits Survey. The Census Bureau produces statistics used to monitor activity in the large and dynamic construction industry. Given the importance of this industry, several of the statistical series are key economic indicators. Two such series are (a) Housing Units Authorized by Building Permits and (b) Housing Starts. Both are based on data from samples of permit-issuing places. These statistics help state and local governments and the Federal Government, as well as private industry, to analyze this important sector of the economy.

The Census Bureau uses Form C–404 to collect data to provide estimates of the number and valuation of new residential housing units authorized by building permits. We use the data, a component of the index of leading economic indicators, to estimate the number of housing units started, completed, and sold, if single-family, and to select samples for the Census Bureau's demographic surveys. Policymakers, planners, businessmen/women, and others use the detailed geographic data collected from state and local officials on new residential construction authorized by building permits to monitor growth and plan for local services and to develop production and marketing plans. The Building Permits Survey is the only source of statistics on residential construction for states and smaller geographic areas. Building permits are public records so the information is not subject to disclosure restrictions.

## II. Method of Collection

The Census Bureau collects this information by mail and electronically through files we download or receive on diskettes or via e-mail.

Monthly, we currently collect this information by mail for about 8,170 permit-issuing jurisdictions and electronically for 550 jurisdictions. Annually, we collect this information by mail for about 10,180 jurisdictions. The universe for the survey will be updated in January 2004 from about 18,900 jurisdictions to 19,600 jurisdictions. A new monthly sample will also be introduced. Monthly data for 2004 will be collected for both the old and the new monthly samples. For 2004, we plan to collect monthly data for about 10,600 permit-issuing jurisdictions (at least 560 electronically), and to collect annual data for about 9,000 jurisdictions. The sample overlap will end in January 2005, thereafter, we will collect monthly data for about 8,600 jurisdictions (at least 560 electronically) and annual data for about 11,000 jurisdictions.

## III. Data

*OMB Number:* 0607–0094.

*Form Number:* C–404.

*Type of Review:* Regular submission.

*Affected Public:* State and local governments.

*Estimated Number of Respondents:* 19,600.

*Estimated Time Per Response:* 10 minutes for monthly respondents who report by mail, 3 minutes for monthly respondents who report electronically, and 25 minutes for annual respondents who report by mail.

*Estimated Total Annual Burden Hours:* 24,166 for 2004, 20,999 thereafter.

*Estimated Total Annual Cost:* $323,596.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13, United States Code, Section 182.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 26, 2003.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 03–24960 Filed 10–1–03; 8:45 am]

BILLING CODE 3510–07–P

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## DEPARTMENT OF COMMERCE

## Economic Development Administration

## Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

**AGENCY:** Economic Development Administration (EDA).

**ACTION:** To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD AUGUST 20, 2003–SEPTEMBER 26, 2003

| Firm name | Address | Date petition accepted | Product |
|---|---|---|---|
| Acushnet Rubber Co., Inc. dba Precix, Inc. | 744 Belleville Avenue, New Bedford, MA 02742. | 09/26/03 | Copier rolls and blades and windshield wiper blades. |
| Beadles Lumber Company | 900 6th Street, N.E., Moultrie, GA 31776 | 09/08/03 | Southern yellow pine lumber. |
| Bobs Candies, Inc | 1315 West Oakridge Drive, Albany, GA 31707. | 09/08/03 | Candy canes. |

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD AUGUST 20, 2003–SEPTEMBER 26, 2003—Continued

| Firm name | Address | Date petition accepted | Product |
|---|---|---|---|
| Calhoun Bend Mill, Inc | 3615 Fourth Street, Jonesville, LA 71343. | 09/04/03 | Dry flour-based mixes. |
| Dan River, Inc | P.O. Box 261, Danville, VA 24543 | 09/11/03 | Fabric for home fashions and automotive industries. |
| Delta Brands, Inc | 2204 Century Center Blvd., Irving, TX 75062. | 09/04/03 | Steel milling machines. |
| Eagle Stud Mill, Inc | 1620 Rogers Street, Unit 7, Missoula, MT 599802. | 09/04/03 | Coniferous lumber studs. |
| Fields & Sons, Inc | P.O. Box 25, Kodiak, AK 99615 | 09/17/03 | Salmon. |
| Henkel, Inc | 211 East Church Street, Hammond, LA 70401. | 09/04/03 | Electrode ovens. |
| IndTool, Inc | 412 Bradley Street, Burlington, NC 27215. | 09/05/03 | Gear boxes and parts and other speed changers. |
| Janssen Engineering, Inc | 6920 Route 7, North Dover, AR 72837 | 09/04/03 | Camshafts and repair parts for tractors and implements. |
| National Magnetic Group, Inc | 1210 Win Drive, Bethlehem, PA 18017 | 09/03/03 | Soft ferrites and dielective resonators. |
| Northcutt Woodworks, L. P | 101 South 4th Street, Crockett, TX 75835. | 09/17/03 | Pine moldings. |
| Polar Ware Company | 2806 North 15th Street, Sheboygan, WI 53082. | 08/29/03 | Stainless steel kitchen ware. |
| Scott Powr-Ply Company dba Scott Fly Rods and The Scott Fly Rod Company. | 2355 Air Park Way, Montrose, CO 81401. | 08/26/03 | Fishing rods. |
| Silverton Victorian Millworks, Inc. dba The Millworks, Inc. | 466 S. Sky Lane, Durango, CO 81303 | 08/26/03 | Wood moldings. |
| Williamson Corporation | 70 Dominion Drive, Concord, MA 01742 | 09/26/03 | Non-contact infrared temperature sensors for used in process control systems. |

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm. Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: September 26, 2003.

**Brenda A. Johnson,**

*Acting Director, Planning and Development Assistance Division.*

[FR Doc. 03–24971 Filed 10–1–03; 8:45 am]

BILLING CODE 3510–24–P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

## Format for Petition Requesting Relief Under U.S. Countervailing Duty Law

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before December 1, 2003.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 or via the Internet at *dHynek@doc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Request for additional information or copies of the information collection instrument and instructions should be directed to: Nicole Bankhead, Import Administration, Office of Policy, Room 3713, 14th & Constitution Avenue, NW., Washington, DC 20230; Phone number: (202) 482–8221, and fax number: (202) 501–7952.

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

The International Trade Administration, Import Administration, AD/CVD Enforcement, implements the U.S. antidumping and countervailing duty law. Import Administration investigates allegations of unfair trade practices by foreign governments and producers and, in conjunction with the U.S. International Trade Commission, can impose duties on the product in question to offset the unfair practices. Form ITA–366P—Format for Petition Requesting Relief Under the U.S. Countervailing Duty Law—is designed for U.S. companies or industries that are unfamiliar with the Countervailing law and the petition process. The Form is designed for potential petitioners that believe a foreign competitor is being subsidized unfairly. Since a variety of detailed information is required under the law before initiation of a countervailing duty investigation, the Form is designed to extract such information in the least burdensome manner possible.

## II. Method of Data Collection

Form ITA–366P is sent by request to potential U.S. petitioners.

## III. Data

*OMB Number:* 0625–0148.
*Form Number:* ITA–366P.
*Type of Review:* Regular Submission.
*Affected Public:* U.S. companies or industries that suspect the presence of unfair competition from subsidized foreign enterprises.
*Estimated Number of Respondents:* 5.
*Estimated Time Per Response:* 40 hours.
*Estimated Total Annual Burden Hours:* 200 hours.
*Estimated Total Annual Costs:* Assuming the number of petitioners remains the same, the estimated annual cost for this collection is $27,500 ($14,000 for respondents and $13,500 for federal government).

## IV. Request for Comments

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 26, 2003.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 03–24961 Filed 10–1–03; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

## National Institute of Standards and Technology

## Proposed Information Collection; Comment Request; Malcolm Baldrige National Quality Award Application

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A).

**DATES:** Written comments must be submitted on or before December 1, 2003.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, Herbert Hoover Building, 1401 Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instruction should be directed to JoAnne M. Surette, Baldrige National Quality Program, Administration Building, Room 621, 100 Bureau Drive, Stop 1020, National Institute of Standards and Technology, Gaithersburg, MD 20899–1020; telephone (301) 975–5267, fax (301) 948–3716, e-mail *joanne.surette@nist.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

The Department of Commerce is responsible for the Baldrige National Quality Program and the Malcolm Baldrige National Quality Award. The National Institute of Standards and Technology (NIST), an agency of the Department's Technology Administration, manages the Baldrige Program. Applicants for the Malcolm Baldrige National Quality Award are required to perform two steps: (1) The applicant organization certifies that it meets eligibility requirements; (2) the applicant organization prepares and completes an application form and the application process. The Malcolm Baldrige National Quality Award Program Office will assist with or offer advice on any questions or issues that the applicant may have concerning the eligibility process or in completing the self-certification forms. NIST will use the application package to assess and provide feedback on the applicant's quality and performance practices.

## II. Method of Collection

Applicants must comply in writing according to the Baldrige Award Application Forms booklet.

## III. Data

*OMB Number:* 0693–0006.
*Form Number:* None.
*Type of Review:* Regular submission.
*Affected Public:* Business or other for-profit organizations.
*Estimated Number of Respondents:* 100.
*Estimated Time Per Response:* 74 hours.
*Estimated Total Annual Burden Hours:* 7,400.
*Estimated Total Annual Cost:* $0

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: September 26, 2003.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 03–24959 Filed 10–1–03; 8:45 am]

**BILLING CODE 3510–13–P**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 092503B]

## Western Pacific Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings and hearings.

**SUMMARY:** The Western Pacific Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will meet on Tuesday, October 14, 2003, through Wednesday October 16, 2003; and the Council will hold its 120th meeting from Monday October 20, 2003 through Thursday October 23, 2003, in Honolulu, HI. (see

**SUPPLEMENTARY INFORMATION** for specific times, dates, and agenda items).

**ADDRESSES:** The SSC meeting will be held at the Council Office Conference Room, 1164 Bishop St., Suite 1400, Honolulu, HI; telephone: (808) 522–8220. The Council meeting will be held at Pagoda Hotel, Cest'Si Bon Room, 1525 Rycroft Street, Honolulu, HI 96814; telephone (808) 941–6611.

**FOR FURTHER INFORMATION CONTACT:** Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

**SUPPLEMENTARY INFORMATION:**

### Dates and Times

The SSC meeting will be held from 9 a.m. to 5 p.m. on October 14, 2003, and from 8:30 a.m. to 5 p.m. on October 15–16, 2003.

1. Introductions
2. Approval of draft agenda and assignment of rapporteur
3. Approval of the minutes of the 83rd meeting
4. Bottomfish
A. Stock assessment workshop
B. Main Hawaiian Islands (MHI) catch data project
C. Genetic research proposal
D. Status of MHI area closure review
E. Report on MHI scoping meeting
F. Seamount groundfish moratorium
5. Protected species
A. Status of Sea Turtle Recovery Team and Recovery Plans
B. Observer programs: objectives and design
6. Crustaceans fisheries
A. Report on Northwestern Hawaiian Islands (NWHI) 2003 lobster research cruise
B. Results of September lobster tagging charter
C. Application of lobster research in stock assessment model
7. Precious Corals
A. Report on MHI black coral meeting

*8:30 a.m. Wednesday, October 15, 2003*

8. Pelagic Fisheries
A. American Samoa and Hawaii Longline Quarterly Reports
B. Tuna and billfish stock assessments
C. Final Report on phase two of chute trials for seabird conservation
D. Turtle conservation and management
a. Update on Judge Kotelly's ruling vacating the June 2002 regulations and 2002 Biological Opinion
b. Movement and survivorship of turtles released from Longline fisheries
c. Status of Environmental Impact Statements (EIS)
i. Supplemental Pelagic EIS
ii. MHI Turtle EIS
iii. Longline Experimental Permit EIS
1. Preferred alternative
2. Atlantic mitigation experiments
d. Turtle Advisory Committee & Database meetings
e. Council turtle conservation actions
f. Measures to manage Hawaii's Longline fishery
E. Marlin management
a. Report on public scoping meetings
b. Marlin tagging project
F. Private fish aggregation devices
G. Shark management
H. Report on international meetings and issues
a. Standing Committee on Tuna and Billfish
b. Predatory conference
c. People and the Sea Conference
d. Inter-American Convention on Sea Turtles

*8:30 a.m. Thursday, October 16, 2003*

Ecosystem and Habitat
A. Northwestern Hawaiian Islands/ Mariana Islands Archipelagic Ecological Assessments
B. NWHI Sanctuary designation progress report
C. Report on the State of Hawaii papio and ulua tagging project
10. Other business
A. Draft Pacific Islands Region Strategic Plan - Research
B. 85th SSC meeting
11. Summary of SSC Recommendations to the Council

### *Council Standing Committee Meetings*

The following Standing Committees of the Council will meet on Monday, October 20, 2003. Enforcement/Vessel Monitoring System (VMS) from 7:30 a.m. to 9 a.m.; Fishery Rights of Indigenous People from 7:30 a.m. to 9 a.m.; International Fisheries/Pelagics from 9 a.m. to 12 noon; Bottomfish from 9 a.m. to 12 noon; Ecosystem and Habitat from 1:30 p.m. to 3 p.m.; Crustaceans and Precious Corals from 3 p.m. to 4:30 p.m.; and Executive/Budget and Program from 4:30 p.m. to 6 p.m.

In addition, the Council will hear recommendations from its scientific and statistical committee, and other ad hoc groups. Public comment periods will be provided throughout the agenda. The order in which agenda items are addressed may change. The Council will meet as late as necessary to complete scheduled business.

### *Public Hearing*

Public hearing will be held to solicit comments on long-term management measures for the region's pelagic fishery on October 22, 2003 at 4:30 p.m. at the Pagoda Hotel, Honolulu HI. The agenda during the full Council meeting will include the items listed here.

*9 a.m. Tuesday, October 21, 2003*

1. Introductions
2. Approval of agenda
3. Approval of 118th and 119th meeting minutes
4. Island reports
A. American Samoa
B. Guam
C. Hawaii
D. Commonwealth of the Northern Mariana Islands (CNMI)
5. Reports from fishery agencies and organizations
A. Department of Commerce
a. NMFS
i. Pacific Islands Regional Office
ii. Pacific Islands Fisheries Science Center
b. NOAA General Counsel Southwest Region
c. National Ocean Service
B. Department of the Interior, U.S. Fish and Wildlife Service
6. Enforcement/vessel monitoring system (VMS)
A. U.S. Coast Guard activities
B. NMFS activities
C. Enforcement activities of local agencies
D. Status of violations
E. Report on national VMS program and policies
F. Options for using electronic logbooks for Hawaii longline fishery
Guest Speaker: Ueta Fa'asili Strategic plan for fisheries management and sustainable coastal fisheries in Pacific islands
7. Observer programs
A. Objectives and design
B. Monitoring and compliance policy
C. Native observer program
8. Precious coral fisheries
A. Report on precious coral industry meeting black coral minimum size
9. Crustaceans fisheries
A. Status of lobster research
a. Report on the 2003 Annual Lobster Resource Cruise
b. Report on the 2003 Lobster Tagging Charter
B. Progress on NWHI lobster population model
10. Fishery Rights of indigenous peoples
A. Revision of CNMI marine conservation plan
B. Status and prognosis of community demonstration projects program
C. Community Development Program (CDP)
a. Status of Mau Zone CDP regulations
b. Indigenous database
c. Guam community monitoring program options
D. Saltonstall-Kennedy solicitation, June 30, 2003, Omnibus solicitation

*Wednesday, October 22, 2003*

11. Pelagic/international fisheries

A. American Samoa & Hawaii longline quarterly reports
B. Standing Committee on Tuna and Billfish stock assessments
C. Report on Hawaii longline observer program
D. Final report on phase two of chute trials for seabird conservation
E. Turtle conservation and management
a. Update on Judge Kollar-Kotelly's ruling vacating the June 2002 regulations and 2002 Biological Opinion
b. Movement and survivorship of turtles released from longline fisheries
c. Status of Environmental Impact Statements (EISs)
i. Supplemental Pelagic EIS
ii. MHI Turtle EIS
iii. Longline experimental permit EIS
1. Preferred alternative
2. Atlantic mitigation experiments
d. Turtle Advisory Committee & Database meetings
e. Council turtle conservation actions
f. Measures to manage Hawaii's longline fishery
F. Marlin management - Report on public scoping meeting
G. Private fish aggregation devices - Report on public scoping meetings
H. Shark management (Action Item)
I. International meetings
a. Standing Committee on Tuna and Billfish
b. Preparatory Conference
c. People and the Sea Conference
d. Inter-American Convention on Sea Turtles
J. Public hearing on measures to manage the Hawaii longline fishery

A public hearing will be held to receive comments on long-term management of the pelagic fishery of the Western Pacific Region, especially the Hawaii-based longline fishery. The Council is developing an amendment to the regulations under the Fishery Management Plan for the Pelagics Fisheries of the Western Pacific Region that would address the fact that an August 31, 2003, Court order vacated NMFS' 2002 Biological Opinion and related regulations, removing any authorization of incidental takes of sea turtles by the fishery that had been provided by the Biological Opinion. At its 119th meeting, the Council took final action to recommend an emergency rule for the short-term management of the longline fishery to conserve sea turtles, and also directed its staff to analyze and document the impacts of a range of alternatives for the long-term management of the fishery. At its 120th meeting, the Council may take final action to recommend a preferred long-term alternative, or it may defer that decision to a later date.

*Thursday, October 23, 2003*

12. Ecosystems and Habitat
A. NWHI/CNMI Archipelago Ecological Assessments
B. Status of NWHI Reserve Operations Plan
C. NWHI Sanctuary designation process report
D. Pacific National Wildlife Refuge expansion
a. Midway Atoll National Wildlife Refuge expansion
b. Hawaiian Island National Wildlife Refuge expansion proposal
E. Report on the U.S. Coral Reef Task Force meeting
a. Pacific regional/local action strategies
b. Guam/Hawaii coral reef fisheries management workshops
13. Bottomfish fisheries
A. Report on MHI management program review
B. Report on Hawaii public scoping meetings
C. Report on CNMI public scoping meetings
D. Seamount groundfish moratorium (expires 8/04)
1. Status of fishery
2. Management options: continue moratorium, closure, other
14. Program planning
A. Legislation
B. Pacific Islands Region Strategic Plan
C. CNMI fishery development project
D. Report on programmatic grants
15. Administrative matters
A. Financial reports
B. Administrative report
C. Meetings and workshops
D. Advisory Group changes
16. Election of officers
17. Other business

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or (808)522–8226 (fax), at least 5 days prior to the meeting date.

**Authority:** 1801 *et seq.*

Dated: September 29, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–25026 Filed 10–1–03; 8:45 am]

BILLING CODE 3510–22–S

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Socialist Republic of Vietnam

September 26, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection.

**EFFECTIVE DATE:** October 2, 2003.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 68 FR 26575, published on May 16, 2003.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

September 26, 2003.

Commissioner,
*Bureau of Customs and Border Protection, Washington, DC 20229*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 12, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Vietnam and exported during the twelve-month period which began on May 1, 2003 and extends through December 31, 2003.

Effective on October 2, 2003, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Vietnam:

| Category | Restraint limit[1] |
|---|---|
| 332 | 6,667 dozen pairs. |
| 347/348 | 5,320,000 dozen. |
| 352/652 | 1,179,794 dozen. |
| 632 | 13,333 dozen pairs. |
| 647/648 | 1,473,411 dozen. |

[1] The limits have not been adjusted to account for any imports exported after April 30, 2003.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 03–24989 Filed 10–1–03; 8:45 am]

**BILLING CODE 3510–DR–S**

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the Socialist Republic of Vietnam

September 26, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection.

**EFFECTIVE DATE:** October 2, 2003.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 68 FR 26575, published on May 16, 2003.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

September 26, 2003.

Commissioner,
*Bureau of Customs and Border Protection, Washington, DC 20229*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 12, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Vietnam and exported during the twelve-month period which began on May 1, 2003 and extends through December 31, 2003.

Effective on October 2, 2003, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Vietnam:

| Category | Restraint limit[1] |
|---|---|
| 340/640 | 1,383,333 dozen. |
| 345 | 224,000 dozen. |
| 448 | 21,713 dozen. |
| 645/646 | 149,333 dozen. |

[1] The limits have not been adjusted to account for any imports exported after April 30, 2003.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 03–24990 Filed 10–1–03; 8:45 am]

**BILLING CODE 3510–DR–S**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Proposed Collection; Comment Request

**AGENCY:** Office of the Assistant Secretary of Defense for Health Affairs.

**ACTION:** Notice.

In accordance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announced the proposed extension of a currently approved collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed extension of collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received on or before December 1, 2003.

**ADDRESSES:** Written comments and recommendations on the information collection should be sent to TRICARE Management Activity—Aurora, Office of Program Requirements Division, 16401 E. Centretech Parkway, ATTN: Graham Kolb, Aurora, CO 80011–9043.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection, please write to the above address or call TRICARE Management Activity, Office of Program Requirements Division at (303) 676–3580.

*Title, Associated Form, and OMB Number:* Health Insurance Claim Form, HCFA–1500, OMB Number 0720–0001

*Needs and Uses:* This information collection requirement is used by TRICARE to determine reimbursement for health care services or supplies rendered by individual professional providers to TRICARE beneficiaries. The requested information is used to determine beneficiary eligibility, appropriations and costs of care, other health insurance liability and whether services received are benefits. Use of this form continues TRICARE commitments to use the national standard claim form for reimbursement of services/supplies provided by individual professional providers.

*Affected Public:* Business or other form profit, State, local or tribal government, Federal government and not for profit institutions.

*Annual Burden Hours:* 5,600,000.

*Number of Respondents:* 22,400,000.

*Responses per Respondent:* 1.

*Average Burden per Response:* 15 minutes.

*Frequency:* On occasion.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

This collection instrument is for is for use by health care providers under the TRICARE Program. TRICARE is a health benefits entitlement program for the dependents of active duty Uniformed Services member and deceased sponsors, retirees and their dependents, dependents of Department of Transportation (Coast Guard) sponsors, and certain North Atlantic Treaty Organizations, National Oceanic and Atmospheric Administration, and Public Health Service eligible beneficiaries. The Form HCFA 1500 is used by individual professional health care or health care related providers to file for reimbursement of civilian health care services or supplies provided to TRICARE beneficiaries. This is the national standard claim from accepted by all major commercial and government payers.

Dated: September 22, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 03–24985 Filed 10–1–03; 8:45 am]

**BILLING CODE 5001–08–M**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Meeting of the Advisory Council on Dependents' Education

**AGENCY:** Department of Defense Education Activity (DoDEA).

**ACTION:** Open meeting notice.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, Appendix 2 of title 5, United States Code, Public Law 92–463, notice is hereby given that a meeting of the Advisory Council on Dependents' Education (ACDE) is scheduled to be held on October 3,2003, from 8 a.m. to 5 p.m. The meeting will be held at the Hotel Oranien Wiesbaden, Platter Strasse 2, Wiesbaden, Germany. The purpose of the ACDE is to recommend to the Director, DoDEA, general policies for the operation of the Department of Defense Dependents Schools (DoDDS); to provide the Director with information about effective educational programs and practices that should be considered by DoDDS; and to perform other tasks as may be required by the Secretary of Defense. The meeting emphases will be on the current operational qualities of 15 schools in DoDDS, the institutionalized school improvement processes in DoDDS and other educational matters. For further information contact Mr. Jim Jarrard, at 703–696–4471, extension 1964.

Dated: September 24, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 03–24986 Filed 10–1–03; 8:45 am]

**BILLING CODE 5001–08–M**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board

**AGENCY:** Department of Defense.

**ACTION:** Notice of advisory committee meetings.

**SUMMARY:** The Defense Science Board Task Force on Enabling Joint Force Capabilities will tentatively meet in closed session October 24, 2003, at IDA, 4850 Mark Center Drive, Alexandria, VA; and October 30, 2003, at Joint Forces Command, Norfolk, VA. This Task Force will review the current state of assigned responsibilities and accountability for joint capabilities to quickly bring combat forces together and focus them on joint objectives across a wide spectrum of possible contingencies and will help identify unfilled needs and areas where assigned responsibility and accountability calls for further clarification and/or organizational arrangements.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will identify specific characteristics and examples of organizations that could be capable of accepting responsibility and accountability for delivering the capability with needed responsiveness, and will recommend further steps to strengthen the joint structure ability to quickly integrate service-provided force capabilities into effective joint forces.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that the Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. § 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

Dated: September 25, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 03–24987 Filed 10–1–03; 8:45 am]

**BILLING CODE 5001–08–M**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board

**AGENCY:** Department of Defense.

**ACTION:** Notice of advisory committee meeting.

**SUMMARY:** The Defense Science Board Task Force on Quarantining Guidance for the Severe Acute Respiratory Syndrome (SARS) Epidemic will meet in open session October 27, 2003, from 0930–1200 and from 1300–1500. The Task Force will meet at SAIC, 4001 N. Fairfax Drive, Suite 500, Arlington, VA. The Task Force will review the impact quarantining may have on DoD planning and operations by preventing the flow of personnel and material to areas of concern, eroding relationships with host countries, and impacting our forces through anxieties about family members.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will review and evaluate the Department's ability to provide information to integrate public health needs, on behalf of national security. Specifically, the Task Force will review: Existing doctrine and processes by which quarantine policy is generated; required cooperation with non-DoD agencies and non-U.S. government entities, including other countries; the capacity of local commanders to rapidly survey disease status, and establish need, ways and means for quarantine in relation to their assigned missions; methods, technologies and doctrine to allow safe transport of personnel through quarantined areas, and restriction of movement where needed; sample scenarios; coordination and allocation of DoD and non DoD resources to combat SARS; identification and tracking of individuals potentially exposed to SARS; and features of the SARS guidance which may be applicable to future infectious disease outbreaks.

**FOR FURTHER INFORMATION CONTACT:** CDR David Waugh, USN, Defense Science Board, 3140 Defense Pentagon, Room 3D865, Washington, DC 20301–3140, via email at *david.waugh@osd.mil*, or via phone at (703) 695–4158.

**SUPPLEMENTARY INFORMATION:** Members of the public who wish to attend the meeting must contact CDR Waugh no later than October 20, 2003, for further information about admission as seating is limited. Additionally, those who wish to make oral comments or deliver written comments should also request to be scheduled, and submit a written text of the comments by October 20, 2003, to allow time for distribution to Task Force members prior to the meeting. Individual oral comments will be limited to five minutes, with the total oral comment period not exceeding 30 minutes.

Dated: September 25, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 03–24988 Filed 10–1–03; 8:45 am]

**BILLING CODE 5001–08–M**

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## DEPARTMENT OF DEFENSE

### Department of the Navy

### Record of Decision for Introduction of F/A–18 E/F (Super Hornet) Aircraft to the East Coast of the United States

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice of record of decision, correction.

**SUMMARY:** The Department of the Navy published a Notice in the **Federal Register** of September 10, 2003, concerning the Record of Decision for Introduction of F/A–18 E/F (Super Hornet) Aircraft to the East Coast of the United States. The document contained an incorrect statement and needs additional clarification.

**FOR FURTHER INFORMATION CONTACT:** Mr. Fred Pierson, Atlantic Division Naval Facilities Engineering Command (Code BD32FP), 6506 Hampton Blvd., Norfolk, VA 23508–1278, telephone (757) 322–4935.

### Correction

In the **Federal Register** of September 10, 2003, in FR Doc. 03–53353, on page 53355, in the third column, second paragraph, delete the third sentence, "Aircraft will not be able to utilize visual flight rules (VFR) when transiting airspace in the area of Site C." The statement is not correct and is now deleted from the decision.

On page 53355, in the third column, fourth paragraph, add the following statements for additional clarification to the end of the paragraph:

> The Class D airspace will extend approximately five miles laterally from the OLF from the surface up to and including 2,500 feet above ground level. Establishment of Class D airspace is contingent upon results of an FAA Airspace Study. No military Special Use Airspace (SUA) will be established.

The revised version of the Record of Decision will also appear in the administrative record.

Dated: September 29, 2003.

**E.F. McDonnell,**

*Major, Marine Corps, Federal Register Liaison Officer.*

[FR Doc. 03–25024 Filed 10–1–03; 8:45 am]

**BILLING CODE 3810–FF–P**

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## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before November 3, 2003.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov*.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 29, 2003.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

### Office of Vocational and Adult Education

*Type of Review:* Extension.

*Title:* Application for Vocational and Technical Education and Adult Education Direct Grants.

*Frequency:* Semi-Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 569.

Burden Hours: 73,970.

*Abstract:* This form will be used to apply for funding authorized by the Carl D. Perkins Vocational and Technical Education Act of 1998 and the Adult Education and Family Literacy Act, administered by the Office of Vocational and Adult Education. The information will be used to award discretionary grants and cooperative agreements.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2351. When you access the information collection, click on "Download Attachments "to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–25014 Filed 10–1–03; 8:45 am]

**BILLING CODE 4000–01–P**

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## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before November 3, 2003.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov*.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 29, 2003.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

### Office of Vocational and Adult Education

*Type of Review:* Reinstatement.

*Title:* Carl D. Perkins Vocational and Technical Education Act (Pub. L. 105–332)—State Plan-Perkins Annual Levels of Performance.

*Frequency:* Annually.

*Affected Public:* State, local or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 25.
Burden Hours: 1,700.

*Abstract:* Pub. 105–332 requires eligible State agencies to submit a 5-year State plan, with annual revisions as the agency deems necessary, in order to receive Federal funds. Program staff review the plans for compliance and quality. This collection also solicits proposed annual levels of performance from States and outlying areas in accordance with section 113(b)(3)(A)(v) of the Carl D. Perkins Vocational and Technical Education Act (Pub. L 105–332).

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2313. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivan.Reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–25015 Filed 10–1–03; 8:45 am]

**BILLING CODE 4000–01–P**

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## DEPARTMENT OF EDUCATION

**[CFDA Nos.: 84.129C, 84.129E, 84.129F, 84.129P, 84.129Q, 84.129R]**

### Rehabilitation Training: Rehabilitation Long-Term Training; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004; Correction

**SUMMARY:** On August 26, 2003, a notice inviting applications for new awards for the Rehabilitation Training: Rehabilitation Long-Term Training program for FY 2004 was published in the **Federal Register** (68 FR 51263).

On page 51263, in column two, 2nd line, in the list after CFDA No:, add "84.129P," after "84.129F,".

On page 51263 in the chart after 84.129F, add the following: "84.129P", "Specialized personnel for rehabilitation of individuals who are blind or have vision impairment (4)", and "$100,000" under the headings CFDA number, Priority area (maximum number of awards in parentheses), and Maximum award, respectively.

On page 51263, in column three, the *Estimated Total Number of Awards* reads "11". This figure is corrected to read "14".

On page 51264, in column one, under the heading *Pilot Project for Electronic Submission of Applications*, in line eight, add "84.129P," after "84.129F,".

On page 51264, in column three, under the heading *For Applications Contact*, in the 4th paragraph in line four, add "P," after "F,".

*For Applications Contact:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html*.

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.129C, E, F, P, Q, or R.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Fountain, U.S. Department of Education, 400 Maryland Avenue, SW., room 3332, Switzer Building, Washington, DC 20202–2649. Telephone: (202) 205–8294 or via Internet: *Marilyn.Fountain@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

### Electronic Access to This Document

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

**Program Authority:** 29 U.S.C. 772.

Dated: September 26, 2003.

**Robert H. Pasternack,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 03–24947 Filed 10–1–03; 8:45 am]

BILLING CODE 4000–01–P

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## DEPARTMENT OF ENERGY

**[Docket Nos. EA–281]**

## Application To Export Electric Energy; Manitoba Hydro

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** Manitoba Hydro has applied for authority to export electric energy from the United States to Canada, pursuant to section 202(e) of the Federal Power Act.

**DATES:** Comments, protests or requests to intervene must be submitted on or before November 3, 2003.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

**FOR FURTHER INFORMATION CONTACT:** Rosalind Carter (Program Office) 202–586–7983 or Michael Skinker (Program Attorney) 202–586–2793.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On September 2, 2003, Manitoba Hydro, a Canadian Crown Corporation, applied to the Office of Fossil Energy, of the Department of Energy (DOE) for authority to export electric energy from the Unites States to Canada. Manitoba Hydro engages in the generation, transmission and distribution of electricity primarily in the Province of Manitoba, Canada. Manitoba Hydro does not own, control, or operate any generation, transmission or other facilities in the United States and does not sell power at wholesale within the United States. Manitoba Hydro is not a public utility subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC).

The type of export transactions that Manitoba Hydro proposes in FE Docket No. EA–281 include: (1) Purchasing electric energy in Canada and wheeling the energy through facilities located in the U.S. and exporting the energy back to Canada to itself or to third parties in Canada and/or (2) purchasing electric energy in the United States, exporting that energy through facilities within the U.S. and then exporting the energy to itself or third parties in Canada. Manitoba Hydro will arrange for the delivery of exports to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Eastern Maine Electric Cooperative, International Transmission Co., Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Company and Vermont Electric Transmission.

The construction of each of the international transmission facilities to be utilized by Manitoba Hydro has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

*Procedural Matters:* Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Manitoba Hydro application to export electric energy to Canada should be clearly marked with Docket EA–281. Additional copies are to be filed directly with K. Jennifer Moroz, Barrister & Solicitor, Legal Department, Manitoba Hydro, 820 Taylor Avenue, Winnipeg, Manitoba Canada R3M 3T1 *and* David Martin Connelly, Bruder, Gentile & Marcoux, L.L.P., 1701 Pennsylvania Avenue, NW., Suite 900, Washington, DC 20006–5805.

A final decision will be made on this application after the environmental impact has been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov.* Upon reaching the Fossil Energy Home page, select

"Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on September 24, 2003.

**Anthony Como,**

*Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.*

[FR Doc. 03–25005 Filed 10–1–03; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

### Office of Science

### Basic Energy Sciences Advisory Committee

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Monday, October 20, 2003, 8:30 a.m. to 5 p.m., and Tuesday, October 21, 2003, 8:30 a.m. to 12 p.m.

**ADDRESSES:** Doubletree Hotel and Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Sharon Long; Office of Basic Energy Sciences; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone: (301) 903–5565.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Meeting:* The purpose of this meeting is to provide advice and guidance with respect to the basic energy sciences research program.

Tentative Agenda: Agenda will include discussions of the following:

Monday, October 20, 2003.

- News from the Office of Science.
- News from the Office of Basic Energy Sciences.
- Basic Energy Sciences Hydrogen Workshop Follow-up and Related Activities.
- Summary of the Chemical Sciences, Geosciences, and Biosciences Division.
- Update of the Linac Coherent Light Source.
- Update and Status of the Spallation Neutron Source.
- BESAC Charges and Directions.

Tuesday, October 21, 2003.

- Review of Recent DOE and National Studies on High-end Computing.
- BESAC Discussion.

*Public Participation:* The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Sharon Long at 301–903–6594 (fax) or *sharon.long@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

*Minutes:* The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; 1E–190, Forrestal Building; 1000 Independence Avenue, SW., Washington, DC 20585; between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, DC on September 26, 2003.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 03–25003 Filed 10–1–03; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Fernald

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Thursday, October 21, 2003, 7 p.m.–9 p.m.

**ADDRESSES:** Fernald Closure Project Site, 7400 Willey Road, Trailer 214, Hamilton, OH 45013–9402.

**FOR FURTHER INFORMATION CONTACT:** Doug Sarno, The Perspectives Group, Inc., 1055 North Fairfax Street, Suite 204, Alexandria, VA 22314, at (703) 837–1197, or e-mail: *djsarno@theperspectivesgroup.com.*

**SUPPLEMENTARY INFORMATION:** Purpose of the Board: The Board is to make recommendations to DOE in areas of environmental restoration, waste management, and related activities.

**Tentative Agenda:**

7 p.m. Call to Order.
7–7:15 p.m. Chair's Remarks, Ex Officio Announcements.
7:15–7:30 p.m Report from the EM SSAB Chairs Meeting.
7:30–8 p.m. Discussion and Proposed Action on Risk Based End States.
8–8:45 p.m. Results of Retreat and Actions for 2004.
8:45–9 p.m. Public Comment.
9 p.m. Adjourn.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, c/o Phoenix Environmental Corporation, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC on September 29, 2003.

**Rachel Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 03–25001 Filed 10–1–03; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

### Nuclear Energy Research Advisory Committee

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Nuclear Energy Research Advisory Committee. The Federal Advisory Committee Act (Pub. L. No.

92–463, 86 Stat. 770), requires that public notice of the meetings be announced in the **Federal Register**.

**DATES:** Monday, November 3, 2003, 9:15 a.m. to 6 p.m.; Tuesday, November 4, 2003, 9 a.m. to 1 p.m.

**ADDRESSES:** Crowne Plaza Hotel, 1489 Jefferson Davis Highway, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Roth, Designated Federal Officer, Nuclear Energy Research Advisory Committee, U.S. Department of Energy, NE–20, 1000 Independence Avenue, SW., Washington DC 20585, Telephone Number 301–903–5501, E-mail: *mark.roth@hq.doe.gov*.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Meeting:* To provide advice to the Director of the Office of Nuclear Energy, Science and Technology (NE) of the Department of Energy on the many complex planning, scientific and technical issues that arise in the development and implementation of the Nuclear Energy research program.

**Tentative Agenda**

*Monday, November 3, 2003*

Welcome Remarks.
Status of Nuclear Energy's FY 2004 Budget Request.
Role of Nuclear Power Under the Administration's Climate Change Initiative.
Subcommittee Reports and Organizational Issues.

*Tuesday, November 4, 2003*

Subcommittee Reports and Organization Issues (continued).
Open Discussion.
Public Comment Period.

*Public Participation:* The day and a half meeting is open to the public on a first-come, first-serve basis because of limited seating. Written statements may be filed with the committee before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Mark Roth at the address or telephone listed above. Requests to make oral statements must be made and received five days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chair of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Reading Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, DC on September 29, 2003.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 03–25006 Filed 10–1–03; 8:45 am]

**BILLING CODE 6450–01–P**

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## DEPARTMENT OF ENERGY

**[FE Docket No. PP–285]**

### Application for Presidential Permit; Sharyland Utilities, L.P.

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** Sharyland Utilities, L.P. (Sharyland) has applied for a Presidential permit to construct, connect, operate, and maintain a single-circuit, 138,000-volt (138-kV) alternating current electric transmission line across the U.S. border with Mexico.

**DATES:** Comments, protests, or requests to intervene must be submitted on or before November 3, 2003.

**ADDRESSES:** Comments, protests, or requests to intervene should be addressed as follows: Office of Coal & Power Import and Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350.

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell (Program Office) 202–586–9624 or Michael T. Skinker (Program Attorney) 202–586–6667.

**SUPPLEMENTARY INFORMATION:** The construction, operation, maintenance, and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038.

On September 11, 2003, Sharyland filed an application with the Office of Fossil Energy(FE) of the Department of Energy (DOE) for a Presidential permit. Sharyland is a transmission and distribution service provider operating within a 6,000-acre master-planned community called Sharyland Plantation, situated between the cities of McAllen and Mission, Texas, along the border between the United States and Mexico.

Sharyland proposes to develop a single-circuit 138-kV transmission line in two phases. In the first phase Sharyland would tap an existing 138-kV transmission facility also owned by Sharyland, construct a 150-megawatt (MW) back-to-back alternating current/direct current/alternating current converter station in the immediate vicinity of the tap, and construct approximately one mile of 138-kV transmission line to the Mexico-U.S. border near the southern boundary of the City of Mission, Texas. At the border the facilities would interconnect with similar facilities owned by Comision Federal de Electricidad (CFE), the national electric utility of Mexico, and continue an additional five miles to CFE's Cumbres substation located approximately 6 miles from the City of Reynosa, Tamaulipas, Mexico. In the second phase, Sharyland would expand the converter facility to a capacity of 300 MW. Sharyland proposes to operate the transmission line as an "open access" facility available for use by other parties to transfer electric power between the United States and Mexico. Sharyland does not intend to seek an electricity export authorization from DOE.

Since the restructuring of the electric power industry began, resulting in the introduction of different types of competitive entities into the marketplace, DOE has consistently expressed its policy that cross-border trade in electric energy should be subject to the same principles of comparable open access and non-discrimination that apply to transmission in interstate commerce. DOE has stated that policy in export authorization granted to entities requesting authority to export over international transmission facilities. Specifically, DOE expects transmitting utilities owning border facilities constructed pursuant to Presidential permits to provide access across the border in accordance with the principles of comparable open access and non-discrimination contained in the FPA and articulated in Federal Energy Regulation Commission Order No. 888, as amended (Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities). In furtherance of this policy, DOE intends to condition any Presidential permit issued in this proceeding on compliance with these open access principles.

*Procedural Matters:* Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Additional copies of such petitions to intervene or protest also should be filed directly with Mark E. Caskey P.E., General Manager, Sharyland Utilities, L.P., 4403 West Military Highway, Suite 700, McAllen, TX 78503 AND Richard P. Noland, James M. Bushee, Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW., Washington, DC 20004–2415.

Before a Presidential permit may be issued or amended, the DOE must determine that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system. In addition, DOE must consider the environmental impacts of the proposed action (*i.e.*, granting the presidential permit, with any conditions and limitations, or denying the permit) pursuant to NEPA. DOE also must obtain the concurrence of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

The NEPA compliance process is a cooperative, non-adversarial process involving members of the public, state governments and the Federal government. The process affords all persons interested in or potentially affected by the environmental consequences of a proposed action an opportunity to present their views, which will be considered in the preparation of the environmental documentation for the proposed action. Intervening and becoming a party to this proceeding will not create any special status for the petitioner with regard to the NEPA process. To apply for the NEPA mailing list now, contact Mrs. Ellen Russell at the address above.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above. In addition, the application may be viewed or downloaded from the Office of Fossil Energy Web site at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy home page, select "Electricity Regulation" and then "Pending Proceedings" from the options menu.

Issued in Washington, DC, on September 24, 2003.

**Anthony J. Como,**

*Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.*

[FR Doc. 03–25004 Filed 10–1–03; 8:45 am]

**BILLING CODE 6450–01–P**

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## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### Biomass Research and Development Technical Advisory Committee

**AGENCY:** Department of Energy.

**ACTION:** Notice of Open Meeting.

**SUMMARY:** This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee under the Biomass Research and Development Act of 2000. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register** to allow for public participation.

**DATES:** October 23–24, 2003, 8:30 a.m.

**ADDRESSES:** Hilton Crystal City Hotel at National Airport, Crystal Room, 2399 Jefferson Davis Highway, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** John Ferrell, Designated Federal Officer for the Committee, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–7766.

**SUPPLEMENTARY INFORMATION:**

*Purpose of Meeting:* To finalize recommendations concerning the federal biomass R&D portfolio and the direction of the Biomass Initiative, to report on these recommendations to the Biomass R&D Board, and to plan Committee activities for FY 2004.

*Tentative Agenda:* Agenda will include discussions on the following:

- Finalizing recommendations concerning the federal biomass R&D portfolio, reviewing the process and results of the FY 2003 USDA/DOE joint solicitation and providing input on the FY 2004 solicitation, finalizing recommendations to the Secretaries of Agriculture and Energy, providing recommendations to the Biomass R&D Board on the direction of the Biomass Initiative, and developing a committee work plan for FY 2004.

*Public Participation:* In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, contact John Ferrell at (202) 586–7766 or Sara Mitcho via e-mail at *sara.mitcho@ee.doe.gov*. You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Co-Chairs of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Co-Chairs will conduct the meeting to facilitate the orderly conduct of business.

*Minutes:* The minutes of the meeting will be available for public review and copying within 60 days of the meeting at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on September 29, 2003.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 03–25002 Filed 10–1–03; 8:45 am]

**BILLING CODE 6450–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–301–083]**

### ANR Pipeline Company; Notice of Compliance Filing

September 24, 2003.

Take notice that on September 15, 2003 subject ANR Pipeline Company (ANR), tendered for filing a service agreement (Agreement) between ANR and Interstate Gas Supply, Inc. pursuant to ANR's Rate Schedule FTS–1.

ANR requests the Commission find that the Agreement contains acceptable material deviations from ANR's Form of Service Agreement and accept the attached tariff sheet which references the Agreement as a non-conforming agreement.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the

Commission's Web site at *http://www.ferc.gov* using the "eLibrary" (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Protest Date:* September 30, 2003.

**Magalie R. Salas,**
*Secretary.*

[FR Doc. 03–24893 Filed 10–1–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### [Docket No. RP03–610–000]

### CenterPoint Energy-Mississippi River Transmission Corporation; Notice of Tariff Filing

September 24, 2003.

Take notice that on September 22, 2003, CenterPoint Energy-Mississippi River Transmission Corporation (MRT) tendered for filing has part of its FERC Gas Tariff, Third Revised Volume No. 1, Fiftieth Revised Sheet No. 5; Fiftieth Revised Sheet No. 6; Forty-Eighth Revised Sheet No. 7; and Twentieth Revised Sheet No. 8, effective November 1, 2003.

MRT states that the purpose of this filing is to adjust the Fuel Use and Loss Percentages under its Rate Schedules FTS, SCT, ITS, FSS and ISS.

MRT further states that a copy of this filing is being mailed to each of MRT's customers and to the state Commissions of Arkansas, Illinois, Louisiana, Missouri and Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Comment Date:* October 6, 2003.

**Magalie R. Salas,**
*Secretary.*

[FR Doc. 03–24891 Filed 10–1–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### [Docket No. CP03–351–000]

### Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

September 25, 2003.

Take notice that on September 12, 2003, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed in Docket No. CP03–351–000, a request pursuant to Sections 157.205 and 157.208 of the Commission's Regulations under the Natural Gas Act (18 CFR Sections 157.205 and 157.208) for authorization to increase the maximum allowable operating pressure (MAOP) of portions of its existing transmission pipeline designated as Line 1655 and Line 136 located in Adams and York Counties, Pennsylvania, under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7(C) of the Natural Gas Act, all as more fully set forth in the request.

Copies of this request are on file with the Commission and are available for public inspection. The application may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Columbia states that the increased MAOPs are necessary in order to meet its existing contractual obligations. Columbia states further, that to the extent uncommitted capacity becomes available as a result of the uprate, Columbia would post such available capacity in accordance with the applicable provisions of its tariff.

Any questions regarding the application should be directed to Fredric J. George, Senior Attorney, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 22030–0146 at (304) 357–2359, fax (304) 357–3206.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214) and the Regulations under the NGA (18 CFR 157.205). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

If no protest is filed within the time allowed, therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

*Comment Date:* October 16, 2003.

**Linda Mitry,**
*Acting Secretary.*
[FR Doc. 03–24882 Filed 10–1–03; 8:45 am]
BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. CP03–353–000 & CP03–355–000]**

### Columbia Gas Transmission, Energy Corporation of America & Eastern American Energy Corporation; Notice of Application

September 25, 2003.

On September 16, 2003, Columbia Gas Transmission Corporation (Columbia), Energy Corporation of America (ECA), and Eastern American Energy Corporation (EAEC), filed a joint application pursuant to Section 7(b) of the Natural Gas Act (NGA), as amended, and the Federal Energy Regulatory Commission's (Commission) Rules and Regulations. Columbia requests authorization to abandon by sale to ECA certain facilities located in West Virginia as well as the services currently provided by the facilities. Columbia requests that the facilities be determined to be non-jurisdictional gathering facilities and exempt from the Commission's jurisdiction pursuant to NGA § 7(b). EAEC, a wholly owned subsidiary of ECA and an explorer, developer and producer of oil and natural gas would own and operated the facilities to provide current services, as more fully set forth in the application. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The facilities proposed for abandonment by sale are Columbia's 8000 system which consists of some 87.8 miles of jurisdictional pipeline and appurtenances. The proposed sale would also include about 10 miles of non-jurisdictional pipeline. The facilities were constructed by Columbia's predecessor in the early 1900's as part of a low-pressure transmission system to support Columbia's merchant role. However the facilities currently transmit local production from various points along the facilities, providing service to local markets along the facilities. Columbia states that the facilities are no longer pertinent to its transporter role. EAEC\ECA the owner and operator of the facilities following the sale requests that it be issued a limited jurisdiction certificate pursuant to NGA § 7(c), so on the rare occasion that local supply is insufficient to supply all service needs, they may utilize interstate natural gas. The sale price for both the jurisdictional and non-jurisdictional facilities is $1.2 Million.

Questions regarding the application may be directed to V. J. Hamilton, Senior Certificate Coordinator, or Frederic J. George, Senior Attorney, both at Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 25325–1273 or by calling respectively, 304–357–2297 (304–357–2926 Fax) or 304–357–2359 (304–357–3206 Fax).

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the nonparty commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Comment Date:* October 16, 2003.

**Linda Mitry,**
*Acting Secretary.*
[FR Doc. 03–24883 Filed 10–2–03; 8:45 am]
BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP03–604–000]**

### LSP—Cottage Grove, L.P., LSP—Whitewater, Limited Partnership v. Northern Natural Gas Company; Notice of Complaint

September 25, 2003.

Take notice that on September 12, 2003, LSP—Cottage Grove, L.P. (Cottage Grove) and LSP—Whitewater, Limited Partnership (Whitewater) filed with the Federal Energy Regulatory Commission (Commission) a Compliant Requesting Fast-Track Processing pursuant to Rule

206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206. The Complaint requests that the Commission grant relief in a billing dispute with Northern Natural Gas Company. Cottage Grove and Whitewater request confidential treatment of certain information in the complaint and the supporting appendices and attachment.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

*Comment Date:* October 15, 2003.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. 03–24890 Filed 10–1–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. AD03–53–001]**

## Old Dominion Electric Cooperative; Notice of Filing

September 24, 2003.

Take notice that on September 12, 2003, Old Dominion Electric Cooperative made a compliance filing pursuant to the accounting and reporting requirements set forth by the Commission in Order 631, Accounting, Financial reporting, and Rate Filing Requirements for Asset Retirement Obligations. The Commission directed jurisdictional entities to file journal entries and supporting information for any adjustments made that affect net income as a result of implementing the accounting rules contained in Order 631.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

*Comment Date:* October 3, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–24881 Filed 10–1–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–342–003]**

## Questar Pipeline Company; Notice of Tariff Filing

September 24, 2003.

Take notice that on September 22, 2003, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Second Revised Sheet No. 86, to be effective May 12, 2003.

Questar states that this filing is being made to make a minor administrative correction relating to Questar's two tariff filings dated April 14, 2003, and April 29, 2003, filed in Docket Nos. RP03–342–000 and –001, respectively, that modified Questar's measurement section of its tariff. This filing deletes language that was intended to be deleted in Docket No. RP03–342–001 upon discovery that the North American Energy Standards Board (NAESB) Standard 2.3.9 was inadvertently deleted in Docket No. RP03–342–000 and replaced by a new paragraph.

Questar states that it filed an amendment to reverse this replacement, but only half of the incorrect paragraph was deleted. Questar states that this filing continues that correction by deleting the remaining part of the paragraph that is redundant in purpose to NAESB Standard 2.3.9.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link.

*Protest Date:* October 6, 2003.

**Magalie R. Salas,**
*Secretary.*
[FR Doc. 03–24889 Filed 10–1–03; 8:45 am]
BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–611–000]**

### SCG Pipeline, Inc.; Notice of Tariff Filing

September 24, 2003.

Take notice that on September 22, 2003, SCG Pipeline, Inc. (SCG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets attached to Appendix A, with an effective date of November 1, 2003.

SCG states that the filing is being made in compliance with ordering paragraph A of the Commission's July 29, 2003 "Order on Pro Forma Tariff" (Tariff Order) 104 FERC ¶ 61,159.

SCG states that these actual tariff sheets reflect modifications to SCG's originally filed Pro Forma FERC Gas Tariff to bring it into compliance with the Tariff Order, current NAESB standards, all the requirements in Order Nos. 637, 637–A, and 637–B and subsequent orders, and any other tariff regulations currently in effect. Additional tariff modifications have been made as indicated in SCG's filing.

SCG states that a copy of this filing has been served upon the official service list in this proceeding and upon its customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Comment Date:* October 6, 2003.

**Magalie R. Salas,**
*Secretary.*
[FR Doc. 03–24892 Filed 10–1–03; 8:45 am]
BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project Nos. 2525–051, 2546–068, 2560–047, 2522–074 & 2595–065]**

### Wisconsin Public Service Company; Notice of Availability of Environmental Assessment

September 25, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects' staff has prepared an Environmental Assessment (EA) for Wisconsin Public Service Company's application requesting Commission approval to amend the application regarding project boundaries of five of its projects to remove 9,738 acres of land, of which it proposes to convey approximately 9,349 acres to the Wisconsin Department of Natural Resources and to use 389 acres for development. The five projects are the Caldron Falls Project No. 2525, the Sandstone Rapids Project No. 2546, the Potato Rapids Project No. 2560, the Johnson Falls Project No. 2522, and the High Falls Project No. 2595 all located on the Peshtigo River in the counties of Marinette and Oconto, Wisconsin. The U.S. Bureau of Land Management owns and manages approximately 10 acres of federal lands (consisting of islands in the Peshtigo River) within the boundaries of the High Falls, Sandstone Rapids, and Potato Rapids projects.

The EA contains the staff's analysis of the potential environmental impacts of the proposal and concludes that approval of the proposal would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is attached to a Commission Order titled "Order Granting Motions To Intervene, Reinstating Request for Rehearing, Granting Rehearing In Part, And Granting With Conditions Application To Amend Project Boundaries" issued on September 15, 2003 (*See* 104 FERC & 61,295) which is available for review at the Commission in the Public Reference Room, or it may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "AeLibrary" link. Enter the docket number (prefaced by P-) and excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free (866) 208–3676, or for TTY, contact (202) 502–8659.

For further information, contact Jean Potvin at 202–502–8928.

**Linda Mitry,**
*Acting Secretary.*
[FR Doc. 03–24886 Filed 10–1–03; 8:45 am]
BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 2232–457]**

### Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

September 25, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Increase in existing water withdrawal from licensed project waters.

b. *Project No:* 2232–457.

c. *Date Filed:* August 28, 2003.

d. *Applicant:* Duke Power Company.

e. *Name of Project:* Catawba-Wateree.

f. *Location:* The Catawba-Wateree Project is located in Alexander, Burke, Caldwell, Catawba, Gaston, Iredell, Lincoln, McDowell and Mecklenburg Counties, North Carolina and Chester, Fairfield, Kershaw, Lancaster, and York Counties, South Carolina. This project does not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C.791a–825r.

*Applicant Contact:* Mr. Joe Hall, Lake Management Representative, Duke Power, Division of Duke Energy Corp., P.O. Box 1006, Charlotte, North Carolina 28201–1006, (704) 382–8576.

i. *FERC Contact:* Any questions regarding this notice should be addressed to B. Peter Yarrington at (202) 502–6129.

j. *Description of Request:* Duke Power proposes to grant an updated Water Withdrawal Easement to the City of Mount Holly, North Carolina for project property within Mountain Island Lake that will supercede an existing easement. The updated easement will provide for the placement and maintenance of new intake screens on existing water intake pipes, allowing Mount Holly to increase water withdrawal using the existing Raw Water Intake Pump Station. Mount Holly has requested an increase in water withdrawal from Mount Island Lake from the currently-permitted withdrawal of 3.0 million gallons per day (MGD) to 13.5 MGD.

k. *Deadline for filing comments or motions:* October 27, 2003.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426 or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item "h" above.

m. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the project number (P–2232–457) to which the filing refers. All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages e-filings.

Anyone may submit responses in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any responses must be received on or before the specified comment date for the particular application.

n. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, that agency will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linda Mitry,**

*Acting Secretary.*

FR Doc. 03–24885 Filed 10–1–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[P–516–379]**

### Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

September 25, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application for Non-Project Use of Project Lands and Waters.

b. *Project No:* 516–379.

c. *Date Filed:* August 27, 2003.

d. *Applicant:* South Carolina Electric & Gas Company (SCE&G).

e. *Name of Project:* Saluda Project.

f. *Location:* The project is located on the Saluda River in Lexington, Newberry, Richland, and Saluda Counties, South Carolina. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and 799 and 801.

h. *Applicant Contact:* Randolph R. Mahan, Manager, Environmental Programs and Special Projects, SCANA Services, Inc., Columbia, SC 29218. Telephone Number (803) 217–8538.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Jean Potvin at (202) 502–8928, or e-mail address: *jean.potvin@ferc.gov.*

j. *Deadline for filing comments and or motions:* October 27, 2003.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–516–379) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-filing" link. The Commission strongly encourages e-filings.

k. *Description of Request:* SCE&G is requesting Commission approval to issue a permit to Boulevard Partners, Inc. for the use of project lands and waters to accommodate the installation of a concrete boat ramp and a multi-boat docking facility designed to berth 32 boats in association with the development of a residential community to be known as Lakeside at Ballentine.

l. *Location of the Applications:* This filing is available for review at the Commission in the Public Reference Room 888 First Street, NE., Room 2A, Washington, DC 20426 or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described applications. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. 03–24894 Filed 10–1–03; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Notice of Application for Land Conveyance and Change in Project Boundary and Soliciting Comments, Motions To Intervene, and Protests

September 25, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to remove project lands from the project boundary.

b. *Project No.:* 1953–069.

c. *Date Filed:* September 9, 2003.

d. *Applicant:* Consolidated Water Power Company

e. *Name of Project:* DuBay Hydroelectric Project

f. *Location:* The project is located on the Wisconsin River, in Portage, Marathon, and Wood Counties, Wisconsin. According to the license the project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Mark Anderson, Consolidated Water Power Company, P.O. Box 8050, Wisconsin Rapids, Wisconsin 54495–8050. (715) 422–3927.

i. *FERC Contact:* Any questions on this notice should be addressed to Jean Potvin, jean.potvin@ferc.gov , or (202) 502–8928.

j. *Deadline for filing comments and or motions:* October 27, 2003.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–1953–069) on any comments or motions filed. Comments, protests and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link. The Commission strongly encourages e-filings.

k. *Description of Proposal:* This proposal includes the conveyance of 2,804 acres of DuBay Project lands to the Wisconsin Department of Natural Resources and removal of the lands from the project boundary. The lands removed from the project boundary would be added to the existing Mead Wildlife Area.

l. *Locations of the Application:* The filing is available for review at the Commission's Public Reference Room, at 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please call the Helpline at (866) 208–3676 or contact *FERCOnlineSupport@ferc.gov.* For TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. 03–24884 Filed 10–1–03; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. P–12187–000]**

### Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protest

September 24, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* P–12187–000.

c. *Date Filed:* June 03, 2002.

d. *Applicant:* Price Dam Partnership, Limited.

e. *Name of Project:* Price Dam Hydroelectric Project.

f. *Location:* Located on the Mississippi River in city of Alton, Wood River Township, Madison County, Illinois. The proposed project would be constructed on the U.S. Corps of Engineers (Corps) Melvin Price Locks & Dam and the nearby Illinois shoreline of the Mississippi River and would affect a portion of the 7.8 acres of federal lands (including six of the nine existing gate bays in the dam and a portion of the Illinois shoreline for the construction of a proposed transmission line and a proposed Control/Storage building).

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. James B. Price, WV Hydro, Inc., P.O. Box 903, Gatlinburg, TN 37738 (865) 436–0402.

i. *FERC Contact:* Lee Emery, (202) 502–8379 or e-mail *lee.emery@ferc.gov.*

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. *Description of Project:* The proposed Price Dam Project would use the U.S. Corps of Engineers' Melvin Price Locks & Dam and Reservoir, and would consist of the following facilities: (1) 192 individual, turbine/generator units grouped in six moveable steel modules 108.9-feet-long by 26.2-feet-wide by 44.0-feet-high, (a) each module contains 32 turbine/generator sets (two horizontal rows of 16 units each) that will be installed in stoplog slots on adjacent piers upstream from the Taintor gates, and (b) each turbine/generator unit includes a 550 kilowatt bulb-type generator, a fixed-blade propeller turbine, and a single draft tube for each two turbine/generating units; (2) flexible power cables, each connecting the six 32-turbine/generator-sets to six 7.2 kilovolt (kV) transformer and breaker sets on an adjacent pier; (3) lifting/access columns at the end of each module; (4) six air-operated spillway gates, 7-feet-high by 96-feet-long, installed on top of each module with each gate containing an inflatable rubber bladder; (5) a hallway housing the station service transformer, motor control center, and control system; (6) a slave terminal at the lockmaster's office and a control station located on the dam superstructure; (7) a 6.9-kV/138-kV step-up transformer located on a platform on the dam axis at elevation 479 feet National Geodetic Vertical Datum; (8) a mobile, 1,000 metric ton crane with an auxiliary crane riding on top of the module cranes' lifting beam; these cranes would lower and raise the power modules and operate the trash rake; (9) a fish bypass on each module; (10) a trashrack assembly with a two-inch clear spacing between the bars, and a crane-operated trash rake; (11) a 500-kilowatt generator; (12) a 0.8-mile-long, 138-kV transmission line connecting the project power to the Mississippi Substation of Ameren, Incorporated; (13) an auxiliary Control/Storage building; and (14) appurtenant facilities. The average annual generation is estimated to be 319,000 megawatt-hours and have an installed generating capacity of 92 megawatts (MW). All generated power would be sold to a local utility connected to the grid.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

You may also register online at *http://www.ferc.gov* /docs-filing/esubscription.asp to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) Bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICEOF INTENT TO FILE COMPETING APPLICATION,'or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

*Notice of Application Accepted For Filing and Soliciting:* September 2003.

*Motions To Intervene And Protests Issue Scoping Document:* January 2004.

*Notice Application Ready For EA (REA) and Soliciting:* April 2004.

**Comments and Recommendations**

*Notice Of The Availability Of The EA:* October 2004.

*Order Issuing The Commission's Decision on the Application:* January 2005.

Unless substantial comments are received in response to the EA, staff intends to prepare a single EA in this case. If substantial comments are received in response to the EA, a final EA will be prepared with the following modifications to the schedule.

*Notice of the Availability of the EA:* December 2004.

*Order issuing the Commission's decision on the application:* February 2005.

**Magalie R. Salas**

*Secretary.*

[FR Doc. 03–24888 Filed 10–1–03; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2744–000]**

### North American Hydro, Inc.; Notice of Meeting To Address the Potential for Early Relicensing of the Park Mill Project

September 25, 2003.

On July 5, 2002, the Commission's Dispute Resolution Service (DRS) issued a notice to convene interested parties on unresolved issues related to fish entrainment and mortality resulting from the outcome of a two-year feasibility study on fish protection required by a Commission order issued in June 24, 1997. The Menominee-Park Mill Project is located on the Menominee River in Marinette County, Wisconsin and Menominee County, Michigan. At the convening session on July 25, 2002, the DRS explored whether the parties would agree to an Alternative Dispute Resolution (ADR) process to resolve the fishery-related issues through assisted negotiations. North American Hydro, Inc. (licensee), federal and state agencies and non-governmental organizations (NGOs) who attended the July meeting agreed to an ADR process to try to resolve the fishery-related issues. Between July 25, 2002 and the present, the parties have been working toward a settlement on the fishery-related issues in mediated discussions under the Administrative Dispute Resolution Act (Pub. L. 104–320, as amended).

The existing license expires in 2015. The parties in the ADR process are exploring the option of accelerating the relicensing of the Park Mill project. An application for an accelerated license has not been filed at this time. The purpose of the up-coming meeting is to explore the concerns and interests of the stakeholders not involved in the ADR process. Formal scoping meetings would be held should the licensee file an application to relicense the project and the Commission issues a formal notice to accelerate the license.

FERC staff will conduct one daytime meeting and one evening meeting. The daytime meeting will focus on resource agency and NGO's concerns and interests. The evening meeting will be held primarily for input from the public on its concerns and interests. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings to assist the staff in addressing the option noted above. The time and locations of these meetings are as follows:

**Daytime Scoping Meeting—Agency-Related**

*Date:* Monday, October 27, 2003.

*Time:* 2 p.m.

*Place:* Wisconsin Department of Natural Resources.

*Address:* 101 North Ogden Street, Peshtigo, WI.

**Evening Public Scoping Meeting**

*Date:* Monday, October 27, 2003.

*Time:* 7 p.m.–9 p.m.

*Place:* Same location noted above.

If you have further questions, please contact Deborah Osborne at 202–502–8831.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. 03–24887 Filed 10–1–03; 8:45 am]

**BILLING CODE 6717–01–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[OAR–2003–0087; FRL–7567–6]**

### Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; National Volatile Organic Compound Emission Standards for Consumer Products, EPA ICR Number 1764.03, OMB Control Number 2060–0348

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on September 30, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before November 3, 2003.

**ADDRESSES:** Submit your comments, referencing docket ID number OAR–2003–0087, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bruce Moore, Emission Standards Division, Mail Code C504–03, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5460; fax number: (919) 541–0072; e-mail address: *moore.bruce@epa.gov*.

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 5, 2003 (68 FR 33688), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OAR–2003–0087, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

*Title:* National Volatile Organic Compound Emission Standards for Consumer Products.

*Abstract:* The information collection includes initial reports and periodic recordkeeping necessary for EPA to ensure compliance with Federal standards for volatile organic compounds in consumer products. Respondents are manufacturers, distributors, and importers of consumer products. Responses to the collection are mandatory under 40 CFR part 59, subpart C—National Volatile Organic Compound Emission Standards for Consumer Products. All information submitted to EPA for which a claim of confidentiality is made will be safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B—Confidentiality of Business Information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 81 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Entities potentially affected by this action are those which manufacture, distribute, or import consumer products for sale or distribution in the United States, including the District of Columbia and all United States territories.

*Estimated Number of Respondents:* 367.

*Frequency of Response:* occasional recordkeeping and reporting.

*Estimated Total Annual Hour Burden:* 29,613.

*Estimated Total Annual Cost:* $1,104,057, includes $0 annualized capital or O&M costs and $1,104,057 labor costs.

*Changes in the Estimates:* There is a decrease of 82 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease reflects an updated estimate calculation and is not due to any change in program requirements.

Dated: September 23, 2003.

**Sara Hisel McCoy,**

*Acting Director, Collection Strategies Division.*

[FR Doc. 03–25009 Filed 10–1–03; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–7567–5]

## Proposed CERCLA Section 122(h) Administrative Agreement for Recovery of Past Costs for the Mercury Refining Superfund Site, Towns of Guilderland and Colonie, Albany County, NY

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency ("EPA"), Region II, of a proposed administrative agreement pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h), with the settling parties, Mercury Refining Company, Inc. ("Mereco"), and Leo Cohen, for recovery of past and future response costs concerning the Mercury Refining Superfund Site ("Site") located in the Towns of Guilderland and Colonie, Albany County, New York. The settlement requires that EPA be paid a total of approximately $524,000: the total remaining funds in an escrow account established by Mereco (estimated to be approximately $494,000) and $30,000 from Leo Cohen, Mereco's founder, sole shareholder and former president. The settlement includes a covenant not to sue the settling parties pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973, in exchange for their payment of monies.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate.EPA's response to any comments received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007–1866. Commenters may request an opportunity for a public meeting in the affected area in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

**DATES:** Comments must be submitted on or before November 3, 2003.

**ADDRESSES:** The proposed settlement is available for public inspection at EPA Region II offices at 290 Broadway, New York, New York 10007–1866. Comments should reference the Mercury Refining Superfund Site, Towns of Guilderland and Colonie, Albany County, New York, Index No. CERCLA–02–2003–2009. To request a copy of the proposed settlement agreement, please contact the individual identified below.

**FOR FURTHER INFORMATION CONTACT:** Sharon E. Kivowitz, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway—17th Floor, New York, New York 10007–1866. Telephone: 212–637–3183.

Dated: September 16, 2003.

**William J. Muszynski,**

*Deputy Regional Administrator, Region 2.*

[FR Doc. 03–25010 Filed 10–1–03; 8:45 am]

BILLING CODE 6560–50–P

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## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Approved by Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13.

**DATES:** Written comments should be submitted on or before November 3, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

**ADDRESSES:** Kim A. Johnson, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–7232 or *Kim_A._Johnson@omb.eop.gov*; or Les Smith, Federal Communications Commission, 445 12th Street, Room 1–A804, Washington DC, 20554, (202) 418–0217 or *Leslie.Smith@fcc.gov*.

**Paperwork Reduction Act**

*OMB Control No.:* 3060–1033.

*Expiration Date:*

*Title:* Multi-channel Video Program Distributor EEO Program Annual Report, FCC Form 396–C.

*Form No.:* 396–C.

*Respondents:* 10 minutes to 2.5 hours.

*Number of Respondents:* 2,200.

*Total Annual Burden:* 3188 hours.

*Total Annual Cost:* None.

*Description:* FCC Form 396–C collects information on the EEO program of multi-channel video program distributors during the last year prior to filing once every five years, each employment unit is also required to submit as an attachment a copy of the units most recent EEO public file report, and is also required to answer additional questions about its hiring program on a Supplemental Investigation Sheet.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03–24935 Filed 10–1–03; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

[DA 03–2706]

### Notice of Suspension and of Proposed Debarment Proceedings; Schools and Libraries Universal Service Support Mechanism

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Enforcement Bureau ("Bureau") gives notice of Mr. Oscar Alvarez's suspension from the schools and libraries universal service support mechanism. In addition, the Bureau gives notice that debarment proceedings are commencing against him. Mr. Alvarez, or any person who has an existing contract with or intends to contract with him to provide or receive services in matters arising out of activities associated with or related to the schools and libraries support, may respond by filing an opposition request, supported by documentation.

**DATES:** Opposition requests must be received by November 3, 2003. However, an opposition request by the party to be suspended must be received 30 days from the receipt of the suspension letter or November 3, 2003, whichever comes first. The Bureau will decide any opposition request for reversal or modification of suspension or debarment within 90 days of its receipt of such requests.

**FOR FURTHER INFORMATION CONTACT:** Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 6–C326, 445 12th Street, SW., Washington, DC 20554. Diana Lee may be contacted by phone at (202) 418–1420 or e-mail at *diana.lee@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** The Bureau has suspension and debarment authority under 47 CFR 54.521 and 47 CFR 0.111(a)(14). Suspension will help to ensure that the party to be suspended cannot continue to benefit from the schools and libraries mechanism pending resolution of the debarment process. Attached is the suspension letter, *Notice of Suspension and of Proposed Debarment Proceedings*, DA 03–2706, which was mailed to Mr. Alvarez and released on August 21, 2003. The letter (1) gives notice of the suspension and proposed debarment; (2) gives the reasons for the proposed debarment; (3) explains the debarment procedures, and (4) describes the potential effect of debarment. The complete text of the suspension letter is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text of this letter may be retrieved from the FCC's Web site at *http://www.fcc.gov*. The text may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

Federal Communications Commission.

**Maureen F. Del Duca,**

*Chief, Investigations and Hearings Division, Enforcement Bureau.*

The suspension letter follows:

**Federal Communications Commission**
Washington, DC 20554

[DA 03–2706]

August 21, 2003.

Via Certified Mail
Return Receipt Requested

Mr. Oscar Alvarez
Connect2 Internet Networks, Inc.
26 Bay Street
Staten Island, NY 10301

Re: Notice of Suspension and of Proposed Debarment, File No. EB–03–IHD–0377.

Dear Mr. Alvarez: The Federal Communications Commission ("FCC" or "Commission") has received notice of your May 20, 2003 conviction pursuant to 18 U.S.C. 1512 for misleading conduct toward another person: (1) to influence, delay, or prevent the testimony of any person in an official proceeding; and (2) with the intent to cause and induce another person to alter, destroy, mutilate and conceal objects with the intent to impair the objects' integrity and availability for use in an official proceeding.[1] Consequently, pursuant to 47 CFR 54.521, this letter constitutes official notice of your suspension from the schools and libraries universal service support mechanism. In addition, the Enforcement Bureau ("Bureau") hereby notifies you that we are commencing debarment proceedings against you.[2]

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[1] Any further reference in this letter to "your conviction" refers to your May 20, 2003 guilty plea and conviction of this count based on your attempt to persuade two school administrators not to reveal evidence to FCC auditors conducting an official investigation into violations by your employer, Connect2 Internet Networks, Inc. ("Connect2") of the FCC rules governing the E-Rate schools and libraries internet funding program ("E-Rate program"). *See United States* v. *Alvarez*, Criminal Docket No. 1:03cr634, Felony Information at 1–2 (S.D.N.Y. filed May 20, 2003) ("*Alvarez Felony Information*").

### I. Notice of Suspension

Pursuant to section 54.521(a)(4) of the Commission's rules,[3] your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[4] Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**.[5]

Suspension is immediate pending the Bureau's final debarment determination. You may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after you receive this letter or after notice is published in the **Federal Register**, whichever comes first.[6] Such requests, however, will not ordinarily be granted.[7] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[8] Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[9]

### II. Notice of Proposed Debarment

#### *A. Reasons for and Cause of Debarment*

The Commission's rules establish procedures to prevent persons who have "defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism" from receiving the benefits associated with that program.[10] On May 20, 2003, you pleaded guilty to attempting to persuade two school administrators not to show to FCC auditors a letter signed by your employer that falsely represented that the school could participate in the E-Rate program at "absolutely no cost to the school."[11] These actions constitute the conduct or transactions upon which this debarment proceeding is based.[12] Moreover, your conviction on the basis of these acts falls within the categories of causes for debarment defined in section 54.521(c) of the Commission's rules.[13] Therefore, pursuant to section 54.521(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

#### B. Debarment Procedures

You may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.[14] Absent extraordinary circumstances, the Bureau will debar you.[15] Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision to debar.[16] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of its decision in the **Federal Register**.[17]

#### *C. Effect of Debarment*

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for at least three years from the date of debarment.[18] The Bureau may, if necessary to protect the public interest, extend the debarment period.[19]

Please direct any responses to the following address:

Diana Lee,
Federal Communications Commission,
Enforcement Bureau.
Investigations and Hearings Division,
Room 6–C326,
445 12th Street, SW.,
Washington, DC 20554.

If you submit your response via hand-delivery or non-United States Postal Service delivery (*e.g.*, Federal Express, DHL, etc.), please send your response to Ms. Lee at the following address:

Federal Communications Commission,
9300 East Hampton Drive,
Capitol Heights, MD 20743.

If you have any questions, please contact Ms. Lee via mail, by telephone at (202) 418–1420 or by e-mail at *diana.lee@fcc.gov*. If Ms. Lee is unavailable, you may contact William Davenport by telephone at (202) 418–1420 and by e-mail at *william.davenport@fcc.gov*.

Sincerely yours,

Maureen F. Del Duca,
*Chief, Investigations and Hearings Division, Enforcement Bureau.*

cc: Joel M. Cohen, Greenberg Traurig, LLP
Kristy Carroll, USAC

[FR Doc. 03–24938 Filed 10–1–03; 8:45 am]

BILLING CODE 6712–01–P

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[2] 47 CFR 54.521; 47 CFR 0.111(a)(14) (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings pursuant to 47 CFR 54.521).

[3] 47 CFR 54.521(a)(4). *See Schools and Libraries Universal Service Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9225–9227, ¶¶ 67–74 (2003) ("Second Report and Order").

[4] *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 67; 47 U.S.C. 254; 47 CFR 54.502–54.503; 47 CFR 54.521(a)(4).

[5] *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 69; 47 CFR 54.521(e)(1).

[6] *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(4).

[7] *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70.

[8] 47 CFR 54.521(f).

[9] *See Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(5), 54.521(f).

[10] *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 66.

[11] *See United States* v. *John Angelides, John Dotson, Oscar Alvarez, and Gary Blum*, U.S. District Court, Southern District of New York, Complaint at 29 (S.D.N.Y. filed Dec. 17, 2003). The incriminating letter was signed by John Angelides, owner and CEO of Connect2. *Id*. Further, the conduct for which you were convicted served to conceal and further a fraudulent scheme unlawfully to obtain E-Rate program funds. *See generally id*.

[12] *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(2)(i).

[13] "Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism." 47 CFR 54.521(c). Such activities "include the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding schools and libraries support mechanism described in this section (47 CFR 54.500 *et seq.*)." 47 CFR 54.521(a)(1).

[14] *See Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(2(i), 54.521(e)(3).

[15] *Second Report and Order*, 18 FCC Rcd at 9227, ¶ 74.

[16] *See Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(5).

[17] *Id*. The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.521(f).

[18] *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 67; 47 CFR 54.521(d), 54.521(g).

[19] *Id.*

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## FEDERAL COMMUNICATIONS COMMISSION

**[DA 03–2707]**

## Notice of Suspension and of Proposed Debarment Proceedings; Schools and Libraries Universal Service Support Mechanism

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Enforcement Bureau ("Bureau") gives notice of Mr. John Angelides" suspension from the schools and libraries universal service support mechanism. In addition, the Bureau gives notice that debarment proceedings are commencing against him. Mr. Angelides, or any person who has an existing contract with or intends to contract with him to provide or receive services in matters arising out of activities associated with or related to the schools and libraries support, may respond by filing an opposition request, supported by documentation.

**DATES:** Opposition requests must be received by November 3, 2003. However, an opposition request by the party to be suspended must be received 30 days from the receipt of the suspension letter or November 3, 2003, whichever comes first. The Bureau will decide any opposition request for reversal or modification of suspension or debarment within 90 days of its receipt of such requests.

**FOR FURTHER INFORMATION CONTACT:** Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 6–C326, 445 12th Street, SW., Washington, DC 20554. Diana Lee may be contacted by phone at (202) 418–1420 or e-mail at *diana.lee@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** The Bureau has suspension and debarment authority under 47 CFR 54.521 and 47 CFR 0.111(a)(14). Suspension will help to ensure that the party to be suspended cannot continue to benefit from the schools and libraries mechanism pending resolution of the debarment process. Attached is the suspension letter, *Notice of Suspension and of Proposed Debarment Proceedings*, DA 03–2707, which was mailed to Mr. Angelides and released on August 21, 2003. The letter (1) gives notice of the suspension and proposed debarment; (2) gives the reasons for the proposed debarment; (3) explains the debarment procedures, and (4) describes the potential effect of debarment. The complete text of the suspension letter is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. In addition, the complete text of this letter may be retrieved from the FCC's Web site at *http://www.fcc.gov.* The text may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

Federal Communications Commission.

**Maureen F. Del Duca,**

*Chief, Investigations and Hearings Division, Enforcement Bureau.*

The suspension letter follows:

**Federal Communications Commission, Washington, DC 20554**

[DA 03–2707]

August 21, 2003.

Via Certified Mail, Return Receipt Requested

Mr. John Angelides,
*Chief Executive Officer, Connect2 Internet Networks, Inc., 26 Bay Street, Staten Island, NY 10301*

Re: Notice of Suspension and of Proposed Debarment, File No. EB–03–IHD–0376

Dear Mr. Angelides: The Federal Communications Commission ("FCC" or "Commission") has received notice of your May 22, 2003 conviction under 18 U.S.C. 371 for conspiracy to commit an offense against or to defraud the United States. Specifically, you were convicted of conspiracy to violate the following laws of the United States: (1) 18 U.S.C. 287 (false, fictitious, and fraudulent claims); (2) 18 U.S.C. 1001 (false statements and entries generally); and (3) 18 U.S.C. 1343 (fraud by wire, radio, or television).[1] Consequently, pursuant to 47 CFR 54.521, this letter constitutes official notice of your suspension from the schools and libraries universal service support mechanism. In addition, the Enforcement Bureau ("Bureau") hereby notifies you that we are commencing debarment proceedings against you.[2]

## I. Notice of Suspension

Pursuant to section 54.521(a)(4) of the Commission's rules,[3] your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[4] Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**.[5]

Suspension is immediate pending the Bureau's final debarment determination. You may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after you receive this letter or after notice is published in the **Federal Register**, whichever comes first.[6] Such requests, however, will not ordinarily be granted.[7] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[8] Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[9]

## II. Notice of Proposed Debarment

### *A. Reasons for and Cause of Debarment*

The Commission's rules establish procedures to prevent persons who have "defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism" from receiving the benefits associated with that program.[10] On May 22, 2003, you admitted, among other things, to selling eligible services to certain participating schools through your company Connect2, imposing 100 percent of the cost on the E-Rate program. You admitted to each of the following acts: (1) Falsely representing to the schools that they could participate in the program at no cost to them; (2) falsely representing to fund administrators and Government investigators that the schools would pay or had paid their unsubsidized share; and (3) falsifying documents, as well as attempting to persuade school administrators not to reveal evidence to Government investigators, in order to conceal the scheme.[11] These actions constitute the conduct or transactions upon which this debarment proceeding is based.[12]

Moreover, your conviction on the basis of these acts falls within the categories of causes for debarment defined in section 54.521(c) of the Commission's rules.[13] Therefore, pursuant to section 54.521(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

### *B. Debarment Procedures*

You may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.[14] Absent extraordinary circumstances, the Bureau will debar you.[15] Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision to debar.[16] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or the publication of its decision in the **Federal Register**.[17]

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[1] Any further reference in this letter to "your conviction" refers to your May 22, 2003 guilty plea and conviction on this count based on your fraudulent scheme to obtain schools and libraries E-Rate program funds. *See United States* v. *Angelides*, Docket No. 1:03cr635, Felony Information (S.D.N.Y. filed May 20, 2003) ("Angelides Felony Information").

[2] 47 CFR 54.521; 47 CFR 0.111(a)(14) (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings pursuant to 47 CFR 54.521).

[3] 47 CFR 54.521(a)(4) See Schools and Libraries Universal Service Support Mechanism, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9225—9227, ¶¶ 67–74 (2003) ("Second Report and Order").

[4] Second Report and Order, 18 FCC Rcd at 9225, ¶ 67; 47 U.S.C. 254; 47 CFR 54.502–54.503; 47 CFR 54.521(a)(4).

[5] Second Report and Order, 18 FCC Rcd at 9226, ¶ 69 47 CFR 54.521(e)(1).

[6] Second Report and Order, 18 FCC Rcd at 9226, ¶ 70; 247 CFR 54.521–54.521(e)(4).

[7] Second Report and Order, 18 FCC Rcd at 9226, ¶ 70.

[8] 47 CFR 54.521(f).

[9] Second Report and Order, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(5), 54.521(f).

[10] Second Report and Order, 18 FCC Rcd at 9225, ¶ 66.

[11] See Angelides Felony Information at 3–11.

[12] Second Report and Order, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(2)(i).

[13] "Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification ordestruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism." 47 CFR 54.521(c). Such activities "include the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding schools and libraries support mechanism described in this section 47 CFR 54.500 et seq.)." 47 CFR 54.521(a)(1).

[14] *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(2)(i), 47 CFR 54.521(e)(3).

[15] *Second Report and Order*, 18 FCC Rcd at 9227, ¶ 74.

*C. Effect of Debarment*

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for at least three years from the date of debarment.[18] The Bureau may, if necessary to protect the public interest, extend the debarment period.[19]

Please direct any responses to the following address: Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 6–C326, 445 12th Street, SW., Washington, DC 20554.

If you submit your response via hand-delivery or non-United States Postal Service delivery (*e.g.*, Federal Express, DHL, etc.), please send your response to Ms. Lee at the following address: Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, MD 20743.

If you have any questions, please contact Ms. Lee via mail, by telephone at (202) 418–1420 or by e-mail at *diana.lee@fcc.gov*. If Ms. Lee is unavailable, you may contact William Davenport by telephone at (202) 418–1420 and by e-mail at *william.davenport@fcc.gov*.

Sincerely yours,

Maureen F. Del Duca,

*Chief, Investigations and Hearings Division, Enforcement Bureau.*

cc: Mark S. Cohen, Cohen & Gressler, LLP
Kristy Carroll, USAC

[FR Doc. 03–24937 Filed 10–1–03; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

**[DA 03–2882]**

## Notice of Suspension and of Proposed Debarment Proceedings; Schools and Libraries Universal Service Support Mechanism

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Enforcement Bureau ("Bureau") gives notice of Mr. Duane Maynard's suspension from the schools and libraries universal service support mechanism. In addition, the Bureau gives notice that debarment proceedings are commencing against him. Mr. Maynard, or any person who has an existing contract with or intends to contract with him to provide or receive services in matters arising out of activities associated with or related to the schools and libraries support, may respond by filing an opposition request, supported by documentation.

**DATES:** Opposition requests must be received by November 3, 2003. However, an opposition request by the party to be suspended must be received 30 days from the receipt of the suspension letter or November 3, 2003, whichever comes first. The Bureau will decide any opposition request for reversal or modification of suspension or debarment within 90 days of its receipt of such requests.

**FOR FURTHER INFORMATION CONTACT:** Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 6–C326, 445 12th Street, SW., Washington, DC 20554. Diana Lee may be contacted by phone at (202) 418–1420 or e-mail at *diana.lee@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** The Bureau has suspension and debarment authority under 47 CFR 54.521 and 47 CFR 0.111(a)(14). Suspension will help to ensure that the party to be suspended cannot continue to benefit from the schools and libraries mechanism pending resolution of the debarment process. Attached is the suspension letter, *Notice of Suspension and of Proposed Debarment Proceedings*, DA 03–2882, which was mailed to Mr. Maynard and released on August 21, 2003. The letter (1) gives notice of the suspension and proposed debarment; (2) gives the reasons for the proposed debarment; (3) explains the debarment procedures, and (4) describes the potential effect of debarment. The complete text of the suspension letter is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text of this letter may be retrieved from the FCC's Web site at *http://www.fcc.gov*. The text may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

Federal Communications Commission.

**Maureen F. Del Duca,**

*Chief, Investigations and Hearings Division, Enforcement Bureau.*

The suspension letter follows:

**Federal Communications Commission, Washington, DC 20554**

[DA 03–2882]

September 11, 2003.

Via Certified Mail Return Receipt Requested

Mr. Duane Maynard
*Howe Electric, Inc., 4682 E. Olive Ave., Fresno, CA 93702*

Re: Notice of Suspension and of Proposed Debarment, File No. EB–03–IHD–0387.

Dear Mr. Maynard: The Federal Communications Commission ("FCC" or "Commission") has received notice of your August 26, 2003 conviction pursuant to 15 U.S.C. 1 for bid rigging.[1] Consequently, pursuant to 47 CFR 54.521, this letter constitutes official notice of your suspension from the schools and libraries universal service support mechanism. In addition, the Enforcement Bureau ("Bureau") hereby notifies you that we are commencing debarment proceedings against you.[2]

**I. Notice of Suspension**

Pursuant to section 54.521(a)(4) of the Commission's rules,[3] your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[4] Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**.[5]

Suspension is immediate pending the Bureau's final debarment determination. You may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after you receive this letter or after notice is published in the **Federal Register**, whichever comes first.[6] Such requests, however, will not ordinarily be granted.[7] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[8] Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[9]

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[16] *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(5).

[17] *Id*. The Commission may reverse a dabarment, or may limit the scope or period of debarment upon a finding f extraordinary circumstances,, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.521(f).

[18] *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 67. 47 CFR 54.521(d), 47 CFR 54.521(g).

[19] *Id*.

[1] Any further reference in this letter to "your conviction" refers to your August 26, 2003 guilty plea and conviction of this count based on your participation, on behalf of your employer, Howe Electric, Inc., in a "combination and conspiracy to suppress bidding for the West Fresno Elementary School District E-Rate project and to allocate among conspirators the responsibility for supplying goods and services for that project." *See United States* v. *Maynard*, Criminal Docket No. 1:03cr5325, Information at 2–3 (E.D.Cal. filed August 19, 2003) ("Maynard Felony Information"); *United States* v. *Maynard*, Criminal Docket No. 1:03cr5325, Plea Agreement at 6–7 (E.D.Cal. filed August 26, 2003) ("Maynard Plea Agreement").

[2] 47 CFR 54.521; 47 CFR 0.111(a)(14) (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings pursuant to 47 CFR 54.521).

[3] 47 CFR 54.521(a)(4); *Schools and Libraries Universal Service Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9225–27, ¶¶ 67–74 (2003) ("*Second Report and Order*"); id. at Appendix B, 18 FCC Rcd at 9263–65.

[4] *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 67; 47 U.S.C. 254; 47 CFR 54.502–54.503; 47 CFR 54.521(a)(4).

[5] *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 69; 47 CFR 54.521(e)(1).

### II. Notice of Proposed Debarment

*A. Reasons for and Cause of Debarment*

The Commission's rules establish procedures to prevent persons who have "defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism" from receiving the benefits associated with that program.[10] On August 26, 2003, you admitted to participating in a combination and conspiracy with West Fresno Elementary School District representatives, a consultant and others representing potential competitors, on behalf of your employer, Howe Electric, Inc.[11] Specifically, you admitted that you and the other co-conspirators combined, conspired, and agreed that: (1) Howe Electric, Inc. would be the successful bidder to provide goods and services for the schools and libraries E-Rate project in the district, while no other co-conspirator companies would bid for the project; (2) certain co-conspirator companies would be Howe Electric's subcontractors; and (3) any competing bids would be disqualified as nonresponsive.[12]

These actions constitute the conduct or transactions upon which this debarment proceeding is based.[13] Moreover, your conviction on the basis of these acts falls within the categories of causes for debarment defined in section 54.521(c) of the Commission's rules.[14] Therefore, pursuant to section 54.521(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

*B. Debarment Procedures*

You may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.[15] Absent extraordinary circumstances, the Bureau will debar you.[16] Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision to debar.[17] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of its decision in the **Federal Register**.[18]

*C. Effect of Debarment*

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for at least three years from the date of debarment.[19] The Bureau may, if necessary to protect the public interest, extend the debarment period.[20]

Please direct any responses to the following address: Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 6–C326, 445 12th Street, SW., Washington, DC 20554.

If you submit your response via hand-delivery or non-United States Postal Service delivery (*e.g.*, Federal Express, DHL, *etc.*), please send your response to Ms. Lee at the following address: Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, MD 20743.

If you have any questions, please contact Ms. Lee via mail, by telephone at (202) 418–1420 or by e-mail at *diana.lee@fcc.gov*. If Ms. Lee is unavailable, you may contact William Davenport by telephone at (202) 418–1420 and by e-mail at *william.davenport@fcc.gov*.

Sincerely yours,

Maureen F. Del Duca,

*Chief, Investigations and Hearings Division, Enforcement Bureau.*

cc: Kenneth Alan Reed, Law Office of Kenneth Alan Reed Kristy Carroll, USAC.

[FR Doc. 03–24936 Filed 10–1–03; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

## Technological Advisory Council

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the first of the Technological Advisory Council ("Council") under its new charter.

**DATES:** October 20, 2003 beginning at 10 a.m. and concluding at 3 p.m.

**ADDRESSES:** Federal Communications Commission, 445 12th St. SW., Room TW–C305, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Jeffery Goldthorp, (202) 418–1096.

**SUPPLEMENTARY INFORMATION:** Continuously accelerating technological changes in telecommunications design, manufacturing, and deployment require that the Commission be promptly informed of those changes to fulfill its statutory mandate effectively. The Council was established by the Federal Communications Commission to provide a means by which a diverse array of recognized technical experts from different areas such as manufacturing, academia, communications services providers, the research community, etc., can provide advice to the FCC on innovation in the communications industry. At this third meeting under the Council's new charter, the Council will focus on Voice services over IP. Members of the public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many persons as possible. Admittance, however, will be limited to the seating available. Unless so requested by the Council's Chair, there will be no public oral participation, but the public may submit written comments to Jeffery Goldthorp, the Federal Communications Commission's Designated Federal Officer for the Technological Advisory Council, before the meeting. Mr. Goldthorp's e-mail address is *Jeffery.Goldthorp@fcc.gov*. Mail delivery address is: Federal Communications Commission, 445 12th Street, SW., Room 7–A325, Washington, DC 20554.

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[6] *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(4).

[7] *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70.

[8] 47 CFR 54.521(f).

[9] *See Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(5), 54.521(f).

[10] *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 66.

[11] *See United States* v. *Maynard*, Criminal Docket No. 1:03cr5325, Docket Proceedings (E.D.Cal. filed August 26, 2003).

[12] *See Maynard Felony Information* at 3; *Maynard Plea Agreement* at 6–7. The conspiracy violated the Commission's competitive bid requirements for telecommunications services supported by the schools and libraries E-Rate program. 47 CFR 54.504.

[13] *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(2)(i).

[14] "Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism." 47 CFR 54.521(c). Such activities "include the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding schools and libraries support mechanism described in this section ([47 C.F. R.] 54.500 *et seq.*)." 47 CFR 54.521(a)(1).

[15] *See Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(2(i), 54.521(e)(3).

[16] *Second Report and Order*, 18 FCC Rcd at 9227, ¶ 74.

[17] *See Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(5).

[18] *Id.* The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.521(f).

[19] *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 67; 47 CFR 54.521(d), 54.521(g).

[20] *Id.*

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03–24991 Filed 10–1–03; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 27, 2003.

**A. Federal Reserve Bank of Philadelphia** (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. *National Penn Bancshares, Inc.*, Boyertown, Pennsylvania; to acquire 21 percent of the voting shares of The Pennsylvania State Banking Company, Camp Hill, Pennsylvania, and thereby indirectly acquire voting shares of Pennsylvania State Bank, Camp Hill, Pennsylvania.

**B. Federal Reserve Bank of Chicago** (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *First Midwest Bancorp, Inc.*, Itasca, Illinois; to merge with Covest Bancshares, Inc., Des Plaines, Illinois, and thereby indirectly acquire voting shares of Covest Banc, National Association, Des Plaines, Illinois.

Board of Governors of the Federal Reserve System, September 26, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–24955 Filed 10–1–03; 8:45 am]

BILLING CODE 6210–01–S

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## FEDERAL RESERVE SYSTEM

### Government in the Sunshine Meeting Notice

**AGENCY:** Board of Governors of the Federal Reserve System.

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 68, FR 56294, September 30, 2003.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 11:30 a.m., Monday, October 6, 2003.

**CHANGES IN THE MEETING:** Change in the time and date of the *closed* meeting to 11:30 a.m., Tuesday, October 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Michelle A. Smith, Director, Office of Board Members; (202) 452–2955.

**SUPPLEMENTARY INFORMATION:** You may call (202) 452–3206 beginning at approximately 5 p.m., two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: September 30, 2003.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 03–25166 Filed 9–30–03; 2:31 pm]

BILLING CODE 6210–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Technical Review Committee (TRC) meeting. This TRC's charge is to review contract proposals and provide recommendations to the Director, AHRQ, with respect to the technical merit of proposals submitted in response to a Request for Proposals (RFP) regarding "Knowledge Transfer and Application Support." The RFP was published in the Federal Business Opportunities on July 17, 2003.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2, implementing regulations, and procurement regulations, 41 CFR 101–6.1023 and 48 CFR 315.604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary information and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision and procurement rules that protect the free exchange of candid views and facilitate Department and Committee operations.

*Name of TRC:* The Agency for Healthcare Research and Quality—"Knowledge Transfer and Application Support."

*Date:* October 8 and 9, 2003 (Closed to the public).

*Place:* Agency for Healthcare Research & Quality, 540 Gaither Road, Rock Creek Room, Rockville, Maryland 20850.

*Contact Person:* Anyone wishing to obtain information regarding this meeting should contact Steve Seitz, Office of Communications and Knowledge Transfer, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland 20850, 301–427–1257.

Dated: September 24, 2003.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. 03–24968 Filed 10–1–03; 8:45 am]

BILLING CODE 4160–90–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[30Day–80–03]

### Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C.

Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

*Proposed Project:* Evaluating the Effectiveness of the Asthma Intervention Program, Power Breathing—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

The Centers for Disease Control and Prevention (CDC) seeks to conduct an evaluation of the effectiveness of the asthma intervention program, Power Breathing, in two school districts in Kansas City, KS and Fredericksburg, VA. The overall aim of this program, developed by the Asthma and Allergy Foundation of America, is to provide adolescents with a basic understanding of asthma and its management in a peer-friendly environment and to empower them to take control of their asthma on a personal level.

The proposed data collection for the evaluation will provide feedback to CDC about the usefulness and cost-effectiveness of this teen asthma intervention program. Sample participants will come from students, parents, program facilitators, and school personnel (school nurses and teachers) in the selected two school districts. Self-administered questionnaires will be given to students at baseline (pre-intervention program), immediately post-program, and at six-months post-program, while parents receive baseline and six-months post-program surveys. The student survey will focus on: knowledge, attitudes, and behaviors regarding their asthma; perception of their health status and quality of life; assessment of the program; and impact of the program on their asthma management skills. Parents will be asked about their child's asthma condition, assessment of the program, and cost-related issues for their child's asthma.

Individual, one-time interviews will be conducted with program facilitators and school personnel regarding their perceptions of the intervention program and its impact on the students. Two focus groups will be conducted with students post-program to obtain additional, in-depth information about their perceptions of the program. The annualized burden is estimated to be 1029 hours.

| Respondents | Number of respondents | Number of responses/respondent | Average burden/response (in hrs.) |
|---|---|---|---|
| Students: | | | |
| Baseline | 524 | 1 | 30/60 |
| Post-program | 524 | 1 | 15/60 |
| 6-month follow-up | 524 | 1 | 30/60 |
| Focus group | 16 | 1 | 1 |
| Parents: | | | |
| Baseline | 524 | 1 | 10/60 |
| 6-month follow-up | 524 | 1 | 15/60 |
| Program facilitators: | | | |
| Interview | 6 | 1 | 40/60 |
| Program sessions | 6 | 12 | 30/60 |
| School nurses: | | | |
| School profile | 6 | 1 | 10/60 |
| Record abstraction | 6 | 87 | 10/60 |
| Interview | 6 | 1 | 40/60 |
| Teachers: | | | |
| Interview | 12 | 1 | 40/60 |

Dated: September 25, 2003.

**Nancy E Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.*

[FR Doc. 03–24972 Filed 10–1–03; 8:45 am]

**BILLING CODE 4163–18–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–71–03]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

*Proposed Project:* Work-related Assaults Treated In Hospital Emergency Departments (OMB Control No. 0920–0575)—Reinstatement without change—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC). Workplace violence, both fatal and nonfatal, is recognized as an important occupational safety and health issue. Various data systems have provided fairly detailed information on fatal workplace violence, but much less is known about the circumstances and risk factors for nonfatal workplace violence. A number of strategies have been suggested for reducing the incidence and severity of workplace violence in various settings (*e.g.*, taxicabs, health care, law enforcement, social services), yet, little empirical knowledge exists about what has been implemented and what impact such strategies may have. The report, *Workplace Violence: A Report to the Nation*, published by the University of Iowa based on recommendations from a workshop of experts states, "* * * research focused on a much broader understanding of the scope and impact of workplace violence is urgently needed to reduce the human and financial burden of this significant public health problem." In 2000, there were 677 workplace homicides in the U.S. From 1993–1999, there were an estimated 1.7 million non-fatal victimizations "while at work or on duty" every year, accounting for 18 percent of all violent crime during the seven-year period.

The Consumer Product Safety Commission (CPSC) maintains a database of injuries treated in a nationally-representative sample of U.S. hospital emergency departments (ED) called the National Electronic Injury Surveillance System (NEISS). Data routinely collected through NEISS include a brief narrative description of the injury event as well as basic demographic information, intent and mechanism of injury, work-relatedness, principal diagnosis, part of body affected, location where the injury occurred, involvement of consumer products, and disposition at ED discharge. For assaults, summary data are also being collected on the relationship of the perpetrator to the injured person and the context (*e.g.*, altercation, robbery, sexual assault, etc.). For work-related cases, occupation and industry information is collected. The data system does not include any information on issues such as the specific workplace circumstances and risk factors for workplace violence, security measures in place in the workplace and whether they were utilized/worked appropriately, training in workplace violence risk factors and prevention strategies, previous incidents of workplace violence, return to work after assault, and other specific workplace violence information.

In December 2001, Congress directed NIOSH to develop an intramural and extramural prevention research program that will target all aspects of workplace violence. For the last ten years, NIOSH has been collaborating with CPSC to collect surveillance data on work-related injuries treated in the NEISS EDs. In addition, NIOSH has utilized the capacity of NEISS to incorporate follow-back surveys. Follow-back surveys allow collection of first-hand, detailed knowledge that does not exist in administrative or other records. CPSC routinely uses this mechanism to collect information on various types of injuries (*e.g.*, fireworks-related injuries, injuries to children in baby walkers, etc.). NIOSH has used this mechanism to collect information on the circumstances of injury, training, protective equipment (if appropriate), and other issues important to more fully understanding the risk factors for work-related injuries and to make appropriate recommendations for preventing other such injuries in the future.

The current proposed study will consist of a telephone interview survey of workers treated in NEISS hospital emergency departments for injuries sustained during a work-related assault over a one-year period. CPSC will hire a contractor to conduct the actual telephone interviews. NIOSH will review potential cases to identify those cases that should be forwarded to the contractor for interview. The survey includes an extended narrative description of the injury incident as well as items regarding general workplace organization; personal characteristics of the worker; work tasks at the time of the assault; training on workplace violence risk factors and prevention strategies; security measures in place and how they impacted the outcome of the incident; medical care received for injuries; time away from work; and return to work after the assault. This study will provide critical information for understanding the nature and impact of nonfatal assault among U.S. workers. In combination with data collected from other sources, this information will ultimately contribute to the prevention of violence in the workplace. The annualized burden for this data collection is 227 hours.

| Survey | Number of respondents | Number of responses/respondent | Avg. burden/response (hours) |
|---|---|---|---|
| Work-related assaults treated in hospital emergency departments | 680 | 1 | 20/60 |

Dated: September 26, 2003.

**Nancy Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.*

[FR Doc. 03–24998 Filed 10–1–03; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

**[30Day–79–03]**

## Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to NCHS/CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–7245. Written comments should be received within 30 days of this notice.

*Proposed Project:* NCHS 2003–2004 National Ambulatory Medical Care Survey (NAMCS) (OMB Control No. 0920–0234)—Extension—National Center for Health Statics (NCHS), Centers for Disease Control and Prevention (CDC). The National Ambulatory Medical Care Survey (NAMCS) was conducted annually from 1973 to 1981, again in 1985, and resumed as an annual survey in 1989. It is directed by the Division of Health Care Statistics, National Center for Health Statistics, CDC. The purpose of NAMCS is to meet the needs and demands for statistical information about the provision of ambulatory medical care services in the United States. Ambulatory services are rendered in a wide variety of settings, including physicians' offices and hospital outpatient and emergency departments. The NAMCS target population consists of all office visits within the United States made by ambulatory patients to non-Federal office-based physicians (excluding those in the specialties of anesthesiology, radiology, and pathology) who are engaged in direct patient care. Since more than 80 percent of all direct ambulatory medical care visits occur in physicians' offices, the NAMCS provides data on the majority of ambulatory medical care services. To complement these data, in 1992 NCHS initiated the National Hospital Ambulatory Medical Care Survey (NHAMCS, OMB No. 0920–0278) to provide data concerning patient visits to hospital outpatient and emergency departments. The NAMCS, together with the NHAMCS constitute the ambulatory component of the National Health Care Survey (NHCS), and will provide coverage of more than 90 percent of ambulatory medical care.

The NAMCS provides a range of baseline data on the characteristics of the users and providers of ambulatory medical care. Data collected include the patients' demographic characteristics and reason(s) for visit, and the physicians' diagnosis(es) and diagnostic services, medications and disposition. These data, together with trend data, may be used to monitor the effects of change in the health care system, provide new insights into ambulatory medical care, and stimulate further research on the use, organization, and delivery of ambulatory care.

Users of NAMCS data include, but are not limited to, congressional and other federal government agencies such as NIH and FDA, state and local governments, medical schools, schools of public health, colleges and universities, private businesses, nonprofit foundations and corporations, professional associations, as well as individual practitioners, researchers, administrators and health planners. Uses vary from the inclusion of a few selected statistics in a large research effort, to an in-depth analysis of the entire NAMCS data set covering several years. The annual burden for this data collection is 6,175 burden hours.

| Form | Number of respondents | Number of responses per respondent | Hours per response |
|---|---|---|---|
| Induction—eligible | 2,250 | 1 | 35/60 |
| Induction—ineligible | 750 | 1 | 5/60 |
| Patient Record | 2,250 | 30 | 4/60 |
| Nonresponse Studies | 300 | 1 | 60/60 |

Dated: September 26, 2003

**Nancy E. Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.*

[FR Doc. 03–24999 Filed 10–1–03; 8:45 am]

**BILLING CODE 4163–18–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

**[Docket No. 2003N–0136]**

## Agency Information Collection Activities: Submission for Office of Management and Budget Review; Comment Request; Adoption of the Food and Drug Administration Food Code By Local, State, and Tribal Governments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by November 3, 2003.

**ADDRESSES:** OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

**SUPPLEMENTARY INFORMATION:** In compliance (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Adoption of the FDA Food Code By Local, State, and Tribal Governments (OMB Control Number 0910–0448)—Extension

FDA has developed its model Food Code to assist and promote consistent implementation of national food safety regulatory policy among the local, State, and tribal jurisdictions that have primary responsibility for the regulation or oversight of retail level food operations. The FDA Food Code provides a scientifically sound technical and legal basis for regulating the retail segment of the food industry. Authority for providing such assistance is derived from section 311(a) of the Public Health Service Act (42 U.S.C. 243(a)) and delegation of authority from the Public Health Service to the Commissioner of Food and Drugs relative to food protection is contained in 21 CFR 5.10(a)(2) and (a)(4). Under 31 U.S.C. 1535, FDA provides assistance to other Federal agencies such as the Indian Health Service (IHS).

Nationwide adoption of the model FDA Food Code is an important step towards the agency's goal for consistent, scientifically sound, and risk-based food safety standards and practices. A current, comprehensive and accurate inventory of Food Code adoptions by States and U.S. Territories, local, and tribal governments is necessary to determine the status of up-to-date protection of the U.S. population and to identify areas where assistance to these governments may promote the adoption of regulations based on the FDA Food Code.

This collection effort, which began in 2001, has had remarkable success with 97-percent participation from State and Territorial agencies. FDA contracted with the Association of Food and Drug Officials (AFDO) to conduct the initial survey using the OMB approved survey form. Contacts were made by telephone and e-mail to determine the Food Code status in their jurisdiction(s). Follow up contacts by telephone and e-mail to minimize the burden on respondents were made to clarify responses.

The rulemaking process that local, State, Territorial, and tribal governments must follow to adopt the Food Code often is a long and complicated process that can extend 2 or more years. For this reason, many agencies reported in the initial survey that they were still in the rulemaking process to adopt or update their food codes for the years 2004, 2005, or beyond. Thus, FDA believes that further implementation of the initial survey is needed to cover this additional rulemaking in order to keep the current database accurate and up-to-date. Based on experience gained in the past 3 years from the initial survey, FDA has developed a more condensed followup survey, to further minimize the burden requirements on respondent agencies. For example, FDA now knows if responding agencies have adopted a new code since 1993, the types of establishments regulated by those codes, the populations of the jurisdiction covered, and the status of local health agencies in the states. This information will not be collected again. We have reduced the number of questions from 16 to 5. Collection(s) of information will be electronically and/or telephonically obtained thus, providing respondents with data already in the database to further the ease of response and lower the burden.

In the **Federal Register** of April 17, 2003 (68 FR 18989), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received in response to that notice.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| Food Code Survey | 150 | 4 | 600 | 1 | 600 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Experience in the initial survey has more clearly identified the respondents for updating the information in the database. For example, FDA will obtain information from the IHS, relative to the tribal nations' adoption of the Food Code that IHS maintains, using the information categories in the revised followup survey form for which this extension is requested. Seventy-three State and Territorial agencies were identified as respondents for Food Code adoption, and it appears that initially, only 30 local agencies in cities of 500,000 or more will need to be contacted because most local jurisdictions are under State requirements. This further reduces the total burden on respondents. Quarterly updates from respondents under active rulemaking, will be requested by AFDO to keep the database current and accurate. Respondents that have concluded rulemaking will likely need only annual contact. Estimated response time is about 1 hour or less because most reporting will be done telephonically or electronically.

Dated: September 24, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–24929 Filed 10–1–03; 8:45 am]

BILLING CODE 4160–0–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## Anti-Infective Drugs Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

*Name of Committee*: Anti-Infective Drugs Advisory Committee.

*General Function of the Committee*: To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time*: The meeting will be held on October 28, 2003, from 8 a.m. to 5:30 p.m., and on October 29, 2003, from 8:30 a.m. to 4:30 p.m.

*Location*: Holiday Inn, The Ballrooms, 2 Montgomery Village Ave., Gaithersburg, MD.

*Contact Person*: Tara P. Turner, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, e-mail: *TurnerT@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12530. Please call the Information Line for up to date information on this meeting.

*Agenda*: On October 28, 2003, the committee will begin with a closed session from 8 a.m. to 12 noon. Following the closed session, from 1 p.m. to 5:30 p.m., the committee will discuss clinical trial design issues for demonstrating the safety and efficacy of antimicrobials in the treatment of diabetic foot infections. On October 29, 2003, the committee will discuss clinical trial design issues for demonstrating the safety and efficacy of antimicrobials in the treatment of acute bacterial sinusitis.

*Procedure*: On October 28, 2003, from 1 p.m. to 5:30 p.m., and on October 29, 2003, from 8:30 a.m. to 4:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 21, 2003. Oral presentations from the public will be scheduled between approximately 3:15 p.m. and 3:45 p.m. on October 28, 2003, and between approximately 1 p.m. and 1:30 p.m. on October 29, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 21, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

*Closed Committee Deliberations*: On October 28, 2003, from 8 a.m. to 12 noon, the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)).

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Tara Turner at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 25, 2003.

**Peter J. Pitts,**

*Associate Commissioner for External Relations.*

[FR Doc. 03–24926 Filed 10–1–03; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## Drug Safety and Risk Management Advisory Committee; Notice of Postponement

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is postponing the meeting of the Drug Safety and Risk Management Advisory Committee scheduled for September 18, 2003, due to Hurricane Isabel. This meeting was announced in the **Federal Register** of June 30, 2003 (68 FR 38713). An amendment to the notice of meeting was announced in the **Federal Register** of July 23, 2003 (68 FR 43534). The future date for this meeting is to be determined.

**FOR FURTHER INFORMATION CONTACT:** Shalini Jain, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *JAINS@CDER.FDA.GOV*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12535. Please call the Information Line for up-to-date information on this meeting.

Dated: September 26, 2003.

**Peter J. Pitts,**

*Associate Commissioner for External Relations.*

[FR Doc. 03–24925 Filed 10–1–03; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## Advisory Committee for Pharmaceutical Science; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Advisory Committee for Pharmaceutical Science.

*General Function of the Committee:* To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on October 21, 2003, from 8:30 a.m. to 4:30 p.m., and October 22, 2003, from 8:30 a.m. to 5 p.m.

*Location:* Best Western Washington Gateway Hotel, 1251 West Montgomery Ave., Rockville, MD.

*Contact Person:* Hilda Scharen, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* On October 21, 2003, the committee will do the following: (1) Receive updates from the Manufacturing, Clinical Pharmacology, and Pharmacology/Toxicology Subcommittees, (2) discuss and provide comments on the FDA draft guidance for industry entitled "Process Analytical Technologies (PAT), a Framework for Innovative Pharmaceutical Manufacturing and Quality Assurance," (see the FDA Internet Web address *http://www.fda.gov/cder/guidance/5815dft.htm)*, and (3) discuss and provide comments on parametric tolerance interval test for dose content uniformity. On October 22, 2003, the committee will do the following: (1) Discuss and provide comments on risk based Chemistry Manufacturing and Control (CMC) review proposals, (2) discuss and provide comments on nomenclature, and (3) discuss and provide direction to the research plan for generics.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by October 10, 2003. Oral presentations from the public will be scheduled between approximately 11:30 a.m. and 12:30 p.m. on October 21, 2003, and between approximately 1 p.m. and 2 p.m. on October 22, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 10, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Hilda Scharen at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 25, 2003.

**Peter J. Pitts,**

*Associate Commissioner for External Relations.*

[FR Doc. 03–24927 Filed 10–1–03; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

## Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, DHHS

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

### HLtat Cell Line

Barbara K. Felber and George Pavlakis (NCI).

DHHS Reference No. E–273–2003/0 (NIH AIDS Research & Reference Reagent Program catalog number 1293).

Licensing Contact: Susan Ano; 301/435–5515; *anos@mail.nih.gov*.

This cell line contains stably integrated copies of the HIV–1 LTR promoter linked to a synthetic one-exon tat gene. HLtat was generated by cotransfection of HeLa cells with pSV2neo and with pL3tat, which contains the HIV–1 LTR promoter, synthetic first tat exon, and the SV40 polyadenylation signal. Clone HLtat was selected in G418 on the basis of high-level production of the one-exon Tat. The cell line is stable and does not need to be routinely maintained under G418 selection. When transfected with HIV DNA or with any plasmid expressing the gene of interest driven by the HIV LTR promoter, high-level of gene expression is achieved. This cell line is further described in J. Virol 64:3734, 1990; AIDS Res. Ref. Reagent Program Courier 91–01:8, 1991; and J. Virol 64:2519, 1990. This cell line is available for licensing through a Biological Materials License Agreement.

### Novel Anti-Tumor and Anti-Fungal Compounds Isolated From Plants of the Genus *Aniba*

R. Shoemaker, E. Sausville, G. Cragg, D. Newman, M. Currens, T. McCloud, P. Klausmeyer, K. Tucker, M. Baseler, G. Chnurny, and W. Bancroft (NCI).

U.S. Provisional Application No. 60/433,489 filed 28 Jan 2003 (DHHS Reference No. E–224–2002/0–US–01).

*Licensing Contact:* Brenda Hefti; 301/435–4632; *heftib@mail.nih.gov*.

The invention describes separate and combined extracts from two plants of the genus Aniba, and a specific compound possessing and indolizinium core. Both the purified extracts and the pure substituted inolizinium compound were found to inhibit the growth of the azone-resistant fungi C. albicans, certain bacteria, as well as demonstrating a differential response across the NCI human tumor cell line panel with a special sensitivity observed in several leukemia cell lines.

**Cloning and Characterization of VIAF in Several Organisms**

Colin S. Duckett, Bettina M. Richter (NCI).

U.S. Provisional Application No. 60/163,748 filed 05 Nov 1999 (DHHS Reference No. E–016–2000/0–US–01), PCT/US00/20576 filed 28 Jul 2000 (DHHS Reference No. E–016–2000/0–PCT–02), U.S. Patent Application No. 10/129,424 filed 03 May 2002 (DHHS Reference No. E–016–2000/0–US–03).

*Licensing Contact:* Matthew Kiser; 301/435–5236; e-mail: *kiserm@mail.nih.gov.*

The process of apoptosis, or programmed cell death, can be utilized to eliminate unwanted cells, and it can occur during embryogenesis, turnover of senescent cells or metamorphosis. It can also be part of a defense mechanism against pathogens, *e.g.*, viruses, by allowing the host organism to eliminate infected cells. In an attempt to circumvent this defense mechanism, pathogens can produce gene products that block these apoptotic pathways. For example, *O. pseudotsugata* expresses a family of inhibitors of apoptosis proteins (IAP), and experimental data suggests that these IAPs can play a role in the protection from cellular apoptosis. This application claims nucleic acid and amino acid sequences corresponding to a viral IAP-associated factor, or VIAF. The gene and its product may enhance the anti-apoptotic properties of IAPs although the exact mechanism of this interaction is not clear. This technology could be used to treat disease states where VIAF is under-expressed, *e.g.*, breast adenocarcinomas, where there is an over-expression of VIAF, *e.g.*, neurodegenerative diseases and where apoptosis is undesired, *e.g.*, AIDS and autoimmune diseases. Additional information may be found in Duckett, CS, "Novel modulators of the apoptotic cell death pathway," Mol. Biol. Cell 12: 732 Suppl. S Nov 2001.

Dated: September 26, 2003.

**Richard U. Rodriguez,**

*Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 03–24969 Filed 10–1–03; 8:45 am]

BILLING CODE 4140–01–P

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## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Citizenship and Immigration Services

### Agency Information Collection Activities: Extension of Existing Collection; Comment Request

**ACTION:** 60-Day notice of information collection under review; The Student and Exchange Visitor Information System (SEVIS); OMB–30.

The Department of Homeland Security, Bureau of Citizenship and Immigration Services (BCIS), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Commenters are encouraged and will be accepted for sixty days until December 1, 2003.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of and existing information collection.

(2) *Title of the Form/Collection:* The Student and Exchange Visitor Information System (SEVIS).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number (File No. OMB–30). Bureau of Citizenship and Immigration Services, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This system is used by institutions and sponsors to provide notification, reports, updates and data required by regulations and the institutions and programs, as well as on student and exchange visitors. Additionally, the BCIS and the Department of State will use SEVIS to adjudicate benefits and services, track student and exchange visitor data, and to monitor institution and program sponsor compliance with current regulations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 625,135 applicant and 5 responses at 20 minutes (.333 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,040,850 annual burden hours:

If you have additional comments, suggestions, or need a coy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Citizenship and Immigration Services, Department of Homeland Security, 425 I Street, NW., Room 4034, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Theresa O'Malley, Chief Information Officer, Department of Homeland Security, Regional Office Building 3, 7th and D Streets, SW., Suite 4636–26, Washington, DC 20202.

Dated: September 26, 2003.

**Richard A. Sloan,**

*Department Clearance Officer, Department of Homeland Security, Bureau of Citizenship and Immigration Services.*

[FR Doc. 03–24942 Filed 10–1–03; 8:45 am]

**BILLING CODE 4410–10–M**

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## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Citizenship and Immigration Services

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** 30-Day notice of information collection under review: Application for Authorization to Issue Health Care Certificates; Form I–905.

The Department of Homeland Security, Bureau of Citizenship and Immigration Services (BCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 17, 2002, at 67 FR 58634, and again on February 25, 2003, at 68 FR 8784, allowing for a 30-day public review and comment period on the proposed revised form. No comments were received on this information collection. However, the proposed form was withdrawn and continued by OMB until submission of accompanying final regulation. The information collection was submitted to OMB on June 20, 2003, for review and was granted temporary approval until December 31, 2003.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 3, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725–17th Street, NW., Suite 10102, Washington, DC 20530; Attention: Department of Justice Desk Officer, Room 10235.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Authorization to Issue Health Care Certificates.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–905, Business and Trade Services, Bureau of Citizenship and Immigration Services, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond,a s well as a brief abstract:* Primary: Not-for-profit institutions. The data collected on this form is used by the BCIS to determine eligibility of an organization to issue certificates to foreign health care workers.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10 responses at 4 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 40 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division Bureau of Citizenship and Immigration Services, Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Ms. Theresa O'Malley, Chief Information Officer, Department of Homeland Security, Regional Office Building 3, 7th and D Streets, SW., Suite 4636–26, Washington, DC 20202.

Dated: September 26, 2003.

**Richard A. Sloan,**

*Department Clearance Officer, Department of Homeland Security, Bureau of Citizenship and Immigration Services.*

[FR Doc. 03–24944 Filed 10–1–03; 8:45 am]

**BILLING CODE 4410–10–M**

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## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Immigration and Customs Enforcement

### Agency Information Collection Activities: Comment Request

**ACTION:** 60-Day notice of information collection under review; Application—Alternative Inspection Services and FAST Commercial Driver Application; Forms I–823 and 823F.

The Department of Homeland Security (DHS), Bureau of Immigration and Customs Enforcement, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until December 1, 2003.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application—Alternative Inspection Services and FAST Commercial Driver Application.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms I–823 and 823F. Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected on this form will be used by the DHS to determine eligibility for automated inspections programs and to secure those data elements necessary to confirm enrollment at the time of application for admission to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 250,000 Form I–823 responses at 70 minutes (1.166 hours) per response; 25,000 CBP Form 823F responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 304,000 annual burden hours.

If you have additional comments, suggestions, or need a coy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Immigration and Customs Enforcement, Department of Homeland Security, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Ms. Theresa O'Malley, Chief Information Officer, Department of Homeland Security, Regional Office Building 3, 7th and D Streets, SW., Suite 4636–26, Washington, DC 20202.

Dated: September 26, 2003.

**Richard A. Sloan,**

*Department Clearance Officer, U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement.*

[FR Doc. 03–24943 Filed 10–1–03; 8:45 am]

**BILLING CODE 4410–10–M**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4820–N–37]**

### Notice of Proposed Information Collection: Comment Request; Comprehensive Needs Assessment

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* December 1, 2003.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

**FOR FURTHER INFORMATION CONTACT:** Beverly J. Miller, Director, Office of Multifamily Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–3730 (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evlauate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Comprehensive Needs Assessment.

*OMB Control Number, if applicable:* 2502–0505.

*Description of the need for the information and proposed use:* This information is necessary for HUD to review and assess the current and future resources and needs of multifamily housing projects. Owners and non-profit entities submit this information.

*Agency form numbers, if applicable:* HUD–96001, HUD–96002, HUD–96003.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The estimated total number of burden hours needed to prepare the information collection is 1,105,000; the number of respondents is 26,000 generating approximately 78,000 annual responses; the frequency of response is annually and every 5 years; and the estimated number of time needed to prepare the response varies from 1.25 hours to 40 hours.

*Status of the proposed information collection:* Extension of a currently approved collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: September 24, 2003.

**Sean G. Cassidy,**

*General Deputy Assistant Secretary for Housing Deputy Federal Housing Commissioner.*

[FR Doc. 03–24963 Filed 10–1–03; 8:45 am]

**BILLING CODE 4210–27–M**

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Endangered and Threatened Wildlife and Plants: Notice of Issuance of Permits for Incidental Take of Endangered (or Threatened) Species for Fiscal Year 2003 in the Northeast Region

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of issuance of incidental take permit for endangered species.

**SUMMARY:** On November 29, 2002, a notice was published in the **Federal Register** (67 FR 71192), that an application had been filed with the U.S. Fish and Wildlife Service (Service) by Snowshoe Mountain Resort, for a permit to incidentally take, pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act) of 1973 (16 U.S.C. 1539), as amended, the West Virginia Northern Flying Squirrel (Glaucomys sabrinus fuscus) on the proposed 51-acre Camp Wilderness Development pursuant to the terms of the Habitat Conservation Plan for the West Virginia Northern Flying Squirrel at the Proposed Camp Wilderness Development, Snowshoe Mountain, Pocahontas County, West Virginia.

Notice is hereby given that on February 24, 2003, after a 60-day public comment period as authorized by the provisions of the Act, the Service issued a permit (PRT–065121–0) to the above-named party subject to certain conditions set forth therein. The permit was granted only after the Service determined that it was applied for in good faith, that granting the permit will not be to the disadvantage of the threatened species, and that it will be consistent with the purpose and policy set forth in the Act, as amended.

Additional information on this permit action may be requested by contacting the West Virginia Field Office, 694 Beverly Pike, Elkins, West Virginia 26241, telephone number 304–636–6586, during normal business hours of 8 a.m. to 4:30 p.m.

No other Incidental Take Permits were issued in the Northeast Region in Fiscal Year 2003.

Dated: September 17, 2003.

**Richard O. Bennett,**

*Acting Regional Director, Region 5.*

[FR Doc. 03–24970 Filed 10–1–03; 8:45 am]

**BILLING CODE 4310–55–P**

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## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 731–TA–1014 and 1017 (Final)]**

## Polyvinyl Alcohol From China and Korea

### Determinations

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China and Korea of polyvinyl alcohol ("PVA"),[2] provided for in subheading 3905.30.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).[3]

### Background

The Commission instituted these investigations effective September 5, 2002, following receipt of a petition filed with the Commission and Commerce by Celanese, Ltd. of Dallas, TX and E.I. du Pont de Nemours & Co. of Wilmington, DE. The final phases of the investigations were scheduled by the Commission following notification of preliminary determinations by Commerce that imports of polyvinyl alcohol from China and Korea were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notices of the scheduling of the final phases of the Commission's investigations and of a public hearing to be held in connection therewith were given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notices in the **Federal Register** of April 14, 2003 (68 FR 17964), as amended by the **Federal Register** of August 19, 2003 (68 FR 49792). The hearing was held in Washington, DC, on May 8, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on September 24, 2003. The views of the Commission are contained in USITC Publication 3634 (September 2003), entitled *Polyvinyl Alcohol from China and Korea: Investigations Nos. 1014 and 1017 (Final).*

By order of the Commission.

Issued: September 29, 2003.

**Marilyn R. Abbott,**

*Secretary.*

[FR Doc. 03–25012 Filed 10–1–03; 8:45 am]

**BILLING CODE 7020–02–P**

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## DEPARTMENT OF JUSTICE

## Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 28 U.S.C. 50.7 and section 122 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622, notice is hereby given that on September 18, 2003, a proposed Consent Decree in *United States* v. *Harding Township, New Jersey*, Civil Action No. 03–4445 (FSH), was lodged with the United States District Court for the District of New Jersey.

In this action the United States, on behalf of the United States Department of the Interior ("DOI"), seeks reimbursement of response costs incurred and to be incurred in connection with response actions at the former Harding Landfill (the "Site"), located within the Great Swamp National Wildlife Refuge in Harding Township, Morris County, New Jersey. The Complaint alleges that the defendant is liable under sections 107(a) and 113(f) of CERCLA, 42 U.S.C. 9607(a) and 9613(f). Pursuant to the Consent Decree, the defendant will transfer title to and interest in a 65 acre parcel of real property (the "Parcel") adjacent to the Great Swamp National Wildlife Refuge to DOI's Central Hazardous Materials Fund as reimbursement for costs incurred and to be incurred by DOI at the Site. The Parcel will be managed by Fish & Wildlife Service as part of the Great Swamp National Wildlife Refuge for use by and enjoyment of the public.

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] For purposes of these investigations, PVA is defined as all polyvinyl alcohol hydrolyzed in excess of 80 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid, except as excluded from the definition. The following forms of polyvinyl alcohol are excluded from the definition of PVA:

(1) PVA in fiber form;

(2) PVA with hydrolysis less than 83 mole percent and certified not for use in the production of textiles;

(3) PVA with hydrolysis greater than 85 percent and viscosity greater than or equal to 90 cps;

(4) PVA with a hydrolysis greater than 85 percent, viscosity greater than or equal to 80 cps but less than 90 cps, certified for use in an ink jet application;

(5) PVA for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement, and accompanied by an end-use certification;

(6) PVA covalently bonded with cationic monomer uniformly present on all polymer chains in a concentration equal to or greater than one mole percent;

(7) PVA covalently bonded with carboxylic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, certified for use in a paper application;

(8) PVA covalently bonded with thiol uniformly present on all polymer chains, certified for use in emulsion polymerization of non-vinyl acetic material;

(9) PVA covalently bonded with paraffin uniformly present on all polymer chains in a concentration equal to or greater than one mole percent;

(10) PVA covalently bonded with silan uniformly present on all polymer chains certified for use in paper coating applications;

(11) PVA covalently bonded with sulfonic acid uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent;

(12) PVA covalently bonded with acetoacetylate uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent;

(13) PVA covalently bonded with polyethylene oxide uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent;

(14) PVA covalently bonded with quaternary amine uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent; and

(15) PVA covalently bonded with diacetoneacrylamide uniformly present on all polymer chains in a concentration level greater than three mole percent certified for use in a paper application.

[3] Commissioner Charlotte R. Lane did not participate in these investigations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Harding Township, New Jersey*, D.J. Ref. 90–11–3–07117.

The Consent Decree may be examined at the Office of the United States Attorney for the District of New Jersey, 970 Broad Street, Room 400, Newark, New Jersey 07102, and at U.S. Department of the Interior, Office of the Solicitor, 1849 C Street, NW., Washington, DC 20240. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.00 (25 cents per page reproduction cost), payable to the U.S. Treasury.

**Ronald Gluck,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 03–24932 Filed 10–1–03; 8:45 am]

BILLING CODE 4410–15–M

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")

Consistent with Departmental policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that on September 15, 2003, a proposed consent decree in *United States* v. *Mallinckrodt Baker, Inc., et al.*, Civil Action No. 03–417S, was lodged with the United States District Court for the District of Rhode Island.

In this action the United States sought recovery of response costs pursuant to Section 107(a) of CERCLA, for costs incurred related to the Davis Liquid Waste Site in Smithfield, Rhode Island. The consent decree requires three generator defendants to pay $1,400,00, of which the United States will receive $660,000. The remaining portion will go to the State of Rhode Island and National Starch and Chemical Co. ("National Starch"), a contribution plaintiff.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Mallinckrodt Baker, Inc., et al.*, D.J. Ref. #90–11–2–137/1.

The consent decree may be examined at the Office of the United States Attorney, Fleet Center, 50 Kennedy Plaza, 8th Floor, Providence, Rhode Island 02903 (contact AUSA Michael Iannotti), and at U.S. EPA Region I, One Congress Street, Suite 1100, Mail Code SES, Boston, MA 02114 (contact Ruthann Sherman). During the public comment period the consent decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $10.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**Ronald G. Gluck,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 03–24933 Filed 10–1–03; 8:45 am]

BILLING CODE 4410–35–M

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on September 16, 2003, a proposed Consent Decree in *United States* v. *Phelps Dodge Corporation*, Civil Action No. CIV–03–1804–PHX–SMM, was lodged with the United States District Court for the District of Arizona.

In this action the United States sought injunctive relief and civil penalties for violations of section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a), at the United Verde mine near Jerome, Arizona. The defendant is Phelps Dodge Corporation, the owner of the United Verde mine.

Under the terms of the proposed settlement, Phelps Dodge will pay a civil penalty of $220,142. In addition, Phelps Dodge will carry out three projects at the United Verde mine designed to address the violations alleged in the complaint.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Phelps Dodge Corporation*, D.J. Ref. 90–5–1–1–07311.

The Consent Decree may be examined at the Office of the United States Attorney, Sue A. Klein, Assistant U.S. Attorney, Two Renaissance Square, 40 North Central Ave., Suite 1200, Phoenix, AZ 8500. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 616–6584, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $9.25 (37 pages at 25 cents per page reproduction cost) payable to the U.S. Treasury.

**Ellen Mahan,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 03–24934 Filed 10–1–03; 8:45 am]

**BILLING CODE 4410–15–M**

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 7, 2003, and published in the **Federal Register** on May 29, 2003 (68 FR 32089), Organix, Inc., 240 Salem Street, Woburn, Massachusetts 01810, made application by renewal to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic class of Cocaine (9041), a Schedule II controlled substance.

The firm plans to manufacture small quantities of a cocaine derivative for distribution for research purposes.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Organix, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Organix, Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed is granted.

Dated: August 27, 2003.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 03–24983 Filed 10–1–03; 8:45 am]

**BILLING CODE 4410–09–M**

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## NATIONAL SCIENCE FOUNDATION

### Notice of Permits Issued Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation

**ACTION:** Notice of permits issued under the Antarctic Conservation of 1978, Pub. L. 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits under the Antarctic Conservation Act of 1978. This is the required notice.

**FOR FURTHER INFORMATION CONTACT:** Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

**SUPPLEMENTARY INFORMATION:** On August 13, 2003 and August 19, 2003, the National Science Foundation published notices in the **Federal Register** of a permit applications received. Permits were issued on September 16, 2003, and September 24, 2003, to Paul J. Ponganis (2004–010) and David Caron (2004–012) respectively.

**Nadene G. Kennedy,**

*Permit Officer.*

[FR Doc. 03–24948 Filed 10–1–03; 8:45 am]

**BILLING CODE 7555–01–M**

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 40–8698]**

### Finding of No Significant Impact and Notice of Availability of the Environmental Assessment Concerning the License Amendment Request for Consideration of the Proposed Reclamation Plan for the Plateau Resources Limited Shootaring Canyon Uranium Project

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability; environmental assessment and finding of no significant impact.

**FOR FURTHER INFORMATION CONTACT:** Rick Weller, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington DC 20555–0001, telephone (301) 415–7287 and e-mail *rmw2@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated October 24, 2002, a request from Plateau Resources Limited (PRL) to (1) amend Source Materials License SUA–1371 for the Shootaring Canyon Uranium Project to change its status from "operational" to "reclamation;" and (2) review and approve PRL's proposed reclamation plan for this facility.

Pursuant to the requirements of 10 CFR part 51 (Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions), the NRC has prepared an environmental assessment (EA) to evaluate the environmental impacts associated with decommissioning and reclamation of the Shootaring Canyon facility. Based on this evaluation, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate for the proposed licensing action.

#### II. Summary of the Environmental Assessment

The EA was prepared to evaluate the environmental impacts associated with PRL's decommissioning and reclamation plan. In the conduct of its evaluation, the NRC considered the following: (1) PRL's reclamation plan, as supplemented and revised, (2) information contained in prior environmental evaluations of the Shootaring Canyon facility, (3) information in Shootaring Canyon environmental monitoring reports, and (4) information derived from NRC site visits and inspections of the Shootaring Canyon site and from communications with PRL, the Utah Department of Environmental Quality, the Utah State Historic Preservation Office, the U.S. Fish and Wildlife Service, the U.S. Bureau of Land Management (Henry Mountains Field Station), and the U.S. National Park Service (Glen Canyon National Recreational Area). In preparing the EA, the NRC evaluated the potential impacts to cultural resources, threatened and endangered species, surface waters, and groundwater at the Shootaring Canyon site. Additionally, the NRC evaluated the potential impacts to members of the public from construction activities associated with decommissioning and reclamation. Lastly, the NRC evaluated the potential radiological impacts to members of the public from the cleanup and disposal of the radioactive wastes generated during uranium recovery operations. The results of the staff's evaluation are documented in an EA which is available for public inspection and/or copying in the NRC's Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). The safety aspects of the decommissioning and reclamation plan are discussed separately in a Technical Evaluation Report that will accompany the agency's final licensing action on PRL's request to amend Source Materials License SUA–1371.

### III Finding of No Significant Impact

Pursuant to 10 CFR part 51, the NRC has prepared the EA, summarized above, concerning the decommissioning and reclamation of the Shootaring Canyon Uranium Project located in Garfield County, Utah. On the basis of the EA, the NRC has concluded that this licensing action would not have any significant effect on the quality of the environment, and, therefore, an environmental impact statement is not required. The NRC has concluded that the approval of PRL's decommissioning and reclamation plan will not cause any significant impacts on the environment and is protective of human health. The NRC has concluded that decommissioning and reclamation of the Shootaring Canyon facility will not result in any adverse impacts to regional surface and groundwater. A groundwater monitoring program will be maintained throughout site reclamation and following site closure to ensure that groundwater is adequately protected during long-term custody of the site. The NRC has also concluded that the waste impoundment at the site will be designed in accordance with the requirements of 10 CFR part 40, appendix A, to provide reasonable assurance of effective control of radiological hazards for 1,000 years, to the extent reasonably achievable, and, in any case, for at least 200 years.

### IV. Further Information

The EA for this proposed action, as well as the licensee's request, as supplemented and revised, are available electronically for public inspection in the NRC's Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*. The ADAMS Accession Numbers for the licensee's request, as supplemented and revised, are:

ML023050449, ML023050465, ML023080393, ML023090051, ML023090054, ML023090059, ML023090062, ML023090067, ML023090070, (October 24, 2002); ML030640211 (February 24, 2003); ML031200325 (April 24, 2003); and ML032541114, ML032541131 (September 5, 2003). The ADAMS Accession Number for the EA is: ML032530553. Documents can also be examined and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

Dated at Rockville, Maryland, this 25th day of September, 2003.

For the Nuclear Regulatory Commission.

**Rick Weller,**

*Senior Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 03–24982 Filed 10–1–03; 8:45 am]

BILLING CODE 7590–01–P

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## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

### Summary of Proposal(s)

(1) *Collection title:* Job Information Report.

(2) *Form(s) submitted:* G–251a, G–251b.

(3) *OMB Number:* 3220–0193.

(4) *Expiration date of current OMB clearance:* 11/30/2003.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Business or other for-profit.

(7) *Estimated annual number of respondents:* 430.

(8) *Total annual responses:* 430.

(9) *Total annual reporting hours:* 144.

(10) *Collection description:* The collection obtains information used by the Railroad Retirement Board (RRB) to assist in determining whether a railroad employee is disabled from his or her regular occupation. It provides, under certain conditions, railroad employers with the opportunity to provide information to the RRB regarding the employee applicant's job duties.

*Additional Information or Comments:* Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

**Chuck Mierzwa,**

*Clearance Officer.*

[FR Doc. 03–24958 Filed 10–1–03; 8:45 am]

BILLING CODE 7905–01–M

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26193]

### Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

September 26, 2003.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of September, 2003. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 21, 2003, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0504.

### Credit Suisse Municipal Bond Fund, Inc. [File No. 811–8923]

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On August 20, 2003, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $65,000 incurred in connection with the liquidation were paid by Credit Suisse Asset Management, LLC, applicant's investment adviser, and/or its affiliates.

*Filing Date:* The application was filed on September 16, 2003.

*Applicant's Address:* 466 Lexington Ave., New York, NY 10017.

**Prudential International Bond Fund, Inc. [File No. 811–5123]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On May 4, 2001, applicant transferred its assets to Dryden Global Total Return Fund, Inc. (formerly Prudential Global Total Return Fund, Inc.), based on net asset value. Expenses of $135,925 incurred in connection with the reorganization were paid by the surviving fund.

*Filing Date:* The application was filed on August 21, 2003.

*Applicant's Address:* Gateway Center Three, 100 Mulberry St., Newark, NJ 07102–4077.

**Morgan Stanley Africa Investment Fund, Inc. [File No. 811–8218]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On July 18, 2003, applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of $81,599 incurred in connection with the liquidation were paid by applicant.

*Filing Date:* The application was filed on September 5, 2003.

*Applicant's Address:* c/o Morgan Stanley Investment Management Inc., 1221 Avenue of the Americas, New York, NY 10020.

**Mercury Global Holdings, Inc. [File No. 811–4351]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On July 21, 2003, applicant transferred its assets to Merrill Lynch Global Growth Fund, Inc., based on net asset value. Expenses of $139,612 incurred in connection with the reorganization were paid by the acquiring fund.

*Filing Date:* The application was filed on August 27, 2003.

*Applicant's Address:* 800 Scudders Mill Rd., Plainsboro, NJ 08536.

**Camelot Funds [File No. 811–3139]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On December 13, 2002, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $515 incurred in connection with the liquidation were paid by The Sachs Company, applicant's investment adviser.

*Filing Date:* The application was filed on August 27, 2003.

*Applicant's Address:* 1346 South Third St., Louisville, KY 40208.

**Prudential Intermediate Global Income Fund, Inc. [File No. 811–5510]**

**Prudential Global Limited Maturity Fund, Inc. [File No. 811–6048]**

*Summary:* Each applicant seeks an order declaring that it has ceased to be an investment company. On October 22, 1999, applicants transferred their assets to Dryden Global Total Return Fund, Inc. (formerly Prudential Global Total Return Fund, Inc.), based on net asset value. Expenses of $181,061 and $108,034, respectively, incurred in connection with the reorganizations were paid by the surviving fund.

*Filing Date:* The applications were filed on August 21, 2003.

*Applicants' Address:* Gateway Center Three, 100 Mulberry St., Newark, NJ 07102–4077.

**Prudential Balanced Fund [File No. 811–5055]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On November 10, 2000, applicant transferred its assets to Prudential Active Balanced Fund, a series of The Prudential Investment Portfolios, Inc., based on net asset value. Expenses of $307,095 incurred in connection with the reorganization were paid by the surviving fund.

*Filing Date:* The application was filed on August 21, 2003.

*Applicant's Address:* Gateway Center Three, 100 Mulberry St., Newark, NJ 07102–4077.

**General American Capital Company [File No. 811–4900]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. Shareholders approved the merger of applicant's series on April 25, 2003 and applicant distributed its assets on April 28, 2003. The funds surviving the merger are portfolios of the Metropolitan Series Fund, Inc. MetLife Advisers, LLC and its affiliates, including General American Life Insurance Company, paid expenses of approximately $660,000 incurred in connection with the merger.

*Filing Date:* The application was filed on September 5, 2003.

*Applicant's Address:* 700 Market Street, St. Louis, Missouri 63101.

**Lincoln National Bond Fund, Inc. [File No. 811–3210]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On April 30, 2003, applicant distributed all of its assets to its shareholders based on net asset value pursuant to an agreement approved by the applicant's shareholders to reorganize Applicant, along with certain other Lincoln National funds, from a Maryland corporation into a series of a Delaware business trust. Aggregate expenses of approximately $42,901.00 were incurred in connection with the reorganization and merger, and were allocated to applicant prior to May 1, 2003, and to the Bond Fund (acquiring fund), a series of the Lincoln Variable Insurance Products Trust, as of May 1, 2003, and thereafter.

*Filing Dates:* The application was filed on May 23, 2003, and amended on August 1, 2003.

*Applicant's Address:* 1300 South Clinton Street, Fort Wayne, IN 46802.

**Lincoln National Capital Appreciation Fund, Inc. [File No. 811–8074]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On April 30, 2003, applicant distributed all of its assets to its shareholders based on net asset value pursuant to an agreement approved by the applicant's shareholders to reorganize applicant, along with certain other Lincoln National funds, from a Maryland corporation into a series of a Delaware business trust. Aggregate expenses of approximately $42,901.00 were incurred in connection with the reorganization and merger, and were allocated to applicant prior to May 1, 2003, and to the Capital Appreciation Fund (acquiring fund), a series of the Lincoln Variable Insurance Products Trust, as of May 1, 2003, and thereafter.

*Filing Dates:* The application was filed on May 23, 2003, and amended on August 1, 2003.

*Applicant's Address:* 1300 South Clinton Street, Fort Wayne, IN 46802.

**Lincoln National Global Asset Allocation Fund, Inc. [File No. 811–5115]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On April 30, 2003, applicant distributed all of its assets to its shareholders based on net asset value pursuant to an agreement approved by the applicant's shareholders to reorganize applicant, along with certain other Lincoln National funds, from a Maryland corporation into a series of a Delaware business trust. Aggregate expenses of approximately $42,901.00 were incurred in connection with the reorganization and merger, and were allocated to applicant prior to May 1, 2003, and to the Global Asset Allocation Fund (acquiring fund), a series of the Lincoln

Variable Insurance Products Trust, as of May 1, 2003, and thereafter.

*Filing Dates:* The application was filed on May 23, 2003, and amended on August 1, 2003.

*Applicant's Address:* 1300 South Clinton Street, Fort Wayne, IN 46802.

**Lincoln National Social Awareness Fund, Inc. [File No. 811–5464]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On April 30, 2003, applicant distributed all of its assets to its shareholders based on net asset value pursuant to an agreement approved by the applicant's shareholders to reorganize applicant, along with certain other Lincoln National funds, from a Maryland corporation into a series of a Delaware business trust. Aggregate expenses of approximately $42,901.00 were incurred in connection with the reorganization and merger, and were allocated to applicant prior to May 1, 2003, and to the Social Awareness Fund (acquiring fund), a series of the Lincoln Variable Insurance Products Trust, as of May 1, 2003, and thereafter.

*Filing Dates:* The application was filed on May 23, 2003, and amended on August 1, 2003.

*Applicant's Address:* 1300 South Clinton Street, Fort Wayne, IN 46802.

**Lincoln National Growth and Income Fund, Inc. [File No. 811–3211]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On April 30, 2003, applicant distributed all of its assets to its shareholders based on net asset value pursuant to an agreement approved by the applicant's shareholders to reorganize applicant, along with certain other Lincoln National funds, from a Maryland corporation into a series of a Delaware business trust. Aggregate expenses of approximately $42,901.00 were incurred in connection with the reorganization and merger, and were allocated to applicant prior to May 1, 2003, and to the Growth and Income Fund (acquiring fund), a series of the Lincoln Variable Insurance Products Trust, as of May 1, 2003, and thereafter.

*Filing Dates:* The application was filed on May 23, 2003, and amended on August 1, 2003.

*Applicant's Address:* 1300 South Clinton Street, Fort Wayne, IN 46802.

**Lincoln National Money Market Fund, Inc. [File No. 811–3212]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On April 30, 2003, applicant distributed all of its assets to its shareholders based on net asset value pursuant to an agreement approved by the applicant's shareholders to reorganize applicant, along with certain other Lincoln National funds, from a Maryland corporation into a series of a Delaware business trust. Aggregate expenses of approximately $42,901.00 were incurred in connection with the reorganization and merger, and were allocated to applicant prior to May 1, 2003, and to the Money Market Fund (acquiring fund), a series of the Lincoln Variable Insurance Products Trust, as of May 1, 2003, and thereafter.

*Filing Dates:* The application was filed on May 23, 2003, and amended on August 1, 2003.

*Applicant's Address:* 1300 South Clinton Street, Fort Wayne, IN 46802.

**Lincoln National Special Opportunities Fund, Inc. [File No. 811–3291]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On April 30, 2003, applicant distributed all of its assets to its shareholders based on net asset value pursuant to an agreement approved by the applicant's shareholders to reorganize applicant, along with certain other Lincoln National funds, from a Maryland corporation into a series of a Delaware business trust. Aggregate expenses of approximately $42,901.00 were incurred in connection with the reorganization and merger, and were allocated to applicant prior to May 1, 2003, and to the Special Opportunities Fund (acquiring fund), a series of the Lincoln Variable Insurance Products Trust, as of May 1, 2003, and thereafter.

*Filing Dates:* The application was filed on May 23, 2003, and amended on August 1, 2003.

*Applicant's Address:* 1300 South Clinton Street, Fort Wayne, IN 46802.

**Lincoln National Managed Fund, Inc. [File No. 811–3683]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On April 30, 2003, applicant distributed all of its assets to its shareholders based on net asset value pursuant to an agreement approved by the applicant's shareholders to reorganize applicant, along with certain other Lincoln National funds, from a Maryland corporation into a series of a Delaware business trust. Aggregate expenses of approximately $42,901.00 were incurred in connection with the reorganization and merger, and were allocated to applicant prior to May 1, 2003, and to the Managed Fund (acquiring fund), a series of the Lincoln Variable Insurance Products Trust, as of May 1, 2003, and thereafter.

*Filing Dates:* The application was filed on May 23, 2003, and amended on August 1, 2003.

*Applicant's Address:* 1300 South Clinton Street, Fort Wayne, IN 46802.

**Lincoln National International Fund, Inc. [File No. 811–6233]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On April 30, 2003, applicant distributed all of its assets to its shareholders based on net asset value pursuant to an agreement approved by the applicant's shareholders to reorganize applicant, along with certain other Lincoln National funds, from a Maryland corporation into a series of a Delaware business trust. Aggregate expenses of approximately $42,901.00 were incurred in connection with the reorganization and merger, and were allocated to applicant prior to May 1, 2003, and to the International Fund (acquiring fund), a series of the Lincoln Variable Insurance Products Trust, as of May 1, 2003, and thereafter.

*Filing Dates:* The application was filed on May 23, 2003, and amended on August 1, 2003.

*Applicant's Address:* 1300 South Clinton Street, Fort Wayne, IN 46802.

**Lincoln National Equity-Income Fund, Inc. [File No. 811–8126]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On April 30, 2003, applicant distributed all of its assets to its shareholders based on net asset value pursuant to an agreement approved by the applicant's shareholders to reorganize applicant, along with certain other Lincoln National funds, from a Maryland corporation into a series of a Delaware business trust. Aggregate expenses of approximately $42,901.00 were incurred in connection with the reorganization and merger, and were allocated to applicant prior to May 1, 2003, and to the Equity-Income Fund (acquiring fund), a series of the Lincoln Variable Insurance Products Trust, as of May 1, 2003, and thereafter.

*Filing Dates:* The application was filed on May 23, 2003, and amended on August 1, 2003.

*Applicant's Address:* 1300 South Clinton Street, Fort Wayne, IN 46802.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–24950 Filed 10–1–03; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48540; File No. SR–CBOE–2003–31]**

## Self-Regulatory Organizations; Notice of Filing and Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Audit Committee Requirements Applicable to Companies Listing Non-Option Securities

September 25, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 11, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend certain non-option listing rules of the Exchange in response to the adoption of Rule 10A–3 of the Exchange Act.[3] Below is the text of the proposed rule change. Proposed new language is italicized; deletions are in brackets.

**Rule 31.7 Securities of Foreign Issuers**

(1) No change.

(2) The Exchange will consider the law, and commercial and business practice of the applicant's domicile in evaluating (A) the election and composition of its Board of Directors, *to the extent such law, and commercial and business practice with respect to the election and composition of its Board of Directors is consistent with the federal securities laws, including, but not limited to, Rule 10A–3 of the Securities Exchange Act of 1934, as amended,* (B) shareholder approval and quorum requirements for meetings, and (C) the issuance of quarterly earnings statements.

(3)–(5) No change.

* * * * *

**Rule 31.10 Independent Directors**

The Exchange requires an issuer to have at least two independent directors. For purposes of this section, "independent director" shall mean a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. The issuer shall maintain an audit committee *(i)* composed of such independent directors[.] *and (ii) that complies with the listing standards set forth in Rule 10A–3 of the Securities Exchange Act of 1934, as amended ("Exchange Act"). If a member of the audit committee ceases to be independent in accordance with the requirements of Exchange Act Rule 10A–3 for reasons outside the member's reasonable control, that person, with written notice to the Exchange, may remain an audit committee member of the listed issuer until the earlier of the next annual shareholders meeting of the listed issuer or one year from the occurrence of the event that caused the member to be no longer independent.*

* * * * *

**Rule 31.94 Suspension and Delisting Policies**

(A)–(I) No change.

* * * *Interpretations and Policies*

*.01 With respect to an issuer that does not comply with the requirements of Rule 10A–3 of the Securities Exchange Act of 1934, as amended, as set forth in Rule 31.10, the Exchange shall remove from listing the securities of such issuer.*

* * * * *

**Rule 31.96 Notices to Exchange**

(A) No change.

(B) Changes in Officers or Directors.

A listed company is required to notify the Exchange promptly (and confirm in writing) *(i)* of any changes of officers or directors *and (ii) after an executive officer of the listed company becomes aware of any material noncompliance by the listed company with the requirements of Rule 10A–3 of the Securities Exchange Act of 1934, as amended.*

(C)–(G) No change.

* * * * *

*Rule 31.97 [Reserved for additional original listing standards.]*

* * * * *

Forms for Listing

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Form 1

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Listing Agreement

__________ (the "Company"), in consideration of the listing of its securities, hereby agrees with the Chicago Board Options Exchange, Incorporated (the "Exchange"), that it will:

1. Promptly notify the Exchange of the following:

(a) changes in the general character or nature of its business, its principal executive officers, directors, its independent public accountants, its transfer agent or registrar *and material noncompliance by the listed company with Rule 10A–3 of the Securities Exchange Act of 1934, as amended ("Exchange Act"), after an executive officer becomes aware of such noncompliance;*

(b)–(k) No change.

(2)–(27) No change.

(28) Comply with Exchange rules, policies and procedures as in effect and as they may be amended from time to time *and with the requirements of Exchange Act Rule 10A–3.*

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Exchange Act Rule 10A–3(a)(1) provides that the "rules of each national securities exchange registered pursuant to section 6 of the [Exchange] Act (15 U.S.C. 78f) must, in accordance with the provisions of [Exchange Act Rule 10A–3], prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements of any portion of paragraph (b) or (c) of [Exchange Act Rule 10A–3]." Exchange Act Rule 10A–3(b) contains new requirements for an issuer's audit committee and Exchange Act Rule 10A–3(c) provides general exemptions from the requirements of Exchange Act Rule 10A–3. Exchange Act Rule 10A–3(a)(5)(ii) requires CBOE to propose new rules or rule amendments that comply with Exchange Act Rule 10A–3 no later than July 15, 2003.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.10A–3. *See* Securities Exchange Act Release No. 47137 (January 8, 2003) 68 FR_____(date).

CBOE Rules 31.5—31.16 contain the criteria for the original listing of an applicant's non-option securities on CBOE. In particular, CBOE Rule 31.7 provides that with respect to foreign issuers, CBOE will consider the law, and commercial and business practice of the foreign issuer's domicile in evaluating the election and composition of the foreign issuer's Board of Directors. CBOE proposes to add a proviso that makes clear CBOE's intention to consider the law, and commercial and business practice of the foreign issuer's domicile only if such law and practices are consistent with federal securities laws, including Exchange Act Rule 10A–3. CBOE also proposes to amend another original listing criterion, CBOE Rule 31.10, which currently provides in part that "the issuer shall maintain an audit committee composed of * * * independent directors." To comply with Exchange Act Rule 10A–3, CBOE proposes to amend the quoted language above in CBOE Rule 31.10 by incorporating by reference the listing standards set forth in Exchange Act Rule 10A–3. Specifically, the proposed language in CBOE Rule 31.10 provides in part that "the issuer shall maintain an audit committee (i) composed of such independent directors and (ii) that complies with the listing standards set forth in Rule 10A–3 of the Securities Exchange Act of 1934, as amended." CBOE proposes to amend the listing agreement on CBOE Form 1 so that it conforms to the proposed language set forth above in CBOE Rule 31.10. Proposed CBOE Rule 31.10 also incorporates the language set forth in Exchange Act Rule 10A–3(a)(3) to satisfy the requirement that CBOE provides appropriate procedures for an issuer to have an opportunity to cure any defects that would be the basis for the prohibition of listing the securities of such issuer under Exchange Act Rule 10A–3(a).

CBOE proposes to add an interpretation to CBOE Rule 31.94 that revises one of CBOE's delisting policies in order to comply with Exchange Act Rule 10A–3. The revision is required because CBOE Rule 31.94(B)(d) currently permits CBOE's Board of Directors to use its discretion in deciding whether to delist an issuer's non-option securities from trading when, in the opinion of CBOE, "the issuer has failed to comply with its listing agreements" with CBOE. Exchange Act Rule 10A–3(a)(1) makes clear that an exchange may not use discretion in deciding whether to delist a non-option security of an issuer that does not comply with Exchange Act Rule 10A–3.

Exchange Act Rule 10A–3(a)(4) provides that the rules required by Exchange Act Rule 10A–3(a)(1) and (2) must include a requirement that a listed issuer must notify CBOE promptly after an executive officer of the listed issuer becomes aware of any material noncompliance by the listed issuer with the requirements of Exchange Act Rule 10A–3. Proposed Rule 31.96(B) and the listing agreement on CBOE Form 1 are amended to reflect this requirement.

The proposed rule change reserves a new rule, proposed CBOE Rule 31.97, to incorporate additional and enhanced original listing standards for the listing of non-option securities on the Exchange. CBOE understands that the National Association of Securities Dealers, Inc. ("NASD") and the New York Stock Exchange, Inc. ("NYSE") have filed rule proposals with the Commission that strengthen their listing standards by enhancing corporate governance requirements for listed entities.[4] Following the Commission's approval of these rule proposals, CBOE intends to submit a rule proposal to the Commission to adopt substantially similar changes to CBOE's original listing rules. For example, consistent with the listing standards that are adopted by NYSE and/or NASD, CBOE intends to revise its original listing rules to, among other things, further address (i) independent director representation on the issuer's Board of Directors; (ii) independent director representation on the issuer's nominating and compensation committees; (iii) shareholder approval requirements of equity-compensation plans, (iv) corporate governance guidelines of issuers; (v) issuer codes of business conduct and ethics; and (vi) the definition of "independent" that is currently provided for in CBOE Rule 31.10.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,[5] in general, and furthers the objectives of Sections 6(b)(5) of the Exchange Act, [6] in particular, in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–2003–31 and should be submitted by October 23, 2003.

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[4] *See* Securities Exchange Act Release No. 34–47516 (March 17, 2003), 68 FR 14451 (March 25, 2003) (noticing SR–NASD–2002–141) and Securities Exchange Act Release No. 34–47672 (April 11, 2003), 68 FR 19051 (April 17, 2003) (noticing SR–NYSE–2002–33).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–25013 Filed 10–1–03; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48538; File No. SR–PCX–2002–01]**

## Self Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 to the Proposed Rule Change by the Pacific Exchange, Inc., Relating to Procedures for Obvious Errors in Options Transactions

September 25, 2003.

### I. Introduction

On January 3, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to adopt an obvious error rule for options transactions. On July 28, 2003, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] On August 8, 2003, the Exchange submitted Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on August 22, 2003.[5] The Commission did not receive any comments on the proposed rule change. On September 16, 2003, the PCX filed Amendment No. 3 to the proposed rule change.[6] This order approves the proposed rule change, as amended, grants accelerated approval to Amendment No. 3, and solicits comments from interested persons on that amendment.

### II. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5)[8] of the Act, which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.[9]

The Commission considers that in most circumstances trades that are executed between parties should be honored. On rare occasions, the price of the executed trade indicates an "obvious error" may exist, suggesting that it is unrealistic to expect that the parties to the trade had come to a meeting of the minds regarding the terms of the transaction. In the Commission's view, the determination of whether such an "obvious error" has occurred should be based on specific and objective criteria and subject to specific and objective procedures. The Commission believes that the PCX's proposed obvious error rule establishes specific and objective criteria for determining when a trade is an "obvious error." The Commission also believes that the proposal establishes specific and objective procedures governing the adjustment or nullification of such trade. In addition, the Commission notes that several provisions of the PCX obvious error rule proposal, as amended, are substantially similar to proposed rule changes submitted by the Chicago Board Options Exchange, Inc. and International Securities Exchange, Inc., which the Commission has approved.[10]

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 3 does not make any substantive changes to the proposed rule text. It simply clarifies the determination of an obvious price error and the definition of a transaction executed below parity. Therefore, the Commission believes that granting accelerated approval of Amendment No. 3 is appropriate and consistent with section 6(b)(5)[11] and section 19(b)[12] of the Act.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposal that are filed with the Commission, and all written communications relating to the proposal between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No.

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Letter from Mai S. Shiver, Senior Attorney, Regulatory Policy, Exchange, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 25, 2003 ("Amendment No. 1"). Amendment No. 1 supersedes and replaces the proposed rule change in its entirety.

[4] *See* Letter from Mai S. Shiver, Senior Attorney, Regulatory Policy, Exchange, to Nancy J. Sanow, Assistant Director, Division, Commission, dated August 7, 2003 ("Amendment No. 2"). Amendment No. 2 supersedes and replaces the proposed rule change and Amendment No. 1 in their entirety.

[5] *See* Securities Exchange Act Release No. 48342 (August 14, 2003), 68 FR 50820 (August 22, 2003) ("Notice").

[6] *See* Letter from Mai S. Shiver, Senior Attorney, Regulatory Policy, Exchange, to Nancy J. Sanow, Assistant Director, Division, Commission, dated September 15, 2003 ("Amendment No. 3"). In Amendment No. 3, the Exchange amended proposed PCX Rule 6.87(g)(2)(E) to clarify a provision relating to the determination of an obvious price error and amended proposed PCX Rule 6.87(g)(2)(G) to clarify the definition of "parity."

[7] For a description of the proposed rule change, see Notice, supra, n.4.

[8] 15 U.S.C. 78f(b)(5).

[9] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] *See* Securities Exchange Act Release No. 47628 (April 3, 2003), 68 FR 17697 (April 10, 2003) (SR–CBOE–00–55); Securities Exchange Act Release No. 48097 (June 26, 2003), 68 FR 39604 (July 2, 2003) (SR–ISE–2003–10).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b).

SR–PCX–2002–01 and should be submitted by October 23, 2003.

### IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal, as amended, is consistent with the Act and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–PCX–2002–01), as amended, be, and hereby is, approved, and that Amendment No. 3 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–24951 Filed 10–1–03; 8:45 am]

BILLING CODE 8010–01–P

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## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3551]

### State of Delaware

As a result of the President's major disaster declaration on September 23, 2003, I find that New Castle County in the State of Delaware constitutes a disaster area due to damages caused by Tropical Storm Henri occurring on September 15, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 24, 2003 and for economic injury until the close of business on June 23, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Kent County in the State of Delaware; Cecil and Kent Counties in the State of Maryland; Gloucester and Salem Counties in the State of New Jersey; and Chester and Delaware Counties in the Commonwealth of Pennsylvania.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners with Credit Available Elsewhere | 5.125 |
| Homeowners without Credit Available Elsewhere | 2.562 |
| Businesses with Credit Available Elsewhere | 6.199 |
| Businesses and Non-Profit Organizations without Credit Available Elsewhere | 3.100 |
| Others (Including Non-Profit Organizations) with Credit Available Elsewhere | 5.500 |
| For Economic Injury: | |
| Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere | 3.100 |

The number assigned to this disaster for physical damage is 355108. For economic injury the number is 9X1300 for Delaware; 9X1400 for Maryland; 9X1500 for New Jersey; and 9X1600 for Pennsylvania.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 24, 2003.

**Cheri L. Cannon,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 03–25033 Filed 10–1–03; 8:45 am]

BILLING CODE 8025–01–P

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## SMALL BUSINESS ADMINISTRATION

### [Declaration of Economic Injury Disaster #9X06]

### State of Oregon

Deschutes and Jefferson Counties and the contiguous counties of Crook, Harney, Klamath, Lake, Lane, Linn, Marion, Wasco and Wheeler in the State of Oregon constitute an economic injury disaster area as a result of a wildfire known as the B & B Complex wildfire that began on August 19, 2003 and continues to burn. The wildfire caused the closure of Highway 20/126 for approximately two weeks and has caused several businesses to suffer substantial economic losses. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance for this disaster until the close of business on June 28, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rate for eligible small businesses and small agricultural cooperatives is 3.100 percent.

The number assigned for economic injury for this disaster is 9X0600.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: September 26, 2003.

**Hector V. Barreto,**

*Administrator.*

[FR Doc. 03–25031 Filed 10–1–03; 8:45 am]

BILLING CODE 8025–01–P

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## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3546]

### Commonwealth of Virginia (Amendment #2)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective September 22, 2003, the above numbered declaration is hereby amended to include the Independent Cities of Bedford, Buena Vista, Charlottesville, Fredericksburg, Harrisonburg, Lynchburg, Manassas, Manassas Park, and Winchester, and the counties of Albemarle, Amelia, Amherst, Appomattox, Bedford, Buckingham, Campbell, Charlotte, Clarke, Culpeper, Cumberland, Dinwiddie, Fauquier, Frederick, Greene, Halifax, Hanover, King George, King William, King and Queen, Louisa, Loudoun, Lunenburg, Madison, Nelson, New Kent, Nottoway, Pittsylvania, Powhatan, Prince Edward, Rappahannock, Rockingham, Shenandoah, and Warren in the Commonwealth of Virginia as disaster areas due to damages caused by Hurricane Isabel occurring on September 18, 2003 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Franklin, Henry, and Roanoke in the Commonwealth of Virginia; Berkeley, Hampshire, Hardy, Jefferson, and Morgan Counties in the State of West Virginia; Frederick and Washington Counties in the State of Maryland; and Caswell, Person, and Rockingham Counties in the State of North Carolina may be filed until the specified date at the previously designated location. All other counties contiguous to the above named independent cities and primary counties have been previously declared.

All other information remains the same, *i.e.,* the deadline for filing applications for physical damage is November 17, 2003, and for economic injury the deadline is June 18, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

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[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

Dated: September 25, 2003.

**Cheri L. Cannon,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 03–25032 Filed 10–1–03; 8:45 am]

**BILLING CODE 8025–01–P**

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## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #P017]**

### State of West Virginia

As a result of the President's major disaster declaration for Public Assistance on September 23, 2003 the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that Berkeley, Grant, Hampshire, Hardy, Jefferson, Mineral, Morgan, Pendleton, Randolph and Tucker Counties in the State of West Virginia constitute a disaster area due to damages caused by Hurricane Isabel occurring on September 18, 2003 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 24, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Non-Profit Organizations without Credit Available Elsewhere | 3.100 |
| Non-Profit Organizations with Credit Available Elsewhere | 5.500 |

The number assigned to this disaster for physical damage is P01708.

(Catalog of Federal Domestic Assistance Program Nos. 59008)

Dated: September 25, 2003.

**Cheri L. Cannon,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 03–25034 Filed 10–1–03; 8:45 am]

**BILLING CODE 8025–01–P**

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## DEPARTMENT OF STATE

**[Public Notice 4502]**

### Bureau of Political-Military Affairs; 30-Day Notice of Proposed Information Collection: Form DS–4028, Request for Approval of Technical Assistance Agreement Cover Letter; Form DS–4029, Request for Approval of Technical Assistance Agreement; OMB Control Number 1405–0148

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

*Type of Request:* Extension of a Currently Approved Collection.

*Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.

*Title of Information Collection:* Request for Approval of Technical Assistance Agreement Cover Letter and Request for Approval of Technical Assistance Agreement.

*Frequency:* On occasion.

*Form Number:* DS–4028 and DS–4029.

*Respondents:* Businesses.

*Estimated Number of Respondents:* 13.

*Average Hours Per Response:* 2 hours.

*Total Estimated Burden:* 2,000 hours, (Total Estimated Burden based on number of forms received per year.)

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

**FOR FURTHER INFORMATION CONTACT:** Copies of the proposed information collection and supporting documents may be obtained from Michael T. Dixon, Director, Office of Defense Trade Controls Management, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, SA–1, Room H1200, 2401 E Street, NW., Washington, DC 20522–0112; (202) 663–2700. Public comments and questions should be directed to State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on (202) 395–3897.

Dated: September 16, 2003.

**Gregory M. Suchan,**

*Deputy Assistant Secretary for Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.*

[FR Doc. 03–25022 Filed 10–1–03; 8:45 am]

**BILLING CODE 4710–25–P**

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## DEPARTMENT OF STATE

**[Public Notice 4501]**

### Redesignation of Foreign Terrorist Organizations

Pursuant to section 219 of the Immigration and Nationality Act, as amended, 8 U.S.C. 1189, the Secretary of State or the Deputy Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, hereby redesignates, effective October 2, 2003, the following organizations as foreign terrorist organizations:

**Abu Nidal Organization**

Also known as ANO
Also known as Black September
Also known as the Fatah Revolutionary Council
Also known as the Arab Revolutionary Council
Also known as the Arab Revolutionary Brigades
Also known as the Revolutionary Organization of Socialist Muslims

**Abu Sayyaf Group**

Also known as Al Harakat Al Islamiyya

**Armed Islamic Group**

Also known as GIA
Also known as Groupement Islamique Arme
Also known as Al-Jama'ah al-Islamiyah al-Musallah

**Aum Shinrikyo**

Also known as Aleph
Also known as Aum Supreme Truth
Also known as A.I.C. Sogo Kenkyusho
Also known as A.I.C. Comprehensive Research Institute

### Basque Fatherland and Liberty

Also known as Euzkadi Ta Askatasuna
Also known as ETA
Also known as Batasuna
Also known as Euskal Herritarrok
Also known as Herri Batasuna
Also known as Ekin
Also known as K.A.S.
Also known as Xaki
Also known as Jarrai-Haika-Segi
Also known as Askatasuna

### Gama'a al-Islamiyya

Also known as the Islamic Group
Also known as IG
Also known as al-Gama'at
Also known as Islamic Gama'at
Also known as Egyptian al-Gama'at al-Islamiyya
Also known as GI

### HAMAS

Also known as the Islamic Resistance Movement
Also known as Harakat al-Muqawama al-Islamiya
Also known as Students of Ayyash
Also known as Students of the Engineer
Also known as Yahya Ayyash Units
Also known as Izz Al-Din Al-Qassim Brigades
Also known as Izz Al-Din Al-Qassim Forces
Also known as Izz Al-Din Al-Qassim Battalions
Also known as Izz al-Din Al-Qassam Brigades
Also known as Izz al-Din Al-Qassam Forces
Also known as Izz al-Din Al-Qassam Battalions

### Harakat ul-Mujahideen

Also known as HUM
Also known as Harakat ul-Ansar
Also known as HUA
Also known as Jamiat ul-Ansar

### Hizballah

Also known as the Party of God
Also known as Islamic Jihad
Also known as Islamic Jihad Organization
Also known as Revolutionary Justice Organization
Also known as Organization of the Oppressed on Earth
Also known as Islamic Jihad for the Liberation of Palestine
Also known as Organization of Right Against Wrong
Also known as Ansar Allah
Also known as Followers of the Prophet Muhammed

### al-Jihad

Also known as Egyptian al-Jihad
Also known as New Jihad
Also known as Egyptian Islamic Jihad
Also known as Jihad Group

### Kahane Chai

Also known as Kach
Also known as Kahane Lives
Also known as the Kfar Tapuah Fund
Also known as The Judean Voice
Also known as The Judean Legion
Also known as The Way of the Torah
Also known as The Yeshiva of the Jewish Idea
Also known as the Repression of Traitors
Also known as Dikuy Bogdim
Also known as DOV
Also known as the State of Judea
Also known as the Committee for the Safety of the Roads
Also known as the Sword of David
Also known as Judea Police
Also known as Forefront of the Idea
Also known as The Qomemiyut Movement
Also known as KOACH
Also known as New Kach Movement
Also known as newkach.org
Also known as Kahane
Also known as Yeshivat HaRav Meir
Also known as the International Kahane Movement
Also known as Kahane.org
Also known as Kahane.net
Also known as Kahanetzadak.com
Also known as Kahane Tzadak
Also known as the Hatikva Jewish Identity Center
Also known as the Rabbi Meir David Kahane Memorial Fund
Also known as Friends of the Jewish Idea Yeshiva
Also known as Judean Congress
Also known as Jewish Legion
Also known as The Voice of Judea
Also known as No'ar Meir
Also known as Meir's Youth
Also known as American Friends of Yeshivat Rav Meir
Also known as American Friends of the United Yeshiva Movement
Also known as The Committee Against Racism and Discrimination (CARD)

### Kurdistan Workers' Party

Also known as Partiya Karkeran Kurdistan
Also known as the PKK
Also known as the Kurdistan Freedom and Democracy Congress
Also known as KADEK
Also known as Freedom and Democracy Congress of Kurdistan
Also known as the People's Defense Force
Also known as Halu Mesru Savunma Kuvveti (HSK)

### Liberation Tigers of Tamil Eelam

Also known as the LTTE
Also known as the Tamil Tigers
Also known as the Ellalan Force

### Mujahedin-e Khalq Organization

Also known as Mujahedin-e Khalq
Also known as MEK
Also known as MKO
Also known as People's Mujahedin Organization of Iran (including its U.S. representative office and all other offices worldwide)
Also known as PMOI
Also known as Organization of the People's Holy Warriors of Iran
Also known as Sazeman-e Mujahedin-e Khalq-e Iran
Also known as National Council of Resistance (including its U.S. representative office and all other offices worldwide)
Also known as NCR
Also known as National Council of Resistance of Iran (including its U.S. representative office and all other offices worldwide)
Also known as NCRI
Also known as the National Liberation Army of Iran
Also known as NLA
Also known as Muslim Iranian Student's Society

### National Liberation Army

Also known as the ELN
Also known as Ejercito de Liberacion Nacional

### Palestine Islamic Jihad—Shaqaqi Faction

Also known as PIJ-Shaqaqi Faction
Also known as PIJ-Shallah Faction
Also known as Palestinian Islamic Jihad
Also known as PIJ
Also known as Islamic Jihad of Palestine
Also known as Islamic Jihad in Palestine
Also known as Abu Ghunaym Squad of the Hizballah Bayt Al-Maqdis
Also known as the Al-Quds Squads
Also known as the Al-Quds Brigades
Also known as Saraya Al-Quds
Also known as Al-Awdah Brigades

### Palestine Liberation Front—Abu Abbas Faction

Also known as the Palestine Liberation Front
Also known as the PLF
Also known as PLF–Abu Abbas

### Popular Front for the Liberation of Palestine

Also known as the PFLP
Also known as the Red Eagles
Also known as the Red Eagle Group
Also known as the Red Eagle Gang
Also known as the Halhul Gang
Also known as the Halhul Squad
Also known as Palestinian Popular Resistance Forces

- Also known as PPRF
- Also known as Martyr Abu-Ali Mustafa Battalion

**Popular Front for the Liberation of Palestine—General Command**

- Also known as PFLP–GC

**al-Qa'ida**

- Also known as al Qaeda
- Also known as "the Base"
- Also known as the Islamic Army
- Also known as the World Islamic Front for Jihad Against Jews and Crusaders
- Also known as the Islamic Army for the Liberation of the Holy Places
- Also known as the Usama Bin Laden Network
- Also known as the Usama Bin Laden Organization
- Also known as Islamic Salvation Foundation
- Also known as The Group for the Preservation of the Holy Sites
- Also known as Egyptian Islamic Jihad
- Also known as al-Jihad
- Also known as the Jihad Group
- Also known as Egyptian al-Jihad
- Also known as New Jihad

**Revolutionary Armed Forces of Colombia**

- Also known as FARC
- Also known as Fuerzas Armadas Revolucionarias de Colombia

**Revolutionary Nuclei**

- Also known as Epanastatiki Pirines
- Also known as Revolutionary People's Struggle
- Also known as Epanastatikos Laikos Agonas
- Also known as ELA
- Also known as Revolutionary Popular Struggle
- Also known as Popular Revolutionary Struggle
- Also known as June 78
- Also known as Organization of Revolutionary Internationalist Solidarity
- Also known as Revolutionary Cells
- Also known as Liberation Struggle

**Revolutionary Organization 17 November**

- Also known as 17 November
- Also known as Epanastatiki Organosi 17 Noemvri

**Revolutionary People's Liberation Party/Front**

- Also known as the Devrimci Halk Kurtulus Partisi-Cephesi
- Also known as the DHKP/C
- Also known as Devrimci Sol
- Also known as Revolutionary Left
- Also known as Dev Sol
- Also known as Dev Sol Silahli Devrimci Birlikleri
- Also known as Dev Sol SDB
- Also known as Dev Sol Armed Revolutionary Units

**Shining Path**

- Also known in Spanish as Sendero Luminoso
- Also known as SL
- Also known as Partido Comunista del Peru en el Sendero Luminoso de Jose Carlos Mariategui (Communist Party of Peru on the Shining Path of Jose Carlos Mariategui)
- Also known as Partido Comunista del Peru (Communist Party of Peru)
- Also known as PCP
- Also known as Socorro Popular del Peru (People's Aid of Peru)
- Also known as SPP
- Also known as Ejercito Guerrillero Popular (People's Guerrilla Army)
- Also known as EGP
- Also known as Ejercito Popular de Liberacion (People's Liberation Army)
- Also known as the EPL

Dated: September 26, 2003.

**Cofer Black,**

*Ambassador, Coordinator for Counterterrorism, Department of State.*

[FR Doc. 03–25017 Filed 10–1–03; 5 pm]

BILLING CODE 4710–10–P

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## DEPARTMENT OF STATE

### [Delegation of Authority 262]

### Office of the Deputy Secretary; Redelegation of Authorities by the Deputy Secretary of State, to the Administrator of the United States Agency for International Development

By the authority vested in me as Deputy Secretary of State, including the authority delegated to me by the Secretary of State in Delegation of Authority No. 245 of April 23, 2001, and by Section 1 of the State Department Basic Authorities Act (22 U.S.C. 2651A), I hereby delegate to the Administrator of the U.S Agency for International Development, to the extent authorized by law, the functions conferred upon the Secretary of State by the President relating to loan guarantees to Israel under chapter 5 of title I of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108–11).

Notwithstanding this delegation of authority, the Secretary of State or Deputy Secretary of State may exercise any function delegated hereby. The Administrator may, to the extent consistent with law, redelegate such functions and authorize their successive redelegation.

This memorandum shall be published in the **Federal Register**.

Dated: September 13, 2003.

**Richard L. Armitage,**

*Deputy Secretary of State, Department of State.*

[FR Doc. 03–25021 Filed 10–1–03; 8:45 am]

BILLING CODE 4710–10–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Montgomery and Grimes Counties, TX

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed transportation project in Montgomery and Grimes Counties, Texas.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Mack, P.E., Federal Highway Administration, Texas Division, 826 Federal Building, 300 East 8th Street, Austin, Texas 78701, Telephone (512) 536–5960.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Texas Department of Transportation (TxDOT) will prepare an environmental impact statement (EIS) for improvements in the SH 249 corridor within Montgomery and Grimes Counties, Texas. The project study area is approximately 15 miles in length from FM 149 in Montgomery County to FM 1774 in Grimes County. Cities within the study area include Pinehurst, Magnolia, and Todd Mission.

A Major Investment Study (MIS) for the project was completed in 2002. The MIS evaluated modal, configuration, and route corridor alternatives within the overall study area and recommended an alternative which was the most feasible modal, configuration, and route corridor that met the regions transportation needs, while minimizing impacts to the surrounding environment. The most feasible corridor alternative studied in the MIS was selected based on the detailed evaluation of the viable alternatives, as well as public input. This alternative encompasses two (2) general-purpose lanes in each direction, including auxiliary lanes between on-ramps and off-ramps where appropriate. The EIS will study in detail the preferred route corridor that was selected in the MIS and recommend a preferred alternative alignment within this corridor. The EIS is authorized pursuant to the Texas Transportation Commission Minute

Order No. 104908 issued January 26, 1995.

A public scoping meeting will be held in the fall of 2003. The purpose of the public scoping meeting is to request comments and identify issues that will be considered during the evaluation of alignment alternatives and preparation of the EIS. All interested citizens are encouraged to attend these meetings. Large-scale maps of the project area will be displayed at the meeting. This will be the first in a series of meetings to solicit public comments on the proposed action. In addition, a public hearing will be held.

The EIS will evaluate potential impacts from construction and operation of the proposed roadway including, but not limited to, the following: transportation impacts (construction detours, construction traffic, mobility improvement and evacuation improvement), air, and noise impacts from construction equipment and operation of the facilities, water quality impacts from construction area and roadway storm water runoff, impacts to water of the United States including wetlands from right-of-way encroachment, impacts to historic and archaeological resources, impacts to floodplains, and impacts and/or potential displacements to residents and businesses.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and Local agencies, and private organizations and citizens who have previously expressed or are known to have interest in this proposal. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address above.

(Catalog of Federal Domestic Assistance Program Number 20.205 Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding governmental consultation on Federal programs and activities apply to this program.)

**John R. Mack,**

*District Engineer.*

[FR Doc. 03–25008 Filed 10–1–03; 8:45 am]

BILLING CODE 4910–22–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2001–11060]**

### Availability of an Environmental Assessment for the Certification of Safety Auditors, Safety Investigators, and Safety Inspectors Interim Final Rule

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Federal Motor Carrier Safety Administration (FMCSA) announces the availability of the Environmental Assessment for the Certification of Safety Auditors, Safety Investigators, and Safety Inspectors interim final rule (67 FR 12776, Mar. 19, 2002) (commonly referred to as the "Certification" rule). This announcement is pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended; the Council on Environmental Quality Regulations implementing NEPA (40 CFR parts 1500–1508); and U.S. Department of Transportation (DOT) Order 5610.1C, *Procedures for Considering Environmental Impacts,* dated September 18, 1979, as amended July 13, 1982, and July 30, 1985. The Certification rule was one of three interim final rules set aside by the U.S. Court of Appeals for the Ninth Circuit on January 16, 2003. The court concluded that FMCSA failed to comply with statutory environmental impact analysis requirements in developing these rules. Accordingly, FMCSA has analyzed the potential environmental impacts from implementation of the Certification rule. The agency has concluded that implementing the rule's requirements would have no adverse environmental consequences and in fact would be likely to have a positive, if minimal, impact on the affected environment.

**DATES:** Submit comments on or before November 3, 2003.

**ADDRESSES:** You may submit comments identified by DOT DMS Docket Number FMCSA–2001–11060 by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW, Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading for further information.

*Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* and/or Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mary Pat Woodman, Chief of the Enforcement and Compliance Division (MC–ECE), (202) 366–9699, FMCSA, 400 Seventh Street, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

### Background

Sec. 210 of the Motor Carrier Safety Improvement Act (MCSIA) of 1999 (Pub. L. 106–159, 113 Stat. 1748) directs that all motor carriers (both foreign and domestic) granted new operating authority must undergo a safety audit within 18 months of commencing operations in interstate commerce in the United States [49 U.S.C. 31144(b)]. Sec. 211 of the MCSIA requires that any safety audit conducted after December 31, 2002, be performed by a certified motor carrier safety auditor [49 U.S.C. 31148(b)]. The legislation also gives the Secretary of Transportation (Secretary) authority to decertify a safety auditor and extend the December 31, 2002, compliance deadline [49 U.S.C. 31148 (e) and (c)]. On July 17, 2003, the Secretary notified the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure that he had extended the compliance deadline to December 31, 2003. FMCSA notified the public of this extension (68 FR 44378, Jul. 28, 2003).

As required by Sec. 211, the agency published an interim final rule, *Certification of Safety Auditors, Safety Investigators, and Safety Inspectors,* establishing procedures to certify and maintain certification for safety auditors, inspectors, and investigators (67 FR 12776, Mar. 19, 2002). This rule amends 49 CFR parts 350 and 385 to provide for three types of certification: (1) Certification to conduct safety audits, (2) certification to conduct compliance reviews, and (3) certification to conduct roadside vehicle and driver inspections. FMCSA determined the Certification rule was not subject to environmental analysis due to a categorical exclusion from statutory requirements. The rule took effect on July 17, 2002.

The 2002 DOT Appropriations Act (Pub. L. 107–87) stipulated that FMCSA could not begin processing applications to allow Mexico-domiciled motor carriers to operate in the United States beyond the border commercial zones in accordance with the North American Free Trade Agreement (NAFTA) until FMCSA published, among other things, a number of regulations including the Certification rule (a condition again imposed in the 2003 Appropriations Act). Another precondition for processing such applications was publication of a rule implementing Sec. 210 of the MCSIA. An interim final rule, *New Entrant Safety Assurance Process* (New Entrant rule) establishing procedures to heighten the agency's safety scrutiny of new entrant motor carriers, including standards and procedures regarding the safety audits mandated by Sec. 210, was published on May 13, 2002 (67 FR 31978, May 13, 2002) and became effective on January 1, 2003.

On January 16, 2003, the U.S. Court of Appeals for the Ninth Circuit set aside the Certification rule and two other FMCSA rules that established application and safety monitoring procedures for Mexico-domiciled motor carriers seeking authority to operate in the United States. The court concluded that FMCSA failed to comply with statutory environmental impact analysis requirements in developing these regulations. *Public Citizen* v. *DOT*, 316 F.3d 1002 (9th Cir. 2003). Specifically with respect to the Certification rule, the court determined that because the rule did not fall within any of the existing DOT categorical exclusions, FMCSA acted arbitrarily and capriciously by failing to at least conduct an Environmental Assessment (EA) of the rule. DOT's petition for rehearing was denied on April 10, 2003. Consequently, the court's mandate setting aside the three rules took effect on April 18, 2003. On September 8, 2003, the United States sought Supreme Court review of the Ninth Circuit decision as to the application and safety monitoring rules, but not the Certification rule.

On August 26, 2003, FMCSA issued a notice to advise the public that a Programmatic Environmental Impact Statement (PEIS) will be prepared pursuant to NEPA and a General Conformity Evaluation will be made pursuant to the Clean Air Act before promulgating the regulations establishing the application and safety monitoring procedures for Mexico-domiciled carriers (68 FR 51322). The Notice stated that FMCSA was preparing an EA for the Certification rule and that a supplemental Notice of Intent would be issued if, based on the EA, FMCSA determined that preparation of a PEIS is required.

## Summary of Environmental Assessment

FMCSA limited its analysis to those environmental resources—land use, traffic and congestion, air quality, noise, and public safety and health—that could be affected by implementation of the safety auditor certification procedures. The certification process preserves and formalizes training requirements and practices that have been in effect within the DOT system for more than 20 years. Implementing the proposed procedures would not require FMCSA to engage in any new activities. Although the New Entrant rule created a new kind of review—the "safety audit" of new entrant carriers—the training required for safety auditor certification is merely a simplified, less comprehensive version of that required to conduct compliance reviews and roadside vehicle and driver inspections.

For each type of certification, initial and refresher training would take place at existing classroom facilities. Audits, inspections and compliance reviews necessary to obtain and maintain certification would be conducted at carrier facilities, weigh stations and other inspection facilities, or by use of existing mobile equipment. No additional facilities or roadways would need to be built. Further, as the certification program would not, in and of itself, increase the number of inspections performed, commercial vehicular traffic congestion and associated air emissions would not increase. Because the Certification rule would not affect construction activity or commercial vehicular traffic, it would not have an adverse impact on air quality and noise levels or increase existing land use.

Generally, an action that involves operational changes or construction of facilities would have potential impacts on a range of environmental characteristics, including visual, cultural, and aesthetic resources, geology and soils, water resources and hydrology, biological and ecological resources, energy consumption, socioeconomics, and environmental justice. However, because the employee certification process would not increase commercial vehicular traffic, alter established safety oversight activities, or require construction of new facilities, it would have no measurable impact in these conventional analysis areas.

As required by DOT Order 5610.1C and the Council on Environmental Quality's regulations implementing NEPA, FMCSA also analyzed the potential environmental impact of failure to implement the proposed certification procedures (the No Action Alternative). Under this scenario, the agency would withdraw the Certification rule and make no changes to the safety fitness regulations at 49 CFR part 385. In addition, we considered two alternative actions: (1) restricting the grandfather period for the certification program to those safety employees who were fully trained before December 9, 1999, and (2) codifying the training requirements. We judged all three alternatives to be inadequate.

Under the No Action Alternative, the inability to hire certified safety employees could diminish the government's ability to identify unsafe motor carriers, vehicles, and drivers. This would adversely impact public safety and be likely to hinder FMCSA's achievement of continued reductions in commercial vehicle-related accidents and fatalities. Limiting the grandfather period would impose significant costs and burdens on FMCSA as well as on State and local governments, while producing little if any safety benefit. Codification of the training requirements would make the certification program less flexible by hampering the agency's ability to quickly modify course content in response to regulatory or circumstantial changes.

The certification alternative is intended to promote more accurate compliance reviews, safety audits, and inspections by ensuring that these activities are conducted by highly trained personnel certified by FMCSA or by State or local governments. To the extent that implementation of the certification process increases the government's ability to identify potentially unsafe carriers and vehicles and remove them from the Nation's roads, it would have positive, if minimal, effects on air quality, noise levels, and public safety. Accordingly, FMCSA anticipates that implementation of the Certification rule would produce a net positive impact on the quality of the human environment. The agency's full Environmental Assessment is available in this docket.

As noted in the Background section of this document, the 2002 and 2003 DOT Appropriations Acts made issuance of the Certification rule a precondition to FMCSA's expenditure of funds on the processing of Mexico-domiciled motor carrier applications for authority to operate beyond the border commercial zones. Nevertheless, the EA does not attempt to analyze the prospective environmental impacts of Mexico-domiciled carriers operating in the United States. This is because the environmental analysis of such operations, in the form of a PEIS and General Conformity Evaluation required by the Ninth Circuit decision, is already being undertaken with respect to two other rules discussed above (establishing application and safety monitoring procedures for Mexico-domiciled carriers) that are preconditions to the processing of applications of Mexican carriers for beyond-the-border-commercial-zones operating authority. Unless the Ninth Circuit decision is reversed or the relevant terms of the DOT Appropriations Acts are not extended, FMCSA cannot process applications of Mexico-domiciled motor carriers seeking authority to operate beyond the border commercial zones until the PEIS and General Conformity Evaluation have been completed and considered by FMCSA. Thus, no operations of Mexican-domiciled carriers could take place beyond the border commercial zones as a result of issuance of the Certification rule.

Additionally, given the nature of the Certification rule, the rule standing alone would have no impact on Mexican truck and bus operations beyond the border commercial zones. For example, implementation of the rule would not affect either the number of Mexico-domiciled vehicles entering the United States or the number and duration of safety inspections of these vehicles. Indeed, unlike the application and safety monitoring rules, which apply solely to Mexico-domiciled motor carriers, the only connection between the Certification rule and the operation of Mexican carriers beyond the border commercial zones is the contingency Congress created when it made issuance of the rule one of the preconditions to the processing of these carriers' applications for operating authority. For these reasons, FMCSA believes that the scope of the Environmental Assessment for the Certification rule is appropriate.

Issued on: September 26, 2003.

**John H. Hill,**

*Assistant Administrator/Chief Safety Officer.*

[FR Doc. 03–24979 Filed 10–1–03; 8:45 am]

BILLING CODE 4910–EX–P

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket Number MARAD 2003 16229]

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel BON ALIZE.

**SUMMARY:** As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16229 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**DATES:** Submit comments on or before November 3, 2003.

**ADDRESSES:** Comments should refer to docket number MARAD–2003 16229. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel BON ALIZE is:

*Intended Use:* "Sailing charter, private sailing lessons, passage making, and funeral services scattering ashes."

*Geographic Region:* "California and Hawaii."

Dated: September 29, 2003.

By order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 03–24997 Filed 10–1–03; 8:45 am]

BILLING CODE 4910–81–P

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket Number MARAD 16230]

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel GATO VERDE.

**SUMMARY:** As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is

listed below. The complete application is given in DOT docket 2003–16230 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**DATES:** Submit comments on or before November 3, 2003.

**ADDRESSES:** Comments should refer to docket number MARAD–2003 16230. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel GATO VERDE is:

*Intended Use:* "It is intended for use as an uninspected vessel used for sail training, outdoor education, and charters. Day trips and overnight expeditions."

*Geographic Region:* "Washington State."

Dated: September 29, 2003.

By order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 03–24995 Filed 10–1–03; 8:45 am]

**BILLING CODE 4910–81–P**

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket Number 2003 16232]**

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel LADYHAWKE.

**SUMMARY:** As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16232 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**DATES:** Submit comments on or before November 3, 2003.

**ADDRESSES:** Comments should refer to docket number MARAD–2003 16232. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel SOWELU is:

*Intended Use:* "Excursion tours."

*Geographic Region:* "Mississippi, Alabama, Florida."

Dated: September 25, 2003.

By order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 03–24994 Filed 10–1–03; 8:45 am]

**BILLING CODE 4910–81–P**

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket Number MARAD 2003 16228]**

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PRINCESS MARIA.

**SUMMARY:** As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16228 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**DATES:** Submit comments on or before November 3, 2003.

**ADDRESSES:** Comments should refer to docket number MARAD–2003 16228. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel PRINCESS MARIA is:

*Intended Use:* "Pleasure charters".

*Geographic Region:* "Gulf Coast of the USA".

Dated: September 29, 2003.

By order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 03–24993 Filed 10–1–03; 8:45 am]

BILLING CODE 4910–81–P

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket Number 2003 16231]**

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SEASONS.

**SUMMARY:** As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16231 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**DATES:** Submit comments on or before November 3, 2003.

**ADDRESSES:** Comments should refer to docket number MARAD–2003 16321. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel SEASONS is:

*Intended Use:* "Charter."

*Geographic Region:* "East Coast of the United States and the U.S. Virgin Islands."

Dated: September 25, 2003.

By order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 03–24992 Filed 10–1–03; 8:45 am]

BILLING CODE 4910–81–P

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket Number 2003 16233]**

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SILVER SEA.

**SUMMARY:** As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16233 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**DATES:** Submit comments on or before November 3, 2003.

**ADDRESSES:** Comments should refer to docket number MARAD–2003 16233. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel SILVER SEA is:

*Intended Use:* "Charter—Recreational fishing, Dinner Cruises."

*Geographic Region:* "Local, State & Federal waters within a 100 mile radius of Cape Cod, Massachusetts."

Dated: September 25, 2003.

By order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 03–24996 Filed 10–1–03; 8:45 am]

BILLING CODE 4910–81–P

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## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### Office of Hazardous Materials Safety; Notice of Applications for Exemptions

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of Applicants for Exemptions.

**SUMMARY:** In accordance with the procedures governing the applications for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before November 3, 2003.

**ADDRESS COMMENTS TO:** Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications (*See* Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590 or at *http://dms.dot.gov.*

This notice of receipt of application for new exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on September 26, 2003.

**R. Ryan Posten,**

*Exemptions Program Officer, Office of Hazardous Materials, Exemptions and Approvals.*

NEW EXEMPTIONS

| Application number | Docket number | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 13289–N | | TITEQ Corporation<br>Palmdale, CA | 49 CFR 173.302(a)(3), 175.3;178.65. | To authorize the manufacture, marking, sale and use of a limited life, non-refillable non-DOT specification steel cylinder similar to DOT Specification 39 for use in transporting certain Division 2.2 hazardous materials. (modes 1, 2, 4) |
| 13290–N | | Teris, L.L.C.<br>Camarillo, CA | 49 CFR 173.188 | To authorize the transportation in commerce of waste white phosphorus, Division 4.2, in 30 gallon 1H2 plastic drums further packaged in 1A2 steel 55 gallon drums banded together and palletized. (mode 1) |
| 13292–N | | Seaquist Perfect Dispensing<br>Cary, IL | 49 CFR 173.306(h) | To authorize the manufacture, mark, sale and use of plastic containers of not more than 20 fluid ounces pressurized with a non-flammable, non-toxic gas to a maximum pressure of 150 psi for transportation of consumer commodities. (modes 1, 2) |
| 13293–N | | Penox Technologies, LLC<br>Pitts, PA | 49 CFR 173.316 | To authorize the transportation in commerce of a non-DOT specification cylinder equipped with an alternative heat transfer design pressure for use in transporting oxygen, refrigerated liquid, Division 2.2. (mode 1) |
| 13294–N | | BOC Edwards<br>San Marcos, CA | 49 CFR 173.211, 173.242 | To authorize the transportation in commerce of electrolyte cells to be shipped in bulk in alternative packaging. (mode 1) |
| 13295–N | | Taylor-Wharton<br>Harrisburg, PA | 49 CFR 172.203(a), 172.203(a), 172.301, 173.302. | To authorize the manufacture, marking, sale and use of non-DOT specification seamless steel cylinders for use in transporting certain compressed gases. (modes 1, 2, 3, 4) |

[FR Doc. 03–24966 Filed 10–1–03; 8:45 am]

BILLING CODE 4910–60–M

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## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of applications for modification of exemptions.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnote to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

**DATES:** Comments must be received on or before (15 days after publication).

**ADDRESSES:** Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC or at *http://dms.dot.gov*.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on September 26, 2003.

**R. Ryan Posten,**

*Exemptions Program Officer, Office of Hazardous Materials Exemptions and Approvals.*

| Application No. | Docket No. | Applicant | Modification of exemption |
|---|---|---|---|
| 9266–M |  | Eurotainer SA Paris, FR (*See* Footnote 1) | 9266 |
| 11494–M |  | Atlantic Research Corp. (Auto. Products Group) Knoxville, TN (*See Footnote 2).* | 11494 |
| 11947–M | RSPA–97–2901 | Patts Fabrication and Services Odessa, TX (*See* Footnote 3) | 11947 |
| 12122–M | RSPA–98–4313 | Atlantic Research Corp. (Auto. Products Group) Knoxville, TN (*See* Footnote 4). | 12122 |
| 12468–M | RSPA–00–7421 | Connecticut Yankee Atomic Power Company East Hampton, CT (*See* Footnote 5). | 12468 |
| 13282–M | RSPA–03–16054 | ConocoPhillips Alaska, Inc. Anchorage, AK (*See* Footnote 6) | 13282 |

(*1*) To modify the exemption to authorize the transportation of an additional Division 2.2 material in non-DOT specification IMO Type 5 portable tanks.

(*2*) To modify the exemption to authorize passenger-carrying aircraft as an additional mode of transportation for Class 9 and Division 2.2 materials in non-DOT specification cylinders.

(*3*) To modify the exemption to authorize the transportation of a Class 8 material in non-DOT specification containers.

(*4*) To modify the exemption to authorize passenger-carrying aircraft as an additional mode of transportation for Division 2.1, 2.2 and Class 9 materials in non-DOT specification cylinders.

(*5*) To modify the exemption to authorize a change to the configuration, project management, transport-related responsibilities and shipment date of the reactor pressure vessel containing a Class 7 material within a Reactor Vessel Transport System.

(*6*) To reissue the exemption originally issued on an emergency basis for the transportation of a Class 8 material in a DOT Specification 1A1 steel drum which exceeds the quantity limitation when shipped by air.

[FR Doc. 03–24967 Filed 10–1–03; 8:45 am]

BILLING CODE 4910–60–M

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## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### International Standards on the Transport of Dangerous Goods; Public Meetings

**AGENCY:** Research and Special Programs Administration (RSPA), Department of Transportation.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice is to advise interested persons that RSPA will conduct a public meeting in preparation for the nineteenth meeting of the International Civil Aviation Organization's Dangerous Goods Panel (ICAO DGP) to be held October 27–November 7, 2003 in Montreal, Canada.

**DATES:** October 15, 10 a.m.–12:30 p.m., Room 8440.

**ADDRESSES:** The meeting will be held at DOT Headquarters, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Bob Richard, International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting will be to prepare and discuss draft positions for the nineteenth meeting of the Dangerous Goods Panel. Topics to be covered during the public meeting will include: (1) Amendments for the 2005–2006 edition of the ICAO Technical Instructions; (2) Harmonization of the ICAO TI with the 13th revised edition of the UN Model Regulations on the Transport of Dangerous Goods; (3) Requirements for infectious substances; (4) Training; (5) Dangerous goods security requirements; (6) revision of the packing instructions; (7) the air eligibility marking requirement; and (8) Dangerous goods carried by passengers and crew members.

The public is invited to attend without prior notification.

Issued in Washington, DC, on September 26, 2003.

**Robert A. McGuire,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 03–24964 Filed 9–1–03; 8:45 am]

**BILLING CODE 4910–60–M**

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## DEPARTMENT OF THE TREASURY

### Community Development Financial Institutions Fund: Open Meeting of the Community Development Advisory Board

**AGENCY:** Community Development Financial Institutions Fund, Department of the Treasury.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces the next meeting of the Community Development Advisory Board, which provides advice to the Director of the Community Development Financial Institutions Fund.

**DATES:** The next meeting of the Community Development Advisory Board will be held on Thursday, October 23, 2003, beginning at 10 a.m.

**ADDRESSES:** The Community Development Advisory Board meeting will be held at The American Institute of Architects Boardroom, located at 1735 New York Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** The Office of External Affairs of the Community Development Financial Institutions Fund (the "Fund"), U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, (202) 622–9046 (this is not a toll free number). Other information regarding the Fund and its programs may be obtained through the Fund's Web site at *http://www.cdfifund.gov.*

**SUPPLEMENTARY INFORMATION:** Section 104(d) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4703(d)) established the Community Development Advisory Board (the "Advisory Board"). The charter for the Advisory Board has been filed in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and with the approval of the Secretary of the Treasury.

The function of the Advisory Board is to advise the Director of the Fund (who has been delegated the authority to administer the Fund) on the policies regarding the activities of the Fund. The Fund is a wholly owned corporation within the Department of the Treasury. The Advisory Board shall not advise the Fund on the granting or denial of any particular application for monetary or non-monetary awards. The Advisory Board shall meet at least annually.

It has been determined that this document is not a major rule as defined in Executive Order 12291 and therefore regulatory impact analysis is not required. In addition, this document does not constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

The next meeting of the Advisory Board, all of which will be open to the public, will be held at The American Institute of Architects Boardroom, located at 1735 New York Avenue, NW., Washington, DC, on Thursday, October 23, 2003, beginning at 10 a.m. The room will accommodate 50 members of the public. Seats are available on a first-come, first-served basis. Participation in the discussions at the meeting will be limited to Advisory Board members and Department of the Treasury staff. Anyone who would like to have the Advisory Board consider a written statement must submit it to the Fund, at the address of the Fund specified above in the **FOR FURTHER INFORMATION CONTACT** section, by 4 p.m., Monday, October 13, 2003.

The meeting will include a report from the Director on the activities of the CDFI Fund since the last Advisory Board meeting, including programmatic, fiscal and legislative initiatives for the years 2003 and 2004.

**Authority:** 12 U.S.C. 4703; Chapter X, Pub. L. 104–19, 109 Stat. 237.

**Tony T. Brown,**

*Director, Community Development Financial Institutions Fund.*

[FR Doc. 03–25007 Filed 10–1–03; 8:45 am]

**BILLING CODE 4810–70–M**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8816

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8816, Special Loss Discount Account and Special Estimated Tax Payments for Insurance Companies.

**DATES:** Written comments should be received on or before December 1, 2003, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Special Loss Discount Account and Special Estimated Tax Payments for Insurance Companies.

*OMB Number:* 1545–1130.

*Form Number:* 8816.

*Abstract:* Form 8816 is used by insurance companies claiming an additional deduction under Internal Revenue Code section 847 to reconcile estimated tax payments and to determine their tax benefit associated with the deduction. The information is needed by the IRS to determine that the proper additional deduction was claimed and to insure the proper amount of special estimated tax was computed and deposited.

*Current Actions:* The following changes are being made to Form 8816: The line items in Part I are being separated into two parts. Part I will be Unpaid Losses—Undiscounted and Discounted, and Part II will be Special Loss Discount Account. Part III will be Special Estimated Tax Payments (previously Part II). The old Part III, Tax Benefit Associated with the Additional Deduction under Section 847, is being eliminated because it is no longer needed. Also, a new line is being added to Part III to request information on prior section 847 payments transferred to the current year. This will enable both taxpayers and the Service Centers to properly identify payments that are transferred between accident years.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 3,000.

*Estimated Time Per Respondent:* 6 hr., 24 minutes.

*Estimated Total Annual Burden Hours:* 19,200

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 23, 2003.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 03–25028 Filed 10–1–03; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Notice 2003–67

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2003–67, Notice on Information Reporting for Payments in Lieu of Dividends.

**DATES:** Written comments should be received on or before December 1, 2003, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of notice should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Notice on Information Reporting for Payments in Lieu of Dividends.

*OMB Number:* 1545–1858.

*Notice Number:* Notice 2003–67.

*Abstract:* Notice 2003–67 provides guidance to brokers and individuals regarding provisions in the Jobs and Growth Tax Relief Reconciliation Act of 2003. The notice provides rules for brokers to use in determining loanable shares and rules for allocating transferred shares for purposes of determining payments in lieu of dividend reportable to individuals. These rules require brokers to comply with certain recordkeeping requirements to use the favorable rules for determining loanable shares and for allocating transferred shares that may give rise to payments in lieu of dividends.

*Current Actions:* There are no changes being made to the notice at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 600.

*Estimated Average Time Per Respondent:* 100 hours.

*Estimated Total Annual Burden Hours:* 60,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 26, 2003.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 03–25029 Filed 10–1–03; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8818

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8818, Optional Form To Record Redemption of Series EE and I U.S. Savings Bonds Issued After 1989.

**DATES:** Written comments should be received on or before December 1, 2003, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Optional Form To Record Redemption of Series EE and I U.S. Savings Bonds Issued After 1989.

*OMB Number:* 1545–1151.

*Form Number:* 8818.

*Abstract:* Under Internal Revenue Code section 135, if an individual redeems U.S. savings bonds issued after 1989 and pays qualified higher education expenses during the year, the interest on the bonds is excludable from income. Form 8818 can be used to keep a record of the bonds cashed so that the taxpayer can claim the proper interest exclusion.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 50,000.

*Estimated Time Per Respondent:* 38 minutes.

*Estimated Total Annual Burden Hours:* 32,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 24, 2003.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 03–25030 Filed 10–1–03; 8:45 am]

BILLING CODE 4830-01-P

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## DEPARTMENT OF VETERANS AFFAIRS

### Research and Development Office; Government Owned Invention Available for Licensing

**AGENCY:** Research and Development Office, Veterans Affairs.

**ACTION:** Notice of Government owned invention available for licensing.

**SUMMARY:** The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

**FOR FURTHER INFORMATION CONTACT:** Technical and licensing information on the invention may be obtained by writing to: Robert W. Potts, Department of Veterans Affairs, Director Technology Transfer Program, Research and Development Office, 810 Vermont Avenue, NW., Washington, DC 20420; fax: 202–254–0473; e-mail at *bob.potts@hq.med.va.gov*. Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** The invention available for licensing is:

US Patent Application No. 08/956,518; Australian Patent No. 752331: "Alpha–7 Nicotinic Receptor"

Dated: September 24, 2003.

**Anthony J. Principi,**

*Secretary, Department of Veterans Affairs.*

[FR Doc. 03–24957 Filed 10–1–03; 8:45 am]

BILLING CODE 8320-01-P

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## DEPARTMENT OF VETERANS AFFAIRS

### Professional Certification and Licensure Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Professional Certification and Licensure Advisory Committee has scheduled a meeting on Wednesday, October 15, 2003, at the Department of Veterans Affairs, Veterans Benefits Administration Education Conference Room 601V, 1800 G Street, NW., Washington, DC, from 8:30 a.m. to 4 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the requirements of organizations or entities offering licensing and certification tests to individuals for which payment for such tests may be made under chapters 30, 32, 34, or 35 of Title 38, United States Code.

The meeting will begin with opening remarks and introduction of new members by Ms. Sandra Winborne, Committee Chair. During the morning session, the Committee will receive a report on outreach activities, and a presentation on licensure and certification usage. The afternoon session will include a progress report on improvements to the Licensing and Certification Approval System (LACAS), and discussion of any old or new business.

Interested persons may file written statements to the committee before the meeting, or within 10 days after the meeting, with Mr. Giles Larrabee, Designated Federal Official, Department of Veterans Affairs, Veterans Benefits Administration (225B), 810 Vermont Avenue, NW., Washington, DC 20420. Oral statements from the public will be heard at 1 p.m. Any member of the public wishing to attend the meeting should contact Mr. Giles Larrabee or Mr. Michael Yunker at (202) 273–7187.

Dated: September 17, 2003.

By Direction of the Secretary.

**E. Philip Riggin,**

*Committee Management Officer.*

[FR Doc. 03–24923 Filed 9–30–03; 8:45 am]

BILLING CODE 8320-01-M

## DEPARTMENT OF VETERANS AFFAIRS

### Executive Committee to the Voluntary Service National Advisory Committee, Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Executive Committee to the Department of Veterans Affairs Voluntary Service (VAVS) National Advisory Committee (NAC) will meet October 20–21, 2003, at the Rosen Plaza Hotel, Orlando, Florida. The meetings are scheduled from 8:30 a.m. until 4:30 p.m. on October 20, 2003, and from 8:30 a.m. until 12 noon on October 21, 2003. The meeting is open to the public.

The NAC consists of sixty-two national organizations and advises the Secretary, through the Under Secretary for Health, on the coordination and promotion of volunteer activities within VA health care facilities. The Executive Committee consists of nineteen representatives from the NAC member organizations and acts as the NAC governing body in the interim period between NAC Annual Meetings.

Business topics for the October 20 morning session include: review goals and objectives, VHA update and a VAVS update of the Voluntary Service program's progress since the 2003 NAC Annual Meeting, Parke Board update, review of the 2003 annual meeting evaluations and the VAVS Partner's Treasurer report. The October 20 afternoon business session topics include: the 58th annual meeting plans, workshop and plenary sessions/suggestions. The October 21 morning business session topics include: 2006 NAC annual meeting planning, membership report review, recommendations, subcommittee reports, standard operating procedure revisions, new business and Executive Committee appointments.

No time will be allocated at this meeting for receiving oral presentations from the public. However, interested persons may either attend or file statements with the Committee. Written statements may be filed either before the meeting or within 10 days after the meeting and addressed to: Ms. Laura Balun, Administrative Officer, Voluntary Service Office (10C2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Individuals interested in attending are encouraged to contact Ms. Balun at (202) 273–8952.

Dated: September 25, 2003.

By Direction of the Secretary.

**E. Philip Riggin,**

*Committee Management Officer.*

[FR Doc. 03–24924 Filed 10–1–03; 8:45 am]

BILLING CODE 8320–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

# Federal Register

**Thursday,**
**October 2, 2003**

## Part II

## Department of Veterans Affairs

**38 CFR Part 17**
**Reasonable Charges for Medical Care or Services; 2003 Methodology Changes; Proposed Rule and Notice**

## DEPARTMENT OF VETERANS AFFAIRS

**38 CFR Part 17**

**RIN 2900–AL06**

## Reasonable Charges for Medical Care or Services; 2003 Methodology Changes

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the Department of Veterans Affairs (VA) medical regulations concerning "reasonable charges" for medical care or services provided or furnished by VA to a veteran:

—For a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract;

—For a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or

—For a nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance.

The regulations contain methodologies designed to establish VA charges that replicate, insofar as possible, the 80th percentile of community charges, adjusted to the market areas in which VA facilities are located, and trended forward to the time period during which the charges will be used. This document proposes to amend the regulations regarding VA's reasonable charges methodologies for the following purposes: to establish charges for medical care, procedures, services, durable medical equipment (DME), drugs, injectables, medical items, and supplies for which we currently do not have charges; to replace certain charges currently based on VA costs with charges based on community charges; to establish separate charges for medical care, procedures, services, DME, drugs, injectables, medical items, and supplies whose charges are presently combined with other charges; to bring our charge structures and associated billing practices closer to industry standard charge structures and billing practices; and to provide certain clarifications.

**DATES:** Comments must be received on or before November 3, 2003.

**ADDRESSES:** Mail or hand-deliver written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1068, Washington, DC 20420; or fax comments to (202) 273–9026; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AL06." All written comments received will be available for public inspection in the Office of Regulations Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

**FOR FURTHER INFORMATION CONTACT:** David Cleaver, Chief Business Office (168), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 254–0361. (This is not a toll free number.)

**SUPPLEMENTARY INFORMATION:** This document proposes to amend VA's medical regulations that are set forth in 38 CFR part 17. More specifically, we are proposing to amend the regulations that establish methodologies for determining reasonable charges for medical care or services provided or furnished by VA to a veteran:

(i) For a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract;

(ii) For a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or

(iii) For a nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance.

Under the provisions of 38 U.S.C. 1729, VA has the right to recover or collect reasonable charges for such medical care and services from a third party to the extent that the veteran or a provider of the care or services would be eligible to receive payment therefor from that third party if the care or services had been furnished by a provider other than a department or agency of the United States. However, consistent with that statutory authority, a third-party payer liable for such medical care and services under a health plan contract has the option of paying, to the extent of its coverage, either the billed charges or the amount the third-party payer demonstrates it would pay for care or services furnished by providers other than entities of the United States for the same care or services in the same geographic area.

The methodologies for establishing reasonable charges are designed to replicate, insofar as possible, the 80th percentile of community charges, adjusted to the market areas in which VA facilities are located, and trended forward to the time period during which the charges will be used. An exception is that charges for prescription drugs are based on VA costs in accordance with the methodology set forth in § 17.102.

This document proposes to amend VA's reasonable charges regulations to make significant changes to our charge development methodologies and charge structures, to provide charges for 2003 Current Procedural Terminology (CPT) codes, and to provide certain clarifications. These proposed changes are described in more detail in the following paragraphs.

### Data for Calculating Actual Charge Amounts

As we have done in the past, we are publishing data for calculating actual charge amounts based on the methodologies set forth in this proposed rule in an accompanying notice in this same edition of the **Federal Register**. However, this document proposes that in the future this information will either be published in a notice in the **Federal Register** or will be posted on the Internet site of the Veterans Health Administration Chief Business Office at *http://www.va.gov/revenue*, under "Charge Data." We are proposing this change because we believe posting this information on the Internet will make it more readily available to the public, while at the same time greatly reducing the volume of information and associated taxpayer expense of publishing it in the **Federal Register**.

### Data Sources

Presently, the regulations identify data sources used to calculate charges by name and edition (for example, 2001 Medicare MedPAR file). In addition, the regulations give specific information on where various databases can be obtained (for example, the Internet site where the Medicare Clinical Diagnostic Laboratory Fee Schedule can be found). This document proposes that data sources will hereafter be identified in these regulations only by name, and that the editions used and information on where these data sources may be obtained will be presented along with the data for calculating actual charge amounts, either in notices in the **Federal Register** or on the Internet site of the Veterans Health Administration Chief Business Office at *http://www.va.gov/revenue*, under "Charge Data." We are proposing this change so that a change in the edition of a data source or in the information on where a database may be obtained will not, by itself, require any change to the regulations.

**Definitions—Additions, Changes, and Deletions**

This document proposes to add definitions for APC (Ambulatory Payment Classification), CMS (Centers for Medicare and Medicaid Services), DME, HCPCS (Healthcare Common Procedure Coding System) code, ICU (Intensive Care Unit), non-provider-based, provider-based, and RBRVS (Resource-Based Relative Value Scale). We are proposing to amend the definition of the term "CPT procedure code" to indicate that the same definition applies equally to the term "CPT code."

Presently, geographic area is defined, for acute inpatient facility charges and skilled nursing facility/sub-acute inpatient facility charges, as Metropolitan Statistical Area (MSA) or the local market, if the VA facility is not located in an MSA; and is defined, for outpatient facility charges and physician charges, as three-digit ZIP Code locality. We are proposing to amend the definition of geographic area to mean simply a three-digit ZIP Code area. This change reflects the fact that we are proposing to use three-digit ZIP Code areas as the geographic areas for all of our charge types. We are proposing this change for acute inpatient facility charges and skilled nursing facility/sub-acute inpatient facility charges because, due to the variability of charges within MSA and non-MSA areas, changing to three-digit ZIP Code areas will produce charges that are more accurate for the location in which the care was provided.

We are proposing to delete the definition for CPI–W (Consumer Price Index—Urban Wage Earners and Clerical Workers) because we have not used CPI–W information anywhere in the regulations, and have no plans to do so. We are also proposing to delete the separate definition for CPI (Consumer Price Index), because that term appears in the regulations only as part of the defined term CPI–U (Consumer Price Index—All Urban Consumers).

**Provider-Based and Non-Provider-Based Entities and Charges**

For a specific item of medical care or service provided on an outpatient basis, we may have a professional charge, or an outpatient facility charge, or both. Presently, for all outpatient services for which we have both a professional charge and an outpatient facility charge, these charges are developed so as to be mutually exclusive, with the expectation that both charges will be billed for the same occasion of service. In addition, most of our outpatient facility charges are expected to be billed by all VA facilities that perform the applicable service, regardless of the type of facility. In other words, these charges are equally available to be billed by the outpatient departments of VA medical centers (VAMCs), by VA community-based outpatient clinics (CBOCs) operating similar to private-sector ambulatory surgery centers, by VA CBOCs operating like private-sector doctors' offices, etc. Presently, the only outpatient facility charges not available to be billed by all VA facilities are those for office or other outpatient evaluation and management (E&M) services CPT codes 99201 through 99215. Billing of the outpatient facility charges for the ten services covered by these codes is presently restricted to the outpatient departments of 169 VAMCs.

This document proposes to amend the regulations to provide that each VA healthcare entity will be designated as either provider-based (entitled to bill outpatient facility charges) or non-provider-based (not entitled to bill outpatient facility charges), based on CMS criteria for provider-based and non-provider-based entities. Further, application of the proposed methodologies presented in this document will provide two sets of charges for outpatient care, one set for use by provider-based entities and one for use by non-provider-based entities. For those outpatient services that have both a professional charge and an outpatient facility charge, the professional charge for use by provider-based entities will be lower, based on Medicare's lower facility practice expense Relative Value Units (RVUs), in consideration of the fact that both the professional charge and the outpatient facility charge will be billed. For the same services, the professional charge for use by non-provider-based entities will be higher, based on Medicare's higher non-facility practice expense RVUs, in consideration of the fact that only the professional charge will be billed. We are proposing these changes because they will result in VA charge structures and billing practices that more closely approximate industry standard charge structures and billing practices.

**Charges for Medical Care or Services Provided by Non-VA Providers at VA Expense**

Presently, the phrase in the regulations, "medical care or services provided or furnished by VA," is understood to include medical care or services provided by non-VA providers at VA expense, and the charges billed for such care are those determined according to this section. This document proposes to amend the regulations by adding language to confirm this understanding.

**Charges for Medical Care or Services for Which VA Does Not Have an Established Charge**

Presently, the regulations do not address the issue of charges for medical care or services for which VA does not have an established charge or does not specifically make other provision for charges. The result has been that VA has not been charging for such care or services. This document proposes to amend the regulations by adding language to provide for charges, under specified circumstances, when we do not have established charges.

Under the proposed change, when VA provides or furnishes medical care or services and VA does not have an established charge for such care or services, then the charges billed for such care or services will be determined according to the provisions of the proposed new paragraph (a)(8) of the regulations, which sets forth four criteria for establishing a charge and provides that, if none apply, then no charge will be made. We believe that these proposed changes provide a fair and reasonable basis for such charges. We are proposing these changes to provide appropriate charges, under these specified circumstances, where presently we have no charges.

**Unlisted and Unspecified Procedures, Services, and Supplies**

Both the American Medical Association and CMS, in compiling CPT and HCPCS Level II, respectively, recognize that there may be procedures, services, or supplies provided by physicians and other healthcare professionals which have not yet been defined. Accordingly, both CPT and HCPCS Level II provide specific codes for reporting unlisted and unspecified procedures, services, and supplies. Presently, the regulations do not provide charges for unlisted CPT codes or for any HCPCS Level II codes. This document proposes methodologies that will enable us to provide charges for unlisted and unspecified procedures, services, and supplies. We are proposing this change so that we will be able to bill for these procedures, services, and supplies when we provide or furnish them to our patients, and so that our charge structures and billing practices will more closely approximate industry standard charge structures and billing practices.

### Charge Types

Presently, the reasonable charges regulations set forth methodologies for four basic types of charges, as follows:

—Acute inpatient facility charges;
—Skilled nursing facility/sub-acute inpatient facility charges;
—Outpatient facility charges; and
—Physician charges.

Under the above organization of charge types, facility charges for observation care are included under outpatient facility charges, and charges for pathology/laboratory and anesthesia services are included under physician charges. This document proposes to amend the regulations to describe separate charge types for observation care, pathology/laboratory, and anesthesia.

Presently, we do not have partial hospitalization facility charges. This document proposes to amend the regulations to establish partial hospitalization facility charges.

Presently, we do not have separate charges for HCPCS Level II codes. This document proposes to amend the regulations to establish charges for HCPCS Level II codes.

Presently, our charges for prosthetic devices and DME provided on an outpatient basis are VA's actual cost, and our charges for outpatient dental care are based on VA costs in accordance with the methodology set forth in § 17.102. In place of these cost-related charges, this document proposes to amend the regulations to establish reasonable charges for prosthetic devices, DME, and outpatient dental care by establishing charges for the associated HCPCS Level II codes.

Presently, we do not have charges for ambulance or other emergency transportation services. This document proposes to amend the regulations to establish reasonable charges for ambulance and other emergency transportation services by establishing charges for the associated HCPCS Level II codes.

Associated with these changes, we are proposing to amend the regulations to organize reasonable charges into the following eleven charge types:

—Acute inpatient facility charges;
—Skilled nursing facility/sub-acute inpatient facility charges;
—Partial hospitalization facility charges;
—Outpatient facility charges;
—Physician and other professional charges except for anesthesia services and certain dental services;
—Professional charges for anesthesia services;
—Professional charges for dental services identified by HCPCS Level II codes;
—Pathology and laboratory charges;
—Observation care facility charges;
—Ambulance and other emergency transportation charges; and
—Charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by HCPCS Level II codes.

The reasons we are proposing these changes are (1) to enable us to bill for medical care, procedures, services, DME, drugs, injectables, medical items, and supplies for which we currently do not have charges; (2) to replace certain charges currently based on VA costs with charges based on community charges; (3) to enable us to bill separately for medical care, procedures, services, DME, drugs, injectables, medical items, and supplies whose charges are presently combined with other charges; and (4) to bring our charge structures and billing practices closer to industry standard charge structures and billing practices.

Additional information regarding each of the above charge types is provided in the following paragraphs.

### Acute Inpatient Facility Charges

Presently, the regulations provide methodologies for calculating two per diem charges for each diagnosis related group (DRG), one for room and board and one for ancillary services. These same per diem charges are used for both ICU days and non-ICU days. This document proposes to amend the regulations by providing methodologies for calculating different room and board per diem charges for ICU days and non-ICU days. With these changes, each DRG will have three per diem charges: a room and board per diem charge for ICU days, a different room and board per diem charge for non-ICU days, and an ancillary services per diem charge that applies to both ICU and non-ICU days. We are proposing these changes because they will result in charges for each patient that will be more specific to the care and services the patient received, and will result in VA charge structures and billing practices that more closely approximate industry standard charge structures and billing practices.

As noted earlier, we are proposing to change from MSAs to three-digit ZIP Codes for geographic areas for acute inpatient facility charges. Presently, we calculate 80th percentile factors and geographic area adjustment factors for acute inpatient facility charges by MSA, based on charge data from the Medicare Standard Analytical File 5% Sample. Associated with the change to three-digit ZIP Codes, we are proposing to amend the regulations to base the calculation of these factors on the MedPAR file, which provides a complete record of all Medicare hospital admissions. This change from 5% to 100% of Medicare hospital admissions will produce more accurate 80th percentile factors and geographic area adjustment factors for the smaller three-digit ZIP Code areas.

### Skilled Nursing Facility/Sub-Acute Inpatient Facility Charges

Presently, we calculate skilled nursing facility/sub-acute inpatient facility all-inclusive per diem charges based on the nationwide average per diem charge presented in annual releases of the Milliman USA, Inc., Health Cost Guidelines. We are proposing to change the regulations to base these charges on the actual average per diem billed charge derived from the MedPAR skilled nursing facility file. This will more directly and accurately measure the nationwide baseline charge, and enable calculation of a more accurate nationwide 80th percentile charge. We are also proposing to change the trending methodology from one based on trends in Medicare reimbursement rates, as presented in the Annual Report of the Boards of Trustees of the Federal Supplementary Medical Insurance Trust Funds, to trends based on the inpatient hospital services component of the CPI-U. This change will result in trending that more accurately reflects changes in billed charge levels.

Presently, we calculate 80th percentile adjustment factors and geographic area adjustment factors based on the Medicare Standard Analytical File 5% Sample and the Milliman USA, Inc., Health Cost Guidelines, respectively. We are proposing to amend the regulations to base calculation of these factors on the MedPAR skilled nursing facility file. These changes will produce more accurate 80th percentile adjustment factors and geographic area adjustment factors.

### Partial Hospitalization Facility Charges

Presently, we do not have a per diem facility charge that is specific to partial hospitalization, nor do we have charges for any of the HCPCS Level II codes, including those associated with partial hospitalization. We are proposing to amend the regulations to provide a methodology for establishing partial hospitalization facility charges. We are proposing this change so that we will be able to bill for these services when we provide or furnish them to our patients.

**Outpatient Facility Charges**

Presently, we calculate outpatient facility charges utilizing a statistical method based on 1998 Medicare practice expense RVUs, which we adopted as a proxy weighting system for the calculation of outpatient facility charges. We are proposing to amend the methodology to base nationwide average outpatient facility charges on Medicare Ambulatory Payment Classification (APC) groups, using data from the Medicare Standard Analytical File 5% Sample. This will provide the basis for a more accurate calculation, because APC payment groups are based on actual outpatient facility charge data, whereas the 1998 Medicare practice expense RVUs were based on physician charge data for overhead expenses.

One consequence of adopting APC groups for this purpose is that the statistical methodology we presently use to bundle CPT codes into CPT code groups will no longer be needed, because APCs provide appropriate groupings of codes. We are also proposing to amend the regulations to adjust APC charges, which represent Medicare average reimbursement levels, to nationwide 80th percentile billed charge levels. This adjustment will result in charges that more accurately reflect market-level charges.

For outpatient facility services which do not have APC assignments, we propose to calculate outpatient facility charges using data from the MDR database, the MedStat claims database, and the Medicare Standard Analytical File 5% Sample.

These changes to the regulations will result in VA charge structures and billing practices that more closely approximate industry standard charge structures and billing practices.

**Physician and Other Professional Charges Except for Anesthesia Services and Certain Dental Services**

Presently, the regulations incorporate the methodologies for charges for pathology/laboratory and anesthesia services in the methodology for physician charges. We are proposing to restructure the regulations so that pathology/laboratory charges and professional charges for anesthesia services are identified as separate charge types. We are also proposing to specify in the regulations that charges for professional dental services identified by CPT code are determined in accordance with the same methodology as for physician charges, while professional dental services identified by HCPCS Level II code are treated as a separate charge type, with charges determined using a different methodology as discussed below. We are proposing these changes so that different charge types and different charge development methodologies will be separately identified and described in the regulations.

Presently, our charges are not influenced by the presence or absence of CPT code modifiers. This document proposes to amend the regulations to add methodology for developing charge adjustment factors for specified CPT/HCPCS code modifiers, using data from the Medicare Standard Analytical File 5% Sample. Some charge adjustment factors will act to increase the charge (for example, modifier 22, Unusual Procedural Services). Other charge adjustment factors will act to decrease the charge (for example, modifier 52, Reduced Services). This change will result in VA charge structures and billing practices that more closely approximate industry standard charge structures and billing practices.

Presently, language in the regulations is interpreted to mean that we do not have professional charges for categories of providers other than physicians unless the provider category is specifically named in the regulations. This document proposes to amend the regulations to set forth charge methodologies for physicians and other professionals that apply to all professional provider categories. This change will result in VA charge structures and billing practices that more closely approximate industry standard charge structures and billing practices.

**Professional Charges for Anesthesia Services**

Presently, professional charges for anesthesia services are based in part on average time units compiled from a Health Care Financing Administration study. Applying this methodology, the professional charge for a given anesthesia procedure is the same, regardless of the length of time the patient received anesthesia. This document proposes to amend the methodology so that professional charges for anesthesia services will vary according to the length of time the patient received anesthesia. This change will result in VA charge structures and billing practices that more closely approximate industry standard charge structures and billing practices.

**Professional Charges for Dental Services Identified by HCPCS Level II Codes**

Presently, charges for outpatient dental care are based on VA costs in accordance with the methodology set forth in § 17.102. This document proposes to amend the methodology to establish reasonable charges for dental services identified by HCPCS Level II codes, using data from the Prevailing Healthcare Charges System, the National Dental Advisory Service nationwide pricing index, the Dental UCR (Usual, Customary, or Reasonable) Module of the Ingenix Comprehensive Healthcare Payment System, the Milliman USA, Inc., Dental Health Cost Guidelines, and the dental services component of the CPI-U. This change will result in VA charge structures and billing practices that more closely approximate industry standard charge structures and billing practices.

**Pathology and Laboratory Charges**

Presently, the regulations provide that for each pathology and laboratory CPT code, the technical component RVUs are added to the professional component RVUs, if any, resulting in only one charge for each pathology and laboratory CPT code. This document proposes to amend the methodology so that those pathology and laboratory procedures which require a professional interpretation will have two separate charges: a professional component charge determined according to the methodology set forth in the Physician and Other Professional Charges paragraph in the regulations, and a technical component charge determined according to the methodology set forth in the Pathology and Laboratory Charges paragraph in the regulations. This change will result in VA charge structures and billing practices that more closely approximate industry standard charge structures and billing practices.

**Observation Care Facility Charges**

Presently, our facility charges for observation care consist of outpatient facility charges for three observation care CPT codes, 99218, 99219, and 99220. These charges are per occurrence, regardless of the number of hours the patient received observation care. This document proposes to amend the regulations to provide a methodology for establishing observation care facility charges that will vary according to the number of hours the patient receives observation care. For this purpose, we propose to use data from the outpatient facility component of the Medicare Standard Analytical File 5% Sample, trend the charges forward using the outpatient hospital services component of the CPI-U, and use the geographic area adjustment factors computed for outpatient facility charges. This change will result in VA charge structures and billing practices that more closely approximate industry standard charge structures and billing practices.

### Ambulance and Other Emergency Transportation Charges

Ambulance and other emergency transportation services are identified by HCPCS Level II codes. Presently, we do not have charges for any HCPCS Level II codes. This document proposes to amend the regulations to provide a methodology for establishing charges for ambulance and other emergency transportation services by HCPCS Level II code. For this purpose, we propose to use data from the outpatient facility component of the Medicare Standard Analytical File 5% Sample, trend the charges forward using the outpatient hospital services component of the CPI-U, and use the geographic area adjustment factors computed for outpatient facility charges. We are proposing this change so that we will be able to bill and be reimbursed for these services when we provide or furnish them to our patients.

### Charges for Durable Medical Equipment, Drugs, Injectables, and Other Medical Services, Items, and Supplies Identified By HCPCS Level II Codes

Presently, we do not have charges for any HCPCS Level II codes. This document proposes to amend the regulations to provide a methodology for establishing charges for DME, drugs, injectables, and other medical services, items, and supplies identified by HCPCS Level II code. For this purpose, we propose to use the following data sources: Ingenix/St. Anthony's RBRVS; Medicare DME Fee Schedule; Medicare Parenteral and Enteral Nutrition Fee Schedule; Part B and DME components of the Medicare Standard Analytical File 5% Sample; MDR database; Milliman USA, Inc., Optimized HMO (Health Maintenance Organization) Data Sets; Milliman USA, Inc., Health Cost Guidelines; and a VA nationwide distribution of procedures, services, items, and supplies. We propose to trend these charges forward using the medical care commodities component of the CPI–U. We are proposing this change so that we will be able to bill and be reimbursed for these services, items, and supplies when we provide or furnish them to our patients.

### Responses to Comments

In response to our interim final rule published in the **Federal Register** on May 8, 2001 (66 FR 23326, RIN 2900–AK73), we received two comments, both from the same commenter, that we have not previously resolved.

The commenter stated that we should add charges for codes G0193 through G0201 (HCPCS Level II codes). In this document, we are proposing to add charges for nearly all HCPCS Level II codes, including codes G0193 through G0201.

The same commenter also stated that we have identified audiology services furnished in conjunction with a hearing aid, CPT codes 92590 through 92595, as physician services, when in fact these services are performed solely by audiologists and should not be designated as physician services.

With respect to our charge development methodology, our charge for a given service reflects the actual amounts billed by the providers of that service. Therefore, our charge for a service performed solely by audiologists will reflect the actual amounts billed by audiologists, not by physicians. However, we agree that including these and other services not performed by physicians under the general category of "physician charges" may be confusing. Therefore, in this document, we are proposing to change from the term "physician services" to the term "physician and other professional services" so as to allow for the fact that many professional medical services are performed by audiologists and other healthcare professionals instead of, or in addition to, physicians.

### Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This proposed rule would have no such effect on State, local, or tribal governments, or the private sector.

### Paperwork Reduction Act

This document contains provisions at 38 CFR 17.101(a)(4) constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521). The Office of Management and Budget (OMB) has approved the information collection requirements for § 17.101(a)(4) under OMB control number 2900–0606.

### Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

### Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would affect mainly large insurance companies, and where small entities are involved, they would not be impacted significantly since most of their business is not with VA. Accordingly, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

### Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers for the programs affected by this rule are 64.005, 64.007, 64.008, 64.009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

### List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: August 8, 2003.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR part 17 is proposed to be amended as set forth below:

## PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

**Authority:** 38 U.S.C. 501, 1721, unless otherwise noted.

2. Section 17.101 is revised to read as follows:

**§ 17.101 Collection or recovery by VA for medical care or services provided or furnished to a veteran for a nonservice-connected disability.**

(a)(1) *General.* This section covers collection or recovery by VA, under 38 U.S.C. 1729, for medical care or services provided or furnished to a veteran:

(i) For a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract;

(ii) For a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or

(iii) For a nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance.

(2) *Methodologies.* Based on the methodologies set forth in this section, the charges billed will include the following types of charges, as appropriate: acute inpatient facility charges; skilled nursing facility/sub-acute inpatient facility charges; partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by HCPCS Level II codes. In addition, the charges billed for prescription drugs not administered during treatment will be based on VA costs in accordance with the methodology set forth in § 17.102. Data for calculating actual charge amounts based on the methodologies set forth in this section will either be published in a notice in the **Federal Register** or will be posted on the Internet site of the Veterans Health Administration Chief Business Office at *http://www.va.gov/revenue,* under "Charge Data." For care for which VA has established a charge, VA will bill using its most recent published or posted charge. For care for which VA has not established a charge, VA will bill according to the methodology set forth in paragraph (a)(8) of this section.

(3) *Data sources.* In this section, data sources are identified by name. The specific editions of these data sources used to calculate actual charge amounts, and information on where these data sources may be obtained, will be presented along with the data for calculating actual charge amounts, either in notices in the **Federal Register** or on the Internet site of the Veterans Health Administration Chief Business Office at *http://www.va.gov/revenue,* under "Charge Data."

(4) *Amount of recovery or collection—third party liability.* A third-party payer liable under a health plan contract has the option of paying either the billed charges described in this section or the amount the health plan demonstrates is the amount it would pay for care or services furnished by providers other than entities of the United States for the same care or services in the same geographic area. If the amount submitted by the health plan for payment is less than the amount billed, VA will accept the submission as payment, subject to verification at VA's discretion in accordance with this section. A VA employee having responsibility for collection of such charges may request that the third party health plan submit evidence or information to substantiate the appropriateness of the payment amount (*e.g.*, health plan or insurance policies, provider agreements, medical evidence, proof of payment to other providers in the same geographic area for the same care and services VA provided).

(5) *Definitions.* For purposes of this section:

*APC* means Medicare Ambulatory Payment Classification.

*CMS* means the Centers for Medicare and Medicaid Services.

*CPI–U* means Consumer Price Index—All Urban Consumers.

*CPT code* and *CPT procedure code* mean Current Procedural Terminology code, a five-digit identifier defined by the American Medical Association for a specified physician service or procedure.

*DME* means Durable Medical Equipment.

*DRG* means Diagnosis Related Group.

*Geographic area* means a three-digit ZIP Code area.

*HCPCS code* means a Healthcare Common Procedure Coding System Level II identifier, consisting of a letter followed by four digits, defined by CMS for a specified physician service, procedure, test, supply, or other medical service.

*ICU* means Intensive Care Unit, including coronary care units.

*MDR* means Medical Data Research, a medical charge database published by Ingenix, Inc.

*MedPAR* means the Medicare Provider Analysis and Review file.

*Non-provider-based* means a VA healthcare entity (such as a small VA community-based outpatient clinic) that functions as the equivalent of a doctor's office or for other reasons does not meet CMS provider-based criteria, and, therefore, is not entitled to bill outpatient facility charges.

*Provider-based* means the outpatient department of a VA hospital or any other VA healthcare entity that meets CMS provider-based criteria. Provider-based entities are entitled to bill outpatient facility charges.

*RBRVS* means Resource-Based Relative Value Scale.

*RVU* means Relative Value Unit.

*Unlisted procedures* mean procedures, services, items, and supplies that have not been defined or specified by the American Medical Association or CMS, and the CPT and HCPCS codes used to report such procedures, services, items, and supplies.

(6) *Provider-based and non-provider-based entities and charges.* Each VA healthcare entity (medical center, hospital, community-based outpatient clinic, independent outpatient clinic, etc) is designated as either provider-based or non-provider-based. Provider-based entities are entitled to bill outpatient facility charges; non-provider-based entities are not. The charges for physician and other professional services provided at non-provider-based entities will be billed as professional charges only. Professional charges for both provider-based entities and non-provider-based entities are produced by the methodologies set forth in this section, with professional charges for provider-based entities based on facility practice expense RVUs, and professional charges for non-provider-based entities based on non-facility practice expense RVUs.

(7) *Charges for medical care or services provided by non-VA providers at VA expense.* When medical care or services are furnished at the expense of the VA by non-VA providers, the charges billed for such care or services will be the higher of the charges determined according to this section, or the amount VA paid to the non-VA provider.

(8) *Charges for medical care or services for which VA does not have an established charge.* When medical care or services are provided or furnished at VA expense by either VA or non-VA providers, and VA does not have an established charge for such care or services, then the charges billed for such care or services will be according to the first of the following subparagraphs that applies:

(i) In the event that a new identifier (DRG, CPT code, or HCPCS code) is assigned to a particular type or item of medical care or service, then until such time as VA establishes a charge for the new identifier, VA's charge for such care or service will be VA's most recent established charge for the identifier previously assigned to that type or item of medical care or service; otherwise,

(ii) In the event that the medical care or service is provided or furnished at VA expense by a non-VA provider, then VA's charge for such care or service will be the amount VA paid to the non-VA provider; otherwise,

(iii) VA's charges for prosthetic devices and durable medical equipment will be VA's actual cost; otherwise,

(iv) If a Medicare allowed charge amount can be determined for the care or service, then VA's charge will be the Medicare participating provider allowed charge amount geographically adjusted using the applicable geographic area adjustment factors determined pursuant to this section; otherwise,

(v) If a charge cannot be established under paragraphs (a)(8)(i) through (iv) of this section, then VA will not charge for the care or service under this section.

(b) *Acute inpatient facility charges.* When VA provides or furnishes acute inpatient services within the scope of care referred to in paragraph (a)(1) of this section, acute inpatient facility charges billed for such services will be determined in accordance with the provisions of this paragraph. Acute inpatient facility charges consist of per diem charges for room and board and for ancillary services that vary by geographic area and by DRG. These charges are calculated as follows:

(1) *Formula.* For each acute inpatient stay, or portion thereof, for which a particular DRG assignment applies, the total acute inpatient facility charge is the sum of the applicable charges determined pursuant to paragraphs (b)(1)(i), (ii), and (iii) of this section. For purposes of this section, standard room and board days and ICU room and board days are mutually exclusive: VA will bill either a standard room and board per diem charge or an ICU room and board per diem charge, as applicable, for each day of a given acute inpatient stay.

(i) *Standard room and board charges.* Multiply the nationwide standard room and board per diem charge determined pursuant to paragraph (b)(2) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (b)(3) of this section. The result constitutes the area-specific standard room and board per diem charge. Multiply this amount by the number of days for which standard room and board charges apply to obtain the total acute inpatient facility standard room and board charge.

(ii) *ICU room and board charges.* Multiply the nationwide ICU room and board per diem charge determined pursuant to paragraph (b)(2) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (b)(3) of this section. The result constitutes the area-specific ICU room and board per diem charge. Multiply this amount by the number of days for which ICU room and board per diem charges apply to obtain the total acute inpatient facility ICU room and board charge.

(iii) *Ancillary charges.* Multiply the nationwide ancillary per diem charge determined pursuant to paragraph (b)(2) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (b)(3) of this section. The result constitutes the area-specific ancillary per diem charge. Multiply this amount by the number of days of acute inpatient care to obtain the total acute inpatient facility ancillary charge.

*Note to paragraph (b)(1):* If there is a change in a patient's condition and/or treatment during a single acute inpatient stay such that the DRG assignment changes (for example, a psychiatric patient who develops a medical or surgical problem), then calculations of acute inpatient facility charges will be made separately for each DRG, according to the number of days of care applicable for each DRG, and the total acute inpatient facility charge will be the sum of the total acute inpatient facility charges for the different DRGs.

(2) *Per diem charges.* To establish a baseline, two nationwide average per diem amounts for each DRG are calculated, one from the MedPAR file and one from the MedStat claims database, a database of nationwide commercial insurance claims. Average per diem charges are calculated based on all available charges, except for care reported for emergency room, ambulance, professional, and observation care. These two data sources may report charges for two differing periods of time; when this occurs, the data source charges with the earlier center date are trended forward to the center date of the other data source, based on changes to the inpatient hospital services component of the CPI–U. Results obtained from these two data sources are then combined into a single weighted average per diem charge for each DRG. The resulting charge for each DRG is then separated into its two components, a room and board component and an ancillary component, with the per diem charge for each component calculated by multiplying the weighted average per diem charge by the corresponding percentage determined pursuant to paragraph (b)(2)(i) of this section. The room and board per diem charge is further differentiated into a standard room and board per diem charge and an ICU room and board per diem charge by multiplying the average room and board charge by the corresponding DRG-specific ratios determined pursuant to paragraph (b)(2)(ii) of this section. The resulting per diem charges for standard room and board, ICU room and board, and ancillary services for each DRG are then each multiplied by the final ratio determined pursuant to paragraph (b)(2)(iii) of this section to reflect the nationwide 80th percentile charges. Finally, the resulting amounts are each trended forward from the center date of the trended data sources to the effective time period for the charges, as set forth in paragraph (b)(2)(iv) of this section. The results constitute the nationwide 80th percentile standard room and board, ICU room and board, and ancillary per diem charges.

(i) *Room and board charge and ancillary charge component percentages.* Using only those cases from the MedPAR file for which a distinction between room and board charges and ancillary charges can be determined, the percentage of the total charges for room and board compared to the combined total charges for room and board and ancillary services, and the percentage of the total charges for ancillary services compared to the combined total charges for room and board and ancillary services, are calculated by DRG.

(ii) *Standard room and board per diem charge and ICU room and board per diem charge ratios.* Using only those cases from the MedPAR file for which a distinction between room and board and ancillary charges can be determined, overall average per diem room and board charges are calculated by DRG. Then, using the same cases, an average standard room and board per diem charge is calculated by dividing total non-ICU room and board charges by total non-ICU room and board days. Similarly, an average ICU room and board per diem charge is calculated by dividing total ICU room and board charges by total ICU room and board days. Finally, ratios of standard room and board per diem charges *to* average overall room and board per diem charges are calculated by DRG, as are ratios of ICU room and board per diem charges *to* average overall room and board per diem charges.

(iii) *80th percentile.* Using cases from the MedPAR file with separately identifiable semi-private room rates, the ratio of the day-weighted 80th percentile semi-private room and board per diem charge *to* the average semi-private room and board per diem charge is obtained for each geographic area. The geographic area-based ratios are averaged to obtain a final 80th percentile ratio.

(iv) *Trending forward.* 80th percentile charges for each DRG, obtained as described in paragraph (b)(2) of this section, are trended forward based on changes to the inpatient hospital services component of the CPI–U. Actual CPI–U changes are used from the center date of the trended data sources through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges.

(3) *Geographic area adjustment factors.* For each geographic area, the average per diem room and board charges and ancillary charges from the MedPAR file are calculated for each DRG. The DRGs are separated into two groups, surgical and non-surgical. For each of these groups of DRGs, for each geographic area, average room and board per diem charges and ancillary per diem charges are calculated, weighted by nationwide VA discharges and by average lengths of stay from the combined MedPAR file and MedStat claims database. This results in four average per diem charges for each geographic area: room and board for surgical DRGs, ancillary for surgical DRGs, room and board for non-surgical DRGs, and ancillary for non-surgical DRGs. Four corresponding national average per diem charges are obtained from the MedPAR file, weighted by nationwide VA discharges and by average lengths of stay from the combined MedPAR file and MedStat claims database. Four geographic area adjustment factors are then calculated for each geographic area by dividing each geographic area average per diem charge by the corresponding national average per diem charge.

(c) *Skilled nursing facility/sub-acute inpatient facility charges.* When VA provides or furnishes skilled nursing/sub-acute inpatient services within the scope of care referred to in paragraph (a)(1) of this section, skilled nursing facility/sub-acute inpatient facility charges billed for such services will be determined in accordance with the provisions of this paragraph. The skilled nursing facility/sub-acute inpatient facility charges are per diem charges that vary by geographic area. The facility charges cover care, including room and board, nursing care, pharmaceuticals, supplies, and skilled rehabilitation services (*e.g.*, physical therapy, inhalation therapy, occupational therapy, and speech-language pathology), that is provided in a nursing home or hospital inpatient setting, is provided under a physician's orders, and is performed by or under the general supervision of professional personnel such as registered nurses, licensed practical nurses, physical therapists, occupational therapists, speech-language pathologists, and audiologists. These charges are calculated as follows:

(1) *Formula.* For each stay, multiply the nationwide per diem charge determined pursuant to paragraph (c)(2) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (c)(3) of this section. The result constitutes the area-specific per diem charge. Finally, multiply the area-specific per diem charge by the number of days of care to obtain the total skilled nursing facility/sub-acute inpatient facility charge.

(2) *Per diem charge.* To establish a baseline, a nationwide average per diem billed charge is calculated based on charges reported in the MedPAR skilled nursing facility file. For this purpose, the following MedPAR charge categories are included: room and board (private, semi-private, and ward), physical therapy, occupational therapy, inhalation therapy, speech-language pathology, pharmacy, medical/surgical supplies, and "other" services. The following MedPAR charge categories are excluded from the calculation of the per diem charge and will be billed separately, using the charges determined as set forth in other applicable paragraphs of this section, when these services are provided to skilled nursing patients or sub-acute inpatients: ICU and CCU room and board, laboratory, radiology, cardiology, dialysis, operating room, blood and blood administration, ambulance, MRI, anesthesia, durable medical equipment, emergency room, clinic, outpatient, professional, lithotripsy, and organ acquisition services. The resulting average per diem billed charge is then multiplied by the 80th percentile adjustment factor determined pursuant to paragraph (c)(2)(i) of this section to obtain a nationwide 80th percentile charge level. Finally, the resulting amount is trended forward to the effective time period for the charges, as set forth in paragraph (c)(2)(ii) of this section.

(i) *80th percentile adjustment factor.* Using the MedPAR skilled nursing facility file, the ratio of the day-weighted 80th percentile room and board per diem charge *to* the day-weighted average room and board per diem charge is obtained for each geographic area. The geographic area-based ratios are averaged to obtain the 80th percentile adjustment factor.

(ii) *Trending forward.* The 80th percentile charge is trended forward based on changes to the inpatient hospital services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charge.

(3) *Geographic area adjustment factors.* The average billed per diem charge for each geographic area is calculated from the MedPAR skilled nursing facility file. This amount is divided by the nationwide average billed charge calculated in paragraph (c)(2) of this section. The geographic area adjustment factor for charges for each VA facility is the ratio for the geographic area in which the facility is located.

(d) *Partial hospitalization facility charges.* When VA provides or furnishes partial hospitalization services that are within the scope of care referred to in paragraph (a)(1) of this section, the facility charges billed for such services will be determined in accordance with the provisions of this paragraph. Partial hospitalization facility charges are per diem charges that vary by geographic area. These charges are calculated as follows:

(1) *Formula.* For each partial hospitalization stay, multiply the nationwide per diem charge determined pursuant to paragraph (d)(2) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (d)(3) of this section. The result constitutes the area-specific per diem charge. Finally, multiply the area-specific per diem charge by the number of days of care to obtain the total partial hospitalization facility charge.

(2) *Per diem charge.* To establish a baseline, a nationwide median per diem billed charge is calculated based on

charges associated with partial hospitalization from the outpatient facility component of the Medicare Standard Analytical File 5% Sample. That median per diem billed charge is then multiplied by the 80th percentile adjustment factor determined pursuant to paragraph (d)(2)(i) of this section to obtain a nationwide 80th percentile charge level. Finally, the resulting amount is trended forward to the effective time period for the charges, as set forth in paragraph (d)(2)(ii) of this section.

(i) *80th percentile adjustment factor.* The 80th percentile adjustment factor for partial hospitalization facility charges is the same as that computed for skilled nursing facility/sub-acute inpatient facility charges under paragraph (c)(2)(i) of this section.

(ii) *Trending forward.* The 80th percentile charge is trended forward based on changes to the outpatient hospital services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges, as described in paragraph (d)(2) of this section.

(3) *Geographic area adjustment factors.* The geographic area adjustment factors for partial hospitalization facility charges are the same as those computed for outpatient facility charges under paragraph (e)(4) of this section.

(e) *Outpatient facility charges.* When VA provides or furnishes outpatient facility services that are within the scope of care referred to in paragraph (a)(1) of this section, the charges billed for such services will be determined in accordance with the provisions of this paragraph. Charges for outpatient facility services vary by geographic area and by CPT/HCPCS code. These charges apply in the situations set forth in paragraph (e)(1) of this section and are calculated as set forth in paragraph (e)(2) of this section.

(1) *Settings and circumstances in which outpatient facility charges apply.* Outpatient facility charges consist of facility charges for procedures, diagnostic tests, evaluation and management services, and other medical services, items, and supplies provided in the following settings and circumstances:

(i) Outpatient departments and clinics at VA medical centers;

(ii) Other VA provider-based entities; and

(iii) VA non-provider-based entities, for procedures and tests for which no corresponding professional charge is established under the provisions of paragraph (f) of this section.

(2) *Formula.* For each outpatient facility charge CPT/HCPCS code, multiply the nationwide 80th percentile charge determined pursuant to paragraph (e)(3) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (e)(4) of this section. The result constitutes the area-specific outpatient facility charge. When multiple surgical procedures are performed during the same outpatient encounter by a provider or provider team, the outpatient facility charges for such procedures will be reduced as set forth in paragraph (e)(5) of this section.

(3) *Nationwide 80th percentile charges by CPT/HCPCS code.* For each CPT/HCPCS code for which outpatient facility charges apply, the nationwide 80th percentile charge is calculated as set forth in either paragraph (e)(3)(i) or (e)(3)(ii) of this section. The resulting amount is trended forward to the effective time period for the charges, as set forth in paragraph (e)(3)(iii) of this section. The results constitute the nationwide 80th percentile outpatient facility charges by CPT/HCPCS code.

(i) *Nationwide 80th percentile charges for CPT/HCPCS codes which have APC assignments.* Using the outpatient facility charges reported in the outpatient facility component of the Medicare Standard Analytical File 5% Sample, claim records are selected for which all charges can be assigned to an APC. Using this subset of the 5% Sample data, nationwide median charge *to* Medicare APC payment amount ratios, by APC, and nationwide 80th percentile *to* median charge ratios, by APC, are computed according to the methodology set forth in paragraphs (e)(3)(i)(A) and (e)(3)(i)(B) of this section, respectively. The product of these two ratios by APC is then computed, resulting in a composite nationwide 80th percentile charge *to* Medicare APC payment amount ratio. This ratio is then compared to the alternate nationwide 80th percentile charge *to* Medicare APC payment amount ratio computed in paragraph (e)(3)(i)(C) of this section, and the lesser amount is selected and multiplied by the current Medicare APC payment amount. The resulting product is the APC-specific nationwide 80th percentile charge amount for each applicable CPT/HCPCS code.

(A) *Nationwide median charge to Medicare APC payment amount ratios.* For each CPT/HCPCS code, the ratio of median billed charge *to* Medicare APC payment amount is determined. The weighted average of these ratios for each APC is then obtained, using the reported 5% Sample frequencies as weights. In addition, corresponding ratios are calculated for each of the APC categories set forth in paragraph (e)(3)(i)(D) of this section, again using the reported 5% Sample frequencies as weights. For APCs where the 5% Sample frequencies provide a statistically credible result, the APC-specific weighted average nationwide median charge *to* Medicare APC payment amount ratio so obtained is accepted without further adjustment. However, if the 5% Sample data do not produce statistically credible results for any specific APC, then the APC category-specific ratio is applied for that APC.

(B) *Nationwide 80th percentile to median charge ratios.* For each CPT/HCPCS code, a geographically normalized nationwide 80th percentile billed charge amount is divided by a similarly normalized nationwide median billed charge amount. The weighted average of these ratios for each APC is then obtained, using the reported 5% Sample frequencies as weights. In addition, corresponding ratios are calculated for each of the APC categories set forth in paragraph (e)(3)(i)(D) of this section, again using the reported 5% Sample frequencies as weights. For APCs where the 5% Sample frequencies provide a statistically credible result, the APC-specific weighted average nationwide 80th percentile *to* median charge ratio so obtained is accepted without further adjustment. However, if the 5% Sample data do not produce statistically credible results for any specific APC, then the APC category-specific ratio is applied for that APC.

(C) *Alternate nationwide 80th percentile charge to Medicare APC payment amount ratios.* A minimum 80th percentile charge *to* Medicare APC payment amount ratio is set at 2.0 for APCs with Medicare APC payment amounts of $25 or less. A maximum 80th percentile charge *to* Medicare APC payment amount ratio is set at 6.5 for APCs with Medicare APC payment amounts of $10,000 or more. Using linear interpolation with these endpoints, the alternate APC-specific nationwide 80th percentile charge *to* Medicare APC payment amount ratio is then computed, based on the Medicare APC payment amount.

(D) *APC categories for the purpose of establishing 80th percentile to median factors.* For the purpose of the statistical methodology set forth in paragraph (e)(3)(i) of this section, APCs are assigned to the following APC categories:

(*1*) Radiology.

(*2*) Drugs.

(*3*) Office, Home, and Urgent Care Visits.

(*4*) Cardiovascular.

(*5*) Emergency Room Visits.

(*6*) Outpatient Psychiatry, Alcohol and Drug Abuse.

(*7*) Pathology.

(*8*) Surgery.

(*9*) Allergy Immunotherapy, Allergy Testing, Immunizations, and Therapeutic Injections.

(*10*) All APCs not assigned to any of the above groups.

(ii) *Nationwide 80th percentile charges for CPT/HCPCS codes which do not have APC assignments.* Nationwide 80th percentile billed charge levels by CPT/HCPCS code are computed from the outpatient facility component of the MDR database, from the MedStat claims database, and from the outpatient facility component of the Medicare Standard Analytical File 5% Sample. If the MDR database contains sufficient data to provide a statistically credible 80th percentile charge, then that result is retained for this purpose. If the MDR database does not provide a statistically credible 80th percentile charge, then the result from the MedStat database is retained for this purpose, provided it is statistically credible. If neither the MDR nor the MedStat databases provide statistically credible results, then the nationwide 80th percentile billed charge computed from the 5% Sample data is retained for this purpose. The nationwide 80th percentile charges retained from each of these data sources are trended forward to the effective time period for the charges, as set forth in paragraph (e)(3)(iii) of this section.

(iii) *Trending forward.* The charges for each CPT/HCPCS code, obtained as described in paragraph (e)(3) of this section, are trended forward based on changes to the outpatient hospital services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges, as described in paragraph (e)(3) of this section.

(4) *Geographic area adjustment factors.* For each geographic area, a single adjustment factor is calculated as the arithmetic average of the outpatient geographic area adjustment factor published in the Milliman USA, Inc., Health Cost Guidelines (this factor constitutes the ratio of the level of charges for each geographic area *to* the nationwide level of charges), and a geographic area adjustment factor developed from the MDR database. *See* paragraph (a)(3) of this section for data sources. The MDR-based geographic area adjustment factors are calculated as the ratio of the CPT/HCPCS code weighted average charge level for each geographic area *to* the nationwide CPT/HCPCS code weighted average charge level.

(5) *Multiple surgical procedures.* When multiple surgical procedures are performed during the same outpatient encounter by a provider or provider team as indicated by multiple surgical CPT/HCPCS procedure codes, then the CPT/HCPCS procedure code with the highest facility charge will be billed at 100% of the charges established under this section; the CPT/HCPCS procedure code with the second highest facility charge will be billed at 25% of the charges established under this section; the CPT/HCPCS procedure code with the third highest facility charge will be billed at 15% of the charges established under this section; and no outpatient facility charges will be billed for any additional surgical procedures.

(f) *Physician and other professional charges except for anesthesia services and certain dental services.* When VA provides or furnishes physician and other professional services, other than professional anesthesia services and certain professional dental services, within the scope of care referred to in paragraph (a)(1) of this section, physician and other professional charges billed for such services will be determined in accordance with the provisions of this paragraph. Charges for professional dental services identified by CPT code are determined in accordance with the provisions of this paragraph; charges for professional dental services identified by HCPCS Level II code are determined in accordance with the provisions of paragraph (h) of this section. Physician and other professional charges consist of charges for professional services that vary by geographic area, by CPT/HCPCS code, by site of service, and by modifier, where applicable. These charges are calculated as follows:

(1) *Formula.* For each CPT/HCPCS code or, where applicable, each CPT/HCPCS code and modifier combination, multiply the total geographically-adjusted RVUs determined pursuant to paragraph (f)(2) of this section by the applicable geographically-adjusted conversion factor (a monetary amount) determined pursuant to paragraph (f)(3) of this section to obtain the physician charge for each CPT/HCPCS code in a particular geographic area. Then, multiply this charge by the appropriate factors for any charge-significant modifiers, determined pursuant to paragraph (f)(4) of this section.

(2)(i) *Total geographically-adjusted RVUs for physician services that have Medicare RVUs.* The work expense and practice expense RVUs for CPT/HCPCS codes, other than the codes described in paragraphs (f)(2)(ii) and (f)(2)(iii) of this section, are compiled using Medicare Physician Fee Schedule RVUs. The sum of the geographically-adjusted work expense RVUs determined pursuant to paragraph (f)(2)(i)(A) of this section and the geographically-adjusted practice expense RVUs determined pursuant to paragraph (f)(2)(i)(B) of this section equals the total geographically-adjusted RVUs.

(A) *Geographically-adjusted work expense RVUs.* For each CPT/HCPCS code for each geographic area, the Medicare Physician Fee Schedule work expense RVUs are multiplied by the work expense Medicare Geographic Practice Cost Index. The result constitutes the geographically-adjusted work expense RVUs.

(B) *Geographically-adjusted practice expense RVUs.* For each CPT/HCPCS code for each geographic area, the Medicare Physician Fee Schedule practice expense RVUs are multiplied by the practice expense Medicare Geographic Practice Cost Index. The result constitutes the geographically-adjusted practice expense RVUs. In these calculations, facility practice expense RVUs are used to obtain geographically-adjusted practice expense RVUs for use by provider-based entities, and non-facility practice expense RVUs are used to obtain geographically-adjusted practice expense RVUs for use by non-provider-based entities.

(ii) *RVUs for CPT/HCPCS codes that do not have Medicare RVUs and are not designated as unlisted procedures.* For CPT/HCPCS codes that are not assigned RVUs in paragraphs (f)(2)(i) or (f)(2)(iii) of this section, total RVUs are developed based on various charge data sources. For these CPT/HCPCS codes, the nationwide 80th percentile billed charges are obtained, where statistically credible, from the MDR database. For any remaining CPT/HCPCS codes, the nationwide 80th percentile billed charges are obtained, where statistically credible, from the Part B component of the Medicare Standard Analytical File 5% Sample. For any remaining CPT/HCPCS codes, the nationwide 80th percentile billed charges are obtained, where statistically credible, from the Prevailing Healthcare Charges System nationwide commercial insurance database. For each of these CPT/HCPCS codes, nationwide total RVUs are obtained by taking the nationwide 80th percentile billed charges obtained using the preceding three databases and dividing by the untrended nationwide conversion factor for the corresponding CPT/HCPCS code group determined pursuant to paragraphs (f)(3) and (f)(3)(i) of this section. For any remaining CPT/HCPCS codes that have not been assigned RVUs using the preceding data sources, the nationwide total RVUs are calculated by summing the work expense and non-facility practice expense RVUs found in Ingenix/St. Anthony's RBRVS. The resulting nationwide total RVUs obtained using these four data sources are multiplied by the geographic area adjustment factors determined pursuant to paragraph (f)(2)(iv) of this section to obtain the area-specific total RVUs.

(iii) *RVUs for CPT/HCPCS codes designated as unlisted procedures.* For CPT/HCPCS codes designated as unlisted procedures, total RVUs are developed based on the weighted median of the total RVUs of CPT/HCPCS codes within the series in which the unlisted procedure code occurs. A nationwide VA distribution of procedures and services is used for the purpose of computing the weighted median. The resulting nationwide total RVUs are multiplied by the geographic area adjustment factors determined pursuant to paragraph (f)(2)(iv) of this section to obtain the area-specific total RVUs.

(iv) *RVU geographic area adjustment factors for CPT/HCPCS codes that do not have Medicare RVUs, including codes that are designated as unlisted procedures.* The adjustment factor for each geographic area consists of the weighted average of the work expense and practice expense Medicare Geographic Practice Cost Indices for each geographic area using charge data for representative CPT/HCPCS codes statistically selected and weighted for work expense and practice expense.

(3) *Geographically-adjusted 80th percentile conversion factors.* CPT/HCPCS codes are separated into the following 23 CPT/HCPCS code groups: allergy immunotherapy, allergy testing, cardiovascular, chiropractor, consults, emergency room visits and observation care, hearing/speech exams, immunizations, inpatient visits, maternity/cesarean deliveries, maternity/non-deliveries, maternity/normal deliveries, miscellaneous medical, office/home/urgent care visits, outpatient psychiatry/alcohol and drug abuse, pathology, physical exams, physical medicine, radiology, surgery, therapeutic injections, vision exams, and well baby exams. For each of the 23 CPT/HCPCS code groups, representative CPT/HCPCS codes are statistically selected and weighted so as to give a weighted average RVU comparable to the weighted average RVU of the entire CPT/HCPCS code group (the selected CPT/HCPCS codes are set forth in the Milliman USA, Inc., Health Cost Guidelines fee survey; see paragraph (a)(3) of this section for data sources). The 80th percentile charge for each selected CPT/HCPCS code is obtained from the MDR database. A nationwide conversion factor (a monetary amount) is calculated for each CPT/HCPCS code group as set forth in paragraph (f)(3)(i) of this section. The nationwide conversion factors for each of the 23 CPT/HCPCS code groups are trended forward to the effective time period for the charges, as set forth in paragraph (f)(3)(ii) of this section. The resulting amounts for each of the 23 groups are multiplied by geographic area adjustment factors determined pursuant to paragraph (f)(3)(iii) of this section, resulting in geographically-adjusted 80th percentile conversion factors for each geographic area for the 23 CPT/HCPCS code groups for the effective charge period.

(i) *Nationwide conversion factors.* Using the nationwide 80th percentile charges for the selected CPT/HCPCS codes from paragraph (f)(3) of this section, a nationwide conversion factor is calculated for each of the 23 CPT/HCPCS code groups by dividing the weighted average charge by the weighted average RVU.

(ii) *Trending forward.* The nationwide conversion factors for each of the 23 CPT/HCPCS code groups, obtained as described in paragraph (f)(3)(i) of this section, are trended forward based on changes to the physicians' services component of the CPI-U. Actual CPI-U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI-U change so obtained is then applied to the 23 conversion factors.

(iii) *Geographic area adjustment factors.* Using the 80th percentile charges for the selected CPT/HCPCS codes from paragraph (f)(3) of this section for each geographic area, a geographic area-specific conversion factor is calculated for each of the 23 CPT/HCPCS code groups by dividing the weighted average charge by the weighted average geographically-adjusted RVU. The resulting conversion factor for each geographic area for each of the 23 CPT/HCPCS code groups is divided by the corresponding nationwide conversion factor determined pursuant to paragraph (f)(3)(i) of this section. The resulting ratios are the geographic area adjustment factors for the conversion factors for each of the 23 CPT/HCPCS code groups for each geographic area.

(4) *Charge adjustment factors for specified CPT/HCPCS code modifiers.* Surcharges or charge discounts are calculated in the following manner: from the Part B component of the Medicare Standard Analytical File 5% Sample, the ratio of weighted average billed charges for CPT/HCPCS codes with the specified modifier *to* the weighted average billed charge for CPT/HCPCS codes with no charge modifier is calculated, using the frequency of procedure codes with the modifier as weights in both weighted average calculations. The resulting ratios constitute the surcharge or discount factors for specified charge-significant CPT/HCPCS code modifiers.

(5) *Certain charges for providers other than physicians.* When services for which charges are established according to the preceding provisions of this paragraph (f) are performed by providers other than physicians, the charges for those services will be as determined by the preceding provisions of this paragraph, except as follows:

(i) *Outpatient facility charges.* When the services of providers other than physicians are furnished in outpatient facility settings or in other facilities designated as provider-based, and outpatient facility charges for those services have been established under paragraph (e) of this section, then the outpatient facility charges established under paragraph (e) will apply instead of the charges established under this paragraph (f).

(ii) *Discounted charges.* Charges for the professional services of the following providers will be the indicated percentages of the amount that would be charged if the care had been provided by a physician:

(A) Nurse practitioner: 85%.

(B) Clinical nurse specialist: 85%.

(C) Physician assistant: 85%.

(D) Clinical psychologist: 80%.

(E) Clinical social worker: 75%.

(F) Dietitian: 75%.

(G) Clinical pharmacist: 80%.

(g) *Professional charges for anesthesia services.* When VA provides or furnishes professional anesthesia services within the scope of care referred to in paragraph (a)(1) of this section, professional anesthesia charges billed for such services will be determined in accordance with the provisions of this paragraph. Charges for professional anesthesia services provided by physicians or by certified registered nurse anesthetists when not medically directed by an anesthesiologist will be 100% of the charges determined as set forth in this paragraph. Charges for professional anesthesia services provided by a certified registered nurse anesthetist when medically directed by an anesthesiologist will be 50% of the charges otherwise determined as set forth in this paragraph, and shall be in addition to the charges for the anesthesiologist. Professional anesthesia charges consist of charges for professional services that vary by geographic area, by CPT/HCPCS code base units, and by number of time units. These charges are calculated as follows:

(1) *Formula.* For each anesthesia CPT/HCPCS code, multiply the total anesthesia RVUs determined pursuant to paragraph (g)(2) of this section by the applicable geographically-adjusted conversion factor (a monetary amount) determined pursuant to paragraph (g)(3) of this section to obtain the professional anesthesia charge for each CPT/HCPCS code in a particular geographic area.

(2) *Total RVUs for professional anesthesia services.* The total anesthesia RVUs for each anesthesia CPT/HCPCS code are the sum of the base units (as compiled by CMS) for that CPT/HCPCS code and the number of time units reported for the anesthesia service, where one time unit equals 15 minutes. For anesthesia CPT/HCPCS codes designated as unlisted procedures, base units are developed based on the weighted median base units for anesthesia CPT/HCPCS codes within the series in which the unlisted procedure code occurs. A nationwide VA distribution of procedures and services is used for the purpose of computing the weighted median base units.

(3) *Geographically-adjusted 80th percentile conversion factors.* A nationwide 80th percentile conversion factor is calculated according to the methodology set forth in paragraph (g)(3)(i) of this section. The nationwide conversion factor is then trended forward to the effective time period for the charges, as set forth in paragraph (g)(3)(ii) of this section. The resulting amount is multiplied by geographic area adjustment factors determined pursuant to paragraph (g)(3)(iii) of this section, resulting in geographically-adjusted 80th percentile conversion factors for each geographic area for the effective charge period.

(i) *Nationwide conversion factor.* Preliminary 80th percentile conversion factors for each area are compiled from the MDR database. Then, a preliminary nationwide weighted-average 80th percentile conversion factor is calculated, using as weights the population (census) frequencies for each geographic area as presented in the Milliman USA, Inc., Health Cost Guidelines (*see* paragraph (a)(3) of this section for data sources). A nationwide 80th percentile fee by CPT/HCPCS code is then computed by multiplying this conversion factor by the MDR base units for each CPT/HCPCS code. An adjusted 80th percentile conversion factor by CPT/HCPCS code is then calculated by dividing the nationwide 80th percentile fee for each procedure code by the anesthesia base units (as compiled by CMS) for that CPT/HCPCS code. Finally, a nationwide weighted average 80th percentile conversion factor is calculated using combined frequencies for billed base units and time units from the Part B component of the Medicare Standard Analytical File 5% Sample as weights.

(ii) *Trending forward.* The nationwide conversion factor, obtained as described in paragraph (g)(3)(i) of this section, is trended forward based on changes to the physicians' services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the conversion factor.

(iii) *Geographic area adjustment factors.* The preliminary 80th percentile conversion factors for each geographic area described in paragraph (g)(3)(i) of this section are divided by the corresponding preliminary nationwide 80th percentile conversion factor also described in paragraph (g)(3)(i). The resulting ratios are the adjustment factors for each geographic area.

(h) *Professional charges for dental services identified by HCPCS Level II codes.* When VA provides or furnishes outpatient dental professional services within the scope of care referred to in paragraph (a)(1) of this section, and such services are identified by HCPCS code rather than CPT code, the charges billed for such services will be determined in accordance with the provisions of this paragraph. The charges for dental services vary by geographic area and by HCPCS code. These charges are calculated as follows:

(1) *Formula.* For each HCPCS dental code, multiply the nationwide 80th percentile charge determined pursuant to paragraph (h)(2) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (h)(3) of this section. The result constitutes the area-specific dental charge.

(2) *Nationwide 80th percentile charges by HCPCS code.* For each HCPCS dental code, 80th percentile charges are extracted from three independent data sources: Prevailing Healthcare Charges System database; National Dental Advisory Service nationwide pricing index; and the Dental UCR Module of the Comprehensive Healthcare Payment System, a release from Ingenix from a nationwide database of dental charges (*see* paragraph (a)(3) of this section for data sources). Charges for each database are then trended forward to a common date, based on actual changes to the dental services component of the CPI-U. Charges for each HCPCS dental code from each data source are combined into an average 80th percentile charge by means of the methodology set forth in paragraph (h)(2)(i) of this section. HCPCS dental codes designated as unlisted are assigned 80th percentile charges by means of the methodology set forth in paragraph (h)(2)(ii) of this section. Finally, the resulting amounts are each trended forward to the effective time period for the charges, as set forth in paragraph (h)(2)(iii) of this section. The results constitute the nationwide 80th percentile charge for each HCPCS dental code.

(i) *Averaging methodology.* The average charge for any particular HCPCS dental code is calculated by first computing a preliminary mean average of the three charges for each code. Statistical outliers are identified and removed by testing whether any charge differs from the preliminary mean charge by more than 50% of the preliminary mean charge. In such cases, the charge most distant from the preliminary mean is removed as an outlier, and the average charge is calculated as a mean of the two remaining charges. In cases where none of the charges differ from the preliminary mean charge by more than 50% of the preliminary mean charge, the average charge is calculated as a mean of all three reported charges.

(ii) *Nationwide 80th percentile charges for HCPCS dental codes designated as unlisted procedures.* For HCPCS dental codes designated as unlisted procedures, 80th percentile charges are developed based on the weighted median 80th percentile charge of HCPCS dental codes within the series in which the unlisted procedure code occurs. The distribution of procedures and services from the Prevailing Healthcare Charges System nationwide commercial insurance database is used for the purpose of computing the weighted median.

(iii) *Trending forward.* 80th percentile charges for each dental procedure code, obtained as described in paragraph (h)(2) of this section, are trended forward based on the dental services component of the CPI-U. Actual CPI-U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI-U change so obtained is then applied to the 80th percentile charges.

(3) *Geographic area adjustment factors.* A geographic adjustment factor (consisting of the ratio of the level of charges in a given geographic area to the nationwide level of charges) for each geographic area and dental class of service is obtained from Milliman USA, Inc., Dental Health Cost Guidelines, a database of nationwide commercial insurance charges and relative costs; and a normalized geographic adjustment factor computed from the Dental UCR Module of the Comprehensive Healthcare Payment System compiled by Ingenix, as follows: Using local and nationwide average charges reported in the Ingenix data, a local weighted average charge for each dental class of procedure codes is calculated using utilization frequencies from the Milliman USA, Inc., Dental Health Cost Guidelines as weights (*see* paragraph (a)(3) of this section for data sources). Similarly, using nationwide average charge levels, a nationwide average charge by dental class of procedure codes is calculated. The normalized geographic adjustment factor for each dental class of procedure codes and for each geographic area is the ratio of the local average charge divided by the corresponding nationwide average charge. Finally, the geographic area adjustment factor is the arithmetic average of the corresponding factors from the data sources mentioned in the first sentence of this paragraph (h)(3).

(i) *Pathology and laboratory charges.* When VA provides or furnishes pathology and laboratory services within the scope of care referred to in paragraph (a)(1) of this section, charges billed for such services will be determined in accordance with the provisions of this paragraph. Pathology and laboratory charges consist of charges for services that vary by geographic area and by CPT/HCPCS code. These charges are calculated as follows:

(1) *Formula.* For each CPT/HCPCS code, multiply the total geographically-adjusted RVUs determined pursuant to paragraph (i)(2) of this section by the applicable geographically-adjusted conversion factor (a monetary amount) determined pursuant to paragraph (i)(3) of this section to obtain the pathology/laboratory charge for each CPT/HCPCS code in a particular geographic area.

(2)(i) *Total geographically-adjusted RVUs for pathology and laboratory services that have Medicare-based RVUs.* Total RVUs are developed based on the Medicare Clinical Diagnostic Laboratory Fee Schedule (CLAB). The CLAB payment amounts are upwardly adjusted such that the adjusted payment amounts are, on average, equivalent to Medicare Physician Fee Schedule payment levels, using statistical comparisons to the 80th percentile derived from the MDR database. These adjusted payment amounts are then divided by the corresponding Medicare conversion factor to derive RVUs for each CPT/HCPCS code. The resulting nationwide total RVUs are multiplied by the geographic adjustment factors determined pursuant to paragraph (i)(2)(iv) of this section to obtain the area-specific total RVUs.

(ii) *RVUs for CPT/HCPCS codes that do not have Medicare-based RVUs and are not designated as unlisted procedures.* For CPT/HCPCS codes that are not assigned RVUs in paragraphs (i)(2)(i) or (i)(2)(iii) of this section, total RVUs are developed based on various charge data sources. For these CPT/HCPCS codes, the nationwide 80th percentile billed charges are obtained, where statistically credible, from the MDR database. For any remaining CPT/HCPCS codes, the nationwide 80th percentile billed charges are obtained, where statistically credible, from the Part B component of the Medicare Standard Analytical File 5% Sample. For any remaining CPT/HCPCS codes, the nationwide 80th percentile billed charges are obtained, where statistically credible, from the Prevailing Healthcare Charges System nationwide commercial insurance database. For each of these CPT/HCPCS codes, nationwide total RVUs are obtained by taking the nationwide 80th percentile billed charges obtained using the preceding three databases and dividing by the untrended nationwide conversion factor determined pursuant to paragraphs (i)(3) and (i)(3)(i) of this section. For any remaining CPT/HCPCS codes that have not been assigned RVUs using the preceding data sources, the nationwide total RVUs are calculated by summing the work expense and non-facility practice expense RVUs found in Ingenix/St. Anthony's RBRVS. The resulting nationwide total RVUs obtained using these four data sources are multiplied by the geographic area adjustment factors determined pursuant to paragraph (i)(2)(iv) of this section to obtain the area-specific total RVUs.

(iii) *RVUs for CPT/HCPCS codes designated as unlisted procedures.* For CPT/HCPCS codes designated as unlisted procedures, total RVUs are developed based on the weighted median of the total RVUs of CPT/HCPCS codes within the series in which the unlisted procedure code occurs. A nationwide VA distribution of procedures and services is used for the purpose of computing the weighted median. The resulting nationwide total RVUs are multiplied by the geographic area adjustment factors determined pursuant to paragraph (i)(2)(iv) of this section to obtain the area-specific total RVUs.

(iv) *RVU geographic area adjustment factors for CPT/HCPCS codes that do not have Medicare RVUs, including codes that are designated as unlisted procedures.* The adjustment factor for each geographic area consists of the weighted average of the work expense and practice expense Medicare Geographic Practice Cost Indices for each geographic area using charge data for representative CPT/HCPCS codes statistically selected and weighted for work expense and practice expense.

(3) *Geographically-adjusted 80th percentile conversion factors.* Representative CPT/HCPCS codes are statistically selected and weighted so as to give a weighted average RVU comparable to the weighted average RVU of the entire pathology/laboratory CPT/HCPCS code group (the selected CPT/HCPCS codes are set forth in the Milliman USA, Inc., Health Cost Guidelines fee survey). The 80th percentile charge for each selected CPT/

HCPCS code is obtained from the MDR database. A nationwide conversion factor (a monetary amount) is calculated as set forth in paragraph (i)(3)(i) of this section. The nationwide conversion factor is trended forward to the effective time period for the charges, as set forth in paragraph (i)(3)(ii) of this section. The resulting amount is multiplied by a geographic area adjustment factor determined pursuant to paragraph (i)(3)(iv) of this section, resulting in the geographically-adjusted 80th percentile conversion factor for the effective charge period.

(i) *Nationwide conversion factors.* Using the nationwide 80th percentile charges for the selected CPT/HCPCS codes from paragraph (i)(3) of this section, a nationwide conversion factor is calculated by dividing the weighted average charge by the weighted average RVU.

(ii) *Trending forward.* The nationwide conversion factor, obtained as described in paragraph (i)(3) of this section, is trended forward based on changes to the physicians' services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the pathology/laboratory conversion factor.

(iii) *Geographic area adjustment factor.* Using the 80th percentile charges for the selected CPT/HCPCS codes from paragraph (i)(3) of this section for each geographic area, a geographic area-specific conversion factor is calculated by dividing the weighted average charge by the weighted average geographically-adjusted RVU. The resulting geographic area conversion factor is divided by the corresponding nationwide conversion factor determined pursuant to paragraph (i)(3)(i) of this section. The resulting ratios are the geographic area adjustment factors for pathology and laboratory services for each geographic area.

(j) *Observation care facility charges.* When VA provides observation care within the scope of care referred to in paragraph (a)(1) of this section, the facility charges billed for such care will be determined in accordance with the provisions of this paragraph. The charges for this care vary by geographic area and number of hours of care. These charges are calculated as follows:

(1) *Formula.* For each occurrence of observation care, add the nationwide base charge determined pursuant to paragraph (j)(2) of this section to the product of the number of hours in observation care and the hourly charge also determined pursuant to paragraph (j)(2) of this section. Then multiply this amount by the appropriate geographic area adjustment factor determined pursuant to paragraph (j)(3) of this section. The result constitutes the area-specific observation care facility charge.

(2)(i) *Nationwide 80th percentile observation care facility charges.* To calculate nationwide base and hourly facility charges, all claims with observation care line items are selected from the outpatient facility component of the Medicare Standard Analytical File 5% Sample. Then, using the 80th percentile observation line item charges for each unique hourly length of stay, a standard linear regression technique is used to calculate the nationwide 80th percentile base charge and 80th percentile hourly charge. Finally, the resulting amounts are each trended forward to the effective time period for the charges, as set forth in paragraph (j)(2)(ii) of this section. The results constitute the nationwide 80th percentile base and hourly facility charges for observation care.

(ii) *Trending forward.* The nationwide 80th percentile base and hourly facility charges for observation care, obtained as described in paragraph (j)(2)(i) of this section, are trended forward based on changes to the outpatient hospital services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges.

(3) *Geographic area adjustment factors.* The geographic area adjustment factors for observation care facility charges are the same as those computed for outpatient facility charges under paragraph (e)(4) of this section.

(k) *Ambulance and other emergency transportation charges.* When VA provides ambulance and other emergency transportation services that are within the scope of care referred to in paragraph (a)(1) of this section, the charges billed for such services will be determined in accordance with the provisions of this paragraph. The charges for these services vary by HCPCS code, length of trip, and geographic area. These charges are calculated as follows:

(1) *Formula.* For each occasion of ambulance or other emergency transportation service, add the nationwide base charge for the appropriate HCPCS code determined pursuant to paragraph (k)(2)(i) of this section to the product of the number of miles traveled and the appropriate HCPCS code mileage charge determined pursuant to paragraph (k)(2)(ii) of this section. Then multiply this amount by the appropriate geographic area adjustment factor determined pursuant to paragraph (k)(3) of this section. The result constitutes the area-specific ambulance or other emergency transportation service charge.

(2)(i) *Nationwide 80th percentile all-inclusive base charge.* To calculate a nationwide all-inclusive base charge, all ambulance and other emergency transportation claims are selected from the outpatient facility component of the Medicare Standard Analytical File 5% Sample. Excluding professional and mileage charges, as well as all-inclusive charges which are reported on such claims, the total charge per claim, including incidental supplies, is computed. Then, the 80th percentile amount for each HCPCS code is computed. Finally, the resulting amounts are each trended forward to the effective time period for the charges, as set forth in paragraph (k)(2)(iii) of this section. The results constitute the nationwide 80th percentile all-inclusive base charge for each HCPCS base charge code.

(ii) *Nationwide 80th percentile mileage charge.* To calculate a nationwide mileage charge, all ambulance and other emergency transportation claims are selected from the outpatient facility component of the Medicare Standard Analytical File 5% Sample. Excluding professional, incidental, and base charges, as well as claims with all-inclusive charges, the total mileage charge per claim is computed. This amount is divided by the number of miles reported on the claim. Then, the 80th percentile amount for each HCPCS code, using miles as weights, is computed. Finally, the resulting amounts are each trended forward to the effective time period for the charges, as set forth in paragraph (k)(2)(iii) of this section. The results constitute the nationwide 80th percentile mileage charge for each HCPCS mileage code.

(iii) *Trending forward.* The nationwide 80th percentile charge for each HCPCS code, obtained as described in paragraphs (k)(2)(i) and (k)(2)(ii) of this section, is trended forward based on changes to the outpatient hospital services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges.

(3) *Geographic area adjustment factors.* The geographic area adjustment factors for ambulance and other emergency transportation charges are the same as those computed for outpatient facility charges under paragraph (e)(4) of this section.

(l) *Charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by HCPCS Level II codes.* When VA provides DME, drugs, injectables, or other medical services, items, or supplies that are identified by HCPCS Level II codes and that are within the scope of care referred to in paragraph (a)(1) of this section, the charges billed for such services, items, and supplies will be determined in accordance with the provisions of this paragraph. The charges for these services, items, and supplies vary by geographic area, by HCPCS code, and by modifier, when applicable. These charges are calculated as follows:

(1) *Formula.* For each HCPCS code, multiply the nationwide charge determined pursuant to paragraphs (l)(2), (l)(3), and (l)(4) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (l)(5) of this section. The result constitutes the area-specific charge.

(2) *Nationwide 80th percentile charges for HCPCS codes with RVUs.* For each applicable HCPCS code, RVUs are compiled from the data sources set forth in paragraph (l)(2)(i) of this section. The RVUs are multiplied by the charge amount for each incremental RVU determined pursuant to paragraph (l)(2)(ii) of this section, and this amount is added to the fixed charge amount also determined pursuant to paragraph (l)(2)(ii) of this section. Then, for each HCPCS code, this charge is multiplied by the appropriate 80th percentile to median charge ratio determined pursuant to paragraph (l)(2)(iii) of this section. Finally, the resulting amount is trended forward to the effective time period for the charges, as set forth in paragraph (l)(2)(iv) of this section to obtain the nationwide 80th percentile charge.

(i) *RVUs for DME, drugs, injectables, and other medical services, items, and supplies.* For the purpose of the statistical methodology set forth in paragraph (l)(2)(ii) of this section, HCPCS codes are assigned to the following HCPCS code groups. For the HCPCS codes in each group, the RVUs or amounts indicated constitute the RVUs:

(A) Chemotherapy Drugs: Ingenix/St. Anthony's RBRVS Practice Expense RVUs.

(B) Other Drugs: Ingenix/St. Anthony's RBRVS Practice Expense RVUs.

(C) DME—Hospital Beds: Medicare DME Fee Schedule amounts.

(D) DME—Medical/Surgical Supplies: Medicare DME Fee Schedule amounts.

(E) DME—Orthotic Devices: Medicare DME Fee Schedule amounts.

(F) DME—Oxygen and Supplies: Medicare DME Fee Schedule amounts.

(G) DME—Wheelchairs: Medicare DME Fee Schedule amounts.

(H) Other DME: Medicare DME Fee Schedule amounts.

(I) Enteral/Parenteral Supplies: Medicare Parenteral and Enteral Nutrition Fee Schedule amounts.

(J) Surgical Dressings and Supplies: Medicare DME Fee Schedule amounts.

(K) Vision Items—Other Than Lenses: Medicare DME Fee Schedule amounts.

(L) Vision Items—Lenses: Medicare DME Fee Schedule amounts.

(M) Hearing Items: Ingenix/St. Anthony's RBRVS Practice Expense RVUs.

(ii) *Charge amounts.* Using combined Part B and DME components of the Medicare Standard Analytical File 5% Sample, the median billed charge is calculated for each HCPCS code. A mathematical approximation methodology based on least squares techniques is applied to the RVUs specified for each of the groups set forth in paragraph (l)(2)(i) of this section, yielding two charge amounts for each HCPCS code group: a charge amount per incremental RVU, and a fixed charge amount.

(iii) *80th Percentile to median charge ratios.* Two ratios are obtained for each HCPCS code group set forth in paragraph (l)(2)(i) of this section by dividing the weighted average 80th percentile charge by the weighted average median charge derived from two data sources: Medicare data, as represented by the combined Part B and DME components of the Medicare Standard Analytical File 5% Sample; and the MDR database. Charge frequencies from the Medicare data are used as weights when calculating all weighted averages. For each HCPCS code group, the smaller of the two ratios is selected as the adjustment from median to 80th percentile charges.

(iv) *Trending forward.* The charges for each HCPCS code, obtained as described in paragraph (l)(2)(iii) of this section, are trended forward based on changes to the medical care commodities component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges, as described in paragraph (l)(2)(iii) of this section.

(3) *Nationwide 80th percentile charges for HCPCS codes without RVUs.* For each applicable HCPCS code, 80th percentile charges are extracted from three independent data sources: the MDR database; Medicare, as represented by the combined Part B and DME components of the Medicare Standard Analytical File 5% Sample; and Milliman USA, Inc., Optimized HMO (Health Maintenance Organization) Data Sets (*see* paragraph (a)(3) of this section for data sources). Charges from each database are then trended forward to the effective time period for the charges, as set forth in paragraph (l)(3)(i) of this section. Charges for each HCPCS code from each data source are combined into an average 80th percentile charge by means of the methodology set forth in paragraph (l)(3)(ii) of this section. The results constitute the nationwide 80th percentile charge for each applicable HCPCS code.

(i) *Trending forward.* The charges from each database for each HCPCS code, obtained as described in paragraph (l)(3) of this section, are trended forward based on changes to the medical care commodities component of the CPI–U. Actual CPI–U changes are used from the time period of each source database through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges, as described in paragraph (l)(3) of this section.

(ii) *Averaging methodology.* The average 80th percentile trended charge for any particular HCPCS code is calculated by first computing a preliminary mean average of the three charges for each HCPCS code. Statistical outliers are identified and removed by testing whether any charge differs from the preliminary mean charge by more than 5 times the preliminary mean charge, or by less than 0.2 times the preliminary mean charge. In such cases, the charge most distant from the preliminary mean is removed as an outlier, and the average charge is calculated as a mean of the two remaining charges. In cases where none of the charges differ from the preliminary mean charge by more than 5 times the preliminary mean charge, or less than 0.2 times the preliminary mean charge, the average charge is calculated as a mean of all three reported charges.

(4) *Nationwide 80th percentile charges for HCPCS codes designated as unlisted or unspecified.* For HCPCS codes designated as unlisted or unspecified procedures, services, items, or supplies, 80th percentile charges are developed based on the weighted median 80th percentile charges of HCPCS codes within the series in which the unlisted or unspecified code occurs. A nationwide VA distribution of procedures, services, items, and supplies is used for the purpose of computing the weighted median.

(5) *Geographic area adjustment factors.* For the purpose of geographic adjustment, HCPCS codes are combined into two groups: drugs and DME/supplies, as set forth in paragraph (l)(5)(i) of this section. The geographic area adjustment factor for each of these groups is calculated as the ratio of the area-specific weighted average charge determined pursuant to paragraph (l)(5)(ii) of this section divided by the nationwide weighted average charge determined pursuant to paragraph (l)(5)(iii) of this section.

(i) *Combined HCPCS code groups for geographic area adjustment factors for DME, drugs, injectables, and other medical services, items, and supplies.* For the purpose of the statistical methodology set forth in paragraph (l)(5) of this section, each of the HCPCS code groups set forth in paragraph (l)(2)(i) of this section is assigned to one of two combined HCPCS code groups, as follows:

(A) Chemotherapy Drugs: Drugs.

(B) Other Drugs: Drugs.

(C) DME—Hospital Beds: DME/supplies.

(D) DME—Medical/Surgical Supplies: DME/supplies.

(E) DME—Orthotic Devices: DME/supplies.

(F) DME—Oxygen and Supplies: DME/supplies.

(G) DME—Wheelchairs: DME/supplies.

(H) Other DME: DME/supplies.

(I) Enteral/Parenteral Supplies: DME/supplies.

(J) Surgical Dressings and Supplies: DME/supplies.

(K) Vision Items—Other Than Lenses: DME/supplies.

(L) Vision Items—Lenses: DME/supplies.

(M) Hearing Items: DME/supplies.

(ii) *Area-specific weighted average charges.* Using the median charges by HCPCS code from the MDR database for each geographic area and utilization frequencies by HCPCS code from the combined Part B and DME components of the Medicare Standard Analytical File 5% Sample, an area-specific weighted average charge is calculated for each combined HCPCS code group.

(iii) *Nationwide weighted average charges.* Using the area-specific weighted average charges determined pursuant to paragraph (l)(5)(ii) of this section, a nationwide weighted average charge is calculated for each combined HCPCS code group, using as weights the population (census) frequencies for each geographic area as presented in the Milliman USA, Inc., Health Cost Guidelines (*see* paragraph (a)(3) of this section for data sources).

(m) *Charges for prescription drugs not administered during treatment.* Notwithstanding other provisions of this section, when VA provides or furnishes prescription drugs not administered during treatment, within the scope of care referred to in paragraph (a)(1) of this section, charges billed separately for such prescription drugs will be based on VA costs in accordance with the methodology set forth in § 17.102 of this part.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0606.)

(Authority: 38 U.S.C. 101, 501, 1701, 1705, 1710, 1721, 1722, 1729)

[FR Doc. 03–24102 Filed 10–1–03; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### Reasonable Charges For Medical Care Or Services; 2003 Methodology Changes

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

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**SUMMARY:** In a companion document published as a proposed rule in this issue of the **Federal Register**, we are proposing to amend VA's medical regulations concerning "reasonable charges" for medical care or services provided or furnished by VA to a veteran:

—For a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract;

—For a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or

—For a nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance.

If the methodology changes presented in the proposed rule are subsequently adopted as a final rule, then the information set forth in this document for calculating actual charge amounts at individual VA facilities will be used from the effective date of the final rule until changed by a subsequent **Federal Register** notice. Accordingly, interested parties may wish to retain this document for future reference.

This document also identifies the editions of the data sources used to develop the accompanying charge tables, provides information on where the various data sources may be obtained, and provides a list of VA health care facilities.

**FOR FURTHER INFORMATION CONTACT:** David Cleaver, Chief Business Office (168), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 254–0361. (This is not a toll free number.)

**SUPPLEMENTARY INFORMATION:** A proposed rule published as a companion document in this issue of the **Federal Register** proposes to amend VA's "reasonable charges" regulations for medical care and services (38 CFR 17.101) to revise the methodology for establishing acute inpatient facility charges; skilled nursing facility/sub-acute inpatient facility charges; partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by HCPCS Level II codes. If the changes presented in the proposed rule are subsequently adopted as a final rule, then information for calculating actual charge amounts at individual VA facilities using the amended methodologies will be as set forth in Tables A through S in this document and will be effective until changed by a subsequent **Federal Register** notice.

The proposed rule also proposes to amend the existing regulations to provide authority to charge for medical care and services under specified circumstances when VA does not have an established charge.

Previously, information on the editions of the data sources used to establish reasonable charges and where the various data sources could be obtained was included in the regulations. We are now proposing to present this information in the applicable **Federal Register** notice. Accordingly, Supplementary Table 1 lists the data sources and editions used for compiling the data in Tables A through S in this document. Supplementary Table 2 provides information on where the various data sources may be obtained.

Previously, the tables of geographic area adjustment factors (GAAFs) listed VA facility locations by city and state. Consistent with the proposal to use three-digit ZIP Code areas as the geographic areas for all charge types, the GAAFs presented in this document are listed by three-digit ZIP Code. Supplementary Table 3 provides a list of VA facilities that links them to their three-digit ZIP Codes.

**Anthony J. Principi,**
*Secretary of Veterans Affairs.*

BILLING CODE 8320–01–P

## TABLE A. — ACUTE INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES BY DRG (DIAGNOSIS RELATED GROUP)

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| DRG | Description | Surgical/ Non-Surgical Indicator | Per Diem Charge | | |
|---|---|---|---|---|---|
| | | | Standard Room and Board | ICU Room and Board | Ancillary |
| 001 | Craniotomy age >17 w cc | S | $1,166.51 | $2,499.20 | $4,591.91 |
| 002 | Craniotomy age >17 w/o cc | S | $1,133.18 | $2,447.46 | $5,683.42 |
| 003 | Craniotomy age 0-17 | S | $1,175.33 | $2,527.44 | $4,872.17 |
| 004 | Spinal procedures | S | $1,034.21 | $2,184.06 | $4,454.33 |
| 005 | Extracranial vascular procedures | S | $893.55 | $1,771.88 | $5,669.96 |
| 006 | Carpal tunnel release | S | $1,094.44 | $1,558.78 | $3,714.81 |
| 007 | Periph & cranial nerve & other nerv syst proc w cc | S | $1,083.26 | $1,979.25 | $3,223.00 |
| 008 | Periph & cranial nerve & other nerv syst proc w/o cc | S | $895.38 | $1,639.09 | $7,069.63 |
| 009 | Spinal disorders & injuries | N | $895.88 | $2,102.85 | $1,378.66 |
| 010 | Nervous system neoplasms w cc | N | $1,115.84 | $2,007.43 | $2,001.86 |
| 011 | Nervous system neoplasms w/o cc | N | $841.72 | $1,712.33 | $1,562.88 |
| 012 | Degenerative nervous system disorders | N | $897.26 | $1,421.96 | $812.08 |
| 013 | Multiple sclerosis & cerebellar ataxia | N | $740.03 | $1,350.96 | $1,026.67 |
| 014 | Intracranial hemorrhage & stroke w infarct | N | $906.40 | $1,754.78 | $1,931.30 |
| 015 | Nonspecific cva & precerebral occlusion w/o infarct | N | $760.94 | $1,462.70 | $1,681.37 |
| 016 | Nonspecific cerebrovascular disorders w cc | N | $989.76 | $1,826.20 | $2,107.43 |
| 017 | Nonspecific cerebrovascular disorders w/o cc | N | $809.67 | $1,320.12 | $1,586.09 |
| 018 | Cranial & peripheral nerve disorders w cc | N | $844.15 | $1,537.12 | $1,711.10 |
| 019 | Cranial & peripheral nerve disorders w/o cc | N | $937.65 | $1,569.88 | $1,863.70 |
| 020 | Nervous system infection except viral meningitis | N | $972.95 | $1,888.67 | $2,662.45 |
| 021 | Viral meningitis | N | $1,005.94 | $1,972.71 | $2,674.78 |
| 022 | Hypertensive encephalopathy | N | $849.92 | $1,658.63 | $2,049.26 |
| 023 | Nontraumatic stupor & coma | N | $1,077.63 | $1,881.63 | $2,109.49 |
| 024 | Seizure & headache age >17 w cc | N | $962.80 | $1,750.09 | $1,998.97 |
| 025 | Seizure & headache age >17 w/o cc | N | $960.38 | $1,720.89 | $1,811.09 |
| 026 | Seizure & headache age 0-17 | N | $1,291.96 | $2,342.71 | $2,621.82 |
| 027 | Traumatic stupor & coma, coma >1 hr | N | $1,086.81 | $2,383.45 | $2,645.80 |
| 028 | Traumatic stupor & coma, coma <1 hr age >17 w cc | N | $965.43 | $2,064.56 | $1,933.15 |
| 029 | Traumatic stupor & coma, coma <1 hr age >17 w/o cc | N | $963.13 | $2,186.93 | $1,448.54 |
| 030 | Traumatic stupor & coma, coma <1 hr age 0-17 | N | $858.08 | $1,862.81 | $1,617.19 |
| 031 | Concussion age >17 w cc | N | $1,359.87 | $2,702.66 | $2,942.84 |
| 032 | Concussion age >17 w/o cc | N | $1,096.58 | $2,355.33 | $2,473.20 |
| 033 | Concussion age 0-17 | N | $1,199.55 | $2,425.30 | $2,622.45 |
| 034 | Other disorders of nervous system w cc | N | $848.01 | $1,591.64 | $1,603.46 |
| 035 | Other disorders of nervous system w/o cc | N | $754.40 | $1,465.97 | $1,196.43 |
| 036 | Retinal procedures | S | $1,025.67 | $2,252.96 | $7,235.50 |
| 037 | Orbital procedures | S | $1,117.48 | $2,122.96 | $3,937.33 |
| 038 | Primary iris procedures | S | $1,388.99 | $1,872.02 | $2,969.74 |
| 039 | Lens procedures with or without vitrectomy | S | $1,010.64 | $2,201.77 | $4,160.29 |
| 040 | Extraocular procedures except orbit age >17 | S | $996.11 | $2,494.26 | $3,144.26 |
| 041 | Extraocular procedures except orbit age 0-17 | S | $996.11 | $2,494.26 | $3,144.26 |
| 042 | Intraocular procedures except retina, iris & lens | S | $1,022.03 | $1,878.05 | $3,949.83 |
| 043 | Hyphema | N | $861.95 | $1,077.37 | $1,502.45 |
| 044 | Acute major eye infections | N | $1,045.99 | $1,551.72 | $1,233.80 |
| 045 | Neurological eye disorders | N | $887.43 | $1,494.87 | $2,256.56 |
| 046 | Other disorders of the eye age >17 w cc | N | $960.46 | $1,676.72 | $1,620.26 |
| 047 | Other disorders of the eye age >17 w/o cc | N | $1,074.35 | $1,484.03 | $1,513.63 |
| 048 | Other disorders of the eye age 0-17 | N | $983.74 | $1,654.00 | $1,593.02 |
| 049 | Major head & neck procedures | S | $1,005.82 | $1,951.66 | $5,364.64 |
| 050 | Sialoadenectomy | S | $1,029.62 | $2,152.91 | $6,790.30 |
| 051 | Salivary gland procedures except sialoadenectomy | S | $1,130.50 | $1,871.59 | $4,316.28 |
| 052 | Cleft lip & palate repair | S | $888.87 | $1,904.81 | $5,282.24 |
| 053 | Sinus & mastoid procedures age >17 | S | $911.10 | $1,874.58 | $4,364.36 |
| 054 | Sinus & mastoid procedures age 0-17 | S | $911.10 | $1,874.58 | $4,364.36 |
| 055 | Miscellaneous ear, nose, mouth & throat procedures | S | $1,034.65 | $1,907.77 | $3,968.24 |
| 056 | Rhinoplasty | S | $1,115.79 | $2,074.45 | $5,871.38 |
| 057 | T&a proc, except tonsillectomy &/or adenoidectomy only, age >17 | S | $878.78 | $1,907.45 | $3,278.15 |
| 058 | T&a proc, except tonsillectomy &/or adenoidectomy only, age 0-17 | S | $878.78 | $1,907.45 | $3,278.15 |
| 059 | Tonsillectomy &/or adenoidectomy only, age >17 | S | $816.95 | $1,670.48 | $3,496.87 |
| 060 | Tonsillectomy &/or adenoidectomy only, age 0-17 | S | $647.71 | $1,324.42 | $2,772.44 |
| 061 | Myringotomy w tube insertion age >17 | S | $1,082.88 | $1,964.67 | $3,649.88 |
| 062 | Myringotomy w tube insertion age 0-17 | S | $1,082.88 | $1,964.67 | $3,649.88 |
| 063 | Other ear, nose, mouth & throat or procedures | S | $1,160.06 | $2,223.62 | $4,740.29 |
| 064 | Ear, nose, mouth & throat malignancy | N | $1,119.92 | $2,160.66 | $2,099.41 |
| 065 | Dysequilibrium | N | $976.77 | $1,685.09 | $2,022.20 |
| 066 | Epistaxis | N | $1,023.73 | $1,957.37 | $1,884.60 |
| 067 | Epiglottitis | N | $933.87 | $1,942.70 | $2,246.66 |
| 068 | Otitis media & uri age >17 w cc | N | $845.51 | $1,585.00 | $1,801.42 |

### TABLE A. — ACUTE INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES BY DRG (DIAGNOSIS RELATED GROUP)

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| DRG | Description | Surgical/Non-Surgical Indicator | Per Diem Charge | | |
|---|---|---|---|---|---|
| | | | Standard Room and Board | ICU Room and Board | Ancillary |
| 069 | Otitis media & uri age >17 w/o cc | N | $788.42 | $1,524.91 | $1,541.06 |
| 070 | Otitis media & uri age 0-17 | N | $765.06 | $1,443.14 | $1,600.80 |
| 071 | Laryngotracheitis | N | $787.23 | $1,775.98 | $1,801.85 |
| 072 | Nasal trauma & deformity | N | $1,504.19 | $2,899.86 | $2,862.53 |
| 073 | Other ear, nose, mouth & throat diagnoses age >17 | N | $1,015.54 | $2,003.33 | $1,986.87 |
| 074 | Other ear, nose, mouth & throat diagnoses age 0-17 | N | $1,395.39 | $2,752.63 | $2,730.01 |
| 075 | Major chest procedures | S | $1,007.10 | $1,899.96 | $3,802.03 |
| 076 | Other resp system or procedures w cc | S | $1,103.30 | $2,007.27 | $3,101.15 |
| 077 | Other resp system or procedures w/o cc | S | $966.84 | $1,534.21 | $3,047.30 |
| 078 | Pulmonary embolism | N | $868.61 | $1,526.64 | $1,982.43 |
| 079 | Respiratory infections & inflammations age >17 w cc | N | $957.37 | $1,696.98 | $2,098.74 |
| 080 | Respiratory infections & inflammations age >17 w/o cc | N | $927.26 | $1,751.23 | $1,644.59 |
| 081 | Respiratory infections & inflammations age 0-17 | N | $1,230.52 | $2,186.51 | $2,681.20 |
| 082 | Respiratory neoplasms | N | $895.41 | $1,534.82 | $1,954.50 |
| 083 | Major chest trauma w cc | N | $901.05 | $1,739.21 | $1,752.23 |
| 084 | Major chest trauma w/o cc | N | $947.40 | $2,102.84 | $1,635.93 |
| 085 | Pleural effusion w cc | N | $952.87 | $1,575.87 | $2,088.41 |
| 086 | Pleural effusion w/o cc | N | $972.60 | $1,715.74 | $2,078.08 |
| 087 | Pulmonary edema & respiratory failure | N | $978.32 | $1,804.65 | $2,540.94 |
| 088 | Chronic obstructive pulmonary disease | N | $817.88 | $1,466.21 | $1,732.37 |
| 089 | Simple pneumonia & pleurisy age >17 w cc | N | $882.57 | $1,582.64 | $1,835.86 |
| 090 | Simple pneumonia & pleurisy age >17 w/o cc | N | $824.86 | $1,452.82 | $1,503.88 |
| 091 | Simple pneumonia & pleurisy age 0-17 | N | $1,034.86 | $1,858.91 | $2,137.34 |
| 092 | Interstitial lung disease w cc | N | $902.04 | $1,589.60 | $1,996.62 |
| 093 | Interstitial lung disease w/o cc | N | $933.22 | $1,669.64 | $1,842.06 |
| 094 | Pneumothorax w cc | N | $818.21 | $1,487.12 | $1,773.21 |
| 095 | Pneumothorax w/o cc | N | $769.37 | $1,608.02 | $1,422.36 |
| 096 | Bronchitis & asthma age >17 w cc | N | $808.64 | $1,504.23 | $1,658.14 |
| 097 | Bronchitis & asthma age >17 w/o cc | N | $791.21 | $1,457.05 | $1,513.60 |
| 098 | Bronchitis & asthma age 0-17 | N | $961.41 | $1,783.58 | $1,932.77 |
| 099 | Respiratory signs & symptoms w cc | N | $943.46 | $1,600.08 | $2,509.73 |
| 100 | Respiratory signs & symptoms w/o cc | N | $839.35 | $1,383.98 | $2,430.68 |
| 101 | Other respiratory system diagnoses w cc | N | $1,005.82 | $1,790.75 | $2,259.80 |
| 102 | Other respiratory system diagnoses w/o cc | N | $1,054.03 | $1,846.39 | $2,380.03 |
| 103 | Heart transplant | S | $1,041.93 | $2,237.60 | $6,646.03 |
| 104 | Cardiac valve & oth major cardiothoracic proc w card cath | S | $1,314.32 | $2,298.70 | $8,048.76 |
| 105 | Cardiac valve & oth major cardiothoracic proc w/o card cath | S | $1,204.48 | $2,181.78 | $8,365.85 |
| 106 | Coronary bypass w ptca | S | $1,110.15 | $2,001.26 | $9,584.07 |
| 107 | Coronary bypass w cardiac cath | S | $1,064.69 | $1,847.48 | $6,922.52 |
| 108 | Other cardiothoracic procedures | S | $1,246.65 | $2,264.68 | $7,976.36 |
| 109 | Coronary bypass w/o ptca or cardiac cath | S | $1,095.81 | $1,947.85 | $7,112.59 |
| 110 | Major cardiovascular procedures w cc | S | $1,010.35 | $1,952.53 | $5,758.52 |
| 111 | Major cardiovascular procedures w/o cc | S | $882.68 | $1,662.88 | $6,827.14 |
| 112 | No longer valid | S | $0.00 | $0.00 | $0.00 |
| 113 | Amputation for circ system disorders except upper limb & toe | S | $996.02 | $1,922.64 | $2,638.93 |
| 114 | Upper limb & toe amputation for circ system disorders | S | $925.09 | $1,687.87 | $1,996.75 |
| 115 | Prm card pacem impl w ami, hrt fail or shk, or aicd lead or gn | S | $1,370.30 | $2,201.40 | $6,674.27 |
| 116 | Other permanent cardiac pacemaker implant | S | $1,107.65 | $1,732.80 | $7,241.45 |
| 117 | Cardiac pacemaker revision except device replacement | S | $1,235.97 | $2,207.21 | $4,593.82 |
| 118 | Cardiac pacemaker device replacement | S | $1,342.15 | $2,058.78 | $8,754.28 |
| 119 | Vein ligation & stripping | S | $1,017.96 | $1,814.25 | $3,360.63 |
| 120 | Other circulatory system or procedures | S | $1,066.75 | $1,922.50 | $3,055.77 |
| 121 | Circulatory disorders w ami & major comp, discharged alive | N | $1,201.09 | $2,145.20 | $2,960.00 |
| 122 | Circulatory disorders w ami w/o major comp, discharged alive | N | $1,303.82 | $2,326.83 | $4,070.69 |
| 123 | Circulatory disorders w ami, expired | N | $1,039.28 | $1,971.43 | $3,646.50 |
| 124 | Circulatory disorders except ami, w card cath & complex diag | N | $1,162.78 | $1,932.41 | $4,635.92 |
| 125 | Circulatory disorders except ami, w card cath w/o complex diag | N | $1,089.56 | $1,748.38 | $5,831.27 |
| 126 | Acute & subacute endocarditis | N | $1,282.18 | $2,169.29 | $2,700.09 |
| 127 | Heart failure & shock | N | $897.65 | $1,556.84 | $1,773.08 |
| 128 | Deep vein thrombophlebitis | N | $869.24 | $1,689.65 | $1,210.99 |
| 129 | Cardiac arrest, unexplained | N | $592.80 | $1,324.17 | $2,795.63 |
| 130 | Peripheral vascular disorders w cc | N | $893.51 | $1,679.22 | $1,544.53 |
| 131 | Peripheral vascular disorders w/o cc | N | $904.94 | $1,780.59 | $1,310.37 |
| 132 | Atherosclerosis w cc | N | $1,386.62 | $2,406.43 | $3,115.91 |
| 133 | Atherosclerosis w/o cc | N | $1,859.09 | $3,224.45 | $3,434.41 |
| 134 | Hypertension | N | $880.46 | $1,473.82 | $1,713.56 |
| 135 | Cardiac congenital & valvular disorders age >17 w cc | N | $1,036.16 | $1,772.74 | $1,902.81 |
| 136 | Cardiac congenital & valvular disorders age >17 w/o cc | N | $928.43 | $1,669.74 | $1,513.08 |

## TABLE A. — ACUTE INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES BY DRG (DIAGNOSIS RELATED GROUP)

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| DRG | Description | Surgical/Non-Surgical Indicator | Per Diem Charge | | |
|---|---|---|---|---|---|
| | | | Standard Room and Board | ICU Room and Board | Ancillary |
| 137 | Cardiac congenital & valvular disorders age 0-17 | N | $2,934.48 | $5,058.79 | $5,317.30 |
| 138 | Cardiac arrhythmia & conduction disorders w cc | N | $1,040.06 | $1,675.93 | $2,143.64 |
| 139 | Cardiac arrhythmia & conduction disorders w/o cc | N | $1,052.38 | $1,649.00 | $2,130.42 |
| 140 | Angina pectoris | N | $931.40 | $1,662.77 | $2,363.80 |
| 141 | Syncope & collapse w cc | N | $1,118.18 | $1,753.62 | $2,188.68 |
| 142 | Syncope & collapse w/o cc | N | $1,002.11 | $1,534.45 | $2,056.66 |
| 143 | Chest pain | N | $1,023.10 | $1,614.53 | $3,027.09 |
| 144 | Other circulatory system diagnoses w cc | N | $1,017.78 | $1,790.72 | $2,516.30 |
| 145 | Other circulatory system diagnoses w/o cc | N | $1,074.54 | $1,933.75 | $2,471.51 |
| 146 | Rectal resection w cc | S | $1,065.65 | $2,136.26 | $3,562.81 |
| 147 | Rectal resection w/o cc | S | $954.51 | $1,871.23 | $3,055.80 |
| 148 | Major small & large bowel procedures w cc | S | $902.04 | $1,860.13 | $3,256.93 |
| 149 | Major small & large bowel procedures w/o cc | S | $937.34 | $1,860.03 | $2,965.89 |
| 150 | Peritoneal adhesiolysis w cc | S | $884.86 | $1,811.57 | $2,901.99 |
| 151 | Peritoneal adhesiolysis w/o cc | S | $817.02 | $1,742.25 | $2,591.97 |
| 152 | Minor small & large bowel procedures w cc | S | $882.35 | $1,768.25 | $2,653.45 |
| 153 | Minor small & large bowel procedures w/o cc | S | $961.45 | $2,387.17 | $2,670.53 |
| 154 | Stomach, esophageal & duodenal procedures age >17 w cc | S | $1,031.15 | $2,158.69 | $4,134.11 |
| 155 | Stomach, esophageal & duodenal procedures age >17 w/o cc | S | $972.87 | $2,241.71 | $4,934.25 |
| 156 | Stomach, esophageal & duodenal procedures age 0-17 | S | $872.09 | $1,842.41 | $3,564.28 |
| 157 | Anal & stomal procedures w cc | S | $1,111.49 | $2,095.62 | $3,217.29 |
| 158 | Anal & stomal procedures w/o cc | S | $873.31 | $1,574.86 | $3,208.68 |
| 159 | Hernia procedures except inguinal & femoral age >17 w cc | S | $902.07 | $1,849.86 | $3,305.80 |
| 160 | Hernia procedures except inguinal & femoral age >17 w/o cc | S | $878.56 | $1,720.44 | $3,918.21 |
| 161 | Inguinal & femoral hernia procedures age >17 w cc | S | $1,150.35 | $2,076.88 | $3,859.22 |
| 162 | Inguinal & femoral hernia procedures age >17 w/o cc | S | $952.74 | $1,839.83 | $4,388.95 |
| 163 | Hernia procedures age 0-17 | S | $976.92 | $1,927.96 | $3,706.85 |
| 164 | Appendectomy w complicated principal diag w cc | S | $896.45 | $1,910.25 | $3,306.24 |
| 165 | Appendectomy w complicated principal diag w/o cc | S | $898.27 | $1,811.52 | $3,308.63 |
| 166 | Appendectomy w/o complicated principal diag w cc | S | $899.42 | $1,810.19 | $3,845.38 |
| 167 | Appendectomy w/o complicated principal diag w/o cc | S | $926.31 | $2,355.65 | $4,779.32 |
| 168 | Mouth procedures w cc | S | $1,067.04 | $2,368.11 | $3,810.49 |
| 169 | Mouth procedures w/o cc | S | $932.34 | $2,855.54 | $4,573.45 |
| 170 | Other digestive system or procedures w cc | S | $1,016.79 | $1,976.33 | $3,171.14 |
| 171 | Other digestive system or procedures w/o cc | S | $907.96 | $1,854.75 | $3,642.45 |
| 172 | Digestive malignancy w cc | N | $1,044.98 | $1,907.59 | $2,075.35 |
| 173 | Digestive malignancy w/o cc | N | $867.81 | $1,386.90 | $1,522.93 |
| 174 | Gi hemorrhage w cc | N | $977.96 | $1,874.70 | $2,268.23 |
| 175 | Gi hemorrhage w/o cc | N | $928.46 | $1,712.03 | $1,926.80 |
| 176 | Complicated peptic ulcer | N | $934.32 | $1,687.11 | $2,209.33 |
| 177 | Uncomplicated peptic ulcer w cc | N | $875.60 | $1,605.17 | $2,254.59 |
| 178 | Uncomplicated peptic ulcer w/o cc | N | $890.23 | $1,518.86 | $2,329.30 |
| 179 | Inflammatory bowel disease | N | $994.64 | $1,770.74 | $1,885.55 |
| 180 | Gi obstruction w cc | N | $919.68 | $1,695.99 | $1,822.50 |
| 181 | Gi obstruction w/o cc | N | $944.21 | $1,534.19 | $1,606.52 |
| 182 | Esophagitis, gastroent & misc digest disorders age >17 w cc | N | $893.14 | $1,575.25 | $1,915.09 |
| 183 | Esophagitis, gastroent & misc digest disorders age >17 w/o cc | N | $866.74 | $1,484.51 | $2,079.62 |
| 184 | Esophagitis, gastroent & misc digest disorders age 0-17 | N | $923.06 | $1,619.57 | $2,023.13 |
| 185 | Dental & oral dis except extractions & restorations, age >17 | N | $954.60 | $1,722.80 | $2,085.57 |
| 186 | Dental & oral dis except extractions & restorations, age 0-17 | N | $1,027.49 | $1,854.35 | $2,244.82 |
| 187 | Dental extractions & restorations | N | $1,128.41 | $1,838.32 | $2,797.68 |
| 188 | Other digestive system diagnoses age >17 w cc | N | $948.70 | $1,727.03 | $2,063.56 |
| 189 | Other digestive system diagnoses age >17 w/o cc | N | $1,125.09 | $1,893.78 | $2,186.96 |
| 190 | Other digestive system diagnoses age 0-17 | N | $1,028.34 | $1,864.00 | $2,215.20 |
| 191 | Pancreas, liver & shunt procedures w cc | S | $1,196.06 | $2,569.64 | $4,726.12 |
| 192 | Pancreas, liver & shunt procedures w/o cc | S | $946.52 | $2,046.15 | $3,729.14 |
| 193 | Biliary tract proc except only cholecyst w or w/o cde w cc | S | $1,124.96 | $2,276.64 | $3,691.43 |
| 194 | Biliary tract proc except only cholecyst w or w/o cde w/o cc | S | $891.08 | $1,585.34 | $2,909.29 |
| 195 | Cholecystectomy w cde w cc | S | $932.18 | $1,867.84 | $3,707.46 |
| 196 | Cholecystectomy w cde w/o cc | S | $887.91 | $1,793.22 | $3,940.18 |
| 197 | Cholecystectomy except by laparoscope w/o cde w cc | S | $939.05 | $1,918.70 | $3,446.11 |
| 198 | Cholecystectomy except by laparoscope w/o cde w/o cc | S | $876.47 | $1,766.82 | $3,344.96 |
| 199 | Hepatobiliary diagnostic procedure for malignancy | S | $1,013.84 | $2,013.65 | $3,220.31 |
| 200 | Hepatobiliary diagnostic procedure for non-malignancy | S | $1,019.50 | $2,129.91 | $3,719.26 |
| 201 | Other hepatobiliary or pancreas or procedures | S | $1,115.91 | $2,313.60 | $3,251.94 |
| 202 | Cirrhosis & alcoholic hepatitis | N | $977.84 | $1,915.07 | $2,196.14 |
| 203 | Malignancy of hepatobiliary system or pancreas | N | $990.31 | $1,821.93 | $2,088.55 |
| 204 | Disorders of pancreas except malignancy | N | $867.40 | $1,676.22 | $2,178.19 |

### TABLE A. — ACUTE INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES BY DRG (DIAGNOSIS RELATED GROUP)

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| DRG | Description | Surgical/ Non-Surgical Indicator | Per Diem Charge | | |
|---|---|---|---|---|---|
| | | | Standard Room and Board | ICU Room and Board | Ancillary |
| 205 | Disorders of liver except malig, cirr, alc hepa w cc | N | $1,053.74 | $2,136.19 | $2,388.50 |
| 206 | Disorders of liver except malig, cirr, alc hepa w/o cc | N | $841.07 | $1,503.99 | $1,811.37 |
| 207 | Disorders of the biliary tract w cc | N | $1,025.17 | $1,876.46 | $2,640.14 |
| 208 | Disorders of the biliary tract w/o cc | N | $1,032.37 | $1,633.46 | $2,890.54 |
| 209 | Major joint & limb reattachment procedures of lower extremity | S | $951.66 | $1,878.80 | $5,957.64 |
| 210 | Hip & femur procedures except major joint age >17 w cc | S | $959.49 | $1,850.43 | $3,312.94 |
| 211 | Hip & femur procedures except major joint age >17 w/o cc | S | $1,079.70 | $1,960.96 | $3,791.71 |
| 212 | Hip & femur procedures except major joint age 0-17 | S | $1,116.97 | $2,154.20 | $3,867.95 |
| 213 | Amputation for musculoskeletal system & conn tissue disorders | S | $1,051.65 | $1,999.60 | $2,657.61 |
| 214 | No longer valid | S | $0.00 | $0.00 | $0.00 |
| 215 | No longer valid | S | $0.00 | $0.00 | $0.00 |
| 216 | Biopsies of musculoskeletal system & connective tissue | S | $1,018.98 | $1,862.79 | $2,826.09 |
| 217 | Wnd debrid & skn grft except hand, for muscskelet & conn tiss dis | S | $1,245.08 | $2,638.13 | $3,330.54 |
| 218 | Lower extrem & humer proc except hip, foot, femur age >17 w cc | S | $926.41 | $1,815.31 | $3,600.61 |
| 219 | Lower extrem & humer proc except hip, foot, femur age >17 w/o cc | S | $987.18 | $1,879.57 | $4,482.57 |
| 220 | Lower extrem & humer proc except hip, foot, femur age 0-17 | S | $1,186.26 | $2,321.09 | $4,882.91 |
| 221 | No longer valid | S | $0.00 | $0.00 | $0.00 |
| 222 | No longer valid | S | $0.00 | $0.00 | $0.00 |
| 223 | Major shoulder/elbow proc, or other upper extremity proc w cc | S | $1,005.49 | $1,853.81 | $5,187.87 |
| 224 | Shoulder, elbow or forearm proc, exc major joint proc, w/o cc | S | $928.79 | $1,567.69 | $5,992.02 |
| 225 | Foot procedures | S | $1,126.50 | $1,952.50 | $3,349.09 |
| 226 | Soft tissue procedures w cc | S | $943.91 | $1,837.20 | $2,693.26 |
| 227 | Soft tissue procedures w/o cc | S | $990.79 | $1,593.79 | $4,158.00 |
| 228 | Major thumb or joint proc, or oth hand or wrist proc w cc | S | $994.58 | $2,159.89 | $3,909.47 |
| 229 | Hand or wrist proc, except major joint proc, w/o cc | S | $998.54 | $1,565.22 | $4,632.84 |
| 230 | Local excision & removal of int fix devices of hip & femur | S | $938.31 | $1,933.59 | $3,308.95 |
| 231 | Local excision & removal of int fix devices except hip & femur | S | $992.04 | $2,104.08 | $3,939.92 |
| 232 | Arthroscopy | S | $1,078.70 | $1,445.17 | $5,558.94 |
| 233 | Other musculoskelet sys & conn tiss or proc w cc | S | $1,040.58 | $2,371.58 | $3,802.73 |
| 234 | Other musculoskelet sys & conn tiss or proc w/o cc | S | $911.11 | $1,911.05 | $5,397.84 |
| 235 | Fractures of femur | N | $770.85 | $1,548.00 | $1,065.58 |
| 236 | Fractures of hip & pelvis | N | $697.08 | $1,479.58 | $904.53 |
| 237 | Sprains, strains, & dislocations of hip, pelvis & thigh | N | $1,019.21 | $1,952.30 | $1,549.44 |
| 238 | Osteomyelitis | N | $895.38 | $1,522.78 | $1,401.33 |
| 239 | Pathological fractures & musculoskeletal & conn tiss malignancy | N | $1,037.23 | $1,840.23 | $1,633.66 |
| 240 | Connective tissue disorders w cc | N | $950.71 | $1,772.07 | $2,127.39 |
| 241 | Connective tissue disorders w/o cc | N | $1,100.68 | $2,219.87 | $1,447.80 |
| 242 | Septic arthritis | N | $950.83 | $1,775.98 | $1,541.89 |
| 243 | Medical back problems | N | $936.60 | $1,797.66 | $1,490.67 |
| 244 | Bone diseases & specific arthropathies w cc | N | $817.06 | $1,512.55 | $1,065.91 |
| 245 | Bone diseases & specific arthropathies w/o cc | N | $925.71 | $1,806.38 | $1,058.00 |
| 246 | Non-specific arthropathies | N | $831.37 | $1,500.81 | $1,060.57 |
| 247 | Signs & symptoms of musculoskeletal system & conn tissue | N | $952.30 | $1,655.80 | $1,434.41 |
| 248 | Tendonitis, myositis & bursitis | N | $1,015.28 | $1,873.73 | $1,483.84 |
| 249 | Aftercare, musculoskeletal system & connective tissue | N | $1,055.88 | $2,100.23 | $1,780.98 |
| 250 | Fx, sprn, strn & disl of forearm, hand, foot age >17 w cc | N | $922.26 | $1,858.73 | $1,449.29 |
| 251 | Fx, sprn, strn & disl of forearm, hand, foot age >17 w/o cc | N | $997.16 | $1,915.87 | $1,386.65 |
| 252 | Fx, sprn, strn & disl of forearm, hand, foot age 0-17 | N | $947.22 | $1,907.04 | $1,426.20 |
| 253 | Fx, sprn, strn & disl of uparm, lowleg ex foot age >17 w cc | N | $865.67 | $1,715.48 | $1,275.48 |
| 254 | Fx, sprn, strn & disl of uparm, lowleg ex foot age >17 w/o cc | N | $1,015.36 | $2,051.44 | $1,187.94 |
| 255 | Fx, sprn, strn & disl of uparm, lowleg ex foot age 0-17 | N | $910.82 | $1,831.64 | $1,252.89 |
| 256 | Other musculoskeletal system & connective tissue diagnoses | N | $801.66 | $1,543.19 | $1,142.52 |
| 257 | Total mastectomy for malignancy w cc | S | $966.31 | $1,885.99 | $4,675.25 |
| 258 | Total mastectomy for malignancy w/o cc | S | $892.57 | $1,625.03 | $5,448.71 |
| 259 | Subtotal mastectomy for malignancy w cc | S | $1,106.09 | $1,875.06 | $4,606.07 |
| 260 | Subtotal mastectomy for malignancy w/o cc | S | $991.23 | $1,710.89 | $7,183.82 |
| 261 | Breast proc for non-malignancy except biopsy & local excision | S | $966.40 | $1,779.34 | $6,376.78 |
| 262 | Breast biopsy & local excision for non-malignancy | S | $994.17 | $1,491.01 | $2,728.78 |
| 263 | Skin graft &/or debrid for skn ulcer or cellulitis w cc | S | $879.68 | $1,655.07 | $1,728.41 |
| 264 | Skin graft &/or debrid for skn ulcer or cellulitis w/o cc | S | $865.22 | $1,307.73 | $1,602.49 |
| 265 | Skin graft &/or debrid except for skin ulcer or cellulitis w cc | S | $1,352.67 | $2,740.28 | $4,031.28 |
| 266 | Skin graft &/or debrid except for skin ulcer or cellulitis w/o cc | S | $1,089.89 | $2,188.48 | $4,071.39 |
| 267 | Perianal & pilonidal procedures | S | $834.60 | $2,721.14 | $2,828.25 |
| 268 | Skin, subcutaneous tissue & breast plastic procedures | S | $1,097.85 | $2,608.58 | $4,956.57 |
| 269 | Other skin, subcut tiss & breast proc w cc | S | $900.96 | $1,730.04 | $2,290.35 |
| 270 | Other skin, subcut tiss & breast proc w/o cc | S | $902.52 | $1,667.33 | $2,666.17 |
| 271 | Skin ulcers | N | $795.67 | $1,277.40 | $1,207.72 |
| 272 | Major skin disorders w cc | N | $1,036.06 | $2,321.94 | $1,710.03 |

### TABLE A. — ACUTE INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES BY DRG (DIAGNOSIS RELATED GROUP)

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| DRG | Description | Surgical/ Non-Surgical Indicator | Per Diem Charge | | |
|---|---|---|---|---|---|
| | | | Standard Room and Board | ICU Room and Board | Ancillary |
| 273 | Major skin disorders w/o cc | N | $975.97 | $1,511.89 | $1,417.53 |
| 274 | Malignant breast disorders w cc | N | $1,126.17 | $1,810.24 | $1,746.68 |
| 275 | Malignant breast disorders w/o cc | N | $884.70 | $1,122.98 | $1,322.24 |
| 276 | Non-maligant breast disorders | N | $1,172.91 | $2,025.62 | $1,714.26 |
| 277 | Cellulitis age >17 w cc | N | $935.67 | $1,624.89 | $1,386.17 |
| 278 | Cellulitis age >17 w/o cc | N | $878.78 | $1,440.83 | $1,056.31 |
| 279 | Cellulitis age 0-17 | N | $892.02 | $1,552.34 | $1,272.57 |
| 280 | Trauma to the skin, subcut tiss & breast age >17 w cc | N | $983.70 | $1,783.95 | $1,669.71 |
| 281 | Trauma to the skin, subcut tiss & breast age >17 w/o cc | N | $1,004.66 | $1,944.19 | $1,461.71 |
| 282 | Trauma to the skin, subcut tiss & breast age 0-17 | N | $948.92 | $1,745.28 | $1,548.06 |
| 283 | Minor skin disorders w cc | N | $964.07 | $1,698.68 | $1,488.93 |
| 284 | Minor skin disorders w/o cc | N | $958.79 | $1,615.40 | $1,325.62 |
| 285 | Amputat of lower limb for endocrine, nutrit, & metabol disorders | S | $944.64 | $1,854.43 | $2,101.17 |
| 286 | Adrenal & pituitary procedures | S | $948.92 | $2,045.66 | $4,595.81 |
| 287 | Skin grafts & wound debrid for endoc, nutrit & metab disorders | S | $1,178.35 | $2,165.87 | $2,015.05 |
| 288 | Or procedures for obesity | S | $960.00 | $2,132.73 | $6,085.54 |
| 289 | Parathyroid procedures | S | $981.42 | $1,997.36 | $4,786.42 |
| 290 | Thyroid procedures | S | $984.18 | $2,000.77 | $5,617.23 |
| 291 | Thyroglossal procedures | S | $1,027.92 | $1,684.67 | $5,969.60 |
| 292 | Other endocrine, nutrit & metab or proc w cc | S | $1,040.90 | $1,934.04 | $2,977.60 |
| 293 | Other endocrine, nutrit & metab or proc w/o cc | S | $1,059.35 | $2,601.34 | $3,764.96 |
| 294 | Diabetes age >35 | N | $905.24 | $1,668.28 | $1,504.78 |
| 295 | Diabetes age 0-35 | N | $859.89 | $1,709.82 | $1,969.69 |
| 296 | Nutritional & misc metabolic disorders age >17 w cc | N | $932.81 | $1,626.09 | $1,635.55 |
| 297 | Nutritional & misc metabolic disorders age >17 w/o cc | N | $891.47 | $1,506.79 | $1,353.70 |
| 298 | Nutritional & misc metabolic disorders age 0-17 | N | $913.31 | $1,590.08 | $1,577.43 |
| 299 | Inborn errors of metabolism | N | $947.76 | $2,133.18 | $2,029.07 |
| 300 | Endocrine disorders w cc | N | $1,017.95 | $1,845.35 | $1,867.25 |
| 301 | Endocrine disorders w/o cc | N | $1,043.26 | $1,816.97 | $1,762.05 |
| 302 | Kidney transplant | S | $1,239.72 | $2,501.78 | $10,973.77 |
| 303 | Kidney, ureter & major bladder procedures for neoplasm | S | $997.23 | $2,013.45 | $3,751.10 |
| 304 | Kidney, ureter & major bladder proc for non-neopl w cc | S | $1,126.87 | $2,333.11 | $3,851.12 |
| 305 | Kidney, ureter & major bladder proc for non-neopl w/o cc | S | $961.22 | $1,881.26 | $4,676.03 |
| 306 | Prostatectomy w cc | S | $1,004.91 | $1,845.32 | $2,753.48 |
| 307 | Prostatectomy w/o cc | S | $766.21 | $1,157.67 | $3,345.13 |
| 308 | Minor bladder procedures w cc | S | $981.09 | $1,958.77 | $3,168.23 |
| 309 | Minor bladder procedures w/o cc | S | $772.91 | $1,242.11 | $5,019.25 |
| 310 | Transurethral procedures w cc | S | $1,066.75 | $1,877.51 | $3,362.73 |
| 311 | Transurethral procedures w/o cc | S | $959.78 | $1,712.33 | $4,582.58 |
| 312 | Urethral procedures, age >17 w cc | S | $1,009.62 | $1,456.02 | $2,879.36 |
| 313 | Urethral procedures, age >17 w/o cc | S | $1,060.91 | $1,724.06 | $3,951.85 |
| 314 | Urethral procedures, age 0-17 | S | $1,074.84 | $1,554.66 | $3,243.57 |
| 315 | Other kidney & urinary tract or procedures | S | $1,062.01 | $1,894.59 | $3,704.92 |
| 316 | Renal failure | N | $871.34 | $1,565.80 | $1,864.33 |
| 317 | Admit for renal dialysis | N | $883.60 | $1,468.92 | $2,763.47 |
| 318 | Kidney & urinary tract neoplasms w cc | N | $1,057.07 | $1,944.76 | $2,202.46 |
| 319 | Kidney & urinary tract neoplasms w/o cc | N | $692.22 | $984.72 | $1,220.11 |
| 320 | Kidney & urinary tract infections age >17 w cc | N | $863.36 | $1,561.71 | $1,572.19 |
| 321 | Kidney & urinary tract infections age >17 w/o cc | N | $895.53 | $1,551.93 | $1,458.92 |
| 322 | Kidney & urinary tract infections age 0-17 | N | $919.06 | $1,660.34 | $1,655.76 |
| 323 | Urinary stones w cc, &/or esw lithotripsy | N | $947.92 | $1,819.50 | $3,167.77 |
| 324 | Urinary stones w/o cc | N | $832.82 | $1,643.20 | $2,862.30 |
| 325 | Kidney & urinary tract signs & symptoms age >17 w cc | N | $1,064.21 | $1,778.99 | $1,781.63 |
| 326 | Kidney & urinary tract signs & symptoms age >17 w/o cc | N | $879.15 | $1,343.07 | $1,463.75 |
| 327 | Kidney & urinary tract signs & symptoms age 0-17 | N | $1,010.93 | $1,681.08 | $1,690.93 |
| 328 | Urethral stricture age >17 w cc | N | $1,115.88 | $1,694.39 | $2,450.61 |
| 329 | Urethral stricture age >17 w/o cc | N | $1,065.40 | $1,526.98 | $2,961.12 |
| 330 | Urethral stricture age 0-17 | N | $1,138.71 | $1,727.40 | $2,554.78 |
| 331 | Other kidney & urinary tract diagnoses age >17 w cc | N | $965.65 | $1,746.74 | $2,113.28 |
| 332 | Other kidney & urinary tract diagnoses age >17 w/o cc | N | $804.64 | $1,320.02 | $1,746.81 |
| 333 | Other kidney & urinary tract diagnoses age 0-17 | N | $1,188.09 | $2,142.08 | $2,598.78 |
| 334 | Major male pelvic procedures w cc | S | $911.33 | $1,829.53 | $4,175.79 |
| 335 | Major male pelvic procedures w/o cc | S | $882.84 | $1,783.98 | $4,752.34 |
| 336 | Transurethral prostatectomy w cc | S | $905.16 | $1,707.70 | $3,071.49 |
| 337 | Transurethral prostatectomy w/o cc | S | $862.09 | $1,587.79 | $3,737.15 |
| 338 | Testes procedures, for malignancy | S | $882.25 | $1,668.97 | $2,935.28 |
| 339 | Testes procedures, non-malignancy age >17 | S | $806.43 | $1,757.94 | $2,781.17 |
| 340 | Testes procedures, non-malignancy age 0-17 | S | $818.52 | $1,682.58 | $2,778.53 |

TABLE A. — ACUTE INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES BY DRG (DIAGNOSIS RELATED GROUP)

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| DRG | Description | Surgical/ Non-Surgical Indicator | Per Diem Charge | | |
|---|---|---|---|---|---|
| | | | Standard Room and Board | ICU Room and Board | Ancillary |
| 341 | Penis procedures | S | $1,169.69 | $2,596.18 | $6,270.96 |
| 342 | Circumcision age >17 | S | $861.78 | $1,546.73 | $2,971.69 |
| 343 | Circumcision age 0-17 | S | $861.78 | $1,546.73 | $2,971.69 |
| 344 | Other male reproductive system or procedures for malignancy | S | $977.19 | $1,431.15 | $6,956.84 |
| 345 | Other male reproductive system or proc except for malignancy | S | $1,024.39 | $2,087.99 | $3,102.84 |
| 346 | Malignancy, male reproductive system, w cc | N | $994.49 | $1,652.62 | $1,744.07 |
| 347 | Malignancy, male reproductive system, w/o cc | N | $727.57 | $1,014.32 | $1,545.17 |
| 348 | Benign prostatic hypertrophy w cc | N | $1,088.89 | $1,819.18 | $1,883.52 |
| 349 | Benign prostatic hypertrophy w/o cc | N | $1,142.04 | $1,968.50 | $1,914.07 |
| 350 | Inflammation of the male reproductive system | N | $910.99 | $1,726.49 | $1,649.32 |
| 351 | Sterilization, male | N | $806.74 | $1,539.10 | $2,198.30 |
| 352 | Other male reproductive system diagnoses | N | $1,073.97 | $2,493.79 | $1,971.18 |
| 353 | Pelvic evisceration, radical hysterectomy & radical vulvectomy | S | $1,240.36 | $3,107.75 | $4,772.07 |
| 354 | Uterine, adnexa proc for non-ovarian/adnexal malig w cc | S | $1,031.45 | $2,081.74 | $3,435.33 |
| 355 | Uterine, adnexa proc for non-ovarian/adnexal malig w/o cc | S | $1,022.51 | $1,981.69 | $3,822.53 |
| 356 | Female reproductive system reconstructive procedures | S | $780.14 | $1,658.85 | $4,598.89 |
| 357 | Uterine & adnexa proc for ovarian or adnexal malignancy | S | $1,093.70 | $2,296.47 | $3,901.50 |
| 358 | Uterine & adnexa proc for non-malignancy w cc | S | $889.06 | $1,835.41 | $3,692.13 |
| 359 | Uterine & adnexa proc for non-malignancy w/o cc | S | $828.45 | $1,610.78 | $4,065.99 |
| 360 | Vagina, cervix & vulva procedures | S | $860.70 | $1,983.53 | $4,155.55 |
| 361 | Laparoscopy & incisional tubal interruption | S | $710.75 | $807.79 | $3,621.16 |
| 362 | Endoscopic tubal interruption | S | $719.67 | $1,452.60 | $3,399.54 |
| 363 | D&c, conization & radio-implant, for malignancy | S | $1,105.70 | $2,266.71 | $3,335.72 |
| 364 | D&c, conization except for malignancy | S | $1,247.32 | $1,996.17 | $2,999.28 |
| 365 | Other female reproductive system or procedures | S | $987.34 | $1,894.57 | $3,322.42 |
| 366 | Malignancy, female reproductive system w cc | N | $926.88 | $1,686.51 | $1,685.61 |
| 367 | Malignancy, female reproductive system w/o cc | N | $1,049.25 | $1,416.19 | $1,341.59 |
| 368 | Infections, female reproductive system | N | $909.63 | $1,969.95 | $1,752.12 |
| 369 | Menstrual & other female reproductive system disorders | N | $1,430.27 | $2,086.21 | $2,443.78 |
| 370 | Cesarean section w cc | S | $929.27 | $1,893.55 | $2,135.97 |
| 371 | Cesarean section w/o cc | S | $905.90 | $1,944.98 | $2,238.63 |
| 372 | Vaginal delivery w complicating diagnoses | N | $1,001.39 | $2,042.05 | $2,049.16 |
| 373 | Vaginal delivery w/o complicating diagnoses | N | $894.61 | $1,465.55 | $2,026.66 |
| 374 | Vaginal delivery w sterilization &/or d&c | S | $941.93 | $7,930.86 | $3,301.37 |
| 375 | Vaginal delivery w or proc except steril &/or d&c | S | $506.82 | $1,725.30 | $2,307.19 |
| 376 | Postpartum & post abortion diagnoses w/o or procedure | N | $1,106.71 | $1,784.87 | $1,350.58 |
| 377 | Postpartum & post abortion diagnoses w or procedure | S | $607.59 | $773.42 | $4,369.56 |
| 378 | Ectopic pregnancy | N | $819.75 | $1,256.11 | $4,606.12 |
| 379 | Threatened abortion | N | $906.56 | $1,879.59 | $1,226.35 |
| 380 | Abortion w/o d&c | N | $815.29 | $1,754.39 | $2,852.56 |
| 381 | Abortion w d&c, aspiration curettage or hysterotomy | S | $1,168.70 | $2,372.78 | $3,798.49 |
| 382 | False labor | N | $1,325.67 | $1,399.98 | $1,088.89 |
| 383 | Other antepartum diagnoses w medical complications | N | $988.48 | $1,780.67 | $1,253.41 |
| 384 | Other antepartum diagnoses w/o medical complications | N | $1,042.59 | $2,111.34 | $1,738.80 |
| 385 | Neonates, died or transferred to another acute care facility | N | $871.48 | $1,758.99 | $4,112.02 |
| 386 | Extreme immaturity | N | $701.84 | $1,416.60 | $3,311.60 |
| 387 | Prematurity w major problems | N | $621.24 | $1,253.93 | $2,931.34 |
| 388 | Prematurity w/o major problems | N | $397.61 | $802.54 | $1,876.13 |
| 389 | Full term neonate w major problems | N | $354.69 | $715.90 | $1,673.55 |
| 390 | Neonate w other significant problems | N | $216.75 | $437.49 | $1,022.74 |
| 391 | Normal newborn | N | $134.68 | $271.85 | $635.50 |
| 392 | Splenectomy age >17 | S | $910.66 | $1,759.39 | $4,001.80 |
| 393 | Splenectomy age 0-17 | S | $910.66 | $1,759.39 | $4,001.80 |
| 394 | Other or procedures of the blood and blood forming organs | S | $1,019.69 | $1,756.20 | $3,855.35 |
| 395 | Red blood cell disorders age >17 | N | $952.62 | $1,653.74 | $2,066.19 |
| 396 | Red blood cell disorders age 0-17 | N | $1,165.76 | $2,023.74 | $2,528.48 |
| 397 | Coagulation disorders | N | $986.31 | $1,801.53 | $3,276.91 |
| 398 | Reticuloendothelial & immunity disorders w cc | N | $1,011.70 | $1,883.56 | $2,604.00 |
| 399 | Reticuloendothelial & immunity disorders w/o cc | N | $962.45 | $1,758.73 | $2,214.47 |
| 400 | Lymphoma & leukemia w major or procedure | S | $1,060.40 | $2,083.56 | $3,912.53 |
| 401 | Lymphoma & non-acute leukemia w other or proc w cc | S | $1,058.00 | $2,069.68 | $3,140.25 |
| 402 | Lymphoma & non-acute leukemia w other or proc w/o cc | S | $920.66 | $1,597.43 | $3,576.95 |
| 403 | Lymphoma & non-acute leukemia w cc | N | $1,149.69 | $2,061.41 | $2,811.16 |
| 404 | Lymphoma & non-acute leukemia w/o cc | N | $1,092.66 | $1,763.98 | $2,421.64 |
| 405 | Acute leukemia w/o major or procedure age 0-17 | N | $1,277.36 | $2,548.40 | $4,139.45 |
| 406 | Myeloprolif disord or poorly diff neopl w major proc w cc | S | $1,307.40 | $2,585.97 | $4,485.38 |
| 407 | Myeloprolif disord or poorly diff neopl w major proc w/o cc | S | $926.08 | $1,881.93 | $4,150.89 |
| 408 | Myeloprolif disord or poorly diff neopl w other or proc | S | $1,501.54 | $2,802.72 | $4,632.74 |

### TABLE A. — ACUTE INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES BY DRG (DIAGNOSIS RELATED GROUP)

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| DRG | Description | Surgical/ Non-Surgical Indicator | Per Diem Charge | | |
|---|---|---|---|---|---|
| | | | Standard Room and Board | ICU Room and Board | Ancillary |
| 409 | Radiotherapy | N | $1,222.12 | $2,647.14 | $2,164.36 |
| 410 | Chemotherapy w/o acute leukemia as secondary diagnosis | N | $1,128.59 | $1,742.65 | $3,441.58 |
| 411 | History of malignancy w/o endoscopy | N | $813.86 | $2,106.73 | $1,743.40 |
| 412 | History of malignancy w endoscopy | N | $1,086.08 | $0.00 | $1,631.90 |
| 413 | Other myeloprolif dis or poorly diff neopl diag w cc | N | $1,012.11 | $1,937.86 | $2,120.79 |
| 414 | Other myeloprolif dis or poorly diff neopl diag w/o cc | N | $923.95 | $2,668.51 | $1,387.54 |
| 415 | Or procedure for infectious & parasitic diseases | S | $1,140.40 | $2,170.22 | $3,147.27 |
| 416 | Septicemia age >17 | N | $1,017.26 | $1,908.58 | $2,155.49 |
| 417 | Septicemia age 0-17 | N | $1,410.90 | $2,647.11 | $2,989.57 |
| 418 | Postoperative & post-traumatic infections | N | $967.99 | $1,717.73 | $1,716.87 |
| 419 | Fever of unknown origin age >17 w cc | N | $997.33 | $1,658.52 | $2,084.28 |
| 420 | Fever of unknown origin age >17 w/o cc | N | $904.17 | $1,442.84 | $1,737.41 |
| 421 | Viral illness age >17 | N | $949.46 | $1,586.06 | $1,954.61 |
| 422 | Viral illness & fever of unknown origin age 0-17 | N | $897.85 | $1,491.87 | $1,855.55 |
| 423 | Other infectious & parasitic diseases diagnoses | N | $933.48 | $1,838.48 | $2,427.98 |
| 424 | Or procedure w principal diagnoses of mental illness | S | $1,006.06 | $1,369.55 | $1,150.12 |
| 425 | Acute adjustment reaction & psychosocial dysfunction | N | $1,042.84 | $1,612.57 | $1,184.44 |
| 426 | Depressive neuroses | N | $1,022.01 | $1,211.66 | $403.16 |
| 427 | Neuroses except depressive | N | $945.17 | $1,317.52 | $354.02 |
| 428 | Disorders of personality & impulse control | N | $1,005.98 | $1,537.57 | $319.81 |
| 429 | Organic disturbances & mental retardation | N | $1,255.92 | $1,720.04 | $622.80 |
| 430 | Psychoses | N | $1,051.27 | $1,278.61 | $337.26 |
| 431 | Childhood mental disorders | N | $917.72 | $1,207.78 | $277.76 |
| 432 | Other mental disorder diagnoses | N | $915.71 | $1,461.81 | $327.50 |
| 433 | Alcohol/drug abuse or dependence, left ama | N | $1,078.88 | $1,693.80 | $647.78 |
| 434 | No longer valid | N | $0.00 | $0.00 | $0.00 |
| 435 | No longer valid | N | $0.00 | $0.00 | $0.00 |
| 436 | No longer valid | N | $0.00 | $0.00 | $0.00 |
| 437 | No longer valid | N | $0.00 | $0.00 | $0.00 |
| 438 | No longer valid | N | $0.00 | $0.00 | $0.00 |
| 439 | Skin grafts for injuries | S | $921.40 | $1,742.47 | $2,238.01 |
| 440 | Wound debridements for injuries | S | $944.90 | $1,991.91 | $2,535.37 |
| 441 | Hand procedures for injuries | S | $856.81 | $2,169.12 | $3,844.49 |
| 442 | Other or procedures for injuries w cc | S | $955.81 | $1,930.72 | $3,474.53 |
| 443 | Other or procedures for injuries w/o cc | S | $992.11 | $1,954.76 | $3,990.46 |
| 444 | Traumatic injury age >17 w cc | N | $807.69 | $1,620.07 | $1,528.17 |
| 445 | Traumatic injury age >17 w/o cc | N | $1,047.09 | $2,164.53 | $1,442.99 |
| 446 | Traumatic injury age 0-17 | N | $721.06 | $1,462.49 | $1,239.56 |
| 447 | Allergic reactions age >17 | N | $926.93 | $1,811.72 | $1,985.64 |
| 448 | Allergic reactions age 0-17 | N | $926.93 | $1,811.72 | $1,985.64 |
| 449 | Poisoning & toxic effects of drugs age >17 w cc | N | $1,059.07 | $2,027.14 | $2,402.52 |
| 450 | Poisoning & toxic effects of drugs age >17 w/o cc | N | $989.79 | $1,804.68 | $1,877.43 |
| 451 | Poisoning & toxic effects of drugs age 0-17 | N | $1,005.67 | $1,913.67 | $2,236.99 |
| 452 | Complications of treatment w cc | N | $905.26 | $1,724.13 | $2,174.28 |
| 453 | Complications of treatment w/o cc | N | $952.17 | $1,821.34 | $1,853.20 |
| 454 | Other injury, poisoning & toxic effect diag w cc | N | $1,706.04 | $3,192.04 | $3,156.07 |
| 455 | Other injury, poisoning & toxic effect diag w/o cc | N | $986.75 | $1,841.38 | $1,867.20 |
| 456 | No longer valid | N | $0.00 | $0.00 | $0.00 |
| 457 | No longer valid | N | $0.00 | $0.00 | $0.00 |
| 458 | No longer valid | S | $0.00 | $0.00 | $0.00 |
| 459 | No longer valid | S | $0.00 | $0.00 | $0.00 |
| 460 | No longer valid | N | $0.00 | $0.00 | $0.00 |
| 461 | Or proc w diagnoses of other contact w health services | S | $1,124.56 | $2,024.38 | $2,488.23 |
| 462 | Rehabilitation | N | $908.51 | $1,188.19 | $1,111.11 |
| 463 | Signs & symptoms w cc | N | $843.64 | $1,471.96 | $1,357.45 |
| 464 | Signs & symptoms w/o cc | N | $660.32 | $1,181.02 | $891.37 |
| 465 | Aftercare w history of malignancy as secondary diagnosis | N | $1,037.75 | $2,221.82 | $1,082.94 |
| 466 | Aftercare w/o history of malignancy as secondary diagnosis | N | $1,099.89 | $1,754.19 | $1,126.24 |
| 467 | Other factors influencing health status | N | $628.18 | $1,683.79 | $763.92 |
| 468 | Extensive or procedure unrelated to principal diagnosis | S | $1,068.47 | $1,998.79 | $3,592.24 |
| 469 | Principal diagnosis invalid as discharge diagnosis | N | $358.38 | $683.70 | $976.55 |
| 470 | Ungroupable | N | $424.41 | $4,658.89 | $875.54 |
| 471 | Bilateral or multiple major joint procs of lower extremity | S | $852.66 | $1,726.96 | $7,008.39 |
| 472 | No longer valid | S | $0.00 | $0.00 | $0.00 |
| 473 | Acute leukemia w/o major or procedure age >17 | S | $1,105.18 | $2,204.90 | $3,585.48 |
| 474 | No longer valid | S | $0.00 | $0.00 | $0.00 |
| 475 | Respiratory system diagnosis with ventilator support | N | $1,036.49 | $1,999.96 | $3,475.10 |
| 476 | Prostatic or procedure unrelated to principal diagnosis | S | $1,115.69 | $1,889.26 | $2,268.19 |

## TABLE A. — ACUTE INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES BY DRG (DIAGNOSIS RELATED GROUP)

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| DRG | Description | Surgical/ Non-Surgical Indicator | Per Diem Charge | | |
|---|---|---|---|---|---|
| | | | Standard Room and Board | ICU Room and Board | Ancillary |
| 477 | Non-extensive or procedure unrelated to principal diagnosis | S | $1,078.97 | $1,918.49 | $2,802.98 |
| 478 | Other vascular procedures w cc | S | $1,092.57 | $1,968.45 | $4,254.70 |
| 479 | Other vascular procedures w/o cc | S | $994.93 | $1,785.08 | $6,053.03 |
| 480 | Liver transplant | S | $1,154.82 | $2,894.63 | $9,659.58 |
| 481 | Bone marrow transplant | S | $1,755.55 | $2,368.29 | $4,341.88 |
| 482 | Tracheostomy for face, mouth & neck diagnoses | S | $1,051.06 | $2,135.52 | $3,413.51 |
| 483 | Trac w mech vent 96+hrs or pdx except face, mouth & neck dx | S | $1,484.30 | $2,407.90 | $4,944.24 |
| 484 | Craniotomy for multiple significant trauma | S | $1,165.46 | $2,643.72 | $6,114.97 |
| 485 | Limb reattachment, hip and femur proc for multiple significant trauma | S | $999.93 | $2,178.80 | $4,488.78 |
| 486 | Other or procedures for multiple significant trauma | S | $1,094.48 | $2,307.88 | $5,661.86 |
| 487 | Other multiple significant trauma | N | $943.97 | $2,161.62 | $2,610.34 |
| 488 | Hiv w extensive or procedure | S | $1,329.35 | $2,690.75 | $4,292.63 |
| 489 | Hiv w major related condition | N | $1,261.07 | $2,287.66 | $2,477.20 |
| 490 | Hiv w or w/o other related condition | N | $1,019.81 | $1,623.87 | $1,852.08 |
| 491 | Major joint & limb reattachment procedures of upper extremity | S | $944.50 | $1,878.77 | $7,199.50 |
| 492 | Chemotherapy w acute leukemia as secondary diagnosis | N | $1,035.24 | $1,782.67 | $3,350.85 |
| 493 | Laparoscopic cholecystectomy w/o cde w cc | S | $932.14 | $1,739.80 | $4,164.36 |
| 494 | Laparoscopic cholecystectomy w/o cde w/o cc | S | $870.74 | $1,553.42 | $5,444.45 |
| 495 | Lung transplant | S | $1,708.36 | $2,813.75 | $12,316.80 |
| 496 | Combined anterior/posterior spinal fusion | S | $1,053.93 | $2,232.99 | $8,592.16 |
| 497 | Spinal fusion except cervical w cc | S | $980.48 | $2,180.78 | $7,827.32 |
| 498 | Spinal fusion except cervical w/o cc | S | $900.37 | $2,127.35 | $8,992.06 |
| 499 | Back & neck procedures except spinal fusion w cc | S | $984.47 | $2,042.61 | $4,315.33 |
| 500 | Back & neck procedures except spinal fusion w/o cc | S | $912.62 | $1,955.87 | $5,487.80 |
| 501 | Knee procedures w pdx of infection w cc | S | $1,021.34 | $1,888.32 | $3,247.22 |
| 502 | Knee procedures w pdx of infection w/o cc | S | $887.72 | $1,582.23 | $3,039.59 |
| 503 | Knee procedures w/o pdx of infection | S | $1,149.19 | $2,326.56 | $4,942.88 |
| 504 | Extensive 3rd degree burns w skin graft | S | $1,782.37 | $3,945.97 | $7,476.63 |
| 505 | Extensive 3rd degree burns w/o skin graft | N | $779.40 | $3,184.88 | $5,932.12 |
| 506 | Full thickness burn w skin graft or inhal inj w cc or sig trauma | S | $1,593.61 | $3,938.86 | $4,344.85 |
| 507 | Full thickness burn w skin grft or inhal inj w/o cc or sig trauma | S | $1,266.73 | $3,461.66 | $2,713.54 |
| 508 | Full thickness burn w/o skin grft or inhal inj w cc or sig trauma | N | $851.59 | $2,461.11 | $1,747.17 |
| 509 | Full thickness burn w/o skin grft or inh inj w/o cc or sig trauma | N | $810.37 | $3,324.63 | $1,520.10 |
| 510 | Non-extensive burns w cc or significant trauma | N | $984.76 | $3,314.38 | $2,065.06 |
| 511 | Non-extensive burns w/o cc or significant trauma | N | $670.98 | $2,415.12 | $1,174.84 |
| 512 | Simultaneous pancreas/kidney transplant | S | $1,112.89 | $2,760.57 | $12,956.64 |
| 513 | Pancreas transplant | S | $1,394.98 | $2,314.81 | $10,927.21 |
| 514 | Cardiac defibrillator implant w cardiac cath | S | $1,176.14 | $2,001.25 | $13,497.15 |
| 515 | Cardiac defibrillator implant w/o cardiac cath | S | $1,074.59 | $1,821.48 | $13,889.86 |
| 516 | Percutaneous cardiovascular proc w ami | S | $1,151.11 | $1,953.40 | $8,426.80 |
| 517 | Perc cardio proc w non-drug eluting stent w/o ami | S | $1,093.60 | $1,818.50 | $12,898.63 |
| 518 | Perc cardio proc w/o coronary artery stent or ami | S | $1,314.56 | $2,022.61 | $8,024.81 |
| 519 | Cervical spinal fusion w cc | S | $1,049.47 | $2,384.89 | $7,008.87 |
| 520 | Cervical spinal fusion w/o cc | S | $880.67 | $1,993.61 | $10,718.77 |
| 521 | Alcohol/drug abuse or dependence w cc | N | $958.32 | $1,706.78 | $919.41 |
| 522 | Alc/drug abuse or depend w rehabilitation therapy w/o cc | N | $841.07 | $1,403.51 | $242.87 |
| 523 | Alc/drug abuse or depend w/o rehabilitation therapy w/o cc | N | $850.18 | $1,203.67 | $290.88 |
| 524 | Transient ischemia | N | $925.81 | $1,547.49 | $2,133.13 |
| 525 | Heart assist system implant | S | $1,234.41 | $2,518.32 | $11,095.18 |
| 526 | Percutaneous cardiovascular proc w drug eluting stent w ami | S | $1,314.56 | $2,022.61 | $8,024.81 |
| 527 | Percutaneous cardiovascular proc w drug eluting stent w/o ami | S | $1,314.56 | $2,022.61 | $8,024.81 |

TABLE B. — SKILLED NURSING FACILITY/SUB-ACUTE INPATIENT FACILITY NATIONWIDE PER DIEM CHARGE

| Description | All-Inclusive Per Diem Charge |
|---|---|
| Skilled Nursing Facility/Sub-Acute Inpatient Facility | $655.39 |

TABLE C. — OBSERVATION CARE FACILITY NATIONWIDE BASE AND HOURLY CHARGES

| Description | Base Charge | Hourly Charge |
|---|---|---|
| Observation Facility Care | $200.91 | $35.22 |

TABLE D. — PARTIAL HOSPITALIZATION FACILITY NATIONWIDE PER DIEM CHARGE

| Description | All-Inclusive Per Diem Charge |
|---|---|
| Partial Hospitalization Facility | $449.76 |

TABLE E. — AMBULANCE AND OTHER EMERGENCY TRANSPORTATION CHARGES BY HCPCS CODE

| HCPCS Code | Description | Charge |
|---|---|---|
| A0380 | Basic Life Support Mileage (Per Mile) | $10.92 |
| A0390 | Advanced Life Support Mileage (Per Mile) | $10.06 |
| A0425 | Ground Mileage, Per Statute Mile | $13.07 |
| A0426 | Ambulance Service, Advanced Life Support, Non-Emergency Transport, Level 1 (ALS 1) | $597.60 |
| A0427 | Ambulance Service, Advanced Life Support, Emergency Transport, Level 1 (ALS1-Emergency) | $690.98 |
| A0428 | Ambulance Service, Basic Life Support, Non-Emergency Transport, (BLS) | $435.75 |
| A0429 | Ambulance Service, Basic Life Support, Emergency Transport (BLS-Emergency) | $464.39 |
| A0430 | Ambulance Service, Conventional Air Services, Transport, One Way (Fixed Wing) | $3,486.00 |
| A0431 | Ambulance Service, Conventional Air Services, Transport, One Way (Rotary Wing) | $5,727.00 |
| A0435 | Fixed Wing Air Mileage, Per Statute Mile | $42.33 |
| A0436 | Rotary Wing Air Mileage, Per Statute Mile | $68.48 |

## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 0003T | Cervicography | | | $129.26 | |
| 0009T | Endometrial cryoablation | | + | $9,694.54 | |
| 0012T | Osteochondral knee autograft | | + | $7,043.98 | |
| 0013T | Osteochondral knee allograft | | + | $7,043.98 | |
| 0014T | Meniscal transplant, knee | | + | $7,043.98 | |
| 0018T | Transcranial magnetic stimul | | | $139.60 | |
| 0025T | Ultrasonic pachymetry | | | $199.00 | |
| 0027T | Endoscopic epidural lysis | | + | $4,534.03 | |
| 10021 | Fna w/o image | | + | $159.39 | |
| 10022 | Fna w/image | | + | $159.39 | |
| 10040 | Acne surgery | | + | $177.67 | |
| 10060 | Drainage of skin abscess | | + | $483.36 | |
| 10061 | Drainage of skin abscess | | + | $483.36 | |
| 10080 | Drainage of pilonidal cyst | | + | $483.36 | |
| 10081 | Drainage of pilonidal cyst | | + | $2,701.58 | |
| 10120 | Remove foreign body | | + | $483.36 | |
| 10121 | Remove foreign body | | + | $3,757.15 | |
| 10140 | Drainage of hematoma/fluid | | + | $2,701.58 | |
| 10160 | Puncture drainage of lesion | | + | $253.44 | |
| 10180 | Complex drainage, wound | | + | $2,701.58 | |
| 11000 | Debride infected skin | | + | $415.44 | |
| 11001 | Debride infected skin add-on | | + | $290.03 | |
| 11010 | Debride skin, fx | | + | $4,689.89 | |
| 11011 | Debride skin/muscle, fx | | + | $4,689.89 | |
| 11012 | Debride skin/muscle/bone, fx | | + | $4,689.89 | |
| 11040 | Debride skin, partial | | + | $415.44 | |
| 11041 | Debride skin, full | | + | $415.44 | |
| 11042 | Debride skin/tissue | | + | $705.44 | |
| 11043 | Debride tissue/muscle | | + | $705.44 | |
| 11044 | Debride tissue/muscle/bone | | + | $1,962.19 | |
| 11055 | Trim skin lesion | | + | $211.64 | |
| 11056 | Trim skin lesions, 2 to 4 | | + | $211.64 | |
| 11057 | Trim skin lesions, over 4 | | + | $211.64 | |
| 11100 | Biopsy of skin lesion | | + | $253.44 | |
| 11101 | Biopsy, skin add-on | | + | $253.44 | |
| 11200 | Removal of skin tags | | + | $290.03 | |
| 11201 | Remove skin tags add-on | | + | $415.44 | |
| 11300 | Shave skin lesion | | + | $211.64 | |
| 11301 | Shave skin lesion | | + | $211.64 | |
| 11302 | Shave skin lesion | | + | $290.03 | |
| 11303 | Shave skin lesion | | + | $415.44 | |
| 11305 | Shave skin lesion | | + | $290.03 | |
| 11306 | Shave skin lesion | | + | $290.03 | |
| 11307 | Shave skin lesion | | + | $290.03 | |
| 11308 | Shave skin lesion | | + | $290.03 | |
| 11310 | Shave skin lesion | | + | $290.03 | |
| 11311 | Shave skin lesion | | + | $290.03 | |
| 11312 | Shave skin lesion | | + | $290.03 | |
| 11313 | Shave skin lesion | | + | $705.44 | |
| 11400 | Exc tr-ext b9+marg 0.5 < cm | | + | $1,016.36 | |
| 11401 | Exc tr-ext b9+marg 0.6-1 cm | | + | $1,016.36 | |
| 11402 | Exc tr-ext b9+marg 1.1-2 cm | | + | $1,016.36 | |
| 11403 | Exc tr-ext b9+marg 2.1-3 cm | | + | $1,938.68 | |
| 11404 | Exc tr-ext b9+marg 3.1-4 cm | | + | $1,938.68 | |
| 11406 | Exc tr-ext b9+marg > 4.0 cm | | + | $3,757.15 | |
| 11420 | Exc h-f-nk-sp b9+marg 0.5 < | | + | $1,938.68 | |
| 11421 | Exc h-f-nk-sp b9+marg 0.6-1 | | + | $1,938.68 | |
| 11422 | Exc h-f-nk-sp b9+marg 1.1-2 | | + | $1,938.68 | |
| 11423 | Exc h-f-nk-sp b9+marg 2.1-3 | | + | $1,938.68 | |
| 11424 | Exc h-f-nk-sp b9+marg 3.1-4 | | + | $3,757.15 | |
| 11426 | Exc h-f-nk-sp b9+marg > 4 cm | | + | $4,689.89 | |
| 11440 | Exc face-mm b9+marg 0.5 < cm | | + | $1,016.36 | |
| 11441 | Exc face-mm b9+marg 0.6-1 cm | | + | $1,016.36 | |
| 11442 | Exc face-mm b9+marg 1.1-2 cm | | + | $1,938.68 | |
| 11443 | Exc face-mm b9+marg 2.1-3 cm | | + | $1,938.68 | |
| 11444 | Exc face-mm b9+marg 3.1-4 cm | | + | $1,938.68 | |

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[1] See end of table.

TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Method-ology |
|---|---|---|---|---|---|
| 11446 | Exc face-mm b9+marg > 4 cm | | + | $4,689.89 | |
| 11450 | Removal, sweat gland lesion | | + | $4,689.89 | |
| 11451 | Removal, sweat gland lesion | | + | $4,689.89 | |
| 11462 | Removal, sweat gland lesion | | + | $4,689.89 | |
| 11463 | Removal, sweat gland lesion | | + | $4,689.89 | |
| 11470 | Removal, sweat gland lesion | | + | $4,689.89 | |
| 11471 | Removal, sweat gland lesion | | + | $4,689.89 | |
| 11600 | Exc tr-ext mlg+marg 0.5 < cm | | + | $1,016.36 | |
| 11601 | Exc tr-ext mlg+marg 0.6-1 cm | | + | $1,016.36 | |
| 11602 | Exc tr-ext mlg+marg 1.1-2 cm | | + | $1,016.36 | |
| 11603 | Exc tr-ext mlg+marg 2.1-3 cm | | + | $1,938.68 | |
| 11604 | Exc tr-ext mlg+marg 3.1-4 cm | | + | $1,938.68 | |
| 11606 | Exc tr-ext mlg+marg > 4 cm | | + | $3,757.15 | |
| 11620 | Exc h-f-nk-sp mlg+marg 0.5 < | | + | $1,938.68 | |
| 11621 | Exc h-f-nk-sp mlg+marg 0.6-1 | | + | $1,016.36 | |
| 11622 | Exc h-f-nk-sp mlg+marg 1.1-2 | | + | $1,938.68 | |
| 11623 | Exc h-f-nk-sp mlg+marg 2.1-3 | | + | $1,938.68 | |
| 11624 | Exc h-f-nk-sp mlg+marg 3.1-4 | | + | $3,757.15 | |
| 11626 | Exc h-f-nk-sp mlg+mar > 4 cm | | + | $4,689.89 | |
| 11640 | Exc face-mm malig+marg 0.5 < | | + | $1,938.58 | |
| 11641 | Exc face-mm malig+marg 0.6-1 | | + | $1,938.68 | |
| 11642 | Exc face-mm malig+marg 1.1-2 | | + | $1,938.68 | |
| 11643 | Exc face-mm malig+marg 2.1-3 | | + | $1,938.68 | |
| 11644 | Exc face-mm malig+marg 3.1-4 | | + | $3,757.15 | |
| 11646 | Exc face-mm mlg+marg > 4 cm | | + | $4,689.89 | |
| 11719 | Trim nail(s) | | + | $169.82 | |
| 11720 | Debride nail, 1-5 | | + | $169.82 | |
| 11721 | Debride nail, 6 or more | | + | $169.82 | |
| 11730 | Removal of nail plate | | + | $290.03 | |
| 11732 | Remove nail plate, add-on | | + | $211.64 | |
| 11740 | Drain blood from under nail | | + | $169.82 | |
| 11750 | Removal of nail bed | | + | $1,016.36 | |
| 11752 | Remove nail bed/finger tip | | + | $4,689.89 | |
| 11755 | Biopsy, nail unit | | + | $1,016.36 | |
| 11760 | Repair of nail bed | | + | $499.03 | |
| 11762 | Reconstruction of nail bed | | + | $499.03 | |
| 11765 | Excision of nail fold, toe | | + | $415.44 | |
| 11770 | Removal of pilonidal lesion | | + | $4,689.89 | |
| 11771 | Removal of pilonidal lesion | | + | $4,689.89 | |
| 11772 | Removal of pilonidal lesion | | + | $4,689.89 | |
| 11900 | Injection into skin lesions | | + | $211.64 | |
| 11901 | Added skin lesions injection | | + | $211.64 | |
| 11920 | Correct skin color defects | | + | $499.03 | |
| 11921 | Correct skin color defects | | + | $499.03 | |
| 11922 | Correct skin color defects | | + | $499.03 | |
| 11950 | Therapy for contour defects | | + | $499.03 | |
| 11951 | Therapy for contour defects | | + | $499.03 | |
| 11952 | Therapy for contour defects | | + | $499.03 | |
| 11954 | Therapy for contour defects | | + | $499.03 | |
| 11960 | Insert tissue expander(s) | | + | $4,104.63 | |
| 11970 | Replace tissue expander | | + | $4,104.63 | |
| 11971 | Remove tissue expander(s) | | + | $4,689.89 | |
| 11976 | Removal of contraceptive cap | | + | $1,016.36 | |
| 11980 | Implant hormone pellet(s) | | | $175.05 | |
| 11981 | Insert drug implant device | | | $175.05 | |
| 11982 | Remove drug implant device | | | $175.05 | |
| 11983 | Remove/insert drug implant | | | $175.05 | |
| 12001 | Repair superficial wound(s) | | + | $499.03 | |
| 12002 | Repair superficial wound(s) | | + | $499.03 | |
| 12004 | Repair superficial wound(s) | | + | $499.03 | |
| 12005 | Repair superficial wound(s) | | + | $499.03 | |
| 12006 | Repair superficial wound(s) | | + | $499.03 | |
| 12007 | Repair superficial wound(s) | | + | $499.03 | |
| 12011 | Repair superficial wound(s) | | + | $499.03 | |
| 12013 | Repair superficial wound(s) | | + | $499.03 | |
| 12014 | Repair superficial wound(s) | | + | $499.03 | |

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[1] See end of table.

## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 12015 | Repair superficial wound(s) | | + | $499.03 | |
| 12016 | Repair superficial wound(s) | | + | $499.03 | |
| 12017 | Repair superficial wound(s) | | + | $499.03 | |
| 12018 | Repair superficial wound(s) | | + | $499.03 | |
| 12020 | Closure of split wound | | + | $499.03 | |
| 12021 | Closure of split wound | | + | $499.03 | |
| 12031 | Layer closure of wound(s) | | + | $499.03 | |
| 12032 | Layer closure of wound(s) | | + | $499.03 | |
| 12034 | Layer closure of wound(s) | | + | $499.03 | |
| 12035 | Layer closure of wound(s) | | + | $499.03 | |
| 12036 | Layer closure of wound(s) | | + | $499.03 | |
| 12037 | Layer closure of wound(s) | | + | $1,580.73 | |
| 12041 | Layer closure of wound(s) | | + | $499.03 | |
| 12042 | Layer closure of wound(s) | | + | $499.03 | |
| 12044 | Layer closure of wound(s) | | + | $499.03 | |
| 12045 | Layer closure of wound(s) | | + | $499.03 | |
| 12046 | Layer closure of wound(s) | | + | $499.03 | |
| 12047 | Layer closure of wound(s) | | + | $1,580.73 | |
| 12051 | Layer closure of wound(s) | | + | $499.03 | |
| 12052 | Layer closure of wound(s) | | + | $499.03 | |
| 12053 | Layer closure of wound(s) | | + | $499.03 | |
| 12054 | Layer closure of wound(s) | | + | $499.03 | |
| 12055 | Layer closure of wound(s) | | + | $499.03 | |
| 12056 | Layer closure of wound(s) | | + | $499.03 | |
| 12057 | Layer closure of wound(s) | | + | $1,580.73 | |
| 13100 | Repair of wound or lesion | | + | $1,580.73 | |
| 13101 | Repair of wound or lesion | | + | $1,580.73 | |
| 13102 | Repair wound/lesion add-on | | + | $499.03 | |
| 13120 | Repair of wound or lesion | | + | $499.03 | |
| 13121 | Repair of wound or lesion | | + | $499.03 | |
| 13122 | Repair wound/lesion add-on | | + | $499.03 | |
| 13131 | Repair of wound or lesion | | + | $499.03 | |
| 13132 | Repair of wound or lesion | | + | $499.03 | |
| 13133 | Repair wound/lesion add-on | | + | $499.03 | |
| 13150 | Repair of wound or lesion | | + | $1,580.73 | |
| 13151 | Repair of wound or lesion | | + | $499.03 | |
| 13152 | Repair of wound or lesion | | + | $1,580.73 | |
| 13153 | Repair wound/lesion add-on | | + | $499.03 | |
| 13160 | Late closure of wound | | + | $4,104.63 | |
| 14000 | Skin tissue rearrangement | | + | $4,104.63 | |
| 14001 | Skin tissue rearrangement | | + | $4,104.63 | |
| 14020 | Skin tissue rearrangement | | + | $4,104.63 | |
| 14021 | Skin tissue rearrangement | | + | $4,104.63 | |
| 14040 | Skin tissue rearrangement | | + | $4,104.63 | |
| 14041 | Skin tissue rearrangement | | + | $4,104.63 | |
| 14060 | Skin tissue rearrangement | | + | $4,104.63 | |
| 14061 | Skin tissue rearrangement | | + | $4,104.63 | |
| 14300 | Skin tissue rearrangement | | + | $4,104.63 | |
| 14350 | Skin tissue rearrangement | | + | $4,104.63 | |
| 15000 | Skin graft | | + | $1,580.73 | |
| 15001 | Skin graft add-on | | + | $1,580.73 | |
| 15050 | Skin pinch graft | | + | $1,580.73 | |
| 15100 | Skin split graft | | + | $4,104.63 | |
| 15101 | Skin split graft add-on | | + | $4,104.63 | |
| 15120 | Skin split graft | | + | $4,104.63 | |
| 15121 | Skin split graft add-on | | + | $4,104.63 | |
| 15200 | Skin full graft | | + | $4,104.63 | |
| 15201 | Skin full graft add-on | | + | $1,580.73 | |
| 15220 | Skin full graft | | + | $4,104.63 | |
| 15221 | Skin full graft add-on | | + | $1,580.73 | |
| 15240 | Skin full graft | | + | $4,104.63 | |
| 15241 | Skin full graft add-on | | + | $1,580.73 | |
| 15260 | Skin full graft | | + | $4,104.63 | |
| 15261 | Skin full graft add-on | | + | $1,580.73 | |
| 15342 | Cultured skin graft, 25 cm | | + | $1,580.73 | |
| 15343 | Culture skn graft addl 25 cm | | + | $499.03 | |

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[1] See end of table.

## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Method-ology |
|---|---|---|---|---|---|
| 15350 | Skin homograft | | + | $3,840.76 | |
| 15351 | Skin homograft add-on | | + | $4,104.63 | |
| 15400 | Skin heterograft | | + | $1,580.73 | |
| 15401 | Skin heterograft add-on | | + | $1,580.73 | |
| 15570 | Form skin pedicle flap | | + | $4,104.63 | |
| 15572 | Form skin pedicle flap | | + | $4,104.63 | |
| 15574 | Form skin pedicle flap | | + | $4,104.63 | |
| 15576 | Form skin pedicle flap | | + | $4,104.63 | |
| 15600 | Skin graft | | + | $4,104.63 | |
| 15610 | Skin graft | | + | $4,104.63 | |
| 15620 | Skin graft | | + | $4,104.63 | |
| 15630 | Skin graft | | + | $4,104.63 | |
| 15650 | Transfer skin pedicle flap | | + | $4,104.63 | |
| 15732 | Muscle-skin graft, head/neck | | + | $4,104.63 | |
| 15734 | Muscle-skin graft, trunk | | + | $4,104.63 | |
| 15736 | Muscle-skin graft, arm | | + | $4,104.63 | |
| 15738 | Muscle-skin graft, leg | | + | $4,104.63 | |
| 15740 | Island pedicle flap graft | | + | $4,104.63 | |
| 15750 | Neurovascular pedicle graft | | + | $4,104.63 | |
| 15760 | Composite skin graft | | + | $4,104.63 | |
| 15770 | Derma-fat-fascia graft | | + | $4,104.63 | |
| 15775 | Hair transplant punch grafts | | + | $1,580.73 | |
| 15776 | Hair transplant punch grafts | | + | $1,580.73 | |
| 15780 | Abrasion treatment of skin | | + | $4,689.89 | |
| 15781 | Abrasion treatment of skin | | + | $4,689.89 | |
| 15782 | Abrasion treatment of skin | | + | $4,689.89 | |
| 15783 | Abrasion treatment of skin | | + | $705.44 | |
| 15786 | Abrasion, lesion, single | | + | $290.03 | |
| 15787 | Abrasion, lesions, add-on | | + | $290.03 | |
| 15788 | Chemical peel, face, epiderm | | + | $211.64 | |
| 15789 | Chemical peel, face, dermal | | + | $415.44 | |
| 15792 | Chemical peel, nonfacial | | + | $211.64 | |
| 15793 | Chemical peel, nonfacial | | + | $290.03 | |
| 15810 | Salabrasion | | + | $705.44 | |
| 15811 | Salabrasion | | + | $705.44 | |
| 15819 | Plastic surgery, neck | | + | $1,580.73 | |
| 15820 | Revision of lower eyelid | | + | $4,104.63 | |
| 15821 | Revision of lower eyelid | | + | $4,104.63 | |
| 15822 | Revision of upper eyelid | | + | $4,104.63 | |
| 15823 | Revision of upper eyelid | | + | $4,104.63 | |
| 15824 | Removal of forehead wrinkles | | + | $4,104.63 | |
| 15825 | Removal of neck wrinkles | | + | $4,104.63 | |
| 15826 | Removal of brow wrinkles | | + | $4,104.63 | |
| 15828 | Removal of face wrinkles | | + | $4,104.63 | |
| 15829 | Removal of skin wrinkles | | + | $4,104.63 | |
| 15831 | Excise excessive skin tissue | | + | $4,689.89 | |
| 15832 | Excise excessive skin tissue | | + | $4,689.89 | |
| 15833 | Excise excessive skin tissue | | + | $4,689.89 | |
| 15834 | Excise excessive skin tissue | | + | $4,689.89 | |
| 15835 | Excise excessive skin tissue | | + | $1,580.73 | |
| 15836 | Excise excessive skin tissue | | + | $1,938.68 | |
| 15837 | Excise excessive skin tissue | | + | $1,938.68 | |
| 15838 | Excise excessive skin tissue | | + | $1,938.68 | |
| 15839 | Excise excessive skin tissue | | + | $1,938.68 | |
| 15840 | Graft for face nerve palsy | | + | $4,104.63 | |
| 15841 | Graft for face nerve palsy | | + | $4,104.63 | |
| 15842 | Flap for face nerve palsy | | + | $4,104.63 | |
| 15845 | Skin and muscle repair, face | | + | $4,104.63 | |
| 15850 | Removal of sutures | | + | $705.44 | |
| 15851 | Removal of sutures | | + | $290.03 | |
| 15852 | Dressing change,not for burn | | | $175.05 | |
| 15860 | Test for blood flow in graft | | | $129.26 | |
| 15876 | Suction assisted lipectomy | | + | $4,104.63 | |
| 15877 | Suction assisted lipectomy | | + | $4,104.63 | |
| 15878 | Suction assisted lipectomy | | + | $4,104.63 | |
| 15879 | Suction assisted lipectomy | | + | $4,104.63 | |

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[1] See end of table.

### TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Method-ology |
|---|---|---|---|---|---|
| 15920 | Removal of tail bone ulcer | | + | $4,689.89 | |
| 15922 | Removal of tail bone ulcer | | + | $4,104.63 | |
| 15931 | Remove sacrum pressure sore | | + | $4,689.89 | |
| 15933 | Remove sacrum pressure sore | | + | $4,689.89 | |
| 15934 | Remove sacrum pressure sore | | + | $4,104.63 | |
| 15935 | Remove sacrum pressure sore | | + | $4,104.63 | |
| 15936 | Remove sacrum pressure sore | | + | $4,104.63 | |
| 15937 | Remove sacrum pressure sore | | + | $4,104.63 | |
| 15940 | Remove hip pressure sore | | + | $4,689.89 | |
| 15941 | Remove hip pressure sore | | + | $4,689.89 | |
| 15944 | Remove hip pressure sore | | + | $4,104.63 | |
| 15945 | Remove hip pressure sore | | + | $4,104.63 | |
| 15946 | Remove hip pressure sore | | + | $4,104.63 | |
| 15950 | Remove thigh pressure sore | | + | $4,689.89 | |
| 15951 | Remove thigh pressure sore | | + | $4,689.89 | |
| 15952 | Remove thigh pressure sore | | + | $4,104.63 | |
| 15953 | Remove thigh pressure sore | | + | $4,104.63 | |
| 15956 | Remove thigh pressure sore | | + | $4,104.63 | |
| 15958 | Remove thigh pressure sore | | + | $4,104.63 | |
| 15999 | Removal of pressure sore | | + | $4,689.89 | |
| 16000 | Initial treatment of burn(s) | | + | $290.03 | |
| 16010 | Treatment of burn(s) | | + | $705.44 | |
| 16015 | Treatment of burn(s) | | + | $4,266.63 | |
| 16020 | Treatment of burn(s) | | + | $290.03 | |
| 16025 | Treatment of burn(s) | | + | $290.03 | |
| 16030 | Treatment of burn(s) | | + | $415.44 | |
| 17000 | Destroy benign/premlg lesion | | + | $177.67 | |
| 17003 | Destroy lesions, 2-14 | | + | $177.67 | |
| 17004 | Destroy lesions, 15 or more | | + | $499.03 | |
| 17106 | Destruction of skin lesions | | + | $499.03 | |
| 17107 | Destruction of skin lesions | | + | $499.03 | |
| 17108 | Destruction of skin lesions | | + | $499.03 | |
| 17110 | Destruct lesion, 1-14 | | + | $177.67 | |
| 17111 | Destruct lesion, 15 or more | | + | $499.03 | |
| 17250 | Chemical cautery, tissue | | + | $290.03 | |
| 17260 | Destruction of skin lesions | | + | $415.44 | |
| 17261 | Destruction of skin lesions | | + | $415.44 | |
| 17262 | Destruction of skin lesions | | + | $415.44 | |
| 17263 | Destruction of skin lesions | | + | $415.44 | |
| 17264 | Destruction of skin lesions | | + | $415.44 | |
| 17266 | Destruction of skin lesions | | + | $705.44 | |
| 17270 | Destruction of skin lesions | | + | $415.44 | |
| 17271 | Destruction of skin lesions | | + | $290.03 | |
| 17272 | Destruction of skin lesions | | + | $415.44 | |
| 17273 | Destruction of skin lesions | | + | $415.44 | |
| 17274 | Destruction of skin lesions | | + | $705.44 | |
| 17276 | Destruction of skin lesions | | + | $705.44 | |
| 17280 | Destruction of skin lesions | | + | $415.44 | |
| 17281 | Destruction of skin lesions | | + | $415.44 | |
| 17282 | Destruction of skin lesions | | + | $415.44 | |
| 17283 | Destruction of skin lesions | | + | $415.44 | |
| 17284 | Destruction of skin lesions | | + | $705.44 | |
| 17286 | Destruction of skin lesions | | + | $415.44 | |
| 17304 | 1 stage mohs, up to 5 spec | | + | $935.36 | |
| 17305 | 2 stage mohs, up to 5 spec | | + | $935.36 | |
| 17306 | 3 stage mohs, up to 5 spec | | + | $935.36 | |
| 17307 | Mohs addl stage up to 5 spec | | + | $935.36 | |
| 17310 | Mohs any stage > 5 spec each | | + | $935.36 | |
| 17340 | Cryotherapy of skin | | + | $211.64 | |
| 17360 | Skin peel therapy | | + | $211.64 | |
| 17380 | Hair removal by electrolysis | | + | $211.64 | |
| 17999 | Skin tissue procedure | | + | $483.36 | |
| 19000 | Drainage of breast lesion | | + | $470.28 | |
| 19001 | Drain breast lesion add-on | | + | $470.28 | |
| 19020 | Incision of breast lesion | | + | $4,352.84 | |
| 19100 | Bx breast percut w/o image | | + | $841.31 | |

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[1] See end of table.

### TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Method-ology |
|---|---|---|---|---|---|
| 19101 | Biopsy of breast, open | | + | $4,548.82 | |
| 19102 | Bx breast percut w/image | | + | $841.31 | |
| 19103 | Bx breast percut w/device | | + | $1,421.34 | |
| 19110 | Nipple exploration | | + | $4,548.82 | |
| 19112 | Excise breast duct fistula | | + | $4,548.82 | |
| 19120 | Removal of breast lesion | | + | $4,548.82 | |
| 19125 | Excision, breast lesion | | + | $4,548.82 | |
| 19126 | Excision, addl breast lesion | | + | $4,548.82 | |
| 19140 | Removal of breast tissue | | + | $4,548.82 | |
| 19160 | Removal of breast tissue | | + | $4,548.82 | |
| 19162 | Remove breast tissue, nodes | | + | $10,134.87 | |
| 19180 | Removal of breast | | + | $7,762.50 | |
| 19182 | Removal of breast | | + | $7,762.50 | |
| 19240 | Removal of breast | | + | $10,116.58 | |
| 19260 | Removal of chest wall lesion | | + | $3,757.15 | |
| 19295 | Place breast clip, percut | | | $389.31 | |
| 19316 | Suspension of breast | | + | $7,762.50 | |
| 19318 | Reduction of large breast | | + | $10,134.87 | |
| 19324 | Enlarge breast | | + | $10,134.87 | |
| 19325 | Enlarge breast with implant | | + | $12,078.77 | |
| 19328 | Removal of breast implant | | + | $7,762.50 | |
| 19330 | Removal of implant material | | + | $7,762.50 | |
| 19340 | Immediate breast prosthesis | | + | $10,116.58 | |
| 19342 | Delayed breast prosthesis | | + | $12,078.77 | |
| 19350 | Breast reconstruction | | + | $7,762.50 | |
| 19355 | Correct inverted nipple(s) | | + | $7,762.50 | |
| 19357 | Breast reconstruction | | + | $12,078.77 | |
| 19366 | Breast reconstruction | | + | $7,762.50 | |
| 19370 | Surgery of breast capsule | | + | $7,762.50 | |
| 19371 | Removal of breast capsule | | + | $7,762.50 | |
| 19380 | Revise breast reconstruction | | + | $10,116.58 | |
| 19396 | Design custom breast implant | | + | $7,762.50 | |
| 19499 | Breast surgery procedure | | + | $4,548.82 | |
| 20000 | Incision of abscess | | + | $483.36 | |
| 20005 | Incision of deep abscess | | + | $5,016.48 | |
| 20100 | Explore wound, neck | | + | $679.31 | |
| 20101 | Explore wound, chest | | + | $4,104.63 | |
| 20102 | Explore wound, abdomen | | + | $4,104.63 | |
| 20103 | Explore wound, extremity | | + | $679.31 | |
| 20150 | Excise epiphyseal bar | | + | $8,872.91 | |
| 20200 | Muscle biopsy | | + | $3,757.15 | |
| 20205 | Deep muscle biopsy | | + | $3,757.15 | |
| 20206 | Needle biopsy, muscle | | + | $841.31 | |
| 20220 | Bone biopsy, trocar/needle | | + | $1,016.36 | |
| 20225 | Bone biopsy, trocar/needle | | + | $1,016.36 | |
| 20240 | Bone biopsy, excisional | | + | $4,689.89 | |
| 20245 | Bone biopsy, excisional | | + | $4,689.89 | |
| 20250 | Open bone biopsy | | + | $5,016.48 | |
| 20251 | Open bone biopsy | | + | $5,016.48 | |
| 20500 | Injection of sinus tract | | + | $514.72 | |
| 20520 | Removal of foreign body | | + | $1,016.36 | |
| 20525 | Removal of foreign body | | + | $4,689.89 | |
| 20526 | Ther injection, carp tunnel | | + | $546.05 | |
| 20550 | Inj tendon sheath/ligament | | + | $546.05 | |
| 20551 | Inject tendon origin/insert | | + | $546.05 | |
| 20552 | Inject trigger point, 1 or 2 | | + | $546.05 | |
| 20553 | Inject trigger points, =/> 3 | | + | $546.05 | |
| 20600 | Drain/inject, joint/bursa | | + | $546.05 | |
| 20605 | Drain/inject, joint/bursa | | + | $546.05 | |
| 20610 | Drain/inject, joint/bursa | | + | $546.05 | |
| 20612 | Aspirate/inj ganglion cyst | | + | $546.05 | |
| 20615 | Treatment of bone cyst | | + | $470.28 | |
| 20650 | Insert and remove bone pin | | + | $5,016.48 | |
| 20660 | Apply, rem fixation device | | | $451.48 | MDR |
| 20665 | Removal of fixation device | | | $175.05 | |
| 20670 | Removal of support implant | | + | $3,757.15 | |

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[1] See end of table.

TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Method-ology |
|---|---|---|---|---|---|
| 20680 | Removal of support implant | | + | $4,689.89 | |
| 20690 | Apply bone fixation device | | + | $6,283.67 | |
| 20692 | Apply bone fixation device | | + | $6,283.67 | |
| 20693 | Adjust bone fixation device | | + | $5,016.48 | |
| 20694 | Remove bone fixation device | | + | $5.016.48 | |
| 20900 | Removal of bone for graft | | + | $6,283.67 | |
| 20902 | Removal of bone for graft | | + | $6,283.67 | |
| 20910 | Remove cartilage for graft | | + | $4,104.63 | |
| 20912 | Remove cartilage for graft | | + | $4,104.63 | |
| 20920 | Removal of fascia for graft | | + | $4,104.63 | |
| 20922 | Removal of fascia for graft | | + | $4,104.63 | |
| 20924 | Removal of tendon for graft | | + | $6,283.67 | |
| 20926 | Removal of tissue for graft | | + | $4,104.63 | |
| 20950 | Fluid pressure, muscle | | + | $483.36 | |
| 20975 | Electrical bone stimulation | | + | $5,016.48 | |
| 20999 | Musculoskeletal surgery | | + | $5,016.48 | |
| 21010 | Incision of jaw joint | | + | $5,424.08 | |
| 21015 | Resection of facial tumor | | + | $3,895.61 | |
| 21025 | Excision of bone, lower jaw | | + | $9,175.99 | |
| 21026 | Excision of facial bone(s) | | + | $9,175.99 | |
| 21029 | Contour of face bone lesion | | + | $9,175.99 | |
| 21030 | Excise max/zygoma b9 tumor | | + | $5.424.08 | |
| 21031 | Remove exostosis, mandible | | + | $5.424.08 | |
| 21032 | Remove exostosis, maxilla | | + | $5,424.08 | |
| 21034 | Excise max/zygoma mlg tumor | | + | $9,175.99 | |
| 21040 | Excise mandible lesion | | + | $5,424.08 | |
| 21044 | Removal of jaw bone lesion | | + | $9,175.99 | |
| 21046 | Remove mandible cyst complex | | + | $9,175.99 | |
| 21047 | Excise lwr jaw cyst w/repair | | + | $9,175.99 | |
| 21048 | Remove maxilla cyst complex | | + | $9,175.99 | |
| 21049 | Excis uppr jaw cyst w/repair | | + | $9,175.99 | |
| 21050 | Removal of jaw joint | | + | $9,175.99 | |
| 21060 | Remove jaw joint cartilage | | + | $9,175.99 | |
| 21070 | Remove coronoid process | | + | $9,175.99 | |
| 21076 | Prepare face/oral prosthesis | | + | $5,424.08 | |
| 21077 | Prepare face/oral prosthesis | | + | $9,175.99 | |
| 21079 | Prepare face/oral prosthesis | | + | $9,175.99 | |
| 21080 | Prepare face/oral prosthesis | | + | $9,175.99 | |
| 21081 | Prepare face/oral prosthesis | | + | $9,175.99 | |
| 21082 | Prepare face/oral prosthesis | | + | $9,175.99 | |
| 21083 | Prepare face/oral prosthesis | | + | $9,175.99 | |
| 21084 | Prepare face/oral prosthesis | | + | $9,175.99 | |
| 21085 | Prepare face/oral prosthesis | | + | $3,895.61 | |
| 21086 | Prepare face/oral prosthesis | | + | $9,175.99 | |
| 21087 | Prepare face/oral prosthesis | | + | $9,175.99 | |
| 21088 | Prepare face/oral prosthesis | | + | $9,175.99 | |
| 21089 | Prepare face/oral prosthesis | | + | $3,895.61 | |
| 21100 | Maxillofacial fixation | | + | $9,175.99 | |
| 21110 | Interdental fixation | | + | $1,565.03 | |
| 21120 | Reconstruction of chin | | + | $5,424.08 | |
| 21121 | Reconstruction of chin | | + | $5,424.08 | |
| 21122 | Reconstruction of chin | | + | $5,424.08 | |
| 21123 | Reconstruction of chin | | + | $5,424.08 | |
| 21125 | Augmentation, lower jaw bone | | + | $5,424.08 | |
| 21127 | Augmentation, lower jaw bone | | + | $9,175.99 | |
| 21137 | Reduction of forehead | | + | $5,424.08 | |
| 21138 | Reduction of forehead | | + | $9,175.99 | |
| 21139 | Reduction of forehead | | + | $9,175.99 | |
| 21181 | Contour cranial bone lesion | | + | $5,424.08 | |
| 21198 | Reconstr lwr jaw segment | | + | $9,175.99 | |
| 21199 | Reconstr lwr jaw w/advance | | + | $9,175.99 | |
| 21206 | Reconstruct upper jaw bone | | + | $9,175.99 | |
| 21208 | Augmentation of facial bones | | + | $9,175.99 | |
| 21209 | Reduction of facial bones | | + | $9,175.99 | |
| 21210 | Face bone graft | | + | $9,175.99 | |
| 21215 | Lower jaw bone graft | | + | $9,175.99 | |

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[1] See end of table.

### TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 21230 | Rib cartilage graft | | + | $9,175.99 | |
| 21235 | Ear cartilage graft | | + | $5,424.08 | |
| 21240 | Reconstruction of jaw joint | | + | $9,175.99 | |
| 21242 | Reconstruction of jaw joint | | + | $9,175.99 | |
| 21243 | Reconstruction of jaw joint | | + | $9,175.99 | |
| 21244 | Reconstruction of lower jaw | | + | $9,175.99 | |
| 21245 | Reconstruction of jaw | | + | $9,175.99 | |
| 21246 | Reconstruction of jaw | | + | $9,175.99 | |
| 21248 | Reconstruction of jaw | | + | $9,175.99 | |
| 21249 | Reconstruction of jaw | | + | $9,175.99 | |
| 21260 | Revise eye sockets | | + | $9,175.99 | |
| 21261 | Revise eye sockets | | + | $9,175.99 | |
| 21263 | Revise eye sockets | | + | $9,175.99 | |
| 21267 | Revise eye sockets | | + | $9,175.99 | |
| 21270 | Augmentation, cheek bone | | + | $9,175.99 | |
| 21275 | Revision, orbitofacial bones | | + | $9,175.99 | |
| 21280 | Revision of eyelid | | + | $9,175.99 | |
| 21282 | Revision of eyelid | | + | $3,895.61 | |
| 21295 | Revision of jaw muscle/bone | | + | $1,565.03 | |
| 21296 | Revision of jaw muscle/bone | | + | $5,424.08 | |
| 21299 | Cranio/maxillofacial surgery | | + | $3,895.61 | |
| 21300 | Treatment of skull fracture | | + | $3,895.61 | |
| 21310 | Treatment of nose fracture | | | $175.05 | |
| 21315 | Treatment of nose fracture | | | $175.05 | |
| 21320 | Treatment of nose fracture | | | $175.05 | |
| 21325 | Treatment of nose fracture | | + | $5,424.08 | |
| 21330 | Treatment of nose fracture | | + | $5,424.08 | |
| 21335 | Treatment of nose fracture | | + | $5,424.08 | |
| 21336 | Treat nasal septal fracture | | + | $7,898.37 | |
| 21337 | Treat nasal septal fracture | | + | $3,895.61 | |
| 21338 | Treat nasoethmoid fracture | | + | $5,424.08 | |
| 21339 | Treat nasoethmoid fracture | | + | $5,424.08 | |
| 21340 | Treatment of nose fracture | | + | $9,175.99 | |
| 21345 | Treat nose/jaw fracture | | + | $5,424.08 | |
| 21355 | Treat cheek bone fracture | | + | $9,175.99 | |
| 21356 | Treat cheek bone fracture | | | $9,523.55 | MDR |
| 21365 | Treat cheek bone fracture | | | $11,428.26 | MDR |
| 21390 | Treat eye socket fracture | | + | $9,175.99 | |
| 21400 | Treat eye socket fracture | | + | $1,565.03 | |
| 21401 | Treat eye socket fracture | | + | $3,895.61 | |
| 21406 | Treat eye socket fracture | | + | $9,175.99 | |
| 21407 | Treat eye socket fracture | | + | $9,175.99 | |
| 21421 | Treat mouth roof fracture | | + | $5,424.08 | |
| 21440 | Treat dental ridge fracture | | + | $5,424.08 | |
| 21445 | Treat dental ridge fracture | | + | $5,424.08 | |
| 21450 | Treat lower jaw fracture | | + | $514.72 | |
| 21451 | Treat lower jaw fracture | | + | $1,565.03 | |
| 21452 | Treat lower jaw fracture | | + | $3,895.61 | |
| 21453 | Treat lower jaw fracture | | + | $9,175.99 | |
| 21454 | Treat lower jaw fracture | | + | $5,424.08 | |
| 21461 | Treat lower jaw fracture | | + | $9,175.99 | |
| 21462 | Treat lower jaw fracture | | + | $9,175.99 | |
| 21465 | Treat lower jaw fracture | | + | $9,175.99 | |
| 21470 | Treat lower jaw fracture | | + | $9,175.99 | |
| 21480 | Reset dislocated jaw | | + | $514.72 | |
| 21485 | Reset dislocated jaw | | + | $3,895.61 | |
| 21490 | Repair dislocated jaw | | + | $9,175.99 | |
| 21493 | Treat hyoid bone fracture | | + | $1,565.03 | |
| 21494 | Treat hyoid bone fracture | | + | $1,565.03 | |
| 21497 | Interdental wiring | | + | $3,895.61 | |
| 21499 | Head surgery procedure | | + | $3,895.61 | |
| 21501 | Drain neck/chest lesion | | + | $4,352.84 | |
| 21502 | Drain chest lesion | | + | $5,016.48 | |
| 21550 | Biopsy of neck/chest | | + | $3,757.15 | |
| 21555 | Remove lesion, neck/chest | | + | $4,689.89 | |
| 21556 | Remove lesion, neck/chest | | + | $4,689.89 | |

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[1] See end of table.

## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 21600 | Partial removal of rib | | + | $6,283.67 | |
| 21610 | Partial removal of rib | | + | $6,283.67 | |
| 21700 | Revision of neck muscle | | + | $5,016.48 | |
| 21720 | Revision of neck muscle | | + | $5,016.48 | |
| 21725 | Revision of neck muscle | | + | $483.36 | |
| 21742 | Repair stern/nuss w/o scope | | + | $8,872.91 | |
| 21743 | Repair sternum/nuss w/scope | | + | $8,872.91 | |
| 21800 | Treatment of rib fracture | | + | $674.08 | |
| 21805 | Treatment of rib fracture | | + | $7,898.37 | |
| 21820 | Treat sternum fracture | | + | $674.08 | |
| 21899 | Neck/chest surgery procedure | | + | $1,565.03 | |
| 21920 | Biopsy soft tissue of back | | + | $1,938.68 | |
| 21925 | Biopsy soft tissue of back | | + | $4,689.89 | |
| 21930 | Remove lesion, back or flank | | + | $4,689.89 | |
| 21935 | Remove tumor, back | | + | $4,689.89 | |
| 22100 | Remove part of neck vertebra | | + | $10,367.41 | |
| 22101 | Remove part, thorax vertebra | | + | $10,367.41 | |
| 22102 | Remove part, lumbar vertebra | | + | $10,367.41 | |
| 22103 | Remove extra spine segment | | + | $10,367.41 | |
| 22305 | Treat spine process fracture | | + | $674.08 | |
| 22310 | Treat spine fracture | | + | $674.08 | |
| 22315 | Treat spine fracture | | + | $674.08 | |
| 22505 | Manipulation of spine | | + | $3,488.02 | |
| 22520 | Percut vertebroplasty thor | | + | $6,283.67 | |
| 22521 | Percut vertebroplasty lumb | | + | $6,283.67 | |
| 22522 | Percut vertebroplasty addl | | + | $6,283.67 | |
| 22612 | Lumbar spine fusion | | + | $10,367.41 | |
| 22614 | Spine fusion, extra segment | | + | $10,367.41 | |
| 22899 | Spine surgery procedure | | + | $674.08 | |
| 22900 | Remove abdominal wall lesion | | + | $4,689.89 | |
| 22999 | Abdomen surgery procedure | | + | $4,689.89 | |
| 23000 | Removal of calcium deposits | | + | $3,757.15 | |
| 23020 | Release shoulder joint | | + | $8,872.91 | |
| 23030 | Drain shoulder lesion | | + | $4,352.84 | |
| 23031 | Drain shoulder bursa | | + | $4,352.84 | |
| 23035 | Drain shoulder bone lesion | | + | $5,016.48 | |
| 23040 | Exploratory shoulder surgery | | + | $6,283.67 | |
| 23044 | Exploratory shoulder surgery | | + | $6,283.67 | |
| 23065 | Biopsy shoulder tissues | | + | $3,757.15 | |
| 23066 | Biopsy shoulder tissues | | + | $4,689.89 | |
| 23075 | Removal of shoulder lesion | | + | $3,757.15 | |
| 23076 | Removal of shoulder lesion | | + | $4,689.89 | |
| 23077 | Remove tumor of shoulder | | + | $4,689.89 | |
| 23100 | Biopsy of shoulder joint | | + | $5,016.48 | |
| 23101 | Shoulder joint surgery | | + | $6,283.67 | |
| 23105 | Remove shoulder joint lining | | + | $6,283.67 | |
| 23106 | Incision of collarbone joint | | + | $6,283.67 | |
| 23107 | Explore treat shoulder joint | | + | $6,283.67 | |
| 23120 | Partial removal, collar bone | | + | $8,872.91 | |
| 23125 | Removal of collar bone | | + | $8,872.91 | |
| 23130 | Remove shoulder bone, part | | + | $8,872.91 | |
| 23140 | Removal of bone lesion | | + | $5,016.48 | |
| 23145 | Removal of bone lesion | | + | $6,283.67 | |
| 23146 | Removal of bone lesion | | + | $6,283.67 | |
| 23150 | Removal of humerus lesion | | + | $6,283.67 | |
| 23155 | Removal of humerus lesion | | + | $6,283.67 | |
| 23156 | Removal of humerus lesion | | + | $6,283.67 | |
| 23170 | Remove collar bone lesion | | + | $6,283.67 | |
| 23172 | Remove shoulder blade lesion | | + | $6,283.67 | |
| 23174 | Remove humerus lesion | | + | $6,283.67 | |
| 23180 | Remove collar bone lesion | | + | $6,283.67 | |
| 23182 | Remove shoulder blade lesion | | + | $6,283.67 | |
| 23184 | Remove humerus lesion | | + | $6,283.67 | |
| 23190 | Partial removal of scapula | | + | $6,283.67 | |
| 23195 | Removal of head of humerus | | + | $6,283.67 | |
| 23330 | Remove shoulder foreign body | | + | $1,938.68 | |

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[1] See end of table

TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 23331 | Remove shoulder foreign body | | + | $4,689.89 | |
| 23395 | Muscle transfer,shoulder/arm | | + | $8,872.91 | |
| 23397 | Muscle transfers | | + | $10,991.87 | |
| 23400 | Fixation of shoulder blade | | + | $6,283.67 | |
| 23405 | Incision of tendon & muscle | | + | $6,283.67 | |
| 23406 | Incise tendon(s) & muscle(s) | | + | $6,283.67 | |
| 23410 | Repair rotator cuff, acute | | + | $10,991.87 | |
| 23412 | Repair rotator cuff, chronic | | + | $10,991.87 | |
| 23415 | Release of shoulder ligament | | + | $8,872.91 | |
| 23420 | Repair of shoulder | | + | $10,991.87 | |
| 23430 | Repair biceps tendon | | + | $10,991.87 | |
| 23440 | Remove/transplant tendon | | + | $10,991.87 | |
| 23450 | Repair shoulder capsule | | + | $10,991.87 | |
| 23455 | Repair shoulder capsule | | + | $10,991.87 | |
| 23460 | Repair shoulder capsule | | + | $10,991.87 | |
| 23462 | Repair shoulder capsule | | + | $10,991.87 | |
| 23465 | Repair shoulder capsule | | + | $10,991.87 | |
| 23466 | Repair shoulder capsule | | + | $10,991.87 | |
| 23470 | Reconstruct shoulder joint | | + | $10,955.28 | |
| 23480 | Revision of collar bone | | + | $8,872.91 | |
| 23485 | Revision of collar bone | | + | $8,872.91 | |
| 23490 | Reinforce clavicle | | + | $8,872.91 | |
| 23491 | Reinforce shoulder bones | | + | $8,872.91 | |
| 23500 | Treat clavicle fracture | | + | $674.08 | |
| 23505 | Treat clavicle fracture | | + | $674.08 | |
| 23515 | Treat clavicle fracture | | + | $7,898.37 | |
| 23520 | Treat clavicle dislocation | | + | $674.08 | |
| 23525 | Treat clavicle dislocation | | + | $674.08 | |
| 23530 | Treat clavicle dislocation | | + | $7,898.37 | |
| 23532 | Treat clavicle dislocation | | + | $7,898.37 | |
| 23540 | Treat clavicle dislocation | | + | $674.08 | |
| 23545 | Treat clavicle dislocation | | + | $674.08 | |
| 23550 | Treat clavicle dislocation | | + | $7,898.37 | |
| 23552 | Treat clavicle dislocation | | + | $7,898.37 | |
| 23570 | Treat shoulder blade fx | | + | $674.08 | |
| 23575 | Treat shoulder blade fx | | + | $674.08 | |
| 23585 | Treat scapula fracture | | + | $7,898.37 | |
| 23600 | Treat humerus fracture | | + | $674.08 | |
| 23605 | Treat humerus fracture | | + | $674.08 | |
| 23615 | Treat humerus fracture | | + | $7,898.37 | |
| 23616 | Treat humerus fracture | | + | $7,898.37 | |
| 23620 | Treat humerus fracture | | + | $674.08 | |
| 23625 | Treat humerus fracture | | + | $674.08 | |
| 23630 | Treat humerus fracture | | + | $7,898.37 | |
| 23650 | Treat shoulder dislocation | | + | $674.08 | |
| 23655 | Treat shoulder dislocation | | + | $3,488.02 | |
| 23660 | Treat shoulder dislocation | | + | $7,898.37 | |
| 23665 | Treat dislocation/fracture | | + | $674.08 | |
| 23670 | Treat dislocation/fracture | | + | $7,898.37 | |
| 23675 | Treat dislocation/fracture | | + | $674.08 | |
| 23680 | Treat dislocation/fracture | | + | $7,898.37 | |
| 23700 | Fixation of shoulder | | + | $3,488.02 | |
| 23800 | Fusion of shoulder joint | | + | $8,872.91 | |
| 23802 | Fusion of shoulder joint | | + | $8,872.91 | |
| 23921 | Amputation follow-up surgery | | + | $1,580.73 | |
| 23929 | Shoulder surgery procedure | | + | $674.08 | |
| 23930 | Drainage of arm lesion | | + | $4,352.84 | |
| 23931 | Drainage of arm bursa | | + | $483.36 | |
| 23935 | Drain arm/elbow bone lesion | | + | $5,016.48 | |
| 24000 | Exploratory elbow surgery | | + | $6,283.67 | |
| 24006 | Release elbow joint | | + | $6,283.67 | |
| 24065 | Biopsy arm/elbow soft tissue | | + | $3,757.15 | |
| 24066 | Biopsy arm/elbow soft tissue | | + | $3,757.15 | |
| 24075 | Remove arm/elbow lesion | | + | $3,757.15 | |
| 24076 | Remove arm/elbow lesion | | + | $4,689.89 | |
| 24077 | Remove tumor of arm/elbow | | + | $4,689.89 | |

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[1] See end of table.

## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 24100 | Biopsy elbow joint lining | | + | $5,016.48 | |
| 24101 | Explore/treat elbow joint | | + | $6,283.67 | |
| 24102 | Remove elbow joint lining | | + | $6,283.67 | |
| 24105 | Removal of elbow bursa | | + | $5,016.48 | |
| 24110 | Remove humerus lesion | | + | $5,016.48 | |
| 24115 | Remove/graft bone lesion | | + | $6,283.67 | |
| 24116 | Remove/graft bone lesion | | + | $6,283.67 | |
| 24120 | Remove elbow lesion | | + | $5,016.48 | |
| 24125 | Remove/graft bone lesion | | + | $6,283.67 | |
| 24126 | Remove/graft bone lesion | | + | $6,283.67 | |
| 24130 | Removal of head of radius | | + | $6,283.67 | |
| 24134 | Removal of arm bone lesion | | + | $6,283.67 | |
| 24136 | Remove radius bone lesion | | + | $6,283.67 | |
| 24138 | Remove elbow bone lesion | | + | $6,283.67 | |
| 24140 | Partial removal of arm bone | | + | $6,283.67 | |
| 24145 | Partial removal of radius | | + | $6,283.67 | |
| 24147 | Partial removal of elbow | | + | $6,283.67 | |
| 24150 | Extensive humerus surgery | | + | $10,991.87 | |
| 24151 | Extensive humerus surgery | | + | $10,991.87 | |
| 24152 | Extensive radius surgery | | + | $10,991.87 | |
| 24153 | Extensive radius surgery | | + | $10,991.87 | |
| 24155 | Removal of elbow joint | | + | $8,872.91 | |
| 24160 | Remove elbow joint implant | | + | $6,283.67 | |
| 24164 | Remove radius head implant | | + | $6,283.67 | |
| 24200 | Removal of arm foreign body | | + | $1,016.36 | |
| 24201 | Removal of arm foreign body | | + | $3,757.15 | |
| 24300 | Manipulate elbow w/anesth | | + | $3,488.02 | |
| 24301 | Muscle/tendon transfer | | + | $6,283.67 | |
| 24305 | Arm tendon lengthening | | + | $6,283.67 | |
| 24310 | Revision of arm tendon | | + | $5,016.48 | |
| 24320 | Repair of arm tendon | | + | $8,872.91 | |
| 24330 | Revision of arm muscles | | + | $8,872.91 | |
| 24331 | Revision of arm muscles | | + | $8,872.91 | |
| 24332 | Tenolysis, triceps | | + | $5,016.48 | |
| 24340 | Repair of biceps tendon | | + | $8,872.91 | |
| 24341 | Repair arm tendon/muscle | | + | $8,872.91 | |
| 24342 | Repair of ruptured tendon | | + | $8,872.91 | |
| 24343 | Repr elbow lat ligmnt w/tiss | | + | $6,283.67 | |
| 24344 | Reconstruct elbow lat ligmnt | | + | $8,872.91 | |
| 24345 | Repr elbw med ligmnt w/tissu | | + | $6,283.67 | |
| 24346 | Reconstruct elbow med ligmnt | | + | $8,872.91 | |
| 24350 | Repair of tennis elbow | | + | $6,283.67 | |
| 24351 | Repair of tennis elbow | | + | $6,283.67 | |
| 24352 | Repair of tennis elbow | | + | $6,283.67 | |
| 24354 | Repair of tennis elbow | | + | $6,283.67 | |
| 24356 | Revision of tennis elbow | | + | $6,283.67 | |
| 24360 | Reconstruct elbow joint | | + | $7,626.62 | |
| 24361 | Reconstruct elbow joint | | + | $10,955.28 | |
| 24362 | Reconstruct elbow joint | | + | $10,955.28 | |
| 24363 | Replace elbow joint | | + | $10,955.28 | |
| 24365 | Reconstruct head of radius | | + | $7,626.62 | |
| 24366 | Reconstruct head of radius | | + | $10,955.28 | |
| 24400 | Revision of humerus | | + | $6,283.67 | |
| 24410 | Revision of humerus | | + | $6,283.67 | |
| 24420 | Revision of humerus | | + | $8,872.91 | |
| 24430 | Repair of humerus | | + | $8,872.91 | |
| 24435 | Repair humerus with graft | | + | $8,872.91 | |
| 24470 | Revision of elbow joint | | + | $8,872.91 | |
| 24495 | Decompression of forearm | | + | $6,283.67 | |
| 24498 | Reinforce humerus | | + | $8,872.91 | |
| 24500 | Treat humerus fracture | | + | $674.08 | |
| 24505 | Treat humerus fracture | | + | $674.08 | |
| 24515 | Treat humerus fracture | | + | $7,898.37 | |
| 24516 | Treat humerus fracture | | + | $7,898.37 | |
| 24530 | Treat humerus fracture | | + | $674.08 | |
| 24535 | Treat humerus fracture | | + | $674.08 | |

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[1] See end of table.

### TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 24538 | Treat humerus fracture | | + | $7,898.37 | |
| 24545 | Treat humerus fracture | | + | $7,898.37 | |
| 24546 | Treat humerus fracture | | + | $7,898.37 | |
| 24560 | Treat humerus fracture | | + | $674.08 | |
| 24565 | Treat humerus fracture | | + | $674.08 | |
| 24566 | Treat humerus fracture | | + | $7,898.37 | |
| 24575 | Treat humerus fracture | | + | $7,898.37 | |
| 24576 | Treat humerus fracture | | + | $674.08 | |
| 24577 | Treat humerus fracture | | + | $674.08 | |
| 24579 | Treat humerus fracture | | + | $7,898.37 | |
| 24582 | Treat humerus fracture | | + | $7,898.37 | |
| 24586 | Treat elbow fracture | | + | $7,898.37 | |
| 24587 | Treat elbow fracture | | + | $7,898.37 | |
| 24600 | Treat elbow dislocation | | + | $674.08 | |
| 24605 | Treat elbow dislocation | | + | $3,488.02 | |
| 24615 | Treat elbow dislocation | | + | $7,898.37 | |
| 24620 | Treat elbow fracture | | + | $674.08 | |
| 24635 | Treat elbow fracture | | + | $7,898.37 | |
| 24640 | Treat elbow dislocation | | + | $674.08 | |
| 24650 | Treat radius fracture | | + | $674.08 | |
| 24655 | Treat radius fracture | | + | $674.08 | |
| 24665 | Treat radius fracture | | + | $7,898.37 | |
| 24666 | Treat radius fracture | | + | $7,898.37 | |
| 24670 | Treat ulnar fracture | | + | $674.08 | |
| 24675 | Treat ulnar fracture | | + | $674.08 | |
| 24685 | Treat ulnar fracture | | + | $7,898.37 | |
| 24800 | Fusion of elbow joint | | + | $8,872.91 | |
| 24802 | Fusion/graft of elbow joint | | + | $8,872.91 | |
| 24925 | Amputation follow-up surgery | | + | $5,016.48 | |
| 24935 | Revision of amputation | | + | $10,991.87 | |
| 24999 | Upper arm/elbow surgery | | + | $674.08 | |
| 25000 | Incision of tendon sheath | | + | $5,016.48 | |
| 25001 | Incise flexor carpi radialis | | + | $5,016.48 | |
| 25020 | Decompress forearm 1 space | | + | $5,016.48 | |
| 25023 | Decompress forearm 1 space | | + | $6,283.67 | |
| 25024 | Decompress forearm 2 spaces | | + | $6,283.67 | |
| 25025 | Decompress forarm 2 spaces | | + | $6,283.67 | |
| 25028 | Drainage of forearm lesion | | + | $5,016.48 | |
| 25031 | Drainage of forearm bursa | | + | $5,016.48 | |
| 25035 | Treat forearm bone lesion | | + | $5,016.48 | |
| 25040 | Explore/treat wrist joint | | + | $6,283.67 | |
| 25065 | Biopsy forearm soft tissues | | + | $3,757.15 | |
| 25066 | Biopsy forearm soft tissues | | + | $4,689.89 | |
| 25075 | Removel forearm lesion subcu | | + | $3,757.15 | |
| 25076 | Removel forearm lesion deep | | + | $4,689.89 | |
| 25077 | Remove tumor, forearm/wrist | | + | $4,689.89 | |
| 25085 | Incision of wrist capsule | | + | $5,016.48 | |
| 25100 | Biopsy of wrist joint | | + | $5,016.48 | |
| 25101 | Explore/treat wrist joint | | + | $6,283.67 | |
| 25105 | Remove wrist joint lining | | + | $6,283.67 | |
| 25107 | Remove wrist joint cartilage | | + | $6,283.67 | |
| 25110 | Remove wrist tendon lesion | | + | $5,016.48 | |
| 25111 | Remove wrist tendon lesion | | + | $3,822.45 | |
| 25112 | Reremove wrist tendon lesion | | + | $3,822.45 | |
| 25115 | Remove wrist/forearm lesion | | + | $5,016.48 | |
| 25116 | Remove wrist/forearm lesion | | + | $5,016.48 | |
| 25118 | Excise wrist tendon sheath | | + | $6,283.67 | |
| 25119 | Partial removal of ulna | | + | $6,283.67 | |
| 25120 | Removal of forearm lesion | | + | $6,283.67 | |
| 25125 | Remove/graft forearm lesion | | + | $6,283.67 | |
| 25126 | Remove/graft forearm lesion | | + | $6,283.67 | |
| 25130 | Removal of wrist lesion | | + | $6,283.67 | |
| 25135 | Remove & graft wrist lesion | | + | $6,283.67 | |
| 25136 | Remove & graft wrist lesion | | + | $6,283.67 | |
| 25145 | Remove forearm bone lesion | | + | $6,283.67 | |
| 25150 | Partial removal of ulna | | + | $6,283.67 | |

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[1] See end of table.

## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 25151 | Partial removal of radius | | + | $6,283.67 | |
| 25170 | Extensive forearm surgery | | + | $10,991.87 | |
| 25210 | Removal of wrist bone | | + | $6,126.90 | |
| 25215 | Removal of wrist bones | | + | $6,126.90 | |
| 25230 | Partial removal of radius | | + | $6,283.67 | |
| 25240 | Partial removal of ulna | | + | $6,283.67 | |
| 25248 | Remove forearm foreign body | | + | $5,016.48 | |
| 25250 | Removal of wrist prosthesis | | + | $6,283.67 | |
| 25251 | Removal of wrist prosthesis | | + | $6,283.67 | |
| 25259 | Manipulate wrist w/anesthes | | + | $674.08 | |
| 25260 | Repair forearm tendon/muscle | | + | $6,283.67 | |
| 25263 | Repair forearm tendon/muscle | | + | $6,283.67 | |
| 25265 | Repair forearm tendon/muscle | | + | $6,283.67 | |
| 25270 | Repair forearm tendon/muscle | | + | $6,283.67 | |
| 25272 | Repair forearm tendon/muscle | | + | $6,283.67 | |
| 25274 | Repair forearm tendon/muscle | | + | $6,283.67 | |
| 25275 | Repair forearm tendon sheath | | + | $6,283.67 | |
| 25280 | Revise wrist/forearm tendon | | + | $6,283.67 | |
| 25290 | Incise wrist/forearm tendon | | + | $6,283.67 | |
| 25295 | Release wrist/forearm tendon | | + | $5,016.48 | |
| 25300 | Fusion of tendons at wrist | | + | $6,283.67 | |
| 25301 | Fusion of tendons at wrist | | + | $6,283.67 | |
| 25310 | Transplant forearm tendon | | + | $8,872.91 | |
| 25312 | Transplant forearm tendon | | + | $8,872.91 | |
| 25315 | Revise palsy hand tendon(s) | | + | $8,872.91 | |
| 25316 | Revise palsy hand tendon(s) | | + | $8,872.91 | |
| 25320 | Repair/revise wrist joint | | + | $8,872.91 | |
| 25332 | Revise wrist joint | | + | $7,626.62 | |
| 25335 | Realignment of hand | | + | $8,872.91 | |
| 25337 | Reconstruct ulna/radioulnar | | + | $8,872.91 | |
| 25350 | Revision of radius | | + | $8,872.91 | |
| 25355 | Revision of radius | | + | $8,872.91 | |
| 25360 | Revision of ulna | | + | $6,283.67 | |
| 25365 | Revise radius & ulna | | + | $6,283.67 | |
| 25370 | Revise radius or ulna | | + | $8,872.91 | |
| 25375 | Revise radius & ulna | | + | $8,872.91 | |
| 25390 | Shorten radius or ulna | | + | $6,283.67 | |
| 25391 | Lengthen radius or ulna | | + | $8,872.91 | |
| 25392 | Shorten radius & ulna | | + | $6,283.67 | |
| 25393 | Lengthen radius & ulna | | + | $8,872.91 | |
| 25394 | Repair carpal bone, shorten | | + | $3,822.45 | |
| 25400 | Repair radius or ulna | | + | $6,283.67 | |
| 25405 | Repair/graft radius or ulna | | + | $6,283.67 | |
| 25415 | Repair radius & ulna | | + | $6,283.67 | |
| 25420 | Repair/graft radius & ulna | | + | $8,872.91 | |
| 25425 | Repair/graft radius or ulna | | + | $8,872.91 | |
| 25426 | Repair/graft radius & ulna | | + | $8,872.91 | |
| 25430 | Vasc graft into carpal bone | | + | $6,126.90 | |
| 25431 | Repair nonunion carpal bone | | + | $6,126.90 | |
| 25440 | Repair/graft wrist bone | | + | $8,872.91 | |
| 25441 | Reconstruct wrist joint | | + | $10,955.28 | |
| 25442 | Reconstruct wrist joint | | + | $10,955.28 | |
| 25443 | Reconstruct wrist joint | | + | $10,955.28 | |
| 25444 | Reconstruct wrist joint | | + | $10,955.28 | |
| 25445 | Reconstruct wrist joint | | + | $10,955.28 | |
| 25446 | Wrist replacement | | + | $10,955.28 | |
| 25447 | Repair wrist joint(s) | | + | $7,626.62 | |
| 25449 | Remove wrist joint implant | | + | $7,626.62 | |
| 25450 | Revision of wrist joint | | + | $8,872.91 | |
| 25455 | Revision of wrist joint | | + | $8,872.91 | |
| 25490 | Reinforce radius | | + | $8,872.91 | |
| 25491 | Reinforce ulna | | + | $8,872.91 | |
| 25492 | Reinforce radius and ulna | | + | $8,872.91 | |
| 25500 | Treat fracture of radius | | + | $674.08 | |
| 25505 | Treat fracture of radius | | + | $674.08 | |
| 25515 | Treat fracture of radius | | + | $7,898.37 | |

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[1] See end of table.

### TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Method-ology |
|---|---|---|---|---|---|
| 25520 | Treat fracture of radius | | + | $674.08 | |
| 25525 | Treat fracture of radius | | + | $7,898.37 | |
| 25526 | Treat fracture of radius | | + | $7,898.37 | |
| 25530 | Treat fracture of ulna | | + | $674.08 | |
| 25535 | Treat fracture of ulna | | + | $674.08 | |
| 25545 | Treat fracture of ulna | | + | $7,898.37 | |
| 25560 | Treat fracture radius & ulna | | + | $674.08 | |
| 25565 | Treat fracture radius & ulna | | + | $674.08 | |
| 25574 | Treat fracture radius & ulna | | + | $7,898.37 | |
| 25575 | Treat fracture radius/ulna | | + | $7,898.37 | |
| 25600 | Treat fracture radius/ulna | | + | $674.08 | |
| 25605 | Treat fracture radius/ulna | | + | $674.08 | |
| 25611 | Treat fracture radius/ulna | | + | $7,898.37 | |
| 25620 | Treat fracture radius/ulna | | + | $7,898.37 | |
| 25622 | Treat wrist bone fracture | | + | $674.08 | |
| 25624 | Treat wrist bone fracture | | + | $674.08 | |
| 25628 | Treat wrist bone fracture | | + | $7,898.37 | |
| 25630 | Treat wrist bone fracture | | + | $674.08 | |
| 25635 | Treat wrist bone fracture | | + | $674.08 | |
| 25645 | Treat wrist bone fracture | | + | $7,898.37 | |
| 25650 | Treat wrist bone fracture | | + | $674.08 | |
| 25651 | Pin ulnar styloid fracture | | + | $7,898.37 | |
| 25652 | Treat fracture ulnar styloid | | + | $7,898.37 | |
| 25660 | Treat wrist dislocation | | + | $674.08 | |
| 25670 | Treat wrist dislocation | | + | $7,898.37 | |
| 25671 | Pin radioulnar dislocation | | + | $7,898.37 | |
| 25675 | Treat wrist dislocation | | + | $674.08 | |
| 25676 | Treat wrist dislocation | | + | $7,898.37 | |
| 25680 | Treat wrist fracture | | + | $674.08 | |
| 25685 | Treat wrist fracture | | + | $7,898.37 | |
| 25690 | Treat wrist dislocation | | + | $674.08 | |
| 25695 | Treat wrist dislocation | | + | $7,898.37 | |
| 25800 | Fusion of wrist joint | | + | $8,872.91 | |
| 25805 | Fusion/graft of wrist joint | | + | $8,872.91 | |
| 25810 | Fusion/graft of wrist joint | | + | $8,872.91 | |
| 25820 | Fusion of hand bones | | + | $3,822.45 | |
| 25825 | Fuse hand bones with graft | | + | $6,126.90 | |
| 25830 | Fusion, radioulnar jnt/ulna | | + | $8,872.91 | |
| 25907 | Amputation follow-up surgery | | + | $5,016.48 | |
| 25922 | Amputate hand at wrist | | + | $5,016.48 | |
| 25929 | Amputation follow-up surgery | | + | $4,104.63 | |
| 25999 | Forearm or wrist surgery | | + | $674.08 | |
| 26010 | Drainage of finger abscess | | + | $483.36 | |
| 26011 | Drainage of finger abscess | | + | $2,701.58 | |
| 26020 | Drain hand tendon sheath | | + | $3,822.45 | |
| 26025 | Drainage of palm bursa | | + | $3,822.45 | |
| 26030 | Drainage of palm bursa(s) | | + | $3,822.45 | |
| 26034 | Treat hand bone lesion | | + | $3,822.45 | |
| 26035 | Decompress fingers/hand | | + | $3,822.45 | |
| 26037 | Decompress fingers/hand | | + | $3,822.45 | |
| 26040 | Release palm contracture | | + | $6,126.90 | |
| 26045 | Release palm contracture | | + | $6,126.90 | |
| 26055 | Incise finger tendon sheath | | + | $3,822.45 | |
| 26060 | Incision of finger tendon | | + | $3,822.45 | |
| 26070 | Explore/treat hand joint | | + | $3,822.45 | |
| 26075 | Explore/treat finger joint | | + | $3,822.45 | |
| 26080 | Explore/treat finger joint | | + | $3,822.45 | |
| 26100 | Biopsy hand joint lining | | + | $3,822.45 | |
| 26105 | Biopsy finger joint lining | | + | $3,822.45 | |
| 26110 | Biopsy finger joint lining | | + | $3,822.45 | |
| 26115 | Removel hand lesion subcut | | + | $4,689.89 | |
| 26116 | Removel hand lesion, deep | | + | $4,689.89 | |
| 26117 | Remove tumor, hand/finger | | + | $4,689.89 | |
| 26121 | Release palm contracture | | + | $6,126.90 | |
| 26123 | Release palm contracture | | + | $6,126.90 | |
| 26125 | Release palm contracture | | + | $6,126.90 | |

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[1] See end of table.

## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Method-ology |
|---|---|---|---|---|---|
| 26130 | Remove wrist joint lining | | + | $3,822.45 | |
| 26135 | Revise finger joint, each | | + | $6,126.90 | |
| 26140 | Revise finger joint, each | | + | $3,822.45 | |
| 26145 | Tendon excision, palm/finger | | + | $3,822.45 | |
| 26160 | Remove tendon sheath lesion | | + | $3,822.45 | |
| 26170 | Removal of palm tendon, each | | + | $3,822.45 | |
| 26180 | Removal of finger tendon | | + | $3,822.45 | |
| 26185 | Remove finger bone | | + | $3,822.45 | |
| 26200 | Remove hand bone lesion | | + | $3,822.45 | |
| 26205 | Remove/graft bone lesion | | + | $6,126.90 | |
| 26210 | Removal of finger lesion | | + | $3,822.45 | |
| 26215 | Remove/graft finger lesion | | + | $3,822.45 | |
| 26230 | Partial removal of hand bone | | + | $3,822.45 | |
| 26235 | Partial removal, finger bone | | + | $3,822.45 | |
| 26236 | Partial removal, finger bone | | + | $3,822.45 | |
| 26250 | Extensive hand surgery | | + | $3,822.45 | |
| 26255 | Extensive hand surgery | | + | $6,126.90 | |
| 26260 | Extensive finger surgery | | + | $3,822.45 | |
| 26261 | Extensive finger surgery | | + | $3,822.45 | |
| 26262 | Partial removal of finger | | + | $3,822.45 | |
| 26320 | Removal of implant from hand | | + | $3,757.15 | |
| 26340 | Manipulate finger w/anesth | | + | $674.08 | |
| 26350 | Repair finger/hand tendon | | + | $6,126.90 | |
| 26352 | Repair/graft hand tendon | | + | $6,126.90 | |
| 26356 | Repair finger/hand tendon | | + | $6,126.90 | |
| 26357 | Repair finger/hand tendon | | + | $6,126.90 | |
| 26358 | Repair/graft hand tendon | | + | $6,126.90 | |
| 26370 | Repair finger/hand tendon | | + | $6,126.90 | |
| 26372 | Repair/graft hand tendon | | + | $6,126.90 | |
| 26373 | Repair finger/hand tendon | | + | $6,126.90 | |
| 26390 | Revise hand/finger tendon | | + | $6,126.90 | |
| 26392 | Repair/graft hand tendon | | + | $6,126.90 | |
| 26410 | Repair hand tendon | | + | $3,822.45 | |
| 26412 | Repair/graft hand tendon | | + | $6,126.90 | |
| 26415 | Excision, hand/finger tendon | | + | $6,126.90 | |
| 26416 | Graft hand or finger tendon | | + | $6,126.90 | |
| 26418 | Repair finger tendon | | + | $3,822.45 | |
| 26420 | Repair/graft finger tendon | | + | $6,126.90 | |
| 26426 | Repair finger/hand tendon | | + | $6,126.90 | |
| 26428 | Repair/graft finger tendon | | + | $6,126.90 | |
| 26432 | Repair finger tendon | | + | $3,822.45 | |
| 26433 | Repair finger tendon | | + | $3,822.45 | |
| 26434 | Repair/graft finger tendon | | + | $6,126.90 | |
| 26437 | Realignment of tendons | | + | $3,822.45 | |
| 26440 | Release palm/finger tendon | | + | $3,822.45 | |
| 26442 | Release palm & finger tendon | | + | $6,126.90 | |
| 26445 | Release hand/finger tendon | | + | $3,822.45 | |
| 26449 | Release forearm/hand tendon | | + | $6,126.90 | |
| 26450 | Incision of palm tendon | | + | $3,822.45 | |
| 26455 | Incision of finger tendon | | + | $3,822.45 | |
| 26460 | Incise hand/finger tendon | | + | $3,822.45 | |
| 26471 | Fusion of finger tendons | | + | $3,822.45 | |
| 26474 | Fusion of finger tendons | | + | $3,822.45 | |
| 26476 | Tendon lengthening | | + | $3,822.45 | |
| 26477 | Tendon shortening | | + | $3,822.45 | |
| 26478 | Lengthening of hand tendon | | + | $3,822.45 | |
| 26479 | Shortening of hand tendon | | + | $3,822.45 | |
| 26480 | Transplant hand tendon | | + | $6,126.90 | |
| 26483 | Transplant/graft hand tendon | | + | $6,126.90 | |
| 26485 | Transplant palm tendon | | + | $6,126.90 | |
| 26489 | Transplant/graft palm tendon | | + | $6,126.90 | |
| 26490 | Revise thumb tendon | | + | $6,126.90 | |
| 26492 | Tendon transfer with graft | | + | $6,126.90 | |
| 26494 | Hand tendon/muscle transfer | | + | $6,126.90 | |
| 26496 | Revise thumb tendon | | + | $6,126.90 | |
| 26497 | Finger tendon transfer | | + | $6,126.90 | |

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[1] See end of table.

## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 26498 | Finger tendon transfer | | + | $6,126.90 | |
| 26499 | Revision of finger | | + | $6,126.90 | |
| 26500 | Hand tendon reconstruction | | + | $3,822.45 | |
| 26502 | Hand tendon reconstruction | | + | $6,126.90 | |
| 26504 | Hand tendon reconstruction | | + | $6,126.90 | |
| 26508 | Release thumb contracture | | + | $3,822.45 | |
| 26510 | Thumb tendon transfer | | + | $6,126.90 | |
| 26516 | Fusion of knuckle joint | | + | $6,126.90 | |
| 26517 | Fusion of knuckle joints | | + | $6,126.90 | |
| 26518 | Fusion of knuckle joints | | + | $6,126.90 | |
| 26520 | Release knuckle contracture | | + | $3,822.45 | |
| 26525 | Release finger contracture | | + | $3,822.45 | |
| 26530 | Revise knuckle joint | | + | $7,626.62 | |
| 26531 | Revise knuckle with implant | | + | $10,955.28 | |
| 26535 | Revise finger joint | | + | $7,626.62 | |
| 26536 | Revise/implant finger joint | | + | $10,955.28 | |
| 26540 | Repair hand joint | | + | $3,822.45 | |
| 26541 | Repair hand joint with graft | | + | $6,126.90 | |
| 26542 | Repair hand joint with graft | | + | $3,822.45 | |
| 26545 | Reconstruct finger joint | | + | $6,126.90 | |
| 26546 | Repair nonunion hand | | + | $6,126.90 | |
| 26548 | Reconstruct finger joint | | + | $6,126.90 | |
| 26550 | Construct thumb replacement | | + | $6,126.90 | |
| 26555 | Positional change of finger | | + | $6,126.90 | |
| 26560 | Repair of web finger | | + | $3,822.45 | |
| 26561 | Repair of web finger | | + | $6,126.90 | |
| 26562 | Repair of web finger | | + | $6,126.90 | |
| 26565 | Correct metacarpal flaw | | + | $6,126.90 | |
| 26567 | Correct finger deformity | | + | $6,126.90 | |
| 26568 | Lengthen metacarpal/finger | | + | $6,126.90 | |
| 26580 | Repair hand deformity | | + | $6,126.90 | |
| 26587 | Reconstruct extra finger | | + | $3,822.45 | |
| 26590 | Repair finger deformity | | + | $6,126.90 | |
| 26591 | Repair muscles of hand | | + | $6,126.90 | |
| 26593 | Release muscles of hand | | + | $3,822.45 | |
| 26596 | Excision constricting tissue | | + | $6,126.90 | |
| 26600 | Treat metacarpal fracture | | + | $674.08 | |
| 26605 | Treat metacarpal fracture | | + | $674.08 | |
| 26607 | Treat metacarpal fracture | | + | $674.08 | |
| 26608 | Treat metacarpal fracture | | + | $7,898.37 | |
| 26615 | Treat metacarpal fracture | | + | $7,898.37 | |
| 26641 | Treat thumb dislocation | | + | $674.08 | |
| 26645 | Treat thumb fracture | | + | $674.08 | |
| 26650 | Treat thumb fracture | | + | $7,898.37 | |
| 26665 | Treat thumb fracture | | + | $7,898.37 | |
| 26670 | Treat hand dislocation | | + | $674.08 | |
| 26675 | Treat hand dislocation | | + | $674.08 | |
| 26676 | Pin hand dislocation | | + | $7,898.37 | |
| 26685 | Treat hand dislocation | | + | $7,898.37 | |
| 26686 | Treat hand dislocation | | + | $7,898.37 | |
| 26700 | Treat knuckle dislocation | | + | $674.08 | |
| 26705 | Treat knuckle dislocation | | + | $674.08 | |
| 26706 | Pin knuckle dislocation | | + | $674.08 | |
| 26715 | Treat knuckle dislocation | | + | $7,898.37 | |
| 26720 | Treat finger fracture, each | | + | $674.08 | |
| 26725 | Treat finger fracture, each | | + | $674.08 | |
| 26727 | Treat finger fracture, each | | + | $7,898.37 | |
| 26735 | Treat finger fracture, each | | + | $7,898.37 | |
| 26740 | Treat finger fracture, each | | + | $674.08 | |
| 26742 | Treat finger fracture, each | | + | $674.08 | |
| 26746 | Treat finger fracture, each | | + | $7,898.37 | |
| 26750 | Treat finger fracture, each | | + | $674.08 | |
| 26755 | Treat finger fracture, each | | + | $674.08 | |
| 26756 | Pin finger fracture, each | | + | $7,898.37 | |
| 26765 | Treat finger fracture, each | | + | $7,898.37 | |
| 26770 | Treat finger dislocation | | + | $674.08 | |

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[1] See end of table.

### TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Method-ology |
|---|---|---|---|---|---|
| 26775 | Treat finger dislocation | | + | $3,488.02 | |
| 26776 | Pin finger dislocation | | + | $7,898.37 | |
| 26785 | Treat finger dislocation | | + | $7,898.37 | |
| 26820 | Thumb fusion with graft | | + | $6,126.90 | |
| 26841 | Fusion of thumb | | + | $6,126.90 | |
| 26842 | Thumb fusion with graft | | + | $6,126.90 | |
| 26843 | Fusion of hand joint | | + | $6,126.90 | |
| 26844 | Fusion/graft of hand joint | | + | $6,126.90 | |
| 26850 | Fusion of knuckle | | + | $6,126.90 | |
| 26852 | Fusion of knuckle with graft | | + | $6,126.90 | |
| 26860 | Fusion of finger joint | | + | $6,126.90 | |
| 26861 | Fusion of finger jnt, add-on | | + | $6,126.90 | |
| 26862 | Fusion/graft of finger joint | | + | $6,126.90 | |
| 26863 | Fuse/graft added joint | | + | $6,126.90 | |
| 26910 | Amputate metacarpal bone | | + | $6,126.90 | |
| 26951 | Amputation of finger/thumb | | + | $3,822.45 | |
| 26952 | Amputation of finger/thumb | | + | $3,822.45 | |
| 26989 | Hand/finger surgery | | + | $674.08 | |
| 26990 | Drainage of pelvis lesion | | + | $5,016.48 | |
| 26991 | Drainage of pelvis bursa | | + | $5,016.48 | |
| 27000 | Incision of hip tendon | | + | $5,016.48 | |
| 27001 | Incision of hip tendon | | + | $6,283.67 | |
| 27003 | Incision of hip tendon | | + | $6,283.67 | |
| 27033 | Exploration of hip joint | | + | $8,872.91 | |
| 27035 | Denervation of hip joint | | + | $10,991.87 | |
| 27040 | Biopsy of soft tissues | | + | $3,757.15 | |
| 27041 | Biopsy of soft tissues | | + | $4,689.89 | |
| 27047 | Remove hip/pelvis lesion | | + | $4,689.89 | |
| 27048 | Remove hip/pelvis lesion | | + | $4,689.89 | |
| 27049 | Remove tumor, hip/pelvis | | + | $4,689.89 | |
| 27050 | Biopsy of sacroiliac joint | | + | $5,016.48 | |
| 27052 | Biopsy of hip joint | | + | $5,016.48 | |
| 27060 | Removal of ischial bursa | | + | $5,016.48 | |
| 27062 | Remove femur lesion/bursa | | + | $5,016.48 | |
| 27065 | Removal of hip bone lesion | | + | $5,016.48 | |
| 27066 | Removal of hip bone lesion | | + | $6,283.67 | |
| 27067 | Remove/graft hip bone lesion | | + | $6,283.67 | |
| 27080 | Removal of tail bone | | + | $6,283.67 | |
| 27086 | Remove hip foreign body | | + | $1,938.68 | |
| 27087 | Remove hip foreign body | | + | $5,016.48 | |
| 27097 | Revision of hip tendon | | + | $6,283.67 | |
| 27098 | Transfer tendon to pelvis | | + | $6,283.67 | |
| 27100 | Transfer of abdominal muscle | | + | $8,872.91 | |
| 27105 | Transfer of spinal muscle | | + | $8,872.91 | |
| 27110 | Transfer of iliopsoas muscle | | + | $8,872.91 | |
| 27111 | Transfer of iliopsoas muscle | | + | $8,872.91 | |
| 27193 | Treat pelvic ring fracture | | + | $674.08 | |
| 27194 | Treat pelvic ring fracture | | + | $3,488.02 | |
| 27200 | Treat tail bone fracture | | + | $674.08 | |
| 27202 | Treat tail bone fracture | | + | $7,898.37 | |
| 27216 | Treat pelvic ring fracture | | + | $6,283.67 | |
| 27220 | Treat hip socket fracture | | + | $674.08 | |
| 27230 | Treat thigh fracture | | + | $674.08 | |
| 27235 | Treat thigh fracture | | + | $6,283.67 | |
| 27238 | Treat thigh fracture | | + | $674.08 | |
| 27246 | Treat thigh fracture | | + | $674.08 | |
| 27250 | Treat hip dislocation | | + | $674.08 | |
| 27252 | Treat hip dislocation | | + | $3,488.02 | |
| 27256 | Treat hip dislocation | | + | $674.08 | |
| 27257 | Treat hip dislocation | | + | $3,488.02 | |
| 27265 | Treat hip dislocation | | + | $674.08 | |
| 27266 | Treat hip dislocation | | + | $3,488.02 | |
| 27275 | Manipulation of hip joint | | + | $3,488.02 | |
| 27299 | Pelvis/hip joint surgery | | + | $674.08 | |
| 27301 | Drain thigh/knee lesion | | + | $4,352.84 | |
| 27305 | Incise thigh tendon & fascia | | + | $5,016.48 | |

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[1] See end of table.

TABLE F.—OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 27306 | Incision of thigh tendon | | + | $5,016.48 | |
| 27307 | Incision of thigh tendons | | + | $5,016.48 | |
| 27310 | Exploration of knee joint | | + | $6,283.67 | |
| 27315 | Partial removal, thigh nerve | | + | $4,264.02 | |
| 27320 | Partial removal, thigh nerve | | + | $4,264.02 | |
| 27323 | Biopsy, thigh soft tissues | | + | $3,757.15 | |
| 27324 | Biopsy, thigh soft tissues | | + | $4,689.89 | |
| 27327 | Removal of thigh lesion | | + | $4,689.89 | |
| 27328 | Removal of thigh lesion | | + | $4,689.89 | |
| 27329 | Remove tumor, thigh/knee | | + | $4,689.89 | |
| 27330 | Biopsy, knee joint lining | | + | $6,283.67 | |
| 27331 | Explore/treat knee joint | | + | $6,283.67 | |
| 27332 | Removal of knee cartilage | | + | $6,283.67 | |
| 27333 | Removal of knee cartilage | | + | $6,283.67 | |
| 27334 | Remove knee joint lining | | + | $6,283.67 | |
| 27335 | Remove knee joint lining | | + | $6,283.67 | |
| 27340 | Removal of kneecap bursa | | + | $5,016.48 | |
| 27345 | Removal of knee cyst | | + | $5,016.48 | |
| 27347 | Remove knee cyst | | + | $5,016.48 | |
| 27350 | Removal of kneecap | | + | $6,283.67 | |
| 27355 | Remove femur lesion | | + | $6,283.67 | |
| 27356 | Remove femur lesion/graft | | + | $6,283.67 | |
| 27357 | Remove femur lesion/graft | | + | $6,283.67 | |
| 27358 | Remove femur lesion/fixation | | + | $6,283.67 | |
| 27360 | Partial removal, leg bone(s) | | + | $6,283.67 | |
| 27372 | Removal of foreign body | | + | $4,689.89 | |
| 27380 | Repair of kneecap tendon | | + | $5,016.48 | |
| 27381 | Repair/graft kneecap tendon | | + | $5,016.48 | |
| 27385 | Repair of thigh muscle | | + | $5,016.48 | |
| 27386 | Repair/graft of thigh muscle | | + | $5,016.48 | |
| 27390 | Incision of thigh tendon | | + | $5,016.48 | |
| 27391 | Incision of thigh tendons | | + | $5,016.48 | |
| 27392 | Incision of thigh tendons | | + | $5,016.48 | |
| 27393 | Lengthening of thigh tendon | | + | $6,283.67 | |
| 27394 | Lengthening of thigh tendons | | + | $6,283.67 | |
| 27395 | Lengthening of thigh tendons | | + | $8,872.91 | |
| 27396 | Transplant of thigh tendon | | + | $6,283.67 | |
| 27397 | Transplants of thigh tendons | | + | $8,872.91 | |
| 27400 | Revise thigh muscles/tendons | | + | $8,872.91 | |
| 27403 | Repair of knee cartilage | | + | $6,283.67 | |
| 27405 | Repair of knee ligament | | + | $8,872.91 | |
| 27407 | Repair of knee ligament | | + | $8,872.91 | |
| 27409 | Repair of knee ligaments | | + | $8,872.91 | |
| 27418 | Repair degenerated kneecap | | + | $8,872.91 | |
| 27420 | Revision of unstable kneecap | | + | $8,872.91 | |
| 27422 | Revision of unstable kneecap | | + | $8,872.91 | |
| 27424 | Revision/removal of kneecap | | + | $8,872.91 | |
| 27425 | Lat retinacular release open | | + | $6,283.67 | |
| 27427 | Reconstruction, knee | | + | $10,991.87 | |
| 27428 | Reconstruction, knee | | + | $10,991.87 | |
| 27429 | Reconstruction, knee | | + | $10,991.87 | |
| 27430 | Revision of thigh muscles | | + | $8,872.91 | |
| 27435 | Incision of knee joint | | + | $8,872.91 | |
| 27437 | Revise kneecap | | + | $7,626.62 | |
| 27438 | Revise kneecap with implant | | + | $10,955.28 | |
| 27440 | Revision of knee joint | | + | $7,626.62 | |
| 27441 | Revision of knee joint | | + | $7,626.62 | |
| 27442 | Revision of knee joint | | + | $7,626.62 | |
| 27443 | Revision of knee joint | | + | $7,626.62 | |
| 27446 | Revision of knee joint | | + | $23,385.84 | |
| 27447 | Total knee arthroplasty | | | $11,544.36 | |
| 27496 | Decompression of thigh/knee | | + | $5,016.48 | |
| 27497 | Decompression of thigh/knee | | + | $5,016.48 | |
| 27498 | Decompression of thigh/knee | | + | $5,016.48 | |
| 27499 | Decompression of thigh/knee | | + | $5,016.48 | |
| 27500 | Treatment of thigh fracture | | + | $674.08 | |

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[1] See end of table.

TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Method-ology |
|---|---|---|---|---|---|
| 27501 | Treatment of thigh fracture | | + | $674.08 | |
| 27502 | Treatment of thigh fracture | | + | $674.08 | |
| 27503 | Treatment of thigh fracture | | + | $674.08 | |
| 27508 | Treatment of thigh fracture | | + | $674.08 | |
| 27509 | Treatment of thigh fracture | | + | $7,898.37 | |
| 27510 | Treatment of thigh fracture | | + | $674.08 | |
| 27516 | Treat thigh fx growth plate | | + | $674.08 | |
| 27517 | Treat thigh fx growth plate | | + | $674.08 | |
| 27520 | Treat kneecap fracture | | + | $674.08 | |
| 27524 | Treat kneecap fracture | | + | $7,898.37 | |
| 27530 | Treat knee fracture | | + | $674.08 | |
| 27532 | Treat knee fracture | | + | $674.08 | |
| 27538 | Treat knee fracture(s) | | + | $674.08 | |
| 27550 | Treat knee dislocation | | + | $674.08 | |
| 27552 | Treat knee dislocation | | + | $3,488.02 | |
| 27560 | Treat kneecap dislocation | | + | $674.08 | |
| 27562 | Treat kneecap dislocation | | + | $3,488.02 | |
| 27566 | Treat kneecap dislocation | | + | $7,898.37 | |
| 27570 | Fixation of knee joint | | + | $3,488.02 | |
| 27594 | Amputation follow-up surgery | | + | $5,016.48 | |
| 27599 | Leg surgery procedure | | + | $674.08 | |
| 27600 | Decompression of lower leg | | + | $5,016.48 | |
| 27601 | Decompression of lower leg | | + | $5,016.48 | |
| 27602 | Decompression of lower leg | | + | $5,016.48 | |
| 27603 | Drain lower leg lesion | | + | $4,352.84 | |
| 27604 | Drain lower leg bursa | | + | $5,016.48 | |
| 27605 | Incision of achilles tendon | | + | $4,765.66 | |
| 27606 | Incision of achilles tendon | | + | $5,016.48 | |
| 27607 | Treat lower leg bone lesion | | + | $5,016.48 | |
| 27610 | Explore/treat ankle joint | | + | $6,283.67 | |
| 27612 | Exploration of ankle joint | | + | $6,283.67 | |
| 27613 | Biopsy lower leg soft tissue | | + | $1,938.68 | |
| 27614 | Biopsy lower leg soft tissue | | + | $4,689.89 | |
| 27615 | Remove tumor, lower leg | | + | $7,898.37 | |
| 27618 | Remove lower leg lesion | | + | $3,757.15 | |
| 27619 | Remove lower leg lesion | | + | $4,689.89 | |
| 27620 | Explore/treat ankle joint | | + | $6,283.67 | |
| 27625 | Remove ankle joint lining | | + | $6,283.67 | |
| 27626 | Remove ankle joint lining | | + | $6,283.67 | |
| 27630 | Removal of tendon lesion | | + | $5,016.48 | |
| 27635 | Remove lower leg bone lesion | | + | $6,283.67 | |
| 27637 | Remove/graft leg bone lesion | | + | $6,283.67 | |
| 27638 | Remove/graft leg bone lesion | | + | $6,283.67 | |
| 27640 | Partial removal of tibia | | + | $8,872.91 | |
| 27641 | Partial removal of fibula | | + | $6,283.67 | |
| 27647 | Extensive ankle/heel surgery | | + | $8,872.91 | |
| 27650 | Repair achilles tendon | | + | $8,872.91 | |
| 27652 | Repair/graft achilles tendon | | + | $8,872.91 | |
| 27654 | Repair of achilles tendon | | + | $8,872.91 | |
| 27656 | Repair leg fascia defect | | + | $5,016.48 | |
| 27658 | Repair of leg tendon, each | | + | $5,016.48 | |
| 27659 | Repair of leg tendon, each | | + | $5,016.48 | |
| 27664 | Repair of leg tendon, each | | + | $5,016.48 | |
| 27665 | Repair of leg tendon, each | | + | $6,283.67 | |
| 27675 | Repair lower leg tendons | | + | $5,016.48 | |
| 27676 | Repair lower leg tendons | | + | $6,283.67 | |
| 27680 | Release of lower leg tendon | | + | $6,283.67 | |
| 27681 | Release of lower leg tendons | | + | $6,283.67 | |
| 27685 | Revision of lower leg tendon | | + | $6,283.67 | |
| 27686 | Revise lower leg tendons | | + | $6,283.67 | |
| 27687 | Revision of calf tendon | | + | $6,283.67 | |
| 27690 | Revise lower leg tendon | | + | $8,872.91 | |
| 27691 | Revise lower leg tendon | | + | $8,872.91 | |
| 27692 | Revise additional leg tendon | | + | $8,872.91 | |
| 27695 | Repair of ankle ligament | | + | $6,283.67 | |
| 27696 | Repair of ankle ligaments | | + | $6,283.67 | |

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[1] See end of table.

TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 27698 | Repair of ankle ligament | | + | $6,283.67 | |
| 27700 | Revision of ankle joint | | + | $7,626.62 | |
| 27704 | Removal of ankle implant | | + | $5,016.48 | |
| 27705 | Incision of tibia | | + | $8,872.91 | |
| 27707 | Incision of fibula | | + | $5,016.48 | |
| 27709 | Incision of tibia & fibula | | + | $6,283.67 | |
| 27730 | Repair of tibia epiphysis | | + | $6,283.67 | |
| 27732 | Repair of fibula epiphysis | | + | $6,283.67 | |
| 27734 | Repair lower leg epiphyses | | + | $6,283.67 | |
| 27740 | Repair of leg epiphyses | | + | $6,283.67 | |
| 27742 | Repair of leg epiphyses | | + | $8,872.91 | |
| 27745 | Reinforce tibia | | + | $8,872.91 | |
| 27750 | Treatment of tibia fracture | | + | $674.08 | |
| 27752 | Treatment of tibia fracture | | + | $674.08 | |
| 27756 | Treatment of tibia fracture | | + | $7,898.37 | |
| 27758 | Treatment of tibia fracture | | + | $7,898.37 | |
| 27759 | Treatment of tibia fracture | | + | $7,898.37 | |
| 27760 | Treatment of ankle fracture | | + | $674.08 | |
| 27762 | Treatment of ankle fracture | | + | $674.08 | |
| 27766 | Treatment of ankle fracture | | + | $7,898.37 | |
| 27780 | Treatment of fibula fracture | | + | $674.08 | |
| 27781 | Treatment of fibula fracture | | + | $674.08 | |
| 27784 | Treatment of fibula fracture | | + | $7,898.37 | |
| 27786 | Treatment of ankle fracture | | + | $674.08 | |
| 27788 | Treatment of ankle fracture | | + | $674.08 | |
| 27792 | Treatment of ankle fracture | | + | $7,898.37 | |
| 27808 | Treatment of ankle fracture | | + | $674.08 | |
| 27810 | Treatment of ankle fracture | | + | $674.08 | |
| 27814 | Treatment of ankle fracture | | + | $7,898.37 | |
| 27816 | Treatment of ankle fracture | | + | $674.08 | |
| 27818 | Treatment of ankle fracture | | + | $674.08 | |
| 27822 | Treatment of ankle fracture | | + | $7,898.37 | |
| 27823 | Treatment of ankle fracture | | + | $7,898.37 | |
| 27824 | Treat lower leg fracture | | + | $674.08 | |
| 27825 | Treat lower leg fracture | | + | $674.08 | |
| 27826 | Treat lower leg fracture | | + | $7,898.37 | |
| 27827 | Treat lower leg fracture | | + | $7,898.37 | |
| 27828 | Treat lower leg fracture | | + | $7,898.37 | |
| 27829 | Treat lower leg joint | | + | $7,898.37 | |
| 27830 | Treat lower leg dislocation | | + | $674.08 | |
| 27831 | Treat lower leg dislocation | | + | $674.08 | |
| 27832 | Treat lower leg dislocation | | + | $7,898.37 | |
| 27840 | Treat ankle dislocation | | + | $674.08 | |
| 27842 | Treat ankle dislocation | | + | $3,488.02 | |
| 27846 | Treat ankle dislocation | | + | $7,898.37 | |
| 27848 | Treat ankle dislocation | | + | $7,898.37 | |
| 27860 | Fixation of ankle joint | | + | $3,488.02 | |
| 27870 | Fusion of ankle joint, open | | + | $8,872.91 | |
| 27871 | Fusion of tibiofibular joint | | + | $8,872.91 | |
| 27884 | Amputation follow-up surgery | | + | $5,016.48 | |
| 27889 | Amputation of foot at ankle | | + | $6,283.67 | |
| 27892 | Decompression of leg | | + | $5,016.48 | |
| 27893 | Decompression of leg | | + | $5,016.48 | |
| 27894 | Decompression of leg | | + | $5,016.48 | |
| 27899 | Leg/ankle surgery procedure | | + | $674.08 | |
| 28001 | Drainage of bursa of foot | | + | $4,352.84 | |
| 28002 | Treatment of foot infection | | + | $5,016.48 | |
| 28003 | Treatment of foot infection | | + | $5,016.48 | |
| 28005 | Treat foot bone lesion | | + | $4,765.66 | |
| 28008 | Incision of foot fascia | | + | $4,765.66 | |
| 28010 | Incision of toe tendon | | + | $4,765.66 | |
| 28011 | Incision of toe tendons | | + | $4,765.66 | |
| 28020 | Exploration of foot joint | | + | $4,765.66 | |
| 28022 | Exploration of foot joint | | + | $4,765.66 | |
| 28024 | Exploration of toe joint | | + | $4,765.66 | |
| 28030 | Removal of foot nerve | | + | $4,264.02 | |

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[1] See end of table.

### TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator[1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 28035 | Decompression of tibia nerve | | + | $4,264.02 | |
| 28043 | Excision of foot lesion | | + | $3,757.15 | |
| 28045 | Excision of foot lesion | | + | $4,765.66 | |
| 28046 | Resection of tumor, foot | | + | $4,765.66 | |
| 28050 | Biopsy of foot joint lining | | + | $4,765.66 | |
| 28052 | Biopsy of foot joint lining | | + | $4,765.66 | |
| 28054 | Biopsy of toe joint lining | | + | $4,765.66 | |
| 28060 | Partial removal, foot fascia | | + | $5,977.98 | |
| 28062 | Removal of foot fascia | | + | $5,977.98 | |
| 28070 | Removal of foot joint lining | | + | $5,977.98 | |
| 28072 | Removal of foot joint lining | | + | $5,977.98 | |
| 28080 | Removal of foot lesion | | + | $4,765.66 | |
| 28086 | Excise foot tendon sheath | | + | $4,765.66 | |
| 28088 | Excise foot tendon sheath | | + | $4,765.66 | |
| 28090 | Removal of foot lesion | | + | $4,765.66 | |
| 28092 | Removal of toe lesions | | + | $4,765.66 | |
| 28100 | Removal of ankle/heel lesion | | + | $4,765.66 | |
| 28102 | Remove/graft foot lesion | | + | $5,977.98 | |
| 28103 | Remove/graft foot lesion | | + | $5,977.98 | |
| 28104 | Removal of foot lesion | | + | $4,765.66 | |
| 28106 | Remove/graft foot lesion | | + | $5,977.98 | |
| 28107 | Remove/graft foot lesion | | + | $5,977.98 | |
| 28108 | Removal of toe lesions | | + | $4,765.66 | |
| 28110 | Part removal of metatarsal | | + | $5,977.98 | |
| 28111 | Part removal of metatarsal | | + | $4,765.66 | |
| 28112 | Part removal of metatarsal | | + | $4,765.66 | |
| 28113 | Part removal of metatarsal | | + | $4,765.66 | |
| 28114 | Removal of metatarsal heads | | + | $4,765.66 | |
| 28116 | Revision of foot | | + | $4,765.66 | |
| 28118 | Removal of heel bone | | + | $4,765.66 | |
| 28119 | Removal of heel spur | | + | $4,765.66 | |
| 28120 | Part removal of ankle/heel | | + | $4,765.66 | |
| 28122 | Partial removal of foot bone | | + | $4,765.66 | |
| 28124 | Partial removal of toe | | + | $4,765.66 | |
| 28126 | Partial removal of toe | | + | $4,765.66 | |
| 28130 | Removal of ankle bone | | + | $4,765.66 | |
| 28140 | Removal of metatarsal | | + | $4,765.66 | |
| 28150 | Removal of toe | | + | $4,765.66 | |
| 28153 | Partial removal of toe | | + | $4,765.66 | |
| 28160 | Partial removal of toe | | + | $4,765.66 | |
| 28171 | Extensive foot surgery | | + | $4,765.66 | |
| 28173 | Extensive foot surgery | | + | $4,765.66 | |
| 28175 | Extensive foot surgery | | + | $4,765.66 | |
| 28190 | Removal of foot foreign body | | + | $1,016.36 | |
| 28192 | Removal of foot foreign body | | + | $3,757.15 | |
| 28193 | Removal of foot foreign body | | + | $3,757.15 | |
| 28200 | Repair of foot tendon | | + | $4,765.66 | |
| 28202 | Repair/graft of foot tendon | | + | $5,977.98 | |
| 28208 | Repair of foot tendon | | + | $4,765.66 | |
| 28210 | Repair/graft of foot tendon | | + | $4,765.66 | |
| 28220 | Release of foot tendon | | + | $4,765.66 | |
| 28222 | Release of foot tendons | | + | $4,765.66 | |
| 28225 | Release of foot tendon | | + | $4,765.66 | |
| 28226 | Release of foot tendons | | + | $4,765.66 | |
| 28230 | Incision of foot tendon(s) | | + | $4,765.66 | |
| 28232 | Incision of toe tendon | | + | $4,765.66 | |
| 28234 | Incision of foot tendon | | + | $4,765.66 | |
| 28238 | Revision of foot tendon | | + | $5,977.98 | |
| 28240 | Release of big toe | | + | $4,765.66 | |
| 28250 | Revision of foot fascia | | + | $5,977.98 | |
| 28260 | Release of midfoot joint | | + | $5,977.98 | |
| 28261 | Revision of foot tendon | | + | $5,977.98 | |
| 28262 | Revision of foot and ankle | | + | $5,977.98 | |
| 28264 | Release of midfoot joint | | + | $5,977.98 | |
| 28270 | Release of foot contracture | | + | $4,765.66 | |
| 28272 | Release of toe joint, each | | + | $4,765.66 | |

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[1] See end of table.

TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 28280 | Fusion of toes | | + | $4,765.66 | |
| 28285 | Repair of hammertoe | | + | $4,765.66 | |
| 28286 | Repair of hammertoe | | + | $4,765.66 | |
| 28288 | Partial removal of foot bone | | + | $5,977.98 | |
| 28289 | Repair hallux rigidus | | + | $5,977.98 | |
| 28290 | Correction of bunion | | + | $5,977.98 | |
| 28292 | Correction of bunion | | + | $6,176.54 | |
| 28293 | Correction of bunion | | + | $6,176.54 | |
| 28294 | Correction of bunion | | + | $5,977.98 | |
| 28296 | Correction of bunion | | + | $5,977.98 | |
| 28297 | Correction of bunion | | + | $6,176.54 | |
| 28298 | Correction of bunion | | + | $5,977.98 | |
| 28299 | Correction of bunion | | + | $6,176.54 | |
| 28300 | Incision of heel bone | | + | $5,977.98 | |
| 28302 | Incision of ankle bone | | + | $5,977.98 | |
| 28304 | Incision of midfoot bones | | + | $5,977.98 | |
| 28305 | Incise/graft midfoot bones | | + | $5,977.98 | |
| 28306 | Incision of metatarsal | | + | $5,977.98 | |
| 28307 | Incision of metatarsal | | + | $5,977.98 | |
| 28308 | Incision of metatarsal | | + | $5,977.98 | |
| 28309 | Incision of metatarsals | | + | $5,977.98 | |
| 28310 | Revision of big toe | | + | $4,765.66 | |
| 28312 | Revision of toe | | + | $4,765.66 | |
| 28313 | Repair deformity of toe | | + | $4,765.66 | |
| 28315 | Removal of sesamoid bone | | + | $4,765.66 | |
| 28320 | Repair of foot bones | | + | $5,977.98 | |
| 28322 | Repair of metatarsals | | + | $5,977.98 | |
| 28340 | Resect enlarged toe tissue | | + | $4,765.66 | |
| 28341 | Resect enlarged toe | | + | $4,765.66 | |
| 28344 | Repair extra toe(s) | | + | $5,977.98 | |
| 28345 | Repair webbed toe(s) | | + | $5,977.98 | |
| 28360 | Reconstruct cleft foot | | + | $5,977.98 | |
| 28400 | Treatment of heel fracture | | + | $674.08 | |
| 28405 | Treatment of heel fracture | | + | $674.08 | |
| 28406 | Treatment of heel fracture | | + | $7,898.37 | |
| 28415 | Treat heel fracture | | + | $7,898.37 | |
| 28420 | Treat/graft heel fracture | | + | $7,898.37 | |
| 28430 | Treatment of ankle fracture | | + | $674.08 | |
| 28435 | Treatment of ankle fracture | | + | $674.08 | |
| 28436 | Treatment of ankle fracture | | + | $7,898.37 | |
| 28445 | Treat ankle fracture | | + | $7,898.37 | |
| 28450 | Treat midfoot fracture, each | | + | $674.08 | |
| 28455 | Treat midfoot fracture, each | | + | $674.08 | |
| 28456 | Treat midfoot fracture | | + | $7,898.37 | |
| 28465 | Treat midfoot fracture, each | | + | $7,898.37 | |
| 28470 | Treat metatarsal fracture | | + | $674.08 | |
| 28475 | Treat metatarsal fracture | | + | $674.08 | |
| 28476 | Treat metatarsal fracture | | + | $7,898.37 | |
| 28485 | Treat metatarsal fracture | | + | $7,898.37 | |
| 28490 | Treat big toe fracture | | + | $674.08 | |
| 28495 | Treat big toe fracture | | + | $674.08 | |
| 28496 | Treat big toe fracture | | + | $7,898.37 | |
| 28505 | Treat big toe fracture | | + | $7,898.37 | |
| 28510 | Treatment of toe fracture | | + | $674.08 | |
| 28515 | Treatment of toe fracture | | + | $674.08 | |
| 28525 | Treat toe fracture | | + | $7,898.37 | |
| 28530 | Treat sesamoid bone fracture | | + | $674.08 | |
| 28531 | Treat sesamoid bone fracture | | + | $7,898.37 | |
| 28540 | Treat foot dislocation | | + | $674.08 | |
| 28545 | Treat foot dislocation | | + | $3,488.02 | |
| 28546 | Treat foot dislocation | | + | $7,898.37 | |
| 28555 | Repair foot dislocation | | + | $7,898.37 | |
| 28570 | Treat foot dislocation | | + | $674.08 | |
| 28575 | Treat foot dislocation | | + | $674.08 | |
| 28576 | Treat foot dislocation | | + | $7,898.37 | |
| 28585 | Repair foot dislocation | | + | $7,898.37 | |

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[1] See end of table.

## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator[1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 28600 | Treat foot dislocation | | + | $674.08 | |
| 28605 | Treat foot dislocation | | + | $674.08 | |
| 28606 | Treat foot dislocation | | + | $7,898.37 | |
| 28615 | Repair foot dislocation | | + | $7,898.37 | |
| 28630 | Treat toe dislocation | | + | $674.08 | |
| 28635 | Treat toe dislocation | | + | $3,488.02 | |
| 28636 | Treat toe dislocation | | + | $7,898.37 | |
| 28645 | Repair toe dislocation | | + | $7,898.37 | |
| 28660 | Treat toe dislocation | | + | $674.08 | |
| 28665 | Treat toe dislocation | | + | $3,488.02 | |
| 28666 | Treat toe dislocation | | + | $7,898.37 | |
| 28675 | Repair of toe dislocation | | + | $7,898.37 | |
| 28705 | Fusion of foot bones | | + | $5,977.98 | |
| 28715 | Fusion of foot bones | | + | $5,977.98 | |
| 28725 | Fusion of foot bones | | + | $5,977.98 | |
| 28730 | Fusion of foot bones | | + | $5,977.98 | |
| 28735 | Fusion of foot bones | | + | $5,977.98 | |
| 28737 | Revision of foot bones | | + | $4,765.66 | |
| 28740 | Fusion of foot bones | | + | $5,977.98 | |
| 28750 | Fusion of big toe joint | | + | $4,765.66 | |
| 28755 | Fusion of big toe joint | | + | $4,765.66 | |
| 28760 | Fusion of big toe joint | | + | $5,977.98 | |
| 28810 | Amputation toe & metatarsal | | + | $4,765.66 | |
| 28820 | Amputation of toe | | + | $4,765.66 | |
| 28825 | Partial amputation of toe | | + | $4,765.66 | |
| 28899 | Foot/toes surgery procedure | | + | $674.08 | |
| 29000 | Application of body cast | | | $279.57 | |
| 29010 | Application of body cast | | | $279.57 | |
| 29015 | Application of body cast | | | $279.57 | |
| 29020 | Application of body cast | | | $279.57 | |
| 29025 | Application of body cast | | | $279.57 | |
| 29035 | Application of body cast | | | $279.57 | |
| 29040 | Application of body cast | | | $279.57 | |
| 29044 | Application of body cast | | | $279.57 | |
| 29046 | Application of body cast | | | $279.57 | |
| 29049 | Application of figure eight | | | $279.57 | |
| 29055 | Application of shoulder cast | | | $279.57 | |
| 29058 | Application of shoulder cast | | | $279.57 | |
| 29065 | Application of long arm cast | | | $279.57 | |
| 29075 | Application of forearm cast | | | $279.57 | |
| 29085 | Apply hand/wrist cast | | | $279.57 | |
| 29086 | Apply finger cast | | | $279.57 | |
| 29105 | Apply long arm splint | | | $279.57 | |
| 29125 | Apply forearm splint | | | $279.57 | |
| 29126 | Apply forearm splint | | | $279.57 | |
| 29130 | Application of finger splint | | | $279.57 | |
| 29131 | Application of finger splint | | | $279.57 | |
| 29200 | Strapping of chest | | | $279.57 | |
| 29220 | Strapping of low back | | | $279.57 | |
| 29240 | Strapping of shoulder | | | $279.57 | |
| 29260 | Strapping of elbow or wrist | | | $279.57 | |
| 29280 | Strapping of hand or finger | | | $279.57 | |
| 29305 | Application of hip cast | | | $279.57 | |
| 29325 | Application of hip casts | | | $279.57 | |
| 29345 | Application of long leg cast | | | $279.57 | |
| 29355 | Application of long leg cast | | | $279.57 | |
| 29358 | Apply long leg cast brace | | | $279.57 | |
| 29365 | Application of long leg cast | | | $279.57 | |
| 29405 | Apply short leg cast | | | $279.57 | |
| 29425 | Apply short leg cast | | | $279.57 | |
| 29435 | Apply short leg cast | | | $279.57 | |
| 29440 | Addition of walker to cast | | | $279.57 | |
| 29445 | Apply rigid leg cast | | | $279.57 | |
| 29450 | Application of leg cast | | | $279.57 | |
| 29505 | Application, long leg splint | | | $279.57 | |
| 29515 | Application lower leg splint | | | $279.57 | |

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[1] See end of table.

## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator[1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 29520 | Strapping of hip | | | $279.57 | |
| 29530 | Strapping of knee | | | $279.57 | |
| 29540 | Strapping of ankle and/or ft | | | $279.57 | |
| 29550 | Strapping of toes | | | $279.57 | |
| 29580 | Application of paste boot | | | $279.57 | |
| 29590 | Application of foot splint | | | $279.57 | |
| 29700 | Removal/revision of cast | | | $279.57 | |
| 29705 | Removal/revision of cast | | | $279.57 | |
| 29710 | Removal/revision of cast | | | $279.57 | |
| 29715 | Removal/revision of cast | | | $279.57 | |
| 29720 | Repair of body cast | | | $279.57 | |
| 29730 | Windowing of cast | | | $279.57 | |
| 29740 | Wedging of cast | | | $279.57 | |
| 29750 | Wedging of clubfoot cast | | | $279.57 | |
| 29799 | Casting/strapping procedure | | | $279.57 | |
| 29800 | Jaw arthroscopy/surgery | | + | $7,043.98 | |
| 29804 | Jaw arthroscopy/surgery | | + | $7,043.98 | |
| 29805 | Shoulder arthroscopy, dx | | + | $7,043.98 | |
| 29806 | Shoulder arthroscopy/surgery | | + | $7,043.98 | |
| 29807 | Shoulder arthroscopy/surgery | | + | $7,043.98 | |
| 29819 | Shoulder arthroscopy/surgery | | + | $7,043.98 | |
| 29820 | Shoulder arthroscopy/surgery | | + | $7,043.98 | |
| 29821 | Shoulder arthroscopy/surgery | | + | $7,043.98 | |
| 29822 | Shoulder arthroscopy/surgery | | + | $7,043.98 | |
| 29823 | Shoulder arthroscopy/surgery | | + | $7,043.98 | |
| 29824 | Shoulder arthroscopy/surgery | | + | $7,043.98 | |
| 29825 | Shoulder arthroscopy/surgery | | + | $7,043.98 | |
| 29826 | Shoulder arthroscopy/surgery | | + | $11,046.72 | |
| 29827 | Arthroscop rotator cuff repr | | + | $7,043.98 | |
| 29830 | Elbow arthroscopy | | + | $7,043.98 | |
| 29834 | Elbow arthroscopy/surgery | | + | $7,043.98 | |
| 29835 | Elbow arthroscopy/surgery | | + | $11,046.72 | |
| 29836 | Elbow arthroscopy/surgery | | + | $11,046.72 | |
| 29837 | Elbow arthroscopy/surgery | | + | $7,043.98 | |
| 29838 | Elbow arthroscopy/surgery | | + | $7,043.98 | |
| 29840 | Wrist arthroscopy | | + | $7,043.98 | |
| 29843 | Wrist arthroscopy/surgery | | + | $7,043.98 | |
| 29844 | Wrist arthroscopy/surgery | | + | $7,043.98 | |
| 29845 | Wrist arthroscopy/surgery | | + | $7,043.98 | |
| 29846 | Wrist arthroscopy/surgery | | + | $7,043.98 | |
| 29847 | Wrist arthroscopy/surgery | | + | $7,043.98 | |
| 29848 | Wrist endoscopy/surgery | | + | $7,043.98 | |
| 29850 | Knee arthroscopy/surgery | | + | $7,043.98 | |
| 29851 | Knee arthroscopy/surgery | | + | $7,043.98 | |
| 29855 | Tibial arthroscopy/surgery | | + | $11,046.72 | |
| 29856 | Tibial arthroscopy/surgery | | + | $7,043.98 | |
| 29860 | Hip arthroscopy, dx | | + | $7,043.98 | |
| 29861 | Hip arthroscopy/surgery | | + | $7,043.98 | |
| 29862 | Hip arthroscopy/surgery | | + | $11,046.72 | |
| 29863 | Hip arthroscopy/surgery | | + | $11,046.72 | |
| 29870 | Knee arthroscopy, dx | | + | $7,043.98 | |
| 29871 | Knee arthroscopy/drainage | | + | $7,043.98 | |
| 29873 | Knee arthroscopy/surgery | | + | $7,043.98 | |
| 29874 | Knee arthroscopy/surgery | | + | $7,043.98 | |
| 29875 | Knee arthroscopy/surgery | | + | $7,043.98 | |
| 29876 | Knee arthroscopy/surgery | | + | $7,043.98 | |
| 29877 | Knee arthroscopy/surgery | | + | $7,043.98 | |
| 29879 | Knee arthroscopy/surgery | | + | $7,043.98 | |
| 29880 | Knee arthroscopy/surgery | | + | $7,043.98 | |
| 29881 | Knee arthroscopy/surgery | | + | $7,043.98 | |
| 29882 | Knee arthroscopy/surgery | | + | $7,043.98 | |
| 29883 | Knee arthroscopy/surgery | | + | $7,043.98 | |
| 29884 | Knee arthroscopy/surgery | | + | $7,043.98 | |
| 29885 | Knee arthroscopy/surgery | | + | $7,043.98 | |
| 29886 | Knee arthroscopy/surgery | | + | $7,043.98 | |
| 29887 | Knee arthroscopy/surgery | | + | $7,043.98 | |

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[1] See end of table.

### TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 29888 | Knee arthroscopy/surgery | | + | $11,046.72 | |
| 29889 | Knee arthroscopy/surgery | | + | $11,046.72 | |
| 29891 | Ankle arthroscopy/surgery | | + | $7,043.98 | |
| 29892 | Ankle arthroscopy/surgery | | + | $7,043.98 | |
| 29893 | Scope, plantar fasciotomy | | + | $4,765.66 | |
| 29894 | Ankle arthroscopy/surgery | | + | $7,043.98 | |
| 29895 | Ankle arthroscopy/surgery | | + | $7,043.98 | |
| 29897 | Ankle arthroscopy/surgery | | + | $7,043.98 | |
| 29898 | Ankle arthroscopy/surgery | | + | $7,043.98 | |
| 29899 | Ankle arthroscopy/surgery | | + | $7,043.98 | |
| 29900 | Mcp joint arthroscopy, dx | | + | $3,822.45 | |
| 29901 | Mcp joint arthroscopy, surg | | + | $3,822.45 | |
| 29902 | Mcp joint arthroscopy, surg | | + | $3,822.45 | |
| 29999 | Arthroscopy of joint | | + | $7,043.98 | |
| 30000 | Drainage of nose lesion | | + | $514.72 | |
| 30020 | Drainage of nose lesion | | + | $514.72 | |
| 30100 | Intranasal biopsy | | + | $1,565.03 | |
| 30110 | Removal of nose polyp(s) | | + | $3,895.61 | |
| 30115 | Removal of nose polyp(s) | | + | $3,895.61 | |
| 30117 | Removal of intranasal lesion | | + | $3,895.61 | |
| 30118 | Removal of intranasal lesion | | + | $5,424.08 | |
| 30120 | Revision of nose | | + | $3,895.61 | |
| 30124 | Removal of nose lesion | | + | $1,565.03 | |
| 30125 | Removal of nose lesion | | + | $9,175.99 | |
| 30130 | Removal of turbinate bones | | + | $3,895.61 | |
| 30140 | Removal of turbinate bones | | + | $5,424.08 | |
| 30150 | Partial removal of nose | | + | $9,175.99 | |
| 30160 | Removal of nose | | + | $9,175.99 | |
| 30200 | Injection treatment of nose | | + | $3,895.61 | |
| 30210 | Nasal sinus therapy | | + | $1,565.03 | |
| 30220 | Insert nasal septal button | | + | $1,565.03 | |
| 30300 | Remove nasal foreign body | | | $175.05 | |
| 30310 | Remove nasal foreign body | | + | $3,895.61 | |
| 30320 | Remove nasal foreign body | | + | $3,895.61 | |
| 30400 | Reconstruction of nose | | + | $9,175.99 | |
| 30410 | Reconstruction of nose | | + | $9,175.99 | |
| 30420 | Reconstruction of nose | | + | $9,175.99 | |
| 30430 | Revision of nose | | + | $5,424.08 | |
| 30435 | Revision of nose | | + | $9,175.99 | |
| 30450 | Revision of nose | | + | $9,175.99 | |
| 30460 | Revision of nose | | + | $9,175.99 | |
| 30462 | Revision of nose | | + | $9,175.99 | |
| 30465 | Repair nasal stenosis | | + | $9,175.99 | |
| 30520 | Repair of nasal septum | | + | $5,424.08 | |
| 30540 | Repair nasal defect | | + | $9,175.99 | |
| 30545 | Repair nasal defect | | + | $9,175.99 | |
| 30560 | Release of nasal adhesions | | + | $514.72 | |
| 30580 | Repair upper jaw fistula | | + | $9,175.99 | |
| 30600 | Repair mouth/nose fistula | | + | $9,175.99 | |
| 30620 | Intranasal reconstruction | | + | $9,175.99 | |
| 30630 | Repair nasal septum defect | | + | $5,424.08 | |
| 30801 | Cauterization, inner nose | | + | $1,565.03 | |
| 30802 | Cauterization, inner nose | | + | $3,895.61 | |
| 30901 | Control of nosebleed | | + | $441.57 | |
| 30903 | Control of nosebleed | | + | $441.57 | |
| 30905 | Control of nosebleed | | + | $441.57 | |
| 30906 | Repeat control of nosebleed | | + | $441.57 | |
| 30915 | Ligation, nasal sinus artery | | + | $7,200.75 | |
| 30920 | Ligation, upper jaw artery | | + | $6,414.31 | |
| 30930 | Therapy, fracture of nose | | + | $3,895.61 | |
| 30999 | Nasal surgery procedure | | + | $514.72 | |
| 31000 | Irrigation, maxillary sinus | | + | $514.72 | |
| 31002 | Irrigation, sphenoid sinus | | + | $1,565.03 | |
| 31020 | Exploration, maxillary sinus | | + | $5,424.08 | |
| 31030 | Exploration, maxillary sinus | | + | $9,175.99 | |
| 31032 | Explore sinus, remove polyps | | + | $9,175.99 | |

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[1] See end of table.

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## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 31040 | Exploration behind upper jaw | | + | $5,424.08 | |
| 31050 | Exploration, sphenoid sinus | | + | $9,175.99 | |
| 31051 | Sphenoid sinus surgery | | + | $9,175.99 | |
| 31070 | Exploration of frontal sinus | | + | $5,424.08 | |
| 31075 | Exploration of frontal sinus | | + | $9,175.99 | |
| 31080 | Removal of frontal sinus | | + | $9,175.99 | |
| 31081 | Removal of frontal sinus | | + | $9,175.99 | |
| 31084 | Removal of frontal sinus | | + | $9,175.99 | |
| 31085 | Removal of frontal sinus | | + | $9,175.99 | |
| 31086 | Removal of frontal sinus | | + | $9,175.99 | |
| 31087 | Removal of frontal sinus | | + | $9,175.99 | |
| 31090 | Exploration of sinuses | | + | $9,175.99 | |
| 31200 | Removal of ethmoid sinus | | + | $9,175.99 | |
| 31201 | Removal of ethmoid sinus | | + | $9,175.99 | |
| 31205 | Removal of ethmoid sinus | | + | $9,175.99 | |
| 31225 | Removal of upper jaw | | | $7,296.14 | MDR |
| 31231 | Nasal endoscopy, dx | | + | $248.21 | |
| 31233 | Nasal/sinus endoscopy, dx | | + | $862.21 | |
| 31235 | Nasal/sinus endoscopy, dx | | + | $3,467.12 | |
| 31237 | Nasal/sinus endoscopy, surg | | + | $5,301.28 | |
| 31238 | Nasal/sinus endoscopy, surg | | + | $3,467.12 | |
| 31239 | Nasal/sinus endoscopy, surg | | + | $5,301.28 | |
| 31240 | Nasal/sinus endoscopy, surg | | + | $3,467.12 | |
| 31254 | Revision of ethmoid sinus | | + | $5,301.28 | |
| 31255 | Removal of ethmoid sinus | | + | $5,301.28 | |
| 31256 | Exploration maxillary sinus | | + | $5,301.28 | |
| 31267 | Endoscopy, maxillary sinus | | + | $5,301.28 | |
| 31276 | Sinus endoscopy, surgical | | + | $5,301.28 | |
| 31287 | Nasal/sinus endoscopy, surg | | + | $5,301.28 | |
| 31288 | Nasal/sinus endoscopy, surg | | + | $5,301.28 | |
| 31299 | Sinus surgery procedure | | + | $1,565.03 | |
| 31300 | Removal of larynx lesion | | + | $9,175.99 | |
| 31320 | Diagnostic incision, larynx | | + | $9,175.99 | |
| 31400 | Revision of larynx | | + | $9,175.99 | |
| 31420 | Removal of epiglottis | | + | $9,175.99 | |
| 31500 | Insert emergency airway | | | $1,227.40 | |
| 31502 | Change of windpipe airway | | + | $561.75 | |
| 31505 | Diagnostic laryngoscopy | | + | $313.54 | |
| 31510 | Laryngoscopy with biopsy | | + | $3,467.12 | |
| 31511 | Remove foreign body, larynx | | + | $313.54 | |
| 31512 | Removal of larynx lesion | | + | $3,467.12 | |
| 31513 | Injection into vocal cord | | + | $313.54 | |
| 31515 | Laryngoscopy for aspiration | | + | $3,467.12 | |
| 31520 | Diagnostic laryngoscopy | | + | $313.54 | |
| 31525 | Diagnostic laryngoscopy | | + | $3,467.12 | |
| 31526 | Diagnostic laryngoscopy | | + | $5,301.28 | |
| 31527 | Laryngoscopy for treatment | | + | $5,301.28 | |
| 31528 | Laryngoscopy and dilation | | + | $3,467.12 | |
| 31529 | Laryngoscopy and dilation | | + | $3,467.12 | |
| 31530 | Operative laryngoscopy | | + | $5,301.28 | |
| 31531 | Operative laryngoscopy | | + | $5,301.28 | |
| 31535 | Operative laryngoscopy | | + | $5,301.28 | |
| 31536 | Operative laryngoscopy | | + | $5,301.28 | |
| 31540 | Operative laryngoscopy | | + | $5,301.28 | |
| 31541 | Operative laryngoscopy | | + | $5,301.28 | |
| 31560 | Operative laryngoscopy | | + | $5,301.28 | |
| 31561 | Operative laryngoscopy | | + | $5,301.28 | |
| 31570 | Laryngoscopy with injection | | + | $3,467.12 | |
| 31571 | Laryngoscopy with injection | | + | $5,301.28 | |
| 31575 | Diagnostic laryngoscopy | | + | $248.21 | |
| 31576 | Laryngoscopy with biopsy | | + | $5,301.28 | |
| 31577 | Remove foreign body, larynx | | + | $862.21 | |
| 31578 | Removal of larynx lesion | | + | $5,301.28 | |
| 31579 | Diagnostic laryngoscopy | | + | $862.21 | |
| 31580 | Revision of larynx | | + | $9,175.99 | |
| 31582 | Revision of larynx | | + | $9,175.99 | |

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[1] See end of table.

### TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Method-ology |
|---|---|---|---|---|---|
| 31585 | Treat larynx fracture | | + | $3,895.61 | |
| 31586 | Treat larynx fracture | | + | $9,175.99 | |
| 31588 | Revision of larynx | | + | $9,175.99 | |
| 31590 | Reinnervate larynx | | + | $9,175.99 | |
| 31595 | Larynx nerve surgery | | + | $9,175.99 | |
| 31599 | Larynx surgery procedure | | + | $5,424.08 | |
| 31600 | Incision of windpipe | | + | $5,424.08 | |
| 31601 | Incision of windpipe | | + | $5,424.08 | |
| 31603 | Incision of windpipe | | + | $1,565.03 | |
| 31605 | Incision of windpipe | | + | $3,895.61 | |
| 31610 | Incision of windpipe | | + | $5,424.08 | |
| 31611 | Surgery/speech prosthesis | | + | $5,424.08 | |
| 31612 | Puncture/clear windpipe | | + | $5,424.08 | |
| 31613 | Repair windpipe opening | | + | $5,424.08 | |
| 31614 | Repair windpipe opening | | + | $9,175.99 | |
| 31615 | Visualization of windpipe | | + | $2,414.19 | |
| 31622 | Dx bronchoscope/wash | | + | $2,414.19 | |
| 31623 | Dx bronchoscope/brush | | + | $2,414.19 | |
| 31624 | Dx bronchoscope/lavage | | + | $2,414.19 | |
| 31625 | Bronchoscopy w/biopsy(s) | | + | $2,414.19 | |
| 31628 | Bronchoscopy/lung bx, each | | + | $2,414.19 | |
| 31629 | Bronchoscopy/needle bx, each | | + | $2,414.19 | |
| 31630 | Bronchoscopy dilate/fx repr | | + | $2,414.19 | |
| 31631 | Bronchoscopy, dilate w/stent | | + | $2,414.19 | |
| 31635 | Bronchoscopy w/fb removal | | + | $2,414.19 | |
| 31640 | Bronchoscopy w/tumor excise | | + | $2,414.19 | |
| 31641 | Bronchoscopy, treat blockage | | + | $2,414.19 | |
| 31643 | Diag bronchoscope/catheter | | + | $2,414.19 | |
| 31645 | Bronchoscopy, clear airways | | + | $2,414.19 | |
| 31646 | Bronchoscopy, reclear airway | | + | $2,414.19 | |
| 31656 | Bronchoscopy, inj for x-ray | | + | $2,414.19 | |
| 31700 | Insertion of airway catheter | | + | $313.54 | |
| 31717 | Bronchial brush biopsy | | + | $862.21 | |
| 31720 | Clearance of airways | | + | $313.54 | |
| 31730 | Intro, windpipe wire/tube | | + | $862.21 | |
| 31750 | Repair of windpipe | | + | $9,175.99 | |
| 31755 | Repair of windpipe | | + | $9,175.99 | |
| 31785 | Remove windpipe lesion | | + | $5,424.08 | |
| 31820 | Closure of windpipe lesion | | + | $3,895.61 | |
| 31825 | Repair of windpipe defect | | + | $5,424.08 | |
| 31830 | Revise windpipe scar | | + | $5,424.08 | |
| 31899 | Airways surgical procedure | | + | $2,414.19 | |
| 32000 | Drainage of chest | | + | $906.62 | |
| 32002 | Treatment of collapsed lung | | + | $906.62 | |
| 32005 | Treat lung lining chemically | | + | $906.62 | |
| 32020 | Insertion of chest tube | | + | $906.62 | |
| 32201 | Drain, percut, lung lesion | | + | $906.62 | |
| 32400 | Needle biopsy chest lining | | + | $841.31 | |
| 32405 | Biopsy, lung or mediastinum | | + | $1,614.67 | |
| 32420 | Puncture/clear lung | | + | $906.62 | |
| 32601 | Thoracoscopy, diagnostic | | + | $7,430.67 | |
| 32602 | Thoracoscopy, diagnostic | | + | $7,430.67 | |
| 32603 | Thoracoscopy, diagnostic | | + | $7,430.67 | |
| 32604 | Thoracoscopy, diagnostic | | + | $7,430.67 | |
| 32605 | Thoracoscopy, diagnostic | | + | $7,430.67 | |
| 32606 | Thoracoscopy, diagnostic | | + | $7,430.67 | |
| 32960 | Therapeutic pneumothorax | | + | $906.62 | |
| 32999 | Chest surgery procedure | | + | $906.62 | |
| 33010 | Drainage of heart sac | | + | $906.62 | |
| 33011 | Repeat drainage of heart sac | | + | $906.62 | |
| 33206 | Insertion of heart pacemaker | | + | $22,676.59 | |
| 33207 | Insertion of heart pacemaker | | + | $22,676.59 | |
| 33208 | Insertion of heart pacemaker | | + | $23,199.52 | |
| 33210 | Insertion of heart electrode | | + | $14,782.96 | |
| 33211 | Insertion of heart electrode | | + | $14,782.96 | |
| 33212 | Insertion of pulse generator | | + | $20,376.10 | |

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[1] See end of table.

TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 33213 | Insertion of pulse generator | | + | $20,839.40 | |
| 33214 | Upgrade of pacemaker system | | + | $23,199.52 | |
| 33215 | Reposition pacing-defib lead | | + | $5,013.87 | |
| 33216 | Insert lead pace-defib, one | | + | $14,782.96 | |
| 33217 | Insert lead pace-defib, dual | | + | $14,782.96 | |
| 33218 | Repair lead pace-defib, one | | + | $14,782.96 | |
| 33220 | Repair lead pace-defib, dual | | + | $14,782.96 | |
| 33222 | Revise pocket, pacemaker | | + | $4,104.63 | |
| 33223 | Revise pocket, pacing-defib | | + | $4,104.63 | |
| 33224 | Insert pacing lead & connect | | + | $4,534.03 | |
| 33225 | L ventric pacing lead add-on | | + | $5,816.72 | |
| 33226 | Reposition l ventric lead | | + | $5,013.87 | |
| 33233 | Removal of pacemaker system | | + | $5,013.87 | |
| 33234 | Removal of pacemaker system | | + | $5,013.87 | |
| 33235 | Removal pacemaker electrode | | + | $5,013.87 | |
| 33240 | Insert pulse generator | | + | $34,025.72 | |
| 33241 | Remove pulse generator | | + | $5,013.87 | |
| 33244 | Remove eltrd, transven | | + | $5,013.87 | |
| 33249 | Eltrd/insert pace-defib | | + | $46,262.73 | |
| 33282 | Implant pat-active ht record | | | $15,135.68 | |
| 33284 | Remove pat-active ht record | | + | $2,014.45 | |
| 33999 | Cardiac surgery procedure | | + | $906.62 | |
| 34101 | Removal of artery clot | | + | $8,784.09 | |
| 34111 | Removal of arm artery clot | | + | $8,784.09 | |
| 34201 | Removal of artery clot | | + | $8,784.09 | |
| 34203 | Removal of leg artery clot | | + | $8,784.09 | |
| 34421 | Removal of vein clot | | + | $8,784.09 | |
| 34471 | Removal of vein clot | | + | $8,784.09 | |
| 34490 | Removal of vein clot | | + | $8,784.09 | |
| 34501 | Repair valve, femoral vein | | + | $8,784.09 | |
| 34510 | Transposition of vein valve | | + | $8,784.09 | |
| 34520 | Cross-over vein graft | | + | $8,784.09 | |
| 34530 | Leg vein fusion | | + | $8,784.09 | |
| 35011 | Repair defect of artery | | + | $8,096.93 | |
| 35180 | Repair blood vessel lesion | | + | $5,562.56 | |
| 35184 | Repair blood vessel lesion | | + | $5,562.56 | |
| 35188 | Repair blood vessel lesion | | + | $8,784.09 | |
| 35190 | Repair blood vessel lesion | | + | $5,562.56 | |
| 35201 | Repair blood vessel lesion | | + | $5,562.56 | |
| 35206 | Repair blood vessel lesion | | + | $5,562.56 | |
| 35207 | Repair blood vessel lesion | | + | $8,784.09 | |
| 35226 | Repair blood vessel lesion | | + | $5,562.56 | |
| 35231 | Repair blood vessel lesion | | + | $5,562.56 | |
| 35236 | Repair blood vessel lesion | | + | $5,562.56 | |
| 35256 | Repair blood vessel lesion | | + | $5,562.56 | |
| 35261 | Repair blood vessel lesion | | + | $8,096.93 | |
| 35266 | Repair blood vessel lesion | | + | $8,096.93 | |
| 35286 | Repair blood vessel lesion | | + | $8,096.93 | |
| 35321 | Rechanneling of artery | | + | $5,562.56 | |
| 35458 | Repair arterial blockage | | + | $11,731.26 | |
| 35459 | Repair arterial blockage | | + | $11,731.26 | |
| 35460 | Repair venous blockage | | + | $11,731.26 | |
| 35470 | Repair arterial blockage | | + | $11,731.26 | |
| 35471 | Repair arterial blockage | | + | $11,731.26 | |
| 35472 | Repair arterial blockage | | + | $11,731.26 | |
| 35473 | Repair arterial blockage | | + | $11,731.26 | |
| 35474 | Repair arterial blockage | | + | $11,731.26 | |
| 35475 | Repair arterial blockage | | + | $11,731.26 | |
| 35476 | Repair venous blockage | | + | $11,731.26 | |
| 35484 | Atherectomy, open | | + | $11,731.26 | |
| 35485 | Atherectomy, open | | + | $11,731.26 | |
| 35490 | Atherectomy, percutaneous | | + | $11,731.26 | |
| 35491 | Atherectomy, percutaneous | | + | $11,731.26 | |
| 35492 | Atherectomy, percutaneous | | + | $11,731.26 | |
| 35493 | Atherectomy, percutaneous | | + | $11,731.26 | |
| 35494 | Atherectomy, percutaneous | | + | $11,731.26 | |

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[1] See end of table.

## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction** Applies | Charge | Charge Method-ology |
|---|---|---|---|---|---|
| 35495 | Atherectomy, percutaneous | | + | $11,731.26 | |
| 35500 | Harvest vein for bypass | | + | $11,731.26 | |
| 35685 | Bypass graft patency/patch | | + | $5,562.56 | |
| 35686 | Bypass graft/av fist patency | | + | $5,562.56 | |
| 35761 | Exploration of artery/vein | | + | $6,558.00 | |
| 35860 | Explore limb vessels | | + | $5,562.56 | |
| 35875 | Removal of clot in graft | | + | $8,784.09 | |
| 35876 | Removal of clot in graft | | + | $8,784.09 | |
| 35879 | Revise graft w/vein | | + | $8,784.09 | |
| 35881 | Revise graft w/vein | | + | $8,784.09 | |
| 35903 | Excision, graft, extremity | | + | $6,558.00 | |
| 36002 | Pseudoaneurysm injection trt | | | $740.18 | |
| 36260 | Insertion of infusion pump | | + | $20,540.52 | |
| 36261 | Revision of infusion pump | | + | $13,505.34 | |
| 36262 | Removal of infusion pump | | + | $2,014.45 | |
| 36420 | Vein access cutdown < 1 yr | | + | $60.10 | |
| 36425 | Vein access cutdown > 1 yr | | + | $60.10 | |
| 36430 | Blood transfusion service | | | $1,086.90 | |
| 36440 | Bl push transfuse, 2 yr or < | | | $1,086.90 | |
| 36450 | Bl exchange/transfuse, nb | | | $1,086.90 | |
| 36455 | Bl exchange/transfuse non-nb | | | $1,086.90 | |
| 36460 | Transfusion service, fetal | | | $1,086.90 | |
| 36468 | Injection(s), spider veins | | + | $449.39 | |
| 36469 | Injection(s), spider veins | | + | $449.39 | |
| 36470 | Injection therapy of vein | | + | $449.39 | |
| 36471 | Injection therapy of veins | | + | $449.39 | |
| 36488 | Insertion of catheter, vein | | + | $3,093.50 | |
| 36489 | Insertion of catheter, vein | | + | $3,093.50 | |
| 36490 | Insertion of catheter, vein | | + | $3,093.50 | |
| 36491 | Insertion of catheter, vein | | + | $3,093.50 | |
| 36493 | Repositioning of cvc | | | $1,104.86 | |
| 36511 | Apheresis wbc | | | $4,039.33 | |
| 36512 | Apheresis rbc | | | $4,039.33 | |
| 36513 | Apheresis platelets | | | $4,039.33 | |
| 36514 | Apheresis plasma | | | $4,039.33 | |
| 36515 | Apheresis, adsorp/reinfuse | | | $9,821.35 | |
| 36516 | Apheresis, selective | | | $9,821.35 | |
| 36522 | Photopheresis | | | $9,821.35 | |
| 36530 | Insertion of infusion pump | | + | $20,540.52 | |
| 36531 | Revision of infusion pump | | + | $13,505.34 | |
| 36532 | Removal of infusion pump | | + | $2,014.45 | |
| 36533 | Insertion of access device | | + | $6,558.00 | |
| 36534 | Revision of access device | | + | $2,014.45 | |
| 36535 | Removal of access device | | + | $2,014.45 | |
| 36536 | Remove cva device obstruct | | + | $1,295.44 | |
| 36537 | Remove cva lumen obstruct | | + | $1,295.44 | |
| 36550 | Declot vascular device | | + | $713.29 | |
| 36640 | Insertion catheter, artery | | + | $3,093.50 | |
| 36680 | Insert needle, bone cavity | | + | $734.50 | |
| 36800 | Insertion of cannula | | + | $6,558.00 | |
| 36810 | Insertion of cannula | | + | $6,558.00 | |
| 36815 | Insertion of cannula | | + | $6,558.00 | |
| 36819 | Av fusion/uppr arm vein | | + | $8,784.09 | |
| 36820 | Av fusion/forearm vein | | + | $8,784.09 | |
| 36821 | Av fusion direct any site | | + | $8,784.09 | |
| 36825 | Artery-vein autograft | | + | $8,784.09 | |
| 36830 | Artery-vein nonautograft | | + | $8,784.09 | |
| 36831 | Open thrombect av fistula | | + | $8,784.09 | |
| 36832 | Av fistula revision, open | | + | $8,784.09 | |
| 36833 | Av fistula revision | | + | $8,784.09 | |
| 36834 | Repair A-V aneurysm | | + | $8,784.09 | |
| 36835 | Artery to vein shunt | | + | $6,558.00 | |
| 36860 | External cannula declotting | | + | $3,192.78 | |
| 36861 | Cannula declotting | | + | $6,558.00 | |
| 36870 | Percut thrombect av fistula | | + | $8,096.93 | |
| 37200 | Transcatheter biopsy | | + | $1,614.67 | |

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[1] See end of table.

## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 37201 | Transcatheter therapy infuse | | + | $1,113.03 | |
| 37202 | Transcatheter therapy infuse | | + | $713.29 | |
| 37203 | Transcatheter retrieval | | + | $3,192.78 | |
| 37204 | Transcatheter occlusion | | + | $6,558.00 | |
| 37205 | Transcatheter stent | | + | $15,460.71 | |
| 37206 | Transcatheter stent add-on | | + | $15,460.71 | |
| 37207 | Transcatheter stent | | + | $15,460.71 | |
| 37208 | Transcatheter stent add-on | | + | $15,460.71 | |
| 37209 | Exchange arterial catheter | | + | $3,192.78 | |
| 37250 | Iv us first vessel add-on | | | $9,147.02 | |
| 37251 | Iv us each add vessel add-on | | | $9,147.02 | |
| 37500 | Endoscopy ligate perf veins | | + | $6,414.31 | |
| 37501 | Vascular endoscopy procedure | | + | $6,414.31 | |
| 37565 | Ligation of neck vein | | + | $5,562.56 | |
| 37600 | Ligation of neck artery | | + | $5,562.56 | |
| 37605 | Ligation of neck artery | | + | $7,200.75 | |
| 37606 | Ligation of neck artery | | + | $7,200.75 | |
| 37607 | Ligation of a-v fistula | | + | $6,414.31 | |
| 37609 | Temporal artery procedure | | + | $3,757.15 | |
| 37615 | Ligation of neck artery | | + | $7,200.75 | |
| 37620 | Revision of major vein | | + | $7,200.75 | |
| 37650 | Revision of major vein | | + | $7,200.75 | |
| 37700 | Revise leg vein | | + | $7,200.75 | |
| 37720 | Removal of leg vein | | + | $6,414.31 | |
| 37730 | Removal of leg veins | | + | $6,414.31 | |
| 37735 | Removal of leg veins/lesion | | + | $6,414.31 | |
| 37760 | Ligation, leg veins, open | | + | $7,200.75 | |
| 37780 | Revision of leg vein | | + | $7,200.75 | |
| 37785 | Revise secondary varicosity | | + | $7,209.75 | |
| 37790 | Penile venous occlusion | | + | $7,885.29 | |
| 37799 | Vascular surgery procedure | | + | $60.10 | |
| 38120 | Laparoscopy, splenectomy | | + | $10,840.33 | |
| 38129 | Laparoscope proc, spleen | | + | $8,214.50 | |
| 38205 | Harvest allogenic stem cells | | | $4,039.33 | |
| 38206 | Harvest auto stem cells | | | $4,039.33 | |
| 38220 | Bone marrow aspiration | | + | $331.82 | |
| 38221 | Bone marrow biopsy | | + | $331.82 | |
| 38230 | Bone marrow collection | | | $1,727.03 | |
| 38240 | Bone marrow/stem transplant | | | $1,727.03 | |
| 38241 | Bone marrow/stem transplant | | | $1,727.03 | |
| 38242 | Lymphocyte infuse transplant | | | $4,039.33 | |
| 38300 | Drainage, lymph node lesion | | + | $4,352.84 | |
| 38305 | Drainage, lymph node lesion | | + | $4,352.84 | |
| 38308 | Incision of lymph channels | | + | $5,055.69 | |
| 38500 | Biopsy/removal, lymph nodes | | + | $5,055.69 | |
| 38505 | Needle biopsy, lymph nodes | | + | $841.31 | |
| 38510 | Biopsy/removal, lymph nodes | | + | $5,055.69 | |
| 38520 | Biopsy/removal, lymph nodes | | + | $5,055.69 | |
| 38525 | Biopsy/removal, lymph nodes | | + | $5,055.69 | |
| 38530 | Biopsy/removal, lymph nodes | | + | $5,055.69 | |
| 38542 | Explore deep node(s), neck | | + | $9,737.74 | |
| 38550 | Removal, neck/armpit lesion | | + | $5,055.69 | |
| 38555 | Removal, neck/armpit lesion | | + | $5,055.69 | |
| 38570 | Laparoscopy, lymph node biop | | + | $10,840.33 | |
| 38571 | Laparoscopy, lymphadenectomy | | + | $15,368.09 | |
| 38572 | Laparoscopy, lymphadenectomy | | + | $10,840.33 | |
| 38589 | Laparoscope proc, lymphatic | | + | $8,214.50 | |
| 38700 | Removal of lymph nodes, neck | | + | $5,055.69 | |
| 38720 | Removal of lymph nodes, neck | | + | $5,055.69 | |
| 38740 | Remove armpit lymph nodes | | + | $9,737.74 | |
| 38745 | Remove armpit lymph nodes | | + | $9,737.74 | |
| 38760 | Remove groin lymph nodes | | + | $5,055.69 | |
| 38999 | Blood/lymph system procedure | | | $1,086.90 | |
| 39400 | Visualization of chest | | + | $7,430.67 | |
| 40490 | Biopsy of lip | | + | $514.72 | |
| 40500 | Partial excision of lip | | + | $3,895.61 | |

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[1] See end of table.

## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 40510 | Partial excision of lip | | + | $5,424.08 | |
| 40520 | Partial excision of lip | | + | $3,895.61 | |
| 40525 | Reconstruct lip with flap | | + | $5,424.08 | |
| 40527 | Reconstruct lip with flap | | + | $5,424.08 | |
| 40530 | Partial removal of lip | | + | $5,424.08 | |
| 40650 | Repair lip | | + | $1,565.03 | |
| 40652 | Repair lip | | + | $1,565.03 | |
| 40654 | Repair lip | | + | $1,565.03 | |
| 40700 | Repair cleft lip/nasal | | + | $9,175.99 | |
| 40701 | Repair cleft lip/nasal | | + | $9,175.99 | |
| 40702 | Repair cleft lip/nasal | | + | $9,175.99 | |
| 40720 | Repair cleft lip/nasal | | + | $9,175.99 | |
| 40761 | Repair cleft lip/nasal | | + | $9,175.99 | |
| 40799 | Lip surgery procedure | | + | $3,895.61 | |
| 40800 | Drainage of mouth lesion | | + | $514.72 | |
| 40801 | Drainage of mouth lesion | | + | $1,565.03 | |
| 40804 | Removal, foreign body, mouth | | | $175.05 | |
| 40805 | Removal, foreign body, mouth | | + | $1,565.03 | |
| 40806 | Incision of lip fold | | + | $514.72 | |
| 40808 | Biopsy of mouth lesion | | + | $514.72 | |
| 40810 | Excision of mouth lesion | | + | $3,895.61 | |
| 40812 | Excise/repair mouth lesion | | + | $3,895.61 | |
| 40814 | Excise/repair mouth lesion | | + | $3,895.61 | |
| 40816 | Excision of mouth lesion | | + | $5,424.08 | |
| 40818 | Excise oral mucosa for graft | | + | $514.72 | |
| 40819 | Excise lip or cheek fold | | + | $1,565.03 | |
| 40820 | Treatment of mouth lesion | | + | $3,895.61 | |
| 40830 | Repair mouth laceration | | + | $514.72 | |
| 408[illegible]1 | Repair mouth laceration | | + | $1,565.03 | |
| 40840 | Reconstruction of mouth | | + | $5,424.08 | |
| 40842 | Reconstruction of mouth | | + | $5,424.08 | |
| 40843 | Reconstruction of mouth | | + | $5,424.08 | |
| 40844 | Reconstruction of mouth | | + | $9,175.99 | |
| 40845 | Reconstruction of mouth | | + | $9,175.99 | |
| 40899 | Mouth surgery procedure | | + | $1,565.03 | |
| 41000 | Drainage of mouth lesion | | + | $3,895.61 | |
| 41005 | Drainage of mouth lesion | | + | $514.72 | |
| 41006 | Drainage of mouth lesion | | + | $5,424.08 | |
| 41007 | Drainage of mouth lesion | | + | $3,895.61 | |
| 41008 | Drainage of mouth lesion | | + | $3,895.61 | |
| 41009 | Drainage of mouth lesion | | + | $514.72 | |
| 41010 | Incision of tongue fold | | + | $3,895.61 | |
| 41015 | Drainage of mouth lesion | | + | $514.72 | |
| 41016 | Drainage of mouth lesion | | + | $1,565.03 | |
| 41017 | Drainage of mouth lesion | | + | $1,565.03 | |
| 41018 | Drainage of mouth lesion | | + | $1,565.03 | |
| 41100 | Biopsy of tongue | | + | $1,565.03 | |
| 41105 | Biopsy of tongue | | + | $3,895.61 | |
| 41108 | Biopsy of floor of mouth | | + | $1,565.03 | |
| 41110 | Excision of tongue lesion | | + | $3,895.61 | |
| 41112 | Excision of tongue lesion | | + | $3,895.61 | |
| 41113 | Excision of tongue lesion | | + | $3,895.61 | |
| 41114 | Excision of tongue lesion | | + | $5,424.08 | |
| 41115 | Excision of tongue fold | | + | $1,565.03 | |
| 41116 | Excision of mouth lesion | | + | $3,895.61 | |
| 41120 | Partial removal of tongue | | + | $5,424.08 | |
| 41250 | Repair tongue laceration | | + | $514.72 | |
| 41251 | Repair tongue laceration | | + | $1,565.03 | |
| 41252 | Repair tongue laceration | | + | $1,565.03 | |
| 41500 | Fixation of tongue | | + | $5,424.08 | |
| 41510 | Tongue to lip surgery | | + | $3,895.61 | |
| 41520 | Reconstruction, tongue fold | | + | $1,565.03 | |
| 41599 | Tongue and mouth surgery | | + | $514.72 | |
| 41800 | Drainage of gum lesion | | + | $514.72 | |
| 41805 | Removal foreign body, gum | | + | $5,424.08 | |
| 41806 | Removal foreign body, jawbone | | + | $3,895.61 | |

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[1] See end of table.

### TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 41820 | Excision, gum, each quadrant | | + | $1,565.03 | |
| 41821 | Excision of gum flap | | + | $1,565.03 | |
| 41822 | Excision of gum lesion | | + | $3,895.61 | |
| 41823 | Excision of gum lesion | | + | $5,424.08 | |
| 41825 | Excision of gum lesion | | + | $3,895.61 | |
| 41826 | Excision of gum lesion | | + | $3,895.61 | |
| 41827 | Excision of gum lesion | | + | $5,424.08 | |
| 41828 | Excision of gum lesion | | + | $3,895.61 | |
| 41830 | Removal of gum tissue | | + | $3,895.61 | |
| 41850 | Treatment of gum lesion | | + | $3,895.61 | |
| 41870 | Gum graft | | + | $5,424.08 | |
| 41872 | Repair gum | | + | $3,895.61 | |
| 41874 | Repair tooth socket | | + | $5,424.08 | |
| 41899 | Dental surgery procedure | | + | $3,895.61 | |
| 42000 | Drainage mouth roof lesion | | + | $514.72 | |
| 42100 | Biopsy roof of mouth | | + | $1,565.03 | |
| 42104 | Excision lesion, mouth roof | | + | $3,895.61 | |
| 42106 | Excision lesion, mouth roof | | + | $3,895.61 | |
| 42107 | Excision lesion, mouth roof | | + | $5,424.08 | |
| 42120 | Remove palate/lesion | | + | $9,175.99 | |
| 42140 | Excision of uvula | | + | $1,565.03 | |
| 42145 | Repair palate, pharynx/uvula | | + | $5,424.08 | |
| 42160 | Treatment mouth roof lesion | | + | $3,895.61 | |
| 42180 | Repair palate | | + | $514.72 | |
| 42182 | Repair palate | | + | $9,175.99 | |
| 42200 | Reconstruct cleft palate | | + | $9,175.99 | |
| 42205 | Reconstruct cleft palate | | + | $9,175.99 | |
| 42210 | Reconstruct cleft palate | | + | $9,175.99 | |
| 42215 | Reconstruct cleft palate | | + | $9,175.99 | |
| 42220 | Reconstruct cleft palate | | + | $9,175.99 | |
| 42225 | Reconstruct cleft palate | | + | $9,175.99 | |
| 42226 | Lengthening of palate | | + | $9,175.99 | |
| 42227 | Lengthening of palate | | + | $9,175.99 | |
| 42235 | Repair palate | | + | $3,895.61 | |
| 42260 | Repair nose to lip fistula | | + | $5,424.08 | |
| 42280 | Preparation, palate mold | | + | $514.72 | |
| 42281 | Insertion, palate prosthesis | | + | $3,895.61 | |
| 42299 | Palate/uvula surgery | | + | $514.72 | |
| 42300 | Drainage of salivary gland | | + | $3,895.61 | |
| 42305 | Drainage of salivary gland | | + | $3,895.61 | |
| 42310 | Drainage of salivary gland | | + | $514.72 | |
| 42320 | Drainage of salivary gland | | + | $514.72 | |
| 42325 | Create salivary cyst drain | | + | $514.72 | |
| 42326 | Create salivary cyst drain | | + | $1,565.03 | |
| 42330 | Removal of salivary stone | | + | $3,895.61 | |
| 42335 | Removal of salivary stone | | + | $3,895.61 | |
| 42340 | Removal of salivary stone | | + | $3,895.61 | |
| 42400 | Biopsy of salivary gland | | + | $841.31 | |
| 42405 | Biopsy of salivary gland | | + | $3,895.61 | |
| 42408 | Excision of salivary cyst | | + | $3,895.61 | |
| 42409 | Drainage of salivary cyst | | + | $3,895.61 | |
| 42410 | Excise parotid gland/lesion | | + | $9,175.99 | |
| 42415 | Excise parotid gland/lesion | | + | $9,175.99 | |
| 42420 | Excise parotid gland/lesion | | + | $9,175.99 | |
| 42425 | Excise parotid gland/lesion | | + | $9,175.99 | |
| 42440 | Excise submaxillary gland | | + | $9,175.99 | |
| 42450 | Excise sublingual gland | | + | $5,424.08 | |
| 42500 | Repair salivary duct | | + | $5,424.08 | |
| 42505 | Repair salivary duct | | + | $9,175.99 | |
| 42507 | Parotid duct diversion | | + | $9,175.99 | |
| 42508 | Parotid duct diversion | | + | $9,175.99 | |
| 42509 | Parotid duct diversion | | + | $9,175.99 | |
| 42510 | Parotid duct diversion | | + | $9,175.99 | |
| 42600 | Closure of salivary fistula | | + | $3,895.61 | |
| 42650 | Dilation of salivary duct | | + | $1,565.03 | |
| 42660 | Dilation of salivary duct | | + | $1,565.03 | |

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[1] See end of table.

### TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 42665 | Ligation of salivary duct | | + | $5,424.08 | |
| 42699 | Salivary surgery procedure | | + | $3,895.61 | |
| 42700 | Drainage of tonsil abscess | | + | $514.72 | |
| 42720 | Drainage of throat abscess | | + | $3,895.61 | |
| 42725 | Drainage of throat abscess | | + | $9,175.99 | |
| 42800 | Biopsy of throat | | + | $1,565.03 | |
| 42802 | Biopsy of throat | | + | $3,895.61 | |
| 42804 | Biopsy of upper nose/throat | | + | $3,895.61 | |
| 42806 | Biopsy of upper nose/throat | | + | $5,424.08 | |
| 42808 | Excise pharynx lesion | | + | $3,895.61 | |
| 42809 | Remove pharynx foreign body | | | $175.05 | |
| 42810 | Excision of neck cyst | | + | $5,424.08 | |
| 42815 | Excision of neck cyst | | + | $9,175.99 | |
| 42820 | Remove tonsils and adenoids | | + | $5,358.77 | |
| 42821 | Remove tonsils and adenoids | | + | $5,358.77 | |
| 42825 | Removal of tonsils | | + | $5,358.77 | |
| 42826 | Removal of tonsils | | + | $5,358.77 | |
| 42830 | Removal of adenoids | | + | $5,358.77 | |
| 42831 | Removal of adenoids | | + | $5,358.77 | |
| 42835 | Removal of adenoids | | + | $5,358.77 | |
| 42836 | Removal of adenoids | | + | $5,358.77 | |
| 42842 | Extensive surgery of throat | | + | $5,424.08 | |
| 42844 | Extensive surgery of throat | | + | $9,175.99 | |
| 42860 | Excision of tonsil tags | | + | $5,358.77 | |
| 42870 | Excision of lingual tonsil | | + | $5,358.77 | |
| 42890 | Partial removal of pharynx | | + | $9,175.99 | |
| 42892 | Revision of pharyngeal walls | | + | $9,175.99 | |
| 42900 | Repair throat wound | | + | $1,565.03 | |
| 42950 | Reconstruction of throat | | + | $5,424.08 | |
| 42955 | Surgical opening of throat | | + | $5,424.08 | |
| 42960 | Control throat bleeding | | + | $441.57 | |
| 42962 | Control throat bleeding | | + | $9,175.99 | |
| 42970 | Control nose/throat bleeding | | + | $441.57 | |
| 42972 | Control nose/throat bleeding | | + | $3,895.61 | |
| 42999 | Throat surgery procedure | | + | $1,565.03 | |
| 43020 | Incision of esophagus | | + | $1,565.03 | |
| 43030 | Throat muscle surgery | | + | $3,895.61 | |
| 43130 | Removal of esophagus pouch | | + | $5,424.08 | |
| 43200 | Esophagus endoscopy | | + | $2,097.86 | |
| 43201 | Esoph scope w/submucous inj | | + | $2,097.86 | |
| 43202 | Esophagus endoscopy, biopsy | | + | $2,097.86 | |
| 43204 | Esoph scope w/sclerosis inj | | + | $2,097.86 | |
| 43205 | Esophagus endoscopy/ligation | | + | $2,097.86 | |
| 43215 | Esophagus endoscopy | | + | $2,097.86 | |
| 43216 | Esophagus endoscopy/lesion | | + | $2,097.86 | |
| 43217 | Esophagus endoscopy | | + | $2,097.86 | |
| 43219 | Esophagus endoscopy | | + | $2,097.86 | |
| 43220 | Esoph endoscopy, dilation | | + | $2,097.86 | |
| 43226 | Esoph endoscopy, dilation | | + | $2,097.86 | |
| 43227 | Esoph endoscopy, repair | | + | $2,097.86 | |
| 43228 | Esoph endoscopy, ablation | | + | $2,097.86 | |
| 43231 | Esoph endoscopy w/us exam | | + | $2,097.86 | |
| 43232 | Esoph endoscopy w/us fn bx | | + | $2,097.86 | |
| 43234 | Upper GI endoscopy, exam | | + | $2,097.86 | |
| 43235 | Uppr gi endoscopy, diagnosis | | + | $2,097.86 | |
| 43236 | Uppr gi scope w/submuc inj | | + | $2,097.86 | |
| 43239 | Upper GI endoscopy, biopsy | | + | $2,097.86 | |
| 43240 | Esoph endoscope w/drain cyst | | + | $2,097.86 | |
| 43241 | Upper GI endoscopy with tube | | + | $2,097.86 | |
| 43242 | Uppr gi endoscopy w/us fn bx | | + | $2,097.86 | |
| 43243 | Upper gi endoscopy & inject | | + | $2,097.86 | |
| 43244 | Upper GI endoscopy/ligation | | + | $2,097.86 | |
| 43245 | Uppr gi scope dilate strictr | | + | $2,097.86 | |
| 43246 | Place gastrostomy tube | | + | $2,097.86 | |
| 43247 | Operative upper GI endoscopy | | + | $2,097.86 | |
| 43248 | Uppr gi endoscopy/guide wire | | + | $2,097.86 | |

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[1] See end of table.

## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 43249 | Esoph endoscopy, dilation | | + | $2,097.86 | |
| 43250 | Upper GI endoscopy/tumor | | + | $2,097.86 | |
| 43251 | Operative upper GI endoscopy | | + | $2,097.86 | |
| 43255 | Operative upper GI endoscopy | | + | $2,097.86 | |
| 43256 | Uppr gi endoscopy w stent | | + | $2,097.86 | |
| 43258 | Operative upper GI endoscopy | | + | $2,097.86 | |
| 43259 | Endoscopic ultrasound exam | | + | $2,097.86 | |
| 43260 | Endo cholangiopancreatograph | | + | $4,721.25 | |
| 43261 | Endo cholangiopancreatograph | | + | $4,721.25 | |
| 43262 | Endo cholangiopancreatograph | | + | $4,721.25 | |
| 43263 | Endo cholangiopancreatograph | | + | $4,721.25 | |
| 43264 | Endo cholangiopancreatograph | | + | $4,721.25 | |
| 43265 | Endo cholangiopancreatograph | | + | $4,721.25 | |
| 43267 | Endo cholangiopancreatograph | | + | $4,721.25 | |
| 43268 | Endo cholangiopancreatograph | | + | $4,721.25 | |
| 43269 | Endo cholangiopancreatograph | | + | $4,721.25 | |
| 43271 | Endo cholangiopancreatograph | | + | $4,721.25 | |
| 43272 | Endo cholangiopancreatograph | | + | $4,721.25 | |
| 43280 | Laparoscopy, fundoplasty | | + | $15,368.09 | |
| 43289 | Laparoscope proc, esoph | | + | $8,214.50 | |
| 43450 | Dilate esophagus | | + | $1,643.42 | |
| 43453 | Dilate esophagus | | + | $1,643.42 | |
| 43456 | Dilate esophagus | | + | $1,643.42 | |
| 43458 | Dilate esophagus | | + | $1,643.42 | |
| 43499 | Esophagus surgery procedure | | + | $2,097.86 | |
| 43600 | Biopsy of stomach | | + | $2,097.86 | |
| 43651 | Laparoscopy, vagus nerve | | + | $15,368.09 | |
| 43652 | Laparoscopy, vagus nerve | | + | $15,368.09 | |
| 43653 | Laparoscopy, gastrostomy | | + | $10,840.33 | |
| 43659 | Laparoscope proc, stom | | + | $8,214.50 | |
| 43750 | Place gastrostomy tube | | + | $2,097.86 | |
| 43752 | Nasal/orogastric w/stent | | | $753.47 | MedStat |
| 43760 | Change gastrostomy tube | | + | $561.75 | |
| 43761 | Reposition gastrostomy tube | | + | $561.75 | |
| 43830 | Place gastrostomy tube | | + | $2,097.86 | |
| 43831 | Place gastrostomy tube | | + | $2,097.86 | |
| 43870 | Repair stomach opening | | + | $2,097.86 | |
| 43999 | Stomach surgery procedure | | + | $2,097.86 | |
| 44100 | Biopsy of bowel | | + | $2,097.86 | |
| 44200 | Laparoscopy, enterolysis | | + | $10,840.33 | |
| 44201 | Laparoscopy, jejunostomy | | + | $10,840.33 | |
| 44206 | Lap part colectomy w/stoma | | + | $15,368.09 | |
| 44207 | L colectomy/coloproctostomy | | + | $15,368.09 | |
| 44208 | L colectomy/coloproctostomy | | + | $15,368.09 | |
| 44238 | Laparoscope proc, intestine | | + | $8,214.50 | |
| 44239 | Laparoscope proc, rectum | | + | $8,214.50 | |
| 44312 | Revision of ileostomy | | + | $4,104.63 | |
| 44340 | Revision of colostomy | | + | $4,104.63 | |
| 44360 | Small bowel endoscopy | | + | $2,194.70 | |
| 44361 | Small bowel endoscopy/biopsy | | + | $2,194.70 | |
| 44363 | Small bowel endoscopy | | + | $2,194.70 | |
| 44364 | Small bowel endoscopy | | + | $2,194.70 | |
| 44365 | Small bowel endoscopy | | + | $2,194.70 | |
| 44366 | Small bowel endoscopy | | + | $2,194.70 | |
| 44369 | Small bowel endoscopy | | + | $2,194.70 | |
| 44370 | Small bowel endoscopy/stent | | + | $2,194.70 | |
| 44372 | Small bowel endoscopy | | + | $2,194.70 | |
| 44373 | Small bowel endoscopy | | + | $2,194.70 | |
| 44376 | Small bowel endoscopy | | + | $2,194.70 | |
| 44377 | Small bowel endoscopy/biopsy | | + | $2,194.70 | |
| 44378 | Small bowel endoscopy | | + | $2,194.70 | |
| 44379 | S bowel endoscope w/stent | | + | $2,194.70 | |
| 44380 | Small bowel endoscopy | | + | $2,194.70 | |
| 44382 | Small bowel endoscopy | | + | $2,194.70 | |
| 44383 | Ileoscopy w/stent | | + | $2,194.70 | |
| 44385 | Endoscopy of bowel pouch | | + | $2,067.65 | |

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[1] See end of table.

TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 44386 | Endoscopy, bowel pouch/biop | | + | $2,067.65 | |
| 44388 | Colon endoscopy | | + | $2,067.65 | |
| 44389 | Colonoscopy with biopsy | | + | $2,067.65 | |
| 44390 | Colonoscopy for foreign body | | + | $2,067.65 | |
| 44391 | Colonoscopy for bleeding | | + | $2,067.65 | |
| 44392 | Colonoscopy & polypectomy | | + | $2,067.65 | |
| 44393 | Colonoscopy, lesion removal | | + | $2,067.65 | |
| 44394 | Colonoscopy w/snare | | + | $2,067.65 | |
| 44397 | Colonoscopy w/stent | | + | $2,067.65 | |
| 44500 | Intro, gastrointestinal tube | | + | $561.75 | |
| 44799 | Intestine surgery procedure | | + | $2,194.70 | |
| 44970 | Laparoscopy, appendectomy | | + | $8,214.50 | |
| 44979 | Laparoscope proc, app | | + | $8,214.50 | |
| 45000 | Drainage of pelvic abscess | | + | $4,415.56 | |
| 45005 | Drainage of rectal abscess | | + | $922.31 | |
| 45020 | Drainage of rectal abscess | | + | $4,415.56 | |
| 45100 | Biopsy of rectum | | + | $4,415.56 | |
| 45108 | Removal of anorectal lesion | | + | $5,727.15 | |
| 45150 | Excision of rectal stricture | | + | $5,727.15 | |
| 45160 | Excision of rectal lesion | | + | $5,727.15 | |
| 45170 | Excision of rectal lesion | | + | $5,727.15 | |
| 45190 | Destruction, rectal tumor | | + | $5,727.15 | |
| 45300 | Proctosigmoidoscopy dx | | + | $924.93 | |
| 45303 | Proctosigmoidoscopy dilate | | + | $924.93 | |
| 45305 | Proctosigmoidoscopy w/bx | | + | $924.93 | |
| 45307 | Proctosigmoidoscopy fb | | + | $924.93 | |
| 45308 | Proctosigmoidoscopy removal | | + | $1,891.62 | |
| 45309 | Proctosigmoidoscopy removal | | + | $1,891.62 | |
| 45315 | Proctosigmoidoscopy removal | | + | $1,891.62 | |
| 45317 | Proctosigmoidoscopy bleed | | + | $924.93 | |
| 45320 | Proctosigmoidoscopy ablate | | + | $1,891.62 | |
| 45321 | Proctosigmoidoscopy volvul | | + | $1,891.62 | |
| 45327 | Proctosigmoidoscopy w/stent | | + | $1,891.62 | |
| 45330 | Diagnostic sigmoidoscopy | | + | $924.93 | |
| 45331 | Sigmoidoscopy and biopsy | | + | $924.93 | |
| 45332 | Sigmoidoscopy w/fb removal | | + | $924.93 | |
| 45333 | Sigmoidoscopy & polypectomy | | + | $1,891.62 | |
| 45334 | Sigmoidoscopy for bleeding | | + | $1,891.62 | |
| 45335 | Sigmoidoscope w/submuc inj | | + | $1,891.62 | |
| 45337 | Sigmoidoscopy & decompress | | + | $1,891.62 | |
| 45338 | Sigmoidoscpy w/tumr remove | | + | $1,891.62 | |
| 45339 | Sigmoidoscopy w/ablate tumr | | + | $1,891.62 | |
| 45340 | Sig w/balloon dilation | | + | $1,891.62 | |
| 45341 | Sigmoidoscopy w/ultrasound | | + | $1,891.62 | |
| 45342 | Sigmoidoscopy w/us guide bx | | + | $1,891.62 | |
| 45345 | Sigmoidoscopy w/stent | | + | $1,891.62 | |
| 45355 | Surgical colonoscopy | | + | $2,067.65 | |
| 45378 | Diagnostic colonoscopy | | + | $2,067.65 | |
| 45379 | Colonoscopy w/fb removal | | + | $2,067.65 | |
| 45380 | Colonoscopy and biopsy | | + | $2,067.65 | |
| 45381 | Colonoscope, submucous inj | | + | $2,067.65 | |
| 45382 | Colonoscopy/control bleeding | | + | $2,067.65 | |
| 45383 | Lesion removal colonoscopy | | + | $2,067.65 | |
| 45384 | Lesion remove colonoscopy | | + | $2,067.65 | |
| 45385 | Lesion removal colonoscopy | | + | $2,067.65 | |
| 45386 | Colonoscope dilate stricture | | + | $2,067.65 | |
| 45387 | Colonoscopy w/stent | | + | $2,067.65 | |
| 45500 | Repair of rectum | | + | $5,727.15 | |
| 45505 | Repair of rectum | | + | $5,727.15 | |
| 45520 | Treatment of rectal prolapse | | + | $449.39 | |
| 45560 | Repair of rectocele | | + | $5,727.15 | |
| 45900 | Reduction of rectal prolapse | | + | $922.31 | |
| 45905 | Dilation of anal sphincter | | + | $4,415.56 | |
| 45910 | Dilation of rectal narrowing | | + | $4,415.56 | |
| 45915 | Remove rectal obstruction | | + | $922.31 | |
| 45999 | Rectum surgery procedure | | + | $922.31 | |

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[1] See end of table.

## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 46020 | Placement of seton | | + | $922.31 | |
| 46030 | Removal of rectal marker | | + | $922.31 | |
| 46040 | Incision of rectal abscess | | + | $2,748.63 | |
| 46045 | Incision of rectal abscess | | + | $5,727.15 | |
| 46050 | Incision of anal abscess | | + | $922.31 | |
| 46060 | Incision of rectal abscess | | + | $5,727.15 | |
| 46070 | Incision of anal septum | | + | $2,748.63 | |
| 46080 | Incision of anal sphincter | | + | $4,415.56 | |
| 46083 | Incise external hemorrhoid | | + | $922.31 | |
| 46200 | Removal of anal fissure | | + | $5,727.15 | |
| 46210 | Removal of anal crypt | | + | $4,415.56 | |
| 46211 | Removal of anal crypts | | + | $5,727.15 | |
| 46220 | Removal of anal tag | | + | $4,415.56 | |
| 46221 | Ligation of hemorrhoid(s) | | + | $922.31 | |
| 46230 | Removal of anal tags | | + | $4,415.56 | |
| 46250 | Hemorrhoidectomy | | + | $5,727.15 | |
| 46255 | Hemorrhoidectomy | | + | $5,727.15 | |
| 46257 | Remove hemorrhoids & fissure | | + | $5,727.15 | |
| 46258 | Remove hemorrhoids & fistula | | + | $5,727.15 | |
| 46260 | Hemorrhoidectomy | | + | $5,727.15 | |
| 46261 | Remove hemorrhoids & fissure | | + | $5,727.15 | |
| 46262 | Remove hemorrhoids & fistula | | + | $5,727.15 | |
| 46270 | Removal of anal fistula | | + | $5,727.15 | |
| 46275 | Removal of anal fistula | | + | $5,727.15 | |
| 46280 | Removal of anal fistula | | + | $5,727.15 | |
| 46285 | Removal of anal fistula | | + | $5,727.15 | |
| 46288 | Repair anal fistula | | + | $5,727.15 | |
| 46320 | Removal of hemorrhoid clot | | + | $922.31 | |
| 46500 | Injection into hemorrhoid(s) | | + | $2,748.63 | |
| 46600 | Diagnostic anoscopy | | | $175.05 | |
| 46604 | Anoscopy and dilation | | + | $1,891.62 | |
| 46606 | Anoscopy and biopsy | | + | $1,891.62 | |
| 46608 | Anoscopy, remove for body | | + | $1,891.62 | |
| 46610 | Anoscopy, remove lesion | | + | $1,891.62 | |
| 46611 | Anoscopy | | + | $1,891.62 | |
| 46612 | Anoscopy, remove lesions | | + | $1,891.62 | |
| 46614 | Anoscopy, control bleeding | | + | $1,891.62 | |
| 46615 | Anoscopy | | + | $1,891.62 | |
| 46700 | Repair of anal stricture | | + | $5,727.15 | |
| 46706 | Repr of anal fistula w/glue | | + | $922.31 | |
| 46750 | Repair of anal sphincter | | + | $5,727.15 | |
| 46753 | Reconstruction of anus | | + | $5,727.15 | |
| 46754 | Removal of suture from anus | | + | $4,415.56 | |
| 46760 | Repair of anal sphincter | | + | $5,727.15 | |
| 46761 | Repair of anal sphincter | | + | $5,727.15 | |
| 46762 | Implant artificial sphincter | | + | $5,727.15 | |
| 46900 | Destruction, anal lesion(s) | | + | $705.44 | |
| 46910 | Destruction, anal lesion(s) | | + | $4,266.53 | |
| 46916 | Cryosurgery, anal lesion(s) | | + | $290.03 | |
| 46917 | Laser surgery, anal lesions | | + | $5,037.38 | |
| 46922 | Excision of anal lesion(s) | | + | $5,037.38 | |
| 46924 | Destruction, anal lesion(s) | | + | $5,037.38 | |
| 46934 | Destruction of hemorrhoids | | + | $2,748.63 | |
| 46935 | Destruction of hemorrhoids | | + | $2,748.63 | |
| 46936 | Destruction of hemorrhoids | | + | $4,415.56 | |
| 46937 | Cryotherapy of rectal lesion | | + | $4,415.56 | |
| 46938 | Cryotherapy of rectal lesion | | + | $5,727.15 | |
| 46940 | Treatment of anal fissure | | + | $4,415.56 | |
| 46942 | Treatment of anal fissure | | + | $922.31 | |
| 46945 | Ligation of hemorrhoids | | + | $2,748.63 | |
| 46946 | Ligation of hemorrhoids | | + | $2,748.63 | |
| 46999 | Anus surgery procedure | | + | $922.31 | |
| 47000 | Needle biopsy of liver | | + | $1,614.67 | |
| 47011 | Percut drain, liver lesion | | + | $841.31 | |
| 47100 | Wedge biopsy of liver | | | $1,727.22 | MedStat |
| 47370 | Laparo ablate liver tumor rf | | + | $8,214.50 | |

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[1] See end of table.

### TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 47371 | Laparo ablate liver cryosurg | | + | $8,214.50 | |
| 47379 | Laparoscope procedure, liver | | + | $8,214.50 | |
| 47382 | Percut ablate liver rf | | + | $9,694.54 | |
| 47399 | Liver surgery procedure | | + | $841.31 | |
| 47490 | Incision of gallbladder | | + | $2,704.19 | |
| 47510 | Insert catheter, bile duct | | + | $2,704.19 | |
| 47511 | Insert bile duct drain | | + | $2,704.19 | |
| 47525 | Change bile duct catheter | | + | $2,897.55 | |
| 47530 | Revise/reinsert bile tube | | + | $561.75 | |
| 47552 | Biliary endoscopy thru skin | | + | $2,704.19 | |
| 47553 | Biliary endoscopy thru skin | | + | $2,704.19 | |
| 47554 | Biliary endoscopy thru skin | | + | $2,704.19 | |
| 47555 | Biliary endoscopy thru skin | | + | $2,704.19 | |
| 47556 | Biliary endoscopy thru skin | | + | $2,704.19 | |
| 47560 | Laparoscopy w/cholangio | | + | $8,214.50 | |
| 47561 | Laparo w/cholangio/biopsy | | + | $8,214.50 | |
| 47562 | Laparoscopic cholecystectomy | | + | $10,840.33 | |
| 47563 | Laparo cholecystectomy/graph | | + | $10,840.33 | |
| 47564 | Laparo cholecystectomy/explr | | + | $10,840.33 | |
| 47579 | Laparoscope proc, biliary | | + | $8,214.50 | |
| 47600 | Removal of gallbladder | | | $13,348.18 | MedStat |
| 47630 | Remove bile duct stone | | + | $2,704.19 | |
| 47999 | Bile tract surgery procedure | | + | $2,704.19 | |
| 48102 | Needle biopsy, pancreas | | + | $1,614.67 | |
| 48511 | Drain pancreatic pseudocyst | | + | $841.31 | |
| 48999 | Pancreas surgery procedure | | + | $841.31 | |
| 49000 | Exploration of abdomen | | | $5,511.93 | MedStat |
| 49020 | Drain abdominal abscess | | | $6,962.55 | MDR |
| 49021 | Drain abdominal abscess | | | $4,641.70 | MDR |
| 49060 | Drain, open, retrop abscess | | | $5,802.13 | MDR |
| 49080 | Puncture, peritoneal cavity | | + | $906.62 | |
| 49081 | Removal of abdominal fluid | | + | $906.62 | |
| 49085 | Remove abdomen foreign body | | + | $5,269.92 | |
| 49180 | Biopsy, abdominal mass | | + | $1,614.67 | |
| 49200 | Removal of abdominal lesion | | + | $8,214.50 | |
| 49250 | Excision of umbilicus | | + | $5,269.92 | |
| 49320 | Diag laparo separate proc | | + | $8,214.50 | |
| 49321 | Laparoscopy, biopsy | | + | $8,214.50 | |
| 49322 | Laparoscopy, aspiration | | + | $8,214.50 | |
| 49323 | Laparo drain lymphocele | | + | $8,214.50 | |
| 49329 | Laparo proc, abdm/per/oment | | + | $8,214.50 | |
| 49419 | Insrt abdom cath for chemotx | | + | $20,540.52 | |
| 49420 | Insert abdom drain, temp | | + | $7,584.83 | |
| 49421 | Insert abdom drain, perm | | + | $7,584.83 | |
| 49422 | Remove perm cannula/catheter | | + | $5,013.87 | |
| 49423 | Exchange drainage catheter | | + | $2,704.19 | |
| 49426 | Revise abdomen-venous shunt | | + | $5,269.92 | |
| 49429 | Removal of shunt | | + | $5,013.87 | |
| 49491 | Rpr hern preemie reduc | | + | $6,936.88 | |
| 49492 | Rpr ing hern premie, blocked | | + | $6,936.88 | |
| 49495 | Rpr ing hernia baby, reduc | | + | $6,936.88 | |
| 49496 | Rpr ing hernia baby, blocked | | + | $6,936.88 | |
| 49500 | Rpr ing hernia, init, reduce | | + | $6,936.88 | |
| 49501 | Rpr ing hernia, init blocked | | + | $6,936.88 | |
| 49505 | Prp i/hern init reduc>5 yr | | + | $6,936.88 | |
| 49507 | Prp i/hern init block>5 yr | | + | $6,936.88 | |
| 49520 | Rerepair ing hernia, reduce | | + | $6,936.88 | |
| 49521 | Rerepair ing hernia, blocked | | + | $6,936.88 | |
| 49525 | Repair ing hernia, sliding | | + | $6,936.88 | |
| 49540 | Repair lumbar hernia | | + | $6,936.88 | |
| 49550 | Rpr fem hernia, init, reduce | | + | $6,936.88 | |
| 49553 | Rpr fem hernia, init blocked | | + | $6,936.88 | |
| 49555 | Rerepair fem hernia, reduce | | + | $6,936.88 | |
| 49557 | Rerepair fem hernia, blocked | | + | $6,936.88 | |
| 49560 | Rpr ventral hern init, reduc | | + | $6,936.88 | |
| 49561 | Rpr ventral hern init, block | | + | $6,936.88 | |

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[1] See end of table

## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator[1] | Multiple Surgery Reduction Applies | Charge | Charge Method-ology |
|---|---|---|---|---|---|
| 49565 | Rerepair ventrl hern, reduce | | + | $6,936.88 | |
| 49566 | Rerepair ventrl hern, block | | + | $6,936.88 | |
| 49568 | Hernia repair w/mesh | | + | $6,936.88 | |
| 49570 | Rpr epigastric hern, reduce | | + | $6,936.88 | |
| 49572 | Rpr epigastric hern, blocked | | + | $6,936.88 | |
| 49580 | Rpr umbil hern, reduc < 5 yr | | + | $6,936.88 | |
| 49582 | Rpr umbil hern, block < 5 yr | | + | $6,936.88 | |
| 49585 | Rpr umbil hern, reduc > 5 yr | | + | $6,936.88 | |
| 49587 | Rpr umbil hern, block > 5 yr | | + | $6,936.88 | |
| 49590 | Repair spigilian hernia | | + | $6,936.88 | |
| 49600 | Repair umbilical lesion | | + | $6,936.88 | |
| 49650 | Laparo hernia repair initial | | + | $10,840.33 | |
| 49651 | Laparo hernia repair recur | | + | $10,840.33 | |
| 49659 | Laparo proc, hernia repair | | + | $10,840.33 | |
| 49900 | Repair of abdominal wall | | | $6,962.55 | MDR |
| 49999 | Abdomen surgery procedure | | + | $5,269.92 | |
| 50021 | Renal abscess, percut drain | | + | $841.31 | |
| 50080 | Removal of kidney stone | | + | $8,705.69 | |
| 50081 | Removal of kidney stone | | + | $8,705.69 | |
| 50200 | Biopsy of kidney | | + | $1,614.67 | |
| 50390 | Drainage of kidney lesion | | + | $1,614.67 | |
| 50392 | Insert kidney drain | | + | $4,235.28 | |
| 50393 | Insert ureteral tube | | + | $4,235.28 | |
| 50395 | Create passage to kidney | | + | $4,235.28 | |
| 50396 | Measure kidney pressure | | + | $303.08 | |
| 50398 | Change kidney tube | | + | $2,897.55 | |
| 50541 | Laparo ablate renal cyst | | + | $8,214.50 | |
| 50542 | Laparo ablate renal mass | | + | $10,840.33 | |
| 50543 | Laparo partial nephrectomy | | + | $10,840.33 | |
| 50544 | Laparoscopy, pyeloplasty | | + | $8,214.50 | |
| 50549 | Laparoscope proc, renal | | + | $8,214.50 | |
| 50551 | Kidney endoscopy | | + | $1,700.91 | |
| 50553 | Kidney endoscopy | | + | $4,235.28 | |
| 50555 | Kidney endoscopy & biopsy | | + | $1,700.91 | |
| 50557 | Kidney endoscopy & treatment | | + | $5,604.37 | |
| 50559 | Renal endoscopy/radiotracer | | + | $1,700.91 | |
| 50561 | Kidney endoscopy & treatment | | + | $4,235.28 | |
| 50562 | Renal scope w/tumor resect | | + | $1,700.91 | |
| 50575 | Kidney endoscopy | | | $6,617.01 | MDR |
| 50590 | Fragmenting of kidney stone | | + | $11,890.64 | |
| 50686 | Measure ureter pressure | | + | $303.08 | |
| 50688 | Change of ureter tube | | + | $561.75 | |
| 50945 | Laparoscopy ureterolithotomy | | + | $10,840.33 | |
| 50947 | Laparo new ureter/bladder | | + | $10,840.33 | |
| 50948 | Laparo new ureter/bladder | | + | $10,840.33 | |
| 50949 | Laparoscope proc, ureter | | + | $8,214.50 | |
| 50951 | Endoscopy of ureter | | + | $1,700.91 | |
| 50953 | Endoscopy of ureter | | + | $1,700.91 | |
| 50955 | Ureter endoscopy & biopsy | | + | $4,235.28 | |
| 50957 | Ureter endoscopy & treatment | | + | $4,235.28 | |
| 50959 | Ureter endoscopy & tracer | | + | $4,235.28 | |
| 50961 | Ureter endoscopy & treatment | | + | $4,235.28 | |
| 50970 | Ureter endoscopy | | + | $1,700.91 | |
| 50972 | Ureter endoscopy & catheter | | + | $1,700.91 | |
| 50974 | Ureter endoscopy & biopsy | | + | $4,235.28 | |
| 50976 | Ureter endoscopy & treatment | | + | $4,235.28 | |
| 50978 | Ureter endoscopy & tracer | | + | $4,235.28 | |
| 50980 | Ureter endoscopy & treatment | | + | $4,235.28 | |
| 51000 | Drainage of bladder | | + | $3,307.76 | |
| 51005 | Drainage of bladder | | + | $303.08 | |
| 51010 | Drainage of bladder | | + | $3,307.76 | |
| 51020 | Incise & treat bladder | | + | $5,604.37 | |
| 51030 | Incise & treat bladder | | + | $5,604.37 | |
| 51040 | Incise & drain bladder | | + | $5,604.37 | |
| 51045 | Incise bladder/drain ureter | | + | $1,700.91 | |
| 51050 | Removal of bladder stone | | + | $5,604.37 | |

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[1] See end of table.

### TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 51065 | Remove ureter calculus | | + | $5,604.37 | |
| 51080 | Drainage of bladder abscess | | + | $2,701.58 | |
| 51500 | Removal of bladder cyst | | + | $6,936.88 | |
| 51520 | Removal of bladder lesion | | + | $5,604.37 | |
| 51700 | Irrigation of bladder | | + | $303.08 | |
| 51705 | Change of bladder tube | | + | $561.75 | |
| 51710 | Change of bladder tube | | + | $561.75 | |
| 51715 | Endoscopic injection/implant | | + | $7,637.09 | |
| 51720 | Treatment of bladder lesion | | + | $802.11 | |
| 51725 | Simple cystometrogram | b | + | $802.11 | |
| 51726 | Complex cystometrogram | b | + | $802.11 | |
| 51736 | Urine flow measurement | b | + | $303.08 | |
| 51741 | Electro-uroflowmetry, first | b | + | $303.08 | |
| 51772 | Urethra pressure profile | b | + | $303.08 | |
| 51784 | Anal/urinary muscle study | b | + | $303.08 | |
| 51785 | Anal/urinary muscle study | b | + | $303.08 | |
| 51792 | Urinary reflex study | b | + | $303.08 | |
| 51795 | Urine voiding pressure study. | b | + | $303.08 | |
| 51797 | Intraabdominal pressure test | b | + | $303.08 | |
| 51798 | Us urine capacity measure | b | | $175.05 | |
| 51880 | Repair of bladder opening | | + | $5,604.37 | |
| 51990 | Laparo urethral suspension | | + | $10,840.33 | |
| 51992 | Laparo sling operation | | + | $15,368.09 | |
| 52000 | Cystoscopy | | + | $1,700.91 | |
| 52001 | Cystoscopy, removal of clots | | + | $1,700.91 | |
| 52005 | Cystoscopy & ureter catheter | | + | $4,235.28 | |
| 52007 | Cystoscopy and biopsy | | + | $4,235.28 | |
| 52010 | Cystoscopy & duct catheter | | + | $1,700.91 | |
| 52204 | Cystoscopy | | + | $4,235.28 | |
| 52214 | Cystoscopy and treatment | | + | $5,604.37 | |
| 52224 | Cystoscopy and treatment | | + | $5,604.37 | |
| 52234 | Cystoscopy and treatment | | + | $5,604.37 | |
| 52235 | Cystoscopy and treatment | | + | $5,604.37 | |
| 52240 | Cystoscopy and treatment | | + | $5,604.37 | |
| 52250 | Cystoscopy and radiotracer | | + | $5,604.37 | |
| 52260 | Cystoscopy and treatment | | + | $4,235.28 | |
| 52265 | Cystoscopy and treatment | | + | $1,700.91 | |
| 52270 | Cystoscopy & revise urethra | | + | $4,235.28 | |
| 52275 | Cystoscopy & revise urethra | | + | $4,235.28 | |
| 52276 | Cystoscopy and treatment | | + | $4,235.28 | |
| 52277 | Cystoscopy and treatment | | + | $5,604.37 | |
| 52281 | Cystoscopy and treatment | | + | $4,235.28 | |
| 52282 | Cystoscopy, implant stent | | + | $8,705.69 | |
| 52283 | Cystoscopy and treatment | | + | $4,235.28 | |
| 52285 | Cystoscopy and treatment | | + | $4,235.28 | |
| 52290 | Cystoscopy and treatment | | + | $4,235.28 | |
| 52300 | Cystoscopy and treatment | | + | $4,235.28 | |
| 52301 | Cystoscopy and treatment | | + | $4,235.28 | |
| 52305 | Cystoscopy and treatment | | + | $4,235.28 | |
| 52310 | Cystoscopy and treatment | | + | $1,700.91 | |
| 52315 | Cystoscopy and treatment | | + | $4,235.28 | |
| 52317 | Remove bladder stone | | + | $5,604.37 | |
| 52318 | Remove bladder stone | | + | $5,604.37 | |
| 52320 | Cystoscopy and treatment | | + | $5,604.37 | |
| 52325 | Cystoscopy, stone removal | | + | $5,604.37 | |
| 52327 | Cystoscopy, inject material | | + | $5,604.37 | |
| 52330 | Cystoscopy and treatment | | + | $5,604.37 | |
| 52332 | Cystoscopy and treatment | | + | $5,604.37 | |
| 52334 | Create passage to kidney | | + | $5,604.37 | |
| 52341 | Cysto w/ureter stricture tx | | + | $5,604.37 | |
| 52342 | Cysto w/up stricture tx | | + | $5,604.37 | |
| 52343 | Cysto w/renal stricture tx | | + | $5,604.37 | |
| 52344 | Cysto/uretero, stone remove | | + | $5,604.37 | |
| 52345 | Cysto/uretero w/up stricture | | + | $5,604.37 | |
| 52346 | Cystouretero w/renal strict | | + | $5,604.37 | |
| 52347 | Cystoscopy, resect ducts | | + | $1,700.91 | |

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## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 52351 | Cystouretero & or pyeloscope | | + | $1,700.91 | |
| 52352 | Cystouretero w/stone remove | | + | $5,604.37 | |
| 52353 | Cystouretero w/lithotripsy | | + | $8,705.69 | |
| 52354 | Cystouretero w/biopsy | | + | $5,604.37 | |
| 52355 | Cystouretero w/excise tumor | | + | $5,604.37 | |
| 52400 | Cystouretero w/congen repr | | + | $5,604.37 | |
| 52450 | Incision of prostate | | + | $5,604.37 | |
| 52500 | Revision of bladder neck | | + | $5,604.37 | |
| 52510 | Dilation prostatic urethra | | + | $4,235.28 | |
| 52601 | Prostatectomy (TURP) | | + | $8,705.69 | |
| 52606 | Control postop bleeding | | + | $5,604.37 | |
| 52612 | Prostatectomy, first stage | | + | $8,705.69 | |
| 52614 | Prostatectomy, second stage | | + | $8,705.69 | |
| 52620 | Remove residual prostate | | + | $8,705.69 | |
| 52630 | Remove prostate regrowth | | + | $8,705.69 | |
| 52640 | Relieve bladder contracture | | + | $5,604.37 | |
| 52647 | Laser surgery of prostate | | + | $8,705.69 | |
| 52648 | Laser surgery of prostate | | + | $8,705.69 | |
| 52700 | Drainage of prostate abscess | | + | $5,604.37 | |
| 53000 | Incision of urethra | | + | $4,156.89 | |
| 53010 | Incision of urethra | | + | $4,156.89 | |
| 53020 | Incision of urethra | | + | $4,156.89 | |
| 53025 | Incision of urethra | | + | $4,156.89 | |
| 53040 | Drainage of urethra abscess | | + | $4,156.89 | |
| 53060 | Drainage of urethra abscess | | + | $4,156.89 | |
| 53080 | Drainage of urinary leakage | | + | $4,156.89 | |
| 53200 | Biopsy of urethra | | + | $4,156.89 | |
| 53210 | Removal of urethra | | + | $6,597.21 | |
| 53215 | Removal of urethra | | + | $6,597.21 | |
| 53220 | Treatment of urethra lesion | | + | $6,597.21 | |
| 53230 | Removal of urethra lesion | | + | $6,597.21 | |
| 53235 | Removal of urethra lesion | | + | $6,597.21 | |
| 53240 | Surgery for urethra pouch | | + | $6,597.21 | |
| 53250 | Removal of urethra gland | | + | $4,156.89 | |
| 53260 | Treatment of urethra lesion | | + | $4,156.89 | |
| 53265 | Treatment of urethra lesion | | + | $4,156.89 | |
| 53270 | Removal of urethra gland | | + | $7,637.09 | |
| 53275 | Repair of urethra defect | | + | $4,156.89 | |
| 53400 | Revise urethra, stage 1 | | + | $6,597.21 | |
| 53405 | Revise urethra, stage 2 | | + | $6,597.21 | |
| 53410 | Reconstruction of urethra | | + | $6,597.21 | |
| 53420 | Reconstruct urethra, stage 1 | | + | $6,597.21 | |
| 53425 | Reconstruct urethra, stage 2 | | + | $6,597.21 | |
| 53430 | Reconstruction of urethra | | + | $6,597.21 | |
| 53431 | Reconstruct urethra/bladder | | + | $6,597.21 | |
| 53440 | Male sling procedure | | + | $22,074.67 | |
| 53442 | Remove/revise male sling | | + | $4,156.89 | |
| 53444 | Insert tandem cuff | | + | $22,074.67 | |
| 53445 | Insert uro/ves nck sphincter | | + | $22,074.67 | |
| 53446 | Remove uro sphincter | | + | $6,597.21 | |
| 53447 | Remove/replace ur sphincter | | + | $22,074.67 | |
| 53449 | Repair uro sphincter | | + | $6,597.21 | |
| 53450 | Revision of urethra | | + | $6,597.21 | |
| 53460 | Revision of urethra | | + | $6,597.21 | |
| 53502 | Repair of urethra injury | | + | $4,156.89 | |
| 53505 | Repair of urethra injury | | + | $7,637.09 | |
| 53510 | Repair of urethra injury | | + | $4,156.89 | |
| 53515 | Repair of urethra injury | | + | $6,597.21 | |
| 53520 | Repair of urethra defect | | + | $6,597.21 | |
| 53600 | Dilate urethra stricture | | + | $802.11 | |
| 53601 | Dilate urethra stricture | | + | $303.08 | |
| 53605 | Dilate urethra stricture | | + | $4,235.28 | |
| 53620 | Dilate urethra stricture | | + | $3,307.76 | |
| 53621 | Dilate urethra stricture | | + | $303.08 | |
| 53660 | Dilation of urethra | | + | $303.08 | |
| 53661 | Dilation of urethra | | + | $303.08 | |

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[1] See end of table.

### TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 53665 | Dilation of urethra | | + | $4,156.89 | |
| 53850 | Prostatic microwave thermotx | | + | $13,095.14 | |
| 53852 | Prostatic rf thermotx | | + | $13,095.14 | |
| 53853 | Prostatic water thermother | | + | $5,816.72 | |
| 53899 | Urology surgery procedure | | + | $303.08 | |
| 54000 | Slitting of prepuce | | + | $4,156.89 | |
| 54001 | Slitting of prepuce | | + | $4,156.89 | |
| 54015 | Drain penis lesion | | + | $2,701.58 | |
| 54050 | Destruction, penis lesion(s) | | + | $290.03 | |
| 54055 | Destruction, penis lesion(s) | | + | $4,266.63 | |
| 54056 | Cryosurgery, penis lesion(s) | | + | $211.64 | |
| 54057 | Laser surg, penis lesion(s) | | + | $4,266.63 | |
| 54060 | Excision of penis lesion(s) | | + | $4,266.63 | |
| 54065 | Destruction, penis lesion(s) | | + | $5,037.38 | |
| 54100 | Biopsy of penis | | + | $3,757.15 | |
| 54105 | Biopsy of penis | | + | $4,689.89 | |
| 54110 | Treatment of penis lesion | | + | $7,885.29 | |
| 54111 | Treat penis lesion, graft | | + | $7,885.29 | |
| 54112 | Treat penis lesion, graft | | + | $7,885.29 | |
| 54115 | Treatment of penis lesion | | + | $4,352.84 | |
| 54120 | Partial removal of penis | | + | $7,885.29 | |
| 54150 | Circumcision | | + | $4,880.64 | |
| 54152 | Circumcision | | + | $4,880.64 | |
| 54160 | Circumcision | | + | $4,880.64 | |
| 54161 | Circumcision | | + | $4,880.64 | |
| 54162 | Lysis penil circumic lesion | | + | $4,880.64 | |
| 54163 | Repair of circumcision | | + | $4,880.64 | |
| 54164 | Frenulotomy of penis | | + | $4,880.64 | |
| 54200 | Treatment of penis lesion | | + | $802.11 | |
| 54205 | Treatment of penis lesion | | + | $7,885.29 | |
| 54220 | Treatment of penis lesion | | + | $802.11 | |
| 54231 | Dynamic cavernosometry | | + | $3,307.76 | |
| 54235 | Penile injection | | + | $303.08 | |
| 54240 | Penis study | b | + | $303.08 | |
| 54250 | Penis study | b | + | $3,307.76 | |
| 54300 | Revision of penis | | + | $7,885.29 | |
| 54304 | Revision of penis | | + | $7,885.29 | |
| 54308 | Reconstruction of urethra | | + | $7,885.29 | |
| 54312 | Reconstruction of urethra | | + | $7,885.29 | |
| 54316 | Reconstruction of urethra | | + | $7,885.29 | |
| 54318 | Reconstruction of urethra | | + | $7,885.29 | |
| 54322 | Reconstruction of urethra | | + | $7,885.29 | |
| 54324 | Reconstruction of urethra | | + | $7,885.29 | |
| 54326 | Reconstruction of urethra | | + | $7,885.29 | |
| 54328 | Revise penis/urethra | | + | $7,885.29 | |
| 54340 | Secondary urethral surgery | | + | $7,885.29 | |
| 54344 | Secondary urethral surgery | | + | $7,885.29 | |
| 54348 | Secondary urethral surgery | | + | $7,885.29 | |
| 54352 | Reconstruct urethra/penis | | + | $7,885.29 | |
| 54360 | Penis plastic surgery | | + | $7,885.29 | |
| 54380 | Repair penis | | + | $7,885.29 | |
| 54385 | Repair penis | | + | $7,885.29 | |
| 54400 | Insert semi-rigid prosthesis | | + | $21,229.86 | |
| 54401 | Insert self-contd prosthesis | | + | $21,229.86 | |
| 54405 | Insert multi-comp penis pros | | + | $21,229.86 | |
| 54406 | Remove muti-comp penis pros | | + | $7,885.29 | |
| 54408 | Repair multi-comp penis pros | | + | $7,885.29 | |
| 54410 | Remove/replace penis prosth | | + | $21,229.86 | |
| 54415 | Remove self-contd penis pros | | + | $7,885.29 | |
| 54416 | Remv/repl penis contain pros | | + | $21,229.86 | |
| 54420 | Revision of penis | | + | $7,885.29 | |
| 54435 | Revision of penis | | + | $7,885.29 | |
| 54440 | Repair of penis | | + | $7,885.29 | |
| 54450 | Preputial stretching | | + | $802.11 | |
| 54500 | Biopsy of testis | | + | $841.31 | |
| 54505 | Biopsy of testis | | + | $5,732.38 | |

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[1] See end of table.

### TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 54512 | Excise lesion testis | | + | $5,732.38 | |
| 54520 | Removal of testis | | + | $5,732.38 | |
| 54522 | Orchiectomy, partial | | + | $5,732.38 | |
| 54530 | Removal of testis | | + | $6,936.88 | |
| 54550 | Exploration for testis | | + | $6,936.88 | |
| 54600 | Reduce testis torsion | | + | $5,732.38 | |
| 54620 | Suspension of testis | | + | $5,732.38 | |
| 54640 | Suspension of testis | | + | $6,936.88 | |
| 54660 | Revision of testis | | + | $5,732.38 | |
| 54670 | Repair testis injury | | + | $5,732.38 | |
| 54680 | Relocation of testis(es) | | + | $5,732.38 | |
| 54690 | Laparoscopy, orchiectomy | | + | $10,840.33 | |
| 54692 | Laparoscopy, orchiopexy | | + | $15,368.09 | |
| 54699 | Laparoscope proc, testis | | + | $8,214.50 | |
| 54700 | Drainage of scrotum | | + | $5,732.38 | |
| 54800 | Biopsy of epididymis | | + | $470.28 | |
| 54820 | Exploration of epididymis | | + | $5,732.38 | |
| 54830 | Remove epididymis lesion | | + | $5,732.38 | |
| 54840 | Remove epididymis lesion | | + | $5,732.38 | |
| 54860 | Removal of epididymis | | + | $5,732.38 | |
| 54861 | Removal of epididymis | | + | $5,732.38 | |
| 54900 | Fusion of spermatic ducts | | + | $5,732.38 | |
| 54901 | Fusion of spermatic ducts | | + | $5,732.38 | |
| 55000 | Drainage of hydrocele | | + | $470.28 | |
| 55040 | Removal of hydrocele | | + | $6,936.88 | |
| 55041 | Removal of hydroceles | | + | $6,936.88 | |
| 55060 | Repair of hydrocele | | + | $5,732.38 | |
| 55100 | Drainage of scrotum abscess | | + | $2,701.58 | |
| 55110 | Explore scrotum | | + | $5,732.38 | |
| 55120 | Removal of scrotum lesion | | + | $5,732.38 | |
| 55150 | Removal of scrotum | | + | $5,732.38 | |
| 55175 | Revision of scrotum | | + | $5,732.38 | |
| 55180 | Revision of scrotum | | + | $5,732.38 | |
| 55200 | Incision of sperm duct | | + | $5,732.38 | |
| 55250 | Removal of sperm duct(s) | | + | $5,732.38 | |
| 55400 | Repair of sperm duct | | + | $5,732.38 | |
| 55450 | Ligation of sperm duct | | + | $5,732.38 | |
| 55500 | Removal of hydrocele | | + | $5,732.38 | |
| 55520 | Removal of sperm cord lesion | | + | $5,732.38 | |
| 55530 | Revise spermatic cord veins | | + | $5,732.38 | |
| 55535 | Revise spermatic cord veins | | + | $6,936.88 | |
| 55540 | Revise hernia & sperm veins | | + | $6,936.88 | |
| 55550 | Laparo ligate spermatic vein | | + | $10,840.33 | |
| 55559 | Laparo proc, spermatic cord | | + | $8,214.50 | |
| 55680 | Remove sperm pouch lesion | | + | $5,732.38 | |
| 55700 | Biopsy of prostate | | + | $995.47 | |
| 55705 | Biopsy of prostate | | + | $995.47 | |
| 55720 | Drainage of prostate abscess | | + | $5,604.37 | |
| 55725 | Drainage of prostate abscess | | + | $5,604.37 | |
| 55859 | Percut/needle insert, pros | | + | $8,705.69 | |
| 55860 | Surgical exposure, prostate | | + | $3,307.76 | |
| 55870 | Vag hyst w/enterocele repair | | + | $423.26 | |
| 55873 | Cryoablate prostate | | + | $16,507.45 | |
| 55899 | Genital surgery procedure | | + | $303.08 | |
| 56405 | I & D of vulva/perineum | | + | $734.18 | |
| 56420 | Drainage of gland abscess | | + | $734.18 | |
| 56440 | Surgery for vulva lesion | | + | $4,859.71 | |
| 56441 | Lysis of labial lesion(s) | | + | $3,903.45 | |
| 56501 | Destroy, vulva lesions, sim | | + | $4,266.63 | |
| 56515 | Destroy vulva lesion/s compl | | + | $5,037.38 | |
| 56605 | Biopsy of vulva/perineum | | + | $1,016.36 | |
| 56606 | Biopsy of vulva/perineum | | + | $1,016.36 | |
| 56620 | Partial removal of vulva | | + | $6,398.64 | |
| 56625 | Complete removal of vulva | | + | $6,398.64 | |
| 56700 | Partial removal of hymen | | + | $4,859.71 | |
| 56720 | Incision of hymen | | + | $3,903.45 | |

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[1] See end of table.

## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 56740 | Remove vagina gland lesion | | + | $4,859.71 | |
| 56800 | Repair of vagina | | + | $4,859.71 | |
| 56805 | Repair clitoris | | + | $4,859.71 | |
| 56810 | Repair of perineum | | + | $4,859.71 | |
| 56820 | Exam of vulva w/scope | | + | $282.18 | |
| 56821 | Exam/biopsy of vulva w/scope | | + | $412.82 | |
| 57000 | Exploration of vagina | | + | $4,859.71 | |
| 57010 | Drainage of pelvic abscess | | + | $4,859.71 | |
| 57020 | Drainage of pelvic fluid | | + | $734.18 | |
| 57022 | I & d vaginal hematoma, pp | | + | $2,701.58 | |
| 57023 | I & d vag hematoma, non-ob | | + | $2,701.58 | |
| 57061 | Destroy vag lesions, simple | | + | $4,859.71 | |
| 57065 | Destroy vag lesions, complex | | + | $4,859.71 | |
| 57100 | Biopsy of vagina | | + | $734.18 | |
| 57105 | Biopsy of vagina | | + | $4,859.71 | |
| 57106 | Remove vagina wall, partial | | + | $4,859.71 | |
| 57107 | Remove vagina tissue, part | | + | $6,398.64 | |
| 57109 | Vaginectomy partial w/nodes | | + | $12,285.18 | |
| 57120 | Closure of vagina | | + | $4,859.71 | |
| 57130 | Remove vagina lesion | | + | $4,859.71 | |
| 57135 | Remove vagina lesion | | + | $4,859.71 | |
| 57150 | Treat vagina infection | | + | $54.87 | |
| 57155 | Insert uteri tandems/ovoids | | + | $734.18 | |
| 57160 | Insert pessary/other device | | + | $282.18 | |
| 57170 | Fitting of diaphragm/cap | | + | $54.87 | |
| 57180 | Treat vaginal bleeding | | + | $734.18 | |
| 57200 | Repair of vagina | | + | $4,859.71 | |
| 57210 | Repair vagina/perineum | | + | $4,859.71 | |
| 57220 | Revision of urethra | | + | $6,398.64 | |
| 57230 | Repair of urethral lesion | | + | $4,859.71 | |
| 57240 | Repair bladder & vagina | | + | $6,398.64 | |
| 57250 | Repair rectum & vagina | | + | $6,398.64 | |
| 57260 | Repair of vagina | | + | $6,398.64 | |
| 57265 | Extensive repair of vagina | | + | $6,398.64 | |
| 57268 | Repair of bowel bulge | | + | $6,398.64 | |
| 57284 | Repair paravaginal defect | | + | $6,398.64 | |
| 57287 | Revise/remove sling repair | | + | $12,285.18 | |
| 57288 | Repair bladder defect | | + | $12,285.18 | |
| 57289 | Repair bladder & vagina | | + | $6,398.64 | |
| 57291 | Construction of vagina | | + | $6,398.64 | |
| 57300 | Repair rectum-vagina fistula | | + | $6,398.64 | |
| 57310 | Repair urethrovaginal lesion | | + | $6,398.64 | |
| 57320 | Repair bladder-vagina lesion | | + | $6,398.64 | |
| 57330 | Repair bladder-vagina lesion | | + | $6,398.64 | |
| 57400 | Dilation of vagina | | + | $4,859.71 | |
| 57410 | Pelvic examination | | + | $4,859.71 | |
| 57415 | Remove vaginal foreign body | | + | $4,859.71 | |
| 57420 | Exam of vagina w/scope | | + | $734.18 | |
| 57421 | Exam/biopsy of vag w/scope | | + | $734.18 | |
| 57452 | Exam of cervix w/scope | | + | $412.82 | |
| 57454 | Bx/curett of cervix w/scope | | + | $734.18 | |
| 57455 | Biopsy of cervix w/scope | | + | $734.18 | |
| 57456 | Endocerv curettage w/scope | | + | $734.18 | |
| 57460 | Bx of cervix w/scope, leep | | + | $3,903.45 | |
| 57461 | Conz of cervix w/scope, leep | | + | $4,859.71 | |
| 57500 | Biopsy of cervix | | + | $734.18 | |
| 57505 | Endocervical curettage | | + | $734.18 | |
| 57510 | Cauterization of cervix | | + | $3,903.45 | |
| 57511 | Cryocautery of cervix | | + | $412.82 | |
| 57513 | Laser surgery of cervix | | + | $3,903.45 | |
| 57520 | Conization of cervix | | + | $4,859.71 | |
| 57522 | Conization of cervix | | + | $6,398.64 | |
| 57530 | Removal of cervix | | + | $6,398.64 | |
| 57550 | Removal of residual cervix | | + | $6,398.64 | |
| 57555 | Remove cervix/repair vagina | | + | $6,398.64 | |
| 57556 | Remove cervix, repair bowel | | + | $6,398.64 | |

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[1] See end of table.

### TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 57700 | Revision of cervix | | + | $4,859.71 | |
| 57720 | Revision of cervix | | + | $4,859.71 | |
| 57800 | Dilation of cervical canal | | + | $3,903.45 | |
| 57820 | D & c of residual cervix | | + | $4,180.40 | |
| 58100 | Biopsy of uterus lining | | + | $282.18 | |
| 58120 | Dilation and curettage | | + | $4,180.40 | |
| 58145 | Myomectomy vag method | | + | $6,398.64 | |
| 58301 | Remove intrauterine device | | + | $412.82 | |
| 58321 | Artificial insemination | | + | $423.26 | |
| 58322 | Artificial insemination | | + | $423.26 | |
| 58323 | Sperm washing | | + | $423.26 | |
| 58345 | Reopen fallopian tube | | + | $4,859.71 | |
| 58346 | Insert heyman uteri capsule | | + | $734.18 | |
| 58350 | Reopen fallopian tube | | + | $4,859.71 | |
| 58353 | Endometr ablate, thermal | | + | $3,903.45 | |
| 58545 | Laparoscopic myomectomy | | + | $8,214.50 | |
| 58546 | Laparo-myomectomy, complex | | + | $10,840.33 | |
| 58550 | Laparo-asst vag hysterectomy | | + | $15,368.09 | |
| 58552 | Laparo-vag hyst incl t/o | | + | $10,840.33 | |
| 58553 | Laparo-vag hyst, complex | | + | $10,840.33 | |
| 58554 | Laparo-vag hyst w/t/o, compl | | + | $10,840.33 | |
| 58555 | Hysteroscopy, dx, sep proc | | + | $4,859.71 | |
| 58558 | Hysteroscopy, biopsy | | + | $5,139.28 | |
| 58559 | Hysteroscopy, lysis | | + | $5,139.28 | |
| 58560 | Hysteroscopy, resect septum | | + | $5,139.28 | |
| 58561 | Hysteroscopy, remove myoma | | + | $5,139.28 | |
| 58562 | Hysteroscopy, remove fb | | + | $5,139.28 | |
| 58563 | Hysteroscopy, ablation | | + | $5,139.28 | |
| 58578 | Laparo proc, uterus | | + | $5,139.28 | |
| 58579 | Hysteroscope procedure | | + | $5,139.28 | |
| 58600 | Division of fallopian tube | | + | $4,859.71 | |
| 58615 | Occlude fallopian tube(s) | | + | $4,859.71 | |
| 58660 | Laparoscopy, lysis | | + | $10,840.33 | |
| 58661 | Laparoscopy, remove adnexa | | + | $10,840.33 | |
| 58662 | Laparoscopy, excise lesions | | + | $10,840.33 | |
| 58670 | Laparoscopy, tubal cautery | | + | $10,840.33 | |
| 58671 | Laparoscopy, tubal block | | + | $10,840.33 | |
| 58672 | Laparoscopy, fimbrioplasty | | + | $10,840.33 | |
| 58673 | Laparoscopy, salpingostomy | | + | $10,840.33 | |
| 58679 | Laparo proc, oviduct-ovary | | + | $8,214.50 | |
| 58720 | Removal of ovary/tube(s) | | | $9,019.84 | MedStat |
| 58800 | Drainage of ovarian cyst(s) | | + | $6,398.64 | |
| 58820 | Drain ovary abscess, open | | + | $6,398.64 | |
| 58823 | Drain pelvic abscess, percut | | + | $3,903.45 | |
| 58900 | Biopsy of ovary(s) | | + | $6,398.64 | |
| 58920 | Partial removal of ovary(s) | | + | $12,285.18 | |
| 58925 | Removal of ovarian cyst(s) | | + | $12,285.18 | |
| 58970 | Retrieval of oocyte | | + | $4,859.71 | |
| 58974 | Transfer of embryo | | + | $423.26 | |
| 58976 | Transfer of embryo | | + | $423.26 | |
| 58999 | Genital surgery procedure | | + | $54.87 | |
| 59000 | Amniocentesis, diagnostic | | + | $340.41 | |
| 59001 | Amniocentesis, therapeutic | | + | $340.41 | |
| 59012 | Fetal cord puncture,prenatal | | + | $340.41 | |
| 59015 | Chorion biopsy | | + | $340.41 | |
| 59020 | Fetal contract stress test | b | + | $340.41 | |
| 59025 | Fetal non-stress test | b | + | $340.41 | |
| 59030 | Fetal scalp blood sample | | + | $340.41 | |
| 59150 | Treat ectopic pregnancy | | + | $10,840.33 | |
| 59151 | Treat ectopic pregnancy | | + | $10,840.33 | |
| 59160 | D & c after delivery | | + | $4,180.40 | |
| 59200 | Insert cervical dilator | | + | $412.82 | |
| 59300 | Episiotomy or vaginal repair | | + | $3,903.45 | |
| 59320 | Revision of cervix | | + | $4,859.71 | |
| 59409 | Obstetrical care | | + | $1,067.86 | |
| 59412 | Antepartum manipulation | | + | $1,057.86 | |

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[1] See end of table.

TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 59414 | Deliver placenta | | + | $1,057.86 | |
| 59612 | Vbac delivery only | | + | $1,057.86 | |
| 59812 | Treatment of miscarriage | | + | $4,137.19 | |
| 59820 | Care of miscarriage | | + | $4,137.19 | |
| 59821 | Treatment of miscarriage | | + | $4,137.19 | |
| 59840 | Abortion | | + | $4,103.17 | |
| 59841 | Abortion | | + | $4,103.17 | |
| 59866 | Abortion (mpr) | | + | $340.41 | |
| 59870 | Evacuate mole of uterus | | + | $4,137.19 | |
| 59871 | Remove cerclage suture | | + | $4,859.71 | |
| 59898 | Laparo proc, ob care/deliver | | + | $8,214.50 | |
| 59899 | Maternity care procedure | | + | $340.41 | |
| 60000 | Drain thyroid/tongue cyst | | + | $1,565.03 | |
| 60001 | Aspirate/inject thyriod cyst | | + | $470.28 | |
| 60100 | Biopsy of thyroid | | + | $470.28 | |
| 60200 | Remove thyroid lesion | | + | $9,737.74 | |
| 60210 | Partial thyroid excision | | + | $9,737.74 | |
| 60212 | Partial thyroid excision | | + | $9,737.74 | |
| 60220 | Partial removal of thyroid | | + | $9,737.74 | |
| 60225 | Partial removal of thyroid | | + | $9,737.74 | |
| 60240 | Removal of thyroid | | + | $9,737.74 | |
| 60252 | Removal of thyroid | | + | $9,175.99 | |
| 60260 | Repeat thyroid surgery | | + | $9,175.99 | |
| 60280 | Remove thyroid duct lesion | | + | $9,737.74 | |
| 60281 | Remove thyroid duct lesion | | + | $9,737.74 | |
| 60500 | Explore parathyroid glands | | + | $9,175.99 | |
| 60512 | Autotransplant parathyroid | | + | $4,689.89 | |
| 60659 | Laparo proc, endocrine | | + | $8,214.50 | |
| 60699 | Endocrine surgery procedure | | + | $9,737.74 | |
| 61000 | Remove cranial cavity fluid | | + | $893.57 | |
| 61001 | Remove cranial cavity fluid | | + | $893.57 | |
| 61020 | Remove brain cavity fluid | | + | $893.57 | |
| 61026 | Injection into brain canal | | + | $893.57 | |
| 61050 | Remove brain canal fluid | | + | $893.57 | |
| 61055 | Injection into brain canal | | + | $893.57 | |
| 61070 | Brain canal shunt procedure | | + | $893.57 | |
| 61215 | Insert brain-fluid device | | + | $9,175.99 | |
| 61330 | Decompress eye socket | | + | $9,175.99 | |
| 61623 | Endovasc tempory vessel occl | | + | $8,420.35 | |
| 61624 | Transcath occlusion, cns | | | $8,181.14 | MDR |
| 61626 | Transcath occlusion, non-cns | | + | $11,731.26 | |
| 61790 | Treat trigeminal nerve | | + | $4,264.02 | |
| 61791 | Treat trigeminal tract | | + | $546.05 | |
| 61793 | Focus radiation beam | | | $3,656.89 | |
| 61795 | Brain surgery using computer | | | $2,489.96 | |
| 61880 | Revise/remove neuroelectrode | | + | $6,968.21 | |
| 61885 | Implant neurostim one array | | + | $23,753.42 | |
| 61886 | Implant neurostim arrays | | + | $23,753.42 | |
| 61888 | Revise/remove neuroreceiver | | + | $18,499.36 | |
| 62194 | Replace/irrigate catheter | | + | $561.75 | |
| 62225 | Replace/irrigate catheter | | + | $561.75 | |
| 62230 | Replace/revise brain shunt | | + | $9,175.99 | |
| 62252 | Csf shunt reprogram | b | | $786.44 | |
| 62263 | Epidural lysis mult sessions | | + | $3,179.73 | |
| 62264 | Epidural lysis on single day | | + | $3,179.73 | |
| 62268 | Drain spinal cord cyst | | + | $893.57 | |
| 62269 | Needle biopsy, spinal cord | | + | $841.31 | |
| 62270 | Spinal fluid tap, diagnostic | | + | $1,127.73 | |
| 62272 | Drain cerebro spinal fluid | | + | $1,127.73 | |
| 62273 | Treat epidural spine lesion | | + | $1,127.73 | |
| 62280 | Treat spinal cord lesion | | + | $1,554.60 | |
| 62281 | Treat spinal cord lesion | | + | $1,554.60 | |
| 62282 | Treat spinal canal lesion | | + | $1,554.60 | |
| 62287 | Percutaneous diskectomy | | + | $4,264.02 | |
| 62292 | Injection into disk lesion | | + | $893.57 | |
| 62294 | Injection into spinal artery | | + | $893.57 | |

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[1] See end of table.

## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 62310 | Inject spine c/t | | + | $1,127.73 | |
| 62311 | Inject spine l/s (cd) | | + | $1,127.73 | |
| 62318 | Inject spine w/cath, c/t | | + | $1,127.73 | |
| 62319 | Inject spine w/cath l/s (cd) | | + | $1,127.73 | |
| 62350 | Implant spinal canal cath | | + | $11,062.41 | |
| 62351 | Implant spinal canal cath | | + | $10,367.41 | |
| 62355 | Remove spinal canal catheter | | + | $3,179.73 | |
| 62360 | Insert spine infusion device | | + | $23,451.17 | |
| 62361 | Implant spine infusion pump | | + | $23,448.73 | |
| 62362 | Implant spine infusion pump | | + | $23,448.73 | |
| 62365 | Remove spine infusion device | | + | $3,179.73 | |
| 62367 | Analyze spine infusion pump | b | | $786.44 | |
| 62368 | Analyze spine infusion pump | b | | $786.44 | |
| 63001 | Removal of spinal lamina | | + | $10,367.41 | |
| 63003 | Removal of spinal lamina | | + | $10,367.41 | |
| 63005 | Removal of spinal lamina | | + | $10,367.41 | |
| 63011 | Removal of spinal lamina | | + | $10,367.41 | |
| 63012 | Removal of spinal lamina | | + | $10,367.41 | |
| 63015 | Removal of spinal lamina | | + | $10,367.41 | |
| 63016 | Removal of spinal lamina | | + | $10,367.41 | |
| 63017 | Removal of spinal lamina | | + | $10,367.41 | |
| 63020 | Neck spine disk surgery | | + | $10,367.41 | |
| 63030 | Low back disk surgery | | + | $10,367.41 | |
| 63035 | Spinal disk surgery add-on | | + | $10,367.41 | |
| 63040 | Laminotomy, single cervical | | + | $10,367.41 | |
| 63042 | Laminotomy, single lumbar | | + | $10,367.41 | |
| 63045 | Removal of spinal lamina | | + | $10,367.41 | |
| 63046 | Removal of spinal lamina | | + | $10,367.41 | |
| 63047 | Removal of spinal lamina | | + | $10,367.41 | |
| 63048 | Remove spinal lamina add-on | | + | $10,367.41 | |
| 63055 | Decompress spinal cord | | + | $10,367.41 | |
| 63056 | Decompress spinal cord | | + | $10,367.41 | |
| 63057 | Decompress spine cord add-on | | + | $10,367.41 | |
| 63064 | Decompress spinal cord | | + | $10,367.41 | |
| 63066 | Decompress spine cord add-on | | + | $10,367.41 | |
| 63600 | Remove spinal cord lesion | | + | $4,264.02 | |
| 63610 | Stimulation of spinal cord | | + | $4,264.02 | |
| 63615 | Remove lesion of spinal cord | | + | $4,264.02 | |
| 63650 | Implant neuroelectrodes | | | $23,493.74 | |
| 63655 | Implant neuroelectrodes | | | $23,493.74 | |
| 63660 | Revise/remove neuroelectrode | | + | $6,968.21 | |
| 63685 | Implant neuroreceiver | | + | $23,753.42 | |
| 63688 | Revise/remove neuroreceiver | | + | $18,499.36 | |
| 63741 | Install spinal shunt | | + | $15,884.05 | |
| 63744 | Revision of spinal shunt | | + | $15,884.05 | |
| 63746 | Removal of spinal shunt | | + | $2,014.45 | |
| 64400 | N block inj, trigeminal | | + | $546.05 | |
| 64402 | N block inj, facial | | + | $546.05 | |
| 64405 | N block inj, occipital | | + | $546.05 | |
| 64408 | N block inj, vagus | | + | $546.05 | |
| 64410 | N block inj, phrenic | | + | $546.05 | |
| 64412 | N block inj, spinal accessor | | + | $546.05 | |
| 64413 | N block inj, cervical plexus | | + | $546.05 | |
| 64415 | N block inj, brachial plexus | | + | $546.05 | |
| 64416 | N block cont infuse, b plex | | + | $546.05 | |
| 64417 | N block inj, axillary | | + | $546.05 | |
| 64418 | N block inj, suprascapular | | + | $546.05 | |
| 64420 | N block inj, intercost, sng | | + | $1,554.60 | |
| 64421 | N block inj, intercost, mlt | | + | $1,554.60 | |
| 64425 | N block inj ilio-ing/hypogi | | + | $546.05 | |
| 64430 | N block inj, pudendal | | + | $546.05 | |
| 64435 | N block inj, paracervical | | + | $546.05 | |
| 64445 | N block inj, sciatic, sng | | + | $546.05 | |
| 64446 | N blk inj, sciatic, cont inf | | + | $546.05 | |
| 64447 | N block inj fem, single | | + | $546.05 | |
| 64448 | N block inj fem, cont inf | | + | $546.05 | |

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[1] See end of table.

## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 64450 | N block, other peripheral | | + | $546.05 | |
| 64470 | Inj paravertebral c/t | | + | $1,554.60 | |
| 64472 | Inj paravertebral c/t add-on | | + | $1,554.60 | |
| 64475 | Inj paravertebral l/s | | + | $1,554.60 | |
| 64476 | Inj paravertebral l/s add-on | | + | $1,554.60 | |
| 64479 | Inj foramen epidural c/t | | + | $1,554.60 | |
| 64480 | Inj foramen epidural add-on | | + | $1,554.60 | |
| 64483 | Inj foramen epidural l/s | | + | $1,554.60 | |
| 64484 | Inj foramen epidural add-on | | + | $1,554.60 | |
| 64505 | N block, spenopalatine gangl | | + | $546.05 | |
| 64508 | N block, carotid sinus s/p | | + | $546.05 | |
| 64510 | N block, stellate ganglion | | + | $1,554.60 | |
| 64520 | N block, lumbar/thoracic | | + | $1,554.60 | |
| 64530 | N block inj, celiac pelus | | + | $1,554.60 | |
| 64550 | Apply neurostimulator | | | $265.13 | MDR |
| 64553 | Implant neuroelectrodes | | | $23,493.74 | |
| 64555 | Implant neuroelectrodes | | | $23,493.74 | |
| 64560 | Implant neuroelectrodes | | | $23,493.74 | |
| 64561 | Implant neuroelectrodes | | | $23,493.74 | |
| 64565 | Implant neuroelectrodes | | | $23,493.74 | |
| 64573 | Implant neuroelectrodes | | | $23,493.74 | |
| 64575 | Implant neuroelectrodes | | | $23,493.74 | |
| 64577 | Implant neuroelectrodes | | | $23,493.74 | |
| 64580 | Implant neuroelectrodes | | | $23,493.74 | |
| 64581 | Implant neuroelectrodes | | | $23,493.74 | |
| 64585 | Revise/remove neuroelectrode | | + | $6,968.21 | |
| 64590 | Implant neuroreceiver | | + | $23,753.42 | |
| 64595 | Revise/remove neuroreceiver | | + | $18,499.36 | |
| 64600 | Injection treatment of nerve | | + | $3,179.73 | |
| 64605 | Injection treatment of nerve | | + | $3,179.73 | |
| 64610 | Injection treatment of nerve | | + | $3,179.73 | |
| 64612 | Destroy nerve, face muscle | | + | $546.05 | |
| 64613 | Destroy nerve, spine muscle | | + | $546.05 | |
| 64614 | Destroy nerve, extrem musc | | + | $546.05 | |
| 64620 | Injection treatment of nerve | | + | $3,179.73 | |
| 64622 | Destr paravertebrl nerve l/s | | + | $3,179.73 | |
| 64623 | Destr paravertebral n add-on | | + | $3,179.73 | |
| 64626 | Destr paravertebrl nerve c/t | | + | $3,179.73 | |
| 64627 | Destr paravertebral n add-on | | + | $3,179.73 | |
| 64630 | Injection treatment of nerve | | + | $1,554.60 | |
| 64640 | Injection treatment of nerve | | + | $1,554.60 | |
| 64680 | Injection treatment of nerve | | + | $3,179.73 | |
| 64702 | Revise finger/toe nerve | | + | $4,264.02 | |
| 64704 | Revise hand/foot nerve | | + | $4,264.02 | |
| 64708 | Revise arm/leg nerve | | + | $4,264.02 | |
| 64712 | Revision of sciatic nerve | | + | $4,264.02 | |
| 64713 | Revision of arm nerve(s) | | + | $4,264.02 | |
| 64714 | Revise low back nerve(s) | | + | $4,264.02 | |
| 64716 | Revision of cranial nerve | | + | $4,264.02 | |
| 64718 | Revise ulnar nerve at elbow | | + | $4,264.02 | |
| 64719 | Revise ulnar nerve at wrist | | + | $4,264.02 | |
| 64721 | Carpal tunnel surgery | | + | $4,264.02 | |
| 64722 | Relieve pressure on nerve(s) | | + | $4,264.02 | |
| 64726 | Release foot/toe nerve | | + | $4,264.02 | |
| 64727 | Internal nerve revision | | + | $4,264.02 | |
| 64732 | Incision of brow nerve | | + | $4,264.02 | |
| 64734 | Incision of cheek nerve | | + | $4,264.02 | |
| 64736 | Incision of chin nerve | | + | $4,264.02 | |
| 64738 | Incision of jaw nerve | | + | $4,264.02 | |
| 64740 | Incision of tongue nerve | | + | $4,264.02 | |
| 64742 | Incision of facial nerve | | + | $4,264.02 | |
| 64744 | Incise nerve, back of head | | + | $4,264.02 | |
| 64746 | Incise diaphragm nerve | | + | $4,264.02 | |
| 64761 | Incision of pelvis nerve | | + | $4,264.02 | |
| 64771 | Sever cranial nerve | | + | $4,264.02 | |
| 64772 | Incision of spinal nerve | | + | $4,264.02 | |

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[1] See end of table.

TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator[1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 64774 | Remove skin nerve lesion | | + | $4,264.02 | |
| 64776 | Remove digit nerve lesion | | + | $4,264.02 | |
| 64778 | Digit nerve surgery add-on | | + | $4,264.02 | |
| 64782 | Remove limb nerve lesion | | + | $4,264.02 | |
| 64783 | Limb nerve surgery add-on | | + | $4,264.02 | |
| 64784 | Remove nerve lesion | | + | $4,264.02 | |
| 64786 | Remove sciatic nerve lesion | | + | $5,802.92 | |
| 64787 | Implant nerve end | | + | $4,264.02 | |
| 64788 | Remove skin nerve lesion | | + | $4,264.02 | |
| 64790 | Removal of nerve lesion | | + | $4,264.02 | |
| 64792 | Removal of nerve lesion | | + | $5,802.92 | |
| 64795 | Biopsy of nerve | | + | $4,264.02 | |
| 64802 | Remove sympathetic nerves | | + | $4,264.02 | |
| 64820 | Remove sympathetic nerves | | + | $4,264.02 | |
| 64821 | Remove sympathestic nerves | | + | $6,126.90 | |
| 64822 | Remove sympathetic nerves | | + | $6,126.90 | |
| 64823 | Remove sympathetic nerves | | + | $6,126.90 | |
| 64831 | Repair of digit nerve | | + | $5,802.92 | |
| 64832 | Repair nerve add-on | | + | $5,802.92 | |
| 64834 | Repair of hand or foot nerve | | + | $5,802.92 | |
| 64835 | Repair of hand or foot nerve | | + | $5,802.92 | |
| 64836 | Repair of hand or foot nerve | | + | $5,802.92 | |
| 64837 | Repair nerve add-on | | + | $5,802.92 | |
| 64840 | Repair of leg nerve | | + | $5,802.92 | |
| 64856 | Repair/transpose nerve | | + | $5,802.92 | |
| 64857 | Repair arm/leg nerve | | + | $5,802.92 | |
| 64858 | Repair sciatic nerve | | + | $5,802.92 | |
| 64859 | Nerve surgery | | + | $5,802.92 | |
| 64861 | Repair of arm nerves | | + | $5,802.92 | |
| 64862 | Repair of low back nerves | | + | $5,802.92 | |
| 64864 | Repair of facial nerve | | + | $5,802.92 | |
| 64865 | Repair of facial nerve | | + | $5,802.92 | |
| 64870 | Fusion of facial/other nerve | | + | $5,802.92 | |
| 64872 | Subsequent repair of nerve | | + | $5,802.92 | |
| 64874 | Repair & revise nerve add-on | | + | $5,802.92 | |
| 64876 | Repair nerve/shorten bone | | + | $5,802.92 | |
| 64885 | Nerve graft, head or neck | | + | $5,802.92 | |
| 64886 | Nerve graft, head or neck | | + | $5,802.92 | |
| 64890 | Nerve graft, hand or foot | | + | $5,802.92 | |
| 64891 | Nerve graft, hand or foot | | + | $5,802.92 | |
| 64892 | Nerve graft, arm or leg | | + | $5,802.92 | |
| 64893 | Nerve graft, arm or leg | | + | $5,802.92 | |
| 64895 | Nerve graft, hand or foot | | + | $5,802.92 | |
| 64896 | Nerve graft, hand or foot | | + | $5,802.92 | |
| 64897 | Nerve graft, arm or leg | | + | $5,802.92 | |
| 64898 | Nerve graft, arm or leg | | + | $5,802.92 | |
| 64901 | Nerve graft add-on | | + | $5,802.92 | |
| 64902 | Nerve graft add-on | | + | $5,802.92 | |
| 64905 | Nerve pedicle transfer | | + | $5,802.92 | |
| 64907 | Nerve pedicle transfer | | + | $5,802.92 | |
| 64999 | Nervous system surgery | | + | $546.05 | |
| 65091 | Revise eye | | + | $7,563.93 | |
| 65093 | Revise eye with implant | | + | $5,562.56 | |
| 65101 | Removal of eye | | + | $7,563.93 | |
| 65103 | Remove eye/insert implant | | + | $7,563.93 | |
| 65105 | Remove eye/attach implant | | + | $7,563.93 | |
| 65110 | Removal of eye | | + | $7,563.93 | |
| 65112 | Remove eye/revise socket | | + | $7,563.93 | |
| 65114 | Remove eye/revise socket | | + | $7,563.93 | |
| 65125 | Revise ocular implant | | + | $4,397.28 | |
| 65130 | Insert ocular implant | | + | $5,562.56 | |
| 65135 | Insert ocular implant | | + | $5,562.56 | |
| 65140 | Attach ocular implant | | + | $7,563.93 | |
| 65150 | Revise ocular implant | | + | $5,562.56 | |
| 65155 | Reinsert ocular implant | | + | $7,563.93 | |
| 65175 | Removal of ocular implant | | + | $4,397.28 | |

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[1] See end of table.

## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 65205 | Remove foreign body from eye | | | $248.75 | |
| 65210 | Remove foreign body from eye | | | $585.26 | |
| 65220 | Remove foreign body from eye | | | $585.26 | |
| 65222 | Remove foreign body from eye | | | $585.26 | |
| 65235 | Remove foreign body from eye | | + | $3,618.66 | |
| 65260 | Remove foreign body from eye | | + | $5,238.56 | |
| 65265 | Remove foreign body from eye | | + | $5,238.56 | |
| 65270 | Repair of eye wound | | + | $4,397.28 | |
| 65272 | Repair of eye wound | | + | $3,618.66 | |
| 65275 | Repair of eye wound | | + | $3,618.66 | |
| 65280 | Repair of eye wound | | + | $5,507.69 | |
| 65285 | Repair of eye wound | | + | $5,507.69 | |
| 65286 | Repair of eye wound | | + | $3,618.66 | |
| 65290 | Repair of eye socket wound | | + | $5,384.90 | |
| 65400 | Removal of eye lesion | | + | $3,618.66 | |
| 65410 | Biopsy of cornea | | + | $3,618.66 | |
| 65420 | Removal of eye lesion | | + | $3,618.66 | |
| 65426 | Removal of eye lesion | | + | $5,507.69 | |
| 65430 | Corneal smear | | | $199.00 | |
| 65435 | Curette/treat cornea | | + | $1,836.78 | |
| 65436 | Curette/treat cornea | | + | $3,618.66 | |
| 65450 | Treatment of corneal lesion | | | $585.26 | |
| 65600 | Revision of cornea | | + | $4,397.28 | |
| 65710 | Corneal transplant | | + | $9,607.09 | |
| 65730 | Corneal transplant | | + | $9,607.09 | |
| 65750 | Corneal transplant | | + | $9,607.09 | |
| 65755 | Corneal transplant | | + | $9,607.09 | |
| 65760 | Revision of cornea | | | $6,250.16 | MDR |
| 65765 | Revision of cornea | | | $6,250.16 | MDR |
| 65767 | Corneal tissue transplant | | | $6,250.16 | MDR |
| 65770 | Revise cornea with implant | | + | $9,607.09 | |
| 65772 | Correction of astigmatism | | + | $3,618.66 | |
| 65775 | Correction of astigmatism | | + | $3,618.66 | |
| 65800 | Drainage of eye | | + | $3,618.66 | |
| 65805 | Drainage of eye | | + | $3,618.66 | |
| 65810 | Drainage of eye | | + | $5,507.69 | |
| 65815 | Drainage of eye | | + | $5,507.69 | |
| 65820 | Relieve inner eye pressure | | + | $1,212.31 | |
| 65850 | Incision of eye | | + | $5,507.69 | |
| 65855 | Laser surgery of eye | | + | $1,269.80 | |
| 65860 | Incise inner eye adhesions | | + | $1,269.80 | |
| 65865 | Incise inner eye adhesions | | + | $3,618.66 | |
| 65870 | Incise inner eye adhesions | | + | $5,507.69 | |
| 65875 | Incise inner eye adhesions | | + | $5,507.69 | |
| 65880 | Incise inner eye adhesions | | + | $3,618.66 | |
| 65900 | Remove eye lesion | | + | $3,618.66 | |
| 65920 | Remove implant of eye | | + | $3,618.66 | |
| 65930 | Remove blood clot from eye | | + | $5,507.69 | |
| 66020 | Injection treatment of eye | | + | $3,618.66 | |
| 66030 | Injection treatment of eye | | + | $3,618.66 | |
| 66130 | Remove eye lesion | | + | $5,507.69 | |
| 66150 | Glaucoma surgery | | + | $3,618.66 | |
| 66155 | Glaucoma surgery | | + | $5,507.69 | |
| 66160 | Glaucoma surgery | | + | $5,507.69 | |
| 66165 | Glaucoma surgery | | + | $5,507.69 | |
| 66170 | Glaucoma surgery | | + | $5,507.69 | |
| 66172 | Incision of eye | | + | $6,996.95 | |
| 66180 | Implant eye shunt | | + | $6,996.95 | |
| 66185 | Revise eye shunt | | + | $6,996.95 | |
| 66220 | Repair eye lesion | | + | $5,238.56 | |
| 66225 | Repair/graft eye lesion | | + | $6,996.95 | |
| 66250 | Follow-up surgery of eye | | + | $3,618.66 | |
| 66500 | Incision of iris | | + | $1,212.31 | |
| 66505 | Incision of iris | | + | $1,212.31 | |
| 66600 | Remove iris and lesion | | + | $3,618.66 | |
| 66605 | Removal of iris | | + | $5,507.69 | |

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[1] See end of table

TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Method- ology |
|---|---|---|---|---|---|
| 66625 | Removal of iris | | + | $3,618.66 | |
| 66630 | Removal of iris | | + | $3,618.66 | |
| 66635 | Removal of iris | | + | $5,507.69 | |
| 66680 | Repair iris & ciliary body | | + | $5,507.69 | |
| 66682 | Repair iris & ciliary body | | + | $5,507.69 | |
| 66700 | Destruction, ciliary body | | + | $3,618.66 | |
| 66710 | Destruction, ciliary body | | + | $3,618.66 | |
| 66720 | Destruction, ciliary body | | + | $3,618.66 | |
| 66740 | Destruction, ciliary body | | + | $3,618.66 | |
| 66761 | Revision of iris | | + | $1,269.80 | |
| 66762 | Revision of iris | | + | $1,269.80 | |
| 66770 | Removal of inner eye lesion | | + | $1,269.80 | |
| 66820 | Incision, secondary cataract | | + | $1,212.31 | |
| 66821 | After cataract laser surgery | | + | $1,269.80 | |
| 66825 | Reposition intraocular lens | | + | $5,507.69 | |
| 66830 | Removal of lens lesion | | + | $1,212.31 | |
| 66840 | Removal of lens material | | + | $3,921.74 | |
| 66850 | Removal of lens material | | + | $7,205.98 | |
| 66852 | Removal of lens material | | + | $7,205.98 | |
| 66920 | Extraction of lens | | + | $7,205.98 | |
| 66930 | Extraction of lens | | + | $7,205.98 | |
| 66940 | Extraction of lens | | + | $3,921.74 | |
| 66982 | Cataract surgery, complex | | + | $5,352.68 | |
| 66983 | Cataract surg w/iol, 1 stage | | + | $5,352.68 | |
| 66984 | Cataract surg w/iol, 1 stage | | + | $5,352.68 | |
| 66985 | Insert lens prosthesis | | + | $5,352.68 | |
| 66986 | Exchange lens prosthesis | | + | $5,352.68 | |
| 66999 | Eye surgery procedure | | + | $1,212.31 | |
| 67005 | Partial removal of eye fluid | | + | $8,969.58 | |
| 67010 | Partial removal of eye fluid | | + | $8,969.58 | |
| 67015 | Release of eye fluid | | + | $8,969.58 | |
| 67025 | Replace eye fluid | | + | $5,238.56 | |
| 67027 | Implant eye drug system | | + | $8,969.58 | |
| 67028 | Injection eye drug | | + | $1,345.55 | |
| 67030 | Incise inner eye strands | | + | $5,238.56 | |
| 67031 | Laser surgery, eye strands | | + | $1,269.80 | |
| 67036 | Removal of inner eye fluid | | + | $8,969.58 | |
| 67038 | Strip retinal membrane | | + | $8,969.58 | |
| 67039 | Laser treatment of retina | | + | $8,969.58 | |
| 67040 | Laser treatment of retina | | + | $10,221.10 | |
| 67101 | Repair detached retina | | + | $1,345.55 | |
| 67105 | Repair detached retina | | + | $1,157.44 | |
| 67107 | Repair detached retina | | + | $10,221.10 | |
| 67108 | Repair detached retina | | + | $10,221.10 | |
| 67110 | Repair detached retina | | + | $1,345.55 | |
| 67112 | Rerepair detached retina | | + | $10,221.10 | |
| 67115 | Release encircling material | | + | $5,238.56 | |
| 67120 | Remove eye implant material | | + | $5,238.56 | |
| 67121 | Remove eye implant material | | + | $8,969.58 | |
| 67141 | Treatment of retina | | + | $1,345.55 | |
| 67145 | Treatment of retina | | + | $1,157.44 | |
| 67208 | Treatment of retinal lesion | | + | $1,345.55 | |
| 67210 | Treatment of retinal lesion | | + | $1,157.44 | |
| 67218 | Treatment of retinal lesion | | + | $5,238.56 | |
| 67220 | Treatment of choroid lesion | | + | $1,345.55 | |
| 67221 | Ocular photodynamic ther | | + | $1,345.55 | |
| 67225 | Eye photodynamic ther add-on | | + | $1,345.55 | |
| 67227 | Treatment of retinal lesion | | + | $1,345.55 | |
| 67228 | Treatment of retinal lesion | | + | $1,157.44 | |
| 67250 | Reinforce eye wall | | + | $4,397.28 | |
| 67255 | Reinforce/graft eye wall | | + | $8,969.58 | |
| 67299 | Eye surgery procedure | | + | $1,345.55 | |
| 67311 | Revise eye muscle | | + | $5,384.90 | |
| 67312 | Revise two eye muscles | | + | $5,384.90 | |
| 67314 | Revise eye muscle | | + | $5,384.90 | |
| 67316 | Revise two eye muscles | | + | $5,384.90 | |

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[1] See end of table.

### TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Method-ology |
|---|---|---|---|---|---|
| 67318 | Revise eye muscle(s) | | + | $5,384.90 | |
| 67320 | Revise eye muscle(s) add-on | | + | $5,384.90 | |
| 67331 | Eye surgery follow-up add-on | | + | $5,384.90 | |
| 67332 | Rerevise eye muscles add-on | | + | $5,384.90 | |
| 67334 | Revise eye muscle w/suture | | + | $5,384.90 | |
| 67335 | Eye suture during surgery | | + | $5,384.90 | |
| 67340 | Revise eye muscle add-on | | + | $5,384.90 | |
| 67343 | Release eye tissue | | + | $5,384.90 | |
| 67345 | Destroy nerve of eye muscle | | + | $802.11 | |
| 67350 | Biopsy eye muscle | | + | $1,013.75 | |
| 67399 | Eye muscle surgery procedure | | + | $5,384.90 | |
| 67400 | Explore/biopsy eye socket | | + | $5,562.56 | |
| 67405 | Explore/drain eye socket | | + | $5,562.56 | |
| 67412 | Explore/treat eye socket | | + | $5,562.56 | |
| 67413 | Explore/treat eye socket | | + | $5,562.56 | |
| 67414 | Explr/decompress eye socket | | + | $7,563.93 | |
| 67415 | Aspiration, orbital contents | | + | $1,836.78 | |
| 67420 | Explore/treat eye socket | | + | $7,563.93 | |
| 67430 | Explore/treat eye socket | | + | $7,563.93 | |
| 67440 | Explore/drain eye socket | | + | $7,563.93 | |
| 67445 | Explr/decompress eye socket | | + | $7,563.93 | |
| 67450 | Explore/biopsy eye socket | | + | $7,563.93 | |
| 67500 | Inject/treat eye socket | | | $585.26 | |
| 67505 | Inject/treat eye socket | | + | $802.11 | |
| 67515 | Inject/treat eye socket | | + | $1,836.78 | |
| 67550 | Insert eye socket implant | | + | $7,563.93 | |
| 67560 | Revise eye socket implant | | + | $5,562.56 | |
| 67570 | Decompress optic nerve | | + | $7,563.93 | |
| 67599 | Orbit surgery procedure | | + | $1,836.78 | |
| 67700 | Drainage of eyelid abscess | | + | $802.11 | |
| 67710 | Incision of eyelid | | + | $1,836.78 | |
| 67715 | Incision of eyelid fold | | + | $4,397.28 | |
| 67800 | Remove eyelid lesion | | + | $802.11 | |
| 67801 | Remove eyelid lesions | | + | $1,836.78 | |
| 67805 | Remove eyelid lesions | | + | $802.11 | |
| 67808 | Remove eyelid lesion(s) | | + | $4,397.28 | |
| 67810 | Biopsy of eyelid | | + | $802.11 | |
| 67820 | Revise eyelashes | | | $199.00 | |
| 67825 | Revise eyelashes | | + | $802.11 | |
| 67830 | Revise eyelashes | | + | $1,836.78 | |
| 67835 | Revise eyelashes | | + | $4,397.28 | |
| 67840 | Remove eyelid lesion | | + | $1,836.78 | |
| 67850 | Treat eyelid lesion | | + | $1,836.78 | |
| 67875 | Closure of eyelid by suture | | + | $1,836.78 | |
| 67880 | Revision of eyelid | | + | $3,618.66 | |
| 67882 | Revision of eyelid | | + | $4,397.28 | |
| 67900 | Repair brow defect | | + | $4,397.28 | |
| 67901 | Repair eyelid defect | | + | $4,397.28 | |
| 67902 | Repair eyelid defect | | + | $4,397.28 | |
| 67903 | Repair eyelid defect | | + | $4,397.28 | |
| 67904 | Repair eyelid defect | | + | $4,397.28 | |
| 67906 | Repair eyelid defect | | + | $4,397.28 | |
| 67908 | Repair eyelid defect | | + | $4,397.28 | |
| 67909 | Revise eyelid defect | | + | $4,397.28 | |
| 67911 | Revise eyelid defect | | + | $4,397.28 | |
| 67914 | Repair eyelid defect | | + | $4,397.28 | |
| 67915 | Repair eyelid defect | | + | $1,836.78 | |
| 67916 | Repair eyelid defect | | + | $4,397.28 | |
| 67917 | Repair eyelid defect | | + | $4,397.28 | |
| 67921 | Repair eyelid defect | | + | $4,397.28 | |
| 67922 | Repair eyelid defect | | + | $1,836.78 | |
| 67923 | Repair eyelid defect | | + | $4,397.28 | |
| 67924 | Repair eyelid defect | | + | $4,397.28 | |
| 67930 | Repair eyelid wound | | + | $4,397.28 | |
| 67935 | Repair eyelid wound | | + | $4,397.28 | |
| 67938 | Remove eyelid foreign body | | | $248.75 | |

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[1] See end of table.

### TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 67950 | Revision of eyelid | | + | $4,397.28 | |
| 67961 | Revision of eyelid | | + | $4,397.28 | |
| 67966 | Revision of eyelid | | + | $4,397.28 | |
| 67971 | Reconstruction of eyelid | | + | $5,562.56 | |
| 67973 | Reconstruction of eyelid | | + | $5,562.56 | |
| 67974 | Reconstruction of eyelid | | + | $5,562.56 | |
| 67975 | Reconstruction of eyelid | | + | $4,397.28 | |
| 67999 | Revision of eyelid | | + | $4,397.28 | |
| 68020 | Incise/drain eyelid lining | | + | $4,397.28 | |
| 68040 | Treatment of eyelid lesions | | | $248.75 | |
| 68100 | Biopsy of eyelid lining | | + | $1,212.31 | |
| 68110 | Remove eyelid lining lesion | | + | $1,013.75 | |
| 68115 | Remove eyelid lining lesion | | + | $1,836.78 | |
| 68130 | Remove eyelid lining lesion | | + | $3,618.66 | |
| 68135 | Remove eyelid lining lesion | | + | $1,836.78 | |
| 68200 | Treat eyelid by injection | | | $248.75 | |
| 68320 | Revise/graft eyelid lining | | + | $4,397.28 | |
| 68325 | Revise/graft eyelid lining | | + | $7,563.93 | |
| 68326 | Revise/graft eyelid lining | | + | $5,562.56 | |
| 68328 | Revise/graft eyelid lining | | + | $5,562.56 | |
| 68330 | Revise eyelid lining | | + | $3,618.66 | |
| 68335 | Revise/graft eyelid lining | | + | $5,562.56 | |
| 68340 | Separate eyelid adhesions | | + | $4,397.28 | |
| 68360 | Revise eyelid lining | | + | $5,507.69 | |
| 68362 | Revise eyelid lining | | + | $5,507.69 | |
| 68399 | Eyelid lining surgery | | + | $1,836.78 | |
| 68400 | Incise/drain tear gland | | + | $802.11 | |
| 68420 | Incise/drain tear sac | | + | $4,397.28 | |
| 68440 | Incise tear duct opening | | + | $802.11 | |
| 68500 | Removal of tear gland | | + | $5,562.56 | |
| 68505 | Partial removal, tear gland | | + | $5,562.56 | |
| 68510 | Biopsy of tear gland | | + | $4,397.28 | |
| 68520 | Removal of tear sac | | + | $5,562.56 | |
| 68525 | Biopsy of tear sac | | + | $4,397.28 | |
| 68530 | Clearance of tear duct | | + | $4,397.28 | |
| 68540 | Remove tear gland lesion | | + | $5,562.56 | |
| 68550 | Remove tear gland lesion | | + | $7,563.93 | |
| 68700 | Repair tear ducts | | + | $5,562.56 | |
| 68705 | Revise tear duct opening | | + | $802.11 | |
| 68720 | Create tear sac drain | | + | $7,563.93 | |
| 68745 | Create tear duct drain | | + | $5,562.56 | |
| 68750 | Create tear duct drain | | + | $7,563.93 | |
| 68760 | Close tear duct opening | | | $248.75 | |
| 68761 | Close tear duct opening | | | $585.26 | |
| 68770 | Close tear system fistula | | + | $4,397.28 | |
| 68801 | Dilate tear duct opening | | | $585.26 | |
| 68810 | Probe nasolacrimal duct | | + | $1,013.75 | |
| 68811 | Probe nasolacrimal duct | | + | $4,397.28 | |
| 68815 | Probe nasolacrimal duct | | + | $4,397.28 | |
| 68840 | Explore/irrigate tear ducts | | + | $1,013.75 | |
| 68899 | Tear duct system surgery | | + | $1,013.75 | |
| 69000 | Drain external ear lesion | | + | $483.36 | |
| 69005 | Drain external ear lesion | | + | $2,701.58 | |
| 69020 | Drain outer ear canal lesion | | + | $483.36 | |
| 69100 | Biopsy of external ear | | + | $1,016.36 | |
| 69105 | Biopsy of external ear canal | | + | $3,895.61 | |
| 69110 | Remove external ear, partial | | + | $3,757.15 | |
| 69120 | Removal of external ear | | + | $5,424.08 | |
| 69140 | Remove ear canal lesion(s) | | + | $5,424.08 | |
| 69145 | Remove ear canal lesion(s) | | + | $3,757.15 | |
| 69150 | Extensive ear canal surgery | | + | $1,565.03 | |
| 69200 | Clear outer ear canal | | | $175.05 | |
| 69205 | Clear outer ear canal | | + | $4,689.89 | |
| 69210 | Remove impacted ear wax | | | $175.05 | |
| 69220 | Clean out mastoid cavity | | + | $211.64 | |
| 69222 | Clean out mastoid cavity | | + | $3,895.61 | |

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[1] See end of table.

TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 69300 | Revise external ear | | + | $5,424.08 | |
| 69310 | Rebuild outer ear canal | | + | $9,175.99 | |
| 69320 | Rebuild outer ear canal | | + | $9,175.99 | |
| 69399 | Outer ear surgery procedure | | + | $514.72 | |
| 69400 | Inflate middle ear canal | | + | $514.72 | |
| 69401 | Inflate middle ear canal | | + | $514.72 | |
| 69405 | Catheterize middle ear canal | | + | $1,565.03 | |
| 69410 | Inset middle ear (baffle) | | + | $1,565.03 | |
| 69420 | Incision of eardrum | | + | $514.72 | |
| 69421 | Incision of eardrum | | + | $3,895.61 | |
| 69424 | Remove ventilating tube | | + | $1,565.03 | |
| 69433 | Create eardrum opening | | + | $1,565.03 | |
| 69436 | Create eardrum opening | | + | $3,895.61 | |
| 69440 | Exploration of middle ear | | + | $5,424.08 | |
| 69450 | Eardrum revision | | + | $9,175.99 | |
| 69501 | Mastoidectomy | | + | $9,175.99 | |
| 69502 | Mastoidectomy | | + | $5,424.08 | |
| 69505 | Remove mastoid structures | | + | $9,175.99 | |
| 69511 | Extensive mastoid surgery | | + | $9,175.99 | |
| 69530 | Extensive mastoid surgery | | + | $9,175.99 | |
| 69540 | Remove ear lesion | | + | $3,895.61 | |
| 69550 | Remove ear lesion | | + | $9,175.99 | |
| 69552 | Remove ear lesion | | + | $9,175.99 | |
| 69601 | Mastoid surgery revision | | + | $9,175.99 | |
| 69602 | Mastoid surgery revision | | + | $9,175.99 | |
| 69603 | Mastoid surgery revision | | + | $9,175.99 | |
| 69604 | Mastoid surgery revision | | + | $9,175.99 | |
| 69605 | Mastoid surgery revision | | + | $9,175.99 | |
| 69610 | Repair of eardrum | | + | $5,424.08 | |
| 69620 | Repair of eardrum | | + | $5,424.08 | |
| 69631 | Repair eardrum structures | | + | $9,175.99 | |
| 69632 | Rebuild eardrum structures | | + | $9,175.99 | |
| 69633 | Rebuild eardrum structures | | + | $9,175.99 | |
| 69635 | Repair eardrum structures | | + | $9,175.99 | |
| 69636 | Rebuild eardrum structures | | + | $9,175.99 | |
| 69637 | Rebuild eardrum structures | | + | $9,175.99 | |
| 69641 | Revise middle ear & mastoid | | + | $9,175.99 | |
| 69642 | Revise middle ear & mastoid | | + | $9,175.99 | |
| 69643 | Revise middle ear & mastoid | | + | $9,175.99 | |
| 69644 | Revise middle ear & mastoid | | + | $9,175.99 | |
| 69645 | Revise middle ear & mastoid | | + | $9,175.99 | |
| 69646 | Revise middle ear & mastoid | | + | $9,175.99 | |
| 69650 | Release middle ear bone | | + | $5,424.08 | |
| 69660 | Revise middle ear bone | | + | $9,175.99 | |
| 69661 | Revise middle ear bone | | + | $9,175.99 | |
| 69662 | Revise middle ear bone | | + | $9,175.99 | |
| 69666 | Repair middle ear structures | | + | $9,175.99 | |
| 69667 | Repair middle ear structures | | + | $9,175.99 | |
| 69670 | Remove mastoid air cells | | + | $9,175.99 | |
| 69676 | Remove middle ear nerve | | + | $9,175.99 | |
| 69700 | Close mastoid fistula | | + | $9,175.99 | |
| 69710 | Implant/replace hearing aid | | | $8,109.16 | |
| 69711 | Remove/repair hearing aid | | + | $9,175.99 | |
| 69714 | Implant temple bone w/stimul | | + | $9,175.99 | |
| 69715 | Temple bne implnt w/stimulat | | + | $9,175.99 | |
| 69717 | Temple bone implant revision | | + | $9,175.99 | |
| 69718 | Revise temple bone implant | | + | $9,175.99 | |
| 69720 | Release facial nerve | | + | $9,175.99 | |
| 69725 | Release facial nerve | | + | $9,175.99 | |
| 69740 | Repair facial nerve | | + | $9,175.99 | |
| 69745 | Repair facial nerve | | + | $9,175.99 | |
| 69799 | Middle ear surgery procedure | | + | $3,895.61 | |
| 69801 | Incise inner ear | | + | $9,175.99 | |
| 69802 | Incise inner ear | | + | $9,175.99 | |
| 69805 | Explore inner ear | | + | $9,175.99 | |
| 69806 | Explore inner ear | | + | $9,175.99 | |

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### TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 69820 | Establish inner ear window | | + | $9.175.99 | |
| 69840 | Revise inner ear window | | + | $9,175.99 | |
| 69905 | Remove inner ear | | + | $9,175.99 | |
| 69910 | Remove inner ear & mastoid | | + | $9,175.99 | |
| 69915 | Incise inner ear nerve | | + | $9,175.99 | |
| 69930 | Implant cochlear device | | + | $38,346.28 | |
| 69949 | Inner ear surgery procedure | | + | $3,895.61 | |
| 69955 | Release facial nerve | | + | $9,175.99 | |
| 69960 | Release inner ear canal | | + | $9,175.99 | |
| 69979 | Temporal bone surgery | | + | $514.72 | |
| 70010 | Contrast x-ray of brain | b | | $1,083.21 | |
| 70015 | Contrast x-ray of brain | b | | $1,083.21 | |
| 70030 | X-ray eye for foreign body | b | | $217.31 | |
| 70100 | X-ray exam of jaw | b | | $217.31 | |
| 70110 | X-ray exam of jaw | b | | $217.31 | |
| 70120 | X-ray exam of mastoids | b | | $217.31 | |
| 70130 | X-ray exam of mastoids | b | | $217.31 | |
| 70134 | X-ray exam of middle ear | b | | $386.95 | |
| 70140 | X-ray exam of facial bones | b | | $217.31 | |
| 70150 | X-ray exam of facial bones | b | | $217.31 | |
| 70160 | X-ray exam of nasal bones | b | | $217.31 | |
| 70170 | X-ray exam of tear duct | b | | $530.77 | |
| 70190 | X-ray exam of eye sockets | b | | $217.31 | |
| 70200 | X-ray exam of eye sockets | b | | $217.31 | |
| 70210 | X-ray exam of sinuses | b | | $217.31 | |
| 70220 | X-ray exam of sinuses | b | | $217.31 | |
| 70240 | X-ray exam, pituitary saddle | b | | $217.31 | |
| 70250 | X-ray exam of skull | b | | $217.31 | |
| 70260 | X-ray exam of skull | b | | $386.95 | |
| 70300 | X-ray exam of teeth | b | | $159.77 | |
| 70310 | X-ray exam of teeth | b | | $159.77 | |
| 70320 | Full mouth x-ray of teeth | b | | $159.77 | |
| 70328 | X-ray exam of jaw joint | b | | $217.31 | |
| 70330 | X-ray exam of jaw joints | b | | $217.31 | |
| 70332 | X-ray exam of jaw joint | b | | $831.35 | |
| 70336 | Magnetic image, jaw joint | b | | $1,760.20 | |
| 70350 | X-ray head for orthodontia | b | | $217.31 | |
| 70355 | Panoramic x-ray of jaws | b | | $217.31 | |
| 70360 | X-ray exam of neck | b | | $217.31 | |
| 70370 | Throat x-ray & fluoroscopy | b | | $373.71 | |
| 70371 | Speech evaluation, complex | b | | $373.71 | |
| 70373 | Contrast x-ray of larynx | b | | $530.77 | |
| 70380 | X-ray exam of salivary gland | b | | $217.31 | |
| 70390 | X-ray exam of salivary duct | b | | $788.03 | |
| 70450 | Ct head/brain w/o dye | b | | $1,153.53 | |
| 70460 | Ct head/brain w/dye | b | | $1,505.09 | |
| 70470 | Ct head/brain w/o&w dye | b | | $1,787.49 | |
| 70480 | Ct orbit/ear/fossa w/o dye | b | | $1,153.53 | |
| 70481 | Ct orbit/ear/fossa w/dye | b | | $1,505.09 | |
| 70482 | Ct orbit/ear/fossa w/o&w dye | b | | $1,787.49 | |
| 70486 | Ct maxillofacial w/o dye | b | | $1,153.53 | |
| 70487 | Ct maxillofacial w/dye | b | | $1,505.09 | |
| 70488 | Ct maxillofacial w/o&w dye | b | | $1,787.49 | |
| 70490 | Ct soft tissue neck w/o dye | b | | $1,153.53 | |
| 70491 | Ct soft tissue neck w/dye | b | | $1,505.09 | |
| 70492 | Ct sft tsue nck w/o & w/dye | b | | $1,787.49 | |
| 70496 | Ct angiography, head | b | | $1,524.60 | |
| 70498 | Ct angiography, neck | b | | $1,524.60 | |
| 70540 | Mri orbit/face/neck w/o dye | b | | $1,975.57 | |
| 70542 | Mri orbit/face/neck w/dye | b | | $2,022.87 | |
| 70543 | Mri orbt/fac/nck w/o&w dye | b | | $2,849.72 | |
| 70544 | Mr angiography head w/o dye | b | | $1,975.57 | |
| 70545 | Mr angiography head w/dye | b | | $2,022.87 | |
| 70546 | Mr angiograph head w/o&w dye | b | | $2,849.72 | |
| 70547 | Mr angiography neck w/o dye | b | | $1,975.57 | |
| 70548 | Mr angiography neck w/dye | b | | $2,022.87 | |

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TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 70549 | Mr angiograph neck w/o&w dye | b | | $2,849.72 | |
| 70551 | Mri brain w/o dye | b | | $1,975.57 | |
| 70552 | Mri brain w/dye | b | | $2,022.87 | |
| 70553 | Mri brain w/o&w dye | b | | $2,849.72 | |
| 71010 | Chest x-ray | b | | $217.31 | |
| 71015 | Chest x-ray | b | | $217.31 | |
| 71020 | Chest x-ray | b | | $217.31 | |
| 71021 | Chest x-ray | b | | $217.31 | |
| 71022 | Chest x-ray | b | | $217.31 | |
| 71023 | Chest x-ray and fluoroscopy | b | | $373.71 | |
| 71030 | Chest x-ray | b | | $217.31 | |
| 71034 | Chest x-ray and fluoroscopy | b | | $373.71 | |
| 71035 | Chest x-ray | b | | $217.31 | |
| 71040 | Contrast x-ray of bronchi | b | | $530.77 | |
| 71060 | Contrast x-ray of bronchi | b | | $788.03 | |
| 71090 | X-ray & pacemaker insertion | b | | $373.71 | |
| 71100 | X-ray exam of ribs | b | | $217.31 | |
| 71101 | X-ray exam of ribs/chest | b | | $217.31 | |
| 71110 | X-ray exam of ribs | b | | $217.31 | |
| 71111 | X-ray exam of ribs/ chest | b | | $386.95 | |
| 71120 | X-ray exam of breastbone | b | | $217.31 | |
| 71130 | X-ray exam of breastbone | b | | $217.31 | |
| 71250 | Ct thorax w/o dye | b | | $1,153.53 | |
| 71260 | Ct thorax w/dye | b | | $1,505.09 | |
| 71270 | Ct thorax w/o&w dye | b | | $1,787.49 | |
| 71275 | Ct angiography, chest | b | | $1,524.60 | |
| 71550 | Mri chest w/o dye | b | | $1,975.57 | |
| 71551 | Mri chest w/dye | b | | $2,022.87 | |
| 71552 | Mri chest w/o&w/dye | b | | $2,849.72 | |
| 72010 | X-ray exam of spine | b | | $386.95 | |
| 72020 | X-ray exam of spine | b | | $217.31 | |
| 72040 | X-ray exam of neck spine | b | | $217.31 | |
| 72050 | X-ray exam of neck spine | b | | $386.95 | |
| 72052 | X-ray exam of neck spine | b | | $386.95 | |
| 72069 | X-ray exam of trunk spine | b | | $217.31 | |
| 72070 | X-ray exam of thoracic spine | b | | $217.31 | |
| 72072 | X-ray exam of thoracic spine | b | | $217.31 | |
| 72074 | X-ray exam of thoracic spine | b | | $217.31 | |
| 72080 | X-ray exam of trunk spine | b | | $217.31 | |
| 72090 | X-ray exam of trunk spine | b | | $386.95 | |
| 72100 | X-ray exam of lower spine | b | | $217.31 | |
| 72110 | X-ray exam of lower spine | b | | $386.95 | |
| 72114 | X-ray exam of lower spine | b | | $386.95 | |
| 72120 | X-ray exam of lower spine | b | | $217.31 | |
| 72125 | Ct neck spine w/o dye | b | | $1,153.53 | |
| 72126 | Ct neck spine w/dye | b | | $1,505.09 | |
| 72127 | Ct neck spine w/o&w/dye | b | | $1,787.49 | |
| 72128 | Ct chest spine w/o dye | b | | $1,153.53 | |
| 72129 | Ct chest spine w/dye | b | | $1,505.09 | |
| 72130 | Ct chest spine w/o&w/dye | b | | $1,787.49 | |
| 72131 | Ct lumbar spine w/o dye | b | | $1,153.53 | |
| 72132 | Ct lumbar spine w/dye | b | | $1,505.09 | |
| 72133 | Ct lumbar spine w/o&w/dye | b | | $1,787.49 | |
| 72141 | Mri neck spine w/o dye | b | | $1,975.57 | |
| 72142 | Mri neck spine w/dye | b | | $2,022.87 | |
| 72146 | Mri chest spine w/o dye | b | | $1,975.57 | |
| 72147 | Mri chest spine w/dye | b | | $2,022.87 | |
| 72148 | Mri lumbar spine w/o dye | b | | $1,975.57 | |
| 72149 | Mri lumbar spine w/dye | b | | $2,022.87 | |
| 72156 | Mri neck spine w/o&w/dye | b | | $2,849.72 | |
| 72157 | Mri chest spine w/o&w/dye | b | | $2,849.72 | |
| 72158 | Mri lumbar spine w/o&w/dye | b | | $2,849.72 | |
| 72170 | X-ray exam of pelvis | b | | $217.31 | |
| 72190 | X-ray exam of pelvis | b | | $217.31 | |
| 72191 | Ct angiograph pelv w/o&w/dye | b | | $1,524.60 | |
| 72192 | Ct pelvis w/o dye | b | | $1,153.53 | |

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### TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 72193 | Ct pelvis w/dye | b | | $1,505.09 | |
| 72194 | Ct pelvis w/o&w/dye | b | | $1,787.49 | |
| 72195 | Mri pelvis w/o dye | b | | $1,975.57 | |
| 72196 | Mri pelvis w/dye | b | | $2,022.87 | |
| 72197 | Mri pelvis w/o & w/dye | b | | $2,849.72 | |
| 72200 | X-ray exam sacroiliac joints | b | | $217.31 | |
| 72202 | X-ray exam sacroiliac joints | b | | $217.31 | |
| 72220 | X-ray exam of tailbone | b | | $217.31 | |
| 72240 | Contrast x-ray of neck spine | b | | $1,083.21 | |
| 72255 | Contrast x-ray, thorax spine | b | | $1,083.21 | |
| 72265 | Contrast x-ray, lower spine | b | | $1,083.21 | |
| 72270 | Contrast x-ray of spine | b | | $1,083.21 | |
| 72275 | Epidurography | b | | $1,083.21 | |
| 72285 | X-ray c/t spine disk | b | | $1,083.21 | |
| 72295 | X-ray of lower spine disk | b | | $1,083.21 | |
| 73000 | X-ray exam of collar bone | b | | $217.31 | |
| 73010 | X-ray exam of shoulder blade | b | | $217.31 | |
| 73020 | X-ray exam of shoulder | b | | $217.31 | |
| 73030 | X-ray exam of shoulder | b | | $217.31 | |
| 73040 | Contrast x-ray of shoulder | b | | $831.35 | |
| 73050 | X-ray exam of shoulders | b | | $217.31 | |
| 73060 | X-ray exam of humerus | b | | $217.31 | |
| 73070 | X-ray exam of elbow | b | | $217.31 | |
| 73080 | X-ray exam of elbow | b | | $217.31 | |
| 73085 | Contrast x-ray of elbow | b | | $831.35 | |
| 73090 | X-ray exam of forearm | b | | $217.31 | |
| 73092 | X-ray exam of arm, infant | b | | $217.31 | |
| 73100 | X-ray exam of wrist | b | | $217.31 | |
| 73110 | X-ray exam of wrist | b | | $217.31 | |
| 73115 | Contrast x-ray of wrist | b | | $831.35 | |
| 73120 | X-ray exam of hand | b | | $217.31 | |
| 73130 | X-ray exam of hand | b | | $217.31 | |
| 73140 | X-ray exam of finger(s) | b | | $217.31 | |
| 73200 | Ct upper extremity w/o dye | b | | $1,153.53 | |
| 73201 | Ct upper extremity w/dye | b | | $1,505.09 | |
| 73202 | Ct uppr extremity w/o&w/dye | b | | $1,787.49 | |
| 73206 | Ct angio upr extrm w/o&w/dye | b | | $1,524.60 | |
| 73218 | Mri upper extremity w/o dye | b | | $1,975.57 | |
| 73219 | Mri upper extremity w/dye | b | | $2,022.87 | |
| 73220 | Mri uppr extremity w/o&w/dye | b | | $2,849.72 | |
| 73221 | Mri joint upr extrem w/o dye | b | | $1,975.57 | |
| 73222 | Mri joint upr extrem w/dye | b | | $2,022.87 | |
| 73223 | Mri joint upr extr w/o&w/dye | b | | $2,849.72 | |
| 73500 | X-ray exam of hip | b | | $217.31 | |
| 73510 | X-ray exam of hip | b | | $217.31 | |
| 73520 | X-ray exam of hips | b | | $217.31 | |
| 73525 | Contrast x-ray of hip | b | | $831.35 | |
| 73530 | X-ray exam of hip | b | | $386.95 | |
| 73540 | X-ray exam of pelvis & hips | b | | $217.31 | |
| 73542 | X-ray exam, sacroiliac joint | b | | $831.35 | |
| 73550 | X-ray exam of thigh | b | | $217.31 | |
| 73560 | X-ray exam of knee, 1 or 2 | b | | $217.31 | |
| 73562 | X-ray exam of knee, 3 | b | | $217.31 | |
| 73564 | X-ray exam, knee, 4 or more | b | | $217.31 | |
| 73565 | X-ray exam of knees | b | | $217.31 | |
| 73580 | Contrast x-ray of knee joint | b | | $831.35 | |
| 73590 | X-ray exam of lower leg | b | | $217.31 | |
| 73592 | X-ray exam of leg, infant | b | | $217.31 | |
| 73600 | X-ray exam of ankle | b | | $217.31 | |
| 73610 | X-ray exam of ankle | b | | $217.31 | |
| 73615 | Contrast x-ray of ankle | b | | $831.35 | |
| 73620 | X-ray exam of foot | b | | $217.31 | |
| 73630 | X-ray exam of foot | b | | $217.31 | |
| 73650 | X-ray exam of heel | b | | $217.31 | |
| 73660 | X-ray exam of toe(s) | b | | $217.31 | |
| 73700 | Ct lower extremity w/o dye | b | | $1,153.53 | |

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[1] See end of table.

TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Method-ology |
|---|---|---|---|---|---|
| 73701 | Ct lower extremity w/dye | b | | $1,505.09 | |
| 73702 | Ct lwr extremity w/o&w/dye | b | | $1,787.49 | |
| 73706 | Ct angio lwr extr w/o&w/dye | b | | $1,524.60 | |
| 73718 | Mri lower extremity w/o dye | b | | $1,975.57 | |
| 73719 | Mri lower extremity w/dye | b | | $2,022.87 | |
| 73720 | Mri lwr extremity w/o&w/dye | b | | $2,849.72 | |
| 73721 | Mri jnt of lwr extre w/o dye | b | | $1,975.57 | |
| 73722 | Mri joint of lwr extr w/dye | b | | $2,022.87 | |
| 73723 | Mri joint lwr extr w/o&w/dye | b | | $2,849.72 | |
| 74000 | X-ray exam of abdomen | b | | $217.31 | |
| 74010 | X-ray exam of abdomen | b | | $217.31 | |
| 74020 | X-ray exam of abdomen | b | | $217.31 | |
| 74022 | X-ray exam series, abdomen | b | | $386.95 | |
| 74150 | Ct abdomen w/o dye | b | | $1,153.53 | |
| 74160 | Ct abdomen w/dye | b | | $1,505.09 | |
| 74170 | Ct abdomen w/o&w/dye | b | | $1,787.49 | |
| 74175 | Ct angio abdom w/o&w/dye | b | | $1,524.60 | |
| 74181 | Mri abdomen w/o dye | b | | $1,975.57 | |
| 74182 | Mri abdomen w/dye | b | | $2,022.87 | |
| 74183 | Mri abdomen w/o&w/dye | b | | $2,849.72 | |
| 74190 | X-ray exam of peritoneum | b | | $530.77 | |
| 74210 | Contrst x-ray exam of throat | b | | $475.45 | |
| 74220 | Contrast x-ray, esophagus | b | | $475.45 | |
| 74230 | Cine/vid x-ray, throat/esoph | b | | $475.45 | |
| 74235 | Remove esophagus obstruction | b | | $674.28 | |
| 74240 | X-ray exam, upper gi tract | b | | $475.45 | |
| 74241 | X-ray exam, upper gi tract | b | | $475.45 | |
| 74245 | X-ray exam, upper gi tract | b | | $658.04 | |
| 74246 | Contrst x-ray uppr gi tract | b | | $475.45 | |
| 74247 | Contrst x-ray uppr gi tract | b | | $475.45 | |
| 74249 | Contrst x-ray uppr gi tract | b | | $658.04 | |
| 74250 | X-ray exam of small bowel | b | | $475.45 | |
| 74251 | X-ray exam of small bowel | b | | $658.04 | |
| 74260 | X-ray exam of small bowel | b | | $658.04 | |
| 74270 | Contrast x-ray exam of colon | b | | $475.45 | |
| 74280 | Contrast x-ray exam of colon | b | | $658.04 | |
| 74283 | Contrast x-ray exam of colon | b | | $475.45 | |
| 74290 | Contrast x-ray, gallbladder | b | | $475.45 | |
| 74291 | Contrast x-rays, gallbladder | b | | $475.45 | |
| 74300 | X-ray bile ducts/pancreas | b | | $530.77 | |
| 74301 | X-rays at surgery add-on | b | | $530.77 | |
| 74305 | X-ray bile ducts/pancreas | b | | $530.77 | |
| 74320 | Contrast x-ray of bile ducts | b | | $788.03 | |
| 74327 | X-ray bile stone removal | b | | $674.28 | |
| 74340 | X-ray guide for GI tube | b | | $373.71 | |
| 74350 | X-ray guide, stomach tube | b | | $530.77 | |
| 74355 | X-ray guide, intestinal tube | b | | $530.77 | |
| 74360 | X-ray guide, GI dilation | b | | $674.28 | |
| 74363 | X-ray, bile duct dilation | b | | $2,147.43 | |
| 74400 | Contrst x-ray, urinary tract | b | | $706.78 | |
| 74410 | Contrst x-ray, urinary tract | b | | $706.78 | |
| 74415 | Contrst x-ray, urinary tract | b | | $706.78 | |
| 74420 | Contrst x-ray, urinary tract | b | | $706.78 | |
| 74425 | Contrst x-ray, urinary tract | b | | $706.78 | |
| 74430 | Contrast x-ray, bladder | b | | $706.78 | |
| 74440 | X-ray, male genital tract | b | | $706.78 | |
| 74445 | X-ray exam of penis | b | | $706.78 | |
| 74450 | X-ray, urethra/bladder | b | | $706.78 | |
| 74455 | X-ray, urethra/bladder | b | | $706.78 | |
| 74470 | X-ray exam of kidney lesion | b | | $788.03 | |
| 74475 | X-ray control, cath insert | b | | $2,147.43 | |
| 74480 | X-ray control, cath insert | b | | $674.28 | |
| 74485 | X-ray guide, GU dilation | b | | $674.28 | |
| 74710 | X-ray measurement of pelvis | b | | $217.31 | |
| 74740 | X-ray, female genital tract | b | | $788.03 | |
| 74742 | X-ray, fallopian tube | b | | $530.77 | |

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[1] See end of table

## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Method-ology |
|---|---|---|---|---|---|
| 74775 | X-ray exam of perineum | b | | $706.78 | |
| 75552 | Heart mri for morph w/o dye | b | | $1.975.57 | |
| 75553 | Heart mri for morph w/dye | b | | $2,022.87 | |
| 75554 | Cardiac MRI/function | b | | $1,760.20 | |
| 75555 | Cardiac MRI/limited study | b | | $1,760.20 | |
| 75556 | Cardiac MRI/flow mapping | | | $2,653.79 | |
| 75600 | Contrast x-ray exam of aorta | b | | $4,251.55 | |
| 75605 | Contrast x-ray exam of aorta | b | | $4,251.55 | |
| 75625 | Contrast x-ray exam of aorta | b | | $4,251.55 | |
| 75630 | X-ray aorta, leg arteries | b | | $4,251.55 | |
| 75635 | Ct angio abdominal arteries | b | | $1,524.60 | |
| 75650 | Artery x-rays, head & neck | b | | $4,251.55 | |
| 75658 | Artery x-rays, arm | b | | $4,251.55 | |
| 75660 | Artery x-rays, head & neck | b | | $2,415.53 | |
| 75662 | Artery x-rays, head & neck | b | | $2,415.53 | |
| 75665 | Artery x-rays, head & neck | b | | $4,251.55 | |
| 75671 | Artery x-rays, head & neck | b | | $4,251.55 | |
| 75676 | Artery x-rays, neck | b | | $4,251.55 | |
| 75680 | Artery x-rays, neck | b | | $4,251.55 | |
| 75685 | Artery x-rays, spine | b | | $2,415.53 | |
| 75705 | Artery x-rays, spine | b | | $2,415.53 | |
| 75710 | Artery x-rays, arm/leg | b | | $4,251.55 | |
| 75716 | Artery x-rays, arms/legs | b | | $4,251.55 | |
| 75722 | Artery x-rays, kidney | b | | $4,251.55 | |
| 75724 | Artery x-rays, kidneys | b | | $4,251.55 | |
| 75726 | Artery x-rays, abdomen | b | | $4,251.55 | |
| 75731 | Artery x-rays, adrenal gland | b | | $4.251.55 | |
| 75733 | Artery x-rays, adrenals | b | | $4,251.55 | |
| 75736 | Artery x-rays, pelvis | b | | $4,251.55 | |
| 75741 | Artery x-rays, lung | b | | $2,415.53 | |
| 75743 | Artery x-rays, lungs | b | | $4,251.55 | |
| 75746 | Artery x-rays, lung | b | | $2,415.53 | |
| 75756 | Artery x-rays, chest | b | | $2,415.53 | |
| 75774 | Artery x-ray, each vessel | b | | $2,886.72 | |
| 75790 | Visualize A-V shunt | b | | $1,459.60 | |
| 75801 | Lymph vessel x-ray, arm/leg | b | | $788.03 | |
| 75803 | Lymph vessel x-ray,arms/legs | b | | $788.03 | |
| 75805 | Lymph vessel x-ray, trunk | b | | $788.03 | |
| 75807 | Lymph vessel x-ray, trunk | b | | $788.03 | |
| 75809 | Nonvascular shunt, x-ray | b | | $530.77 | |
| 75810 | Vein x-ray, spleen/liver | b | | $2,415.53 | |
| 75820 | Vein x-ray, arm/leg | b | | $1,459.60 | |
| 75822 | Vein x-ray, arms/legs | b | | $1,459.60 | |
| 75825 | Vein x-ray, trunk | b | | $2.415.53 | |
| 75827 | Vein x-ray, chest | b | | $2,415.53 | |
| 75831 | Vein x-ray, kidney | b | | $1,952.47 | |
| 75833 | Vein x-ray, kidneys | b | | $2,415.53 | |
| 75840 | Vein x-ray, adrenal gland | b | | $1,952.47 | |
| 75842 | Vein x-ray, adrenal glands | b | | $1,952.47 | |
| 75860 | Vein x-ray, neck | b | | $1,952.47 | |
| 75870 | Vein x-ray, skull | b | | $1,952.47 | |
| 75872 | Vein x-ray, skull | b | | $1,952.47 | |
| 75880 | Vein x-ray, eye socket | b | | $1,952.47 | |
| 75885 | Vein x-ray, liver | b | | $2,415.53 | |
| 75887 | Vein x-ray, liver | b | | $4,251.55 | |
| 75889 | Vein x-ray, liver | b | | $2,415.53 | |
| 75891 | Vein x-ray, liver | b | | $2,415.53 | |
| 75894 | X-rays, transcath therapy | b | | $2,147.43 | |
| 75896 | X-rays, transcath therapy | b | | $2,147.43 | |
| 75898 | Follow-up angiography | b | | $788.03 | |
| 75900 | Arterial catheter exchange | b | | $1,157.61 | MDR |
| 75901 | Remove cva device obstruct | b | | $788.03 | |
| 75902 | Remove cva lumen obstruct | b | | $530.77 | |
| 75940 | X-ray placement, vein filter | b | | $1,104.86 | |
| 75945 | Intravascular us | b | | $740.18 | |
| 75946 | Intravascular us add-on | b | | $740.18 | |

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[1] See end of table.

## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Method-ology |
|---|---|---|---|---|---|
| 75960 | Transcatheter intro, stent | b | | $4,251.55 | |
| 75961 | Retrieval, broken catheter | b | | $4,251.55 | |
| 75962 | Repair arterial blockage | b | | $4,251.55 | |
| 75964 | Repair artery blockage, each | b | | $4,251.55 | |
| 75966 | Repair arterial blockage | b | | $4,251.55 | |
| 75968 | Repair artery blockage, each | b | | $4,251.55 | |
| 75970 | Vascular biopsy | b | | $4,251.55 | |
| 75978 | Repair venous blockage | b | | $2,886.72 | |
| 75980 | Contrast xray exam bile duct | b | | $674.28 | |
| 75982 | Contrast xray exam bile duct | b | | $2,147.43 | |
| 75984 | Xray control catheter change | b | | $788.03 | |
| 75992 | Atherectomy, x-ray exam | b | | $4,251.55 | |
| 75993 | Atherectomy, x-ray exam | b | | $4,251.55 | |
| 75994 | Atherectomy, x-ray exam | b | | $4,251.55 | |
| 75995 | Atherectomy, x-ray exam | b | | $4,251.55 | |
| 75996 | Atherectomy, x-ray exam | b | | $4,251.55 | |
| 76000 | Fluoroscope examination | b | | $373.71 | |
| 76006 | X-ray stress view | b | | $217.31 | |
| 76010 | X-ray, nose to rectum | b | | $217.31 | |
| 76012 | Percut vertebroplasty fluor | b | | $1,083.21 | |
| 76013 | Percut vertebroplasty, ct | b | | $1,083.21 | |
| 76020 | X-rays for bone age | b | | $217.31 | |
| 76040 | X-rays, bone evaluation | b | | $217.31 | |
| 76061 | X-rays, bone survey | b | | $386.95 | |
| 76062 | X-rays, bone survey | b | | $386.95 | |
| 76065 | X-rays, bone evaluation | b | | $386.95 | |
| 76066 | Joint survey, single view | b | | $217.31 | |
| 76071 | Ct bone density, peripheral | b | | $468.48 | |
| 76075 | Dexa, axial skeleton study | b | | $362.42 | |
| 76076 | Dexa, peripheral study | b | | $230.17 | |
| 76078 | Radiographic absorptiometry | b | | $386.95 | |
| 76080 | X-ray exam of fistula | b | | $530.77 | |
| 76086 | X-ray of mammary duct | b | | $530.77 | |
| 76088 | X-ray of mammary ducts | b | | $530.77 | |
| 76090 | Mammogram, one breast | b | | $186.09 | |
| 76091 | Mammogram, both breasts | b | | $186.09 | |
| 76095 | Stereotactic breast biopsy | b | | $1,104.86 | |
| 76096 | X-ray of needle wire, breast | b | | $530.77 | |
| 76098 | X-ray exam, breast specimen | b | | $217.31 | |
| 76100 | X-ray exam of body section | b | | $386.95 | |
| 76101 | Complex body section x-ray | b | | $788.03 | |
| 76102 | Complex body section x-rays | b | | $788.03 | |
| 76120 | Cine/video x-rays | b | | $217.31 | |
| 76125 | Cine/video x-rays add-on | b | | $217.31 | |
| 76150 | X-ray exam, dry process | | | $217.31 | |
| 76355 | CAT scan for localization | b | | $1,505.09 | |
| 76360 | CAT scan for needle biopsy | b | | $1,505.09 | |
| 76370 | CAT scan for therapy guide | b | | $468.48 | |
| 76375 | 3d/holograph reconstr add-on | b | | $468.48 | |
| 76380 | CAT scan follow-up study | b | | $468.48 | |
| 76400 | Magnetic image, bone marrow | b | | $1,760.20 | |
| 76496 | Fluoroscopic procedure | | | $373.71 | |
| 76497 | Ct procedure | | | $468.48 | |
| 76498 | Mri procedure | | | $1,760.20 | |
| 76499 | Radiographic procedure | b | | $217.31 | |
| 76506 | Echo exam of head | b | | $536.72 | |
| 76511 | Echo exam of eye | b | | $536.72 | |
| 76512 | Echo exam of eye | b | | $536.72 | |
| 76513 | Echo exam of eye, water bath | b | | $331.16 | |
| 76516 | Echo exam of eye | b | | $536.72 | |
| 76519 | Echo exam of eye | b | | $536.72 | |
| 76529 | Echo exam of eye | b | | $331.16 | |
| 76536 | Us exam of head and neck | b | | $536.72 | |
| 76604 | Us exam, chest, b-scan | b | | $536.72 | |
| 76645 | Us exam, breast(s) | b | | $331.16 | |
| 76700 | Us exam, abdom, complete | b | | $536.72 | |

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[1] See end of table.

## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator[1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 76705 | Echo exam of abdomen | b | | $536.72 | |
| 76770 | Us exam abdo back wall, comp | b | | $536.72 | |
| 76775 | Us eam abdo back wall, lim | b | | $536.72 | |
| 76778 | Us exam kidney transplant | b | | $536.72 | |
| 76800 | Us exam, spinal canal | b | | $536.72 | |
| 76801 | Ob us < 14 wks, single fetus | b | | $331.16 | |
| 76802 | Ob us < 14 wks, addl fetus | b | | $331.16 | |
| 76805 | Ob us >/= 14 wks, sngl fetus | b | | $536.72 | |
| 76810 | Ob us >/= 14 wks, addl fetus | b | | $331.16 | |
| 76811 | Ob us, detailed, sngl fetus | b | | $740.18 | |
| 76812 | Ob us, detailed, addl fetus | b | | $536.72 | |
| 76815 | Ob us, limited, fetus(s) | b | | $331.16 | |
| 76816 | Ob us, follow-up, per fetus | b | | $331.16 | |
| 76817 | Transvaginal us, obstetric | b | | $331.16 | |
| 76818 | Fetal biophys profile w/nst | b | | $536.72 | |
| 76819 | Fetal biophys profil w/o nst | b | | $536.72 | |
| 76825 | Echo exam of fetal heart | b | | $426.95 | |
| 76826 | Echo exam of fetal heart | b | | $376.50 | |
| 76827 | Echo exam of fetal heart | b | | $426.95 | |
| 76828 | Echo exam of fetal heart | b | | $376.50 | |
| 76830 | Transvaginal us, non-ob | b | | $536.72 | |
| 76831 | Echo exam, uterus | b | | $536.72 | |
| 76856 | Us exam, pelvic, complete | b | | $536.72 | |
| 76857 | Us exam, pelvic, limited | b | | $331.16 | |
| 76870 | Us exam, scrotum | b | | $536.72 | |
| 76872 | Echo exam, transrectal | b | | $536.72 | |
| 76873 | Echograp trans r, pros study | b | | $536.72 | |
| 76880 | Us exam, extremity | b | | $536.72 | |
| 76885 | Us exam infant hips, dynamic | b | | $536.72 | |
| 76886 | Us exam infant hips, static | b | | $536.72 | |
| 76930 | Echo guide, cardiocentesis | b | | $387.24 | |
| 76932 | Echo guide for heart biopsy | b | | $387.24 | |
| 76936 | Echo guide for artery repair | b | | $387.24 | |
| 76941 | Echo guide for transfusion | b | | $387.24 | |
| 76942 | Echo guide for biopsy | b | | $387.24 | |
| 76945 | Echo guide, villus sampling | b | | $387.24 | |
| 76946 | Echo guide for amniocentesis | b | | $387.24 | |
| 76948 | Echo guide, ova aspiration | b | | $387.24 | |
| 76950 | Echo guidance radiotherapy | b | | $387.24 | |
| 76965 | Echo guidance radiotherapy | b | | $387.24 | |
| 76970 | Ultrasound exam follow-up | b | | $331.16 | |
| 76975 | GI endoscopic ultrasound | b | | $536.72 | |
| 76977 | Us bone density measure | b | | $331.16 | |
| 76986 | Ultrasound guide intraoper | b | | $536.72 | |
| 76999 | Echo examination procedure | b | | $331.16 | |
| 77280 | Set radiation therapy field | b | | $402.15 | |
| 77285 | Set radiation therapy field | b | | $983.60 | |
| 77290 | Set radiation therapy field | b | | $983.60 | |
| 77295 | Set radiation therapy field | b | | $3,818.29 | |
| 77300 | Radiation therapy dose plan | b | | $402.15 | |
| 77301 | Radiotherapy dose plan, imrt | b | | $4,534.03 | |
| 77305 | Teletx isodose plan simple | b | | $402.15 | |
| 77310 | Teletx isodose plan intermed | b | | $402.15 | |
| 77315 | Teletx isodose plan complex | b | | $983.60 | |
| 77321 | Special teletx port plan | b | | $983.60 | |
| 77326 | Brachytx isodose calc simp | b | | $983.60 | |
| 77327 | Brachytx isodose calc interm | b | | $983.60 | |
| 77328 | Brachytx isodose plan compl | b | | $983.60 | |
| 77331 | Special radiation dosimetry | b | | $402.15 | |
| 77332 | Radiation treatment aid(s) | b | | $764.74 | |
| 77333 | Radiation treatment aid(s) | b | | $764.74 | |
| 77334 | Radiation treatment aid(s) | b | | $764.74 | |
| 77336 | Radiation physics consult | | | $402.15 | |
| 77370 | Radiation physics consult | | | $983.60 | |
| 77399 | External radiation dosimetry | b | | $402.15 | |
| 77401 | Radiation treatment delivery | | | $382.70 | |

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[1] See end of table.

## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 77402 | Radiation treatment delivery | | | $382.70 | |
| 77403 | Radiation treatment delivery | | | $382.70 | |
| 77404 | Radiation treatment delivery | | | $382.70 | |
| 77406 | Radiation treatment delivery | | | $382.70 | |
| 77407 | Radiation treatment delivery | | | $382.70 | |
| 77408 | Radiation treatment delivery | | | $382.70 | |
| 77409 | Radiation treatment delivery | | | $382.70 | |
| 77411 | Radiation treatment delivery | | | $382.70 | |
| 77412 | Radiation treatment delivery | | | $528.07 | |
| 77413 | Radiation treatment delivery | | | $528.07 | |
| 77414 | Radiation treatment delivery | | | $528.07 | |
| 77416 | Radiation treatment delivery | | | $528.07 | |
| 77417 | Radiology port film(s) | | | $217.31 | |
| 77418 | Radiation tx delivery, imrt | | | $2,143.56 | |
| 77470 | Special radiation treatment | b | | $1,670.82 | |
| 77520 | Proton trmt, simple w/o comp | | | $2,808.19 | |
| 77522 | Proton trmt, simple w/comp | | | $2,808.19 | |
| 77523 | Proton trmt, intermediate | | | $4,534.03 | |
| 77525 | Proton treatment, complex | | | $4,534.03 | |
| 77600 | Hyperthermia treatment | b | | $1,167.16 | |
| 77605 | Hyperthermia treatment | b | | $1,167.16 | |
| 77610 | Hyperthermia treatment | b | | $1,167.16 | |
| 77615 | Hyperthermia treatment | b | | $1,167.16 | |
| 77620 | Hyperthermia treatment | b | | $1,167.16 | |
| 77750 | Infuse radioactive materials | b | | $382.70 | |
| 77761 | Apply intrcav radiat simple | b | | $14,526.89 | |
| 77762 | Apply intrcav radiat interm | b | | $14,526.89 | |
| 77763 | Apply intrcav radiat compl | b | | $14,526.89 | |
| 77776 | Apply interstit radiat simpl | b | | $14,526.89 | |
| 77777 | Apply interstit radiat inter | b | | $14,526.89 | |
| 77778 | Apply interstit radiat compl | b | | $14,906.97 | |
| 77781 | High intensity brachytherapy | b | | $5,879.06 | |
| 77782 | High intensity brachytherapy | b | | $5,879.06 | |
| 77783 | High intensity brachytherapy | b | | $5,879.06 | |
| 77784 | High intensity brachytherapy | b | | $5,879.06 | |
| 77789 | Apply surface radiation | b | | $382.70 | |
| 77799 | Radium/radioisotope therapy | b | | $5,879.06 | |
| 78000 | Thyroid, single uptake | b | | $565.96 | |
| 78001 | Thyroid, multiple uptakes | b | | $565.96 | |
| 78003 | Thyroid suppress/stimul | b | | $565.96 | |
| 78006 | Thyroid imaging with uptake | b | | $1,083.42 | |
| 78007 | Thyroid image, mult uptakes | b | | $1,199.63 | |
| 78010 | Thyroid imaging | b | | $1,083.42 | |
| 78011 | Thyroid imaging with flow | b | | $1,199.63 | |
| 78015 | Thyroid met imaging | b | | $1,083.42 | |
| 78016 | Thyroid met imaging/studies | b | | $1,199.63 | |
| 78018 | Thyroid met imaging, body | b | | $1,199.63 | |
| 78020 | Thyroid met uptake | b | | $489.66 | |
| 78070 | Parathyroid nuclear imaging | b | | $1,199.63 | |
| 78075 | Adrenal nuclear imaging | b | | $1,199.63 | |
| 78099 | Endocrine nuclear procedure | b | | $1,083.42 | |
| 78102 | Bone marrow imaging, ltd | b | | $1,083.42 | |
| 78103 | Bone marrow imaging, mult | b | | $1,083.42 | |
| 78104 | Bone marrow imaging, body | b | | $1,083.42 | |
| 78110 | Plasma volume, single | b | | $565.96 | |
| 78111 | Plasma volume, multiple | b | | $565.96 | |
| 78120 | Red cell mass, single | b | | $565.96 | |
| 78121 | Red cell mass, multiple | b | | $565.96 | |
| 78122 | Blood volume | b | | $565.96 | |
| 78130 | Red cell survival study | b | | $565.96 | |
| 78135 | Red cell survival kinetics | b | | $565.96 | |
| 78140 | Red cell sequestration | b | | $565.96 | |
| 78160 | Plasma iron turnover | b | | $565.96 | |
| 78162 | Radioiron absorption exam | b | | $565.96 | |
| 78170 | Red cell iron utilization | b | | $565.96 | |
| 78172 | Total body iron estimation | b | | $565.96 | |

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[1] See end of table

### TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 78185 | Spleen imaging | b | | $1,083.42 | |
| 78190 | Platelet survival, kinetics | b | | $565.96 | |
| 78191 | Platelet survival | b | | $1,199.63 | |
| 78195 | Lymph system imaging | b | | $1,199.63 | |
| 78199 | Blood/lymph nuclear exam | b | | $1,083.42 | |
| 78201 | Liver imaging | b | | $1,083.42 | |
| 78202 | Liver imaging with flow | b | | $1,083.42 | |
| 78205 | Liver imaging (3D) | b | | $1,083.42 | |
| 78206 | Liver image (3d) with flow | b | | $1,199.63 | |
| 78215 | Liver and spleen imaging | b | | $1,083.42 | |
| 78216 | Liver & spleen image/flow | b | | $1,083.42 | |
| 78220 | Liver function study | b | | $1,083.42 | |
| 78223 | Hepatobiliary imaging | b | | $1,199.63 | |
| 78230 | Salivary gland imaging | b | | $1,199.63 | |
| 78231 | Serial salivary imaging | b | | $1,199.63 | |
| 78232 | Salivary gland function exam | b | | $1,199.63 | |
| 78258 | Esophageal motility study | b | | $1,083.42 | |
| 78261 | Gastric mucosa imaging | b | | $1,083.42 | |
| 78262 | Gastroesophageal reflux exam | b | | $1,199.63 | |
| 78264 | Gastric emptying study | b | | $1,199.63 | |
| 78270 | Vit B-12 absorption exam | b | | $565.96 | |
| 78271 | Vit b-12 absrp exam, int fac | b | | $565.96 | |
| 78272 | Vit B-12 absorp, combined | b | | $565.96 | |
| 78278 | Acute GI blood loss imaging | b | | $1,199.63 | |
| 78282 | GI protein loss exam | b | | $565.96 | |
| 78290 | Meckel's divert exam | b | | $1,199.63 | |
| 78291 | Leveen/shunt patency exam | b | | $1,199.63 | |
| 78299 | GI nuclear procedure | b | | $1,083.42 | |
| 78300 | Bone imaging, limited area | b | | $1,083.42 | |
| 78305 | Bone imaging, multiple areas | b | | $1,083.42 | |
| 78306 | Bone imaging, whole body | b | | $1,083.42 | |
| 78315 | Bone imaging, 3 phase | b | | $1,199.63 | |
| 78320 | Bone imaging (3D) | b | | $1,083.42 | |
| 78350 | Bone mineral, single photon | b | | $386.95 | |
| 78399 | Musculoskeletal nuclear exam | b | | $1,083.42 | |
| 78414 | Non-imaging heart function | b | | $565.96 | |
| 78428 | Cardiac shunt imaging | b | | $1,083.42 | |
| 78445 | Vascular flow imaging | b | | $1,083.42 | |
| 78455 | Venous thrombosis study | b | | $565.96 | |
| 78456 | Acute venous thrombus image | b | | $1,199.63 | |
| 78457 | Venous thrombosis imaging | b | | $1,083.42 | |
| 78458 | Ven thrombosis images, bilat | b | | $1,199.63 | |
| 78459 | Heart muscle imaging (PET) | b | | $5,066.66 | |
| 78460 | Heart muscle blood, single | b | | $1,877.82 | |
| 78461 | Heart muscle blood, multiple | b | | $1,877.82 | |
| 78464 | Heart image (3d), single | b | | $1,877.82 | |
| 78465 | Heart image (3d), multiple | b | | $1,877.82 | |
| 78466 | Heart infarct image | b | | $1,083.42 | |
| 78468 | Heart infarct image (ef) | b | | $1,083.42 | |
| 78469 | Heart infarct image (3D) | b | | $1,083.42 | |
| 78472 | Gated heart, planar, single | b | | $1,877.82 | |
| 78473 | Gated heart, multiple | b | | $1,877.82 | |
| 78478 | Heart wall motion add-on | b | | $489.66 | |
| 78480 | Heart function add-on | b | | $489.66 | |
| 78481 | Heart first pass, single | b | | $1,877.82 | |
| 78483 | Heart first pass, multiple | b | | $1,877.82 | |
| 78494 | Heart image, spect | b | | $1,877.82 | |
| 78496 | Heart first pass add-on | b | | $489.66 | |
| 78499 | Cardiovascular nuclear exam | b | | $1,083.42 | |
| 78580 | Lung perfusion imaging | b | | $1,083.42 | |
| 78584 | Lung V/Q image single breath | b | | $1,199.63 | |
| 78585 | Lung V/Q imaging | b | | $1,199.63 | |
| 78586 | Aerosol lung image, single | b | | $1,083.42 | |
| 78587 | Aerosol lung image, multiple | b | | $1,083.42 | |
| 78588 | Perfusion lung image | b | | $1,199.63 | |
| 78591 | Vent image, 1 breath, 1 proj | b | | $1,083.42 | |

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[1] See end of table.

### TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator[1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 78593 | Vent image, 1 proj, gas | b | | $1,083.42 | |
| 78594 | Vent image, mult proj, gas | b | | $1,083.42 | |
| 78596 | Lung differential function | b | | $1,199.63 | |
| 78599 | Respiratory nuclear exam | b | | $1,083.42 | |
| 78600 | Brain imaging, ltd static | b | | $1,083.42 | |
| 78601 | Brain imaging, ltd w/ flow | b | | $1,083.42 | |
| 78605 | Brain imaging, complete | b | | $1,083.42 | |
| 78606 | Brain imaging, compl w/flow | b | | $1,083.42 | |
| 78607 | Brain imaging (3D) | b | | $1,083.42 | |
| 78610 | Brain flow imaging only | b | | $1,083.42 | |
| 78615 | Cerebral vascular flow image | b | | $1,083.42 | |
| 78630 | Cerebrospinal fluid scan | b | | $1,199.63 | |
| 78635 | CSF ventriculography | b | | $1,199.63 | |
| 78645 | CSF shunt evaluation | b | | $1,199.63 | |
| 78647 | Cerebrospinal fluid scan | b | | $1,199.63 | |
| 78650 | CSF leakage imaging | b | | $1,199.63 | |
| 78660 | Nuclear exam of tear flow | b | | $1,083.42 | |
| 78699 | Nervous system nuclear exam | b | | $1,083.42 | |
| 78700 | Kidney imaging, static | b | | $1,083.42 | |
| 78701 | Kidney imaging with flow | b | | $1,083.42 | |
| 78704 | Imaging renogram | b | | $1,083.42 | |
| 78707 | Kidney flow/function image | b | | $1,083.42 | |
| 78708 | Kidney flow/function image | b | | $1,199.63 | |
| 78709 | Kidney flow/function image | b | | $1,199.63 | |
| 78710 | Kidney imaging (3D) | b | | $1,083.42 | |
| 78715 | Renal vascular flow exam | b | | $1,083.42 | |
| 78725 | Kidney function study | b | | $565.96 | |
| 78730 | Urinary bladder retention | b | | $1,083.42 | |
| 78740 | Ureteral reflux study | b | | $1,199.63 | |
| 78760 | Testicular imaging | b | | $1,083.42 | |
| 78761 | Testicular imaging/flow | b | | $1,083.42 | |
| 78799 | Genitourinary nuclear exam | b | | $1,083.42 | |
| 78800 | Tumor imaging, limited area | b | | $1,199.63 | |
| 78801 | Tumor imaging, mult areas | b | | $1,199.63 | |
| 78802 | Tumor imaging, whole body | b | | $1,199.63 | |
| 78803 | Tumor imaging (3D) | b | | $1,199.63 | |
| 78805 | Abscess imaging, ltd area | b | | $1,199.63 | |
| 78806 | Abscess imaging, whole body | b | | $1,199.63 | |
| 78807 | Nuclear localization/abscess | b | | $1,199.63 | |
| 78999 | Nuclear diagnostic exam | b | | $1,083.42 | |
| 79000 | Init hyperthyroid therapy | b | | $1,140.08 | |
| 79001 | Repeat hyperthyroid therapy | b | | $1,140.08 | |
| 79020 | Thyroid ablation | b | | $1,140.08 | |
| 79030 | Thyroid ablation, carcinoma | b | | $1,140.08 | |
| 79035 | Thyroid metastatic therapy | b | | $1,140.08 | |
| 79100 | Hematopoetic nuclear therapy | b | | $1,140.08 | |
| 79200 | Intracavitary nuclear trmt | b | | $1,140.08 | |
| 79300 | Interstitial nuclear therapy | b | | $1,140.08 | |
| 79400 | Nonhemato nuclear therapy | b | | $1,140.08 | |
| 79420 | Intravascular nuclear ther | b | | $1,140.08 | |
| 79440 | Nuclear joint therapy | b | | $1,140.08 | |
| 79999 | Nuclear medicine therapy | b | | $1,140.08 | |
| 80500 | Lab pathology consultation | | | $145.86 | |
| 80502 | Lab pathology consultation | | | $72.27 | |
| 85060 | Blood smear interpretation | | | $72.27 | |
| 85097 | Bone marrow interpretation | | | $145.86 | |
| 86077 | Physician blood bank service | | | $145.86 | |
| 86078 | Physician blood bank service | | | $199.79 | |
| 86079 | Physician blood bank service | | | $199.79 | |
| 86485 | Skin test, candida | | | $46.81 | |
| 86490 | Coccidioidomycosis skin test | | | $46.81 | |
| 86510 | Histoplasmosis skin test | | | $46.81 | |
| 86580 | TB intradermal test | | | $46.81 | |
| 86585 | TB tine test | | | $46.81 | |
| 86586 | Skin test, unlisted | | | $46.81 | |
| 86850 | RBC antibody screen | | | $62.84 | |

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[1] See end of table.

TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 86860 | RBC antibody elution | | | $121.67 | |
| 86870 | RBC antibody identification | | | $121.67 | |
| 86880 | Coombs test, direct | | | $46.81 | |
| 86885 | Coombs test, indirect, qual | | | $46.81 | |
| 86886 | Coombs test, indirect, titer | | | $46.81 | |
| 86890 | Autologous blood process | | | $362.13 | |
| 86891 | Autologous blood, op salvage | | | $62.84 | |
| 86900 | Blood typing, ABO | | | $46.81 | |
| 86901 | Blood typing, Rh (D) | | | $62.84 | |
| 86903 | Blood typing, antigen screen | | | $62.84 | |
| 86904 | Blood typing, patient serum | | | $62.84 | |
| 86905 | Blood typing, RBC antigens | | | $62.84 | |
| 86906 | Blood typing, Rh phenotype | | | $62.84 | |
| 86920 | Compatibility test | | | $121.67 | |
| 86921 | Compatibility test | | | $62.84 | |
| 86922 | Compatibility test | | | $121.67 | |
| 86927 | Plasma, fresh frozen | | | $121.67 | |
| 86930 | Frozen blood prep | | | $362.13 | |
| 86931 | Frozen blood thaw | | | $362.13 | |
| 86932 | Frozen blood freeze/thaw | | | $362.13 | |
| 86945 | Blood product/irradiation | | | $121.67 | |
| 86950 | Leukacyte transfusion | | | $362.13 | |
| 86965 | Pooling blood platelets | | | $121.67 | |
| 86970 | RBC pretreatment | | | $62.84 | |
| 86971 | RBC pretreatment | | | $62.84 | |
| 86972 | RBC pretreatment | | | $62.84 | |
| 86975 | RBC pretreatment, serum | | | $62.84 | |
| 86976 | RBC pretreatment, serum | | | $62.84 | |
| 86977 | RBC pretreatment, serum | | | $62.84 | |
| 86978 | RBC pretreatment, serum | | | $62.84 | |
| 86985 | Split blood or products | | | $362.13 | |
| 86999 | Transfusion procedure | | | $62.84 | |
| 88104 | Cytopathology, fluids | b | | $145.86 | |
| 88106 | Cytopathology, fluids | b | | $145.86 | |
| 88107 | Cytopathology, fluids | b | | $145.86 | |
| 88108 | Cytopath, concentrate tech | b | | $145.86 | |
| 88125 | Forensic cytopathology | b | | $72.27 | |
| 88160 | Cytopath smear, other source | b | | $72.27 | |
| 88161 | Cytopath smear, other source | b | | $145.86 | |
| 88162 | Cytopath smear, other source | b | | $145.86 | |
| 88172 | Cytopathology eval of fna | b | | $145.86 | |
| 88173 | Cytopath eval, fna, report | b | | $145.86 | |
| 88180 | Cell marker study | b | | $145.86 | |
| 88182 | Cell marker study | b | | $199.79 | |
| 88299 | Cytogenetic study | | | $72.27 | |
| 88300 | Surgical path, gross | b | | $72.27 | |
| 88302 | Tissue exam by pathologist | b | | $72.27 | |
| 88304 | Tissue exam by pathologist | b | | $145.86 | |
| 88305 | Tissue exam by pathologist | b | | $145.86 | |
| 88307 | Tissue exam by pathologist | b | | $199.79 | |
| 88309 | Tissue exam by pathologist | b | | $199.79 | |
| 88311 | Decalcify tissue | b | | $72.27 | |
| 88312 | Special stains | b | | $72.27 | |
| 88313 | Special stains | b | | $72.27 | |
| 88314 | Histochemical stain | b | | $72.27 | |
| 88318 | Chemical histochemistry | b | | $72.27 | |
| 88319 | Enzyme histochemistry | b | | $72.27 | |
| 88323 | Microslide consultation | b | | $145.86 | |
| 88325 | Comprehensive review of data | | | $199.79 | |
| 88329 | Path consult introp | | | $72.27 | |
| 88331 | Path consult intraop, 1 bloc | b | | $145.86 | |
| 88332 | Path consult intraop, addl | b | | $72.27 | |
| 88342 | Immunocytochemistry | b | | $199.79 | |
| 88346 | Immunofluorescent study | b | | $145.86 | |
| 88347 | Immunofluorescent study | b | | $199.79 | |
| 88348 | Electron microscopy | b | | $1,130.12 | |

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## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Method-ology |
|---|---|---|---|---|---|
| 88349 | Scanning electron microscopy | b | | $1,130.12 | |
| 88355 | Analysis, skeletal muscle | b | | $199.79 | |
| 88356 | Analysis, nerve | b | | $199.79 | |
| 88358 | Analysis, tumor | b | | $199.79 | |
| 88362 | Nerve teasing preparations | b | | $145.86 | |
| 88365 | Tissue hybridization | b | | $199.79 | |
| 89100 | Sample intestinal contents | | | $439.91 | |
| 89105 | Sample intestinal contents | | | $439.91 | |
| 89130 | Sample stomach contents | | | $439.91 | |
| 89132 | Sample stomach contents | | | $439.91 | |
| 89135 | Sample stomach contents | | | $439.91 | |
| 89136 | Sample stomach contents | | | $439.91 | |
| 89140 | Sample stomach contents | | | $439.91 | |
| 89141 | Sample stomach contents | | | $439.91 | |
| 89250 | Fertilization of oocyte | | | $177.94 | |
| 89251 | Culture oocyte w/embryos | | | $177.94 | |
| 89252 | Assist oocyte fertilization | | | $177.94 | |
| 89253 | Embryo hatching | | | $177.94 | |
| 89254 | Oocyte identification | | | $177.94 | |
| 89255 | Prepare embryo for transfer | | | $177.94 | |
| 89256 | Prepare cryopreserved embryo | | | $177.94 | |
| 89257 | Sperm identification | | | $177.94 | |
| 89258 | Cryopreservation, embryo | | | $177.94 | |
| 89259 | Cryopreservation, sperm | | | $177.94 | |
| 89260 | Sperm isolation, simple | | | $177.94 | |
| 89261 | Sperm isolation, complex | | | $177.94 | |
| 89264 | Identify sperm tissue | | | $177.94 | |
| 89350 | Sputum specimen collection | | | $199.79 | |
| 89360 | Collect sweat for test | | | $199.79 | |
| 90296 | Diphtheria antitoxin | | | $164.90 | |
| 90375 | Rabies ig, im/sc | | | $164.90 | |
| 90376 | Rabies ig, heat treated | | | $164.90 | |
| 90379 | Rsv ig, iv | | | $164.90 | |
| 90581 | Anthrax vaccine, sc | | | $164.90 | |
| 90636 | Hep a/hep b vacc, adult im | | | $45.93 | |
| 90657 | Flu vaccine, 6-35 mo, im | | | $12.45 | SAF |
| 90658 | Flu vaccine, 3 yrs, im | | | $18.68 | SAF |
| 90659 | Flu vaccine, whole, im | | | $12.64 | SAF |
| 90693 | Typhoid vaccine, akd, sc | | | $164.90 | |
| 90723 | Dtap-hep b-ipv vaccine, im | | | $164.90 | |
| 90732 | Pneumococcal vaccine | | | $39.84 | SAF |
| 90782 | Injection, sc/im | | | $88.14 | |
| 90783 | Injection, ia | | | $244.22 | |
| 90784 | Injection, iv | | | $244.22 | |
| 90788 | Injection of antibiotic | | | $244.22 | |
| 90799 | Ther/prophylactic/dx inject | | | $48.02 | |
| 90801 | Psy dx interview | | | $189.44 | |
| 90802 | Intac psy dx interview | | | $189.44 | |
| 90804 | Psytx, office, 20-30 min | | | $220.26 | |
| 90805 | Psytx, off, 20-30 min w/e&m | | | $220.26 | |
| 90806 | Psytx, off, 45-50 min | | | $189.44 | |
| 90807 | Psytx, off, 45-50 min w/e&m | | | $189.44 | |
| 90808 | Psytx, office, 75-80 min | | | $189.44 | |
| 90809 | Psytx, off, 75-80, w/e&m | | | $189.44 | |
| 90810 | Intac psytx, off, 20-30 min | | | $220.26 | |
| 90811 | Intac psytx, 20-30, w/e&m | | | $220.26 | |
| 90812 | Intac psytx, off, 45-50 min | | | $189.44 | |
| 90813 | Intac psytx, 45-50 min w/e&m | | | $189.44 | |
| 90814 | Intac psytx, off, 75-80 min | | | $189.44 | |
| 90815 | Intac psytx, 75-80 w/e&m | | | $189.44 | |
| 90816 | Psytx, hosp, 20-30 min | | | $220.26 | |
| 90817 | Psytx, hosp, 20-30 min w/e&m | | | $220.26 | |
| 90818 | Psytx, hosp, 45-50 min | | | $189.44 | |
| 90819 | Psytx, hosp, 45-50 min w/e&m | | | $189.44 | |
| 90821 | Psytx, hosp, 75-80 min | | | $189.44 | |
| 90822 | Psytx, hosp, 75-80 min w/e&m | | | $189.44 | |

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[1] See end of table.

## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

| CPT/ HCPCS Code | Description | Status/ Usage Indicator[1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 90823 | Intac psytx, hosp, 20-30 min | | | $220.26 | |
| 90824 | Intac psytx, hsp 20-30 w/e&m | | | $220.26 | |
| 90826 | Intac psytx, hosp, 45-50 min | | | $189.44 | |
| 90827 | Intac psytx, hsp 45-50 w/e&m | | | $189.44 | |
| 90828 | Intac psytx, hosp, 75-80 min | | | $189.44 | |
| 90829 | Intac psytx, hsp 75-80 w/e&m | | | $189.44 | |
| 90845 | Psychoanalysis | | | $189.44 | |
| 90846 | Family psytx w/o patient | | | $326.99 | |
| 90847 | Family psytx w/patient | | | $326.99 | |
| 90849 | Multiple family group psytx | | | $192.54 | |
| 90853 | Group psychotherapy | | | $192.54 | |
| 90857 | Intac group psytx | | | $192.54 | |
| 90862 | Medication management | | | $120.03 | |
| 90865 | Narcosynthesis | | | $189.44 | |
| 90870 | Electroconvulsive therapy | | | $566.43 | |
| 90871 | Electroconvulsive therapy | | | $566.43 | |
| 90880 | Hypnotherapy | | | $189.44 | |
| 90899 | Psychiatric service/therapy | | | $220.26 | |
| 90901 | Biofeedback train, any meth | | | $327.31 | |
| 90911 | Biofeedback peri/uro/rectal | | | $327.31 | |
| 90935 | Hemodialysis, one evaluation | | | $1,306.63 | |
| 90937 | Hemodialysis, repeated eval | | | $425.79 | SAF |
| 90945 | Dialysis, one evaluation | | | $1,306.63 | |
| 90947 | Dialysis, repeated eval | | | $73.53 | SAF |
| 90989 | Dialysis training, complete | | | $202.14 | SAF |
| 90993 | Dialysis training, incompl | | | $419.49 | SAF |
| 90999 | Dialysis procedure | | | $171.56 | SAF |
| 91000 | Esophageal intubation | b | | $916.47 | |
| 91010 | Esophagus motility study | b | | $916.47 | |
| 91011 | Esophagus motility study | b | | $916.47 | |
| 91012 | Esophagus motility study | b | | $916.47 | |
| 91020 | Gastric motility | b | | $916.47 | |
| 91030 | Acid perfusion of esophagus | b | | $916.47 | |
| 91032 | Esophagus, acid reflux test | b | | $916.47 | |
| 91033 | Prolonged acid reflux test | b | | $916.47 | |
| 91052 | Gastric analysis test | b | | $916.47 | |
| 91055 | Gastric intubation for smear | b | | $439.91 | |
| 91060 | Gastric saline load test | b | | $439.91 | |
| 91065 | Breath hydrogen test | b | | $439.91 | |
| 91100 | Pass intestine bleeding tube | | | $439.91 | |
| 91105 | Gastric intubation treatment | | | $439.91 | |
| 91122 | Anal pressure record | b | + | $802.11 | |
| 91132 | Electrogastrography | b | | $439.91 | |
| 91133 | Electrogastrography w/test | b | | $439.91 | |
| 91299 | Gastroenterology procedure | b | | $439.91 | |
| 92002 | Eye exam, new patient | | | $100.98 | |
| 92004 | Eye exam, new patient | | | $146.92 | |
| 92012 | Eye exam established pat | | | $95.20 | |
| 92014 | Eye exam & treatment | | | $146.92 | |
| 92018 | New eye exam & treatment | | + | $1,013.75 | |
| 92019 | Eye exam & treatment | | | $248.75 | |
| 92020 | Special eye evaluation | | | $199.00 | |
| 92060 | Special eye evaluation | b | | $199.00 | |
| 92065 | Orthoptic/pleoptic training | b | | $199.00 | |
| 92081 | Visual field examination(s) | b | | $199.00 | |
| 92082 | Visual field examination(s) | b | | $248.75 | |
| 92083 | Visual field examination(s) | b | | $248.75 | |
| 92120 | Tonography & eye evaluation | | | $199.00 | |
| 92130 | Water provocation tonography | | | $248.75 | |
| 92135 | Opthalmic dx imaging | b | | $199.00 | |
| 92136 | Ophthalmic biometry | b | | $199.00 | |
| 92140 | Glaucoma provocative tests | | | $248.75 | |
| 92225 | Special eye exam, initial | | | $248.75 | |
| 92226 | Special eye exam, subsequent | | | $248.75 | |
| 92230 | Eye exam with photos | | + | $1,013.75 | |
| 92235 | Eye exam with photos | b | + | $1,013.75 | |

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[1] See end of table.

## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 92240 | Icg angiography | b | | $585.26 | |
| 92250 | Eye exam with photos | b | | $199.00 | |
| 92260 | Ophthalmoscopy/dynamometry | | | $199.00 | |
| 92265 | Eye muscle evaluation | b | | $585.26 | |
| 92270 | Electro-oculography | b | | $248.75 | |
| 92275 | Electroretinography | b | | $585.26 | |
| 92283 | Color vision examination | b | | $199.00 | |
| 92284 | Dark adaptation eye exam | b | | $248.75 | |
| 92285 | Eye photography | b | | $199.00 | |
| 92286 | Internal eye photography | b | | $248.75 | |
| 92287 | Internal eye photography | b | | $585.26 | |
| 92311 | Contact lens fitting | | | $767.22 | |
| 92312 | Contact lens fitting | | | $767.22 | |
| 92313 | Contact lens fitting | | | $767.22 | |
| 92315 | Prescription of contact lens | | | $767.22 | |
| 92316 | Prescription of contact lens | | | $767.22 | |
| 92317 | Prescription of contact lens | | | $767.22 | |
| 92325 | Modification of contact lens | | | $767.22 | |
| 92326 | Replacement of contact lens | | | $767.22 | |
| 92330 | Fitting of artificial eye | | | $199.00 | |
| 92352 | Special spectacles fitting | | | $767.22 | |
| 92353 | Special spectacles fitting | | | $767.22 | |
| 92354 | Special spectacles fitting | | | $767.22 | |
| 92355 | Special spectacles fitting | | | $767.22 | |
| 92358 | Eye prosthesis service | | | $767.22 | |
| 92371 | Repair & adjust spectacles | | | $767.22 | |
| 92499 | Eye service or procedure | b | | $199.00 | |
| 92502 | Ear and throat examination | | + | $514.72 | |
| 92511 | Nasopharyngoscopy | | + | $248.21 | |
| 92512 | Nasal function studies | | | $293.26 | |
| 92516 | Facial nerve function test | | | $429.43 | |
| 92520 | Laryngeal function studies | | | $429.43 | |
| 92541 | Spontaneous nystagmus test | b | | $293.26 | |
| 92542 | Positional nystagmus test | b | | $293.26 | |
| 92543 | Caloric vestibular test | b | | $429.43 | |
| 92544 | Optokinetic nystagmus test | b | | $293.26 | |
| 92545 | Oscillating tracking test | b | | $293.26 | |
| 92546 | Sinusoidal rotational test | b | | $429.43 | |
| 92547 | Supplemental electrical test | b | | $293.26 | |
| 92548 | Posturography | b | | $429.43 | |
| 92552 | Pure tone audiometry, air | | | $120.44 | |
| 92553 | Audiometry, air & bone | | | $327.31 | |
| 92555 | Speech threshold audiometry | | | $120.44 | |
| 92556 | Speech audiometry, complete | | | $120.44 | |
| 92557 | Comprehensive hearing test | | | $327.31 | |
| 92561 | Bekesy audiometry, diagnosis | | | $327.31 | |
| 92562 | Loudness balance test | | | $120.44 | |
| 92563 | Tone decay hearing test | | | $120.44 | |
| 92564 | Sisi hearing test | | | $120.44 | |
| 92565 | Stenger test, pure tone | | | $120.44 | |
| 92567 | Tympanometry | | | $120.44 | |
| 92568 | Acoustic reflex testing | | | $120.44 | |
| 92569 | Acoustic reflex decay test | | | $120.44 | |
| 92571 | Filtered speech hearing test | | | $120.44 | |
| 92572 | Staggered spondaic word test | | | $120.44 | |
| 92573 | Lombard test | | | $120.44 | |
| 92575 | Sensorineural acuity test | | | $327.31 | |
| 92576 | Synthetic sentence test | | | $120.44 | |
| 92577 | Stenger test, speech | | | $327.31 | |
| 92579 | Visual audiometry (vra) | | | $327.31 | |
| 92582 | Conditioning play audiometry | | | $327.31 | |
| 92583 | Select picture audiometry | | | $120.44 | |
| 92584 | Electrocochleography | | | $429.43 | |
| 92585 | Auditor evoke potent, compre | b | | $782.92 | |
| 92586 | Auditor evoke potent, limit | | | $208.14 | |
| 92587 | Evoked auditory test | b | | $293.26 | |

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[1] See end of table.

## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator[1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 92588 | Evoked auditory test | b | | $429.43 | |
| 92589 | Auditory function test(s) | | | $120.44 | |
| 92596 | Ear protector evaluation | | | $327.31 | |
| 92700 | Ent procedure/service | | | $120.44 | |
| 92950 | Heart/lung resuscitation cpr | | | $1,227.40 | |
| 92953 | Temporary external pacing | | | $1,227.40 | |
| 92960 | Cardioversion electric, ext | | | $1,729.54 | |
| 92961 | Cardioversion, electric, int | b | | $1,729.54 | |
| 92973 | Percut coronary thrombectomy | | + | $1,295.44 | |
| 92974 | Cath place, cardio brachytx | | + | $12,366.54 | |
| 92977 | Dissolve clot, heart vessel | | + | $1,113.03 | |
| 92978 | Intravasc us, heart add-on | b | | $9,147.02 | |
| 92979 | Intravasc us, heart add-on | b | | $9,147.02 | |
| 92980 | Insert intracoronary stent | | + | $18,804.07 | |
| 92981 | Insert intracoronary stent | | + | $18,804.07 | |
| 92982 | Coronary artery dilation | | + | $14,014.81 | |
| 92984 | Coronary artery dilation | | + | $14,014.81 | |
| 92986 | Revision of aortic valve | | + | $14,014.81 | |
| 92987 | Revision of mitral valve | | + | $14,014.81 | |
| 92990 | Revision of pulmonary valve | | + | $14,014.81 | |
| 92995 | Coronary atherectomy | | + | $20,183.82 | |
| 92996 | Coronary atherectomy add-on | | + | $20,183.82 | |
| 92997 | Pul art balloon repr, percut | | + | $11,731.26 | |
| 92998 | Pul art balloon repr, percut | | + | $11,731.26 | |
| 93005 | Electrocardiogram, tracing | e | | $124.81 | |
| 93017 | Cardiovascular stress test | e | | $543.02 | |
| 93024 | Cardiac drug stress test | b | | $543.02 | |
| 93025 | Microvolt t-wave assess | b | | $543.02 | |
| 93041 | Rhythm ECG, tracing | e | | $124.81 | |
| 93225 | ECG monitor/record, 24 hrs | e | | $340.94 | |
| 93226 | ECG monitor/report, 24 hrs | e | | $340.94 | |
| 93231 | Ecg monitor/record, 24 hrs | e | | $340.94 | |
| 93232 | ECG monitor/report, 24 hrs | e | | $340.94 | |
| 93236 | ECG monitor/report, 24 hrs | | | $340.94 | |
| 93270 | ECG recording | | | $340.94 | |
| 93271 | Ecg/monitoring and analysis | | | $340.94 | |
| 93278 | ECG/signal-averaged | b | | $124.81 | |
| 93303 | Echo transthoracic | b | | $838.71 | |
| 93304 | Echo transthoracic | b | | $376.50 | |
| 93307 | Echo exam of heart | b | | $838.71 | |
| 93308 | Echo exam of heart | b | | $376.50 | |
| 93312 | Echo transesophageal | b | | $1,695.45 | |
| 93313 | Echo transesophageal | | | $1,695.45 | |
| 93315 | Echo transesophageal | b | | $1,695.45 | |
| 93316 | Echo transesophageal | | | $1,695.45 | |
| 93318 | Echo transesophageal intraop | b | | $1,695.45 | |
| 93320 | Doppler echo exam, heart | b | | $426.95 | |
| 93321 | Doppler echo exam, heart | b | | $376.50 | |
| 93325 | Doppler color flow add-on | b | | $376.50 | |
| 93350 | Echo transthoracic | b | | $838.71 | |
| 93501 | Right heart catheterization | b | + | $9,518.27 | |
| 93503 | Insert/place heart catheter | | + | $3,192.78 | |
| 93505 | Biopsy of heart lining | b | + | $3,192.78 | |
| 93508 | Cath placement, angiography | b | + | $9,518.27 | |
| 93510 | Left heart catheterization | b | + | $9,518.27 | |
| 93511 | Left heart catheterization | b | + | $9,518.27 | |
| 93514 | Left heart catheterization | b | + | $9,518.27 | |
| 93524 | Left heart catheterization | b | + | $9,518.27 | |
| 93526 | Rt & Lt heart catheters | b | + | $9,518.27 | |
| 93527 | Rt & Lt heart catheters | b | + | $9,518.27 | |
| 93528 | Rt & Lt heart catheters | b | + | $9,518.27 | |
| 93529 | Rt, lt heart catheterization | b | + | $9,518.27 | |
| 93530 | Rt heart cath, congenital | b | + | $9,518.27 | |
| 93531 | R & l heart cath, congenital | b | + | $9,518.27 | |
| 93532 | R & l heart cath, congenital | b | + | $9,518.27 | |
| 93533 | R & l heart cath, congenital | b | + | $9,518.27 | |

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[1] See end of table.

TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 93580 | Transcath closure of asd | | + | $12,366.54 | |
| 93581 | Transcath closure of vsd | | + | $12,366.54 | |
| 93600 | Bundle of His recording | b | + | $11,473.97 | |
| 93602 | Intra-atrial recording | b | + | $11,473.97 | |
| 93603 | Right ventricular recording | b | + | $11,473.97 | |
| 93609 | Map tachycardia, add-on | b | + | $11,473.97 | |
| 93610 | Intra-atrial pacing | b | + | $11,473.97 | |
| 93612 | Intraventricular pacing | b | + | $11,473.97 | |
| 93613 | Electrophys map 3d, add-on | b | + | $11,473.97 | |
| 93615 | Esophageal recording | b | + | $11,473.97 | |
| 93616 | Esophageal recording | b | + | $11,473.97 | |
| 93618 | Heart rhythm pacing | b | + | $11,473.97 | |
| 93619 | Electrophysiology evaluation | b | + | $12,032.18 | |
| 93620 | Electrophysiology evaluation | b | + | $12,032.18 | |
| 93621 | Electrophysiology evaluation | b | + | $12,032.18 | |
| 93622 | Electrophysiology evaluation | b | + | $12,032.18 | |
| 93623 | Stimulation, pacing heart | b | + | $11,473.97 | |
| 93624 | Electrophysiologic study | b | | $2,984.84 | |
| 93631 | Heart pacing, mapping | b | + | $11,473.97 | |
| 93640 | Evaluation heart device | b | | $2,984.84 | |
| 93641 | Electrophysiology evaluation | b | | $2,984.84 | |
| 93642 | Electrophysiology evaluation | b | | $2,984.84 | |
| 93650 | Ablate heart dysrhythm focus | | + | $14,514.67 | |
| 93651 | Ablate heart dysrhythm focus | | + | $14,514.67 | |
| 93652 | Ablate heart dysrhythm focus | | + | $14,514.67 | |
| 93660 | Tilt table evaluation | b | | $1,351.39 | |
| 93662 | Intracardiac ecg (ice) | b | | $9,147.02 | |
| 93701 | Bioimpedance, thoracic | b | | $124.81 | |
| 93721 | Plethysmography tracing | | | $285.97 | |
| 93724 | Analyze pacemaker system | b | | $136.36 | |
| 93727 | Analyze ilr system | b | | $136.36 | |
| 93731 | Analyze pacemaker system | b | | $136.36 | |
| 93732 | Analyze pacemaker system | b | | $136.36 | |
| 93733 | Telephone analy, pacemaker | b | | $136.36 | |
| 93734 | Analyze pacemaker system | b | | $136.36 | |
| 93735 | Analyze pacemaker system | b | | $136.36 | |
| 93736 | Telephone analy, pacemaker | b | | $136.36 | |
| 93740 | Temperature gradient studies | b | | $182.18 | |
| 93741 | Analyze ht pace device sngl | b | | $185.98 | |
| 93742 | Analyze ht pace device sngl | b | | $185.98 | |
| 93743 | Analyze ht pace device dual | b | | $185.98 | |
| 93744 | Analyze ht pace device dual | b | | $185.98 | |
| 93786 | Ambulatory BP recording | | | $340.94 | |
| 93797 | Cardiac rehab | | | $139.39 | |
| 93798 | Cardiac rehab/monitor | | | $139.39 | |
| 93799 | Cardiovascular procedure | b | | $575.53 | |
| 93875 | Extracranial study | b | | $575.53 | |
| 93880 | Extracranial study | b | | $740.18 | |
| 93882 | Extracranial study | b | | $740.18 | |
| 93886 | Intracranial study | b | | $740.18 | |
| 93888 | Intracranial study | b | | $536.72 | |
| 93922 | Extremity study | b | | $575.53 | |
| 93923 | Extremity study | b | | $575.53 | |
| 93924 | Extremity study | b | | $575.53 | |
| 93925 | Lower extremity study | b | | $740.18 | |
| 93926 | Lower extremity study | b | | $740.18 | |
| 93930 | Upper extremity study | b | | $740.18 | |
| 93931 | Upper extremity study | b | | $536.72 | |
| 93965 | Extremity study | b | | $575.53 | |
| 93970 | Extremity study | b | | $740.18 | |
| 93971 | Extremity study | b | | $740.18 | |
| 93975 | Vascular study | b | | $740.18 | |
| 93976 | Vascular study | b | | $740.18 | |
| 93978 | Vascular study | b | | $740.18 | |
| 93979 | Vascular study | b | | $740.18 | |
| 93980 | Penile vascular study | b | | $740.18 | |

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[1] See end of table.

### TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| 93981 | Penile vascular study | b | | $740.18 | |
| 93990 | Doppler flow testing | b | | $740.18 | |
| 94010 | Breathing capacity test | b | | $285.97 | |
| 94014 | Patient recorded spirometry | | | $182.18 | |
| 94015 | Patient recorded spirometry | | | $182.18 | |
| 94060 | Evaluation of wheezing | b | | $285.97 | |
| 94070 | Evaluation of wheezing | b | | $699.12 | |
| 94150 | Vital capacity test | b | | $182.18 | |
| 94200 | Lung function test (MBC/MVV) | b | | $182.18 | |
| 94240 | Residual lung capacity | b | | $285.97 | |
| 94250 | Expired gas collection | b | | $182.18 | |
| 94260 | Thoracic gas volume | b | | $285.97 | |
| 94350 | Lung nitrogen washout curve | b | | $285.97 | |
| 94360 | Measure airflow resistance | b | | $182.18 | |
| 94370 | Breath airway closing volume | b | | $182.18 | |
| 94375 | Respiratory flow volume loop | b | | $182.18 | |
| 94400 | CO2 breathing response curve | b | | $182.18 | |
| 94450 | Hypoxia response curve | b | | $182.18 | |
| 94620 | Pulmonary stress test/simple | b | | $285.97 | |
| 94621 | Pulm stress test/complex | b | | $699.12 | |
| 94640 | Airway inhalation treatment | | | $78.56 | |
| 94642 | Aerosol inhalation treatment | | | $175.44 | |
| 94656 | Initial ventilator mgmt | | | $442.53 | |
| 94657 | Continued ventilator mgmt | | | $442.53 | |
| 94660 | Pos airway pressure, CPAP | | | $560.36 | |
| 94662 | Neg press ventilation, cnp | | | $442.53 | |
| 94664 | Evaluate pt use of inhaler | | | $78.56 | |
| 94667 | Chest wall manipulation | | | $78.56 | |
| 94668 | Chest wall manipulation | | | $78.56 | |
| 94680 | Exhaled air analysis, o2 | b | | $182.18 | |
| 94681 | Exhaled air analysis, o2/co2 | b | | $285.97 | |
| 94690 | Exhaled air analysis | b | | $182.18 | |
| 94720 | Monoxide diffusing capacity | b | | $285.97 | |
| 94725 | Membrane diffusion capacity | b | | $285.97 | |
| 94750 | Pulmonary compliance study | b | | $182.18 | |
| 94770 | Exhaled carbon dioxide test | b | | $182.18 | |
| 94772 | Breath recording, infant | | | $699.12 | |
| 94799 | Pulmonary service/procedure | b | | $182.18 | |
| 95004 | Percut allergy skin tests | | | $166.99 | |
| 95010 | Percut allergy titrate test | | | $166.99 | |
| 95015 | Id allergy titrate-drug/bug | | | $166.99 | |
| 95024 | Id allergy test, drug/bug | | | $166.99 | |
| 95027 | Id allergy titrate-airborne | | | $166.99 | |
| 95028 | Id allergy test-delayed type | | | $166.99 | |
| 95044 | Allergy patch tests | | | $166.99 | |
| 95052 | Photo patch test | | | $166.99 | |
| 95056 | Photosensitivity tests | | | $166.99 | |
| 95060 | Eye allergy tests | | | $166.99 | |
| 95065 | Nose allergy test | | | $166.99 | |
| 95070 | Bronchial allergy tests | | | $699.12 | |
| 95071 | Bronchial allergy tests | | | $699.12 | |
| 95075 | Ingestion challenge test | | | $916.47 | |
| 95078 | Provocative testing | | | $166.99 | |
| 95115 | Immunotherapy, one injection | | | $48.02 | |
| 95117 | Immunotherapy injections | | | $88.14 | |
| 95144 | Antigen therapy services | | | $108.55 | |
| 95145 | Antigen therapy services | | | $108.55 | |
| 95146 | Antigen therapy services | | | $108.55 | |
| 95147 | Antigen therapy services | | | $108.55 | |
| 95148 | Antigen therapy services | | | $108.55 | |
| 95149 | Antigen therapy services | | | $108.55 | |
| 95165 | Antigen therapy services | | | $108.55 | |
| 95170 | Antigen therapy services | | | $108.55 | |
| 95180 | Rapid desensitization | | | $166.99 | |
| 95199 | Allergy immunology services | | | $166.99 | |
| 95250 | Glucose monitoring, cont | | | $777.26 | |

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[1] See end of table.

## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Method-ology |
|---|---|---|---|---|---|
| 95805 | Multiple sleep latency test | b | | $3,063.61 | |
| 95806 | Sleep study, unattended | b | | $879.80 | |
| 95807 | Sleep study, attended | b | | $3,063.61 | |
| 95808 | Polysomnography, 1-3 | b | | $3,063.61 | |
| 95810 | Polysomnography, 4 or more | b | | $3,063.61 | |
| 95811 | Polysomnography w/cpap | b | | $3,063.61 | |
| 95812 | Eeg, 41-60 minutes | b | | $879.80 | |
| 95813 | Eeg, over 1 hour | b | | $879.80 | |
| 95816 | Eeg, awake and drowsy | b | | $602.24 | |
| 95819 | Eeg, awake and asleep | b | | $602.24 | |
| 95822 | Eeg, coma or sleep only | b | | $602.24 | |
| 95824 | Eeg, cerebral death only | b | | $602.24 | |
| 95827 | Eeg, all night recording | b | | $3,063.61 | |
| 95829 | Surgery electrocorticogram | b | | $602.24 | |
| 95857 | Tensilon test | | | $208.14 | |
| 95858 | Tensilon test & myogram | b | | $208.14 | |
| 95860 | Muscle test, one limb | b | | $208.14 | |
| 95861 | Muscle test, 2 limbs | b | | $208.14 | |
| 95863 | Muscle test, 3 limbs | b | | $208.14 | |
| 95864 | Muscle test, 4 limbs | b | | $208.14 | |
| 95867 | Muscle test cran nerv unilat | b | | $208.14 | |
| 95868 | Muscle test cran nerve bilat | b | | $208.14 | |
| 95869 | Muscle test, thor paraspinal | b | | $139.60 | |
| 95870 | Muscle test, nonparaspinal | b | | $208.14 | |
| 95872 | Muscle test, one fiber | b | | $208.14 | |
| 95875 | Limb exercise test | b | | $139.60 | |
| 95900 | Motor nerve conduction test | b | | $208.14 | |
| 95903 | Motor nerve conduction test | b | | $208.14 | |
| 95904 | Sense nerve conduction test | b | | $139.60 | |
| 95920 | Intraop nerve test add-on | b | | $782.92 | |
| 95921 | Autonomic nerv function test | b | | $208.14 | |
| 95922 | Autonomic nerv function test | b | | $208.14 | |
| 95923 | Autonomic nerv function test | b | | $139.60 | |
| 95925 | Somatosensory testing | b | | $782.92 | |
| 95926 | Somatosensory testing | b | | $782.92 | |
| 95927 | Somatosensory testing | b | | $782.92 | |
| 95930 | Visual evoked potential test | b | | $208.14 | |
| 95933 | Blink reflex test | b | | $139.60 | |
| 95934 | H-reflex test | b | | $139.60 | |
| 95936 | H-reflex test | b | | $139.60 | |
| 95937 | Neuromuscular junction test | b | | $208.14 | |
| 95950 | Ambulatory eeg monitoring | b | | $879.80 | |
| 95951 | EEG monitoring/videorecord | b | | $3,063.61 | |
| 95953 | EEG monitoring/computer | b | | $3,063.61 | |
| 95954 | EEG monitoring/giving drugs | b | | $602.24 | |
| 95955 | EEG during surgery | b | | $602.24 | |
| 95956 | Eeg monitoring, cable/radio | b | | $602.24 | |
| 95957 | EEG digital analysis | b | | $602.24 | |
| 95958 | EEG monitoring/function test | b | | $879.80 | |
| 95961 | Electrode stimulation, brain | b | | $782.92 | |
| 95962 | Electrode stim, brain add-on | b | | $782.92 | |
| 95965 | Meg, spontaneous | b | | $11,658.94 | |
| 95966 | Meg, evoked, single | b | | $7,124.91 | |
| 95967 | Meg, evoked, each addl | b | | $4,534.03 | |
| 95970 | Analyze neurostim, no prog | | | $1,691.53 | |
| 95971 | Analyze neurostim, simple | | | $1,691.53 | |
| 95972 | Analyze neurostim, complex | | | $1,691.53 | |
| 95973 | Analyze neurostim, complex | | | $1,691.53 | |
| 95974 | Cranial neurostim, complex | | | $1,691.53 | |
| 95975 | Cranial neurostim, complex | | | $1,691.53 | |
| 95990 | Spin/brain pump refil & main | | + | $557.74 | |
| 95999 | Neurological procedure | | | $139.60 | |
| 96000 | Motion analysis, video/3d | | | $777.26 | |
| 96001 | Motion test w/ft press meas | | | $777.26 | |
| 96002 | Dynamic surface emg | | | $777.26 | |
| 96003 | Dynamic fine wire emg | | | $777.26 | |

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[1] See end of table.

## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Method-ology |
|---|---|---|---|---|---|
| 96100 | Psychological testing | | | $610.11 | |
| 96105 | Assessment of aphasia | | | $610.11 | |
| 96110 | Developmental test, lim | | | $610.11 | |
| 96111 | Developmental test, extend | | | $610.11 | |
| 96115 | Neurobehavior status exam | | | $610.11 | |
| 96117 | Neuropsych test battery | | | $610.11 | |
| 96150 | Assess hlth/behave, init | | | $220.26 | |
| 96151 | Assess hlth/behave, subseq | | | $220.26 | |
| 96152 | Intervene hlth/behave, indiv | | | $220.26 | |
| 96153 | Intervene hlth/behave, group | | | $220.26 | |
| 96154 | Interv hlth/behav, fam w/pt | | | $220.26 | |
| 96155 | Interv hlth/behav fam no pt | | | $220.26 | |
| 96520 | Port pump refill & main | | + | $557.74 | |
| 96530 | Syst pump refill & main | | + | $557.74 | |
| 96567 | Photodynamic tx, skin | | + | $777.26 | |
| 96570 | Photodynamic tx, 30 min | | + | $1,295.44 | |
| 96571 | Photodynamic tx, addl 15 min | | + | $1,295.44 | |
| 96900 | Ultraviolet light therapy | | | $102.12 | |
| 96910 | Photochemotherapy with UV-B | | | $102.12 | |
| 96912 | Photochemotherapy with UV-A | | | $102.12 | |
| 96913 | Photochemotherapy, UV-A or B | | | $513.23 | |
| 96920 | Laser tx, skin < 250 sq cm | | + | $211.64 | |
| 96921 | Laser tx, skin 250-500 sq cm | | + | $211.64 | |
| 96922 | Laser tx, skin > 500 sq cm | | + | $290.03 | |
| 96999 | Dermatological procedure | | + | $177.67 | |
| 98925 | Osteopathic manipulation | | | $89.01 | |
| 98926 | Osteopathic manipulation | | | $89.01 | |
| 98927 | Osteopathic manipulation | | | $89.01 | |
| 98928 | Osteopathic manipulation | | | $89.01 | |
| 98929 | Osteopathic manipulation | | | $89.01 | |
| 98940 | Chiropractic manipulation | | | $89.01 | |
| 98941 | Chiropractic manipulation | | | $89.01 | |
| 98942 | Chiropractic manipulation | | | $89.01 | |
| 99170 | Anogenital exam, child | | + | $54.87 | |
| 99195 | Phlebotomy | | | $144.01 | |
| 99201 | Office/outpatient visit, new | a | | $95.20 | |
| 99202 | Office/outpatient visit, new | a | | $95.20 | |
| 99203 | Office/outpatient visit, new | a | | $100.98 | |
| 99204 | Office/outpatient visit, new | a | | $146.92 | |
| 99205 | Office/outpatient visit, new | a | | $146.92 | |
| 99211 | Office/outpatient visit, est | a | | $95.20 | |
| 99212 | Office/outpatient visit, est | a | | $95.20 | |
| 99213 | Office/outpatient visit, est | a | | $100.98 | |
| 99214 | Office/outpatient visit, est | a | | $146.92 | |
| 99215 | Office/outpatient visit, est | a | | $146.92 | |
| 99241 | Office consultation | | | $95.20 | |
| 99242 | Office consultation | | | $95.20 | |
| 99243 | Office consultation | | | $100.98 | |
| 99244 | Office consultation | | | $146.92 | |
| 99245 | Office consultation | | | $146.92 | |
| 99271 | Confirmatory consultation | | | $95.20 | |
| 99272 | Confirmatory consultation | | | $95.20 | |
| 99273 | Confirmatory consultation | | | $100.98 | |
| 99274 | Confirmatory consultation | | | $146.92 | |
| 99275 | Confirmatory consultation | | | $146.92 | |
| 99281 | Emergency dept visit | f | | $226.53 | |
| 99282 | Emergency dept visit | f | | $226.53 | |
| 99283 | Emergency dept visit | f | | $413.97 | |
| 99284 | Emergency dept visit | f | | $791.46 | |
| 99285 | Emergency dept visit | f | | $791.46 | |
| 99291 | Critical care, first hour | | | $2,691.80 | |
| 99431 | Initial care, normal newborn | | | $95.20 | |
| 99440 | Newborn resuscitation | | | $1,227.40 | |
| A9507 | Indium/111 capromab pendetid | | | $4,443.56 | |
| A9508 | Iobenguane sulfate I-131 | | | $947.16 | |
| A9511 | Technetium TC 99m depreotide | | | $1,513.47 | |

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[1] See end of table.

## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Method- ology |
|---|---|---|---|---|---|
| A9518 | I-131 sodium iodide solution | | | $253.99 | |
| A9521 | Technetiumtc-99m exametazine | | | $1,199.27 | |
| A9600 | Strontium-89 chloride | | | $2,429.94 | |
| A9605 | Samarium sm153 lexidronamm | | | $3,951.30 | |
| A9700 | Echocardiography Contrast | | | $615.33 | |
| C1010 | Blood, L/R, Cmv-Neg | | | $631.05 | |
| C1011 | Platelets, HLA-m, L/R, unit | | | $2,589.68 | |
| C1012 | Platelet Conc, L/R, Irrad | | | $617.97 | |
| C1013 | Platelet Conc, L/R, Unit | | | $256.61 | |
| C1014 | Platelet,Aph/Pher, L/R, unit | | | $2,118.36 | |
| C1015 | Plt, pher,L/R,CMV, irrad | | | $2,326.32 | |
| C1016 | Blood,L/R,Froz/Degly/Washed | | | $1,563.25 | |
| C1017 | Plt, Aph/Pher,L/R,Cmv-Neg | | | $2,037.18 | |
| C1018 | Blood, L/R, Irradiated | | | $686.04 | |
| C1020 | Rbc, Frz/Deg/Wsh, L/R, Irrad | | | $1,578.56 | |
| C1021 | Rbc, L/R, Cmv Neg, Irrad | | | $944.77 | |
| C1022 | Plasma, frz within 24 hour | | | $492.28 | |
| C1088 | Laser Optic Tr Sys | | + | $9,694.54 | |
| C1091 | IN111 oxyquinoline,per0.5mCi | | | $1,272.58 | |
| C1092 | IN 111 pentetate per 0.5 mCi | | | $1,199.27 | |
| C1098 | Tc 99M Exametazime, Per Dose | | | $1,199.27 | |
| C1122 | Tc 99M ARCITUMOMAB PER VIAL | | | $3,100.28 | |
| C1167 | Epirubicin Hcl, 2 Mg | | | $89.01 | |
| C1178 | Busulfan Iv, 6 Mg | | | $130.93 | |
| C1207 | Octreotide Acetate Depot 1Mg | | | $384.92 | |
| C1300 | Hyperbaric Oxygen | | | $874.58 | |
| C1305 | Apligraf | | | $3,527.09 | |
| C1348 | I-131 sol, per 1-6 mCi | | | $253.99 | |
| C1716 | Brachytx seed, Gold 198 | | | $117.82 | |
| C1718 | Brachytx seed, Iodine 125 | | | $162.36 | |
| C1719 | Brachytx seed,Non-HDR Ir-192 | | | $141.39 | |
| C1720 | Brachytx seed, Palladium 103 | | | $227.81 | |
| C1774 | Darbepoetin alfa, non-esrd | | | $12.28 | |
| C1775 | FDG, per dose (4-40 mCi/ml) | | | $2,034.56 | |
| C2616 | Brachytx seed, Yttrium-90 | | | $23,253.60 | |
| C8900 | MRA w/cont, abd | | | $2,022.87 | |
| C8901 | MRA w/o cont, abd | | | $1,975.57 | |
| C8902 | MRA w/o fol w/cont, abd | | | $2,849.72 | |
| C8903 | MRI w/cont, breast, uni | | | $2,022.87 | |
| C8904 | MRI w/o cont, breast, uni | | | $1,975.57 | |
| C8905 | MRI w/o fol w/cont, brst, un | | | $2,849.72 | |
| C8906 | MRI w/cont, breast, bi | | | $2,022.87 | |
| C8907 | MRI w/o cont, breast, bi | | | $1,975.57 | |
| C8908 | MRI w/o fol w/cont, breast, | | | $2,849.72 | |
| C8909 | MRA w/cont, chest | | | $2,022.87 | |
| C8910 | MRA w/o cont, chest | | | $1,975.57 | |
| C8911 | MRA w/o fol w/cont, chest | | | $2,849.72 | |
| C8912 | MRA w/cont, lwr ext | | | $2,022.87 | |
| C8913 | MRA w/o cont, lwr ext | | | $1,975.57 | |
| C8914 | MRA w/o fol w/cont, lwr ext | | | $2,849.72 | |
| C9000 | Na chromateCr51, per 0.25mCi | | | $460.50 | |
| C9003 | Palivizumab, per 50 mg | | | $2,314.74 | |
| C9009 | Baclofen Refill Kit-2000mcg | | | $196.38 | |
| C9010 | Baclofen Refill Kit–4000mcg | | | $248.75 | |
| C9019 | Caspofungin acetate, 5 mg | | | $160.66 | |
| C9020 | Sirolimus tablet, 1 mg | | | $14.23 | |
| C9105 | Hep B imm glob, per 1 ml | | | $370.31 | |
| C9108 | Thyrotropin alfa, 1.1 mg | | | $1,858.67 | |
| C9109 | Tirofiban hcl, 6.25 mg | | | $538.85 | |
| C9110 | Alemtuzumab, per 10mg/ml | | | $2,401.47 | |
| C9111 | Inj, bivalirudin, 250mg vial | | | $1,868.73 | |
| C9112 | Perflutren lipid micro, 2ml | | | $696.17 | |
| C9113 | Inj pantoprazole sodium, via | | | $107.10 | |
| C9114 | Nesiritide, per 1.5 mg vial | | | $678.32 | |
| C9115 | Inj, zoledronic acid, 2 mg | | | $955.43 | |
| C9116 | Ertapenem sodium, per 1 gm | | | $212.85 | |

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TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| C9119 | Injection, pegfilgrastim | | | $13,164.84 | |
| C9120 | Injection, fulvestrant | | | $822.82 | |
| C9121 | Injection, argatroban | | | $66.94 | |
| C9200 | Orcel, per 36 cm2 | | | $5,332.88 | |
| C9201 | Dermagraft, per 37.5 sq cm | | | $2,713.30 | |
| C9503 | Fresh frozen plasma, ea unit | | | $361.36 | |
| C9701 | Stretta System | | + | $9,694.54 | |
| C9703 | Bard Endoscopic Suturing Sys | | + | $8,420.35 | |
| C9708 | Preview Tx Planning Software | | + | $3,238.60 | |
| C9711 | H.E.L.P. Apheresis System | | + | $7,124.91 | |
| D0150 | Comprehensve oral evaluation | | | $1,290.91 | |
| D0240 | Intraoral occlusal film | | | $1,290.91 | |
| D0250 | Extraoral first film | | | $1,290.91 | |
| D0260 | Extraoral ea additional film | | | $1,290.91 | |
| D0270 | Dental bitewing single film | | | $1,290.91 | |
| D0272 | Dental bitewings two films | | | $1,290.91 | |
| D0274 | Dental bitewings four films | | | $1,290.91 | |
| D0277 | Vert bitewings-sev to eight | | | $1,290.91 | |
| D0460 | Pulp vitality test | | | $1,290.91 | |
| D0472 | Gross exam, prep & report | | | $1,290.91 | |
| D0473 | Micro exam, prep & report | | | $1,290.91 | |
| D0474 | Micro w exam of surg margins | | | $1,290.91 | |
| D0480 | Cytopath smear prep & report | | | $1,290.91 | |
| D0502 | Other oral pathology procedu | | | $1,290.91 | |
| D0999 | Unspecified diagnostic proce | | | $1,290.91 | |
| D1510 | Space maintainer fxd unilat | | | $1,290.91 | |
| D1515 | Fixed bilat space maintainer | | | $1,290.91 | |
| D1520 | Remove unilat space maintain | | | $1,290.91 | |
| D1525 | Remove bilat space maintain | | | $1,290.91 | |
| D1550 | Recement space maintainer | | | $1,290.91 | |
| D2970 | Temporary- fractured tooth | | | $1,290.91 | |
| D2999 | Dental unspec restorative pr | | | $1,290.91 | |
| D3460 | Endodontic endosseous implan | | | $1,290.91 | |
| D3999 | Endodontic procedure | | | $1,290.91 | |
| D4260 | Osseous surgery per quadrant | | | $1,290.91 | |
| D4263 | Bone replce graft first site | | | $1,290.91 | |
| D4264 | Bone replce graft each add | | | $1,290.91 | |
| D4268 | Surgical revision procedure | | | $1,290.91 | |
| D4270 | Pedicle soft tissue graft pr | | | $1,290.91 | |
| D4271 | Free soft tissue graft proc | | | $1,290.91 | |
| D4273 | Subepithelial tissue graft | | | $1,290.91 | |
| D4355 | Full mouth debridement | | | $1,290.91 | |
| D4381 | Localized chemo delivery | | | $1,290.91 | |
| D5911 | Facial moulage sectional | | | $1,290.91 | |
| D5912 | Facial moulage complete | | | $1,290.91 | |
| D5983 | Radiation applicator | | | $1,290.91 | |
| D5984 | Radiation shield | | | $1,290.91 | |
| D5985 | Radiation cone locator | | | $1,290.91 | |
| D5987 | Commissure splint | | | $1,290.91 | |
| D6920 | Dental connector bar | | | $1,290.91 | |
| D7111 | Coronal remnants deciduous t | | | $1,290.91 | |
| D7140 | Extraction erupted tooth/exr | | | $1,290.91 | |
| D7210 | Rem imp tooth w mucoper flp | | | $1,290.91 | |
| D7220 | Impact tooth remov soft tiss | | | $1,290.91 | |
| D7230 | Impact tooth remov part bony | | | $1,290.91 | |
| D7240 | Impact tooth remov comp bony | | | $1,290.91 | |
| D7241 | Impact tooth rem bony w/comp | | | $1,290.91 | |
| D7250 | Tooth root removal | | | $1,290.91 | |
| D7260 | Oral antral fistula closure | | | $1,290.91 | |
| D7261 | Primary closure sinus perf | | | $1,290.91 | |
| D7291 | Transseptal fiberotomy | | | $1,290.91 | |
| D7940 | Reshaping bone orthognathic | | | $1,290.91 | |
| D9630 | Other drugs/medicaments | | | $1,290.91 | |
| D9930 | Treatment of complications | | | $1,290.91 | |
| D9940 | Dental occlusal guard | | | $1,290.91 | |
| D9950 | Occlusion analysis | | | $1,290.91 | |

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## TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| D9951 | Limited occlusal adjustment | | | $1,290.91 | |
| D9952 | Complete occlusal adjustment | | | $1,290.91 | |
| G0008 | Admin influenza virus vac | | | $12.45 | SAF |
| G0009 | Admin pneumococcal vaccine | | | $15.56 | SAF |
| G0010 | Admin hepatitis b vaccine | | | $45.93 | |
| G0030 | PET imaging prev PET single | c | | $5,066.66 | |
| G0031 | PET imaging prev PET multiple | c | | $5,066.66 | |
| G0032 | PET follow SPECT 78464 singl | c | | $5,066.66 | |
| G0033 | PET follow SPECT 78464 mult | c | | $5,066.66 | |
| G0034 | PET follow SPECT 76865 singl | c | | $5,066.66 | |
| G0035 | PET follow SPECT 78465 mult | c | | $5,066.66 | |
| G0036 | PET follow cornry angio sing | c | | $5,066.66 | |
| G0037 | PET follow cornry angio mult | c | | $5,066.66 | |
| G0038 | PET follow myocard perf sing | c | | $5,066.66 | |
| G0039 | PET follow myocard perf mult | c | | $5,066.66 | |
| G0040 | PET follow stress echo singl | c | | $5,066.66 | |
| G0041 | PET follow stress echo mult | c | | $5,066.66 | |
| G0042 | PET follow ventriculogm sing | c | | $5,066.66 | |
| G0043 | PET follow ventriculogm mult | c | | $5,066.66 | |
| G0044 | PET following rest ECG singl | c | | $5,066.66 | |
| G0045 | PET following rest ECG mult | c | | $5,066.66 | |
| G0046 | PET follow stress ECG singl | c | | $5,066.66 | |
| G0047 | PET follow stress ECG mult | c | | $5,066.66 | |
| G0101 | CA screen;pelvic/breast exam | | | $95.20 | |
| G0104 | CA screen;flexi sigmoidscope | | | $627.05 | |
| G0105 | Colorectal scrn; hi risk ind | | + | $1,904.70 | |
| G0106 | Colon CA screen;barium enema | b | | $684.54 | |
| G0117 | Glaucoma scrn hgh risk direc | | | $199.00 | |
| G0118 | Glaucoma scrn hgh risk direc | | | $199.00 | |
| G0120 | Colon ca scrn; barium enema | b | | $684.54 | |
| G0121 | Colon ca scrn not hi rsk ind | | + | $1,904.70 | |
| G0125 | PET image pulmonary nodule | b | | $7,124.91 | |
| G0127 | Trim nail(s) | | + | $169.82 | |
| G0130 | Single energy x-ray study | c | | $217.31 | |
| G0166 | Extrnl counterpulse, per tx | | + | $599.62 | |
| G0168 | Wound closure by adhesive | | | $175.05 | |
| G0173 | Stereo radosurgery,complete | | | $22,165.41 | |
| G0175 | OPPS Service,sched team conf | | | $146.92 | |
| G0186 | Dstry eye lesn,fdr vssl tech | | + | $1,345.55 | |
| G0204 | Diagnostic mammography digital | b | | $249.15 | |
| G0206 | Diagnostic mammography digital | b | | $249.15 | |
| G0210 | PET img wholebody dxlung | c | | $7,124.91 | |
| G0211 | PET img wholbody init lung | c | | $7,124.91 | |
| G0212 | PET img wholebod restag lung | c | | $7,124.91 | |
| G0213 | PET img wholbody dx | c | | $7,124.91 | |
| G0214 | PET img wholebod init | c | | $7,124.91 | |
| G0215 | PETimg wholebod restag | c | | $7,124.91 | |
| G0216 | PET img wholebod dx melanoma | c | | $7,124.91 | |
| G0217 | PET img wholebod init melan | c | | $7,124.91 | |
| G0218 | PET img wholebod restag mela | c | | $7,124.91 | |
| G0220 | PET img wholebod dx lymphoma | c | | $7,124.91 | |
| G0221 | PET imag wholbod init lympho | c | | $7,124.91 | |
| G0222 | PET imag wholbod resta lymph | c | | $7,124.91 | |
| G0223 | PET imag wholbod reg dx head | c | | $7,124.91 | |
| G0224 | PET imag wholbod reg ini hea | c | | $7,124.91 | |
| G0225 | PET whol restag headneckonly | c | | $7,124.91 | |
| G0226 | PET img wholbody dx esophagl | c | | $7,124.91 | |
| G0227 | PET img wholbod ini esophage | c | | $7,124.91 | |
| G0228 | PET img wholbod restg esopha | c | | $7,124.91 | |
| G0229 | PET img metaboloc brain pres | c | | $7,124.91 | |
| G0230 | PET myocard viability post | c | | $7,124.91 | |
| G0231 | PET WhBD colorec; gamma cam | c | | $7,124.91 | |
| G0232 | PET whbd lymphoma; gamma cam | c | | $7,124.91 | |
| G0233 | PET whbd melanoma; gamma cam | c | | $7,124.91 | |
| G0234 | PET WhBD pulm nod; gamma cam | c | | $7,124.91 | |
| G0236 | Digital film convert diag ma | b | | $129.26 | |

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[1] See end of table.

### TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| G0237 | Therapeutic procd strg endur | | | $129.26 | |
| G0238 | Oth resp proc, indiv | | | $129.26 | |
| G0239 | Oth resp proc, group | | | $129.26 | |
| G0242 | Multisource photon ster plan | | | $7,124.91 | |
| G0243 | Multisour photon stero treat | | | $22,165.41 | |
| G0244 | Observ care by facility topt | | | $1,950.76 | |
| G0245 | Initial foot exam pt lops | | | $95.20 | |
| G0246 | Followup eval of foot pt lop | | | $95.20 | |
| G0247 | Routine footcare pt w lops | | + | $169.82 | |
| G0248 | Demonstrate use home inr mon | | | $777.26 | |
| G0249 | Provide test material,equipm | | | $777.26 | |
| G0251 | Linear acc based stero radio | | | $5,829.47 | |
| G0252 | PET imaging initial dx | c | | $7,124.91 | |
| G0253 | PET image brst dection recur | c | | $7,124.91 | |
| G0254 | PET image brst eval to tx | c | | $7,124.91 | |
| G0256 | Prostate brachy w palladium | | + | $22,825.13 | |
| G0257 | Unsched dialysis ESRD pt hos | | | $1,306.63 | |
| G0258 | IV infusion during obs stay | | | $175.05 | |
| G0260 | Inj for sacroiliac jt anesth | | + | $546.05 | |
| G0261 | Prostate brachy w iodine see | | + | $21,576.13 | |
| G0262 | Sm intestinal image capsule | b | | $3,238.60 | |
| G0264 | Assmt otr CHF, CP, asthma | | | $95.20 | |
| G0268 | Removal of impacted wax md | | | $175.05 | |
| G0272 | Naso/oro gastric tube pl MD | | | $373.71 | |
| G0273 | Pretx planning, non-Hodgkins | b | | $14,249.82 | |
| G0274 | Radiopharm tx, non-Hodgkins | b | | $40,000.00 | |
| G0288 | Recon, CTA for surg plan | | + | $3,238.60 | |
| G0292 | Adm exp drugs,clinical trial | | | $777.26 | |
| G0293 | Non-cov surg proc,clin trial | | | $2,143.56 | |
| G0294 | Non-cov proc, clinical trial | | | $388.63 | |
| J0130 | Abciximab injection | | | $1,433.78 | |
| J0151 | Adenosine injection | | | $783.60 | |
| J0207 | Amifostine | | | $1,103.81 | |
| J0287 | Amphotericin b lipid complex | | | $102.08 | |
| J0585 | Botulinum toxin a per unit | | | $9.95 | |
| J0587 | Botulinum toxin type B | | | $41.29 | |
| J0637 | Caspofungin acetate | | | $160.66 | |
| J0850 | Cytomegalovirus imm IV /vial | | | $1,160.79 | |
| J1190 | Dexrazoxane HCl injection | | | $553.09 | |
| J1327 | Eptifibatide injection | | | $35.61 | |
| J1440 | Filgrastim 300 mcg injection | | | $515.12 | |
| J1441 | Filgrastim 480 mcg injection | | | $790.48 | |
| J1563 | IV immune globulin | | | $179.51 | |
| J1564 | Immune globulin 10 mg | | | $2.38 | |
| J1565 | RSV-ivig | | | $144.81 | |
| J1745 | Infliximab injection | | | $180.40 | |
| J1825 | Interferon beta-1a | | | $683.64 | |
| J1830 | Interferon beta-1b / .25 MG | | | $486.63 | |
| J1950 | Leuprolide acetate /3.75 MG | | | $930.54 | |
| J2324 | Nesiritide | | | $678.32 | |
| J2352 | Octreotide acetate injection | | | $310.98 | |
| J2355 | Oprelvekin injection | | | $669.41 | |
| J2430 | Pamidronate disodium /30 MG | | | $799.96 | |
| J2788 | Rho d immune globulin 50 mcg | | | $11.86 | |
| J2792 | Rho(D) immune globulin h, sd | | | $54.61 | |
| J2941 | Somatropin injection | | | $175.65 | |
| J2993 | Reteplase injection | | | $3,100.16 | |
| J3100 | Tenecteplase injection | | | $6,760.57 | |
| J3240 | Thyrotropin injection | | | $1,858.67 | |
| J3245 | Tirofiban hydrochloride | | | $1,210.62 | |
| J3305 | Inj trimetrexate glucoronate | | | $320.46 | |
| J3395 | Verteporfin injection | | | $4,047.31 | |
| J3487 | Zoledronic acid | | | $955.43 | |
| J7190 | Factor viii | | | $0.79 | |
| J7191 | Factor VIII (porcine) | | | $7.13 | |
| J7192 | Factor viii recombinant | | | $4.75 | |

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[1] See end of table.

TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator[1] | Multiple Surgery Reduction Applies | Charge | Charge Methodology |
|---|---|---|---|---|---|
| J7193 | Factor IX non-recombinant | | | $2.38 | |
| J7194 | Factor ix complex | | | $2.14 | |
| J7195 | Factor IX recombinant | | | $4.75 | |
| J7197 | Antithrombin iii injection | | | $4.75 | |
| J7198 | Anti-inhibitor | | | $1.88 | |
| J7320 | Hylan G-F 20 injection | | | $579.21 | |
| J7330 | Cultured chondrocytes implnt | | | $22,781.67 | |
| J7502 | Cyclosporine oral 100 mg | | | $8.53 | |
| J7504 | Lymphocyte immune globulin | | | $818.95 | |
| J7505 | Monoclonal antibodies | | | $1,704.38 | |
| J7507 | Tacrolimus oral per 1 MG | | | $4.77 | |
| J7511 | Antithymocyte globuln rabbit | | | $645.68 | |
| J7513 | Daclizumab, parenteral | | | $1,077.70 | |
| J7517 | Mycophenolate mofetil oral | | | $3.51 | |
| J7520 | Sirolimus, oral | | | $14.23 | |
| J8520 | Capecitabine, oral, 150 mg | | | $7.13 | |
| J8560 | Etoposide oral 50 MG | | | $135.30 | |
| J8700 | Temozolmide | | | $14.23 | |
| J9001 | Doxorubicin hcl liposome inj | | | $1,075.32 | |
| J9010 | Alemtuzumab injection | | | $2,401.47 | |
| J9015 | Aldesleukin/single use vial | | | $1,785.10 | |
| J9017 | Arsenic trioxide | | | $147.27 | |
| J9040 | Bleomycin sulfate injection | | | $780.98 | |
| J9045 | Carboplatin injection | | | $365.56 | |
| J9050 | Carmus bischl nitro inj | | | $375.07 | |
| J9060 | Cisplatin 10 MG injection | | | $104.44 | |
| J9065 | Inj cladribine per 1 MG | | | $194.66 | |
| J9150 | Daunorubicin | | | $474.75 | |
| J9151 | Daunorubicin citrate liposom | | | $712.14 | |
| J9160 | Denileukin diftitox, 300 mcg | | | $2,971.99 | |
| J9165 | Diethylstilbestrol injection | | | $496.11 | |
| J9170 | Docetaxel | | | $954.28 | |
| J9185 | Fludarabine phosphate inj | | | $804.71 | |
| J9200 | Floxuridine injection | | | $543.59 | |
| J9201 | Gemcitabine HCl | | | $318.08 | |
| J9202 | Goserelin acetate implant | | | $1,362.56 | |
| J9206 | Irinotecan injection | | | $429.65 | |
| J9208 | Ifosfomide injection | | | $470.02 | |
| J9209 | Mesna injection | | | $123.45 | |
| J9211 | Idarubicin hcl injection | | | $1,191.64 | |
| J9216 | Interferon gamma 1-b inj | | | $745.38 | |
| J9217 | Leuprolide acetate suspnsion | | | $1,609.42 | |
| J9218 | Leuprolide acetate injeciton | | | $189.91 | |
| J9219 | Leuprolide acetate implant | | | $22,005.69 | |
| J9245 | Inj melphalan hydrochl 50 MG | | | $1,110.94 | |
| J9265 | Paclitaxel injection | | | $567.33 | |
| J9266 | Pegaspargase/singl dose vial | | | $2,157.77 | |
| J9268 | Pentostatin injection | | | $4,871.03 | |
| J9280 | Mitomycin 5 MG inj | | | $277.74 | |
| J9293 | Mitoxantrone hydrochl / 5 MG | | | $716.89 | |
| J9310 | Rituximab cancer treatment | | | $1,345.95 | |
| J9350 | Topotecan | | | $1,889.54 | |
| J9355 | Trastuzumab | | | $154.29 | |
| J9357 | Valrubicin, 200 mg | | | $873.55 | |
| J9390 | Vinorelbine tartrate/10 mg | | | $263.50 | |
| J9600 | Porfimer sodium | | | $7,254.31 | |
| M0064 | Visit for drug monitoring | | | $120.03 | |
| P9010 | Whole blood for transfusion | | | $455.61 | |
| P9012 | Cryoprecipitate each unit | | | $151.87 | |
| P9016 | RBC leukocytes reduced | | | $617.97 | |
| P9017 | One donor fresh frozn plasma | | | $492.28 | |
| P9019 | Platelets, each unit | | | $214.73 | |
| P9020 | Plaelet rich plasma unit | | | $277.56 | |
| P9021 | Red blood cells unit | | | $447.75 | |
| P9022 | Washed red blood cells unit | | | $832.67 | |
| P9023 | Frozen plasma, pooled, sd | | | $644.16 | |

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[1] See end of table.

TABLE F. — OUTPATIENT FACILITY NATIONWIDE CHARGES BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Description | Status/ Usage Indicator [1] | Multiple Surgery Reduction Applies | Charge | Charge Method- ology |
|---|---|---|---|---|---|
| P9031 | Platelets leukocytes reduced | | | $256.61 | |
| P9032 | Platelets, irradiated | | | $387.54 | |
| P9033 | Platelets leukoreduced irrad | | | $617.97 | |
| P9034 | Platelets, pheresis | | | $2,118.36 | |
| P9035 | Platelet pheres leukoreduced | | | $2,118.36 | |
| P9036 | Platelet pheresis irradiated | | | $2,299.04 | |
| P9037 | Plate pheres leukoredu irrad | | | $2,105.25 | |
| P9038 | RBC irradiated | | | $562.98 | |
| P9039 | RBC deglycerolized | | | $950.52 | |
| P9040 | RBC leukoreduced irradiated | | | $950.52 | |
| P9041 | Albumin (human),5%, 50ml | | | $269.69 | |
| P9043 | Plasma protein fract,5%,50ml | | | $481.80 | |
| P9044 | Cryoprecipitatereducedplasma | | | $193.76 | |
| P9045 | Albumin (human), 5%, 250 ml | | | $1,343.28 | |
| P9046 | Albumin (human), 25%, 20 ml | | | $290.66 | |
| P9047 | Albumin (human), 25%, 50ml | | | $725.31 | |
| P9048 | Plasmaprotein fract,5%,250ml | | | $2,409.00 | |
| P9050 | Granulocytes, pheresis unit | | | $6,470.26 | |
| Q0035 | Cardiokymography | b | | $543.02 | |
| Q0081 | Infusion ther other than che | | + | $734.50 | |
| Q0083 | Chemo by other than infusion | d | | $189.91 | |
| Q0084 | Chemotherapy by infusion | d | | $883.06 | |
| Q0085 | Chemo by both infusion and o | d | | $1,343.57 | |
| Q0091 | Obtaining screen pap smear | | + | $54.87 | |
| Q0136 | Non esrd epoetin alpha inj | | | $57.80 | |
| Q0187 | Factor viia recombinant | | | $5,091.79 | |
| Q2005 | Corticorelin ovine triflutat | | | $562.60 | |
| Q2006 | Digoxin immune fab (ovine) | | | $1,220.13 | |
| Q2011 | Hemin, per 1 mg | | | $2.38 | |
| Q2017 | Teniposide, 50 mg | | | $479.50 | |
| Q2019 | Basiliximab | | | $3,273.46 | |
| Q2022 | VonWillebrandFactrCmplxperIU | | | $4.75 | |
| Q3003 | Technetium tc99m bicisate | | | $949.52 | |
| Q3008 | Indium 111-in pentetreotide | | | $2,012.99 | |
| Q3011 | Chromic phosphate p32 | | | $389.30 | |
| Q3021 | Ped hepatitis b vaccine inj | | | $45.93 | |
| Q3022 | Hepatitis b vaccine adult ds | | | $164.90 | |
| Q3023 | Injection hepatitis Bvaccine | | | $164.90 | |
| Q3025 | IM inj interferon beta 1-a | | | $227.88 | |

Key to Status/Usage Indicators:

a Cannot be billed by VA non-provider-based clinics, because the charge is included in the associated professional charge.

b Cannot be billed by VA non-provider-based clinics, because a technical component charge from the professional charge table applies.

c Can be billed by VA non-provider-based clinics.

d Cannot be billed by VA non-provider-based clinics, because a different code is used for professional billing.

e Cannot be billed by VA non-provider-based clinics, because a stand-alone charge from the professional charge table applies.

f Can be billed for patients who are subsequently admitted to the hospital.

All other procedures: Cannot be billed by VA non-provider-based clinics, because the service is generally considered facility only, or else the facility charge is included in the professional non-facility practice expense units.

Charge Methodology:

No entry: Charge derived using the methodology based on Medicare Ambulatory Payment Classifications.

All other entries: See Supplementary Table 1, Reasonable Charges Data Sources - V2.0.

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 0020T | | Extracorp shock wave tx, ft | Miscellaneous Medical | | 0.06 | 1.46 | 0.02 | | |
| 10021 | | Fna w/o image | Surgery | | 1.27 | 2.37 | 0.53 | | |
| 10022 | | Fna w/image | Surgery | | 1.27 | 2.66 | 0.44 | | |
| 10040 | | Acne surgery | Surgery | | 1.18 | 1.10 | 0.71 | | |
| 10060 | | Drainage of skin abscess | Surgery | | 1.17 | 1.49 | 0.67 | | |
| 10061 | | Drainage of skin abscess | Surgery | | 2.40 | 1.88 | 1.41 | | |
| 10080 | | Drainage of pilonidal cyst | Surgery | | 1.17 | 2.13 | 0.73 | | |
| 10081 | | Drainage of pilonidal cyst | Surgery | | 2.45 | 2.90 | 1.55 | | |
| 10120 | | Remove foreign body | Surgery | | 1.22 | 1.54 | 0.36 | | |
| 10121 | | Remove foreign body | Surgery | | 2.69 | 2.96 | 1.79 | | |
| 10140 | | Drainage of hematoma/fluid | Surgery | | 1.53 | 1.49 | 0.87 | | |
| 10160 | | Puncture drainage of lesion | Surgery | | 1.20 | 0.77 | 0.42 | | |
| 10180 | | Complex drainage, wound | Surgery | | 2.25 | 1.48 | 1.27 | | |
| 11000 | | Debride infected skin | Surgery | | 0.60 | 0.64 | 0.24 | | |
| 11001 | | Debride infected skin add-on | Surgery | | 0.30 | 0.38 | 0.11 | | |
| 11010 | | Debride skin, fx | Surgery | | 4.20 | 2.40 | 1.96 | | |
| 11011 | | Debride skin/muscle, fx | Surgery | | 4.95 | 3.83 | 2.60 | | |
| 11012 | | Debride skin/muscle/bone, fx | Surgery | | 6.88 | 5.51 | 4.23 | | |
| 11040 | | Debride skin, partial | Surgery | | 0.50 | 0.52 | 0.21 | | |
| 11041 | | Debride skin, full | Surgery | | 0.82 | 0.66 | 0.33 | | |
| 11042 | | Debride skin/tissue | Surgery | | 1.12 | 0.97 | 0.47 | | |
| 11043 | | Debride tissue/muscle | Surgery | | 2.38 | 3.57 | 2.64 | | |
| 11044 | | Debride tissue/muscle/bone | Surgery | | 3.06 | 4.73 | 3.91 | | |
| 11055 | | Trim skin lesion | Surgery | | 0.43 | 0.51 | 0.18 | | |
| 11056 | | Trim skin lesions, 2 to 4 | Surgery | | 0.61 | 0.58 | 0.26 | | |
| 11057 | | Trim skin lesions, over 4 | Surgery | | 0.79 | 0.65 | 0.33 | | |
| 11100 | | Biopsy of skin lesion | Surgery | | 0.81 | 1.24 | 0.38 | | |
| 11101 | | Biopsy, skin add-on | Surgery | | 0.41 | 0.38 | 0.20 | | |
| 11200 | | Removal of skin tags | Surgery | | 0.77 | 1.23 | 0.31 | | |
| 11201 | | Remove skin tags add-on | Surgery | | 0.29 | 0.56 | 0.12 | | |
| 11300 | | Shave skin lesion | Surgery | | 0.51 | 0.99 | 0.22 | | |
| 11301 | | Shave skin lesion | Surgery | | 0.85 | 1.10 | 0.39 | | |
| 11302 | | Shave skin lesion | Surgery | | 1.05 | 1.30 | 0.48 | | |
| 11303 | | Shave skin lesion | Surgery | | 1.24 | 1.59 | 0.54 | | |
| 11305 | | Shave skin lesion | Surgery | | 0.67 | 0.84 | 0.27 | | |
| 11306 | | Shave skin lesion | Surgery | | 0.99 | 1.10 | 0.43 | | |
| 11307 | | Shave skin lesion | Surgery | | 1.14 | 1.29 | 0.50 | | |
| 11308 | | Shave skin lesion | Surgery | | 1.41 | 1.45 | 0.61 | | |
| 11310 | | Shave skin lesion | Surgery | | 0.73 | 1.11 | 0.33 | | |
| 11311 | | Shave skin lesion | Surgery | | 1.05 | 1.23 | 0.50 | | |
| 11312 | | Shave skin lesion | Surgery | | 1.20 | 1.43 | 0.57 | | |
| 11313 | | Shave skin lesion | Surgery | | 1.62 | 1.81 | 0.74 | | |
| 11400 | | Exc tr-ext b9+marg 0.5 < cm | Surgery | | 0.85 | 2.08 | 0.96 | | |
| 11401 | | Exc tr-ext b9+marg 0.6-1 cm | Surgery | | 1.23 | 2.12 | 1.08 | | |
| 11402 | | Exc tr-ext b9+marg 1.1-2 cm | Surgery | | 1.51 | 2.28 | 1.14 | | |
| 11403 | | Exc tr-ext b9+marg 2.1-3 cm | Surgery | | 1.79 | 2.50 | 1.35 | | |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology.

TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 11404 | | Exc tr-ext b9+marg 3.1-4 cm | Surgery | | 2.06 | 2.84 | 1.42 | | |
| 11406 | | Exc tr-ext b9+marg > 4.0 cm | Surgery | | 2.76 | 3.24 | 1.68 | | |
| 11420 | | Exc h-f-nk-sp b9+marg 0.5 < | Surgery | | 0.98 | 1.81 | 1.00 | | |
| 11421 | | Exc h-f-nk-sp b9+marg 0.6-1 | Surgery | | 1.42 | 2.12 | 1.18 | | |
| 11422 | | Exc h-f-nk-sp b9+marg 1.1-2 | Surgery | | 1.63 | 2.30 | 1.38 | | |
| 11423 | | Exc h-f-nk-sp b9+marg 2.1-3 | Surgery | | 2.01 | 2.66 | 1.49 | | |
| 11424 | | Exc h-f-nk-sp b9+marg 3.1-4 | Surgery | | 2.43 | 2.93 | 1.64 | | |
| 11426 | | Exc h-f-nk-sp b9+marg > 4 cm | Surgery | | 3.78 | 3.75 | 2.15 | | |
| 11440 | | Exc face-mm b9+marg 0.5 < cm | Surgery | | 1.06 | 2.27 | 1.41 | | |
| 11441 | | Exc face-mm b9+marg 0.6-1 cm | Surgery | | 1.48 | 2.40 | 1.59 | | |
| 11442 | | Exc face-mm b9+marg 1.1-2 cm | Surgery | | 1.72 | 2.66 | 1.66 | | |
| 11443 | | Exc face-mm b9+marg 2.1-3 cm | Surgery | | 2.29 | 3.04 | 1.90 | | |
| 11444 | | Exc face-mm b9+marg 3.1-4 cm | Surgery | | 3.14 | 3.64 | 2.28 | | |
| 11446 | | Exc face-mm b9+marg > 4 cm | Surgery | | 4.49 | 4.26 | 2.88 | | |
| 11450 | | Removal, sweat gland lesion | Surgery | | 2.73 | 4.12 | 0.98 | | |
| 11451 | | Removal, sweat gland lesion | Surgery | | 3.95 | 4.98 | 1.43 | | |
| 11462 | | Removal, sweat gland lesion | Surgery | | 2.51 | 4.10 | 0.95 | | |
| 11463 | | Removal, sweat gland lesion | Surgery | | 3.95 | 5.60 | 1.57 | | |
| 11470 | | Removal, sweat gland lesion | Surgery | | 3.25 | 4.54 | 1.23 | | |
| 11471 | | Removal, sweat gland lesion | Surgery | | 4.41 | 5.69 | 1.72 | | |
| 11600 | | Exc tr-ext mlg+marg 0.5 < cm | Surgery | | 1.31 | 2.53 | 0.99 | | |
| 11601 | | Exc tr-ext mlg+marg 0.6-1 cm | Surgery | | 1.80 | 2.60 | 1.24 | | |
| 11602 | | Exc tr-ext mlg+marg 1.1-2 cm | Surgery | | 1.95 | 2.73 | 1.29 | | |
| 11603 | | Exc tr-ext mlg+marg 2.1-3 cm | Surgery | | 2.19 | 2.96 | 1.35 | | |
| 11604 | | Exc tr-ext mlg+marg 3.1-4 cm | Surgery | | 2.40 | 3.27 | 1.41 | | |
| 11606 | | Exc tr-ext mlg+marg > 4 cm | Surgery | | 3.43 | 3.96 | 1.76 | | |
| 11620 | | Exc h-f-nk-sp mlg+marg 0.5 < | Surgery | | 1.19 | 2.49 | 0.97 | | |
| 11621 | | Exc h-f-nk-sp mlg+marg 0.6-1 | Surgery | | 1.76 | 2.60 | 1.27 | | |
| 11622 | | Exc h-f-nk-sp mlg+marg 1.1-2 | Surgery | | 2.09 | 2.87 | 1.42 | | |
| 11623 | | Exc h-f-nk-sp mlg+marg 2.1-3 | Surgery | | 2.61 | 3.22 | 1.62 | | |
| 11624 | | Exc h-f-nk-sp mlg+marg 3.1-4 | Surgery | | 3.06 | 3.61 | 1.81 | | |
| 11626 | | Exc h-f-nk-sp mlg+mar > 4 cm | Surgery | | 4.30 | 4.56 | 2.44 | | |
| 11640 | | Exc face-mm malig+marg 0.5 < | Surgery | | 1.35 | 2.54 | 1.14 | | |
| 11641 | | Exc face-mm malig+marg 0.6-1 | Surgery | | 2.16 | 2.92 | 1.57 | | |
| 11642 | | Exc face-mm malig+marg 1.1-2 | Surgery | | 2.59 | 3.30 | 1.77 | | |
| 11643 | | Exc face-mm malig+marg 2.1-3 | Surgery | | 3.10 | 3.70 | 2.01 | | |
| 11644 | | Exc face-mm malig+marg 3.1-4 | Surgery | | 4.03 | 4.63 | 2.56 | | |
| 11646 | | Exc face-mm mlg+marg > 4 cm | Surgery | | 5.95 | 5.73 | 3.60 | | |
| 11719 | | Trim nail(s) | Surgery | | 0.17 | 0.25 | 0.07 | | |
| 11720 | | Debride nail, 1-5 | Surgery | | 0.32 | 0.34 | 0.13 | | |
| 11721 | | Debride nail, 6 or more | Surgery | | 0.54 | 0.44 | 0.21 | | |
| 11730 | | Removal of nail plate | Surgery | | 1.13 | 0.81 | 0.44 | | |
| 11732 | | Remove nail plate, add-on | Surgery | | 0.57 | 0.30 | 0.23 | | |
| 11740 | | Drain blood from under nail | Surgery | | 0.37 | 0.82 | 0.14 | | |
| 11750 | | Removal of nail bed | Surgery | | 1.86 | 1.72 | 0.77 | | |
| 11752 | | Remove nail bed/finger tip | Surgery | | 2.67 | 2.11 | 1.76 | | |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology.

## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 11755 | | Biopsy, nail unit | Surgery | | 1.31 | 1.11 | 0.56 | | |
| 11760 | | Repair of nail bed | Surgery | | 1.58 | 1.80 | 1.25 | | |
| 11762 | | Reconstruction of nail bed | Surgery | | 2.89 | 2.24 | 1.88 | | |
| 11765 | | Excision of nail fold, toe | Surgery | | 0.69 | 1.13 | 0.49 | | |
| 11770 | | Removal of pilonidal lesion | Surgery | | 2.61 | 2.98 | 1.23 | | |
| 11771 | | Removal of pilonidal lesion | Surgery | | 5.74 | 5.60 | 3.91 | | |
| 11772 | | Removal of pilonidal lesion | Surgery | | 6.98 | 6.41 | 4.36 | | |
| 11900 | | Injection into skin lesions | Surgery | | 0.52 | 0.75 | 0.22 | | |
| 11901 | | Added skin lesions injection | Surgery | | 0.80 | 0.72 | 0.36 | | |
| 11920 | | Correct skin color defects | Surgery | | 1.61 | 2.16 | 0.80 | | |
| 11921 | | Correct skin color defects | Surgery | | 1.93 | 2.52 | 1.00 | | |
| 11922 | | Correct skin color defects | Surgery | | 0.49 | 0.38 | 0.26 | | |
| 11950 | | Therapy for contour defects | Surgery | | 0.84 | 1.22 | 0.42 | | |
| 11951 | | Therapy for contour defects | Surgery | | 1.19 | 1.61 | 0.52 | | |
| 11952 | | Therapy for contour defects | Surgery | | 1.69 | 1.97 | 0.70 | | |
| 11954 | | Therapy for contour defects | Surgery | | 1.85 | 2.59 | 0.93 | | |
| 11960 | | Insert tissue expander(s) | Surgery | | 9.08 | 10.94 | 10.94 | | |
| 11970 | | Replace tissue expander | Surgery | | 7.06 | 4.98 | 4.98 | | |
| 11971 | | Remove tissue expander(s) | Surgery | | 2.13 | 6.33 | 3.86 | | |
| 11975 | | Insert contraceptive cap | Surgery | | 1.48 | 1.44 | 0.58 | | |
| 11976 | | Removal of contraceptive cap | Surgery | | 1.78 | 1.62 | 0.70 | | |
| 11977 | | Removal/reinsert contra cap | Surgery | | 3.30 | 2.30 | 1.28 | | |
| 11980 | | Implant hormone pellet(s) | Surgery | | 1.48 | 1.07 | 0.56 | | |
| 11981 | | Insert drug implant device | Surgery | | 1.48 | 1.59 | 0.58 | | |
| 11982 | | Remove drug implant device | Surgery | | 1.78 | 1.71 | 0.70 | | |
| 11983 | | Remove/insert drug implant | Surgery | | 3.30 | 2.30 | 1.28 | | |
| 12001 | | Repair superficial wound(s) | Surgery | | 1.70 | 2.16 | 0.44 | | |
| 12002 | | Repair superficial wound(s) | Surgery | | 1.86 | 2.23 | 0.92 | | |
| 12004 | | Repair superficial wound(s) | Surgery | | 2.24 | 2.51 | 1.03 | | |
| 12005 | | Repair superficial wound(s) | Surgery | | 2.86 | 3.07 | 1.22 | | |
| 12006 | | Repair superficial wound(s) | Surgery | | 3.67 | 3.69 | 1.53 | | |
| 12007 | | Repair superficial wound(s) | Surgery | | 4.12 | 4.16 | 1.83 | | |
| 12011 | | Repair superficial wound(s) | Surgery | | 1.76 | 2.34 | 0.44 | | |
| 12013 | | Repair superficial wound(s) | Surgery | | 1.99 | 2.49 | 0.96 | | |
| 12014 | | Repair superficial wound(s) | Surgery | | 2.46 | 2.77 | 1.08 | | |
| 12015 | | Repair superficial wound(s) | Surgery | | 3.19 | 3.38 | 1.27 | | |
| 12016 | | Repair superficial wound(s) | Surgery | | 3.93 | 3.81 | 1.55 | | |
| 12017 | | Repair superficial wound(s) | Surgery | | 4.71 | 1.90 | 1.90 | | |
| 12018 | | Repair superficial wound(s) | Surgery | | 5.53 | 2.27 | 2.27 | | |
| 12020 | | Closure of split wound | Surgery | | 2.62 | 2.55 | 1.42 | | |
| 12021 | | Closure of split wound | Surgery | | 1.84 | 1.70 | 1.02 | | |
| 12031 | | Layer closure of wound(s) | Surgery | | 2.15 | 2.29 | 0.77 | | |
| 12032 | | Layer closure of wound(s) | Surgery | | 2.47 | 2.98 | 1.28 | | |
| 12034 | | Layer closure of wound(s) | Surgery | | 2.92 | 3.21 | 1.44 | | |
| 12035 | | Layer closure of wound(s) | Surgery | | 3.43 | 3.15 | 1.67 | | |
| 12036 | | Layer closure of wound(s) | Surgery | | 4.05 | 5.26 | 2.46 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 12037 | | Layer closure of wound(s) | Surgery | | 4.67 | 5.62 | 2.80 | | |
| 12041 | | Layer closure of wound(s) | Surgery | | 2.37 | 2.48 | 0.83 | | |
| 12042 | | Layer closure of wound(s) | Surgery | | 2.74 | 3.17 | 1.41 | | |
| 12044 | | Layer closure of wound(s) | Surgery | | 3.14 | 3.26 | 1.60 | | |
| 12045 | | Layer closure of wound(s) | Surgery | | 3.64 | 3.58 | 1.87 | | |
| 12046 | | Layer closure of wound(s) | Surgery | | 4.25 | 5.53 | 2.55 | | |
| 12047 | | Layer closure of wound(s) | Surgery | | 4.65 | 6.15 | 2.89 | | |
| 12051 | | Layer closure of wound(s) | Surgery | | 2.47 | 3.16 | 1.41 | | |
| 12052 | | Layer closure of wound(s) | Surgery | | 2.77 | 3.12 | 1.38 | | |
| 12053 | | Layer closure of wound(s) | Surgery | | 3.12 | 3.26 | 1.54 | | |
| 12054 | | Layer closure of wound(s) | Surgery | | 3.46 | 3.60 | 1.64 | | |
| 12055 | | Layer closure of wound(s) | Surgery | | 4.43 | 4.60 | 2.19 | | |
| 12056 | | Layer closure of wound(s) | Surgery | | 5.24 | 6.62 | 3.05 | | |
| 12057 | | Layer closure of wound(s) | Surgery | | 5.96 | 6.14 | 3.73 | | |
| 13100 | | Repair of wound or lesion | Surgery | | 3.12 | 3.50 | 1.84 | | |
| 13101 | | Repair of wound or lesion | Surgery | | 3.92 | 3.76 | 2.29 | | |
| 13102 | | Repair wound/lesion add-on | Surgery | | 1.24 | 0.76 | 0.58 | | |
| 13120 | | Repair of wound or lesion | Surgery | | 3.30 | 3.60 | 1.88 | | |
| 13121 | | Repair of wound or lesion | Surgery | | 4.33 | 3.99 | 2.39 | | |
| 13122 | | Repair wound/lesion add-on | Surgery | | 1.44 | 0.89 | 0.65 | | |
| 13131 | | Repair of wound or lesion | Surgery | | 3.79 | 3.88 | 2.21 | | |
| 13132 | | Repair of wound or lesion | Surgery | | 5.95 | 4.72 | 3.25 | | |
| 13133 | | Repair wound/lesion add-on | Surgery | | 2.19 | 1.22 | 1.05 | | |
| 13150 | | Repair of wound or lesion | Surgery | | 3.81 | 5.29 | 2.64 | | |
| 13151 | | Repair of wound or lesion | Surgery | | 4.45 | 5.27 | 3.08 | | |
| 13152 | | Repair of wound or lesion | Surgery | | 6.33 | 6.01 | 3.98 | | |
| 13153 | | Repair wound/lesion add-on | Surgery | | 2.38 | 1.37 | 1.16 | | |
| 13160 | | Late closure of wound | Surgery | | 10.48 | 6.33 | 6.33 | | |
| 14000 | | Skin tissue rearrangement | Surgery | | 5.89 | 7.60 | 4.65 | | |
| 14001 | | Skin tissue rearrangement | Surgery | | 8.47 | 8.94 | 5.96 | | |
| 14020 | | Skin tissue rearrangement | Surgery | | 6.59 | 8.10 | 5.35 | | |
| 14021 | | Skin tissue rearrangement | Surgery | | 10.06 | 9.53 | 7.12 | | |
| 14040 | | Skin tissue rearrangement | Surgery | | 7.87 | 8.77 | 7.05 | | |
| 14041 | | Skin tissue rearrangement | Surgery | | 11.49 | 11.01 | 8.91 | | |
| 14060 | | Skin tissue rearrangement | Surgery | | 8.50 | 9.48 | 7.84 | | |
| 14061 | | Skin tissue rearrangement | Surgery | | 12.29 | 12.05 | 9.77 | | |
| 14300 | | Skin tissue rearrangement | Surgery | | 11.76 | 11.44 | 9.36 | | |
| 14350 | | Skin tissue rearrangement | Surgery | | 9.61 | 6.36 | 6.36 | | |
| 15000 | | Skin graft | Surgery | | 4.00 | 3.66 | 2.22 | | |
| 15001 | | Skin graft add-on | Surgery | | 1.00 | 1.26 | 0.42 | | |
| 15050 | | Skin pinch graft | Surgery | | 4.30 | 5.12 | 3.99 | | |
| 15100 | | Skin split graft | Surgery | | 9.05 | 11.70 | 8.09 | | |
| 15101 | | Skin split graft add-on | Surgery | | 1.72 | 3.27 | 1.48 | | |
| 15120 | | Skin split graft | Surgery | | 9.83 | 10.23 | 8.03 | | |
| 15121 | | Skin split graft add-on | Surgery | | 2.67 | 4.19 | 1.85 | | |
| 15200 | | Skin full graft | Surgery | | 8.03 | 9.60 | 5.54 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 15201 | | Skin full graft add-on | Surgery | | 1.32 | 1.05 | 0.64 | | |
| 15220 | | Skin full graft | Surgery | | 7.87 | 9.74 | 6.18 | | |
| 15221 | | Skin full graft add-on | Surgery | | 1.19 | 0.93 | 0.58 | | |
| 15240 | | Skin full graft | Surgery | | 9.04 | 9.25 | 7.01 | | |
| 15241 | | Skin full graft add-on | Surgery | | 1.86 | 1.47 | 0.94 | | |
| 15260 | | Skin full graft | Surgery | | 10.06 | 9.91 | 8.90 | | |
| 15261 | | Skin full graft add-on | Surgery | | 2.23 | 2.91 | 1.60 | | |
| 15342 | | Cultured skin graft, 25 cm | Surgery | | 1.00 | 2.06 | 0.75 | | |
| 15343 | | Culture skn graft addl 25 cm | Surgery | | 0.25 | 0.26 | 0.10 | | |
| 15350 | | Skin homograft | Surgery | | 4.00 | 8.44 | 4.34 | | |
| 15351 | | Skin homograft add-on | Surgery | | 1.00 | 0.95 | 0.41 | | |
| 15400 | | Skin heterograft | Surgery | | 4.00 | 4.84 | 4.84 | | |
| 15401 | | Skin heterograft add-on | Surgery | | 1.00 | 1.25 | 0.46 | | |
| 15570 | | Form skin pedicle flap | Surgery | | 9.21 | 8.16 | 6.07 | | |
| 15572 | | Form skin pedicle flap | Surgery | | 9.27 | 7.75 | 5.80 | | |
| 15574 | | Form skin pedicle flap | Surgery | | 9.88 | 8.32 | 6.84 | | |
| 15576 | | Form skin pedicle flap | Surgery | | 8.69 | 8.91 | 6.29 | | |
| 15600 | | Skin graft | Surgery | | 1.91 | 6.13 | 2.34 | | |
| 15610 | | Skin graft | Surgery | | 2.42 | 3.39 | 2.62 | | |
| 15620 | | Skin graft | Surgery | | 2.94 | 6.74 | 3.39 | | |
| 15630 | | Skin graft | Surgery | | 3.27 | 6.19 | 3.66 | | |
| 15650 | | Transfer skin pedicle flap | Surgery | | 3.97 | 6.17 | 3.73 | | |
| 15732 | | Muscle-skin graft, head/neck | Surgery | | 17.84 | 12.70 | 12.70 | | |
| 15734 | | Muscle-skin graft, trunk | Surgery | | 17.79 | 12.73 | 12.73 | | |
| 15736 | | Muscle-skin graft, arm | Surgery | | 16.27 | 11.61 | 11.61 | | |
| 15738 | | Muscle-skin graft, leg | Surgery | | 17.92 | 12.25 | 12.25 | | |
| 15740 | | Island pedicle flap graft | Surgery | | 10.25 | 9.00 | 7.05 | | |
| 15750 | | Neurovascular pedicle graft | Surgery | | 11.41 | 8.20 | 8.20 | | |
| 15756 | | Free myo/skin flap microvasc | Surgery | | 35.23 | 20.85 | 20.85 | | |
| 15757 | | Free skin flap, microvasc | Surgery | | 35.23 | 21.96 | 21.96 | | |
| 15758 | | Free fascial flap, microvasc | Surgery | | 35.10 | 22.00 | 22.00 | | |
| 15760 | | Composite skin graft | Surgery | | 8.74 | 9.10 | 6.62 | | |
| 15770 | | Derma-fat-fascia graft | Surgery | | 7.52 | 6.08 | 6.08 | | |
| 15775 | | Hair transplant punch grafts | Surgery | | 3.96 | 2.87 | 1.35 | | |
| 15776 | | Hair transplant punch grafts | Surgery | | 5.54 | 5.75 | 2.89 | | |
| 15780 | | Abrasion treatment of skin | Surgery | | 7.29 | 6.61 | 6.58 | | |
| 15781 | | Abrasion treatment of skin | Surgery | | 4.85 | 5.07 | 4.80 | | |
| 15782 | | Abrasion treatment of skin | Surgery | | 4.32 | 4.30 | 4.15 | | |
| 15783 | | Abrasion treatment of skin | Surgery | | 4.29 | 4.72 | 3.57 | | |
| 15786 | | Abrasion, lesion, single | Surgery | | 2.03 | 1.77 | 1.29 | | |
| 15787 | | Abrasion, lesions, add-on | Surgery | | 0.33 | 0.32 | 0.16 | | |
| 15788 | | Chemical peel, face, epiderm | Surgery | | 2.09 | 3.14 | 1.03 | | |
| 15789 | | Chemical peel, face, dermal | Surgery | | 4.92 | 6.17 | 3.51 | | |
| 15792 | | Chemical peel, nonfacial | Surgery | | 1.86 | 2.96 | 2.17 | | |
| 15793 | | Chemical peel, nonfacial | Surgery | | 3.74 | 3.50 | 3.50 | | |
| 15810 | | Salabrasion | Surgery | | 4.74 | 3.73 | 3.73 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 15811 | | Salabrasion | Surgery | | 5.39 | 6.09 | 4.73 | | |
| 15819 | | Plastic surgery, neck | Surgery | | 9.38 | 6.67 | 6.67 | | |
| 15820 | | Revision of lower eyelid | Surgery | | 5.15 | 7.12 | 5.25 | | |
| 15821 | | Revision of lower eyelid | Surgery | | 5.72 | 7.47 | 5.41 | | |
| 15822 | | Revision of upper eyelid | Surgery | | 4.45 | 6.06 | 4.23 | | |
| 15823 | | Revision of upper eyelid | Surgery | | 7.05 | 8.06 | 6.13 | | |
| 15824 | | Removal of forehead wrinkles | Surgery | | | | | 18.73 | MDR |
| 15825 | | Removal of neck wrinkles | Surgery | | | | | 21.41 | MDR |
| 15826 | | Removal of brow wrinkles | Surgery | | | | | 18.73 | MDR |
| 15828 | | Removal of face wrinkles | Surgery | | | | | 49.50 | MDR |
| 15829 | | Removal of skin wrinkles | Surgery | | | | | 54.85 | MDR |
| 15831 | | Excise excessive skin tissue | Surgery | | 12.40 | 7.69 | 7.69 | | |
| 15832 | | Excise excessive skin tissue | Surgery | | 11.59 | 7.68 | 7.68 | | |
| 15833 | | Excise excessive skin tissue | Surgery | | 10.64 | 7.06 | 7.06 | | |
| 15834 | | Excise excessive skin tissue | Surgery | | 10.85 | 6.95 | 6.95 | | |
| 15835 | | Excise excessive skin tissue | Surgery | | 11.67 | 6.93 | 6.93 | | |
| 15836 | | Excise excessive skin tissue | Surgery | | 9.34 | 6.18 | 6.18 | | |
| 15837 | | Excise excessive skin tissue | Surgery | | 8.43 | 7.40 | 6.42 | | |
| 15838 | | Excise excessive skin tissue | Surgery | | 7.13 | 5.68 | 5.68 | | |
| 15839 | | Excise excessive skin tissue | Surgery | | 9.38 | 7.21 | 5.75 | | |
| 15840 | | Graft for face nerve palsy | Surgery | | 13.26 | 9.75 | 9.75 | | |
| 15841 | | Graft for face nerve palsy | Surgery | | 23.26 | 14.51 | 14.51 | | |
| 15842 | | Flap for face nerve palsy | Surgery | | 37.96 | 22.78 | 22.78 | | |
| 15845 | | Skin and muscle repair, face | Surgery | | 12.57 | 8.47 | 8.47 | | |
| 15850 | | Removal of sutures | Surgery | | 0.78 | 1.44 | 0.30 | | |
| 15851 | | Removal of sutures | Surgery | | 0.86 | 1.64 | 0.34 | | |
| 15852 | | Dressing change,not for burn | Surgery | | 0.86 | 1.75 | 0.36 | | |
| 15860 | | Test for blood flow in graft | Surgery | | 1.95 | 1.30 | 0.81 | | |
| 15876 | | Suction assisted lipectomy | Surgery | | | | | 12.05 | PHCS |
| 15877 | | Suction assisted lipectomy | Surgery | | | | | 20.08 | PHCS |
| 15878 | | Suction assisted lipectomy | Surgery | | | | | 13.17 | PHCS |
| 15879 | | Suction assisted lipectomy | Surgery | | | | | 24.10 | PHCS |
| 15920 | | Removal of tail bone ulcer | Surgery | | 7.95 | 5.49 | 5.49 | | |
| 15922 | | Removal of tail bone ulcer | Surgery | | 9.90 | 7.31 | 7.31 | | |
| 15931 | | Remove sacrum pressure sore | Surgery | | 9.24 | 5.56 | 5.56 | | |
| 15933 | | Remove sacrum pressure sore | Surgery | | 10.85 | 7.98 | 7.98 | | |
| 15934 | | Remove sacrum pressure sore | Surgery | | 12.69 | 8.29 | 8.29 | | |
| 15935 | | Remove sacrum pressure sore | Surgery | | 14.57 | 9.96 | 9.96 | | |
| 15936 | | Remove sacrum pressure sore | Surgery | | 12.38 | 8.79 | 8.79 | | |
| 15937 | | Remove sacrum pressure sore | Surgery | | 14.21 | 10.25 | 10.25 | | |
| 15940 | | Remove hip pressure sore | Surgery | | 9.34 | 5.92 | 5.92 | | |
| 15941 | | Remove hip pressure sore | Surgery | | 11.43 | 9.80 | 9.80 | | |
| 15944 | | Remove hip pressure sore | Surgery | | 11.46 | 8.59 | 8.59 | | |
| 15945 | | Remove hip pressure sore | Surgery | | 12.69 | 9.51 | 9.51 | | |
| 15946 | | Remove hip pressure sore | Surgery | | 21.57 | 13.95 | 13.95 | | |
| 15950 | | Remove thigh pressure sore | Surgery | | 7.54 | 5.15 | 5.15 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 15951 | | Remove thigh pressure sore | Surgery | | 10.72 | 7.99 | 7.99 | | |
| 15952 | | Remove thigh pressure sore | Surgery | | 11.39 | 7.39 | 7.39 | | |
| 15953 | | Remove thigh pressure sore | Surgery | | 12.63 | 8.79 | 8.79 | | |
| 15956 | | Remove thigh pressure sore | Surgery | | 15.52 | 10.40 | 10.40 | | |
| 15958 | | Remove thigh pressure sore | Surgery | | 15.48 | 10.72 | 10.72 | | |
| 15999 | | Removal of pressure sore | Surgery | | | | | 29.27 | Misc |
| 16000 | | Initial treatment of burn(s) | Surgery | | 0.89 | 1.07 | 0.27 | | |
| 16010 | | Treatment of burn(s) | Surgery | | 0.87 | 1.19 | 0.36 | | |
| 16015 | | Treatment of burn(s) | Surgery | | 2.35 | 1.89 | 0.94 | | |
| 16020 | | Treatment of burn(s) | Surgery | | 0.80 | 1.13 | 0.26 | | |
| 16025 | | Treatment of burn(s) | Surgery | | 1.85 | 1.88 | 0.67 | | |
| 16030 | | Treatment of burn(s) | Surgery | | 2.08 | 3.05 | 0.91 | | |
| 16035 | | Incision of burn scab, initi | Surgery | | 3.75 | 1.50 | 1.50 | | |
| 16036 | | Incise burn scab, addl incis | Surgery | | 1.50 | 0.62 | 0.62 | | |
| 17000 | | Destroy benign/premlg lesion | Surgery | | 0.60 | 1.04 | 0.27 | | |
| 17003 | | Destroy lesions, 2-14 | Surgery | | 0.15 | 0.12 | 0.07 | | |
| 17004 | | Destroy lesions, 15 or more | Surgery | | 2.79 | 2.45 | 1.27 | | |
| 17106 | | Destruction of skin lesions | Surgery | | 4.59 | 4.77 | 3.21 | | |
| 17107 | | Destruction of skin lesions | Surgery | | 9.16 | 7.30 | 5.37 | | |
| 17108 | | Destruction of skin lesions | Surgery | | 13.20 | 9.35 | 7.66 | | |
| 17110 | | Destruct lesion, 1-14 | Surgery | | 0.65 | 1.71 | 0.45 | | |
| 17111 | | Destruct lesion, 15 or more | Surgery | | 0.92 | 1.75 | 0.56 | | |
| 17250 | | Chemical cautery, tissue | Surgery | | 0.50 | 1.23 | 0.34 | | |
| 17260 | | Destruction of skin lesions | Surgery | | 0.91 | 1.37 | 0.41 | | |
| 17261 | | Destruction of skin lesions | Surgery | | 1.17 | 1.62 | 0.55 | | |
| 17262 | | Destruction of skin lesions | Surgery | | 1.58 | 1.89 | 0.75 | | |
| 17263 | | Destruction of skin lesions | Surgery | | 1.79 | 2.07 | 0.82 | | |
| 17264 | | Destruction of skin lesions | Surgery | | 1.94 | 2.25 | 0.88 | | |
| 17266 | | Destruction of skin lesions | Surgery | | 2.34 | 2.57 | 0.96 | | |
| 17270 | | Destruction of skin lesions | Surgery | | 1.32 | 1.70 | 0.60 | | |
| 17271 | | Destruction of skin lesions | Surgery | | 1.49 | 1.79 | 0.71 | | |
| 17272 | | Destruction of skin lesions | Surgery | | 1.77 | 2.00 | 0.85 | | |
| 17273 | | Destruction of skin lesions | Surgery | | 2.05 | 2.23 | 0.96 | | |
| 17274 | | Destruction of skin lesions | Surgery | | 2.59 | 2.61 | 1.18 | | |
| 17276 | | Destruction of skin lesions | Surgery | | 3.20 | 3.03 | 1.42 | | |
| 17280 | | Destruction of skin lesions | Surgery | | 1.17 | 1.61 | 0.53 | | |
| 17281 | | Destruction of skin lesions | Surgery | | 1.72 | 1.92 | 0.82 | | |
| 17282 | | Destruction of skin lesions | Surgery | | 2.04 | 2.17 | 0.98 | | |
| 17283 | | Destruction of skin lesions | Surgery | | 2.64 | 2.58 | 1.23 | | |
| 17284 | | Destruction of skin lesions | Surgery | | 3.21 | 2.99 | 1.49 | | |
| 17286 | | Destruction of skin lesions | Surgery | | 4.44 | 3.78 | 2.18 | | |
| 17304 | | 1 stage mohs, up to 5 spec | Surgery | | 7.60 | 8.09 | 3.66 | | |
| 17305 | | 2 stage mohs, up to 5 spec | Surgery | | 2.85 | 3.81 | 1.37 | | |
| 17306 | | 3 stage mohs, up to 5 spec | Surgery | | 2.85 | 3.81 | 1.38 | | |
| 17307 | | Mohs addl stage up to 5 spec | Surgery | | 2.85 | 3.82 | 1.40 | | |
| 17310 | | Mohs any stage > 5 spec each | Surgery | | 0.62 | 1.48 | 0.31 | | |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology.

## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 17340 | | Cryotherapy of skin | Surgery | | 0.76 | 0.38 | 0.26 | | |
| 17360 | | Skin peel therapy | Surgery | | 1.43 | 1.59 | 0.72 | | |
| 17380 | | Hair removal by electrolysis | Surgery | | | | | 0.81 | MDR |
| 17999 | | Skin tissue procedure | Surgery | | | | | 0.34 | Misc |
| 19000 | | Drainage of breast lesion | Surgery | | 0.84 | 1.20 | 0.29 | | |
| 19001 | | Drain breast lesion add-on | Surgery | | 0.42 | 0.82 | 0.14 | | |
| 19020 | | Incision of breast lesion | Surgery | | 3.57 | 6.81 | 3.39 | | |
| 19030 | | Injection for breast x-ray | Surgery | | 1.53 | 3.56 | 0.52 | | |
| 19100 | | Bx breast percut w/o image | Surgery | | 1.27 | 1.43 | 0.44 | | |
| 19101 | | Biopsy of breast, open | Surgery | | 3.18 | 5.02 | 1.89 | | |
| 19102 | | Bx breast percut w/image | Surgery | | 2.00 | 4.86 | 0.68 | | |
| 19103 | | Bx breast percut w/device | Surgery | | 3.70 | 12.31 | 1.27 | | |
| 19110 | | Nipple exploration | Surgery | | 4.30 | 8.62 | 4.43 | | |
| 19112 | | Excise breast duct fistula | Surgery | | 3.67 | 9.15 | 3.08 | | |
| 19120 | | Removal of breast lesion | Surgery | | 5.56 | 4.92 | 3.09 | | |
| 19125 | | Excision, breast lesion | Surgery | | 6.06 | 5.05 | 3.26 | | |
| 19126 | | Excision, addl breast lesion | Surgery | | 2.93 | 1.02 | 1.02 | | |
| 19140 | | Removal of breast tissue | Surgery | | 5.14 | 9.35 | 3.65 | | |
| 19160 | | Removal of breast tissue | Surgery | | 5.99 | 4.52 | 4.52 | | |
| 19162 | | Remove breast tissue, nodes | Surgery | | 13.53 | 7.88 | 7.88 | | |
| 19180 | | Removal of breast | Surgery | | 8.80 | 5.93 | 5.93 | | |
| 19182 | | Removal of breast | Surgery | | 7.73 | 4.98 | 4.98 | | |
| 19200 | | Removal of breast | Surgery | | 15.49 | 9.07 | 9.07 | | |
| 19220 | | Removal of breast | Surgery | | 15.72 | 9.12 | 9.12 | | |
| 19240 | | Removal of breast | Surgery | | 16.00 | 8.74 | 8.74 | | |
| 19260 | | Removal of chest wall lesion | Surgery | | 15.44 | 9.13 | 9.13 | | |
| 19271 | | Revision of chest wall | Surgery | | 18.90 | 11.31 | 11.31 | | |
| 19272 | | Extensive chest wall surgery | Surgery | | 21.55 | 12.24 | 12.24 | | |
| 19290 | | Place needle wire, breast | Surgery | | 1.27 | 2.89 | 0.43 | | |
| 19291 | | Place needle wire, breast | Surgery | | 0.63 | 1.69 | 0.21 | | |
| 19295 | | Place breast clip, percut | Surgery | | 0.00 | 2.65 | 2.65 | | |
| 19316 | | Suspension of breast | Surgery | | 10.69 | 7.57 | 7.57 | | |
| 19318 | | Reduction of large breast | Surgery | | 15.62 | 11.72 | 11.72 | | |
| 19324 | | Enlarge breast | Surgery | | 5.85 | 4.25 | 4.25 | | |
| 19325 | | Enlarge breast with implant | Surgery | | 8.45 | 6.25 | 6.25 | | |
| 19328 | | Removal of breast implant | Surgery | | 5.68 | 4.54 | 4.54 | | |
| 19330 | | Removal of implant material | Surgery | | 7.59 | 5.20 | 5.20 | | |
| 19340 | | Immediate breast prosthesis | Surgery | | 6.33 | 3.19 | 3.19 | | |
| 19342 | | Delayed breast prosthesis | Surgery | | 11.20 | 7.83 | 7.83 | | |
| 19350 | | Breast reconstruction | Surgery | | 8.92 | 13.45 | 6.80 | | |
| 19355 | | Correct inverted nipple(s) | Surgery | | 7.57 | 13.63 | 5.41 | | |
| 19357 | | Breast reconstruction | Surgery | | 18.16 | 9.82 | 9.82 | | |
| 19361 | | Breast reconstruction | Surgery | | 19.26 | 10.27 | 10.27 | | |
| 19364 | | Breast reconstruction | Surgery | | 41.00 | 25.22 | 25.22 | | |
| 19366 | | Breast reconstruction | Surgery | | 21.28 | 10.27 | 10.27 | | |
| 19367 | | Breast reconstruction | Surgery | | 25.73 | 17.47 | 17.47 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 19368 | | Breast reconstruction | Surgery | | 32.42 | 21.08 | 21.08 | | |
| 19369 | | Breast reconstruction | Surgery | | 29.82 | 20.65 | 20.65 | | |
| 19370 | | Surgery of breast capsule | Surgery | | 8.05 | 6.08 | 6.08 | | |
| 19371 | | Removal of breast capsule | Surgery | | 9.35 | 7.15 | 7.15 | | |
| 19380 | | Revise breast reconstruction | Surgery | | 9.14 | 7.05 | 7.05 | | |
| 19396 | | Design custom breast implant | Surgery | | 2.17 | 6.25 | 1.02 | | |
| 19499 | | Breast surgery procedure | Surgery | | | | | 25.83 | Misc |
| 20000 | | Incision of abscess | Surgery | | 2.12 | 2.16 | 1.18 | | |
| 20005 | | Incision of deep abscess | Surgery | | 3.42 | 3.03 | 2.21 | | |
| 20100 | | Explore wound, neck | Surgery | | 10.08 | 5.82 | 4.37 | | |
| 20101 | | Explore wound, chest | Surgery | | 3.22 | 2.90 | 1.50 | | |
| 20102 | | Explore wound, abdomen | Surgery | | 3.94 | 3.39 | 1.75 | | |
| 20103 | | Explore wound, extremity | Surgery | | 5.30 | 4.26 | 3.02 | | |
| 20150 | | Excise epiphyseal bar | Surgery | | 13.69 | 8.96 | 8.96 | | |
| 20200 | | Muscle biopsy | Surgery | | 1.46 | 1.70 | 0.61 | | |
| 20205 | | Deep muscle biopsy | Surgery | | 2.35 | 3.87 | 0.96 | | |
| 20206 | | Needle biopsy, muscle | Surgery | | 0.99 | 3.15 | 0.35 | | |
| 20220 | | Bone biopsy, trocar/needle | Surgery | | 1.27 | 4.87 | 2.93 | | |
| 20225 | | Bone biopsy, trocar/needle | Surgery | | 1.87 | 4.37 | 3.02 | | |
| 20240 | | Bone biopsy, excisional | Surgery | | 3.23 | 4.22 | 4.22 | | |
| 20245 | | Bone biopsy, excisional | Surgery | | 7.78 | 6.91 | 6.91 | | |
| 20250 | | Open bone biopsy | Surgery | | 5.03 | 4.37 | 4.37 | | |
| 20251 | | Open bone biopsy | Surgery | | 5.56 | 4.92 | 4.92 | | |
| 20500 | | Injection of sinus tract | Surgery | | 1.23 | 5.89 | 3.82 | | |
| 20501 | | Inject sinus tract for x-ray | Surgery | | 0.76 | 3.14 | 0.26 | | |
| 20520 | | Removal of foreign body | Surgery | | 1.85 | 5.60 | 3.59 | | |
| 20525 | | Removal of foreign body | Surgery | | 3.50 | 6.84 | 4.38 | | |
| 20526 | | Ther injection, carp tunnel | Surgery | | 0.94 | 0.77 | 0.41 | | |
| 20550 | | Inj tendon sheath/ligament | Surgery | | 0.75 | 0.76 | 0.24 | | |
| 20551 | | Inject tendon origin/insert | Surgery | | 0.75 | 0.70 | 0.34 | | |
| 20552 | | Inject trigger point, 1 or 2 | Surgery | | 0.66 | 0.66 | 0.30 | | |
| 20553 | | Inject trigger points, =/> 3 | Surgery | | 0.75 | 0.75 | 0.34 | | |
| 20600 | | Drain/inject, joint/bursa | Surgery | | 0.66 | 0.66 | 0.36 | | |
| 20605 | | Drain/inject, joint/bursa | Surgery | | 0.68 | 0.78 | 0.37 | | |
| 20610 | | Drain/inject, joint/bursa | Surgery | | 0.79 | 0.97 | 0.42 | | |
| 20612 | | Aspirate/inj ganglion cyst | Surgery | | 0.70 | 0.77 | 0.28 | | |
| 20615 | | Treatment of bone cyst | Surgery | | 2.28 | 4.87 | 2.69 | | |
| 20650 | | Insert and remove bone pin | Surgery | | 2.23 | 5.08 | 3.29 | | |
| 20660 | | Apply, rem fixation device | Surgery | | 2.51 | 2.28 | 2.28 | | |
| 20661 | | Application of head brace | Surgery | | 4.89 | 6.91 | 6.91 | | |
| 20662 | | Application of pelvis brace | Surgery | | 6.07 | 6.27 | 6.27 | | |
| 20663 | | Application of thigh brace | Surgery | | 5.43 | 5.58 | 5.58 | | |
| 20664 | | Halo brace application | Surgery | | 8.06 | 8.62 | 8.62 | | |
| 20665 | | Removal of fixation device | Surgery | | 1.31 | 2.14 | 1.30 | | |
| 20670 | | Removal of support implant | Surgery | | 1.74 | 6.09 | 3.55 | | |
| 20680 | | Removal of support implant | Surgery | | 3.35 | 5.37 | 5.37 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 20690 | | Apply bone fixation device | Surgery | | 3.52 | 1.82 | 1.82 | | |
| 20692 | | Apply bone fixation device | Surgery | | 6.41 | 3.05 | 3.05 | | |
| 20693 | | Adjust bone fixation device | Surgery | | 5.86 | 13.20 | 13.20 | | |
| 20694 | | Remove bone fixation device | Surgery | | 4.16 | 9.45 | 6.56 | | |
| 20802 | | Replantation, arm, complete | Surgery | | 41.15 | 27.57 | 27.57 | | |
| 20805 | | Replant forearm, complete | Surgery | | 50.00 | 43.16 | 43.16 | | |
| 20808 | | Replantation hand, complete | Surgery | | 61.65 | 49.60 | 49.60 | | |
| 20816 | | Replantation digit, complete | Surgery | | 30.94 | 46.54 | 46.54 | | |
| 20822 | | Replantation digit, complete | Surgery | | 25.59 | 42.54 | 42.54 | | |
| 20824 | | Replantation thumb, complete | Surgery | | 30.94 | 45.41 | 45.41 | | |
| 20827 | | Replantation thumb, complete | Surgery | | 26.41 | 45.08 | 45.08 | | |
| 20838 | | Replantation foot, complete | Surgery | | 41.41 | 28.58 | 28.58 | | |
| 20900 | | Removal of bone for graft | Surgery | | 5.58 | 6.60 | 6.39 | | |
| 20902 | | Removal of bone for graft | Surgery | | 7.55 | 9.17 | 9.17 | | |
| 20910 | | Remove cartilage for graft | Surgery | | 5.34 | 8.85 | 6.69 | | |
| 20912 | | Remove cartilage for graft | Surgery | | 6.35 | 7.49 | 7.49 | | |
| 20920 | | Removal of fascia for graft | Surgery | | 5.31 | 5.57 | 5.57 | | |
| 20922 | | Removal of fascia for graft | Surgery | | 6.61 | 8.97 | 6.40 | | |
| 20924 | | Removal of tendon for graft | Surgery | | 6.48 | 7.16 | 7.16 | | |
| 20926 | | Removal of tissue for graft | Surgery | | 5.53 | 6.42 | 6.42 | | |
| 20930 | | Spinal bone allograft | Surgery | | | | | 3.37 | MDR |
| 20931 | | Spinal bone allograft | Surgery | | 1.81 | 0.96 | 0.96 | | |
| 20936 | | Spinal bone autograft | Surgery | | | | | 5.12 | MDR |
| 20937 | | Spinal bone autograft | Surgery | | 2.79 | 1.49 | 1.49 | | |
| 20938 | | Spinal bone autograft | Surgery | | 3.02 | 1.59 | 1.59 | | |
| 20950 | | Fluid pressure, muscle | Surgery | | 1.26 | 2.24 | 2.24 | | |
| 20955 | | Fibula bone graft, microvasc | Surgery | | 39.21 | 29.76 | 29.76 | | |
| 20956 | | Iliac bone graft, microvasc | Surgery | | 39.27 | 28.79 | 28.79 | | |
| 20957 | | Mt bone graft, microvasc | Surgery | | 40.65 | 21.19 | 21.19 | | |
| 20962 | | Other bone graft, microvasc | Surgery | | 39.27 | 28.28 | 28.28 | | |
| 20969 | | Bone/skin graft, microvasc | Surgery | | 43.92 | 32.14 | 32.14 | | |
| 20970 | | Bone/skin graft, iliac crest | Surgery | | 43.06 | 30.05 | 30.05 | | |
| 20972 | | Bone/skin graft, metatarsal | Surgery | | 42.99 | 18.39 | 18.39 | | |
| 20973 | | Bone/skin graft, great toe | Surgery | | 45.76 | 28.24 | 28.24 | | |
| 20974 | | Electrical bone stimulation | Surgery | | 0.62 | 0.42 | 0.33 | | |
| 20975 | | Electrical bone stimulation | Surgery | | 2.60 | 1.38 | 1.38 | | |
| 20979 | | Us bone stimulation | Surgery | | 0.62 | 0.73 | 0.35 | | |
| 20999 | | Musculoskeletal surgery | Surgery | | | | | 2.18 | Misc |
| 21010 | | Incision of jaw joint | Surgery | | 10.14 | 7.16 | 7.16 | | |
| 21015 | | Resection of facial tumor | Surgery | | 5.29 | 7.09 | 7.09 | | |
| 21025 | | Excision of bone, lower jaw | Surgery | | 10.06 | 7.35 | 6.87 | | |
| 21026 | | Excision of facial bone(s) | Surgery | | 4.85 | 5.39 | 5.08 | | |
| 21029 | | Contour of face bone lesion | Surgery | | 7.71 | 6.96 | 6.15 | | |
| 21030 | | Excise max/zygoma b9 tumor | Surgery | | 3.89 | 4.36 | 3.64 | | |
| 21031 | | Remove exostosis, mandible | Surgery | | 3.24 | 3.35 | 2.17 | | |
| 21032 | | Remove exostosis, maxilla | Surgery | | 3.24 | 3.32 | 2.29 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 21034 | | Excise max/zygoma mlg tumor | Surgery | | 16.17 | 10.67 | 10.64 | | |
| 21040 | | Excise mandible lesion | Surgery | | 3.89 | 3.76 | 2.58 | | |
| 21044 | | Removal of jaw bone lesion | Surgery | | 11.86 | 7.96 | 7.96 | | |
| 21045 | | Extensive jaw surgery | Surgery | | 16.17 | 10.29 | 10.29 | | |
| 21046 | | Remove mandible cyst complex | Surgery | | 13.00 | 10.42 | 10.42 | | |
| 21047 | | Excise lwr jaw cyst w/repair | Surgery | | 18.75 | 9.87 | 9.87 | | |
| 21048 | | Remove maxilla cyst complex | Surgery | | 13.50 | 10.63 | 10.63 | | |
| 21049 | | Excis uppr jaw cyst w/repair | Surgery | | 18.00 | 9.55 | 9.55 | | |
| 21050 | | Removal of jaw joint | Surgery | | 10.77 | 11.63 | 11.63 | | |
| 21060 | | Remove jaw joint cartilage | Surgery | | 10.23 | 10.09 | 10.09 | | |
| 21070 | | Remove coronoid process | Surgery | | 8.20 | 5.98 | 5.98 | | |
| 21076 | | Prepare face/oral prosthesis | Surgery | | 13.42 | 9.49 | 7.13 | | |
| 21077 | | Prepare face/oral prosthesis | Surgery | | 33.75 | 23.88 | 17.94 | | |
| 21079 | | Prepare face/oral prosthesis | Surgery | | 22.34 | 16.88 | 12.41 | | |
| 21080 | | Prepare face/oral prosthesis | Surgery | | 25.10 | 18.97 | 13.94 | | |
| 21081 | | Prepare face/oral prosthesis | Surgery | | 22.88 | 17.28 | 12.71 | | |
| 21082 | | Prepare face/oral prosthesis | Surgery | | 20.87 | 14.77 | 11.10 | | |
| 21083 | | Prepare face/oral prosthesis | Surgery | | 19.30 | 14.58 | 10.72 | | |
| 21084 | | Prepare face/oral prosthesis | Surgery | | 22.51 | 17.01 | 12.51 | | |
| 21085 | | Prepare face/oral prosthesis | Surgery | | 9.00 | 6.37 | 4.79 | | |
| 21086 | | Prepare face/oral prosthesis | Surgery | | 24.92 | 18.83 | 13.84 | | |
| 21087 | | Prepare face/oral prosthesis | Surgery | | 24.92 | 17.63 | 13.24 | | |
| 21088 | | Prepare face/oral prosthesis | Surgery | | | | | 10.04 | PHCS |
| 21089 | | Prepare face/oral prosthesis | Surgery | | | | | 8.07 | SAF |
| 21100 | | Maxillofacial fixation | Surgery | | 4.22 | 5.93 | 4.05 | | |
| 21110 | | Interdental fixation | Surgery | | 5.21 | 5.31 | 4.32 | | |
| 21116 | | Injection, jaw joint x-ray | Surgery | | 0.81 | 7.71 | 0.29 | | |
| 21120 | | Reconstruction of chin | Surgery | | 4.93 | 9.80 | 6.08 | | |
| 21121 | | Reconstruction of chin | Surgery | | 7.64 | 7.94 | 6.21 | | |
| 21122 | | Reconstruction of chin | Surgery | | 8.52 | 7.63 | 7.63 | | |
| 21123 | | Reconstruction of chin | Surgery | | 11.16 | 8.08 | 8.08 | | |
| 21125 | | Augmentation, lower jaw bone | Surgery | | 10.62 | 9.53 | 8.07 | | |
| 21127 | | Augmentation, lower jaw bone | Surgery | | 11.12 | 9.80 | 7.50 | | |
| 21137 | | Reduction of forehead | Surgery | | 9.82 | 8.03 | 8.03 | | |
| 21138 | | Reduction of forehead | Surgery | | 12.19 | 9.40 | 9.40 | | |
| 21139 | | Reduction of forehead | Surgery | | 14.61 | 9.78 | 9.78 | | |
| 21141 | | Reconstruct midface, lefort | Surgery | | 18.10 | 10.79 | 10.79 | | |
| 21142 | | Reconstruct midface, lefort | Surgery | | 18.81 | 12.16 | 12.16 | | |
| 21143 | | Reconstruct midface, lefort | Surgery | | 19.58 | 11.10 | 11.10 | | |
| 21145 | | Reconstruct midface, lefort | Surgery | | 19.94 | 11.25 | 11.25 | | |
| 21146 | | Reconstruct midface, lefort | Surgery | | 20.71 | 11.92 | 11.92 | | |
| 21147 | | Reconstruct midface, lefort | Surgery | | 21.77 | 12.15 | 12.15 | | |
| 21150 | | Reconstruct midface, lefort | Surgery | | 25.24 | 16.33 | 16.33 | | |
| 21151 | | Reconstruct midface, lefort | Surgery | | 28.30 | 19.93 | 19.93 | | |
| 21154 | | Reconstruct midface, lefort | Surgery | | 30.52 | 19.84 | 19.84 | | |
| 21155 | | Reconstruct midface, lefort | Surgery | | 34.45 | 20.75 | 20.75 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 21159 | | Reconstruct midface, lefort | Surgery | | 42.38 | 25.58 | 25.58 | | |
| 21160 | | Reconstruct midface, lefort | Surgery | | 46.44 | 26.69 | 26.69 | | |
| 21172 | | Reconstruct orbit/forehead | Surgery | | 27.80 | 15.82 | 15.82 | | |
| 21175 | | Reconstruct orbit/forehead | Surgery | | 33.17 | 20.06 | 20.06 | | |
| 21179 | | Reconstruct entire forehead | Surgery | | 22.25 | 17.84 | 17.84 | | |
| 21180 | | Reconstruct entire forehead | Surgery | | 25.19 | 18.59 | 18.59 | | |
| 21181 | | Contour cranial bone lesion | Surgery | | 9.90 | 8.34 | 8.34 | | |
| 21182 | | Reconstruct cranial bone | Surgery | | 32.19 | 21.89 | 21.89 | | |
| 21183 | | Reconstruct cranial bone | Surgery | | 35.31 | 23.87 | 23.87 | | |
| 21184 | | Reconstruct cranial bone | Surgery | | 38.24 | 24.30 | 24.30 | | |
| 21188 | | Reconstruction of midface | Surgery | | 22.46 | 15.62 | 15.62 | | |
| 21193 | | Reconst lwr jaw w/o graft | Surgery | | 17.15 | 10.78 | 10.78 | | |
| 21194 | | Reconst lwr jaw w/graft | Surgery | | 19.84 | 12.72 | 12.72 | | |
| 21195 | | Reconst lwr jaw w/o fixation | Surgery | | 17.24 | 12.35 | 12.35 | | |
| 21196 | | Reconst lwr jaw w/fixation | Surgery | | 18.91 | 12.91 | 12.91 | | |
| 21198 | | Reconstr lwr jaw segment | Surgery | | 14.16 | 11.66 | 11.66 | | |
| 21199 | | Reconstr lwr jaw w/advance | Surgery | | 16.00 | 9.29 | 9.29 | | |
| 21206 | | Reconstruct upper jaw bone | Surgery | | 14.10 | 9.72 | 9.72 | | |
| 21208 | | Augmentation of facial bones | Surgery | | 10.23 | 9.69 | 8.36 | | |
| 21209 | | Reduction of facial bones | Surgery | | 6.72 | 7.97 | 5.79 | | |
| 21210 | | Face bone graft | Surgery | | 10.23 | 8.99 | 8.14 | | |
| 21215 | | Lower jaw bone graft | Surgery | | 10.77 | 8.90 | 7.08 | | |
| 21230 | | Rib cartilage graft | Surgery | | 10.77 | 10.06 | 10.06 | | |
| 21235 | | Ear cartilage graft | Surgery | | 6.72 | 12.21 | 8.03 | | |
| 21240 | | Reconstruction of jaw joint | Surgery | | 14.05 | 11.30 | 11.30 | | |
| 21242 | | Reconstruction of jaw joint | Surgery | | 12.95 | 11.07 | 11.07 | | |
| 21243 | | Reconstruction of jaw joint | Surgery | | 20.79 | 13.76 | 13.76 | | |
| 21244 | | Reconstruction of lower jaw | Surgery | | 11.86 | 9.17 | 9.17 | | |
| 21245 | | Reconstruction of jaw | Surgery | | 11.86 | 12.18 | 10.18 | | |
| 21246 | | Reconstruction of jaw | Surgery | | 12.47 | 10.33 | 10.33 | | |
| 21247 | | Reconstruct lower jaw bone | Surgery | | 22.63 | 16.39 | 16.39 | | |
| 21248 | | Reconstruction of jaw | Surgery | | 11.48 | 8.99 | 7.76 | | |
| 21249 | | Reconstruction of jaw | Surgery | | 17.52 | 11.51 | 10.20 | | |
| 21255 | | Reconstruct lower jaw bone | Surgery | | 16.72 | 11.44 | 11.44 | | |
| 21256 | | Reconstruction of orbit | Surgery | | 16.19 | 13.27 | 13.27 | | |
| 21260 | | Revise eye sockets | Surgery | | 16.52 | 10.71 | 10.71 | | |
| 21261 | | Revise eye sockets | Surgery | | 31.49 | 20.59 | 20.59 | | |
| 21263 | | Revise eye sockets | Surgery | | 28.42 | 12.98 | 12.98 | | |
| 21267 | | Revise eye sockets | Surgery | | 18.90 | 14.48 | 14.48 | | |
| 21268 | | Revise eye sockets | Surgery | | 24.48 | 16.12 | 16.12 | | |
| 21270 | | Augmentation, cheek bone | Surgery | | 10.23 | 9.54 | 9.54 | | |
| 21275 | | Revision, orbitofacial bones | Surgery | | 11.24 | 10.78 | 10.78 | | |
| 21280 | | Revision of eyelid | Surgery | | 6.03 | 6.07 | 6.07 | | |
| 21282 | | Revision of eyelid | Surgery | | 3.49 | 5.15 | 5.15 | | |
| 21295 | | Revision of jaw muscle/bone | Surgery | | 1.53 | 4.35 | 4.35 | | |
| 21296 | | Revision of jaw muscle/bone | Surgery | | 4.25 | 4.55 | 4.55 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 21299 | | Cranio/maxillofacial surgery | Surgery | | | | | 14.84 | Misc |
| 21300 | | Treatment of skull fracture | Surgery | | 0.72 | 2.73 | 0.26 | | |
| 21310 | | Treatment of nose fracture | Surgery | | 0.58 | 2.68 | 0.15 | | |
| 21315 | | Treatment of nose fracture | Surgery | | 1.51 | 3.43 | 1.27 | | |
| 21320 | | Treatment of nose fracture | Surgery | | 1.85 | 4.83 | 2.03 | | |
| 21325 | | Treatment of nose fracture | Surgery | | 3.77 | 3.67 | 3.67 | | |
| 21330 | | Treatment of nose fracture | Surgery | | 5.38 | 5.51 | 5.51 | | |
| 21335 | | Treatment of nose fracture | Surgery | | 8.61 | 7.16 | 7.16 | | |
| 21336 | | Treat nasal septal fracture | Surgery | | 5.72 | 5.55 | 5.55 | | |
| 21337 | | Treat nasal septal fracture | Surgery | | 2.70 | 5.23 | 3.25 | | |
| 21338 | | Treat nasoethmoid fracture | Surgery | | 6.46 | 5.96 | 5.96 | | |
| 21339 | | Treat nasoethmoid fracture | Surgery | | 8.09 | 6.70 | 6.70 | | |
| 21340 | | Treatment of nose fracture | Surgery | | 10.77 | 9.09 | 9.09 | | |
| 21343 | | Treatment of sinus fracture | Surgery | | 12.95 | 9.77 | 9.77 | | |
| 21344 | | Treatment of sinus fracture | Surgery | | 19.72 | 13.44 | 13.44 | | |
| 21345 | | Treat nose/jaw fracture | Surgery | | 8.16 | 9.73 | 7.91 | | |
| 21346 | | Treat nose/jaw fracture | Surgery | | 10.61 | 10.05 | 10.05 | | |
| 21347 | | Treat nose/jaw fracture | Surgery | | 12.69 | 9.50 | 9.50 | | |
| 21348 | | Treat nose/jaw fracture | Surgery | | 16.69 | 10.93 | 10.93 | | |
| 21355 | | Treat cheek bone fracture | Surgery | | 3.77 | 4.40 | 2.28 | | |
| 21356 | | Treat cheek bone fracture | Surgery | | 4.15 | 3.23 | 3.23 | | |
| 21360 | | Treat cheek bone fracture | Surgery | | 6.46 | 5.63 | 5.63 | | |
| 21365 | | Treat cheek bone fracture | Surgery | | 14.95 | 11.31 | 11.31 | | |
| 21366 | | Treat cheek bone fracture | Surgery | | 17.77 | 11.90 | 11.90 | | |
| 21385 | | Treat eye socket fracture | Surgery | | 9.16 | 7.53 | 7.53 | | |
| 21386 | | Treat eye socket fracture | Surgery | | 9.16 | 7.97 | 7.97 | | |
| 21387 | | Treat eye socket fracture | Surgery | | 9.70 | 8.22 | 8.22 | | |
| 21390 | | Treat eye socket fracture | Surgery | | 10.13 | 8.47 | 8.47 | | |
| 21395 | | Treat eye socket fracture | Surgery | | 12.68 | 9.79 | 9.79 | | |
| 21400 | | Treat eye socket fracture | Surgery | | 1.40 | 3.12 | 1.05 | | |
| 21401 | | Treat eye socket fracture | Surgery | | 3.26 | 4.83 | 3.11 | | |
| 21406 | | Treat eye socket fracture | Surgery | | 7.01 | 6.75 | 6.75 | | |
| 21407 | | Treat eye socket fracture | Surgery | | 8.61 | 7.75 | 7.75 | | |
| 21408 | | Treat eye socket fracture | Surgery | | 12.38 | 10.01 | 10.01 | | |
| 21421 | | Treat mouth roof fracture | Surgery | | 5.14 | 7.44 | 6.09 | | |
| 21422 | | Treat mouth roof fracture | Surgery | | 8.32 | 7.49 | 7.49 | | |
| 21423 | | Treat mouth roof fracture | Surgery | | 10.40 | 8.02 | 8.02 | | |
| 21431 | | Treat craniofacial fracture | Surgery | | 7.05 | 6.68 | 6.68 | | |
| 21432 | | Treat craniofacial fracture | Surgery | | 8.61 | 7.74 | 7.74 | | |
| 21433 | | Treat craniofacial fracture | Surgery | | 25.35 | 17.10 | 17.10 | | |
| 21435 | | Treat craniofacial fracture | Surgery | | 17.25 | 12.56 | 12.56 | | |
| 21436 | | Treat craniofacial fracture | Surgery | | 28.04 | 17.16 | 17.16 | | |
| 21440 | | Treat dental ridge fracture | Surgery | | 2.70 | 5.68 | 3.64 | | |
| 21445 | | Treat dental ridge fracture | Surgery | | 5.38 | 7.04 | 5.17 | | |
| 21450 | | Treat lower jaw fracture | Surgery | | 2.97 | 6.87 | 2.74 | | |
| 21451 | | Treat lower jaw fracture | Surgery | | 4.87 | 6.63 | 5.65 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 21452 | | Treat lower jaw fracture | Surgery | | 1.98 | 9.39 | 4.20 | | |
| 21453 | | Treat lower jaw fracture | Surgery | | 5.54 | 7.52 | 6.40 | | |
| 21454 | | Treat lower jaw fracture | Surgery | | 6.46 | 5.78 | 5.78 | | |
| 21461 | | Treat lower jaw fracture | Surgery | | 8.09 | 9.26 | 7.94 | | |
| 21462 | | Treat lower jaw fracture | Surgery | | 9.79 | 10.56 | 8.08 | | |
| 21465 | | Treat lower jaw fracture | Surgery | | 11.91 | 7.87 | 7.87 | | |
| 21470 | | Treat lower jaw fracture | Surgery | | 15.34 | 9.93 | 9.93 | | |
| 21480 | | Reset dislocated jaw | Surgery | | 0.61 | 1.58 | 0.18 | | |
| 21485 | | Reset dislocated jaw | Surgery | | 3.99 | 3.85 | 3.39 | | |
| 21490 | | Repair dislocated jaw | Surgery | | 11.86 | 7.57 | 7.57 | | |
| 21493 | | Treat hyoid bone fracture | Surgery | | 1.27 | 3.38 | 3.38 | | |
| 21494 | | Treat hyoid bone fracture | Surgery | | 6.28 | 5.06 | 5.06 | | |
| 21495 | | Treat hyoid bone fracture | Surgery | | 5.69 | 5.00 | 5.00 | | |
| 21497 | | Interdental wiring | Surgery | | 3.86 | 4.75 | 3.97 | | |
| 21499 | | Head surgery procedure | Surgery | | | | | 30.71 | Misc |
| 21501 | | Drain neck/chest lesion | Surgery | | 3.81 | 4.39 | 3.59 | | |
| 21502 | | Drain chest lesion | Surgery | | 7.12 | 7.44 | 7.44 | | |
| 21510 | | Drainage of bone lesion | Surgery | | 5.74 | 7.16 | 7.16 | | |
| 21550 | | Biopsy of neck/chest | Surgery | | 2.06 | 2.33 | 1.22 | | |
| 21555 | | Remove lesion, neck/chest | Surgery | | 4.35 | 4.26 | 2.44 | | |
| 21556 | | Remove lesion, neck/chest | Surgery | | 5.57 | 3.21 | 3.21 | | |
| 21557 | | Remove tumor, neck/chest | Surgery | | 8.88 | 7.68 | 7.68 | | |
| 21600 | | Partial removal of rib | Surgery | | 6.89 | 7.57 | 7.57 | | |
| 21610 | | Partial removal of rib | Surgery | | 14.61 | 11.24 | 11.24 | | |
| 21615 | | Removal of rib | Surgery | | 9.87 | 8.07 | 8.07 | | |
| 21616 | | Removal of rib and nerves | Surgery | | 12.04 | 9.27 | 9.27 | | |
| 21620 | | Partial removal of sternum | Surgery | | 6.79 | 8.04 | 8.04 | | |
| 21627 | | Sternal debridement | Surgery | | 6.81 | 12.58 | 12.58 | | |
| 21630 | | Extensive sternum surgery | Surgery | | 17.38 | 13.52 | 13.52 | | |
| 21632 | | Extensive sternum surgery | Surgery | | 18.14 | 12.17 | 12.17 | | |
| 21700 | | Revision of neck muscle | Surgery | | 6.19 | 9.22 | 7.25 | | |
| 21705 | | Revision of neck muscle/rib | Surgery | | 9.60 | 7.62 | 7.62 | | |
| 21720 | | Revision of neck muscle | Surgery | | 5.68 | 7.95 | 7.01 | | |
| 21725 | | Revision of neck muscle | Surgery | | 6.99 | 7.45 | 7.45 | | |
| 21740 | | Reconstruction of sternum | Surgery | | 16.50 | 12.48 | 12.48 | | |
| 21742 | | Repair stern/nuss w/o scope | Surgery | | | | | 22.52 | SA |
| 21743 | | Repair sternum/nuss w/scope | Surgery | | | | | 29.64 | SA |
| 21750 | | Repair of sternum separation | Surgery | | 10.77 | 9.85 | 9.85 | | |
| 21800 | | Treatment of rib fracture | Surgery | | 0.96 | 2.38 | 1.08 | | |
| 21805 | | Treatment of rib fracture | Surgery | | 2.75 | 4.71 | 4.71 | | |
| 21810 | | Treatment of rib fracture(s) | Surgery | | 6.86 | 7.06 | 7.06 | | |
| 21820 | | Treat sternum fracture | Surgery | | 1.28 | 2.92 | 1.56 | | |
| 21825 | | Treat sternum fracture | Surgery | | 7.41 | 10.26 | 10.26 | | |
| 21899 | | Neck/chest surgery procedure | Surgery | | | | | 31.97 | Misc |
| 21920 | | Biopsy soft tissue of back | Surgery | | 2.06 | 2.45 | 0.75 | | |
| 21925 | | Biopsy soft tissue of back | Surgery | | 4.49 | 11.93 | 4.68 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 21930 | | Remove lesion, back or flank | Surgery | | 5.00 | 4.60 | 2.62 | | |
| 21935 | | Remove tumor, back | Surgery | | 17.96 | 13.01 | 13.01 | | |
| 22100 | | Remove part of neck vertebra | Surgery | | 9.73 | 8.38 | 8.38 | | |
| 22101 | | Remove part, thorax vertebra | Surgery | | 9.81 | 8.57 | 8.57 | | |
| 22102 | | Remove part, lumbar vertebra | Surgery | | 9.81 | 8.77 | 8.77 | | |
| 22103 | | Remove extra spine segment | Surgery | | 2.34 | 1.24 | 1.24 | | |
| 22110 | | Remove part of neck vertebra | Surgery | | 12.74 | 10.66 | 10.66 | | |
| 22112 | | Remove part, thorax vertebra | Surgery | | 12.81 | 10.54 | 10.54 | | |
| 22114 | | Remove part, lumbar vertebra | Surgery | | 12.81 | 10.45 | 10.45 | | |
| 22116 | | Remove extra spine segment | Surgery | | 2.32 | 1.19 | 1.19 | | |
| 22210 | | Revision of neck spine | Surgery | | 23.82 | 17.10 | 17.10 | | |
| 22212 | | Revision of thorax spine | Surgery | | 19.42 | 14.61 | 14.61 | | |
| 22214 | | Revision of lumbar spine | Surgery | | 19.45 | 15.09 | 15.09 | | |
| 22216 | | Revise, extra spine segment | Surgery | | 6.04 | 3.21 | 3.21 | | |
| 22220 | | Revision of neck spine | Surgery | | 21.37 | 15.50 | 15.50 | | |
| 22222 | | Revision of thorax spine | Surgery | | 21.52 | 13.08 | 13.08 | | |
| 22224 | | Revision of lumbar spine | Surgery | | 21.52 | 15.72 | 15.72 | | |
| 22226 | | Revise, extra spine segment | Surgery | | 6.04 | 3.17 | 3.17 | | |
| 22305 | | Treat spine process fracture | Surgery | | 2.05 | 3.40 | 2.82 | | |
| 22310 | | Treat spine fracture | Surgery | | 2.61 | 5.04 | 4.44 | | |
| 22315 | | Treat spine fracture | Surgery | | 8.84 | 8.64 | 8.64 | | |
| 22318 | | Treat odontoid fx w/o graft | Surgery | | 21.50 | 14.63 | 14.63 | | |
| 22319 | | Treat odontoid fx w/graft | Surgery | | 24.00 | 17.14 | 17.14 | | |
| 22325 | | Treat spine fracture | Surgery | | 18.30 | 13.88 | 13.88 | | |
| 22326 | | Treat neck spine fracture | Surgery | | 19.59 | 15.00 | 15.00 | | |
| 22327 | | Treat thorax spine fracture | Surgery | | 19.20 | 14.24 | 14.24 | | |
| 22328 | | Treat each add spine fx | Surgery | | 4.61 | 2.33 | 2.33 | | |
| 22505 | | Manipulation of spine | Surgery | | 1.87 | 4.80 | 3.19 | | |
| 22520 | | Percut vertebroplasty thor | Surgery | | 8.91 | 3.98 | 3.98 | | |
| 22521 | | Percut vertebroplasty lumb | Surgery | | 8.34 | 3.81 | 3.81 | | |
| 22522 | | Percut vertebroplasty addl | Surgery | | 4.31 | 1.73 | 1.73 | | |
| 22548 | | Neck spine fusion | Surgery | | 25.82 | 16.22 | 16.22 | | |
| 22554 | | Neck spine fusion | Surgery | | 18.62 | 12.63 | 12.63 | | |
| 22556 | | Thorax spine fusion | Surgery | | 23.46 | 14.89 | 14.89 | | |
| 22558 | | Lumbar spine fusion | Surgery | | 22.28 | 13.40 | 13.40 | | |
| 22585 | | Additional spinal fusion | Surgery | | 5.53 | 2.87 | 2.87 | | |
| 22590 | | Spine & skull spinal fusion | Surgery | | 20.51 | 13.62 | 13.62 | | |
| 22595 | | Neck spinal fusion | Surgery | | 19.39 | 13.12 | 13.12 | | |
| 22600 | | Neck spine fusion | Surgery | | 16.14 | 11.40 | 11.40 | | |
| 22610 | | Thorax spine fusion | Surgery | | 16.02 | 11.56 | 11.56 | | |
| 22612 | | Lumbar spine fusion | Surgery | | 21.00 | 14.36 | 14.36 | | |
| 22614 | | Spine fusion, extra segment | Surgery | | 6.44 | 3.44 | 3.44 | | |
| 22630 | | Lumbar spine fusion | Surgery | | 20.84 | 14.01 | 14.01 | | |
| 22632 | | Spine fusion, extra segment | Surgery | | 5.23 | 2.74 | 2.74 | | |
| 22800 | | Fusion of spine | Surgery | | 18.25 | 13.02 | 13.02 | | |
| 22802 | | Fusion of spine | Surgery | | 30.88 | 19.99 | 19.99 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 22804 | | Fusion of spine | Surgery | | 36.27 | 23.15 | 23.15 | | |
| 22808 | | Fusion of spine | Surgery | | 26.27 | 16.72 | 16.72 | | |
| 22810 | | Fusion of spine | Surgery | | 30.27 | 18.75 | 18.75 | | |
| 22812 | | Fusion of spine | Surgery | | 32.70 | 20.27 | 20.27 | | |
| 22818 | | Kyphectomy, 1-2 segments | Surgery | | 31.83 | 19.49 | 19.49 | | |
| 22819 | | Kyphectomy, 3 or more | Surgery | | 36.44 | 20.58 | 20.58 | | |
| 22830 | | Exploration of spinal fusion | Surgery | | 10.85 | 8.32 | 8.32 | | |
| 22840 | | Insert spine fixation device | Surgery | | 12.54 | 6.67 | 6.67 | | |
| 22841 | | Insert spine fixation device | Surgery | | | | | 9.74 | MDR |
| 22842 | | Insert spine fixation device | Surgery | | 12.58 | 6.69 | 6.69 | | |
| 22843 | | Insert spine fixation device | Surgery | | 13.46 | 6.78 | 6.78 | | |
| 22844 | | Insert spine fixation device | Surgery | | 16.44 | 8.99 | 8.99 | | |
| 22845 | | Insert spine fixation device | Surgery | | 11.96 | 6.24 | 6.24 | | |
| 22846 | | Insert spine fixation device | Surgery | | 12.42 | 6.51 | 6.51 | | |
| 22847 | | Insert spine fixation device | Surgery | | 13.80 | 7.21 | 7.21 | | |
| 22848 | | Insert pelv fixation device | Surgery | | 6.00 | 3.27 | 3.27 | | |
| 22849 | | Reinsert spinal fixation | Surgery | | 18.51 | 13.75 | 13.75 | | |
| 22850 | | Remove spine fixation device | Surgery | | 9.52 | 8.50 | 8.50 | | |
| 22851 | | Apply spine prosth device | Surgery | | 6.71 | 3.45 | 3.45 | | |
| 22852 | | Remove spine fixation device | Surgery | | 9.01 | 8.26 | 8.26 | | |
| 22855 | | Remove spine fixation device | Surgery | | 15.13 | 11.24 | 11.24 | | |
| 22899 | | Spine surgery procedure | Surgery | | | | | 25.88 | Misc |
| 22900 | | Remove abdominal wall lesion | Surgery | | 5.80 | 4.29 | 4.29 | | |
| 23000 | | Removal of calcium deposits | Surgery | | 4.36 | 8.97 | 7.38 | | |
| 23020 | | Release shoulder joint | Surgery | | 8.93 | 10.95 | 10.95 | | |
| 23030 | | Drain shoulder lesion | Surgery | | 3.43 | 6.24 | 4.54 | | |
| 23031 | | Drain shoulder bursa | Surgery | | 2.74 | 6.00 | 4.34 | | |
| 23035 | | Drain shoulder bone lesion | Surgery | | 8.61 | 15.81 | 15.81 | | |
| 23040 | | Exploratory shoulder surgery | Surgery | | 9.20 | 12.15 | 12.15 | | |
| 23044 | | Exploratory shoulder surgery | Surgery | | 7.12 | 11.01 | 11.01 | | |
| 23065 | | Biopsy shoulder tissues | Surgery | | 2.27 | 2.71 | 1.33 | | |
| 23066 | | Biopsy shoulder tissues | Surgery | | 4.16 | 7.96 | 6.49 | | |
| 23075 | | Removal of shoulder lesion | Surgery | | 2.39 | 5.36 | 3.21 | | |
| 23076 | | Removal of shoulder lesion | Surgery | | 7.63 | 8.42 | 8.42 | | |
| 23077 | | Remove tumor of shoulder | Surgery | | 16.09 | 14.26 | 14.26 | | |
| 23100 | | Biopsy of shoulder joint | Surgery | | 6.03 | 9.13 | 9.13 | | |
| 23101 | | Shoulder joint surgery | Surgery | | 5.58 | 9.14 | 9.14 | | |
| 23105 | | Remove shoulder joint lining | Surgery | | 8.23 | 10.55 | 10.55 | | |
| 23106 | | Incision of collarbone joint | Surgery | | 5.96 | 9.25 | 9.25 | | |
| 23107 | | Explore treat shoulder joint | Surgery | | 8.62 | 10.74 | 10.74 | | |
| 23120 | | Partial removal, collar bone | Surgery | | 7.11 | 9.97 | 9.97 | | |
| 23125 | | Removal of collar bone | Surgery | | 9.39 | 11.08 | 11.08 | | |
| 23130 | | Remove shoulder bone, part | Surgery | | 7.55 | 10.20 | 10.20 | | |
| 23140 | | Removal of bone lesion | Surgery | | 6.89 | 8.64 | 8.64 | | |
| 23145 | | Removal of bone lesion | Surgery | | 9.09 | 12.05 | 12.05 | | |
| 23146 | | Removal of bone lesion | Surgery | | 7.83 | 11.37 | 11.37 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 23150 | | Removal of humerus lesion | Surgery | | 8.48 | 10.37 | 10.37 | | |
| 23155 | | Removal of humerus lesion | Surgery | | 10.35 | 12.62 | 12.62 | | |
| 23156 | | Removal of humerus lesion | Surgery | | 8.68 | 10.74 | 10.74 | | |
| 23170 | | Remove collar bone lesion | Surgery | | 6.86 | 11.17 | 11.17 | | |
| 23172 | | Remove shoulder blade lesion | Surgery | | 6.90 | 10.70 | 10.70 | | |
| 23174 | | Remove humerus lesion | Surgery | | 9.51 | 12.19 | 12.19 | | |
| 23180 | | Remove collar bone lesion | Surgery | | 8.53 | 16.82 | 16.82 | | |
| 23182 | | Remove shoulder blade lesion | Surgery | | 8.15 | 16.90 | 16.90 | | |
| 23184 | | Remove humerus lesion | Surgery | | 9.38 | 17.08 | 17.08 | | |
| 23190 | | Partial removal of scapula | Surgery | | 7.24 | 8.72 | 8.72 | | |
| 23195 | | Removal of head of humerus | Surgery | | 9.81 | 11.11 | 11.11 | | |
| 23200 | | Removal of collar bone | Surgery | | 12.08 | 14.52 | 14.52 | | |
| 23210 | | Removal of shoulder blade | Surgery | | 12.49 | 14.47 | 14.47 | | |
| 23220 | | Partial removal of humerus | Surgery | | 14.56 | 15.73 | 15.73 | | |
| 23221 | | Partial removal of humerus | Surgery | | 17.74 | 17.13 | 17.13 | | |
| 23222 | | Partial removal of humerus | Surgery | | 23.92 | 21.02 | 21.02 | | |
| 23330 | | Remove shoulder foreign body | Surgery | | 1.85 | 5.75 | 3.77 | | |
| 23331 | | Remove shoulder foreign body | Surgery | | 7.38 | 10.06 | 10.06 | | |
| 23332 | | Remove shoulder foreign body | Surgery | | 11.62 | 12.40 | 12.40 | | |
| 23350 | | Injection for shoulder x-ray | Surgery | | 1.00 | 7.30 | 0.34 | | |
| 23395 | | Muscle transfer,shoulder/arm | Surgery | | 16.85 | 14.27 | 14.27 | | |
| 23397 | | Muscle transfers | Surgery | | 16.13 | 14.61 | 14.61 | | |
| 23400 | | Fixation of shoulder blade | Surgery | | 13.54 | 14.58 | 14.58 | | |
| 23405 | | Incision of tendon & muscle | Surgery | | 8.37 | 9.69 | 9.69 | | |
| 23406 | | Incise tendon(s) & muscle(s) | Surgery | | 10.79 | 11.89 | 11.89 | | |
| 23410 | | Repair rotator cuff, acute | Surgery | | 12.45 | 12.81 | 12.81 | | |
| 23412 | | Repair rotator cuff, chronic | Surgery | | 13.31 | 13.32 | 13.32 | | |
| 23415 | | Release of shoulder ligament | Surgery | | 9.97 | 10.45 | 10.45 | | |
| 23420 | | Repair of shoulder | Surgery | | 13.30 | 14.31 | 14.31 | | |
| 23430 | | Repair biceps tendon | Surgery | | 9.98 | 11.50 | 11.50 | | |
| 23440 | | Remove/transplant tendon | Surgery | | 10.48 | 11.82 | 11.82 | | |
| 23450 | | Repair shoulder capsule | Surgery | | 13.40 | 13.30 | 13.30 | | |
| 23455 | | Repair shoulder capsule | Surgery | | 14.37 | 13.88 | 13.88 | | |
| 23460 | | Repair shoulder capsule | Surgery | | 15.37 | 14.46 | 14.46 | | |
| 23462 | | Repair shoulder capsule | Surgery | | 15.30 | 14.13 | 14.13 | | |
| 23465 | | Repair shoulder capsule | Surgery | | 15.85 | 14.31 | 14.31 | | |
| 23466 | | Repair shoulder capsule | Surgery | | 14.22 | 13.84 | 13.84 | | |
| 23470 | | Reconstruct shoulder joint | Surgery | | 17.15 | 12.42 | 12.42 | | |
| 23472 | | Reconstruct shoulder joint | Surgery | | 21.10 | 14.64 | 14.64 | | |
| 23480 | | Revision of collar bone | Surgery | | 11.18 | 12.16 | 12.16 | | |
| 23485 | | Revision of collar bone | Surgery | | 13.43 | 13.35 | 13.35 | | |
| 23490 | | Reinforce clavicle | Surgery | | 11.86 | 12.24 | 12.24 | | |
| 23491 | | Reinforce shoulder bones | Surgery | | 14.21 | 13.76 | 13.76 | | |
| 23500 | | Treat clavicle fracture | Surgery | | 2.08 | 4.08 | 2.60 | | |
| 23505 | | Treat clavicle fracture | Surgery | | 3.69 | 6.20 | 4.12 | | |
| 23515 | | Treat clavicle fracture | Surgery | | 7.41 | 8.43 | 8.43 | | |

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 23520 | | Treat clavicle dislocation | Surgery | | 2.16 | 4.12 | 2.68 | | |
| 23525 | | Treat clavicle dislocation | Surgery | | 3.60 | 6.00 | 3.98 | | |
| 23530 | | Treat clavicle dislocation | Surgery | | 7.31 | 8.20 | 8.20 | | |
| 23532 | | Treat clavicle dislocation | Surgery | | 8.01 | 8.60 | 8.60 | | |
| 23540 | | Treat clavicle dislocation | Surgery | | 2.23 | 4.68 | 2.57 | | |
| 23545 | | Treat clavicle dislocation | Surgery | | 3.25 | 5.26 | 3.69 | | |
| 23550 | | Treat clavicle dislocation | Surgery | | 7.24 | 8.37 | 8.37 | | |
| 23552 | | Treat clavicle dislocation | Surgery | | 8.45 | 9.03 | 9.03 | | |
| 23570 | | Treat shoulder blade fx | Surgery | | 2.23 | 4.06 | 2.77 | | |
| 23575 | | Treat shoulder blade fx | Surgery | | 4.06 | 6.41 | 4.37 | | |
| 23585 | | Treat scapula fracture | Surgery | | 8.96 | 9.58 | 9.58 | | |
| 23600 | | Treat humerus fracture | Surgery | | 2.93 | 5.91 | 3.74 | | |
| 23605 | | Treat humerus fracture | Surgery | | 4.87 | 8.79 | 6.83 | | |
| 23615 | | Treat humerus fracture | Surgery | | 9.35 | 10.47 | 10.47 | | |
| 23616 | | Treat humerus fracture | Surgery | | 21.27 | 16.24 | 16.24 | | |
| 23620 | | Treat humerus fracture | Surgery | | 2.40 | 5.62 | 3.47 | | |
| 23625 | | Treat humerus fracture | Surgery | | 3.93 | 7.75 | 5.75 | | |
| 23630 | | Treat humerus fracture | Surgery | | 7.35 | 8.44 | 8.44 | | |
| 23650 | | Treat shoulder dislocation | Surgery | | 3.39 | 5.74 | 3.58 | | |
| 23655 | | Treat shoulder dislocation | Surgery | | 4.57 | 4.38 | 4.38 | | |
| 23660 | | Treat shoulder dislocation | Surgery | | 7.49 | 8.24 | 8.24 | | |
| 23665 | | Treat dislocation/fracture | Surgery | | 4.47 | 7.93 | 5.99 | | |
| 23670 | | Treat dislocation/fracture | Surgery | | 7.90 | 8.93 | 8.93 | | |
| 23675 | | Treat dislocation/fracture | Surgery | | 6.05 | 8.66 | 6.87 | | |
| 23680 | | Treat dislocation/fracture | Surgery | | 10.06 | 10.06 | 10.06 | | |
| 23700 | | Fixation of shoulder | Surgery | | 2.52 | 3.65 | 3.65 | | |
| 23800 | | Fusion of shoulder joint | Surgery | | 14.16 | 14.66 | 14.66 | | |
| 23802 | | Fusion of shoulder joint | Surgery | | 16.60 | 13.91 | 13.91 | | |
| 23900 | | Amputation of arm & girdle | Surgery | | 19.72 | 15.69 | 15.69 | | |
| 23920 | | Amputation at shoulder joint | Surgery | | 14.61 | 14.02 | 14.02 | | |
| 23921 | | Amputation follow-up surgery | Surgery | | 5.49 | 6.90 | 6.90 | | |
| 23929 | | Shoulder surgery procedure | Surgery | | | | | 11.98 | SAF |
| 23930 | | Drainage of arm lesion | Surgery | | 2.94 | 6.19 | 4.05 | | |
| 23931 | | Drainage of arm bursa | Surgery | | 1.79 | 5.97 | 3.88 | | |
| 23935 | | Drain arm/elbow bone lesion | Surgery | | 6.09 | 13.61 | 13.61 | | |
| 24000 | | Exploratory elbow surgery | Surgery | | 5.82 | 6.17 | 6.17 | | |
| 24006 | | Release elbow joint | Surgery | | 9.31 | 8.70 | 8.70 | | |
| 24065 | | Biopsy arm/elbow soft tissue | Surgery | | 2.08 | 5.87 | 3.35 | | |
| 24066 | | Biopsy arm/elbow soft tissue | Surgery | | 5.21 | 8.94 | 6.82 | | |
| 24075 | | Remove arm/elbow lesion | Surgery | | 3.92 | 8.20 | 6.14 | | |
| 24076 | | Remove arm/elbow lesion | Surgery | | 6.30 | 7.34 | 7.34 | | |
| 24077 | | Remove tumor of arm/elbow | Surgery | | 11.76 | 13.78 | 13.78 | | |
| 24100 | | Biopsy elbow joint lining | Surgery | | 4.93 | 5.79 | 5.79 | | |
| 24101 | | Explore/treat elbow joint | Surgery | | 6.13 | 6.96 | 6.96 | | |
| 24102 | | Remove elbow joint lining | Surgery | | 8.03 | 7.95 | 7.95 | | |
| 24105 | | Removal of elbow bursa | Surgery | | 3.61 | 5.38 | 5.38 | | |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology.

TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 24110 | | Remove humerus lesion | Surgery | | 7.39 | 10.13 | 10.13 | | |
| 24115 | | Remove/graft bone lesion | Surgery | | 9.63 | 10.52 | 10.52 | | |
| 24116 | | Remove/graft bone lesion | Surgery | | 11.81 | 12.57 | 12.57 | | |
| 24120 | | Remove elbow lesion | Surgery | | 6.65 | 6.95 | 6.95 | | |
| 24125 | | Remove/graft bone lesion | Surgery | | 7.89 | 7.28 | 7.28 | | |
| 24126 | | Remove/graft bone lesion | Surgery | | 8.31 | 8.03 | 8.03 | | |
| 24130 | | Removal of head of radius | Surgery | | 6.25 | 7.05 | 7.05 | | |
| 24134 | | Removal of arm bone lesion | Surgery | | 9.73 | 16.46 | 16.46 | | |
| 24136 | | Remove radius bone lesion | Surgery | | 7.99 | 6.55 | 6.55 | | |
| 24138 | | Remove elbow bone lesion | Surgery | | 8.05 | 8.03 | 8.03 | | |
| 24140 | | Partial removal of arm bone | Surgery | | 9.18 | 17.56 | 17.56 | | |
| 24145 | | Partial removal of radius | Surgery | | 7.58 | 11.64 | 11.64 | | |
| 24147 | | Partial removal of elbow | Surgery | | 7.54 | 11.64 | 11.64 | | |
| 24149 | | Radical resection of elbow | Surgery | | 14.20 | 11.19 | 11.19 | | |
| 24150 | | Extensive humerus surgery | Surgery | | 13.27 | 15.23 | 15.23 | | |
| 24151 | | Extensive humerus surgery | Surgery | | 15.58 | 16.96 | 16.96 | | |
| 24152 | | Extensive radius surgery | Surgery | | 10.06 | 9.83 | 9.83 | | |
| 24153 | | Extensive radius surgery | Surgery | | 11.54 | 7.06 | 7.06 | | |
| 24155 | | Removal of elbow joint | Surgery | | 11.73 | 9.42 | 9.42 | | |
| 24160 | | Remove elbow joint implant | Surgery | | 7.83 | 6.95 | 6.95 | | |
| 24164 | | Remove radius head implant | Surgery | | 6.23 | 5.95 | 5.95 | | |
| 24200 | | Removal of arm foreign body | Surgery | | 1.76 | 5.73 | 3.35 | | |
| 24201 | | Removal of arm foreign body | Surgery | | 4.56 | 8.91 | 7.06 | | |
| 24220 | | Injection for elbow x-ray | Surgery | | 1.31 | 11.02 | 0.46 | | |
| 24300 | | Manipulate elbow w/anesth | Surgery | | 3.75 | 5.53 | 5.53 | | |
| 24301 | | Muscle/tendon transfer | Surgery | | 10.20 | 9.22 | 9.22 | | |
| 24305 | | Arm tendon lengthening | Surgery | | 7.45 | 7.79 | 7.79 | | |
| 24310 | | Revision of arm tendon | Surgery | | 5.98 | 8.53 | 8.53 | | |
| 24320 | | Repair of arm tendon | Surgery | | 10.56 | 11.05 | 11.05 | | |
| 24330 | | Revision of arm muscles | Surgery | | 9.60 | 8.87 | 8.87 | | |
| 24331 | | Revision of arm muscles | Surgery | | 10.65 | 9.48 | 9.48 | | |
| 24332 | | Tenolysis, triceps | Surgery | | 7.45 | 5.21 | 5.21 | | |
| 24340 | | Repair of biceps tendon | Surgery | | 7.89 | 7.86 | 7.86 | | |
| 24341 | | Repair arm tendon/muscle | Surgery | | 7.90 | 7.86 | 7.86 | | |
| 24342 | | Repair of ruptured tendon | Surgery | | 10.62 | 9.44 | 9.44 | | |
| 24343 | | Repr elbow lat ligmnt w/tiss | Surgery | | 8.65 | 7.89 | 7.89 | | |
| 24344 | | Reconstruct elbow lat ligmnt | Surgery | | 14.00 | 11.18 | 11.18 | | |
| 24345 | | Repr elbw med ligmnt w/tissu | Surgery | | 8.65 | 7.89 | 7.89 | | |
| 24346 | | Reconstruct elbow med ligmnt | Surgery | | 14.00 | 11.18 | 11.18 | | |
| 24350 | | Repair of tennis elbow | Surgery | | 5.25 | 6.44 | 6.44 | | |
| 24351 | | Repair of tennis elbow | Surgery | | 5.91 | 6.93 | 6.93 | | |
| 24352 | | Repair of tennis elbow | Surgery | | 6.43 | 7.19 | 7.19 | | |
| 24354 | | Repair of tennis elbow | Surgery | | 6.48 | 7.15 | 7.15 | | |
| 24356 | | Revision of tennis elbow | Surgery | | 6.68 | 7.33 | 7.33 | | |
| 24360 | | Reconstruct elbow joint | Surgery | | 12.34 | 9.65 | 9.65 | | |
| 24361 | | Reconstruct elbow joint | Surgery | | 14.08 | 10.64 | 10.64 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 24362 | | Reconstruct elbow joint | Surgery | | 14.99 | 12.41 | 12.41 | | |
| 24363 | | Replace elbow joint | Surgery | | 18.49 | 11.53 | 11.53 | | |
| 24365 | | Reconstruct head of radius | Surgery | | 8.39 | 7.31 | 7.31 | | |
| 24366 | | Reconstruct head of radius | Surgery | | 9.13 | 7.69 | 7.69 | | |
| 24400 | | Revision of humerus | Surgery | | 11.06 | 12.99 | 12.99 | | |
| 24410 | | Revision of humerus | Surgery | | 14.82 | 14.11 | 14.11 | | |
| 24420 | | Revision of humerus | Surgery | | 13.44 | 17.27 | 17.27 | | |
| 24430 | | Repair of humerus | Surgery | | 12.81 | 13.18 | 13.18 | | |
| 24435 | | Repair humerus with graft | Surgery | | 13.17 | 14.37 | 14.37 | | |
| 24470 | | Revision of elbow joint | Surgery | | 8.74 | 8.50 | 8.50 | | |
| 24495 | | Decompression of forearm | Surgery | | 8.12 | 10.28 | 10.28 | | |
| 24498 | | Reinforce humerus | Surgery | | 11.92 | 12.68 | 12.68 | | |
| 24500 | | Treat humerus fracture | Surgery | | 3.21 | 5.31 | 3.38 | | |
| 24505 | | Treat humerus fracture | Surgery | | 5.17 | 9.31 | 7.10 | | |
| 24515 | | Treat humerus fracture | Surgery | | 11.65 | 11.58 | 11.58 | | |
| 24516 | | Treat humerus fracture | Surgery | | 11.65 | 12.14 | 12.14 | | |
| 24530 | | Treat humerus fracture | Surgery | | 3.50 | 6.52 | 4.97 | | |
| 24535 | | Treat humerus fracture | Surgery | | 6.87 | 9.14 | 6.89 | | |
| 24538 | | Treat humerus fracture | Surgery | | 9.43 | 10.85 | 10.85 | | |
| 24545 | | Treat humerus fracture | Surgery | | 10.46 | 10.37 | 10.37 | | |
| 24546 | | Treat humerus fracture | Surgery | | 15.69 | 13.83 | 13.83 | | |
| 24560 | | Treat humerus fracture | Surgery | | 2.80 | 5.10 | 3.16 | | |
| 24565 | | Treat humerus fracture | Surgery | | 5.56 | 8.24 | 6.05 | | |
| 24566 | | Treat humerus fracture | Surgery | | 7.79 | 10.34 | 10.34 | | |
| 24575 | | Treat humerus fracture | Surgery | | 10.66 | 8.43 | 8.43 | | |
| 24576 | | Treat humerus fracture | Surgery | | 2.86 | 4.85 | 3.31 | | |
| 24577 | | Treat humerus fracture | Surgery | | 5.79 | 8.47 | 6.32 | | |
| 24579 | | Treat humerus fracture | Surgery | | 11.60 | 11.31 | 11.31 | | |
| 24582 | | Treat humerus fracture | Surgery | | 8.55 | 10.77 | 10.77 | | |
| 24586 | | Treat elbow fracture | Surgery | | 15.21 | 11.05 | 11.05 | | |
| 24587 | | Treat elbow fracture | Surgery | | 15.16 | 10.88 | 10.88 | | |
| 24600 | | Treat elbow dislocation | Surgery | | 4.23 | 7.12 | 5.11 | | |
| 24605 | | Treat elbow dislocation | Surgery | | 5.42 | 5.09 | 5.09 | | |
| 24615 | | Treat elbow dislocation | Surgery | | 9.42 | 7.97 | 7.97 | | |
| 24620 | | Treat elbow fracture | Surgery | | 6.98 | 6.71 | 6.71 | | |
| 24635 | | Treat elbow fracture | Surgery | | 13.19 | 16.64 | 16.64 | | |
| 24640 | | Treat elbow dislocation | Surgery | | 1.20 | 3.54 | 1.84 | | |
| 24650 | | Treat radius fracture | Surgery | | 2.16 | 4.81 | 2.92 | | |
| 24655 | | Treat radius fracture | Surgery | | 4.40 | 7.66 | 5.41 | | |
| 24665 | | Treat radius fracture | Surgery | | 8.14 | 9.72 | 9.72 | | |
| 24666 | | Treat radius fracture | Surgery | | 9.49 | 10.48 | 10.48 | | |
| 24670 | | Treat ulnar fracture | Surgery | | 2.54 | 4.71 | 3.13 | | |
| 24675 | | Treat ulnar fracture | Surgery | | 4.72 | 7.86 | 5.68 | | |
| 24685 | | Treat ulnar fracture | Surgery | | 8.80 | 10.08 | 10.08 | | |
| 24800 | | Fusion of elbow joint | Surgery | | 11.20 | 9.94 | 9.94 | | |
| 24802 | | Fusion/graft of elbow joint | Surgery | | 13.69 | 11.56 | 11.56 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 24900 | | Amputation of upper arm | Surgery | | 9.60 | 11.21 | 11.21 | | |
| 24920 | | Amputation of upper arm | Surgery | | 9.54 | 12.82 | 12.82 | | |
| 24925 | | Amputation follow-up surgery | Surgery | | 7.07 | 9.68 | 9.68 | | |
| 24930 | | Amputation follow-up surgery | Surgery | | 10.25 | 11.78 | 11.78 | | |
| 24931 | | Amputate upper arm & implant | Surgery | | 12.72 | 9.23 | 9.23 | | |
| 24935 | | Revision of amputation | Surgery | | 15.58 | 12.63 | 12.63 | | |
| 24940 | | Revision of upper arm | Surgery | | | | | 22.76 | MDR |
| 24999 | | Upper arm/elbow surgery | Surgery | | | | | 9.89 | Misc |
| 25000 | | Incision of tendon sheath | Surgery | | 3.38 | 7.59 | 7.59 | | |
| 25001 | | Incise flexor carpi radialis | Surgery | | 3.38 | 4.37 | 4.37 | | |
| 25020 | | Decompress forearm 1 space | Surgery | | 5.92 | 11.38 | 11.38 | | |
| 25023 | | Decompress forearm 1 space | Surgery | | 12.96 | 17.36 | 17.36 | | |
| 25024 | | Decompress forearm 2 spaces | Surgery | | 9.50 | 8.08 | 8.08 | | |
| 25025 | | Decompress forarm 2 spaces | Surgery | | 16.54 | 11.75 | 11.75 | | |
| 25028 | | Drainage of forearm lesion | Surgery | | 5.25 | 10.17 | 10.17 | | |
| 25031 | | Drainage of forearm bursa | Surgery | | 4.14 | 10.14 | 10.14 | | |
| 25035 | | Treat forearm bone lesion | Surgery | | 7.36 | 16.87 | 16.87 | | |
| 25040 | | Explore/treat wrist joint | Surgery | | 7.18 | 9.48 | 9.48 | | |
| 25065 | | Biopsy forearm soft tissues | Surgery | | 1.99 | 2.58 | 2.58 | | |
| 25066 | | Biopsy forearm soft tissues | Surgery | | 4.13 | 8.42 | 8.42 | | |
| 25075 | | Removel forearm lesion subcu | Surgery | | 3.74 | 7.39 | 7.39 | | |
| 25076 | | Removel forearm lesion deep | Surgery | | 4.92 | 12.88 | 12.88 | | |
| 25077 | | Remove tumor, forearm/wrist | Surgery | | 9.76 | 15.51 | 15.51 | | |
| 25085 | | Incision of wrist capsule | Surgery | | 5.50 | 11.29 | 11.29 | | |
| 25100 | | Biopsy of wrist joint | Surgery | | 3.90 | 7.66 | 7.66 | | |
| 25101 | | Explore/treat wrist joint | Surgery | | 4.69 | 8.02 | 8.02 | | |
| 25105 | | Remove wrist joint lining | Surgery | | 5.85 | 11.25 | 11.25 | | |
| 25107 | | Remove wrist joint cartilage | Surgery | | 6.43 | 11.62 | 11.62 | | |
| 25110 | | Remove wrist tendon lesion | Surgery | | 3.92 | 8.62 | 8.62 | | |
| 25111 | | Remove wrist tendon lesion | Surgery | | 3.39 | 6.67 | 6.67 | | |
| 25112 | | Reremove wrist tendon lesion | Surgery | | 4.53 | 7.49 | 7.49 | | |
| 25115 | | Remove wrist/forearm lesion | Surgery | | 8.82 | 17.36 | 17.36 | | |
| 25116 | | Remove wrist/forearm lesion | Surgery | | 7.11 | 16.36 | 16.36 | | |
| 25118 | | Excise wrist tendon sheath | Surgery | | 4.37 | 8.09 | 8.09 | | |
| 25119 | | Partial removal of ulna | Surgery | | 6.04 | 11.54 | 11.54 | | |
| 25120 | | Removal of forearm lesion | Surgery | | 6.10 | 15.31 | 15.31 | | |
| 25125 | | Remove/graft forearm lesion | Surgery | | 7.48 | 16.39 | 16.39 | | |
| 25126 | | Remove/graft forearm lesion | Surgery | | 7.55 | 15.93 | 15.93 | | |
| 25130 | | Removal of wrist lesion | Surgery | | 5.26 | 8.44 | 8.44 | | |
| 25135 | | Remove & graft wrist lesion | Surgery | | 6.89 | 9.27 | 9.27 | | |
| 25136 | | Remove & graft wrist lesion | Surgery | | 5.97 | 8.50 | 8.50 | | |
| 25145 | | Remove forearm bone lesion | Surgery | | 6.37 | 15.73 | 15.73 | | |
| 25150 | | Partial removal of ulna | Surgery | | 7.09 | 12.28 | 12.28 | | |
| 25151 | | Partial removal of radius | Surgery | | 7.39 | 16.28 | 16.28 | | |
| 25170 | | Extensive forearm surgery | Surgery | | 11.09 | 17.76 | 17.76 | | |
| 25210 | | Removal of wrist bone | Surgery | | 5.95 | 8.84 | 8.84 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 25215 | | Removal of wrist bones | Surgery | | 7.89 | 12.52 | 12.52 | | |
| 25230 | | Partial removal of radius | Surgery | | 5.23 | 8.35 | 8.35 | | |
| 25240 | | Partial removal of ulna | Surgery | | 5.17 | 11.07 | 11.07 | | |
| 25246 | | Injection for wrist x-ray | Surgery | | 1.45 | 10.27 | 0.50 | | |
| 25248 | | Remove forearm foreign body | Surgery | | 5.14 | 10.23 | 10.23 | | |
| 25250 | | Removal of wrist prosthesis | Surgery | | 6.60 | 6.19 | 6.19 | | |
| 25251 | | Removal of wrist prosthesis | Surgery | | 9.57 | 8.08 | 8.08 | | |
| 25259 | | Manipulate wrist w/anesthes | Surgery | | 3.75 | 5.46 | 5.46 | | |
| 25260 | | Repair forearm tendon/muscle | Surgery | | 7.80 | 17.12 | 17.12 | | |
| 25263 | | Repair forearm tendon/muscle | Surgery | | 7.82 | 16.99 | 16.99 | | |
| 25265 | | Repair forearm tendon/muscle | Surgery | | 9.88 | 17.71 | 17.71 | | |
| 25270 | | Repair forearm tendon/muscle | Surgery | | 6.00 | 16.17 | 16.17 | | |
| 25272 | | Repair forearm tendon/muscle | Surgery | | 7.04 | 16.74 | 16.74 | | |
| 25274 | | Repair forearm tendon/muscle | Surgery | | 8.75 | 17.17 | 17.17 | | |
| 25275 | | Repair forearm tendon sheath | Surgery | | 8.50 | 7.44 | 7.44 | | |
| 25280 | | Revise wrist/forearm tendon | Surgery | | 7.22 | 16.29 | 16.29 | | |
| 25290 | | Incise wrist/forearm tendon | Surgery | | 5.29 | 18.62 | 18.62 | | |
| 25295 | | Release wrist/forearm tendon | Surgery | | 6.55 | 15.93 | 15.93 | | |
| 25300 | | Fusion of tendons at wrist | Surgery | | 8.80 | 10.06 | 10.06 | | |
| 25301 | | Fusion of tendons at wrist | Surgery | | 8.40 | 9.98 | 9.98 | | |
| 25310 | | Transplant forearm tendon | Surgery | | 8.14 | 16.74 | 16.74 | | |
| 25312 | | Transplant forearm tendon | Surgery | | 9.57 | 17.49 | 17.49 | | |
| 25315 | | Revise palsy hand tendon(s) | Surgery | | 10.20 | 18.31 | 18.31 | | |
| 25316 | | Revise palsy hand tendon(s) | Surgery | | 12.33 | 19.71 | 19.71 | | |
| 25320 | | Repair/revise wrist joint | Surgery | | 10.77 | 11.60 | 11.50 | | |
| 25332 | | Revise wrist joint | Surgery | | 11.41 | 9.34 | 9.34 | | |
| 25335 | | Realignment of hand | Surgery | | 12.88 | 14.95 | 14.95 | | |
| 25337 | | Reconstruct ulna/radioulnar | Surgery | | 10.17 | 13.85 | 13.85 | | |
| 25350 | | Revision of radius | Surgery | | 8.78 | 16.98 | 16.98 | | |
| 25355 | | Revision of radius | Surgery | | 10.17 | 17.60 | 17.60 | | |
| 25360 | | Revision of ulna | Surgery | | 8.43 | 16.89 | 16.89 | | |
| 25365 | | Revise radius & ulna | Surgery | | 12.40 | 18.51 | 18.51 | | |
| 25370 | | Revise radius or ulna | Surgery | | 13.36 | 18.42 | 18.42 | | |
| 25375 | | Revise radius & ulna | Surgery | | 13.04 | 19.42 | 19.42 | | |
| 25390 | | Shorten radius or ulna | Surgery | | 10.40 | 17.69 | 17.69 | | |
| 25391 | | Lengthen radius or ulna | Surgery | | 13.65 | 19.37 | 19.37 | | |
| 25392 | | Shorten radius & ulna | Surgery | | 13.95 | 18.37 | 18.37 | | |
| 25393 | | Lengthen radius & ulna | Surgery | | 15.87 | 20.63 | 20.63 | | |
| 25394 | | Repair carpal bone, shorten | Surgery | | 10.40 | 8.29 | 8.29 | | |
| 25400 | | Repair radius or ulna | Surgery | | 10.92 | 18.22 | 18.22 | | |
| 25405 | | Repair/graft radius or ulna | Surgery | | 14.38 | 20.48 | 20.48 | | |
| 25415 | | Repair radius & ulna | Surgery | | 13.35 | 19.39 | 19.39 | | |
| 25420 | | Repair/graft radius & ulna | Surgery | | 16.33 | 21.34 | 21.34 | | |
| 25425 | | Repair/graft radius or ulna | Surgery | | 13.21 | 26.80 | 26.80 | | |
| 25426 | | Repair/graft radius & ulna | Surgery | | 15.82 | 20.12 | 20.12 | | |
| 25430 | | Vasc graft into carpal bone | Surgery | | 9.25 | 7.62 | 7.62 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 25431 | | Repair nonunion carpal bone | Surgery | | 10.44 | 6.38 | 6.38 | | |
| 25440 | | Repair/graft wrist bone | Surgery | | 10.44 | 11.25 | 11.25 | | |
| 25441 | | Reconstruct wrist joint | Surgery | | 12.90 | 10.14 | 10.14 | | |
| 25442 | | Reconstruct wrist joint | Surgery | | 10.85 | 9.00 | 9.00 | | |
| 25443 | | Reconstruct wrist joint | Surgery | | 10.39 | 8.89 | 8.89 | | |
| 25444 | | Reconstruct wrist joint | Surgery | | 11.15 | 9.17 | 9.17 | | |
| 25445 | | Reconstruct wrist joint | Surgery | | 9.69 | 8.18 | 8.18 | | |
| 25446 | | Wrist replacement | Surgery | | 16.55 | 12.17 | 12.17 | | |
| 25447 | | Repair wrist joint(s) | Surgery | | 10.37 | 8.76 | 8.76 | | |
| 25449 | | Remove wrist joint implant | Surgery | | 14.49 | 10.89 | 10.89 | | |
| 25450 | | Revision of wrist joint | Surgery | | 7.87 | 13.09 | 13.09 | | |
| 25455 | | Revision of wrist joint | Surgery | | 9.49 | 14.28 | 14.28 | | |
| 25490 | | Reinforce radius | Surgery | | 9.54 | 16.71 | 16.71 | | |
| 25491 | | Reinforce ulna | Surgery | | 9.96 | 17.58 | 17.58 | | |
| 25492 | | Reinforce radius and ulna | Surgery | | 12.33 | 18.06 | 18.06 | | |
| 25500 | | Treat fracture of radius | Surgery | | 2.45 | 4.37 | 2.93 | | |
| 25505 | | Treat fracture of radius | Surgery | | 5.21 | 8.04 | 5.81 | | |
| 25515 | | Treat fracture of radius | Surgery | | 9.18 | 10.00 | 10.00 | | |
| 25520 | | Treat fracture of radius | Surgery | | 6.26 | 8.23 | 6.43 | | |
| 25525 | | Treat fracture of radius | Surgery | | 12.24 | 11.92 | 11.92 | | |
| 25526 | | Treat fracture of radius | Surgery | | 12.98 | 15.40 | 15.40 | | |
| 25530 | | Treat fracture of ulna | Surgery | | 2.09 | 4.42 | 2.92 | | |
| 25535 | | Treat fracture of ulna | Surgery | | 5.14 | 7.81 | 5.86 | | |
| 25545 | | Treat fracture of ulna | Surgery | | 8.90 | 10.14 | 10.14 | | |
| 25560 | | Treat fracture radius & ulna | Surgery | | 2.44 | 4.41 | 2.90 | | |
| 25565 | | Treat fracture radius & ulna | Surgery | | 5.63 | 8.28 | 6.02 | | |
| 25574 | | Treat fracture radius & ulna | Surgery | | 7.01 | 9.05 | 9.05 | | |
| 25575 | | Treat fracture radius/ulna | Surgery | | 10.45 | 10.98 | 10.98 | | |
| 25600 | | Treat fracture radius/ulna | Surgery | | 2.63 | 4.75 | 3.11 | | |
| 25605 | | Treat fracture radius/ulna | Surgery | | 5.81 | 8.51 | 6.27 | | |
| 25611 | | Treat fracture radius/ulna | Surgery | | 7.77 | 10.37 | 10.37 | | |
| 25620 | | Treat fracture radius/ulna | Surgery | | 8.55 | 9.91 | 9.91 | | |
| 25622 | | Treat wrist bone fracture | Surgery | | 2.61 | 4.70 | 3.08 | | |
| 25624 | | Treat wrist bone fracture | Surgery | | 4.53 | 7.73 | 5.49 | | |
| 25628 | | Treat wrist bone fracture | Surgery | | 8.43 | 9.95 | 9.85 | | |
| 25630 | | Treat wrist bone fracture | Surgery | | 2.88 | 4.86 | 3.14 | | |
| 25635 | | Treat wrist bone fracture | Surgery | | 4.39 | 7.68 | 4.75 | | |
| 25645 | | Treat wrist bone fracture | Surgery | | 7.25 | 9.47 | 9.47 | | |
| 25650 | | Treat wrist bone fracture | Surgery | | 3.05 | 4.91 | 3.21 | | |
| 25651 | | Pin ulnar styloid fracture | Surgery | | 5.36 | 5.69 | 5.69 | | |
| 25652 | | Treat fracture ulnar styloid | Surgery | | 7.60 | 6.85 | 6.85 | | |
| 25660 | | Treat wrist dislocation | Surgery | | 4.76 | 5.49 | 5.49 | | |
| 25670 | | Treat wrist dislocation | Surgery | | 7.92 | 9.73 | 9.73 | | |
| 25671 | | Pin radioulnar dislocation | Surgery | | 6.00 | 6.02 | 6.02 | | |
| 25675 | | Treat wrist dislocation | Surgery | | 4.67 | 7.52 | 5.43 | | |
| 25676 | | Treat wrist dislocation | Surgery | | 8.04 | 9.78 | 9.78 | | |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology.

TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 25680 | | Treat wrist fracture | Surgery | | 5.99 | 6.48 | 6.48 | | |
| 25685 | | Treat wrist fracture | Surgery | | 9.78 | 10.44 | 10.44 | | |
| 25690 | | Treat wrist dislocation | Surgery | | 5.50 | 7.21 | 7.21 | | |
| 25695 | | Treat wrist dislocation | Surgery | | 8.34 | 9.86 | 9.86 | | |
| 25800 | | Fusion of wrist joint | Surgery | | 9.76 | 10.92 | 10.92 | | |
| 25805 | | Fusion/graft of wrist joint | Surgery | | 11.28 | 11.81 | 11.81 | | |
| 25810 | | Fusion/graft of wrist joint | Surgery | | 10.57 | 11.34 | 11.34 | | |
| 25820 | | Fusion of hand bones | Surgery | | 7.45 | 9.68 | 9.68 | | |
| 25825 | | Fuse hand bones with graft | Surgery | | 9.27 | 10.66 | 10.66 | | |
| 25830 | | Fusion, radioulnar jnt/ulna | Surgery | | 10.06 | 17.12 | 17.12 | | |
| 25900 | | Amputation of forearm | Surgery | | 9.01 | 14.48 | 14.48 | | |
| 25905 | | Amputation of forearm | Surgery | | 9.12 | 15.75 | 15.75 | | |
| 25907 | | Amputation follow-up surgery | Surgery | | 7.80 | 15.19 | 15.19 | | |
| 25909 | | Amputation follow-up surgery | Surgery | | 8.96 | 15.62 | 15.62 | | |
| 25915 | | Amputation of forearm | Surgery | | 17.08 | 23.14 | 23.14 | | |
| 25920 | | Amputate hand at wrist | Surgery | | 8.68 | 9.91 | 9.91 | | |
| 25922 | | Amputate hand at wrist | Surgery | | 7.42 | 9.06 | 9.06 | | |
| 25924 | | Amputation follow-up surgery | Surgery | | 8.46 | 10.25 | 10.25 | | |
| 25927 | | Amputation of hand | Surgery | | 8.80 | 14.18 | 14.18 | | |
| 25929 | | Amputation follow-up surgery | Surgery | | 7.59 | 7.83 | 7.83 | | |
| 25931 | | Amputation follow-up surgery | Surgery | | 7.81 | 15.09 | 15.09 | | |
| 25999 | | Forearm or wrist surgery | Surgery | | | | | 10.49 | Misc |
| 26010 | | Drainage of finger abscess | Surgery | | 1.54 | 5.97 | 1.78 | | |
| 26011 | | Drainage of finger abscess | Surgery | | 2.19 | 12.48 | 2.48 | | |
| 26020 | | Drain hand tendon sheath | Surgery | | 4.67 | 5.31 | 5.31 | | |
| 26025 | | Drainage of palm bursa | Surgery | | 4.82 | 5.18 | 5.18 | | |
| 26030 | | Drainage of palm bursa(s) | Surgery | | 5.93 | 5.85 | 5.85 | | |
| 26034 | | Treat hand bone lesion | Surgery | | 6.23 | 6.04 | 6.04 | | |
| 26035 | | Decompress fingers/hand | Surgery | | 9.51 | 7.99 | 7.99 | | |
| 26037 | | Decompress fingers/hand | Surgery | | 7.25 | 6.48 | 6.48 | | |
| 26040 | | Release palm contracture | Surgery | | 3.33 | 3.75 | 3.75 | | |
| 26045 | | Release palm contracture | Surgery | | 5.56 | 5.30 | 5.30 | | |
| 26055 | | Incise finger tendon sheath | Surgery | | 2.69 | 15.46 | 3.59 | | |
| 26060 | | Incision of finger tendon | Surgery | | 2.81 | 3.28 | 3.28 | | |
| 26070 | | Explore/treat hand joint | Surgery | | 3.69 | 3.32 | 3.32 | | |
| 26075 | | Explore/treat finger joint | Surgery | | 3.79 | 3.67 | 3.67 | | |
| 26080 | | Explore/treat finger joint | Surgery | | 4.24 | 4.58 | 4.58 | | |
| 26100 | | Biopsy hand joint lining | Surgery | | 3.67 | 3.90 | 3.90 | | |
| 26105 | | Biopsy finger joint lining | Surgery | | 3.71 | 3.93 | 3.93 | | |
| 26110 | | Biopsy finger joint lining | Surgery | | 3.53 | 3.80 | 3.80 | | |
| 26115 | | Removel hand lesion subcut | Surgery | | 3.86 | 14.42 | 4.43 | | |
| 26116 | | Removel hand lesion, deep | Surgery | | 5.53 | 5.66 | 5.66 | | |
| 26117 | | Remove tumor, hand/finger | Surgery | | 8.55 | 6.94 | 6.94 | | |
| 26121 | | Release palm contracture | Surgery | | 7.54 | 6.72 | 6.72 | | |
| 26123 | | Release palm contracture | Surgery | | 9.29 | 8.65 | 8.65 | | |
| 26125 | | Release palm contracture | Surgery | | 4.61 | 2.51 | 2.51 | | |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology

TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 26130 | | Remove wrist joint lining | Surgery | | 5.42 | 5.12 | 5.12 | | |
| 26135 | | Revise finger joint, each | Surgery | | 6.96 | 6.20 | 6.20 | | |
| 26140 | | Revise finger joint, each | Surgery | | 6.17 | 5.75 | 5.75 | | |
| 26145 | | Tendon excision, palm/finger | Surgery | | 6.32 | 5.78 | 5.78 | | |
| 26160 | | Remove tendon sheath lesion | Surgery | | 3.15 | 18.94 | 3.86 | | |
| 26170 | | Removal of palm tendon, each | Surgery | | 4.77 | 4.72 | 4.72 | | |
| 26180 | | Removal of finger tendon | Surgery | | 5.18 | 5.10 | 5.10 | | |
| 26185 | | Remove finger bone | Surgery | | 5.25 | 5.62 | 5.62 | | |
| 26200 | | Remove hand bone lesion | Surgery | | 5.51 | 5.14 | 5.14 | | |
| 26205 | | Remove/graft bone lesion | Surgery | | 7.70 | 6.69 | 6.69 | | |
| 26210 | | Removal of finger lesion | Surgery | | 5.15 | 5.12 | 5.12 | | |
| 26215 | | Remove/graft finger lesion | Surgery | | 7.10 | 6.07 | 6.07 | | |
| 26230 | | Partial removal of hand bone | Surgery | | 6.33 | 5.68 | 5.68 | | |
| 26235 | | Partial removal, finger bone | Surgery | | 6.19 | 5.62 | 5.62 | | |
| 26236 | | Partial removal, finger bone | Surgery | | 5.32 | 5.17 | 5.17 | | |
| 26250 | | Extensive hand surgery | Surgery | | 7.55 | 6.23 | 6.23 | | |
| 26255 | | Extensive hand surgery | Surgery | | 12.43 | 9.26 | 9.26 | | |
| 26260 | | Extensive finger surgery | Surgery | | 7.03 | 5.98 | 5.98 | | |
| 26261 | | Extensive finger surgery | Surgery | | 9.09 | 6.22 | 6.22 | | |
| 26262 | | Partial removal of finger | Surgery | | 5.67 | 5.18 | 5.18 | | |
| 26320 | | Removal of implant from hand | Surgery | | 3.98 | 4.50 | 4.50 | | |
| 26340 | | Manipulate finger w/anesth | Surgery | | 2.50 | 4.64 | 4.64 | | |
| 26350 | | Repair finger/hand tendon | Surgery | | 5.99 | 20.03 | 20.03 | | |
| 26352 | | Repair/graft hand tendon | Surgery | | 7.68 | 20.50 | 20.50 | | |
| 26356 | | Repair finger/hand tendon | Surgery | | 8.07 | 21.49 | 21.49 | | |
| 26357 | | Repair finger/hand tendon | Surgery | | 8.58 | 21.19 | 21.19 | | |
| 26358 | | Repair/graft hand tendon | Surgery | | 9.14 | 21.74 | 21.74 | | |
| 26370 | | Repair finger/hand tendon | Surgery | | 7.11 | 20.67 | 20.67 | | |
| 26372 | | Repair/graft hand tendon | Surgery | | 8.76 | 22.00 | 22.00 | | |
| 26373 | | Repair finger/hand tendon | Surgery | | 8.16 | 21.56 | 21.56 | | |
| 26390 | | Revise hand/finger tendon | Surgery | | 9.19 | 16.75 | 16.75 | | |
| 26392 | | Repair/graft hand tendon | Surgery | | 10.26 | 22.55 | 22.55 | | |
| 26410 | | Repair hand tendon | Surgery | | 4.63 | 16.30 | 16.30 | | |
| 26412 | | Repair/graft hand tendon | Surgery | | 6.31 | 17.39 | 17.39 | | |
| 26415 | | Excision, hand/finger tendon | Surgery | | 8.34 | 15.90 | 15.90 | | |
| 26416 | | Graft hand or finger tendon | Surgery | | 9.37 | 18.56 | 18.56 | | |
| 26418 | | Repair finger tendon | Surgery | | 4.25 | 16.13 | 16.13 | | |
| 26420 | | Repair/graft finger tendon | Surgery | | 6.77 | 17.69 | 17.69 | | |
| 26426 | | Repair finger/hand tendon | Surgery | | 6.15 | 17.16 | 17.16 | | |
| 26428 | | Repair/graft finger tendon | Surgery | | 7.21 | 18.24 | 18.24 | | |
| 26432 | | Repair finger tendon | Surgery | | 4.02 | 13.36 | 13.36 | | |
| 26433 | | Repair finger tendon | Surgery | | 4.56 | 14.27 | 14.27 | | |
| 26434 | | Repair/graft finger tendon | Surgery | | 6.09 | 14.67 | 14.67 | | |
| 26437 | | Realignment of tendons | Surgery | | 5.82 | 14.40 | 14.40 | | |
| 26440 | | Release palm/finger tendon | Surgery | | 5.02 | 18.87 | 18.87 | | |
| 26442 | | Release palm & finger tendon | Surgery | | 8.16 | 20.31 | 20.31 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 26445 | | Release hand/finger tendon | Surgery | | 4.31 | 18.71 | 18.71 | | |
| 26449 | | Release forearm/hand tendon | Surgery | | 7.00 | 20.02 | 20.02 | | |
| 26450 | | Incision of palm tendon | Surgery | | 3.67 | 8.57 | 8.57 | | |
| 26455 | | Incision of finger tendon | Surgery | | 3.64 | 8.45 | 8.45 | | |
| 26460 | | Incise hand/finger tendon | Surgery | | 3.46 | 8.20 | 8.20 | | |
| 26471 | | Fusion of finger tendons | Surgery | | 5.73 | 14.06 | 14.06 | | |
| 26474 | | Fusion of finger tendons | Surgery | | 5.32 | 14.31 | 14.31 | | |
| 26476 | | Tendon lengthening | Surgery | | 5.18 | 13.80 | 13.80 | | |
| 26477 | | Tendon shortening | Surgery | | 5.15 | 14.01 | 14.01 | | |
| 26478 | | Lengthening of hand tendon | Surgery | | 5.80 | 14.65 | 14.65 | | |
| 26479 | | Shortening of hand tendon | Surgery | | 5.74 | 14.65 | 14.65 | | |
| 26480 | | Transplant hand tendon | Surgery | | 6.69 | 19.94 | 19.94 | | |
| 26483 | | Transplant/graft hand tendon | Surgery | | 8.29 | 20.43 | 20.43 | | |
| 26485 | | Transplant palm tendon | Surgery | | 7.70 | 20.34 | 20.34 | | |
| 26489 | | Transplant/graft palm tendon | Surgery | | 9.55 | 17.04 | 17.04 | | |
| 26490 | | Revise thumb tendon | Surgery | | 8.41 | 15.54 | 15.54 | | |
| 26492 | | Tendon transfer with graft | Surgery | | 9.62 | 16.15 | 16.15 | | |
| 26494 | | Hand tendon/muscle transfer | Surgery | | 8.47 | 16.14 | 16.14 | | |
| 26496 | | Revise thumb tendon | Surgery | | 9.59 | 15.87 | 15.87 | | |
| 26497 | | Finger tendon transfer | Surgery | | 9.57 | 16.32 | 16.32 | | |
| 26498 | | Finger tendon transfer | Surgery | | 14.00 | 18.71 | 18.71 | | |
| 26499 | | Revision of finger | Surgery | | 8.98 | 17.02 | 17.02 | | |
| 26500 | | Hand tendon reconstruction | Surgery | | 5.96 | 14.98 | 14.98 | | |
| 26502 | | Hand tendon reconstruction | Surgery | | 7.14 | 15.27 | 15.27 | | |
| 26504 | | Hand tendon reconstruction | Surgery | | 7.47 | 15.08 | 15.08 | | |
| 26508 | | Release thumb contracture | Surgery | | 6.01 | 14.59 | 14.59 | | |
| 26510 | | Thumb tendon transfer | Surgery | | 5.43 | 14.30 | 14.30 | | |
| 26516 | | Fusion of knuckle joint | Surgery | | 7.15 | 15.07 | 15.07 | | |
| 26517 | | Fusion of knuckle joints | Surgery | | 8.83 | 16.41 | 16.41 | | |
| 26518 | | Fusion of knuckle joints | Surgery | | 9.02 | 16.12 | 16.12 | | |
| 26520 | | Release knuckle contracture | Surgery | | 5.30 | 18.85 | 18.85 | | |
| 26525 | | Release finger contracture | Surgery | | 5.33 | 19.02 | 19.02 | | |
| 26530 | | Revise knuckle joint | Surgery | | 6.69 | 6.04 | 6.04 | | |
| 26531 | | Revise knuckle with implant | Surgery | | 7.91 | 6.95 | 6.95 | | |
| 26535 | | Revise finger joint | Surgery | | 5.24 | 3.69 | 3.69 | | |
| 26536 | | Revise/implant finger joint | Surgery | | 6.37 | 10.32 | 10.32 | | |
| 26540 | | Repair hand joint | Surgery | | 6.43 | 14.89 | 14.89 | | |
| 26541 | | Repair hand joint with graft | Surgery | | 8.62 | 16.25 | 16.25 | | |
| 26542 | | Repair hand joint with graft | Surgery | | 6.78 | 14.78 | 14.78 | | |
| 26545 | | Reconstruct finger joint | Surgery | | 6.92 | 15.52 | 15.52 | | |
| 26546 | | Repair nonunion hand | Surgery | | 8.92 | 16.15 | 16.15 | | |
| 26548 | | Reconstruct finger joint | Surgery | | 8.03 | 16.02 | 16.02 | | |
| 26550 | | Construct thumb replacement | Surgery | | 21.24 | 23.47 | 23.47 | | |
| 26551 | | Great toe-hand transfer | Surgery | | 46.58 | 36.90 | 36.90 | | |
| 26553 | | Single transfer, toe-hand | Surgery | | 46.27 | 28.16 | 28.16 | | |
| 26554 | | Double transfer, toe-hand | Surgery | | 54.95 | 38.79 | 38.79 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 26555 | | Positional change of finger | Surgery | | 16.63 | 22.51 | 22.51 | | |
| 26556 | | Toe joint transfer | Surgery | | 47.26 | 34.27 | 34.27 | | |
| 26560 | | Repair of web finger | Surgery | | 5.38 | 12.99 | 12.99 | | |
| 26561 | | Repair of web finger | Surgery | | 10.92 | 16.12 | 16.12 | | |
| 26562 | | Repair of web finger | Surgery | | 15.00 | 19.37 | 19.37 | | |
| 26565 | | Correct metacarpal flaw | Surgery | | 6.74 | 14.95 | 14.95 | | |
| 26567 | | Correct finger deformity | Surgery | | 6.82 | 14.88 | 14.88 | | |
| 26568 | | Lengthen metacarpal/finger | Surgery | | 9.08 | 20.41 | 20.41 | | |
| 26580 | | Repair hand deformity | Surgery | | 18.18 | 15.87 | 15.87 | | |
| 26587 | | Reconstruct extra finger | Surgery | | 14.05 | 6.36 | 4.76 | | |
| 26590 | | Repair finger deformity | Surgery | | 17.96 | 17.46 | 17.46 | | |
| 26591 | | Repair muscles of hand | Surgery | | 3.25 | 13.80 | 13.80 | | |
| 26593 | | Release muscles of hand | Surgery | | 5.31 | 13.78 | 13.78 | | |
| 26596 | | Excision constricting tissue | Surgery | | 8.95 | 9.86 | 9.86 | | |
| 26600 | | Treat metacarpal fracture | Surgery | | 1.96 | 4.36 | 2.83 | | |
| 26605 | | Treat metacarpal fracture | Surgery | | 2.85 | 6.33 | 4.45 | | |
| 26607 | | Treat metacarpal fracture | Surgery | | 5.36 | 8.46 | 8.46 | | |
| 26608 | | Treat metacarpal fracture | Surgery | | 5.36 | 9.07 | 9.07 | | |
| 26615 | | Treat metacarpal fracture | Surgery | | 5.33 | 8.49 | 8.49 | | |
| 26641 | | Treat thumb dislocation | Surgery | | 3.94 | 6.70 | 4.86 | | |
| 26645 | | Treat thumb fracture | Surgery | | 4.41 | 7.51 | 5.35 | | |
| 26650 | | Treat thumb fracture | Surgery | | 5.72 | 9.24 | 9.24 | | |
| 26665 | | Treat thumb fracture | Surgery | | 7.60 | 9.52 | 9.52 | | |
| 26670 | | Treat hand dislocation | Surgery | | 3.69 | 6.53 | 4.75 | | |
| 26675 | | Treat hand dislocation | Surgery | | 4.64 | 6.66 | 4.57 | | |
| 26676 | | Pin hand dislocation | Surgery | | 5.52 | 9.30 | 9.30 | | |
| 26685 | | Treat hand dislocation | Surgery | | 6.98 | 9.14 | 9.14 | | |
| 26686 | | Treat hand dislocation | Surgery | | 7.94 | 9.73 | 9.73 | | |
| 26700 | | Treat knuckle dislocation | Surgery | | 3.69 | 5.13 | 2.96 | | |
| 26705 | | Treat knuckle dislocation | Surgery | | 4.19 | 6.47 | 4.41 | | |
| 26706 | | Pin knuckle dislocation | Surgery | | 5.12 | 5.98 | 5.98 | | |
| 26715 | | Treat knuckle dislocation | Surgery | | 5.74 | 8.65 | 8.65 | | |
| 26720 | | Treat finger fracture, each | Surgery | | 1.66 | 3.22 | 1.69 | | |
| 26725 | | Treat finger fracture, each | Surgery | | 3.33 | 5.47 | 3.28 | | |
| 26727 | | Treat finger fracture, each | Surgery | | 5.23 | 9.18 | 9.18 | | |
| 26735 | | Treat finger fracture, each | Surgery | | 5.98 | 8.91 | 8.91 | | |
| 26740 | | Treat finger fracture, each | Surgery | | 1.94 | 4.01 | 2.67 | | |
| 26742 | | Treat finger fracture, each | Surgery | | 3.85 | 7.41 | 5.28 | | |
| 26746 | | Treat finger fracture, each | Surgery | | 5.81 | 8.98 | 8.98 | | |
| 26750 | | Treat finger fracture, each | Surgery | | 1.70 | 3.82 | 2.41 | | |
| 26755 | | Treat finger fracture, each | Surgery | | 3.10 | 5.25 | 3.10 | | |
| 26756 | | Pin finger fracture, each | Surgery | | 4.39 | 8.89 | 8.89 | | |
| 26765 | | Treat finger fracture, each | Surgery | | 4.17 | 7.97 | 7.97 | | |
| 26770 | | Treat finger dislocation | Surgery | | 3.02 | 4.98 | 2.71 | | |
| 26775 | | Treat finger dislocation | Surgery | | 3.71 | 6.25 | 4.06 | | |
| 26776 | | Pin finger dislocation | Surgery | | 4.80 | 9.01 | 9.01 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 26785 | | Treat finger dislocation | Surgery | | 4.21 | 7.94 | 7.94 | | |
| 26820 | | Thumb fusion with graft | Surgery | | 8.26 | 16.22 | 16.22 | | |
| 26841 | | Fusion of thumb | Surgery | | 7.13 | 15.46 | 15.46 | | |
| 26842 | | Thumb fusion with graft | Surgery | | 8.24 | 16.24 | 16.24 | | |
| 26843 | | Fusion of hand joint | Surgery | | 7.61 | 14.93 | 14.93 | | |
| 26844 | | Fusion/graft of hand joint | Surgery | | 8.73 | 16.20 | 16.20 | | |
| 26850 | | Fusion of knuckle | Surgery | | 6.97 | 14.89 | 14.89 | | |
| 26852 | | Fusion of knuckle with graft | Surgery | | 8.46 | 15.84 | 15.84 | | |
| 26860 | | Fusion of finger joint | Surgery | | 4.69 | 13.75 | 13.75 | | |
| 26861 | | Fusion of finger jnt, add-on | Surgery | | 1.74 | 0.96 | 0.96 | | |
| 26862 | | Fusion/graft of finger joint | Surgery | | 7.37 | 15.38 | 15.38 | | |
| 26863 | | Fuse/graft added joint | Surgery | | 3.90 | 2.17 | 2.17 | | |
| 26910 | | Amputate metacarpal bone | Surgery | | 7.60 | 14.07 | 14.07 | | |
| 26951 | | Amputation of finger/thumb | Surgery | | 4.59 | 13.06 | 13.06 | | |
| 26952 | | Amputation of finger/thumb | Surgery | | 6.31 | 14.25 | 14.25 | | |
| 26989 | | Hand/finger surgery | Surgery | | | | | 7.32 | SAF |
| 26990 | | Drainage of pelvis lesion | Surgery | | 7.48 | 16.35 | 16.35 | | |
| 26991 | | Drainage of pelvis bursa | Surgery | | 6.68 | 11.94 | 9.87 | | |
| 26992 | | Drainage of bone lesion | Surgery | | 13.02 | 20.25 | 20.25 | | |
| 27000 | | Incision of hip tendon | Surgery | | 5.62 | 7.78 | 7.78 | | |
| 27001 | | Incision of hip tendon | Surgery | | 6.94 | 8.52 | 8.52 | | |
| 27003 | | Incision of hip tendon | Surgery | | 7.34 | 9.52 | 9.52 | | |
| 27005 | | Incision of hip tendon | Surgery | | 9.66 | 10.84 | 10.84 | | |
| 27006 | | Incision of hip tendons | Surgery | | 9.68 | 10.84 | 10.84 | | |
| 27025 | | Incision of hip/thigh fascia | Surgery | | 11.16 | 10.70 | 10.70 | | |
| 27030 | | Drainage of hip joint | Surgery | | 13.01 | 12.69 | 12.69 | | |
| 27033 | | Exploration of hip joint | Surgery | | 13.39 | 12.81 | 12.81 | | |
| 27035 | | Denervation of hip joint | Surgery | | 16.69 | 17.51 | 17.51 | | |
| 27036 | | Excision of hip joint/muscle | Surgery | | 12.88 | 14.25 | 14.25 | | |
| 27040 | | Biopsy of soft tissues | Surgery | | 2.87 | 6.16 | 3.97 | | |
| 27041 | | Biopsy of soft tissues | Surgery | | 9.89 | 8.60 | 8.60 | | |
| 27047 | | Remove hip/pelvis lesion | Surgery | | 7.45 | 9.54 | 7.15 | | |
| 27048 | | Remove hip/pelvis lesion | Surgery | | 6.25 | 8.06 | 8.06 | | |
| 27049 | | Remove tumor, hip/pelvis | Surgery | | 13.66 | 13.54 | 13.54 | | |
| 27050 | | Biopsy of sacroiliac joint | Surgery | | 4.36 | 7.42 | 7.42 | | |
| 27052 | | Biopsy of hip joint | Surgery | | 6.23 | 8.71 | 8.71 | | |
| 27054 | | Removal of hip joint lining | Surgery | | 8.54 | 11.05 | 11.05 | | |
| 27060 | | Removal of ischial bursa | Surgery | | 5.43 | 7.63 | 7.63 | | |
| 27062 | | Remove femur lesion/bursa | Surgery | | 5.37 | 7.59 | 7.59 | | |
| 27065 | | Removal of hip bone lesion | Surgery | | 5.90 | 9.09 | 9.09 | | |
| 27066 | | Removal of hip bone lesion | Surgery | | 10.33 | 12.88 | 12.88 | | |
| 27067 | | Remove/graft hip bone lesion | Surgery | | 13.83 | 14.91 | 14.91 | | |
| 27070 | | Partial removal of hip bone | Surgery | | 10.72 | 18.36 | 18.36 | | |
| 27071 | | Partial removal of hip bone | Surgery | | 11.46 | 19.32 | 19.32 | | |
| 27075 | | Extensive hip surgery | Surgery | | 35.00 | 25.82 | 25.82 | | |
| 27076 | | Extensive hip surgery | Surgery | | 22.12 | 20.29 | 20.29 | | |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology.

TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 27077 | | Extensive hip surgery | Surgery | | 40.00 | 29.14 | 29.14 | | |
| 27078 | | Extensive hip surgery | Surgery | | 13.44 | 15.81 | 15.81 | | |
| 27079 | | Extensive hip surgery | Surgery | | 13.75 | 15.34 | 15.34 | | |
| 27080 | | Removal of tail bone | Surgery | | 6.39 | 7.66 | 7.66 | | |
| 27086 | | Remove hip foreign body | Surgery | | 1.87 | 5.13 | 3.97 | | |
| 27087 | | Remove hip foreign body | Surgery | | 8.54 | 9.19 | 9.19 | | |
| 27090 | | Removal of hip prosthesis | Surgery | | 11.15 | 8.95 | 8.95 | | |
| 27091 | | Removal of hip prosthesis | Surgery | | 22.14 | 14.22 | 14.22 | | |
| 27093 | | Injection for hip x-ray | Surgery | | 1.30 | 12.50 | 0.50 | | |
| 27095 | | Injection for hip x-ray | Surgery | | 1.50 | 11.47 | 0.54 | | |
| 27096 | | Inject sacroiliac joint | Surgery | | 1.40 | 10.28 | 0.34 | | |
| 27097 | | Revision of hip tendon | Surgery | | 8.80 | 9.44 | 9.44 | | |
| 27098 | | Transfer tendon to pelvis | Surgery | | 8.83 | 9.88 | 9.88 | | |
| 27100 | | Transfer of abdominal muscle | Surgery | | 11.08 | 13.03 | 13.03 | | |
| 27105 | | Transfer of spinal muscle | Surgery | | 11.77 | 12.72 | 12.72 | | |
| 27110 | | Transfer of iliopsoas muscle | Surgery | | 13.26 | 13.59 | 13.59 | | |
| 27111 | | Transfer of iliopsoas muscle | Surgery | | 12.15 | 12.43 | 12.43 | | |
| 27120 | | Reconstruction of hip socket | Surgery | | 18.01 | 12.05 | 12.05 | | |
| 27122 | | Reconstruction of hip socket | Surgery | | 14.98 | 11.19 | 11.19 | | |
| 27125 | | Partial hip replacement | Surgery | | 14.69 | 10.75 | 10.75 | | |
| 27130 | | Total hip arthroplasty | Surgery | | 20.12 | 13.58 | 13.58 | | |
| 27132 | | Total hip arthroplasty | Surgery | | 23.30 | 15.87 | 15.87 | | |
| 27134 | | Revise hip joint replacement | Surgery | | 28.52 | 18.20 | 18.20 | | |
| 27137 | | Revise hip joint replacement | Surgery | | 21.17 | 14.24 | 14.24 | | |
| 27138 | | Revise hip joint replacement | Surgery | | 22.17 | 14.72 | 14.72 | | |
| 27140 | | Transplant femur ridge | Surgery | | 12.24 | 12.27 | 12.27 | | |
| 27146 | | Incision of hip bone | Surgery | | 17.43 | 16.51 | 16.51 | | |
| 27147 | | Revision of hip bone | Surgery | | 20.58 | 17.71 | 17.71 | | |
| 27151 | | Incision of hip bones | Surgery | | 22.51 | 12.83 | 12.83 | | |
| 27156 | | Revision of hip bones | Surgery | | 24.63 | 20.37 | 20.37 | | |
| 27158 | | Revision of pelvis | Surgery | | 19.74 | 16.00 | 16.00 | | |
| 27161 | | Incision of neck of femur | Surgery | | 16.71 | 14.57 | 14.57 | | |
| 27165 | | Incision/fixation of femur | Surgery | | 17.91 | 15.11 | 15.11 | | |
| 27170 | | Repair/graft femur head/neck | Surgery | | 16.07 | 14.30 | 14.30 | | |
| 27175 | | Treat slipped epiphysis | Surgery | | 8.46 | 7.39 | 7.39 | | |
| 27176 | | Treat slipped epiphysis | Surgery | | 12.05 | 10.20 | 10.20 | | |
| 27177 | | Treat slipped epiphysis | Surgery | | 15.08 | 11.88 | 11.88 | | |
| 27178 | | Treat slipped epiphysis | Surgery | | 11.99 | 9.63 | 9.63 | | |
| 27179 | | Revise head/neck of femur | Surgery | | 12.98 | 11.01 | 11.01 | | |
| 27181 | | Treat slipped epiphysis | Surgery | | 14.68 | 11.17 | 11.17 | | |
| 27185 | | Revision of femur epiphysis | Surgery | | 9.18 | 10.51 | 10.51 | | |
| 27187 | | Reinforce hip bones | Surgery | | 13.54 | 13.81 | 13.81 | | |
| 27193 | | Treat pelvic ring fracture | Surgery | | 5.56 | 7.39 | 5.47 | | |
| 27194 | | Treat pelvic ring fracture | Surgery | | 9.65 | 9.40 | 7.71 | | |
| 27200 | | Treat tail bone fracture | Surgery | | 1.84 | 3.25 | 1.83 | | |
| 27202 | | Treat tail bone fracture | Surgery | | 7.04 | 22.21 | 22.21 | | |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology.

## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 27215 | | Treat pelvic fracture(s) | Surgery | | 10.05 | 10.59 | 10.59 | | |
| 27216 | | Treat pelvic ring fracture | Surgery | | 15.19 | 14.82 | 14.82 | | |
| 27217 | | Treat pelvic ring fracture | Surgery | | 14.11 | 13.07 | 13.07 | | |
| 27218 | | Treat pelvic ring fracture | Surgery | | 20.15 | 14.41 | 14.41 | | |
| 27220 | | Treat hip socket fracture | Surgery | | 6.18 | 7.73 | 5.82 | | |
| 27222 | | Treat hip socket fracture | Surgery | | 12.70 | 10.44 | 10.44 | | |
| 27226 | | Treat hip wall fracture | Surgery | | 14.91 | 10.98 | 10.98 | | |
| 27227 | | Treat hip fracture(s) | Surgery | | 23.45 | 17.40 | 17.40 | | |
| 27228 | | Treat hip fracture(s) | Surgery | | 27.16 | 19.68 | 19.68 | | |
| 27230 | | Treat thigh fracture | Surgery | | 5.50 | 8.01 | 6.44 | | |
| 27232 | | Treat thigh fracture | Surgery | | 10.68 | 9.48 | 9.48 | | |
| 27235 | | Treat thigh fracture | Surgery | | 12.16 | 11.34 | 11.34 | | |
| 27236 | | Treat thigh fracture | Surgery | | 15.60 | 11.28 | 11.28 | | |
| 27238 | | Treat thigh fracture | Surgery | | 5.52 | 6.55 | 6.55 | | |
| 27240 | | Treat thigh fracture | Surgery | | 12.50 | 10.52 | 10.52 | | |
| 27244 | | Treat thigh fracture | Surgery | | 15.94 | 13.24 | 13.24 | | |
| 27245 | | Treat thigh fracture | Surgery | | 20.31 | 15.64 | 15.64 | | |
| 27246 | | Treat thigh fracture | Surgery | | 4.71 | 7.73 | 6.19 | | |
| 27248 | | Treat thigh fracture | Surgery | | 10.45 | 10.25 | 10.25 | | |
| 27250 | | Treat hip dislocation | Surgery | | 6.95 | 6.49 | 6.49 | | |
| 27252 | | Treat hip dislocation | Surgery | | 10.39 | 8.43 | 8.43 | | |
| 27253 | | Treat hip dislocation | Surgery | | 12.92 | 11.14 | 11.14 | | |
| 27254 | | Treat hip dislocation | Surgery | | 18.26 | 14.04 | 14.04 | | |
| 27256 | | Treat hip dislocation | Surgery | | 4.12 | 4.45 | 4.45 | | |
| 27257 | | Treat hip dislocation | Surgery | | 5.22 | 4.77 | 4.77 | | |
| 27258 | | Treat hip dislocation | Surgery | | 15.43 | 14.26 | 14.26 | | |
| 27259 | | Treat hip dislocation | Surgery | | 21.55 | 17.51 | 17.51 | | |
| 27265 | | Treat hip dislocation | Surgery | | 5.05 | 6.25 | 6.25 | | |
| 27266 | | Treat hip dislocation | Surgery | | 7.49 | 7.69 | 7.69 | | |
| 27275 | | Manipulation of hip joint | Surgery | | 2.27 | 3.75 | 3.75 | | |
| 27280 | | Fusion of sacroiliac joint | Surgery | | 13.39 | 14.60 | 14.60 | | |
| 27282 | | Fusion of pubic bones | Surgery | | 11.34 | 12.54 | 12.54 | | |
| 27284 | | Fusion of hip joint | Surgery | | 23.45 | 18.80 | 18.80 | | |
| 27286 | | Fusion of hip joint | Surgery | | 23.45 | 19.33 | 19.33 | | |
| 27290 | | Amputation of leg at hip | Surgery | | 23.28 | 17.03 | 17.03 | | |
| 27295 | | Amputation of leg at hip | Surgery | | 18.65 | 14.46 | 14.46 | | |
| 27299 | | Pelvis/hip joint surgery | Surgery | | | | | 42.42 | Misc |
| 27301 | | Drain thigh/knee lesion | Surgery | | 6.49 | 16.43 | 14.49 | | |
| 27303 | | Drainage of bone lesion | Surgery | | 8.28 | 15.57 | 15.57 | | |
| 27305 | | Incise thigh tendon & fascia | Surgery | | 5.92 | 9.50 | 9.50 | | |
| 27306 | | Incision of thigh tendon | Surgery | | 4.62 | 7.93 | 7.93 | | |
| 27307 | | Incision of thigh tendons | Surgery | | 5.80 | 8.53 | 8.53 | | |
| 27310 | | Exploration of knee joint | Surgery | | 9.27 | 10.40 | 10.40 | | |
| 27315 | | Partial removal, thigh nerve | Surgery | | 6.97 | 4.45 | 4.45 | | |
| 27320 | | Partial removal, thigh nerve | Surgery | | 6.30 | 4.68 | 4.68 | | |
| 27323 | | Biopsy, thigh soft tissues | Surgery | | 2.28 | 6.01 | 3.57 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 27324 | | Biopsy, thigh soft tissues | Surgery | | 4.90 | 7.14 | 7.14 | | |
| 27327 | | Removal of thigh lesion | Surgery | | 4.47 | 8.59 | 6.51 | | |
| 27328 | | Removal of thigh lesion | Surgery | | 5.57 | 7.28 | 7.28 | | |
| 27329 | | Remove tumor, thigh/knee | Surgery | | 14.14 | 14.74 | 14.74 | | |
| 27330 | | Biopsy, knee joint lining | Surgery | | 4.97 | 6.61 | 6.61 | | |
| 27331 | | Explore/treat knee joint | Surgery | | 5.88 | 7.83 | 7.83 | | |
| 27332 | | Removal of knee cartilage | Surgery | | 8.27 | 9.06 | 9.06 | | |
| 27333 | | Removal of knee cartilage | Surgery | | 7.30 | 8.59 | 8.59 | | |
| 27334 | | Remove knee joint lining | Surgery | | 8.70 | 9.97 | 9.97 | | |
| 27335 | | Remove knee joint lining | Surgery | | 10.00 | 10.83 | 10.83 | | |
| 27340 | | Removal of kneecap bursa | Surgery | | 4.18 | 6.26 | 6.26 | | |
| 27345 | | Removal of knee cyst | Surgery | | 5.92 | 7.70 | 7.70 | | |
| 27347 | | Remove knee cyst | Surgery | | 5.78 | 7.45 | 7.45 | | |
| 27350 | | Removal of kneecap | Surgery | | 8.17 | 9.17 | 9.17 | | |
| 27355 | | Remove femur lesion | Surgery | | 7.65 | 10.74 | 10.74 | | |
| 27356 | | Remove femur lesion/graft | Surgery | | 9.48 | 11.74 | 11.74 | | |
| 27357 | | Remove femur lesion/graft | Surgery | | 10.53 | 12.24 | 12.24 | | |
| 27358 | | Remove femur lesion/fixation | Surgery | | 4.74 | 2.59 | 2.59 | | |
| 27360 | | Partial removal, leg bone(s) | Surgery | | 10.50 | 18.97 | 18.97 | | |
| 27365 | | Extensive leg surgery | Surgery | | 16.27 | 14.68 | 14.68 | | |
| 27370 | | Injection for knee x-ray | Surgery | | 0.96 | 11.98 | 0.33 | | |
| 27372 | | Removal of foreign body | Surgery | | 5.07 | 8.64 | 6.69 | | |
| 27380 | | Repair of kneecap tendon | Surgery | | 7.16 | 8.67 | 8.67 | | |
| 27381 | | Repair/graft kneecap tendon | Surgery | | 10.34 | 10.37 | 10.37 | | |
| 27385 | | Repair of thigh muscle | Surgery | | 7.76 | 9.02 | 9.02 | | |
| 27386 | | Repair/graft of thigh muscle | Surgery | | 10.56 | 11.17 | 11.17 | | |
| 27390 | | Incision of thigh tendon | Surgery | | 5.33 | 8.20 | 8.20 | | |
| 27391 | | Incision of thigh tendons | Surgery | | 7.20 | 9.33 | 9.33 | | |
| 27392 | | Incision of thigh tendons | Surgery | | 9.20 | 11.43 | 11.43 | | |
| 27393 | | Lengthening of thigh tendon | Surgery | | 6.39 | 8.74 | 8.74 | | |
| 27394 | | Lengthening of thigh tendons | Surgery | | 8.50 | 11.13 | 11.13 | | |
| 27395 | | Lengthening of thigh tendons | Surgery | | 11.73 | 14.02 | 14.02 | | |
| 27396 | | Transplant of thigh tendon | Surgery | | 7.86 | 11.02 | 11.02 | | |
| 27397 | | Transplants of thigh tendons | Surgery | | 11.28 | 12.48 | 12.48 | | |
| 27400 | | Revise thigh muscles/tendons | Surgery | | 9.02 | 11.20 | 11.20 | | |
| 27403 | | Repair of knee cartilage | Surgery | | 8.33 | 9.19 | 9.19 | | |
| 27405 | | Repair of knee ligament | Surgery | | 8.65 | 10.04 | 10.04 | | |
| 27407 | | Repair of knee ligament | Surgery | | 10.28 | 10.74 | 10.74 | | |
| 27409 | | Repair of knee ligaments | Surgery | | 12.90 | 12.29 | 12.29 | | |
| 27418 | | Repair degenerated kneecap | Surgery | | 10.85 | 11.28 | 11.28 | | |
| 27420 | | Revision of unstable kneecap | Surgery | | 9.83 | 10.02 | 10.02 | | |
| 27422 | | Revision of unstable kneecap | Surgery | | 9.78 | 10.04 | 10.04 | | |
| 27424 | | Revision/removal of kneecap | Surgery | | 9.81 | 10.00 | 10.00 | | |
| 27425 | | Lat retinacular release open | Surgery | | 5.22 | 7.58 | 7.58 | | |
| 27427 | | Reconstruction, knee | Surgery | | 9.36 | 9.64 | 9.64 | | |
| 27428 | | Reconstruction, knee | Surgery | | 14.00 | 12.86 | 12.86 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 27429 | | Reconstruction, knee | Surgery | | 15.52 | 13.68 | 13.68 | | |
| 27430 | | Revision of thigh muscles | Surgery | | 9.67 | 10.08 | 10.08 | | |
| 27435 | | Incision of knee joint | Surgery | | 9.49 | 9.91 | 9.91 | | |
| 27437 | | Revise kneecap | Surgery | | 8.46 | 7.31 | 7.31 | | |
| 27438 | | Revise kneecap with implant | Surgery | | 11.23 | 8.71 | 8.71 | | |
| 27440 | | Revision of knee joint | Surgery | | 10.43 | 6.23 | 6.23 | | |
| 27441 | | Revision of knee joint | Surgery | | 10.82 | 6.90 | 6.90 | | |
| 27442 | | Revision of knee joint | Surgery | | 11.89 | 9.09 | 9.09 | | |
| 27443 | | Revision of knee joint | Surgery | | 10.93 | 8.85 | 8.85 | | |
| 27445 | | Revision of knee joint | Surgery | | 17.68 | 12.52 | 12.52 | | |
| 27446 | | Revision of knee joint | Surgery | | 15.84 | 11.50 | 11.50 | | |
| 27447 | | Total knee arthroplasty | Surgery | | 21.48 | 14.82 | 14.82 | | |
| 27448 | | Incision of thigh | Surgery | | 11.06 | 12.41 | 12.41 | | |
| 27450 | | Incision of thigh | Surgery | | 13.98 | 14.20 | 14.20 | | |
| 27454 | | Realignment of thigh bone | Surgery | | 17.56 | 16.02 | 16.02 | | |
| 27455 | | Realignment of knee | Surgery | | 12.82 | 12.70 | 12.70 | | |
| 27457 | | Realignment of knee | Surgery | | 13.45 | 11.87 | 11.87 | | |
| 27465 | | Shortening of thigh bone | Surgery | | 13.87 | 14.06 | 14.06 | | |
| 27466 | | Lengthening of thigh bone | Surgery | | 16.33 | 16.39 | 16.39 | | |
| 27468 | | Shorten/lengthen thighs | Surgery | | 18.97 | 16.56 | 16.56 | | |
| 27470 | | Repair of thigh | Surgery | | 16.07 | 16.45 | 16.45 | | |
| 27472 | | Repair/graft of thigh | Surgery | | 17.72 | 17.33 | 17.33 | | |
| 27475 | | Surgery to stop leg growth | Surgery | | 8.64 | 9.62 | 9.62 | | |
| 27477 | | Surgery to stop leg growth | Surgery | | 9.85 | 10.08 | 10.08 | | |
| 27479 | | Surgery to stop leg growth | Surgery | | 12.80 | 12.35 | 12.35 | | |
| 27485 | | Surgery to stop leg growth | Surgery | | 8.84 | 9.79 | 9.79 | | |
| 27486 | | Revise/replace knee joint | Surgery | | 19.27 | 13.67 | 13.67 | | |
| 27487 | | Revise/replace knee joint | Surgery | | 25.27 | 16.83 | 16.83 | | |
| 27488 | | Removal of knee prosthesis | Surgery | | 15.74 | 11.83 | 11.83 | | |
| 27495 | | Reinforce thigh | Surgery | | 15.55 | 16.19 | 16.19 | | |
| 27496 | | Decompression of thigh/knee | Surgery | | 6.11 | 8.25 | 8.25 | | |
| 27497 | | Decompression of thigh/knee | Surgery | | 7.17 | 8.28 | 8.28 | | |
| 27498 | | Decompression of thigh/knee | Surgery | | 7.99 | 8.67 | 8.67 | | |
| 27499 | | Decompression of thigh/knee | Surgery | | 9.00 | 9.28 | 9.28 | | |
| 27500 | | Treatment of thigh fracture | Surgery | | 5.92 | 10.40 | 7.84 | | |
| 27501 | | Treatment of thigh fracture | Surgery | | 5.92 | 11.65 | 9.09 | | |
| 27502 | | Treatment of thigh fracture | Surgery | | 10.58 | 11.60 | 11.60 | | |
| 27503 | | Treatment of thigh fracture | Surgery | | 10.58 | 11.64 | 11.64 | | |
| 27506 | | Treatment of thigh fracture | Surgery | | 17.45 | 14.57 | 14.57 | | |
| 27507 | | Treatment of thigh fracture | Surgery | | 13.99 | 12.74 | 12.74 | | |
| 27508 | | Treatment of thigh fracture | Surgery | | 5.83 | 7.42 | 5.52 | | |
| 27509 | | Treatment of thigh fracture | Surgery | | 7.71 | 9.50 | 9.50 | | |
| 27510 | | Treatment of thigh fracture | Surgery | | 9.13 | 7.39 | 7.39 | | |
| 27511 | | Treatment of thigh fracture | Surgery | | 13.64 | 13.34 | 13.34 | | |
| 27513 | | Treatment of thigh fracture | Surgery | | 17.92 | 15.66 | 15.66 | | |
| 27514 | | Treatment of thigh fracture | Surgery | | 17.30 | 14.78 | 14.78 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 27516 | | Treat thigh fx growth plate | Surgery | | 5.37 | 8.20 | 6.00 | | |
| 27517 | | Treat thigh fx growth plate | Surgery | | 8.78 | 9.86 | 7.97 | | |
| 27519 | | Treat thigh fx growth plate | Surgery | | 15.02 | 13.83 | 13.83 | | |
| 27520 | | Treat kneecap fracture | Surgery | | 2.86 | 5.79 | 3.90 | | |
| 27524 | | Treat kneecap fracture | Surgery | | 10.00 | 9.05 | 9.05 | | |
| 27530 | | Treat knee fracture | Surgery | | 3.78 | 6.31 | 4.45 | | |
| 27532 | | Treat knee fracture | Surgery | | 7.30 | 7.79 | 5.87 | | |
| 27535 | | Treat knee fracture | Surgery | | 11.50 | 12.23 | 12.23 | | |
| 27536 | | Treat knee fracture | Surgery | | 15.65 | 12.09 | 12.09 | | |
| 27538 | | Treat knee fracture(s) | Surgery | | 4.87 | 7.97 | 5.73 | | |
| 27540 | | Treat knee fracture | Surgery | | 13.10 | 10.55 | 10.55 | | |
| 27550 | | Treat knee dislocation | Surgery | | 5.76 | 7.57 | 5.83 | | |
| 27552 | | Treat knee dislocation | Surgery | | 7.90 | 8.23 | 8.23 | | |
| 27556 | | Treat knee dislocation | Surgery | | 14.41 | 14.69 | 14.69 | | |
| 27557 | | Treat knee dislocation | Surgery | | 16.77 | 15.93 | 15.93 | | |
| 27558 | | Treat knee dislocation | Surgery | | 17.72 | 16.13 | 16.13 | | |
| 27560 | | Treat kneecap dislocation | Surgery | | 3.82 | 6.20 | 3.99 | | |
| 27562 | | Treat kneecap dislocation | Surgery | | 5.79 | 5.85 | 5.85 | | |
| 27566 | | Treat kneecap dislocation | Surgery | | 12.23 | 10.20 | 10.20 | | |
| 27570 | | Fixation of knee joint | Surgery | | 1.74 | 3.45 | 3.45 | | |
| 27580 | | Fusion of knee | Surgery | | 19.37 | 16.57 | 16.57 | | |
| 27590 | | Amputate leg at thigh | Surgery | | 12.03 | 12.59 | 12.59 | | |
| 27591 | | Amputate leg at thigh | Surgery | | 12.68 | 14.63 | 14.63 | | |
| 27592 | | Amputate leg at thigh | Surgery | | 10.02 | 12.18 | 12.18 | | |
| 27594 | | Amputation follow-up surgery | Surgery | | 6.92 | 9.10 | 9.10 | | |
| 27596 | | Amputation follow-up surgery | Surgery | | 10.60 | 12.65 | 12.65 | | |
| 27598 | | Amputate lower leg at knee | Surgery | | 10.53 | 11.61 | 11.61 | | |
| 27599 | | Leg surgery procedure | Surgery | | | | | 51.12 | Misc |
| 27600 | | Decompression of lower leg | Surgery | | 5.65 | 7.85 | 7.85 | | |
| 27601 | | Decompression of lower leg | Surgery | | 5.64 | 7.79 | 7.79 | | |
| 27602 | | Decompression of lower leg | Surgery | | 7.35 | 8.13 | 8.13 | | |
| 27603 | | Drain lower leg lesion | Surgery | | 4.94 | 16.03 | 10.71 | | |
| 27604 | | Drain lower leg bursa | Surgery | | 4.47 | 11.74 | 8.69 | | |
| 27605 | | Incision of achilles tendon | Surgery | | 2.87 | 10.88 | 4.01 | | |
| 27606 | | Incision of achilles tendon | Surgery | | 4.14 | 13.17 | 5.24 | | |
| 27607 | | Treat lower leg bone lesion | Surgery | | 7.97 | 14.85 | 14.85 | | |
| 27610 | | Explore/treat ankle joint | Surgery | | 8.34 | 10.90 | 10.90 | | |
| 27612 | | Exploration of ankle joint | Surgery | | 7.33 | 8.61 | 8.61 | | |
| 27613 | | Biopsy lower leg soft tissue | Surgery | | 2.17 | 5.93 | 3.16 | | |
| 27614 | | Biopsy lower leg soft tissue | Surgery | | 5.66 | 11.55 | 7.39 | | |
| 27615 | | Remove tumor, lower leg | Surgery | | 12.56 | 16.85 | 16.85 | | |
| 27618 | | Remove lower leg lesion | Surgery | | 5.09 | 11.86 | 6.66 | | |
| 27619 | | Remove lower leg lesion | Surgery | | 8.40 | 13.36 | 9.46 | | |
| 27620 | | Explore/treat ankle joint | Surgery | | 5.98 | 8.48 | 8.48 | | |
| 27625 | | Remove ankle joint lining | Surgery | | 8.30 | 10.10 | 10.10 | | |
| 27626 | | Remove ankle joint lining | Surgery | | 8.91 | 10.79 | 10.79 | | |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology.

TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 27630 | | Removal of tendon lesion | Surgery | | 4.80 | 11.52 | 7.24 | | |
| 27635 | | Remove lower leg bone lesion | Surgery | | 7.78 | 11.58 | 11.58 | | |
| 27637 | | Remove/graft leg bone lesion | Surgery | | 9.85 | 12.91 | 12.91 | | |
| 27638 | | Remove/graft leg bone lesion | Surgery | | 10.57 | 13.24 | 13.24 | | |
| 27640 | | Partial removal of tibia | Surgery | | 11.37 | 18.94 | 18.94 | | |
| 27641 | | Partial removal of fibula | Surgery | | 9.24 | 16.89 | 16.89 | | |
| 27645 | | Extensive lower leg surgery | Surgery | | 14.17 | 18.70 | 18.70 | | |
| 27646 | | Extensive lower leg surgery | Surgery | | 12.66 | 17.64 | 17.64 | | |
| 27647 | | Extensive ankle/heel surgery | Surgery | | 12.24 | 11.52 | 11.52 | | |
| 27648 | | Injection for ankle x-ray | Surgery | | 0.96 | 9.75 | 0.34 | | |
| 27650 | | Repair achilles tendon | Surgery | | 9.69 | 9.79 | 9.79 | | |
| 27652 | | Repair/graft achilles tendon | Surgery | | 10.33 | 10.02 | 10.02 | | |
| 27654 | | Repair of achilles tendon | Surgery | | 10.02 | 10.51 | 10.51 | | |
| 27656 | | Repair leg fascia defect | Surgery | | 4.57 | 12.84 | 6.76 | | |
| 27658 | | Repair of leg tendon, each | Surgery | | 4.98 | 13.20 | 9.52 | | |
| 27659 | | Repair of leg tendon, each | Surgery | | 6.81 | 14.89 | 10.27 | | |
| 27664 | | Repair of leg tendon, each | Surgery | | 4.59 | 15.00 | 9.66 | | |
| 27665 | | Repair of leg tendon, each | Surgery | | 5.40 | 14.63 | 9.79 | | |
| 27675 | | Repair lower leg tendons | Surgery | | 7.18 | 8.63 | 8.63 | | |
| 27676 | | Repair lower leg tendons | Surgery | | 8.42 | 9.68 | 9.68 | | |
| 27680 | | Release of lower leg tendon | Surgery | | 5.74 | 8.48 | 8.48 | | |
| 27681 | | Release of lower leg tendons | Surgery | | 6.82 | 8.98 | 8.98 | | |
| 27685 | | Revision of lower leg tendon | Surgery | | 6.50 | 10.50 | 8.74 | | |
| 27686 | | Revise lower leg tendons | Surgery | | 7.46 | 15.11 | 10.39 | | |
| 27687 | | Revision of calf tendon | Surgery | | 6.24 | 8.90 | 8.90 | | |
| 27690 | | Revise lower leg tendon | Surgery | | 8.71 | 9.75 | 9.75 | | |
| 27691 | | Revise lower leg tendon | Surgery | | 9.96 | 11.37 | 11.37 | | |
| 27692 | | Revise additional leg tendon | Surgery | | 1.87 | 0.95 | 0.95 | | |
| 27695 | | Repair of ankle ligament | Surgery | | 6.51 | 9.63 | 9.63 | | |
| 27696 | | Repair of ankle ligaments | Surgery | | 8.27 | 9.97 | 9.97 | | |
| 27698 | | Repair of ankle ligament | Surgery | | 9.36 | 9.72 | 9.72 | | |
| 27700 | | Revision of ankle joint | Surgery | | 9.29 | 5.81 | 5.81 | | |
| 27702 | | Reconstruct ankle joint | Surgery | | 13.67 | 10.57 | 10.57 | | |
| 27703 | | Reconstruction, ankle joint | Surgery | | 15.87 | 11.36 | 11.36 | | |
| 27704 | | Removal of ankle implant | Surgery | | 7.62 | 5.75 | 5.75 | | |
| 27705 | | Incision of tibia | Surgery | | 10.38 | 11.94 | 11.94 | | |
| 27707 | | Incision of fibula | Surgery | | 4.37 | 8.83 | 8.83 | | |
| 27709 | | Incision of tibia & fibula | Surgery | | 9.95 | 11.93 | 11.93 | | |
| 27712 | | Realignment of lower leg | Surgery | | 14.25 | 14.10 | 14.10 | | |
| 27715 | | Revision of lower leg | Surgery | | 14.39 | 15.50 | 15.50 | | |
| 27720 | | Repair of tibia | Surgery | | 11.79 | 14.12 | 14.12 | | |
| 27722 | | Repair/graft of tibia | Surgery | | 11.82 | 13.88 | 13.88 | | |
| 27724 | | Repair/graft of tibia | Surgery | | 18.20 | 17.61 | 17.61 | | |
| 27725 | | Repair of lower leg | Surgery | | 15.59 | 16.06 | 16.06 | | |
| 27727 | | Repair of lower leg | Surgery | | 14.01 | 14.96 | 14.96 | | |
| 27730 | | Repair of tibia epiphysis | Surgery | | 7.41 | 21.22 | 10.17 | | |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology.

## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 27732 | | Repair of fibula epiphysis | Surgery | | 5.32 | 14.21 | 8.71 | | |
| 27734 | | Repair lower leg epiphyses | Surgery | | 8.48 | 9.91 | 9.91 | | |
| 27740 | | Repair of leg epiphyses | Surgery | | 9.30 | 23.90 | 11.76 | | |
| 27742 | | Repair of leg epiphyses | Surgery | | 10.30 | 16.69 | 10.97 | | |
| 27745 | | Reinforce tibia | Surgery | | 10.07 | 12.05 | 12.05 | | |
| 27750 | | Treatment of tibia fracture | Surgery | | 3.19 | 5.93 | 4.10 | | |
| 27752 | | Treatment of tibia fracture | Surgery | | 5.84 | 8.53 | 6.34 | | |
| 27756 | | Treatment of tibia fracture | Surgery | | 6.78 | 11.38 | 11.38 | | |
| 27758 | | Treatment of tibia fracture | Surgery | | 11.67 | 12.42 | 12.42 | | |
| 27759 | | Treatment of tibia fracture | Surgery | | 13.76 | 13.74 | 13.74 | | |
| 27760 | | Treatment of ankle fracture | Surgery | | 3.01 | 5.69 | 3.91 | | |
| 27762 | | Treatment of ankle fracture | Surgery | | 5.25 | 7.99 | 5.87 | | |
| 27766 | | Treatment of ankle fracture | Surgery | | 8.36 | 8.68 | 8.68 | | |
| 27780 | | Treatment of fibula fracture | Surgery | | 2.65 | 5.61 | 3.71 | | |
| 27781 | | Treatment of fibula fracture | Surgery | | 4.40 | 6.84 | 4.69 | | |
| 27784 | | Treatment of fibula fracture | Surgery | | 7.11 | 8.92 | 8.92 | | |
| 27786 | | Treatment of ankle fracture | Surgery | | 2.84 | 5.66 | 3.83 | | |
| 27788 | | Treatment of ankle fracture | Surgery | | 4.45 | 6.92 | 4.75 | | |
| 27792 | | Treatment of ankle fracture | Surgery | | 7.66 | 8.40 | 8.40 | | |
| 27808 | | Treatment of ankle fracture | Surgery | | 2.83 | 6.81 | 4.62 | | |
| 27810 | | Treatment of ankle fracture | Surgery | | 5.13 | 8.08 | 5.88 | | |
| 27814 | | Treatment of ankle fracture | Surgery | | 10.68 | 11.19 | 11.19 | | |
| 27816 | | Treatment of ankle fracture | Surgery | | 2.89 | 6.27 | 4.63 | | |
| 27818 | | Treatment of ankle fracture | Surgery | | 5.50 | 8.22 | 6.02 | | |
| 27822 | | Treatment of ankle fracture | Surgery | | 11.00 | 13.50 | 13.50 | | |
| 27823 | | Treatment of ankle fracture | Surgery | | 13.00 | 14.56 | 14.56 | | |
| 27824 | | Treat lower leg fracture | Surgery | | 2.89 | 6.73 | 4.63 | | |
| 27825 | | Treat lower leg fracture | Surgery | | 6.19 | 8.70 | 6.50 | | |
| 27826 | | Treat lower leg fracture | Surgery | | 8.54 | 12.17 | 12.17 | | |
| 27827 | | Treat lower leg fracture | Surgery | | 14.06 | 15.23 | 15.23 | | |
| 27828 | | Treat lower leg fracture | Surgery | | 16.23 | 15.93 | 15.93 | | |
| 27829 | | Treat lower leg joint | Surgery | | 5.49 | 8.94 | 8.94 | | |
| 27830 | | Treat lower leg dislocation | Surgery | | 3.79 | 5.77 | 4.31 | | |
| 27831 | | Treat lower leg dislocation | Surgery | | 4.56 | 5.53 | 5.53 | | |
| 27832 | | Treat lower leg dislocation | Surgery | | 6.49 | 8.61 | 8.61 | | |
| 27840 | | Treat ankle dislocation | Surgery | | 4.58 | 6.11 | 6.11 | | |
| 27842 | | Treat ankle dislocation | Surgery | | 6.21 | 5.25 | 5.25 | | |
| 27846 | | Treat ankle dislocation | Surgery | | 9.79 | 10.58 | 10.58 | | |
| 27848 | | Treat ankle dislocation | Surgery | | 11.20 | 11.92 | 11.92 | | |
| 27860 | | Fixation of ankle joint | Surgery | | 2.34 | 3.76 | 3.76 | | |
| 27870 | | Fusion of ankle joint, open | Surgery | | 13.91 | 14.08 | 14.08 | | |
| 27871 | | Fusion of tibiofibular joint | Surgery | | 9.17 | 11.36 | 11.36 | | |
| 27880 | | Amputation of lower leg | Surgery | | 11.85 | 11.88 | 11.88 | | |
| 27881 | | Amputation of lower leg | Surgery | | 12.34 | 13.55 | 13.55 | | |
| 27882 | | Amputation of lower leg | Surgery | | 8.94 | 12.97 | 12.97 | | |
| 27884 | | Amputation follow-up surgery | Surgery | | 8.21 | 10.83 | 10.83 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 27886 | | Amputation follow-up surgery | Surgery | | 9.32 | 11.37 | 11.37 | | |
| 27888 | | Amputation of foot at ankle | Surgery | | 9.67 | 11.23 | 11.23 | | |
| 27889 | | Amputation of foot at ankle | Surgery | | 9.98 | 10.58 | 10.58 | | |
| 27892 | | Decompression of leg | Surgery | | 7.39 | 8.26 | 8.26 | | |
| 27893 | | Decompression of leg | Surgery | | 7.35 | 8.11 | 8.11 | | |
| 27894 | | Decompression of leg | Surgery | | 10.49 | 9.56 | 9.56 | | |
| 27899 | | Leg/ankle surgery procedure | Surgery | | | | | 35.61 | Misc |
| 28001 | | Drainage of bursa of foot | Surgery | | 2.73 | 5.63 | 3.23 | | |
| 28002 | | Treatment of foot infection | Surgery | | 4.62 | 6.93 | 4.33 | | |
| 28003 | | Treatment of foot infection | Surgery | | 8.41 | 11.29 | 10.81 | | |
| 28005 | | Treat foot bone lesion | Surgery | | 8.68 | 10.68 | 10.68 | | |
| 28008 | | Incision of foot fascia | Surgery | | 4.45 | 8.11 | 6.33 | | |
| 28010 | | Incision of toe tendon | Surgery | | 2.84 | 7.56 | 5.29 | | |
| 28011 | | Incision of toe tendons | Surgery | | 4.14 | 9.37 | 7.07 | | |
| 28020 | | Exploration of foot joint | Surgery | | 5.01 | 9.32 | 6.74 | | |
| 28022 | | Exploration of foot joint | Surgery | | 4.67 | 8.13 | 6.33 | | |
| 28024 | | Exploration of toe joint | Surgery | | 4.38 | 8.30 | 6.56 | | |
| 28030 | | Removal of foot nerve | Surgery | | 6.15 | 3.46 | 3.46 | | |
| 28035 | | Decompression of tibia nerve | Surgery | | 5.09 | 9.32 | 5.50 | | |
| 28043 | | Excision of foot lesion | Surgery | | 3.54 | 7.53 | 5.21 | | |
| 28045 | | Excision of foot lesion | Surgery | | 4.72 | 8.14 | 5.91 | | |
| 28046 | | Resection of tumor, foot | Surgery | | 10.18 | 12.35 | 10.95 | | |
| 28050 | | Biopsy of foot joint lining | Surgery | | 4.25 | 7.78 | 6.03 | | |
| 28052 | | Biopsy of foot joint lining | Surgery | | 3.94 | 8.10 | 6.14 | | |
| 28054 | | Biopsy of toe joint lining | Surgery | | 3.45 | 8.01 | 5.96 | | |
| 28060 | | Partial removal, foot fascia | Surgery | | 5.23 | 8.76 | 6.63 | | |
| 28062 | | Removal of foot fascia | Surgery | | 6.52 | 9.62 | 6.52 | | |
| 28070 | | Removal of foot joint lining | Surgery | | 5.10 | 7.95 | 6.12 | | |
| 28072 | | Removal of foot joint lining | Surgery | | 4.58 | 8.50 | 7.07 | | |
| 28080 | | Removal of foot lesion | Surgery | | 3.58 | 7.89 | 5.68 | | |
| 28086 | | Excise foot tendon sheath | Surgery | | 4.78 | 11.42 | 7.64 | | |
| 28088 | | Excise foot tendon sheath | Surgery | | 3.86 | 9.48 | 6.95 | | |
| 28090 | | Removal of foot lesion | Surgery | | 4.41 | 8.05 | 5.73 | | |
| 28092 | | Removal of toe lesions | Surgery | | 3.64 | 8.48 | 6.17 | | |
| 28100 | | Removal of ankle/heel lesion | Surgery | | 5.66 | 11.90 | 7.91 | | |
| 28102 | | Remove/graft foot lesion | Surgery | | 7.73 | 9.27 | 9.27 | | |
| 28103 | | Remove/graft foot lesion | Surgery | | 6.50 | 10.07 | 7.46 | | |
| 28104 | | Removal of foot lesion | Surgery | | 5.12 | 8.79 | 6.99 | | |
| 28106 | | Remove/graft foot lesion | Surgery | | 7.16 | 6.84 | 6.84 | | |
| 28107 | | Remove/graft foot lesion | Surgery | | 5.56 | 10.01 | 7.09 | | |
| 28108 | | Removal of toe lesions | Surgery | | 4.16 | 7.42 | 5.44 | | |
| 28110 | | Part removal of metatarsal | Surgery | | 4.08 | 8.95 | 7.08 | | |
| 28111 | | Part removal of metatarsal | Surgery | | 5.01 | 10.65 | 7.86 | | |
| 28112 | | Part removal of metatarsal | Surgery | | 4.49 | 9.66 | 7.66 | | |
| 28113 | | Part removal of metatarsal | Surgery | | 4.79 | 9.24 | 7.32 | | |
| 28114 | | Removal of metatarsal heads | Surgery | | 9.79 | 14.07 | 11.12 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 28116 | | Revision of foot | Surgery | | 7.75 | 8.88 | 6.83 | | |
| 28118 | | Removal of heel bone | Surgery | | 5.96 | 9.52 | 7.26 | | |
| 28119 | | Removal of heel spur | Surgery | | 5.39 | 8.54 | 6.23 | | |
| 28120 | | Part removal of ankle/heel | Surgery | | 5.40 | 12.72 | 10.02 | | |
| 28122 | | Partial removal of foot bone | Surgery | | 7.29 | 11.28 | 9.68 | | |
| 28124 | | Partial removal of toe | Surgery | | 4.81 | 9.52 | 7.87 | | |
| 28126 | | Partial removal of toe | Surgery | | 3.52 | 8.27 | 7.11 | | |
| 28130 | | Removal of ankle bone | Surgery | | 8.11 | 9.03 | 9.03 | | |
| 28140 | | Removal of metatarsal | Surgery | | 6.91 | 10.80 | 7.99 | | |
| 28150 | | Removal of toe | Surgery | | 4.09 | 8.94 | 7.33 | | |
| 28153 | | Partial removal of toe | Surgery | | 3.66 | 8.27 | 5.96 | | |
| 28160 | | Partial removal of toe | Surgery | | 3.74 | 8.58 | 7.50 | | |
| 28171 | | Extensive foot surgery | Surgery | | 9.60 | 8.48 | 8.48 | | |
| 28173 | | Extensive foot surgery | Surgery | | 8.80 | 11.13 | 8.87 | | |
| 28175 | | Extensive foot surgery | Surgery | | 6.05 | 9.58 | 6.90 | | |
| 28190 | | Removal of foot foreign body | Surgery | | 1.96 | 6.41 | 3.42 | | |
| 28192 | | Removal of foot foreign body | Surgery | | 4.64 | 8.20 | 5.59 | | |
| 28193 | | Removal of foot foreign body | Surgery | | 5.73 | 8.77 | 6.70 | | |
| 28200 | | Repair of foot tendon | Surgery | | 4.60 | 8.41 | 6.53 | | |
| 28202 | | Repair/graft of foot tendon | Surgery | | 6.84 | 11.55 | 7.11 | | |
| 28208 | | Repair of foot tendon | Surgery | | 4.37 | 8.15 | 6.10 | | |
| 28210 | | Repair/graft of foot tendon | Surgery | | 6.35 | 9.60 | 6.56 | | |
| 28220 | | Release of foot tendon | Surgery | | 4.53 | 7.94 | 6.29 | | |
| 28222 | | Release of foot tendons | Surgery | | 5.62 | 8.34 | 7.12 | | |
| 28225 | | Release of foot tendon | Surgery | | 3.66 | 7.72 | 5.83 | | |
| 28226 | | Release of foot tendons | Surgery | | 4.53 | 7.99 | 6.80 | | |
| 28230 | | Incision of foot tendon(s) | Surgery | | 4.24 | 8.10 | 7.09 | | |
| 28232 | | Incision of toe tendon | Surgery | | 3.39 | 8.14 | 6.78 | | |
| 28234 | | Incision of foot tendon | Surgery | | 3.37 | 8.22 | 6.25 | | |
| 28238 | | Revision of foot tendon | Surgery | | 7.73 | 10.31 | 7.61 | | |
| 28240 | | Release of big toe | Surgery | | 4.36 | 8.05 | 6.67 | | |
| 28250 | | Revision of foot fascia | Surgery | | 5.92 | 9.00 | 7.08 | | |
| 28260 | | Release of midfoot joint | Surgery | | 7.96 | 9.47 | 7.73 | | |
| 28261 | | Revision of foot tendon | Surgery | | 11.73 | 11.02 | 9.66 | | |
| 28262 | | Revision of foot and ankle | Surgery | | 15.83 | 17.31 | 15.44 | | |
| 28264 | | Release of midfoot joint | Surgery | | 10.35 | 11.28 | 11.28 | | |
| 28270 | | Release of foot contracture | Surgery | | 4.76 | 8.70 | 7.46 | | |
| 28272 | | Release of toe joint, each | Surgery | | 3.80 | 7.59 | 5.63 | | |
| 28280 | | Fusion of toes | Surgery | | 5.19 | 9.25 | 7.16 | | |
| 28285 | | Repair of hammertoe | Surgery | | 4.59 | 8.76 | 6.85 | | |
| 28286 | | Repair of hammertoe | Surgery | | 4.56 | 8.62 | 6.80 | | |
| 28288 | | Partial removal of foot bone | Surgery | | 4.74 | 9.14 | 8.50 | | |
| 28289 | | Repair hallux rigidus | Surgery | | 7.04 | 11.61 | 9.63 | | |
| 28290 | | Correction of bunion | Surgery | | 5.66 | 9.89 | 9.25 | | |
| 28292 | | Correction of bunion | Surgery | | 7.04 | 9.86 | 7.77 | | |
| 28293 | | Correction of bunion | Surgery | | 9.15 | 8.28 | 5.99 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/CAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 28294 | | Correction of bunion | Surgery | | 8.56 | 10.47 | 7.96 | | |
| 28296 | | Correction of bunion | Surgery | | 9.18 | 10.94 | 8.74 | | |
| 28297 | | Correction of bunion | Surgery | | 9.18 | 11.96 | 10.51 | | |
| 28298 | | Correction of bunion | Surgery | | 7.94 | 10.07 | 8.40 | | |
| 28299 | | Correction of bunion | Surgery | | 10.58 | 11.36 | 9.11 | | |
| 28300 | | Incision of heel bone | Surgery | | 9.54 | 15.04 | 9.59 | | |
| 28302 | | Incision of ankle bone | Surgery | | 9.55 | 14.76 | 9.53 | | |
| 28304 | | Incision of midfoot bones | Surgery | | 9.16 | 10.31 | 7.89 | | |
| 28305 | | Incise/graft midfoot bones | Surgery | | 10.50 | 14.76 | 9.73 | | |
| 28306 | | Incision of metatarsal | Surgery | | 5.86 | 9.21 | 6.48 | | |
| 28307 | | Incision of metatarsal | Surgery | | 6.33 | 13.36 | 8.20 | | |
| 28308 | | Incision of metatarsal | Surgery | | 5.29 | 7.88 | 5.45 | | |
| 28309 | | Incision of metatarsals | Surgery | | 12.78 | 10.66 | 10.66 | | |
| 28310 | | Revision of big toe | Surgery | | 5.43 | 9.14 | 6.99 | | |
| 28312 | | Revision of toe | Surgery | | 4.55 | 8.87 | 7.70 | | |
| 28313 | | Repair deformity of toe | Surgery | | 5.01 | 9.36 | 9.36 | | |
| 28315 | | Removal of sesamoid bone | Surgery | | 4.86 | 7.91 | 5.75 | | |
| 28320 | | Repair of foot bones | Surgery | | 9.18 | 9.14 | 9.14 | | |
| 28322 | | Repair of metatarsals | Surgery | | 8.34 | 11.91 | 8.67 | | |
| 28340 | | Resect enlarged toe tissue | Surgery | | 6.98 | 9.40 | 6.86 | | |
| 28341 | | Resect enlarged toe | Surgery | | 8.41 | 9.50 | 7.14 | | |
| 28344 | | Repair extra toe(s) | Surgery | | 4.26 | 8.82 | 5.99 | | |
| 28345 | | Repair webbed toe(s) | Surgery | | 5.92 | 9.33 | 7.70 | | |
| 28360 | | Reconstruct cleft foot | Surgery | | 13.34 | 13.96 | 13.96 | | |
| 28400 | | Treatment of heel fracture | Surgery | | 2.16 | 6.16 | 4.90 | | |
| 28405 | | Treatment of heel fracture | Surgery | | 4.57 | 7.06 | 6.09 | | |
| 28406 | | Treatment of heel fracture | Surgery | | 6.31 | 9.13 | 9.13 | | |
| 28415 | | Treat heel fracture | Surgery | | 15.97 | 15.68 | 15.68 | | |
| 28420 | | Treat/graft heel fracture | Surgery | | 16.64 | 16.03 | 16.03 | | |
| 28430 | | Treatment of ankle fracture | Surgery | | 2.09 | 5.58 | 4.27 | | |
| 28435 | | Treatment of ankle fracture | Surgery | | 3.40 | 5.82 | 4.89 | | |
| 28436 | | Treatment of ankle fracture | Surgery | | 4.71 | 8.17 | 8.17 | | |
| 28445 | | Treat ankle fracture | Surgery | | 15.62 | 14.08 | 14.08 | | |
| 28450 | | Treat midfoot fracture, each | Surgery | | 1.90 | 5.53 | 4.16 | | |
| 28455 | | Treat midfoot fracture, each | Surgery | | 3.09 | 5.46 | 5.08 | | |
| 28456 | | Treat midfoot fracture | Surgery | | 2.68 | 6.50 | 6.50 | | |
| 28465 | | Treat midfoot fracture, each | Surgery | | 7.01 | 8.48 | 8.48 | | |
| 28470 | | Treat metatarsal fracture | Surgery | | 1.99 | 4.77 | 3.44 | | |
| 28475 | | Treat metatarsal fracture | Surgery | | 2.97 | 5.37 | 4.59 | | |
| 28476 | | Treat metatarsal fracture | Surgery | | 3.38 | 7.01 | 7.01 | | |
| 28485 | | Treat metatarsal fracture | Surgery | | 5.71 | 8.18 | 8.18 | | |
| 28490 | | Treat big toe fracture | Surgery | | 1.09 | 2.86 | 2.18 | | |
| 28495 | | Treat big toe fracture | Surgery | | 1.58 | 2.96 | 2.31 | | |
| 28496 | | Treat big toe fracture | Surgery | | 2.33 | 10.94 | 5.26 | | |
| 28505 | | Treat big toe fracture | Surgery | | 3.81 | 11.49 | 6.99 | | |
| 28510 | | Treatment of toe fracture | Surgery | | 1.09 | 2.55 | 2.17 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 28515 | | Treatment of toe fracture | Surgery | | 1.46 | 2.80 | 2.26 | | |
| 28525 | | Treat toe fracture | Surgery | | 3.32 | 11.14 | 6.62 | | |
| 28530 | | Treat sesamoid bone fracture | Surgery | | 1.06 | 3.07 | 2.81 | | |
| 28531 | | Treat sesamoid bone fracture | Surgery | | 2.35 | 11.17 | 4.20 | | |
| 28540 | | Treat foot dislocation | Surgery | | 2.04 | 3.82 | 3.82 | | |
| 28545 | | Treat foot dislocation | Surgery | | 2.45 | 4.11 | 4.11 | | |
| 28546 | | Treat foot dislocation | Surgery | | 3.20 | 9.17 | 6.25 | | |
| 28555 | | Repair foot dislocation | Surgery | | 6.30 | 13.38 | 8.67 | | |
| 28570 | | Treat foot dislocation | Surgery | | 1.66 | 4.23 | 4.00 | | |
| 28575 | | Treat foot dislocation | Surgery | | 3.31 | 6.02 | 5.69 | | |
| 28576 | | Treat foot dislocation | Surgery | | 4.17 | 11.89 | 6.88 | | |
| 28585 | | Repair foot dislocation | Surgery | | 7.99 | 9.70 | 8.46 | | |
| 28600 | | Treat foot dislocation | Surgery | | 1.89 | 4.58 | 4.15 | | |
| 28605 | | Treat foot dislocation | Surgery | | 2.71 | 5.24 | 5.20 | | |
| 28606 | | Treat foot dislocation | Surgery | | 4.90 | 16.53 | 7.41 | | |
| 28615 | | Repair foot dislocation | Surgery | | 7.77 | 9.71 | 9.71 | | |
| 28630 | | Treat toe dislocation | Surgery | | 1.70 | 2.39 | 2.39 | | |
| 28635 | | Treat toe dislocation | Surgery | | 1.91 | 2.60 | 2.60 | | |
| 28636 | | Treat toe dislocation | Surgery | | 2.77 | 7.15 | 3.21 | | |
| 28645 | | Repair toe dislocation | Surgery | | 4.22 | 6.72 | 4.42 | | |
| 28660 | | Treat toe dislocation | Surgery | | 1.23 | 3.15 | 2.47 | | |
| 28665 | | Treat toe dislocation | Surgery | | 1.92 | 2.63 | 2.63 | | |
| 28666 | | Treat toe dislocation | Surgery | | 2.66 | 7.78 | 2.94 | | |
| 28675 | | Repair of toe dislocation | Surgery | | 2.92 | 9.64 | 5.13 | | |
| 28705 | | Fusion of foot bones | Surgery | | 18.80 | 15.42 | 15.42 | | |
| 28715 | | Fusion of foot bones | Surgery | | 13.10 | 12.85 | 12.85 | | |
| 28725 | | Fusion of foot bones | Surgery | | 11.61 | 11.67 | 11.67 | | |
| 28730 | | Fusion of foot bones | Surgery | | 10.76 | 11.03 | 11.03 | | |
| 28735 | | Fusion of foot bones | Surgery | | 10.85 | 10.81 | 10.81 | | |
| 28737 | | Revision of foot bones | Surgery | | 9.64 | 9.45 | 9.45 | | |
| 28740 | | Fusion of foot bones | Surgery | | 8.02 | 13.73 | 9.19 | | |
| 28750 | | Fusion of big toe joint | Surgery | | 7.30 | 14.99 | 9.59 | | |
| 28755 | | Fusion of big toe joint | Surgery | | 4.74 | 9.24 | 6.76 | | |
| 28760 | | Fusion of big toe joint | Surgery | | 7.75 | 10.17 | 7.89 | | |
| 28800 | | Amputation of midfoot | Surgery | | 8.21 | 9.11 | 9.11 | | |
| 28805 | | Amputation thru metatarsal | Surgery | | 8.39 | 9.05 | 9.05 | | |
| 28810 | | Amputation toe & metatarsal | Surgery | | 6.21 | 7.96 | 7.96 | | |
| 28820 | | Amputation of toe | Surgery | | 4.41 | 11.19 | 7.26 | | |
| 28825 | | Partial amputation of toe | Surgery | | 3.59 | 10.58 | 7.11 | | |
| 28899 | | Foot/toes surgery procedure | Surgery | | | | | 17.84 | Misc |
| 29000 | | Application of body cast | Surgery | | 2.25 | 3.08 | 1.74 | | |
| 29010 | | Application of body cast | Surgery | | 2.06 | 3.07 | 1.72 | | |
| 29015 | | Application of body cast | Surgery | | 2.41 | 2.97 | 1.60 | | |
| 29020 | | Application of body cast | Surgery | | 2.11 | 3.27 | 1.44 | | |
| 29025 | | Application of body cast | Surgery | | 2.40 | 3.16 | 1.86 | | |
| 29035 | | Application of body cast | Surgery | | 1.77 | 3.10 | 1.53 | | |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology

TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 29040 | | Application of body cast | Surgery | | 2.22 | 2.48 | 1.54 | | |
| 29044 | | Application of body cast | Surgery | | 2.12 | 3.42 | 1.83 | | |
| 29046 | | Application of body cast | Surgery | | 2.41 | 3.12 | 2.01 | | |
| 29049 | | Application of figure eight | Surgery | | 0.89 | 1.10 | 0.57 | | |
| 29055 | | Application of shoulder cast | Surgery | | 1.78 | 2.54 | 1.44 | | |
| 29058 | | Application of shoulder cast | Surgery | | 1.31 | 1.36 | 0.76 | | |
| 29065 | | Application of long arm cast | Surgery | | 0.87 | 1.15 | 0.70 | | |
| 29075 | | Application of forearm cast | Surgery | | 0.77 | 1.09 | 0.64 | | |
| 29085 | | Apply hand/wrist cast | Surgery | | 0.87 | 1.13 | 0.62 | | |
| 29086 | | Apply finger cast | Surgery | | 0.62 | 0.72 | 0.55 | | |
| 29105 | | Apply long arm splint | Surgery | | 0.87 | 1.08 | 0.51 | | |
| 29125 | | Apply forearm splint | Surgery | | 0.59 | 0.91 | 0.40 | | |
| 29126 | | Apply forearm splint | Surgery | | 0.77 | 1.13 | 0.47 | | |
| 29130 | | Application of finger splint | Surgery | | 0.50 | 0.44 | 0.17 | | |
| 29131 | | Application of finger splint | Surgery | | 0.55 | 0.71 | 0.24 | | |
| 29200 | | Strapping of chest | Surgery | | 0.65 | 0.80 | 0.36 | | |
| 29220 | | Strapping of low back | Surgery | | 0.64 | 0.75 | 0.40 | | |
| 29240 | | Strapping of shoulder | Surgery | | 0.71 | 0.88 | 0.39 | | |
| 29260 | | Strapping of elbow or wrist | Surgery | | 0.55 | 0.77 | 0.34 | | |
| 29280 | | Strapping of hand or finger | Surgery | | 0.51 | 0.81 | 0.34 | | |
| 29305 | | Application of hip cast | Surgery | | 2.03 | 2.91 | 1.65 | | |
| 29325 | | Application of hip casts | Surgery | | 2.32 | 3.09 | 1.83 | | |
| 29345 | | Application of long leg cast | Surgery | | 1.40 | 1.55 | 1.02 | | |
| 29355 | | Application of long leg cast | Surgery | | 1.53 | 1.53 | 1.07 | | |
| 29358 | | Apply long leg cast brace | Surgery | | 1.43 | 1.80 | 1.04 | | |
| 29365 | | Application of long leg cast | Surgery | | 1.18 | 1.44 | 0.90 | | |
| 29405 | | Apply short leg cast | Surgery | | 0.86 | 1.07 | 0.67 | | |
| 29425 | | Apply short leg cast | Surgery | | 1.01 | 1.08 | 0.70 | | |
| 29435 | | Apply short leg cast | Surgery | | 1.18 | 1.37 | 0.89 | | |
| 29440 | | Addition of walker to cast | Surgery | | 0.57 | 0.63 | 0.27 | | |
| 29445 | | Apply rigid leg cast | Surgery | | 1.78 | 1.64 | 0.95 | | |
| 29450 | | Application of leg cast | Surgery | | 2.08 | 1.39 | 1.08 | | |
| 29505 | | Application, long leg splint | Surgery | | 0.69 | 1.06 | 0.47 | | |
| 29515 | | Application lower leg splint | Surgery | | 0.73 | 0.80 | 0.47 | | |
| 29520 | | Strapping of hip | Surgery | | 0.54 | 0.88 | 0.44 | | |
| 29530 | | Strapping of knee | Surgery | | 0.57 | 0.82 | 0.35 | | |
| 29540 | | Strapping of ankle and/or ft | Surgery | | 0.51 | 0.39 | 0.32 | | |
| 29550 | | Strapping of toes | Surgery | | 0.47 | 0.40 | 0.27 | | |
| 29580 | | Application of paste boot | Surgery | | 0.57 | 0.60 | 0.35 | | |
| 29590 | | Application of foot splint | Surgery | | 0.76 | 0.49 | 0.30 | | |
| 29700 | | Removal/revision of cast | Surgery | | 0.57 | 0.81 | 0.29 | | |
| 29705 | | Removal/revision of cast | Surgery | | 0.76 | 0.74 | 0.39 | | |
| 29710 | | Removal/revision of cast | Surgery | | 1.34 | 1.41 | 0.71 | | |
| 29715 | | Removal/revision of cast | Surgery | | 0.94 | 1.08 | 0.41 | | |
| 29720 | | Repair of body cast | Surgery | | 0.68 | 1.00 | 0.39 | | |
| 29730 | | Windowing of cast | Surgery | | 0.75 | 0.73 | 0.35 | | |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology.

## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 29740 | | Wedging of cast | Surgery | | 1.12 | 1.04 | 0.50 | | |
| 29750 | | Wedging of clubfoot cast | Surgery | | 1.26 | 1.00 | 0.59 | | |
| 29799 | | Casting/strapping procedure | Surgery | | | | | 1.52 | Misc |
| 29800 | | Jaw arthroscopy/surgery | Surgery | | 6.43 | 9.06 | 9.06 | | |
| 29804 | | Jaw arthroscopy/surgery | Surgery | | 8.14 | 8.53 | 8.53 | | |
| 29805 | | Shoulder arthroscopy, dx | Surgery | | 5.89 | 7.85 | 7.85 | | |
| 29806 | | Shoulder arthroscopy/surgery | Surgery | | 14.37 | 11.17 | 11.17 | | |
| 29807 | | Shoulder arthroscopy/surgery | Surgery | | 13.90 | 10.93 | 10.93 | | |
| 29819 | | Shoulder arthroscopy/surgery | Surgery | | 7.62 | 6.87 | 6.87 | | |
| 29820 | | Shoulder arthroscopy/surgery | Surgery | | 7.07 | 6.39 | 6.39 | | |
| 29821 | | Shoulder arthroscopy/surgery | Surgery | | 7.72 | 6.89 | 6.89 | | |
| 29822 | | Shoulder arthroscopy/surgery | Surgery | | 7.43 | 6.77 | 6.77 | | |
| 29823 | | Shoulder arthroscopy/surgery | Surgery | | 8.17 | 7.32 | 7.32 | | |
| 29824 | | Shoulder arthroscopy/surgery | Surgery | | 8.25 | 7.46 | 7.46 | | |
| 29825 | | Shoulder arthroscopy/surgery | Surgery | | 7.62 | 6.86 | 6.86 | | |
| 29826 | | Shoulder arthroscopy/surgery | Surgery | | 8.99 | 7.63 | 7.63 | | |
| 29827 | | Arthroscop rotator cuff repr | Surgery | | 15.36 | 11.55 | 11.55 | | |
| 29830 | | Elbow arthroscopy | Surgery | | 5.76 | 5.47 | 5.47 | | |
| 29834 | | Elbow arthroscopy/surgery | Surgery | | 6.28 | 5.96 | 5.96 | | |
| 29835 | | Elbow arthroscopy/surgery | Surgery | | 6.48 | 6.02 | 6.02 | | |
| 29836 | | Elbow arthroscopy/surgery | Surgery | | 7.55 | 6.83 | 6.83 | | |
| 29837 | | Elbow arthroscopy/surgery | Surgery | | 6.87 | 6.27 | 6.27 | | |
| 29838 | | Elbow arthroscopy/surgery | Surgery | | 7.71 | 6.98 | 6.98 | | |
| 29840 | | Wrist arthroscopy | Surgery | | 5.54 | 5.49 | 5.49 | | |
| 29843 | | Wrist arthroscopy/surgery | Surgery | | 6.01 | 5.74 | 5.74 | | |
| 29844 | | Wrist arthroscopy/surgery | Surgery | | 6.37 | 5.96 | 5.96 | | |
| 29845 | | Wrist arthroscopy/surgery | Surgery | | 7.52 | 6.61 | 6.61 | | |
| 29846 | | Wrist arthroscopy/surgery | Surgery | | 6.75 | 6.19 | 6.19 | | |
| 29847 | | Wrist arthroscopy/surgery | Surgery | | 7.08 | 6.33 | 6.33 | | |
| 29848 | | Wrist endoscopy/surgery | Surgery | | 5.44 | 5.69 | 5.69 | | |
| 29850 | | Knee arthroscopy/surgery | Surgery | | 8.19 | 5.27 | 5.27 | | |
| 29851 | | Knee arthroscopy/surgery | Surgery | | 13.10 | 9.94 | 9.94 | | |
| 29855 | | Tibial arthroscopy/surgery | Surgery | | 10.62 | 8.79 | 8.79 | | |
| 29856 | | Tibial arthroscopy/surgery | Surgery | | 14.14 | 10.74 | 10.74 | | |
| 29860 | | Hip arthroscopy, dx | Surgery | | 8.05 | 7.06 | 7.06 | | |
| 29861 | | Hip arthroscopy/surgery | Surgery | | 9.15 | 7.48 | 7.48 | | |
| 29862 | | Hip arthroscopy/surgery | Surgery | | 9.90 | 8.58 | 8.58 | | |
| 29863 | | Hip arthroscopy/surgery | Surgery | | 9.90 | 8.53 | 8.53 | | |
| 29870 | | Knee arthroscopy, dx | Surgery | | 5.07 | 5.00 | 5.00 | | |
| 29871 | | Knee arthroscopy/drainage | Surgery | | 6.55 | 5.98 | 5.98 | | |
| 29873 | | Knee arthroscopy/surgery | Surgery | | 6.00 | 6.56 | 6.56 | | |
| 29874 | | Knee arthroscopy/surgery | Surgery | | 7.05 | 6.27 | 6.27 | | |
| 29875 | | Knee arthroscopy/surgery | Surgery | | 6.31 | 5.98 | 5.98 | | |
| 29876 | | Knee arthroscopy/surgery | Surgery | | 7.92 | 7.12 | 7.12 | | |
| 29877 | | Knee arthroscopy/surgery | Surgery | | 7.35 | 6.81 | 6.81 | | |
| 29879 | | Knee arthroscopy/surgery | Surgery | | 8.04 | 7.21 | 7.21 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 29880 | | Knee arthroscopy/surgery | Surgery | | 8.50 | 7.46 | 7.46 | | |
| 29881 | | Knee arthroscopy/surgery | Surgery | | 7.76 | 7.04 | 7.04 | | |
| 29882 | | Knee arthroscopy/surgery | Surgery | | 8.65 | 7.34 | 7.34 | | |
| 29883 | | Knee arthroscopy/surgery | Surgery | | 11.05 | 9.16 | 9.16 | | |
| 29884 | | Knee arthroscopy/surgery | Surgery | | 7.33 | 6.76 | 6.76 | | |
| 29885 | | Knee arthroscopy/surgery | Surgery | | 9.09 | 7.98 | 7.98 | | |
| 29886 | | Knee arthroscopy/surgery | Surgery | | 7.54 | 6.94 | 6.94 | | |
| 29887 | | Knee arthroscopy/surgery | Surgery | | 9.04 | 7.95 | 7.95 | | |
| 29888 | | Knee arthroscopy/surgery | Surgery | | 13.90 | 10.42 | 10.42 | | |
| 29889 | | Knee arthroscopy/surgery | Surgery | | 16.00 | 12.48 | 12.48 | | |
| 29891 | | Ankle arthroscopy/surgery | Surgery | | 8.40 | 7.50 | 7.50 | | |
| 29892 | | Ankle arthroscopy/surgery | Surgery | | 9.00 | 7.77 | 7.77 | | |
| 29893 | | Scope, plantar fasciotomy | Surgery | | 5.22 | 3.88 | 3.88 | | |
| 29894 | | Ankle arthroscopy/surgery | Surgery | | 7.21 | 5.61 | 5.61 | | |
| 29895 | | Ankle arthroscopy/surgery | Surgery | | 6.99 | 5.60 | 5.60 | | |
| 29897 | | Ankle arthroscopy/surgery | Surgery | | 7.18 | 6.04 | 6.04 | | |
| 29898 | | Ankle arthroscopy/surgery | Surgery | | 8.32 | 6.28 | 6.28 | | |
| 29899 | | Ankle arthroscopy/surgery | Surgery | | 13.91 | 10.58 | 10.58 | | |
| 29900 | | Mcp joint arthroscopy, dx | Surgery | | 5.42 | 5.92 | 5.92 | | |
| 29901 | | Mcp joint arthroscopy, surg | Surgery | | 6.13 | 6.30 | 6.30 | | |
| 29902 | | Mcp joint arthroscopy, surg | Surgery | | 6.70 | 6.61 | 6.61 | | |
| 29999 | | Arthroscopy of joint | Surgery | | | | | 16.82 | Misc |
| 30000 | | Drainage of nose lesion | Surgery | | 1.43 | 2.52 | 1.47 | | |
| 30020 | | Drainage of nose lesion | Surgery | | 1.43 | 2.71 | 1.56 | | |
| 30100 | | Intranasal biopsy | Surgery | | 0.94 | 1.33 | 0.52 | | |
| 30110 | | Removal of nose polyp(s) | Surgery | | 1.63 | 2.80 | 0.87 | | |
| 30115 | | Removal of nose polyp(s) | Surgery | | 4.35 | 4.49 | 4.49 | | |
| 30117 | | Removal of intranasal lesion | Surgery | | 3.16 | 4.97 | 3.15 | | |
| 30118 | | Removal of intranasal lesion | Surgery | | 9.69 | 8.17 | 8.17 | | |
| 30120 | | Revision of nose | Surgery | | 5.27 | 5.97 | 5.97 | | |
| 30124 | | Removal of nose lesion | Surgery | | 3.10 | 3.31 | 3.31 | | |
| 30125 | | Removal of nose lesion | Surgery | | 7.16 | 6.42 | 6.42 | | |
| 30130 | | Removal of turbinate bones | Surgery | | 3.38 | 3.94 | 3.94 | | |
| 30140 | | Removal of turbinate bones | Surgery | | 3.43 | 4.58 | 4.58 | | |
| 30150 | | Partial removal of nose | Surgery | | 9.14 | 8.56 | 8.56 | | |
| 30160 | | Removal of nose | Surgery | | 9.58 | 8.47 | 8.47 | | |
| 30200 | | Injection treatment of nose | Surgery | | 0.78 | 1.21 | 0.44 | | |
| 30210 | | Nasal sinus therapy | Surgery | | 1.08 | 2.15 | 0.59 | | |
| 30220 | | Insert nasal septal button | Surgery | | 1.54 | 2.51 | 0.84 | | |
| 30300 | | Remove nasal foreign body | Surgery | | 1.04 | 2.60 | 0.38 | | |
| 30310 | | Remove nasal foreign body | Surgery | | 1.96 | 1.88 | 1.88 | | |
| 30320 | | Remove nasal foreign body | Surgery | | 4.52 | 5.24 | 5.24 | | |
| 30400 | | Reconstruction of nose | Surgery | | 9.83 | 8.81 | 8.81 | | |
| 30410 | | Reconstruction of nose | Surgery | | 12.98 | 10.50 | 10.50 | | |
| 30420 | | Reconstruction of nose | Surgery | | 15.88 | 12.20 | 12.20 | | |
| 30430 | | Revision of nose | Surgery | | 7.21 | 7.14 | 7.14 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 30435 | | Revision of nose | Surgery | | 11.71 | 10.22 | 10.22 | | |
| 30450 | | Revision of nose | Surgery | | 18.65 | 13.82 | 13.82 | | |
| 30460 | | Revision of nose | Surgery | | 9.96 | 9.12 | 9.12 | | |
| 30462 | | Revision of nose | Surgery | | 19.57 | 14.40 | 14.40 | | |
| 30465 | | Repair nasal stenosis | Surgery | | 11.64 | 8.64 | 8.64 | | |
| 30520 | | Repair of nasal septum | Surgery | | 5.70 | 5.85 | 5.85 | | |
| 30540 | | Repair nasal defect | Surgery | | 7.75 | 6.43 | 6.43 | | |
| 30545 | | Repair nasal defect | Surgery | | 11.38 | 9.58 | 9.58 | | |
| 30560 | | Release of nasal adhesions | Surgery | | 1.26 | 2.33 | 1.50 | | |
| 30580 | | Repair upper jaw fistula | Surgery | | 6.69 | 4.97 | 4.97 | | |
| 30600 | | Repair mouth/nose fistula | Surgery | | 6.02 | 4.93 | 4.93 | | |
| 30620 | | Intranasal reconstruction | Surgery | | 5.97 | 6.54 | 6.54 | | |
| 30630 | | Repair nasal septum defect | Surgery | | 7.12 | 7.08 | 7.08 | | |
| 30801 | | Cauterization, inner nose | Surgery | | 1.09 | 2.55 | 2.30 | | |
| 30802 | | Cauterization, inner nose | Surgery | | 2.03 | 3.10 | 2.84 | | |
| 30901 | | Control of nosebleed | Surgery | | 1.21 | 1.40 | 0.33 | | |
| 30903 | | Control of nosebleed | Surgery | | 1.54 | 3.14 | 0.51 | | |
| 30905 | | Control of nosebleed | Surgery | | 1.97 | 3.79 | 0.78 | | |
| 30906 | | Repeat control of nosebleed | Surgery | | 2.45 | 4.19 | 1.23 | | |
| 30915 | | Ligation, nasal sinus artery | Surgery | | 7.20 | 7.03 | 7.03 | | |
| 30920 | | Ligation, upper jaw artery | Surgery | | 9.83 | 8.48 | 8.48 | | |
| 30930 | | Therapy, fracture of nose | Surgery | | 1.26 | 2.16 | 2.16 | | |
| 30999 | | Nasal surgery procedure | Surgery | | | | | 2.94 | Misc |
| 31000 | | Irrigation, maxillary sinus | Surgery | | 1.15 | 2.43 | 0.64 | | |
| 31002 | | Irrigation, sphenoid sinus | Surgery | | 1.91 | 2.03 | 2.03 | | |
| 31020 | | Exploration, maxillary sinus | Surgery | | 2.94 | 4.30 | 3.64 | | |
| 31030 | | Exploration, maxillary sinus | Surgery | | 5.92 | 4.77 | 4.60 | | |
| 31032 | | Explore sinus, remove polyps | Surgery | | 6.57 | 6.06 | 6.06 | | |
| 31040 | | Exploration behind upper jaw | Surgery | | 9.42 | 6.97 | 6.97 | | |
| 31050 | | Exploration, sphenoid sinus | Surgery | | 5.28 | 5.04 | 5.04 | | |
| 31051 | | Sphenoid sinus surgery | Surgery | | 7.11 | 6.51 | 6.51 | | |
| 31070 | | Exploration of frontal sinus | Surgery | | 4.28 | 5.00 | 5.00 | | |
| 31075 | | Exploration of frontal sinus | Surgery | | 9.16 | 8.16 | 8.16 | | |
| 31080 | | Removal of frontal sinus | Surgery | | 11.42 | 8.78 | 8.78 | | |
| 31081 | | Removal of frontal sinus | Surgery | | 12.75 | 9.73 | 9.73 | | |
| 31084 | | Removal of frontal sinus | Surgery | | 13.51 | 10.49 | 10.49 | | |
| 31085 | | Removal of frontal sinus | Surgery | | 14.20 | 10.73 | 10.73 | | |
| 31086 | | Removal of frontal sinus | Surgery | | 12.86 | 10.42 | 10.42 | | |
| 31087 | | Removal of frontal sinus | Surgery | | 13.10 | 10.43 | 10.43 | | |
| 31090 | | Exploration of sinuses | Surgery | | 9.53 | 8.89 | 8.89 | | |
| 31200 | | Removal of ethmoid sinus | Surgery | | 4.97 | 5.70 | 5.70 | | |
| 31201 | | Removal of ethmoid sinus | Surgery | | 8.37 | 7.76 | 7.76 | | |
| 31205 | | Removal of ethmoid sinus | Surgery | | 10.24 | 8.39 | 8.39 | | |
| 31225 | | Removal of upper jaw | Surgery | | 19.23 | 15.01 | 15.01 | | |
| 31230 | | Removal of upper jaw | Surgery | | 21.94 | 16.66 | 16.66 | | |
| 31231 | | Nasal endoscopy, dx | Surgery | | 1.10 | 1.99 | 0.59 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 31233 | | Nasal/sinus endoscopy, dx | Surgery | | 2.18 | 2.63 | 1.19 | | |
| 31235 | | Nasal/sinus endoscopy, dx | Surgery | | 2.64 | 2.90 | 1.45 | | |
| 31237 | | Nasal/sinus endoscopy, surg | Surgery | | 2.98 | 3.17 | 1.61 | | |
| 31238 | | Nasal/sinus endoscopy, surg | Surgery | | 3.26 | 3.71 | 1.82 | | |
| 31239 | | Nasal/sinus endoscopy, surg | Surgery | | 8.70 | 6.51 | 6.51 | | |
| 31240 | | Nasal/sinus endoscopy, surg | Surgery | | 2.61 | 1.55 | 1.55 | | |
| 31254 | | Revision of ethmoid sinus | Surgery | | 4.65 | 2.71 | 2.71 | | |
| 31255 | | Removal of ethmoid sinus | Surgery | | 6.96 | 4.01 | 4.01 | | |
| 31256 | | Exploration maxillary sinus | Surgery | | 3.29 | 1.95 | 1.95 | | |
| 31267 | | Endoscopy, maxillary sinus | Surgery | | 5.46 | 3.16 | 3.16 | | |
| 31276 | | Sinus endoscopy, surgical | Surgery | | 8.85 | 5.05 | 5.05 | | |
| 31287 | | Nasal/sinus endoscopy, surg | Surgery | | 3.92 | 2.30 | 2.30 | | |
| 31288 | | Nasal/sinus endoscopy, surg | Surgery | | 4.58 | 2.67 | 2.67 | | |
| 31290 | | Nasal/sinus endoscopy, surg | Surgery | | 17.24 | 11.56 | 11.56 | | |
| 31291 | | Nasal/sinus endoscopy, surg | Surgery | | 18.19 | 11.87 | 11.87 | | |
| 31292 | | Nasal/sinus endoscopy, surg | Surgery | | 14.76 | 10.05 | 10.05 | | |
| 31293 | | Nasal/sinus endoscopy, surg | Surgery | | 16.21 | 10.76 | 10.76 | | |
| 31294 | | Nasal/sinus endoscopy, surg | Surgery | | 19.06 | 12.32 | 12.32 | | |
| 31299 | | Sinus surgery procedure | Surgery | | | | | 3.68 | Misc |
| 31300 | | Removal of larynx lesion | Surgery | | 14.29 | 17.26 | 17.26 | | |
| 31320 | | Diagnostic incision, larynx | Surgery | | 5.26 | 12.98 | 12.98 | | |
| 31360 | | Removal of larynx | Surgery | | 17.08 | 19.03 | 19.03 | | |
| 31365 | | Removal of larynx | Surgery | | 24.16 | 22.76 | 22.76 | | |
| 31367 | | Partial removal of larynx | Surgery | | 21.86 | 23.63 | 23.63 | | |
| 31368 | | Partial removal of larynx | Surgery | | 27.09 | 28.25 | 28.25 | | |
| 31370 | | Partial removal of larynx | Surgery | | 21.38 | 23.28 | 23.28 | | |
| 31375 | | Partial removal of larynx | Surgery | | 20.21 | 20.86 | 20.86 | | |
| 31380 | | Partial removal of larynx | Surgery | | 20.21 | 20.88 | 20.88 | | |
| 31382 | | Partial removal of larynx | Surgery | | 20.52 | 22.86 | 22.86 | | |
| 31390 | | Removal of larynx & pharynx | Surgery | | 27.53 | 28.42 | 28.42 | | |
| 31395 | | Reconstruct larynx & pharynx | Surgery | | 31.09 | 34.27 | 34.27 | | |
| 31400 | | Revision of larynx | Surgery | | 10.31 | 15.66 | 15.66 | | |
| 31420 | | Removal of epiglottis | Surgery | | 10.22 | 15.35 | 15.35 | | |
| 31500 | | Insert emergency airway | Surgery | | 2.33 | 0.67 | 0.67 | | |
| 31502 | | Change of windpipe airway | Surgery | | 0.65 | 1.98 | 0.26 | | |
| 31505 | | Diagnostic laryngoscopy | Surgery | | 0.61 | 0.67 | 0.23 | | |
| 31510 | | Laryngoscopy with biopsy | Surgery | | 1.92 | 2.83 | 0.98 | | |
| 31511 | | Remove foreign body, larynx | Surgery | | 2.16 | 3.12 | 0.75 | | |
| 31512 | | Removal of larynx lesion | Surgery | | 2.07 | 3.07 | 1.07 | | |
| 31513 | | Injection into vocal cord | Surgery | | 2.10 | 1.28 | 1.28 | | |
| 31515 | | Laryngoscopy for aspiration | Surgery | | 1.80 | 2.39 | 0.85 | | |
| 31520 | | Diagnostic laryngoscopy | Surgery | | 2.56 | 1.38 | 1.38 | | |
| 31525 | | Diagnostic laryngoscopy | Surgery | | 2.63 | 2.91 | 1.48 | | |
| 31526 | | Diagnostic laryngoscopy | Surgery | | 2.57 | 1.54 | 1.54 | | |
| 31527 | | Laryngoscopy for treatment | Surgery | | 3.27 | 1.71 | 1.71 | | |
| 31528 | | Laryngoscopy and dilation | Surgery | | 2.37 | 1.26 | 1.26 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 31529 | | Laryngoscopy and dilation | Surgery | | 2.68 | 1.55 | 1.55 | | |
| 31530 | | Operative laryngoscopy | Surgery | | 3.39 | 1.75 | 1.75 | | |
| 31531 | | Operative laryngoscopy | Surgery | | 3.59 | 2.12 | 2.12 | | |
| 31535 | | Operative laryngoscopy | Surgery | | 3.16 | 1.82 | 1.82 | | |
| 31536 | | Operative laryngoscopy | Surgery | | 3.56 | 2.09 | 2.09 | | |
| 31540 | | Operative laryngoscopy | Surgery | | 4.13 | 2.40 | 2.40 | | |
| 31541 | | Operative laryngoscopy | Surgery | | 4.53 | 2.64 | 2.64 | | |
| 31560 | | Operative laryngoscopy | Surgery | | 5.46 | 3.05 | 3.05 | | |
| 31561 | | Operative laryngoscopy | Surgery | | 6.00 | 3.26 | 3.26 | | |
| 31570 | | Laryngoscopy with injection | Surgery | | 3.87 | 4.16 | 2.23 | | |
| 31571 | | Laryngoscopy with injection | Surgery | | 4.27 | 2.45 | 2.45 | | |
| 31575 | | Diagnostic laryngoscopy | Surgery | | 1.10 | 2.07 | 0.57 | | |
| 31576 | | Laryngoscopy with biopsy | Surgery | | 1.97 | 2.45 | 1.02 | | |
| 31577 | | Remove foreign body, larynx | Surgery | | 2.47 | 2.93 | 1.25 | | |
| 31578 | | Removal of larynx lesion | Surgery | | 2.84 | 3.19 | 1.24 | | |
| 31579 | | Diagnostic laryngoscopy | Surgery | | 2.26 | 2.94 | 1.20 | | |
| 31580 | | Revision of larynx | Surgery | | 12.38 | 16.18 | 16.18 | | |
| 31582 | | Revision of larynx | Surgery | | 21.62 | 21.69 | 21.69 | | |
| 31584 | | Treat larynx fracture | Surgery | | 19.64 | 18.64 | 18.64 | | |
| 31585 | | Treat larynx fracture | Surgery | | 4.64 | 8.94 | 8.94 | | |
| 31586 | | Treat larynx fracture | Surgery | | 8.03 | 12.77 | 12.77 | | |
| 31587 | | Revision of larynx | Surgery | | 11.99 | 14.23 | 14.23 | | |
| 31588 | | Revision of larynx | Surgery | | 13.11 | 17.11 | 17.11 | | |
| 31590 | | Reinnervate larynx | Surgery | | 6.97 | 12.52 | 12.52 | | |
| 31595 | | Larynx nerve surgery | Surgery | | 8.34 | 11.32 | 11.32 | | |
| 31599 | | Larynx surgery procedure | Surgery | | | | | 3.74 | Misc |
| 31600 | | Incision of windpipe | Surgery | | 7.18 | 3.05 | 3.05 | | |
| 31601 | | Incision of windpipe | Surgery | | 4.45 | 2.15 | 2.15 | | |
| 31603 | | Incision of windpipe | Surgery | | 4.15 | 1.75 | 1.75 | | |
| 31605 | | Incision of windpipe | Surgery | | 3.58 | 1.21 | 1.21 | | |
| 31610 | | Incision of windpipe | Surgery | | 8.76 | 10.79 | 10.79 | | |
| 31611 | | Surgery/speech prosthesis | Surgery | | 5.64 | 10.19 | 10.19 | | |
| 31612 | | Puncture/clear windpipe | Surgery | | 0.91 | 1.49 | 0.42 | | |
| 31613 | | Repair windpipe opening | Surgery | | 4.59 | 8.88 | 8.88 | | |
| 31614 | | Repair windpipe opening | Surgery | | 7.12 | 12.24 | 12.24 | | |
| 31615 | | Visualization of windpipe | Surgery | | 2.09 | 3.74 | 1.17 | | |
| 31622 | | Dx bronchoscope/wash | Surgery | | 2.78 | 3.44 | 1.15 | | |
| 31623 | | Dx bronchoscope/brush | Surgery | | 2.88 | 3.18 | 1.14 | | |
| 31624 | | Dx bronchoscope/lavage | Surgery | | 2.88 | 2.89 | 1.14 | | |
| 31625 | | Bronchoscopy w/biopsy(s) | Surgery | | 3.37 | 1.30 | 1.30 | | |
| 31628 | | Bronchoscopy/lung bx, each | Surgery | | 3.81 | 3.36 | 1.40 | | |
| 31629 | | Bronchoscopy/needle bx, each | Surgery | | 3.37 | 1.27 | 1.27 | | |
| 31630 | | Bronchoscopy dilate/fx repr | Surgery | | 3.82 | 1.97 | 1.97 | | |
| 31631 | | Bronchoscopy, dilate w/stent | Surgery | | 4.37 | 2.01 | 2.01 | | |
| 31635 | | Bronchoscopy w/fb removal | Surgery | | 3.68 | 1.67 | 1.67 | | |
| 31640 | | Bronchoscopy w/tumor excise | Surgery | | 4.94 | 2.34 | 2.34 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 31641 | | Bronchoscopy, treat blockage | Surgery | | 5.03 | 2.13 | 2.13 | | |
| 31643 | | Diag bronchoscope/catheter | Surgery | | 3.50 | 1.32 | 1.32 | | |
| 31645 | | Bronchoscopy, clear airways | Surgery | | 3.16 | 1.22 | 1.22 | | |
| 31646 | | Bronchoscopy, reclear airway | Surgery | | 2.72 | 1.09 | 1.09 | | |
| 31656 | | Bronchoscopy, inj for x-ray | Surgery | | 2.17 | 0.93 | 0.93 | | |
| 31700 | | Insertion of airway catheter | Surgery | | 1.34 | 2.34 | 0.69 | | |
| 31708 | | Instill airway contrast dye | Surgery | | 1.41 | 0.60 | 0.60 | | |
| 31710 | | Insertion of airway catheter | Surgery | | 1.30 | 0.71 | 0.71 | | |
| 31715 | | Injection for bronchus x-ray | Surgery | | 1.11 | 0.61 | 0.61 | | |
| 31717 | | Bronchial brush biopsy | Surgery | | 2.12 | 3.40 | 0.88 | | |
| 31720 | | Clearance of airways | Surgery | | 1.06 | 1.86 | 0.33 | | |
| 31725 | | Clearance of airways | Surgery | | 1.96 | 0.60 | 0.60 | | |
| 31730 | | Intro, windpipe wire/tube | Surgery | | 2.85 | 2.42 | 1.10 | | |
| 31750 | | Repair of windpipe | Surgery | | 13.02 | 16.00 | 16.00 | | |
| 31755 | | Repair of windpipe | Surgery | | 15.93 | 19.11 | 19.11 | | |
| 31760 | | Repair of windpipe | Surgery | | 22.35 | 12.34 | 12.34 | | |
| 31766 | | Reconstruction of windpipe | Surgery | | 30.43 | 16.11 | 16.11 | | |
| 31770 | | Repair/graft of bronchus | Surgery | | 22.51 | 14.25 | 14.25 | | |
| 31775 | | Reconstruct bronchus | Surgery | | 23.54 | 15.35 | 15.35 | | |
| 31780 | | Reconstruct windpipe | Surgery | | 17.72 | 12.85 | 12.85 | | |
| 31781 | | Reconstruct windpipe | Surgery | | 23.53 | 14.74 | 14.74 | | |
| 31785 | | Remove windpipe lesion | Surgery | | 17.23 | 12.68 | 12.68 | | |
| 31786 | | Remove windpipe lesion | Surgery | | 23.98 | 15.62 | 15.62 | | |
| 31800 | | Repair of windpipe injury | Surgery | | 7.43 | 6.79 | 6.79 | | |
| 31805 | | Repair of windpipe injury | Surgery | | 13.13 | 10.71 | 10.71 | | |
| 31820 | | Closure of windpipe lesion | Surgery | | 4.49 | 8.08 | 7.96 | | |
| 31825 | | Repair of windpipe defect | Surgery | | 6.81 | 11.16 | 11.16 | | |
| 31830 | | Revise windpipe scar | Surgery | | 4.50 | 7.97 | 7.97 | | |
| 31899 | | Airways surgical procedure | Surgery | | | | | 6.91 | Misc |
| 32000 | | Drainage of chest | Surgery | | 1.54 | 3.11 | 0.50 | | |
| 32002 | | Treatment of collapsed lung | Surgery | | 2.19 | 0.85 | 0.85 | | |
| 32005 | | Treat lung lining chemically | Surgery | | 2.19 | 0.87 | 0.87 | | |
| 32020 | | Insertion of chest tube | Surgery | | 3.98 | 1.44 | 1.44 | | |
| 32035 | | Exploration of chest | Surgery | | 8.67 | 7.97 | 7.97 | | |
| 32036 | | Exploration of chest | Surgery | | 9.68 | 8.69 | 8.69 | | |
| 32095 | | Biopsy through chest wall | Surgery | | 8.36 | 8.13 | 8.13 | | |
| 32100 | | Exploration/biopsy of chest | Surgery | | 15.24 | 10.39 | 10.39 | | |
| 32110 | | Explore/repair chest | Surgery | | 23.00 | 12.89 | 12.89 | | |
| 32120 | | Re-exploration of chest | Surgery | | 11.54 | 9.49 | 9.49 | | |
| 32124 | | Explore chest free adhesions | Surgery | | 12.72 | 9.42 | 9.42 | | |
| 32140 | | Removal of lung lesion(s) | Surgery | | 13.93 | 9.97 | 9.97 | | |
| 32141 | | Remove/treat lung lesions | Surgery | | 14.00 | 9.87 | 9.87 | | |
| 32150 | | Removal of lung lesion(s) | Surgery | | 14.15 | 9.84 | 9.84 | | |
| 32151 | | Remove lung foreign body | Surgery | | 14.21 | 10.50 | 10.50 | | |
| 32160 | | Open chest heart massage | Surgery | | 9.30 | 6.31 | 6.31 | | |
| 32200 | | Drain, open, lung lesion | Surgery | | 15.29 | 10.04 | 10.04 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 32201 | | Drain, percut., lung lesion | Surgery | | 4.00 | 5.54 | 5.54 | | |
| 32215 | | Treat chest lining | Surgery | | 11.33 | 9.44 | 9.44 | | |
| 32220 | | Release of lung | Surgery | | 24.00 | 13.45 | 13.45 | | |
| 32225 | | Partial release of lung | Surgery | | 13.96 | 10.11 | 10.11 | | |
| 32310 | | Removal of chest lining | Surgery | | 13.44 | 9.75 | 9.75 | | |
| 32320 | | Free/remove chest lining | Surgery | | 24.00 | 13.18 | 13.18 | | |
| 32400 | | Needle biopsy chest lining | Surgery | | 1.76 | 1.86 | 0.57 | | |
| 32402 | | Open biopsy chest lining | Surgery | | 7.56 | 8.06 | 8.06 | | |
| 32405 | | Biopsy, lung or mediastinum | Surgery | | 1.93 | 2.38 | 0.65 | | |
| 32420 | | Puncture/clear lung | Surgery | | 2.18 | 0.85 | 0.85 | | |
| 32440 | | Removal of lung | Surgery | | 25.00 | 12.43 | 12.43 | | |
| 32442 | | Sleeve pneumonectomy | Surgery | | 26.24 | 14.04 | 14.04 | | |
| 32445 | | Removal of lung | Surgery | | 25.09 | 13.48 | 13.48 | | |
| 32480 | | Partial removal of lung | Surgery | | 23.75 | 12.47 | 12.47 | | |
| 32482 | | Bilobectomy | Surgery | | 25.00 | 12.50 | 12.50 | | |
| 32484 | | Segmentectomy | Surgery | | 20.69 | 10.93 | 10.93 | | |
| 32486 | | Sleeve lobectomy | Surgery | | 23.92 | 12.63 | 12.63 | | |
| 32488 | | Completion pneumonectomy | Surgery | | 25.71 | 13.20 | 13.20 | | |
| 32491 | | Lung volume reduction | Surgery | | 21.25 | 11.97 | 11.97 | | |
| 32500 | | Partial removal of lung | Surgery | | 22.00 | 11.79 | 11.79 | | |
| 32501 | | Repair bronchus add-on | Surgery | | 4.69 | 1.54 | 1.54 | | |
| 32520 | | Remove lung & revise chest | Surgery | | 21.68 | 10.87 | 10.87 | | |
| 32522 | | Remove lung & revise chest | Surgery | | 24.20 | 11.71 | 11.71 | | |
| 32525 | | Remove lung & revise chest | Surgery | | 26.50 | 12.42 | 12.42 | | |
| 32540 | | Removal of lung lesion | Surgery | | 14.64 | 9.12 | 9.12 | | |
| 32601 | | Thoracoscopy, diagnostic | Surgery | | 5.46 | 3.61 | 3.61 | | |
| 32602 | | Thoracoscopy, diagnostic | Surgery | | 5.96 | 3.76 | 3.76 | | |
| 32603 | | Thoracoscopy, diagnostic | Surgery | | 7.81 | 4.19 | 4.19 | | |
| 32604 | | Thoracoscopy, diagnostic | Surgery | | 8.78 | 4.74 | 4.74 | | |
| 32605 | | Thoracoscopy, diagnostic | Surgery | | 6.93 | 4.26 | 4.26 | | |
| 32606 | | Thoracoscopy, diagnostic | Surgery | | 8.40 | 4.57 | 4.57 | | |
| 32650 | | Thoracoscopy, surgical | Surgery | | 10.75 | 6.50 | 6.50 | | |
| 32651 | | Thoracoscopy, surgical | Surgery | | 12.91 | 7.05 | 7.05 | | |
| 32652 | | Thoracoscopy, surgical | Surgery | | 18.66 | 9.74 | 9.74 | | |
| 32653 | | Thoracoscopy, surgical | Surgery | | 12.87 | 6.78 | 6.78 | | |
| 32654 | | Thoracoscopy, surgical | Surgery | | 12.44 | 7.20 | 7.20 | | |
| 32655 | | Thoracoscopy, surgical | Surgery | | 13.10 | 7.07 | 7.07 | | |
| 32656 | | Thoracoscopy, surgical | Surgery | | 12.91 | 7.53 | 7.53 | | |
| 32657 | | Thoracoscopy, surgical | Surgery | | 13.65 | 7.42 | 7.42 | | |
| 32658 | | Thoracoscopy, surgical | Surgery | | 11.63 | 7.01 | 7.01 | | |
| 32659 | | Thoracoscopy, surgical | Surgery | | 11.59 | 7.12 | 7.12 | | |
| 32660 | | Thoracoscopy, surgical | Surgery | | 17.43 | 9.05 | 9.05 | | |
| 32661 | | Thoracoscopy, surgical | Surgery | | 13.25 | 7.47 | 7.47 | | |
| 32662 | | Thoracoscopy, surgical | Surgery | | 16.44 | 8.51 | 8.51 | | |
| 32663 | | Thoracoscopy, surgical | Surgery | | 18.47 | 10.22 | 10.22 | | |
| 32664 | | Thoracoscopy, surgical | Surgery | | 14.20 | 7.48 | 7.48 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 32665 | | Thoracoscopy, surgical | Surgery | | 15.54 | 8.02 | 8.02 | | |
| 32800 | | Repair lung hernia | Surgery | | 13.69 | 9.82 | 9.82 | | |
| 32810 | | Close chest after drainage | Surgery | | 13.05 | 10.08 | 10.08 | | |
| 32815 | | Close bronchial fistula | Surgery | | 23.15 | 13.56 | 13.56 | | |
| 32820 | | Reconstruct injured chest | Surgery | | 21.48 | 13.98 | 13.98 | | |
| 32851 | | Lung transplant, single | Surgery | | 38.63 | 20.19 | 20.19 | | |
| 32852 | | Lung transplant with bypass | Surgery | | 41.80 | 21.70 | 21.70 | | |
| 32853 | | Lung transplant, double | Surgery | | 47.81 | 23.60 | 23.60 | | |
| 32854 | | Lung transplant with bypass | Surgery | | 50.98 | 24.25 | 24.25 | | |
| 32900 | | Removal of rib(s) | Surgery | | 20.27 | 12.20 | 12.20 | | |
| 32905 | | Revise & repair chest wall | Surgery | | 20.75 | 12.57 | 12.57 | | |
| 32906 | | Revise & repair chest wall | Surgery | | 26.77 | 14.61 | 14.61 | | |
| 32940 | | Revision of lung | Surgery | | 19.43 | 11.85 | 11.85 | | |
| 32960 | | Therapeutic pneumothorax | Surgery | | 1.84 | 2.15 | 0.57 | | |
| 32997 | | Total lung lavage | Surgery | | 6.00 | 1.93 | 1.93 | | |
| 32999 | | Chest surgery procedure | Surgery | | | | | 44.67 | Misc |
| 33010 | | Drainage of heart sac | Surgery | | 2.24 | 0.98 | 0.98 | | |
| 33011 | | Repeat drainage of heart sac | Surgery | | 2.24 | 1.02 | 1.02 | | |
| 33015 | | Incision of heart sac | Surgery | | 6.80 | 4.52 | 4.52 | | |
| 33020 | | Incision of heart sac | Surgery | | 12.61 | 8.01 | 8.01 | | |
| 33025 | | Incision of heart sac | Surgery | | 12.09 | 7.88 | 7.88 | | |
| 33030 | | Partial removal of heart sac | Surgery | | 18.71 | 12.30 | 12.30 | | |
| 33031 | | Partial removal of heart sac | Surgery | | 21.79 | 13.57 | 13.57 | | |
| 33050 | | Removal of heart sac lesion | Surgery | | 14.36 | 10.31 | 10.31 | | |
| 33120 | | Removal of heart lesion | Surgery | | 24.56 | 16.05 | 16.05 | | |
| 33130 | | Removal of heart lesion | Surgery | | 21.39 | 12.74 | 12.74 | | |
| 33140 | | Heart revascularize (tmr) | Surgery | | 20.00 | 10.67 | 10.67 | | |
| 33141 | | Heart tmr w/other procedure | Surgery | | 4.84 | 1.57 | 1.57 | | |
| 33200 | | Insertion of heart pacemaker | Surgery | | 12.48 | 9.72 | 9.72 | | |
| 33201 | | Insertion of heart pacemaker | Surgery | | 10.18 | 9.71 | 9.71 | | |
| 33206 | | Insertion of heart pacemaker | Surgery | | 6.67 | 5.69 | 5.69 | | |
| 33207 | | Insertion of heart pacemaker | Surgery | | 8.04 | 6.23 | 6.23 | | |
| 33208 | | Insertion of heart pacemaker | Surgery | | 8.13 | 6.43 | 6.43 | | |
| 33210 | | Insertion of heart electrode | Surgery | | 3.30 | 1.28 | 1.28 | | |
| 33211 | | Insertion of heart electrode | Surgery | | 3.40 | 1.34 | 1.34 | | |
| 33212 | | Insertion of pulse generator | Surgery | | 5.52 | 4.62 | 4.62 | | |
| 33213 | | Insertion of pulse generator | Surgery | | 6.37 | 5.06 | 5.06 | | |
| 33214 | | Upgrade of pacemaker system | Surgery | | 7.75 | 6.19 | 6.19 | | |
| 33215 | | Reposition pacing-defib lead | Surgery | | 4.76 | 3.15 | 3.15 | | |
| 33216 | | Insert lead pace-defib, one | Surgery | | 5.78 | 5.32 | 5.32 | | |
| 33217 | | Insert lead pace-defib, dual | Surgery | | 5.75 | 5.58 | 5.58 | | |
| 33218 | | Repair lead pace-defib, one | Surgery | | 5.44 | 4.68 | 4.68 | | |
| 33220 | | Repair lead pace-defib, dual | Surgery | | 5.52 | 4.69 | 4.69 | | |
| 33222 | | Revise pocket, pacemaker | Surgery | | 4.96 | 4.08 | 4.08 | | |
| 33223 | | Revise pocket, pacing-defib | Surgery | | 6.46 | 5.41 | 5.41 | | |
| 33224 | | Insert pacing lead & connect | Surgery | | 9.05 | 3.92 | 3.92 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 33225 | | L ventric pacing lead add-on | Surgery | | 8.34 | 3.11 | 3.11 | | |
| 33226 | | Reposition l ventric lead | Surgery | | 8.69 | 3.79 | 3.79 | | |
| 33233 | | Removal of pacemaker system | Surgery | | 3.29 | 4.12 | 4.12 | | |
| 33234 | | Removal of pacemaker system | Surgery | | 7.82 | 5.66 | 5.66 | | |
| 33235 | | Removal pacemaker electrode | Surgery | | 9.40 | 6.50 | 6.50 | | |
| 33236 | | Remove electrode/thoracotomy | Surgery | | 12.60 | 9.38 | 9.38 | | |
| 33237 | | Remove electrode/thoracotomy | Surgery | | 13.71 | 9.78 | 9.78 | | |
| 33238 | | Remove electrode/thoracotomy | Surgery | | 15.22 | 9.27 | 9.27 | | |
| 33240 | | Insert pulse generator | Surgery | | 7.60 | 5.77 | 5.77 | | |
| 33241 | | Remove pulse generator | Surgery | | 3.24 | 3.71 | 3.71 | | |
| 33243 | | Remove eltrd/thoracotomy | Surgery | | 22.64 | 10.90 | 10.90 | | |
| 33244 | | Remove eltrd, transven | Surgery | | 13.76 | 8.43 | 8.43 | | |
| 33245 | | Insert epic eltrd pace-defib | Surgery | | 14.30 | 11.02 | 11.02 | | |
| 33246 | | Insert epic eltrd/generator | Surgery | | 20.71 | 14.36 | 14.36 | | |
| 33249 | | Eltrd/insert pace-defib | Surgery | | 14.23 | 9.27 | 9.27 | | |
| 33250 | | Ablate heart dysrhythm focus | Surgery | | 21.85 | 14.42 | 14.42 | | |
| 33251 | | Ablate heart dysrhythm focus | Surgery | | 24.88 | 14.53 | 14.53 | | |
| 33253 | | Reconstruct atria | Surgery | | 31.06 | 16.79 | 16.79 | | |
| 33261 | | Ablate heart dysrhythm focus | Surgery | | 24.88 | 14.79 | 14.79 | | |
| 33282 | | Implant pat-active ht record | Surgery | | 4.17 | 4.91 | 4.91 | | |
| 33284 | | Remove pat-active ht record | Surgery | | 2.50 | 4.39 | 4.39 | | |
| 33300 | | Repair of heart wound | Surgery | | 17.92 | 12.08 | 12.08 | | |
| 33305 | | Repair of heart wound | Surgery | | 21.44 | 13.53 | 13.53 | | |
| 33310 | | Exploratory heart surgery | Surgery | | 18.51 | 12.43 | 12.43 | | |
| 33315 | | Exploratory heart surgery | Surgery | | 22.37 | 13.74 | 13.74 | | |
| 33320 | | Repair major blood vessel(s) | Surgery | | 16.79 | 11.44 | 11.44 | | |
| 33321 | | Repair major vessel | Surgery | | 20.20 | 12.72 | 12.72 | | |
| 33322 | | Repair major blood vessel(s) | Surgery | | 20.62 | 13.32 | 13.32 | | |
| 33330 | | Insert major vessel graft | Surgery | | 21.43 | 12.93 | 12.93 | | |
| 33332 | | Insert major vessel graft | Surgery | | 23.98 | 13.18 | 13.18 | | |
| 33335 | | Insert major vessel graft | Surgery | | 30.01 | 16.23 | 16.23 | | |
| 33400 | | Repair of aortic valve | Surgery | | 28.50 | 15.00 | 15.00 | | |
| 33401 | | Valvuloplasty, open | Surgery | | 23.91 | 13.33 | 13.33 | | |
| 33403 | | Valvuloplasty, w/cp bypass | Surgery | | 24.89 | 13.71 | 13.71 | | |
| 33404 | | Prepare heart-aorta conduit | Surgery | | 28.54 | 13.94 | 13.94 | | |
| 33405 | | Replacement of aortic valve | Surgery | | 35.00 | 17.52 | 17.52 | | |
| 33406 | | Replacement of aortic valve | Surgery | | 37.50 | 18.31 | 18.31 | | |
| 33410 | | Replacement of aortic valve | Surgery | | 32.46 | 16.00 | 16.00 | | |
| 33411 | | Replacement of aortic valve | Surgery | | 36.25 | 17.97 | 17.97 | | |
| 33412 | | Replacement of aortic valve | Surgery | | 42.00 | 19.77 | 19.77 | | |
| 33413 | | Replacement of aortic valve | Surgery | | 43.50 | 20.10 | 20.10 | | |
| 33414 | | Repair of aortic valve | Surgery | | 30.35 | 17.98 | 17.98 | | |
| 33415 | | Revision, subvalvular tissue | Surgery | | 27.15 | 16.05 | 16.05 | | |
| 33416 | | Revise ventricle muscle | Surgery | | 30.35 | 16.41 | 16.41 | | |
| 33417 | | Repair of aortic valve | Surgery | | 28.53 | 17.51 | 17.51 | | |
| 33420 | | Revision of mitral valve | Surgery | | 22.70 | 10.12 | 10.12 | | |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology.

TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 33422 | | Revision of mitral valve | Surgery | | 25.94 | 13.03 | 13.03 | | |
| 33425 | | Repair of mitral valve | Surgery | | 27.00 | 12.58 | 12.58 | | |
| 33426 | | Repair of mitral valve | Surgery | | 33.00 | 16.42 | 16.42 | | |
| 33427 | | Repair of mitral valve | Surgery | | 40.00 | 18.59 | 18.59 | | |
| 33430 | | Replacement of mitral valve | Surgery | | 33.50 | 16.54 | 16.54 | | |
| 33460 | | Revision of tricuspid valve | Surgery | | 23.60 | 14.13 | 14.13 | | |
| 33463 | | Valvuloplasty, tricuspid | Surgery | | 25.62 | 14.87 | 14.87 | | |
| 33464 | | Valvuloplasty, tricuspid | Surgery | | 27.33 | 15.47 | 15.47 | | |
| 33465 | | Replace tricuspid valve | Surgery | | 28.79 | 15.80 | 15.80 | | |
| 33468 | | Revision of tricuspid valve | Surgery | | 30.12 | 20.10 | 20.10 | | |
| 33470 | | Revision of pulmonary valve | Surgery | | 20.81 | 13.67 | 13.67 | | |
| 33471 | | Valvotomy, pulmonary valve | Surgery | | 22.25 | 12.72 | 12.72 | | |
| 33472 | | Revision of pulmonary valve | Surgery | | 22.25 | 15.25 | 15.25 | | |
| 33474 | | Revision of pulmonary valve | Surgery | | 23.04 | 13.42 | 13.42 | | |
| 33475 | | Replacement, pulmonary valve | Surgery | | 33.00 | 18.87 | 18.87 | | |
| 33476 | | Revision of heart chamber | Surgery | | 25.77 | 14.07 | 14.07 | | |
| 33478 | | Revision of heart chamber | Surgery | | 26.74 | 15.15 | 15.15 | | |
| 33496 | | Repair, prosth valve clot | Surgery | | 27.25 | 17.18 | 17.18 | | |
| 33500 | | Repair heart vessel fistula | Surgery | | 25.55 | 13.88 | 13.88 | | |
| 33501 | | Repair heart vessel fistula | Surgery | | 17.78 | 10.55 | 10.55 | | |
| 33502 | | Coronary artery correction | Surgery | | 21.04 | 17.04 | 17.04 | | |
| 33503 | | Coronary artery graft | Surgery | | 21.78 | 14.05 | 14.05 | | |
| 33504 | | Coronary artery graft | Surgery | | 24.66 | 16.92 | 16.92 | | |
| 33505 | | Repair artery w/tunnel | Surgery | | 26.84 | 18.36 | 18.36 | | |
| 33506 | | Repair artery, translocation | Surgery | | 35.50 | 19.69 | 19.69 | | |
| 33508 | | Endoscopic vein harvest | Surgery | | 0.31 | 0.11 | 0.11 | | |
| 33510 | | CABG, vein, single | Surgery | | 29.00 | 15.52 | 15.52 | | |
| 33511 | | CABG, vein, two | Surgery | | 30.00 | 16.21 | 16.21 | | |
| 33512 | | CABG, vein, three | Surgery | | 31.80 | 16.75 | 16.75 | | |
| 33513 | | CABG, vein, four | Surgery | | 32.00 | 16.91 | 16.91 | | |
| 33514 | | CABG, vein, five | Surgery | | 32.75 | 17.16 | 17.16 | | |
| 33516 | | Cabg, vein, six or more | Surgery | | 35.00 | 17.91 | 17.91 | | |
| 33517 | | CABG, artery-vein, single | Surgery | | 2.57 | 0.84 | 0.84 | | |
| 33518 | | CABG, artery-vein, two | Surgery | | 4.85 | 1.58 | 1.58 | | |
| 33519 | | CABG, artery-vein, three | Surgery | | 7.12 | 2.31 | 2.31 | | |
| 33521 | | CABG, artery-vein, four | Surgery | | 9.40 | 3.05 | 3.05 | | |
| 33522 | | CABG, artery-vein, five | Surgery | | 11.67 | 3.79 | 3.79 | | |
| 33523 | | Cabg, art-vein, six or more | Surgery | | 13.95 | 4.50 | 4.50 | | |
| 33530 | | Coronary artery, bypass/reop | Surgery | | 5.86 | 1.90 | 1.90 | | |
| 33533 | | CABG, arterial, single | Surgery | | 30.00 | 15.67 | 15.67 | | |
| 33534 | | CABG, arterial, two | Surgery | | 32.20 | 16.81 | 16.81 | | |
| 33535 | | CABG, arterial, three | Surgery | | 34.50 | 17.30 | 17.30 | | |
| 33536 | | Cabg, arterial, four or more | Surgery | | 37.50 | 17.63 | 17.63 | | |
| 33542 | | Removal of heart lesion | Surgery | | 28.85 | 17.43 | 17.43 | | |
| 33545 | | Repair of heart damage | Surgery | | 36.78 | 20.01 | 20.01 | | |
| 33572 | | Open coronary endarterectomy | Surgery | | 4.45 | 1.44 | 1.44 | | |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology.

TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 33600 | | Closure of valve | Surgery | | 29.51 | 16.89 | 16.89 | | |
| 33602 | | Closure of valve | Surgery | | 28.54 | 16.43 | 16.43 | | |
| 33606 | | Anastomosis/artery-aorta | Surgery | | 30.74 | 18.23 | 18.23 | | |
| 33608 | | Repair anomaly w/conduit | Surgery | | 31.09 | 17.62 | 17.62 | | |
| 33610 | | Repair by enlargement | Surgery | | 30.61 | 18.66 | 18.66 | | |
| 33611 | | Repair double ventricle | Surgery | | 34.00 | 19.21 | 19.21 | | |
| 33612 | | Repair double ventricle | Surgery | | 35.00 | 19.97 | 19.97 | | |
| 33615 | | Repair, modified fontan | Surgery | | 34.00 | 18.80 | 18.80 | | |
| 33617 | | Repair single ventricle | Surgery | | 37.00 | 21.91 | 21.91 | | |
| 33619 | | Repair single ventricle | Surgery | | 45.00 | 27.24 | 27.24 | | |
| 33641 | | Repair heart septum defect | Surgery | | 21.39 | 11.95 | 11.95 | | |
| 33645 | | Revision of heart veins | Surgery | | 24.82 | 14.27 | 14.27 | | |
| 33647 | | Repair heart septum defects | Surgery | | 28.73 | 17.65 | 17.65 | | |
| 33660 | | Repair of heart defects | Surgery | | 30.00 | 17.37 | 17.37 | | |
| 33665 | | Repair of heart defects | Surgery | | 28.60 | 17.67 | 17.67 | | |
| 33670 | | Repair of heart chambers | Surgery | | 35.00 | 16.19 | 16.19 | | |
| 33681 | | Repair heart septum defect | Surgery | | 30.61 | 18.07 | 18.07 | | |
| 33684 | | Repair heart septum defect | Surgery | | 29.65 | 16.93 | 16.93 | | |
| 33688 | | Repair heart septum defect | Surgery | | 30.62 | 14.40 | 14.40 | | |
| 33690 | | Reinforce pulmonary artery | Surgery | | 19.55 | 13.65 | 13.65 | | |
| 33692 | | Repair of heart defects | Surgery | | 30.75 | 17.47 | 17.47 | | |
| 33694 | | Repair of heart defects | Surgery | | 34.00 | 18.41 | 18.41 | | |
| 33697 | | Repair of heart defects | Surgery | | 36.00 | 19.61 | 19.61 | | |
| 33702 | | Repair of heart defects | Surgery | | 26.54 | 16.85 | 16.85 | | |
| 33710 | | Repair of heart defects | Surgery | | 29.71 | 18.23 | 18.23 | | |
| 33720 | | Repair of heart defect | Surgery | | 26.56 | 16.34 | 16.34 | | |
| 33722 | | Repair of heart defect | Surgery | | 28.41 | 17.91 | 17.91 | | |
| 33730 | | Repair heart-vein defect(s) | Surgery | | 34.25 | 18.02 | 18.02 | | |
| 33732 | | Repair heart-vein defect | Surgery | | 28.18 | 17.20 | 17.20 | | |
| 33735 | | Revision of heart chamber | Surgery | | 21.39 | 12.25 | 12.25 | | |
| 33736 | | Revision of heart chamber | Surgery | | 23.52 | 15.56 | 15.56 | | |
| 33737 | | Revision of heart chamber | Surgery | | 21.76 | 14.86 | 14.86 | | |
| 33750 | | Major vessel shunt | Surgery | | 21.41 | 13.38 | 13.38 | | |
| 33755 | | Major vessel shunt | Surgery | | 21.79 | 12.25 | 12.25 | | |
| 33762 | | Major vessel shunt | Surgery | | 21.79 | 13.40 | 13.40 | | |
| 33764 | | Major vessel shunt & graft | Surgery | | 21.79 | 13.15 | 13.15 | | |
| 33766 | | Major vessel shunt | Surgery | | 22.76 | 15.33 | 15.33 | | |
| 33767 | | Major vessel shunt | Surgery | | 24.50 | 15.19 | 15.19 | | |
| 33770 | | Repair great vessels defect | Surgery | | 37.00 | 17.97 | 17.97 | | |
| 33771 | | Repair great vessels defect | Surgery | | 34.65 | 14.95 | 14.95 | | |
| 33774 | | Repair great vessels defect | Surgery | | 30.98 | 16.58 | 16.58 | | |
| 33775 | | Repair great vessels defect | Surgery | | 32.20 | 16.92 | 16.92 | | |
| 33776 | | Repair great vessels defect | Surgery | | 34.04 | 18.41 | 18.41 | | |
| 33777 | | Repair great vessels defect | Surgery | | 33.46 | 17.41 | 17.41 | | |
| 33778 | | Repair great vessels defect | Surgery | | 40.00 | 20.72 | 20.72 | | |
| 33779 | | Repair great vessels defect | Surgery | | 36.21 | 18.16 | 18.16 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 33780 | | Repair great vessels defect | Surgery | | 41.75 | 22.40 | 22.40 | | |
| 33781 | | Repair great vessels defect | Surgery | | 36.45 | 15.41 | 15.41 | | |
| 33786 | | Repair arterial trunk | Surgery | | 39.00 | 20.17 | 20.17 | | |
| 33788 | | Revision of pulmonary artery | Surgery | | 26.62 | 15.38 | 15.38 | | |
| 33800 | | Aortic suspension | Surgery | | 16.24 | 12.45 | 12.45 | | |
| 33802 | | Repair vessel defect | Surgery | | 17.66 | 13.02 | 13.02 | | |
| 33803 | | Repair vessel defect | Surgery | | 19.60 | 13.51 | 13.51 | | |
| 33813 | | Repair septal defect | Surgery | | 20.65 | 14.94 | 14.94 | | |
| 33814 | | Repair septal defect | Surgery | | 25.77 | 16.47 | 16.47 | | |
| 33820 | | Revise major vessel | Surgery | | 16.29 | 11.45 | 11.45 | | |
| 33822 | | Revise major vessel | Surgery | | 17.32 | 13.84 | 13.84 | | |
| 33824 | | Revise major vessel | Surgery | | 19.52 | 12.63 | 12.63 | | |
| 33840 | | Remove aorta constriction | Surgery | | 20.63 | 18.95 | 13.95 | | |
| 33845 | | Remove aorta constriction | Surgery | | 22.12 | 15.13 | 15.13 | | |
| 33851 | | Remove aorta constriction | Surgery | | 21.27 | 14.80 | 14.80 | | |
| 33852 | | Repair septal defect | Surgery | | 23.71 | 15.34 | 15.34 | | |
| 33853 | | Repair septal defect | Surgery | | 31.72 | 18.90 | 18.90 | | |
| 33860 | | Ascending aortic graft | Surgery | | 38.00 | 18.90 | 18.90 | | |
| 33861 | | Ascending aortic graft | Surgery | | 42.00 | 20.18 | 20.18 | | |
| 33863 | | Ascending aortic graft | Surgery | | 45.00 | 21.14 | 21.14 | | |
| 33870 | | Transverse aortic arch graft | Surgery | | 44.00 | 20.83 | 20.83 | | |
| 33875 | | Thoracic aortic graft | Surgery | | 33.06 | 17.10 | 17.10 | | |
| 33877 | | Thoracoabdominal graft | Surgery | | 42.60 | 21.75 | 21.75 | | |
| 33910 | | Remove lung artery emboli | Surgery | | 24.59 | 14.28 | 14.28 | | |
| 33915 | | Remove lung artery emboli | Surgery | | 21.02 | 12.37 | 12.37 | | |
| 33916 | | Surgery of great vessel | Surgery | | 25.83 | 14.94 | 14.94 | | |
| 33917 | | Repair pulmonary artery | Surgery | | 24.50 | 15.94 | 15.94 | | |
| 33918 | | Repair pulmonary atresia | Surgery | | 26.45 | 15.59 | 15.59 | | |
| 33919 | | Repair pulmonary atresia | Surgery | | 40.00 | 21.68 | 21.68 | | |
| 33920 | | Repair pulmonary atresia | Surgery | | 31.95 | 16.90 | 16.90 | | |
| 33922 | | Transect pulmonary artery | Surgery | | 23.52 | 14.38 | 14.38 | | |
| 33924 | | Remove pulmonary shunt | Surgery | | 5.50 | 1.82 | 1.82 | | |
| 33935 | | Transplantation, heart/lung | Surgery | | 60.96 | 27.89 | 27.89 | | |
| 33940 | | Removal of donor heart | Surgery | | | | | 46.59 | PHCS |
| 33945 | | Transplantation of heart | Surgery | | 42.10 | 21.79 | 21.79 | | |
| 33960 | | External circulation assist | Surgery | | 19.36 | 4.96 | 4.96 | | |
| 33961 | | External circulation assist | Surgery | | 10.93 | 3.65 | 3.65 | | |
| 33967 | | Insert ia percut device | Surgery | | 4.85 | 1.90 | 1.87 | | |
| 33968 | | Remove aortic assist device | Surgery | | 0.64 | 0.23 | 0.23 | | |
| 33970 | | Aortic circulation assist | Surgery | | 6.75 | 2.29 | 2.29 | | |
| 33971 | | Aortic circulation assist | Surgery | | 9.69 | 8.18 | 8.18 | | |
| 33973 | | Insert balloon device | Surgery | | 9.76 | 3.31 | 3.31 | | |
| 33974 | | Remove intra-aortic balloon | Surgery | | 14.41 | 10.98 | 10.98 | | |
| 33975 | | Implant ventricular device | Surgery | | 21.00 | 6.28 | 6.28 | | |
| 33976 | | Implant ventricular device | Surgery | | 23.00 | 7.52 | 7.52 | | |
| 33977 | | Remove ventricular device | Surgery | | 19.29 | 10.50 | 10.50 | | |

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### TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 33978 | | Remove ventricular device | Surgery | | 21.73 | 11.37 | 11.37 | | |
| 33979 | | Insert intracorporeal device | Surgery | | 46.00 | 17.88 | 17.88 | | |
| 33980 | | Remove intracorporeal device | Surgery | | 56.25 | 26.47 | 26.47 | | |
| 33999 | | Cardiac surgery procedure | Surgery | | | | | 20.99 | Misc |
| 34001 | | Removal of artery clot | Surgery | | 12.91 | 5.85 | 5.85 | | |
| 34051 | | Removal of artery clot | Surgery | | 15.21 | 6.91 | 6.91 | | |
| 34101 | | Removal of artery clot | Surgery | | 10.00 | 4.71 | 4.71 | | |
| 34111 | | Removal of arm artery clot | Surgery | | 10.00 | 4.77 | 4.77 | | |
| 34151 | | Removal of artery clot | Surgery | | 25.00 | 10.24 | 10.24 | | |
| 34201 | | Removal of artery clot | Surgery | | 10.03 | 5.03 | 5.03 | | |
| 34203 | | Removal of leg artery clot | Surgery | | 16.50 | 7.46 | 7.46 | | |
| 34401 | | Removal of vein clot | Surgery | | 25.00 | 10.05 | 10.05 | | |
| 34421 | | Removal of vein clot | Surgery | | 12.00 | 5.88 | 5.88 | | |
| 34451 | | Removal of vein clot | Surgery | | 27.00 | 10.76 | 10.76 | | |
| 34471 | | Removal of vein clot | Surgery | | 10.18 | 4.93 | 4.93 | | |
| 34490 | | Removal of vein clot | Surgery | | 9.86 | 6.12 | 6.12 | | |
| 34501 | | Repair valve, femoral vein | Surgery | | 16.00 | 9.25 | 9.25 | | |
| 34502 | | Reconstruct vena cava | Surgery | | 26.95 | 10.98 | 10.98 | | |
| 34510 | | Transposition of vein valve | Surgery | | 18.95 | 10.27 | 10.27 | | |
| 34520 | | Cross-over vein graft | Surgery | | 17.95 | 9.30 | 9.30 | | |
| 34530 | | Leg vein fusion | Surgery | | 16.64 | 8.74 | 8.74 | | |
| 34800 | | Endovasc abdo repair w/tube | Surgery | | 20.75 | 8.94 | 8.94 | | |
| 34802 | | Endovasc abdo repr w/device | Surgery | | 23.00 | 9.69 | 9.69 | | |
| 34804 | | Endovasc abdo repr w/device | Surgery | | 23.00 | 9.69 | 9.69 | | |
| 34808 | | Endovasc abdo occlud device | Surgery | | 4.13 | 1.40 | 1.40 | | |
| 34812 | | Xpose for endoprosth, femorl | Surgery | | 6.75 | 2.29 | 2.29 | | |
| 34813 | | Femoral endovas graft add-on | Surgery | | 4.80 | 1.60 | 1.60 | | |
| 34820 | | Xpose for endoprosth, iliac | Surgery | | 9.75 | 3.30 | 3.30 | | |
| 34825 | | Endovasc extend prosth, init | Surgery | | 12.00 | 5.95 | 5.95 | | |
| 34826 | | Endovasc exten prosth, addl | Surgery | | 4.13 | 1.41 | 1.41 | | |
| 34830 | | Open aortic tube prosth repr | Surgery | | 32.59 | 13.31 | 13.31 | | |
| 34831 | | Open aortoiliac prosth repr | Surgery | | 35.34 | 11.68 | 11.68 | | |
| 34832 | | Open aortofemor prosth repr | Surgery | | 35.34 | 14.38 | 14.38 | | |
| 34833 | | Xpose for endoprosth, iliac | Surgery | | 12.00 | 4.98 | 4.98 | | |
| 34834 | | Xpose, endoprosth, brachial | Surgery | | 5.35 | 2.48 | 2.48 | | |
| 34900 | | Endovasc iliac repr w/graft | Surgery | | 16.38 | 8.24 | 8.24 | | |
| 35001 | | Repair defect of artery | Surgery | | 19.64 | 8.39 | 8.39 | | |
| 35002 | | Repair artery rupture, neck | Surgery | | 21.00 | 9.07 | 9.07 | | |
| 35005 | | Repair defect of artery | Surgery | | 18.12 | 7.79 | 7.79 | | |
| 35011 | | Repair defect of artery | Surgery | | 18.00 | 7.40 | 7.40 | | |
| 35013 | | Repair artery rupture, arm | Surgery | | 22.00 | 8.74 | 8.74 | | |
| 35021 | | Repair defect of artery | Surgery | | 19.65 | 8.61 | 8.61 | | |
| 35022 | | Repair artery rupture, chest | Surgery | | 23.18 | 9.43 | 9.43 | | |
| 35045 | | Repair defect of arm artery | Surgery | | 17.57 | 8.61 | 8.61 | | |
| 35081 | | Repair defect of artery | Surgery | | 28.01 | 11.65 | 11.65 | | |
| 35082 | | Repair artery rupture, aorta | Surgery | | 38.50 | 14.60 | 14.60 | | |

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### TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 35091 | | Repair defect of artery | Surgery | | 35.40 | 13.91 | 13.91 | | |
| 35092 | | Repair artery rupture, aorta | Surgery | | 45.00 | 16.93 | 16.93 | | |
| 35102 | | Repair defect of artery | Surgery | | 30.76 | 12.33 | 12.33 | | |
| 35103 | | Repair artery rupture, groin | Surgery | | 40.50 | 15.39 | 15.39 | | |
| 35111 | | Repair defect of artery | Surgery | | 25.00 | 10.18 | 10.18 | | |
| 35112 | | Repair artery rupture,spleen | Surgery | | 30.00 | 11.65 | 11.65 | | |
| 35121 | | Repair defect of artery | Surgery | | 30.00 | 12.07 | 12.07 | | |
| 35122 | | Repair artery rupture, belly | Surgery | | 35.00 | 13.46 | 13.46 | | |
| 35131 | | Repair defect of artery | Surgery | | 25.00 | 10.38 | 10.38 | | |
| 35132 | | Repair artery rupture, groin | Surgery | | 30.00 | 11.82 | 11.82 | | |
| 35141 | | Repair defect of artery | Surgery | | 20.00 | 8.50 | 8.50 | | |
| 35142 | | Repair artery rupture, thigh | Surgery | | 23.30 | 9.56 | 9.56 | | |
| 35151 | | Repair defect of artery | Surgery | | 22.64 | 9.54 | 9.54 | | |
| 35152 | | Repair artery rupture, knee | Surgery | | 25.62 | 10.42 | 10.42 | | |
| 35161 | | Repair defect of artery | Surgery | | 18.76 | 8.70 | 8.70 | | |
| 35162 | | Repair artery rupture | Surgery | | 19.78 | 8.86 | 8.86 | | |
| 35180 | | Repair blood vessel lesion | Surgery | | 13.62 | 6.35 | 6.35 | | |
| 35182 | | Repair blood vessel lesion | Surgery | | 30.00 | 12.30 | 12.30 | | |
| 35184 | | Repair blood vessel lesion | Surgery | | 18.00 | 7.79 | 7.79 | | |
| 35188 | | Repair blood vessel lesion | Surgery | | 14.28 | 6.58 | 6.58 | | |
| 35189 | | Repair blood vessel lesion | Surgery | | 28.00 | 11.46 | 11.46 | | |
| 35190 | | Repair blood vessel lesion | Surgery | | 12.75 | 5.88 | 5.88 | | |
| 35201 | | Repair blood vessel lesion | Surgery | | 16.14 | 7.02 | 7.02 | | |
| 35206 | | Repair blood vessel lesion | Surgery | | 13.25 | 7.51 | 7.51 | | |
| 35207 | | Repair blood vessel lesion | Surgery | | 10.15 | 9.76 | 9.76 | | |
| 35211 | | Repair blood vessel lesion | Surgery | | 22.12 | 13.77 | 13.77 | | |
| 35216 | | Repair blood vessel lesion | Surgery | | 18.75 | 11.67 | 11.67 | | |
| 35221 | | Repair blood vessel lesion | Surgery | | 24.39 | 10.09 | 10.09 | | |
| 35226 | | Repair blood vessel lesion | Surgery | | 14.50 | 8.95 | 8.95 | | |
| 35231 | | Repair blood vessel lesion | Surgery | | 20.00 | 9.24 | 9.24 | | |
| 35236 | | Repair blood vessel lesion | Surgery | | 17.11 | 8.89 | 8.89 | | |
| 35241 | | Repair blood vessel lesion | Surgery | | 23.12 | 14.42 | 14.42 | | |
| 35246 | | Repair blood vessel lesion | Surgery | | 26.45 | 14.23 | 14.23 | | |
| 35251 | | Repair blood vessel lesion | Surgery | | 30.20 | 12.03 | 12.03 | | |
| 35256 | | Repair blood vessel lesion | Surgery | | 18.36 | 9.43 | 9.43 | | |
| 35261 | | Repair blood vessel lesion | Surgery | | 17.80 | 7.43 | 7.43 | | |
| 35266 | | Repair blood vessel lesion | Surgery | | 14.91 | 7.98 | 7.98 | | |
| 35271 | | Repair blood vessel lesion | Surgery | | 22.12 | 13.57 | 13.57 | | |
| 35276 | | Repair blood vessel lesion | Surgery | | 24.25 | 13.84 | 13.84 | | |
| 35281 | | Repair blood vessel lesion | Surgery | | 28.00 | 11.41 | 11.41 | | |
| 35286 | | Repair blood vessel lesion | Surgery | | 16.16 | 8.73 | 8.73 | | |
| 35301 | | Rechanneling of artery | Surgery | | 18.70 | 8.26 | 8.26 | | |
| 35311 | | Rechanneling of artery | Surgery | | 27.00 | 10.92 | 10.92 | | |
| 35321 | | Rechanneling of artery | Surgery | | 16.00 | 6.72 | 6.72 | | |
| 35331 | | Rechanneling of artery | Surgery | | 26.20 | 10.82 | 10.82 | | |
| 35341 | | Rechanneling of artery | Surgery | | 25.11 | 10.41 | 10.41 | | |

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TABLE G.—PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 35351 | | Rechanneling of artery | Surgery | | 23.00 | 9.63 | 9.63 | | |
| 35355 | | Rechanneling of artery | Surgery | | 18.50 | 8.12 | 8.12 | | |
| 35361 | | Rechanneling of artery | Surgery | | 28.20 | 11.37 | 11.37 | | |
| 35363 | | Rechanneling of artery | Surgery | | 30.20 | 12.12 | 12.12 | | |
| 35371 | | Rechanneling of artery | Surgery | | 14.72 | 6.58 | 6.58 | | |
| 35372 | | Rechanneling of artery | Surgery | | 18.00 | 7.73 | 7.73 | | |
| 35381 | | Rechanneling of artery | Surgery | | 15.81 | 7.21 | 7.21 | | |
| 35390 | | Reoperation, carotid add-on | Surgery | | 3.19 | 1.07 | 1.07 | | |
| 35400 | | Angioscopy | Surgery | | 3.00 | 1.05 | 1.05 | | |
| 35450 | | Repair arterial blockage | Surgery | | 10.07 | 4.02 | 4.02 | | |
| 35452 | | Repair arterial blockage | Surgery | | 6.91 | 3.09 | 3.09 | | |
| 35454 | | Repair arterial blockage | Surgery | | 6.04 | 2.77 | 2.77 | | |
| 35456 | | Repair arterial blockage | Surgery | | 7.35 | 3.21 | 3.21 | | |
| 35458 | | Repair arterial blockage | Surgery | | 9.49 | 3.92 | 3.92 | | |
| 35459 | | Repair arterial blockage | Surgery | | 8.63 | 3.59 | 3.59 | | |
| 35460 | | Repair venous blockage | Surgery | | 6.04 | 2.63 | 2.63 | | |
| 35470 | | Repair arterial blockage | Surgery | | 8.63 | 3.89 | 3.89 | | |
| 35471 | | Repair arterial blockage | Surgery | | 10.07 | 4.53 | 4.53 | | |
| 35472 | | Repair arterial blockage | Surgery | | 6.91 | 3.26 | 3.26 | | |
| 35473 | | Repair arterial blockage | Surgery | | 6.04 | 2.95 | 2.95 | | |
| 35474 | | Repair arterial blockage | Surgery | | 7.36 | 2.94 | 2.94 | | |
| 35475 | | Repair arterial blockage | Surgery | | 9.49 | 4.12 | 4.12 | | |
| 35476 | | Repair venous blockage | Surgery | | 6.04 | 2.88 | 2.88 | | |
| 35480 | | Atherectomy, open | Surgery | | 11.08 | 4.50 | 4.50 | | |
| 35481 | | Atherectomy, open | Surgery | | 7.61 | 3.38 | 3.38 | | |
| 35482 | | Atherectomy, open | Surgery | | 6.65 | 3.04 | 3.04 | | |
| 35483 | | Atherectomy, open | Surgery | | 8.10 | 3.47 | 3.47 | | |
| 35484 | | Atherectomy, open | Surgery | | 10.44 | 4.19 | 4.19 | | |
| 35485 | | Atherectomy, open | Surgery | | 9.49 | 4.02 | 4.02 | | |
| 35490 | | Atherectomy, percutaneous | Surgery | | 11.08 | 4.80 | 4.80 | | |
| 35491 | | Atherectomy, percutaneous | Surgery | | 7.61 | 3.32 | 3.32 | | |
| 35492 | | Atherectomy, percutaneous | Surgery | | 6.65 | 3.20 | 3.20 | | |
| 35493 | | Atherectomy, percutaneous | Surgery | | 8.10 | 3.86 | 3.86 | | |
| 35494 | | Atherectomy, percutaneous | Surgery | | 10.44 | 4.46 | 4.46 | | |
| 35495 | | Atherectomy, percutaneous | Surgery | | 9.49 | 4.46 | 4.46 | | |
| 35500 | | Harvest vein for bypass | Surgery | | 6.45 | 2.07 | 2.07 | | |
| 35501 | | Artery bypass graft | Surgery | | 19.19 | 7.43 | 7.43 | | |
| 35506 | | Artery bypass graft | Surgery | | 19.67 | 8.13 | 8.13 | | |
| 35507 | | Artery bypass graft | Surgery | | 19.67 | 8.09 | 8.09 | | |
| 35508 | | Artery bypass graft | Surgery | | 18.65 | 7.85 | 7.85 | | |
| 35509 | | Artery bypass graft | Surgery | | 18.07 | 7.54 | 7.54 | | |
| 35511 | | Artery bypass graft | Surgery | | 21.20 | 8.69 | 8.69 | | |
| 35515 | | Artery bypass graft | Surgery | | 18.65 | 7.93 | 7.93 | | |
| 35516 | | Artery bypass graft | Surgery | | 16.32 | 5.80 | 5.80 | | |
| 35518 | | Artery bypass graft | Surgery | | 21.20 | 8.49 | 8.49 | | |
| 35521 | | Artery bypass graft | Surgery | | 22.20 | 9.33 | 9.33 | | |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology.

TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 35526 | | Artery bypass graft | Surgery | | 29.95 | 12.00 | 12.00 | | |
| 35531 | | Artery bypass graft | Surgery | | 36.20 | 14.13 | 14.13 | | |
| 35533 | | Artery bypass graft | Surgery | | 28.00 | 11.36 | 11.36 | | |
| 35536 | | Artery bypass graft | Surgery | | 31.70 | 12.58 | 12.58 | | |
| 35541 | | Artery bypass graft | Surgery | | 25.80 | 10.72 | 10.72 | | |
| 35546 | | Artery bypass graft | Surgery | | 25.54 | 10.48 | 10.48 | | |
| 35548 | | Artery bypass graft | Surgery | | 21.57 | 9.06 | 9.06 | | |
| 35549 | | Artery bypass graft | Surgery | | 23.35 | 9.81 | 9.81 | | |
| 35551 | | Artery bypass graft | Surgery | | 26.67 | 10.89 | 10.89 | | |
| 35556 | | Artery bypass graft | Surgery | | 21.76 | 9.24 | 9.24 | | |
| 35558 | | Artery bypass graft | Surgery | | 21.20 | 8.99 | 8.99 | | |
| 35560 | | Artery bypass graft | Surgery | | 32.00 | 12.78 | 12.78 | | |
| 35563 | | Artery bypass graft | Surgery | | 24.20 | 10.09 | 10.09 | | |
| 35565 | | Artery bypass graft | Surgery | | 23.20 | 9.71 | 9.71 | | |
| 35566 | | Artery bypass graft | Surgery | | 26.92 | 11.67 | 11.67 | | |
| 35571 | | Artery bypass graft | Surgery | | 24.06 | 11.90 | 11.90 | | |
| 35572 | | Harvest femoropopliteal vein | Surgery | | 6.82 | 2.57 | 2.57 | | |
| 35582 | | Vein bypass graft | Surgery | | 27.13 | 11.09 | 11.09 | | |
| 35583 | | Vein bypass graft | Surgery | | 22.37 | 10.39 | 10.39 | | |
| 35585 | | Vein bypass graft | Surgery | | 28.39 | 14.29 | 14.29 | | |
| 35587 | | Vein bypass graft | Surgery | | 24.75 | 12.58 | 12.58 | | |
| 35600 | | Harvest artery for cabg | Surgery | | 4.95 | 1.62 | 1.62 | | |
| 35601 | | Artery bypass graft | Surgery | | 17.50 | 7.33 | 7.33 | | |
| 35606 | | Artery bypass graft | Surgery | | 18.71 | 7.75 | 7.75 | | |
| 35612 | | Artery bypass graft | Surgery | | 15.76 | 6.72 | 6.72 | | |
| 35616 | | Artery bypass graft | Surgery | | 15.70 | 6.78 | 6.78 | | |
| 35621 | | Artery bypass graft | Surgery | | 20.00 | 8.67 | 8.67 | | |
| 35623 | | Bypass graft, not vein | Surgery | | 24.00 | 9.98 | 9.98 | | |
| 35626 | | Artery bypass graft | Surgery | | 27.75 | 10.93 | 10.93 | | |
| 35631 | | Artery bypass graft | Surgery | | 34.00 | 13.41 | 13.41 | | |
| 35636 | | Artery bypass graft | Surgery | | 29.50 | 12.11 | 12.11 | | |
| 35641 | | Artery bypass graft | Surgery | | 24.57 | 10.27 | 10.27 | | |
| 35642 | | Artery bypass graft | Surgery | | 17.98 | 7.86 | 7.86 | | |
| 35645 | | Artery bypass graft | Surgery | | 17.47 | 7.69 | 7.69 | | |
| 35646 | | Artery bypass graft | Surgery | | 31.00 | 13.00 | 13.00 | | |
| 35647 | | Artery bypass graft | Surgery | | 28.00 | 11.76 | 11.76 | | |
| 35650 | | Artery bypass graft | Surgery | | 19.00 | 7.77 | 7.77 | | |
| 35651 | | Artery bypass graft | Surgery | | 25.04 | 10.50 | 10.50 | | |
| 35654 | | Artery bypass graft | Surgery | | 25.00 | 10.34 | 10.34 | | |
| 35656 | | Artery bypass graft | Surgery | | 19.53 | 8.22 | 8.22 | | |
| 35661 | | Artery bypass graft | Surgery | | 19.00 | 8.09 | 8.09 | | |
| 35663 | | Artery bypass graft | Surgery | | 22.00 | 9.44 | 9.44 | | |
| 35665 | | Artery bypass graft | Surgery | | 21.00 | 8.98 | 8.98 | | |
| 35666 | | Artery bypass graft | Surgery | | 22.19 | 11.72 | 11.72 | | |
| 35671 | | Artery bypass graft | Surgery | | 19.33 | 10.39 | 10.39 | | |
| 35681 | | Composite bypass graft | Surgery | | 1.60 | 0.55 | 0.55 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 35682 | | Composite bypass graft | Surgery | | 7.20 | 2.44 | 2.44 | | |
| 35683 | | Composite bypass graft | Surgery | | 8.50 | 2.88 | 2.88 | | |
| 35685 | | Bypass graft patency/patch | Surgery | | 4.05 | 1.52 | 1.52 | | |
| 35686 | | Bypass graft/av fist patency | Surgery | | 3.35 | 1.26 | 1.26 | | |
| 35691 | | Arterial transposition | Surgery | | 18.05 | 7.54 | 7.54 | | |
| 35693 | | Arterial transposition | Surgery | | 15.36 | 6.59 | 6.59 | | |
| 35694 | | Arterial transposition | Surgery | | 19.16 | 7.83 | 7.83 | | |
| 35695 | | Arterial transposition | Surgery | | 19.16 | 7.78 | 7.78 | | |
| 35700 | | Reoperation, bypass graft | Surgery | | 3.08 | 1.03 | 1.03 | | |
| 35701 | | Exploration, carotid artery | Surgery | | 8.50 | 4.59 | 4.59 | | |
| 35721 | | Exploration, femoral artery | Surgery | | 7.18 | 5.13 | 5.13 | | |
| 35741 | | Exploration popliteal artery | Surgery | | 8.00 | 5.34 | 5.34 | | |
| 35761 | | Exploration of artery/vein | Surgery | | 5.37 | 4.42 | 4.42 | | |
| 35800 | | Explore neck vessels | Surgery | | 7.02 | 3.90 | 3.90 | | |
| 35820 | | Explore chest vessels | Surgery | | 12.88 | 4.19 | 4.19 | | |
| 35840 | | Explore abdominal vessels | Surgery | | 9.77 | 5.10 | 5.10 | | |
| 35860 | | Explore limb vessels | Surgery | | 5.55 | 3.54 | 3.54 | | |
| 35870 | | Repair vessel graft defect | Surgery | | 22.17 | 9.95 | 9.95 | | |
| 35875 | | Removal of clot in graft | Surgery | | 10.13 | 6.30 | 6.30 | | |
| 35876 | | Removal of clot in graft | Surgery | | 17.00 | 8.80 | 8.80 | | |
| 35879 | | Revise graft w/vein | Surgery | | 16.00 | 7.61 | 7.61 | | |
| 35881 | | Revise graft w/vein | Surgery | | 18.00 | 8.46 | 8.46 | | |
| 35901 | | Excision, graft, neck | Surgery | | 8.19 | 5.82 | 5.82 | | |
| 35903 | | Excision, graft, extremity | Surgery | | 9.39 | 8.08 | 8.08 | | |
| 35905 | | Excision, graft, thorax | Surgery | | 31.25 | 15.12 | 15.12 | | |
| 35907 | | Excision, graft, abdomen | Surgery | | 35.00 | 14.57 | 14.57 | | |
| 36000 | | Place needle in vein | Surgery | | 0.18 | 0.66 | 0.05 | | |
| 36002 | | Pseudoaneurysm injection trt | Surgery | | 1.96 | 2.45 | 1.00 | | |
| 36005 | | Injection ext venography | Surgery | | 0.95 | 8.51 | 0.32 | | |
| 36010 | | Place catheter in vein | Surgery | | 2.43 | 0.81 | 0.81 | | |
| 36011 | | Place catheter in vein | Surgery | | 3.14 | 1.05 | 1.05 | | |
| 36012 | | Place catheter in vein | Surgery | | 3.52 | 1.18 | 1.18 | | |
| 36013 | | Place catheter in artery | Surgery | | 2.52 | 0.67 | 0.67 | | |
| 36014 | | Place catheter in artery | Surgery | | 3.02 | 1.02 | 1.02 | | |
| 36015 | | Place catheter in artery | Surgery | | 3.52 | 1.18 | 1.18 | | |
| 36100 | | Establish access to artery | Surgery | | 3.02 | 1.12 | 1.12 | | |
| 36120 | | Establish access to artery | Surgery | | 2.01 | 0.67 | 0.67 | | |
| 36140 | | Establish access to artery | Surgery | | 2.01 | 0.66 | 0.66 | | |
| 36145 | | Artery to vein shunt | Surgery | | 2.01 | 0.68 | 0.68 | | |
| 36160 | | Establish access to aorta | Surgery | | 2.52 | 0.86 | 0.86 | | |
| 36200 | | Place catheter in aorta | Surgery | | 3.02 | 1.04 | 1.04 | | |
| 36215 | | Place catheter in artery | Surgery | | 4.68 | 1.62 | 1.62 | | |
| 36216 | | Place catheter in artery | Surgery | | 5.28 | 1.81 | 1.81 | | |
| 36217 | | Place catheter in artery | Surgery | | 6.30 | 2.21 | 2.21 | | |
| 36218 | | Place catheter in artery | Surgery | | 1.01 | 0.35 | 0.35 | | |
| 36245 | | Place catheter in artery | Surgery | | 4.68 | 1.69 | 1.69 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 36246 | | Place catheter in artery | Surgery | | 5.28 | 1.83 | 1.83 | | |
| 36247 | | Place catheter in artery | Surgery | | 6.30 | 2.17 | 2.17 | | |
| 36248 | | Place catheter in artery | Surgery | | 1.01 | 0.36 | 0.36 | | |
| 36260 | | Insertion of infusion pump | Surgery | | 9.71 | 5.50 | 5.50 | | |
| 36261 | | Revision of infusion pump | Surgery | | 5.45 | 3.33 | 3.33 | | |
| 36262 | | Removal of infusion pump | Surgery | | 4.02 | 2.48 | 2.48 | | |
| 36299 | | Vessel injection procedure | Surgery | | | | | 5.10 | Misc |
| 36400 | | Bl draw < 3 yrs fem/jugular | Surgery | | 0.38 | 0.89 | 0.10 | | |
| 36405 | | Bl draw < 3 yrs scalp vein | Surgery | | 0.31 | 0.33 | 0.08 | | |
| 36406 | | Bl draw < 3 yrs other vein | Surgery | | 0.18 | 0.37 | 0.05 | | |
| 36410 | | Non-routine bl draw > 3 yrs | Surgery | | 0.18 | 0.39 | 0.05 | | |
| 36415 | | Routine venipuncture | Miscellaneous Medical | b | | | | 0.18 | MDR |
| 36416 | | Capillary blood draw | Miscellaneous Medical | b | | | | 0.11 | SA |
| 36420 | | Vein access cutdown < 1 yr | Surgery | | 1.01 | 0.31 | 0.31 | | |
| 36425 | | Vein access cutdown > 1 yr | Surgery | | 0.76 | 0.22 | 0.22 | | |
| 36430 | | Blood transfusion service | Surgery | | 0.00 | 1.01 | 1.01 | | |
| 36440 | | Bl push transfuse, 2 yr or < | Surgery | | 1.03 | 0.29 | 0.29 | | |
| 36450 | | Bl exchange/transfuse, nb | Surgery | | 2.23 | 0.72 | 0.72 | | |
| 36455 | | Bl exchange/transfuse non-nb | Surgery | | 2.43 | 0.85 | 0.85 | | |
| 36460 | | Transfusion service, fetal | Surgery | | 6.59 | 2.27 | 2.27 | | |
| 36468 | | Injection(s), spider veins | Surgery | | | | | 1.65 | SAF |
| 36469 | | Injection(s), spider veins | Surgery | | | | | 2.16 | PHCS |
| 36470 | | Injection therapy of vein | Surgery | | 1.09 | 2.33 | 0.39 | | |
| 36471 | | Injection therapy of veins | Surgery | | 1.57 | 2.68 | 0.55 | | |
| 36481 | | Insertion of catheter, vein | Surgery | | 6.99 | 2.80 | 2.80 | | |
| 36488 | | Insertion of catheter, vein | Surgery | | 1.35 | 0.74 | 0.74 | | |
| 36489 | | Insertion of catheter, vein | Surgery | | 2.50 | 4.11 | 1.04 | | |
| 36490 | | Insertion of catheter, vein | Surgery | | 1.67 | 0.83 | 0.83 | | |
| 36491 | | Insertion of catheter, vein | Surgery | | 1.43 | 0.76 | 0.76 | | |
| 36493 | | Repositioning of cvc | Surgery | | 1.21 | 0.86 | 0.86 | | |
| 36500 | | Insertion of catheter, vein | Surgery | | 3.52 | 1.26 | 1.26 | | |
| 36510 | | Insertion of catheter, vein | Surgery | | 1.09 | 0.72 | 0.72 | | |
| 36511 | | Apheresis wbc | Surgery | | 1.74 | 0.70 | 0.70 | | |
| 36512 | | Apheresis rbc | Surgery | | 1.74 | 0.70 | 0.70 | | |
| 36513 | | Apheresis platelets | Surgery | | 1.74 | 0.70 | 0.70 | | |
| 36514 | | Apheresis plasma | Surgery | | 1.74 | 0.70 | 0.70 | | |
| 36515 | | Apheresis, adsorp/reinfuse | Surgery | | 1.74 | 0.70 | 0.70 | | |
| 36516 | | Apheresis, selective | Surgery | | 1.74 | 0.70 | 0.70 | | |
| 36522 | | Photopheresis | Surgery | | 1.67 | 6.77 | 1.15 | | |
| 36530 | | Insertion of infusion pump | Surgery | | 6.20 | 3.70 | 3.70 | | |
| 36531 | | Revision of infusion pump | Surgery | | 4.87 | 3.25 | 3.25 | | |
| 36532 | | Removal of infusion pump | Surgery | | 3.30 | 1.52 | 1.52 | | |
| 36533 | | Insertion of access device | Surgery | | 5.32 | 13.55 | 3.38 | | |
| 36534 | | Revision of access device | Surgery | | 2.80 | 1.46 | 1.46 | | |
| 36535 | | Removal of access device | Surgery | | 2.27 | 2.81 | 1.82 | | |
| 36536 | | Remove cva device obstruct | Surgery | | 3.60 | 33.54 | 1.47 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 36537 | | Remove cva lumen obstruct | Surgery | | 0.75 | 7.69 | 0.49 | | |
| 36540 | | Collect blood venous device | Surgery | | | | | 0.51 | MDR |
| 36550 | | Declot vascular device | Surgery | | 0.00 | 0.38 | 0.38 | | |
| 36600 | | Withdrawal of arterial blood | Surgery | | 0.32 | 0.41 | 0.09 | | |
| 36620 | | Insertion catheter, artery | Surgery | | 1.15 | 0.24 | 0.24 | | |
| 36625 | | Insertion catheter, artery | Surgery | | 2.11 | 0.53 | 0.53 | | |
| 36640 | | Insertion catheter, artery | Surgery | | 2.10 | 0.72 | 0.72 | | |
| 36660 | | Insertion catheter, artery | Surgery | | 1.40 | 0.45 | 0.45 | | |
| 36680 | | Insert needle, bone cavity | Surgery | | 1.20 | 0.62 | 0.62 | | |
| 36800 | | Insertion of cannula | Surgery | | 2.43 | 1.76 | 1.76 | | |
| 36810 | | Insertion of cannula | Surgery | | 3.97 | 2.24 | 2.24 | | |
| 36815 | | Insertion of cannula | Surgery | | 2.62 | 1.26 | 1.26 | | |
| 36819 | | Av fusion/uppr arm vein | Surgery | | 14.00 | 6.41 | 6.41 | | |
| 36820 | | Av fusion/forearm vein | Surgery | | 14.00 | 6.43 | 6.43 | | |
| 36821 | | Av fusion direct any site | Surgery | | 8.93 | 4.94 | 4.94 | | |
| 36822 | | Insertion of cannula(s) | Surgery | | 5.42 | 7.14 | 7.14 | | |
| 36823 | | Insertion of cannula(s) | Surgery | | 21.00 | 10.38 | 10.38 | | |
| 36825 | | Artery-vein autograft | Surgery | | 9.84 | 5.48 | 5.48 | | |
| 36830 | | Artery-vein nonautograft | Surgery | | 12.00 | 6.04 | 6.04 | | |
| 36831 | | Open thrombect av fistula | Surgery | | 8.00 | 3.93 | 3.93 | | |
| 36832 | | Av fistula revision, open | Surgery | | 10.50 | 5.53 | 5.53 | | |
| 36833 | | Av fistula revision | Surgery | | 11.95 | 6.00 | 6.00 | | |
| 36834 | | Repair A-V aneurysm | Surgery | | 9.93 | 3.79 | 3.79 | | |
| 36835 | | Artery to vein shunt | Surgery | | 7.15 | 4.52 | 4.52 | | |
| 36860 | | External cannula declotting | Surgery | | 2.01 | 2.62 | 1.34 | | |
| 36861 | | Cannula declotting | Surgery | | 2.52 | 1.46 | 1.46 | | |
| 36870 | | Percut thrombect av fistula | Surgery | | 5.16 | 42.32 | 2.39 | | |
| 37140 | | Revision of circulation | Surgery | | 23.60 | 10.31 | 10.31 | | |
| 37145 | | Revision of circulation | Surgery | | 24.61 | 10.93 | 10.93 | | |
| 37160 | | Revision of circulation | Surgery | | 21.60 | 9.14 | 9.14 | | |
| 37180 | | Revision of circulation | Surgery | | 24.61 | 10.27 | 10.27 | | |
| 37181 | | Splice spleen/kidney veins | Surgery | | 26.68 | 10.86 | 10.86 | | |
| 37182 | | Insert hepatic shunt (tips) | Surgery | | 17.00 | 6.37 | 6.37 | | |
| 37183 | | Remove hepatic shunt (tips) | Surgery | | 8.00 | 3.12 | 3.12 | | |
| 37195 | | Thrombolytic therapy, stroke | Surgery | | 0.00 | 8.02 | 8.02 | | |
| 37200 | | Transcatheter biopsy | Surgery | | 4.56 | 1.55 | 1.55 | | |
| 37201 | | Transcatheter therapy infuse | Surgery | | 5.00 | 2.53 | 2.53 | | |
| 37202 | | Transcatheter therapy infuse | Surgery | | 5.68 | 3.10 | 3.10 | | |
| 37203 | | Transcatheter retrieval | Surgery | | 5.03 | 2.55 | 2.55 | | |
| 37204 | | Transcatheter occlusion | Surgery | | 18.14 | 6.11 | 6.11 | | |
| 37205 | | Transcatheter stent | Surgery | | 8.28 | 3.79 | 3.79 | | |
| 37206 | | Transcatheter stent add-on | Surgery | | 4.13 | 1.48 | 1.48 | | |
| 37207 | | Transcatheter stent | Surgery | | 8.28 | 3.53 | 3.53 | | |
| 37208 | | Transcatheter stent add-on | Surgery | | 4.13 | 1.41 | 1.41 | | |
| 37209 | | Exchange arterial catheter | Surgery | | 2.27 | 0.77 | 0.77 | | |
| 37250 | | Iv us first vessel add-on | Surgery | | 2.10 | 0.77 | 0.77 | | |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology.

TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 37251 | | Iv us each add vessel add-on | Surgery | | 1.60 | 0.57 | 0.57 | | |
| 37500 | | Endoscopy ligate perf veins | Surgery | | 11.00 | 8.70 | 8.70 | | |
| 37565 | | Ligation of neck vein | Surgery | | 10.88 | 5.08 | 5.08 | | |
| 37600 | | Ligation of neck artery | Surgery | | 11.25 | 6.30 | 6.30 | | |
| 37605 | | Ligation of neck artery | Surgery | | 13.11 | 6.48 | 6.48 | | |
| 37606 | | Ligation of neck artery | Surgery | | 6.28 | 3.98 | 3.98 | | |
| 37607 | | Ligation of a-v fistula | Surgery | | 6.16 | 3.65 | 3.65 | | |
| 37609 | | Temporal artery procedure | Surgery | | 3.00 | 7.02 | 2.52 | | |
| 37615 | | Ligation of neck artery | Surgery | | 5.73 | 3.64 | 3.64 | | |
| 37616 | | Ligation of chest artery | Surgery | | 16.49 | 10.58 | 10.58 | | |
| 37617 | | Ligation of abdomen artery | Surgery | | 22.06 | 9.42 | 9.42 | | |
| 37618 | | Ligation of extremity artery | Surgery | | 4.84 | 3.49 | 3.49 | | |
| 37620 | | Revision of major vein | Surgery | | 10.56 | 5.40 | 5.40 | | |
| 37650 | | Revision of major vein | Surgery | | 7.80 | 4.65 | 4.65 | | |
| 37660 | | Revision of major vein | Surgery | | 21.00 | 9.32 | 9.32 | | |
| 37700 | | Revise leg vein | Surgery | | 3.73 | 3.14 | 3.14 | | |
| 37720 | | Removal of leg vein | Surgery | | 5.66 | 3.63 | 3.63 | | |
| 37730 | | Removal of leg veins | Surgery | | 7.33 | 4.51 | 4.51 | | |
| 37735 | | Removal of leg veins/lesion | Surgery | | 10.53 | 5.77 | 5.77 | | |
| 37760 | | Ligation, leg veins, open | Surgery | | 10.47 | 5.63 | 5.63 | | |
| 37780 | | Revision of leg vein | Surgery | | 3.84 | 2.96 | 2.96 | | |
| 37785 | | Revise secondary varicosity | Surgery | | 3.84 | 6.98 | 2.85 | | |
| 37788 | | Revascularization, penis | Surgery | | 22.01 | 11.50 | 11.50 | | |
| 37790 | | Penile venous occlusion | Surgery | | 8.34 | 6.11 | 6.11 | | |
| 37799 | | Vascular surgery procedure | Surgery | | | | | 1.63 | Misc |
| 38100 | | Removal of spleen, total | Surgery | | 14.50 | 6.56 | 6.56 | | |
| 38101 | | Removal of spleen, partial | Surgery | | 15.31 | 6.94 | 6.94 | | |
| 38102 | | Removal of spleen, total | Surgery | | 4.80 | 1.68 | 1.68 | | |
| 38115 | | Repair of ruptured spleen | Surgery | | 15.82 | 7.04 | 7.04 | | |
| 38120 | | Laparoscopy, splenectomy | Surgery | | 17.00 | 7.37 | 7.37 | | |
| 38129 | | Laparoscope proc, spleen | Surgery | | | | | 27.62 | Misc |
| 38200 | | Injection for spleen x-ray | Surgery | | 2.64 | 0.92 | 0.92 | | |
| 38205 | | Harvest allogenic stem cells | Surgery | | 1.50 | 0.61 | 0.61 | | |
| 38206 | | Harvest auto stem cells | Surgery | | 1.50 | 0.61 | 0.61 | | |
| 38207 | | Cryopreserve stem cells | Surgery | | | | | 1.65 | SA |
| 38208 | | Thaw preserved stem cells | Surgery | | | | | 1.80 | SA |
| 38209 | | Wash harvest stem cells | Surgery | | | | | 1.59 | SA |
| 38210 | | T-cell depletion of harvest | Surgery | | | | | 1.73 | SA |
| 38211 | | Tumor cell deplete of harvst | Surgery | | | | | 1.73 | SA |
| 38212 | | Rbc depletion of harvest | Surgery | | | | | 1.73 | SA |
| 38213 | | Platelet deplete of harvest | Surgery | | | | | 1.73 | SA |
| 38214 | | Volume deplete of harvest | Surgery | | | | | 1.43 | SA |
| 38215 | | Harvest stem cell concentrte | Surgery | | | | | 1.73 | SA |
| 38220 | | Bone marrow aspiration | Surgery | | 1.08 | 4.64 | 0.43 | | |
| 38221 | | Bone marrow biopsy | Surgery | | 1.37 | 4.79 | 0.54 | | |
| 38230 | | Bone marrow collection | Surgery | | 4.54 | 2.42 | 2.42 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 38240 | | Bone marrow/stem transplant | Surgery | | 2.24 | 0.84 | 0.84 | | |
| 38241 | | Bone marrow/stem transplant | Surgery | | 2.24 | 0.84 | 0.84 | | |
| 38242 | | Lymphocyte infuse transplant | Surgery | | 1.71 | 0.70 | 0.70 | | |
| 38300 | | Drainage, lymph node lesion | Surgery | | 1.99 | 4.51 | 2.59 | | |
| 38305 | | Drainage, lymph node lesion | Surgery | | 6.00 | 8.72 | 6.29 | | |
| 38308 | | Incision of lymph channels | Surgery | | 6.45 | 5.70 | 5.70 | | |
| 38380 | | Thoracic duct procedure | Surgery | | 7.46 | 7.55 | 7.55 | | |
| 38381 | | Thoracic duct procedure | Surgery | | 12.88 | 9.83 | 9.83 | | |
| 38382 | | Thoracic duct procedure | Surgery | | 10.08 | 9.18 | 9.18 | | |
| 38500 | | Biopsy/removal, lymph nodes | Surgery | | 3.75 | 3.04 | 2.56 | | |
| 38505 | | Needle biopsy, lymph nodes | Surgery | | 1.14 | 3.13 | 1.09 | | |
| 38510 | | Biopsy/removal, lymph nodes | Surgery | | 6.43 | 5.41 | 5.41 | | |
| 38520 | | Biopsy/removal, lymph nodes | Surgery | | 6.67 | 5.55 | 5.55 | | |
| 38525 | | Biopsy/removal, lymph nodes | Surgery | | 6.07 | 4.40 | 4.40 | | |
| 38530 | | Biopsy/removal, lymph nodes | Surgery | | 7.98 | 5.84 | 5.84 | | |
| 38542 | | Explore deep node(s), neck | Surgery | | 5.91 | 6.00 | 6.00 | | |
| 38550 | | Removal, neck/armpit lesion | Surgery | | 6.92 | 4.90 | 4.90 | | |
| 38555 | | Removal, neck/armpit lesion | Surgery | | 14.14 | 10.28 | 10.28 | | |
| 38562 | | Removal, pelvic lymph nodes | Surgery | | 10.49 | 6.53 | 6.53 | | |
| 38564 | | Removal, abdomen lymph nodes | Surgery | | 10.83 | 6.27 | 6.27 | | |
| 38570 | | Laparoscopy, lymph node biop | Surgery | | 9.25 | 4.47 | 4.47 | | |
| 38571 | | Laparoscopy, lymphadenectomy | Surgery | | 14.68 | 6.10 | 6.10 | | |
| 38572 | | Laparoscopy, lymphadenectomy | Surgery | | 16.59 | 7.40 | 7.40 | | |
| 38589 | | Laparoscope proc, lymphatic | Surgery | | | | | 26.88 | Misc |
| 38700 | | Removal of lymph nodes, neck | Surgery | | 8.24 | 13.43 | 13.43 | | |
| 38720 | | Removal of lymph nodes, neck | Surgery | | 13.61 | 15.95 | 15.95 | | |
| 38724 | | Removal of lymph nodes, neck | Surgery | | 14.54 | 16.51 | 16.51 | | |
| 38740 | | Remove armpit lymph nodes | Surgery | | 10.03 | 5.79 | 5.79 | | |
| 38745 | | Remove armpit lymph nodes | Surgery | | 13.10 | 8.25 | 8.25 | | |
| 38746 | | Remove thoracic lymph nodes | Surgery | | 4.89 | 1.60 | 1.60 | | |
| 38747 | | Remove abdominal lymph nodes | Surgery | | 4.89 | 1.70 | 1.70 | | |
| 38760 | | Remove groin lymph nodes | Surgery | | 12.95 | 7.14 | 7.14 | | |
| 38765 | | Remove groin lymph nodes | Surgery | | 19.98 | 11.22 | 11.22 | | |
| 38770 | | Remove pelvis lymph nodes | Surgery | | 13.23 | 6.79 | 6.79 | | |
| 38780 | | Remove abdomen lymph nodes | Surgery | | 16.59 | 9.28 | 9.28 | | |
| 38790 | | Inject for lymphatic x-ray | Surgery | | 1.29 | 31.59 | 0.45 | | |
| 38792 | | Identify sentinel node | Surgery | | 0.52 | 0.18 | 0.18 | | |
| 38794 | | Access thoracic lymph duct | Surgery | | 4.45 | 1.54 | 1.54 | | |
| 38999 | | Blood/lymph system procedure | Surgery | | | | | 8.09 | Misc |
| 39000 | | Exploration of chest | Surgery | | 6.10 | 7.58 | 7.58 | | |
| 39010 | | Exploration of chest | Surgery | | 11.79 | 7.19 | 7.19 | | |
| 39200 | | Removal chest lesion | Surgery | | 13.62 | 7.30 | 7.30 | | |
| 39220 | | Removal chest lesion | Surgery | | 17.42 | 9.05 | 9.05 | | |
| 39400 | | Visualization of chest | Surgery | | 5.61 | 4.59 | 4.59 | | |
| 39499 | | Chest procedure | Surgery | | | | | 14.79 | Misc |
| 39501 | | Repair diaphragm laceration | Surgery | | 13.19 | 7.73 | 7.73 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 39502 | | Repair paraesophageal hernia | Surgery | | 16.33 | 8.22 | 8.22 | | |
| 39503 | | Repair of diaphragm hernia | Surgery | | 95.00 | 34.45 | 34.45 | | |
| 39520 | | Repair of diaphragm hernia | Surgery | | 16.10 | 9.68 | 9.68 | | |
| 39530 | | Repair of diaphragm hernia | Surgery | | 15.41 | 8.56 | 8.56 | | |
| 39531 | | Repair of diaphragm hernia | Surgery | | 16.42 | 8.75 | 8.75 | | |
| 39540 | | Repair of diaphragm hernia | Surgery | | 13.32 | 7.77 | 7.77 | | |
| 39541 | | Repair of diaphragm hernia | Surgery | | 14.41 | 7.86 | 7.86 | | |
| 39545 | | Revision of diaphragm | Surgery | | 13.37 | 9.29 | 9.29 | | |
| 39560 | | Resect diaphragm, simple | Surgery | | 12.00 | 7.53 | 7.53 | | |
| 39561 | | Resect diaphragm, complex | Surgery | | 17.50 | 9.76 | 9.76 | | |
| 39599 | | Diaphragm surgery procedure | Surgery | | | | | 32.77 | Misc |
| 40490 | | Biopsy of lip | Surgery | | 1.22 | 1.73 | 0.62 | | |
| 40500 | | Partial excision of lip | Surgery | | 4.28 | 5.89 | 5.69 | | |
| 40510 | | Partial excision of lip | Surgery | | 4.70 | 6.76 | 6.51 | | |
| 40520 | | Partial excision of lip | Surgery | | 4.67 | 7.77 | 6.87 | | |
| 40525 | | Reconstruct lip with flap | Surgery | | 7.55 | 8.36 | 8.36 | | |
| 40527 | | Reconstruct lip with flap | Surgery | | 9.13 | 9.24 | 9.24 | | |
| 40530 | | Partial removal of lip | Surgery | | 5.40 | 6.60 | 6.24 | | |
| 40650 | | Repair lip | Surgery | | 3.64 | 5.44 | 4.81 | | |
| 40652 | | Repair lip | Surgery | | 4.26 | 6.83 | 6.80 | | |
| 40654 | | Repair lip | Surgery | | 5.31 | 7.71 | 7.50 | | |
| 40700 | | Repair cleft lip/nasal | Surgery | | 12.79 | 10.32 | 10.32 | | |
| 40701 | | Repair cleft lip/nasal | Surgery | | 15.85 | 12.70 | 12.70 | | |
| 40702 | | Repair cleft lip/nasal | Surgery | | 13.04 | 9.54 | 9.54 | | |
| 40720 | | Repair cleft lip/nasal | Surgery | | 13.55 | 11.93 | 11.93 | | |
| 40761 | | Repair cleft lip/nasal | Surgery | | 14.72 | 12.39 | 12.39 | | |
| 40799 | | Lip surgery procedure | Surgery | | | | | 3.57 | Misc |
| 40800 | | Drainage of mouth lesion | Surgery | | 1.17 | 1.82 | 0.87 | | |
| 40801 | | Drainage of mouth lesion | Surgery | | 2.53 | 2.42 | 1.55 | | |
| 40804 | | Removal, foreign body, mouth | Surgery | | 1.24 | 2.31 | 1.03 | | |
| 40805 | | Removal, foreign body, mouth | Surgery | | 2.69 | 2.75 | 1.75 | | |
| 40806 | | Incision of lip fold | Surgery | | 0.31 | 0.96 | 0.86 | | |
| 40808 | | Biopsy of mouth lesion | Surgery | | 0.96 | 1.94 | 1.02 | | |
| 40810 | | Excision of mouth lesion | Surgery | | 1.31 | 2.07 | 1.16 | | |
| 40812 | | Excise/repair mouth lesion | Surgery | | 2.31 | 2.43 | 1.72 | | |
| 40814 | | Excise/repair mouth lesion | Surgery | | 3.42 | 3.34 | 2.98 | | |
| 40816 | | Excision of mouth lesion | Surgery | | 3.67 | 3.46 | 3.17 | | |
| 40818 | | Excise oral mucosa for graft | Surgery | | 2.41 | 4.11 | 4.11 | | |
| 40819 | | Excise lip or cheek fold | Surgery | | 2.41 | 3.57 | 3.55 | | |
| 40820 | | Treatment of mouth lesion | Surgery | | 1.28 | 2.47 | 2.30 | | |
| 40830 | | Repair mouth laceration | Surgery | | 1.76 | 2.53 | 2.50 | | |
| 40831 | | Repair mouth laceration | Surgery | | 2.46 | 2.78 | 2.78 | | |
| 40840 | | Reconstruction of mouth | Surgery | | 8.73 | 6.14 | 6.14 | | |
| 40842 | | Reconstruction of mouth | Surgery | | 8.73 | 6.00 | 6.00 | | |
| 40843 | | Reconstruction of mouth | Surgery | | 12.10 | 7.31 | 7.31 | | |
| 40844 | | Reconstruction of mouth | Surgery | | 16.01 | 8.98 | 8.95 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 40845 | | Reconstruction of mouth | Surgery | | 18.58 | 10.94 | 10.94 | | |
| 40899 | | Mouth surgery procedure | Surgery | | | | | 3.92 | Misc |
| 41000 | | Drainage of mouth lesion | Surgery | | 1.30 | 2.38 | 1.50 | | |
| 41005 | | Drainage of mouth lesion | Surgery | | 1.26 | 2.26 | 1.47 | | |
| 41006 | | Drainage of mouth lesion | Surgery | | 3.24 | 3.75 | 3.40 | | |
| 41007 | | Drainage of mouth lesion | Surgery | | 3.10 | 3.87 | 3.19 | | |
| 41008 | | Drainage of mouth lesion | Surgery | | 3.37 | 3.60 | 3.28 | | |
| 41009 | | Drainage of mouth lesion | Surgery | | 3.59 | 3.67 | 3.27 | | |
| 41010 | | Incision of tongue fold | Surgery | | 1.06 | 3.26 | 3.26 | | |
| 41015 | | Drainage of mouth lesion | Surgery | | 3.96 | 4.22 | 3.23 | | |
| 41016 | | Drainage of mouth lesion | Surgery | | 4.07 | 4.15 | 3.38 | | |
| 41017 | | Drainage of mouth lesion | Surgery | | 4.07 | 4.16 | 3.32 | | |
| 41018 | | Drainage of mouth lesion | Surgery | | 5.10 | 4.55 | 3.79 | | |
| 41100 | | Biopsy of tongue | Surgery | | 1.63 | 2.36 | 1.40 | | |
| 41105 | | Biopsy of tongue | Surgery | | 1.42 | 2.18 | 1.32 | | |
| 41108 | | Biopsy of floor of mouth | Surgery | | 1.05 | 2.04 | 1.10 | | |
| 41110 | | Excision of tongue lesion | Surgery | | 1.51 | 2.44 | 1.31 | | |
| 41112 | | Excision of tongue lesion | Surgery | | 2.73 | 3.38 | 2.71 | | |
| 41113 | | Excision of tongue lesion | Surgery | | 3.19 | 3.40 | 2.94 | | |
| 41114 | | Excision of tongue lesion | Surgery | | 8.47 | 5.44 | 5.44 | | |
| 41115 | | Excision of tongue fold | Surgery | | 1.74 | 2.61 | 2.54 | | |
| 41116 | | Excision of mouth lesion | Surgery | | 2.44 | 3.40 | 3.40 | | |
| 41120 | | Partial removal of tongue | Surgery | | 9.77 | 8.88 | 8.88 | | |
| 41130 | | Partial removal of tongue | Surgery | | 11.15 | 9.66 | 9.66 | | |
| 41135 | | Tongue and neck surgery | Surgery | | 23.09 | 15.99 | 15.99 | | |
| 41140 | | Removal of tongue | Surgery | | 25.50 | 17.32 | 17.32 | | |
| 41145 | | Tongue removal, neck surgery | Surgery | | 30.06 | 21.30 | 21.30 | | |
| 41150 | | Tongue, mouth, jaw surgery | Surgery | | 23.04 | 17.16 | 17.16 | | |
| 41153 | | Tongue, mouth, neck surgery | Surgery | | 23.77 | 17.77 | 17.77 | | |
| 41155 | | Tongue, jaw, & neck surgery | Surgery | | 27.72 | 19.97 | 19.97 | | |
| 41250 | | Repair tongue laceration | Surgery | | 1.91 | 2.88 | 1.71 | | |
| 41251 | | Repair tongue laceration | Surgery | | 2.27 | 2.72 | 2.00 | | |
| 41252 | | Repair tongue laceration | Surgery | | 2.97 | 3.50 | 2.34 | | |
| 41500 | | Fixation of tongue | Surgery | | 3.71 | 4.33 | 4.33 | | |
| 41510 | | Tongue to lip surgery | Surgery | | 3.42 | 4.80 | 4.80 | | |
| 41520 | | Reconstruction, tongue fold | Surgery | | 2.73 | 3.03 | 3.03 | | |
| 41599 | | Tongue and mouth surgery | Surgery | | | | | 5.39 | Misc |
| 41800 | | Drainage of gum lesion | Surgery | | 1.17 | 1.97 | 1.37 | | |
| 41805 | | Removal foreign body, gum | Surgery | | 1.24 | 1.95 | 1.95 | | |
| 41806 | | Removal foreign body,jawbone | Surgery | | 2.69 | 2.57 | 2.45 | | |
| 41820 | | Excision, gum, each quadrant | Surgery | | | | | 5.28 | MDR |
| 41821 | | Excision of gum flap | Surgery | | | | | 1.19 | MDR |
| 41822 | | Excision of gum lesion | Surgery | | 2.31 | 2.83 | 0.96 | | |
| 41823 | | Excision of gum lesion | Surgery | | 3.30 | 3.58 | 3.00 | | |
| 41825 | | Excision of gum lesion | Surgery | | 1.31 | 2.40 | 2.36 | | |
| 41826 | | Excision of gum lesion | Surgery | | 2.31 | 2.64 | 2.64 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 41827 | | Excision of gum lesion | Surgery | | 3.42 | 3.58 | 3.58 | | |
| 41828 | | Excision of gum lesion | Surgery | | 3.09 | 3.01 | 2.40 | | |
| 41830 | | Removal of gum tissue | Surgery | | 3.35 | 3.30 | 2.94 | | |
| 41850 | | Treatment of gum lesion | Surgery | | | | | 2.64 | MDR |
| 41870 | | Gum graft | Surgery | | | | | 6.60 | MDR |
| 41872 | | Repair gum | Surgery | | 2.59 | 2.88 | 2.88 | | |
| 41874 | | Repair tooth socket | Surgery | | 3.09 | 2.88 | 2.40 | | |
| 41899 | | Dental surgery procedure | Surgery | | | | | 8.37 | Misc |
| 42000 | | Drainage mouth roof lesion | Surgery | | 1.23 | 2.53 | 1.53 | | |
| 42100 | | Biopsy roof of mouth | Surgery | | 1.31 | 2.51 | 2.50 | | |
| 42104 | | Excision lesion, mouth roof | Surgery | | 1.64 | 2.57 | 2.57 | | |
| 42106 | | Excision lesion, mouth roof | Surgery | | 2.10 | 2.64 | 2.64 | | |
| 42107 | | Excision lesion, mouth roof | Surgery | | 4.44 | 4.11 | 4.11 | | |
| 42120 | | Remove palate/lesion | Surgery | | 6.17 | 6.11 | 6.11 | | |
| 42140 | | Excision of uvula | Surgery | | 1.62 | 3.91 | 3.37 | | |
| 42145 | | Repair palate, pharynx/uvula | Surgery | | 8.05 | 7.50 | 7.50 | | |
| 42160 | | Treatment mouth roof lesion | Surgery | | 1.80 | 3.28 | 2.70 | | |
| 42180 | | Repair palate | Surgery | | 2.50 | 2.99 | 2.11 | | |
| 42182 | | Repair palate | Surgery | | 3.83 | 3.47 | 3.06 | | |
| 42200 | | Reconstruct cleft palate | Surgery | | 12.00 | 10.14 | 10.14 | | |
| 42205 | | Reconstruct cleft palate | Surgery | | 13.29 | 9.23 | 9.23 | | |
| 42210 | | Reconstruct cleft palate | Surgery | | 14.50 | 9.51 | 9.51 | | |
| 42215 | | Reconstruct cleft palate | Surgery | | 8.82 | 8.69 | 8.69 | | |
| 42220 | | Reconstruct cleft palate | Surgery | | 7.02 | 6.73 | 6.73 | | |
| 42225 | | Reconstruct cleft palate | Surgery | | 9.54 | 9.15 | 9.15 | | |
| 42226 | | Lengthening of palate | Surgery | | 10.01 | 9.52 | 9.52 | | |
| 42227 | | Lengthening of palate | Surgery | | 9.52 | 8.09 | 8.09 | | |
| 42235 | | Repair palate | Surgery | | 7.87 | 6.18 | 6.18 | | |
| 42260 | | Repair nose to lip fistula | Surgery | | 9.80 | 6.99 | 6.99 | | |
| 42280 | | Preparation, palate mold | Surgery | | 1.54 | 1.43 | 0.75 | | |
| 42281 | | Insertion, palate prosthesis | Surgery | | 1.93 | 1.81 | 0.97 | | |
| 42299 | | Palate/uvula surgery | Surgery | | | | | 6.32 | Misc |
| 42300 | | Drainage of salivary gland | Surgery | | 1.93 | 2.65 | 1.89 | | |
| 42305 | | Drainage of salivary gland | Surgery | | 6.07 | 5.29 | 5.29 | | |
| 42310 | | Drainage of salivary gland | Surgery | | 1.56 | 2.32 | 1.65 | | |
| 42320 | | Drainage of salivary gland | Surgery | | 2.35 | 2.77 | 2.13 | | |
| 42325 | | Create salivary cyst drain | Surgery | | 2.75 | 3.36 | 1.15 | | |
| 42326 | | Create salivary cyst drain | Surgery | | 3.78 | 3.34 | 1.76 | | |
| 42330 | | Removal of salivary stone | Surgery | | 2.21 | 2.78 | 1.05 | | |
| 42335 | | Removal of salivary stone | Surgery | | 3.31 | 3.66 | 3.66 | | |
| 42340 | | Removal of salivary stone | Surgery | | 4.60 | 4.80 | 4.80 | | |
| 42400 | | Biopsy of salivary gland | Surgery | | 0.78 | 2.49 | 0.39 | | |
| 42405 | | Biopsy of salivary gland | Surgery | | 3.29 | 3.40 | 3.34 | | |
| 42408 | | Excision of salivary cyst | Surgery | | 4.54 | 4.54 | 4.54 | | |
| 42409 | | Drainage of salivary cyst | Surgery | | 2.81 | 3.39 | 3.39 | | |
| 42410 | | Excise parotid gland/lesion | Surgery | | 9.34 | 7.87 | 7.87 | | |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology.

TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 42415 | | Excise parotid gland/lesion | Surgery | | 16.89 | 12.47 | 12.47 | | |
| 42420 | | Excise parotid gland/lesion | Surgery | | 19.59 | 14.03 | 14.03 | | |
| 42425 | | Excise parotid gland/lesion | Surgery | | 13.02 | 10.46 | 10.46 | | |
| 42426 | | Excise parotid gland/lesion | Surgery | | 21.26 | 14.83 | 14.83 | | |
| 42440 | | Excise submaxillary gland | Surgery | | 6.97 | 5.98 | 5.98 | | |
| 42450 | | Excise sublingual gland | Surgery | | 4.62 | 4.78 | 4.78 | | |
| 42500 | | Repair salivary duct | Surgery | | 4.30 | 4.84 | 4.84 | | |
| 42505 | | Repair salivary duct | Surgery | | 6.18 | 5.46 | 5.46 | | |
| 42507 | | Parotid duct diversion | Surgery | | 6.11 | 5.98 | 5.98 | | |
| 42508 | | Parotid duct diversion | Surgery | | 9.10 | 8.12 | 8.12 | | |
| 42509 | | Parotid duct diversion | Surgery | | 11.54 | 9.65 | 9.65 | | |
| 42510 | | Parotid duct diversion | Surgery | | 8.15 | 7.09 | 7.09 | | |
| 42550 | | Injection for salivary x-ray | Surgery | | 1.25 | 12.74 | 0.43 | | |
| 42600 | | Closure of salivary fistula | Surgery | | 4.82 | 6.30 | 5.67 | | |
| 42650 | | Dilation of salivary duct | Surgery | | 0.77 | 1.09 | 0.40 | | |
| 42660 | | Dilation of salivary duct | Surgery | | 1.13 | 1.18 | 1.18 | | |
| 42665 | | Ligation of salivary duct | Surgery | | 2.53 | 3.51 | 3.51 | | |
| 42699 | | Salivary surgery procedure | Surgery | | | | | 14.42 | Misc |
| 42700 | | Drainage of tonsil abscess | Surgery | | 1.62 | 3.27 | 1.88 | | |
| 42720 | | Drainage of throat abscess | Surgery | | 5.42 | 4.88 | 4.76 | | |
| 42725 | | Drainage of throat abscess | Surgery | | 10.72 | 8.52 | 8.52 | | |
| 42800 | | Biopsy of throat | Surgery | | 1.39 | 3.09 | 2.62 | | |
| 42802 | | Biopsy of throat | Surgery | | 1.54 | 3.18 | 2.70 | | |
| 42804 | | Biopsy of upper nose/throat | Surgery | | 1.24 | 3.05 | 2.57 | | |
| 42806 | | Biopsy of upper nose/throat | Surgery | | 1.58 | 3.52 | 2.76 | | |
| 42808 | | Excise pharynx lesion | Surgery | | 2.30 | 5.06 | 3.15 | | |
| 42809 | | Remove pharynx foreign body | Surgery | | 1.81 | 3.50 | 1.74 | | |
| 42810 | | Excision of neck cyst | Surgery | | 3.25 | 5.52 | 4.50 | | |
| 42815 | | Excision of neck cyst | Surgery | | 7.07 | 6.58 | 6.58 | | |
| 42820 | | Remove tonsils and adenoids | Surgery | | 3.91 | 4.25 | 4.25 | | |
| 42821 | | Remove tonsils and adenoids | Surgery | | 4.29 | 4.23 | 4.23 | | |
| 42825 | | Removal of tonsils | Surgery | | 3.42 | 3.69 | 3.69 | | |
| 42826 | | Removal of tonsils | Surgery | | 3.38 | 3.75 | 3.75 | | |
| 42830 | | Removal of adenoids | Surgery | | 2.57 | 2.42 | 2.42 | | |
| 42831 | | Removal of adenoids | Surgery | | 2.71 | 2.55 | 2.55 | | |
| 42835 | | Removal of adenoids | Surgery | | 2.30 | 3.15 | 3.15 | | |
| 42836 | | Removal of adenoids | Surgery | | 3.18 | 3.68 | 3.68 | | |
| 42842 | | Extensive surgery of throat | Surgery | | 8.76 | 7.82 | 7.82 | | |
| 42844 | | Extensive surgery of throat | Surgery | | 14.31 | 11.36 | 11.36 | | |
| 42845 | | Extensive surgery of throat | Surgery | | 24.29 | 17.44 | 17.44 | | |
| 42860 | | Excision of tonsil tags | Surgery | | 2.22 | 3.08 | 3.08 | | |
| 42870 | | Excision of lingual tonsil | Surgery | | 5.40 | 6.10 | 6.10 | | |
| 42890 | | Partial removal of pharynx | Surgery | | 12.94 | 10.82 | 10.82 | | |
| 42892 | | Revision of pharyngeal walls | Surgery | | 15.83 | 12.34 | 12.34 | | |
| 42894 | | Revision of pharyngeal walls | Surgery | | 22.88 | 16.97 | 16.97 | | |
| 42900 | | Repair throat wound | Surgery | | 5.25 | 3.76 | 3.76 | | |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology.

TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 42950 | | Reconstruction of throat | Surgery | | 8.10 | 7.52 | 7.52 | | |
| 42953 | | Repair throat, esophagus | Surgery | | 8.96 | 8.99 | 8.99 | | |
| 42955 | | Surgical opening of throat | Surgery | | 7.39 | 6.53 | 6.53 | | |
| 42960 | | Control throat bleeding | Surgery | | 2.33 | 2.11 | 2.11 | | |
| 42961 | | Control throat bleeding | Surgery | | 5.59 | 5.27 | 5.27 | | |
| 42962 | | Control throat bleeding | Surgery | | 7.14 | 6.18 | 6.18 | | |
| 42970 | | Control nose/throat bleeding | Surgery | | 5.43 | 3.77 | 3.77 | | |
| 42971 | | Control nose/throat bleeding | Surgery | | 6.21 | 5.81 | 5.81 | | |
| 42972 | | Control nose/throat bleeding | Surgery | | 7.20 | 5.54 | 5.54 | | |
| 42999 | | Throat surgery procedure | Surgery | | | | | 7.10 | Misc |
| 43020 | | Incision of esophagus | Surgery | | 8.09 | 6.46 | 6.46 | | |
| 43030 | | Throat muscle surgery | Surgery | | 7.69 | 6.93 | 6.93 | | |
| 43045 | | Incision of esophagus | Surgery | | 20.12 | 11.08 | 11.08 | | |
| 43100 | | Excision of esophagus lesion | Surgery | | 9.19 | 7.20 | 7.20 | | |
| 43101 | | Excision of esophagus lesion | Surgery | | 16.24 | 8.62 | 8.62 | | |
| 43107 | | Removal of esophagus | Surgery | | 40.00 | 18.02 | 18.02 | | |
| 43108 | | Removal of esophagus | Surgery | | 34.19 | 15.85 | 15.85 | | |
| 43112 | | Removal of esophagus | Surgery | | 43.50 | 19.49 | 19.49 | | |
| 43113 | | Removal of esophagus | Surgery | | 35.27 | 16.48 | 16.48 | | |
| 43116 | | Partial removal of esophagus | Surgery | | 31.22 | 18.82 | 18.82 | | |
| 43117 | | Partial removal of esophagus | Surgery | | 40.00 | 17.09 | 17.09 | | |
| 43118 | | Partial removal of esophagus | Surgery | | 33.20 | 15.40 | 15.40 | | |
| 43121 | | Partial removal of esophagus | Surgery | | 29.19 | 13.36 | 13.36 | | |
| 43122 | | Partial removal of esophagus | Surgery | | 40.00 | 17.29 | 17.29 | | |
| 43123 | | Partial removal of esophagus | Surgery | | 33.20 | 15.82 | 15.82 | | |
| 43124 | | Removal of esophagus | Surgery | | 27.32 | 14.94 | 14.94 | | |
| 43130 | | Removal of esophagus pouch | Surgery | | 11.75 | 8.86 | 8.86 | | |
| 43135 | | Removal of esophagus pouch | Surgery | | 16.10 | 9.91 | 9.91 | | |
| 43200 | | Esophagus endoscopy | Surgery | | 1.59 | 7.97 | 1.18 | | |
| 43201 | | Esoph scope w/submucous inj | Surgery | | 2.09 | 4.44 | 1.27 | | |
| 43202 | | Esophagus endoscopy, biopsy | Surgery | | 1.89 | 6.25 | 1.13 | | |
| 43204 | | Esoph scope w/sclerosis inj | Surgery | | 3.77 | 1.67 | 1.67 | | |
| 43205 | | Esophagus endoscopy/ligation | Surgery | | 3.79 | 1.68 | 1.68 | | |
| 43215 | | Esophagus endoscopy | Surgery | | 2.60 | 1.23 | 1.23 | | |
| 43216 | | Esophagus endoscopy/lesion | Surgery | | 2.40 | 1.18 | 1.18 | | |
| 43217 | | Esophagus endoscopy | Surgery | | 2.90 | 1.33 | 1.33 | | |
| 43219 | | Esophagus endoscopy | Surgery | | 2.80 | 1.40 | 1.40 | | |
| 43220 | | Esoph endoscopy, dilation | Surgery | | 2.10 | 1.10 | 1.10 | | |
| 43226 | | Esoph endoscopy, dilation | Surgery | | 2.34 | 1.17 | 1.17 | | |
| 43227 | | Esoph endoscopy, repair | Surgery | | 3.60 | 1.60 | 1.60 | | |
| 43228 | | Esoph endoscopy, ablation | Surgery | | 3.77 | 1.72 | 1.72 | | |
| 43231 | | Esoph endoscopy w/us exam | Surgery | | 3.19 | 1.57 | 1.57 | | |
| 43232 | | Esoph endoscopy w/us fn bx | Surgery | | 4.48 | 2.10 | 2.10 | | |
| 43234 | | Upper GI endoscopy, exam | Surgery | | 2.01 | 4.28 | 1.04 | | |
| 43235 | | Uppr gi endoscopy, diagnosis | Surgery | | 2.39 | 5.85 | 1.06 | | |
| 43236 | | Uppr gi scope w/submuc inj | Surgery | | 2.92 | 4.70 | 1.26 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 43239 | | Upper GI endoscopy, biopsy | Surgery | | 2.87 | 6.17 | 1.23 | | |
| 43240 | | Esoph endoscope w/drain cyst | Surgery | | 6.86 | 2.70 | 2.70 | | |
| 43241 | | Upper GI endoscopy with tube | Surgery | | 2.59 | 1.14 | 1.14 | | |
| 43242 | | Uppr gi endoscopy w/us fn bx | Surgery | | 7.31 | 2.83 | 2.83 | | |
| 43243 | | Upper gi endoscopy & inject | Surgery | | 4.57 | 1.86 | 1.86 | | |
| 43244 | | Upper GI endoscopy/ligation | Surgery | | 5.05 | 2.03 | 2.03 | | |
| 43245 | | Uppr gi scope dilate strictr | Surgery | | 3.18 | 13.87 | 1.34 | | |
| 43246 | | Place gastrostomy tube | Surgery | | 4.33 | 1.75 | 1.75 | | |
| 43247 | | Operative upper GI endoscopy | Surgery | | 3.39 | 1.42 | 1.42 | | |
| 43248 | | Uppr gi endoscopy/guide wire | Surgery | | 3.15 | 1.35 | 1.35 | | |
| 43249 | | Esoph endoscopy, dilation | Surgery | | 2.90 | 1.26 | 1.26 | | |
| 43250 | | Upper GI endoscopy/tumor | Surgery | | 3.20 | 1.35 | 1.35 | | |
| 43251 | | Operative upper GI endoscopy | Surgery | | 3.70 | 1.53 | 1.53 | | |
| 43255 | | Operative upper GI endoscopy | Surgery | | 4.82 | 1.95 | 1.95 | | |
| 43256 | | Uppr gi endoscopy w stent | Surgery | | 4.35 | 1.77 | 1.77 | | |
| 43258 | | Operative upper GI endoscopy | Surgery | | 4.55 | 1.85 | 1.85 | | |
| 43259 | | Endoscopic ultrasound exam | Surgery | | 4.89 | 1.95 | 1.95 | | |
| 43260 | | Endo cholangiopancreatograph | Surgery | | 5.96 | 2.44 | 2.44 | | |
| 43261 | | Endo cholangiopancreatograph | Surgery | | 6.27 | 2.55 | 2.55 | | |
| 43262 | | Endo cholangiopancreatograph | Surgery | | 7.39 | 2.96 | 2.96 | | |
| 43263 | | Endo cholangiopancreatograph | Surgery | | 7.29 | 2.93 | 2.93 | | |
| 43264 | | Endo cholangiopancreatograph | Surgery | | 8.90 | 3.49 | 3.49 | | |
| 43265 | | Endo cholangiopancreatograph | Surgery | | 10.02 | 3.89 | 3.89 | | |
| 43267 | | Endo cholangiopancreatograph | Surgery | | 7.39 | 2.96 | 2.96 | | |
| 43268 | | Endo cholangiopancreatograph | Surgery | | 7.39 | 2.96 | 2.96 | | |
| 43269 | | Endo cholangiopancreatograph | Surgery | | 8.21 | 3.24 | 3.24 | | |
| 43271 | | Endo cholangiopancreatograph | Surgery | | 7.39 | 2.95 | 2.95 | | |
| 43272 | | Endo cholangiopancreatograph | Surgery | | 7.39 | 2.96 | 2.96 | | |
| 43280 | | Laparoscopy, fundoplasty | Surgery | | 17.25 | 8.20 | 8.20 | | |
| 43289 | | Laparoscope proc, esoph | Surgery | | | | | 29.47 | Misc |
| 43300 | | Repair of esophagus | Surgery | | 9.14 | 7.25 | 7.25 | | |
| 43305 | | Repair esophagus and fistula | Surgery | | 17.39 | 12.70 | 12.70 | | |
| 43310 | | Repair of esophagus | Surgery | | 25.39 | 14.66 | 14.66 | | |
| 43312 | | Repair esophagus and fistula | Surgery | | 28.42 | 18.20 | 18.20 | | |
| 43313 | | Esophagoplasty congenital | Surgery | | 45.28 | 21.66 | 21.66 | | |
| 43314 | | Tracheo-esophagoplasty cong | Surgery | | 50.27 | 23.68 | 23.68 | | |
| 43320 | | Fuse esophagus & stomach | Surgery | | 19.93 | 10.45 | 10.45 | | |
| 43324 | | Revise esophagus & stomach | Surgery | | 20.57 | 9.48 | 9.48 | | |
| 43325 | | Revise esophagus & stomach | Surgery | | 20.06 | 9.85 | 9.85 | | |
| 43326 | | Revise esophagus & stomach | Surgery | | 19.74 | 10.49 | 10.49 | | |
| 43330 | | Repair of esophagus | Surgery | | 19.77 | 9.56 | 9.56 | | |
| 43331 | | Repair of esophagus | Surgery | | 20.13 | 11.13 | 11.13 | | |
| 43340 | | Fuse esophagus & intestine | Surgery | | 19.61 | 10.61 | 10.61 | | |
| 43341 | | Fuse esophagus & intestine | Surgery | | 20.85 | 12.08 | 12.08 | | |
| 43350 | | Surgical opening, esophagus | Surgery | | 15.78 | 10.17 | 10.17 | | |
| 43351 | | Surgical opening, esophagus | Surgery | | 18.35 | 10.61 | 10.61 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 43352 | | Surgical opening, esophagus | Surgery | | 15.26 | 9.72 | 9.72 | | |
| 43360 | | Gastrointestinal repair | Surgery | | 35.70 | 16.54 | 16.54 | | |
| 43361 | | Gastrointestinal repair | Surgery | | 40.50 | 18.38 | 18.38 | | |
| 43400 | | Ligate esophagus veins | Surgery | | 21.20 | 10.34 | 10.34 | | |
| 43401 | | Esophagus surgery for veins | Surgery | | 22.09 | 10.35 | 10.35 | | |
| 43405 | | Ligate/staple esophagus | Surgery | | 20.01 | 9.51 | 9.51 | | |
| 43410 | | Repair esophagus wound | Surgery | | 13.47 | 8.93 | 8.93 | | |
| 43415 | | Repair esophagus wound | Surgery | | 25.00 | 12.26 | 12.26 | | |
| 43420 | | Repair esophagus opening | Surgery | | 14.35 | 8.92 | 8.92 | | |
| 43425 | | Repair esophagus opening | Surgery | | 21.03 | 11.22 | 11.22 | | |
| 43450 | | Dilate esophagus | Surgery | | 1.38 | 1.38 | 0.62 | | |
| 43453 | | Dilate esophagus | Surgery | | 1.51 | 0.67 | 0.67 | | |
| 43456 | | Dilate esophagus | Surgery | | 2.57 | 1.04 | 1.04 | | |
| 43458 | | Dilate esophagus | Surgery | | 3.06 | 1.23 | 1.23 | | |
| 43460 | | Pressure treatment esophagus | Surgery | | 3.80 | 1.50 | 1.50 | | |
| 43496 | | Free jejunum flap, microvasc | Surgery | | | | | 65.67 | PHCS |
| 43499 | | Esophagus surgery procedure | Surgery | | | | | 33.65 | Misc |
| 43500 | | Surgical opening of stomach | Surgery | | 11.06 | 5.08 | 5.08 | | |
| 43501 | | Surgical repair of stomach | Surgery | | 20.04 | 8.60 | 8.60 | | |
| 43502 | | Surgical repair of stomach | Surgery | | 23.13 | 9.77 | 9.77 | | |
| 43510 | | Surgical opening of stomach | Surgery | | 13.08 | 7.53 | 7.53 | | |
| 43520 | | Incision of pyloric muscle | Surgery | | 9.99 | 5.81 | 5.81 | | |
| 43600 | | Biopsy of stomach | Surgery | | 1.91 | 1.02 | 1.02 | | |
| 43605 | | Biopsy of stomach | Surgery | | 11.98 | 5.39 | 5.39 | | |
| 43610 | | Excision of stomach lesion | Surgery | | 14.60 | 6.69 | 6.69 | | |
| 43611 | | Excision of stomach lesion | Surgery | | 17.84 | 7.93 | 7.93 | | |
| 43620 | | Removal of stomach | Surgery | | 30.04 | 12.69 | 12.69 | | |
| 43621 | | Removal of stomach | Surgery | | 30.73 | 12.88 | 12.88 | | |
| 43622 | | Removal of stomach | Surgery | | 32.53 | 13.48 | 13.48 | | |
| 43631 | | Removal of stomach, partial | Surgery | | 22.59 | 9.45 | 9.45 | | |
| 43632 | | Removal of stomach, partial | Surgery | | 22.59 | 9.46 | 9.46 | | |
| 43633 | | Removal of stomach, partial | Surgery | | 23.10 | 9.64 | 9.64 | | |
| 43634 | | Removal of stomach, partial | Surgery | | 25.12 | 10.41 | 10.41 | | |
| 43635 | | Removal of stomach, partial | Surgery | | 2.06 | 0.72 | 0.72 | | |
| 43638 | | Removal of stomach, partial | Surgery | | 29.00 | 11.77 | 11.77 | | |
| 43639 | | Removal of stomach, partial | Surgery | | 29.65 | 12.01 | 12.01 | | |
| 43640 | | Vagotomy & pylorus repair | Surgery | | 17.02 | 7.52 | 7.52 | | |
| 43641 | | Vagotomy & pylorus repair | Surgery | | 17.27 | 7.63 | 7.63 | | |
| 43651 | | Laparoscopy, vagus nerve | Surgery | | 10.15 | 4.59 | 4.59 | | |
| 43652 | | Laparoscopy, vagus nerve | Surgery | | 12.15 | 5.37 | 5.37 | | |
| 43653 | | Laparoscopy, gastrostomy | Surgery | | 7.73 | 4.23 | 4.23 | | |
| 43659 | | Laparoscope proc, stom | Surgery | | | | | 16.19 | Misc |
| 43750 | | Place gastrostomy tube | Surgery | | 4.49 | 2.62 | 2.62 | | |
| 43752 | | Nasal/orogastric w/stent | Surgery | | | | | 1.11 | MDR |
| 43760 | | Change gastrostomy tube | Surgery | | 1.10 | 1.42 | 0.46 | | |
| 43761 | | Reposition gastrostomy tube | Surgery | | 2.01 | 0.80 | 0.80 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 43800 | | Reconstruction of pylorus | Surgery | | 13.69 | 6.44 | 6.44 | | |
| 43810 | | Fusion of stomach and bowel | Surgery | | 14.65 | 6.74 | 6.74 | | |
| 43820 | | Fusion of stomach and bowel | Surgery | | 15.37 | 6.96 | 6.96 | | |
| 43825 | | Fusion of stomach and bowel | Surgery | | 19.22 | 8.30 | 8.30 | | |
| 43830 | | Place gastrostomy tube | Surgery | | 9.53 | 4.91 | 4.91 | | |
| 43831 | | Place gastrostomy tube | Surgery | | 7.84 | 4.28 | 4.28 | | |
| 43832 | | Place gastrostomy tube | Surgery | | 15.60 | 7.46 | 7.46 | | |
| 43840 | | Repair of stomach lesion | Surgery | | 15.56 | 7.02 | 7.02 | | |
| 43842 | | Gastroplasty for obesity | Surgery | | 18.47 | 11.21 | 11.21 | | |
| 43843 | | Gastroplasty for obesity | Surgery | | 18.65 | 10.81 | 10.81 | | |
| 43846 | | Gastric bypass for obesity | Surgery | | 24.05 | 13.23 | 13.23 | | |
| 43847 | | Gastric bypass for obesity | Surgery | | 26.92 | 14.86 | 14.86 | | |
| 43848 | | Revision gastroplasty | Surgery | | 29.39 | 15.91 | 15.91 | | |
| 43850 | | Revise stomach-bowel fusion | Surgery | | 24.72 | 10.14 | 10.14 | | |
| 43855 | | Revise stomach-bowel fusion | Surgery | | 26.16 | 10.73 | 10.73 | | |
| 43860 | | Revise stomach-bowel fusion | Surgery | | 25.00 | 10.30 | 10.30 | | |
| 43865 | | Revise stomach-bowel fusion | Surgery | | 26.52 | 10.85 | 10.85 | | |
| 43870 | | Repair stomach opening | Surgery | | 9.69 | 5.05 | 5.05 | | |
| 43880 | | Repair stomach-bowel fistula | Surgery | | 24.65 | 10.67 | 10.67 | | |
| 43999 | | Stomach surgery procedure | Surgery | | | | | 29.29 | Misc |
| 44005 | | Freeing of bowel adhesion | Surgery | | 16.23 | 7.20 | 7.20 | | |
| 44010 | | Incision of small bowel | Surgery | | 12.52 | 6.32 | 6.32 | | |
| 44015 | | Insert needle cath bowel | Surgery | | 2.62 | 0.91 | 0.91 | | |
| 44020 | | Explore small intestine | Surgery | | 13.99 | 6.40 | 6.40 | | |
| 44021 | | Decompress small bowel | Surgery | | 14.08 | 6.84 | 6.84 | | |
| 44025 | | Incision of large bowel | Surgery | | 14.28 | 6.49 | 6.49 | | |
| 44050 | | Reduce bowel obstruction | Surgery | | 14.03 | 6.42 | 6.42 | | |
| 44055 | | Correct malrotation of bowel | Surgery | | 22.00 | 9.20 | 9.20 | | |
| 44100 | | Biopsy of bowel | Surgery | | 2.01 | 1.06 | 1.06 | | |
| 44110 | | Excise intestine lesion(s) | Surgery | | 11.81 | 5.69 | 5.69 | | |
| 44111 | | Excision of bowel lesion(s) | Surgery | | 14.29 | 7.05 | 7.05 | | |
| 44120 | | Removal of small intestine | Surgery | | 17.00 | 7.45 | 7.45 | | |
| 44121 | | Removal of small intestine | Surgery | | 4.45 | 1.56 | 1.56 | | |
| 44125 | | Removal of small intestine | Surgery | | 17.54 | 7.64 | 7.64 | | |
| 44126 | | Enterectomy w/o taper, cong | Surgery | | 35.50 | 17.79 | 17.79 | | |
| 44127 | | Enterectomy w/taper, cong | Surgery | | 41.00 | 20.28 | 20.28 | | |
| 44128 | | Enterectomy cong, add-on | Surgery | | 4.45 | 1.73 | 1.73 | | |
| 44130 | | Bowel to bowel fusion | Surgery | | 14.49 | 6.57 | 6.57 | | |
| 44139 | | Mobilization of colon | Surgery | | 2.23 | 0.78 | 0.78 | | |
| 44140 | | Partial removal of colon | Surgery | | 21.00 | 8.86 | 8.86 | | |
| 44141 | | Partial removal of colon | Surgery | | 19.51 | 10.20 | 10.20 | | |
| 44143 | | Partial removal of colon | Surgery | | 22.99 | 10.89 | 10.89 | | |
| 44144 | | Partial removal of colon | Surgery | | 21.53 | 9.70 | 9.70 | | |
| 44145 | | Partial removal of colon | Surgery | | 26.42 | 11.04 | 11.04 | | |
| 44146 | | Partial removal of colon | Surgery | | 27.54 | 13.12 | 13.12 | | |
| 44147 | | Partial removal of colon | Surgery | | 20.71 | 8.85 | 8.85 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 44150 | | Removal of colon | Surgery | | 23.95 | 12.20 | 12.20 | | |
| 44151 | | Removal of colon/ileostomy | Surgery | | 26.88 | 13.55 | 13.55 | | |
| 44152 | | Removal of colon/ileostomy | Surgery | | 27.83 | 11.94 | 11.94 | | |
| 44153 | | Removal of colon/ileostomy | Surgery | | 30.59 | 14.74 | 14.74 | | |
| 44155 | | Removal of colon/ileostomy | Surgery | | 27.86 | 13.56 | 13.56 | | |
| 44156 | | Removal of colon/ileostomy | Surgery | | 30.79 | 15.19 | 15.19 | | |
| 44160 | | Removal of colon | Surgery | | 18.62 | 7.93 | 7.93 | | |
| 44200 | | Laparoscopy, enterolysis | Surgery | | 14.44 | 6.38 | 6.38 | | |
| 44201 | | Laparoscopy, jejunostomy | Surgery | | 9.78 | 4.63 | 4.63 | | |
| 44202 | | Lap resect s/intestine singl | Surgery | | 22.04 | 9.14 | 9.14 | | |
| 44203 | | Lap resect s/intestine, addl | Surgery | | 4.45 | 1.56 | 1.56 | | |
| 44204 | | Laparo partial colectomy | Surgery | | 25.08 | 10.21 | 10.21 | | |
| 44205 | | Lap colectomy part w/ileum | Surgery | | 22.23 | 9.07 | 9.07 | | |
| 44206 | | Lap part colectomy w/stoma | Surgery | | 27.00 | 11.22 | 11.22 | | |
| 44207 | | L colectomy/coloproctostomy | Surgery | | 30.00 | 11.82 | 11.82 | | |
| 44208 | | L colectomy/coloproctostomy | Surgery | | 32.00 | 13.42 | 13.42 | | |
| 44210 | | Laparo total proctocolectomy | Surgery | | 28.00 | 12.11 | 12.11 | | |
| 44211 | | Laparo total proctocolectomy | Surgery | | 35.00 | 15.02 | 15.02 | | |
| 44212 | | Laparo total proctocolectomy | Surgery | | 32.50 | 14.16 | 14.16 | | |
| 44300 | | Open bowel to skin | Surgery | | 12.11 | 5.63 | 5.63 | | |
| 44310 | | Ileostomy/jejunostomy | Surgery | | 15.95 | 6.88 | 6.88 | | |
| 44312 | | Revision of ileostomy | Surgery | | 8.02 | 4.09 | 4.09 | | |
| 44314 | | Revision of ileostomy | Surgery | | 15.05 | 6.71 | 6.71 | | |
| 44316 | | Devise bowel pouch | Surgery | | 21.09 | 8.71 | 8.71 | | |
| 44320 | | Colostomy | Surgery | | 17.64 | 7.83 | 7.83 | | |
| 44322 | | Colostomy with biopsies | Surgery | | 11.98 | 8.75 | 8.75 | | |
| 44340 | | Revision of colostomy | Surgery | | 7.72 | 4.35 | 4.35 | | |
| 44345 | | Revision of colostomy | Surgery | | 15.43 | 7.03 | 7.03 | | |
| 44346 | | Revision of colostomy | Surgery | | 16.99 | 7.54 | 7.54 | | |
| 44360 | | Small bowel endoscopy | Surgery | | 2.59 | 1.36 | 1.36 | | |
| 44361 | | Small bowel endoscopy/biopsy | Surgery | | 2.87 | 1.45 | 1.45 | | |
| 44363 | | Small bowel endoscopy | Surgery | | 3.50 | 1.64 | 1.64 | | |
| 44364 | | Small bowel endoscopy | Surgery | | 3.74 | 1.76 | 1.76 | | |
| 44365 | | Small bowel endoscopy | Surgery | | 3.31 | 1.63 | 1.63 | | |
| 44366 | | Small bowel endoscopy | Surgery | | 4.41 | 2.01 | 2.01 | | |
| 44369 | | Small bowel endoscopy | Surgery | | 4.52 | 2.01 | 2.01 | | |
| 44370 | | Small bowel endoscopy/stent | Surgery | | 4.80 | 2.15 | 2.15 | | |
| 44372 | | Small bowel endoscopy | Surgery | | 4.41 | 2.00 | 2.00 | | |
| 44373 | | Small bowel endoscopy | Surgery | | 3.50 | 1.72 | 1.72 | | |
| 44376 | | Small bowel endoscopy | Surgery | | 5.26 | 2.30 | 2.30 | | |
| 44377 | | Small bowel endoscopy/biopsy | Surgery | | 5.53 | 2.43 | 2.43 | | |
| 44378 | | Small bowel endoscopy | Surgery | | 7.13 | 2.99 | 2.99 | | |
| 44379 | | S bowel endoscope w/stent | Surgery | | 7.47 | 3.11 | 3.11 | | |
| 44380 | | Small bowel endoscopy | Surgery | | 1.05 | 0.78 | 0.78 | | |
| 44382 | | Small bowel endoscopy | Surgery | | 1.27 | 0.87 | 0.87 | | |
| 44383 | | Ileoscopy w/stent | Surgery | | 2.94 | 1.42 | 1.42 | | |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology.

TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 44385 | | Endoscopy of bowel pouch | Surgery | | 1.82 | 4.53 | 0.96 | | |
| 44386 | | Endoscopy, bowel pouch/biop | Surgery | | 2.12 | 5.99 | 1.09 | | |
| 44388 | | Colon endoscopy | Surgery | | 2.82 | 6.49 | 1.38 | | |
| 44389 | | Colonoscopy with biopsy | Surgery | | 3.13 | 7.24 | 1.51 | | |
| 44390 | | Colonoscopy for foreign body | Surgery | | 3.83 | 6.96 | 1.73 | | |
| 44391 | | Colonoscopy for bleeding | Surgery | | 4.32 | 6.01 | 1.73 | | |
| 44392 | | Colonoscopy & polypectomy | Surgery | | 3.82 | 7.44 | 1.74 | | |
| 44393 | | Colonoscopy, lesion removal | Surgery | | 4.84 | 7.76 | 2.12 | | |
| 44394 | | Colonoscopy w/snare | Surgery | | 4.43 | 7.96 | 1.98 | | |
| 44397 | | Colonoscopy w/stent | Surgery | | 4.71 | 2.06 | 2.06 | | |
| 44500 | | Intro, gastrointestinal tube | Surgery | | 0.49 | 0.36 | 0.36 | | |
| 44602 | | Suture, small intestine | Surgery | | 16.03 | 6.63 | 6.63 | | |
| 44603 | | Suture, small intestine | Surgery | | 18.66 | 7.52 | 7.52 | | |
| 44604 | | Suture, large intestine | Surgery | | 16.03 | 6.69 | 6.69 | | |
| 44605 | | Repair of bowel lesion | Surgery | | 19.53 | 8.66 | 8.66 | | |
| 44615 | | Intestinal stricturoplasty | Surgery | | 15.93 | 6.89 | 6.89 | | |
| 44620 | | Repair bowel opening | Surgery | | 12.20 | 5.48 | 5.48 | | |
| 44625 | | Repair bowel opening | Surgery | | 15.05 | 6.49 | 6.49 | | |
| 44626 | | Repair bowel opening | Surgery | | 25.36 | 10.09 | 10.09 | | |
| 44640 | | Repair bowel-skin fistula | Surgery | | 21.65 | 8.82 | 8.82 | | |
| 44650 | | Repair bowel fistula | Surgery | | 22.57 | 9.13 | 9.13 | | |
| 44660 | | Repair bowel-bladder fistula | Surgery | | 21.36 | 8.56 | 8.56 | | |
| 44661 | | Repair bowel-bladder fistula | Surgery | | 24.81 | 9.80 | 9.80 | | |
| 44680 | | Surgical revision, intestine | Surgery | | 15.40 | 6.64 | 6.64 | | |
| 44700 | | Sus bowel w/prosthesis | Surgery | | 16.11 | 6.88 | 6.88 | | |
| 44701 | | Intraop colon lavage add-on | Surgery | | 3.10 | 1.07 | 1.07 | | |
| 44799 | | Intestine surgery procedure | Surgery | | | | | 33.30 | Misc |
| 44800 | | Excision of bowel pouch | Surgery | | 11.23 | 5.50 | 5.50 | | |
| 44820 | | Excision of mesentery lesion | Surgery | | 12.09 | 5.63 | 5.63 | | |
| 44850 | | Repair of mesentery | Surgery | | 10.74 | 5.13 | 5.13 | | |
| 44899 | | Bowel surgery procedure | Surgery | | | | | 22.23 | Misc |
| 44900 | | Drain app abscess, open | Surgery | | 10.14 | 4.87 | 4.87 | | |
| 44901 | | Drain app abscess, percut | Surgery | | 3.38 | 4.51 | 4.51 | | |
| 44950 | | Apectomy | Surgery | | 10.00 | 4.50 | 4.50 | | |
| 44955 | | Apectomy add-on | Surgery | | 1.53 | 0.55 | 0.55 | | |
| 44960 | | Apectomy | Surgery | | 12.34 | 5.52 | 5.52 | | |
| 44970 | | Laparoscopy, apectomy | Surgery | | 8.70 | 4.22 | 4.22 | | |
| 44979 | | Laparoscope proc, app | Surgery | | | | | 19.00 | Misc |
| 45000 | | Drainage of pelvic abscess | Surgery | | 4.52 | 3.08 | 3.08 | | |
| 45005 | | Drainage of rectal abscess | Surgery | | 1.99 | 4.51 | 1.57 | | |
| 45020 | | Drainage of rectal abscess | Surgery | | 4.72 | 3.38 | 3.38 | | |
| 45100 | | Biopsy of rectum | Surgery | | 3.68 | 2.49 | 2.49 | | |
| 45108 | | Removal of anorectal lesion | Surgery | | 4.76 | 3.02 | 3.02 | | |
| 45110 | | Removal of rectum | Surgery | | 28.00 | 12.51 | 12.51 | | |
| 45111 | | Partial removal of rectum | Surgery | | 16.48 | 7.35 | 7.35 | | |
| 45112 | | Removal of rectum | Surgery | | 30.54 | 12.07 | 12.07 | | |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology

## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 45113 | | Partial proctectomy | Surgery | | 30.58 | 12.98 | 12.98 | | |
| 45114 | | Partial removal of rectum | Surgery | | 27.32 | 11.19 | 11.19 | | |
| 45116 | | Partial removal of rectum | Surgery | | 24.58 | 10.22 | 10.22 | | |
| 45119 | | Remove rectum w/reservoir | Surgery | | 30.84 | 12.85 | 12.85 | | |
| 45120 | | Removal of rectum | Surgery | | 24.60 | 10.31 | 10.31 | | |
| 45121 | | Removal of rectum and colon | Surgery | | 27.04 | 11.34 | 11.34 | | |
| 45123 | | Partial proctectomy | Surgery | | 16.71 | 7.02 | 7.02 | | |
| 45126 | | Pelvic exenteration | Surgery | | 45.16 | 19.41 | 19.41 | | |
| 45130 | | Excision of rectal prolapse | Surgery | | 16.44 | 6.93 | 6.93 | | |
| 45135 | | Excision of rectal prolapse | Surgery | | 19.28 | 8.54 | 8.54 | | |
| 45136 | | Excise ileoanal reservior | Surgery | | 27.30 | 12.31 | 12.31 | | |
| 45150 | | Excision of rectal stricture | Surgery | | 5.67 | 3.08 | 3.08 | | |
| 45160 | | Excision of rectal lesion | Surgery | | 15.32 | 6.78 | 6.78 | | |
| 45170 | | Excision of rectal lesion | Surgery | | 11.49 | 5.39 | 5.39 | | |
| 45190 | | Destruction, rectal tumor | Surgery | | 9.74 | 5.12 | 5.12 | | |
| 45300 | | Proctosigmoidoscopy dx | Surgery | | 0.38 | 1.33 | 0.23 | | |
| 45303 | | Proctosigmoidoscopy dilate | Surgery | | 0.44 | 1.58 | 0.26 | | |
| 45305 | | Proctosigmoidoscopy w/bx | Surgery | | 1.01 | 1.58 | 0.45 | | |
| 45307 | | Proctosigmoidoscopy fb | Surgery | | 0.94 | 2.52 | 0.42 | | |
| 45308 | | Proctosigmoidoscopy removal | Surgery | | 0.83 | 1.52 | 0.39 | | |
| 45309 | | Proctosigmoidoscopy removal | Surgery | | 2.01 | 2.39 | 0.79 | | |
| 45315 | | Proctosigmoidoscopy removal | Surgery | | 1.40 | 2.55 | 0.59 | | |
| 45317 | | Proctosigmoidoscopy bleed | Surgery | | 1.50 | 1.84 | 0.62 | | |
| 45320 | | Proctosigmoidoscopy ablate | Surgery | | 1.58 | 1.80 | 0.66 | | |
| 45321 | | Proctosigmoidoscopy volvul | Surgery | | 1.17 | 0.51 | 0.51 | | |
| 45327 | | Proctosigmoidoscopy w/stent | Surgery | | 1.65 | 0.86 | 0.86 | | |
| 45330 | | Diagnostic sigmoidoscopy | Surgery | | 0.96 | 1.82 | 0.52 | | |
| 45331 | | Sigmoidoscopy and biopsy | Surgery | | 1.15 | 2.24 | 0.53 | | |
| 45332 | | Sigmoidoscopy w/fb removal | Surgery | | 1.79 | 3.96 | 0.75 | | |
| 45333 | | Sigmoidoscopy & polypectomy | Surgery | | 1.79 | 3.57 | 0.75 | | |
| 45334 | | Sigmoidoscopy for bleeding | Surgery | | 2.73 | 1.08 | 1.08 | | |
| 45335 | | Sigmoidoscope w/submuc inj | Surgery | | 1.36 | 2.48 | 0.65 | | |
| 45337 | | Sigmoidoscopy & decompress | Surgery | | 2.36 | 0.95 | 0.95 | | |
| 45338 | | Sigmoidoscpy w/tumr remove | Surgery | | 2.34 | 4.29 | 0.95 | | |
| 45339 | | Sigmoidoscopy w/ablate tumr | Surgery | | 3.14 | 3.26 | 1.23 | | |
| 45340 | | Sig w/balloon dilation | Surgery | | 1.66 | 7.19 | 0.76 | | |
| 45341 | | Sigmoidoscopy w/ultrasound | Surgery | | 2.60 | 1.37 | 1.37 | | |
| 45342 | | Sigmoidoscopy w/us guide bx | Surgery | | 4.06 | 1.81 | 1.81 | | |
| 45345 | | Sigmoidoscopy w/stent | Surgery | | 2.92 | 1.40 | 1.40 | | |
| 45355 | | Surgical colonoscopy | Surgery | | 3.52 | 1.24 | 1.24 | | |
| 45378 | | Diagnostic colonoscopy | Surgery | | 3.70 | 8.03 | 1.72 | | |
| 45379 | | Colonoscopy w/fb removal | Surgery | | 4.69 | 8.34 | 2.08 | | |
| 45380 | | Colonoscopy and biopsy | Surgery | | 4.44 | 8.46 | 2.00 | | |
| 45381 | | Colonoscope, submucous inj | Surgery | | 4.20 | 6.15 | 1.70 | | |
| 45382 | | Colonoscopy/control bleeding | Surgery | | 5.69 | 9.73 | 2.23 | | |
| 45383 | | Lesion removal colonoscopy | Surgery | | 5.87 | 9.34 | 2.50 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 45384 | | Lesion remove colonoscopy | Surgery | | 4.70 | 9.07 | 2.09 | | |
| 45385 | | Lesion removal colonoscopy | Surgery | | 5.31 | 9.24 | 2.31 | | |
| 45386 | | Colonoscope dilate stricture | Surgery | | 4.58 | 15.29 | 1.84 | | |
| 45387 | | Colonoscopy w/stent | Surgery | | 5.91 | 2.52 | 2.52 | | |
| 45500 | | Repair of rectum | Surgery | | 7.29 | 4.14 | 4.14 | | |
| 45505 | | Repair of rectum | Surgery | | 7.58 | 3.70 | 3.70 | | |
| 45520 | | Treatment of rectal prolapse | Surgery | | 0.55 | 0.77 | 0.19 | | |
| 45540 | | Correct rectal prolapse | Surgery | | 16.27 | 7.90 | 7.90 | | |
| 45541 | | Correct rectal prolapse | Surgery | | 13.40 | 6.78 | 6.78 | | |
| 45550 | | Repair rectum/remove sigmoid | Surgery | | 23.00 | 10.15 | 10.15 | | |
| 45560 | | Repair of rectocele | Surgery | | 10.58 | 5.89 | 5.89 | | |
| 45562 | | Exploration/repair of rectum | Surgery | | 15.38 | 7.30 | 7.30 | | |
| 45563 | | Exploration/repair of rectum | Surgery | | 23.47 | 10.90 | 10.90 | | |
| 45800 | | Repair rect/bladder fistula | Surgery | | 17.77 | 7.91 | 7.91 | | |
| 45805 | | Repair fistula w/colostomy | Surgery | | 20.78 | 9.91 | 9.91 | | |
| 45820 | | Repair rectourethral fistula | Surgery | | 18.48 | 8.15 | 8.15 | | |
| 45825 | | Repair fistula w/colostomy | Surgery | | 21.25 | 10.13 | 10.13 | | |
| 45900 | | Reduction of rectal prolapse | Surgery | | 2.61 | 1.02 | 1.02 | | |
| 45905 | | Dilation of anal sphincter | Surgery | | 2.30 | 11.46 | 0.94 | | |
| 45910 | | Dilation of rectal narrowing | Surgery | | 2.80 | 15.87 | 1.12 | | |
| 45915 | | Remove rectal obstruction | Surgery | | 3.14 | 4.65 | 1.10 | | |
| 45999 | | Rectum surgery procedure | Surgery | | | | | 3.30 | Misc |
| 46020 | | Placement of seton | Surgery | | 2.90 | 3.12 | 2.38 | | |
| 46030 | | Removal of rectal marker | Surgery | | 1.23 | 3.00 | 1.19 | | |
| 46040 | | Incision of rectal abscess | Surgery | | 4.96 | 5.34 | 3.05 | | |
| 46045 | | Incision of rectal abscess | Surgery | | 4.32 | 2.77 | 2.77 | | |
| 46050 | | Incision of anal abscess | Surgery | | 1.19 | 3.52 | 1.32 | | |
| 46060 | | Incision of rectal abscess | Surgery | | 5.69 | 3.71 | 3.71 | | |
| 46070 | | Incision of anal septum | Surgery | | 2.71 | 2.40 | 2.40 | | |
| 46080 | | Incision of anal sphincter | Surgery | | 2.49 | 3.61 | 1.60 | | |
| 46083 | | Incise external hemorrhoid | Surgery | | 1.40 | 4.66 | 1.53 | | |
| 46200 | | Removal of anal fissure | Surgery | | 3.42 | 3.84 | 2.35 | | |
| 46210 | | Removal of anal crypt | Surgery | | 2.67 | 5.08 | 2.17 | | |
| 46211 | | Removal of anal crypts | Surgery | | 4.25 | 5.20 | 2.88 | | |
| 46220 | | Removal of anal tag | Surgery | | 1.56 | 1.26 | 0.55 | | |
| 46221 | | Ligation of hemorrhoid(s) | Surgery | | 2.04 | 1.71 | 1.07 | | |
| 46230 | | Removal of anal tags | Surgery | | 2.57 | 4.26 | 1.65 | | |
| 46250 | | Hemorrhoidectomy | Surgery | | 3.89 | 5.32 | 2.65 | | |
| 46255 | | Hemorrhoidectomy | Surgery | | 4.60 | 6.00 | 2.87 | | |
| 46257 | | Remove hemorrhoids & fissure | Surgery | | 5.40 | 3.05 | 3.05 | | |
| 46258 | | Remove hemorrhoids & fistula | Surgery | | 5.73 | 3.19 | 3.19 | | |
| 46260 | | Hemorrhoidectomy | Surgery | | 6.37 | 3.92 | 3.92 | | |
| 46261 | | Remove hemorrhoids & fissure | Surgery | | 7.08 | 4.04 | 4.04 | | |
| 46262 | | Remove hemorrhoids & fistula | Surgery | | 7.50 | 4.26 | 4.26 | | |
| 46270 | | Removal of anal fistula | Surgery | | 3.72 | 5.01 | 2.56 | | |
| 46275 | | Removal of anal fistula | Surgery | | 4.56 | 4.66 | 2.76 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 46280 | | Removal of anal fistula | Surgery | | 5.98 | 3.69 | 3.69 | | |
| 46285 | | Removal of anal fistula | Surgery | | 4.09 | 4.07 | 2.60 | | |
| 46288 | | Repair anal fistula | Surgery | | 7.13 | 4.19 | 4.19 | | |
| 46320 | | Removal of hemorrhoid clot | Surgery | | 1.61 | 3.86 | 1.54 | | |
| 46500 | | Injection into hemorrhoid(s) | Surgery | | 1.61 | 2.71 | 0.57 | | |
| 46600 | | Diagnostic anoscopy | Surgery | | 0.50 | 0.80 | 0.15 | | |
| 46604 | | Anoscopy and dilation | Surgery | | 1.31 | 0.96 | 0.46 | | |
| 46606 | | Anoscopy and biopsy | Surgery | | 0.81 | 0.87 | 0.28 | | |
| 46608 | | Anoscopy, remove for body | Surgery | | 1.51 | 1.83 | 0.47 | | |
| 46610 | | Anoscopy, remove lesion | Surgery | | 1.32 | 1.42 | 0.47 | | |
| 46611 | | Anoscopy | Surgery | | 1.81 | 2.00 | 0.64 | | |
| 46612 | | Anoscopy, remove lesions | Surgery | | 2.34 | 2.45 | 0.84 | | |
| 46614 | | Anoscopy, control bleeding | Surgery | | 2.01 | 1.79 | 0.69 | | |
| 46615 | | Anoscopy | Surgery | | 2.68 | 1.73 | 0.94 | | |
| 46700 | | Repair of anal stricture | Surgery | | 9.13 | 4.64 | 4.64 | | |
| 46705 | | Repair of anal stricture | Surgery | | 6.90 | 4.06 | 4.06 | | |
| 46706 | | Repr of anal fistula w/glue | Surgery | | 2.39 | 1.24 | 1.24 | | |
| 46715 | | Repair of anovaginal fistula | Surgery | | 7.20 | 4.23 | 4.23 | | |
| 46716 | | Repair of anovaginal fistula | Surgery | | 15.07 | 7.38 | 7.38 | | |
| 46730 | | Construction of absent anus | Surgery | | 26.75 | 12.23 | 12.23 | | |
| 46735 | | Construction of absent anus | Surgery | | 32.17 | 14.08 | 14.08 | | |
| 46740 | | Construction of absent anus | Surgery | | 30.00 | 12.54 | 12.54 | | |
| 46742 | | Repair of imperforated anus | Surgery | | 35.80 | 18.00 | 18.00 | | |
| 46744 | | Repair of cloacal anomaly | Surgery | | 52.63 | 21.43 | 21.43 | | |
| 46746 | | Repair of cloacal anomaly | Surgery | | 58.22 | 25.90 | 25.90 | | |
| 46748 | | Repair of cloacal anomaly | Surgery | | 64.21 | 25.75 | 25.75 | | |
| 46750 | | Repair of anal sphincter | Surgery | | 10.25 | 5.63 | 5.63 | | |
| 46751 | | Repair of anal sphincter | Surgery | | 8.77 | 6.38 | 6.38 | | |
| 46753 | | Reconstruction of anus | Surgery | | 8.29 | 4.01 | 4.01 | | |
| 46754 | | Removal of suture from anus | Surgery | | 2.20 | 5.44 | 1.36 | | |
| 46760 | | Repair of anal sphincter | Surgery | | 14.43 | 7.07 | 7.07 | | |
| 46761 | | Repair of anal sphincter | Surgery | | 13.84 | 6.57 | 6.57 | | |
| 46762 | | Implant artificial sphincter | Surgery | | 12.71 | 5.72 | 5.72 | | |
| 46900 | | Destruction, anal lesion(s) | Surgery | | 1.91 | 3.44 | 0.75 | | |
| 46910 | | Destruction, anal lesion(s) | Surgery | | 1.86 | 3.74 | 1.46 | | |
| 46916 | | Cryosurgery, anal lesion(s) | Surgery | | 1.86 | 3.36 | 1.67 | | |
| 46917 | | Laser surgery, anal lesions | Surgery | | 1.86 | 4.72 | 1.52 | | |
| 46922 | | Excision of anal lesion(s) | Surgery | | 1.86 | 3.86 | 1.43 | | |
| 46924 | | Destruction, anal lesion(s) | Surgery | | 2.76 | 5.09 | 1.69 | | |
| 46934 | | Destruction of hemorrhoids | Surgery | | 3.51 | 6.23 | 3.58 | | |
| 46935 | | Destruction of hemorrhoids | Surgery | | 2.43 | 4.23 | 0.86 | | |
| 46936 | | Destruction of hemorrhoids | Surgery | | 3.69 | 5.91 | 3.43 | | |
| 46937 | | Cryotherapy of rectal lesion | Surgery | | 2.69 | 4.41 | 1.77 | | |
| 46938 | | Cryotherapy of rectal lesion | Surgery | | 4.66 | 5.03 | 3.25 | | |
| 46940 | | Treatment of anal fissure | Surgery | | 2.32 | 3.14 | 0.81 | | |
| 46942 | | Treatment of anal fissure | Surgery | | 2.04 | 2.86 | 0.69 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 46945 | | Ligation of hemorrhoids | Surgery | | 1.84 | 3.93 | 2.15 | | |
| 46946 | | Ligation of hemorrhoids | Surgery | | 2.58 | 4.99 | 2.45 | | |
| 46999 | | Anus surgery procedure | Surgery | | | | | 1.45 | Misc |
| 47000 | | Needle biopsy of liver | Surgery | | 1.90 | 8.24 | 0.65 | | |
| 47001 | | Needle biopsy, liver add-on | Surgery | | 1.90 | 0.67 | 0.67 | | |
| 47010 | | Open drainage, liver lesion | Surgery | | 16.01 | 9.66 | 9.66 | | |
| 47011 | | Percut drain, liver lesion | Surgery | | 3.70 | 4.38 | 4.38 | | |
| 47015 | | Inject/aspirate liver cyst | Surgery | | 15.11 | 7.84 | 7.84 | | |
| 47100 | | Wedge biopsy of liver | Surgery | | 11.67 | 6.30 | 6.30 | | |
| 47120 | | Partial removal of liver | Surgery | | 35.50 | 16.55 | 16.55 | | |
| 47122 | | Extensive removal of liver | Surgery | | 55.13 | 23.43 | 23.43 | | |
| 47125 | | Partial removal of liver | Surgery | | 49.19 | 21.42 | 21.42 | | |
| 47130 | | Partial removal of liver | Surgery | | 53.35 | 22.88 | 22.88 | | |
| 47133 | | Removal of donor liver | Surgery | | | | | 53.82 | PHCS |
| 47134 | | Partial removal, donor liver | Surgery | | 39.15 | 13.56 | 13.56 | | |
| 47135 | | Transplantation of liver | Surgery | | 81.52 | 42.52 | 42.52 | | |
| 47136 | | Transplantation of liver | Surgery | | 68.60 | 41.83 | 41.83 | | |
| 47300 | | Surgery for liver lesion | Surgery | | 15.08 | 7.53 | 7.53 | | |
| 47350 | | Repair liver wound | Surgery | | 19.56 | 9.21 | 9.21 | | |
| 47360 | | Repair liver wound | Surgery | | 26.92 | 12.51 | 12.51 | | |
| 47361 | | Repair liver wound | Surgery | | 47.12 | 19.57 | 19.57 | | |
| 47362 | | Repair liver wound | Surgery | | 18.51 | 9.54 | 9.54 | | |
| 47370 | | Laparo ablate liver tumor rf | Surgery | | 19.69 | 9.72 | 9.72 | | |
| 47371 | | Laparo ablate liver cryosurg | Surgery | | 19.69 | 9.72 | 9.72 | | |
| 47379 | | Laparoscope procedure, liver | Surgery | | | | | 39.13 | Misc |
| 47380 | | Open ablate liver tumor rf | Surgery | | 23.00 | 11.01 | 11.01 | | |
| 47381 | | Open ablate liver tumor cryo | Surgery | | 23.27 | 11.12 | 11.12 | | |
| 47382 | | Percut ablate liver rf | Surgery | | 15.19 | 6.25 | 6.25 | | |
| 47399 | | Liver surgery procedure | Surgery | | | | | 24.27 | Misc |
| 47400 | | Incision of liver duct | Surgery | | 32.49 | 14.44 | 14.44 | | |
| 47420 | | Incision of bile duct | Surgery | | 19.88 | 9.15 | 9.15 | | |
| 47425 | | Incision of bile duct | Surgery | | 19.83 | 9.22 | 9.22 | | |
| 47460 | | Incise bile duct sphincter | Surgery | | 18.04 | 8.96 | 8.96 | | |
| 47480 | | Incision of gallbladder | Surgery | | 10.82 | 6.58 | 6.58 | | |
| 47490 | | Incision of gallbladder | Surgery | | 7.23 | 7.49 | 7.49 | | |
| 47500 | | Injection for liver x-rays | Surgery | | 1.96 | 0.66 | 0.66 | | |
| 47505 | | Injection for liver x-rays | Surgery | | 0.76 | 2.65 | 0.26 | | |
| 47510 | | Insert catheter, bile duct | Surgery | | 7.83 | 4.69 | 4.69 | | |
| 47511 | | Insert bile duct drain | Surgery | | 10.50 | 10.37 | 10.37 | | |
| 47525 | | Change bile duct catheter | Surgery | | 5.55 | 3.25 | 3.25 | | |
| 47530 | | Revise/reinsert bile tube | Surgery | | 5.85 | 4.93 | 4.93 | | |
| 47550 | | Bile duct endoscopy add-on | Surgery | | 3.02 | 1.04 | 1.04 | | |
| 47552 | | Biliary endoscopy thru skin | Surgery | | 6.04 | 2.44 | 2.44 | | |
| 47553 | | Biliary endoscopy thru skin | Surgery | | 6.35 | 2.64 | 2.64 | | |
| 47554 | | Biliary endoscopy thru skin | Surgery | | 9.06 | 3.44 | 3.44 | | |
| 47555 | | Biliary endoscopy thru skin | Surgery | | 7.56 | 3.05 | 3.05 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 47556 | | Biliary endoscopy thru skin | Surgery | | 8.56 | 3.39 | 3.39 | | |
| 47560 | | Laparoscopy w/cholangio | Surgery | | 4.89 | 1.84 | 1.84 | | |
| 47561 | | Laparo w/cholangio/biopsy | Surgery | | 5.18 | 2.13 | 2.13 | | |
| 47562 | | Laparoscopic cholecystectomy | Surgery | | 11.09 | 5.01 | 5.01 | | |
| 47563 | | Laparo cholecystectomy/graph | Surgery | | 11.94 | 5.27 | 5.27 | | |
| 47564 | | Laparo cholecystectomy/explr | Surgery | | 14.23 | 6.08 | 6.08 | | |
| 47570 | | Laparo cholecystoenterostomy | Surgery | | 12.58 | 5.50 | 5.50 | | |
| 47579 | | Laparoscope proc, biliary | Surgery | | | | | 26.92 | Misc |
| 47600 | | Removal of gallbladder | Surgery | | 13.58 | 6.67 | 6.67 | | |
| 47605 | | Removal of gallbladder | Surgery | | 14.69 | 7.03 | 7.03 | | |
| 47610 | | Removal of gallbladder | Surgery | | 18.82 | 8.59 | 8.59 | | |
| 47612 | | Removal of gallbladder | Surgery | | 18.78 | 8.45 | 8.45 | | |
| 47620 | | Removal of gallbladder | Surgery | | 20.64 | 9.12 | 9.12 | | |
| 47630 | | Remove bile duct stone | Surgery | | 9.11 | 3.08 | 3.08 | | |
| 47700 | | Exploration of bile ducts | Surgery | | 15.62 | 8.51 | 8.51 | | |
| 47701 | | Bile duct revision | Surgery | | 27.81 | 13.06 | 13.06 | | |
| 47711 | | Excision of bile duct tumor | Surgery | | 23.03 | 11.02 | 11.02 | | |
| 47712 | | Excision of bile duct tumor | Surgery | | 30.24 | 13.63 | 13.63 | | |
| 47715 | | Excision of bile duct cyst | Surgery | | 18.80 | 8.75 | 8.75 | | |
| 47716 | | Fusion of bile duct cyst | Surgery | | 16.44 | 8.20 | 8.20 | | |
| 47720 | | Fuse gallbladder & bowel | Surgery | | 15.91 | 8.48 | 8.48 | | |
| 47721 | | Fuse upper gi structures | Surgery | | 19.12 | 9.60 | 9.60 | | |
| 47740 | | Fuse gallbladder & bowel | Surgery | | 18.48 | 9.40 | 9.40 | | |
| 47741 | | Fuse gallbladder & bowel | Surgery | | 21.34 | 10.33 | 10.33 | | |
| 47760 | | Fuse bile ducts and bowel | Surgery | | 25.85 | 11.93 | 11.93 | | |
| 47765 | | Fuse liver ducts & bowel | Surgery | | 24.88 | 12.37 | 12.37 | | |
| 47780 | | Fuse bile ducts and bowel | Surgery | | 26.50 | 12.17 | 12.17 | | |
| 47785 | | Fuse bile ducts and bowel | Surgery | | 31.18 | 14.49 | 14.49 | | |
| 47800 | | Reconstruction of bile ducts | Surgery | | 23.30 | 11.15 | 11.15 | | |
| 47801 | | Placement, bile duct support | Surgery | | 15.17 | 10.03 | 10.03 | | |
| 47802 | | Fuse liver duct & intestine | Surgery | | 21.55 | 11.13 | 11.13 | | |
| 47900 | | Suture bile duct injury | Surgery | | 19.90 | 9.91 | 9.91 | | |
| 47999 | | Bile tract surgery procedure | Surgery | | | | | 21.11 | Misc |
| 48000 | | Drainage of abdomen | Surgery | | 28.07 | 12.40 | 12.40 | | |
| 48001 | | Placement of drain, pancreas | Surgery | | 35.45 | 14.70 | 14.70 | | |
| 48005 | | Resect/debride pancreas | Surgery | | 42.17 | 16.99 | 16.99 | | |
| 48020 | | Removal of pancreatic stone | Surgery | | 15.70 | 7.38 | 7.38 | | |
| 48100 | | Biopsy of pancreas, open | Surgery | | 12.23 | 6.83 | 6.83 | | |
| 48102 | | Needle biopsy, pancreas | Surgery | | 4.68 | 8.84 | 2.38 | | |
| 48120 | | Removal of pancreas lesion | Surgery | | 15.85 | 7.36 | 7.36 | | |
| 48140 | | Partial removal of pancreas | Surgery | | 22.94 | 10.51 | 10.51 | | |
| 48145 | | Partial removal of pancreas | Surgery | | 24.02 | 11.18 | 11.18 | | |
| 48146 | | Pancreatectomy | Surgery | | 26.40 | 13.29 | 13.29 | | |
| 48148 | | Removal of pancreatic duct | Surgery | | 17.34 | 8.98 | 8.98 | | |
| 48150 | | Partial removal of pancreas | Surgery | | 48.00 | 21.38 | 21.38 | | |
| 48152 | | Pancreatectomy | Surgery | | 43.75 | 20.25 | 20.25 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 48153 | | Pancreatectomy | Surgery | | 47.89 | 21.58 | 21.58 | | |
| 48154 | | Pancreatectomy | Surgery | | 44.10 | 20.13 | 20.13 | | |
| 48155 | | Removal of pancreas | Surgery | | 24.64 | 13.48 | 13.48 | | |
| 48160 | | Pancreas removal/transplant | Surgery | | | | | 62.79 | MDR |
| 48180 | | Fuse pancreas and bowel | Surgery | | 24.72 | 10.85 | 10.85 | | |
| 48400 | | Injection, intraop add-on | Surgery | | 1.95 | 0.67 | 0.67 | | |
| 48500 | | Surgery of pancreatic cyst | Surgery | | 15.28 | 7.24 | 7.24 | | |
| 48510 | | Drain pancreatic pseudocyst | Surgery | | 14.31 | 7.49 | 7.49 | | |
| 48511 | | Drain pancreatic pseudocyst | Surgery | | 4.00 | 3.72 | 3.72 | | |
| 48520 | | Fuse pancreas cyst and bowel | Surgery | | 15.59 | 7.21 | 7.21 | | |
| 48540 | | Fuse pancreas cyst and bowel | Surgery | | 19.72 | 8.62 | 8.62 | | |
| 48545 | | Pancreatorrhaphy | Surgery | | 18.18 | 8.68 | 8.68 | | |
| 48547 | | Duodenal exclusion | Surgery | | 25.83 | 10.79 | 10.79 | | |
| 48550 | | Donor pancreatectomy | Surgery | | | | | 25.86 | SAF |
| 48554 | | Transpl allograft pancreas | Surgery | | 34.17 | 11.94 | 11.94 | | |
| 48556 | | Removal, allograft pancreas | Surgery | | 15.71 | 8.46 | 8.46 | | |
| 48999 | | Pancreas surgery procedure | Surgery | | | | | 46.42 | Misc |
| 49000 | | Exploration of abdomen | Surgery | | 11.68 | 6.06 | 6.06 | | |
| 49002 | | Reopening of abdomen | Surgery | | 10.49 | 5.96 | 5.96 | | |
| 49010 | | Exploration behind abdomen | Surgery | | 12.28 | 6.93 | 6.93 | | |
| 49020 | | Drain abdominal abscess | Surgery | | 22.84 | 11.41 | 11.41 | | |
| 49021 | | Drain abdominal abscess | Surgery | | 3.38 | 5.28 | 5.28 | | |
| 49040 | | Drain, open, abdom abscess | Surgery | | 13.52 | 8.19 | 8.19 | | |
| 49041 | | Drain, percut, abdom abscess | Surgery | | 4.00 | 5.61 | 5.61 | | |
| 49060 | | Drain, open, retrop abscess | Surgery | | 15.86 | 9.58 | 9.58 | | |
| 49061 | | Drain, percut, retroper absc | Surgery | | 3.70 | 5.62 | 5.62 | | |
| 49062 | | Drain to peritoneal cavity | Surgery | | 11.36 | 7.07 | 7.07 | | |
| 49080 | | Puncture, peritoneal cavity | Surgery | | 1.35 | 4.39 | 0.47 | | |
| 49081 | | Removal of abdominal fluid | Surgery | | 1.26 | 3.07 | 0.58 | | |
| 49085 | | Remove abdomen foreign body | Surgery | | 12.14 | 6.56 | 6.56 | | |
| 49180 | | Biopsy, abdominal mass | Surgery | | 1.73 | 8.22 | 0.59 | | |
| 49200 | | Removal of abdominal lesion | Surgery | | 10.25 | 6.27 | 6.27 | | |
| 49201 | | Remove abdom lesion, complex | Surgery | | 14.84 | 8.56 | 8.56 | | |
| 49215 | | Excise sacral spine tumor | Surgery | | 33.50 | 14.74 | 14.74 | | |
| 49220 | | Multiple surgery, abdomen | Surgery | | 14.88 | 7.63 | 7.63 | | |
| 49250 | | Excision of umbilicus | Surgery | | 8.35 | 5.08 | 5.08 | | |
| 49255 | | Removal of omentum | Surgery | | 11.14 | 6.49 | 6.49 | | |
| 49320 | | Diag laparo separate proc | Surgery | | 5.10 | 3.01 | 3.01 | | |
| 49321 | | Laparoscopy, biopsy | Surgery | | 5.40 | 2.99 | 2.99 | | |
| 49322 | | Laparoscopy, aspiration | Surgery | | 5.70 | 3.42 | 3.42 | | |
| 49323 | | Laparo drain lymphocele | Surgery | | 9.48 | 4.03 | 4.03 | | |
| 49329 | | Laparo proc, abdm/per/oment | Surgery | | | | | 17.54 | Misc |
| 49400 | | Air injection into abdomen | Surgery | | 1.88 | 0.80 | 0.80 | | |
| 49419 | | Insrt abdom cath for chemotx | Surgery | | 6.65 | 3.81 | 3.81 | | |
| 49420 | | Insert abdom drain, temp | Surgery | | 2.22 | 0.97 | 0.97 | | |
| 49421 | | Insert abdom drain, perm | Surgery | | 5.54 | 4.06 | 4.06 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 49422 | | Remove perm cannula/catheter | Surgery | | 6.25 | 2.93 | 2.93 | | |
| 49423 | | Exchange drainage catheter | Surgery | | 1.46 | 0.68 | 0.68 | | |
| 49424 | | Assess cyst, contrast inject | Surgery | | 0.76 | 0.44 | 0.44 | | |
| 49425 | | Insert abdomen-venous drain | Surgery | | 11.37 | 6.69 | 6.69 | | |
| 49426 | | Revise abdomen-venous shunt | Surgery | | 9.63 | 6.07 | 6.07 | | |
| 49427 | | Injection, abdominal shunt | Surgery | | 0.89 | 0.48 | 0.48 | | |
| 49428 | | Ligation of shunt | Surgery | | 6.06 | 3.16 | 3.16 | | |
| 49429 | | Removal of shunt | Surgery | | 7.40 | 3.44 | 3.44 | | |
| 49491 | | Rpr hern preemie reduc | Surgery | | 11.13 | 5.51 | 5.51 | | |
| 49492 | | Rpr ing hern premie, blocked | Surgery | | 14.03 | 6.28 | 6.28 | | |
| 49495 | | Rpr ing hernia baby, reduc | Surgery | | 5.89 | 3.48 | 3.48 | | |
| 49496 | | Rpr ing hernia baby, blocked | Surgery | | 8.79 | 6.11 | 6.11 | | |
| 49500 | | Rpr ing hernia, init, reduce | Surgery | | 5.48 | 3.34 | 3.34 | | |
| 49501 | | Rpr ing hernia, init blocked | Surgery | | 8.88 | 4.43 | 4.43 | | |
| 49505 | | Prp i/hern init reduc>5 yr | Surgery | | 7.60 | 4.48 | 4.01 | | |
| 49507 | | Prp i/hern init block>5 yr | Surgery | | 9.57 | 6.01 | 6.01 | | |
| 49520 | | Rerepair ing hernia, reduce | Surgery | | 9.63 | 5.34 | 5.34 | | |
| 49521 | | Rerepair ing hernia, blocked | Surgery | | 11.97 | 5.68 | 5.68 | | |
| 49525 | | Repair ing hernia, sliding | Surgery | | 8.57 | 4.83 | 4.83 | | |
| 49540 | | Repair lumbar hernia | Surgery | | 10.39 | 5.51 | 5.51 | | |
| 49550 | | Rpr rem hernia, init, reduce | Surgery | | 8.63 | 4.42 | 4.42 | | |
| 49553 | | Rpr fem hernia, init blocked | Surgery | | 9.44 | 4.84 | 4.84 | | |
| 49555 | | Rerepair fem hernia, reduce | Surgery | | 9.03 | 5.17 | 5.17 | | |
| 49557 | | Rerepair fem hernia, blocked | Surgery | | 11.15 | 5.42 | 5.42 | | |
| 49560 | | Rpr ventral hern init, reduc | Surgery | | 11.57 | 5.95 | 5.95 | | |
| 49561 | | Rpr ventral hern init, block | Surgery | | 14.25 | 6.53 | 6.53 | | |
| 49565 | | Rerepair ventrl hern, reduce | Surgery | | 11.57 | 6.11 | 6.11 | | |
| 49566 | | Rerepair ventrl hern, block | Surgery | | 14.40 | 6.60 | 6.60 | | |
| 49568 | | Hernia repair w/mesh | Surgery | | 4.89 | 1.71 | 1.71 | | |
| 49570 | | Rpr epigastric hern, reduce | Surgery | | 5.69 | 3.43 | 3.43 | | |
| 49572 | | Rpr epigastric hern, blocked | Surgery | | 6.73 | 3.91 | 3.91 | | |
| 49580 | | Rpr umbil hern, reduc < 5 yr | Surgery | | 4.11 | 2.92 | 2.92 | | |
| 49582 | | Rpr umbil hern, block < 5 yr | Surgery | | 6.65 | 4.86 | 4.86 | | |
| 49585 | | Rpr umbil hern, reduc > 5 yr | Surgery | | 6.23 | 4.04 | 4.04 | | |
| 49587 | | Rpr umbil hern, block > 5 yr | Surgery | | 7.56 | 4.15 | 4.15 | | |
| 49590 | | Repair spigilian hernia | Surgery | | 8.54 | 4.85 | 4.85 | | |
| 49600 | | Repair umbilical lesion | Surgery | | 10.96 | 6.07 | 6.07 | | |
| 49605 | | Repair umbilical lesion | Surgery | | 76.00 | 29.89 | 29.89 | | |
| 49606 | | Repair umbilical lesion | Surgery | | 18.60 | 9.06 | 9.06 | | |
| 49610 | | Repair umbilical lesion | Surgery | | 10.50 | 6.77 | 6.77 | | |
| 49611 | | Repair umbilical lesion | Surgery | | 8.92 | 9.64 | 9.64 | | |
| 49650 | | Laparo hernia repair initial | Surgery | | 6.27 | 3.23 | 3.23 | | |
| 49651 | | Laparo hernia repair recur | Surgery | | 8.24 | 4.28 | 4.28 | | |
| 49659 | | Laparo proc, hernia repair | Surgery | | | | | 12.73 | Misc |
| 49900 | | Repair of abdominal wall | Surgery | | 12.28 | 6.65 | 6.65 | | |
| 49904 | | Omental flap, extra-abdom | Surgery | | 20.00 | 15.98 | 15.98 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 49905 | | Omental flap, intra-abdom | Surgery | | 6.55 | 2.34 | 2.34 | | |
| 49999 | | Abdomen surgery procedure | Surgery | | | | | 15.86 | Misc |
| 50010 | | Exploration of kidney | Surgery | | 10.98 | 6.48 | 6.48 | | |
| 50020 | | Renal abscess, open drain | Surgery | | 14.66 | 13.74 | 13.74 | | |
| 50021 | | Renal abscess, percut drain | Surgery | | 3.38 | 9.98 | 9.98 | | |
| 50040 | | Drainage of kidney | Surgery | | 14.94 | 10.83 | 10.83 | | |
| 50045 | | Exploration of kidney | Surgery | | 15.46 | 7.88 | 7.88 | | |
| 50060 | | Removal of kidney stone | Surgery | | 19.30 | 9.13 | 9.13 | | |
| 50065 | | Incision of kidney | Surgery | | 20.79 | 8.01 | 8.01 | | |
| 50070 | | Incision of kidney | Surgery | | 20.32 | 9.53 | 9.53 | | |
| 50075 | | Removal of kidney stone | Surgery | | 25.34 | 11.61 | 11.61 | | |
| 50080 | | Removal of kidney stone | Surgery | | 14.71 | 10.16 | 10.16 | | |
| 50081 | | Removal of kidney stone | Surgery | | 21.80 | 12.23 | 12.23 | | |
| 50100 | | Revise kidney blood vessels | Surgery | | 16.09 | 9.66 | 9.66 | | |
| 50120 | | Exploration of kidney | Surgery | | 15.91 | 8.08 | 8.08 | | |
| 50125 | | Explore and drain kidney | Surgery | | 16.52 | 8.36 | 8.36 | | |
| 50130 | | Removal of kidney stone | Surgery | | 17.29 | 8.41 | 8.41 | | |
| 50135 | | Exploration of kidney | Surgery | | 19.18 | 9.05 | 9.05 | | |
| 50200 | | Biopsy of kidney | Surgery | | 2.63 | 0.93 | 0.93 | | |
| 50205 | | Biopsy of kidney | Surgery | | 11.31 | 6.20 | 6.20 | | |
| 50220 | | Remove kidney, open | Surgery | | 17.15 | 8.57 | 8.57 | | |
| 50225 | | Removal kidney open, complex | Surgery | | 20.23 | 9.46 | 9.46 | | |
| 50230 | | Removal kidney open, radical | Surgery | | 22.07 | 10.04 | 10.04 | | |
| 50234 | | Removal of kidney & ureter | Surgery | | 22.40 | 10.14 | 10.14 | | |
| 50236 | | Removal of kidney & ureter | Surgery | | 24.86 | 13.21 | 13.21 | | |
| 50240 | | Partial removal of kidney | Surgery | | 22.00 | 12.33 | 12.33 | | |
| 50280 | | Removal of kidney lesion | Surgery | | 15.67 | 7.95 | 7.95 | | |
| 50290 | | Removal of kidney lesion | Surgery | | 14.73 | 7.80 | 7.80 | | |
| 50300 | | Removal of donor kidney | Surgery | | | | | 27.81 | MDR |
| 50320 | | Removal of donor kidney | Surgery | | 22.21 | 10.24 | 10.24 | | |
| 50340 | | Removal of kidney | Surgery | | 12.15 | 9.07 | 9.07 | | |
| 50360 | | Transplantation of kidney | Surgery | | 31.53 | 17.43 | 17.43 | | |
| 50365 | | Transplantation of kidney | Surgery | | 36.81 | 21.07 | 21.07 | | |
| 50370 | | Remove transplanted kidney | Surgery | | 13.72 | 9.47 | 9.47 | | |
| 50380 | | Reimplantation of kidney | Surgery | | 20.76 | 13.49 | 13.49 | | |
| 50390 | | Drainage of kidney lesion | Surgery | | 1.96 | 0.66 | 0.66 | | |
| 50392 | | Insert kidney drain | Surgery | | 3.38 | 1.13 | 1.13 | | |
| 50393 | | Insert ureteral tube | Surgery | | 4.16 | 1.39 | 1.39 | | |
| 50394 | | Injection for kidney x-ray | Surgery | | 0.76 | 2.44 | 0.26 | | |
| 50395 | | Create passage to kidney | Surgery | | 3.38 | 1.13 | 1.13 | | |
| 50396 | | Measure kidney pressure | Surgery | | 2.09 | 0.87 | 0.87 | | |
| 50398 | | Change kidney tube | Surgery | | 1.46 | 1.19 | 0.49 | | |
| 50400 | | Revision of kidney/ureter | Surgery | | 19.50 | 9.19 | 9.19 | | |
| 50405 | | Revision of kidney/ureter | Surgery | | 23.93 | 11.44 | 11.44 | | |
| 50500 | | Repair of kidney wound | Surgery | | 19.57 | 10.59 | 10.59 | | |
| 50520 | | Close kidney-skin fistula | Surgery | | 17.23 | 10.04 | 10.04 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 50525 | | Repair renal-abdomen fistula | Surgery | | 22.27 | 11.99 | 11.99 | | |
| 50526 | | Repair renal-abdomen fistula | Surgery | | 24.02 | 13.43 | 13.43 | | |
| 50540 | | Revision of horseshoe kidney | Surgery | | 19.93 | 9.97 | 9.97 | | |
| 50541 | | Laparo ablate renal cyst | Surgery | | 16.00 | 6.37 | 6.37 | | |
| 50542 | | Laparo ablate renal mass | Surgery | | 20.00 | 8.34 | 8.34 | | |
| 50543 | | Laparo partial nephrectomy | Surgery | | 25.50 | 10.48 | 10.48 | | |
| 50544 | | Laparoscopy, pyeloplasty | Surgery | | 22.40 | 8.56 | 8.56 | | |
| 50545 | | Laparo radical nephrectomy | Surgery | | 24.00 | 9.14 | 9.14 | | |
| 50546 | | Laparoscopic nephrectomy | Surgery | | 20.48 | 7.95 | 7.95 | | |
| 50547 | | Laparo removal donor kidney | Surgery | | 25.50 | 10.79 | 10.79 | | |
| 50548 | | Laparo remove k/ureter | Surgery | | 24.40 | 9.18 | 9.18 | | |
| 50549 | | Laparoscope proc, renal | Surgery | | | | | 42.76 | Misc |
| 50551 | | Kidney endoscopy | Surgery | | 5.60 | 4.06 | 1.84 | | |
| 50553 | | Kidney endoscopy | Surgery | | 5.99 | 14.02 | 2.00 | | |
| 50555 | | Kidney endoscopy & biopsy | Surgery | | 6.53 | 16.01 | 2.17 | | |
| 50557 | | Kidney endoscopy & treatment | Surgery | | 6.62 | 14.80 | 2.18 | | |
| 50559 | | Renal endoscopy/radiotracer | Surgery | | 6.78 | 2.31 | 2.31 | | |
| 50561 | | Kidney endoscopy & treatment | Surgery | | 7.59 | 14.09 | 2.51 | | |
| 50562 | | Renal scope w/tumor resect | Surgery | | 10.92 | 4.02 | 4.02 | | |
| 50570 | | Kidney endoscopy | Surgery | | 9.54 | 3.13 | 3.13 | | |
| 50572 | | Kidney endoscopy | Surgery | | 10.35 | 3.41 | 3.41 | | |
| 50574 | | Kidney endoscopy & biopsy | Surgery | | 11.02 | 3.64 | 3.64 | | |
| 50575 | | Kidney endoscopy | Surgery | | 13.98 | 4.60 | 4.60 | | |
| 50576 | | Kidney endoscopy & treatment | Surgery | | 10.99 | 3.60 | 3.60 | | |
| 50578 | | Renal endoscopy/radiotracer | Surgery | | 11.35 | 3.73 | 3.73 | | |
| 50580 | | Kidney endoscopy & treatment | Surgery | | 11.86 | 3.90 | 3.90 | | |
| 50590 | | Fragmenting of kidney stone | Surgery | | 9.09 | 10.73 | 4.94 | | |
| 50600 | | Exploration of ureter | Surgery | | 15.84 | 8.11 | 8.11 | | |
| 50605 | | Insert ureteral support | Surgery | | 15.46 | 8.26 | 8.26 | | |
| 50610 | | Removal of ureter stone | Surgery | | 15.92 | 8.44 | 8.44 | | |
| 50620 | | Removal of ureter stone | Surgery | | 15.16 | 7.64 | 7.64 | | |
| 50630 | | Removal of ureter stone | Surgery | | 14.94 | 7.60 | 7.60 | | |
| 50650 | | Removal of ureter | Surgery | | 17.41 | 8.83 | 8.83 | | |
| 50660 | | Removal of ureter | Surgery | | 19.55 | 9.57 | 9.57 | | |
| 50684 | | Injection for ureter x-ray | Surgery | | 0.76 | 12.61 | 0.25 | | |
| 50686 | | Measure ureter pressure | Surgery | | 1.51 | 2.45 | 0.67 | | |
| 50688 | | Change of ureter tube | Surgery | | 1.17 | 1.69 | 1.69 | | |
| 50690 | | Injection for ureter x-ray | Surgery | | 1.16 | 12.77 | 0.39 | | |
| 50700 | | Revision of ureter | Surgery | | 15.21 | 8.75 | 8.75 | | |
| 50715 | | Release of ureter | Surgery | | 18.90 | 11.71 | 11.71 | | |
| 50722 | | Release of ureter | Surgery | | 16.35 | 9.56 | 9.56 | | |
| 50725 | | Release/revise ureter | Surgery | | 18.49 | 9.86 | 9.86 | | |
| 50727 | | Revise ureter | Surgery | | 8.18 | 5.79 | 5.79 | | |
| 50728 | | Revise ureter | Surgery | | 12.02 | 7.55 | 7.55 | | |
| 50740 | | Fusion of ureter & kidney | Surgery | | 18.42 | 9.09 | 9.09 | | |
| 50750 | | Fusion of ureter & kidney | Surgery | | 19.51 | 9.63 | 9.63 | | |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology.

TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 50760 | | Fusion of ureters | Surgery | | 18.42 | 9.37 | 9.37 | | |
| 50770 | | Splicing of ureters | Surgery | | 19.51 | 9.55 | 9.55 | | |
| 50780 | | Reimplant ureter in bladder | Surgery | | 18.36 | 9.22 | 9.22 | | |
| 50782 | | Reimplant ureter in bladder | Surgery | | 19.54 | 11.06 | 11.06 | | |
| 50783 | | Reimplant ureter in bladder | Surgery | | 20.55 | 10.18 | 10.18 | | |
| 50785 | | Reimplant ureter in bladder | Surgery | | 20.52 | 9.96 | 9.96 | | |
| 50800 | | Implant ureter in bowel | Surgery | | 14.52 | 8.99 | 8.99 | | |
| 50810 | | Fusion of ureter & bowel | Surgery | | 20.05 | 12.28 | 12.28 | | |
| 50815 | | Urine shunt to intestine | Surgery | | 19.93 | 10.98 | 10.98 | | |
| 50820 | | Construct bowel bladder | Surgery | | 21.89 | 11.33 | 11.33 | | |
| 50825 | | Construct bowel bladder | Surgery | | 28.18 | 14.12 | 14.12 | | |
| 50830 | | Revise urine flow | Surgery | | 31.28 | 14.80 | 14.80 | | |
| 50840 | | Replace ureter by bowel | Surgery | | 20.00 | 10.92 | 10.92 | | |
| 50845 | | Apico-vesicostomy | Surgery | | 20.89 | 9.62 | 9.62 | | |
| 50860 | | Transplant ureter to skin | Surgery | | 15.36 | 8.23 | 8.23 | | |
| 50900 | | Repair of ureter | Surgery | | 13.62 | 7.40 | 7.40 | | |
| 50920 | | Closure ureter/skin fistula | Surgery | | 14.33 | 7.95 | 7.95 | | |
| 50930 | | Closure ureter/bowel fistula | Surgery | | 18.72 | 9.48 | 9.48 | | |
| 50940 | | Release of ureter | Surgery | | 14.51 | 7.65 | 7.65 | | |
| 50945 | | Laparoscopy ureterolithotomy | Surgery | | 17.00 | 6.99 | 6.99 | | |
| 50947 | | Laparo new ureter/bladder | Surgery | | 24.50 | 9.90 | 9.90 | | |
| 50948 | | Laparo new ureter/bladder | Surgery | | 22.50 | 8.85 | 8.85 | | |
| 50949 | | Laparoscope proc, ureter | Surgery | | | | | 30.98 | Misc |
| 50951 | | Endoscopy of ureter | Surgery | | 5.84 | 4.50 | 1.92 | | |
| 50953 | | Endoscopy of ureter | Surgery | | 6.24 | 13.95 | 2.06 | | |
| 50955 | | Ureter endoscopy & biopsy | Surgery | | 6.75 | 17.98 | 2.26 | | |
| 50957 | | Ureter endoscopy & treatment | Surgery | | 6.79 | 13.79 | 2.24 | | |
| 50959 | | Ureter endoscopy & tracer | Surgery | | 4.40 | 1.45 | 1.45 | | |
| 50961 | | Ureter endoscopy & treatment | Surgery | | 6.05 | 17.61 | 1.99 | | |
| 50970 | | Ureter endoscopy | Surgery | | 7.14 | 2.36 | 2.36 | | |
| 50972 | | Ureter endoscopy & catheter | Surgery | | 6.89 | 2.32 | 2.32 | | |
| 50974 | | Ureter endoscopy & biopsy | Surgery | | 9.17 | 3.01 | 3.01 | | |
| 50976 | | Ureter endoscopy & treatment | Surgery | | 9.04 | 2.99 | 2.99 | | |
| 50978 | | Ureter endoscopy & tracer | Surgery | | 5.10 | 1.74 | 1.74 | | |
| 50980 | | Ureter endoscopy & treatment | Surgery | | 6.85 | 2.26 | 2.26 | | |
| 51000 | | Drainage of bladder | Surgery | | 0.78 | 1.87 | 0.25 | | |
| 51005 | | Drainage of bladder | Surgery | | 1.02 | 3.05 | 0.35 | | |
| 51010 | | Drainage of bladder | Surgery | | 3.53 | 5.71 | 2.08 | | |
| 51020 | | Incise & treat bladder | Surgery | | 6.71 | 5.08 | 5.08 | | |
| 51030 | | Incise & treat bladder | Surgery | | 6.77 | 5.36 | 5.36 | | |
| 51040 | | Incise & drain bladder | Surgery | | 4.40 | 3.80 | 3.80 | | |
| 51045 | | Incise bladder/drain ureter | Surgery | | 6.77 | 5.46 | 5.46 | | |
| 51050 | | Removal of bladder stone | Surgery | | 6.92 | 4.53 | 4.53 | | |
| 51060 | | Removal of ureter stone | Surgery | | 8.85 | 5.65 | 5.65 | | |
| 51065 | | Remove ureter calculus | Surgery | | 8.85 | 5.50 | 5.50 | | |
| 51080 | | Drainage of bladder abscess | Surgery | | 5.96 | 5.14 | 5.14 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 51500 | | Removal of bladder cyst | Surgery | | 10.14 | 5.85 | 5.85 | | |
| 51520 | | Removal of bladder lesion | Surgery | | 9.29 | 5.87 | 5.87 | | |
| 51525 | | Removal of bladder lesion | Surgery | | 13.97 | 7.28 | 7.28 | | |
| 51530 | | Removal of bladder lesion | Surgery | | 12.38 | 7.08 | 7.08 | | |
| 51535 | | Repair of ureter lesion | Surgery | | 12.57 | 7.63 | 7.63 | | |
| 51550 | | Partial removal of bladder | Surgery | | 15.66 | 7.97 | 7.97 | | |
| 51555 | | Partial removal of bladder | Surgery | | 21.23 | 10.19 | 10.19 | | |
| 51565 | | Revise bladder & ureter(s) | Surgery | | 21.62 | 10.66 | 10.66 | | |
| 51570 | | Removal of bladder | Surgery | | 24.24 | 11.71 | 11.71 | | |
| 51575 | | Removal of bladder & nodes | Surgery | | 30.45 | 14.33 | 14.33 | | |
| 51580 | | Remove bladder/revise tract | Surgery | | 31.08 | 14.97 | 14.97 | | |
| 51585 | | Removal of bladder & nodes | Surgery | | 35.23 | 16.07 | 16.07 | | |
| 51590 | | Remove bladder/revise tract | Surgery | | 32.66 | 14.90 | 14.90 | | |
| 51595 | | Remove bladder/revise tract | Surgery | | 37.14 | 16.33 | 16.33 | | |
| 51596 | | Remove bladder/create pouch | Surgery | | 39.52 | 17.60 | 17.60 | | |
| 51597 | | Removal of pelvic structures | Surgery | | 38.35 | 17.28 | 17.28 | | |
| 51600 | | Injection for bladder x-ray | Surgery | | 0.88 | 4.76 | 0.30 | | |
| 51605 | | Preparation for bladder xray | Surgery | | 0.64 | 13.63 | 0.22 | | |
| 51610 | | Injection for bladder x-ray | Surgery | | 1.05 | 13.41 | 0.35 | | |
| 51700 | | Irrigation of bladder | Surgery | | 0.88 | 1.16 | 0.29 | | |
| 51701 | | Insert bladder catheter | Surgery | | 0.50 | 1.06 | 0.20 | | |
| 51702 | | Insert temp bladder cath | Surgery | | 0.50 | 1.97 | 0.27 | | |
| 51703 | | Insert bladder cath, complex | Surgery | | 1.47 | 1.91 | 0.59 | | |
| 51705 | | Change of bladder tube | Surgery | | 1.02 | 1.40 | 0.54 | | |
| 51710 | | Change of bladder tube | Surgery | | 1.49 | 3.90 | 1.30 | | |
| 51715 | | Endoscopic injection/implant | Surgery | | 3.74 | 3.64 | 1.24 | | |
| 51720 | | Treatment of bladder lesion | Surgery | | 1.96 | 1.41 | 0.73 | | |
| 51725 | 26 | Simple cystometrogram | Surgery | | 1.51 | 0.51 | 0.51 | | |
| 51725 | TC | Simple cystometrogram | Surgery | ■ | 0.00 | 6.78 | 6.78 | | |
| 51726 | 26 | Complex cystometrogram | Surgery | | 1.71 | 0.58 | 0.58 | | |
| 51726 | TC | Complex cystometrogram | Surgery | ■ | 0.00 | 6.39 | 6.39 | | |
| 51736 | 26 | Urine flow measurement | Surgery | | 0.61 | 0.21 | 0.21 | | |
| 51736 | TC | Urine flow measurement | Surgery | ■ | 0.00 | 0.34 | 0.34 | | |
| 51741 | 26 | Electro-uroflowmetry, first | Surgery | | 1.14 | 0.38 | 0.38 | | |
| 51741 | TC | Electro-uroflowmetry, first | Surgery | ■ | 0.00 | 0.41 | 0.41 | | |
| 51772 | 26 | Urethra pressure profile | Surgery | | 1.61 | 0.57 | 0.57 | | |
| 51772 | TC | Urethra pressure profile | Surgery | ■ | 0.00 | 5.75 | 5.75 | | |
| 51784 | 26 | Anal/urinary muscle study | Surgery | | 1.53 | 0.52 | 0.52 | | |
| 51784 | TC | Anal/urinary muscle study | Surgery | ■ | 0.00 | 4.73 | 4.73 | | |
| 51785 | 26 | Anal/urinary muscle study | Surgery | | 1.53 | 0.52 | 0.52 | | |
| 51785 | TC | Anal/urinary muscle study | Surgery | ■ | 0.00 | 4.75 | 4.75 | | |
| 51792 | 26 | Urinary reflex study | Surgery | | 1.10 | 0.43 | 0.43 | | |
| 51792 | TC | Urinary reflex study | Surgery | ■ | 0.00 | 5.01 | 5.01 | | |
| 51795 | 26 | Urine voiding pressure study | Surgery | | 1.53 | 0.52 | 0.52 | | |
| 51795 | TC | Urine voiding pressure study | Surgery | ■ | 0.00 | 6.18 | 6.18 | | |
| 51797 | 26 | Intraabdominal pressure test | Surgery | | 1.60 | 0.54 | 0.54 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 51797 | TC | Intraabdominal pressure test | Surgery | a | 0.00 | 3.77 | 3.77 | | |
| 51798 | 26 | Us urine capacity measure | Surgery | | | | | 0.41 | SA |
| 51798 | TC | Us urine capacity measure | Surgery | a | | | | 0.07 | SA |
| 51800 | | Revision of bladder/urethra | Surgery | | 17.42 | 8.79 | 8.79 | | |
| 51820 | | Revision of urinary tract | Surgery | | 17.89 | 10.56 | 10.56 | | |
| 51840 | | Attach bladder/urethra | Surgery | | 10.71 | 6.31 | 6.31 | | |
| 51841 | | Attach bladder/urethra | Surgery | | 13.03 | 7.98 | 7.98 | | |
| 51845 | | Repair bladder neck | Surgery | | 9.73 | 6.13 | 6.13 | | |
| 51860 | | Repair of bladder wound | Surgery | | 12.02 | 7.34 | 7.34 | | |
| 51865 | | Repair of bladder wound | Surgery | | 15.04 | 8.18 | 8.18 | | |
| 51880 | | Repair of bladder opening | Surgery | | 7.66 | 5.30 | 5.30 | | |
| 51900 | | Repair bladder/vagina lesion | Surgery | | 12.97 | 7.62 | 7.62 | | |
| 51920 | | Close bladder-uterus fistula | Surgery | | 11.81 | 6.82 | 6.82 | | |
| 51925 | | Hysterectomy/bladder repair | Surgery | | 15.58 | 9.31 | 9.31 | | |
| 51940 | | Correction of bladder defect | Surgery | | 28.43 | 15.43 | 15.43 | | |
| 51960 | | Revision of bladder & bowel | Surgery | | 23.01 | 12.19 | 12.19 | | |
| 51980 | | Construct bladder opening | Surgery | | 11.36 | 6.56 | 6.56 | | |
| 51990 | | Laparo urethral suspension | Surgery | | 12.50 | 6.53 | 6.53 | | |
| 51992 | | Laparo sling operation | Surgery | | 14.01 | 6.44 | 6.44 | | |
| 52000 | | Cystoscopy | Surgery | | 2.01 | 4.57 | 0.78 | | |
| 52001 | | Cystoscopy, removal of clots | Surgery | | 5.45 | 7.89 | 2.33 | | |
| 52005 | | Cystoscopy & ureter catheter | Surgery | | 2.37 | 6.38 | 0.92 | | |
| 52007 | | Cystoscopy and biopsy | Surgery | | 3.02 | 1.17 | 1.17 | | |
| 52010 | | Cystoscopy & duct catheter | Surgery | | 3.02 | 7.77 | 1.15 | | |
| 52204 | | Cystoscopy | Surgery | | 2.37 | 5.44 | 0.93 | | |
| 52214 | | Cystoscopy and treatment | Surgery | | 3.71 | 7.24 | 1.36 | | |
| 52224 | | Cystoscopy and treatment | Surgery | | 3.14 | 6.12 | 1.16 | | |
| 52234 | | Cystoscopy and treatment | Surgery | | 4.63 | 1.67 | 1.67 | | |
| 52235 | | Cystoscopy and treatment | Surgery | | 5.45 | 1.95 | 1.95 | | |
| 52240 | | Cystoscopy and treatment | Surgery | | 9.72 | 3.37 | 3.37 | | |
| 52250 | | Cystoscopy and radiotracer | Surgery | | 4.50 | 1.70 | 1.70 | | |
| 52260 | | Cystoscopy and treatment | Surgery | | 3.92 | 1.46 | 1.46 | | |
| 52265 | | Cystoscopy and treatment | Surgery | | 2.94 | 5.67 | 1.14 | | |
| 52270 | | Cystoscopy & revise urethra | Surgery | | 3.37 | 6.41 | 1.34 | | |
| 52275 | | Cystoscopy & revise urethra | Surgery | | 4.70 | 7.11 | 1.78 | | |
| 52276 | | Cystoscopy and treatment | Surgery | | 5.00 | 8.01 | 1.90 | | |
| 52277 | | Cystoscopy and treatment | Surgery | | 6.17 | 2.31 | 2.31 | | |
| 52281 | | Cystoscopy and treatment | Surgery | | 2.80 | 8.05 | 1.10 | | |
| 52282 | | Cystoscopy, implant stent | Surgery | | 6.40 | 13.08 | 2.29 | | |
| 52283 | | Cystoscopy and treatment | Surgery | | 3.74 | 5.86 | 1.41 | | |
| 52285 | | Cystoscopy and treatment | Surgery | | 3.61 | 6.31 | 1.37 | | |
| 52290 | | Cystoscopy and treatment | Surgery | | 4.59 | 1.69 | 1.69 | | |
| 52300 | | Cystoscopy and treatment | Surgery | | 5.31 | 1.95 | 1.95 | | |
| 52301 | | Cystoscopy and treatment | Surgery | | 5.51 | 2.04 | 2.04 | | |
| 52305 | | Cystoscopy and treatment | Surgery | | 5.31 | 1.90 | 1.90 | | |
| 52310 | | Cystoscopy and treatment | Surgery | | 2.81 | 4.73 | 1.05 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 52315 | | Cystoscopy and treatment | Surgery | | 5.21 | 5.75 | 1.88 | | |
| 52317 | | Remove bladder stone | Surgery | | 6.72 | 7.82 | 2.34 | | |
| 52318 | | Remove bladder stone | Surgery | | 9.19 | 3.17 | 3.17 | | |
| 52320 | | Cystoscopy and treatment | Surgery | | 4.70 | 1.68 | 1.68 | | |
| 52325 | | Cystoscopy, stone removal | Surgery | | 6.16 | 2.17 | 2.17 | | |
| 52327 | | Cystoscopy, inject material | Surgery | | 5.19 | 1.87 | 1.87 | | |
| 52330 | | Cystoscopy and treatment | Surgery | | 5.04 | 17.40 | 1.80 | | |
| 52332 | | Cystoscopy and treatment | Surgery | | 2.83 | 16.40 | 1.07 | | |
| 52334 | | Create passage to kidney | Surgery | | 4.83 | 1.80 | 1.80 | | |
| 52341 | | Cysto w/ureter stricture tx | Surgery | | 6.00 | 2.26 | 2.26 | | |
| 52342 | | Cysto w/up stricture tx | Surgery | | 6.50 | 2.41 | 2.41 | | |
| 52343 | | Cysto w/renal stricture tx | Surgery | | 7.20 | 2.69 | 2.69 | | |
| 52344 | | Cysto/uretero, stone remove | Surgery | | 7.70 | 2.87 | 2.87 | | |
| 52345 | | Cysto/uretero w/up stricture | Surgery | | 8.20 | 3.03 | 3.03 | | |
| 52346 | | Cystouretero w/renal strict | Surgery | | 9.23 | 3.38 | 3.38 | | |
| 52347 | | Cystoscopy, resect ducts | Surgery | | 5.28 | 2.09 | 2.09 | | |
| 52351 | | Cystouretero & or pyeloscope | Surgery | | 5.86 | 2.19 | 2.19 | | |
| 52352 | | Cystouretero w/stone remove | Surgery | | 6.88 | 2.57 | 2.57 | | |
| 52353 | | Cystouretero w/lithotripsy | Surgery | | 7.97 | 2.93 | 2.93 | | |
| 52354 | | Cystouretero w/biopsy | Surgery | | 7.34 | 2.74 | 2.74 | | |
| 52355 | | Cystouretero w/excise tumor | Surgery | | 8.82 | 3.22 | 3.22 | | |
| 52400 | | Cystouretero w/congen repr | Surgery | | 9.68 | 4.31 | 4.31 | | |
| 52450 | | Incision of prostate | Surgery | | 7.64 | 3.65 | 3.65 | | |
| 52500 | | Revision of bladder neck | Surgery | | 8.47 | 3.91 | 3.91 | | |
| 52510 | | Dilation prostatic urethra | Surgery | | 6.72 | 3.24 | 3.24 | | |
| 52601 | | Prostatectomy (TURP) | Surgery | | 12.37 | 5.23 | 5.23 | | |
| 52606 | | Control postop bleeding | Surgery | | 8.13 | 3.56 | 3.56 | | |
| 52612 | | Prostatectomy, first stage | Surgery | | 7.98 | 3.83 | 3.83 | | |
| 52614 | | Prostatectomy, second stage | Surgery | | 6.84 | 3.42 | 3.42 | | |
| 52620 | | Remove residual prostate | Surgery | | 6.61 | 3.08 | 3.08 | | |
| 52630 | | Remove prostate regrowth | Surgery | | 7.26 | 3.20 | 3.20 | | |
| 52640 | | Relieve bladder contracture | Surgery | | 6.62 | 3.10 | 3.10 | | |
| 52647 | | Laser surgery of prostate | Surgery | | 10.36 | 42.87 | 4.57 | | |
| 52648 | | Laser surgery of prostate | Surgery | | 11.21 | 4.78 | 4.78 | | |
| 52700 | | Drainage of prostate abscess | Surgery | | 6.80 | 3.24 | 3.24 | | |
| 53000 | | Incision of urethra | Surgery | | 2.28 | 7.31 | 2.23 | | |
| 53010 | | Incision of urethra | Surgery | | 3.64 | 4.08 | 4.08 | | |
| 53020 | | Incision of urethra | Surgery | | 1.77 | 3.05 | 0.66 | | |
| 53025 | | Incision of urethra | Surgery | | 1.13 | 3.69 | 0.45 | | |
| 53040 | | Drainage of urethra abscess | Surgery | | 6.40 | 11.86 | 7.17 | | |
| 53060 | | Drainage of urethra abscess | Surgery | | 2.63 | 5.91 | 2.67 | | |
| 53080 | | Drainage of urinary leakage | Surgery | | 6.29 | 7.22 | 7.22 | | |
| 53085 | | Drainage of urinary leakage | Surgery | | 10.27 | 8.63 | 8.63 | | |
| 53200 | | Biopsy of urethra | Surgery | | 2.59 | 4.76 | 0.95 | | |
| 53210 | | Removal of urethra | Surgery | | 12.57 | 7.49 | 7.49 | | |
| 53215 | | Removal of urethra | Surgery | | 15.58 | 8.08 | 8.08 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 53220 | | Treatment of urethra lesion | Surgery | | 7.00 | 5.08 | 5.08 | | |
| 53230 | | Removal of urethra lesion | Surgery | | 9.58 | 5.80 | 5.80 | | |
| 53235 | | Removal of urethra lesion | Surgery | | 10.14 | 6.00 | 6.00 | | |
| 53240 | | Surgery for urethra pouch | Surgery | | 6.45 | 4.85 | 4.85 | | |
| 53250 | | Removal of urethra gland | Surgery | | 5.89 | 4.24 | 4.24 | | |
| 53260 | | Treatment of urethra lesion | Surgery | | 2.98 | 5.30 | 2.24 | | |
| 53265 | | Treatment of urethra lesion | Surgery | | 3.12 | 5.77 | 2.28 | | |
| 53270 | | Removal of urethra gland | Surgery | | 3.09 | 5.58 | 2.52 | | |
| 53275 | | Repair of urethra defect | Surgery | | 4.53 | 3.04 | 3.04 | | |
| 53400 | | Revise urethra, stage 1 | Surgery | | 12.77 | 7.42 | 7.42 | | |
| 53405 | | Revise urethra, stage 2 | Surgery | | 14.48 | 7.70 | 7.70 | | |
| 53410 | | Reconstruction of urethra | Surgery | | 16.44 | 8.43 | 8.43 | | |
| 53415 | | Reconstruction of urethra | Surgery | | 19.41 | 8.99 | 8.99 | | |
| 53420 | | Reconstruct urethra, stage 1 | Surgery | | 14.08 | 8.53 | 8.53 | | |
| 53425 | | Reconstruct urethra, stage 2 | Surgery | | 15.98 | 8.49 | 8.49 | | |
| 53430 | | Reconstruction of urethra | Surgery | | 16.34 | 8.62 | 8.62 | | |
| 53431 | | Reconstruct urethra/bladder | Surgery | | 19.89 | 9.04 | 9.04 | | |
| 53440 | | Male sling procedure | Surgery | | 13.62 | 6.33 | 6.33 | | |
| 53442 | | Remove/revise male sling | Surgery | | 11.57 | 5.93 | 5.93 | | |
| 53444 | | Insert tandem cuff | Surgery | | 13.40 | 6.14 | 6.14 | | |
| 53445 | | Insert uro/ves nck sphincter | Surgery | | 14.06 | 7.76 | 7.76 | | |
| 53446 | | Remove uro sphincter | Surgery | | 10.23 | 5.82 | 5.82 | | |
| 53447 | | Remove/replace ur sphincter | Surgery | | 13.49 | 6.55 | 6.55 | | |
| 53448 | | Remov/replc ur sphinctr comp | Surgery | | 21.15 | 9.85 | 9.85 | | |
| 53449 | | Repair uro sphincter | Surgery | | 9.70 | 5.90 | 5.90 | | |
| 53450 | | Revision of urethra | Surgery | | 6.14 | 4.53 | 4.53 | | |
| 53460 | | Revision of urethra | Surgery | | 7.12 | 4.90 | 4.90 | | |
| 53502 | | Repair of urethra injury | Surgery | | 7.63 | 5.32 | 5.32 | | |
| 53505 | | Repair of urethra injury | Surgery | | 7.63 | 5.04 | 5.04 | | |
| 53510 | | Repair of urethra injury | Surgery | | 10.11 | 6.43 | 6.43 | | |
| 53515 | | Repair of urethra injury | Surgery | | 13.31 | 7.05 | 7.05 | | |
| 53520 | | Repair of urethra defect | Surgery | | 8.68 | 5.50 | 5.50 | | |
| 53600 | | Dilate urethra stricture | Surgery | | 1.21 | 0.87 | 0.45 | | |
| 53601 | | Dilate urethra stricture | Surgery | | 0.98 | 0.95 | 0.39 | | |
| 53605 | | Dilate urethra stricture | Surgery | | 1.28 | 0.42 | 0.42 | | |
| 53620 | | Dilate urethra stricture | Surgery | | 1.62 | 1.30 | 0.62 | | |
| 53621 | | Dilate urethra stricture | Surgery | | 1.35 | 1.33 | 0.51 | | |
| 53660 | | Dilation of urethra | Surgery | | 0.71 | 1.01 | 0.33 | | |
| 53661 | | Dilation of urethra | Surgery | | 0.72 | 0.97 | 0.31 | | |
| 53665 | | Dilation of urethra | Surgery | | 0.76 | 0.26 | 0.26 | | |
| 53850 | | Prostatic microwave thermotx | Surgery | | 9.45 | 63.30 | 4.25 | | |
| 53852 | | Prostatic rf thermotx | Surgery | | 9.88 | 52.42 | 4.43 | | |
| 53853 | | Prostatic water thermother | Surgery | | 5.24 | 38.58 | 3.30 | | |
| 53899 | | Urology surgery procedure | Surgery | | | | | 2.96 | Misc |
| 54000 | | Slitting of prepuce | Surgery | | 1.54 | 4.77 | 1.40 | | |
| 54001 | | Slitting of prepuce | Surgery | | 2.19 | 5.36 | 2.01 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 54015 | | Drain penis lesion | Surgery | | 5.32 | 6.51 | 3.05 | | |
| 54050 | | Destruction, penis lesion(s) | Surgery | | 1.24 | 2.78 | 0.50 | | |
| 54055 | | Destruction, penis lesion(s) | Surgery | | 1.22 | 5.59 | 1.39 | | |
| 54056 | | Cryosurgery, penis lesion(s) | Surgery | | 1.24 | 3.12 | 0.54 | | |
| 54057 | | Laser surg, penis lesion(s) | Surgery | | 1.24 | 3.09 | 1.24 | | |
| 54060 | | Excision of penis lesion(s) | Surgery | | 1.93 | 4.89 | 1.56 | | |
| 54065 | | Destruction, penis lesion(s) | Surgery | | 2.42 | 5.24 | 2.02 | | |
| 54100 | | Biopsy of penis | Surgery | | 1.90 | 3.32 | 0.76 | | |
| 54105 | | Biopsy of penis | Surgery | | 3.50 | 5.55 | 2.07 | | |
| 54110 | | Treatment of penis lesion | Surgery | | 10.13 | 6.86 | 6.86 | | |
| 54111 | | Treat penis lesion, graft | Surgery | | 13.57 | 8.38 | 8.38 | | |
| 54112 | | Treat penis lesion, graft | Surgery | | 15.86 | 8.86 | 8.86 | | |
| 54115 | | Treatment of penis lesion | Surgery | | 6.15 | 9.53 | 6.06 | | |
| 54120 | | Partial removal of penis | Surgery | | 9.97 | 7.23 | 7.23 | | |
| 54125 | | Removal of penis | Surgery | | 13.53 | 8.43 | 8.43 | | |
| 54130 | | Remove penis & nodes | Surgery | | 20.14 | 10.94 | 10.94 | | |
| 54135 | | Remove penis & nodes | Surgery | | 26.36 | 13.00 | 13.00 | | |
| 54150 | | Circumcision | Surgery | | 1.81 | 5.45 | 1.88 | | |
| 54152 | | Circumcision | Surgery | | 2.31 | 1.65 | 1.65 | | |
| 54160 | | Circumcision | Surgery | | 2.48 | 4.97 | 1.75 | | |
| 54161 | | Circumcision | Surgery | | 3.27 | 1.92 | 1.92 | | |
| 54162 | | Lysis penil circumic lesion | Surgery | | 3.00 | 2.30 | 2.30 | | |
| 54163 | | Repair of circumcision | Surgery | | 3.00 | 2.07 | 2.07 | | |
| 54164 | | Frenulotomy of penis | Surgery | | 2.50 | 1.90 | 1.90 | | |
| 54200 | | Treatment of penis lesion | Surgery | | 1.06 | 2.40 | 0.37 | | |
| 54205 | | Treatment of penis lesion | Surgery | | 7.93 | 6.47 | 6.47 | | |
| 54220 | | Treatment of penis lesion | Surgery | | 2.42 | 1.89 | 1.02 | | |
| 54230 | | Prepare penis study | Surgery | | 1.34 | 0.44 | 0.44 | | |
| 54231 | | Dynamic cavernosometry | Surgery | | 2.04 | 2.14 | 0.81 | | |
| 54235 | | Penile injection | Surgery | | 1.19 | 1.12 | 0.40 | | |
| 54240 | 26 | Penis study | Surgery | | 1.31 | 0.44 | 0.44 | | |
| 54240 | TC | Penis study | Surgery | a | 0.00 | 1.41 | 1.41 | | |
| 54250 | 26 | Penis study | Surgery | | 2.22 | 0.73 | 0.73 | | |
| 54250 | TC | Penis study | Surgery | a | 0.00 | 2.12 | 2.12 | | |
| 54300 | | Revision of penis | Surgery | | 10.41 | 8.04 | 8.04 | | |
| 54304 | | Revision of penis | Surgery | | 12.49 | 9.25 | 9.25 | | |
| 54308 | | Reconstruction of urethra | Surgery | | 11.83 | 8.82 | 8.82 | | |
| 54312 | | Reconstruction of urethra | Surgery | | 13.57 | 9.87 | 9.87 | | |
| 54316 | | Reconstruction of urethra | Surgery | | 16.82 | 10.83 | 10.83 | | |
| 54318 | | Reconstruction of urethra | Surgery | | 11.25 | 8.64 | 8.64 | | |
| 54322 | | Reconstruction of urethra | Surgery | | 13.01 | 8.56 | 8.56 | | |
| 54324 | | Reconstruction of urethra | Surgery | | 16.31 | 11.06 | 11.06 | | |
| 54326 | | Reconstruction of urethra | Surgery | | 15.72 | 10.15 | 10.15 | | |
| 54328 | | Revise penis/urethra | Surgery | | 15.65 | 10.09 | 10.09 | | |
| 54332 | | Revise penis/urethra | Surgery | | 17.08 | 10.56 | 10.56 | | |
| 54336 | | Revise penis/urethra | Surgery | | 20.04 | 14.12 | 14.12 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 54340 | | Secondary urethral surgery | Surgery | | 8.91 | 7.34 | 7.34 | | |
| 54344 | | Secondary urethral surgery | Surgery | | 15.94 | 10.34 | 10.34 | | |
| 54348 | | Secondary urethral surgery | Surgery | | 17.15 | 11.25 | 11.25 | | |
| 54352 | | Reconstruct urethra/penis | Surgery | | 24.74 | 14.53 | 14.53 | | |
| 54360 | | Penis plastic surgery | Surgery | | 11.93 | 7.85 | 7.85 | | |
| 54380 | | Repair penis | Surgery | | 13.18 | 9.50 | 9.50 | | |
| 54385 | | Repair penis | Surgery | | 15.39 | 12.19 | 12.19 | | |
| 54390 | | Repair penis and bladder | Surgery | | 21.61 | 13.02 | 13.02 | | |
| 54400 | | Insert semi-rigid prosthesis | Surgery | | 8.99 | 5.68 | 5.68 | | |
| 54401 | | Insert self-contd prosthesis | Surgery | | 10.28 | 6.46 | 6.46 | | |
| 54405 | | Insert multi-comp penis pros | Surgery | | 13.43 | 7.53 | 7.53 | | |
| 54406 | | Remove muti-comp penis pros | Surgery | | 12.10 | 5.50 | 5.50 | | |
| 54408 | | Repair multi-comp penis pros | Surgery | | 12.75 | 5.86 | 5.86 | | |
| 54410 | | Remove/replace penis prosth | Surgery | | 15.50 | 6.77 | 6.77 | | |
| 54411 | | Remov/replc penis pros, comp | Surgery | | 16.00 | 8.90 | 8.90 | | |
| 54415 | | Remove self-contd penis pros | Surgery | | 8.20 | 4.61 | 4.61 | | |
| 54416 | | Remv/repl penis contain pros | Surgery | | 10.87 | 6.91 | 6.91 | | |
| 54417 | | Remv/replc penis pros, compl | Surgery | | 14.19 | 7.81 | 7.81 | | |
| 54420 | | Revision of penis | Surgery | | 11.42 | 7.47 | 7.47 | | |
| 54430 | | Revision of penis | Surgery | | 10.15 | 7.27 | 7.27 | | |
| 54435 | | Revision of penis | Surgery | | 6.12 | 5.01 | 5.01 | | |
| 54440 | | Repair of penis | Surgery | | | | | 14.97 | MDR |
| 54450 | | Preputial stretching | Surgery | | 1.12 | 1.00 | 0.48 | | |
| 54500 | | Biopsy of testis | Surgery | | 1.31 | 5.46 | 0.44 | | |
| 54505 | | Biopsy of testis | Surgery | | 3.46 | 2.28 | 2.28 | | |
| 54512 | | Excise lesion testis | Surgery | | 8.58 | 4.50 | 4.50 | | |
| 54520 | | Removal of testis | Surgery | | 5.23 | 3.24 | 3.24 | | |
| 54522 | | Orchiectomy, partial | Surgery | | 9.50 | 5.12 | 5.12 | | |
| 54530 | | Removal of testis | Surgery | | 8.58 | 4.86 | 4.86 | | |
| 54535 | | Extensive testis surgery | Surgery | | 12.16 | 6.72 | 6.72 | | |
| 54550 | | Exploration for testis | Surgery | | 7.78 | 4.38 | 4.38 | | |
| 54560 | | Exploration for testis | Surgery | | 11.13 | 6.34 | 6.34 | | |
| 54600 | | Reduce testis torsion | Surgery | | 7.01 | 3.88 | 3.88 | | |
| 54620 | | Suspension of testis | Surgery | | 4.90 | 2.77 | 2.77 | | |
| 54640 | | Suspension of testis | Surgery | | 6.90 | 3.94 | 3.94 | | |
| 54650 | | Orchiopexy (Fowler-Stephens) | Surgery | | 11.45 | 6.59 | 6.59 | | |
| 54660 | | Revision of testis | Surgery | | 5.11 | 3.11 | 3.11 | | |
| 54670 | | Repair testis injury | Surgery | | 6.41 | 3.83 | 3.83 | | |
| 54680 | | Relocation of testis(es) | Surgery | | 12.65 | 7.06 | 7.06 | | |
| 54690 | | Laparoscopy, orchiectomy | Surgery | | 10.96 | 6.32 | 6.32 | | |
| 54692 | | Laparoscopy, orchiopexy | Surgery | | 12.88 | 5.47 | 5.47 | | |
| 54699 | | Laparoscope proc, testis | Surgery | | | | | 23.60 | Misc |
| 54700 | | Drainage of scrotum | Surgery | | 3.43 | 7.02 | 3.06 | | |
| 54800 | | Biopsy of epididymis | Surgery | | 2.33 | 4.98 | 0.79 | | |
| 54820 | | Exploration of epididymis | Surgery | | 5.14 | 3.26 | 3.26 | | |
| 54830 | | Remove epididymis lesion | Surgery | | 5.38 | 3.33 | 3.33 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 54840 | | Remove epididymis lesion | Surgery | | 5.20 | 3.24 | 3.24 | | |
| 54860 | | Removal of epididymis | Surgery | | 6.32 | 3.80 | 3.80 | | |
| 54861 | | Removal of epididymis | Surgery | | 8.90 | 4.64 | 4.64 | | |
| 54900 | | Fusion of spermatic ducts | Surgery | | 13.20 | 6.22 | 6.22 | | |
| 54901 | | Fusion of spermatic ducts | Surgery | | 17.94 | 8.49 | 8.49 | | |
| 55000 | | Drainage of hydrocele | Surgery | | 1.43 | 2.17 | 0.48 | | |
| 55040 | | Removal of hydrocele | Surgery | | 5.36 | 3.10 | 3.10 | | |
| 55041 | | Removal of hydroceles | Surgery | | 7.74 | 4.11 | 4.11 | | |
| 55060 | | Repair of hydrocele | Surgery | | 5.52 | 3.19 | 3.19 | | |
| 55100 | | Drainage of scrotum abscess | Surgery | | 2.13 | 7.87 | 3.22 | | |
| 55110 | | Explore scrotum | Surgery | | 5.70 | 3.22 | 3.22 | | |
| 55120 | | Removal of scrotum lesion | Surgery | | 5.09 | 3.05 | 3.05 | | |
| 55150 | | Removal of scrotum | Surgery | | 7.22 | 4.22 | 4.22 | | |
| 55175 | | Revision of scrotum | Surgery | | 5.24 | 3.31 | 3.31 | | |
| 55180 | | Revision of scrotum | Surgery | | 10.72 | 5.99 | 5.99 | | |
| 55200 | | Incision of sperm duct | Surgery | | 4.24 | 2.79 | 2.79 | | |
| 55250 | | Removal of sperm duct(s) | Surgery | | 3.29 | 7.70 | 2.92 | | |
| 55300 | | Prepare, sperm duct x-ray | Surgery | | 3.51 | 1.54 | 1.54 | | |
| 55400 | | Repair of sperm duct | Surgery | | 8.49 | 4.80 | 4.80 | | |
| 55450 | | Ligation of sperm duct | Surgery | | 4.12 | 5.98 | 2.43 | | |
| 55500 | | Removal of hydrocele | Surgery | | 5.59 | 3.44 | 3.44 | | |
| 55520 | | Removal of sperm cord lesion | Surgery | | 6.03 | 3.64 | 3.64 | | |
| 55530 | | Revise spermatic cord veins | Surgery | | 5.66 | 3.43 | 3.43 | | |
| 55535 | | Revise spermatic cord veins | Surgery | | 6.56 | 3.71 | 3.71 | | |
| 55540 | | Revise hernia & sperm veins | Surgery | | 7.67 | 4.20 | 4.20 | | |
| 55550 | | Laparo ligate spermatic vein | Surgery | | 6.57 | 3.50 | 3.50 | | |
| 55559 | | Laparo proc, spermatic cord | Surgery | | | | | 13.57 | Misc |
| 55600 | | Incise sperm duct pouch | Surgery | | 6.38 | 3.82 | 3.82 | | |
| 55605 | | Incise sperm duct pouch | Surgery | | 7.96 | 4.90 | 4.90 | | |
| 55650 | | Remove sperm duct pouch | Surgery | | 11.80 | 5.81 | 5.81 | | |
| 55680 | | Remove sperm pouch lesion | Surgery | | 5.19 | 3.48 | 3.48 | | |
| 55700 | | Biopsy of prostate | Surgery | | 1.57 | 3.50 | 0.73 | | |
| 55705 | | Biopsy of prostate | Surgery | | 4.57 | 3.30 | 3.30 | | |
| 55720 | | Drainage of prostate abscess | Surgery | | 7.64 | 5.30 | 5.30 | | |
| 55725 | | Drainage of prostate abscess | Surgery | | 8.68 | 5.85 | 5.85 | | |
| 55801 | | Removal of prostate | Surgery | | 17.80 | 8.82 | 8.82 | | |
| 55810 | | Extensive prostate surgery | Surgery | | 22.58 | 10.79 | 10.79 | | |
| 55812 | | Extensive prostate surgery | Surgery | | 27.51 | 12.97 | 12.97 | | |
| 55815 | | Extensive prostate surgery | Surgery | | 30.46 | 13.85 | 13.85 | | |
| 55821 | | Removal of prostate | Surgery | | 14.25 | 7.33 | 7.33 | | |
| 55831 | | Removal of prostate | Surgery | | 15.62 | 7.81 | 7.81 | | |
| 55840 | | Extensive prostate surgery | Surgery | | 22.69 | 11.27 | 11.27 | | |
| 55842 | | Extensive prostate surgery | Surgery | | 24.38 | 11.85 | 11.85 | | |
| 55845 | | Extensive prostate surgery | Surgery | | 28.55 | 13.14 | 13.14 | | |
| 55859 | | Percut/needle insert, pros | Surgery | | 12.52 | 6.86 | 6.86 | | |
| 55860 | | Surgical exposure, prostate | Surgery | | 14.45 | 7.58 | 7.58 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 55862 | | Extensive prostate surgery | Surgery | | 18.39 | 9.19 | 9.19 | | |
| 55865 | | Extensive prostate surgery | Surgery | | 22.87 | 10.50 | 10.50 | | |
| 55866 | | Laparo radical prostatectomy | Surgery | | 30.74 | 11.79 | 11.79 | | |
| 55870 | | Vag hyst w/enterocele repair | Surgery | | 2.58 | 1.94 | 1.04 | | |
| 55873 | | Cryoablate prostate | Surgery | | 19.47 | 9.46 | 9.46 | | |
| 55899 | | Genital surgery procedure | Surgery | | | | | 26.24 | Misc |
| 56405 | | I & D of vulva/perineum | Surgery | | 1.44 | 2.29 | 1.23 | | |
| 56420 | | Drainage of gland abscess | Surgery | | 1.39 | 2.29 | 1.24 | | |
| 56440 | | Surgery for vulva lesion | Surgery | | 2.84 | 3.45 | 2.22 | | |
| 56441 | | Lysis of labial lesion(s) | Surgery | | 1.97 | 2.33 | 1.81 | | |
| 56501 | | Destroy, vulva lesions, sim | Surgery | | 1.53 | 2.24 | 1.29 | | |
| 56515 | | Destroy vulva lesion/s compl | Surgery | | 2.76 | 3.01 | 2.24 | | |
| 56605 | | Biopsy of vulva/perineum | Surgery | | 1.10 | 1.09 | 0.47 | | |
| 56606 | | Biopsy of vulva/perineum | Surgery | | 0.55 | 0.51 | 0.22 | | |
| 56620 | | Partial removal of vulva | Surgery | | 7.47 | 4.85 | 4.85 | | |
| 56625 | | Complete removal of vulva | Surgery | | 8.40 | 5.78 | 5.78 | | |
| 56630 | | Extensive vulva surgery | Surgery | | 12.36 | 7.60 | 7.60 | | |
| 56631 | | Extensive vulva surgery | Surgery | | 16.20 | 10.27 | 10.27 | | |
| 56632 | | Extensive vulva surgery | Surgery | | 20.29 | 10.23 | 10.23 | | |
| 56633 | | Extensive vulva surgery | Surgery | | 16.47 | 9.27 | 9.27 | | |
| 56634 | | Extensive vulva surgery | Surgery | | 17.88 | 10.95 | 10.95 | | |
| 56637 | | Extensive vulva surgery | Surgery | | 21.97 | 12.64 | 12.64 | | |
| 56640 | | Extensive vulva surgery | Surgery | | 22.17 | 12.24 | 12.24 | | |
| 56700 | | Partial removal of hymen | Surgery | | 2.52 | 1.70 | 1.70 | | |
| 56720 | | Incision of hymen | Surgery | | 0.68 | 0.41 | 0.41 | | |
| 56740 | | Remove vagina gland lesion | Surgery | | 4.57 | 2.58 | 2.58 | | |
| 56800 | | Repair of vagina | Surgery | | 3.89 | 2.61 | 2.61 | | |
| 56805 | | Repair clitoris | Surgery | | 18.86 | 9.12 | 9.12 | | |
| 56810 | | Repair of perineum | Surgery | | 4.13 | 2.72 | 2.72 | | |
| 56820 | | Exam of vulva w/scope | Surgery | | 1.50 | 1.64 | 0.65 | | |
| 56821 | | Exam/biopsy of vulva w/scope | Surgery | | 2.05 | 2.02 | 0.92 | | |
| 57000 | | Exploration of vagina | Surgery | | 2.97 | 2.19 | 2.19 | | |
| 57010 | | Drainage of pelvic abscess | Surgery | | 6.03 | 3.79 | 3.79 | | |
| 57020 | | Drainage of pelvic fluid | Surgery | | 1.50 | 1.56 | 0.63 | | |
| 57022 | | I & d vaginal hematoma, pp | Surgery | | 2.56 | 2.03 | 2.03 | | |
| 57023 | | I & d vag hematoma, non-ob | Surgery | | 4.75 | 2.89 | 2.89 | | |
| 57061 | | Destroy vag lesions, simple | Surgery | | 1.25 | 2.16 | 1.16 | | |
| 57065 | | Destroy vag lesions, complex | Surgery | | 2.61 | 2.88 | 2.23 | | |
| 57100 | | Biopsy of vagina | Surgery | | 1.20 | 1.11 | 0.50 | | |
| 57105 | | Biopsy of vagina | Surgery | | 1.69 | 2.00 | 1.31 | | |
| 57106 | | Remove vagina wall, partial | Surgery | | 6.36 | 3.87 | 3.87 | | |
| 57107 | | Remove vagina tissue, part | Surgery | | 23.00 | 10.28 | 10.28 | | |
| 57109 | | Vaginectomy partial w/nodes | Surgery | | 27.00 | 11.53 | 11.53 | | |
| 57110 | | Remove vagina wall, complete | Surgery | | 14.29 | 7.21 | 7.21 | | |
| 57111 | | Remove vagina tissue, compl | Surgery | | 27.00 | 12.30 | 12.30 | | |
| 57112 | | Vaginectomy w/nodes, compl | Surgery | | 29.00 | 12.39 | 12.39 | | |

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 57120 | | Closure of vagina | Surgery | | 7.41 | 4.59 | 4.59 | | |
| 57130 | | Remove vagina lesion | Surgery | | 2.43 | 2.03 | 2.03 | | |
| 57135 | | Remove vagina lesion | Surgery | | 2.67 | 2.67 | 2.13 | | |
| 57150 | | Treat vagina infection | Surgery | | 0.55 | 0.99 | 0.22 | | |
| 57155 | | Insert uteri tandems/ovoids | Surgery | | 6.27 | 3.68 | 3.68 | | |
| 57160 | | Insert pessary/other device | Surgery | | 0.89 | 1.10 | 0.40 | | |
| 57170 | | Fitting of diaphragm/cap | Surgery | | 0.91 | 1.38 | 0.34 | | |
| 57180 | | Treat vaginal bleeding | Surgery | | 1.58 | 2.22 | 1.41 | | |
| 57200 | | Repair of vagina | Surgery | | 3.94 | 3.11 | 3.11 | | |
| 57210 | | Repair vagina/perineum | Surgery | | 5.17 | 3.67 | 3.67 | | |
| 57220 | | Revision of urethra | Surgery | | 4.31 | 3.34 | 3.34 | | |
| 57230 | | Repair of urethral lesion | Surgery | | 5.64 | 3.54 | 3.54 | | |
| 57240 | | Repair bladder & vagina | Surgery | | 6.07 | 3.90 | 3.90 | | |
| 57250 | | Repair rectum & vagina | Surgery | | 5.53 | 3.81 | 3.81 | | |
| 57260 | | Repair of vagina | Surgery | | 8.27 | 5.14 | 5.14 | | |
| 57265 | | Extensive repair of vagina | Surgery | | 11.34 | 6.38 | 6.38 | | |
| 57268 | | Repair of bowel bulge | Surgery | | 6.76 | 4.48 | 4.48 | | |
| 57270 | | Repair of bowel pouch | Surgery | | 12.11 | 6.60 | 6.60 | | |
| 57280 | | Suspension of vagina | Surgery | | 15.04 | 7.73 | 7.73 | | |
| 57282 | | Repair of vaginal prolapse | Surgery | | 8.86 | 5.58 | 5.58 | | |
| 57284 | | Repair paravaginal defect | Surgery | | 12.70 | 7.12 | 7.12 | | |
| 57287 | | Revise/remove sling repair | Surgery | | 10.71 | 5.60 | 5.60 | | |
| 57288 | | Repair bladder defect | Surgery | | 13.02 | 6.05 | 6.05 | | |
| 57289 | | Repair bladder & vagina | Surgery | | 11.58 | 6.26 | 6.26 | | |
| 57291 | | Construction of vagina | Surgery | | 7.95 | 5.29 | 5.29 | | |
| 57292 | | Construct vagina with graft | Surgery | | 13.09 | 7.38 | 7.38 | | |
| 57300 | | Repair rectum-vagina fistula | Surgery | | 7.61 | 4.85 | 4.85 | | |
| 57305 | | Repair rectum-vagina fistula | Surgery | | 13.77 | 6.49 | 6.49 | | |
| 57307 | | Fistula repair & colostomy | Surgery | | 15.93 | 7.55 | 7.55 | | |
| 57308 | | Fistula repair, transperine | Surgery | | 9.94 | 5.89 | 5.89 | | |
| 57310 | | Repair urethrovaginal lesion | Surgery | | 6.78 | 4.29 | 4.29 | | |
| 57311 | | Repair urethrovaginal lesion | Surgery | | 7.98 | 4.85 | 4.85 | | |
| 57320 | | Repair bladder-vagina lesion | Surgery | | 8.01 | 4.95 | 4.95 | | |
| 57330 | | Repair bladder-vagina lesion | Surgery | | 12.35 | 6.29 | 6.29 | | |
| 57335 | | Repair vagina | Surgery | | 18.73 | 8.97 | 8.97 | | |
| 57400 | | Dilation of vagina | Surgery | | 2.27 | 1.14 | 1.14 | | |
| 57410 | | Pelvic examination | Surgery | | 1.75 | 2.55 | 1.03 | | |
| 57415 | | Remove vaginal foreign body | Surgery | | 2.17 | 3.21 | 1.87 | | |
| 57420 | | Exam of vagina w/scope | Surgery | | 1.60 | 1.68 | 0.69 | | |
| 57421 | | Exam/biopsy of vag w/scope | Surgery | | 2.20 | 2.08 | 0.98 | | |
| 57452 | | Exam of cervix w/scope | Surgery | | 1.50 | 1.70 | 0.65 | | |
| 57454 | | Bx/curett of cervix w/scope | Surgery | | 2.33 | 2.05 | 1.02 | | |
| 57455 | | Biopsy of cervix w/scope | Surgery | | 1.99 | 1.94 | 0.89 | | |
| 57456 | | Endocerv curettage w/scope | Surgery | | 1.85 | 1.86 | 0.84 | | |
| 57460 | | Bx of cervix w/scope, leep | Surgery | | 2.83 | 5.01 | 1.25 | | |
| 57461 | | Conz of cervix w/scope, leep | Surgery | | 3.44 | 5.32 | 1.50 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 57500 | | Biopsy of cervix | Surgery | | 0.97 | 2.02 | 0.49 | | |
| 57505 | | Endocervical curettage | Surgery | | 1.14 | 1.90 | 1.21 | | |
| 57510 | | Cauterization of cervix | Surgery | | 1.90 | 3.01 | 1.51 | | |
| 57511 | | Cryocautery of cervix | Surgery | | 1.90 | 2.36 | 0.75 | | |
| 57513 | | Laser surgery of cervix | Surgery | | 1.90 | 2.57 | 1.50 | | |
| 57520 | | Conization of cervix | Surgery | | 4.04 | 4.13 | 2.76 | | |
| 57522 | | Conization of cervix | Surgery | | 3.36 | 3.86 | 2.49 | | |
| 57530 | | Removal of cervix | Surgery | | 4.79 | 3.53 | 3.53 | | |
| 57531 | | Removal of cervix, radical | Surgery | | 28.00 | 13.53 | 13.53 | | |
| 57540 | | Removal of residual cervix | Surgery | | 12.22 | 6.14 | 6.14 | | |
| 57545 | | Remove cervix/repair pelvis | Surgery | | 13.03 | 6.59 | 6.59 | | |
| 57550 | | Removal of residual cervix | Surgery | | 5.53 | 3.78 | 3.78 | | |
| 57555 | | Remove cervix/repair vagina | Surgery | | 8.95 | 5.60 | 5.60 | | |
| 57556 | | Remove cervix, repair bowel | Surgery | | 8.37 | 4.83 | 4.83 | | |
| 57700 | | Revision of cervix | Surgery | | 3.55 | 2.44 | 2.44 | | |
| 57720 | | Revision of cervix | Surgery | | 4.13 | 3.20 | 3.20 | | |
| 57800 | | Dilation of cervical canal | Surgery | | 0.77 | 0.77 | 0.48 | | |
| 57820 | | D & c of residual cervix | Surgery | | 1.67 | 1.51 | 1.11 | | |
| 58100 | | Biopsy of uterus lining | Surgery | | 1.53 | 1.45 | 0.75 | | |
| 58120 | | Dilation and curettage | Surgery | | 3.27 | 2.35 | 1.97 | | |
| 58140 | | Myomectomy abdom method | Surgery | | 14.60 | 7.01 | 7.01 | | |
| 58145 | | Myomectomy vag method | Surgery | | 8.04 | 4.84 | 4.84 | | |
| 58146 | | Myomectomy abdom complex | Surgery | | 19.00 | 9.15 | 9.15 | | |
| 58150 | | Total hysterectomy | Surgery | | 15.24 | 7.89 | 7.89 | | |
| 58152 | | Total hysterectomy | Surgery | | 20.60 | 10.28 | 10.28 | | |
| 58180 | | Partial hysterectomy | Surgery | | 15.29 | 7.85 | 7.85 | | |
| 58200 | | Extensive hysterectomy | Surgery | | 21.59 | 10.60 | 10.60 | | |
| 58210 | | Extensive hysterectomy | Surgery | | 28.85 | 13.96 | 13.96 | | |
| 58240 | | Removal of pelvis contents | Surgery | | 38.39 | 18.48 | 18.48 | | |
| 58260 | | Vaginal hysterectomy | Surgery | | 12.98 | 6.68 | 6.68 | | |
| 58262 | | Vag hyst including t/o | Surgery | | 14.77 | 7.43 | 7.43 | | |
| 58263 | | Vag hyst w/t/o & vag repair | Surgery | | 16.06 | 7.95 | 7.95 | | |
| 58267 | | Vag hyst w/urinary repair | Surgery | | 17.04 | 8.52 | 8.52 | | |
| 58270 | | Vag hyst w/enterocele repair | Surgery | | 14.26 | 7.19 | 7.19 | | |
| 58275 | | Hysterectomy/revise vagina | Surgery | | 15.76 | 7.72 | 7.72 | | |
| 58280 | | Hysterectomy/revise vagina | Surgery | | 17.01 | 8.21 | 8.21 | | |
| 58285 | | Extensive hysterectomy | Surgery | | 22.26 | 10.85 | 10.85 | | |
| 58290 | | Vag hyst complex | Surgery | | 19.00 | 9.37 | 9.37 | | |
| 58291 | | Vag hyst incl t/o, complex | Surgery | | 20.79 | 10.34 | 10.34 | | |
| 58292 | | Vag hyst t/o & repair, compl | Surgery | | 22.08 | 10.85 | 10.85 | | |
| 58293 | | Vag hyst w/uro repair, compl | Surgery | | 23.06 | 11.25 | 11.25 | | |
| 58294 | | Vag hyst w/enterocele, compl | Surgery | | 20.28 | 10.10 | 10.10 | | |
| 58300 | | Insert intrauterine device | Surgery | | 1.01 | 1.44 | 0.39 | | |
| 58301 | | Remove intrauterine device | Surgery | | 1.27 | 1.54 | 0.50 | | |
| 58321 | | Artificial insemination | Surgery | | 0.92 | 0.94 | 0.38 | | |
| 58322 | | Artificial insemination | Surgery | | 1.10 | 1.00 | 0.43 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 58323 | | Sperm washing | Surgery | | 0.23 | 0.54 | 0.10 | | |
| 58340 | | Catheter for hysterography | Surgery | | 0.88 | 12.74 | 0.32 | | |
| 58345 | | Reopen fallopian tube | Surgery | | 4.66 | 1.73 | 1.73 | | |
| 58346 | | Insert heyman uteri capsule | Surgery | | 6.75 | 3.87 | 3.87 | | |
| 58350 | | Reopen fallopian tube | Surgery | | 1.01 | 1.93 | 1.05 | | |
| 58353 | | Endometr ablate, thermal | Surgery | | 3.56 | 2.23 | 2.23 | | |
| 58400 | | Suspension of uterus | Surgery | | 6.36 | 3.93 | 3.93 | | |
| 58410 | | Suspension of uterus | Surgery | | 12.73 | 6.55 | 6.55 | | |
| 58520 | | Repair of ruptured uterus | Surgery | | 11.92 | 5.93 | 5.93 | | |
| 58540 | | Revision of uterus | Surgery | | 14.64 | 6.90 | 6.90 | | |
| 58545 | | Laparoscopic myomectomy | Surgery | | 14.60 | 7.76 | 7.76 | | |
| 58546 | | Laparo-myomectomy, complex | Surgery | | 19.00 | 9.55 | 9.55 | | |
| 58550 | | Laparo-asst vag hysterectomy | Surgery | | 14.19 | 7.21 | 7.21 | | |
| 58552 | | Laparo-vag hyst incl t/o | Surgery | | 14.19 | 7.56 | 7.56 | | |
| 58553 | | Laparo-vag hyst, complex | Surgery | | 19.00 | 9.57 | 9.57 | | |
| 58554 | | Laparo-vag hyst w/t/o, compl | Surgery | | 19.00 | 9.26 | 9.26 | | |
| 58555 | | Hysteroscopy, dx, sep proc | Surgery | | 3.33 | 2.10 | 1.49 | | |
| 58558 | | Hysteroscopy, biopsy | Surgery | | 4.75 | 2.12 | 2.12 | | |
| 58559 | | Hysteroscopy, lysis | Surgery | | 6.17 | 2.69 | 2.69 | | |
| 58560 | | Hysteroscopy, resect septum | Surgery | | 7.00 | 3.05 | 3.05 | | |
| 58561 | | Hysteroscopy, remove myoma | Surgery | | 10.00 | 4.28 | 4.28 | | |
| 58562 | | Hysteroscopy, remove fb | Surgery | | 5.21 | 2.27 | 2.27 | | |
| 58563 | | Hysteroscopy, ablation | Surgery | | 6.17 | 2.71 | 2.71 | | |
| 58578 | | Laparo proc, uterus | Surgery | | | | | 28.61 | Misc |
| 58579 | | Hysteroscope procedure | Surgery | | | | | 13.10 | Misc |
| 58600 | | Division of fallopian tube | Surgery | | 5.60 | 3.28 | 3.28 | | |
| 58605 | | Division of fallopian tube | Surgery | | 5.00 | 3.12 | 3.12 | | |
| 58611 | | Ligate oviduct(s) add-on | Surgery | | 1.45 | 0.59 | 0.59 | | |
| 58615 | | Occlude fallopian tube(s) | Surgery | | 3.90 | 3.11 | 3.11 | | |
| 58660 | | Laparoscopy, lysis | Surgery | | 11.29 | 5.60 | 5.60 | | |
| 58661 | | Laparoscopy, remove adnexa | Surgery | | 11.05 | 5.27 | 5.27 | | |
| 58662 | | Laparoscopy, excise lesions | Surgery | | 11.79 | 5.54 | 5.54 | | |
| 58670 | | Laparoscopy, tubal cautery | Surgery | | 5.60 | 3.62 | 3.62 | | |
| 58671 | | Laparoscopy, tubal block | Surgery | | 5.60 | 3.63 | 3.63 | | |
| 58672 | | Laparoscopy, fimbrioplasty | Surgery | | 12.88 | 6.52 | 6.52 | | |
| 58673 | | Laparoscopy, salpingostomy | Surgery | | 13.74 | 6.86 | 6.86 | | |
| 58679 | | Laparo proc, oviduct-ovary | Surgery | | | | | 11.24 | Misc |
| 58700 | | Removal of fallopian tube | Surgery | | 12.05 | 5.80 | 5.80 | | |
| 58720 | | Removal of ovary/tube(s) | Surgery | | 11.36 | 5.75 | 5.75 | | |
| 58740 | | Revise fallopian tube(s) | Surgery | | 14.00 | 6.99 | 6.99 | | |
| 58750 | | Repair oviduct | Surgery | | 14.84 | 7.37 | 7.37 | | |
| 58752 | | Revise ovarian tube(s) | Surgery | | 14.84 | 7.06 | 7.06 | | |
| 58760 | | Remove tubal obstruction | Surgery | | 13.13 | 6.67 | 6.67 | | |
| 58770 | | Create new tubal opening | Surgery | | 13.97 | 6.97 | 6.97 | | |
| 58800 | | Drainage of ovarian cyst(s) | Surgery | | 4.14 | 4.39 | 4.36 | | |
| 58805 | | Drainage of ovarian cyst(s) | Surgery | | 5.88 | 3.47 | 3.47 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 58820 | | Drain ovary abscess, open | Surgery | | 4.22 | 3.34 | 3.34 | | |
| 58822 | | Drain ovary abscess, percut | Surgery | | 10.13 | 5.04 | 5.04 | | |
| 58823 | | Drain pelvic abscess, percut | Surgery | | 3.38 | 2.32 | 2.32 | | |
| 58825 | | Transposition, ovary(s) | Surgery | | 10.98 | 5.74 | 5.74 | | |
| 58900 | | Biopsy of ovary(s) | Surgery | | 5.99 | 3.53 | 3.53 | | |
| 58920 | | Partial removal of ovary(s) | Surgery | | 11.36 | 5.58 | 5.58 | | |
| 58925 | | Removal of ovarian cyst(s) | Surgery | | 11.36 | 5.54 | 5.54 | | |
| 58940 | | Removal of ovary(s) | Surgery | | 7.29 | 3.94 | 3.94 | | |
| 58943 | | Removal of ovary(s) | Surgery | | 18.43 | 9.44 | 9.44 | | |
| 58950 | | Resect ovarian malignancy | Surgery | | 16.93 | 9.00 | 9.00 | | |
| 58951 | | Resect ovarian malignancy | Surgery | | 22.38 | 11.32 | 11.32 | | |
| 58952 | | Resect ovarian malignancy | Surgery | | 25.01 | 12.41 | 12.41 | | |
| 58953 | | Tah, rad dissect for debulk | Surgery | | 32.00 | 15.08 | 15.08 | | |
| 58954 | | Tah rad debulk/lymph remove | Surgery | | 35.00 | 16.15 | 16.15 | | |
| 58960 | | Exploration of abdomen | Surgery | | 14.65 | 8.12 | 8.12 | | |
| 58970 | | Retrieval of oocyte | Surgery | | 3.53 | 8.36 | 1.67 | | |
| 58974 | | Transfer of embryo | Surgery | | | | | 4.68 | MDR |
| 58976 | | Transfer of embryo | Surgery | | 3.83 | 2.29 | 1.59 | | |
| 58999 | | Genital surgery procedure | Surgery | | | | | 3.85 | Misc |
| 59000 | | Amniocentesis, diagnostic | Maternity — Non-Deliveries | | 1.30 | 1.88 | 0.71 | | |
| 59001 | | Amniocentesis, therapeutic | Maternity — Non-Deliveries | | 3.00 | 1.35 | 1.35 | | |
| 59012 | | Fetal cord puncture,prenatal | Maternity — Non-Deliveries | | 3.45 | 1.60 | 1.60 | | |
| 59015 | | Chorion biopsy | Maternity — Non-Deliveries | | 2.20 | 1.59 | 1.08 | | |
| 59020 | 26 | Fetal contract stress test | Maternity — Non-Deliveries | | 0.66 | 0.27 | 0.27 | | |
| 59020 | TC | Fetal contract stress test | Maternity — Non-Deliveries | a | 0.00 | 0.52 | 0.52 | | |
| 59025 | 26 | Fetal non-stress test | Maternity — Non-Deliveries | | 0.53 | 0.22 | 0.22 | | |
| 59025 | TC | Fetal non-stress test | Maternity — Non-Deliveries | a | 0.00 | 0.23 | 0.23 | | |
| 59030 | | Fetal scalp blood sample | Maternity — Non-Deliveries | | 1.99 | 1.06 | 1.06 | | |
| 59050 | | Fetal monitor w/report | Maternity — Non-Deliveries | | 0.89 | 0.36 | 0.36 | | |
| 59051 | | Fetal monitor/interpret only | Maternity — Non-Deliveries | | 0.74 | 0.30 | 0.30 | | |
| 59100 | | Remove uterus lesion | Maternity — Non-Deliveries | | 12.35 | 6.29 | 6.29 | | |
| 59120 | | Treat ectopic pregnancy | Maternity — Non-Deliveries | | 11.49 | 6.06 | 6.06 | | |
| 59121 | | Treat ectopic pregnancy | Maternity — Non-Deliveries | | 11.67 | 6.19 | 6.19 | | |
| 59130 | | Treat ectopic pregnancy | Maternity — Non-Deliveries | | 14.22 | 5.81 | 5.81 | | |
| 59135 | | Treat ectopic pregnancy | Maternity — Non-Deliveries | | 13.88 | 7.04 | 7.04 | | |
| 59136 | | Treat ectopic pregnancy | Maternity — Non-Deliveries | | 13.18 | 6.61 | 6.61 | | |
| 59140 | | Treat ectopic pregnancy | Maternity — Non-Deliveries | | 5.46 | 3.36 | 3.36 | | |
| 59150 | | Treat ectopic pregnancy | Maternity — Non-Deliveries | | 11.67 | 6.40 | 6.40 | | |
| 59151 | | Treat ectopic pregnancy | Maternity — Non-Deliveries | | 11.49 | 5.84 | 5.84 | | |
| 59160 | | D & c after delivery | Maternity — Non-Deliveries | | 2.71 | 3.48 | 2.15 | | |
| 59200 | | Insert cervical dilator | Maternity — Non-Deliveries | | 0.79 | 1.32 | 0.31 | | |
| 59300 | | Episiotomy or vaginal repair | Maternity — Non-Deliveries | | 2.41 | 2.08 | 0.99 | | |
| 59320 | | Revision of cervix | Maternity — Non-Deliveries | | 2.48 | 1.29 | 1.29 | | |
| 59325 | | Revision of cervix | Maternity — Non-Deliveries | | 4.07 | 1.96 | 1.96 | | |
| 59350 | | Repair of uterus | Maternity — Non-Deliveries | | 4.95 | 2.00 | 2.00 | | |
| 59400 | | Obstetrical care | Maternity — Normal Deliveries | | 23.06 | 16.09 | 16.09 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 59409 | | Obstetrical care | Maternity — Normal Deliveries | | 13.50 | 5.44 | 5.44 | | |
| 59410 | | Obstetrical care | Maternity — Normal Deliveries | | 14.78 | 6.48 | 6.48 | | |
| 59412 | | Antepartum manipulation | Maternity — Normal Deliveries | | 1.71 | 0.84 | 0.84 | | |
| 59414 | | Deliver placenta | Maternity — Normal Deliveries | | 1.61 | 0.65 | 0.65 | | |
| 59425 | | Antepartum care only | Maternity — Normal Deliveries | | 4.81 | 4.46 | 1.90 | | |
| 59426 | | Antepartum care only | Maternity — Normal Deliveries | | 8.28 | 8.04 | 3.30 | | |
| 59430 | | Care after delivery | Maternity — Normal Deliveries | | 2.13 | 0.98 | 0.98 | | |
| 59510 | | Cesarean delivery | Maternity — Cesarean Deliveries | | 26.22 | 18.21 | 18.21 | | |
| 59514 | | Cesarean delivery only | Maternity — Cesarean Deliveries | | 15.97 | 6.38 | 6.38 | | |
| 59515 | | Cesarean delivery | Maternity — Cesarean Deliveries | | 17.37 | 8.05 | 8.05 | | |
| 59525 | | Remove uterus after cesarean | Surgery | | 8.54 | 3.39 | 3.39 | | |
| 59610 | | Vbac delivery | Maternity — Normal Deliveries | | 24.62 | 16.66 | 16.66 | | |
| 59612 | | Vbac delivery only | Maternity — Normal Deliveries | | 15.06 | 6.21 | 6.21 | | |
| 59614 | | Vbac care after delivery | Maternity — Normal Deliveries | | 16.34 | 7.12 | 7.12 | | |
| 59618 | | Attempted vbac delivery | Maternity — Cesarean Deliveries | | 27.78 | 19.52 | 19.52 | | |
| 59620 | | Attempted vbac delivery only | Maternity — Cesarean Deliveries | | 17.53 | 6.94 | 6.94 | | |
| 59622 | | Attempted vbac after care | Maternity — Cesarean Deliveries | | 16.93 | 8.87 | 8.87 | | |
| 59812 | | Treatment of miscarriage | Maternity — Non-Deliveries | | 4.01 | 3.60 | 2.53 | | |
| 59820 | | Care of miscarriage | Maternity — Non-Deliveries | | 4.01 | 3.62 | 2.66 | | |
| 59821 | | Treatment of miscarriage | Maternity — Non-Deliveries | | 4.47 | 3.79 | 2.85 | | |
| 59830 | | Treat uterus infection | Maternity — Non-Deliveries | | 6.11 | 3.94 | 3.94 | | |
| 59840 | | Abortion | Maternity — Non-Deliveries | | 3.01 | 3.98 | 2.24 | | |
| 59841 | | Abortion | Maternity — Non-Deliveries | | 5.24 | 5.60 | 3.55 | | |
| 59850 | | Abortion | Maternity — Non-Deliveries | | 5.91 | 2.73 | 2.73 | | |
| 59851 | | Abortion | Maternity — Non-Deliveries | | 5.93 | 3.13 | 3.13 | | |
| 59852 | | Abortion | Maternity — Non-Deliveries | | 8.24 | 4.57 | 4.57 | | |
| 59855 | | Abortion | Maternity — Non-Deliveries | | 6.12 | 3.24 | 3.24 | | |
| 59856 | | Abortion | Maternity — Non-Deliveries | | 7.48 | 3.83 | 3.83 | | |
| 59857 | | Abortion | Maternity — Non-Deliveries | | 9.29 | 4.39 | 4.39 | | |
| 59866 | | Abortion (mpr) | Maternity — Non-Deliveries | | 4.00 | 1.55 | 1.55 | | |
| 59870 | | Evacuate mole of uterus | Maternity — Non-Deliveries | | 6.01 | 3.78 | 3.78 | | |
| 59871 | | Remove cerclage suture | Maternity — Non-Deliveries | | 2.13 | 2.00 | 0.90 | | |
| 59898 | | Laparo proc, ob care/deliver | Maternity — Normal Deliveries | | | | | 19.62 | Misc |
| 59899 | | Maternity care procedure | Maternity — Normal Deliveries | | | | | 19.62 | Misc |
| 60000 | | Drain thyroid/tongue cyst | Surgery | | 1.76 | 2.36 | 2.15 | | |
| 60001 | | Aspirate/inject thyriod cyst | Surgery | | 0.97 | 1.64 | 0.35 | | |
| 60100 | | Biopsy of thyroid | Surgery | | 1.56 | 1.86 | 0.55 | | |
| 60200 | | Remove thyroid lesion | Surgery | | 9.55 | 6.57 | 6.57 | | |
| 60210 | | Partial thyroid excision | Surgery | | 10.88 | 6.45 | 6.45 | | |
| 60212 | | Partial thyroid excision | Surgery | | 16.03 | 8.23 | 8.23 | | |
| 60220 | | Partial removal of thyroid | Surgery | | 11.90 | 6.99 | 6.99 | | |
| 60225 | | Partial removal of thyroid | Surgery | | 14.19 | 7.82 | 7.82 | | |
| 60240 | | Removal of thyroid | Surgery | | 16.06 | 9.05 | 9.05 | | |
| 60252 | | Removal of thyroid | Surgery | | 20.57 | 11.39 | 11.39 | | |
| 60254 | | Extensive thyroid surgery | Surgery | | 26.99 | 15.79 | 15.79 | | |
| 60260 | | Repeat thyroid surgery | Surgery | | 17.47 | 10.30 | 10.30 | | |

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|---|---|---|---|---|---|---|---|---|---|
| 60270 | | Removal of thyroid | Surgery | | 20.27 | 11.50 | 11.50 | | |
| 60271 | | Removal of thyroid | Surgery | | 16.83 | 9.82 | 9.82 | | |
| 60280 | | Remove thyroid duct lesion | Surgery | | 5.87 | 5.16 | 5.16 | | |
| 60281 | | Remove thyroid duct lesion | Surgery | | 8.53 | 6.35 | 6.35 | | |
| 60500 | | Explore parathyroid glands | Surgery | | 18.23 | 7.75 | 7.75 | | |
| 60502 | | Re-explore parathyroids | Surgery | | 20.35 | 9.59 | 9.59 | | |
| 60505 | | Explore parathyroid glands | Surgery | | 21.49 | 11.42 | 11.42 | | |
| 60512 | | Autotransplant parathyroid | Surgery | | 4.45 | 1.66 | 1.66 | | |
| 60520 | | Removal of thymus gland | Surgery | | 16.81 | 9.84 | 9.84 | | |
| 60521 | | Removal of thymus gland | Surgery | | 18.87 | 11.77 | 11.77 | | |
| 60522 | | Removal of thymus gland | Surgery | | 23.09 | 13.01 | 13.01 | | |
| 60540 | | Explore adrenal gland | Surgery | | 17.03 | 7.64 | 7.64 | | |
| 60545 | | Explore adrenal gland | Surgery | | 19.88 | 9.33 | 9.33 | | |
| 60600 | | Remove carotid body lesion | Surgery | | 17.93 | 13.24 | 13.24 | | |
| 60605 | | Remove carotid body lesion | Surgery | | 20.24 | 18.11 | 18.11 | | |
| 60650 | | Laparoscopy adrenalectomy | Surgery | | 20.00 | 8.06 | 8.06 | | |
| 60659 | | Laparo proc, endocrine | Surgery | | | | | 36.12 | Misc |
| 60699 | | Endocrine surgery procedure | Surgery | | | | | 31.73 | Misc |
| 61000 | | Remove cranial cavity fluid | Surgery | | 1.58 | 0.98 | 0.98 | | |
| 61001 | | Remove cranial cavity fluid | Surgery | | 1.49 | 1.08 | 1.08 | | |
| 61020 | | Remove brain cavity fluid | Surgery | | 1.51 | 1.38 | 1.38 | | |
| 61026 | | Injection into brain canal | Surgery | | 1.69 | 1.45 | 1.45 | | |
| 61050 | | Remove brain canal fluid | Surgery | | 1.51 | 1.27 | 1.27 | | |
| 61055 | | Injection into brain canal | Surgery | | 2.10 | 1.42 | 1.42 | | |
| 61070 | | Brain canal shunt procedure | Surgery | | 0.89 | 1.04 | 1.04 | | |
| 61105 | | Twist drill hole | Surgery | | 5.14 | 4.04 | 4.04 | | |
| 61107 | | Drill skull for implantation | Surgery | | 5.00 | 3.38 | 3.38 | | |
| 61108 | | Drill skull for drainage | Surgery | | 10.19 | 7.29 | 7.29 | | |
| 61120 | | Burr hole for puncture | Surgery | | 8.76 | 6.12 | 6.12 | | |
| 61140 | | Pierce skull for biopsy | Surgery | | 15.90 | 10.11 | 10.11 | | |
| 61150 | | Pierce skull for drainage | Surgery | | 17.57 | 10.66 | 10.66 | | |
| 61151 | | Pierce skull for drainage | Surgery | | 12.42 | 8.01 | 8.01 | | |
| 61154 | | Pierce skull & remove clot | Surgery | | 14.99 | 9.70 | 9.70 | | |
| 61156 | | Pierce skull for drainage | Surgery | | 16.32 | 10.07 | 10.07 | | |
| 61210 | | Pierce skull, implant device | Surgery | | 5.84 | 3.78 | 3.78 | | |
| 61215 | | Insert brain-fluid device | Surgery | | 4.89 | 4.09 | 4.09 | | |
| 61250 | | Pierce skull & explore | Surgery | | 10.42 | 7.01 | 7.01 | | |
| 61253 | | Pierce skull & explore | Surgery | | 12.36 | 7.87 | 7.87 | | |
| 61304 | | Open skull for exploration | Surgery | | 21.96 | 13.18 | 13.18 | | |
| 61305 | | Open skull for exploration | Surgery | | 26.61 | 15.70 | 15.70 | | |
| 61312 | | Open skull for drainage | Surgery | | 24.57 | 15.42 | 15.42 | | |
| 61313 | | Open skull for drainage | Surgery | | 24.93 | 15.20 | 15.20 | | |
| 61314 | | Open skull for drainage | Surgery | | 24.23 | 13.34 | 13.34 | | |
| 61315 | | Open skull for drainage | Surgery | | 27.68 | 16.42 | 16.42 | | |
| 61316 | | Implt cran bone flap to abdo | Surgery | | 1.39 | 0.57 | 0.57 | | |
| 61320 | | Open skull for drainage | Surgery | | 25.62 | 15.16 | 15.16 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 61321 | | Open skull for drainage | Surgery | | 28.50 | 16.55 | 16.55 | | |
| 61322 | | Decompressive craniotomy | Surgery | | 29.50 | 13.88 | 13.88 | | |
| 61323 | | Decompressive lobectomy | Surgery | | 31.00 | 14.08 | 14.08 | | |
| 61330 | | Decompress eye socket | Surgery | | 23.32 | 14.10 | 14.10 | | |
| 61332 | | Explore/biopsy eye socket | Surgery | | 27.28 | 15.97 | 15.97 | | |
| 61333 | | Explore orbit/remove lesion | Surgery | | 27.95 | 16.02 | 16.02 | | |
| 61334 | | Explore orbit/remove object | Surgery | | 18.27 | 10.93 | 10.93 | | |
| 61340 | | Subtemporal decompression | Surgery | | 18.66 | 11.41 | 11.41 | | |
| 61343 | | Incise skull (press relief) | Surgery | | 29.77 | 17.97 | 17.97 | | |
| 61345 | | Relieve cranial pressure | Surgery | | 27.20 | 16.51 | 16.51 | | |
| 61440 | | Incise skull for surgery | Surgery | | 26.63 | 15.30 | 15.30 | | |
| 61450 | | Incise skull for surgery | Surgery | | 25.95 | 15.53 | 15.53 | | |
| 61458 | | Incise skull for brain wound | Surgery | | 27.29 | 16.59 | 16.59 | | |
| 61460 | | Incise skull for surgery | Surgery | | 28.39 | 17.53 | 17.53 | | |
| 61470 | | Incise skull for surgery | Surgery | | 26.06 | 15.06 | 15.06 | | |
| 61480 | | Incise skull for surgery | Surgery | | 26.49 | 15.99 | 15.99 | | |
| 61490 | | Incise skull for surgery | Surgery | | 25.66 | 15.56 | 15.56 | | |
| 61500 | | Removal of skull lesion | Surgery | | 17.92 | 11.76 | 11.76 | | |
| 61501 | | Remove infected skull bone | Surgery | | 14.84 | 9.97 | 9.97 | | |
| 61510 | | Removal of brain lesion | Surgery | | 28.45 | 17.22 | 17.22 | | |
| 61512 | | Remove brain lining lesion | Surgery | | 35.09 | 20.72 | 20.72 | | |
| 61514 | | Removal of brain abscess | Surgery | | 25.26 | 15.47 | 15.47 | | |
| 61516 | | Removal of brain lesion | Surgery | | 24.61 | 14.92 | 14.92 | | |
| 61517 | | Implt brain chemotx add-on | Surgery | | 1.38 | 0.56 | 0.56 | | |
| 61518 | | Removal of brain lesion | Surgery | | 37.32 | 22.22 | 22.22 | | |
| 61519 | | Remove brain lining lesion | Surgery | | 41.39 | 24.21 | 24.21 | | |
| 61520 | | Removal of brain lesion | Surgery | | 54.84 | 31.73 | 31.73 | | |
| 61521 | | Removal of brain lesion | Surgery | | 44.48 | 25.76 | 25.76 | | |
| 61522 | | Removal of brain abscess | Surgery | | 29.45 | 17.56 | 17.56 | | |
| 61524 | | Removal of brain lesion | Surgery | | 27.86 | 16.79 | 16.79 | | |
| 61526 | | Removal of brain lesion | Surgery | | 52.17 | 30.71 | 30.71 | | |
| 61530 | | Removal of brain lesion | Surgery | | 43.86 | 26.94 | 26.94 | | |
| 61531 | | Implant brain electrodes | Surgery | | 14.63 | 9.66 | 9.66 | | |
| 61533 | | Implant brain electrodes | Surgery | | 19.71 | 12.32 | 12.32 | | |
| 61534 | | Removal of brain lesion | Surgery | | 20.97 | 13.13 | 13.13 | | |
| 61535 | | Remove brain electrodes | Surgery | | 11.63 | 8.10 | 8.10 | | |
| 61536 | | Removal of brain lesion | Surgery | | 35.52 | 21.02 | 21.02 | | |
| 61538 | | Removal of brain tissue | Surgery | | 26.81 | 16.32 | 16.32 | | |
| 61539 | | Removal of brain tissue | Surgery | | 32.08 | 18.97 | 18.97 | | |
| 61541 | | Incision of brain tissue | Surgery | | 28.85 | 16.91 | 16.91 | | |
| 61542 | | Removal of brain tissue | Surgery | | 31.02 | 19.07 | 19.07 | | |
| 61543 | | Removal of brain tissue | Surgery | | 29.22 | 17.52 | 17.52 | | |
| 61544 | | Remove & treat brain lesion | Surgery | | 25.50 | 14.52 | 14.52 | | |
| 61545 | | Excision of brain tumor | Surgery | | 43.80 | 25.02 | 25.02 | | |
| 61546 | | Removal of pituitary gland | Surgery | | 31.30 | 18.68 | 18.68 | | |
| 61548 | | Removal of pituitary gland | Surgery | | 21.53 | 13.64 | 13.64 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 61550 | | Release of skull seams | Surgery | | 14.65 | 7.34 | 7.34 | | |
| 61552 | | Release of skull seams | Surgery | | 19.56 | 9.84 | 9.84 | | |
| 61556 | | Incise skull/sutures | Surgery | | 22.26 | 12.01 | 12.01 | | |
| 61557 | | Incise skull/sutures | Surgery | | 22.38 | 13.86 | 13.86 | | |
| 61558 | | Excision of skull/sutures | Surgery | | 25.58 | 15.13 | 15.13 | | |
| 61559 | | Excision of skull/sutures | Surgery | | 32.79 | 19.67 | 19.67 | | |
| 61563 | | Excision of skull tumor | Surgery | | 26.83 | 16.07 | 16.07 | | |
| 61564 | | Excision of skull tumor | Surgery | | 33.83 | 18.72 | 18.72 | | |
| 61570 | | Remove foreign body, brain | Surgery | | 24.60 | 14.37 | 14.37 | | |
| 61571 | | Incise skull for brain wound | Surgery | | 26.39 | 15.70 | 15.70 | | |
| 61575 | | Skull base/brainstem surgery | Surgery | | 34.36 | 21.20 | 21.20 | | |
| 61576 | | Skull base/brainstem surgery | Surgery | | 52.43 | 30.80 | 30.80 | | |
| 61580 | | Craniofacial approach, skull | Surgery | | 30.35 | 19.15 | 19.15 | | |
| 61581 | | Craniofacial approach, skull | Surgery | | 34.60 | 15.39 | 15.39 | | |
| 61582 | | Craniofacial approach, skull | Surgery | | 31.66 | 19.26 | 19.26 | | |
| 61583 | | Craniofacial approach, skull | Surgery | | 36.21 | 22.62 | 22.62 | | |
| 61584 | | Orbitocranial approach/skull, | Surgery | | 34.65 | 20.92 | 20.92 | | |
| 61585 | | Orbitocranial approach/skull | Surgery | | 38.61 | 22.58 | 22.58 | | |
| 61586 | | Resect nasopharynx, skull | Surgery | | 25.10 | 16.22 | 16.22 | | |
| 61590 | | Infratemporal approach/skull | Surgery | | 41.78 | 25.53 | 25.53 | | |
| 61591 | | Infratemporal approach/skull | Surgery | | 43.68 | 26.34 | 26.34 | | |
| 61592 | | Orbitocranial approach/skull | Surgery | | 39.64 | 23.61 | 23.61 | | |
| 61595 | | Transtemporal approach/skull | Surgery | | 29.57 | 19.32 | 19.32 | | |
| 61596 | | Transcochlear approach/skull | Surgery | | 35.63 | 22.01 | 22.01 | | |
| 61597 | | Transcondylar approach/skull | Surgery | | 37.96 | 21.20 | 21.20 | | |
| 61598 | | Transpetrosal approach/skull | Surgery | | 33.41 | 20.65 | 20.65 | | |
| 61600 | | Resect/excise cranial lesion | Surgery | | 25.85 | 15.96 | 15.96 | | |
| 61601 | | Resect/excise cranial lesion | Surgery | | 27.89 | 17.32 | 17.32 | | |
| 61605 | | Resect/excise cranial lesion | Surgery | | 29.33 | 18.50 | 18.50 | | |
| 61606 | | Resect/excise cranial lesion | Surgery | | 38.83 | 23.37 | 23.37 | | |
| 61607 | | Resect/excise cranial lesion | Surgery | | 36.27 | 22.06 | 22.05 | | |
| 61608 | | Resect/excise cranial lesion | Surgery | | 42.10 | 24.77 | 24.77 | | |
| 61609 | | Transect artery, sinus | Surgery | | 9.89 | 4.91 | 4.91 | | |
| 61610 | | Transect artery, sinus | Surgery | | 29.67 | 13.48 | 13.48 | | |
| 61611 | | Transect artery, sinus | Surgery | | 7.42 | 3.40 | 3.40 | | |
| 61612 | | Transect artery, sinus | Surgery | | 27.88 | 13.67 | 13.67 | | |
| 61613 | | Remove aneurysm, sinus | Surgery | | 40.86 | 23.95 | 23.95 | | |
| 61615 | | Resect/excise lesion, skull | Surgery | | 32.07 | 20.58 | 20.58 | | |
| 61616 | | Resect/excise lesion, skull | Surgery | | 43.33 | 26.87 | 26.87 | | |
| 61618 | | Repair dura | Surgery | | 16.99 | 11.45 | 11.45 | | |
| 61619 | | Repair dura | Surgery | | 20.71 | 13.38 | 13.38 | | |
| 61623 | | Endovasc tempory vessel occl | Surgery | | 9.96 | 4.23 | 4.23 | | |
| 61624 | | Transcath occlusion, cns | Surgery | | 20.15 | 7.13 | 7.13 | | |
| 61626 | | Transcath occlusion, non-cns | Surgery | | 16.62 | 5.70 | 5.70 | | |
| 61680 | | Intracranial vessel surgery | Surgery | | 30.71 | 18.44 | 18.44 | | |
| 61682 | | Intracranial vessel surgery | Surgery | | 61.57 | 34.01 | 34.01 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 61684 | | Intracranial vessel surgery | Surgery | | 39.81 | 23.12 | 23.12 | | |
| 61686 | | Intracranial vessel surgery | Surgery | | 64.49 | 36.02 | 36.02 | | |
| 61690 | | Intracranial vessel surgery | Surgery | | 29.31 | 17.76 | 17.76 | | |
| 61692 | | Intracranial vessel surgery | Surgery | | 51.87 | 28.84 | 28.84 | | |
| 61697 | | Brain aneurysm repr, complx | Surgery | | 50.52 | 28.73 | 28.73 | | |
| 61698 | | Brain aneurysm repr, complx | Surgery | | 48.41 | 27.36 | 27.36 | | |
| 61700 | | Brain aneurysm repr, simple | Surgery | | 50.52 | 28.68 | 28.68 | | |
| 61702 | | Inner skull vessel surgery | Surgery | | 48.41 | 27.66 | 27.66 | | |
| 61703 | | Clamp neck artery | Surgery | | 17.47 | 11.24 | 11.24 | | |
| 61705 | | Revise circulation to head | Surgery | | 36.20 | 20.05 | 20.05 | | |
| 61708 | | Revise circulation to head | Surgery | | 35.30 | 15.87 | 15.87 | | |
| 61710 | | Revise circulation to head | Surgery | | 29.67 | 14.53 | 14.53 | | |
| 61711 | | Fusion of skull arteries | Surgery | | 36.33 | 20.63 | 20.63 | | |
| 61720 | | Incise skull/brain surgery | Surgery | | 16.77 | 10.74 | 10.74 | | |
| 61735 | | Incise skull/brain surgery | Surgery | | 20.43 | 12.76 | 12.76 | | |
| 61750 | | Incise skull/brain biopsy | Surgery | | 18.20 | 10.96 | 10.96 | | |
| 61751 | | Brain biopsy w/ct/mr guide | Surgery | | 17.62 | 10.77 | 10.77 | | |
| 61760 | | Implant brain electrodes | Surgery | | 22.27 | 8.83 | 8.83 | | |
| 61770 | | Incise skull for treatment | Surgery | | 21.44 | 13.05 | 13.05 | | |
| 61790 | | Treat trigeminal nerve | Surgery | | 10.86 | 6.02 | 6.02 | | |
| 61791 | | Treat trigeminal tract | Surgery | | 14.61 | 9.26 | 9.26 | | |
| 61793 | | Focus radiation beam | Surgery | | 17.24 | 10.93 | 10.93 | | |
| 61795 | | Brain surgery using computer | Surgery | | 4.04 | 2.09 | 2.09 | | |
| 61850 | | Implant neuroelectrodes | Surgery | | 12.39 | 8.08 | 8.08 | | |
| 61860 | | Implant neuroelectrodes | Surgery | | 20.87 | 12.88 | 12.88 | | |
| 61862 | | Implant neurostimul, subcort | Surgery | | 19.34 | 12.08 | 12.08 | | |
| 61870 | | Implant neuroelectrodes | Surgery | | 14.94 | 10.85 | 10.85 | | |
| 61875 | | Implant neuroelectrodes | Surgery | | 15.06 | 9.28 | 9.28 | | |
| 61880 | | Revise/remove neuroelectrode | Surgery | | 6.29 | 5.34 | 5.34 | | |
| 61885 | | Implant neurostim one array | Surgery | | 5.85 | 5.09 | 5.09 | | |
| 61886 | | Implant neurostim arrays | Surgery | | 8.00 | 6.15 | 6.15 | | |
| 61888 | | Revise/remove neuroreceiver | Surgery | | 5.07 | 3.90 | 3.90 | | |
| 62000 | | Treat skull fracture | Surgery | | 12.53 | 5.65 | 5.65 | | |
| 62005 | | Treat skull fracture | Surgery | | 16.17 | 9.46 | 9.46 | | |
| 62010 | | Treatment of head injury | Surgery | | 19.81 | 12.28 | 12.28 | | |
| 62100 | | Repair brain fluid leakage | Surgery | | 22.03 | 13.85 | 13.85 | | |
| 62115 | | Reduction of skull defect | Surgery | | 21.66 | 11.69 | 11.69 | | |
| 62116 | | Reduction of skull defect | Surgery | | 23.59 | 13.79 | 13.79 | | |
| 62117 | | Reduction of skull defect | Surgery | | 26.60 | 15.87 | 15.87 | | |
| 62120 | | Repair skull cavity lesion | Surgery | | 23.35 | 14.38 | 14.38 | | |
| 62121 | | Incise skull repair | Surgery | | 21.58 | 13.55 | 13.55 | | |
| 62140 | | Repair of skull defect | Surgery | | 13.51 | 8.61 | 8.61 | | |
| 62141 | | Repair of skull defect | Surgery | | 14.91 | 9.78 | 9.78 | | |
| 62142 | | Remove skull plate/flap. | Surgery | | 10.79 | 7.24 | 7.24 | | |
| 62143 | | Replace skull plate/flap | Surgery | | 13.05 | 8.75 | 8.75 | | |
| 62145 | | Repair of skull & brain | Surgery | | 18.82 | 11.69 | 11.69 | | |

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### TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 62146 | | Repair of skull with graft | Surgery | | 16.12 | 10.40 | 10.40 | | |
| 62147 | | Repair of skull with graft | Surgery | | 19.34 | 12.14 | 12.14 | | |
| 62148 | | Retr bone flap to fix skull | Surgery | | 2.00 | 0.82 | 0.82 | | |
| 62160 | | Neuroendoscopy add-on | Surgery | | 3.00 | 1.16 | 1.16 | | |
| 62161 | | Dissect brain w/scope | Surgery | | 20.00 | 9.71 | 9.71 | | |
| 62162 | | Remove colloid cyst w/scope | Surgery | | 25.25 | 11.89 | 11.89 | | |
| 62163 | | Neuroendoscopy w/fb removal | Surgery | | 15.50 | 7.97 | 7.97 | | |
| 62164 | | Remove brain tumor w/scope | Surgery | | 27.50 | 13.12 | 13.12 | | |
| 62165 | | Remove pituit tumor w/scope | Surgery | | 22.00 | 10.68 | 10.68 | | |
| 62180 | | Establish brain cavity shunt | Surgery | | 21.06 | 12.90 | 12.90 | | |
| 62190 | | Establish braia cavity shunt | Surgery | | 11.07 | 7.73 | 7.73 | | |
| 62192 | | Establish brain cavity shunt | Surgery | | 12.25 | 8.27 | 8.27 | | |
| 62194 | | Replace/irrigate catheter | Surgery | | 5.03 | 2.77 | 2.77 | | |
| 62200 | | Establish brain cavity shunt | Surgery | | 18.32 | 11.59 | 11.59 | | |
| 62201 | | Brain cavity shunt w/scope | Surgery | | 14.86 | 9.77 | 9.77 | | |
| 62220 | | Establish brain cavity shunt | Surgery | | 13.00 | 8.65 | 8.65 | | |
| 62223 | | Establish brain cavity shunt | Surgery | | 12.87 | 8.51 | 8.51 | | |
| 62225 | | Replace/irrigate catheter | Surgery | | 5.41 | 4.81 | 4.81 | | |
| 62230 | | Replace/revise brain shunt | Surgery | | 10.54 | 7.23 | 7.23 | | |
| 62252 | 26 | Csf shunt reprogram | Surgery | | 0.74 | 0.38 | 0.38 | | |
| 62252 | TC | Csf shunt reprogram | Surgery | a | 0.00 | 1.09 | 1.09 | | |
| 62256 | | Remove brain cavity shunt | Surgery | | 6.60 | 5.45 | 5.45 | | |
| 62258 | | Replace brain cavity shunt | Surgery | | 14.54 | 9.34 | 9.34 | | |
| 62263 | | Epidural lysis mult sessions | Surgery | | 6.14 | 13.45 | 2.43 | | |
| 62264 | | Epidural lysis on single day | Surgery | | 4.43 | 11.38 | 1.32 | | |
| 62268 | | Drain spinal cord cyst | Surgery | | 4.74 | 2.71 | 2.71 | | |
| 62269 | | Needle biopsy, spinal cord | Surgery | | 5.02 | 2.37 | 2.37 | | |
| 62270 | | Spinal fluid tap, diagnostic | Surgery | | 1.13 | 3.78 | 0.50 | | |
| 62272 | | Drain cerebro spinal fluid | Surgery | | 1.35 | 4.85 | 0.65 | | |
| 62273 | | Treat epidural spine lesion | Surgery | | 2.15 | 2.79 | 0.58 | | |
| 62280 | | Treat spinal cord lesion | Surgery | | 2.63 | 9.34 | 0.82 | | |
| 62281 | | Treat spinal cord lesion | Surgery | | 2.66 | 7.92 | 0.72 | | |
| 62282 | | Treat spinal canal lesion | Surgery | | 2.33 | 11.43 | 0.73 | | |
| 62284 | | Injection for myelogram | Surgery | | 1.54 | 5.07 | 0.61 | | |
| 62287 | | Percutaneous diskectomy | Surgery | | 8.08 | 5.04 | 5.04 | | |
| 62290 | | Inject for spine disk x-ray | Surgery | | 3.00 | 8.54 | 1.29 | | |
| 62291 | | Inject for spine disk x-ray | Surgery | | 2.91 | 7.28 | 1.15 | | |
| 62292 | | Injection into disk lesion | Surgery | | 7.86 | 5.04 | 5.04 | | |
| 62294 | | Injection into spinal artery | Surgery | | 11.83 | 6.68 | 6.68 | | |
| 62310 | | Inject spine c/t | Surgery | | 1.91 | 4.91 | 0.51 | | |
| 62311 | | Inject spine l/s (cd) | Surgery | | 1.54 | 5.02 | 0.45 | | |
| 62318 | | Inject spine w/cath, c/t | Surgery | | 2.04 | 5.53 | 0.52 | | |
| 62319 | | Inject spine w/cath l/s (cd) | Surgery | | 1.87 | 4.90 | 0.48 | | |
| 62350 | | Implant spinal canal cath | Surgery | | 6.87 | 3.64 | 3.64 | | |
| 62351 | | Implant spinal canal cath | Surgery | | 10.00 | 6.72 | 6.72 | | |
| 62355 | | Remove spinal canal catheter | Surgery | | 5.45 | 2.82 | 2.82 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 62360 | | Insert spine infusion device | Surgery | | 2.62 | 2.28 | 2.28 | | |
| 62361 | | Implant spine infusion pump | Surgery | | 5.42 | 3.50 | 3.50 | | |
| 62362 | | Implant spine infusion pump | Surgery | | 7.04 | 4.06 | 4.06 | | |
| 62365 | | Remove spine infusion device | Surgery | | 5.42 | 4.09 | 4.09 | | |
| 62367 | 26 | Analyze spine infusion pump | Surgery | | 0.48 | 0.13 | 0.13 | | |
| 62367 | TC | Analyze spine infusion pump | Surgery | a | | | | 1.04 | SAF |
| 62368 | 26 | Analyze spine infusion pump | Surgery | | 0.75 | 0.19 | 0.19 | | |
| 62368 | TC | Analyze spine infusion pump | Surgery | a | | | | 0.67 | SAF |
| 63001 | | Removal of spinal lamina | Surgery | | 15.82 | 9.93 | 9.93 | | |
| 63003 | | Removal of spinal lamina | Surgery | | 15.95 | 10.28 | 10.28 | | |
| 63005 | | Removal of spinal lamina | Surgery | | 14.92 | 10.31 | 10.31 | | |
| 63011 | | Removal of spinal lamina | Surgery | | 14.52 | 8.60 | 8.60 | | |
| 63012 | | Removal of spinal lamina | Surgery | | 15.40 | 10.45 | 10.45 | | |
| 63015 | | Removal of spinal lamina | Surgery | | 19.35 | 12.36 | 12.36 | | |
| 63016 | | Removal of spinal lamina | Surgery | | 19.20 | 12.22 | 12.22 | | |
| 63017 | | Removal of spinal lamina | Surgery | | 15.94 | 10.77 | 10.77 | | |
| 63020 | | Neck spine disk surgery | Surgery | | 14.81 | 10.08 | 10.08 | | |
| 63030 | | Low back disk surgery | Surgery | | 12.00 | 8.75 | 8.75 | | |
| 63035 | | Spinal disk surgery add-on | Surgery | | 3.15 | 1.63 | 1.63 | | |
| 63040 | | Laminotomy, single cervical | Surgery | | 18.81 | 11.91 | 11.91 | | |
| 63042 | | Laminotomy, single lumbar | Surgery | | 17.47 | 11.71 | 11.71 | | |
| 63043 | | Laminotomy, addl cervical | Surgery | | | | | 16.80 | MDR |
| 63044 | | Laminotomy, addl lumbar | Surgery | | | | | 15.96 | MDR |
| 63045 | | Removal of spinal lamina | Surgery | | 16.50 | 10.76 | 10.76 | | |
| 63046 | | Removal of spinal lamina | Surgery | | 15.80 | 10.54 | 10.54 | | |
| 63047 | | Removal of spinal lamina | Surgery | | 14.61 | 10.23 | 10.23 | | |
| 63048 | | Remove spinal lamina add-on | Surgery | | 3.26 | 1.71 | 1.71 | | |
| 63055 | | Decompress spinal cord | Surgery | | 21.99 | 13.60 | 13.60 | | |
| 63056 | | Decompress spinal cord | Surgery | | 20.36 | 12.98 | 12.98 | | |
| 63057 | | Decompress spine cord add-on | Surgery | | 5.26 | 2.71 | 2.71 | | |
| 63064 | | Decompress spinal cord | Surgery | | 24.61 | 14.93 | 14.93 | | |
| 63066 | | Decompress spine cord add-on | Surgery | | 3.26 | 1.71 | 1.71 | | |
| 63075 | | Neck spine disk surgery | Surgery | | 19.41 | 12.53 | 12.53 | | |
| 63076 | | Neck spine disk surgery | Surgery | | 4.05 | 2.11 | 2.11 | | |
| 63077 | | Spine disk surgery, thorax | Surgery | | 21.44 | 13.08 | 13.08 | | |
| 63078 | | Spine disk surgery, thorax | Surgery | | 3.28 | 1.67 | 1.67 | | |
| 63081 | | Removal of vertebral body | Surgery | | 23.73 | 14.80 | 14.80 | | |
| 63082 | | Remove vertebral body add-on | Surgery | | 4.37 | 2.29 | 2.29 | | |
| 63085 | | Removal of vertebral body | Surgery | | 26.92 | 15.83 | 15.83 | | |
| 63086 | | Remove vertebral body add-on | Surgery | | 3.19 | 1.63 | 1.63 | | |
| 63087 | | Removal of vertebral body | Surgery | | 35.57 | 19.93 | 19.93 | | |
| 63088 | | Remove vertebral body add-on | Surgery | | 4.33 | 2.23 | 2.23 | | |
| 63090 | | Removal of vertebral body | Surgery | | 28.16 | 16.40 | 16.40 | | |
| 63091 | | Remove vertebral body add-on | Surgery | | 3.03 | 1.49 | 1.49 | | |
| 63170 | | Incise spinal cord tract(s) | Surgery | | 19.83 | 13.69 | 13.69 | | |
| 63172 | | Drainage of spinal cyst | Surgery | | 17.66 | 13.21 | 13.21 | | |

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### TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 63173 | | Drainage of spinal cyst | Surgery | | 21.99 | 15.22 | 15.22 | | |
| 63180 | | Revise spinal cord ligaments | Surgery | | 18.27 | 13.27 | 13.27 | | |
| 63182 | | Revise spinal cord ligaments | Surgery | | 20.50 | 12.93 | 12.93 | | |
| 63185 | | Incise spinal column/nerves | Surgery | | 15.04 | 9.82 | 9.82 | | |
| 63190 | | Incise spinal column/nerves | Surgery | | 17.45 | 11.92 | 11.92 | | |
| 63191 | | Incise spinal column/nerves | Surgery | | 17.54 | 12.31 | 12.31 | | |
| 63194 | | Incise spinal column & cord | Surgery | | 19.19 | 13.35 | 13.35 | | |
| 63195 | | Incise spinal column & cord | Surgery | | 18.84 | 12.97 | 12.97 | | |
| 63196 | | Incise spinal column & cord | Surgery | | 22.30 | 13.65 | 13.65 | | |
| 63197 | | Incise spinal column & cord | Surgery | | 21.11 | 13.85 | 13.85 | | |
| 63198 | | Incise spinal column & cord | Surgery | | 25.38 | 10.80 | 10.80 | | |
| 63199 | | Incise spinal column & cord | Surgery | | 26.89 | 16.29 | 16.29 | | |
| 63200 | | Release of spinal cord | Surgery | | 19.18 | 13.10 | 13.10 | | |
| 63250 | | Revise spinal cord vessels | Surgery | | 40.76 | 20.69 | 20.69 | | |
| 63251 | | Revise spinal cord vessels | Surgery | | 41.20 | 23.26 | 23.26 | | |
| 63252 | | Revise spinal cord vessels | Surgery | | 41.19 | 22.90 | 22.90 | | |
| 63265 | | Excise intraspinal lesion | Surgery | | 21.56 | 13.30 | 13.30 | | |
| 63266 | | Excise intraspinal lesion | Surgery | | 22.30 | 13.73 | 13.73 | | |
| 63267 | | Excise intraspinal lesion | Surgery | | 17.95 | 11.53 | 11.53 | | |
| 63268 | | Excise intraspinal lesion | Surgery | | 18.52 | 10.86 | 10.86 | | |
| 63270 | | Excise intraspinal lesion | Surgery | | 26.80 | 16.10 | 16.10 | | |
| 63271 | | Excise intraspinal lesion | Surgery | | 26.92 | 16.20 | 16.20 | | |
| 63272 | | Excise intraspinal lesion | Surgery | | 25.32 | 15.27 | 15.27 | | |
| 63273 | | Excise intraspinal lesion | Surgery | | 24.29 | 14.89 | 14.89 | | |
| 63275 | | Biopsy/excise spinal tumor | Surgery | | 23.68 | 14.35 | 14.35 | | |
| 63276 | | Biopsy/excise spinal tumor | Surgery | | 23.45 | 14.23 | 14.23 | | |
| 63277 | | Biopsy/excise spinal tumor | Surgery | | 20.83 | 13.01 | 13.01 | | |
| 63278 | | Biopsy/excise spinal tumor | Surgery | | 20.56 | 12.84 | 12.84 | | |
| 63280 | | Biopsy/excise spinal tumor | Surgery | | 28.35 | 16.80 | 16.80 | | |
| 63281 | | Biopsy/excise spinal tumor | Surgery | | 28.05 | 16.64 | 16.64 | | |
| 63282 | | Biopsy/excise spinal tumor | Surgery | | 26.39 | 15.77 | 15.77 | | |
| 63283 | | Biopsy/excise spinal tumor | Surgery | | 25.00 | 15.09 | 15.09 | | |
| 63285 | | Biopsy/excise spinal tumor | Surgery | | 36.00 | 20.53 | 20.53 | | |
| 63286 | | Biopsy/excise spinal tumor | Surgery | | 35.63 | 20.47 | 20.47 | | |
| 63287 | | Biopsy/excise spinal tumor | Surgery | | 36.70 | 21.04 | 21.04 | | |
| 63290 | | Biopsy/excise spinal tumor | Surgery | | 37.38 | 21.18 | 21.18 | | |
| 63300 | | Removal of vertebral body | Surgery | | 24.43 | 14.84 | 14.84 | | |
| 63301 | | Removal of vertebral body | Surgery | | 27.60 | 15.84 | 15.84 | | |
| 63302 | | Removal of vertebral body | Surgery | | 27.81 | 16.16 | 16.16 | | |
| 63303 | | Removal of vertebral body | Surgery | | 30.50 | 17.39 | 17.39 | | |
| 63304 | | Removal of vertebral body | Surgery | | 30.33 | 17.77 | 17.77 | | |
| 63305 | | Removal of vertebral body | Surgery | | 32.03 | 18.30 | 18.30 | | |
| 63306 | | Removal of vertebral body | Surgery | | 32.22 | 18.04 | 18.04 | | |
| 63307 | | Removal of vertebral body | Surgery | | 31.63 | 17.33 | 17.33 | | |
| 63308 | | Remove vertebral body add-on | Surgery | | 5.25 | 2.67 | 2.67 | | |
| 63600 | | Remove spinal cord lesion | Surgery | | 14.02 | 6.03 | 6.03 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 63610 | | Stimulation of spinal cord | Surgery | | 8.73 | 3.79 | 3.79 | | |
| 63615 | | Remove lesion of spinal cord | Surgery | | 16.28 | 9.99 | 9.99 | | |
| 63650 | | Implant neuroelectrodes | Surgery | | 6.74 | 2.96 | 2.96 | | |
| 63655 | | Implant neuroelectrodes | Surgery | | 10.29 | 7.23 | 7.23 | | |
| 63660 | | Revise/remove neuroelectrode | Surgery | | 6.16 | 3.74 | 3.74 | | |
| 63685 | | Implant neuroreceiver | Surgery | | 7.04 | 4.28 | 4.28 | | |
| 63688 | | Revise/remove neuroreceiver | Surgery | | 5.39 | 3.68 | 3.68 | | |
| 63700 | | Repair of spinal herniation | Surgery | | 16.53 | 10.45 | 10.45 | | |
| 63702 | | Repair of spinal herniation | Surgery | | 18.48 | 10.71 | 10.71 | | |
| 63704 | | Repair of spinal herniation | Surgery | | 21.18 | 12.61 | 12.61 | | |
| 63706 | | Repair of spinal herniation | Surgery | | 24.11 | 13.52 | 13.52 | | |
| 63707 | | Repair spinal fluid leakage | Surgery | | 11.26 | 8.01 | 8.01 | | |
| 63709 | | Repair spinal fluid leakage | Surgery | | 14.32 | 9.70 | 9.70 | | |
| 63710 | | Graft repair of spine defect | Surgery | | 14.07 | 9.43 | 9.43 | | |
| 63740 | | Install spinal shunt | Surgery | | 11.36 | 7.76 | 7.76 | | |
| 63741 | | Install spinal shunt | Surgery | | 8.25 | 4.86 | 4.86 | | |
| 63744 | | Revision of spinal shunt | Surgery | | 8.10 | 5.58 | 5.58 | | |
| 63746 | | Removal of spinal shunt | Surgery | | 6.43 | 4.04 | 4.04 | | |
| 64400 | | N block inj, trigeminal | Surgery | | 1.11 | 1.96 | 0.36 | | |
| 64402 | | N block inj, facial | Surgery | | 1.25 | 1.57 | 0.54 | | |
| 64405 | | N block inj, occipital | Surgery | | 1.32 | 1.70 | 0.40 | | |
| 64408 | | N block inj, vagus | Surgery | | 1.41 | 2.60 | 0.67 | | |
| 64410 | | N block inj, phrenic | Surgery | | 1.43 | 2.48 | 0.40 | | |
| 64412 | | N block inj, spinal accessor | Surgery | | 1.18 | 2.62 | 0.37 | | |
| 64413 | | N block inj, cervical plexus | Surgery | | 1.40 | 1.99 | 0.44 | | |
| 64415 | | N block inj, brachial plexus | Surgery | | 1.48 | 3.05 | 0.39 | | |
| 64416 | | N block cont infuse, b plex | Surgery | | 3.50 | 0.75 | 0.75 | | |
| 64417 | | N block inj, axillary | Surgery | | 1.44 | 3.25 | 0.43 | | |
| 64418 | | N block inj, suprascapular | Surgery | | 1.32 | 2.67 | 0.37 | | |
| 64420 | | N block inj, intercost, sng | Surgery | | 1.18 | 3.56 | 0.35 | | |
| 64421 | | N block inj, intercost, mlt | Surgery | | 1.68 | 5.30 | 0.46 | | |
| 64425 | | N block inj ilio-ing/hypogi | Surgery | | 1.75 | 1.60 | 0.48 | | |
| 64430 | | N block inj, pudendal | Surgery | | 1.46 | 2.09 | 0.50 | | |
| 64435 | | N block inj, paracervical | Surgery | | 1.45 | 2.24 | 0.65 | | |
| 64445 | | N block inj, sciatic, sng | Surgery | | 1.48 | 2.78 | 0.38 | | |
| 64446 | | N blk inj, sciatic, cont inf | Surgery | | 3.25 | 1.15 | 1.15 | | |
| 64447 | | N block inj fem, single | Surgery | | 1.50 | 0.52 | 0.52 | | |
| 64448 | | N block inj fem, cont inf | Surgery | | 3.00 | 1.04 | 1.04 | | |
| 64450 | | N block, other peripheral | Surgery | | 1.27 | 1.30 | 0.42 | | |
| 64470 | | Inj paravertebral c/t | Surgery | | 1.85 | 4.99 | 0.57 | | |
| 64472 | | Inj paravertebral c/t add-on | Surgery | | 1.29 | 1.99 | 0.32 | | |
| 64475 | | Inj paravertebral l/s | Surgery | | 1.41 | 4.65 | 0.48 | | |
| 64476 | | Inj paravertebral l/s add-on | Surgery | | 0.98 | 1.86 | 0.25 | | |
| 64479 | | Inj foramen epidural c/t | Surgery | | 2.20 | 7.32 | 0.73 | | |
| 64480 | | Inj foramen epidural add-on | Surgery | | 1.54 | 2.36 | 0.48 | | |
| 64483 | | Inj foramen epidural l/s | Surgery | | 1.90 | 7.75 | 0.67 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 64484 | | Inj foramen epidural add-on | Surgery | | 1.33 | 2.70 | 0.38 | | |
| 64505 | | N block, spenopalatine gangl | Surgery | | 1.36 | 1.89 | 0.49 | | |
| 64508 | | N block, carotid sinus s/p | Surgery | | 1.12 | 4.79 | 0.52 | | |
| 64510 | | N block, stellate ganglion | Surgery | | 1.22 | 3.19 | 0.38 | | |
| 64520 | | N block, lumbar/thoracic | Surgery | | 1.35 | 4.54 | 0.42 | | |
| 64530 | | N block inj, celiac pelus | Surgery | | 1.58 | 5.83 | 0.48 | | |
| 64550 | | Apply neurostimulator | Surgery | | 0.18 | 0.56 | 0.05 | | |
| 64553 | | Implant neuroelectrodes | Surgery | | 2.31 | 1.89 | 1.27 | | |
| 64555 | | Implant neuroelectrodes | Surgery | | 2.27 | 2.47 | 0.64 | | |
| 64560 | | Implant neuroelectrodes | Surgery | | 2.36 | 2.43 | 0.71 | | |
| 64561 | | Implant neuroelectrodes | Surgery | | 6.74 | 15.24 | 3.78 | | |
| 64565 | | Implant neuroelectrodes | Surgery | | 1.76 | 3.26 | 0.66 | | |
| 64573 | | Implant neuroelectrodes | Surgery | | 7.50 | 5.40 | 5.40 | | |
| 64575 | | Implant neuroelectrodes | Surgery | | 4.35 | 3.01 | 3.01 | | |
| 64577 | | Implant neuroelectrodes | Surgery | | 4.62 | 3.63 | 3.63 | | |
| 64580 | | Implant neuroelectrodes | Surgery | | 4.12 | 4.01 | 4.01 | | |
| 64581 | | Implant neuroelectrodes | Surgery | | 13.50 | 6.61 | 6.61 | | |
| 64585 | | Revise/remove neuroelectrode | Surgery | | 2.06 | 3.38 | 2.09 | | |
| 64590 | | Implant neuroreceiver | Surgery | | 2.40 | 2.24 | 2.24 | | |
| 64595 | | Revise/remove neuroreceiver | Surgery | | 1.73 | 1.91 | 1.91 | | |
| 64600 | | Injection treatment of nerve | Surgery | | 3.45 | 9.19 | 1.50 | | |
| 64605 | | Injection treatment of nerve | Surgery | | 5.61 | 10.60 | 2.01 | | |
| 64610 | | Injection treatment of nerve | Surgery | | 7.16 | 3.58 | 3.58 | | |
| 64612 | | Destroy nerve, face muscle | Surgery | | 1.96 | 2.29 | 1.03 | | |
| 64613 | | Destroy nerve, spine muscle | Surgery | | 1.96 | 2.96 | 0.96 | | |
| 64614 | | Destroy nerve, extrem musc | Surgery | | 2.20 | 4.40 | 1.04 | | |
| 64620 | | Injection treatment of nerve | Surgery | | 2.84 | 6.13 | 1.10 | | |
| 64622 | | Destr paravertebrl nerve l/s | Surgery | | 3.00 | 8.53 | 1.17 | | |
| 64623 | | Destr paravertebral n add-on | Surgery | | 0.99 | 2.49 | 0.23 | | |
| 64626 | | Destr paravertebrl nerve c/t | Surgery | | 3.28 | 8.46 | 1.84 | | |
| 64627 | | Destr paravertebral n add-on | Surgery | | 1.16 | 2.70 | 0.27 | | |
| 64630 | | Injection treatment of nerve | Surgery | | 3.00 | 4.46 | 1.22 | | |
| 64640 | | Injection treatment of nerve | Surgery | | 2.76 | 6.72 | 1.70 | | |
| 64680 | | Injection treatment of nerve | Surgery | | 2.62 | 7.28 | 1.21 | | |
| 64702 | | Revise finger/toe nerve | Surgery | | 4.23 | 3.99 | 3.99 | | |
| 64704 | | Revise hand/foot nerve | Surgery | | 4.57 | 3.22 | 3.22 | | |
| 64708 | | Revise arm/leg nerve | Surgery | | 6.12 | 5.12 | 5.12 | | |
| 64712 | | Revision of sciatic nerve | Surgery | | 7.75 | 5.27 | 5.27 | | |
| 64713 | | Revision of arm nerve(s) | Surgery | | 11.00 | 5.80 | 5.80 | | |
| 64714 | | Revise low back nerve(s) | Surgery | | 10.33 | 4.22 | 4.22 | | |
| 64716 | | Revision of cranial nerve | Surgery | | 6.31 | 4.97 | 4.97 | | |
| 64718 | | Revise ulnar nerve at elbow | Surgery | | 5.99 | 5.30 | 5.30 | | |
| 64719 | | Revise ulnar nerve at wrist | Surgery | | 4.85 | 4.77 | 4.77 | | |
| 64721 | | Carpal tunnel surgery | Surgery | | 4.29 | 5.97 | 5.64 | | |
| 64722 | | Relieve pressure on nerve(s) | Surgery | | 4.70 | 3.33 | 3.33 | | |
| 64726 | | Release foot/toe nerve | Surgery | | 4.18 | 3.09 | 3.09 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 64727 | | Internal nerve revision | Surgery | | 3.10 | 1.54 | 1.54 | | |
| 64732 | | Incision of brow nerve | Surgery | | 4.41 | 3.64 | 3.64 | | |
| 64734 | | Incision of cheek nerve | Surgery | | 4.92 | 3.65 | 3.65 | | |
| 64736 | | Incision of chin nerve | Surgery | | 4.60 | 2.95 | 2.95 | | |
| 64738 | | Incision of jaw nerve | Surgery | | 5.73 | 3.65 | 3.65 | | |
| 64740 | | Incision of tongue nerve | Surgery | | 5.59 | 3.82 | 3.82 | | |
| 64742 | | Incision of facial nerve | Surgery | | 6.22 | 4.71 | 4.71 | | |
| 64744 | | Incise nerve, back of head | Surgery | | 5.24 | 4.00 | 4.00 | | |
| 64746 | | Incise diaphragm nerve | Surgery | | 5.93 | 4.49 | 4.49 | | |
| 64752 | | Incision of vagus nerve | Surgery | | 7.06 | 4.70 | 4.70 | | |
| 64755 | | Incision of stomach nerves | Surgery | | 13.52 | 6.17 | 6.17 | | |
| 64760 | | Incision of vagus nerve | Surgery | | 6.96 | 4.02 | 4.02 | | |
| 64761 | | Incision of pelvis nerve | Surgery | | 6.41 | 3.63 | 3.63 | | |
| 64763 | | Incise hip/thigh nerve | Surgery | | 6.93 | 6.07 | 6.07 | | |
| 64766 | | Incise hip/thigh nerve | Surgery | | 8.67 | 5.68 | 5.68 | | |
| 64771 | | Sever cranial nerve | Surgery | | 7.35 | 5.62 | 5.62 | | |
| 64772 | | Incision of spinal nerve | Surgery | | 7.21 | 4.89 | 4.89 | | |
| 64774 | | Remove skin nerve lesion | Surgery | | 5.17 | 3.78 | 3.78 | | |
| 64776 | | Remove digit nerve lesion | Surgery | | 5.12 | 3.84 | 3.84 | | |
| 64778 | | Digit nerve surgery add-on | Surgery | | 3.11 | 1.54 | 1.54 | | |
| 64782 | | Remove limb nerve lesion | Surgery | | 6.23 | 3.72 | 3.72 | | |
| 64783 | | Limb nerve surgery add-on | Surgery | | 3.72 | 1.89 | 1.89 | | |
| 64784 | | Remove nerve lesion | Surgery | | 9.82 | 6.68 | 6.68 | | |
| 64786 | | Remove sciatic nerve lesion | Surgery | | 15.46 | 10.13 | 10.13 | | |
| 64787 | | Implant nerve end | Surgery | | 4.30 | 2.18 | 2.18 | | |
| 64788 | | Remove skin nerve lesion | Surgery | | 4.61 | 3.48 | 3.48 | | |
| 64790 | | Removal of nerve lesion | Surgery | | 11.31 | 7.29 | 7.29 | | |
| 64792 | | Removal of nerve lesion | Surgery | | 14.92 | 8.85 | 8.85 | | |
| 64795 | | Biopsy of nerve | Surgery | | 3.01 | 1.80 | 1.80 | | |
| 64802 | | Remove sympathetic nerves | Surgery | | 9.15 | 5.43 | 5.43 | | |
| 64804 | | Remove sympathetic nerves | Surgery | | 14.64 | 7.42 | 7.42 | | |
| 64809 | | Remove sympathetic nerves | Surgery | | 13.67 | 6.31 | 6.31 | | |
| 64818 | | Remove sympathetic nerves | Surgery | | 10.30 | 5.77 | 5.77 | | |
| 64820 | | Remove sympathetic nerves | Surgery | | 10.37 | 7.44 | 7.44 | | |
| 64821 | | Remove sympathestic nerves | Surgery | | 8.75 | 9.23 | 9.23 | | |
| 64822 | | Remove sympathetic nerves | Surgery | | 8.75 | 9.23 | 9.23 | | |
| 64823 | | Remove sympathetic nerves | Surgery | | 10.37 | 10.03 | 10.03 | | |
| 64831 | | Repair of digit nerve | Surgery | | 9.44 | 7.24 | 7.24 | | |
| 64832 | | Repair nerve add-on | Surgery | | 5.66 | 3.02 | 3.02 | | |
| 64834 | | Repair of hand or foot nerve | Surgery | | 10.19 | 7.18 | 7.18 | | |
| 64835 | | Repair of hand or foot nerve | Surgery | | 10.94 | 7.86 | 7.86 | | |
| 64836 | | Repair of hand or foot nerve | Surgery | | 10.94 | 7.83 | 7.83 | | |
| 64837 | | Repair nerve add-on | Surgery | | 6.26 | 3.31 | 3.31 | | |
| 64840 | | Repair of leg nerve | Surgery | | 13.02 | 8.34 | 8.34 | | |
| 64856 | | Repair/transpose nerve | Surgery | | 13.80 | 9.40 | 9.40 | | |
| 64857 | | Repair arm/leg nerve | Surgery | | 14.49 | 9.87 | 9.87 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 64858 | | Repair sciatic nerve | Surgery | | 16.49 | 10.82 | 10.82 | | |
| 64859 | | Nerve surgery | Surgery | | 4.26 | 2.25 | 2.25 | | |
| 64861 | | Repair of arm nerves | Surgery | | 19.24 | 12.64 | 12.64 | | |
| 64862 | | Repair of low back nerves | Surgery | | 19.44 | 12.26 | 12.26 | | |
| 64864 | | Repair of facial nerve | Surgery | | 12.55 | 8.52 | 8.52 | | |
| 64865 | | Repair of facial nerve | Surgery | | 15.24 | 10.09 | 10.09 | | |
| 64866 | | Fusion of facial/other nerve | Surgery | | 15.74 | 9.99 | 9.99 | | |
| 64868 | | Fusion of facial/other nerve | Surgery | | 14.04 | 9.32 | 9.32 | | |
| 64870 | | Fusion of facial/other nerve | Surgery | | 15.99 | 9.09 | 9.09 | | |
| 64872 | | Subsequent repair of nerve | Surgery | | 1.99 | 1.08 | 1.08 | | |
| 64874 | | Repair & revise nerve add-on | Surgery | | 2.98 | 1.54 | 1.54 | | |
| 64876 | | Repair nerve/shorten bone | Surgery | | 3.38 | 1.31 | 1.31 | | |
| 64885 | | Nerve graft, head or neck | Surgery | | 17.53 | 11.16 | 11.16 | | |
| 64886 | | Nerve graft, head or neck | Surgery | | 20.75 | 13.07 | 13.07 | | |
| 64890 | | Nerve graft, hand or foot | Surgery | | 15.15 | 10.25 | 10.25 | | |
| 64891 | | Nerve graft, hand or foot | Surgery | | 16.14 | 7.75 | 7.75 | | |
| 64892 | | Nerve graft, arm or leg | Surgery | | 14.65 | 9.10 | 9.10 | | |
| 64893 | | Nerve graft, arm or leg | Surgery | | 15.60 | 10.05 | 10.05 | | |
| 64895 | | Nerve graft, hand or foot | Surgery | | 19.25 | 9.82 | 9.82 | | |
| 64896 | | Nerve graft, hand or foot | Surgery | | 20.49 | 11.11 | 11.11 | | |
| 64897 | | Nerve graft, arm or leg | Surgery | | 18.24 | 10.91 | 10.91 | | |
| 64898 | | Nerve graft, arm or leg | Surgery | | 19.50 | 11.88 | 11.88 | | |
| 64901 | | Nerve graft add-on | Surgery | | 10.22 | 5.41 | 5.41 | | |
| 64902 | | Nerve graft add-on | Surgery | | 11.83 | 6.13 | 6.13 | | |
| 64905 | | Nerve pedicle transfer | Surgery | | 14.02 | 8.94 | 8.94 | | |
| 64907 | | Nerve pedicle transfer | Surgery | | 18.83 | 12.38 | 12.38 | | |
| 64999 | | Nervous system surgery | Surgery | | | | | 6.68 | Misc |
| 65091 | | Revise eye | Surgery | | 6.46 | 11.28 | 11.28 | | |
| 65093 | | Revise eye with implant | Surgery | | 6.87 | 11.50 | 11.50 | | |
| 65101 | | Removal of eye | Surgery | | 7.03 | 11.59 | 11.59 | | |
| 65103 | | Remove eye/insert implant | Surgery | | 7.57 | 11.74 | 11.74 | | |
| 65105 | | Remove eye/attach implant | Surgery | | 8.49 | 12.24 | 12.24 | | |
| 65110 | | Removal of eye | Surgery | | 13.95 | 15.29 | 15.29 | | |
| 65112 | | Remove eye/revise socket | Surgery | | 16.38 | 17.54 | 17.54 | | |
| 65114 | | Remove eye/revise socket | Surgery | | 17.53 | 17.50 | 17.50 | | |
| 65125 | | Revise ocular implant | Surgery | | 3.12 | 5.96 | 1.45 | | |
| 65130 | | Insert ocular implant | Surgery | | 7.15 | 11.22 | 11.22 | | |
| 65135 | | Insert ocular implant | Surgery | | 7.33 | 11.43 | 11.43 | | |
| 65140 | | Attach ocular implant | Surgery | | 8.02 | 11.71 | 11.71 | | |
| 65150 | | Revise ocular implant | Surgery | | 6.26 | 10.75 | 10.75 | | |
| 65155 | | Reinsert ocular implant | Surgery | | 8.66 | 12.54 | 12.54 | | |
| 65175 | | Removal of ocular implant | Surgery | | 6.28 | 10.82 | 10.82 | | |
| 65205 | | Remove foreign body from eye | Surgery | | 0.71 | 0.62 | 0.19 | | |
| 65210 | | Remove foreign body from eye | Surgery | | 0.84 | 0.77 | 0.30 | | |
| 65220 | | Remove foreign body from eye | Surgery | | 0.71 | 8.06 | 0.18 | | |
| 65222 | | Remove foreign body from eye | Surgery | | 0.93 | 0.78 | 0.28 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 65235 | | Remove foreign body from eye | Surgery | | 7.57 | 6.84 | 6.84 | | |
| 65260 | | Remove foreign body from eye | Surgery | | 10.96 | 12.38 | 12.38 | | |
| 65265 | | Remove foreign body from eye | Surgery | | 12.59 | 13.88 | 13.88 | | |
| 65270 | | Repair of eye wound | Surgery | | 1.90 | 3.97 | 2.31 | | |
| 65272 | | Repair of eye wound | Surgery | | 3.82 | 5.59 | 4.64 | | |
| 65273 | | Repair of eye wound | Surgery | | 4.36 | 4.98 | 4.98 | | |
| 65275 | | Repair of eye wound | Surgery | | 5.34 | 5.56 | 5.08 | | |
| 65280 | | Repair of eye wound | Surgery | | 7.66 | 7.64 | 7.64 | | |
| 65285 | | Repair of eye wound | Surgery | | 12.90 | 13.46 | 13.46 | | |
| 65286 | | Repair of eye wound | Surgery | | 5.51 | 8.82 | 7.61 | | |
| 65290 | | Repair of eye socket wound | Surgery | | 5.41 | 6.27 | 6.27 | | |
| 65400 | | Removal of eye lesion | Surgery | | 6.06 | 8.38 | 6.91 | | |
| 65410 | | Biopsy of cornea | Surgery | | 1.47 | 1.71 | 0.67 | | |
| 65420 | | Removal of eye lesion | Surgery | | 4.17 | 8.08 | 6.97 | | |
| 65426 | | Removal of eye lesion | Surgery | | 5.25 | 7.80 | 6.54 | | |
| 65430 | | Corneal smear | Surgery | | 1.47 | 8.34 | 0.68 | | |
| 65435 | | Curette/treat cornea | Surgery | | 0.92 | 1.33 | 0.40 | | |
| 65436 | | Curette/treat cornea | Surgery | | 4.19 | 5.81 | 4.86 | | |
| 65450 | | Treatment of corneal lesion | Surgery | | 3.27 | 7.76 | 6.57 | | |
| 65600 | | Revision of cornea | Surgery | | 3.40 | 5.39 | 1.43 | | |
| 65710 | | Corneal transplant | Surgery | | 12.35 | 12.72 | 12.72 | | |
| 65730 | | Corneal transplant | Surgery | | 14.25 | 11.77 | 11.77 | | |
| 65750 | | Corneal transplant | Surgery | | 15.00 | 14.13 | 14.13 | | |
| 65755 | | Corneal transplant | Surgery | | 14.89 | 14.04 | 14.04 | | |
| 65760 | | Revision of cornea | Surgery | | | | | 32.51 | MDR |
| 65765 | | Revision of cornea | Surgery | | | | | 37.71 | MDR |
| 65767 | | Corneal tissue transplant | Surgery | | | | | 35.11 | MDR |
| 65770 | | Revise cornea with implant | Surgery | | 17.56 | 15.06 | 15.06 | | |
| 65771 | | Radial keratotomy | Surgery | | | | | 19.12 | MDR |
| 65772 | | Correction of astigmatism | Surgery | | 4.29 | 7.24 | 6.24 | | |
| 65775 | | Correction of astigmatism | Surgery | | 5.79 | 8.38 | 8.38 | | |
| 65800 | | Drainage of eye | Surgery | | 1.91 | 2.26 | 1.40 | | |
| 65805 | | Drainage of eye | Surgery | | 1.91 | 2.26 | 1.41 | | |
| 65810 | | Drainage of eye | Surgery | | 4.87 | 8.65 | 8.65 | | |
| 65815 | | Drainage of eye | Surgery | | 5.05 | 9.08 | 7.88 | | |
| 65820 | | Relieve inner eye pressure | Surgery | | 8.13 | 10.64 | 10.64 | | |
| 65850 | | Incision of eye | Surgery | | 10.52 | 9.99 | 9.99 | | |
| 65855 | | Laser surgery of eye | Surgery | | 3.85 | 5.01 | 3.56 | | |
| 65860 | | Incise inner eye adhesions | Surgery | | 3.55 | 4.01 | 3.07 | | |
| 65865 | | Incise inner eye adhesions | Surgery | | 5.60 | 6.69 | 6.69 | | |
| 65870 | | Incise inner eye adhesions | Surgery | | 6.27 | 7.02 | 7.02 | | |
| 65875 | | Incise inner eye adhesions | Surgery | | 6.54 | 7.12 | 7.12 | | |
| 65880 | | Incise inner eye adhesions | Surgery | | 7.09 | 7.38 | 7.38 | | |
| 65900 | | Remove eye lesion | Surgery | | 10.93 | 12.48 | 12.48 | | |
| 65920 | | Remove implant of eye | Surgery | | 8.40 | 7.99 | 7.99 | | |
| 65930 | | Remove blood clot from eye | Surgery | | 7.44 | 8.56 | 8.56 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 66020 | | Injection treatment of eye | Surgery | | 1.59 | 2.36 | 1.52 | | |
| 66030 | | Injection treatment of eye | Surgery | | 1.25 | 2.20 | 1.35 | | |
| 66130 | | Remove eye lesion | Surgery | | 7.69 | 7.39 | 6.48 | | |
| 66150 | | Glaucoma surgery | Surgery | | 8.30 | 10.61 | 10.61 | | |
| 66155 | | Glaucoma surgery | Surgery | | 8.29 | 10.58 | 10.58 | | |
| 66160 | | Glaucoma surgery | Surgery | | 10.17 | 11.44 | 11.44 | | |
| 66165 | | Glaucoma surgery | Surgery | | 8.01 | 10.44 | 10.44 | | |
| 66170 | | Glaucoma surgery | Surgery | | 12.16 | 16.52 | 16.52 | | |
| 66172 | | Incision of eye | Surgery | | 15.04 | 15.12 | 15.12 | | |
| 66180 | | Implant eye shunt | Surgery | | 14.55 | 12.04 | 12.04 | | |
| 66185 | | Revise eye shunt | Surgery | | 8.14 | 8.23 | 8.23 | | |
| 66220 | | Repair eye lesion | Surgery | | 7.77 | 9.93 | 9.93 | | |
| 66225 | | Repair/graft eye lesion | Surgery | | 11.05 | 9.31 | 9.31 | | |
| 66250 | | Follow-up surgery of eye | Surgery | | 5.98 | 7.79 | 6.33 | | |
| 66500 | | Incision of iris | Surgery | | 3.71 | 4.65 | 4.65 | | |
| 66505 | | Incision of iris | Surgery | | 4.08 | 4.80 | 4.80 | | |
| 66600 | | Remove iris and lesion | Surgery | | 8.68 | 8.62 | 8.62 | | |
| 66605 | | Removal of iris | Surgery | | 12.79 | 12.14 | 12.14 | | |
| 66625 | | Removal of iris | Surgery | | 5.13 | 7.62 | 6.59 | | |
| 66630 | | Removal of iris | Surgery | | 6.16 | 7.50 | 7.50 | | |
| 66635 | | Removal of iris | Surgery | | 6.25 | 6.46 | 6.46 | | |
| 66680 | | Repair iris & ciliary body | Surgery | | 5.44 | 6.06 | 6.06 | | |
| 66682 | | Repair iris & ciliary body | Surgery | | 6.21 | 7.51 | 7.51 | | |
| 66700 | | Destruction, ciliary body | Surgery | | 4.78 | 5.44 | 4.27 | | |
| 66710 | | Destruction, ciliary body | Surgery | | 4.78 | 5.14 | 3.81 | | |
| 66720 | | Destruction, ciliary body | Surgery | | 4.78 | 5.45 | 4.49 | | |
| 66740 | | Destruction, ciliary body | Surgery | | 4.78 | 4.84 | 4.84 | | |
| 66761 | | Revision of iris | Surgery | | 4.07 | 5.25 | 3.98 | | |
| 66762 | | Revision of iris | Surgery | | 4.58 | 5.33 | 3.97 | | |
| 66770 | | Removal of inner eye lesion | Surgery | | 5.18 | 5.76 | 4.48 | | |
| 66820 | | Incision, secondary cataract | Surgery | | 3.89 | 8.19 | 8.19 | | |
| 66821 | | After cataract laser surgery | Surgery | | 2.35 | 3.78 | 3.34 | | |
| 66825 | | Reposition intraocular lens | Surgery | | 8.23 | 10.19 | 10.19 | | |
| 66830 | | Removal of lens lesion | Surgery | | 8.20 | 6.83 | 6.83 | | |
| 66840 | | Removal of lens material | Surgery | | 7.91 | 6.74 | 6.74 | | |
| 66850 | | Removal of lens material | Surgery | | 9.11 | 7.26 | 7.26 | | |
| 66852 | | Removal of lens material | Surgery | | 9.97 | 7.72 | 7.72 | | |
| 66920 | | Extraction of lens | Surgery | | 8.86 | 7.19 | 7.19 | | |
| 66930 | | Extraction of lens | Surgery | | 10.18 | 8.68 | 8.68 | | |
| 66940 | | Extraction of lens | Surgery | | 8.93 | 8.12 | 8.12 | | |
| 66982 | | Cataract surgery, complex | Surgery | | 13.50 | 9.09 | 9.09 | | |
| 66983 | | Cataract surg w/iol, 1 stage | Surgery | | 8.99 | 5.88 | 5.88 | | |
| 66984 | | Cataract surg w/iol, 1 stage | Surgery | | 10.23 | 7.59 | 7.59 | | |
| 66985 | | Insert lens prosthesis | Surgery | | 8.39 | 6.82 | 6.82 | | |
| 66986 | | Exchange lens prosthesis | Surgery | | 12.28 | 8.57 | 8.57 | | |
| 66990 | | Ophthalmic endoscope add-on | Surgery | | 1.51 | 0.70 | 0.70 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 66999 | | Eye surgery procedure | Surgery | | | | | 12.42 | Misc |
| 67005 | | Partial removal of eye fluid | Surgery | | 5.70 | 2.65 | 2.65 | | |
| 67010 | | Partial removal of eye fluid | Surgery | | 6.87 | 3.20 | 3.20 | | |
| 67015 | | Release of eye fluid | Surgery | | 6.92 | 8.12 | 8.12 | | |
| 67025 | | Replace eye fluid | Surgery | | 6.84 | 16.76 | 7.51 | | |
| 67027 | | Implant eye drug system | Surgery | | 10.85 | 14.10 | 8.71 | | |
| 67028 | | Injection eye drug | Surgery | | 2.52 | 10.43 | 1.16 | | |
| 67030 | | Incise inner eye strands | Surgery | | 4.84 | 6.72 | 6.72 | | |
| 67031 | | Laser surgery, eye strands | Surgery | | 3.67 | 4.08 | 3.13 | | |
| 67036 | | Removal of inner eye fluid | Surgery | | 11.89 | 8.99 | 8.99 | | |
| 67038 | | Strip retinal membrane | Surgery | | 21.24 | 15.45 | 15.45 | | |
| 67039 | | Laser treatment of retina | Surgery | | 14.52 | 12.33 | 12.33 | | |
| 67040 | | Laser treatment of retina | Surgery | | 17.23 | 13.59 | 13.59 | | |
| 67101 | | Repair detached retina | Surgery | | 7.53 | 10.94 | 8.87 | | |
| 67105 | | Repair detached retina | Surgery | | 7.41 | 7.56 | 5.54 | | |
| 67107 | | Repair detached retina | Surgery | | 14.84 | 13.18 | 13.18 | | |
| 67108 | | Repair detached retina | Surgery | | 20.82 | 17.69 | 17.69 | | |
| 67110 | | Repair detached retina | Surgery | | 8.81 | 20.18 | 10.29 | | |
| 67112 | | Rerepair detached retina | Surgery | | 16.86 | 15.69 | 15.69 | | |
| 67115 | | Release encircling material | Surgery | | 4.99 | 6.81 | 6.81 | | |
| 67120 | | Remove eye implant material | Surgery | | 5.98 | 16.07 | 7.12 | | |
| 67121 | | Remove eye implant material | Surgery | | 10.67 | 12.10 | 12.10 | | |
| 67141 | | Treatment of retina | Surgery | | 5.20 | 8.03 | 6.95 | | |
| 67145 | | Treatment of retina | Surgery | | 5.37 | 5.27 | 4.16 | | |
| 67208 | | Treatment of retinal lesion | Surgery | | 6.70 | 8.36 | 7.13 | | |
| 67210 | | Treatment of retinal lesion | Surgery | | 8.82 | 7.26 | 5.74 | | |
| 67218 | | Treatment of retinal lesion | Surgery | | 18.53 | 15.79 | 15.79 | | |
| 67220 | | Treatment of choroid lesion | Surgery | | 13.13 | 10.81 | 9.62 | | |
| 67221 | | Ocular photodynamic ther | Surgery | | 4.01 | 4.63 | 1.88 | | |
| 67225 | | Eye photodynamic ther add-on | Surgery | | 0.47 | 0.28 | 0.21 | | |
| 67227 | | Treatment of retinal lesion | Surgery | | 6.58 | 9.10 | 7.15 | | |
| 67228 | | Treatment of retinal lesion | Surgery | | 12.74 | 9.84 | 7.21 | | |
| 67250 | | Reinforce eye wall | Surgery | | 8.66 | 11.67 | 11.67 | | |
| 67255 | | Reinforce/graft eye wall | Surgery | | 8.90 | 11.84 | 11.84 | | |
| 67299 | | Eye surgery procedure | Surgery | | | | | 21.82 | Misc |
| 67311 | | Revise eye muscle | Surgery | | 6.65 | 6.15 | 6.15 | | |
| 67312 | | Revise two eye muscles | Surgery | | 8.54 | 7.20 | 7.20 | | |
| 67314 | | Revise eye muscle | Surgery | | 7.52 | 6.72 | 6.72 | | |
| 67316 | | Revise two eye muscles | Surgery | | 9.66 | 7.70 | 7.70 | | |
| 67318 | | Revise eye muscle(s) | Surgery | | 7.85 | 7.11 | 7.11 | | |
| 67320 | | Revise eye muscle(s) add-on | Surgery | | 4.33 | 2.01 | 2.01 | | |
| 67331 | | Eye surgery follow-up add-on | Surgery | | 4.06 | 1.94 | 1.94 | | |
| 67332 | | Rerevise eye muscles add-on | Surgery | | 4.49 | 2.08 | 2.08 | | |
| 67334 | | Revise eye muscle w/suture | Surgery | | 3.98 | 1.84 | 1.84 | | |
| 67335 | | Eye suture during surgery | Surgery | | 2.49 | 1.15 | 1.15 | | |
| 67340 | | Revise eye muscle add-on | Surgery | | 4.93 | 2.28 | 2.28 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 67343 | | Release eye tissue | Surgery | | 7.35 | 7.00 | 7.00 | | |
| 67345 | | Destroy nerve of eye muscle | Surgery | | 2.96 | 4.33 | 1.34 | | |
| 67350 | | Biopsy eye muscle | Surgery | | 2.87 | 1.93 | 1.93 | | |
| 67399 | | Eye muscle surgery procedure | Surgery | | | | | 4.79 | Misc |
| 67400 | | Explore/biopsy eye socket | Surgery | | 9.76 | 13.39 | 13.39 | | |
| 67405 | | Explore/drain eye socket | Surgery | | 7.93 | 12.30 | 12.30 | | |
| 67412 | | Explore/treat eye socket | Surgery | | 9.50 | 15.45 | 15.45 | | |
| 67413 | | Explore/treat eye socket | Surgery | | 10.00 | 13.35 | 13.35 | | |
| 67414 | | Explr/decompress eye socket | Surgery | | 11.13 | 16.37 | 16.37 | | |
| 67415 | | Aspiration, orbital contents | Surgery | | 1.76 | 0.79 | 0.79 | | |
| 67420 | | Explore/treat eye socket | Surgery | | 20.06 | 20.10 | 20.10 | | |
| 67430 | | Explore/treat eye socket | Surgery | | 13.39 | 17.12 | 17.12 | | |
| 67440 | | Explore/drain eye socket | Surgery | | 13.09 | 16.53 | 16.53 | | |
| 67445 | | Explr/decompress eye socket | Surgery | | 14.42 | 17.65 | 17.65 | | |
| 67450 | | Explore/biopsy eye socket | Surgery | | 13.51 | 16.68 | 16.68 | | |
| 67500 | | Inject/treat eye socket | Surgery | | 0.79 | 0.84 | 0.19 | | |
| 67505 | | Inject/treat eye socket | Surgery | | 0.82 | 0.93 | 0.21 | | |
| 67515 | | Inject/treat eye socket | Surgery | | 0.61 | 0.84 | 0.28 | | |
| 67550 | | Insert eye socket implant | Surgery | | 10.19 | 13.19 | 13.19 | | |
| 67560 | | Revise eye socket implant | Surgery | | 10.60 | 13.05 | 13.05 | | |
| 67570 | | Decompress optic nerve | Surgery | | 13.58 | 17.13 | 17.13 | | |
| 67599 | | Orbit surgery procedure | Surgery | | | | | 1.82 | Misc |
| 67700 | | Drainage of eyelid abscess | Surgery | | 1.35 | 7.46 | 0.58 | | |
| 67710 | | Incision of eyelid | Surgery | | 1.02 | 7.61 | 0.48 | | |
| 67715 | | Incision of eyelid fold | Surgery | | 1.22 | 0.57 | 0.57 | | |
| 67800 | | Remove eyelid lesion | Surgery | | 1.38 | 2.58 | 0.64 | | |
| 67801 | | Remove eyelid lesions | Surgery | | 1.88 | 7.91 | 0.88 | | |
| 67805 | | Remove eyelid lesions | Surgery | | 2.22 | 8.08 | 1.03 | | |
| 67808 | | Remove eyelid lesion(s) | Surgery | | 3.80 | 4.16 | 4.16 | | |
| 67810 | | Biopsy of eyelid | Surgery | | 1.48 | 5.52 | 0.70 | | |
| 67820 | | Revise eyelashes | Surgery | | 0.89 | 1.96 | 0.38 | | |
| 67825 | | Revise eyelashes | Surgery | | 1.38 | 5.49 | 1.03 | | |
| 67830 | | Revise eyelashes | Surgery | | 1.70 | 11.06 | 2.11 | | |
| 67835 | | Revise eyelashes | Surgery | | 5.56 | 4.65 | 4.65 | | |
| 67840 | | Remove eyelid lesion | Surgery | | 2.04 | 7.87 | 0.96 | | |
| 67850 | | Treat eyelid lesion | Surgery | | 1.69 | 9.04 | 2.06 | | |
| 67875 | | Closure of eyelid by suture | Surgery | | 1.35 | 11.20 | 2.08 | | |
| 67880 | | Revision of eyelid | Surgery | | 3.80 | 12.26 | 3.13 | | |
| 67882 | | Revision of eyelid | Surgery | | 5.07 | 14.08 | 4.62 | | |
| 67900 | | Repair brow defect | Surgery | | 6.14 | 10.96 | 6.46 | | |
| 67901 | | Repair eyelid defect | Surgery | | 6.97 | 6.80 | 6.80 | | |
| 67902 | | Repair eyelid defect | Surgery | | 7.03 | 6.88 | 6.88 | | |
| 67903 | | Repair eyelid defect | Surgery | | 6.37 | 12.11 | 7.18 | | |
| 67904 | | Repair eyelid defect | Surgery | | 6.26 | 14.38 | 8.10 | | |
| 67906 | | Repair eyelid defect | Surgery | | 6.79 | 9.57 | 6.37 | | |
| 67908 | | Repair eyelid defect | Surgery | | 5.13 | 9.32 | 6.10 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 67909 | | Revise eyelid defect | Surgery | | 5.40 | 9.94 | 6.58 | | |
| 67911 | | Revise eyelid defect | Surgery | | 5.27 | 6.68 | 6.68 | | |
| 67914 | | Repair eyelid defect | Surgery | | 3.68 | 12.71 | 3.56 | | |
| 67915 | | Repair eyelid defect | Surgery | | 3.18 | 11.26 | 1.48 | | |
| 67916 | | Repair eyelid defect | Surgery | | 6.31 | 15.80 | 5.33 | | |
| 67917 | | Repair eyelid defect | Surgery | | 6.02 | 10.26 | 6.60 | | |
| 67921 | | Repair eyelid defect | Surgery | | 3.40 | 12.44 | 3.35 | | |
| 67922 | | Repair eyelid defect | Surgery | | 3.06 | 11.23 | 3.16 | | |
| 67923 | | Repair eyelid defect | Surgery | | 5.88 | 14.92 | 5.42 | | |
| 67924 | | Repair eyelid defect | Surgery | | 5.79 | 9.60 | 5.96 | | |
| 67930 | | Repair eyelid wound | Surgery | | 3.61 | 12.28 | 3.05 | | |
| 67935 | | Repair eyelid wound | Surgery | | 6.22 | 15.02 | 5.40 | | |
| 67938 | | Remove eyelid foreign body | Surgery | | 1.33 | 9.40 | 0.51 | | |
| 67950 | | Revision of eyelid | Surgery | | 5.82 | 8.75 | 7.27 | | |
| 67961 | | Revision of eyelid | Surgery | | 5.69 | 9.12 | 5.75 | | |
| 67966 | | Revision of eyelid | Surgery | | 6.57 | 8.80 | 5.89 | | |
| 67971 | | Reconstruction of eyelid | Surgery | | 9.79 | 7.53 | 7.53 | | |
| 67973 | | Reconstruction of eyelid | Surgery | | 12.87 | 9.54 | 9.54 | | |
| 67974 | | Reconstruction of eyelid | Surgery | | 12.84 | 9.45 | 9.45 | | |
| 67975 | | Reconstruction of eyelid | Surgery | | 9.13 | 7.20 | 7.20 | | |
| 67999 | | Revision of eyelid | Surgery | | | | | 3.23 | Misc |
| 68020 | | Incise/drain eyelid lining | Surgery | | 1.37 | 7.52 | 0.63 | | |
| 68040 | | Treatment of eyelid lesions | Surgery | | 0.85 | 7.38 | 0.39 | | |
| 68100 | | Biopsy of eyelid lining | Surgery | | 1.35 | 7.59 | 0.62 | | |
| 68110 | | Remove eyelid lining lesion | Surgery | | 1.77 | 8.64 | 1.35 | | |
| 68115 | | Remove eyelid lining lesion | Surgery | | 2.36 | 8.14 | 1.09 | | |
| 68130 | | Remove eyelid lining lesion | Surgery | | 4.93 | 2.30 | 2.30 | | |
| 68135 | | Remove eyelid lining lesion | Surgery | | 1.84 | 7.89 | 0.86 | | |
| 68200 | | Treat eyelid by injection | Surgery | | 0.49 | 0.74 | 0.23 | | |
| 68320 | | Revise/graft eyelid lining | Surgery | | 5.37 | 5.56 | 5.14 | | |
| 68325 | | Revise/graft eyelid lining | Surgery | | 7.36 | 6.16 | 6.16 | | |
| 68326 | | Revise/graft eyelid lining | Surgery | | 7.15 | 6.03 | 6.03 | | |
| 68328 | | Revise/graft eyelid lining | Surgery | | 8.18 | 6.79 | 6.79 | | |
| 68330 | | Revise eyelid lining | Surgery | | 4.83 | 7.04 | 5.53 | | |
| 68335 | | Revise/graft eyelid lining | Surgery | | 7.19 | 5.48 | 5.48 | | |
| 68340 | | Separate eyelid adhesions | Surgery | | 4.17 | 14.49 | 4.17 | | |
| 68360 | | Revise eyelid lining | Surgery | | 4.37 | 6.58 | 5.23 | | |
| 68362 | | Revise eyelid lining | Surgery | | 7.34 | 7.82 | 7.82 | | |
| 68399 | | Eyelid lining surgery | Surgery | | | | | 1.46 | Misc |
| 68400 | | Incise/drain tear gland | Surgery | | 1.69 | 11.17 | 2.13 | | |
| 68420 | | Incise/drain tear sac | Surgery | | 2.30 | 11.50 | 2.44 | | |
| 68440 | | Incise tear duct opening | Surgery | | 0.94 | 7.52 | 0.44 | | |
| 68500 | | Removal of tear gland | Surgery | | 11.02 | 9.59 | 9.59 | | |
| 68505 | | Partial removal, tear gland | Surgery | | 10.94 | 10.69 | 10.69 | | |
| 68510 | | Biopsy of tear gland | Surgery | | 4.61 | 12.31 | 2.15 | | |
| 68520 | | Removal of tear sac | Surgery | | 7.51 | 7.17 | 7.17 | | |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology.

TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 68525 | | Biopsy of tear sac | Surgery | | 4.43 | 2.07 | 2.07 | | |
| 68530 | | Clearance of tear duct | Surgery | | 3.66 | 13.81 | 3.00 | | |
| 68540 | | Remove tear gland lesion | Surgery | | 10.60 | 9.17 | 9.17 | | |
| 68550 | | Remove tear gland lesion | Surgery | | 13.26 | 11.19 | 11.19 | | |
| 68700 | | Repair tear ducts | Surgery | | 6.60 | 6.64 | 6.64 | | |
| 68705 | | Revise tear duct opening | Surgery | | 2.06 | 8.07 | 0.97 | | |
| 68720 | | Create tear sac drain | Surgery | | 8.96 | 7.78 | 7.78 | | |
| 68745 | | Create tear duct drain | Surgery | | 8.63 | 7.66 | 7.66 | | |
| 68750 | | Create tear duct drain | Surgery | | 8.66 | 8.17 | 8.17 | | |
| 68760 | | Close tear duct opening | Surgery | | 1.73 | 6.49 | 1.19 | | |
| 68761 | | Close tear duct opening | Surgery | | 1.36 | 3.00 | 0.95 | | |
| 58770 | | Close tear system fistula | Surgery | | 7.02 | 16.24 | 5.98 | | |
| 68801 | | Dilate tear duct opening | Surgery | | 0.94 | 0.85 | 0.56 | | |
| 68810 | | Probe nasolacrimal duct | Surgery | | 1.90 | 2.40 | 0.88 | | |
| 68811 | | Probe nasolacrimal duct | Surgery | | 2.35 | 2.39 | 2.39 | | |
| 68815 | | Probe nasolacrimal duct | Surgery | | 3.20 | 12.25 | 2.83 | | |
| 68840 | | Explore/irrigate tear ducts | Surgery | | 1.25 | 1.56 | 0.93 | | |
| 68850 | | Injection for tear sac x-ray | Surgery | | 0.80 | 14.94 | 0.31 | | |
| 68899 | | Tear duct system surgery | Surgery | | | | | 5.31 | Misc |
| 69000 | | Drain external ear lesion | Surgery | | 1.45 | 2.10 | 0.55 | | |
| 69005 | | Drain external ear lesion | Surgery | | 2.11 | 2.53 | 2.01 | | |
| 69020 | | Drain outer ear canal lesion | Surgery | | 1.48 | 2.22 | 0.71 | | |
| 69090 | | Pierce earlobes | Surgery | | | | | 0.67 | MDR |
| 69100 | | Biopsy of external ear | Surgery | | 0.81 | 1.59 | 0.41 | | |
| 69105 | | Biopsy of external ear canal | Surgery | | 0.85 | 1.51 | 1.02 | | |
| 69110 | | Remove external ear, partial | Surgery | | 3.44 | 3.53 | 2.78 | | |
| 69120 | | Removal of external ear | Surgery | | 4.05 | 4.45 | 4.45 | | |
| 69140 | | Remove ear canal lesion(s) | Surgery | | 7.97 | 8.07 | 8.07 | | |
| 69145 | | Remove ear canal lesion(s) | Surgery | | 2.62 | 3.37 | 2.52 | | |
| 69150 | | Extensive ear canal surgery | Surgery | | 13.43 | 11.17 | 11.17 | | |
| 69155 | | Extensive ear/neck surgery | Surgery | | 20.80 | 15.26 | 15.26 | | |
| 69200 | | Clear outer ear canal | Surgery | | 0.77 | 1.44 | 0.76 | | |
| 69205 | | Clear outer ear canal | Surgery | | 1.20 | 1.56 | 1.56 | | |
| 69210 | | Remove impacted ear wax | Surgery | | 0.61 | 0.58 | 0.24 | | |
| 69220 | | Clean out mastoid cavity | Surgery | | 0.83 | 1.52 | 0.43 | | |
| 69222 | | Clean out mastoid cavity | Surgery | | 1.40 | 2.23 | 1.70 | | |
| 69300 | | Revise external ear | Surgery | | 6.36 | 4.37 | 4.37 | | |
| 69310 | | Rebuild outer ear canal | Surgery | | 10.79 | 9.71 | 9.71 | | |
| 69320 | | Rebuild outer ear canal | Surgery | | 16.96 | 13.79 | 13.79 | | |
| 69399 | | Outer ear surgery procedure | Surgery | | | | | 1.43 | Misc |
| 69400 | | Inflate middle ear canal | Surgery | | 0.83 | 1.51 | 0.40 | | |
| 69401 | | Inflate middle ear canal | Surgery | | 0.63 | 1.41 | 0.35 | | |
| 69405 | | Catheterize middle ear canal | Surgery | | 2.63 | 3.09 | 1.46 | | |
| 69410 | | Inset middle ear (baffle) | Surgery | | 0.33 | 1.42 | 0.16 | | |
| 69420 | | Incision of eardrum | Surgery | | 1.33 | 2.36 | 0.71 | | |
| 69421 | | Incision of eardrum | Surgery | | 1.73 | 2.58 | 1.90 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 69424 | | Remove ventilating tube | Surgery | | 0.85 | 1.69 | 0.90 | | |
| 69433 | | Create eardrum opening | Surgery | | 1.52 | 2.31 | 0.85 | | |
| 69436 | | Create eardrum opening | Surgery | | 1.96 | 2.04 | 2.04 | | |
| 69440 | | Exploration of middle ear | Surgery | | 7.57 | 7.30 | 7.30 | | |
| 69450 | | Eardrum revision | Surgery | | 5.57 | 6.11 | 6.11 | | |
| 69501 | | Mastoidectomy | Surgery | | 9.07 | 8.07 | 8.07 | | |
| 69502 | | Mastoidectomy | Surgery | | 12.38 | 10.64 | 10.64 | | |
| 69505 | | Remove mastoid structures | Surgery | | 12.99 | 10.89 | 10.89 | | |
| 69511 | | Extensive mastoid surgery | Surgery | | 13.52 | 11.23 | 11.23 | | |
| 69530 | | Extensive mastoid surgery | Surgery | | 19.19 | 14.75 | 14.75 | | |
| 69535 | | Remove part of temporal bone | Surgery | | 36.14 | 24.17 | 24.17 | | |
| 69540 | | Remove ear lesion | Surgery | | 1.20 | 2.27 | 1.59 | | |
| 69550 | | Remove ear lesion | Surgery | | 10.99 | 9.75 | 9.75 | | |
| 69552 | | Remove ear lesion | Surgery | | 19.46 | 14.32 | 14.32 | | |
| 69554 | | Remove ear lesion | Surgery | | 33.16 | 21.82 | 21.82 | | |
| 69601 | | Mastoid surgery revision | Surgery | | 13.24 | 11.82 | 11.82 | | |
| 69602 | | Mastoid surgery revision | Surgery | | 13.58 | 11.36 | 11.36 | | |
| 69603 | | Mastoid surgery revision | Surgery | | 14.02 | 11.55 | 11.55 | | |
| 69604 | | Mastoid surgery revision | Surgery | | 14.02 | 11.48 | 11.48 | | |
| 69605 | | Mastoid surgery revision | Surgery | | 18.49 | 14.48 | 14.48 | | |
| 69610 | | Repair of eardrum | Surgery | | 4.43 | 4.22 | 3.40 | | |
| 69620 | | Repair of eardrum | Surgery | | 5.89 | 6.87 | 3.19 | | |
| 69631 | | Repair eardrum structures | Surgery | | 9.86 | 9.19 | 9.19 | | |
| 69632 | | Rebuild eardrum structures | Surgery | | 12.75 | 11.54 | 11.54 | | |
| 69633 | | Rebuild eardrum structures | Surgery | | 12.10 | 11.19 | 11.19 | | |
| 69635 | | Repair eardrum structures | Surgery | | 13.33 | 10.74 | 10.74 | | |
| 69636 | | Rebuild eardrum structures | Surgery | | 15.22 | 13.01 | 13.01 | | |
| 69637 | | Rebuild eardrum structures | Surgery | | 15.11 | 12.92 | 12.92 | | |
| 69641 | | Revise middle ear & mastoid | Surgery | | 12.71 | 10.87 | 10.87 | | |
| 69642 | | Revise middle ear & mastoid | Surgery | | 16.84 | 13.86 | 13.86 | | |
| 69643 | | Revise middle ear & mastoid | Surgery | | 15.32 | 13.01 | 13.01 | | |
| 69644 | | Revise middle ear & mastoid | Surgery | | 16.97 | 13.94 | 13.94 | | |
| 69645 | | Revise middle ear & mastoid | Surgery | | 16.38 | 13.57 | 13.57 | | |
| 69646 | | Revise middle ear & mastoid | Surgery | | 17.99 | 14.53 | 14.53 | | |
| 69650 | | Release middle ear bone | Surgery | | 9.66 | 8.43 | 8.43 | | |
| 69660 | | Revise middle ear bone | Surgery | | 11.90 | 9.65 | 9.65 | | |
| 69661 | | Revise middle ear bone | Surgery | | 15.74 | 12.44 | 12.44 | | |
| 69662 | | Revise middle ear bone | Surgery | | 15.44 | 12.31 | 12.31 | | |
| 69666 | | Repair middle ear structures | Surgery | | 9.75 | 8.51 | 8.51 | | |
| 69667 | | Repair middle ear structures | Surgery | | 9.76 | 8.49 | 8.49 | | |
| 69670 | | Remove mastoid air cells | Surgery | | 11.51 | 10.11 | 10.11 | | |
| 69676 | | Remove middle ear nerve | Surgery | | 9.52 | 9.03 | 9.03 | | |
| 69700 | | Close mastoid fistula | Surgery | | 8.23 | 5.53 | 5.53 | | |
| 69710 | | Implant/replace hearing aid | Surgery | | | | | 17.75 | PHCS |
| 69711 | | Remove/repair hearing aid | Surgery | | 10.44 | 9.35 | 9.35 | | |
| 69714 | | Implant temple bone w/stimul | Surgery | | 14.00 | 11.17 | 11.17 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 69715 | | Temple bne impint w/stimulat | Surgery | | 18.25 | 13.73 | 13.73 | | |
| 69717 | | Temple bone implant revision | Surgery | | 14.98 | 10.55 | 10.55 | | |
| 69718 | | Revise temple bone implant | Surgery | | 18.50 | 13.61 | 13.61 | | |
| 69720 | | Release facial nerve | Surgery | | 14.38 | 12.47 | 12.47 | | |
| 69725 | | Release facial nerve | Surgery | | 25.38 | 18.04 | 18.04 | | |
| 69740 | | Repair facial nerve | Surgery | | 15.96 | 11.27 | 11.27 | | |
| 69745 | | Repair facial nerve | Surgery | | 16.69 | 12.77 | 12.77 | | |
| 69799 | | Middle ear surgery procedure | Surgery | | | | | 4.68 | Misc |
| 69801 | | Incise inner ear | Surgery | | 8.56 | 7.84 | 7.84 | | |
| 69802 | | Incise inner ear | Surgery | | 13.10 | 11.13 | 11.13 | | |
| 69805 | | Explore inner ear | Surgery | | 13.82 | 10.80 | 10.80 | | |
| 69806 | | Explore inner ear | Surgery | | 12.35 | 10.68 | 10.68 | | |
| 69820 | | Establish inner ear window | Surgery | | 10.34 | 8.97 | 8.97 | | |
| 69840 | | Revise inner ear window | Surgery | | 10.26 | 7.64 | 7.64 | | |
| 69905 | | Remove inner ear | Surgery | | 11.10 | 9.73 | 9.73 | | |
| 69910 | | Remove inner ear & mastoid | Surgery | | 13.63 | 11.19 | 11.19 | | |
| 69915 | | Incise inner ear nerve | Surgery | | 21.23 | 15.65 | 15.65 | | |
| 69930 | | Implant cochlear device | Surgery | | 16.81 | 12.70 | 12.70 | | |
| 69949 | | Inner ear surgery procedure | Surgery | | | | | 33.71 | Misc |
| 69950 | | Incise inner ear nerve | Surgery | | 25.64 | 16.46 | 16.46 | | |
| 69955 | | Release facial nerve | Surgery | | 27.04 | 18.64 | 18.64 | | |
| 69960 | | Release inner ear canal | Surgery | | 27.04 | 18.13 | 18.13 | | |
| 69970 | | Remove inner ear lesion | Surgery | | 30.04 | 18.91 | 18.91 | | |
| 69979 | | Temporal bone surgery | Surgery | | | | | 58.56 | Misc |
| 69990 | | Microsurgery add-on | Surgery | | 3.47 | 1.84 | 1.84 | | |
| 70010 | 26 | Contrast x-ray of brain | Radiology | | 1.19 | 0.41 | 0.41 | | |
| 70010 | TC | Contrast x-ray of brain | Radiology | a | 0.00 | 4.31 | 4.31 | | |
| 70015 | 26 | Contrast x-ray of brain | Radiology | | 1.19 | 0.41 | 0.41 | | |
| 70015 | TC | Contrast x-ray of brain | Radiology | a | 0.00 | 1.34 | 1.34 | | |
| 70030 | 26 | X-ray eye for foreign body | Radiology | | 0.17 | 0.06 | 0.06 | | |
| 70030 | TC | X-ray eye for foreign body | Radiology | a | 0.00 | 0.42 | 0.42 | | |
| 70100 | 26 | X-ray exam of jaw | Radiology | | 0.18 | 0.06 | 0.06 | | |
| 70100 | TC | X-ray exam of jaw | Radiology | a | 0.00 | 0.52 | 0.52 | | |
| 70110 | 26 | X-ray exam of jaw | Radiology | | 0.25 | 0.08 | 0.08 | | |
| 70110 | TC | X-ray exam of jaw | Radiology | a | 0.00 | 0.62 | 0.62 | | |
| 70120 | 26 | X-ray exam of mastoids | Radiology | | 0.18 | 0.06 | 0.06 | | |
| 70120 | TC | X-ray exam of mastoids | Radiology | a | 0.00 | 0.62 | 0.62 | | |
| 70130 | 26 | X-ray exam of mastoids | Radiology | | 0.34 | 0.12 | 0.12 | | |
| 70130 | TC | X-ray exam of mastoids | Radiology | a | 0.00 | 0.78 | 0.78 | | |
| 70134 | 26 | X-ray exam of middle ear | Radiology | | 0.34 | 0.12 | 0.12 | | |
| 70134 | TC | X-ray exam of middle ear | Radiology | a | 0.00 | 0.74 | 0.74 | | |
| 70140 | 26 | X-ray exam of facial bones | Radiology | | 0.19 | 0.06 | 0.06 | | |
| 70140 | TC | X-ray exam of facial bones | Radiology | a | 0.00 | 0.52 | 0.62 | | |
| 70150 | 26 | X-ray exam of facial bones | Radiology | | 0.26 | 0.09 | 0.09 | | |
| 70150 | TC | X-ray exam of facial bones | Radiology | a | 0.00 | 0.78 | 0.78 | | |
| 70160 | 26 | X-ray exam of nasal bones | Radiology | | 0.17 | 0.06 | 0.06 | | |

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### TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 70160 | TC | X-ray exam of nasal bones | Radiology | a | 0.00 | 0.52 | 0.52 | | |
| 70170 | 26 | X-ray exam of tear duct | Radiology | | 0.30 | 0.10 | 0.10 | | |
| 70170 | TC | X-ray exam of tear duct | Radiology | a | 0.00 | 0.95 | 0.95 | | |
| 70190 | 26 | X-ray exam of eye sockets | Radiology | | 0.21 | 0.07 | 0.07 | | |
| 70190 | TC | X-ray exam of eye sockets | Radiology | a | 0.00 | 0.62 | 0.62 | | |
| 70200 | 26 | X-ray exam of eye sockets | Radiology | | 0.28 | 0.10 | 0.10 | | |
| 70200 | TC | X-ray exam of eye sockets | Radiology | a | 0.00 | 0.78 | 0.78 | | |
| 70210 | 26 | X-ray exam of sinuses | Radiology | | 0.17 | 0.06 | 0.06 | | |
| 70210 | TC | X-ray exam of sinuses | Radiology | a | 0.00 | 0.62 | 0.62 | | |
| 70220 | 26 | X-ray exam of sinuses | Radiology | | 0.25 | 0.09 | 0.09 | | |
| 70220 | TC | X-ray exam of sinuses | Radiology | a | 0.00 | 0.78 | 0.78 | | |
| 70240 | 26 | X-ray exam, pituitary saddle | Radiology | | 0.19 | 0.06 | 0.06 | | |
| 70240 | TC | X-ray exam, pituitary saddle | Radiology | a | 0.00 | 0.42 | 0.42 | | |
| 70250 | 26 | X-ray exam of skull | Radiology | | 0.24 | 0.08 | 0.08 | | |
| 70250 | TC | X-ray exam of skull | Radiology | a | 0.00 | 0.62 | 0.62 | | |
| 70260 | 26 | X-ray exam of skull | Radiology | | 0.34 | 0.12 | 0.12 | | |
| 70260 | TC | X-ray exam of skull | Radiology | a | 0.00 | 0.89 | 0.89 | | |
| 70300 | 26 | X-ray exam of teeth | Radiology | | 0.10 | 0.04 | 0.04 | | |
| 70300 | TC | X-ray exam of teeth | Radiology | a | 0.00 | 0.26 | 0.26 | | |
| 70310 | 26 | X-ray exam of teeth | Radiology | | 0.16 | 0.06 | 0.06 | | |
| 70310 | TC | X-ray exam of teeth | Radiology | a | 0.00 | 0.42 | 0.42 | | |
| 70320 | 26 | Full mouth x-ray of teeth | Radiology | | 0.22 | 0.08 | 0.08 | | |
| 70320 | TC | Full mouth x-ray of teeth | Radiology | a | 0.00 | 0.78 | 0.78 | | |
| 70328 | 26 | X-ray exam of jaw joint | Radiology | | 0.18 | 0.06 | 0.06 | | |
| 70328 | TC | X-ray exam of jaw joint | Radiology | a | 0.00 | 0.49 | 0.49 | | |
| 70330 | 26 | X-ray exam of jaw joints | Radiology | | 0.24 | 0.08 | 0.08 | | |
| 70330 | TC | X-ray exam of jaw joints | Radiology | a | 0.00 | 0.84 | 0.84 | | |
| 70332 | 26 | X-ray exam of jaw joint | Radiology | | 0.54 | 0.19 | 0.19 | | |
| 70332 | TC | X-ray exam of jaw joint | Radiology | a | 0.00 | 2.09 | 2.09 | | |
| 70336 | 26 | Magnetic image, jaw joint | Radiology | | 1.48 | 0.51 | 0.51 | | |
| 70336 | TC | Magnetic image, jaw joint | Radiology | a | 0.00 | 11.16 | 11.16 | | |
| 70350 | 26 | X-ray head for orthodontia | Radiology | | 0.17 | 0.06 | 0.06 | | |
| 70350 | TC | X-ray head for orthodontia | Radiology | a | 0.00 | 0.38 | 0.38 | | |
| 70355 | 26 | Panoramic x-ray of jaws | Radiology | | 0.20 | 0.07 | 0.07 | | |
| 70355 | TC | Panoramic x-ray of jaws | Radiology | a | 0.00 | 0.57 | 0.57 | | |
| 70360 | 26 | X-ray exam of neck | Radiology | | 0.17 | 0.06 | 0.06 | | |
| 70360 | TC | X-ray exam of neck | Radiology | a | 0.00 | 0.42 | 0.42 | | |
| 70370 | 26 | Throat x-ray & fluoroscopy | Radiology | | 0.32 | 0.11 | 0.11 | | |
| 70370 | TC | Throat x-ray & fluoroscopy | Radiology | a | 0.00 | 1.30 | 1.30 | | |
| 70371 | 26 | Speech evaluation, complex | Radiology | | 0.84 | 0.29 | 0.29 | | |
| 70371 | TC | Speech evaluation, complex | Radiology | a | 0.00 | 2.09 | 2.09 | | |
| 70373 | 26 | Contrast x-ray of larynx | Radiology | | 0.44 | 0.15 | 0.15 | | |
| 70373 | TC | Contrast x-ray of larynx | Radiology | a | 0.00 | 1.77 | 1.77 | | |
| 70380 | 26 | X-ray exam of salivary gland | Radiology | | 0.17 | 0.06 | 0.06 | | |
| 70380 | TC | X-ray exam of salivary gland | Radiology | a | 0.00 | 0.67 | 0.67 | | |
| 70390 | 26 | X-ray exam of salivary duct | Radiology | | 0.38 | 0.13 | 0.13 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 70390 | TC | X-ray exam of salivary duct | Radiology | a | 0.00 | 1.77 | 1.77 | | |
| 70450 | 26 | Ct head/brain w/o dye | Radiology | | 0.85 | 0.29 | 0.29 | | |
| 70450 | TC | Ct head/brain w/o dye | Radiology | a | 0.00 | 4.70 | 4.70 | | |
| 70460 | 26 | Ct head/brain w/dye | Radiology | | 1.13 | 0.39 | 0.39 | | |
| 70460 | TC | Ct head/brain w/dye | Radiology | a | 0.00 | 5.63 | 5.63 | | |
| 70470 | 26 | Ct head/brain w/o&w dye | Radiology | | 1.27 | 0.43 | 0.43 | | |
| 70470 | TC | Ct head/brain w/o&w dye | Radiology | a | 0.00 | 7.04 | 7.04 | | |
| 70480 | 26 | Ct orbit/ear/fossa w/o dye | Radiology | | 1.28 | 0.44 | 0.44 | | |
| 70480 | TC | Ct orbit/ear/fossa w/o dye | Radiology | a | 0.00 | 4.70 | 4.70 | | |
| 70481 | 26 | Ct orbit/ear/fossa w/dye | Radiology | | 1.38 | 0.47 | 0.47 | | |
| 70481 | TC | Ct orbit/ear/fossa w/dye | Radiology | a | 0.00 | 5.63 | 5.63 | | |
| 70482 | 26 | Ct orbit/ear/fossa w/o&w dye | Radiology | | 1.45 | 0.49 | 0.49 | | |
| 70482 | TC | Ct orbit/ear/fossa w/o&w dye | Radiology | a | 0.00 | 7.04 | 7.04 | | |
| 70486 | 26 | Ct maxillofacial w/o dye | Radiology | | 1.14 | 0.39 | 0.39 | | |
| 70486 | TC | Ct maxillofacial w/o dye | Radiology | a | 0.00 | 4.70 | 4.70 | | |
| 70487 | 26 | Ct maxillofacial w/dye | Radiology | | 1.30 | 0.44 | 0.44 | | |
| 70487 | TC | Ct maxillofacial w/dye | Radiology | a | 0.00 | 5.63 | 5.63 | | |
| 70488 | 26 | Ct maxillofacial w/o&w dye | Radiology | | 1.42 | 0.48 | 0.48 | | |
| 70488 | TC | Ct maxillofacial w/o&w dye | Radiology | a | 0.00 | 7.04 | 7.04 | | |
| 70490 | 26 | Ct soft tissue neck w/o dye | Radiology | | 1.28 | 0.43 | 0.43 | | |
| 70490 | TC | Ct soft tissue neck w/o dye | Radiology | a | 0.00 | 4.70 | 4.70 | | |
| 70491 | 26 | Ct soft tissue neck w/dye | Radiology | | 1.38 | 0.47 | 0.47 | | |
| 70491 | TC | Ct soft tissue neck w/dye | Radiology | a | 0.00 | 5.63 | 5.63 | | |
| 70492 | 26 | Ct sft tsue nck w/o & w/dye | Radiology | | 1.45 | 0.49 | 0.49 | | |
| 70492 | TC | Ct sft tsue nck w/o & w/dye | Radiology | a | 0.00 | 7.04 | 7.04 | | |
| 70496 | 26 | Ct angiography, head | Radiology | | 1.75 | 0.59 | 0.59 | | |
| 70496 | TC | Ct angiography, head | Radiology | a | 0.00 | 10.56 | 10.56 | | |
| 70498 | 26 | Ct angiography, neck | Radiology | | 1.75 | 0.60 | 0.60 | | |
| 70498 | TC | Ct angiography, neck | Radiology | a | 0.00 | 10.56 | 10.56 | | |
| 70540 | 26 | Mri orbit/face/neck w/o dye | Radiology | | 1.35 | 0.46 | 0.46 | | |
| 70540 | TC | Mri orbit/face/neck w/o dye | Radiology | a | 0.00 | 11.16 | 11.16 | | |
| 70542 | 26 | Mri orbit/face/neck w/dye | Radiology | | 1.62 | 0.56 | 0.56 | | |
| 70542 | TC | Mri orbit/face/neck w/dye | Radiology | a | 0.00 | 13.38 | 13.38 | | |
| 70543 | 26 | Mri orbt/fac/nck w/o&w dye | Radiology | | 2.15 | 0.73 | 0.73 | | |
| 70543 | TC | Mri orbt/fac/nck w/o&w dye | Radiology | a | 0.00 | 24.78 | 24.78 | | |
| 70544 | 26 | Mr angiography head w/o dye | Radiology | | 1.20 | 0.41 | 0.41 | | |
| 70544 | TC | Mr angiography head w/o dye | Radiology | a | 0.00 | 11.16 | 11.16 | | |
| 70545 | 26 | Mr angiography head w/dye | Radiology | | 1.20 | 0.41 | 0.41 | | |
| 70545 | TC | Mr angiography head w/dye | Radiology | a | 0.00 | 11.16 | 11.16 | | |
| 70546 | 26 | Mr angiograph head w/o&w dye | Radiology | | 1.80 | 0.62 | 0.62 | | |
| 70546 | TC | Mr angiograph head w/o&w dye | Radiology | a | 0.00 | 22.31 | 22.31 | | |
| 70547 | 26 | Mr angiography neck w/o dye | Radiology | | 1.20 | 0.41 | 0.41 | | |
| 70547 | TC | Mr angiography neck w/o dye | Radiology | a | 0.00 | 11.16 | 11.16 | | |
| 70548 | 26 | Mr angiography neck w/dye | Radiology | | 1.20 | 0.41 | 0.41 | | |
| 70548 | TC | Mr angiography neck w/dye | Radiology | a | 0.00 | 11.16 | 11.16 | | |
| 70549 | 26 | Mr angiograph neck w/o&w dye | Radiology | | 1.80 | 0.62 | 0.62 | | |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology.

## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 70549 | TC | Mr angiograph neck w/o&w dye | Radiology | a | 0.00 | 22.31 | 22.31 | | |
| 70551 | 26 | Mri brain w/o dye | Radiology | | 1.48 | 0.51 | 0.51 | | |
| 70551 | TC | Mri brain w/o dye | Radiology | a | 0.00 | 11.16 | 11.16 | | |
| 70552 | 26 | Mri brain w/dye | Radiology | | 1.78 | 0.62 | 0.62 | | |
| 70552 | TC | Mri brain w/dye | Radiology | a | 0.00 | 13.38 | 13.38 | | |
| 70553 | 26 | Mri brain w/o&w dye | Radiology | | 2.36 | 0.81 | 0.81 | | |
| 70553 | TC | Mri brain w/o&w dye | Radiology | a | 0.00 | 24.78 | 24.78 | | |
| 71010 | 26 | Chest x-ray | Radiology | | 0.18 | 0.06 | 0.06 | | |
| 71010 | TC | Chest x-ray | Radiology | a | 0.00 | 0.47 | 0.47 | | |
| 71015 | 26 | Chest x-ray | Radiology | | 0.21 | 0.07 | 0.07 | | |
| 71015 | TC | Chest x-ray | Radiology | a | 0.00 | 0.52 | 0.52 | | |
| 71020 | 26 | Chest x-ray | Radiology | | 0.22 | 0.07 | 0.07 | | |
| 71020 | TC | Chest x-ray | Radiology | a | 0.00 | 0.62 | 0.62 | | |
| 71021 | 26 | Chest x-ray | Radiology | | 0.27 | 0.09 | 0.09 | | |
| 71021 | TC | Chest x-ray | Radiology | a | 0.00 | 0.74 | 0.74 | | |
| 71022 | 26 | Chest x-ray | Radiology | | 0.31 | 0.11 | 0.11 | | |
| 71022 | TC | Chest x-ray | Radiology | a | 0.00 | 0.74 | 0.74 | | |
| 71023 | 26 | Chest x-ray and fluoroscopy | Radiology | | 0.38 | 0.14 | 0.14 | | |
| 71023 | TC | Chest x-ray and fluoroscopy | Radiology | a | 0.00 | 0.78 | 0.78 | | |
| 71030 | 26 | Chest x-ray | Radiology | | 0.31 | 0.10 | 0.10 | | |
| 71030 | TC | Chest x-ray | Radiology | a | 0.00 | 0.78 | 0.78 | | |
| 71034 | 26 | Chest x-ray and fluoroscopy | Radiology | | 0.46 | 0.17 | 0.17 | | |
| 71034 | TC | Chest x-ray and fluoroscopy | Radiology | a | 0.00 | 1.43 | 1.43 | | |
| 71035 | 26 | Chest x-ray | Radiology | | 0.18 | 0.06 | 0.06 | | |
| 71035 | TC | Chest x-ray | Radiology | a | 0.00 | 0.52 | 0.52 | | |
| 71040 | 26 | Contrast x-ray of bronchi | Radiology | | 0.58 | 0.20 | 0.20 | | |
| 71040 | TC | Contrast x-ray of bronchi | Radiology | a | 0.00 | 1.45 | 1.45 | | |
| 71060 | 26 | Contrast x-ray of bronchi | Radiology | | 0.74 | 0.25 | 0.25 | | |
| 71060 | TC | Contrast x-ray of bronchi | Radiology | a | 0.00 | 2.20 | 2.20 | | |
| 71090 | 26 | X-ray & pacemaker insertion | Radiology | | 0.54 | 0.21 | 0.21 | | |
| 71090 | TC | X-ray & pacemaker insertion | Radiology | a | 0.00 | 1.67 | 1.67 | | |
| 71100 | 26 | X-ray exam of ribs | Radiology | | 0.22 | 0.07 | 0.07 | | |
| 71100 | TC | X-ray exam of ribs | Radiology | a | 0.00 | 0.57 | 0.57 | | |
| 71101 | 26 | X-ray exam of ribs/chest | Radiology | | 0.27 | 0.09 | 0.09 | | |
| 71101 | TC | X-ray exam of ribs/chest | Radiology | a | 0.00 | 0.67 | 0.67 | | |
| 71110 | 26 | X-ray exam of ribs | Radiology | | 0.27 | 0.09 | 0.09 | | |
| 71110 | TC | X-ray exam of ribs | Radiology | a | 0.00 | 0.78 | 0.78 | | |
| 71111 | 26 | X-ray exam of ribs/ chest | Radiology | | 0.32 | 0.11 | 0.11 | | |
| 71111 | TC | X-ray exam of ribs/ chest | Radiology | a | 0.00 | 0.89 | 0.89 | | |
| 71120 | 26 | X-ray exam of breastbone | Radiology | | 0.20 | 0.07 | 0.07 | | |
| 71120 | TC | X-ray exam of breastbone | Radiology | a | 0.00 | 0.65 | 0.65 | | |
| 71130 | 26 | X-ray exam of breastbone | Radiology | | 0.22 | 0.07 | 0.07 | | |
| 71130 | TC | X-ray exam of breastbone | Radiology | a | 0.00 | 0.71 | 0.71 | | |
| 71250 | 26 | Ct thorax w/o dye | Radiology | | 1.16 | 0.39 | 0.39 | | |
| 71250 | TC | Ct thorax w/o dye | Radiology | a | 0.00 | 5.88 | 5.88 | | |
| 71260 | 26 | Ct thorax w/dye | Radiology | | 1.24 | 0.42 | 0.42 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 71260 | TC | Ct thorax w/dye | Radiology | a | 0.00 | 7.04 | 7.04 | | |
| 71270 | 26 | Ct thorax w/o&w dye | Radiology | | 1.38 | 0.47 | 0.47 | | |
| 71270 | TC | Ct thorax w/o&w dye | Radiology | a | 0.00 | 8.81 | 8.81 | | |
| 71275 | 26 | Ct angiography, chest | Radiology | | 1.92 | 0.65 | 0.65 | | |
| 71275 | TC | Ct angiography, chest | Radiology | a | 0.00 | 12.33 | 12.33 | | |
| 71550 | 26 | Mri chest w/o dye | Radiology | | 1.46 | 0.50 | 0.50 | | |
| 71550 | TC | Mri chest w/o dye | Radiology | a | 0.00 | 11.16 | 11.16 | | |
| 71551 | 26 | Mri chest w/dye | Radiology | | 1.73 | 0.59 | 0.59 | | |
| 71551 | TC | Mri chest w/dye | Radiology | a | 0.00 | 13.38 | 13.38 | | |
| 71552 | 26 | Mri chest w/o&w/dye | Radiology | | 2.26 | 0.77 | 0.77 | | |
| 71552 | TC | Mri chest w/o&w/dye | Radiology | a | 0.00 | 24.78 | 24.78 | | |
| 71555 | 26 | Mri angio chest w or w/o dye | Radiology | | 1.81 | 0.62 | 0.62 | | |
| 71555 | TC | Mri angio chest w or w/o dye | Radiology | a | 0.00 | 11.16 | 11.16 | | |
| 72010 | 26 | X-ray exam of spine | Radiology | | 0.45 | 0.15 | 0.15 | | |
| 72010 | TC | X-ray exam of spine | Radiology | a | 0.00 | 1.02 | 1.02 | | |
| 72020 | 26 | X-ray exam of spine | Radiology | | 0.15 | 0.05 | 0.05 | | |
| 72020 | TC | X-ray exam of spine | Radiology | a | 0.00 | 0.42 | 0.42 | | |
| 72040 | 26 | X-ray exam of neck spine | Radiology | | 0.22 | 0.07 | 0.07 | | |
| 72040 | TC | X-ray exam of neck spine | Radiology | a | 0.00 | 0.60 | 0.60 | | |
| 72050 | 26 | X-ray exam of neck spine | Radiology | | 0.31 | 0.11 | 0.11 | | |
| 72050 | TC | X-ray exam of neck spine | Radiology | a | 0.00 | 0.89 | 0.89 | | |
| 72052 | 26 | X-ray exam of neck spine | Radiology | | 0.36 | 0.12 | 0.12 | | |
| 72052 | TC | X-ray exam of neck spine | Radiology | a | 0.00 | 1.12 | 1.12 | | |
| 72069 | 26 | X-ray exam of trunk spine | Radiology | | 0.22 | 0.08 | 0.08 | | |
| 72069 | TC | X-ray exam of trunk spine | Radiology | a | 0.00 | 0.49 | 0.49 | | |
| 72070 | 26 | X-ray exam of thoracic spine | Radiology | | 0.22 | 0.07 | 0.07 | | |
| 72070 | TC | X-ray exam of thoracic spine | Radiology | a | 0.00 | 0.65 | 0.65 | | |
| 72072 | 26 | X-ray exam of thoracic spine | Radiology | | 0.22 | 0.07 | 0.07 | | |
| 72072 | TC | X-ray exam of thoracic spine | Radiology | a | 0.00 | 0.74 | 0.74 | | |
| 72074 | 26 | X-ray exam of thoracic spine | Radiology | | 0.22 | 0.07 | 0.07 | | |
| 72074 | TC | X-ray exam of thoracic spine | Radiology | a | 0.00 | 0.91 | 0.91 | | |
| 72080 | 26 | X-ray exam of trunk spine | Radiology | | 0.22 | 0.08 | 0.08 | | |
| 72080 | TC | X-ray exam of trunk spine | Radiology | a | 0.00 | 0.67 | 0.67 | | |
| 72090 | 26 | X-ray exam of trunk spine | Radiology | | 0.28 | 0.10 | 0.10 | | |
| 72090 | TC | X-ray exam of trunk spine | Radiology | a | 0.00 | 0.67 | 0.67 | | |
| 72100 | 26 | X-ray exam of lower spine | Radiology | | 0.22 | 0.08 | 0.08 | | |
| 72100 | TC | X-ray exam of lower spine | Radiology | a | 0.00 | 0.67 | 0.67 | | |
| 72110 | 26 | X-ray exam of lower spine | Radiology | | 0.31 | 0.11 | 0.11 | | |
| 72110 | TC | X-ray exam of lower spine | Radiology | a | 0.00 | 0.91 | 0.91 | | |
| 72114 | 26 | X-ray exam of lower spine | Radiology | | 0.36 | 0.12 | 0.12 | | |
| 72114 | TC | X-ray exam of lower spine | Radiology | a | 0.00 | 1.18 | 1.18 | | |
| 72120 | 26 | X-ray exam of lower spine | Radiology | | 0.22 | 0.08 | 0.08 | | |
| 72120 | TC | X-ray exam of lower spine | Radiology | a | 0.00 | 0.89 | 0.89 | | |
| 72125 | 26 | Ct neck spine w/o dye | Radiology | | 1.16 | 0.39 | 0.39 | | |
| 72125 | TC | Ct neck spine w/o dye | Radiology | a | 0.00 | 5.88 | 5.88 | | |
| 72126 | 26 | Ct neck spine w/dye | Radiology | | 1.22 | 0.41 | 0.41 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 72126 | TC | Ct neck spine w/dye | Radiology | a | 0.00 | 7.04 | 7.04 | | |
| 72127 | 26 | Ct neck spine w/o&w/dye | Radiology | | 1.27 | 0.43 | 0.43 | | |
| 72127 | TC | Ct neck spine w/o&w/dye | Radiology | a | 0.00 | 8.81 | 8.81 | | |
| 72128 | 26 | Ct chest spine w/o dye | Radiology | | 1.16 | 0.39 | 0.39 | | |
| 72128 | TC | Ct chest spine w/o dye | Radiology | a | 0.00 | 5.88 | 5.88 | | |
| 72129 | 26 | Ct chest spine w/dye | Radiology | | 1.22 | 0.41 | 0.41 | | |
| 72129 | TC | Ct chest spine w/dye | Radiology | a | 0.00 | 7.04 | 7.04 | | |
| 72130 | 26 | Ct chest spine w/o&w/dye | Radiology | | 1.27 | 0.43 | 0.43 | | |
| 72130 | TC | Ct chest spine w/o&w/dye | Radiology | a | 0.00 | 8.81 | 8.81 | | |
| 72131 | 26 | Ct lumbar spine w/o dye | Radiology | | 1.16 | 0.40 | 0.40 | | |
| 72131 | TC | Ct lumbar spine w/o dye | Radiology | a | 0.00 | 5.88 | 5.88 | | |
| 72132 | 26 | Ct lumbar spine w/dye | Radiology | | 1.22 | 0.41 | 0.41 | | |
| 72132 | TC | Ct lumbar spine w/dye | Radiology | a | 0.00 | 7.04 | 7.04 | | |
| 72133 | 26 | Ct lumbar spine w/o&w/dye | Radiology | | 1.27 | 0.44 | 0.44 | | |
| 72133 | TC | Ct lumbar spine w/o&w/dye | Radiology | a | 0.00 | 8.81 | 8.81 | | |
| 72141 | 26 | Mri neck spine w/o dye | Radiology | | 1.60 | 0.55 | 0.55 | | |
| 72141 | TC | Mri neck spine w/o dye | Radiology | a | 0.00 | 11.16 | 11.16 | | |
| 72142 | 26 | Mri neck spine w/dye | Radiology | | 1.92 | 0.67 | 0.67 | | |
| 72142 | TC | Mri neck spine w/dye | Radiology | a | 0.00 | 13.38 | 13.38 | | |
| 72146 | 26 | Mri chest spine w/o dye | Radiology | | 1.60 | 0.55 | 0.55 | | |
| 72146 | TC | Mri chest spine w/o dye | Radiology | a | 0.00 | 12.39 | 12.39 | | |
| 72147 | 26 | Mri chest spine w/dye | Radiology | | 1.92 | 0.66 | 0.66 | | |
| 72147 | TC | Mri chest spine w/dye | Radiology | a | 0.00 | 13.38 | 13.38 | | |
| 72148 | 26 | Mri lumbar spine w/o dye | Radiology | | 1.48 | 0.51 | 0.51 | | |
| 72148 | TC | Mri lumbar spine w/o dye | Radiology | a | 0.00 | 12.39 | 12.39 | | |
| 72149 | 26 | Mri lumbar spine w/dye | Radiology | | 1.78 | 0.62 | 0.62 | | |
| 72149 | TC | Mri lumbar spine w/dye | Radiology | a | 0.00 | 13.38 | 13.38 | | |
| 72156 | 26 | Mri neck spine w/o&w/dye | Radiology | | 2.57 | 0.88 | 0.88 | | |
| 72156 | TC | Mri neck spine w/o&w/dye | Radiology | a | 0.00 | 24.78 | 24.78 | | |
| 72157 | 26 | Mri chest spine w/o&w/dye | Radiology | | 2.57 | 0.88 | 0.88 | | |
| 72157 | TC | Mri chest spine w/o&w/dye | Radiology | a | 0.00 | 24.78 | 24.78 | | |
| 72158 | 26 | Mri lumbar spine w/o&w/dye | Radiology | | 2.36 | 0.81 | 0.81 | | |
| 72158 | TC | Mri lumbar spine w/o&w/dye | Radiology | a | 0.00 | 24.78 | 24.78 | | |
| 72159 | 26 | Mr angio spine w/o&w/dye | Radiology | | 1.80 | 0.70 | 0.70 | | |
| 72159 | TC | Mr angio spine w/o&w/dye | Radiology | a | 0.00 | 12.39 | 12.39 | | |
| 72170 | 26 | X-ray exam of pelvis | Radiology | | 0.17 | 0.06 | 0.06 | | |
| 72170 | TC | X-ray exam of pelvis | Radiology | a | 0.00 | 0.52 | 0.52 | | |
| 72190 | 26 | X-ray exam of pelvis | Radiology | | 0.21 | 0.07 | 0.07 | | |
| 72190 | TC | X-ray exam of pelvis | Radiology | a | 0.00 | 0.67 | 0.67 | | |
| 72191 | 26 | Ct angiograph pelv w/o&w/dye | Radiology | | 1.81 | 0.62 | 0.62 | | |
| 72191 | TC | Ct angiograph pelv w/o&w/dye | Radiology | a | 0.00 | 11.97 | 11.97 | | |
| 72192 | 26 | Ct pelvis w/o dye | Radiology | | 1.09 | 0.37 | 0.37 | | |
| 72192 | TC | Ct pelvis w/o dye | Radiology | a | 0.00 | 5.88 | 5.88 | | |
| 72193 | 26 | Ct pelvis w/dye | Radiology | | 1.16 | 0.39 | 0.39 | | |
| 72193 | TC | Ct pelvis w/dye | Radiology | a | 0.00 | 6.82 | 6.82 | | |
| 72194 | 26 | Ct pelvis w/o&w/dye | Radiology | | 1.22 | 0.41 | 0.41 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 72194 | TC | Ct pelvis w/o&w/dye | Radiology | a | 0.00 | 8.45 | 8.45 | | |
| 72195 | 26 | Mri pelvis w/o dye | Radiology | | 1.46 | 0.50 | 0.50 | | |
| 72195 | TC | Mri pelvis w/o dye | Radiology | a | 0.00 | 11.16 | 11.16 | | |
| 72196 | 26 | Mri pelvis w/dye | Radiology | | 1.73 | 0.59 | 0.59 | | |
| 72196 | TC | Mri pelvis w/dye | Radiology | a | 0.00 | 13.38 | 13.38 | | |
| 72197 | 26 | Mri pelvis w/o & w/dye | Radiology | | 2.26 | 0.77 | 0.77 | | |
| 72197 | TC | Mri pelvis w/o & w/dye | Radiology | a | 0.00 | 24.78 | 24.78 | | |
| 72198 | 26 | Mr angio pelvis w/o&w/dye | Radiology | | 1.80 | 0.70 | 0.70 | | |
| 72198 | TC | Mr angio pelvis w/o&w/dye | Radiology | a | 0.00 | 11.16 | 11.16 | | |
| 72200 | 26 | X-ray exam sacroiliac joints | Radiology | | 0.17 | 0.06 | 0.06 | | |
| 72200 | TC | X-ray exam sacroiliac joints | Radiology | a | 0.00 | 0.52 | 0.52 | | |
| 72202 | 26 | X-ray exam sacroiliac joints | Radiology | | 0.19 | 0.06 | 0.06 | | |
| 72202 | TC | X-ray exam sacroiliac joints | Radiology | a | 0.00 | 0.62 | 0.62 | | |
| 72220 | 26 | X-ray exam of tailbone | Radiology | | 0.17 | 0.06 | 0.06 | | |
| 72220 | TC | X-ray exam of tailbone | Radiology | a | 0.00 | 0.57 | 0.57 | | |
| 72240 | 26 | Contrast x-ray of neck spine | Radiology | | 0.91 | 0.30 | 0.30 | | |
| 72240 | TC | Contrast x-ray of neck spine | Radiology | a | 0.00 | 4.73 | 4.73 | | |
| 72255 | 26 | Contrast x-ray, thorax spine | Radiology | | 0.91 | 0.28 | 0.28 | | |
| 72255 | TC | Contrast x-ray, thorax spine | Radiology | a | 0.00 | 4.31 | 4.31 | | |
| 72265 | 26 | Contrast x-ray, lower spine | Radiology | | 0.83 | 0.26 | 0.26 | | |
| 72265 | TC | Contrast x-ray, lower spine | Radiology | a | 0.00 | 4.05 | 4.05 | | |
| 72270 | 26 | Contrast x-ray of spine | Radiology | | 1.33 | 0.43 | 0.43 | | |
| 72270 | TC | Contrast x-ray of spine | Radiology | a | 0.00 | 6.07 | 6.07 | | |
| 72275 | 26 | Epidurography | Radiology | | 0.76 | 0.20 | 0.20 | | |
| 72275 | TC | Epidurography | Radiology | a | 0.00 | 2.09 | 2.09 | | |
| 72285 | 26 | X-ray c/t spine disk | Radiology | | 1.16 | 0.37 | 0.37 | | |
| 72285 | TC | X-ray c/t spine disk | Radiology | a | 0.00 | 8.35 | 8.35 | | |
| 72295 | 26 | X-ray of lower spine disk | Radiology | | 0.83 | 0.28 | 0.28 | | |
| 72295 | TC | X-ray of lower spine disk | Radiology | a | 0.00 | 7.82 | 7.82 | | |
| 73000 | 26 | X-ray exam of collar bone | Radiology | | 0.16 | 0.05 | 0.05 | | |
| 73000 | TC | X-ray exam of collar bone | Radiology | a | 0.00 | 0.52 | 0.52 | | |
| 73010 | 26 | X-ray exam of shoulder blade | Radiology | | 0.17 | 0.06 | 0.06 | | |
| 73010 | TC | X-ray exam of shoulder blade | Radiology | a | 0.00 | 0.52 | 0.52 | | |
| 73020 | 26 | X-ray exam of shoulder | Radiology | | 0.15 | 0.05 | 0.05 | | |
| 73020 | TC | X-ray exam of shoulder | Radiology | a | 0.00 | 0.47 | 0.47 | | |
| 73030 | 26 | X-ray exam of shoulder | Radiology | | 0.18 | 0.06 | 0.06 | | |
| 73030 | TC | X-ray exam of shoulder | Radiology | a | 0.00 | 0.57 | 0.57 | | |
| 73040 | 26 | Contrast x-ray of shoulder | Radiology | | 0.54 | 0.18 | 0.18 | | |
| 73040 | TC | Contrast x-ray of shoulder | Radiology | a | 0.00 | 2.09 | 2.09 | | |
| 73050 | 26 | X-ray exam of shoulders | Radiology | | 0.20 | 0.07 | 0.07 | | |
| 73050 | TC | X-ray exam of shoulders | Radiology | a | 0.00 | 0.67 | 0.67 | | |
| 73060 | 26 | X-ray exam of humerus | Radiology | | 0.17 | 0.06 | 0.06 | | |
| 73060 | TC | X-ray exam of humerus | Radiology | a | 0.00 | 0.57 | 0.57 | | |
| 73070 | 26 | X-ray exam of elbow | Radiology | | 0.15 | 0.05 | 0.05 | | |
| 73070 | TC | X-ray exam of elbow | Radiology | a | 0.00 | 0.52 | 0.52 | | |
| 73080 | 26 | X-ray exam of elbow | Radiology | | 0.17 | 0.06 | 0.06 | | |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology.

## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 73080 | TC | X-ray exam of elbow | Radiology | a | 0.00 | 0.57 | 0.57 | | |
| 73085 | 26 | Contrast x-ray of elbow | Radiology | | 0.54 | 0.19 | 0.19 | | |
| 73085 | TC | Contrast x-ray of elbow | Radiology | a | 0.00 | 2.09 | 2.09 | | |
| 73090 | 26 | X-ray exam of forearm | Radiology | | 0.16 | 0.05 | 0.05 | | |
| 73090 | TC | X-ray exam of forearm | Radiology | a | 0.00 | 0.52 | 0.52 | | |
| 73092 | 26 | X-ray exam of arm, infant | Radiology | | 0.16 | 0.05 | 0.05 | | |
| 73092 | TC | X-ray exam of arm, infant | Radiology | a | 0.00 | 0.49 | 0.49 | | |
| 73100 | 26 | X-ray exam of wrist | Radiology | | 0.16 | 0.06 | 0.06 | | |
| 73100 | TC | X-ray exam of wrist | Radiology | a | 0.00 | 0.49 | 0.49 | | |
| 73110 | 26 | X-ray exam of wrist | Radiology | | 0.17 | 0.06 | 0.06 | | |
| 73110 | TC | X-ray exam of wrist | Radiology | a | 0.00 | 0.53 | 0.53 | | |
| 73115 | 26 | Contrast x-ray of wrist | Radiology | | 0.54 | 0.19 | 0.19 | | |
| 73115 | TC | Contrast x-ray of wrist | Radiology | a | 0.00 | 1.57 | 1.57 | | |
| 73120 | 26 | X-ray exam of hand | Radiology | | 0.16 | 0.06 | 0.06 | | |
| 73120 | TC | X-ray exam of hand | Radiology | a | 0.00 | 0.49 | 0.49 | | |
| 73130 | 26 | X-ray exam of hand | Radiology | | 0.17 | 0.06 | 0.06 | | |
| 73130 | TC | X-ray exam of hand | Radiology | a | 0.00 | 0.53 | 0.53 | | |
| 73140 | 26 | X-ray exam of finger(s) | Radiology | | 0.13 | 0.04 | 0.04 | | |
| 73140 | TC | X-ray exam of finger(s) | Radiology | a | 0.00 | 0.42 | 0.42 | | |
| 73200 | 26 | Ct upper extremity w/o dye | Radiology | | 1.09 | 0.37 | 0.37 | | |
| 73200 | TC | Ct upper extremity w/o dye | Radiology | a | 0.00 | 4.94 | 4.94 | | |
| 73201 | 26 | Ct upper extremity w/dye | Radiology | | 1.16 | 0.40 | 0.40 | | |
| 73201 | TC | Ct upper extremity w/dye | Radiology | a | 0.00 | 5.88 | 5.88 | | |
| 73202 | 26 | Ct uppr extremity w/o&w/dye | Radiology | | 1.22 | 0.42 | 0.42 | | |
| 73202 | TC | Ct uppr extremity w/o&w/dye | Radiology | a | 0.00 | 7.39 | 7.39 | | |
| 73206 | 26 | Ct angio upr extrm w/o&w/dye | Radiology | | 1.81 | 0.62 | 0.62 | | |
| 73206 | TC | Ct angio upr extrm w/o&w/dye | Radiology | a | 0.00 | 10.92 | 10.92 | | |
| 73218 | 26 | Mri upper extremity w/o dye | Radiology | | 1.35 | 0.46 | 0.46 | | |
| 73218 | TC | Mri upper extremity w/o dye | Radiology | a | 0.00 | 11.16 | 11.16 | | |
| 73219 | 26 | Mri upper extremity w/dye | Radiology | | 1.62 | 0.56 | 0.56 | | |
| 73219 | TC | Mri upper extremity w/dye | Radiology | a | 0.00 | 13.38 | 13.38 | | |
| 73220 | 26 | Mri uppr extremity w/o&w/dye | Radiology | | 2.15 | 0.74 | 0.74 | | |
| 73220 | TC | Mri uppr extremity w/o&w/dye | Radiology | a | 0.00 | 24.78 | 24.78 | | |
| 73221 | 26 | Mri joint upr extrem w/o dye | Radiology | | 1.35 | 0.46 | 0.46 | | |
| 73221 | TC | Mri joint upr extrem w/o dye | Radiology | a | 0.00 | 11.16 | 11.16 | | |
| 73222 | 26 | Mri joint upr extrem w/dye | Radiology | | 1.62 | 0.55 | 0.55 | | |
| 73222 | TC | Mri joint upr extrem w/dye | Radiology | a | 0.00 | 13.38 | 13.38 | | |
| 73223 | 26 | Mri joint upr extr w/o&w/dye | Radiology | | 2.15 | 0.74 | 0.74 | | |
| 73223 | TC | Mri joint upr extr w/o&w/dye | Radiology | a | 0.00 | 24.78 | 24.78 | | |
| 73225 | 26 | Mr angio upr extr w/o&w/dye | Radiology | | 1.73 | 0.68 | 0.68 | | |
| 73225 | TC | Mr angio upr extr w/o&w/dye | Radiology | a | 0.00 | 11.16 | 11.16 | | |
| 73500 | 26 | X-ray exam of hip | Radiology | | 0.17 | 0.06 | 0.06 | | |
| 73500 | TC | X-ray exam of hip | Radiology | a | 0.00 | 0.47 | 0.47 | | |
| 73510 | 26 | X-ray exam of hip | Radiology | | 0.21 | 0.07 | 0.07 | | |
| 73510 | TC | X-ray exam of hip | Radiology | a | 0.00 | 0.57 | 0.57 | | |
| 73520 | 26 | X-ray exam of hips | Radiology | | 0.26 | 0.09 | 0.09 | | |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology.

TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 73520 | TC | X-ray exam of hips | Radiology | a | 0.00 | 0.67 | 0.67 | | |
| 73525 | 26 | Contrast x-ray of hip | Radiology | | 0.54 | 0.18 | 0.18 | | |
| 73525 | TC | Contrast x-ray of hip | Radiology | a | 0.00 | 2.09 | 2.09 | | |
| 73530 | 26 | X-ray exam of hip | Radiology | | 0.29 | 0.10 | 0.10 | | |
| 73530 | TC | X-ray exam of hip | Radiology | a | 0.00 | 0.52 | 0.52 | | |
| 73540 | 26 | X-ray exam of pelvis & hips | Radiology | | 0.20 | 0.07 | 0.07 | | |
| 73540 | TC | X-ray exam of pelvis & hips | Radiology | a | 0.00 | 0.57 | 0.57 | | |
| 73542 | 26 | X-ray exam, sacroiliac joint | Radiology | | 0.59 | 0.17 | 0.17 | | |
| 73542 | TC | X-ray exam, sacroiliac joint | Radiology | a | 0.00 | 2.09 | 2.09 | | |
| 73550 | 26 | X-ray exam of thigh | Radiology | | 0.17 | 0.06 | 0.06 | | |
| 73550 | TC | X-ray exam of thigh | Radiology | a | 0.00 | 0.57 | 0.57 | | |
| 73560 | 26 | X-ray exam of knee, 1 or 2 | Radiology | | 0.17 | 0.06 | 0.06 | | |
| 73560 | TC | X-ray exam of knee, 1 or 2 | Radiology | a | 0.00 | 0.52 | 0.52 | | |
| 73562 | 26 | X-ray exam of knee, 3 | Radiology | | 0.18 | 0.06 | 0.06 | | |
| 73562 | TC | X-ray exam of knee, 3 | Radiology | a | 0.00 | 0.57 | 0.57 | | |
| 73564 | 26 | X-ray exam, knee, 4 or more | Radiology | | 0.22 | 0.08 | 0.08 | | |
| 73564 | TC | X-ray exam, knee, 4 or more | Radiology | a | 0.00 | 0.62 | 0.62 | | |
| 73565 | 26 | X-ray exam of knees | Radiology | | 0.17 | 0.06 | 0.06 | | |
| 73565 | TC | X-ray exam of knees | Radiology | a | 0.00 | 0.49 | 0.49 | | |
| 73580 | 26 | Contrast x-ray of knee joint | Radiology | | 0.54 | 0.18 | 0.18 | | |
| 73580 | TC | Contrast x-ray of knee joint | Radiology | a | 0.00 | 2.61 | 2.61 | | |
| 73590 | 26 | X-ray exam of lower leg | Radiology | | 0.17 | 0.06 | 0.06 | | |
| 73590 | TC | X-ray exam of lower leg | Radiology | a | 0.00 | 0.52 | 0.52 | | |
| 73592 | 26 | X-ray exam of leg, infant | Radiology | | 0.16 | 0.06 | 0.06 | | |
| 73592 | TC | X-ray exam of leg, infant | Radiology | a | 0.00 | 0.49 | 0.49 | | |
| 73600 | 26 | X-ray exam of ankle | Radiology | | 0.16 | 0.06 | 0.06 | | |
| 73600 | TC | X-ray exam of ankle | Radiology | a | 0.00 | 0.49 | 0.49 | | |
| 73610 | 26 | X-ray exam of ankle | Radiology | | 0.17 | 0.06 | 0.06 | | |
| 73610 | TC | X-ray exam of ankle | Radiology | a | 0.00 | 0.53 | 0.53 | | |
| 73615 | 26 | Contrast x-ray of ankle | Radiology | | 0.54 | 0.19 | 0.19 | | |
| 73615 | TC | Contrast x-ray of ankle | Radiology | a | 0.00 | 2.09 | 2.09 | | |
| 73620 | 26 | X-ray exam of foot | Radiology | | 0.16 | 0.06 | 0.06 | | |
| 73620 | TC | X-ray exam of foot | Radiology | a | 0.00 | 0.49 | 0.49 | | |
| 73630 | 26 | X-ray exam of foot | Radiology | | 0.17 | 0.06 | 0.06 | | |
| 73630 | TC | X-ray exam of foot | Radiology | a | 0.00 | 0.53 | 0.53 | | |
| 73650 | 26 | X-ray exam of heel | Radiology | | 0.16 | 0.06 | 0.06 | | |
| 73650 | TC | X-ray exam of heel | Radiology | a | 0.00 | 0.47 | 0.47 | | |
| 73660 | 26 | X-ray exam of toe(s) | Radiology | | 0.13 | 0.04 | 0.04 | | |
| 73660 | TC | X-ray exam of toe(s) | Radiology | a | 0.00 | 0.42 | 0.42 | | |
| 73700 | 26 | Ct lower extremity w/o dye | Radiology | | 1.09 | 0.37 | 0.37 | | |
| 73700 | TC | Ct lower extremity w/o dye | Radiology | a | 0.00 | 4.94 | 4.94 | | |
| 73701 | 26 | Ct lower extremity w/dye | Radiology | | 1.16 | 0.39 | 0.39 | | |
| 73701 | TC | Ct lower extremity w/dye | Radiology | a | 0.00 | 5.88 | 5.88 | | |
| 73702 | 26 | Ct lwr extremity w/o&w/dye | Radiology | | 1.22 | 0.41 | 0.41 | | |
| 73702 | TC | Ct lwr extremity w/o&w/dye | Radiology | a | 0.00 | 7.39 | 7.39 | | |
| 73706 | 26 | Ct angio lwr extr w/o&w/dye | Radiology | | 1.90 | 0.65 | 0.65 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 73706 | TC | Ct angio lwr extr w/o&w/dye | Radiology | a | 0.00 | 10.92 | 10.92 | | |
| 73718 | 26 | Mri lower extremity w/o dye | Radiology | | 1.35 | 0.46 | 0.46 | | |
| 73718 | TC | Mri lower extremity w/o dye | Radiology | a | 0.00 | 11.16 | 11.16 | | |
| 73719 | 26 | Mri lower extremity w/dye | Radiology | | 1.62 | 0.55 | 0.55 | | |
| 73719 | TC | Mri lower extremity w/dye | Radiology | a | 0.00 | 13.38 | 13.38 | | |
| 73720 | 26 | Mri lwr extremity w/o&w/dye | Radiology | | 2.15 | 0.73 | 0.73 | | |
| 73720 | TC | Mri lwr extremity w/o&w/dye | Radiology | a | 0.00 | 24.78 | 24.78 | | |
| 73721 | 26 | Mri jnt of lwr extre w/o dye | Radiology | | 1.35 | 0.46 | 0.46 | | |
| 73721 | TC | Mri jnt of lwr extre w/o dye | Radiology | a | 0.00 | 11.16 | 11.16 | | |
| 73722 | 26 | Mri joint of lwr extr w/dye | Radiology | | 1.62 | 0.56 | 0.56 | | |
| 73722 | TC | Mri joint of lwr extr w/dye | Radiology | a | 0.00 | 13.38 | 13.38 | | |
| 73723 | 26 | Mri joint lwr extr w/o&w/dye | Radiology | | 2.15 | 0.74 | 0.74 | | |
| 73723 | TC | Mri joint lwr extr w/o&w/dye | Radiology | a | 0.00 | 24.78 | 24.78 | | |
| 73725 | 26 | Mr ang lwr ext w or w/o dye | Radiology | | 1.82 | 0.62 | 0.62 | | |
| 73725 | TC | Mr ang lwr ext w or w/o dye | Radiology | a | 0.00 | 11.16 | 11.16 | | |
| 74000 | 26 | X-ray exam of abdomen | Radiology | | 0.18 | 0.06 | 0.06 | | |
| 74000 | TC | X-ray exam of abdomen | Radiology | a | 0.00 | 0.52 | 0.52 | | |
| 74010 | 26 | X-ray exam of abdomen | Radiology | | 0.23 | 0.08 | 0.08 | | |
| 74010 | TC | X-ray exam of abdomen | Radiology | a | 0.00 | 0.57 | 0.57 | | |
| 74020 | 26 | X-ray exam of abdomen | Radiology | | 0.27 | 0.09 | 0.09 | | |
| 74020 | TC | X-ray exam of abdomen | Radiology | a | 0.00 | 0.62 | 0.62 | | |
| 74022 | 26 | X-ray exam series, abdomen | Radiology | | 0.32 | 0.11 | 0.11 | | |
| 74022 | TC | X-ray exam series, abdomen | Radiology | a | 0.00 | 0.74 | 0.74 | | |
| 74150 | 26 | Ct abdomen w/o dye | Radiology | | 1.19 | 0.40 | 0.40 | | |
| 74150 | TC | Ct abdomen w/o dye | Radiology | a | 0.00 | 5.63 | 5.63 | | |
| 74160 | 26 | Ct abdomen w/dye | Radiology | | 1.27 | 0.43 | 0.43 | | |
| 74160 | TC | Ct abdomen w/dye | Radiology | a | 0.00 | 6.82 | 6.82 | | |
| 74170 | 26 | Ct abdomen w/o&w/dye | Radiology | | 1.40 | 0.48 | 0.48 | | |
| 74170 | TC | Ct abdomen w/o&w/dye | Radiology | a | 0.00 | 8.45 | 8.45 | | |
| 74175 | 26 | Ct angio abdom w/o&w/dye | Radiology | | 1.90 | 0.65 | 0.65 | | |
| 74175 | TC | Ct angio abdom w/o&w/dye | Radiology | a | 0.00 | 11.97 | 11.97 | | |
| 74181 | 26 | Mri abdomen w/o dye | Radiology | | 1.46 | 0.50 | 0.50 | | |
| 74181 | TC | Mri abdomen w/o dye | Radiology | a | 0.00 | 11.16 | 11.16 | | |
| 74182 | 26 | Mri abdomen w/dye | Radiology | | 1.73 | 0.59 | 0.59 | | |
| 74182 | TC | Mri abdomen w/dye | Radiology | a | 0.00 | 13.38 | 13.38 | | |
| 74183 | 26 | Mri abdomen w/o&w/dye | Radiology | | 2.26 | 0.77 | 0.77 | | |
| 74183 | TC | Mri abdomen w/o&w/dye | Radiology | a | 0.00 | 24.78 | 24.78 | | |
| 74185 | 26 | Mri angio, abdom w or w/o dy | Radiology | | 1.80 | 0.61 | 0.61 | | |
| 74185 | TC | Mri angio, abdom w or w/o dy | Radiology | a | 0.00 | 11.16 | 11.16 | | |
| 74190 | 26 | X-ray exam of peritoneum | Radiology | | 0.48 | 0.16 | 0.16 | | |
| 74190 | TC | X-ray exam of peritoneum | Radiology | a | 0.00 | 1.30 | 1.30 | | |
| 74210 | 26 | Contrst x-ray exam of throat | Radiology | | 0.36 | 0.12 | 0.12 | | |
| 74210 | TC | Contrst x-ray exam of throat | Radiology | a | 0.00 | 1.18 | 1.18 | | |
| 74220 | 26 | Contrast x-ray, esophagus | Radiology | | 0.46 | 0.16 | 0.16 | | |
| 74220 | TC | Contrast x-ray, esophagus | Radiology | a | 0.00 | 1.18 | 1.18 | | |
| 74230 | 26 | Cine/vid x-ray, throat/esoph | Radiology | | 0.53 | 0.18 | 0.18 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 74230 | TC | Cine/vid x-ray, throat/esoph | Radiology | a | 0.00 | 1.30 | 1.30 | | |
| 74235 | 26 | Remove esophagus obstruction | Radiology | | 1.19 | 0.41 | 0.41 | | |
| 74235 | TC | Remove esophagus obstruction | Radiology | a | 0.00 | 2.61 | 2.61 | | |
| 74240 | 26 | X-ray exam, upper gi tract | Radiology | | 0.69 | 0.23 | 0.23 | | |
| 74240 | TC | X-ray exam, upper gi tract | Radiology | a | 0.00 | 1.45 | 1.45 | | |
| 74241 | 26 | X-ray exam, upper gi tract | Radiology | | 0.69 | 0.23 | 0.23 | | |
| 74241 | TC | X-ray exam, upper gi tract | Radiology | a | 0.00 | 1.48 | 1.48 | | |
| 74245 | 26 | X-ray exam, upper gi tract | Radiology | | 0.91 | 0.31 | 0.31 | | |
| 74245 | TC | X-ray exam, upper gi tract | Radiology | a | 0.00 | 2.37 | 2.37 | | |
| 74246 | 26 | Contrst x-ray uppr gi tract | Radiology | | 0.69 | 0.23 | 0.23 | | |
| 74246 | TC | Contrst x-ray uppr gi tract | Radiology | a | 0.00 | 1.63 | 1.63 | | |
| 74247 | 26 | Contrst x-ray uppr gi tract | Radiology | | 0.69 | 0.23 | 0.23 | | |
| 74247 | TC | Contrst x-ray uppr gi tract | Radiology | a | 0.00 | 1.67 | 1.67 | | |
| 74249 | 26 | Contrst x-ray uppr gi tract | Radiology | | 0.91 | 0.31 | 0.31 | | |
| 74249 | TC | Contrst x-ray uppr gi tract | Radiology | a | 0.00 | 2.56 | 2.56 | | |
| 74250 | 26 | X-ray exam of small bowel | Radiology | | 0.47 | 0.16 | 0.16 | | |
| 74250 | TC | X-ray exam of small bowel | Radiology | a | 0.00 | 1.30 | 1.30 | | |
| 74251 | 26 | X-ray exam of small bowel | Radiology | | 0.69 | 0.23 | 0.23 | | |
| 74251 | TC | X-ray exam of small bowel | Radiology | a | 0.00 | 1.30 | 1.30 | | |
| 74260 | 26 | X-ray exam of small bowel | Radiology | | 0.50 | 0.17 | 0.17 | | |
| 74260 | TC | X-ray exam of small bowel | Radiology | a | 0.00 | 1.48 | 1.48 | | |
| 74270 | 26 | Contrast x-ray exam of colon | Radiology | | 0.69 | 0.23 | 0.23 | | |
| 74270 | TC | Contrast x-ray exam of colon | Radiology | a | 0.00 | 1.69 | 1.69 | | |
| 74280 | 26 | Contrast x-ray exam of colon | Radiology | | 0.99 | 0.34 | 0.34 | | |
| 74280 | TC | Contrast x-ray exam of colon | Radiology | a | 0.00 | 2.22 | 2.22 | | |
| 74283 | 26 | Contrast x-ray exam of colon | Radiology | | 2.02 | 0.69 | 0.69 | | |
| 74283 | TC | Contrast x-ray exam of colon | Radiology | a | 0.00 | 2.55 | 2.55 | | |
| 74290 | 26 | Contrast x-ray, gallbladder | Radiology | | 0.32 | 0.11 | 0.11 | | |
| 74290 | TC | Contrast x-ray, gallbladder | Radiology | a | 0.00 | 0.74 | 0.74 | | |
| 74291 | 26 | Contrast x-rays, gallbladder | Radiology | | 0.20 | 0.07 | 0.07 | | |
| 74291 | TC | Contrast x-rays, gallbladder | Radiology | a | 0.00 | 0.42 | 0.42 | | |
| 74300 | 26 | X-ray bile ducts/pancreas | Radiology | | 0.36 | 0.12 | 0.12 | | |
| 74300 | TC | X-ray bile ducts/pancreas | Radiology | a | | | | 1.42 | MDR |
| 74301 | 26 | X-rays at surgery add-on | Radiology | | 0.21 | 0.07 | 0.07 | | |
| 74301 | TC | X-rays at surgery add-on | Radiology | a | | | | 0.81 | MDR |
| 74305 | 26 | X-ray bile ducts/pancreas | Radiology | | 0.42 | 0.14 | 0.14 | | |
| 74305 | TC | X-ray bile ducts/pancreas | Radiology | a | 0.00 | 0.78 | 0.78 | | |
| 74320 | 26 | Contrast x-ray of bile ducts | Radiology | | 0.54 | 0.18 | 0.18 | | |
| 74320 | TC | Contrast x-ray of bile ducts | Radiology | a | 0.00 | 3.13 | 3.13 | | |
| 74327 | 26 | X-ray bile stone removal | Radiology | | 0.70 | 0.24 | 0.24 | | |
| 74327 | TC | X-ray bile stone removal | Radiology | a | 0.00 | 1.75 | 1.75 | | |
| 74328 | 26 | X-ray bile duct endoscopy | Radiology | | 0.70 | 0.24 | 0.24 | | |
| 74328 | TC | X-ray bile duct endoscopy | Radiology | a | 0.00 | 3.13 | 3.13 | | |
| 74329 | 26 | X-ray for pancreas endoscopy | Radiology | | 0.70 | 0.24 | 0.24 | | |
| 74329 | TC | X-ray for pancreas endoscopy | Radiology | a | 0.00 | 3.13 | 3.13 | | |
| 74330 | 26 | X-ray bile/panc endoscopy | Radiology | | 0.90 | 0.31 | 0.31 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 74330 | TC | X-ray bile/panc endoscopy | Radiology | a | 0.00 | 3.13 | 3.13 | | |
| 74340 | 26 | X-ray guide for GI tube | Radiology | | 0.54 | 0.18 | 0.18 | | |
| 74340 | TC | X-ray guide for GI tube | Radiology | a | 0.00 | 2.61 | 2.61 | | |
| 74350 | 26 | X-ray guide, stomach tube | Radiology | | 0.76 | 0.26 | 0.26 | | |
| 74350 | TC | X-ray guide, stomach tube | Radiology | a | 0.00 | 3.13 | 3.13 | | |
| 74355 | 26 | X-ray guide, intestinal tube | Radiology | | 0.76 | 0.26 | 0.26 | | |
| 74355 | TC | X-ray guide, intestinal tube | Radiology | a | 0.00 | 2.61 | 2.61 | | |
| 74360 | 26 | X-ray guide, GI dilation | Radiology | | 0.54 | 0.19 | 0.19 | | |
| 74360 | TC | X-ray guide, GI dilation | Radiology | a | 0.00 | 3.13 | 3.13 | | |
| 74363 | 26 | X-ray, bile duct dilation | Radiology | | 0.88 | 0.30 | 0.30 | | |
| 74363 | TC | X-ray, bile duct dilation | Radiology | a | 0.00 | 6.07 | 6.07 | | |
| 74400 | 26 | Contrst x-ray, urinary tract | Radiology | | 0.49 | 0.17 | 0.17 | | |
| 74400 | TC | Contrst x-ray, urinary tract | Radiology | a | 0.00 | 1.67 | 1.67 | | |
| 74410 | 26 | Contrst x-ray, urinary tract | Radiology | | 0.49 | 0.17 | 0.17 | | |
| 74410 | TC | Contrst x-ray, urinary tract | Radiology | a | 0.00 | 1.94 | 1.94 | | |
| 74415 | 26 | Contrst x-ray, urinary tract | Radiology | | 0.49 | 0.17 | 0.17 | | |
| 74415 | TC | Contrst x-ray, urinary tract | Radiology | a | 0.00 | 2.11 | 2.11 | | |
| 74420 | 26 | Contrst x-ray, urinary tract | Radiology | | 0.36 | 0.12 | 0.12 | | |
| 74420 | TC | Contrst x-ray, urinary tract | Radiology | a | 0.00 | 2.61 | 2.61 | | |
| 74425 | 26 | Contrst x-ray, urinary tract | Radiology | | 0.36 | 0.12 | 0.12 | | |
| 74425 | TC | Contrst x-ray, urinary tract | Radiology | a | 0.00 | 1.30 | 1.30 | | |
| 74430 | 26 | Contrast x-ray, bladder | Radiology | | 0.32 | 0.11 | 0.11 | | |
| 74430 | TC | Contrast x-ray, bladder | Radiology | a | 0.00 | 1.04 | 1.04 | | |
| 74440 | 26 | X-ray, male genital tract | Radiology | | 0.38 | 0.13 | 0.13 | | |
| 74440 | TC | X-ray, male genital tract | Radiology | a | 0.00 | 1.12 | 1.12 | | |
| 74445 | 26 | X-ray exam of penis | Radiology | | 1.14 | 0.38 | 0.38 | | |
| 74445 | TC | X-ray exam of penis | Radiology | a | 0.00 | 1.12 | 1.12 | | |
| 74450 | 26 | X-ray, urethra/bladder | Radiology | | 0.33 | 0.11 | 0.11 | | |
| 74450 | TC | X-ray, urethra/bladder | Radiology | a | 0.00 | 1.45 | 1.45 | | |
| 74455 | 26 | X-ray, urethra/bladder | Radiology | | 0.33 | 0.11 | 0.11 | | |
| 74455 | TC | X-ray, urethra/bladder | Radiology | a | 0.00 | 1.57 | 1.57 | | |
| 74470 | 26 | X-ray exam of kidney lesion | Radiology | | 0.54 | 0.18 | 0.18 | | |
| 74470 | TC | X-ray exam of kidney lesion | Radiology | a | 0.00 | 1.24 | 1.24 | | |
| 74475 | 26 | X-ray control, cath insert | Radiology | | 0.54 | 0.18 | 0.18 | | |
| 74475 | TC | X-ray control, cath insert | Radiology | a | 0.00 | 4.05 | 4.05 | | |
| 74480 | 26 | X-ray control, cath insert | Radiology | | 0.54 | 0.18 | 0.18 | | |
| 74480 | TC | X-ray control, cath insert | Radiology | a | 0.00 | 4.05 | 4.05 | | |
| 74485 | 26 | X-ray guide, GU dilation | Radiology | | 0.54 | 0.18 | 0.18 | | |
| 74485 | TC | X-ray guide, GU dilation | Radiology | a | 0.00 | 3.13 | 3.13 | | |
| 74710 | 26 | X-ray measurement of pelvis | Radiology | | 0.34 | 0.12 | 0.12 | | |
| 74710 | TC | X-ray measurement of pelvis | Radiology | a | 0.00 | 1.04 | 1.04 | | |
| 74740 | 26 | X-ray, female genital tract | Radiology | | 0.38 | 0.13 | 0.13 | | |
| 74740 | TC | X-ray, female genital tract | Radiology | a | 0.00 | 1.30 | 1.30 | | |
| 74742 | 26 | X-ray, fallopian tube | Radiology | | 0.61 | 0.21 | 0.21 | | |
| 74742 | TC | X-ray, fallopian tube | Radiology | a | 0.00 | 3.13 | 3.13 | | |
| 74775 | 26 | X-ray exam of perineum | Radiology | | 0.62 | 0.22 | 0.22 | | |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology.

## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 74775 | TC | X-ray exam of perineum | Radiology | a | 0.00 | 1.45 | 1.45 | | |
| 75552 | 26 | Heart mri for morph w/o dye | Radiology | | 1.60 | 0.55 | 0.55 | | |
| 75552 | TC | Heart mri for morph w/o dye | Radiology | a | 0.00 | 11.16 | 11.16 | | |
| 75553 | 26 | Heart mri for morph w/dye | Radiology | | 2.00 | 0.68 | 0.68 | | |
| 75553 | TC | Heart mri for morph w/dye | Radiology | a | 0.00 | 11.16 | 11.16 | | |
| 75554 | 26 | Cardiac MRI/function | Radiology | | 1.83 | 0.67 | 0.67 | | |
| 75554 | TC | Cardiac MRI/function | Radiology | a | 0.00 | 11.16 | 11.16 | | |
| 75555 | 26 | Cardiac MRI/limited study | Radiology | | 1.74 | 0.66 | 0.66 | | |
| 75555 | TC | Cardiac MRI/limited study | Radiology | a | 0.00 | 11.16 | 11.16 | | |
| 75600 | 26 | Contrast x-ray exam of aorta | Radiology | | 0.49 | 0.19 | 0.19 | | |
| 75600 | TC | Contrast x-ray exam of aorta | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75605 | 26 | Contrast x-ray exam of aorta | Radiology | | 1.14 | 0.41 | 0.41 | | |
| 75605 | TC | Contrast x-ray exam of aorta | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75625 | 26 | Contrast x-ray exam of aorta | Radiology | | 1.14 | 0.39 | 0.39 | | |
| 75625 | TC | Contrast x-ray exam of aorta | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75630 | 26 | X-ray aorta, leg arteries | Radiology | | 1.79 | 0.64 | 0.64 | | |
| 75630 | TC | X-ray aorta, leg arteries | Radiology | a | 0.00 | 13.08 | 13.08 | | |
| 75635 | 26 | Ct angio abdominal arteries | Radiology | | 2.40 | 0.82 | 0.82 | | |
| 75635 | TC | Ct angio abdominal arteries | Radiology | a | 0.00 | 15.84 | 15.84 | | |
| 75650 | 26 | Artery x-rays, head & neck | Radiology | | 1.49 | 0.51 | 0.51 | | |
| 75650 | TC | Artery x-rays, head & neck | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75658 | 26 | Artery x-rays, arm | Radiology | | 1.31 | 0.49 | 0.49 | | |
| 75658 | TC | Artery x-rays, arm | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75660 | 26 | Artery x-rays, head & neck | Radiology | | 1.31 | 0.46 | 0.46 | | |
| 75660 | TC | Artery x-rays, head & neck | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75662 | 26 | Artery x-rays, head & neck | Radiology | | 1.66 | 0.61 | 0.61 | | |
| 75662 | TC | Artery x-rays, head & neck | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75665 | 26 | Artery x-rays, head & neck | Radiology | | 1.31 | 0.45 | 0.45 | | |
| 75665 | TC | Artery x-rays, head & neck | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75671 | 26 | Artery x-rays, head & neck | Radiology | | 1.66 | 0.57 | 0.57 | | |
| 75671 | TC | Artery x-rays, head & neck | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75676 | 26 | Artery x-rays, neck | Radiology | | 1.31 | 0.46 | 0.46 | | |
| 75676 | TC | Artery x-rays, neck | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75680 | 26 | Artery x-rays, neck | Radiology | | 1.66 | 0.57 | 0.57 | | |
| 75680 | TC | Artery x-rays, neck | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75685 | 26 | Artery x-rays, spine | Radiology | | 1.31 | 0.45 | 0.45 | | |
| 75685 | TC | Artery x-rays, spine | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75705 | 26 | Artery x-rays, spine | Radiology | | 2.18 | 0.76 | 0.76 | | |
| 75705 | TC | Artery x-rays, spine | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75710 | 26 | Artery x-rays, arm/leg | Radiology | | 1.14 | 0.40 | 0.40 | | |
| 75710 | TC | Artery x-rays, arm/leg | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75716 | 26 | Artery x-rays, arms/legs | Radiology | | 1.31 | 0.45 | 0.45 | | |
| 75716 | TC | Artery x-rays, arms/legs | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75722 | 26 | Artery x-rays, kidney | Radiology | | 1.14 | 0.41 | 0.41 | | |
| 75722 | TC | Artery x-rays, kidney | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75724 | 26 | Artery x-rays, kidneys | Radiology | | 1.49 | 0.58 | 0.58 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 75724 | TC | Artery x-rays, kidneys | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75726 | 26 | Artery x-rays, abdomen | Radiology | | 1.14 | 0.39 | 0.39 | | |
| 75726 | TC | Artery x-rays, abdomen | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75731 | 26 | Artery x-rays, adrenal gland | Radiology | | 1.14 | 0.39 | 0.39 | | |
| 75731 | TC | Artery x-rays, adrenal gland | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75733 | 26 | Artery x-rays, adrenals | Radiology | | 1.31 | 0.45 | 0.45 | | |
| 75733 | TC | Artery x-rays, adrenals | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75736 | 26 | Artery x-rays, pelvis | Radiology | | 1.14 | 0.39 | 0.39 | | |
| 75736 | TC | Artery x-rays, pelvis | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75741 | 26 | Artery x-rays, lung | Radiology | | 1.31 | 0.45 | 0.45 | | |
| 75741 | TC | Artery x-rays, lung | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75743 | 26 | Artery x-rays, lungs | Radiology | | 1.66 | 0.56 | 0.56 | | |
| 75743 | TC | Artery x-rays, lungs | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75746 | 26 | Artery x-rays, lung | Radiology | | 1.14 | 0.39 | 0.39 | | |
| 75746 | TC | Artery x-rays, lung | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75756 | 26 | Artery x-rays, chest | Radiology | | 1.14 | 0.46 | 0.46 | | |
| 75756 | TC | Artery x-rays, chest | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75774 | 26 | Artery x-ray, each vessel | Radiology | | 0.36 | 0.13 | 0.13 | | |
| 75774 | TC | Artery x-ray, each vessel | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75790 | 26 | Visualize A-V shunt | Radiology | | 1.84 | 0.62 | 0.62 | | |
| 75790 | TC | Visualize A-V shunt | Radiology | a | 0.00 | 1.34 | 1.34 | | |
| 75801 | 26 | Lymph vessel x-ray, arm/leg | Radiology | | 0.81 | 0.28 | 0.28 | | |
| 75801 | TC | Lymph vessel x-ray, arm/leg | Radiology | a | 0.00 | 5.39 | 5.39 | | |
| 75803 | 26 | Lymph vessel x-ray,arms/legs | Radiology | | 1.17 | 0.40 | 0.40 | | |
| 75803 | TC | Lymph vessel x-ray,arms/legs | Radiology | a | 0.00 | 5.39 | 5.39 | | |
| 75805 | 26 | Lymph vessel x-ray, trunk | Radiology | | 0.81 | 0.28 | 0.28 | | |
| 75805 | TC | Lymph vessel x-ray, trunk | Radiology | a | 0.00 | 6.07 | 6.07 | | |
| 75807 | 26 | Lymph vessel x-ray, trunk | Radiology | | 1.17 | 0.40 | 0.40 | | |
| 75807 | TC | Lymph vessel x-ray, trunk | Radiology | a | 0.00 | 6.07 | 6.07 | | |
| 75809 | 26 | Nonvascular shunt, x-ray | Radiology | | 0.47 | 0.16 | 0.16 | | |
| 75809 | TC | Nonvascular shunt, x-ray | Radiology | a | 0.00 | 0.78 | 0.78 | | |
| 75810 | 26 | Vein x-ray, spleen/liver | Radiology | | 1.14 | 0.39 | 0.39 | | |
| 75810 | TC | Vein x-ray, spleen/liver | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75820 | 26 | Vein x-ray, arm/leg | Radiology | | 0.70 | 0.24 | 0.24 | | |
| 75820 | TC | Vein x-ray, arm/leg | Radiology | a | 0.00 | 0.95 | 0.95 | | |
| 75822 | 26 | Vein x-ray, arms/legs | Radiology | | 1.06 | 0.36 | 0.36 | | |
| 75822 | TC | Vein x-ray, arms/legs | Radiology | a | 0.00 | 1.47 | 1.47 | | |
| 75825 | 26 | Vein x-ray, trunk | Radiology | | 1.14 | 0.39 | 0.39 | | |
| 75825 | TC | Vein x-ray, trunk | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75827 | 26 | Vein x-ray, chest | Radiology | | 1.14 | 0.38 | 0.38 | | |
| 75827 | TC | Vein x-ray, chest | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75831 | 26 | Vein x-ray, kidney | Radiology | | 1.14 | 0.38 | 0.38 | | |
| 75831 | TC | Vein x-ray, kidney | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75833 | 26 | Vein x-ray, kidneys | Radiology | | 1.49 | 0.51 | 0.51 | | |
| 75833 | TC | Vein x-ray, kidneys | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75840 | 26 | Vein x-ray, adrenal gland | Radiology | | 1.14 | 0.39 | 0.39 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 75840 | TC | Vein x-ray, adrenal gland | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75842 | 26 | Vein x-ray, adrenal glands | Radiology | | 1.49 | 0.50 | 0.50 | | |
| 75842 | TC | Vein x-ray, adrenal glands | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75860 | 26 | Vein x-ray, neck | Radiology | | 1.14 | 0.40 | 0.40 | | |
| 75860 | TC | Vein x-ray, neck | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75870 | 26 | Vein x-ray, skull | Radiology | | 1.14 | 0.40 | 0.40 | | |
| 75870 | TC | Vein x-ray, skull | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75872 | 26 | Vein x-ray, skull | Radiology | | 1.14 | 0.39 | 0.39 | | |
| 75872 | TC | Vein x-ray, skull | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75880 | 26 | Vein x-ray, eye socket | Radiology | | 0.70 | 0.24 | 0.24 | | |
| 75880 | TC | Vein x-ray, eye socket | Radiology | a | 0.00 | 0.95 | 0.95 | | |
| 75885 | 26 | Vein x-ray, liver | Radiology | | 1.44 | 0.49 | 0.49 | | |
| 75885 | TC | Vein x-ray, liver | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75887 | 26 | Vein x-ray, liver | Radiology | | 1.44 | 0.49 | 0.49 | | |
| 75887 | TC | Vein x-ray, liver | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75889 | 26 | Vein x-ray, liver | Radiology | | 1.14 | 0.38 | 0.38 | | |
| 75889 | TC | Vein x-ray, liver | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75891 | 26 | Vein x-ray, liver | Radiology | | 1.14 | 0.38 | 0.38 | | |
| 75891 | TC | Vein x-ray, liver | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75893 | 26 | Venous sampling by catheter | Radiology | | 0.54 | 0.19 | 0.19 | | |
| 75893 | TC | Venous sampling by catheter | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75894 | 26 | X-rays, transcath therapy | Radiology | | 1.31 | 0.45 | 0.45 | | |
| 75894 | TC | X-rays, transcath therapy | Radiology | a | 0.00 | 24.03 | 24.03 | | |
| 75896 | 26 | X-rays, transcath therapy | Radiology | | 1.31 | 0.47 | 0.47 | | |
| 75896 | TC | X-rays, transcath therapy | Radiology | a | 0.00 | 20.90 | 20.90 | | |
| 75898 | 26 | Follow-up angiography | Radiology | | 1.65 | 0.57 | 0.57 | | |
| 75898 | TC | Follow-up angiography | Radiology | a | 0.00 | 1.04 | 1.04 | | |
| 75900 | 26 | Arterial catheter exchange | Radiology | | 0.49 | 0.17 | 0.17 | | |
| 75900 | TC | Arterial catheter exchange | Radiology | a | 0.00 | 20.88 | 20.88 | | |
| 75901 | 26 | Remove cva device obstruct | Radiology | | 0.49 | 0.17 | 0.17 | | |
| 75901 | TC | Remove cva device obstruct | Radiology | a | 0.00 | 1.30 | 1.30 | | |
| 75902 | 26 | Remove cva lumen obstruct | Radiology | | 0.39 | 0.13 | 0.13 | | |
| 75902 | TC | Remove cva lumen obstruct | Radiology | a | 0.00 | 1.30 | 1.30 | | |
| 75940 | 26 | X-ray placement, vein filter | Radiology | | 0.54 | 0.18 | 0.18 | | |
| 75940 | TC | X-ray placement, vein filter | Radiology | a | 0.00 | 12.55 | 12.55 | | |
| 75945 | 26 | Intravascular us | Radiology | | 0.40 | 0.15 | 0.15 | | |
| 75945 | TC | Intravascular us | Radiology | a | 0.00 | 4.55 | 4.55 | | |
| 75946 | 26 | Intravascular us add-on | Radiology | | 0.40 | 0.14 | 0.14 | | |
| 75946 | TC | Intravascular us add-on | Radiology | a | 0.00 | 2.28 | 2.28 | | |
| 75952 | 26 | Endovasc repair abdom aorta | Radiology | | 4.50 | 1.75 | 1.75 | | |
| 75952 | TC | Endovasc repair abdom aorta | Radiology | a | | | | 18.50 | MDR |
| 75953 | 26 | Abdom aneurysm endovas rpr | Radiology | | 1.36 | 0.53 | 0.53 | | |
| 75953 | TC | Abdom aneurysm endovas rpr | Radiology | a | | | | 20.58 | MDR |
| 75954 | 26 | Iliac aneurysm endovas rpr | Radiology | | 1.36 | 0.48 | 0.48 | | |
| 75954 | TC | Iliac aneurysm endovas rpr | Radiology | a | | | | 16.56 | SA |
| 75960 | 26 | Transcatheter intro, stent | Radiology | | 0.82 | 0.29 | 0.29 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 75960 | TC | Transcatheter intro, stent | Radiology | a | 0.00 | 14.84 | 14.84 | | |
| 75961 | 26 | Retrieval, broken catheter | Radiology | | 4.25 | 1.44 | 1.44 | | |
| 75961 | TC | Retrieval, broken catheter | Radiology | a | 0.00 | 10.46 | 10.46 | | |
| 75962 | 26 | Repair arterial blockage | Radiology | | 0.54 | 0.19 | 0.19 | | |
| 75962 | TC | Repair arterial blockage | Radiology | a | 0.00 | 15.67 | 15.67 | | |
| 75964 | 26 | Repair artery blockage, each | Radiology | | 0.36 | 0.13 | 0.13 | | |
| 75964 | TC | Repair artery blockage, each | Radiology | a | 0.00 | 8.36 | 8.36 | | |
| 75966 | 26 | Repair arterial blockage | Radiology | | 1.31 | 0.48 | 0.48 | | |
| 75966 | TC | Repair arterial blockage | Radiology | a | 0.00 | 15.67 | 15.67 | | |
| 75968 | 26 | Repair artery blockage, each | Radiology | | 0.36 | 0.13 | 0.13 | | |
| 75968 | TC | Repair artery blockage, each | Radiology | a | 0.00 | 8.36 | 8.36 | | |
| 75970 | 26 | Vascular biopsy | Radiology | | 0.83 | 0.29 | 0.29 | | |
| 75970 | TC | Vascular biopsy | Radiology | a | 0.00 | 11.49 | 11.49 | | |
| 75978 | 26 | Repair venous blockage | Radiology | | 0.54 | 0.18 | 0.18 | | |
| 75978 | TC | Repair venous blockage | Radiology | a | 0.00 | 15.67 | 15.67 | | |
| 75980 | 26 | Contrast xray exam bile duct | Radiology | | 1.44 | 0.49 | 0.49 | | |
| 75980 | TC | Contrast xray exam bile duct | Radiology | a | 0.00 | 5.39 | 5.39 | | |
| 75982 | 26 | Contrast xray exam bile duct | Radiology | | 1.44 | 0.48 | 0.48 | | |
| 75982 | TC | Contrast xray exam bile duct | Radiology | a | 0.00 | 6.07 | 6.07 | | |
| 75984 | 26 | Xray control catheter change | Radiology | | 0.72 | 0.24 | 0.24 | | |
| 75984 | TC | Xray control catheter change | Radiology | a | 0.00 | 1.94 | 1.94 | | |
| 75989 | 26 | Abscess drainage under x-ray | Radiology | | 1.19 | 0.40 | 0.40 | | |
| 75989 | TC | Abscess drainage under x-ray | Radiology | a | 0.00 | 3.13 | 3.13 | | |
| 75992 | 26 | Atherectomy, x-ray exam | Radiology | | 0.54 | 0.20 | 0.20 | | |
| 75992 | TC | Atherectomy, x-ray exam | Radiology | a | 0.00 | 15.67 | 15.67 | | |
| 75993 | 26 | Atherectomy, x-ray exam | Radiology | | 0.36 | 0.14 | 0.14 | | |
| 75993 | TC | Atherectomy, x-ray exam | Radiology | a | 0.00 | 8.36 | 8.36 | | |
| 75994 | 26 | Atherectomy, x-ray exam | Radiology | | 1.31 | 0.48 | 0.48 | | |
| 75994 | TC | Atherectomy, x-ray exam | Radiology | a | 0.00 | 15.67 | 15.67 | | |
| 75995 | 26 | Atherectomy, x-ray exam | Radiology | | 1.31 | 0.49 | 0.49 | | |
| 75995 | TC | Atherectomy, x-ray exam | Radiology | a | 0.00 | 15.67 | 15.67 | | |
| 75996 | 26 | Atherectomy, x-ray exam | Radiology | | 0.36 | 0.12 | 0.12 | | |
| 75996 | TC | Atherectomy, x-ray exam | Radiology | a | 0.00 | 8.36 | 8.36 | | |
| 76000 | 26 | Fluoroscope examination | Radiology | | 0.17 | 0.05 | 0.05 | | |
| 76000 | TC | Fluoroscope examination | Radiology | a | 0.00 | 1.30 | 1.30 | | |
| 76001 | 26 | Fluoroscope exam, extensive | Radiology | | 0.67 | 0.23 | 0.23 | | |
| 76001 | TC | Fluoroscope exam, extensive | Radiology | a | 0.00 | 2.61 | 2.61 | | |
| 76003 | 26 | Needle localization by x-ray | Radiology | | 0.54 | 0.18 | 0.18 | | |
| 76003 | TC | Needle localization by x-ray | Radiology | a | 0.00 | 1.30 | 1.30 | | |
| 76005 | 26 | Fluoroguide for spine inject | Radiology | | 0.60 | 0.16 | 0.16 | | |
| 76005 | TC | Fluoroguide for spine inject | Radiology | a | 0.00 | 1.30 | 1.30 | | |
| 76006 | | X-ray stress view | Radiology | | 0.41 | 0.19 | 0.19 | | |
| 76010 | 26 | X-ray, nose to rectum | Radiology | | 0.18 | 0.06 | 0.06 | | |
| 76010 | TC | X-ray, nose to rectum | Radiology | a | 0.00 | 0.52 | 0.52 | | |
| 76012 | 26 | Percut vertebroplasty fluor | Radiology | | 1.31 | 0.51 | 0.51 | | |
| 76012 | TC | Percut vertebroplasty fluor | Radiology | a | | | | 6.77 | MDR |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology.

TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 76013 | 26 | Percut vertebroplasty, ct | Radiology | | 1.38 | 0.54 | 0.54 | | |
| 76013 | TC | Percut vertebroplasty, ct | Radiology | a | | | | 8.17 | MDR |
| 76020 | 26 | X-rays for bone age | Radiology | | 0.19 | 0.06 | 0.06 | | |
| 76020 | TC | X-rays for bone age | Radiology | a | 0.00 | 0.52 | 0.52 | | |
| 76040 | 26 | X-rays, bone evaluation | Radiology | | 0.27 | 0.09 | 0.09 | | |
| 76040 | TC | X-rays, bone evaluation | Radiology | a | 0.00 | 0.78 | 0.78 | | |
| 76061 | 26 | X-rays, bone survey | Radiology | | 0.45 | 0.15 | 0.15 | | |
| 76061 | TC | X-rays, bone survey | Radiology | a | 0.00 | 1.00 | 1.00 | | |
| 76062 | 26 | X-rays, bone survey | Radiology | | 0.54 | 0.18 | 0.18 | | |
| 76062 | TC | X-rays, bone survey | Radiology | a | 0.00 | 1.43 | 1.43 | | |
| 76065 | 26 | X-rays, bone evaluation | Radiology | | 0.70 | 0.24 | 0.24 | | |
| 76065 | TC | X-rays, bone evaluation | Radiology | a | 0.00 | 0.74 | 0.74 | | |
| 76066 | 26 | Joint survey, single view | Radiology | | 0.31 | 0.11 | 0.11 | | |
| 76066 | TC | Joint survey, single view | Radiology | a | 0.00 | 1.10 | 1.10 | | |
| 76070 | 26 | Ct bone density, axial | Radiology | | 0.25 | 0.08 | 0.08 | | |
| 76070 | TC | Ct bone density, axial | Radiology | a | 0.00 | 2.94 | 2.94 | | |
| 76071 | 26 | Ct bone density, peripheral | Radiology | | 0.22 | 0.07 | 0.07 | | |
| 76071 | TC | Ct bone density, peripheral | Radiology | a | 0.00 | 2.94 | 2.94 | | |
| 76075 | 26 | Dexa, axial skeleton study | Radiology | | 0.30 | 0.11 | 0.11 | | |
| 76075 | TC | Dexa, axial skeleton study | Radiology | a | 0.00 | 3.08 | 3.08 | | |
| 76076 | 26 | Dexa, peripheral study | Radiology | | 0.22 | 0.08 | 0.08 | | |
| 76076 | TC | Dexa, peripheral study | Radiology | a | 0.00 | 0.75 | 0.75 | | |
| 76078 | 26 | Radiographic absorptiometry | Radiology | | 0.20 | 0.07 | 0.07 | | |
| 76078 | TC | Radiographic absorptiometry | Radiology | a | 0.00 | 0.75 | 0.75 | | |
| 76080 | 26 | X-ray exam of fistula | Radiology | | 0.54 | 0.18 | 0.18 | | |
| 76080 | TC | X-ray exam of fistula | Radiology | a | 0.00 | 1.04 | 1.04 | | |
| 76085 | 26 | Computer mammogram add-on | Radiology | | 0.06 | 0.02 | 0.02 | | |
| 76085 | TC | Computer mammogram add-on | Radiology | a | 0.00 | 0.42 | 0.42 | | |
| 76086 | 26 | X-ray of mammary duct | Radiology | | 0.36 | 0.12 | 0.12 | | |
| 76086 | TC | X-ray of mammary duct | Radiology | a | 0.00 | 2.61 | 2.61 | | |
| 76088 | 26 | X-ray of mammary ducts | Radiology | | 0.45 | 0.15 | 0.15 | | |
| 76088 | TC | X-ray of mammary ducts | Radiology | a | 0.00 | 3.65 | 3.65 | | |
| 76090 | 26 | Mammogram, one breast | Radiology | | 0.70 | 0.24 | 0.24 | | |
| 76090 | TC | Mammogram, one breast | Radiology | a | 0.00 | 1.04 | 1.04 | | |
| 76091 | 26 | Mammogram, both breasts | Radiology | | 0.87 | 0.30 | 0.30 | | |
| 76091 | TC | Mammogram, both breasts | Radiology | a | 0.00 | 1.30 | 1.30 | | |
| 76092 | 26 | Mammogram, screening | Radiology | | 0.70 | 0.25 | 0.25 | | |
| 76092 | TC | Mammogram, screening | Radiology | a | 0.00 | 1.21 | 1.21 | | |
| 76093 | 26 | Magnetic image, breast | Radiology | | 1.63 | 0.56 | 0.56 | | |
| 76093 | TC | Magnetic image, breast | Radiology | a | 0.00 | 17.55 | 17.55 | | |
| 76094 | 26 | Magnetic image, both breasts | Radiology | | 1.63 | 0.55 | 0.55 | | |
| 76094 | TC | Magnetic image, both breasts | Radiology | a | 0.00 | 23.80 | 23.80 | | |
| 76095 | 26 | Stereotactic breast biopsy | Radiology | | 1.59 | 0.54 | 0.54 | | |
| 76095 | TC | Stereotactic breast biopsy | Radiology | a | 0.00 | 7.13 | 7.13 | | |
| 76096 | 26 | X-ray of needle wire, breast | Radiology | | 0.56 | 0.19 | 0.19 | | |
| 76096 | TC | X-ray of needle wire, breast | Radiology | a | 0.00 | 1.30 | 1.30 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 76098 | 26 | X-ray exam, breast specimen | Radiology |  | 0.16 | 0.06 | 0.06 |  |  |
| 76098 | TC | X-ray exam, breast specimen | Radiology | a | 0.00 | 0.42 | 0.42 |  |  |
| 76100 | 26 | X-ray exam of body section | Radiology |  | 0.58 | 0.20 | 0.20 |  |  |
| 76100 | TC | X-ray exam of body section | Radiology | a | 0.00 | 1.24 | 1.24 |  |  |
| 76101 | 26 | Complex body section x-ray | Radiology |  | 0.58 | 0.20 | 0.20 |  |  |
| 76101 | TC | Complex body section x-ray | Radiology | a | 0.00 | 1.41 | 1.41 |  |  |
| 76102 | 26 | Complex body section x-rays | Radiology |  | 0.58 | 0.20 | 0.20 |  |  |
| 76102 | TC | Complex body section x-rays | Radiology | a | 0.00 | 1.72 | 1.72 |  |  |
| 76120 | 26 | Cine/video x-rays | Radiology |  | 0.38 | 0.13 | 0.13 |  |  |
| 76120 | TC | Cine/video x-rays | Radiology | a | 0.00 | 1.04 | 1.04 |  |  |
| 76125 | 26 | Cine/video x-rays add-on | Radiology |  | 0.27 | 0.10 | 0.10 |  |  |
| 76125 | TC | Cine/video x-rays add-on | Radiology | a | 0.00 | 0.78 | 0.78 |  |  |
| 76140 |  | X-ray consultation | Radiology |  |  |  |  | 0.78 | SAF |
| 76150 |  | X-ray exam, dry process | Radiology |  | 0.00 | 0.42 | 0.42 |  |  |
| 76350 | 26 | Special x-ray contrast study | Radiology |  |  |  |  | 0.25 | SA |
| 76350 | TC | Special x-ray contrast study | Radiology | a |  |  |  | 1.03 | SA |
| 76355 | 26 | CAT scan for localization | Radiology |  | 1.21 | 0.42 | 0.42 |  |  |
| 76355 | TC | CAT scan for localization | Radiology | a | 0.00 | 8.22 | 8.22 |  |  |
| 76360 | 26 | CAT scan for needle biopsy | Radiology |  | 1.16 | 0.39 | 0.39 |  |  |
| 76360 | TC | CAT scan for needle biopsy | Radiology | a | 0.00 | 8.22 | 8.22 |  |  |
| 76362 | 26 | Cat scan for tissue ablation | Radiology |  | 4.00 | 1.35 | 1.35 |  |  |
| 76362 | TC | Cat scan for tissue ablation | Radiology | a | 0.00 | 8.22 | 8.22 |  |  |
| 76370 | 26 | CAT scan for therapy guide | Radiology |  | 0.85 | 0.29 | 0.29 |  |  |
| 76370 | TC | CAT scan for therapy guide | Radiology | a | 0.00 | 2.94 | 2.94 |  |  |
| 76375 | 26 | 3d/holograph reconstr add-on | Radiology |  | 0.16 | 0.05 | 0.05 |  |  |
| 76375 | TC | 3d/holograph reconstr add-on | Radiology | a | 0.00 | 3.52 | 3.52 |  |  |
| 76380 | 26 | CAT scan follow-up study | Radiology |  | 0.98 | 0.33 | 0.33 |  |  |
| 76380 | TC | CAT scan follow-up study | Radiology | a | 0.00 | 3.48 | 3.48 |  |  |
| 76390 | 26 | Mr spectroscopy | Radiology |  | 1.40 | 0.48 | 0.48 |  |  |
| 76390 | TC | Mr spectroscopy | Radiology | a | 0.00 | 11.16 | 11.16 |  |  |
| 76393 | 26 | Mr guidance for needle place | Radiology |  | 1.50 | 0.52 | 0.52 |  |  |
| 76393 | TC | Mr guidance for needle place | Radiology | a | 0.00 | 11.16 | 11.16 |  |  |
| 76394 | 26 | Mri for tissue ablation | Radiology |  | 4.25 | 1.44 | 1.44 |  |  |
| 76394 | TC | Mri for tissue ablation | Radiology | a | 0.00 | 11.16 | 11.16 |  |  |
| 76400 | 26 | Magnetic image, bone marrow | Radiology |  | 1.60 | 0.54 | 0.54 |  |  |
| 76400 | TC | Magnetic image, bone marrow | Radiology | a | 0.00 | 11.16 | 11.16 |  |  |
| 76490 | 26 | Us for tissue ablation | Radiology |  | 4.00 | 1.34 | 1.34 |  |  |
| 76490 | TC | Us for tissue ablation | Radiology | a | 0.00 | 1.51 | 1.51 |  |  |
| 76499 | 26 | Radiographic procedure | Radiology |  |  |  |  | 0.36 | Misc |
| 76499 | TC | Radiographic procedure | Radiology | a |  |  |  | 1.24 | Misc |
| 76506 | 26 | Echo exam of head | Radiology |  | 0.63 | 0.25 | 0.25 |  |  |
| 76506 | TC | Echo exam of head | Radiology | a | 0.00 | 1.41 | 1.41 |  |  |
| 76511 | 26 | Echo exam of eye | Radiology |  | 0.94 | 0.41 | 0.41 |  |  |
| 76511 | TC | Echo exam of eye | Radiology | a | 0.00 | 2.18 | 2.18 |  |  |
| 76512 | 26 | Echo exam of eye | Radiology |  | 0.66 | 0.30 | 0.30 |  |  |
| 76512 | TC | Echo exam of eye | Radiology | a | 0.00 | 2.24 | 2.24 |  |  |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 76513 | 26 | Echo exam of eye, water bath | Radiology | | 0.68 | 0.30 | 0.30 | | |
| 76513 | TC | Echo exam of eye, water bath | Radiology | a | 0.00 | 2.50 | 2.50 | | |
| 76516 | 26 | Echo exam of eye | Radiology | | 0.54 | 0.25 | 0.25 | | |
| 76516 | TC | Echo exam of eye | Radiology | a | 0.00 | 1.88 | 1.88 | | |
| 76519 | 26 | Echo exam of eye | Radiology | | 0.54 | 0.25 | 0.25 | | |
| 76519 | TC | Echo exam of eye | Radiology | a | 0.00 | 1.61 | 1.61 | | |
| 76529 | 26 | Echo exam of eye | Radiology | | 0.57 | 0.25 | 0.25 | | |
| 76529 | TC | Echo exam of eye | Radiology | a | 0.00 | 2.17 | 2.17 | | |
| 76536 | 26 | Us exam of head and neck | Radiology | | 0.56 | 0.19 | 0.19 | | |
| 76536 | TC | Us exam of head and neck | Radiology | a | 0.00 | 1.41 | 1.41 | | |
| 76604 | 26 | Us exam, chest, b-scan | Radiology | | 0.55 | 0.19 | 0.19 | | |
| 76604 | TC | Us exam, chest, b-scan | Radiology | a | 0.00 | 1.30 | 1.30 | | |
| 76645 | 26 | Us exam, breast(s) | Radiology | | 0.54 | 0.18 | 0.18 | | |
| 76645 | TC | Us exam, breast(s) | Radiology | a | 0.00 | 1.04 | 1.04 | | |
| 76700 | 26 | Us exam, abdom, complete | Radiology | | 0.81 | 0.28 | 0.28 | | |
| 76700 | TC | Us exam, abdom, complete | Radiology | a | 0.00 | 1.96 | 1.96 | | |
| 76705 | 26 | Echo exam of abdomen | Radiology | | 0.59 | 0.20 | 0.20 | | |
| 76705 | TC | Echo exam of abdomen | Radiology | a | 0.00 | 1.41 | 1.41 | | |
| 76770 | 26 | Us exam abdo back wall, comp | Radiology | | 0.74 | 0.25 | 0.25 | | |
| 76770 | TC | Us exam abdo back wall, comp | Radiology | a | 0.00 | 1.95 | 1.96 | | |
| 76775 | 26 | Us eam abdo back wall, lim | Radiology | | 0.58 | 0.20 | 0.20 | | |
| 76775 | TC | Us eam abdo back wall, lim | Radiology | a | 0.00 | 1.41 | 1.41 | | |
| 76778 | 26 | Us exam kidney transplant | Radiology | | 0.74 | 0.25 | 0.25 | | |
| 76778 | TC | Us exam kidney transplant | Radiology | a | 0.00 | 1.96 | 1.96 | | |
| 76800 | 26 | Us exam, spinal canal | Radiology | | 1.13 | 0.35 | 0.35 | | |
| 76800 | TC | Us exam, spinal canal | Radiology | a | 0.00 | 1.41 | 1.41 | | |
| 76801 | 26 | Ob us < 14 wks, single fetus | Radiology | | 0.99 | 0.36 | 0.36 | | |
| 76801 | TC | Ob us < 14 wks, single fetus | Radiology | a | 0.00 | 1.04 | 1.04 | | |
| 76802 | 26 | Ob us < 14 wks, addl fetus | Radiology | | 0.83 | 0.30 | 0.30 | | |
| 76802 | TC | Ob us < 14 wks, addl fetus | Radiology | a | 0.00 | 0.71 | 0.71 | | |
| 76805 | 26 | Ob us >/= 14 wks, sngl fetus | Radiology | | 0.99 | 0.35 | 0.35 | | |
| 76805 | TC | Ob us >/= 14 wks, sngl fetus | Radiology | a | 0.00 | 2.09 | 2.09 | | |
| 76810 | 26 | Ob us >/= 14 wks, addl fetus | Radiology | | 0.98 | 0.36 | 0.36 | | |
| 76810 | TC | Ob us >/= 14 wks, addl fetus | Radiology | a | 0.00 | 1.04 | 1.04 | | |
| 76811 | 26 | Ob us, detailed, sngl fetus | Radiology | | 1.90 | 0.68 | 0.68 | | |
| 76811 | TC | Ob us, detailed, sngl fetus | Radiology | a | 0.00 | 3.51 | 3.51 | | |
| 76812 | 26 | Ob us, detailed, addl fetus | Radiology | | 1.78 | 0.65 | 0.65 | | |
| 76812 | TC | Ob us, detailed, addl fetus | Radiology | a | 0.00 | 1.04 | 1.04 | | |
| 76815 | 26 | Ob us, limited, fetus(s) | Radiology | | 0.65 | 0.24 | 0.24 | | |
| 76815 | TC | Ob us, limited, fetus(s) | Radiology | a | 0.00 | 1.41 | 1.41 | | |
| 76816 | 26 | Ob us, follow-up, per fetus | Radiology | | 0.85 | 0.33 | 0.33 | | |
| 76816 | TC | Ob us, follow-up, per fetus | Radiology | a | 0.00 | 1.10 | 1.10 | | |
| 76817 | 26 | Transvaginal us, obstetric | Radiology | | 0.75 | 0.28 | 0.28 | | |
| 76817 | TC | Transvaginal us, obstetric | Radiology | a | 0.00 | 1.51 | 1.51 | | |
| 76818 | 26 | Fetal biophys profile w/nst | Radiology | | 1.05 | 0.40 | 0.40 | | |
| 76818 | TC | Fetal biophys profile w/nst | Radiology | a | 0.00 | 1.61 | 1.61 | | |

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### TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 76819 | 26 | Fetal biophys profil w/o nst | Radiology | | 0.77 | 0.29 | 0.29 | | |
| 76819 | TC | Fetal biophys profil w/o nst | Radiology | a | 0.00 | 1.61 | 1.61 | | |
| 76825 | 26 | Echo exam of fetal heart | Radiology | | 1.67 | 0.62 | 0.62 | | |
| 76825 | TC | Echo exam of fetal heart | Radiology | a | 0.00 | 1.96 | 1.96 | | |
| 76826 | 26 | Echo exam of fetal heart | Radiology | | 0.83 | 0.30 | 0.30 | | |
| 76826 | TC | Echo exam of fetal heart | Radiology | a | 0.00 | 0.71 | 0.71 | | |
| 76827 | 26 | Echo exam of fetal heart | Radiology | | 0.58 | 0.22 | 0.22 | | |
| 76827 | TC | Echo exam of fetal heart | Radiology | a | 0.00 | 1.71 | 1.71 | | |
| 76828 | 26 | Echo exam of fetal heart | Radiology | | 0.56 | 0.22 | 0.22 | | |
| 76828 | TC | Echo exam of fetal heart | Radiology | a | 0.00 | 1.10 | 1.10 | | |
| 76830 | 26 | Transvaginal us, non-ob | Radiology | | 0.69 | 0.24 | 0.24 | | |
| 76830 | TC | Transvaginal us, non-ob | Radiology | a | 0.00 | 1.51 | 1.51 | | |
| 76831 | 26 | Echo exam, uterus | Radiology | | 0.72 | 0.26 | 0.26 | | |
| 76831 | TC | Echo exam, uterus | Radiology | a | 0.00 | 1.51 | 1.51 | | |
| 76856 | 26 | Us exam, pelvic, complete | Radiology | | 0.69 | 0.24 | 0.24 | | |
| 76856 | TC | Us exam, pelvic, complete | Radiology | a | 0.00 | 1.51 | 1.51 | | |
| 76857 | 26 | Us exam, pelvic, limited | Radiology | | 0.38 | 0.13 | 0.13 | | |
| 76857 | TC | Us exam, pelvic, limited | Radiology | a | 0.00 | 1.96 | 1.96 | | |
| 76870 | 26 | Us exam, scrotum | Radiology | | 0.64 | 0.22 | 0.22 | | |
| 76870 | TC | Us exam, scrotum | Radiology | a | 0.00 | 1.51 | 1.51 | | |
| 76872 | 26 | Echo exam, transrectal | Radiology | | 0.69 | 0.23 | 0.23 | | |
| 76872 | TC | Echo exam, transrectal | Radiology | a | 0.00 | 1.58 | 1.58 | | |
| 76873 | 26 | Echograp trans r, pros study | Radiology | | 1.55 | 0.52 | 0.52 | | |
| 76873 | TC | Echograp trans r, pros study | Radiology | a | 0.00 | 2.09 | 2.09 | | |
| 76880 | 26 | Us exam, extremity | Radiology | | 0.59 | 0.20 | 0.20 | | |
| 76880 | TC | Us exam, extremity | Radiology | a | 0.00 | 1.41 | 1.41 | | |
| 76885 | 26 | Us exam infant hips, dynamic | Radiology | | 0.74 | 0.25 | 0.25 | | |
| 76885 | TC | Us exam infant hips, dynamic | Radiology | a | 0.00 | 1.51 | 1.51 | | |
| 76886 | 26 | Us exam infant hips, static | Radiology | | 0.62 | 0.21 | 0.21 | | |
| 76886 | TC | Us exam infant hips, static | Radiology | a | 0.00 | 1.41 | 1.41 | | |
| 76930 | 26 | Echo guide, cardiocentesis | Radiology | | 0.67 | 0.26 | 0.26 | | |
| 76930 | TC | Echo guide, cardiocentesis | Radiology | a | 0.00 | 1.51 | 1.51 | | |
| 76932 | 26 | Echo guide for heart biopsy | Radiology | | 0.67 | 0.26 | 0.26 | | |
| 76932 | TC | Echo guide for heart biopsy | Radiology | a | 0.00 | 1.51 | 1.51 | | |
| 76936 | 26 | Echo guide for artery repair | Radiology | | 1.99 | 0.68 | 0.68 | | |
| 76936 | TC | Echo guide for artery repair | Radiology | a | 0.00 | 6.27 | 6.27 | | |
| 76941 | 26 | Echo guide for transfusion | Radiology | | 1.34 | 0.49 | 0.49 | | |
| 76941 | TC | Echo guide for transfusion | Radiology | a | 0.00 | 1.52 | 1.52 | | |
| 76942 | 26 | Echo guide for biopsy | Radiology | | 0.67 | 0.23 | 0.23 | | |
| 76942 | TC | Echo guide for biopsy | Radiology | a | 0.00 | 2.95 | 2.95 | | |
| 76945 | 26 | Echo guide, villus sampling | Radiology | | 0.67 | 0.23 | 0.23 | | |
| 76945 | TC | Echo guide, villus sampling | Radiology | a | 0.00 | 1.52 | 1.52 | | |
| 76946 | 26 | Echo guide for amniocentesis | Radiology | | 0.38 | 0.14 | 0.14 | | |
| 76946 | TC | Echo guide for amniocentesis | Radiology | a | 0.00 | 1.51 | 1.51 | | |
| 76948 | 26 | Echo guide, ova aspiration | Radiology | | 0.38 | 0.13 | 0.13 | | |
| 76948 | TC | Echo guide, ova aspiration | Radiology | a | 0.00 | 1.51 | 1.51 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 76950 | 26 | Echo guidance radiotherapy | Radiology | | 0.58 | 0.20 | 0.20 | | |
| 76950 | TC | Echo guidance radiotherapy | Radiology | a | 0.00 | 1.30 | 1.30 | | |
| 76965 | 26 | Echo guidance radiotherapy | Radiology | | 1.34 | 0.45 | 0.45 | | |
| 76965 | TC | Echo guidance radiotherapy | Radiology | a | 0.00 | 5.54 | 5.54 | | |
| 76970 | 26 | Ultrasound exam follow-up | Radiology | | 0.40 | 0.14 | 0.14 | | |
| 76970 | TC | Ultrasound exam follow-up | Radiology | a | 0.00 | 1.04 | 1.04 | | |
| 76975 | 26 | GI endoscopic ultrasound | Radiology | | 0.81 | 0.29 | 0.29 | | |
| 76975 | TC | GI endoscopic ultrasound | Radiology | a | 0.00 | 1.51 | 1.51 | | |
| 76977 | 26 | Us bone density measure | Radiology | | 0.05 | 0.02 | 0.02 | | |
| 76977 | TC | Us bone density measure | Radiology | a | 0.00 | 0.82 | 0.82 | | |
| 76986 | 26 | Ultrasound guide intraoper | Radiology | | 1.20 | 0.41 | 0.41 | | |
| 76986 | TC | Ultrasound guide intraoper | Radiology | a | 0.00 | 2.61 | 2.61 | | |
| 76999 | 26 | Echo examination procedure | Radiology | | | | | 1.13 | Misc |
| 76999 | TC | Echo examination procedure | Radiology | a | | | | 3.22 | Misc |
| 77261 | | Radiation therapy planning | Radiology | | 1.39 | 0.54 | 0.54 | | |
| 77262 | | Radiation therapy planning | Radiology | | 2.11 | 0.80 | 0.80 | | |
| 77263 | | Radiation therapy planning | Radiology | | 3.14 | 1.17 | 1.17 | | |
| 77280 | 26 | Set radiation therapy field | Radiology | | 0.70 | 0.24 | 0.24 | | |
| 77280 | TC | Set radiation therapy field | Radiology | a | 0.00 | 3.45 | 3.45 | | |
| 77285 | 26 | Set radiation therapy field | Radiology | | 1.05 | 0.36 | 0.36 | | |
| 77285 | TC | Set radiation therapy field | Radiology | a | 0.00 | 5.54 | 5.54 | | |
| 77290 | 26 | Set radiation therapy field | Radiology | | 1.56 | 0.53 | 0.53 | | |
| 77290 | TC | Set radiation therapy field | Radiology | a | 0.00 | 6.48 | 6.48 | | |
| 77295 | 26 | Set radiation therapy field | Radiology | | 4.57 | 1.54 | 1.54 | | |
| 77295 | TC | Set radiation therapy field | Radiology | a | 0.00 | 27.81 | 27.81 | | |
| 77299 | 26 | Radiation therapy planning | Radiology | | | | | 2.62 | Misc |
| 77299 | TC | Radiation therapy planning | Radiology | | | | | 12.96 | Misc |
| 77300 | 26 | Radiation therapy dose plan | Radiology | | 0.62 | 0.21 | 0.21 | | |
| 77300 | TC | Radiation therapy dose plan | Radiology | a | 0.00 | 1.33 | 1.33 | | |
| 77301 | 26 | Radiotherapy dose plan, imrt | Radiology | | 8.00 | 3.11 | 3.11 | | |
| 77301 | TC | Radiotherapy dose plan, imrt | Radiology | a | 0.00 | 27.81 | 27.81 | | |
| 77305 | 26 | Teletx isodose plan simple | Radiology | | 0.70 | 0.24 | 0.24 | | |
| 77305 | TC | Teletx isodose plan simple | Radiology | a | 0.00 | 1.85 | 1.85 | | |
| 77310 | 26 | Teletx isodose plan intermed | Radiology | | 1.05 | 0.36 | 0.36 | | |
| 77310 | TC | Teletx isodose plan intermed | Radiology | a | 0.00 | 2.32 | 2.32 | | |
| 77315 | 26 | Teletx isodose plan complex | Radiology | | 1.56 | 0.53 | 0.53 | | |
| 77315 | TC | Teletx isodose plan complex | Radiology | a | 0.00 | 2.65 | 2.65 | | |
| 77321 | 26 | Special teletx port plan | Radiology | | 0.95 | 0.32 | 0.32 | | |
| 77321 | TC | Special teletx port plan | Radiology | a | 0.00 | 4.02 | 4.02 | | |
| 77326 | 26 | Brachytx isodose calc simp | Radiology | | 0.93 | 0.31 | 0.31 | | |
| 77326 | TC | Brachytx isodose calc simp | Radiology | a | 0.00 | 2.35 | 2.35 | | |
| 77327 | 26 | Brachytx isodose calc interm | Radiology | | 1.39 | 0.47 | 0.47 | | |
| 77327 | TC | Brachytx isodose calc interm | Radiology | a | 0.00 | 3.45 | 3.45 | | |
| 77328 | 26 | Brachytx isodose plan compl | Radiology | | 2.09 | 0.71 | 0.71 | | |
| 77328 | TC | Brachytx isodose plan compl | Radiology | a | 0.00 | 4.94 | 4.94 | | |
| 77331 | 26 | Special radiation dosimetry | Radiology | | 0.87 | 0.30 | 0.30 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 77331 | TC | Special radiation dosimetry | Radiology | a | 0.00 | 0.50 | 0.50 | | |
| 77332 | 26 | Radiation treatment aid(s) | Radiology | | 0.54 | 0.18 | 0.18 | | |
| 77332 | TC | Radiation treatment aid(s) | Radiology | a | 0.00 | 1.33 | 1.33 | | |
| 77333 | 26 | Radiation treatment aid(s) | Radiology | | 0.84 | 0.29 | 0.29 | | |
| 77333 | TC | Radiation treatment aid(s) | Radiology | a | 0.00 | 1.89 | 1.89 | | |
| 77334 | 26 | Radiation treatment aid(s) | Radiology | | 1.24 | 0.42 | 0.42 | | |
| 77334 | TC | Radiation treatment aid(s) | Radiology | a | 0.00 | 3.23 | 3.23 | | |
| 77336 | | Radiation physics consult | Radiology | | 0.00 | 2.97 | 2.97 | | |
| 77370 | | Radiation physics consult | Radiology | | 0.00 | 3.47 | 3.47 | | |
| 77399 | 26 | External radiation dosimetry | Radiology | | | | | 1.47 | Misc |
| 77399 | TC | External radiation dosimetry | Radiology | a | | | | 3.70 | Misc |
| 77401 | | Radiation treatment delivery | Radiology | | 0.00 | 1.76 | 1.76 | | |
| 77402 | | Radiation treatment delivery | Radiology | | 0.00 | 1.76 | 1.76 | | |
| 77403 | | Radiation treatment delivery | Radiology | | 0.00 | 1.76 | 1.76 | | |
| 77404 | | Radiation treatment delivery | Radiology | | 0.00 | 1.76 | 1.76 | | |
| 77406 | | Radiation treatment delivery | Radiology | | 0.00 | 1.76 | 1.76 | | |
| 77407 | | Radiation treatment delivery | Radiology | | 0.00 | 2.08 | 2.08 | | |
| 77408 | | Radiation treatment delivery | Radiology | | 0.00 | 2.08 | 2.08 | | |
| 77409 | | Radiation treatment delivery | Radiology | | 0.00 | 2.08 | 2.08 | | |
| 77411 | | Radiation treatment delivery | Radiology | | 0.00 | 2.08 | 2.08 | | |
| 77412 | | Radiation treatment delivery | Radiology | | 0.00 | 2.32 | 2.32 | | |
| 77413 | | Radiation treatment delivery | Radiology | | 0.00 | 2.32 | 2.32 | | |
| 77414 | | Radiation treatment delivery | Radiology | | 0.00 | 2.32 | 2.32 | | |
| 77416 | | Radiation treatment delivery | Radiology | | 0.00 | 2.32 | 2.32 | | |
| 77417 | | Radiology port film(s) | Radiology | | 0.00 | 0.59 | 0.59 | | |
| 77418 | | Radiation tx delivery, imrt | Radiology | | 0.00 | 17.97 | 17.97 | | |
| 77427 | | Radiation tx management, x5 | Radiology | | 3.31 | 1.12 | 1.12 | | |
| 77431 | | Radiation therapy management | Radiology | | 1.81 | 0.71 | 0.71 | | |
| 77432 | | Stereotactic radiation trmt | Radiology | | 7.93 | 3.06 | 3.06 | | |
| 77470 | 26 | Special radiation treatment | Radiology | | 2.09 | 0.71 | 0.71 | | |
| 77470 | TC | Special radiation treatment | Radiology | a | 0.00 | 11.10 | 11.10 | | |
| 77499 | 26 | Radiation therapy management | Radiology | | | | | 3.51 | Misc |
| 77499 | TC | Radiation therapy management | Radiology | | | | | 22.20 | Misc |
| 77523 | | Proton trmt, intermediate | Radiology | | | | | 19.70 | PHCS |
| 77600 | 26 | Hyperthermia treatment | Radiology | | 1.56 | 0.53 | 0.53 | | |
| 77600 | TC | Hyperthermia treatment | Radiology | a | 0.00 | 3.04 | 3.04 | | |
| 77605 | 26 | Hyperthermia treatment | Radiology | | 2.09 | 0.71 | 0.71 | | |
| 77605 | TC | Hyperthermia treatment | Radiology | a | 0.00 | 4.04 | 4.04 | | |
| 77610 | 26 | Hyperthermia treatment | Radiology | | 1.56 | 0.53 | 0.53 | | |
| 77610 | TC | Hyperthermia treatment | Radiology | a | 0.00 | 3.04 | 3.04 | | |
| 77615 | 26 | Hyperthermia treatment | Radiology | | 2.09 | 0.71 | 0.71 | | |
| 77615 | TC | Hyperthermia treatment | Radiology | a | 0.00 | 4.04 | 4.04 | | |
| 77620 | 26 | Hyperthermia treatment | Radiology | | 1.56 | 0.54 | 0.54 | | |
| 77620 | TC | Hyperthermia treatment | Radiology | a | 0.00 | 3.04 | 3.04 | | |
| 77750 | 26 | Infuse radioactive materials | Radiology | | 4.91 | 1.67 | 1.67 | | |
| 77750 | TC | Infuse radioactive materials | Radiology | a | 0.00 | 1.33 | 1.33 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 77761 | 26 | Apply intrcav radiat simple | Radiology | | 3.81 | 1.14 | 1.14 | | |
| 77761 | TC | Apply intrcav radiat simple | Radiology | a | 0.00 | 2.50 | 2.50 | | |
| 77762 | 26 | Apply intrcav radiat interm | Radiology | | 5.72 | 1.92 | 1.92 | | |
| 77762 | TC | Apply intrcav radiat interm | Radiology | a | 0.00 | 3.59 | 3.59 | | |
| 77763 | 26 | Apply intrcav radiat compl | Radiology | | 8.57 | 2.88 | 2.88 | | |
| 77763 | TC | Apply intrcav radiat compl | Radiology | a | 0.00 | 4.47 | 4.47 | | |
| 77776 | 26 | Apply interstit radiat simpl | Radiology | | 4.66 | 0.98 | 0.98 | | |
| 77776 | TC | Apply interstit radiat simpl | Radiology | a | 0.00 | 2.17 | 2.17 | | |
| 77777 | 26 | Apply interstit radiat inter | Radiology | | 7.48 | 2.48 | 2.48 | | |
| 77777 | TC | Apply interstit radiat inter | Radiology | a | 0.00 | 4.22 | 4.22 | | |
| 77778 | 26 | Apply interstit radiat compl | Radiology | | 11.19 | 3.77 | 3.77 | | |
| 77778 | TC | Apply interstit radiat compl | Radiology | a | 0.00 | 5.11 | 5.11 | | |
| 77781 | 26 | High intensity brachytherapy | Radiology | | 1.66 | 0.57 | 0.57 | | |
| 77781 | TC | High intensity brachytherapy | Radiology | a | 0.00 | 20.22 | 20.22 | | |
| 77782 | 26 | High intensity brachytherapy | Radiology | | 2.49 | 0.85 | 0.85 | | |
| 77782 | TC | High intensity brachytherapy | Radiology | a | 0.00 | 20.22 | 20.22 | | |
| 77783 | 26 | High intensity brachytherapy | Radiology | | 3.73 | 1.26 | 1.26 | | |
| 77783 | TC | High intensity brachytherapy | Radiology | a | 0.00 | 20.22 | 20.22 | | |
| 77784 | 26 | High intensity brachytherapy | Radiology | | 5.61 | 1.89 | 1.89 | | |
| 77784 | TC | High intensity brachytherapy | Radiology | a | 0.00 | 20.22 | 20.22 | | |
| 77789 | 26 | Apply surface radiation | Radiology | | 1.12 | 0.39 | 0.39 | | |
| 77789 | TC | Apply surface radiation | Radiology | a | 0.00 | 0.45 | 0.45 | | |
| 77790 | 26 | Radiation handling | Radiology | | 1.05 | 0.36 | 0.36 | | |
| 77790 | TC | Radiation handling | Radiology | a | 0.00 | 0.50 | 0.50 | | |
| 77799 | 26 | Radium/radioisotope therapy | Radiology | | | | | 8.25 | Misc |
| 77799 | TC | Radium/radioisotope therapy | Radiology | a | | | | 10.22 | Misc |
| 78000 | 26 | Thyroid, single uptake | Radiology | | 0.19 | 0.07 | 0.07 | | |
| 78000 | TC | Thyroid, single uptake | Radiology | a | 0.00 | 0.97 | 0.97 | | |
| 78001 | 26 | Thyroid, multiple uptakes | Radiology | | 0.26 | 0.09 | 0.09 | | |
| 78001 | TC | Thyroid, multiple uptakes | Radiology | a | 0.00 | 1.30 | 1.30 | | |
| 78003 | 26 | Thyroid suppress/stimul | Radiology | | 0.33 | 0.11 | 0.11 | | |
| 78003 | TC | Thyroid suppress/stimul | Radiology | a | 0.00 | 0.97 | 0.97 | | |
| 78006 | 26 | Thyroid imaging with uptake | Radiology | | 0.49 | 0.17 | 0.17 | | |
| 78006 | TC | Thyroid imaging with uptake | Radiology | a | 0.00 | 2.37 | 2.37 | | |
| 78007 | 26 | Thyroid image, mult uptakes | Radiology | | 0.50 | 0.17 | 0.17 | | |
| 78007 | TC | Thyroid image, mult uptakes | Radiology | a | 0.00 | 2.56 | 2.56 | | |
| 78010 | 26 | Thyroid imaging | Radiology | | 0.39 | 0.14 | 0.14 | | |
| 78010 | TC | Thyroid imaging | Radiology | a | 0.00 | 1.81 | 1.81 | | |
| 78011 | 26 | Thyroid imaging with flow | Radiology | | 0.45 | 0.16 | 0.16 | | |
| 78011 | TC | Thyroid imaging with flow | Radiology | a | 0.00 | 2.40 | 2.40 | | |
| 78015 | 26 | Thyroid met imaging | Radiology | | 0.67 | 0.23 | 0.23 | | |
| 78015 | TC | Thyroid met imaging | Radiology | a | 0.00 | 2.56 | 2.56 | | |
| 78016 | 26 | Thyroid met imaging/studies | Radiology | | 0.82 | 0.30 | 0.30 | | |
| 78016 | TC | Thyroid met imaging/studies | Radiology | a | 0.00 | 3.46 | 3.46 | | |
| 78018 | 26 | Thyroid met imaging, body | Radiology | | 0.86 | 0.31 | 0.31 | | |
| 78018 | TC | Thyroid met imaging, body | Radiology | a | 0.00 | 5.40 | 5.40 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 78020 | 26 | Thyroid met uptake | Radiology | | 0.60 | 0.22 | 0.22 | | |
| 78020 | TC | Thyroid met uptake | Radiology | a | 0.00 | 1.30 | 1.30 | | |
| 78070 | 26 | Parathyroid nuclear imaging | Radiology | | 0.82 | 0.29 | 0.29 | | |
| 78070 | TC | Parathyroid nuclear imaging | Radiology | a | 0.00 | 1.81 | 1.81 | | |
| 78075 | 26 | Adrenal nuclear imaging | Radiology | | 0.74 | 0.27 | 0.27 | | |
| 78075 | TC | Adrenal nuclear imaging | Radiology | a | 0.00 | 5.40 | 5.40 | | |
| 78099 | 26 | Endocrine nuclear procedure | Radiology | | | | | 0.83 | Misc |
| 78099 | TC | Endocrine nuclear procedure | Radiology | a | | | | 4.74 | Misc |
| 78102 | 26 | Bone marrow imaging, ltd | Radiology | | 0.55 | 0.20 | 0.20 | | |
| 78102 | TC | Bone marrow imaging, ltd | Radiology | a | 0.00 | 2.03 | 2.03 | | |
| 78103 | 26 | Bone marrow imaging, mult | Radiology | | 0.75 | 0.27 | 0.27 | | |
| 78103 | TC | Bone marrow imaging, mult | Radiology | a | 0.00 | 3.15 | 3.15 | | |
| 78104 | 26 | Bone marrow imaging, body | Radiology | | 0.80 | 0.28 | 0.28 | | |
| 78104 | TC | Bone marrow imaging, body | Radiology | a | 0.00 | 4.05 | 4.05 | | |
| 78110 | 26 | Plasma volume, single | Radiology | | 0.19 | 0.07 | 0.07 | | |
| 78110 | TC | Plasma volume, single | Radiology | a | 0.00 | 0.95 | 0.95 | | |
| 78111 | 26 | Plasma volume, multiple | Radiology | | 0.22 | 0.08 | 0.08 | | |
| 78111 | TC | Plasma volume, multiple | Radiology | a | 0.00 | 2.56 | 2.56 | | |
| 78120 | 26 | Red cell mass, single | Radiology | | 0.23 | 0.08 | 0.08 | | |
| 78120 | TC | Red cell mass, single | Radiology | a | 0.00 | 1.72 | 1.72 | | |
| 78121 | 26 | Red cell mass, multiple | Radiology | | 0.32 | 0.12 | 0.12 | | |
| 78121 | TC | Red cell mass, multiple | Radiology | a | 0.00 | 2.90 | 2.90 | | |
| 78122 | 26 | Blood volume | Radiology | | 0.45 | 0.16 | 0.16 | | |
| 78122 | TC | Blood volume | Radiology | a | 0.00 | 4.58 | 4.58 | | |
| 78130 | 26 | Red cell survival study | Radiology | | 0.61 | 0.22 | 0.22 | | |
| 78130 | TC | Red cell survival study | Radiology | a | 0.00 | 2.84 | 2.84 | | |
| 78135 | 26 | Red cell survival kinetics | Radiology | | 0.64 | 0.23 | 0.23 | | |
| 78135 | TC | Red cell survival kinetics | Radiology | a | 0.00 | 4.86 | 4.86 | | |
| 78140 | 26 | Red cell sequestration | Radiology | | 0.61 | 0.21 | 0.21 | | |
| 78140 | TC | Red cell sequestration | Radiology | a | 0.00 | 3.92 | 3.92 | | |
| 78160 | 26 | Plasma iron turnover | Radiology | | 0.33 | 0.12 | 0.12 | | |
| 78160 | TC | Plasma iron turnover | Radiology | a | 0.00 | 3.65 | 3.65 | | |
| 78162 | 26 | Radioiron absorption exam | Radiology | | 0.45 | 0.19 | 0.19 | | |
| 78162 | TC | Radioiron absorption exam | Radiology | a | 0.00 | 3.18 | 3.18 | | |
| 78170 | 26 | Red cell iron utilization | Radiology | | 0.41 | 0.14 | 0.14 | | |
| 78170 | TC | Red cell iron utilization | Radiology | a | 0.00 | 5.28 | 5.28 | | |
| 78172 | 26 | Total body iron estimation | Radiology | | 0.53 | 0.18 | 0.18 | | |
| 78172 | TC | Total body iron estimation | Radiology | a | | | | 1.12 | MDR |
| 78185 | 26 | Spleen imaging | Radiology | | 0.40 | 0.14 | 0.14 | | |
| 78185 | TC | Spleen imaging | Radiology | a | 0.00 | 2.35 | 2.35 | | |
| 78190 | 26 | Platelet survival, kinetics | Radiology | | 1.09 | 0.40 | 0.40 | | |
| 78190 | TC | Platelet survival, kinetics | Radiology | a | 0.00 | 5.69 | 5.69 | | |
| 78191 | 26 | Platelet survival | Radiology | | 0.61 | 0.21 | 0.21 | | |
| 78191 | TC | Platelet survival | Radiology | a | 0.00 | 7.30 | 7.30 | | |
| 78195 | 26 | Lymph system imaging | Radiology | | 1.20 | 0.43 | 0.43 | | |
| 78195 | TC | Lymph system imaging | Radiology | a | 0.00 | 4.05 | 4.05 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 78199 | 26 | Blood/lymph nuclear exam | Radiology | | | | | 2.06 | Misc |
| 78199 | TC | Blood/lymph nuclear exam | Radiology | a | | | | 8.10 | Misc |
| 78201 | 26 | Liver imaging | Radiology | | 0.44 | 0.15 | 0.15 | | |
| 78201 | TC | Liver imaging | Radiology | a | 0.00 | 2.35 | 2.35 | | |
| 78202 | 26 | Liver imaging with flow | Radiology | | 0.51 | 0.18 | 0.18 | | |
| 78202 | TC | Liver imaging with flow | Radiology | a | 0.00 | 2.87 | 2.87 | | |
| 78205 | 26 | Liver imaging (3D) | Radiology | | 0.71 | 0.25 | 0.25 | | |
| 78205 | TC | Liver imaging (3D) | Radiology | a | 0.00 | 5.88 | 5.88 | | |
| 78206 | 26 | Liver image (3d) with flow | Radiology | | 0.96 | 0.34 | 0.34 | | |
| 78206 | TC | Liver image (3d) with flow | Radiology | a | 0.00 | 5.88 | 5.88 | | |
| 78215 | 26 | Liver and spleen imaging | Radiology | | 0.49 | 0.17 | 0.17 | | |
| 78215 | TC | Liver and spleen imaging | Radiology | a | 0.00 | 2.93 | 2.93 | | |
| 78216 | 26 | Liver & spleen image/flow | Radiology | | 0.57 | 0.20 | 0.20 | | |
| 78216 | TC | Liver & spleen image/flow | Radiology | a | 0.00 | 3.46 | 3.46 | | |
| 78220 | 26 | Liver function study | Radiology | | 0.49 | 0.17 | 0.17 | | |
| 78220 | TC | Liver function study | Radiology | a | 0.00 | 3.70 | 3.70 | | |
| 78223 | 26 | Hepatobiliary imaging | Radiology | | 0.84 | 0.29 | 0.29 | | |
| 78223 | TC | Hepatobiliary imaging | Radiology | a | 0.00 | 3.65 | 3.65 | | |
| 78230 | 26 | Salivary gland imaging | Radiology | | 0.45 | 0.15 | 0.15 | | |
| 78230 | TC | Salivary gland imaging | Radiology | a | 0.00 | 2.17 | 2.17 | | |
| 78231 | 26 | Serial salivary imaging | Radiology | | 0.52 | 0.19 | 0.19 | | |
| 78231 | TC | Serial salivary imaging | Radiology | a | 0.00 | 3.15 | 3.15 | | |
| 78232 | 26 | Salivary gland function exam | Radiology | | 0.47 | 0.17 | 0.17 | | |
| 78232 | TC | Salivary gland function exam | Radiology | a | 0.00 | 3.52 | 3.52 | | |
| 78258 | 26 | Esophageal motility study | Radiology | | 0.74 | 0.26 | 0.26 | | |
| 78258 | TC | Esophageal motility study | Radiology | a | 0.00 | 2.87 | 2.87 | | |
| 78261 | 26 | Gastric mucosa imaging | Radiology | | 0.69 | 0.25 | 0.25 | | |
| 78261 | TC | Gastric mucosa imaging | Radiology | a | 0.00 | 4.08 | 4.08 | | |
| 78262 | 26 | Gastroesophageal reflux exam | Radiology | | 0.68 | 0.24 | 0.24 | | |
| 78262 | TC | Gastroesophageal reflux exam | Radiology | a | 0.00 | 4.24 | 4.24 | | |
| 78264 | 26 | Gastric emptying study | Radiology | | 0.78 | 0.27 | 0.27 | | |
| 78264 | TC | Gastric emptying study | Radiology | a | 0.00 | 4.11 | 4.11 | | |
| 78270 | 26 | Vit B-12 absorption exam | Radiology | | 0.20 | 0.07 | 0.07 | | |
| 78270 | TC | Vit B-12 absorption exam | Radiology | a | 0.00 | 1.54 | 1.54 | | |
| 78271 | 26 | Vit b-12 absrp exam, int fac | Radiology | | 0.20 | 0.07 | 0.07 | | |
| 78271 | TC | Vit b-12 absrp exam, int fac | Radiology | a | 0.00 | 1.63 | 1.63 | | |
| 78272 | 26 | Vit B-12 absorp, combined | Radiology | | 0.27 | 0.10 | 0.10 | | |
| 78272 | TC | Vit B-12 absorp, combined | Radiology | a | 0.00 | 2.31 | 2.31 | | |
| 78278 | 26 | Acute GI blood loss imaging | Radiology | | 0.99 | 0.34 | 0.34 | | |
| 78278 | TC | Acute GI blood loss imaging | Radiology | a | 0.00 | 4.86 | 4.86 | | |
| 78282 | 26 | GI protein loss exam | Radiology | | 0.38 | 0.14 | 0.14 | | |
| 78282 | TC | GI protein loss exam | Radiology | a | | | | 3.32 | MDR |
| 78290 | 26 | Meckel's divert exam | Radiology | | 0.68 | 0.24 | 0.24 | | |
| 78290 | TC | Meckel's divert exam | Radiology | a | 0.00 | 3.04 | 3.04 | | |
| 78291 | 26 | Leveen/shunt patency exam | Radiology | | 0.88 | 0.31 | 0.31 | | |
| 78291 | TC | Leveen/shunt patency exam | Radiology | a | 0.00 | 3.05 | 3.05 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 78299 | 26 | GI nuclear procedure | Radiology | | | | | 1.42 | Misc |
| 78299 | TC | GI nuclear procedure | Radiology | a | | | | 7.30 | Misc |
| 78300 | 26 | Bone imaging, limited area | Radiology | | 0.62 | 0.21 | 0.21 | | |
| 78300 | TC | Bone imaging, limited area | Radiology | a | 0.00 | 2.48 | 2.48 | | |
| 78305 | 26 | Bone imaging, multiple areas | Radiology | | 0.83 | 0.29 | 0.29 | | |
| 78305 | TC | Bone imaging, multiple areas | Radiology | a | 0.00 | 3.65 | 3.65 | | |
| 78306 | 26 | Bone imaging, whole body | Radiology | | 0.86 | 0.30 | 0.30 | | |
| 78306 | TC | Bone imaging, whole body | Radiology | a | 0.00 | 4.26 | 4.26 | | |
| 78315 | 26 | Bone imaging, 3 phase | Radiology | | 1.02 | 0.36 | 0.36 | | |
| 78315 | TC | Bone imaging, 3 phase | Radiology | a | 0.00 | 4.76 | 4.76 | | |
| 78320 | 26 | Bone imaging (3D) | Radiology | | 1.04 | 0.37 | 0.37 | | |
| 78320 | TC | Bone imaging (3D) | Radiology | a | 0.00 | 5.88 | 5.88 | | |
| 78350 | 26 | Bone mineral, single photon | Radiology | | 0.22 | 0.08 | 0.08 | | |
| 78350 | TC | Bone mineral, single photon | Radiology | a | 0.00 | 0.75 | 0.75 | | |
| 78351 | 26 | Bone mineral, dual photon | Radiology | | | | | 0.63 | SAF |
| 78351 | TC | Bone mineral, dual photon | Radiology | a | | | | 1.41 | |
| 78399 | 26 | Musculoskeletal nuclear exam | Radiology | | | | | 1.46 | Misc |
| 78399 | TC | Musculoskeletal nuclear exam | Radiology | a | | | | 8.52 | Misc |
| 78414 | 26 | Non-imaging heart function | Radiology | | 0.45 | 0.16 | 0.16 | | |
| 78414 | TC | Non-imaging heart function | Radiology | a | | | | 1.42 | SA |
| 78428 | 26 | Cardiac shunt imaging | Radiology | | 0.78 | 0.30 | 0.30 | | |
| 78428 | TC | Cardiac shunt imaging | Radiology | a | 0.00 | 2.24 | 2.24 | | |
| 78445 | 26 | Vascular flow imaging | Radiology | | 0.49 | 0.18 | 0.18 | | |
| 78445 | TC | Vascular flow imaging | Radiology | a | 0.00 | 1.85 | 1.85 | | |
| 78455 | 26 | Venous thrombosis study | Radiology | | 0.73 | 0.26 | 0.26 | | |
| 78455 | TC | Venous thrombosis study | Radiology | a | 0.00 | 3.97 | 3.97 | | |
| 78456 | 26 | Acute venous thrombus image | Radiology | | 1.00 | 0.36 | 0.36 | | |
| 78456 | TC | Acute venous thrombus image | Radiology | a | 0.00 | 3.97 | 3.97 | | |
| 78457 | 26 | Venous thrombosis imaging | Radiology | | 0.77 | 0.27 | 0.27 | | |
| 78457 | TC | Venous thrombosis imaging | Radiology | a | 0.00 | 2.65 | 2.65 | | |
| 78458 | 26 | Ven thrombosis images, bilat | Radiology | | 0.90 | 0.33 | 0.33 | | |
| 78458 | TC | Ven thrombosis images, bilat | Radiology | a | 0.00 | 4.00 | 4.00 | | |
| 78459 | 26 | Heart muscle imaging (PET) | Radiology | | 1.50 | 0.59 | 0.59 | | |
| 78459 | TC | Heart muscle imaging (PET) | Radiology | a | | | | 18.81 | PHCS |
| 78460 | 26 | Heart muscle blood, single | Radiology | | 0.86 | 0.30 | 0.30 | | |
| 78460 | TC | Heart muscle blood, single | Radiology | a | 0.00 | 2.35 | 2.35 | | |
| 78461 | 26 | Heart muscle blood, multiple | Radiology | | 1.23 | 0.45 | 0.45 | | |
| 78461 | TC | Heart muscle blood, multiple | Radiology | a | 0.00 | 4.70 | 4.70 | | |
| 78464 | 26 | Heart image (3d), single | Radiology | | 1.09 | 0.39 | 0.39 | | |
| 78464 | TC | Heart image (3d), single | Radiology | a | 0.00 | 7.04 | 7.04 | | |
| 78465 | 26 | Heart image (3d), multiple | Radiology | | 1.46 | 0.54 | 0.54 | | |
| 78465 | TC | Heart image (3d), multiple | Radiology | a | 0.00 | 11.74 | 11.74 | | |
| 78466 | 26 | Heart infarct image | Radiology | | 0.69 | 0.25 | 0.25 | | |
| 78466 | TC | Heart infarct image | Radiology | a | 0.00 | 2.61 | 2.61 | | |
| 78468 | 26 | Heart infarct image (ef) | Radiology | | 0.80 | 0.28 | 0.28 | | |
| 78468 | TC | Heart infarct image (ef) | Radiology | a | 0.00 | 3.65 | 3.65 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 78469 | 26 | Heart infarct image (3D) | Radiology | | 0.92 | 0.32 | 0.32 | | |
| 78469 | TC | Heart infarct image (3D) | Radiology | a | 0.00 | 5.19 | 5.19 | | |
| 78472 | 26 | Gated heart, planar, single | Radiology | | 0.98 | 0.35 | 0.35 | | |
| 78472 | TC | Gated heart, planar, single | Radiology | a | 0.00 | 5.48 | 5.48 | | |
| 78473 | 26 | Gated heart, multiple | Radiology | | 1.47 | 0.53 | 0.53 | | |
| 78473 | TC | Gated heart, multiple | Radiology | a | 0.00 | 8.22 | 8.22 | | |
| 78478 | 26 | Heart wall motion add-on | Radiology | | 0.62 | 0.23 | 0.23 | | |
| 78478 | TC | Heart wall motion add-on | Radiology | a | 0.00 | 1.55 | 1.55 | | |
| 78480 | 26 | Heart function add-on | Radiology | | 0.62 | 0.23 | 0.23 | | |
| 78480 | TC | Heart function add-on | Radiology | a | 0.00 | 1.55 | 1.55 | | |
| 78481 | 26 | Heart first pass, single | Radiology | | 0.98 | 0.37 | 0.37 | | |
| 78481 | TC | Heart first pass, single | Radiology | a | 0.00 | 5.19 | 5.19 | | |
| 78483 | 26 | Heart first pass, multiple | Radiology | | 1.47 | 0.56 | 0.56 | | |
| 78483 | TC | Heart first pass, multiple | Radiology | a | 0.00 | 7.83 | 7.83 | | |
| 78491 | 26 | Heart image (pet), single | Radiology | | 1.50 | 0.60 | 0.60 | | |
| 78491 | TC | Heart image (pet), single | Radiology | a | | | | 4.90 | SA |
| 78492 | 26 | Heart image (pet), multiple | Radiology | | 1.87 | 0.75 | 0.75 | | |
| 78492 | TC | Heart image (pet), multiple | Radiology | a | | | | 14.89 | PHCS |
| 78494 | 26 | Heart image, spect | Radiology | | 1.19 | 0.43 | 0.43 | | |
| 78494 | TC | Heart image, spect | Radiology | a | 0.00 | 7.04 | 7.04 | | |
| 78496 | 26 | Heart first pass add-on | Radiology | | 0.50 | 0.19 | 0.19 | | |
| 78496 | TC | Heart first pass add-on | Radiology | a | 0.00 | 7.04 | 7.04 | | |
| 78499 | 26 | Cardiovascular nuclear exam | Radiology | | | | | 1.46 | Misc |
| 78499 | TC | Cardiovascular nuclear exam | Radiology | a | | | | 3.10 | Misc |
| 78580 | 26 | Lung perfusion imaging | Radiology | | 0.74 | 0.26 | 0.26 | | |
| 78580 | TC | Lung perfusion imaging | Radiology | a | 0.00 | 3.41 | 3.41 | | |
| 78584 | 26 | Lung V/Q image single breath | Radiology | | 0.99 | 0.34 | 0.34 | | |
| 78584 | TC | Lung V/Q image single breath | Radiology | a | 0.00 | 3.18 | 3.18 | | |
| 78585 | 26 | Lung V/Q imaging | Radiology | | 1.09 | 0.38 | 0.38 | | |
| 78585 | TC | Lung V/Q imaging | Radiology | a | 0.00 | 5.61 | 5.61 | | |
| 78586 | 26 | Aerosol lung image, single | Radiology | | 0.40 | 0.14 | 0.14 | | |
| 78586 | TC | Aerosol lung image, single | Radiology | a | 0.00 | 2.58 | 2.58 | | |
| 78587 | 26 | Aerosol lung image, multiple | Radiology | | 0.49 | 0.17 | 0.17 | | |
| 78587 | TC | Aerosol lung image, multiple | Radiology | a | 0.00 | 2.80 | 2.80 | | |
| 78588 | 26 | Perfusion lung image | Radiology | | 1.09 | 0.38 | 0.38 | | |
| 78588 | TC | Perfusion lung image | Radiology | a | 0.00 | 3.18 | 3.18 | | |
| 78591 | 26 | Vent image, 1 breath, 1 proj | Radiology | | 0.40 | 0.14 | 0.14 | | |
| 78591 | TC | Vent image, 1 breath, 1 proj | Radiology | a | 0.00 | 2.84 | 2.84 | | |
| 78593 | 26 | Vent image, 1 proj, gas | Radiology | | 0.49 | 0.17 | 0.17 | | |
| 78593 | TC | Vent image, 1 proj, gas | Radiology | a | 0.00 | 3.43 | 3.43 | | |
| 78594 | 26 | Vent image, mult proj, gas | Radiology | | 0.53 | 0.19 | 0.19 | | |
| 78594 | TC | Vent image, mult proj, gas | Radiology | a | 0.00 | 4.96 | 4.96 | | |
| 78596 | 26 | Lung differential function | Radiology | | 1.27 | 0.44 | 0.44 | | |
| 78596 | TC | Lung differential function | Radiology | a | 0.00 | 7.04 | 7.04 | | |
| 78599 | 26 | Respiratory nuclear exam | Radiology | | | | | 1.67 | Misc |
| 78599 | TC | Respiratory nuclear exam | Radiology | a | | | | 6.82 | Misc |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology

TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 78600 | 26 | Brain imaging, ltd static | Radiology | | 0.44 | 0.16 | 0.16 | | |
| 78600 | TC | Brain imaging, ltd static | Radiology | a | 0.00 | 2.87 | 2.87 | | |
| 78601 | 26 | Brain imaging, ltd w/ flow | Radiology | | 0.51 | 0.18 | 0.18 | | |
| 78601 | TC | Brain imaging, ltd w/ flow | Radiology | a | 0.00 | 3.39 | 3.39 | | |
| 78605 | 26 | Brain imaging, complete | Radiology | | 0.53 | 0.19 | 0.19 | | |
| 78605 | TC | Brain imaging, complete | Radiology | a | 0.00 | 3.39 | 3.39 | | |
| 78606 | 26 | Brain imaging, compl w/flow | Radiology | | 0.64 | 0.22 | 0.22 | | |
| 78606 | TC | Brain imaging, compl w/flow | Radiology | a | 0.00 | 3.85 | 3.85 | | |
| 78607 | 26 | Brain imaging (3D) | Radiology | | 1.23 | 0.45 | 0.45 | | |
| 78607 | TC | Brain imaging (3D) | Radiology | a | 0.00 | 6.53 | 6.53 | | |
| 78608 | | Brain imaging (PET) | Radiology | | | | | 28.40 | PHCS |
| 78609 | | Brain imaging (PET) | Radiology | | | | | 29.38 | PHCS |
| 78610 | 26 | Brain flow imaging only | Radiology | | 0.30 | 0.11 | 0.11 | | |
| 78610 | TC | Brain flow imaging only | Radiology | a | 0.00 | 1.57 | 1.57 | | |
| 78615 | 26 | Cerebral vascular flow image | Radiology | | 0.42 | 0.16 | 0.16 | | |
| 78615 | TC | Cerebral vascular flow image | Radiology | a | 0.00 | 3.83 | 3.83 | | |
| 78630 | 26 | Cerebrospinal fluid scan | Radiology | | 0.68 | 0.24 | 0.24 | | |
| 78630 | TC | Cerebrospinal fluid scan | Radiology | a | 0.00 | 5.02 | 5.02 | | |
| 78635 | 26 | CSF ventriculography | Radiology | | 0.61 | 0.24 | 0.24 | | |
| 78635 | TC | CSF ventriculography | Radiology | a | 0.00 | 2.53 | 2.53 | | |
| 78645 | 26 | CSF shunt evaluation | Radiology | | 0.57 | 0.20 | 0.20 | | |
| 78645 | TC | CSF shunt evaluation | Radiology | a | 0.00 | 3.41 | 3.41 | | |
| 78647 | 26 | Cerebrospinal fluid scan | Radiology | | 0.90 | 0.33 | 0.33 | | |
| 78647 | TC | Cerebrospinal fluid scan | Radiology | a | 0.00 | 5.88 | 5.88 | | |
| 78650 | 26 | CSF leakage imaging | Radiology | | 0.61 | 0.22 | 0.22 | | |
| 78650 | TC | CSF leakage imaging | Radiology | a | 0.00 | 4.62 | 4.62 | | |
| 78660 | 26 | Nuclear exam of tear flow | Radiology | | 0.53 | 0.19 | 0.19 | | |
| 78660 | TC | Nuclear exam of tear flow | Radiology | a | 0.00 | 2.11 | 2.11 | | |
| 78699 | 26 | Nervous system nuclear exam | Radiology | | | | | 1.16 | Misc |
| 78699 | TC | Nervous system nuclear exam | Radiology | a | | | | 13.06 | Misc |
| 78700 | 26 | Kidney imaging, static | Radiology | | 0.45 | 0.16 | 0.16 | | |
| 78700 | TC | Kidney imaging, static | Radiology | a | 0.00 | 3.04 | 3.04 | | |
| 78701 | 26 | Kidney imaging with flow | Radiology | | 0.49 | 0.17 | 0.17 | | |
| 78701 | TC | Kidney imaging with flow | Radiology | a | 0.00 | 3.54 | 3.54 | | |
| 78704 | 26 | Imaging renogram | Radiology | | 0.74 | 0.26 | 0.26 | | |
| 78704 | TC | Imaging renogram | Radiology | a | 0.00 | 3.94 | 3.94 | | |
| 78707 | 26 | Kidney flow/function image | Radiology | | 0.96 | 0.34 | 0.34 | | |
| 78707 | TC | Kidney flow/function image | Radiology | a | 0.00 | 4.45 | 4.45 | | |
| 78708 | 26 | Kidney flow/function image | Radiology | | 1.21 | 0.43 | 0.43 | | |
| 78708 | TC | Kidney flow/function image | Radiology | a | 0.00 | 4.45 | 4.45 | | |
| 78709 | 26 | Kidney flow/function image | Radiology | | 1.41 | 0.49 | 0.49 | | |
| 78709 | TC | Kidney flow/function image | Radiology | a | 0.00 | 4.45 | 4.45 | | |
| 78710 | 26 | Kidney imaging (3D) | Radiology | | 0.66 | 0.23 | 0.23 | | |
| 78710 | TC | Kidney imaging (3D) | Radiology | a | 0.00 | 5.88 | 5.88 | | |
| 78715 | 26 | Renal vascular flow exam | Radiology | | 0.30 | 0.11 | 0.11 | | |
| 78715 | TC | Renal vascular flow exam | Radiology | a | 0.00 | 1.57 | 1.57 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 78725 | 26 | Kidney function study | Radiology | | 0.38 | 0.13 | 0.13 | | |
| 78725 | TC | Kidney function study | Radiology | a | 0.00 | 1.77 | 1.77 | | |
| 78730 | 26 | Urinary bladder retention | Radiology | | 0.36 | 0.13 | 0.13 | | |
| 78730 | TC | Urinary bladder retention | Radiology | a | 0.00 | 1.45 | 1.45 | | |
| 78740 | 26 | Ureteral reflux study | Radiology | | 0.57 | 0.19 | 0.19 | | |
| 78740 | TC | Ureteral reflux study | Radiology | a | 0.00 | 2.11 | 2.11 | | |
| 78760 | 26 | Testicular imaging | Radiology | | 0.66 | 0.23 | 0.23 | | |
| 78760 | TC | Testicular imaging | Radiology | a | 0.00 | 2.67 | 2.67 | | |
| 78761 | 26 | Testicular imaging/flow | Radiology | | 0.71 | 0.25 | 0.25 | | |
| 78761 | TC | Testicular imaging/flow | Radiology | a | 0.00 | 3.18 | 3.18 | | |
| 78799 | 26 | Genitourinary nuclear exam | Radiology | | | | | 1.64 | Misc |
| 78799 | TC | Genitourinary nuclear exam | Radiology | a | | | | 8.90 | Misc |
| 78800 | 26 | Tumor imaging, limited area | Radiology | | 0.66 | 0.23 | 0.23 | | |
| 78800 | TC | Tumor imaging, limited area | Radiology | a | 0.00 | 3.39 | 3.39 | | |
| 78801 | 26 | Tumor imaging, mult areas | Radiology | | 0.79 | 0.28 | 0.28 | | |
| 78801 | TC | Tumor imaging, mult areas | Radiology | a | 0.00 | 4.21 | 4.21 | | |
| 78802 | 26 | Tumor imaging, whole body | Radiology | | 0.86 | 0.31 | 0.31 | | |
| 78802 | TC | Tumor imaging, whole body | Radiology | a | 0.00 | 5.50 | 5.50 | | |
| 78803 | 26 | Tumor imaging (3D) | Radiology | | 1.09 | 0.40 | 0.40 | | |
| 78803 | TC | Tumor imaging (3D) | Radiology | a | 0.00 | 6.53 | 6.53 | | |
| 78805 | 26 | Abscess imaging, ltd area | Radiology | | 0.73 | 0.26 | 0.26 | | |
| 78805 | TC | Abscess imaging, ltd area | Radiology | a | 0.00 | 3.39 | 3.39 | | |
| 78806 | 26 | Abscess imaging, whole body | Radiology | | 0.86 | 0.31 | 0.31 | | |
| 78806 | TC | Abscess imaging, whole body | Radiology | a | 0.00 | 6.40 | 6.40 | | |
| 78807 | 26 | Nuclear localization/abscess | Radiology | | 1.09 | 0.41 | 0.41 | | |
| 78807 | TC | Nuclear localization/abscess | Radiology | a | 0.00 | 6.53 | 6.53 | | |
| 78810 | 26 | Tumor imaging (PET) | Radiology | | 1.93 | 0.75 | 0.75 | | |
| 78810 | TC | Tumor imaging (PET) | Radiology | a | | | | 28.52 | PHCS |
| 78890 | 26 | Nuclear medicine data proc | Radiology | | 0.05 | 0.02 | 0.02 | | |
| 78890 | TC | Nuclear medicine data proc | Radiology | a | 0.00 | 1.30 | 1.30 | | |
| 78891 | 26 | Nuclear med data proc | Radiology | | 0.10 | 0.04 | 0.04 | | |
| 78891 | TC | Nuclear med data proc | Radiology | a | 0.00 | 2.61 | 2.61 | | |
| 78990 | | Provide diag radionuclide(s) | Radiology | | | | | 1.89 | PHCS |
| 78999 | 26 | Nuclear diagnostic exam | Radiology | | | | | 1.48 | Misc |
| 78999 | TC | Nuclear diagnostic exam | Radiology | a | | | | 5.22 | Misc |
| 79000 | 26 | Init hyperthyroid therapy | Radiology | | 1.80 | 0.63 | 0.63 | | |
| 79000 | TC | Init hyperthyroid therapy | Radiology | a | 0.00 | 2.61 | 2.61 | | |
| 79001 | 26 | Repeat hyperthyroid therapy | Radiology | | 1.05 | 0.37 | 0.37 | | |
| 79001 | TC | Repeat hyperthyroid therapy | Radiology | a | 0.00 | 1.30 | 1.30 | | |
| 79020 | 26 | Thyroid ablation | Radiology | | 1.81 | 0.62 | 0.62 | | |
| 79020 | TC | Thyroid ablation | Radiology | a | 0.00 | 2.61 | 2.61 | | |
| 79030 | 26 | Thyroid ablation, carcinoma | Radiology | | 2.10 | 0.74 | 0.74 | | |
| 79030 | TC | Thyroid ablation, carcinoma | Radiology | a | 0.00 | 2.61 | 2.61 | | |
| 79035 | 26 | Thyroid metastatic therapy | Radiology | | 2.52 | 0.91 | 0.91 | | |
| 79035 | TC | Thyroid metastatic therapy | Radiology | a | 0.00 | 2.61 | 2.61 | | |
| 79100 | 26 | Hematopoetic nuclear therapy | Radiology | | 1.32 | 0.48 | 0.48 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 79100 | TC | Hematopoetic nuclear therapy | Radiology | a | 0.00 | 2.61 | 2.61 | | |
| 79200 | 26 | Intracavitary nuclear trmt | Radiology | | 1.99 | 0.72 | 0.72 | | |
| 79200 | TC | Intracavitary nuclear trmt | Radiology | a | 0.00 | 2.61 | 2.61 | | |
| 79300 | 26 | Interstitial nuclear therapy | Radiology | | 1.60 | 0.59 | 0.59 | | |
| 79300 | TC | Interstitial nuclear therapy | Radiology | a | | | | 1.88 | MDR |
| 79400 | 26 | Nonhemato nuclear therapy | Radiology | | 1.96 | 0.70 | 0.70 | | |
| 79400 | TC | Nonhemato nuclear therapy | Radiology | a | 0.00 | 2.61 | 2.61 | | |
| 79420 | 26 | Intravascular nuclear ther | Radiology | | 1.51 | 0.52 | 0.52 | | |
| 79420 | TC | Intravascular nuclear ther | Radiology | a | | | | 1.36 | SA |
| 79440 | 26 | Nuclear joint therapy | Radiology | | 1.99 | 0.75 | 0.75 | | |
| 79440 | TC | Nuclear joint therapy | Radiology | a | 0.00 | 2.61 | 2.61 | | |
| 79900 | | Provide ther radiopharm(s) | Radiology | | | | | 2.53 | SAF |
| 79999 | 26 | Nuclear medicine therapy | Radiology | | | | | 3.06 | Misc |
| 79999 | TC | Nuclear medicine therapy | Radiology | a | | | | 5.22 | Misc |
| 80500 | | Lab pathology consultation | Pathology | | 0.37 | 0.22 | 0.17 | | |
| 80502 | | Lab pathology consultation | Pathology | | 1.33 | 0.65 | 0.60 | | |
| 83020 | 26 | Hemoglobin electrophoresis | Pathology | | 0.37 | 0.16 | 0.16 | | |
| 83912 | 26 | Genetic examination | Pathology | | 0.37 | 0.15 | 0.15 | | |
| 84165 | 26 | Assay of serum proteins | Pathology | | 0.37 | 0.16 | 0.16 | | |
| 84181 | 26 | Western blot test | Pathology | | 0.37 | 0.14 | 0.14 | | |
| 84182 | 26 | Protein, western blot test | Pathology | | 0.37 | 0.17 | 0.17 | | |
| 85060 | | Blood smear interpretation | Pathology | | 0.45 | 0.19 | 0.19 | | |
| 85097 | | Bone marrow interpretation | Pathology | | 0.94 | 1.81 | 0.41 | | |
| 85390 | 26 | Fibrinolysins screen | Pathology | | 0.37 | 0.13 | 0.13 | | |
| 85576 | 26 | Blood platelet aggregation | Pathology | | 0.37 | 0.16 | 0.16 | | |
| 86077 | | Physician blood bank service | Pathology | | 0.94 | 0.47 | 0.42 | | |
| 86078 | | Physician blood bank service | Pathology | | 0.94 | 0.51 | 0.42 | | |
| 86079 | | Physician blood bank service | Pathology | | 0.94 | 0.50 | 0.42 | | |
| 86255 | 26 | Fluorescent antibody, screen | Pathology | | 0.37 | 0.17 | 0.17 | | |
| 86256 | 26 | Fluorescent antibody, titer | Pathology | | 0.37 | 0.16 | 0.16 | | |
| 86320 | 26 | Serum immunoelectrophoresis | Pathology | | 0.37 | 0.17 | 0.16 | | |
| 86325 | 26 | Other immunoelectrophoresis | Pathology | | 0.37 | 0.16 | 0.16 | | |
| 86327 | 26 | Immunoelectrophoresis assay | Pathology | | 0.42 | 0.19 | 0.19 | | |
| 86334 | 26 | Immunofixation procedure | Pathology | | 0.37 | 0.16 | 0.10 | | |
| 86490 | | Coccidioidomycosis skin test | Pathology | | 0.00 | 0.29 | 0.29 | | |
| 86510 | | Histoplasmosis skin test | Pathology | | 0.00 | 0.32 | 0.32 | | |
| 86580 | | TB intradermal test | Pathology | | 0.00 | 0.25 | 0.25 | | |
| 86585 | | TB tine test | Pathology | | 0.00 | 0.20 | 0.20 | | |
| 87164 | 26 | Dark field examination | Pathology | | 0.37 | 0.12 | 0.12 | | |
| 87207 | 26 | Smear, special stain | Pathology | | 0.37 | 0.17 | 0.17 | | |
| 88104 | 26 | Cytopathology, fluids | Pathology | | 0.56 | 0.25 | 0.25 | | |
| 88104 | TC | Cytopathology, fluids | Pathology | a | 0.00 | 0.54 | 0.54 | | |
| 88106 | 26 | Cytopathology, fluids | Pathology | | 0.56 | 0.25 | 0.25 | | |
| 88106 | TC | Cytopathology, fluids | Pathology | a | 0.00 | 0.37 | 0.37 | | |
| 88107 | 26 | Cytopathology, fluids | Pathology | | 0.76 | 0.34 | 0.34 | | |
| 88107 | TC | Cytopathology, fluids | Pathology | a | 0.00 | 0.66 | 0.66 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 88108 | 26 | Cytopath, concentrate tech | Pathology | | 0.56 | 0.25 | 0.25 | | |
| 88108 | TC | Cytopath, concentrate tech | Pathology | a | 0.00 | 0.58 | 0.58 | | |
| 88125 | 26 | Forensic cytopathology | Pathology | | 0.26 | 0.12 | 0.12 | | |
| 88125 | TC | Forensic cytopathology | Pathology | a | 0.00 | 0.18 | 0.18 | | |
| 88141 | | Cytopath, c/v, interpret | Pathology | | 0.42 | 0.19 | 0.19 | | |
| 88160 | 26 | Cytopath smear, other source | Pathology | | 0.50 | 0.22 | 0.22 | | |
| 88160 | TC | Cytopath smear, other source | Pathology | a | 0.00 | 0.76 | 0.76 | | |
| 88161 | 26 | Cytopath smear, other source | Pathology | | 0.50 | 0.22 | 0.22 | | |
| 88161 | TC | Cytopath smear, other source | Pathology | a | 0.00 | 0.71 | 0.71 | | |
| 88162 | 26 | Cytopath smear, other source | Pathology | | 0.76 | 0.34 | 0.34 | | |
| 88162 | TC | Cytopath smear, other source | Pathology | a | 0.00 | 0.37 | 0.37 | | |
| 88172 | 26 | Cytopathology eval of fna | Pathology | | 0.60 | 0.27 | 0.27 | | |
| 88172 | TC | Cytopathology eval of fna | Pathology | a | 0.00 | 0.42 | 0.42 | | |
| 88173 | 26 | Cytopath eval, fna, report | Pathology | | 1.39 | 0.62 | 0.62 | | |
| 88173 | TC | Cytopath eval, fna, report | Pathology | a | 0.00 | 1.21 | 1.21 | | |
| 88180 | 26 | Cell marker study | Pathology | | 0.36 | 0.16 | 0.16 | | |
| 88180 | TC | Cell marker study | Pathology | a | 0.00 | 1.04 | 1.04 | | |
| 88182 | 26 | Cell marker study | Pathology | | 0.77 | 0.35 | 0.35 | | |
| 88182 | TC | Cell marker study | Pathology | a | 0.00 | 1.21 | 1.21 | | |
| 88199 | 26 | Cytopathology procedure | Pathology | | | | | 1.06 | Misc |
| 88199 | TC | Cytopathology procedure | Pathology | | | | | 2.08 | Misc |
| 88291 | | Cyto/molecular report | Pathology | | 0.52 | 0.30 | 0.30 | | |
| 88300 | 26 | Surgical path, gross | Pathology | | 0.08 | 0.04 | 0.04 | | |
| 88300 | TC | Surgical path, gross | Pathology | a | 0.00 | 0.26 | 0.26 | | |
| 88302 | 26 | Tissue exam by pathologist | Pathology | | 0.13 | 0.06 | 0.06 | | |
| 88302 | TC | Tissue exam by pathologist | Pathology | a | 0.00 | 0.67 | 0.67 | | |
| 88304 | 26 | Tissue exam by pathologist | Pathology | | 0.22 | 0.10 | 0.10 | | |
| 88304 | TC | Tissue exam by pathologist | Pathology | a | 0.00 | 0.80 | 0.80 | | |
| 88305 | 26 | Tissue exam by pathologist | Pathology | | 0.75 | 0.34 | 0.34 | | |
| 88305 | TC | Tissue exam by pathologist | Pathology | a | 0.00 | 1.43 | 1.43 | | |
| 88307 | 26 | Tissue exam by pathologist | Pathology | | 1.59 | 0.71 | 0.71 | | |
| 88307 | TC | Tissue exam by pathologist | Pathology | a | 0.00 | 2.01 | 2.01 | | |
| 88309 | 26 | Tissue exam by pathologist | Pathology | | 2.28 | 1.02 | 1.02 | | |
| 88309 | TC | Tissue exam by pathologist | Pathology | a | 0.00 | 2.31 | 2.31 | | |
| 88311 | 26 | Decalcify tissue | Pathology | | 0.24 | 0.11 | 0.11 | | |
| 88311 | TC | Decalcify tissue | Pathology | a | 0.00 | 0.09 | 0.09 | | |
| 88312 | 26 | Special stains | Pathology | | 0.54 | 0.24 | 0.24 | | |
| 88312 | TC | Special stains | Pathology | a | 0.00 | 1.37 | 1.37 | | |
| 88313 | 26 | Special stains | Pathology | | 0.24 | 0.11 | 0.11 | | |
| 88313 | TC | Special stains | Pathology | a | 0.00 | 1.08 | 1.08 | | |
| 88314 | 26 | Histochemical stain | Pathology | | 0.45 | 0.20 | 0.20 | | |
| 88314 | TC | Histochemical stain | Pathology | a | 0.00 | 0.64 | 0.64 | | |
| 88318 | 26 | Chemical histochemistry | Pathology | | 0.42 | 0.19 | 0.19 | | |
| 88318 | TC | Chemical histochemistry | Pathology | a | 0.00 | 0.55 | 0.55 | | |
| 88319 | 26 | Enzyme histochemistry | Pathology | | 0.53 | 0.24 | 0.24 | | |
| 88319 | TC | Enzyme histochemistry | Pathology | a | 0.00 | 1.94 | 1.94 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 88321 | | Microslide consultation | Pathology | | 1.30 | 0.83 | 0.58 | | |
| 88323 | 26 | Microslide consultation | Pathology | | 1.35 | 0.61 | 0.61 | | |
| 88323 | TC | Microslide consultation | Pathology | a | 0.00 | 0.81 | 0.81 | | |
| 88325 | | Comprehensive review of data | Pathology | | 2.22 | 2.93 | 0.99 | | |
| 88329 | | Path consult introp | Pathology | | 0.67 | 0.66 | 0.30 | | |
| 88331 | 26 | Path consult intraop, 1 bloc | Pathology | | 1.19 | 0.54 | 0.54 | | |
| 88331 | TC | Path consult intraop, 1 bloc | Pathology | a | 0.00 | 0.49 | 0.49 | | |
| 88332 | 26 | Path consult intraop, addl | Pathology | | 0.59 | 0.27 | 0.27 | | |
| 88332 | TC | Path consult intraop, addl | Pathology | a | 0.00 | 0.25 | 0.25 | | |
| 88342 | 26 | Immunocytochemistry | Pathology | | 0.85 | 0.38 | 0.38 | | |
| 88342 | TC | Immunocytochemistry | Pathology | a | 0.00 | 0.93 | 0.93 | | |
| 88346 | 26 | Immunofluorescent study | Pathology | | 0.86 | 0.38 | 0.38 | | |
| 88346 | TC | Immunofluorescent study | Pathology | a | 0.00 | 1.08 | 1.08 | | |
| 88347 | 26 | Immunofluorescent study | Pathology | | 0.86 | 0.36 | 0.36 | | |
| 88347 | TC | Immunofluorescent study | Pathology | a | 0.00 | 1.50 | 1.50 | | |
| 88348 | 26 | Electron microscopy | Pathology | | 1.51 | 0.67 | 0.67 | | |
| 88348 | TC | Electron microscopy | Pathology | a | 0.00 | 7.42 | 7.42 | | |
| 88349 | 26 | Scanning electron microscopy | Pathology | | 0.76 | 0.34 | 0.34 | | |
| 88349 | TC | Scanning electron microscopy | Pathology | a | 0.00 | 9.04 | 9.04 | | |
| 88355 | 26 | Analysis, skeletal muscle | Pathology | | 1.85 | 0.83 | 0.83 | | |
| 88355 | TC | Analysis, skeletal muscle | Pathology | a | 0.00 | 1.72 | 1.72 | | |
| 88356 | 26 | Analysis, nerve | Pathology | | 3.02 | 1.30 | 1.30 | | |
| 88356 | TC | Analysis, nerve | Pathology | a | 0.00 | 1.53 | 1.53 | | |
| 88358 | 26 | Analysis, tumor | Pathology | | 2.82 | 1.25 | 1.25 | | |
| 88358 | TC | Analysis, tumor | Pathology | a | 0.00 | 0.47 | 0.47 | | |
| 88362 | 26 | Nerve teasing preparations | Pathology | | 2.17 | 0.95 | 0.95 | | |
| 88362 | TC | Nerve teasing preparations | Pathology | a | 0.00 | 3.59 | 3.59 | | |
| 88365 | 26 | Tissue hybridization | Pathology | | 0.93 | 0.41 | 0.41 | | |
| 88365 | TC | Tissue hybridization | Pathology | a | 0.00 | 1.62 | 1.62 | | |
| 88371 | 26 | Protein, western blot tissue | Pathology | | 0.37 | 0.13 | 0.13 | | |
| 88372 | 26 | Protein analysis w/probe | Pathology | | 0.37 | 0.17 | 0.17 | | |
| 88399 | 26 | Surgical pathology procedure | Pathology | | | | | 1.43 | Misc |
| 88399 | TC | Surgical pathology procedure | Pathology | | | | | 2.86 | Misc |
| 89060 | 26 | Exam,synovial fluid crystals | Pathology | | 0.37 | 0.17 | 0.17 | | |
| 89100 | | Sample intestinal contents | Pathology | | 0.60 | 1.72 | 0.22 | | |
| 89105 | | Sample intestinal contents | Pathology | | 0.50 | 2.28 | 0.18 | | |
| 89130 | | Sample stomach contents | Pathology | | 0.45 | 1.97 | 0.13 | | |
| 89132 | | Sample stomach contents | Pathology | | 0.19 | 1.76 | 0.07 | | |
| 89135 | | Sample stomach contents | Pathology | | 0.79 | 1.75 | 0.26 | | |
| 89136 | | Sample stomach contents | Pathology | | 0.21 | 1.77 | 0.08 | | |
| 89140 | | Sample stomach contents | Pathology | | 0.94 | 2.22 | 0.28 | | |
| 89141 | | Sample stomach contents | Pathology | | 0.85 | 2.80 | 0.35 | | |
| 89350 | | Sputum specimen collection | Pathology | | 0.00 | 0.41 | 0.41 | | |
| 89360 | | Collect sweat for test | Pathology | | 0.00 | 0.45 | 0.45 | | |
| 89399 | 26 | Surgical pathology procedure | Pathology | | | | | 0.71 | Misc |
| 89399 | TC | Surgical pathology procedure | Pathology | | | | | 0.14 | Misc |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 90281 | | Human ig, im | Therapeutic Injections | | | | | 0.32 | PHCS |
| 90283 | | Human ig, iv | Therapeutic Injections | | | | | 0.72 | PHCS |
| 90287 | | Botulinum antitoxin | Therapeutic Injections | | | | | 0.48 | PHCS |
| 90288 | | Botulism ig, iv | Therapeutic Injections | | | | | 0.23 | PHCS |
| 90291 | | Cmv ig, iv | Therapeutic Injections | | | | | 1.76 | PHCS |
| 90296 | | Diphtheria antitoxin | Therapeutic Injections | | | | | 0.46 | PHCS |
| 90371 | | Hep b ig, im | Therapeutic Injections | | | | | 0.98 | PHCS |
| 90375 | | Rabies ig, im/sc | Therapeutic Injections | | | | | 1.68 | MDR |
| 90376 | | Rabies ig, heat treated | Therapeutic Injections | | | | | 1.61 | MDR |
| 90378 | | Rsv ig, im, 50mg | Therapeutic Injections | | | | | 4.79 | PHCS |
| 90379 | | Rsv ig, iv | Therapeutic Injections | | | | | 6.94 | PHCS |
| 90384 | | Rh ig, full-dose, im | Therapeutic Injections | | | | | 0.96 | PHCS |
| 90385 | | Rh ig, minidose, im | Therapeutic Injections | | | | | 0.70 | PHCS |
| 90386 | | Rh ig, iv | Therapeutic Injections | | | | | 2.31 | PHCS |
| 90389 | | Tetanus ig, im | Therapeutic Injections | | | | | 1.12 | MDR |
| 90393 | | Vaccina ig, im | Therapeutic Injections | | | | | 0.64 | PHCS |
| 90396 | | Varicella-zoster ig, im | Therapeutic Injections | | | | | 0.70 | PHCS |
| 90399 | | Immune globulin | Therapeutic Injections | | | | | 1.12 | Misc |
| 90471 | | Immunization admin | Immunizations | | 0.00 | 0.20 | 0.20 | | |
| 90472 | | Immunization admin, each add | Immunizations | | 0.00 | 0.14 | 0.14 | | |
| 90473 | | Immune admin oral/nasal | Immunizations | | | | | 0.25 | MDR |
| 90474 | | Immune admin oral/nasal addl | Immunizations | | | | | 0.25 | MDR |
| 90476 | | Adenovirus vaccine, type 4 | Immunizations | | | | | 0.56 | PHCS |
| 90477 | | Adenovirus vaccine, type 7 | Immunizations | | | | | 0.38 | PHCS |
| 90581 | | Anthrax vaccine, sc | Immunizations | | | | | 2.03 | MDR |
| 90585 | | Bcg vaccine, percut | Immunizations | | | | | 2.35 | PHCS |
| 90586 | | Bcg vaccine, intravesical | Immunizations | | | | | 1.99 | PHCS |
| 90632 | | Hep a vaccine, adult im | Immunizations | | | | | 0.81 | PHCS |
| 90633 | | Hep a vacc, ped/adol, 2 dose | Immunizations | | | | | 0.66 | PHCS |
| 90634 | | Hep a vacc, ped/adol, 3 dose | Immunizations | | | | | 0.69 | PHCS |
| 90636 | | Hep a/hep b vacc, adult im | Immunizations | | | | | 1.41 | PHCS |
| 90645 | | Hib vaccine, hboc, im | Immunizations | | | | | 0.39 | PHCS |
| 90646 | | Hib vaccine, prp-d, im | Immunizations | | | | | 0.42 | PHCS |
| 90647 | | Hib vaccine, prp-omp, im | Immunizations | | | | | 0.38 | PHCS |
| 90648 | | Hib vaccine, prp-t, im | Immunizations | | | | | 0.42 | PHCS |
| 90657 | | Flu vaccine, 6-35 mo, im | Immunizations | | | | | 0.11 | PHCS |
| 90658 | | Flu vaccine, 3 yrs, im | Immunizations | | | | | 0.10 | PHCS |
| 90659 | | Flu vaccine, whole, im | Immunizations | | | | | 0.11 | PHCS |
| 90660 | | Flu vaccine, nasal | Immunizations | | | | | 0.23 | PHCS |
| 90665 | | Lyme disease vaccine, im | Immunizations | | | | | 0.75 | PHCS |
| 90669 | | Pneumococcal vacc, ped <5 | Immunizations | | | | | 0.89 | PHCS |
| 90675 | | Rabies vaccine, im | Immunizations | | | | | 1.77 | PHCS |
| 90676 | | Rabies vaccine, id | Immunizations | | | | | 1.11 | PHCS |
| 90680 | | Rotovirus vaccine, oral | Immunizations | | | | | 0.67 | PHCS |
| 90690 | | Typhoid vaccine, oral | Immunizations | | | | | 0.54 | PHCS |
| 90691 | | Typhoid vaccine, im | Immunizations | | | | | 0.61 | PHCS |

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 90692 | | Typhoid vaccine, h-p, sc/id | Immunizations | | | | | 0.56 | PHCS |
| 90693 | | Typhoid vaccine, akd, sc | Immunizations | | | | | 0.59 | PHCS |
| 90700 | | Dtap vaccine, im | Immunizations | | | | | 0.42 | PHCS |
| 90701 | | Dtp vaccine, im | Immunizations | | | | | 0.28 | PHCS |
| 90702 | | Dt vaccine < 7, im | Immunizations | | | | | 0.14 | PHCS |
| 90703 | | Tetanus vaccine, im | Immunizations | | | | | 0.09 | PHCS |
| 90704 | | Mumps vaccine, sc | Immunizations | | | | | 0.42 | PHCS |
| 90705 | | Measles vaccine, sc | Immunizations | | | | | 0.38 | PHCS |
| 90706 | | Rubella vaccine, sc | Immunizations | | | | | 0.38 | PHCS |
| 90707 | | Mmr vaccine, sc | Immunizations | | | | | 0.56 | PHCS |
| 90708 | | Measles-rubella vaccine, sc | Immunizations | | | | | 0.38 | PHCS |
| 90710 | | Mmrv vaccine, sc | Immunizations | | | | | 0.56 | PHCS |
| 90712 | | Oral poliovirus vaccine | Immunizations | | | | | 0.36 | PHCS |
| 90713 | | Poliovirus, ipv, sc | Immunizations | | | | | 0.40 | PHCS |
| 90716 | | Chicken pox vaccine, sc | Immunizations | | | | | 0.73 | PHCS |
| 90717 | | Yellow fever vaccine, sc | Immunizations | | | | | 0.82 | PHCS |
| 90718 | | Td vaccine > 7, im | Immunizations | | | | | 0.11 | PHCS |
| 90719 | | Diphtheria vaccine, im | Immunizations | | | | | 0.23 | PHCS |
| 90720 | | Dtp/hib vaccine, im | Immunizations | | | | | 0.66 | PHCS |
| 90721 | | Dtap/hib vaccine, im | Immunizations | | | | | 0.66 | PHCS |
| 90723 | | Dtap-hep b-ipv vaccine, im | Immunizations | | | | | 0.52 | PHCS |
| 90725 | | Cholera vaccine, injectable | Immunizations | | | | | 0.23 | PHCS |
| 90727 | | Plague vaccine, im | Immunizations | | | | | 0.18 | PHCS |
| 90732 | | Pneumococcal vaccine | Immunizations | | | | | 0.28 | PHCS |
| 90733 | | Meningococcal vaccine, sc | Immunizations | | | | | 0.94 | PHCS |
| 90735 | | Encephalitis vaccine, sc | Immunizations | | | | | 0.99 | PHCS |
| 90740 | | Hepb vacc, ill pat 3 dose im | Immunizations | | | | | 2.87 | MDR |
| 90743 | | Hep b vacc, adol, 2 dose, im | Immunizations | | | | | 0.66 | PHCS |
| 90744 | | Hepb vacc ped/adol 3 dose im | Immunizations | | | | | 0.56 | PHCS |
| 90746 | | Hep b vaccine, adult, im | Immunizations | | | | | 0.80 | PHCS |
| 90747 | | Hepb vacc, ill pat 4 dose im | Immunizations | | | | | 2.79 | PHCS |
| 90748 | | Hep b/hib vaccine, im | Immunizations | | | | | 0.74 | PHCS |
| 90749 | | Vaccine toxoid | Immunizations | | | | | 0.27 | SAF |
| 90780 | | IV infusion therapy, 1 hour | Therapeutic Injections | | 0.00 | 1.10 | 1.10 | | |
| 90781 | | IV infusion, additional hour | Therapeutic Injections | | 0.00 | 0.56 | 0.56 | | |
| 90782 | | Injection, sc/im | Therapeutic Injections | | 0.00 | 0.11 | 0.11 | | |
| 90783 | | Injection, ia | Therapeutic Injections | | 0.00 | 0.41 | 0.41 | | |
| 90784 | | Injection, iv | Therapeutic Injections | | 0.00 | 0.47 | 0.47 | | |
| 90788 | | Injection of antibiotic | Therapeutic Injections | | 0.00 | 0.12 | 0.12 | | |
| 90799 | | Ther/prophylactic/dx inject | Therapeutic Injections | | | | | 0.22 | Misc |
| 90801 | | Psy dx interview | OP Psych./Alc. & Drug Abuse | | 2.80 | 1.19 | 0.96 | | |
| 90802 | | Intac psy dx interview | OP Psych./Alc. & Drug Abuse | | 3.01 | 1.23 | 1.01 | | |
| 90804 | | Psytx, office, 20-30 min | OP Psych./Alc. & Drug Abuse | | 1.21 | 0.51 | 0.39 | | |
| 90805 | | Psytx, off, 20-30 min w/e&m | OP Psych./Alc. & Drug Abuse | | 1.37 | 0.52 | 0.44 | | |
| 90806 | | Psytx, off, 45-50 min | OP Psych./Alc. & Drug Abuse | | 1.86 | 0.72 | 0.62 | | |
| 90807 | | Psytx, off, 45-50 min w/e&m | OP Psych./Alc. & Drug Abuse | | 2.02 | 0.72 | 0.65 | | |

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 90808 | | Psytx, office, 75-80 min | OP Psych./Alc. & Drug Abuse | | 2.79 | 1.05 | 0.93 | | |
| 90809 | | Psytx, off, 75-80, w/e&m | OP Psych./Alc. & Drug Abuse | | 2.95 | 1.02 | 0.95 | | |
| 90810 | | Intac psytx, off, 20-30 min | OP Psych./Alc. & Drug Abuse | | 1.32 | 0.53 | 0.43 | | |
| 90811 | | Intac psytx, 20-30, w/e&m | OP Psych./Alc. & Drug Abuse | | 1.48 | 0.59 | 0.48 | | |
| 90812 | | Intac psytx, off, 45-50 min | OP Psych./Alc. & Drug Abuse | | 1.97 | 0.82 | 0.66 | | |
| 90813 | | Intac psytx, 45-50 min w/e&m | OP Psych./Alc. & Drug Abuse | | 2.13 | 0.79 | 0.69 | | |
| 90814 | | Intac psytx, off, 75-80 min | OP Psych./Alc. & Drug Abuse | | 2.90 | 1.13 | 1.01 | | |
| 90815 | | Intac psytx, 75-80 w/e&m | OP Psych./Alc. & Drug Abuse | | 3.06 | 1.08 | 0.98 | | |
| 90816 | | Psytx, hosp, 20-30 min | OP Psych./Alc. & Drug Abuse | | 1.25 | 0.48 | 0.48 | | |
| 90817 | | Psytx, hosp, 20-30 min w/e&m | OP Psych./Alc. & Drug Abuse | | 1.41 | 0.47 | 0.47 | | |
| 90818 | | Psytx, hosp, 45-50 min | OP Psych./Alc. & Drug Abuse | | 1.89 | 0.71 | 0.71 | | |
| 90819 | | Psytx, hosp, 45-50 min w/e&m | OP Psych./Alc. & Drug Abuse | | 2.05 | 0.67 | 0.67 | | |
| 90821 | | Psytx, hosp, 75-80 min | OP Psych./Alc. & Drug Abuse | | 2.83 | 1.03 | 1.03 | | |
| 90822 | | Psytx, hosp, 75-80 min w/e&m | OP Psych./Alc. & Drug Abuse | | 2.99 | 0.97 | 0.97 | | |
| 90823 | | Intac psytx, hosp, 20-30 min | OP Psych./Alc. & Drug Abuse | | 1.36 | 0.49 | 0.49 | | |
| 90824 | | Intac psytx, hsp 20-30 w/e&m | OP Psych./Alc. & Drug Abuse | | 1.52 | 0.51 | 0.51 | | |
| 90826 | | Intac psytx, hosp, 45-50 min | OP Psych./Alc. & Drug Abuse | | 2.01 | 0.75 | 0.75 | | |
| 90827 | | Intac psytx, hsp 45-50 w/e&m | OP Psych./Alc. & Drug Abuse | | 2.16 | 0.71 | 0.71 | | |
| 90828 | | Intac psytx, hosp, 75-80 min | OP Psych./Alc. & Drug Abuse | | 2.94 | 1.09 | 1.09 | | |
| 90829 | | Intac psytx, hsp 75-80 w/e&m | OP Psych./Alc. & Drug Abuse | | 3.10 | 1.01 | 1.01 | | |
| 90845 | | Psychoanalysis | OP Psych./Alc. & Drug Abuse | | 1.79 | 0.60 | 0.57 | | |
| 90846 | | Family psytx w/o patient | OP Psych./Alc. & Drug Abuse | | 1.83 | 0.67 | 0.66 | | |
| 90847 | | Family psytx w/patient | OP Psych./Alc. & Drug Abuse | | 2.21 | 0.84 | 0.78 | | |
| 90849 | | Multiple family group psytx | OP Psych./Alc. & Drug Abuse | | 0.59 | 0.28 | 0.25 | | |
| 90853 | | Group psychotherapy | OP Psych./Alc. & Drug Abuse | | 0.59 | 0.26 | 0.24 | | |
| 90857 | | Intac group psytx | OP Psych./Alc. & Drug Abuse | | 0.63 | 0.31 | 0.26 | | |
| 90862 | | Medication management | OP Psych./Alc. & Drug Abuse | | 0.95 | 0.41 | 0.33 | | |
| 90865 | | Narcosynthesis | OP Psych./Alc. & Drug Abuse | | 2.84 | 1.62 | 0.91 | | |
| 90870 | | Electroconvulsive therapy | OP Psych./Alc. & Drug Abuse | | 1.88 | 0.81 | 0.81 | | |
| 90871 | | Electroconvulsive therapy | OP Psych./Alc. & Drug Abuse | | 2.72 | 1.08 | 1.08 | | |
| 90875 | | Psychophysiological therapy | OP Psych./Alc. & Drug Abuse | | 1.20 | 0.91 | 0.47 | | |
| 90876 | | Psychophysiological therapy | OP Psych./Alc. & Drug Abuse | | 1.90 | 1.18 | 0.74 | | |
| 90880 | | Hypnotherapy | OP Psych./Alc. & Drug Abuse | | 2.19 | 1.06 | 0.71 | | |
| 90882 | | Environmental manipulation | OP Psych./Alc. & Drug Abuse | | | | | 3.03 | MDR |
| 90885 | | Psy evaluation of records | OP Psych./Alc. & Drug Abuse | | 0.97 | 0.38 | 0.38 | | |
| 90887 | | Consultation with family | OP Psych./Alc. & Drug Abuse | | 1.48 | 0.83 | 0.58 | | |
| 90889 | | Preparation of report | OP Psych./Alc. & Drug Abuse | | | | | 2.61 | MDR |
| 90899 | | Psychiatric service/therapy | OP Psych./Alc. & Drug Abuse | | | | | 1.69 | Misc |
| 90901 | | Biofeedback train, any meth | Miscellaneous Medical | | 0.41 | 0.86 | 0.19 | | |
| 90911 | | Biofeedback peri/uro/rectal | Miscellaneous Medical | | 0.89 | 0.88 | 0.36 | | |
| 90918 | | ESRD related services, month | Miscellaneous Medical | | 11.18 | 7.56 | 7.56 | | |
| 90919 | | ESRD related services, month | Miscellaneous Medical | | 8.54 | 4.18 | 4.18 | | |
| 90920 | | ESRD related services, month | Miscellaneous Medical | | 7.27 | 3.92 | 3.92 | | |
| 90921 | | ESRD related services, month | Miscellaneous Medical | | 4.47 | 2.54 | 2.54 | | |
| 90922 | | ESRD related services, day | Miscellaneous Medical | | 0.37 | 0.22 | 0.22 | | |
| 90923 | | Esrd related services, day | Miscellaneous Medical | | 0.28 | 0.13 | 0.13 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 90924 | | Esrd related services, day | Miscellaneous Medical | | 0.24 | 0.12 | 0.12 | | |
| 90925 | | Esrd related services, day | Miscellaneous Medical | | 0.15 | 0.08 | 0.08 | | |
| 90935 | | Hemodialysis, one evaluation | Miscellaneous Medical | | 1.22 | 0.69 | 0.69 | | |
| 90937 | | Hemodialysis, repeated eval | Miscellaneous Medical | | 2.11 | 1.00 | 1.00 | | |
| 90939 | 26 | Hemodialysis study, transcut | Miscellaneous Medical | | | | | 0.86 | SA |
| 90939 | TC | Hemodialysis study, transcut | Miscellaneous Medical | a | | | | 1.29 | SA |
| 90940 | 26 | Hemodialysis access study | Miscellaneous Medical | | | | | 0.86 | SA |
| 90940 | TC | Hemodialysis access study | Miscellaneous Medical | a | | | | 1.29 | SA |
| 90945 | | Dialysis, one evaluation | Miscellaneous Medical | | 1.28 | 0.72 | 0.72 | | |
| 90947 | | Dialysis, repeated eval | Miscellaneous Medical | | 2.16 | 1.02 | 1.02 | | |
| 90989 | | Dialysis training, complete | Miscellaneous Medical | | | | | 14.35 | MDR |
| 90993 | | Dialysis training, incompl | Miscellaneous Medical | | | | | 2.42 | MDR |
| 90997 | | Hemoperfusion | Miscellaneous Medical | | 1.84 | 1.43 | 1.43 | | |
| 91000 | 26 | Esophageal intubation | Miscellaneous Medical | | 0.73 | 0.25 | 0.25 | | |
| 91000 | TC | Esophageal intubation | Miscellaneous Medical | a | 0.00 | 0.08 | 0.08 | | |
| 91010 | 26 | Esophagus motility study | Miscellaneous Medical | | 1.25 | 0.45 | 0.45 | | |
| 91010 | TC | Esophagus motility study | Miscellaneous Medical | a | 0.00 | 2.30 | 2.30 | | |
| 91011 | 26 | Esophagus motility study | Miscellaneous Medical | | 1.50 | 0.54 | 0.54 | | |
| 91011 | TC | Esophagus motility study | Miscellaneous Medical | a | 0.00 | 2.64 | 2.64 | | |
| 91012 | 26 | Esophagus motility study | Miscellaneous Medical | | 1.46 | 0.53 | 0.53 | | |
| 91012 | TC | Esophagus motility study | Miscellaneous Medical | a | 0.00 | 2.78 | 2.78 | | |
| 91020 | 26 | Gastric motility | Miscellaneous Medical | | 1.44 | 0.50 | 0.50 | | |
| 91020 | TC | Gastric motility | Miscellaneous Medical | a | 0.00 | 2.55 | 2.55 | | |
| 91030 | 26 | Acid perfusion of esophagus | Miscellaneous Medical | | 0.91 | 0.33 | 0.33 | | |
| 91030 | TC | Acid perfusion of esophagus | Miscellaneous Medical | a | 0.00 | 2.24 | 2.24 | | |
| 91032 | 26 | Esophagus, acid reflux test | Miscellaneous Medical | | 1.21 | 0.43 | 0.43 | | |
| 91032 | TC | Esophagus, acid reflux test | Miscellaneous Medical | a | 0.00 | 2.00 | 2.00 | | |
| 91033 | 26 | Prolonged acid reflux test | Miscellaneous Medical | | 1.30 | 0.47 | 0.47 | | |
| 91033 | TC | Prolonged acid reflux test | Miscellaneous Medical | a | 0.00 | 2.17 | 2.17 | | |
| 91052 | 26 | Gastric analysis test | Miscellaneous Medical | | 0.79 | 0.28 | 0.28 | | |
| 91052 | TC | Gastric analysis test | Miscellaneous Medical | a | 0.00 | 2.10 | 2.10 | | |
| 91055 | 26 | Gastric intubation for smear | Miscellaneous Medical | | 0.94 | 0.27 | 0.27 | | |
| 91055 | TC | Gastric intubation for smear | Miscellaneous Medical | a | 0.00 | 1.90 | 1.90 | | |
| 91060 | 26 | Gastric saline load test | Miscellaneous Medical | | 0.45 | 0.14 | 0.14 | | |
| 91060 | TC | Gastric saline load test | Miscellaneous Medical | a | 0.00 | 0.16 | 0.16 | | |
| 91065 | 26 | Breath hydrogen test | Miscellaneous Medical | | 0.20 | 0.07 | 0.07 | | |
| 91065 | TC | Breath hydrogen test | Miscellaneous Medical | a | 0.00 | 3.81 | 3.81 | | |
| 91100 | | Pass intestine bleeding tube | Miscellaneous Medical | | 1.08 | 0.29 | 0.29 | | |
| 91105 | | Gastric intubation treatment | Miscellaneous Medical | | 0.37 | 0.10 | 0.10 | | |
| 91122 | 26 | Anal pressure record | Miscellaneous Medical | | 1.77 | 0.62 | 0.62 | | |
| 91122 | TC | Anal pressure record | Miscellaneous Medical | a | 0.00 | 3.93 | 3.93 | | |
| 91132 | 26 | Electrogastrography | Miscellaneous Medical | | 0.52 | 0.19 | 0.19 | | |
| 91132 | TC | Electrogastrography | Miscellaneous Medical | a | | | | 0.38 | SA |
| 91133 | 26 | Electrogastrography w/test | Miscellaneous Medical | | 0.66 | 0.24 | 0.24 | | |
| 91133 | TC | Electrogastrography w/test | Miscellaneous Medical | a | | | | 0.49 | SA |
| 91299 | 26 | Gastroenterology procedure | Miscellaneous Medical | | | | | 2.15 | Misc |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 91299 | TC | Gastroenterology procedure | Miscellaneous Medical | a | | | | 4.60 | Misc |
| 92002 | | Eye exam, new patient | Vision Exams | | 0.88 | 0.94 | 0.35 | | |
| 92004 | | Eye exam, new patient | Vision Exams | | 1.67 | 1.66 | 0.70 | | |
| 92012 | | Eye exam established pat | Vision Exams | | 0.67 | 0.99 | 0.30 | | |
| 92014 | | Eye exam & treatment | Vision Exams | | 1.10 | 1.35 | 0.48 | | |
| 92015 | | Refraction | Vision Exams | | 0.38 | 1.51 | 0.15 | | |
| 92018 | | New eye exam & treatment | Miscellaneous Medical | | 2.50 | 1.10 | 1.10 | | |
| 92019 | | Eye exam & treatment | Miscellaneous Medical | | 1.31 | 0.58 | 0.58 | | |
| 92020 | | Special eye evaluation | Miscellaneous Medical | | 0.37 | 0.92 | 0.16 | | |
| 92060 | 26 | Special eye evaluation | Miscellaneous Medical | | 0.69 | 0.30 | 0.30 | | |
| 92060 | TC | Special eye evaluation | Miscellaneous Medical | a | 0.00 | 0.44 | 0.44 | | |
| 92065 | 26 | Orthoptic/pleoptic training | Miscellaneous Medical | | 0.37 | 0.16 | 0.16 | | |
| 92065 | TC | Orthoptic/pleoptic training | Miscellaneous Medical | a | 0.00 | 0.40 | 0.40 | | |
| 92070 | | Fitting of contact lens | Miscellaneous Medical | | 0.70 | 1.04 | 0.33 | | |
| 92081 | 26 | Visual field examination(s) | Miscellaneous Medical | | 0.36 | 0.16 | 0.16 | | |
| 92081 | TC | Visual field examination(s) | Miscellaneous Medical | a | 0.00 | 1.88 | 1.88 | | |
| 92082 | 26 | Visual field examination(s) | Miscellaneous Medical | | 0.44 | 0.19 | 0.19 | | |
| 92082 | TC | Visual field examination(s) | Miscellaneous Medical | a | 0.00 | 0.87 | 0.87 | | |
| 92083 | 26 | Visual field examination(s) | Miscellaneous Medical | | 0.50 | 0.23 | 0.23 | | |
| 92083 | TC | Visual field examination(s) | Miscellaneous Medical | a | 0.00 | 1.36 | 1.36 | | |
| 92100 | | Serial tonometry exam(s) | Miscellaneous Medical | | 0.92 | 0.73 | 0.38 | | |
| 92120 | | Tonography & eye evaluation | Miscellaneous Medical | | 0.81 | 0.80 | 0.33 | | |
| 92130 | | Water provocation tonography | Miscellaneous Medical | | 0.81 | 0.91 | 0.38 | | |
| 92135 | 26 | Opthalmic dx imaging | Miscellaneous Medical | | 0.35 | 0.16 | 0.16 | | |
| 92135 | TC | Opthalmic dx imaging | Miscellaneous Medical | a | 0.00 | 1.38 | 1.38 | | |
| 92136 | 26 | Ophthalmic biometry | Miscellaneous Medical | | 0.54 | 0.25 | 0.25 | | |
| 92136 | TC | Ophthalmic biometry | Miscellaneous Medical | a | 0.00 | 1.63 | 1.63 | | |
| 92140 | | Glaucoma provocative tests | Miscellaneous Medical | | 0.50 | 0.99 | 0.22 | | |
| 92225 | | Special eye exam, initial | Miscellaneous Medical | | 0.38 | 0.22 | 0.16 | | |
| 92226 | | Special eye exam, subsequent | Miscellaneous Medical | | 0.33 | 0.21 | 0.15 | | |
| 92230 | | Eye exam with photos | Miscellaneous Medical | | 0.60 | 1.69 | 0.20 | | |
| 92235 | 26 | Eye exam with photos | Miscellaneous Medical | | 0.81 | 0.38 | 0.38 | | |
| 92235 | TC | Eye exam with photos | Miscellaneous Medical | a | 0.00 | 2.23 | 2.23 | | |
| 92240 | 26 | Icg angiography | Miscellaneous Medical | | 1.10 | 0.51 | 0.51 | | |
| 92240 | TC | Icg angiography | Miscellaneous Medical | a | 0.00 | 4.58 | 4.58 | | |
| 92250 | 26 | Eye exam with photos | Miscellaneous Medical | | 0.44 | 0.20 | 0.20 | | |
| 92250 | TC | Eye exam with photos | Miscellaneous Medical | a | 0.00 | 1.29 | 1.29 | | |
| 92260 | | Ophthalmoscopy/dynamometry | Miscellaneous Medical | | 0.20 | 0.24 | 0.09 | | |
| 92265 | 26 | Eye muscle evaluation | Miscellaneous Medical | | 0.81 | 0.29 | 0.29 | | |
| 92265 | TC | Eye muscle evaluation | Miscellaneous Medical | a | 0.00 | 1.60 | 1.60 | | |
| 92270 | 26 | Electro-oculography | Miscellaneous Medical | | 0.81 | 0.35 | 0.35 | | |
| 92270 | TC | Electro-oculography | Miscellaneous Medical | a | 0.00 | 1.41 | 1.41 | | |
| 92275 | 26 | Electroretinography | Miscellaneous Medical | | 1.01 | 0.44 | 0.44 | | |
| 92275 | TC | Electroretinography | Miscellaneous Medical | a | 0.00 | 1.54 | 1.54 | | |
| 92283 | 26 | Color vision examination | Miscellaneous Medical | | 0.17 | 0.07 | 0.07 | | |
| 92283 | TC | Color vision examination | Miscellaneous Medical | a | 0.00 | 0.79 | 0.79 | | |

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### TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 92284 | 26 | Dark adaptation eye exam | Miscellaneous Medical | | 0.24 | 0.09 | 0.09 | | |
| 92284 | TC | Dark adaptation eye exam | Miscellaneous Medical | a | 0.00 | 2.19 | 2.19 | | |
| 92285 | 26 | Eye photography | Miscellaneous Medical | | 0.20 | 0.09 | 0.09 | | |
| 92285 | TC | Eye photography | Miscellaneous Medical | a | 0.00 | 0.76 | 0.76 | | |
| 92286 | 26 | Internal eye photography | Miscellaneous Medical | | 0.66 | 0.30 | 0.30 | | |
| 92286 | TC | Internal eye photography | Miscellaneous Medical | a | 0.00 | 2.56 | 2.56 | | |
| 92287 | 26 | Internal eye photography | Miscellaneous Medical | | | | | 1.05 | SA |
| 92287 | TC | Internal eye photography | Miscellaneous Medical | a | | | | 2.46 | |
| 92310 | | Contact lens fitting | Vision Exams | | 1.17 | 1.13 | 0.46 | | |
| 92311 | | Contact lens fitting | Miscellaneous Medical | | 1.08 | 1.14 | 0.36 | | |
| 92312 | | Contact lens fitting | Miscellaneous Medical | | 1.26 | 1.13 | 0.51 | | |
| 92313 | | Contact lens fitting | Miscellaneous Medical | | 0.92 | 1.11 | 0.29 | | |
| 92314 | | Prescription of contact lens | Vision Exams | | 0.69 | 0.95 | 0.27 | | |
| 92315 | | Prescription of contact lens | Miscellaneous Medical | | 0.45 | 0.90 | 0.17 | | |
| 92316 | | Prescription of contact lens | Miscellaneous Medical | | 0.68 | 0.96 | 0.30 | | |
| 92317 | | Prescription of contact lens | Miscellaneous Medical | | 0.45 | 0.99 | 0.14 | | |
| 92325 | | Modification of contact lens | Vision Exams | | 0.00 | 0.40 | 0.40 | | |
| 92326 | | Replacement of contact lens | Vision Exams | | 0.00 | 1.62 | 1.62 | | |
| 92330 | | Fitting of artificial eye | Miscellaneous Medical | | 1.08 | 1.03 | 0.33 | | |
| 92335 | | Fitting of artificial eye | Miscellaneous Medical | | 0.45 | 0.96 | 0.17 | | |
| 92340 | | Fitting of spectacles | Vision Exams | | 0.37 | 0.71 | 0.14 | | |
| 92341 | | Fitting of spectacles | Vision Exams | | 0.47 | 0.75 | 0.18 | | |
| 92342 | | Fitting of spectacles | Vision Exams | | 0.53 | 0.77 | 0.21 | | |
| 92352 | | Special spectacles fitting | Miscellaneous Medical | | 0.37 | 0.71 | 0.14 | | |
| 92353 | | Special spectacles fitting | Miscellaneous Medical | | 0.50 | 0.76 | 0.20 | | |
| 92354 | | Special spectacles fitting | Miscellaneous Medical | | 0.00 | 8.82 | 8.82 | | |
| 92355 | | Special spectacles fitting | Miscellaneous Medical | | 0.00 | 4.31 | 4.31 | | |
| 92358 | | Eye prosthesis service | Miscellaneous Medical | | 0.00 | 0.97 | 0.97 | | |
| 92370 | | Repair & adjust spectacles | Vision Exams | | 0.32 | 0.56 | 0.13 | | |
| 92371 | | Repair & adjust spectacles | Miscellaneous Medical | | 0.00 | 0.62 | 0.62 | | |
| 92390 | | Supply of spectacles | Vision Exams | | | | | 4.39 | SAF |
| 92391 | | Supply of contact lenses | Vision Exams | | | | | 2.48 | SAF |
| 92392 | | Supply of low vision aids | Vision Exams | | 0.00 | 3.84 | 3.84 | | |
| 92393 | | Supply of artificial eye | Miscellaneous Medical | | 0.00 | 11.92 | 11.92 | | |
| 92395 | | Supply of spectacles | Miscellaneous Medical | | 0.00 | 1.30 | 1.30 | | |
| 92396 | | Supply of contact lenses | Miscellaneous Medical | | 0.00 | 2.19 | 2.19 | | |
| 92499 | 26 | Eye service or procedure | Vision Exams | | | | | 1.97 | Misc |
| 92499 | TC | Eye service or procedure | Vision Exams | a | | | | 5.58 | Misc |
| 92502 | | Ear and throat examination | Miscellaneous Medical | | 1.51 | 1.24 | 1.24 | | |
| 92504 | | Ear microscopy examination | Miscellaneous Medical | | 0.18 | 0.51 | 0.09 | | |
| 92506 | | Speech/hearing evaluation | Hearing/Speech Exams | | 0.86 | 1.63 | 0.41 | | |
| 92507 | | Speech/hearing therapy | Hearing/Speech Exams | | 0.52 | 1.56 | 0.24 | | |
| 92508 | | Speech/hearing therapy | Hearing/Speech Exams | | 0.26 | 1.45 | 0.12 | | |
| 92510 | | Rehab for ear implant | Hearing/Speech Exams | | 1.50 | 2.11 | 0.83 | | |
| 92511 | | Nasopharyngoscopy | Miscellaneous Medical | | 0.84 | 1.38 | 0.42 | | |
| 92512 | | Nasal function studies | Miscellaneous Medical | | 0.55 | 1.10 | 0.18 | | |

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|---|---|---|---|---|---|---|---|---|---|
| 92516 | | Facial nerve function test | Miscellaneous Medical | | 0.43 | 0.97 | 0.22 | | |
| 92520 | | Laryngeal function studies | Miscellaneous Medical | | 0.76 | 0.55 | 0.40 | | |
| 92526 | | Oral function therapy | Miscellaneous Medical | | 0.55 | 1.62 | 0.21 | | |
| 92531 | | Spontaneous nystagmus study | Miscellaneous Medical | | | | | 0.54 | MDR |
| 92532 | | Positional nystagmus test | Miscellaneous Medical | | | | | 0.63 | MDR |
| 92533 | | Caloric vestibular test | Miscellaneous Medical | | | | | 1.01 | MDR |
| 92534 | | Optokinetic nystagmus test | Miscellaneous Medical | | | | | 0.44 | MDR |
| 92541 | 26 | Spontaneous nystagmus test | Miscellaneous Medical | | 0.40 | 0.20 | 0.20 | | |
| 92541 | TC | Spontaneous nystagmus test | Miscellaneous Medical | a | 0.00 | 0.91 | 0.91 | | |
| 92542 | 26 | Positional nystagmus test | Miscellaneous Medical | | 0.33 | 0.16 | 0.16 | | |
| 92542 | TC | Positional nystagmus test | Miscellaneous Medical | a | 0.00 | 1.04 | 1.04 | | |
| 92543 | 26 | Caloric vestibular test | Miscellaneous Medical | | 0.10 | 0.05 | 0.05 | | |
| 92543 | TC | Caloric vestibular test | Miscellaneous Medical | a | 0.00 | 0.58 | 0.58 | | |
| 92544 | 26 | Optokinetic nystagmus test | Miscellaneous Medical | | 0.26 | 0.13 | 0.13 | | |
| 92544 | TC | Optokinetic nystagmus test | Miscellaneous Medical | a | 0.00 | 0.84 | 0.84 | | |
| 92545 | 26 | Oscillating tracking test | Miscellaneous Medical | | 0.23 | 0.11 | 0.11 | | |
| 92545 | TC | Oscillating tracking test | Miscellaneous Medical | a | 0.00 | 0.79 | 0.79 | | |
| 92546 | 26 | Sinusoidal rotational test | Miscellaneous Medical | | 0.29 | 0.14 | 0.14 | | |
| 92546 | TC | Sinusoidal rotational test | Miscellaneous Medical | a | 0.00 | 2.11 | 2.11 | | |
| 92547 | | Supplemental electrical test | Miscellaneous Medical | | 0.00 | 1.34 | 1.34 | | |
| 92548 | 26 | Posturography | Miscellaneous Medical | | 0.50 | 0.27 | 0.27 | | |
| 92548 | TC | Posturography | Miscellaneous Medical | a | 0.00 | 3.71 | 3.71 | | |
| 92551 | | Pure tone hearing test, air | Hearing/Speech Exams | | | | | 0.42 | MDR |
| 92552 | | Pure tone audiometry, air | Hearing/Speech Exams | | 0.00 | 0.45 | 0.45 | | |
| 92553 | | Audiometry, air & bone | Hearing/Speech Exams | | 0.00 | 0.66 | 0.66 | | |
| 92555 | | Speech threshold audiometry | Hearing/Speech Exams | | 0.00 | 0.38 | 0.38 | | |
| 92556 | | Speech audiometry, complete | Hearing/Speech Exams | | 0.00 | 0.57 | 0.57 | | |
| 92557 | | Comprehensive hearing test | Hearing/Speech Exams | | 0.00 | 1.18 | 1.18 | | |
| 92559 | | Group audiometric testing | Hearing/Speech Exams | | | | | 1.36 | PHCS |
| 92560 | | Bekesy audiometry, screen | Hearing/Speech Exams | | | | | 0.62 | PHCS |
| 92561 | | Bekesy audiometry, diagnosis | Hearing/Speech Exams | | 0.00 | 0.72 | 0.72 | | |
| 92562 | | Loudness balance test | Hearing/Speech Exams | | 0.00 | 0.41 | 0.41 | | |
| 92563 | | Tone decay hearing test | Hearing/Speech Exams | | 0.00 | 0.38 | 0.38 | | |
| 92564 | | Sisi hearing test | Hearing/Speech Exams | | 0.00 | 0.47 | 0.47 | | |
| 92565 | | Stenger test, pure tone | Hearing/Speech Exams | | 0.00 | 0.40 | 0.40 | | |
| 92567 | | Tympanometry | Hearing/Speech Exams | | 0.00 | 0.52 | 0.52 | | |
| 92568 | | Acoustic reflex testing | Hearing/Speech Exams | | 0.00 | 0.38 | 0.38 | | |
| 92569 | | Acoustic reflex decay test | Hearing/Speech Exams | | 0.00 | 0.41 | 0.41 | | |
| 92571 | | Filtered speech hearing test | Hearing/Speech Exams | | 0.00 | 0.39 | 0.39 | | |
| 92572 | | Staggered spondaic word test | Hearing/Speech Exams | | 0.00 | 0.09 | 0.09 | | |
| 92573 | | Lombard test | Hearing/Speech Exams | | 0.00 | 0.35 | 0.35 | | |
| 92575 | | Sensorineural acuity test | Hearing/Speech Exams | | 0.00 | 0.30 | 0.30 | | |
| 92576 | | Synthetic sentence test | Hearing/Speech Exams | | 0.00 | 0.45 | 0.45 | | |
| 92577 | | Stenger test, speech | Hearing/Speech Exams | | 0.00 | 0.72 | 0.72 | | |
| 92579 | | Visual audiometry (vra) | Hearing/Speech Exams | | 0.00 | 0.73 | 0.73 | | |
| 92582 | | Conditioning play audiometry | Hearing/Speech Exams | | 0.00 | 0.73 | 0.73 | | |

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|---|---|---|---|---|---|---|---|---|---|
| 92583 | | Select picture audiometry | Hearing/Speech Exams | | 0.00 | 0.89 | 0.89 | | |
| 92584 | | Electrocochleography | Hearing/Speech Exams | | 0.00 | 2.47 | 2.47 | | |
| 92585 | 26 | Auditor evoke potent, compre | Hearing/Speech Exams | | 0.50 | 0.22 | 0.22 | | |
| 92585 | TC | Auditor evoke potent, compre | Hearing/Speech Exams | a | 0.00 | 1.84 | 1.84 | | |
| 92586 | | Auditor evoke potent, limit | Hearing/Speech Exams | | 0.00 | 1.84 | 1.84 | | |
| 92587 | 26 | Evoked auditory test | Hearing/Speech Exams | | 0.13 | 0.07 | 0.07 | | |
| 92587 | TC | Evoked auditory test | Hearing/Speech Exams | a | 0.00 | 1.30 | 1.30 | | |
| 92588 | 26 | Evoked auditory test | Hearing/Speech Exams | | 0.36 | 0.17 | 0.17 | | |
| 92588 | TC | Evoked auditory test | Hearing/Speech Exams | a | 0.00 | 1.46 | 1.46 | | |
| 92589 | | Auditory function test(s) | Hearing/Speech Exams | | 0.00 | 0.53 | 0.53 | | |
| 92590 | | Hearing aid exam, one ear | Hearing/Speech Exams | | | | | 1.60 | MDR |
| 92591 | | Hearing aid exam, both ears | Hearing/Speech Exams | | | | | 2.40 | MDR |
| 92592 | | Hearing aid check, one ear | Hearing/Speech Exams | | | | | 0.70 | MDR |
| 92593 | | Hearing aid check, both ears | Hearing/Speech Exams | | | | | 1.06 | MDR |
| 92594 | | Electro hearng aid test, one | Hearing/Speech Exams | | | | | 0.77 | MDR |
| 92595 | | Electro hearng aid tst, both | Hearing/Speech Exams | | | | | 1.15 | MDR |
| 92596 | | Ear protector evaluation | Hearing/Speech Exams | | 0.00 | 0.59 | 0.59 | | |
| 92597 | | Oral speech device eval | Hearing/Speech Exams | | 0.86 | 1.63 | 0.41 | | |
| 92601 | | Cochlear implt f/up exam < 7 | Miscellaneous Medical | | 0.00 | 3.50 | 3.50 | | |
| 92602 | | Reprogram cochlear implt < 7 | Miscellaneous Medical | | 0.00 | 2.44 | 2.44 | | |
| 92603 | | Cochlear implt f/up exam 7 > | Miscellaneous Medical | | 0.00 | 2.34 | 2.34 | | |
| 92604 | | Reprogram cochlear implt 7 > | Miscellaneous Medical | | 0.00 | 1.58 | 1.58 | | |
| 92607 | | Ex for speech device rx, 1hr | Miscellaneous Medical | | 0.00 | 2.93 | 2.93 | | |
| 92608 | | Ex for speech device rx addl | Miscellaneous Medical | | 0.00 | 0.55 | 0.55 | | |
| 92609 | | Use of speech device service | Miscellaneous Medical | | 0.00 | 1.58 | 1.58 | | |
| 92610 | | Evaluate swallowing function | Miscellaneous Medical | | 0.00 | 1.08 | 1.08 | | |
| 92611 | | Motion fluoroscopy/swallow | Miscellaneous Medical | | 0.00 | 1.18 | 1.18 | | |
| 92612 | | Endoscopy swallow tst (fees) | Miscellaneous Medical | | 1.27 | 3.36 | 0.50 | | |
| 92614 | | Laryngoscopic sensory test | Miscellaneous Medical | | 1.27 | 2.29 | 0.50 | | |
| 92616 | | Fees w/laryngeal sense test | Miscellaneous Medical | | 1.88 | 3.02 | 0.73 | | |
| 92950 | | Heart/lung resuscitation cpr | Cardiovascular | | 3.80 | 1.01 | 1.01 | | |
| 92953 | | Temporary external pacing | Cardiovascular | | 0.23 | 0.23 | 0.23 | | |
| 92960 | | Cardioversion electric, ext | Cardiovascular | | 2.25 | 2.28 | 0.86 | | |
| 92961 | 26 | Cardioversion, electric, int | Cardiovascular | | | | | 3.50 | SA |
| 92961 | TC | Cardioversion, electric, int | Cardiovascular | a | | | | 2.87 | |
| 92970 | | Cardioassist, internal | Cardiovascular | | 3.52 | 1.08 | 1.08 | | |
| 92971 | | Cardioassist, external | Cardiovascular | | 1.77 | 0.88 | 0.88 | | |
| 92973 | | Percut coronary thrombectomy | Surgery | | 3.28 | 1.32 | 1.32 | | |
| 92974 | | Cath place, cardio brachytx | Surgery | | 3.00 | 1.20 | 1.20 | | |
| 92975 | | Dissolve clot, heart vessel | Cardiovascular | | 7.25 | 2.88 | 2.88 | | |
| 92977 | | Dissolve clot, heart vessel | Cardiovascular | | 0.00 | 8.02 | 8.02 | | |
| 92978 | 26 | Intravasc us, heart add-on | Cardiovascular | | 1.80 | 0.73 | 0.73 | | |
| 92978 | TC | Intravasc us, heart add-on | Cardiovascular | a | 0.00 | 4.55 | 4.55 | | |
| 92979 | 26 | Intravasc us, heart add-on | Cardiovascular | | 1.44 | 0.58 | 0.58 | | |
| 92979 | TC | Intravasc us, heart add-on | Cardiovascular | a | 0.00 | 2.28 | 2.28 | | |
| 92980 | | Insert intracoronary stent | Surgery | | 14.84 | 6.21 | 6.21 | | |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology.

TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 92981 | | Insert intracoronary stent | Surgery | | 4.17 | 1.68 | 1.68 | | |
| 92982 | | Coronary artery dilation | Surgery | | 10.98 | 4.66 | 4.66 | | |
| 92984 | | Coronary artery dilation | Surgery | | 2.97 | 1.19 | 1.19 | | |
| 92986 | | Revision of aortic valve | Surgery | | 21.80 | 10.27 | 10.27 | | |
| 92987 | | Revision of mitral valve | Surgery | | 22.70 | 10.66 | 10.66 | | |
| 92990 | | Revision of pulmonary valve | Surgery | | 17.34 | 8.24 | 8.24 | | |
| 92992 | | Revision of heart chamber | Surgery | | | | | 39.45 | MDR |
| 92993 | | Revision of heart chamber | Surgery | | | | | 27.64 | MDR |
| 92995 | | Coronary atherectomy | Surgery | | 12.09 | 5.10 | 5.10 | | |
| 92996 | | Coronary atherectomy add-on | Surgery | | 3.26 | 1.30 | 1.30 | | |
| 92997 | | Pul art balloon repr, percut | Surgery | | 12.00 | 4.96 | 4.96 | | |
| 92998 | | Pul art balloon repr, percut | Surgery | | 6.00 | 2.26 | 2.26 | | |
| 93000 | | Electrocardiogram, complete | Cardiovascular | | 0.17 | 0.51 | 0.51 | | |
| 93005 | | Electrocardiogram, tracing | Cardiovascular | | 0.00 | 0.45 | 0.45 | | |
| 93010 | | Electrocardiogram report | Cardiovascular | | 0.17 | 0.06 | 0.06 | | |
| 93012 | | Transmission of ecg | Cardiovascular | | 0.00 | 5.99 | 2.35 | | |
| 93014 | | Report on transmitted ecg | Cardiovascular | | 0.52 | 0.19 | 0.19 | | |
| 93015 | | Cardiovascular stress test | Cardiovascular | | 0.75 | 1.97 | 1.97 | | |
| 93016 | | Cardiovascular stress test | Cardiovascular | | 0.45 | 0.18 | 0.18 | | |
| 93017 | | Cardiovascular stress test | Cardiovascular | | 0.00 | 1.67 | 1.67 | | |
| 93018 | | Cardiovascular stress test | Cardiovascular | | 0.30 | 0.12 | 0.12 | | |
| 93024 | 26 | Cardiac drug stress test | Cardiovascular | | 1.17 | 0.46 | 0.46 | | |
| 93024 | TC | Cardiac drug stress test | Cardiovascular | a | 0.00 | 1.11 | 1.11 | | |
| 93025 | 26 | Microvolt t-wave assess | Cardiovascular | | 0.75 | 0.31 | 0.31 | | |
| 93025 | TC | Microvolt t-wave assess | Cardiovascular | a | 0.00 | 10.42 | 10.42 | | |
| 93040 | | Rhythm ECG with report | Cardiovascular | | 0.16 | 0.20 | 0.20 | | |
| 93041 | | Rhythm ECG, tracing | Cardiovascular | | 0.00 | 0.15 | 0.15 | | |
| 93042 | | Rhythm ECG, report | Cardiovascular | | 0.16 | 0.05 | 0.05 | | |
| 93224 | | ECG monitor/report, 24 hrs | Cardiovascular | | 0.52 | 3.61 | 3.61 | | |
| 93225 | | ECG monitor/record, 24 hrs | Cardiovascular | | 0.00 | 1.23 | 1.23 | | |
| 93226 | | ECG monitor/report, 24 hrs | Cardiovascular | | 0.00 | 2.18 | 2.18 | | |
| 93227 | | ECG monitor/review, 24 hrs | Cardiovascular | | 0.52 | 0.20 | 0.20 | | |
| 93230 | | ECG monitor/report, 24 hrs | Cardiovascular | | 0.52 | 3.88 | 3.88 | | |
| 93231 | | Ecg monitor/record, 24 hrs | Cardiovascular | | 0.00 | 1.51 | 1.51 | | |
| 93232 | | ECG monitor/report, 24 hrs | Cardiovascular | | 0.00 | 2.17 | 2.17 | | |
| 93233 | | ECG monitor/review, 24 hrs | Cardiovascular | | 0.52 | 0.20 | 0.20 | | |
| 93235 | | ECG monitor/report, 24 hrs | Cardiovascular | | 0.45 | 2.78 | 2.78 | | |
| 93236 | | ECG monitor/report, 24 hrs | Cardiovascular | | 0.00 | 2.61 | 2.61 | | |
| 93237 | | ECG monitor/review, 24 hrs | Cardiovascular | | 0.45 | 0.17 | 0.17 | | |
| 93268 | | ECG record/review | Cardiovascular | | 0.52 | 7.41 | 7.41 | | |
| 93270 | | ECG recording | Cardiovascular | | 0.00 | 1.23 | 1.23 | | |
| 93271 | | Ecg/monitoring and analysis | Cardiovascular | | 0.00 | 5.99 | 5.99 | | |
| 93272 | | Ecg/review, interpret only | Cardiovascular | | 0.52 | 0.19 | 0.19 | | |
| 93278 | 26 | ECG/signal-averaged | Cardiovascular | | 0.25 | 0.10 | 0.10 | | |
| 93278 | TC | ECG/signal-averaged | Cardiovascular | a | 0.00 | 1.14 | 1.14 | | |
| 93303 | 26 | Echo transthoracic | Cardiovascular | | 1.30 | 0.49 | 0.49 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 93303 | TC | Echo transthoracic | Cardiovascular | a | 0.00 | 3.84 | 3.84 | | |
| 93304 | 26 | Echo transthoracic | Cardiovascular | | 0.75 | 0.29 | 0.29 | | |
| 93304 | TC | Echo transthoracic | Cardiovascular | a | 0.00 | 1.93 | 1.93 | | |
| 93307 | 26 | Echo exam of heart | Cardiovascular | | 0.92 | 0.36 | 0.36 | | |
| 93307 | TC | Echo exam of heart | Cardiovascular | a | 0.00 | 3.84 | 3.84 | | |
| 93308 | 26 | Echo exam of heart | Cardiovascular | | 0.53 | 0.21 | 0.21 | | |
| 93308 | TC | Echo exam of heart | Cardiovascular | a | 0.00 | 1.93 | 1.93 | | |
| 93312 | 26 | Echo transesophageal | Cardiovascular | | 2.20 | 0.81 | 0.81 | | |
| 93312 | TC | Echo transesophageal | Cardiovascular | a | 0.00 | 3.76 | 3.76 | | |
| 93313 | | Echo transesophageal | Cardiovascular | | 0.95 | 0.22 | 0.21 | | |
| 93314 | 26 | Echo transesophageal | Cardiovascular | | 1.25 | 0.48 | 0.48 | | |
| 93314 | TC | Echo transesophageal | Cardiovascular | a | 0.00 | 3.76 | 3.76 | | |
| 93315 | 26 | Echo transesophageal | Cardiovascular | | 2.78 | 1.03 | 1.03 | | |
| 93315 | TC | Echo transesophageal | Cardiovascular | a | 0.00 | 3.76 | 3.76 | | |
| 93316 | | Echo transesophageal | Cardiovascular | | 0.95 | 0.24 | 0.24 | | |
| 93317 | 26 | Echo transesophageal | Cardiovascular | | 1.83 | 0.69 | 0.69 | | |
| 93317 | TC | Echo transesophageal | Cardiovascular | a | 0.00 | 3.76 | 3.76 | | |
| 93318 | 26 | Echo transesophageal intraop | Cardiovascular | | 2.20 | 0.49 | 0.49 | | |
| 93318 | TC | Echo transesophageal intraop | Cardiovascular | a | | | | 4.35 | MDR |
| 93320 | 26 | Doppler echo exam, heart | Cardiovascular | | 0.38 | 0.15 | 0.15 | | |
| 93320 | TC | Doppler echo exam, heart | Cardiovascular | a | 0.00 | 1.70 | 1.70 | | |
| 93321 | 26 | Doppler echo exam, heart | Cardiovascular | | 0.15 | 0.06 | 0.06 | | |
| 93321 | TC | Doppler echo exam, heart | Cardiovascular | a | 0.00 | 1.10 | 1.10 | | |
| 93325 | 26 | Doppler color flow add-on | Cardiovascular | | 0.07 | 0.03 | 0.03 | | |
| 93325 | TC | Doppler color flow add-on | Cardiovascular | a | 0.00 | 2.89 | 2.89 | | |
| 93350 | 26 | Echo transthoracic | Cardiovascular | | 1.48 | 0.58 | 0.58 | | |
| 93350 | TC | Echo transthoracic | Cardiovascular | a | 0.00 | 1.75 | 1.75 | | |
| 93501 | 26 | Right heart catheterization | Surgery | | 3.02 | 1.18 | 1.18 | | |
| 93501 | TC | Right heart catheterization | Surgery | a | 0.00 | 16.83 | 16.83 | | |
| 93503 | | Insert/place heart catheter | Surgery | | 2.91 | 0.69 | 0.69 | | |
| 93505 | 26 | Biopsy of heart lining | Surgery | | 4.38 | 1.72 | 1.72 | | |
| 93505 | TC | Biopsy of heart lining | Surgery | a | 0.00 | 1.97 | 1.97 | | |
| 93508 | 26 | Cath placement, angiography | Surgery | | 4.10 | 1.64 | 1.64 | | |
| 93508 | TC | Cath placement, angiography | Surgery | a | 0.00 | 12.55 | 12.55 | | |
| 93510 | 26 | Left heart catheterization | Surgery | | 4.33 | 1.74 | 1.74 | | |
| 93510 | TC | Left heart catheterization | Surgery | a | 0.00 | 36.79 | 36.79 | | |
| 93511 | 26 | Left heart catheterization | Surgery | | 5.03 | 2.02 | 2.02 | | |
| 93511 | TC | Left heart catheterization | Surgery | a | 0.00 | 35.82 | 35.82 | | |
| 93514 | 26 | Left heart catheterization | Surgery | | 7.05 | 2.76 | 2.76 | | |
| 93514 | TC | Left heart catheterization | Surgery | a | 0.00 | 35.82 | 35.82 | | |
| 93524 | 26 | Left heart catheterization | Surgery | | 6.95 | 2.77 | 2.77 | | |
| 93524 | TC | Left heart catheterization | Surgery | a | 0.00 | 46.80 | 46.80 | | |
| 93526 | 26 | Rt & Lt heart catheters | Surgery | | 5.99 | 2.40 | 2.40 | | |
| 93526 | TC | Rt & Lt heart catheters | Surgery | a | 0.00 | 48.08 | 48.08 | | |
| 93527 | 26 | Rt & Lt heart catheters | Surgery | | 7.28 | 2.92 | 2.92 | | |
| 93527 | TC | Rt & Lt heart catheters | Surgery | a | 0.00 | 46.80 | 46.80 | | |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology

TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 93528 | 26 | Rt & Lt heart catheters | Surgery | | 9.00 | 3.64 | 3.64 | | |
| 93528 | TC | Rt & Lt heart catheters | Surgery | a | 0.00 | 46.80 | 46.80 | | |
| 93529 | 26 | Rt, lt heart catheterization | Surgery | | 4.80 | 1.87 | 1.87 | | |
| 93529 | TC | Rt, lt heart catheterization | Surgery | a | 0.00 | 46.80 | 46.80 | | |
| 93530 | 26 | Rt heart cath, congenital | Surgery | | 4.23 | 1.54 | 1.54 | | |
| 93530 | TC | Rt heart cath, congenital | Surgery | a | 0.00 | 16.83 | 16.83 | | |
| 93531 | 26 | R & l heart cath, congenital | Surgery | | 8.35 | 3.22 | 3.22 | | |
| 93531 | TC | R & l heart cath, congenital | Surgery | a | 0.00 | 48.08 | 48.08 | | |
| 93532 | 26 | R & l heart cath, congenital | Surgery | | 10.00 | 3.90 | 3.90 | | |
| 93532 | TC | R & l heart cath, congenital | Surgery | a | 0.00 | 46.80 | 46.80 | | |
| 93533 | 26 | R & l heart cath, congenital | Surgery | | 6.70 | 2.44 | 2.44 | | |
| 93533 | TC | R & l heart cath, congenital | Surgery | a | 0.00 | 46.80 | 46.80 | | |
| 93539 | | Injection, cardiac cath | Cardiovascular | | 0.40 | 0.16 | 0.16 | | |
| 93540 | | Injection, cardiac cath | Cardiovascular | | 0.43 | 0.17 | 0.17 | | |
| 93541 | | Injection for lung angiogram | Cardiovascular | | 0.29 | 0.12 | 0.12 | | |
| 93542 | | Injection for heart x-rays | Cardiovascular | | 0.29 | 0.12 | 0.12 | | |
| 93543 | | Injection for heart x-rays | Cardiovascular | | 0.29 | 0.12 | 0.12 | | |
| 93544 | | Injection for aortography | Cardiovascular | | 0.25 | 0.10 | 0.10 | | |
| 93545 | | Inject for coronary x-rays | Cardiovascular | | 0.40 | 0.16 | 0.16 | | |
| 93555 | 26 | Imaging, cardiac cath | Cardiovascular | | 0.81 | 0.33 | 0.33 | | |
| 93555 | TC | Imaging, cardiac cath | Cardiovascular | a | 0.00 | 6.25 | 6.25 | | |
| 93556 | 26 | Imaging, cardiac cath | Cardiovascular | | 0.83 | 0.33 | 0.33 | | |
| 93556 | TC | Imaging, cardiac cath | Cardiovascular | a | 0.00 | 9.85 | 9.85 | | |
| 93561 | 26 | Cardiac output measurement | Surgery | | 0.50 | 0.16 | 0.16 | | |
| 93561 | TC | Cardiac output measurement | Surgery | a | 0.00 | 0.52 | 0.52 | | |
| 93562 | 26 | Cardiac output measurement | Surgery | | 0.16 | 0.05 | 0.05 | | |
| 93562 | TC | Cardiac output measurement | Surgery | a | 0.00 | 0.32 | 0.32 | | |
| 93571 | 26 | Heart flow reserve measure | Surgery | | 1.80 | 0.70 | 0.70 | | |
| 93571 | TC | Heart flow reserve measure | Surgery | a | 0.00 | 4.55 | 4.55 | | |
| 93572 | 26 | Heart flow reserve measure | Surgery | | 1.44 | 0.50 | 0.50 | | |
| 93572 | TC | Heart flow reserve measure | Surgery | a | 0.00 | 2.28 | 2.28 | | |
| 93580 | | Transcath closure of asd | Surgery | | 18.00 | 7.34 | 7.34 | | |
| 93581 | | Transcath closure of vsd | Surgery | | 24.43 | 9.84 | 9.84 | | |
| 93600 | 26 | Bundle of His recording | Cardiovascular | | 2.12 | 0.85 | 0.85 | | |
| 93600 | TC | Bundle of His recording | Cardiovascular | a | 0.00 | 1.94 | 1.94 | | |
| 93602 | 26 | Intra-atrial recording | Cardiovascular | | 2.12 | 0.84 | 0.84 | | |
| 93602 | TC | Intra-atrial recording | Cardiovascular | a | 0.00 | 1.10 | 1.10 | | |
| 93603 | 26 | Right ventricular recording | Cardiovascular | | 2.12 | 0.84 | 0.84 | | |
| 93603 | TC | Right ventricular recording | Cardiovascular | a | 0.00 | 1.67 | 1.67 | | |
| 93609 | 26 | Map tachycardia, add-on | Cardiovascular | | 5.00 | 2.00 | 2.00 | | |
| 93609 | TC | Map tachycardia, add-on | Cardiovascular | a | 0.00 | 2.71 | 2.71 | | |
| 93610 | 26 | Intra-atrial pacing | Cardiovascular | | 3.02 | 1.18 | 1.18 | | |
| 93610 | TC | Intra-atrial pacing | Cardiovascular | a | 0.00 | 1.34 | 1.34 | | |
| 93612 | 26 | Intraventricular pacing | Cardiovascular | | 3.02 | 1.18 | 1.18 | | |
| 93612 | TC | Intraventricular pacing | Cardiovascular | a | 0.00 | 1.61 | 1.61 | | |
| 93613 | 26 | Electrphys map 3d, add-on | Cardiovascular | | | | | 5.35 | SA |

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### TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 93613 | TC | Electrophys map 3d, add-on | Cardiovascular | a | | | | 4.37 | |
| 93615 | 26 | Esophageal recording | Cardiovascular | | 0.99 | 0.27 | 0.27 | | |
| 93615 | TC | Esophageal recording | Cardiovascular | a | 0.00 | 0.32 | 0.32 | | |
| 93616 | 26 | Esophageal recording | Cardiovascular | | 1.49 | 0.44 | 0.44 | | |
| 93616 | TC | Esophageal recording | Cardiovascular | a | 0.00 | 0.32 | 0.32 | | |
| 93618 | 26 | Heart rhythm pacing | Cardiovascular | | 4.26 | 1.71 | 1.71 | | |
| 93618 | TC | Heart rhythm pacing | Cardiovascular | a | 0.00 | 3.95 | 3.95 | | |
| 93619 | 26 | Electrophysiology evaluation | Cardiovascular | | 7.32 | 2.92 | 2.92 | | |
| 93619 | TC | Electrophysiology evaluation | Cardiovascular | a | 0.00 | 7.67 | 7.67 | | |
| 93620 | 26 | Electrophysiology evaluation | Cardiovascular | | 11.59 | 4.62 | 4.62 | | |
| 93620 | TC | Electrophysiology evaluation | Cardiovascular | a | | | | 13.26 | SA |
| 93621 | 26 | Electrophysiology evaluation | Cardiovascular | | 2.10 | 0.84 | 0.84 | | |
| 93621 | TC | Electrophysiology evaluation | Cardiovascular | a | | | | 2.41 | SA |
| 93622 | 26 | Electrophysiology evaluation | Cardiovascular | | 3.10 | 1.23 | 1.23 | | |
| 93622 | TC | Electrophysiology evaluation | Cardiovascular | a | | | | 3.55 | SA |
| 93623 | 26 | Stimulation, pacing heart | Cardiovascular | | 2.85 | 1.13 | 1.13 | | |
| 93623 | TC | Stimulation, pacing heart | Cardiovascular | a | | | | 3.98 | MDR |
| 93624 | 26 | Electrophysiologic study | Cardiovascular | | 4.81 | 1.91 | 1.91 | | |
| 93624 | TC | Electrophysiologic study | Cardiovascular | a | 0.00 | 1.97 | 1.97 | | |
| 93631 | 26 | Heart pacing, mapping | Cardiovascular | | 7.60 | 2.81 | 2.81 | | |
| 93631 | TC | Heart pacing, mapping | Cardiovascular | a | 0.00 | 6.12 | 6.12 | | |
| 93640 | 26 | Evaluation heart device | Cardiovascular | | 3.52 | 1.39 | 1.39 | | |
| 93640 | TC | Evaluation heart device | Cardiovascular | a | 0.00 | 7.14 | 7.14 | | |
| 93641 | 26 | Electrophysiology evaluation | Cardiovascular | | 5.93 | 2.37 | 2.37 | | |
| 93641 | TC | Electrophysiology evaluation | Cardiovascular | a | 0.00 | 7.14 | 7.14 | | |
| 93642 | 26 | Electrophysiology evaluation | Cardiovascular | | 4.89 | 1.93 | 1.93 | | |
| 93642 | TC | Electrophysiology evaluation | Cardiovascular | a | 0.00 | 7.14 | 7.14 | | |
| 93650 | | Ablate heart dysrhythm focus | Cardiovascular | | 10.51 | 4.19 | 4.19 | | |
| 93651 | | Ablate heart dysrhythm focus | Cardiovascular | | 16.25 | 6.49 | 6.49 | | |
| 93652 | | Ablate heart dysrhythm focus | Cardiovascular | | 17.68 | 7.07 | 7.07 | | |
| 93660 | 26 | Tilt table evaluation | Cardiovascular | | 1.89 | 0.76 | 0.76 | | |
| 93660 | TC | Tilt table evaluation | Cardiovascular | a | 0.00 | 1.67 | 1.67 | | |
| 93662 | 26 | Intracardiac ecg (ice) | Cardiovascular | | 2.80 | 1.08 | 1.08 | | |
| 93662 | TC | Intracardiac ecg (ice) | Cardiovascular | a | | | | 12.96 | MDR |
| 93668 | | Peripheral vascular rehab | Cardiovascular | | | | | 1.86 | MDR |
| 93701 | 26 | Bioimpedance, thoracic | Cardiovascular | | 0.17 | 0.07 | 0.07 | | |
| 93701 | TC | Bioimpedance, thoracic | Cardiovascular | a | 0.00 | 1.07 | 1.07 | | |
| 93720 | 26 | Total body plethysmography | Cardiovascular | | | | | 0.37 | SA |
| 93720 | TC | Total body plethysmography | Cardiovascular | a | | | | 0.56 | MDR |
| 93721 | | Plethysmography tracing | Cardiovascular | | 0.00 | 0.71 | 0.71 | | |
| 93722 | | Plethysmography report | Cardiovascular | | 0.17 | 0.05 | 0.05 | | |
| 93724 | 26 | Analyze pacemaker system | Cardiovascular | | 4.89 | 1.96 | 1.96 | | |
| 93724 | TC | Analyze pacemaker system | Cardiovascular | a | 0.00 | 3.95 | 3.95 | | |
| 93727 | | Analyze ilr system | Cardiovascular | | 0.52 | 0.20 | 0.20 | | |
| 93731 | 26 | Analyze pacemaker system | Cardiovascular | | 0.45 | 0.18 | 0.18 | | |
| 93731 | TC | Analyze pacemaker system | Cardiovascular | a | 0.00 | 0.49 | 0.49 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 93732 | 26 | Analyze pacemaker system | Cardiovascular | | 0.92 | 0.36 | 0.36 | | |
| 93732 | TC | Analyze pacemaker system | Cardiovascular | a | 0.00 | 0.51 | 0.51 | | |
| 93733 | 26 | Telephone analy, pacemaker | Cardiovascular | | 0.17 | 0.07 | 0.07 | | |
| 93733 | TC | Telephone analy, pacemaker | Cardiovascular | a | 0.00 | 0.73 | 0.73 | | |
| 93734 | 26 | Analyze pacemaker system | Cardiovascular | | 0.38 | 0.15 | 0.15 | | |
| 93734 | TC | Analyze pacemaker system | Cardiovascular | a | 0.00 | 0.35 | 0.35 | | |
| 93735 | 26 | Analyze pacemaker system | Cardiovascular | | 0.74 | 0.29 | 0.29 | | |
| 93735 | TC | Analyze pacemaker system | Cardiovascular | a | 0.00 | 0.45 | 0.45 | | |
| 93736 | 26 | Telephone analy, pacemaker | Cardiovascular | | 0.15 | 0.06 | 0.06 | | |
| 93736 | TC | Telephone analy, pacemaker | Cardiovascular | a | 0.00 | 0.63 | 0.63 | | |
| 93740 | 26 | Temperature gradient studies | Cardiovascular | | 0.16 | 0.04 | 0.04 | | |
| 93740 | TC | Temperature gradient studies | Cardiovascular | a | 0.00 | 0.15 | 0.15 | | |
| 93741 | 26 | Analyze ht pace device sngl | Cardiovascular | | 0.80 | 0.32 | 0.32 | | |
| 93741 | TC | Analyze ht pace device sngl | Cardiovascular | a | 0.00 | 0.67 | 0.67 | | |
| 93742 | 26 | Analyze ht pace device sngl | Cardiovascular | | 0.91 | 0.37 | 0.37 | | |
| 93742 | TC | Analyze ht pace device sngl | Cardiovascular | a | 0.00 | 0.67 | 0.67 | | |
| 93743 | 26 | Analyze ht pace device dual | Cardiovascular | | 1.03 | 0.41 | 0.41 | | |
| 93743 | TC | Analyze ht pace device dual | Cardiovascular | a | 0.00 | 0.74 | 0.74 | | |
| 93744 | 26 | Analyze ht pace device dual | Cardiovascular | | 1.18 | 0.47 | 0.47 | | |
| 93744 | TC | Analyze ht pace device dual | Cardiovascular | a | 0.00 | 0.67 | 0.67 | | |
| 93760 | 26 | Cephalic thermogram | Cardiovascular | | | | | 0.29 | SA |
| 93760 | TC | Cephalic thermogram | Cardiovascular | a | | | | 1.18 | SA |
| 93762 | 26 | Peripheral thermogram | Cardiovascular | | | | | 0.64 | SA |
| 93762 | TC | Peripheral thermogram | Cardiovascular | a | | | | 2.61 | SA |
| 93770 | 26 | Measure venous pressure | Cardiovascular | | 0.16 | 0.05 | 0.05 | | |
| 93770 | TC | Measure venous pressure | Cardiovascular | a | 0.00 | 0.03 | 0.03 | | |
| 93784 | | Ambulatory BP monitoring | Cardiovascular | | 0.17 | 0.98 | 0.98 | | |
| 93786 | | Ambulatory BP recording | Cardiovascular | | 0.00 | 0.91 | 0.91 | | |
| 93788 | | Ambulatory BP analysis | Cardiovascular | | | | | 1.82 | MDR |
| 93790 | | Review/report BP recording | Cardiovascular | | 0.17 | 0.07 | 0.07 | | |
| 93797 | | Cardiac rehab | Cardiovascular | | 0.18 | 0.39 | 0.07 | | |
| 93798 | | Cardiac rehab/monitor | Cardiovascular | | 0.28 | 0.50 | 0.11 | | |
| 93799 | 26 | Cardiovascular procedure | Cardiovascular | | | | | 1.47 | Misc |
| 93799 | TC | Cardiovascular procedure | Cardiovascular | a | | | | 3.40 | Misc |
| 93875 | 26 | Extracranial study | Miscellaneous Medical | | 0.22 | 0.08 | 0.08 | | |
| 93875 | TC | Extracranial study | Miscellaneous Medical | a | 0.00 | 1.57 | 1.57 | | |
| 93880 | 26 | Extracranial study | Miscellaneous Medical | | 0.60 | 0.21 | 0.21 | | |
| 93880 | TC | Extracranial study | Miscellaneous Medical | a | 0.00 | 4.09 | 4.09 | | |
| 93882 | 26 | Extracranial study | Miscellaneous Medical | | 0.40 | 0.14 | 0.14 | | |
| 93882 | TC | Extracranial study | Miscellaneous Medical | a | 0.00 | 2.81 | 2.81 | | |
| 93886 | 26 | Intracranial study | Miscellaneous Medical | | 0.94 | 0.38 | 0.38 | | |
| 93886 | TC | Intracranial study | Miscellaneous Medical | a | 0.00 | 4.35 | 4.35 | | |
| 93888 | 26 | Intracranial study | Miscellaneous Medical | | 0.62 | 0.23 | 0.23 | | |
| 93888 | TC | Intracranial study | Miscellaneous Medical | a | 0.00 | 2.91 | 2.91 | | |
| 93922 | 26 | Extremity study | Miscellaneous Medical | | 0.25 | 0.09 | 0.09 | | |
| 93922 | TC | Extremity study | Miscellaneous Medical | a | 0.00 | 1.79 | 1.79 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 93923 | 26 | Extremity study | Miscellaneous Medical | | 0.45 | 0.16 | 0.16 | | |
| 93923 | TC | Extremity study | Miscellaneous Medical | a | 0.00 | 2.79 | 2.79 | | |
| 93924 | 26 | Extremity study | Miscellaneous Medical | | 0.50 | 0.17 | 0.17 | | |
| 93924 | TC | Extremity study | Miscellaneous Medical | a | 0.00 | 3.50 | 3.50 | | |
| 93925 | 26 | Lower extremity study | Miscellaneous Medical | | 0.58 | 0.20 | 0.20 | | |
| 93925 | TC | Lower extremity study | Miscellaneous Medical | a | 0.00 | 4.75 | 4.75 | | |
| 93926 | 26 | Lower extremity study | Miscellaneous Medical | | 0.39 | 0.13 | 0.13 | | |
| 93926 | TC | Lower extremity study | Miscellaneous Medical | a | 0.00 | 3.26 | 3.26 | | |
| 93930 | 26 | Upper extremity study | Miscellaneous Medical | | 0.46 | 0.16 | 0.16 | | |
| 93930 | TC | Upper extremity study | Miscellaneous Medical | a | 0.00 | 3.78 | 3.78 | | |
| 93931 | 26 | Upper extremity study | Miscellaneous Medical | | 0.31 | 0.11 | 0.11 | | |
| 93931 | TC | Upper extremity study | Miscellaneous Medical | a | 0.00 | 2.72 | 2.72 | | |
| 93965 | 26 | Extremity study | Miscellaneous Medical | | 0.35 | 0.12 | 0.12 | | |
| 93965 | TC | Extremity study | Miscellaneous Medical | a | 0.00 | 1.73 | 1.73 | | |
| 93970 | 26 | Extremity study | Miscellaneous Medical | | 0.68 | 0.24 | 0.24 | | |
| 93970 | TC | Extremity study | Miscellaneous Medical | a | 0.00 | 3.81 | 3.81 | | |
| 93971 | 26 | Extremity study | Miscellaneous Medical | | 0.45 | 0.15 | 0.15 | | |
| 93971 | TC | Extremity study | Miscellaneous Medical | a | 0.00 | 2.72 | 2.72 | | |
| 93975 | 26 | Vascular study | Miscellaneous Medical | | 1.80 | 0.62 | 0.62 | | |
| 93975 | TC | Vascular study | Miscellaneous Medical | a | 0.00 | 5.30 | 5.30 | | |
| 93976 | 26 | Vascular study | Miscellaneous Medical | | 1.21 | 0.41 | 0.41 | | |
| 93976 | TC | Vascular study | Miscellaneous Medical | a | 0.00 | 3.08 | 3.08 | | |
| 93978 | 26 | Vascular study | Miscellaneous Medical | | 0.65 | 0.23 | 0.23 | | |
| 93978 | TC | Vascular study | Miscellaneous Medical | a | 0.00 | 3.40 | 3.40 | | |
| 93979 | 26 | Vascular study | Miscellaneous Medical | | 0.44 | 0.16 | 0.16 | | |
| 93979 | TC | Vascular study | Miscellaneous Medical | a | 0.00 | 2.47 | 2.47 | | |
| 93980 | 26 | Penile vascular study | Miscellaneous Medical | | 1.25 | 0.42 | 0.42 | | |
| 93980 | TC | Penile vascular study | Miscellaneous Medical | a | 0.00 | 4.08 | 4.08 | | |
| 93981 | 26 | Penile vascular study | Miscellaneous Medical | | 0.44 | 0.15 | 0.15 | | |
| 93981 | TC | Penile vascular study | Miscellaneous Medical | a | 0.00 | 4.67 | 4.67 | | |
| 93990 | 26 | Doppler flow testing | Miscellaneous Medical | | 0.25 | 0.09 | 0.09 | | |
| 93990 | TC | Doppler flow testing | Miscellaneous Medical | a | 0.00 | 3.26 | 3.26 | | |
| 94010 | 26 | Breathing capacity test | Miscellaneous Medical | | 0.17 | 0.05 | 0.05 | | |
| 94010 | TC | Breathing capacity test | Miscellaneous Medical | a | 0.00 | 0.83 | 0.83 | | |
| 94014 | | Patient recorded spirometry | Miscellaneous Medical | | 0.52 | 0.46 | 0.46 | | |
| 94015 | | Patient recorded spirometry | Miscellaneous Medical | | 0.00 | 0.29 | 0.29 | | |
| 94016 | | Review patient spirometry | Miscellaneous Medical | | 0.52 | 0.17 | 0.17 | | |
| 94060 | 26 | Evaluation of wheezing | Miscellaneous Medical | | 0.31 | 0.10 | 0.10 | | |
| 94060 | TC | Evaluation of wheezing | Miscellaneous Medical | a | 0.00 | 1.42 | 1.42 | | |
| 94070 | 26 | Evaluation of wheezing | Miscellaneous Medical | | 0.60 | 0.19 | 0.19 | | |
| 94070 | TC | Evaluation of wheezing | Miscellaneous Medical | a | 0.00 | 4.15 | 4.15 | | |
| 94150 | 26 | Vital capacity test | Miscellaneous Medical | | 0.07 | 0.03 | 0.03 | | |
| 94150 | TC | Vital capacity test | Miscellaneous Medical | a | 0.00 | 0.63 | 0.63 | | |
| 94200 | 26 | Lung function test (MBC/MVV) | Miscellaneous Medical | | 0.11 | 0.03 | 0.03 | | |
| 94200 | TC | Lung function test (MBC/MVV) | Miscellaneous Medical | a | 0.00 | 0.60 | 0.60 | | |
| 94240 | 26 | Residual lung capacity | Miscellaneous Medical | | 0.26 | 0.08 | 0.08 | | |

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### TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 94240 | TC | Residual lung capacity | Miscellaneous Medical | a | 0.00 | 1.81 | 1.81 | | |
| 94250 | 26 | Expired gas collection | Miscellaneous Medical | | 0.11 | 0.03 | 0.03 | | |
| 94250 | TC | Expired gas collection | Miscellaneous Medical | a | 0.00 | 0.67 | 0.67 | | |
| 94260 | 26 | Thoracic gas volume | Miscellaneous Medical | | 0.13 | 0.04 | 0.04 | | |
| 94260 | TC | Thoracic gas volume | Miscellaneous Medical | a | 0.00 | 0.51 | 0.51 | | |
| 94350 | 26 | Lung nitrogen washout curve | Miscellaneous Medical | | 0.26 | 0.08 | 0.08 | | |
| 94350 | TC | Lung nitrogen washout curve | Miscellaneous Medical | a | 0.00 | 1.88 | 1.88 | | |
| 94360 | 26 | Measure airflow resistance | Miscellaneous Medical | | 0.26 | 0.08 | 0.08 | | |
| 94360 | TC | Measure airflow resistance | Miscellaneous Medical | a | 0.00 | 0.49 | 0.49 | | |
| 94370 | 26 | Breath airway closing volume | Miscellaneous Medical | | 0.26 | 0.08 | 0.08 | | |
| 94370 | TC | Breath airway closing volume | Miscellaneous Medical | a | 0.00 | 1.88 | 1.88 | | |
| 94375 | 26 | Respiratory flow volume loop | Miscellaneous Medical | | 0.31 | 0.10 | 0.10 | | |
| 94375 | TC | Respiratory flow volume loop | Miscellaneous Medical | a | 0.00 | 0.57 | 0.57 | | |
| 94400 | 26 | CO2 breathing response curve | Miscellaneous Medical | | 0.40 | 0.13 | 0.13 | | |
| 94400 | TC | CO2 breathing response curve | Miscellaneous Medical | a | 0.00 | 0.76 | 0.76 | | |
| 94450 | 26 | Hypoxia response curve | Miscellaneous Medical | | 0.40 | 0.12 | 0.12 | | |
| 94450 | TC | Hypoxia response curve | Miscellaneous Medical | a | 0.00 | 0.56 | 0.56 | | |
| 94620 | 26 | Pulmonary stress test/simple | Miscellaneous Medical | | 0.64 | 0.20 | 0.20 | | |
| 94620 | TC | Pulmonary stress test/simple | Miscellaneous Medical | a | 0.00 | 2.27 | 2.27 | | |
| 94621 | 26 | Pulm stress test/complex | Miscellaneous Medical | | 1.42 | 0.45 | 0.45 | | |
| 94621 | TC | Pulm stress test/complex | Miscellaneous Medical | a | 0.00 | 1.67 | 1.67 | | |
| 94640 | | Airway inhalation treatment | Miscellaneous Medical | | 0.00 | 0.70 | 0.70 | | |
| 94642 | | Aerosol inhalation treatment | Miscellaneous Medical | | | | | 2.17 | MDR |
| 94656 | | Initial ventilator mgmt | Miscellaneous Medical | | 1.22 | 0.32 | 0.32 | | |
| 94657 | | Continued ventilator mgmt | Miscellaneous Medical | | 0.83 | 0.26 | 0.26 | | |
| 94660 | | Pos airway pressure, CPAP | Miscellaneous Medical | | 0.76 | 0.68 | 0.24 | | |
| 94662 | | Neg press ventilation, cnp | Miscellaneous Medical | | 0.76 | 0.24 | 0.24 | | |
| 94664 | | Evaluate pt use of inhaler | Miscellaneous Medical | | 0.00 | 0.52 | 0.52 | | |
| 94667 | | Chest wall manipulation | Miscellaneous Medical | | 0.00 | 0.81 | 0.81 | | |
| 94668 | | Chest wall manipulation | Miscellaneous Medical | | 0.00 | 0.71 | 0.71 | | |
| 94680 | 26 | Exhaled air analysis, o2 | Miscellaneous Medical | | 0.26 | 0.09 | 0.09 | | |
| 94680 | TC | Exhaled air analysis, o2 | Miscellaneous Medical | a | 0.00 | 1.82 | 1.82 | | |
| 94681 | 26 | Exhaled air analysis, o2/co2 | Miscellaneous Medical | | 0.20 | 0.07 | 0.07 | | |
| 94681 | TC | Exhaled air analysis, o2/co2 | Miscellaneous Medical | a | 0.00 | 2.73 | 2.73 | | |
| 94690 | 26 | Exhaled air analysis | Miscellaneous Medical | | 0.07 | 0.02 | 0.02 | | |
| 94690 | TC | Exhaled air analysis | Miscellaneous Medical | a | 0.00 | 2.11 | 2.11 | | |
| 94720 | 26 | Monoxide diffusing capacity | Miscellaneous Medical | | 0.26 | 0.08 | 0.08 | | |
| 94720 | TC | Monoxide diffusing capacity | Miscellaneous Medical | a | 0.00 | 1.47 | 1.47 | | |
| 94725 | 26 | Membrane diffusion capacity | Miscellaneous Medical | | 0.26 | 0.08 | 0.08 | | |
| 94725 | TC | Membrane diffusion capacity | Miscellaneous Medical | a | 0.00 | 2.48 | 2.48 | | |
| 94750 | 26 | Pulmonary compliance study | Miscellaneous Medical | | 0.23 | 0.07 | 0.07 | | |
| 94750 | TC | Pulmonary compliance study | Miscellaneous Medical | a | 0.00 | 2.00 | 2.00 | | |
| 94760 | | Measure blood oxygen level | Miscellaneous Medical | | 0.00 | 0.09 | 0.09 | | |
| 94761 | | Measure blood oxygen level | Miscellaneous Medical | | 0.00 | 0.17 | 0.17 | | |
| 94762 | | Measure blood oxygen level | Miscellaneous Medical | | 0.00 | 0.74 | 0.74 | | |
| 94770 | 26 | Exhaled carbon dioxide test | Miscellaneous Medical | | 0.15 | 0.04 | 0.04 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 94770 | TC | Exhaled carbon dioxide test | Miscellaneous Medical | a | 0.00 | 1.64 | 1.64 | | |
| 94772 | | Breath recording, infant | Miscellaneous Medical | | | | | 3.67 | PHCS |
| 94799 | 26 | Pulmonary service/procedure | Miscellaneous Medical | | | | | 0.42 | Misc |
| 94799 | TC | Pulmonary service/procedure | Miscellaneous Medical | a | | | | 2.84 | Misc |
| 95004 | | Percut allergy skin tests | Allergy Testing | | 0.00 | 0.10 | 0.10 | | |
| 95010 | | Percut allergy titrate test | Allergy Testing | | 0.15 | 0.44 | 0.06 | | |
| 95015 | | Id allergy titrate-drug/bug | Allergy Testing | | 0.15 | 0.38 | 0.06 | | |
| 95024 | | Id allergy test, drug/bug | Allergy Testing | | 0.00 | 0.15 | 0.15 | | |
| 95027 | | Id allergy titrate-airborne | Allergy Testing | | 0.00 | 0.15 | 0.15 | | |
| 95028 | | Id allergy test-delayed type | Allergy Testing | | 0.00 | 0.23 | 0.23 | | |
| 95044 | | Allergy patch tests | Allergy Testing | | 0.00 | 0.20 | 0.20 | | |
| 95052 | | Photo patch test | Allergy Testing | | 0.00 | 0.25 | 0.25 | | |
| 95056 | | Photosensitivity tests | Allergy Testing | | 0.00 | 0.17 | 0.17 | | |
| 95060 | | Eye allergy tests | Allergy Testing | | 0.00 | 0.35 | 0.35 | | |
| 95065 | | Nose allergy test | Allergy Testing | | 0.00 | 0.20 | 0.20 | | |
| 95070 | | Bronchial allergy tests | Allergy Testing | | 0.00 | 2.27 | 2.27 | | |
| 95071 | | Bronchial allergy tests | Allergy Testing | | 0.00 | 2.91 | 2.91 | | |
| 95075 | | Ingestion challenge test | Allergy Testing | | 0.95 | 0.84 | 0.40 | | |
| 95078 | | Provocative testing | Allergy Testing | | 0.00 | 0.25 | 0.25 | | |
| 95115 | | Immunotherapy, one injection | Allergy Immunotherapy | | 0.00 | 0.39 | 0.39 | | |
| 95117 | | Immunotherapy injections | Allergy Immunotherapy | | 0.00 | 0.50 | 0.50 | | |
| 95120 | | Immunotherapy, one injection | Allergy Immunotherapy | | | | | 0.57 | MDR |
| 95125 | | Immunotherapy, many antigens | Allergy Immunotherapy | | | | | 0.70 | MDR |
| 95130 | | Immunotherapy, insect venom | Allergy Immunotherapy | | | | | 0.99 | MDR |
| 95131 | | Immunotherapy, insect venoms | Allergy Immunotherapy | | | | | 1.24 | MDR |
| 95132 | | Immunotherapy, insect venoms | Allergy Immunotherapy | | | | | 1.50 | MDR |
| 95133 | | Immunotherapy, insect venoms | Allergy Immunotherapy | | | | | 1.82 | MDR |
| 95134 | | Immunotherapy, insect venoms | Allergy Immunotherapy | | | | | 2.18 | MDR |
| 95144 | | Antigen therapy services | Allergy Immunotherapy | | 0.06 | 0.25 | 0.02 | | |
| 95145 | | Antigen therapy services | Allergy Immunotherapy | | 0.06 | 0.49 | 0.02 | | |
| 95146 | | Antigen therapy services | Allergy Immunotherapy | | 0.06 | 0.61 | 0.03 | | |
| 95147 | | Antigen therapy services | Allergy Immunotherapy | | 0.06 | 0.83 | 0.02 | | |
| 95148 | | Antigen therapy services | Allergy Immunotherapy | | 0.06 | 0.81 | 0.03 | | |
| 95149 | | Antigen therapy services | Allergy Immunotherapy | | 0.06 | 1.02 | 0.03 | | |
| 95165 | | Antigen therapy services | Allergy Immunotherapy | | 0.06 | 0.20 | 0.02 | | |
| 95170 | | Antigen therapy services | Allergy Immunotherapy | | 0.06 | 0.26 | 0.02 | | |
| 95180 | | Rapid desensitization | Allergy Immunotherapy | | 2.01 | 1.60 | 0.84 | | |
| 95199 | | Allergy immunology services | Allergy Immunotherapy | | | | | 0.28 | Misc |
| 95250 | | Glucose monitoring; cont | Miscellaneous Medical | | 0.00 | 3.22 | 3.22 | | |
| 95805 | 26 | Multiple sleep latency test | Miscellaneous Medical | | 1.88 | 0.68 | 0.68 | | |
| 95805 | TC | Multiple sleep latency test | Miscellaneous Medical | a | 0.00 | 16.43 | 16.43 | | |
| 95806 | 26 | Sleep study, unattended | Miscellaneous Medical | | 1.66 | 0.55 | 0.55 | | |
| 95806 | TC | Sleep study, unattended | Miscellaneous Medical | a | 0.00 | 3.55 | 3.55 | | |
| 95807 | 26 | Sleep study, attended | Miscellaneous Medical | | 1.66 | 0.54 | 0.54 | | |
| 95807 | TC | Sleep study, attended | Miscellaneous Medical | a | 0.00 | 11.46 | 11.46 | | |
| 95808 | 26 | Polysomnography, 1-3 | Miscellaneous Medical | | 2.65 | 0.95 | 0.95 | | |

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 95808 | TC | Polysomnography, 1-3 | Miscellaneous Medical | a | 0.00 | 12.15 | 12.15 | | |
| 95810 | 26 | Polysomnography, 4 or more | Miscellaneous Medical | | 3.53 | 1.21 | 1.21 | | |
| 95810 | TC | Polysomnography, 4 or more | Miscellaneous Medical | a | 0.00 | 16.08 | 16.08 | | |
| 95811 | 26 | Polysomnography w/cpap | Miscellaneous Medical | | 3.80 | 1.30 | 1.30 | | |
| 95811 | TC | Polysomnography w/cpap | Miscellaneous Medical | a | 0.00 | 16.37 | 16.37 | | |
| 95812 | 26 | Eeg, 41-60 minutes | Miscellaneous Medical | | 1.08 | 0.46 | 0.46 | | |
| 95812 | TC | Eeg, 41-60 minutes | Miscellaneous Medical | a | 0.00 | 4.26 | 4.26 | | |
| 95813 | 26 | Eeg, over 1 hour | Miscellaneous Medical | | 1.73 | 0.72 | 0.72 | | |
| 95813 | TC | Eeg, over 1 hour | Miscellaneous Medical | a | 0.00 | 5.08 | 5.08 | | |
| 95816 | 26 | Eeg, awake and drowsy | Miscellaneous Medical | | 1.08 | 0.47 | 0.47 | | |
| 95816 | TC | Eeg, awake and drowsy | Miscellaneous Medical | a | 0.00 | 3.20 | 3.20 | | |
| 95819 | 26 | Eeg, awake and asleep | Miscellaneous Medical | | 1.08 | 0.47 | 0.47 | | |
| 95819 | TC | Eeg, awake and asleep | Miscellaneous Medical | a | 0.00 | 3.84 | 3.84 | | |
| 95822 | 26 | Eeg, coma or sleep only | Miscellaneous Medical | | 1.08 | 0.47 | 0.47 | | |
| 95822 | TC | Eeg, coma or sleep only | Miscellaneous Medical | a | 0.00 | 4.64 | 4.64 | | |
| 95824 | 26 | Eeg, cerebral death only | Miscellaneous Medical | | 0.74 | 0.32 | 0.32 | | |
| 95824 | TC | Eeg, cerebral death only | Miscellaneous Medical | a | | | | 1.69 | PHCS |
| 95827 | 26 | Eeg, all night recording | Miscellaneous Medical | | 1.08 | 0.42 | 0.42 | | |
| 95827 | TC | Eeg, all night recording | Miscellaneous Medical | a | 0.00 | 2.28 | 2.28 | | |
| 95829 | 26 | Surgery electrocorticogram | Miscellaneous Medical | | 6.21 | 2.38 | 2.38 | | |
| 95829 | TC | Surgery electrocorticogram | Miscellaneous Medical | a | 0.00 | 37.74 | 37.74 | | |
| 95830 | | Insert electrodes for EEG | Miscellaneous Medical | | 1.70 | 3.55 | 0.75 | | |
| 95831 | | Limb muscle testing, manual | Miscellaneous Medical | | 0.28 | 0.53 | 0.13 | | |
| 95832 | | Hand muscle testing, manual | Miscellaneous Medical | | 0.29 | 0.45 | 0.12 | | |
| 95833 | | Body muscle testing, manual | Miscellaneous Medical | | 0.47 | 0.61 | 0.23 | | |
| 95834 | | Body muscle testing, manual | Miscellaneous Medical | | 0.60 | 0.58 | 0.28 | | |
| 95851 | | Range of motion measurements | Miscellaneous Medical | | 0.16 | 0.57 | 0.08 | | |
| 95852 | | Range of motion measurements | Miscellaneous Medical | | 0.11 | 0.47 | 0.05 | | |
| 95857 | | Tensilon test | Miscellaneous Medical | | 0.53 | 0.65 | 0.23 | | |
| 95858 | 26 | Tensilon test & myogram | Miscellaneous Medical | | 1.56 | 0.69 | 0.69 | | |
| 95858 | TC | Tensilon test & myogram | Miscellaneous Medical | a | 0.00 | 0.40 | 0.40 | | |
| 95860 | 26 | Muscle test, one limb | Miscellaneous Medical | | 0.96 | 0.43 | 0.43 | | |
| 95860 | TC | Muscle test, one limb | Miscellaneous Medical | a | 0.00 | 1.19 | 1.19 | | |
| 95861 | 26 | Muscle test, 2 limbs | Miscellaneous Medical | | 1.54 | 0.70 | 0.70 | | |
| 95861 | TC | Muscle test, 2 limbs | Miscellaneous Medical | a | 0.00 | 0.74 | 0.74 | | |
| 95863 | 26 | Muscle test, 3 limbs | Miscellaneous Medical | | 1.87 | 0.83 | 0.83 | | |
| 95863 | TC | Muscle test, 3 limbs | Miscellaneous Medical | a | 0.00 | 0.94 | 0.94 | | |
| 95864 | 26 | Muscle test, 4 limbs | Miscellaneous Medical | | 1.99 | 0.89 | 0.89 | | |
| 95864 | TC | Muscle test, 4 limbs | Miscellaneous Medical | a | 0.00 | 1.77 | 1.77 | | |
| 95867 | 26 | Muscle test cran nerv unilat | Miscellaneous Medical | | 0.79 | 0.36 | 0.36 | | |
| 95867 | TC | Muscle test cran nerv unilat | Miscellaneous Medical | a | 0.00 | 0.58 | 0.58 | | |
| 95868 | 26 | Muscle test cran nerve bilat | Miscellaneous Medical | | 1.18 | 0.53 | 0.53 | | |
| 95868 | TC | Muscle test cran nerve bilat | Miscellaneous Medical | a | 0.00 | 0.70 | 0.70 | | |
| 95869 | 26 | Muscle test, thor paraspinal | Miscellaneous Medical | | 0.37 | 0.17 | 0.17 | | |
| 95869 | TC | Muscle test, thor paraspinal | Miscellaneous Medical | a | 0.00 | 0.21 | 0.21 | | |
| 95870 | 26 | Muscle test, nonparaspinal | Miscellaneous Medical | | 0.37 | 0.16 | 0.16 | | |

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 95870 | TC | Muscle test, nonparaspinal | Miscellaneous Medical | a | 0.00 | 0.21 | 0.21 | | |
| 95872 | 26 | Muscle test, one fiber | Miscellaneous Medical | | 1.50 | 0.65 | 0.65 | | |
| 95872 | TC | Muscle test, one fiber | Miscellaneous Medical | a | 0.00 | 0.60 | 0.60 | | |
| 95875 | 26 | Limb exercise test | Miscellaneous Medical | | 1.10 | 0.48 | 0.48 | | |
| 95875 | TC | Limb exercise test | Miscellaneous Medical | a | 0.00 | 1.24 | 1.24 | | |
| 95900 | 26 | Motor nerve conduction test | Miscellaneous Medical | | 0.42 | 0.19 | 0.19 | | |
| 95900 | TC | Motor nerve conduction test | Miscellaneous Medical | a | 0.00 | 0.93 | 0.93 | | |
| 95903 | 26 | Motor nerve conduction test | Miscellaneous Medical | | 0.60 | 0.27 | 0.27 | | |
| 95903 | TC | Motor nerve conduction test | Miscellaneous Medical | a | 0.00 | 0.80 | 0.80 | | |
| 95904 | 26 | Sense nerve conduction test | Miscellaneous Medical | | 0.34 | 0.15 | 0.15 | | |
| 95904 | TC | Sense nerve conduction test | Miscellaneous Medical | a | 0.00 | 0.80 | 0.80 | | |
| 95920 | 26 | Intraop nerve test add-on | Miscellaneous Medical | | 2.11 | 0.96 | 0.96 | | |
| 95920 | TC | Intraop nerve test add-on | Miscellaneous Medical | a | 0.00 | 1.30 | 1.30 | | |
| 95921 | 26 | Autonomic nerv function test | Miscellaneous Medical | | 0.90 | 0.34 | 0.34 | | |
| 95921 | TC | Autonomic nerv function test | Miscellaneous Medical | a | 0.00 | 0.38 | 0.38 | | |
| 95922 | 26 | Autonomic nerv function test | Miscellaneous Medical | | 0.96 | 0.41 | 0.41 | | |
| 95922 | TC | Autonomic nerv function test | Miscellaneous Medical | a | 0.00 | 0.38 | 0.38 | | |
| 95923 | 26 | Autonomic nerv function test | Miscellaneous Medical | | 0.90 | 0.39 | 0.39 | | |
| 95923 | TC | Autonomic nerv function test | Miscellaneous Medical | a | 0.00 | 2.53 | 2.53 | | |
| 95925 | 26 | Somatosensory testing | Miscellaneous Medical | | 0.54 | 0.23 | 0.23 | | |
| 95925 | TC | Somatosensory testing | Miscellaneous Medical | a | 0.00 | 0.91 | 0.91 | | |
| 95926 | 26 | Somatosensory testing | Miscellaneous Medical | | 0.54 | 0.24 | 0.24 | | |
| 95926 | TC | Somatosensory testing | Miscellaneous Medical | a | 0.00 | 0.91 | 0.91 | | |
| 95927 | 26 | Somatosensory testing | Miscellaneous Medical | | 0.54 | 0.26 | 0.26 | | |
| 95927 | TC | Somatosensory testing | Miscellaneous Medical | a | 0.00 | 0.91 | 0.91 | | |
| 95930 | 26 | Visual evoked potential test | Miscellaneous Medical | | 0.35 | 0.15 | 0.15 | | |
| 95930 | TC | Visual evoked potential test | Miscellaneous Medical | a | 0.00 | 1.03 | 1.03 | | |
| 95933 | 26 | Blink reflex test | Miscellaneous Medical | | 0.59 | 0.25 | 0.25 | | |
| 95933 | TC | Blink reflex test | Miscellaneous Medical | a | 0.00 | 0.78 | 0.78 | | |
| 95934 | 26 | H-reflex test | Miscellaneous Medical | | 0.51 | 0.23 | 0.23 | | |
| 95934 | TC | H-reflex test | Miscellaneous Medical | a | 0.00 | 0.21 | 0.21 | | |
| 95936 | 26 | H-reflex test | Miscellaneous Medical | | 0.55 | 0.25 | 0.25 | | |
| 95936 | TC | H-reflex test | Miscellaneous Medical | a | 0.00 | 0.21 | 0.21 | | |
| 95937 | 26 | Neuromuscular junction test | Miscellaneous Medical | | 0.65 | 0.27 | 0.27 | | |
| 95937 | TC | Neuromuscular junction test | Miscellaneous Medical | a | 0.00 | 0.34 | 0.34 | | |
| 95950 | 26 | Ambulatory eeg monitoring | Miscellaneous Medical | | 1.51 | 0.65 | 0.65 | | |
| 95950 | TC | Ambulatory eeg monitoring | Miscellaneous Medical | a | 0.00 | 6.14 | 6.14 | | |
| 95951 | 26 | EEG monitoring/videorecord | Miscellaneous Medical | | 6.00 | 2.62 | 2.62 | | |
| 95951 | TC | EEG monitoring/videorecord | Miscellaneous Medical | a | 0.00 | 0.01 | 0.01 | | |
| 95953 | 26 | EEG monitoring/computer | Miscellaneous Medical | | 3.08 | 1.32 | 1.32 | | |
| 95953 | TC | EEG monitoring/computer | Miscellaneous Medical | a | 0.00 | 6.31 | 6.31 | | |
| 95954 | 26 | EEG monitoring/giving drugs | Miscellaneous Medical | | 2.45 | 1.06 | 1.06 | | |
| 95954 | TC | EEG monitoring/giving drugs | Miscellaneous Medical | a | 0.00 | 3.98 | 3.98 | | |
| 95955 | 26 | EEG during surgery | Miscellaneous Medical | | 1.01 | 0.37 | 0.37 | | |
| 95955 | TC | EEG during surgery | Miscellaneous Medical | a | 0.00 | 1.95 | 1.95 | | |
| 95956 | 26 | Eeg monitoring, cable/radio | Miscellaneous Medical | | 3.08 | 1.33 | 1.33 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 95956 | TC | Eeg monitoring, cable/radio | Miscellaneous Medical | a | 0.00 | 14.36 | 14.36 | | |
| 95957 | 26 | EEG digital analysis | Miscellaneous Medical | | 1.98 | 0.87 | 0.87 | | |
| 95957 | TC | EEG digital analysis | Miscellaneous Medical | a | 0.00 | 1.69 | 1.69 | | |
| 95958 | 26 | EEG monitoring/function test | Miscellaneous Medical | | 4.25 | 1.78 | 1.78 | | |
| 95958 | TC | EEG monitoring/function test | Miscellaneous Medical | a | 0.00 | 1.73 | 1.73 | | |
| 95961 | 26 | Electrode stimulation, brain | Miscellaneous Medical | | 2.97 | 1.35 | 1.35 | | |
| 95961 | TC | Electrode stimulation, brain | Miscellaneous Medical | a | 0.00 | 1.30 | 1.30 | | |
| 95962 | 26 | Electrode stim, brain add-on | Miscellaneous Medical | | 3.21 | 1.42 | 1.42 | | |
| 95962 | TC | Electrode stim, brain add-on | Miscellaneous Medical | a | 0.00 | 1.30 | 1.30 | | |
| 95965 | 26 | Meg, spontaneous | Miscellaneous Medical | | 8.00 | 3.11 | 3.11 | | |
| 95965 | TC | Meg, spontaneous | Miscellaneous Medical | a | | | | 44.44 | SA |
| 95966 | 26 | Meg, evoked, single | Miscellaneous Medical | | 4.00 | 1.55 | 1.55 | | |
| 95966 | TC | Meg, evoked, single | Miscellaneous Medical | a | | | | 22.20 | SA |
| 95967 | 26 | Meg, evoked, each addl | Miscellaneous Medical | | 3.50 | 1.36 | 1.36 | | |
| 95967 | TC | Meg, evoked, each addl | Miscellaneous Medical | a | | | | 19.44 | SA |
| 95970 | | Analyze neurostim, no prog | Miscellaneous Medical | | 0.45 | 0.17 | 0.15 | | |
| 95971 | | Analyze neurostim, simple | Miscellaneous Medical | | 0.78 | 0.28 | 0.23 | | |
| 95972 | | Analyze neurostim, complex | Miscellaneous Medical | | 1.50 | 0.61 | 0.51 | | |
| 95973 | | Analyze neurostim, complex | Miscellaneous Medical | | 0.92 | 0.41 | 0.35 | | |
| 95974 | | Cranial neurostim, complex | Miscellaneous Medical | | 3.00 | 1.32 | 1.32 | | |
| 95975 | | Cranial neurostim, complex | Miscellaneous Medical | | 1.70 | 0.75 | 0.75 | | |
| 95990 | | Spin/brain pump refil & main | Miscellaneous Medical | | 0.00 | 1.49 | 1.49 | | |
| 95999 | | Neurological procedure | Miscellaneous Medical | | | | | 2.66 | Misc |
| 96000 | | Motion analysis, video/3d | Miscellaneous Medical | | 1.80 | 0.70 | 0.70 | | |
| 96001 | | Motion test w/ft press meas | Miscellaneous Medical | | 2.15 | 0.84 | 0.84 | | |
| 96002 | | Dynamic surface emg | Miscellaneous Medical | | 0.41 | 0.16 | 0.16 | | |
| 96003 | | Dynamic fine wire emg | Miscellaneous Medical | | 0.37 | 0.14 | 0.14 | | |
| 96004 | | Phys review of motion tests | Miscellaneous Medical | | 2.14 | 0.84 | 0.84 | | |
| 96100 | | Psychological testing | Miscellaneous Medical | | 0.00 | 1.75 | 1.75 | | |
| 96105 | | Assessment of aphasia | Miscellaneous Medical | | 0.00 | 1.75 | 1.75 | | |
| 96110 | | Developmental test, lim | Miscellaneous Medical | | | | | 1.89 | MDR |
| 96111 | | Developmental test, extend | Miscellaneous Medical | | 0.00 | 1.75 | 1.75 | | |
| 96115 | | Neurobehavior status exam | Miscellaneous Medical | | 0.00 | 1.75 | 1.75 | | |
| 96117 | | Neuropsych test battery | Miscellaneous Medical | | 0.00 | 1.75 | 1.75 | | |
| 96150 | | Assess lth/behave, init | Miscellaneous Medical | | 0.50 | 0.21 | 0.20 | | |
| 96151 | | Assess hlth/behave, subseq | Miscellaneous Medical | | 0.48 | 0.20 | 0.19 | | |
| 96152 | | Intervene hlth/behave, indiv | Miscellaneous Medical | | 0.46 | 0.19 | 0.18 | | |
| 96153 | | Intervene hlth/behave, group | Miscellaneous Medical | | 0.10 | 0.04 | 0.04 | | |
| 96154 | | Interv hlth/behav, fam w/pt | Miscellaneous Medical | | 0.45 | 0.19 | 0.18 | | |
| 96155 | | Interv hlth/behav fam no pt | Miscellaneous Medical | | 0.44 | 0.18 | 0.17 | | |
| 96400 | | Chemotherapy, sc/im | Miscellaneous Medical | b | 0.00 | 1.01 | 1.01 | | |
| 96405 | | Intralesional chemo admin | Miscellaneous Medical | b | 0.52 | 1.68 | 0.23 | | |
| 96406 | | Intralesional chemo admin | Miscellaneous Medical | b | 0.80 | 2.54 | 0.30 | | |
| 96408 | | Chemotherapy, push technique | Miscellaneous Medical | b | 0.00 | 0.97 | 0.97 | | |
| 96410 | | Chemotherapy,infusion method | Miscellaneous Medical | b | 0.00 | 1.54 | 1.54 | | |
| 96412 | | Chemo, infuse method add-on | Miscellaneous Medical | b | 0.00 | 1.14 | 1.14 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 96414 | | Chemo, infuse method add-on | Miscellaneous Medical | b | 0.00 | 1.33 | 1.33 | | |
| 96420 | | Chemotherapy, push technique | Miscellaneous Medical | b | 0.00 | 1.24 | 1.24 | | |
| 96422 | | Chemotherapy,infusion method | Miscellaneous Medical | b | 0.00 | 1.22 | 1.22 | | |
| 96423 | | Chemo, infuse method add-on | Miscellaneous Medical | b | 0.00 | 0.48 | 0.48 | | |
| 96425 | | Chemotherapy,infusion method | Miscellaneous Medical | b | 0.00 | 1.42 | 1.42 | | |
| 96440 | | Chemotherapy, intracavitary | Miscellaneous Medical | b | 2.37 | 7.92 | 1.04 | | |
| 96445 | | Chemotherapy, intracavitary | Miscellaneous Medical | b | 2.20 | 7.97 | 1.02 | | |
| 96450 | | Chemotherapy, into CNS | Miscellaneous Medical | b | 1.89 | 6.30 | 0.93 | | |
| 96520 | | Port pump refill & main | Miscellaneous Medical | | 0.00 | 0.89 | 0.89 | | |
| 96530 | | Syst pump refill & main | Miscellaneous Medical | | 0.00 | 1.05 | 1.05 | | |
| 96542 | | Chemotherapy injection | Miscellaneous Medical | | 1.42 | 3.99 | 0.55 | | |
| 96545 | | Provide chemotherapy agent | Miscellaneous Medical | | | | | 1.89 | SAF |
| 96549 | | Chemotherapy, unspecified | Miscellaneous Medical | | | | | 0.39 | SAF |
| 96567 | | Photodynamic tx, skin | Miscellaneous Medical | | 0.00 | 5.10 | 5.10 | | |
| 96570 | | Photodynamic tx, 30 min | Miscellaneous Medical | | 1.10 | 0.38 | 0.37 | | |
| 96571 | | Photodynamic tx, addl 15 min | Miscellaneous Medical | | 0.55 | 0.21 | 0.20 | | |
| 96900 | | Ultraviolet light therapy | Miscellaneous Medical | | 0.00 | 0.49 | 0.49 | | |
| 96902 | | Trichogram | Miscellaneous Medical | | 0.41 | 0.25 | 0.16 | | |
| 96910 | | Photochemotherapy with UV-B | Miscellaneous Medical | | 0.00 | 1.57 | 1.57 | | |
| 96912 | | Photochemotherapy with UV-A | Miscellaneous Medical | | 0.00 | 1.80 | 1.80 | | |
| 96913 | | Photochemotherapy, UV-A or B | Miscellaneous Medical | | 0.00 | 2.71 | 2.71 | | |
| 96920 | | Laser tx, skin < 250 sq cm | Miscellaneous Medical | | 1.15 | 2.88 | 0.45 | | |
| 96921 | | Laser tx, skin 250-500 sq cm | Miscellaneous Medical | | 1.17 | 2.96 | 0.46 | | |
| 96922 | | Laser tx, skin > 500 sq cm | Miscellaneous Medical | | 2.10 | 3.56 | 0.82 | | |
| 96999 | | Dermatological procedure | Miscellaneous Medical | | | | | 3.14 | Misc |
| 97001 | | Pt evaluation | Physical Medicine | | 1.20 | 0.74 | 0.46 | | |
| 97002 | | Pt re-evaluation | Physical Medicine | | 0.60 | 0.45 | 0.24 | | |
| 97003 | | Ot evaluation | Physical Medicine | | 1.20 | 0.87 | 0.41 | | |
| 97004 | | Ot re-evaluation | Physical Medicine | | 0.60 | 0.68 | 0.20 | | |
| 97005 | | Athletic train eval | Physical Medicine | | | | | 1.56 | SA |
| 97006 | | Athletic train reeval | Physical Medicine | | | | | 0.78 | SA |
| 97010 | | Hot or cold packs therapy | Physical Medicine | | 0.06 | 0.05 | 0.05 | | |
| 97012 | | Mechanical traction therapy | Physical Medicine | | 0.25 | 0.14 | 0.14 | | |
| 97014 | | Electric stimulation therapy | Physical Medicine | | 0.18 | 0.19 | 0.19 | | |
| 97016 | | Vasopneumatic device therapy | Physical Medicine | | 0.18 | 0.19 | 0.19 | | |
| 97018 | | Paraffin bath therapy | Physical Medicine | | 0.06 | 0.11 | 0.11 | | |
| 97020 | | Microwave therapy | Physical Medicine | | 0.06 | 0.06 | 0.06 | | |
| 97022 | | Whirlpool therapy | Physical Medicine | | 0.17 | 0.22 | 0.22 | | |
| 97024 | | Diathermy treatment | Physical Medicine | | 0.06 | 0.06 | 0.06 | | |
| 97026 | | Infrared therapy | Physical Medicine | | 0.06 | 0.06 | 0.06 | | |
| 97028 | | Ultraviolet therapy | Physical Medicine | | 0.08 | 0.07 | 0.07 | | |
| 97032 | | Electrical stimulation | Physical Medicine | | 0.25 | 0.18 | 0.18 | | |
| 97033 | | Electric current therapy | Physical Medicine | | 0.26 | 0.27 | 0.27 | | |
| 97034 | | Contrast bath therapy | Physical Medicine | | 0.21 | 0.16 | 0.16 | | |
| 97035 | | Ultrasound therapy | Physical Medicine | | 0.21 | 0.11 | 0.11 | | |
| 97036 | | Hydrotherapy | Physical Medicine | | 0.28 | 0.33 | 0.33 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 97039 | | Physical therapy treatment | Physical Medicine | | 0.20 | 0.11 | 0.11 | | |
| 97110 | | Therapeutic exercises | Physical Medicine | | 0.45 | 0.28 | 0.28 | | |
| 97112 | | Neuromuscular reeducation | Physical Medicine | | 0.45 | 0.31 | 0.31 | | |
| 97113 | | Aquatic therapy/exercises | Physical Medicine | | 0.44 | 0.34 | 0.34 | | |
| 97116 | | Gait training therapy | Physical Medicine | | 0.40 | 0.25 | 0.25 | | |
| 97124 | | Massage therapy | Physical Medicine | | 0.35 | 0.24 | 0.24 | | |
| 97139 | | Physical medicine procedure | Physical Medicine | | 0.21 | 0.21 | 0.21 | | |
| 97140 | | Manual therapy | Physical Medicine | | 0.43 | 0.27 | 0.27 | | |
| 97150 | | Group therapeutic procedures | Physical Medicine | | 0.27 | 0.21 | 0.21 | | |
| 97504 | | Orthotic training | Physical Medicine | | 0.45 | 0.29 | 0.29 | | |
| 97520 | | Prosthetic training | Physical Medicine | | 0.45 | 0.28 | 0.28 | | |
| 97530 | | Therapeutic activities | Physical Medicine | | 0.44 | 0.31 | 0.31 | | |
| 97532 | | Cognitive skills development | Physical Medicine | | 0.44 | 0.20 | 0.20 | | |
| 97533 | | Sensory integration | Physical Medicine | | 0.44 | 0.24 | 0.24 | | |
| 97535 | | Self care mngment training | Physical Medicine | | 0.45 | 0.36 | 0.36 | | |
| 97537 | | Community/work reintegration | Physical Medicine | | 0.45 | 0.27 | 0.27 | | |
| 97542 | | Wheelchair mngment training | Physical Medicine | | 0.45 | 0.29 | 0.29 | | |
| 97545 | | Work hardening | Physical Medicine | | | | | 2.52 | MDR |
| 97546 | | Work hardening add-on | Physical Medicine | | | | | 1.01 | MDR |
| 97601 | | Wound(s) care, selective | Physical Medicine | | 0.50 | 0.53 | 0.53 | | |
| 97602 | | Wound(s) care non-selective | Physical Medicine | | | | | 0.37 | MDR |
| 97703 | | Prosthetic checkout | Physical Medicine | | 0.25 | 0.33 | 0.33 | | |
| 97750 | | Physical performance test | Physical Medicine | | 0.45 | 0.31 | 0.31 | | |
| 97780 | | Acupuncture w/o stimul | Physical Medicine | | | | | 1.18 | SAF |
| 97781 | | Acupuncture w/stimul | Physical Medicine | | | | | 1.57 | SAF |
| 97799 | | Physical medicine procedure | Physical Medicine | | | | | 0.97 | Misc |
| 97802 | | Medical nutrition, indiv, in | Miscellaneous Medical | | 0.00 | 0.47 | 0.47 | | |
| 97803 | | Med nutrition, indiv, subseq | Miscellaneous Medical | | 0.00 | 0.47 | 0.47 | | |
| 97804 | | Medical nutrition, group | Miscellaneous Medical | | 0.00 | 0.18 | 0.18 | | |
| 98925 | | Osteopathic manipulation | Physical Medicine | | 0.45 | 0.37 | 0.15 | | |
| 98926 | | Osteopathic manipulation | Physical Medicine | | 0.65 | 0.44 | 0.26 | | |
| 98927 | | Osteopathic manipulation | Physical Medicine | | 0.87 | 0.51 | 0.30 | | |
| 98928 | | Osteopathic manipulation | Physical Medicine | | 1.03 | 0.59 | 0.35 | | |
| 98929 | | Osteopathic manipulation | Physical Medicine | | 1.19 | 0.65 | 0.38 | | |
| 98940 | | Chiropractic manipulation | Chiropractor | | 0.45 | 0.24 | 0.13 | | |
| 98941 | | Chiropractic manipulation | Chiropractor | | 0.65 | 0.30 | 0.18 | | |
| 98942 | | Chiropractic manipulation | Chiropractor | | 0.87 | 0.37 | 0.24 | | |
| 98943 | | Chiropractic manipulation | Chiropractor | | 0.40 | 0.24 | 0.16 | | |
| 99000 | | Specimen handling | Miscellaneous Medical | | | | | 0.22 | MDR |
| 99001 | | Specimen handling | Miscellaneous Medical | | | | | 0.24 | MDR |
| 99002 | | Device handling | Miscellaneous Medical | | | | | 0.35 | MDR |
| 99024 | | Postop follow-up visit | Miscellaneous Medical | | | | | 1.22 | PHCS |
| 99025 | | Initial surgical evaluation | Miscellaneous Medical | | | | | 0.57 | MDR |
| 99050 | | Medical services after hrs | Miscellaneous Medical | | | | | 0.65 | MDR |
| 99052 | | Medical services at night | Miscellaneous Medical | | | | | 0.65 | MDR |
| 99054 | | Medical servcs, unusual hrs | Miscellaneous Medical | | | | | 0.65 | MDR |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 99056 | | Non-office medical services | Miscellaneous Medical | | | | | 0.85 | MDR |
| 99058 | | Office emergency care | Miscellaneous Medical | | | | | 0.88 | MDR |
| 99070 | | Special supplies | Miscellaneous Medical | | | | | 0.38 | SAF |
| 99071 | | Patient education materials | Miscellaneous Medical | | | | | 0.25 | SAF |
| 99075 | | Medical testimony | Miscellaneous Medical | | | | | 9.30 | PHCS |
| 99078 | | Group health education | Miscellaneous Medical | | | | | 0.92 | PHCS |
| 99080 | | Special reports or forms | Miscellaneous Medical | | | | | 0.44 | SAF |
| 99082 | | Unusual physician travel | Miscellaneous Medical | | | | | 0.38 | PHCS |
| 99090 | | Computer data analysis | Miscellaneous Medical | | | | | 1.57 | SAF |
| 99091 | | Collect/review data from pt | Miscellaneous Medical | | | | | 0.12 | PHCS |
| 99100 | | Special anesthesia service | Surgery | | | | | 0.54 | SAF |
| 99116 | | Anesthesia with hypothermia | Surgery | | | | | 0.44 | PHCS |
| 99135 | | Special anesthesia procedure | Surgery | | | | | 0.56 | PHCS |
| 99140 | | Emergency anesthesia | Surgery | | | | | 1.08 | SAF |
| 99141 | | Sedation, iv/im or inhalant | Surgery | | 0.80 | 2.15 | 0.39 | | |
| 99142 | | Sedation, oral/rectal/nasal | Surgery | | 0.60 | 1.25 | 0.31 | | |
| 99170 | | Anogenital exam, child | Miscellaneous Medical | | 1.75 | 2.07 | 0.53 | | |
| 99172 | 26 | Ocular function screen | Vision Exams | | | | | 0.24 | SA |
| 99172 | TC | Ocular function screen | Vision Exams | a | | | | 1.01 | SA |
| 99173 | | Visual acuity screen | Vision Exams | | | | | 0.63 | MDR |
| 99175 | | Induction of vomiting | Miscellaneous Medical | | 0.00 | 1.38 | 1.38 | | |
| 99183 | | Hyperbaric oxygen therapy | Miscellaneous Medical | | 2.34 | 0.75 | 0.75 | | |
| 99185 | 26 | Regional hypothermia | Miscellaneous Medical | | | | | 0.26 | SA |
| 99185 | TC | Regional hypothermia | Miscellaneous Medical | a | | | | 0.38 | |
| 99186 | 26 | Total body hypothermia | Miscellaneous Medical | | | | | 0.71 | SA |
| 99186 | TC | Total body hypothermia | Miscellaneous Medical | a | | | | 1.06 | |
| 99190 | | Special pump services | Miscellaneous Medical | | | | | 13.80 | MDR |
| 99191 | | Special pump services | Miscellaneous Medical | | | | | 10.35 | MDR |
| 99192 | | Special pump services | Miscellaneous Medical | | | | | 6.90 | MDR |
| 99195 | | Phlebotomy | Miscellaneous Medical | | 0.00 | 0.45 | 0.45 | | |
| 99199 | | Special service/proc/report | Miscellaneous Medical | | | | | 3.84 | Misc |
| 99201 | | Office/outpatient visit, new | Office/Home/Urgent Care Visits | | 0.45 | 0.48 | 0.16 | | |
| 99202 | | Office/outpatient visit, new | Office/Home/Urgent Care Visits | | 0.88 | 0.77 | 0.32 | | |
| 99203 | | Office/outpatient visit, new | Office/Home/Urgent Care Visits | | 1.34 | 1.10 | 0.49 | | |
| 99204 | | Office/outpatient visit, new | Office/Home/Urgent Care Visits | | 2.00 | 1.49 | 0.72 | | |
| 99205 | | Office/outpatient visit, new | Office/Home/Urgent Care Visits | | 2.67 | 1.79 | 0.95 | | |
| 99211 | | Office/outpatient visit, est | Office/Home/Urgent Care Visits | | 0.17 | 0.38 | 0.06 | | |
| 99212 | | Office/outpatient visit, est | Office/Home/Urgent Care Visits | | 0.45 | 0.52 | 0.16 | | |
| 99213 | | Office/outpatient visit, est | Office/Home/Urgent Care Visits | | 0.67 | 0.69 | 0.24 | | |
| 99214 | | Office/outpatient visit, est | Office/Home/Urgent Care Visits | | 1.10 | 1.03 | 0.40 | | |
| 99215 | | Office/outpatient visit, est | Office/Home/Urgent Care Visits | | 1.77 | 1.34 | 0.64 | | |
| 99217 | | Observation care discharge | Emergency Room Visits | | 1.28 | 0.44 | 0.44 | | |
| 99218 | | Observation care | Emergency Room Visits | | 1.28 | 0.44 | 0.44 | | |
| 99219 | | Observation care | Emergency Room Visits | | 2.14 | 0.73 | 0.73 | | |
| 99220 | | Observation care | Emergency Room Visits | | 2.99 | 1.03 | 1.03 | | |
| 99221 | | Initial hospital care | Inpatient Visits | | 1.28 | 0.46 | 0.46 | | |

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TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 99222 | | Initial hospital care | Inpatient Visits | | 2.14 | 0.75 | 0.75 | | |
| 99223 | | Initial hospital care | Inpatient Visits | | 2.99 | 1.04 | 1.04 | | |
| 99231 | | Subsequent hospital care | Inpatient Visits | | 0.64 | 0.23 | 0.23 | | |
| 99232 | | Subsequent hospital care | Inpatient Visits | | 1.06 | 0.38 | 0.38 | | |
| 99233 | | Subsequent hospital care | Inpatient Visits | | 1.51 | 0.53 | 0.53 | | |
| 99234 | | Observ/hosp same date | Inpatient Visits | | 2.56 | 0.89 | 0.89 | | |
| 99235 | | Observ/hosp same date | Inpatient Visits | | 3.42 | 1.16 | 1.16 | | |
| 99236 | | Observ/hosp same date | Inpatient Visits | | 4.27 | 1.45 | 1.45 | | |
| 99238 | | Hospital discharge day | Inpatient Visits | | 1.28 | 0.56 | 0.56 | | |
| 99239 | | Hospital discharge day | Inpatient Visits | | 1.75 | 0.75 | 0.75 | | |
| 99241 | | Office consultation | Consults | | 0.64 | 0.61 | 0.22 | | |
| 99242 | | Office consultation | Consults | | 1.29 | 1.02 | 0.47 | | |
| 99243 | | Office consultation | Consults | | 1.72 | 1.35 | 0.64 | | |
| 99244 | | Office consultation | Consults | | 2.58 | 1.80 | 0.94 | | |
| 99245 | | Office consultation | Consults | | 3.43 | 2.26 | 1.24 | | |
| 99251 | | Initial inpatient consult | Consults | | 0.66 | 0.25 | 0.25 | | |
| 99252 | | Initial inpatient consult | Consults | | 1.32 | 0.51 | 0.51 | | |
| 99253 | | Initial inpatient consult | Consults | | 1.82 | 0.70 | 0.70 | | |
| 99254 | | Initial inpatient consult | Consults | | 2.64 | 1.00 | 1.00 | | |
| 99255 | | Initial inpatient consult | Consults | | 3.65 | 1.36 | 1.36 | | |
| 99261 | | Follow-up inpatient consult | Consults | | 0.42 | 0.16 | 0.16 | | |
| 99262 | | Follow-up inpatient consult | Consults | | 0.85 | 0.31 | 0.31 | | |
| 99263 | | Follow-up inpatient consult | Consults | | 1.27 | 0.46 | 0.46 | | |
| 99271 | | Confirmatory consultation | Consults | | 0.45 | 0.66 | 0.16 | | |
| 99272 | | Confirmatory consultation | Consults | | 0.84 | 0.89 | 0.32 | | |
| 99273 | | Confirmatory consultation | Consults | | 1.19 | 1.09 | 0.45 | | |
| 99274 | | Confirmatory consultation | Consults | | 1.73 | 1.39 | 0.65 | | |
| 99275 | | Confirmatory consultation | Consults | | 2.31 | 1.64 | 0.84 | | |
| 99281 | | Emergency dept visit | Emergency Room Visits | | 0.33 | 0.09 | 0.09 | | |
| 99282 | | Emergency dept visit | Emergency Room Visits | | 0.55 | 0.15 | 0.15 | | |
| 99283 | | Emergency dept visit | Emergency Room Visits | | 1.24 | 0.32 | 0.32 | | |
| 99284 | | Emergency dept visit | Emergency Room Visits | | 1.95 | 0.49 | 0.49 | | |
| 99285 | | Emergency dept visit | Emergency Room Visits | | 3.06 | 0.74 | 0.74 | | |
| 99288 | | Direct advanced life support | Emergency Room Visits | | | | | 1.35 | SAF |
| 99289 | | Ped crit care transport | Inpatient Visits | | 4.80 | 1.87 | 1.87 | | |
| 99290 | | Ped crit care transport addl | Inpatient Visits | | 2.40 | 0.94 | 0.94 | | |
| 99291 | | Critical care, first hour | Inpatient Visits | | 4.00 | 1.57 | 1.30 | | |
| 99292 | | Critical care, addl 30 min | Inpatient Visits | | 2.00 | 0.86 | 0.65 | | |
| 99293 | | Ped critical care, initial | Inpatient Visits | | 16.00 | 5.13 | 5.13 | | |
| 99294 | | Ped critical care, subseq | Inpatient Visits | | 8.00 | 2.57 | 2.57 | | |
| 99295 | | Neonate crit care, initial | Inpatient Visits | | 18.49 | 5.48 | 5.48 | | |
| 99296 | | Neonate critical care subseq | Inpatient Visits | | 8.00 | 2.61 | 2.61 | | |
| 99298 | | Ic for lbw infant < 1500 gm | Inpatient Visits | | 2.75 | 0.96 | 0.96 | | |
| 99299 | | Ic, lbw infant 1500-2500 gm | Inpatient Visits | | 2.50 | 0.98 | 0.98 | | |
| 99301 | | Nursing facility care | Inpatient Visits | | 1.20 | 0.69 | 0.42 | | |
| 99302 | | Nursing facility care | Inpatient Visits | | 1.61 | 0.97 | 0.55 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| 99303 | | Nursing facility care | Inpatient Visits | | 2.01 | 1.19 | 0.68 | | |
| 99311 | | Nursing fac care, subseq | Inpatient Visits | | 0.60 | 0.49 | 0.21 | | |
| 99312 | | Nursing fac care, subseq | Inpatient Visits | | 1.00 | 0.67 | 0.34 | | |
| 99313 | | Nursing fac care, subseq | Inpatient Visits | | 1.42 | 0.87 | 0.49 | | |
| 99315 | | Nursing fac discharge day | Inpatient Visits | | 1.13 | 0.73 | 0.38 | | |
| 99316 | | Nursing fac discharge day | Inpatient Visits | | 1.50 | 0.93 | 0.52 | | |
| 99321 | | Rest home visit, new patient | Office/Home/Urgent Care Visits | | 0.71 | 0.45 | 0.45 | | |
| 99322 | | Rest home visit, new patient | Office/Home/Urgent Care Visits | | 1.01 | 0.70 | 0.70 | | |
| 99323 | | Rest home visit, new patient | Office/Home/Urgent Care Visits | | 1.28 | 0.92 | 0.92 | | |
| 99331 | | Rest home visit, est pat | Office/Home/Urgent Care Visits | | 0.60 | 0.47 | 0.47 | | |
| 99332 | | Rest home visit, est pat | Office/Home/Urgent Care Visits | | 0.80 | 0.58 | 0.58 | | |
| 99333 | | Rest home visit, est pat | Office/Home/Urgent Care Visits | | 1.00 | 0.71 | 0.71 | | |
| 99341 | | Home visit, new patient | Office/Home/Urgent Care Visits | | 1.01 | 0.55 | 0.55 | | |
| 99342 | | Home visit, new patient | Office/Home/Urgent Care Visits | | 1.52 | 0.85 | 0.85 | | |
| 99343 | | Home visit, new patient | Office/Home/Urgent Care Visits | | 2.27 | 1.26 | 1.26 | | |
| 99344 | | Home visit, new patient | Office/Home/Urgent Care Visits | | 3.03 | 1.55 | 1.55 | | |
| 99345 | | Home visit, new patient | Office/Home/Urgent Care Visits | | 3.79 | 1.81 | 1.81 | | |
| 99347 | | Home visit, est patient | Office/Home/Urgent Care Visits | | 0.76 | 0.48 | 0.48 | | |
| 99348 | | Home visit, est patient | Office/Home/Urgent Care Visits | | 1.26 | 0.72 | 0.72 | | |
| 99349 | | Home visit, est patient | Office/Home/Urgent Care Visits | | 2.02 | 1.05 | 1.05 | | |
| 99350 | | Home visit, est patient | Office/Home/Urgent Care Visits | | 3.03 | 1.43 | 1.43 | | |
| 99354 | | Prolonged service, office | Office/Home/Urgent Care Visits | | 1.77 | 1.46 | 0.61 | | |
| 99355 | | Prolonged service, office | Office/Home/Urgent Care Visits | | 1.77 | 1.24 | 0.59 | | |
| 99356 | | Prolonged service, inpatient | Inpatient Visits | | 1.71 | 0.60 | 0.60 | | |
| 99357 | | Prolonged service, inpatient | Inpatient Visits | | 1.71 | 0.61 | 0.61 | | |
| 99358 | | Prolonged serv, w/o contact | Office/Home/Urgent Care Visits | | | | | 4.40 | MDR |
| 99359 | | Prolonged serv, w/o contact | Office/Home/Urgent Care Visits | | | | | 2.20 | MDR |
| 99360 | | Physician standby services | Miscellaneous Medical | | | | | 2.45 | PHCS |
| 99361 | | Physician/team conference | Office/Home/Urgent Care Visits | | | | | 2.52 | MDR |
| 99362 | | Physician/team conference | Office/Home/Urgent Care Visits | | | | | 4.40 | MDR |
| 99371 | | Physician phone consultation | Office/Home/Urgent Care Visits | | | | | 0.40 | MDR |
| 99372 | | Physician phone consultation | Office/Home/Urgent Care Visits | | | | | 1.00 | MDR |
| 99373 | | Physician phone consultation | Office/Home/Urgent Care Visits | | | | | 2.00 | MDR |
| 99374 | | Home health care supervision | Office/Home/Urgent Care Visits | | 1.10 | 1.49 | 0.43 | | |
| 99375 | | Home health care supervision | Office/Home/Urgent Care Visits | | 1.73 | 1.57 | 1.57 | | |
| 99377 | | Hospice care supervision | Office/Home/Urgent Care Visits | | 1.10 | 1.49 | 0.43 | | |
| 99378 | | Hospice care supervision | Office/Home/Urgent Care Visits | | 1.73 | 1.97 | 1.97 | | |
| 99379 | | Nursing fac care supervision | Office/Home/Urgent Care Visits | | 1.10 | 1.49 | 0.43 | | |
| 99380 | | Nursing fac care supervision | Office/Home/Urgent Care Visits | | 1.73 | 1.74 | 0.68 | | |
| 99381 | | Prev visit, new, infant | Well Baby Exams | | 1.19 | 1.52 | 0.46 | | |
| 99382 | | Prev visit, new, age 1-4 | Physical Exams | | 1.36 | 1.56 | 0.53 | | |
| 99383 | | Prev visit, new, age 5-11 | Physical Exams | | 1.36 | 1.50 | 0.53 | | |
| 99384 | | Prev visit, new, age 12-17 | Physical Exams | | 1.53 | 1.57 | 0.60 | | |
| 99385 | | Prev visit, new, age 18-39 | Physical Exams | | 1.53 | 1.57 | 0.60 | | |
| 99386 | | Prev visit, new, age 40-64 | Physical Exams | | 1.88 | 1.76 | 0.73 | | |
| 99387 | | Prev visit, new, 65 & over | Physical Exams | | 2.06 | 1.89 | 0.80 | | |

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### TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| 99391 | | Prev visit, est, infant | Well Baby Exams | | 1.02 | 1.03 | 0.40 | | |
| 99392 | | Prev visit, est, age 1-4 | Physical Exams | | 1.19 | 1.10 | 0.46 | | |
| 99393 | | Prev visit, est, age 5-11 | Physical Exams | | 1.19 | 1.07 | 0.46 | | |
| 99394 | | Prev visit, est, age 12-17 | Physical Exams | | 1.36 | 1.15 | 0.53 | | |
| 99395 | | Prev visit, est, age 18-39 | Physical Exams | | 1.36 | 1.18 | 0.53 | | |
| 99396 | | Prev visit, est, age 40-64 | Physical Exams | | 1.53 | 1.27 | 0.60 | | |
| 99397 | | Prev visit, est, 65 & over | Physical Exams | | 1.71 | 1.38 | 0.67 | | |
| 99401 | | Preventive counseling, indiv | Physical Exams | | 0.48 | 0.63 | 0.19 | | |
| 99402 | | Preventive counseling, indiv | Physical Exams | | 0.98 | 0.88 | 0.38 | | |
| 99403 | | Preventive counseling, indiv | Physical Exams | | 1.46 | 1.10 | 0.57 | | |
| 99404 | | Preventive counseling, indiv | Physical Exams | | 1.95 | 1.34 | 0.76 | | |
| 99411 | | Preventive counseling, group | Physical Exams | | 0.15 | 0.18 | 0.06 | | |
| 99412 | | Preventive counseling, group | Physical Exams | | 0.25 | 0.25 | 0.10 | | |
| 99420 | | Health risk assessment test | Physical Exams | | | | | 1.52 | PHCS |
| 99429 | | Unlisted preventive service | Physical Exams | | | | | 1.08 | SAF |
| 99431 | | Initial care, normal newborn | Inpatient Visits | | 1.17 | 0.39 | 0.39 | | |
| 99432 | | Newborn care, not in hosp | Well Baby Exams | | 1.26 | 0.84 | 0.41 | | |
| 99433 | | Normal newborn care/hospital | Inpatient Visits | | 0.62 | 0.20 | 0.20 | | |
| 99435 | | Newborn discharge day hosp | Inpatient Visits | | 1.50 | 0.51 | 0.51 | | |
| 99436 | | Attendance, birth | Inpatient Visits | | 1.50 | 0.49 | 0.48 | | |
| 99440 | | Newborn resuscitation | Inpatient Visits | | 2.93 | 0.95 | 0.95 | | |
| 99450 | | Life/disability evaluation | Office/Home/Urgent Care Visits | | | | | 2.62 | PHCS |
| 99455 | | Disability examination | Office/Home/Urgent Care Visits | | | | | 4.19 | SAF |
| 99456 | | Disability examination | Office/Home/Urgent Care Visits | | | | | 11.63 | PHCS |
| 99499 | | Unlisted e&m service | Office/Home/Urgent Care Visits | | | | | 1.97 | Misc |
| 99500 | | Home visit, prenatal | Office/Home/Urgent Care Visits | | | | | 3.52 | PHCS |
| 99501 | | Home visit, postnatal | Office/Home/Urgent Care Visits | | | | | 2.08 | PHCS |
| 99506 | | Home visit, im injection | Office/Home/Urgent Care Visits | | | | | 1.44 | PHCS |
| 99507 | | Home visit, cath maintain | Office/Home/Urgent Care Visits | | | | | 0.45 | PHCS |
| 99509 | | Home visit day life activity | Office/Home/Urgent Care Visits | | | | | 1.97 | PHCS |
| 99512 | | Home visit, hemodialysis | Office/Home/Urgent Care Visits | | | | | 7.57 | PHCS |
| 99551 | | Home infus, pain mgmt, iv/sc | Office/Home/Urgent Care Visits | | | | | 1.44 | PHCS |
| 99552 | | Hm infus pain mgmt, epid/ith | Office/Home/Urgent Care Visits | | | | | 1.42 | PHCS |
| 99553 | | Home infuse, tocolytic tx | Office/Home/Urgent Care Visits | | | | | 9.18 | PHCS |
| 99554 | | Home infus, hormone/platelet | Office/Home/Urgent Care Visits | | | | | 18.15 | PHCS |
| 99555 | | Home infuse, chemotheraphy | Office/Home/Urgent Care Visits | | | | | 2.74 | PHCS |
| 99556 | | Home infus, antibio/fung/vir | Office/Home/Urgent Care Visits | | | | | 2.58 | PHCS |
| 99557 | | Home infuse, anticoagulant | Office/Home/Urgent Care Visits | | | | | 3.27 | PHCS |
| 99558 | | Home infuse, immunotherapy | Office/Home/Urgent Care Visits | | | | | 0.08 | PHCS |
| 99560 | | Home infus, entero nutrition | Office/Home/Urgent Care Visits | | | | | 0.74 | PHCS |
| 99561 | | Home infuse, hydration tx | Office/Home/Urgent Care Visits | | | | | 2.95 | PHCS |
| 99562 | | Home infus, parent nutrition | Office/Home/Urgent Care Visits | | | | | 3.88 | PHCS |
| 99566 | | Home infuse, iv therapy | Office/Home/Urgent Care Visits | | | | | 1.42 | PHCS |
| 99568 | | Home infus, misc drug, daily | Office/Home/Urgent Care Visits | | | | | 4.26 | PHCS |
| 99569 | | Home infuse, each addl tx | Office/Home/Urgent Care Visits | | | | | 2.20 | PHCS |
| 99600 | | Home visit nos | Office/Home/Urgent Care Visits | | | | | 2.20 | Misc |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| G0008 | | Admin influenza virus vac | Immunizations | | | | | 0.09 | MDR |
| G0009 | | Admin pneumococcal vaccine | Immunizations | | | | | 0.09 | MDR |
| G0010 | | Admin hepatitis b vaccine | Immunizations | | | | | 0.14 | MDR |
| G0030 | 26 | PET imaging prev PET single | Radiology | | 1.50 | 0.52 | 0.52 | | |
| G0031 | 26 | PET imaging prev PET multple | Radiology | | 1.87 | 0.70 | 0.70 | | |
| G0032 | 26 | PET follow SPECT 78464 singl | Radiology | | 1.50 | 0.52 | 0.52 | | |
| G0033 | 26 | PET follow SPECT 78464 mult | Radiology | | 1.87 | 0.70 | 0.70 | | |
| G0034 | 26 | PET follow SPECT 76865 singl | Radiology | | 1.50 | 0.52 | 0.52 | | |
| G0035 | 26 | PET follow SPECT 78465 mult | Radiology | | 1.87 | 0.70 | 0.70 | | |
| G0036 | 26 | PET follow cornry angio sing | Radiology | | 1.50 | 0.52 | 0.52 | | |
| G0037 | 26 | PET follow cornry angio mult | Radiology | | 1.87 | 0.70 | 0.70 | | |
| G0038 | 26 | PET follow myocard perf sing | Radiology | | 1.50 | 0.52 | 0.52 | | |
| G0039 | 26 | PET follow myocard perf mult | Radiology | | 1.87 | 0.70 | 0.70 | | |
| G0040 | 26 | PET follow stress echo singl | Radiology | | 1.50 | 0.52 | 0.52 | | |
| G0041 | 26 | PET follow stress echo mult | Radiology | | 1.87 | 0.70 | 0.70 | | |
| G0042 | 26 | PET follow ventriculogm sing | Radiology | | 1.50 | 0.52 | 0.52 | | |
| G0043 | 26 | PET follow ventriculogm mult | Radiology | | 1.87 | 0.70 | 0.70 | | |
| G0044 | 26 | PET following rest ECG singl | Radiology | | 1.50 | 0.52 | 0.52 | | |
| G0045 | 26 | PET following rest ECG mult | Radiology | | 1.87 | 0.70 | 0.70 | | |
| G0046 | 26 | PET follow stress ECG singl | Radiology | | 1.50 | 0.52 | 0.52 | | |
| G0047 | 26 | PET follow stress ECG mult | Radiology | | 1.87 | 0.70 | 0.70 | | |
| G0101 | | CA screen;pelvic/breast exam | Physical Exams | | 0.45 | 0.51 | 0.17 | | |
| G0102 | | Prostate ca screening; dre | Physical Exams | | 0.17 | 0.38 | 0.06 | | |
| G0104 | | CA screen;flexi sigmoidscope | Surgery | | 0.98 | 1.82 | 0.52 | | |
| G0105 | | Colorectal scrn; hi risk ind | Surgery | | 3.70 | 8.03 | 1.72 | | |
| G0106 | 26 | Colon CA screen;barium enema | Surgery | | 0.99 | 0.34 | 0.34 | | |
| G0106 | TC | Colon CA screen;barium enema | Surgery | a | 0.00 | 2.22 | 2.22 | | |
| G0108 | | Diab manage trn per indiv | Miscellaneous Medical | | 0.00 | 0.82 | 0.82 | | |
| G0109 | | Diab manage trn ind/group | Miscellaneous Medical | | 0.00 | 0.48 | 0.48 | | |
| G0110 | | Nett pulm-rehab educ; ind | Miscellaneous Medical | | 0.90 | 0.71 | 0.30 | | |
| G0111 | | Nett pulm-rehab educ; group | Miscellaneous Medical | | 0.27 | 0.29 | 0.14 | | |
| G0112 | | Nett;nutrition guid, initial | Miscellaneous Medical | | 1.72 | 1.22 | 0.67 | | |
| G0113 | | Nett;nutrition guid,subseqnt | Miscellaneous Medical | | 1.29 | 0.84 | 0.42 | | |
| G0114 | | Nett; psychosocial consult | Miscellaneous Medical | | 1.20 | 0.50 | 0.38 | | |
| G0115 | | Nett; psychological testing | Miscellaneous Medical | | 1.20 | 0.65 | 0.38 | | |
| G0116 | | Nett; psychosocial counsel | Miscellaneous Medical | | 1.11 | 1.02 | 0.34 | | |
| G0117 | | Glaucoma scrn hgh risk direc | Miscellaneous Medical | | 0.45 | 0.94 | 0.21 | | |
| G0118 | | Glaucoma scrn hgh risk direc | Miscellaneous Medical | | 0.17 | 0.81 | 0.08 | | |
| G0120 | 26 | Colon ca scrn; barium enema | Surgery | | 0.99 | 0.34 | 0.34 | | |
| G0120 | TC | Colon ca scrn; barium enema | Surgery | a | 0.00 | 2.22 | 2.22 | | |
| G0121 | | Colon ca scrn not hi rsk ind | Surgery | | 3.70 | 8.03 | 1.72 | | |
| G0122 | 26 | Colon ca scrn; barium enema | Radiology | | 0.99 | 0.39 | 0.39 | | |
| G0122 | TC | Colon ca scrn; barium enema | Radiology | a | 0.00 | 2.22 | 2.22 | | |
| G0124 | | Screen c/v thin layer by MD | Pathology | | 0.42 | 0.99 | 0.99 | | |
| G0125 | 26 | PET image pulmonary nodule | Radiology | | 1.50 | 0.52 | 0.52 | | |
| G0125 | TC | PET image pulmonary nodule | Radiology | a | 0.00 | 55.31 | 55.31 | | |

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## TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Methodology |
|---|---|---|---|---|---|---|---|---|---|
| G0127 | | Trim nail(s) | Surgery | | 0.17 | 0.26 | 0.07 | | |
| G0128 | | CORF skilled nursing service | Miscellaneous Medical | | 0.08 | 0.03 | 0.03 | | |
| G0130 | 26 | Single energy x-ray study | Radiology | | 0.22 | 0.11 | 0.11 | | |
| G0141 | | Scr c/v cyto,autosys and md | Pathology | | 0.42 | 0.99 | 0.99 | | |
| G0151 | | HHCP-serv of pt,ea 15 min | Office/Home/Urgent Care Visits | | | | | 0.69 | MDR |
| G0166 | | Extrnl counterpulse, per tx | Miscellaneous Medical | | 0.07 | 5.57 | 0.03 | | |
| G0167 | | Hyperbaric oz tx;no md reqrd | Miscellaneous Medical | | | | | 2.37 | MDR |
| G0168 | | Wound closure by adhesive | Surgery | | 0.45 | 2.24 | 0.18 | | |
| G0179 | | MD recertification HHA PT | Office/Home/Urgent Care Visits | | 0.45 | 1.09 | 1.09 | | |
| G0180 | | MD certification HHA patient | Office/Home/Urgent Care Visits | | 0.67 | 1.31 | 1.31 | | |
| G0181 | | Home health care supervision | Office/Home/Urgent Care Visits | | 1.73 | 1.56 | 1.56 | | |
| G0182 | | Hospice care supervision | Office/Home/Urgent Care Visits | | 1.73 | 1.75 | 1.75 | | |
| G0186 | | Dstry eye lesn,fdr vssl tech | Miscellaneous Medical | | | | | 17.53 | MDR |
| G0202 | 26 | Screen mammography film digital | Radiology | | 0.70 | 0.27 | 0.27 | | |
| G0202 | TC | Screen mammography film digital | Radiology | a | 0.00 | 2.53 | 2.53 | | |
| G0204 | 26 | Diagnostic mammography digital | Radiology | | 0.87 | 0.34 | 0.34 | | |
| G0204 | TC | Diagnostic mammography digital | Radiology | a | 0.00 | 2.50 | 2.50 | | |
| G0206 | 26 | Diagnostic mammography digital | Radiology | | 0.70 | 0.27 | 0.27 | | |
| G0206 | TC | Diagnostic mammography digital | Radiology | a | 0.00 | 2.01 | 2.01 | | |
| G0210 | 26 | PET img wholebody dxlung | Radiology | | 1.50 | 0.59 | 0.59 | | |
| G0211 | 26 | PET img wholbody init lung | Radiology | | 1.50 | 0.59 | 0.59 | | |
| G0212 | 26 | PET img wholebod restag lung | Radiology | | 1.50 | 0.59 | 0.59 | | |
| G0213 | 26 | PET img wholbody dx | Radiology | | 1.50 | 0.59 | 0.59 | | |
| G0214 | 26 | PET img wholebod init | Radiology | | 1.50 | 0.59 | 0.59 | | |
| G0215 | 26 | PETimg wholebod restag | Radiology | | 1.50 | 0.59 | 0.59 | | |
| G0216 | 26 | PET img wholebod dx melanoma | Radiology | | 1.50 | 0.59 | 0.59 | | |
| G0217 | 26 | PET img wholebod init melan | Radiology | | 1.50 | 0.59 | 0.59 | | |
| G0218 | 26 | PET img wholebod restag mela | Radiology | | 1.50 | 0.59 | 0.59 | | |
| G0219 | | PET img wholbod melano nonco | Radiology | | 1.50 | 0.59 | 0.59 | | |
| G0220 | 26 | PET img wholebod dx lymphoma | Radiology | | 1.50 | 0.59 | 0.59 | | |
| G0221 | 26 | PET imag wholbod init lympho | Radiology | | 1.50 | 0.59 | 0.59 | | |
| G0222 | 26 | PET imag wholbod resta lymph | Radiology | | 1.50 | 0.59 | 0.59 | | |
| G0223 | 26 | PET imag wholbod reg dx head | Radiology | | 1.50 | 0.59 | 0.59 | | |
| G0224 | 26 | PET imag wholbod reg ini hea | Radiology | | 1.50 | 0.59 | 0.59 | | |
| G0225 | 26 | PET whol restag headneckonly | Radiology | | 1.50 | 0.59 | 0.59 | | |
| G0226 | 26 | PET img wholbody dx esophagl | Radiology | | 1.50 | 0.59 | 0.59 | | |
| G0227 | 26 | PET img wholbod ini esophage | Radiology | | 1.50 | 0.59 | 0.59 | | |
| G0228 | 26 | PET img wholbod restg esopha | Radiology | | 1.50 | 0.59 | 0.59 | | |
| G0229 | 26 | PET img metaboloc brain pres | Radiology | | 1.50 | 0.59 | 0.59 | | |
| G0230 | 26 | PET myocard viability post | Radiology | | 1.50 | 0.59 | 0.59 | | |
| G0231 | 26 | PET WhBD colorec; gamma cam | Radiology | | 1.50 | 0.59 | 0.59 | | |
| G0232 | 26 | PET whbd lymphoma; gamma cam | Radiology | | 1.50 | 0.59 | 0.59 | | |
| G0233 | 26 | PET whbd melanoma; gamma cam | Radiology | | 1.50 | 0.59 | 0.59 | | |
| G0234 | 26 | PET WhBD pulm nod; gamma cam | Radiology | | 1.50 | 0.59 | 0.59 | | |
| G0236 | 26 | Digital film convert diag ma | Radiology | | 0.06 | 0.02 | 0.02 | | |
| G0236 | TC | Digital film convert diag ma | Radiology | a | 0.00 | 0.42 | 0.42 | | |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology.

TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| G0237 | | Therapeutic procd strg endur | Miscellaneous Medical | | 0.00 | 0.47 | 0.47 | | |
| G0245 | | Initial foot exam pt lops | Office/Home/Urgent Care Visits | | 0.88 | 0.77 | 0.32 | | |
| G0246 | | Followup eval of foot pt lop | Office/Home/Urgent Care Visits | | 0.45 | 0.52 | 0.16 | | |
| G0247 | | Routine footcare pt w lops | Office/Home/Urgent Care Visits | | 0.50 | 0.52 | 0.21 | | |
| G0248 | | Demonstrate use home inr mon | Cardiovascular | | 0.00 | 4.30 | 4.30 | | |
| G0249 | | Provide test material,equipm | Cardiovascular | | 0.00 | 3.35 | 3.35 | | |
| G0250 | | MD review interpret of test | Cardiovascular | | 0.18 | 0.07 | 0.07 | | |
| G0252 | 26 | PET imaging initial dx | Radiology | | 1.50 | 0.60 | 0.60 | | |
| G0253 | 26 | PET image brst dection recur | Radiology | | 1.87 | 0.73 | 0.73 | | |
| G0254 | 26 | PET image brst eval to tx | Radiology | | 1.87 | 0.73 | 0.73 | | |
| G0255 | | Current percep threshold tst | Miscellaneous Medical | | 1.50 | 0.59 | 0.59 | | |
| G0262 | 26 | Sm intestinal image capsule | Radiology | | 2.12 | 0.83 | 0.83 | | |
| G0262 | TC | Sm intestinal image capsule | Radiology | ■ | 0.00 | 17.84 | 17.84 | | |
| G0268 | | Removal of impacted wax md | Surgery | | 0.61 | 0.57 | 0.24 | | |
| G0270 | | MNT subs tx for change dx | Miscellaneous Medical | | 0.00 | 0.47 | 0.47 | | |
| G0271 | | Group MNT 2 or more 30 mins | Miscellaneous Medical | | 0.00 | 0.18 | 0.18 | | |
| G0272 | | Naso/oro gastric tube pl MD | Radiology | | 0.32 | 0.13 | 0.13 | | |
| G0273 | 26 | Pretx planning, non-Hodgkins | Radiology | | 0.86 | 0.34 | 0.34 | | |
| G0273 | TC | Pretx planning, non-Hodgkins | Radiology | ■ | 0.00 | 11.02 | 11.02 | | |
| G0274 | 26 | Radiopharm tx, non-Hodgkins | Radiology | | 2.07 | 0.81 | 0.81 | | |
| G0274 | TC | Radiopharm tx, non-Hodgkins | Radiology | ■ | 0.00 | 2.61 | 2.61 | | |
| G0275 | | Renal angio, cardiac cath | Radiology | | 0.25 | 0.10 | 0.10 | | |
| G0278 | | Iliac art angio,cardiac cath | Radiology | | 0.25 | 0.10 | 0.10 | | |
| G0279 | | Excorp shock tx, elbow epi | Physical Medicine | | 0.06 | 1.46 | 0.02 | | |
| G0280 | | Excorp shock tx other than | Physical Medicine | | 0.06 | 1.46 | 0.02 | | |
| G0281 | | Elec stim unattend for press | Physical Medicine | | 0.18 | 0.16 | 0.16 | | |
| G0283 | | Elec stim other than wound | Physical Medicine | | 0.18 | 0.16 | 0.16 | | |
| G0288 | | Recon, CTA for surg plan | Radiology | | 0.00 | 10.57 | 10.57 | | |
| G0289 | | Arthro, loose body + chondro | Surgery | | 1.48 | 0.58 | 0.58 | | |
| M0064 | | Visit for drug monitoring | OP Psych./Alc. & Drug Abuse | | 0.37 | 0.35 | 0.12 | | |
| M0076 | | Prolotherapy | Miscellaneous Medical | | | | | 1.70 | MDR |
| M0300 | | IV chelationtherapy | Cardiovascular | | | | | 0.84 | MDR |
| P3001 | | Screening pap smear by phys | Pathology | | 0.42 | 0.99 | 0.99 | | |
| P7001 | | Culture bacterial urine | Pathology | | | | | 0.58 | MDR |
| P9010 | | Whole blood for transfusion | Miscellaneous Medical | | | | | 2.08 | SA |
| P9011 | | Blood split unit | Miscellaneous Medical | | | | | 2.98 | SA |
| P9016 | | RBC leukocytes reduced | Miscellaneous Medical | | | | | 2.86 | MDR |
| P9019 | | Platelets, each unit | Miscellaneous Medical | | | | | 1.78 | MDR |
| P9020 | | Plaelet rich plasma unit | Miscellaneous Medical | | | | | 1.34 | MDR |
| P9021 | | Red blood cells unit | Miscellaneous Medical | | | | | 4.27 | MDR |
| P9022 | | Washed red blood cells unit | Miscellaneous Medical | | | | | 3.59 | MDR |
| P9041 | | Albumin (human),5%, 50ml | Miscellaneous Medical | | | | | 0.80 | SA |
| P9043 | | Plasma protein fract,5%,50ml | Miscellaneous Medical | | | | | 0.86 | SA |
| P9045 | | Albumin (human), 5%, 250 ml | Miscellaneous Medical | | | | | 1.59 | SA |
| P9046 | | Albumin (human), 25%, 20 ml | Miscellaneous Medical | | | | | 0.69 | SA |
| P9047 | | Albumin (human), 25%, 50ml | Miscellaneous Medical | | | | | 1.59 | SA |

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology.

TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

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| CPT/ HCPCS Code | Modifier | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Status/ Usage Indicator | Work Expense RVUs | Facility Practice Expense RVUs | Non-Facility Practice Expense RVUs | Total Expense RVUs | Charge Method-ology |
|---|---|---|---|---|---|---|---|---|---|
| P9048 | | Plasmaprotein fract,5%,250ml | Miscellaneous Medical | | | | | 2.40 | SA |
| P9603 | | One-way allow prorated miles | Miscellaneous Medical | | | | | 0.01 | MDR |
| P9604 | | One-way allow prorated trip | Miscellaneous Medical | | | | | 0.19 | MDR |
| Q0035 | 26 | Cardiokymography | Radiology | | 0.17 | 0.07 | 0.07 | | |
| Q0035 | TC | Cardiokymography | Radiology | a | 0.00 | 0.39 | 0.39 | | |
| Q0091 | | Obtaining screen pap smear | Pathology | | 0.37 | 0.68 | 0.14 | | |
| Q0092 | | Set up port xray equipment | Radiology | | 0.00 | 0.32 | 0.32 | | |

Key to Status/Usage Indicators:

a Cannot be billed by VA Hospital Outpatients and Provider-Based Clinics (because the service is separately priced as outpatient facility charges — see Table F).

b Cannot be billed by VA Hospital Outpatients and Provider-Based Clinics (because a different code is used for facility billing).

No entry: Can be billed at all VA locations.

Charge Methodology:

Misc: RVUs obtained using the methodology for unlisted procedures.

No entry: RVUs obtained from the Medicare Physician Fee Schedule.

All other entries: See Supplementary Table 1, Reasonable Charges Data Sources - V2.0

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See end of table for notes regarding Status/Usage Indicators and Charge Methodology

### TABLE H. — PROFESSIONAL ANESTHESIA NATIONWIDE BASE UNITS BY CPT CODE

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| CPT Code | CPT Code Description | Base Units |
|---|---|---|
| 00100 | Anes-Proc Salivary Glands Incl Bx | 5.0 |
| 00102 | Anes-Proc Plastic Repair Cleft Lip | 6.0 |
| 00103 | Anes-Reconstructive Proc Eyelid | 5.0 |
| 00104 | Anes-Electroculvulsive Therapy | 4.0 |
| 00120 | Anes-Ext Mid&Innr Ear W/Bx; Nos | 5.0 |
| 00124 | Anes-Ext Mid&Innr Ear W/Bx; Otscpy | 4.0 |
| 00126 | Anes-Ext Mid&Innr Ear W/Bx; Tympnot | 4.0 |
| 00140 | Anesthesia Procedures On Eye; Nos | 5.0 |
| 00142 | Anesthesia Proc Eye; Lens Surgery | 4.0 |
| 00144 | Anes-Proc Eye; Corneal Transplant | 6.0 |
| 00145 | Anes-Proc Eye; Vitreoretinal Surg | 6.0 |
| 00147 | Anesthesia Proc Eye; Iridectomy | 4.0 |
| 00148 | Anesthesia Proc Eye; Ophthalmoscopy | 4.0 |
| 00160 | Anes-Proc Nose&Access Sinuses; Nos | 5.0 |
| 00162 | Anes-Nse&Acss Sinuses; Radl Surg | 7.0 |
| 00164 | Anes-Nse&Acss Sinuses; Bx Sft Tiss | 4.0 |
| 00170 | Anes-Intraoral Including Bx; Nos | 5.0 |
| 00172 | Anes-Intraorl W/Bx; Repr Clt Palate | 6.0 |
| 00174 | Anes-Intraoral W/Bx; Exc Tumor | 6.0 |
| 00176 | Anes-Intraorl Incl Bx; Radl Surgery | 7.0 |
| 00190 | Anes-Proc Facial Bones/Skull; Nos | 5.0 |
| 00192 | Anes-Proc Fce Bns/Skull; Radl Surg | 7.0 |
| 00210 | Anes-Intracran; Nos | 11.0 |
| 00212 | Anes-Intracran; Subdural Taps | 5.0 |
| 00214 | Anes-Cran; Burr Holes-Ventricgrph | 9.0 |
| 00215 | Anes-Intracran;Elev Skl Fx-Xtradurl | 9.0 |
| 00216 | Anes-Intracran; Vascular Procedures | 15.0 |
| 00218 | Anes-Intracran; Proc Sitting Pstn | 13.0 |
| 00220 | Anes-Intracran;Cerebrosp Fl Shnting | 10.0 |
| 00222 | Anes-Intracran;Elec-Coag Cran Nerv | 6.0 |
| 00300 | Anes-Integ-Musc&Nerv-Head-Trunk;Nos | 5.0 |
| 00320 | Anes-Esoph Thyrd Trachea;Nos 1 Yr/> | 6.0 |
| 00322 | Anes-Esoph Thyroid Trach;Bx Thyroid | 3.0 |
| 00326 | Anes-Larynx&Trach Chld < 1 Yr Age | 7.0 |
| 00350 | Anes-Proc Major Vessels Neck; Nos | 10.0 |
| 00352 | Anes-Proc Maj Ves Neck; Simple Lig | 5.0 |
| 00400 | Anes-Integ Extrem Trnk Perin; Nos | 3.0 |
| 00402 | Anes-Integ Extrem Trnk; Brst Recon | 5.0 |
| 00404 | Anes-Integ Trunk; Radl Breast Proc | 5.0 |
| 00406 | Anes-Integ;Radl Brst W/Node Dissect | 13.0 |
| 00410 | Anes-Integ Extrm Trnk;Convrt Arryth | 4.0 |
| 00450 | Anes-Proc Clavicle&Scapula; Nos | 5.0 |
| 00452 | Anes-Proc Clav&Scapula; Radl Surg | 6.0 |
| 00454 | Anes-Proc Clav&Scapula; Bx Clav | 3.0 |
| 00470 | Anes-Partial Rib Resection; Nos | 6.0 |
| 00472 | Anes-Part Rib Res; Thoracoplasty | 10.0 |
| 00474 | Anes-Part Rib Resection; Radl Proc | 13.0 |
| 00500 | Anes-On Esophagus | 15.0 |
| 00520 | Anes-Closed Chest; Nos | 6.0 |
| 00522 | Anes-Closed Chest; Needle Bx Pleura | 4.0 |
| 00524 | Anes-Closed Chest; Pneumocentesis | 4.0 |
| 00528 | Anes-Closed Chest; Mediastinoscopy | 8.0 |
| 00530 | Anes-Perm Trns Pacemkr Insertion | 4.0 |
| 00532 | Anes-Access Cntrl Venous Circ | 4.0 |
| 00534 | Anes-Trns Insrt/Repl Pacing Defib | 7.0 |
| 00537 | Anes-Card Eps Incl Radiofreq Ablat | 7.0 |
| 00539 | Anes-Tracheobronchial Reconstruct | 18.0 |
| 00540 | Anes-Thoracot ; Nos | 12.0 |
| 00541 | Anes-Thoracot; Util 1 Lung Vent | 15.0 |
| 00542 | Anes-Thoracot ; Decortication | 15.0 |
| 00544 | Anes-Thoracot ; Pleurectomy | 15.0 |
| 00546 | Anes-Thoracot Lungs;Thoracoplasty | 15.0 |
| 00548 | Anes-Thoracot Lungs;Intrathor Trach | 17.0 |
| 00550 | Anesthesia For Sternal Debridement | 10.0 |
| 00560 | Anes-Hrt Pericard Sac; W/O Oxygntr | 15.0 |
| 00562 | Anes-Hrt Pericard Sac; W/Oxygntr | 20.0 |
| 00563 | Anes-Hrt Pericard Sac;Oxygntr&Arrst | 25.0 |
| 00566 | Anes-Direct Cabg W/O Pump Oxygenatr | 25.0 |
| 00580 | Anes-Hrt Tplnt/Hrt/Lung Tplnt | 20.0 |
| 00600 | Anesthesia Proc C-Spine&Cord; Nos | 10.0 |
| 00604 | Anes-Cerv Spine&Cord; Pt Sit Pstn | 13.0 |

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TABLE H. — PROFESSIONAL ANESTHESIA NATIONWIDE BASE UNITS BY CPT CODE

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| CPT Code | CPT Code Description | Base Units |
|---|---|---|
| 00620 | Anesthesia Proc T-Spine&Cord; Nos | 10.0 |
| 00622 | Anes-Thoracic;Thoracolum Sympathect | 13.0 |
| 00630 | Anesthesia Proc Lumbar Region; Nos | 8.0 |
| 00632 | Anes-Proc Lumb Rgn; Lumb Sympathect | 7.0 |
| 00634 | Anes-Lumb Rgn; Chemonucleolysis | 10.0 |
| 00635 | Anes-Lumb Rgn; Dx/Tx Lumb Punct | 4.0 |
| 00640 | Anes-Manip Spn/Clos Proc Spn | 3.0 |
| 00670 | Anes-Exten Spine & Spinal Cord | 13.0 |
| 00700 | Anes-Proc Upper Ant Abd Wall; Nos | 4.0 |
| 00702 | Anes-Up Ant Abd Wall; Perq Livr Bx | 4.0 |
| 00730 | Anes-Proc Upper Posterior Abd Wall | 5.0 |
| 00740 | Anes-Ugi Endoscopy-Intro Prox Duod | 5.0 |
| 00750 | Anes-Hernia Repairs Upper Abd; Nos | 4.0 |
| 00752 | Anes-Hernia Repr Up Abd, &/Dehis | 6.0 |
| 00754 | Anes-Hern Repr Up Abd, Omphalocele | 7.0 |
| 00756 | Anes-Hernia Repr Up Abd;Transabd | 7.0 |
| 00770 | Anes-On Major Abd Blood Vessels | 15.0 |
| 00790 | Anes-Intraper Up Abd W/Lap;Nos | 7.0 |
| 00792 | Anes-Intraper Up Abd W/Lap;Hepatec | 13.0 |
| 00794 | Anes-Intraper Up W/Lap;Pancreatect | 8.0 |
| 00796 | Anes-Intraper Up W/Lap;Liver Tplnt | 30.0 |
| 00797 | Anes-Intraper W/Lap; Gastr Restirct | 8.0 |
| 00800 | Anes-Proc Lower Ant Abd Wall; Nos | 4.0 |
| 00802 | Anes-Lw Ant Abd Wall; Panniculect | 5.0 |
| 00810 | Anes-Low Intest Endo-Dist To Duod | 5.0 |
| 00820 | Anes-Proc Lower Posterior Abd Wall | 5.0 |
| 00830 | Anes-Hernia Repairs Lower Abd; Nos | 4.0 |
| 00832 | Anes-Hern Rep ; Ventral&Inci Hern S | 6.0 |
| 00834 | Anes-Hern Repr Nos Under 1 Yr Age | 5.0 |
| 00836 | Anes-Hern Nos<37Wk Brth &<50Wk Surg | 6.0 |
| 00840 | Anes-Intraper W/Laparscpy; Nos | 6.0 |
| 00842 | Anes-Intraper W/Laparscpy; Amnio | 4.0 |
| 00844 | Anes-Intraper;Abd-Perinl Resection | 7.0 |
| 00846 | Anes-Intraper Low W/Lap;Radl Hyst | 8.0 |
| 00848 | Anes-Intraper W/Lap;Pelv Exentratn | 8.0 |
| 00851 | Anes-Intraper W/Lap; Tubal Lig | 6.0 |
| 00860 | Anes-Xtraper W/Urin Tract; Nos | 6.0 |
| 00862 | Anes-Xtraper;Up 1/3 Ureter/Nephrect | 7.0 |
| 00864 | Anes-Xtraper Low Abd;Tot Cystect | 8.0 |
| 00865 | Anes-Xtraper Low;Radl Prostatect | 7.0 |
| 00866 | Anes-Xtraper Low Abd;Adrenalectomy | 10.0 |
| 00868 | Anes-Xtraper Low Abd;Renal Trsplnt | 10.0 |
| 00870 | Anes-Xtraper Low Abd;Cystolithtomy | 5.0 |
| 00872 | Anes-Lith Etracorp;W/Water Bath | 7.0 |
| 00873 | Anes-Lith Xtracorp;W/O Water Bath | 5.0 |
| 00880 | Anes-Proc Major Lower Abd Ves; Nos | 15.0 |
| 00882 | Anes-Maj Ves; Inf Vena Cava Lig | 10.0 |
| 00902 | Anesthesia For; Anorectal Procedure | 5.0 |
| 00904 | Anes-For; Radical Perineal Proc | 7.0 |
| 00906 | Anesthesia For; Vulvectomy | 4.0 |
| 00908 | Anes-For; Perineal Prostatectomy | 6.0 |
| 00910 | Anes-Transurethral ; Nos | 3.0 |
| 00912 | Anes-Trnsureth;Resect Bladder Tumor | 5.0 |
| 00914 | Anes-Transurethral ; Turp | 5.0 |
| 00916 | Anes-Trnsureth;Post Resection Bleed | 5.0 |
| 00918 | Anes-Trnsureth;W/Manip&/Remv Calcu | 5.0 |
| 00920 | Anesthesia Proc Male Genitalia; Nos | 3.0 |
| 00921 | Anes-Male Gnt; Vasect Unilat/Bilat | 3.0 |
| 00922 | Anes-Proc Male Gnt; Seminl Vesicles | 6.0 |
| 00924 | Anes-Male;Undescend Testis Uni/Bil | 4.0 |
| 00926 | Anes-Male Gnt; Radl Orchect Ing | 4.0 |
| 00928 | Anes-Male Gnt; Radl Orchect Abd | 6.0 |
| 00930 | Anes-Male Genit;Orchiopexy Uni/Bil | 4.0 |
| 00932 | Anes-Proc Male Gnt; Cmpl Amp Penis | 4.0 |
| 00934 | Anes-Male;Radl Amp Penis-Ing Lymph | 6.0 |
| 00936 | Anes Male;Radl Amp Penis-Ing&Iliac | 8.0 |
| 00938 | Anes-Male Genit;Insrt Penile Prosth | 4.0 |
| 00940 | Anes-Vag ; Not Otherwise Specified | 3.0 |
| 00942 | Anes-Vag; Colpot Vaginect&Opn Ureth | 4.0 |
| 00944 | Anes-Vag ; Vaginal Hysterectomy | 6.0 |
| 00948 | Anes-Vag ; Cervical Cerclage | 4.0 |

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## TABLE H. — PROFESSIONAL ANESTHESIA NATIONWIDE BASE UNITS BY CPT CODE

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| CPT Code | CPT Code Description | Base Units |
|---|---|---|
| 00950 | Anes-Vag ; Culdoscopy | 5.0 |
| 00952 | Anes-Vag;Hysteroscopy&/Salpingraphy | 4.0 |
| 01112 | Anes-Bn Marrow Asp&/Bx Iliac Crest | 5.0 |
| 01120 | Anesthesia Procedures Bony Pelvis | 6.0 |
| 01130 | Anes-Body Cast Application/Rev | 3.0 |
| 01140 | Anesthesia Interpelviabd Amputation | 15.0 |
| 01150 | Anes-Radl Tumor Pelv No Hndqtr Amp | 10.0 |
| 01160 | Anes-Clos Proc Invlv Pubis/Si Jnt | 4.0 |
| 01170 | Anes-Open Proc Invlv Pubis/Si Jnt | 8.0 |
| 01180 | Anes-Obtur Neurectomy; Extrapelvic | 3.0 |
| 01190 | Anes-Obtur Neurectomy; Intrapelvic | 4.0 |
| 01200 | Anes-All Clos Proc Invlv Hip Joint | 4.0 |
| 01202 | Anes-Arthroscopic Proc Hip Joint | 4.0 |
| 01210 | Anes-Open Proc Invlv Hip Joint; Nos | 6.0 |
| 01212 | Anes-Open Proc Invlv Hip;Disartic | 10.0 |
| 01214 | Anes-Opn Hip Jnt; Tot Hip Arthplsty | 8.0 |
| 01215 | Anes-Open Invlv Hip;Total Hip Rev | 10.0 |
| 01220 | Anes-All Clos Proc Invlv Up 2/3 Fem | 4.0 |
| 01230 | Anes-Open Invlv Upper 2/3 Femur;Nos | 6.0 |
| 01232 | Anes-Open Invlv Upper 2/3 Femur;Amp | 5.0 |
| 01234 | Anes-Open Upper 2/3 Femur;Radl Res | 8.0 |
| 01250 | Anes-All Nerv Musc Tend Fasc Up Leg | 4.0 |
| 01260 | Anes-Invlv Vns Upper Leg Incl Expl | 3.0 |
| 01270 | Anes-Invlv Artery Up Leg W/Gft;Nos | 8.0 |
| 01272 | Anes-Invlv Art Up Leg W/Gft;Fem Lig | 4.0 |
| 01274 | Anes-Invlv Art Up Leg W/Gft;Fem Emb | 6.0 |
| 01320 | Anes-Nerv Musc Fasc Burs Knee&/Pop | 4.0 |
| 01340 | Anes-All Clos Proc Lower 1/3 Femur | 4.0 |
| 01360 | Anes-All Open Proc Lower 1/3 Femur | 5.0 |
| 01380 | Anes-All Closed Proc Knee Joint | 3.0 |
| 01382 | Anes-Dx Arthroscopic Proc Knee Jnt | 3.0 |
| 01390 | Anes-All Clos Up Ends Tib Fib&/Pat | 3.0 |
| 01392 | Anes-All Open Up Ends Tib Fib&/Pat | 4.0 |
| 01400 | Anes-Open/Scope Proc Knee Jnt; Nos | 4.0 |
| 01402 | Anes-Open/Scope Knee Jnt; Tot Plsty | 7.0 |
| 01404 | Anes-Open/Scope Knee Jnt; Disartic | 5.0 |
| 01420 | Anes-All Cast Applic/Repr W/Knee | 3.0 |
| 01430 | Anes-Proc Veins Knee&Pop Area; Nos | 3.0 |
| 01432 | Anes-Vns Knee&Pop Area; Av Fist | 6.0 |
| 01440 | Anes-Proc Art Knee&Pop Area; Nos | 8.0 |
| 01442 | Anes-Art Knee;Pop Thrombendartect | 8.0 |
| 01444 | Anes-Art Knee;Pop Exc Occl/Aneur | 8.0 |
| 01462 | Anes-All Clos Proc Low Leg Ank&Foot | 3.0 |
| 01464 | Anes-Arthroscopic Proc Ank &Or Foot | 3.0 |
| 01470 | Anes-Nerv Musc Fasc Leg Ank&Ft;Nos | 3.0 |
| 01472 | Anes-Nerv Musc Leg&Ft;Repr Achilles | 5.0 |
| 01474 | Anes-Nrv Musc Leg&Ft;Gastroc Recess | 5.0 |
| 01480 | Anes-Open Bones Low Leg Ank&Ft;Nos | 3.0 |
| 01482 | Anes-Open Bones Lw Leg;Radl Res/Amp | 4.0 |
| 01484 | Anes-Open Bns Lw Leg;Osteot Tib Fib | 4.0 |
| 01486 | Anes-Open Bones Lw Leg;Tot Ank Repl | 7.0 |
| 01490 | Anes-Lw Leg Cast Applic Removl/Repr | 3.0 |
| 01500 | Anes-Art Lw Leg W/Byps Gft; Nos | 8.0 |
| 01502 | Anes-Art Low Leg W/Gft;Embolectomy | 6.0 |
| 01520 | Anes-Proc Veins Lower Leg; Nos | 3.0 |
| 01522 | Anes-Veins Lw Leg;Thrombect Direct | 5.0 |
| 01610 | Anes-Nerv Musc Tend Fasc Burs Shldr | 5.0 |
| 01620 | Anes-All Clos Hum Sc Ac&Shldr Jnt | 4.0 |
| 01622 | Anes-Dx Arthroscopic Proc Shldr Jnt | 4.0 |
| 01630 | Anes-Open/Scope Hum Sc Ac&Shldr;Nos | 5.0 |
| 01632 | Anes-Opn/Scope Hum Sc&Shldr;Rad Res | 6.0 |
| 01634 | Anes-Opn/Scope Hum Sc&Shldr;Disartc | 9.0 |
| 01636 | Anes-Opn/Scope Hum Sc Ac&Shldr; Amp | 15.0 |
| 01638 | Anes-Open/Scope Hum Ac&Shldr; Repl | 10.0 |
| 01650 | Anes-Proc Art Shoulder&Axilla; Nos | 6.0 |
| 01652 | Anes-Art Shldr&Ax; Ax-Brach Aneur | 10.0 |
| 01654 | Anes-Proc Art Shldr&Ax; Byps Graft | 8.0 |
| 01656 | Anes-Art Shldr&Ax; Ax-Fem Byps Gft | 10.0 |
| 01670 | Anes-On Veins Of Shoulder&Axilla | 4.0 |
| 01680 | Anes-Shldr Cast Applic/Remv/Repr;Nos | 3.0 |
| 01682 | Anes-Shldr Cast Applic/Remv;Spica | 4.0 |

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TABLE H. — PROFESSIONAL ANESTHESIA NATIONWIDE BASE UNITS BY CPT CODE

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| CPT Code | CPT Code Description | Base Units |
|---|---|---|
| 01710 | Anes-Nrv Musc Burs Up Arm&Elb;Nos | 3.0 |
| 01712 | Anes-Nrv Musc Burs Up Arm&Elb;Tenot | 5.0 |
| 01714 | Anes-Nrv Musc Up Arm&Elb;Tenoplasty | 5.0 |
| 01716 | Anes-Nrv Musc Up Arm&Elb;Tenodesis | 5.0 |
| 01730 | Anes-All Closed Proc Humerus&Elbow | 3.0 |
| 01732 | Anes-Dx Arthroscopic Proc Elb Joint | 3.0 |
| 01740 | Anes-Open/Surg Scope Proc Elb; Nos | 4.0 |
| 01742 | Anes-Open/Scope Proc Elb;Osteot Hum | 5.0 |
| 01744 | Anes-Open/Scope Elb;Rep Non/Mal Hum | 5.0 |
| 01756 | Anes-Open/Scope Proc Elb; Radl Proc | 6.0 |
| 01758 | Anes-Opn/Scope Elb;Exc Cyst/Tum Hum | 5.0 |
| 01760 | Anes-Open/Scope Elb; Tot Elb Repl | 7.0 |
| 01770 | Anes-Proc Art Upper Arm&Elbow; Nos | 6.0 |
| 01772 | Anes-Proc Art Upper Arm&Elb; Embo | 6.0 |
| 01780 | Anes-Proc Veins Upper Arm&Elb; Nos | 3.0 |
| 01782 | Anes-Proc Vns Up Arm&Elb; Phleborr | 4.0 |
| 01810 | Anes-All Nerv Musc Forarm Wrst&Hnd | 3.0 |
| 01820 | Anes-Clos Radius Ulna Wrst/Hnd Bone | 3.0 |
| 01829 | Anes-Dx Arthroscopic Proc Wrist | 3.0 |
| 01830 | Anes-Opn/Scope/Endo Wrst/Hnd; Nos | 3.0 |
| 01832 | Anes-Open/Scope/Endo Wrst/Hnd; Tot | 6.0 |
| 01840 | Anes-Proc Art Forarm Wrst&Hand; Nos | 6.0 |
| 01842 | Anes-Proc Art Forarm Wrst&Hnd; Embo | 6.0 |
| 01844 | Anes-Vasc Shnt/Shnt Rev Any Type | 6.0 |
| 01850 | Anes-Proc Vns Forarm Wrst&Hand; Nos | 3.0 |
| 01852 | Anes-Vns Forarm Wrst&Hnd; Phleborr | 4.0 |
| 01860 | Anes-Forarm/Hand Cast Applic/Remv | 3.0 |
| 01905 | Anes-Myelgrph Diskgrph Vertplsty | 5.0 |
| 01916 | Anes-Diagnostic Artrgrph/Venography | 5.0 |
| 01920 | Anes-Card Cath Cor Angio&Ventrcgrph | 7.0 |
| 01922 | Anes-Non-Invasive Imaging/Rad Tx | 7.0 |
| 01924 | Anes-Tx Intrvn Rad Art Sys; Nos | 5.0 |
| 01925 | Anes-Tx Intrvn Rad Art; Carotid/Cor | 7.0 |
| 01926 | Anes-Tx Rad Art;Intrcran -Card/Aort | 8.0 |
| 01930 | Anes-Tx Intrvn Rad Venus/Lymph; Nos | 5.0 |
| 01931 | Anes-Tx Rad Venus; Intrahep/Portal | 7.0 |
| 01932 | Anes-Tx Rad Venus; Intrathr/Jugular | 6.0 |
| 01933 | Anes-Tx Rad Venus/Lymph; Intracran | 7.0 |
| 01951 | Anes-2&3 Deg Brn Exc/Debrid; < 4% | 3.0 |
| 01952 | Anes-2&3 Deg Brn Exc/Debrid; 4-9% | 5.0 |
| 01953 | Anes-2-3 Deg Exc/Debrid;Ea Add 9% | 1.0 |
| 01960 | Anesthesia Vaginal Delivery Only | 5.0 |
| 01961 | Anesthesia Cesarean Delivery Only | 7.0 |
| 01962 | Anes-Urgent Hyst Follow Deliv | 8.0 |
| 01963 | Anes-C/S Hyst W/O Labr Analg/Anes | 8.0 |
| 01964 | Anesthesia For Abortion Procedures | 4.0 |
| 01967 | Neurax Labr Anlg/Anes-Plan Vag Del | 5.0 |
| 01968 | Anes-Cd Flw Neurax Labr Analg/Anes | 2.0 |
| 01969 | Anes-C/S Hyst Flw Neurax Labr Analg | 5.0 |
| 01990 | Physiolog Supp-Harv Org-Brain Dead | 7.0 |
| 01991 | Anes-Dx/Tx Nrv Blks&Inj; Not Prone | 3.0 |
| 01992 | Anes-Dx/Tx Nrv Blks&Inj; Prone Pstn | 5.0 |
| 01995 | Rgn Iv Admn Loc Anes Agt/Oth Med | 5.0 |
| 01996 | Daily Hos Epidurl/Subarach Cont Rx | 3.0 |
| 01999 | Unlisted Anesthesia Procedure | 5.0 |

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## TABLE I. — OUTPATIENT DENTAL PROFESSIONAL NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | HCPCS Code Description | Charge | GAAF Category |
|---|---|---|---|
| D0120 | Periodic oral evaluation | $35.86 | I |
| D0140 | Limit oral eval problm focus | $54.15 | I |
| D0150 | Comprehensve oral evaluation | $59.52 | I |
| D0160 | Extensv oral eval prob focus | $129.76 | I |
| D0170 | Re-eval,est pt,problem focus | $48.63 | I |
| D0180 | Comp periodontal evaluation | $57.62 | I |
| D0210 | Intraor complete film series | $99.08 | I |
| D0220 | Intraoral periapical first f | $21.11 | I |
| D0230 | Intraoral periapical ea add | $16.53 | I |
| D0240 | Intraoral occlusal film | $30.14 | I |
| D0250 | Extraoral first film | $42.22 | I |
| D0260 | Extraoral ea additional film | $36.68 | I |
| D0270 | Dental bitewing single film | $20.96 | I |
| D0272 | Dental bitewings two films | $33.05 | I |
| D0274 | Dental bitewings four films | $46.69 | I |
| D0277 | Vert bitewings-sev to eight | $70.11 | I |
| D0290 | Dental film skull/facial bon | $110.65 | I |
| D0310 | Dental saliography | $377.27 | I |
| D0320 | Dental tmj arthrogram incl i | $630.54 | I |
| D0321 | Dental other tmj films | $153.72 | I |
| D0322 | Dental tomographic survey | $412.53 | I |
| D0330 | Dental panoramic film | $86.55 | I |
| D0340 | Dental cephalometric film | $98.57 | I |
| D0350 | Oral/facial images | $49.34 | I |
| D0415 | Bacteriologic study | $26.58 | I |
| D0425 | Caries susceptibility test | $22.04 | I |
| D0460 | Pulp vitality test | $38.70 | I |
| D0470 | Diagnostic casts | $77.33 | I |
| D0472 | Gross exam, prep & report | $61.49 | I |
| D0473 | Micro exam, prep & report | $123.90 | I |
| D0474 | Micro w exam of surg margins | $92.99 | I |
| D0480 | Cytopath smear prep & report | $53.51 | I |
| D0502 | Other oral pathology procedu | $111.18 | I |
| D1110 | Dental prophylaxis adult | $67.18 | I |
| D1120 | Dental prophylaxis child | $48.80 | I |
| D1201 | Topical fluor w prophy child | $72.98 | I |
| D1203 | Topical fluor w/o prophy chi | $28.49 | I |
| D1204 | Topical fluor w/o prophy adu | $28.43 | I |
| D1205 | Topical fluoride w/ prophy a | $84.80 | I |
| D1310 | Nutri counsel-control caries | $45.62 | I |
| D1320 | Tobacco counseling | $50.88 | I |
| D1330 | Oral hygiene instruction | $44.27 | I |
| D1351 | Dental sealant per tooth | $39.74 | I |
| D1510 | Space maintainer fxd unilat | $255.52 | II |
| D1515 | Fixed bilat space maintainer | $368.47 | II |
| D1520 | Remove unilat space maintain | $315.66 | II |
| D1525 | Remove bilat space maintain | $439.34 | II |
| D1550 | Recement space maintainer | $56.37 | II |
| D2140 | Amalgam one surface permanen | $97.07 | II |
| D2150 | Amalgam two surfaces permane | $122.71 | II |
| D2160 | Amalgam three surfaces perma | $148.35 | II |
| D2161 | Amalgam 4 or > surfaces perm | $177.29 | II |
| D2330 | Resin one surface-anterior | $111.45 | II |
| D2331 | Resin two surfaces-anterior | $139.53 | II |
| D2332 | Resin three surfaces-anterio | $170.58 | II |
| D2335 | Resin 4/> surf or w incis an | $208.20 | II |
| D2390 | Ant resin-based cmpst crown | $367.35 | II |
| D2391 | Post 1 srfc resinbased cmpst | $133.77 | II |
| D2392 | Post 2 srfc resinbased cmpst | $176.99 | II |
| D2393 | Post 3 srfc resinbased cmpst | $223.29 | II |
| D2394 | Post >=4srfc resinbase cmpst | $261.37 | II |
| D2410 | Dental gold foil one surface | $182.78 | III |
| D2420 | Dental gold foil two surface | $410.14 | III |
| D2430 | Dental gold foil three surfa | $696.90 | III |
| D2510 | Dental inlay metalic 1 surf | $616.00 | III |
| D2520 | Dental inlay metallic 2 surf | $689.11 | III |
| D2530 | Dental inlay metl 3/more sur | $756.12 | III |
| D2542 | Dental onlay metallic 2 surf | $783.11 | III |
| D2543 | Dental onlay metallic 3 surf | $810.69 | III |
| D2544 | Dental onlay metl 4/more sur | $838.25 | III |

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### TABLE I. — OUTPATIENT DENTAL PROFESSIONAL NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | HCPCS Code Description | Charge | GAAF Category |
|---|---|---|---|
| D2610 | Inlay porcelain/ceramic 1 su | $709.63 | III |
| D2620 | Inlay porcelain/ceramic 2 su | $752.51 | III |
| D2630 | Dental onlay porc 3/more sur | $795.38 | III |
| D2642 | Dental onlay porcelin 2 surf | $799.80 | III |
| D2643 | Dental onlay porcelin 3 surf | $835.73 | III |
| D2644 | Dental onlay porc 4/more sur | $862.59 | III |
| D2650 | Inlay composite/resin one su | $535.30 | III |
| D2651 | Inlay composite/resin two su | $637.68 | III |
| D2652 | Dental inlay resin 3/mre sur | $675.37 | III |
| D2662 | Dental onlay resin 2 surface | $669.36 | III |
| D2663 | Dental onlay resin 3 surface | $718.96 | III |
| D2664 | Dental onlay resin 4/mre sur | $743.82 | III |
| D2710 | Crown resin laboratory | $348.82 | III |
| D2720 | Crown resin w/ high noble me | $824.61 | III |
| D2721 | Crown resin w/ base metal | $745.30 | III |
| D2722 | Crown resin w/ noble metal | $775.02 | III |
| D2740 | Crown porcelain/ceramic subs | $877.95 | III |
| D2750 | Crown porcelain w/ h noble m | $847.10 | III |
| D2751 | Crown porcelain fused base m | $770.51 | III |
| D2752 | Crown porcelain w/ noble met | $801.94 | III |
| D2780 | Crown 3/4 cast hi noble met | $844.03 | III |
| D2781 | Crown 3/4 cast base metal | $813.02 | III |
| D2782 | Crown 3/4 cast noble metal | $809.76 | III |
| D2783 | Crown 3/4 porcelain/ceramic | $877.97 | III |
| D2790 | Crown full cast high noble m | $824.22 | III |
| D2791 | Crown full cast base metal | $764.54 | III |
| D2792 | Crown full cast noble metal | $782.22 | III |
| D2799 | Provisional crown | $309.49 | III |
| D2910 | Dental recement inlay | $79.83 | III |
| D2920 | Dental recement crown | $80.19 | III |
| D2930 | Prefab stnlss steel crwn pri | $208.29 | III |
| D2931 | Prefab stnlss steel crown pe | $239.79 | III |
| D2932 | Prefabricated resin crown | $262.60 | III |
| D2933 | Prefab stainless steel crown | $284.00 | III |
| D2940 | Dental sedative filling | $82.63 | III |
| D2950 | Core build-up incl any pins | $206.97 | III |
| D2951 | Tooth pin retention | $45.45 | III |
| D2952 | Post and core cast + crown | $326.27 | III |
| D2953 | Each addtnl cast post | $200.12 | III |
| D2954 | Prefab post/core + crown | $262.73 | III |
| D2955 | Post removal | $217.78 | III |
| D2957 | Each addtnl prefab post | $117.74 | III |
| D2960 | Laminate labial veneer | $516.20 | III |
| D2961 | Lab labial veneer resin | $754.87 | III |
| D2962 | Lab labial veneer porcelain | $827.06 | III |
| D2970 | Temporary- fractured tooth | $215.38 | III |
| D2980 | Crown repair | $203.99 | III |
| D3110 | Pulp cap direct | $58.05 | II |
| D3120 | Pulp cap indirect | $51.46 | II |
| D3220 | Therapeutic pulpotomy | $136.74 | II |
| D3221 | Gross pulpal debridement | $150.95 | II |
| D3230 | Pulpal therapy anterior prim | $172.90 | II |
| D3240 | Pulpal therapy posterior pri | $188.63 | II |
| D3310 | Anterior | $551.31 | II |
| D3320 | Root canal therapy 2 canals | $660.01 | II |
| D3330 | Root canal therapy 3 canals | $839.74 | II |
| D3331 | Non-surg tx root canal obs | $250.28 | II |
| D3332 | Incomplete endodontic tx | $365.38 | II |
| D3333 | Internal root repair | $189.01 | II |
| D3346 | Retreat root canal anterior | $712.54 | II |
| D3347 | Retreat root canal bicuspid | $814.55 | II |
| D3348 | Retreat root canal molar | $979.31 | II |
| D3351 | Apexification/recalc initial | $282.66 | II |
| D3352 | Apexification/recalc interim | $163.67 | II |
| D3353 | Apexification/recalc final | $428.63 | II |
| D3410 | Apicoect/perirad surg anter | $594.74 | II |
| D3421 | Root surgery bicuspid | $651.80 | II |
| D3425 | Root surgery molar | $737.93 | II |
| D3426 | Root surgery ea add root | $268.39 | II |
| D3430 | Retrograde filling | $195.75 | II |

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## TABLE I. — OUTPATIENT DENTAL PROFESSIONAL NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | HCPCS Code Description | Charge | GAAF Category |
|---|---|---|---|
| D3450 | Root amputation | $396.23 | II |
| D3460 | Endodontic endosseous implan | $1,532.94 | II |
| D3470 | Intentional replantation | $639.49 | II |
| D3910 | Isolation- tooth w rubb dam | $147.39 | II |
| D3920 | Tooth splitting | $324.37 | II |
| D3950 | Canal prep/fitting of dowel | $150.64 | II |
| D4210 | Gingivectomy/plasty per quad | $494.95 | II |
| D4211 | Gingivectomy/plasty per toot | $152.77 | II |
| D4240 | Gingival flap proc w/ planin | $581.26 | II |
| D4241 | Gngvl flap w rootplan 1-3 th | $497.01 | II |
| D4245 | Apically positioned flap | $528.09 | II |
| D4249 | Crown lengthen hard tissue | $669.21 | II |
| D4260 | Osseous surgery per quadrant | $904.70 | II |
| D4261 | Osseous surgl-3teethperquad | $671.94 | II |
| D4263 | Bone replce graft first site | $412.60 | II |
| D4264 | Bone replce graft each add | $175.89 | II |
| D4265 | Bio mtrls to aid soft/os reg | $344.72 | II |
| D4266 | Guided tiss regen resorble | $491.32 | II |
| D4267 | Guided tiss regen nonresorb | $592.32 | II |
| D4268 | Surgical revision procedure | $598.80 | II |
| D4270 | Pedicle soft tissue graft pr | $694.05 | II |
| D4271 | Free soft tissue graft proc | $731.22 | II |
| D4273 | Subepithelial tissue graft | $834.73 | II |
| D4274 | Distal/proximal wedge proc | $270.36 | II |
| D4275 | Soft tissue allograft | $748.08 | II |
| D4276 | Con tissue w dble ped graft | $905.52 | II |
| D4320 | Provision splnt intracoronal | $343.87 | II |
| D4321 | Provisional splint extracoro | $306.96 | II |
| D4341 | Periodontal scaling & root | $193.17 | II |
| D4342 | Periodontal scaling 1-3teeth | $101.87 | II |
| D4355 | Full mouth debridement | $131.37 | II |
| D4381 | Localized chemo delivery | $127.65 | II |
| D4910 | Periodontal maint procedures | $107.31 | II |
| D4920 | Unscheduled dressing change | $84.70 | II |
| D5110 | Dentures complete maxillary | $1,133.84 | III |
| D5120 | Dentures complete mandible | $1,126.73 | III |
| D5130 | Dentures immediat maxillary | $1,225.08 | III |
| D5140 | Dentures immediat mandible | $1,222.18 | III |
| D5211 | Dentures maxill part resin | $899.41 | III |
| D5212 | Dentures mand part resin | $981.95 | III |
| D5213 | Dentures maxill part metal | $1,240.52 | III |
| D5214 | Dentures mandibl part metal | $1,237.72 | III |
| D5281 | Removable partial denture | $698.03 | III |
| D5410 | Dentures adjust cmplt maxil | $63.99 | III |
| D5411 | Dentures adjust cmplt mand | $62.21 | III |
| D5421 | Dentures adjust part maxill | $65.41 | III |
| D5422 | Dentures adjust part mandbl | $63.99 | III |
| D5510 | Dentur repr broken compl bas | $137.30 | III |
| D5520 | Replace denture teeth complt | $115.45 | III |
| D5610 | Dentures repair resin base | $139.15 | III |
| D5620 | Rep part denture cast frame | $175.61 | III |
| D5630 | Rep partial denture clasp | $177.41 | III |
| D5640 | Replace part denture teeth | $122.23 | III |
| D5650 | Add tooth to partial denture | $157.10 | III |
| D5660 | Add clasp to partial denture | $188.69 | III |
| D5670 | Replc tth&acrlc on mtl frmwk | $501.12 | III |
| D5671 | Replc tth&acrlc mandibular | $501.12 | III |
| D5710 | Dentures rebase cmplt maxil | $430.05 | III |
| D5711 | Dentures rebase cmplt mand | $422.89 | III |
| D5720 | Dentures rebase part maxill | $412.64 | III |
| D5721 | Dentures rebase part mandbl | $414.42 | III |
| D5730 | Denture reln cmplt maxil ch | $261.73 | III |
| D5731 | Denture reln cmplt mand chr | $261.02 | III |
| D5740 | Denture reln part maxil chr | $246.52 | III |
| D5741 | Denture reln part mand chr | $248.23 | III |
| D5750 | Denture reln cmplt max lab | $340.81 | III |
| D5751 | Denture reln cmplt mand lab | $340.81 | III |
| D5760 | Denture reln part maxil lab | $340.37 | III |
| D5761 | Denture reln part mand lab | $340.01 | III |
| D5810 | Denture interm cmplt maxill | $562.58 | III |

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TABLE I. — OUTPATIENT DENTAL PROFESSIONAL NATIONWIDE CHARGES BY HCPCS CODE
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| HCPCS Code | HCPCS Code Description | Charge | GAAF Category |
|---|---|---|---|
| D5811 | Denture interm cmplt mandbl | $584.36 | III |
| D5820 | Denture interm part maxill | $456.16 | III |
| D5821 | Denture interm part mandbl | $471.32 | III |
| D5850 | Denture tiss conditn maxill | $127.46 | III |
| D5851 | Denture tiss condtin mandbl | $127.82 | III |
| D5860 | Overdenture complete | $1,623.06 | III |
| D5861 | Overdenture partial | $1,416.27 | III |
| D5862 | Precision attachment | $487.76 | III |
| D5867 | Replacement of precision att | $189.28 | III |
| D5875 | Prosthesis modification | $352.12 | III |
| D5911 | Facial moulage sectional | $268.73 | III |
| D5912 | Facial moulage complete | $268.73 | III |
| D5913 | Nasal prosthesis | $5,658.73 | III |
| D5914 | Auricular prosthesis | $5,658.73 | III |
| D5915 | Orbital prosthesis | $7,657.75 | III |
| D5916 | Ocular prosthesis | $2,042.52 | III |
| D5922 | Nasal septal prosthesis | $415.93 | III |
| D5931 | Surgical obturator | $3,046.86 | III |
| D5932 | Postsurgical obturator | $4,571.56 | III |
| D5933 | Refitting of obturator | $693.22 | III |
| D5934 | Mandibular flange prosthesis | $5,193.78 | III |
| D5935 | Mandibular denture prosth | $4,519.06 | III |
| D5936 | Temp obturator prosthesis | $5,075.85 | III |
| D5937 | Trismus appliance | $617.61 | III |
| D5951 | Feeding aid | $829.38 | III |
| D5952 | Pediatric speech aid | $2,693.07 | III |
| D5953 | Adult speech aid | $5,114.51 | III |
| D5954 | Superimposed prosthesis | $4,739.45 | III |
| D5955 | Palatal lift prosthesis | $4,383.73 | III |
| D5982 | Surgical stent | $436.71 | III |
| D5983 | Radiation applicator | $1,275.97 | III |
| D5984 | Radiation shield | $1,275.97 | III |
| D5985 | Radiation cone locator | $1,275.97 | III |
| D5986 | Fluoride applicator | $142.55 | III |
| D5987 | Commissure splint | $1,914.92 | III |
| D5988 | Surgical splint | $508.20 | III |
| D6010 | Odontics endosteal implant | $1,731.79 | III |
| D6020 | Odontics abutment placement | $283.17 | III |
| D6040 | Odontics eposteal implant | $6,095.67 | III |
| D6050 | Odontics transosteal implnt | $4,923.89 | III |
| D6053 | Implnt/abtmnt spprt remv dnt | $1,970.54 | III |
| D6054 | Implnt/abtmnt spprt remvprtl | $1,970.54 | III |
| D6055 | Implant connecting bar | $1,081.15 | III |
| D6056 | Prefabricated abutment | $629.25 | III |
| D6057 | Custom abutment | $794.60 | III |
| D6058 | Abutment supported crown | $1,157.23 | III |
| D6059 | Abutment supported mtl crown | $1,142.08 | III |
| D6060 | Abutment supported mtl crown | $1,069.18 | III |
| D6061 | Abutment supported mtl crown | $1,092.78 | III |
| D6062 | Abutment supported mtl crown | $1,140.63 | III |
| D6063 | Abutment supported mtl crown | $879.60 | III |
| D6064 | Abutment supported mtl crown | $1,062.49 | III |
| D6065 | Implant supported crown | $1,207.88 | III |
| D6066 | Implant supported mtl crown | $1,181.41 | III |
| D6067 | Implant supported mtl crown | $1,171.68 | III |
| D6068 | Abutment supported retainer | $1,066.32 | III |
| D6069 | Abutment supported retainer | $1,136.19 | III |
| D6070 | Abutment supported retainer | $973.57 | III |
| D6071 | Abutment supported retainer | $1,057.23 | III |
| D6072 | Abutment supported retainer | $1,218.20 | III |
| D6073 | Abutment supported retainer | $916.75 | III |
| D6074 | Abutment supported retainer | $1,079.82 | III |
| D6075 | Implant supported retainer | $1,027.54 | III |
| D6076 | Implant supported retainer | $1,062.50 | III |
| D6077 | Implant supported retainer | $1,042.18 | III |
| D6078 | Implnt/abut suprtd fixd dent | $4,518.13 | III |
| D6079 | Implnt/abut suprtd fixd dent | $2,054.25 | III |
| D6080 | Implant maintenance | $94.97 | III |
| D6090 | Repair implant | $443.98 | III |
| D6095 | Odontics repr abutment | $439.35 | III |

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### TABLE I. — OUTPATIENT DENTAL PROFESSIONAL NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | HCPCS Code Description | Charge | GAAF Category |
|---|---|---|---|
| D6100 | Removal of implant | $576.87 | III |
| D6210 | Prosthodont high noble metal | $818.33 | III |
| D6211 | Bridge base metal cast | $769.73 | III |
| D6212 | Bridge noble metal cast | $780.31 | III |
| D6240 | Bridge porcelain high noble | $836.47 | III |
| D6241 | Bridge porcelain base metal | $749.05 | III |
| D6242 | Bridge porcelain nobel metal | $791.11 | III |
| D6245 | Bridge porcelain/ceramic | $852.73 | III |
| D6250 | Bridge resin w/high noble | $830.29 | III |
| D6251 | Bridge resin base metal | $770.39 | III |
| D6252 | Bridge resin w/noble metal | $786.12 | III |
| D6253 | Provisional pontic | $762.49 | III |
| D6545 | Dental retainr cast metl | $448.88 | III |
| D6548 | Porcelain/ceramic retainer | $521.42 | III |
| D6600 | Porcelain/ceramic inlay 2srf | $900.38 | III |
| D6601 | Porc/ceram inlay >= 3 surfac | $1,007.39 | III |
| D6602 | Cst hgh nble mtl inlay 2 srf | $965.20 | III |
| D6603 | Cst hgh nble mtl inlay >=3sr | $1,047.52 | III |
| D6604 | Cst bse mtl inlay 2 surfaces | $877.74 | III |
| D6605 | Cst bse mtl inlay >= 3 surfa | $969.32 | III |
| D6606 | Cast noble metal inlay 2 sur | $926.10 | III |
| D6607 | Cst noble mtl inlay >=3 surf | $1,017.68 | III |
| D6608 | Onlay porc/crmc 2 surfaces | $951.83 | III |
| D6609 | Onlay porc/crmc >=3 surfaces | $1,151.45 | III |
| D6610 | Onlay cst hgh nbl mtl 2 srfc | $1,070.16 | III |
| D6611 | Onlay cst hgh nbl mtl >=3srf | $1,211.13 | III |
| D6612 | Onlay cst base mtl 2 surface | $912.72 | III |
| D6613 | Onlay cst base mtl >=3 surfa | $1,102.06 | III |
| D6614 | Onlay cst nbl mtl 2 surfaces | $998.13 | III |
| D6615 | Onlay cst nbl mtl >=3 surfac | $1,174.09 | III |
| D6720 | Retain crown resin w hi nble | $843.38 | III |
| D6721 | Crown resin w/base metal | $782.99 | III |
| D6722 | Crown resin w/noble metal | $814.53 | III |
| D6740 | Crown porcelain/ceramic | $903.12 | III |
| D6750 | Crown porcelain high noble | $875.56 | III |
| D6751 | Crown porcelain base metal | $785.74 | III |
| D6752 | Crown porcelain noble metal | $824.07 | III |
| D6780 | Crown 3/4 high noble metal | $831.65 | III |
| D6781 | Crown 3/4 cast based metal | $838.13 | III |
| D6782 | Crown 3/4 cast noble metal | $803.03 | III |
| D6783 | Crown 3/4 porcelain/ceramic | $851.86 | III |
| D6790 | Crown full high noble metal | $842.70 | III |
| D6791 | Crown full base metal cast | $787.59 | III |
| D6792 | Crown full noble metal cast | $815.81 | III |
| D6793 | Provisional retainer crown | $346.77 | III |
| D6920 | Dental connector bar | $142.59 | III |
| D6930 | Dental recement bridge | $113.74 | III |
| D6940 | Stress breaker | $275.69 | III |
| D6950 | Precision attachment | $473.97 | III |
| D6970 | Post & core plus retainer | $321.52 | III |
| D6971 | Cast post bridge retainer | $307.76 | III |
| D6972 | Prefab post & core plus reta | $253.99 | III |
| D6973 | Core build up for retainer | $201.00 | III |
| D6975 | Coping metal | $543.08 | III |
| D6976 | Each addtnl cast post | $169.75 | III |
| D6977 | Each addtl prefab post | $134.69 | III |
| D6980 | Bridge repair | $267.87 | III |
| D6985 | Pediatric partial denture fx | $805.71 | III |
| D7111 | Coronal remnants deciduous t | $114.22 | II |
| D7140 | Extraction erupted tooth/exr | $118.34 | II |
| D7210 | Rem imp tooth w mucoper flp | $203.24 | II |
| D7220 | Impact tooth remov soft tiss | $245.14 | II |
| D7230 | Impact tooth remov part bony | $313.41 | II |
| D7240 | Impact tooth remov comp bony | $373.80 | II |
| D7241 | Impact tooth rem bony w/comp | $451.88 | II |
| D7250 | Tooth root removal | $219.27 | II |
| D7260 | Oral antral fistula closure | $1,495.77 | II |
| D7261 | Primary closure sinus perf | $611.23 | II |
| D7270 | Tooth reimplantation | $404.59 | II |
| D7272 | Tooth transplantation | $534.30 | II |

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TABLE I. — OUTPATIENT DENTAL PROFESSIONAL NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | HCPCS Code Description | Charge | GAAF Category |
|---|---|---|---|
| D7280 | Exposure impact tooth orthod | $435.46 | II |
| D7281 | Exposure tooth aid eruption | $368.04 | II |
| D7282 | Mobilize erupted/malpos toot | $420.86 | II |
| D7285 | Biopsy of oral tissue hard | $516.78 | II |
| D7286 | Biopsy of oral tissue soft | $276.97 | II |
| D7287 | Cytology sample collection | $91.58 | II |
| D7290 | Repositioning of teeth | $350.79 | II |
| D7291 | Transseptal fiberotomy | $171.57 | II |
| D7310 | Alveoplasty w/ extraction | $214.70 | II |
| D7320 | Alveoplasty w/o extraction | $383.08 | II |
| D7340 | Vestibuloplasty ridge extens | $1,266.27 | II |
| D7350 | Vestibuloplasty exten graft | $1,777.56 | II |
| D7410 | Rad exc lesion up to 1.25 cm | $395.87 | II |
| D7411 | Excision benign lesion>1.25c | $473.34 | II |
| D7412 | Excision benign lesion compl | $549.49 | II |
| D7413 | Excision malig lesion<=1.25c | $494.95 | II |
| D7414 | Excision malig lesion>1.25cm | $668.85 | II |
| D7415 | Excision malig les complicat | $818.06 | II |
| D7440 | Malig tumor exc to 1.25 cm | $817.04 | II |
| D7441 | Malig tumor > 1.25 cm | $1,424.15 | II |
| D7450 | Rem odontogen cyst to 1.25cm | $508.15 | II |
| D7451 | Rem odontogen cyst > 1.25 cm | $791.17 | II |
| D7460 | Rem nonodontc cyst to 1.25cm | $505.56 | II |
| D7461 | Rem nonodonto cyst > 1.25 cm | $834.77 | II |
| D7465 | Lesion destruction | $317.38 | II |
| D7471 | Rem exostosis any site | $573.71 | II |
| D7472 | Removal of torus palatinus | $576.24 | II |
| D7473 | Remove torus mandibularis | $576.24 | II |
| D7485 | Surg reduct osseoustuberosit | $516.56 | II |
| D7490 | Mandible resection | $6,417.25 | II |
| D7510 | I&d absc intraoral soft tiss | $186.88 | II |
| D7520 | I&d abscess extraoral | $788.27 | II |
| D7530 | Removal fb skin/areolar tiss | $286.50 | II |
| D7540 | Removal of fb reaction | $439.71 | II |
| D7550 | Removal of sloughed off bone | $307.68 | II |
| D7560 | Maxillary sinusotomy | $1,543.57 | II |
| D7610 | Maxilla open reduct simple | $3,311.00 | II |
| D7620 | Clsd reduct simpl maxilla fx | $2,329.93 | II |
| D7630 | Open red simpl mandible fx | $3,600.65 | II |
| D7640 | Clsd red simpl mandible fx | $2,490.27 | II |
| D7650 | Open red simp malar/zygom fx | $2,573.45 | II |
| D7660 | Clsd red simp malar/zygom fx | $1,879.93 | II |
| D7670 | Closd rductn splint alveolus | $1,094.13 | II |
| D7671 | Alveolus open reduction | $307.67 | II |
| D7680 | Reduct simple facial bone fx | $5,630.98 | II |
| D7710 | Maxilla open reduct compound | $3,625.56 | II |
| D7720 | Clsd reduct compd maxilla fx | $2,598.19 | II |
| D7730 | Open reduct compd mandble fx | $4,968.45 | II |
| D7740 | Clsd reduct compd mandble fx | $2,726.57 | II |
| D7750 | Open red comp malar/zygma fx | $3,345.47 | II |
| D7760 | Clsd red comp malar/zygma fx | $2,630.57 | II |
| D7770 | Open reduc compd alveolus fx | $1,813.81 | II |
| D7771 | Alveolus clsd reduc stblz te | $659.59 | II |
| D7780 | Reduct compnd facial bone fx | $7,705.36 | II |
| D7810 | Tmj open reduct-dislocation | $3,446.61 | II |
| D7820 | Closed tmp manipulation | $451.14 | II |
| D7830 | Tmj manipulation under anest | $443.55 | II |
| D7840 | Removal of tmj condyle | $4,547.27 | II |
| D7850 | Tmj meniscectomy | $4,260.13 | II |
| D7852 | Tmj repair of joint disc | $4,615.49 | II |
| D7854 | Tmj excisn of joint membrane | $4,698.25 | II |
| D7856 | Tmj cutting of a muscle | $3,062.83 | II |
| D7858 | Tmj reconstruction | $9,743.55 | II |
| D7860 | Tmj cutting into joint | $4,153.00 | II |
| D7865 | Tmj reshaping components | $6,692.50 | II |
| D7870 | Tmj aspiration joint fluid | $241.45 | II |
| D7871 | Lysis + lavage w catheters | $407.80 | II |
| D7872 | Tmj diagnostic arthroscopy | $2,360.64 | II |
| D7873 | Tmj arthroscopy lysis adhesn | $2,842.39 | II |
| D7874 | Tmj arthroscopy disc reposit | $4,077.04 | II |

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TABLE I. — OUTPATIENT DENTAL PROFESSIONAL NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | HCPCS Code Description | Charge | GAAF Category |
|---|---|---|---|
| D7875 | Tmj arthroscopy synovectomy | $4,466.47 | II |
| D7876 | Tmj arthroscopy discectomy | $4,815.52 | II |
| D7877 | Tmj arthroscopy debridement | $4,250.12 | II |
| D7880 | Occlusal orthotic appliance | $666.43 | II |
| D7910 | Dent sutur recent wnd to 5cm | $255.12 | II |
| D7911 | Dental suture wound to 5 cm | $571.59 | II |
| D7912 | Suture complicate wnd > 5 cm | $1,420.55 | II |
| D7920 | Dental skin graft | $1,766.23 | II |
| D7940 | Reshaping bone orthognathic | $2,396.87 | II |
| D7941 | Bone cutting ramus closed | $6,893.52 | II |
| D7943 | Cutting ramus open w/graft | $6,859.06 | II |
| D7944 | Bone cutting segmented | $5,943.51 | II |
| D7945 | Bone cutting body mandible | $6,090.09 | II |
| D7946 | Reconstruction maxilla total | $7,509.35 | II |
| D7947 | Reconstruct maxilla segment | $6,775.81 | II |
| D7948 | Reconstruct midface no graft | $10,051.04 | II |
| D7949 | Reconstruct midface w/graft | $12,959.53 | II |
| D7950 | Mandible graft | $2,045.32 | II |
| D7955 | Repair maxillofacial defects | $1,972.06 | II |
| D7960 | Frenulectomy/frenulotomy | $396.29 | II |
| D7970 | Excision hyperplastic tissue | $413.24 | II |
| D7971 | Excision pericoronal gingiva | $173.63 | II |
| D7972 | Surg redct fibrous tuberosit | $806.74 | II |
| D7980 | Sialolithotomy | $589.16 | II |
| D7981 | Excision of salivary gland | $2,020.14 | II |
| D7982 | Sialodochoplasty | $1,553.51 | II |
| D7983 | Closure of salivary fistula | $1,392.25 | II |
| D7990 | Emergency tracheotomy | $1,322.12 | II |
| D7991 | Dental coronoidectomy | $3,567.74 | II |
| D7995 | Synthetic graft facial bones | $399.93 | II |
| D7996 | Implant mandible for augment | $1,386.43 | II |
| D7997 | Appliance removal | $224.98 | II |
| D8010 | Limited dental tx primary | $1,555.85 | III |
| D8020 | Limited dental tx transition | $1,779.14 | III |
| D8030 | Limited dental tx adolescent | $2,043.59 | III |
| D8040 | Limited dental tx adult | $2,058.00 | III |
| D8050 | Intercep dental tx primary | $2,238.08 | III |
| D8060 | Intercep dental tx transitn | $2,540.60 | III |
| D8070 | Compre dental tx transition | $4,645.94 | III |
| D8080 | Compre dental tx adolescent | $4,733.40 | III |
| D8090 | Compre dental tx adult | $4,977.27 | III |
| D8210 | Orthodontic rem appliance tx | $719.27 | III |
| D8220 | Fixed appliance therapy habt | $823.20 | III |
| D8660 | Preorthodontic tx visit | $144.68 | III |
| D8670 | Periodic orthodontc tx visit | $167.91 | III |
| D8680 | Orthodontic retention | $420.46 | III |
| D8690 | Orthodontic treatment | $179.06 | III |
| D8691 | Repair ortho appliance | $125.90 | III |
| D8692 | Replacement retainer | $225.56 | III |
| D9110 | Tx dental pain minor proc | $87.32 | II |
| D9210 | Dent anesthesia w/o surgery | $24.96 | II |
| D9211 | Regional block anesthesia | $28.68 | II |
| D9212 | Trigeminal block anesthesia | $109.07 | II |
| D9215 | Local anesthesia | $22.29 | II |
| D9220 | General anesthesia | $302.55 | II |
| D9221 | General anesthesia ea ad 15m | $120.40 | II |
| D9230 | Analgesia | $46.65 | II |
| D9241 | Intravenous sedation | $281.95 | II |
| D9242 | IV sedation ea ad 30 m | $106.39 | II |
| D9248 | Sedation (non-iv) | $59.85 | II |
| D9310 | Dental consultation | $115.44 | I |
| D9410 | Dental house call | $196.75 | I |
| D9420 | Hospital call | $249.97 | I |
| D9430 | Office visit during hours | $55.81 | I |
| D9440 | Office visit after hours | $113.48 | I |
| D9450 | Case presentation tx plan | $98.78 | I |
| D9610 | Dent therapeutic drug inject | $67.73 | III |
| D9630 | Other drugs/medicaments | $40.22 | III |
| D9910 | Dent appl desensitizing med | $38.81 | III |
| D9911 | Appl desensitizing resin | $53.58 | III |

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TABLE I. — OUTPATIENT DENTAL PROFESSIONAL NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | HCPCS Code Description | Charge | GAAF Category |
|---|---|---|---|
| D9920 | Behavior management | $119.41 | III |
| D9930 | Treatment of complications | $94.02 | III |
| D9940 | Dental occlusal guard | $484.86 | III |
| D9941 | Fabrication athletic guard | $152.76 | III |
| D9950 | Occlusion analysis | $233.80 | III |
| D9951 | Limited occlusal adjustment | $108.17 | III |
| D9952 | Complete occlusal adjustment | $532.05 | III |
| D9970 | Enamel microabrasion | $40.27 | III |
| D9971 | Odontoplasty 1-2 teeth | $61.27 | III |
| D9972 | Extrnl bleaching per arch | $267.16 | III |
| D9973 | Extrnl bleaching per tooth | $31.74 | III |
| D9974 | Intrnl bleaching per tooth | $217.18 | III |

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TABLE J. — PATHOLOGY AND LABORATORY SERVICES RELATIVE VALUE UNITS (RVUS)

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| CPT/ HCPCS Code | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Total RVUs | Charge Methodology |
|---|---|---|---|---|
| 78267 | Breath tst attain/anal c-14 | Pathology | 0.40 | |
| 78268 | Breath test analysis, c-14 | Pathology | 3.46 | |
| 80048 | Basic metabolic panel | Pathology | 0.43 | |
| 80050 | General health panel | Pathology | 1.52 | MDR |
| 80051 | Electrolyte panel | Pathology | 0.36 | |
| 80053 | Comprehen metabolic panel | Pathology | 0.54 | |
| 80055 | Obstetric panel | Pathology | 1.37 | MDR |
| 80061 | Lipid panel | Pathology | 0.69 | |
| 80069 | Renal function panel | Pathology | 0.45 | |
| 80074 | Acute hepatitis panel | Pathology | 2.44 | |
| 80076 | Hepatic function panel | Pathology | 0.42 | |
| 80100 | Drug screen, qualitate/multi | Pathology | 0.75 | |
| 80101 | Drug screen, single | Pathology | 0.71 | |
| 80102 | Drug confirmation | Pathology | 0.68 | |
| 80103 | Drug analysis, tissue prep | Pathology | 0.49 | MDR |
| 80150 | Assay of amikacin | Pathology | 0.77 | |
| 80152 | Assay of amitriptyline | Pathology | 0.92 | |
| 80154 | Assay of benzodiazepines | Pathology | 0.95 | |
| 80156 | Assay, carbamazepine, total | Pathology | 0.75 | |
| 80157 | Assay, carbamazepine, free | Pathology | 0.51 | |
| 80158 | Assay of cyclosporine | Pathology | 0.93 | |
| 80160 | Assay of desipramine | Pathology | 0.88 | |
| 80162 | Assay of digoxin | Pathology | 0.68 | |
| 80164 | Assay, dipropylacetic acid | Pathology | 0.70 | |
| 80166 | Assay of doxepin | Pathology | 0.80 | |
| 80168 | Assay of ethosuximide | Pathology | 0.84 | |
| 80170 | Assay of gentamicin | Pathology | 0.84 | |
| 80172 | Assay of gold | Pathology | 0.84 | |
| 80173 | Assay of haloperidol | Pathology | 0.75 | |
| 80174 | Assay of imipramine | Pathology | 0.88 | |
| 80176 | Assay of lidocaine | Pathology | 0.75 | |
| 80178 | Assay of lithium | Pathology | 0.34 | |
| 80182 | Assay of nortriptyline | Pathology | 0.70 | |
| 80184 | Assay of phenobarbital | Pathology | 0.59 | |
| 80185 | Assay of phenytoin, total | Pathology | 0.68 | |
| 80186 | Assay of phenytoin, free | Pathology | 0.71 | |
| 80188 | Assay of primidone | Pathology | 0.85 | |
| 80190 | Assay of procainamide | Pathology | 0.86 | |
| 80192 | Assay of procainamide | Pathology | 0.86 | |
| 80194 | Assay of quinidine | Pathology | 0.75 | |
| 80196 | Assay of salicylate | Pathology | 0.36 | |
| 80197 | Assay of tacrolimus | Pathology | 0.70 | |
| 80198 | Assay of theophylline | Pathology | 0.73 | |
| 80200 | Assay of tobramycin | Pathology | 0.83 | |
| 80201 | Assay of topiramate | Pathology | 0.61 | |
| 80202 | Assay of vancomycin | Pathology | 0.70 | |
| 80299 | Quantitative assay, drug | Pathology | 0.70 | |
| 80400 | Acth stimulation panel | Pathology | 1.67 | |
| 80402 | Acth stimulation panel | Pathology | 4.46 | |
| 80406 | Acth stimulation panel | Pathology | 4.02 | |
| 80408 | Aldosterone suppression eval | Pathology | 6.44 | |
| 80410 | Calcitonin stimul panel | Pathology | 4.12 | |
| 80412 | CRH stimulation panel | Pathology | 16.91 | |
| 80414 | Testosterone response | Pathology | 2.65 | |
| 80415 | Estradiol response panel | Pathology | 2.87 | |
| 80416 | Renin stimulation panel | Pathology | 6.77 | |
| 80417 | Renin stimulation panel | Pathology | 2.26 | |
| 80418 | Pituitary evaluation panel | Pathology | 29.74 | |
| 80420 | Dexamethasone panel | Pathology | 3.70 | |
| 80422 | Glucagon tolerance panel | Pathology | 2.36 | |
| 80424 | Glucagon tolerance panel | Pathology | 2.59 | |
| 80426 | Gonadotropin hormone panel | Pathology | 7.62 | |
| 80428 | Growth hormone panel | Pathology | 3.42 | |
| 80430 | Growth hormone panel | Pathology | 4.03 | |
| 80432 | Insulin suppression panel | Pathology | 6.93 | |
| 80434 | Insulin tolerance panel | Pathology | 5.19 | |
| 80435 | Insulin tolerance panel | Pathology | 5.28 | |
| 80436 | Metyrapone panel | Pathology | 4.68 | |
| 80438 | TRH stimulation panel | Pathology | 2.59 | |

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TABLE J. — PATHOLOGY AND LABORATORY SERVICES RELATIVE VALUE UNITS (RVUS)

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| CPT/ HCPCS Code | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Total RVUs | Charge Method-ology |
|---|---|---|---|---|
| 80439 | TRH stimulation panel | Pathology | 3.45 | |
| 80440 | TRH stimulation panel | Pathology | 2.98 | |
| 81000 | Urinalysis, nonauto w/scope | Pathology | 0.16 | |
| 81001 | Urinalysis, auto w/scope | Pathology | 0.16 | |
| 81002 | Urinalysis nonauto w/o scope | Pathology | 0.13 | |
| 81003 | Urinalysis, auto, w/o scope | Pathology | 0.12 | |
| 81005 | Urinalysis | Pathology | 0.11 | |
| 81007 | Urine screen for bacteria | Pathology | 0.13 | |
| 81015 | Microscopic exam of urine | Pathology | 0.16 | |
| 81020 | Urinalysis, glass test | Pathology | 0.19 | |
| 81025 | Urine pregnancy test | Pathology | 0.32 | |
| 81050 | Urinalysis, volume measure | Pathology | 0.15 | |
| 81099 | Urinalysis test procedure | Pathology | 0.16 | |
| 82000 | Assay of blood acetaldehyde | Pathology | 0.64 | |
| 82003 | Assay of acetaminophen | Pathology | 1.04 | |
| 82009 | Test for acetone/ketones | Pathology | 0.23 | |
| 82010 | Acetone assay | Pathology | 0.42 | |
| 82013 | Acetylcholinesterase assay | Pathology | 0.57 | |
| 82016 | Acylcarnitines, qual | Pathology | 0.71 | |
| 82017 | Acylcarnitines, quant | Pathology | 0.87 | |
| 82024 | Assay of acth | Pathology | 1.98 | |
| 82030 | Assay of adp & amp | Pathology | 1.32 | |
| 82040 | Assay of serum albumin | Pathology | 0.25 | |
| 82042 | Assay of urine albumin | Pathology | 0.27 | |
| 82043 | Microalbumin, quantitative | Pathology | 0.30 | |
| 82044 | Microalbumin, semiquant | Pathology | 0.23 | |
| 82055 | Assay of ethanol | Pathology | 0.55 | |
| 82075 | Assay of breath ethanol | Pathology | 0.62 | |
| 82085 | Assay of aldolase | Pathology | 0.50 | |
| 82088 | Assay of aldosterone | Pathology | 2.09 | |
| 82101 | Assay of urine alkaloids | Pathology | 1.54 | |
| 82103 | Alpha-1-antitrypsin, total | Pathology | 0.69 | |
| 82104 | Alpha-1-antitrypsin, pheno | Pathology | 0.74 | |
| 82105 | Alpha-fetoprotein, serum | Pathology | 0.86 | |
| 82106 | Alpha-fetoprotein, amniotic | Pathology | 0.86 | |
| 82108 | Assay of aluminum | Pathology | 1.31 | |
| 82120 | Amines, vaginal fluid qual | Pathology | 0.19 | |
| 82127 | Amino acid, single qual | Pathology | 0.71 | |
| 82128 | Amino acids, mult qual | Pathology | 0.71 | |
| 82131 | Amino acids, single quant | Pathology | 0.87 | |
| 82135 | Assay, aminolevulinic acid | Pathology | 0.84 | |
| 82136 | Amino acids, quant, 2-5 | Pathology | 0.87 | |
| 82139 | Amino acids, quan, 6 or more | Pathology | 0.87 | |
| 82140 | Assay of ammonia | Pathology | 0.75 | |
| 82143 | Amniotic fluid scan | Pathology | 0.35 | |
| 82145 | Assay of amphetamines | Pathology | 0.80 | |
| 82150 | Assay of amylase | Pathology | 0.33 | |
| 82154 | Androstanediol glucuronide | Pathology | 1.48 | |
| 82157 | Assay of androstenedione | Pathology | 1.50 | |
| 82160 | Assay of androsterone | Pathology | 1.28 | |
| 82163 | Assay of angiotensin II | Pathology | 1.05 | |
| 82164 | Angiotensin I enzyme test | Pathology | 0.75 | |
| 82172 | Assay of apolipoprotein | Pathology | 0.80 | |
| 82175 | Assay of arsenic | Pathology | 0.97 | |
| 82180 | Assay of ascorbic acid | Pathology | 0.51 | |
| 82190 | Atomic absorption | Pathology | 0.77 | |
| 82205 | Assay of barbiturates | Pathology | 0.59 | |
| 82232 | Assay of beta-2 protein | Pathology | 0.83 | |
| 82239 | Bile acids, total | Pathology | 0.88 | |
| 82240 | Bile acids, cholylglycine | Pathology | 1.36 | |
| 82247 | Bilirubin, total | Pathology | 0.26 | |
| 82248 | Bilirubin, direct | Pathology | 0.26 | |
| 82252 | Fecal bilirubin test | Pathology | 0.23 | |
| 82261 | Assay of biotinidase | Pathology | 0.87 | |
| 82270 | Test for blood, feces | Pathology | 0.17 | |
| 82273 | Test for blood, other source | Pathology | 0.17 | |
| 82274 | Assay test for blood, fecal | Pathology | 1.09 | SA |
| 82286 | Assay of bradykinin | Pathology | 0.35 | |
| 82300 | Assay of cadmium | Pathology | 1.19 | |

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TABLE J. — PATHOLOGY AND LABORATORY SERVICES RELATIVE VALUE UNITS (RVUS)

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| CPT/ HCPCS Code | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Total RVUs | Charge Method-ology |
|---|---|---|---|---|
| 82306 | Assay of vitamin D | Pathology | 1.52 | |
| 82307 | Assay of vitamin D | Pathology | 1.65 | |
| 82308 | Assay of calcitonin | Pathology | 1.37 | |
| 82310 | Assay of calcium | Pathology | 0.26 | |
| 82330 | Assay of calcium | Pathology | 0.70 | |
| 82331 | Calcium infusion test | Pathology | 0.27 | |
| 82340 | Assay of calcium in urine | Pathology | 0.31 | |
| 82355 | Calculus analysis, qual | Pathology | 0.59 | |
| 82360 | Calculus assay, quant | Pathology | 0.66 | |
| 82365 | Calculus spectroscopy | Pathology | 0.66 | |
| 82370 | X-ray assay, calculus | Pathology | 0.64 | |
| 82373 | Assay, c-d transfer measure | Pathology | 0.93 | |
| 82374 | Assay, blood carbon dioxide | Pathology | 0.25 | |
| 82375 | Assay, blood carbon monoxide | Pathology | 0.63 | |
| 82376 | Test for carbon monoxide | Pathology | 0.31 | |
| 82378 | Carcinoembryonic antigen | Pathology | 0.97 | |
| 82379 | Assay of carnitine | Pathology | 0.87 | |
| 82380 | Assay of carotene | Pathology | 0.47 | |
| 82382 | Assay, urine catecholamines | Pathology | 0.88 | |
| 82383 | Assay, blood catecholamines | Pathology | 1.29 | |
| 82384 | Assay, three catecholamines | Pathology | 1.30 | |
| 82387 | Assay of cathepsin-d | Pathology | 1.07 | |
| 82390 | Assay of ceruloplasmin | Pathology | 0.55 | |
| 82397 | Chemiluminescent assay | Pathology | 0.73 | |
| 82415 | Assay of chloramphenicol | Pathology | 0.65 | |
| 82435 | Assay of blood chloride | Pathology | 0.24 | |
| 82436 | Assay of urine chloride | Pathology | 0.26 | |
| 82438 | Assay, other fluid chlorides | Pathology | 0.25 | |
| 82441 | Test for chlorohydrocarbons | Pathology | 0.31 | |
| 82465 | Assay, bld/serum cholesterol | Pathology | 0.22 | |
| 82480 | Assay, serum cholinesterase | Pathology | 0.40 | |
| 82482 | Assay, rbc cholinesterase | Pathology | 0.39 | |
| 82485 | Assay, chondroitin sulfate | Pathology | 1.06 | |
| 82486 | Gas/liquid chromatography | Pathology | 0.93 | |
| 82487 | Paper chromatography | Pathology | 0.82 | |
| 82488 | Paper chromatography | Pathology | 1.10 | |
| 82489 | Thin layer chromatography | Pathology | 0.95 | |
| 82491 | Chromotography, quant, sing | Pathology | 0.93 | |
| 82492 | Chromotography, quant, mult | Pathology | 0.93 | |
| 82495 | Assay of chromium | Pathology | 1.04 | |
| 82507 | Assay of citrate | Pathology | 1.43 | |
| 82520 | Assay of cocaine | Pathology | 0.78 | |
| 82523 | Collagen crosslinks | Pathology | 0.96 | |
| 82525 | Assay of copper | Pathology | 0.64 | |
| 82528 | Assay of corticosterone | Pathology | 1.16 | |
| 82530 | Cortisol, free | Pathology | 0.86 | |
| 82533 | Total cortisol | Pathology | 0.84 | |
| 82540 | Assay of creatine | Pathology | 0.24 | |
| 82541 | Column chromotography, qual | Pathology | 0.93 | |
| 82542 | Column chromotography, quant | Pathology | 0.93 | |
| 82543 | Column chromotograph/isotope | Pathology | 0.93 | |
| 82544 | Column chromotograph/isotope | Pathology | 0.93 | |
| 82550 | Assay of ck (cpk) | Pathology | 0.33 | |
| 82552 | Assay of cpk in blood | Pathology | 0.69 | |
| 82553 | Creatine, MB fraction | Pathology | 0.59 | |
| 82554 | Creatine, isoforms | Pathology | 0.61 | |
| 82565 | Assay of creatinine | Pathology | 0.26 | |
| 82570 | Assay of urine creatinine | Pathology | 0.27 | |
| 82575 | Creatinine clearance test | Pathology | 0.48 | |
| 82585 | Assay of cryofibrinogen | Pathology | 0.44 | |
| 82595 | Assay of cryoglobulin | Pathology | 0.33 | |
| 82600 | Assay of cyanide | Pathology | 1.00 | |
| 82607 | Vitamin B-12 | Pathology | 0.77 | |
| 82608 | B-12 binding capacity | Pathology | 0.73 | |
| 82615 | Test for urine cystines | Pathology | 0.42 | |
| 82626 | Dehydroepiandrosterone | Pathology | 1.30 | |
| 82627 | Dehydroepiandrosterone | Pathology | 1.14 | |
| 82633 | Desoxycorticosterone | Pathology | 1.59 | |
| 82634 | Deoxycortisol | Pathology | 1.50 | |

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## TABLE J. — PATHOLOGY AND LABORATORY SERVICES RELATIVE VALUE UNITS (RVUS)

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| CPT/ HCPCS Code | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Total RVUs | Charge Methodology |
|---|---|---|---|---|
| 82638 | Assay of dibucaine number | Pathology | 0.63 | |
| 82646 | Assay of dihydrocodeinone | Pathology | 1.06 | |
| 82649 | Assay of dihydromorphinone | Pathology | 1.32 | |
| 82651 | Assay of dihydrotestosterone | Pathology | 1.32 | |
| 82652 | Assay of dihydroxyvitamin d | Pathology | 1.98 | |
| 82654 | Assay of dimethadione | Pathology | 0.71 | |
| 82657 | Enzyme cell activity | Pathology | 0.93 | |
| 82658 | Enzyme cell activity, ra | Pathology | 0.93 | |
| 82664 | Electrophoretic test | Pathology | 1.76 | |
| 82666 | Assay of epiandrosterone | Pathology | 1.10 | |
| 82668 | Assay of erythropoietin | Pathology | 0.96 | |
| 82670 | Assay of estradiol | Pathology | 1.43 | |
| 82671 | Assay of estrogens | Pathology | 1.66 | |
| 82672 | Assay of estrogen | Pathology | 1.11 | |
| 82677 | Assay of estriol | Pathology | 1.24 | |
| 82679 | Assay of estrone | Pathology | 1.28 | |
| 82690 | Assay of ethchlorvynol | Pathology | 0.89 | |
| 82693 | Assay of ethylene glycol | Pathology | 0.76 | |
| 82696 | Assay of etiocholanolone | Pathology | 1.21 | |
| 82705 | Fats/lipids, feces, qual | Pathology | 0.26 | |
| 82710 | Fats/lipids, feces, quant | Pathology | 0.86 | |
| 82715 | Assay of fecal fat | Pathology | 0.88 | |
| 82725 | Assay of blood fatty acids | Pathology | 0.68 | |
| 82726 | Long chain fatty acids | Pathology | 0.93 | |
| 82728 | Assay of ferritin | Pathology | 0.70 | |
| 82731 | Assay of fetal fibronectin | Pathology | 3.31 | |
| 82735 | Assay of fluoride | Pathology | 0.95 | |
| 82742 | Assay of flurazepam | Pathology | 1.02 | |
| 82746 | Blood folic acid serum | Pathology | 0.75 | |
| 82747 | Assay of folic acid, rbc | Pathology | 0.89 | |
| 82757 | Assay of semen fructose | Pathology | 0.89 | |
| 82759 | Assay of rbc galactokinase | Pathology | 1.10 | |
| 82760 | Assay of galactose | Pathology | 0.57 | |
| 82775 | Assay galactose transferase | Pathology | 1.08 | |
| 82776 | Galactose transferase test | Pathology | 0.43 | |
| 82784 | Assay of gammaglobulin igm | Pathology | 0.48 | |
| 82785 | Assay of gammaglobulin ige | Pathology | 0.85 | |
| 82787 | Igg 1, 2, 3 or 4, each | Pathology | 0.41 | |
| 82800 | Blood pH | Pathology | 0.43 | |
| 82803 | Blood gases: pH, pO2 & pCO2 | Pathology | 0.99 | |
| 82805 | Blood gases W/02 saturation | Pathology | 1.46 | |
| 82810 | Blood gases, O2 sat only | Pathology | 0.45 | |
| 82820 | Hemoglobin-oxygen affinity | Pathology | 0.51 | |
| 82926 | Assay of gastric acid | Pathology | 0.28 | |
| 82928 | Assay of gastric acid | Pathology | 0.34 | |
| 82938 | Gastrin test | Pathology | 0.91 | |
| 82941 | Assay of gastrin | Pathology | 0.90 | |
| 82943 | Assay of glucagon | Pathology | 0.73 | |
| 82945 | Glucose other fluid | Pathology | 0.20 | |
| 82946 | Glucagon tolerance test | Pathology | 0.77 | |
| 82947 | Assay, glucose, blood quant | Pathology | 0.20 | |
| 82948 | Reagent strip/blood glucose | Pathology | 0.16 | |
| 82950 | Glucose test | Pathology | 0.24 | |
| 82951 | Glucose tolerance test (GTT) | Pathology | 0.66 | |
| 82952 | GTT-added samples | Pathology | 0.20 | |
| 82953 | Glucose-tolbutamide test | Pathology | 0.78 | |
| 82955 | Assay of g6pd enzyme | Pathology | 0.50 | |
| 82960 | Test for G6PD enzyme | Pathology | 0.31 | |
| 82962 | Glucose blood test | Pathology | 0.12 | |
| 82963 | Assay of glucosidase | Pathology | 1.10 | |
| 82965 | Assay of gdh enzyme | Pathology | 0.40 | |
| 82975 | Assay of glutamine | Pathology | 0.81 | |
| 82977 | Assay of GGT | Pathology | 0.37 | |
| 82978 | Assay of glutathione | Pathology | 0.73 | |
| 82979 | Assay, rbc glutathione | Pathology | 0.35 | |
| 82980 | Assay of glutethimide | Pathology | 0.94 | |
| 82985 | Glycated protein | Pathology | 0.77 | |
| 83001 | Gonadotropin (FSH) | Pathology | 0.95 | |
| 83002 | Gonadotropin (LH) | Pathology | 0.95 | |

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TABLE J. — PATHOLOGY AND LABORATORY SERVICES RELATIVE VALUE UNITS (RVUS)

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| CPT/ HCPCS Code | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Total RVUs | Charge Method-ology |
|---|---|---|---|---|
| 83003 | Assay, growth hormone (hgh) | Pathology | 0.86 | |
| 83008 | Assay of guanosine | Pathology | 0.86 | |
| 83010 | Assay of haptoglobin, quant | Pathology | 0.65 | |
| 83012 | Assay of haptoglobins | Pathology | 0.88 | |
| 83013 | H pylori analysis | Pathology | 3.46 | |
| 83014 | H pylori drug admin/collect | Pathology | 0.40 | |
| 83015 | Heavy metal screen | Pathology | 0.97 | |
| 83018 | Quantitative screen, metals | Pathology | 1.13 | |
| 83020 | Hemoglobin electrophoresis | Pathology | 0.66 | |
| 83021 | Hemoglobin chromotography | Pathology | 0.93 | |
| 83026 | Hemoglobin, copper sulfate | Pathology | 0.12 | |
| 83030 | Fetal hemoglobin, chemical | Pathology | 0.42 | |
| 83033 | Fetal hemoglobin assay, qual | Pathology | 0.31 | |
| 83036 | Glycated hemoglobin test | Pathology | 0.50 | |
| 83045 | Blood methemoglobin test | Pathology | 0.25 | |
| 83050 | Blood methemoglobin assay | Pathology | 0.38 | |
| 83051 | Assay of plasma hemoglobin | Pathology | 0.37 | |
| 83055 | Blood sulfhemoglobin test | Pathology | 0.25 | |
| 83060 | Blood sulfhemoglobin assay | Pathology | 0.42 | |
| 83065 | Assay of hemoglobin heat | Pathology | 0.35 | |
| 83068 | Hemoglobin stability screen | Pathology | 0.43 | |
| 83069 | Assay of urine hemoglobin | Pathology | 0.20 | |
| 83070 | Assay of hemosiderin, qual | Pathology | 0.24 | |
| 83071 | Assay of hemosiderin, quant | Pathology | 0.35 | |
| 83080 | Assay of b hexosaminidase | Pathology | 0.87 | |
| 83088 | Assay of histamine | Pathology | 1.52 | |
| 83090 | Assay of homocystine | Pathology | 0.87 | |
| 83150 | Assay of for hva | Pathology | 0.99 | |
| 83491 | Assay of corticosteroids | Pathology | 0.90 | |
| 83497 | Assay of 5-hiaa | Pathology | 0.66 | |
| 83498 | Assay of progesterone | Pathology | 1.39 | |
| 83499 | Assay of progesterone | Pathology | 1.29 | |
| 83500 | Assay, free hydroxyproline | Pathology | 1.16 | |
| 83505 | Assay, total hydroxyproline | Pathology | 1.25 | |
| 83516 | Immunoassay, nonantibody | Pathology | 0.59 | |
| 83518 | Immunoassay, dipstick | Pathology | 0.44 | |
| 83519 | Immunoassay, nonantibody | Pathology | 0.69 | |
| 83520 | Immunoassay, RIA | Pathology | 0.66 | |
| 83525 | Assay of insulin | Pathology | 0.59 | |
| 83527 | Assay of insulin | Pathology | 0.66 | |
| 83528 | Assay of intrinsic factor | Pathology | 0.82 | |
| 83540 | Assay of iron | Pathology | 0.33 | |
| 83550 | Iron binding test | Pathology | 0.45 | |
| 83570 | Assay of idh enzyme | Pathology | 0.45 | |
| 83582 | Assay of ketogenic steroids | Pathology | 0.73 | |
| 83586 | Assay 17- ketosteroids | Pathology | 0.66 | |
| 83593 | Fractionation, ketosteroids | Pathology | 1.35 | |
| 83605 | Assay of lactic acid | Pathology | 0.55 | |
| 83615 | Lactate (LD) (LDH) enzyme | Pathology | 0.31 | |
| 83625 | Assay of ldh enzymes | Pathology | 0.66 | |
| 83632 | Placental lactogen | Pathology | 1.04 | |
| 83633 | Test urine for lactose | Pathology | 0.28 | |
| 83634 | Assay of urine for lactose | Pathology | 0.59 | |
| 83655 | Assay of lead | Pathology | 0.62 | |
| 83661 | L/s ratio, fetal lung | Pathology | 1.13 | |
| 83662 | Foam stability, fetal lung | Pathology | 0.97 | |
| 83663 | Fluoro polarize, fetal lung | Pathology | 0.49 | |
| 83664 | Lamellar bdy, fetal lung | Pathology | 0.24 | |
| 83670 | Assay of lap enzyme | Pathology | 0.47 | |
| 83690 | Assay of lipase | Pathology | 0.35 | |
| 83715 | Assay of blood lipoproteins | Pathology | 0.58 | |
| 83716 | Assay of blood lipoproteins | Pathology | 1.27 | |
| 83718 | Assay of lipoprotein | Pathology | 0.42 | |
| 83719 | Assay of blood lipoprotein | Pathology | 0.60 | |
| 83721 | Assay of blood lipoprotein | Pathology | 0.49 | |
| 83727 | Assay of lrh hormone | Pathology | 0.88 | |
| 83735 | Assay of magnesium | Pathology | 0.34 | |
| 83775 | Assay of md enzyme | Pathology | 0.38 | |
| 83785 | Assay of manganese | Pathology | 1.26 | |

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TABLE J. — PATHOLOGY AND LABORATORY SERVICES RELATIVE VALUE UNITS (RVUS)

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| CPT/ HCPCS Code | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Total RVUs | Charge Methodology |
|---|---|---|---|---|
| 83788 | Mass spectrometry qual | Pathology | 0.93 | |
| 83789 | Mass spectrometry quant | Pathology | 0.93 | |
| 83805 | Assay of meprobamate | Pathology | 0.90 | |
| 83825 | Assay of mercury | Pathology | 0.83 | |
| 83835 | Assay of metanephrines | Pathology | 0.87 | |
| 83840 | Assay of methadone | Pathology | 0.84 | |
| 83857 | Assay of methemalbumin | Pathology | 0.55 | |
| 83858 | Assay of methsuximide | Pathology | 0.76 | |
| 83864 | Mucopolysaccharides | Pathology | 1.02 | |
| 83866 | Mucopolysaccharides screen | Pathology | 0.51 | |
| 83872 | Assay synovial fluid mucin | Pathology | 0.30 | |
| 83873 | Assay of csf protein | Pathology | 0.88 | |
| 83874 | Assay of myoglobin | Pathology | 0.66 | |
| 83880 | Natriuretic peptide | Pathology | 1.74 | |
| 83883 | Assay, nephelometry not spec | Pathology | 0.70 | |
| 83885 | Assay of nickel | Pathology | 1.26 | |
| 83887 | Assay of nicotine | Pathology | 1.22 | |
| 83890 | Molecule isolate | Pathology | 0.21 | |
| 83891 | Molecule isolate nucleic | Pathology | 0.21 | |
| 83892 | Molecular diagnostics | Pathology | 0.21 | |
| 83893 | Molecule dot/slot/blot | Pathology | 0.21 | |
| 83894 | Molecule gel electrophor | Pathology | 0.21 | |
| 83896 | Molecular diagnostics | Pathology | 0.21 | |
| 83897 | Molecule nucleic transfer | Pathology | 0.21 | |
| 83898 | Molecule nucleic ampli | Pathology | 0.86 | |
| 83901 | Molecule nucleic ampli | Pathology | 0.86 | |
| 83902 | Molecular diagnostics | Pathology | 0.73 | |
| 83903 | Molecule mutation scan | Pathology | 0.86 | |
| 83904 | Molecule mutation identify | Pathology | 0.86 | |
| 83905 | Molecule mutation identify | Pathology | 0.86 | |
| 83906 | Molecule mutation identify | Pathology | 0.86 | |
| 83912 | Genetic examination | Pathology | 0.21 | |
| 83915 | s | Pathology | 0.57 | |
| 83916 | Oligoclonal bands | Pathology | 1.03 | |
| 83918 | Organic acids, total, quant | Pathology | 0.84 | |
| 83919 | Organic acids, qual, each | Pathology | 0.84 | |
| 83921 | Organic acid, single, quant | Pathology | 0.84 | |
| 83925 | Assay of opiates | Pathology | 1.00 | |
| 83930 | Assay of blood osmolality | Pathology | 0.34 | |
| 83935 | Assay of urine osmolality | Pathology | 0.35 | |
| 83937 | Assay of osteocalcin | Pathology | 1.53 | |
| 83945 | Assay of oxalate | Pathology | 0.66 | |
| 83950 | Oncoprotein, her-2/neu | Pathology | 3.31 | |
| 83970 | Assay of parathormone | Pathology | 2.12 | |
| 83986 | Assay of body fluid acidity | Pathology | 0.18 | |
| 83992 | Assay for phencyclidine | Pathology | 0.75 | |
| 84022 | Assay of phenothiazine | Pathology | 0.80 | |
| 84030 | Assay of blood pku | Pathology | 0.28 | |
| 84035 | Assay of phenylketones | Pathology | 0.19 | |
| 84060 | Assay acid phosphatase | Pathology | 0.38 | |
| 84061 | Phosphatase, forensic exam | Pathology | 0.41 | |
| 84066 | Assay prostate phosphatase | Pathology | 0.50 | |
| 84075 | Assay alkaline phosphatase | Pathology | 0.27 | |
| 84078 | Assay alkaline phosphatase | Pathology | 0.37 | |
| 84080 | Assay alkaline phosphatases | Pathology | 0.76 | |
| 84081 | Amniotic fluid enzyme test | Pathology | 0.85 | |
| 84085 | Assay of rbc pg6d enzyme | Pathology | 0.35 | |
| 84087 | Assay phosphohexose enzymes | Pathology | 0.53 | |
| 84100 | Assay of phosphorus | Pathology | 0.24 | |
| 84105 | Assay of urine phosphorus | Pathology | 0.27 | |
| 84106 | Test for porphobilinogen | Pathology | 0.22 | |
| 84110 | Assay of porphobilinogen | Pathology | 0.43 | |
| 84119 | Test urine for porphyrins | Pathology | 0.44 | |
| 84120 | Assay of urine porphyrins | Pathology | 0.75 | |
| 84126 | Assay of feces porphyrins | Pathology | 1.31 | |
| 84127 | Assay of feces porphyrins | Pathology | 0.60 | |
| 84132 | Assay of serum potassium | Pathology | 0.24 | |
| 84133 | Assay of urine potassium | Pathology | 0.22 | |
| 84134 | Assay of prealbumin | Pathology | 0.75 | |

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| CPT/ HCPCS Code | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Total RVUs | Charge Method-ology |
|---|---|---|---|---|
| 84135 | Assay of pregnanediol | Pathology | 0.98 | |
| 84138 | Assay of pregnanetriol | Pathology | 0.97 | |
| 84140 | Assay of pregnenolone | Pathology | 1.06 | |
| 84143 | Assay of 17-hydroxypregneno | Pathology | 1.17 | |
| 84144 | Assay of progesterone | Pathology | 1.07 | |
| 84146 | Assay of prolactin | Pathology | 0.99 | |
| 84150 | Assay of prostaglandin | Pathology | 1.28 | |
| 84152 | Assay of psa, complexed | Pathology | 0.94 | |
| 84153 | Assay of psa, total | Pathology | 0.94 | |
| 84154 | Assay of psa, free | Pathology | 0.94 | |
| 84155 | Assay of protein | Pathology | 0.19 | |
| 84160 | Assay of serum protein | Pathology | 0.27 | |
| 84165 | Assay of serum proteins | Pathology | 0.55 | |
| 84181 | Western blot test | Pathology | 0.87 | |
| 84182 | Protein, western blot test | Pathology | 0.92 | |
| 84202 | Assay RBC protoporphyrin | Pathology | 0.74 | |
| 84203 | Test RBC protoporphyrin | Pathology | 0.44 | |
| 84206 | Assay of proinsulin | Pathology | 0.91 | |
| 84207 | Assay of vitamin b-6 | Pathology | 1.44 | |
| 84210 | Assay of pyruvate | Pathology | 0.56 | |
| 84220 | Assay of pyruvate kinase | Pathology | 0.48 | |
| 84228 | Assay of quinine | Pathology | 0.60 | |
| 84233 | Assay of estrogen | Pathology | 3.31 | |
| 84234 | Assay of progesterone | Pathology | 3.33 | |
| 84235 | Assay of endocrine hormone | Pathology | 2.69 | |
| 84238 | Assay, nonendocrine receptor | Pathology | 1.88 | |
| 84244 | Assay of renin | Pathology | 1.13 | |
| 84252 | Assay of vitamin b-2 | Pathology | 1.04 | |
| 84255 | Assay of selenium | Pathology | 1.31 | |
| 84260 | Assay of serotonin | Pathology | 1.59 | |
| 84270 | Assay of sex hormone globul | Pathology | 1.12 | |
| 84275 | Assay of sialic acid | Pathology | 0.69 | |
| 84285 | Assay of silica | Pathology | 1.21 | |
| 84295 | Assay of serum sodium | Pathology | 0.25 | |
| 84300 | Assay of urine sodium | Pathology | 0.25 | |
| 84302 | Assay of sweat sodium | Pathology | 0.25 | |
| 84305 | Assay of somatomedin | Pathology | 1.09 | |
| 84307 | Assay of somatostatin | Pathology | 0.94 | |
| 84311 | Spectrophotometry | Pathology | 0.36 | |
| 84315 | Body fluid specific gravity | Pathology | 0.13 | |
| 84375 | Chromatogram assay, sugars | Pathology | 1.01 | |
| 84376 | Sugars, single, qual | Pathology | 0.28 | |
| 84377 | Sugars, multiple, qual | Pathology | 0.28 | |
| 84378 | Sugars single quant | Pathology | 0.59 | |
| 84379 | Sugars multiple quant | Pathology | 0.59 | |
| 84392 | Assay of urine sulfate | Pathology | 0.24 | |
| 84402 | Assay of testosterone | Pathology | 1.31 | |
| 84403 | Assay of total testosterone | Pathology | 1.33 | |
| 84425 | Assay of vitamin b-1 | Pathology | 1.09 | |
| 84430 | Assay of thiocyanate | Pathology | 0.60 | |
| 84432 | Assay of thyroglobulin | Pathology | 0.82 | |
| 84436 | Assay of total thyroxine | Pathology | 0.35 | |
| 84437 | Assay of neonatal thyroxine | Pathology | 0.33 | |
| 84439 | Assay of free thyroxine | Pathology | 0.46 | |
| 84442 | Assay of thyroid activity | Pathology | 0.76 | |
| 84443 | Assay thyroid stim hormone | Pathology | 0.86 | |
| 84445 | Assay of tsi | Pathology | 2.61 | |
| 84446 | Assay of vitamin e | Pathology | 0.73 | |
| 84449 | Assay of transcortin | Pathology | 0.92 | |
| 84450 | Transferase (AST) (SGOT) | Pathology | 0.27 | |
| 84460 | Alanine amino (ALT) (SGPT) | Pathology | 0.27 | |
| 84466 | Assay of transferrin | Pathology | 0.66 | |
| 84478 | Assay of triglycerides | Pathology | 0.30 | |
| 84479 | Assay of thyroid (t3 or t4) | Pathology | 0.33 | |
| 84480 | Assay, triiodothyronine (t3) | Pathology | 0.73 | |
| 84481 | Free assay (FT-3) | Pathology | 0.87 | |
| 84482 | T3 reverse | Pathology | 0.81 | |
| 84484 | Assay of troponin, quant | Pathology | 0.51 | |
| 84485 | Assay duodenal fluid trypsin | Pathology | 0.39 | |

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TABLE J. — PATHOLOGY AND LABORATORY SERVICES RELATIVE VALUE UNITS (RVUS)

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| CPT/ HCPCS Code | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Total RVUs | Charge Method-ology |
|---|---|---|---|---|
| 84488 | Test feces for trypsin | Pathology | 0.37 | |
| 84490 | Assay of feces for trypsin | Pathology | 0.39 | |
| 84510 | Assay of tyrosine | Pathology | 0.53 | |
| 84512 | Assay of troponin, qual | Pathology | 0.40 | |
| 84520 | Assay of urea nitrogen | Pathology | 0.20 | |
| 84525 | Urea nitrogen semi-quant | Pathology | 0.19 | |
| 84540 | Assay of urine/urea-n | Pathology | 0.24 | |
| 84545 | Urea-N clearance test | Pathology | 0.34 | |
| 84550 | Assay of blood/uric acid | Pathology | 0.23 | |
| 84560 | Assay of urine/uric acid | Pathology | 0.24 | |
| 84577 | Assay of feces/urobilinogen | Pathology | 0.64 | |
| 84578 | Test urine urobilinogen | Pathology | 0.17 | |
| 84580 | Assay of urine urobilinogen | Pathology | 0.36 | |
| 84583 | Assay of urine urobilinogen | Pathology | 0.26 | |
| 84585 | Assay of urine vma | Pathology | 0.80 | |
| 84586 | Assay of vip | Pathology | 1.81 | |
| 84588 | Assay of vasopressin | Pathology | 1.74 | |
| 84590 | Assay of vitamin a | Pathology | 0.59 | |
| 84591 | Assay of nos vitamin | Pathology | 0.59 | |
| 84597 | Assay of vitamin k | Pathology | 0.70 | |
| 84600 | Assay of volatiles | Pathology | 0.82 | |
| 84620 | Xylose tolerance test | Pathology | 0.61 | |
| 84630 | Assay of zinc | Pathology | 0.58 | |
| 84681 | Assay of c-peptide | Pathology | 1.07 | |
| 84702 | Chorionic gonadotropin test | Pathology | 0.77 | |
| 84703 | Chorionic gonadotropin assay | Pathology | 0.39 | |
| 84830 | Ovulation tests | Pathology | 0.51 | |
| 84999 | Clinical chemistry test | Pathology | 0.27 | |
| 85002 | Bleeding time test | Pathology | 0.23 | |
| 85004 | Automated diff wbc count | Pathology | 0.33 | |
| 85007 | Bl smear w/diff wbc count | Pathology | 0.18 | |
| 85008 | Bl smear w/o diff wbc count | Pathology | 0.18 | |
| 85009 | Manual diff wbc count b-coat | Pathology | 0.19 | |
| 85013 | Spun microhematocrit | Pathology | 0.12 | |
| 85014 | Hematocrit | Pathology | 0.12 | |
| 85018 | Hemoglobin | Pathology | 0.12 | |
| 85025 | Complete cbc w/auto diff wbc | Pathology | 0.40 | |
| 85027 | Complete cbc, automated | Pathology | 0.33 | |
| 85032 | Manual cell count, each | Pathology | 0.22 | |
| 85041 | Automated rbc count | Pathology | 0.15 | |
| 85044 | Manual reticulocyte count | Pathology | 0.22 | |
| 85045 | Automated reticulocyte count | Pathology | 0.21 | |
| 85046 | Reticyte/hgb concentrate | Pathology | 0.29 | |
| 85048 | Automated leukocyte count | Pathology | 0.13 | |
| 85049 | Automated platelet count | Pathology | 0.23 | |
| 85130 | Chromogenic substrate assay | Pathology | 0.61 | |
| 85170 | Blood clot retraction | Pathology | 0.19 | |
| 85175 | Blood clot lysis time | Pathology | 0.23 | |
| 85210 | Blood clot factor II test | Pathology | 0.67 | |
| 85220 | Blood clot factor V test | Pathology | 0.91 | |
| 85230 | Blood clot factor VII test | Pathology | 0.92 | |
| 85240 | Blood clot factor VIII test | Pathology | 0.92 | |
| 85244 | Blood clot factor VIII test | Pathology | 1.05 | |
| 85245 | Blood clot factor VIII test | Pathology | 1.18 | |
| 85246 | Blood clot factor VIII test | Pathology | 1.18 | |
| 85247 | Blood clot factor VIII test | Pathology | 1.18 | |
| 85250 | Blood clot factor IX test | Pathology | 0.98 | |
| 85260 | Blood clot factor X test | Pathology | 0.92 | |
| 85270 | Blood clot factor XI test | Pathology | 0.92 | |
| 85280 | Blood clot factor XII test | Pathology | 0.99 | |
| 85290 | Blood clot factor XIII test | Pathology | 0.84 | |
| 85291 | Blood clot factor XIII test | Pathology | 0.46 | |
| 85292 | Blood clot factor assay | Pathology | 0.97 | |
| 85293 | Blood clot factor assay | Pathology | 0.97 | |
| 85300 | Antithrombin III test | Pathology | 0.61 | |
| 85301 | Antithrombin III test | Pathology | 0.55 | |
| 85302 | Blood clot inhibitor antigen | Pathology | 0.62 | |
| 85303 | Blood clot inhibitor test | Pathology | 0.71 | |
| 85305 | Blood clot inhibitor assay | Pathology | 0.59 | |

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### TABLE J. — PATHOLOGY AND LABORATORY SERVICES RELATIVE VALUE UNITS (RVUS)

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| CPT/ HCPCS Code | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Total RVUs | Charge Method-ology |
|---|---|---|---|---|
| 85306 | Blood clot inhibitor test | Pathology | 0.79 | |
| 85307 | Assay activated protein c | Pathology | 0.79 | |
| 85335 | Factor inhibitor test | Pathology | 0.66 | |
| 85337 | Thrombomodulin | Pathology | 0.53 | |
| 85345 | Coagulation time | Pathology | 0.22 | |
| 85347 | Coagulation time | Pathology | 0.22 | |
| 85348 | Coagulation time | Pathology | 0.19 | |
| 85360 | Euglobulin lysis | Pathology | 0.43 | |
| 85362 | Fibrin degradation products | Pathology | 0.35 | |
| 85366 | Fibrinogen test | Pathology | 0.44 | |
| 85370 | Fibrinogen test | Pathology | 0.58 | |
| 85378 | Fibrin degrade, semiquant | Pathology | 0.37 | |
| 85379 | Fibrin degradation, quant | Pathology | 0.52 | |
| 85380 | Fibrin degradation, vte | Pathology | 0.52 | |
| 85384 | Fibrinogen | Pathology | 0.44 | |
| 85385 | Fibrinogen | Pathology | 0.44 | |
| 85390 | Fibrinolysins screen | Pathology | 0.27 | |
| 85400 | Fibrinolytic plasmin | Pathology | 0.45 | |
| 85410 | Fibrinolytic antiplasmin | Pathology | 0.40 | |
| 85415 | Fibrinolytic plasminogen | Pathology | 0.88 | |
| 85420 | Fibrinolytic plasminogen | Pathology | 0.34 | |
| 85421 | Fibrinolytic plasminogen | Pathology | 0.52 | |
| 85441 | Heinz bodies, direct | Pathology | 0.22 | |
| 85445 | Heinz bodies, induced | Pathology | 0.35 | |
| 85460 | Hemoglobin, fetal | Pathology | 0.40 | |
| 85461 | Hemoglobin, fetal | Pathology | 0.34 | |
| 85475 | Hemolysin | Pathology | 0.46 | |
| 85520 | Heparin assay | Pathology | 0.67 | |
| 85525 | Heparin neutralization | Pathology | 0.61 | |
| 85530 | Heparin-protamine tolerance | Pathology | 0.73 | |
| 85536 | Iron stain peripheral blood | Pathology | 0.33 | |
| 85540 | Wbc alkaline phosphatase | Pathology | 0.44 | |
| 85547 | RBC mechanical fragility | Pathology | 0.44 | |
| 85549 | Muramidase | Pathology | 0.96 | |
| 85555 | RBC osmotic fragility | Pathology | 0.34 | |
| 85557 | RBC osmotic fragility | Pathology | 0.69 | |
| 85576 | Blood platelet aggregation | Pathology | 1.10 | |
| 85597 | Platelet neutralization | Pathology | 0.92 | |
| 85610 | Prothrombin time | Pathology | 0.20 | |
| 85611 | Prothrombin test | Pathology | 0.20 | |
| 85612 | Viper venom prothrombin time | Pathology | 0.49 | |
| 85613 | Russell viper venom, diluted | Pathology | 0.49 | |
| 85635 | Reptilase test | Pathology | 0.51 | |
| 85651 | Rbc sed rate, nonautomated | Pathology | 0.18 | |
| 85652 | Rbc sed rate, automated | Pathology | 0.14 | |
| 85660 | RBC sickle cell test | Pathology | 0.28 | |
| 85670 | Thrombin time, plasma | Pathology | 0.30 | |
| 85675 | Thrombin time, titer | Pathology | 0.35 | |
| 85705 | Thromboplastin inhibition | Pathology | 0.49 | |
| 85730 | Thromboplastin time, partial | Pathology | 0.31 | |
| 85732 | Thromboplastin time, partial | Pathology | 0.33 | |
| 85810 | Blood viscosity examination | Pathology | 0.60 | |
| 85999 | Hematology procedure | Pathology | 0.20 | |
| 86000 | Agglutinins, febrile | Pathology | 0.36 | |
| 86001 | Allergen specific igg | Pathology | 0.27 | |
| 86003 | Allergen specific IgE | Pathology | 0.27 | |
| 86005 | Allergen specific IgE | Pathology | 0.41 | |
| 86021 | WBC antibody identification | Pathology | 0.77 | |
| 86022 | Platelet antibodies | Pathology | 0.94 | |
| 86023 | Immunoglobulin assay | Pathology | 0.64 | |
| 86038 | Antinuclear antibodies | Pathology | 0.62 | |
| 86039 | Antinuclear antibodies (ANA) | Pathology | 0.57 | |
| 86060 | Antistreptolysin o, titer | Pathology | 0.37 | |
| 86063 | Antistreptolysin o, screen | Pathology | 0.30 | |
| 86140 | C-reactive protein | Pathology | 0.27 | |
| 86141 | C-reactive protein, hs | Pathology | 0.66 | |
| 86146 | Glycoprotein antibody | Pathology | 1.31 | |
| 86147 | Cardiolipin antibody | Pathology | 1.31 | |
| 86148 | Phospholipid antibody | Pathology | 0.82 | |

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TABLE J. — PATHOLOGY AND LABORATORY SERVICES RELATIVE VALUE UNITS (RVUS)

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| CPT/ HCPCS Code | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Total RVUs | Charge Method-ology |
|---|---|---|---|---|
| 86155 | Chemctaxis assay | Pathology | 0.82 | |
| 86156 | Cold agglutinin, screen | Pathology | 0.34 | |
| 86157 | Cold agglutinin, titer | Pathology | 0.41 | |
| 86160 | Complement, antigen | Pathology | 0.62 | |
| 86161 | Complement/function activity | Pathology | 0.62 | |
| 86162 | Complement, total (CH50) | Pathology | 1.04 | |
| 86171 | Complement fixation, each | Pathology | 0.51 | |
| 86185 | Counterimmunoelectrophoresis | Pathology | 0.46 | |
| 86215 | Deoxyribonuclease, antibody | Pathology | 0.68 | |
| 86225 | DNA antibody | Pathology | 0.71 | |
| 86226 | DNA antibody, single strand | Pathology | 0.62 | |
| 86235 | Nuclear antigen antibody | Pathology | 0.92 | |
| 86243 | Fc receptor | Pathology | 1.05 | |
| 86255 | Fluorescent antibody, screen | Pathology | 0.62 | |
| 86256 | Fluorescent antibody, titer | Pathology | 0.62 | |
| 86277 | Growth hormone antibody | Pathology | 0.81 | |
| 86280 | Hemagglutination inhibition | Pathology | 0.42 | |
| 86294 | Immunoassay, tumor qual | Pathology | 1.01 | |
| 86300 | Immunoassay, tumor ca 15-3 | Pathology | 1.07 | |
| 86301 | Immunoassay, tumor ca 19-9 | Pathology | 1.07 | |
| 86304 | Immunoassay, tumor, ca 125 | Pathology | 1.07 | |
| 86308 | Heterophile antibodies | Pathology | 0.27 | |
| 86309 | Heterophile antibodies | Pathology | 0.33 | |
| 86310 | Heterophile antibodies | Pathology | 0.38 | |
| 86316 | Immunoassay, tumor other | Pathology | 1.07 | |
| 86317 | Immunoassay,infectious agent | Pathology | 0.77 | |
| 86318 | Immunoassay,infectious agent | Pathology | 0.66 | |
| 86320 | Serum immunoelectrophoresis | Pathology | 1.15 | |
| 86325 | Other immunoelectrophoresis | Pathology | 1.15 | |
| 86327 | Immunoelectrophoresis assay | Pathology | 1.16 | |
| 86329 | Immunodiffusion | Pathology | 0.72 | |
| 86331 | Immunodiffusion ouchterlony | Pathology | 0.62 | |
| 86332 | Immune complex assay | Pathology | 1.25 | |
| 86334 | Immunofixation procedure | Pathology | 1.15 | |
| 86336 | Inhibin A | Pathology | 0.80 | |
| 86337 | Insulin antibodies | Pathology | 1.10 | |
| 86340 | Intrinsic factor antibody | Pathology | 0.77 | |
| 86341 | Islet cell antibody | Pathology | 1.02 | |
| 86343 | Leukocyte histamine release | Pathology | 0.64 | |
| 86344 | Leukocyte phagocytosis | Pathology | 0.41 | |
| 86353 | Lymphocyte transformation | Pathology | 2.52 | |
| 86359 | T cells, total count | Pathology | 1.94 | |
| 86360 | T cell, absolute count/ratio | Pathology | 2.41 | |
| 86361 | T cell, absolute count | Pathology | 1.37 | |
| 86376 | Microsomal antibody | Pathology | 0.75 | |
| 86378 | Migration inhibitory factor | Pathology | 1.01 | |
| 86382 | Neutralization test, viral | Pathology | 0.87 | |
| 86384 | Nitroblue tetrazolium dye | Pathology | 0.58 | |
| 86403 | Particle agglutination test | Pathology | 0.52 | |
| 86406 | Particle agglutination test | Pathology | 0.55 | |
| 86430 | Rheumatoid factor test | Pathology | 0.29 | |
| 86431 | Rheumatoid factor, quant | Pathology | 0.29 | |
| 86485 | Skin test, candida | Pathology | 0.30 | MDR |
| 86586 | Skin test, unlisted | Pathology | 0.30 | MDR |
| 86590 | Streptokinase, antibody | Pathology | 0.57 | |
| 86592 | Blood serology, qualitative | Pathology | 0.22 | |
| 86593 | Blood serology, quantitative | Pathology | 0.23 | |
| 86602 | Antinomyces antibody | Pathology | 0.52 | |
| 86603 | Adenovirus antibody | Pathology | 0.66 | |
| 86606 | Aspergillus antibody | Pathology | 0.77 | |
| 86609 | Bacterium antibody | Pathology | 0.66 | |
| 86611 | Bartonella antibody | Pathology | 0.52 | |
| 86612 | Blastomyces antibody | Pathology | 0.66 | |
| 86615 | Bordetella antibody | Pathology | 0.68 | |
| 86617 | Lyme disease antibody | Pathology | 0.79 | |
| 86618 | Lyme disease antibody | Pathology | 0.87 | |
| 86619 | Borrelia antibody | Pathology | 0.69 | |
| 86622 | Brucella antibody | Pathology | 0.46 | |
| 86625 | Campylobacter antibody | Pathology | 0.67 | |

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## TABLE J. — PATHOLOGY AND LABORATORY SERVICES RELATIVE VALUE UNITS (RVUS)

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| CPT/ HCPCS Code | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Total RVUs | Charge Method-ology |
|---|---|---|---|---|
| 86628 | Candida antibody | Pathology | 0.62 | |
| 86631 | Chlamydia antibody | Pathology | 0.61 | |
| 86632 | Chlamydia igm antibody | Pathology | 0.65 | |
| 86635 | Coccidioides antibody | Pathology | 0.59 | |
| 86638 | Q fever antibody | Pathology | 0.62 | |
| 86641 | Cryptococcus antibody | Pathology | 0.74 | |
| 86644 | CMV antibody | Pathology | 0.74 | |
| 86645 | CMV antibody, IgM | Pathology | 0.86 | |
| 86648 | Diphtheria antibody | Pathology | 0.78 | |
| 86651 | Encephalitis antibody | Pathology | 0.68 | |
| 86652 | Encephalitis antibody | Pathology | 0.68 | |
| 86653 | Encephalitis antibody | Pathology | 0.68 | |
| 86654 | Encephalitis antibody | Pathology | 0.68 | |
| 86658 | Enterovirus antibody | Pathology | 0.67 | |
| 86663 | Epstein-barr antibody | Pathology | 0.67 | |
| 86664 | Epstein-barr antibody | Pathology | 0.79 | |
| 86665 | Epstein-barr antibody | Pathology | 0.93 | |
| 86666 | Ehrlichia antibody | Pathology | 0.52 | |
| 86668 | Francisella tularensis | Pathology | 0.53 | |
| 86671 | Fungus antibody | Pathology | 0.63 | |
| 86674 | Giardia lamblia antibody | Pathology | 0.76 | |
| 86677 | Helicobacter pylori | Pathology | 0.74 | |
| 86682 | Helminth antibody | Pathology | 0.67 | |
| 86684 | Hemophilus influenza | Pathology | 0.81 | |
| 86687 | Htlv-i antibody | Pathology | 0.43 | |
| 86688 | Htlv-ii antibody | Pathology | 0.72 | |
| 86689 | HTLV/HIV confirmatory test | Pathology | 0.99 | |
| 86692 | Hepatitis, delta agent | Pathology | 0.88 | |
| 86694 | Herpes simplex test | Pathology | 0.74 | |
| 86695 | Herpes simplex test | Pathology | 0.68 | |
| 86696 | Herpes simplex type 2 | Pathology | 0.99 | |
| 86698 | Histoplasma | Pathology | 0.64 | |
| 86701 | HIV-1 | Pathology | 0.46 | |
| 86702 | HIV-2 | Pathology | 0.69 | |
| 86703 | HIV-1/HIV-2, single assay | Pathology | 0.70 | |
| 86704 | Hep b core antibody, total | Pathology | 0.62 | |
| 86705 | Hep b core antibody, igm | Pathology | 0.60 | |
| 86706 | Hep b surface antibody | Pathology | 0.55 | |
| 86707 | Hep be antibody | Pathology | 0.59 | |
| 86708 | Hep a antibody, total | Pathology | 0.64 | |
| 86709 | Hep a antibody, igm | Pathology | 0.58 | |
| 86710 | Influenza virus antibody | Pathology | 0.70 | |
| 86713 | Legionella antibody | Pathology | 0.79 | |
| 86717 | Leishmania antibody | Pathology | 0.63 | |
| 86720 | Leptospira antibody | Pathology | 0.68 | |
| 86723 | Listeria monocytogenes ab | Pathology | 0.68 | |
| 86727 | Lymph choriomeningitis ab | Pathology | 0.66 | |
| 86729 | Lympho venereum antibody | Pathology | 0.61 | |
| 86732 | Mucormycosis antibody | Pathology | 0.68 | |
| 86735 | Mumps antibody | Pathology | 0.67 | |
| 86738 | Mycoplasma antibody | Pathology | 0.68 | |
| 86741 | Neisseria meningitidis | Pathology | 0.68 | |
| 86744 | Nocardia antibody | Pathology | 0.68 | |
| 86747 | Parvovirus antibody | Pathology | 0.77 | |
| 86750 | Malaria antibody | Pathology | 0.68 | |
| 86753 | Protozoa antibody nos | Pathology | 0.64 | |
| 86756 | Respiratory virus antibody | Pathology | 0.66 | |
| 86757 | Rickettsia antibody | Pathology | 0.99 | |
| 86759 | Rotavirus antibody | Pathology | 0.68 | |
| 86762 | Rubella antibody | Pathology | 0.74 | |
| 86765 | Rubeola antibody | Pathology | 0.66 | |
| 86768 | Salmonella antibody | Pathology | 0.68 | |
| 86771 | Shigella antibody | Pathology | 0.68 | |
| 86774 | Tetanus antibody | Pathology | 0.76 | |
| 86777 | Toxoplasma antibody | Pathology | 0.74 | |
| 86778 | Toxoplasma antibody, igm | Pathology | 0.74 | |
| 86781 | Treponema pallidum, confirm | Pathology | 0.68 | |
| 86784 | Trichinella antibody | Pathology | 0.64 | |
| 86787 | Varicella-zoster antibody | Pathology | 0.66 | |

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| CPT/ HCPCS Code | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Total RVUs | Charge Method-ology |
|---|---|---|---|---|
| 86790 | Virus antibody nos | Pathology | 0.66 | |
| 86793 | Yersinia antibody | Pathology | 0.68 | |
| 86800 | Thyroglobulin antibody | Pathology | 0.82 | |
| 86803 | Hepatitis c ab test | Pathology | 0.73 | |
| 86804 | Hep c ab test, confirm | Pathology | 0.79 | |
| 86805 | Lymphocytotoxicity assay | Pathology | 2.68 | |
| 86806 | Lymphocytotoxicity assay | Pathology | 2.44 | |
| 86807 | Cytotoxic antibody screening | Pathology | 2.03 | |
| 86808 | Cytotoxic antibody screening | Pathology | 1.52 | |
| 86812 | HLA typing, A, B, or C | Pathology | 1.32 | |
| 86813 | HLA typing, A, B, or C | Pathology | 2.98 | |
| 86816 | HLA typing, DR/DQ | Pathology | 1.43 | |
| 86817 | HLA typing, DR/DQ | Pathology | 3.30 | |
| 86821 | Lymphocyte culture, mixed | Pathology | 2.90 | |
| 86822 | Lymphocyte culture, primed | Pathology | 1.88 | |
| 86849 | Immunology procedure | Pathology | 1.17 | SAF |
| 86850 | RBC antibody screen | Pathology | 0.42 | MDR |
| 86860 | RBC antibody elution | Pathology | 0.42 | MDR |
| 86870 | RBC antibody identification | Pathology | 0.73 | MDR |
| 86880 | Coombs test, direct | Pathology | 0.28 | |
| 86885 | Coombs test, indirect, qual | Pathology | 0.29 | |
| 86886 | Coombs test, indirect, titer | Pathology | 0.27 | |
| 86890 | Autologous blood process | Pathology | 1.68 | MDR |
| 86891 | Autologous blood, op salvage | Pathology | 2.62 | MDR |
| 86900 | Blood typing, ABO | Pathology | 0.15 | |
| 86901 | Blood typing, Rh (D) | Pathology | 0.21 | MDR |
| 86903 | Blood typing, antigen screen | Pathology | 0.48 | |
| 86904 | Blood typing, patient serum | Pathology | 0.49 | |
| 86905 | Blood typing, RBC antigens | Pathology | 0.20 | |
| 86906 | Blood typing, Rh phenotype | Pathology | 0.40 | |
| 86910 | Blood typing, paternity test | Pathology | 0.46 | MDR |
| 86911 | Blood typing, antigen system | Pathology | 0.36 | MDR |
| 86920 | Compatibility test | Pathology | 0.46 | MDR |
| 86921 | Compatibility test | Pathology | 0.42 | MDR |
| 86922 | Compatibility test | Pathology | 0.25 | MDR |
| 86927 | Plasma, fresh frozen | Pathology | 0.23 | MDR |
| 86930 | Frozen blood prep | Pathology | 1.46 | PHCS |
| 86931 | Frozen blood thaw | Pathology | 2.31 | MDR |
| 86932 | Frozen blood freeze/thaw | Pathology | 2.52 | MDR |
| 86940 | Hemolysins/agglutinins, auto | Pathology | 0.42 | |
| 86941 | Hemolysins/agglutinins | Pathology | 0.62 | |
| 86945 | Blood product/irradiation | Pathology | 0.63 | MDR |
| 86950 | Leukacyte transfusion | Pathology | 1.15 | MDR |
| 86965 | Pooling blood platelets | Pathology | 0.29 | MDR |
| 86970 | RBC pretreatment | Pathology | 0.34 | MDR |
| 86971 | RBC pretreatment | Pathology | 0.34 | MDR |
| 86972 | RBC pretreatment | Pathology | 0.31 | MDR |
| 86975 | RBC pretreatment, serum | Pathology | 0.21 | MDR |
| 86976 | RBC pretreatment, serum | Pathology | 0.17 | MDR |
| 86977 | RBC pretreatment, serum | Pathology | 0.21 | MDR |
| 86978 | RBC pretreatment, serum | Pathology | 0.46 | MDR |
| 86985 | Split blood or products | Pathology | 0.44 | MDR |
| 87001 | Small animal inoculation | Pathology | 0.68 | |
| 87003 | Small animal inoculation | Pathology | 0.86 | |
| 87015 | Specimen concentration | Pathology | 0.34 | |
| 87040 | Blood culture for bacteria | Pathology | 0.53 | |
| 87045 | Feces culture, bacteria | Pathology | 0.48 | |
| 87046 | Stool cultr, bacteria, each | Pathology | 0.12 | |
| 87070 | Culture, bacteria, other | Pathology | 0.44 | |
| 87071 | Culture bacteri aerobic othr | Pathology | 0.24 | |
| 87073 | Culture bacteria anaerobic | Pathology | 0.24 | |
| 87075 | Culture bacteria anaerobic | Pathology | 0.49 | |
| 87076 | Culture anaerobe ident, each | Pathology | 0.41 | |
| 87077 | Culture aerobic identify | Pathology | 0.41 | |
| 87081 | Culture screen only | Pathology | 0.34 | |
| 87084 | Culture of specimen by kit | Pathology | 0.44 | |
| 87086 | Urine culture/colony count | Pathology | 0.41 | |
| 87088 | Urine bacteria culture | Pathology | 0.42 | |
| 87101 | Skin fungi culture | Pathology | 0.40 | |

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| CPT/ HCPCS Code | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Total RVUs | Charge Methodology |
|---|---|---|---|---|
| 87102 | Fungus isolation culture | Pathology | 0.43 | |
| 87103 | Blood fungus culture | Pathology | 0.46 | |
| 87106 | Fungi identification, yeast | Pathology | 0.53 | |
| 87107 | Fungi identification, mold | Pathology | 0.53 | |
| 87109 | Mycoplasma | Pathology | 0.79 | |
| 87110 | Chlamydia culture | Pathology | 1.01 | |
| 87116 | Mycobacteria culture | Pathology | 0.55 | |
| 87118 | Mycobacteric identification | Pathology | 0.56 | |
| 87140 | Culture type immunofluoresc | Pathology | 0.29 | |
| 87143 | Culture typing, glc/hplc | Pathology | 0.64 | |
| 87147 | Culture type, immunologic | Pathology | 0.27 | |
| 87149 | Culture type, nucleic acid | Pathology | 1.03 | |
| 87152 | Culture type pulse field gel | Pathology | 0.27 | |
| 87158 | Culture typing, added method | Pathology | 0.27 | |
| 87164 | Dark field examination | Pathology | 0.55 | |
| 87166 | Dark field examination | Pathology | 0.58 | |
| 87168 | Macroscopic exam arthropod | Pathology | 0.22 | |
| 87169 | Macroscopic exam parasite | Pathology | 0.22 | |
| 87172 | Pinworm exam | Pathology | 0.22 | |
| 87176 | Tissue homogenization, cultr | Pathology | 0.30 | |
| 87177 | Ova and parasites smears | Pathology | 0.46 | |
| 87181 | Microbe susceptible, diffuse | Pathology | 0.24 | |
| 87184 | Microbe susceptible, disk | Pathology | 0.35 | |
| 87185 | Microbe susceptible, enzyme | Pathology | 0.24 | |
| 87186 | Microbe susceptible, mic | Pathology | 0.44 | |
| 87187 | Microbe susceptible, mlc | Pathology | 0.53 | |
| 87188 | Microbe suscept, macrobroth | Pathology | 0.34 | |
| 87190 | Microbe suscept, mycobacteri | Pathology | 0.29 | |
| 87197 | Bactericidal level, serum | Pathology | 0.77 | |
| 87205 | Smear, gram stain | Pathology | 0.22 | |
| 87206 | Smear, fluorescent/acid stai | Pathology | 0.28 | |
| 87207 | Smear, special stain | Pathology | 0.31 | |
| 87210 | Smear, wet mount, saline/ink | Pathology | 0.22 | |
| 87220 | Tissue exam for fungi | Pathology | 0.22 | |
| 87230 | Assay, toxin or antitoxin | Pathology | 1.01 | |
| 87250 | Virus inoculate, eggs/animal | Pathology | 1.00 | |
| 87252 | Virus inoculation, tissue | Pathology | 1.34 | |
| 87253 | Virus inoculate tissue, addl | Pathology | 1.04 | |
| 87254 | Virus inoculation, shell via | Pathology | 0.25 | |
| 87255 | Genet virus isolate, hsv | Pathology | 1.74 | |
| 87260 | Adenovirus ag, if | Pathology | 0.62 | |
| 87265 | Pertussis ag, if | Pathology | 0.62 | |
| 87267 | Enterovirus antibody, dfa | Pathology | 0.62 | |
| 87270 | Chlamydia trachomatis ag, if | Pathology | 0.62 | |
| 87271 | Cryptosporidum/gardia ag, if | Pathology | 0.62 | |
| 87272 | Cryptosporidum/gardia ag, if | Pathology | 0.62 | |
| 87273 | Herpes simplex 2, ag, if | Pathology | 0.62 | |
| 87274 | Herpes simplex 1, ag, if | Pathology | 0.62 | |
| 87275 | Influenza b, ag, if | Pathology | 0.62 | |
| 87276 | Influenza a, ag, if | Pathology | 0.62 | |
| 87277 | Legionella micdadei, ag, if | Pathology | 0.62 | |
| 87278 | Legion pneumophilia ag, if | Pathology | 0.62 | |
| 87279 | Parainfluenza, ag, if | Pathology | 0.62 | |
| 87280 | Respiratory syncytial ag, if | Pathology | 0.62 | |
| 87281 | Pneumocystis carinii, ag, if | Pathology | 0.62 | |
| 87283 | Rubeola, ag, if | Pathology | 0.62 | |
| 87285 | Treponema pallidum, ag, if | Pathology | 0.62 | |
| 87290 | Varicella zoster, ag, if | Pathology | 0.62 | |
| 87299 | Antibody detection, nos, if | Pathology | 0.62 | |
| 87300 | Ag detection, polyval, if | Pathology | 0.31 | |
| 87301 | Adenovirus ag, eia | Pathology | 0.62 | |
| 87320 | Chylmd trach ag, eia | Pathology | 0.62 | |
| 87324 | Clostridium ag, eia | Pathology | 0.62 | |
| 87327 | Cryptococcus neoform ag, eia | Pathology | 0.62 | |
| 87328 | Cryptospor ag, eia | Pathology | 0.62 | |
| 87332 | Cytomegalovirus ag, eia | Pathology | 0.62 | |
| 87335 | E coli 0157 ag, eia | Pathology | 0.62 | |
| 87336 | Entamoeb hist dispr, ag, eia | Pathology | 0.62 | |
| 87337 | Entamoeb hist group, ag, eia | Pathology | 0.62 | |

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TABLE J. — PATHOLOGY AND LABORATORY SERVICES RELATIVE VALUE UNITS (RVUS)

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| CPT/ HCPCS Code | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Total RVUs | Charge Method-ology |
|---|---|---|---|---|
| 87338 | Hpylori, stool, eia | Pathology | 0.74 | |
| 87339 | H pylori ag, eia | Pathology | 0.62 | |
| 87340 | Hepatitis b surface ag, eia | Pathology | 0.53 | |
| 87341 | Hepatitis b surface, ag, eia | Pathology | 0.53 | |
| 87350 | Hepatitis be ag, eia | Pathology | 0.59 | |
| 87380 | Hepatitis delta ag, eia | Pathology | 0.84 | |
| 87385 | Histoplasma capsul ag, eia | Pathology | 0.62 | |
| 87390 | Hiv-1 ag, eia | Pathology | 0.91 | |
| 87391 | Hiv-2 ag, eia | Pathology | 0.91 | |
| 87400 | Influenza a/b, ag, eia | Pathology | 0.62 | |
| 87420 | Resp syncytial ag, eia | Pathology | 0.62 | |
| 87425 | Rotavirus ag, eia | Pathology | 0.62 | |
| 87427 | Shiga-like toxin ag, eia | Pathology | 0.62 | |
| 87430 | Strep a ag, eia | Pathology | 0.62 | |
| 87449 | Ag detect nos, eia, mult | Pathology | 0.62 | |
| 87450 | Ag detect nos, eia, single | Pathology | 0.49 | |
| 87451 | Ag detect polyval, eia, mult | Pathology | 0.49 | |
| 87470 | Bartonella, dna, dir probe | Pathology | 1.03 | |
| 87471 | Bartonella, dna, amp probe | Pathology | 1.80 | |
| 87472 | Bartonella, dna, quant | Pathology | 2.20 | |
| 87475 | Lyme dis, dna, dir probe | Pathology | 1.03 | |
| 87476 | Lyme dis, dna, amp probe | Pathology | 1.80 | |
| 87477 | Lyme dis, dna, quant | Pathology | 2.20 | |
| 87480 | Candida, dna, dir probe | Pathology | 1.03 | |
| 87481 | Candida, dna, amp probe | Pathology | 1.80 | |
| 87482 | Candida, dna, quant | Pathology | 2.14 | |
| 87485 | Chylmd pneum, dna, dir probe | Pathology | 1.03 | |
| 87486 | Chylmd pneum, dna, amp probe | Pathology | 1.80 | |
| 87487 | Chylmd pneum, dna, quant | Pathology | 2.20 | |
| 87490 | Chylmd trach, dna, dir probe | Pathology | 1.03 | |
| 87491 | Chylmd trach, dna, amp probe | Pathology | 1.80 | |
| 87492 | Chylmd trach, dna, quant | Pathology | 1.79 | |
| 87495 | Cytomeg, dna, dir probe | Pathology | 1.03 | |
| 87496 | Cytomeg, dna, amp probe | Pathology | 1.80 | |
| 87497 | Cytomeg, dna, quant | Pathology | 2.20 | |
| 87510 | Gardner vag, dna, dir probe | Pathology | 1.03 | |
| 87511 | Gardner vag, dna, amp probe | Pathology | 1.80 | |
| 87512 | Gardner vag, dna, quant | Pathology | 2.14 | |
| 87515 | Hepatitis b, dna, dir probe | Pathology | 1.03 | |
| 87516 | Hepatitis b, dna, amp probe | Pathology | 1.80 | |
| 87517 | Hepatitis b, dna, quant | Pathology | 2.20 | |
| 87520 | Hepatitis c, rna, dir probe | Pathology | 1.03 | |
| 87521 | Hepatitis c, rna, amp probe | Pathology | 1.80 | |
| 87522 | Hepatitis c, rna, quant | Pathology | 2.20 | |
| 87525 | Hepatitis g, dna, dir probe | Pathology | 1.03 | |
| 87526 | Hepatitis g, dna, amp probe | Pathology | 1.80 | |
| 87527 | Hepatitis g, dna, quant | Pathology | 2.14 | |
| 87528 | Hsv, dna, dir probe | Pathology | 1.03 | |
| 87529 | Hsv, dna, amp probe | Pathology | 1.80 | |
| 87530 | Hsv, dna, quant | Pathology | 2.20 | |
| 87531 | Hhv-6, dna, dir probe | Pathology | 1.03 | |
| 87532 | Hhv-6, dna, amp probe | Pathology | 1.80 | |
| 87533 | Hhv-6, dna, quant | Pathology | 2.14 | |
| 87534 | Hiv-1, dna, dir probe | Pathology | 1.03 | |
| 87535 | Hiv-1, dna, amp probe | Pathology | 1.80 | |
| 87536 | Hiv-1, dna, quant | Pathology | 4.37 | |
| 87537 | Hiv-2, dna, dir probe | Pathology | 1.03 | |
| 87538 | Hiv-2, dna, amp probe | Pathology | 1.80 | |
| 87539 | Hiv-2, dna, quant | Pathology | 2.20 | |
| 87540 | Legion pneumo, dna, dir prob | Pathology | 1.03 | |
| 87541 | Legion pneumo, dna, amp prob | Pathology | 1.80 | |
| 87542 | Legion pneumo, dna, quant | Pathology | 2.14 | |
| 87550 | Mycobacteria, dna, dir probe | Pathology | 1.03 | |
| 87551 | Mycobacteria, dna, amp probe | Pathology | 1.80 | |
| 87552 | Mycobacteria, dna, quant | Pathology | 2.20 | |
| 87555 | M.tuberculo, dna, dir probe | Pathology | 1.03 | |
| 87556 | M.tuberculo, dna, amp probe | Pathology | 1.80 | |
| 87557 | M.tuberculo, dna, quant | Pathology | 2.20 | |
| 87560 | M.avium-intra, dna, dir prob | Pathology | 1.03 | |

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TABLE J. — PATHOLOGY AND LABORATORY SERVICES RELATIVE VALUE UNITS (RVUS)

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| CPT/ HCPCS Code | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Total RVUs | Charge Methodology |
|---|---|---|---|---|
| 87561 | M.avium-intra, dna, amp prob | Pathology | 1.80 | |
| 87562 | M.avium-intra, dna, quant | Pathology | 2.20 | |
| 87580 | M.pneumon, dna, dir probe | Pathology | 1.03 | |
| 87581 | M.pneumon, dna, amp probe | Pathology | 1.80 | |
| 87582 | M.pneumon, dna, quant | Pathology | 2.14 | |
| 87590 | N.gonorrhoeae, dna, dir prob | Pathology | 1.03 | |
| 87591 | N.gonorrhoeae, dna, amp prob | Pathology | 1.80 | |
| 87592 | N.gonorrhoeae, dna, quant | Pathology | 2.20 | |
| 87620 | Hpv, dna, dir probe | Pathology | 1.03 | |
| 87621 | Hpv, dna, amp probe | Pathology | 1.80 | |
| 87622 | Hpv, dna, quant | Pathology | 2.14 | |
| 87650 | Strep a, dna, dir probe | Pathology | 1.03 | |
| 87651 | Strep a, dna, amp probe | Pathology | 1.80 | |
| 87652 | Strep a, dna, quant | Pathology | 2.14 | |
| 87797 | Detect agent nos, dna, dir | Pathology | 1.03 | |
| 87798 | Detect agent nos, dna, amp | Pathology | 1.80 | |
| 87799 | Detect agent nos, dna, quant | Pathology | 2.20 | |
| 87800 | Detect agnt mult, dna, direc | Pathology | 2.06 | |
| 87801 | Detect agnt mult, dna, ampli | Pathology | 3.60 | |
| 87802 | Strep b assay w/optic | Pathology | 0.62 | |
| 87803 | Clostridium toxin a w/optic | Pathology | 0.62 | |
| 87804 | Influenza assay w/optic | Pathology | 0.62 | |
| 87810 | Chylmd trach assay w/optic | Pathology | 0.62 | |
| 87850 | N. gonorrhoeae assay w/optic | Pathology | 0.62 | |
| 87880 | Strep a assay w/optic | Pathology | 0.62 | |
| 87899 | Agent nos assay w/optic | Pathology | 0.62 | |
| 87901 | Genotype, dna, hiv reverse t | Pathology | 13.21 | |
| 87902 | Genotype, dna, hepatitis C | Pathology | 13.21 | |
| 87903 | Phenotype, dna hiv w/culture | Pathology | 25.08 | |
| 87904 | Phenotype, dna hiv w/clt add | Pathology | 1.34 | |
| 87999 | Microbiology procedure | Pathology | 0.42 | |
| 88000 | Autopsy (necropsy), gross | Pathology | 7.21 | MDR |
| 88005 | Autopsy (necropsy), gross | Pathology | 8.01 | MDR |
| 88007 | Autopsy (necropsy), gross | Pathology | 8.81 | MDR |
| 88012 | Autopsy (necropsy), gross | Pathology | 6.64 | MDR |
| 88014 | Autopsy (necropsy), gross | Pathology | 6.64 | MDR |
| 88016 | Autopsy (necropsy), gross | Pathology | 8.07 | MDR |
| 88020 | Autopsy (necropsy), complete | Pathology | 10.36 | MDR |
| 88025 | Autopsy (necropsy), complete | Pathology | 11.16 | MDR |
| 88027 | Autopsy (necropsy), complete | Pathology | 11.96 | MDR |
| 88028 | Autopsy (necropsy), complete | Pathology | 6.64 | MDR |
| 88029 | Autopsy (necropsy), complete | Pathology | 6.64 | MDR |
| 88036 | Limited autopsy | Pathology | 4.29 | MDR |
| 88037 | Limited autopsy | Pathology | 3.15 | MDR |
| 88040 | Forensic autopsy (necropsy) | Pathology | 17.16 | MDR |
| 88045 | Coroner's autopsy (necropsy) | Pathology | 1.43 | MDR |
| 88099 | Necropsy (autopsy) procedure | Pathology | 11.16 | Misc. |
| 88130 | Sex chromatin identification | Pathology | 0.77 | |
| 88140 | Sex chromatin identification | Pathology | 0.41 | |
| 88142 | Cytopath, c/v, thin layer | Pathology | 1.04 | |
| 88143 | Cytopath c/v thin layer redo | Pathology | 1.04 | |
| 88147 | Cytopath, c/v, automated | Pathology | 0.58 | |
| 88148 | Cytopath, c/v, auto rescreen | Pathology | 0.78 | |
| 88150 | Cytopath, c/v, manual | Pathology | 0.54 | |
| 88152 | Cytopath, c/v, auto redo | Pathology | 0.54 | |
| 88153 | Cytopath, c/v, redo | Pathology | 0.54 | |
| 88154 | Cytopath, c/v, select | Pathology | 0.54 | |
| 88155 | Cytopath, c/v, index add-on | Pathology | 0.31 | |
| 88164 | Cytopath tbs, c/v, manual | Pathology | 0.54 | |
| 88165 | Cytopath tbs, c/v, redo | Pathology | 0.54 | |
| 88166 | Cytopath tbs, c/v, auto redo | Pathology | 0.54 | |
| 88167 | Cytopath tbs, c/v, select | Pathology | 0.54 | |
| 88174 | Cytopath, c/v auto, in fluid | Pathology | 1.10 | |
| 88175 | Cytopath c/v auto fluid redo | Pathology | 1.36 | |
| 88230 | Tissue culture, lymphocyte | Pathology | 5.98 | |
| 88233 | Tissue culture, skin/biopsy | Pathology | 7.22 | |
| 88235 | Tissue culture, placenta | Pathology | 7.56 | |
| 88237 | Tissue culture, bone marrow | Pathology | 6.48 | |
| 88239 | Tissue culture, tumor | Pathology | 7.57 | |

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TABLE J. — PATHOLOGY AND LABORATORY SERVICES RELATIVE VALUE UNITS (RVUS)

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| CPT/ HCPCS Code | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Total RVUs | Charge Methodology |
|---|---|---|---|---|
| 88240 | Cell cryopreserve/storage | Pathology | 0.52 | |
| 88241 | Frozen cell preparation | Pathology | 0.52 | |
| 88245 | Chromosome analysis, 20-25 | Pathology | 7.64 | |
| 88248 | Chromosome analysis, 50-100 | Pathology | 8.89 | |
| 88249 | Chromosome analysis, 100 | Pathology | 8.89 | |
| 88261 | Chromosome analysis, 5 | Pathology | 9.07 | |
| 88262 | Chromosome analysis, 15-20 | Pathology | 6.40 | |
| 88263 | Chromosome analysis, 45 | Pathology | 7.71 | |
| 88264 | Chromosome analysis, 20-25 | Pathology | 6.40 | |
| 88267 | Chromosome analys, placenta | Pathology | 9.23 | |
| 88269 | Chromosome analys, amniotic | Pathology | 8.53 | |
| 88271 | Cytogenetics, dna probe | Pathology | 1.10 | |
| 88272 | Cytogenetics, 3-5 | Pathology | 1.37 | |
| 88273 | Cytogenetics, 10-30 | Pathology | 1.65 | |
| 88274 | Cytogenetics, 25-99 | Pathology | 1.79 | |
| 88275 | Cytogenetics, 100-300 | Pathology | 2.06 | |
| 88280 | Chromosome karyotype study | Pathology | 1.29 | |
| 88283 | Chromosome banding study | Pathology | 3.52 | |
| 88285 | Chromosome count, additional | Pathology | 0.97 | |
| 88289 | Chromosome study, additional | Pathology | 1.77 | |
| 88299 | Cytogenetic study | Pathology | 6.40 | |
| 88371 | Protein, western blot tissue | Pathology | 1.14 | |
| 88372 | Protein analysis w/probe | Pathology | 1.17 | |
| 88400 | Bilirubin total transcul | Pathology | 0.13 | |
| 89050 | Body fluid cell count | Pathology | 0.24 | |
| 89051 | Body fluid cell count | Pathology | 0.28 | |
| 89055 | Leukocyte count, fecal | Pathology | 0.22 | |
| 89060 | Exam,synovial fluid crystals | Pathology | 0.37 | |
| 89125 | Specimen fat stain | Pathology | 0.22 | |
| 89160 | Exam feces for meat fibers | Pathology | 0.19 | |
| 89190 | Nasal smear for eosinophils | Pathology | 0.24 | |
| 89250 | Fertilization of oocyte | Pathology | 14.48 | MDR |
| 89251 | Culture oocyte w/embryos | Pathology | 18.44 | PHCS |
| 89252 | Assist oocyte fertilization | Pathology | 27.11 | PHCS |
| 89253 | Embryo hatching | Pathology | 10.85 | PHCS |
| 89254 | Oocyte identification | Pathology | 9.00 | PHCS |
| 89255 | Prepare embryo for transfer | Pathology | 5.42 | PHCS |
| 89256 | Prepare cryopreserved embryo | Pathology | 9.76 | PHCS |
| 89257 | Sperm identification | Pathology | 5.42 | PHCS |
| 89258 | Cryopreservation, embryo | Pathology | 10.85 | PHCS |
| 89259 | Cryopreservation, sperm | Pathology | 2.71 | PHCS |
| 89260 | Sperm isolation, simple | Pathology | 1.63 | PHCS |
| 89261 | Sperm isolation, complex | Pathology | 2.71 | PHCS |
| 89264 | Identify sperm tissue | Pathology | 5.42 | PHCS |
| 89300 | Semen analysis w/huhner | Pathology | 0.46 | |
| 89310 | Semen analysis w/count | Pathology | 0.44 | |
| 89320 | Semen analysis, complete | Pathology | 0.62 | |
| 89321 | Semen analysis & motility | Pathology | 0.62 | |
| 89325 | Sperm antibody test | Pathology | 0.55 | |
| 89329 | Sperm evaluation test | Pathology | 1.08 | |
| 89330 | Evaluation, cervical mucus | Pathology | 0.51 | |
| 89355 | Exam feces for starch | Pathology | 0.17 | |
| 89365 | Water load test | Pathology | 0.28 | |
| G0001 | Drawing blood for specimen | Pathology | 0.11 | |
| G0103 | Psa, total screening | Pathology | 0.94 | |
| G0107 | CA screen; fecal blood test | Pathology | 0.17 | |
| G0123 | Screen cerv/vag thin layer | Pathology | 1.04 | |
| G0143 | Scr c/v cyto,thinlayer,rescr | Pathology | 1.04 | |
| G0144 | Scr c/v cyto,thinlayer,rescr | Pathology | 1.10 | |
| G0145 | Scr c/v cyto,thinlayer,rescr | Pathology | 1.36 | |
| G0147 | Scr c/v cyto, automated sys | Pathology | 0.58 | |
| G0148 | Scr c/v cyto, autosys, rescr | Pathology | 0.78 | |
| G0265 | Cryopresevation Freeze+stora | Pathology | 0.52 | |
| G0266 | Thawing + expansion froz cel | Pathology | 0.52 | |
| P2038 | Blood mucoprotein | Pathology | 0.26 | |
| P3000 | Screen pap by tech w md supv | Pathology | 0.54 | |
| P9612 | Catheterize for urine spec | Pathology | 0.11 | |
| P9615 | Urine specimen collect mult | Pathology | 0.11 | |
| Q0111 | Wet mounts/ w preparations | Pathology | 0.22 | |

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| CPT/ HCPCS Code | CPT/HCPCS Code Description | Conversion Factor/GAAF Category | Total RVUs | Charge Method-ology |
|---|---|---|---|---|
| Q0112 | Potassium hydroxide preps | Pathology | 0.22 | |
| Q0113 | Pinworm examinations | Pathology | 0.28 | |
| Q0114 | Fern test | Pathology | 0.37 | |
| Q0115 | Post-coital mucous exam | Pathology | 0.51 | |

Charge Methodology:
Misc: RVUs obtained using the methodology for unlisted procedures.
No entry: RVUs based on Medicare Clinical Diagnostic Laboratory Fee Schedule.
All other entries: See Supplementary Table 1, Reasonable Charges Data Sources - V2.0.

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## TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Category |
|---|---|---|---|---|---|
| A4206 | | 1 CC sterile syringe&needle | | $0.61 | Non-Drug |
| A4207 | | 2 CC sterile syringe&needle | | $0.70 | Non-Drug |
| A4208 | | 3 CC sterile syringe&needle | | $0.61 | Non-Drug |
| A4209 | | 5+ CC sterile syringe&needle | | $0.61 | Non-Drug |
| A4210 | | Nonneedle injection device | | $1,900.89 | Non-Drug |
| A4211 | | Supp for self-adm injections | | $0.84 | Non-Drug |
| A4212 | | Non coring needle or stylet | | $17.52 | Non-Drug |
| A4213 | | 20+ CC syringe only | | $1.84 | Non-Drug |
| A4214 | | 30 CC sterile water/saline | | $2.50 | Non-Drug |
| A4215 | | Sterile needle | | $0.35 | Non-Drug |
| A4220 | | Infusion pump refill kit | | $30.87 | Non-Drug |
| A4221 | | Maint drug infus cath per wk | | $35.84 | Non-Drug |
| A4222 | | Drug infusion pump supplies | | $72.92 | Non-Drug |
| A4230 | | Infus insulin pump non needl | | $21.67 | Non-Drug |
| A4231 | | Infusion insulin pump needle | | $9.54 | Non-Drug |
| A4232 | | Syringe w/needle insulin 3cc | | $7.35 | Non-Drug |
| A4244 | | Alcohol or peroxide per pint | | $1.84 | Non-Drug |
| A4245 | | Alcohol wipes per box | | $5.66 | Non-Drug |
| A4246 | | Betadine/phisohex solution | | $6.30 | Non-Drug |
| A4247 | | Betadine/iodine swabs/wipes | | $9.49 | Non-Drug |
| A4250 | | Urine reagent strips/tablets | | $37.92 | Non-Drug |
| A4253 | NU | Blood glucose/reagent strips | | $59.60 | Non-Drug |
| A4253 | | Blood glucose/reagent strips | | $65.12 | Non-Drug |
| A4254 | NU | Battery for glucose monitor | | $12.95 | Non-Drug |
| A4254 | RR | Battery for glucose monitor | | $1.91 | Non-Drug |
| A4254 | UE | Battery for glucose monitor | | $10.61 | Non-Drug |
| A4254 | | Battery for glucose monitor | | $13.69 | Non-Drug |
| A4255 | | Glucose monitor platforms | | $9.43 | Non-Drug |
| A4256 | | Calibrator solution/chips | | $17.12 | Non-Drug |
| A4257 | | Replace Lensshield Cartridge | | $19.18 | Non-Drug |
| A4258 | | Lancet device each | | $27.49 | Non-Drug |
| A4259 | | Lancets per box | | $19.16 | Non-Drug |
| A4260 | | Levonorgestrel implant | | $815.75 | Non-Drug |
| A4261 | | Cervical cap contraceptive | | $45.36 | Non-Drug |
| A4262 | | Temporary tear duct plug | | $1.21 | Non-Drug |
| A4263 | | Permanent tear duct plug | | $86.88 | Non-Drug |
| A4265 | | Paraffin | | $4.91 | Non-Drug |
| A4267 | | Male condom | | $0.61 | Non-Drug |
| A4269 | | Spermicide | | $1.84 | Non-Drug |
| A4270 | | Disposable endoscope sheath | | $32.95 | Non-Drug |
| A4280 | | Brst prsths adhsv attchmnt | | $8.66 | Non-Drug |
| A4284 | | Replcmnt breast pump shield | | $38.60 | Non-Drug |
| A4290 | | Sacral nerve stim test lead | | $218.58 | Non-Drug |
| A4300 | | Cath impl vasc access portal | | $17.00 | Non-Drug |
| A4301 | | Implantable access syst perc | | $74.87 | Non-Drug |
| A4305 | | Drug delivery system >=50 ML | | $28.40 | Non-Drug |
| A4306 | | Drug delivery system <=5 ML | | $38.60 | Non-Drug |
| A4310 | | Insert tray w/o bag/cath | | $11.28 | Non-Drug |
| A4311 | | Catheter w/o bag 2-way latex | | $22.46 | Non-Drug |
| A4312 | | Cath w/o bag 2-way silicone | | $27.48 | Non-Drug |
| A4313 | | Catheter w/bag 3-way | | $28.23 | Non-Drug |
| A4314 | | Cath w/drainage 2-way latex | | $38.86 | Non-Drug |
| A4315 | | Cath w/drainage 2-way silcne | | $40.58 | Non-Drug |
| A4316 | | Cath w/drainage 3-way | | $43.74 | Non-Drug |
| A4319 | | Sterile H2O irrigation solut | | $9.92 | Non-Drug |
| A4320 | | Irrigation tray | | $7.77 | Non-Drug |
| A4321 | | Cath therapeutic irrig agent | | $2.51 | Non-Drug |
| A4322 | | Irrigation syringe | | $4.40 | Non-Drug |
| A4323 | | Saline irrigation solution | | $12.95 | Non-Drug |
| A4324 | | Male ext cath w/adh coating | | $5.43 | Non-Drug |
| A4325 | | Male ext cath w/adh strip | | $5.03 | Non-Drug |
| A4326 | | Male external catheter | | $16.10 | Non-Drug |
| A4327 | | Fem urinary collect dev cup | | $69.19 | Non-Drug |
| A4328 | | Fem urinary collect pouch | | $15.57 | Non-Drug |
| A4330 | | Stool collection pouch | | $10.44 | Non-Drug |
| A4331 | | Extension drainage tubing | | $4.61 | Non-Drug |
| A4332 | | Lubricant for cath insertion | | $0.17 | Non-Drug |
| A4333 | | Urinary cath anchor device | | $5.46 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

### TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| A4334 | | Urinary cath leg strap | | $8.41 | Non-Drug |
| A4335 | | Incontinence supply | | $1.53 | Non-Drug |
| A4338 | | Indwelling catheter latex | | $18.41 | Non-Drug |
| A4340 | | Indwelling catheter special | | $48.99 | Non-Drug |
| A4344 | | Cath indw foley 2 way silicn | | $24.31 | Non-Drug |
| A4346 | | Cath indw foley 3 way | | $29.91 | Non-Drug |
| A4347 | | Male external catheter | | $31.10 | Non-Drug |
| A4348 | | Male ext cath extended wear | | $42.84 | Non-Drug |
| A4351 | | Straight tip urine catheter | | $2.59 | Non-Drug |
| A4352 | | Coude tip urinary catheter | | $9.37 | Non-Drug |
| A4353 | | Intermittent urinary cath | | $10.22 | Non-Drug |
| A4354 | | Cath insertion tray w/bag | | $17.69 | Non-Drug |
| A4355 | | Bladder irrigation tubing | | $13.15 | Non-Drug |
| A4356 | | Ext ureth clmp or compr dvc | | $70.78 | Non-Drug |
| A4357 | | Bedside drainage bag | | $14.39 | Non-Drug |
| A4358 | | Urinary leg or abdomen bag | | $9.68 | Non-Drug |
| A4359 | | Urinary suspensory w/o leg b | | $47.24 | Non-Drug |
| A4361 | | Ostomy face plate | | $28.00 | Non-Drug |
| A4362 | | Solid skin barrier | | $5.02 | Non-Drug |
| A4364 | | Adhesive, liquid or equal | | $6.25 | Non-Drug |
| A4365 | | Adhesive remover wipes | | $16.93 | Non-Drug |
| A4367 | | Ostomy belt | | $10.74 | Non-Drug |
| A4368 | | Ostomy filter | | $0.36 | Non-Drug |
| A4369 | | Skin barrier liquid per oz | | $3.49 | Non-Drug |
| A4371 | | Skin barrier powder per oz | | $5.30 | Non-Drug |
| A4372 | | Skin barrier solid 4x4 equiv | | $6.08 | Non-Drug |
| A4373 | | Skin barrier with flange | | $9.16 | Non-Drug |
| A4375 | | Drainable plastic pch w fcpl | | $26.13 | Non-Drug |
| A4376 | | Drainable rubber pch w fcplt | | $73.84 | Non-Drug |
| A4377 | | Drainable plstic pch w/o fp | | $6.24 | Non-Drug |
| A4378 | | Drainable rubber pch w/o fp | | $47.43 | Non-Drug |
| A4379 | | Urinary plastic pouch w fcpl | | $22.74 | Non-Drug |
| A4380 | | Urinary rubber pouch w fcplt | | $57.75 | Non-Drug |
| A4381 | | Urinary plastic pouch w/o fp | | $6.71 | Non-Drug |
| A4382 | | Urinary hvy plstc pch w/o fp | | $37.80 | Non-Drug |
| A4383 | | Urinary rubber pouch w/o fp | | $43.41 | Non-Drug |
| A4384 | | Ostomy faceplt/silicone ring | | $14.26 | Non-Drug |
| A4385 | | Ost skn barrier sld ext wear | | $7.43 | Non-Drug |
| A4387 | | Ost clsd pouch w att st barr | | $4.73 | Non-Drug |
| A4388 | | Drainable pch w ex wear barr | | $6.34 | Non-Drug |
| A4389 | | Drainable pch w st wear barr | | $9.08 | Non-Drug |
| A4390 | | Drainable pch ex wear convex | | $14.25 | Non-Drug |
| A4391 | | Urinary pouch w ex wear barr | | $11.48 | Non-Drug |
| A4392 | | Urinary pouch w st wear barr | | $12.11 | Non-Drug |
| A4393 | | Urine pch w ex wear bar conv | | $14.51 | Non-Drug |
| A4394 | | Ostomy pouch liq deodorant | | $3.72 | Non-Drug |
| A4395 | | Ostomy pouch solid deodorant | | $0.07 | Non-Drug |
| A4396 | | Peristomal hernia supprt blt | | $62.69 | Non-Drug |
| A4397 | | Irrigation supply sleeve | | $6.97 | Non-Drug |
| A4398 | | Ostomy irrigation bag | | $20.84 | Non-Drug |
| A4399 | | Ostomy irrig cone/cath w brs | | $18.41 | Non-Drug |
| A4400 | | Ostomy irrigation set | | $75.86 | Non-Drug |
| A4402 | | Lubricant per ounce | | $2.28 | Non-Drug |
| A4404 | | Ostomy ring each | | $2.41 | Non-Drug |
| A4405 | | Nonpectin based ostomy paste | | $4.93 | Non-Drug |
| A4406 | | Pectin based ostomy paste | | $8.37 | Non-Drug |
| A4407 | | Ext wear ost skn barr <=4sq" | | $12.91 | Non-Drug |
| A4408 | | Ext wear ost skn barr >4sq" | | $14.66 | Non-Drug |
| A4409 | | Ost skn barr w flng <=4 sq" | | $9.08 | Non-Drug |
| A4410 | | Ost skn barr w flng >4sq" | | $13.35 | Non-Drug |
| A4413 | | 2 pc drainable ost pouch | | $8.02 | Non-Drug |
| A4414 | | Ostomy sknbarr w flng <=4sq" | | $7.18 | Non-Drug |
| A4415 | | Ostomy skn barr w flng >4sq" | | $8.75 | Non-Drug |
| A4421 | | | | | |
| A4422 | | Ost pouch absorbent material | | $0.17 | Non-Drug |
| A4450 | | Non-waterproof tape | | $0.13 | Non-Drug |
| A4452 | | Waterproof tape | | $0.50 | Non-Drug |
| A4455 | | Adhesive remover per ounce | | $2.03 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

## TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| A4462 | | Abdmnl drssng holder/binder | | $4.77 | Non-Drug |
| A4465 | | Non-elastic extremity binder | | $19.56 | Non-Drug |
| A4470 | | Gravlee jet washer | | $12.77 | Non-Drug |
| A4480 | | Vabra aspirator | | $10.12 | Non-Drug |
| A4481 | | Tracheostoma filter | | $1.08 | Non-Drug |
| A4490 | | Above knee surgical stocking | | $14.13 | Non-Drug |
| A4495 | | Thigh length surg stocking | | $14.13 | Non-Drug |
| A4500 | | Below knee surgical stocking | | $10.12 | Non-Drug |
| A4510 | | Full length surg stocking | | $25.68 | Non-Drug |
| A4521 | | Adult size diaper sm each | | $20.91 | Non-Drug |
| A4522 | | Adult size diaper med each | | $37.63 | Non-Drug |
| A4523 | | Adult size diaper lg each | | $52.96 | Non-Drug |
| A4524 | | Adult size diaper xl each | | $16.73 | Non-Drug |
| A4525 | | Adult size brief sm each | | $1.21 | Non-Drug |
| A4526 | | Adult size brief med each | | $2.48 | Non-Drug |
| A4527 | | Adult size brief lg each | | $3.11 | Non-Drug |
| A4528 | | Adult size brief xl each | | $1.84 | Non-Drug |
| A4531 | | Child size brief sm/med each | | $1.21 | Non-Drug |
| A4532 | | Child size brief lg each | | $2.48 | Non-Drug |
| A4534 | | Youth size brief each | | $1.21 | Non-Drug |
| A4535 | | Disp incont liner/shield ea | | $0.61 | Non-Drug |
| A4550 | | Surgical trays | | $63.76 | Non-Drug |
| A4554 | | Disposable underpads | | $6.30 | Non-Drug |
| A4556 | | Electrodes, pair | | $20.88 | Non-Drug |
| A4557 | | Lead wires, pair | | $33.65 | Non-Drug |
| A4558 | | Conductive paste or gel | | $11.34 | Non-Drug |
| A4561 | | Pessary rubber, any type | | $34.87 | Non-Drug |
| A4562 | | Pessary, non rubber,any type | | $87.99 | Non-Drug |
| A4565 | | Slings | | $14.81 | Non-Drug |
| A4570 | | Splint | | $37.24 | Non-Drug |
| A4575 | | Hyperbaric o2 chamber disps | | $712.76 | Non-Drug |
| A4580 | | Cast supplies (plaster) | | $29.77 | Non-Drug |
| A4590 | | Special casting material | | $84.84 | Non-Drug |
| A4595 | | TENS suppl 2 lead per month | | $44.63 | Non-Drug |
| A4608 | | Transtracheal oxygen cath | | $92.29 | Non-Drug |
| A4609 | | Trach suction cath clsed sys | | $97.54 | Non-Drug |
| A4610 | | Trach sctn cath 72h clsedsys | | $2.42 | Non-Drug |
| A4611 | NU | Heavy duty battery | | $326.81 | Non-Drug |
| A4611 | RR | Heavy duty battery | | $32.60 | Non-Drug |
| A4611 | UE | Heavy duty battery | | $243.53 | Non-Drug |
| A4611 | | Heavy duty battery | | $374.36 | Non-Drug |
| A4612 | NU | Battery cables | | $129.22 | Non-Drug |
| A4612 | RR | Battery cables | | $15.17 | Non-Drug |
| A4612 | UE | Battery cables | | $97.04 | Non-Drug |
| A4612 | | Battery cables | | $152.24 | Non-Drug |
| A4613 | NU | Battery charger | | $238.23 | Non-Drug |
| A4613 | RR | Battery charger | | $24.14 | Non-Drug |
| A4613 | UE | Battery charger | | $170.53 | Non-Drug |
| A4614 | | Hand-held PEFR meter | | $36.49 | Non-Drug |
| A4615 | | Cannula nasal | | $6.46 | Non-Drug |
| A4616 | | Tubing (oxygen) per foot | | $2.58 | Non-Drug |
| A4617 | | Mouth piece | | $33.60 | Non-Drug |
| A4618 | NU | Breathing circuits | | $13.12 | Non-Drug |
| A4618 | RR | Breathing circuits | | $1.43 | Non-Drug |
| A4618 | UE | Breathing circuits | | $9.74 | Non-Drug |
| A4618 | | Breathing circuits | | $16.16 | Non-Drug |
| A4619 | | Face tent | | $4.26 | Non-Drug |
| A4620 | | Variable concentration mask | | $11.63 | Non-Drug |
| A4621 | | Tracheotomy mask or collar | | $4.89 | Non-Drug |
| A4622 | | Tracheostomy or larngectomy | | $89.04 | Non-Drug |
| A4623 | | Tracheostomy inner cannula | | $9.56 | Non-Drug |
| A4624 | NU | Tracheal suction tube | | $7.32 | Non-Drug |
| A4624 | | Tracheal suction tube | | $8.07 | Non-Drug |
| A4625 | | Trach care kit for new trach | | $10.12 | Non-Drug |
| A4626 | | Tracheostomy cleaning brush | | $4.62 | Non-Drug |
| A4627 | | Spacer bag/reservoir | | $33.94 | Non-Drug |
| A4628 | NU | Oropharyngeal suction cath | | $5.43 | Non-Drug |
| A4628 | | Oropharyngeal suction cath | | $1.21 | Non-Drug |

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## TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| A4629 | | Tracheostomy care kit | | $6.74 | Non-Drug |
| A4630 | NU | Repl bat t.e.n.s. own by pt | | $12.48 | Non-Drug |
| A4630 | | Repl bat t.e.n.s. own by pt | | $11.45 | Non-Drug |
| A4631 | NU | Wheelchair battery | | $165.12 | Non-Drug |
| A4631 | RR | Wheelchair battery | | $18.27 | Non-Drug |
| A4631 | UE | Wheelchair battery | | $120.98 | Non-Drug |
| A4631 | | Wheelchair battery | | $193.72 | Non-Drug |
| A4635 | NU | Underarm crutch pad | | $10.87 | Non-Drug |
| A4635 | RR | Underarm crutch pad | | $1.97 | Non-Drug |
| A4635 | UE | Underarm crutch pad | | $8.40 | Non-Drug |
| A4635 | | Underarm crutch pad | | $10.32 | Non-Drug |
| A4636 | NU | Handgrip for cane etc | | $9.57 | Non-Drug |
| A4636 | RR | Handgrip for cane etc | | $1.23 | Non-Drug |
| A4636 | UE | Handgrip for cane etc | | $7.95 | Non-Drug |
| A4636 | | Handgrip for cane etc | | $9.76 | Non-Drug |
| A4637 | NU | Repl tip cane/crutch/walker | | $6.08 | Non-Drug |
| A4637 | RR | Repl tip cane/crutch/walker | | $0.86 | Non-Drug |
| A4637 | UE | Repl tip cane/crutch/walker | | $4.60 | Non-Drug |
| A4637 | | Repl tip cane/crutch/walker | | $6.76 | Non-Drug |
| A4640 | NU | Alternating pressure pad | | $101.06 | Non-Drug |
| A4640 | RR | Alternating pressure pad | | $12.77 | Non-Drug |
| A4640 | UE | Alternating pressure pad | | $69.75 | Non-Drug |
| A4640 | | Alternating pressure pad | | $97.38 | Non-Drug |
| A4641 | | Diagnostic imaging agent | | $74.79 | Non-Drug |
| A4642 | | Satumomab pendetide per dose | | $5.02 | Non-Drug |
| A4643 | | High dose contrast MRI | | $189.61 | Non-Drug |
| A4644 | | Contrast 100-199 MGs iodine | | $1.92 | Non-Drug |
| A4645 | | Contrast 200-299 MGs iodine | | $2.46 | Non-Drug |
| A4646 | | Contrast 300-399 MGs iodine | | $3.15 | Non-Drug |
| A4647 | | Supp- paramagnetic contr mat | | $188.73 | Non-Drug |
| A4649 | | | | | |
| A4651 | | Calibrated microcap tube | | $2.86 | Non-Drug |
| A4652 | | Microcapillary tube sealant | | $4.29 | Non-Drug |
| A4656 | | Needle any size | | $7.14 | Non-Drug |
| A4660 | | Sphyg/bp app w cuff and stet | | $36.42 | Non-Drug |
| A4663 | | Dialysis blood pressure cuff | | $46.26 | Non-Drug |
| A4670 | | Automatic bp monitor, dial | | $112.14 | Non-Drug |
| A4680 | | Activated carbon filter, ea | | $80.42 | Non-Drug |
| A4690 | | Dialyzer, each | | $1,176.93 | Non-Drug |
| A4707 | | Bicarbonate conc pow per pac | | $5.71 | Non-Drug |
| A4709 | | Acid conc sol per gallon | | $14.29 | Non-Drug |
| A4712 | | Sterile water inj per 10 ml | | $6.47 | Non-Drug |
| A4719 | | "Y set" tubing | | $14.29 | Non-Drug |
| A4721 | | Dialysat sol fld vol > 999cc | | $28.57 | Non-Drug |
| A4722 | | Dialys sol fld vol > 1999cc | | $42.86 | Non-Drug |
| A4723 | | Dialys sol fld vol > 2999cc | | $38.57 | Non-Drug |
| A4725 | | Dialys sol fld vol > 4999cc | | $41.43 | Non-Drug |
| A4726 | | Dialys sol fld vol > 5999cc | | $48.57 | Non-Drug |
| A4730 | | Fistula cannulation set, ea | | $2.86 | Non-Drug |
| A4740 | | Shunt accessory | | $1.43 | Non-Drug |
| A4750 | | Art or venous blood tubing | | $17.15 | Non-Drug |
| A4755 | | Comb art/venous blood tubing | | $28.00 | Non-Drug |
| A4765 | | Dialysate conc pow per pack | | $11.43 | Non-Drug |
| A4766 | | Dialysate conc sol add 10 ml | | $5.71 | Non-Drug |
| A4770 | | Blood collection tube/vacuum | | $27.78 | Non-Drug |
| A4772 | | Blood glucose test strips | | $36.82 | Non-Drug |
| A4773 | | Occult blood test strips | | $27.65 | Non-Drug |
| A4802 | | Protamine sulfate per 50 mg | | $8.82 | Non-Drug |
| A4860 | | Disposable catheter tips | | $6.78 | Non-Drug |
| A4890 | | Repair/maint cont hemo equip | | $150.00 | Non-Drug |
| A4911 | | Drain bag/bottle | | $17.14 | Non-Drug |
| A4913 | | | | | |
| A4918 | | Venous pressure clamp | | $1.43 | Non-Drug |
| A4927 | | Non-sterile gloves | | $6.62 | Non-Drug |
| A4928 | | Surgical mask | | $0.34 | Non-Drug |
| A4929 | | Tourniquet for dialysis, ea | | $0.26 | Non-Drug |
| A5051 | | Pouch clsd w barr attached | | $3.11 | Non-Drug |
| A5052 | | Clsd ostomy pouch w/o barr | | $4.39 | Non-Drug |

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### TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| A5053 | | Clsd ostomy pouch faceplate | | $2.49 | Non-Drug |
| A5054 | | Clsd ostomy pouch w/flange | | $1.84 | Non-Drug |
| A5055 | | Stoma cap | | $2.05 | Non-Drug |
| A5061 | | Pouch drainable w barrier at | | $5.03 | Non-Drug |
| A5062 | | Drnble ostomy pouch w/o barr | | $3.19 | Non-Drug |
| A5063 | | Drain ostomy pouch w/flange | | $3.11 | Non-Drug |
| A5071 | | Urinary pouch w/barrier | | $10.12 | Non-Drug |
| A5072 | | Urinary pouch w/o barrier | | $5.11 | Non-Drug |
| A5073 | | Urinary pouch on barr w/flng | | $6.94 | Non-Drug |
| A5081 | | Continent stoma plug | | $4.78 | Non-Drug |
| A5082 | | Continent stoma catheter | | $17.83 | Non-Drug |
| A5093 | | Ostomy accessory convex inse | | $2.80 | Non-Drug |
| A5102 | | Bedside drain btl w/wo tube | | $34.60 | Non-Drug |
| A5105 | | Urinary suspensory | | $63.13 | Non-Drug |
| A5112 | | Urinary leg bag | | $53.50 | Non-Drug |
| A5113 | | Latex leg strap | | $6.84 | Non-Drug |
| A5114 | | Foam/fabric leg strap | | $13.20 | Non-Drug |
| A5119 | | Skin barrier wipes box pr 50 | | $16.19 | Non-Drug |
| A5121 | | Solid skin barrier 6x6 | | $10.90 | Non-Drug |
| A5122 | | Solid skin barrier 8x8 | | $19.33 | Non-Drug |
| A5126 | | Disk/foam pad +or- adhesive | | $1.87 | Non-Drug |
| A5131 | | Appliance cleaner | | $24.06 | Non-Drug |
| A5200 | | Percutaneous catheter anchor | | $16.90 | Non-Drug |
| A5500 | | Diab shoe for density insert | | $95.12 | Non-Drug |
| A5501 | | Diabetic custom molded shoe | | $287.15 | Non-Drug |
| A5503 | | Diabetic shoe w/roller/rockr | | $51.13 | Non-Drug |
| A5504 | | Diabetic shoe with wedge | | $43.41 | Non-Drug |
| A5505 | | Diab shoe w/metatarsal bar | | $49.00 | Non-Drug |
| A5506 | | Diabetic shoe w/off set heel | | $43.05 | Non-Drug |
| A5507 | | Modification diabetic shoe | | $90.61 | Non-Drug |
| A5508 | | Diabetic deluxe shoe | | $43.23 | Non-Drug |
| A5509 | | Direct heat form shoe insert | | $45.18 | Non-Drug |
| A5510 | | Compression form shoe insert | | $42.67 | Non-Drug |
| A5511 | | Custom fab molded shoe inser | | $46.43 | Non-Drug |
| A6000 | | Wound warming wound cover | | $32.39 | Non-Drug |
| A6010 | | Collagen based wound filler | | $47.75 | Non-Drug |
| A6011 | | Collagen gel/paste wound fil | | $3.28 | Non-Drug |
| A6021 | | Collagen dressing <=16 sq in | | $32.16 | Non-Drug |
| A6022 | | Collagen drsg>6<=48 sq in | | $32.16 | Non-Drug |
| A6023 | | Collagen dressing >48 sq in | | $297.82 | Non-Drug |
| A6024 | | Collagen dsg wound filler | | $9.03 | Non-Drug |
| A6025 | | Silicone gel sheet, each | | $52.88 | Non-Drug |
| A6154 | | Wound pouch each | | $21.73 | Non-Drug |
| A6196 | | Alginate dressing <=16 sq in | | $10.74 | Non-Drug |
| A6197 | | Alginate drsg >16 <=48 sq in | | $24.97 | Non-Drug |
| A6199 | | Alginate drsg wound filler | | $7.71 | Non-Drug |
| A6200 | | Compos drsg <=16 no border | | $14.08 | Non-Drug |
| A6201 | | Compos drsg >16<=48 no bdr | | $31.81 | Non-Drug |
| A6202 | | Compos drsg >48 no border | | $53.91 | Non-Drug |
| A6203 | | Composite drsg <= 16 sq in | | $4.86 | Non-Drug |
| A6204 | | Composite drsg >16<=48 sq in | | $9.09 | Non-Drug |
| A6205 | | Composite drsg > 48 sq in | | $12.80 | Non-Drug |
| A6206 | | Contact layer <= 16 sq in | | $8.85 | Non-Drug |
| A6207 | | Contact layer >16<= 48 sq in | | $10.72 | Non-Drug |
| A6208 | | Contact layer > 48 sq in | | $6.59 | Non-Drug |
| A6209 | | Foam drsg <=16 sq in w/o bdr | | $10.93 | Non-Drug |
| A6210 | | Foam drg >16<=48 sq in w/o b | | $30.43 | Non-Drug |
| A6211 | | Foam drg > 48 sq in w/o brdr | | $45.26 | Non-Drug |
| A6212 | | Foam drg <=16 sq in w/border | | $14.39 | Non-Drug |
| A6213 | | Foam drg >16<=48 sq in w/bdr | | $46.08 | Non-Drug |
| A6214 | | Foam drg > 48 sq in w/border | | $15.32 | Non-Drug |
| A6216 | | Non-sterile gauze<=16 sq in | | $0.07 | Non-Drug |
| A6217 | | Non-sterile gauze>16<=48 sq | | $0.61 | Non-Drug |
| A6218 | | Non-sterile gauze > 48 sq in | | $0.61 | Non-Drug |
| A6219 | | Gauze <= 16 sq in w/border | | $1.33 | Non-Drug |
| A6220 | | Gauze >16 <=48 sq in w/bordr | | $3.72 | Non-Drug |
| A6222 | | Gauze <=16 in no w/sal w/o b | | $3.06 | Non-Drug |
| A6223 | | Gauze >16<=48 no w/sal w/o b | | $3.49 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| A6224 | | Gauze > 48 in no w/sal w/o b | | $5.24 | Non-Drug |
| A6228 | | Gauze <= 16 sq in water/sal | | $3.75 | Non-Drug |
| A6229 | | Gauze >16<=48 sq in watr/sal | | $5.24 | Non-Drug |
| A6230 | | Gauze > 48 sq in water/salne | | $6.30 | Non-Drug |
| A6231 | | Hydrogel dsg<=16 sq in | | $6.81 | Non-Drug |
| A6232 | | Hydrogel dsg>16<=48 sq in | | $10.05 | Non-Drug |
| A6233 | | Hydrogel dressing >48 sq in | | $29.28 | Non-Drug |
| A6234 | | Hydrocolld drg <=16 w/o bdr | | $9.55 | Non-Drug |
| A6235 | | Hydrocolld drg >16<=48 w/o b | | $25.56 | Non-Drug |
| A6236 | | Hydrocolld drg > 48 in w/o b | | $41.93 | Non-Drug |
| A6237 | | Hydrocolld drg <=16 in w/bdr | | $11.58 | Non-Drug |
| A6238 | | Hydrocolld drg >16<=48 w/bdr | | $34.93 | Non-Drug |
| A6239 | | Hydrocolld drg > 48 in w/bdr | | $18.14 | Non-Drug |
| A6240 | | Hydrocolld drg filler paste | | $18.38 | Non-Drug |
| A6241 | | Hydrocolloid drg filler dry | | $3.71 | Non-Drug |
| A6242 | | Hydrogel drg <=16 in w/o bdr | | $8.86 | Non-Drug |
| A6243 | | Hydrogel drg >16<=48 w/o bdr | | $18.49 | Non-Drug |
| A6244 | | Hydrogel drg >48 in w/o bdr | | $60.81 | Non-Drug |
| A6245 | | Hydrogel drg <= 16 in w/bdr | | $10.62 | Non-Drug |
| A6246 | | Hydrogel drg >16<=48 in w/b | | $14.74 | Non-Drug |
| A6247 | | Hydrogel drg > 48 sq in w/b | | $36.49 | Non-Drug |
| A6248 | | Hydrogel drsg gel filler | | $24.65 | Non-Drug |
| A6250 | | Skin seal protect moisturizr | | $2.47 | Non-Drug |
| A6251 | | Absorpt drg <=16 sq in w/o b | | $2.85 | Non-Drug |
| A6252 | | Absorpt drg >16 <=48 w/o bdr | | $4.71 | Non-Drug |
| A6253 | | Absorpt drg > 48 sq in w/o b | | $9.25 | Non-Drug |
| A6254 | | Absorpt drg <=16 sq in w/bdr | | $1.71 | Non-Drug |
| A6255 | | Absorpt drg >16<=48 in w/bdr | | $4.38 | Non-Drug |
| A6257 | | Transparent film <= 16 sq in | | $2.18 | Non-Drug |
| A6258 | | Transparent film >16<=48 in | | $6.25 | Non-Drug |
| A6259 | | Transparent film > 48 sq in | | $16.34 | Non-Drug |
| A6260 | | Wound cleanser any type/size | | $1.84 | Non-Drug |
| A6261 | | Wound filler gel/paste /oz | | $8.21 | Non-Drug |
| A6262 | | Wound filler dry form / gram | | $1.84 | Non-Drug |
| A6266 | | Impreg gauze no h20/sal/yard | | $2.75 | Non-Drug |
| A6402 | | Sterile gauze <= 16 sq in | | $0.17 | Non-Drug |
| A6403 | | Sterile gauze>16 <= 48 sq in | | $0.60 | Non-Drug |
| A6404 | | Sterile gauze > 48 sq in | | $1.21 | Non-Drug |
| A6410 | | Sterile eye pad | | $0.55 | Non-Drug |
| A6411 | | Non-sterile eye pad | | $0.61 | Non-Drug |
| A6412 | | Occlusive eye patch | | $0.61 | Non-Drug |
| A6440 | | Zinc paste bdg >=3<5"w /roll | | $17.03 | Non-Drug |
| A7000 | NU | Disposable canister for pump | | $17.17 | Non-Drug |
| A7000 | | Disposable canister for pump | | $20.44 | Non-Drug |
| A7001 | NU | Nondisposable pump canister | | $50.72 | Non-Drug |
| A7001 | | Nondisposable pump canister | | $60.59 | Non-Drug |
| A7002 | NU | Tubing used w suction pump | | $9.03 | Non-Drug |
| A7002 | | Tubing used w suction pump | | $10.32 | Non-Drug |
| A7003 | NU | Nebulizer administration set | | $7.48 | Non-Drug |
| A7003 | | Nebulizer administration set | | $8.07 | Non-Drug |
| A7004 | NU | Disposable nebulizer sml vol | | $5.14 | Non-Drug |
| A7004 | | Disposable nebulizer sml vol | | $6.76 | Non-Drug |
| A7005 | NU | Nondisposable nebulizer set | | $47.51 | Non-Drug |
| A7005 | | Nondisposable nebulizer set | | $57.24 | Non-Drug |
| A7006 | NU | Filtered nebulizer admin set | | $17.17 | Non-Drug |
| A7006 | | Filtered nebulizer admin set | | $19.88 | Non-Drug |
| A7007 | NU | Lg vol nebulizer disposable | | $10.14 | Non-Drug |
| A7007 | | Lg vol nebulizer disposable | | $11.45 | Non-Drug |
| A7008 | NU | Disposable nebulizer prefill | | $19.25 | Non-Drug |
| A7008 | | Disposable nebulizer prefill | | $22.69 | Non-Drug |
| A7009 | NU | Nebulizer reservoir bottle | | $64.97 | Non-Drug |
| A7009 | | Nebulizer reservoir bottle | | $79.32 | Non-Drug |
| A7010 | NU | Disposable corrugated tubing | | $37.19 | Non-Drug |
| A7010 | | Disposable corrugated tubing | | $44.06 | Non-Drug |
| A7011 | | Nondispos corrugated tubing | | $63.53 | Non-Drug |
| A7012 | NU | Nebulizer water collec devic | | $8.96 | Non-Drug |
| A7012 | | Nebulizer water collec devic | | $10.32 | Non-Drug |
| A7013 | NU | Disposable compressor filter | | $2.37 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

## TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| A7013 | | Disposable compressor filter | | $2.25 | Non-Drug |
| A7014 | NU | Compressor nondispos filter | | $9.97 | Non-Drug |
| A7014 | | Compressor nondispos filter | | $11.45 | Non-Drug |
| A7015 | NU | Aerosol mask used w nebulize | | $5.37 | Non-Drug |
| A7015 | | Aerosol mask used w nebulize | | $6.76 | Non-Drug |
| A7016 | NU | Nebulizer dome & mouthpiece | | $13.91 | Non-Drug |
| A7016 | | Nebulizer dome & mouthpiece | | $15.94 | Non-Drug |
| A7017 | NU | Nebulizer not used w oxygen | | $220.98 | Non-Drug |
| A7017 | RR | Nebulizer not used w oxygen | | $22.67 | Non-Drug |
| A7017 | UE | Nebulizer not used w oxygen | | $164.14 | Non-Drug |
| A7018 | | Water distilled w/nebulizer | | $1.08 | Non-Drug |
| A7019 | | Saline solution dispenser | | $0.48 | Non-Drug |
| A7020 | | Sterile H2O or NSS w iqv neb | | $7.49 | Non-Drug |
| A7042 | | Implanted pleural catheter | | $319.47 | Non-Drug |
| A7043 | | Vacuum drainagebottle/tubing | | $45.02 | Non-Drug |
| A7501 | | Tracheostoma valve w diaphra | | $164.00 | Non-Drug |
| A7502 | | Replacement diaphragm/fplate | | $77.49 | Non-Drug |
| A7503 | | HMES filter holder or cap | | $16.95 | Non-Drug |
| A7504 | | Tracheostoma HMES filter | | $0.94 | Non-Drug |
| A7505 | | HMES or trach valve housing | | $6.81 | Non-Drug |
| A7506 | | HMES/trachvalve adhesivedisk | | $0.46 | Non-Drug |
| A7507 | | Integrated filter & holder | | $3.59 | Non-Drug |
| A7508 | | Housing & Integrated Adhesiv | | $4.15 | Non-Drug |
| A7509 | | Heat & moisture exchange sys | | $2.00 | Non-Drug |
| A9150 | | | | | |
| A9270 | | | | | |
| A9300 | | | | | |
| A9500 | | Technetium TC 99m sestamibi | | $175.77 | Non-Drug |
| A9502 | | Technetium TC99M tetrofosmin | | $191.41 | Non-Drug |
| A9503 | | Technetium TC 99m medronate | | $47.06 | Non-Drug |
| A9504 | | Technetium tc 99m apcitide | | $77.90 | Non-Drug |
| A9505 | | Thallous chloride TL 201/mci | | $79.83 | Non-Drug |
| A9507 | | Indium/111 capromab pendetid | a | $2,699.79 | Non-Drug |
| A9508 | | Iobenguane sulfate I-131 | a | $38.51 | Non-Drug |
| A9510 | | Technetium TC99m Disofenin | | $173.67 | Non-Drug |
| A9600 | | Strontium-89 chloride | a | $1,283.32 | Non-Drug |
| A9605 | | Samarium sm153 lexidronamm | a | $609.49 | Non-Drug |
| A9700 | | Echocardiography Contrast | a | $261.28 | Non-Drug |
| A9900 | | Supply/accessory/service | | $20.90 | Non-Drug |
| A9901 | | Delivery/set up/dispensing | | $15.28 | Non-Drug |
| B4034 | | Enter feed supkit syr by day | | $9.37 | Non-Drug |
| B4035 | | Enteral feed supp pump per d | | $17.87 | Non-Drug |
| B4036 | | Enteral feed sup kit grav by | | $12.24 | Non-Drug |
| B4081 | | Enteral ng tubing w/ stylet | | $35.90 | Non-Drug |
| B4082 | | Enteral ng tubing w/o stylet | | $25.46 | Non-Drug |
| B4083 | | Enteral stomach tube levine | | $3.75 | Non-Drug |
| B4086 | | Gastrostomy/jejunostomy tube | | $62.49 | Non-Drug |
| B4150 | | Enteral formulae category i | | $1.02 | Non-Drug |
| B4151 | | Enteral formulae cat1natural | | $2.39 | Non-Drug |
| B4152 | | Enteral formulae category ii | | $0.85 | Non-Drug |
| B4153 | | Enteral formulae categoryIII | | $2.91 | Non-Drug |
| B4154 | | Enteral formulae category IV | | $1.86 | Non-Drug |
| B4155 | | Enteral formulae category v | | $1.45 | Non-Drug |
| B4156 | | Enteral formulae category vi | | $2.06 | Non-Drug |
| B4164 | | Parenteral 50% dextrose solu | | $26.19 | Non-Drug |
| B4168 | | Parenteral sol amino acid 3. | | $40.39 | Non-Drug |
| B4172 | | Parenteral sol amino acid 5. | | $35.06 | Non-Drug |
| B4176 | | Parenteral sol amino acid 7- | | $82.83 | Non-Drug |
| B4178 | | Parenteral sol amino acid > | | $100.43 | Non-Drug |
| B4180 | | Parenteral sol carb > 50% | | $39.67 | Non-Drug |
| B4184 | | Parenteral sol lipids 10% | | $141.36 | Non-Drug |
| B4186 | | Parenteral sol lipids 20% | | $190.13 | Non-Drug |
| B4189 | | Parenteral sol amino acid & | | $320.57 | Non-Drug |
| B4193 | | Parenteral sol 52-73 gm prot | | $415.70 | Non-Drug |
| B4197 | | Parenteral sol 74-100 gm pro | | $507.16 | Non-Drug |
| B4199 | | Parenteral sol > 100gm prote | | $580.25 | Non-Drug |
| B4216 | | Parenteral nutrition additiv | | $11.48 | Non-Drug |
| B4220 | | Parenteral supply kit premix | | $11.89 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

## TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| B4222 | | Parenteral supply kit homemi | | $14.66 | Non-Drug |
| B4224 | | Parenteral administration ki | | $40.86 | Non-Drug |
| B5000 | | Parenteral sol renal-amirosy | | $17.66 | Non-Drug |
| B5100 | | Parenteral sol hepatic-fream | | $6.90 | Non-Drug |
| B5200 | | Parenteral sol stres-brnch c | | $523.73 | Non-Drug |
| B9000 | NU | Enter infusion pump w/o alrm | | $2,311.66 | Non-Drug |
| B9000 | RR | Enter infusion pump w/o alrm | | $207.92 | Non-Drug |
| B9000 | UE | Enter infusion pump w/o alrm | | $1,732.50 | Non-Drug |
| B9002 | NU | Enteral infusion pump w/ ala | | $2,311.66 | Non-Drug |
| B9002 | RR | Enteral infusion pump w/ ala | | $219.42 | Non-Drug |
| B9004 | NU | Parenteral infus pump portab | | $4,616.04 | Non-Drug |
| B9004 | RR | Parenteral infus pump portab | | $726.60 | Non-Drug |
| B9004 | UE | Parenteral infus pump portab | | $3,460.79 | Non-Drug |
| B9006 | NU | Parenteral infus pump statio | | $4,616.04 | Non-Drug |
| B9006 | RR | Parenteral infus pump statio | | $726.60 | Non-Drug |
| B9006 | UE | Parenteral infus pump statio | | $3,460.79 | Non-Drug |
| B9998 | | | | | |
| B9999 | | | | | |
| E0100 | NU | Cane adjust/fixed with tip | | $33.60 | Non-Drug |
| E0100 | RR | Cane adjust/fixed with tip | | $12.04 | Non-Drug |
| E0100 | UE | Cane adjust/fixed with tip | | $27.52 | Non-Drug |
| E0105 | NU | Cane adjust/fixed quad/3 pro | | $76.96 | Non-Drug |
| E0105 | RR | Cane adjust/fixed quad/3 pro | | $16.20 | Non-Drug |
| E0105 | UE | Cane adjust/fixed quad/3 pro | | $57.88 | Non-Drug |
| E0110 | NU | Crutch forearm pair | | $125.26 | Non-Drug |
| E0110 | RR | Crutch forearm pair | | $26.36 | Non-Drug |
| E0110 | UE | Crutch forearm pair | | $92.34 | Non-Drug |
| E0111 | NU | Crutch forearm each | | $84.00 | Non-Drug |
| E0111 | RR | Crutch forearm each | | $15.59 | Non-Drug |
| E0111 | UE | Crutch forearm each | | $63.38 | Non-Drug |
| E0112 | NU | Crutch underarm pair wood | | $56.43 | Non-Drug |
| E0112 | RR | Crutch underarm pair wood | | $17.73 | Non-Drug |
| E0112 | UE | Crutch underarm pair wood | | $43.81 | Non-Drug |
| E0113 | NU | Crutch underarm each wood | | $33.69 | Non-Drug |
| E0113 | RR | Crutch underarm each wood | | $10.91 | Non-Drug |
| E0113 | UE | Crutch underarm each wood | | $26.18 | Non-Drug |
| E0114 | NU | Crutch underarm pair no wood | | $73.70 | Non-Drug |
| E0114 | RR | Crutch underarm pair no wood | | $15.79 | Non-Drug |
| E0114 | UE | Crutch underarm pair no wood | | $54.41 | Non-Drug |
| E0116 | NU | Crutch underarm each no wood | | $43.11 | Non-Drug |
| E0116 | RR | Crutch underarm each no wood | | $11.27 | Non-Drug |
| E0116 | UE | Crutch underarm each no wood | | $33.33 | Non-Drug |
| E0130 | NU | Walker rigid adjust/fixed ht | | $112.77 | Non-Drug |
| E0130 | RR | Walker rigid adjust/fixed ht | | $27.55 | Non-Drug |
| E0130 | UE | Walker rigid adjust/fixed ht | | $86.49 | Non-Drug |
| E0135 | NU | Walker folding adjust/fixed | | $135.85 | Non-Drug |
| E0135 | RR | Walker folding adjust/fixed | | $28.17 | Non-Drug |
| E0135 | UE | Walker folding adjust/fixed | | $102.75 | Non-Drug |
| E0141 | NU | Rigid walker wheeled wo seat | | $189.18 | Non-Drug |
| E0141 | RR | Rigid walker wheeled wo seat | | $35.44 | Non-Drug |
| E0141 | UE | Rigid walker wheeled wo seat | | $140.31 | Non-Drug |
| E0142 | NU | Walker rigid wheeled with se | | $285.32 | Non-Drug |
| E0142 | RR | Walker rigid wheeled with se | | $41.24 | Non-Drug |
| E0142 | UE | Walker rigid wheeled with se | | $215.79 | Non-Drug |
| E0143 | NU | Walker folding wheeled w/o s | | $197.56 | Non-Drug |
| E0143 | RR | Walker folding wheeled w/o s | | $34.34 | Non-Drug |
| E0143 | UE | Walker folding wheeled w/o s | | $146.27 | Non-Drug |
| E0144 | NU | Enclosed walker w rear seat | | $533.69 | Non-Drug |
| E0144 | RR | Enclosed walker w rear seat | | $48.98 | Non-Drug |
| E0144 | UE | Enclosed walker w rear seat | | $398.68 | Non-Drug |
| E0145 | NU | Walker whled seat/crutch att | | $229.74 | Non-Drug |
| E0145 | RR | Walker whled seat/crutch att | | $33.15 | Non-Drug |
| E0145 | UE | Walker whled seat/crutch att | | $184.02 | Non-Drug |
| E0146 | NU | Folding walker wheels w seat | | $293.27 | Non-Drug |
| E0146 | RR | Folding walker wheels w seat | | $30.71 | Non-Drug |
| E0146 | UE | Folding walker wheels w seat | | $234.93 | Non-Drug |
| E0147 | NU | Walker variable wheel resist | | $968.41 | Non-Drug |
| E0147 | RR | Walker variable wheel resist | | $91.15 | Non-Drug |

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### TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| E0147 | UE | Walker variable wheel resist | | $724.77 | Non-Drug |
| E0148 | NU | Heavyduty walker no wheels | | $209.13 | Non-Drug |
| E0148 | RR | Heavyduty walker no wheels | | $21.70 | Non-Drug |
| E0148 | UE | Heavyduty walker no wheels | | $155.25 | Non-Drug |
| E0149 | NU | Heavy duty wheeled walker | | $372.17 | Non-Drug |
| E0149 | RR | Heavy duty wheeled walker | | $35.38 | Non-Drug |
| E0149 | UE | Heavy duty wheeled walker | | $277.53 | Non-Drug |
| E0153 | NU | Forearm crutch platform atta | | $111.33 | Non-Drug |
| E0153 | RR | Forearm crutch platform atta | | $14.75 | Non-Drug |
| E0153 | UE | Forearm crutch platform atta | | $81.91 | Non-Drug |
| E0154 | NU | Walker platform attachment | | $113.25 | Non-Drug |
| E0154 | RR | Walker platform attachment | | $15.77 | Non-Drug |
| E0154 | UE | Walker platform attachment | | $84.52 | Non-Drug |
| E0155 | NU | Walker wheel attachment,pair | | $48.55 | Non-Drug |
| E0155 | RR | Walker wheel attachment,pair | | $9.06 | Non-Drug |
| E0155 | UE | Walker wheel attachment,pair | | $37.85 | Non-Drug |
| E0156 | NU | Walker seat attachment | | $41.24 | Non-Drug |
| E0156 | RR | Walker seat attachment | | $8.39 | Non-Drug |
| E0156 | UE | Walker seat attachment | | $31.86 | Non-Drug |
| E0157 | NU | Walker crutch attachment | | $132.60 | Non-Drug |
| E0157 | RR | Walker crutch attachment | | $16.39 | Non-Drug |
| E0157 | UE | Walker crutch attachment | | $97.89 | Non-Drug |
| E0158 | NU | Walker leg extenders set of4 | | $49.44 | Non-Drug |
| E0158 | RR | Walker leg extenders set of4 | | $8.63 | Non-Drug |
| E0158 | UE | Walker leg extenders set of4 | | $38.19 | Non-Drug |
| E0159 | NU | Brake for wheeled walker | | $29.04 | Non-Drug |
| E0159 | RR | Brake for wheeled walker | | $5.28 | Non-Drug |
| E0159 | UE | Brake for wheeled walker | | $22.67 | Non-Drug |
| E0159 | | Brake for wheeled walker | | $39.56 | Non-Drug |
| E0160 | NU | Sitz type bath or equipment | | $50.69 | Non-Drug |
| E0160 | RR | Sitz type bath or equipment | | $9.74 | Non-Drug |
| E0160 | UE | Sitz type bath or equipment | | $38.88 | Non-Drug |
| E0161 | NU | Sitz bath/equipment w/faucet | | $40.96 | Non-Drug |
| E0161 | RR | Sitz bath/equipment w/faucet | | $8.66 | Non-Drug |
| E0161 | UE | Sitz bath/equipment w/faucet | | $31.56 | Non-Drug |
| E0162 | NU | Sitz bath chair | | $240.75 | Non-Drug |
| E0162 | RR | Sitz bath chair | | $25.36 | Non-Drug |
| E0162 | UE | Sitz bath chair | | $185.30 | Non-Drug |
| E0163 | NU | Commode chair stationry fxd | | $180.71 | Non-Drug |
| E0163 | RR | Commode chair stationry fxd | | $38.39 | Non-Drug |
| E0163 | UE | Commode chair stationry fxd | | $137.91 | Non-Drug |
| E0164 | NU | Commode chair mobile fixed a | | $301.29 | Non-Drug |
| E0164 | RR | Commode chair mobile fixed a | | $41.24 | Non-Drug |
| E0164 | UE | Commode chair mobile fixed a | | $224.39 | Non-Drug |
| E0165 | NU | Commode chair stationry det | | $261.81 | Non-Drug |
| E0165 | RR | Commode chair stationry det | | $30.05 | Non-Drug |
| E0165 | UE | Commode chair stationry det | | $209.22 | Non-Drug |
| E0166 | NU | Commode chair mobile detach | | $397.70 | Non-Drug |
| E0166 | RR | Commode chair mobile detach | | $47.95 | Non-Drug |
| E0166 | UE | Commode chair mobile detach | | $317.14 | Non-Drug |
| E0167 | NU | Commode chair pail or pan | | $20.68 | Non-Drug |
| E0167 | RR | Commode chair pail or pan | | $3.60 | Non-Drug |
| E0167 | UE | Commode chair pail or pan | | $16.46 | Non-Drug |
| E0168 | NU | Heavyduty/wide commode chair | | $249.60 | Non-Drug |
| E0168 | RR | Heavyduty/wide commode chair | | $25.19 | Non-Drug |
| E0168 | UE | Heavyduty/wide commode chair | | $185.61 | Non-Drug |
| E0169 | NU | Seatlift incorp commodechair | | $515.67 | Non-Drug |
| E0169 | RR | Seatlift incorp commodechair | | $79.33 | Non-Drug |
| E0169 | UE | Seatlift incorp commodechair | | $385.42 | Non-Drug |
| E0175 | NU | Commode chair foot rest | | $105.99 | Non-Drug |
| E0175 | RR | Commode chair foot rest | | $13.01 | Non-Drug |
| E0175 | UE | Commode chair foot rest | | $76.33 | Non-Drug |
| E0176 | NU | Air pressre pad/cushion nonp | | $175.31 | Non-Drug |
| E0176 | RR | Air pressre pad/cushion nonp | | $23.74 | Non-Drug |
| E0176 | UE | Air pressre pad/cushion nonp | | $128.70 | Non-Drug |
| E0177 | NU | Water press pad/cushion nonp | | $173.67 | Non-Drug |
| E0177 | RR | Water press pad/cushion nonp | | $20.89 | Non-Drug |
| E0177 | UE | Water press pad/cushion nonp | | $128.70 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

### TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| E0178 | NU | Gel pressre pad/cushion nonp | | $199.44 | Non-Drug |
| E0178 | RR | Gel pressre pad/cushion nonp | | $24.97 | Non-Drug |
| E0178 | UE | Gel pressre pad/cushion nonp | | $147.99 | Non-Drug |
| E0179 | NU | Dry pressre pad/cushion nonp | | $20.62 | Non-Drug |
| E0179 | RR | Dry pressre pad/cushion nonp | | $3.54 | Non-Drug |
| E0179 | UE | Dry pressre pad/cushion nonp | | $16.98 | Non-Drug |
| E0180 | NU | Press pad alternating w pump | | $311.55 | Non-Drug |
| E0180 | RR | Press pad alternating w pump | | $34.54 | Non-Drug |
| E0180 | UE | Press pad alternating w pump | | $195.97 | Non-Drug |
| E0181 | NU | Press pad alternating w/ pum | | $415.63 | Non-Drug |
| E0181 | RR | Press pad alternating w/ pum | | $37.89 | Non-Drug |
| E0181 | UE | Press pad alternating w/ pum | | $331.56 | Non-Drug |
| E0182 | NU | Pressure pad alternating pum | | $428.02 | Non-Drug |
| E0182 | RR | Pressure pad alternating pum | | $40.89 | Non-Drug |
| E0182 | UE | Pressure pad alternating pum | | $352.64 | Non-Drug |
| E0184 | NU | Dry pressure mattress | | $323.84 | Non-Drug |
| E0184 | RR | Dry pressure mattress | | $38.59 | Non-Drug |
| E0184 | UE | Dry pressure mattress | | $246.89 | Non-Drug |
| E0185 | NU | Gel pressure mattress pad | | $536.08 | Non-Drug |
| E0185 | RR | Gel pressure mattress pad | | $69.89 | Non-Drug |
| E0185 | UE | Gel pressure mattress pad | | $409.95 | Non-Drug |
| E0186 | NU | Air pressure mattress | | $381.12 | Non-Drug |
| E0186 | RR | Air pressure mattress | | $32.51 | Non-Drug |
| E0186 | UE | Air pressure mattress | | $189.34 | Non-Drug |
| E0187 | NU | Water pressure mattress | | $363.81 | Non-Drug |
| E0187 | RR | Water pressure mattress | | $36.65 | Non-Drug |
| E0187 | UE | Water pressure mattress | | $309.51 | Non-Drug |
| E0188 | NU | Synthetic sheepskin pad | | $40.65 | Non-Drug |
| E0188 | RR | Synthetic sheepskin pad | | $4.49 | Non-Drug |
| E0188 | UE | Synthetic sheepskin pad | | $30.32 | Non-Drug |
| E0188 | | Synthetic sheepskin pad | | $73.96 | Non-Drug |
| E0189 | NU | Lambswool sheepskin pad | | $80.71 | Non-Drug |
| E0189 | RR | Lambswool sheepskin pad | | $8.21 | Non-Drug |
| E0189 | UE | Lambswool sheepskin pad | | $60.34 | Non-Drug |
| E0191 | NU | Protector heel or elbow | | $17.81 | Non-Drug |
| E0191 | RR | Protector heel or elbow | | $2.91 | Non-Drug |
| E0191 | UE | Protector heel or elbow | | $14.21 | Non-Drug |
| E0192 | NU | Pad wheelchr low press/posit | | $478.15 | Non-Drug |
| E0192 | RR | Pad wheelchr low press/posit | | $53.92 | Non-Drug |
| E0192 | UE | Pad wheelchr low press/posit | | $360.58 | Non-Drug |
| E0193 | RR | Powered air flotation bed | | $1,270.07 | Non-Drug |
| E0194 | NU | Air fluidized bed | | $42,822.34 | Non-Drug |
| E0194 | RR | Air fluidized bed | | $4,532.83 | Non-Drug |
| E0194 | UE | Air fluidized bed | | $32,168.79 | Non-Drug |
| E0196 | NU | Gel pressure mattress | | $533.35 | Non-Drug |
| E0196 | RR | Gel pressure mattress | | $53.07 | Non-Drug |
| E0196 | UE | Gel pressure mattress | | $400.01 | Non-Drug |
| E0197 | NU | Air pressure pad for mattres | | $369.42 | Non-Drug |
| E0197 | RR | Air pressure pad for mattres | | $47.14 | Non-Drug |
| E0197 | UE | Air pressure pad for mattres | | $323.74 | Non-Drug |
| E0198 | NU | Water pressure pad for mattr | | $369.42 | Non-Drug |
| E0198 | RR | Water pressure pad for mattr | | $36.28 | Non-Drug |
| E0198 | UE | Water pressure pad for mattr | | $278.80 | Non-Drug |
| E0199 | NU | Dry pressure pad for mattres | | $49.25 | Non-Drug |
| E0199 | RR | Dry pressure pad for mattres | | $8.12 | Non-Drug |
| E0199 | UE | Dry pressure pad for mattres | | $37.84 | Non-Drug |
| E0200 | NU | Heat lamp without stand | | $128.12 | Non-Drug |
| E0200 | RR | Heat lamp without stand | | $18.91 | Non-Drug |
| E0200 | UE | Heat lamp without stand | | $94.56 | Non-Drug |
| E0202 | RR | Phototherapy light w/ photom | | $99.85 | Non-Drug |
| E0205 | NU | Heat lamp with stand | | $322.76 | Non-Drug |
| E0205 | RR | Heat lamp with stand | | $33.99 | Non-Drug |
| E0205 | UE | Heat lamp with stand | | $240.48 | Non-Drug |
| E0210 | NU | Electric heat pad standard | | $50.09 | Non-Drug |
| E0210 | RR | Electric heat pad standard | | $7.95 | Non-Drug |
| E0210 | UE | Electric heat pad standard | | $38.46 | Non-Drug |
| E0215 | NU | Electric heat pad moist | | $113.81 | Non-Drug |
| E0215 | RR | Electric heat pad moist | | $14.13 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

### TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Category |
|---|---|---|---|---|---|
| E0215 | UE | Electric heat pad moist | | $83.79 | Non-Drug |
| E0217 | NU | Water circ heat pad w pump | | $835.57 | Non-Drug |
| E0217 | RR | Water circ heat pad w pump | | $87.42 | Non-Drug |
| E0217 | UE | Water circ heat pad w pump | | $625.04 | Non-Drug |
| E0218 | NU | Water circ cold pad w pump | | $599.16 | Non-Drug |
| E0218 | RR | Water circ cold pad w pump | | $63.93 | Non-Drug |
| E0218 | UE | Water circ cold pad w pump | | $447.29 | Non-Drug |
| E0218 | | Water circ cold pad w pump | | $452.85 | Non-Drug |
| E0220 | NU | Hot water bottle | | $15.64 | Non-Drug |
| E0220 | RR | Hot water bottle | | $2.54 | Non-Drug |
| E0220 | UE | Hot water bottle | | $12.59 | Non-Drug |
| E0221 | NU | Infrared heating pad system | | $3,577.56 | Non-Drug |
| E0221 | RR | Infrared heating pad system | | $352.06 | Non-Drug |
| E0221 | UE | Infrared heating pad system | | $2,681.60 | Non-Drug |
| E0225 | NU | Hydrocollator unit | | $652.73 | Non-Drug |
| E0225 | RR | Hydrocollator unit | | $58.65 | Non-Drug |
| E0225 | UE | Hydrocollator unit | | $487.96 | Non-Drug |
| E0230 | NU | Ice cap or collar | | $15.66 | Non-Drug |
| E0230 | RR | Ice cap or collar | | $2.71 | Non-Drug |
| E0230 | UE | Ice cap or collar | | $12.61 | Non-Drug |
| E0235 | NU | Paraffin bath unit portable | | $282.22 | Non-Drug |
| E0235 | RR | Paraffin bath unit portable | | $28.17 | Non-Drug |
| E0235 | UE | Paraffin bath unit portable | | $211.54 | Non-Drug |
| E0236 | NU | Pump for water circulating p | | $354.42 | Non-Drug |
| E0236 | RR | Pump for water circulating p | | $68.72 | Non-Drug |
| E0236 | UE | Pump for water circulating p | | $283.82 | Non-Drug |
| E0238 | NU | Heat pad non-electric moist | | $42.10 | Non-Drug |
| E0238 | RR | Heat pad non-electric moist | | $7.45 | Non-Drug |
| E0238 | UE | Heat pad non-electric moist | | $31.91 | Non-Drug |
| E0239 | NU | Hydrocollator unit portable | | $756.48 | Non-Drug |
| E0239 | RR | Hydrocollator unit portable | | $69.97 | Non-Drug |
| E0239 | UE | Hydrocollator unit portable | | $565.81 | Non-Drug |
| E0241 | | Bath tub wall rail | | $39.00 | Non-Drug |
| E0242 | | Bath tub rail floor | | $89.36 | Non-Drug |
| E0243 | | Toilet rail | | $69.28 | Non-Drug |
| E0244 | | Toilet seat raised | | $51.93 | Non-Drug |
| E0245 | | Tub stool or bench | | $88.02 | Non-Drug |
| E0246 | | Transfer tub rail attachment | | $122.81 | Non-Drug |
| E0249 | NU | Pad water circulating heat u | | $162.58 | Non-Drug |
| E0249 | RR | Pad water circulating heat u | | $19.18 | Non-Drug |
| E0249 | UE | Pad water circulating heat u | | $120.35 | Non-Drug |
| E0250 | NU | Hosp bed fixed ht w/ mattres | | $2,026.33 | Non-Drug |
| E0250 | RR | Hosp bed fixed ht w/ mattres | | $151.85 | Non-Drug |
| E0250 | UE | Hosp bed fixed ht w/ mattres | | $1,312.45 | Non-Drug |
| E0251 | NU | Hosp bed fixd ht w/o mattres | | $1,185.91 | Non-Drug |
| E0251 | RR | Hosp bed fixd ht w/o mattres | | $118.86 | Non-Drug |
| E0251 | UE | Hosp bed fixd ht w/o mattres | | $948.20 | Non-Drug |
| E0255 | NU | Hospital bed var ht w/ mattr | | $2,056.09 | Non-Drug |
| E0255 | RR | Hospital bed var ht w/ mattr | | $179.22 | Non-Drug |
| E0255 | UE | Hospital bed var ht w/ mattr | | $1,539.31 | Non-Drug |
| E0256 | NU | Hospital bed var ht w/o matt | | $1,318.49 | Non-Drug |
| E0256 | RR | Hospital bed var ht w/o matt | | $131.85 | Non-Drug |
| E0256 | UE | Hospital bed var ht w/o matt | | $1,054.79 | Non-Drug |
| E0260 | NU | Hosp bed semi-electr w/ matt | | $2,024.10 | Non-Drug |
| E0260 | RR | Hosp bed semi-electr w/ matt | | $249.24 | Non-Drug |
| E0260 | UE | Hosp bed semi-electr w/ matt | | $1,563.39 | Non-Drug |
| E0261 | NU | Hosp bed semi-electr w/o mat | | $1,979.77 | Non-Drug |
| E0261 | RR | Hosp bed semi-electr w/o mat | | $206.23 | Non-Drug |
| E0261 | UE | Hosp bed semi-electr w/o mat | | $1,319.85 | Non-Drug |
| E0265 | NU | Hosp bed total electr w/ mat | | $2,441.19 | Non-Drug |
| E0265 | RR | Hosp bed total electr w/ mat | | $293.58 | Non-Drug |
| E0265 | UE | Hosp bed total electr w/ mat | | $1,579.91 | Non-Drug |
| E0266 | NU | Hosp bed total elec w/o matt | | $2,625.21 | Non-Drug |
| E0266 | RR | Hosp bed total elec w/o matt | | $262.64 | Non-Drug |
| E0266 | UE | Hosp bed total elec w/o matt | | $1,804.83 | Non-Drug |
| E0270 | NU | Hospital bed institutional t | | $513.52 | Non-Drug |
| E0270 | RR | Hospital bed institutional t | | $54.36 | Non-Drug |
| E0270 | UE | Hospital bed institutional t | | $385.76 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators

### TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| E0271 | NU | Mattress innerspring | | $324.34 | Non-Drug |
| E0271 | RR | Mattress innerspring | | $38.15 | Non-Drug |
| E0271 | UE | Mattress innerspring | | $256.91 | Non-Drug |
| E0272 | NU | Mattress foam rubber | | $297.04 | Non-Drug |
| E0272 | RR | Mattress foam rubber | | $35.10 | Non-Drug |
| E0272 | UE | Mattress foam rubber | | $225.81 | Non-Drug |
| E0273 | NU | Bed board | | $43.48 | Non-Drug |
| E0273 | RR | Bed board | | $18.28 | Non-Drug |
| E0273 | UE | Bed board | | $34.87 | Non-Drug |
| E0273 | | Bed board | | $83.63 | Non-Drug |
| E0274 | NU | Over-bed table | | $69.30 | Non-Drug |
| E0274 | RR | Over-bed table | | $31.19 | Non-Drug |
| E0274 | UE | Over-bed table | | $55.78 | Non-Drug |
| E0274 | | Over-bed table | | $33.45 | Non-Drug |
| E0275 | NU | Bed pan standard | | $25.39 | Non-Drug |
| E0275 | RR | Bed pan standard | | $4.57 | Non-Drug |
| E0275 | UE | Bed pan standard | | $19.93 | Non-Drug |
| E0276 | NU | Bed pan fracture | | $22.53 | Non-Drug |
| E0276 | RR | Bed pan fracture | | $4.48 | Non-Drug |
| E0276 | UE | Bed pan fracture | | $18.57 | Non-Drug |
| E0277 | NU | Powered pres-redu air mattrs | | $10,109.17 | Non-Drug |
| E0277 | RR | Powered pres-redu air mattrs | | $1,070.08 | Non-Drug |
| E0277 | UE | Powered pres-redu air mattrs | | $7,594.16 | Non-Drug |
| E0280 | NU | Bed cradle | | $62.10 | Non-Drug |
| E0280 | RR | Bed cradle | | $8.18 | Non-Drug |
| E0280 | UE | Bed cradle | | $47.00 | Non-Drug |
| E0290 | NU | Hosp bed fx ht w/o rails w/m | | $1,235.89 | Non-Drug |
| E0290 | RR | Hosp bed fx ht w/o rails w/m | | $119.90 | Non-Drug |
| E0290 | UE | Hosp bed fx ht w/o rails w/m | | $988.84 | Non-Drug |
| E0291 | NU | Hosp bed fx ht w/o rail w/o | | $875.68 | Non-Drug |
| E0291 | RR | Hosp bed fx ht w/o rail w/o | | $87.57 | Non-Drug |
| E0291 | UE | Hosp bed fx ht w/o rail w/o | | $648.26 | Non-Drug |
| E0292 | NU | Hosp bed var ht w/o rail w/o | | $1,326.11 | Non-Drug |
| E0292 | RR | Hosp bed var ht w/o rail w/o | | $132.81 | Non-Drug |
| E0292 | UE | Hosp bed var ht w/o rail w/o | | $1,060.50 | Non-Drug |
| E0293 | NU | Hosp bed var ht w/o rail w/ | | $1,149.22 | Non-Drug |
| E0293 | RR | Hosp bed var ht w/o rail w/ | | $114.79 | Non-Drug |
| E0293 | UE | Hosp bed var ht w/o rail w/ | | $839.82 | Non-Drug |
| E0294 | NU | Hosp bed semi-elect w/ mattr | | $1,913.63 | Non-Drug |
| E0294 | RR | Hosp bed semi-elect w/ mattr | | $197.50 | Non-Drug |
| E0294 | UE | Hosp bed semi-elect w/ mattr | | $1,315.01 | Non-Drug |
| E0295 | NU | Hosp bed semi-elect w/o matt | | $1,765.55 | Non-Drug |
| E0295 | RR | Hosp bed semi-elect w/o matt | | $192.92 | Non-Drug |
| E0295 | UE | Hosp bed semi-elect w/o matt | | $1,145.29 | Non-Drug |
| E0296 | NU | Hosp bed total elect w/ matt | | $2,438.14 | Non-Drug |
| E0296 | RR | Hosp bed total elect w/ matt | | $244.06 | Non-Drug |
| E0296 | UE | Hosp bed total elect w/ matt | | $1,950.64 | Non-Drug |
| E0297 | NU | Hosp bed total elect w/o mat | | $2,116.52 | Non-Drug |
| E0297 | RR | Hosp bed total elect w/o mat | | $211.40 | Non-Drug |
| E0297 | UE | Hosp bed total elect w/o mat | | $1,416.40 | Non-Drug |
| E0305 | NU | Rails bed side half length | | $297.48 | Non-Drug |
| E0305 | RR | Rails bed side half length | | $29.82 | Non-Drug |
| E0305 | UE | Rails bed side half length | | $213.57 | Non-Drug |
| E0310 | NU | Rails bed side full length | | $285.61 | Non-Drug |
| E0310 | RR | Rails bed side full length | | $37.68 | Non-Drug |
| E0310 | UE | Rails bed side full length | | $220.06 | Non-Drug |
| E0315 | | Bed accessory brd/tbl/supprt | | $55.46 | Non-Drug |
| E0316 | RR | Bed safety enclosure | | $309.40 | Non-Drug |
| E0325 | NU | Urinal male jug-type | | $17.98 | Non-Drug |
| E0325 | RR | Urinal male jug-type | | $4.31 | Non-Drug |
| E0325 | UE | Urinal male jug-type | | $13.11 | Non-Drug |
| E0326 | NU | Urinal female jug-type | | $18.54 | Non-Drug |
| E0326 | RR | Urinal female jug-type | | $3.40 | Non-Drug |
| E0326 | UE | Urinal female jug-type | | $14.79 | Non-Drug |
| E0352 | | Disposable pack w/bowel syst | | $59.60 | Non-Drug |
| E0370 | | Air elevator for heel | | $20.73 | Non-Drug |
| E0371 | RR | Nonpower mattress overlay | | $747.40 | Non-Drug |
| E0372 | RR | Powered air mattress overlay | | $908.26 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

## TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| E0373 | RR | Nonpowered pressure mattress | | $1,035.66 | Non-Drug |
| E0424 | RR | Stationary compressed gas 02 | | $504.85 | Non-Drug |
| E0425 | NU | Gas system stationary compre | | $6,795.38 | Non-Drug |
| E0425 | UE | Gas system stationary compre | | $5,131.01 | Non-Drug |
| E0430 | NU | Oxygen system gas portable | | $3,082.00 | Non-Drug |
| E0430 | RR | Oxygen system gas portable | | $5.50 | Non-Drug |
| E0430 | UE | Oxygen system gas portable | | $2,313.52 | Non-Drug |
| E0431 | RR | Portable gaseous 02 | | $86.86 | Non-Drug |
| E0434 | RR | Portable liquid 02 | | $86.86 | Non-Drug |
| E0435 | NU | Oxygen system liquid portabl | | $2,121.60 | Non-Drug |
| E0435 | UE | Oxygen system liquid portabl | | $1,593.62 | Non-Drug |
| E0439 | RR | Stationary liquid 02 | | $504.85 | Non-Drug |
| E0440 | NU | Oxygen system liquid station | | $4,298.82 | Non-Drug |
| E0440 | UE | Oxygen system liquid station | | $3,226.14 | Non-Drug |
| E0441 | | Oxygen contents, gaseous | | $362.18 | Non-Drug |
| E0442 | | Oxygen contents, liquid | | $362.18 | Non-Drug |
| E0443 | | Portable 02 contents, gas | | $57.89 | Non-Drug |
| E0444 | | Portable 02 contents, liquid | | $57.89 | Non-Drug |
| E0450 | NU | Volume vent stationary/porta | | $15,231.61 | Non-Drug |
| E0450 | RR | Volume vent stationary/porta | | $1,612.30 | Non-Drug |
| E0450 | UE | Volume vent stationary/porta | | $11,442.22 | Non-Drug |
| E0457 | NU | Chest shell | | $1,035.73 | Non-Drug |
| E0457 | RR | Chest shell | | $97.89 | Non-Drug |
| E0457 | UE | Chest shell | | $775.16 | Non-Drug |
| E0459 | NU | Chest wrap | | $799.79 | Non-Drug |
| E0459 | RR | Chest wrap | | $79.98 | Non-Drug |
| E0459 | UE | Chest wrap | | $800.12 | Non-Drug |
| E0460 | NU | Neg press vent portabl/statn | | $11,692.02 | Non-Drug |
| E0460 | RR | Neg press vent portabl/statn | | $1,237.62 | Non-Drug |
| E0460 | UE | Neg press vent portabl/statn | | $8,783.23 | Non-Drug |
| E0462 | NU | Rocking bed w/ or w/o side r | | $4,207.54 | Non-Drug |
| E0462 | RR | Rocking bed w/ or w/o side r | | $420.60 | Non-Drug |
| E0462 | UE | Rocking bed w/ or w/o side r | | $3,155.78 | Non-Drug |
| E0480 | NU | Percussor elect/pneum home m | | $653.76 | Non-Drug |
| E0480 | RR | Percussor elect/pneum home m | | $68.19 | Non-Drug |
| E0480 | UE | Percussor elect/pneum home m | | $573.73 | Non-Drug |
| E0481 | | Intrpulmnry percuss vent sys | | $1,036.44 | Non-Drug |
| E0482 | RR | Cough stimulating device | | $722.88 | Non-Drug |
| E0500 | NU | Ippb all types | | $1,978.06 | Non-Drug |
| E0500 | RR | Ippb all types | | $179.82 | Non-Drug |
| E0500 | UE | Ippb all types | | $1,303.72 | Non-Drug |
| E0550 | NU | Humidif extens supple w ippb | | $479.82 | Non-Drug |
| E0550 | RR | Humidif extens supple w ippb | | $78.69 | Non-Drug |
| E0550 | UE | Humidif extens supple w ippb | | $383.85 | Non-Drug |
| E0555 | NU | Humidifier for use w/ regula | | $24.55 | Non-Drug |
| E0555 | RR | Humidifier for use w/ regula | | $16.80 | Non-Drug |
| E0555 | UE | Humidifier for use w/ regula | | $20.68 | Non-Drug |
| E0555 | | Humidifier for use w/ regula | | $21.55 | Non-Drug |
| E0560 | NU | Humidifier supplemental w/ i | | $284.54 | Non-Drug |
| E0560 | RR | Humidifier supplemental w/ i | | $32.22 | Non-Drug |
| E0560 | UE | Humidifier supplemental w/ i | | $211.82 | Non-Drug |
| E0565 | NU | Compressor air power source | | $969.39 | Non-Drug |
| E0565 | RR | Compressor air power source | | $97.14 | Non-Drug |
| E0565 | UE | Compressor air power source | | $681.99 | Non-Drug |
| E0570 | NU | Nebulizer with compression | | $289.20 | Non-Drug |
| E0570 | RR | Nebulizer with compression | | $31.69 | Non-Drug |
| E0570 | UE | Nebulizer with compression | | $116.21 | Non-Drug |
| E0571 | RR | Aerosol compressor for svneb | | $46.29 | Non-Drug |
| E0572 | RR | Aerosol compressor adjust pr | | $91.46 | Non-Drug |
| E0574 | RR | Ultrasonic generator w svneb | | $96.16 | Non-Drug |
| E0575 | NU | Nebulizer ultrasonic | | $1,682.63 | Non-Drug |
| E0575 | RR | Nebulizer ultrasonic | | $167.97 | Non-Drug |
| E0575 | UE | Nebulizer ultrasonic | | $1,095.46 | Non-Drug |
| E0580 | NU | Nebulizer for use w/ regulat | | $220.98 | Non-Drug |
| E0580 | RR | Nebulizer for use w/ regulat | | $22.67 | Non-Drug |
| E0580 | UE | Nebulizer for use w/ regulat | | $164.14 | Non-Drug |
| E0585 | NU | Nebulizer w/ compressor & he | | $536.20 | Non-Drug |
| E0585 | RR | Nebulizer w/ compressor & he | | $53.56 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

### TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| E0585 | UE | Nebulizer w/ compressor & he | | $345.85 | Non-Drug |
| E0590 | | Dispensing fee dme neb drug | | $7.74 | Non-Drug |
| E0600 | NU | Suction pump portab hom modl | | $642.61 | Non-Drug |
| E0600 | RR | Suction pump portab hom modl | | $71.33 | Non-Drug |
| E0600 | UE | Suction pump portab hom modl | | $385.69 | Non-Drug |
| E0601 | NU | Cont airway pressure device | | $1,686.27 | Non-Drug |
| E0601 | RR | Cont airway pressure device | | $183.11 | Non-Drug |
| E0601 | UE | Cont airway pressure device | | $1,009.44 | Non-Drug |
| E0602 | NU | Manual breast pump | | $45.65 | Non-Drug |
| E0602 | RR | Manual breast pump | | $7.79 | Non-Drug |
| E0602 | UE | Manual breast pump | | $35.13 | Non-Drug |
| E0602 | | Manual breast pump | | $38.44 | Non-Drug |
| E0603 | NU | Electric breast pump | | $128.16 | Non-Drug |
| E0603 | RR | Electric breast pump | | $41.25 | Non-Drug |
| E0603 | UE | Electric breast pump | | $101.40 | Non-Drug |
| E0604 | NU | Hosp grade elec breast pump | | $381.05 | Non-Drug |
| E0604 | RR | Hosp grade elec breast pump | | $142.21 | Non-Drug |
| E0604 | UE | Hosp grade elec breast pump | | $284.04 | Non-Drug |
| E0605 | NU | Vaporizer room type | | $41.24 | Non-Drug |
| E0605 | RR | Vaporizer room type | | $7.95 | Non-Drug |
| E0605 | UE | Vaporizer room type | | $34.60 | Non-Drug |
| E0606 | NU | Drainage board postural | | $365.51 | Non-Drug |
| E0606 | RR | Drainage board postural | | $36.27 | Non-Drug |
| E0606 | UE | Drainage board postural | | $274.27 | Non-Drug |
| E0607 | NU | Blood glucose monitor home | | $79.99 | Non-Drug |
| E0607 | RR | Blood glucose monitor home | | $10.88 | Non-Drug |
| E0607 | UE | Blood glucose monitor home | | $71.29 | Non-Drug |
| E0607 | | Blood glucose monitor home | | $78.60 | Non-Drug |
| E0610 | NU | Pacemaker monitr audible/vis | | $397.03 | Non-Drug |
| E0610 | RR | Pacemaker monitr audible/vis | | $39.33 | Non-Drug |
| E0610 | UE | Pacemaker monitr audible/vis | | $296.24 | Non-Drug |
| E0615 | NU | Pacemaker monitr digital/vis | | $805.64 | Non-Drug |
| E0615 | RR | Pacemaker monitr digital/vis | | $92.88 | Non-Drug |
| E0615 | UE | Pacemaker monitr digital/vis | | $602.66 | Non-Drug |
| E0617 | RR | Automatic ext defibrillator | | $509.27 | Non-Drug |
| E0618 | | Apnea monitor | | $483.42 | Non-Drug |
| E0621 | NU | Patient lift sling or seat | | $156.46 | Non-Drug |
| E0621 | RR | Patient lift sling or seat | | $16.76 | Non-Drug |
| E0621 | UE | Patient lift sling or seat | | $116.39 | Non-Drug |
| E0625 | NU | Patient lift bathroom or toi | | $1,091.15 | Non-Drug |
| E0625 | RR | Patient lift bathroom or toi | | $115.50 | Non-Drug |
| E0625 | UE | Patient lift bathroom or toi | | $819.69 | Non-Drug |
| E0627 | NU | Seat lift incorp lift-chair | | $565.69 | Non-Drug |
| E0627 | RR | Seat lift incorp lift-chair | | $51.66 | Non-Drug |
| E0627 | UE | Seat lift incorp lift-chair | | $422.70 | Non-Drug |
| E0628 | NU | Seat lift for pt furn-electr | | $565.69 | Non-Drug |
| E0628 | RR | Seat lift for pt furn-electr | | $51.66 | Non-Drug |
| E0628 | UE | Seat lift for pt furn-electr | | $422.70 | Non-Drug |
| E0629 | NU | Seat lift for pt furn-non-el | | $554.48 | Non-Drug |
| E0629 | RR | Seat lift for pt furn-non-el | | $50.72 | Non-Drug |
| E0629 | UE | Seat lift for pt furn-non-el | | $414.24 | Non-Drug |
| E0630 | NU | Patient lift hydraulic | | $1,784.73 | Non-Drug |
| E0630 | RR | Patient lift hydraulic | | $166.45 | Non-Drug |
| E0630 | UE | Patient lift hydraulic | | $1,268.37 | Non-Drug |
| E0635 | NU | Patient lift electric | | $2,009.71 | Non-Drug |
| E0635 | RR | Patient lift electric | | $201.17 | Non-Drug |
| E0635 | UE | Patient lift electric | | $1,371.73 | Non-Drug |
| E0650 | NU | Pneuma compresor non-segment | | $1,214.99 | Non-Drug |
| E0650 | RR | Pneuma compresor non-segment | | $144.38 | Non-Drug |
| E0650 | UE | Pneuma compresor non-segment | | $909.65 | Non-Drug |
| E0651 | NU | Pneum compressor segmental | | $1,551.08 | Non-Drug |
| E0651 | RR | Pneum compressor segmental | | $152.78 | Non-Drug |
| E0651 | UE | Pneum compressor segmental | | $1,161.74 | Non-Drug |
| E0652 | NU | Pneum compres w/cal pressure | | $8,983.55 | Non-Drug |
| E0652 | RR | Pneum compres w/cal pressure | | $882.16 | Non-Drug |
| E0652 | UE | Pneum compres w/cal pressure | | $6,730.05 | Non-Drug |
| E0655 | NU | Pneumatic appliance half arm | | $176.69 | Non-Drug |
| E0655 | RR | Pneumatic appliance half arm | | $21.65 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

## TABLE K. → DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Category |
|---|---|---|---|---|---|
| E0655 | UE | Pneumatic appliance half arm | | $131.12 | Non-Drug |
| E0660 | NU | Pneumatic appliance full leg | | $264.58 | Non-Drug |
| E0660 | RR | Pneumatic appliance full leg | | $27.27 | Non-Drug |
| E0660 | UE | Pneumatic appliance full leg | | $196.83 | Non-Drug |
| E0665 | NU | Pneumatic appliance full arm | | $225.98 | Non-Drug |
| E0665 | RR | Pneumatic appliance full arm | | $23.63 | Non-Drug |
| E0665 | UE | Pneumatic appliance full arm | | $168.14 | Non-Drug |
| E0666 | NU | Pneumatic appliance half leg | | $227.83 | Non-Drug |
| E0666 | RR | Pneumatic appliance half leg | | $23.85 | Non-Drug |
| E0666 | UE | Pneumatic appliance half leg | | $169.34 | Non-Drug |
| E0667 | NU | Seg pneumatic appl full leg | | $542.71 | Non-Drug |
| E0667 | RR | Seg pneumatic appl full leg | | $55.68 | Non-Drug |
| E0667 | UE | Seg pneumatic appl full leg | | $405.46 | Non-Drug |
| E0668 | NU | Seg pneumatic appl full arm | | $743.00 | Non-Drug |
| E0668 | RR | Seg pneumatic appl full arm | | $67.63 | Non-Drug |
| E0668 | UE | Seg pneumatic appl full arm | | $555.68 | Non-Drug |
| E0669 | NU | Seg pneumatic appli half leg | | $304.53 | Non-Drug |
| E0669 | RR | Seg pneumatic appli half leg | | $29.71 | Non-Drug |
| E0669 | UE | Seg pneumatic appli half leg | | $226.86 | Non-Drug |
| E0671 | NU | Pressure pneum appl full leg | | $698.01 | Non-Drug |
| E0671 | RR | Pressure pneum appl full leg | | $64.12 | Non-Drug |
| E0671 | UE | Pressure pneum appl full leg | | $521.91 | Non-Drug |
| E0672 | NU | Pressure pneum appl full arm | | $540.95 | Non-Drug |
| E0672 | RR | Pressure pneum appl full arm | | $49.58 | Non-Drug |
| E0672 | UE | Pressure pneum appl full arm | | $404.15 | Non-Drug |
| E0673 | NU | Pressure pneum appl half leg | | $448.43 | Non-Drug |
| E0673 | RR | Pressure pneum appl half leg | | $41.80 | Non-Drug |
| E0673 | UE | Pressure pneum appl half leg | | $334.78 | Non-Drug |
| E0700 | | Safety equipment | | $41.11 | Non-Drug |
| E0710 | | Restraints any type | | $401.83 | Non-Drug |
| E0720 | NU | Tens two lead | | $617.00 | Non-Drug |
| E0720 | RR | Tens two lead | | $177.48 | Non-Drug |
| E0720 | UE | Tens two lead | | $338.25 | Non-Drug |
| E0730 | NU | Tens four lead | | $622.06 | Non-Drug |
| E0730 | RR | Tens four lead | | $211.79 | Non-Drug |
| E0730 | UE | Tens four lead | | $342.74 | Non-Drug |
| E0731 | NU | Conductive garment for tens/ | | $598.54 | Non-Drug |
| E0731 | RR | Conductive garment for tens/ | | $63.36 | Non-Drug |
| E0731 | UE | Conductive garment for tens/ | | $449.63 | Non-Drug |
| E0740 | NU | Incontinence treatment systm | | $880.33 | Non-Drug |
| E0740 | RR | Incontinence treatment systm | | $82.35 | Non-Drug |
| E0740 | UE | Incontinence treatment systm | | $658.72 | Non-Drug |
| E0744 | NU | Neuromuscular stim for scoli | | $998.18 | Non-Drug |
| E0744 | RR | Neuromuscular stim for scoli | | $148.96 | Non-Drug |
| E0744 | UE | Neuromuscular stim for scoli | | $904.91 | Non-Drug |
| E0745 | NU | Neuromuscular stim for shock | | $1,374.26 | Non-Drug |
| E0745 | RR | Neuromuscular stim for shock | | $145.47 | Non-Drug |
| E0745 | UE | Neuromuscular stim for shock | | $1,032.36 | Non-Drug |
| E0747 | NU | Elec osteogen stim not spine | | $5,974.90 | Non-Drug |
| E0747 | RR | Elec osteogen stim not spine | | $588.06 | Non-Drug |
| E0747 | UE | Elec osteogen stim not spine | | $4,437.62 | Non-Drug |
| E0748 | NU | Elec osteogen stim spinal | | $5,936.14 | Non-Drug |
| E0748 | RR | Elec osteogen stim spinal | | $587.92 | Non-Drug |
| E0748 | UE | Elec osteogen stim spinal | | $4,450.56 | Non-Drug |
| E0749 | RR | Elec osteogen stim implanted | | $428.01 | Non-Drug |
| E0749 | | Elec osteogen stim implanted | | $5,661.76 | Non-Drug |
| E0752 | | Neurostimulator electrode | | $508.73 | Non-Drug |
| E0754 | | Pulsegenerator pt programmer | | $1,370.24 | Non-Drug |
| E0756 | | Implantable pulse generator | | $9,845.24 | Non-Drug |
| E0757 | | Implantable RF receiver | | $7,024.19 | Non-Drug |
| E0758 | | External RF transmitter | | $6,178.68 | Non-Drug |
| E0759 | | Replace rdfrquncy transmittr | | $851.93 | Non-Drug |
| E0760 | NU | Osteogen ultrasound stimltor | | $4,931.75 | Non-Drug |
| E0760 | RR | Osteogen ultrasound stimltor | | $487.50 | Non-Drug |
| E0760 | UE | Osteogen ultrasound stimltor | | $3,697.24 | Non-Drug |
| E0765 | NU | Nerve stimulator for tx n&v | | $136.35 | Non-Drug |
| E0765 | RR | Nerve stimulator for tx n&v | | $15.59 | Non-Drug |
| E0765 | UE | Nerve stimulator for tx n&v | | $100.72 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

## TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| E0776 | NU | Iv pole | | $236.44 | Non-Drug |
| E0776 | RR | Iv pole | | $30.15 | Non-Drug |
| E0776 | UE | Iv pole | | $172.29 | Non-Drug |
| E0779 | RR | Amb infusion pump mechanical | | $27.42 | Non-Drug |
| E0780 | NU | Mech amb infusion pump <8hrs | | $18.35 | Non-Drug |
| E0781 | RR | External ambulatory infus pu | | $442.83 | Non-Drug |
| E0782 | NU | Non-programble infusion pump | | $6,551.24 | Non-Drug |
| E0782 | RR | Non-programble infusion pump | | $649.46 | Non-Drug |
| E0782 | UE | Non-programble infusion pump | | $4,911.85 | Non-Drug |
| E0782 | | Non-programble infusion pump | | $7,627.39 | Non-Drug |
| E0783 | NU | Programmable infusion pump | | $12,497.95 | Non-Drug |
| E0783 | RR | Programmable infusion pump | | $1,244.12 | Non-Drug |
| E0783 | UE | Programmable infusion pump | | $9,371.89 | Non-Drug |
| E0784 | RR | Ext amb infusn pump insulin | | $701.77 | Non-Drug |
| E0784 | | Ext amb infusn pump insulin | | $5,014.13 | Non-Drug |
| E0785 | | Replacement impl pump cathet | | $715.35 | Non-Drug |
| E0786 | NU | Implantable pump replacement | | $12,190.83 | Non-Drug |
| E0786 | RR | Implantable pump replacement | | $1,213.39 | Non-Drug |
| E0786 | UE | Implantable pump replacement | | $9,141.54 | Non-Drug |
| E0791 | NU | Parenteral infusion pump sta | | $6,053.99 | Non-Drug |
| E0791 | RR | Parenteral infusion pump sta | | $640.83 | Non-Drug |
| E0791 | UE | Parenteral infusion pump sta | | $4,547.85 | Non-Drug |
| E0830 | | Ambulatory traction device | | $2,267.22 | Non-Drug |
| E0840 | NU | Tract frame attach headboard | | $117.59 | Non-Drug |
| E0840 | RR | Tract frame attach headboard | | $27.49 | Non-Drug |
| E0840 | UE | Tract frame attach headboard | | $88.56 | Non-Drug |
| E0850 | NU | Traction stand free standing | | $161.98 | Non-Drug |
| E0850 | RR | Traction stand free standing | | $24.50 | Non-Drug |
| E0850 | UE | Traction stand free standing | | $125.53 | Non-Drug |
| E0855 | NU | Cervical traction equipment | | $846.01 | Non-Drug |
| E0855 | RR | Cervical traction equipment | | $78.91 | Non-Drug |
| E0855 | UE | Cervical traction equipment | | $632.91 | Non-Drug |
| E0860 | NU | Tract equip cervical tract | | $62.62 | Non-Drug |
| E0860 | RR | Tract equip cervical tract | | $11.97 | Non-Drug |
| E0860 | UE | Tract equip cervical tract | | $48.36 | Non-Drug |
| E0870 | NU | Tract frame attach footboard | | $177.59 | Non-Drug |
| E0870 | RR | Tract frame attach footboard | | $22.87 | Non-Drug |
| E0870 | UE | Tract frame attach footboard | | $137.78 | Non-Drug |
| E0880 | NU | Trac stand free stand extrem | | $190.40 | Non-Drug |
| E0880 | RR | Trac stand free stand extrem | | $32.85 | Non-Drug |
| E0880 | UE | Trac stand free stand extrem | | $148.05 | Non-Drug |
| E0890 | NU | Traction frame attach pelvic | | $183.28 | Non-Drug |
| E0890 | RR | Traction frame attach pelvic | | $53.61 | Non-Drug |
| E0890 | UE | Traction frame attach pelvic | | $150.78 | Non-Drug |
| E0900 | NU | Trac stand free stand pelvic | | $193.98 | Non-Drug |
| E0900 | RR | Trac stand free stand pelvic | | $45.37 | Non-Drug |
| E0900 | UE | Trac stand free stand pelvic | | $149.57 | Non-Drug |
| E0910 | NU | Trapeze bar attached to bed | | $333.66 | Non-Drug |
| E0910 | RR | Trapeze bar attached to bed | | $33.31 | Non-Drug |
| E0910 | UE | Trapeze bar attached to bed | | $250.38 | Non-Drug |
| E0920 | NU | Fracture frame attached to b | | $745.97 | Non-Drug |
| E0920 | RR | Fracture frame attached to b | | $74.66 | Non-Drug |
| E0920 | UE | Fracture frame attached to b | | $618.80 | Non-Drug |
| E0930 | NU | Fracture frame free standing | | $736.87 | Non-Drug |
| E0930 | RR | Fracture frame free standing | | $73.95 | Non-Drug |
| E0930 | UE | Fracture frame free standing | | $541.85 | Non-Drug |
| E0935 | RR | Exercise device passive moti | | $35.97 | Non-Drug |
| E0940 | NU | Trapeze bar free standing | | $529.98 | Non-Drug |
| E0940 | RR | Trapeze bar free standing | | $56.68 | Non-Drug |
| E0940 | UE | Trapeze bar free standing | | $375.02 | Non-Drug |
| E0941 | NU | Gravity assisted traction de | | $702.78 | Non-Drug |
| E0941 | RR | Gravity assisted traction de | | $70.34 | Non-Drug |
| E0941 | UE | Gravity assisted traction de | | $531.40 | Non-Drug |
| E0942 | NU | Cervical head harness/halter | | $33.08 | Non-Drug |
| E0942 | RR | Cervical head harness/halter | | $5.38 | Non-Drug |
| E0942 | UE | Cervical head harness/halter | | $25.21 | Non-Drug |
| E0943 | NU | Cervical pillow | | $45.44 | Non-Drug |
| E0943 | RR | Cervical pillow | | $6.80 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

## TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| E0943 | UE | Cervical pillow | | $34.48 | Non-Drug |
| E0944 | NU | Pelvic belt/harness/boot | | $63.32 | Non-Drug |
| E0944 | RR | Pelvic belt/harness/boot | | $7.06 | Non-Drug |
| E0944 | UE | Pelvic belt/harness/boot | | $47.68 | Non-Drug |
| E0945 | NU | Belt/harness extremity | | $61.20 | Non-Drug |
| E0945 | RR | Belt/harness extremity | | $6.84 | Non-Drug |
| E0945 | UE | Belt/harness extremity | | $47.55 | Non-Drug |
| E0946 | NU | Fracture frame dual w cross | | $954.27 | Non-Drug |
| E0946 | RR | Fracture frame dual w cross | | $95.26 | Non-Drug |
| E0946 | UE | Fracture frame dual w cross | | $716.14 | Non-Drug |
| E0947 | NU | Fracture frame attachmnts pe | | $857.87 | Non-Drug |
| E0947 | RR | Fracture frame attachmnts pe | | $101.16 | Non-Drug |
| E0947 | UE | Fracture frame attachmnts pe | | $647.44 | Non-Drug |
| E0948 | NU | Fracture frame attachmnts ce | | $830.29 | Non-Drug |
| E0948 | RR | Fracture frame attachmnts ce | | $94.43 | Non-Drug |
| E0948 | UE | Fracture frame attachmnts ce | | $590.34 | Non-Drug |
| E0950 | NU | Tray | | $141.97 | Non-Drug |
| E0950 | RR | Tray | | $17.27 | Non-Drug |
| E0950 | UE | Tray | | $108.44 | Non-Drug |
| E0950 | | Tray | | $52.12 | Non-Drug |
| E0951 | NU | Loop heel | | $26.45 | Non-Drug |
| E0951 | RR | Loop heel | | $3.45 | Non-Drug |
| E0951 | UE | Loop heel | | $20.05 | Non-Drug |
| E0952 | NU | Loop tie | | $32.73 | Non-Drug |
| E0952 | RR | Loop tie | | $4.40 | Non-Drug |
| E0952 | UE | Loop tie | | $25.00 | Non-Drug |
| E0953 | NU | Pneumatic tire | | $62.09 | Non-Drug |
| E0953 | RR | Pneumatic tire | | $6.97 | Non-Drug |
| E0953 | UE | Pneumatic tire | | $46.63 | Non-Drug |
| E0953 | | Pneumatic tire | | $26.71 | Non-Drug |
| E0954 | NU | Wheelchair semi-pneumatic ca | | $63.12 | Non-Drug |
| E0954 | RR | Wheelchair semi-pneumatic ca | | $8.52 | Non-Drug |
| E0954 | UE | Wheelchair semi-pneumatic ca | | $36.85 | Non-Drug |
| E0954 | | Wheelchair semi-pneumatic ca | | $71.75 | Non-Drug |
| E0958 | NU | Whlchr att- conv 1 arm drive | | $603.81 | Non-Drug |
| E0958 | RR | Whlchr att- conv 1 arm drive | | $60.26 | Non-Drug |
| E0958 | UE | Whlchr att- conv 1 arm drive | | $453.17 | Non-Drug |
| E0959 | NU | Amputee adapter | | $118.55 | Non-Drug |
| E0959 | RR | Amputee adapter | | $15.73 | Non-Drug |
| E0959 | UE | Amputee adapter | | $94.21 | Non-Drug |
| E0959 | | Amputee adapter | | $175.17 | Non-Drug |
| E0961 | NU | Wheelchair brake extension | | $51.27 | Non-Drug |
| E0961 | RR | Wheelchair brake extension | | $6.46 | Non-Drug |
| E0961 | UE | Wheelchair brake extension | | $38.91 | Non-Drug |
| E0961 | | Wheelchair brake extension | | $21.09 | Non-Drug |
| E0962 | NU | Wheelchair 1 inch cushion | | $80.16 | Non-Drug |
| E0962 | RR | Wheelchair 1 inch cushion | | $8.89 | Non-Drug |
| E0962 | UE | Wheelchair 1 inch cushion | | $61.59 | Non-Drug |
| E0963 | NU | Wheelchair 2 inch cushion | | $94.22 | Non-Drug |
| E0963 | RR | Wheelchair 2 inch cushion | | $10.63 | Non-Drug |
| E0963 | UE | Wheelchair 2 inch cushion | | $72.78 | Non-Drug |
| E0964 | NU | Wheelchair 3 inch cushion | | $104.21 | Non-Drug |
| E0964 | RR | Wheelchair 3 inch cushion | | $11.68 | Non-Drug |
| E0964 | UE | Wheelchair 3 inch cushion | | $80.16 | Non-Drug |
| E0965 | NU | Wheelchair 4 inch cushion | | $110.85 | Non-Drug |
| E0965 | RR | Wheelchair 4 inch cushion | | $12.35 | Non-Drug |
| E0965 | UE | Wheelchair 4 inch cushion | | $85.13 | Non-Drug |
| E0966 | NU | Wheelchair head rest extensi | | $94.21 | Non-Drug |
| E0966 | RR | Wheelchair head rest extensi | | $10.58 | Non-Drug |
| E0966 | UE | Wheelchair head rest extensi | | $67.11 | Non-Drug |
| E0966 | | Wheelchair head rest extensi | | $75.52 | Non-Drug |
| E0967 | NU | Wheelchair hand rims | | $168.43 | Non-Drug |
| E0967 | RR | Wheelchair hand rims | | $19.27 | Non-Drug |
| E0967 | UE | Wheelchair hand rims | | $128.33 | Non-Drug |
| E0968 | NU | Wheelchair commode seat | | $254.80 | Non-Drug |
| E0968 | RR | Wheelchair commode seat | | $25.23 | Non-Drug |
| E0968 | UE | Wheelchair commode seat | | $162.47 | Non-Drug |
| E0969 | NU | Wheelchair narrowing device | | $198.20 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

## TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| E0969 | RR | Wheelchair narrowing device | | $21.93 | Non-Drug |
| E0969 | UE | Wheelchair narrowing device | | $150.63 | Non-Drug |
| E0970 | NU | Wheelchair no. 2 footplates | | $69.87 | Non-Drug |
| E0970 | RR | Wheelchair no. 2 footplates | | $6.97 | Non-Drug |
| E0970 | UE | Wheelchair no. 2 footplates | | $53.33 | Non-Drug |
| E0970 | | Wheelchair no. 2 footplates | | $50.44 | Non-Drug |
| E0971 | NU | Wheelchair anti-tipping devi | | $87.77 | Non-Drug |
| E0971 | RR | Wheelchair anti-tipping devi | | $10.96 | Non-Drug |
| E0971 | UE | Wheelchair anti-tipping devi | | $67.79 | Non-Drug |
| E0972 | NU | Transfer board or device | | $97.75 | Non-Drug |
| E0972 | RR | Transfer board or device | | $12.09 | Non-Drug |
| E0972 | UE | Transfer board or device | | $71.92 | Non-Drug |
| E0972 | | Transfer board or device | | $63.42 | Non-Drug |
| E0973 | NU | Wheelchair adjustabl height | | $140.59 | Non-Drug |
| E0973 | RR | Wheelchair adjustabl height | | $14.70 | Non-Drug |
| E0973 | UE | Wheelchair adjustabl height | | $103.85 | Non-Drug |
| E0973 | | Wheelchair adjustabl height | | $147.58 | Non-Drug |
| E0974 | NU | Wheelchair grade-aid | | $109.82 | Non-Drug |
| E0974 | RR | Wheelchair grade-aid | | $12.64 | Non-Drug |
| E0974 | UE | Wheelchair grade-aid | | $84.56 | Non-Drug |
| E0974 | | Wheelchair grade-aid | | $198.42 | Non-Drug |
| E0975 | NU | Wheelchair reinforced seat u | | $73.54 | Non-Drug |
| E0975 | RR | Wheelchair reinforced seat u | | $8.00 | Non-Drug |
| E0975 | UE | Wheelchair reinforced seat u | | $55.91 | Non-Drug |
| E0975 | | Wheelchair reinforced seat u | | $68.32 | Non-Drug |
| E0976 | NU | Wheelchair reinforced back u | | $63.63 | Non-Drug |
| E0976 | RR | Wheelchair reinforced back u | | $8.00 | Non-Drug |
| E0976 | UE | Wheelchair reinforced back u | | $55.91 | Non-Drug |
| E0976 | | Wheelchair reinforced back u | | $68.90 | Non-Drug |
| E0977 | NU | Wheelchair wedge cushion | | $87.35 | Non-Drug |
| E0977 | RR | Wheelchair wedge cushion | | $9.38 | Non-Drug |
| E0977 | UE | Wheelchair wedge cushion | | $67.51 | Non-Drug |
| E0978 | NU | Wheelchair belt w/airplane b | | $68.03 | Non-Drug |
| E0978 | RR | Wheelchair belt w/airplane b | | $7.49 | Non-Drug |
| E0978 | UE | Wheelchair belt w/airplane b | | $51.27 | Non-Drug |
| E0978 | | Wheelchair belt w/airplane b | | $58.99 | Non-Drug |
| E0979 | NU | Wheelchair belt with velcro | | $49.72 | Non-Drug |
| E0979 | RR | Wheelchair belt with velcro | | $5.43 | Non-Drug |
| E0979 | UE | Wheelchair belt with velcro | | $37.36 | Non-Drug |
| E0979 | | Wheelchair belt with velcro | | $58.99 | Non-Drug |
| E0980 | NU | Wheelchair safety vest | | $45.85 | Non-Drug |
| E0980 | RR | Wheelchair safety vest | | $5.29 | Non-Drug |
| E0980 | UE | Wheelchair safety vest | | $34.40 | Non-Drug |
| E0990 | NU | Whellchair elevating leg res | | $155.75 | Non-Drug |
| E0990 | RR | Whellchair elevating leg res | | $20.36 | Non-Drug |
| E0990 | UE | Whellchair elevating leg res | | $124.98 | Non-Drug |
| E0990 | | Whellchair elevating leg res | | $150.57 | Non-Drug |
| E0991 | NU | Wheelchair upholstry seat | | $67.11 | Non-Drug |
| E0991 | RR | Wheelchair upholstry seat | | $8.52 | Non-Drug |
| E0991 | UE | Wheelchair upholstry seat | | $50.24 | Non-Drug |
| E0991 | | Wheelchair upholstry seat | | $63.32 | Non-Drug |
| E0992 | NU | Wheelchair solid seat insert | | $130.95 | Non-Drug |
| E0992 | RR | Wheelchair solid seat insert | | $14.70 | Non-Drug |
| E0992 | UE | Wheelchair solid seat insert | | $86.86 | Non-Drug |
| E0992 | | Wheelchair solid seat insert | | $123.49 | Non-Drug |
| E0993 | NU | Wheelchair back upholstery | | $63.12 | Non-Drug |
| E0993 | RR | Wheelchair back upholstery | | $7.49 | Non-Drug |
| E0993 | UE | Wheelchair back upholstery | | $47.66 | Non-Drug |
| E0993 | | Wheelchair back upholstery | | $64.17 | Non-Drug |
| E0994 | NU | Wheelchair arm rest | | $24.82 | Non-Drug |
| E0994 | RR | Wheelchair arm rest | | $3.22 | Non-Drug |
| E0994 | UE | Wheelchair arm rest | | $18.82 | Non-Drug |
| E0995 | NU | Wheelchair calf rest | | $45.09 | Non-Drug |
| E0995 | RR | Wheelchair calf rest | | $5.94 | Non-Drug |
| E0995 | UE | Wheelchair calf rest | | $39.42 | Non-Drug |
| E0995 | | Wheelchair calf rest | | $42.22 | Non-Drug |
| E0996 | NU | Wheelchair tire solid | | $42.00 | Non-Drug |
| E0996 | RR | Wheelchair tire solid | | $5.43 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| E0996 | UE | Wheelchair tire solid | | $32.73 | Non-Drug |
| E0996 | | Wheelchair tire solid | | $39.66 | Non-Drug |
| E0997 | NU | Wheelchair caster w/ a fork | | $88.69 | Non-Drug |
| E0997 | RR | Wheelchair caster w/ a fork | | $10.51 | Non-Drug |
| E0997 | UE | Wheelchair caster w/ a fork | | $68.49 | Non-Drug |
| E0998 | NU | Wheelchair caster w/o a fork | | $52.96 | Non-Drug |
| E0998 | RR | Wheelchair caster w/o a fork | | $6.19 | Non-Drug |
| E0998 | UE | Wheelchair caster w/o a fork | | $39.95 | Non-Drug |
| E0999 | NU | Wheelchr pneumatic tire w/wh | | $147.58 | Non-Drug |
| E0999 | RR | Wheelchr pneumatic tire w/wh | | $16.48 | Non-Drug |
| E0999 | UE | Wheelchr pneumatic tire w/wh | | $112.65 | Non-Drug |
| E1000 | NU | Wheelchair tire pneumatic ca | | $53.33 | Non-Drug |
| E1000 | RR | Wheelchair tire pneumatic ca | | $7.49 | Non-Drug |
| E1000 | UE | Wheelchair tire pneumatic ca | | $39.94 | Non-Drug |
| E1000 | | Wheelchair tire pneumatic ca | | $49.86 | Non-Drug |
| E1001 | NU | Wheelchair wheel | | $127.03 | Non-Drug |
| E1001 | RR | Wheelchair wheel | | $14.82 | Non-Drug |
| E1001 | UE | Wheelchair wheel | | $97.25 | Non-Drug |
| E1031 | NU | Rollabout chair with casters | | $692.48 | Non-Drug |
| E1031 | RR | Rollabout chair with casters | | $69.25 | Non-Drug |
| E1031 | UE | Rollabout chair with casters | | $519.36 | Non-Drug |
| E1035 | | Patient transfer system | | $368.99 | Non-Drug |
| E1050 | NU | Whelchr fxd full length arms | | $1,477.68 | Non-Drug |
| E1050 | RR | Whelchr fxd full length arms | | $131.62 | Non-Drug |
| E1050 | UE | Whelchr fxd full length arms | | $1,108.70 | Non-Drug |
| E1060 | NU | Wheelchair detachable arms | | $1,906.99 | Non-Drug |
| E1060 | RR | Wheelchair detachable arms | | $181.07 | Non-Drug |
| E1060 | UE | Wheelchair detachable arms | | $1,430.11 | Non-Drug |
| E1065 | NU | Wheelchair power attachment | | $3,540.64 | Non-Drug |
| E1065 | RR | Wheelchair power attachment | | $329.05 | Non-Drug |
| E1065 | UE | Wheelchair power attachment | | $2,657.45 | Non-Drug |
| E1066 | NU | Wheelchair battery charger | | $352.30 | Non-Drug |
| E1066 | RR | Wheelchair battery charger | | $39.42 | Non-Drug |
| E1066 | UE | Wheelchair battery charger | | $248.05 | Non-Drug |
| E1066 | | Wheelchair battery charger | | $328.21 | Non-Drug |
| E1069 | NU | Wheelchair deep cycle batter | | $134.16 | Non-Drug |
| E1069 | RR | Wheelchair deep cycle batter | | $20.36 | Non-Drug |
| E1069 | UE | Wheelchair deep cycle batter | | $118.55 | Non-Drug |
| E1069 | | Wheelchair deep cycle batter | | $144.38 | Non-Drug |
| E1070 | NU | Wheelchair detachable foot r | | $1,731.26 | Non-Drug |
| E1070 | RR | Wheelchair detachable foot r | | $140.97 | Non-Drug |
| E1070 | UE | Wheelchair detachable foot r | | $1,298.33 | Non-Drug |
| E1083 | NU | Hemi-wheelchair fixed arms | | $1,036.41 | Non-Drug |
| E1083 | RR | Hemi-wheelchair fixed arms | | $103.55 | Non-Drug |
| E1083 | UE | Hemi-wheelchair fixed arms | | $756.42 | Non-Drug |
| E1084 | NU | Hemi-wheelchair detachable a | | $1,554.76 | Non-Drug |
| E1084 | RR | Hemi-wheelchair detachable a | | $127.08 | Non-Drug |
| E1084 | UE | Hemi-wheelchair detachable a | | $1,110.54 | Non-Drug |
| E1085 | NU | Hemi-wheelchair fixed arms | | $967.69 | Non-Drug |
| E1085 | RR | Hemi-wheelchair fixed arms | | $103.85 | Non-Drug |
| E1085 | UE | Hemi-wheelchair fixed arms | | $697.20 | Non-Drug |
| E1085 | | Hemi-wheelchair fixed arms | | $849.98 | Non-Drug |
| E1086 | NU | Hemi-wheelchair detachable a | | $1,177.11 | Non-Drug |
| E1086 | RR | Hemi-wheelchair detachable a | | $114.41 | Non-Drug |
| E1086 | UE | Hemi-wheelchair detachable a | | $857.01 | Non-Drug |
| E1086 | | Hemi-wheelchair detachable a | | $849.98 | Non-Drug |
| E1087 | NU | Wheelchair lightwt fixed arm | | $1,613.99 | Non-Drug |
| E1087 | RR | Wheelchair lightwt fixed arm | | $161.60 | Non-Drug |
| E1087 | UE | Wheelchair lightwt fixed arm | | $1,176.87 | Non-Drug |
| E1088 | NU | Wheelchair lightweight det a | | $1,916.99 | Non-Drug |
| E1088 | RR | Wheelchair lightweight det a | | $191.08 | Non-Drug |
| E1088 | UE | Wheelchair lightweight det a | | $1,314.83 | Non-Drug |
| E1089 | NU | Wheelchair lightwt fixed arm | | $1,559.66 | Non-Drug |
| E1089 | RR | Wheelchair lightwt fixed arm | | $163.09 | Non-Drug |
| E1089 | UE | Wheelchair lightwt fixed arm | | $1,172.05 | Non-Drug |
| E1089 | | Wheelchair lightwt fixed arm | | $2,024.06 | Non-Drug |
| E1090 | NU | Wheelchair lightweight det a | | $1,607.88 | Non-Drug |
| E1090 | RR | Wheelchair lightweight det a | | $163.09 | Non-Drug |

NOTE. See end of table for notes regarding Status/Usage Indicators.

## TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| E1090 | UE | Wheelchair lightweight det a | | $1,177.11 | Non-Drug |
| E1090 | | Wheelchair lightweight det a | | $2,024.06 | Non-Drug |
| E1091 | RR | Wheelchair youth | | $109.18 | Non-Drug |
| E1092 | NU | Wheelchair wide w/ leg rests | | $1,808.49 | Non-Drug |
| E1092 | RR | Wheelchair wide w/ leg rests | | $164.03 | Non-Drug |
| E1092 | UE | Wheelchair wide w/ leg-rests | | $1,321.59 | Non-Drug |
| E1093 | NU | Wheelchair wide w/ foot rest | | $1,388.44 | Non-Drug |
| E1093 | RR | Wheelchair wide w/ foot rest | | $142.17 | Non-Drug |
| E1093 | UE | Wheelchair wide w/ foot rest | | $1,033.26 | Non-Drug |
| E1100 | NU | Whchr s-recl fxd arm leg res | | $1,339.73 | Non-Drug |
| E1100 | RR | Whchr s-recl fxd arm leg res | | $134.02 | Non-Drug |
| E1100 | UE | Whchr s-recl fxd arm leg res | | $1,005.12 | Non-Drug |
| E1110 | NU | Wheelchair semi-recl detach | | $1,315.52 | Non-Drug |
| E1110 | RR | Wheelchair semi-recl detach | | $131.40 | Non-Drug |
| E1110 | UE | Wheelchair semi-recl detach | | $957.01 | Non-Drug |
| E1130 | NU | Whlchr stand fxd arm ft rest | | $623.26 | Non-Drug |
| E1130 | RR | Whlchr stand fxd arm ft rest | | $69.41 | Non-Drug |
| E1130 | UE | Whlchr stand fxd arm ft rest | | $475.38 | Non-Drug |
| E1130 | | Whlchr stand fxd arm ft rest | | $739.55 | Non-Drug |
| E1140 | NU | Wheelchair standard detach a | | $894.21 | Non-Drug |
| E1140 | RR | Wheelchair standard detach a | | $96.50 | Non-Drug |
| E1140 | UE | Wheelchair standard detach a | | $635.66 | Non-Drug |
| E1140 | | Wheelchair standard detach a | | $739.55 | Non-Drug |
| E1150 | NU | Wheelchair standard w/ leg r | | $1,104.42 | Non-Drug |
| E1150 | RR | Wheelchair standard w/ leg r | | $107.00 | Non-Drug |
| E1150 | UE | Wheelchair standard w/ leg r | | $731.55 | Non-Drug |
| E1160 | NU | Wheelchair fixed arms | | $918.73 | Non-Drug |
| E1160 | RR | Wheelchair fixed arms | | $83.82 | Non-Drug |
| E1160 | UE | Wheelchair fixed arms | | $641.69 | Non-Drug |
| E1170 | NU | Whlchr ampu fxd arm leg rest | | $1,164.42 | Non-Drug |
| E1170 | RR | Whlchr ampu fxd arm leg rest | | $116.40 | Non-Drug |
| E1170 | UE | Whlchr ampu fxd arm leg rest | | $873.20 | Non-Drug |
| E1171 | NU | Wheelchair amputee w/o leg r | | $1,053.05 | Non-Drug |
| E1171 | RR | Wheelchair amputee w/o leg r | | $105.27 | Non-Drug |
| E1171 | UE | Wheelchair amputee w/o leg r | | $790.08 | Non-Drug |
| E1172 | NU | Wheelchair amputee detach ar | | $1,268.56 | Non-Drug |
| E1172 | RR | Wheelchair amputee detach ar | | $126.89 | Non-Drug |
| E1172 | UE | Wheelchair amputee detach ar | | $951.32 | Non-Drug |
| E1180 | NU | Wheelchair amputee w/ foot r | | $1,309.68 | Non-Drug |
| E1180 | RR | Wheelchair amputee w/ foot r | | $131.01 | Non-Drug |
| E1180 | UE | Wheelchair amputee w/ foot r | | $982.38 | Non-Drug |
| E1190 | NU | Wheelchair amputee w/ leg re | | $1,502.26 | Non-Drug |
| E1190 | RR | Wheelchair amputee w/ leg re | | $150.13 | Non-Drug |
| E1190 | UE | Wheelchair amputee w/ leg re | | $1,097.21 | Non-Drug |
| E1195 | NU | Wheelchair amputee heavy dut | | $1,603.63 | Non-Drug |
| E1195 | RR | Wheelchair amputee heavy dut | | $160.53 | Non-Drug |
| E1195 | UE | Wheelchair amputee heavy dut | | $1,202.93 | Non-Drug |
| E1200 | NU | Wheelchair amputee fixed arm | | $1,133.55 | Non-Drug |
| E1200 | RR | Wheelchair amputee fixed arm | | $113.60 | Non-Drug |
| E1200 | UE | Wheelchair amputee fixed arm | | $850.16 | Non-Drug |
| E1210 | NU | Whlchr moto ful arm leg rest | | $5,071.30 | Non-Drug |
| E1210 | RR | Whlchr moto ful arm leg rest | | $507.13 | Non-Drug |
| E1210 | UE | Whlchr moto ful arm leg rest | | $3,804.13 | Non-Drug |
| E1211 | NU | Wheelchair motorized w/ det | | $5,159.87 | Non-Drug |
| E1211 | RR | Wheelchair motorized w/ det | | $516.43 | Non-Drug |
| E1211 | UE | Wheelchair motorized w/ det | | $3,872.10 | Non-Drug |
| E1212 | NU | Wheelchair motorized w full | | $5,243.25 | Non-Drug |
| E1212 | RR | Wheelchair motorized w full | | $531.41 | Non-Drug |
| E1212 | UE | Wheelchair motorized w full | | $3,935.78 | Non-Drug |
| E1212 | | Wheelchair motorized w full | | $5,255.16 | Non-Drug |
| E1213 | NU | Wheelchair motorized w/ det | | $5,638.20 | Non-Drug |
| E1213 | RR | Wheelchair motorized w/ det | | $570.90 | Non-Drug |
| E1213 | UE | Wheelchair motorized w/ det | | $4,232.00 | Non-Drug |
| E1213 | | Wheelchair motorized w/ det | | $5,255.16 | Non-Drug |
| E1220 | | Whlchr special size/constrc | | $3,302.56 | Non-Drug |
| E1221 | NU | Wheelchair spec size w foot | | $658.40 | Non-Drug |
| E1221 | RR | Wheelchair spec size w foot | | $65.54 | Non-Drug |
| E1221 | UE | Wheelchair spec size w foot | | $493.80 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

## TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| E1222 | NU | Wheelchair spec size w/ leg | | $900.45 | Non-Drug |
| E1222 | RR | Wheelchair spec size w/ leg | | $90.25 | Non-Drug |
| E1222 | UE | Wheelchair spec size w/ leg | | $647.76 | Non-Drug |
| E1223 | NU | Wheelchair spec size w foot | | $978.16 | Non-Drug |
| E1223 | RR | Wheelchair spec size w foot | | $97.82 | Non-Drug |
| E1223 | UE | Wheelchair spec size w foot | | $699.41 | Non-Drug |
| E1224 | NU | Wheelchair spec size w/ leg | | $1,119.83 | Non-Drug |
| E1224 | RR | Wheelchair spec size w/ leg | | $106.48 | Non-Drug |
| E1224 | UE | Wheelchair spec size w/ leg | | $750.97 | Non-Drug |
| E1225 | NU | Wheelchair spec sz semi-recl | | $622.11 | Non-Drug |
| E1225 | RR | Wheelchair spec sz semi-recl | | $62.40 | Non-Drug |
| E1225 | UE | Wheelchair spec sz semi-recl | | $466.81 | Non-Drug |
| E1226 | NU | Wheelchair spec sz full-recl | | $684.80 | Non-Drug |
| E1226 | RR | Wheelchair spec sz full-recl | | $75.38 | Non-Drug |
| E1226 | UE | Wheelchair spec sz full-recl | | $487.78 | Non-Drug |
| E1226 | | Wheelchair spec sz full-recl | | $670.92 | Non-Drug |
| E1227 | NU | Wheelchair spec sz spec ht a | | $345.08 | Non-Drug |
| E1227 | RR | Wheelchair spec sz spec ht a | | $38.61 | Non-Drug |
| E1227 | UE | Wheelchair spec sz spec ht a | | $260.81 | Non-Drug |
| E1228 | NU | Wheelchair spec sz spec ht b | | $391.18 | Non-Drug |
| E1228 | RR | Wheelchair spec sz spec ht b | | $38.98 | Non-Drug |
| E1228 | UE | Wheelchair spec sz spec ht b | | $293.50 | Non-Drug |
| E1230 | NU | Power operated vehicle | | $2,756.30 | Non-Drug |
| E1230 | RR | Power operated vehicle | | $278.18 | Non-Drug |
| E1230 | UE | Power operated vehicle | | $2,181.56 | Non-Drug |
| E1240 | NU | Whchr litwt det arm leg rest | | $1,328.47 | Non-Drug |
| E1240 | RR | Whchr litwt det arm leg rest | | $133.06 | Non-Drug |
| E1240 | UE | Whchr litwt det arm leg rest | | $950.70 | Non-Drug |
| E1250 | NU | Wheelchair lightwt fixed arm | | $955.75 | Non-Drug |
| E1250 | RR | Wheelchair lightwt fixed arm | | $94.21 | Non-Drug |
| E1250 | UE | Wheelchair lightwt fixed arm | | $758.73 | Non-Drug |
| E1250 | | Wheelchair lightwt fixed arm | | $95.20 | Non-Drug |
| E1260 | NU | Wheelchair lightwt foot rest | | $1,115.57 | Non-Drug |
| E1260 | RR | Wheelchair lightwt foot rest | | $118.55 | Non-Drug |
| E1260 | UE | Wheelchair lightwt foot rest | | $881.81 | Non-Drug |
| E1260 | | Wheelchair lightwt foot rest | | $108.53 | Non-Drug |
| E1270 | NU | Wheelchair lightweight leg r | | $1,036.48 | Non-Drug |
| E1270 | RR | Wheelchair lightweight leg r | | $103.79 | Non-Drug |
| E1270 | UE | Wheelchair lightweight leg r | | $760.84 | Non-Drug |
| E1280 | NU | Whchr h-duty det arm leg res | | $1,671.64 | Non-Drug |
| E1280 | RR | Whchr h-duty det arm leg res | | $167.37 | Non-Drug |
| E1280 | UE | Whchr h-duty det arm leg res | | $1,198.11 | Non-Drug |
| E1285 | NU | Wheelchair heavy duty fixed | | $1,435.66 | Non-Drug |
| E1285 | RR | Wheelchair heavy duty fixed | | $150.70 | Non-Drug |
| E1285 | UE | Wheelchair heavy duty fixed | | $1,054.03 | Non-Drug |
| E1285 | | Wheelchair heavy duty fixed | | $1,326.22 | Non-Drug |
| E1290 | NU | Wheelchair hvy duty detach a | | $1,484.80 | Non-Drug |
| E1290 | RR | Wheelchair hvy duty detach a | | $155.75 | Non-Drug |
| E1290 | UE | Wheelchair hvy duty detach a | | $1,084.80 | Non-Drug |
| E1290 | | Wheelchair hvy duty detach a | | $1,326.22 | Non-Drug |
| E1295 | NU | Wheelchair heavy duty fixed | | $1,552.77 | Non-Drug |
| E1295 | RR | Wheelchair heavy duty fixed | | $155.48 | Non-Drug |
| E1295 | UE | Wheelchair heavy duty fixed | | $1,127.94 | Non-Drug |
| E1296 | NU | Wheelchair special seat heig | | $605.33 | Non-Drug |
| E1296 | RR | Wheelchair special seat heig | | $68.56 | Non-Drug |
| E1296 | UE | Wheelchair special seat heig | | $455.96 | Non-Drug |
| E1297 | NU | Wheelchair special seat dept | | $134.99 | Non-Drug |
| E1297 | RR | Wheelchair special seat dept | | $16.63 | Non-Drug |
| E1297 | UE | Wheelchair special seat dept | | $103.20 | Non-Drug |
| E1298 | NU | Wheelchair spec seat depth/w | | $522.67 | Non-Drug |
| E1298 | RR | Wheelchair spec seat depth/w | | $59.87 | Non-Drug |
| E1298 | UE | Wheelchair spec seat depth/w | | $393.96 | Non-Drug |
| E1300 | NU | Whirlpool portable | | $1,461.95 | Non-Drug |
| E1300 | | Whirlpool portable | | $1,461.95 | Non-Drug |
| E1310 | NU | Whirlpool non-portable | | $3,635.11 | Non-Drug |
| E1310 | RR | Whirlpool non-portable | | $305.14 | Non-Drug |
| E1310 | UE | Whirlpool non-portable | | $2,724.75 | Non-Drug |
| E1340 | | Repair for DME, per 15 min | | $16.97 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

### TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Category |
|---|---|---|---|---|---|
| E1353 | NU | Oxygen supplies regulator | | $168.96 | Non-Drug |
| E1353 | RR | Oxygen supplies regulator | | $14.22 | Non-Drug |
| E1353 | UE | Oxygen supplies regulator | | $137.10 | Non-Drug |
| E1353 | | Oxygen supplies regulator | | $33.38 | Non-Drug |
| E1355 | NU | Oxygen supplies stand/rack | | $117.99 | Non-Drug |
| E1355 | RR | Oxygen supplies stand/rack | | $20.68 | Non-Drug |
| E1355 | UE | Oxygen supplies stand/rack | | $96.49 | Non-Drug |
| E1372 | NU | Oxy suppl heater for nebuliz | | $270.14 | Non-Drug |
| E1372 | RR | Oxy suppl heater for nebuliz | | $37.34 | Non-Drug |
| E1372 | UE | Oxy suppl heater for nebuliz | | $198.32 | Non-Drug |
| E1390 | NU | Oxygen concentrator | | $3,835.79 | Non-Drug |
| E1390 | RR | Oxygen concentrator | | $504.85 | Non-Drug |
| E1399 | | Durable medical equipment mi | | $2.76 | Non-Drug |
| E1405 | NU | O2/water vapor enrich w/heat | | $4,921.42 | Non-Drug |
| E1405 | RR | O2/water vapor enrich w/heat | | $520.94 | Non-Drug |
| E1405 | UE | O2/water vapor enrich w/heat | | $3,697.05 | Non-Drug |
| E1406 | NU | O2/water vapor enrich w/o he | | $2,100.21 | Non-Drug |
| E1406 | RR | O2/water vapor enrich w/o he | | $222.31 | Non-Drug |
| E1406 | UE | O2/water vapor enrich w/o he | | $1,577.71 | Non-Drug |
| E1510 | RR | Kidney dialysate delivry sys | | $631.46 | Non-Drug |
| E1510 | | Kidney dialysate delivry sys | | $1,403.10 | Non-Drug |
| E1590 | RR | Hemodialysis machine | | $1,107.71 | Non-Drug |
| E1594 | RR | Cycler dialysis machine | | $544.78 | Non-Drug |
| E1610 | RR | Reverse osmosis h2o puri sys | | $499.99 | Non-Drug |
| E1700 | NU | Jaw motion rehab system | | $578.44 | Non-Drug |
| E1700 | RR | Jaw motion rehab system | | $51.77 | Non-Drug |
| E1700 | UE | Jaw motion rehab system | | $432.25 | Non-Drug |
| E1701 | | Repl cushions for jaw motion | | $18.69 | Non-Drug |
| E1702 | | Repl measr scales jaw motion | | $35.74 | Non-Drug |
| E1800 | RR | Adjust elbow ext/flex device | | $201.41 | Non-Drug |
| E1801 | RR | SPS elbow device | | $212.43 | Non-Drug |
| E1805 | RR | Adjust wrist ext/flex device | | $207.92 | Non-Drug |
| E1806 | RR | SPS wrist device | | $173.28 | Non-Drug |
| E1810 | RR | Adjust knee ext/flex device | | $204.94 | Non-Drug |
| E1811 | RR | SPS knee device | | $221.12 | Non-Drug |
| E1815 | RR | Adjust ankle ext/flex device | | $207.92 | Non-Drug |
| E1816 | RR | SPS ankle device | | $224.71 | Non-Drug |
| E1818 | RR | SPS forearm device | | $229.54 | Non-Drug |
| E1820 | NU | Soft interface material | | $132.29 | Non-Drug |
| E1820 | RR | Soft interface material | | $15.22 | Non-Drug |
| E1820 | UE | Soft interface material | | $97.65 | Non-Drug |
| E1821 | NU | Replacement interface SPSD | | $172.16 | Non-Drug |
| E1821 | RR | Replacement interface SPSD | | $18.55 | Non-Drug |
| E1821 | UE | Replacement interface SPSD | | $127.56 | Non-Drug |
| E1825 | RR | Adjust finger ext/flex devc | | $207.92 | Non-Drug |
| E1830 | RR | Adjust toe ext/flex device | | $207.92 | Non-Drug |
| E1840 | RR | Adj shoulder ext/flex device | | $642.66 | Non-Drug |
| E2000 | RR | Gastric suction pump hme mdl | | $81.57 | Non-Drug |
| E2100 | NU | Bld glucose monitor w voice | | $1,084.36 | Non-Drug |
| E2100 | RR | Bld glucose monitor w voice | | $102.75 | Non-Drug |
| E2100 | UE | Bld glucose monitor w voice | | $811.71 | Non-Drug |
| E2101 | NU | Bld glucose monitor w lance | | $313.43 | Non-Drug |
| E2101 | RR | Bld glucose monitor w lance | | $30.45 | Non-Drug |
| E2101 | UE | Bld glucose monitor w lance | | $233.49 | Non-Drug |
| J0120 | | Tetracyclin injection | | $221.44 | Drug |
| J0130 | | Abciximab injection | a | $858.69 | Drug |
| J0150 | | Injection adenosine 6 MG | | $72.13 | Drug |
| J0151 | | Adenosine injection | a | $378.97 | Drug |
| J0170 | | Adrenalin epinephrin inject | | $3.36 | Drug |
| J0200 | | Alatrofloxacin mesylate | | $41.22 | Drug |
| J0205 | | Alglucerase injection | | $71.56 | Drug |
| J0207 | | Amifostine | a | $704.16 | Drug |
| J0210 | | Methyldopate hcl injection | | $25.54 | Drug |
| J0256 | | Alpha 1 proteinase inhibitor | | $3.36 | Drug |
| J0270 | | Alprostadil for injection | | $7.12 | Drug |
| J0275 | | Alprostadil urethral suppos | | $41.26 | Drug |
| J0280 | | Aminophyllin 250 MG inj | | $1.68 | Drug |
| J0282 | | Amiodarone HCl | | $42.94 | Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

### TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| J0285 | | Amphotericin B | | $23.94 | Drug |
| J0287 | | Amphotericin b lipid complex | a | $45.80 | Drug |
| J0288 | | Ampho b cholesteryl sulfate | | $33.55 | Drug |
| J0289 | | Amphotericin b liposome inj | | $68.70 | Drug |
| J0290 | | Ampicillin 500 MG inj | | $2.80 | Drug |
| J0295 | | Ampicillin sodium per 1.5 gm | | $15.13 | Drug |
| J0300 | | Amobarbital 125 MG inj | | $3.92 | Drug |
| J0330 | | Succinycholine chloride inj | | $0.56 | Drug |
| J0360 | | Hydralazine hcl injection | | $38.93 | Drug |
| J0380 | | Inj metaraminol bitartrate | | $2.24 | Drug |
| J0390 | | Chloroquine injection | | $42.36 | Drug |
| J0395 | | Arbutamine HCl injection | | $311.42 | Drug |
| J0456 | | Azithromycin | | $50.38 | Drug |
| J0460 | | Atropine sulfate injection | | $1.12 | Drug |
| J0470 | | Dimecaprol injection | | $48.66 | Drug |
| J0475 | | Baclofen 10 MG injection | | $366.37 | Drug |
| J0476 | | Baclofen intrathecal trial | | $141.97 | Drug |
| J0500 | | Dicyclomine injection | | $35.15 | Drug |
| J0515 | | Inj benztropine mesylate | | $7.12 | Drug |
| J0520 | | Bethanechol chloride inject | | $10.32 | Drug |
| J0530 | | Penicillin g benzathine inj | | $23.14 | Drug |
| J0540 | | Penicillin g benzathine inj | | $44.08 | Drug |
| J0550 | | Penicillin g benzathine inj | | $83.58 | Drug |
| J0560 | | Penicillin g benzathine inj | | $11.12 | Drug |
| J0570 | | Penicillin g benzathine inj | | $11.12 | Drug |
| J0580 | | Penicillin g benzathine inj | | $24.74 | Drug |
| J0585 | | Botulinum toxin a per unit | a | $8.72 | Drug |
| J0587 | | Botulinum toxin type B | a | $18.33 | Drug |
| J0592 | | Buprenorphine hydrochloride | | $1.68 | Drug |
| J0600 | | Edetate calcium disodium inj | | $76.14 | Drug |
| J0610 | | Calcium gluconate injection | | $1.68 | Drug |
| J0620 | | Calcium glycer & lact/10 ML | | $11.93 | Drug |
| J0630 | | Calcitonin salmon injection | | $73.28 | Drug |
| J0636 | | Inj calcitriol per 0.1 mcg | | $2,296.70 | Drug |
| J0637 | | Caspofungin acetate | a | $61.83 | Drug |
| J0640 | | Leucovorin calcium injection | | $38.93 | Drug |
| J0670 | | Inj mepivacaine HCL/10 ml | | $3.36 | Drug |
| J0690 | | Cefazolin sodium injection | | $2.80 | Drug |
| J0692 | | Cefepime HCl for injection | | $17.53 | Drug |
| J0694 | | Cefoxitin sodium injection | | $23.14 | Drug |
| J0696 | | Ceftriaxone sodium injection | | $32.75 | Drug |
| J0697 | | Sterile cefuroxime injection | | $13.53 | Drug |
| J0698 | | Cefotaxime sodium injection | | $22.34 | Drug |
| J0702 | | Betamethasone acet&sod phosp | | $7.12 | Drug |
| J0704 | | Betamethasone sod phosp/4 MG | | $3.92 | Drug |
| J0706 | | Caffeine citrate injection | | $5.52 | Drug |
| J0710 | | Cephapirin sodium injection | | $15.77 | Drug |
| J0713 | | Inj ceftazidime per 500 mg | | $14.33 | Drug |
| J0715 | | Ceftizoxime sodium / 500 MG | | $9.52 | Drug |
| J0720 | | Chloramphenicol sodium injec | | $14.33 | Drug |
| J0725 | | Chorionic gonadotropin/1000u | | $2.80 | Drug |
| J0735 | | Clonidine hydrochloride | | $100.75 | Drug |
| J0740 | | Cidofovir injection | | $1,339.55 | Drug |
| J0743 | | Cilastatin sodium injection | | $35.15 | Drug |
| J0744 | | Ciprofloxacin iv | | $32.75 | Drug |
| J0745 | | Inj codeine phosphate /30 MG | | $0.56 | Drug |
| J0760 | | Colchicine injection | | $14.33 | Drug |
| J0770 | | Colistimethate sodium inj | | $99.61 | Drug |
| J0780 | | Prochlorperazine injection | | $3.92 | Drug |
| J0800 | | Corticotropin injection | | $185.48 | Drug |
| J0835 | | Inj cosyntropin per 0.25 MG | | $36.75 | Drug |
| J0850 | | Cytomegalovirus imm IV /vial | a | $1,171.[illegible] | Drug |
| J0880 | | Darbepoetin alfa injection | | $48.66 | Drug |
| J0895 | | Deferoxamine mesylate inj | | $32.75 | Drug |
| J0900 | | Testosterone enanthate inj | | $2.80 | Drug |
| J0945 | | Brompheniramine maleate inj | | $1.68 | Drug |
| J0970 | | Estradiol valerate injection | | $2.80 | Drug |
| J1000 | | Depo-estradiol cypionate inj | | $1.12 | Drug |

NOTE. See end of table for notes regarding Status/Usage Indicators.

### TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| J1020 | | Methylprednisolone 20 MG inj | | $3.92 | Drug |
| J1030 | | Methylprednisolone 40 MG inj | | $10.32 | Drug |
| J1040 | | Methylprednisolone 80 MG inj | | $21.54 | Drug |
| J1051 | | Medroxyprogesterone inj | | $9.52 | Drug |
| J1055 | | Medrxyprogester acetate inj | | $112.78 | Drug |
| J1056 | | MA/EC contraceptiveinjection | | $52.10 | Drug |
| J1060 | | Testosterone cypionate 1 ML | | $8.72 | Drug |
| J1070 | | Testosterone cypionat 100 MG | | $10.32 | Drug |
| J1080 | | Testosterone cypionat 200 MG | | $19.13 | Drug |
| J1094 | | Inj dexamethasone acetate | | $0.56 | Drug |
| J1100 | | Dexamethasone sodium phos | | $1.12 | Drug |
| J1110 | | Inj dihydroergotamine mesylt | | $60.11 | Drug |
| J1120 | | Acetazolamid sodium injectio | | $58.96 | Drug |
| J1160 | | Digoxin injection | | $2.80 | Drug |
| J1165 | | Phenytoin sodium injection | | $1.12 | Drug |
| J1170 | | Hydromorphone injection | | $2.24 | Drug |
| J1180 | | Dyphylline injection | | $19.13 | Drug |
| J1190 | | Dexrazoxane HCl injection | a | $384.12 | Drug |
| J1200 | | Diphenhydramine hcl injectio | | $2.80 | Drug |
| J1205 | | Chlorothiazide sodium inj | | $22.34 | Drug |
| J1212 | | Dimethyl sulfoxide 50% 50 ML | | $79.00 | Drug |
| J1230 | | Methadone injection | | $1.12 | Drug |
| J1240 | | Dimenhydrinate injection | | $0.56 | Drug |
| J1245 | | Dipyridamole injection | | $45.80 | Drug |
| J1250 | | Inj dobutamine HCL/250 mg | | $7.12 | Drug |
| J1260 | | Dolasetron mesylate | | $29.90 | Drug |
| J1270 | | Injection, doxercalciferol | | $8.72 | Drug |
| J1320 | | Amitriptyline injection | | $3.92 | Drug |
| J1325 | | Epoprostenol injection | | $39.50 | Drug |
| J1327 | | Eptifibatide injection | a | $27.94 | Drug |
| J1364 | | Erythro lactobionate /500 MG | | $6.32 | Drug |
| J1380 | | Estradiol valerate 10 MG inj | | $0.56 | Drug |
| J1390 | | Estradiol valerate 20 MG inj | | $1.68 | Drug |
| J1410 | | Inj estrogen conjugate 25 MG | | $103.62 | Drug |
| J1435 | | Injection estrone per 1 MG | | $0.56 | Drug |
| J1436 | | Etidronate disodium inj | | $125.94 | Drug |
| J1438 | | Etanercept injection | | $254.75 | Drug |
| J1440 | | Filgrastim 300 mcg injection | a | $317.14 | Drug |
| J1441 | | Filgrastim 480 mcg injection | a | $529.53 | Drug |
| J1450 | | Fluconazole | | $163.15 | Drug |
| J1452 | | Intraocular Fomivirsen na | | $1,581.70 | Drug |
| J1455 | | Foscarnet sodium injection | | $26.34 | Drug |
| J1460 | | Gamma globulin 1 CC inj | | $24.74 | Drug |
| J1470 | | Gamma globulin 2 CC inj | | $47.52 | Drug |
| J1480 | | Gamma globulin 3 CC inj | | $66.41 | Drug |
| J1490 | | Gamma globulin 4 CC inj | | $85.30 | Drug |
| J1500 | | Gamma globulin 5 CC inj | | $104.19 | Drug |
| J1510 | | Gamma globulin 6 CC inj | | $123.08 | Drug |
| J1520 | | Gamma globulin 7 CC inj | | $141.97 | Drug |
| J1530 | | Gamma globulin 8 CC inj | | $160.86 | Drug |
| J1540 | | Gamma globulin 9 CC inj | | $179.75 | Drug |
| J1550 | | Gamma globulin 10 CC inj | | $198.64 | Drug |
| J1560 | | Gamma globulin > 10 CC inj | | $19.26 | Drug |
| J1563 | | IV immune globulin | a | $101.33 | Drug |
| J1564 | | Immune globulin 10 mg | a | $1.12 | Drug |
| J1565 | | RSV-ivig | a | $36.75 | Drug |
| J1570 | | Ganciclovir sodium injection | | $68.12 | Drug |
| J1580 | | Garamycin gentamicin inj | | $3.36 | Drug |
| J1590 | | Gatifloxacin injection | | $1.68 | Drug |
| J1600 | | Gold sodium thiomaleate inj | | $29.55 | Drug |
| J1610 | | Glucagon hydrochloride/1 MG | | $81.29 | Drug |
| J1620 | | Gonadorelin hydroch/ 100 mcg | | $344.05 | Drug |
| J1626 | | Granisetron HCl injection | | $40.65 | Drug |
| J1630 | | Haloperidol injection | | $15.13 | Drug |
| J1631 | | Haloperidol decanoate inj | | $50.95 | Drug |
| J1642 | | Inj heparin sodium per 10 u | | $1.12 | Drug |
| J1644 | | Inj heparin sodium per 1000u | | $0.56 | Drug |
| J1645 | | Dalteparin sodium | | $34.35 | Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

### TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Category |
|---|---|---|---|---|---|
| J1650 | | Inj enoxaparin sodium | | $11.12 | Drug |
| J1652 | | Fondaparinux sodium | | $17.53 | Drug |
| J1655 | | Tinzaparin sodium injection | | $7.12 | Drug |
| J1670 | | Tetanus immune globulin inj | | $198.64 | Drug |
| J1700 | | Hydrocortisone acetate inj | | $0.56 | Drug |
| J1710 | | Hydrocortisone sodium ph inj | | $11.12 | Drug |
| J1720 | | Hydrocortisone sodium succ i | | $2.80 | Drug |
| J1730 | | Diazoxide injection | | $212.96 | Drug |
| J1742 | | Ibutilide fumarate injection | | $443.08 | Drug |
| J1745 | | Infliximab injection | a | $118.50 | Drug |
| J1750 | | Iron dextran | | $39.50 | Drug |
| J1756 | | Iron sucrose injection | | $1.12 | Drug |
| J1785 | | Injection imiglucerase /unit | | $7.12 | Drug |
| J1790 | | Droperidol injection | | $2.80 | Drug |
| J1800 | | Propranolol injection | | $25.54 | Drug |
| J1810 | | Droperidol/fentanyl inj | | $19.93 | Drug |
| J1815 | | Insulin injection | | $0.56 | Drug |
| J1825 | | Interferon beta-1a | a | $396.72 | Drug |
| J1830 | | Interferon beta-1b / .25 MG | a | $103.14 | Drug |
| J1835 | | Itraconazole injection | | $1,463.20 | Drug |
| J1840 | | Kanamycin sulfate 500 MG inj | | $6.32 | Drug |
| J1850 | | Kanamycin sulfate 75 MG inj | | $0.56 | Drug |
| J1885 | | Ketorolac tromethamine inj | | $11.93 | Drug |
| J1890 | | Cephalothin sodium injection | | $22.34 | Drug |
| J1910 | | Kutapressin injection | | $32.75 | Drug |
| J1940 | | Furosemide injection | | $1.68 | Drug |
| J1950 | | Leuprolide acetate /3.75 MG | a | $851.25 | Drug |
| J1955 | | Inj levocarnitine per 1 gm | | $66.41 | Drug |
| J1956 | | Levofloxacin injection | | $42.36 | Drug |
| J1960 | | Levorphanol tartrate inj | | $7.12 | Drug |
| J1980 | | Hyoscyamine sulfate inj | | $17.53 | Drug |
| J1990 | | Chlordiazepoxide injection | | $50.95 | Drug |
| J2000 | | Lidocaine injection | | $7.92 | Drug |
| J2010 | | Lincomycin injection | | $6.32 | Drug |
| J2020 | | Linezolid injection | | $73.28 | Drug |
| J2060 | | Lorazepam injection | | $5.52 | Drug |
| J2150 | | Mannitol injection | | $10.32 | Drug |
| J2175 | | Meperidine hydrochl /100 MG | | $1.12 | Drug |
| J2180 | | Meperidine/promethazine inj | | $8.72 | Drug |
| J2210 | | Methylergonovin maleate inj | | $7.12 | Drug |
| J2250 | | Inj midazolam hydrochloride | | $2.24 | Drug |
| J2260 | | Inj milrinone lactate / 5 ML | | $95.03 | Drug |
| J2270 | | Morphine sulfate injection | | $1.12 | Drug |
| J2271 | | Morphine so4 injection 100mg | | $30.35 | Drug |
| J2275 | | Morphine sulfate injection | | $3.92 | Drug |
| J2300 | | Inj nalbuphine hydrochloride | | $2.24 | Drug |
| J2310 | | Inj naloxone hydrochloride | | $3.92 | Drug |
| J2320 | | Nandrolone decanoate 50 MG | | $10.32 | Drug |
| J2321 | | Nandrolone decanoate 100 MG | | $22.34 | Drug |
| J2322 | | Nandrolone decanoate 200 MG | | $27.94 | Drug |
| J2324 | | Nesiritide | a | $248.45 | Drug |
| J2352 | | Octreotide acetate injection | a | $156.28 | Drug |
| J2355 | | Oprelvekin injection | a | $434.50 | Drug |
| J2360 | | Orphenadrine injection | | $11.12 | Drug |
| J2370 | | Phenylephrine hcl injection | | $3.36 | Drug |
| J2400 | | Chloroprocaine hcl injection | | $12.73 | Drug |
| J2405 | | Ondansetron hcl injection | | $12.73 | Drug |
| J2410 | | Oxymorphone hcl injection | | $4.72 | Drug |
| J2430 | | Pamidronate disodium /30 MG | a | $465.41 | Drug |
| J2440 | | Papaverin hcl injection | | $11.93 | Drug |
| J2460 | | Oxytetracycline injection | | $1.68 | Drug |
| J2501 | | Paricalcitol | | $10.32 | Drug |
| J2510 | | Penicillin g procaine inj | | $19.13 | Drug |
| J2515 | | Pentobarbital sodium inj | | $1.12 | Drug |
| J2540 | | Penicillin g potassium inj | | $7.12 | Drug |
| J2543 | | Piperacillin/tazobactam | | $9.52 | Drug |
| J2545 | | Pentamidine isethionte/300mg | | $164.87 | Drug |
| J2550 | | Promethazine hcl injection | | $3.36 | Drug |

NOTE  See end of table for notes regarding Status/Usage Indicators

## TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| J2560 | | Phenobarbital sodium inj | | $2.80 | Drug |
| J2590 | | Oxytocin injection | | $1.68 | Drug |
| J2597 | | Inj desmopressin acetate | | $7.92 | Drug |
| J2650 | | Prednisolone acetate inj | | $0.56 | Drug |
| J2670 | | Totazoline hcl injection | | $7.12 | Drug |
| J2675 | | Inj progesterone per 50 MG | | $8.72 | Drug |
| J2680 | | Fluphenazine decanoate 25 MG | | $30.35 | Drug |
| J2690 | | Procainamide hcl injection | | $23.94 | Drug |
| J2700 | | Oxacillin sodium injeciton | | $1.12 | Drug |
| J2710 | | Neostigmine methylslfte inj | | $3.92 | Drug |
| J2720 | | Inj protamine sulfate/10 MG | | $1.12 | Drug |
| J2725 | | Inj protirelin per 250 mcg | | $50.38 | Drug |
| J2730 | | Pralidoxime chloride inj | | $180.33 | Drug |
| J2760 | | Phentolaine mesylate inj | | $63.54 | Drug |
| J2765 | | Metoclopramide hcl injection | | $2.80 | Drug |
| J2770 | | Quinupristin/dalfopristin | | $183.76 | Drug |
| J2780 | | Ranitidine hydrochloride inj | | $2.24 | Drug |
| J2788 | | Rho d immune globulin 50 mcg | a | $69.27 | Drug |
| J2790 | | Rho d immune globulin inj | | $184.33 | Drug |
| J2792 | | Rho(D) immune globulin h, sd | a | $43.51 | Drug |
| J2795 | | Ropivacaine HCl injection | | $0.21 | Drug |
| J2800 | | Methocarbamol injection | | $7.12 | Drug |
| J2810 | | Inj theophylline per 40 MG | | $1.36 | Drug |
| J2820 | | Sargramostim injection | | $57.82 | Drug |
| J2910 | | Aurothioglucose injeciton | | $35.15 | Drug |
| J2912 | | Sodium chloride injection | | $0.56 | Drug |
| J2916 | | Na ferric gluconate complex | | $17.53 | Drug |
| J2920 | | Methylprednisolone injection | | $2.80 | Drug |
| J2930 | | Methylprednisolone injection | | $3.36 | Drug |
| J2940 | | Somatrem injection | | $85.30 | Drug |
| J2941 | | Somatropin injection | a | $85.30 | Drug |
| J2950 | | Promazine hcl injection | | $0.56 | Drug |
| J2993 | | Reteplase injection | a | $2,171.33 | Drug |
| J2995 | | Inj streptokinase /250000 IU | | $219.25 | Drug |
| J2997 | | Alteplase recombinant | | $68.70 | Drug |
| J3000 | | Streptomycin injection | | $12.73 | Drug |
| J3010 | | Fentanyl citrate injeciton | | $3.36 | Drug |
| J3030 | | Sumatriptan succinate / 6 MG | | $53.81 | Drug |
| J3070 | | Pentazocine injection | | $10.32 | Drug |
| J3100 | | Tenecteplase injection | a | $4,332.94 | Drug |
| J3105 | | Terbutaline sulfate inj | | $58.39 | Drug |
| J3120 | | Testosterone enanthate inj | | $1.12 | Drug |
| J3130 | | Testosterone enanthate inj | | $35.95 | Drug |
| J3140 | | Testosterone suspension inj | | $0.56 | Drug |
| J3150 | | Testosteron propionate inj | | $1.68 | Drug |
| J3230 | | Chlorpromazine hcl injection | | $7.12 | Drug |
| J3240 | | Thyrotropin injection | a | $947.42 | Drug |
| J3245 | | Tirofiban hydrochloride | a | $774.54 | Drug |
| J3250 | | Trimethobenzamide hcl inj | | $2.24 | Drug |
| J3260 | | Tobramycin sulfate injection | | $12.73 | Drug |
| J3265 | | Injection torsemide 10 mg/ml | | $2.24 | Drug |
| J3280 | | Thiethylperazine maleate inj | | $8.72 | Drug |
| J3301 | | Triamcinolone acetonide inj | | $2.24 | Drug |
| J3302 | | Triamcinolone diacetate inj | | $0.56 | Drug |
| J3303 | | Triamcinolone hexacetonl inj | | $1.68 | Drug |
| J3305 | | Inj trimetrexate glucoronate | a | $245.59 | Drug |
| J3310 | | Perphenazine injeciton | | $18.33 | Drug |
| J3315 | | Triptorelin pamoate | | $696.68 | Drug |
| J3320 | | Spectinomycn di-hcl inj | | $53.81 | Drug |
| J3350 | | Urea injection | | $176.32 | Drug |
| J3360 | | Diazepam injection | | $7.12 | Drug |
| J3364 | | Urokinase 5000 IU injection | | $103.62 | Drug |
| J3365 | | Urokinase 250,000 IU inj | | $856.40 | Drug |
| J3370 | | Vancomycin hcl injection | | $15.13 | Drug |
| J3395 | | Verteporfin injection | a | $2,423.22 | Drug |
| J3400 | | Triflupromazine hcl inj | | $74.27 | Drug |
| J3410 | | Hydroxyzine hcl injection | | $1.12 | Drug |
| J3420 | | Vitamin b12 injection | | $2.24 | Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

### TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| J3430 | | Vitamin k phytonadione inj | | $3.92 | Drug |
| J3470 | | Hyaluronidase injection | | $50.95 | Drug |
| J3475 | | Inj magnesium sulfate | | $0.56 | Drug |
| J3480 | | Inj potassium chloride | | $0.56 | Drug |
| J3485 | | Zidovudine | | $1.68 | Drug |
| J3487 | | Zoledronic acid | a | $369.81 | Drug |
| J3490 | | | | | |
| J3520 | | Edetate disodium per 150 mg | | $1.12 | Drug |
| J3535 | | Metered dose inhaler drug | | $2.99 | Drug |
| J3570 | | Laetrile amygdalin vit B17 | | $35.76 | Drug |
| J3590 | | | | | |
| J7030 | | Normal saline solution infus | | $23.14 | Drug |
| J7040 | | Normal saline solution infus | | $11.12 | Drug |
| J7042 | | 5% dextrose/normal saline | | $19.93 | Drug |
| J7050 | | Normal saline solution infus | | $4.72 | Drug |
| J7051 | | Sterile saline/water | | $1.12 | Drug |
| J7060 | | 5% dextrose/water | | $15.93 | Drug |
| J7070 | | D5w infusion | | $24.74 | Drug |
| J7100 | | Dextran 40 infusion | | $51.52 | Drug |
| J7110 | | Dextran 75 infusion | | $31.15 | Drug |
| J7120 | | Ringers lactate infusion | | $27.14 | Drug |
| J7130 | | Hypertonic saline solution | | $1.12 | Drug |
| J7190 | | Factor viii | a | $1.68 | Drug |
| J7191 | | Factor VIII (porcine) | a | $3.36 | Drug |
| J7192 | | Factor viii recombinant | a | $2.24 | Drug |
| J7193 | | Factor IX non-recombinant | a | $1.68 | Drug |
| J7194 | | Factor ix complex | a | $0.56 | Drug |
| J7195 | | Factor IX recombinant | a | $1.68 | Drug |
| J7197 | | Antithrombin iii injection | a | $1.68 | Drug |
| J7198 | | Anti-inhibitor | a | $2.24 | Drug |
| J7300 | | Intraut copper contraceptive | | $461.84 | Drug |
| J7302 | | Levonorgestrel iu contracept | | $751.64 | Drug |
| J7308 | | Aminolevulinic acid hcl top | | $176.89 | Drug |
| J7310 | | Ganciclovir long act implant | | $7,869.58 | Drug |
| J7317 | | Sodium hyaluronate injection | | $245.01 | Drug |
| J7320 | | Hylan G-F 20 injection | a | $378.97 | Drug |
| J7330 | | Cultured chondrocytes implnt | a | $25,100.57 | Drug |
| J7340 | | Metabolic active D/E tissue | | $58.39 | Drug |
| J7342 | | Metabolically active tissue | | $28.40 | Non-Drug |
| J7500 | | Azathioprine oral 50mg | | $2.24 | Drug |
| J7501 | | Azathioprine parenteral | | $108.77 | Drug |
| J7502 | | Cyclosporine oral 100 mg | a | $16.73 | Drug |
| J7504 | | Lymphocyte immune globulin | a | $490.03 | Drug |
| J7505 | | Monoclonal antibodies | a | $1,563.38 | Drug |
| J7506 | | Prednisone oral | | $0.09 | Drug |
| J7507 | | Tacrolimus oral per 1 MG | a | $7.12 | Drug |
| J7508 | | Tacrolimus oral per 5 MG | | $40.07 | Drug |
| J7509 | | Methylprednisolone oral | | $1.12 | Drug |
| J7510 | | Prednisolone oral per 5 mg | | $0.18 | Drug |
| J7511 | | Antithymocyte globuln rabbit | a | $547.84 | Drug |
| J7513 | | Daclizumab, parenteral | a | $713.28 | Drug |
| J7515 | | Cyclosporine oral 25 mg | | $2.80 | Drug |
| J7516 | | Cyclosporin parenteral 250mg | | $60.11 | Drug |
| J7517 | | Mycophenolate mofetil oral | a | $4.72 | Drug |
| J7520 | | Sirolimus, oral | a | $16.73 | Drug |
| J7525 | | Tacrolimus injection | | $239.86 | Drug |
| J7599 | | | | | |
| J7608 | | Acetylcysteine inh sol u d | | $13.07 | Drug |
| J7618 | | Albuterol inh sol con | | $0.23 | Drug |
| J7619 | | Albuterol inh sol u d | | $0.75 | Drug |
| J7622 | | Beclomethasone inhalatn sol | | $6.88 | Drug |
| J7626 | | Budesonide inhalation sol | | $10.32 | Drug |
| J7628 | | Bitolterol mes inhal sol con | | $0.40 | Drug |
| J7629 | | Bitolterol mes inh sol u d | | $1.12 | Drug |
| J7631 | | Cromolyn sodium inh sol u d | | $0.56 | Drug |
| J7633 | | Budesonide concentrated sol | | $11.93 | Drug |
| J7636 | | Atropine inhal sol unit dose | | $0.51 | Drug |
| J7637 | | Dexamethasone inhal sol con | | $0.21 | Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators

TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| J7638 | | Dexamethasone inhal sol u d | | $0.50 | Drug |
| J7639 | | Domase alpha inhal sol u d | | $89.31 | Drug |
| J7642 | | Glycopyrrolate inhal sol con | | $9.83 | Drug |
| J7643 | | Glycopyrrolate inhal sol u d | | $12.38 | Drug |
| J7644 | | Ipratropium brom inh sol u d | | $5.79 | Drug |
| J7649 | | Isoetharine hcl inh sol u d | | $1.38 | Drug |
| J7668 | | Metaproterenol inh sol con | | $0.50 | Drug |
| J7669 | | Metaproterenol inh sol u d | | $2.44 | Drug |
| J7680 | | Terbutaline so4 inh sol con | | $6.88 | Drug |
| J7681 | | Terbutaline so4 inh sol u d | | $2.77 | Drug |
| J7682 | | Tobramycin inhalation sol | | $102.47 | Drug |
| J7683 | | Triamcinolone inh sol con | | $0.10 | Drug |
| J7684 | | Triamcinolone inh sol u d | | $0.30 | Drug |
| J7699 | | | | | |
| J7799 | | | | | |
| J8499 | | | | | |
| J8510 | | Oral busulfan | | $5.11 | Drug |
| J8520 | | Capecitabine, oral, 150 mg | a | $6.56 | Drug |
| J8521 | | Capecitabine, oral, 500 mg | | $22.61 | Drug |
| J8530 | | Cyclophosphamide oral 25 MG | | $5.83 | Drug |
| J8560 | | Etoposide oral 50 MG | a | $137.05 | Drug |
| J8600 | | Melphalan oral 2 MG | | $5.83 | Drug |
| J8610 | | Methotrexate oral 2.5 MG | | $8.02 | Drug |
| J8700 | | Temozolmide | a | $16.05 | Drug |
| J8999 | | | | | |
| J9000 | | Doxorubic hcl 10 MG vl chemo | | $103.76 | Drug |
| J9001 | | Doxorubicin hcl liposome inj | a | $636.00 | Drug |
| J9010 | | Alemtuzumab injection | a | $855.83 | Drug |
| J9015 | | Aldesleukin/single use vial | a | $1,084.35 | Drug |
| J9017 | | Arsenic trioxide | a | $64.91 | Drug |
| J9020 | | Asparaginase injection | | $127.34 | Drug |
| J9031 | | Bcg live intravesical vac | | $351.05 | Drug |
| J9040 | | Bleomycin sulfate injection | a | $511.64 | Drug |
| J9045 | | Carboplatin injection | a | $274.40 | Drug |
| J9050 | | Carmus bischl nitro inj | a | $257.06 | Drug |
| J9060 | | Cisplatin 10 MG injection | a | $87.80 | Drug |
| J9062 | | Cisplatin 50 MG injection | | $405.71 | Drug |
| J9065 | | Inj cladribine per 1 MG | a | $108.61 | Drug |
| J9070 | | Cyclophosphamide 100 MG inj | | $12.40 | Drug |
| J9080 | | Cyclophosphamide 200 MG inj | | $24.07 | Drug |
| J9090 | | Cyclophosphamide 500 MG inj | | $49.65 | Drug |
| J9091 | | Cyclophosphamide 1.0 grm inj | | $97.51 | Drug |
| J9092 | | Cyclophosphamide 2.0 grm inj | | $192.55 | Drug |
| J9093 | | Cyclophosphamide lyophilized | | $12.40 | Drug |
| J9094 | | Cyclophosphamide lyophilized | | $24.80 | Drug |
| J9095 | | Cyclophosphamide lyophilized | | $51.03 | Drug |
| J9096 | | Cyclophosphamide lyophilized | | $99.59 | Drug |
| J9097 | | Cyclophosphamide lyophilized | | $198.10 | Drug |
| J9100 | | Cytarabine hcl 100 MG inj | | $12.40 | Drug |
| J9110 | | Cytarabine hcl 500 MG inj | | $49.65 | Drug |
| J9120 | | Dactinomycin actinomycin d | | $29.17 | Drug |
| J9130 | | Dacarbazine 10 MG inj | | $26.99 | Drug |
| J9140 | | Dacarbazine 200 MG inj | | $46.87 | Drug |
| J9150 | | Daunorubicin | a | $162.03 | Drug |
| J9151 | | Daunorubicin citrate liposom | a | $131.50 | Drug |
| J9160 | | Denileukin diftitox, 300 mcg | a | $2,012.76 | Drug |
| J9165 | | Diethylstilbestrol injection | a | $30.63 | Drug |
| J9170 | | Docetaxel | a | $565.82 | Drug |
| J9180 | | Epirubicin HCl injection | | $1,113.38 | Drug |
| J9181 | | Etoposide 10 MG inj | | $21.88 | Drug |
| J9182 | | Etoposide 100 MG inj | | $211.28 | Drug |
| J9185 | | Fludarabine phosphate inj | a | $563.40 | Drug |
| J9190 | | Fluorouracil injection | | $5.83 | Drug |
| J9200 | | Floxuridine injection | a | $261.92 | Drug |
| J9201 | | Gemcitabine HCl | a | $244.58 | Drug |
| J9202 | | Goserelin acetate implant | a | $731.24 | Drug |
| J9206 | | Innotecan injection | a | $306.31 | Drug |
| J9208 | | Ifosfomide injection | a | $303.54 | Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

## TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| J9209 | | Mesna injection | a | $74.62 | Drug |
| J9211 | | Idarubicin hcl injection | a | $759.30 | Drug |
| J9212 | | Interferon alfacon-1 | | $7.92 | Drug |
| J9213 | | Interferon alfa-2a inj | | $71.85 | Drug |
| J9214 | | Interferon alfa-2b inj | | $28.44 | Drug |
| J9215 | | Interferon alfa-n3 inj | | $16.77 | Drug |
| J9216 | | Interferon gamma 1-b inj | a | $393.13 | Drug |
| J9217 | | Leuprolide acetate suspnsion | a | $961.97 | Drug |
| J9218 | | Leuprolide acetate injeciton | a | $51.73 | Drug |
| J9219 | | Leuprolide acetate implant | a | $7,657.49 | Drug |
| J9230 | | Mechlorethamine hcl inj | | $25.53 | Drug |
| J9245 | | Inj melphalan hydrochl 50 MG | a | $689.65 | Drug |
| J9250 | | Methotrexate sodium inj | | $0.73 | Drug |
| J9260 | | Methotrexate sodium inj | | $11.67 | Drug |
| J9265 | | Paclitaxel injection | a | $327.13 | Drug |
| J9266 | | Pegaspargase/singl dose vial | a | $2,102.56 | Drug |
| J9268 | | Pentostatin injection | a | $2,800.56 | Drug |
| J9270 | | Plicamycin (mithramycin) inj | | $189.77 | Drug |
| J9280 | | Mitomycin 5 MG inj | a | $196.02 | Drug |
| J9290 | | Mitomycin 20 MG inj | | $685.29 | Drug |
| J9291 | | Mitomycin 40 MG inj | | $1,322.34 | Drug |
| J9293 | | Mitoxantrone hydrochl / 5 MG | a | $478.75 | Drug |
| J9300 | | Gemtuzumab ozogamicin | | $3,045.80 | Drug |
| J9310 | | Rituximab cancer treatment | a | $770.91 | Drug |
| J9320 | | Streptozocin injection | | $275.79 | Drug |
| J9340 | | Thiotepa injection | | $236.25 | Drug |
| J9350 | | Topotecan | a | $1,127.40 | Drug |
| J9355 | | Trastuzumab | a | $100.75 | Drug |
| J9357 | | Valrubicin, 200 mg | a | $881.59 | Drug |
| J9360 | | Vinblastine sulfate inj | | $8.75 | Drug |
| J9370 | | Vincristine sulfate 1 MG inj | | $69.76 | Drug |
| J9375 | | Vincristine sulfate 2 MG inj | | $106.53 | Drug |
| J9380 | | Vincristine sulfate 5 MG inj | | $323.66 | Drug |
| J9390 | | Vinorelbine tartrate/10 mg | a | $200.87 | Drug |
| J9600 | | Porfimer sodium | a | $3,747.66 | Drug |
| J9999 | | | | | |
| K0001 | NU | Standard wheelchair | | $739.55 | Non-Drug |
| K0001 | RR | Standard wheelchair | | $74.24 | Non-Drug |
| K0001 | UE | Standard wheelchair | | $554.66 | Non-Drug |
| K0002 | NU | Stnd hemi (low seat) whlchr | | $849.98 | Non-Drug |
| K0002 | RR | Stnd hemi (low seat) whlchr | | $107.31 | Non-Drug |
| K0002 | UE | Stnd hemi (low seat) whlchr | | $667.37 | Non-Drug |
| K0003 | NU | Lightweight wheelchair | | $1,326.22 | Non-Drug |
| K0003 | RR | Lightweight wheelchair | | $116.74 | Non-Drug |
| K0003 | UE | Lightweight wheelchair | | $994.78 | Non-Drug |
| K0004 | NU | High strength ltwt whlchr | | $2,024.06 | Non-Drug |
| K0004 | RR | High strength ltwt whlchr | | $170.26 | Non-Drug |
| K0004 | UE | High strength ltwt whlchr | | $1,517.77 | Non-Drug |
| K0005 | NU | Ultralightweight wheelchair | | $2,254.41 | Non-Drug |
| K0005 | RR | Ultralightweight wheelchair | | $232.50 | Non-Drug |
| K0005 | UE | Ultralightweight wheelchair | | $1,692.75 | Non-Drug |
| K0006 | NU | Heavy duty wheelchair | | $1,461.95 | Non-Drug |
| K0006 | RR | Heavy duty wheelchair_ | | $160.26 | Non-Drug |
| K0006 | UE | Heavy duty wheelchair | | $1,101.81 | Non-Drug |
| K0007 | NU | Extra heavy duty wheelchair | | $2,247.76 | Non-Drug |
| K0007 | RR | Extra heavy duty wheelchair | | $224.78 | Non-Drug |
| K0007 | UE | Extra heavy duty wheelchair | | $2,201.16 | Non-Drug |
| K0009 | | Other manual wheelchair/base | | $545.20 | Non-Drug |
| K0010 | NU | Stnd wt frame power whlchr | | $5,255.16 | Non-Drug |
| K0010 | RR | Stnd wt frame power whlchr | | $525.52 | Non-Drug |
| K0010 | UE | Stnd wt frame power whlchr | | $3,942.05 | Non-Drug |
| K0011 | NU | Stnd wt pwr whlchr w control | | $8,819.59 | Non-Drug |
| K0011 | RR | Stnd wt pwr whlchr w control | | $651.48 | Non-Drug |
| K0012 | RR | Ltwt portbl power whlchr | | $402.70 | Non-Drug |
| K0012 | | Ltwt portbl power whlchr | | $3,760.35 | Non-Drug |
| K0014 | | Other power whlchr base | | $1,445.57 | Non-Drug |
| K0015 | NU | Detach non-adjus hght armrst | | $228.66 | Non-Drug |
| K0015 | RR | Detach non-adjus hght armrst | | $25.57 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

## TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| K0015 | UE | Detach non-adjus hght armrst | | $173.46 | Non-Drug |
| K0016 | NU | Detach adjust armrst cmplete | | $147.58 | Non-Drug |
| K0016 | RR | Detach adjust armrst cmplete | | $15.71 | Non-Drug |
| K0016 | UE | Detach adjust armrst cmplete | | $112.65 | Non-Drug |
| K0017 | NU | Detach adjust armrest base | | $69.98 | Non-Drug |
| K0017 | RR | Detach adjust armrest base | | $7.75 | Non-Drug |
| K0017 | UE | Detach adjust armrest base | | $53.03 | Non-Drug |
| K0018 | NU | Detach adjust armrst upper | | $39.70 | Non-Drug |
| K0018 | RR | Detach adjust armrst upper | | $4.66 | Non-Drug |
| K0018 | UE | Detach adjust armrst upper | | $30.00 | Non-Drug |
| K0019 | NU | Arm pad each | | $24.29 | Non-Drug |
| K0019 | RR | Arm pad each | | $3.13 | Non-Drug |
| K0019 | UE | Arm pad each | | $18.41 | Non-Drug |
| K0020 | NU | Fixed adjust armrest pair | | $64.11 | Non-Drug |
| K0020 | RR | Fixed adjust armrest pair | | $7.13 | Non-Drug |
| K0020 | UE | Fixed adjust armrest pair | | $48.26 | Non-Drug |
| K0022 | NU | Reinforced back upholstery | | $68.90 | Non-Drug |
| K0022 | RR | Reinforced back upholstery | | $7.61 | Non-Drug |
| K0022 | UE | Reinforced back upholstery | | $52.12 | Non-Drug |
| K0023 | NU | Planr back insrt foam w/strp | | $122.20 | Non-Drug |
| K0023 | RR | Planr back insrt foam w/strp | | $13.60 | Non-Drug |
| K0023 | UE | Planr back insrt foam w/strp | | $93.64 | Non-Drug |
| K0024 | NU | Plnr back insrt foam w/hrdwr | | $143.23 | Non-Drug |
| K0024 | RR | Plnr back insrt foam w/hrdwr | | $15.99 | Non-Drug |
| K0024 | UE | Plnr back insrt foam w/hrdwr | | $109.41 | Non-Drug |
| K0025 | NU | Hook-on headrest extension | | $94.60 | Non-Drug |
| K0025 | RR | Hook-on headrest extension | | $10.39 | Non-Drug |
| K0025 | UE | Hook-on headrest extension | | $72.91 | Non-Drug |
| K0026 | NU | Back upholst lgtwt whlchr | | $64.17 | Non-Drug |
| K0026 | RR | Back upholst lgtwt whlchr | | $7.10 | Non-Drug |
| K0026 | UE | Back upholst lgtwt whlchr | | $48.53 | Non-Drug |
| K0027 | NU | Back upholst other whlchr | | $64.17 | Non-Drug |
| K0027 | RR | Back upholst other whlchr | | $7.10 | Non-Drug |
| K0027 | UE | Back upholst other whlchr | | $48.53 | Non-Drug |
| K0028 | NU | Manual fully reclining back | | $670.92 | Non-Drug |
| K0028 | RR | Manual fully reclining back | | $76.11 | Non-Drug |
| K0028 | UE | Manual fully reclining back | | $505.11 | Non-Drug |
| K0029 | NU | Reinforced seat upholstery | | $68.32 | Non-Drug |
| K0029 | RR | Reinforced seat upholstery | | $7.52 | Non-Drug |
| K0029 | UE | Reinforced seat upholstery | | $51.67 | Non-Drug |
| K0030 | NU | Solid plnr seat sngl dnsfoam | | $123.49 | Non-Drug |
| K0030 | RR | Solid plnr seat sngl dnsfoam | | $13.40 | Non-Drug |
| K0030 | UE | Solid plnr seat sngl dnsfoam | | $94.60 | Non-Drug |
| K0030 | | Solid plnr seat sngl dnsfoam | | $175.04 | Non-Drug |
| K0031 | NU | Safety belt/pelvic strap | | $58.99 | Non-Drug |
| K0031 | RR | Safety belt/pelvic strap | | $6.62 | Non-Drug |
| K0031 | UE | Safety belt/pelvic strap | | $43.94 | Non-Drug |
| K0032 | NU | Seat uphols lgtwt whlchr | | $63.32 | Non-Drug |
| K0032 | RR | Seat uphols lgtwt whlchr | | $6.79 | Non-Drug |
| K0032 | UE | Seat uphols lgtwt whlchr | | $47.93 | Non-Drug |
| K0033 | NU | Seat upholstery other whlchr | | $63.32 | Non-Drug |
| K0033 | RR | Seat upholstery other whlchr | | $6.79 | Non-Drug |
| K0033 | UE | Seat upholstery other whlchr | | $47.93 | Non-Drug |
| K0035 | NU | Heel loop with ankle strap | | $36.09 | Non-Drug |
| K0035 | RR | Heel loop with ankle strap | | $4.33 | Non-Drug |
| K0035 | UE | Heel loop with ankle strap | | $27.30 | Non-Drug |
| K0036 | NU | Toe loop each | | $26.45 | Non-Drug |
| K0036 | RR | Toe loop each | | $3.46 | Non-Drug |
| K0036 | UE | Toe loop each | | $20.05 | Non-Drug |
| K0037 | NU | High mount flip-up footrest | | $66.39 | Non-Drug |
| K0C37 | RR | High mount flip-up footrest | | $6.65 | Non-Drug |
| K0037 | UE | High mount flip-up footrest | | $50.03 | Non-Drug |
| K0038 | NU | Leg strap each | | $33.86 | Non-Drug |
| K0038 | RR | Leg strap each | | $4.10 | Non-Drug |
| K0038 | UE | Leg strap each | | $25.60 | Non-Drug |
| K0039 | NU | Leg strap h style each | | $73.34 | Non-Drug |
| K0039 | RR | Leg strap h style each | | $8.15 | Non-Drug |
| K0039 | UE | Leg strap h style each | | $55.87 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| K0040 | NU | Adjustable angle footplate | | $98.61 | Non-Drug |
| K0040 | RR | Adjustable angle footplate | | $10.94 | Non-Drug |
| K0040 | UE | Adjustable angle footplate | | $75.91 | Non-Drug |
| K0041 | NU | Large size footplate each | | $72.18 | Non-Drug |
| K0041 | RR | Large size footplate each | | $8.03 | Non-Drug |
| K0041 | UE | Large size footplate each | | $54.89 | Non-Drug |
| K0042 | NU | Standard size footplate each | | $50.44 | Non-Drug |
| K0042 | RR | Standard size footplate each | | $5.74 | Non-Drug |
| K0042 | UE | Standard size footplate each | | $38.03 | Non-Drug |
| K0043 | NU | First lower extension tube | | $27.41 | Non-Drug |
| K0043 | RR | First lower extension tube | | $3.45 | Non-Drug |
| K0043 | UE | First lower extension tube | | $20.77 | Non-Drug |
| K0044 | NU | First upper hanger bracket | | $23.47 | Non-Drug |
| K0044 | RR | First upper hanger bracket | | $3.07 | Non-Drug |
| K0044 | UE | First upper hanger bracket | | $17.80 | Non-Drug |
| K0045 | NU | Footrest complete assembly | | $76.67 | Non-Drug |
| K0045 | RR | Footrest complete assembly | | $8.75 | Non-Drug |
| K0045 | UE | Footrest complete assembly | | $58.67 | Non-Drug |
| K0046 | NU | Elevat legrst low extension | | $27.41 | Non-Drug |
| K0046 | RR | Elevat legrst low extension | | $3.45 | Non-Drug |
| K0046 | UE | Elevat legrst low extension | | $20.77 | Non-Drug |
| K0047 | NU | Elevat legrst up hangr brack | | $100.81 | Non-Drug |
| K0047 | RR | Elevat legrst up hangr brack | | $11.24 | Non-Drug |
| K0047 | UE | Elevat legrst up hangr brack | | $77.55 | Non-Drug |
| K0048 | NU | Elevate legrest complete | | $150.57 | Non-Drug |
| K0048 | RR | Elevate legrest complete | | $18.81 | Non-Drug |
| K0048 | UE | Elevate legrest complete | | $119.36 | Non-Drug |
| K0049 | NU | Calf pad each | | $42.22 | Non-Drug |
| K0049 | RR | Calf pad each | | $4.95 | Non-Drug |
| K0049 | UE | Calf pad each | | $31.84 | Non-Drug |
| K0050 | NU | Ratchet assembly | | $45.09 | Non-Drug |
| K0050 | RR | Ratchet assembly | | $5.21 | Non-Drug |
| K0050 | UE | Ratchet assembly | | $34.03 | Non-Drug |
| K0051 | NU | Cam relese assem ftrst/lgrst | | $71.80 | Non-Drug |
| K0051 | RR | Cam relese assem ftrst/lgrst | | $8.00 | Non-Drug |
| K0051 | UE | Cam relese assem ftrst/lgrst | | $54.55 | Non-Drug |
| K0052 | NU | Swingaway detach footrest | | $120.20 | Non-Drug |
| K0052 | RR | Swingaway detach footrest | | $13.38 | Non-Drug |
| K0052 | UE | Swingaway detach footrest | | $92.11 | Non-Drug |
| K0053 | NU | Elevate footrest articulate | | $131.83 | Non-Drug |
| K0053 | RR | Elevate footrest articulate | | $14.68 | Non-Drug |
| K0053 | UE | Elevate footrest articulate | | $100.84 | Non-Drug |
| K0054 | NU | Seat wdth 10-12/15/17/20 wc | | $135.02 | Non-Drug |
| K0054 | RR | Seat wdth 10-12/15/17/20 wc | | $15.05 | Non-Drug |
| K0054 | UE | Seat wdth 10-12/15/17/20 wc | | $103.22 | Non-Drug |
| K0055 | NU | Seat dpth 15/17/18 ltwt wc | | $123.43 | Non-Drug |
| K0055 | RR | Seat dpth 15/17/18 ltwt wc | | $13.75 | Non-Drug |
| K0055 | UE | Seat dpth 15/17/18 ltwt wc | | $94.56 | Non-Drug |
| K0056 | NU | Seat ht <17 or >=21 ltwt wc | | $123.43 | Non-Drug |
| K0056 | RR | Seat ht <17 or >=21 ltwt wc | | $13.75 | Non-Drug |
| K0056 | UE | Seat ht <17 or >=21 ltwt wc | | $94.56 | Non-Drug |
| K0057 | NU | Seat wdth 19/20 hvy dty wc | | $158.79 | Non-Drug |
| K0057 | RR | Seat wdth 19/20 hvy dty wc | | $17.73 | Non-Drug |
| K0057 | UE | Seat wdth 19/20 hvy dty wc | | $121.05 | Non-Drug |
| K0058 | NU | Seat dpth 17/18 power wc | | $81.23 | Non-Drug |
| K0058 | RR | Seat dpth 17/18 power wc | | $9.02 | Non-Drug |
| K0058 | UE | Seat dpth 17/18 power wc | | $62.49 | Non-Drug |
| K0059 | NU | Plastic coated handrim each | | $44.02 | Non-Drug |
| K0059 | RR | Plastic coated handrim each | | $5.10 | Non-Drug |
| K0059 | UE | Plastic coated handrim each | | $33.21 | Non-Drug |
| K0060 | NU | Steel handrim each | | $38.61 | Non-Drug |
| K0060 | RR | Steel handrim each | | $4.58 | Non-Drug |
| K0060 | UE | Steel handrim each | | $29.14 | Non-Drug |
| K0061 | NU | Aluminum handrim each | | $54.45 | Non-Drug |
| K0061 | RR | Aluminum handrim each | | $6.16 | Non-Drug |
| K0061 | UE | Aluminum handrim each | | $41.05 | Non-Drug |
| K0062 | NU | Handrim 8-10 vert/obliq proj | | $82.01 | Non-Drug |
| K0062 | RR | Handrim 8-10 vert/obliq proj | | $9.13 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

### TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| K0062 | UE | Handrim 8-10 vert/obliq proj | | $63.15 | Non-Drug |
| K0063 | NU | Hndrm 12-16 vert/obliq proj | | $106.86 | Non-Drug |
| K0063 | RR | Hndrm 12-16 vert/obliq proj | | $11.90 | Non-Drug |
| K0063 | UE | Hndrm 12-16 vert/obliq proj | | $82.09 | Non-Drug |
| K0064 | NU | Zero pressure tube flat free | | $42.24 | Non-Drug |
| K0064 | RR | Zero pressure tube flat free | | $4.95 | Non-Drug |
| K0064 | UE | Zero pressure tube flat free | | $31.85 | Non-Drug |
| K0065 | NU | Spoke protectors | | $61.39 | Non-Drug |
| K0065 | RR | Spoke protectors | | $6.86 | Non-Drug |
| K0065 | UE | Spoke protectors | | $46.23 | Non-Drug |
| K0066 | NU | Solid tire any size each | | $39.66 | Non-Drug |
| K0066 | RR | Solid tire any size each | | $4.54 | Non-Drug |
| K0066 | UE | Solid tire any size each | | $30.52 | Non-Drug |
| K0067 | NU | Pneumatic tire any size each | | $56.55 | Non-Drug |
| K0067 | RR | Pneumatic tire any size each | | $6.26 | Non-Drug |
| K0067 | UE | Pneumatic tire any size each | | $40.72 | Non-Drug |
| K0068 | NU | Pneumatic tire tube each | | $8.80 | Non-Drug |
| K0068 | RR | Pneumatic tire tube each | | $1.62 | Non-Drug |
| K0068 | UE | Pneumatic tire tube each | | $6.81 | Non-Drug |
| K0069 | NU | Rear whl complete solid tire | | $129.29 | Non-Drug |
| K0069 | RR | Rear whl complete solid tire | | $14.98 | Non-Drug |
| K0069 | UE | Rear whl complete solid tire | | $98.93 | Non-Drug |
| K0070 | NU | Rear whl compl pneum tire | | $230.44 | Non-Drug |
| K0070 | RR | Rear whl compl pneum tire | | $25.77 | Non-Drug |
| K0070 | UE | Rear whl compl pneum tire | | $174.80 | Non-Drug |
| K0071 | NU | Front castr compl pneum tire | | $140.63 | Non-Drug |
| K0071 | RR | Front castr compl pneum tire | | $15.69 | Non-Drug |
| K0071 | UE | Front castr compl pneum tire | | $107.42 | Non-Drug |
| K0072 | NU | Frnt cstr cmpl sem-pneum tir | | $87.78 | Non-Drug |
| K0072 | RR | Frnt cstr cmpl sem-pneum tir | | $9.74 | Non-Drug |
| K0072 | UE | Frnt cstr cmpl sem-pneum tir | | $67.80 | Non-Drug |
| K0073 | NU | Caster pin lock each | | $48.22 | Non-Drug |
| K0073 | RR | Caster pin lock each | | $5.53 | Non-Drug |
| K0073 | UE | Caster pin lock each | | $36.36 | Non-Drug |
| K0074 | NU | Pneumatic caster tire each | | $49.86 | Non-Drug |
| K0074 | RR | Pneumatic caster tire each | | $6.19 | Non-Drug |
| K0074 | UE | Pneumatic caster tire each | | $37.58 | Non-Drug |
| K0075 | NU | Semi-pneumatic caster tire | | $57.83 | Non-Drug |
| K0075 | RR | Semi-pneumatic caster tire | | $7.22 | Non-Drug |
| K0075 | UE | Semi-pneumatic caster tire | | $43.57 | Non-Drug |
| K0076 | NU | Solid caster tire each | | $35.61 | Non-Drug |
| K0076 | RR | Solid caster tire each | | $4.31 | Non-Drug |
| K0076 | UE | Solid caster tire each | | $26.93 | Non-Drug |
| K0077 | NU | Front caster assem complete | | $79.38 | Non-Drug |
| K0077 | RR | Front caster assem complete | | $8.80 | Non-Drug |
| K0077 | UE | Front caster assem complete | | $60.94 | Non-Drug |
| K0078 | NU | Pneumatic caster tire tube | | $13.87 | Non-Drug |
| K0078 | RR | Pneumatic caster tire tube | | $2.09 | Non-Drug |
| K0078 | UE | Pneumatic caster tire tube | | $10.58 | Non-Drug |
| K0079 | NU | Wheel lock extension pair | | $80.20 | Non-Drug |
| K0079 | RR | Wheel lock extension pair | | $9.27 | Non-Drug |
| K0079 | UE | Wheel lock extension pair | | $41.30 | Non-Drug |
| K0080 | NU | Anti-rollback device pair | | $198.42 | Non-Drug |
| K0080 | RR | Anti-rollback device pair | | $23.47 | Non-Drug |
| K0080 | UE | Anti-rollback device pair | | $151.85 | Non-Drug |
| K0081 | NU | Wheel lock assembly complete | | $56.24 | Non-Drug |
| K0081 | RR | Wheel lock assembly complete | | $6.32 | Non-Drug |
| K0081 | UE | Wheel lock assembly complete | | $42.36 | Non-Drug |
| K0082 | NU | 22 nf nonsealed leadacid | | $144.38 | Non-Drug |
| K0082 | RR | 22 nf nonsealed leadacid | | $16.18 | Non-Drug |
| K0082 | UE | 22 nf nonsealed leadacid | | $110.26 | Non-Drug |
| K0082 | | 22 nf nonsealed leadacid | | $137.38 | Non-Drug |
| K0083 | NU | 22nf sealed leadacid battery | | $177.35 | Non-Drug |
| K0083 | RR | 22nf sealed leadacid battery | | $19.80 | Non-Drug |
| K0083 | UE | 22nf sealed leadacid battery | | $135.00 | Non-Drug |
| K0083 | | 22nf sealed leadacid battery | | $169.06 | Non-Drug |
| K0084 | NU | Gr24 nonsealed leadacid | | $119.64 | Non-Drug |
| K0084 | RR | Gr24 nonsealed leadacid | | $13.33 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

## TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| K0084 | UE | Gr24 nonsealed leadacid | | $91.69 | Non-Drug |
| K0084 | | Gr24 nonsealed leadacid | | $126.81 | Non-Drug |
| K0085 | NU | Gr24 sealed leadacid battery | | $233.89 | Non-Drug |
| K0085 | RR | Gr24 sealed leadacid battery | | $26.15 | Non-Drug |
| K0085 | UE | Gr24 sealed leadacid battery | | $177.38 | Non-Drug |
| K0085 | | Gr24 sealed leadacid battery | | $222.80 | Non-Drug |
| K0086 | NU | U1nonsealed leadacid battery | | $144.38 | Non-Drug |
| K0086 | RR | U1nonsealed leadacid battery | | $16.18 | Non-Drug |
| K0086 | UE | U1nonsealed leadacid battery | | $110.26 | Non-Drug |
| K0086 | | U1nonsealed leadacid battery | | $137.38 | Non-Drug |
| K0087 | NU | U1 sealed leadacid battery | | $144.17 | Non-Drug |
| K0087 | RR | U1 sealed leadacid battery | | $16.08 | Non-Drug |
| K0087 | UE | U1 sealed leadacid battery | | $110.13 | Non-Drug |
| K0087 | | U1 sealed leadacid battery | | $137.38 | Non-Drug |
| K0088 | NU | Battery charger, single mode | | $328.21 | Non-Drug |
| K0088 | RR | Battery charger, single mode | | $36.81 | Non-Drug |
| K0088 | UE | Battery charger, single mode | | $248.13 | Non-Drug |
| K0088 | | Battery charger, single mode | | $311.43 | Non-Drug |
| K0089 | NU | Battery charger, dual mode | | $517.12 | Non-Drug |
| K0089 | RR | Battery charger, dual mode | | $57.91 | Non-Drug |
| K0089 | UE | Battery charger, dual mode | | $389.81 | Non-Drug |
| K0090 | NU | Rear tire power wheelchair | | $100.44 | Non-Drug |
| K0090 | RR | Rear tire power wheelchair | | $11.19 | Non-Drug |
| K0090 | UE | Rear tire power wheelchair | | $77.30 | Non-Drug |
| K0091 | NU | Rear tire tube power whlchr | | $29.10 | Non-Drug |
| K0091 | RR | Rear tire tube power whlchr | | $3.61 | Non-Drug |
| K0091 | UE | Rear tire tube power whlchr | | $22.01 | Non-Drug |
| K0092 | NU | Rear assem cmplt powr whlchr | | $303.31 | Non-Drug |
| K0092 | RR | Rear assem cmplt powr whlchr | | $33.91 | Non-Drug |
| K0092 | UE | Rear assem cmplt powr whlchr | | $229.45 | Non-Drug |
| K0093 | NU | Rear zero pressure tire tube | | $192.43 | Non-Drug |
| K0093 | RR | Rear zero pressure tire tube | | $21.49 | Non-Drug |
| K0093 | UE | Rear zero pressure tire tube | | $146.29 | Non-Drug |
| K0094 | NU | Wheel tire for power base | | $68.02 | Non-Drug |
| K0094 | RR | Wheel tire for power base | | $7.55 | Non-Drug |
| K0094 | UE | Wheel tire for power base | | $51.37 | Non-Drug |
| K0095 | NU | Wheel tire tube each base | | $68.02 | Non-Drug |
| K0095 | RR | Wheel tire tube each base | | $7.55 | Non-Drug |
| K0095 | UE | Wheel tire tube each base | | $51.37 | Non-Drug |
| K0096 | NU | Wheel assem powr base complt | | $341.18 | Non-Drug |
| K0096 | RR | Wheel assem powr base complt | | $38.16 | Non-Drug |
| K0096 | UE | Wheel assem powr base complt | | $257.85 | Non-Drug |
| K0097 | NU | Wheel zero presure tire tube | | $84.53 | Non-Drug |
| K0097 | RR | Wheel zero presure tire tube | | $9.39 | Non-Drug |
| K0097 | UE | Wheel zero presure tire tube | | $65.27 | Non-Drug |
| K0098 | NU | Drive belt power wheelchair | | $37.88 | Non-Drug |
| K0098 | RR | Drive belt power wheelchair | | $4.50 | Non-Drug |
| K0098 | UE | Drive belt power wheelchair | | $28.58 | Non-Drug |
| K0099 | NU | Pwr wheelchair front caster | | $106.19 | Non-Drug |
| K0099 | RR | Pwr wheelchair front caster | | $11.84 | Non-Drug |
| K0099 | UE | Pwr wheelchair front caster | | $81.61 | Non-Drug |
| K0100 | NU | Amputee adapter pair | | $115.31 | Non-Drug |
| K0100 | RR | Amputee adapter pair | | $12.89 | Non-Drug |
| K0100 | UE | Amputee adapter pair | | $89.19 | Non-Drug |
| K0102 | NU | Crutch and cane holder | | $59.87 | Non-Drug |
| K0102 | RR | Crutch and cane holder | | $6.71 | Non-Drug |
| K0102 | UE | Crutch and cane holder | | $45.10 | Non-Drug |
| K0103 | NU | Transfer board < 25" | | $74.85 | Non-Drug |
| K0103 | RR | Transfer board < 25" | | $8.44 | Non-Drug |
| K0103 | UE | Transfer board < 25" | | $55.80 | Non-Drug |
| K0104 | NU | Cylinder tank carrier | | $152.21 | Non-Drug |
| K0104 | RR | Cylinder tank carrier | | $16.97 | Non-Drug |
| K0104 | UE | Cylinder tank carrier | | $116.13 | Non-Drug |
| K0105 | NU | Iv hanger | | $128.69 | Non-Drug |
| K0105 | RR | Iv hanger | | $14.32 | Non-Drug |
| K0105 | UE | Iv hanger | | $98.48 | Non-Drug |
| K0106 | NU | Arm trough each | | $138.09 | Non-Drug |
| K0106 | RR | Arm trough each | | $15.43 | Non-Drug |

NOTE. See end of table for notes regarding Status/Usage Indicators

## TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Category |
|---|---|---|---|---|---|
| K0106 | UE | Arm trough each | | $105.54 | Non-Drug |
| K0107 | NU | Wheelchair tray | | $134.19 | Non-Drug |
| K0107 | RR | Wheelchair tray | | $14.98 | Non-Drug |
| K0107 | UE | Wheelchair tray | | $102.62 | Non-Drug |
| K0108 | | W/c component-accessory NOS | | $84.19 | Non-Drug |
| K0112 | | Trunk vest supprt innr frame | | $476.66 | Non-Drug |
| K0113 | | Trunk vest suprt w/o inr frm | | $288.28 | Non-Drug |
| K0114 | NU | Whlchr back suprt inr frame | | $929.20 | Non-Drug |
| K0114 | RR | Whlchr back suprt inr frame | | $100.03 | Non-Drug |
| K0114 | UE | Whlchr back suprt inr frame | | $698.87 | Non-Drug |
| K0115 | NU | Back module orthotic system | | $1,467.92 | Non-Drug |
| K0115 | RR | Back module orthotic system | | $141.14 | Non-Drug |
| K0115 | UE | Back module orthotic system | | $1,099.37 | Non-Drug |
| K0116 | NU | Back & seat modul orthot sys | | $3,070.77 | Non-Drug |
| K0116 | RR | Back & seat modul orthot sys | | $301.39 | Non-Drug |
| K0116 | UE | Back & seat modul orthot sys | | $2,301.53 | Non-Drug |
| K0195 | RR | Elevating whlchair leg rests | | $29.51 | Non-Drug |
| K0195 | | Elevating whlchair leg rests | | $143.35 | Non-Drug |
| K0268 | NU | Humidifier nonheated w PAP | | $240.83 | Non-Drug |
| K0268 | RR | Humidifier nonheated w PAP | | $36.55 | Non-Drug |
| K0268 | UE | Humidifier nonheated w PAP | | $182.82 | Non-Drug |
| K0415 | | | | | |
| K0416 | | | | | |
| K0452 | NU | Wheelchair bearings | | $9.72 | Non-Drug |
| K0452 | RR | Wheelchair bearings | | $1.69 | Non-Drug |
| K0452 | UE | Wheelchair bearings | | $7.50 | Non-Drug |
| K0455 | RR | Pump uninterrupted infusion | | $442.83 | Non-Drug |
| K0460 | RR | WC power add-on joystick | | $311.57 | Non-Drug |
| K0461 | NU | WC power add-on tiller cntrl | | $2,329.53 | Non-Drug |
| K0461 | RR | WC power add-on tiller cntrl | | $223.67 | Non-Drug |
| K0461 | UE | WC power add-on tiller cntrl | | $1,799.34 | Non-Drug |
| K0462 | | Temporary replacement eqpmnt | | $40.18 | Non-Drug |
| K0531 | NU | Heated humidifier used w pap | | $504.47 | Non-Drug |
| K0531 | RR | Heated humidifier used w pap | | $46.49 | Non-Drug |
| K0531 | UE | Heated humidifier used w pap | | $376.77 | Non-Drug |
| K0532 | RR | Noninvasive assist wo backup | | $428.81 | Non-Drug |
| K0533 | RR | Noninvasive assist w backup | | $1,082.63 | Non-Drug |
| K0534 | RR | Invasive assist w backup | | $1,082.63 | Non-Drug |
| K0538 | RR | Neg pressure wnd thrpy pump | | $2,904.35 | Non-Drug |
| K0539 | | Neg pres wnd thrpy dsg set | | $42.20 | Non-Drug |
| K0540 | | Neg pres wnd thrp canister | | $37.66 | Non-Drug |
| K0541 | NU | SGD prerecorded msg <= 8 min | | $656.82 | Non-Drug |
| K0541 | RR | SGD prerecorded msg <= 8 min | | $60.00 | Non-Drug |
| K0541 | UE | SGD prerecorded msg <= 8 min | | $491.03 | Non-Drug |
| K0542 | NU | SGD prerecorded msg > 8 min | | $2,556.81 | Non-Drug |
| K0542 | RR | SGD prerecorded msg > 8 min | | $249.98 | Non-Drug |
| K0542 | UE | SGD prerecorded msg > 8 min | | $1,916.02 | Non-Drug |
| K0543 | NU | SGD msg formed by spelling | | $6,058.67 | Non-Drug |
| K0543 | RR | SGD msg formed by spelling | | $600.20 | Non-Drug |
| K0543 | UE | SGD msg formed by spelling | | $4,542.45 | Non-Drug |
| K0544 | NU | SGD w multi methods msg/accs | | $11,470.86 | Non-Drug |
| K0544 | RR | SGD w multi methods msg/accs | | $1,141.39 | Non-Drug |
| K0544 | UE | SGD w multi methods msg/accs | | $8,601.55 | Non-Drug |
| K0547 | | SGD accessory NOC | | $259.11 | Non-Drug |
| K0548 | | Insulin lispro | | $3.11 | Drug |
| K0549 | NU | Hosp bed hvy dty xtra wide | | $4,382.11 | Non-Drug |
| K0549 | RR | Hosp bed hvy dty xtra wide | | $438.06 | Non-Drug |
| K0549 | UE | Hosp bed hvy dty xtra wide | | $3,285.44 | Non-Drug |
| K0550 | NU | Hosp bed xtra hvy dty x wide | | $10,257.46 | Non-Drug |
| K0550 | RR | Hosp bed xtra hvy dty x wide | | $1,085.77 | Non-Drug |
| K0550 | UE | Hosp bed xtra hvy dty x wide | | $7,705.56 | Non-Drug |
| K0556 | | Socket insert w lock mech | | $835.33 | Non-Drug |
| K0557 | | Socket insert w/o lock mech | | $690.23 | Non-Drug |
| K0558 | | Intl custm cong/atyp insert | | $1,504.95 | Non-Drug |
| K0559 | | Initial custom socket insert | | $1,504.95 | Non-Drug |
| K0581 | | Ost pch clsd w barrier/filtr | | $3.97 | Non-Drug |
| K0582 | | Ost pch w bar/bltinconv/fltr | | $5.40 | Non-Drug |
| K0583 | | Ost pch clsd w/o bar w filtr | | $2.59 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| K0584 | | Ost pch for bar w flange/flt | | $2.49 | Non-Drug |
| K0587 | | Ost pch drain w bar & filter | | $6.91 | Non-Drug |
| K0588 | | Ost pch drain for barrier fl | | $5.19 | Non-Drug |
| K0589 | | Ost pch drain 2 piece system | | $3.40 | Non-Drug |
| K0591 | | Urine ost pouch w faucet/tap | | $9.50 | Non-Drug |
| K0592 | | Urine ost pouch w bltinconv | | $10.99 | Non-Drug |
| K0593 | | Ost urine pch w b/bltin conv | | $12.54 | Non-Drug |
| K0594 | | Ost pch urine w barrier/tapv | | $7.40 | Non-Drug |
| K0595 | | Os pch urine w bar/fange/tap | | $5.21 | Non-Drug |
| K0596 | | Urine ost pch bar w lock fln | | $4.84 | Non-Drug |
| K0597 | | Ost pch urine w lock flng/ft | | $5.46 | Non-Drug |
| L0100 | | Cranial orthosis/helmet mold | | $668.86 | Non-Drug |
| L0110 | | Cranial orthosis/helmet nonm | | $158.59 | Non-Drug |
| L0120 | | Cerv flexible non-adjustable | | $31.81 | Non-Drug |
| L0130 | | Flex thermoplastic collar mo | | $179.68 | Non-Drug |
| L0140 | | Cervical semi-rigid adjustab | | $72.38 | Non-Drug |
| L0150 | | Cerv semi-rig adj molded chn | | $120.06 | Non-Drug |
| L0160 | | Cerv semi-rig wire occ/mand | | $172.61 | Non-Drug |
| L0170 | | Cervical collar molded to pt | | $753.42 | Non-Drug |
| L0172 | | Cerv col thermplas foam 2 pi | | $140.52 | Non-Drug |
| L0174 | | Cerv col foam 2 piece w thor | | $300.73 | Non-Drug |
| L0180 | | Cer post col occ/man sup adj | | $417.90 | Non-Drug |
| L0190 | | Cerv collar supp adj cerv ba | | $570.55 | Non-Drug |
| L0200 | | Cerv col supp adj bar & thor | | $596.28 | Non-Drug |
| L0210 | | Thoracic rib belt | | $51.01 | Non-Drug |
| L0220 | | Thor rib belt custom fabrica | | $135.65 | Non-Drug |
| L0450 | | TLSO flex prefab thoracic | | $191.21 | Non-Drug |
| L0452 | | tlso flex custom fab thoraci | | $367.89 | Non-Drug |
| L0454 | | TLSO flex prefab sacrococ-T9 | | $411.73 | Non-Drug |
| L0456 | | TLSO flex prefab | | $411.73 | Non-Drug |
| L0458 | | TLSO 2Mod symphis-xipho pre | | $853.60 | Non-Drug |
| L0460 | | TLSO2Mod symphysis-stern pre | | $853.60 | Non-Drug |
| L0462 | | TLSO 3Mod sacro-scap pre | | $853.60 | Non-Drug |
| L0464 | | TLSO 4Mod sacro-scap pre | | $853.60 | Non-Drug |
| L0466 | | TLSO rigid frame pre soft ap | | $421.67 | Non-Drug |
| L0468 | | TLSO rigid frame prefab pelv | | $525.32 | Non-Drug |
| L0470 | | TLSO rigid frame pre subclav | | $744.43 | Non-Drug |
| L0472 | | TLSO rigid frame hyperex pre | | $459.25 | Non-Drug |
| L0476 | | TLSO flexion compres jac pre | | $1,135.31 | Non-Drug |
| L0478 | | TLSO flexion compres jac cus | | $1,697.58 | Non-Drug |
| L0480 | | TLSO rigid plastic custom fa | | $1,706.07 | Non-Drug |
| L0482 | | TLSO rigid lined custom fab | | $1,861.08 | Non-Drug |
| L0484 | | TLSO rigid plastic cust fab | | $2,137.96 | Non-Drug |
| L0486 | | TLSO rigidlined cust fab two | | $2,270.41 | Non-Drug |
| L0488 | | TLSO rigid lined pre one pie | | $1,603.34 | Non-Drug |
| L0490 | | TLSO rigid plastic pre one | | $1,334.77 | Non-Drug |
| L0500 | | Lso flex surgical support | | $149.88 | Non-Drug |
| L0510 | | Lso flexible custom fabricat | | $301.85 | Non-Drug |
| L0515 | | Lso flex elas w/ rig post pa | | $320.76 | Non-Drug |
| L0520 | | Lso a-p-l control with apron | | $468.70 | Non-Drug |
| L0530 | | Lso ant-pos control w apron | | $471.41 | Non-Drug |
| L0540 | | Lso lumbar flexion a-p-l | | $510.43 | Non-Drug |
| L0550 | | Lso a-p-l control molded | | $1,582.23 | Non-Drug |
| L0560 | | Lso a-p-l w interface | | $1,731.87 | Non-Drug |
| L0561 | | Prefab lso | | $368.09 | Non-Drug |
| L0565 | | Lso a-p-l control custom | | $1,336.07 | Non-Drug |
| L0600 | | Sacroiliac flex surg support | | $102.90 | Non-Drug |
| L0610 | | Sacroiliac flexible custm fa | | $282.72 | Non-Drug |
| L0620 | | Sacroiliac semi-rig w apron | | $482.53 | Non-Drug |
| L0700 | | Ctlso a-p-l control molded | | $2,437.03 | Non-Drug |
| L0710 | | Ctlso a-p-l control w/ inter | | $2,518.72 | Non-Drug |
| L0810 | | Halo cervical into jckt vest | | $3,119.03 | Non-Drug |
| L0820 | | Halo cervical into body jack | | $2,606.25 | Non-Drug |
| L0830 | | Halo cerv into milwaukee typ | | $3,799.39 | Non-Drug |
| L0860 | | Magnetic resonanc image comp | | $1,454.51 | Non-Drug |
| L0960 | | Post surgical support pads | | $77.86 | Non-Drug |
| L0970 | | Tlso corset front | | $126.80 | Non-Drug |
| L0972 | | Lso corset front | | $114.48 | Non-Drug |

NOTE. See end of table for notes regarding Status/Usage Indicators.

## TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| L0974 | | Tlso full corset | | $196.89 | Non-Drug |
| L0976 | | Lso full corset | | $176.16 | Non-Drug |
| L0978 | | Axillary crutch extension | | $211.44 | Non-Drug |
| L0980 | | Peroneal straps pair | | $21.99 | Non-Drug |
| L0982 | | Stocking supp grips set of f | | $20.71 | Non-Drug |
| L0984 | | Protective body sock each | | $67.88 | Non-Drug |
| L0999 | | | | | |
| L1000 | | Ctlso milwauke initial model | | $2,447.47 | Non-Drug |
| L1005 | | Tension based scoliosis orth | | $3,704.11 | Non-Drug |
| L1010 | | Ctlso axilla sling | | $75.73 | Non-Drug |
| L1020 | | Kyphosis pad | | $96.64 | Non-Drug |
| L1025 | | Kyphosis pad floating | | $138.07 | Non-Drug |
| L1030 | | Lumbar bolster pad | | $71.95 | Non-Drug |
| L1040 | | Lumbar or lumbar rib pad | | $87.53 | Non-Drug |
| L1050 | | Sternal pad | | $93.20 | Non-Drug |
| L1060 | | Thoracic pad | | $106.61 | Non-Drug |
| L1070 | | Trapezius sling | | $100.48 | Non-Drug |
| L1080 | | Outrigger | | $62.99 | Non-Drug |
| L1085 | | Outrigger bil w/ vert extens | | $169.70 | Non-Drug |
| L1090 | | Lumbar sling | | $102.31 | Non-Drug |
| L1100 | | Ring flange plastic/leather | | $175.22 | Non-Drug |
| L1110 | | Ring flange plas/leather mol | | $279.53 | Non-Drug |
| L1120 | | Covers for upright each | | $46.08 | Non-Drug |
| L1200 | | Furnsh initial orthosis only | | $1,880.78 | Non-Drug |
| L1210 | | Lateral thoracic extension | | $286.31 | Non-Drug |
| L1220 | | Anterior thoracic extension | | $242.88 | Non-Drug |
| L1230 | | Milwaukee type superstructur | | $659.93 | Non-Drug |
| L1240 | | Lumbar derotation pad | | $87.13 | Non-Drug |
| L1250 | | Anterior asis pad | | $81.29 | Non-Drug |
| L1260 | | Anterior thoracic derotation | | $84.98 | Non-Drug |
| L1270 | | Abdominal pad | | $86.95 | Non-Drug |
| L1280 | | Rib gusset (elastic) each | | $96.46 | Non-Drug |
| L1290 | | Lateral trochanteric pad | | $88.17 | Non-Drug |
| L1300 | | Body jacket mold to patient | | $2,007.48 | Non-Drug |
| L1310 | | Post-operative body jacket | | $2,066.72 | Non-Drug |
| L1499 | | Spinal orthosis NOS | | $281.56 | Non-Drug |
| L1500 | | Thkao mobility frame | | $2,287.56 | Non-Drug |
| L1510 | | Thkao standing frame | | $1,434.27 | Non-Drug |
| L1520 | | Thkao swivel walker | | $2,754.56 | Non-Drug |
| L1600 | | Abduct hip flex frejka w cvr | | $142.58 | Non-Drug |
| L1610 | | Abduct hip flex frejka covr | | $50.61 | Non-Drug |
| L1620 | | Abduct hip flex pavlik harne | | $148.11 | Non-Drug |
| L1630 | | Abduct control hip semi-flex | | $186.51 | Non-Drug |
| L1640 | | Pelv band/spread bar thigh c | | $529.06 | Non-Drug |
| L1650 | | HO abduction hip adjustable | | $253.70 | Non-Drug |
| L1652 | | HO bi thighcuffs w sprdr bar | | $381.26 | Non-Drug |
| L1660 | | HO abduction static plastic | | $188.32 | Non-Drug |
| L1680 | | Pelvic & hip control thigh c | | $1,454.74 | Non-Drug |
| L1685 | | Post-op hip abduct custom fa | | $1,419.35 | Non-Drug |
| L1686 | | HO post-op hip abduction | | $1,080.28 | Non-Drug |
| L1690 | | Combination bilateral HO | | $2,223.99 | Non-Drug |
| L1700 | | Leg perthes orth toronto typ | | $1,832.22 | Non-Drug |
| L1710 | | Legg perthes orth newington | | $2,150.82 | Non-Drug |
| L1720 | | Legg perthes orthosis trilat | | $1,576.17 | Non-Drug |
| L1730 | | Legg perthes orth scottish r | | $1,348.81 | Non-Drug |
| L1750 | | Legg perthes sling | | $216.05 | Non-Drug |
| L1755 | | Legg perthes patten bottom t | | $1,900.86 | Non-Drug |
| L1800 | | Knee orthoses elas w stays | | $75.10 | Non-Drug |
| L1810 | | Ko elastic with joints | | $109.68 | Non-Drug |
| L1815 | | Elastic with condylar pads | | $107.95 | Non-Drug |
| L1820 | | Ko elas w/ condyle pads & jo | | $143.43 | Non-Drug |
| L1825 | | Ko elastic knee cap | | $62.61 | Non-Drug |
| L1830 | | Ko immobilizer canvas longit | | $97.78 | Non-Drug |
| L1832 | | KO adj jnt pos rigid support | | $708.25 | Non-Drug |
| L1834 | | Ko w/0 joint rigid molded to | | $914.04 | Non-Drug |
| L1836 | | Rigid KO wo joints | | $141.07 | Non-Drug |
| L1840 | | Ko derot ant cruciate custom | | $1,089.18 | Non-Drug |
| L1843 | | KO single upright custom fit | | $1,013.07 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

### TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| L1844 | | Ko w/adj jt rot cntrl molded | | $1,909.21 | Non-Drug |
| L1845 | | Ko w/ adj flex/ext rotat cus | | $964.30 | Non-Drug |
| L1846 | | Ko w adj flex/ext rotat mold | | $1,263.09 | Non-Drug |
| L1847 | | KO adjustable w air chambers | | $636.76 | Non-Drug |
| L1850 | | Ko swedish type | | $316.78 | Non-Drug |
| L1855 | | Ko plas doub upright jnt mol | | $1,308.56 | Non-Drug |
| L1858 | | Ko polycentric pneumatic pad | | $1,430.08 | Non-Drug |
| L1860 | | Ko supracondylar socket mold | | $1,276.98 | Non-Drug |
| L1870 | | Ko doub upright lacers molde | | $1,244.53 | Non-Drug |
| L1880 | | Ko doub upright cuffs/lacers | | $830.33 | Non-Drug |
| L1885 | | Knee upright w/resistance | | $1,181.50 | Non-Drug |
| L1900 | | Afo sprng wir drsflx calf bd | | $295.10 | Non-Drug |
| L1901 | | Prefab ankle orthosis | | $21.38 | Non-Drug |
| L1902 | | Afo ankle gauntlet | | $89.49 | Non-Drug |
| L1904 | | Afo molded ankle gauntlet | | $539.84 | Non-Drug |
| L1906 | | Afo multiligamentus ankle su | | $133.26 | Non-Drug |
| L1910 | | Afo sing bar clasp attach sh | | $292.55 | Non-Drug |
| L1920 | | Afo sing upright w/ adjust s | | $392.30 | Non-Drug |
| L1930 | | Afo plastic | | $259.16 | Non-Drug |
| L1940 | | Afo molded to patient plasti | | $569.56 | Non-Drug |
| L1945 | | Afo molded plas rig ant tib | | $1,096.79 | Non-Drug |
| L1950 | | Afo spiral molded to pt plas | | $875.63 | Non-Drug |
| L1960 | | Afo pos solid ank plastic mo | | $642.61 | Non-Drug |
| L1970 | | Afo plastic molded w/ankle j | | $834.93 | Non-Drug |
| L1980 | | Afo sing solid stirrup calf | | $413.60 | Non-Drug |
| L1990 | | Afo doub solid stirrup calf | | $509.88 | Non-Drug |
| L2000 | | Kafo sing fre stirr thi/calf | | $1,205.11 | Non-Drug |
| L2010 | | Kafo sng solid stirrup w/o j | | $1,095.46 | Non-Drug |
| L2020 | | Kafo dbl solid stirrup band/ | | $1,392.65 | Non-Drug |
| L2030 | | Kafo dbl solid stirrup w/o j | | $1,203.60 | Non-Drug |
| L2035 | | KAFO plastic pediatric size | | $183.36 | Non-Drug |
| L2036 | | Kafo plas doub free knee mol | | $2,233.58 | Non-Drug |
| L2037 | | Kafo plas sing free knee mol | | $2,001.57 | Non-Drug |
| L2038 | | Kafo w/o joint multi-axis an | | $1,713.15 | Non-Drug |
| L2039 | | KAFO plstic mediat rotat con | | $2,561.21 | Non-Drug |
| L2040 | | Hkafo torsion bil rot straps | | $195.27 | Non-Drug |
| L2050 | | Hkafo torsion cable hip pelv | | $547.31 | Non-Drug |
| L2060 | | Hkafo torsion ball bearing j | | $674.77 | Non-Drug |
| L2070 | | Hkafo torsion unilat rot str | | $148.66 | Non-Drug |
| L2080 | | Hkafo unilat torsion cable | | $404.63 | Non-Drug |
| L2090 | | Hkafo unilat torsion ball br | | $501.00 | Non-Drug |
| L2102 | | Afo tibial fx cast plstr mol | | $571.57 | Non-Drug |
| L2104 | | Afo tib fx cast synthetic mo | | $608.54 | Non-Drug |
| L2106 | | Afo tib fx cast plaster mold | | $796.23 | Non-Drug |
| L2108 | | Afo tib fx cast molded to pt | | $1,271.35 | Non-Drug |
| L2112 | | Afo tibial fracture soft | | $535.32 | Non-Drug |
| L2114 | | Afo tib fx semi-rigid | | $674.58 | Non-Drug |
| L2116 | | Afo tibial fracture rigid | | $835.35 | Non-Drug |
| L2122 | | Kafo fem fx cast plaster mol | | $1,034.91 | Non-Drug |
| L2124 | | Kafo fem fx cast synthet mol | | $1,242.77 | Non-Drug |
| L2126 | | Kafo fem fx cast thermoplas | | $1,429.11 | Non-Drug |
| L2128 | | Kafo fem fx cast molded to p | | $2,061.65 | Non-Drug |
| L2132 | | Kafo femoral fx cast soft | | $951.24 | Non-Drug |
| L2134 | | Kafo fem fx cast semi-rigid | | $1,147.51 | Non-Drug |
| L2136 | | Kafo femoral fx cast rigid | | $1,410.94 | Non-Drug |
| L2180 | | Plas shoe insert w ank joint | | $129.84 | Non-Drug |
| L2182 | | Drop lock knee | | $102.30 | Non-Drug |
| L2184 | | Limited motion knee joint | | $137.17 | Non-Drug |
| L2186 | | Adj motion knee jnt lerman t | | $166.04 | Non-Drug |
| L2188 | | Quadrilateral brim | | $331.03 | Non-Drug |
| L2190 | | Waist belt | | $97.61 | Non-Drug |
| L2192 | | Pelvic band & belt thigh fla | | $400.81 | Non-Drug |
| L2200 | | Limited ankle motion ea jnt | | $54.55 | Non-Drug |
| L2210 | | Dorsiflexion assist each joi | | $75.85 | Non-Drug |
| L2220 | | Dorsi & plantar flex ass/res | | $91.73 | Non-Drug |
| L2230 | | Split flat caliper stirr & p | | $86.14 | Non-Drug |
| L2240 | | Round caliper and plate atta | | $93.60 | Non-Drug |
| L2250 | | Foot plate molded stirrup at | | $399.32 | Non-Drug |

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## TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| L2260 | | Reinforced solid stirrup | | $220.07 | Non-Drug |
| L2265 | | Long tongue stirrup | | $130.56 | Non-Drug |
| L2270 | | Varus/valgus strap padded/li | | $61.22 | Non-Drug |
| L2275 | | Plastic mod-low ext pad/line | | $138.84 | Non-Drug |
| L2280 | | Molded inner boot | | $518.52 | Non-Drug |
| L2300 | | Abduction bar jointed adjust | | $294.52 | Non-Drug |
| L2310 | | Abduction bar-straight | | $136.24 | Non-Drug |
| L2320 | | Non-molded lacer | | $225.79 | Non-Drug |
| L2330 | | Lacer molded to patient mode | | $444.96 | Non-Drug |
| L2335 | | Anterior swing band | | $248.99 | Non-Drug |
| L2340 | | Pre-tibial shell molded to p | | $511.33 | Non-Drug |
| L2350 | | Prosthetic type socket molde | | $1,054.41 | Non-Drug |
| L2360 | | Extended steel shank | | $59.09 | Non-Drug |
| L2370 | | Patten bottom | | $280.95 | Non-Drug |
| L2375 | | Torsion ank & half solid sti | | $125.40 | Non-Drug |
| L2380 | | Torsion straight knee joint | | $136.34 | Non-Drug |
| L2385 | | Straight knee joint heavy du | | $148.06 | Non-Drug |
| L2390 | | Offset knee joint each | | $121.57 | Non-Drug |
| L2395 | | Offset knee joint heavy duty | | $172.44 | Non-Drug |
| L2397 | | Suspension sleeve lower ext | | $124.74 | Non-Drug |
| L2405 | | Knee joint drop lock ea jnt | | $93.25 | Non-Drug |
| L2415 | | Knee joint cam lock each joi | | $128.71 | Non-Drug |
| L2425 | | Knee disc/dial lock/adj flex | | $151.32 | Non-Drug |
| L2430 | | Knee jnt ratchet lock ea jnt | | $151.32 | Non-Drug |
| L2435 | | Knee joint polycentric joint | | $182.22 | Non-Drug |
| L2492 | | Knee lift loop drop lock rin | | $113.47 | Non-Drug |
| L2500 | | Thi/glut/ischia wgt bearing | | $350.57 | Non-Drug |
| L2510 | | Th/wght bear quad-lat brim m | | $853.05 | Non-Drug |
| L2520 | | Th/wght bear quad-lat brim c | | $528.13 | Non-Drug |
| L2525 | | Th/wght bear nar m-l brim mo | | $1,455.44 | Non-Drug |
| L2526 | | Th/wght bear nar m-l brim cu | | $802.38 | Non-Drug |
| L2530 | | Thigh/wght bear lacer non-mo | | $257.41 | Non-Drug |
| L2540 | | Thigh/wght bear lacer molded | | $481.80 | Non-Drug |
| L2550 | | Thigh/wght bear high roll cu | | $316.00 | Non-Drug |
| L2570 | | Hip clevis type 2 posit jnt | | $547.25 | Non-Drug |
| L2580 | | Pelvic control pelvic sling | | $532.33 | Non-Drug |
| L2600 | | Hip clevis/thrust bearing fr | | $225.39 | Non-Drug |
| L2610 | | Hip clevis/thrust bearing lo | | $265.95 | Non-Drug |
| L2620 | | Pelvic control hip heavy dut | | $292.50 | Non-Drug |
| L2622 | | Hip joint adjustable flexion | | $339.80 | Non-Drug |
| L2624 | | Hip adj flex ext abduct cont | | $369.73 | Non-Drug |
| L2627 | | Plastic mold recipro hip & c | | $2,061.11 | Non-Drug |
| L2628 | | Metal frame recipro hip & ca | | $2,013.54 | Non-Drug |
| L2630 | | Pelvic control band & belt u | | $271.12 | Non-Drug |
| L2640 | | Pelvic control band & belt b | | $375.74 | Non-Drug |
| L2650 | | Pelv & thor control gluteal | | $132.99 | Non-Drug |
| L2660 | | Thoracic control thoracic ba | | $204.82 | Non-Drug |
| L2670 | | Thorac cont paraspinal uprig | | $187.73 | Non-Drug |
| L2680 | | Thorac cont lat support upri | | $172.47 | Non-Drug |
| L2750 | | Plating chrome/nickel pr bar | | $93.56 | Non-Drug |
| L2755 | | Carbon graphite lamination | | $138.21 | Non-Drug |
| L2760 | | Extension per extension per | | $68.85 | Non-Drug |
| L2768 | | Ortho sidebar disconnect | | $137.83 | Non-Drug |
| L2770 | | Low ext orthosis per bar/jnt | | $69.92 | Non-Drug |
| L2780 | | Non-corrosive finish | | $76.34 | Non-Drug |
| L2785 | | Drop lock retainer each | | $37.39 | Non-Drug |
| L2795 | | Knee control full kneecap | | $95.06 | Non-Drug |
| L2800 | | Knee cap medial or lateral p | | $118.55 | Non-Drug |
| L2810 | | Knee control condylar pad | | $87.63 | Non-Drug |
| L2820 | | Soft interface below knee se | | $97.09 | Non-Drug |
| L2830 | | Soft interface above knee se | | $104.79 | Non-Drug |
| L2840 | | Tibial length sock fx or equ | | $50.38 | Non-Drug |
| L2850 | | Femoral lgth sock fx or equa | | $70.11 | Non-Drug |
| L2860 | | Torsion mechanism knee/ankle | | $414.14 | Non-Drug |
| L2999 | | | | | |
| L3000 | | Ft insert ucb berkeley shell | | $264.94 | Non-Drug |
| L3001 | | Foot insert remov molded spe | | $157.32 | Non-Drug |
| L3002 | | Foot insert plastazote or eq | | $130.54 | Non-Drug |

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TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| L3003 | | Foot insert silicone gel eac | | $159.80 | Non-Drug |
| L3010 | | Foot longitudinal arch suppo | | $206.42 | Non-Drug |
| L3020 | | Foot longitud/metatarsal sup | | $260.97 | Non-Drug |
| L3030 | | Foot arch support remov prem | | $260.97 | Non-Drug |
| L3040 | | Ft arch suprt premold longit | | $48.71 | Non-Drug |
| L3050 | | Foot arch supp premold metat | | $45.74 | Non-Drug |
| L3060 | | Foot arch supp longitud/meta | | $85.41 | Non-Drug |
| L3070 | | Arch suprt att to sho longit | | $28.38 | Non-Drug |
| L3080 | | Arch supp att to shoe metata | | $13.50 | Non-Drug |
| L3090 | | Arch supp att to shoe long/m | | $18.96 | Non-Drug |
| L3100 | | Hallus-valgus night dynamic s | | $29.87 | Non-Drug |
| L3140 | | Abduction rotation bar shoe | | $79.96 | Non-Drug |
| L3150 | | Abduct rotation bar w/o shoe | | $67.56 | Non-Drug |
| L3160 | | Shoe styled positioning dev | | $22.93 | Non-Drug |
| L3170 | | Foot plastic heel stabilizer | | $36.81 | Non-Drug |
| L3201 | | Oxford w supinat/pronat inf | | $79.46 | Non-Drug |
| L3202 | | Oxford w/ supinat/pronator c | | $77.97 | Non-Drug |
| L3203 | | Oxford w/ supinator/pronator | | $75.99 | Non-Drug |
| L3204 | | Hightop w/ supp/pronator inf | | $75.99 | Non-Drug |
| L3206 | | Hightop w/ supp/pronator chi | | $78.97 | Non-Drug |
| L3207 | | Hightop w/ supp/pronator jun | | $80.45 | Non-Drug |
| L3208 | | Surgical boot each infant | | $43.75 | Non-Drug |
| L3209 | | Surgical boot each child | | $60.62 | Non-Drug |
| L3211 | | Surgical boot each junior | | $64.09 | Non-Drug |
| L3212 | | Benesch boot pair infant | | $88.39 | Non-Drug |
| L3213 | | Benesch boot pair child | | $106.24 | Non-Drug |
| L3214 | | Benesch boot pair junior | | $112.69 | Non-Drug |
| L3215 | | Orthopedic ftwear ladies oxf | | $142.44 | Non-Drug |
| L3216 | | Orthoped ladies shoes dpth i | | $171.70 | Non-Drug |
| L3217 | | Ladies shoes hightop depth i | | $186.08 | Non-Drug |
| L3219 | | Orthopedic mens shoes oxford | | $159.80 | Non-Drug |
| L3221 | | Orthopedic mens shoes dpth i | | $191.04 | Non-Drug |
| L3222 | | Mens shoes hightop depth inl | | $210.88 | Non-Drug |
| L3224 | | Woman's shoe oxford brace | | $66.74 | Non-Drug |
| L3225 | | Man's shoe oxford brace | | $76.30 | Non-Drug |
| L3230 | | Custom shoes depth inlay | | $247.58 | Non-Drug |
| L3250 | | Custom mold shoe remov prost | | $502.09 | Non-Drug |
| L3251 | | Shoe molded to pt silicone s | | $68.55 | Non-Drug |
| L3252 | | Shoe molded plastazote cust | | $263.45 | Non-Drug |
| L3253 | | Shoe molded plastazote cust | | $68.05 | Non-Drug |
| L3254 | | Orth foot non-stndard size/w | | $22.59 | Non-Drug |
| L3255 | | Orth foot non-standard size/ | | $25.10 | Non-Drug |
| L3257 | | Orth foot add charge split s | | $50.20 | Non-Drug |
| L3260 | | Ambulatory surgical boot eac | | $29.87 | Non-Drug |
| L3265 | | Plastazote sandal each | | $31.85 | Non-Drug |
| L3300 | | Sho lift taper to metatarsal | | $36.32 | Non-Drug |
| L3310 | | Shoe lift elev heel/sole neo | | $69.54 | Non-Drug |
| L3320 | | Shoe lift elev heel/sole cor | | $179.14 | Non-Drug |
| L3330 | | Lifts elevation metal extens | | $287.75 | Non-Drug |
| L3332 | | Shoe lifts tapered to one-ha | | $22.93 | Non-Drug |
| L3334 | | Shoe lifts elevation heel /i | | $22.93 | Non-Drug |
| L3340 | | Shoe wedge sach | | $50.70 | Non-Drug |
| L3350 | | Shoe heel wedge | | $33.34 | Non-Drug |
| L3360 | | Shoe sole wedge outside sole | | $25.90 | Non-Drug |
| L3370 | | Shoe sole wedge between sole | | $30.36 | Non-Drug |
| L3380 | | Shoe clubfoot wedge | | $49.71 | Non-Drug |
| L3390 | | Shoe outflare wedge | | $68.05 | Non-Drug |
| L3400 | | Shoe metatarsal bar wedge ro | | $65.58 | Non-Drug |
| L3410 | | Shoe metatarsal bar between | | $108.72 | Non-Drug |
| L3420 | | Full sole/heel wedge btween | | $36.81 | Non-Drug |
| L3430 | | Sho heel count plast reinfor | | $88.39 | Non-Drug |
| L3440 | | Heel leather reinforced | | $60.12 | Non-Drug |
| L3450 | | Shoe heel sach cushion type | | $49.71 | Non-Drug |
| L3455 | | Shoe heel new leather standa | | $22.43 | Non-Drug |
| L3460 | | Shoe heel new rubber standar | | $36.81 | Non-Drug |
| L3465 | | Shoe heel thomas with wedge | | $26.89 | Non-Drug |
| L3470 | | Shoe heel thomas extend to b | | $61.61 | Non-Drug |
| L3480 | | Shoe heel pad & depress for | | $42.76 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators

TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| L3485 | | Shoe heel pad removable for | | $29.87 | Non-Drug |
| L3500 | | Ortho shoe add leather insol | | $32.35 | Non-Drug |
| L3510 | | Orthopedic shoe add rub insl | | $30.36 | Non-Drug |
| L3520 | | O shoe add felt w leath insl | | $47.72 | Non-Drug |
| L3530 | | Ortho shoe add half sole | | $16.48 | Non-Drug |
| L3540 | | Ortho shoe add full sole | | $52.19 | Non-Drug |
| L3550 | | O shoe add standard toe tap | | $11.02 | Non-Drug |
| L3560 | | O shoe add horseshoe toe tap | | $13.50 | Non-Drug |
| L3570 | | O shoe add instep extension | | $46.73 | Non-Drug |
| L3580 | | O shoe add instep velcro clo | | $68.05 | Non-Drug |
| L3590 | | O shoe convert to sof counte | | $53.67 | Non-Drug |
| L3595 | | Ortho shoe add march bar | | $17.47 | Non-Drug |
| L3600 | | Trans shoe calip plate exist | | $85.41 | Non-Drug |
| L3610 | | Trans shoe caliper plate new | | $136.00 | Non-Drug |
| L3620 | | Trans shoe solid stirrup exi | | $85.41 | Non-Drug |
| L3630 | | Trans shoe solid stirrup new | | $104.26 | Non-Drug |
| L3640 | | Shoe dennis browne splint bo | | $36.32 | Non-Drug |
| L3649 | | | | | |
| L3650 | | Shlder fig 8 abduct restrain | | $65.91 | Non-Drug |
| L3651 | | Prefab shoulder orthosis | | $65.06 | Non-Drug |
| L3652 | | Prefab dbl shoulder orthosis | | $189.84 | Non-Drug |
| L3660 | | Abduct restrainer canvas&web | | $111.96 | Non-Drug |
| L3670 | | Acromio/clavicular canvas&we | | $122.86 | Non-Drug |
| L3675 | | Canvas vest SO | | $168.25 | Non-Drug |
| L3677 | | SO hard plastic stabilizer | | $196.00 | Non-Drug |
| L3700 | | Elbow orthoses elas w stays | | $77.02 | Non-Drug |
| L3701 | | Prefab elbow orthosis | | $22.25 | Non-Drug |
| L3710 | | Elbow elastic with metal joi | | $134.02 | Non-Drug |
| L3720 | | Forearm/arm cuffs free motio | | $747.48 | Non-Drug |
| L3730 | | Forearm/arm cuffs ext/flex a | | $1,043.49 | Non-Drug |
| L3740 | | Cuffs adj lock w/ active con | | $1,243.68 | Non-Drug |
| L3760 | | EO withjoint, Prefabricated | | $496.53 | Non-Drug |
| L3762 | | Rigid EO wo joints | | $104.29 | Non-Drug |
| L3800 | | Whfo short opponen no attach | | $214.88 | Non-Drug |
| L3805 | | Whfo long opponens no attach | | $347.65 | Non-Drug |
| L3807 | | WHFO,no joint, prefabricated | | $238.42 | Non-Drug |
| L3810 | | Whfo thumb abduction bar | | $71.73 | Non-Drug |
| L3815 | | Whfo second m.p. abduction a | | $66.81 | Non-Drug |
| L3820 | | Whfo ip ext asst w/ mp ext s | | $112.54 | Non-Drug |
| L3825 | | Whfo m.p. extension stop | | $71.78 | Non-Drug |
| L3830 | | Whfo m.p. extension assist | | $92.75 | Non-Drug |
| L3835 | | Whfo m.p. spring extension a | | $100.30 | Non-Drug |
| L3840 | | Whfo spring swivel thumb | | $69.67 | Non-Drug |
| L3845 | | Whfo thumb ip ext ass w/ mp | | $89.07 | Non-Drug |
| L3850 | | Action wrist w/ dorsiflex as | | $125.91 | Non-Drug |
| L3855 | | Whfo adj m.p. flexion contro | | $126.89 | Non-Drug |
| L3860 | | Whfo adj m.p. flex ctrl & i. | | $172.56 | Non-Drug |
| L3890 | | Torsion mechanism wrist/elbo | | $303.18 | Non-Drug |
| L3900 | | Hinge extension/flex wrist/f | | $1,513.16 | Non-Drug |
| L3901 | | Hinge ext/flex wrist finger | | $1,887.79 | Non-Drug |
| L3902 | | Whfo ext power compress gas | | $2,879.60 | Non-Drug |
| L3904 | | Whfo electric custom fitted | | $3,469.03 | Non-Drug |
| L3906 | | Wrist gauntlet molded to pt | | $437.62 | Non-Drug |
| L3907 | | Whfo wrst gauntlt thmb spica | | $572.64 | Non-Drug |
| L3908 | | Wrist cock-up non-molded | | $66.56 | Non-Drug |
| L3909 | | Prefab wrist orthosis | | $16.39 | Non-Drug |
| L3910 | | Whfo swanson design | | $413.64 | Non-Drug |
| L3912 | | Flex glove w/elastic finger | | $103.54 | Non-Drug |
| L3914 | | WHO wrist extension cock-up | | $93.88 | Non-Drug |
| L3916 | | Whfo wrist extens w/ outrigg | | $137.61 | Non-Drug |
| L3918 | | HFO knuckle bender | | $86.10 | Non-Drug |
| L3920 | | Knuckle bender with outrigge | | $106.82 | Non-Drug |
| L3922 | | Knuckle bend 2 seg to flex j | | $106.66 | Non-Drug |
| L3923 | | HFO, no joint, prefabricated | | $39.71 | Non-Drug |
| L3924 | | Oppenheimer | | $116.03 | Non-Drug |
| L3926 | | Thomas suspension | | $101.42 | Non-Drug |
| L3928 | | Finger extension w/ clock sp | | $64.73 | Non-Drug |
| L3930 | | Finger extension with wrist | | $68.26 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

## TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| L3932 | | Safety pin spring wire | | $52.87 | Non-Drug |
| L3934 | | Safety pin modified | | $54.12 | Non-Drug |
| L3936 | | Palmer | | $97.44 | Non-Drug |
| L3938 | | Dorsal wrist | | $101.89 | Non-Drug |
| L3940 | | Dorsal wrist w/ outrigger at | | $116.95 | Non-Drug |
| L3942 | | Reverse knuckle bender | | $81.85 | Non-Drug |
| L3944 | | Reverse knuckle bend w/ outr | | $107.12 | Non-Drug |
| L3946 | | HFO composite elastic | | $96.96 | Non-Drug |
| L3948 | | Finger knuckle bender | | $61.45 | Non-Drug |
| L3950 | | Oppenheimer w/ knuckle bend | | $161.92 | Non-Drug |
| L3952 | | Oppenheimer w/ rev knuckle 2 | | $179.37 | Non-Drug |
| L3954 | | Spreading hand | | $120.06 | Non-Drug |
| L3956 | | Add joint upper ext orthosis | | $45.18 | Non-Drug |
| L3960 | | Sewho airplan desig abdu pos | | $844.23 | Non-Drug |
| L3962 | | Sewho erbs palsey design abd | | $823.36 | Non-Drug |
| L3963 | | Molded w/ articulating elbow | | $1,961.14 | Non-Drug |
| L3964 | NU | Seo mobile arm sup att to wc | | $721.54 | Non-Drug |
| L3964 | RR | Seo mobile arm sup att to wc | | $70.06 | Non-Drug |
| L3964 | UE | Seo mobile arm sup att to wc | | $532.31 | Non-Drug |
| L3964 | | Seo mobile arm sup att to wc | | $933.50 | Non-Drug |
| L3965 | NU | Arm supp att to wc rancho ty | | $1,172.34 | Non-Drug |
| L3965 | RR | Arm supp att to wc rancho ty | | $110.00 | Non-Drug |
| L3965 | UE | Arm supp att to wc rancho ty | | $870.45 | Non-Drug |
| L3965 | | Arm supp att to wc rancho ty | | $1,511.14 | Non-Drug |
| L3966 | NU | Mobile arm supports reclinin | | $874.48 | Non-Drug |
| L3966 | RR | Mobile arm supports reclinin | | $83.62 | Non-Drug |
| L3966 | UE | Mobile arm supports reclinin | | $647.06 | Non-Drug |
| L3966 | | Mobile arm supports reclinin | | $1,191.78 | Non-Drug |
| L3968 | NU | Friction dampening arm supp | | $1,115.99 | Non-Drug |
| L3968 | RR | Friction dampening arm supp | | $104.98 | Non-Drug |
| L3968 | UE | Friction dampening arm supp | | $828.20 | Non-Drug |
| L3968 | | Friction dampening arm supp | | $1,324.01 | Non-Drug |
| L3969 | NU | Monosuspension arm/hand supp | | $769.82 | Non-Drug |
| L3969 | RR | Monosuspension arm/hand supp | | $74.35 | Non-Drug |
| L3969 | UE | Monosuspension arm/hand supp | | $568.55 | Non-Drug |
| L3969 | | Monosuspension arm/hand supp | | $957.03 | Non-Drug |
| L3970 | NU | Elevat proximal arm support | | $288.13 | Non-Drug |
| L3970 | RR | Elevat proximal arm support | | $31.59 | Non-Drug |
| L3970 | UE | Elevat proximal arm support | | $216.87 | Non-Drug |
| L3970 | | Elevat proximal arm support | | $348.02 | Non-Drug |
| L3972 | NU | Offset/lat rocker arm w/ ela | | $184.34 | Non-Drug |
| L3972 | RR | Offset/lat rocker arm w/ ela | | $21.22 | Non-Drug |
| L3972 | UE | Offset/lat rocker arm w/ ela | | $139.03 | Non-Drug |
| L3972 | | Offset/lat rocker arm w/ ela | | $322.25 | Non-Drug |
| L3974 | NU | Mobile arm support supinator | | $156.82 | Non-Drug |
| L3974 | RR | Mobile arm support supinator | | $18.48 | Non-Drug |
| L3974 | UE | Mobile arm support supinator | | $118.39 | Non-Drug |
| L3974 | | Mobile arm support supinator | | $198.48 | Non-Drug |
| L3980 | | Upp ext fx orthosis humeral | | $334.73 | Non-Drug |
| L3982 | | Upper ext fx orthosis rad/ul | | $411.51 | Non-Drug |
| L3984 | | Upper ext fx orthosis wrist | | $376.67 | Non-Drug |
| L3985 | | Forearm hand fx orth w/ wr h | | $664.19 | Non-Drug |
| L3986 | | Humeral rad/ulna wrist fx or | | $635.51 | Non-Drug |
| L3995 | | Sock fracture or equal each | | $37.73 | Non-Drug |
| L3999 | | Upper limb orthosis NOS | | $36.07 | Non-Drug |
| L4000 | | Repl girdle milwaukee orth | | $1,523.98 | Non-Drug |
| L4010 | | Replace trilateral socket br | | $785.48 | Non-Drug |
| L4020 | | Replace quadlat socket brim | | $1,018.07 | Non-Drug |
| L4030 | | Replace socket brim cust fit | | $582.19 | Non-Drug |
| L4040 | | Replace molded thigh lacer | | $463.96 | Non-Drug |
| L4045 | | Replace non-molded thigh lac | | $365.93 | Non-Drug |
| L4050 | | Replace molded calf lacer | | $469.64 | Non-Drug |
| L4055 | | Replace non-molded calf lace | | $292.45 | Non-Drug |
| L4060 | | Replace high roll cuff | | $353.42 | Non-Drug |
| L4070 | | Replace prox & dist upright | | $308.94 | Non-Drug |
| L4080 | | Repl met band kafo-afo prox | | $112.57 | Non-Drug |
| L4090 | | Repl met band kafo-afo calf/ | | $100.83 | Non-Drug |
| L4100 | | Repl leath cuff kafo prox th | | $115.99 | Non-Drug |

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TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| L4110 | | Repl leath cuff kafo-afo cal | | $94.88 | Non-Drug |
| L4130 | | Replace pretibial shell | | $571.50 | Non-Drug |
| L4205 | | Ortho dvc repair per 15 min | | $31.44 | Non-Drug |
| L4210 | | Orth dev repair/repl minor p | | $40.79 | Non-Drug |
| L4350 | | Pneumatic ankle cntrl splint | | $99.85 | Non-Drug |
| L4360 | | Pneumatic walking splint | | $303.38 | Non-Drug |
| L4370 | | Pneumatic full leg splint | | $207.43 | Non-Drug |
| L4380 | | Pneumatic knee splint | | $119.36 | Non-Drug |
| L4386 | | Non-pneumatic walking splint | | $167.06 | Non-Drug |
| L4392 | | Replace AFO soft interface | | $27.39 | Non-Drug |
| L4394 | | Replace foot drop spint | | $20.82 | Non-Drug |
| L4396 | | Static AFO | | $176.32 | Non-Drug |
| L4398 | | Foot drop splint recumbent | | $82.83 | Non-Drug |
| L5000 | | Sho insert w arch toe filler | | $623.05 | Non-Drug |
| L5010 | | Mold socket ank hgt w/ toe f | | $1,550.87 | Non-Drug |
| L5020 | | Tibial tubercle hgt w/ toe f | | $2,546.61 | Non-Drug |
| L5050 | | Ank symes mold sckt sach ft | | $2,954.66 | Non-Drug |
| L5060 | | Symes met fr leath socket ar | | $3,563.12 | Non-Drug |
| L5100 | | Molded socket shin sach foot | | $2,992.69 | Non-Drug |
| L5105 | | Plast socket jts/thgh lacer | | $4,490.63 | Non-Drug |
| L5150 | | Mold sckt ext knee shin sach | | $4,539.81 | Non-Drug |
| L5160 | | Mold socket bent knee shin s | | $4,940.94 | Non-Drug |
| L5200 | | Kne sing axis fric shin sach | | $4,268.55 | Non-Drug |
| L5210 | | No knee/ankle joints w/ ft b | | $3,126.13 | Non-Drug |
| L5220 | | No knee joint with artic ali | | $3,558.23 | Non-Drug |
| L5230 | | Fem focal defic constant fri | | $4,920.85 | Non-Drug |
| L5250 | | Hip canad sing axi cons fric | | $6,724.41 | Non-Drug |
| L5270 | | Tilt table locking hip sing | | $6,665.20 | Non-Drug |
| L5280 | | Hemipelvect canad sing axis | | $6,598.19 | Non-Drug |
| L5301 | | BK mold socket SACH ft endo | | $2,956.06 | Non-Drug |
| L5311 | | Knee disart, SACH ft, endo | | $4,262.05 | Non-Drug |
| L5321 | | AK open end SACH | | $4,246.69 | Non-Drug |
| L5331 | | Hip disart canadian SACH ft | | $6,023.84 | Non-Drug |
| L5341 | | Hemipelvectomy canadian SACH | | $6,549.06 | Non-Drug |
| L5400 | | Postop dress & 1 cast chg bk | | $1,532.77 | Non-Drug |
| L5410 | | Postop dsg bk ea add cast ch | | $509.13 | Non-Drug |
| L5420 | | Postop dsg & 1 cast chg ak/d | | $1,945.06 | Non-Drug |
| L5430 | | Postop dsg ak ea add cast ch | | $620.38 | Non-Drug |
| L5450 | | Postop app non-wgt bear dsg | | $495.57 | Non-Drug |
| L5460 | | Postop app non-wgt bear dsg | | $675.18 | Non-Drug |
| L5500 | | Init bk ptb plaster direct | | $1,638.01 | Non-Drug |
| L5505 | | Init ak ischal plstr direct | | $2,230.77 | Non-Drug |
| L5510 | | Prep BK ptb plaster molded | | $1,861.50 | Non-Drug |
| L5520 | | Perp BK ptb thermopls direct | | $1,838.29 | Non-Drug |
| L5530 | | Prep BK ptb thermopls molded | | $2,215.03 | Non-Drug |
| L5535 | | Prep BK ptb open end socket | | $2,174.08 | Non-Drug |
| L5540 | | Prep BK ptb laminated socket | | $2,322.81 | Non-Drug |
| L5560 | | Prep AK ischial plast molded | | $2,496.89 | Non-Drug |
| L5570 | | Prep AK ischial direct form | | $2,597.27 | Non-Drug |
| L5580 | | Prep AK ischial thermo mold | | $3,038.03 | Non-Drug |
| L5585 | | Prep AK ischial open end | | $3,298.08 | Non-Drug |
| L5590 | | Prep AK ischial laminated | | $3,096.63 | Non-Drug |
| L5595 | | Hip disartic sach thermopls | | $5,210.50 | Non-Drug |
| L5600 | | Hip disart sach laminat mold | | $5,757.62 | Non-Drug |
| L5610 | | Above knee hydracadence | | $2,662.09 | Non-Drug |
| L5611 | | Ak 4 bar link w/fric swing | | $2,063.83 | Non-Drug |
| L5613 | | Ak 4 bar ling w/hydraul swig | | $3,157.55 | Non-Drug |
| L5614 | | 4-bar link above knee w/swng | | $1,940.09 | Non-Drug |
| L5616 | | Ak univ multiplex sys frict | | $1,734.20 | Non-Drug |
| L5617 | | AK/BK self-aligning unit ea | | $623.95 | Non-Drug |
| L5618 | | Test socket symes | | $331.18 | Non-Drug |
| L5620 | | Test socket below knee | | $326.99 | Non-Drug |
| L5622 | | Test socket knee disarticula | | $437.09 | Non-Drug |
| L5624 | | Test socket above knee | | $438.44 | Non-Drug |
| L5626 | | Test socket hip disarticulat | | $585.95 | Non-Drug |
| L5628 | | Test socket hemipelvectomy | | $593.80 | Non-Drug |
| L5629 | | Below knee acrylic socket | | $378.82 | Non-Drug |
| L5630 | | Syme typ expandabl wall sckt | | $549.48 | Non-Drug |

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### TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| L5631 | | Ak/knee disartic acrylic soc | | $537.21 | Non-Drug |
| L5632 | | Symes type ptb brim design s | | $259.14 | Non-Drug |
| L5634 | | Symes type poster opening so | | $361.08 | Non-Drug |
| L5636 | | Symes type medial opening so | | $296.92 | Non-Drug |
| L5637 | | Below knee total contact | | $341.16 | Non-Drug |
| L5638 | | Below knee leather socket | | $598.82 | Non-Drug |
| L5639 | | Below knee wood socket | | $1,425.47 | Non-Drug |
| L5640 | | Knee disarticulat leather so | | $797.85 | Non-Drug |
| L5642 | | Above knee leather socket | | $771.97 | Non-Drug |
| L5643 | | Hip flex inner socket ext fr | | $1,992.52 | Non-Drug |
| L5644 | | Above knee wood socket | | $734.28 | Non-Drug |
| L5645 | | Bk flex inner socket ext fra | | $1,004.29 | Non-Drug |
| L5646 | | Below knee air cushion socke | | $678.62 | Non-Drug |
| L5647 | | Below knee suction socket | | $1,001.12 | Non-Drug |
| L5648 | | Above knee air cushion socke | | $822.52 | Non-Drug |
| L5649 | | Isch containmt/narrow m-l so | | $2,445.23 | Non-Drug |
| L5650 | | Tot contact ak/knee disart s | | $600.80 | Non-Drug |
| L5651 | | Ak flex inner socket ext fra | | $1,529.34 | Non-Drug |
| L5652 | | Suction susp ak/knee disart | | $532.79 | Non-Drug |
| L5653 | | Knee disart expand wall sock | | $723.01 | Non-Drug |
| L5654 | | Socket insert symes | | $396.86 | Non-Drug |
| L5655 | | Socket insert below knee | | $310.35 | Non-Drug |
| L5656 | | Socket insert knee articulat | | $448.08 | Non-Drug |
| L5658 | | Socket insert above knee | | $438.49 | Non-Drug |
| L5661 | | Multi-durometer symes | | $757.60 | Non-Drug |
| L5665 | | Multi-durometer below knee | | $631.87 | Non-Drug |
| L5666 | | Below knee cuff suspension | | $83.81 | Non-Drug |
| L5668 | | Socket insert w/o lock lower | | $119.54 | Non-Drug |
| L5670 | | Bk molded supracondylar susp | | $318.31 | Non-Drug |
| L5671 | | BK/AK locking mechanism | | $612.81 | Non-Drug |
| L5672 | | Bk removable medial brim sus | | $353.27 | Non-Drug |
| L5674 | | Bk suspension sleeve | | $76.79 | Non-Drug |
| L5675 | | Bk heavy duty susp sleeve | | $102.99 | Non-Drug |
| L5676 | | Bk knee joints single axis p | | $436.89 | Non-Drug |
| L5677 | | Bk knee joints polycentric p | | $607.15 | Non-Drug |
| L5678 | | Bk joint covers pair | | $48.88 | Non-Drug |
| L5680 | | Bk thigh lacer non-molded | | $361.33 | Non-Drug |
| L5682 | | Bk thigh lacer glut/ischia m | | $779.56 | Non-Drug |
| L5684 | | Bk fork strap | | $58.59 | Non-Drug |
| L5686 | | Bk back check | | $61.99 | Non-Drug |
| L5688 | | Bk waist belt webbing | | $73.52 | Non-Drug |
| L5690 | | Bk waist belt padded and lin | | $115.93 | Non-Drug |
| L5692 | | Ak pelvic control belt light | | $156.31 | Non-Drug |
| L5694 | | Ak pelvic control belt pad/l | | $212.29 | Non-Drug |
| L5695 | | Ak sleeve susp neoprene/equa | | $191.15 | Non-Drug |
| L5696 | | Ak/knee disartic pelvic join | | $216.45 | Non-Drug |
| L5697 | | Ak/knee disartic pelvic band | | $95.66 | Non-Drug |
| L5698 | | Ak/knee disartic silesian ba | | $123.38 | Non-Drug |
| L5699 | | Shoulder harness | | $218.10 | Non-Drug |
| L5700 | | Replace socket below knee | | $3,532.55 | Non-Drug |
| L5701 | | Replace socket above knee | | $4,394.46 | Non-Drug |
| L5702 | | Replace socket hip | | $5,624.99 | Non-Drug |
| L5704 | | Custom shape cover BK | | $650.79 | Non-Drug |
| L5705 | | Custom shape cover AK | | $1,174.99 | Non-Drug |
| L5706 | | Custom shape cvr knee disart | | $1,152.09 | Non-Drug |
| L5707 | | Custom shape cvr hip disart | | $1,576.41 | Non-Drug |
| L5710 | | Kne-shin exo sng axi mnl loc | | $433.36 | Non-Drug |
| L5711 | | Knee-shin exo mnl lock ultra | | $645.06 | Non-Drug |
| L5712 | | Knee-shin exo frict swg & st | | $526.16 | Non-Drug |
| L5714 | | Knee-shin exo variable frict | | $509.73 | Non-Drug |
| L5716 | | Knee-shin exo mech stance ph | | $914.32 | Non-Drug |
| L5718 | | Knee-shin exo frct swg & sta | | $1,151.60 | Non-Drug |
| L5722 | | Knee-shin pneum swg frct exo | | $1,141.06 | Non-Drug |
| L5724 | | Knee-shin exo fluid swing ph | | $1,931.25 | Non-Drug |
| L5726 | | Knee-shin ext jnts fld swg e | | $2,231.10 | Non-Drug |
| L5728 | | Knee-shin fluid swg & stance | | $3,064.79 | Non-Drug |
| L5780 | | Knee-shin pneum/hydra pneum | | $1,456.38 | Non-Drug |
| L5781 | | Lower limb pros vacuum pump | | $4,648.50 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| L5785 | | Exoskeletal bk ultralt mater | | $641.66 | Non-Drug |
| L5790 | | Exoskeletal ak ultra-light m | | $901.54 | Non-Drug |
| L5795 | | Exoskel hip ultra-light mate | | $1,363.60 | Non-Drug |
| L5810 | | Endoskel knee-shin mnl lock | | $599.08 | Non-Drug |
| L5811 | | Endo knee-shin mnl lck ultra | | $914.94 | Non-Drug |
| L5812 | | Endo knee-shin frct swg & st | | $701.25 | Non-Drug |
| L5814 | | Endo knee-shin hydral swg ph | | $4,312.18 | Non-Drug |
| L5816 | | Endo knee-shin polyc mch sta | | $1,072.75 | Non-Drug |
| L5818 | | Endo knee-shin frct swg & st | | $1,215.91 | Non-Drug |
| L5822 | | Endo knee-shin pneum swg frc | | $2,183.33 | Non-Drug |
| L5824 | | Endo knee-shin fluid swing p | | $1,962.71 | Non-Drug |
| L5826 | | Miniature knee joint | | $3,643.33 | Non-Drug |
| L5828 | | Endo knee-shin fluid swg/sta | | $3,643.80 | Non-Drug |
| L5830 | | Endo knee-shin pneum/swg pha | | $2,436.88 | Non-Drug |
| L5840 | | Multi-axial knee/shin system | | $4,380.49 | Non-Drug |
| L5845 | | Knee-shin sys stance flexion | | $2,062.91 | Non-Drug |
| L5846 | | Knee-shin sys microprocessor | | $6,350.78 | Non-Drug |
| L5847 | | Microprocessor cntrl feature | | $18,094.38 | Non-Drug |
| L5848 | | Knee-shin sys hydraul stance | | $1,223.54 | Non-Drug |
| L5850 | | Endo ak/hip knee extens assi | | $150.61 | Non-Drug |
| L5855 | | Mech hip extension assist | | $367.14 | Non-Drug |
| L5910 | | Endo below knee alignable sy | | $436.63 | Non-Drug |
| L5920 | | Endo ak/hip alignable system | | $656.04 | Non-Drug |
| L5925 | | Above knee manual lock | | $402.54 | Non-Drug |
| L5930 | | High activity knee frame | | $3,930.12 | Non-Drug |
| L5940 | | Endo bk ultra-light material | | $618.29 | Non-Drug |
| L5950 | | Endo ak ultra-light material | | $978.38 | Non-Drug |
| L5960 | | Endo hip ultra-light materia | | $1,220.74 | Non-Drug |
| L5962 | | Below knee flex cover system | | $730.57 | Non-Drug |
| L5964 | | Above knee flex cover system | | $1,184.90 | Non-Drug |
| L5966 | | Hip flexible cover system | | $1,519.50 | Non-Drug |
| L5968 | | Multiaxial ankle w dorsiflex | | $4,218.60 | Non-Drug |
| L5970 | | Foot external keel sach foot | | $237.29 | Non-Drug |
| L5972 | | Flexible keel foot | | $423.94 | Non-Drug |
| L5974 | | Foot single axis ankle/foot | | $271.81 | Non-Drug |
| L5975 | | Combo ankle/foot prosthesis | | $507.47 | Non-Drug |
| L5976 | | Energy storing foot | | $694.39 | Non-Drug |
| L5978 | | Ft prosth multiaxial ankl/ft | | $344.99 | Non-Drug |
| L5979 | | Multi-axial ankle/ft prosth | | $2,937.45 | Non-Drug |
| L5980 | | Flex foot system | | $4,795.18 | Non-Drug |
| L5981 | | Flex-walk sys low ext prosth | | $3,717.06 | Non-Drug |
| L5982 | | Exoskeletal axial rotation u | | $717.96 | Non-Drug |
| L5984 | | Endoskeletal axial rotation | | $706.97 | Non-Drug |
| L5985 | | Lwr ext dynamic prosth pylon | | $297.55 | Non-Drug |
| L5986 | | Multi-axial rotation unit | | $790.35 | Non-Drug |
| L5987 | | Shank ft w vert load pylon | | $8,385.66 | Non-Drug |
| L5988 | | Vertical shock reducing pylo | | $2,303.27 | Non-Drug |
| L5989 | | Pylon w elctrnc force sensor | | $3,590.71 | Non-Drug |
| L5990 | | User adjustable heel height | | $2,088.47 | Non-Drug |
| L5999 | | | | | |
| L6000 | | Par hand robin-aids thum rem | | $1,695.81 | Non-Drug |
| L6010 | | Hand robin-aids little/ring | | $1,891.13 | Non-Drug |
| L6020 | | Part hand robin-aids no fing | | $1,760.80 | Non-Drug |
| L6025 | | Part hand disart myoelectric | | $9,332.24 | Non-Drug |
| L6050 | | Wrst MLd sck flx hng tri pad | | $2,439.61 | Non-Drug |
| L6055 | | Wrst mold sock w/exp interfa | | $3,414.06 | Non-Drug |
| L6100 | | Elb mold sock flex hinge pad | | $2,472.17 | Non-Drug |
| L6110 | | Elbow mold sock suspension t | | $2,624.28 | Non-Drug |
| L6120 | | Elbow mold doub splt soc ste | | $3,064.05 | Non-Drug |
| L6130 | | Elbow stump activated lock h | | $3,337.36 | Non-Drug |
| L6200 | | Elbow mold outsid lock hinge | | $3,518.93 | Non-Drug |
| L6205 | | Elbow molded w/ expand inter | | $4,709.00 | Non-Drug |
| L6250 | | Elbow inter loc elbow forarm | | $3,463.25 | Non-Drug |
| L6300 | | Shlder disart int lock elbow | | $4,818.52 | Non-Drug |
| L6310 | | Shoulder passive restor comp | | $3,918.25 | Non-Drug |
| L6320 | | Shoulder passive restor cap | | $2,191.19 | Non-Drug |
| L6350 | | Thoracic intern lock elbow | | $5,067.74 | Non-Drug |
| L6360 | | Thoracic passive restor comp | | $4,114.42 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

## TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| L6370 | | Thoracic passive restor cap | | $2,610.87 | Non-Drug |
| L6380 | | Postop dsg cast chg wrst/elb | | $1,463.36 | Non-Drug |
| L6382 | | Postop dsg cast chg elb dis/ | | $1,893.81 | Non-Drug |
| L6384 | | Postop dsg cast chg shlder/t | | $2,448.72 | Non-Drug |
| L6386 | | Postop ea cast chg & realign | | $487.98 | Non-Drug |
| L6388 | | Postop applicat rigid dsg on | | $537.53 | Non-Drug |
| L6400 | | Below elbow prosth tiss shap | | $2,987.80 | Non-Drug |
| L6450 | | Elb disart prosth tiss shap | | $3,981.43 | Non-Drug |
| L6500 | | Above elbow prosth tiss shap | | $3,984.72 | Non-Drug |
| L6550 | | Shldr disar prosth tiss shap | | $4,932.67 | Non-Drug |
| L6570 | | Scap thorac prosth tiss shap | | $5,666.96 | Non-Drug |
| L6580 | | Wrist/elbow bowden cable mol | | $2,001.27 | Non-Drug |
| L6582 | | Wrist/elbow bowden cbl dir f | | $1,757.84 | Non-Drug |
| L6584 | | Elbow fair lead cable molded | | $2,631.36 | Non-Drug |
| L6586 | | Elbow fair lead cable dir fo | | $2,418.51 | Non-Drug |
| L6588 | | Shdr fair lead cable molded | | $3,647.17 | Non-Drug |
| L6590 | | Shdr fair lead cable direct | | $3,392.33 | Non-Drug |
| L6600 | | Polycentric hinge pair | | $219.39 | Non-Drug |
| L6605 | | Single pivot hinge pair | | $216.68 | Non-Drug |
| L6610 | | Flexible metal hinge pair | | $195.07 | Non-Drug |
| L6615 | | Disconnect locking wrist uni | | $203.41 | Non-Drug |
| L6616 | | Disconnect insert locking wr | | $77.88 | Non-Drug |
| L6620 | | Flexion-friction wrist unit | | $359.82 | Non-Drug |
| L6623 | | Spring-ass rot wrst w/ latch | | $800.49 | Non-Drug |
| L6625 | | Rotation wrst w/ cable lock | | $657.70 | Non-Drug |
| L6628 | | Quick disconn hook adapter o | | $588.89 | Non-Drug |
| L6629 | | Lamination collar w/ couplin | | $171.80 | Non-Drug |
| L6630 | | Stainless steel any wrist | | $251.62 | Non-Drug |
| L6632 | | Latex suspension sleeve each | | $78.01 | Non-Drug |
| L6635 | | Lift assist for elbow | | $206.19 | Non-Drug |
| L6637 | | Nudge control elbow lock | | $443.17 | Non-Drug |
| L6638 | | Elec lock on manual pw elbow | | $2,892.11 | Non-Drug |
| L6640 | | Shoulder abduction joint pai | | $329.72 | Non-Drug |
| L6641 | | Excursion amplifier pulley t | | $188.09 | Non-Drug |
| L6642 | | Excursion amplifier lever ty | | $253.84 | Non-Drug |
| L6645 | | Shoulder flexion-abduction j | | $380.69 | Non-Drug |
| L6646 | | Multipo locking shoulder jnt | | $3,656.79 | Non-Drug |
| L6647 | | Shoulder lock actuator | | $572.62 | Non-Drug |
| L6648 | | Ext pwrd shlder lock/unlock | | $3,772.57 | Non-Drug |
| L6650 | | Shoulder universal joint | | $405.77 | Non-Drug |
| L6655 | | Standard control cable extra | | $89.71 | Non-Drug |
| L6660 | | Heavy duty control cable | | $108.94 | Non-Drug |
| L6665 | | Teflon or equal cable lining | | $56.20 | Non-Drug |
| L6670 | | Hook to hand cable adapter | | $58.39 | Non-Drug |
| L6672 | | Harness chest/shlder saddle | | $197.53 | Non-Drug |
| L6675 | | Harness figure of 8 sing con | | $141.57 | Non-Drug |
| L6676 | | Harness figure of 8 dual con | | $142.94 | Non-Drug |
| L6680 | | Test sock wrist disart/bel e | | $270.64 | Non-Drug |
| L6682 | | Test sock elbw disart/above | | $298.98 | Non-Drug |
| L6684 | | Test socket shldr disart/tho | | $418.92 | Non-Drug |
| L6686 | | Suction socket | | $733.92 | Non-Drug |
| L6687 | | Frame typ socket bel elbow/w | | $716.26 | Non-Drug |
| L6688 | | Frame typ sock above elb/dis | | $654.94 | Non-Drug |
| L6689 | | Frame typ socket shoulder di | | $842.62 | Non-Drug |
| L6690 | | Frame typ sock interscap-tho | | $860.62 | Non-Drug |
| L6691 | | Removable insert each | | $414.51 | Non-Drug |
| L6692 | | Silicone gel insert or equal | | $693.36 | Non-Drug |
| L6693 | | Lockingelbow forearm cntrbal | | $3,288.08 | Non-Drug |
| L6700 | | Terminal device model #3 | | $640.60 | Non-Drug |
| L6705 | | Terminal device model #5 | | $361.55 | Non-Drug |
| L6710 | | Terminal device model #5x | | $414.44 | Non-Drug |
| L6715 | | Terminal device model #5xa | | $411.43 | Non-Drug |
| L6720 | | Terminal device model #6 | | $1,076.22 | Non-Drug |
| L6725 | | Terminal device model #7 | | $502.89 | Non-Drug |
| L6730 | | Terminal device model #7lo | | $797.30 | Non-Drug |
| L6735 | | Terminal device model #8 | | $352.99 | Non-Drug |
| L6740 | | Terminal device model #8x | | $470.91 | Non-Drug |
| L6745 | | Terminal device model #88x | | $427.87 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

### TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| L6750 | | Terminal device model #10p | | $422.53 | Non-Drug |
| L6755 | | Terminal device model #10x | | $421.22 | Non-Drug |
| L6765 | | Terminal device model #12p | | $441.65 | Non-Drug |
| L6770 | | Terminal device model #99x | | $424.50 | Non-Drug |
| L6775 | | Terminal device model#555 | | $509.48 | Non-Drug |
| L6780 | | Terminal device model #ss555 | | $547.02 | Non-Drug |
| L6790 | | Hooks-accu hook or equal | | $553.49 | Non-Drug |
| L6795 | | Hooks-2 load or equal | | $1,577.15 | Non-Drug |
| L6800 | | Hooks-aprl vc or equal | | $1,284.80 | Non-Drug |
| L6805 | | Modifier wrist flexion unit | | $408.05 | Non-Drug |
| L6806 | | Trs grip vc or equal | | $1,858.00 | Non-Drug |
| L6807 | | Term device grip1/2 or equal | | $1,681.54 | Non-Drug |
| L6808 | | Term device infant or child | | $1,430.72 | Non-Drug |
| L6809 | | Trs super sport passive | | $448.20 | Non-Drug |
| L6810 | | Pincher tool otto bock or eq | | $218.20 | Non-Drug |
| L6825 | | Hands dorrance vo | | $1,308.93 | Non-Drug |
| L6830 | | Hand aprl vc | | $1,729.02 | Non-Drug |
| L6835 | | Hand sierra vo | | $1,501.61 | Non-Drug |
| L6840 | | Hand becker imperial | | $1,032.46 | Non-Drug |
| L6845 | | Hand becker lock grip | | $955.92 | Non-Drug |
| L6850 | | Term dvc-hand becker plylite | | $862.43 | Non-Drug |
| L6855 | | Hand robin-aids vo | | $1,106.48 | Non-Drug |
| L6860 | | Hand robin-aids vo soft | | $830.67 | Non-Drug |
| L6865 | | Hand passive hand | | $389.02 | Non-Drug |
| L6867 | | Hand detroit infant hand | | $1,216.42 | Non-Drug |
| L6868 | | Passive inf hand steeper/hos | | $279.56 | Non-Drug |
| L6870 | | Hand child mitt | | $277.19 | Non-Drug |
| L6872 | | Hand nyu child hand | | $1,191.78 | Non-Drug |
| L6873 | | Hand mech inf steeper or equ | | $574.24 | Non-Drug |
| L6875 | | Hand bock vc | | $977.40 | Non-Drug |
| L6880 | | Hand bock vo | | $621.73 | Non-Drug |
| L6881 | | Autograsp feature ul term dv | | $4,750.41 | Non-Drug |
| L6882 | | Microprocessor control uplmb | | $3,594.92 | Non-Drug |
| L6890 | | Production glove | | $199.23 | Non-Drug |
| L6895 | | Custom glove | | $692.26 | Non-Drug |
| L6900 | | Hand restorat thumb/1 finger | | $1,932.61 | Non-Drug |
| L6905 | | Hand restoration multiple fi | | $1,877.57 | Non-Drug |
| L6910 | | Hand restoration no fingers | | $1,828.23 | Non-Drug |
| L6915 | | Hand restoration replacmnt g | | $780.37 | Non-Drug |
| L6920 | | Wrist disarticul switch ctrl | | $8,659.29 | Non-Drug |
| L6925 | | Wrist disart myoelectronic c | | $10,002.46 | Non-Drug |
| L6930 | | Below elbow switch control | | $8,713.21 | Non-Drug |
| L6935 | | Below elbow myoelectronic ct | | $10,190.37 | Non-Drug |
| L6940 | | Elbow disarticulation switch | | $11,395.16 | Non-Drug |
| L6945 | | Elbow disart myoelectronic c | | $13,262.69 | Non-Drug |
| L6950 | | Above elbow switch control | | $12,957.01 | Non-Drug |
| L6955 | | Above elbow myoelectronic ct | | $15,524.75 | Non-Drug |
| L6960 | | Shldr disartic switch contro | | $15,658.18 | Non-Drug |
| L6965 | | Shldr disartic myoelectronic | | $18,428.81 | Non-Drug |
| L6970 | | Interscapular-thor switch ct | | $18,965.96 | Non-Drug |
| L6975 | | Interscap-thor myoelectronic | | $20,784.04 | Non-Drug |
| L7010 | | Hand otto back steeper/eq sw | | $4,723.06 | Non-Drug |
| L7015 | | Hand sys teknik village swit | | $7,526.04 | Non-Drug |
| L7020 | | Electronic greifer switch ct | | $4,398.09 | Non-Drug |
| L7025 | | Electron hand myoelectronic | | $4,438.65 | Non-Drug |
| L7030 | | Hand sys teknik vill myoelec | | $6,806.00 | Non-Drug |
| L7035 | | Electron greifer myoelectro | | $4,546.53 | Non-Drug |
| L7040 | | Prehensile actuator hosmer s | | $3,637.60 | Non-Drug |
| L7045 | | Electron hook child michigan | | $2,070.54 | Non-Drug |
| L7170 | | Electronic elbow hosmer swit | | $7,603.74 | Non-Drug |
| L7180 | | Electronic elbow utah myoele | | $42,523.31 | Non-Drug |
| L7185 | | Electron elbow adolescent sw | | $7,700.25 | Non-Drug |
| L7186 | | Electron elbow child switch | | $11,488.73 | Non-Drug |
| L7190 | | Elbow adolescent myoelectron | | $9,806.70 | Non-Drug |
| L7191 | | Elbow child myoelectronic ct | | $12,006.64 | Non-Drug |
| L7260 | | Electron wrist rotator otto | | $2,528.73 | Non-Drug |
| L7261 | | Electron wrist rotator utah | | $4,632.14 | Non-Drug |
| L7266 | | Servo control steeper or equ | | $1,254.66 | Non-Drug |

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### TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| L7272 | | Analoque control unb or equa | | $2,594.82 | Non-Drug |
| L7274 | | Proportional ctl 12 volt uta | | $7,447.51 | Non-Drug |
| L7360 | | Six volt bat otto bock/eq ea | | $265.32 | Non-Drug |
| L7362 | | Battery chrgr six volt otto | | $292.00 | Non-Drug |
| L7364 | | Twelve volt battery utah/equ | | $483.93 | Non-Drug |
| L7366 | | Battery chrgr 12 volt utah/e | | $664.08 | Non-Drug |
| L7367 | | Replacemnt lithium ionbatter | | $420.53 | Non-Drug |
| L7368 | | Lithium ion battery charger | | $555.58 | Non-Drug |
| L7500 | | Prosthetic dvc repair hourly | | $100.40 | Non-Drug |
| L7510 | | Prosthetic device repair rep | | $28.32 | Non-Drug |
| L7520 | | Repair prosthesis per 15 min | | $32.52 | Non-Drug |
| L7900 | | Vacuum erection system | | $592.57 | Non-Drug |
| L8000 | | Mastectomy bra | | $45.19 | Non-Drug |
| L8001 | | Breast prosthesis bra & form | | $133.04 | Non-Drug |
| L8002 | | Brst prsth bra & bilat form | | $174.03 | Non-Drug |
| L8010 | | Mastectomy sleeve | | $63.10 | Non-Drug |
| L8015 | | Ext breastprosthesis garment | | $65.34 | Non-Drug |
| L8020 | | Mastectomy form | | $234.43 | Non-Drug |
| L8030 | | Breast prosthesis silicone/e | | $375.80 | Non-Drug |
| L8035 | | Custom breast prosthesis | | $4,253.37 | Non-Drug |
| L8040 | KM | Nasal prosthesis | | $2,719.08 | Non-Drug |
| L8040 | KN | Nasal prosthesis | | $1,124.49 | Non-Drug |
| L8040 | | Nasal prosthesis | | $2,864.05 | Non-Drug |
| L8041 | KM | Midfacial prosthesis | | $3,284.63 | Non-Drug |
| L8041 | KN | Midfacial prosthesis | | $1,362.62 | Non-Drug |
| L8041 | | Midfacial prosthesis | | $3,459.37 | Non-Drug |
| L8042 | KM | Orbital prosthesis | | $3,694.95 | Non-Drug |
| L8042 | KN | Orbital prosthesis | | $1,535.39 | Non-Drug |
| L8042 | | Orbital prosthesis | | $3,891.28 | Non-Drug |
| L8043 | KM | Upper facial prosthesis | | $4,142.57 | Non-Drug |
| L8043 | KN | Upper facial prosthesis | | $1,723.86 | Non-Drug |
| L8043 | | Upper facial prosthesis | | $4,362.46 | Non-Drug |
| L8044 | KM | Hemi-facial prosthesis | | $4,590.20 | Non-Drug |
| L8044 | KN | Hemi-facial prosthesis | | $1,912.33 | Non-Drug |
| L8044 | | Hemi-facial prosthesis | | $4,833.63 | Non-Drug |
| L8045 | KM | Auricular prosthesis | | $3,008.31 | Non-Drug |
| L8045 | KN | Auricular prosthesis | | $1,246.28 | Non-Drug |
| L8045 | | Auricular prosthesis | | $3,168.51 | Non-Drug |
| L8046 | KM | Partial facial prosthesis | | $2,948.92 | Non-Drug |
| L8046 | KN | Partial facial prosthesis | | $1,221.27 | Non-Drug |
| L8046 | | Partial facial prosthesis | | $3,105.98 | Non-Drug |
| L8047 | KM | Nasal septal prosthesis | | $1,494.17 | Non-Drug |
| L8047 | KN | Nasal septal prosthesis | | $608.74 | Non-Drug |
| L8047 | | Nasal septal prosthesis | | $1,574.66 | Non-Drug |
| L8100 | | Compression stocking BK18-30 | | $28.38 | Non-Drug |
| L8110 | | Compression stocking BK30-40 | | $28.88 | Non-Drug |
| L8120 | | Compression stocking BK40-50 | | $29.87 | Non-Drug |
| L8130 | | Gc stocking thighlngth 18-30 | | $42.76 | Non-Drug |
| L8140 | | Gc stocking thighlngth 30-40 | | $42.76 | Non-Drug |
| L8150 | | Gc stocking thighlngth 40-50 | | $37.80 | Non-Drug |
| L8160 | | Gc stocking full lngth 18-30 | | $47.72 | Non-Drug |
| L8170 | | Gc stocking full lngth 30-40 | | $47.72 | Non-Drug |
| L8180 | | Gc stocking full lngth 40-50 | | $47.72 | Non-Drug |
| L8190 | | Gc stocking waistlngth 18-30 | | $182.61 | Non-Drug |
| L8195 | | Gc stocking waistlngth 30-40 | | $159.38 | Non-Drug |
| L8200 | | Gc stocking waistlngth 40-50 | | $182.61 | Non-Drug |
| L8210 | | Gc stocking custom made | | $92.85 | Non-Drug |
| L8220 | | Gc stocking lymphedema | | $29.87 | Non-Drug |
| L8230 | | Gc stocking garter belt | | $30.86 | Non-Drug |
| L8239 | | | | | |
| L8300 | | Truss single w/ standard pad | | $100.36 | Non-Drug |
| L8310 | | Truss double w/ standard pad | | $156.67 | Non-Drug |
| L8320 | | Truss addition to std pad wa | | $64.73 | Non-Drug |
| L8330 | | Truss add to std pad scrotal | | $60.02 | Non-Drug |
| L8400 | | Sheath below knee | | $21.24 | Non-Drug |
| L8410 | | Sheath above knee | | $26.98 | Non-Drug |
| L8415 | | Sheath upper limb | | $27.81 | Non-Drug |
| L8417 | | Pros sheath/sock w gel cushn | | $80.97 | Non-Drug |

NOTE See end of table for notes regarding Status/Usage Indicators

## TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| L8420 | | Prosthetic sock multi ply BK | | $25.52 | Non-Drug |
| L8430 | | Prosthetic sock multi ply AK | | $28.62 | Non-Drug |
| L8435 | | Pros sock multi ply upper lm | | $27.33 | Non-Drug |
| L8440 | | Shrinker below knee | | $51.32 | Non-Drug |
| L8460 | | Shrinker above knee | | $79.95 | Non-Drug |
| L8465 | | Shrinker upper limb | | $59.34 | Non-Drug |
| L8470 | | Pros sock single ply BK | | $10.79 | Non-Drug |
| L8480 | | Pros sock single ply AK | | $13.70 | Non-Drug |
| L8485 | | Pros sock single ply upper l | | $15.91 | Non-Drug |
| L8490 | | Air seal suction reten systm | | $156.31 | Non-Drug |
| L8499 | | | | | |
| L8500 | | Artificial larynx | | $824.59 | Non-Drug |
| L8501 | | Tracheostomy speaking valve | | $142.39 | Non-Drug |
| L8505 | | Artificial larynx, accessory | | $26.35 | Non-Drug |
| L8507 | | Trach-esoph voice pros pt in | | $46.50 | Non-Drug |
| L8509 | | Trach-esoph voice pros md in | | $116.24 | Non-Drug |
| L8510 | | Voice amplifier | | $264.91 | Non-Drug |
| L8600 | | Implant breast silicone/eq | | $778.33 | Non-Drug |
| L8603 | | Collagen imp urinary 2.5 ml | | $660.89 | Non-Drug |
| L8606 | | Synthetic implnt urinary 1ml | | $330.99 | Non-Drug |
| L8610 | | Ocular implant | | $727.34 | Non-Drug |
| L8612 | | Aqueous shunt prosthesis | | $756.94 | Non-Drug |
| L8613 | | Ossicular implant | | $299.79 | Non-Drug |
| L8614 | | Cochlear device/system | | $22,606.58 | Non-Drug |
| L8619 | | Replace cochlear processor | | $9,683.53 | Non-Drug |
| L8630 | | Metacarpophalangeal implant | | $403.71 | Non-Drug |
| L8641 | | Metatarsal joint implant | | $420.83 | Non-Drug |
| L8642 | | Hallux implant | | $334.69 | Non-Drug |
| L8658 | | Interphalangeal joint implnt | | $362.41 | Non-Drug |
| L8670 | | Vascular graft, synthetic | | $617.47 | Non-Drug |
| L8699 | | | | | |
| Q0081 | | Infusion ther other than che | a | $99.11 | Non-Drug |
| Q0083 | | Chemo by other than infusion | a | $189.77 | Drug |
| Q0084 | | Chemotherapy by infusion | a | $322.96 | Drug |
| Q0085 | | Chemo by both infusion and o | a | $404.96 | Drug |
| Q0086 | | Physical therapy evaluation/ | | $75.05 | Non-Drug |
| Q0136 | | Non esrd epoetin alpha inj | a | $27.94 | Drug |
| Q0144 | | Azithromycin dihydrate, oral | | $29.55 | Drug |
| Q0163 | | Diphenhydramine HCl 50mg | | $1.46 | Drug |
| Q0164 | | Prochlorperazine maleate 5mg | | $0.73 | Drug |
| Q0165 | | Prochlorperazine maleate10mg | | $1.46 | Drug |
| Q0166 | | Granisetron HCl 1 mg oral | | $90.58 | Drug |
| Q0167 | | Dronabinol 2.5mg oral | | $7.29 | Drug |
| Q0168 | | Dronabinol 5mg oral | | $16.77 | Drug |
| Q0169 | | Promethazine HCl 12.5mg oral | | $0.73 | Drug |
| Q0170 | | Promethazine HCl 25 mg oral | | $0.25 | Drug |
| Q0171 | | Chlorpromazine HCl 10mg oral | | $0.73 | Drug |
| Q0172 | | Chlorpromazine HCl 25mg oral | | $0.73 | Drug |
| Q0173 | | Trimethobenzamide HCl 250mg | | $0.73 | Drug |
| Q0174 | | Thiethylperazine maleate10mg | | $1.46 | Drug |
| Q0175 | | Perphenazine 4mg oral | | $1.46 | Drug |
| Q0176 | | Perphenazine 8mg oral | | $1.46 | Drug |
| Q0177 | | Hydroxyzine pamoate 25mg | | $0.25 | Drug |
| Q0178 | | Hydroxyzine pamoate 50mg | | $0.73 | Drug |
| Q0179 | | Ondansetron HCl 8mg oral | | $113.47 | Drug |
| Q0180 | | Dolasetron mesylate oral | | $143.30 | Drug |
| Q0181 | | Unspecified oral anti-emetic | | $0.29 | Drug |
| Q0183 | | Nonmetabolic active tissue | | $28.40 | Non-Drug |
| Q0187 | | Factor viia recombinant | a | $2,651.05 | Drug |
| Q1001 | | Ntiol category 1 | | $70.64 | Non-Drug |
| Q1002 | | Ntiol category 2 | | $70.64 | Non-Drug |
| Q2001 | | Oral cabergoline 0.5 mg | | $58.39 | Drug |
| Q2002 | | Elliotts b solution per ml | | $31.15 | Drug |
| Q2003 | | Aprotinin, 10,000 kiu | | $3.36 | Drug |
| Q2004 | | Bladder calculi irrig sol | | $50.38 | Drug |
| Q2005 | | Corticorelin ovine triflutat | a | $611.39 | Drug |
| Q2006 | | Digoxin immune fab (ovine) | a | $911.93 | Drug |
| Q2007 | | Ethanolamine oleate 100 mg | | $103.04 | Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

### TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| Q2009 | | Fosphenytoin, 50 mg | | $34.38 | Drug |
| Q2010 | | Glatiramer acetate, per dose | | $60.68 | Drug |
| Q2011 | | Hemin, per 1 mg | a | $35.76 | Drug |
| Q2012 | | Pegademase bovine, 25 iu | | $237.57 | Drug |
| Q2014 | | Sermorelin acetate, 0.5 mg | | $34.35 | Drug |
| Q2017 | | Teniposide, 50 mg | a | $435.21 | Drug |
| Q2018 | | Urofollitropin, 75 iu | | $163.15 | Drug |
| Q2019 | | Basiliximab | a | $2,332.77 | Drug |
| Q2021 | | Lepirudin | | $222.69 | Drug |
| Q2022 | | VonWillebrandFactrCmplxperIU | a | $1.38 | Drug |
| Q3002 | | Gallium ga 67 | | $60.28 | Non-Drug |
| Q3004 | | Xenon xe 133 | | $58.61 | Non-Drug |
| Q3005 | | Technetium tc99m mertiatide | | $261.21 | Non-Drug |
| Q3008 | | Indium 111-in pentetreotide | a | $2,427.93 | Non-Drug |
| Q3009 | | Technetium tc99m oxidronate | | $23.93 | Non-Drug |
| Q3010 | | Technetium tc99mlabeledrbcs | | $18.88 | Non-Drug |
| Q3014 | | Telehealth facility fee | | $45.34 | Non-Drug |
| Q3021 | | Ped hepatitis b vaccine inj | a | $79.57 | Drug |
| Q3022 | | Hepatitis b vaccine adult ds | a | $168.30 | Drug |
| Q3023 | | Injection hepatitis Bvaccine | a | $506.05 | Drug |
| Q3025 | | IM inj interferon beta 1-a | a | $138.54 | Drug |
| Q4001 | | Cast sup body cast plaster | | $305.13 | Non-Drug |
| Q4002 | | Cast sup body cast fiberglas | | $649.17 | Non-Drug |
| Q4003 | | Cast sup shoulder cast plstr | | $165.07 | Non-Drug |
| Q4004 | | Cast sup shoulder cast fbrgl | | $351.36 | Non-Drug |
| Q4005 | | Cast sup long arm adult plst | | $90.28 | Non-Drug |
| Q4006 | | Cast sup long arm adult fbrg | | $192.94 | Non-Drug |
| Q4007 | | Cast sup long arm ped plster | | $44.72 | Non-Drug |
| Q4008 | | Cast sup long arm ped fbrgls | | $95.72 | Non-Drug |
| Q4009 | | Cast sup sht arm adult plstr | | $69.20 | Non-Drug |
| Q4010 | | Cast sup sht arm adult fbrgl | | $149.43 | Non-Drug |
| Q4011 | | Cast sup sht arm ped plaster | | $34.52 | Non-Drug |
| Q4012 | | Cast sup sht arm ped fbrglas | | $73.96 | Non-Drug |
| Q4013 | | Cast sup gauntlet plaster | | $65.12 | Non-Drug |
| Q4014 | | Cast sup gauntlet fiberglass | | $140.59 | Non-Drug |
| Q4015 | | Cast sup gauntlet ped plster | | $32.48 | Non-Drug |
| Q4016 | | Cast sup gauntlet ped fbrgls | | $69.88 | Non-Drug |
| Q4017 | | Cast sup lng arm splint plst | | $56.96 | Non-Drug |
| Q4018 | | Cast sup lng arm splint fbrg | | $122.23 | Non-Drug |
| Q4019 | | Cast sup lng arm splnt ped p | | $28.40 | Non-Drug |
| Q4020 | | Cast sup lng arm splnt ped f | | $61.04 | Non-Drug |
| Q4021 | | Cast sup sht arm splint plst | | $56.96 | Non-Drug |
| Q4022 | | Cast sup sht arm splint fbrg | | $122.23 | Non-Drug |
| Q4023 | | Cast sup sht arm splnt ped p | | $28.40 | Non-Drug |
| Q4024 | | Cast sup sht arm splnt ped f | | $61.04 | Non-Drug |
| Q4025 | | Cast sup hip spica plaster | | $256.18 | Non-Drug |
| Q4026 | | Cast sup hip spica fiberglas | | $545.82 | Non-Drug |
| Q4027 | | Cast sup hip spica ped plstr | | $127.67 | Non-Drug |
| Q4028 | | Cast sup hip spica ped fbrgl | | $272.49 | Non-Drug |
| Q4029 | | Cast sup long leg plaster | | $125.63 | Non-Drug |
| Q4030 | | Cast sup long leg fiberglass | | $268.41 | Non-Drug |
| Q4031 | | Cast sup lng leg ped plaster | | $62.40 | Non-Drug |
| Q4032 | | Cast sup lng leg ped fbrgls | | $133.79 | Non-Drug |
| Q4033 | | Cast sup lng leg cylinder pl | | $107.27 | Non-Drug |
| Q4034 | | Cast sup lng leg cylinder fb | | $228.30 | Non-Drug |
| Q4035 | | Cast sup lngleg cylndr ped p | | $52.88 | Non-Drug |
| Q4036 | | Cast sup lngleg cylndr ped f | | $113.39 | Non-Drug |
| Q4037 | | Cast sup shrt leg plaster | | $143.99 | Non-Drug |
| Q4038 | | Cast sup shrt leg fiberglass | | $307.85 | Non-Drug |
| Q4039 | | Cast sup shrt leg ped plster | | $71.24 | Non-Drug |
| Q4040 | | Cast sup shrt leg ped fbrgls | | $153.51 | Non-Drug |
| Q4041 | | Cast sup lng leg splnt plstr | | $82.12 | Non-Drug |
| Q4042 | | Cast sup lng leg splnt fbrgl | | $175.27 | Non-Drug |
| Q4043 | | Cast sup lng leg splnt ped p | | $40.64 | Non-Drug |
| Q4044 | | Cast sup lng leg splnt ped f | | $87.56 | Non-Drug |
| Q4045 | | Cast sup sht leg splnt plstr | | $52.88 | Non-Drug |
| Q4046 | | Cast sup sht leg splnt fbrgl | | $113.39 | Non-Drug |
| Q4047 | | Cast sup sht leg splnt ped p | | $25.68 | Non-Drug |

NOTE. See end of table for notes regarding Status/Usage Indicators.

### TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| Q4048 | | Cast sup sht leg splnt ped f | | $56.28 | Non-Drug |
| Q4049 | | Finger splint, static | | $69.88 | Non-Drug |
| Q4050 | | | | | |
| Q4051 | | Splint supplies misc | | $28.14 | Non-Drug |
| Q9920 | | Epoetin with hct <= 20 | | $25.54 | Drug |
| Q9921 | | Epoetin with hct = 21 | | $25.54 | Drug |
| Q9922 | | Epoetin with hct = 22 | | $25.54 | Drug |
| Q9923 | | Epoetin with hct = 23 | | $25.54 | Drug |
| Q9924 | | Epoetin with hct = 24 | | $25.54 | Drug |
| Q9925 | | Epoetin with hct = 25 | | $25.54 | Drug |
| Q9926 | | Epoetin with hct = 26 | | $25.54 | Drug |
| Q9927 | | Epoetin with hct = 27 | | $25.54 | Drug |
| Q9928 | | Epoetin with hct = 28 | | $25.54 | Drug |
| Q9929 | | Epoetin with hct = 29 | | $25.54 | Drug |
| Q9930 | | Epoetin with hct = 30 | | $25.54 | Drug |
| Q9931 | | Epoetin with hct = 31 | | $25.54 | Drug |
| Q9932 | | Epoetin with hct = 32 | | $25.54 | Drug |
| Q9933 | | Epoetin with hct = 33 | | $25.54 | Drug |
| Q9934 | | Epoetin with hct = 34 | | $25.54 | Drug |
| Q9935 | | Epoetin with hct = 35 | | $25.54 | Drug |
| Q9936 | | Epoetin with hct = 36 | | $25.54 | Drug |
| Q9937 | | Epoetin with hct = 37 | | $25.54 | Drug |
| Q9938 | | Epoetin with hct = 38 | | $25.54 | Drug |
| Q9939 | | Epoetin with hct = 39 | | $25.54 | Drug |
| Q9940 | | Epoetin with hct >= 40 | | $25.54 | Drug |
| R0070 | | Transport portable x-ray | | $141.79 | Non-Drug |
| R0075 | | Transport port x-ray multipl | | $74.62 | Non-Drug |
| R0076 | | Transport portable EKG | | $138.30 | Non-Drug |
| S0009 | | Injection, butorphanol tartr | | $16.02 | Non-Drug |
| S0012 | | Butorphanol tartrate, nasal | | $161.88 | Non-Drug |
| S0014 | | Tacrine hydrochloride, 10 mg | | $2.27 | Non-Drug |
| S0016 | | Injection, amikacin sulfate | | $55.47 | Non-Drug |
| S0017 | | Injection, aminocaproic acid | | $4.01 | Non-Drug |
| S0020 | | Injection, bupivicaine hydro | | $6.59 | Non-Drug |
| S0023 | | Injection, cimetidine hydroc | | $8.79 | Non-Drug |
| S0028 | | Injection, famotidine, 20 mg | | $9.57 | Non-Drug |
| S0030 | | Injection, metronidazole | | $26.81 | Non-Drug |
| S0032 | | Injection, nafcillin sodium | | $10.26 | Non-Drug |
| S0039 | | Injection, sulfamethoxazole | | $19.90 | Non-Drug |
| S0040 | | Injection, ticarcillin disod | | $28.85 | Non-Drug |
| S0071 | | Injection, acyclovir sodium | | $4.10 | Non-Drug |
| S0072 | | Injection, amikacin sulfate | | $213.03 | Non-Drug |
| S0073 | | Injection, aztreonam, 500 mg | | $27.56 | Non-Drug |
| S0074 | | Injection, cefotetan disodiu | | $13.36 | Non-Drug |
| S0077 | | Injection, clindamycin phosp | | $19.06 | Non-Drug |
| S0079 | | Octreotide 100 mcg | | $29.41 | Non-Drug |
| S0080 | | Injection, pentamidine iseth | | $162.68 | Non-Drug |
| S0081 | | Injection, piperacillin sodi | | $68.22 | Non-Drug |
| S0090 | | Sildenafil citrate, 25 mg | | $16.70 | Non-Drug |
| S0091 | | Granisetron 1mg | | $367.81 | Non-Drug |
| S0092 | | Hydromorphone 250 mg | | $167.29 | Non-Drug |
| S0093 | | Morphine 500 mg | | $19.93 | Non-Drug |
| S0106 | | Bupropion HCL SR 60 tablets | | $198.96 | Non-Drug |
| S0108 | | Mercaptopurine 50 mg | | $6.87 | Non-Drug |
| S0122 | | Inj menotropins 75 iu | | $120.71 | Non-Drug |
| S0126 | | Inj follitropin alfa 75 iu | | $159.97 | Non-Drug |
| S0128 | | Inj follitropin beta 75 iu | | $156.05 | Non-Drug |
| S0130 | | Inj c gonadotropin 5000 iu | | $32.99 | Non-Drug |
| S0155 | | Epoprostenol dilutant | | $21.73 | Non-Drug |
| S0156 | | Exemestane, 25 mg | | $13.47 | Non-Drug |
| S0170 | | Anastrozole 1 mg | | $12.19 | Non-Drug |
| S0171 | | Bumetanide 0.5 mg | | $2.71 | Non-Drug |
| S0172 | | Chlorambucil 2 mg | | $3.12 | Non-Drug |
| S0173 | | Dexamethasone 4 mg | | $1.82 | Non-Drug |
| S0174 | | Dolasetron 50 mg | | $121.16 | Non-Drug |
| S0175 | | Flutamide 125 mg | | $3.70 | Non-Drug |
| S0176 | | Hydroxyurea 500 mg | | $2.40 | Non-Drug |
| S0177 | | Levamisole 50 mg | | $11.98 | Non-Drug |

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TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| S0178 | | Lomustine 10 mg | | $12.04 | Non-Drug |
| S0179 | | Megestrol 20 mg | | $1.26 | Non-Drug |
| S0181 | | Ondansetron 4 mg | | $31.45 | Non-Drug |
| S0182 | | Procarbazine 5 mg | | $1.30 | Non-Drug |
| S0183 | | Prochlorperazine 5 mg | | $1.06 | Non-Drug |
| S0187 | | Tamoxifen 10 mg | | $4.16 | Non-Drug |
| S0190 | | Mifepristone, oral, 200 mg | | $158.38 | Non-Drug |
| S0191 | | Misoprostol, oral, 200 mcg | | $1.88 | Non-Drug |
| S0209 | | WC van mileage per mi | | $1.36 | Non-Drug |
| S0215 | | Nonemerg transp mileage | | $1.36 | Non-Drug |
| S0302 | | Completed EPSDT | | $64.13 | Non-Drug |
| S0395 | | Impression casting ft | | $68.22 | Non-Drug |
| S0500 | | Dispos cont lens | | $122.80 | Non-Drug |
| S0580 | | Polycarb lens | | $34.11 | Non-Drug |
| S0605 | | Digital rectal examination, | | $20.47 | Non-Drug |
| S0610 | | Annual gynecological examina | | $143.27 | Non-Drug |
| S0612 | | Annual gynecological examina | | $109.16 | Non-Drug |
| S0620 | | Routine ophthalmological exa | | $75.05 | Non-Drug |
| S0621 | | Routine ophthalmological exa | | $83.23 | Non-Drug |
| S0630 | | Removal of sutures | | $51.85 | Non-Drug |
| S0800 | | Laser in situ keratomileusis | | $1,562.32 | Non-Drug |
| S0820 | | Computerized corneal topogra | | $110.52 | Non-Drug |
| S1016 | | Non-pvc intravenous administ | | $21.83 | Non-Drug |
| S3620 | | Newborn metabolic screening | | $40.93 | Non-Drug |
| S4993 | | Contraceptive pills for bc | | $32.75 | Non-Drug |
| S5000 | | Prescription drug, generic | | $15.01 | Non-Drug |
| S5001 | | Prescription drug,brand name | | $64.13 | Non-Drug |
| S5010 | | 5% dextrose and 0.45% saline | | $10.92 | Non-Drug |
| S5199 | | | | | |
| S5498 | | HIT simple cath care | | $20.47 | Non-Drug |
| S5501 | | HIT complex cath care | | $27.29 | Non-Drug |
| S5502 | | HIT interim cath care | | $12.28 | Non-Drug |
| S8085 | | Fluorine-18 fluorodeoxygluco | | $701.34 | Non-Drug |
| S8092 | | Electron beam computed tomog | | $538.97 | Non-Drug |
| S8095 | | Wig (for medically-induced h | | $409.34 | Non-Drug |
| S8096 | | Portable peak flow meter | | $27.29 | Non-Drug |
| S8110 | | Peak expiratory flow rate (p | | $25.92 | Non-Drug |
| S8181 | | Trach tube holder | | $8.19 | Non-Drug |
| S8186 | | Swivel adaptor | | $46.39 | Non-Drug |
| S8189 | | Trach supply noc | | $24.56 | Non-Drug |
| S8260 | | Oral orthotic for treatment | | $1,289.43 | Non-Drug |
| S8420 | | Custom gradient sleev/glov | | $1.36 | Non-Drug |
| S8450 | | Splint digit | | $9.55 | Non-Drug |
| S8451 | | Splint wrist or ankle | | $38.21 | Non-Drug |
| S9001 | | Home uterine monitor with or | | $100.97 | Non-Drug |
| S9015 | | Automated EEG monitoring | | $120.07 | Non-Drug |
| S9075 | | Smoking cessation treatment | | $238.78 | Non-Drug |
| S9088 | | Services provided in urgent | | $122.80 | Non-Drug |
| S9090 | | Vertebral axial decompressio | | $88.69 | Non-Drug |
| S9122 | | Home health aide or certifie | | $58.73 | Non-Drug |
| S9123 | | Nursing care, in the home, b | | $100.15 | Non-Drug |
| S9124 | | Nursing care, in the home, b | | $53.21 | Non-Drug |
| S9126 | | Hospice care, in the home, p | | $272.89 | Non-Drug |
| S9127 | | Social work visit, in the ho | | $210.60 | Non-Drug |
| S9129 | | Occupational therapy, in the | | $178.61 | Non-Drug |
| S9131 | | PT in the home per diem | | $174.65 | Non-Drug |
| S9140 | | Diabetic Management Program, | | $86.20 | Non-Drug |
| S9208 | | Home mgmt preterm labor | | $8,671.22 | Non-Drug |
| S9325 | | HIT pain mgmt per diem | | $320.65 | Non-Drug |
| S9326 | | HIT cont pain per diem | | $129.62 | Non-Drug |
| S9330 | | HIT cont chem diem | | $122.80 | Non-Drug |
| S9331 | | HIT intermit chemo diem | | $341.12 | Non-Drug |
| S9338 | | HIT immunotherapy diem | | $163.74 | Non-Drug |
| S9340 | | HIT enteral per diem | | $170.56 | Non-Drug |
| S9342 | | HIT enteral pump diem | | $62.77 | Non-Drug |
| S9347 | | HIT longterm infusion diem | | $88.69 | Non-Drug |
| S9348 | | HIT sympathomim diem | | $12.28 | Non-Drug |
| S9349 | | HIT tocolysis diem | | $272.89 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators

## TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| S9364 | | HIT tpn total diem | | $927.84 | Non-Drug |
| S9366 | | HIT tpn 2 liter diem | | $573.08 | Non-Drug |
| S9367 | | HIT tpn 3 liter diem | | $477.57 | Non-Drug |
| S9373 | | HIT hydra total diem | | $498.03 | Non-Drug |
| S9374 | | HIT hydra 1 liter diem | | $122.80 | Non-Drug |
| S9375 | | HIT hydra 2 liter diem | | $17.74 | Non-Drug |
| S9435 | | Medical foods for inborn err | | $13.64 | Non-Drug |
| S9455 | | Diabetic Management Program, | | $68.22 | Non-Drug |
| S9460 | | Diabetic Management Program, | | $95.51 | Non-Drug |
| S9465 | | Diabetic Management Program, | | $84.83 | Non-Drug |
| S9470 | | Nutritional counseling, diet | | $76.33 | Non-Drug |
| S9494 | | HIT antibiotic total diem | | $4.09 | Non-Drug |
| S9500 | | HIT antibiotic q24h diem | | $143.27 | Non-Drug |
| S9501 | | HIT antibiotic q12h diem | | $221.04 | Non-Drug |
| S9502 | | HIT antibiotic q8h diem | | $238.78 | Non-Drug |
| S9503 | | HIT antibiotic q6h diem | | $204.67 | Non-Drug |
| S9504 | | HIT antibiotic q4h diem | | $343.85 | Non-Drug |
| S9524 | | Nursing services related to | | $168.22 | Non-Drug |
| S9537 | | HT hem horm inj diem | | $68.22 | Non-Drug |
| S9558 | | HT inj growth horm diem | | $5.46 | Non-Drug |
| V2020 | | Vision svcs frames purchases | | $82.55 | Non-Drug |
| V2025 | | Eyeglasses delux frames | | $114.03 | Non-Drug |
| V2100 | | Lens spher single plano 4.00 | | $47.76 | Non-Drug |
| V2101 | | Single visn sphere 4.12-7.00 | | $50.29 | Non-Drug |
| V2102 | | Singl visn sphere 7.12-20.00 | | $70.47 | Non-Drug |
| V2103 | | Spherocylindr 4.00d/12-2.00d | | $41.57 | Non-Drug |
| V2104 | | Spherocylindr 4.00d/2.12-4d | | $45.96 | Non-Drug |
| V2105 | | Spherocylinder 4.00d/4.25-6d | | $49.98 | Non-Drug |
| V2106 | | Spherocylinder 4.00d/>6.00d | | $55.38 | Non-Drug |
| V2107 | | Spherocylinder 4.25d/12-2d | | $52.71 | Non-Drug |
| V2108 | | Spherocylinder 4.25d/2.12-4d | | $54.55 | Non-Drug |
| V2109 | | Spherocylinder 4.25d/4.25-6d | | $60.27 | Non-Drug |
| V2110 | | Spherocylinder 4.25d/over 6d | | $59.49 | Non-Drug |
| V2111 | | Spherocylindr 7.25d/.25-2.25 | | $61.99 | Non-Drug |
| V2112 | | Spherocylindr 7.25d/2.25-4d | | $67.60 | Non-Drug |
| V2113 | | Spherocylindr 7.25d/4.25-6d | | $75.48 | Non-Drug |
| V2114 | | Spherocylinder over 12.00d | | $80.84 | Non-Drug |
| V2115 | | Lens lenticular bifocal | | $87.01 | Non-Drug |
| V2116 | | Nonaspheric lens bifocal | | $78.58 | Non-Drug |
| V2117 | | Aspheric lens bifocal | | $89.55 | Non-Drug |
| V2118 | | Lens aniseikonic single | | $86.35 | Non-Drug |
| V2199 | | Lens single vision not oth c | | $95.05 | Non-Drug |
| V2200 | | Lens spher bifoc plano 4.00d | | $62.30 | Non-Drug |
| V2201 | | Lens sphere bifocal 4.12-7.0 | | $67.84 | Non-Drug |
| V2202 | | Lens sphere bifocal 7.12-20. | | $78.57 | Non-Drug |
| V2203 | | Lens sphcyl bifocal 4.00d/.1 | | $62.84 | Non-Drug |
| V2204 | | Lens sphcy bifocal 4.00d/2.1 | | $65.68 | Non-Drug |
| V2205 | | Lens sphcy bifocal 4.00d/4.2 | | $70.96 | Non-Drug |
| V2206 | | Lens sphcy bifocal 4.00d/ove | | $75.54 | Non-Drug |
| V2207 | | Lens sphcy bifocal 4.25-7d/. | | $69.36 | Non-Drug |
| V2208 | | Lens sphcy bifocal 4.25-7/2. | | $72.62 | Non-Drug |
| V2209 | | Lens sphcy bifocal 4.25-7/4. | | $77.35 | Non-Drug |
| V2210 | | Lens sphcy bifocal 4.25-7/ov | | $84.18 | Non-Drug |
| V2211 | | Lens sphcy bifo 7.25-12/.25- | | $86.88 | Non-Drug |
| V2212 | | Lens sphcyl bifo 7.25-12/2.2 | | $89.35 | Non-Drug |
| V2213 | | Lens sphcyl bifo 7.25-12/4.2 | | $90.15 | Non-Drug |
| V2214 | | Lens sphcyl bifocal over 12. | | $97.03 | Non-Drug |
| V2215 | | Lens lenticular bifocal | | $98.33 | Non-Drug |
| V2216 | | Lens lenticular nonaspheric | | $105.57 | Non-Drug |
| V2217 | | Lens lenticular aspheric bif | | $100.37 | Non-Drug |
| V2218 | | Lens aniseikonic bifocal | | $114.91 | Non-Drug |
| V2219 | | Lens bifocal seg width over | | $54.20 | Non-Drug |
| V2220 | | Lens bifocal add over 3.25d | | $44.09 | Non-Drug |
| V2299 | | Lens bifocal speciality | | $64.82 | Non-Drug |
| V2300 | | Lens sphere trifocal 4.00d | | $78.06 | Non-Drug |
| V2301 | | Lens sphere trifocal 4.12-7. | | $90.04 | Non-Drug |
| V2302 | | Lens sphere trifocal 7.12-20 | | $95.26 | Non-Drug |
| V2303 | | Lens sphcy trifocal 4.0/.12- | | $76.99 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

## TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| V2304 | | Lens sphcy trifocal 4.0/2.25 | | $80.05 | Non-Drug |
| V2305 | | Lens sphcy trifocal 4.0/4.25 | | $90.99 | Non-Drug |
| V2306 | | Lens sphcyl trifocal 4.00/>6 | | $93.36 | Non-Drug |
| V2307 | | Lens sphcy trifocal 4.25-7/. | | $88.99 | Non-Drug |
| V2308 | | Lens sphc trifocal 4.25-7/2. | | $92.73 | Non-Drug |
| V2309 | | Lens sphc trifocal 4.25-7/4. | | $100.03 | Non-Drug |
| V2310 | | Lens sphc trifocal 4.25-7/>6 | | $98.97 | Non-Drug |
| V2311 | | Lens sphc trifo 7.25-12/.25- | | $102.53 | Non-Drug |
| V2312 | | Lens sphc trifo 7.25-12/2.25 | | $103.06 | Non-Drug |
| V2313 | | Lens sphc trifo 7.25-12/4.25 | | $113.81 | Non-Drug |
| V2314 | | Lens sphcyl trifocal over 12 | | $121.40 | Non-Drug |
| V2315 | | Lens lenticular trifocal | | $133.57 | Non-Drug |
| V2316 | | Lens lenticular nonaspheric | | $125.91 | Non-Drug |
| V2317 | | Lens lenticular aspheric tri | | $134.67 | Non-Drug |
| V2318 | | Lens aniseikonic trifocal | | $161.66 | Non-Drug |
| V2319 | | Lens trifocal seg width > 28 | | $60.37 | Non-Drug |
| V2320 | | Lens trifocal add over 3.25d | | $63.65 | Non-Drug |
| V2399 | | Lens trifocal speciality | | $49.52 | Non-Drug |
| V2410 | | Lens variab asphericity sing | | $103.12 | Non-Drug |
| V2430 | | Lens variable asphericity bi | | $122.01 | Non-Drug |
| V2499 | | Variable asphericity lens | | $37.13 | Non-Drug |
| V2500 | | Contact lens pmma spherical | | $94.51 | Non-Drug |
| V2501 | | Cntct lens pmma-toric/prism | | $138.18 | Non-Drug |
| V2502 | | Contact lens pmma bifocal | | $167.64 | Non-Drug |
| V2503 | | Cntct lens pmma color vision | | $155.28 | Non-Drug |
| V2510 | | Cntct gas permeable sphericl | | $124.97 | Non-Drug |
| V2511 | | Cntct toric prism ballast | | $174.74 | Non-Drug |
| V2512 | | Cntct lens gas permbl bifocl | | $204.47 | Non-Drug |
| V2513 | | Contact lens extended wear | | $173.44 | Non-Drug |
| V2520 | | Contact lens hydrophilic | | $118.14 | Non-Drug |
| V2521 | | Cntct lens hydrophilic toric | | $197.48 | Non-Drug |
| V2522 | | Cntct lens hydrophil bifocl | | $192.48 | Non-Drug |
| V2523 | | Cntct lens hydrophil extend | | $165.67 | Non-Drug |
| V2530 | | Contact lens gas impermeable | | $240.05 | Non-Drug |
| V2531 | | Contact lens gas permeable | | $513.76 | Non-Drug |
| V2599 | | Contact lens/es other type | | $85.78 | Non-Drug |
| V2600 | | Hand held low vision aids | | $68.37 | Non-Drug |
| V2610 | | Single lens spectacle mount | | $305.64 | Non-Drug |
| V2623 | | Plastic eye prosth custom | | $2,172.80 | Non-Drug |
| V2624 | | Polishing artifical eye | | $78.58 | Non-Drug |
| V2625 | | Enlargemnt of eye prosthesis | | $779.92 | Non-Drug |
| V2626 | | Reduction of eye prosthesis | | $379.00 | Non-Drug |
| V2627 | | Scleral cover shell | | $3,204.93 | Non-Drug |
| V2628 | | Fabrication & fitting | | $605.98 | Non-Drug |
| V2629 | | Prosthetic eye other type | | $694.63 | Non-Drug |
| V2630 | | Anter chamber intraocul lens | | $275.82 | Non-Drug |
| V2632 | | Post chmbr intraocular lens | | $356.48 | Non-Drug |
| V2700 | | Balance lens | | $53.35 | Non-Drug |
| V2710 | | Glass/plastic slab off prism | | $76.89 | Non-Drug |
| V2715 | | Prism lens/es | | $14.66 | Non-Drug |
| V2718 | | Fresnell prism press-on lens | | $35.01 | Non-Drug |
| V2730 | | Special base curve | | $26.04 | Non-Drug |
| V2740 | | Rose tint plastic | | $13.30 | Non-Drug |
| V2741 | | Non-rose tint plastic | | $12.79 | Non-Drug |
| V2742 | | Rose tint glass | | $12.73 | Non-Drug |
| V2743 | | Non-rose tint glass | | $16.09 | Non-Drug |
| V2744 | | Tint photochromatic lens/es | | $20.41 | Non-Drug |
| V2750 | | Anti-reflective coating | | $23.63 | Non-Drug |
| V2755 | | UV lens/es | | $20.65 | Non-Drug |
| V2760 | | Scratch resistant coating | | $19.95 | Non-Drug |
| V2770 | | Occluder lens/es | | $24.15 | Non-Drug |
| V2780 | | Oversize lens/es | | $15.75 | Non-Drug |
| V2781 | | Progressive lens per lens | | $145.84 | Non-Drug |
| V2785 | | Corneal tissue processing | | $2,702.35 | Non-Drug |
| V2790 | | Amniotic membrane | | $48.62 | Non-Drug |
| V2799 | | | | | |
| V5008 | | Hearing screening | | $91.45 | Non-Drug |
| V5010 | | Assessment for hearing aid | | $116.41 | Non-Drug |

NOTE: See end of table for notes regarding Status/Usage Indicators.

### TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

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| HCPCS Code | Modifier | HCPCS Code Description | Status/ Usage Indicator | Charge | GAAF Cateogory |
|---|---|---|---|---|---|
| V5011 | | Hearing aid fitting/checking | | $176.17 | Non-Drug |
| V5014 | | Hearing aid repair/modifying | | $210.32 | Non-Drug |
| V5020 | | Conformity evaluation | | $103.28 | Non-Drug |
| V5030 | | Body-worn hearing aid air | | $1,936.98 | Non-Drug |
| V5040 | | Body-worn hearing aid bone | | $1,401.20 | Non-Drug |
| V5050 | | Hearing aid monaural in ear | | $1,666.60 | Non-Drug |
| V5060 | | Behind ear hearing aid | | $1,343.55 | Non-Drug |
| V5070 | | Glasses air conduction | | $814.94 | Non-Drug |
| V5080 | | Glasses bone conduction | | $1,994.63 | Non-Drug |
| V5090 | | Hearing aid dispensing fee | | $548.53 | Non-Drug |
| V5100 | | Body-worn bilat hearing aid | | $3,378.30 | Non-Drug |
| V5110 | | Hearing aid dispensing fee | | $557.07 | Non-Drug |
| V5120 | | Body-worn binaur hearing aid | | $2,915.09 | Non-Drug |
| V5130 | | In ear binaural hearing aid | | $3,120.85 | Non-Drug |
| V5140 | | Behind ear binaur hearing ai | | $3,257.03 | Non-Drug |
| V5150 | | Glasses binaural hearing aid | | $3,497.58 | Non-Drug |
| V5160 | | Dispensing fee binaural | | $695.45 | Non-Drug |
| V5170 | | Within ear cros hearing aid | | $2,342.54 | Non-Drug |
| V5180 | | Behind ear cros hearing aid | | $1,936.98 | Non-Drug |
| V5190 | | Glasses cros hearing aid | | $2,313.71 | Non-Drug |
| V5200 | | Cros hearing aid dispens fee | | $552.48 | Non-Drug |
| V5210 | | In ear bicros hearing aid | | $2,571.16 | Non-Drug |
| V5220 | | Behind ear bicros hearing ai | | $2,458.84 | Non-Drug |
| V5230 | | Glasses bicros hearing aid | | $2,552.27 | Non-Drug |
| V5240 | | Dispensing fee bicros | | $571.52 | Non-Drug |
| V5241 | | Dispensing fee, monaural | | $112.38 | Non-Drug |
| V5243 | | Hearing aid, monaural, itc | | $1,364.61 | Non-Drug |
| V5245 | | Hearing aid, prog, mon, itc | | $2,408.13 | Non-Drug |
| V5249 | | Hearing aid, binaural, itc | | $2,083.83 | Non-Drug |
| V5251 | | Hearing aid, prog, bin, itc | | $5,442.37 | Non-Drug |
| V5252 | | Hearing aid, prog, bin, ite | | $5,137.34 | Non-Drug |
| V5258 | | Hearing aid, digit, bin, cic | | $5,456.82 | Non-Drug |
| V5264 | | Ear mold/insert | | $78.67 | Non-Drug |
| V5266 | | Battery for hearing device | | $1.61 | Non-Drug |
| V5267 | | Hearing aid supply/accessory | | $24.08 | Non-Drug |
| V5275 | | Ear impression | | $48.16 | Non-Drug |
| V5299 | | Hearing service | | $1,553.98 | Non-Drug |

Key to Status/Usage Indicators:
a Cannot be billed by VA Hospital Outpatient and Provider-Based Clinics (because the service is separately priced as outpatient facility charges — see Table F).
No entry: Can be billed at all VA locations.

NOTE: See end of table for notes regarding Status/Usage Indicators.

## TABLE L. — PROFESSIONAL SERVICES RELATIVE VALUE UNIT (RVU) AND CONVERSION FACTOR GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

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| Zip Code | RVU GAAFs | | | Conversion Factor GAAFs By Category | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Work Expense | Practice Expense | Total Unit Value | Inpatient Visits | Office/ Home/ Urgent Care Visits | Therapeutic Injections | Allergy Testing | Allergy Immunotherapy | Misc Medical | ER Visits | Consults | Physical Medicine | Cardiovascular | Immunizations | Well Baby Exams | Vision Exams | Hearing/ Speech Exams | Physical Exams | Chiropractor | Psych / Alcohol & Drug Abuse | Surgery | Radiology | Pathology | Anesthesia | Normal Deliveries | Cesarean Deliveries | Non-Deliveries |
| Nationwide Average | 1.000 | 1.000 | 1.000 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 |
| 002 | 0.986 | 1.030 | 1.010 | 1.02 | 0.99 | 0.65 | 0.62 | 1.03 | 0.73 | 0.81 | 0.92 | 0.92 | 0.91 | 0.71 | 1.01 | 0.89 | 0.80 | 1.12 | 0.94 | 0.91 | 0.94 | 0.79 | 0.76 | 1.06 | 0.88 | 0.86 | 0.89 |
| 005 | 1.068 | 1.251 | 1.170 | 0.94 | 1.05 | 1.03 | 0.94 | 1.22 | 0.91 | 0.96 | 1.02 | 1.08 | 0.83 | 1.05 | 0.84 | 1.04 | 0.78 | 0.95 | 1.07 | 1.10 | 1.30 | 1.08 | 0.96 | 1.53 | 1.56 | 1.53 | 1.50 |
| 006 | 0.881 | 0.712 | 0.790 | 1.19 | 1.27 | 1.74 | 1.20 | 1.34 | 1.23 | 1.06 | 1.11 | 0.97 | 1.14 | 3.17 | 0.76 | 0.95 | 1.59 | 0.86 | 1.40 | 1.10 | 1.15 | 1.35 | 0.93 | 1.42 | 1.37 | 1.14 | 1.14 |
| 007 | 0.881 | 0.712 | 0.790 | 1.19 | 1.27 | 1.74 | 1.20 | 1.34 | 1.23 | 1.08 | 1.11 | 0.97 | 1.14 | 3.17 | 0.76 | 0.95 | 1.59 | 0.86 | 1.40 | 1.10 | 1.15 | 1.35 | 0.93 | 1.42 | 1.37 | 1.14 | 1.14 |
| 008 | 0.965 | 1.023 | 1.000 | 1.00 | 1.00 | 1.16 | 0.79 | 0.94 | 0.88 | 0.89 | 0.89 | 0.78 | 0.82 | 2.13 | 0.60 | 0.75 | 1.10 | 0.69 | 1.12 | 0.92 | 0.89 | 0.99 | 0.72 | 1.42 | 1.05 | 0.88 | 0.86 |
| 009 | 0.881 | 0.712 | 0.790 | 1.19 | 1.27 | 1.74 | 1.20 | 1.34 | 1.23 | 1.06 | 1.11 | 0.97 | 1.14 | 3.17 | 0.76 | 0.95 | 1.59 | 0.86 | 1.40 | 1.10 | 1.15 | 1.35 | 0.93 | 1.42 | 1.37 | 1.14 | 1.14 |
| 010 | 1.010 | 1.129 | 1.080 | 0.95 | 0.97 | 0.72 | 0.85 | 0.95 | 0.75 | 0.73 | 0.94 | 1.09 | 0.77 | 0.85 | 1.17 | 0.97 | 0.92 | 1.19 | 0.98 | 0.87 | 0.97 | 0.95 | 0.75 | 1.08 | 1.02 | 1.12 | 1.21 |
| 011 | 1.010 | 1.129 | 1.080 | 0.95 | 0.97 | 0.72 | 0.85 | 0.95 | 0.75 | 0.73 | 0.94 | 1.09 | 0.77 | 0.85 | 1.17 | 0.97 | 0.92 | 1.19 | 0.98 | 0.87 | 0.97 | 0.95 | 0.75 | 1.08 | 1.02 | 1.12 | 1.21 |
| 012 | 1.010 | 1.129 | 1.080 | 0.80 | 0.84 | 1.25 | 0.57 | 1.26 | 0.91 | 0.75 | 0.88 | 0.78 | 0.94 | 0.79 | 1.18 | 0.85 | 0.96 | 1.08 | 0.84 | 0.83 | 0.90 | 0.78 | 0.84 | 0.89 | 0.97 | 0.81 | 0.93 |
| 013 | 1.010 | 1.129 | 1.080 | 0.88 | 0.95 | 0.73 | 0.81 | 1.28 | 0.91 | 0.88 | 0.88 | 1.01 | 0.89 | 0.82 | 1.09 | 0.97 | 1.28 | 1.08 | 0.91 | 0.94 | 1.05 | 0.95 | 0.93 | 1.03 | 1.05 | 1.14 | 1.07 |
| 014 | 1.010 | 1.129 | 1.080 | 0.88 | 0.95 | 0.73 | 0.81 | 1.28 | 0.91 | 0.88 | 0.88 | 1.01 | 0.89 | 0.82 | 1.09 | 0.97 | 1.28 | 1.08 | 0.91 | 0.94 | 1.05 | 0.95 | 0.93 | 1.03 | 1.05 | 1.14 | 1.07 |
| 015 | 1.010 | 1.129 | 1.080 | 0.99 | 0.98 | 0.89 | 0.86 | 1.18 | 0.69 | 0.77 | 0.98 | 0.85 | 0.79 | 0.69 | 1.11 | 0.84 | 1.07 | 1.09 | 0.93 | 0.91 | 0.98 | 0.91 | 0.74 | 0.86 | 1.20 | 1.09 | 1.01 |
| 016 | 1.010 | 1.129 | 1.080 | 0.92 | 1.00 | 1.01 | 0.86 | 1.43 | 0.94 | 0.85 | 0.88 | 1.00 | 1.15 | 0.78 | 1.06 | 0.92 | 1.28 | 1.05 | 1.05 | 0.88 | 0.93 | 0.81 | 0.95 | 0.88 | 0.95 | 0.98 | 1.12 |
| 017 | 1.041 | 1.239 | 1.150 | 0.91 | 0.99 | 0.64 | 0.85 | 1.09 | 0.75 | 0.87 | 0.84 | 0.81 | 0.90 | 0.74 | 1.10 | 0.90 | 0.80 | 1.01 | 0.89 | 0.86 | 0.96 | 1.00 | 0.90 | 1.02 | 0.97 | 0.88 | 0.80 |
| 018 | 1.010 | 1.129 | 1.080 | 0.91 | 0.96 | 0.79 | 1.25 | 1.27 | 0.86 | 0.79 | 0.86 | 0.86 | 0.91 | 1.01 | 1.21 | 0.92 | 1.15 | 1.20 | 0.92 | 0.92 | 0.97 | 0.96 | 0.85 | 1.04 | 1.03 | 0.98 | 1.11 |
| 019 | 1.010 | 1.129 | 1.080 | 0.91 | 0.96 | 0.79 | 1.25 | 1.27 | 0.86 | 0.79 | 0.88 | 0.86 | 0.91 | 1.01 | 1.21 | 0.92 | 1.15 | 1.20 | 0.92 | 0.92 | 0.97 | 0.96 | 0.85 | 1.04 | 1.03 | 0.98 | 1.11 |
| 020 | 1.041 | 1.239 | 1.150 | 0.88 | 0.90 | 0.59 | 0.78 | 1.26 | 0.70 | 0.75 | 0.83 | 0.77 | 0.86 | 0.92 | 1.05 | 0.87 | 0.79 | 1.03 | 0.85 | 0.88 | 0.91 | 0.82 | 0.78 | 1.09 | 1.05 | 0.93 | 1.26 |
| 021 | 1.041 | 1.239 | 1.150 | 0.94 | 1.04 | 1.08 | 0.85 | 1.02 | 0.82 | 0.89 | 0.88 | 1.01 | 0.88 | 0.91 | 1.11 | 0.91 | 1.11 | 1.08 | 0.97 | 0.96 | 0.94 | 0.85 | 0.77 | 1.07 | 1.13 | 1.04 | 0.99 |
| 022 | 1.041 | 1.239 | 1.150 | 1.01 | 1.01 | 1.07 | 1.43 | 1.15 | 0.96 | 0.96 | 0.98 | 0.79 | 0.85 | 0.64 | 1.09 | 1.21 | 1.33 | 1.04 | 0.98 | 0.89 | 0.94 | 0.84 | 0.83 | 1.08 | 1.13 | 1.16 | 0.95 |
| 023 | 1.010 | 1.129 | 1.080 | 0.92 | 0.96 | 0.65 | 0.85 | 1.38 | 0.76 | 0.79 | 0.87 | 0.82 | 0.93 | 1.01 | 1.12 | 0.93 | 0.86 | 1.10 | 0.90 | 0.92 | 0.96 | 0.88 | 0.84 | 1.09 | 1.10 | 0.98 | 1.34 |
| 024 | 1.010 | 1.129 | 1.080 | 0.98 | 1.11 | 1.15 | 0.93 | 1.11 | 0.89 | 0.92 | 0.94 | 1.07 | 0.95 | 1.00 | 1.18 | 0.97 | 1.21 | 1.15 | 1.03 | 1.01 | 1.00 | 0.91 | 0.82 | 1.07 | 1.19 | 1.10 | 1.05 |
| 025 | 1.010 | 1.129 | 1.080 | 0.88 | 0.97 | 0.82 | 0.97 | 1.33 | 0.66 | 0.85 | 0.86 | 0.80 | 0.82 | 1.09 | 1.09 | 0.94 | 0.85 | 1.05 | 0.95 | 0.81 | 0.99 | 0.85 | 0.75 | 0.98 | 1.07 | 0.90 | 1.04 |
| 026 | 1.010 | 1.129 | 1.080 | 0.88 | 0.97 | 0.82 | 0.97 | 1.33 | 0.66 | 0.85 | 0.86 | 0.80 | 0.82 | 1.09 | 1.09 | 0.94 | 0.85 | 1.05 | 0.95 | 0.81 | 0.99 | 0.85 | 0.75 | 0.98 | 1.07 | 0.90 | 1.04 |
| 027 | 1.010 | 1.129 | 1.080 | 0.92 | 0.96 | 0.65 | 0.85 | 1.38 | 0.76 | 0.79 | 0.87 | 0.82 | 0.93 | 1.01 | 1.12 | 0.93 | 0.86 | 1.10 | 0.90 | 0.92 | 0.96 | 0.88 | 0.84 | 1.09 | 1.10 | 0.98 | 1.34 |
| 028 | 1.017 | 1.065 | 1.040 | 0.88 | 1.00 | 0.77 | 0.75 | 1.09 | 1.10 | 0.85 | 0.90 | 1.14 | 0.80 | 0.91 | 0.98 | 0.96 | 1.64 | 0.99 | 0.98 | 0.82 | 0.96 | 1.01 | 0.91 | 1.00 | 1.03 | 0.85 | 0.99 |
| 029 | 1.017 | 1.065 | 1.040 | 0.88 | 1.00 | 0.77 | 0.75 | 1.09 | 1.10 | 0.85 | 0.90 | 1.14 | 0.80 | 0.91 | 0.98 | 0.96 | 1.64 | 0.99 | 0.98 | 0.82 | 0.96 | 1.01 | 0.91 | 1.00 | 1.03 | 0.85 | 0.99 |
| 030 | 0.986 | 1.030 | 1.010 | 1.01 | 1.02 | 0.79 | 1.08 | 1.20 | 0.92 | 0.82 | 0.98 | 0.92 | 0.91 | 1.00 | 1.01 | 0.89 | 1.01 | 1.12 | 1.00 | 0.94 | 0.98 | 0.90 | 0.90 | 0.93 | 0.99 | 1.00 | 1.12 |
| 031 | 0.986 | 1.030 | 1.010 | 1.01 | 1.02 | 0.79 | 1.08 | 1.20 | 0.92 | 0.82 | 0.98 | 0.92 | 0.91 | 1.00 | 1.01 | 0.89 | 1.01 | 1.12 | 1.00 | 0.94 | 0.98 | 0.90 | 0.90 | 0.93 | 0.99 | 1.00 | 1.12 |
| 032 | 0.986 | 1.030 | 1.010 | 1.10 | 0.99 | 1.09 | 0.83 | 1.03 | 1.00 | 0.80 | 1.09 | 0.88 | 0.86 | 0.64 | 0.92 | 1.03 | 1.05 | 1.08 | 0.93 | 0.83 | 1.04 | 1.14 | 1.02 | 0.97 | 1.04 | 1.18 | 1.06 |
| 033 | 0.986 | 1.030 | 1.010 | 1.10 | 0.99 | 1.09 | 0.83 | 1.03 | 1.00 | 0.80 | 1.09 | 0.88 | 0.86 | 0.64 | 0.92 | 1.03 | 1.05 | 1.08 | 0.93 | 0.83 | 1.04 | 1.14 | 1.02 | 0.97 | 1.04 | 1.18 | 1.06 |
| 034 | 0.986 | 1.030 | 1.010 | 1.10 | 0.99 | 1.09 | 0.83 | 1.03 | 1.00 | 0.80 | 1.09 | 0.88 | 0.86 | 0.64 | 0.92 | 1.03 | 1.05 | 1.08 | 0.93 | 0.83 | 1.04 | 1.14 | 1.02 | 0.97 | 1.04 | 1.18 | 1.06 |
| 035 | 0.986 | 1.030 | 1.010 | 1.10 | 0.99 | 1.09 | 0.83 | 1.03 | 1.00 | 0.80 | 1.09 | 0.88 | 0.86 | 0.64 | 0.92 | 1.03 | 1.05 | 1.08 | 0.93 | 0.83 | 1.04 | 1.14 | 1.02 | 0.97 | 1.04 | 1.18 | 1.06 |
| 036 | 0.986 | 1.030 | 1.010 | 1.10 | 0.99 | 1.09 | 0.83 | 1.03 | 1.00 | 0.80 | 1.09 | 0.88 | 0.86 | 0.64 | 0.92 | 1.03 | 1.05 | 1.08 | 0.93 | 0.83 | 1.04 | 1.14 | 1.02 | 0.97 | 1.04 | 1.18 | 1.06 |
| 037 | 0.986 | 1.030 | 1.010 | 1.10 | 0.99 | 1.09 | 0.83 | 1.03 | 1.00 | 0.80 | 1.09 | 0.88 | 0.86 | 0.64 | 0.92 | 1.03 | 1.05 | 1.08 | 0.93 | 0.83 | 1.04 | 1.14 | 1.02 | 0.97 | 1.04 | 1.18 | 1.06 |
| 038 | 0.986 | 1.030 | 1.010 | 1.02 | 0.99 | 0.65 | 0.62 | 1.03 | 0.73 | 0.81 | 0.92 | 0.92 | 0.91 | 0.71 | 1.01 | 0.89 | 0.80 | 1.12 | 0.94 | 0.91 | 0.94 | 0.79 | 0.76 | 1.06 | 0.88 | 0.86 | 0.89 |
| 039 | 0.979 | 0.999 | 0.990 | 0.95 | 0.91 | 0.71 | 0.76 | 0.92 | 1.04 | 0.77 | 0.99 | 0.83 | 0.82 | 1.00 | 1.05 | 0.90 | 0.98 | 1.03 | 0.92 | 1.01 | 0.87 | 0.98 | 0.94 | 0.86 | 0.95 | 1.03 | 0.84 |
| 040 | 0.979 | 0.999 | 0.990 | 0.91 | 0.97 | 0.57 | 0.86 | 0.95 | 0.83 | 0.93 | 1.03 | 0.89 | 0.91 | 0.79 | 1.24 | 0.87 | 1.09 | 1.14 | 0.92 | 1.02 | 0.99 | 1.19 | 0.90 | 1.08 | 0.94 | 1.08 | 0.84 |
| 041 | 0.979 | 0.999 | 0.990 | 1.03 | 1.06 | 0.71 | 0.97 | 1.06 | 0.99 | 0.76 | 1.07 | 1.01 | 0.78 | 0.87 | 1.19 | 1.10 | 0.94 | 1.44 | 1.03 | 0.95 | 1.01 | 1.03 | 1.02 | 0.91 | 1.00 | 0.97 | 0.83 |
| 042 | 0.961 | 0.910 | 0.930 | 0.94 | 1.03 | 0.63 | 0.94 | 1.03 | 0.90 | 0.96 | 1.08 | 0.93 | 0.98 | 0.86 | 1.31 | 0.92 | 1.19 | 1.20 | 0.97 | 1.06 | 1.04 | 1.27 | 0.97 | 1.08 | 0.99 | 1.13 | 0.88 |
| 043 | 0.961 | 0.910 | 0.930 | 0.98 | 0.97 | 0.78 | 0.83 | 1.00 | 1.13 | 0.80 | 1.04 | 0.87 | 0.89 | 1.10 | 1.10 | 0.95 | 1.06 | 1.09 | 0.97 | 1.05 | 0.92 | 1.05 | 1.00 | 0.86 | 0.99 | 1.08 | 0.89 |
| 044 | 0.961 | 0.910 | 0.930 | 1.00 | 1.00 | 0.67 | 0.89 | 1.09 | 1.05 | 0.67 | 1.08 | 1.14 | 0.94 | 1.11 | 1.29 | 1.09 | 0.91 | 1.08 | 1.12 | 1.02 | 0.98 | 1.06 | 1.13 | 1.03 | 0.92 | 0.92 | 0.87 |
| 045 | 0.961 | 0.910 | 0.930 | 1.00 | 1.00 | 0.67 | 0.89 | 1.09 | 1.05 | 0.67 | 1.08 | 1.14 | 0.94 | 1.11 | 1.29 | 1.09 | 0.91 | 1.08 | 1.12 | 1.02 | 0.96 | 1.06 | 1.13 | 1.03 | 0.92 | 0.92 | 0.87 |
| 046 | 0.961 | 0.910 | 0.930 | 1.00 | 1.00 | 0.67 | 0.89 | 1.09 | 1.05 | 0.67 | 1.08 | 1.14 | 0.94 | 1.11 | 1.29 | 1.09 | 0.91 | 1.08 | 1.12 | 1.02 | 0.96 | 1.06 | 1.13 | 1.03 | 0.92 | 0.92 | 0.87 |
| 047 | 0.961 | 0.910 | 0.930 | 0.98 | 0.97 | 0.78 | 0.83 | 1.00 | 1.13 | 0.80 | 1.04 | 0.87 | 0.89 | 1.10 | 1.10 | 0.95 | 1.08 | 1.09 | 0.97 | 1.05 | 0.92 | 1.05 | 1.00 | 0.86 | 0.99 | 1.08 | 0.89 |
| 048 | 0.961 | 0.910 | 0.930 | 1.00 | 1.00 | 0.67 | 0.89 | 1.09 | 1.05 | 0.67 | 1.08 | 1.14 | 0.94 | 1.11 | 1.29 | 1.09 | 0.91 | 1.08 | 1.12 | 1.02 | 0.96 | 1.06 | 1.13 | 1.03 | 0.92 | 0.92 | 0.87 |
| 049 | 0.961 | 0.910 | 0.930 | 0.98 | 0.97 | 0.78 | 0.83 | 1.00 | 1.13 | 0.80 | 1.04 | 0.87 | 0.89 | 1.10 | 1.10 | 0.95 | 1.06 | 1.09 | 0.97 | 1.05 | 0.92 | 1.05 | 1.00 | 0.86 | 0.99 | 1.08 | 0.89 |
| 050 | 0.973 | 0.986 | 0.980 | 0.85 | 0.88 | 0.88 | 0.82 | 1.08 | 0.84 | 0.88 | 0.89 | 0.80 | 0.93 | 0.88 | 1.00 | 0.86 | 1.15 | 0.90 | 0.85 | 0.85 | 0.94 | 0.91 | 0.85 | 0.89 | 0.90 | 0.94 | 0.79 |
| 051 | 0.973 | 0.986 | 0.980 | 0.85 | 0.88 | 0.88 | 0.82 | 1.08 | 0.84 | 0.88 | 0.89 | 0.80 | 0.93 | 0.88 | 1.00 | 0.86 | 1.15 | 0.90 | 0.85 | 0.85 | 0.94 | 0.91 | 0.85 | 0.89 | 0.90 | 0.94 | 0.79 |
| 052 | 0.973 | 0.986 | 0.980 | 0.85 | 0.88 | 0.88 | 0.82 | 1.08 | 0.84 | 0.88 | 0.89 | 0.80 | 0.93 | 0.88 | 1.00 | 0.86 | 1.15 | 0.90 | 0.85 | 0.85 | 0.94 | 0.91 | 0.85 | 0.89 | 0.90 | 0.94 | 0.79 |
| 053 | 0.973 | 0.986 | 0.980 | 0.85 | 0.88 | 0.88 | 0.82 | 1.08 | 0.84 | 0.88 | 0.89 | 0.80 | 0.93 | 0.88 | 1.00 | 0.86 | 1.15 | 0.90 | 0.85 | 0.85 | 0.94 | 0.91 | 0.85 | 0.89 | 0.90 | 0.94 | 0.79 |
| 054 | 0.973 | 0.986 | 0.980 | 0.98 | 0.96 | 1.13 | 0.66 | 1.12 | 1.30 | 0.88 | 0.98 | 0.88 | 0.84 | 1.32 | 1.10 | 0.88 | 0.79 | 0.96 | 0.91 | 0.84 | 1.11 | 1.26 | 0.87 | 0.95 | 0.91 | 0.99 | 0.97 |
| 055 | 1.010 | 1.129 | 1.080 | 0.91 | 0.96 | 0.79 | 1.25 | 1.27 | 0.86 | 0.79 | 0.88 | 0.86 | 0.91 | 1.01 | 1.21 | 0.92 | 1.15 | 1.20 | 0.92 | 0.92 | 0.97 | 0.96 | 0.85 | 1.04 | 1.03 | 0.98 | 1.11 |
| 056 | 0.973 | 0.986 | 0.980 | 0.85 | 0.88 | 0.88 | 0.82 | 1.08 | 0.84 | 0.88 | 0.89 | 0.80 | 0.93 | 0.88 | 1.00 | 0.86 | 1.15 | 0.90 | 0.85 | 0.85 | 0.94 | 0.91 | 0.85 | 0.89 | 0.90 | 0.94 | 0.79 |
| 057 | 0.973 | 0.986 | 0.980 | 0.85 | 0.88 | 0.88 | 0.82 | 1.08 | 0.84 | 0.88 | 0.89 | 0.80 | 0.93 | 0.88 | 1.00 | 0.86 | 1.15 | 0.90 | 0.85 | 0.85 | 0.94 | 0.91 | 0.85 | 0.89 | 0.90 | 0.94 | 0.79 |
| 058 | 0.973 | 0.986 | 0.980 | 0.85 | 0.88 | 0.88 | 0.82 | 1.08 | 0.84 | 0.88 | 0.89 | 0.80 | 0.93 | 0.88 | 1.00 | 0.86 | 1.15 | 0.90 | 0.85 | 0.85 | 0.94 | 0.91 | 0.85 | 0.89 | 0.90 | 0.94 | 0.79 |
| 059 | 0.973 | 0.986 | 0.980 | 0.85 | 0.88 | 0.88 | 0.82 | 1.08 | 0.84 | 0.88 | 0.89 | 0.80 | 0.93 | 0.88 | 1.00 | 0.86 | 1.15 | 0.90 | 0.85 | 0.85 | 0.94 | 0.91 | 0.85 | 0.89 | 0.90 | 0.94 | 0.79 |
| 060 | 1.050 | 1.156 | 1.110 | 0.95 | 0.99 | 0.95 | 0.97 | 1.05 | 0.87 | 0.76 | 0.94 | 0.93 | 0.86 | 0.86 | 1.28 | 1.08 | 0.95 | 1.25 | 1.02 | 1.00 | 1.03 | 0.97 | 0.90 | 1.04 | 1.10 | 1.04 | 1.05 |
| 061 | 1.050 | 1.156 | 1.110 | 1.06 | 1.14 | 0.95 | 0.89 | 1.16 | 1.04 | 0.99 | 1.05 | 1.02 | 0.90 | 0.72 | 1.29 | 1.08 | 1.04 | 1.22 | 1.09 | 0.97 | 1.07 | 0.94 | 0.91 | 1.52 | 1.33 | 1.30 | 1.03 |

# TABLE L. — PROFESSIONAL SERVICES RELATIVE VALUE UNIT (RVU) AND CONVERSION FACTOR GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

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| Zip Code | RVU GAAFs | | | Conversion Factor GAAFs By Category | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Work Expense | Practice Expense | Total Unit Value | Inpatient Visits | Office/ Home/ Urgent Care Visits | Therapeutic Injections | Allergy Testing | Allergy Immunotherapy | Misc Medical | ER Visits | Consults | Physical Medicine | Cardiovascular | Immunizations | Well Baby Exams | Vision Exams | Hearing/ Speech Exams | Physical Exams | Chiropractor | Psych / Alcohol & Drug Abuse | Surgery | Radiology | Pathology | Anesthesia | Normal Deliveries | Cesarean Deliveries | Non-Deliveries |
| 062 | 1.050 | 1.156 | 1.110 | 0.95 | 0.99 | 0.95 | 0.97 | 1.05 | 0.87 | 0.76 | 0.94 | 0.93 | 0.86 | 0.86 | 1.28 | 1.08 | 0.95 | 1.25 | 1.02 | 1.00 | 1.03 | 0.97 | 0.90 | 1.04 | 1.10 | 1.04 | 1.05 |
| 063 | 1.050 | 1.156 | 1.110 | 0.95 | 0.99 | 0.95 | 0.97 | 1.05 | 0.87 | 0.76 | 0.94 | 0.93 | 0.86 | 0.86 | 1.28 | 1.08 | 0.95 | 1.25 | 1.02 | 1.00 | 1.03 | 0.97 | 0.90 | 1.04 | 1.10 | 1.04 | 1.05 |
| 064 | 1.050 | 1.156 | 1.110 | 0.95 | 1.01 | 0.76 | 0.96 | 1.19 | 0.93 | 0.92 | 0.99 | 0.99 | 0.83 | 0.78 | 1.22 | 1.24 | 1.08 | 1.22 | 1.03 | 0.98 | 1.14 | 0.99 | 0.85 | 1.16 | 1.28 | 1.14 | 1.05 |
| 065 | 1.050 | 1.156 | 1.110 | 1.04 | 1.03 | 0.67 | 0.97 | 1.25 | 0.87 | 0.82 | 1.06 | 1.12 | 0.88 | 1.01 | 1.14 | 1.16 | 1.09 | 1.24 | 1.09 | 0.99 | 1.16 | 1.09 | 0.85 | 1.29 | 1.28 | 1.11 | 1.00 |
| 066 | 1.050 | 1.156 | 1.110 | 1.04 | 1.03 | 0.67 | 0.97 | 1.25 | 0.87 | 0.82 | 1.06 | 1.12 | 0.88 | 1.01 | 1.14 | 1.16 | 1.09 | 1.24 | 1.09 | 0.99 | 1.16 | 1.09 | 0.85 | 1.29 | 1.28 | 1.11 | 1.00 |
| 067 | 1.050 | 1.156 | 1.110 | 0.95 | 1.01 | 0.76 | 0.96 | 1.19 | 0.93 | 0.92 | 0.99 | 0.99 | 0.83 | 0.78 | 1.22 | 1.24 | 1.08 | 1.22 | 1.03 | 0.98 | 1.14 | 0.99 | 0.85 | 1.16 | 1.28 | 1.14 | 1.05 |
| 068 | 1.050 | 1.156 | 1.110 | 1.04 | 1.10 | 0.92 | 1.10 | 1.47 | 1.01 | 1.06 | 1.05 | 0.99 | 0.88 | 1.11 | 1.29 | 1.16 | 0.98 | 1.32 | 1.06 | 1.11 | 1.18 | 1.06 | 0.88 | 1.14 | 1.40 | 1.37 | 1.12 |
| 069 | 1.050 | 1.156 | 1.110 | 1.04 | 1.10 | 0.92 | 1.10 | 1.47 | 1.01 | 1.06 | 1.05 | 0.99 | 0.88 | 1.11 | 1.29 | 1.16 | 0.98 | 1.32 | 1.06 | 1.11 | 1.18 | 1.06 | 0.88 | 1.14 | 1.40 | 1.37 | 1.12 |
| 070 | 1.058 | 1.193 | 1.130 | 0.97 | 1.02 | 1.14 | 1.32 | 1.05 | 1.02 | 1.10 | 0.94 | 1.12 | 0.98 | 1.31 | 0.84 | 1.01 | 1.01 | 0.91 | 1.10 | 1.14 | 1.24 | 0.88 | 0.86 | 1.36 | 1.28 | 1.27 | 1.22 |
| 071 | 1.058 | 1.193 | 1.130 | 1.14 | 1.10 | 1.19 | 0.95 | 1.20 | 1.20 | 1.09 | 1.05 | 1.08 | 1.01 | 1.17 | 1.01 | 0.95 | 0.89 | 1.02 | 1.04 | 1.30 | 1.28 | 0.97 | 0.99 | 1.41 | 1.32 | 1.26 | 1.46 |
| 072 | 1.058 | 1.193 | 1.130 | 0.97 | 1.02 | 1.14 | 1.32 | 1.05 | 1.02 | 1.10 | 0.94 | 1.12 | 0.98 | 1.31 | 0.84 | 1.01 | 1.01 | 0.91 | 1.10 | 1.14 | 1.24 | 0.88 | 0.86 | 1.36 | 1.28 | 1.27 | 1.22 |
| 073 | 1.058 | 1.193 | 1.130 | 1.14 | 1.10 | 1.19 | 0.95 | 1.20 | 1.20 | 1.09 | 1.05 | 1.08 | 1.01 | 1.17 | 1.01 | 0.95 | 0.89 | 1.02 | 1.04 | 1.30 | 1.28 | 0.97 | 0.99 | 1.41 | 1.32 | 1.26 | 1.46 |
| 074 | 1.058 | 1.193 | 1.130 | 1.03 | 1.05 | 1.01 | 1.58 | 1.20 | 1.02 | 1.01 | 0.95 | 1.10 | 0.95 | 0.96 | 0.86 | 1.03 | 0.99 | 0.98 | 1.04 | 1.15 | 1.26 | 0.93 | 0.95 | 1.58 | 1.33 | 1.22 | 1.26 |
| 075 | 1.058 | 1.193 | 1.130 | 1.03 | 1.05 | 1.01 | 1.58 | 1.20 | 1.02 | 1.01 | 0.95 | 1.10 | 0.95 | 0.96 | 0.86 | 1.03 | 0.99 | 0.98 | 1.04 | 1.15 | 1.26 | 0.93 | 0.95 | 1.58 | 1.33 | 1.22 | 1.26 |
| 076 | 1.058 | 1.193 | 1.130 | 1.03 | 1.05 | 1.01 | 1.58 | 1.20 | 1.02 | 1.01 | 0.95 | 1.10 | 0.95 | 0.96 | 0.86 | 1.03 | 0.99 | 0.98 | 1.04 | 1.15 | 1.26 | 0.93 | 0.95 | 1.58 | 1.33 | 1.22 | 1.26 |
| 077 | 1.029 | 1.110 | 1.070 | 1.00 | 0.99 | 0.88 | 1.08 | 0.96 | 1.03 | 1.03 | 0.97 | 1.06 | 1.06 | 0.96 | 0.86 | 0.99 | 0.92 | 0.95 | 1.05 | 1.06 | 1.21 | 1.01 | 0.91 | 1.26 | 1.25 | 1.15 | 1.44 |
| 078 | 1.058 | 1.193 | 1.130 | 0.99 | 0.96 | 0.77 | 1.08 | 1.20 | 0.96 | 1.33 | 0.95 | 1.12 | 0.90 | 1.09 | 0.96 | 1.02 | 0.81 | 0.97 | 1.01 | 1.13 | 1.16 | 0.89 | 0.88 | 1.28 | 1.30 | 1.26 | 1.52 |
| 079 | 1.058 | 1.193 | 1.130 | 0.99 | 0.96 | 0.77 | 1.08 | 1.20 | 0.96 | 1.33 | 0.95 | 1.12 | 0.90 | 1.09 | 0.96 | 1.02 | 0.81 | 0.97 | 1.01 | 1.13 | 1.16 | 0.89 | 0.88 | 1.28 | 1.30 | 1.26 | 1.52 |
| 080 | 1.029 | 1.110 | 1.070 | 0.97 | 0.93 | 1.18 | 1.00 | 1.05 | 1.00 | 1.35 | 0.93 | 1.18 | 1.14 | 1.02 | 1.05 | 0.91 | 1.10 | 1.00 | 1.02 | 1.02 | 1.10 | 1.03 | 0.94 | 1.03 | 0.99 | 0.96 | 1.25 |
| 081 | 1.029 | 1.110 | 1.070 | 0.97 | 0.93 | 1.18 | 1.00 | 1.05 | 1.00 | 1.35 | 0.93 | 1.18 | 1.14 | 1.02 | 1.05 | 0.91 | 1.10 | 1.00 | 1.02 | 1.02 | 1.10 | 1.03 | 0.94 | 1.03 | 0.99 | 0.96 | 1.25 |
| 082 | 1.029 | 1.110 | 1.070 | 0.97 | 0.93 | 1.18 | 1.00 | 1.05 | 1.00 | 1.35 | 0.93 | 1.18 | 1.14 | 1.02 | 1.05 | 0.91 | 1.10 | 1.00 | 1.02 | 1.02 | 1.10 | 1.03 | 0.94 | 1.03 | 0.99 | 0.96 | 1.25 |
| 083 | 1.029 | 1.110 | 1.070 | 0.97 | 0.93 | 1.18 | 1.00 | 1.05 | 1.00 | 1.35 | 0.93 | 1.18 | 1.14 | 1.02 | 1.05 | 0.91 | 1.10 | 1.00 | 1.02 | 1.02 | 1.10 | 1.03 | 0.94 | 1.03 | 0.99 | 0.96 | 1.25 |
| 084 | 1.029 | 1.110 | 1.070 | 0.97 | 0.93 | 1.18 | 1.00 | 1.05 | 1.00 | 1.35 | 0.93 | 1.18 | 1.14 | 1.02 | 1.05 | 0.91 | 1.10 | 1.00 | 1.02 | 1.02 | 1.10 | 1.03 | 0.94 | 1.03 | 0.99 | 0.96 | 1.25 |
| 085 | 1.029 | 1.110 | 1.070 | 1.00 | 0.99 | 0.88 | 1.08 | 0.96 | 1.03 | 1.03 | 0.97 | 1.06 | 1.06 | 0.96 | 0.86 | 0.99 | 0.92 | 0.95 | 1.05 | 1.06 | 1.21 | 1.01 | 0.91 | 1.26 | 1.25 | 1.15 | 1.44 |
| 086 | 1.029 | 1.110 | 1.070 | 1.00 | 0.99 | 0.88 | 1.08 | 0.96 | 1.03 | 1.03 | 0.97 | 1.06 | 1.06 | 0.96 | 0.86 | 0.99 | 0.92 | 0.95 | 1.05 | 1.06 | 1.21 | 1.01 | 0.91 | 1.26 | 1.25 | 1.15 | 1.44 |
| 087 | 1.029 | 1.110 | 1.070 | 0.99 | 0.95 | 0.83 | 0.72 | 0.86 | 0.92 | 1.06 | 0.92 | 1.21 | 0.97 | 0.97 | 0.88 | 1.05 | 0.96 | 1.00 | 0.99 | 1.06 | 1.17 | 1.00 | 0.80 | 1.18 | 1.17 | 1.10 | 1.41 |
| 088 | 1.058 | 1.193 | 1.130 | 0.91 | 0.95 | 0.85 | 1.08 | 1.05 | 0.94 | 1.21 | 0.91 | 1.15 | 0.96 | 1.03 | 0.91 | 0.94 | 0.91 | 1.01 | 0.99 | 1.04 | 1.15 | 0.98 | 0.99 | 1.21 | 1.28 | 1.19 | 1.46 |
| 089 | 1.058 | 1.193 | 1.130 | 1.08 | 1.07 | 0.85 | 1.21 | 1.36 | 1.10 | 1.09 | 1.02 | 1.17 | 1.00 | 1.09 | 0.82 | 1.01 | 0.73 | 0.90 | 1.05 | 1.01 | 1.21 | 0.83 | 0.97 | 1.34 | 1.24 | 1.32 | 1.43 |
| 100 | 1.094 | 1.351 | 1.240 | 1.40 | 1.47 | 1.09 | 1.36 | 1.53 | 1.04 | 1.09 | 1.23 | 1.27 | 0.94 | 1.26 | 1.14 | 1.34 | 0.93 | 1.27 | 1.38 | 1.24 | 1.51 | 1.09 | 0.93 | 1.59 | 1.87 | 1.77 | 1.21 |
| 101 | 1.094 | 1.351 | 1.240 | 1.40 | 1.47 | 1.09 | 1.36 | 1.53 | 1.04 | 1.09 | 1.23 | 1.27 | 0.94 | 1.26 | 1.14 | 1.34 | 0.93 | 1.27 | 1.38 | 1.24 | 1.51 | 1.09 | 0.93 | 1.59 | 1.87 | 1.77 | 1.21 |
| 102 | 1.094 | 1.351 | 1.240 | 1.40 | 1.47 | 1.09 | 1.36 | 1.53 | 1.04 | 1.09 | 1.23 | 1.27 | 0.94 | 1.26 | 1.14 | 1.34 | 0.93 | 1.27 | 1.38 | 1.24 | 1.51 | 1.09 | 0.93 | 1.59 | 1.87 | 1.77 | 1.21 |
| 103 | 1.068 | 1.251 | 1.170 | 0.92 | 1.14 | 1.00 | 0.96 | 1.35 | 0.97 | 0.97 | 1.05 | 1.01 | 0.86 | 1.14 | 0.88 | 1.08 | 0.94 | 0.98 | 1.07 | 1.14 | 1.31 | 0.98 | 0.97 | 1.58 | 1.70 | 1.65 | 1.66 |
| 104 | 1.068 | 1.251 | 1.170 | 0.92 | 1.14 | 1.00 | 0.96 | 1.35 | 0.97 | 0.97 | 1.05 | 1.01 | 0.86 | 1.14 | 0.88 | 1.08 | 0.94 | 0.98 | 1.07 | 1.14 | 1.31 | 0.98 | 0.97 | 1.58 | 1.70 | 1.65 | 1.66 |
| 105 | 1.011 | 1.075 | 1.050 | 1.12 | 1.23 | 1.20 | 1.79 | 1.45 | 1.15 | 0.94 | 1.17 | 1.11 | 1.02 | 1.27 | 1.10 | 1.20 | 0.97 | 1.29 | 1.17 | 1.32 | 1.41 | 1.00 | 0.89 | 1.46 | 1.80 | 1.62 | 1.73 |
| 106 | 1.068 | 1.251 | 1.170 | 0.94 | 1.21 | 1.02 | 1.45 | 1.39 | 0.97 | 0.90 | 1.17 | 0.78 | 0.83 | 1.59 | 0.76 | 1.14 | 0.80 | 0.94 | 1.06 | 1.07 | 1.24 | 0.74 | 0.82 | 1.33 | 1.71 | 1.53 | 0.73 |
| 107 | 1.068 | 1.251 | 1.170 | 1.02 | 1.09 | 1.01 | 1.49 | 1.24 | 0.99 | 0.85 | 1.04 | 0.99 | 0.88 | 1.07 | 0.98 | 1.07 | 0.83 | 1.16 | 1.04 | 1.20 | 1.24 | 0.87 | 0.79 | 1.46 | 1.57 | 1.41 | 1.50 |
| 108 | 1.068 | 1.251 | 1.170 | 1.02 | 1.09 | 1.01 | 1.49 | 1.24 | 0.99 | 0.85 | 1.04 | 0.99 | 0.88 | 1.07 | 0.98 | 1.07 | 0.83 | 1.16 | 1.04 | 1.20 | 1.24 | 0.87 | 0.79 | 1.46 | 1.57 | 1.41 | 1.50 |
| 109 | 1.068 | 1.251 | 1.170 | 0.98 | 0.98 | 0.84 | 1.17 | 1.24 | 0.90 | 0.93 | 0.98 | 0.88 | 0.85 | 1.06 | 0.93 | 1.16 | 0.79 | 1.05 | 0.97 | 1.00 | 1.24 | 0.81 | 0.85 | 1.86 | 1.28 | 1.41 | 1.36 |
| 110 | 1.068 | 1.251 | 1.170 | 0.92 | 1.14 | 1.00 | 0.96 | 1.35 | 0.87 | 0.97 | 1.05 | 1.01 | 0.86 | 1.14 | 0.88 | 1.08 | 0.94 | 0.98 | 1.07 | 1.14 | 1.31 | 0.98 | 0.97 | 1.58 | 1.70 | 1.65 | 1.66 |
| 111 | 1.058 | 1.228 | 1.150 | 0.93 | 1.15 | 1.02 | 0.99 | 1.37 | 0.99 | 0.98 | 1.07 | 1.03 | 0.88 | 1.16 | 0.89 | 1.10 | 0.96 | 0.99 | 1.09 | 1.16 | 1.33 | 1.00 | 0.98 | 1.58 | 1.73 | 1.68 | 1.69 |
| 112 | 1.068 | 1.251 | 1.170 | 0.93 | 1.19 | 1.19 | 1.05 | 1.32 | 1.07 | 1.04 | 1.07 | 0.98 | 0.99 | 1.41 | 0.99 | 1.09 | 0.94 | 0.98 | 1.11 | 1.02 | 1.36 | 1.06 | 0.87 | 1.30 | 1.71 | 1.54 | 1.61 |
| 113 | 1.058 | 1.228 | 1.150 | 0.94 | 1.20 | 1.22 | 1.08 | 1.35 | 1.09 | 1.06 | 1.09 | 1.00 | 1.01 | 1.44 | 1.01 | 1.11 | 0.96 | 0.99 | 1.13 | 1.03 | 1.38 | 1.08 | 0.88 | 1.30 | 1.74 | 1.57 | 1.64 |
| 114 | 1.068 | 1.251 | 1.170 | 0.93 | 1.19 | 1.19 | 1.05 | 1.32 | 1.07 | 1.04 | 1.07 | 0.98 | 0.99 | 1.41 | 0.99 | 1.09 | 0.94 | 0.98 | 1.11 | 1.02 | 1.36 | 1.06 | 0.87 | 1.30 | 1.71 | 1.54 | 1.61 |
| 115 | 1.068 | 1.251 | 1.170 | 0.94 | 1.05 | 1.03 | 0.94 | 1.22 | 0.91 | 0.96 | 1.02 | 1.08 | 0.83 | 1.05 | 0.84 | 1.04 | 0.78 | 0.95 | 1.07 | 1.10 | 1.30 | 1.08 | 0.96 | 1.53 | 1.56 | 1.53 | 1.50 |
| 116 | 1.058 | 1.228 | 1.150 | 0.95 | 1.07 | 1.05 | 0.96 | 1.24 | 0.93 | 0.97 | 1.04 | 1.10 | 0.85 | 1.07 | 0.85 | 1.05 | 0.80 | 0.96 | 1.08 | 1.11 | 1.33 | 1.10 | 0.97 | 1.53 | 1.58 | 1.55 | 1.53 |
| 117 | 1.068 | 1.251 | 1.170 | 0.94 | 1.05 | 1.03 | 0.94 | 1.22 | 0.91 | 0.96 | 1.02 | 1.08 | 0.83 | 1.05 | 0.84 | 1.04 | 0.78 | 0.95 | 1.07 | 1.10 | 1.30 | 1.08 | 0.96 | 1.53 | 1.56 | 1.53 | 1.50 |
| 118 | 1.068 | 1.251 | 1.170 | 0.94 | 1.05 | 1.03 | 0.94 | 1.22 | 0.91 | 0.96 | 1.02 | 1.08 | 0.83 | 1.05 | 0.84 | 1.04 | 0.78 | 0.95 | 1.07 | 1.10 | 1.30 | 1.08 | 0.96 | 1.53 | 1.56 | 1.53 | 1.50 |
| 119 | 1.068 | 1.251 | 1.170 | 0.94 | 1.05 | 1.03 | 0.94 | 1.22 | 0.91 | 0.96 | 1.02 | 1.08 | 0.83 | 1.05 | 0.84 | 1.04 | 0.78 | 0.95 | 1.07 | 1.10 | 1.30 | 1.08 | 0.96 | 1.53 | 1.56 | 1.53 | 1.50 |
| 120 | 0.998 | 0.944 | 0.970 | 0.93 | 1.02 | 1.36 | 1.24 | 1.10 | 1.07 | 0.90 | 0.91 | 0.91 | 0.82 | 1.04 | 1.27 | 1.08 | 1.01 | 1.14 | 0.94 | 1.08 | 0.98 | 1.11 | 0.97 | 0.94 | 1.09 | 1.14 | 1.04 |
| 121 | 0.998 | 0.944 | 0.970 | 0.93 | 1.02 | 1.36 | 1.24 | 1.10 | 1.07 | 0.90 | 0.91 | 0.91 | 0.82 | 1.04 | 1.27 | 1.08 | 1.01 | 1.14 | 0.94 | 1.08 | 0.98 | 1.11 | 0.97 | 0.94 | 1.09 | 1.14 | 1.04 |
| 122 | 0.998 | 0.944 | 0.970 | 0.93 | 1.02 | 1.36 | 1.24 | 1.10 | 1.07 | 0.90 | 0.91 | 0.91 | 0.82 | 1.04 | 1.27 | 1.08 | 1.01 | 1.14 | 0.94 | 1.08 | 0.98 | 1.11 | 0.97 | 0.94 | 1.09 | 1.14 | 1.04 |
| 123 | 0.998 | 0.944 | 0.970 | 0.93 | 1.02 | 1.36 | 1.24 | 1.10 | 1.07 | 0.90 | 0.91 | 0.91 | 0.82 | 1.04 | 1.27 | 1.08 | 1.01 | 1.14 | 0.94 | 1.08 | 0.98 | 1.11 | 0.97 | 0.94 | 1.09 | 1.14 | 1.04 |
| 124 | 1.011 | 1.075 | 1.050 | 0.88 | 0.94 | 1.17 | 1.05 | 0.97 | 0.94 | 0.85 | 0.85 | 0.84 | 0.73 | 0.89 | 1.17 | 0.99 | 0.88 | 1.05 | 0.87 | 1.03 | 0.90 | 0.99 | 0.89 | 0.94 | 0.98 | 1.03 | 0.94 |
| 125 | 1.011 | 1.075 | 1.050 | 0.97 | 0.98 | 0.90 | 1.01 | 1.09 | 0.95 | 1.02 | 0.97 | 0.82 | 0.87 | 0.94 | 1.29 | 1.03 | 0.94 | 1.17 | 0.91 | 1.00 | 1.11 | 1.14 | 0.96 | 1.36 | 1.33 | 1.46 | 1.63 |
| 126 | 1.011 | 1.075 | 1.050 | 0.97 | 0.98 | 0.90 | 1.01 | 1.09 | 0.95 | 1.02 | 0.97 | 0.82 | 0.87 | 0.94 | 1.29 | 1.03 | 0.94 | 1.17 | 0.91 | 1.00 | 1.11 | 1.14 | 0.96 | 1.36 | 1.33 | 1.46 | 1.63 |
| 127 | 1.011 | 1.075 | 1.050 | 0.97 | 0.98 | 0.90 | 1.01 | 1.09 | 0.95 | 1.02 | 0.97 | 0.82 | 0.87 | 0.94 | 1.29 | 1.03 | 0.94 | 1.17 | 0.91 | 1.00 | 1.11 | 1.14 | 0.96 | 1.36 | 1.33 | 1.46 | 1.63 |
| 128 | 0.998 | 0.944 | 0.970 | 0.89 | 0.97 | 1.31 | 1.18 | 1.17 | 0.99 | 0.92 | 0.92 | 1.07 | 1.00 | 1.00 | 1.24 | 1.02 | 0.91 | 0.99 | 0.92 | 0.99 | 0.96 | 0.96 | 0.99 | 0.98 | 1.26 | 1.17 | 1.08 |
| 129 | 0.998 | 0.944 | 0.970 | 0.89 | 0.97 | 1.31 | 1.18 | 1.17 | 0.99 | 0.92 | 0.92 | 1.07 | 1.00 | 1.00 | 1.24 | 1.02 | 0.91 | 0.99 | 0.92 | 0.99 | 0.96 | 0.96 | 0.99 | 0.98 | 1.26 | 1.17 | 1.08 |
| 130 | 0.998 | 0.944 | 0.970 | 0.93 | 1.04 | 1.04 | 0.86 | 1.09 | 1.04 | 1.03 | 0.95 | 0.77 | 0.92 | 1.03 | 1.06 | 0.96 | 1.02 | 1.14 | 0.93 | 1.00 | 1.04 | 1.00 | 0.94 | 1.07 | 1.28 | 1.28 | 1.05 |
| 131 | 0.998 | 0.944 | 0.970 | 0.93 | 1.04 | 1.04 | 0.86 | 1.09 | 1.04 | 1.03 | 0.95 | 0.77 | 0.92 | 1.03 | 1.06 | 0.96 | 1.02 | 1.14 | 0.93 | 1.00 | 1.04 | 1.00 | 0.94 | 1.07 | 1.28 | 1.28 | 1.05 |
| 132 | 0.998 | 0.944 | 0.970 | 0.93 | 1.04 | 1.04 | 0.86 | 1.09 | 1.04 | 1.03 | 0.95 | 0.77 | 0.92 | 1.03 | 1.06 | 0.96 | 1.02 | 1.14 | 0.93 | 1.00 | 1.04 | 1.00 | 0.94 | 1.07 | 1.28 | 1.28 | 1.05 |
| 133 | 0.998 | 0.944 | 0.970 | 0.88 | 0.93 | 0.87 | 0.85 | 1.19 | 0.94 | 1.04 | 0.89 | 0.88 | 0.96 | 1.22 | 1.11 | 1.04 | 0.98 | 1.08 | 0.88 | 1.00 | 1.02 | 1.08 | 0.95 | 1.00 | 1.07 | 1.05 | 1.03 |

## TABLE L. — PROFESSIONAL SERVICES RELATIVE VALUE UNIT (RVU) AND CONVERSION FACTOR GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

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| Zip Code | RVU GAAFs | | | Conversion Factor GAAFs By Category | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Work Expense | Practice Expense | Total Unit Value | Inpatient Visits | Office/Home/Urgent Care Visits | Therapeutic Injections | Allergy Testing | Allergy Immunotherapy | Misc Medical | ER Visits | Consults | Physical Medicine | Cardiovascular | Immunizations | Well Baby Exams | Vision Exams | Hearing/Speech Exams | Physical Exams | Chiropractor | Psych / Alcohol & Drug Abuse | Surgery | Radiology | Pathology | Anesthesia | Normal Deliveries | Cesarean Deliveries | Non-Deliveries |
| 134 | 0.998 | 0.944 | 0.970 | 0.88 | 0.93 | 0.87 | 0.85 | 1.19 | 0.94 | 1.04 | 0.89 | 0.88 | 0.96 | 1.22 | 1.11 | 1.04 | 0.98 | 1.08 | 0.88 | 1.00 | 1.02 | 1.08 | 0.95 | 1.00 | 1.07 | 1.05 | 1.03 |
| 135 | 0.998 | 0.944 | 0.970 | 0.88 | 0.93 | 0.87 | 0.85 | 1.19 | 0.94 | 1.04 | 0.89 | 0.88 | 0.96 | 1.22 | 1.11 | 1.04 | 0.98 | 1.08 | 0.88 | 1.00 | 1.02 | 1.08 | 0.95 | 1.00 | 1.07 | 1.05 | 1.03 |
| 136 | 0.998 | 0.944 | 0.970 | 0.88 | 0.93 | 0.87 | 0.85 | 1.19 | 0.94 | 1.04 | 0.89 | 0.88 | 0.96 | 1.22 | 1.11 | 1.04 | 0.98 | 1.08 | 0.88 | 1.00 | 1.02 | 1.08 | 0.95 | 1.00 | 1.07 | 1.05 | 1.03 |
| 137 | 0.998 | 0.944 | 0.970 | 0.85 | 1.00 | 0.94 | 0.68 | 0.93 | 1.06 | 0.85 | 0.94 | 0.83 | 1.03 | 0.92 | 1.10 | 0.93 | 1.06 | 0.79 | 0.92 | 0.90 | 1.02 | 0.94 | 1.05 | 1.14 | 1.08 | 1.13 | 0.86 |
| 138 | 1.011 | 1.075 | 1.050 | 0.81 | 0.92 | 0.81 | 0.58 | 0.81 | 0.93 | 0.80 | 0.87 | 0.77 | 0.91 | 0.79 | 1.01 | 0.86 | 0.94 | 0.73 | 0.85 | 0.86 | 0.93 | 0.84 | 0.96 | 1.14 | 0.98 | 1.02 | 0.77 |
| 139 | 0.998 | 0.944 | 0.970 | 0.85 | 1.00 | 0.94 | 0.68 | 0.93 | 1.05 | 0.85 | 0.94 | 0.83 | 1.03 | 0.92 | 1.10 | 0.93 | 1.06 | 0.79 | 0.92 | 0.90 | 1.02 | 0.94 | 1.05 | 1.14 | 1.08 | 1.13 | 0.86 |
| 140 | 0.998 | 0.944 | 0.970 | 0.77 | 0.84 | 0.68 | 1.69 | 0.92 | 0.80 | 0.99 | 0.84 | 0.70 | 0.83 | 0.83 | 1.00 | 0.92 | 1.06 | 0.88 | 0.80 | 0.89 | 0.81 | 0.89 | 0.90 | 0.79 | 1.02 | 0.98 | 0.70 |
| 141 | 0.998 | 0.944 | 0.970 | 0.77 | 0.84 | 0.68 | 1.69 | 0.92 | 0.80 | 0.99 | 0.84 | 0.70 | 0.83 | 0.83 | 1.00 | 0.92 | 1.06 | 0.88 | 0.80 | 0.89 | 0.81 | 0.89 | 0.90 | 0.79 | 1.02 | 0.98 | 0.70 |
| 142 | 0.998 | 0.944 | 0.970 | 0.77 | 0.84 | 0.68 | 1.69 | 0.92 | 0.80 | 0.99 | 0.84 | 0.70 | 0.83 | 0.83 | 1.00 | 0.92 | 1.06 | 0.88 | 0.80 | 0.89 | 0.81 | 0.89 | 0.90 | 0.79 | 1.02 | 0.98 | 0.70 |
| 143 | 0.998 | 0.944 | 0.970 | 0.77 | 0.84 | 0.68 | 1.69 | 0.92 | 0.80 | 0.99 | 0.84 | 0.70 | 0.83 | 0.83 | 1.00 | 0.92 | 1.06 | 0.88 | 0.80 | 0.89 | 0.81 | 0.89 | 0.90 | 0.79 | 1.02 | 0.98 | 0.70 |
| 144 | 0.998 | 0.944 | 0.970 | 0.90 | 0.94 | 1.00 | 1.02 | 0.89 | 0.97 | 0.85 | 0.90 | 0.83 | 0.96 | 1.05 | 1.12 | 1.07 | 0.97 | 1.00 | 0.89 | 0.94 | 0.93 | 1.01 | 1.00 | 0.94 | 1.06 | 1.00 | 0.98 |
| 145 | 0.998 | 0.944 | 0.970 | 0.90 | 0.94 | 1.00 | 1.02 | 0.89 | 0.97 | 0.85 | 0.90 | 0.83 | 0.96 | 1.05 | 1.12 | 1.07 | 0.97 | 1.00 | 0.89 | 0.94 | 0.93 | 1.01 | 1.00 | 0.94 | 1.06 | 1.00 | 0.98 |
| 146 | 0.998 | 0.944 | 0.970 | 0.90 | 0.94 | 1.00 | 1.02 | 0.89 | 0.97 | 0.85 | 0.90 | 0.83 | 0.96 | 1.05 | 1.12 | 1.07 | 0.97 | 1.00 | 0.89 | 0.94 | 0.93 | 1.01 | 1.00 | 0.94 | 1.06 | 1.00 | 0.98 |
| 147 | 0.998 | 0.944 | 0.970 | 0.77 | 0.84 | 0.68 | 1.69 | 0.92 | 0.80 | 0.99 | 0.84 | 0.70 | 0.83 | 0.83 | 1.00 | 0.92 | 1.06 | 0.88 | 0.80 | 0.89 | 0.81 | 0.89 | 0.90 | 0.79 | 1.02 | 0.98 | 0.70 |
| 148 | 0.998 | 0.944 | 0.970 | 0.90 | 0.94 | 1.00 | 1.02 | 0.89 | 0.97 | 0.85 | 0.90 | 0.83 | 0.96 | 1.05 | 1.12 | 1.07 | 0.97 | 1.00 | 0.89 | 0.94 | 0.93 | 1.01 | 1.00 | 0.94 | 1.06 | 1.00 | 0.98 |
| 149 | 0.998 | 0.944 | 0.970 | 0.90 | 0.94 | 1.00 | 1.02 | 0.89 | 0.97 | 0.85 | 0.90 | 0.83 | 0.96 | 1.05 | 1.12 | 1.07 | 0.97 | 1.00 | 0.89 | 0.94 | 0.93 | 1.01 | 1.00 | 0.94 | 1.06 | 1.00 | 0.98 |
| 150 | 0.989 | 0.929 | 0.960 | 1.02 | 0.94 | 1.39 | 1.01 | 0.85 | 1.15 | 1.09 | 0.92 | 0.97 | 1.23 | 0.75 | 0.95 | 0.99 | 1.31 | 0.87 | 0.99 | 0.94 | 1.05 | 1.02 | 1.12 | 1.02 | 0.92 | 0.88 | 1.13 |
| 151 | 0.989 | 0.929 | 0.960 | 1.02 | 0.94 | 1.39 | 1.01 | 0.86 | 1.15 | 1.09 | 0.92 | 0.97 | 1.23 | 0.75 | 0.96 | 0.99 | 1.31 | 0.87 | 0.99 | 0.94 | 1.05 | 1.02 | 1.12 | 1.02 | 0.92 | 0.88 | 1.13 |
| 152 | 0.989 | 0.929 | 0.960 | 1.02 | 0.94 | 1.39 | 1.01 | 0.85 | 1.15 | 1.09 | 0.92 | 0.97 | 1.23 | 0.75 | 0.95 | 0.99 | 1.31 | 0.87 | 0.99 | 0.94 | 1.05 | 1.02 | 1.12 | 1.02 | 0.92 | 0.88 | 1.13 |
| 153 | 0.989 | 0.929 | 0.960 | 0.88 | 0.91 | 1.09 | 0.81 | 0.84 | 1.06 | 0.92 | 0.80 | 1.00 | 1.15 | 0.77 | 0.89 | 0.94 | 1.04 | 0.82 | 0.99 | 0.97 | 1.02 | 0.96 | 0.96 | 1.25 | 1.02 | 1.02 | 1.09 |
| 154 | 0.989 | 0.929 | 0.960 | 0.88 | 0.91 | 1.09 | 0.81 | 0.84 | 1.06 | 0.92 | 0.80 | 1.00 | 1.15 | 0.77 | 0.89 | 0.94 | 1.04 | 0.82 | 0.99 | 0.97 | 1.02 | 0.96 | 0.96 | 1.25 | 1.02 | 1.02 | 1.09 |
| 155 | 0.989 | 0.929 | 0.960 | 0.80 | 0.85 | 1.09 | 0.84 | 0.88 | 1.13 | 0.80 | 0.81 | 0.96 | 1.12 | 0.84 | 0.83 | 0.84 | 1.31 | 0.75 | 0.98 | 0.90 | 0.86 | 0.86 | 0.86 | 0.96 | 0.81 | 0.80 | 0.74 |
| 156 | 0.989 | 0.929 | 0.960 | 0.80 | 0.86 | 0.75 | 1.11 | 0.84 | 0.89 | 0.72 | 0.82 | 1.18 | 1.03 | 0.85 | 0.72 | 0.86 | 1.21 | 0.71 | 1.10 | 0.88 | 0.94 | 1.11 | 1.02 | 1.00 | 0.85 | 0.85 | 1.09 |
| 157 | 0.989 | 0.929 | 0.960 | 0.80 | 0.86 | 0.75 | 1.11 | 0.84 | 0.89 | 0.72 | 0.82 | 1.18 | 1.03 | 0.85 | 0.72 | 0.86 | 1.21 | 0.71 | 1.10 | 0.88 | 0.94 | 1.11 | 1.02 | 1.00 | 0.85 | 0.85 | 1.09 |
| 158 | 0.989 | 0.929 | 0.960 | 0.86 | 0.86 | 0.64 | 0.86 | 0.94 | 0.97 | 0.80 | 0.84 | 1.13 | 1.17 | 0.84 | 0.81 | 1.00 | 1.27 | 0.64 | 0.98 | 0.81 | 0.94 | 0.96 | 1.02 | 0.84 | 0.81 | 0.90 | 1.08 |
| 159 | 0.989 | 0.929 | 0.960 | 0.80 | 0.85 | 1.09 | 0.84 | 0.88 | 1.13 | 0.80 | 0.81 | 0.96 | 1.12 | 0.84 | 0.83 | 0.84 | 1.31 | 0.75 | 0.98 | 0.90 | 0.86 | 0.86 | 0.86 | 0.96 | 0.81 | 0.80 | 0.74 |
| 160 | 0.989 | 0.929 | 0.960 | 0.80 | 0.86 | 0.75 | 1.11 | 0.84 | 0.89 | 0.72 | 0.82 | 1.18 | 1.03 | 0.85 | 0.72 | 0.86 | 1.21 | 0.71 | 1.10 | 0.88 | 0.94 | 1.11 | 1.02 | 1.00 | 0.85 | 0.85 | 1.09 |
| 161 | 0.989 | 0.929 | 0.960 | 0.80 | 0.86 | 0.75 | 1.11 | 0.84 | 0.89 | 0.72 | 0.82 | 1.18 | 1.03 | 0.85 | 0.72 | 0.86 | 1.21 | 0.71 | 1.10 | 0.88 | 0.94 | 1.11 | 1.02 | 1.00 | 0.85 | 0.85 | 1.09 |
| 162 | 0.989 | 0.929 | 0.960 | 0.80 | 0.86 | 0.75 | 1.11 | 0.84 | 0.89 | 0.72 | 0.82 | 1.18 | 1.03 | 0.85 | 0.72 | 0.86 | 1.21 | 0.71 | 1.10 | 0.88 | 0.94 | 1.11 | 1.02 | 1.00 | 0.85 | 0.85 | 1.09 |
| 163 | 0.989 | 0.929 | 0.960 | 0.86 | 0.86 | 0.64 | 0.86 | 0.94 | 0.97 | 0.80 | 0.84 | 1.13 | 1.17 | 0.84 | 0.81 | 1.00 | 1.27 | 0.64 | 0.98 | 0.81 | 0.94 | 0.96 | 1.02 | 0.84 | 0.81 | 0.90 | 1.08 |
| 164 | 0.989 | 0.929 | 0.960 | 0.88 | 0.94 | 0.73 | 0.84 | 0.71 | 0.86 | 1.06 | 0.85 | 1.12 | 1.56 | 0.83 | 0.86 | 0.89 | 0.99 | 0.76 | 0.96 | 0.86 | 1.06 | 0.97 | 1.03 | 0.89 | 0.91 | 0.95 | 1.15 |
| 165 | 0.989 | 0.929 | 0.960 | 0.88 | 0.94 | 0.73 | 0.84 | 0.71 | 0.86 | 1.06 | 0.85 | 1.12 | 1.56 | 0.83 | 0.86 | 0.89 | 0.99 | 0.76 | 0.96 | 0.86 | 1.06 | 0.97 | 1.03 | 0.89 | 0.91 | 0.95 | 1.15 |
| 166 | 0.989 | 0.929 | 0.960 | 0.88 | 0.87 | 0.80 | 0.95 | 0.84 | 0.87 | 0.85 | 0.83 | 1.09 | 1.00 | 0.56 | 0.71 | 0.95 | 1.48 | 0.69 | 0.95 | 0.80 | 1.03 | 1.10 | 1.00 | 0.92 | 0.92 | 0.96 | 0.93 |
| 167 | 0.989 | 0.929 | 0.960 | 0.86 | 0.86 | 0.64 | 0.86 | 0.94 | 0.97 | 0.80 | 0.84 | 1.13 | 1.17 | 0.84 | 0.81 | 1.00 | 1.27 | 0.64 | 0.98 | 0.81 | 0.94 | 0.96 | 1.02 | 0.84 | 0.81 | 0.90 | 1.08 |
| 168 | 0.989 | 0.929 | 0.960 | 0.88 | 0.87 | 0.80 | 0.95 | 0.84 | 0.87 | 0.85 | 0.83 | 1.09 | 1.00 | 0.56 | 0.71 | 0.95 | 1.48 | 0.69 | 0.95 | 0.80 | 1.03 | 1.10 | 1.00 | 0.92 | 0.92 | 0.96 | 0.93 |
| 169 | 0.989 | 0.929 | 0.960 | 1.16 | 0.84 | 0.57 | 0.91 | 0.74 | 0.99 | 1.06 | 0.89 | 0.91 | 1.36 | 0.56 | 0.69 | 0.89 | 1.25 | 0.72 | 0.98 | 0.94 | 1.12 | 1.02 | 1.02 | 0.92 | 0.94 | 0.96 | 1.47 |
| 170 | 0.989 | 0.929 | 0.960 | 1.12 | 0.85 | 0.71 | 1.36 | 0.80 | 0.96 | 0.84 | 0.81 | 0.95 | 1.06 | 0.57 | 0.64 | 0.94 | 1.15 | 0.70 | 0.89 | 0.83 | 1.01 | 1.11 | 0.89 | 1.00 | 0.91 | 0.96 | 1.33 |
| 171 | 0.989 | 0.929 | 0.960 | 1.12 | 0.85 | 0.71 | 1.36 | 0.80 | 0.96 | 0.84 | 0.81 | 0.95 | 1.06 | 0.57 | 0.64 | 0.94 | 1.15 | 0.70 | 0.89 | 0.83 | 1.01 | 1.11 | 0.89 | 1.00 | 0.91 | 0.96 | 1.33 |
| 172 | 0.989 | 0.929 | 0.960 | 0.84 | 0.85 | 0.90 | 1.02 | 0.90 | 0.85 | 0.96 | 0.87 | 0.88 | 0.97 | 0.78 | 0.64 | 0.95 | 1.07 | 0.65 | 0.88 | 0.80 | 0.96 | 1.16 | 0.89 | 0.94 | 0.73 | 0.76 | 0.88 |
| 173 | 0.989 | 0.929 | 0.960 | 0.84 | 0.85 | 0.90 | 1.02 | 0.90 | 0.85 | 0.96 | 0.87 | 0.88 | 0.97 | 0.78 | 0.64 | 0.95 | 1.07 | 0.65 | 0.88 | 0.80 | 0.96 | 1.16 | 0.89 | 0.94 | 0.73 | 0.76 | 0.88 |
| 174 | 0.989 | 0.929 | 0.960 | 0.84 | 0.85 | 0.90 | 1.02 | 0.90 | 0.85 | 0.96 | 0.87 | 0.88 | 0.97 | 0.78 | 0.64 | 0.95 | 1.07 | 0.65 | 0.88 | 0.80 | 0.96 | 1.16 | 0.89 | 0.94 | 0.73 | 0.76 | 0.88 |
| 175 | 0.989 | 0.929 | 0.960 | 0.84 | 0.85 | 0.90 | 1.02 | 0.90 | 0.85 | 0.96 | 0.87 | 0.88 | 0.97 | 0.78 | 0.64 | 0.95 | 1.07 | 0.65 | 0.88 | 0.80 | 0.96 | 1.16 | 0.89 | 0.94 | 0.73 | 0.76 | 0.88 |
| 176 | 0.989 | 0.929 | 0.960 | 0.92 | 0.90 | 0.82 | 1.19 | 1.01 | 0.84 | 1.43 | 0.84 | 1.02 | 1.08 | 0.67 | 0.57 | 0.98 | 1.15 | 0.64 | 0.92 | 0.82 | 0.96 | 1.06 | 0.73 | 1.02 | 0.69 | 0.71 | 0.93 |
| 177 | 0.989 | 0.929 | 0.960 | 1.16 | 0.84 | 0.57 | 0.91 | 0.74 | 0.99 | 1.06 | 0.89 | 0.91 | 1.36 | 0.56 | 0.69 | 0.89 | 1.25 | 0.72 | 0.98 | 0.94 | 1.12 | 1.02 | 1.02 | 0.92 | 0.94 | 0.96 | 1.47 |
| 178 | 0.989 | 0.929 | 0.960 | 1.16 | 0.84 | 0.57 | 0.91 | 0.74 | 0.99 | 1.06 | 0.89 | 0.91 | 1.36 | 0.56 | 0.69 | 0.89 | 1.25 | 0.72 | 0.98 | 0.94 | 1.12 | 1.02 | 1.02 | 0.92 | 0.94 | 0.96 | 1.47 |
| 179 | 0.989 | 0.929 | 0.960 | 0.76 | 0.87 | 0.82 | 1.06 | 0.95 | 0.86 | 0.88 | 0.83 | 0.77 | 1.07 | 0.84 | 0.66 | 0.91 | 1.61 | 0.72 | 0.88 | 0.85 | 0.92 | 0.97 | 0.70 | 0.86 | 1.09 | 1.00 | 1.32 |
| 180 | 0.989 | 0.929 | 0.960 | 0.85 | 0.90 | 0.82 | 1.02 | 0.84 | 0.96 | 1.03 | 0.85 | 1.27 | 1.20 | 0.92 | 0.62 | 0.93 | 1.10 | 0.68 | 1.02 | 1.02 | 1.01 | 0.96 | 1.05 | 1.07 | 1.02 | 0.94 | 1.23 |
| 181 | 0.989 | 0.929 | 0.960 | 0.85 | 0.90 | 0.82 | 1.02 | 0.84 | 0.96 | 1.03 | 0.85 | 1.27 | 1.20 | 0.92 | 0.62 | 0.93 | 1.10 | 0.68 | 1.02 | 1.02 | 1.01 | 0.96 | 1.05 | 1.07 | 1.02 | 0.94 | 1.23 |
| 182 | 0.989 | 0.929 | 0.960 | 0.91 | 0.90 | 0.77 | 1.34 | 0.85 | 1.01 | 0.96 | 0.92 | 0.98 | 1.13 | 0.83 | 0.63 | 0.91 | 1.36 | 0.66 | 0.88 | 0.88 | 1.01 | 1.23 | 0.90 | 0.87 | 0.86 | 0.92 | 1.05 |
| 183 | 0.989 | 0.929 | 0.960 | 0.86 | 0.90 | 0.82 | 1.02 | 0.84 | 0.96 | 1.03 | 0.85 | 1.27 | 1.20 | 0.92 | 0.62 | 0.93 | 1.10 | 0.68 | 1.02 | 1.02 | 1.01 | 0.96 | 1.05 | 1.07 | 1.02 | 0.94 | 1.23 |
| 184 | 0.989 | 0.929 | 0.960 | 0.91 | 0.90 | 0.77 | 1.34 | 0.85 | 1.01 | 0.96 | 0.92 | 0.98 | 1.13 | 0.83 | 0.63 | 0.91 | 1.36 | 0.66 | 0.88 | 0.88 | 1.01 | 1.23 | 0.90 | 0.87 | 0.86 | 0.92 | 1.05 |
| 185 | 0.989 | 0.929 | 0.960 | 0.91 | 0.90 | 0.77 | 1.34 | 0.85 | 1.01 | 0.96 | 0.92 | 0.98 | 1.13 | 0.83 | 0.63 | 0.91 | 1.36 | 0.66 | 0.88 | 0.88 | 1.01 | 1.23 | 0.90 | 0.87 | 0.86 | 0.92 | 1.05 |
| 186 | 0.989 | 0.929 | 0.960 | 0.91 | 0.90 | 0.77 | 1.34 | 0.85 | 1.01 | 0.96 | 0.92 | 0.98 | 1.13 | 0.83 | 0.63 | 0.91 | 1.36 | 0.66 | 0.88 | 0.88 | 1.01 | 1.23 | 0.90 | 0.87 | 0.86 | 0.92 | 1.05 |
| 187 | 0.989 | 0.929 | 0.960 | 0.91 | 0.90 | 0.77 | 1.34 | 0.85 | 1.01 | 0.96 | 0.92 | 0.98 | 1.13 | 0.83 | 0.63 | 0.91 | 1.36 | 0.66 | 0.88 | 0.88 | 1.01 | 1.23 | 0.90 | 0.87 | 0.86 | 0.92 | 1.05 |
| 188 | 0.989 | 0.929 | 0.960 | 0.91 | 0.90 | 0.77 | 1.34 | 0.85 | 1.01 | 0.96 | 0.92 | 0.98 | 1.13 | 0.83 | 0.63 | 0.91 | 1.36 | 0.66 | 0.88 | 0.88 | 1.01 | 1.23 | 0.90 | 0.87 | 0.86 | 0.92 | 1.05 |
| 189 | 1.023 | 1.092 | 1.060 | 0.89 | 0.88 | 0.93 | 0.97 | 0.96 | 0.91 | 1.01 | 0.81 | 0.97 | 1.03 | 0.69 | 0.90 | 0.96 | 1.05 | 0.90 | 0.92 | 0.92 | 0.96 | 0.90 | 0.96 | 1.07 | 1.00 | 0.95 | 1.19 |
| 190 | 1.023 | 1.092 | 1.060 | 0.93 | 0.94 | 0.87 | 0.85 | 0.95 | 0.87 | 1.03 | 0.87 | 0.98 | 1.00 | 0.87 | 0.90 | 1.02 | 1.07 | 0.83 | 1.01 | 1.08 | 0.98 | 0.97 | 0.91 | 1.11 | 0.97 | 0.93 | 1.04 |
| 191 | 1.023 | 1.092 | 1.060 | 1.17 | 1.07 | 1.28 | 0.90 | 0.96 | 1.03 | 1.09 | 1.12 | 1.01 | 1.14 | 0.73 | 1.05 | 0.71 | 1.19 | 0.97 | 1.09 | 1.08 | 1.14 | 1.15 | 1.04 | 1.21 | 1.07 | 1.01 | 1.16 |
| 192 | 1.023 | 1.092 | 1.060 | 1.17 | 1.07 | 1.28 | 0.90 | 0.96 | 1.03 | 1.09 | 1.12 | 1.01 | 1.14 | 0.73 | 1.05 | 0.71 | 1.19 | 0.97 | 1.09 | 1.08 | 1.14 | 1.15 | 1.04 | 1.21 | 1.07 | 1.01 | 1.16 |
| 193 | 1.023 | 1.092 | 1.060 | 0.89 | 0.88 | 0.93 | 0.97 | 0.96 | 0.91 | 1.01 | 0.81 | 0.97 | 1.03 | 0.69 | 0.90 | 0.96 | 1.05 | 0.90 | 0.92 | 0.92 | 0.96 | 0.90 | 0.96 | 1.07 | 1.00 | 0.95 | 1.19 |
| 194 | 1.023 | 1.092 | 1.060 | 0.89 | 0.88 | 0.93 | 0.97 | 0.96 | 0.91 | 1.01 | 0.81 | 0.97 | 1.03 | 0.69 | 0.90 | 0.96 | 1.05 | 0.90 | 0.92 | 0.92 | 0.96 | 0.90 | 0.96 | 1.07 | 1.00 | 0.95 | 1.19 |
| 195 | 0.989 | 0.929 | 0.960 | 0.76 | 0.87 | 0.92 | 1.06 | 0.95 | 0.86 | 0.88 | 0.83 | 0.77 | 1.07 | 0.84 | 0.66 | 0.91 | 1.61 | 0.72 | 0.88 | 0.85 | 0.92 | 0.97 | 0.70 | 0.86 | 1.09 | 1.00 | 1.32 |

TABLE L. — PROFESSIONAL SERVICES RELATIVE VALUE UNIT (RVU) AND CONVERSION FACTOR GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

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| Zip Code | RVU GAAFs | | | Conversion Factor GAAFs By Category | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Work Expense | Practice Expense | Total Unit Value | Inpatient Visits | Office/ Home/ Urgent Care Visits | Therapeutic Injections | Allergy Testing | Allergy Immunotherapy | Misc. Medical | ER Visits | Consults | Physical Medicine | Cardiovascular | Immunizations | Well Baby Exams | Vision Exams | Hearing/ Speech Exams | Physical Exams | Chiropractor | Psych / Alcohol & Drug Abuse | Surgery | Radiology | Pathology | Anesthesia | Normal Deliveries | Cesarean Deliveries | Non-Deliveries |
| 196 | 0.989 | 0.929 | 0.980 | 0.76 | 0.87 | 0.92 | 1.05 | 0.95 | 0.86 | 0.88 | 0.83 | 0.77 | 1.07 | 0.84 | 0.86 | 0.91 | 1.61 | 0.72 | 0.88 | 0.85 | 0.92 | 0.97 | 0.70 | 0.86 | 1.09 | 1.00 | 1.32 |
| 197 | 1.019 | 1.035 | 1.030 | 1.05 | 1.00 | 1.29 | 0.78 | 0.88 | 1.05 | 1.04 | 1.02 | 0.99 | 1.06 | 0.86 | 1.00 | 0.94 | 1.14 | 0.94 | 1.04 | 0.86 | 1.06 | 0.87 | 1.01 | 1.08 | 0.95 | 0.87 | 1.17 |
| 198 | 1.019 | 1.035 | 1.030 | 1.06 | 1.00 | 1.29 | 0.78 | 0.88 | 1.05 | 1.04 | 1.02 | 0.99 | 1.06 | 0.86 | 1.00 | 0.94 | 1.14 | 0.94 | 1.04 | 0.86 | 1.06 | 0.87 | 1.01 | 1.08 | 0.95 | 0.87 | 1.17 |
| 199 | 1.019 | 1.035 | 1.030 | 0.91 | 0.98 | 0.85 | 0.85 | 0.88 | 0.82 | 1.03 | 0.97 | 0.81 | 0.96 | 0.77 | 1.31 | 0.91 | 0.95 | 0.98 | 0.93 | 0.81 | 1.03 | 0.95 | 0.92 | 0.94 | 0.98 | 1.02 | 0.99 |
| 200 | 1.050 | 1.166 | 1.110 | 1.20 | 1.14 | 1.13 | 1.07 | 0.83 | 1.00 | 0.96 | 1.00 | 0.92 | 1.06 | 0.88 | 1.27 | 1.09 | 0.96 | 1.20 | 1.05 | 1.12 | 1.04 | 0.89 | 0.95 | 1.03 | 1.30 | 1.21 | 1.31 |
| 201 | 0.984 | 0.938 | 0.980 | 1.20 | 1.14 | 1.22 | 0.95 | 1.05 | 1.18 | 0.99 | 1.09 | 0.99 | 1.15 | 1.11 | 1.28 | 1.08 | 1.01 | 1.22 | 1.11 | 0.99 | 1.14 | 1.18 | 1.18 | 1.06 | 1.29 | 1.26 | 1.35 |
| 202 | 1.050 | 1.166 | 1.110 | 1.20 | 1.14 | 1.13 | 1.07 | 0.83 | 1.00 | 0.96 | 1.00 | 0.92 | 1.06 | 0.88 | 1.27 | 1.09 | 0.96 | 1.20 | 1.05 | 1.12 | 1.04 | 0.89 | 0.95 | 1.03 | 1.30 | 1.21 | 1.31 |
| 203 | 1.050 | 1.166 | 1.110 | 1.20 | 1.14 | 1.13 | 1.07 | 0.83 | 1.00 | 0.96 | 1.00 | 0.92 | 1.06 | 0.88 | 1.27 | 1.09 | 0.96 | 1.20 | 1.05 | 1.12 | 1.04 | 0.89 | 0.95 | 1.03 | 1.30 | 1.21 | 1.31 |
| 204 | 1.050 | 1.166 | 1.110 | 1.20 | 1.14 | 1.13 | 1.07 | 0.83 | 1.00 | 0.96 | 1.00 | 0.92 | 1.06 | 0.88 | 1.27 | 1.09 | 0.96 | 1.20 | 1.05 | 1.12 | 1.04 | 0.89 | 0.95 | 1.03 | 1.30 | 1.21 | 1.31 |
| 205 | 1.050 | 1.166 | 1.110 | 1.20 | 1.14 | 1.13 | 1.07 | 0.83 | 1.00 | 0.96 | 1.00 | 0.92 | 1.06 | 0.88 | 1.27 | 1.09 | 0.96 | 1.20 | 1.05 | 1.12 | 1.04 | 0.89 | 0.95 | 1.03 | 1.30 | 1.21 | 1.31 |
| 206 | 0.984 | 0.972 | 0.980 | 0.95 | 0.98 | 1.05 | 0.99 | 1.08 | 1.04 | 0.97 | 0.96 | 1.10 | 1.15 | 1.17 | 0.89 | 1.00 | 0.91 | 0.87 | 1.07 | 0.99 | 1.18 | 1.06 | 0.92 | 1.03 | 1.26 | 1.35 | 1.58 |
| 207 | 1.050 | 1.166 | 1.110 | 1.01 | 1.00 | 0.86 | 0.97 | 0.78 | 0.90 | 0.94 | 0.92 | 1.28 | 1.05 | 0.75 | 0.95 | 1.00 | 0.88 | 0.93 | 1.02 | 0.98 | 1.03 | 0.88 | 0.99 | 1.03 | 1.22 | 1.25 | 1.15 |
| 208 | 1.050 | 1.166 | 1.110 | 1.05 | 1.01 | 0.89 | 0.83 | 0.91 | 1.03 | 0.99 | 0.95 | 0.96 | 0.95 | 1.55 | 0.99 | 0.98 | 0.88 | 1.04 | 1.00 | 0.98 | 1.01 | 0.83 | 0.98 | 1.07 | 1.17 | 1.18 | 1.30 |
| 209 | 1.050 | 1.166 | 1.110 | 1.05 | 1.01 | 0.89 | 0.83 | 0.91 | 1.03 | 0.99 | 0.95 | 0.96 | 0.95 | 1.55 | 0.99 | 0.98 | 0.88 | 1.04 | 1.00 | 0.98 | 1.01 | 0.83 | 0.98 | 1.07 | 1.17 | 1.18 | 1.30 |
| 210 | 1.021 | 1.038 | 1.030 | 0.99 | 0.99 | 0.84 | 0.91 | 0.97 | 1.02 | 1.04 | 0.94 | 1.13 | 0.98 | 0.84 | 0.84 | 0.97 | 0.92 | 0.90 | 1.03 | 0.94 | 1.02 | 1.08 | 0.89 | 0.97 | 1.11 | 1.14 | 1.22 |
| 211 | 1.021 | 1.038 | 1.030 | 0.99 | 0.99 | 0.84 | 0.91 | 0.97 | 1.02 | 1.04 | 0.94 | 1.13 | 0.98 | 0.84 | 0.84 | 0.97 | 0.92 | 0.90 | 1.03 | 0.94 | 1.02 | 1.08 | 0.89 | 0.97 | 1.11 | 1.14 | 1.22 |
| 212 | 1.021 | 1.038 | 1.030 | 1.21 | 1.06 | 1.02 | 0.80 | 0.94 | 1.03 | 1.06 | 1.02 | 0.93 | 0.97 | 0.87 | 1.23 | 1.03 | 1.08 | 1.21 | 1.01 | 1.00 | 1.06 | 1.05 | 1.04 | 1.03 | 1.14 | 1.16 | 1.31 |
| 214 | 1.021 | 1.038 | 1.030 | 0.99 | 0.99 | 0.84 | 0.91 | 0.97 | 1.02 | 1.04 | 0.94 | 1.13 | 0.98 | 0.84 | 0.84 | 0.97 | 0.92 | 0.90 | 1.03 | 0.94 | 1.02 | 1.08 | 0.89 | 0.97 | 1.11 | 1.14 | 1.22 |
| 215 | 0.984 | 0.972 | 0.980 | 0.97 | 0.94 | 0.95 | 0.98 | 1.04 | 0.97 | 1.28 | 0.96 | 0.89 | 1.08 | 0.90 | 0.91 | 0.98 | 1.01 | 0.86 | 0.90 | 0.84 | 0.97 | 0.82 | 0.71 | 1.18 | 1.08 | 1.05 | 1.04 |
| 216 | 0.984 | 0.972 | 0.980 | 0.88 | 0.94 | 0.97 | 0.83 | 0.87 | 0.83 | 0.94 | 0.92 | 0.89 | 0.86 | 0.76 | 0.89 | 0.91 | 0.99 | 0.89 | 0.92 | 1.04 | 0.91 | 0.84 | 0.76 | 0.98 | 1.06 | 1.02 | 0.94 |
| 217 | 0.984 | 0.972 | 0.980 | 0.97 | 0.94 | 0.95 | 0.98 | 1.04 | 0.97 | 1.28 | 0.96 | 0.89 | 1.08 | 0.90 | 0.91 | 0.98 | 1.01 | 0.86 | 0.90 | 0.84 | 0.97 | 0.82 | 0.71 | 1.18 | 1.08 | 1.05 | 1.04 |
| 218 | 0.984 | 0.972 | 0.980 | 0.88 | 0.94 | 0.97 | 0.83 | 0.87 | 0.83 | 0.94 | 0.92 | 0.89 | 0.86 | 0.76 | 0.89 | 0.91 | 0.99 | 0.89 | 0.92 | 1.04 | 0.91 | 0.84 | 0.76 | 0.98 | 1.06 | 1.02 | 0.94 |
| 219 | 0.984 | 0.972 | 0.980 | 1.04 | 1.04 | 0.91 | 0.98 | 1.04 | 1.09 | 1.09 | 0.99 | 1.19 | 1.05 | 0.90 | 0.88 | 1.02 | 0.99 | 0.95 | 1.08 | 0.99 | 1.07 | 1.14 | 0.94 | 0.97 | 1.17 | 1.21 | 1.30 |
| 220 | 1.050 | 1.166 | 1.110 | 1.07 | 0.98 | 0.96 | 0.75 | 0.85 | 0.97 | 0.88 | 0.95 | 0.86 | 0.94 | 0.88 | 1.11 | 0.93 | 0.81 | 1.06 | 0.97 | 0.88 | 0.98 | 0.98 | 1.00 | 1.06 | 1.10 | 1.08 | 1.14 |
| 221 | 1.050 | 1.166 | 1.110 | 1.07 | 0.98 | 0.96 | 0.75 | 0.85 | 0.97 | 0.88 | 0.95 | 0.86 | 0.94 | 0.88 | 1.11 | 0.93 | 0.81 | 1.06 | 0.97 | 0.88 | 0.98 | 0.98 | 1.00 | 1.06 | 1.10 | 1.08 | 1.14 |
| 222 | 1.050 | 1.166 | 1.110 | 0.98 | 0.98 | 0.96 | 0.67 | 0.91 | 0.98 | 1.03 | 0.95 | 0.95 | 0.88 | 0.61 | 1.01 | 0.95 | 0.96 | 0.95 | 1.03 | 0.93 | 1.02 | 1.00 | 0.94 | 1.01 | 1.15 | 1.05 | 1.21 |
| 223 | 1.050 | 1.166 | 1.110 | 0.98 | 0.98 | 0.96 | 0.67 | 0.91 | 0.98 | 1.03 | 0.95 | 0.95 | 0.88 | 0.61 | 1.01 | 0.95 | 0.96 | 0.95 | 1.03 | 0.93 | 1.02 | 1.00 | 0.94 | 1.01 | 1.15 | 1.05 | 1.21 |
| 224 | 0.984 | 0.938 | 0.960 | 1.01 | 1.03 | 0.75 | 0.87 | 1.01 | 1.05 | 0.98 | 1.03 | 0.97 | 0.91 | 0.94 | 1.26 | 0.99 | 1.03 | 1.11 | 1.00 | 0.92 | 0.93 | 0.93 | 0.96 | 0.88 | 0.98 | 0.93 | 0.85 |
| 225 | 0.984 | 0.938 | 0.960 | 1.01 | 1.03 | 0.75 | 0.87 | 1.01 | 1.05 | 0.98 | 1.03 | 0.97 | 0.91 | 0.94 | 1.26 | 0.99 | 1.03 | 1.11 | 1.00 | 0.92 | 0.93 | 0.93 | 0.96 | 0.88 | 0.98 | 0.93 | 0.85 |
| 226 | 0.984 | 0.938 | 0.960 | 1.00 | 0.95 | 0.78 | 1.16 | 0.95 | 0.84 | 0.95 | 0.97 | 0.87 | 0.88 | 0.84 | 1.11 | 0.85 | 0.85 | 1.03 | 0.92 | 0.85 | 0.90 | 0.96 | 0.86 | 0.74 | 0.95 | 1.00 | 0.84 |
| 227 | 0.984 | 0.938 | 0.960 | 1.00 | 0.95 | 0.78 | 1.16 | 0.95 | 0.84 | 0.95 | 0.97 | 0.87 | 0.88 | 0.84 | 1.11 | 0.85 | 0.85 | 1.03 | 0.92 | 0.85 | 0.90 | 0.96 | 0.86 | 0.74 | 0.95 | 1.00 | 0.84 |
| 228 | 0.984 | 0.938 | 0.960 | 1.00 | 0.95 | 0.78 | 1.16 | 0.95 | 0.84 | 0.95 | 0.97 | 0.87 | 0.88 | 0.84 | 1.11 | 0.85 | 0.85 | 1.03 | 0.92 | 0.85 | 0.90 | 0.96 | 0.86 | 0.74 | 0.95 | 1.00 | 0.84 |
| 229 | 0.984 | 0.938 | 0.960 | 1.00 | 0.95 | 0.78 | 1.16 | 0.95 | 0.84 | 0.95 | 0.97 | 0.87 | 0.88 | 0.84 | 1.11 | 0.85 | 0.85 | 1.03 | 0.92 | 0.85 | 0.90 | 0.96 | 0.86 | 0.74 | 0.95 | 1.00 | 0.84 |
| 230 | 0.984 | 0.938 | 0.960 | 1.01 | 1.03 | 0.75 | 0.87 | 1.01 | 1.05 | 0.98 | 1.03 | 0.97 | 0.91 | 0.94 | 1.26 | 0.99 | 1.03 | 1.11 | 1.00 | 0.92 | 0.93 | 0.93 | 0.96 | 0.88 | 0.98 | 0.93 | 0.85 |
| 231 | 0.984 | 0.938 | 0.960 | 1.01 | 1.03 | 0.75 | 0.87 | 1.01 | 1.05 | 0.98 | 1.03 | 0.97 | 0.91 | 0.94 | 1.26 | 0.99 | 1.03 | 1.11 | 1.00 | 0.92 | 0.93 | 0.93 | 0.96 | 0.88 | 0.98 | 0.93 | 0.85 |
| 232 | 0.984 | 0.938 | 0.960 | 1.01 | 1.03 | 0.75 | 0.87 | 1.01 | 1.05 | 0.98 | 1.03 | 0.97 | 0.91 | 0.94 | 1.26 | 0.99 | 1.03 | 1.11 | 1.00 | 0.92 | 0.93 | 0.93 | 0.96 | 0.88 | 0.98 | 0.93 | 0.85 |
| 233 | 0.984 | 0.938 | 0.960 | 0.99 | 0.98 | 1.23 | 0.87 | 0.91 | 1.23 | 0.88 | 0.98 | 1.08 | 1.02 | 1.09 | 1.32 | 1.00 | 1.02 | 1.12 | 0.97 | 0.87 | 1.05 | 0.96 | 1.13 | 0.67 | 0.96 | 0.95 | 0.98 |
| 234 | 0.984 | 0.938 | 0.960 | 0.99 | 0.98 | 1.23 | 0.87 | 0.91 | 1.23 | 0.88 | 0.98 | 1.08 | 1.02 | 1.09 | 1.32 | 1.00 | 1.02 | 1.12 | 0.97 | 0.87 | 1.05 | 0.96 | 1.13 | 0.67 | 0.96 | 0.95 | 0.98 |
| 235 | 0.984 | 0.938 | 0.960 | 0.99 | 0.98 | 1.23 | 0.87 | 0.91 | 1.23 | 0.88 | 0.98 | 1.08 | 1.02 | 1.09 | 1.32 | 1.00 | 1.02 | 1.12 | 0.97 | 0.87 | 1.05 | 0.96 | 1.13 | 0.67 | 0.96 | 0.95 | 0.98 |
| 236 | 0.984 | 0.938 | 0.960 | 0.99 | 0.98 | 1.23 | 0.87 | 0.91 | 1.23 | 0.88 | 0.98 | 1.08 | 1.02 | 1.09 | 1.32 | 1.00 | 1.02 | 1.12 | 0.97 | 0.87 | 1.05 | 0.96 | 1.13 | 0.67 | 0.96 | 0.95 | 0.98 |
| 237 | 0.984 | 0.938 | 0.960 | 0.99 | 0.98 | 1.23 | 0.87 | 0.91 | 1.23 | 0.88 | 0.98 | 1.08 | 1.02 | 1.09 | 1.32 | 1.00 | 1.02 | 1.12 | 0.97 | 0.87 | 1.05 | 0.96 | 1.13 | 0.67 | 0.96 | 0.95 | 0.98 |
| 238 | 0.984 | 0.938 | 0.960 | 1.01 | 1.03 | 0.75 | 0.87 | 1.01 | 1.05 | 0.98 | 1.03 | 0.97 | 0.91 | 0.94 | 1.26 | 0.99 | 1.03 | 1.11 | 1.00 | 0.92 | 0.93 | 0.93 | 0.96 | 0.88 | 0.98 | 0.93 | 0.85 |
| 239 | 0.984 | 0.938 | 0.960 | 0.91 | 0.92 | 0.69 | 1.04 | 0.85 | 0.88 | 0.90 | 0.93 | 0.80 | 0.86 | 0.88 | 1.20 | 0.90 | 1.02 | 0.97 | 0.88 | 0.83 | 0.89 | 0.95 | 0.89 | 0.75 | 0.83 | 0.90 | 0.82 |
| 240 | 0.984 | 0.938 | 0.960 | 0.98 | 0.97 | 1.19 | 1.05 | 0.83 | 1.14 | 0.95 | 0.96 | 1.00 | 1.09 | 0.84 | 1.18 | 0.93 | 1.09 | 1.08 | 0.90 | 0.91 | 0.92 | 1.02 | 1.04 | 0.80 | 0.90 | 0.83 | 0.84 |
| 241 | 0.984 | 0.938 | 0.960 | 0.98 | 0.97 | 1.19 | 1.05 | 0.83 | 1.14 | 0.95 | 0.96 | 1.00 | 1.09 | 0.84 | 1.18 | 0.93 | 1.09 | 1.08 | 0.90 | 0.91 | 0.92 | 1.02 | 1.04 | 0.80 | 0.90 | 0.83 | 0.84 |
| 242 | 0.984 | 0.938 | 0.960 | 0.98 | 0.97 | 1.19 | 1.05 | 0.83 | 1.14 | 0.95 | 0.96 | 1.00 | 1.09 | 0.84 | 1.18 | 0.93 | 1.09 | 1.08 | 0.90 | 0.91 | 0.92 | 1.02 | 1.04 | 0.80 | 0.90 | 0.83 | 0.84 |
| 243 | 0.984 | 0.938 | 0.960 | 0.98 | 0.97 | 1.19 | 1.05 | 0.83 | 1.14 | 0.95 | 0.96 | 1.00 | 1.09 | 0.84 | 1.18 | 0.93 | 1.09 | 1.08 | 0.90 | 0.91 | 0.92 | 1.02 | 1.04 | 0.80 | 0.90 | 0.83 | 0.84 |
| 244 | 0.984 | 0.938 | 0.960 | 1.00 | 0.95 | 0.78 | 1.16 | 0.95 | 0.84 | 0.95 | 0.97 | 0.87 | 0.88 | 0.84 | 1.11 | 0.85 | 0.85 | 1.03 | 0.92 | 0.85 | 0.90 | 0.96 | 0.86 | 0.74 | 0.95 | 1.00 | 0.84 |
| 245 | 0.984 | 0.938 | 0.960 | 0.91 | 0.92 | 0.69 | 1.04 | 0.85 | 0.88 | 0.90 | 0.93 | 0.80 | 0.86 | 0.88 | 1.20 | 0.90 | 1.02 | 0.97 | 0.88 | 0.83 | 0.89 | 0.95 | 0.89 | 0.75 | 0.83 | 0.90 | 0.82 |
| 246 | 0.984 | 0.938 | 0.960 | 0.98 | 0.97 | 1.19 | 1.05 | 0.83 | 1.14 | 0.95 | 0.96 | 1.00 | 1.09 | 0.84 | 1.18 | 0.93 | 1.09 | 1.08 | 0.90 | 0.91 | 0.92 | 1.02 | 1.04 | 0.80 | 0.90 | 0.83 | 0.84 |
| 247 | 0.963 | 0.850 | 0.900 | 1.02 | 1.03 | 0.90 | 1.23 | 1.15 | 1.11 | 0.94 | 1.03 | 1.23 | 1.12 | 1.22 | 1.19 | 1.03 | 1.08 | 1.35 | 1.01 | 1.05 | 1.12 | 1.11 | 1.32 | 1.15 | 1.07 | 1.01 | 1.12 |
| 248 | 0.963 | 0.850 | 0.900 | 1.02 | 1.03 | 0.90 | 1.23 | 1.15 | 1.11 | 0.94 | 1.03 | 1.23 | 1.12 | 1.22 | 1.19 | 1.03 | 1.08 | 1.35 | 1.01 | 1.05 | 1.12 | 1.11 | 1.32 | 1.15 | 1.07 | 1.01 | 1.12 |
| 249 | 0.963 | 0.850 | 0.900 | 1.02 | 1.03 | 0.90 | 1.23 | 1.15 | 1.11 | 0.94 | 1.03 | 1.23 | 1.12 | 1.22 | 1.19 | 1.03 | 1.08 | 1.35 | 1.01 | 1.05 | 1.12 | 1.11 | 1.32 | 1.15 | 1.07 | 1.01 | 1.12 |
| 250 | 0.963 | 0.850 | 0.900 | 1.02 | 1.03 | 0.90 | 1.23 | 1.16 | 1.11 | 0.94 | 1.03 | 1.23 | 1.12 | 1.22 | 1.19 | 1.03 | 1.08 | 1.35 | 1.01 | 1.05 | 1.12 | 1.11 | 1.32 | 1.15 | 1.07 | 1.01 | 1.12 |
| 251 | 0.963 | 0.850 | 0.900 | 1.02 | 1.03 | 0.90 | 1.23 | 1.15 | 1.11 | 0.94 | 1.03 | 1.23 | 1.12 | 1.22 | 1.19 | 1.03 | 1.08 | 1.35 | 1.01 | 1.05 | 1.12 | 1.11 | 1.32 | 1.15 | 1.07 | 1.01 | 1.12 |
| 252 | 0.963 | 0.850 | 0.900 | 1.02 | 1.03 | 0.90 | 1.23 | 1.15 | 1.11 | 0.94 | 1.03 | 1.23 | 1.12 | 1.22 | 1.19 | 1.03 | 1.08 | 1.35 | 1.01 | 1.05 | 1.12 | 1.11 | 1.32 | 1.15 | 1.07 | 1.01 | 1.12 |
| 253 | 0.963 | 0.850 | 0.900 | 1.02 | 1.03 | 0.90 | 1.23 | 1.15 | 1.11 | 0.94 | 1.03 | 1.23 | 1.12 | 1.22 | 1.19 | 1.03 | 1.08 | 1.35 | 1.01 | 1.05 | 1.12 | 1.11 | 1.32 | 1.15 | 1.07 | 1.01 | 1.12 |
| 254 | 0.963 | 0.850 | 0.900 | 0.98 | 1.01 | 0.69 | 1.40 | 1.12 | 0.96 | 0.95 | 1.02 | 1.39 | 1.06 | 0.99 | 1.33 | 1.07 | 1.28 | 1.18 | 1.03 | 1.04 | 1.00 | 0.94 | 1.15 | 0.98 | 0.94 | 0.98 | 0.95 |
| 255 | 0.963 | 0.850 | 0.900 | 1.02 | 1.03 | 0.90 | 1.23 | 1.15 | 1.11 | 0.94 | 1.03 | 1.23 | 1.12 | 1.22 | 1.19 | 1.03 | 1.08 | 1.35 | 1.01 | 1.05 | 1.12 | 1.11 | 1.32 | 1.15 | 1.07 | 1.01 | 1.12 |
| 256 | 0.963 | 0.850 | 0.900 | 1.02 | 1.03 | 0.90 | 1.23 | 1.15 | 1.11 | 0.94 | 1.03 | 1.23 | 1.12 | 1.22 | 1.19 | 1.03 | 1.08 | 1.35 | 1.01 | 1.05 | 1.12 | 1.11 | 1.32 | 1.15 | 1.07 | 1.01 | 1.12 |
| 257 | 0.963 | 0.850 | 0.900 | 1.02 | 1.03 | 0.90 | 1.23 | 1.15 | 1.11 | 0.94 | 1.03 | 1.23 | 1.12 | 1.22 | 1.19 | 1.03 | 1.08 | 1.35 | 1.01 | 1.05 | 1.12 | 1.11 | 1.32 | 1.15 | 1.07 | 1.01 | 1.12 |
| 258 | 0.963 | 0.850 | 0.900 | 1.02 | 1.03 | 0.90 | 1.23 | 1.15 | 1.11 | 0.94 | 1.03 | 1.23 | 1.12 | 1.22 | 1.19 | 1.03 | 1.08 | 1.35 | 1.01 | 1.05 | 1.12 | 1.11 | 1.32 | 1.15 | 1.07 | 1.01 | 1.12 |

## TABLE L. — PROFESSIONAL SERVICES RELATIVE VALUE UNIT (RVU) AND CONVERSION FACTOR GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

PAGE 5 OF 15

| Zip Code | RVU GAAFs | | | Conversion Factor GAAFs By Category | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Work Expense | Practice Expense | Total Unit Value | Inpatient Visits | Office/ Home/ Urgent Care Visits | Therapeutic Injections | Allergy Testing | Allergy Immunotherapy | Misc Medical | ER Visits | Consults | Physical Medicine | Cardiovascular | Immunizations | Well Baby Exams | Vision Exams | Hearing/ Speech Exams | Physical Exams | Chiropractor | Psych / Alcohol & Drug Abuse | Surgery | Radiology | Pathology | Anesthesia | Normal Deliveries | Cesarean Deliveries | Non-Deliveries |
| 259 | 0.963 | 0.850 | 0.900 | 1.02 | 1.03 | 0.90 | 1.23 | 1.15 | 1.11 | 0.94 | 1.03 | 1.23 | 1.12 | 1.22 | 1.19 | 1.03 | 1.08 | 1.35 | 1.01 | 1.06 | 1.12 | 1.11 | 1.32 | 1.15 | 1.07 | 1.01 | 1.12 |
| 260 | 0.963 | 0.850 | 0.900 | 0.98 | 1.01 | 0.69 | 1.40 | 1.12 | 0.96 | 0.95 | 1.02 | 1.39 | 1.06 | 0.99 | 1.33 | 1.07 | 1.28 | 1.18 | 1.03 | 1.04 | 1.00 | 0.94 | 1.15 | 0.98 | 0.94 | 0.98 | 0.95 |
| 261 | 0.963 | 0.850 | 0.900 | 0.98 | 1.01 | 0.69 | 1.40 | 1.12 | 0.96 | 0.95 | 1.02 | 1.39 | 1.06 | 0.99 | 1.33 | 1.07 | 1.28 | 1.18 | 1.03 | 1.04 | 1.00 | 0.94 | 1.15 | 0.98 | 0.94 | 0.98 | 0.95 |
| 262 | 0.963 | 0.850 | 0.900 | 0.98 | 1.01 | 0.69 | 1.40 | 1.12 | 0.96 | 0.95 | 1.02 | 1.39 | 1.06 | 0.99 | 1.33 | 1.07 | 1.28 | 1.18 | 1.03 | 1.04 | 1.00 | 0.94 | 1.15 | 0.98 | 0.94 | 0.98 | 0.95 |
| 263 | 0.963 | 0.850 | 0.900 | 0.98 | 1.01 | 0.69 | 1.40 | 1.12 | 0.96 | 0.95 | 1.02 | 1.39 | 1.06 | 0.99 | 1.33 | 1.07 | 1.28 | 1.18 | 1.03 | 1.04 | 1.00 | 0.94 | 1.15 | 0.98 | 0.94 | 0.98 | 0.95 |
| 264 | 0.963 | 0.850 | 0.900 | 0.98 | 1.01 | 0.69 | 1.40 | 1.12 | 0.96 | 0.95 | 1.02 | 1.39 | 1.06 | 0.99 | 1.33 | 1.07 | 1.28 | 1.18 | 1.03 | 1.04 | 1.00 | 0.94 | 1.15 | 0.98 | 0.94 | 0.98 | 0.95 |
| 265 | 0.963 | 0.850 | 0.900 | 0.98 | 1.01 | 0.69 | 1.40 | 1.12 | 0.96 | 0.95 | 1.02 | 1.39 | 1.06 | 0.99 | 1.33 | 1.07 | 1.28 | 1.18 | 1.03 | 1.04 | 1.00 | 0.94 | 1.15 | 0.98 | 0.94 | 0.98 | 0.95 |
| 266 | 0.963 | 0.850 | 0.900 | 1.02 | 1.03 | 0.90 | 1.23 | 1.15 | 1.11 | 0.94 | 1.03 | 1.23 | 1.12 | 1.22 | 1.19 | 1.03 | 1.08 | 1.35 | 1.01 | 1.05 | 1.12 | 1.11 | 1.32 | 1.15 | 1.07 | 1.01 | 1.12 |
| 267 | 0.963 | 0.850 | 0.900 | 0.98 | 1.01 | 0.69 | 1.40 | 1.12 | 0.96 | 0.95 | 1.02 | 1.39 | 1.06 | 0.99 | 1.33 | 1.07 | 1.28 | 1.18 | 1.03 | 1.04 | 1.00 | 0.94 | 1.15 | 0.98 | 0.94 | 0.98 | 0.95 |
| 268 | 0.963 | 0.850 | 0.900 | 0.98 | 1.01 | 0.69 | 1.40 | 1.12 | 0.96 | 0.95 | 1.02 | 1.39 | 1.06 | 0.99 | 1.33 | 1.07 | 1.28 | 1.18 | 1.03 | 1.04 | 1.00 | 0.94 | 1.15 | 0.98 | 0.94 | 0.98 | 0.95 |
| 270 | 0.970 | 0.931 | 0.950 | 1.03 | 1.09 | 1.00 | 0.94 | 0.74 | 1.00 | 0.95 | 1.05 | 1.04 | 0.95 | 0.95 | 0.91 | 0.89 | 1.03 | 1.04 | 1.03 | 0.92 | 0.96 | 0.97 | 1.13 | 0.97 | 0.96 | 1.01 | 0.92 |
| 271 | 0.970 | 0.931 | 0.950 | 1.18 | 1.15 | 1.33 | 1.36 | 0.79 | 1.09 | 0.93 | 1.15 | 0.95 | 1.24 | 0.95 | 1.31 | 1.08 | 0.82 | 1.11 | 1.03 | 0.99 | 0.95 | 1.09 | 1.08 | 1.14 | 0.95 | 1.02 | 0.88 |
| 272 | 0.970 | 0.931 | 0.950 | 1.03 | 1.09 | 1.00 | 0.94 | 0.74 | 1.00 | 0.95 | 1.05 | 1.04 | 0.95 | 0.95 | 0.91 | 0.89 | 1.03 | 1.04 | 1.03 | 0.92 | 0.96 | 0.97 | 1.13 | 0.97 | 0.96 | 1.01 | 0.92 |
| 273 | 0.970 | 0.931 | 0.950 | 1.03 | 1.09 | 1.00 | 0.94 | 0.74 | 1.00 | 0.95 | 1.05 | 1.04 | 0.95 | 0.95 | 0.91 | 0.89 | 1.03 | 1.04 | 1.03 | 0.92 | 0.96 | 0.97 | 1.13 | 0.97 | 0.96 | 1.01 | 0.92 |
| 274 | 0.970 | 0.931 | 0.950 | 1.03 | 1.09 | 1.00 | 0.94 | 0.74 | 1.00 | 0.95 | 1.05 | 1.04 | 0.95 | 0.95 | 0.91 | 0.89 | 1.03 | 1.04 | 1.03 | 0.92 | 0.96 | 0.97 | 1.13 | 0.97 | 0.96 | 1.01 | 0.92 |
| 275 | 0.970 | 0.931 | 0.950 | 1.19 | 1.17 | 1.21 | 1.21 | 0.91 | 1.31 | 1.07 | 1.12 | 0.90 | 1.19 | 0.85 | 1.07 | 0.90 | 1.13 | 1.23 | 1.04 | 1.01 | 1.06 | 1.10 | 1.03 | 1.01 | 1.06 | 1.14 | 0.99 |
| 276 | 0.970 | 0.931 | 0.950 | 1.19 | 1.17 | 1.21 | 1.21 | 0.91 | 1.31 | 1.07 | 1.12 | 0.90 | 1.19 | 0.85 | 1.07 | 0.90 | 1.13 | 1.23 | 1.04 | 1.01 | 1.06 | 1.10 | 1.03 | 1.01 | 1.06 | 1.14 | 0.99 |
| 277 | 0.970 | 0.931 | 0.950 | 1.22 | 1.39 | 1.26 | 1.05 | 1.37 | 1.41 | 1.30 | 1.07 | 0.90 | 1.47 | 1.28 | 1.07 | 1.15 | 1.08 | 1.11 | 1.12 | 1.04 | 1.11 | 1.38 | 1.18 | 1.06 | 0.94 | 1.01 | 1.02 |
| 278 | 0.970 | 0.931 | 0.950 | 1.05 | 1.02 | 0.97 | 1.02 | 0.95 | 1.06 | 1.07 | 1.08 | 0.85 | 1.13 | 1.10 | 0.97 | 1.02 | 1.08 | 0.98 | 0.93 | 0.98 | 1.02 | 1.12 | 1.12 | 0.95 | 1.02 | 1.01 | 0.99 |
| 279 | 0.970 | 0.931 | 0.950 | 1.05 | 1.02 | 0.97 | 1.02 | 0.95 | 1.05 | 1.07 | 1.08 | 0.85 | 1.13 | 1.10 | 0.97 | 1.02 | 1.08 | 0.98 | 0.93 | 0.98 | 1.02 | 1.12 | 1.12 | 0.95 | 1.02 | 1.01 | 0.99 |
| 280 | 0.970 | 0.931 | 0.950 | 1.11 | 1.10 | 1.07 | 1.04 | 1.13 | 1.14 | 1.09 | 1.11 | 0.90 | 1.11 | 0.81 | 1.33 | 0.89 | 0.91 | 1.27 | 1.03 | 0.98 | 0.99 | 1.09 | 1.08 | 0.91 | 0.95 | 1.00 | 0.92 |
| 281 | 0.970 | 0.931 | 0.950 | 1.11 | 1.10 | 1.07 | 1.04 | 1.13 | 1.14 | 1.09 | 1.11 | 0.90 | 1.11 | 0.81 | 1.33 | 0.89 | 0.91 | 1.27 | 1.03 | 0.98 | 0.99 | 1.09 | 1.08 | 0.91 | 0.95 | 1.00 | 0.92 |
| 282 | 0.970 | 0.931 | 0.950 | 1.22 | 1.19 | 2.03 | 0.94 | 0.74 | 1.34 | 1.07 | 1.22 | 0.90 | 1.10 | 1.04 | 1.45 | 1.20 | 1.07 | 1.35 | 1.09 | 0.98 | 1.04 | 1.08 | 1.14 | 1.00 | 1.03 | 1.03 | 1.00 |
| 283 | 0.970 | 0.931 | 0.950 | 1.05 | 1.02 | 0.97 | 1.02 | 0.95 | 1.05 | 1.07 | 1.08 | 0.85 | 1.13 | 1.10 | 0.97 | 1.02 | 1.08 | 0.98 | 0.93 | 0.98 | 1.02 | 1.12 | 1.12 | 0.95 | 1.02 | 1.01 | 0.99 |
| 284 | 0.970 | 0.931 | 0.950 | 1.05 | 1.02 | 0.97 | 1.02 | 0.95 | 1.05 | 1.07 | 1.08 | 0.85 | 1.13 | 1.10 | 0.97 | 1.02 | 1.08 | 0.98 | 0.93 | 0.98 | 1.02 | 1.12 | 1.12 | 0.95 | 1.02 | 1.01 | 0.99 |
| 285 | 0.970 | 0.931 | 0.950 | 1.05 | 1.02 | 0.97 | 1.02 | 0.95 | 1.05 | 1.07 | 1.08 | 0.85 | 1.13 | 1.10 | 0.97 | 1.02 | 1.08 | 0.98 | 0.93 | 0.98 | 1.02 | 1.12 | 1.12 | 0.95 | 1.02 | 1.01 | 0.99 |
| 286 | 0.970 | 0.931 | 0.950 | 1.01 | 1.01 | 1.18 | 1.19 | 0.91 | 1.04 | 0.90 | 1.01 | 1.10 | 0.96 | 1.05 | 0.96 | 0.99 | 1.16 | 1.04 | 0.94 | 0.95 | 0.98 | 1.00 | 0.98 | 0.97 | 1.03 | 0.99 | 1.02 |
| 287 | 0.970 | 0.931 | 0.950 | 1.01 | 1.01 | 1.18 | 1.19 | 0.91 | 1.04 | 0.90 | 1.01 | 1.10 | 0.96 | 1.05 | 0.96 | 0.99 | 1.16 | 1.04 | 0.94 | 0.95 | 0.98 | 1.00 | 0.98 | 0.97 | 1.03 | 0.99 | 1.02 |
| 288 | 0.970 | 0.931 | 0.950 | 1.01 | 1.01 | 1.18 | 1.19 | 0.91 | 1.04 | 0.90 | 1.01 | 1.10 | 0.96 | 1.05 | 0.96 | 0.99 | 1.16 | 1.04 | 0.94 | 0.95 | 0.98 | 1.00 | 0.98 | 0.97 | 1.03 | 0.99 | 1.02 |
| 289 | 0.970 | 0.931 | 0.950 | 1.01 | 1.01 | 1.18 | 1.19 | 0.91 | 1.04 | 0.90 | 1.01 | 1.10 | 0.96 | 1.05 | 0.96 | 0.99 | 1.16 | 1.04 | 0.94 | 0.95 | 0.98 | 1.00 | 0.98 | 0.97 | 1.03 | 0.99 | 1.02 |
| 290 | 0.974 | 0.904 | 0.940 | 0.94 | 1.05 | 1.51 | 0.87 | 0.81 | 0.99 | 1.18 | 0.95 | 1.11 | 1.00 | 0.99 | 0.74 | 0.90 | 0.99 | 0.87 | 1.05 | 0.87 | 1.02 | 1.06 | 1.15 | 0.90 | 1.03 | 0.99 | 1.20 |
| 291 | 0.974 | 0.904 | 0.940 | 0.94 | 1.05 | 1.51 | 0.87 | 0.81 | 0.99 | 1.18 | 0.95 | 1.11 | 1.00 | 0.99 | 0.74 | 0.90 | 0.99 | 0.87 | 1.05 | 0.87 | 1.02 | 1.06 | 1.15 | 0.90 | 1.03 | 0.99 | 1.20 |
| 292 | 0.974 | 0.904 | 0.940 | 1.00 | 1.01 | 0.95 | 1.30 | 1.13 | 1.16 | 0.99 | 0.97 | 1.12 | 0.97 | 1.33 | 0.89 | 1.09 | 0.97 | 0.93 | 1.08 | 0.83 | 0.97 | 1.04 | 1.12 | 1.02 | 0.96 | 0.84 | 1.05 |
| 293 | 0.974 | 0.904 | 0.940 | 1.01 | 1.04 | 1.19 | 1.10 | 0.79 | 1.05 | 1.09 | 0.97 | 1.07 | 1.02 | 1.11 | 0.96 | 0.98 | 1.08 | 1.12 | 1.00 | 0.82 | 0.99 | 1.06 | 1.09 | 0.87 | 1.07 | 1.01 | 1.05 |
| 294 | 0.974 | 0.904 | 0.940 | 0.96 | 1.00 | 1.10 | 1.10 | 0.79 | 1.12 | 1.10 | 1.02 | 0.96 | 1.05 | 1.25 | 0.77 | 1.03 | 1.00 | 0.98 | 0.94 | 0.90 | 1.01 | 1.11 | 1.12 | 0.93 | 0.98 | 0.94 | 0.99 |
| 295 | 0.974 | 0.904 | 0.940 | 0.96 | 1.00 | 1.10 | 1.10 | 0.79 | 1.12 | 1.10 | 1.02 | 0.96 | 1.05 | 1.25 | 0.77 | 1.03 | 1.00 | 0.98 | 0.94 | 0.90 | 1.01 | 1.11 | 1.12 | 0.93 | 0.98 | 0.94 | 0.99 |
| 296 | 0.974 | 0.904 | 0.940 | 0.99 | 0.97 | 1.72 | 1.01 | 0.88 | 1.20 | 1.02 | 0.97 | 1.08 | 1.08 | 1.60 | 0.72 | 0.92 | 0.99 | 0.89 | 1.00 | 0.82 | 0.98 | 1.03 | 1.12 | 0.90 | 0.97 | 0.85 | 1.01 |
| 297 | 0.974 | 0.904 | 0.940 | 1.01 | 1.04 | 1.19 | 1.10 | 0.79 | 1.05 | 1.09 | 0.97 | 1.07 | 1.02 | 1.11 | 0.95 | 0.98 | 1.08 | 1.12 | 1.00 | 0.82 | 0.99 | 1.05 | 1.09 | 0.87 | 1.07 | 1.01 | 1.05 |
| 298 | 0.974 | 0.904 | 0.940 | 1.07 | 1.05 | 1.32 | 1.35 | 0.88 | 1.01 | 0.99 | 1.02 | 1.00 | 0.93 | 1.34 | 0.81 | 0.98 | 0.98 | 0.97 | 1.04 | 0.82 | 1.04 | 1.07 | 1.10 | 1.22 | 1.10 | 1.13 | 1.12 |
| 299 | 0.974 | 0.904 | 0.940 | 1.07 | 1.05 | 1.32 | 1.35 | 0.88 | 1.01 | 0.99 | 1.02 | 1.00 | 0.93 | 1.34 | 0.81 | 0.98 | 0.98 | 0.97 | 1.04 | 0.82 | 1.04 | 1.07 | 1.10 | 1.22 | 1.10 | 1.13 | 1.12 |
| 300 | 1.006 | 1.059 | 1.040 | 0.97 | 0.98 | 1.30 | 1.21 | 0.77 | 0.99 | 0.94 | 1.00 | 1.03 | 0.92 | 0.91 | 0.88 | 0.97 | 0.99 | 0.93 | 1.04 | 0.99 | 1.01 | 0.93 | 1.10 | 1.02 | 1.08 | 1.02 | 0.98 |
| 301 | 0.970 | 0.892 | 0.930 | 1.01 | 1.06 | 1.14 | 1.41 | 0.98 | 1.14 | 0.97 | 1.05 | 1.09 | 1.04 | 1.49 | 0.95 | 1.07 | 1.19 | 1.05 | 1.09 | 1.19 | 1.12 | 1.06 | 1.18 | 1.02 | 1.18 | 1.14 | 1.08 |
| 302 | 0.970 | 0.892 | 0.930 | 1.01 | 1.06 | 1.14 | 1.41 | 0.98 | 1.14 | 0.97 | 1.05 | 1.09 | 1.04 | 1.49 | 0.95 | 1.07 | 1.19 | 1.05 | 1.09 | 1.19 | 1.12 | 1.06 | 1.18 | 1.02 | 1.18 | 1.14 | 1.08 |
| 303 | 1.006 | 1.059 | 1.040 | 1.13 | 1.05 | 1.41 | 1.21 | 0.75 | 1.16 | 1.08 | 1.04 | 1.04 | 0.98 | 1.28 | 1.07 | 1.01 | 1.09 | 1.15 | 1.10 | 1.07 | 1.08 | 1.10 | 1.10 | 1.03 | 1.10 | 1.08 | 1.02 |
| 304 | 0.970 | 0.892 | 0.930 | 0.99 | 1.00 | 1.02 | 1.28 | 0.87 | 1.08 | 1.19 | 1.06 | 0.98 | 1.18 | 1.23 | 0.80 | 1.06 | 1.08 | 0.84 | 0.98 | 1.19 | 1.02 | 1.09 | 1.02 | 1.05 | 1.07 | 1.04 | 1.09 |
| 305 | 0.970 | 0.892 | 0.930 | 1.03 | 1.00 | 1.08 | 1.06 | 0.87 | 1.02 | 1.22 | 1.01 | 1.01 | 1.10 | 0.97 | 0.82 | 0.99 | 1.00 | 0.98 | 1.01 | 1.13 | 1.07 | 1.13 | 1.10 | 1.06 | 1.12 | 1.03 | 1.13 |
| 306 | 0.970 | 0.892 | 0.930 | 1.03 | 1.00 | 1.08 | 1.06 | 0.87 | 1.02 | 1.22 | 1.01 | 1.01 | 1.10 | 0.97 | 0.82 | 0.99 | 1.00 | 0.98 | 1.01 | 1.13 | 1.07 | 1.13 | 1.10 | 1.06 | 1.12 | 1.03 | 1.13 |
| 307 | 0.970 | 0.892 | 0.930 | 1.03 | 1.00 | 1.08 | 1.06 | 0.87 | 1.02 | 1.22 | 1.01 | 1.01 | 1.10 | 0.97 | 0.82 | 0.99 | 1.00 | 0.98 | 1.01 | 1.13 | 1.07 | 1.13 | 1.10 | 1.06 | 1.12 | 1.03 | 1.13 |
| 308 | 0.970 | 0.892 | 0.930 | 1.03 | 1.00 | 1.08 | 1.06 | 0.87 | 1.02 | 1.22 | 1.01 | 1.01 | 1.10 | 0.97 | 0.82 | 0.99 | 1.00 | 0.98 | 1.01 | 1.13 | 1.07 | 1.13 | 1.10 | 1.06 | 1.12 | 1.03 | 1.13 |
| 309 | 0.970 | 0.892 | 0.930 | 1.03 | 1.00 | 1.08 | 1.06 | 0.87 | 1.02 | 1.22 | 1.01 | 1.01 | 1.10 | 0.97 | 0.82 | 0.99 | 1.00 | 0.98 | 1.01 | 1.13 | 1.07 | 1.13 | 1.10 | 1.06 | 1.12 | 1.03 | 1.13 |
| 310 | 0.970 | 0.892 | 0.930 | 1.06 | 1.01 | 1.15 | 1.06 | 0.98 | 1.19 | 1.05 | 1.04 | 1.01 | 1.24 | 0.86 | 0.75 | 1.13 | 1.07 | 0.98 | 1.00 | 1.00 | 1.12 | 1.13 | 1.22 | 1.12 | 1.12 | 1.09 | 1.17 |
| 311 | 1.006 | 1.059 | 1.040 | 1.13 | 1.05 | 1.41 | 1.21 | 0.75 | 1.16 | 1.08 | 1.04 | 1.04 | 0.98 | 1.26 | 1.07 | 1.01 | 1.09 | 1.15 | 1.10 | 1.07 | 1.08 | 1.10 | 1.10 | 1.03 | 1.10 | 1.08 | 1.02 |
| 312 | 0.970 | 0.892 | 0.930 | 1.06 | 1.01 | 1.15 | 1.06 | 0.98 | 1.19 | 1.05 | 1.04 | 1.01 | 1.24 | 0.86 | 0.75 | 1.13 | 1.07 | 0.96 | 1.00 | 1.00 | 1.12 | 1.13 | 1.22 | 1.12 | 1.12 | 1.09 | 1.17 |
| 313 | 0.970 | 0.892 | 0.930 | 0.97 | 0.99 | 1.03 | 1.13 | 1.17 | 1.07 | 0.91 | 1.01 | 0.91 | 1.12 | 1.47 | 0.87 | 1.01 | 1.07 | 0.82 | 0.94 | 1.05 | 1.07 | 1.19 | 1.20 | 1.18 | 1.07 | 1.05 | 1.17 |
| 314 | 0.970 | 0.892 | 0.930 | 0.97 | 0.99 | 1.03 | 1.13 | 1.17 | 1.07 | 0.91 | 1.01 | 0.91 | 1.12 | 1.47 | 0.87 | 1.01 | 1.07 | 0.82 | 0.94 | 1.05 | 1.07 | 1.19 | 1.20 | 1.18 | 1.07 | 1.05 | 1.17 |
| 315 | 0.970 | 0.892 | 0.930 | 0.99 | 1.00 | 1.02 | 1.28 | 0.87 | 1.08 | 1.19 | 1.06 | 0.96 | 1.18 | 1.23 | 0.80 | 1.06 | 1.08 | 0.84 | 0.98 | 1.19 | 1.02 | 1.09 | 1.02 | 1.05 | 1.07 | 1.04 | 1.09 |
| 316 | 0.970 | 0.892 | 0.930 | 1.00 | 1.00 | 0.91 | 0.88 | 0.87 | 1.10 | 1.02 | 1.01 | 1.00 | 1.04 | 1.43 | 0.92 | 1.00 | 1.02 | 1.07 | 1.01 | 1.07 | 1.08 | 1.13 | 1.08 | 0.99 | 1.05 | 1.04 | 1.04 |
| 317 | 0.970 | 0.892 | 0.930 | 1.00 | 1.00 | 0.91 | 0.88 | 0.87 | 1.10 | 1.02 | 1.01 | 1.00 | 1.04 | 1.43 | 0.92 | 1.00 | 1.02 | 1.07 | 1.01 | 1.07 | 1.08 | 1.13 | 1.08 | 0.99 | 1.05 | 1.04 | 1.04 |
| 318 | 0.970 | 0.892 | 0.930 | 1.00 | 1.00 | 0.91 | 0.88 | 0.87 | 1.10 | 1.02 | 1.01 | 1.00 | 1.04 | 1.43 | 0.92 | 1.00 | 1.02 | 1.07 | 1.01 | 1.07 | 1.08 | 1.13 | 1.08 | 0.99 | 1.05 | 1.04 | 1.04 |
| 319 | 0.970 | 0.892 | 0.930 | 1.00 | 1.00 | 0.91 | 0.88 | 0.87 | 1.10 | 1.02 | 1.01 | 1.00 | 1.04 | 1.43 | 0.92 | 1.00 | 1.02 | 1.07 | 1.01 | 1.07 | 1.08 | 1.13 | 1.08 | 0.99 | 1.05 | 1.04 | 1.04 |
| 320 | 0.975 | 0.946 | 0.960 | 1.00 | 0.95 | 1.23 | 0.96 | 0.95 | 1.10 | 0.97 | 0.99 | 1.01 | 1.10 | 0.90 | 1.18 | 0.92 | 0.99 | 1.08 | 1.08 | 0.99 | 1.00 | 0.95 | 1.01 | 1.08 | 0.87 | 0.78 | 0.76 |
| 321 | 0.975 | 0.946 | 0.960 | 0.89 | 0.95 | 0.59 | 0.97 | 1.15 | 0.90 | 1.06 | 0.94 | 1.08 | 0.90 | 1.06 | 1.21 | 1.00 | 1.03 | 0.97 | 0.94 | 0.92 | 0.96 | 0.78 | 1.00 | 0.97 | 0.80 | 0.82 | 0.73 |

## TABLE L. — PROFESSIONAL SERVICES RELATIVE VALUE UNIT (RVU) AND CONVERSION FACTOR GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

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| Zip Code | RVU GAAFs | | | Conversion Factor GAAFs By Category | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Work Expense | Practice Expense | Total Unit Value | Inpatient Visits | Office/ Home/ Urgent Care Visits | Therapeutic Injections | Allergy Testing | Allergy Immunotherapy | Misc. Medical | ER Visits | Consults | Physical Medicine | Cardiovascular | Immunizations | Well Baby Exams | Vision Exams | Hearing/ Speech Exams | Physical Exams | Chiropractor | Psych./ Alcohol & Drug Abuse | Surgery | Radiology | Pathology | Anesthesia | Normal Deliveries | Cesarean Deliveries | Non-Deliveries |
| 322 | 0.975 | 0.946 | 0.960 | 1.05 | 0.99 | 1.25 | 0.73 | 0.82 | 1.09 | 0.93 | 1.08 | 1.07 | 1.04 | 0.90 | 1.31 | 1.06 | 1.07 | 1.14 | 1.07 | 1.06 | 0.93 | 1.18 | 0.96 | 0.94 | 0.84 | 0.96 | 0.71 |
| 323 | 0.975 | 0.946 | 0.960 | 0.90 | 0.98 | 0.87 | 0.97 | 1.09 | 0.93 | 1.03 | 0.97 | 0.90 | 0.96 | 0.90 | 1.20 | 0.93 | 1.00 | 1.14 | 0.96 | 1.00 | 0.91 | 0.88 | 0.93 | 1.01 | 0.87 | 0.83 | 0.89 |
| 324 | 0.975 | 0.946 | 0.960 | 0.90 | 0.98 | 0.87 | 0.97 | 1.09 | 0.93 | 1.03 | 0.97 | 0.90 | 0.96 | 0.90 | 1.20 | 0.93 | 1.00 | 1.14 | 0.96 | 1.00 | 0.91 | 0.88 | 0.93 | 1.01 | 0.87 | 0.83 | 0.89 |
| 325 | 0.975 | 0.946 | 0.960 | 0.90 | 0.98 | 0.87 | 0.97 | 1.09 | 0.93 | 1.03 | 0.97 | 0.90 | 0.96 | 0.90 | 1.20 | 0.93 | 1.00 | 1.14 | 0.96 | 1.00 | 0.91 | 0.88 | 0.93 | 1.01 | 0.87 | 0.83 | 0.89 |
| 326 | 0.975 | 0.946 | 0.960 | 1.14 | 1.03 | 0.96 | 0.96 | 1.04 | 1.05 | 1.04 | 0.97 | 0.81 | 0.82 | 0.63 | 1.26 | 0.92 | 1.03 | 1.17 | 0.94 | 1.06 | 0.97 | 0.86 | 0.77 | 1.05 | 0.87 | 0.81 | 0.69 |
| 327 | 0.975 | 0.946 | 0.960 | 0.96 | 0.98 | 1.11 | 0.97 | 1.09 | 0.92 | 1.08 | 1.01 | 0.98 | 1.03 | 1.07 | 1.16 | 1.00 | 1.06 | 1.06 | 1.05 | 1.04 | 0.97 | 0.86 | 0.94 | 0.98 | 0.91 | 0.90 | 0.90 |
| 328 | 0.975 | 0.946 | 0.960 | 1.10 | 1.02 | 1.12 | 0.97 | 1.10 | 1.12 | 1.05 | 1.06 | 1.06 | 1.09 | 1.33 | 1.14 | 1.09 | 1.13 | 1.12 | 1.09 | 1.08 | 0.96 | 0.82 | 1.06 | 1.31 | 0.99 | 1.04 | 1.18 |
| 329 | 0.975 | 0.946 | 0.960 | 0.94 | 1.04 | 0.93 | 1.13 | 1.19 | 0.90 | 0.95 | 1.05 | 1.05 | 0.94 | 1.17 | 1.08 | 1.00 | 0.93 | 1.01 | 1.05 | 1.01 | 0.96 | 0.83 | 0.94 | 1.14 | 0.94 | 0.95 | 0.96 |
| 330 | 1.015 | 1.052 | 1.040 | 1.20 | 1.10 | 1.04 | 1.08 | 0.98 | 1.03 | 1.33 | 1.08 | 1.09 | 1.12 | 1.21 | 1.22 | 1.10 | 1.01 | 0.96 | 1.17 | 1.21 | 1.03 | 0.93 | 1.06 | 1.16 | 0.98 | 0.96 | 0.93 |
| 331 | 1.015 | 1.052 | 1.040 | 1.26 | 1.15 | 1.08 | 1.31 | 0.95 | 1.08 | 1.28 | 1.15 | 1.07 | 1.21 | 1.34 | 1.20 | 1.02 | 1.13 | 1.02 | 1.18 | 1.40 | 1.07 | 1.06 | 0.92 | 1.08 | 1.04 | 1.10 | 0.91 |
| 332 | 1.015 | 1.052 | 1.040 | 1.26 | 1.15 | 1.08 | 1.31 | 0.95 | 1.08 | 1.28 | 1.15 | 1.07 | 1.21 | 1.34 | 1.20 | 1.02 | 1.13 | 1.02 | 1.18 | 1.40 | 1.07 | 1.06 | 0.92 | 1.08 | 1.04 | 1.10 | 0.91 |
| 333 | 0.996 | 1.018 | 1.010 | 1.33 | 1.07 | 1.14 | 1.69 | 1.33 | 1.08 | 1.53 | 1.08 | 1.13 | 1.05 | 1.20 | 1.00 | 1.02 | 1.03 | 0.98 | 1.17 | 1.38 | 0.97 | 1.01 | 0.93 | 1.08 | 1.05 | 1.02 | 1.02 |
| 334 | 0.996 | 1.018 | 1.010 | 0.97 | 1.01 | 0.95 | 1.15 | 0.99 | 0.86 | 1.31 | 1.01 | 1.10 | 0.95 | 1.29 | 1.04 | 0.99 | 0.95 | 0.96 | 1.11 | 1.20 | 1.00 | 0.92 | 0.86 | 1.06 | 1.06 | 1.05 | 1.16 |
| 335 | 0.975 | 0.946 | 0.960 | 1.05 | 0.96 | 1.03 | 1.05 | 1.12 | 0.89 | 1.42 | 1.03 | 1.02 | 0.91 | 1.06 | 1.18 | 1.00 | 0.97 | 1.02 | 1.02 | 1.06 | 0.97 | 0.88 | 0.76 | 1.05 | 0.91 | 0.87 | 0.83 |
| 336 | 0.975 | 0.946 | 0.960 | 1.08 | 1.04 | 0.96 | 1.29 | 1.31 | 1.03 | 1.15 | 1.13 | 1.00 | 1.03 | 1.07 | 1.14 | 0.99 | 0.87 | 1.17 | 1.10 | 1.08 | 1.02 | 0.95 | 1.10 | 1.22 | 0.88 | 0.95 | 0.96 |
| 337 | 0.975 | 0.946 | 0.960 | 1.05 | 0.96 | 1.03 | 1.05 | 1.12 | 0.89 | 1.42 | 1.03 | 1.02 | 0.91 | 1.06 | 1.18 | 1.00 | 0.97 | 1.02 | 1.02 | 1.06 | 0.97 | 0.88 | 0.76 | 1.05 | 0.91 | 0.87 | 0.83 |
| 338 | 0.975 | 0.946 | 0.960 | 0.95 | 1.01 | 1.13 | 0.97 | 1.24 | 0.84 | 1.33 | 0.95 | 0.98 | 0.91 | 0.82 | 0.74 | 1.08 | 1.05 | 0.84 | 1.02 | 0.99 | 0.94 | 0.86 | 0.85 | 0.96 | 0.88 | 0.87 | 0.87 |
| 339 | 0.975 | 0.946 | 0.960 | 0.94 | 1.02 | 0.76 | 1.09 | 1.06 | 0.91 | 0.91 | 1.04 | 1.03 | 0.89 | 1.13 | 1.23 | 0.99 | 0.96 | 1.12 | 1.04 | 1.07 | 0.97 | 1.04 | 0.83 | 1.06 | 0.91 | 0.90 | 0.81 |
| 341 | 0.996 | 1.018 | 1.010 | 0.92 | 1.00 | 0.78 | 0.87 | 1.09 | 1.06 | 0.93 | 0.97 | 1.13 | 1.06 | 1.34 | 1.40 | 0.94 | 0.92 | 1.27 | 1.01 | 1.21 | 0.96 | 0.83 | 0.81 | 1.10 | 0.96 | 0.96 | 0.84 |
| 342 | 0.975 | 0.946 | 0.960 | 0.93 | 0.96 | 0.98 | 0.97 | 1.03 | 0.96 | 1.35 | 1.00 | 0.99 | 0.94 | 1.08 | 1.23 | 0.98 | 0.99 | 1.18 | 0.99 | 1.04 | 0.96 | 0.86 | 0.83 | 1.18 | 0.95 | 1.05 | 1.01 |
| 344 | 0.975 | 0.946 | 0.960 | 0.84 | 0.90 | 0.66 | 1.00 | 1.02 | 0.81 | 1.16 | 0.93 | 0.89 | 0.75 | 0.86 | 1.16 | 0.94 | 1.00 | 1.12 | 0.87 | 1.09 | 0.87 | 0.76 | 0.77 | 1.12 | 0.83 | 0.90 | 0.86 |
| 346 | 0.975 | 0.946 | 0.960 | 0.93 | 0.96 | 0.98 | 0.97 | 1.03 | 0.98 | 1.35 | 1.00 | 0.99 | 0.94 | 1.08 | 1.23 | 0.98 | 0.99 | 1.18 | 0.99 | 1.04 | 0.96 | 0.86 | 0.83 | 1.18 | 0.95 | 1.05 | 1.01 |
| 347 | 0.975 | 0.946 | 0.960 | 0.96 | 0.98 | 1.11 | 0.97 | 1.09 | 0.92 | 1.08 | 1.01 | 0.98 | 1.03 | 1.07 | 1.16 | 1.00 | 1.06 | 1.06 | 1.05 | 1.04 | 0.97 | 0.85 | 0.94 | 0.96 | 0.91 | 0.90 | 0.90 |
| 349 | 0.975 | 0.946 | 0.960 | 1.06 | 1.06 | 1.02 | 1.61 | 1.30 | 0.97 | 1.26 | 1.14 | 1.15 | 1.10 | 1.17 | 0.96 | 1.01 | 1.07 | 1.11 | 1.07 | 1.11 | 1.10 | 0.96 | 1.06 | 1.10 | 1.00 | 0.99 | 0.87 |
| 350 | 0.978 | 0.870 | 0.920 | 0.75 | 0.87 | 0.73 | 1.29 | 0.89 | 0.86 | 1.05 | 0.84 | 1.04 | 0.80 | 0.86 | 0.70 | 0.88 | 1.05 | 0.62 | 0.93 | 1.02 | 0.87 | 1.02 | 0.83 | 0.94 | 0.94 | 0.80 | 0.74 |
| 351 | 0.978 | 0.870 | 0.920 | 0.75 | 0.87 | 0.73 | 1.29 | 0.89 | 0.86 | 1.05 | 0.84 | 1.04 | 0.80 | 0.86 | 0.70 | 0.88 | 1.05 | 0.62 | 0.93 | 1.02 | 0.87 | 1.02 | 0.83 | 0.94 | 0.94 | 0.80 | 0.74 |
| 352 | 0.978 | 0.870 | 0.920 | 0.80 | 0.90 | 0.80 | 1.28 | 0.95 | 0.95 | 0.94 | 0.87 | 1.18 | 0.95 | 0.98 | 0.60 | 0.94 | 1.11 | 0.80 | 1.09 | 0.98 | 0.96 | 1.05 | 1.12 | 0.86 | 0.98 | 0.93 | 0.72 |
| 354 | 0.978 | 0.870 | 0.920 | 0.75 | 0.87 | 0.73 | 1.29 | 0.89 | 0.86 | 1.05 | 0.84 | 1.04 | 0.80 | 0.86 | 0.70 | 0.88 | 1.05 | 0.62 | 0.93 | 1.02 | 0.87 | 1.02 | 0.83 | 0.94 | 0.94 | 0.80 | 0.74 |
| 355 | 0.978 | 0.870 | 0.920 | 0.75 | 0.87 | 0.73 | 1.29 | 0.89 | 0.86 | 1.05 | 0.84 | 1.04 | 0.80 | 0.86 | 0.70 | 0.88 | 1.05 | 0.62 | 0.93 | 1.02 | 0.87 | 1.02 | 0.83 | 0.94 | 0.94 | 0.80 | 0.74 |
| 356 | 0.978 | 0.870 | 0.920 | 0.83 | 0.89 | 0.71 | 1.10 | 0.79 | 0.92 | 0.93 | 0.87 | 0.97 | 0.85 | 1.00 | 0.61 | 0.92 | 1.12 | 0.66 | 0.94 | 0.92 | 0.85 | 1.00 | 0.96 | 0.93 | 1.06 | 0.96 | 0.90 |
| 357 | 0.978 | 0.870 | 0.920 | 0.83 | 0.89 | 0.71 | 1.10 | 0.79 | 0.92 | 0.93 | 0.87 | 0.97 | 0.85 | 1.00 | 0.61 | 0.92 | 1.12 | 0.66 | 0.94 | 0.92 | 0.85 | 1.00 | 0.96 | 0.93 | 1.06 | 0.96 | 0.90 |
| 358 | 0.978 | 0.870 | 0.920 | 0.83 | 0.89 | 0.71 | 1.10 | 0.79 | 0.92 | 0.93 | 0.87 | 0.97 | 0.85 | 1.00 | 0.61 | 0.92 | 1.12 | 0.66 | 0.94 | 0.92 | 0.85 | 1.00 | 0.96 | 0.93 | 1.06 | 0.96 | 0.90 |
| 359 | 0.978 | 0.870 | 0.920 | 0.76 | 0.86 | 0.60 | 0.75 | 0.92 | 0.87 | 0.90 | 0.87 | 0.91 | 0.94 | 1.00 | 0.58 | 0.91 | 0.84 | 0.74 | 0.83 | 0.90 | 0.82 | 0.88 | 0.91 | 1.03 | 0.98 | 0.84 | 0.78 |
| 360 | 0.978 | 0.870 | 0.920 | 0.74 | 0.87 | 0.68 | 1.26 | 0.83 | 0.83 | 0.98 | 0.81 | 1.04 | 0.86 | 0.94 | 0.59 | 0.91 | 0.92 | 0.65 | 0.92 | 0.93 | 0.91 | 1.05 | 0.76 | 0.97 | 1.00 | 0.92 | 0.71 |
| 361 | 0.978 | 0.870 | 0.920 | 0.74 | 0.87 | 0.68 | 1.26 | 0.83 | 0.83 | 0.98 | 0.81 | 1.04 | 0.86 | 0.94 | 0.59 | 0.91 | 0.92 | 0.65 | 0.92 | 0.93 | 0.91 | 1.05 | 0.76 | 0.97 | 1.00 | 0.92 | 0.71 |
| 362 | 0.978 | 0.870 | 0.920 | 0.76 | 0.86 | 0.60 | 0.75 | 0.92 | 0.87 | 0.90 | 0.87 | 0.91 | 0.94 | 1.00 | 0.58 | 0.91 | 0.84 | 0.74 | 0.83 | 0.90 | 0.82 | 0.88 | 0.91 | 1.03 | 0.98 | 0.84 | 0.78 |
| 363 | 0.978 | 0.870 | 0.920 | 0.74 | 0.87 | 0.68 | 1.26 | 0.83 | 0.83 | 0.98 | 0.81 | 1.04 | 0.86 | 0.94 | 0.59 | 0.91 | 0.92 | 0.65 | 0.92 | 0.93 | 0.91 | 1.05 | 0.76 | 0.97 | 1.00 | 0.92 | 0.71 |
| 364 | 0.978 | 0.870 | 0.920 | 0.74 | 0.87 | 0.68 | 1.26 | 0.83 | 0.83 | 0.98 | 0.81 | 1.04 | 0.86 | 0.94 | 0.59 | 0.91 | 0.92 | 0.65 | 0.92 | 0.93 | 0.91 | 1.05 | 0.76 | 0.97 | 1.00 | 0.92 | 0.71 |
| 365 | 0.978 | 0.870 | 0.920 | 0.73 | 0.86 | 0.65 | 1.06 | 0.84 | 0.79 | 0.87 | 0.80 | 1.06 | 0.75 | 0.91 | 0.53 | 1.00 | 0.78 | 0.56 | 0.95 | 1.06 | 0.84 | 0.89 | 0.85 | 0.77 | 0.90 | 0.79 | 0.72 |
| 366 | 0.978 | 0.870 | 0.920 | 0.73 | 0.86 | 0.65 | 1.06 | 0.84 | 0.79 | 0.87 | 0.80 | 1.06 | 0.75 | 0.91 | 0.53 | 1.00 | 0.78 | 0.56 | 0.95 | 1.06 | 0.84 | 0.89 | 0.85 | 0.77 | 0.90 | 0.79 | 0.72 |
| 367 | 0.978 | 0.870 | 0.920 | 0.74 | 0.87 | 0.68 | 1.26 | 0.83 | 0.83 | 0.98 | 0.81 | 1.04 | 0.86 | 0.94 | 0.59 | 0.91 | 0.92 | 0.65 | 0.92 | 0.93 | 0.91 | 1.05 | 0.76 | 0.97 | 1.00 | 0.92 | 0.71 |
| 368 | 0.978 | 0.870 | 0.920 | 0.74 | 0.87 | 0.68 | 1.26 | 0.83 | 0.83 | 0.98 | 0.81 | 1.04 | 0.86 | 0.94 | 0.59 | 0.91 | 0.92 | 0.65 | 0.92 | 0.93 | 0.91 | 1.05 | 0.76 | 0.97 | 1.00 | 0.92 | 0.71 |
| 369 | 0.978 | 0.870 | 0.920 | 0.74 | 0.87 | 0.68 | 1.26 | 0.83 | 0.83 | 0.98 | 0.81 | 1.04 | 0.86 | 0.94 | 0.59 | 0.91 | 0.92 | 0.65 | 0.92 | 0.93 | 0.91 | 1.05 | 0.76 | 0.97 | 1.00 | 0.92 | 0.71 |
| 370 | 0.975 | 0.900 | 0.930 | 0.94 | 0.95 | 0.85 | 1.07 | 0.97 | 1.03 | 1.07 | 0.98 | 1.11 | 1.02 | 0.98 | 1.04 | 0.90 | 1.02 | 1.01 | 0.97 | 1.01 | 0.99 | 1.05 | 1.16 | 0.92 | 0.95 | 0.95 | 1.01 |
| 371 | 0.975 | 0.900 | 0.930 | 0.94 | 0.96 | 0.85 | 1.07 | 0.97 | 1.03 | 1.07 | 0.98 | 1.11 | 1.02 | 0.98 | 1.04 | 0.90 | 1.02 | 1.01 | 0.97 | 1.01 | 0.99 | 1.05 | 1.16 | 0.92 | 0.95 | 0.95 | 1.01 |
| 372 | 0.975 | 0.900 | 0.930 | 0.99 | 1.02 | 0.90 | 1.26 | 0.86 | 1.12 | 1.23 | 1.11 | 1.15 | 1.01 | 0.80 | 1.11 | 1.02 | 0.93 | 1.09 | 1.06 | 1.07 | 1.02 | 1.03 | 1.10 | 0.95 | 1.02 | 1.06 | 1.06 |
| 373 | 0.975 | 0.900 | 0.930 | 0.97 | 0.95 | 0.91 | 0.90 | 0.93 | 1.07 | 1.11 | 1.00 | 1.08 | 1.01 | 0.92 | 1.22 | 1.00 | 1.00 | 1.16 | 0.96 | 1.02 | 0.98 | 1.03 | 1.17 | 0.96 | 0.93 | 0.93 | 0.97 |
| 374 | 0.975 | 0.900 | 0.930 | 0.97 | 0.95 | 0.91 | 0.90 | 0.93 | 1.07 | 1.11 | 1.00 | 1.08 | 1.01 | 0.92 | 1.22 | 1.00 | 1.00 | 1.16 | 0.96 | 1.02 | 0.98 | 1.03 | 1.17 | 0.96 | 0.93 | 0.93 | 0.97 |
| 375 | 0.975 | 0.900 | 0.930 | 1.02 | 1.06 | 1.18 | 0.96 | 0.87 | 1.02 | 0.95 | 1.09 | 1.20 | 1.16 | 1.11 | 1.07 | 1.05 | 0.99 | 1.03 | 1.14 | 1.05 | 1.03 | 1.04 | 1.12 | 0.90 | 1.02 | 0.95 | 0.94 |
| 376 | 0.975 | 0.900 | 0.930 | 0.97 | 0.95 | 0.91 | 0.90 | 0.93 | 1.07 | 1.11 | 1.00 | 1.08 | 1.01 | 0.92 | 1.22 | 1.00 | 1.00 | 1.16 | 0.96 | 1.02 | 0.98 | 1.03 | 1.17 | 0.96 | 0.93 | 0.93 | 0.97 |
| 377 | 0.975 | 0.900 | 0.930 | 0.97 | 0.95 | 0.91 | 0.90 | 0.93 | 1.07 | 1.11 | 1.00 | 1.08 | 1.01 | 0.92 | 1.22 | 1.00 | 1.00 | 1.16 | 0.96 | 1.02 | 0.98 | 1.03 | 1.17 | 0.96 | 0.93 | 0.93 | 0.97 |
| 378 | 0.975 | 0.900 | 0.930 | 0.97 | 0.95 | 0.91 | 0.90 | 0.93 | 1.07 | 1.11 | 1.00 | 1.08 | 1.01 | 0.92 | 1.22 | 1.00 | 1.00 | 1.16 | 0.96 | 1.02 | 0.98 | 1.03 | 1.17 | 0.96 | 0.93 | 0.93 | 0.97 |
| 379 | 0.975 | 0.900 | 0.930 | 0.99 | 1.03 | 1.09 | 0.90 | 0.88 | 1.01 | 1.38 | 1.09 | 1.09 | 0.94 | 0.87 | 1.33 | 0.96 | 0.96 | 1.37 | 1.03 | 1.07 | 1.01 | 1.03 | 1.12 | 0.96 | 0.95 | 0.95 | 0.96 |
| 380 | 0.975 | 0.900 | 0.930 | 0.92 | 1.14 | 0.85 | 0.96 | 1.12 | 1.01 | 0.97 | 0.99 | 1.06 | 0.97 | 0.87 | 1.12 | 0.90 | 1.01 | 1.11 | 1.05 | 1.08 | 0.99 | 1.11 | 1.01 | 1.12 | 0.89 | 0.95 | 1.01 |
| 381 | 0.975 | 0.900 | 0.930 | 1.02 | 1.06 | 1.18 | 0.96 | 0.87 | 1.02 | 0.95 | 1.09 | 1.20 | 1.16 | 1.11 | 1.07 | 1.05 | 0.99 | 1.03 | 1.14 | 1.05 | 1.03 | 1.04 | 1.12 | 0.90 | 1.02 | 0.95 | 0.94 |
| 382 | 0.975 | 0.900 | 0.930 | 0.98 | 0.95 | 0.82 | 1.06 | 0.93 | 1.00 | 0.86 | 0.95 | 1.04 | 1.07 | 1.11 | 0.90 | 0.87 | 0.95 | 0.84 | 0.96 | 1.10 | 0.98 | 1.03 | 1.12 | 1.01 | 0.95 | 0.90 | 0.77 |
| 383 | 0.975 | 0.900 | 0.930 | 0.98 | 0.95 | 0.82 | 1.06 | 0.93 | 1.00 | 0.86 | 0.95 | 1.04 | 1.07 | 1.11 | 0.90 | 0.87 | 0.95 | 0.84 | 0.96 | 1.10 | 0.98 | 1.03 | 1.12 | 1.01 | 0.95 | 0.90 | 0.77 |
| 384 | 0.975 | 0.900 | 0.930 | 0.94 | 0.95 | 0.85 | 1.07 | 0.97 | 1.03 | 1.07 | 0.98 | 1.11 | 1.02 | 0.98 | 1.04 | 0.90 | 1.02 | 1.01 | 0.97 | 1.01 | 0.99 | 1.05 | 1.16 | 0.92 | 0.95 | 0.95 | 1.01 |
| 385 | 0.975 | 0.900 | 0.930 | 0.97 | 0.95 | 0.91 | 0.90 | 0.93 | 1.07 | 1.11 | 1.00 | 1.08 | 1.01 | 0.92 | 1.22 | 1.00 | 1.00 | 1.16 | 0.96 | 1.02 | 0.98 | 1.03 | 1.17 | 0.96 | 0.93 | 0.93 | 0.97 |
| 386 | 0.957 | 0.837 | 0.890 | 0.92 | 0.96 | 1.10 | 0.94 | 0.81 | 1.09 | 0.96 | 1.03 | 1.09 | 1.02 | 0.93 | 0.77 | 0.89 | 1.26 | 0.79 | 1.01 | 0.96 | 0.99 | 1.07 | 1.16 | 0.81 | 0.85 | 0.87 | 0.92 |
| 387 | 0.957 | 0.837 | 0.890 | 0.92 | 0.96 | 1.10 | 0.94 | 0.81 | 1.09 | 0.96 | 1.03 | 1.09 | 1.02 | 0.93 | 0.77 | 0.89 | 1.26 | 0.79 | 1.01 | 0.96 | 0.99 | 1.07 | 1.16 | 0.81 | 0.85 | 0.87 | 0.92 |
| 388 | 0.957 | 0.837 | 0.890 | 0.92 | 0.96 | 1.10 | 0.94 | 0.81 | 1.09 | 0.96 | 1.03 | 1.09 | 1.02 | 0.93 | 0.77 | 0.89 | 1.26 | 0.79 | 1.01 | 0.96 | 0.99 | 1.07 | 1.16 | 0.81 | 0.85 | 0.87 | 0.92 |

## TABLE L —PROFESSIONAL SERVICES RELATIVE VALUE UNIT (RVU) AND CONVERSION FACTOR GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

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| Zip Code | RVU GAAFs | | | Conversion Factor GAAFs By Category | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Work Expense | Practice Expense | Total Unit Value | Inpatient Visits | Office/Home/Urgent Care Visits | Therapeutic Injections | Allergy Testing | Allergy Immunotherapy | Misc Medical | ER Visits | Consults | Physical Medicine | Cardiovascular | Immunizations | Well Baby Exams | Vision Exams | Hearing/Speech Exams | Physical Exams | Chiropractor | Psych/Alcohol & Drug Abuse | Surgery | Radiology | Pathology | Anesthesia | Normal Deliveries | Cesarean Deliveries | Non-Deliveries |
| 389 | 0.957 | 0.837 | 0.890 | 0.92 | 0.96 | 1.10 | 0.94 | 0.81 | 1.09 | 0.96 | 1.03 | 1.09 | 1.02 | 0.93 | 0.77 | 0.89 | 1.26 | 0.79 | 1.01 | 0.96 | 0.99 | 1.07 | 1.16 | 0.81 | 0.85 | 0.87 | 0.92 |
| 390 | 0.957 | 0.837 | 0.890 | 0.95 | 0.95 | 0.98 | 1.52 | 0.87 | 1.03 | 0.95 | 0.98 | 1.09 | 1.19 | 1.04 | 0.74 | 0.94 | 1.08 | 0.87 | 1.04 | 1.06 | 1.00 | 1.08 | 1.16 | 0.91 | 0.85 | 0.86 | 0.97 |
| 391 | 0.957 | 0.837 | 0.890 | 0.95 | 0.95 | 0.98 | 1.52 | 0.87 | 1.03 | 0.95 | 0.98 | 1.09 | 1.19 | 1.04 | 0.74 | 0.94 | 1.08 | 0.87 | 1.04 | 1.06 | 1.00 | 1.08 | 1.16 | 0.91 | 0.85 | 0.86 | 0.97 |
| 392 | 0.957 | 0.837 | 0.890 | 0.95 | 0.95 | 0.98 | 1.52 | 0.87 | 1.03 | 0.95 | 0.98 | 1.09 | 1.19 | 1.04 | 0.74 | 0.94 | 1.08 | 0.87 | 1.04 | 1.06 | 1.00 | 1.08 | 1.16 | 0.91 | 0.85 | 0.86 | 0.97 |
| 393 | 0.957 | 0.837 | 0.890 | 0.95 | 0.95 | 0.98 | 1.52 | 0.87 | 1.03 | 0.95 | 0.98 | 1.09 | 1.19 | 1.04 | 0.74 | 0.94 | 1.08 | 0.87 | 1.04 | 1.06 | 1.00 | 1.08 | 1.16 | 0.91 | 0.85 | 0.86 | 0.97 |
| 394 | 0.957 | 0.837 | 0.890 | 0.90 | 0.95 | 0.90 | 1.06 | 0.86 | 1.19 | 0.94 | 0.94 | 1.11 | 1.14 | 1.24 | 0.72 | 0.95 | 0.94 | 0.73 | 1.01 | 1.02 | 1.01 | 1.01 | 1.11 | 0.90 | 0.88 | 0.92 | 1.00 |
| 395 | 0.957 | 0.837 | 0.890 | 0.90 | 0.95 | 0.90 | 1.06 | 0.86 | 1.19 | 0.94 | 0.94 | 1.11 | 1.14 | 1.24 | 0.72 | 0.95 | 0.94 | 0.73 | 1.01 | 1.02 | 1.01 | 1.01 | 1.11 | 0.90 | 0.88 | 0.92 | 1.00 |
| 396 | 0.957 | 0.837 | 0.890 | 0.90 | 0.95 | 0.90 | 1.06 | 0.86 | 1.19 | 0.94 | 0.94 | 1.11 | 1.14 | 1.24 | 0.72 | 0.95 | 0.94 | 0.73 | 1.01 | 1.02 | 1.01 | 1.01 | 1.11 | 0.90 | 0.88 | 0.92 | 1.00 |
| 397 | 0.957 | 0.837 | 0.890 | 0.92 | 0.96 | 1.10 | 0.94 | 0.81 | 1.09 | 0.96 | 1.03 | 1.09 | 1.02 | 0.93 | 0.77 | 0.89 | 1.26 | 0.79 | 1.01 | 0.96 | 0.99 | 1.07 | 1.16 | 0.81 | 0.85 | 0.87 | 0.92 |
| 399 | 1.006 | 1.059 | 1.040 | 1.13 | 1.05 | 1.41 | 1.21 | 0.75 | 1.16 | 1.08 | 1.04 | 1.04 | 0.98 | 1.26 | 1.07 | 1.01 | 1.09 | 1.15 | 1.10 | 1.07 | 1.08 | 1.10 | 1.10 | 1.03 | 1.10 | 1.08 | 1.02 |
| 400 | 0.970 | 0.866 | 0.910 | 0.87 | 0.90 | 1.22 | 0.82 | 0.71 | 0.98 | 1.13 | 1.02 | 0.98 | 0.83 | 1.29 | 1.04 | 0.79 | 0.74 | 0.99 | 0.98 | 0.90 | 1.04 | 1.01 | 1.07 | 0.95 | 0.92 | 0.95 | 1.08 |
| 401 | 0.970 | 0.866 | 0.910 | 0.87 | 0.90 | 1.22 | 0.82 | 0.71 | 0.98 | 1.13 | 1.02 | 0.98 | 0.83 | 1.29 | 1.04 | 0.79 | 0.74 | 0.99 | 0.98 | 0.90 | 1.04 | 1.01 | 1.07 | 0.95 | 0.92 | 0.95 | 1.08 |
| 402 | 0.970 | 0.866 | 0.910 | 0.99 | 1.00 | 1.40 | 0.90 | 0.83 | 1.05 | 1.07 | 0.99 | 1.01 | 0.94 | 0.87 | 1.07 | 1.03 | 1.02 | 1.01 | 1.04 | 0.95 | 0.95 | 0.98 | 1.23 | 1.02 | 1.00 | 0.84 | 0.91 |
| 403 | 0.970 | 0.866 | 0.910 | 0.88 | 0.94 | 1.09 | 1.09 | 0.90 | 1.10 | 0.88 | 0.94 | 0.88 | 0.97 | 0.97 | 1.06 | 0.95 | 0.96 | 0.97 | 0.97 | 1.15 | 0.99 | 0.89 | 1.10 | 0.79 | 0.85 | 0.93 | 0.88 |
| 404 | 0.970 | 0.866 | 0.910 | 0.88 | 0.94 | 1.09 | 1.09 | 0.90 | 1.10 | 0.88 | 0.94 | 0.88 | 0.97 | 0.97 | 1.06 | 0.95 | 0.96 | 0.97 | 0.97 | 1.15 | 0.99 | 0.89 | 1.10 | 0.79 | 0.85 | 0.93 | 0.88 |
| 405 | 0.970 | 0.866 | 0.910 | 1.01 | 1.16 | 1.09 | 0.99 | 0.96 | 1.06 | 1.21 | 1.14 | 1.09 | 0.93 | 0.91 | 1.14 | 0.96 | 0.91 | 1.07 | 1.10 | 1.05 | 1.02 | 0.94 | 1.21 | 0.83 | 0.90 | 0.95 | 1.00 |
| 406 | 0.970 | 0.866 | 0.910 | 1.01 | 1.16 | 1.09 | 0.99 | 0.96 | 1.06 | 1.21 | 1.14 | 1.09 | 0.93 | 0.91 | 1.14 | 0.96 | 0.91 | 1.07 | 1.10 | 1.05 | 1.02 | 0.94 | 1.21 | 0.83 | 0.90 | 0.95 | 1.00 |
| 407 | 0.970 | 0.866 | 0.910 | 0.95 | 0.98 | 0.95 | 1.19 | 0.90 | 1.16 | 0.98 | 0.98 | 1.04 | 1.14 | 1.00 | 1.04 | 1.05 | 1.16 | 0.95 | 1.05 | 0.96 | 1.07 | 1.12 | 1.40 | 1.07 | 0.94 | 0.93 | 0.95 |
| 408 | 0.970 | 0.866 | 0.910 | 0.95 | 0.98 | 0.95 | 1.19 | 0.90 | 1.16 | 0.98 | 0.98 | 1.04 | 1.14 | 1.00 | 1.04 | 1.05 | 1.16 | 0.95 | 1.05 | 0.96 | 1.07 | 1.12 | 1.40 | 1.07 | 0.94 | 0.93 | 0.95 |
| 409 | 0.970 | 0.866 | 0.910 | 0.95 | 0.98 | 0.95 | 1.19 | 0.90 | 1.16 | 0.98 | 0.98 | 1.04 | 1.14 | 1.00 | 1.04 | 1.05 | 1.16 | 0.95 | 1.05 | 0.96 | 1.07 | 1.12 | 1.40 | 1.07 | 0.94 | 0.93 | 0.95 |
| 410 | 0.970 | 0.866 | 0.910 | 0.88 | 0.94 | 1.09 | 1.09 | 0.90 | 1.10 | 0.88 | 0.94 | 0.88 | 0.97 | 0.97 | 1.06 | 0.95 | 0.96 | 0.97 | 0.97 | 1.15 | 0.99 | 0.89 | 1.10 | 0.79 | 0.85 | 0.93 | 0.88 |
| 411 | 0.970 | 0.866 | 0.910 | 0.95 | 0.98 | 0.95 | 1.19 | 0.90 | 1.16 | 0.98 | 0.98 | 1.04 | 1.14 | 1.00 | 1.04 | 1.05 | 1.16 | 0.95 | 1.05 | 0.96 | 1.07 | 1.12 | 1.40 | 1.07 | 0.94 | 0.93 | 0.95 |
| 412 | 0.970 | 0.866 | 0.910 | 0.95 | 0.98 | 0.95 | 1.19 | 0.90 | 1.16 | 0.98 | 0.98 | 1.04 | 1.14 | 1.00 | 1.04 | 1.05 | 1.16 | 0.95 | 1.05 | 0.96 | 1.07 | 1.12 | 1.40 | 1.07 | 0.94 | 0.93 | 0.95 |
| 413 | 0.970 | 0.866 | 0.910 | 0.95 | 0.98 | 0.95 | 1.19 | 0.90 | 1.16 | 0.98 | 0.98 | 1.04 | 1.14 | 1.00 | 1.04 | 1.05 | 1.16 | 0.95 | 1.05 | 0.96 | 1.07 | 1.12 | 1.40 | 1.07 | 0.94 | 0.93 | 0.95 |
| 414 | 0.970 | 0.866 | 0.910 | 0.95 | 0.98 | 0.95 | 1.19 | 0.90 | 1.16 | 0.98 | 0.98 | 1.04 | 1.14 | 1.00 | 1.04 | 1.05 | 1.16 | 0.95 | 1.05 | 0.96 | 1.07 | 1.12 | 1.40 | 1.07 | 0.94 | 0.93 | 0.95 |
| 415 | 0.970 | 0.866 | 0.910 | 0.95 | 0.98 | 0.95 | 1.19 | 0.90 | 1.16 | 0.98 | 0.98 | 1.04 | 1.14 | 1.00 | 1.04 | 1.05 | 1.16 | 0.95 | 1.05 | 0.96 | 1.07 | 1.12 | 1.40 | 1.07 | 0.94 | 0.93 | 0.95 |
| 416 | 0.970 | 0.866 | 0.910 | 0.95 | 0.98 | 0.95 | 1.19 | 0.80 | 1.16 | 0.98 | 0.98 | 1.04 | 1.14 | 1.00 | 1.04 | 1.05 | 1.16 | 0.95 | 1.05 | 0.96 | 1.07 | 1.12 | 1.40 | 1.07 | 0.94 | 0.93 | 0.95 |
| 417 | 0.970 | 0.866 | 0.910 | 0.95 | 0.98 | 0.95 | 1.19 | 0.90 | 1.16 | 0.98 | 0.98 | 1.04 | 1.14 | 1.00 | 1.04 | 1.05 | 1.16 | 0.95 | 1.05 | 0.96 | 1.07 | 1.12 | 1.40 | 1.07 | 0.94 | 0.93 | 0.95 |
| 418 | 0.970 | 0.866 | 0.910 | 0.95 | 0.96 | 0.95 | 1.19 | 0.90 | 1.16 | 0.98 | 0.98 | 1.04 | 1.14 | 1.00 | 1.04 | 1.05 | 1.16 | 0.95 | 1.05 | 0.96 | 1.07 | 1.12 | 1.40 | 1.07 | 0.94 | 0.93 | 0.95 |
| 420 | 0.970 | 0.866 | 0.910 | 0.92 | 0.94 | 0.81 | 0.97 | 0.77 | 1.04 | 1.06 | 1.02 | 0.97 | 0.98 | 0.89 | 1.06 | 0.93 | 0.94 | 0.96 | 0.92 | 0.92 | 0.95 | 0.99 | 1.13 | 0.91 | 0.89 | 0.84 | 0.95 |
| 421 | 0.970 | 0.866 | 0.910 | 0.92 | 0.94 | 0.81 | 0.97 | 0.77 | 1.04 | 1.06 | 1.02 | 0.97 | 0.98 | 0.89 | 1.06 | 0.93 | 0.94 | 0.96 | 0.92 | 0.92 | 0.95 | 0.99 | 1.13 | 0.91 | 0.89 | 0.84 | 0.95 |
| 422 | 0.970 | 0.866 | 0.910 | 0.92 | 0.94 | 0.81 | 0.97 | 0.77 | 1.04 | 1.06 | 1.02 | 0.97 | 0.98 | 0.89 | 1.06 | 0.93 | 0.94 | 0.96 | 0.92 | 0.92 | 0.95 | 0.99 | 1.13 | 0.91 | 0.89 | 0.84 | 0.95 |
| 423 | 0.970 | 0.866 | 0.910 | 0.92 | 0.94 | 0.81 | 0.97 | 0.77 | 1.04 | 1.06 | 1.02 | 0.97 | 0.98 | 0.89 | 1.06 | 0.93 | 0.94 | 0.96 | 0.92 | 0.92 | 0.95 | 0.99 | 1.13 | 0.91 | 0.89 | 0.84 | 0.95 |
| 424 | 0.970 | 0.866 | 0.910 | 0.92 | 0.94 | 0.81 | 0.97 | 0.77 | 1.04 | 1.06 | 1.02 | 0.97 | 0.98 | 0.89 | 1.06 | 0.93 | 0.94 | 0.96 | 0.92 | 0.92 | 0.95 | 0.99 | 1.13 | 0.91 | 0.89 | 0.84 | 0.95 |
| 425 | 0.970 | 0.866 | 0.910 | 0.91 | 0.94 | 0.55 | 0.75 | 0.64 | 1.14 | 1.29 | 0.96 | 0.97 | 0.95 | 0.95 | 1.05 | 0.99 | 1.04 | 0.89 | 0.91 | 1.29 | 0.91 | 0.87 | 1.03 | 0.83 | 0.90 | 0.85 | 0.93 |
| 426 | 0.970 | 0.866 | 0.910 | 0.91 | 0.94 | 0.55 | 0.75 | 0.64 | 1.14 | 1.29 | 0.96 | 0.97 | 0.95 | 0.95 | 1.05 | 0.99 | 1.04 | 0.89 | 0.91 | 1.29 | 0.91 | 0.87 | 1.03 | 0.83 | 0.90 | 0.85 | 0.93 |
| 427 | 0.970 | 0.866 | 0.910 | 0.91 | 0.94 | 0.55 | 0.75 | 0.64 | 1.14 | 1.29 | 0.96 | 0.97 | 0.95 | 0.95 | 1.05 | 0.99 | 1.04 | 0.89 | 0.91 | 1.29 | 0.91 | 0.87 | 1.03 | 0.83 | 0.90 | 0.85 | 0.93 |
| 430 | 0.988 | 0.944 | 0.960 | 0.91 | 0.91 | 0.84 | 0.66 | 0.77 | 1.00 | 0.89 | 0.95 | 0.99 | 1.00 | 0.82 | 0.90 | 0.95 | 0.72 | 0.86 | 0.96 | 0.96 | 0.96 | 1.01 | 1.16 | 0.98 | 0.79 | 0.82 | 1.00 |
| 431 | 0.988 | 0.944 | 0.960 | 0.91 | 0.91 | 0.84 | 0.66 | 0.77 | 1.00 | 0.89 | 0.95 | 0.99 | 1.00 | 0.82 | 0.90 | 0.95 | 0.72 | 0.86 | 0.96 | 0.96 | 0.96 | 1.01 | 1.16 | 0.98 | 0.79 | 0.82 | 1.00 |
| 432 | 0.988 | 0.944 | 0.960 | 0.99 | 0.96 | 1.04 | 0.83 | 0.78 | 1.10 | 1.18 | 0.97 | 1.04 | 1.08 | 0.81 | 1.23 | 1.04 | 0.90 | 1.01 | 1.00 | 1.01 | 1.03 | 1.04 | 1.19 | 0.97 | 0.77 | 0.86 | 1.00 |
| 433 | 0.988 | 0.944 | 0.960 | 0.85 | 0.85 | 0.99 | 0.99 | 0.86 | 0.92 | 0.87 | 0.87 | 0.91 | 1.07 | 0.72 | 0.85 | 0.91 | 1.01 | 0.82 | 0.88 | 0.99 | 0.95 | 1.06 | 1.09 | 0.96 | 0.82 | 0.89 | 1.02 |
| 434 | 0.988 | 0.944 | 0.960 | 0.92 | 0.92 | 0.85 | 1.14 | 1.10 | 0.94 | 0.95 | 0.96 | 1.05 | 1.05 | 0.85 | 0.70 | 0.92 | 0.88 | 0.78 | 0.98 | 1.02 | 0.98 | 0.99 | 1.11 | 0.93 | 0.79 | 0.81 | 1.08 |
| 435 | 0.988 | 0.944 | 0.960 | 0.92 | 0.92 | 0.85 | 1.14 | 1.10 | 0.94 | 0.95 | 0.96 | 1.05 | 1.05 | 0.85 | 0.70 | 0.92 | 0.88 | 0.78 | 0.98 | 1.02 | 0.98 | 0.99 | 1.11 | 0.93 | 0.79 | 0.81 | 1.08 |
| 436 | 0.988 | 0.944 | 0.960 | 0.92 | 0.92 | 0.85 | 1.14 | 1.10 | 0.94 | 0.95 | 0.96 | 1.05 | 1.05 | 0.85 | 0.70 | 0.92 | 0.88 | 0.78 | 0.98 | 1.02 | 0.98 | 0.99 | 1.11 | 0.93 | 0.79 | 0.81 | 1.08 |
| 437 | 0.988 | 0.944 | 0.960 | 0.86 | 0.90 | 0.68 | 0.87 | 0.89 | 0.95 | 0.94 | 0.86 | 0.92 | 0.98 | 0.82 | 0.82 | 0.93 | 0.80 | 0.82 | 0.94 | 0.84 | 0.94 | 0.92 | 0.97 | 0.92 | 0.81 | 0.82 | 0.98 |
| 438 | 0.988 | 0.944 | 0.960 | 0.86 | 0.90 | 0.68 | 0.87 | 0.89 | 0.95 | 0.94 | 0.86 | 0.92 | 0.98 | 0.82 | 0.82 | 0.93 | 0.80 | 0.82 | 0.94 | 0.84 | 0.94 | 0.92 | 0.97 | 0.92 | 0.81 | 0.82 | 0.98 |
| 439 | 0.988 | 0.944 | 0.960 | 0.86 | 0.90 | 0.68 | 0.87 | 0.89 | 0.95 | 0.94 | 0.86 | 0.92 | 0.98 | 0.82 | 0.82 | 0.93 | 0.80 | 0.82 | 0.94 | 0.84 | 0.94 | 0.92 | 0.97 | 0.92 | 0.81 | 0.82 | 0.98 |
| 440 | 0.988 | 0.944 | 0.960 | 0.94 | 0.97 | 0.93 | 0.99 | 1.11 | 0.93 | 1.28 | 0.96 | 0.97 | 1.22 | 0.82 | 0.84 | 0.79 | 0.81 | 0.89 | 1.01 | 0.96 | 1.05 | 1.00 | 1.09 | 1.25 | 0.89 | 0.94 | 1.08 |
| 441 | 0.988 | 0.944 | 0.960 | 1.38 | 1.12 | 1.13 | 1.01 | 1.24 | 1.15 | 1.15 | 1.28 | 0.96 | 1.20 | 0.85 | 0.92 | 1.01 | 0.95 | 0.91 | 1.08 | 1.08 | 1.22 | 1.21 | 1.05 | 1.21 | 0.93 | 0.94 | 1.08 |
| 442 | 0.988 | 0.944 | 0.960 | 0.88 | 0.92 | 0.93 | 1.14 | 1.01 | 1.01 | 1.22 | 0.97 | 1.08 | 1.15 | 0.80 | 0.93 | 0.93 | 0.87 | 0.90 | 0.92 | 0.95 | 1.01 | 1.09 | 1.22 | 1.29 | 1.00 | 0.90 | 1.12 |
| 443 | 0.988 | 0.944 | 0.960 | 0.88 | 0.92 | 0.93 | 1.14 | 1.01 | 1.01 | 1.22 | 0.97 | 1.08 | 1.15 | 0.80 | 0.93 | 0.93 | 0.87 | 0.90 | 0.92 | 0.95 | 1.01 | 1.09 | 1.22 | 1.29 | 1.00 | 0.90 | 1.12 |
| 444 | 0.988 | 0.944 | 0.960 | 0.84 | 0.90 | 0.71 | 0.84 | 0.96 | 0.91 | 1.21 | 0.84 | 1.02 | 1.10 | 0.81 | 0.94 | 0.91 | 0.85 | 0.76 | 0.99 | 0.97 | 0.91 | 1.00 | 0.93 | 1.08 | 0.90 | 0.89 | 1.17 |
| 445 | 0.988 | 0.944 | 0.960 | 0.84 | 0.90 | 0.71 | 0.84 | 0.96 | 0.91 | 1.21 | 0.84 | 1.02 | 1.10 | 0.81 | 0.94 | 0.91 | 0.85 | 0.76 | 0.99 | 0.97 | 0.91 | 1.00 | 0.93 | 1.08 | 0.90 | 0.89 | 1.17 |
| 446 | 0.988 | 0.944 | 0.960 | 0.86 | 0.90 | 0.68 | 0.87 | 0.89 | 0.95 | 0.94 | 0.86 | 0.92 | 0.98 | 0.82 | 0.82 | 0.93 | 0.80 | 0.82 | 0.94 | 0.84 | 0.94 | 0.92 | 0.97 | 0.92 | 0.81 | 0.82 | 0.98 |
| 447 | 0.988 | 0.944 | 0.960 | 0.89 | 0.94 | 1.03 | 0.88 | 1.11 | 0.96 | 0.86 | 0.95 | 0.81 | 0.91 | 1.33 | 0.64 | 0.99 | 1.03 | 0.80 | 0.90 | 0.96 | 0.97 | 1.00 | 0.86 | 0.78 | 0.77 | 0.76 | 0.93 |
| 448 | 0.988 | 0.944 | 0.960 | 0.90 | 0.90 | 0.84 | 0.79 | 1.11 | 0.90 | 0.96 | 0.94 | 0.90 | 1.17 | 0.81 | 0.83 | 0.95 | 0.76 | 0.91 | 0.93 | 0.97 | 1.01 | 1.06 | 1.08 | 1.06 | 0.87 | 0.93 | 1.18 |
| 449 | 0.988 | 0.944 | 0.960 | 0.90 | 0.90 | 0.84 | 0.79 | 1.11 | 0.90 | 0.96 | 0.94 | 0.90 | 1.17 | 0.81 | 0.83 | 0.95 | 0.76 | 0.91 | 0.93 | 0.97 | 1.01 | 1.06 | 1.08 | 1.06 | 0.87 | 0.93 | 1.18 |
| 450 | 0.988 | 0.944 | 0.960 | 0.88 | 0.88 | 0.96 | 0.89 | 0.94 | 0.95 | 0.89 | 0.91 | 1.00 | 1.17 | 0.99 | 0.96 | 0.87 | 0.93 | 0.86 | 0.96 | 0.97 | 0.93 | 0.94 | 1.16 | 0.84 | 0.82 | 0.79 | 1.07 |
| 451 | 0.988 | 0.944 | 0.960 | 0.88 | 0.88 | 0.96 | 0.89 | 0.94 | 0.95 | 0.89 | 0.91 | 1.00 | 1.17 | 0.98 | 0.96 | 0.87 | 0.93 | 0.86 | 0.96 | 0.97 | 0.93 | 0.94 | 1.16 | 0.84 | 0.82 | 0.79 | 1.07 |
| 452 | 0.988 | 0.944 | 0.960 | 0.92 | 0.94 | 1.03 | 1.08 | 1.10 | 0.88 | 0.88 | 0.97 | 1.04 | 0.93 | 0.82 | 1.07 | 0.95 | 0.82 | 1.00 | 1.01 | 1.01 | 0.96 | 0.94 | 0.94 | 0.84 | 0.89 | 0.89 | 0.94 |
| 453 | 0.988 | 0.944 | 0.960 | 0.92 | 0.88 | 1.08 | 1.24 | 0.83 | 0.88 | 0.88 | 0.90 | 0.83 | 1.02 | 0.95 | 0.84 | 0.85 | 0.94 | 0.83 | 0.92 | 0.88 | 0.90 | 1.09 | 0.99 | 0.82 | 0.76 | 0.77 | 1.01 |
| 454 | 0.988 | 0.944 | 0.960 | 0.96 | 0.92 | 1.00 | 0.84 | 0.88 | 1.03 | 0.91 | 0.91 | 1.03 | 0.95 | 0.71 | 0.89 | 0.90 | 0.86 | 0.87 | 0.98 | 0.95 | 1.00 | 0.95 | 0.87 | 0.83 | 0.84 | 0.79 | 0.95 |

### TABLE L. — PROFESSIONAL SERVICES RELATIVE VALUE UNIT (RVU) AND CONVERSION FACTOR GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

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| Zip Code | RVU GAAFs |  |  | Conversion Factor GAAFs By Category |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
|  | Work Expense | Practice Expense | Total Unit Value | Inpatient Visits | Office/ Home/ Urgent Care Visits | Therapeutic Injections | Allergy Testing | Allergy Immunotherapy | Misc. Medical | ER Visits | Consults | Physical Medicine | Cardiovascular | Immunizations | Well Baby Exams | Vision Exams | Hearing/ Speech Exams | Physical Exams | Chiropractor | Psych / Alcohol & Drug Abuse | Surgery | Radiology | Pathology | Anesthesia | Normal Deliveries | Cesarean Deliveries | Non-Deliveries |
| 455 | 0.988 | 0.944 | 0.960 | 0.92 | 0.88 | 1.08 | 1.24 | 0.83 | 0.88 | 0.88 | 0.90 | 0.83 | 1.02 | 0.95 | 0.84 | 0.85 | 0.94 | 0.83 | 0.92 | 0.88 | 0.90 | 1.09 | 0.99 | 0.82 | 0.76 | 0.77 | 1.01 |
| 456 | 0.988 | 0.944 | 0.960 | 0.88 | 0.88 | 0.98 | 0.89 | 0.94 | 0.95 | 0.80 | 0.91 | 1.00 | 1.17 | 0.99 | 0.96 | 0.87 | 0.93 | 0.86 | 0.96 | 0.97 | 0.93 | 0.94 | 1.16 | 0.84 | 0.82 | 0.79 | 1.07 |
| 457 | 0.988 | 0.944 | 0.960 | 0.86 | 0.90 | 0.68 | 0.87 | 0.89 | 0.95 | 0.94 | 0.86 | 0.92 | 0.98 | 0.82 | 0.82 | 0.93 | 0.80 | 0.82 | 0.94 | 0.84 | 0.94 | 0.92 | 0.97 | 0.92 | 0.81 | 0.82 | 0.98 |
| 458 | 0.988 | 0.944 | 0.960 | 0.85 | 0.85 | 0.99 | 0.99 | 0.86 | 0.92 | 0.87 | 0.87 | 0.91 | 1.07 | 0.72 | 0.85 | 0.91 | 1.01 | 0.82 | 0.88 | 0.99 | 0.95 | 1.06 | 1.09 | 0.96 | 0.82 | 0.89 | 1.02 |
| 459 | 0.988 | 0.944 | 0.960 | 0.92 | 0.94 | 1.03 | 1.08 | 1.10 | 0.88 | 0.88 | 0.97 | 1.04 | 0.93 | 0.82 | 1.07 | 0.95 | 0.82 | 1.00 | 1.01 | 1.01 | 0.96 | 0.94 | 0.94 | 0.84 | 0.89 | 0.89 | 0.94 |
| 460 | 0.981 | 0.922 | 0.950 | 1.03 | 0.92 | 1.08 | 1.07 | 1.03 | 1.10 | 0.92 | 1.03 | 1.04 | 1.22 | 1.04 | 0.77 | 0.87 | 1.01 | 0.84 | 0.93 | 0.93 | 1.06 | 1.18 | 1.17 | 0.89 | 0.84 | 0.83 | 0.94 |
| 461 | 0.981 | 0.922 | 0.950 | 1.03 | 0.92 | 1.08 | 1.07 | 1.03 | 1.10 | 0.92 | 1.03 | 1.04 | 1.22 | 1.04 | 0.77 | 0.87 | 1.01 | 0.84 | 0.93 | 0.93 | 1.06 | 1.18 | 1.17 | 0.89 | 0.84 | 0.83 | 0.94 |
| 462 | 0.981 | 0.922 | 0.950 | 1.09 | 1.01 | 1.15 | 0.89 | 0.93 | 1.13 | 0.93 | 1.07 | 1.21 | 1.19 | 0.96 | 1.08 | 1.01 | 1.05 | 0.96 | 1.10 | 1.08 | 1.09 | 1.04 | 1.34 | 0.90 | 0.81 | 0.86 | 1.03 |
| 463 | 0.981 | 0.922 | 0.950 | 1.10 | 1.04 | 1.22 | 1.15 | 0.96 | 1.13 | 1.08 | 1.09 | 1.25 | 1.20 | 1.28 | 0.90 | 1.03 | 1.13 | 0.84 | 1.08 | 0.94 | 1.14 | 1.02 | 1.34 | 0.92 | 1.07 | 1.03 | 1.36 |
| 464 | 0.981 | 0.922 | 0.950 | 1.10 | 1.04 | 1.22 | 1.15 | 0.96 | 1.13 | 1.08 | 1.09 | 1.25 | 1.20 | 1.28 | 0.90 | 1.03 | 1.13 | 0.84 | 1.08 | 0.94 | 1.14 | 1.02 | 1.34 | 0.92 | 1.07 | 1.03 | 1.36 |
| 465 | 0.981 | 0.922 | 0.950 | 1.03 | 0.90 | 1.35 | 1.07 | 0.92 | 1.10 | 1.07 | 1.02 | 1.08 | 1.08 | 0.88 | 1.12 | 0.97 | 1.07 | 1.04 | 0.92 | 0.91 | 0.97 | 1.02 | 1.03 | 0.79 | 0.87 | 0.83 | 0.84 |
| 466 | 0.981 | 0.922 | 0.950 | 1.03 | 0.90 | 1.35 | 1.07 | 0.92 | 1.10 | 1.07 | 1.02 | 1.08 | 1.08 | 0.88 | 1.12 | 0.97 | 1.07 | 1.04 | 0.92 | 0.91 | 0.97 | 1.02 | 1.03 | 0.79 | 0.87 | 0.83 | 0.84 |
| 467 | 0.981 | 0.922 | 0.950 | 0.97 | 0.92 | 0.96 | 0.89 | 1.01 | 0.93 | 1.01 | 1.01 | 1.18 | 1.07 | 0.96 | 0.78 | 1.03 | 1.03 | 0.78 | 0.97 | 0.94 | 0.97 | 1.03 | 1.02 | 0.81 | 0.88 | 0.95 | 1.03 |
| 468 | 0.981 | 0.922 | 0.950 | 0.97 | 0.92 | 0.96 | 0.89 | 1.01 | 0.93 | 1.01 | 1.01 | 1.18 | 1.07 | 0.96 | 0.78 | 1.03 | 1.03 | 0.78 | 0.97 | 0.94 | 0.97 | 1.03 | 1.02 | 0.81 | 0.88 | 0.95 | 1.03 |
| 469 | 0.981 | 0.922 | 0.950 | 1.03 | 0.88 | 0.99 | 1.15 | 0.87 | 1.11 | 0.93 | 0.95 | 1.15 | 1.43 | 1.17 | 0.70 | 0.95 | 1.17 | 0.93 | 0.96 | 0.92 | 1.08 | 1.14 | 1.27 | 0.67 | 0.86 | 0.92 | 1.05 |
| 470 | 0.981 | 0.922 | 0.950 | 0.93 | 0.91 | 0.87 | 0.88 | 0.86 | 0.96 | 1.11 | 0.92 | 1.09 | 1.13 | 0.88 | 0.86 | 0.90 | 0.82 | 0.83 | 0.91 | 0.92 | 1.07 | 0.98 | 1.21 | 0.88 | 0.78 | 0.80 | 0.90 |
| 471 | 0.981 | 0.922 | 0.950 | 0.93 | 0.91 | 0.87 | 0.88 | 0.86 | 0.96 | 1.11 | 0.92 | 1.09 | 1.13 | 0.88 | 0.86 | 0.90 | 0.82 | 0.83 | 0.91 | 0.92 | 1.07 | 0.98 | 1.21 | 0.88 | 0.78 | 0.80 | 0.90 |
| 472 | 0.981 | 0.922 | 0.950 | 0.93 | 0.91 | 0.87 | 0.88 | 0.86 | 0.96 | 1.11 | 0.92 | 1.09 | 1.13 | 0.88 | 0.86 | 0.90 | 0.82 | 0.83 | 0.91 | 0.92 | 1.07 | 0.98 | 1.21 | 0.88 | 0.78 | 0.80 | 0.90 |
| 473 | 0.981 | 0.922 | 0.950 | 1.03 | 0.92 | 1.08 | 1.07 | 1.03 | 1.10 | 0.92 | 1.03 | 1.04 | 1.22 | 1.04 | 0.77 | 0.87 | 1.04 | 0.84 | 0.93 | 0.93 | 1.06 | 1.18 | 1.17 | 0.89 | 0.84 | 0.83 | 0.94 |
| 474 | 0.981 | 0.922 | 0.950 | 0.93 | 0.91 | 0.87 | 0.88 | 0.86 | 0.96 | 1.11 | 0.92 | 1.09 | 1.13 | 0.88 | 0.86 | 0.90 | 0.82 | 0.83 | 0.91 | 0.92 | 1.07 | 0.98 | 1.21 | 0.88 | 0.78 | 0.80 | 0.90 |
| 475 | 0.981 | 0.922 | 0.950 | 0.94 | 0.93 | 1.07 | 0.89 | 0.87 | 1.15 | 0.94 | 0.96 | 1.40 | 1.07 | 0.79 | 0.64 | 0.89 | 0.78 | 0.73 | 1.22 | 1.02 | 1.00 | 1.08 | 1.08 | 0.81 | 0.95 | 1.01 | 1.06 |
| 476 | 0.981 | 0.922 | 0.950 | 0.94 | 0.93 | 1.07 | 0.89 | 0.87 | 1.15 | 0.94 | 0.96 | 1.40 | 1.07 | 0.79 | 0.64 | 0.89 | 0.78 | 0.73 | 1.22 | 1.02 | 1.00 | 1.08 | 1.08 | 0.81 | 0.95 | 1.01 | 1.06 |
| 477 | 0.981 | 0.922 | 0.950 | 0.94 | 0.93 | 1.07 | 0.89 | 0.87 | 1.15 | 0.94 | 0.96 | 1.40 | 1.07 | 0.79 | 0.64 | 0.89 | 0.78 | 0.73 | 1.22 | 1.02 | 1.00 | 1.08 | 1.08 | 0.81 | 0.95 | 1.01 | 1.06 |
| 478 | 0.981 | 0.922 | 0.950 | 0.93 | 0.91 | 0.87 | 0.88 | 0.86 | 0.96 | 1.11 | 0.92 | 1.09 | 1.13 | 0.88 | 0.86 | 0.90 | 0.82 | 0.83 | 0.91 | 0.92 | 1.07 | 0.98 | 1.21 | 0.88 | 0.78 | 0.80 | 0.90 |
| 479 | 0.981 | 0.922 | 0.950 | 1.03 | 0.88 | 0.99 | 1.15 | 0.87 | 1.11 | 0.93 | 0.95 | 1.15 | 1.43 | 1.17 | 0.70 | 0.95 | 1.17 | 0.93 | 0.96 | 0.92 | 1.08 | 1.14 | 1.27 | 0.67 | 0.86 | 0.92 | 1.05 |
| 480 | 0.997 | 0.938 | 0.960 | 0.83 | 0.91 | 0.70 | 0.79 | 0.81 | 0.87 | 0.95 | 0.84 | 1.36 | 0.93 | 0.93 | 1.11 | 1.01 | 0.91 | 1.07 | 1.05 | 0.96 | 0.80 | 1.17 | 0.94 | 0.87 | 0.95 | 0.81 | 0.80 |
| 481 | 1.043 | 1.038 | 1.040 | 0.84 | 0.86 | 0.62 | 0.80 | 0.92 | 0.73 | 0.83 | 0.82 | 1.16 | 0.77 | 0.69 | 1.04 | 0.93 | 0.76 | 0.98 | 0.99 | 0.89 | 0.76 | 0.81 | 0.77 | 0.80 | 0.78 | 0.71 | 0.64 |
| 482 | 1.043 | 1.038 | 1.040 | 0.90 | 0.93 | 0.92 | 1.06 | 0.94 | 0.77 | 0.84 | 0.85 | 1.32 | 0.74 | 0.69 | 1.02 | 1.13 | 0.85 | 1.01 | 1.12 | 0.93 | 0.84 | 0.89 | 0.85 | 0.86 | 0.76 | 0.68 | 0.63 |
| 483 | 1.043 | 1.038 | 1.040 | 0.80 | 0.82 | 1.01 | 0.78 | 0.94 | 0.75 | 0.84 | 0.79 | 1.49 | 0.81 | 0.77 | 1.05 | 0.97 | 0.89 | 0.99 | 1.03 | 0.92 | 0.72 | 0.94 | 0.82 | 0.83 | 0.78 | 0.74 | 1.08 |
| 484 | 0.997 | 0.938 | 0.960 | 0.82 | 0.86 | 0.44 | 0.95 | 0.97 | 0.77 | 0.81 | 0.80 | 1.12 | 0.86 | 0.89 | 1.01 | 0.95 | 0.79 | 0.97 | 0.94 | 0.96 | 0.79 | 0.81 | 0.76 | 0.79 | 0.77 | 0.79 | 0.66 |
| 485 | 0.997 | 0.938 | 0.960 | 0.82 | 0.86 | 0.44 | 0.95 | 0.97 | 0.77 | 0.81 | 0.80 | 1.12 | 0.86 | 0.89 | 1.01 | 0.95 | 0.79 | 0.97 | 0.94 | 0.96 | 0.79 | 0.81 | 0.76 | 0.79 | 0.77 | 0.79 | 0.66 |
| 486 | 0.997 | 0.938 | 0.960 | 0.85 | 0.88 | 0.73 | 0.79 | 0.92 | 0.87 | 0.81 | 0.85 | 1.49 | 0.80 | 0.53 | 1.00 | 1.01 | 0.91 | 1.05 | 1.02 | 0.89 | 0.79 | 0.87 | 0.77 | 0.80 | 0.86 | 0.89 | 0.70 |
| 487 | 0.997 | 0.938 | 0.960 | 0.85 | 0.88 | 0.73 | 0.79 | 0.92 | 0.87 | 0.81 | 0.85 | 1.49 | 0.80 | 0.53 | 1.00 | 1.01 | 0.91 | 1.05 | 1.02 | 0.89 | 0.79 | 0.87 | 0.77 | 0.80 | 0.86 | 0.89 | 0.70 |
| 488 | 0.997 | 0.938 | 0.960 | 0.84 | 0.86 | 0.65 | 0.83 | 0.92 | 0.74 | 0.76 | 0.84 | 0.90 | 0.82 | 0.73 | 0.89 | 0.93 | 0.92 | 0.96 | 0.91 | 0.90 | 0.79 | 0.81 | 0.79 | 0.80 | 0.81 | 0.78 | 0.61 |
| 489 | 0.997 | 0.938 | 0.960 | 0.84 | 0.86 | 0.65 | 0.83 | 0.92 | 0.74 | 0.76 | 0.84 | 0.90 | 0.82 | 0.73 | 0.89 | 0.93 | 0.92 | 0.96 | 0.91 | 0.90 | 0.79 | 0.81 | 0.79 | 0.80 | 0.81 | 0.78 | 0.61 |
| 490 | 0.997 | 0.938 | 0.960 | 0.90 | 0.88 | 0.73 | 0.95 | 0.89 | 0.85 | 0.92 | 0.92 | 0.92 | 0.94 | 0.88 | 0.88 | 0.99 | 0.92 | 0.95 | 0.90 | 0.89 | 0.84 | 0.90 | 0.83 | 0.98 | 1.19 | 1.08 | 0.79 |
| 491 | 0.997 | 0.938 | 0.960 | 0.90 | 0.88 | 0.73 | 0.95 | 0.89 | 0.85 | 0.92 | 0.92 | 0.92 | 0.94 | 0.88 | 0.88 | 0.99 | 0.92 | 0.95 | 0.90 | 0.89 | 0.84 | 0.90 | 0.83 | 0.98 | 1.19 | 1.08 | 0.79 |
| 492 | 0.997 | 0.938 | 0.960 | 0.90 | 0.88 | 0.73 | 0.95 | 0.89 | 0.85 | 0.92 | 0.92 | 0.92 | 0.94 | 0.88 | 0.88 | 0.99 | 0.92 | 0.95 | 0.90 | 0.89 | 0.84 | 0.90 | 0.83 | 0.98 | 1.19 | 1.08 | 0.79 |
| 493 | 0.997 | 0.938 | 0.960 | 0.86 | 0.89 | 1.09 | 0.82 | 0.90 | 0.85 | 0.82 | 0.84 | 1.04 | 0.84 | 0.89 | 0.79 | 0.94 | 0.82 | 0.95 | 0.96 | 0.87 | 0.85 | 0.81 | 0.88 | 0.81 | 0.77 | 0.78 | 0.79 |
| 494 | 0.997 | 0.938 | 0.960 | 0.86 | 0.89 | 1.09 | 0.82 | 0.90 | 0.85 | 0.82 | 0.84 | 1.04 | 0.84 | 0.89 | 0.79 | 0.94 | 0.82 | 0.95 | 0.96 | 0.87 | 0.85 | 0.81 | 0.88 | 0.81 | 0.77 | 0.78 | 0.79 |
| 495 | 0.997 | 0.938 | 0.960 | 0.86 | 0.89 | 1.09 | 0.82 | 0.90 | 0.85 | 0.82 | 0.84 | 1.04 | 0.84 | 0.89 | 0.79 | 0.94 | 0.82 | 0.95 | 0.96 | 0.87 | 0.85 | 0.81 | 0.88 | 0.81 | 0.77 | 0.78 | 0.79 |
| 496 | 0.997 | 0.938 | 0.960 | 0.86 | 0.89 | 1.09 | 0.82 | 0.90 | 0.85 | 0.82 | 0.84 | 1.04 | 0.84 | 0.89 | 0.79 | 0.94 | 0.82 | 0.95 | 0.96 | 0.87 | 0.85 | 0.81 | 0.88 | 0.81 | 0.77 | 0.78 | 0.79 |
| 497 | 0.997 | 0.938 | 0.960 | 0.86 | 0.89 | 1.09 | 0.82 | 0.90 | 0.85 | 0.82 | 0.84 | 1.04 | 0.84 | 0.89 | 0.79 | 0.94 | 0.82 | 0.95 | 0.96 | 0.87 | 0.85 | 0.81 | 0.88 | 0.81 | 0.77 | 0.78 | 0.79 |
| 498 | 0.997 | 0.938 | 0.960 | 0.88 | 0.93 | 1.04 | 0.94 | 0.98 | 0.93 | 0.99 | 0.91 | 0.88 | 1.15 | 0.89 | 0.83 | 0.99 | 1.03 | 0.96 | 0.88 | 0.87 | 0.91 | 0.97 | 1.26 | 1.01 | 0.95 | 1.01 | 0.88 |
| 499 | 0.997 | 0.938 | 0.960 | 0.88 | 0.93 | 1.04 | 0.94 | 0.98 | 0.93 | 0.99 | 0.91 | 0.88 | 1.15 | 0.89 | 0.83 | 0.99 | 1.03 | 0.96 | 0.88 | 0.87 | 0.91 | 0.97 | 1.26 | 1.01 | 0.95 | 1.01 | 0.88 |
| 500 | 0.959 | 0.876 | 0.910 | 1.01 | 0.94 | 0.62 | 0.87 | 0.84 | 0.93 | 0.87 | 1.03 | 1.04 | 1.04 | 0.65 | 0.91 | 1.02 | 0.99 | 1.01 | 0.95 | 1.19 | 0.92 | 0.98 | 0.96 | 0.86 | 0.95 | 0.95 | 0.79 |
| 501 | 0.959 | 0.876 | 0.910 | 1.01 | 0.94 | 0.62 | 0.87 | 0.84 | 0.93 | 0.87 | 1.03 | 1.04 | 1.04 | 0.65 | 0.91 | 1.02 | 0.99 | 1.01 | 0.95 | 1.19 | 0.92 | 0.98 | 0.96 | 0.86 | 0.95 | 0.95 | 0.79 |
| 502 | 0.959 | 0.876 | 0.910 | 1.01 | 0.94 | 0.62 | 0.87 | 0.84 | 0.93 | 0.87 | 1.03 | 1.04 | 1.04 | 0.65 | 0.91 | 1.02 | 0.99 | 1.01 | 0.95 | 1.19 | 0.92 | 0.98 | 0.96 | 0.86 | 0.95 | 0.95 | 0.79 |
| 503 | 0.959 | 0.876 | 0.910 | 1.01 | 0.94 | 0.62 | 0.87 | 0.84 | 0.93 | 0.87 | 1.03 | 1.04 | 1.04 | 0.65 | 0.91 | 1.02 | 0.99 | 1.01 | 0.95 | 1.19 | 0.92 | 0.98 | 0.96 | 0.86 | 0.95 | 0.95 | 0.79 |
| 504 | 0.959 | 0.876 | 0.910 | 0.93 | 0.90 | 0.74 | 1.11 | 1.13 | 0.79 | 0.78 | 1.10 | 0.82 | 0.83 | 0.78 | 0.82 | 0.94 | 1.22 | 0.98 | 0.83 | 0.93 | 0.88 | 1.01 | 1.01 | 0.77 | 0.89 | 0.90 | 0.74 |
| 505 | 0.959 | 0.876 | 0.910 | 0.91 | 0.94 | 0.84 | 1.30 | 0.96 | 0.90 | 0.82 | 1.03 | 0.83 | 0.96 | 0.86 | 0.98 | 0.91 | 0.98 | 0.83 | 0.82 | 0.99 | 0.87 | 0.97 | 0.95 | 0.81 | 0.93 | 1.03 | 0.73 |
| 506 | 0.959 | 0.876 | 0.910 | 0.93 | 0.90 | 0.74 | 1.11 | 1.13 | 0.79 | 0.78 | 1.10 | 0.82 | 0.83 | 0.78 | 0.82 | 0.94 | 1.22 | 0.98 | 0.83 | 0.93 | 0.88 | 1.01 | 1.01 | 0.77 | 0.89 | 0.90 | 0.74 |
| 507 | 0.959 | 0.876 | 0.910 | 0.93 | 0.90 | 0.74 | 1.11 | 1.13 | 0.79 | 0.78 | 1.10 | 0.82 | 0.83 | 0.78 | 0.82 | 0.94 | 1.22 | 0.98 | 0.83 | 0.93 | 0.88 | 1.01 | 1.01 | 0.77 | 0.89 | 0.90 | 0.74 |
| 508 | 0.959 | 0.876 | 0.910 | 0.91 | 0.94 | 0.84 | 1.30 | 0.96 | 0.90 | 0.82 | 1.03 | 0.83 | 0.96 | 0.86 | 0.98 | 0.91 | 0.98 | 0.83 | 0.82 | 0.99 | 0.87 | 0.97 | 0.95 | 0.81 | 0.93 | 1.03 | 0.73 |
| 509 | 0.959 | 0.876 | 0.910 | 1.01 | 0.94 | 0.62 | 0.87 | 0.84 | 0.93 | 0.87 | 1.03 | 1.04 | 1.04 | 0.65 | 0.91 | 1.02 | 0.98 | 1.01 | 0.95 | 1.19 | 0.92 | 0.98 | 0.96 | 0.86 | 0.95 | 0.95 | 0.79 |
| 510 | 0.959 | 0.876 | 0.910 | 0.91 | 0.94 | 0.84 | 1.30 | 0.96 | 0.90 | 0.82 | 1.03 | 0.83 | 0.96 | 0.86 | 0.98 | 0.91 | 0.98 | 0.83 | 0.82 | 0.99 | 0.87 | 0.97 | 0.95 | 0.81 | 0.93 | 1.03 | 0.73 |
| 511 | 0.959 | 0.876 | 0.910 | 1.01 | 1.05 | 0.94 | 0.93 | 0.96 | 0.89 | 0.91 | 1.06 | 1.00 | 0.96 | 0.79 | 1.04 | 1.39 | 1.06 | 1.02 | 0.95 | 0.99 | 0.84 | 0.87 | 0.92 | 0.78 | 0.97 | 0.96 | 0.70 |
| 512 | 0.959 | 0.876 | 0.910 | 0.91 | 0.94 | 0.84 | 1.30 | 0.96 | 0.90 | 0.82 | 1.03 | 0.83 | 0.96 | 0.86 | 0.98 | 0.91 | 0.98 | 0.83 | 0.82 | 0.99 | 0.87 | 0.97 | 0.95 | 0.81 | 0.93 | 1.03 | 0.73 |
| 513 | 0.959 | 0.876 | 0.910 | 0.91 | 0.94 | 0.84 | 1.30 | 0.96 | 0.90 | 0.82 | 1.03 | 0.83 | 0.96 | 0.86 | 0.98 | 0.91 | 0.98 | 0.83 | 0.82 | 0.99 | 0.87 | 0.97 | 0.95 | 0.81 | 0.93 | 1.03 | 0.73 |
| 514 | 0.959 | 0.876 | 0.910 | 0.91 | 0.94 | 0.84 | 1.30 | 0.96 | 0.90 | 0.82 | 1.03 | 0.83 | 0.96 | 0.86 | 0.98 | 0.91 | 0.98 | 0.83 | 0.82 | 0.99 | 0.87 | 0.97 | 0.95 | 0.81 | 0.93 | 1.03 | 0.73 |
| 515 | 0.959 | 0.876 | 0.910 | 0.91 | 0.94 | 0.84 | 1.30 | 0.96 | 0.90 | 0.82 | 1.03 | 0.83 | 0.96 | 0.86 | 0.98 | 0.91 | 0.98 | 0.83 | 0.82 | 0.99 | 0.87 | 0.97 | 0.95 | 0.81 | 0.93 | 1.03 | 0.73 |
| 516 | 0.959 | 0.876 | 0.910 | 0.91 | 0.94 | 0.84 | 1.30 | 0.96 | 0.90 | 0.82 | 1.03 | 0.83 | 0.96 | 0.86 | 0.98 | 0.91 | 0.98 | 0.83 | 0.82 | 0.99 | 0.87 | 0.97 | 0.95 | 0.81 | 0.93 | 1.03 | 0.73 |

# TABLE L — PROFESSIONAL SERVICES RELATIVE VALUE UNIT (RVU) AND CONVERSION FACTOR GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

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| Zip Code | RVU GAAFs | | | Conversion Factor GAAFs By Category | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Work Expense | Practice Expense | Total Unit Value | Inpatient Visits | Office/Home/Urgent Care Visits | Therapeutic Injections | Allergy Testing | Allergy Immunotherapy | Misc Medical | ER Visits | Consults | Physical Medicine | Cardiovascular | Immunizations | Well Baby Exams | Vision Exams | Hearing/Speech Exams | Physical Exams | Chiropractor | Psych / Alcohol & Drug Abuse | Surgery | Radiology | Pathology | Anesthesia | Normal Deliveries | Cesarean Deliveries | Non-Deliveries |
| 520 | 0.959 | 0.876 | 0.910 | 1.05 | 1.06 | 0.77 | 1.16 | 1.21 | 0.97 | 0.82 | 1.12 | 0.93 | 1.02 | 0.75 | 1.07 | 1.06 | 1.02 | 0.97 | 0.94 | 1.05 | 0.96 | 1.00 | 0.86 | 0.89 | 1.03 | 1.04 | 0.89 |
| 521 | 0.959 | 0.876 | 0.910 | 0.93 | 0.90 | 0.74 | 1.11 | 1.13 | 0.79 | 0.78 | 1.10 | 0.82 | 0.83 | 0.78 | 0.82 | 0.94 | 1.22 | 0.96 | 0.83 | 0.93 | 0.88 | 1.01 | 1.01 | 0.77 | 0.89 | 0.90 | 0.74 |
| 522 | 0.959 | 0.876 | 0.910 | 1.05 | 1.06 | 0.77 | 1.16 | 1.21 | 0.97 | 0.82 | 1.12 | 0.93 | 1.02 | 0.75 | 1.07 | 1.06 | 1.02 | 0.97 | 0.94 | 1.05 | 0.96 | 1.00 | 0.86 | 0.89 | 1.03 | 1.04 | 0.89 |
| 523 | 0.959 | 0.876 | 0.910 | 1.05 | 1.06 | 0.77 | 1.16 | 1.21 | 0.97 | 0.82 | 1.12 | 0.93 | 1.02 | 0.75 | 1.07 | 1.06 | 1.02 | 0.97 | 0.94 | 1.05 | 0.96 | 1.00 | 0.86 | 0.89 | 1.03 | 1.04 | 0.89 |
| 524 | 0.959 | 0.876 | 0.910 | 1.05 | 1.06 | 0.77 | 1.16 | 1.21 | 0.97 | 0.82 | 1.12 | 0.93 | 1.02 | 0.75 | 1.07 | 1.06 | 1.02 | 0.97 | 0.94 | 1.05 | 0.96 | 1.00 | 0.86 | 0.89 | 1.03 | 1.04 | 0.89 |
| 525 | 0.959 | 0.876 | 0.910 | 1.05 | 1.06 | 0.77 | 1.16 | 1.21 | 0.97 | 0.82 | 1.12 | 0.93 | 1.02 | 0.75 | 1.07 | 1.06 | 1.02 | 0.97 | 0.94 | 1.05 | 0.96 | 1.00 | 0.86 | 0.89 | 1.03 | 1.04 | 0.89 |
| 526 | 0.959 | 0.876 | 0.910 | 1.05 | 1.06 | 0.77 | 1.16 | 1.21 | 0.97 | 0.82 | 1.12 | 0.93 | 1.02 | 0.75 | 1.07 | 1.06 | 1.02 | 0.97 | 0.94 | 1.05 | 0.96 | 1.00 | 0.86 | 0.89 | 1.03 | 1.04 | 0.89 |
| 527 | 0.959 | 0.876 | 0.910 | 1.05 | 1.06 | 0.77 | 1.16 | 1.21 | 0.97 | 0.82 | 1.12 | 0.93 | 1.02 | 0.75 | 1.07 | 1.06 | 1.02 | 0.97 | 0.94 | 1.05 | 0.96 | 1.00 | 0.86 | 0.89 | 1.03 | 1.04 | 0.89 |
| 528 | 0.959 | 0.876 | 0.910 | 1.05 | 1.06 | 0.77 | 1.16 | 1.21 | 0.97 | 0.82 | 1.12 | 0.93 | 1.02 | 0.75 | 1.07 | 1.06 | 1.02 | 0.97 | 0.94 | 1.05 | 0.96 | 1.00 | 0.86 | 0.89 | 1.03 | 1.04 | 0.89 |
| 530 | 0.981 | 0.929 | 0.950 | 1.13 | 1.22 | 0.97 | 1.19 | 1.31 | 1.22 | 0.90 | 1.19 | 1.30 | 1.44 | 1.19 | 0.88 | 1.27 | 1.25 | 1.14 | 1.16 | 1.13 | 1.16 | 1.19 | 1.28 | 1.19 | 0.98 | 1.12 | 1.01 |
| 531 | 0.981 | 0.929 | 0.950 | 1.08 | 1.14 | 1.06 | 1.19 | 1.13 | 1.12 | 0.99 | 1.09 | 1.39 | 1.61 | 0.99 | 0.85 | 1.00 | 1.21 | 1.01 | 1.14 | 1.09 | 1.13 | 1.16 | 1.28 | 1.09 | 0.98 | 1.03 | 1.03 |
| 532 | 0.981 | 0.929 | 0.950 | 1.27 | 1.31 | 0.87 | 1.29 | 1.35 | 1.31 | 1.10 | 1.29 | 1.42 | 1.82 | 0.97 | 0.93 | 1.13 | 1.21 | 1.06 | 1.25 | 1.23 | 1.19 | 1.24 | 1.34 | 1.11 | 1.02 | 1.13 | 1.02 |
| 534 | 0.981 | 0.929 | 0.950 | 1.18 | 1.17 | 0.85 | 1.02 | 1.01 | 1.16 | 0.93 | 1.37 | 1.35 | 1.28 | 1.16 | 1.40 | 0.84 | 1.07 | 1.00 | 1.13 | 1.11 | 1.07 | 0.95 | 1.09 | 1.16 | 0.93 | 0.89 | 0.94 |
| 535 | 0.981 | 0.929 | 0.950 | 1.16 | 1.11 | 1.04 | 1.19 | 1.18 | 1.09 | 1.06 | 1.16 | 1.23 | 1.52 | 0.81 | 0.86 | 0.89 | 1.22 | 0.97 | 1.10 | 1.04 | 1.07 | 1.02 | 1.29 | 0.92 | 0.96 | 1.15 | 1.11 |
| 537 | 0.981 | 0.929 | 0.950 | 1.29 | 1.33 | 0.84 | 1.68 | 1.56 | 1.41 | 1.03 | 1.29 | 1.08 | 1.64 | 0.90 | 1.64 | 0.99 | 1.44 | 1.36 | 1.20 | 1.30 | 1.28 | 1.29 | 1.35 | 0.94 | 1.24 | 1.29 | 1.30 |
| 538 | 0.981 | 0.929 | 0.950 | 1.16 | 1.11 | 1.04 | 1.19 | 1.18 | 1.09 | 1.06 | 1.16 | 1.23 | 1.52 | 0.81 | 0.86 | 0.89 | 1.22 | 0.97 | 1.10 | 1.04 | 1.07 | 1.02 | 1.29 | 0.92 | 0.96 | 1.15 | 1.11 |
| 539 | 0.981 | 0.929 | 0.950 | 1.14 | 1.13 | 1.03 | 1.19 | 1.31 | 1.08 | 0.93 | 1.11 | 1.17 | 1.25 | 0.77 | 0.85 | 0.69 | 1.15 | 0.88 | 1.06 | 0.96 | 1.08 | 1.07 | 1.32 | 0.90 | 0.97 | 1.12 | 1.02 |
| 540 | 0.981 | 0.929 | 0.950 | 1.01 | 1.08 | 0.83 | 1.18 | 1.08 | 0.88 | 0.85 | 1.12 | 0.77 | 0.77 | 0.93 | 1.09 | 0.74 | 1.03 | 0.90 | 0.95 | 0.94 | 0.93 | 1.02 | 0.88 | 1.05 | 1.06 | 0.99 | 0.84 |
| 541 | 0.981 | 0.929 | 0.950 | 1.10 | 1.04 | 1.07 | 1.01 | 1.16 | 1.15 | 1.05 | 1.10 | 1.09 | 1.26 | 1.03 | 1.06 | 0.90 | 1.09 | 0.92 | 1.00 | 1.24 | 1.08 | 1.10 | 1.15 | 0.99 | 1.00 | 1.02 | 0.99 |
| 542 | 0.981 | 0.929 | 0.950 | 1.10 | 1.04 | 1.07 | 1.01 | 1.16 | 1.15 | 1.05 | 1.10 | 1.09 | 1.26 | 1.03 | 1.06 | 0.90 | 1.09 | 0.92 | 1.00 | 1.24 | 1.08 | 1.10 | 1.15 | 0.99 | 1.00 | 1.02 | 0.99 |
| 543 | 0.981 | 0.929 | 0.950 | 1.07 | 1.08 | 0.73 | 1.35 | 1.12 | 1.08 | 0.90 | 1.07 | 0.98 | 1.27 | 1.07 | 0.74 | 0.93 | 1.30 | 0.84 | 1.03 | 1.01 | 1.02 | 1.06 | 1.16 | 1.09 | 0.94 | 0.97 | 0.86 |
| 544 | 0.981 | 0.929 | 0.950 | 1.07 | 1.24 | 1.00 | 1.10 | 1.14 | 1.16 | 1.00 | 1.18 | 1.22 | 1.37 | 1.38 | 0.79 | 1.00 | 1.22 | 0.90 | 1.12 | 1.27 | 1.07 | 1.09 | 1.24 | 1.13 | 0.99 | 1.04 | 1.03 |
| 545 | 0.981 | 0.929 | 0.950 | 1.06 | 1.13 | 0.84 | 0.99 | 1.23 | 1.05 | 1.06 | 1.08 | 1.25 | 1.11 | 1.06 | 0.78 | 0.98 | 1.50 | 0.81 | 1.00 | 1.18 | 1.02 | 1.11 | 1.21 | 1.02 | 0.98 | 1.02 | 0.97 |
| 546 | 0.981 | 0.929 | 0.950 | 1.27 | 1.20 | 0.86 | 0.83 | 1.28 | 1.38 | 1.54 | 1.11 | 1.12 | 1.72 | 0.95 | 0.75 | 1.13 | 1.20 | 0.87 | 1.17 | 1.07 | 1.26 | 1.58 | 1.41 | 0.98 | 1.00 | 1.08 | 1.22 |
| 547 | 0.981 | 0.929 | 0.950 | 1.13 | 1.19 | 1.06 | 1.02 | 1.14 | 1.08 | 1.11 | 1.10 | 1.14 | 1.36 | 1.39 | 0.99 | 0.97 | 1.31 | 1.14 | 1.05 | 1.19 | 1.07 | 1.04 | 1.44 | 1.04 | 0.96 | 1.03 | 1.01 |
| 548 | 0.981 | 0.929 | 0.950 | 1.05 | 1.13 | 0.84 | 0.99 | 1.23 | 1.05 | 1.06 | 1.08 | 1.25 | 1.11 | 1.06 | 0.78 | 0.98 | 1.50 | 0.81 | 1.00 | 1.18 | 1.02 | 1.11 | 1.21 | 1.02 | 0.96 | 1.02 | 0.97 |
| 549 | 0.981 | 0.929 | 0.950 | 1.08 | 1.08 | 0.95 | 1.02 | 1.07 | 1.05 | 0.99 | 1.05 | 1.10 | 1.31 | 1.16 | 0.75 | 0.94 | 1.09 | 0.80 | 1.09 | 1.04 | 1.03 | 1.10 | 1.13 | 1.03 | 0.88 | 0.95 | 0.89 |
| 550 | 0.990 | 0.974 | 0.980 | 1.12 | 1.14 | 1.18 | 1.01 | 1.09 | 1.19 | 0.99 | 1.15 | 1.06 | 1.15 | 1.22 | 1.35 | 0.96 | 1.06 | 1.14 | 1.00 | 0.99 | 0.96 | 0.97 | 1.16 | 0.83 | 0.95 | 0.94 | 0.98 |
| 551 | 0.990 | 0.974 | 0.980 | 1.14 | 1.17 | 1.20 | 1.01 | 1.02 | 1.11 | 1.14 | 1.18 | 0.94 | 0.96 | 1.04 | 1.39 | 0.89 | 1.03 | 1.31 | 1.03 | 1.09 | 0.91 | 0.87 | 1.01 | 0.67 | 0.95 | 0.98 | 0.73 |
| 553 | 0.990 | 0.974 | 0.980 | 1.13 | 1.08 | 1.13 | 0.80 | 1.17 | 1.09 | 1.02 | 1.13 | 0.96 | 0.96 | 0.92 | 1.36 | 0.95 | 1.06 | 1.27 | 0.95 | 1.08 | 0.86 | 0.89 | 0.99 | 0.70 | 0.93 | 0.98 | 0.71 |
| 554 | 0.990 | 0.974 | 0.980 | 1.17 | 1.16 | 1.17 | 1.18 | 1.18 | 1.19 | 1.01 | 1.19 | 1.01 | 1.12 | 0.83 | 1.36 | 1.10 | 1.01 | 1.35 | 1.07 | 1.11 | 0.97 | 0.93 | 1.07 | 0.74 | 0.95 | 1.04 | 0.77 |
| 555 | 0.990 | 0.974 | 0.980 | 1.13 | 1.08 | 1.13 | 0.80 | 1.17 | 1.09 | 1.02 | 1.13 | 0.96 | 0.95 | 0.82 | 1.36 | 0.95 | 1.06 | 1.27 | 0.95 | 1.08 | 0.86 | 0.89 | 0.99 | 0.70 | 0.93 | 0.98 | 0.71 |
| 556 | 0.990 | 0.974 | 0.980 | 1.00 | 1.00 | 0.75 | 1.18 | 1.21 | 0.91 | 0.86 | 1.03 | 0.95 | 1.05 | 0.83 | 0.80 | 0.84 | 1.09 | 0.91 | 0.87 | 1.16 | 0.91 | 0.97 | 0.97 | 0.70 | 1.01 | 1.03 | 0.83 |
| 557 | 0.990 | 0.974 | 0.980 | 1.00 | 1.00 | 0.75 | 1.18 | 1.21 | 0.91 | 0.86 | 1.03 | 0.95 | 1.05 | 0.83 | 0.80 | 0.84 | 1.09 | 0.91 | 0.87 | 1.16 | 0.91 | 0.97 | 0.97 | 0.70 | 1.01 | 1.03 | 0.83 |
| 558 | 0.990 | 0.974 | 0.980 | 1.00 | 0.97 | 0.78 | 1.19 | 1.21 | 0.94 | 0.88 | 1.02 | 0.99 | 1.04 | 0.81 | 0.86 | 1.09 | 1.12 | 0.85 | 0.96 | 1.18 | 0.95 | 1.03 | 1.08 | 0.57 | 0.95 | 0.96 | 0.92 |
| 559 | 0.990 | 0.974 | 0.980 | 1.04 | 1.18 | 1.00 | 1.36 | 0.99 | 1.20 | 0.89 | 1.13 | 0.99 | 1.36 | 0.90 | 1.08 | 1.08 | 1.37 | 0.99 | 1.03 | 1.37 | 1.14 | 1.08 | 1.22 | 0.79 | 0.93 | 1.00 | 0.99 |
| 560 | 0.990 | 0.974 | 0.980 | 1.06 | 1.04 | 1.00 | 1.61 | 1.10 | 1.03 | 0.90 | 1.11 | 0.86 | 1.09 | 0.74 | 0.73 | 0.87 | 0.82 | 0.88 | 0.90 | 1.23 | 0.99 | 1.09 | 1.17 | 0.55 | 0.97 | 1.02 | 0.96 |
| 561 | 0.990 | 0.974 | 0.980 | 1.06 | 1.04 | 1.00 | 1.61 | 1.10 | 1.03 | 0.90 | 1.11 | 0.86 | 1.09 | 0.74 | 0.73 | 0.87 | 0.82 | 0.88 | 0.90 | 1.23 | 0.99 | 1.09 | 1.17 | 0.55 | 0.97 | 1.02 | 0.96 |
| 562 | 0.990 | 0.974 | 0.980 | 1.10 | 1.13 | 0.80 | 1.10 | 1.12 | 0.83 | 0.92 | 1.12 | 0.71 | 0.96 | 0.58 | 0.80 | 0.73 | 1.13 | 0.93 | 0.94 | 1.17 | 0.95 | 0.97 | 0.96 | 0.73 | 1.01 | 1.23 | 1.13 |
| 563 | 0.990 | 0.974 | 0.980 | 1.13 | 1.03 | 1.04 | 0.93 | 1.09 | 0.86 | 0.96 | 1.20 | 1.07 | 0.73 | 0.92 | 1.28 | 0.78 | 0.98 | 1.16 | 1.04 | 1.09 | 0.88 | 0.85 | 0.95 | 1.08 | 0.84 | 1.08 | 0.94 |
| 564 | 0.990 | 0.974 | 0.980 | 1.13 | 1.03 | 1.04 | 0.93 | 1.09 | 0.86 | 0.96 | 1.20 | 1.07 | 0.73 | 0.92 | 1.28 | 0.78 | 0.98 | 1.16 | 1.04 | 1.09 | 0.88 | 0.85 | 0.95 | 1.08 | 0.84 | 1.08 | 0.94 |
| 565 | 0.990 | 0.974 | 0.980 | 1.00 | 1.00 | 0.75 | 1.18 | 1.21 | 0.91 | 0.86 | 1.03 | 0.95 | 1.05 | 0.83 | 0.80 | 0.84 | 1.09 | 0.91 | 0.87 | 1.16 | 0.91 | 0.97 | 0.97 | 0.70 | 1.01 | 1.03 | 0.83 |
| 566 | 0.990 | 0.974 | 0.980 | 1.00 | 1.00 | 0.75 | 1.18 | 1.21 | 0.91 | 0.86 | 1.03 | 0.95 | 1.05 | 0.83 | 0.80 | 0.84 | 1.09 | 0.91 | 0.87 | 1.16 | 0.91 | 0.97 | 0.97 | 0.70 | 1.01 | 1.03 | 0.83 |
| 567 | 0.990 | 0.974 | 0.980 | 1.00 | 1.00 | 0.75 | 1.18 | 1.21 | 0.91 | 0.86 | 1.03 | 0.95 | 1.05 | 0.83 | 0.80 | 0.84 | 1.09 | 0.91 | 0.87 | 1.16 | 0.91 | 0.97 | 0.97 | 0.70 | 1.01 | 1.03 | 0.83 |
| 570 | 0.935 | 0.878 | 0.900 | 0.99 | 0.99 | 0.78 | 0.83 | 0.90 | 1.03 | 0.88 | 1.08 | 1.07 | 1.14 | 0.90 | 0.68 | 0.90 | 1.06 | 0.85 | 0.96 | 0.98 | 0.99 | 1.14 | 0.98 | 1.03 | 0.88 | 0.95 | 0.87 |
| 571 | 0.935 | 0.878 | 0.900 | 1.01 | 1.12 | 0.77 | 0.94 | 0.81 | 1.02 | 0.88 | 1.12 | 1.16 | 1.26 | 0.67 | 0.95 | 0.97 | 0.96 | 0.85 | 1.06 | 1.04 | 1.09 | 1.04 | 0.99 | 1.01 | 0.97 | 0.99 | 1.21 |
| 572 | 0.935 | 0.878 | 0.900 | 0.99 | 0.99 | 0.78 | 0.83 | 0.90 | 1.03 | 0.88 | 1.08 | 1.07 | 1.14 | 0.90 | 0.68 | 0.90 | 1.06 | 0.85 | 0.96 | 0.98 | 0.99 | 1.14 | 0.98 | 1.03 | 0.88 | 0.95 | 0.87 |
| 573 | 0.935 | 0.878 | 0.900 | 0.99 | 0.99 | 0.78 | 0.83 | 0.90 | 1.03 | 0.88 | 1.08 | 1.07 | 1.14 | 0.90 | 0.68 | 0.90 | 1.06 | 0.85 | 0.96 | 0.98 | 0.99 | 1.14 | 0.98 | 1.03 | 0.88 | 0.95 | 0.87 |
| 574 | 0.935 | 0.878 | 0.900 | 0.99 | 0.99 | 0.78 | 0.83 | 0.90 | 1.03 | 0.88 | 1.08 | 1.07 | 1.14 | 0.90 | 0.68 | 0.90 | 1.06 | 0.85 | 0.96 | 0.98 | 0.99 | 1.14 | 0.98 | 1.03 | 0.88 | 0.95 | 0.87 |
| 575 | 0.935 | 0.878 | 0.900 | 0.99 | 0.99 | 0.78 | 0.83 | 0.90 | 1.03 | 0.88 | 1.08 | 1.07 | 1.14 | 0.90 | 0.68 | 0.90 | 1.06 | 0.85 | 0.96 | 0.98 | 0.99 | 1.14 | 0.98 | 1.03 | 0.88 | 0.95 | 0.87 |
| 576 | 0.935 | 0.878 | 0.900 | 0.99 | 0.99 | 0.78 | 0.83 | 0.90 | 1.03 | 0.88 | 1.08 | 1.07 | 1.14 | 0.90 | 0.68 | 0.90 | 1.06 | 0.85 | 0.96 | 0.98 | 0.99 | 1.14 | 0.98 | 1.03 | 0.88 | 0.95 | 0.87 |
| 577 | 0.935 | 0.878 | 0.900 | 0.99 | 0.99 | 0.78 | 0.83 | 0.90 | 1.03 | 0.88 | 1.08 | 1.07 | 1.14 | 0.90 | 0.68 | 0.90 | 1.06 | 0.85 | 0.96 | 0.98 | 0.99 | 1.14 | 0.98 | 1.03 | 0.88 | 0.95 | 0.87 |
| 580 | 0.950 | 0.880 | 0.910 | 0.99 | 1.02 | 0.64 | 1.15 | 1.25 | 0.89 | 0.81 | 1.06 | 1.56 | 1.12 | 0.90 | 0.74 | 1.16 | 0.96 | 0.67 | 0.97 | 1.18 | 0.76 | 0.83 | 1.05 | 0.72 | 0.87 | 0.91 | 0.70 |
| 581 | 0.950 | 0.880 | 0.910 | 1.18 | 1.04 | 0.89 | 1.09 | 1.37 | 0.97 | 0.95 | 1.15 | 1.59 | 1.17 | 0.99 | 0.81 | 1.11 | 1.25 | 0.60 | 1.02 | 1.39 | 0.86 | 0.95 | 1.22 | 0.54 | 0.90 | 1.15 | 0.84 |
| 582 | 0.950 | 0.880 | 0.910 | 0.99 | 1.02 | 0.64 | 1.15 | 1.25 | 0.89 | 0.81 | 1.06 | 1.56 | 1.12 | 0.90 | 0.74 | 1.16 | 0.96 | 0.67 | 0.97 | 1.18 | 0.76 | 0.83 | 1.05 | 0.72 | 0.87 | 0.91 | 0.70 |
| 583 | 0.950 | 0.880 | 0.910 | 0.99 | 1.02 | 0.64 | 1.15 | 1.25 | 0.89 | 0.81 | 1.06 | 1.56 | 1.12 | 0.90 | 0.74 | 1.16 | 0.96 | 0.67 | 0.97 | 1.18 | 0.76 | 0.83 | 1.05 | 0.72 | 0.87 | 0.91 | 0.70 |
| 584 | 0.950 | 0.880 | 0.910 | 0.99 | 1.02 | 0.64 | 1.15 | 1.25 | 0.89 | 0.81 | 1.06 | 1.56 | 1.12 | 0.90 | 0.74 | 1.16 | 0.96 | 0.67 | 0.97 | 1.18 | 0.76 | 0.83 | 1.05 | 0.72 | 0.87 | 0.91 | 0.70 |
| 585 | 0.950 | 0.880 | 0.910 | 0.99 | 1.02 | 0.64 | 1.15 | 1.25 | 0.89 | 0.81 | 1.06 | 1.56 | 1.12 | 0.90 | 0.74 | 1.16 | 0.96 | 0.67 | 0.97 | 1.18 | 0.76 | 0.83 | 1.05 | 0.72 | 0.87 | 0.91 | 0.70 |
| 586 | 0.950 | 0.880 | 0.910 | 0.99 | 1.02 | 0.64 | 1.15 | 1.25 | 0.89 | 0.81 | 1.06 | 1.56 | 1.12 | 0.90 | 0.74 | 1.16 | 0.96 | 0.67 | 0.97 | 1.18 | 0.76 | 0.83 | 1.05 | 0.72 | 0.87 | 0.91 | 0.70 |
| 587 | 0.950 | 0.880 | 0.910 | 0.99 | 1.02 | 0.64 | 1.15 | 1.25 | 0.89 | 0.81 | 1.06 | 1.56 | 1.12 | 0.90 | 0.74 | 1.16 | 0.96 | 0.67 | 0.97 | 1.18 | 0.76 | 0.83 | 1.05 | 0.72 | 0.87 | 0.91 | 0.70 |
| 588 | 0.950 | 0.880 | 0.910 | 0.99 | 1.02 | 0.64 | 1.15 | 1.25 | 0.89 | 0.81 | 1.06 | 1.56 | 1.12 | 0.90 | 0.74 | 1.16 | 0.96 | 0.67 | 0.97 | 1.18 | 0.76 | 0.83 | 1.05 | 0.72 | 0.87 | 0.91 | 0.70 |
| 590 | 0.960 | 0.876 | 0.910 | 0.97 | 1.04 | 0.83 | 1.09 | 0.89 | 0.90 | 0.88 | 1.06 | 0.80 | 0.96 | 0.86 | 0.82 | 0.90 | 1.05 | 1.04 | 0.88 | 0.95 | 0.88 | 0.89 | 0.87 | 0.81 | 0.92 | 1.07 | 0.78 |

## TABLE L — PROFESSIONAL SERVICES RELATIVE VALUE UNIT (RVU) AND CONVERSION FACTOR GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

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| Zip Code | RVU GAAFs | | | Conversion Factor GAAFs By Category | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Work Expense | Practice Expense | Total Unit Value | Inpatient Visits | Office/ Home/ Urgent Care Visits | Therapeutic Injections | Allergy Testing | Allergy Immunotherapy | Misc Medical | ER Visits | Consults | Physical Medicine | Cardiovascular | Immunizations | Well Baby Exams | Vision Exams | Hearing/ Speech Exams | Physical Exams | Chiropractor | Psych / Alcohol & Drug Abuse | Surgery | Radiology | Pathology | Anesthesia | Normal Deliveries | Cesarean Deliveries | Non-Deliveries |
| 591 | 0.950 | 0.876 | 0.910 | 1.11 | 1.13 | 0.93 | 1.06 | 0.58 | 0.93 | 0.80 | 1.17 | 1.09 | 1.14 | 0.76 | 0.93 | 0.87 | 0.98 | 0.98 | 1.01 | 0.89 | 0.95 | 1.07 | 0.88 | 0.90 | 0.87 | 0.94 | 0.96 |
| 592 | 0.950 | 0.876 | 0.910 | 0.97 | 1.04 | 0.83 | 1.09 | 0.89 | 0.90 | 0.88 | 1.06 | 0.80 | 0.96 | 0.66 | 0.82 | 0.90 | 1.05 | 1.04 | 0.88 | 0.95 | 0.88 | 0.89 | 0.87 | 0.81 | 0.92 | 1.07 | 0.78 |
| 593 | 0.950 | 0.876 | 0.910 | 0.97 | 1.04 | 0.83 | 1.09 | 0.89 | 0.90 | 0.88 | 1.06 | 0.80 | 0.96 | 0.66 | 0.82 | 0.90 | 1.05 | 1.04 | 0.88 | 0.95 | 0.88 | 0.89 | 0.87 | 0.81 | 0.92 | 1.07 | 0.78 |
| 594 | 0.950 | 0.876 | 0.910 | 0.97 | 1.04 | 0.83 | 1.09 | 0.89 | 0.90 | 0.88 | 1.06 | 0.80 | 0.96 | 0.66 | 0.82 | 0.90 | 1.05 | 1.04 | 0.88 | 0.95 | 0.88 | 0.89 | 0.87 | 0.81 | 0.92 | 1.07 | 0.78 |
| 595 | 0.950 | 0.876 | 0.910 | 0.97 | 1.04 | 0.83 | 1.09 | 0.89 | 0.90 | 0.88 | 1.06 | 0.80 | 0.96 | 0.66 | 0.82 | 0.90 | 1.05 | 1.04 | 0.88 | 0.95 | 0.88 | 0.89 | 0.87 | 0.81 | 0.92 | 1.07 | 0.78 |
| 596 | 0.950 | 0.876 | 0.910 | 0.97 | 1.04 | 0.83 | 1.09 | 0.89 | 0.90 | 0.88 | 1.06 | 0.80 | 0.96 | 0.66 | 0.82 | 0.90 | 1.05 | 1.04 | 0.88 | 0.95 | 0.88 | 0.89 | 0.87 | 0.81 | 0.92 | 1.07 | 0.78 |
| 597 | 0.950 | 0.876 | 0.910 | 0.97 | 1.04 | 0.83 | 1.09 | 0.89 | 0.90 | 0.88 | 1.06 | 0.80 | 0.96 | 0.66 | 0.82 | 0.90 | 1.05 | 1.04 | 0.88 | 0.95 | 0.88 | 0.89 | 0.87 | 0.81 | 0.92 | 1.07 | 0.78 |
| 598 | 0.950 | 0.876 | 0.910 | 0.97 | 1.04 | 0.83 | 1.09 | 0.89 | 0.90 | 0.88 | 1.06 | 0.80 | 0.96 | 0.66 | 0.82 | 0.90 | 1.05 | 1.04 | 0.88 | 0.95 | 0.88 | 0.89 | 0.87 | 0.81 | 0.92 | 1.07 | 0.78 |
| 599 | 0.950 | 0.876 | 0.910 | 0.97 | 1.04 | 0.83 | 1.09 | 0.89 | 0.90 | 0.88 | 1.06 | 0.80 | 0.96 | 0.66 | 0.82 | 0.90 | 1.05 | 1.04 | 0.88 | 0.95 | 0.88 | 0.89 | 0.87 | 0.81 | 0.92 | 1.07 | 0.78 |
| 600 | 1.006 | 1.071 | 1.040 | 1.05 | 1.04 | 1.06 | 0.98 | 0.87 | 1.09 | 1.28 | 1.04 | 1.16 | 0.98 | 1.02 | 1.05 | 1.00 | 0.96 | 1.05 | 1.05 | 0.98 | 1.14 | 0.87 | 1.07 | 1.30 | 1.02 | 1.05 | 1.17 |
| 601 | 1.028 | 1.092 | 1.060 | 1.07 | 0.97 | 1.14 | 0.95 | 0.94 | 1.13 | 1.38 | 0.97 | 1.09 | 0.98 | 1.00 | 1.05 | 0.95 | 0.93 | 0.97 | 1.00 | 0.91 | 1.11 | 0.91 | 1.18 | 1.10 | 1.01 | 1.00 | 0.96 |
| 602 | 1.028 | 1.092 | 1.060 | 0.99 | 1.00 | 1.47 | 0.89 | 0.78 | 1.19 | 0.98 | 0.96 | 0.89 | 0.93 | 0.90 | 0.95 | 0.96 | 0.79 | 0.95 | 0.96 | 1.02 | 1.15 | 0.92 | 1.11 | 1.22 | 1.08 | 0.98 | 1.15 |
| 603 | 1.028 | 1.092 | 1.060 | 0.99 | 1.00 | 1.47 | 0.89 | 0.78 | 1.19 | 0.98 | 0.96 | 0.89 | 0.93 | 0.90 | 0.95 | 0.96 | 0.79 | 0.95 | 0.96 | 1.02 | 1.15 | 0.92 | 1.11 | 1.22 | 1.08 | 0.98 | 1.15 |
| 604 | 1.006 | 1.071 | 1.040 | 1.06 | 0.96 | 1.55 | 0.88 | 0.87 | 1.04 | 1.04 | 0.99 | 1.13 | 1.04 | 0.94 | 0.78 | 0.96 | 0.93 | 0.77 | 0.97 | 0.97 | 1.15 | 0.92 | 1.20 | 1.16 | 0.97 | 0.98 | 1.01 |
| 605 | 0.964 | 0.889 | 0.920 | 1.09 | 1.11 | 1.15 | 1.29 | 1.08 | 1.16 | 1.17 | 1.11 | 1.09 | 1.16 | 1.21 | 1.07 | 1.08 | 1.11 | 0.99 | 1.15 | 1.07 | 1.26 | 1.09 | 1.18 | 1.13 | 1.20 | 1.21 | 1.09 |
| 606 | 1.028 | 1.092 | 1.060 | 1.13 | 1.05 | 1.34 | 1.36 | 0.95 | 1.13 | 0.96 | 1.06 | 1.14 | 1.02 | 1.21 | 0.93 | 0.99 | 1.05 | 0.95 | 1.08 | 1.07 | 1.22 | 1.04 | 1.07 | 1.22 | 1.17 | 1.16 | 1.23 |
| 607 | 1.028 | 1.092 | 1.060 | 1.13 | 1.05 | 1.34 | 1.36 | 0.95 | 1.13 | 0.96 | 1.06 | 1.14 | 1.02 | 1.21 | 0.93 | 0.99 | 1.05 | 0.95 | 1.08 | 1.07 | 1.22 | 1.04 | 1.07 | 1.22 | 1.17 | 1.16 | 1.23 |
| 608 | 1.028 | 1.092 | 1.060 | 1.13 | 1.05 | 1.34 | 1.36 | 0.95 | 1.13 | 0.96 | 1.06 | 1.14 | 1.02 | 1.21 | 0.93 | 0.99 | 1.05 | 0.95 | 1.08 | 1.07 | 1.22 | 1.04 | 1.07 | 1.22 | 1.17 | 1.16 | 1.23 |
| 609 | 0.964 | 0.889 | 0.920 | 0.94 | 0.93 | 0.78 | 0.87 | 0.77 | 0.95 | 0.98 | 0.97 | 1.24 | 1.13 | 1.13 | 0.75 | 0.92 | 1.05 | 0.71 | 0.99 | 0.91 | 1.05 | 1.11 | 1.19 | 1.00 | 0.91 | 0.93 | 0.98 |
| 610 | 0.964 | 0.889 | 0.920 | 1.01 | 1.08 | 0.67 | 0.97 | 1.01 | 0.77 | 0.88 | 1.01 | 0.93 | 1.03 | 0.86 | 0.99 | 1.04 | 0.91 | 1.16 | 0.96 | 1.11 | 0.93 | 0.80 | 0.96 | 0.89 | 1.07 | 0.97 | 0.92 |
| 611 | 0.964 | 0.889 | 0.920 | 1.00 | 1.04 | 1.06 | 1.30 | 1.33 | 1.12 | 0.96 | 1.07 | 1.34 | 1.03 | 1.37 | 0.79 | 1.28 | 1.32 | 0.80 | 1.07 | 1.19 | 1.10 | 1.25 | 1.27 | 1.16 | 1.05 | 1.04 | 1.02 |
| 612 | 0.964 | 0.889 | 0.920 | 1.01 | 1.08 | 0.67 | 0.97 | 1.01 | 0.77 | 0.88 | 1.01 | 0.93 | 1.03 | 0.86 | 0.99 | 1.04 | 0.91 | 1.16 | 0.96 | 1.11 | 0.93 | 0.80 | 0.96 | 0.89 | 1.07 | 0.97 | 0.92 |
| 613 | 0.964 | 0.889 | 0.920 | 0.85 | 0.89 | 0.93 | 1.55 | 0.96 | 0.90 | 0.98 | 0.98 | 1.13 | 1.09 | 1.03 | 0.68 | 0.89 | 0.93 | 0.69 | 0.91 | 0.91 | 0.97 | 0.98 | 0.96 | 0.89 | 0.88 | 0.91 | 0.90 |
| 614 | 0.964 | 0.889 | 0.920 | 0.85 | 0.89 | 0.93 | 1.55 | 0.96 | 0.90 | 0.98 | 0.98 | 1.13 | 1.09 | 1.03 | 0.68 | 0.89 | 0.93 | 0.69 | 0.91 | 0.91 | 0.97 | 0.98 | 0.96 | 0.89 | 0.88 | 0.91 | 0.90 |
| 615 | 0.964 | 0.889 | 0.920 | 0.85 | 0.89 | 0.93 | 1.55 | 0.96 | 0.90 | 0.98 | 0.98 | 1.13 | 1.09 | 1.03 | 0.68 | 0.89 | 0.93 | 0.69 | 0.91 | 0.91 | 0.97 | 0.98 | 0.96 | 0.89 | 0.88 | 0.91 | 0.90 |
| 616 | 0.964 | 0.889 | 0.920 | 0.98 | 0.93 | 0.86 | 1.39 | 0.97 | 1.06 | 0.99 | 0.95 | 1.23 | 1.05 | 1.17 | 0.78 | 0.90 | 0.82 | 0.74 | 0.95 | 0.95 | 1.04 | 1.13 | 0.99 | 1.00 | 0.82 | 0.92 | 0.89 |
| 617 | 0.964 | 0.889 | 0.920 | 0.94 | 0.93 | 0.78 | 0.87 | 0.77 | 0.95 | 0.98 | 0.97 | 1.24 | 1.13 | 1.13 | 0.75 | 0.92 | 1.05 | 0.71 | 0.99 | 0.91 | 1.05 | 1.11 | 1.19 | 1.00 | 0.91 | 0.93 | 0.98 |
| 618 | 0.964 | 0.889 | 0.920 | 1.15 | 1.13 | 0.87 | 1.22 | 0.97 | 1.21 | 1.18 | 1.17 | 1.41 | 1.19 | 1.05 | 0.72 | 1.04 | 1.23 | 0.81 | 1.06 | 1.04 | 1.16 | 1.20 | 1.23 | 0.91 | 0.93 | 1.13 | 1.23 |
| 619 | 0.964 | 0.889 | 0.920 | 0.88 | 0.91 | 0.88 | 1.01 | 0.85 | 0.96 | 1.20 | 1.02 | 1.13 | 1.02 | 1.03 | 0.63 | 1.06 | 1.06 | 0.66 | 0.89 | 0.91 | 0.99 | 0.99 | 1.03 | 1.02 | 0.89 | 0.94 | 1.11 |
| 620 | 0.988 | 0.924 | 0.950 | 0.87 | 0.89 | 0.91 | 0.80 | 0.98 | 0.93 | 0.97 | 0.94 | 1.04 | 1.13 | 1.10 | 0.72 | 0.96 | 0.95 | 0.90 | 0.92 | 0.82 | 0.93 | 0.97 | 1.19 | 0.88 | 0.94 | 0.95 | 0.94 |
| 622 | 0.988 | 0.924 | 0.950 | 0.85 | 0.88 | 0.66 | 1.13 | 1.26 | 0.83 | 0.95 | 0.95 | 1.13 | 0.91 | 0.86 | 0.74 | 0.86 | 0.79 | 0.68 | 0.88 | 0.83 | 0.91 | 1.02 | 1.02 | 0.99 | 0.89 | 0.90 | 0.91 |
| 623 | 0.964 | 0.889 | 0.920 | 1.05 | 0.95 | 0.85 | 0.73 | 0.82 | 0.87 | 1.02 | 1.03 | 0.95 | 1.14 | 0.95 | 0.65 | 0.90 | 0.85 | 0.71 | 0.89 | 0.85 | 0.95 | 1.07 | 1.04 | 1.06 | 0.94 | 0.91 | 1.06 |
| 624 | 0.964 | 0.889 | 0.920 | 0.88 | 0.91 | 0.88 | 1.01 | 0.85 | 0.96 | 1.20 | 1.02 | 1.13 | 1.02 | 1.03 | 0.63 | 1.06 | 1.06 | 0.66 | 0.89 | 0.91 | 0.99 | 0.99 | 1.03 | 1.02 | 0.89 | 0.94 | 1.11 |
| 625 | 0.964 | 0.889 | 0.920 | 1.05 | 0.95 | 0.85 | 0.73 | 0.82 | 0.87 | 1.02 | 1.03 | 0.95 | 1.14 | 0.95 | 0.65 | 0.90 | 0.85 | 0.71 | 0.89 | 0.85 | 0.95 | 1.07 | 1.04 | 1.06 | 0.94 | 0.91 | 1.06 |
| 626 | 0.964 | 0.889 | 0.920 | 1.05 | 0.95 | 0.85 | 0.73 | 0.82 | 0.87 | 1.02 | 1.03 | 0.95 | 1.14 | 0.95 | 0.65 | 0.90 | 0.85 | 0.71 | 0.89 | 0.85 | 0.95 | 1.07 | 1.04 | 1.06 | 0.94 | 0.91 | 1.06 |
| 627 | 0.964 | 0.889 | 0.920 | 1.16 | 1.06 | 1.10 | 1.35 | 1.08 | 1.16 | 1.04 | 1.13 | 1.40 | 1.46 | 1.42 | 0.74 | 0.96 | 1.68 | 0.92 | 1.02 | 1.06 | 1.11 | 1.12 | 1.10 | 0.92 | 1.20 | 1.20 | 1.33 |
| 628 | 0.964 | 0.889 | 0.920 | 0.88 | 0.91 | 0.88 | 1.01 | 0.85 | 0.96 | 1.20 | 1.02 | 1.13 | 1.02 | 1.03 | 0.63 | 1.06 | 1.06 | 0.66 | 0.89 | 0.91 | 0.99 | 0.99 | 1.03 | 1.02 | 0.89 | 0.94 | 1.11 |
| 629 | 0.964 | 0.889 | 0.920 | 0.88 | 0.92 | 0.71 | 1.23 | 1.33 | 0.88 | 0.99 | 0.99 | 1.19 | 0.97 | 0.92 | 0.77 | 0.90 | 0.85 | 0.71 | 0.92 | 0.86 | 0.96 | 1.08 | 1.06 | 0.99 | 0.96 | 0.97 | 0.98 |
| 630 | 0.994 | 0.938 | 0.960 | 0.93 | 0.91 | 0.87 | 1.01 | 0.93 | 1.03 | 0.99 | 0.94 | 1.02 | 1.32 | 0.93 | 0.70 | 1.05 | 1.11 | 0.86 | 0.93 | 0.89 | 0.98 | 0.97 | 1.07 | 0.88 | 0.92 | 0.90 | 1.08 |
| 631 | 0.994 | 0.938 | 0.960 | 1.03 | 0.98 | 1.36 | 1.02 | 0.93 | 1.12 | 1.02 | 1.06 | 1.04 | 1.14 | 0.93 | 0.75 | 1.06 | 1.39 | 0.80 | 0.99 | 0.93 | 1.07 | 1.13 | 1.24 | 0.98 | 0.91 | 0.92 | 1.02 |
| 633 | 0.994 | 0.938 | 0.960 | 0.93 | 0.91 | 0.87 | 1.01 | 0.93 | 1.03 | 0.99 | 0.94 | 1.02 | 1.32 | 0.93 | 0.70 | 1.05 | 1.11 | 0.86 | 0.93 | 0.89 | 0.98 | 0.97 | 1.07 | 0.88 | 0.92 | 0.90 | 1.08 |
| 634 | 0.946 | 0.825 | 0.880 | 1.00 | 1.00 | 0.99 | 1.15 | 1.04 | 1.16 | 1.06 | 1.01 | 1.10 | 1.47 | 1.96 | 0.76 | 1.14 | 1.24 | 0.93 | 1.01 | 0.96 | 1.07 | 1.08 | 1.18 | 0.88 | 1.00 | 0.97 | 1.17 |
| 635 | 0.946 | 0.825 | 0.880 | 0.94 | 0.94 | 0.65 | 1.06 | 0.94 | 0.86 | 1.14 | 0.95 | 0.95 | 0.97 | 0.77 | 1.10 | 0.99 | 0.99 | 0.87 | 0.88 | 0.75 | 0.98 | 1.17 | 1.09 | 0.90 | 0.86 | 0.98 | 0.91 |
| 636 | 0.946 | 0.825 | 0.880 | 0.92 | 1.00 | 1.13 | 1.06 | 0.93 | 1.16 | 1.01 | 0.98 | 0.99 | 0.92 | 1.05 | 0.81 | 1.04 | 1.23 | 0.81 | 0.99 | 0.81 | 1.06 | 1.10 | 1.27 | 0.78 | 0.84 | 0.82 | 1.32 |
| 637 | 0.946 | 0.825 | 0.880 | 0.92 | 1.00 | 1.13 | 1.06 | 0.93 | 1.16 | 1.01 | 0.98 | 0.99 | 0.92 | 1.05 | 0.81 | 1.04 | 1.23 | 0.81 | 0.99 | 0.81 | 1.06 | 1.10 | 1.27 | 0.78 | 0.84 | 0.82 | 1.32 |
| 638 | 0.946 | 0.825 | 0.880 | 1.00 | 0.94 | 0.79 | 1.16 | 0.93 | 0.97 | 1.04 | 0.99 | 0.93 | 0.94 | 0.90 | 0.75 | 0.92 | 1.09 | 0.74 | 0.94 | 0.91 | 0.94 | 1.21 | 1.18 | 0.87 | 0.85 | 0.88 | 0.86 |
| 639 | 0.946 | 0.825 | 0.880 | 1.00 | 0.94 | 0.79 | 1.16 | 0.93 | 0.97 | 1.04 | 0.99 | 0.93 | 0.94 | 0.90 | 0.75 | 0.92 | 1.09 | 0.74 | 0.94 | 0.91 | 0.94 | 1.21 | 1.18 | 0.87 | 0.85 | 0.88 | 0.86 |
| 640 | 0.946 | 0.825 | 0.880 | 0.99 | 1.02 | 1.38 | 1.14 | 1.06 | 1.21 | 1.07 | 1.05 | 1.06 | 1.11 | 0.94 | 1.02 | 1.20 | 1.18 | 1.08 | 1.04 | 1.04 | 0.89 | 1.10 | 1.00 | 0.90 | 0.98 | 0.97 | 0.89 |
| 641 | 0.988 | 0.967 | 0.980 | 0.92 | 0.93 | 1.19 | 0.98 | 0.92 | 1.06 | 1.00 | 0.96 | 0.97 | 0.98 | 0.81 | 0.92 | 1.08 | 1.02 | 0.99 | 0.95 | 0.96 | 0.90 | 0.97 | 0.89 | 0.90 | 0.90 | 0.89 | 0.81 |
| 644 | 0.946 | 0.825 | 0.880 | 0.94 | 0.94 | 0.65 | 1.06 | 0.94 | 0.86 | 1.14 | 0.95 | 0.95 | 0.97 | 0.77 | 1.10 | 0.99 | 0.99 | 0.87 | 0.88 | 0.75 | 0.98 | 1.17 | 1.09 | 0.90 | 0.86 | 0.98 | 0.91 |
| 645 | 0.946 | 0.825 | 0.880 | 0.94 | 0.94 | 0.65 | 1.06 | 0.94 | 0.86 | 1.14 | 0.95 | 0.95 | 0.97 | 0.77 | 1.10 | 0.99 | 0.99 | 0.87 | 0.88 | 0.75 | 0.98 | 1.17 | 1.09 | 0.90 | 0.86 | 0.98 | 0.91 |
| 646 | 0.946 | 0.825 | 0.880 | 0.94 | 0.94 | 0.65 | 1.06 | 0.94 | 0.86 | 1.14 | 0.95 | 0.95 | 0.97 | 0.77 | 1.10 | 0.99 | 0.99 | 0.87 | 0.88 | 0.75 | 0.98 | 1.17 | 1.09 | 0.90 | 0.86 | 0.98 | 0.91 |
| 647 | 0.946 | 0.825 | 0.880 | 1.00 | 0.94 | 0.79 | 1.16 | 0.93 | 0.97 | 1.04 | 0.99 | 0.93 | 0.94 | 0.90 | 0.75 | 0.92 | 1.09 | 0.74 | 0.94 | 0.91 | 0.94 | 1.21 | 1.18 | 0.87 | 0.85 | 0.88 | 0.86 |
| 648 | 0.946 | 0.825 | 0.880 | 1.00 | 0.94 | 0.79 | 1.16 | 0.93 | 0.97 | 1.04 | 0.99 | 0.93 | 0.94 | 0.90 | 0.75 | 0.92 | 1.09 | 0.74 | 0.94 | 0.91 | 0.94 | 1.21 | 1.18 | 0.87 | 0.85 | 0.88 | 0.86 |
| 649 | 0.988 | 0.967 | 0.980 | 0.92 | 0.93 | 1.19 | 0.98 | 0.92 | 1.06 | 1.00 | 0.96 | 0.97 | 0.98 | 0.81 | 0.92 | 1.08 | 1.02 | 0.99 | 0.95 | 0.96 | 0.90 | 0.97 | 0.89 | 0.90 | 0.90 | 0.89 | 0.81 |
| 650 | 0.946 | 0.825 | 0.880 | 0.97 | 0.98 | 1.26 | 1.16 | 0.98 | 1.13 | 0.95 | 1.03 | 0.97 | 1.16 | 1.12 | 0.88 | 1.03 | 1.05 | 0.99 | 1.00 | 0.95 | 1.01 | 1.13 | 1.19 | 0.88 | 1.13 | 1.18 | 1.17 |
| 651 | 0.946 | 0.825 | 0.880 | 0.97 | 0.98 | 1.26 | 1.16 | 0.98 | 1.13 | 0.95 | 1.03 | 0.97 | 1.16 | 1.12 | 0.88 | 1.03 | 1.05 | 0.99 | 1.00 | 0.95 | 1.01 | 1.13 | 1.19 | 0.88 | 1.13 | 1.18 | 1.17 |
| 652 | 0.946 | 0.825 | 0.880 | 0.97 | 0.98 | 1.26 | 1.16 | 0.98 | 1.13 | 0.95 | 1.03 | 0.97 | 1.16 | 1.12 | 0.88 | 1.03 | 1.05 | 0.99 | 1.00 | 0.95 | 1.01 | 1.13 | 1.19 | 0.88 | 1.13 | 1.18 | 1.17 |
| 653 | 0.946 | 0.825 | 0.880 | 1.00 | 0.94 | 0.79 | 1.16 | 0.93 | 0.97 | 1.04 | 0.99 | 0.93 | 0.94 | 0.90 | 0.75 | 0.92 | 1.09 | 0.74 | 0.94 | 0.91 | 0.94 | 1.21 | 1.18 | 0.87 | 0.85 | 0.88 | 0.86 |
| 654 | 0.946 | 0.825 | 0.880 | 1.00 | 0.94 | 0.79 | 1.16 | 0.93 | 0.97 | 1.04 | 0.99 | 0.93 | 0.94 | 0.90 | 0.75 | 0.92 | 1.09 | 0.74 | 0.94 | 0.91 | 0.94 | 1.21 | 1.18 | 0.87 | 0.85 | 0.88 | 0.86 |
| 655 | 0.946 | 0.825 | 0.880 | 1.00 | 0.94 | 0.79 | 1.16 | 0.93 | 0.97 | 1.04 | 0.99 | 0.93 | 0.94 | 0.90 | 0.75 | 0.92 | 1.09 | 0.74 | 0.94 | 0.91 | 0.94 | 1.21 | 1.18 | 0.87 | 0.85 | 0.88 | 0.86 |
| 656 | 0.946 | 0.825 | 0.880 | 1.00 | 0.94 | 0.79 | 1.16 | 0.93 | 0.97 | 1.04 | 0.99 | 0.93 | 0.94 | 0.90 | 0.75 | 0.92 | 1.09 | 0.74 | 0.94 | 0.91 | 0.94 | 1.21 | 1.18 | 0.87 | 0.85 | 0.88 | 0.86 |

## TABLE L. — PROFESSIONAL SERVICES RELATIVE VALUE UNIT (RVU) AND CONVERSION FACTOR GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

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| Zip Code | RVU GAAFs | | | Conversion Factor GAAFs By Category | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Work Expense | Practice Expense | Total Unit Value | Inpatient Visits | Office/ Home/ Urgent Care Visits | Therapeutic Injections | Allergy Testing | Allergy Immunotherapy | Misc Medical | ER Visits | Consults | Physical Medicine | Cardiovascular | Immunizations | Well Baby Exams | Vision Exams | Hearing/ Speech Exams | Physical Exams | Chiropractor | Psych / Alcohol & Drug Abuse | Surgery | Radiology | Pathology | Anesthesia | Normal Deliveries | Cesarean Deliveries | Non-Deliveries |
| 657 | 0.946 | 0.825 | 0.880 | 1.00 | 0.94 | 0.79 | 1.16 | 0.93 | 0.97 | 1.04 | 0.99 | 0.93 | 0.94 | 0.90 | 0.78 | 0.92 | 1.09 | 0.74 | 0.94 | 0.91 | 0.94 | 1.21 | 1.18 | 0.87 | 0.85 | 0.88 | 0.86 |
| 658 | 0.946 | 0.825 | 0.880 | 1.06 | 1.05 | 0.91 | 0.96 | 1.01 | 0.90 | 0.70 | 1.06 | 1.08 | 1.06 | 1.05 | 0.79 | 1.09 | 1.20 | 0.87 | 0.94 | 0.90 | 1.02 | 1.10 | 1.21 | 0.86 | 0.93 | 0.88 | 0.79 |
| 660 | 0.963 | 0.895 | 0.930 | 0.91 | 0.90 | 0.86 | 1.05 | 0.98 | 1.00 | 0.99 | 0.94 | 1.04 | 1.00 | 0.86 | 1.09 | 0.93 | 1.00 | 0.94 | 0.94 | 0.90 | 0.87 | 0.98 | 1.15 | 0.83 | 0.85 | 0.92 | 0.74 |
| 661 | 0.963 | 0.895 | 0.930 | 0.91 | 0.90 | 0.86 | 1.05 | 0.98 | 1.00 | 0.99 | 0.94 | 1.04 | 1.00 | 0.86 | 1.09 | 0.93 | 1.00 | 0.94 | 0.94 | 0.90 | 0.87 | 0.98 | 1.15 | 0.83 | 0.85 | 0.92 | 0.74 |
| 662 | 0.963 | 0.895 | 0.930 | 1.04 | 0.97 | 1.29 | 1.21 | 0.93 | 1.17 | 0.98 | 0.95 | 1.05 | 0.90 | 0.87 | 0.99 | 1.05 | 1.01 | 1.04 | 1.01 | 1.06 | 0.95 | 0.98 | 0.88 | 0.87 | 0.96 | 1.03 | 1.11 |
| 664 | 0.963 | 0.895 | 0.930 | 0.82 | 0.82 | 0.66 | 0.99 | 0.68 | 0.87 | 0.70 | 0.88 | 0.71 | 0.91 | 1.10 | 0.56 | 0.77 | 0.85 | 0.63 | 0.76 | 0.90 | 0.79 | 0.92 | 1.00 | 0.93 | 0.85 | 0.87 | 0.90 |
| 665 | 0.963 | 0.895 | 0.930 | 0.82 | 0.82 | 0.66 | 0.99 | 0.68 | 0.87 | 0.70 | 0.88 | 0.71 | 0.91 | 1.10 | 0.56 | 0.77 | 0.85 | 0.63 | 0.76 | 0.90 | 0.79 | 0.92 | 1.00 | 0.93 | 0.85 | 0.87 | 0.90 |
| 666 | 0.963 | 0.895 | 0.930 | 0.86 | 0.94 | 0.69 | 1.33 | 0.96 | 1.01 | 0.77 | 0.97 | 0.74 | 1.00 | 0.98 | 0.58 | 0.86 | 0.91 | 0.79 | 0.88 | 1.01 | 0.89 | 1.09 | 0.99 | 1.00 | 0.90 | 0.87 | 0.60 |
| 667 | 0.963 | 0.895 | 0.930 | 0.86 | 0.83 | 0.51 | 0.84 | 0.86 | 0.87 | 0.93 | 0.88 | 0.89 | 1.07 | 0.79 | 0.77 | 0.88 | 1.14 | 0.77 | 0.83 | 0.85 | 0.90 | 0.90 | 0.97 | 0.77 | 0.85 | 0.89 | 0.73 |
| 668 | 0.963 | 0.895 | 0.930 | 0.86 | 0.83 | 0.51 | 0.84 | 0.86 | 0.87 | 0.93 | 0.88 | 0.89 | 1.07 | 0.79 | 0.77 | 0.88 | 1.14 | 0.77 | 0.83 | 0.85 | 0.90 | 0.90 | 0.97 | 0.77 | 0.85 | 0.89 | 0.73 |
| 669 | 0.963 | 0.895 | 0.930 | 0.82 | 0.85 | 0.78 | 0.90 | 0.86 | 0.99 | 0.82 | 0.88 | 0.85 | 0.97 | 0.69 | 0.81 | 0.96 | 0.90 | 0.74 | 0.84 | 0.88 | 0.87 | 1.07 | 1.00 | 0.86 | 0.86 | 0.90 | 0.68 |
| 670 | 0.963 | 0.895 | 0.930 | 0.84 | 0.87 | 0.85 | 1.07 | 0.78 | 0.96 | 0.92 | 0.97 | 0.75 | 1.02 | 1.10 | 0.93 | 0.83 | 0.95 | 0.69 | 0.81 | 0.90 | 0.92 | 0.92 | 1.01 | 0.83 | 0.85 | 0.85 | 0.83 |
| 671 | 0.963 | 0.895 | 0.930 | 0.84 | 0.87 | 0.85 | 1.07 | 0.78 | 0.96 | 0.92 | 0.97 | 0.75 | 1.02 | 1.10 | 0.93 | 0.83 | 0.95 | 0.69 | 0.81 | 0.90 | 0.92 | 0.92 | 1.01 | 0.83 | 0.85 | 0.85 | 0.83 |
| 672 | 0.963 | 0.895 | 0.930 | 0.91 | 0.91 | 1.04 | 0.90 | 0.71 | 1.12 | 0.90 | 0.89 | 0.93 | 1.04 | 0.69 | 0.93 | 0.87 | 1.08 | 1.02 | 0.91 | 1.12 | 0.94 | 1.00 | 1.02 | 0.85 | 0.86 | 0.89 | 0.77 |
| 673 | 0.963 | 0.895 | 0.930 | 0.86 | 0.83 | 0.51 | 0.84 | 0.86 | 0.87 | 0.93 | 0.88 | 0.89 | 1.07 | 0.79 | 0.77 | 0.88 | 1.14 | 0.77 | 0.83 | 0.85 | 0.90 | 0.90 | 0.97 | 0.77 | 0.85 | 0.89 | 0.73 |
| 674 | 0.963 | 0.895 | 0.930 | 0.82 | 0.85 | 0.78 | 0.90 | 0.86 | 0.99 | 0.82 | 0.88 | 0.85 | 0.97 | 0.69 | 0.81 | 0.96 | 0.90 | 0.74 | 0.84 | 0.88 | 0.87 | 1.07 | 1.00 | 0.86 | 0.86 | 0.90 | 0.68 |
| 675 | 0.963 | 0.895 | 0.930 | 0.82 | 0.85 | 0.78 | 0.90 | 0.86 | 0.99 | 0.82 | 0.88 | 0.85 | 0.97 | 0.69 | 0.81 | 0.96 | 0.90 | 0.74 | 0.84 | 0.88 | 0.87 | 1.07 | 1.00 | 0.86 | 0.86 | 0.90 | 0.68 |
| 676 | 0.963 | 0.895 | 0.930 | 0.82 | 0.85 | 0.78 | 0.90 | 0.86 | 0.99 | 0.82 | 0.88 | 0.85 | 0.97 | 0.69 | 0.81 | 0.96 | 0.90 | 0.74 | 0.84 | 0.88 | 0.87 | 1.07 | 1.00 | 0.86 | 0.86 | 0.90 | 0.68 |
| 677 | 0.963 | 0.895 | 0.930 | 0.82 | 0.85 | 0.78 | 0.90 | 0.86 | 0.99 | 0.82 | 0.88 | 0.85 | 0.97 | 0.69 | 0.81 | 0.96 | 0.90 | 0.74 | 0.84 | 0.88 | 0.87 | 1.07 | 1.00 | 0.86 | 0.86 | 0.90 | 0.68 |
| 678 | 0.963 | 0.895 | 0.930 | 0.82 | 0.85 | 0.78 | 0.90 | 0.86 | 0.99 | 0.82 | 0.88 | 0.85 | 0.97 | 0.69 | 0.81 | 0.96 | 0.90 | 0.74 | 0.84 | 0.88 | 0.87 | 1.07 | 1.00 | 0.86 | 0.86 | 0.90 | 0.68 |
| 679 | 0.963 | 0.895 | 0.930 | 0.82 | 0.85 | 0.78 | 0.90 | 0.86 | 0.99 | 0.82 | 0.88 | 0.85 | 0.97 | 0.69 | 0.81 | 0.96 | 0.90 | 0.74 | 0.84 | 0.88 | 0.87 | 1.07 | 1.00 | 0.86 | 0.86 | 0.90 | 0.68 |
| 680 | 0.948 | 0.877 | 0.910 | 0.99 | 0.98 | 1.14 | 0.99 | 1.09 | 0.96 | 0.96 | 0.99 | 0.90 | 1.07 | 0.94 | 1.28 | 0.90 | 1.04 | 1.17 | 0.93 | 0.94 | 0.89 | 1.15 | 0.99 | 0.81 | 0.88 | 0.95 | 0.78 |
| 681 | 0.948 | 0.877 | 0.910 | 0.99 | 0.98 | 1.14 | 0.99 | 1.09 | 0.96 | 0.96 | 0.99 | 0.90 | 1.07 | 0.94 | 1.28 | 0.90 | 1.04 | 1.17 | 0.93 | 0.94 | 0.89 | 1.15 | 0.99 | 0.81 | 0.88 | 0.95 | 0.78 |
| 683 | 0.948 | 0.877 | 0.910 | 0.88 | 0.94 | 0.73 | 1.13 | 0.91 | 0.95 | 0.75 | 0.94 | 0.78 | 0.84 | 0.76 | 0.97 | 0.93 | 0.89 | 0.86 | 0.87 | 0.91 | 0.82 | 1.12 | 0.98 | 0.75 | 0.84 | 0.90 | 0.86 |
| 684 | 0.948 | 0.877 | 0.910 | 0.88 | 0.94 | 0.73 | 1.13 | 0.91 | 0.95 | 0.75 | 0.94 | 0.78 | 0.84 | 0.76 | 0.97 | 0.93 | 0.89 | 0.86 | 0.87 | 0.91 | 0.82 | 1.12 | 0.98 | 0.75 | 0.84 | 0.90 | 0.86 |
| 685 | 0.948 | 0.877 | 0.910 | 0.99 | 1.03 | 0.95 | 1.13 | 0.92 | 0.94 | 0.90 | 1.02 | 0.85 | 1.02 | 1.02 | 1.16 | 0.94 | 0.92 | 1.08 | 0.94 | 0.93 | 0.90 | 1.13 | 1.02 | 0.80 | 0.88 | 0.85 | 0.75 |
| 686 | 0.948 | 0.877 | 0.910 | 0.88 | 0.94 | 0.73 | 1.13 | 0.91 | 0.95 | 0.75 | 0.94 | 0.78 | 0.84 | 0.76 | 0.97 | 0.93 | 0.89 | 0.86 | 0.87 | 0.91 | 0.82 | 1.12 | 0.98 | 0.75 | 0.84 | 0.90 | 0.86 |
| 687 | 0.948 | 0.877 | 0.910 | 0.88 | 0.94 | 0.73 | 1.13 | 0.91 | 0.95 | 0.75 | 0.94 | 0.78 | 0.84 | 0.76 | 0.97 | 0.93 | 0.89 | 0.86 | 0.87 | 0.91 | 0.82 | 1.12 | 0.98 | 0.75 | 0.84 | 0.90 | 0.86 |
| 688 | 0.948 | 0.877 | 0.910 | 0.88 | 0.94 | 0.73 | 1.13 | 0.91 | 0.95 | 0.75 | 0.94 | 0.78 | 0.84 | 0.76 | 0.97 | 0.93 | 0.89 | 0.86 | 0.87 | 0.91 | 0.82 | 1.12 | 0.98 | 0.75 | 0.84 | 0.90 | 0.86 |
| 689 | 0.948 | 0.877 | 0.910 | 0.88 | 0.94 | 0.73 | 1.13 | 0.91 | 0.95 | 0.75 | 0.94 | 0.78 | 0.84 | 0.76 | 0.97 | 0.93 | 0.89 | 0.86 | 0.87 | 0.91 | 0.82 | 1.12 | 0.98 | 0.75 | 0.84 | 0.90 | 0.86 |
| 690 | 0.948 | 0.877 | 0.910 | 0.88 | 0.94 | 0.73 | 1.13 | 0.91 | 0.95 | 0.75 | 0.94 | 0.78 | 0.84 | 0.76 | 0.97 | 0.93 | 0.89 | 0.86 | 0.87 | 0.91 | 0.82 | 1.12 | 0.98 | 0.75 | 0.84 | 0.90 | 0.86 |
| 691 | 0.948 | 0.877 | 0.910 | 0.88 | 0.94 | 0.73 | 1.13 | 0.91 | 0.95 | 0.75 | 0.94 | 0.78 | 0.84 | 0.76 | 0.97 | 0.93 | 0.89 | 0.86 | 0.87 | 0.91 | 0.82 | 1.12 | 0.98 | 0.75 | 0.84 | 0.90 | 0.86 |
| 692 | 0.948 | 0.877 | 0.910 | 0.88 | 0.94 | 0.73 | 1.13 | 0.91 | 0.95 | 0.75 | 0.94 | 0.78 | 0.84 | 0.76 | 0.97 | 0.93 | 0.89 | 0.86 | 0.87 | 0.91 | 0.82 | 1.12 | 0.98 | 0.75 | 0.84 | 0.90 | 0.86 |
| 693 | 0.948 | 0.877 | 0.910 | 0.88 | 0.94 | 0.73 | 1.13 | 0.91 | 0.95 | 0.75 | 0.94 | 0.78 | 0.84 | 0.76 | 0.97 | 0.93 | 0.89 | 0.86 | 0.87 | 0.91 | 0.82 | 1.12 | 0.98 | 0.75 | 0.84 | 0.90 | 0.86 |
| 700 | 0.998 | 0.945 | 0.970 | 0.97 | 0.96 | 0.86 | 0.87 | 0.93 | 0.99 | 1.09 | 0.98 | 0.95 | 1.05 | 0.86 | 0.91 | 0.98 | 0.87 | 0.89 | 1.05 | 0.95 | 0.97 | 0.95 | 1.17 | 1.13 | 0.79 | 0.91 | 0.91 |
| 701 | 0.998 | 0.945 | 0.970 | 1.03 | 0.97 | 1.05 | 1.10 | 1.04 | 1.00 | 0.85 | 0.96 | 1.08 | 1.03 | 0.96 | 0.91 | 0.95 | 1.21 | 0.97 | 1.05 | 0.98 | 0.98 | 1.00 | 1.07 | 1.01 | 0.89 | 0.92 | 0.89 |
| 703 | 0.968 | 0.870 | 0.910 | 0.98 | 1.00 | 1.03 | 1.06 | 0.81 | 1.10 | 1.02 | 1.08 | 1.03 | 1.07 | 0.87 | 0.81 | 1.43 | 0.99 | 0.92 | 1.05 | 0.95 | 1.06 | 1.03 | 0.98 | 0.95 | 0.95 | 0.92 | 1.11 |
| 704 | 0.968 | 0.870 | 0.910 | 1.02 | 1.02 | 0.94 | 0.95 | 1.01 | 1.07 | 1.15 | 1.04 | 1.01 | 1.13 | 0.94 | 0.96 | 1.04 | 0.95 | 0.94 | 1.12 | 1.00 | 1.03 | 1.03 | 1.25 | 1.13 | 0.84 | 0.97 | 0.97 |
| 705 | 0.968 | 0.870 | 0.910 | 0.98 | 1.00 | 1.03 | 1.06 | 0.81 | 1.10 | 1.02 | 1.08 | 1.03 | 1.07 | 0.87 | 0.81 | 1.43 | 0.99 | 0.92 | 1.05 | 0.95 | 1.06 | 1.03 | 0.98 | 0.95 | 0.95 | 0.92 | 1.11 |
| 706 | 0.968 | 0.870 | 0.910 | 0.98 | 1.00 | 1.03 | 1.06 | 0.81 | 1.10 | 1.02 | 1.08 | 1.03 | 1.07 | 0.87 | 0.81 | 1.43 | 0.99 | 0.92 | 1.05 | 0.95 | 1.06 | 1.03 | 0.98 | 0.95 | 0.95 | 0.92 | 1.11 |
| 707 | 0.968 | 0.870 | 0.910 | 1.01 | 1.04 | 1.19 | 1.06 | 0.97 | 0.95 | 0.98 | 1.03 | 1.09 | 0.91 | 1.09 | 1.39 | 0.99 | 1.14 | 1.18 | 1.12 | 0.88 | 0.97 | 0.98 | 1.03 | 0.91 | 0.88 | 0.91 | 1.03 |
| 708 | 0.968 | 0.870 | 0.910 | 1.01 | 1.04 | 1.19 | 1.06 | 0.97 | 0.95 | 0.98 | 1.03 | 1.09 | 0.91 | 1.09 | 1.39 | 0.99 | 1.14 | 1.18 | 1.12 | 0.88 | 0.97 | 0.98 | 1.03 | 0.91 | 0.88 | 0.91 | 1.03 |
| 710 | 0.968 | 0.870 | 0.910 | 1.01 | 1.02 | 1.04 | 1.56 | 1.15 | 1.07 | 1.03 | 1.03 | 1.08 | 1.28 | 1.20 | 1.06 | 0.94 | 0.93 | 0.91 | 1.06 | 0.89 | 1.00 | 1.05 | 1.23 | 1.00 | 0.86 | 0.84 | 0.99 |
| 711 | 0.968 | 0.870 | 0.910 | 1.01 | 1.02 | 1.04 | 1.56 | 1.15 | 1.07 | 1.03 | 1.03 | 1.08 | 1.28 | 1.20 | 1.06 | 0.94 | 0.93 | 0.91 | 1.06 | 0.89 | 1.00 | 1.05 | 1.23 | 1.00 | 0.86 | 0.84 | 0.99 |
| 712 | 0.968 | 0.870 | 0.910 | 1.01 | 1.02 | 1.04 | 1.56 | 1.15 | 1.07 | 1.03 | 1.03 | 1.08 | 1.28 | 1.20 | 1.06 | 0.94 | 0.93 | 0.91 | 1.06 | 0.89 | 1.00 | 1.05 | 1.23 | 1.00 | 0.86 | 0.84 | 0.99 |
| 713 | 0.968 | 0.870 | 0.910 | 1.01 | 1.02 | 1.04 | 1.56 | 1.15 | 1.07 | 1.03 | 1.03 | 1.08 | 1.28 | 1.20 | 1.06 | 0.94 | 0.93 | 0.91 | 1.06 | 0.89 | 1.00 | 1.05 | 1.23 | 1.00 | 0.86 | 0.84 | 0.99 |
| 714 | 0.968 | 0.870 | 0.910 | 1.01 | 1.02 | 1.04 | 1.56 | 1.15 | 1.07 | 1.03 | 1.03 | 1.08 | 1.28 | 1.20 | 1.06 | 0.94 | 0.93 | 0.91 | 1.06 | 0.89 | 1.00 | 1.05 | 1.23 | 1.00 | 0.86 | 0.84 | 0.99 |
| 716 | 0.953 | 0.847 | 0.890 | 0.86 | 0.96 | 0.83 | 1.16 | 0.75 | 1.02 | 1.14 | 0.95 | 1.03 | 1.00 | 0.94 | 0.96 | 0.96 | 1.15 | 1.01 | 1.02 | 1.15 | 0.90 | 1.15 | 0.99 | 0.74 | 1.08 | 1.01 | 0.92 |
| 717 | 0.953 | 0.847 | 0.890 | 0.86 | 0.96 | 0.83 | 1.16 | 0.75 | 1.02 | 1.14 | 0.95 | 1.03 | 1.00 | 0.94 | 0.96 | 0.96 | 1.15 | 1.01 | 1.02 | 1.15 | 0.90 | 1.15 | 0.99 | 0.74 | 1.08 | 1.01 | 0.92 |
| 718 | 0.953 | 0.847 | 0.890 | 0.86 | 0.96 | 0.83 | 1.16 | 0.75 | 1.02 | 1.14 | 0.95 | 1.03 | 1.00 | 0.94 | 0.96 | 0.96 | 1.15 | 1.01 | 1.02 | 1.15 | 0.90 | 1.15 | 0.99 | 0.74 | 1.08 | 1.01 | 0.92 |
| 719 | 0.953 | 0.847 | 0.890 | 0.86 | 0.96 | 0.83 | 1.16 | 0.75 | 1.02 | 1.14 | 0.95 | 1.03 | 1.00 | 0.94 | 0.96 | 0.96 | 1.15 | 1.01 | 1.02 | 1.15 | 0.90 | 1.15 | 0.99 | 0.74 | 1.08 | 1.01 | 0.92 |
| 720 | 0.953 | 0.847 | 0.890 | 0.98 | 1.02 | 0.69 | 1.02 | 0.75 | 1.01 | 1.03 | 0.99 | 1.03 | 0.93 | 0.87 | 1.33 | 1.24 | 1.00 | 1.13 | 1.01 | 1.29 | 0.92 | 1.07 | 0.99 | 0.76 | 1.08 | 1.01 | 0.93 |
| 721 | 0.953 | 0.847 | 0.890 | 0.98 | 1.02 | 0.69 | 1.02 | 0.75 | 1.01 | 1.03 | 0.99 | 1.03 | 0.93 | 0.87 | 1.33 | 1.24 | 1.00 | 1.13 | 1.01 | 1.29 | 0.92 | 1.07 | 0.99 | 0.76 | 1.08 | 1.01 | 0.93 |
| 722 | 0.953 | 0.847 | 0.890 | 0.98 | 1.02 | 0.69 | 1.02 | 0.75 | 1.01 | 1.03 | 0.99 | 1.03 | 0.93 | 0.87 | 1.33 | 1.24 | 1.00 | 1.13 | 1.01 | 1.29 | 0.92 | 1.07 | 0.99 | 0.76 | 1.08 | 1.01 | 0.93 |
| 723 | 0.953 | 0.847 | 0.890 | 0.86 | 0.96 | 0.83 | 1.16 | 0.75 | 1.02 | 1.14 | 0.95 | 1.03 | 1.00 | 0.94 | 0.96 | 0.96 | 1.15 | 1.01 | 1.02 | 1.15 | 0.90 | 1.15 | 0.99 | 0.74 | 1.08 | 1.01 | 0.92 |
| 724 | 0.953 | 0.847 | 0.890 | 0.88 | 1.00 | 0.75 | 1.36 | 0.93 | 0.88 | 0.83 | 1.00 | 1.18 | 0.91 | 0.75 | 1.04 | 1.13 | 1.02 | 1.13 | 1.14 | 1.18 | 0.96 | 0.99 | 1.07 | 0.77 | 1.03 | 1.04 | 0.89 |
| 725 | 0.953 | 0.847 | 0.890 | 0.88 | 1.00 | 0.75 | 1.36 | 0.93 | 0.88 | 0.83 | 1.00 | 1.18 | 0.91 | 0.75 | 1.04 | 1.13 | 1.02 | 1.13 | 1.14 | 1.18 | 0.96 | 0.99 | 1.07 | 0.77 | 1.03 | 1.04 | 0.89 |
| 726 | 0.953 | 0.847 | 0.890 | 0.88 | 1.00 | 0.75 | 1.36 | 0.93 | 0.88 | 0.83 | 1.00 | 1.18 | 0.91 | 0.75 | 1.04 | 1.13 | 1.02 | 1.13 | 1.14 | 1.18 | 0.96 | 0.99 | 1.07 | 0.77 | 1.03 | 1.04 | 0.89 |
| 727 | 0.953 | 0.847 | 0.890 | 0.88 | 1.00 | 0.75 | 1.36 | 0.93 | 0.88 | 0.83 | 1.00 | 1.18 | 0.91 | 0.75 | 1.04 | 1.13 | 1.02 | 1.13 | 1.14 | 1.18 | 0.96 | 0.99 | 1.07 | 0.77 | 1.03 | 1.04 | 0.89 |
| 728 | 0.953 | 0.847 | 0.890 | 0.86 | 0.96 | 0.83 | 1.16 | 0.75 | 1.02 | 1.14 | 0.95 | 1.03 | 1.00 | 0.94 | 0.96 | 0.96 | 1.15 | 1.01 | 1.02 | 1.15 | 0.90 | 1.15 | 0.99 | 0.74 | 1.08 | 1.01 | 0.92 |
| 729 | 0.953 | 0.847 | 0.890 | 0.91 | 1.13 | 0.74 | 1.37 | 0.82 | 1.00 | 0.57 | 1.06 | 1.39 | 1.17 | 0.75 | 0.76 | 0.99 | 1.21 | 1.05 | 1.17 | 1.13 | 0.99 | 1.08 | 1.09 | 0.78 | 1.02 | 0.93 | 1.01 |
| 730 | 0.968 | 0.876 | 0.920 | 0.96 | 1.04 | 1.35 | 0.91 | 0.53 | 1.13 | 1.00 | 1.03 | 1.10 | 0.87 | 0.99 | 1.12 | 1.05 | 1.05 | 1.19 | 1.03 | 0.90 | 0.92 | 1.00 | 1.11 | 0.85 | 0.88 | 0.88 | 0.83 |

## TABLE L. — PROFESSIONAL SERVICES RELATIVE VALUE UNIT (RVU) AND CONVERSION FACTOR GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

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| Zip Code | RVU GAAFs | | | Conversion Factor GAAFs By Category | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Work Expense | Practice Expense | Total Unit Value | Inpatient Visits | Office/ Home/ Urgent Care Visits | Therapeutic Injections | Allergy Testing | Allergy Immunotherapy | Misc. Medical | ER Visits | Consults | Physical Medicine | Cardiovascular | Immunizations | Well Baby Exams | Vision Exams | Hearing/ Speech Exams | Physical Exams | Chiropractor | Psych / Alcohol & Drug Abuse | Surgery | Radiology | Pathology | Anesthesia | Normal Deliveries | Cesarean Deliveries | Non-Deliveries |
| 731 | 0.968 | 0.876 | 0.920 | 0.96 | 1.04 | 1.35 | 0.91 | 0.53 | 1.13 | 1.00 | 1.03 | 1.10 | 0.87 | 0.99 | 1.12 | 1.05 | 1.05 | 1.19 | 1.03 | 0.90 | 0.92 | 1.00 | 1.11 | 0.85 | 0.88 | 0.88 | 0.83 |
| 733 | 0.966 | 0.996 | 0.990 | 1.23 | 1.03 | 1.30 | 0.94 | 0.85 | 1.14 | 0.89 | 1.05 | 1.03 | 1.01 | 1.29 | 1.30 | 0.92 | 0.93 | 1.19 | 1.03 | 0.87 | 0.95 | 1.12 | 1.39 | 0.93 | 1.00 | 1.00 | 0.97 |
| 734 | 0.968 | 0.876 | 0.920 | 1.01 | 1.01 | 1.03 | 1.13 | 1.09 | 1.03 | 1.02 | 1.05 | 1.21 | 1.01 | 1.01 | 0.80 | 0.88 | 1.11 | 0.99 | 1.04 | 0.99 | 0.96 | 1.05 | 1.06 | 0.82 | 0.88 | 0.91 | 0.99 |
| 735 | 0.968 | 0.876 | 0.920 | 1.01 | 1.01 | 1.03 | 1.13 | 1.09 | 1.03 | 1.02 | 1.05 | 1.21 | 1.01 | 1.01 | 0.80 | 0.88 | 1.11 | 0.99 | 1.04 | 0.99 | 0.96 | 1.05 | 1.06 | 0.82 | 0.88 | 0.91 | 0.99 |
| 736 | 0.968 | 0.876 | 0.920 | 0.86 | 0.87 | 1.02 | 0.88 | 0.79 | 1.02 | 0.97 | 0.87 | 0.86 | 0.85 | 0.91 | 0.82 | 0.89 | 0.88 | 0.76 | 0.88 | 0.81 | 0.95 | 1.03 | 1.12 | 0.82 | 0.86 | 0.86 | 0.78 |
| 737 | 0.968 | 0.876 | 0.920 | 0.86 | 0.87 | 1.02 | 0.88 | 0.79 | 1.02 | 0.97 | 0.87 | 0.86 | 0.85 | 0.91 | 0.82 | 0.89 | 0.88 | 0.76 | 0.88 | 0.81 | 0.95 | 1.03 | 1.12 | 0.82 | 0.86 | 0.86 | 0.78 |
| 738 | 0.968 | 0.876 | 0.920 | 0.86 | 0.87 | 1.02 | 0.88 | 0.79 | 1.02 | 0.97 | 0.87 | 0.86 | 0.85 | 0.91 | 0.82 | 0.89 | 0.88 | 0.76 | 0.88 | 0.81 | 0.95 | 1.03 | 1.12 | 0.82 | 0.86 | 0.86 | 0.78 |
| 739 | 0.968 | 0.876 | 0.920 | 0.86 | 0.87 | 1.02 | 0.88 | 0.79 | 1.02 | 0.97 | 0.87 | 0.86 | 0.85 | 0.91 | 0.82 | 0.89 | 0.88 | 0.76 | 0.88 | 0.81 | 0.95 | 1.03 | 1.12 | 0.82 | 0.86 | 0.86 | 0.78 |
| 740 | 0.968 | 0.876 | 0.920 | 0.97 | 1.05 | 1.51 | 1.12 | 0.90 | 1.02 | 0.93 | 0.99 | 1.08 | 0.86 | 0.91 | 0.87 | 0.98 | 0.92 | 0.92 | 1.06 | 0.94 | 0.93 | 0.92 | 0.99 | 0.89 | 0.87 | 0.83 | 0.83 |
| 741 | 0.968 | 0.876 | 0.920 | 0.97 | 1.05 | 1.51 | 1.12 | 0.90 | 1.02 | 0.93 | 0.99 | 1.08 | 0.86 | 0.91 | 0.87 | 0.98 | 0.92 | 0.92 | 1.06 | 0.94 | 0.93 | 0.92 | 0.99 | 0.89 | 0.87 | 0.83 | 0.83 |
| 743 | 0.968 | 0.876 | 0.920 | 1.03 | 0.89 | 1.05 | 0.67 | 0.85 | 0.86 | 1.11 | 0.94 | 1.10 | 1.01 | 1.13 | 1.06 | 0.98 | 1.05 | 1.04 | 0.98 | 0.95 | 0.94 | 1.00 | 1.03 | 0.93 | 0.94 | 0.91 | 0.91 |
| 744 | 0.968 | 0.876 | 0.920 | 1.03 | 0.89 | 1.05 | 0.67 | 0.85 | 0.86 | 1.11 | 0.94 | 1.10 | 1.01 | 1.13 | 1.06 | 0.98 | 1.05 | 1.04 | 0.98 | 0.95 | 0.94 | 1.00 | 1.03 | 0.93 | 0.94 | 0.91 | 0.91 |
| 745 | 0.968 | 0.876 | 0.920 | 1.01 | 1.01 | 1.03 | 1.13 | 1.09 | 1.03 | 1.02 | 1.05 | 1.21 | 1.01 | 1.01 | 0.80 | 0.88 | 1.11 | 0.99 | 1.04 | 0.99 | 0.96 | 1.05 | 1.06 | 0.82 | 0.88 | 0.91 | 0.99 |
| 746 | 0.968 | 0.876 | 0.920 | 0.86 | 0.87 | 1.02 | 0.88 | 0.79 | 1.02 | 0.97 | 0.87 | 0.86 | 0.85 | 0.91 | 0.82 | 0.89 | 0.88 | 0.76 | 0.88 | 0.81 | 0.95 | 1.03 | 1.12 | 0.82 | 0.86 | 0.86 | 0.78 |
| 747 | 0.968 | 0.876 | 0.920 | 1.01 | 1.01 | 1.03 | 1.13 | 1.09 | 1.03 | 1.02 | 1.05 | 1.21 | 1.01 | 1.01 | 0.80 | 0.88 | 1.11 | 0.99 | 1.04 | 0.99 | 0.96 | 1.05 | 1.06 | 0.82 | 0.88 | 0.91 | 0.99 |
| 748 | 0.968 | 0.876 | 0.920 | 1.03 | 0.89 | 1.05 | 0.67 | 0.85 | 0.86 | 1.11 | 0.94 | 1.10 | 1.01 | 1.13 | 1.06 | 0.98 | 1.05 | 1.04 | 0.98 | 0.95 | 0.94 | 1.00 | 1.03 | 0.93 | 0.94 | 0.91 | 0.91 |
| 749 | 0.968 | 0.876 | 0.920 | 1.01 | 1.01 | 1.03 | 1.13 | 1.09 | 1.03 | 1.02 | 1.05 | 1.21 | 1.01 | 1.01 | 0.80 | 0.88 | 1.11 | 0.99 | 1.04 | 0.99 | 0.96 | 1.05 | 1.06 | 0.82 | 0.88 | 0.91 | 0.99 |
| 750 | 0.966 | 0.880 | 0.920 | 1.19 | 1.12 | 1.38 | 1.24 | 1.17 | 1.35 | 1.02 | 1.12 | 1.09 | 1.24 | 1.45 | 1.43 | 1.17 | 1.02 | 1.39 | 1.10 | 1.09 | 1.13 | 1.16 | 1.31 | 1.07 | 1.11 | 1.17 | 1.25 |
| 751 | 0.966 | 0.880 | 0.920 | 1.19 | 1.12 | 1.38 | 1.24 | 1.17 | 1.35 | 1.02 | 1.12 | 1.09 | 1.24 | 1.45 | 1.43 | 1.17 | 1.02 | 1.39 | 1.10 | 1.09 | 1.13 | 1.16 | 1.31 | 1.07 | 1.11 | 1.17 | 1.25 |
| 752 | 1.010 | 1.065 | 1.040 | 1.23 | 1.10 | 1.80 | 0.97 | 0.85 | 1.21 | 1.05 | 1.13 | 1.03 | 1.07 | 0.97 | 1.29 | 1.01 | 0.88 | 1.18 | 1.05 | 1.01 | 1.05 | 0.99 | 1.16 | 1.15 | 1.02 | 1.02 | 0.97 |
| 753 | 1.010 | 1.065 | 1.040 | 1.23 | 1.10 | 1.80 | 0.97 | 0.85 | 1.21 | 1.05 | 1.13 | 1.03 | 1.07 | 0.97 | 1.29 | 1.01 | 0.88 | 1.18 | 1.05 | 1.01 | 1.05 | 0.99 | 1.16 | 1.15 | 1.02 | 1.02 | 0.97 |
| 754 | 0.966 | 0.880 | 0.920 | 1.05 | 1.05 | 1.39 | 1.06 | 0.88 | 1.22 | 0.97 | 1.03 | 1.05 | 1.27 | 1.41 | 0.92 | 0.98 | 1.00 | 0.99 | 1.01 | 1.01 | 1.01 | 1.11 | 1.27 | 1.00 | 1.03 | 1.00 | 1.00 |
| 755 | 0.966 | 0.880 | 0.920 | 1.05 | 1.05 | 1.39 | 1.06 | 0.88 | 1.22 | 0.97 | 1.03 | 1.05 | 1.27 | 1.41 | 0.92 | 0.98 | 1.00 | 0.99 | 1.01 | 1.01 | 1.01 | 1.11 | 1.27 | 1.00 | 1.03 | 1.00 | 1.00 |
| 756 | 0.966 | 0.880 | 0.920 | 1.05 | 1.05 | 1.39 | 1.06 | 0.88 | 1.22 | 0.97 | 1.03 | 1.05 | 1.27 | 1.41 | 0.92 | 0.98 | 1.00 | 0.99 | 1.01 | 1.01 | 1.01 | 1.11 | 1.27 | 1.00 | 1.03 | 1.00 | 1.00 |
| 757 | 0.966 | 0.880 | 0.920 | 1.05 | 1.05 | 1.39 | 1.06 | 0.88 | 1.22 | 0.97 | 1.03 | 1.05 | 1.27 | 1.41 | 0.92 | 0.98 | 1.00 | 0.99 | 1.01 | 1.01 | 1.01 | 1.11 | 1.27 | 1.00 | 1.03 | 1.00 | 1.00 |
| 758 | 0.966 | 0.880 | 0.920 | 1.05 | 1.05 | 1.39 | 1.06 | 0.88 | 1.22 | 0.97 | 1.03 | 1.05 | 1.27 | 1.41 | 0.92 | 0.98 | 1.00 | 0.99 | 1.01 | 1.01 | 1.01 | 1.11 | 1.27 | 1.00 | 1.03 | 1.00 | 1.00 |
| 759 | 0.966 | 0.880 | 0.920 | 1.05 | 1.05 | 1.39 | 1.06 | 0.88 | 1.22 | 0.97 | 1.03 | 1.05 | 1.27 | 1.41 | 0.92 | 0.98 | 1.00 | 0.99 | 1.01 | 1.01 | 1.01 | 1.11 | 1.27 | 1.00 | 1.03 | 1.00 | 1.00 |
| 760 | 0.966 | 0.880 | 0.920 | 1.14 | 1.09 | 1.40 | 1.06 | 1.14 | 1.26 | 0.99 | 1.06 | 1.10 | 1.22 | 1.38 | 1.30 | 1.15 | 0.97 | 1.10 | 1.05 | 1.04 | 1.02 | 1.03 | 1.22 | 1.06 | 0.93 | 0.93 | 1.08 |
| 761 | 0.987 | 0.981 | 0.980 | 1.10 | 1.03 | 1.27 | 0.95 | 1.04 | 1.15 | 0.95 | 1.03 | 1.04 | 1.13 | 1.25 | 1.22 | 1.08 | 0.89 | 1.04 | 0.99 | 1.00 | 0.96 | 0.95 | 1.13 | 1.06 | 0.88 | 0.89 | 1.02 |
| 762 | 0.966 | 0.880 | 0.920 | 1.06 | 1.06 | 1.37 | 0.89 | 1.01 | 1.25 | 1.00 | 1.06 | 1.05 | 1.30 | 1.16 | 1.16 | 0.99 | 1.15 | 1.10 | 1.02 | 0.92 | 1.05 | 1.08 | 1.04 | 0.96 | 1.11 | 1.08 | 1.07 |
| 763 | 0.966 | 0.880 | 0.920 | 1.06 | 1.06 | 1.37 | 0.89 | 1.01 | 1.25 | 1.00 | 1.06 | 1.05 | 1.30 | 1.16 | 1.16 | 0.99 | 1.15 | 1.10 | 1.02 | 0.92 | 1.05 | 1.08 | 1.04 | 0.96 | 1.11 | 1.08 | 1.07 |
| 764 | 0.966 | 0.880 | 0.920 | 0.99 | 1.04 | 1.25 | 1.06 | 0.88 | 1.24 | 0.81 | 1.09 | 1.04 | 1.37 | 1.00 | 1.22 | 0.99 | 1.09 | 1.12 | 0.99 | 1.11 | 1.01 | 1.33 | 1.17 | 0.84 | 0.82 | 0.80 | 0.89 |
| 765 | 0.966 | 0.880 | 0.920 | 1.14 | 1.07 | 0.95 | 0.92 | 0.82 | 1.15 | 0.88 | 1.16 | 1.05 | 1.49 | 1.46 | 0.80 | 0.95 | 1.39 | 0.90 | 1.00 | 1.33 | 1.00 | 1.08 | 1.36 | 0.94 | 0.95 | 0.81 | 0.97 |
| 766 | 0.966 | 0.880 | 0.920 | 0.99 | 1.04 | 1.25 | 1.06 | 0.88 | 1.24 | 0.81 | 1.09 | 1.04 | 1.37 | 1.00 | 1.22 | 0.99 | 1.09 | 1.12 | 0.99 | 1.11 | 1.01 | 1.33 | 1.17 | 0.84 | 0.82 | 0.80 | 0.89 |
| 767 | 0.966 | 0.880 | 0.920 | 0.99 | 1.04 | 1.25 | 1.06 | 0.88 | 1.24 | 0.81 | 1.09 | 1.04 | 1.37 | 1.00 | 1.22 | 0.99 | 1.09 | 1.12 | 0.99 | 1.11 | 1.01 | 1.33 | 1.17 | 0.84 | 0.82 | 0.80 | 0.89 |
| 768 | 0.966 | 0.880 | 0.920 | 1.07 | 1.02 | 1.28 | 1.08 | 0.87 | 1.19 | 1.00 | 1.06 | 1.00 | 1.40 | 1.49 | 0.90 | 0.98 | 1.10 | 0.87 | 0.95 | 1.05 | 1.07 | 1.23 | 1.16 | 0.90 | 0.89 | 1.03 | 1.06 |
| 769 | 0.966 | 0.880 | 0.920 | 1.07 | 1.02 | 1.28 | 1.08 | 0.87 | 1.19 | 1.00 | 1.06 | 1.00 | 1.40 | 1.49 | 0.90 | 0.98 | 1.10 | 0.87 | 0.95 | 1.05 | 1.07 | 1.23 | 1.16 | 0.90 | 0.89 | 1.03 | 1.06 |
| 770 | 1.020 | 1.007 | 1.010 | 1.18 | 1.00 | 1.28 | 0.89 | 0.85 | 1.05 | 1.14 | 1.05 | 0.99 | 1.07 | 1.19 | 1.17 | 1.01 | 1.01 | 1.08 | 1.02 | 1.00 | 1.06 | 1.05 | 1.38 | 0.93 | 1.07 | 1.00 | 1.10 |
| 772 | 1.020 | 1.007 | 1.010 | 1.18 | 1.00 | 1.28 | 0.89 | 0.85 | 1.05 | 1.14 | 1.05 | 0.99 | 1.07 | 1.19 | 1.17 | 1.01 | 1.01 | 1.08 | 1.02 | 1.00 | 1.06 | 1.05 | 1.38 | 0.93 | 1.07 | 1.00 | 1.10 |
| 773 | 0.966 | 0.880 | 0.920 | 1.09 | 1.07 | 1.06 | 1.06 | 1.09 | 1.25 | 1.22 | 1.05 | 1.04 | 1.20 | 1.38 | 1.24 | 1.03 | 1.04 | 1.16 | 1.07 | 1.12 | 1.11 | 1.21 | 1.32 | 1.00 | 1.00 | 1.04 | 1.08 |
| 774 | 0.966 | 0.880 | 0.920 | 1.09 | 1.07 | 1.06 | 1.06 | 1.09 | 1.25 | 1.22 | 1.05 | 1.04 | 1.20 | 1.38 | 1.24 | 1.03 | 1.04 | 1.16 | 1.07 | 1.12 | 1.11 | 1.21 | 1.32 | 1.00 | 1.00 | 1.04 | 1.08 |
| 775 | 0.968 | 0.969 | 0.960 | 1.03 | 1.00 | 0.94 | 0.94 | 0.99 | 1.14 | 1.16 | 0.99 | 0.98 | 1.09 | 1.23 | 1.17 | 0.96 | 0.93 | 1.09 | 1.00 | 1.07 | 1.03 | 1.11 | 1.23 | 1.00 | 0.92 | 0.96 | 0.99 |
| 776 | 0.966 | 0.880 | 0.920 | 1.00 | 1.05 | 1.88 | 1.06 | 1.17 | 1.22 | 1.10 | 0.99 | 1.20 | 1.20 | 1.67 | 1.12 | 1.02 | 0.94 | 1.18 | 1.11 | 0.99 | 1.03 | 1.27 | 1.17 | 0.99 | 1.11 | 1.07 | 1.01 |
| 777 | 0.992 | 0.890 | 0.940 | 0.97 | 1.02 | 1.81 | 1.02 | 1.13 | 1.19 | 1.06 | 0.96 | 1.16 | 1.16 | 1.62 | 1.09 | 1.00 | 0.90 | 1.15 | 1.08 | 0.96 | 0.99 | 1.23 | 1.14 | 0.99 | 1.05 | 1.01 | 0.96 |
| 778 | 0.966 | 0.880 | 0.920 | 1.14 | 1.07 | 0.95 | 0.92 | 0.82 | 1.15 | 0.88 | 1.16 | 1.05 | 1.49 | 1.46 | 0.80 | 0.95 | 1.39 | 0.90 | 1.00 | 1.33 | 1.00 | 1.08 | 1.36 | 0.94 | 0.95 | 0.81 | 0.97 |
| 779 | 0.966 | 0.880 | 0.920 | 0.99 | 1.00 | 1.43 | 1.06 | 0.94 | 1.19 | 1.03 | 1.00 | 0.93 | 1.18 | 1.05 | 1.16 | 0.92 | 1.25 | 1.05 | 0.95 | 1.01 | 0.99 | 0.90 | 1.07 | 0.96 | 0.98 | 0.95 | 0.90 |
| 780 | 0.966 | 0.880 | 0.920 | 1.13 | 1.05 | 1.39 | 0.89 | 1.10 | 1.14 | 1.27 | 1.04 | 1.04 | 1.18 | 1.27 | 1.02 | 1.10 | 0.93 | 1.01 | 1.04 | 1.09 | 1.01 | 1.01 | 1.29 | 0.92 | 0.82 | 0.83 | 1.06 |
| 781 | 0.966 | 0.880 | 0.920 | 0.99 | 1.00 | 1.43 | 1.06 | 0.94 | 1.19 | 1.03 | 1.00 | 0.93 | 1.18 | 1.05 | 1.16 | 0.92 | 1.25 | 1.05 | 0.95 | 1.01 | 0.99 | 0.90 | 1.07 | 0.96 | 0.98 | 0.95 | 0.90 |
| 782 | 0.966 | 0.880 | 0.920 | 1.13 | 1.05 | 1.39 | 0.89 | 1.10 | 1.14 | 1.27 | 1.04 | 1.04 | 1.18 | 1.27 | 1.02 | 1.10 | 0.93 | 1.01 | 1.04 | 1.09 | 1.01 | 1.01 | 1.29 | 0.92 | 0.82 | 0.83 | 1.06 |
| 783 | 0.966 | 0.880 | 0.920 | 1.05 | 1.05 | 1.35 | 1.04 | 1.18 | 1.24 | 1.15 | 1.04 | 1.07 | 1.05 | 1.20 | 0.92 | 1.05 | 1.06 | 0.98 | 1.06 | 1.07 | 1.10 | 1.05 | 1.23 | 1.08 | 0.98 | 1.02 | 1.07 |
| 784 | 0.966 | 0.880 | 0.920 | 1.05 | 1.06 | 1.35 | 1.04 | 1.18 | 1.24 | 1.15 | 1.04 | 1.07 | 1.05 | 1.20 | 0.92 | 1.05 | 1.06 | 0.98 | 1.06 | 1.07 | 1.10 | 1.05 | 1.23 | 1.08 | 0.98 | 1.02 | 1.07 |
| 785 | 0.966 | 0.880 | 0.920 | 1.05 | 1.05 | 1.35 | 1.04 | 1.18 | 1.24 | 1.15 | 1.04 | 1.07 | 1.05 | 1.20 | 0.92 | 1.05 | 1.06 | 0.98 | 1.06 | 1.07 | 1.10 | 1.05 | 1.23 | 1.08 | 0.98 | 1.02 | 1.07 |
| 786 | 0.966 | 0.880 | 0.920 | 1.28 | 1.10 | 1.45 | 1.04 | 0.94 | 1.26 | 0.92 | 1.11 | 1.08 | 1.11 | 1.45 | 1.39 | 0.99 | 1.03 | 1.27 | 1.10 | 0.91 | 1.01 | 1.22 | 1.50 | 0.93 | 1.04 | 1.04 | 1.02 |
| 787 | 0.966 | 0.996 | 0.990 | 1.23 | 1.03 | 1.30 | 0.94 | 0.85 | 1.14 | 0.89 | 1.05 | 1.03 | 1.01 | 1.29 | 1.30 | 0.92 | 0.93 | 1.19 | 1.03 | 0.87 | 0.95 | 1.12 | 1.39 | 0.93 | 1.00 | 1.00 | 0.97 |
| 788 | 0.966 | 0.880 | 0.920 | 1.07 | 1.02 | 1.28 | 1.08 | 0.87 | 1.19 | 1.00 | 1.06 | 1.00 | 1.40 | 1.49 | 0.90 | 0.98 | 1.10 | 0.87 | 0.95 | 1.05 | 1.07 | 1.23 | 1.16 | 0.90 | 0.89 | 1.03 | 1.06 |
| 789 | 0.966 | 0.880 | 0.920 | 1.28 | 1.10 | 1.45 | 1.04 | 0.94 | 1.26 | 0.92 | 1.11 | 1.08 | 1.11 | 1.45 | 1.39 | 0.99 | 1.03 | 1.27 | 1.10 | 0.91 | 1.01 | 1.22 | 1.50 | 0.93 | 1.04 | 1.04 | 1.02 |
| 790 | 0.966 | 0.880 | 0.920 | 0.96 | 0.92 | 0.91 | 1.24 | 1.36 | 1.20 | 0.89 | 1.06 | 1.01 | 1.20 | 1.01 | 0.88 | 0.92 | 0.91 | 0.80 | 0.90 | 1.03 | 0.99 | 1.07 | 1.10 | 0.93 | 0.92 | 0.93 | 1.00 |
| 791 | 0.966 | 0.880 | 0.920 | 0.96 | 0.92 | 0.91 | 1.24 | 1.36 | 1.20 | 0.89 | 1.06 | 1.01 | 1.20 | 1.01 | 0.88 | 0.92 | 0.91 | 0.80 | 0.90 | 1.03 | 0.99 | 1.07 | 1.10 | 0.93 | 0.92 | 0.93 | 1.00 |
| 792 | 0.966 | 0.880 | 0.920 | 0.96 | 0.92 | 0.91 | 1.24 | 1.36 | 1.20 | 0.89 | 1.06 | 1.01 | 1.20 | 1.01 | 0.88 | 0.92 | 0.91 | 0.80 | 0.90 | 1.03 | 0.99 | 1.07 | 1.10 | 0.93 | 0.92 | 0.93 | 1.00 |
| 793 | 0.966 | 0.880 | 0.920 | 1.18 | 1.01 | 1.22 | 0.88 | 0.77 | 1.21 | 1.74 | 1.02 | 0.96 | 1.16 | 1.41 | 0.99 | 1.06 | 1.07 | 1.00 | 0.99 | 1.03 | 1.02 | 1.17 | 1.18 | 0.92 | 0.94 | 1.04 | 1.02 |
| 794 | 0.966 | 0.880 | 0.920 | 1.18 | 1.01 | 1.22 | 0.88 | 0.77 | 1.21 | 1.74 | 1.02 | 0.96 | 1.16 | 1.41 | 0.99 | 1.06 | 1.07 | 1.00 | 0.99 | 1.03 | 1.02 | 1.17 | 1.18 | 0.92 | 0.94 | 1.04 | 1.02 |
| 795 | 0.966 | 0.880 | 0.920 | 1.18 | 1.01 | 1.22 | 0.88 | 0.77 | 1.21 | 1.74 | 1.02 | 0.96 | 1.16 | 1.41 | 0.99 | 1.06 | 1.07 | 1.00 | 0.99 | 1.03 | 1.02 | 1.17 | 1.18 | 0.92 | 0.94 | 1.04 | 1.02 |

## TABLE L. — PROFESSIONAL SERVICES RELATIVE VALUE UNIT (RVU) AND CONVERSION FACTOR GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

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| Zip Code | RVU GAAFs | | | Conversion Factor GAAFs By Category | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Work Expense | Practice Expense | Total Unit Value | Inpatient Visits | Office/ Home/ Urgent Care Visits | Therapeutic Injections | Allergy Testing | Allergy Immunotherapy | Misc Medical | ER Visits | Consults | Physical Medicine | Cardiovascular | Immunizations | Well Baby Exams | Vision Exams | Hearing/ Speech Exams | Physical Exams | Chiropractor | Psych / Alcohol & Drug Abuse | Surgery | Radiology | Pathology | Anesthesia | Normal Deliveries | Cesarean Deliveries | Non-Deliveries |
| 796 | 0.966 | 0.880 | 0.920 | 1.18 | 1.01 | 1.22 | 0.88 | 0.77 | 1.21 | 1.74 | 1.02 | 0.96 | 1.16 | 1.41 | 0.99 | 1.06 | 1.07 | 1.00 | 0.99 | 1.03 | 1.02 | 1.17 | 1.18 | 0.92 | 0.94 | 1.04 | 1.02 |
| 797 | 0.966 | 0.880 | 0.920 | 1.07 | 1.02 | 1.28 | 1.08 | 0.87 | 1.19 | 1.00 | 1.06 | 1.00 | 1.40 | 1.49 | 0.90 | 0.98 | 1.10 | 0.87 | 0.95 | 1.05 | 1.07 | 1.23 | 1.16 | 0.90 | 0.89 | 1.03 | 1.06 |
| 798 | 0.966 | 0.880 | 0.920 | 1.07 | 1.02 | 1.28 | 1.08 | 0.87 | 1.19 | 1.00 | 1.06 | 1.00 | 1.40 | 1.49 | 0.90 | 0.98 | 1.10 | 0.87 | 0.95 | 1.05 | 1.07 | 1.23 | 1.16 | 0.90 | 0.89 | 1.03 | 1.06 |
| 799 | 0.966 | 0.880 | 0.920 | 1.03 | 1.00 | 1.42 | 0.88 | 0.82 | 1.26 | 0.97 | 1.05 | 1.00 | 1.15 | 1.08 | 0.89 | 1.07 | 0.88 | 0.86 | 1.03 | 1.14 | 1.05 | 0.96 | 1.16 | 0.92 | 0.85 | 0.97 | 0.96 |
| 800 | 0.985 | 0.992 | 0.990 | 1.06 | 1.06 | 1.14 | 0.95 | 1.04 | 1.16 | 1.05 | 1.02 | 0.92 | 0.96 | 1.01 | 1.37 | 1.02 | 0.77 | 1.23 | 1.09 | 0.90 | 0.85 | 0.82 | 0.89 | 0.80 | 0.88 | 0.92 | 0.74 |
| 801 | 0.985 | 0.992 | 0.990 | 1.10 | 1.08 | 0.95 | 1.27 | 1.01 | 1.14 | 1.03 | 1.09 | 0.91 | 0.95 | 0.93 | 1.30 | 1.02 | 0.84 | 1.31 | 1.14 | 0.96 | 0.90 | 0.75 | 0.94 | 0.77 | 1.00 | 0.94 | 0.73 |
| 802 | 0.985 | 0.992 | 0.990 | 1.13 | 1.05 | 1.14 | 0.89 | 1.21 | 1.19 | 1.06 | 1.04 | 0.90 | 0.86 | 1.05 | 1.38 | 1.04 | 0.86 | 1.26 | 1.14 | 1.01 | 0.90 | 0.78 | 0.78 | 0.85 | 0.92 | 0.97 | 0.77 |
| 803 | 0.985 | 0.992 | 0.990 | 1.06 | 1.06 | 1.14 | 0.95 | 1.04 | 1.16 | 1.05 | 1.02 | 0.92 | 0.96 | 1.01 | 1.37 | 1.02 | 0.77 | 1.23 | 1.09 | 0.90 | 0.85 | 0.82 | 0.89 | 0.80 | 0.88 | 0.92 | 0.74 |
| 804 | 0.985 | 0.992 | 0.990 | 1.06 | 1.06 | 1.14 | 0.95 | 1.04 | 1.16 | 1.05 | 1.02 | 0.92 | 0.96 | 1.01 | 1.37 | 1.02 | 0.77 | 1.23 | 1.09 | 0.90 | 0.85 | 0.82 | 0.89 | 0.80 | 0.88 | 0.92 | 0.74 |
| 805 | 0.985 | 0.992 | 0.990 | 0.95 | 1.00 | 0.98 | 0.86 | 0.96 | 1.10 | 0.84 | 0.99 | 0.96 | 0.86 | 0.93 | 1.33 | 0.97 | 0.84 | 1.14 | 0.96 | 0.89 | 0.76 | 0.82 | 0.88 | 0.82 | 0.86 | 0.92 | 0.76 |
| 806 | 0.985 | 0.992 | 0.990 | 0.95 | 1.00 | 0.98 | 0.86 | 0.96 | 1.10 | 0.84 | 0.99 | 0.96 | 0.86 | 0.93 | 1.33 | 0.97 | 0.84 | 1.14 | 0.96 | 0.89 | 0.76 | 0.82 | 0.88 | 0.82 | 0.86 | 0.92 | 0.76 |
| 807 | 0.985 | 0.992 | 0.990 | 0.95 | 1.00 | 0.98 | 0.86 | 0.96 | 1.10 | 0.84 | 0.99 | 0.96 | 0.86 | 0.93 | 1.33 | 0.97 | 0.84 | 1.14 | 0.96 | 0.89 | 0.76 | 0.82 | 0.88 | 0.82 | 0.86 | 0.92 | 0.76 |
| 808 | 0.985 | 0.992 | 0.990 | 1.10 | 1.06 | 1.13 | 0.80 | 0.91 | 1.07 | 0.97 | 1.05 | 1.06 | 0.86 | 0.86 | 1.41 | 0.93 | 0.92 | 1.27 | 1.07 | 0.92 | 0.85 | 0.72 | 0.89 | 0.92 | 0.85 | 0.88 | 0.81 |
| 809 | 0.985 | 0.992 | 0.990 | 1.10 | 1.06 | 1.13 | 0.80 | 0.91 | 1.07 | 0.97 | 1.05 | 1.06 | 0.86 | 0.86 | 1.41 | 0.93 | 0.92 | 1.27 | 1.07 | 0.92 | 0.85 | 0.72 | 0.89 | 0.92 | 0.85 | 0.88 | 0.81 |
| 810 | 0.985 | 0.992 | 0.990 | 1.10 | 1.06 | 1.13 | 0.80 | 0.91 | 1.07 | 0.97 | 1.05 | 1.06 | 0.86 | 0.86 | 1.41 | 0.93 | 0.92 | 1.27 | 1.07 | 0.92 | 0.85 | 0.72 | 0.89 | 0.92 | 0.85 | 0.88 | 0.81 |
| 811 | 0.985 | 0.992 | 0.990 | 0.92 | 0.91 | 1.37 | 1.00 | 0.95 | 1.01 | 0.90 | 0.95 | 0.79 | 0.86 | 0.98 | 1.19 | 0.84 | 0.83 | 1.05 | 0.90 | 0.82 | 0.88 | 0.91 | 0.94 | 0.85 | 0.79 | 0.88 | 0.75 |
| 812 | 0.985 | 0.992 | 0.990 | 0.92 | 0.91 | 1.37 | 1.00 | 0.95 | 1.01 | 0.90 | 0.95 | 0.79 | 0.86 | 0.98 | 1.19 | 0.84 | 0.83 | 1.05 | 0.90 | 0.82 | 0.88 | 0.91 | 0.94 | 0.85 | 0.79 | 0.88 | 0.75 |
| 813 | 0.985 | 0.992 | 0.990 | 0.92 | 0.91 | 1.37 | 1.00 | 0.95 | 1.01 | 0.90 | 0.95 | 0.79 | 0.86 | 0.98 | 1.19 | 0.84 | 0.83 | 1.05 | 0.90 | 0.82 | 0.88 | 0.91 | 0.94 | 0.85 | 0.79 | 0.88 | 0.75 |
| 814 | 0.985 | 0.992 | 0.990 | 0.92 | 0.91 | 1.37 | 1.00 | 0.95 | 1.01 | 0.90 | 0.95 | 0.79 | 0.86 | 0.98 | 1.19 | 0.84 | 0.83 | 1.05 | 0.90 | 0.82 | 0.88 | 0.91 | 0.94 | 0.85 | 0.79 | 0.88 | 0.75 |
| 815 | 0.985 | 0.992 | 0.990 | 0.92 | 0.91 | 1.37 | 1.00 | 0.95 | 1.01 | 0.90 | 0.95 | 0.79 | 0.86 | 0.98 | 1.19 | 0.84 | 0.83 | 1.05 | 0.90 | 0.82 | 0.88 | 0.91 | 0.94 | 0.85 | 0.79 | 0.88 | 0.75 |
| 816 | 0.985 | 0.992 | 0.990 | 1.11 | 1.08 | 0.82 | 1.59 | 0.89 | 1.05 | 1.00 | 1.07 | 0.87 | 1.03 | 1.33 | 1.43 | 1.14 | 0.69 | 1.24 | 1.11 | 1.04 | 1.08 | 0.87 | 0.97 | 0.87 | 0.92 | 0.98 | 0.99 |
| 820 | 0.967 | 0.895 | 0.930 | 0.91 | 0.92 | 0.87 | 0.72 | 0.73 | 1.03 | 0.86 | 1.03 | 0.86 | 0.99 | 0.82 | 0.67 | 0.88 | 0.97 | 0.68 | 0.88 | 0.94 | 0.93 | 0.99 | 0.97 | 0.86 | 0.84 | 0.92 | 0.92 |
| 821 | 0.967 | 0.895 | 0.930 | 0.91 | 0.92 | 0.87 | 0.72 | 0.73 | 1.03 | 0.86 | 1.03 | 0.86 | 0.99 | 0.82 | 0.67 | 0.88 | 0.97 | 0.68 | 0.88 | 0.94 | 0.93 | 0.99 | 0.97 | 0.86 | 0.84 | 0.92 | 0.92 |
| 822 | 0.967 | 0.895 | 0.930 | 0.91 | 0.92 | 0.87 | 0.72 | 0.73 | 1.03 | 0.86 | 1.03 | 0.86 | 0.99 | 0.82 | 0.67 | 0.88 | 0.97 | 0.68 | 0.88 | 0.94 | 0.93 | 0.99 | 0.97 | 0.86 | 0.84 | 0.92 | 0.92 |
| 823 | 0.967 | 0.895 | 0.930 | 0.91 | 0.92 | 0.87 | 0.72 | 0.73 | 1.03 | 0.86 | 1.03 | 0.86 | 0.99 | 0.82 | 0.67 | 0.88 | 0.97 | 0.68 | 0.88 | 0.94 | 0.93 | 0.99 | 0.97 | 0.86 | 0.84 | 0.92 | 0.92 |
| 824 | 0.967 | 0.895 | 0.930 | 0.91 | 0.92 | 0.87 | 0.72 | 0.73 | 1.03 | 0.86 | 1.03 | 0.86 | 0.99 | 0.82 | 0.67 | 0.88 | 0.97 | 0.68 | 0.88 | 0.94 | 0.93 | 0.99 | 0.97 | 0.86 | 0.84 | 0.92 | 0.92 |
| 825 | 0.967 | 0.895 | 0.930 | 0.91 | 0.92 | 0.87 | 0.72 | 0.73 | 1.03 | 0.86 | 1.03 | 0.86 | 0.99 | 0.82 | 0.67 | 0.88 | 0.97 | 0.68 | 0.88 | 0.94 | 0.93 | 0.99 | 0.97 | 0.86 | 0.84 | 0.92 | 0.92 |
| 826 | 0.967 | 0.895 | 0.930 | 0.91 | 0.92 | 0.87 | 0.72 | 0.73 | 1.03 | 0.86 | 1.03 | 0.86 | 0.99 | 0.82 | 0.67 | 0.88 | 0.97 | 0.68 | 0.88 | 0.94 | 0.93 | 0.99 | 0.97 | 0.86 | 0.84 | 0.92 | 0.92 |
| 827 | 0.967 | 0.895 | 0.930 | 0.91 | 0.92 | 0.87 | 0.72 | 0.73 | 1.03 | 0.86 | 1.03 | 0.86 | 0.99 | 0.82 | 0.67 | 0.88 | 0.97 | 0.68 | 0.88 | 0.94 | 0.93 | 0.99 | 0.97 | 0.86 | 0.84 | 0.92 | 0.92 |
| 828 | 0.967 | 0.895 | 0.930 | 0.91 | 0.92 | 0.87 | 0.72 | 0.73 | 1.03 | 0.86 | 1.03 | 0.86 | 0.99 | 0.82 | 0.67 | 0.88 | 0.97 | 0.68 | 0.88 | 0.94 | 0.93 | 0.99 | 0.97 | 0.86 | 0.84 | 0.92 | 0.92 |
| 829 | 0.967 | 0.895 | 0.930 | 0.91 | 0.92 | 0.87 | 0.72 | 0.73 | 1.03 | 0.86 | 1.03 | 0.86 | 0.99 | 0.82 | 0.67 | 0.88 | 0.97 | 0.68 | 0.88 | 0.94 | 0.93 | 0.99 | 0.97 | 0.86 | 0.84 | 0.92 | 0.92 |
| 830 | 0.967 | 0.895 | 0.930 | 0.91 | 0.92 | 0.87 | 0.72 | 0.73 | 1.03 | 0.86 | 1.03 | 0.86 | 0.99 | 0.82 | 0.67 | 0.88 | 0.97 | 0.68 | 0.88 | 0.94 | 0.93 | 0.99 | 0.97 | 0.86 | 0.84 | 0.92 | 0.92 |
| 831 | 0.967 | 0.895 | 0.930 | 0.91 | 0.92 | 0.87 | 0.72 | 0.73 | 1.03 | 0.86 | 1.03 | 0.86 | 0.99 | 0.82 | 0.67 | 0.88 | 0.97 | 0.68 | 0.88 | 0.94 | 0.93 | 0.99 | 0.97 | 0.86 | 0.84 | 0.92 | 0.92 |
| 832 | 0.960 | 0.881 | 0.920 | 1.01 | 0.98 | 0.97 | 0.63 | 0.36 | 0.92 | 0.89 | 1.08 | 0.69 | 1.00 | 0.86 | 0.69 | 0.88 | 0.73 | 0.83 | 0.84 | 1.03 | 0.90 | 0.97 | 0.88 | 0.75 | 0.76 | 0.87 | 0.75 |
| 833 | 0.960 | 0.881 | 0.920 | 0.92 | 1.03 | 0.96 | 1.30 | 0.95 | 1.07 | 0.82 | 1.01 | 0.79 | 0.92 | 0.90 | 0.92 | 0.92 | 1.06 | 1.01 | 0.88 | 0.93 | 0.94 | 0.97 | 0.78 | 0.77 | 0.85 | 0.98 | 0.86 |
| 834 | 0.960 | 0.881 | 0.920 | 1.01 | 0.98 | 0.97 | 0.63 | 0.36 | 0.92 | 0.89 | 1.08 | 0.69 | 1.00 | 0.86 | 0.69 | 0.88 | 0.73 | 0.83 | 0.84 | 1.03 | 0.90 | 0.97 | 0.88 | 0.75 | 0.76 | 0.87 | 0.75 |
| 835 | 0.960 | 0.881 | 0.920 | 0.92 | 1.03 | 0.96 | 1.30 | 0.95 | 1.07 | 0.82 | 1.01 | 0.79 | 0.92 | 0.90 | 0.92 | 0.92 | 1.06 | 1.01 | 0.88 | 0.93 | 0.94 | 0.97 | 0.78 | 0.77 | 0.85 | 0.98 | 0.86 |
| 836 | 0.960 | 0.881 | 0.920 | 0.92 | 1.03 | 0.96 | 1.30 | 0.95 | 1.07 | 0.82 | 1.01 | 0.79 | 0.92 | 0.90 | 0.92 | 0.92 | 1.06 | 1.01 | 0.88 | 0.93 | 0.94 | 0.97 | 0.78 | 0.77 | 0.85 | 0.98 | 0.86 |
| 837 | 0.960 | 0.881 | 0.920 | 1.04 | 1.07 | 1.05 | 0.78 | 0.87 | 1.00 | 0.90 | 1.12 | 1.11 | 0.94 | 0.82 | 0.93 | 0.92 | 0.86 | 1.03 | 0.95 | 0.94 | 1.02 | 1.03 | 0.76 | 0.81 | 0.86 | 0.99 | 0.94 |
| 838 | 0.960 | 0.881 | 0.920 | 0.92 | 1.03 | 0.96 | 1.30 | 0.95 | 1.07 | 0.82 | 1.01 | 0.79 | 0.92 | 0.90 | 0.92 | 0.92 | 1.06 | 1.01 | 0.88 | 0.93 | 0.94 | 0.97 | 0.78 | 0.77 | 0.85 | 0.98 | 0.86 |
| 840 | 0.976 | 0.941 | 0.960 | 0.92 | 0.84 | 0.75 | 0.85 | 0.58 | 1.07 | 0.87 | 0.92 | 0.83 | 0.76 | 1.32 | 0.83 | 0.88 | 0.82 | 0.83 | 0.87 | 0.90 | 0.82 | 0.84 | 0.76 | 0.73 | 0.68 | 0.71 | 0.72 |
| 841 | 0.976 | 0.941 | 0.960 | 0.94 | 0.86 | 0.79 | 0.85 | 0.84 | 1.01 | 0.90 | 0.92 | 0.88 | 0.84 | 0.83 | 0.82 | 0.91 | 0.85 | 0.79 | 0.86 | 0.91 | 0.80 | 0.87 | 0.76 | 0.69 | 0.71 | 0.75 | 0.69 |
| 842 | 0.976 | 0.941 | 0.960 | 0.91 | 0.79 | 0.65 | 1.19 | 0.67 | 0.84 | 0.89 | 0.82 | 0.68 | 0.78 | 0.92 | 0.78 | 0.85 | 0.85 | 0.76 | 0.83 | 0.91 | 0.82 | 0.85 | 0.73 | 0.69 | 0.76 | 0.80 | 0.66 |
| 843 | 0.976 | 0.941 | 0.960 | 0.91 | 0.79 | 0.65 | 1.19 | 0.67 | 0.84 | 0.89 | 0.82 | 0.68 | 0.78 | 0.92 | 0.78 | 0.85 | 0.85 | 0.76 | 0.83 | 0.91 | 0.82 | 0.85 | 0.73 | 0.69 | 0.76 | 0.80 | 0.66 |
| 844 | 0.976 | 0.941 | 0.960 | 0.91 | 0.79 | 0.65 | 1.19 | 0.67 | 0.84 | 0.89 | 0.82 | 0.68 | 0.78 | 0.92 | 0.78 | 0.85 | 0.85 | 0.76 | 0.83 | 0.91 | 0.82 | 0.85 | 0.73 | 0.69 | 0.76 | 0.80 | 0.66 |
| 845 | 0.976 | 0.941 | 0.960 | 0.90 | 0.83 | 0.57 | 0.75 | 0.63 | 0.98 | 0.83 | 0.88 | 0.66 | 0.88 | 0.89 | 0.96 | 0.93 | 0.81 | 0.84 | 0.82 | 0.87 | 0.81 | 0.86 | 0.79 | 0.81 | 0.66 | 0.68 | 0.66 |
| 846 | 0.976 | 0.941 | 0.960 | 0.90 | 0.83 | 0.57 | 0.75 | 0.63 | 0.98 | 0.83 | 0.88 | 0.66 | 0.88 | 0.89 | 0.96 | 0.93 | 0.81 | 0.84 | 0.82 | 0.87 | 0.81 | 0.86 | 0.79 | 0.81 | 0.66 | 0.68 | 0.66 |
| 847 | 0.976 | 0.941 | 0.960 | 0.90 | 0.83 | 0.57 | 0.75 | 0.63 | 0.98 | 0.83 | 0.88 | 0.66 | 0.88 | 0.89 | 0.96 | 0.93 | 0.81 | 0.84 | 0.82 | 0.87 | 0.81 | 0.86 | 0.79 | 0.81 | 0.66 | 0.68 | 0.66 |
| 850 | 0.994 | 0.978 | 0.990 | 0.98 | 1.02 | 0.64 | 0.99 | 0.99 | 0.85 | 1.03 | 1.00 | 1.01 | 0.94 | 1.29 | 1.13 | 0.98 | 1.10 | 1.15 | 1.03 | 1.02 | 0.92 | 0.91 | 0.96 | 0.93 | 0.86 | 0.89 | 0.70 |
| 852 | 0.994 | 0.978 | 0.990 | 0.91 | 0.95 | 0.89 | 0.68 | 0.84 | 0.93 | 1.26 | 0.95 | 1.00 | 0.86 | 1.13 | 1.11 | 0.93 | 0.98 | 1.10 | 0.98 | 0.93 | 0.90 | 0.90 | 0.89 | 0.93 | 0.86 | 0.90 | 0.85 |
| 853 | 0.994 | 0.978 | 0.990 | 0.91 | 0.95 | 0.89 | 0.68 | 0.84 | 0.93 | 1.26 | 0.95 | 1.00 | 0.86 | 1.13 | 1.11 | 0.93 | 0.98 | 1.10 | 0.98 | 0.93 | 0.90 | 0.90 | 0.89 | 0.93 | 0.86 | 0.90 | 0.85 |
| 855 | 0.994 | 0.978 | 0.990 | 0.94 | 0.95 | 0.78 | 0.95 | 0.84 | 0.88 | 1.09 | 0.95 | 0.93 | 0.94 | 0.98 | 1.16 | 1.00 | 0.91 | 1.09 | 0.94 | 0.94 | 0.95 | 0.99 | 0.88 | 0.83 | 0.86 | 0.83 | 0.82 |
| 856 | 0.994 | 0.978 | 0.990 | 0.91 | 1.01 | 1.10 | 0.93 | 0.88 | 1.03 | 0.93 | 0.92 | 0.93 | 0.78 | 1.03 | 1.07 | 0.95 | 0.77 | 1.04 | 0.96 | 0.99 | 0.83 | 1.00 | 0.91 | 0.81 | 0.88 | 0.92 | 0.71 |
| 857 | 0.994 | 0.978 | 0.990 | 0.91 | 1.01 | 1.10 | 0.93 | 0.88 | 1.03 | 0.93 | 0.92 | 0.93 | 0.78 | 1.03 | 1.07 | 0.95 | 0.77 | 1.04 | 0.96 | 0.99 | 0.83 | 1.00 | 0.91 | 0.81 | 0.88 | 0.92 | 0.71 |
| 859 | 0.994 | 0.978 | 0.990 | 0.94 | 0.95 | 0.78 | 0.95 | 0.84 | 0.88 | 1.09 | 0.95 | 0.93 | 0.94 | 0.98 | 1.16 | 1.00 | 0.91 | 1.09 | 0.94 | 0.94 | 0.95 | 0.99 | 0.88 | 0.83 | 0.86 | 0.83 | 0.82 |
| 860 | 0.994 | 0.978 | 0.990 | 1.03 | 0.98 | 1.12 | 1.00 | 0.99 | 1.07 | 0.86 | 1.00 | 0.93 | 0.91 | 1.20 | 1.23 | 0.98 | 0.97 | 1.18 | 0.94 | 0.91 | 1.06 | 0.90 | 0.84 | 0.96 | 1.01 | 1.17 | 0.94 |
| 863 | 0.994 | 0.978 | 0.990 | 0.94 | 0.95 | 0.78 | 0.95 | 0.84 | 0.88 | 1.09 | 0.95 | 0.93 | 0.94 | 0.98 | 1.16 | 1.00 | 0.91 | 1.09 | 0.94 | 0.94 | 0.95 | 0.99 | 0.88 | 0.83 | 0.86 | 0.83 | 0.82 |
| 864 | 0.994 | 0.978 | 0.990 | 0.94 | 0.95 | 0.78 | 0.95 | 0.84 | 0.88 | 1.08 | 0.95 | 0.93 | 0.94 | 0.98 | 1.16 | 1.00 | 0.91 | 1.09 | 0.94 | 0.94 | 0.95 | 0.99 | 0.88 | 0.83 | 0.86 | 0.83 | 0.82 |
| 865 | 0.994 | 0.978 | 0.990 | 1.03 | 0.98 | 1.12 | 1.00 | 0.99 | 1.07 | 0.86 | 1.00 | 0.93 | 0.91 | 1.20 | 1.23 | 0.98 | 0.97 | 1.18 | 0.94 | 0.91 | 1.06 | 0.90 | 0.84 | 0.96 | 1.01 | 1.17 | 0.94 |
| 870 | 0.973 | 0.900 | 0.930 | 0.98 | 1.05 | 1.20 | 0.77 | 1.06 | 1.15 | 0.94 | 1.01 | 0.96 | 1.29 | 0.85 | 1.55 | 1.01 | 0.98 | 1.26 | 1.03 | 0.94 | 0.99 | 1.09 | 0.88 | 0.86 | 0.84 | 0.82 | 0.83 |
| 871 | 0.973 | 0.900 | 0.930 | 0.98 | 1.06 | 0.89 | 0.87 | 1.03 | 1.13 | 0.99 | 1.13 | 0.82 | 1.07 | 1.08 | 1.15 | 1.32 | 1.10 | 1.10 | 1.05 | 1.02 | 0.83 | 0.98 | 0.74 | 0.92 | 1.11 | 1.21 | 0.67 |
| 872 | 0.973 | 0.900 | 0.930 | 0.98 | 1.05 | 1.20 | 0.77 | 1.06 | 1.15 | 0.94 | 1.01 | 0.96 | 1.29 | 0.85 | 1.55 | 1.01 | 0.98 | 1.26 | 1.03 | 0.94 | 0.99 | 1.09 | 0.88 | 0.86 | 0.84 | 0.82 | 0.83 |

## TABLE L. — PROFESSIONAL SERVICES RELATIVE VALUE UNIT (RVU) AND CONVERSION FACTOR GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

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| Zip Code | RVU GAAFs | | | Conversion Factor GAAFs By Category | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Work Expense | Practice Expense | Total Unit Value | Inpatient Visits | Office/ Home/ Urgent Care Visits | Therapeutic Injections | Allergy Testing | Allergy Immunotherapy | Misc Medical | ER Visits | Consults | Physical Medicine | Cardiovascular | Immunizations | Well Baby Exams | Vision Exams | Hearing/ Speech Exams | Physical Exams | Chiropractor | Psych / Alcohol & Drug Abuse | Surgery | Radiology | Pathology | Anesthesia | Normal Deliveries | Cesarean Deliveries | Non-Deliveries |
| 873 | 0.973 | 0.900 | 0.930 | 0.98 | 1.05 | 1.20 | 0.77 | 1.06 | 1.15 | 0.94 | 1.01 | 0.96 | 1.29 | 0.85 | 1.55 | 1.01 | 0.98 | 1.26 | 1.03 | 0.94 | 0.99 | 1.09 | 0.88 | 0.86 | 0.84 | 0.82 | 0.83 |
| 874 | 0.973 | 0.900 | 0.930 | 0.98 | 1.05 | 1.20 | 0.77 | 1.06 | 1.15 | 0.94 | 1.01 | 0.96 | 1.29 | 0.85 | 1.55 | 1.01 | 0.98 | 1.26 | 1.03 | 0.94 | 0.99 | 1.09 | 0.88 | 0.86 | 0.84 | 0.82 | 0.83 |
| 875 | 0.973 | 0.900 | 0.930 | 0.98 | 1.05 | 1.20 | 0.77 | 1.06 | 1.15 | 0.94 | 1.01 | 0.96 | 1.29 | 0.85 | 1.55 | 1.01 | 0.98 | 1.26 | 1.03 | 0.94 | 0.99 | 1.09 | 0.88 | 0.86 | 0.84 | 0.82 | 0.83 |
| 877 | 0.973 | 0.900 | 0.930 | 0.98 | 1.05 | 1.20 | 0.77 | 1.06 | 1.15 | 0.94 | 1.01 | 0.96 | 1.29 | 0.85 | 1.55 | 1.01 | 0.98 | 1.26 | 1.03 | 0.94 | 0.99 | 1.09 | 0.88 | 0.86 | 0.84 | 0.82 | 0.83 |
| 878 | 0.973 | 0.900 | 0.930 | 0.95 | 1.00 | 1.30 | 0.78 | 0.91 | 1.19 | 0.93 | 0.99 | 0.95 | 1.13 | 0.89 | 0.99 | 0.95 | 0.90 | 1.04 | 1.00 | 0.86 | 0.99 | 1.13 | 1.02 | 0.93 | 0.92 | 1.02 | 0.88 |
| 879 | 0.973 | 0.900 | 0.930 | 0.95 | 1.00 | 1.30 | 0.78 | 0.91 | 1.19 | 0.93 | 0.99 | 0.95 | 1.13 | 0.89 | 0.99 | 0.95 | 0.90 | 1.04 | 1.00 | 0.86 | 0.99 | 1.13 | 1.02 | 0.93 | 0.92 | 1.02 | 0.88 |
| 880 | 0.973 | 0.900 | 0.930 | 0.95 | 1.00 | 1.30 | 0.78 | 0.91 | 1.19 | 0.93 | 0.99 | 0.95 | 1.13 | 0.89 | 0.99 | 0.95 | 0.90 | 1.04 | 1.00 | 0.86 | 0.99 | 1.13 | 1.02 | 0.93 | 0.92 | 1.02 | 0.88 |
| 881 | 0.973 | 0.900 | 0.930 | 0.95 | 1.00 | 1.30 | 0.78 | 0.91 | 1.19 | 0.93 | 0.99 | 0.95 | 1.13 | 0.89 | 0.99 | 0.95 | 0.90 | 1.04 | 1.00 | 0.86 | 0.99 | 1.13 | 1.02 | 0.93 | 0.92 | 1.02 | 0.88 |
| 882 | 0.973 | 0.900 | 0.930 | 0.95 | 1.00 | 1.30 | 0.78 | 0.91 | 1.19 | 0.93 | 0.99 | 0.95 | 1.13 | 0.89 | 0.99 | 0.95 | 0.90 | 1.04 | 1.00 | 0.86 | 0.99 | 1.13 | 1.02 | 0.93 | 0.92 | 1.02 | 0.88 |
| 883 | 0.973 | 0.900 | 0.930 | 0.95 | 1.00 | 1.30 | 0.78 | 0.91 | 1.19 | 0.93 | 0.99 | 0.95 | 1.13 | 0.89 | 0.99 | 0.95 | 0.90 | 1.04 | 1.00 | 0.86 | 0.99 | 1.13 | 1.02 | 0.93 | 0.92 | 1.02 | 0.88 |
| 884 | 0.973 | 0.900 | 0.930 | 0.98 | 1.05 | 1.20 | 0.77 | 1.06 | 1.15 | 0.94 | 1.01 | 0.96 | 1.29 | 0.85 | 1.55 | 1.01 | 0.98 | 1.26 | 1.03 | 0.94 | 0.99 | 1.09 | 0.88 | 0.86 | 0.84 | 0.82 | 0.83 |
| 885 | 0.966 | 0.880 | 0.920 | 1.03 | 1.00 | 1.42 | 0.88 | 0.82 | 1.26 | 0.97 | 1.05 | 1.00 | 1.15 | 1.08 | 0.89 | 1.07 | 0.88 | 0.86 | 1.03 | 1.14 | 1.05 | 0.95 | 1.16 | 0.92 | 0.85 | 0.97 | 0.96 |
| 889 | 1.005 | 1.039 | 1.020 | 1.17 | 1.16 | 1.03 | 1.04 | 1.25 | 1.03 | 1.12 | 1.11 | 0.90 | 1.08 | 1.01 | 1.01 | 0.99 | 1.10 | 0.94 | 1.09 | 1.16 | 1.04 | 0.90 | 1.01 | 1.32 | 0.83 | 0.87 | 1.17 |
| 890 | 1.005 | 1.039 | 1.020 | 1.17 | 1.16 | 1.03 | 1.04 | 1.25 | 1.03 | 1.12 | 1.11 | 0.90 | 1.08 | 1.01 | 1.01 | 0.99 | 1.10 | 0.94 | 1.09 | 1.16 | 1.04 | 0.90 | 1.01 | 1.32 | 0.83 | 0.87 | 1.17 |
| 891 | 1.005 | 1.039 | 1.020 | 1.17 | 1.16 | 1.03 | 1.04 | 1.25 | 1.03 | 1.12 | 1.11 | 0.90 | 1.08 | 1.01 | 1.01 | 0.99 | 1.10 | 0.94 | 1.09 | 1.16 | 1.04 | 0.90 | 1.01 | 1.32 | 0.83 | 0.87 | 1.17 |
| 893 | 1.005 | 1.039 | 1.020 | 0.97 | 0.96 | 0.88 | 0.87 | 0.87 | 0.97 | 0.98 | 0.99 | 0.94 | 0.89 | 0.73 | 0.91 | 0.97 | 0.85 | 0.95 | 0.95 | 1.00 | 0.98 | 0.95 | 1.01 | 0.90 | 0.77 | 0.75 | 0.86 |
| 894 | 1.005 | 1.039 | 1.020 | 0.97 | 0.96 | 0.88 | 0.87 | 0.87 | 0.97 | 0.98 | 0.99 | 0.94 | 0.89 | 0.73 | 0.91 | 0.97 | 0.85 | 0.95 | 0.95 | 1.00 | 0.98 | 0.95 | 1.01 | 0.90 | 0.77 | 0.75 | 0.86 |
| 895 | 1.005 | 1.039 | 1.020 | 0.97 | 0.96 | 0.88 | 0.87 | 0.87 | 0.97 | 0.98 | 0.99 | 0.94 | 0.89 | 0.73 | 0.91 | 0.97 | 0.85 | 0.95 | 0.95 | 1.00 | 0.98 | 0.95 | 1.01 | 0.90 | 0.77 | 0.75 | 0.86 |
| 897 | 1.005 | 1.039 | 1.020 | 0.97 | 0.96 | 0.88 | 0.87 | 0.87 | 0.97 | 0.98 | 0.99 | 0.94 | 0.89 | 0.73 | 0.91 | 0.97 | 0.85 | 0.95 | 0.95 | 1.00 | 0.98 | 0.95 | 1.01 | 0.90 | 0.77 | 0.75 | 0.86 |
| 898 | 1.005 | 1.039 | 1.020 | 0.97 | 0.96 | 0.88 | 0.87 | 0.87 | 0.97 | 0.98 | 0.99 | 0.94 | 0.89 | 0.73 | 0.91 | 0.97 | 0.85 | 0.95 | 0.95 | 1.00 | 0.98 | 0.95 | 1.01 | 0.90 | 0.77 | 0.75 | 0.86 |
| 900 | 1.056 | 1.139 | 1.100 | 1.39 | 1.08 | 1.38 | 0.97 | 1.16 | 1.07 | 1.04 | 1.14 | 0.99 | 1.10 | 1.19 | 1.00 | 1.48 | 1.13 | 1.07 | 1.08 | 1.13 | 1.08 | 1.31 | 1.00 | 1.11 | 1.12 | 1.21 | 1.06 |
| 901 | 1.056 | 1.139 | 1.100 | 1.39 | 1.08 | 1.38 | 0.97 | 1.16 | 1.07 | 1.04 | 1.14 | 0.99 | 1.10 | 1.19 | 1.00 | 1.48 | 1.13 | 1.07 | 1.08 | 1.13 | 1.08 | 1.31 | 1.00 | 1.11 | 1.12 | 1.21 | 1.06 |
| 902 | 1.056 | 1.139 | 1.100 | 1.03 | 1.10 | 1.18 | 0.97 | 1.02 | 1.07 | 0.87 | 1.08 | 0.87 | 1.00 | 1.12 | 0.90 | 1.20 | 1.11 | 0.98 | 1.05 | 1.12 | 1.04 | 1.10 | 0.98 | 1.17 | 1.21 | 1.23 | 1.17 |
| 903 | 1.056 | 1.139 | 1.100 | 1.03 | 1.10 | 1.18 | 0.97 | 1.02 | 1.07 | 0.87 | 1.08 | 0.87 | 1.00 | 1.12 | 0.90 | 1.20 | 1.11 | 0.98 | 1.05 | 1.12 | 1.04 | 1.10 | 0.98 | 1.17 | 1.21 | 1.23 | 1.17 |
| 904 | 1.056 | 1.139 | 1.100 | 1.03 | 1.10 | 1.18 | 0.97 | 1.02 | 1.07 | 0.87 | 1.08 | 0.87 | 1.00 | 1.12 | 0.90 | 1.20 | 1.11 | 0.98 | 1.05 | 1.12 | 1.04 | 1.10 | 0.98 | 1.17 | 1.21 | 1.23 | 1.17 |
| 905 | 1.056 | 1.139 | 1.100 | 0.96 | 0.95 | 1.11 | 0.83 | 0.93 | 0.96 | 0.93 | 0.96 | 0.90 | 0.93 | 1.11 | 1.01 | 1.04 | 1.09 | 1.03 | 0.98 | 1.06 | 0.98 | 1.10 | 0.98 | 1.05 | 0.92 | 0.94 | 0.83 |
| 906 | 1.056 | 1.139 | 1.100 | 0.96 | 0.95 | 1.11 | 0.83 | 0.93 | 0.96 | 0.93 | 0.96 | 0.90 | 0.93 | 1.11 | 1.01 | 1.04 | 1.09 | 1.03 | 0.98 | 1.06 | 0.98 | 1.10 | 0.98 | 1.05 | 0.92 | 0.94 | 0.83 |
| 907 | 1.056 | 1.139 | 1.100 | 0.96 | 0.95 | 1.11 | 0.83 | 0.93 | 0.96 | 0.93 | 0.96 | 0.90 | 0.93 | 1.11 | 1.01 | 1.04 | 1.09 | 1.03 | 0.98 | 1.06 | 0.98 | 1.10 | 0.98 | 1.05 | 0.92 | 0.94 | 0.83 |
| 908 | 1.056 | 1.139 | 1.100 | 0.96 | 0.95 | 1.11 | 0.83 | 0.93 | 0.96 | 0.93 | 0.96 | 0.90 | 0.93 | 1.11 | 1.01 | 1.04 | 1.09 | 1.03 | 0.98 | 1.06 | 0.98 | 1.10 | 0.98 | 1.05 | 0.92 | 0.94 | 0.83 |
| 910 | 1.056 | 1.139 | 1.100 | 0.98 | 1.02 | 0.69 | 0.95 | 0.89 | 0.92 | 0.90 | 1.02 | 0.85 | 0.98 | 0.80 | 0.94 | 1.01 | 1.05 | 0.95 | 1.00 | 1.03 | 1.00 | 1.05 | 0.85 | 0.99 | 0.89 | 0.91 | 1.01 |
| 911 | 1.056 | 1.139 | 1.100 | 1.20 | 1.07 | 1.69 | 0.82 | 1.09 | 1.11 | 0.96 | 1.04 | 0.84 | 0.88 | 0.82 | 1.06 | 1.06 | 1.00 | 1.03 | 1.02 | 1.09 | 1.02 | 1.06 | 0.92 | 0.97 | 1.12 | 1.20 | 0.96 |
| 912 | 1.056 | 1.139 | 1.100 | 0.98 | 1.02 | 0.69 | 0.95 | 0.89 | 0.92 | 0.90 | 1.02 | 0.85 | 0.98 | 0.80 | 0.94 | 1.01 | 1.05 | 0.95 | 1.00 | 1.03 | 1.00 | 1.05 | 0.85 | 0.99 | 0.89 | 0.91 | 1.01 |
| 913 | 1.056 | 1.139 | 1.100 | 1.02 | 1.00 | 0.91 | 0.82 | 0.93 | 0.99 | 0.91 | 1.00 | 0.90 | 0.95 | 0.90 | 0.92 | 1.12 | 0.90 | 0.98 | 1.02 | 1.03 | 1.00 | 1.20 | 1.02 | 1.24 | 0.93 | 0.94 | 1.00 |
| 914 | 1.056 | 1.139 | 1.100 | 1.17 | 1.06 | 1.11 | 0.70 | 0.93 | 1.04 | 1.02 | 1.04 | 0.96 | 0.93 | 0.99 | 0.99 | 1.01 | 0.95 | 0.97 | 1.08 | 1.04 | 1.04 | 1.40 | 1.15 | 1.17 | 1.13 | 1.02 | 0.84 |
| 915 | 1.056 | 1.139 | 1.100 | 1.02 | 1.00 | 0.91 | 0.82 | 0.93 | 0.99 | 0.91 | 1.00 | 0.90 | 0.95 | 0.90 | 0.92 | 1.12 | 0.90 | 0.98 | 1.02 | 1.03 | 1.00 | 1.20 | 1.02 | 1.24 | 0.93 | 0.94 | 1.00 |
| 916 | 1.056 | 1.139 | 1.100 | 1.17 | 1.06 | 1.11 | 0.70 | 0.93 | 1.04 | 1.02 | 1.04 | 0.96 | 0.93 | 0.99 | 0.99 | 1.01 | 0.95 | 0.97 | 1.08 | 1.04 | 1.04 | 1.40 | 1.15 | 1.17 | 1.13 | 1.02 | 0.84 |
| 917 | 1.007 | 1.034 | 1.020 | 1.01 | 1.04 | 1.34 | 1.01 | 1.06 | 1.06 | 1.01 | 1.08 | 0.94 | 1.05 | 1.10 | 0.86 | 0.99 | 1.21 | 1.02 | 1.05 | 1.16 | 0.99 | 0.99 | 1.05 | 0.95 | 0.91 | 1.02 | 0.87 |
| 918 | 1.056 | 1.139 | 1.100 | 0.95 | 0.96 | 1.20 | 0.91 | 0.96 | 0.97 | 0.95 | 1.00 | 0.87 | 0.96 | 0.99 | 0.80 | 0.92 | 1.10 | 0.95 | 0.97 | 1.09 | 0.92 | 0.91 | 0.97 | 0.95 | 0.84 | 0.94 | 0.79 |
| 919 | 1.007 | 1.034 | 1.020 | 0.95 | 0.93 | 1.03 | 0.93 | 1.02 | 0.97 | 1.19 | 1.00 | 0.88 | 0.93 | 1.04 | 0.86 | 1.02 | 1.04 | 1.01 | 0.95 | 1.10 | 0.91 | 1.15 | 0.88 | 0.96 | 0.87 | 0.88 | 0.90 |
| 920 | 1.007 | 1.034 | 1.020 | 0.95 | 0.93 | 1.03 | 0.93 | 1.02 | 0.97 | 1.19 | 1.00 | 0.88 | 0.93 | 1.04 | 0.86 | 1.02 | 1.04 | 1.01 | 0.95 | 1.10 | 0.91 | 1.15 | 0.88 | 0.96 | 0.87 | 0.88 | 0.90 |
| 921 | 1.007 | 1.034 | 1.020 | 1.01 | 0.96 | 0.79 | 0.89 | 1.03 | 0.93 | 1.02 | 1.03 | 0.83 | 0.95 | 0.98 | 0.72 | 1.05 | 1.03 | 0.97 | 0.95 | 1.14 | 0.98 | 1.15 | 0.99 | 0.97 | 0.88 | 0.88 | 0.84 |
| 922 | 1.007 | 1.034 | 1.020 | 0.95 | 0.97 | 0.88 | 0.78 | 1.03 | 0.96 | 0.88 | 1.03 | 0.98 | 1.00 | 1.08 | 0.99 | 0.96 | 1.09 | 0.96 | 0.98 | 1.07 | 0.92 | 1.00 | 0.87 | 0.93 | 0.87 | 0.87 | 0.91 |
| 923 | 1.007 | 1.034 | 1.020 | 0.95 | 0.97 | 0.88 | 0.78 | 1.03 | 0.96 | 0.88 | 1.03 | 0.98 | 1.00 | 1.08 | 0.99 | 0.96 | 1.09 | 0.96 | 0.98 | 1.07 | 0.92 | 1.00 | 0.87 | 0.93 | 0.87 | 0.87 | 0.91 |
| 924 | 1.007 | 1.034 | 1.020 | 0.95 | 0.97 | 0.88 | 0.78 | 1.03 | 0.96 | 0.88 | 1.03 | 0.98 | 1.00 | 1.08 | 0.99 | 0.96 | 1.09 | 0.96 | 0.98 | 1.07 | 0.92 | 1.00 | 0.87 | 0.93 | 0.87 | 0.87 | 0.91 |
| 925 | 1.007 | 1.034 | 1.020 | 0.95 | 0.97 | 0.88 | 0.78 | 1.03 | 0.96 | 0.88 | 1.03 | 0.98 | 1.00 | 1.08 | 0.99 | 0.96 | 1.09 | 0.96 | 0.98 | 1.07 | 0.92 | 1.00 | 0.87 | 0.93 | 0.87 | 0.87 | 0.91 |
| 926 | 1.037 | 1.184 | 1.120 | 1.08 | 0.96 | 1.03 | 0.81 | 0.90 | 0.88 | 0.90 | 1.01 | 0.93 | 0.85 | 0.94 | 0.91 | 1.01 | 1.06 | 0.99 | 0.98 | 1.08 | 0.96 | 1.05 | 0.88 | 1.00 | 0.95 | 0.95 | 1.03 |
| 927 | 1.037 | 1.184 | 1.120 | 1.08 | 0.96 | 1.03 | 0.81 | 0.90 | 0.88 | 0.90 | 1.01 | 0.93 | 0.85 | 0.94 | 0.91 | 1.01 | 1.06 | 0.99 | 0.98 | 1.08 | 0.96 | 1.05 | 0.88 | 1.00 | 0.95 | 0.95 | 1.03 |
| 928 | 1.037 | 1.184 | 1.120 | 1.08 | 0.96 | 1.03 | 0.81 | 0.90 | 0.88 | 0.90 | 1.01 | 0.93 | 0.85 | 0.94 | 0.91 | 1.01 | 1.06 | 0.99 | 0.98 | 1.08 | 0.96 | 1.05 | 0.88 | 1.00 | 0.95 | 0.95 | 1.03 |
| 930 | 1.028 | 1.125 | 1.080 | 0.90 | 0.91 | 0.97 | 0.82 | 0.95 | 0.86 | 0.95 | 0.94 | 0.92 | 0.92 | 0.92 | 0.84 | 1.05 | 1.03 | 0.87 | 0.93 | 0.95 | 0.86 | 1.12 | 0.91 | 1.12 | 1.01 | 0.97 | 0.92 |
| 931 | 1.007 | 1.034 | 1.020 | 1.03 | 1.11 | 0.88 | 1.08 | 1.19 | 0.91 | 0.88 | 1.10 | 0.87 | 1.06 | 0.86 | 0.77 | 1.01 | 0.99 | 0.99 | 1.02 | 1.21 | 0.95 | 1.06 | 1.03 | 1.06 | 0.87 | 0.87 | 0.76 |
| 932 | 1.007 | 1.034 | 1.020 | 0.93 | 0.99 | 1.19 | 0.93 | 1.03 | 1.05 | 1.09 | 0.99 | 0.94 | 1.16 | 1.33 | 0.92 | 1.03 | 0.93 | 0.94 | 1.01 | 0.89 | 0.92 | 0.93 | 0.92 | 1.10 | 0.82 | 0.86 | 1.02 |
| 933 | 1.007 | 1.034 | 1.020 | 0.93 | 0.99 | 1.19 | 0.93 | 1.03 | 1.05 | 1.09 | 0.99 | 0.94 | 1.16 | 1.33 | 0.92 | 1.03 | 0.93 | 0.94 | 1.01 | 0.89 | 0.92 | 0.93 | 0.92 | 1.10 | 0.82 | 0.86 | 1.02 |
| 934 | 1.007 | 1.034 | 1.020 | 0.86 | 0.92 | 0.92 | 0.93 | 0.86 | 0.84 | 0.90 | 0.98 | 0.76 | 0.77 | 0.85 | 0.70 | 1.04 | 0.93 | 0.87 | 0.90 | 0.95 | 0.89 | 1.00 | 0.75 | 0.85 | 0.87 | 0.99 | 0.85 |
| 935 | 1.007 | 1.034 | 1.020 | 0.93 | 0.99 | 1.19 | 0.93 | 1.03 | 1.05 | 1.09 | 0.99 | 0.94 | 1.16 | 1.33 | 0.92 | 1.03 | 0.93 | 0.94 | 1.01 | 0.89 | 0.92 | 0.93 | 0.92 | 1.10 | 0.82 | 0.86 | 1.02 |
| 936 | 1.007 | 1.034 | 1.020 | 0.83 | 0.86 | 0.70 | 0.93 | 1.10 | 0.87 | 0.95 | 0.99 | 0.88 | 0.84 | 1.08 | 0.89 | 1.00 | 1.01 | 0.87 | 0.91 | 0.88 | 0.88 | 1.03 | 1.04 | 0.85 | 0.75 | 0.73 | 0.68 |
| 937 | 1.007 | 1.034 | 1.020 | 0.83 | 0.86 | 0.70 | 0.93 | 1.10 | 0.87 | 0.95 | 0.99 | 0.88 | 0.84 | 1.08 | 0.89 | 1.00 | 1.01 | 0.87 | 0.91 | 0.88 | 0.88 | 1.03 | 1.04 | 0.85 | 0.75 | 0.73 | 0.68 |
| 938 | 1.007 | 1.034 | 1.020 | 0.83 | 0.86 | 0.70 | 0.93 | 1.10 | 0.87 | 0.95 | 0.99 | 0.88 | 0.84 | 1.08 | 0.89 | 1.00 | 1.01 | 0.87 | 0.91 | 0.88 | 0.88 | 1.03 | 1.04 | 0.85 | 0.75 | 0.73 | 0.68 |
| 939 | 1.007 | 1.034 | 1.020 | 1.05 | 1.01 | 0.97 | 0.93 | 1.26 | 0.91 | 0.98 | 1.10 | 0.93 | 0.86 | 1.08 | 1.31 | 1.24 | 1.03 | 1.08 | 1.03 | 1.07 | 0.94 | 0.96 | 0.92 | 0.92 | 0.87 | 0.92 | 1.07 |
| 940 | 1.048 | 1.432 | 1.260 | 0.94 | 0.99 | 0.92 | [illegible] | 0.92 | 0.77 | 0.87 | 0.97 | 0.80 | 0.80 | 0.85 | 0.94 | 0.98 | 0.85 | 1.13 | 0.92 | 0.93 | 0.83 | 0.89 | 0.85 | 1.11 | 0.98 | 1.03 | 0.95 |
| 941 | 1.088 | 1.458 | 1.280 | 1.30 | 1.05 | 0.79 | 0.90 | 1.01 | 0.83 | 1.28 | 1.35 | 0.73 | 0.86 | 0.86 | 0.79 | 1.06 | 0.82 | 1.05 | 0.92 | 1.01 | 0.95 | 0.99 | 0.95 | 1.02 | 0.92 | 0.98 | 0.80 |
| 942 | 1.007 | 1.034 | 1.020 | 1.10 | 0.89 | 1.07 | 0.70 | 0.86 | 1.02 | 1.10 | 1.00 | 0.79 | 0.80 | 0.88 | 0.85 | 0.99 | 0.92 | 0.89 | 0.91 | 0.87 | 0.86 | 1.16 | 1.12 | 0.95 | 0.77 | 0.88 | 0.93 |
| 943 | 1.063 | 1.380 | 1.240 | 1.33 | 1.16 | 1.04 | 0.77 | 0.99 | 0.88 | 0.93 | 1.33 | 0.80 | 0.92 | 0.76 | 0.83 | 1.21 | 0.91 | 1.11 | 0.99 | 1.08 | 1.02 | 1.03 | 1.08 | 1.12 | 1.09 | 1.14 | 1.03 |

# TABLE L. — PROFESSIONAL SERVICES RELATIVE VALUE UNIT (RVU) AND CONVERSION FACTOR GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

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| Zip Code | RVU GAAFs | | | Conversion Factor GAAFs By Category | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Work Expense | Practice Expense | Total Unit Value | Inpatient Visits | Office/Home/Urgent Care Visits | Therapeutic Injections | Allergy Testing | Allergy Immunotherapy | Misc Medical | ER Visits | Consults | Physical Medicine | Cardiovascular | Immunizations | Well Baby Exams | Vision Exams | Hearing/Speech Exams | Physical Exams | Chiropractor | Psych / Alcohol & Drug Abuse | Surgery | Radiology | Pathology | Anesthesia | Normal Deliveries | Cesarean Deliveries | Non-Deliveries |
| 944 | 1.048 | 1.432 | 1.260 | 0.87 | 0.88 | 0.81 | 0.46 | 0.72 | 0.67 | 0.87 | 0.96 | 0.96 | 0.83 | 0.58 | 0.90 | 1.00 | 0.74 | 0.99 | 0.86 | 0.97 | 0.82 | 0.79 | 0.85 | 1.15 | 0.90 | 0.95 | 0.85 |
| 945 | 1.015 | 1.248 | 1.140 | 0.96 | 0.90 | 0.67 | 0.72 | 0.87 | 0.87 | 1.00 | 0.93 | 0.84 | 0.83 | 0.84 | 0.93 | 0.98 | 0.88 | 0.99 | 0.91 | 0.92 | 0.87 | 0.93 | 0.92 | 1.02 | 0.91 | 1.00 | 0.82 |
| 946 | 1.041 | 1.235 | 1.150 | 0.95 | 0.89 | 0.68 | 0.73 | 0.87 | 0.88 | 0.98 | 0.92 | 0.84 | 0.84 | 0.85 | 0.92 | 0.97 | 0.88 | 0.98 | 0.91 | 0.91 | 0.86 | 0.93 | 0.92 | 1.02 | 0.90 | 0.99 | 0.81 |
| 947 | 1.041 | 1.235 | 1.150 | 0.95 | 0.89 | 0.68 | 0.73 | 0.87 | 0.88 | 0.98 | 0.92 | 0.84 | 0.84 | 0.85 | 0.92 | 0.97 | 0.88 | 0.98 | 0.91 | 0.91 | 0.86 | 0.93 | 0.92 | 1.02 | 0.90 | 0.99 | 0.81 |
| 948 | 1.041 | 1.235 | 1.150 | 0.95 | 0.89 | 0.68 | 0.73 | 0.87 | 0.88 | 0.98 | 0.92 | 0.84 | 0.84 | 0.85 | 0.92 | 0.97 | 0.88 | 0.98 | 0.91 | 0.91 | 0.86 | 0.93 | 0.92 | 1.02 | 0.90 | 0.99 | 0.81 |
| 949 | 1.007 | 1.034 | 1.020 | 1.02 | 0.99 | 0.81 | 0.86 | 1.02 | 1.02 | 1.04 | 1.01 | 0.91 | 0.96 | 1.00 | 1.03 | 1.09 | 1.03 | 1.09 | 1.00 | 0.98 | 0.96 | 1.07 | 1.04 | 1.02 | 0.98 | 1.07 | 0.89 |
| 950 | 1.063 | 1.380 | 1.240 | 0.96 | 0.90 | 0.72 | 0.63 | 0.95 | 0.79 | 0.79 | 0.95 | 0.74 | 0.79 | 0.97 | 0.89 | 0.94 | 0.96 | 1.01 | 0.88 | 0.87 | 0.87 | 0.92 | 0.89 | 1.06 | 0.86 | 0.83 | 0.97 |
| 951 | 1.063 | 1.380 | 1.240 | 0.96 | 0.90 | 0.72 | 0.63 | 0.95 | 0.79 | 0.79 | 0.95 | 0.74 | 0.79 | 0.97 | 0.89 | 0.94 | 0.96 | 1.01 | 0.88 | 0.87 | 0.87 | 0.92 | 0.89 | 1.06 | 0.86 | 0.83 | 0.97 |
| 952 | 1.007 | 1.034 | 1.020 | 0.92 | 0.95 | 1.03 | 0.64 | 1.08 | 0.92 | 0.90 | 0.97 | 0.87 | 0.97 | 1.10 | 1.13 | 1.08 | 1.01 | 0.97 | 0.95 | 0.94 | 0.86 | 1.01 | 0.97 | 0.99 | 0.86 | 0.91 | 0.77 |
| 953 | 1.007 | 1.034 | 1.020 | 0.92 | 0.95 | 1.03 | 0.64 | 1.08 | 0.92 | 0.90 | 0.97 | 0.87 | 0.97 | 1.10 | 1.13 | 1.08 | 1.01 | 0.97 | 0.95 | 0.94 | 0.86 | 1.01 | 0.97 | 0.99 | 0.86 | 0.91 | 0.77 |
| 954 | 1.007 | 1.034 | 1.020 | 0.89 | 0.88 | 0.89 | 0.91 | 1.13 | 0.89 | 0.96 | 0.95 | 0.80 | 0.94 | 0.94 | 1.05 | 0.97 | 0.97 | 0.99 | 0.89 | 0.87 | 0.85 | 0.93 | 0.83 | 0.94 | 0.80 | 0.84 | 0.80 |
| 955 | 1.007 | 1.034 | 1.020 | 0.89 | 0.88 | 0.89 | 0.91 | 1.13 | 0.89 | 0.96 | 0.95 | 0.80 | 0.94 | 0.94 | 1.05 | 0.97 | 0.97 | 0.99 | 0.89 | 0.87 | 0.85 | 0.93 | 0.83 | 0.94 | 0.80 | 0.84 | 0.80 |
| 956 | 1.007 | 1.034 | 1.020 | 0.95 | 0.86 | 0.89 | 0.92 | 0.97 | 0.90 | 1.02 | 0.91 | 0.82 | 0.93 | 1.18 | 0.85 | 1.01 | 1.10 | 0.92 | 0.90 | 0.84 | 0.89 | 1.14 | 1.02 | 0.92 | 0.88 | 0.93 | 0.96 |
| 957 | 1.007 | 1.034 | 1.020 | 0.95 | 0.86 | 0.89 | 0.92 | 0.97 | 0.90 | 1.02 | 0.91 | 0.82 | 0.93 | 1.18 | 0.85 | 1.01 | 1.10 | 0.92 | 0.90 | 0.84 | 0.89 | 1.14 | 1.02 | 0.92 | 0.88 | 0.93 | 0.96 |
| 958 | 1.007 | 1.034 | 1.020 | 1.10 | 0.89 | 1.07 | 0.70 | 0.86 | 1.02 | 1.10 | 1.00 | 0.79 | 0.80 | 0.88 | 0.85 | 0.99 | 0.92 | 0.89 | 0.91 | 0.87 | 0.86 | 1.16 | 1.12 | 0.95 | 0.77 | 0.88 | 0.93 |
| 959 | 1.007 | 1.034 | 1.020 | 0.89 | 0.88 | 0.89 | 0.91 | 1.13 | 0.89 | 0.96 | 0.95 | 0.80 | 0.94 | 0.94 | 1.05 | 0.97 | 0.97 | 0.99 | 0.89 | 0.87 | 0.85 | 0.93 | 0.83 | 0.94 | 0.80 | 0.84 | 0.80 |
| 960 | 1.007 | 1.034 | 1.020 | 0.89 | 0.88 | 0.89 | 0.91 | 1.13 | 0.89 | 0.96 | 0.95 | 0.80 | 0.94 | 0.94 | 1.05 | 0.97 | 0.97 | 0.99 | 0.89 | 0.87 | 0.85 | 0.93 | 0.83 | 0.94 | 0.80 | 0.84 | 0.80 |
| 961 | 1.007 | 1.034 | 1.020 | 0.89 | 0.88 | 0.89 | 0.91 | 1.13 | 0.89 | 0.96 | 0.96 | 0.80 | 0.94 | 0.94 | 1.05 | 0.97 | 0.97 | 0.99 | 0.89 | 0.87 | 0.85 | 0.93 | 0.83 | 0.94 | 0.80 | 0.84 | 0.80 |
| 967 | 0.997 | 1.124 | 1.070 | 1.11 | 1.11 | 0.71 | 0.97 | 1.49 | 0.76 | 1.60 | 1.08 | 0.80 | 1.00 | 0.80 | 0.86 | 1.19 | 1.05 | 0.90 | 0.97 | 1.20 | 1.01 | 0.82 | 0.84 | 0.97 | 0.81 | 0.94 | 0.97 |
| 968 | 0.997 | 1.124 | 1.070 | 1.11 | 1.11 | 0.71 | 0.97 | 1.49 | 0.76 | 1.60 | 1.08 | 0.80 | 1.00 | 0.80 | 0.86 | 1.19 | 1.05 | 0.90 | 0.97 | 1.20 | 1.01 | 0.82 | 0.84 | 0.97 | 0.81 | 0.94 | 0.97 |
| 969 | 0.997 | 1.124 | 1.070 | 1.11 | 1.11 | 0.71 | 0.97 | 1.49 | 0.76 | 1.60 | 1.08 | 0.80 | 1.00 | 0.80 | 0.86 | 1.19 | 1.05 | 0.90 | 0.97 | 1.20 | 1.01 | 0.82 | 0.84 | 0.97 | 0.81 | 0.94 | 0.97 |
| 970 | 0.961 | 0.933 | 0.950 | 1.02 | 1.14 | 0.79 | 1.10 | 1.14 | 0.84 | 0.86 | 1.08 | 1.00 | 0.82 | 0.90 | 1.46 | 1.01 | 0.90 | 1.38 | 1.08 | 1.02 | 0.95 | 0.74 | 0.78 | 0.86 | 0.96 | 0.97 | 0.86 |
| 971 | 0.961 | 0.933 | 0.950 | 1.02 | 1.14 | 0.79 | 1.10 | 1.14 | 0.84 | 0.86 | 1.08 | 1.00 | 0.82 | 0.90 | 1.46 | 1.01 | 0.90 | 1.38 | 1.08 | 1.02 | 0.95 | 0.74 | 0.78 | 0.86 | 0.96 | 0.97 | 0.86 |
| 972 | 0.996 | 1.049 | 1.030 | 1.09 | 1.18 | 0.72 | 0.98 | 0.98 | 0.86 | 0.99 | 1.20 | 0.95 | 0.81 | 0.84 | 1.38 | 1.08 | 0.95 | 1.33 | 1.09 | 0.97 | 0.86 | 0.81 | 0.71 | 0.82 | 1.01 | 0.99 | 0.87 |
| 973 | 0.961 | 0.933 | 0.950 | 0.99 | 1.14 | 0.76 | 1.11 | 1.14 | 0.88 | 0.88 | 1.08 | 1.06 | 0.81 | 0.91 | 1.49 | 1.09 | 1.08 | 1.34 | 1.07 | 0.97 | 0.86 | 0.83 | 0.84 | 0.80 | 1.03 | 0.98 | 0.91 |
| 974 | 0.961 | 0.933 | 0.950 | 1.04 | 1.14 | 0.76 | 1.23 | 1.17 | 0.88 | 1.03 | 1.13 | 1.03 | 0.86 | 1.04 | 1.50 | 1.11 | 1.23 | 1.42 | 1.06 | 0.96 | 0.85 | 0.82 | 0.75 | 0.86 | 1.00 | 1.03 | 0.72 |
| 975 | 0.961 | 0.933 | 0.950 | 1.04 | 1.14 | 0.75 | 1.23 | 1.17 | 0.88 | 1.03 | 1.13 | 1.03 | 0.86 | 1.04 | 1.50 | 1.11 | 1.23 | 1.42 | 1.06 | 0.96 | 0.85 | 0.82 | 0.75 | 0.86 | 1.00 | 1.03 | 0.72 |
| 976 | 0.961 | 0.933 | 0.950 | 1.04 | 1.14 | 0.75 | 1.23 | 1.17 | 0.88 | 1.03 | 1.13 | 1.03 | 0.86 | 1.04 | 1.50 | 1.11 | 1.23 | 1.42 | 1.06 | 0.96 | 0.85 | 0.82 | 0.75 | 0.86 | 1.00 | 1.03 | 0.72 |
| 977 | 0.961 | 0.933 | 0.950 | 1.04 | 1.14 | 0.75 | 1.23 | 1.17 | 0.88 | 1.03 | 1.13 | 1.03 | 0.86 | 1.04 | 1.50 | 1.11 | 1.23 | 1.42 | 1.06 | 0.96 | 0.85 | 0.82 | 0.75 | 0.86 | 1.00 | 1.03 | 0.72 |
| 978 | 0.961 | 0.933 | 0.950 | 0.91 | 1.05 | 0.65 | 1.03 | 1.14 | 0.86 | 0.89 | 1.02 | 0.88 | 0.90 | 0.85 | 0.88 | 1.07 | 1.00 | 1.12 | 0.88 | 0.84 | 0.87 | 0.82 | 0.61 | 0.66 | 0.92 | 0.92 | 0.66 |
| 979 | 0.961 | 0.933 | 0.950 | 0.91 | 1.05 | 0.65 | 1.03 | 1.14 | 0.86 | 0.89 | 1.02 | 0.88 | 0.90 | 0.85 | 0.88 | 1.07 | 1.00 | 1.12 | 0.88 | 0.84 | 0.87 | 0.82 | 0.61 | 0.65 | 0.92 | 0.92 | 0.66 |
| 980 | 0.961 | 0.972 | 0.980 | 1.07 | 1.04 | 0.78 | 1.08 | 1.24 | 0.94 | 0.89 | 1.08 | 0.82 | 0.89 | 0.70 | 1.26 | 1.03 | 0.86 | 1.23 | 0.97 | 0.96 | 0.86 | 0.83 | 0.96 | 0.81 | 0.94 | 1.01 | 0.81 |
| 981 | 1.005 | 1.100 | 1.060 | 1.18 | 1.18 | 1.00 | 0.95 | 1.11 | 0.96 | 0.91 | 1.16 | 0.97 | 0.91 | 0.74 | 1.56 | 1.03 | 0.96 | 1.31 | 1.01 | 0.97 | 0.84 | 0.88 | 0.77 | 0.86 | 0.96 | 0.99 | 0.77 |
| 982 | 0.961 | 0.972 | 0.980 | 1.04 | 1.04 | 0.69 | 0.99 | 1.25 | 0.86 | 0.82 | 1.12 | 0.88 | 0.85 | 0.76 | 1.32 | 0.94 | 1.02 | 1.21 | 0.96 | 0.91 | 0.76 | 0.91 | 0.69 | 0.82 | 0.99 | 1.08 | 0.73 |
| 983 | 0.961 | 0.972 | 0.980 | 1.10 | 1.11 | 0.75 | 0.97 | 1.22 | 0.86 | 0.78 | 1.01 | 0.84 | 1.05 | 0.64 | 1.33 | 1.02 | 0.88 | 1.37 | 1.00 | 0.92 | 0.84 | 0.78 | 0.82 | 0.86 | 1.01 | 1.02 | 0.88 |
| 984 | 0.961 | 0.972 | 0.980 | 1.10 | 1.11 | 0.75 | 0.97 | 1.22 | 0.86 | 0.78 | 1.01 | 0.84 | 1.05 | 0.64 | 1.33 | 1.02 | 0.88 | 1.37 | 1.00 | 0.92 | 0.84 | 0.78 | 0.82 | 0.86 | 1.01 | 1.02 | 0.88 |
| 985 | 0.961 | 0.972 | 0.980 | 0.99 | 0.94 | 0.73 | 0.90 | 1.13 | 0.99 | 0.92 | 0.96 | 0.88 | 0.99 | 0.83 | 1.09 | 0.96 | 0.92 | 1.14 | 0.92 | 0.93 | 0.83 | 0.91 | 0.74 | 0.77 | 0.99 | 1.03 | 0.84 |
| 986 | 0.961 | 0.972 | 0.980 | 1.04 | 1.22 | 0.83 | 0.77 | 1.29 | 1.00 | 0.82 | 1.19 | 0.91 | 0.80 | 0.83 | 1.22 | 0.97 | 0.84 | 1.22 | 1.11 | 0.92 | 0.79 | 0.83 | 0.82 | 0.84 | 0.99 | 1.13 | 0.70 |
| 988 | 0.961 | 0.972 | 0.980 | 0.99 | 1.00 | 0.94 | 1.04 | 1.08 | 0.97 | 0.90 | 1.01 | 0.73 | 0.91 | 0.89 | 0.94 | 1.03 | 0.91 | 1.12 | 0.89 | 0.85 | 0.83 | 0.88 | 0.82 | 0.84 | 0.98 | 0.96 | 0.79 |
| 989 | 0.961 | 0.972 | 0.980 | 0.99 | 1.00 | 0.94 | 1.04 | 1.08 | 0.97 | 0.90 | 1.01 | 0.73 | 0.91 | 0.89 | 0.94 | 1.03 | 0.91 | 1.12 | 0.89 | 0.85 | 0.83 | 0.88 | 0.82 | 0.84 | 0.98 | 0.96 | 0.79 |
| 990 | 0.961 | 0.972 | 0.980 | 0.95 | 0.91 | 1.07 | 0.83 | 1.08 | 0.97 | 0.90 | 0.90 | 0.82 | 0.77 | 0.80 | 1.10 | 1.07 | 0.90 | 1.06 | 0.86 | 0.93 | 0.73 | 0.78 | 0.67 | 0.80 | 0.80 | 0.83 | 0.73 |
| 991 | 0.961 | 0.972 | 0.980 | 0.95 | 0.91 | 1.07 | 0.83 | 1.08 | 0.97 | 0.90 | 0.90 | 0.82 | 0.77 | 0.80 | 1.10 | 1.07 | 0.90 | 1.06 | 0.86 | 0.93 | 0.73 | 0.78 | 0.67 | 0.80 | 0.80 | 0.83 | 0.73 |
| 992 | 0.961 | 0.972 | 0.980 | 0.95 | 0.91 | 1.07 | 0.83 | 1.08 | 0.97 | 0.90 | 0.90 | 0.82 | 0.77 | 0.80 | 1.10 | 1.07 | 0.90 | 1.06 | 0.86 | 0.93 | 0.73 | 0.78 | 0.67 | 0.80 | 0.80 | 0.83 | 0.73 |
| 993 | 0.961 | 0.972 | 0.980 | 0.99 | 1.00 | 0.94 | 1.04 | 1.08 | 0.97 | 0.90 | 1.01 | 0.73 | 0.91 | 0.89 | 0.94 | 1.03 | 0.91 | 1.12 | 0.89 | 0.85 | 0.83 | 0.88 | 0.82 | 0.84 | 0.98 | 0.96 | 0.79 |
| 994 | 0.961 | 0.972 | 0.980 | 0.99 | 1.00 | 0.94 | 1.04 | 1.08 | 0.97 | 0.90 | 1.01 | 0.73 | 0.91 | 0.89 | 0.94 | 1.03 | 0.91 | 1.12 | 0.89 | 0.85 | 0.83 | 0.88 | 0.82 | 0.84 | 0.98 | 0.96 | 0.79 |
| 995 | 1.064 | 1.172 | 1.120 | 1.30 | 1.26 | 1.05 | 1.06 | 0.81 | 1.06 | 1.10 | 1.22 | 1.04 | 0.85 | 0.99 | 1.07 | 1.08 | 1.05 | 1.03 | 1.18 | 0.98 | 1.12 | 0.92 | 1.01 | 1.02 | 0.94 | 1.32 | 0.95 |
| 996 | 1.064 | 1.172 | 1.120 | 1.13 | 1.11 | 0.94 | 1.33 | 0.89 | 0.96 | 0.92 | 1.04 | 0.97 | 1.00 | 0.84 | 0.95 | 1.03 | 0.93 | 0.94 | 1.06 | 0.85 | 1.06 | 0.85 | 1.02 | 1.45 | 0.97 | 1.16 | 0.88 |
| 997 | 1.064 | 1.172 | 1.120 | 1.30 | 1.26 | 1.05 | 1.06 | 0.81 | 1.06 | 1.10 | 1.22 | 1.04 | 0.85 | 0.99 | 1.07 | 1.08 | 1.05 | 1.03 | 1.18 | 0.98 | 1.12 | 0.92 | 1.01 | 1.02 | 0.94 | 1.32 | 0.95 |
| 998 | 1.064 | 1.172 | 1.120 | 1.13 | 1.11 | 0.94 | 1.33 | 0.89 | 0.96 | 0.92 | 1.04 | 0.97 | 1.00 | 0.84 | 0.95 | 1.03 | 0.93 | 0.94 | 1.06 | 0.85 | 1.06 | 0.85 | 1.02 | 1.45 | 0.97 | 1.16 | 0.88 |
| 999 | 1.064 | 1.172 | 1.120 | 1.13 | 1.11 | 0.94 | 1.33 | 0.89 | 0.96 | 0.92 | 1.04 | 0.97 | 1.00 | 0.84 | 0.95 | 1.03 | 0.93 | 0.94 | 1.06 | 0.85 | 1.06 | 0.85 | 1.02 | 1.45 | 0.97 | 1.16 | 0.88 |

TABLE M. — CHARGE ADJUSTMENT FACTORS FOR PROFESSIONAL SERVICES CHARGE MODIFIERS

| CPT/ HCPCS Code Modifier | Description | Charge Factor |
|---|---|---|
| 22 | Unusual Procedure | 1.20 |
| 50 | Bilateral Procedure | 1.54 |
| 51 | Multiple Procedures | 0.94 |
| 52 | Reduced Services | 0.70 |
| 53 | Discontinued Procedure | 0.97 |
| 62 | Two Surgeons | 0.92 |
| 80 | Assistant Surgeon | 0.31 |

## TABLE N. — ACUTE INPATIENT FACILITY CHARGES GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

PAGE 1 OF 7

| ZIP Code | GAAF For Surgical DRGs | | GAAF For Non-Surgical DRGs | |
|---|---|---|---|---|
| | Room & Board | Ancillary | Room & Board | Ancillary |
| Nationwide Average | 1.00 | 1.00 | 1.00 | 1.00 |
| 002 | 0.84 | 1.01 | 0.93 | 0.90 |
| 005 | 1.22 | 0.51 | 1.48 | 0.50 |
| 006 | 0.26 | 0.30 | 0.25 | 0.38 |
| 007 | 0.25 | 0.30 | 0.51 | 0.33 |
| 008 | 0.63 | 0.34 | 0.73 | 0.39 |
| 009 | 0.43 | 0.40 | 0.47 | 0.42 |
| 010 | 0.69 | 0.59 | 0.78 | 0.58 |
| 011 | 0.92 | 0.89 | 1.14 | 0.74 |
| 012 | 0.77 | 0.77 | 0.90 | 0.70 |
| 013 | 0.80 | 0.68 | 1.02 | 0.67 |
| 014 | 0.80 | 0.68 | 1.02 | 0.67 |
| 015 | 0.92 | 1.01 | 0.84 | 0.94 |
| 016 | 0.92 | 1.01 | 0.84 | 0.94 |
| 017 | 1.10 | 0.88 | 1.29 | 0.92 |
| 018 | 0.81 | 0.71 | 0.79 | 0.70 |
| 019 | 0.68 | 0.58 | 0.86 | 0.64 |
| 020 | 0.71 | 0.79 | 0.80 | 0.71 |
| 021 | 1.34 | 1.04 | 1.26 | 0.92 |
| 022 | 1.34 | 1.04 | 1.26 | 0.92 |
| 023 | 0.75 | 0.73 | 1.14 | 0.68 |
| 024 | 0.75 | 0.73 | 1.14 | 0.68 |
| 025 | 0.75 | 0.73 | 1.14 | 0.68 |
| 026 | 0.75 | 0.73 | 1.14 | 0.68 |
| 027 | 0.55 | 0.58 | 0.67 | 0.60 |
| 028 | 0.95 | 0.67 | 1.06 | 0.75 |
| 029 | 1.28 | 0.84 | 1.34 | 0.83 |
| 030 | 0.73 | 1.04 | 0.86 | 0.87 |
| 031 | 0.73 | 1.04 | 0.86 | 0.87 |
| 032 | 0.76 | 0.87 | 0.79 | 0.75 |
| 033 | 0.76 | 0.87 | 0.79 | 0.75 |
| 034 | 0.73 | 1.04 | 0.86 | 0.87 |
| 035 | 0.84 | 0.87 | 0.88 | 0.72 |
| 036 | 1.06 | 0.77 | 1.04 | 0.74 |
| 037 | 1.06 | 0.77 | 1.04 | 0.74 |
| 038 | 0.84 | 1.01 | 0.93 | 0.90 |
| 039 | 0.84 | 1.01 | 0.93 | 0.90 |
| 040 | 0.96 | 0.74 | 1.02 | 0.70 |
| 041 | 0.74 | 0.64 | 0.86 | 0.66 |
| 042 | 1.11 | 0.94 | 1.11 | 0.81 |
| 043 | 1.11 | 0.94 | 1.11 | 0.81 |
| 044 | 0.97 | 0.72 | 1.04 | 0.73 |
| 045 | 1.11 | 0.94 | 1.11 | 0.81 |
| 046 | 0.97 | 0.72 | 1.04 | 0.73 |
| 047 | 0.97 | 0.72 | 1.04 | 0.73 |
| 048 | 1.11 | 0.94 | 1.11 | 0.81 |
| 049 | 0.94 | 0.77 | 1.01 | 0.85 |
| 050 | 0.83 | 0.67 | 0.83 | 0.69 |
| 051 | 0.72 | 0.63 | 0.82 | 0.55 |
| 052 | 0.72 | 0.63 | 0.82 | 0.55 |
| 053 | 0.72 | 0.63 | 0.82 | 0.55 |
| 054 | 0.85 | 0.61 | 0.91 | 0.63 |
| 055 | 0.81 | 0.71 | 0.79 | 0.70 |
| 056 | 0.84 | 0.87 | 0.88 | 0.72 |
| 057 | 0.83 | 0.67 | 0.83 | 0.69 |
| 058 | 0.84 | 0.87 | 0.88 | 0.72 |
| 059 | 0.84 | 0.87 | 0.88 | 0.72 |
| 060 | 1.15 | 0.79 | 1.25 | 0.83 |
| 061 | 1.05 | 0.54 | 1.13 | 0.58 |
| 062 | 0.91 | 0.73 | 1.06 | 0.89 |
| 063 | 0.91 | 0.73 | 1.06 | 0.89 |
| 064 | 0.99 | 0.87 | 1.04 | 0.86 |
| 065 | 1.21 | 0.87 | 1.24 | 1.00 |
| 066 | 0.81 | 0.82 | 1.06 | 0.69 |
| 067 | 0.81 | 0.85 | 0.92 | 1.04 |
| 068 | 1.10 | 0.90 | 1.22 | 0.99 |
| 069 | 1.10 | 0.90 | 1.22 | 0.99 |
| 070 | 2.77 | 0.68 | 2.65 | 0.73 |
| 071 | 2.54 | 0.79 | 2.53 | 0.84 |
| 072 | 2.30 | 0.86 | 2.54 | 1.01 |
| 073 | 2.80 | 0.56 | 3.10 | 0.72 |
| 074 | 2.08 | 0.56 | 2.26 | 0.60 |
| 075 | 1.97 | 0.59 | 2.13 | 0.71 |
| 076 | 2.54 | 0.79 | 2.53 | 0.84 |
| 077 | 3.52 | 0.84 | 3.81 | 0.84 |
| 078 | 2.21 | 0.75 | 2.34 | 0.85 |
| 079 | 2.03 | 0.74 | 1.87 | 0.67 |
| 080 | 2.18 | 0.79 | 1.94 | 0.75 |
| 081 | 2.19 | 1.03 | 2.23 | 0.97 |
| 082 | 2.27 | 0.82 | 2.37 | 0.87 |
| 083 | 2.37 | 0.82 | 2.25 | 1.06 |
| 084 | 2.27 | 0.82 | 2.37 | 0.87 |
| 085 | 3.68 | 1.07 | 2.75 | 1.01 |
| 086 | 3.68 | 1.07 | 2.75 | 1.01 |
| 087 | 2.54 | 0.79 | 2.53 | 0.84 |
| 088 | 3.14 | 0.89 | 3.22 | 0.98 |
| 089 | 3.14 | 0.89 | 3.22 | 0.98 |
| 100 | 2.16 | 0.58 | 2.17 | 0.52 |
| 101 | 2.16 | 0.58 | 2.17 | 0.52 |
| 102 | 2.16 | 0.58 | 2.17 | 0.52 |
| 103 | 1.82 | 0.63 | 1.71 | 0.57 |
| 104 | 2.66 | 0.45 | 2.31 | 0.33 |
| 105 | 2.18 | 0.26 | 1.43 | 0.46 |
| 106 | 0.75 | 0.46 | 1.01 | 0.52 |
| 107 | 0.81 | 0.36 | 0.89 | 0.46 |
| 108 | 0.81 | 0.36 | 0.89 | 0.46 |
| 109 | 1.22 | 0.64 | 1.19 | 0.76 |
| 110 | 1.96 | 0.67 | 2.12 | 0.61 |
| 111 | 2.30 | 0.25 | 1.89 | 0.31 |
| 112 | 2.30 | 0.25 | 1.89 | 0.31 |
| 113 | 1.59 | 0.41 | 1.93 | 0.38 |
| 114 | 1.56 | 0.35 | 1.53 | 0.39 |
| 115 | 1.22 | 0.51 | 1.48 | 0.50 |
| 116 | 1.22 | 0.51 | 1.48 | 0.50 |
| 117 | 1.28 | 0.55 | 1.26 | 0.58 |
| 118 | 1.28 | 0.55 | 1.26 | 0.58 |
| 119 | 1.28 | 0.55 | 1.26 | 0.58 |
| 120 | 0.67 | 0.40 | 0.72 | 0.56 |
| 121 | 0.67 | 0.40 | 0.72 | 0.56 |
| 122 | 0.69 | 0.63 | 0.65 | 0.63 |
| 123 | 0.70 | 0.51 | 0.81 | 0.66 |
| 124 | 0.79 | 0.42 | 0.90 | 0.49 |
| 125 | 1.12 | 0.61 | 1.14 | 0.67 |
| 126 | 1.12 | 0.61 | 1.14 | 0.67 |
| 127 | 0.79 | 0.42 | 0.90 | 0.49 |
| 128 | 0.55 | 0.51 | 0.69 | 0.62 |
| 129 | 0.76 | 0.40 | 0.90 | 0.57 |
| 130 | 0.67 | 0.43 | 0.77 | 0.51 |
| 131 | 0.67 | 0.43 | 0.77 | 0.51 |
| 132 | 0.86 | 0.44 | 0.90 | 0.45 |
| 133 | 0.61 | 0.58 | 0.67 | 0.65 |
| 134 | 0.61 | 0.58 | 0.67 | 0.65 |
| 135 | 0.81 | 0.53 | 0.80 | 0.58 |
| 136 | 0.69 | 0.46 | 0.71 | 0.48 |
| 137 | 0.48 | 0.54 | 0.56 | 0.55 |
| 138 | 0.48 | 0.54 | 0.56 | 0.55 |
| 139 | 0.48 | 0.54 | 0.56 | 0.55 |
| 140 | 0.79 | 0.47 | 0.84 | 0.41 |
| 141 | 0.79 | 0.47 | 0.84 | 0.41 |
| 142 | 0.82 | 0.41 | 0.80 | 0.39 |
| 143 | 0.79 | 0.47 | 0.84 | 0.41 |
| 144 | 0.64 | 0.37 | 0.68 | 0.36 |

TABLE N. — ACUTE INPATIENT FACILITY CHARGES GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

PAGE 2 OF 7

| ZIP Code | GAAF For Surgical DRGs | | GAAF For Non-Surgical DRGs | |
|---|---|---|---|---|
| | Room & Board | Ancillary | Room & Board | Ancillary |
| 145 | 0.64 | 0.37 | 0.68 | 0.36 |
| 146 | 0.75 | 0.45 | 0.76 | 0.42 |
| 147 | 0.53 | 0.55 | 0.60 | 0.55 |
| 148 | 0.61 | 0.50 | 0.61 | 0.51 |
| 149 | 0.61 | 0.50 | 0.61 | 0.51 |
| 150 | 0.70 | 0.83 | 0.83 | 0.90 |
| 151 | 0.71 | 0.72 | 0.83 | 0.85 |
| 152 | 1.34 | 1.40 | 1.21 | 1.33 |
| 153 | 1.00 | 0.88 | 1.00 | 0.87 |
| 154 | 0.57 | 0.45 | 0.67 | 0.52 |
| 155 | 0.60 | 0.99 | 0.75 | 0.93 |
| 156 | 0.76 | 0.71 | 0.86 | 0.73 |
| 157 | 0.62 | 0.79 | 0.64 | 0.68 |
| 158 | 0.65 | 0.62 | 0.70 | 0.74 |
| 159 | 0.60 | 0.99 | 0.75 | 0.93 |
| 160 | 0.65 | 0.75 | 0.71 | 0.68 |
| 161 | 0.63 | 0.80 | 0.70 | 0.74 |
| 162 | 0.65 | 0.75 | 0.71 | 0.68 |
| 163 | 0.61 | 0.61 | 0.59 | 0.59 |
| 164 | 0.99 | 1.07 | 1.01 | 1.06 |
| 165 | 0.99 | 1.07 | 1.01 | 1.06 |
| 166 | 0.66 | 0.73 | 0.80 | 0.67 |
| 167 | 0.52 | 0.70 | 0.64 | 0.65 |
| 168 | 0.53 | 0.81 | 0.72 | 0.79 |
| 169 | 0.52 | 0.70 | 0.64 | 0.65 |
| 170 | 0.85 | 0.74 | 0.77 | 0.83 |
| 171 | 1.01 | 0.99 | 1.09 | 1.03 |
| 172 | 0.79 | 0.62 | 1.12 | 0.73 |
| 173 | 0.56 | 0.73 | 0.60 | 0.71 |
| 174 | 0.56 | 0.73 | 0.60 | 0.71 |
| 175 | 0.69 | 0.76 | 0.73 | 0.83 |
| 176 | 0.69 | 0.76 | 0.73 | 0.83 |
| 177 | 0.66 | 0.95 | 0.71 | 1.05 |
| 178 | 0.97 | 0.76 | 0.82 | 0.79 |
| 179 | 0.50 | 0.51 | 0.56 | 0.59 |
| 180 | 0.89 | 0.76 | 0.95 | 0.82 |
| 181 | 1.30 | 0.85 | 1.01 | 0.84 |
| 182 | 0.66 | 0.77 | 0.70 | 0.99 |
| 183 | 0.66 | 0.77 | 0.70 | 0.99 |
| 184 | 0.62 | 0.61 | 0.69 | 0.68 |
| 185 | 0.74 | 0.91 | 0.79 | 1.10 |
| 186 | 0.71 | 0.83 | 0.90 | 0.86 |
| 187 | 0.71 | 0.83 | 0.90 | 0.86 |
| 188 | 0.82 | 0.74 | 0.87 | 0.89 |
| 189 | 1.35 | 1.23 | 1.80 | 1.59 |
| 190 | 2.19 | 1.39 | 2.31 | 1.73 |
| 191 | 2.45 | 1.84 | 2.34 | 1.73 |
| 192 | 2.45 | 1.84 | 2.34 | 1.73 |
| 193 | 1.18 | 0.89 | 1.39 | 0.86 |
| 194 | 1.04 | 1.25 | 0.98 | 1.12 |
| 195 | 0.53 | 0.57 | 0.55 | 0.57 |
| 196 | 0.53 | 0.57 | 0.55 | 0.57 |
| 197 | 0.68 | 0.58 | 0.87 | 0.62 |
| 198 | 0.68 | 0.58 | 0.87 | 0.62 |
| 199 | 0.62 | 0.80 | 0.68 | 0.98 |
| 200 | 1.01 | 1.09 | 1.03 | 1.20 |
| 201 | 1.01 | 1.09 | 1.03 | 1.20 |
| 202 | 1.01 | 1.09 | 1.03 | 1.20 |
| 203 | 1.01 | 1.09 | 1.03 | 1.20 |
| 204 | 1.01 | 1.09 | 1.03 | 1.20 |
| 205 | 1.01 | 1.09 | 1.03 | 1.20 |
| 206 | 0.61 | 0.45 | 0.73 | 0.48 |
| 207 | 0.71 | 0.45 | 0.77 | 0.48 |
| 208 | 0.58 | 0.57 | 0.69 | 0.48 |
| 209 | 0.59 | 0.42 | 0.64 | 0.44 |
| 210 | 0.69 | 0.51 | 0.76 | 0.45 |
| 211 | 0.69 | 0.51 | 0.76 | 0.45 |
| 212 | 0.85 | 0.56 | 0.87 | 0.50 |
| 214 | 0.69 | 0.51 | 0.76 | 0.45 |
| 215 | 0.44 | 0.43 | 0.48 | 0.37 |
| 216 | 0.66 | 0.39 | 0.74 | 0.41 |
| 217 | 0.62 | 0.41 | 0.70 | 0.38 |
| 218 | 0.52 | 0.39 | 0.62 | 0.39 |
| 219 | 0.66 | 0.39 | 0.74 | 0.41 |
| 220 | 0.62 | 0.96 | 0.75 | 1.07 |
| 221 | 0.62 | 0.96 | 0.75 | 1.07 |
| 222 | 0.99 | 1.07 | 1.00 | 1.10 |
| 223 | 0.76 | 0.74 | 0.75 | 1.01 |
| 224 | 0.47 | 0.76 | 0.69 | 0.98 |
| 225 | 0.47 | 0.76 | 0.69 | 0.98 |
| 226 | 0.38 | 0.68 | 0.49 | 0.83 |
| 227 | 0.58 | 0.68 | 0.76 | 0.78 |
| 228 | 0.58 | 0.68 | 0.76 | 0.78 |
| 229 | 0.77 | 0.79 | 0.68 | 0.76 |
| 230 | 0.55 | 1.05 | 0.62 | 0.92 |
| 231 | 0.55 | 1.05 | 0.62 | 0.92 |
| 232 | 0.87 | 1.39 | 0.80 | 1.37 |
| 233 | 0.49 | 0.74 | 0.65 | 0.79 |
| 234 | 0.49 | 0.74 | 0.65 | 0.79 |
| 235 | 0.61 | 0.94 | 0.77 | 0.97 |
| 236 | 0.86 | 0.89 | 1.07 | 0.86 |
| 237 | 0.49 | 0.74 | 0.65 | 0.79 |
| 238 | 0.67 | 0.97 | 0.81 | 1.10 |
| 239 | 0.67 | 0.97 | 0.81 | 1.10 |
| 240 | 0.62 | 0.91 | 0.80 | 0.98 |
| 241 | 0.58 | 0.92 | 0.81 | 0.94 |
| 242 | 0.49 | 0.88 | 0.75 | 1.05 |
| 243 | 0.43 | 1.02 | 0.54 | 0.92 |
| 244 | 0.77 | 0.79 | 0.68 | 0.76 |
| 245 | 0.70 | 0.79 | 0.71 | 0.67 |
| 246 | 0.42 | 1.13 | 0.42 | 1.60 |
| 247 | 0.41 | 0.73 | 0.55 | 0.77 |
| 248 | 0.41 | 0.73 | 0.55 | 0.77 |
| 249 | 0.38 | 0.81 | 0.48 | 0.96 |
| 250 | 0.38 | 0.81 | 0.48 | 0.96 |
| 251 | 0.32 | 0.79 | 0.53 | 0.85 |
| 252 | 0.32 | 0.79 | 0.53 | 0.85 |
| 253 | 0.32 | 0.79 | 0.53 | 0.85 |
| 254 | 0.38 | 0.68 | 0.49 | 0.83 |
| 255 | 0.66 | 0.65 | 0.66 | 0.80 |
| 256 | 0.66 | 0.65 | 0.66 | 0.80 |
| 257 | 0.66 | 0.65 | 0.66 | 0.80 |
| 258 | 0.40 | 0.75 | 0.42 | 0.89 |
| 259 | 0.40 | 0.75 | 0.42 | 0.89 |
| 260 | 0.48 | 0.63 | 0.75 | 0.70 |
| 261 | 0.42 | 0.70 | 0.62 | 0.71 |
| 262 | 0.38 | 0.81 | 0.48 | 0.96 |
| 263 | 0.43 | 0.51 | 0.65 | 0.51 |
| 264 | 0.43 | 0.51 | 0.65 | 0.51 |
| 265 | 0.67 | 0.75 | 0.78 | 0.78 |
| 266 | 0.38 | 0.81 | 0.48 | 0.96 |
| 267 | 0.38 | 0.81 | 0.48 | 0.96 |
| 268 | 0.38 | 0.81 | 0.48 | 0.96 |
| 270 | 0.50 | 0.67 | 0.59 | 0.65 |
| 271 | 0.50 | 0.67 | 0.59 | 0.65 |
| 272 | 0.30 | 0.72 | 0.51 | 0.78 |
| 273 | 0.60 | 1.12 | 0.64 | 1.19 |
| 274 | 0.36 | 0.50 | 0.43 | 0.54 |
| 275 | 0.69 | 0.82 | 0.57 | 0.79 |
| 276 | 0.60 | 0.91 | 0.75 | 0.81 |
| 277 | 1.01 | 0.92 | 0.87 | 1.01 |
| 278 | 0.34 | 0.77 | 0.52 | 0.82 |
| 279 | 0.48 | 0.82 | 0.58 | 0.84 |
| 280 | 0.39 | 0.85 | 0.63 | 0.92 |

### TABLE N. — ACUTE INPATIENT FACILITY CHARGES GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

PAGE 3 OF 7

| ZIP Code | GAAF For Surgical DRGs | | GAAF For Non-Surgical DRGs | |
|---|---|---|---|---|
| | Room & Board | Ancillary | Room & Board | Ancillary |
| 281 | 0.43 | 0.92 | 0.53 | 1.09 |
| 282 | 0.84 | 0.91 | 0.86 | 0.95 |
| 283 | 0.62 | 0.99 | 0.73 | 0.94 |
| 284 | 0.50 | 1.04 | 0.59 | 1.12 |
| 285 | 0.29 | 0.81 | 0.48 | 0.78 |
| 286 | 0.51 | 1.39 | 0.55 | 1.09 |
| 287 | 0.44 | 0.80 | 0.57 | 0.82 |
| 288 | 0.62 | 0.78 | 0.68 | 0.83 |
| 289 | 0.44 | 0.80 | 0.57 | 0.82 |
| 290 | 0.58 | 1.00 | 0.88 | 0.93 |
| 291 | 0.58 | 1.00 | 0.88 | 0.93 |
| 292 | 0.61 | 0.86 | 0.61 | 0.75 |
| 293 | 0.65 | 1.19 | 0.79 | 1.31 |
| 294 | 0.72 | 0.99 | 0.91 | 1.06 |
| 295 | 0.70 | 1.15 | 0.80 | 1.29 |
| 296 | 0.67 | 0.95 | 0.78 | 0.92 |
| 297 | 1.00 | 1.83 | 1.02 | 1.78 |
| 298 | 0.70 | 1.37 | 0.79 | 0.96 |
| 299 | 0.68 | 1.52 | 0.67 | 1.35 |
| 300 | 0.64 | 1.07 | 0.78 | 1.20 |
| 301 | 0.49 | 1.29 | 0.62 | 1.12 |
| 302 | 0.58 | 0.99 | 0.75 | 1.07 |
| 303 | 0.81 | 0.92 | 1.02 | 0.93 |
| 304 | 0.56 | 1.17 | 0.56 | 1.40 |
| 305 | 0.55 | 1.08 | 0.70 | 1.14 |
| 306 | 0.46 | 1.06 | 0.49 | 1.14 |
| 307 | 0.53 | 0.84 | 0.57 | 1.26 |
| 308 | 0.59 | 0.98 | 0.61 | 0.97 |
| 309 | 0.59 | 0.98 | 0.61 | 0.97 |
| 310 | 0.48 | 0.96 | 0.52 | 0.85 |
| 311 | 0.81 | 0.92 | 1.02 | 0.93 |
| 312 | 0.66 | 1.04 | 0.91 | 1.25 |
| 313 | 0.77 | 1.15 | 0.87 | 1.01 |
| 314 | 0.77 | 1.15 | 0.87 | 1.01 |
| 315 | 0.61 | 1.15 | 0.84 | 1.02 |
| 316 | 0.45 | 0.87 | 0.74 | 0.93 |
| 317 | 0.41 | 0.93 | 0.50 | 0.93 |
| 318 | 0.52 | 0.72 | 0.54 | 0.78 |
| 319 | 0.49 | 0.96 | 0.54 | 0.95 |
| 320 | 0.71 | 1.47 | 0.90 | 1.54 |
| 321 | 0.87 | 1.10 | 0.96 | 1.27 |
| 322 | 0.62 | 1.38 | 0.72 | 1.30 |
| 323 | 0.74 | 1.22 | 0.78 | 1.23 |
| 324 | 0.68 | 1.41 | 0.84 | 1.18 |
| 325 | 0.73 | 1.52 | 0.90 | 1.58 |
| 326 | 0.74 | 1.37 | 0.83 | 1.46 |
| 327 | 0.67 | 1.24 | 0.79 | 1.20 |
| 328 | 1.00 | 1.32 | 1.18 | 1.42 |
| 329 | 0.62 | 1.27 | 0.75 | 1.22 |
| 330 | 0.80 | 1.35 | 0.95 | 1.70 |
| 331 | 0.96 | 1.21 | 0.94 | 1.45 |
| 332 | 0.80 | 1.35 | 0.95 | 1.70 |
| 333 | 0.82 | 1.68 | 0.96 | 1.88 |
| 334 | 0.71 | 1.50 | 1.01 | 1.72 |
| 335 | 0.70 | 1.44 | 0.77 | 1.96 |
| 336 | 0.77 | 1.43 | 0.93 | 1.49 |
| 337 | 0.79 | 1.47 | 0.96 | 1.44 |
| 338 | 0.68 | 1.15 | 0.77 | 1.38 |
| 339 | 0.77 | 1.40 | 1.03 | 1.40 |
| 341 | 0.77 | 1.40 | 1.03 | 1.40 |
| 342 | 0.82 | 1.33 | 0.98 | 1.31 |
| 344 | 0.45 | 0.94 | 0.65 | 1.19 |
| 346 | 0.88 | 1.55 | 0.97 | 1.52 |
| 347 | 0.63 | 1.32 | 0.80 | 1.44 |
| 349 | 0.73 | 1.57 | 0.86 | 1.55 |
| 350 | 0.67 | 1.21 | 0.69 | 1.25 |
| 351 | 0.67 | 1.21 | 0.69 | 1.25 |
| 352 | 0.92 | 1.56 | 1.06 | 1.64 |
| 354 | 0.82 | 1.11 | 0.75 | 1.11 |
| 355 | 0.57 | 1.26 | 0.65 | 1.30 |
| 356 | 0.60 | 1.09 | 0.59 | 1.07 |
| 357 | 0.69 | 1.22 | 0.83 | 1.30 |
| 358 | 0.69 | 1.22 | 0.83 | 1.30 |
| 359 | 0.54 | 1.36 | 0.67 | 1.42 |
| 360 | 0.65 | 1.57 | 0.64 | 1.13 |
| 361 | 0.75 | 1.14 | 0.83 | 1.17 |
| 362 | 0.60 | 1.05 | 0.65 | 1.25 |
| 363 | 0.60 | 1.18 | 0.62 | 1.31 |
| 364 | 0.43 | 0.90 | 0.49 | 0.89 |
| 365 | 0.37 | 0.92 | 0.36 | 0.94 |
| 366 | 0.46 | 0.90 | 0.47 | 1.14 |
| 367 | 0.47 | 0.95 | 0.64 | 0.96 |
| 368 | 0.52 | 0.72 | 0.54 | 0.78 |
| 369 | 0.43 | 1.00 | 0.53 | 0.97 |
| 370 | 0.59 | 1.21 | 0.71 | 1.12 |
| 371 | 0.46 | 0.81 | 0.64 | 0.92 |
| 372 | 0.65 | 1.02 | 0.82 | 1.06 |
| 373 | 0.53 | 1.20 | 0.70 | 1.13 |
| 374 | 0.67 | 1.09 | 0.80 | 1.08 |
| 375 | 0.56 | 0.89 | 0.76 | 1.05 |
| 376 | 0.57 | 0.94 | 0.72 | 0.99 |
| 377 | 0.47 | 0.72 | 0.64 | 0.77 |
| 378 | 0.57 | 1.04 | 0.69 | 1.09 |
| 379 | 0.66 | 1.07 | 0.78 | 1.17 |
| 380 | 0.40 | 1.00 | 0.53 | 0.88 |
| 381 | 0.56 | 0.89 | 0.76 | 1.05 |
| 382 | 0.43 | 0.78 | 0.53 | 0.88 |
| 383 | 0.49 | 0.92 | 0.59 | 0.97 |
| 384 | 0.41 | 0.75 | 0.51 | 0.90 |
| 385 | 0.54 | 0.97 | 0.68 | 1.09 |
| 386 | 0.44 | 0.78 | 0.73 | 0.82 |
| 387 | 0.45 | 0.73 | 0.54 | 0.84 |
| 388 | 0.46 | 0.87 | 0.52 | 1.08 |
| 389 | 0.31 | 0.65 | 0.44 | 0.65 |
| 390 | 0.35 | 1.04 | 0.64 | 0.74 |
| 391 | 0.56 | 1.25 | 0.81 | 1.11 |
| 392 | 0.41 | 0.88 | 0.50 | 0.96 |
| 393 | 0.43 | 1.00 | 0.53 | 0.97 |
| 394 | 0.47 | 0.77 | 0.56 | 0.79 |
| 395 | 0.61 | 1.35 | 0.94 | 1.48 |
| 396 | 0.44 | 0.93 | 0.51 | 0.84 |
| 397 | 0.45 | 0.92 | 0.53 | 0.74 |
| 399 | 0.81 | 0.92 | 1.02 | 0.93 |
| 400 | 0.72 | 0.98 | 0.83 | 0.99 |
| 401 | 0.72 | 0.98 | 0.83 | 0.99 |
| 402 | 0.72 | 0.98 | 0.83 | 0.99 |
| 403 | 0.50 | 0.66 | 0.58 | 0.79 |
| 404 | 0.47 | 0.70 | 0.69 | 0.73 |
| 405 | 0.64 | 0.84 | 0.75 | 0.84 |
| 406 | 0.64 | 0.84 | 0.75 | 0.84 |
| 407 | 0.50 | 0.86 | 0.64 | 0.90 |
| 408 | 0.50 | 0.86 | 0.64 | 0.90 |
| 409 | 0.50 | 0.86 | 0.64 | 0.90 |
| 410 | 0.60 | 0.97 | 0.74 | 0.90 |
| 411 | 0.44 | 0.95 | 0.61 | 1.09 |
| 412 | 0.44 | 0.95 | 0.61 | 1.09 |
| 413 | 0.74 | 0.83 | 0.77 | 1.17 |
| 414 | 0.74 | 0.83 | 0.77 | 1.17 |
| 415 | 0.74 | 0.83 | 0.77 | 1.17 |
| 416 | 0.74 | 0.83 | 0.77 | 1.17 |
| 417 | 0.74 | 0.83 | 0.77 | 1.17 |
| 418 | 0.74 | 0.83 | 0.77 | 1.17 |
| 420 | 0.41 | 0.84 | 0.57 | 0.79 |
| 421 | 0.57 | 1.00 | 0.59 | 0.87 |

### TABLE N. — ACUTE INPATIENT FACILITY CHARGES GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

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| ZIP Code | GAAF For Surgical DRGs | | GAAF For Non-Surgical DRGs | |
|---|---|---|---|---|
| | Room & Board | Ancillary | Room & Board | Ancillary |
| 422 | 0.57 | 1.00 | 0.59 | 0.87 |
| 423 | 0.57 | 0.78 | 0.62 | 0.78 |
| 424 | 0.63 | 0.82 | 0.61 | 0.77 |
| 425 | 0.72 | 1.23 | 0.80 | 1.07 |
| 426 | 0.72 | 1.23 | 0.80 | 1.07 |
| 427 | 0.48 | 0.75 | 0.58 | 0.72 |
| 430 | 0.49 | 0.87 | 0.64 | 0.93 |
| 431 | 0.51 | 0.89 | 0.62 | 0.81 |
| 432 | 0.57 | 0.93 | 0.66 | 0.97 |
| 433 | 0.46 | 0.87 | 0.50 | 0.83 |
| 434 | 0.82 | 1.00 | 0.91 | 0.83 |
| 435 | 0.82 | 1.00 | 0.91 | 0.83 |
| 436 | 1.06 | 1.17 | 1.01 | 1.13 |
| 437 | 0.75 | 0.78 | 0.66 | 0.74 |
| 438 | 0.75 | 0.78 | 0.66 | 0.74 |
| 439 | 0.49 | 0.75 | 0.73 | 0.81 |
| 440 | 0.77 | 0.68 | 0.75 | 0.67 |
| 441 | 1.03 | 0.86 | 1.06 | 0.85 |
| 442 | 0.86 | 0.84 | 0.89 | 0.96 |
| 443 | 1.15 | 0.85 | 1.03 | 1.04 |
| 444 | 0.58 | 0.94 | 0.62 | 0.96 |
| 445 | 0.70 | 1.11 | 0.79 | 1.09 |
| 446 | 0.45 | 0.59 | 0.54 | 0.59 |
| 447 | 0.45 | 0.59 | 0.54 | 0.59 |
| 448 | 0.63 | 0.85 | 0.70 | 0.80 |
| 449 | 0.63 | 0.85 | 0.70 | 0.80 |
| 450 | 0.64 | 0.78 | 0.71 | 0.75 |
| 451 | 0.55 | 0.78 | 0.68 | 0.77 |
| 452 | 0.53 | 1.01 | 0.64 | 0.94 |
| 453 | 0.77 | 0.83 | 0.81 | 0.98 |
| 454 | 0.80 | 0.91 | 0.83 | 1.05 |
| 455 | 0.80 | 0.91 | 0.83 | 1.05 |
| 456 | 0.72 | 0.88 | 0.72 | 0.97 |
| 457 | 0.69 | 0.87 | 0.82 | 0.82 |
| 458 | 0.54 | 0.85 | 0.62 | 0.86 |
| 459 | 0.53 | 1.01 | 0.64 | 0.94 |
| 460 | 0.58 | 0.81 | 0.72 | 0.86 |
| 461 | 0.63 | 0.81 | 0.80 | 0.77 |
| 462 | 0.77 | 0.78 | 0.80 | 0.78 |
| 463 | 0.57 | 0.86 | 0.66 | 0.91 |
| 464 | 0.51 | 0.81 | 0.63 | 0.80 |
| 465 | 0.92 | 0.91 | 0.99 | 0.84 |
| 466 | 1.02 | 1.08 | 1.07 | 0.95 |
| 467 | 0.80 | 1.05 | 0.88 | 0.89 |
| 468 | 0.88 | 0.83 | 0.94 | 0.78 |
| 469 | 0.59 | 0.77 | 0.71 | 0.79 |
| 470 | 0.61 | 0.75 | 0.73 | 0.81 |
| 471 | 0.62 | 0.90 | 0.72 | 1.03 |
| 472 | 0.61 | 0.75 | 0.73 | 0.81 |
| 473 | 0.64 | 0.85 | 0.64 | 0.82 |
| 474 | 0.70 | 0.76 | 0.81 | 0.80 |
| 475 | 0.71 | 0.77 | 0.75 | 0.71 |
| 476 | 0.57 | 0.92 | 0.78 | 0.91 |
| 477 | 0.57 | 0.92 | 0.78 | 0.91 |
| 478 | 0.60 | 0.99 | 0.80 | 0.96 |
| 479 | 0.78 | 0.86 | 0.75 | 0.81 |
| 480 | 1.08 | 0.88 | 1.12 | 1.04 |
| 481 | 1.01 | 0.80 | 0.93 | 0.79 |
| 482 | 1.13 | 0.89 | 1.12 | 0.93 |
| 483 | 0.93 | 1.08 | 0.93 | 0.99 |
| 484 | 0.73 | 0.62 | 0.80 | 0.74 |
| 485 | 0.90 | 0.80 | 0.96 | 0.76 |
| 486 | 0.71 | 0.80 | 0.81 | 0.86 |
| 487 | 1.05 | 0.73 | 0.99 | 0.69 |
| 488 | 0.72 | 0.74 | 0.81 | 0.89 |
| 489 | 0.72 | 0.74 | 0.81 | 0.89 |
| 490 | 0.58 | 0.89 | 0.68 | 0.91 |
| 491 | 0.58 | 0.89 | 0.68 | 0.91 |
| 492 | 0.68 | 0.66 | 0.81 | 0.80 |
| 493 | 0.46 | 0.77 | 0.60 | 0.83 |
| 494 | 0.46 | 0.77 | 0.60 | 0.83 |
| 495 | 0.72 | 0.59 | 0.83 | 0.71 |
| 496 | 0.76 | 0.68 | 0.81 | 0.80 |
| 497 | 0.74 | 0.67 | 0.74 | 0.75 |
| 498 | 0.69 | 0.77 | 0.78 | 0.83 |
| 499 | 0.69 | 0.77 | 0.78 | 0.83 |
| 500 | 0.54 | 0.72 | 0.62 | 0.70 |
| 501 | 0.54 | 0.72 | 0.62 | 0.70 |
| 502 | 0.54 | 0.72 | 0.62 | 0.70 |
| 503 | 0.82 | 0.85 | 0.86 | 0.78 |
| 504 | 0.45 | 1.02 | 0.58 | 1.01 |
| 505 | 0.71 | 0.74 | 0.67 | 0.66 |
| 506 | 0.66 | 0.79 | 0.64 | 0.66 |
| 507 | 0.66 | 0.79 | 0.64 | 0.66 |
| 508 | 0.52 | 0.83 | 0.67 | 0.85 |
| 509 | 0.82 | 0.85 | 0.86 | 0.78 |
| 510 | 0.71 | 0.93 | 0.68 | 0.77 |
| 511 | 0.71 | 0.93 | 0.68 | 0.77 |
| 512 | 0.71 | 0.93 | 0.68 | 0.77 |
| 513 | 0.71 | 0.93 | 0.68 | 0.77 |
| 514 | 0.40 | 0.54 | 0.49 | 0.63 |
| 515 | 0.52 | 0.83 | 0.67 | 0.85 |
| 516 | 0.52 | 0.83 | 0.67 | 0.85 |
| 520 | 0.64 | 0.81 | 0.78 | 0.76 |
| 521 | 0.64 | 0.81 | 0.78 | 0.76 |
| 522 | 1.09 | 0.65 | 1.04 | 0.61 |
| 523 | 1.09 | 0.65 | 1.04 | 0.61 |
| 524 | 0.51 | 0.65 | 0.59 | 0.63 |
| 525 | 0.75 | 0.66 | 0.79 | 0.67 |
| 526 | 0.76 | 0.74 | 0.70 | 0.66 |
| 527 | 0.64 | 0.79 | 0.64 | 0.72 |
| 528 | 0.64 | 0.79 | 0.64 | 0.72 |
| 530 | 0.55 | 0.91 | 0.70 | 1.09 |
| 531 | 0.36 | 0.96 | 0.54 | 1.00 |
| 532 | 0.54 | 1.21 | 0.69 | 1.32 |
| 534 | 0.36 | 0.96 | 0.54 | 1.00 |
| 535 | 0.41 | 1.07 | 0.69 | 0.98 |
| 537 | 0.59 | 0.88 | 0.61 | 1.06 |
| 538 | 0.41 | 1.07 | 0.69 | 0.98 |
| 539 | 0.54 | 0.95 | 0.65 | 0.95 |
| 540 | 0.64 | 0.97 | 0.68 | 1.12 |
| 541 | 0.47 | 0.90 | 0.64 | 0.95 |
| 542 | 0.47 | 0.90 | 0.64 | 0.95 |
| 543 | 0.67 | 0.76 | 0.77 | 0.63 |
| 544 | 0.43 | 0.85 | 0.60 | 0.85 |
| 545 | 0.72 | 0.80 | 0.65 | 0.84 |
| 546 | 0.24 | 1.11 | 0.45 | 1.21 |
| 547 | 0.38 | 0.96 | 0.50 | 0.83 |
| 548 | 0.72 | 0.80 | 0.65 | 0.84 |
| 549 | 0.45 | 0.84 | 0.57 | 0.78 |
| 550 | 0.76 | 0.86 | 0.95 | 0.91 |
| 551 | 1.25 | 1.20 | 1.32 | 1.29 |
| 553 | 1.09 | 0.93 | 1.03 | 0.94 |
| 554 | 1.33 | 1.12 | 1.46 | 1.30 |
| 555 | 1.09 | 0.93 | 1.03 | 0.94 |
| 556 | 0.55 | 0.80 | 0.70 | 0.78 |
| 557 | 0.55 | 0.80 | 0.70 | 0.78 |
| 558 | 0.87 | 0.90 | 0.99 | 0.89 |
| 559 | 0.97 | 0.78 | 1.05 | 0.96 |
| 560 | 0.45 | 0.82 | 0.60 | 0.84 |
| 561 | 0.65 | 0.73 | 0.74 | 0.72 |
| 562 | 0.65 | 0.73 | 0.74 | 0.72 |
| 563 | 0.66 | 0.74 | 0.87 | 0.81 |
| 564 | 0.71 | 0.80 | 0.79 | 0.74 |

### TABLE N. — ACUTE INPATIENT FACILITY CHARGES GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

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| ZIP Code | GAAF For Surgical DRGs | | GAAF For Non-Surgical DRGs | |
|---|---|---|---|---|
| | Room & Board | Ancillary | Room & Board | Ancillary |
| 565 | 0.75 | 0.63 | 0.81 | 0.65 |
| 566 | 0.75 | 0.63 | 0.81 | 0.65 |
| 567 | 0.75 | 0.63 | 0.81 | 0.65 |
| 570 | 0.59 | 0.81 | 0.56 | 0.65 |
| 571 | 0.33 | 0.94 | 0.56 | 1.18 |
| 572 | 0.61 | 0.88 | 0.68 | 0.78 |
| 573 | 0.61 | 0.88 | 0.68 | 0.78 |
| 574 | 0.61 | 0.88 | 0.68 | 0.78 |
| 575 | 0.61 | 0.79 | 0.75 | 0.74 |
| 576 | 0.61 | 0.79 | 0.75 | 0.74 |
| 577 | 0.61 | 0.79 | 0.75 | 0.74 |
| 580 | 0.64 | 0.87 | 0.80 | 0.78 |
| 581 | 0.64 | 0.87 | 0.80 | 0.78 |
| 582 | 0.28 | 0.95 | 0.47 | 0.93 |
| 583 | 0.57 | 0.54 | 0.67 | 0.44 |
| 584 | 0.57 | 0.54 | 0.67 | 0.44 |
| 585 | 0.46 | 0.82 | 0.57 | 0.70 |
| 586 | 0.60 | 0.81 | 0.71 | 0.67 |
| 587 | 0.60 | 0.81 | 0.71 | 0.67 |
| 588 | 0.60 | 0.81 | 0.71 | 0.67 |
| 590 | 0.87 | 0.91 | 0.90 | 0.77 |
| 591 | 0.87 | 0.91 | 0.90 | 0.77 |
| 592 | 0.85 | 1.02 | 0.82 | 0.81 |
| 593 | 0.85 | 1.02 | 0.82 | 0.81 |
| 594 | 0.63 | 0.66 | 0.72 | 0.62 |
| 595 | 0.85 | 1.02 | 0.82 | 0.81 |
| 596 | 0.63 | 0.66 | 0.72 | 0.62 |
| 597 | 0.70 | 0.80 | 0.61 | 0.71 |
| 598 | 0.68 | 0.91 | 0.79 | 0.77 |
| 599 | 0.68 | 0.91 | 0.79 | 0.77 |
| 600 | 0.95 | 1.20 | 1.08 | 1.32 |
| 601 | 1.06 | 1.28 | 1.24 | 1.41 |
| 602 | 1.05 | 1.15 | 1.20 | 1.41 |
| 603 | 1.21 | 1.29 | 1.27 | 1.35 |
| 604 | 0.98 | 1.09 | 1.14 | 1.19 |
| 605 | 1.01 | 1.31 | 1.17 | 1.47 |
| 606 | 1.21 | 1.29 | 1.27 | 1.35 |
| 607 | 1.21 | 1.29 | 1.27 | 1.35 |
| 608 | 1.21 | 1.29 | 1.27 | 1.35 |
| 609 | 0.91 | 1.07 | 0.90 | 1.19 |
| 610 | 0.57 | 0.95 | 0.71 | 1.12 |
| 611 | 0.82 | 1.06 | 0.84 | 0.98 |
| 612 | 0.56 | 0.99 | 0.58 | 0.75 |
| 613 | 0.61 | 0.86 | 0.68 | 0.92 |
| 614 | 0.59 | 0.72 | 0.75 | 0.84 |
| 615 | 0.42 | 1.23 | 0.54 | 1.21 |
| 616 | 0.42 | 1.23 | 0.54 | 1.21 |
| 617 | 0.56 | 1.18 | 0.81 | 1.08 |
| 618 | 0.58 | 1.09 | 0.78 | 1.06 |
| 619 | 0.58 | 1.09 | 0.78 | 1.06 |
| 620 | 0.65 | 1.09 | 0.70 | 1.22 |
| 622 | 0.60 | 0.81 | 0.65 | 0.86 |
| 623 | 0.41 | 0.68 | 0.59 | 0.81 |
| 624 | 0.45 | 0.74 | 0.61 | 0.85 |
| 625 | 0.50 | 0.86 | 0.61 | 1.02 |
| 626 | 0.78 | 0.77 | 0.70 | 1.04 |
| 627 | 0.86 | 0.91 | 0.83 | 0.96 |
| 628 | 0.51 | 0.99 | 0.53 | 0.96 |
| 629 | 0.62 | 1.13 | 0.53 | 0.92 |
| 630 | 0.63 | 1.00 | 0.71 | 1.13 |
| 631 | 0.77 | 1.24 | 0.81 | 1.40 |
| 633 | 0.73 | 1.14 | 0.82 | 1.19 |
| 634 | 0.41 | 0.68 | 0.59 | 0.81 |
| 635 | 0.62 | 1.24 | 0.73 | 0.99 |
| 636 | 0.43 | 0.76 | 0.46 | 0.81 |
| 637 | 0.48 | 0.98 | 0.58 | 1.11 |
| 638 | 0.48 | 0.98 | 0.58 | 1.11 |
| 639 | 0.48 | 0.98 | 0.58 | 1.11 |
| 640 | 0.77 | 1.09 | 0.89 | 1.21 |
| 641 | 0.92 | 1.33 | 1.01 | 1.41 |
| 644 | 0.72 | 1.05 | 0.80 | 0.98 |
| 645 | 0.72 | 1.05 | 0.80 | 0.98 |
| 646 | 0.62 | 1.24 | 0.73 | 0.99 |
| 647 | 0.61 | 1.04 | 0.72 | 1.05 |
| 648 | 0.76 | 1.14 | 0.85 | 1.17 |
| 649 | 0.92 | 1.33 | 1.01 | 1.41 |
| 650 | 0.74 | 0.96 | 0.80 | 0.94 |
| 651 | 0.74 | 0.96 | 0.80 | 0.94 |
| 652 | 0.85 | 1.06 | 0.76 | 1.21 |
| 653 | 0.74 | 0.96 | 0.80 | 0.94 |
| 654 | 0.59 | 0.79 | 0.61 | 0.86 |
| 655 | 0.59 | 0.79 | 0.61 | 0.86 |
| 656 | 0.71 | 0.97 | 0.85 | 1.02 |
| 657 | 0.71 | 0.97 | 0.85 | 1.02 |
| 658 | 0.67 | 0.82 | 0.75 | 0.83 |
| 660 | 0.90 | 0.91 | 0.71 | 0.98 |
| 661 | 0.85 | 1.19 | 0.86 | 1.36 |
| 662 | 1.02 | 1.39 | 1.40 | 1.48 |
| 664 | 0.73 | 0.79 | 0.80 | 0.74 |
| 665 | 0.73 | 0.79 | 0.80 | 0.74 |
| 666 | 0.57 | 1.01 | 0.63 | 0.97 |
| 667 | 0.66 | 0.75 | 0.75 | 0.82 |
| 668 | 0.54 | 0.64 | 0.57 | 0.76 |
| 669 | 0.57 | 0.98 | 0.62 | 0.75 |
| 670 | 0.64 | 0.77 | 0.75 | 0.70 |
| 671 | 0.65 | 0.68 | 0.74 | 0.60 |
| 672 | 0.92 | 1.23 | 1.02 | 1.32 |
| 673 | 0.60 | 0.69 | 0.62 | 0.82 |
| 674 | 0.57 | 0.98 | 0.62 | 0.75 |
| 675 | 0.60 | 0.67 | 0.57 | 0.63 |
| 676 | 0.71 | 1.22 | 0.63 | 1.05 |
| 677 | 0.85 | 0.93 | 0.73 | 0.85 |
| 678 | 0.85 | 0.93 | 0.73 | 0.85 |
| 679 | 0.85 | 0.93 | 0.73 | 0.85 |
| 680 | 0.70 | 1.37 | 0.82 | 1.42 |
| 681 | 0.70 | 1.37 | 0.82 | 1.42 |
| 683 | 0.66 | 1.00 | 0.67 | 0.99 |
| 684 | 0.66 | 1.00 | 0.67 | 0.99 |
| 685 | 0.66 | 1.00 | 0.67 | 0.99 |
| 686 | 0.51 | 0.67 | 0.52 | 0.71 |
| 687 | 0.51 | 0.67 | 0.52 | 0.71 |
| 688 | 0.54 | 0.92 | 0.61 | 0.80 |
| 689 | 0.54 | 0.92 | 0.61 | 0.80 |
| 690 | 0.57 | 0.89 | 0.67 | 0.85 |
| 691 | 0.57 | 0.89 | 0.67 | 0.85 |
| 692 | 0.57 | 0.89 | 0.67 | 0.85 |
| 693 | 0.57 | 0.89 | 0.67 | 0.85 |
| 700 | 0.84 | 1.42 | 0.89 | 1.46 |
| 701 | 0.88 | 1.62 | 1.06 | 1.64 |
| 703 | 0.63 | 1.04 | 0.69 | 1.03 |
| 704 | 0.62 | 1.75 | 0.75 | 1.37 |
| 705 | 0.58 | 1.09 | 0.67 | 1.02 |
| 706 | 0.53 | 1.17 | 0.73 | 1.17 |
| 707 | 0.59 | 0.90 | 0.75 | 0.91 |
| 708 | 0.59 | 0.90 | 0.75 | 0.91 |
| 710 | 0.54 | 0.85 | 0.82 | 0.87 |
| 711 | 0.60 | 1.29 | 0.80 | 1.48 |
| 712 | 0.50 | 1.15 | 0.70 | 1.21 |
| 713 | 0.56 | 1.03 | 0.76 | 0.96 |
| 714 | 0.58 | 1.10 | 0.80 | 1.19 |
| 716 | 0.44 | 0.99 | 0.60 | 0.89 |
| 717 | 0.59 | 0.95 | 0.62 | 0.97 |
| 718 | 0.59 | 0.95 | 0.62 | 0.97 |
| 719 | 0.82 | 1.85 | 0.96 | 1.60 |

### TABLE N. — ACUTE INPATIENT FACILITY CHARGES GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

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| ZIP Code | GAAF For Surgical DRGs | | GAAF For Non-Surgical DRGs | |
|---|---|---|---|---|
| | Room & Board | Ancillary | Room & Board | Ancillary |
| 720 | 0.49 | 0.79 | 0.74 | 0.91 |
| 721 | 0.49 | 1.03 | 0.64 | 1.06 |
| 722 | 0.48 | 1.05 | 0.63 | 1.26 |
| 723 | 0.38 | 0.52 | 0.61 | 0.77 |
| 724 | 0.37 | 0.70 | 0.65 | 0.75 |
| 725 | 0.48 | 0.78 | 0.61 | 0.75 |
| 726 | 0.48 | 0.78 | 0.61 | 0.75 |
| 727 | 0.58 | 0.86 | 0.80 | 0.77 |
| 728 | 0.30 | 1.22 | 0.55 | 1.16 |
| 729 | 0.46 | 0.93 | 0.51 | 1.02 |
| 730 | 0.57 | 1.03 | 0.48 | 0.88 |
| 731 | 0.68 | 1.27 | 0.66 | 1.31 |
| 733 | 0.51 | 0.92 | 0.51 | 1.05 |
| 734 | 0.58 | 1.19 | 0.68 | 1.16 |
| 735 | 0.73 | 1.13 | 0.71 | 1.05 |
| 736 | 0.47 | 1.12 | 0.57 | 0.85 |
| 737 | 0.82 | 1.05 | 0.71 | 0.97 |
| 738 | 0.47 | 1.12 | 0.57 | 0.85 |
| 739 | 0.47 | 1.12 | 0.57 | 0.85 |
| 740 | 0.53 | 0.72 | 0.71 | 0.81 |
| 741 | 0.59 | 0.89 | 0.78 | 1.02 |
| 743 | 0.49 | 0.99 | 0.70 | 0.82 |
| 744 | 0.47 | 0.65 | 0.63 | 0.71 |
| 745 | 0.43 | 0.83 | 0.44 | 0.61 |
| 746 | 0.82 | 1.05 | 0.71 | 0.97 |
| 747 | 0.58 | 1.19 | 0.68 | 1.16 |
| 748 | 0.56 | 0.64 | 0.53 | 0.73 |
| 749 | 0.43 | 0.83 | 0.44 | 0.61 |
| 750 | 0.80 | 1.24 | 0.97 | 1.47 |
| 751 | 0.70 | 1.28 | 0.67 | 1.32 |
| 752 | 0.84 | 1.11 | 0.96 | 1.42 |
| 753 | 0.84 | 1.11 | 0.96 | 1.42 |
| 754 | 0.53 | 0.79 | 0.68 | 0.93 |
| 755 | 0.62 | 0.91 | 0.76 | 1.06 |
| 756 | 0.79 | 0.89 | 0.90 | 1.29 |
| 757 | 1.12 | 1.44 | 1.16 | 1.43 |
| 758 | 0.62 | 1.20 | 0.74 | 1.21 |
| 759 | 0.62 | 1.20 | 0.74 | 1.21 |
| 760 | 0.61 | 1.06 | 0.74 | 1.08 |
| 761 | 0.68 | 1.09 | 0.73 | 1.33 |
| 762 | 0.75 | 1.45 | 0.84 | 1.37 |
| 763 | 0.49 | 0.78 | 0.56 | 0.85 |
| 764 | 0.61 | 1.06 | 0.74 | 1.08 |
| 765 | 0.64 | 0.93 | 0.78 | 1.09 |
| 766 | 0.55 | 0.84 | 0.74 | 1.02 |
| 767 | 0.55 | 0.84 | 0.74 | 1.02 |
| 768 | 0.56 | 0.95 | 0.56 | 1.15 |
| 769 | 0.61 | 1.13 | 0.79 | 1.17 |
| 770 | 1.00 | 1.16 | 0.95 | 1.50 |
| 772 | 1.00 | 1.16 | 0.95 | 1.50 |
| 773 | 0.74 | 1.12 | 0.75 | 1.56 |
| 774 | 0.61 | 1.19 | 1.02 | 1.25 |
| 775 | 0.83 | 1.18 | 0.80 | 1.54 |
| 776 | 0.65 | 1.33 | 0.75 | 1.88 |
| 777 | 0.65 | 1.24 | 0.77 | 1.76 |
| 778 | 0.70 | 1.51 | 0.81 | 1.55 |
| 779 | 0.50 | 0.92 | 0.59 | 1.08 |
| 780 | 0.67 | 0.81 | 0.63 | 0.97 |
| 781 | 0.55 | 1.01 | 0.62 | 1.44 |
| 782 | 0.66 | 0.97 | 0.84 | 1.14 |
| 783 | 0.60 | 1.23 | 0.88 | 1.53 |
| 784 | 0.60 | 1.23 | 0.88 | 1.53 |
| 785 | 0.83 | 1.36 | 0.97 | 1.71 |
| 786 | 0.51 | 0.92 | 0.51 | 1.05 |
| 787 | 0.68 | 1.04 | 0.79 | 1.19 |
| 788 | 0.42 | 0.71 | 0.48 | 0.86 |
| 789 | 0.51 | 0.92 | 0.51 | 1.05 |
| 790 | 0.53 | 1.02 | 0.79 | 0.93 |
| 791 | 0.57 | 1.15 | 0.64 | 1.35 |
| 792 | 0.53 | 1.02 | 0.79 | 0.93 |
| 793 | 0.84 | 1.43 | 0.82 | 1.98 |
| 794 | 0.84 | 1.43 | 0.82 | 1.98 |
| 795 | 0.40 | 0.94 | 0.42 | 0.77 |
| 796 | 0.58 | 0.95 | 0.64 | 1.46 |
| 797 | 0.52 | 0.94 | 0.64 | 0.98 |
| 798 | 1.11 | 1.98 | 1.16 | 2.50 |
| 799 | 1.11 | 1.98 | 1.16 | 2.50 |
| 800 | 1.27 | 1.31 | 1.29 | 1.35 |
| 801 | 1.27 | 1.31 | 1.29 | 1.35 |
| 802 | 1.09 | 1.48 | 1.08 | 1.46 |
| 803 | 1.27 | 1.31 | 1.29 | 1.35 |
| 804 | 1.01 | 1.02 | 1.09 | 1.10 |
| 805 | 1.01 | 1.02 | 1.09 | 1.10 |
| 806 | 1.01 | 1.02 | 1.09 | 1.10 |
| 807 | 1.01 | 1.02 | 1.09 | 1.10 |
| 808 | 1.00 | 1.31 | 0.99 | 1.30 |
| 809 | 1.00 | 1.31 | 0.99 | 1.30 |
| 810 | 1.02 | 1.31 | 0.87 | 1.15 |
| 811 | 0.79 | 1.00 | 0.84 | 1.01 |
| 812 | 0.79 | 1.00 | 0.84 | 1.01 |
| 813 | 0.79 | 1.00 | 0.84 | 1.01 |
| 814 | 0.90 | 0.93 | 1.11 | 1.01 |
| 815 | 0.90 | 0.93 | 1.11 | 1.01 |
| 816 | 0.90 | 0.93 | 1.11 | 1.01 |
| 820 | 0.74 | 1.05 | 0.85 | 0.93 |
| 821 | 0.74 | 1.05 | 0.85 | 0.93 |
| 822 | 0.74 | 1.05 | 0.85 | 0.93 |
| 823 | 0.74 | 1.05 | 0.85 | 0.93 |
| 824 | 0.74 | 0.80 | 0.77 | 0.75 |
| 825 | 0.74 | 0.80 | 0.77 | 0.75 |
| 826 | 0.74 | 1.05 | 0.85 | 0.93 |
| 827 | 0.74 | 0.80 | 0.77 | 0.75 |
| 828 | 0.74 | 0.80 | 0.77 | 0.75 |
| 829 | 0.74 | 0.80 | 0.77 | 0.75 |
| 830 | 0.74 | 0.80 | 0.77 | 0.75 |
| 831 | 0.74 | 0.80 | 0.77 | 0.75 |
| 832 | 0.84 | 1.03 | 0.92 | 0.88 |
| 833 | 0.61 | 0.84 | 0.91 | 0.77 |
| 834 | 0.84 | 1.03 | 0.92 | 0.88 |
| 835 | 0.71 | 0.72 | 0.88 | 0.78 |
| 836 | 0.86 | 0.84 | 0.88 | 0.93 |
| 837 | 0.56 | 0.88 | 0.78 | 0.94 |
| 838 | 0.71 | 0.72 | 0.88 | 0.78 |
| 840 | 0.82 | 0.87 | 1.13 | 0.81 |
| 841 | 1.12 | 0.81 | 1.23 | 0.92 |
| 842 | 1.20 | 0.67 | 1.24 | 0.64 |
| 843 | 1.20 | 0.67 | 1.24 | 0.64 |
| 844 | 1.20 | 0.67 | 1.24 | 0.64 |
| 845 | 1.16 | 0.68 | 1.04 | 0.61 |
| 846 | 1.16 | 0.68 | 1.04 | 0.61 |
| 847 | 1.16 | 0.68 | 1.04 | 0.61 |
| 850 | 1.09 | 1.52 | 1.21 | 1.60 |
| 852 | 1.17 | 1.52 | 1.37 | 1.71 |
| 853 | 1.05 | 1.21 | 1.22 | 1.28 |
| 855 | 0.87 | 1.16 | 0.89 | 1.47 |
| 856 | 1.24 | 1.20 | 1.14 | 1.12 |
| 857 | 1.24 | 1.20 | 1.14 | 1.12 |
| 859 | 0.87 | 1.16 | 0.89 | 1.47 |
| 860 | 0.92 | 1.18 | 0.91 | 1.12 |
| 863 | 0.92 | 1.18 | 0.91 | 1.12 |
| 864 | 0.92 | 1.18 | 0.91 | 1.12 |
| 865 | 0.92 | 1.18 | 0.91 | 1.12 |
| 870 | 0.86 | 1.03 | 1.00 | 0.94 |
| 871 | 0.86 | 1.03 | 1.00 | 0.94 |

### TABLE N. — ACUTE INPATIENT FACILITY CHARGES GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

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| ZIP Code | GAAF For Surgical DRGs | | GAAF For Non-Surgical DRGs | |
|---|---|---|---|---|
| | Room & Board | Ancillary | Room & Board | Ancillary |
| 872 | 0.86 | 1.03 | 1.00 | 0.94 |
| 873 | 0.81 | 0.67 | 0.85 | 0.74 |
| 874 | 0.81 | 0.67 | 0.85 | 0.74 |
| 875 | 0.77 | 0.97 | 0.76 | 0.97 |
| 877 | 0.77 | 0.97 | 0.76 | 0.97 |
| 878 | 0.65 | 1.01 | 0.67 | 1.24 |
| 879 | 0.65 | 1.01 | 0.67 | 1.24 |
| 880 | 0.65 | 1.01 | 0.67 | 1.24 |
| 881 | 0.84 | 1.18 | 0.87 | 1.32 |
| 882 | 0.84 | 1.18 | 0.87 | 1.32 |
| 883 | 0.84 | 1.18 | 0.87 | 1.32 |
| 884 | 0.77 | 0.97 | 0.76 | 0.97 |
| 885 | 1.11 | 1.98 | 1.16 | 2.50 |
| 889 | 0.65 | 1.76 | 0.78 | 1.99 |
| 890 | 0.86 | 1.81 | 1.01 | 1.98 |
| 891 | 0.65 | 1.76 | 0.78 | 1.99 |
| 893 | 0.89 | 1.41 | 1.19 | 1.42 |
| 894 | 0.89 | 1.41 | 1.19 | 1.42 |
| 895 | 0.82 | 1.61 | 1.03 | 1.49 |
| 897 | 0.89 | 1.41 | 1.19 | 1.42 |
| 898 | 0.89 | 1.41 | 1.19 | 1.42 |
| 900 | 2.07 | 1.90 | 2.09 | 1.89 |
| 901 | 2.07 | 1.90 | 2.09 | 1.89 |
| 902 | 1.99 | 1.84 | 1.68 | 2.00 |
| 903 | 2.24 | 2.08 | 2.41 | 2.36 |
| 904 | 2.24 | 2.08 | 2.41 | 2.36 |
| 905 | 2.70 | 1.48 | 2.78 | 1.46 |
| 906 | 1.35 | 1.37 | 1.39 | 1.65 |
| 907 | 1.32 | 1.61 | 1.43 | 1.98 |
| 908 | 1.32 | 1.61 | 1.43 | 1.98 |
| 910 | 1.42 | 1.47 | 1.53 | 1.62 |
| 911 | 1.42 | 1.47 | 1.53 | 1.62 |
| 912 | 1.42 | 1.47 | 1.53 | 1.62 |
| 913 | 1.74 | 1.75 | 1.78 | 1.82 |
| 914 | 1.64 | 1.41 | 1.64 | 1.53 |
| 915 | 1.64 | 1.41 | 1.64 | 1.53 |
| 916 | 1.64 | 1.41 | 1.64 | 1.53 |
| 917 | 1.80 | 1.80 | 1.61 | 1.83 |
| 918 | 1.80 | 1.80 | 1.61 | 1.83 |
| 919 | 1.65 | 1.47 | 1.43 | 1.22 |
| 920 | 1.79 | 1.35 | 1.76 | 1.35 |
| 921 | 1.94 | 1.85 | 1.76 | 1.73 |
| 922 | 1.74 | 2.11 | 2.06 | 2.32 |
| 923 | 1.52 | 1.42 | 1.32 | 1.42 |
| 924 | 1.33 | 1.35 | 1.37 | 1.44 |
| 925 | 1.33 | 1.35 | 1.37 | 1.44 |
| 926 | 1.39 | 1.81 | 1.47 | 1.88 |
| 927 | 1.86 | 2.65 | 1.88 | 2.62 |
| 928 | 1.38 | 1.90 | 1.46 | 1.98 |
| 930 | 1.16 | 1.58 | 1.23 | 1.52 |
| 931 | 1.53 | 2.16 | 1.50 | 2.15 |
| 932 | 0.84 | 1.17 | 0.97 | 1.19 |
| 933 | 1.06 | 1.20 | 1.23 | 1.15 |
| 934 | 1.85 | 2.36 | 1.85 | 2.78 |
| 935 | 1.18 | 1.51 | 1.22 | 1.64 |
| 936 | 1.01 | 1.30 | 1.07 | 1.17 |
| 937 | 1.01 | 1.30 | 1.07 | 1.17 |

| ZIP Code | GAAF For Surgical DRGs | | GAAF For Non-Surgical DRGs | |
|---|---|---|---|---|
| | Room & Board | Ancillary | Room & Board | Ancillary |
| 938 | 1.01 | 1.30 | 1.07 | 1.17 |
| 939 | 1.57 | 1.41 | 2.19 | 1.53 |
| 940 | 2.68 | 1.58 | 2.76 | 1.59 |
| 941 | 2.61 | 1.57 | 2.61 | 1.65 |
| 942 | 2.03 | 2.07 | 2.06 | 2.21 |
| 943 | 3.03 | 1.65 | 2.59 | 1.71 |
| 944 | 3.03 | 1.65 | 2.59 | 1.71 |
| 945 | 2.27 | 1.79 | 2.11 | 1.55 |
| 946 | 2.64 | 1.87 | 2.65 | 1.76 |
| 947 | 2.64 | 1.87 | 2.65 | 1.76 |
| 948 | 2.64 | 1.87 | 2.65 | 1.76 |
| 949 | 2.99 | 1.41 | 2.80 | 1.47 |
| 950 | 1.97 | 1.98 | 2.15 | 1.81 |
| 951 | 2.18 | 1.55 | 2.13 | 1.53 |
| 952 | 2.25 | 1.54 | 2.03 | 1.23 |
| 953 | 2.65 | 3.63 | 2.13 | 3.03 |
| 954 | 1.38 | 1.39 | 1.40 | 1.10 |
| 955 | 1.02 | 1.35 | 1.08 | 1.22 |
| 956 | 2.03 | 2.07 | 2.06 | 2.21 |
| 957 | 2.03 | 2.07 | 2.06 | 2.21 |
| 958 | 3.01 | 2.34 | 2.49 | 1.98 |
| 959 | 1.37 | 1.18 | 1.26 | 1.41 |
| 960 | 1.87 | 3.22 | 1.55 | 2.62 |
| 961 | 1.27 | 1.55 | 1.13 | 1.40 |
| 967 | 0.97 | 0.77 | 0.99 | 0.85 |
| 968 | 1.07 | 0.97 | 1.22 | 1.11 |
| 969 | 0.57 | 0.33 | 0.54 | 0.36 |
| 970 | 1.02 | 0.76 | 1.06 | 1.42 |
| 971 | 0.74 | 1.05 | 0.96 | 1.00 |
| 972 | 0.91 | 1.00 | 1.03 | 1.09 |
| 973 | 0.92 | 0.75 | 0.94 | 0.78 |
| 974 | 0.74 | 0.91 | 0.95 | 0.87 |
| 975 | 1.14 | 0.90 | 1.06 | 0.95 |
| 976 | 0.87 | 0.72 | 0.81 | 0.86 |
| 977 | 0.87 | 0.72 | 0.81 | 0.86 |
| 978 | 0.87 | 0.72 | 0.81 | 0.86 |
| 979 | 0.87 | 0.72 | 0.81 | 0.86 |
| 980 | 0.94 | 0.79 | 1.10 | 0.76 |
| 981 | 1.22 | 1.04 | 1.19 | 0.95 |
| 982 | 0.91 | 1.06 | 1.10 | 0.84 |
| 983 | 0.80 | 0.79 | 0.92 | 0.75 |
| 984 | 0.72 | 1.20 | 0.67 | 0.79 |
| 985 | 1.10 | 1.08 | 1.18 | 0.85 |
| 986 | 0.82 | 0.81 | 0.94 | 0.83 |
| 988 | 0.83 | 0.89 | 1.05 | 0.72 |
| 989 | 0.83 | 0.89 | 1.05 | 0.72 |
| 990 | 0.80 | 0.92 | 0.74 | 0.83 |
| 991 | 0.80 | 0.92 | 0.74 | 0.83 |
| 992 | 0.80 | 0.92 | 0.74 | 0.83 |
| 993 | 0.94 | 0.94 | 1.01 | 0.91 |
| 994 | 0.94 | 0.94 | 1.01 | 0.91 |
| 995 | 1.33 | 1.01 | 1.38 | 1.02 |
| 996 | 1.33 | 1.01 | 1.38 | 1.02 |
| 997 | 1.33 | 1.01 | 1.38 | 1.02 |
| 998 | 0.93 | 0.96 | 1.35 | 0.72 |
| 999 | 0.93 | 0.96 | 1.35 | 0.72 |

### TABLE O. — SKILLED NURSING FACILITY/SUB-ACUTE INPATIENT FACILITY CHARGES GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

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| ZIP Code | GAAF | ZIP Code | GAAF | ZIP Code | GAAF | ZIP Code | GAAF |
|---|---|---|---|---|---|---|---|
| Nationwide Average | 1.00 | 070 | 1.04 | 149 | 0.81 | 219 | 0.89 |
| | | 071 | 0.86 | 150 | 1.03 | 220 | 0.92 |
| | | 072 | 0.67 | 151 | 1.02 | 221 | 0.87 |
| 002 | 0.95 | 073 | 0.86 | 152 | 1.25 | 222 | 0.87 |
| 005 | 0.88 | 074 | 0.96 | 153 | 1.13 | 223 | 1.06 |
| 006 | 0.91 | 075 | 0.77 | 154 | 1.05 | 224 | 0.73 |
| 007 | 0.67 | 076 | 1.00 | 155 | 0.90 | 225 | 0.73 |
| 008 | 0.67 | 077 | 0.94 | 156 | 1.20 | 226 | 0.72 |
| 009 | 0.88 | 078 | 0.77 | 157 | 0.95 | 227 | 0.63 |
| 010 | 0.92 | 079 | 1.11 | 158 | 0.69 | 228 | 0.76 |
| 011 | 0.69 | 080 | 0.94 | 159 | 1.16 | 229 | 0.91 |
| 012 | 0.96 | 081 | 1.22 | 160 | 0.94 | 230 | 0.70 |
| 013 | 0.85 | 082 | 0.98 | 161 | 1.18 | 231 | 0.82 |
| 014 | 1.06 | 083 | 0.67 | 162 | 0.97 | 232 | 0.83 |
| 015 | 1.02 | 084 | 0.59 | 163 | 1.13 | 233 | 0.64 |
| 016 | 0.97 | 085 | 1.05 | 164 | 0.72 | 234 | 0.86 |
| 017 | 1.14 | 086 | 0.88 | 165 | 1.14 | 235 | 0.83 |
| 018 | 1.06 | 087 | 0.89 | 166 | 1.08 | 236 | 0.82 |
| 019 | 1.00 | 088 | 0.90 | 167 | 0.64 | 237 | 0.72 |
| 020 | 1.05 | 089 | 1.85 | 168 | 1.08 | 238 | 0.72 |
| 021 | 1.11 | 100 | 0.99 | 169 | 0.68 | 239 | 0.68 |
| 022 | 2.20 | 101 | 0.99 | 170 | 0.95 | 240 | 0.83 |
| 023 | 0.91 | 102 | 0.99 | 171 | 0.92 | 241 | 0.75 |
| 024 | 1.04 | 103 | 0.95 | 172 | 0.83 | 242 | 0.72 |
| 025 | 0.95 | 104 | 0.92 | 173 | 0.88 | 243 | 1.04 |
| 026 | 1.03 | 105 | 0.88 | 174 | 0.74 | 244 | 0.61 |
| 027 | 1.03 | 106 | 0.86 | 175 | 0.71 | 245 | 0.85 |
| 028 | 0.81 | 107 | 0.74 | 176 | 0.96 | 246 | 1.41 |
| 029 | 0.82 | 108 | 0.96 | 177 | 0.77 | 247 | 1.77 |
| 030 | 0.99 | 109 | 0.70 | 178 | 0.75 | 248 | 0.61 |
| 031 | 0.87 | 110 | 1.19 | 179 | 0.78 | 249 | 1.09 |
| 032 | 0.73 | 111 | 0.66 | 180 | 0.96 | 250 | 0.68 |
| 033 | 0.82 | 112 | 0.89 | 181 | 1.12 | 251 | 0.89 |
| 034 | 0.77 | 113 | 0.91 | 182 | 0.87 | 252 | 0.93 |
| 035 | 0.79 | 114 | 0.90 | 183 | 0.73 | 253 | 1.04 |
| 036 | 0.92 | 115 | 0.88 | 184 | 0.75 | 254 | 1.14 |
| 037 | 0.92 | 116 | 0.75 | 185 | 1.24 | 255 | 0.80 |
| 038 | 0.95 | 117 | 0.93 | 186 | 0.72 | 256 | 1.12 |
| 039 | 1.53 | 118 | 1.07 | 187 | 0.96 | 257 | 1.03 |
| 040 | 0.95 | 119 | 0.87 | 188 | 1.56 | 258 | 0.71 |
| 041 | 0.85 | 120 | 0.85 | 189 | 1.07 | 259 | 0.83 |
| 042 | 0.81 | 121 | 0.68 | 190 | 1.30 | 260 | 0.96 |
| 043 | 0.75 | 122 | 0.70 | 191 | 1.49 | 261 | 1.06 |
| 044 | 0.96 | 123 | 0.81 | 192 | 1.49 | 262 | 0.77 |
| 045 | 0.70 | 124 | 0.90 | 193 | 1.02 | 263 | 1.01 |
| 046 | 0.77 | 125 | 0.77 | 194 | 1.24 | 264 | 0.56 |
| 047 | 1.05 | 126 | 0.85 | 195 | 0.69 | 265 | 0.96 |
| 048 | 0.90 | 127 | 0.67 | 196 | 0.83 | 266 | 0.83 |
| 049 | 0.94 | 128 | 0.68 | 197 | 0.67 | 267 | 0.63 |
| 050 | 1.00 | 129 | 0.75 | 198 | 0.83 | 268 | 0.78 |
| 051 | 0.63 | 130 | 0.76 | 199 | 0.74 | 270 | 0.58 |
| 052 | 0.74 | 131 | 0.72 | 200 | 1.23 | 271 | 0.90 |
| 053 | 0.68 | 132 | 0.76 | 201 | 1.06 | 272 | 0.70 |
| 054 | 0.79 | 133 | 0.55 | 202 | 1.23 | 273 | 0.67 |
| 055 | 1.06 | 134 | 0.64 | 203 | 1.23 | 274 | 1.03 |
| 056 | 0.55 | 135 | 0.66 | 204 | 1.23 | 275 | 0.68 |
| 057 | 0.78 | 136 | 0.80 | 205 | 1.23 | 276 | 0.77 |
| 058 | 0.55 | 137 | 0.69 | 206 | 1.02 | 277 | 0.91 |
| 059 | 0.79 | 138 | 0.66 | 207 | 0.84 | 278 | 0.68 |
| 060 | 0.93 | 139 | 0.66 | 208 | 1.01 | 279 | 0.71 |
| 061 | 1.00 | 140 | 0.81 | 209 | 1.14 | 280 | 0.68 |
| 062 | 0.91 | 141 | 0.64 | 210 | 1.02 | 281 | 0.72 |
| 063 | 0.89 | 142 | 0.76 | 211 | 0.85 | 282 | 0.91 |
| 064 | 1.00 | 143 | 0.68 | 212 | 0.98 | 283 | 0.62 |
| 065 | 1.10 | 144 | 0.65 | 214 | 1.09 | 284 | 0.80 |
| 066 | 1.10 | 145 | 0.71 | 215 | 0.61 | 285 | 0.75 |
| 067 | 0.91 | 146 | 0.76 | 216 | 0.70 | 286 | 0.92 |
| 068 | 1.01 | 147 | 0.59 | 217 | 0.77 | 287 | 0.71 |
| 069 | 1.14 | 148 | 0.66 | 218 | 0.81 | 288 | 0.82 |

TABLE O. — SKILLED NURSING FACILITY/SUB-ACUTE INPATIENT FACILITY CHARGES
GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

PAGE 2 OF 4

| ZIP Code | GAAF | ZIP Code | GAAF | ZIP Code | GAAF | ZIP Code | GAAF |
|---|---|---|---|---|---|---|---|
| 289 | 0.47 | 363 | 0.70 | 436 | 1.16 | 505 | 0.68 |
| 290 | 0.84 | 364 | 0.71 | 437 | 0.93 | 506 | 0.70 |
| 291 | 0.68 | 365 | 0.84 | 438 | 0.75 | 507 | 1.38 |
| 292 | 1.06 | 366 | 0.78 | 439 | 1.15 | 508 | 0.62 |
| 293 | 0.68 | 367 | 0.67 | 440 | 1.02 | 509 | 1.15 |
| 294 | 1.03 | 368 | 0.84 | 441 | 1.40 | 510 | 0.64 |
| 295 | 0.83 | 369 | 0.72 | 442 | 0.86 | 511 | 1.33 |
| 296 | 0.81 | 370 | 1.01 | 443 | 1.03 | 512 | 0.51 |
| 297 | 0.97 | 371 | 0.76 | 444 | 0.98 | 513 | 0.88 |
| 298 | 0.57 | 372 | 1.26 | 445 | 1.14 | 514 | 0.60 |
| 299 | 1.09 | 373 | 0.69 | 446 | 0.87 | 515 | 1.15 |
| 300 | 0.81 | 374 | 0.82 | 447 | 1.04 | 516 | 0.62 |
| 301 | 0.76 | 375 | 1.05 | 448 | 0.97 | 520 | 1.17 |
| 302 | 0.72 | 376 | 1.14 | 449 | 0.75 | 521 | 0.56 |
| 303 | 0.99 | 377 | 0.74 | 450 | 0.88 | 522 | 0.83 |
| 304 | 0.48 | 378 | 0.76 | 451 | 0.81 | 523 | 0.85 |
| 305 | 0.84 | 379 | 1.21 | 452 | 1.07 | 524 | 1.07 |
| 306 | 0.84 | 380 | 0.61 | 453 | 0.83 | 525 | 0.93 |
| 307 | 0.92 | 381 | 1.05 | 454 | 0.97 | 526 | 1.13 |
| 308 | 0.57 | 382 | 1.15 | 455 | 0.99 | 527 | 0.97 |
| 309 | 0.76 | 383 | 0.86 | 456 | 0.85 | 528 | 1.28 |
| 310 | 0.62 | 384 | 0.67 | 457 | 0.92 | 530 | 0.88 |
| 311 | 0.99 | 385 | 0.87 | 458 | 0.84 | 531 | 0.80 |
| 312 | 0.72 | 386 | 1.20 | 459 | 1.07 | 532 | 0.91 |
| 313 | 0.59 | 387 | 1.07 | 460 | 0.98 | 534 | 0.74 |
| 314 | 1.14 | 388 | 0.99 | 461 | 0.95 | 535 | 0.81 |
| 315 | 0.71 | 389 | 1.02 | 462 | 0.99 | 537 | 0.78 |
| 316 | 0.71 | 390 | 0.66 | 463 | 1.10 | 538 | 0.77 |
| 317 | 0.56 | 391 | 0.84 | 464 | 1.30 | 539 | 0.66 |
| 318 | 0.50 | 392 | 0.87 | 465 | 1.02 | 540 | 0.66 |
| 319 | 0.63 | 393 | 0.52 | 466 | 0.94 | 541 | 0.69 |
| 320 | 0.82 | 394 | 0.84 | 467 | 0.86 | 542 | 0.71 |
| 321 | 0.84 | 395 | 1.34 | 468 | 0.91 | 543 | 0.68 |
| 322 | 0.98 | 396 | 0.68 | 469 | 0.96 | 544 | 0.69 |
| 323 | 0.89 | 397 | 0.95 | 470 | 0.81 | 545 | 0.69 |
| 324 | 0.76 | 399 | 0.99 | 471 | 0.88 | 546 | 0.64 |
| 325 | 1.06 | 400 | 0.85 | 472 | 1.10 | 547 | 0.75 |
| 326 | 1.14 | 401 | 0.55 | 473 | 0.91 | 548 | 0.71 |
| 327 | 0.87 | 402 | 1.07 | 474 | 0.76 | 549 | 0.77 |
| 328 | 1.24 | 403 | 0.91 | 475 | 0.79 | 550 | 0.66 |
| 329 | 1.07 | 404 | 0.90 | 476 | 0.68 | 551 | 0.84 |
| 330 | 1.08 | 405 | 0.92 | 477 | 1.17 | 553 | 0.72 |
| 331 | 1.29 | 406 | 0.64 | 478 | 1.03 | 554 | 0.81 |
| 332 | 1.08 | 407 | 0.81 | 479 | 0.82 | 555 | 0.72 |
| 333 | 1.17 | 408 | 1.10 | 480 | 1.01 | 556 | 0.67 |
| 334 | 0.98 | 409 | 0.69 | 481 | 0.83 | 557 | 0.66 |
| 335 | 1.19 | 410 | 1.15 | 482 | 0.89 | 558 | 0.63 |
| 336 | 1.08 | 411 | 0.89 | 483 | 1.03 | 559 | 0.58 |
| 337 | 1.07 | 412 | 0.54 | 484 | 0.82 | 560 | 0.55 |
| 338 | 0.90 | 413 | 0.55 | 485 | 1.05 | 561 | 0.52 |
| 339 | 1.11 | 414 | 0.65 | 486 | 0.91 | 562 | 0.50 |
| 341 | 0.93 | 415 | 0.91 | 487 | 0.65 | 563 | 0.63 |
| 342 | 1.14 | 416 | 1.33 | 488 | 0.88 | 564 | 0.66 |
| 344 | 0.90 | 417 | 0.41 | 489 | 0.77 | 565 | 0.60 |
| 346 | 0.97 | 418 | 0.61 | 490 | 0.72 | 566 | 0.62 |
| 347 | 0.90 | 420 | 0.89 | 491 | 0.95 | 567 | 0.65 |
| 349 | 1.29 | 421 | 0.66 | 492 | 0.85 | 570 | 0.55 |
| 350 | 0.79 | 422 | 0.56 | 493 | 0.83 | 571 | 0.64 |
| 351 | 0.90 | 423 | 0.90 | 494 | 0.71 | 572 | 0.62 |
| 352 | 1.05 | 424 | 0.96 | 495 | 0.89 | 573 | 0.59 |
| 354 | 0.80 | 425 | 1.28 | 496 | 0.86 | 574 | 0.55 |
| 355 | 0.83 | 426 | 0.48 | 497 | 0.82 | 575 | 0.69 |
| 356 | 0.76 | 427 | 0.63 | 498 | 0.56 | 576 | 0.56 |
| 357 | 0.94 | 430 | 0.82 | 499 | 0.61 | 577 | 0.55 |
| 358 | 0.95 | 431 | 0.81 | 500 | 1.00 | 580 | 0.63 |
| 359 | 0.77 | 432 | 1.01 | 501 | 0.81 | 581 | 1.16 |
| 360 | 0.89 | 433 | 0.78 | 502 | 0.69 | 582 | 0.76 |
| 361 | 0.87 | 434 | 0.77 | 503 | 1.15 | 583 | 0.68 |
| 362 | 0.75 | 435 | 0.95 | 504 | 0.95 | 584 | 0.61 |

## TABLE O. — SKILLED NURSING FACILITY/SUB-ACUTE INPATIENT FACILITY CHARGES GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

PAGE 3 OF 4

| ZIP Code | GAAF | ZIP Code | GAAF | ZIP Code | GAAF | ZIP Code | GAAF |
|---|---|---|---|---|---|---|---|
| 585 | 1.21 | 660 | 1.12 | 741 | 1.64 | 812 | 0.83 |
| 586 | 0.59 | 661 | 1.48 | 743 | 0.89 | 813 | 1.09 |
| 587 | 0.61 | 662 | 1.04 | 744 | 0.89 | 814 | 0.88 |
| 588 | 0.93 | 664 | 0.66 | 745 | 0.83 | 815 | 1.31 |
| 590 | 0.62 | 665 | 0.78 | 746 | 1.11 | 816 | 0.73 |
| 591 | 1.12 | 666 | 0.72 | 747 | 0.91 | 820 | 0.94 |
| 592 | 0.45 | 667 | 1.16 | 748 | 1.05 | 821 | 0.94 |
| 593 | 0.57 | 668 | 0.77 | 749 | 0.88 | 822 | 0.94 |
| 594 | 0.77 | 669 | 0.99 | 750 | 1.22 | 823 | 0.59 |
| 595 | 0.71 | 670 | 0.81 | 751 | 0.92 | 824 | 0.67 |
| 596 | 1.03 | 671 | 0.96 | 752 | 1.45 | 825 | 0.98 |
| 597 | 0.79 | 672 | 1.84 | 753 | 1.45 | 826 | 0.83 |
| 598 | 0.76 | 673 | 1.07 | 754 | 0.82 | 827 | 0.67 |
| 599 | 0.73 | 674 | 0.96 | 755 | 0.95 | 828 | 0.69 |
| 600 | 1.16 | 675 | 0.96 | 756 | 0.79 | 829 | 0.73 |
| 601 | 1.39 | 676 | 1.58 | 757 | 1.18 | 830 | 0.67 |
| 602 | 1.73 | 677 | 0.52 | 758 | 0.58 | 831 | 0.67 |
| 603 | 1.76 | 678 | 0.90 | 759 | 0.91 | 832 | 0.87 |
| 604 | 1.17 | 679 | 1.31 | 760 | 0.95 | 833 | 0.87 |
| 605 | 1.12 | 680 | 0.87 | 761 | 1.09 | 834 | 1.09 |
| 606 | 1.48 | 681 | 1.48 | 762 | 0.88 | 835 | 0.71 |
| 607 | 0.98 | 683 | 0.64 | 763 | 0.71 | 836 | 0.71 |
| 608 | 1.44 | 684 | 0.59 | 764 | 0.56 | 837 | 0.91 |
| 609 | 0.91 | 685 | 1.13 | 765 | 1.10 | 838 | 0.78 |
| 610 | 1.03 | 686 | 0.52 | 766 | 0.89 | 840 | 1.01 |
| 611 | 1.15 | 687 | 0.62 | 767 | 0.68 | 841 | 0.93 |
| 612 | 1.10 | 688 | 0.87 | 768 | 0.98 | 842 | 0.91 |
| 613 | 0.99 | 689 | 0.91 | 769 | 0.99 | 843 | 0.91 |
| 614 | 1.03 | 690 | 0.49 | 770 | 1.53 | 844 | 1.18 |
| 615 | 0.86 | 691 | 0.54 | 772 | 1.53 | 845 | 1.28 |
| 616 | 1.18 | 692 | 0.73 | 773 | 1.44 | 846 | 1.26 |
| 617 | 1.08 | 693 | 0.76 | 774 | 1.01 | 847 | 0.80 |
| 618 | 0.87 | 700 | 1.98 | 775 | 1.30 | 850 | 1.65 |
| 619 | 0.92 | 701 | 2.26 | 776 | 1.52 | 852 | 1.23 |
| 620 | 1.27 | 703 | 1.09 | 777 | 1.36 | 853 | 1.31 |
| 622 | 0.89 | 704 | 1.70 | 778 | 1.23 | 855 | 0.78 |
| 623 | 1.00 | 705 | 1.78 | 779 | 1.03 | 856 | 0.88 |
| 624 | 0.90 | 706 | 1.52 | 780 | 1.25 | 857 | 0.98 |
| 625 | 1.09 | 707 | 1.09 | 781 | 0.71 | 859 | 1.13 |
| 626 | 0.81 | 708 | 1.46 | 782 | 1.00 | 860 | 1.94 |
| 627 | 1.30 | 710 | 0.90 | 783 | 1.28 | 863 | 0.89 |
| 628 | 0.87 | 711 | 0.92 | 784 | 1.97 | 864 | 1.24 |
| 629 | 0.82 | 712 | 1.51 | 785 | 1.04 | 865 | 1.94 |
| 630 | 1.04 | 713 | 1.13 | 786 | 0.77 | 870 | 0.57 |
| 631 | 1.42 | 714 | 0.69 | 787 | 1.16 | 871 | 1.25 |
| 633 | 1.35 | 716 | 0.84 | 788 | 0.69 | 872 | 1.25 |
| 634 | 0.79 | 717 | 0.89 | 789 | 0.85 | 873 | 0.61 |
| 635 | 1.35 | 718 | 0.75 | 790 | 0.77 | 874 | 0.89 |
| 636 | 1.00 | 719 | 1.36 | 791 | 1.52 | 875 | 1.18 |
| 637 | 0.92 | 720 | 0.77 | 792 | 0.54 | 877 | 0.77 |
| 638 | 1.06 | 721 | 0.80 | 793 | 0.62 | 878 | 0.77 |
| 639 | 1.42 | 722 | 1.34 | 794 | 1.83 | 879 | 0.89 |
| 640 | 1.29 | 723 | 0.85 | 795 | 0.47 | 880 | 1.01 |
| 641 | 1.88 | 724 | 0.88 | 796 | 1.36 | 881 | 0.59 |
| 644 | 0.86 | 725 | 0.98 | 797 | 1.19 | 882 | 1.93 |
| 645 | 2.27 | 726 | 1.04 | 798 | 1.19 | 883 | 0.93 |
| 646 | 0.89 | 727 | 0.98 | 799 | 2.11 | 884 | 0.60 |
| 647 | 1.21 | 728 | 1.07 | 800 | 1.03 | 885 | 2.11 |
| 648 | 1.25 | 729 | 1.38 | 801 | 1.59 | 889 | 1.35 |
| 649 | 1.88 | 730 | 0.95 | 802 | 1.32 | 890 | 1.26 |
| 650 | 1.10 | 731 | 1.34 | 803 | 0.74 | 891 | 1.35 |
| 651 | 1.39 | 733 | 0.77 | 804 | 0.70 | 893 | 0.91 |
| 652 | 1.51 | 734 | 1.50 | 805 | 0.86 | 894 | 0.96 |
| 653 | 1.18 | 735 | 1.70 | 806 | 1.15 | 895 | 1.54 |
| 654 | 1.23 | 736 | 0.74 | 807 | 0.64 | 897 | 0.70 |
| 655 | 1.01 | 737 | 2.04 | 808 | 0.72 | 898 | 1.54 |
| 656 | 1.18 | 738 | 1.31 | 809 | 0.98 | 900 | 1.39 |
| 657 | 1.13 | 739 | 1.31 | 810 | 1.13 | 901 | 1.39 |
| 658 | 1.33 | 740 | 0.98 | 811 | 0.67 | 902 | 1.70 |

TABLE O. — SKILLED NURSING FACILITY/SUB-ACUTE INPATIENT FACILITY CHARGES
GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

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| ZIP Code | GAAF |
|---|---|
| 903 | 1.41 |
| 904 | 1.23 |
| 905 | 1.82 |
| 906 | 1.19 |
| 907 | 1.01 |
| 908 | 1.24 |
| 910 | 1.16 |
| 911 | 0.79 |
| 912 | 1.58 |
| 913 | 1.53 |
| 914 | 1.24 |
| 915 | 1.55 |
| 916 | 0.69 |
| 917 | 1.22 |
| 918 | 0.56 |
| 919 | 1.06 |
| 920 | 1.32 |
| 921 | 1.63 |
| 922 | 1.49 |
| 923 | 1.12 |
| 924 | 1.53 |
| 925 | 1.11 |
| 926 | 1.78 |
| 927 | 1.67 |
| 928 | 1.18 |
| 930 | 1.39 |
| 931 | 1.73 |
| 932 | 1.20 |
| 933 | 1.28 |
| 934 | 1.31 |
| 935 | 1.66 |
| 936 | 0.72 |
| 937 | 1.05 |
| 938 | 1.05 |
| 939 | 1.02 |
| 940 | 2.00 |
| 941 | 2.13 |
| 942 | 0.97 |
| 943 | 1.05 |
| 944 | 2.00 |
| 945 | 1.55 |
| 946 | 1.32 |
| 947 | 1.36 |
| 948 | 0.87 |
| 949 | 1.31 |
| 950 | 1.42 |
| 951 | 1.50 |
| 952 | 1.35 |
| 953 | 1.43 |
| 954 | 1.42 |
| 955 | 0.60 |
| 956 | 0.97 |
| 957 | 0.97 |
| 958 | 1.77 |
| 959 | 1.11 |
| 960 | 1.40 |
| 961 | 1.19 |
| 967 | 1.06 |
| 968 | 1.03 |
| 969 | 1.43 |
| 970 | 0.80 |
| 971 | 0.99 |
| 972 | 0.97 |
| 973 | 0.82 |
| 974 | 0.80 |
| 975 | 0.81 |
| 976 | 1.18 |
| 977 | 1.01 |
| 978 | 1.11 |
| 979 | 0.86 |
| 980 | 0.90 |
| 981 | 1.21 |
| 982 | 0.79 |
| 983 | 0.81 |
| 984 | 0.81 |
| 985 | 0.96 |
| 986 | 0.82 |
| 988 | 0.89 |
| 989 | 0.91 |
| 990 | 0.62 |
| 991 | 0.67 |
| 992 | 0.82 |
| 993 | 1.00 |
| 994 | 1.08 |
| 995 | 2.24 |
| 996 | 0.82 |
| 997 | 1.15 |
| 998 | 1.23 |
| 999 | 1.23 |

TABLE P. — OUTPATIENT FACILITY CHARGES GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

PAGE 1 OF 4

| ZIP Code | GAAF | ZIP Code | GAAF | ZIP Code | GAAF | ZIP Code | GAAF |
|---|---|---|---|---|---|---|---|
| Nationwide Average | 1.00 | 071 | 0.90 | 151 | 1.00 | 222 | 0.90 |
| | | 072 | 0.89 | 152 | 1.00 | 223 | 0.90 |
| | | 073 | 0.90 | 153 | 0.84 | 224 | 0.92 |
| 002 | 0.94 | 074 | 0.88 | 154 | 0.84 | 225 | 0.92 |
| 005 | 0.80 | 075 | 0.88 | 155 | 0.81 | 226 | 0.72 |
| 006 | 0.40 | 076 | 0.88 | 156 | 0.87 | 227 | 0.72 |
| 007 | 0.40 | 077 | 1.12 | 157 | 0.80 | 228 | 0.72 |
| 008 | 0.40 | 078 | 0.87 | 158 | 0.75 | 229 | 0.72 |
| 009 | 0.40 | 079 | 0.87 | 159 | 0.81 | 230 | 0.92 |
| 010 | 0.81 | 080 | 1.11 | 160 | 0.87 | 231 | 0.92 |
| 011 | 0.81 | 081 | 1.11 | 161 | 0.87 | 232 | 0.92 |
| 012 | 0.70 | 082 | 1.11 | 162 | 0.87 | 233 | 0.82 |
| 013 | 0.91 | 083 | 1.11 | 163 | 0.75 | 234 | 0.82 |
| 014 | 0.91 | 084 | 1.11 | 164 | 0.84 | 235 | 0.82 |
| 015 | 1.00 | 085 | 1.12 | 165 | 0.84 | 236 | 0.82 |
| 016 | 0.90 | 086 | 1.12 | 166 | 0.85 | 237 | 0.82 |
| 017 | 1.03 | 087 | 1.01 | 167 | 0.75 | 238 | 0.92 |
| 018 | 0.80 | 088 | 0.98 | 168 | 0.80 | 239 | 0.74 |
| 019 | 0.80 | 089 | 1.12 | 169 | 0.73 | 240 | 0.76 |
| 020 | 0.87 | 100 | 0.86 | 170 | 0.79 | 241 | 0.76 |
| 021 | 0.91 | 101 | 0.86 | 171 | 0.79 | 242 | 0.76 |
| 022 | 1.08 | 102 | 0.86 | 172 | 0.77 | 243 | 0.76 |
| 023 | 0.87 | 103 | 0.89 | 173 | 0.77 | 244 | 0.72 |
| 024 | 0.91 | 104 | 0.89 | 174 | 0.77 | 245 | 0.74 |
| 025 | 0.77 | 105 | 0.85 | 175 | 0.77 | 246 | 0.76 |
| 026 | 0.77 | 106 | 0.85 | 176 | 0.65 | 247 | 0.67 |
| 027 | 0.87 | 107 | 0.85 | 177 | 0.73 | 248 | 0.67 |
| 028 | 0.83 | 108 | 0.85 | 178 | 0.73 | 249 | 0.67 |
| 029 | 0.83 | 109 | 1.00 | 179 | 0.67 | 250 | 0.67 |
| 030 | 0.91 | 110 | 0.89 | 180 | 0.77 | 251 | 0.67 |
| 031 | 0.91 | 111 | 0.89 | 181 | 0.77 | 252 | 0.67 |
| 032 | 0.79 | 112 | 0.90 | 182 | 0.83 | 253 | 0.67 |
| 033 | 0.79 | 113 | 0.90 | 183 | 0.86 | 254 | 0.74 |
| 034 | 0.79 | 114 | 0.90 | 184 | 0.83 | 255 | 0.67 |
| 035 | 0.79 | 115 | 0.80 | 185 | 0.83 | 256 | 0.67 |
| 036 | 0.79 | 116 | 0.80 | 186 | 0.83 | 257 | 0.67 |
| 037 | 0.79 | 117 | 0.80 | 187 | 0.83 | 258 | 0.67 |
| 038 | 0.94 | 118 | 0.80 | 188 | 0.83 | 259 | 0.67 |
| 039 | 0.78 | 119 | 0.80 | 189 | 1.24 | 260 | 0.67 |
| 040 | 0.75 | 120 | 0.68 | 190 | 1.48 | 261 | 0.74 |
| 041 | 0.64 | 121 | 0.68 | 191 | 1.27 | 262 | 0.74 |
| 042 | 0.75 | 122 | 0.68 | 192 | 1.27 | 263 | 0.74 |
| 043 | 0.78 | 123 | 0.68 | 193 | 1.24 | 264 | 0.74 |
| 044 | 0.80 | 124 | 0.68 | 194 | 1.24 | 265 | 0.67 |
| 045 | 0.80 | 125 | 0.75 | 195 | 0.67 | 266 | 0.67 |
| 046 | 0.80 | 126 | 0.75 | 196 | 0.67 | 267 | 0.74 |
| 047 | 0.78 | 127 | 0.75 | 197 | 0.67 | 268 | 0.74 |
| 048 | 0.80 | 128 | 0.66 | 198 | 0.67 | 270 | 0.63 |
| 049 | 0.78 | 129 | 0.66 | 199 | 0.76 | 271 | 0.60 |
| 050 | 0.73 | 130 | 0.60 | 200 | 0.91 | 272 | 0.63 |
| 051 | 0.73 | 131 | 0.60 | 201 | 0.86 | 273 | 0.63 |
| 052 | 0.73 | 132 | 0.60 | 202 | 0.91 | 274 | 0.63 |
| 053 | 0.73 | 133 | 0.67 | 203 | 0.91 | 275 | 0.72 |
| 054 | 0.69 | 134 | 0.67 | 204 | 0.91 | 276 | 0.72 |
| 055 | 0.80 | 135 | 0.67 | 205 | 0.91 | 277 | 0.77 |
| 056 | 0.73 | 136 | 0.67 | 206 | 0.65 | 278 | 0.72 |
| 057 | 0.73 | 137 | 0.64 | 207 | 0.66 | 279 | 0.72 |
| 058 | 0.73 | 138 | 0.64 | 208 | 0.72 | 280 | 0.72 |
| 059 | 0.73 | 139 | 0.64 | 209 | 0.72 | 281 | 0.72 |
| 060 | 0.88 | 140 | 0.54 | 210 | 0.54 | 282 | 0.73 |
| 061 | 0.83 | 141 | 0.54 | 211 | 0.54 | 283 | 0.72 |
| 062 | 0.88 | 142 | 0.54 | 212 | 0.54 | 284 | 0.72 |
| 063 | 0.88 | 143 | 0.54 | 214 | 0.54 | 285 | 0.72 |
| 064 | 0.91 | 144 | 0.56 | 215 | 0.49 | 286 | 0.75 |
| 065 | 0.88 | 145 | 0.56 | 216 | 0.50 | 287 | 0.75 |
| 066 | 0.88 | 146 | 0.56 | 217 | 0.49 | 288 | 0.75 |
| 067 | 0.91 | 147 | 0.54 | 218 | 0.50 | 289 | 0.75 |
| 068 | 0.94 | 148 | 0.56 | 219 | 0.54 | 290 | 0.82 |
| 069 | 0.94 | 149 | 0.56 | 220 | 0.86 | 291 | 0.82 |
| 070 | 0.89 | 150 | 1.00 | 221 | 0.86 | 292 | 0.76 |

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TABLE P. — OUTPATIENT FACILITY CHARGES GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

PAGE 2 OF 4

| ZIP Code | GAAF | ZIP Code | GAAF | ZIP Code | GAAF | ZIP Code | GAAF |
|---|---|---|---|---|---|---|---|
| 293 | 0.87 | 368 | 1.01 | 442 | 0.84 | 512 | 0.72 |
| 294 | 0.89 | 369 | 1.01 | 443 | 0.84 | 513 | 0.72 |
| 295 | 0.89 | 370 | 0.83 | 444 | 0.80 | 514 | 0.72 |
| 296 | 0.78 | 371 | 0.83 | 445 | 0.80 | 515 | 0.72 |
| 297 | 0.87 | 372 | 0.85 | 446 | 0.76 | 516 | 0.72 |
| 298 | 0.88 | 373 | 0.79 | 447 | 0.64 | 520 | 0.71 |
| 299 | 0.88 | 374 | 0.79 | 448 | 0.76 | 521 | 0.71 |
| 300 | 0.88 | 375 | 0.81 | 449 | 0.78 | 522 | 0.71 |
| 301 | 0.86 | 376 | 0.79 | 450 | 0.77 | 523 | 0.71 |
| 302 | 0.86 | 377 | 0.79 | 451 | 0.77 | 524 | 0.71 |
| 303 | 0.86 | 378 | 0.79 | 452 | 0.73 | 525 | 0.71 |
| 304 | 0.90 | 379 | 0.81 | 453 | 0.81 | 526 | 0.71 |
| 305 | 0.83 | 380 | 0.82 | 454 | 0.86 | 527 | 0.71 |
| 306 | 0.83 | 381 | 0.81 | 455 | 0.81 | 528 | 0.71 |
| 307 | 0.83 | 382 | 0.72 | 456 | 0.77 | 530 | 0.91 |
| 308 | 0.83 | 383 | 0.72 | 457 | 0.76 | 531 | 1.00 |
| 309 | 0.83 | 384 | 0.83 | 458 | 0.72 | 532 | 0.97 |
| 310 | 0.86 | 385 | 0.79 | 459 | 0.73 | 534 | 0.90 |
| 311 | 0.86 | 386 | 0.76 | 460 | 0.76 | 535 | 0.82 |
| 312 | 0.86 | 387 | 0.73 | 461 | 0.76 | 537 | 0.80 |
| 313 | 0.90 | 388 | 0.73 | 462 | 0.72 | 538 | 0.82 |
| 314 | 0.90 | 389 | 0.73 | 463 | 0.82 | 539 | 0.84 |
| 315 | 0.90 | 390 | 0.70 | 464 | 0.82 | 540 | 0.93 |
| 316 | 0.82 | 391 | 0.70 | 465 | 0.84 | 541 | 0.74 |
| 317 | 0.82 | 392 | 0.70 | 466 | 0.84 | 542 | 0.74 |
| 318 | 0.82 | 393 | 0.70 | 467 | 0.73 | 543 | 0.66 |
| 319 | 0.82 | 394 | 0.75 | 468 | 0.73 | 544 | 0.75 |
| 320 | 1.17 | 395 | 0.75 | 469 | 0.77 | 545 | 0.93 |
| 321 | 1.02 | 396 | 0.75 | 470 | 0.76 | 546 | 0.82 |
| 322 | 1.15 | 397 | 0.73 | 471 | 0.76 | 547 | 0.80 |
| 323 | 1.10 | 399 | 0.86 | 472 | 0.76 | 548 | 0.93 |
| 324 | 1.10 | 400 | 0.96 | 473 | 0.76 | 549 | 0.67 |
| 325 | 1.10 | 401 | 0.96 | 474 | 0.76 | 550 | 0.98 |
| 326 | 0.98 | 402 | 0.90 | 475 | 0.77 | 551 | 1.00 |
| 327 | 1.19 | 403 | 0.75 | 476 | 0.77 | 553 | 1.06 |
| 328 | 1.13 | 404 | 0.75 | 477 | 0.77 | 554 | 0.95 |
| 329 | 1.26 | 405 | 0.79 | 478 | 0.76 | 555 | 1.06 |
| 330 | 1.28 | 406 | 0.79 | 479 | 0.77 | 556 | 0.83 |
| 331 | 1.11 | 407 | 0.83 | 480 | 0.97 | 557 | 0.83 |
| 332 | 1.11 | 408 | 0.83 | 481 | 0.96 | 558 | 0.79 |
| 333 | 1.42 | 409 | 0.83 | 482 | 0.97 | 559 | 0.76 |
| 334 | 1.14 | 410 | 0.75 | 483 | 0.99 | 560 | 0.74 |
| 335 | 1.19 | 411 | 0.83 | 484 | 0.89 | 561 | 0.79 |
| 336 | 1.18 | 412 | 0.83 | 485 | 0.89 | 562 | 0.79 |
| 337 | 1.19 | 413 | 0.83 | 486 | 0.81 | 563 | 0.76 |
| 338 | 1.02 | 414 | 0.83 | 487 | 0.81 | 564 | 0.76 |
| 339 | 1.12 | 415 | 0.83 | 488 | 0.79 | 565 | 0.83 |
| 341 | 1.34 | 416 | 0.83 | 489 | 0.79 | 566 | 0.83 |
| 342 | 1.06 | 417 | 0.83 | 490 | 0.79 | 567 | 0.83 |
| 344 | 0.92 | 418 | 0.83 | 491 | 0.79 | 570 | 0.65 |
| 346 | 1.06 | 420 | 0.74 | 492 | 0.79 | 571 | 0.68 |
| 347 | 1.19 | 421 | 0.94 | 493 | 0.70 | 572 | 0.65 |
| 349 | 1.23 | 422 | 0.74 | 494 | 0.70 | 573 | 0.65 |
| 350 | 1.00 | 423 | 0.74 | 495 | 0.70 | 574 | 0.65 |
| 351 | 1.00 | 424 | 0.74 | 496 | 0.70 | 575 | 0.65 |
| 352 | 1.11 | 425 | 0.74 | 497 | 0.70 | 576 | 0.65 |
| 354 | 1.00 | 426 | 0.74 | 498 | 0.82 | 577 | 0.65 |
| 355 | 1.00 | 427 | 0.74 | 499 | 0.82 | 580 | 0.74 |
| 356 | 0.94 | 430 | 0.79 | 500 | 0.74 | 581 | 0.86 |
| 357 | 0.94 | 431 | 0.79 | 501 | 0.74 | 582 | 0.74 |
| 358 | 0.94 | 432 | 0.74 | 502 | 0.74 | 583 | 0.74 |
| 359 | 1.09 | 433 | 0.72 | 503 | 0.74 | 584 | 0.74 |
| 360 | 1.01 | 434 | 0.82 | 504 | 0.71 | 585 | 0.74 |
| 361 | 1.01 | 435 | 0.82 | 505 | 0.72 | 586 | 0.74 |
| 362 | 1.09 | 436 | 0.82 | 506 | 0.71 | 587 | 0.74 |
| 363 | 1.01 | 437 | 0.76 | 507 | 0.71 | 588 | 0.74 |
| 364 | 1.01 | 438 | 0.76 | 508 | 0.72 | 590 | 0.68 |
| 365 | 0.81 | 439 | 0.76 | 509 | 0.74 | 591 | 0.84 |
| 366 | 0.81 | 440 | 0.83 | 510 | 0.72 | 592 | 0.68 |
| 367 | 1.01 | 441 | 0.80 | 511 | 0.75 | 593 | 0.68 |

TABLE P. — OUTPATIENT FACILITY CHARGES GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

PAGE 3 OF 4

| ZIP Code | GAAF | ZIP Code | GAAF | ZIP Code | GAAF | ZIP Code | GAAF |
|---|---|---|---|---|---|---|---|
| 594 | 0.68 | 670 | 0.94 | 752 | 1.08 | 826 | 0.92 |
| 595 | 0.68 | 671 | 0.94 | 753 | 1.08 | 827 | 0.92 |
| 596 | 0.68 | 672 | 1.11 | 754 | 1.10 | 828 | 0.92 |
| 597 | 0.68 | 673 | 0.83 | 755 | 1.10 | 829 | 0.92 |
| 598 | 0.68 | 674 | 0.80 | 756 | 1.10 | 830 | 0.92 |
| 599 | 0.68 | 675 | 0.80 | 757 | 1.10 | 831 | 0.92 |
| 600 | 1.22 | 676 | 0.80 | 758 | 1.10 | 832 | 0.87 |
| 601 | 1.25 | 677 | 0.80 | 759 | 1.10 | 833 | 0.88 |
| 602 | 1.15 | 678 | 0.80 | 760 | 1.18 | 834 | 0.87 |
| 603 | 1.15 | 679 | 0.80 | 761 | 1.18 | 835 | 0.88 |
| 604 | 1.28 | 680 | 0.92 | 762 | 1.08 | 836 | 0.88 |
| 605 | 1.33 | 681 | 0.92 | 763 | 1.08 | 837 | 0.82 |
| 606 | 1.18 | 683 | 0.79 | 764 | 0.92 | 838 | 0.88 |
| 607 | 1.18 | 684 | 0.79 | 765 | 1.07 | 840 | 0.98 |
| 608 | 1.18 | 685 | 0.90 | 766 | 0.92 | 841 | 0.95 |
| 609 | 1.10 | 686 | 0.79 | 767 | 0.92 | 842 | 0.95 |
| 610 | 0.92 | 687 | 0.79 | 768 | 0.97 | 843 | 0.95 |
| 611 | 1.04 | 688 | 0.79 | 769 | 0.97 | 844 | 0.95 |
| 612 | 0.92 | 689 | 0.79 | 770 | 1.12 | 845 | 0.82 |
| 613 | 1.04 | 690 | 0.79 | 772 | 1.12 | 846 | 0.82 |
| 614 | 1.04 | 691 | 0.79 | 773 | 1.12 | 847 | 0.82 |
| 615 | 1.04 | 692 | 0.79 | 774 | 1.12 | 850 | 1.27 |
| 616 | 1.17 | 693 | 0.79 | 775 | 1.12 | 852 | 1.29 |
| 617 | 1.13 | 700 | 1.06 | 776 | 1.32 | 853 | 1.29 |
| 618 | 1.04 | 701 | 1.14 | 777 | 1.32 | 855 | 1.20 |
| 619 | 0.95 | 703 | 0.94 | 778 | 1.07 | 856 | 1.10 |
| 620 | 1.20 | 704 | 1.06 | 779 | 0.97 | 857 | 1.10 |
| 622 | 0.99 | 705 | 0.94 | 780 | 1.04 | 859 | 1.20 |
| 623 | 0.84 | 706 | 0.94 | 781 | 0.97 | 860 | 1.04 |
| 624 | 0.92 | 707 | 0.97 | 782 | 1.04 | 863 | 1.20 |
| 625 | 0.84 | 708 | 0.97 | 783 | 1.28 | 864 | 1.20 |
| 626 | 0.84 | 710 | 1.07 | 784 | 1.28 | 865 | 1.04 |
| 627 | 0.94 | 711 | 1.07 | 785 | 1.28 | 870 | 0.96 |
| 628 | 0.92 | 712 | 1.07 | 786 | 1.06 | 871 | 0.88 |
| 629 | 0.99 | 713 | 1.07 | 787 | 1.06 | 872 | 0.96 |
| 630 | 1.07 | 714 | 1.07 | 788 | 0.97 | 873 | 0.96 |
| 631 | 1.07 | 716 | 0.92 | 789 | 1.06 | 874 | 0.96 |
| 633 | 1.07 | 717 | 0.92 | 790 | 1.01 | 875 | 0.96 |
| 634 | 1.07 | 718 | 0.92 | 791 | 1.01 | 877 | 0.96 |
| 635 | 0.95 | 719 | 0.92 | 792 | 1.01 | 878 | 1.08 |
| 636 | 0.92 | 720 | 1.01 | 793 | 1.22 | 879 | 1.08 |
| 637 | 0.92 | 721 | 1.01 | 794 | 1.22 | 880 | 1.08 |
| 638 | 0.91 | 722 | 1.01 | 795 | 1.22 | 881 | 1.08 |
| 639 | 0.91 | 723 | 0.92 | 796 | 1.22 | 882 | 1.08 |
| 640 | 1.09 | 724 | 0.85 | 797 | 0.97 | 883 | 1.08 |
| 641 | 1.09 | 725 | 0.85 | 798 | 0.97 | 884 | 0.96 |
| 644 | 0.95 | 726 | 0.85 | 799 | 1.82 | 885 | 1.82 |
| 645 | 0.95 | 727 | 0.85 | 800 | 1.06 | 889 | 1.54 |
| 646 | 0.95 | 728 | 0.92 | 801 | 1.28 | 890 | 1.54 |
| 647 | 0.91 | 729 | 0.86 | 802 | 1.07 | 891 | 1.54 |
| 648 | 0.91 | 730 | 0.95 | 803 | 1.06 | 893 | 1.33 |
| 649 | 1.09 | 731 | 0.95 | 804 | 1.06 | 894 | 1.33 |
| 650 | 0.90 | 733 | 1.06 | 805 | 0.91 | 895 | 1.33 |
| 651 | 0.90 | 734 | 1.02 | 806 | 0.91 | 897 | 1.33 |
| 652 | 0.90 | 735 | 1.02 | 807 | 0.91 | 898 | 1.33 |
| 653 | 0.91 | 736 | 0.95 | 808 | 1.02 | 900 | 1.45 |
| 654 | 0.91 | 737 | 0.95 | 809 | 1.02 | 901 | 1.45 |
| 655 | 0.91 | 738 | 0.95 | 810 | 1.02 | 902 | 1.73 |
| 656 | 0.91 | 739 | 0.95 | 811 | 0.90 | 903 | 1.73 |
| 657 | 0.91 | 740 | 0.80 | 812 | 0.90 | 904 | 1.73 |
| 658 | 0.79 | 741 | 0.80 | 813 | 0.90 | 905 | 1.61 |
| 660 | 1.08 | 743 | 0.88 | 814 | 0.90 | 906 | 1.61 |
| 661 | 1.08 | 744 | 0.88 | 815 | 0.90 | 907 | 1.61 |
| 662 | 1.26 | 745 | 1.02 | 816 | 0.98 | 908 | 1.61 |
| 664 | 0.93 | 746 | 0.95 | 820 | 0.92 | 910 | 1.46 |
| 665 | 0.93 | 747 | 1.02 | 821 | 0.92 | 911 | 1.69 |
| 666 | 0.97 | 748 | 0.88 | 822 | 0.92 | 912 | 1.46 |
| 667 | 0.83 | 749 | 1.02 | 823 | 0.92 | 913 | 1.47 |
| 668 | 0.83 | 750 | 1.18 | 824 | 0.92 | 914 | 1.56 |
| 669 | 0.80 | 751 | 1.18 | 825 | 0.92 | 915 | 1.47 |

TABLE P. — OUTPATIENT FACILITY CHARGES GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

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| ZIP Code | GAAF |
|---|---|
| 916 | 1.56 |
| 917 | 1.69 |
| 918 | 1.69 |
| 919 | 1.40 |
| 920 | 1.40 |
| 921 | 1.40 |
| 922 | 1.38 |
| 923 | 1.38 |
| 924 | 1.38 |
| 925 | 1.38 |
| 926 | 1.44 |
| 927 | 1.44 |
| 928 | 1.44 |
| 930 | 1.21 |
| 931 | 1.67 |
| 932 | 1.20 |
| 933 | 1.20 |
| 934 | 1.66 |
| 935 | 1.20 |
| 936 | 1.28 |
| 937 | 1.28 |
| 938 | 1.28 |
| 939 | 1.39 |
| 940 | 1.60 |
| 941 | 1.54 |
| 942 | 1.81 |
| 943 | 1.43 |
| 944 | 1.48 |
| 945 | 1.60 |
| 946 | 1.60 |
| 947 | 1.60 |
| 948 | 1.60 |
| 949 | 1.60 |
| 950 | 1.72 |
| 951 | 1.72 |
| 952 | 1.68 |
| 953 | 1.68 |
| 954 | 1.23 |
| 955 | 1.23 |
| 956 | 1.88 |
| 957 | 1.88 |
| 958 | 1.81 |
| 959 | 1.23 |
| 960 | 1.23 |
| 961 | 1.23 |
| 967 | 1.05 |
| 968 | 1.05 |
| 969 | 1.05 |
| 970 | 1.01 |
| 971 | 1.01 |
| 972 | 0.92 |
| 973 | 0.84 |
| 974 | 0.81 |
| 975 | 0.81 |
| 976 | 0.81 |
| 977 | 0.81 |
| 978 | 0.99 |
| 979 | 0.99 |
| 980 | 0.90 |
| 981 | 0.88 |
| 982 | 0.95 |
| 983 | 1.02 |
| 984 | 1.02 |
| 985 | 0.92 |
| 986 | 0.89 |
| 988 | 0.90 |
| 989 | 0.90 |
| 990 | 1.03 |
| 991 | 1.03 |
| 992 | 1.03 |
| 993 | 0.90 |
| 994 | 0.90 |
| 995 | 1.13 |
| 996 | 1.07 |
| 997 | 1.13 |
| 998 | 1.07 |
| 999 | 1.11 |

## TABLE Q. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE CHARGES GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

PAGE 1 OF 5

| ZIP Code | GAAF | |
|---|---|---|
| | Non-Drug | Drug |
| Nationwide Average | 1.00 | 1.00 |
| 002 | 1.12 | 0.71 |
| 005 | 0.95 | 0.67 |
| 006 | 1.16 | 0.68 |
| 007 | 1.16 | 0.68 |
| 008 | 1.16 | 0.68 |
| 009 | 1.16 | 0.68 |
| 010 | 0.81 | 0.73 |
| 011 | 0.81 | 0.73 |
| 012 | 0.95 | 0.98 |
| 013 | 1.00 | 1.04 |
| 014 | 1.00 | 1.04 |
| 015 | 1.07 | 0.92 |
| 016 | 0.93 | 0.96 |
| 017 | 0.86 | 1.07 |
| 018 | 0.90 | 0.80 |
| 019 | 0.90 | 0.80 |
| 020 | 0.85 | 1.08 |
| 021 | 0.92 | 1.03 |
| 022 | 0.89 | 0.92 |
| 023 | 0.85 | 1.08 |
| 024 | 0.92 | 1.03 |
| 025 | 0.95 | 0.93 |
| 026 | 0.95 | 0.93 |
| 027 | 0.85 | 1.08 |
| 028 | 0.88 | 1.31 |
| 029 | 0.88 | 1.31 |
| 030 | 0.73 | 1.19 |
| 031 | 0.73 | 1.19 |
| 032 | 1.04 | 0.74 |
| 033 | 1.04 | 0.74 |
| 034 | 1.04 | 0.74 |
| 035 | 1.04 | 0.74 |
| 036 | 1.04 | 0.74 |
| 037 | 1.04 | 0.74 |
| 038 | 1.12 | 0.71 |
| 039 | 0.90 | 0.85 |
| 040 | 1.09 | 0.57 |
| 041 | 1.16 | 0.61 |
| 042 | 1.09 | 0.57 |
| 043 | 0.90 | 0.85 |
| 044 | 0.85 | 0.84 |
| 045 | 0.85 | 0.84 |
| 046 | 0.85 | 0.84 |
| 047 | 0.90 | 0.85 |
| 048 | 0.85 | 0.84 |
| 049 | 0.90 | 0.85 |
| 050 | 1.14 | 0.78 |
| 051 | 1.14 | 0.78 |
| 052 | 1.14 | 0.78 |
| 053 | 1.14 | 0.78 |
| 054 | 1.07 | 0.60 |
| 055 | 0.90 | 0.80 |
| 056 | 1.14 | 0.78 |
| 057 | 1.14 | 0.78 |
| 058 | 1.14 | 0.78 |
| 059 | 1.14 | 0.78 |
| 060 | 0.81 | 0.77 |
| 061 | 0.77 | 0.70 |
| 062 | 0.81 | 0.77 |
| 063 | 0.81 | 0.77 |
| 064 | 1.04 | 0.66 |
| 065 | 1.00 | 0.61 |
| 066 | 1.00 | 0.61 |
| 067 | 1.04 | 0.66 |
| 068 | 1.12 | 0.75 |
| 069 | 1.12 | 0.75 |
| 070 | 0.97 | 1.05 |
| 071 | 1.06 | 1.00 |
| 072 | 0.97 | 1.05 |
| 073 | 1.06 | 1.00 |
| 074 | 0.98 | 0.80 |
| 075 | 0.98 | 0.80 |
| 076 | 0.98 | 0.80 |
| 077 | 1.07 | 0.76 |
| 078 | 0.93 | 0.76 |
| 079 | 0.93 | 0.76 |
| 080 | 1.17 | 1.18 |
| 081 | 1.17 | 1.18 |
| 082 | 1.17 | 1.18 |
| 083 | 1.17 | 1.18 |
| 084 | 1.17 | 1.18 |
| 085 | 1.07 | 0.76 |
| 086 | 1.07 | 0.76 |
| 087 | 1.15 | 0.77 |
| 088 | 1.02 | 0.88 |
| 089 | 0.76 | 0.63 |
| 100 | 1.16 | 0.75 |
| 101 | 1.16 | 0.75 |
| 102 | 1.16 | 0.75 |
| 103 | 1.08 | 0.69 |
| 104 | 1.08 | 0.69 |
| 105 | 1.14 | 0.67 |
| 106 | 1.03 | 0.86 |
| 107 | 1.14 | 0.67 |
| 108 | 1.14 | 0.67 |
| 109 | 0.94 | 0.74 |
| 110 | 1.08 | 0.69 |
| 111 | 1.08 | 0.69 |
| 112 | 1.05 | 1.14 |
| 113 | 1.05 | 1.14 |
| 114 | 1.05 | 1.14 |
| 115 | 0.95 | 0.67 |
| 116 | 0.95 | 0.67 |
| 117 | 0.95 | 0.67 |
| 118 | 0.95 | 0.67 |
| 119 | 0.95 | 0.67 |
| 120 | 1.00 | 1.10 |
| 121 | 1.00 | 1.10 |
| 122 | 1.00 | 1.10 |
| 123 | 1.00 | 1.10 |
| 124 | 1.00 | 1.10 |
| 125 | 0.72 | 0.56 |
| 126 | 0.72 | 0.56 |
| 127 | 0.72 | 0.56 |
| 128 | 0.97 | 0.72 |
| 129 | 0.97 | 0.72 |
| 130 | 0.85 | 1.16 |
| 131 | 0.85 | 1.16 |
| 132 | 0.85 | 1.16 |
| 133 | 1.07 | 0.98 |
| 134 | 1.07 | 0.98 |
| 135 | 1.07 | 0.98 |
| 136 | 1.07 | 0.98 |
| 137 | 1.15 | 0.57 |
| 138 | 1.15 | 0.57 |
| 139 | 1.15 | 0.57 |
| 140 | 0.94 | 0.90 |
| 141 | 0.94 | 0.90 |
| 142 | 0.94 | 0.90 |
| 143 | 0.94 | 0.90 |
| 144 | 1.05 | 1.09 |
| 144 | 1.05 | 1.09 |
| 145 | 1.05 | 1.09 |
| 146 | 1.05 | 1.09 |
| 147 | 0.94 | 0.90 |
| 148 | 1.05 | 1.09 |
| 149 | 1.05 | 1.09 |
| 150 | 1.05 | 0.59 |
| 151 | 1.05 | 0.59 |
| 152 | 1.05 | 0.59 |
| 153 | 1.02 | 1.28 |
| 154 | 1.02 | 1.28 |
| 155 | 1.06 | 0.91 |
| 156 | 1.00 | 0.68 |
| 157 | 1.09 | 1.05 |
| 158 | 1.02 | 1.10 |
| 159 | 1.06 | 0.91 |
| 160 | 1.00 | 0.68 |
| 161 | 1.00 | 0.68 |
| 162 | 1.00 | 0.68 |
| 163 | 1.02 | 1.10 |
| 164 | 1.13 | 0.95 |
| 165 | 1.13 | 0.95 |
| 166 | 0.99 | 1.04 |
| 167 | 1.02 | 1.10 |
| 168 | 1.09 | 1.05 |
| 169 | 0.78 | 0.97 |
| 170 | 0.96 | 0.93 |
| 171 | 0.96 | 0.93 |
| 172 | 1.06 | 0.90 |
| 173 | 1.06 | 0.90 |
| 174 | 1.06 | 0.90 |
| 175 | 1.06 | 0.90 |
| 176 | 1.11 | 1.02 |
| 177 | 0.78 | 0.97 |
| 178 | 0.78 | 0.97 |
| 179 | 1.07 | 0.76 |
| 180 | 1.07 | 1.00 |
| 181 | 1.07 | 1.00 |
| 182 | 0.96 | 0.85 |
| 183 | 1.16 | 0.79 |
| 184 | 0.96 | 0.85 |
| 185 | 0.96 | 0.85 |
| 186 | 0.96 | 0.85 |
| 187 | 0.96 | 0.85 |
| 188 | 0.96 | 0.85 |
| 189 | 1.12 | 0.88 |
| 190 | 1.05 | 0.78 |
| 191 | 0.84 | 0.82 |
| 192 | 0.84 | 0.82 |
| 193 | 1.12 | 0.88 |
| 194 | 1.12 | 0.88 |
| 195 | 1.07 | 0.76 |
| 196 | 1.07 | 0.76 |
| 197 | 0.83 | 0.88 |
| 198 | 0.83 | 0.88 |
| 199 | 1.07 | 0.82 |
| 200 | 1.11 | 1.39 |
| 201 | 1.22 | 0.97 |
| 202 | 1.11 | 1.39 |
| 203 | 1.11 | 1.39 |
| 204 | 1.11 | 1.39 |
| 205 | 1.11 | 1.39 |
| 206 | 1.09 | 0.84 |
| 207 | 1.12 | 0.92 |
| 208 | 1.00 | 0.74 |
| 209 | 1.00 | 0.74 |
| 210 | 0.89 | 0.97 |

TABLE Q. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE CHARGES
GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

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| ZIP Code | GAAF | | ZIP Code | GAAF | | ZIP Code | GAAF | |
|---|---|---|---|---|---|---|---|---|
| | Non-Drug | Drug | | Non-Drug | Drug | | Non-Drug | Drug |
| 211 | 0.89 | 0.97 | 280 | 1.07 | 0.98 | 351 | 0.89 | 1.01 |
| 212 | 0.95 | 1.07 | 281 | 1.07 | 0.98 | 352 | 0.99 | 0.89 |
| 214 | 0.89 | 0.97 | 282 | 1.08 | 1.27 | 354 | 0.89 | 1.01 |
| 215 | 1.04 | 0.97 | 283 | 1.11 | 0.96 | 355 | 0.89 | 1.01 |
| 216 | 0.72 | 0.73 | 284 | 1.11 | 0.96 | 356 | 0.92 | 0.90 |
| 217 | 1.04 | 0.97 | 285 | 1.11 | 0.96 | 357 | 0.92 | 0.90 |
| 218 | 0.72 | 0.73 | 286 | 1.27 | 1.10 | 358 | 0.92 | 0.90 |
| 219 | 0.89 | 0.97 | 287 | 1.27 | 1.10 | 359 | 1.08 | 1.21 |
| 220 | 1.22 | 0.97 | 288 | 1.27 | 1.10 | 360 | 1.04 | 0.85 |
| 221 | 1.22 | 0.97 | 289 | 1.27 | 1.10 | 361 | 1.04 | 0.85 |
| 222 | 0.94 | 0.92 | 290 | 1.01 | 1.04 | 362 | 1.08 | 1.21 |
| 223 | 0.94 | 0.92 | 291 | 1.01 | 1.04 | 363 | 1.04 | 0.85 |
| 224 | 1.01 | 1.10 | 292 | 1.13 | 1.15 | 364 | 1.04 | 0.85 |
| 225 | 1.01 | 1.10 | 293 | 1.09 | 1.35 | 365 | 0.79 | 1.01 |
| 226 | 1.04 | 1.01 | 294 | 1.09 | 0.97 | 366 | 0.79 | 1.01 |
| 227 | 1.04 | 1.01 | 295 | 1.09 | 0.97 | 367 | 1.04 | 0.85 |
| 228 | 1.04 | 1.01 | 296 | 0.97 | 1.01 | 368 | 1.04 | 0.85 |
| 229 | 1.04 | 1.01 | 297 | 1.09 | 1.35 | 369 | 1.04 | 0.85 |
| 230 | 1.01 | 1.10 | 298 | 0.94 | 0.86 | 370 | 1.30 | 1.00 |
| 231 | 1.01 | 1.10 | 299 | 0.94 | 0.86 | 371 | 1.30 | 1.00 |
| 232 | 1.01 | 1.10 | 300 | 1.02 | 1.09 | 372 | 0.96 | 0.88 |
| 233 | 1.19 | 1.05 | 301 | 1.12 | 1.20 | 373 | 1.07 | 1.32 |
| 234 | 1.19 | 1.05 | 302 | 1.12 | 1.20 | 374 | 1.07 | 1.32 |
| 235 | 1.19 | 1.05 | 303 | 0.94 | 1.09 | 375 | 1.01 | 1.15 |
| 236 | 1.19 | 1.05 | 304 | 1.00 | 1.10 | 376 | 1.07 | 1.32 |
| 237 | 1.19 | 1.05 | 305 | 0.75 | 1.04 | 377 | 1.07 | 1.32 |
| 238 | 1.01 | 1.10 | 306 | 0.75 | 1.04 | 378 | 1.07 | 1.32 |
| 239 | 1.03 | 0.59 | 307 | 0.75 | 1.04 | 379 | 0.99 | 0.76 |
| 240 | 1.06 | 0.85 | 308 | 0.75 | 1.04 | 380 | 1.03 | 1.08 |
| 241 | 1.06 | 0.85 | 309 | 0.75 | 1.04 | 381 | 1.01 | 1.15 |
| 242 | 1.06 | 0.85 | 310 | 1.05 | 1.09 | 382 | 1.01 | 1.06 |
| 243 | 1.06 | 0.85 | 311 | 0.94 | 1.09 | 383 | 1.01 | 1.06 |
| 244 | 1.04 | 1.01 | 312 | 1.05 | 1.09 | 384 | 1.30 | 1.00 |
| 245 | 1.03 | 0.59 | 313 | 1.02 | 0.73 | 385 | 1.07 | 1.32 |
| 246 | 1.06 | 0.85 | 314 | 1.02 | 0.73 | 386 | 0.98 | 1.19 |
| 247 | 1.09 | 0.90 | 315 | 1.00 | 1.10 | 387 | 1.09 | 0.85 |
| 248 | 1.09 | 0.90 | 316 | 1.11 | 1.09 | 388 | 1.09 | 0.85 |
| 249 | 1.09 | 0.90 | 317 | 1.11 | 1.09 | 389 | 1.09 | 0.85 |
| 250 | 1.09 | 0.90 | 318 | 1.11 | 1.09 | 390 | 1.24 | 0.91 |
| 251 | 1.09 | 0.90 | 319 | 1.11 | 1.09 | 391 | 1.24 | 0.91 |
| 252 | 1.09 | 0.90 | 320 | 1.01 | 1.08 | 392 | 1.24 | 0.91 |
| 253 | 1.09 | 0.90 | 321 | 1.02 | 1.22 | 393 | 1.24 | 0.91 |
| 254 | 0.90 | 0.93 | 322 | 0.93 | 1.05 | 394 | 1.05 | 1.35 |
| 255 | 1.09 | 0.90 | 323 | 1.06 | 1.02 | 395 | 1.05 | 1.35 |
| 256 | 1.09 | 0.90 | 324 | 1.06 | 1.02 | 396 | 1.05 | 1.35 |
| 257 | 1.09 | 0.90 | 325 | 1.06 | 1.02 | 397 | 1.09 | 0.85 |
| 258 | 1.09 | 0.90 | 326 | 1.02 | 1.08 | 399 | 0.94 | 1.09 |
| 259 | 1.09 | 0.90 | 327 | 1.04 | 1.35 | 400 | 0.95 | 0.83 |
| 260 | 0.95 | 1.14 | 328 | 1.04 | 1.08 | 401 | 0.95 | 0.83 |
| 261 | 0.90 | 0.93 | 329 | 0.90 | 0.97 | 402 | 1.01 | 1.00 |
| 262 | 0.90 | 0.93 | 330 | 1.12 | 1.08 | 403 | 0.89 | 1.41 |
| 263 | 0.90 | 0.93 | 331 | 0.88 | 1.08 | 404 | 0.89 | 1.41 |
| 264 | 0.90 | 0.93 | 332 | 0.88 | 1.08 | 405 | 1.04 | 0.82 |
| 265 | 0.95 | 1.14 | 333 | 1.23 | 1.04 | 406 | 1.04 | 0.82 |
| 266 | 1.09 | 0.90 | 334 | 1.06 | 1.35 | 407 | 0.77 | 1.10 |
| 267 | 0.90 | 0.93 | 335 | 1.24 | 1.18 | 408 | 0.77 | 1.10 |
| 268 | 0.90 | 0.93 | 336 | 1.00 | 0.92 | 409 | 0.77 | 1.10 |
| 270 | 0.91 | 1.13 | 337 | 1.24 | 1.18 | 410 | 0.89 | 1.41 |
| 271 | 1.06 | 1.08 | 338 | 1.08 | 0.78 | 411 | 0.77 | 1.10 |
| 272 | 0.91 | 1.13 | 339 | 1.18 | 0.91 | 412 | 0.77 | 1.10 |
| 273 | 0.91 | 1.13 | 341 | 1.13 | 0.70 | 413 | 0.77 | 1.10 |
| 274 | 0.91 | 1.13 | 342 | 1.15 | 1.00 | 414 | 0.77 | 1.10 |
| 275 | 1.05 | 1.09 | 344 | 1.16 | 0.94 | 415 | 0.77 | 1.10 |
| 276 | 1.05 | 1.09 | 346 | 1.15 | 1.00 | 416 | 0.77 | 1.10 |
| 277 | 0.98 | 1.01 | 347 | 1.04 | 1.35 | 417 | 0.77 | 1.10 |
| 278 | 1.11 | 0.96 | 349 | 1.06 | 1.07 | 418 | 0.77 | 1.10 |
| 279 | 1.11 | 0.96 | 350 | 0.89 | 1.01 | 420 | 1.01 | 0.95 |

TABLE Q. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE CHARGES GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

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| ZIP Code | GAAF | | ZIP Code | GAAF | | ZIP Code | GAAF | |
|---|---|---|---|---|---|---|---|---|
| | Non-Drug | Drug | | Non-Drug | Drug | | Non-Drug | Drug |
| 421 | 0.95 | 0.80 | 490 | 0.84 | 0.73 | 564 | 1.03 | 0.84 |
| 422 | 1.01 | 0.95 | 491 | 0.84 | 0.73 | 565 | 0.87 | 0.74 |
| 423 | 1.01 | 0.95 | 492 | 0.84 | 0.73 | 566 | 0.87 | 0.74 |
| 424 | 1.01 | 0.95 | 493 | 0.94 | 0.72 | 567 | 0.87 | 0.74 |
| 425 | 1.05 | 1.13 | 494 | 0.94 | 0.72 | 570 | 0.97 | 0.73 |
| 426 | 1.05 | 1.13 | 495 | 0.94 | 0.72 | 571 | 0.84 | 0.82 |
| 427 | 1.05 | 1.13 | 496 | 0.94 | 0.72 | 572 | 0.97 | 0.73 |
| 430 | 1.02 | 0.53 | 497 | 0.94 | 0.72 | 573 | 0.97 | 0.73 |
| 431 | 1.02 | 0.53 | 498 | 1.24 | 0.65 | 574 | 0.97 | 0.73 |
| 432 | 0.75 | 1.21 | 499 | 1.24 | 0.65 | 575 | 0.97 | 0.73 |
| 433 | 0.87 | 0.76 | 500 | 0.93 | 0.67 | 576 | 0.97 | 0.73 |
| 434 | 0.96 | 0.68 | 501 | 0.93 | 0.67 | 577 | 0.97 | 0.73 |
| 435 | 0.96 | 0.68 | 502 | 0.93 | 0.67 | 580 | 0.96 | 0.58 |
| 436 | 0.96 | 0.68 | 503 | 0.93 | 0.67 | 581 | 0.86 | 0.75 |
| 437 | 0.96 | 0.85 | 504 | 0.76 | 0.75 | 582 | 0.96 | 0.58 |
| 438 | 0.96 | 0.85 | 505 | 0.92 | 0.76 | 583 | 0.96 | 0.58 |
| 439 | 0.96 | 0.85 | 506 | 0.76 | 0.75 | 584 | 0.96 | 0.58 |
| 440 | 0.92 | 0.95 | 507 | 0.76 | 0.75 | 585 | 0.96 | 0.58 |
| 441 | 0.86 | 0.77 | 508 | 0.92 | 0.76 | 586 | 0.96 | 0.58 |
| 442 | 1.03 | 0.98 | 509 | 0.93 | 0.67 | 587 | 0.96 | 0.58 |
| 443 | 1.03 | 0.98 | 510 | 0.92 | 0.76 | 588 | 0.96 | 0.58 |
| 444 | 0.81 | 0.95 | 511 | 0.78 | 0.77 | 590 | 0.88 | 0.71 |
| 445 | 0.81 | 0.95 | 512 | 0.92 | 0.76 | 591 | 0.77 | 0.69 |
| 446 | 0.96 | 0.85 | 513 | 0.92 | 0.76 | 592 | 0.88 | 0.71 |
| 447 | 0.95 | 0.99 | 514 | 0.92 | 0.76 | 593 | 0.88 | 0.71 |
| 448 | 0.60 | 0.95 | 515 | 0.92 | 0.76 | 594 | 0.88 | 0.71 |
| 449 | 0.79 | 0.71 | 516 | 0.92 | 0.76 | 595 | 0.88 | 0.71 |
| 450 | 1.07 | 0.72 | 520 | 0.95 | 0.84 | 596 | 0.88 | 0.71 |
| 451 | 1.07 | 0.72 | 521 | 0.76 | 0.75 | 597 | 0.88 | 0.71 |
| 452 | 1.06 | 0.81 | 522 | 0.95 | 0.84 | 598 | 0.88 | 0.71 |
| 453 | 0.86 | 1.01 | 523 | 0.95 | 0.84 | 599 | 0.88 | 0.71 |
| 454 | 0.98 | 0.99 | 524 | 0.95 | 0.84 | 600 | 1.06 | 0.98 |
| 455 | 0.86 | 1.01 | 525 | 0.95 | 0.84 | 601 | 1.02 | 1.18 |
| 456 | 1.07 | 0.72 | 526 | 0.95 | 0.84 | 602 | 0.97 | 1.15 |
| 457 | 0.96 | 0.85 | 527 | 0.95 | 0.84 | 603 | 0.97 | 1.15 |
| 458 | 0.87 | 0.76 | 528 | 0.95 | 0.84 | 604 | 1.07 | 0.99 |
| 459 | 1.06 | 0.81 | 530 | 0.78 | 1.02 | 605 | 0.94 | 0.93 |
| 460 | 1.02 | 1.21 | 531 | 1.04 | 1.07 | 606 | 0.97 | 1.05 |
| 461 | 1.02 | 1.21 | 532 | 0.94 | 0.99 | 607 | 0.97 | 1.05 |
| 462 | 0.89 | 0.83 | 534 | 1.02 | 1.16 | 608 | 0.97 | 1.05 |
| 463 | 0.98 | 1.43 | 535 | 0.86 | 0.96 | 609 | 1.04 | 0.77 |
| 464 | 0.98 | 1.43 | 537 | 0.84 | 0.94 | 610 | 0.97 | 0.90 |
| 465 | 0.84 | 1.09 | 538 | 0.86 | 0.96 | 611 | 0.85 | 0.99 |
| 466 | 0.84 | 1.09 | 539 | 0.69 | 0.81 | 612 | 0.97 | 0.90 |
| 467 | 0.88 | 0.88 | 540 | 1.04 | 0.92 | 613 | 0.68 | 0.80 |
| 468 | 0.88 | 0.88 | 541 | 0.69 | 0.94 | 614 | 0.68 | 0.80 |
| 469 | 0.89 | 0.97 | 542 | 0.69 | 0.94 | 615 | 0.68 | 0.80 |
| 470 | 0.92 | 0.97 | 543 | 0.78 | 1.02 | 616 | 0.84 | 1.02 |
| 471 | 0.92 | 0.97 | 544 | 1.11 | 0.94 | 617 | 1.02 | 0.81 |
| 472 | 0.92 | 0.97 | 545 | 1.04 | 0.92 | 618 | 0.82 | 0.83 |
| 473 | 1.02 | 1.21 | 546 | 0.72 | 0.76 | 619 | 1.07 | 1.11 |
| 474 | 0.92 | 0.97 | 547 | 0.95 | 0.68 | 620 | 1.02 | 0.99 |
| 475 | 1.03 | 0.99 | 548 | 1.04 | 0.92 | 622 | 0.79 | 1.02 |
| 476 | 1.03 | 0.99 | 549 | 0.84 | 0.70 | 623 | 0.96 | 0.84 |
| 477 | 1.03 | 0.99 | 550 | 0.85 | 0.85 | 624 | 0.87 | 0.99 |
| 478 | 0.92 | 0.97 | 551 | 0.89 | 1.03 | 625 | 0.96 | 0.84 |
| 479 | 0.89 | 0.97 | 553 | 0.72 | 0.64 | 626 | 0.96 | 0.84 |
| 480 | 1.27 | 0.81 | 554 | 0.80 | 0.99 | 627 | 0.84 | 0.60 |
| 481 | 1.07 | 0.93 | 555 | 0.72 | 0.64 | 628 | 0.87 | 0.99 |
| 482 | 0.95 | 1.03 | 556 | 0.87 | 0.74 | 629 | 0.79 | 1.02 |
| 483 | 1.04 | 1.07 | 557 | 0.87 | 0.74 | 630 | 0.80 | 0.77 |
| 484 | 1.05 | 0.76 | 558 | 0.85 | 0.90 | 631 | 1.07 | 0.98 |
| 485 | 1.05 | 0.76 | 559 | 0.96 | 0.65 | 633 | 0.80 | 0.77 |
| 486 | 1.10 | 0.93 | 560 | 0.98 | 0.80 | 634 | 0.80 | 0.77 |
| 487 | 1.10 | 0.93 | 561 | 0.71 | 0.58 | 635 | 0.92 | 1.17 |
| 488 | 0.85 | 0.78 | 562 | 0.71 | 0.58 | 636 | 0.99 | 1.00 |
| 489 | 0.85 | 0.78 | 563 | 1.03 | 0.84 | 637 | 0.99 | 1.00 |

TABLE Q. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE CHARGES GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

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| ZIP Code | GAAF | | ZIP Code | GAAF | | ZIP Code | GAAF | |
|---|---|---|---|---|---|---|---|---|
| | Non-Drug | Drug | | Non-Drug | Drug | | Non-Drug | Drug |
| 638 | 1.11 | 1.04 | 719 | 1.07 | 0.95 | 789 | 1.04 | 1.08 |
| 639 | 1.11 | 1.04 | 720 | 0.99 | 0.92 | 790 | 1.21 | 1.05 |
| 640 | 0.97 | 1.01 | 721 | 0.99 | 0.92 | 791 | 1.21 | 1.05 |
| 641 | 0.97 | 1.01 | 722 | 0.99 | 0.92 | 792 | 1.21 | 1.05 |
| 644 | 0.92 | 1.17 | 723 | 1.07 | 0.95 | 793 | 1.02 | 1.28 |
| 645 | 0.92 | 1.17 | 724 | 1.13 | 0.80 | 794 | 1.02 | 1.28 |
| 646 | 0.92 | 1.17 | 725 | 1.13 | 0.80 | 795 | 1.02 | 1.28 |
| 647 | 1.11 | 1.04 | 726 | 1.13 | 0.80 | 796 | 1.02 | 1.28 |
| 648 | 1.11 | 1.04 | 727 | 1.13 | 0.80 | 797 | 1.02 | 0.96 |
| 649 | 0.97 | 1.01 | 728 | 1.07 | 0.95 | 798 | 1.02 | 0.96 |
| 650 | 0.93 | 1.01 | 729 | 0.98 | 1.09 | 799 | 1.39 | 0.97 |
| 651 | 0.93 | 1.01 | 730 | 1.03 | 1.33 | 800 | 0.94 | 1.01 |
| 652 | 0.93 | 1.01 | 731 | 1.03 | 1.33 | 801 | 1.15 | 0.85 |
| 653 | 1.11 | 1.04 | 733 | 1.04 | 1.08 | 802 | 0.94 | 1.03 |
| 654 | 1.11 | 1.04 | 734 | 1.06 | 1.41 | 803 | 0.94 | 1.01 |
| 655 | 1.11 | 1.04 | 735 | 1.06 | 1.41 | 804 | 0.94 | 1.01 |
| 656 | 1.11 | 1.04 | 736 | 0.90 | 1.17 | 805 | 0.86 | 0.92 |
| 657 | 1.11 | 1.04 | 737 | 0.90 | 1.17 | 806 | 0.86 | 0.92 |
| 658 | 1.09 | 0.85 | 738 | 0.90 | 1.17 | 807 | 0.86 | 0.92 |
| 660 | 1.03 | 0.89 | 739 | 0.90 | 1.17 | 808 | 0.96 | 0.82 |
| 661 | 1.03 | 0.89 | 740 | 1.08 | 1.48 | 809 | 0.96 | 0.82 |
| 662 | 1.06 | 1.20 | 741 | 1.08 | 1.48 | 810 | 0.96 | 0.82 |
| 664 | 0.99 | 0.79 | 743 | 0.88 | 1.40 | 811 | 0.93 | 0.94 |
| 665 | 0.99 | 0.79 | 744 | 0.88 | 1.40 | 812 | 0.93 | 0.94 |
| 666 | 0.89 | 0.58 | 745 | 1.06 | 1.41 | 813 | 0.93 | 0.94 |
| 667 | 0.86 | 1.07 | 746 | 0.90 | 1.17 | 814 | 0.93 | 0.94 |
| 668 | 0.86 | 1.07 | 747 | 1.06 | 1.41 | 815 | 0.93 | 0.94 |
| 669 | 1.06 | 0.99 | 748 | 0.88 | 1.40 | 816 | 0.89 | 1.11 |
| 670 | 1.00 | 0.99 | 749 | 1.06 | 1.41 | 820 | 0.96 | 0.70 |
| 671 | 1.00 | 0.99 | 750 | 1.11 | 1.01 | 821 | 0.96 | 0.70 |
| 672 | 0.95 | 1.01 | 751 | 1.11 | 1.01 | 822 | 0.96 | 0.70 |
| 673 | 0.86 | 1.07 | 752 | 1.04 | 1.05 | 823 | 0.96 | 0.70 |
| 674 | 1.06 | 0.99 | 753 | 1.04 | 1.05 | 824 | 0.96 | 0.70 |
| 675 | 1.06 | 0.99 | 754 | 0.97 | 0.98 | 825 | 0.96 | 0.70 |
| 676 | 1.06 | 0.99 | 755 | 0.97 | 0.98 | 826 | 0.96 | 0.70 |
| 677 | 1.06 | 0.99 | 756 | 0.97 | 0.98 | 827 | 0.96 | 0.70 |
| 678 | 1.06 | 0.99 | 757 | 0.97 | 0.98 | 828 | 0.96 | 0.70 |
| 679 | 1.06 | 0.99 | 758 | 0.97 | 0.98 | 829 | 0.96 | 0.70 |
| 680 | 0.95 | 0.89 | 759 | 0.97 | 0.98 | 830 | 0.96 | 0.70 |
| 681 | 0.95 | 0.89 | 760 | 0.94 | 1.05 | 831 | 0.96 | 0.70 |
| 683 | 0.98 | 0.87 | 761 | 0.94 | 1.05 | 832 | 0.77 | 0.79 |
| 684 | 0.98 | 0.87 | 762 | 0.85 | 1.10 | 833 | 0.73 | 0.74 |
| 685 | 0.72 | 0.95 | 763 | 0.85 | 1.10 | 834 | 0.77 | 0.79 |
| 686 | 0.98 | 0.87 | 764 | 1.05 | 0.95 | 835 | 0.73 | 0.74 |
| 687 | 0.98 | 0.87 | 765 | 1.10 | 0.97 | 836 | 0.73 | 0.74 |
| 688 | 0.98 | 0.87 | 766 | 1.05 | 0.95 | 837 | 0.54 | 0.65 |
| 689 | 0.98 | 0.87 | 767 | 1.05 | 0.95 | 838 | 0.73 | 0.74 |
| 690 | 0.98 | 0.87 | 768 | 1.02 | 0.96 | 840 | 0.81 | 0.94 |
| 691 | 0.98 | 0.87 | 769 | 1.02 | 0.96 | 841 | 0.83 | 0.94 |
| 692 | 0.98 | 0.87 | 770 | 1.08 | 1.13 | 842 | 0.79 | 0.77 |
| 693 | 0.98 | 0.87 | 772 | 1.08 | 1.13 | 843 | 0.79 | 0.77 |
| 700 | 0.94 | 1.15 | 773 | 1.06 | 1.08 | 844 | 0.79 | 0.77 |
| 701 | 1.21 | 1.09 | 774 | 1.06 | 1.08 | 845 | 0.92 | 0.88 |
| 703 | 0.91 | 1.08 | 775 | 1.06 | 1.08 | 846 | 0.92 | 0.88 |
| 704 | 0.94 | 1.15 | 776 | 0.99 | 0.99 | 847 | 0.92 | 0.88 |
| 705 | 0.91 | 1.08 | 777 | 0.99 | 0.99 | 850 | 0.94 | 0.95 |
| 706 | 0.91 | 1.08 | 778 | 1.10 | 0.97 | 852 | 1.07 | 0.93 |
| 707 | 0.94 | 1.16 | 779 | 1.11 | 1.01 | 853 | 1.07 | 0.93 |
| 708 | 0.94 | 1.16 | 780 | 0.99 | 1.17 | 855 | 1.08 | 0.96 |
| 710 | 0.96 | 1.26 | 781 | 1.11 | 1.01 | 856 | 1.07 | 1.00 |
| 711 | 0.96 | 1.26 | 782 | 0.99 | 1.17 | 857 | 1.07 | 1.00 |
| 712 | 0.96 | 1.26 | 783 | 1.07 | 0.91 | 859 | 1.08 | 0.96 |
| 713 | 0.96 | 1.26 | 784 | 1.07 | 0.91 | 860 | 0.92 | 0.99 |
| 714 | 0.96 | 1.26 | 785 | 1.07 | 0.91 | 863 | 1.08 | 0.96 |
| 716 | 1.07 | 0.95 | 786 | 1.04 | 1.08 | 864 | 1.08 | 0.96 |
| 717 | 1.07 | 0.95 | 787 | 1.04 | 1.08 | 865 | 0.92 | 0.99 |
| 718 | 1.07 | 0.95 | 788 | 1.02 | 0.96 | 870 | 1.01 | 0.99 |

TABLE Q. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE CHARGES GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

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| ZIP Code | GAAF | |
|---|---|---|
| | Non-Drug | Drug |
| 871 | 0.93 | 0.86 |
| 872 | 1.01 | 0.99 |
| 873 | 1.01 | 0.99 |
| 874 | 1.01 | 0.99 |
| 875 | 1.01 | 0.99 |
| 877 | 1.01 | 0.99 |
| 878 | 0.90 | 0.95 |
| 879 | 0.90 | 0.95 |
| 880 | 0.90 | 0.95 |
| 881 | 0.90 | 0.95 |
| 882 | 0.90 | 0.95 |
| 883 | 0.90 | 0.95 |
| 884 | 1.01 | 0.99 |
| 885 | 1.39 | 0.97 |
| 889 | 1.14 | 0.94 |
| 890 | 1.14 | 0.94 |
| 891 | 1.14 | 0.94 |
| 893 | 1.15 | 0.77 |
| 894 | 1.15 | 0.77 |
| 895 | 1.15 | 0.77 |
| 897 | 1.15 | 0.77 |
| 898 | 1.15 | 0.77 |
| 900 | 0.73 | 0.76 |
| 901 | 0.73 | 0.76 |
| 902 | 1.05 | 0.88 |
| 903 | 1.05 | 0.88 |
| 904 | 1.05 | 0.88 |
| 905 | 0.97 | 0.80 |
| 906 | 0.97 | 0.80 |
| 907 | 0.97 | 0.80 |
| 908 | 0.97 | 0.80 |
| 910 | 0.81 | 0.78 |
| 911 | 0.95 | 1.03 |
| 912 | 0.81 | 0.78 |
| 913 | 0.94 | 0.88 |
| 914 | 0.96 | 0.81 |
| 915 | 0.94 | 0.88 |
| 916 | 0.96 | 0.81 |
| 917 | 1.12 | 1.17 |
| 918 | 1.12 | 1.17 |
| 919 | 0.91 | 0.80 |
| 920 | 0.91 | 0.80 |
| 921 | 0.84 | 0.84 |
| 922 | 0.87 | 0.95 |
| 923 | 0.87 | 0.95 |
| 924 | 0.87 | 0.95 |
| 925 | 0.87 | 0.95 |
| 926 | 1.20 | 1.04 |
| 927 | 1.20 | 1.04 |
| 928 | 1.20 | 1.04 |
| 930 | 0.97 | 0.88 |
| 931 | 1.07 | 0.64 |
| 932 | 1.22 | 1.04 |
| 933 | 1.22 | 1.04 |
| 934 | 1.01 | 0.76 |
| 935 | 1.22 | 1.04 |
| 936 | 1.07 | 0.70 |
| 937 | 1.07 | 0.70 |
| 938 | 1.07 | 0.70 |
| 939 | 1.15 | 0.86 |
| 940 | 1.03 | 0.71 |
| 941 | 0.93 | 1.06 |
| 942 | 1.02 | 0.60 |
| 943 | 1.06 | 0.78 |
| 944 | 1.17 | 0.61 |
| 945 | 1.08 | 0.89 |
| 946 | 1.08 | 0.89 |
| 947 | 1.08 | 0.89 |
| 948 | 1.08 | 0.89 |
| 949 | 1.08 | 0.89 |
| 950 | 0.93 | 0.71 |
| 951 | 0.93 | 0.71 |
| 952 | 0.96 | 0.88 |
| 953 | 0.96 | 0.88 |
| 954 | 1.00 | 0.91 |
| 955 | 1.00 | 0.91 |
| 956 | 1.26 | 1.03 |
| 957 | 1.26 | 1.03 |
| 958 | 1.02 | 0.60 |
| 959 | 1.00 | 0.91 |
| 960 | 1.00 | 0.91 |
| 961 | 1.00 | 0.91 |
| 967 | 1.04 | 1.10 |
| 968 | 1.04 | 1.10 |
| 969 | 1.04 | 1.10 |
| 970 | 1.08 | 0.89 |
| 971 | 1.08 | 0.89 |
| 972 | 0.98 | 0.76 |
| 973 | 0.91 | 0.52 |
| 974 | 0.92 | 0.95 |
| 975 | 0.92 | 0.95 |
| 976 | 0.92 | 0.95 |
| 977 | 0.92 | 0.95 |
| 978 | 1.03 | 1.01 |
| 979 | 1.03 | 1.01 |
| 980 | 1.11 | 0.64 |
| 981 | 0.87 | 1.02 |
| 982 | 0.93 | 0.88 |
| 983 | 1.04 | 0.77 |
| 984 | 1.04 | 0.77 |
| 985 | 1.09 | 0.59 |
| 986 | 1.00 | 1.01 |
| 988 | 0.96 | 0.80 |
| 989 | 0.96 | 0.80 |
| 990 | 0.91 | 0.80 |
| 991 | 0.91 | 0.80 |
| 992 | 0.91 | 0.80 |
| 993 | 0.96 | 0.80 |
| 994 | 0.96 | 0.80 |
| 995 | 0.71 | 0.73 |
| 996 | 1.00 | 0.75 |
| 997 | 0.71 | 0.73 |
| 998 | 1.00 | 0.75 |
| 999 | 0.80 | 1.08 |

### TABLE R. — OUTPATIENT DENTAL PROFESSIONAL CHARGES
### GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

PAGE 1 OF 5

| ZIP Code | GAAF | | |
|---|---|---|---|
| | Class I | Class II | Class III |
| Nationwide Average | 1.00 | 1.00 | 1.00 |
| 002 | 0.96 | 1.02 | 1.08 |
| 005 | 1.23 | 1.11 | 1.15 |
| 006 | 0.80 | 0.64 | 0.74 |
| 007 | 0.80 | 0.64 | 0.74 |
| 008 | 0.80 | 0.64 | 0.74 |
| 009 | 0.80 | 0.64 | 0.74 |
| 010 | 0.93 | 0.98 | 1.04 |
| 011 | 0.93 | 0.98 | 1.04 |
| 012 | 0.87 | 0.94 | 1.02 |
| 013 | 0.98 | 1.04 | 1.07 |
| 014 | 0.98 | 1.04 | 1.07 |
| 015 | 1.00 | 1.03 | 1.12 |
| 016 | 1.04 | 1.07 | 1.12 |
| 017 | 1.06 | 1.10 | 1.20 |
| 018 | 1.07 | 1.08 | 1.16 |
| 019 | 1.07 | 1.08 | 1.16 |
| 020 | 1.04 | 1.06 | 1.12 |
| 021 | 1.12 | 1.11 | 1.24 |
| 022 | 1.10 | 1.10 | 1.30 |
| 023 | 1.04 | 1.06 | 1.12 |
| 024 | 1.12 | 1.11 | 1.24 |
| 025 | 1.06 | 1.08 | 1.15 |
| 026 | 1.06 | 1.08 | 1.15 |
| 027 | 1.04 | 1.06 | 1.12 |
| 028 | 1.08 | 0.97 | 1.05 |
| 029 | 1.08 | 0.97 | 1.05 |
| 030 | 0.98 | 1.05 | 1.09 |
| 031 | 0.98 | 1.05 | 1.09 |
| 032 | 0.96 | 1.00 | 1.08 |
| 033 | 0.96 | 1.00 | 1.08 |
| 034 | 0.96 | 1.00 | 1.08 |
| 035 | 0.96 | 1.00 | 1.08 |
| 036 | 0.96 | 1.00 | 1.08 |
| 037 | 0.96 | 1.00 | 1.08 |
| 038 | 0.96 | 1.02 | 1.08 |
| 039 | 0.88 | 0.90 | 1.01 |
| 040 | 0.93 | 0.98 | 1.08 |
| 041 | 0.94 | 1.04 | 1.11 |
| 042 | 0.93 | 0.98 | 1.08 |
| 043 | 0.88 | 0.90 | 1.01 |
| 044 | 0.89 | 0.93 | 1.01 |
| 045 | 0.89 | 0.93 | 1.01 |
| 046 | 0.89 | 0.93 | 1.01 |
| 047 | 0.88 | 0.90 | 1.01 |
| 048 | 0.89 | 0.93 | 1.01 |
| 049 | 0.88 | 0.90 | 1.01 |
| 050 | 0.87 | 0.94 | 0.99 |
| 051 | 0.87 | 0.94 | 0.99 |
| 052 | 0.87 | 0.94 | 0.99 |
| 053 | 0.87 | 0.94 | 0.99 |
| 054 | 0.87 | 0.97 | 0.99 |
| 055 | 1.07 | 1.08 | 1.16 |
| 056 | 0.87 | 0.94 | 0.99 |
| 057 | 0.87 | 0.94 | 0.99 |
| 058 | 0.87 | 0.94 | 0.99 |
| 059 | 0.87 | 0.94 | 0.99 |
| 060 | 1.08 | 1.08 | 1.12 |
| 061 | 1.12 | 1.09 | 1.14 |
| 062 | 1.08 | 1.08 | 1.12 |
| 063 | 1.08 | 1.08 | 1.12 |
| 064 | 1.10 | 1.09 | 1.13 |
| 065 | 1.16 | 1.10 | 1.15 |
| 066 | 1.16 | 1.10 | 1.15 |
| 067 | 1.10 | 1.09 | 1.13 |
| 068 | 1.17 | 1.24 | 1.29 |
| 069 | 1.17 | 1.24 | 1.29 |
| 070 | 1.16 | 1.13 | 1.16 |
| 071 | 1.16 | 1.04 | 1.10 |
| 072 | 1.16 | 1.13 | 1.16 |
| 073 | 1.16 | 1.04 | 1.10 |
| 074 | 1.16 | 1.18 | 1.18 |
| 075 | 1.16 | 1.18 | 1.18 |
| 076 | 1.16 | 1.18 | 1.18 |
| 077 | 1.03 | 1.07 | 1.07 |
| 078 | 1.16 | 1.20 | 1.18 |
| 079 | 1.16 | 1.20 | 1.18 |
| 080 | 0.98 | 1.03 | 1.01 |
| 081 | 0.98 | 1.03 | 1.01 |
| 082 | 0.98 | 1.03 | 1.01 |
| 083 | 0.98 | 1.03 | 1.01 |
| 084 | 0.98 | 1.03 | 1.01 |
| 085 | 1.03 | 1.07 | 1.07 |
| 086 | 1.03 | 1.07 | 1.07 |
| 087 | 1.01 | 1.03 | 1.04 |
| 088 | 1.15 | 1.16 | 1.16 |
| 089 | 1.17 | 1.19 | 1.16 |
| 100 | 1.73 | 1.62 | 1.58 |
| 101 | 1.73 | 1.62 | 1.58 |
| 102 | 1.73 | 1.62 | 1.58 |
| 103 | 1.35 | 1.12 | 1.17 |
| 104 | 1.35 | 1.12 | 1.17 |
| 105 | 1.24 | 1.19 | 1.24 |
| 106 | 1.28 | 1.24 | 1.31 |
| 107 | 1.24 | 1.19 | 1.24 |
| 108 | 1.24 | 1.19 | 1.24 |
| 109 | 1.13 | 1.10 | 1.15 |
| 110 | 1.35 | 1.12 | 1.17 |
| 111 | 1.35 | 1.12 | 1.17 |
| 112 | 1.43 | 1.14 | 1.17 |
| 113 | 1.43 | 1.14 | 1.17 |
| 114 | 1.43 | 1.14 | 1.17 |
| 115 | 1.23 | 1.11 | 1.15 |
| 116 | 1.23 | 1.11 | 1.15 |
| 117 | 1.23 | 1.11 | 1.15 |
| 118 | 1.23 | 1.11 | 1.15 |
| 119 | 1.23 | 1.11 | 1.15 |
| 120 | 0.91 | 0.91 | 0.96 |
| 121 | 0.91 | 0.91 | 0.96 |
| 122 | 0.91 | 0.91 | 0.96 |
| 123 | 0.91 | 0.91 | 0.96 |
| 124 | 0.91 | 0.91 | 0.96 |
| 125 | 0.91 | 0.90 | 0.98 |
| 126 | 0.91 | 0.90 | 0.98 |
| 127 | 0.91 | 0.90 | 0.98 |
| 128 | 0.90 | 0.88 | 0.94 |
| 129 | 0.90 | 0.88 | 0.94 |
| 130 | 0.82 | 0.88 | 0.90 |
| 131 | 0.82 | 0.88 | 0.90 |
| 132 | 0.82 | 0.88 | 0.90 |
| 133 | 0.74 | 0.82 | 0.84 |
| 134 | 0.74 | 0.82 | 0.84 |
| 135 | 0.74 | 0.82 | 0.84 |
| 136 | 0.74 | 0.82 | 0.84 |
| 137 | 0.81 | 0.82 | 0.91 |
| 138 | 0.81 | 0.82 | 0.91 |
| 139 | 0.81 | 0.82 | 0.91 |
| 140 | 0.81 | 0.80 | 0.91 |
| 141 | 0.81 | 0.80 | 0.91 |
| 142 | 0.81 | 0.80 | 0.91 |
| 143 | 0.81 | 0.80 | 0.91 |
| 144 | 0.77 | 0.82 | 0.94 |
| 145 | 0.77 | 0.82 | 0.94 |
| 146 | 0.77 | 0.82 | 0.94 |
| 147 | 0.81 | 0.80 | 0.91 |
| 148 | 0.77 | 0.82 | 0.94 |
| 149 | 0.77 | 0.82 | 0.94 |
| 150 | 0.84 | 0.82 | 0.89 |
| 151 | 0.84 | 0.82 | 0.89 |
| 152 | 0.84 | 0.82 | 0.89 |
| 153 | 0.82 | 0.80 | 0.88 |
| 154 | 0.82 | 0.80 | 0.88 |
| 155 | 0.71 | 0.69 | 0.76 |
| 156 | 0.80 | 0.77 | 0.84 |
| 157 | 0.76 | 0.74 | 0.82 |
| 158 | 0.73 | 0.70 | 0.79 |
| 159 | 0.71 | 0.69 | 0.76 |
| 160 | 0.80 | 0.77 | 0.84 |
| 161 | 0.80 | 0.77 | 0.84 |
| 162 | 0.80 | 0.77 | 0.84 |
| 163 | 0.73 | 0.70 | 0.79 |
| 164 | 0.78 | 0.79 | 0.85 |
| 165 | 0.78 | 0.79 | 0.85 |
| 166 | 0.82 | 0.77 | 0.89 |
| 167 | 0.73 | 0.70 | 0.79 |
| 168 | 0.76 | 0.74 | 0.82 |
| 169 | 0.75 | 0.73 | 0.82 |
| 170 | 0.86 | 0.83 | 0.89 |
| 171 | 0.86 | 0.83 | 0.89 |
| 172 | 0.80 | 0.80 | 0.89 |
| 173 | 0.80 | 0.80 | 0.89 |
| 174 | 0.80 | 0.80 | 0.89 |
| 175 | 0.80 | 0.80 | 0.89 |
| 176 | 0.84 | 0.88 | 0.96 |
| 177 | 0.75 | 0.73 | 0.82 |
| 178 | 0.75 | 0.73 | 0.82 |
| 179 | 0.83 | 0.83 | 0.89 |
| 180 | 0.92 | 0.92 | 0.96 |
| 181 | 0.92 | 0.92 | 0.96 |
| 182 | 0.79 | 0.79 | 0.86 |
| 183 | 0.90 | 0.89 | 0.94 |
| 184 | 0.79 | 0.79 | 0.86 |
| 185 | 0.79 | 0.79 | 0.86 |
| 186 | 0.79 | 0.79 | 0.86 |
| 187 | 0.79 | 0.79 | 0.86 |
| 188 | 0.79 | 0.79 | 0.86 |
| 189 | 1.03 | 1.02 | 1.07 |
| 190 | 1.06 | 1.02 | 1.07 |
| 191 | 1.04 | 0.98 | 1.04 |
| 192 | 1.04 | 0.98 | 1.04 |
| 193 | 1.03 | 1.02 | 1.07 |
| 194 | 1.03 | 1.02 | 1.07 |
| 195 | 0.83 | 0.83 | 0.89 |
| 196 | 0.83 | 0.83 | 0.89 |
| 197 | 1.13 | 1.12 | 1.19 |
| 198 | 1.13 | 1.12 | 1.19 |
| 199 | 1.02 | 1.02 | 1.10 |
| 200 | 1.18 | 1.24 | 1.27 |
| 201 | 1.07 | 1.12 | 1.09 |
| 202 | 1.18 | 1.24 | 1.27 |
| 203 | 1.18 | 1.24 | 1.27 |
| 204 | 1.18 | 1.24 | 1.27 |
| 205 | 1.18 | 1.24 | 1.27 |
| 206 | 0.99 | 0.97 | 1.01 |
| 207 | 1.05 | 1.02 | 1.04 |
| 208 | 1.07 | 1.09 | 1.10 |
| 209 | 1.07 | 1.09 | 1.10 |
| 210 | 1.00 | 1.00 | 1.05 |
| 211 | 1.00 | 1.00 | 1.05 |
| 212 | 1.02 | 0.96 | 1.03 |
| 214 | 1.00 | 1.00 | 1.05 |
| 215 | 0.93 | 0.93 | 0.99 |
| 216 | 0.87 | 0.92 | 0.92 |
| 217 | 0.93 | 0.93 | 0.99 |
| 218 | 0.87 | 0.92 | 0.92 |

TABLE R. — OUTPATIENT DENTAL PROFESSIONAL CHARGES
GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

PAGE 2 OF 5

| ZIP Code | GAAF | | |
|---|---|---|---|
| | Class I | Class II | Class III |
| 219 | 1.00 | 1.00 | 1.05 |
| 220 | 1.07 | 1.12 | 1.09 |
| 221 | 1.07 | 1.12 | 1.09 |
| 222 | 1.09 | 1.14 | 1.12 |
| 223 | 1.09 | 1.14 | 1.12 |
| 224 | 0.90 | 0.89 | 0.95 |
| 225 | 0.90 | 0.89 | 0.95 |
| 226 | 0.82 | 0.87 | 0.92 |
| 227 | 0.82 | 0.87 | 0.92 |
| 228 | 0.82 | 0.87 | 0.92 |
| 229 | 0.82 | 0.87 | 0.92 |
| 230 | 0.90 | 0.89 | 0.95 |
| 231 | 0.90 | 0.89 | 0.95 |
| 232 | 0.90 | 0.89 | 0.95 |
| 233 | 0.93 | 0.94 | 0.98 |
| 234 | 0.93 | 0.94 | 0.98 |
| 235 | 0.93 | 0.94 | 0.98 |
| 236 | 0.93 | 0.94 | 0.98 |
| 237 | 0.93 | 0.94 | 0.98 |
| 238 | 0.90 | 0.89 | 0.95 |
| 239 | 0.77 | 0.77 | 0.82 |
| 240 | 0.78 | 0.79 | 0.83 |
| 241 | 0.78 | 0.79 | 0.83 |
| 242 | 0.78 | 0.79 | 0.83 |
| 243 | 0.78 | 0.79 | 0.83 |
| 244 | 0.82 | 0.87 | 0.92 |
| 245 | 0.77 | 0.77 | 0.82 |
| 246 | 0.78 | 0.79 | 0.83 |
| 247 | 0.76 | 0.73 | 0.82 |
| 248 | 0.76 | 0.73 | 0.82 |
| 249 | 0.76 | 0.73 | 0.82 |
| 250 | 0.76 | 0.73 | 0.82 |
| 251 | 0.76 | 0.73 | 0.82 |
| 252 | 0.76 | 0.73 | 0.82 |
| 253 | 0.76 | 0.73 | 0.82 |
| 254 | 0.76 | 0.74 | 0.80 |
| 255 | 0.76 | 0.73 | 0.82 |
| 256 | 0.76 | 0.73 | 0.82 |
| 257 | 0.76 | 0.73 | 0.82 |
| 258 | 0.76 | 0.73 | 0.82 |
| 259 | 0.76 | 0.73 | 0.82 |
| 260 | 0.74 | 0.74 | 0.80 |
| 261 | 0.76 | 0.74 | 0.80 |
| 262 | 0.76 | 0.74 | 0.80 |
| 263 | 0.76 | 0.74 | 0.80 |
| 264 | 0.76 | 0.74 | 0.80 |
| 265 | 0.74 | 0.74 | 0.80 |
| 266 | 0.76 | 0.73 | 0.82 |
| 267 | 0.76 | 0.74 | 0.80 |
| 268 | 0.76 | 0.74 | 0.80 |
| 270 | 0.86 | 0.93 | 0.93 |
| 271 | 0.94 | 0.99 | 0.93 |
| 272 | 0.86 | 0.93 | 0.93 |
| 273 | 0.86 | 0.93 | 0.93 |
| 274 | 0.86 | 0.93 | 0.93 |
| 275 | 0.93 | 0.98 | 0.97 |
| 276 | 0.93 | 0.98 | 0.97 |
| 277 | 0.94 | 0.97 | 0.95 |
| 278 | 0.86 | 0.90 | 0.89 |
| 279 | 0.86 | 0.90 | 0.89 |
| 280 | 0.89 | 0.92 | 0.92 |
| 281 | 0.89 | 0.92 | 0.92 |
| 282 | 0.98 | 1.01 | 1.02 |
| 283 | 0.86 | 0.90 | 0.89 |
| 284 | 0.86 | 0.90 | 0.89 |
| 285 | 0.86 | 0.90 | 0.89 |
| 286 | 0.83 | 0.92 | 0.92 |
| 287 | 0.83 | 0.92 | 0.92 |
| 288 | 0.83 | 0.92 | 0.92 |
| 289 | 0.83 | 0.92 | 0.92 |
| 290 | 0.81 | 0.87 | 0.92 |
| 291 | 0.81 | 0.87 | 0.92 |
| 292 | 0.83 | 0.91 | 0.95 |
| 293 | 0.82 | 0.86 | 0.90 |
| 294 | 0.83 | 0.87 | 0.92 |
| 295 | 0.83 | 0.87 | 0.92 |
| 296 | 0.84 | 0.85 | 0.93 |
| 297 | 0.82 | 0.86 | 0.90 |
| 298 | 0.83 | 0.88 | 0.93 |
| 299 | 0.83 | 0.88 | 0.93 |
| 300 | 0.96 | 1.04 | 1.04 |
| 301 | 0.91 | 0.99 | 0.98 |
| 302 | 0.91 | 0.99 | 0.98 |
| 303 | 1.01 | 1.11 | 1.11 |
| 304 | 0.82 | 0.89 | 0.94 |
| 305 | 0.82 | 0.93 | 0.92 |
| 306 | 0.82 | 0.93 | 0.92 |
| 307 | 0.82 | 0.93 | 0.92 |
| 308 | 0.82 | 0.93 | 0.92 |
| 309 | 0.82 | 0.93 | 0.92 |
| 310 | 0.80 | 0.87 | 0.88 |
| 311 | 1.01 | 1.11 | 1.11 |
| 312 | 0.80 | 0.87 | 0.88 |
| 313 | 0.85 | 0.88 | 0.95 |
| 314 | 0.85 | 0.88 | 0.95 |
| 315 | 0.82 | 0.89 | 0.94 |
| 316 | 0.80 | 0.87 | 0.90 |
| 317 | 0.80 | 0.87 | 0.90 |
| 318 | 0.80 | 0.87 | 0.90 |
| 319 | 0.80 | 0.87 | 0.90 |
| 320 | 0.84 | 0.91 | 0.94 |
| 321 | 0.78 | 0.88 | 0.90 |
| 322 | 0.90 | 0.96 | 0.98 |
| 323 | 0.81 | 0.89 | 0.89 |
| 324 | 0.81 | 0.89 | 0.89 |
| 325 | 0.81 | 0.89 | 0.89 |
| 326 | 0.82 | 0.93 | 0.93 |
| 327 | 0.86 | 0.93 | 0.94 |
| 328 | 0.87 | 0.93 | 0.94 |
| 329 | 0.91 | 1.02 | 0.97 |
| 330 | 1.09 | 1.09 | 1.04 |
| 331 | 1.38 | 1.30 | 1.19 |
| 332 | 1.38 | 1.30 | 1.19 |
| 333 | 1.10 | 1.15 | 1.04 |
| 334 | 0.99 | 1.08 | 1.08 |
| 335 | 0.85 | 0.97 | 0.95 |
| 336 | 0.89 | 1.01 | 0.95 |
| 337 | 0.85 | 0.97 | 0.95 |
| 338 | 0.84 | 0.89 | 0.92 |
| 339 | 0.89 | 1.00 | 0.98 |
| 341 | 0.93 | 1.06 | 1.02 |
| 342 | 0.85 | 0.97 | 0.95 |
| 344 | 0.77 | 0.89 | 0.87 |
| 346 | 0.85 | 0.97 | 0.95 |
| 347 | 0.86 | 0.93 | 0.94 |
| 349 | 0.88 | 0.98 | 0.97 |
| 350 | 0.74 | 0.76 | 0.77 |
| 351 | 0.74 | 0.76 | 0.77 |
| 352 | 0.77 | 0.81 | 0.80 |
| 354 | 0.74 | 0.76 | 0.77 |
| 355 | 0.74 | 0.76 | 0.77 |
| 356 | 0.79 | 0.80 | 0.80 |
| 357 | 0.79 | 0.80 | 0.80 |
| 358 | 0.79 | 0.80 | 0.80 |
| 359 | 0.74 | 0.75 | 0.76 |
| 360 | 0.72 | 0.78 | 0.78 |
| 361 | 0.72 | 0.78 | 0.78 |
| 362 | 0.74 | 0.75 | 0.76 |
| 363 | 0.72 | 0.78 | 0.78 |
| 364 | 0.72 | 0.78 | 0.78 |
| 365 | 0.75 | 0.81 | 0.83 |
| 366 | 0.75 | 0.81 | 0.83 |
| 367 | 0.72 | 0.78 | 0.78 |
| 368 | 0.72 | 0.78 | 0.78 |
| 369 | 0.72 | 0.78 | 0.78 |
| 370 | 0.84 | 0.86 | 0.88 |
| 371 | 0.84 | 0.86 | 0.88 |
| 372 | 0.90 | 0.94 | 0.95 |
| 373 | 0.78 | 0.81 | 0.82 |
| 374 | 0.78 | 0.81 | 0.82 |
| 375 | 0.85 | 0.85 | 0.90 |
| 376 | 0.78 | 0.81 | 0.82 |
| 377 | 0.78 | 0.81 | 0.82 |
| 378 | 0.78 | 0.81 | 0.82 |
| 379 | 0.80 | 0.82 | 0.84 |
| 380 | 0.80 | 0.79 | 0.83 |
| 381 | 0.85 | 0.85 | 0.90 |
| 382 | 0.76 | 0.76 | 0.77 |
| 383 | 0.76 | 0.76 | 0.77 |
| 384 | 0.84 | 0.86 | 0.88 |
| 385 | 0.78 | 0.81 | 0.82 |
| 386 | 0.79 | 0.76 | 0.78 |
| 387 | 0.77 | 0.78 | 0.78 |
| 388 | 0.77 | 0.78 | 0.78 |
| 389 | 0.77 | 0.78 | 0.78 |
| 390 | 0.81 | 0.81 | 0.84 |
| 391 | 0.81 | 0.81 | 0.84 |
| 392 | 0.81 | 0.81 | 0.84 |
| 393 | 0.81 | 0.81 | 0.84 |
| 394 | 0.80 | 0.80 | 0.82 |
| 395 | 0.80 | 0.80 | 0.82 |
| 396 | 0.80 | 0.80 | 0.82 |
| 397 | 0.77 | 0.78 | 0.78 |
| 399 | 1.01 | 1.11 | 1.11 |
| 400 | 0.79 | 0.78 | 0.83 |
| 401 | 0.79 | 0.78 | 0.83 |
| 402 | 0.81 | 0.81 | 0.86 |
| 403 | 0.79 | 0.77 | 0.82 |
| 404 | 0.79 | 0.77 | 0.82 |
| 405 | 0.81 | 0.83 | 0.86 |
| 406 | 0.81 | 0.83 | 0.86 |
| 407 | 0.78 | 0.73 | 0.77 |
| 408 | 0.78 | 0.73 | 0.77 |
| 409 | 0.78 | 0.73 | 0.77 |
| 410 | 0.79 | 0.77 | 0.82 |
| 411 | 0.78 | 0.73 | 0.77 |
| 412 | 0.78 | 0.73 | 0.77 |
| 413 | 0.78 | 0.73 | 0.77 |
| 414 | 0.78 | 0.73 | 0.77 |
| 415 | 0.78 | 0.73 | 0.77 |
| 416 | 0.78 | 0.73 | 0.77 |
| 417 | 0.78 | 0.73 | 0.77 |
| 418 | 0.78 | 0.73 | 0.77 |
| 420 | 0.76 | 0.77 | 0.81 |
| 421 | 0.77 | 0.76 | 0.79 |
| 422 | 0.76 | 0.77 | 0.81 |
| 423 | 0.76 | 0.77 | 0.81 |
| 424 | 0.76 | 0.77 | 0.81 |
| 425 | 0.72 | 0.71 | 0.73 |
| 426 | 0.72 | 0.71 | 0.73 |
| 427 | 0.72 | 0.71 | 0.73 |
| 430 | 0.87 | 0.91 | 0.93 |
| 431 | 0.87 | 0.91 | 0.93 |
| 432 | 0.90 | 0.95 | 0.99 |
| 433 | 0.76 | 0.80 | 0.86 |
| 434 | 0.85 | 0.87 | 0.93 |
| 435 | 0.85 | 0.87 | 0.93 |

TABLE R. — OUTPATIENT DENTAL PROFESSIONAL CHARGES
GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

PAGE 3 OF 5

| ZIP Code | GAAF | | |
|---|---|---|---|
| | Class I | Class II | Class III |
| 436 | 0.85 | 0.87 | 0.93 |
| 437 | 0.76 | 0.79 | 0.86 |
| 438 | 0.76 | 0.79 | 0.86 |
| 439 | 0.76 | 0.79 | 0.86 |
| 440 | 0.87 | 0.90 | 0.95 |
| 441 | 0.92 | 0.95 | 1.01 |
| 442 | 0.87 | 0.90 | 0.95 |
| 443 | 0.87 | 0.90 | 0.95 |
| 444 | 0.82 | 0.81 | 0.88 |
| 445 | 0.82 | 0.81 | 0.88 |
| 446 | 0.76 | 0.79 | 0.86 |
| 447 | 0.85 | 0.88 | 0.93 |
| 448 | 0.77 | 0.80 | 0.86 |
| 449 | 0.78 | 0.81 | 0.88 |
| 450 | 0.82 | 0.84 | 0.90 |
| 451 | 0.82 | 0.84 | 0.90 |
| 452 | 0.87 | 0.92 | 0.95 |
| 453 | 0.80 | 0.80 | 0.88 |
| 454 | 0.83 | 0.87 | 0.90 |
| 455 | 0.80 | 0.80 | 0.88 |
| 456 | 0.82 | 0.84 | 0.90 |
| 457 | 0.76 | 0.79 | 0.86 |
| 458 | 0.76 | 0.80 | 0.86 |
| 459 | 0.87 | 0.92 | 0.95 |
| 460 | 0.82 | 0.86 | 0.89 |
| 461 | 0.82 | 0.86 | 0.89 |
| 462 | 0.86 | 0.93 | 0.93 |
| 463 | 0.90 | 0.91 | 0.95 |
| 464 | 0.90 | 0.91 | 0.95 |
| 465 | 0.81 | 0.87 | 0.89 |
| 466 | 0.81 | 0.87 | 0.89 |
| 467 | 0.76 | 0.82 | 0.85 |
| 468 | 0.76 | 0.82 | 0.85 |
| 469 | 0.82 | 0.87 | 0.89 |
| 470 | 0.79 | 0.79 | 0.85 |
| 471 | 0.79 | 0.79 | 0.85 |
| 472 | 0.79 | 0.79 | 0.85 |
| 473 | 0.82 | 0.86 | 0.89 |
| 474 | 0.79 | 0.79 | 0.85 |
| 475 | 0.74 | 0.78 | 0.85 |
| 476 | 0.74 | 0.78 | 0.85 |
| 477 | 0.74 | 0.78 | 0.85 |
| 478 | 0.79 | 0.79 | 0.85 |
| 479 | 0.82 | 0.87 | 0.89 |
| 480 | 1.05 | 0.94 | 0.94 |
| 481 | 1.06 | 0.95 | 0.94 |
| 482 | 1.06 | 0.93 | 0.94 |
| 483 | 1.07 | 0.96 | 0.96 |
| 484 | 1.01 | 0.89 | 0.88 |
| 485 | 1.01 | 0.89 | 0.88 |
| 486 | 0.91 | 0.87 | 0.86 |
| 487 | 0.91 | 0.87 | 0.86 |
| 488 | 0.94 | 0.89 | 0.89 |
| 489 | 0.94 | 0.89 | 0.89 |
| 490 | 0.88 | 0.85 | 0.89 |
| 491 | 0.88 | 0.85 | 0.89 |
| 492 | 0.88 | 0.85 | 0.89 |
| 493 | 0.86 | 0.86 | 0.90 |
| 494 | 0.86 | 0.86 | 0.90 |
| 495 | 0.86 | 0.86 | 0.90 |
| 496 | 0.86 | 0.86 | 0.90 |
| 497 | 0.86 | 0.86 | 0.90 |
| 498 | 0.83 | 0.82 | 0.87 |
| 499 | 0.83 | 0.82 | 0.87 |
| 500 | 0.83 | 0.84 | 0.85 |
| 501 | 0.83 | 0.84 | 0.85 |
| 502 | 0.83 | 0.84 | 0.85 |
| 503 | 0.83 | 0.84 | 0.85 |
| 504 | 0.73 | 0.75 | 0.78 |
| 505 | 0.69 | 0.73 | 0.75 |
| 506 | 0.73 | 0.75 | 0.78 |
| 507 | 0.73 | 0.75 | 0.78 |
| 508 | 0.69 | 0.73 | 0.75 |
| 509 | 0.83 | 0.84 | 0.85 |
| 510 | 0.69 | 0.73 | 0.75 |
| 511 | 0.84 | 0.86 | 0.87 |
| 512 | 0.69 | 0.73 | 0.75 |
| 513 | 0.69 | 0.73 | 0.75 |
| 514 | 0.69 | 0.73 | 0.75 |
| 515 | 0.69 | 0.73 | 0.75 |
| 516 | 0.69 | 0.73 | 0.75 |
| 520 | 0.75 | 0.78 | 0.80 |
| 521 | 0.73 | 0.75 | 0.78 |
| 522 | 0.75 | 0.78 | 0.80 |
| 523 | 0.75 | 0.78 | 0.80 |
| 524 | 0.75 | 0.78 | 0.80 |
| 525 | 0.75 | 0.78 | 0.80 |
| 526 | 0.75 | 0.78 | 0.80 |
| 527 | 0.75 | 0.78 | 0.80 |
| 528 | 0.75 | 0.78 | 0.80 |
| 530 | 0.88 | 0.89 | 0.93 |
| 531 | 0.90 | 0.90 | 0.91 |
| 532 | 0.91 | 0.91 | 0.92 |
| 534 | 0.92 | 0.94 | 0.93 |
| 535 | 0.80 | 0.82 | 0.85 |
| 537 | 0.93 | 0.96 | 0.96 |
| 538 | 0.80 | 0.82 | 0.85 |
| 539 | 0.84 | 0.87 | 0.89 |
| 540 | 0.79 | 0.81 | 0.84 |
| 541 | 0.82 | 0.82 | 0.89 |
| 542 | 0.82 | 0.82 | 0.89 |
| 543 | 0.89 | 0.94 | 0.97 |
| 544 | 0.84 | 0.85 | 0.89 |
| 545 | 0.79 | 0.81 | 0.84 |
| 546 | 0.80 | 0.81 | 0.85 |
| 547 | 0.83 | 0.83 | 0.88 |
| 548 | 0.79 | 0.81 | 0.84 |
| 549 | 0.85 | 0.88 | 0.90 |
| 550 | 0.92 | 0.95 | 0.94 |
| 551 | 0.98 | 0.98 | 1.01 |
| 553 | 0.95 | 0.99 | 0.98 |
| 554 | 1.04 | 1.04 | 1.03 |
| 555 | 0.95 | 0.99 | 0.98 |
| 556 | 0.84 | 0.80 | 0.84 |
| 557 | 0.84 | 0.80 | 0.84 |
| 558 | 0.83 | 0.83 | 0.87 |
| 559 | 0.85 | 0.83 | 0.89 |
| 560 | 0.80 | 0.79 | 0.85 |
| 561 | 0.78 | 0.76 | 0.81 |
| 562 | 0.78 | 0.76 | 0.81 |
| 563 | 0.83 | 0.82 | 0.86 |
| 564 | 0.83 | 0.82 | 0.86 |
| 565 | 0.84 | 0.80 | 0.84 |
| 566 | 0.84 | 0.80 | 0.84 |
| 567 | 0.84 | 0.80 | 0.84 |
| 570 | 0.81 | 0.77 | 0.80 |
| 571 | 0.80 | 0.79 | 0.80 |
| 572 | 0.81 | 0.77 | 0.80 |
| 573 | 0.81 | 0.77 | 0.80 |
| 574 | 0.81 | 0.77 | 0.80 |
| 575 | 0.81 | 0.77 | 0.80 |
| 576 | 0.81 | 0.77 | 0.80 |
| 577 | 0.81 | 0.77 | 0.80 |
| 580 | 0.78 | 0.75 | 0.81 |
| 581 | 0.83 | 0.80 | 0.85 |
| 582 | 0.78 | 0.75 | 0.81 |
| 583 | 0.78 | 0.75 | 0.81 |
| 584 | 0.78 | 0.75 | 0.81 |
| 585 | 0.78 | 0.75 | 0.81 |
| 586 | 0.78 | 0.75 | 0.81 |
| 587 | 0.78 | 0.75 | 0.81 |
| 588 | 0.78 | 0.75 | 0.81 |
| 590 | 0.89 | 0.86 | 0.88 |
| 591 | 0.90 | 0.92 | 0.92 |
| 592 | 0.89 | 0.86 | 0.88 |
| 593 | 0.89 | 0.86 | 0.88 |
| 594 | 0.89 | 0.86 | 0.88 |
| 595 | 0.89 | 0.86 | 0.88 |
| 596 | 0.89 | 0.86 | 0.88 |
| 597 | 0.89 | 0.86 | 0.88 |
| 598 | 0.89 | 0.86 | 0.88 |
| 599 | 0.89 | 0.86 | 0.88 |
| 600 | 1.01 | 1.05 | 1.06 |
| 601 | 0.97 | 1.01 | 1.02 |
| 602 | 1.01 | 1.06 | 1.05 |
| 603 | 1.01 | 1.06 | 1.05 |
| 604 | 0.94 | 0.96 | 0.98 |
| 605 | 0.98 | 1.01 | 1.03 |
| 606 | 1.07 | 1.05 | 1.06 |
| 607 | 1.07 | 1.05 | 1.06 |
| 608 | 1.07 | 1.05 | 1.06 |
| 609 | 0.80 | 0.83 | 0.85 |
| 610 | 0.82 | 0.82 | 0.87 |
| 611 | 0.88 | 0.93 | 0.95 |
| 612 | 0.82 | 0.82 | 0.87 |
| 613 | 0.80 | 0.81 | 0.85 |
| 614 | 0.80 | 0.81 | 0.85 |
| 615 | 0.80 | 0.81 | 0.85 |
| 616 | 0.86 | 0.88 | 0.84 |
| 617 | 0.83 | 0.81 | 0.87 |
| 618 | 0.83 | 0.83 | 0.87 |
| 619 | 0.78 | 0.79 | 0.85 |
| 620 | 0.78 | 0.83 | 0.83 |
| 622 | 0.79 | 0.82 | 0.84 |
| 623 | 0.74 | 0.76 | 0.81 |
| 624 | 0.73 | 0.73 | 0.79 |
| 625 | 0.74 | 0.76 | 0.81 |
| 626 | 0.74 | 0.76 | 0.81 |
| 627 | 0.83 | 0.87 | 0.91 |
| 628 | 0.73 | 0.73 | 0.79 |
| 629 | 0.79 | 0.82 | 0.84 |
| 630 | 0.89 | 0.91 | 0.92 |
| 631 | 0.90 | 0.92 | 0.95 |
| 633 | 0.89 | 0.91 | 0.92 |
| 634 | 0.89 | 0.91 | 0.92 |
| 635 | 0.71 | 0.69 | 0.74 |
| 636 | 0.75 | 0.76 | 0.77 |
| 637 | 0.75 | 0.76 | 0.77 |
| 638 | 0.73 | 0.74 | 0.75 |
| 639 | 0.73 | 0.74 | 0.75 |
| 640 | 0.86 | 0.89 | 0.89 |
| 641 | 0.86 | 0.89 | 0.89 |
| 644 | 0.71 | 0.69 | 0.74 |
| 645 | 0.71 | 0.69 | 0.74 |
| 646 | 0.71 | 0.69 | 0.74 |
| 647 | 0.73 | 0.74 | 0.75 |
| 648 | 0.73 | 0.74 | 0.75 |
| 649 | 0.86 | 0.89 | 0.89 |
| 650 | 0.78 | 0.83 | 0.85 |
| 651 | 0.78 | 0.83 | 0.85 |
| 652 | 0.78 | 0.83 | 0.85 |
| 653 | 0.73 | 0.74 | 0.75 |
| 654 | 0.73 | 0.74 | 0.75 |
| 655 | 0.73 | 0.74 | 0.75 |
| 656 | 0.73 | 0.74 | 0.75 |
| 657 | 0.73 | 0.74 | 0.75 |
| 658 | 0.81 | 0.82 | 0.86 |

## TABLE R. — OUTPATIENT DENTAL PROFESSIONAL CHARGES
## GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

PAGE 4 OF 5

| ZIP Code | GAAF | | |
|---|---|---|---|
| | Class I | Class II | Class III |
| 660 | 0.84 | 0.86 | 0.85 |
| 661 | 0.84 | 0.86 | 0.85 |
| 662 | 0.91 | 0.97 | 0.98 |
| 664 | 0.84 | 0.80 | 0.83 |
| 665 | 0.84 | 0.80 | 0.83 |
| 666 | 0.88 | 0.85 | 0.87 |
| 667 | 0.77 | 0.76 | 0.78 |
| 668 | 0.77 | 0.76 | 0.78 |
| 669 | 0.77 | 0.77 | 0.80 |
| 670 | 0.81 | 0.78 | 0.81 |
| 671 | 0.81 | 0.78 | 0.81 |
| 672 | 0.89 | 0.90 | 0.89 |
| 673 | 0.77 | 0.76 | 0.78 |
| 674 | 0.77 | 0.77 | 0.80 |
| 675 | 0.77 | 0.77 | 0.80 |
| 676 | 0.77 | 0.77 | 0.80 |
| 677 | 0.77 | 0.77 | 0.80 |
| 678 | 0.77 | 0.77 | 0.80 |
| 679 | 0.77 | 0.77 | 0.80 |
| 680 | 0.76 | 0.79 | 0.80 |
| 681 | 0.76 | 0.79 | 0.80 |
| 683 | 0.72 | 0.75 | 0.77 |
| 684 | 0.72 | 0.75 | 0.77 |
| 685 | 0.74 | 0.80 | 0.84 |
| 686 | 0.72 | 0.75 | 0.77 |
| 687 | 0.72 | 0.75 | 0.77 |
| 688 | 0.72 | 0.75 | 0.77 |
| 689 | 0.72 | 0.75 | 0.77 |
| 690 | 0.72 | 0.75 | 0.77 |
| 691 | 0.72 | 0.75 | 0.77 |
| 692 | 0.72 | 0.75 | 0.77 |
| 693 | 0.72 | 0.75 | 0.77 |
| 700 | 0.78 | 0.88 | 0.89 |
| 701 | 0.82 | 0.89 | 0.90 |
| 703 | 0.76 | 0.84 | 0.88 |
| 704 | 0.78 | 0.88 | 0.89 |
| 705 | 0.76 | 0.84 | 0.88 |
| 706 | 0.76 | 0.84 | 0.88 |
| 707 | 0.77 | 0.86 | 0.90 |
| 708 | 0.77 | 0.86 | 0.90 |
| 710 | 0.79 | 0.83 | 0.87 |
| 711 | 0.79 | 0.83 | 0.87 |
| 712 | 0.79 | 0.83 | 0.87 |
| 713 | 0.79 | 0.83 | 0.87 |
| 714 | 0.79 | 0.83 | 0.87 |
| 716 | 0.75 | 0.74 | 0.77 |
| 717 | 0.75 | 0.74 | 0.77 |
| 718 | 0.75 | 0.74 | 0.77 |
| 719 | 0.75 | 0.74 | 0.77 |
| 720 | 0.82 | 0.81 | 0.81 |
| 721 | 0.82 | 0.81 | 0.81 |
| 722 | 0.82 | 0.81 | 0.81 |
| 723 | 0.75 | 0.74 | 0.77 |
| 724 | 0.82 | 0.80 | 0.82 |
| 725 | 0.82 | 0.80 | 0.82 |
| 726 | 0.82 | 0.80 | 0.82 |
| 727 | 0.82 | 0.80 | 0.82 |
| 728 | 0.75 | 0.74 | 0.77 |
| 729 | 0.83 | 0.79 | 0.83 |
| 730 | 0.84 | 0.84 | 0.88 |
| 731 | 0.84 | 0.84 | 0.88 |
| 733 | 0.94 | 1.03 | 1.04 |
| 734 | 0.79 | 0.76 | 0.79 |
| 735 | 0.79 | 0.76 | 0.79 |
| 736 | 0.81 | 0.79 | 0.83 |
| 737 | 0.81 | 0.79 | 0.83 |
| 738 | 0.81 | 0.79 | 0.83 |
| 739 | 0.81 | 0.79 | 0.83 |
| 740 | 0.83 | 0.85 | 0.88 |
| 741 | 0.83 | 0.85 | 0.88 |
| 743 | 0.77 | 0.73 | 0.77 |
| 744 | 0.77 | 0.73 | 0.77 |
| 745 | 0.79 | 0.76 | 0.79 |
| 746 | 0.81 | 0.79 | 0.83 |
| 747 | 0.79 | 0.76 | 0.79 |
| 748 | 0.77 | 0.73 | 0.77 |
| 749 | 0.79 | 0.76 | 0.79 |
| 750 | 0.95 | 1.07 | 1.03 |
| 751 | 0.95 | 1.07 | 1.03 |
| 752 | 0.96 | 1.09 | 1.09 |
| 753 | 0.96 | 1.09 | 1.09 |
| 754 | 0.77 | 0.83 | 0.88 |
| 755 | 0.77 | 0.83 | 0.88 |
| 756 | 0.77 | 0.83 | 0.88 |
| 757 | 0.77 | 0.83 | 0.88 |
| 758 | 0.77 | 0.83 | 0.88 |
| 759 | 0.77 | 0.83 | 0.88 |
| 760 | 0.89 | 0.98 | 0.97 |
| 761 | 0.89 | 0.98 | 0.97 |
| 762 | 0.85 | 0.92 | 0.94 |
| 763 | 0.85 | 0.92 | 0.94 |
| 764 | 0.84 | 0.90 | 0.95 |
| 765 | 0.78 | 0.83 | 0.88 |
| 766 | 0.84 | 0.90 | 0.95 |
| 767 | 0.84 | 0.90 | 0.95 |
| 768 | 0.79 | 0.84 | 0.87 |
| 769 | 0.79 | 0.84 | 0.87 |
| 770 | 0.96 | 1.04 | 1.05 |
| 772 | 0.96 | 1.04 | 1.05 |
| 773 | 0.89 | 0.99 | 1.00 |
| 774 | 0.89 | 0.99 | 1.00 |
| 775 | 0.89 | 0.99 | 1.00 |
| 776 | 0.78 | 0.84 | 0.86 |
| 777 | 0.78 | 0.84 | 0.86 |
| 778 | 0.78 | 0.83 | 0.88 |
| 779 | 0.77 | 0.82 | 0.87 |
| 780 | 0.87 | 0.89 | 0.92 |
| 781 | 0.77 | 0.82 | 0.87 |
| 782 | 0.87 | 0.89 | 0.92 |
| 783 | 0.81 | 0.88 | 0.88 |
| 784 | 0.81 | 0.88 | 0.88 |
| 785 | 0.81 | 0.88 | 0.88 |
| 786 | 0.94 | 1.03 | 1.04 |
| 787 | 0.94 | 1.03 | 1.04 |
| 788 | 0.79 | 0.84 | 0.87 |
| 789 | 0.94 | 1.03 | 1.04 |
| 790 | 0.80 | 0.86 | 0.87 |
| 791 | 0.80 | 0.86 | 0.87 |
| 792 | 0.80 | 0.86 | 0.87 |
| 793 | 0.81 | 0.87 | 0.88 |
| 794 | 0.81 | 0.87 | 0.88 |
| 795 | 0.81 | 0.87 | 0.88 |
| 796 | 0.81 | 0.87 | 0.88 |
| 797 | 0.79 | 0.84 | 0.87 |
| 798 | 0.79 | 0.84 | 0.87 |
| 799 | 0.91 | 0.92 | 0.87 |
| 800 | 1.05 | 1.08 | 1.07 |
| 801 | 1.05 | 1.09 | 1.07 |
| 802 | 1.04 | 1.05 | 1.04 |
| 803 | 1.05 | 1.08 | 1.07 |
| 804 | 1.05 | 1.08 | 1.07 |
| 805 | 0.91 | 0.96 | 0.97 |
| 806 | 0.91 | 0.96 | 0.97 |
| 807 | 0.91 | 0.96 | 0.97 |
| 808 | 0.99 | 1.04 | 1.00 |
| 809 | 0.99 | 1.04 | 1.00 |
| 810 | 0.99 | 1.04 | 1.00 |
| 811 | 0.85 | 0.89 | 0.91 |
| 812 | 0.85 | 0.89 | 0.91 |
| 813 | 0.85 | 0.89 | 0.91 |
| 814 | 0.85 | 0.89 | 0.91 |
| 815 | 0.85 | 0.89 | 0.91 |
| 816 | 0.97 | 1.09 | 1.07 |
| 820 | 0.80 | 0.76 | 0.79 |
| 821 | 0.80 | 0.76 | 0.79 |
| 822 | 0.80 | 0.76 | 0.79 |
| 823 | 0.80 | 0.76 | 0.79 |
| 824 | 0.80 | 0.76 | 0.79 |
| 825 | 0.80 | 0.76 | 0.79 |
| 826 | 0.80 | 0.76 | 0.79 |
| 827 | 0.80 | 0.76 | 0.79 |
| 828 | 0.80 | 0.76 | 0.79 |
| 829 | 0.80 | 0.76 | 0.79 |
| 830 | 0.80 | 0.76 | 0.79 |
| 831 | 0.80 | 0.76 | 0.79 |
| 832 | 0.83 | 0.78 | 0.81 |
| 833 | 0.91 | 0.87 | 0.87 |
| 834 | 0.83 | 0.78 | 0.81 |
| 835 | 0.91 | 0.87 | 0.87 |
| 836 | 0.91 | 0.87 | 0.87 |
| 837 | 0.94 | 0.90 | 0.92 |
| 838 | 0.91 | 0.87 | 0.87 |
| 840 | 0.81 | 0.78 | 0.81 |
| 841 | 0.85 | 0.82 | 0.85 |
| 842 | 0.77 | 0.75 | 0.77 |
| 843 | 0.77 | 0.75 | 0.77 |
| 844 | 0.77 | 0.75 | 0.77 |
| 845 | 0.80 | 0.76 | 0.81 |
| 846 | 0.80 | 0.76 | 0.81 |
| 847 | 0.80 | 0.76 | 0.81 |
| 850 | 1.00 | 1.04 | 0.99 |
| 852 | 0.98 | 1.02 | 0.99 |
| 853 | 0.98 | 1.02 | 0.99 |
| 855 | 0.90 | 0.91 | 0.92 |
| 856 | 0.95 | 0.98 | 0.96 |
| 857 | 0.95 | 0.98 | 0.96 |
| 859 | 0.90 | 0.91 | 0.92 |
| 860 | 0.93 | 0.92 | 0.95 |
| 863 | 0.90 | 0.91 | 0.92 |
| 864 | 0.90 | 0.91 | 0.92 |
| 865 | 0.93 | 0.92 | 0.95 |
| 870 | 0.96 | 0.94 | 0.97 |
| 871 | 0.96 | 0.96 | 0.98 |
| 872 | 0.96 | 0.94 | 0.97 |
| 873 | 0.96 | 0.94 | 0.97 |
| 874 | 0.96 | 0.94 | 0.97 |
| 875 | 0.96 | 0.94 | 0.97 |
| 877 | 0.96 | 0.94 | 0.97 |
| 878 | 0.91 | 0.89 | 0.93 |
| 879 | 0.91 | 0.89 | 0.93 |
| 880 | 0.91 | 0.89 | 0.93 |
| 881 | 0.91 | 0.89 | 0.93 |
| 882 | 0.91 | 0.89 | 0.93 |
| 883 | 0.91 | 0.89 | 0.93 |
| 884 | 0.96 | 0.94 | 0.97 |
| 885 | 0.91 | 0.92 | 0.87 |
| 889 | 1.03 | 1.02 | 0.96 |
| 890 | 1.03 | 1.02 | 0.96 |
| 891 | 1.03 | 1.02 | 0.96 |
| 893 | 1.11 | 1.17 | 1.06 |
| 894 | 1.11 | 1.17 | 1.06 |
| 895 | 1.11 | 1.17 | 1.06 |
| 897 | 1.11 | 1.17 | 1.06 |
| 898 | 1.11 | 1.17 | 1.06 |
| 900 | 1.33 | 1.21 | 1.13 |
| 901 | 1.33 | 1.21 | 1.13 |
| 902 | 1.32 | 1.29 | 1.17 |

TABLE R. — OUTPATIENT DENTAL PROFESSIONAL CHARGES
GEOGRAPHIC AREA ADJUSTMENT FACTORS (GAAFS) BY ZIP CODE

PAGE 5 OF 5

| ZIP Code | GAAF | | |
|---|---|---|---|
| | Class I | Class II | Class III |
| 903 | 1.32 | 1.29 | 1.17 |
| 904 | 1.32 | 1.29 | 1.17 |
| 905 | 1.22 | 1.15 | 1.07 |
| 906 | 1.22 | 1.15 | 1.07 |
| 907 | 1.22 | 1.15 | 1.07 |
| 908 | 1.22 | 1.15 | 1.07 |
| 910 | 1.15 | 1.12 | 1.07 |
| 911 | 1.19 | 1.15 | 1.10 |
| 912 | 1.15 | 1.12 | 1.07 |
| 913 | 1.18 | 1.21 | 1.09 |
| 914 | 1.23 | 1.21 | 1.10 |
| 915 | 1.18 | 1.21 | 1.09 |
| 916 | 1.23 | 1.21 | 1.10 |
| 917 | 1.23 | 1.08 | 1.03 |
| 918 | 1.23 | 1.08 | 1.03 |
| 919 | 1.11 | 1.16 | 1.05 |
| 920 | 1.11 | 1.16 | 1.05 |
| 921 | 1.11 | 1.15 | 1.04 |
| 922 | 1.15 | 1.07 | 1.01 |
| 923 | 1.15 | 1.07 | 1.01 |
| 924 | 1.15 | 1.07 | 1.01 |
| 925 | 1.15 | 1.07 | 1.01 |
| 926 | 1.24 | 1.22 | 1.11 |
| 927 | 1.24 | 1.22 | 1.11 |
| 928 | 1.24 | 1.22 | 1.11 |
| 930 | 1.17 | 1.16 | 1.04 |
| 931 | 1.18 | 1.29 | 1.13 |
| 932 | 1.10 | 1.06 | 0.98 |
| 933 | 1.10 | 1.06 | 0.98 |
| 934 | 1.08 | 1.10 | 0.99 |
| 935 | 1.10 | 1.06 | 0.98 |
| 936 | 1.06 | 1.04 | 0.94 |
| 937 | 1.06 | 1.04 | 0.94 |
| 938 | 1.06 | 1.04 | 0.94 |
| 939 | 1.15 | 1.20 | 1.07 |
| 940 | 1.27 | 1.31 | 1.17 |
| 941 | 1.25 | 1.31 | 1.19 |
| 942 | 1.12 | 1.12 | 0.99 |
| 943 | 1.36 | 1.41 | 1.30 |
| 944 | 1.25 | 1.29 | 1.18 |
| 945 | 1.22 | 1.26 | 1.11 |
| 946 | 1.22 | 1.26 | 1.11 |
| 947 | 1.22 | 1.26 | 1.11 |
| 948 | 1.22 | 1.26 | 1.11 |
| 949 | 1.22 | 1.26 | 1.11 |
| 950 | 1.30 | 1.28 | 1.13 |
| 951 | 1.30 | 1.28 | 1.13 |
| 952 | 1.09 | 1.08 | 0.97 |
| 953 | 1.09 | 1.08 | 0.97 |
| 954 | 1.06 | 1.15 | 1.01 |
| 955 | 1.06 | 1.15 | 1.01 |
| 956 | 1.11 | 1.10 | 0.99 |
| 957 | 1.11 | 1.10 | 0.99 |
| 958 | 1.12 | 1.12 | 0.99 |
| 959 | 1.06 | 1.15 | 1.01 |
| 960 | 1.06 | 1.15 | 1.01 |
| 961 | 1.06 | 1.15 | 1.01 |
| 967 | 1.12 | 1.01 | 1.01 |
| 968 | 1.12 | 1.01 | 1.01 |
| 969 | 1.12 | 1.01 | 1.01 |
| 970 | 1.14 | 1.01 | 0.98 |
| 971 | 1.14 | 1.01 | 0.98 |
| 972 | 1.15 | 1.01 | 0.95 |
| 973 | 1.07 | 0.97 | 0.96 |
| 974 | 1.09 | 0.96 | 0.94 |
| 975 | 1.09 | 0.96 | 0.94 |
| 976 | 1.09 | 0.96 | 0.94 |
| 977 | 1.09 | 0.96 | 0.94 |
| 978 | 1.03 | 0.90 | 0.91 |
| 979 | 1.03 | 0.90 | 0.91 |
| 980 | 1.32 | 1.22 | 1.13 |
| 981 | 1.30 | 1.24 | 1.15 |
| 982 | 1.23 | 1.12 | 1.08 |
| 983 | 1.26 | 1.17 | 1.10 |
| 984 | 1.26 | 1.17 | 1.10 |
| 985 | 1.20 | 1.09 | 1.04 |
| 986 | 1.18 | 1.09 | 1.03 |
| 988 | 1.17 | 1.10 | 1.03 |
| 989 | 1.17 | 1.10 | 1.03 |
| 990 | 1.15 | 1.07 | 1.00 |
| 991 | 1.15 | 1.07 | 1.00 |
| 992 | 1.15 | 1.07 | 1.00 |
| 993 | 1.17 | 1.10 | 1.03 |
| 994 | 1.17 | 1.10 | 1.03 |
| 995 | 1.51 | 1.39 | 1.21 |
| 996 | 1.52 | 1.37 | 1.20 |
| 997 | 1.51 | 1.39 | 1.21 |
| 998 | 1.52 | 1.37 | 1.20 |
| 999 | 1.47 | 1.38 | 1.17 |

TABLE S. — PROFESSIONAL SERVICES CONVERSION FACTORS

| Category | Conversion Factor |
|---|---|
| Allergy Immunotherapy | $50.29 |
| Allergy Testing | $66.19 |
| Anesthesia | $80.29 |
| Cardiovascular | $113.14 |
| Chiropractor | $63.89 |
| Consults | $62.53 |
| Emergency Room Visits | $105.87 |
| Hearing/Speech Exams | $68.85 |
| Immunizations | $113.64 |
| Inpatient Visits | $78.48 |
| Maternity — Cesarean Deliveries | $79.59 |
| Maternity — Non-Deliveries | $128.86 |
| Maternity — Normal Deliveries | $73.22 |
| Miscellaneous Medical | $87.24 |
| Office/Home/Urgent Care Visits | $55.05 |
| OP Psych./Alc. & Drug Abuse | $54.93 |
| Pathology | $98.38 |
| Physical Exams | $52.61 |
| Physical Medicine | $70.01 |
| Radiology | $112.74 |
| Surgery | $132.82 |
| Therapeutic Injections | $167.00 |
| Vision Exams | $42.51 |
| Well Baby Exams | $46.12 |

## Supplementary Table 1
## Reasonable Charges Data Sources - V2.0

V2p0 PR Data Sources.xls - By Charge Type

Page 1 of 6

| Charge Type | Paragraph | Subject | Data Source | Edition |
|---|---|---|---|---|
| Inpt | (b)(2) | per diem charges | CPI-U, inpatient hospital services component, seasonally adjusted | Jan 2003, as of Feb 2003 |
| Inpt | (b)(2) | per diem charges | MedPAR file | FY 2001 |
| Inpt | (b)(2) | per diem charges | MedStat claims database | 1999 |
| Inpt | (b)(2)(i) | charge component percentages: R&B, ancillary | MedPAR file | FY 2001 |
| Inpt | (b)(2)(ii) | charge ratios: standard R&B, ICU R&B | MedPAR file | FY 2001 |
| Inpt | (b)(2)(iii) | 80th percentile | MedPAR file | FY 2001 |
| Inpt | (b)(2)(iv) | trending forward | CPI-U, inpatient hospital services component, seasonally adjusted | Jan 2003, as of Feb 2003 |
| Inpt | (b)(3) | GAAFs | MedPAR file | FY 2001 |
| Inpt | (b)(3) | GAAFs | MedStat claims database | 1999 |
| Inpt | (b)(3) | GAAFs | VA nationwide discharges | FY 2002 |
| | | | | |
| SNF | (c)(2) | per diem charge | MedPAR skilled nursing facility file | FY 2000 |
| SNF | (c)(2)(i) | 80th percentile adjustment factor | MedPAR skilled nursing facility file | FY 2000 |
| SNF | (c)(2)(ii) | trending forward | CPI-U, inpatient hospital services component, seasonally adjusted | Jan 2003, as of Feb 2003 |
| SNF | (c)(3) | GAAFs | MedPAR skilled nursing facility file | FY 2000 |
| | | | | |
| PH | (d)(2) | per diem charge | Medicare SAF 5% Sample, outpatient facility component | CY 2001 |
| PH | (d)(2)(ii) | trending forward | CPI-U, outpatient hospital services component, seasonally adjusted | Jan 2003, as of Feb 2003 |
| | | | | |
| Opt | (e)(3)(i) | 80th percentile charges, codes with APCs | Medicare APC payment amount | 2003 |
| Opt | (e)(3)(i) | 80th percentile charges, codes with APCs | Medicare SAF 5% Sample, outpatient facility component | CY 2001 |
| Opt | (e)(3)(ii) | 80th percentile charges, codes with no APC | MDR database, outpatient facility component | July 2002 |
| Opt | (e)(3)(ii) | 80th percentile charges, codes with no APC | Medicare SAF 5% Sample, outpatient facility component | CY 2001 |
| Opt | (e)(3)(ii) | 80th percentile charges, codes with no APC | MedStat claims database | 1999 |
| Opt | (e)(3)(iii) | trending forward | CPI-U, outpatient hospital services component, seasonally adjusted | Jan 2003, as of Feb 2003 |
| Opt | (e)(4) | GAAFs | MDR database | July 2002 |
| Opt | (e)(4) | GAAFs | Milliman USA, Inc., Health Cost Guidelines | 2002 |
| | | | | |
| Phys | (f)(2)(i)(A) | RVUs, codes with Medicare RVUs, work expense | Medicare Geographic Practice Cost Index, work expense | 2003 |
| Phys | (f)(2)(i)(A) | RVUs, codes with Medicare RVUs, work expense | Medicare Physician Fee Schedule RVUs, work expense | 2003 |
| Phys | (f)(2)(i)(B) | RVUs, codes with Medicare RVUs, practice expense | Medicare Geographic Practice Cost Index, practice expense | 2003 |
| Phys | (f)(2)(i)(B) | RVUs, codes with Medicare RVUs, practice expense | Medicare Physician Fee Schedule RVUs, practice expense | 2003 |
| Phys | (f)(2)(ii) | RVUs, codes with no Medicare RVUs | Ingenix/St. Anthony's RBRVS | 2003 |
| Phys | (f)(2)(ii) | RVUs, codes with no Medicare RVUs | MDR database | Aug 2001 |
| Phys | (f)(2)(ii) | RVUs, codes with no Medicare RVUs | Medicare SAF 5% Sample, Part B component | CY 2001 |
| Phys | (f)(2)(ii) | RVUs, codes with no Medicare RVUs | Prevailing Healthcare Charges System | May 2002 |
| Phys | (f)(2)(iii) | RVUs, unlisted procedures | VA nationwide distribution of procedures and services | FY 2002 |
| Phys | (f)(2)(iv) | RVU GAAFs, codes with no Medicare RVUs | Medicare Geographic Practice Cost Index, practice expense | 2003 |
| Phys | (f)(2)(iv) | RVU GAAFs, codes with no Medicare RVUs | Medicare Geographic Practice Cost Index, work expense | 2003 |
| Phys | (f)(3) | conversion factors, 80th percentile, geographically adjusted | MDR database | Aug 2001 |
| Phys | (f)(3) | conversion factors, 80th percentile, geographically adjusted | Milliman USA, Inc., Health Cost Guidelines fee survey | 2002 |
| Phys | (f)(3)(ii) | trending forward | CPI-U, physicians' services component, seasonally adjusted | Jan 2003, as of Feb 2003 |
| Phys | (f)(4) | modifiers: charge adjustment factors | Medicare SAF 5% Sample, Part B component | CY 2001 |
| | | | | |
| Anes | (g)(2) | RVUs | CMS anesthesia base units | 2003 |
| Anes | (g)(2) | RVUs for unlisted procedures | VA nationwide distribution of procedures and services | FY 2002 |

## Supplementary Table 1

## Reasonable Charges Data Sources - V2.0

V2p0 PR Data Sources.xls - By Charge Type

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| Charge Type | Paragraph | Subject | Data Source | Edition |
|---|---|---|---|---|
| Anes | (g)(3)(i) | conversion factor, nationwide | CMS anesthesia base units | 2003 |
| Anes | (g)(3)(i) | conversion factor, nationwide | MDR database | Sept 2001 |
| Anes | (g)(3)(i) | conversion factor, nationwide | Medicare SAF 5% Sample, Part B component | CY 2001 |
| Anes | (g)(3)(i) | conversion factor, nationwide | Milliman USA, Inc., Health Cost Guidelines | 2002 |
| Anes | (g)(3)(ii) | trending forward | CPI-U, physicians' services component, seasonally adjusted | Jan 2003, as of Feb 2003 |
| | | | | |
| Dent | (h)(2) | charges, 80th percentile, nationwide | CPI-U, dental services component, seasonally adjusted | Jan 2003, as of Feb 2003 |
| Dent | (h)(2) | charges, 80th percentile, nationwide | Ingenix Comprehensive Healthcare Payment System, Dental UCR Module | Sept 2002 |
| Dent | (h)(2) | charges, 80th percentile, nationwide | National Dental Advisory Service nationwide pricing index | 2003 |
| Dent | (h)(2) | charges, 80th percentile, nationwide | Prevailing Healthcare Charges System | May 2002 |
| Dent | (h)(2)(ii) | charges, 80th percentile, nationwide, for unlisted procedures | Prevailing Healthcare Charges System | May 2002 |
| Dent | (h)(2)(iii) | trending forward | CPI-U, dental services component, seasonally adjusted | Jan 2003, as of Feb 2003 |
| Dent | (h)(3) | GAAFs | Ingenix Comprehensive Healthcare Payment System, Dental UCR Module | Sept 2002 |
| Dent | (h)(3) | GAAFs | Milliman USA, Inc., Dental Health Cost Guidelines | 2002 |
| | | | | |
| Lab | (i)(2)(i) | RVUs, codes with Medicare-based RVUs | MDR database | Aug 2001 |
| Lab | (i)(2)(i) | RVUs, codes with Medicare-based RVUs | Medicare Clinical Diagnostic Laboratory Fee Schedule | 2003 |
| Lab | (i)(2)(i) | RVUs, codes with Medicare-based RVUs | Medicare conversion factor | 2003 |
| Lab | (i)(2)(i) | RVUs, codes with Medicare-based RVUs | Medicare Physician Fee Schedule payment levels | 2003 |
| Lab | (i)(2)(ii) | RVUs, codes with no Medicare-based RVUs | Ingenix/St. Anthony's RBRVS | 2003 |
| Lab | (i)(2)(ii) | RVUs, codes with no Medicare-based RVUs | MDR database | Aug 2001 |
| Lab | (i)(2)(ii) | RVUs, codes with no Medicare-based RVUs | Medicare SAF 5% Sample, Part B component | CY 2001 |
| Lab | (i)(2)(ii) | RVUs, codes with no Medicare-based RVUs | Prevailing Healthcare Charges System | May 2002 |
| Lab | (i)(2)(iii) | RVUs, unlisted procedures | VA nationwide distribution of procedures and services | FY 2002 |
| Lab | (i)(2)(iv) | RVU GAAFs, codes with no Medicare-based RVUs | Medicare Geographic Practice Cost Index, practice expense | 2003 |
| Lab | (i)(2)(iv) | RVU GAAFs, codes with no Medicare-based RVUs | Medicare Geographic Practice Cost Index, work expense | 2003 |
| Lab | (i)(3) | conversion factors, 80th percentile, geographically adjusted | MDR database | Aug 2001 |
| Lab | (i)(3) | conversion factors, 80th percentile, geographically adjusted | Milliman USA, Inc., Health Cost Guidelines fee survey | 2002 |
| Lab | (i)(3)(ii) | trending forward | CPI-U, physicians' services component, seasonally adjusted | Jan 2003, as of Feb 2003 |
| | | | | |
| Obs | (j)(2)(i) | charges, 80th percentile, nationwide | Medicare SAF 5% Sample, outpatient facility component | CY 2001 |
| Obs | (j)(2)(ii) | trending forward | CPI-U, outpatient hospital services component, seasonally adjusted | Jan 2003, as of Feb 2003 |
| | | | | |
| Amb | (k)(2)(i) | base charge, 80th percentile, nationwide | Medicare SAF 5% Sample, outpatient facility component | CY 2001 |
| Amb | (k)(2)(ii) | mileage charge, 80th percentile, nationwide | Medicare SAF 5% Sample, outpatient facility component | CY 2001 |
| Amb | (k)(2)(iii) | trending forward | CPI-U, outpatient hospital services component, seasonally adjusted | Jan 2003, as of Feb 2003 |
| | | | | |
| DME | (l)(2)(i) | RVUs | Ingenix/St. Anthony's RBRVS, practice expense RVUs | 2003 |
| DME | (l)(2)(i) | RVUs | Medicare DME Fee Schedule | 2003 |
| DME | (l)(2)(i) | RVUs | Medicare Parenteral and Enteral Nutrition Fee Schedule | 2003 |
| DME | (l)(2)(ii) | charge amounts | Medicare SAF 5% Sample, DME component | CY 2001 |
| DME | (l)(2)(ii) | charge amounts | Medicare SAF 5% Sample, Part B component | CY 2001 |
| DME | (l)(2)(iii) | charge ratios, 80th percentile to median | MDR database | Sept 2002 |
| DME | (l)(2)(iii) | charge ratios, 80th percentile to median | Medicare SAF 5% Sample, DME component | CY 2001 |
| DME | (l)(2)(iii) | charge ratios, 80th percentile to median | Medicare SAF 5% Sample, Part B component | CY 2001 |
| DME | (l)(2)(iv) | trending forward | CPI-U, medical care commodities component, seasonally adjusted | Jan 2003, as of Feb 2003 |

## Supplementary Table 1
## Reasonable Charges Data Sources - V2.0

V2p0 PR Data Sources.xls - By Charge Type

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| Charge Type | Paragraph | Subject | Data Source | Edition |
|---|---|---|---|---|
| DME | (l)(3) | charges for codes with no RVUs | MDR database | Sept 2002 |
| DME | (l)(3) | charges for codes with no RVUs | Medicare SAF 5% Sample, DME component | CY 2001 |
| DME | (l)(3) | charges for codes with no RVUs | Medicare SAF 5% Sample, Part B component | CY 2001 |
| DME | (l)(3) | charges for codes with no RVUs | Milliman USA, Inc., Optimized HMO Data Sets | 2000 |
| DME | (l)(3)(i) | trending forward | CPI-U, medical care commodities component, seasonally adjusted | Jan 2003, as of Feb 2003 |
| DME | (l)(4) | charges for unlisted procedures | VA nationwide distribution of procedures, services, items, and supplies | FY 2002 |
| DME | (l)(5)(ii) | charges, weighted average, area-specific | MDR database | Sept 2002 |
| DME | (l)(5)(ii) | charges, weighted average, area-specific | Medicare SAF 5% Sample, DME component | CY 2001 |
| DME | (l)(5)(ii) | charges, weighted average, area-specific | Medicare SAF 5% Sample, Part B component | CY 2001 |
| DME | (l)(5)(iii) | charges, weighted average, nationwide | Milliman USA, Inc., Health Cost Guidelines | 2002 |

**Charge Type Abbreviations**

Amb = Ambulance
Anes = Anesthesia
Dent = Dental HCPCS Level II
DME = DME and other HCPCS Level II
Inpt = Acute inpatient facility charges
Lab = Pathology and laboratory
Obs = Observation care
Opt = Outpatient facility charges
PH = Partial hospitalization
Phys = Physician and other professional charges
SNF = Skilled nursing facility / sub-acute inpatient facility charges

**Other Abbreviations**

APC = Ambulatory Payment Classification
CMS = Centers for Medicare and Medicaid Services
CPI-U = Consumer Price Index - All Urban Consumers
CY = Calendar Year (January - December)
DME = Durable Medical Equipment
FY = Fiscal Year (October - September)
GAAF = Geographic Area Adjustment Factor
HMO = Health Maintenance Organizations
ICU = Intensive Care Unit
MDR = Medical Data Research
MedPAR = Medicare Provider Analysis and Review
R&B = Room and Board
RBRVS = Resource-Based Relative Value Scale
RVU = Relative Value Unit
SAF = Standard Analytical File
UCR = Usual, Customary, or Reasonable
VA = Department of Veterans Affairs

## Supplementary Table 1

## Reasonable Charges Data Sources - V2.0

V2p0 PR Data Sources.xls - By Data Source

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| Charge Type | Paragraph | Subject | Data Source | Edition |
|---|---|---|---|---|
| Anes | (g)(2) | RVUs | CMS anesthesia base units | 2003 |
| Anes | (g)(3)(i) | conversion factor, nationwide | CMS anesthesia base units | 2003 |
| Dent | (h)(2) | charges, 80th percentile, nationwide | CPI-U, dental services component, seasonally adjusted | Jan 2003, as of Feb 2003 |
| Dent | (h)(2)(iii) | trending forward | CPI-U, dental services component, seasonally adjusted | Jan 2003, as of Feb 2003 |
| Inpt | (b)(2) | per diem charges | CPI-U, inpatient hospital services component, seasonally adjusted | Jan 2003, as of Feb 2003 |
| Inpt | (b)(2)(iv) | trending forward | CPI-U, inpatient hospital services component, seasonally adjusted | Jan 2003, as of Feb 2003 |
| SNF | (c)(2)(ii) | trending forward | CPI-U, inpatient hospital services component, seasonally adjusted | Jan 2003, as of Feb 2003 |
| DME | (l)(2)(iv) | trending forward | CPI-U, medical care commodities component, seasonally adjusted | Jan 2003, as of Feb 2003 |
| DME | (l)(3)(i) | trending forward | CPI-U, medical care commodities component, seasonally adjusted | Jan 2003, as of Feb 2003 |
| PH | (d)(2)(ii) | trending forward | CPI-U, outpatient hospital services component, seasonally adjusted | Jan 2003, as of Feb 2003 |
| Opt | (e)(3)(iii) | trending forward | CPI-U, outpatient hospital services component, seasonally adjusted | Jan 2003, as of Feb 2003 |
| Obs | (j)(2)(ii) | trending forward | CPI-U, outpatient hospital services component, seasonally adjusted | Jan 2003, as of Feb 2003 |
| Amb | (k)(2)(iii) | trending forward | CPI-U outpatient hospital services component, seasonally adjusted | Jan 2003, as of Feb 2003 |
| Phys | (f)(3)(ii) | trending forward | CPI-U, physicians' services component, seasonally adjusted | Jan 2003, as of Feb 2003 |
| Anes | (g)(3)(ii) | trending forward | CPI-U, physicians' services component, seasonally adjusted | Jan 2003, as of Feb 2003 |
| Lab | (i)(3)(ii) | trending forward | CPI-U, physicians' services component, seasonally adjusted | Jan 2003, as of Feb 2003 |
| Dent | (h)(2) | charges, 80th percentile, nationwide | Ingenix Comprehensive Healthcare Payment System, Dental UCR Module | Sept 2002 |
| Dent | (h)(3) | GAAFs | Ingenix Comprehensive Healthcare Payment System, Dental UCR Module | Sept 2002 |
| Phys | (f)(2)(ii) | RVUs, codes with no Medicare RVUs | Ingenix/St. Anthony's RBRVS | 2003 |
| Lab | (i)(2)(ii) | RVUs, codes with no Medicare-based RVUs | Ingenix/St. Anthony's RBRVS | 2003 |
| DME | (l)(2)(i) | RVUs | Ingenix/St. Anthony's RBRVS, practice expense RVUs | 2003 |
| Opt | (e)(4) | GAAFs | MDR database | July 2002 |
| Phys | (f)(2)(ii) | RVUs, codes with no Medicare RVUs | MDR database | Aug 2001 |
| Phys | (f)(3) | conversion factors, 80th percentile, geographically adjusted | MDR database | Aug 2001 |
| Anes | (g)(3)(i) | conversion factor, nationwide | MDR database | Sept 2001 |
| Lab | (i)(2)(i) | RVUs, codes with Medicare-based RVUs | MDR database | Aug 2001 |
| Lab | (i)(2)(ii) | RVUs, codes with no Medicare-based RVUs | MDR database | Aug 2001 |
| Lab | (i)(3) | conversion factors, 80th percentile, geographically adjusted | MDR database | Aug 2001 |
| DME | (l)(2)(iii) | charge ratios, 80th percentile to median | MDR database | Sept 2002 |
| DME | (l)(3) | charges for codes with no RVUs | MDR database | Sept 2002 |
| DME | (l)(5)(ii) | charges, weighted average, area-specific | MDR database | Sept 2002 |
| Opt | (e)(3)(ii) | 80th percentile charges, codes with no APC | MDR database, outpatient facility component | July 2002 |
| Opt | (e)(3)(i) | 80th percentile charges, codes with APCs | Medicare APC payment amount | 2003 |
| Lab | (i)(2)(i) | RVUs, codes with Medicare-based RVUs | Medicare Clinical Diagnostic Laboratory Fee Schedule | 2003 |
| Lab | (i)(2)(i) | RVUs, codes with Medicare-based RVUs | Medicare conversion factor | 2003 |
| DME | (l)(2)(i) | RVUs | Medicare DME Fee Schedule | 2003 |
| Phys | (f)(2)(i)(B) | RVUs, codes with Medicare RVUs, practice expense | Medicare Geographic Practice Cost Index, practice expense | 2003 |
| Phys | (f)(2)(iv) | RVU GAAFs, codes with no Medicare RVUs | Medicare Geographic Practice Cost Index, practice expense | 2003 |
| Lab | (i)(2)(iv) | RVU GAAFs, codes with no Medicare-based RVUs | Medicare Geographic Practice Cost Index, practice expense | 2003 |
| Phys | (f)(2)(i)(A) | RVUs, codes with Medicare RVUs, work expense | Medicare Geographic Practice Cost Index, work expense | 2003 |
| Phys | (f)(2)(iv) | RVU GAAFs, codes with no Medicare RVUs | Medicare Geographic Practice Cost Index, work expense | 2003 |
| Lab | (i)(2)(iv) | RVU GAAFs, codes with no Medicare-based RVUs | Medicare Geographic Practice Cost Index, work expense | 2003 |
| DME | (l)(2)(i) | RVUs | Medicare Parenteral and Enteral Nutrition Fee Schedule | 2003 |
| Lab | (i)(2)(i) | RVUs, codes with Medicare-based RVUs | Medicare Physician Fee Schedule payment levels | 2003 |
| Phys | (f)(2)(i)(B) | RVUs, codes with Medicare RVUs, practice expense | Medicare Physician Fee Schedule RVUs, practice expense | 2003 |
| Phys | (f)(2)(i)(A) | RVUs, codes with Medicare RVUs, work expense | Medicare Physician Fee Schedule RVUs, work expense | 2003 |

## Supplementary Table 1
## Reasonable Charges Data Sources - V2.0

V2p0 PR Data Sources.xls - By Data Source

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| Charge Type | Paragraph | Subject | Data Source | Edition |
|---|---|---|---|---|
| DME | (l)(2)(ii) | charge amounts | Medicare SAF 5% Sample, DME component | CY 2001 |
| DME | (l)(2)(iii) | charge ratios, 80th percentile to median | Medicare SAF 5% Sample, DME component | CY 2001 |
| DME | (l)(3) | charges for codes with no RVUs | Medicare SAF 5% Sample, DME component | CY 2001 |
| DME | (l)(5)(ii) | charges, weighted average, area-specific | Medicare SAF 5% Sample, DME component | CY 2001 |
| PH | (d)(2) | per diem charge | Medicare SAF 5% Sample, outpatient facility component | CY 2001 |
| Opt | (e)(3)(i) | 80th percentile charges, codes with APCs | Medicare SAF 5% Sample, outpatient facility component | CY 2001 |
| Opt | (e)(3)(ii) | 80th percentile charges, codes with no APC | Medicare SAF 5% Sample, outpatient facility component | CY 2001 |
| Obs | (j)(2)(i) | charges, 80th percentile, nationwide | Medicare SAF 5% Sample, outpatient facility component | CY 2001 |
| Amb | (k)(2)(i) | base charge, 80th percentile, nationwide | Medicare SAF 5% Sample, outpatient facility component | CY 2001 |
| Amb | (k)(2)(ii) | mileage charge, 80th percentile, nationwide | Medicare SAF 5% Sample, outpatient facility component | CY 2001 |
| Phys | (f)(2)(ii) | RVUs, codes with no Medicare RVUs | Medicare SAF 5% Sample, Part B component | CY 2001 |
| Phys | (f)(4) | modifiers: charge adjustment factors | Medicare SAF 5% Sample, Part B component | CY 2001 |
| Anes | (g)(3)(i) | conversion factor, nationwide | Medicare SAF 5% Sample, Part B component | CY 2001 |
| Lab | (i)(2)(ii) | RVUs, codes with no Medicare-based RVUs | Medicare SAF 5% Sample, Part B component | CY 2001 |
| DME | (l)(2)(ii) | charge amounts | Medicare SAF 5% Sample, Part B component | CY 2001 |
| DME | (l)(2)(iii) | charge ratios, 80th percentile to median | Medicare SAF 5% Sample, Part B component | CY 2001 |
| DME | (l)(3) | charges for codes with no RVUs | Medicare SAF 5% Sample, Part B component | CY 2001 |
| DME | (l)(5)(ii) | charges, weighted average, area-specific | Medicare SAF 5% Sample, Part B component | CY 2001 |
| Inpt | (b)(2) | per diem charges | MedPAR file | FY 2001 |
| Inpt | (b)(2)(i) | charge component percentages: R&B, ancillary | MedPAR file | FY 2001 |
| Inpt | (b)(2)(ii) | charge ratios: standard R&B, ICU R&B | MedPAR file | FY 2001 |
| Inpt | (b)(2)(iii) | 80th percentile | MedPAR file | FY 2001 |
| Inpt | (b)(3) | GAAFs | MedPAR file | FY 2001 |
| SNF | (c)(2) | per diem charge | MedPAR skilled nursing facility file | FY 2000 |
| SNF | (c)(2)(i) | 80th percentile adjustment factor | MedPAR skilled nursing facility file | FY 2000 |
| SNF | (c)(3) | GAAFs | MedPAR skilled nursing facility file | FY 2000 |
| Inpt | (b)(2) | per diem charges | MedStat claims database | 1999 |
| Inpt | (b)(3) | GAAFs | MedStat claims database | 1999 |
| Opt | (e)(3)(ii) | 80th percentile charges, codes with no APC | MedStat claims database | 1999 |
| Dent | (h)(3) | GAAFs | Milliman USA, Inc., Dental Health Cost Guidelines | 2002 |
| Opt | (e)(4) | GAAFs | Milliman USA, Inc., Health Cost Guidelines | 2002 |
| Anes | (g)(3)(i) | conversion factor, nationwide | Milliman USA, Inc., Health Cost Guidelines | 2002 |
| DME | (l)(5)(iii) | charges, weighted average, nationwide | Milliman USA, Inc., Health Cost Guidelines | 2002 |
| Phys | (f)(3) | conversion factors, 80th percentile, geographically adjusted | Milliman USA, Inc., Health Cost Guidelines fee survey | 2002 |
| Lab | (i)(3) | conversion factors, 80th percentile, geographically adjusted | Milliman USA, Inc., Health Cost Guidelines fee survey | 2002 |
| DME | (l)(3) | charges for codes with no RVUs | Milliman USA, Inc., Optimized HMO Data Sets | 2000 |
| Dent | (h)(2) | charges, 80th percentile, nationwide | National Dental Advisory Service nationwide pricing index | 2003 |
| Phys | (f)(2)(ii) | RVUs, codes with no Medicare RVUs | Prevailing Healthcare Charges System | May 2002 |
| Dent | (h)(2) | charges, 80th percentile, nationwide | Prevailing Healthcare Charges System | May 2002 |
| Dent | (h)(2)(ii) | charges, 80th percentile, nationwide, for unlisted procedures | Prevailing Healthcare Charges System | May 2002 |
| Lab | (i)(2)(ii) | RVUs, codes with no Medicare-based RVUs | Prevailing Healthcare Charges System | May 2002 |
| Inpt | (b)(3) | GAAFs | VA nationwide discharges | FY 2002 |
| Phys | (f)(2)(iii) | RVUs, unlisted procedures | VA nationwide distribution of procedures and services | FY 2002 |
| Anes | (g)(2) | RVUs for unlisted procedures | VA nationwide distribution of procedures and services | FY 2002 |
| Lab | (i)(2)(iii) | RVUs, unlisted procedures | VA nationwide distribution of procedures and services | FY 2002 |
| DME | (l)(4) | charges for unlisted procedures | VA nationwide distribution of procedures, services, items, and supplies | FY 2002 |

## Supplementary Table 1
## Reasonable Charges Data Sources - V2.0

V2p0 PR Data Sources.xls - By Data Source

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| Charge Type | Paragraph | Subject | Data Source | Edition |
|---|---|---|---|---|
| | | | | |
| | | | | |
| **Charge Type Abbreviations** | | | **Other Abbreviations** | |
| Amb = Ambulance | | | APC = Ambulatory Payment Classification | |
| Anes = Anesthesia | | | CMS = Centers for Medicare and Medicaid Services | |
| Dent = Dental HCPCS Level II | | | CPI-U = Consumer Price Index - All Urban Consumers | |
| DME = DME and other HCPCS Level II | | | CY = Calendar Year (January - December) | |
| Inpt = Acute inpatient facility charges | | | DME = Durable Medical Equipment | |
| Lab = Pathology and laboratory | | | FY = Fiscal Year (October - September) | |
| Obs = Observation care | | | GAAF = Geographic Area Adjustment Factor | |
| Opt = Outpatient facility charges | | | HMO = Health Maintenance Organizations | |
| PH = Partial hospitalization | | | ICU = Intensive Care Unit | |
| Phys = Physician and other professional charges | | | MDR = Medical Data Research | |
| SNF = Skilled nursing facility / sub-acute inpatient facility charges | | | MedPAR = Medicare Provider Analysis and Review | |
| | | | R&B = Room and Board | |
| | | | RBRVS = Resource-Based Relative Value Scale | |
| | | | RVU = Relative Value Unit | |
| | | | SAF = Standard Analytical File | |
| | | | UCR = Usual, Customary, or Reasonable | |
| | | | VA = Department of Veterans Affairs | |

## Supplementary Table 2

V2p0 PR Data Sources.xls - Obtain

## Reasonable Charges Data Sources - V2.0 - Where To Obtain

Page 1 of 1

| **Database** | **Where To Obtain** |
|---|---|
| CMS anesthesia base units | Centers for Medicare and Medicaid Services |
| CPI-U, various components, seasonally adjusted | Bureau of Labor Statistics Internet site, CPI section, http://www.bls.gov/cpi/ |
| Ingenix Comprehensive Healthcare Payment System, Dental UCR Module | Ingenix, Inc., 2525 Lake Park Blvd., Salt Lake City, UT 84120 |
| Ingenix/St. Anthony's RBRVS | Ingenix, Inc., 2525 Lake Park Blvd., Salt Lake City, UT 84120 |
| MDR database | Ingenix, Inc., 2525 Lake Park Blvd., Salt Lake City, UT 84120 |
| MDR database, outpatient facility component | Ingenix, Inc., 2525 Lake Park Blvd., Salt Lake City, UT 84120 |
| Medicare APC payment amount | CMS Internet site, http://www.cms.gov/regulations/hopps/changecy2003.asp |
| Medicare Clinical Diagnostic Laboratory Fee Schedule | CMS Internet site, files-for-download section, http://www.cms.gov/providers/pufdownload/ |
| Medicare conversion factor | Federal Register, Vol. 68, No. 40, February 28, 2003, pages 9567-9568 |
| Medicare DME Fee Schedule | CMS Internet site, files-for-download section, http://www.cms.gov/providers/pufdownload/ |
| Medicare Geographic Practice Cost Index, practice expense | Federal Register, Vol. 67, No. 251, December 31, 2002, pages 80170-80172 |
| Medicare Geographic Practice Cost Index, work expense | Federal Register, Vol. 67, No. 251, December 31, 2002, pages 80170-80172 |
| Medicare Parenteral and Enteral Nutrition Fee Schedule | CMS Internet site, files-for-download section, http://www.cms.gov/providers/pufdownload/ (included as part of DME Fee Schedule download) |
| Medicare Physician Fee Schedule payment levels | CMS Internet site, files-for-download section, http://www.cms.gov/providers/pufdownload/ |
| Medicare Physician Fee Schedule RVUs, practice expense | CMS Internet site, files-for-download section, http://www.cms.gov/providers/pufdownload/ |
| Medicare Physician Fee Schedule RVUs, work expense | CMS Internet site, files-for-download section, http://www.cms.gov/providers/pufdownload/ |
| Medicare SAF 5% Sample, DME component | CMS Internet site, Files for Purchase Directory, at http://cms.hhs.gov/data/purchase/default.asp |
| Medicare SAF 5% Sample, outpatient facility component | CMS Internet site, Files for Purchase Directory, at http://cms.hhs.gov/data/purchase/default.asp |
| Medicare SAF 5% Sample, Part B component | CMS Internet site, Files for Purchase Directory, at http://cms.hhs.gov/data/purchase/default.asp |
| MedPAR file | CMS Internet site, Files for Purchase Directory, at http://cms.hhs.gov/data/purchase/default.asp |
| MedPAR skilled nursing facility file | CMS Internet site, Files for Purchase Directory, at http://cms.hhs.gov/data/purchase/default.asp |
| MedStat claims database | MedStat Group, 777 E. Eisenhower Parkway, Ann Arbor, MI 48108 |
| Milliman USA, Inc., Dental Health Cost Guidelines | Milliman USA, Inc., 1301 5th Avenue, Suite 3800, Seattle, WA 98101-2605 |
| Milliman USA, Inc., Health Cost Guidelines | Milliman USA, Inc., 1301 5th Avenue, Suite 3800, Seattle, WA 98101-2605 |
| Milliman USA, Inc., Health Cost Guidelines fee survey | Milliman USA, Inc., 1301 5th Avenue, Suite 3800, Seattle, WA 98101-2605 |
| Milliman USA, Inc., Optimized HMO Data Sets | Milliman USA, Inc., 1301 5th Avenue, Suite 3800, Seattle, WA 98101-2605 |
| National Dental Advisory Service nationwide pricing index | Wasserman Medical Publishers, Ltd., PO. Box 510949, Milwaukee, WI 53203 |
| Prevailing Healthcare Charges System | Ingenix, Inc., 2525 Lake Park Blvd., Salt Lake City, UT 84120 |
| VA nationwide discharges | Veterans Health Administration |
| VA nationwide distribution of procedures and services | Veterans Health Administration |
| VA nationwide distribution of procedures, services, items, and supplies | Veterans Health Administration |

**Abbreviations**

APC = Ambulatory Payment Classification
CMS = Centers for Medicare and Medicaid Services
CPI-U = Consumer Price Index - All Urban Consumers
DME = Durable Medical Equipment
HMO = Health Maintenance Organizations
MDR = Medical Data Research
MedPAR = Medicare Provider Analysis and Review
RBRVS = Resource-Based Relative Value Scale
RVU = Relative Value Unit
SAF = Standard Analytical File
UCR = Usual, Customary, or Reasonable
VA = Department of Veterans Affairs

### Supplementary Table 3
### VA Medical Facility Locations and Three-Digit ZIP Codes
### Reasonable Charges Version 2.0

RC V2p0 Station List 02-11-05.xls

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| Fac # | VA Facility Location | ST | ZIP 3 | VN | Type |
|---|---|---|---|---|---|
| 463 | ANCHORAGE, AK | AK | 995 | 20 | IOC |
| 463GA | FAIRBANKS, AK | AK | 997 | 20 | CBOC |
| 463HA | FORT WAINWRIGHT, AK | AK | 997 | 20 | CBOC |
| 463GB | KENAI, AK | AK | 996 | 20 | CBOC |
| 521GE | ANNISTON, AL | AL | 362 | 7 | CBOC |
| 521 | BIRMINGHAM, AL | AL | 352 | 7 | VAMC |
| 521GB | DECATUR, AL | AL | 356 | 7 | CBOC |
| 619GB | DOTHAN, AL | AL | 363 | 7 | CBOC |
| 521GC | FLORENCE, AL | AL | 356 | 7 | CBOC |
| 521GD | GADSDEN, AL | AL | 359 | 7 | CBOC |
| 521GA | HUNTSVILLE, AL | AL | 358 | 7 | CBOC |
| 521GF | JASPER, AL | AL | 355 | 7 | CBOC |
| 520GA | MOBILE, AL | AL | 366 | 16 | CBOC |
| 619 | MONTGOMERY, AL | AL | 361 | 7 | VAMC |
| 679 | TUSCALOOSA, AL | AL | 354 | 7 | VAMC |
| 619A4 | TUSKEGEE, AL | AL | 360 | 7 | VAMC |
| 598GB | EL DORADO, AR | AR | 717 | 16 | CBOC |
| 564HK | FAYETTEVILLE MOC, AR | AR | 727 | 16 | CBOC |
| 564 | FAYETTEVILLE, AR | AR | 727 | 16 | VAMC |
| 564GB | FORT SMITH, AR | AR | 729 | 16 | CBOC |
| 564GA | HARRISON, AR | AR | 726 | 16 | CBOC |
| 598GC | HOT SPRINGS, AR | AR | 719 | 16 | CBOC |
| 614GB | JONESBORO, AR | AR | 724 | 9 | CBOC |
| 598 | LITTLE ROCK, AR | AR | 722 | 16 | VAMC |
| 598GA | MOUNTAIN HOME, AR | AR | 726 | 16 | CBOC |
| 598A0 | NORTH LITTLE ROCK, AR | AR | 721 | 16 | VAMC |
| 657GG | PARAGOULD, AR | AR | 724 | 15 | CBOC |
| 649GB | BELLEMONT, AZ | AZ | 860 | 18 | CBOC |
| 649GD | BLACK CANYON CITY, AZ | AZ | 853 | 18 | CBOC |
| 644GC | BUCKEYE, AZ | AZ | 853 | 18 | CBOC |
| 678GC | CASA GRANDE, AZ | AZ | 852 | 18 | CBOC |
| 649GE | COTTONWOOD, AZ | AZ | 863 | 18 | CBOC |
| 678GE | GREEN VALLEY, AZ | AZ | 856 | 18 | CBOC |
| 649GF | HOLBROOK, AZ | AZ | 860 | 18 | CBOC |
| 649GA | KINGMAN, AZ | AZ | 864 | 18 | CBOC |
| 649GC | LAKE HAVASU CITY, AZ | AZ | 864 | 18 | CBOC |
| 644BY | MESA/WILLIAMS AFB, AZ | AZ | 852 | 18 | CBOC |
| 644GD | PAYSON, AZ | AZ | 855 | 18 | CBOC |
| 644 | PHOENIX, AZ | AZ | 850 | 18 | VAMC |
| 649HK | PRESCOTT MOC, AZ | AZ | 863 | 18 | CBOC |
| 649 | PRESCOTT, AZ | AZ | 863 | 18 | VAMC |
| 678GD | SAFFORD, AZ | AZ | 855 | 18 | CBOC |
| 644GB | SHOW LOW, AZ | AZ | 859 | 18 | CBOC |
| 678GA | SIERRA VISTA, AZ | AZ | 856 | 18 | CBOC |
| 644GA | SUN CITY, AZ | AZ | 853 | 18 | CBOC |
| 678 | TUCSON, AZ | AZ | 857 | 18 | VAMC |
| 678GB | YUMA, AZ | AZ | 853 | 18 | CBOC |
| 600GA | ANAHEIM, CA | CA | 928 | 22 | CBOC |
| 570GA | ATWATER, CA | CA | 953 | 21 | CBOC |

## Supplementary Table 3
## VA Medical Facility Locations and Three-Digit ZIP Codes
## Reasonable Charges Version 2.0

RC V2p0 Station List 02-11-05.xls

| Fac # | VA Facility Location | ST | ZIP 3 | VN | Type |
|---|---|---|---|---|---|
| 654GA | AUBURN, CA | CA | 956 | 21 | CBOC |
| 691GD | BAKERSFIELD, CA | CA | 933 | 22 | CBOC |
| 640GA | CAPITOLA, CA | CA | 950 | 21 | CBOC |
| 612GG | CHICO, CA | CA | 959 | 21 | CBOC |
| 664GC | CHULA VISTA, CA | CA | 919 | 22 | CBOC |
| 605GD | CORONA, CA | CA | 928 | 22 | CBOC |
| 691GI | CULVER CITY, CA | CA | 902 | 22 | CBOC |
| 691GF | EAST LOS ANGELES, CA | CA | 900 | 22 | CBOC |
| 664GA | EL CENTRO, CA | CA | 922 | 22 | CBOC |
| 664GD | ESCONDIDO, CA | CA | 920 | 22 | CBOC |
| 662GC | EUREKA, CA | CA | 955 | 21 | CBOC |
| 612GD | FAIRFIELD, CA | CA | 945 | 21 | CBOC |
| 570 | FRESNO, CA | CA | 937 | 21 | VAMC |
| 691GC | GARDENA, CA | CA | 902 | 22 | CBOC |
| 691GG | LANCASTER/ANTELOPE VALLEY, CA | CA | 935 | 22 | CBOC |
| 640A4 | LIVERMORE, CA | CA | 945 | 21 | VAMC |
| 605 | LOMA LINDA, CA | CA | 923 | 22 | VAMC |
| 691GL | LOMPOC, CA | CA | 934 | 22 | CBOC |
| 600GC | LONG BEACH CBOC, CA | CA | 908 | 22 | CBOC |
| 600 | LONG BEACH, CA | CA | 908 | 22 | VAMC |
| 691GE | LOS ANGELES CBOC, CA | CA | 900 | 22 | CBOC |
| 612GE | MARE ISLAND, CA | CA | 945 | 21 | CBOC |
| 612GF | MARTINEZ CBOC, CA | CA | 945 | 21 | CBOC |
| 612 | MARTINEZ, CA | CA | 945 | 21 | VAMC |
| 612GH | MCCLELLAN AFB, CA | CA | 956 | 21 | CBOC |
| 640A0 | MENLO PARK, CA | CA | 940 | 21 | VAMC |
| 640HB | MODESTO, CA | CA | 953 | 21 | CBOC |
| 640HC | MONTEREY/FORT ORD, CA | CA | 939 | 21 | CBOC |
| 612BY | OAKLAND, CA | CA | 946 | 21 | CBOC |
| 605GC | PALM DESERT, CA | CA | 922 | 22 | CBOC |
| 640 | PALO ALTO, CA | CA | 943 | 21 | VAMC |
| 691GO | PASADENA, CA | CA | 911 | 22 | CBOC |
| 691GM | PORT HUENEME/OXNARD, CA | CA | 930 | 22 | CBOC |
| 612B4 | REDDING, CA | CA | 960 | 21 | CBOC |
| 612A4 | SACRAMENTO/MATHER AFB, CA | CA | 958 | 21 | VAMC |
| 664BY | SAN DIEGO CBOC, CA | CA | 921 | 22 | CBOC |
| 664 | SAN DIEGO, CA | CA | 921 | 22 | VAMC |
| 662BU | SAN FRANCISCO HOMELESS CTR, CA | CA | 941 | 21 | CBOC |
| 662 | SAN FRANCISCO, CA | CA | 941 | 21 | VAMC |
| 640BY | SAN JOSE, CA | CA | 951 | 21 | CBOC |
| 691GK | SAN LUIS OBISPO, CA | CA | 934 | 22 | CBOC |
| 600GB | SANTA ANA, CA | CA | 927 | 22 | CBOC |
| 691GB | SANTA BARBARA, CA | CA | 931 | 22 | CBOC |
| 600GD | SANTA FE SPRINGS, CA | CA | 906 | 22 | CBOC |
| 662GA | SANTA ROSA, CA | CA | 954 | 21 | CBOC |
| 691A4 | SEPULVEDA, CA | CA | 913 | 22 | CBOC |
| 640GB | SONORA, CA | CA | 953 | 21 | CBOC |
| 640HA | STOCKTON, CA | CA | 952 | 21 | CBOC |
| 605GB | SUN CITY, CA | CA | 923 | 22 | CBOC |

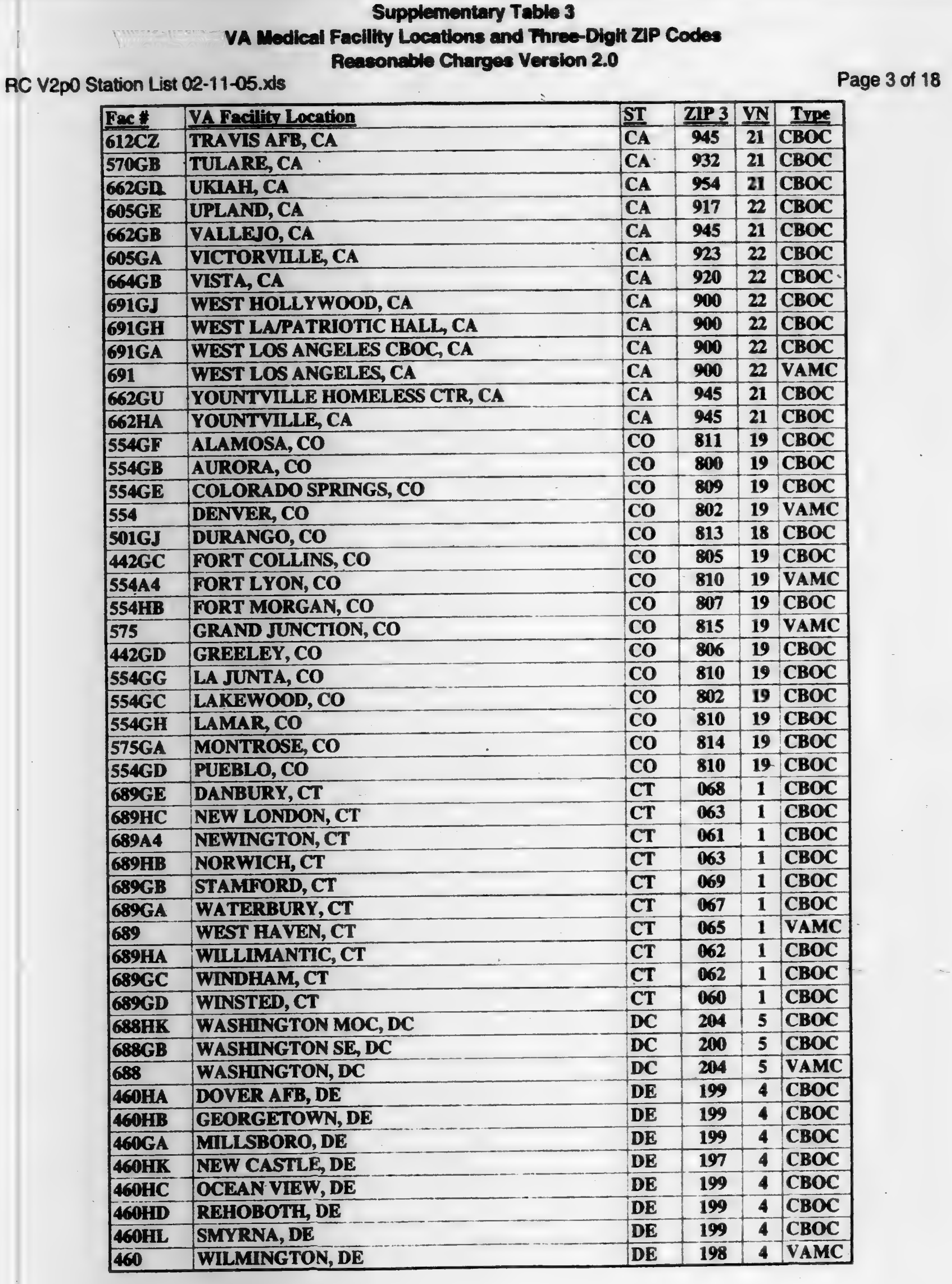

### Supplementary Table 3
### VA Medical Facility Locations and Three-Digit ZIP Codes
### Reasonable Charges Version 2.0

RC V2p0 Station List 02-11-05.xls

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| Fac # | VA Facility Location | ST | ZIP 3 | VN | Type |
|---|---|---|---|---|---|
| 612CZ | TRAVIS AFB, CA | CA | 945 | 21 | CBOC |
| 570GB | TULARE, CA | CA | 932 | 21 | CBOC |
| 662GD | UKIAH, CA | CA | 954 | 21 | CBOC |
| 605GE | UPLAND, CA | CA | 917 | 22 | CBOC |
| 662GB | VALLEJO, CA | CA | 945 | 21 | CBOC |
| 605GA | VICTORVILLE, CA | CA | 923 | 22 | CBOC |
| 664GB | VISTA, CA | CA | 920 | 22 | CBOC |
| 691GJ | WEST HOLLYWOOD, CA | CA | 900 | 22 | CBOC |
| 691GH | WEST LA/PATRIOTIC HALL, CA | CA | 900 | 22 | CBOC |
| 691GA | WEST LOS ANGELES CBOC, CA | CA | 900 | 22 | CBOC |
| 691 | WEST LOS ANGELES, CA | CA | 900 | 22 | VAMC |
| 662GU | YOUNTVILLE HOMELESS CTR, CA | CA | 945 | 21 | CBOC |
| 662HA | YOUNTVILLE, CA | CA | 945 | 21 | CBOC |
| 554GF | ALAMOSA, CO | CO | 811 | 19 | CBOC |
| 554GB | AURORA, CO | CO | 800 | 19 | CBOC |
| 554GE | COLORADO SPRINGS, CO | CO | 809 | 19 | CBOC |
| 554 | DENVER, CO | CO | 802 | 19 | VAMC |
| 501GJ | DURANGO, CO | CO | 813 | 18 | CBOC |
| 442GC | FORT COLLINS, CO | CO | 805 | 19 | CBOC |
| 554A4 | FORT LYON, CO | CO | 810 | 19 | VAMC |
| 554HB | FORT MORGAN, CO | CO | 807 | 19 | CBOC |
| 575 | GRAND JUNCTION, CO | CO | 815 | 19 | VAMC |
| 442GD | GREELEY, CO | CO | 806 | 19 | CBOC |
| 554GG | LA JUNTA, CO | CO | 810 | 19 | CBOC |
| 554GC | LAKEWOOD, CO | CO | 802 | 19 | CBOC |
| 554GH | LAMAR, CO | CO | 810 | 19 | CBOC |
| 575GA | MONTROSE, CO | CO | 814 | 19 | CBOC |
| 554GD | PUEBLO, CO | CO | 810 | 19 | CBOC |
| 689GE | DANBURY, CT | CT | 068 | 1 | CBOC |
| 689HC | NEW LONDON, CT | CT | 063 | 1 | CBOC |
| 689A4 | NEWINGTON, CT | CT | 061 | 1 | CBOC |
| 689HB | NORWICH, CT | CT | 063 | 1 | CBOC |
| 689GB | STAMFORD, CT | CT | 069 | 1 | CBOC |
| 689GA | WATERBURY, CT | CT | 067 | 1 | CBOC |
| 689 | WEST HAVEN, CT | CT | 065 | 1 | VAMC |
| 689HA | WILLIMANTIC, CT | CT | 062 | 1 | CBOC |
| 689GC | WINDHAM, CT | CT | 062 | 1 | CBOC |
| 689GD | WINSTED, CT | CT | 060 | 1 | CBOC |
| 688HK | WASHINGTON MOC, DC | DC | 204 | 5 | CBOC |
| 688GB | WASHINGTON SE, DC | DC | 200 | 5 | CBOC |
| 688 | WASHINGTON, DC | DC | 204 | 5 | VAMC |
| 460HA | DOVER AFB, DE | DE | 199 | 4 | CBOC |
| 460HB | GEORGETOWN, DE | DE | 199 | 4 | CBOC |
| 460GA | MILLSBORO, DE | DE | 199 | 4 | CBOC |
| 460HK | NEW CASTLE, DE | DE | 197 | 4 | CBOC |
| 460HC | OCEAN VIEW, DE | DE | 199 | 4 | CBOC |
| 460HD | REHOBOTH, DE | DE | 199 | 4 | CBOC |
| 460HL | SMYRNA, DE | DE | 199 | 4 | CBOC |
| 460 | WILMINGTON, DE | DE | 198 | 4 | VAMC |

## Supplementary Table 3
## VA Medical Facility Locations and Three-Digit ZIP Codes
## Reasonable Charges Version 2.0

RC V2p0 Station List 02-11-05.xls

| Fac # | VA Facility Location | ST | ZIP 3 | VN | Type |
|---|---|---|---|---|---|
| 516GH | AVON PARK, FL | FL | 338 | 8 | CBOC |
| 516 | BAY PINES, FL | FL | 337 | 8 | VAMC |
| 548GD | BOCA RATON, FL | FL | 334 | 8 | CBOC |
| 673GC | BROOKSVILLE, FL | FL | 346 | 8 | CBOC |
| 516GC | CLEARWATER, FL | FL | 346 | 8 | CBOC |
| 546GG | CORAL SPRINGS, FL | FL | 330 | 8 | CBOC |
| 573BZ | DAYTONA BEACH, FL | FL | 321 | 8 | CBOC |
| 546GH | DEERFIELD BEACH, FL | FL | 334 | 8 | CBOC |
| 548GB | DELRAY BEACH, FL | FL | 334 | 8 | CBOC |
| 516GD | ELLENTON, FL | FL | 342 | 8 | CBOC |
| 516BZ | FORT MYERS, FL | FL | 339 | 8 | CBOC |
| 548GA | FORT PIERCE, FL | FL | 349 | 8 | CBOC |
| 573 | GAINESVILLE, FL | FL | 326 | 8 | VAMC |
| 546GF | HALLANDALE, FL | FL | 330 | 8 | CBOC |
| 546GC | HOMESTEAD, FL | FL | 330 | 8 | CBOC |
| 573GG | INVERNESS, FL | FL | 344 | 8 | CBOC |
| 573BY | JACKSONVILLE, FL | FL | 322 | 8 | CBOC |
| 546GE | KEY LARGO, FL | FL | 330 | 8 | CBOC |
| 546GB | KEY WEST, FL | FL | 330 | 8 | CBOC |
| 673GE | KISSIMMEE, FL | FL | 347 | 8 | CBOC |
| 573A4 | LAKE CITY, FL | FL | 320 | 8 | VAMC |
| 673GB | LAKELAND, FL | FL | 338 | 8 | CBOC |
| 573GH | LEESBURG, FL | FL | 347 | 8 | CBOC |
| 546GA | MIAMI CBOC, FL | FL | 331 | 8 | CBOC |
| 546 | MIAMI, FL | FL | 331 | 8 | VAMC |
| 516GF | NAPLES, FL | FL | 341 | 8 | CBOC |
| 546BZ | OAKLAND PARK, FL | FL | 333 | 8 | CBOC |
| 573GD | OCALA, FL | FL | 344 | 8 | CBOC |
| 548GF | OKEECHOBEE, FL | FL | 349 | 8 | CBOC |
| 673BY | ORLANDO, FL | FL | 328 | 8 | CBOC |
| 520GB | PANAMA CITY, FL | FL | 324 | 16 | CBOC |
| 546GD | PEMBROKE PINES, FL | FL | 330 | 8 | CBOC |
| 520BZ | PENSACOLA, FL | FL | 325 | 16 | CBOC |
| 516GE | PORT CHARLOTTE, FL | FL | 339 | 8 | CBOC |
| 673BZ | PORT RICHEY, FL | FL | 346 | 8 | CBOC |
| 573GE | SAINT AUGUSTINE, FL | FL | 320 | 8 | CBOC |
| 516GB | SAINT PETERSBURG, FL | FL | 337 | 8 | CBOC |
| 673GD | SANFORD, FL | FL | 327 | 8 | CBOC |
| 516GA | SARASOTA, FL | FL | 342 | 8 | CBOC |
| 548GC | STUART, FL | FL | 349 | 8 | CBOC |
| 573GF | TALLAHASSEE, FL | FL | 323 | 8 | CBOC |
| 673 | TAMPA, FL | FL | 336 | 8 | VAMC |
| 548GE | VERO BEACH, FL | FL | 329 | 8 | CBOC |
| 673GA | VIERA/MELBOURNE, FL | FL | 329 | 8 | CBOC |
| 548 | WEST PALM BEACH, FL | FL | 334 | 8 | VAMC |
| 673GF | ZEPHYRHILLS, FL | FL | 335 | 8 | CBOC |
| 557GB | ALBANY, GA | GA | 317 | 7 | CBOC |
| 508 | ATLANTA/DECATUR, GA | GA | 300 | 7 | VAMC |
| 508GA | ATLANTA/MIDTOWN, GA | GA | 303 | 7 | CBOC |

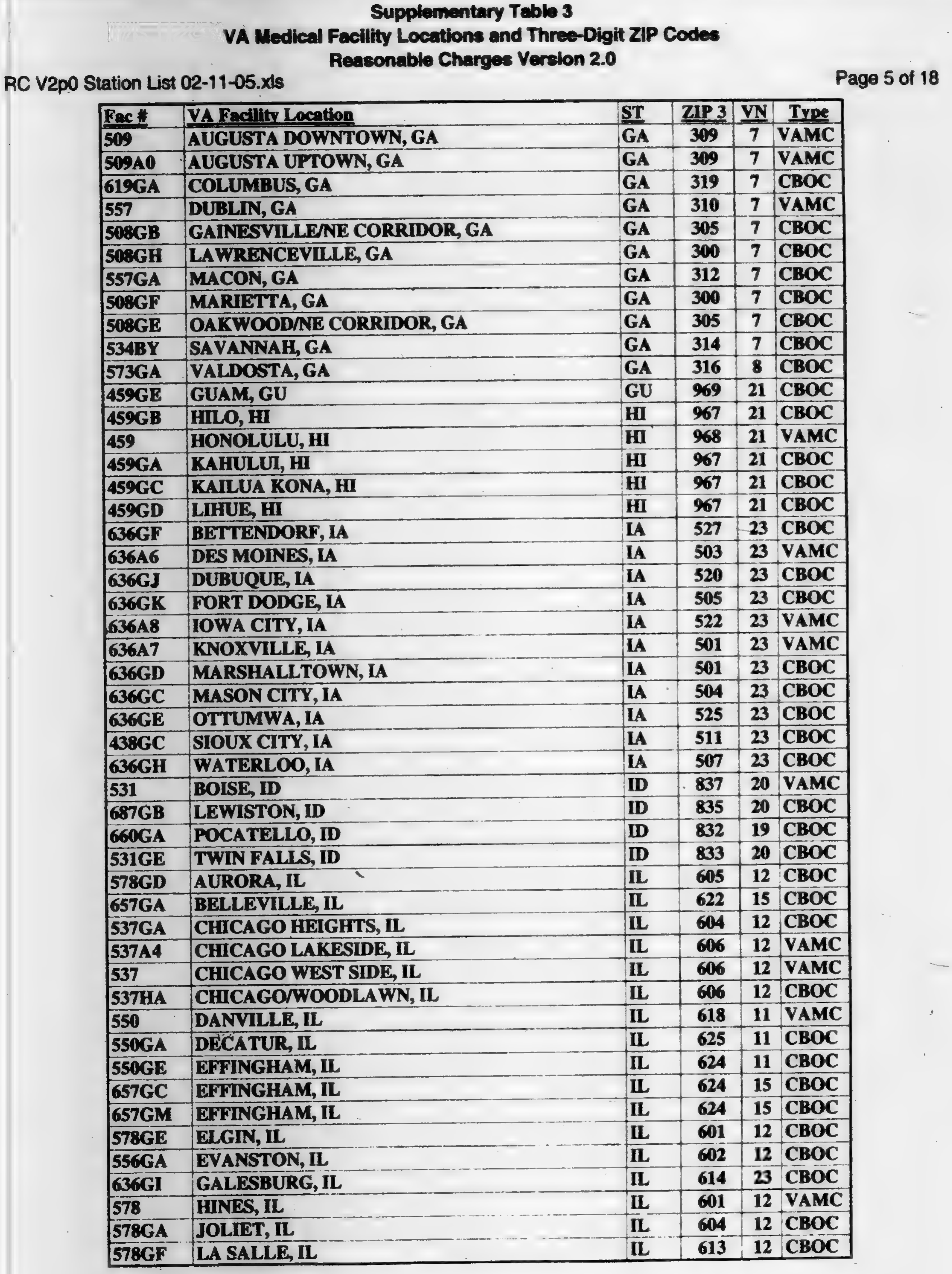

**Supplementary Table 3**
**VA Medical Facility Locations and Three-Digit ZIP Codes**
**Reasonable Charges Version 2.0**

RC V2p0 Station List 02-11-05.xls

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| Fac # | VA Facility Location | ST | ZIP 3 | VN | Type |
|---|---|---|---|---|---|
| 509 | AUGUSTA DOWNTOWN, GA | GA | 309 | 7 | VAMC |
| 509A0 | AUGUSTA UPTOWN, GA | GA | 309 | 7 | VAMC |
| 619GA | COLUMBUS, GA | GA | 319 | 7 | CBOC |
| 557 | DUBLIN, GA | GA | 310 | 7 | VAMC |
| 508GB | GAINESVILLE/NE CORRIDOR, GA | GA | 305 | 7 | CBOC |
| 508GH | LAWRENCEVILLE, GA | GA | 300 | 7 | CBOC |
| 557GA | MACON, GA | GA | 312 | 7 | CBOC |
| 508GF | MARIETTA, GA | GA | 300 | 7 | CBOC |
| 508GE | OAKWOOD/NE CORRIDOR, GA | GA | 305 | 7 | CBOC |
| 534BY | SAVANNAH, GA | GA | 314 | 7 | CBOC |
| 573GA | VALDOSTA, GA | GA | 316 | 8 | CBOC |
| 459GE | GUAM, GU | GU | 969 | 21 | CBOC |
| 459GB | HILO, HI | HI | 967 | 21 | CBOC |
| 459 | HONOLULU, HI | HI | 968 | 21 | VAMC |
| 459GA | KAHULUI, HI | HI | 967 | 21 | CBOC |
| 459GC | KAILUA KONA, HI | HI | 967 | 21 | CBOC |
| 459GD | LIHUE, HI | HI | 967 | 21 | CBOC |
| 636GF | BETTENDORF, IA | IA | 527 | 23 | CBOC |
| 636A6 | DES MOINES, IA | IA | 503 | 23 | VAMC |
| 636GJ | DUBUQUE, IA | IA | 520 | 23 | CBOC |
| 636GK | FORT DODGE, IA | IA | 505 | 23 | CBOC |
| 636A8 | IOWA CITY, IA | IA | 522 | 23 | VAMC |
| 636A7 | KNOXVILLE, IA | IA | 501 | 23 | VAMC |
| 636GD | MARSHALLTOWN, IA | IA | 501 | 23 | CBOC |
| 636GC | MASON CITY, IA | IA | 504 | 23 | CBOC |
| 636GE | OTTUMWA, IA | IA | 525 | 23 | CBOC |
| 438GC | SIOUX CITY, IA | IA | 511 | 23 | CBOC |
| 636GH | WATERLOO, IA | IA | 507 | 23 | CBOC |
| 531 | BOISE, ID | ID | 837 | 20 | VAMC |
| 687GB | LEWISTON, ID | ID | 835 | 20 | CBOC |
| 660GA | POCATELLO, ID | ID | 832 | 19 | CBOC |
| 531GE | TWIN FALLS, ID | ID | 833 | 20 | CBOC |
| 578GD | AURORA, IL | IL | 605 | 12 | CBOC |
| 657GA | BELLEVILLE, IL | IL | 622 | 15 | CBOC |
| 537GA | CHICAGO HEIGHTS, IL | IL | 604 | 12 | CBOC |
| 537A4 | CHICAGO LAKESIDE, IL | IL | 606 | 12 | VAMC |
| 537 | CHICAGO WEST SIDE, IL | IL | 606 | 12 | VAMC |
| 537HA | CHICAGO/WOODLAWN, IL | IL | 606 | 12 | CBOC |
| 550 | DANVILLE, IL | IL | 618 | 11 | VAMC |
| 550GA | DECATUR, IL | IL | 625 | 11 | CBOC |
| 550GE | EFFINGHAM, IL | IL | 624 | 11 | CBOC |
| 657GC | EFFINGHAM, IL | IL | 624 | 15 | CBOC |
| 657GM | EFFINGHAM, IL | IL | 624 | 15 | CBOC |
| 578GE | ELGIN, IL | IL | 601 | 12 | CBOC |
| 556GA | EVANSTON, IL | IL | 602 | 12 | CBOC |
| 636GI | GALESBURG, IL | IL | 614 | 23 | CBOC |
| 578 | HINES, IL | IL | 601 | 12 | VAMC |
| 578GA | JOLIET, IL | IL | 604 | 12 | CBOC |
| 578GF | LA SALLE, IL | IL | 613 | 12 | CBOC |

## Supplementary Table 3
## VA Medical Facility Locations and Three-Digit ZIP Codes
## Reasonable Charges Version 2.0

RC V2p0 Station List 02-11-05.xls

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| Fac # | VA Facility Location | ST | ZIP 3 | VN | Type |
|---|---|---|---|---|---|
| 578GC | MANTENO, IL | IL | 609 | 12 | CBOC |
| 657A5 | MARION, IL | IL | 629 | 15 | VAMC |
| 556GC | MCHENRY, IL | IL | 600 | 12 | CBOC |
| 657GK | MOUNT VERNON, IL | IL | 628 | 15 | CBOC |
| 556 | NORTH CHICAGO, IL | IL | 600 | 12 | VAMC |
| 578GG | OAK LAWN, IL | IL | 604 | 12 | CBOC |
| 578GB | OAK PARK, IL | IL | 603 | 12 | CBOC |
| 550BY | PEORIA, IL | IL | 616 | 11 | CBOC |
| 636GG | QUINCY, IL | IL | 623 | 23 | CBOC |
| 607HA | ROCKFORD, IL | IL | 611 | 12 | CBOC |
| 550GD | SPRINGFIELD, IL | IL | 627 | 11 | CBOC |
| 657GE | SPRINGFIELD, IL | IL | 627 | 15 | CBOC |
| 583GB | BLOOMINGTON, IN | IN | 474 | 11 | CBOC |
| 537BY | CROWN POINT, IN | IN | 463 | 12 | CBOC |
| 657GJ | EVANSVILLE, IN | IN | 477 | 15 | CBOC |
| 610A4 | FORT WAYNE, IN | IN | 468 | 11 | VAMC |
| 583 | INDIANAPOLIS, IN | IN | 462 | 11 | VAMC |
| 550GC | LAFAYETTE, IN | IN | 479 | 11 | CBOC |
| 539GC | LAWRENCEBURG, IN | IN | 470 | 10 | CBOC |
| 610 | MARION, IN | IN | 469 | 11 | VAMC |
| 610GB | MUNCIE, IN | IN | 473 | 11 | CBOC |
| 603GB | NEW ALBANY, IN | IN | 471 | 9 | CBOC |
| 552GC | RICHMOND, IN | IN | 473 | 10 | CBOC |
| 610GA | SOUTH BEND, IN | IN | 466 | 11 | CBOC |
| 583GA | TERRE HAUTE, IN | IN | 478 | 11 | CBOC |
| 589GK | ABILENE, KS | KS | 674 | 15 | CBOC |
| 589GM | CHANUTE, KS | KS | 667 | 15 | CBOC |
| 589G2 | DODGE CITY, KS | KS | 678 | 15 | CBOC |
| 589GN | EMPORIA, KS | KS | 668 | 15 | CBOC |
| 589GO | FORT RILEY, KS | KS | 664 | 15 | CBOC |
| 589GV | FORT SCOTT, KS | KS | 667 | 15 | CBOC |
| 589GP | GARNETT, KS | KS | 660 | 15 | CBOC |
| 589G4 | HAYS, KS | KS | 676 | 15 | CBOC |
| 589GQ | HOLTON, KS | KS | 664 | 15 | CBOC |
| 589GR | JUNCTION CITY, KS | KS | 664 | 15 | CBOC |
| 589GJ | KANSAS CITY/WYANDOTTE, KS | KS | 661 | 15 | CBOC |
| 589GU | LAWRENCE, KS | KS | 660 | 15 | CBOC |
| 589A6 | LEAVENWORTH, KS | KS | 660 | 15 | VAMC |
| 504GB | LIBERAL, KS | KS | 679 | 18 | CBOC |
| 589G3 | LIBERAL, KS | KS | 679 | 15 | CBOC |
| 589GC | PAOLA, KS | KS | 660 | 15 | CBOC |
| 589G5 | PARSONS, KS | KS | 673 | 15 | CBOC |
| 589GS | RUSSELL, KS | KS | 676 | 15 | CBOC |
| 589G6 | SALINA, KS | KS | 674 | 15 | CBOC |
| 589GW | SALINA, KS | KS | 674 | 15 | CBOC |
| 589GT | SENECA, KS | KS | 665 | 15 | CBOC |
| 589A5 | TOPEKA, KS | KS | 666 | 15 | VAMC |
| 589A7 | WICHITA, KS | KS | 672 | 15 | VAMC |
| 539GA | BELLEVUE, KY | KY | 410 | 10 | CBOC |

### Supplementary Table 3
### VA Medical Facility Locations and Three-Digit ZIP Codes
### Reasonable Charges Version 2.0

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| Fac # | VA Facility Location | ST | ZIP 3 | VN | Type |
|---|---|---|---|---|---|
| 626GC | BOWLING GREEN, KY | KY | 421 | 9 | CBOC |
| 603GA | FORT KNOX, KY | KY | 401 | 9 | CBOC |
| 626GD | HOPKINSVILLE, KY | KY | 422 | 9 | CBOC |
| 596A0 | LEXINGTON COOPER DRIVE, KY | KY | 405 | 9 | VAMC |
| 596A4 | LEXINGTON COOPER DRIVE, KY | KY | 405 | 9 | VAMC |
| 596 | LEXINGTON LEESTOWN, KY | KY | 405 | 9 | VAMC |
| 596HA | LEXINGTON ORC, KY | KY | 405 | 9 | CBOC |
| 603GC | LOUISVILLE CBOC, KY | KY | 402 | 9 | CBOC |
| 603 | LOUISVILLE, KY | KY | 402 | 9 | VAMC |
| 657GL | PADUCAH, KY | KY | 420 | 15 | CBOC |
| 581GA | PRESTONSBURG, KY | KY | 416 | 9 | CBOC |
| 596GA | SOMERSET, KY | KY | 425 | 9 | CBOC |
| 581GC | WHITESBURG, KY | KY | 418 | 9 | CBOC |
| 502 | ALEXANDRIA, LA | LA | 713 | 16 | VAMC |
| 629BY | BATON ROUGE, LA | LA | 708 | 16 | CBOC |
| 502GA | JENNINGS, LA | LA | 705 | 16 | CBOC |
| 502GB | LAFAYETTE, LA | LA | 705 | 16 | CBOC |
| 667GB | MONROE, LA | LA | 712 | 16 | CBOC |
| 629 | NEW ORLEANS, LA | LA | 701 | 16 | VAMC |
| 667 | SHREVEPORT, LA | LA | 711 | 16 | VAMC |
| 518 | BEDFORD, MA | MA | 017 | 1 | VAMC |
| 523BZ | BOSTON CBOC, MA | MA | 021 | 1 | CBOC |
| 523 | BOSTON, MA | MA | 021 | 1 | VAMC |
| 523A5 | BROCKTON, MA | MA | 024 | 1 | VAMC |
| 523GE | DORCHESTER, MA | MA | 021 | 1 | CBOC |
| 518GG | FITCHBURG, MA | MA | 014 | 1 | CBOC |
| 523GA | FRAMINGHAM, MA | MA | 017 | 1 | CBOC |
| 518GE | GLOUCESTER, MA | MA | 019 | 1 | CBOC |
| 631GD | GREENFIELD, MA | MA | 013 | 1 | CBOC |
| 518GB | HAVERHILL, MA | MA | 018 | 1 | CBOC |
| 650GB | HYANNIS, MA | MA | 026 | 1 | CBOC |
| 518GD | LOWELL, MA | MA | 018 | 1 | CBOC |
| 518GA | LYNN, MA | MA | 019 | 1 | CBOC |
| 650GE | NANTUCKET, MA | MA | 025 | 1 | CBOC |
| 650GA | NEW BEDFORD, MA | MA | 027 | 1 | CBOC |
| 631GA | NORTHAMPTON CBOC, MA | MA | 010 | 1 | CBOC |
| 631 | NORTHAMPTON, MA | MA | 010 | 1 | VAMC |
| 650GC | OAK BLUFFS, MA | MA | 025 | 1 | CBOC |
| 631GC | PITTSFIELD, MA | MA | 012 | 1 | CBOC |
| 523GD | PLYMOUTH, MA | MA | 023 | 1 | CBOC |
| 523GC | QUINCY, MA | MA | 021 | 1 | CBOC |
| 631GB | SPRINGFIELD CBOC, MA | MA | 011 | 1 | CBOC |
| 631BY | SPRINGFIELD SOC, MA | MA | 011 | 1 | CBOC |
| 523A4 | WEST ROXBURY, MA | MA | 021 | 1 | VAMC |
| 518GC | WINCHINDON, MA | MA | 014 | 1 | CBOC |
| 523GB | WORCESTER, MA | MA | 016 | 1 | CBOC |
| 512HK | BALTIMORE MOC, MD | MD | 212 | 5 | CBOC |
| 512 | BALTIMORE, MD | MD | 212 | 5 | VAMC |
| 512GD | BALTIMORE/LOCH RAVEN, MD | MD | 212 | 5 | CBOC |

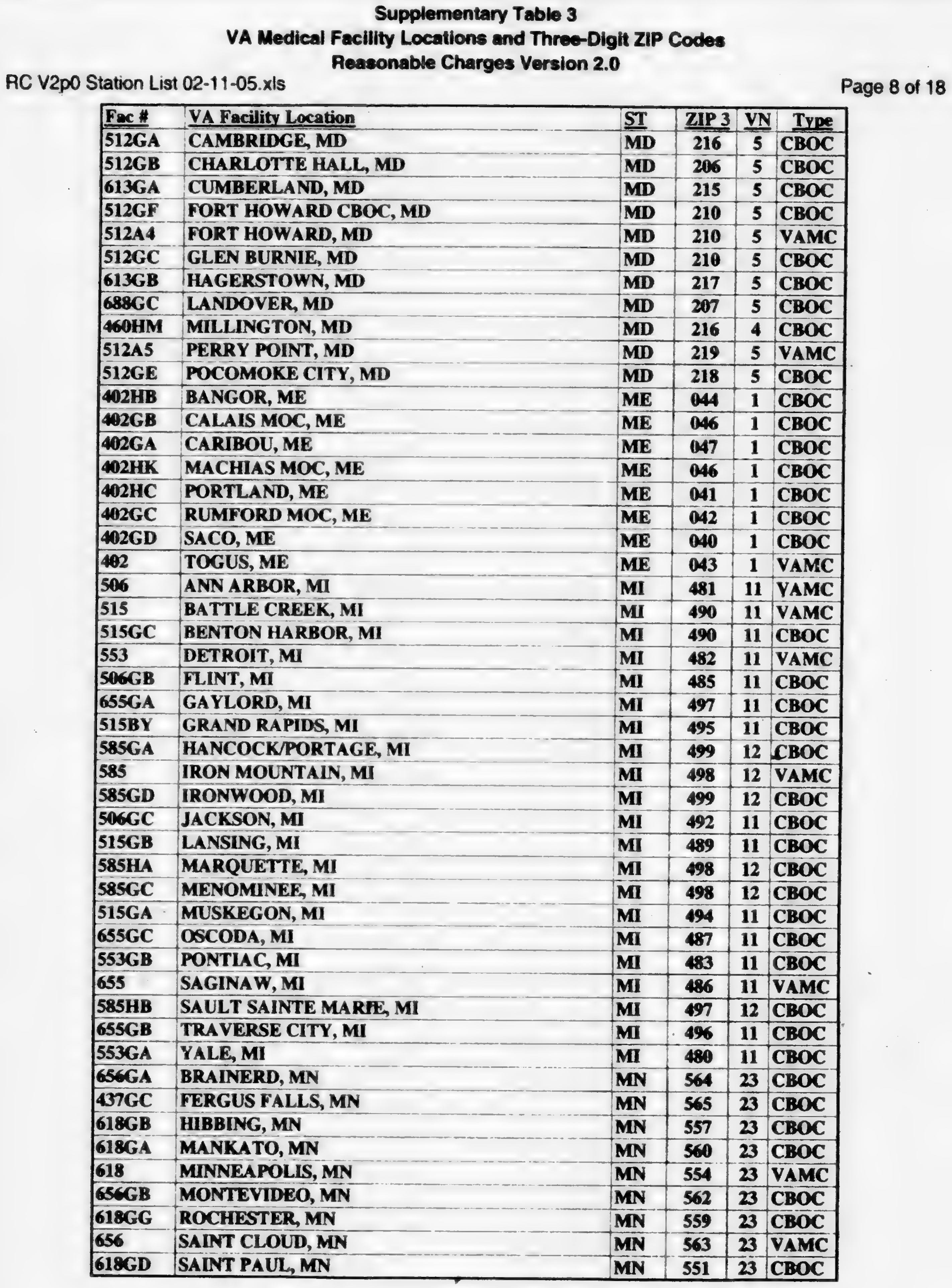

Supplementary Table 3
VA Medical Facility Locations and Three-Digit ZIP Codes
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| Fac # | VA Facility Location | ST | ZIP 3 | VN | Type |
|---|---|---|---|---|---|
| 512GA | CAMBRIDGE, MD | MD | 216 | 5 | CBOC |
| 512GB | CHARLOTTE HALL, MD | MD | 206 | 5 | CBOC |
| 613GA | CUMBERLAND, MD | MD | 215 | 5 | CBOC |
| 512GF | FORT HOWARD CBOC, MD | MD | 210 | 5 | CBOC |
| 512A4 | FORT HOWARD, MD | MD | 210 | 5 | VAMC |
| 512GC | GLEN BURNIE, MD | MD | 210 | 5 | CBOC |
| 613GB | HAGERSTOWN, MD | MD | 217 | 5 | CBOC |
| 688GC | LANDOVER, MD | MD | 207 | 5 | CBOC |
| 460HM | MILLINGTON, MD | MD | 216 | 4 | CBOC |
| 512A5 | PERRY POINT, MD | MD | 219 | 5 | VAMC |
| 512GE | POCOMOKE CITY, MD | MD | 218 | 5 | CBOC |
| 402HB | BANGOR, ME | ME | 044 | 1 | CBOC |
| 402GB | CALAIS MOC, ME | ME | 046 | 1 | CBOC |
| 402GA | CARIBOU, ME | ME | 047 | 1 | CBOC |
| 402HK | MACHIAS MOC, ME | ME | 046 | 1 | CBOC |
| 402HC | PORTLAND, ME | ME | 041 | 1 | CBOC |
| 402GC | RUMFORD MOC, ME | ME | 042 | 1 | CBOC |
| 402GD | SACO, ME | ME | 040 | 1 | CBOC |
| 402 | TOGUS, ME | ME | 043 | 1 | VAMC |
| 506 | ANN ARBOR, MI | MI | 481 | 11 | VAMC |
| 515 | BATTLE CREEK, MI | MI | 490 | 11 | VAMC |
| 515GC | BENTON HARBOR, MI | MI | 490 | 11 | CBOC |
| 553 | DETROIT, MI | MI | 482 | 11 | VAMC |
| 506GB | FLINT, MI | MI | 485 | 11 | CBOC |
| 655GA | GAYLORD, MI | MI | 497 | 11 | CBOC |
| 515BY | GRAND RAPIDS, MI | MI | 495 | 11 | CBOC |
| 585GA | HANCOCK/PORTAGE, MI | MI | 499 | 12 | CBOC |
| 585 | IRON MOUNTAIN, MI | MI | 498 | 12 | VAMC |
| 585GD | IRONWOOD, MI | MI | 499 | 12 | CBOC |
| 506GC | JACKSON, MI | MI | 492 | 11 | CBOC |
| 515GB | LANSING, MI | MI | 489 | 11 | CBOC |
| 585HA | MARQUETTE, MI | MI | 498 | 12 | CBOC |
| 585GC | MENOMINEE, MI | MI | 498 | 12 | CBOC |
| 515GA | MUSKEGON, MI | MI | 494 | 11 | CBOC |
| 655GC | OSCODA, MI | MI | 487 | 11 | CBOC |
| 553GB | PONTIAC, MI | MI | 483 | 11 | CBOC |
| 655 | SAGINAW, MI | MI | 486 | 11 | VAMC |
| 585HB | SAULT SAINTE MARIE, MI | MI | 497 | 12 | CBOC |
| 655GB | TRAVERSE CITY, MI | MI | 496 | 11 | CBOC |
| 553GA | YALE, MI | MI | 480 | 11 | CBOC |
| 656GA | BRAINERD, MN | MN | 564 | 23 | CBOC |
| 437GC | FERGUS FALLS, MN | MN | 565 | 23 | CBOC |
| 618GB | HIBBING, MN | MN | 557 | 23 | CBOC |
| 618GA | MANKATO, MN | MN | 560 | 23 | CBOC |
| 618 | MINNEAPOLIS, MN | MN | 554 | 23 | VAMC |
| 656GB | MONTEVIDEO, MN | MN | 562 | 23 | CBOC |
| 618GG | ROCHESTER, MN | MN | 559 | 23 | CBOC |
| 656 | SAINT CLOUD, MN | MN | 563 | 23 | VAMC |
| 618GD | SAINT PAUL, MN | MN | 551 | 23 | CBOC |

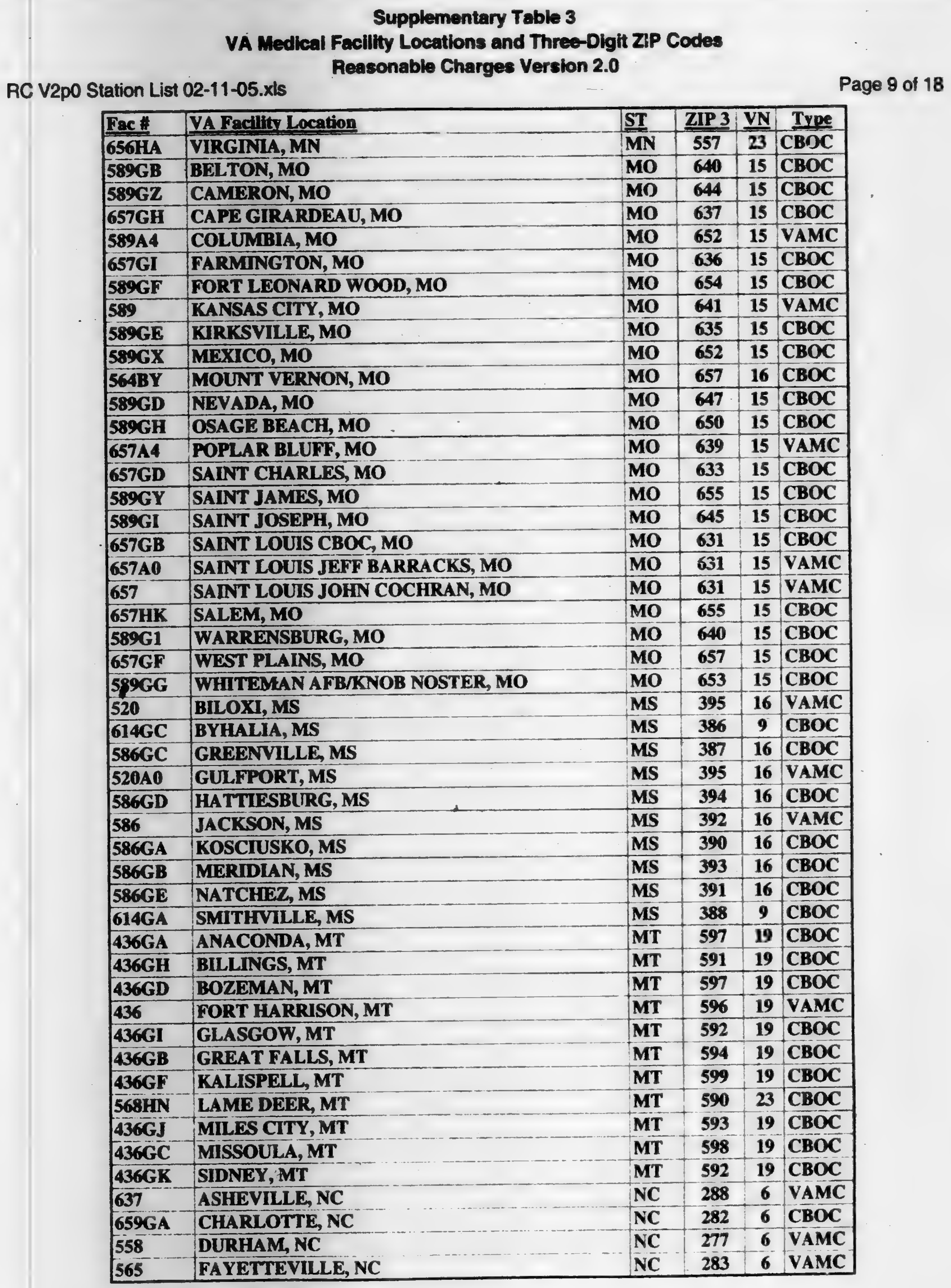

### Supplementary Table 3
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| Fac # | VA Facility Location | ST | ZIP 3 | VN | Type |
|---|---|---|---|---|---|
| 656HA | VIRGINIA, MN | MN | 557 | 23 | CBOC |
| 589GB | BELTON, MO | MO | 640 | 15 | CBOC |
| 589GZ | CAMERON, MO | MO | 644 | 15 | CBOC |
| 657GH | CAPE GIRARDEAU, MO | MO | 637 | 15 | CBOC |
| 589A4 | COLUMBIA, MO | MO | 652 | 15 | VAMC |
| 657GI | FARMINGTON, MO | MO | 636 | 15 | CBOC |
| 589GF | FORT LEONARD WOOD, MO | MO | 654 | 15 | CBOC |
| 589 | KANSAS CITY, MO | MO | 641 | 15 | VAMC |
| 589GE | KIRKSVILLE, MO | MO | 635 | 15 | CBOC |
| 589GX | MEXICO, MO | MO | 652 | 15 | CBOC |
| 564BY | MOUNT VERNON, MO | MO | 657 | 16 | CBOC |
| 589GD | NEVADA, MO | MO | 647 | 15 | CBOC |
| 589GH | OSAGE BEACH, MO | MO | 650 | 15 | CBOC |
| 657A4 | POPLAR BLUFF, MO | MO | 639 | 15 | VAMC |
| 657GD | SAINT CHARLES, MO | MO | 633 | 15 | CBOC |
| 589GY | SAINT JAMES, MO | MO | 655 | 15 | CBOC |
| 589GI | SAINT JOSEPH, MO | MO | 645 | 15 | CBOC |
| 657GB | SAINT LOUIS CBOC, MO | MO | 631 | 15 | CBOC |
| 657A0 | SAINT LOUIS JEFF BARRACKS, MO | MO | 631 | 15 | VAMC |
| 657 | SAINT LOUIS JOHN COCHRAN, MO | MO | 631 | 15 | VAMC |
| 657HK | SALEM, MO | MO | 655 | 15 | CBOC |
| 589G1 | WARRENSBURG, MO | MO | 640 | 15 | CBOC |
| 657GF | WEST PLAINS, MO | MO | 657 | 15 | CBOC |
| 589GG | WHITEMAN AFB/KNOB NOSTER, MO | MO | 653 | 15 | CBOC |
| 520 | BILOXI, MS | MS | 395 | 16 | VAMC |
| 614GC | BYHALIA, MS | MS | 386 | 9 | CBOC |
| 586GC | GREENVILLE, MS | MS | 387 | 16 | CBOC |
| 520A0 | GULFPORT, MS | MS | 395 | 16 | VAMC |
| 586GD | HATTIESBURG, MS | MS | 394 | 16 | CBOC |
| 586 | JACKSON, MS | MS | 392 | 16 | VAMC |
| 586GA | KOSCIUSKO, MS | MS | 390 | 16 | CBOC |
| 586GB | MERIDIAN, MS | MS | 393 | 16 | CBOC |
| 586GE | NATCHEZ, MS | MS | 391 | 16 | CBOC |
| 614GA | SMITHVILLE, MS | MS | 388 | 9 | CBOC |
| 436GA | ANACONDA, MT | MT | 597 | 19 | CBOC |
| 436GH | BILLINGS, MT | MT | 591 | 19 | CBOC |
| 436GD | BOZEMAN, MT | MT | 597 | 19 | CBOC |
| 436 | FORT HARRISON, MT | MT | 596 | 19 | VAMC |
| 436GI | GLASGOW, MT | MT | 592 | 19 | CBOC |
| 436GB | GREAT FALLS, MT | MT | 594 | 19 | CBOC |
| 436GF | KALISPELL, MT | MT | 599 | 19 | CBOC |
| 568HN | LAME DEER, MT | MT | 590 | 23 | CBOC |
| 436GJ | MILES CITY, MT | MT | 593 | 19 | CBOC |
| 436GC | MISSOULA, MT | MT | 598 | 19 | CBOC |
| 436GK | SIDNEY, MT | MT | 592 | 19 | CBOC |
| 637 | ASHEVILLE, NC | NC | 288 | 6 | VAMC |
| 659GA | CHARLOTTE, NC | NC | 282 | 6 | CBOC |
| 558 | DURHAM, NC | NC | 277 | 6 | VAMC |
| 565 | FAYETTEVILLE, NC | NC | 283 | 6 | VAMC |

### Supplementary Table 3
### VA Medical Facility Locations and Three-Digit ZIP Codes
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| Fac # | VA Facility Location | ST | ZIP 3 | VN | Type |
|---|---|---|---|---|---|
| 558GA | GREENVILLE, NC | NC | 278 | 6 | CBOC |
| 565GA | JACKSONVILLE UCJ, NC | NC | 285 | 6 | CBOC |
| 558GB | RALEIGH, NC | NC | 276 | 6 | CBOC |
| 659 | SALISBURY, NC | NC | 281 | 6 | VAMC |
| 565GC | WILMINGTON, NC | NC | 284 | 6 | CBOC |
| 659BY | WINSTON-SALEM, NC | NC | 271 | 6 | CBOC |
| 437GB | BISMARCK, ND | ND | 585 | 23 | CBOC |
| 437 | FARGO, ND | ND | 581 | 23 | VAMC |
| 437GA | GRAFTON, ND | ND | 582 | 23 | CBOC |
| 437GD | MINOT, ND | ND | 587 | 23 | CBOC |
| 568HC | ALLIANCE, NE | NE | 693 | 23 | CBOC |
| 568HH | GERING, NE | NE | 693 | 23 | CBOC |
| 636A4 | GRAND ISLAND, NE | NE | 688 | 23 | VAMC |
| 636A5 | LINCOLN, NE | NE | 685 | 23 | VAMC |
| 636GA | NORFOLK, NE | NE | 687 | 23 | CBOC |
| 636GB | NORTH PLATTE, NE | NE | 691 | 23 | CBOC |
| 636 | OMAHA, NE | NE | 681 | 23 | VAMC |
| 568HB | RUSHVILLE, NE | NE | 693 | 23 | CBOC |
| 442GB | SIDNEY, NE | NE | 691 | 19 | CBOC |
| 608GD | CONWAY, NH | NH | 038 | 1 | CBOC |
| 405HE | KEENE, NH | NH | 034 | 1 | CBOC |
| 608 | MANCHESTER, NH | NH | 031 | 1 | VAMC |
| 608GA | PORTSMOUTH, NH | NH | 038 | 1 | CBOC |
| 608HA | TILTON, NH | NH | 032 | 1 | CBOC |
| 608GC | WOLFEBORO, NH | NH | 038 | 1 | CBOC |
| 460HF | BLACKWOOD, NJ | NJ | 080 | 4 | CBOC |
| 561BZ | BRICK, NJ | NJ | 087 | 3 | CBOC |
| 642GB | CAPE MAY, NJ | NJ | 082 | 4 | CBOC |
| 561 | EAST ORANGE, NJ | NJ | 070 | 3 | VAMC |
| 561GB | ELIZABETH, NJ | NJ | 072 | 3 | CBOC |
| 642GA | FORT DIX, NJ | NJ | 086 | 4 | CBOC |
| 561GD | HACKENSACK, NJ | NJ | 076 | 3 | CBOC |
| 561HB | JAMESBURG, NJ | NJ | 088 | 3 | CBOC |
| 561GE | JERSEY CITY, NJ | NJ | 073 | 3 | CBOC |
| 561A4 | LYONS, NJ | NJ | 079 | 3 | VAMC |
| 561GH | MORRISTOWN, NJ | NJ | 079 | 3 | CBOC |
| 561GF | NEW BRUNSWICK, NJ | NJ | 089 | 3 | CBOC |
| 561GG | NEWARK CBOC, NJ | NJ | 071 | 3 | CBOC |
| 561BY | NEWARK SAC, NJ | NJ | 071 | 3 | CBOC |
| 561GA | TRENTON, NJ | NJ | 086 | 3 | CBOC |
| 460HE | VENTNOR CITY, NJ | NJ | 084 | 4 | CBOC |
| 542GI | VENTNOR CITY, NJ | NJ | 084 | 4 | CBOC |
| 460HG | VINELAND, NJ | NJ | 083 | 4 | CBOC |
| 542GF | VINELAND, NJ | NJ | 083 | 4 | CBOC |
| 501GI | ALAMOGORDO, NM | NM | 883 | 18 | CBOC |
| 501 | ALBUQUERQUE, NM | NM | 871 | 18 | VAMC |
| 501GA | ARTESIA, NM | NM | 882 | 18 | CBOC |
| 504GC | CLAYTON, NM | NM | 884 | 18 | CBOC |
| 504BZ | CLOVIS, NM | NM | 881 | 18 | CBOC |

## Supplementary Table 3
## VA Medical Facility Locations and Three-Digit ZIP Codes
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| Fac # | VA Facility Location | ST | ZIP 3 | VN | Type |
|---|---|---|---|---|---|
| 501GE | ESPANOLA, NM | NM | 884 | 18 | CBOC |
| 501GB | FARMINGTON, NM | NM | 874 | 18 | CBOC |
| 501GD | GALLUP, NM | NM | 873 | 18 | CBOC |
| 519GB | HOBBS, NM | NM | 882 | 18 | CBOC |
| 756GA | LAS CRUCES, NM | NM | 880 | 18 | CBOC |
| 501G2 | LAS VEGAS, NM | NM | 875 | 18 | CBOC |
| 501HB | RATON, NM | NM | 877 | 18 | CBOC |
| 501GK | SANTA FE, NM | NM | 875 | 18 | CBOC |
| 501GF | SANTA ROSA, NM | NM | 884 | 18 | CBOC |
| 501GC | SILVER CITY, NM | NM | 880 | 18 | CBOC |
| 501GH | TRUTH OR CONSEQUENCES, NM | NM | 879 | 18 | CBOC |
| 660GC | ELY, NV | NV | 893 | 19 | CBOC |
| 593GB | HENDERSON, NV | NV | 890 | 22 | CBOC |
| 593GA | LAS VEGAS CBOC, NV | NV | 891 | 22 | CBOC |
| 593 | LAS VEGAS, NV | NV | 891 | 22 | VAMC |
| 654GB | MINDEN, NV | NV | 894 | 21 | CBOC |
| 593GC | PAHRUMP, NV | NV | 890 | 22 | CBOC |
| 654 | RENO, NV | NV | 895 | 21 | VAMC |
| 528A8 | ALBANY, NY | NY | 122 | 2 | VAMC |
| 528G5 | AUBURN, NY | NY | 130 | 2 | CBOC |
| 528G3 | BAINBRIDGE, NY | NY | 137 | 2 | CBOC |
| 528A4 | BATAVIA, NY | NY | 140 | 2 | VAMC |
| 528A6 | BATH, NY | NY | 148 | 2 | VAMC |
| 528GN | BINGHAMTON, NY | NY | 139 | 2 | CBOC |
| 526 | BRONX, NY | NY | 104 | 3 | VAMC |
| 630GD | BROOKLYN BEDFORD-STUYVESANT, NY | NY | 112 | 3 | CBOC |
| 630GE | BROOKLYN CBOC, NY | NY | 112 | 3 | CBOC |
| 630GC | BROOKLYN CHAPEL STREET, NY | NY | 112 | 3 | CBOC |
| 630CG | BROOKLYN HOMELESS CTR, NY | NY | 112 | 3 | CBOC |
| 630A4 | BROOKLYN, NY | NY | 112 | 3 | VAMC |
| 528 | BUFFALO, NY | NY | 142 | 2 | VAMC |
| 528A5 | CANANDAIGUA, NY | NY | 144 | 2 | VAMC |
| 620GB | CARMEL, NY | NY | 105 | 3 | CBOC |
| 620A4 | CASTLE POINT, NY | NY | 125 | 3 | VAMC |
| 528G7 | CATSKILL, NY | NY | 124 | 2 | CBOC |
| 528GY | CLIFTON PARK, NY | NY | 120 | 2 | CBOC |
| 528G9 | CORTLAND, NY | NY | 130 | 2 | CBOC |
| 528GC | DUNKIRK, NY | NY | 140 | 2 | CBOC |
| 528G2 | ELIZABETHTOWN, NY | NY | 129 | 2 | CBOC |
| 528G4 | ELMIRA, NY | NY | 149 | 2 | CBOC |
| 630GF | FAR ROCKAWAY, NY | NY | 116 | 3 | CBOC |
| 528G6 | FONDA, NY | NY | 120 | 2 | CBOC |
| 528GT | GLENS FALLS, NY | NY | 128 | 2 | CBOC |
| 630GA | HARLEM, NY | NY | 100 | 3 | CBOC |
| 620GF | HARRIS, NY | NY | 127 | 3 | CBOC |
| 632HG | HICKSVILLE, NY | NY | 118 | 3 | CBOC |
| 632HC | ISLIP, NY | NY | 117 | 3 | CBOC |
| 528GB | JAMESTOWN, NY | NY | 147 | 2 | CBOC |
| 528GZ | KINGSTON, NY | NY | 124 | 2 | CBOC |

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### Reasonable Charges Version 2.0

RC V2p0 Station List 02-11-05.xls

| Fac # | VA Facility Location | ST | ZIP 3 | VN | Type |
|---|---|---|---|---|---|
| 620GC | KINGSTON, NY | NY | 124 | 3 | CBOC |
| 528GQ | LACKAWANNA, NY | NY | 142 | 2 | CBOC |
| 632HF | LINDENHURST, NY | NY | 117 | 3 | CBOC |
| 528GK | LOCKPORT, NY | NY | 140 | 2 | CBOC |
| 632HA | LYNBROOK, NY | NY | 115 | 3 | CBOC |
| 528G1 | MALONE, NY | NY | 129 | 2 | CBOC |
| 528GL | MASSENA, NY | NY | 136 | 2 | CBOC |
| 620 | MONTROSE, NY | NY | 105 | 3 | VAMC |
| 528GI | MOUNT MORRIS, NY | NY | 145 | 2 | CBOC |
| 632HE | MOUNT SINAI, NY | NY | 117 | 3 | CBOC |
| 620GA | NEW CITY, NY | NY | 109 | 3 | CBOC |
| 630BZ | NEW YORK METHADONE, NY | NY | 100 | 3 | CBOC |
| 630B2 | NEW YORK SOHO C&P UNIT, NY | NY | 100 | 3 | CBOC |
| 630 | NEW YORK, NY | NY | 100 | 3 | VAMC |
| 528GD | NIAGARA FALLS, NY | NY | 143 | 2 | CBOC |
| 632 | NORTHPORT/LONG ISLAND, NY | NY | 117 | 3 | VAMC |
| 528GR | OLEAN, NY | NY | 147 | 2 | CBOC |
| 528GP | OSWEGO, NY | NY | 131 | 2 | CBOC |
| 632HD | PATCHOGUE, NY | NY | 117 | 3 | CBOC |
| 528GJ | PENN YAN, NY | NY | 145 | 2 | CBOC |
| 632GA | PLAINVIEW, NY | NY | 118 | 3 | CBOC |
| 528GV | PLATTSBURGH, NY | NY | 129 | 2 | CBOC |
| 620GE | PORT JERVIS, NY | NY | 127 | 3 | CBOC |
| 620GG | POUGHKEEPSIE, NY | NY | 126 | 3 | CBOC |
| 526GD | QUEENS, NY | NY | 111 | 3 | CBOC |
| 632HB | RIVERHEAD, NY | NY | 119 | 3 | CBOC |
| 528GE | ROCHESTER, NY | NY | 146 | 2 | CBOC |
| 528GM | ROME, NY | NY | 134 | 2 | CBOC |
| 630A5 | SAINT ALBANS, NY | NY | 114 | 3 | VAMC |
| 632HH | SAYVILLE, NY | NY | 117 | 3 | CBOC |
| 528GW | SCHENECTADY, NY | NY | 123 | 2 | CBOC |
| 526GC | SOUTH BRONX, NY | NY | 104 | 3 | CBOC |
| 630GB | STATEN ISLAND, NY | NY | 103 | 3 | CBOC |
| 528A7 | SYRACUSE, NY | NY | 132 | 2 | VAMC |
| 528GX | TROY, NY | NY | 121 | 2 | CBOC |
| 620GD | WALLKILL, NY | NY | 125 | 3 | CBOC |
| 528GO | WATERTOWN/FORT DRUM, NY | NY | 136 | 2 | CBOC |
| 528G8 | WELLSVILLE, NY | NY | 148 | 2 | CBOC |
| 526GA | WHITE PLAINS/BRONX, NY | NY | 106 | 3 | CBOC |
| 526GB | YONKERS, NY | NY | 107 | 3 | CBOC |
| 541GG | AKRON, OH | OH | 443 | 10 | CBOC |
| 562GB | ASHTABULA, OH | OH | 440 | 4 | CBOC |
| 538GA | ATHENS, OH | OH | 457 | 10 | CBOC |
| 541BY | CANTON, OH | OH | 447 | 10 | CBOC |
| 538 | CHILLICOTHE, OH | OH | 456 | 10 | VAMC |
| 539GB | CINCINNATI CBOC, OH | OH | 452 | 10 | CBOC |
| 539 | CINCINNATI, OH | OH | 452 | 10 | VAMC |
| 541A0 | CLEVELAND BRECKSVILLE, OH | OH | 441 | 10 | VAMC |
| 541GE | CLEVELAND CBOC, OH | OH | 441 | 10 | CBOC |

### Supplementary Table 3
### VA Medical Facility Locations and Three-Digit ZIP Codes
### Reasonable Charges Version 2.0

RC V2p0 Station List 02-11-05.xls

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| Fac # | VA Facility Location | ST | ZIP 3 | VN | Type |
|---|---|---|---|---|---|
| 541 | CLEVELAND WADE PARK, OH | OH | 441 | 10 | VAMC |
| 757 | COLUMBUS, OH | OH | 432 | 10 | IOC |
| 552 | DAYTON, OH | OH | 454 | 10 | VAMC |
| 541GH | EAST LIVERPOOL, OH | OH | 439 | 10 | CBOC |
| 757GB | GROVE CITY, OH | OH | 431 | 10 | CBOC |
| 538GD | LANCASTER, OH | OH | 431 | 10 | CBOC |
| 552GB | LIMA, OH | OH | 458 | 10 | CBOC |
| 541GB | LORAIN, OH | OH | 440 | 10 | CBOC |
| 541GD | MANSFIELD, OH | OH | 449 | 10 | CBOC |
| 538GC | MARIETTA, OH | OH | 457 | 10 | CBOC |
| 552GA | MIDDLETOWN, OH | OH | 450 | 10 | CBOC |
| 541GF | PAINESVILLE, OH | OH | 440 | 10 | CBOC |
| 538GB | PORTSMOUTH, OH | OH | 456 | 10 | CBOC |
| 646GA | SAINT CLAIRSVILLE, OH | OH | 439 | 4 | CBOC |
| 541GC | SANDUSKY, OH | OH | 448 | 10 | CBOC |
| 552GD | SPRINGFIELD, OH | OH | 455 | 10 | CBOC |
| 506GA | TOLEDO, OH | OH | 436 | 11 | CBOC |
| 541GI | WARREN, OH | OH | 444 | 10 | CBOC |
| 538HF | WASHINGTON COURT HOUSE, OH | OH | 431 | 10 | CBOC |
| 538HA | WELLSTON, OH | OH | 456 | 10 | CBOC |
| 541BZ | YOUNGSTOWN, OH | OH | 445 | 10 | CBOC |
| 757GA | ZANESVILLE, OH | OH | 437 | 10 | CBOC |
| 635HB | ARDMORE, OK | OK | 734 | 16 | CBOC |
| 635HA | CLINTON, OK | OK | 736 | 16 | CBOC |
| 635GD | KONAWA, OK | OK | 748 | 16 | CBOC |
| 635GA | LAWTON/FORT SILL, OK | OK | 735 | 16 | CBOC |
| 623GA | MCALESTER, OK | OK | 745 | 16 | CBOC |
| 623 | MUSKOGEE, OK | OK | 744 | 16 | VAMC |
| 635 | OKLAHOMA CITY, OK | OK | 731 | 16 | VAMC |
| 635GC | PONCA CITY, OK | OK | 746 | 16 | CBOC |
| 623HA | TALIHINA, OK | OK | 745 | 16 | CBOC |
| 623BY | TULSA, OK | OK | 741 | 16 | CBOC |
| 653GA | BANDON, OR | OR | 974 | 20 | CBOC |
| 648GA | BEND, OR | OR | 977 | 20 | CBOC |
| 653GB | BROOKINGS, OR | OR | 974 | 20 | CBOC |
| 653BY | EUGENE, OR | OR | 974 | 20 | CBOC |
| 692GA | KLAMATH FALLS, OR | OR | 976 | 20 | CBOC |
| 648GD | NORTH COAST, OR | OR | 971 | 20 | CBOC |
| 531GD | ONTARIO, OR | OR | 979 | 20 | CBOC |
| 648 | PORTLAND, OR | OR | 972 | 20 | VAMC |
| 653 | ROSEBURG, OR | OR | 974 | 20 | VAMC |
| 648GB | SALEM, OR | OR | 973 | 20 | CBOC |
| 692 | WHITE CITY, OR | OR | 975 | 20 | DOM |
| 646GC | ALIQUIPPA, PA | PA | 150 | 4 | CBOC |
| 693B4 | ALLENTOWN, PA | PA | 181 | 4 | CBOC |
| 503 | ALTOONA, PA | PA | 166 | 4 | VAMC |
| 693GF | BERWICK, PA | PA | 186 | 4 | CBOC |
| 529 | BUTLER, PA | PA | 160 | 4 | VAMC |
| 595GA | CAMP HILL, PA | PA | 170 | 4 | CBOC |

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## Supplementary Table 3
## VA Medical Facility Locations and Three-Digit ZIP Codes
## Reasonable Charges Version 2.0

RC V2p0 Station List 02-11-05.xls

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| Fac # | VA Facility Location | ST | ZIP 3 | VN | Type |
|---|---|---|---|---|---|
| 542GH | COATESVILLE CBOC, PA | PA | 193 | 4 | CBOC |
| 542GG | COATESVILLE MSCEC, PA | PA | 193 | 4 | CBOC |
| 542 | COATESVILLE, PA | PA | 193 | 4 | VAMC |
| 503GB | DU BOIS, PA | PA | 158 | 4 | CBOC |
| 562 | ERIE, PA | PA | 165 | 4 | VAMC |
| 646GB | GREENSBURG, PA | PA | 156 | 4 | CBOC |
| 503GA | JOHNSTOWN, PA | PA | 159 | 4 | CBOC |
| 529GC | KITTANNING, PA | PA | 162 | 4 | CBOC |
| 529GD | KNOX, PA | PA | 162 | 4 | CBOC |
| 542GD | LANCASTER, PA | PA | 176 | 4 | CBOC |
| 595GC | LANCASTER, PA | PA | 176 | 4 | CBOC |
| 595 | LEBANON, PA | PA | 170 | 4 | VAMC |
| 562GA | MEADVILLE, PA | PA | 163 | 4 | CBOC |
| 529GA | MERCER, PA | PA | 161 | 4 | CBOC |
| 529GB | NEW CASTLE, PA | PA | 161 | 4 | CBOC |
| 542GB | PHILADELPHIA CBOC, PA | PA | 191 | 4 | CBOC |
| 642 | PHILADELPHIA, PA | PA | 191 | 4 | VAMC |
| 646A0 | PITTSBURGH ASPINWALL, PA | PA | 152 | 4 | VAMC |
| 646A4 | PITTSBURGH ASPINWALL, PA | PA | 152 | 4 | VAMC |
| 646A5 | PITTSBURGH HIGHLAND DR, PA | PA | 152 | 4 | VAMC |
| 646 | PITTSBURGH UNIV DR, PA | PA | 152 | 4 | VAMC |
| 595GB | POTTSVILLE/SCHUYLKILL/SHENANDOAH, PA | PA | 179 | 4 | CBOC |
| 693GE | POTTSVILLE/SCHUYLKILL/SHENANDOAH, PA | PA | 179 | 4 | CBOC |
| 542GC | READING, PA | PA | 196 | 4 | CBOC |
| 595GD | READING, PA | PA | 196 | 4 | CBOC |
| 693GA | SAYRE, PA | PA | 188 | 4 | CBOC |
| 693GD | SCRANTON, PA | PA | 185 | 4 | CBOC |
| 562GC | SMETHPORT, PA | PA | 167 | 4 | CBOC |
| 542GE | SPRING CITY, PA | PA | 194 | 4 | CBOC |
| 542GA | SPRINGFIELD, PA | PA | 190 | 4 | CBOC |
| 503GC | STATE COLLEGE, PA | PA | 168 | 4 | CBOC |
| 693GC | TOBYHANNA, PA | PA | 184 | 4 | CBOC |
| 646GD | WASHINGTON, PA | PA | 153 | 4 | CBOC |
| 693HK | WILKES-BARRE MOC, PA | PA | 187 | 4 | CBOC |
| 693 | WILKES-BARRE, PA | PA | 187 | 4 | VAMC |
| 693GB | WILLIAMSPORT, PA | PA | 177 | 4 | CBOC |
| 642GC | WILLOW GROVE, PA | PA | 190 | 4 | CBOC |
| 595GE | YORK, PA | PA | 174 | 4 | CBOC |
| 672GC | ARECIBO, PR | PR | 006 | 8 | CBOC |
| 672BZ | MAYAGUEZ, PR | PR | 006 | 8 | CBOC |
| 672B0 | PONCE, PR | PR | 007 | 8 | CBOC |
| 672 | SAN JUAN, PR | PR | 009 | 8 | VAMC |
| 650GD | MIDDLETOWN, RI | RI | 028 | 1 | CBOC |
| 650 | PROVIDENCE, RI | RI | 029 | 1 | VAMC |
| 544GD | ANDERSON, SC | SC | 296 | 7 | CBOC |
| 534GC | BEAUFORT, SC | SC | 299 | 7 | CBOC |
| 534 | CHARLESTON, SC | SC | 294 | 7 | VAMC |
| 544 | COLUMBIA, SC | SC | 292 | 7 | VAMC |
| 544GB | FLORENCE, SC | SC | 295 | 7 | CBOC |

### Supplementary Table 3
### VA Medical Facility Locations and Three-Digit ZIP Codes
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RC V2p0 Station List 02-11-05.xls

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| Fac # | VA Facility Location | ST | ZIP 3 | VN | Type |
|---|---|---|---|---|---|
| 544BZ | GREENVILLE, SC | SC | 296 | 7 | CBOC |
| 534GB | MYRTLE BEACH, SC | SC | 295 | 7 | CBOC |
| 544GE | ORANGEBURG, SC | SC | 291 | 7 | CBOC |
| 544GC | ROCK HILL, SC | SC | 297 | 7 | CBOC |
| 544GF | SUMTER, SC | SC | 291 | 7 | CBOC |
| 438GD | ABERDEEN, SD | SD | 574 | 23 | CBOC |
| 568HM | EAGLE BUTTE, SD | SD | 576 | 23 | CBOC |
| 568HD | ELLSWORTH AFB, SD | SD | 577 | 23 | CBOC |
| 568 | FORT MEADE, SD | SD | 577 | 23 | VAMC |
| 568A4 | HOT SPRINGS, SD | SD | 577 | 23 | VAMC |
| 568HE | KYLE, SD | SD | 577 | 23 | CBOC |
| 568HK | MCLAUGHLIN, SD | SD | 576 | 23 | CBOC |
| 568GB | PIERRE, SD | SD | 575 | 23 | CBOC |
| 568HF | PINE RIDGE, SD | SD | 577 | 23 | CBOC |
| 568GA | RAPID CITY, SD | SD | 577 | 23 | CBOC |
| 568HJ | ROSEBUD, SD | SD | 575 | 23 | CBOC |
| 438 | SIOUX FALLS, SD | SD | 571 | 23 | VAMC |
| 568HP | WINNER, SD | SD | 575 | 23 | CBOC |
| 438GA | WORTHING, SD | SD | 570 | 23 | CBOC |
| 626GF | CHATTANOOGA, TN | TN | 374 | 9 | CBOC |
| 626GE | CLARKSVILLE, TN | TN | 370 | 9 | CBOC |
| 626GH | COOKEVILLE, TN | TN | 385 | 9 | CBOC |
| 626GA | DOVER, TN | TN | 370 | 9 | CBOC |
| 626BY | KNOXVILLE, TN | TN | 379 | 9 | CBOC |
| 626GB | MADISON, TN | TN | 371 | 9 | CBOC |
| 614 | MEMPHIS, TN | TN | 381 | 9 | VAMC |
| 621GB | MOUNTAIN CITY, TN | TN | 376 | 9 | CBOC |
| 621 | MOUNTAIN HOME, TN | TN | 376 | 9 | VAMC |
| 626A4 | MURFREESBORO, TN | TN | 371 | 9 | VAMC |
| 626 | NASHVILLE, TN | TN | 372 | 9 | VAMC |
| 621GA | ROGERSVILLE, TN | TN | 378 | 9 | CBOC |
| 614GD | SAVANNAH, TN | TN | 383 | 9 | CBOC |
| 626GG | TULLAHOMA/ARNOLD AFB, TN | TN | 373 | 9 | CBOC |
| 519HC | ABILENE, TX | TX | 796 | 18 | CBOC |
| 671GG | ALICE, TX | TX | 783 | 17 | CBOC |
| 504 | AMARILLO, TX | TX | 791 | 18 | VAMC |
| 674BY | AUSTIN, TX | TX | 787 | 17 | CBOC |
| 580BY | BEAUMONT, TX | TX | 777 | 16 | CBOC |
| 671GH | BEEVILLE, TX | TX | 781 | 17 | CBOC |
| 519 | BIG SPRING, TX | TX | 797 | 18 | VAMC |
| 549GC | BONHAM CBOC, TX | TX | 754 | 17 | CBOC |
| 549A4 | BONHAM, TX | TX | 754 | 17 | VAMC |
| 671GA | BROWNSVILLE, TX | TX | 785 | 17 | CBOC |
| 674GB | BROWNWOOD, TX | TX | 768 | 17 | CBOC |
| 674GC | BRYAN/COLLEGE STATION, TX | TX | 778 | 17 | CBOC |
| 674GD | CEDAR PARK, TX | TX | 786 | 17 | CBOC |
| 504GA | CHILDRESS, TX | TX | 792 | 18 | CBOC |
| 549GI | CLEBURNE, TX | TX | 760 | 17 | CBOC |
| 671BZ | CORPUS CHRISTI, TX | TX | 784 | 17 | CBOC |

### Supplementary Table 3
### VA Medical Facility Locations and Three-Digit ZIP Codes
### Reasonable Charges Version 2.0

RC V2p0 Station List 02-11-05.xls Page 16 of 18

| Fac # | VA Facility Location | ST | ZIP 3 | VN | Type |
|---|---|---|---|---|---|
| 549 | DALLAS, TX | TX | 752 | 17 | VAMC |
| 549GB | DALLAS/PLEASANT GROVE, TX | TX | 752 | 17 | CBOC |
| 549GE | DECATUR, TX | TX | 762 | 17 | CBOC |
| 671GC | DEL RIO, TX | TX | 788 | 17 | CBOC |
| 549GD | DENTON, TX | TX | 762 | 17 | CBOC |
| 671GD | EAGLE PASS, TX | TX | 788 | 17 | CBOC |
| 549GF | EASTLAND, TX | TX | 764 | 17 | CBOC |
| 756 | EL PASO, TX | TX | 799 | 18 | IOC |
| 519GD | FORT STOCKTON, TX | TX | 797 | 18 | CBOC |
| 549BY | FORT WORTH SOC, TX | TX | 761 | 17 | CBOC |
| 549HA | FORT WORTH/DIAMOND HILL, TX | TX | 761 | 17 | CBOC |
| 549GH | GREENVILLE, TX | TX | 754 | 17 | CBOC |
| 674HA | HAMILTON, TX | TX | 765 | 17 | CBOC |
| 580GB | HOUSTON CBOC, TX | TX | 770 | 16 | CBOC |
| 580 | HOUSTON, TX | TX | 770 | 16 | VAMC |
| 671A4 | KERRVILLE, TX | TX | 780 | 17 | VAMC |
| 671GI | KINGSVILLE, TX | TX | 783 | 17 | CBOC |
| 671GE | LAREDO, TX | TX | 780 | 17 | CBOC |
| 667GC | LONGVIEW, TX | TX | 756 | 16 | CBOC |
| 504BY | LUBBOCK, TX | TX | 794 | 18 | CBOC |
| 580BZ | LUFKIN, TX | TX | 759 | 16 | CBOC |
| 674A5 | MARLIN, TX | TX | 766 | 17 | VAMC |
| 671B0 | MCALLEN, TX | TX | 785 | 17 | CBOC |
| 549GG | MCKINNEY, TX | TX | 750 | 17 | CBOC |
| 519GE | MONAHANS, TX | TX | 797 | 18 | CBOC |
| 671GL | NEW BRAUNFELS, TX | TX | 781 | 17 | CBOC |
| 519GA | ODESSA, TX | TX | 797 | 18 | CBOC |
| 674GA | PALESTINE, TX | TX | 758 | 17 | CBOC |
| 519HF | SAN ANGELO, TX | TX | 769 | 18 | CBOC |
| 671BY | SAN ANTONIO CBOC, TX | TX | 782 | 17 | CBOC |
| 671GK | SAN ANTONIO CBOC, TX | TX | 782 | 17 | CBOC |
| 671 | SAN ANTONIO, TX | TX | 782 | 17 | VAMC |
| 671GM | SAN MARCOS, TX | TX | 786 | 17 | CBOC |
| 671GN | SEGUIN, TX | TX | 781 | 17 | CBOC |
| 671GF | SOUTH BEXAR COUNTY, TX | TX | 782 | 17 | CBOC |
| 519HD | STAMFORD, TX | TX | 795 | 18 | CBOC |
| 504HB | STRATFORD, TX | TX | 790 | 18 | CBOC |
| 674 | TEMPLE, TX | TX | 765 | 17 | VAMC |
| 667GA | TEXARKANA, TX | TX | 755 | 16 | CBOC |
| 549GA | TYLER, TX | TX | 757 | 17 | CBOC |
| 671GJ | UVALDE, TX | TX | 788 | 17 | CBOC |
| 671GB | VICTORIA, TX | TX | 779 | 17 | CBOC |
| 674A4 | WACO, TX | TX | 767 | 17 | VAMC |
| 635GB | WICHITA FALLS, TX | TX | 763 | 16 | CBOC |
| 660GI | NEPHI, UT | UT | 846 | 19 | CBOC |
| 660GB | OGDEN, UT | UT | 844 | 19 | CBOC |
| 660GE | OREM, UT | UT | 840 | 19 | CBOC |
| 660GD | ROOSEVELT, UT | UT | 840 | 19 | CBOC |
| 660GG | SAINT GEORGE, UT | UT | 847 | 19 | CBOC |

## Supplementary Table 3
## VA Medical Facility Locations and Three-Digit ZIP Codes
## Reasonable Charges Version 2.0

RC V2p0 Station List 02-11-05.xls

| Fac # | VA Facility Location | ST | ZIP 3 | VN | Type |
|---|---|---|---|---|---|
| 660 | SALT LAKE CITY, UT | UT | 841 | 19 | VAMC |
| 688GA | ALEXANDRIA, VA | VA | 223 | 5 | CBOC |
| 658HG | COVINGTON, VA | VA | 244 | 6 | CBOC |
| 658GB | DANVILLE, VA | VA | 245 | 6 | CBOC |
| 652GA | FREDERICKSBURG, VA | VA | 224 | 6 | CBOC |
| 590 | HAMPTON, VA | VA | 236 | 6 | VAMC |
| 613GF | HARRISONBURG, VA | VA | 228 | 5 | CBOC |
| 658HD | HILLSVILLE, VA | VA | 243 | 6 | CBOC |
| 658HC | LYNCHBURG, VA | VA | 245 | 6 | CBOC |
| 658HH | MARION, VA | VA | 243 | 6 | CBOC |
| 658HE | MARTINSVILLE, VA | VA | 241 | 6 | CBOC |
| 590GA | NORFOLK, VA | VA | 235 | 6 | CBOC |
| 621GC | NORTON, VA | VA | 242 | 9 | CBOC |
| 658HB | PULASKI, VA | VA | 243 | 6 | CBOC |
| 652 | RICHMOND, VA | VA | 232 | 6 | VAMC |
| 621GD | SAINT CHARLES, VA | VA | 242 | 9 | CBOC |
| 658 | SALEM, VA | VA | 241 | 6 | VAMC |
| 613GC | STEPHENS CITY, VA | VA | 226 | 5 | CBOC |
| 658HA | STUARTS DRAFT, VA | VA | 244 | 6 | CBOC |
| 658GA | TAZEWELL, VA | VA | 246 | 6 | CBOC |
| 672GD | KINGSHILL, VI | VI | 008 | 8 | CBOC |
| 672GA | SAINT CROIX, VI | VI | 008 | 8 | CBOC |
| 672GB | SAINT THOMAS, VI | VI | 008 | 8 | CBOC |
| 405GA | BENNINGTON, VT | VT | 052 | 1 | CBOC |
| 405HA | BURLINGTON, VT | VT | 054 | 1 | CBOC |
| 405HB | MONTPELIER, VT | VT | 056 | 1 | CBOC |
| 405HD | NEWPORT, VT | VT | 058 | 1 | CBOC |
| 405HF | RUTLAND, VT | VT | 057 | 1 | CBOC |
| 405HC | SAINT JOHNSBURY, VT | VT | 058 | 1 | CBOC |
| 405 | WHITE RIVER JCT, VT | VT | 050 | 1 | VAMC |
| 405HG | WILDER, VT | VT | 050 | 1 | CBOC |
| 663A4 | AMERICAN LAKE/TACOMA, WA | WA | 984 | 20 | VAMC |
| 663GB | BREMERTON, WA | WA | 983 | 20 | CBOC |
| 648GC | LONGVIEW, WA | WA | 986 | 20 | CBOC |
| 663GA | LYNNWOOD/NORTHGATE, WA | WA | 980 | 20 | CBOC |
| 687GA | RICHLAND, WA | WA | 993 | 20 | CBOC |
| 663 | SEATTLE, WA | WA | 981 | 20 | VAMC |
| 668HK | SPOKANE MOC, WA | WA | 992 | 20 | CBOC |
| 668 | SPOKANE, WA | WA | 992 | 20 | VAMC |
| 648A4 | VANCOUVER, WA | WA | 986 | 20 | VAMC |
| 687 | WALLA WALLA, WA | WA | 993 | 20 | VAMC |
| 687HA | YAKIMA, WA | WA | 989 | 20 | CBOC |
| 695BY | APPLETON, WI | WI | 549 | 12 | CBOC |
| 607GD | BARABOO, WI | WI | 539 | 12 | CBOC |
| 607GE | BEAVER DAM, WI | WI | 539 | 12 | CBOC |
| 618GE | CHIPPEWA FALLS, WI | WI | 547 | 23 | CBOC |
| 695GC | CLEVELAND, WI | WI | 530 | 12 | CBOC |
| 607GC | EDGERTON, WI | WI | 535 | 12 | CBOC |
| 556GD | KENOSHA, WI | WI | 531 | 12 | CBOC |

### Supplementary Table 3
### VA Medical Facility Locations and Three-Digit ZIP Codes
### Reasonable Charges Version 2.0

RC V2p0 Station List 02-11-05.xls

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| Fac # | VA Facility Location | ST | ZIP 3 | VN | Type |
|---|---|---|---|---|---|
| 676GC | LA CROSSE, WI | WI | 546 | 12 | CBOC |
| 676GE | LOYAL, WI | WI | 544 | 12 | CBOC |
| 607 | MADISON, WI | WI | 537 | 12 | VAMC |
| 695HK | MILWAUKEE MOC, WI | WI | 532 | 12 | CBOC |
| 695 | MILWAUKEE, WI | WI | 532 | 12 | VAMC |
| 585GB | RHINELANDER, WI | WI | 545 | 12 | CBOC |
| 618BY | SUPERIOR, WI | WI | 548 | 23 | CBOC |
| 676 | TOMAH, WI | WI | 546 | 12 | VAMC |
| 695GA | UNION GROVE, WI | WI | 531 | 12 | CBOC |
| 676GA | WAUSAU, WI | WI | 544 | 12 | CBOC |
| 676HB | WAUTOMA, WI | WI | 549 | 12 | CBOC |
| 676GD | WISCONSIN RAPIDS, WI | WI | 544 | 12 | CBOC |
| 517 | BECKLEY, WV | WV | 258 | 6 | VAMC |
| 581GB | CHARLESTON, WV | WV | 253 | 9 | CBOC |
| 540 | CLARKSBURG, WV | WV | 263 | 4 | VAMC |
| 613GD | FRANKLIN, WV | WV | 268 | 5 | CBOC |
| 517GA | GASSAWAY, WV | WV | 266 | 6 | CBOC |
| 540GC | GASSAWAY, WV | WV | 266 | 4 | CBOC |
| 581 | HUNTINGTON, WV | WV | 257 | 9 | VAMC |
| 581GE | LOGAN, WV | WV | 256 | 9 | CBOC |
| 613HK | MARTINSBURG MOC, WV | WV | 254 | 5 | CBOC |
| 613 | MARTINSBURG, WV | WV | 254 | 5 | VAMC |
| 540GB | PARKERSBURG, WV | WV | 261 | 4 | CBOC |
| 540GA | PARSONS, WV | WV | 262 | 4 | CBOC |
| 613GE | PETERSBURG, WV | WV | 268 | 5 | CBOC |
| 581GD | WILLIAMSON, WV | WV | 256 | 9 | CBOC |
| 666GB | CASPER, WY | WY | 826 | 19 | CBOC |
| 442 | CHEYENNE, WY | WY | 820 | 19 | VAMC |
| 666GE | GILLETTE, WY | WY | 827 | 19 | CBOC |
| 660GF | GREEN RIVER, WY | WY | 829 | 19 | CBOC |
| 568HA | NEWCASTLE, WY | WY | 827 | 23 | CBOC |
| 666GD | POWELL, WY | WY | 824 | 19 | CBOC |
| 666GC | RIVERTON, WY | WY | 825 | 19 | CBOC |
| 666 | SHERIDAN, WY | WY | 828 | 19 | VAMC |

**Abbreviations**

CBOC = Community-Based Outpatient Clinic
DOM = Independent Domiciliary
Fac # = VA Facility Number
IOC = Independent Outpatient Clinic
MOC = Mobile Outreach Clinic
SOC = Satellite Outpatient Clinic
ST = State
VAMC = VA Medical Center
VN = Veterans Integrated Service Network
ZIP 3 = First three digits of ZIP Code

[FR Doc. 03-24103 Filed 10-1-03; 8:45 am]

BILLING CODE 8320-01-C

Federal Register

**Thursday,**
**October 2, 2003**

## Part III

# Department of Transportation

**Federal Transit Administration**

## Over-the-Road Bus Accessibility Program Announcement of Project Selections; Notice

## DEPARTMENT OF TRANSPORTATION

## Federal Transit Administration

## Over-the-Road Bus Accessibility Program Announcement of Project Selections

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Transportation (DOT) Federal Transit Administration (FTA) announces the selection of projects to be funded under Fiscal Year 2003 appropriations for the Over-the-Road Bus (OTRB) Accessibility Program, authorized by Section 3038 of the Transportation Equity Act for the 21st Century (TEA–21). The OTRB Accessibility Program makes funds available to private operators of over-the-road buses to help finance the incremental capital and training costs of complying with DOT's over-the-road bus accessibility rule, published in the **Federal Register** on September 24, 1998.

**FOR FURTHER INFORMATION CONTACT:** The appropriate FTA Regional Administrator for grant-specific issues; or Blenda Younger, Office of Program Management, 202–366–2053, for general information about the OTRB Program.

**SUPPLEMENTARY INFORMATION:** A total of $6.9 million was made available for the program in FY 2003: $5.2 million for intercity fixed-route providers and $1.7 million for all other providers, such as commuter, charter, and tour operators. A total of 84 applicants requested $17.6 million: $10.5 million was requested by intercity fixed-route providers, and $7.1 million was requested by all other providers. Project selections were made on a discretionary basis, based on each applicant's responsiveness to statutory project selection criteria, fleet size, and level of funding received in previous years. Because of the high demand for the funds available, most applicants received less funding than they requested, but all qualified applicants received some funding. The selected projects will provide funding for the incremental cost of adding lifts to 128 new vehicles, retrofitting 80 vehicles, and $335,546 for training. Each of the following 74 awardees, as well as the 10 applicants who were not selected for funding, will receive a letter that explains how funding decisions were made.

| Operator | City/State | Award amounts | | |
|---|---|---|---|---|
| | | Intercity fixed-route | Other | Total |
| Region I: | | | | |
| Bonanza Bus Lines | Providence, RI | $109,935 | | $109,935 |
| Bristol Tours, Inc | Bristol, VT | | 39,547 | 39,547 |
| Concord Coach Lines, Inc | Concord, NH | 48,800 | | 48,800 |
| Entertainment Tours | Braintree, MA | 63,000 | | 63,000 |
| Peter Pan Bus Lines | Springfield, MA | 157,859 | | 157,859 |
| Vermont Transit Co | Burlington, VT | | 33,151 | 33,151 |
| Region II: | | | | |
| Adirondack Trailways | Hurley, NY | 187,500 | | 187,500 |
| Blue Bird Coach Lines, Inc | N.Tonawanda, NY | | 87,030 | 87,030 |
| Hampton Jitney, Inc | Southampton, NY | | 28,800 | 28,800 |
| Shortline (Hudson Transit) | Mahwah, NJ | 180,000 | | 180,000 |
| Sunrise Coach Lines, Inc | Green Port, NY | | 39,384 | 39,384 |
| Syracuse and Oswego Motor Lines | E. Syracuse, NY | | 43,481 | 43,481 |
| Trans Express, Inc | Brooklyn, NY | | 33,750 | 33,750 |
| Trolley Tours, Inc | Forked River, NJ | 72,000 | 22,950 | 94,950 |
| Utica Rome Bus Company | Clinton, NY | | 41,990 | 41,990 |
| Region III: | | | | |
| Abbott Bus Lines, Inc | Roanoke, VA | | 91,482 | 91,482 |
| Angelic Luxury Coach, Inc | District Hgts, MD | 35,000 | | 35,000 |
| Brown Bus Company | Richmond, VA | | 28,710 | 28,710 |
| Butler Motor Transit | Butler, PA | | 37,800 | 37,800 |
| Capitol Bus Company | Harrisburg, PA | 50,400 | | 50,400 |
| Elegance Bus Tours, Inc | Suitland, MD | 35,000 | | 35,000 |
| Eyre Bus Service, Inc | Glenelg, MD | | 63,142 | 63,142 |
| First Priority Tours, Inc | District Hgts. MD | | 20,965 | 20,965 |
| Hagey Coach, Inc | Franconia, PA | | 50,400 | 50,400 |
| Krapf's Coaches, Inc | West Chester, PA | | 25,200 | 25,200 |
| Lenzer Tour and Travel | Sewickley, Pa | | 37,800 | 37,800 |
| Penn Highway Transit Co | Lancaster, PA | | 33,712 | 33,712 |
| Perkiomen Tours | Pennsburg, PA | | 33,300 | 33,300 |
| Susquehanna Transit Co | Avis, PA | 100,596 | | 100,596 |
| Thomas Tours | Beltsville, MD | | 12,617 | 12,617 |
| Trans-Bridge Lines | Bethlehem, PA | 154,101 | | 154,101 |
| Region IV: | | | | |
| Americoach Tours | Memphis, TN | | 38,250 | 38,250 |
| Blue Grass Tours, Inc | Lexington, KY | | 28,507 | 28,507 |
| Carolina Trailways | Raleigh, NC | | 33,151 | 33,151 |
| Champion Coach | Greenville, SC | | 27,000 | 27,000 |
| Escot Bus Lines, Inc | Tampa, FL | | 39,368 | 39,368 |
| Good Time Tours | Pensacola, FL | | 2,700 | 2,700 |
| Lancaster Tours and Travel | Lancaster, SC | | 35,000 | 35,000 |
| North Mississippi Services | Tupelo, MS | | 45,814 | 45,814 |
| Region V: | | | | |
| Alpha Bus Leasing | Cincinnati, OH | | 54,871 | 54,871 |
| B&W Charters, Inc | Kalamazoo, MI | | 36,961 | 36,961 |
| Brecksville Road Transit, Inc | Brecksville, OH | | 37,104 | 37,104 |

| Operator | City/State | Award amounts | | |
|---|---|---|---|---|
| | | Intercity fixed-route | Other | Total |
| Cavallo Bus Lines, Inc | Gillespie, IL | | 35,000 | 35,000 |
| Colonial Coach Lines | Des Plaines, IL | 112,274 | | 112,274 |
| Dixon Meyers Bus Transportation | Mt. Morris, IL | | 35,946 | 35,946 |
| Jefferson Lines | Minneapolis, MN | 133,250 | | 133,250 |
| Peoria Charter Coach Co | Peoria, IL | 35,910 | | 35,910 |
| Pioneer Coach Lines, Inc | Chicago, IL | | 27,000 | 27,000 |
| Red River Trails | Moorhead, MN | | 27,239 | 27,239 |
| Robinson Coach | Evanston, IL | | 35,500 | 35,500 |
| Trobec Bus Service, Inc | St. Stephen, MN | | 27,000 | 27,000 |
| Vandalia Bus Lines, Inc | Caseyville, Il | | 52,332 | 52,332 |
| Wisconsin Coach | Waukesha, WI | 108,000 | | 108,000 |
| Region VI: | | | | |
| Cowtown Bus Charters, Inc | Fort Worth, TX | | 28,474 | 28,474 |
| El Expresso | Houston, TX | 76,050 | | 76,050 |
| Fun Time Tours | Corpus Christi, TX | | 38,554 | 38,554 |
| Gotta Go Express Trailways | Fort Worth, TX | | 25,626 | 25,626 |
| Greyhound | Dallas, TX | 2,588,544 | | 2,588,544 |
| Gulf Coast Transit | Houston, TX | | 38,250 | 38,250 |
| Kerrville Bus Co | San Antonio, TX | 176,670 | | 176,670 |
| TNM&O | Lubbock,TX | 165,755 | | 165,755 |
| Valley Transit | Harlingen, TX | 99,453 | | 99,453 |
| Region VII: | | | | |
| Burlington Trailways | W. Burlington, IA | 85,488 | | 85,488 |
| Tiger Air Express, Inc | Columbia, MO | 45,022 | | 45,022 |
| Region VIII: | | | | |
| Express Charters, Inc | Fort Collins, CO | | 27,000 | 27,000 |
| Utah Trailways | Salt Lake City, UT | 28,135 | | 28,135 |
| Region IX: | | | | |
| Marin Airporter | San Rafael, CA | 112,365 | | 112,365 |
| Pacific Coachways | Garden Grove, CA | | 25,200 | 25,200 |
| Quest Transportation, Inc | San Luis Obispo, CA | 74,160 | | 74,160 |
| RDH Transportation Services | Honolulu, Hawaii | | 55,576 | 55,576 |
| Silverado Stages, Inc | San Luis Obispo, CA | 74,160 | | 74,160 |
| Region X: | | | | |
| Central Washington Airporter | Ferndale, WA | 44,305 | | 44,305 |
| Northwestern Stage Lines | Spokane, WA | 29,250 | | 29,250 |
| Premier Alaska Tours, Inc | Anchorage, AK | | 26,316 | 26,316 |
| Total | | 5,182,982 | 1,688,950 | 6,871,932 |

Eligible project costs may be incurred by awardees prior to final grant approval. The incremental capital cost for adding wheelchair lift equipment to any new vehicles delivered on or after June 9, 1998, the effective date of TEA–21, is eligible for funding under the OTRB Accessibility Program.

Applicants selected for funding may be contacted by FTA regional offices if additional information is needed before grants are made. The grant applications will be sent to the U.S. Department of Labor (DOL) for certification under labor protection requirements pursuant to 49 U.S.C. 5333(b). After referring applications to affected employees represented by a labor organization, DOL will issue a certification to FTA. Terms and conditions of the certification will be incorporated in the FTA grant agreement under the new guidelines replacing those in 29 CFR Part 215. Please see *Amendment to Section 5333(b), Guidelines to Carry Out New Programs Authorized by the Transportation Equity Act for the 21st Century (TEA–21);* Final Rule (64 FR 40990, July 28, 1999).

Issued on: September 26, 2003.

**Jennifer L. Dorn,**

*Administrator.*

[FR Doc. 03–24965 Filed 10–1–03; 8:45 am]

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1985

# Federal Register

Thursday,
October 2, 2003

## Part IV

## Department of the Interior

### Fish and Wildlife Service

50 CFR Part 32
2003–2004 Refuge-Specific Hunting and Sport Fishing Regulations; Final Rule

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 32**

**RIN 1018–AI63**

## 2003–2004 Refuge-Specific Hunting and Sport Fishing Regulations

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Fish and Wildlife Service adds seven additional refuges to the list of areas open for hunting and/or sport fishing activities and increases the activities available at three other refuges for 2003–2004.

**DATES:** This rule is effective October 2, 2003.

**FOR FURTHER INFORMATION CONTACT:** Leslie A. Marler, (703) 358–2397; Fax (703) 358–2248.

**SUPPLEMENTARY INFORMATION:** The National Wildlife Refuge System Administration Act of 1966 (Administration Act) closes national wildlife refuges to all uses until opened. The Secretary of the Interior (Secretary) may open refuge areas to any use, including hunting and/or fishing, upon a determination that such uses are compatible with the purposes of the refuge and National Wildlife Refuge System mission. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State fish and wildlife agency(ies), and consistent with the principles of sound fish and wildlife management and administration. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the National Wildlife Refuge System (System or we) for the benefit of present and future generations of Americans.

We annually review refuge hunting and fishing programs to determine whether to include additional refuges.

Provisions governing hunting and fishing on national wildlife refuges are in Title 50 of the Code of Federal Regulations in part 32 (50 CFR part 32). We regulate hunting and fishing on refuges to:

- Ensure compatibility with refuge purpose(s);
- Properly manage the fish and wildlife resource(s);
- Protect other refuge values;
- Ensure refuge visitor safety; and
- Provide opportunities for quality recreational and educational experiences.

On many refuges where we decide to allow hunting and fishing, our general policy of adopting regulations identical to State hunting and fishing regulations is adequate in meeting these objectives. On other refuges, we must supplement State regulations with more-restrictive Federal regulations to ensure that we meet our management responsibilities, as outlined in the "Statutory Authority" section. We issue refuge-specific hunting and sport fishing regulations when we open wildlife refuges to either migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. These regulations list the wildlife species that you may hunt or those species subject to sport fishing, seasons, bag limits, methods of hunting or fishing, descriptions of areas open to hunting or fishing, and other provisions as appropriate. You may find previously issued refuge-specific regulations for hunting and fishing in 50 CFR part 32.

### Statutory Authority

The National Wildlife Refuge System Administration Act (Administration Act) of 1966 (16 U.S.C. 668dd–668ee, as amended) and the Refuge Recreation Act (Recreation Act) of 1962 (16 U.S.C. 460k–460k–4) govern the administration and public use of national wildlife refuges.

Amendments enacted by the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act) build upon the Administration Act in a manner that provides an "Organic Act" for the System similar to those that exist for other public Federal lands. The Improvement Act serves to ensure that we effectively manage the System as a national network of lands, waters, and interests for the protection and conservation of our Nation's wildlife resources. The Administration Act states first and foremost that we focus the mission of the System on conservation of fish, wildlife, and plant resources and their habitats. The Improvement Act requires the Secretary, before allowing a new use of a refuge, or before expanding, renewing, or extending an existing use of a refuge, to determine that the use is compatible. The Improvement Act established as the policy of the United States that wildlife-dependent recreation, when compatible, is a legitimate and appropriate public use of the System, through which the American public can develop an appreciation for fish and wildlife. The Act established six wildlife-dependent recreational uses, when compatible, as the priority general public uses of the System. These uses are: hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

The Recreation Act authorizes the Secretary to administer areas within the System for public recreation as an appropriate incidental or secondary use only to the extent that doing so is practicable and not inconsistent with the primary purpose(s) for which Congress and the Service established the areas. The Recreation Act requires that any recreational use of refuge lands be compatible with the primary purpose(s) for which we established the refuge and not inconsistent with other previously authorized operations.

The Administration Act and Recreation Act also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

We develop specific management plans for each refuge prior to opening it to hunting or fishing. In many cases, we develop refuge-specific regulations to ensure the compatibility of the programs with the purpose(s) for which we established the refuge and the mission of the System. We ensure initial compliance with the Administration Act and the Recreation Act for hunting and sport fishing on newly acquired refuges through an interim determination of compatibility made at or near the time of acquisition. These regulations ensure that we make the determinations required by these acts prior to adding refuges to the lists of areas open to hunting and fishing in 50 CFR part 32. We ensure continued compliance by the development of comprehensive conservation plans, specific plans, and by annual review of hunting and sport fishing programs and regulations.

### Response to Comments Received

In the August 14, 2003, **Federal Register** (68 FR 48583), we published a proposed rulemaking identifying the refuges and their proposed hunting and/or fishing programs and invited public comments. We reviewed and considered all comments following a 30-day comment period.

We received 1,541 comments on the proposed rule: 570 in support and 482 in opposition to the openings and 489 comments that were either considered to be anonymous (did not provide a full mailing address as stipulated in the proposed rule) or were received after the comment close date. Of the 1,052 comments considered, 1,031 came from individuals (558 in support and 473 in opposition), 15 represented nongovernment organizations (7 in support and 8 in opposition), 5 comments from States (all in support) and 1 comment from academia (in opposition).

We also received numerous comments unrelated to the content of the proposed rule (*e.g.*, those dealing with such issues as trapping and general refuge management). We reviewed and analyzed the specific substantive comments and broke them into 12 general comments as follows:

*Comment #1:* A commenter suggested that the circumstances surrounding the possibility of opening these refuges to hunting dictate that, according to the National Environmental Policy Act (NEPA), the Service should have prepared an Environmental Impact Statement (EIS).

*Response:* We disagree with the statement that the Service should have prepared an EIS for the opening of these seven refuges to hunting and/or fishing. Each individual refuge, when making a determination as to whether or not to allow hunting and/or fishing, complies with NEPA (Categorical Exclusion, Environmental Assessment, or an Environmental Impact Statement) as appropriate when preparing an "opening package." For each of the refuges included in this rulemaking, we prepared Environmental Assessments and determined that EISs were unnecessary. No changes were made as a result of this comment.

*Comment #2:* A commenter suggested the Service should have conducted biological assessments and inventories of flora and fauna as required by the (National Wildlife Refuge System Improvement Act of 1997) Improvement Act.

*Response:* The Improvement Act does not require a biological assessment of flora and fauna. However, the Improvement Act does require the Service to "monitor the status and trends of fish, wildlife, and plants in each refuge." Before we establish a hunting or fishing program, the law requires we first determine compatibility with refuge purposes. All seven refuges at which hunting or fishing programs were proposed met this requirement. No changes were made as a result of this comment.

*Comment #3:* Many commenters said the Service should have considered public opinion polls containing statistics on public opposition to recreational and commercial killing of wildlife on national wildlife refuges. Many also felt that a trend is developing within the System placing the interests of sport hunters ahead of those of both the wildlife and nonhunting refuge visitors.

*Response:* The System has a long history of support by recreational hunters, including the creation of over 300 units through the use of Migratory Bird Conservation Act of 1919 (16 U.S.C. 715a-715r) using "Duck Stamp" funds. This traditional support has been recognized in subsequent statutory authority for the System, including most recently the Improvement Act amendment to the Administration Act. This law, which also provides the System its mission, clearly states that six wildlife-dependent recreational uses, including both hunting and fishing as well as wildlife observation and photography and environmental education and interpretation, when compatible, are the priority general public uses of the System. Furthermore, these uses are to receive "enhanced consideration over other general public uses in planning and management within the System * * *." The Improvement Act also directs the Service to provide "increased opportunities for families to experience compatible wildlife-dependent recreation, particularly opportunities for parents and their children to safely engage in traditional outdoor activities, such as fishing and hunting * * *." From this statutory language, Congress' intent is clear that the Service provide opportunities for compatible hunting and fishing on the System. Thus, while we carefully consider public comment and opinion in our rulemaking, we find this statutory direction unequivocal.

Commercial hunting and fishing are generally prohibited within the System. This rulemaking does not include commercial hunting and fishing. No changes were made as a result of this comment.

*Comment #4:* A commenter said the Service should have determined the detrimental effects of current predator management strategies to protect sensitive, threatened, and endangered species.

*Response:* This comment appears to be directed at refuge management generally and endangered species management specifically and not at the proposed rule. Specific to Endangered Species Act Section 7 Consultation, each refuge reviews its opening package to determine the impact of allowing hunting and/or fishing on any threatened or endangered species. We also comply with section 7 of the ESA when developing comprehensive conservation plans (CCPs) and step-down management plans for public use of refuges, such as hunting and fishing, and prior to implementing any new or revised public recreation program on a refuge as identified in 50 CFR 26.32. We made no changes as a result of this comment.

*Comment #5:* Many commenters stated that the majority of people who visit refuges do so to observe wildlife and enjoy nature, and not to hunt, fish, or trap.

*Response:* Within the System as a whole, this information is correct. However, in some locations, such as North Dakota, South Dakota, and Minnesota, more visitors participate in consumptive uses (hunting, fishing, and trapping) than nonconsumptive forms of wildlife-dependent recreation. However, as explained in response to comment #3 above, the Improvement Act clearly indicates that six forms of wildlife-dependent recreation, when compatible, are the priority general public uses of the System. The Act and associated House Report 105–106 also indicate there are no priorities between these six uses (again, when compatible), and does not indicate usage should be allocated based on the relative proportion of individuals participating in the activity. No changes were made as a result of this comment.

*Comment #6:* Several commenters suggested that the Service must conduct rigorous biological analyses of wildlife populations...before making any compatibility determinations about the commercial and/or recreational killing of wildlife on the refuges listed in the Notice. On a related topic, several commenters believe, in the past, the Service relied too heavily on lethal predator control as the primary method of addressing recovery of threatened and endangered species on refuges and has failed to address more serious threats to these species, including habitat degradation, pollution, and human impact.

*Response:* In addition to the information provided above in response to comment #2, many of the suggested biological analyses are conducted at the flyway level for migratory waterfowl and other game birds, with survey data going back decades. These population surveys detect trends in population numbers. If there is not sufficient information for a refuge manager, using his/her sound professional judgment to make an affirmative determination of compatibililty, the manager cannot allow the use. Similar to the response to comment #4, some of this comment appears to be directed at endangered and threatened species conservation, not these regulations. No changes were made as a result of these comments.

*Comment #7:* Concern was expressed that Service has strayed far from its own policy, which directs that "wildlife comes first" in the System. A related comment said a thorough discussion of proposed refuge habitat management practices is needed.

*Response:* The Administration Act authorizes the Service to allow uses of any refuge area as long as those uses are compatible; in fact, the Act specifically references hunting and fishing. Recent amendments to the Administration Act made by the Improvement Act establish wildlife-dependent recreational uses as priority general public uses and include hunting and fishing in the definition of those priority uses.

The principal focus of the Improvement Act was to clearly establish a wildlife conservation mission for the System and provide managers clear direction to make determinations regarding wildlife conservation and public uses within the units of the System. The Service manages national wildlife refuges primarily for wildlife conservation, habitat protection, and biological integrity, and allows uses only when compatible with the refuge purpose(s). In passing the Improvement Act, Congress reaffirmed the System was created to conserve fish, wildlife, plants, and their habitats and would facilitate opportunities for Americans to participate in compatible wildlife-dependent recreation, including hunting and/or fishing on System lands. The Service has adopted policies and regulations implementing the requirements of the Improvement Act with which refuge managers comply when considering hunting and fishing programs.

When lands and waters are under consideration for addition to the System, the refuge manager will make an interim compatibility determination on any existing wildlife-dependent recreational uses. The record of decision establishing the refuge must document the completion of such determinations. The results of these determinations are in effect until the completion of a CCP. During the development of the CCP and implementation of the NEPA process, we accept and incorporate public comments into the hunting and/or fishing decision on the refuge. When considering opening an existing refuge, the refuge manager similarly must make a determination that the proposal is compatible and complies with NEPA before taking any action. Refuge managers plan efforts well in advance of any proposed changes in order to obtain as much involvement from stakeholders as possible. This may include public meetings, workshops, news releases, and mailings to interested groups. The refuge manager consults with affected Service Regional Office, State fish and wildlife agencies, tribes, and the public before opening a refuge to hunting or fishing. This decision must also be consistent with the principles of sound wildlife management, applicable wildlife objectives, and otherwise be in the public interest. The refuge manager must submit a hunting and/or fishing plan that has undergone a public input process to the Regional Office for approval. The Regional Director approves the plan before the rulemaking process begins. These hunting and/or fishing plans contain:

1. Step-down hunting/fishing plans containing compatibility determinations. The plan is usually an appendix to the overall plan for providing visitor services on refuges, providing documentation of the hunting and/or fishing allowed on a refuge, including the relationship of hunting and/or fishing to other priority general public uses, refuge purpose(s), goals, objectives, and the System mission;
2. Appropriate NEPA documentation;
3. Appropriate decision documentation;
4. Section 7 ESA evaluation;
5. Copies of letters requesting State and, where appropriate, tribal involvement and the results of the request;
6. Draft news release; and
7. Outreach plan.

One of the elements of the CCP, specific to the habitat management practices comment, requires that each refuge develop goals for significant wildlife species or groups of species, habitat (including land protection needs), compatible wildlife-dependent recreation, other mandates (such as refuge-specific legislation, Executive orders, special area designations), and fish, wildlife and plant populations, as appropriate.

*Comment #8:* A commenter felt the Service should use the Improvement Act to restore this public land system to its original purpose of providing an inviolate sanctuary for wildlife.

*Response:* The term "inviolate sanctuary" is something of a misnomer. The Migratory Bird Conservation Act of 1929 authorized acquisition of refuges as "inviolate sanctuaries" where the birds could rest and reproduce in total security. In 1949, the "inviolate sanctuary" concept was modified by an amendment to the Migratory Bird Hunting and Conservation Stamp Act which permitted hunting on up to 25 percent of each inviolate refuge. Another amendment to the Migratory Bird Hunting and Conservation Stamp Act in 1958 increased the total area of an inviolate refuge that could be opened for hunting up to 40 percent. These parameters were enacted as part of the Administration Act. Whether an area is an "inviolate sanctuary" is a function of the mechanism of its creation. If a refuge was acquired as an inviolate sanctuary, only 40 percent of the refuge area may be opened at one time for hunting of migratory game birds. However, if the refuge was not acquired as an inviolate sanctuary, 100 percent of the refuge may be opened for hunting. The Fish and Wildlife Improvement Act of 1978 amended section 6 of the Administration Act to provide for the opening of all or any portion of an inviolate sanctuary to the taking of migratory birds if taking is determined to be "beneficial" to the species. Such opening of more than 40 percent to hunting is determined on a species-by-species basis. This amendment refers to inviolate sanctuaries created in the past or to be created in the future. It has no application to areas acquired for other management purposes. No changes were made as a result of this comment.

*Comment #9:* A commenter believes the Service needs to consider the need for assessment and mitigation of the impacts of recreational activities on native flora and fauna.

*Response:* See the response to the comment #7 above concerning "straying from the FWS policy." No changes were made as a result of this comment.

*Comment #10:* One commenter asked us to clarify/change Coldwater National Wildlife Refuge relative to the prohibition of "any weapon" while fishing on the refuge. Does that include a fishing knife?

*Response:* With respect to knives, the legal definition of a weapon in the State of Mississippi is a knife longer than 3 inches (7.5 cm). We will modify the condition listed under Coldwater National Wildlife Refuge to read: D.4. We prohibit possession of any weapon while fishing on the refuge. This does not include fishing knives unless they are longer than 3 inches (7.5 cm).

*Comment #11:* One commenter asked if we could allow lead shot no larger than #6 shot with a maximum of 25 shells carried in the field at one time on Northern Tallgrass Prairie National Wildlife Refuge under Upland Game Hunting.

*Response:* 50 CFR 32.2(k) prohibits possession of lead shot unless hunting for turkey and deer (where we allow those activities). The refuge in question, Northern Tallgrass Prairie in the States of Minnesota and Iowa, under Upland Game Hunting, does not have turkey hunting; therefore, we already prohibit lead shot.

*Comment #12:* One commenter questioned the economic analysis. "It is estimated that the consumer surplus from the proposed expansion in hunting and sport fishing opportunities is $199,614. However, this estimate is seriously flawed, since it includes only the gains from increased hunting and fishing opportunities, but excludes the losses in consumer surplus of non-consumptive users due to a decline in wildlife watching opportunities. Before any rule changes are considered, the U.S. Fish and Wildlife Service should conduct a new economic analysis of changes to the consumer surplus, which takes all relevant factors, including changes in non-consumptive uses, into consideration"

*Response:* Increased hunting and fishing opportunities may impact wildlife watching opportunities in two ways. First, increased hunting would decrease the wildlife population that is being hunted (*e.g.*, deer, migratory birds, *etc.*). As such, the quality of a wildlife watching activity may slightly decline because a visitor may be less likely to view wildlife. However, we would expect this impact to only be a small decrease to consumer surplus. Second, some wildlife watching visitors may choose not to visit during hunting season. Instead, they may choose to visit before or after the hunting season or choose to visit a different area for their wildlife watching activities. Again, we would expect this impact to be a small decrease to consumer surplus because the quality of the visit may be impacted. If the visitor chooses to no longer view wildlife at all, then there would be a loss of consumer surplus and visitor expenditures to the region. While these are valid impacts to wildlife watching opportunities, we do not have the data to properly quantify them. For example, we do not know how a slight change to wildlife populations will influence wildlife watching behavior. Because this information is not available, and we believe these shifts in visitation to be small, we are unable to conduct an economic analysis that addresses this concern.

Other changes from the proposed rule were as follows: We clarified the issue of only allowing specific breeds of dogs on Grand Cote National Wildlife Refuge and Big Branch Marsh National Wildlife Refuge (§ 32.37), in the State of Louisiana. We also made several administrative changes for clarity under North Platte and Boyer Chute National Wildlife Refuges (§ 32.46) in the State of Nebraska.

## Effective Date

This rule is effective upon publication in the **Federal Register**. We have determined that any further delay in implementing these refuge-specific hunting and sport fishing regulations would not be in the public interest, in that a delay would hinder the effective planning and administration of the hunting and fishing programs. We provided a 30-day comment period for the August 14, 2003, proposed rule. An additional delay would jeopardize holding the hunting and/or fishing programs this year or shorten their duration and thereby lessen the management effectiveness of this regulation. This rule does not impact the public generally in terms of requiring lead time for compliance. Rather it relieves restrictions in that it allow activities on refuges that we would otherwise prohibit. Therefore, we find good cause under 5 U.S.C. 553(d)(3) to make this rule effective upon publication.

## New Hunting and Fishing Programs

In preparation for opening additional refuges to hunting and fishing, or to initiating new hunting or fishing programs on refuges already open, we document appropriate compliance with the National Environmental Policy Act (NEPA) through an Environmental Assessment with a finding of No Significant Impact, an Environmental Impact Statement with a Record of Decision, or determine and document that the action qualifies for a Categorical Exclusion. We also conduct and document internal consultations under section 7 of the Endangered Species Act, and coordinate with the State(s), and if appropriate, Tribe(s) in or near the refuge.

Upon review of these documents, we have determined that the opening of these National Wildlife Refuges to hunting and/or fishing is compatible with the purpose of the refuge and the mission of the system, and not inconsistent with applicable State laws. A copy of the compatibility determinations for each respective refuge is available upon request from the Regional Office noted under the heading "Available Information for Specific Refuges."

We allow the following wildlife-dependent recreational activities:

| Refuge | State | Migratory bird hunting | Upland game hunting | Big game hunting | Sport fishing |
|---|---|---|---|---|---|
| Wapanocca | Arkansas | X | .......... | X | .......... |
| Grand Cote | Louisiana | X | X | X | .......... |
| Northern Tallgrass Prairie | Minnesota/Iowa | X | X | X | .......... |
| Boyer Chute | Nebraska | X | .......... | X | .......... |
| DeSoto | Iowa | .......... | X | .......... | .......... |
| Big Branch Marsh | Louisiana | .......... | X | .......... | .......... |
| North Platte | Nebraska | .......... | X | X | .......... |
| Coldwater | Mississippi | .......... | .......... | .......... | X |
| Bandon Marsh | Oregon | .......... | .......... | .......... | X |
| Rappahannock River Valley | Virginia | .......... | .......... | .......... | X |

Lands acquired as "waterfowl production areas," which we generally manage as part of Wetland Management Districts, are open to the hunting of migratory game birds, upland game, big game, and sport fishing subject to the provisions of State law and regulations (*see* 50 CFR 32.1 and 32.4). This year we are adding Detroit Lakes Wetland Management District in Minnesota to the list of refuges open for all four of these activities.

We are correcting an administrative error in 50 CFR part 32 that occurred with regard to Bandon Marsh National Wildlife Refuge in Oregon. It has come to our attention that the CFR does not indicate that the refuge is open to sport fishing. We opened the refuge to sport fishing in 1986 (55 FR 30655, 30663; August 28, 1986). It appears that a clerical error was made when the rules adopted in 1986 were being published in the subsequent edition of the CFR. We are correcting that error and part 32 will now reflect that the refuge is open to sport fishing. Coldwater National Wildlife Refuge was part of Tallahatchie National Wildlife Refuge (both in Mississippi) and is an area of the System that we opened by reason of its having been included in Tallahatchie's fishing plan (61 FR 45364, August 29, 1996). It has become a separate unit this year, thus we are including a separate listing that Coldwater National Wildlife Refuge is open to fishing only.

Upon publication of this document, the 2003–2004 hunting and fishing season will result in a net of three national wildlife refuges added to fishing and four national wildlife refuges added to hunting. This will bring our cumulative total of national wildlife refuges open to hunting to 315 and refuges open to fishing to 274.

We incorporate this regulation into 50 CFR part 32. Part 32 contains general provisions and refuge-specific regulations for hunting and sport fishing on national wildlife refuges.

**Regulatory Planning and Review**

In accordance with the criteria in Executive Order 12866, the Service asserts that this rule is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under Executive Order 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government. A cost-benefit and full economic analysis is not required. The purpose of this rule is to add seven refuges to the list of refuges that have hunting and/or fishing activities and to increase the type of activities at three other refuges. The refuges are located in the States of Arkansas, Iowa, Louisiana, Minnesota, Mississippi, Nebraska, Oregon, and Virginia. Fishing and hunting are two of the wildlife-dependent uses of national wildlife refuges that Congress recognized as legitimate and appropriate and directed us to facilitate, subject to such restrictions or regulations as may be necessary to ensure their compatibility with the purpose(s) and mission of each refuge. Many of the 542 existing national wildlife refuges already have programs where we allow fishing and hunting. Not all refuges have the necessary resources and landscape that would make fishing and hunting opportunities available to the public. By opening these refuges to new activities, we have determined that we can make quality experiences available to the public. This rule establishes hunting and/or fishing programs at the following refuges: Wapanocca National Wildlife Refuge in Arkansas, Grand Cote National Wildlife Refuge in Louisiana, Northern Tallgrass Prairie National Wildlife Refuge in Minnesota and Iowa, Boyer Chute and North Platte National Wildlife Refuges in Nebraska, DeSoto National Wildlife Refuge in Iowa, Big Branch Marsh National Wildlife Refuge in Louisiana, Coldwater National Wildlife Refuge in Mississippi, Bandon Marsh National Wildlife Refuge in Oregon, and Rappahannock River Valley National Wildlife Refuge in Virginia. We present impacts in 2002 real dollars.

For this analysis, we do not expect changes to recreational visits at the Detroit Lakes Wetland Management District, Bandon Marsh National Wildlife Refuge, or Coldwater National Wildlife Refuge. All Wetland Management Districts are open to hunting and fishing activities until closed, and this rulemaking reflects that Detroit Lakes Wetland Management District is open to hunting of migratory game birds, upland game, big game, and sport fishing. However, we do not expect any change in visitation rates at this management district because recreationists currently have the option to participate in these activities at Detroit Lakes. We expect no visitation changes at Bandon Marsh National Wildlife Refuge. The rule corrects an administrative error, but does not change current activities at the refuge since the refuge has been open to fishing since 1986. Also, we expect no visitation changes at Coldwater National Wildlife Refuge. Coldwater was part of Tallahatchie National Wildlife Refuge (also in the State of Mississippi) and covered by its fishing plan. Therefore, we would expect any previous fishing activity in the Coldwater section of Tallahatchie to continue without change.

Following a best-case scenario, if the refuges establishing new fishing and hunting programs were a pure addition to the current supply of such activities, it would mean a consumer surplus of approximately $200,000 annually and an estimated increase of 1,000 user days of hunting and 2,082 user days of fishing (Table 1). Consequently, this rule will have a small, measurable, beneficial economic impact on the U.S. economy.

TABLE 1.—ESTIMATED CHANGES IN CONSUMER SURPLUS FROM ADDITIONAL FISHING AND HUNTING OPPORTUNITIES IN 2003

[In days]

| Refuge | Current visitation (FY02) | Additional fishing | Additional hunting | Additional fishing and hunting combined |
|---|---|---|---|---|
| Wapanocca | 844 | | 70 | 70 |
| Grand Cote | 2,500 | | 1,000 | 1,000 |
| Northern Tallgrass Prairie | | | 300 | 300 |
| Boyer Chute | 3,147 | | 175 | 175 |
| DeSoto | 14,967 | | 25 | 25 |
| Big Branch Marsh | 5,975 | | 500 | 500 |
| North Platte | | | 12 | 12 |
| Bandon Marsh | 100 | | | 0 |
| Coldwater | | | | 0 |
| Rappahannock River | 45 | 1,000 | | 1,000 |
| Total Days per Year | 27,578 | 1,000 | 2,082 | 3,082 |
| Consumer Surplus per Day | | $62.16 | $66.02 | |
| Change in Total Consumer Surplus | | $62,160 | $137,454 | $199,614 |

**Note:** All estimates are stated in 2002 real dollars.

b. This rule will not create inconsistencies with other agencies' actions. This action pertains solely to the management of the System. The fishing and hunting activities located on national wildlife refuges account for approximately 1 percent of the available supply in the United States. Any small, incremental change in the supply of fishing and hunting opportunities will not measurably impact any other agency's existing programs.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule does not affect entitlement programs. There are no grants or other Federal assistance programs associated with public use of national wildlife refuges.

d. This rule will not raise novel legal or policy issues. This rule opens seven additional refuges for fishing and hunting activities and increases the activities available at three other refuges. This rule continues the practice of allowing recreational public use of national wildlife refuges. Many refuges in the System currently have opportunities for the public to hunt and fish on refuge lands.

**Regulatory Flexibility Act**

We certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

This rule does not increase the number of recreation types allowed in the System but establishes new or additional hunting and/or fishing programs on 10 refuges. As a result, opportunities for wildlife-dependent recreation on national wildlife refuges will increase. The changes in the amount of permitted use are likely to increase visitor activity on these national wildlife refuges.

For purposes of analysis, we will assume that any increase in refuge visitation is a pure addition to the supply of the available activity. This will result in a best-case scenario, and we expect to overstate the benefits to local businesses. The latest information on the distances traveled for fishing and hunting activities indicates that more than 80 percent of the participants travel less than 100 miles from home to engage in the activity. This indicates that participants will spend travel-related expenditures in their local economies. Since participation is scattered across the country, many small businesses benefit. The 2001 National Survey of Fishing, Hunting, and Wildlife Associated Recreation identifies expenditures for food and lodging, transportation, and other incidental expenses. Using the average expenditures for these categories with the expected maximum additional participation on the System as a result of this rule yields the following estimates (Table 2) compared to total business activity for these sectors.

TABLE 2.—ESTIMATION OF THE ADDITIONAL EXPENDITURES WITH AN INCREASE OF ACTIVITIES IN THREE REFUGES AND THE OPENING OF SEVEN REFUGES TO FISHING AND/OR HUNTING FOR 2003–2004

| | U.S. total expenditures in 2001 (in billions) | Average expenditures per day | Current refuge expenditures w/o duplication (FY2002) (in millions) | Possible additional refuge expenditures |
|---|---|---|---|---|
| Anglers: | | | | |
| Total Days Spent (in millions) | $557 | .................... | $5.9 | $1,000 |
| Total Expenditures | 36.2 | $465 | 386.3 | 64,937 |
| Trip Related | 14.9 | 27 | 158.9 | 26,710 |
| Food and Lodging | 6.0 | 11 | 63.8 | 10,718 |
| Transportation | 3.6 | 6 | 38.1 | 6,407 |
| Other | 5.3 | 10 | 57.0 | 9,585 |
| Hunters: | | | | |
| Total Days Spent (in millions) | 228 | .................... | 2.0 | 2,082 |
| Total Expenditures | 20.6 | 92 | 181.0 | 190,878 |
| Trip Related | 5.3 | 23 | 46.1 | 48,642 |
| Food and Lodging | 2.4 | 11 | 21.5 | 22,689 |
| Transportation | 1.8 | 8 | 15.7 | 16,571 |
| Other | 1.0 | 5 | 8.9 | 9,383 |

**Note:** All estimates are in 2002 real dollars.

Using a national impact multiplier for hunting activities (2.73) derived from the report "Economic Importance of Hunting in America" and a national impact multiplier for sportfishing activities (2.79) from the report "Sportfishing in America" for the estimated increase in direct expenditures yields a total economic impact of approximately 257,000 (Southwick Associates, Inc., 2003).

A large percentage of the retail trade establishments in the majority of affected counties qualifies as small businesses. With the small increase in overall spending anticipated from this rule, it is unlikely that a substantial number of small entities will have more than a small benefit from the increased recreationist spending near the affected refuges; none are likely to have any adverse impact.

TABLE 3.—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL REFUGE VISITATION FOR 2003

| Refuge/county(ies) | Retail trade in 1997 (2002 dollars) (in millions) | Estimated maximum addition from new refuge | Addition as a % of total | Total number retail establish | Establish. with <10 emp. |
|---|---|---|---|---|---|
| Wapannocca, Crittenden, AR | $24,260 | $6,440 | 0.00003 | 262 | 171 |
| Grand Cote, Avoyelles, LA | 238 | 92,000 | 0.39 | 169 | 129 |
| Northern Tallgrass Prairie, Rock, MN | 96 | 27,600 | .029 | 62 | 39 |
| Boyer Chute, Washington, NE | 262 | 16,100 | .006 | 99 | 64 |
| DeSoto, Washington, NE | 262 | 1,150 | .0004 | 99 | 64 |
| Harrison, IA | 187 | 1,150 | .0006 | 101 | 76 |
| Big Branch Marsh, St. Tammany, LA | 1,694 | 46,000 | .003 | 1068 | 713 |
| North Platte, Scotts Bluff, NE | 439 | 1,104 | .0003 | 312 | 220 |
| Rappahannock River, Northumberland, VA | 5,492 | 65,000 | .001 | 54 | 45 |

Many small businesses may benefit from some increased wildlife refuge visitation. We expect that the incremental recreational opportunities will be scattered, and so we do not expect that the rule will have a significant economic effect (benefit) on a substantial number of small entities in any region or nationally.

## Small Business Regulatory Enforcement Fairness Act

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. We anticipate no significant employment or small business effects. This rule:

a. Does not have an annual effect on the economy of $100 million or more. The additional fishing and hunting opportunities at the 10 refuges would generate angler and hunter expenditures with an economic impact estimated at $257,000 per year (2002 dollars). Consequently, the maximum benefit of this rule for businesses, both small and large, would not be sufficient to make this a major rule. The impact would be scattered across the country and would most likely not be significant in any local area.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule will have only a slight effect on the costs of hunting and fishing opportunities for Americans. Under the assumption that any additional hunting and fishing opportunities would be quality opportunities, we would attract participants to the refuge. If the refuge were closer to the participants' residences, then a reduction in travel costs would occur and benefit the participants. The Service does not have information to quantify this reduction in travel cost but assumes that, since most people travel less than 100 miles to hunt and fish, the reduced travel cost would be small for the additional days of hunting and fishing generated by this rule. We do not expect this rule to affect the supply or demand for fishing and hunting opportunities in the United States and; therefore, it should not affect prices for fishing and hunting equipment and supplies, or the retailers that sell equipment.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. Refuges that establish hunting and fishing programs may hire additional staff from the local community to assist with the programs, but this would not be a significant increase, because only seven refuges are adding new programs and only three refuges are increasing programs by this rule.

## Unfunded Mandates Reform Act

Since this rule applies to public use of federally owned and managed refuges, it does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

## Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. This regulation will affect only visitors at national wildlife refuges and describe what they can do while they are on a refuge.

## Federalism (Executive Order 13132)

As discussed in the Regulatory Planning and Review and Unfunded Mandates Reform Act sections above, this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 13132. In preparing this rule, we worked with State governments, and our programs are consistent to the State regulations to the degree practicable.

## Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. The regulation will clarify established regulations and result in better understanding of the regulations by refuge visitors.

## Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule opens seven refuges to hunting and/or sport fishing programs and increases activities at three others, it is not a significant regulatory action under Executive Order 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

## Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

In accordance with Executive Order 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. We coordinate recreational use on national wildlife refuges with Tribal governments having adjoining or overlapping jurisdiction before we propose the regulations. This regulation is consistent with and not less restrictive than Tribal reservation rules.

## Paperwork Reduction Act

This regulation does not contain any information collection requirements other than those already approved by the OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (OMB Control Number is 1018–0102). See 50 CFR 25.23 for information concerning that approval. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

## Endangered Species Act Section 7 Consultation

We reviewed the changes in hunting and fishing regulations herein with regard to section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531–1544, as amended) (ESA). For the national wildlife refuges opening for hunting and/or fishing we have determined that DeSoto National Wildlife Refuge, Wapanocca National Wildlife Refuge, Northern Tallgrass Prairie National Wildlife Refuge, and Grand Cote National Wildlife Refuge (for Louisiana black bear) will not likely adversely affect any endangered or threatened species or designated critical habitat, and Grand Cote National Wildlife Refuge (for bald eagle), North Platte National Wildlife Refuge, Big Branch Marsh National Wildlife Refuge, Rappahannock River Valley National Wildlife Refuge, and Boyer Chute National Wildlife Refuge will not affect any endangered or threatened species or designated critical habitat.

We also comply with section 7 of the ESA when developing CCPs and step-down management plans for public use of refuges, and prior to implementing any new or revised public recreation program on a refuge as identified in 50 CFR 26.32. We also make determinations when required by the ESA before the addition of a refuge to the lists of areas open to hunting or fishing as contained in 50 CFR 32.7.

## National Environmental Policy Act

Prior to submitting these openings for publication in this rule, the Service complied with the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)) and 516 DM 6, Appendix 1 for each of the openings or program additions during the preparation of individual refuge hunting or fishing decision documents.

We analyzed this rule in accordance with the criteria of the NEPA. A categorical exclusion from NEPA documentation applies to this amendment of refuge-specific hunting and fishing regulations since it is technical and procedural in nature and we otherwise comply with NEPA at the specific refuge units.

Prior to the addition of a refuge to the list of areas open to hunting and fishing in 50 CFR part 32, we develop specific management plans for the affected refuges. We incorporate these refuge hunting and fishing activities in refuge CCPs and/or other step-down management plans, pursuant to our refuge planning guidance in 602 FW 1, 3, and 4. We prepare CCPs and step-down plans in compliance with section 102(2)(C) of NEPA, and the Council on Environmental Quality's regulations for implementing NEPA in 40 CFR parts 1500–1508. We invite the affected public to participate in the review, development, and implementation of these plans.

## Available Information for Specific Refuges

Individual refuge headquarters retain information regarding public use programs and the conditions that apply to their specific programs and maps of their respective areas. You may also obtain information from the Regional Offices at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma, and Texas. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, PO Box 1306, 500 Gold Avenue, Albuquerque, New Mexico 87103; Telephone (505) 248–6804.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1 Federal Drive, Federal Building, Fort Snelling, Minnesota 55111; Telephone (612)–713–5400.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia 30345; Telephone (404) 679–7154.

Region 5—Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; Telephone (413) 253–8302.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, Colorado 80228; Telephone (303) 236–8145.

Region 7—Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3354.

## Primary Author

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## List of Subjects in 50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

■ For the reasons set forth in the preamble, we amend Title 50, Chapter I, subchapter C of the Code of Federal Regulations as follows:

## PART 32—[AMENDED]

■ 1. The authority citation for part 32 continues to read as follows:

**Authority:** 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd–668ee, and 715i.

■ 2. In § 32.7 "What refuge units are open to hunting and/or fishing?" by:

■ a. Alphabetically adding Detroit Lakes Wetland Management District in the State of Minnesota;

■ b. Alphabetically adding Northern Tallgrass Prairie National Wildlife Refuge in the States of Minnesota and Iowa.

■ c. Alphabetically adding Coldwater National Wildlife Refuge in the State of Mississippi;

■ 3. In § 32.23 Arkansas by adding the text of paragraphs A. and C. of Wapanocca National Wildlife Refuge to read as follows:

**§ 32.23 Arkansas.**

* * * * *

**Wapanocca National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of snow geese on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require refuge hunting permits. The permits are nontransferable and anyone on refuge land in possession of hunting equipment must sign and carry them at all times.

2. We provide annual season dates on the hunt brochure/permit.

3. You must sign in prior to the hunt and sign out after the hunt at the Hunter Information Station.

4. You must adhere to all public use special conditions and regulations on the annual hunt brochure/permit.

* * * * *

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A4 apply.

2. We prohibit hunting from or within 50 yards (45 m) of graveled roads and within 150 yards (135 m) of refuge buildings.

3. We allow archery/crossbow hunting for deer. We specify annual season dates and bag limits on the hunting permits.

4. Immediately record the deer zone 640 on the hunter's license and later on official check station records upon harvest of a deer.

5. You must sign in prior to the hunt and sign out after the hunt at the Hunter Information Station. You must check harvested deer at this location.

6. We prohibit dogs.

7. We allow only single-person portable tree stands. You may place tree stands on the refuge 2 days before the hunt but must remove them within 2 days after the hunt. You must permanently affix the owner's name and address on stands left on the refuge.

8. We prohibit possession of or marking trails with materials other than biodegradable paper/flagging or reflective tape/tacks.

9. We prohibit ATVs.

* * * * *

■ 4. In § 32.34 Iowa by:

■ a. Adding the text of paragraph B. of DeSoto National Wildlife Refuge; and

■ b. Adding Northern Tallgrass Prairie National Wildlife Refuge to read as follows:

**§ 32.34 Iowa.**

* * * * *

**DeSoto National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* We allow hunting of ring-necked pheasant and turkey on designated areas of the refuge in accordance with the States of Iowa and Nebraska regulations subject to the following condition: We require a refuge permit.

* * * * *

**Northern Tallgrass Prairie National Wildlife Refuge**

Refer to § 32.42 Minnesota for regulations.

* * * * *

■ 5. In § 32.37 Louisiana by:

■ a. Adding the text of paragraph B. of Big Branch Marsh National Wildlife Refuge; and

■ b. Adding the text of paragraphs A., B., and C. of Grand Cote National Wildlife Refuge to read as follows:

**§ 32.37 Louisiana.**

* * * * *

**Big Branch Marsh National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* We allow hunting of squirrel, rabbit, snipe, woodcock, quail, gallinule, rail, and nutria subject to the following conditions:

1. We allow hunting during the open State season using only approved nontoxic shot size #4 or smaller.

2. You may use dogs for squirrel and rabbit after the close of the State gun deer season only.

3. You may only use dogs to locate, point, and retrieve when hunting for snipe, woodcock, and quail.

4. You must possess and carry a valid refuge hunt permit.

5. We prohibit air-thrust boats, motorized pirogues, mud boats, and air-cooled propulsion engines on the refuge.

6. Youth hunters 15 years of age and under must successfully complete a State-approved hunter education course. While hunting, each youth must possess and carry a card or certificate of completion. One adult 21 years of age or older must supervise each youth hunter. For upland game hunts, one adult may supervise two youths.

7. You must unload and encase or dismantle firearms carried in vehicles or boats.

8. We open the refuge during daylight hours only.

9. We prohibit possession of buckshot, slugs, rifles, or rifle ammunition.

10. We prohibit hunting within 200 feet (60 m) of any road (including refuge roads), residence, or designated public facilities.

11. We prohibit possession of lead shot during all refuge hunts.

* * * * *

**Grand Cote National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of ducks, geese, coots, mourning dove, and woodcock on designated areas of the refuge, as shown on refuge hunting brochure map, subject to the following conditions:

1. We require hunters 16 years of age and older to purchase and carry a signed $12.50 refuge hunt/fish/ATV permit.

2. We allow public access from 5 a.m. to 1 hour after legal sunset.

3. An adult 21 years of age or older must accompany (within sight of and in normal voice contact with) youth hunters 15 years of age and under. We require youth hunters to possess and carry proof of completion of an approved Hunter Safety Course. Each adult can supervise one youth hunter during deer hunts and not more that two youths during all other hunts.

4. We require hunters to enter and exit the refuge from designated parking lots only.

5. We require hunters to check in/out at a designated check station.

6. We prohibit camping or parking overnight on the refuge.

7. We prohibit discharge of firearms except when hunting.

8. We prohibit marking of trails with nonbiodegradable flagging tape.

9. We allow use of ATVs on designated trails from the third Saturday in September to the last day of the State rabbit season. An ATV is an off-road vehicle with factory specifications not to exceed the following: weight—750 lbs. (337.5 kg), length—85 inches (212.5 cm), and width—48 inches (120 cm). We restrict ATV tires to those no larger than 25 x 12 with a maximum 1-inch (2.5 cm) lug height and a maximum allowable tire pressure of 7 psi as indicated on the tire by the manufacturer.

10. We prohibit horses and mules.

11. We prohibit saws, saw blades, and/or machetes while on the refuge.

12. We prohibit hunting within 100 feet (30 m) of any designated road, ATV or hiking trail, or refuge facility.

13. We prohibit transportation of loaded weapons on an ATV.

14. We prohibit blocking of gates or trails with vehicles or ATVs.

15. We prohibit ATVs on trails/roads not specifically designated by signs for ATV use.

16. We allow only nonmotorized boats.

17. You may take raccoon, feral hog, beaver, nutria, and coyote incidental to migratory bird hunting, upland game hunting, and big game hunting with weapons legal for that hunt.

18. We allow waterfowl (ducks, geese, coots) hunting on Wednesdays and Saturdays until 12 a.m. (noon) only during the Statewide duck season.

19. We allow use of shotguns during designated hunts only.

20. We prohibit the construction or use of permanent blinds.

21. You must remove all decoys, portable blinds, and boats daily.

22. We have a youth waterfowl hunt in the Crawfish Pond Unit during the Statewide duck season. This will be a quota-type hunt, and hunters will apply on an index or post card with their name, address, phone number, and dates of the hunt for which they are applying. When the State sets the duck season, we will set the dates of the hunt.

23. We allow hunting of mourning doves incidentally by waterfowl hunters only on days open to waterfowl hunting.

24. We only allow dogs to locate, point, and retrieve when hunting for migratory game birds.

25. We prohibit frogging.

*B. Upland Game Hunting.* We allow hunting of rabbit, raccoon, feral hog, beaver, nutria, and coyote on designated areas of the refuge, as shown on refuge hunting brochure map, subject to the following conditions:

1. Conditions A1 through A17 and A25 apply.

2. We allow rabbit hunting from December 1 until the end of the Statewide season.

3. We allow use of shotguns during designated hunts only.

4. We allow rabbit dogs only after the close of the State deer rifle season.

5. We require you to collar all dogs with owner's name and phone number.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge as shown on refuge hunting brochure map subject to the following conditions:

1. Conditions A1 through A17 and A25 apply.

2. We allow archery-only deer hunting on the refuge from October 1 through October 31 in the Gremillion Unit, Island of the Owls Unit, and Concrete Bridge Unit.

3. You must have hunter's name, address, and phone number permanently attached to all deer stands. We allow only portable deer stands that hunters must take down daily.

4. We prohibit hunters to drive deer or use pursuit dogs. We prohibit use of dogs to trail wounded deer.

5. We allow only archery equipment during designated seasons.

6. We require hunters to complete and possess and carry proof of completion of the International Bowhunters' Safety Course.

7. You may kill one deer of either sex per day during the deer season.

* * * * *

■ 6. In § 32.42 Minnesota by:
■ a. Adding Detroit Lakes Wetland Management District; and
■ b. Adding Northern Tallgrass Prairie National Wildlife Refuge to read as follows:

### § 32.42 Minnesota.

* * * * *

**Detroit Lakes Wetland Management District**

*A. Hunting of Migratory Game Birds.* We allow hunting of migratory game birds throughout the district in accordance with State regulations, except that we prohibit hunting on the Headquarters Waterfowl Production Area (WPA) in Becker County, the Hitterdal WPA in Clay County, and the McIntosh WPA in Polk County. The following conditions apply:

1. We prohibit the use of motorized boats.

2. You must remove boats, decoys, blinds, and blind materials brought onto WPAs following each day's hunt.

3. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times.

*B. Upland Game Hunting.* We allow upland game hunting in accordance with State regulations throughout the district, except that we allow no hunting on the Headquarters Waterfowl Production Area (WPA) in Becker county, the Hitterdal WPA in Clay county, and the McIntosh WPA in Polk county. The following condition applies: We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times.

*C. Big Game Hunting.* We allow big game hunting in accordance with State regulations throughout the district, except that we allow no hunting on the Headquarters Waterfowl Production Area (WPA) in Becker county, the Hitterdal WPA in Clay county, and the McIntosh WPA in Polk county. The following conditions apply:

1. We prohibit the construction or use of permanent blinds, platforms, or ladders.

2. You must remove all portable hunting stands from the area at the end of each day's hunt.

*D. Sport Fishing.* We allow fishing in accordance with State regulations throughout the district subject to the following condition: We prohibit the use of motorized boats.

* * * * *

**Northern Tallgrass Prairie National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of migratory game birds on designated areas in accordance with State regulations subject to the following conditions:

1. You must remove boats, decoys, portable or temporary blinds, materials brought onto the refuge, and other personal property at the end of each day's hunt.

2. We prohibit the construction or use of permanent blinds, stands, or scaffolds.

3. We prohibit the use of motorized watercraft.

*B. Upland Game Hunting.* We allow hunting of upland game on designated areas in accordance with State regulations subject to the following conditions:

1. Hunters may possess only approved nontoxic shot while in the field.

2. We prohibit the use of dogs for hunting furbearers.

3. Hunters may take weasel, coyote, gopher, crow, and all other species for which there is no closed season only during a State-designated open season for other upland game species.

*C. Big Game Hunting.* We allow hunting of big game in accordance with State regulations subject to the following conditions:

1. We prohibit the construction or use of permanent blinds, stands, or scaffolds.

2. You must remove all temporary blinds, stands, and scaffolds at the end of each day's hunt.

3. We prohibit the use of motorized watercraft.

* * * * *

■ 7. In § 32.43 Mississippi by adding Coldwater National Wildlife Refuge to read as follows:

### § 32.43 Mississippi.

* * * * *

**Coldwater National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* [Reserved]

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* [Reserved]

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. All persons fishing who are 16 years of age and older must carry a State license on the refuge. You must have a signed refuge fishing permit in your possession when fishing on the refuge. You may obtain permits at North Mississippi Refuges Complex Headquarters, 2776 Sunset Drive, Grenada, Mississippi 38901, or at the Dahomey National Wildlife Refuge Office, Box 381, Highway 446, Boyle, Mississippi 38730, or by mail from the above addresses.

2. We close the refuge to fishing from October 1 through February 28.

3. We allow fishing in bar pits along the Corps of Engineers levee only.

4. We prohibit possession of any weapon while fishing on the refuge. This does not include fishing knives unless they are longer than 3 inches (7.5 cm).

5. We prohibit possession or use of jugs, seines, nets, hand-grab baskets, slat traps/baskets, or any other similar devices and commercial fishing of any kind.

6. We allow trotlines, yo-yos, limb lines, crawfish traps, or any other similar devices for recreational use only, and you must tag or mark them with waterproof ink, legibly inscribed or legibly stamped on the tag with your full name and full residence address, including zip code. You must attend these devices a minimum of once daily. If you are not going to attend these devices, you must remove them from the refuge.

7. We prohibit snagging or attempting to snag fish.

8. We allow crawfishing.

9. We allow taking of frogs by Special Use Permit only.

* * * * *

■ 8. In § 32.46 Nebraska by:
■ a. Adding the text of paragraph A. and the text of paragraph C. of Boyer Chute National Wildlife Refuge; and
■ b. Adding the text of paragraphs B. and C. of North Platte National Wildlife Refuge to read as follows:

### § 32.46 Nebraska.

* * * * *

**Boyer Chute National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of ducks, geese, and coots on designated areas of the refuge subject to the following conditions:

1. You may access the refuge from 1½ hours before legal sunrise to 1 hour after legal sunset along the immediate shoreline and including the high bank of the Missouri River. You may access the hunting area by water or, if by land, only within the public use area of the Island Unit and only with shotgun cased and unloaded.

2. You must remove all blinds and decoys at the conclusion of each day's hunt.

3. You must adhere to all applicable State hunting regulations.

* * * * *

*C. Big Game Hunting.* We allow hunting of white-tailed deer subject to the following condition: We allow a mentored youth hunt on designated areas of the refuge subject to the guidelines set forth and administered by the State.

* * * * *

**North Platte National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* We allow hunting of squirrel, rabbit, pheasant, State-defined furbearers, and coyote on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We close the Lake Alice Unit to all public entry from October 15 through January 14.
2. Hunters must be 15 years of age or younger. A licensed hunter 19 years of age or older must accompany youth hunters. We prohibit adults accompanying youth hunters to hunt or carry firearms. The accompanying adult is responsible for ensuring that the hunter does not engage in conduct that would constitute a violation of refuge or State regulations.
3. We close the refuge to public use from legal sunset to legal sunrise. However, youth hunters and their adult guides may enter the designated hunting area 1 hour prior to legal sunrise.
4. We only allow dogs for pheasant-hunting on the refuge.

*C. Big Game Hunting.* We allow archery hunting of mule deer and white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We close the Lake Alice Unit to all public entry from October 15 through January 14.
2. We close the refuge to public use from legal sunset to legal sunrise. However, archery deer hunters may enter the designated hunting area 1 hour prior to legal sunrise and remain until 1 hour after legal sunset.

* * * * *

■ 9. In § 32.56 Oregon by adding the text of paragraph D. of Bandon Marsh National Wildlife Refuge to read as follows:

**§ 32.56 Oregon.**

* * * * *

**Bandon Marsh National Wildlife Refuge**

* * * * *

*D. Sport Fishing.* We allow sport fishing in accordance with State regulations, on that portion of the refuge west of U.S. Highway 101.

* * * * *

■ 10. In § 32.66 Virginia by adding the text of paragraph D. of Rappahannock River Valley National Wildlife Refuge to read as follows:

**§ 32.66 Virginia.**

* * * * *

**Rappahannock River Valley National Wildlife Refuge**

* * * * *

*D. Sport Fishing.* We allow fishing on designated areas of Wilna Pond in Richmond County subject to the following conditions:

1. As we implement the new fishing program at Wilna Pond, we intend to be open on a daily basis, legal sunrise to legal sunset. If unexpected law enforcement issues arise, we may restrict hours of access for fishing.
2. From March 15 through June 30, we allow fishing from the Wilna Pond pier only (no boat or bank fishing).
3. During the period when we open the Wilna Tract for deer hunting, we will close it to all other uses, including fishing.
4. We prohibit fishing by any means other than by use of one or more attended poles with hook and line attached.
5. We prohibit the use of lead fishing tackle.
6. We require catch and release fishing only for largemouth bass. Anglers may take other finfish species in accordance with State regulations.
7. We prohibit the take of any reptile, amphibian, or invertebrate species for use as bait or for any other purpose.
8. We prohibit the use of live minnows as bait.
9. We prohibit use of boats propelled by gasoline motors, sail, or mechanically operated paddle wheel. We only permit car-top boats; and we prohibit trailers.
10. Prescheduled environmental education field trips will have priority over other uses, including sport fishing, on the Wilna Pond pier at all times.

* * * * *

Dated: September 29, 2003.

**Julie MacDonald,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 03–25193 Filed 9–30–03; 3:56 pm]

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- Fishery conservation and management:
  - Alaska; fisheries of Exclusive Economic Zone—
    - Pollock; published 10-3-03
    - Rock sole and yellowfish sole; published 9-2-03
- Marine mammals:
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**ENERGY DEPARTMENT**

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**FEDERAL COMMUNICATIONS COMMISSION**

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    - Wireline services offering advanced telecommunications capability; deployment; published 9-2-03

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

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  - Dexamethasone injection; published 10-2-03

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

- Hunting and fishing:
  - Refuge-specific regulations; published 10-2-03

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

- Airworthiness directives:
  - Rolls-Royce plc; published 8-28-03

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- Fresh fruits, vegetables, and other products; inspection and certification:
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  - West Coast States and Western Pacific fisheries—
    - Pacific Coast groundfish; comments due by 10-6-03; published 9-5-03 [FR 03-22571]
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  - Physician fee schedule (2004 CY); payment policies and relative value unit adjustments; comments due by 10-7-03; published 8-15-03 [FR 03-20662]
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    - Blue-fronted Amazon parrots from Argentina; comments due by 10-6-03; published 8-6-03 [FR 03-19945]

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- √1√Supplemental standards of ethical conduct for National Endowment for the Arts employees; comments due by 10-6-03; published 9-5-03 [FR 03-22653]
- √2√Supplemental standards of ethical conduct for National Endowment for the Humanities employees; comments due by 10-6-03; published 9-5-03 [FR 03-22654]
- Conflicts of interest; cross reference provision; comments due by 10-6-03; published 9-5-03 [FR 03-22655]

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  - Honeywell International Inc.; comments due by 10-7-03; published 8-8-03 [FR 03-20231]
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  - Testimony or production of records in court or other proceeding; comments due by 10-7-03; published 7-9-03 [FR 03-17230]

## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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**H.R. 2658/P.L. 108–87**
Department of Defense Appropriations Act, 2004 (Sept. 30, 2003; 117 Stat. 1054)

**H.R. 3087/P.L. 108–88**
Surface Transportation Extension Act of 2003 (Sept. 30, 2003; 117 Stat. 1110)

**H.R. 3146/P.L. 108–89**
To extend the Temporary Assistance for Needy Families block grant program, and certain tax and trade programs, and for other purposes. (Oct. 1, 2003; 117 Stat. 1131)

**Last List October 1, 2003**

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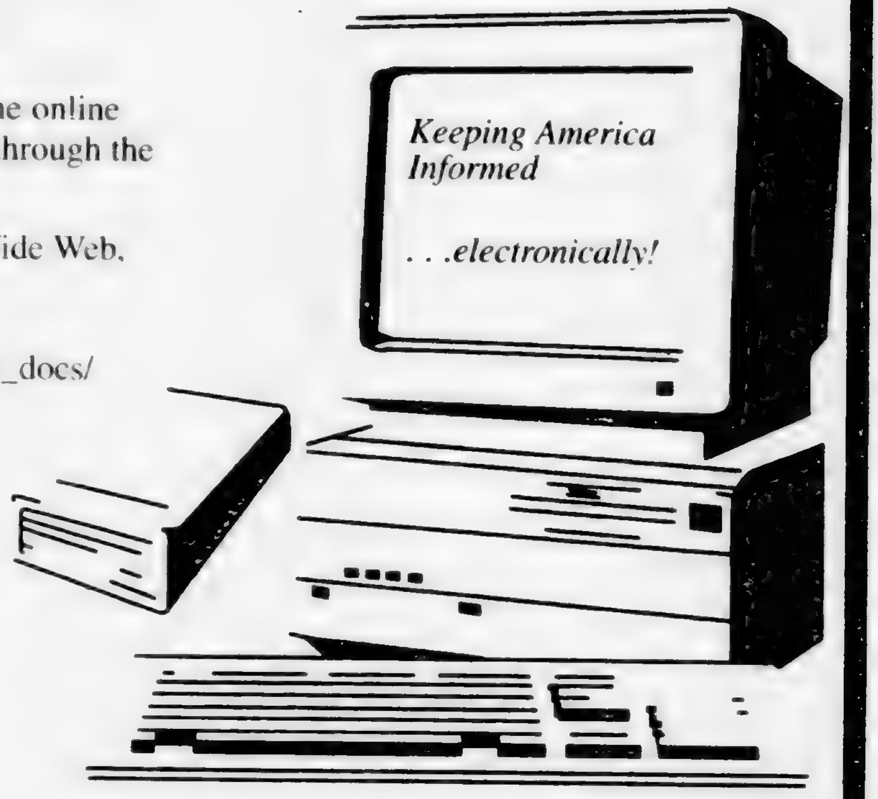

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# Federal Register

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# Presidential Documents

**Title 3—**

**The President**

**Presidential Determination No. 2003–40 of September 24, 2003**

## Waiving Prohibition on United States Military Assistance to Parties to the Rome Statute Establishing the International Criminal Court

**Memorandum for the Secretary of State**

Consistent with the authority vested in me by section 2007 of the American Servicemembers' Protection Act of 2002, title II of Public Law 107–206 (22 U.S.C. 7421 *et seq.*), I hereby determine that:

(1) Afghanistan, Democratic Republic of the Congo, Georgia, and Honduras have each entered into an agreement with the United States pursuant to Article 98 of the Rome Statute preventing the International Criminal Court from proceeding against U.S. personnel present in such countries, and waive the prohibition of section 2007(a) of the American Servicemembers' Protection Act with respect to these countries for as long as such agreement remains in force; and

(2) it is important to the national security interest of the United States to waive, for a period of 6 months from the date of this determination, the prohibition of section 2007(a) with respect to Guinea, and waive that prohibition with respect to this country for that period.

You are authorized and directed to report this determination to the Congress, and to arrange for its publication in the **Federal Register**.

THE WHITE HOUSE,
*Washington, September 24, 2003.*

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# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 930

**[Docket No. FV03–930–3 FR]**

## Tart Cherries Grown in the States of Michigan, et al.; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule increases the assessment rate for tart cherries that are utilized in the production of tart cherry products from $0.0019 to $0.0021 per pound. The assessment rate was recommended by the Cherry Industry Administrative Board (Board) under Marketing Order No. 930 for the 2003–2004 and subsequent fiscal periods. The Board is responsible for local administration of the marketing order which regulates the handling of tart cherries grown in the production area. Authorization to assess tart cherry handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The fiscal period began July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** This final rule becomes effective October 6, 2003.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, MD 20737, telephone: (301) 734–5243, or Fax: (301)–734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, tart cherry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable tart cherries beginning July 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule increases the assessment rate established for the Board for the 2003–2004 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products from $0.0019 to $0.0021 per pound of cherries.

The tart cherry marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of tart cherries. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2002–2003 fiscal period, the Board recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the USDA upon recommendation and information submitted by the Board or other information available to USDA.

Section 930.42(a) of the order authorizes a reserve sufficient to cover one year's operating expenses. The increased rate is expected to generate enough income to meet the Board's operating expenses in 2003–2004.

The Board met on January 23, 2003, and unanimously recommended 2003–2004 expenditures of $532,000. The industry completed a formal rulemaking proceeding which amended the assessment rate section by authorizing one assessment rate rather than two assessment rates for different tart cherry products [67 FR 51697]. The provisions requiring the establishment of different assessment rates for different products were removed. In their place, the Board is required to consider the volume of cherries used in making various products and the relative market value of those products in deciding whether the assessment rate should be a single, uniform rate applicable to all cherries or whether varying rates should be recommended for cherries manufactured into different products.

In addition, the amended order provides that the assessment rate not apply to cherries diverted in orchard by growers, and those diverted by handlers through destruction at their plants. The Board recommended the amendment to allow them to establish one assessment rate for all tart cherry products handled. In making its recommendation, the Board stated that while a two-tiered assessment rate scheme may be appropriate in some years, it may not be in others due to the fact that the absolute and relative market values of various tart cherry products fluctuate from year to year.

The amended order specifically provides that under section 930.41(f)(1) and (2) the established assessment rate may be uniform, or may vary depending on the product the cherries are used to manufacture. The Board must consider the differences in the number of pounds of cherries utilized for various cherry products and the relative market values of such cherry products.

On June 25, 2003 (68 FR 37726), a final rule was published in the **Federal Register** that established a single assessment rate for the 2002–2003 fiscal period for all tart cherries handled regardless of the product the cherries are used to manufacture. The Board determined that the markets for juice, juice concentrate, and puree were gaining in importance and that cherries used in such products should be assessed the same as those sold for use in assorted bakery items, as canned pie fill and as dried cherries.

The Board considered the above items and decided that one assessment rate should be recommended for all cherry products during 2003–2004. According to the Board, processors have developed a strong market for juice and concentrate products over the past few years. There is considerable belief that juice will be one of the growth outlets for tart cherries. This derives from the industry's promotional efforts being undertaken for juice and concentrate products, the segmentation of the market into retail and industrial components, and the nutritional/nutraceutical profile of the product. As a result, there has been an increase in consumer recognition, acceptance, purchases, and the value of tart cherry juice and concentrate. According to the Board, prices received for tart cherry juice concentrate are now $25.00 per gallon or more. This is derived by using the fairly common conversion ratio of 100 pounds to the gallon for mid-west production, which has a raw product value of $0.25 per pound. Using a 50 gallon conversion for the product, as has been seen on the west coast, this represents a per pound value of $0.50. The difference in the west and mid-west conversion factors is that tart cherries produced in the western United States generally have a higher sugar content and larger fruit size, thus fewer raw product is needed. The average grower price received ranges between $0.17 to $0.20 per pound.

According to the Board, puree products are as valuable and comparable to juice and juice concentrate products. The Board reported that the spot price for single strength puree for 2001 was about 60 cents per pound. The raw product equivalent (RPE) volume of pureed fruit was 539,504 pounds which is about 0.15 percent of all processed fruit. The Board also reported for 2001 that the price for five plus one product was 67 cents per pound. Five plus one is a product of cherries and sugar which is manufactured by many processors (25 pounds of cherries and 5 pounds of sugar to make a 30 pound commercial container). It is the main product that handlers produce. Five plus one cherries are primarily sold and remanufactured into assorted bakery items, canned pie fill, and dried cherries. Since juice, juice concentrate, and puree are not considered to be low value products at this time, the Board considers one assessment to be appropriate. It is important to understand that product is moved around between production areas and may be converted into puree or concentrate at a later date. The market drives the processing of these various products each season.

In comparing the costs of juice, juice concentrate, and puree, the Board has determined that current prices are similar for these products when compared to the 5 plus 1 product. The information received from the Board indicates that puree products are becoming a viable market and should be assessed at a higher assessment rate.

As a result of last season's short crop, much of the tart cherry products released from inventory were in the form of tart cherry juice and/or juice concentrate. There is not much, if any, of this product that is available on the market today. The Board contends that given these factors, it is hard to suggest that juice/concentrate, or puree, are of lesser value than are the more traditional products such as pie-fill or individually quick frozen tart cherries. Thus, the Board determined that one assessment rate is appropriate for the 2003–04 fiscal period.

Budgeted expenditures for the 2003–04 fiscal period were unanimously recommended at $532,000. The major expenditures recommended by the Board for the 2003–2004 fiscal period include $81,000 for meetings, $149,000 for compliance, $191,000 for personnel, $106,000 for office expenses, and $5,000 for industry educational efforts. Budgeted expenses for those items in 2002–2003 were $85,000 for meetings, $170,000 for compliance, $185,000 for personnel, $80,000 for office expenses, and $2,500 for industry educational efforts, respectively. In comparison, last year's budgeted expenditures were $522,500. Last season, the tart cherry industry experienced a significant frost mainly in Michigan which severely impacted the crop. Only 60 million pounds of cherries were produced in comparison to a normal crop of about 260 million pounds. The Board staff has responded to this decrease in funds by cutting its expenditures. The Board reduced its staff and Committee travel for meetings and used reserve funds to continue administrative operations in 2002–2003.

The recommended assessment rate of $0.0021 is higher than the current rate of $0.0019 per pound. The Board recommended an increased assessment rate to generate larger revenue to meet its expenses and keep its reserves at an acceptable level. In deriving the recommended assessment rate in January, the Board estimated assessable tart cherry production for the fiscal period at 260 million pounds. However, actual production was 222 million pounds. Therefore, total assessment income for 2003–2004 based on actual production of 222 million pounds is $466,200. This amount plus adequate funds in the reserve and interest income will be adequate to cover budgeted expenses. Funds in the reserve (approximately $66,000) will be kept within the approximately six months' operating expenses as recommended by the Board consistent with section 930.42(a).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and other information submitted by the Board or other available information.

Although the assessment rate is effective for an indefinite period, the Board will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or the USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modifications of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 2003–2004 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the USDA.

### The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this final regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) allows AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS's Fruit and Vegetable Programs (Programs) no longer opts for such certification, but rather performs regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $5,000,000, and small agricultural producers are those whose annual receipts are less than $750,000. A majority of the tart cherry handlers and producers may be classified as small entities.

The Board unanimously recommended 2003–2004 expenditures of $532,000 and an assessment rate increase from $0.0019 to $0.0021 per pound. This rule increases the assessment rate established for the Board and collected from handlers for the 2003–2004 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products. The quantity of assessable tart cherries produced during the 2003–2004 crop year is 222 million pounds. Assessment income, based on this crop, along with interest income and reserves, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Board for the 2003–2004 fiscal period include $81,000 for meetings, $149,000 for compliance, $191,000 for personnel, $106,000 for office expenses, and $5,000 for industry educational efforts. Budgeted expenses for those items in 2002–2003 were $85,000 for meetings, $170,000 for compliance, $185,000 for personnel, $80,000 for office expenses, and $2,500 for industry educational efforts, respectively.

The Board discussed the alternative of continuing the existing assessment rate, but concluded that would cause the amount in the operating reserve to be reduced to an unacceptable level.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. Data from the National Agricultural Statistics Service (NASS) states that during the period 1995/96 through 2002/03, approximately 92 percent of the U.S. tart cherry crop, or 285.7 million pounds, was processed annually. Of the 285.7 million pounds of tart cherries processed, 58 percent was frozen, 30 percent was canned, and 12 percent was utilized for juice.

Based on NASS data, acreage in the United States devoted to tart cherry production has been trending downward. Since 1987/88 tart cherry bearing acres have decreased from 50,050 acres, to 36,900 acres in the 2002/03 crop year. In 2002/03, 93 percent of domestic tart cherry acreage was located in four States: Michigan, New York, Utah, and Wisconsin. Michigan leads the nation in tart cherry acreage with 74 percent of the total. Michigan produces about 75 percent of the U.S. tart cherry crop each year. Tart cherry acreage in Michigan decreased from 28,500 acres in 2000–2001, to 27,400 acres in 2002–2003.

In deriving the recommended assessment rate, the Board estimated assessable tart cherry production for the fiscal period at 260 million pounds. However, actual 2003–2004 production is approximately 222 million pounds. Cherries used for handler destruction and grower diversion outlets are exempt from assessment obligations. Funds in the reserve (approximately $66,000) will be kept within the approximately six months' operational expenses as recommended by the Board which would be consistent with the order (§ 930.42(a)).

While this action will impose additional costs on handlers, the costs are in the form of assessments which are applied uniformly. Some of the costs may also be passed on to producers. However, these costs are offset by the benefits derived from the operation of the marketing order. The Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the January 23, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action will impose no additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on July 25, 2003 (68 FR 43978). Copies of the rule were mailed and sent via facsimile to all Board members and cherry handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending August 25, 2003, was provided to allow interested persons to respond to the proposal.

One comment was received from Mr. Perry Hedin, Executive Director of the Board. He commented that the Board is in support of the proposed rule but he wanted to make one clarification. The terms of the order allow the Board to maintain one year's operational expenses as a reserve. The Board policy, however, intends to maintain cash reserves equal to one half of one year's operational budget. The Board's increase in the assessment rate this year was intended to replenish the cash reserves depleted when the crop was extremely short in 2002. The commenter stated that the Board should be able to rebuild some of the intended cash reserves under the current assessment, but it is as yet unknown if reserves will be fully replenished this season.

Accordingly, no changes will be made to the rule based on the comment received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab/html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matters presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the 2003–2004 fiscal period began on July 1, 2003, and ends on June 30, 2004, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable tart cherries handled during such fiscal period. Further, handlers are aware of this action which was unanimously recommended by the Board at a public meeting. Also, a 30-day comment period was provided in the proposed rule.

### List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

- For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

### PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

- 1. The authority citation for 7 CFR part 930 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

- 2. Section 930.200 is revised to read as follows:

**§ 930.200 Handler assessment rate.**

On and after July 1, 2003, the assessment rate imposed on handlers shall be $0.0021 per pound of cherries handled for tart cherries grown in the production area and utilized in the production of tart cherry products.

Dated: September 29, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03–25110 Filed 10–2–03; 8:45 am]

**BILLING CODE 3410–02–P**

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## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 956

**[Docket No. FV03–956–1 FR]**

## Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Fiscal Period Change

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule changes the fiscal period under the Walla Walla sweet onion marketing order from June 1 through May 31 to January 1 through December 31. This rule was recommended by the Walla Walla Sweet Onion Marketing Committee (Committee), the agency responsible for local administration of the marketing order regulating the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon. The June 1 through May 31 fiscal period has been in place since the marketing order's inception in 1995. Due to the advance planning needed for market promotion, including paid advertising, it has been the practice of the Committee to develop its budget of expenditures prior to the start of each fiscal period, but delay the actual expenditure of funds until after June 1. This made it more difficult for the Committee to coordinate the timing of marketing promotion activities with the short harvest and marketing season for Walla Walla sweet onions. This fiscal period change is expected to help the Committee better coordinate its marketing promotion activities with the marketing season—mid-June into September.

**EFFECTIVE DATE:** This final rule becomes effective January 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Barry M. Broadbent, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, Oregon 97204–2807; Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: *Barry.Broadbent@usda.gov.*; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

Small business may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Order No. 956, both as amended (7 CFR part 956), regulating the handling of Walla Walla sweet onions grown in Southeast Washington and Northeast Oregon, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule changes the fiscal period from June 1 through May 31 to January 1 through December 31. This rule also makes conforming changes to the order's administrative rules and regulations. This change was unanimously recommended by the Committee at its December 17, 2003, meeting.

Section 956.40 of the order provides authority for the Committee to incur expenses that are reasonable and necessary to operate the program. Section 956.42 provides that these expenses be paid by assessments levied on fresh shipments of Walla Walla sweet onions. Further, § 956.41 provides that an annual budget of expenses be prepared by the Committee based on the defined fiscal period. Section 956.13 of the order defines "fiscal period" and provides the authority for making this fiscal period change.

Walla Walla sweet onions are traditionally harvested from about mid-June through about mid-August, although, in recent years, harvest has been extended into September due to an increase in spring planted onions and the use of better storage facilities. Walla Walla sweet onions have a short shelf life and are therefore generally marketed within a relatively short period of time following harvest. During the promulgation of the order in 1995, the proponent industry committee—the organization responsible for drafting the order and presenting it during the promulgation hearing—was of the opinion that the new order's fiscal period should begin shortly before the marketing season began. Testimony during the hearing supported the position that the start of the fiscal period should be close to the beginning of the season. This was so a minimum of expenses would be incurred prior to the time assessment revenue was received by the Committee following the sweet onion harvest.

Experience gained over the last eight years has shown the Committee that the June 1 through May 31 fiscal period is not conducive to coordinating the timing of its marketing promotion, including paid advertising activities, with the short harvest and marketing season for Walla Walla sweet onions. The crop is harvested and marketed during a four-month period—mid-June into September.

Due to the advance planning needed for market promotion, including paid advertising, it has been the practice of the Committee to develop its budget of expenditures prior to the start of each fiscal period, but delay the actual expenditure of funds until after June 1. This made it more difficult for the Committee to coordinate the timing of its promotion activities with the short harvest and marketing season. The Committee believes that better timing of marketing promotion activities with the harvest and marketing of Walla Walla sweet onions will improve the distribution and consumption of sweet onions. To foster better timing, the Committee recommended that the fiscal period begin January 1 and end December 31 each year.

As previously stated, the Committee has been operating with a fiscal period of June 1 through May 31. The Committee formulated a budget for the twelve-month period beginning June 1, 2003, and submitted it to the USDA for approval. The budget was approved on May 23, 2003. The Committee began expending funds June 1 for its 2003–2004 promotion and research plans, as well as for administration costs. With the effective date of this fiscal period change being January 1, 2004, the Committee will be required to meet prior to that date to reformulate and resubmit a new budget for USDA approval for a new fiscal period beginning January 1, 2004, and ending December 31, 2004.

As conforming changes to the fiscal period change, this rule also updates language in § 956.142, Interest charges, and § 956.180, Reports by removing the words "of each fiscal period" wherever they appear.

## Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 26 handlers of Walla Walla sweet onions subject to regulation under the order and approximately 35 Walla Walla sweet onion producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

The Committee estimates that in 2002, 611,955 50-pound units of Walla Walla sweet onions were marketed at an average FOB price of about $9.00 per unit. The total industry value at shipping point was approximately $5,507,595. Thus, a majority of handlers and producers of Walla Walla sweet onions may be classified as small entities.

This final rule changes the current fiscal period from June 1 through May 31 to January 1 through December 31. The prior fiscal period had been in place since the marketing order's inception in 1995. Due to the advance planning needed for market promotion, including paid advertising, the Committee has previously developed its budget of expenditures before June 1, but delayed actual expenditures until that date. This made it more difficult for the Committee to coordinate the timing of marketing promotion activities with the short harvest and marketing season for Walla Walla sweet onions—mid-June into September. The Committee believes the January 1 through December 31 fiscal period will better facilitate marketing promotion programs and will improve the distribution and consumption of Walla Walla sweet onions.

Section 956.13 of the order defines "fiscal period" and provides the authority for making this change. This final rule is a change to Committee operations that will not impose any new requirements or costs on Walla Walla sweet onion handlers or producers. It could, on the other hand, simplify the business operations within the Walla Walla sweet onion industry by putting the order's fiscal period on the same basis as that of normal business recordkeeping practices.

The Committee discussed the alternative of taking no action on a fiscal period change, but unanimously concluded that this change will improve program administration.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Walla Walla sweet onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

The Committee's meeting was widely publicized throughout the Walla Walla sweet onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the December 17, 2002, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on April 9, 2003 (68 FR 17325). Copies of the rule were mailed or sent via facsimile to all Committee members and Walla Walla sweet onion handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 60-day comment period ending June 9, 2003, was provided to allow interested persons to respond to the proposal. One comment was received but was not relevant to the fiscal period change.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

### List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 956 is amended as follows:

## PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON

■ 1. The authority citation for 7 CFR part 956 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. A new § 956.113 is added to subpart "Rules and Regulations" to read as follows:

### § 956.113 Fiscal period.

■ Pursuant to § 956.13, *fiscal period* shall mean the period beginning January 1 and ending December 31 of each year.

### § 956.142 [Amended]

■ 3. Section 956.142 is amended by removing the words "of each fiscal period" in the second sentence.

### § 956.180 [Amended]

■ 4. Section 956.180 is amended by removing the words "of each fiscal period" in the introductory text.

Dated: September 29, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03–25111 Filed 10–2–03; 8:45 am]

**BILLING CODE 3410–02–P**

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## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 1220

**[No. LS–03–03]**

## Soybean Promotion and Research: Amend the Order To Adjust Representation on the United Soybean Board

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule adjusts the number of members for certain States on the United Soybean Board (Board) to reflect changes in production levels that have occurred since the last time the Board was reapportioned in 2000. These adjustments are required by the Soybean Promotion and Research Order (Order). The results of the adjustments are an additional member for Maryland and Michigan. New York is no longer part of the Eastern Region unit. The State has sufficient soybean production to qualify as a separate State unit with one representative on the Board. New Jersey is merged into the Eastern Region unit. The State no longer has sufficient soybean production to be a separate State unit. As a result of these changes, the total Board membership increases from 62 members to 64 members. These changes to the Board are effective with the Secretary of Agriculture's 2004 appointments.

**EFFECTIVE DATE:** November 3, 2003.

**FOR FURTHER INFORMATION:** Kenneth R. Payne, Chief; Marketing Programs Branch; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA, Room 2638–S; STOP 0251; 1400 Independence Avenue, SW.; Washington, DC 20250–0251; telephone 202/720–1115.

**SUPPLEMENTARY INFORMATION:**

### Executive Orders 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

### Executive Orders 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Soybean Promotion, Research, and Consumer Information Act (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1971 of the Act, a person subject to the Order may file a petition with the Secretary stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, the Department of Agriculture (Department) would rule on the petition. The Act provides that the district courts of the United States in any district in which such person is an inhabitant, or has their principal place of business, has jurisdiction to review USDA's ruling on the petition, if a complaint for this purpose is filed within 20 days after the date of the entry of the ruling.

### Regulatory Flexibility Act

The Administrator of AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because it merely adjusts representation on the Board to reflect changes in production levels that have occurred since the Board was reapportioned in 2000. As such, these changes will not have an impact on those persons subject to the program. There are an estimated 600,813 soybean producers who pay assessments and an estimated 10,000 first purchasers who collect assessments, most of whom would be considered small entities under the criteria established by the Small Business Administration (13 CFR 121.201).

### Paperwork Reduction Act

In accordance with OMB regulations (5 CFR part 1320), which implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements and recordkeeping requirements contained in the Order have been previously approved by OMB under OMB control number 0581–0093.

**Background and Changes**

The Act (7 U.S.C. 6301–6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace, and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 percent of the net market price of soybeans sold by producers. Pursuant to the Act, an Order was made effective July 9, 1991. The Order established a Board of 60 members. For purposes of establishing the Board, the United States was divided into 31 geographic units. Representation on the Board from each unit was determined by the level of production in each unit. The Secretary appointed the initial Board on July 11, 1991. The Board is composed of domestic soybean producers.

Section 1220.201(c) of the Order provides that at the end of each 3-year period, the Board shall review soybean production levels in the geographic units throughout the United States. The Board may recommend to the Secretary modification in the levels of production necessary for Board membership for each unit. At its March 2003 meeting the Board decided not to recommend any changes to the levels of production necessary for Board membership for each unit.

Section 1220.201(d) of the Order provides that at the end of each 3-year period, the Secretary must review the volume of production of each unit and adjust the boundaries of any unit and the number of Board members from each such unit as necessary to conform with the criteria set forth in § 1220.201(e): (1) To the extent practicable, States with annual average soybean production of less than 3,000,000 bushels shall be grouped into geographically contiguous units, each of which has a combined production level equal to or greater than 3,000,000 bushels, and each such group shall be entitled to at least one member on the Board; (2) units with at least 3,000,000 bushels, but fewer than 15,000,000 bushels shall be entitled to one Board member; (3) units with 15,000,000 bushels or more but fewer than 70,000,000 bushels shall be entitled to two Board members; (4) units with 70,000,000 bushels or more but fewer than 200,000,000 bushels shall be entitled to three Board members; and (5) units with 200,000,000 bushels or more shall be entitled to four Board members.

A proposed rule was published in the **Federal Register** (68 FR 35825) on June 17, 2003, with a 60-day comment period. The Department received one comment from an individual who, while opposed to the proposal, did not address the proposed changes to the representation on the Board.

Based on the requirements of the Act and Order, AMS is adjusting representation on the Board as proposed. Maryland and Michigan will each gain an additional member. New York will no longer be part of the Eastern Region unit because the State has sufficient soybean production to qualify as a separate State unit with one representative on the Board. New Jersey will lose its only member because the State no longer has sufficient soybean production to be a separate State unit. New Jersey is merged into the Eastern Region unit, and will be represented on the Board by the Eastern Region's representative. There are no adjustments to the other States or regions.

This final rule will increase Board membership from 62 members to 64 members effective with the 2004 nominations and appointments. The number of geographical units will remain at 30.

**List of Subjects in 7 CFR Part 1220**

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, Title 7, part 1220 is amended as follows:

## PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

■ 1. The authority citation for 7 CFR part 1220 continues to read as follows:

**Authority:** 7 U.S.C. 6301–6311.

■ 2. In § 1220.201, the table in paragraph (a) is revised to read as follows:

**§ 1220.201 Membership of board.**

(a) * * *

| Unit | No. of members |
|---|---|
| Illinois | 4 |
| Iowa | 4 |
| Minnesota | 4 |
| Indiana | 4 |
| Missouri | 3 |
| Ohio | 3 |
| Arkansas | 3 |
| Nebraska | 3 |
| South Dakota | 3 |
| Kansas | 3 |
| Michigan | 3 |
| Mississippi | 2 |
| Louisiana | 2 |
| Tennessee | 2 |
| North Carolina | 2 |
| Kentucky | 2 |
| North Dakota | 2 |
| Wisconsin | 2 |
| Maryland | 2 |
| Virginia | 1 |
| Georgia | 1 |
| South Carolina | 1 |
| Alabama | 1 |
| Delaware | 1 |
| Texas | 1 |
| Pennsylvania | 1 |
| Oklahoma | 1 |
| New York | 1 |
| Eastern Region (New Jersey, Massachusetts, Connecticut, Florida, Rhode Island, Vermont, New Hampshire, Maine, West Virginia, District of Columbia, and Puerto Rico) | 1 |
| Western Region (Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Arizona, Washington, Oregon, Nevada, California, Hawaii, and Alaska) | 1 |

* * * * *

Dated: September 29, 2003

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03–25113 Filed 10–2–03; 8:45 am]

BILLING CODE 3410–02–P

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 30, 40, and 70

**RIN 3150–AG85**

## Financial Assurance for Materials Licensees

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations for financial assurance for certain materials licensees, including all waste brokers, to bring the amount of financial assurance required more in line with current decommissioning costs. The objective of this action is to ensure that licensees maintain adequate financial assurance so that timely decommissioning can be carried out following shutdown of a licensed facility.

**EFFECTIVE DATE:** December 2, 2003.

**FOR FURTHER INFORMATION CONTACT:** James Morris, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–0191, e-mail *jem2@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

## Introduction

When NRC published the "General Requirements for Decommissioning Nuclear Facilities" final rule the Commission noted that inadequate or untimely consideration of decommissioning, specifically in the areas of planning and financial assurance, could result in significant adverse health, safety and environmental impacts (53 FR 24018, June 27, 1988). Additionally, they stated an intention that the regulations make clear that the licensee is responsible for the funding and completion of decommissioning in a manner which protects public health and safety.

Availability of adequate decommissioning funding is necessary for assuring that timely decontamination of facilities takes place following cessation of licensed operations. If a nuclear materials facility remains in a nonoperating status without being decommissioned, public health and safety could be compromised by leakage and contamination and/or loss of control of nuclear materials. Also, when decommissioning is delayed for long periods following cessation of operations, there is a risk that safety practices may become lax as key personnel relocate and management interest wanes. The Commission stated in the "Timeliness in Decommissioning of Materials Facilities" final rule that the rule was intended to reduce the potential risk to public health and the environment from radioactive material remaining for long periods of time at such facilities after licensed activities have ceased (59 FR 36026, July 15, 1994).

## Background

On October 7, 2002, the NRC published a proposed rule (67 FR 62403) that would amend the requirements for financial assurance for certain materials licensees. The proposed rule was developed in response to a need to update financial assurance requirements to ensure that licensees maintain adequate financial assurance coverage. The NRC regulations requiring financial assurance for decommissioning are designed to ensure that adequate funding will be available for timely decommissioning by licensees following shutdown of normal operations. The financial assurance regulations are part of the overall NRC strategy to maintain safety and protection of the public and the environment during and after decommissioning and decontamination of nuclear facilities.

Financial assurance is composed of several parts: (1) Appropriate identification of licensees for which financial assurance should be required; (2) the amount of financial assurance required for each licensee must be adequate to fund current decommissioning costs; and (3) appropriate financial assurance mechanisms (surety bonds, escrow accounts, parent or self-guarantee, etc.) must be required.

The NRC is amending its financial assurance requirements for certain materials licensees to bring required financial assurance amounts more in line with actual current decommissioning costs. The objective of this rulemaking is to maintain adequate financial assurance by addressing gaps in the current regulatory framework regarding (1) and (2) above.

Under current decommissioning regulations, materials licensees that use substantial quantities of nuclear materials must provide financial assurance for decommissioning (most materials licensees do not need to provide financial assurance because their possession limits are below the threshold for requiring financial assurance). NRC has approximately 4900 materials licensees, of which approximately 10 percent require financial assurance. The financial assurance requirements were established in 1988 as part of the decommissioning rulemaking (53 FR 24018; June 27, 1988). The amount of financial assurance that must be provided can be based on either: (1) A facility-specific decommissioning cost estimate provided by the licensee in a decommissioning funding plan;[1] or (2) one of several dollar amounts prescribed by regulation (certification amounts), that are based on possession limits. Revision to some of the financial assurance requirements for materials licensees are needed because there have been changes in decommissioning costs since that rulemaking was issued. Also, experience has revealed that for certain types of licensees, such as waste brokers,[2] special circumstances exist that require different financial assurance considerations.

The financial assurance regulations no longer provide adequate coverage of decommissioning costs for certain types of materials licensees, mainly due to large increases in decommissioning costs since the financial assurance regulations were put in place. Allowing these financial assurance coverage shortfalls to remain could increase the likelihood of inadequate funding for timely decommissioning.

To address these financial assurance coverage issues NRC considered two alternatives which were: (1) No action; and (2) carrying out this rulemaking. NRC performed a regulatory analysis studying the costs and benefits of the two alternatives and reached the following conclusions.

### *(1) No Action*

Under this alternative, no rulemaking would be done. The amount of financial assurance required would not be adequate to fully fund decommissioning activities for a large number of licensees. This shortfall in financial assurance would increase the likelihood that decommissioning of some facilities would not be carried out in a timely manner. This could result in adverse impacts on public health and safety, and also could have adverse environmental effects. It would also increase the likelihood that State or local governments and/or the general public would have to bear the costs of decommissioning.

No costs to licensees or NRC would be involved for this alternative. Licensees would not be subject to any cost increases, and NRC would not incur costs associated with developing and implementing the rulemaking.

### *(2) Rulemaking to Revise the Financial Assurance Requirements for Materials Licensees*

Under this alternative, certification amounts would be raised by 50 percent, providing approximately $80 million in additional financial assurance.[3] Large irradiator and waste broker licensees would have to base financial assurance on a site-specific decommissioning cost estimate. All waste brokers would have to provide financial assurance to cover the amount of the cost estimate. The decommissioning cost estimates would have to be updated at least every 3 years. A rulemaking to revise the financial assurance requirements for materials licensees would increase the assurance of adequate funding for decommissioning activities. This increased assurance would make timely decommissioning more likely, contributing to maintaining public health and safety and protection of the environment. This action would also decrease the likelihood that State and local governments and/or the general public would have to bear the costs of decommissioning, should a licensee be unable to do so.

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[1] For some types of licensees using very large amounts of radioactive material, a facility-specific cost estimate must be used.

[2] Waste brokers are waste processors and waste collectors as defined in 10 CFR part 20, appendix G.

[3] Estimate based on current numbers of licensees using each certification amount.

The benefit of the rulemaking is enhanced assurance of adequate funding for timely decommissioning. As stated above, there are gaps in the current financial assurance regulations permitting some licensees to provide financial assurance that does not cover the full cost of decommissioning, mainly due to large increases in decommissioning costs since the financial assurance regulations were put in place. Allowing these gaps to remain could increase the likelihood of inadequate funding for timely decommissioning.

The effect of inadequate/untimely funding of decommissioning may have adverse impacts on public health and safety. If a site is not decommissioned due to insufficient funds there is an increased likelihood of contamination and/or exposure of members of the public. The changes to the regulations are concentrated in areas where the likelihood of inadequate funding relative to decommissioning costs appears to be relatively high. First, the financial assurance requirements are imposed only on those licensees having the highest possession limits, and thus the potential for highest doses. Only about 10 percent of materials licensees must provide financial assurance. Second, the changes in this plan address situations where risk of inadequate funding of decommissioning obligations is greatest—where required amounts of financial assurance appear to be substantially less than decommissioning costs.

Failure to provide adequate financial assurance for decommissioning also has equity considerations. The potential public costs involved in cleanup of contaminated facilities where financial assurance is inadequate must be considered. Equity considerations call for adequate financial assurance so that a licensee's decommissioning costs are borne by the licensee.

The changes to the regulations are focused on areas where the likelihood of inadequate funding relative to decommissioning costs is high. The changes address situations where currently required amounts of financial assurance appear to be substantially less than decommissioning costs. The changes would provide approximately $80 million in additional financial assurance.[4]

These amendments were developed prior to recent heightened concerns about security of nuclear material. Because the objective of the amendments is to ensure that adequate funds are available to provide for the timely decommissioning of nuclear facilities with appropriate disposal of radioactive materials, these amendments should also enhance security of nuclear materials.

Changes are being made in four areas:

(1) Large sealed source licensees, *i.e.*, large irradiators, would not be permitted to use the certification amounts, and would have to base their financial assurance on a site-specific decommissioning cost estimate;

(2) All waste broker licensees (waste processors and waste collectors) would have to provide financial assurance, would not be permitted to use the certification amounts, and would have to base their financial assurance on a site-specific decommissioning cost estimate;

(3) The certification amounts for licensees would be increased by 50 percent; and

(4) Decommissioning cost estimates would have to be updated at least every 3 years.

**Analysis of Public Comments**

Eight comment letters were received. Three were from industry organizations, four from corporations, and one from an individual health physics professional. The comments and staff responses are summarized below:

*A. Comments Regarding Requirements for Large Sealed Source Licensees*

NRC's previous requirements allowed all sealed source licensees to use a certification amount as a basis for financial assurance. The proposed revisions modified this requirement by requiring sealed source licensees above a specified threshold (*i.e.*, possession limits in excess of $10^{12}$ times the applicable quantities of appendix B to part 30) to prepare and submit site-specific decommissioning cost estimates in place of certifications of financial assurance. The comments raised three issues related to this proposed change.

1. Residual Market Value of Sealed Sources

*Comment:* Several commenters argued that NRC's proposed rule is based on an overestimate of large irradiator decommissioning costs because NRC fails to take into account the residual market value of sealed sources. The residual market value of the sources is substantial, and should be considered as an offset to decommissioning costs. The NRC is unjustified in ending the use of certification amounts by large irradiators because actual decommissioning costs for large irradiators, considering the residual value of sources, would still be less than the proposed certification amount for sealed source licensees of $113K. With the cost of removal and transport being recovered from the resale or redistribution value of the sources, there is little difference in decommissioning costs of large versus small irradiators, and the $113K figure should be adequate.

One commenter asserted that the cobalt-60 used in large irradiators sells for about $1 per curie or more; therefore, a facility with 2 million curies should be able to sell its inventory for some significant fraction of its $2 million market value. Decommissioning such a facility would likely result in little or no out of pocket cost (such as the supplier handling charge assumed by NRC in NUREG/CR–6280) and perhaps a positive cash flow. The commenter then provided two examples where the commenter decommissioned licensee facilities in part to obtain title to cobalt-60 worth between $0.25–$1 per curie or more. As a result of this residual value, NRC's proposal to require large irradiators to prepare a site-specific decommissioning cost estimate actually would result in reduced amounts of financial assurance (due to consideration of the value of the sources), while placing an unnecessary burden on licensees.

Another commenter extended a similar argument to items in finished goods inventory, other saleable goods in inventory, and active or contaminated equipment that could be used elsewhere. This commenter stated that it is unfair and beyond the boundaries of good business practices to consider assets as liabilities just because they are radioactive, and NRC has not established within its regulations the difference between radioactive materials with residual value and radioactive materials as waste.

*Response:* The NRC agrees that the proposed rule does not take into account the residual market value of sealed sources. This approach is both appropriate and consistent with existing NRC policy. For example, current guidance in NUREG–1727 states the following:[5]

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[4] The estimate is based on numbers of licensees using each of the 3 certification amounts, and the differential between the revised certification amounts and former certification amounts for each of the 3 groups.

> The cost estimate should clearly state that it does not take credit for any salvage value that might be realized from the sale of potential assets (*e.g.*, recovered materials or decontaminated equipment) during or after decommissioning. If estimated credits are taken for salvage value but are not fully realized at the time of decommissioning, the cost estimate (as well as the financial assurance) may be significantly low.

The NRC believes that it would be inappropriate to incorporate salvage value into certification amounts when the actual residual value can vary substantially depending on the number and type of sources at a given facility, as well as on the curies present at the time of decommissioning (which generally is not known when a licensee's certification of financial assurance is put in place). Any residual value also would be subject to variability arising from changing market conditions. Therefore, it would be inappropriate to consider these characteristics when establishing generic certification levels.

Furthermore, NRC is concerned that it may be impossible at the time of decommissioning to realize (*i.e.*, as cash) any inherent value contained in sealed sources, even if the sources have substantial value to the licensees that possess them. Irradiator licensees convert this inherent value into cash through the course of their business operations. However, these business operations cease at the time of decommissioning. Assuming that licensees decommission their facilities at the most economical point in time, then their sources will probably have decayed just to the point where they can no longer be used cost-effectively. In this case at least, the sources are unlikely to have value to anyone unless they can be re-processed.

Another significant concern to NRC is the possibility that some sources may have no residual value at all and may need to be disposed of as low-level waste (LLW). If sources must be disposed as LLW, then decommissioning costs would be considerably higher. For example, NUREG/CR–6280 concludes that decommissioning costs for a clean reference large irradiator facility may range (in 1993 dollars) from $289,000, if the sources are returned to the supplier, up to $3.0 million if it is necessary to dispose of the sources as LLW.[6]

If the potential salvage value of a source were to be used to offset the estimated cost of decommissioning, the effect would be to reduce the amount of funds guaranteed by financial instruments that possess a very high level of assurance, such as a prepaid escrow fund or an irrevocable letter of credit. However, the estimated salvage value of a source does not guarantee that funds will be available when needed. Even where a potential buyer provides a contractual promise to buy the source for a specified sum, the contract provides a lower level of assurance than the protection provided by the fiduciary obligations required of financial institutions that act as trustees or guarantors of funds. A contractual arrangement between the licensee and a buyer does not include the NRC as a beneficiary with the right to demand that funds be placed into a standby trust which restricts use of the funds for decommissioning only. In contrast, a letter of credit, for example, does establish the NRC as a beneficiary and gives the NRC that right. Therefore, permitting a licensee to reduce its decommissioning cost estimate by the potential salvage value of a source would decrease the level of financial assurance as compared to the financial instruments required by current regulations.

For all these reasons, NRC concludes that its current approach not to permit credit for residual salvage value in setting certification amounts is reasonable.

### 2. Exemption Threshold Too Low

Comment: One commenter noted that, under the proposed rule, sealed source licensees are exempt from financial assurance requirements if the licensed material is less than or equal to $10^{10}$ times the applicable quantities of appendix B to part 30, which becomes 10,000 Ci for cobalt ($10^{10}$ times 1.0 μCi). The commenter asserted that this causes problems for owners of cobalt teletherapy units, wherein a new source typically decays to below 10,000 Ci in the first 2 years of use. The complication, according to the commenter, is that financial assurance is initially required but then becomes unnecessary for the remainder of the source's life. The commenter requested that the exempted amount be raised to $5 \times 10^{10}$ times the applicable Appendix B quantity as no teletherapy source exceeds 15,000 Ci.

Response: The certification levels and calculations described in the regulations are based on *licensed* possession limits, rather than actual possession. If a licensee for a cobalt teletherapy unit is allowed to possess cobalt in excess of 10,000 Ci under its license, then financial assurance is required even if the activity of the source decays to lower than that level. In fact, financial assurance must be maintained until NRC terminates the license, even if the licensee no longer possesses any radioactive material (unless the license is modified to reflect different possession limits). This approach ensures that licensees maintain adequate financial assurance for activities that are authorized under the license. Also, requiring a constant amount of financial assurance avoids the complication of constantly adjusting financial assurance levels to account for decay, changing inventories, etc.

The commenter may be correct that an increase in the exemption threshold would benefit teletherapy unit licensees. However, it also would eliminate the added protections achieved by the financial assurance requirements (even in cases where decommissioning occurred before any significant decay of the radioactive sources).

### 3. "Arbitrary" Upper Certification Limit

Comment: One commenter stated that decommissioning costs are driven more by the size and complexity of the facility than the size or activity of the source used, *e.g.*, a newer facility with twice as large a source as an older facility may require half the cost to decommission due to new design features. Therefore, the upper limit (of $10^{12}$ times the applicable quantities of appendix B to part 30) for sealed source certifications is arbitrary and should be removed.

Response: NRC agrees that both the size and complexity of a facility are important decommissioning cost drivers. Although newer facilities may be more likely to incorporate design features that will tend to reduce decommissioning costs, this correlation is untested and may only be true in general terms. There is no assurance that a new facility will cost less to decommission than an older facility or, conversely, that older facilities (which may have been remodeled) cost more to decommission. Moreover, research indicates that the characteristics of the sealed sources constitute an important and potentially critical cost driver. Therefore, the proposed activity-based upper limit is not arbitrary, but rather provides a reasonably effective and simple method for distinguishing those licensees for whom preparation of a facility-specific cost estimate (including a discussion of the fate of the sealed sources) is warranted. NRC believes that an upper limit based on activity is considerably easier to implement than one that would account for additional or alternative factors.

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[5] NUREG–1727, "NMSS Decommissioning Standard Review Plan," Appendix F, September 2000, p. F26.

[6] NUREG/CR–6280, "Technology, Safety, and Costs of Decommissioning a Reference Large Irradiator and Reference Sealed Sources," Pacific Northwest Laboratory, January 1996.

### *B. Comments on Waste Broker Definition*

Commenters raised three issues regarding NRC's proposed definition of "waste broker." The proposed definition stated that waste broker means any licensee that collects or accepts radioactive material from other entities for the purpose of processing, compacting, repackaging, or otherwise preparing it for disposal, or storage.

#### 1. Applicability to Storage and Radioactive Materials

Comment: Two commenters stated that the proposed definition of waste broker should be reconsidered, particularly its applicability to storage activities and to radioactive material (as opposed to radioactive waste). Otherwise, these commenters stated, NRC's waste broker requirements will inadvertently subject some licensees that are not waste brokers to NRC's waste broker requirements, including the following:

- Manufacturers (who receive radioactive material from a supplier for storage and future use);
- Distributors (who receive radioactive material from a supplier for storage and distribution);
- Service companies (who are authorized to receive sources from a supplier to be used for source exchanges);
- Contractors (who receive radioactive material in generally-licensed devices as part of a turnkey job, then place them in storage until they are turned over to the user); and
- Carriers (who, as general licensees, store radioactive material or waste prior to delivery, or who deliver material or waste prior to storage by the recipient).

Response: The NRC agrees that the proposed definition is problematic as suggested by these commenters. The final rule does not establish a definition of waste broker, but instead uses the existing definitions of waste processor and waste collector in 10 CFR part 20, appendix G. § 30.35 (c)(5) now requires waste collectors and waste processors to have financial assurance and base the amount of financial assurance on a site-specific decommissioning cost estimate.

#### 2. Collectors vs. Processors

Comment: One commenter stated that the proposed rule's definition of waste broker appropriately covers waste processors and should, but does not, include waste collectors. There are certain licensees that have as their principal purpose to collect and consolidate packaged radioactive waste from others and transfer it to waste processors or disposal facilities. Facilities for interim storage of waste should have adequate financial assurance to cover decommissioning whether the licensee is a collector or processor.

Response: NRC agrees that the waste "collectors" described in the comment should be subject to the waste broker requirements. A change has been made to Section 30.35 (c)(5) to place requirements on waste collectors and waste processors as defined in 10 CFR part 20, appendix G.

#### 3. Need to Define Radioactive "Waste"

Comment: One commenter stated that the proposed term "waste broker" cannot be defined when there is no clear standard definition of "waste" anywhere in NRC regulation or statute. The commenter stated that, historically, the term "waste" has been generally applied to sealed sources at the end of intended use regardless of whether they can be reused by someone else or their contents recovered as feedstock or reworked to extend the useful life of the sources. The commenter noted that there are differing definitions in 10 CFR 63.2 and 10 CFR 110.2, with the latter specifically exempting sealed sources being returned to any qualified manufacturer from the waste import and export regulations. In other contexts, there is no meaningful definition of radioactive "waste" as it applies to sealed sources or other radioactive materials. The commenter asserted that regardless of the lack of a clear definition of radioactive "waste," there is also a conflict in NRC policy and regulation as, on one hand, some sealed sources are exempted from the definition of "waste" while, on the other hand, sources are included in the scope of licensed material subject to decommissioning financial assurance.

Response: The NRC has decided not to define "waste" or "waste broker" in this rule. Although "waste" is not defined in NRC regulations, it is used in other NRC regulations and guidance in various contexts; therefore, defining the term for this rulemaking could result in unintended consequences. The apparent conflict in NRC policy and regulations that was raised by one commenter regarding the inconsistency of the use of this term as applied to sealed sources, is easily resolved by placing in context the exemption the commenter cited in 10 CFR 110.2 (vs. the inclusion of sealed sources in the scope of licensed material subject to the decommissioning financial assurance in this rule). As the Statements of Consideration for the exemption explain (60 FR 37556, published on 7/21/95), the exemption refers to sealed sources that are being returned to the United States or another country for reconditioning, recycling, or reprocessing. These types of transfers help to ensure that the materials are handled responsibly and not left in dispersed and perhaps unregulated locations around the world. Therefore, the NRC determined that they should not be subject to specific licensing, in this context, if the radioactive material involved would not be otherwise subject to such licensing. The disposition of sealed sources in this context differs radically from the disposition of sealed sources addressed by the rule.

As noted in the Statement of Considerations accompanying the proposed rule, the waste broker provisions of the rule are intended to be applied to licensees that (1) are likely to have fluctuating amounts of radioactive waste generated by other licensees, and (2) have a financial interest in maximizing the amount of radioactive waste they handle (*i.e.*, because their revenue is directly correlated to the amount of waste accepted). However, the existing definitions of "waste processor" and "waste collector" in 10 CFR part 20, appendix G, "Requirements for Transfers of Low-level Radioactive Waste Intended for Disposal at Licensed Land Disposal Facilities and Manifest," encompass the activities of the licensees the proposed term "waste broker" sought to address. These activities, which are well understood by the regulated community, make such licensees stand out among other NRC licensees from a financial assurance perspective and support the inclusion of these licensees in this rule.

### *C. Comments on Requirements for Decommissioning Cost Updates*

#### 1. Three vs. Five Year Updates

*Comment:* Several commenters stated that the 3-year time frame for periodic decommissioning cost estimate updates is too frequent and that every 5 years would be more reasonable. One of the three stated that cost estimates should be reassessed every 5 years in order to coincide with the license renewal process. This commenter stated that, for irradiators, decommissioning does not involve disposal of materials as radioactive waste and, therefore, that the stated impetus for the 3-year period (*i.e.*, recent increases in radioactive waste disposal costs) does not apply. Another of these commenters stated that NRC's proposal will be burdensome and appears to be driven by short-term investment performance and anticipation of higher waste disposal costs. This commenter countered that the history of investments over long periods of time (*e.g.*, 40-plus year facility lifetimes) is very positive, and that licensees have taken steps to lower their waste disposal costs by reducing the volume of decommissioning waste that will be generated and by increasing the recycling of materials to other nuclear facilities.

*Response:* The proposed requirement to update decommissioning cost estimates every 3 years will help ensure that financial assurance obtained by licensees will not become inadequate as a result of changing disposal prices or other factors. Increasing waste disposal costs have been and continue to be a concern for NRC. However, decommissioning costs also may change for a variety of licensee-specific reasons (*e.g.*, due to changes in the size and scope of operations) as well as for other reasons that may be out of a licensee's control (*e.g.*, inflation). The proposed 3-year cost estimate updates are intended to capture changes in estimated costs regardless of cause, and to help ensure that the level of financial assurance required of each licensee is appropriate. Therefore, the proposed requirement is appropriate even for licensees that are not expecting to incur any significant waste disposal costs, as well as for licensees that may be taking steps to reduce the volume of decommissioning waste (which is only one component of decommissioning costs).

Although it would be less burdensome to require updates every 5 years as opposed to every 3 years, the NRC believes that this would entail too great of a risk that cost estimates could become significantly low. The NRC's experience indicates that decommissioning cost estimates may fluctuate significantly in less than five years. In one case, a licensee increased its decommissioning cost estimate from $55,000,000 to $67,000,000 in one year. Even where site conditions do not change as dramatically as in the case noted, inflation may increase costs significantly.

For example, if decommissioning costs were to rise by five percent annually (due to higher disposal costs, increased operations, inflation, and/or other factors), then in only 3 years a previously accurate estimate would understate current costs by 15 percent. As a result, financial assurance would be low by the same amount. This would create an unacceptable risk of unfunded decommissioning obligations. This risk would increase even further over a 5-year period.

2. Update Estimates Only When Warranted

*Comment:* One commenter asserted that the reason costs can change significantly has to do with "internal" factors such as the size and scope of operations (as opposed to "external" factors such as the cost of disposal). Therefore, this commenter suggested that whenever an application for a license amendment is submitted due to changes in operations or materials possession (or other factors specified by NRC), an updated cost estimate should be required and considered as part of the amendment process. If no license amendments are required prior to license renewal, then an updated estimate should be required only at the time of license renewal. The commenter also described two alternatives to this approach. Under the first alternative, NRC could arrange for updates on a case-by-case basis by category and default history for that segment. Under the second alternative, licensees would update their cost estimate if estimated costs exceed a required contingency included in the previous estimate.

*Response:* NRC agrees that internal factors are an important cause of significant changes to decommissioning costs. However, if the commenter's primary suggestion (*i.e.*, to require an updated cost estimate as part of any license amendment application involving a change in operations or materials possession, or at the time of license renewal if there are no amendments) were enacted, licensees would update their cost estimates only once every 5 years, assuming there were no license amendments or other "internal" trigger events that might be specified by NRC. This would be true regardless of cost increases due to "external" factors (*e.g.*, increased disposal costs, inflation). As discussed in Section C.1 above, this approach is not acceptable to NRC because it could result in a substantial portion of decommissioning costs not being covered by financial assurance.

The first alternative approach would require that updates be provided by licensees on a case-by-case basis by "category" and "default history" for the relevant segment. NRC believes this approach would place an unreasonable administrative burden on NRC staff to analyze all changes and events applicable to each licensee individually, as well as to study default histories and other developments by segment. Even if NRC were to undertake such efforts, licensees still might be required to submit updated estimates (albeit on a case-by-case basis) with a frequency that approximates that of this rulemaking.

The second alternative approach suggested in the comment would require that cost estimates be updated only when the new estimate exceeds the required contingency in the previously-submitted cost estimate. As do other types of engineering cost estimates, decommissioning cost estimates include a contingency factor to account for unanticipated costs. This contingency factor is typically equal to 25 percent of the total of all known decommissioning costs. One problem with this alternative is that, if the contingency factor were allowed to cover recent increases in known costs, then the contingency would not be available to address the unanticipated costs for which it was intended. This means that the outdated estimate could be inadequate by 25 percent, which is not acceptable to NRC. A second problem with this alternative is that, in order to avoid updating the cost estimate, licensees would have to develop an updated cost estimate so that they could determine whether costs have escalated to more than the contingency factor. Therefore, it would be more efficient and more protective of decommissioning funding for the licensee to submit the updated estimate to NRC as proposed in this rulemaking, using it as the most accurate basis for financial assurance.

### *D. General Comments*

1. Rule Is Arbitrary and Unwarranted

*Comment:* One commenter disagreed with the increase in certification amounts and with NRC's justification for the change, characterizing it as "arbitrary and unwarranted." The commenter stated that although disposal costs have indeed risen, waste liabilities actually have been reduced by efforts to reduce weights and volumes and eliminate sources of waste streams, and by considering ease of decommissioning in the design, construction, and operation of new facilities. The commenter stated that Barnwell has been unable to achieve South Carolina targets for generation of volume-driven revenue due to changes in waste management practices by generators over the years.

*Response:* NRC does not agree that the basis for the rulemaking is arbitrary or unwarranted. First, and as noted by the comment, disposal costs have indeed risen. Although some licensees have implemented waste reduction efforts, these efforts do not necessarily offset all (or even most) of the waste disposal cost increases for these licensees. Moreover, other licensees have not implemented such efforts. NRC believes that the greatest waste reduction efforts have been made by larger licensees, who are the least likely to use the certification amounts.

Second, increased disposal costs are not NRC's only justification for increasing the certification amounts. Inflation that has occurred since the promulgation of the original certification amounts exceeds 50 percent, based on the Consumer Price Index.[7] Specific information on decommissioning costs also shows a substantial increase. NRC regulations for decommissioning of nuclear power reactor licensees at 10 CFR 50.75 contain a cost adjustment factor for licensees to update the minimum amount of financial assurance required. This adjustment factor, which takes into account labor, energy, and waste disposal costs, shows a minimum increase of approximately 65 percent in reactor decommissioning costs from 1986 to 2000.[8] Thus, inflation, by itself is more than adequate as a justification for the rule's 50 percent increase in the certification amounts. In addition, other research conducted by NRC for this rulemaking indicates that licensees using certifications have substantially less financial assurance than is warranted based on their estimated decommissioning costs.[9]

2. NRC's Financial Assurance Rules too Complicated

Comment: One commenter stated that the regulations addressing decommissioning plans and financial assurance are unnecessarily complicated. The commenter suggested that the rules be consolidated within a single chapter of 10 CFR, instead of spread through four chapters and appendices. The commenter suggested listing requirements in simpler language instead of burying them in complicated prose. The commenter also offered assistance to NRC.

Response: The NRC agrees that plain language improvements may be needed. This rulemaking makes changes in only a part of NRC's overall financial assurance requirements. Its objective is to bring financial assurance requirements more in line with actual decommissioning costs. NRC is trying to close any such gaps in a timely manner. Any future rulemakings covering more general changes in the financial assurance requirements will be carried out with a view toward clarification and simplification, where practical. As an aid to understanding its requirements, the NRC staff has developed a guidance document, "NMSS Decommissioning Standard Review Plan," NUREG–1727,[10] that explains how licensees can meet decommissioning requirements, including financial assurance requirements.

3. Consider Costs to Agreement State Licensees

Comment: One commenter stated that it appears NRC considered the cost of the rule only to its own licensees, and not to Agreement State licensees. It is unrealistic to expect Agreement States not to adopt the rule (even though they are not required to do so based upon its category D rating), so NRC should consider costs to all licensees.

Response: NRC has considered these costs, and has provided several opportunities for Agreement States to comment. The comments that NRC has received from Agreement States have generally supported this rulemaking. However, NRC has revised the Regulatory Analysis for the rule to more clearly estimate costs to Agreement State licensees that adopt the rule.

4. Comment Period Should Be Extended

Comment: One commenter requested that the public comment period for the proposed rule be extended until 60 days after NUREG/CR–6477 is made available for review by the public.

Response: NUREG/CR–6477 was published in mid-January, and placed on the website for this rulemaking. A **Federal Register** notice of availability of the NUREG report, with a 30-day public comment period, was published on January 30, 2003 (68 FR 4801). No comments were received on the report.

## Changes From the Proposed Rule

The definition of waste broker in § 30.4 is being removed. In § 30.35(c)(5), the terms waste processors[11] and waste collectors[12], as defined in 10 CFR part 20, appendix G, are being used instead. Implementation dates have been inserted at appropriate places in the rule as described below.

## Implementation

The NRC is implementing these requirements in a way intended to minimize the burden on licensees and regulators. Licensees are being given a reasonable period of time to submit new decommissioning cost estimates and to obtain any additional financial assurance that may be required. The NRC is establishing different effective dates for revised financial assurance requirements, depending on the type of licensee, so that new financial assurance submittals would not all be filed at one time. Licensees currently using the $750K certification amount are required to obtain additional financial assurance to comply with the revised $1,125K certification amount within 12 months of the effective date of the final rule. Licensees currently using the $75K or $150K certification amounts are required to obtain additional financial assurance to comply with the revised $113K or $225K certification amounts within 18 months of the effective date of the final rule. In either case, these licensees could choose the option of basing financial assurance on a decommissioning cost estimate. Licensees that can no longer use the certification amounts, such as large irradiators and waste brokers, are allowed up to 24 months to submit a decommissioning cost estimate.

## Discussion of Amendments by Section

### *Section 30.35 Financial Assurance and Recordkeeping for Decommissioning*

Paragraph (a) is amended to require licensees possessing large numbers of sealed sources to base financial assurance on a decommissioning funding plan. Section 30.35(c)(2) revises the certification amount. A new § 30.35(c)(5) requires waste processors and waste collectors to base financial assurance on a site-specific decommissioning cost estimate. Section 30.35(d) increases the certification amounts by 50 percent—new certification amounts are $113K, $225K, and $1,125K. Section 30.35(e) requires that decommissioning funding plans be updated at least every 3 years.

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[7] "CPI Inflation Calculator," U.S. Department of Labor, Bureau of Labor Statistics, *http://www.bls.gov/cpi.*

[8] NUREG–1307, Revision 9, p.6.

[9] "Analysis of Decommissioning Certification Amounts for Materials Licensees (parts 30, 40, and 70)," ICF Consulting, 2000.

[10] NUREG–1727 is available in the NRC Public Document Room, Room O-1F23, 11555 Rockville Pike, Rockville, MD. The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

[11] Waste processor means an entity, operating under a Commission or Agreement State license, whose principal purpose is to process, repackage, or otherwise treat low-level radioactive material or waste generated by others prior to eventual transfer of waste to a licensed low-level radioactive waste land disposal facility.

[12] Waste collector means an entity, operating under a Commission or Agreement State license, whose principal purpose is to collect and consolidate waste generated by others, and to transfer this waste, without processing or repackaging the collected waste, to another licensed waste collector, licensed waste processor, or licensed land disposal facility.

*10 CFR 40.36 Financial Assurance and Recordkeeping*

Section 40.36(b)(2) increases the applicable certification amount by 50 percent. Section 40.36(c)(2) revises the certification amount. Section 40.36(d) requires that decommissioning funding plans be updated at least every 3 years.

*10 CFR 70.25 Financial Assurance and Recordkeeping for Decommissioning*

Section 70.25(c)(2) revises the certification amount. Section 70.25(d) increases the applicable certification amounts by 50 percent. Section 70.25(e) requires that decommissioning funding plans be updated at least every 3 years.

### Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" that became effective on September 3, 1997 (62 FR 46517), NRC program elements (including regulations) are placed into four compatibility categories. In addition, NRC program elements also can be identified as having particular health and safety significance or as being reserved solely to the NRC.

The sections of 10 CFR parts 30, 40, and 70 dealing with financial assurance that are being changed and their respective compatibility categories are as follows:

Section 30.35 Financial Assurance and Recordkeeping for Decommissioning
- Compatibility category D—paragraphs (c), (e), (f)
- Health and Safety—paragraphs (a), (b), (d), and (g).

Compatibility category D for paragraphs (c), (e), and (f) is warranted because States are allowed the flexibility to specify different dollar amounts based on jurisdiction and local conditions. The Health and Safety designation for paragraphs (a), (b), and (d) is warranted because these paragraphs address decommissioning funding plans necessary to ensure that funding is available for timely decommissioning. The Health and Safety designation of paragraph (g) is warranted because of the requirement for transfer of certain records (e.g., spills or spread of contamination that could impact health and safety) important to subsequent licensees for decommissioning at the same facility.

Section 40.36 Financial Assurance and Recordkeeping for Decommissioning
- Compatibility category D—paragraphs (c) and (e).
- Health and Safety—paragraphs (a), (b), (d), and (f).

Compatibility category D for paragraphs (c), and (e) is warranted because States are allowed the flexibility to specify different dollar amounts based on jurisdiction and local conditions. The Health and Safety designation for paragraphs (a), (b), and (d) is warranted because these paragraphs address decommissioning funding plans necessary to ensure that funding is available for timely decommissioning. The Health and Safety designation of paragraph (f) is warranted because of the requirement for transfer of certain records (e.g., spills or spread of contamination that could impact health and safety) important to subsequent licensees for decommissioning at the same facility.

Section 70.25 Financial Assurance and Recordkeeping for Decommissioning
- Compatibility category D—paragraphs (c), (e), and (f)
- NRC—paragraph (a)
- Health and Safety—paragraphs (b), (d), and (g).

Compatibility category D for paragraphs (c), (e), and (f) is warranted because States are allowed the flexibility to specify different dollar amounts based on jurisdiction and local conditions. Paragraph (a) addresses areas reserved to the NRC because it concerns uranium enrichment facilities and special nuclear materials in quantities sufficient to form a critical mass. The Health and Safety designation for paragraphs (b) and (d) is warranted because these paragraphs address decommissioning funding plans necessary to ensure that funding is available for timely decommissioning. The Health and Safety designation of paragraph (g) is warranted because of the requirement for transfer of certain records (*e.g.*, spills or spread of contamination that could impact health and safety) important to subsequent licensees for decommissioning at the same facility.

### Plain Language

The Presidential Memorandum dated June 1, 1998, entitled "Plain Language in Government Writing" directed that the Government's writing be in plain language. One comment on this rule specifically addressed the clarity and effectiveness of the language used in the financial assurance regulations. The NRC response to the comment is included in the "Analysis of Public Comments" section of this notice.

### Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this rule, the NRC is making revisions to certain financial assurance requirements for materials licensees. Financial assurance requirements are not standards that have been established by any voluntary consensus organizations.

### Environmental Assessment and Finding of No Significant Environmental Impact

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, not to prepare an environmental impact statement for this rule because the Commission has concluded on the basis of the environmental assessment (contained in this notice below) that this rule is not a major Federal action significantly affecting the quality of the human environment.

These amendments revise financial assurance requirements for certain materials licensees. The amendments require certain materials licensees to submit decommissioning cost estimates; increase the amount of financial assurance required by licensees using the certification amounts; and require updates of decommissioning cost estimates at least every 3 years. None of these actions have any adverse impact on the environment. The amendments would not lead to any increase in the effect on the environment of the decommissioning activities already considered in the final decommissioning rule published on June 27, 1988 (53 FR 24018), as analyzed in "Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities" (NUREG–0586, August 1988).[13] Actions conducted under this rule would not introduce any impacts on the environment not previously considered by the NRC.

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[13] Copies of NUREG–0586 are available for inspection or copying for a fee from the NRC Public Document Room at O–1F23, 11555 Rockville Pike, Rockville, MD. Copies may be purchased at current rates from the U.S. Government Printing Office, P.O. Box 370892, Washington, DC 20402–9328 (telephone (202) 512–2249); or from the National Technology Information Service by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161.

The determination of this environmental assessment is that there will be no significant adverse impact to the quality of the human environment from this action. This action should have a positive impact on the quality of the human environment by providing additional assurance of timely decommissioning. Timely decommissioning should reduce the possibility of contamination of sites, and should enhance safety and protection of the environment. This discussion constitutes the environmental assessment upon which a finding of no significant impact has been found for this rule.

## Paperwork Reduction Act Statement

This final rule contains information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval numbers 3150–0009, –0017, and –0020.

The burden to the public for the information collections contained in 10 CFR part 30 is estimated to average 10.4 hours per response, the burden for the information collections contained in 10 CFR part 40 is estimated to average 7.3 hours per response, and the burden for the information collections contained in 10 CFR part 70 is estimated to average 7.5 hours per response. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Records Management Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *infocollects@nrc.gov;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0009, –0017, and –0020), Office of Management and Budget, Washington, DC 20503.

## Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

## Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection and copying in the NRC Public Document Room at O–1F23, 11555 Rockville Pike, Rockville, MD. Single copies of the regulatory analysis are available from James Morris, telephone (301) 415–0191, e-mail, *jem2@nrc.gov* of the Office of Nuclear Material Safety and Safeguards.

## Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule would not have a significant economic impact on a substantial number of small entities. Some licensees affected by this action may fall within the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121. However, while the rule would change the financial assurance requirements for these licensees, such licensees may base their financial assurance on a site-specific decommissioning cost estimate. No licensee would be required to provide financial assurance in excess of what is needed to cover decommissioning costs. Increases in financial assurance amounts required are only the amounts necessary to maintain adequate financial assurance to cover increased decommissioning costs. The regulatory analysis cited for this action contains estimates of cost impacts on different types of licensees.

## Backfit Analysis

There are no backfit requirements in 10 CFR parts 30 and 40, and, in accordance with the "Effective Date Note" regarding implementation of § 70.76, the provisions of 10 CFR 70.76 on backfitting have not yet gone into effect. Therefore, a backfit analysis is not required. However, the burdens and the benefits associated with this rule are addressed in the Regulatory Analysis.

## Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

## List of Subjects

*10 CFR Part 30*

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

*10 CFR Part 40*

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

*10 CFR Part 70*

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR parts 30, 40, and 70.

## PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

■ 1. The authority citation for part 30 continues to read as follows:

**Authority:** Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 30.34(b) also issued under sec.184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 2. In § 30.35, paragraphs (a), (c)(2), (d), and (e) are revised and a new paragraph (c)(5) is added to read as follows:

### § 30.35 Financial assurance and recordkeeping for decommissioning.

(a)(1) Each applicant for a specific license authorizing the possession and use of unsealed byproduct material of half-life greater than 120 days and in quantities exceeding $10^5$ times the applicable quantities set forth in appendix B to part 30 shall submit a decommissioning funding plan as described in paragraph (e) of this section. The decommissioning funding plan must also be submitted when a combination of isotopes is involved if R divided by $10^5$ is greater than 1 (unity rule), where R is defined here as the sum of the ratios of the quantity of each isotope to the applicable value in appendix B to part 30.

(2) Each holder of, or applicant for, any specific license authorizing the possession and use of sealed sources or plated foils of half-life greater than 120 days and in quantities exceeding $10^{12}$ times the applicable quantities set forth in appendix B to part 30 (or when a combination of isotopes is involved if R, as defined in § 30.35(a)(1), divided by $10^{12}$ is greater than 1), shall submit a decommissioning funding plan as described in paragraph (e) of this section. The decommissioning funding plan must be submitted to NRC by December 2, 2005.

* * * * *

(c) * * *

(2) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (a) of this section shall submit a decommissioning funding plan as described in paragraph (e) of this section or a certification of financial assurance for decommissioning in an amount at least equal to $1,125,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

* * * * *

(5) Waste collectors and waste processors, as defined in 10 CFR part 20, Appendix G, must provide financial assurance in an amount based on a decommissioning funding plan as described in paragraph (e) of this section. The decommissioning funding plan must include the cost of disposal of the maximum amount (curies) of radioactive material permitted by license, and the cost of disposal of the maximum quantity, by volume, of radioactive material which could be present at the licensee's facility at any time, in addition to the cost to remediate the licensee's site to meet the license termination criteria of 10 CFR part 20. The decommissioning funding plan must be submitted by December 2, 2005.

(d) Table of required amounts of financial assurance for decommissioning by quantity of material. Licensees required to submit the $1,125,000 amount must do so by December 2, 2004. Licensees required to submit the $113,000 or $225,000 amount must do so by June 2, 2005. Licensees having possession limits exceeding the upper bounds of this table must base financial assurance on a decommissioning funding plan.

| | |
|---|---|
| Greater than $10^4$ but less than or equal to $10^5$ times the applicable quantities of appendix B to part 30 in unsealed form. (For a combination of isotopes, if R, as defined in § 30.35(a)(1), divided by $10^4$ is greater than 1 but R divided by $10^5$ is less than or equal to 1) | $1,125,000 |
| Greater than $10^3$ but less than or equal to $10^4$ times the applicable quantities of appendix B to part 30 in unsealed form. (For a combination of isotopes, if R, as defined in § 30.35(a)(1), divided by $10^3$ is greater than 1 but R divided by $10^4$ is less than or equal to 1) | 225,000 |
| Greater than $10^{10}$ but less than or equal to $10^{12}$ times the applicable quantities of appendix B to part 30 in sealed sources or plated foils. (For a combination of isotopes, if R, as defined in § 30.35(a)(1), divided by $10^{10}$ is greater than, 1, but R divided by $10^{12}$ is less than or equal to 1) | 113,000 |

(e) Each decommissioning funding plan must contain a cost estsimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (f) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. Cost estimates must be adjusted at intervals not to exceed 3 years. The decommissioning funding plan must also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requriements of paragraph (f) of this section.

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## PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

■ 3. The authority citation for part 40 continues to read as follows:

**Authority:** Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 4. In § 40.36, paragraphs (b)(2), (c)(2), and (d) are revised to read as follows:

### § 40.36 Financial assurance and recordkeeping for decommissioning.

* * * * *

(b) * * *

(2) Submit a certification that financial assurance for decommissioning has been provided in the amount of $225,000 by June 2, 2005 using one of the methods described in paragraph (e) of this section. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section must be submitted to NRC prior to receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to NRC, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section.

(c) * * *

(2) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (a) of this section shall submit a decommissioning funding plan as described in paragraph (d) of this section or a certification of financial assurance for decommissioning in an amount at least equal to $1,125,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of

financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal. Licensees required to submit the $1,125,000 amount must do so by December 2, 2004.

* * * * *

(d) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (e) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. Cost estimates must be adjusted at intervals not to exceed 3 years. The decommissioning funding plan must also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section.

* * * * *

## PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

■ 5. The authority citation for part 70 continues to read as follows:

**Authority:** Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 193, 104 Stat. 2835 as amended by Pub.L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.81 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.82 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

■ 6. In § 70.25, paragraphs (c)(2), (d), and (e) are revised to read as follows:

**§ 70.25 Financial assurance and recordkeeping for decommissioning.**

* * * * *

(c) * * *

(2) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (a) of this section shall submit a decommissioning funding plan as described in paragraph (e) of this section or a certification of financial assurance for decommissioning in an amount at least equal to $1,125,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

* * * * *

(d) Table of required amounts of financial assurance for decommissioning by quantity of material. Licensees required to submit the $1,125,000 amount must do so by December 2, 2004. Licensees required to submit the $225,000 amount must do so by June 2, 2005. Licensees having possession limits exceeding the upper bounds of this table must base financial assurance on a decommissioning funding plan.

| | |
|---|---|
| Greater than $10^4$ but less than or equal to $10^5$ times the applicable quantities of appendix B to part 30. (For a combination of isotopes, if R, as defined in § 70.25(a), divided by $10^4$ is greater than 1 but R divided by $10^5$ is less than or equal to 1.) ......... | $1,125,000 |
| Greater than $10^3$ but less than or equal to $10^4$ times the applicable quantities of appendix B to part 30. (For a combination of isotopes, if R, as defined in § 70.25(a), divided by $10^3$ is greater than 1 but R divided by $10^4$ is less than or equal to 1.) ......... | $225,000 |

(e) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (f) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. Cost estimates must be adjusted at intervals not to exceed 3 years. The decommissioning funding plan must also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of paragraph (f) of this section.

* * * * *

Dated at Rockville, Maryland this 29th day of September, 2003.

For the Nuclear Regulatory Commission.

**Annette Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 03–25093 Filed 10–2–03; 8:45 am]

BILLING CODE 7590–01–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NM–372–AD; Amendment 39–13322; AD 2003–20–04]**

**RIN 2120–AA64**

## Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB 2000 series airplanes, that requires an inspection to detect chafing or damage to the electrical wire harnesses in the left and right wing fuel tanks, applicable corrective action(s) if necessary, and installation of harnesses. For certain airplanes, this AD also requires modifying the collector tank walls. This action is necessary to prevent chafing damage to the electrical wire harnesses in the left and right wing fuel tanks, which could cause misleading data and erroneous fuel pump cautions to be displayed to the flightcrew, and could result in electrical arcing with consequent increased potential for fire or explosion in the fuel tank. This action is intended to address the identified unsafe condition.

**DATES:** Effective November 7, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 7, 2003.

**ADDRESSES:** The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Rosanne Ryburn, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2139; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes was published in the **Federal Register** on July 21, 2003 (68 FR 43042). That action proposed to require an inspection to detect chafing or damage to the electrical wire harnesses in the left and right wing fuel tanks, applicable corrective action(s) if necessary, and installation of harnesses. For certain airplanes, that action also proposed to require modifying the collector tank walls.

## Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

## Changes to Final Rule

*Paragraph (e) of the proposed AD states:* "For all airplanes: Within 18 months after the effective date of this AD, install new electrical wire harnesses by accomplishing all the actions specified in paragraph 2.E. of the Accomplishment Instructions of Saab Service Bulletin SAAB 2000–28–012, dated October 1, 2001." In preparing this final rule, we re-examined the requirements of the proposed AD, and in doing so, we find it necessary to clarify that our intent in including paragraph (e) was NOT to require that all operators install "new" electrical wire harnesses. Rather, paragraph (e) was intended to capture the recommendation in paragraph 2.E. of the service bulletin, which addresses installation of harnesses following inspection, corrective actions (which may include installing new harnesses for some airplanes), and modification (if applicable).

For purposes of clarifying the requirements of this AD, we have combined paragraphs (a) through (e) of the proposed AD into paragraphs (a) and (b) of this final rule to reference accomplishing the actions specified in the Accomplishment Instructions of the service bulletin.

## Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. These changes will neither increase the economic burden on any operator nor increase the scope of the AD.

## Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

## Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

## Cost Impact

The FAA estimates that 3 airplanes of U.S. registry will be affected by this AD, that it will take approximately 80 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will cost approximately $455 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $16,965, or $5,655 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

## Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

**2003–20–04 Saab Aircraft AB:** Amendment 39–13322. Docket 2001–NM–372–AD.

*Applicability:* Model SAAB 2000 series airplanes, serial numbers SAAB 2000–004 through –063 inclusive, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent chafing damage to the electrical wire harnesses in the left and right wing fuel tanks, which could cause misleading data and erroneous fuel pump cautions to be displayed to the flightcrew, and could result in electrical arcing with consequent increased potential for fire or explosion in the fuel tank, accomplish the following:

### Inspection

(a) For all airplanes: Within 18 months after the effective date of this AD, do a detailed inspection to detect chafing or damage to the electrical wire harnesses in the left and right wing fuel tanks (including any applicable repair or replacement of electrical wire harnesses) by accomplishing all actions specified in the Accomplishment Instructions of Saab Service Bulletin 2000–28–012, dated October 1, 2001. Do the actions per the service bulletin. Any applicable repair or replacement of an electrical wire harness with a new electrical wire harness must be accomplished before further flight.

**Note 2:** For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

### Modification (for Certain Airplanes)

(b) For airplanes having serial numbers SAAB 2000–007 through -063 inclusive: Within 18 months after the effective date of this AD, modify the collector tank walls by accomplishing all the actions specified in paragraph 2.D. of the Accomplishment Instructions of Saab Service Bulletin 2000–28–012, dated October 1, 2001.

### Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

### Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

### Incorporation by Reference

(e) The actions shall be done in accordance with Saab Service Bulletin 2000–28–012, dated October 1, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Link"ping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 4:** The subject of this AD is addressed in Swedish airworthiness directive 1–168, dated October 1, 2001.

### Effective Date

(f) This amendment becomes effective on November 7, 2003.

Issued in Renton, Washington, on September 25, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–24841 Filed 10–2–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–NM–61–AD; Amendment 39–13324; AD 2003–20–06]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model DC–9–31 and DC–9–32 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–31 and DC–9–32 airplanes. This action requires, among other actions, various inspections to detect cracks of the cockpit enclosure window sill, and follow-on and corrective actions, as applicable. This action is necessary to prevent fatigue cracking of the internal doublers and frame structure of the fuselage skin of the cockpit enclosure window sill, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective October 20, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 2003.

Comments for inclusion in the Rules Docket must be received on or before December 2, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–61–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–61–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5324; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:** The FAA has received several reports of cracking of the internal doublers and frame structure of the fuselage skin of the cockpit enclosure window sill on McDonnell Douglas Model DC–9 series airplanes. These airplanes had accumulated between 61,624 and 100,238 total flight cycles. The cause of such cracking has been attributed to high-cycle fatigue. Fatigue cracking of the subject area, if not corrected, could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

### Other Related Rulemaking

On October 11, 2002, the FAA issued AD 2002–21–09, amendment 39–12915 (67 FR 65303, October 24, 2002), applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes, which currently requires, among other actions, various inspections to detect cracks of the cockpit enclosure window sill, and follow-on and corrective actions, as applicable. That AD was prompted by reports of cracking of the internal doublers and frame structure of the fuselage skin of the cockpit enclosure window sill. The actions required by that AD are intended to prevent fatigue cracking of the internal doublers and frame structure of the fuselage skin of the cockpit enclosure window sill, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

Since issuance of that AD, the FAA has determined that the same unsafe condition addressed in that AD may exist on certain additional Model DC–9–31 and DC–9–32 airplanes. The FAA was advised that four Model DC–9–31 and DC–9–32 airplanes (manufacturer's fuselage numbers 0268, 0505, 1039, and 1046) were omitted inadvertently from the applicability of AD 2002–21–09 because those airplanes had been excluded inadvertently from the effectivity of paragraph 1.A. of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002. Therefore, these additional airplanes are also subject to the same unsafe condition addressed in AD 2002–21–09.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin DC9–53–290, Revision 02, dated January 30, 2003. The procedures specified by Revision 02 of the service bulletin are essentially the same as those procedures included in Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002, as cited in AD 2002–21–09. However, this revision also adds four airplane fuselage numbers to the effectivity. No more work is necessary on the airplanes changed, as shown in Revision 01 of the service bulletin.

Accomplishment of the actions specified in AD 2002–21–09 is acceptable for compliance with the requirements of this AD.

### Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some time in the future, this AD is being issued to prevent fatigue cracking of the internal doublers and frame structure of the fuselage skin of the cockpit enclosure window sill, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane. This AD requires, among other actions, various inspections to detect cracks of the cockpit enclosure window sill, and follow-on and corrective actions, as applicable. The actions are required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

### Difference Between Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

### Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

### Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

### Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 4 work hours to accomplish the required actions, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this AD would be $260 per airplane.

### Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

### Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–61–AD." The postcard will be date stamped and returned to the commenter.

## Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

## § 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

**2003–20–06 McDonnell Douglas:** Amendment 39–13324. Docket 2003–NM–61–AD.

*Applicability:* Model DC–9–31 and DC–9–32 airplanes; fuselage numbers 0268, 0505, 1039 and 1046; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the internal doublers and frame structure of the fuselage skin of the cockpit enclosure window sill, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

**Note 1:** Where there are differences between the AD and the referenced service bulletin, the AD prevails.

### Initial Inspections

(a) Before the accumulation of 40,000 total landings, or within 5,000 landings after the effective date of this AD, whichever occurs later, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD per the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 02, dated January 30, 2003.

(1) Do a general visual inspection to determine if any existing repair of the internal doublers and frame structure of the fuselage skin of the cockpit enclosure window sill has been accomplished before the effective date of this AD.

**Note 2:** For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(2) Do inspections to detect cracks or loose or missing fasteners of the cockpit enclosure window sill per paragraphs 3.B.1. through 3.B.6. of the Accomplishment Instructions of the service bulletin. The inspections include a general visual inspection to detect loose or missing fasteners or cracks of the upper nose skins of the cockpit; a high frequency eddy current (HFEC) inspection for cracking of Zees; and detailed, borescope, and HFEC inspections for cracking of the skins and frames.

**Note 3:** For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

**Note 4:** If any cracked Zee is found during any inspection per paragraph (a)(2) of this AD, refer to paragraph (h) of this AD.

### Condition 1 (No Previous Repair and No Crack)

(b) If no previous repair and no crack is found during the inspections required by paragraphs (a)(1) and (a)(2) of this AD: Do the actions specified in paragraph (b)(1) or (b)(2) of this AD, at the times specified in those paragraphs.

### Condition 1, Option 1: Repetitive Inspections

(1) Condition 1, Option 1: Repeat the inspections required by paragraph (a)(2) of this AD every 5,000 landings, until paragraph (b)(2) of this AD is done. If any crack is found, before further flight, determine the applicable Condition as specified in the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 02, dated January 30, 2003, and do the applicable actions required by this AD.

### Condition 1, Option 2: Permanent Repair

(2) Condition 1, Option 2: Do paragraphs (b)(2)(i) and (b)(2)(ii) of this AD.

(i) Before further flight, do all actions associated with the permanent repair (including detailed and eddy current inspections of various parts; and repair, replacement, or rework of those parts, as applicable) per Condition 1, Option 2, of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 02, dated January 30, 2003. This terminates the repetitive inspections per paragraph (b)(1) of this AD.

**Note 5:** Boeing Service Bulletin DC9–53–290, Revision 02, dated January 30, 2003, refers to Boeing Service Rework Drawing SR09530268, Revision D, dated November 29, 2001, as an additional source of service information for identifying parts to be inspected, and repairing, replacing, or reworking those parts.

(ii) Within 40,000 landings after doing the permanent repair required by paragraph (b)(2)(i) of this AD, repeat the inspections specified in paragraph (a)(2) of this AD to detect any crack of the completed repair, per the Accomplishment Instructions of the service bulletin. If no crack is found, repeat the inspections specified in paragraph (a)(2) of this AD every 5,000 landings. If any crack is found, do paragraph (g) of this AD.

### Condition 2 (Any Crack Within Flyable Limits for Temporary Repair)

(c) If any crack is found during the initial inspection required by paragraph (a)(2) of this AD, or during any repetitive inspection required by paragraph (b)(1) of this AD, and that crack is within the flyable limits specified in Condition 2 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 02, dated January 30, 2003: Do the actions specified in paragraph (c)(1) or (c)(2) of this AD.

**Note 6:** Boeing Service Bulletin DC9–53–290, Revision 02, dated January 30, 2003, refers to Boeing Service Rework Drawing SR09530268, Revision D, dated November

29, 2001, as the source for determining flyable limits.

### Condition 2, Option 1: Temporary Repair and Repetitive Inspections

(1) Condition 2, Option 1: Do paragraphs (c)(1)(i), (c)(1)(ii), (c)(1)(iii), and (c)(1)(iv) of this AD, at the times specified in those paragraphs.

(i) Before further flight, do the temporary repair (including installation of doublers) per Condition 2, Option 1, of the Accomplishment Instructions of the service bulletin.

(ii) Within 2,000 landings after doing the temporary repair, do a general visual inspection to detect cracks of the skins and external doublers. If no crack is found that is outside the flyable limits specified in Condition 2 of the Accomplishment Instructions of the service bulletin, repeat the inspection every 2,000 landings until paragraph (c)(2)(i) of this AD is done.

(iii) Within 3,500 landings after doing the temporary repair, do borescope and HFEC inspections to detect cracks of the internal structure. If no crack is found that is outside the flyable limits specified in Condition 2 of the Accomplishment Instructions of the service bulletin, repeat the inspection every 3,500 landings until paragraph (c)(2)(i) of this AD is done.

**Note 7:** If any crack is found during any inspection per paragraph (c)(1)(ii) or (c)(1)(iii) of this AD, refer to paragraph (f) of this AD.

(iv) Except as provided by paragraph (f) of this AD, within 8,000 landings after doing the temporary repair, do the permanent repair specified in paragraph (c)(2) of this AD.

### Condition 2, Option 2: Permanent Repair

(2) Condition 2, Option 2: Do paragraphs (c)(2)(i) and (c)(2)(ii) of this AD at the times specified in those paragraphs.

(i) Before further flight, do all actions associated with the permanent repair (including detailed and eddy current inspections of various parts; and repair, replacement, or rework of those parts, as applicable) per Condition 2, Option 2, of the Accomplishment Instructions of the service bulletin. This terminates the repetitive inspections required by paragraphs (c)(1)(ii) and (c)(1)(iii) of this AD.

(ii) Within 40,000 landings after doing the permanent repair required by paragraph (c)(2)(i) of this AD, repeat the inspections specified in paragraph (a)(2) of this AD to detect any crack of the completed repair, per the Accomplishment Instructions of the service bulletin. If no crack and no crack progression is found, repeat the inspections specified in paragraph (a)(2) of this AD every 5,000 landings. If any crack or crack progression is found, do paragraph (g) of this AD.

### Condition 3 (Existing Temporary Repairs Per Certain Service Information)

(d) If any temporary repair is found during any inspection required by paragraph (a)(1) of this AD and that repair was accomplished per the service information identified in Condition 3 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 02, dated January 30, 2003: Do the actions specified in paragraph (d)(1) or (d)(2) of this AD. Also, if the Station Y=83.550 frames have been repaired before the effective date of this AD per DC–9/MD–80 Structural Repair Manual, Section 53–03, Figure 34, or Boeing Service Rework Drawing S509530127, do a one-time inspection of the frames for crack growth emanating beyond the repair angles. If any crack progression is found, before further flight, replace the frames with new frames per the Accomplishment Instructions of the service bulletin.

### Condition 3, Option 1: Repetitive Inspections

(1) Condition 3, Option 1: Do paragraphs (d)(1)(i), (d)(1)(ii), and (d)(1)(iii) of this AD at the times specified in those paragraphs.

(i) Within 2,000 landings after doing the temporary repair, or before further flight after accomplishment of the initial inspections in paragraph (a) of this AD, whichever is later, do a general visual inspection to detect cracks of the skins and external doublers. If no crack is found that is outside the flyable limits specified in Condition 2 of the Accomplishment Instructions of the service bulletin, repeat the inspection every 2,000 landings until paragraph (d)(2)(i) of this AD is done.

**Note 8:** If any crack outside the flyable limits is found during any inspection per paragraph (d)(1)(i) or (d)(1)(ii) of this AD, refer to paragraph (f) of this AD.

(ii) Within 3,500 landings after doing the temporary repair, or before further flight after accomplishment of the initial inspections in paragraph (a) of this AD, whichever is later, do borescope and HFEC inspections to detect cracks of the internal structure. If no crack is found that is outside the flyable limits specified in Condition 2 of the Accomplishment Instructions of the service bulletin, repeat the inspection every 3,500 landings until paragraph (d)(2)(i) of this AD is done.

(iii) Except as provided by paragraph (f) of this AD, within 8,000 landings after doing the temporary repair, or before further flight if more than 8,000 landings have been accumulated since the temporary repair, do the permanent repair specified in paragraph (d)(2)(i) of this AD.

### Condition 3, Option 2: Permanent Repair

(2) Condition 3, Option 2: Do paragraphs (d)(2)(i) and (d)(2)(ii) of this AD at the times specified in those paragraphs.

(i) Before further flight, do all actions associated with the permanent repair (including detailed and eddy current inspections of various parts; and repair, replacement, or rework of those parts, as applicable) per Condition 3, Option 2, of the Accomplishment Instructions of the service bulletin. This terminates the repetitive inspections required by paragraphs (d)(1)(i) and (d)(1)(ii) of this AD.

(ii) Within 40,000 landings after doing the permanent repair required by paragraph (d)(2)(i) of this AD, repeat the inspections specified in paragraph (a)(2) of this AD to detect any crack of the completed repair, per the Accomplishment Instructions of the service bulletin. If no crack and no crack progression is found: Repeat the inspections specified in paragraph (a)(2) of this AD every 5,000 landings. If any crack or crack progression is found, do paragraph (g) of this AD.

### Condition 4 (Existing Repairs Per Other Service Information)

(e) If any repair is found during any inspection required by paragraph (a)(1) of this AD, and the repair was not accomplished per the service information identified in Condition 4 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 02, dated January 30, 2003: Before further flight, repair per a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

### Condition 5 (Crack Outside Flyable Limits for Temporary Repair)

(f) If any crack is found during any inspection required by paragraph (a)(2), (b)(1), (c)(1)(ii), (c)(1)(iii), (d)(1)(i), or (d)(1)(ii) of this AD; and that crack is outside the limits specified in Condition 2 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 02, dated January 30, 2003; and a permanent repair was not previously accomplished per this AD: Do paragraphs (f)(1) and (f)(2) of this AD at the times specified in those paragraphs.

(1) Before further flight, do all actions associated with the permanent repair (including detailed and eddy current inspections of various parts; and repair, replacement, or rework of those parts, as applicable) per Condition 5 of the Accomplishment Instructions of the service bulletin.

(2) Within 40,000 landings after doing the permanent repair required by paragraph (f)(1) of this AD, repeat the inspections specified in paragraph (a)(2) of this AD to detect any crack of the completed repair, per the Accomplishment Instructions of the service bulletin. If no crack and no crack progression is found, repeat the inspections specified in paragraph (a)(2) of this AD every 5,000 landings. If any crack or crack progression is found, do paragraph (g) of this AD.

### Corrective Actions: Cracking Following Permanent Repair

(g) If any crack or crack progression is found during any inspection required by paragraph (b)(2)(ii), (c)(2)(ii), (d)(2)(ii), or (f)(2) of this AD: Before further flight, repair per a method approved by the Manager, Los Angeles ACO.

### Corrective Action for Cracked Zee

(h) If any cracked Zee is found during any inspection performed per paragraph (a)(2) of this AD: Before further flight, replace the cracked Zee with a new part per the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 02, dated January 30, 2003.

### Credit for Accomplishment of Related AD 2002–21–09, Amendment 39–12915

(i) Accomplishment of the actions specified in AD 2002–21–09 is acceptable for compliance with the requirements of this AD.

**Alternative Methods of Compliance**

(j)(1) In accordance with 14 CFR 39.19, the Manager, Los Angeles ACO, FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company Engineering Representative (DER) who has been authorized by the Manager, Los Angeles ACO, to make such findings.

**Incorporation by Reference**

(k) Unless otherwise specified by this AD, the actions shall be done in accordance with Boeing Service Bulletin DC9–53–290, Revision 02, dated January 30, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Effective Date**

(l) This amendment becomes effective on October 20, 2003.

Issued in Renton, Washington, on September 24, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–24681 Filed 10–2–03; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–CE–29–AD; Amendment 39–13323; AD 2003–20–05]**

**RIN 2120–AA64**

## Airworthiness Directives; PILATUS Aircraft Ltd. Model PC–7 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA adopts a new airworthiness directive (AD) for certain PILATUS Aircraft Ltd. (Pilatus) Model PC–7 airplanes. This AD requires you to inspect the forward and aft dihedral fittings for cracks and replace any cracked fitting. This AD also requires you to modify the aft dihedral fitting and spar-cap bolt holes. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to prevent cracks from developing in the forward and aft dihedral fittings, which could result in failure of the wing in certain maneuvers. Such failure could lead to loss of control of the airplane.

**DATES:** This AD becomes effective on November 14, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of November 14, 2003.

**ADDRESSES:** You may get the service information identified in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–29–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

### Discussion

*What Events Have Caused This AD?*

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Model PC–7 airplanes. The FOCA reports that an operator of a similar aircraft type design, which uses identical dihedral fittings, reported a crack in one fitting. An inspection of the fleet revealed stress corrosion cracking in six aft dihedral fittings. Each cracked fitting was found on airplanes that had logged more than 3,000 hours time-in-service (TIS) or had been in service for 10 years or more.

*What Is the Potential Impact if FAA Took No Action?*

Cracks in the forward and aft dihedral fittings could result in failure of the wing in certain maneuvers. Such failure could lead to loss of control of the airplane.

*Has FAA Taken Any Action to This Point?*

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Model PC–7 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 3, 2003 (68 FR 398970). The NPRM proposed to require you to:

—Inspect the forward and aft dihedral fittings for cracks;

—Replace any cracked fittings found; and

—Modify the aft dihedral fittings and spar-cap bolt holes.

*Was the Public Invited To Comment?*

We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.

### Conclusion

*What Is FAA's Final Determination on This Issue?*

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

### Changes to 14 CFR Part 39—Effect on the AD

*How Does the Revision to 14 CFR Part 39 Affect This AD?*

On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

### Costs of Compliance

*How Many Airplanes Does This AD Impact?*

We estimate that this AD affects 10 airplanes in the U.S. registry.

*What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?*

We estimate the following costs to accomplish the actions of this AD:

INSPECTIONS

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 3 workhours per fitting (4 fittings per airplane) × $60 per hour = $180 per fitting.. | Not applicable | $180 × 4 fittings per airplane = $720. | $720 × 10 = $7,200. |

FORWARD DIHEDRAL FITTING REPLACEMENT

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 93 workhours per fitting (2 fittings per airplane) × $60 per hour = $5,580 per fitting. | $142 per replacement fitting | $5,722 per fitting. |

AFT DIHEDRAL FITTING REPLACEMENT AND MODIFICATION

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 20 workhours per fitting for replacement and modification (2 fittings per airplane) × $60 per hour = $1,200 per fitting.<br>10 workhours per fitting for modification only (2 fittings per airplane) × $60 per hour = $600 per fitting | $76 per replacement fitting and $66 for modification bolts. | $1,200 + $76 + $66 = $1,342 (labor, replacement, and modification per fitting).<br>$600 + $66 = $666 (labor and modification per fitting). |

## Compliance Time of This AD

*What Is the Compliance Time of This AD?*

The compliance time of this AD is whichever occurs later: (1) upon the accumulation of 3,000 hours time-in-service (TIS) on the dihedral fittings or 10 years after installation of the dihedral fittings, whichever occurs first; or (2) within 90 days after the effective date of this AD.

*Why Is the Compliance Time of This AD Presented in Both Hours TIS and Calendar Time?*

Cracking of the dihedral fittings on the affected airplanes is caused by stress corrosion, which starts as a result of high local stress incurred through operation. Corrosion can then develop regardless of whether the airplane is in flight or on the ground. The cracks may not be noticed initially as a result of the stress loads, but could then progress as a result of corrosion. The stress incurred during flight operations or temperature changes could then cause rapid crack growth. In order to ensure that these stress corrosion cracks do not go undetected, a compliance time of specific hours TIS and calendar time is used.

## Regulatory Findings

*Will This AD Impact Various Entities?*

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

*Will This AD Involve a Significant Rule or Regulatory Action?*

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–CE–29–AD" in your request.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

**2003–20–05 Pilatus Aircraft Ltd.:** Amendment 39–13323; Docket No. 2003–CE–29–AD.

**When Does This AD Become Effective?**

(a) This AD becomes effective on November 14, 2003.

**Are Any Other ADs Affected by This Action?**

(b) None.

**What Airplanes Are Affected by This AD?**

(c) This AD affects the following airplane models and serial numbers that are:

(1) Certificated in any category; and

(2) Equipped with forward and aft dihedral fittings, part number (P/N) 111.34.07.469, 111.34.07.470, 111.34.07.471, and P/N 111.34.07.472.

| Model | Manufacturer serial Nos. (MSN) |
|---|---|
| PC–7 | 101 through 618. |

**What Is the Unsafe Condition Presented in This AD?**

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to prevent cracks from developing in the forward and aft dihedral fittings, which could result in failure of the wing in certain maneuvers. Such failure could lead to loss of control of the airplane.

**What Must I Do To Address This Problem?**

(e) To address this problem, you must accomplish the following:

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Accomplish the following inspections:<br>(i) Using Impedance-Plane Eddy-Current inspection procedures, inspect the aft dihedral fittings, P/N 111.34.07.469 and P/N 111.34.07.470, for cracks; and<br>(ii) Using Radiographic inspection procedures, inspect the forward dihedral fittings, P/N 111.34.07.471 and P/N 111.34.07.472, for cracks | At whichever of the following occurs later, unless already accomplished: upon the accumulation of 3,000 hours time-in-service (TIS) on the dihedral fittings or 10 years after installation of the dihedral fittings, whichever occurs first; or within 90 days after November 14, 2003 (the effective date of this AD). | Inspect in accordance with Pilatus PC–7 Service Bulletin No. 57–006, Revision No. 3, dated January 15, 2003. |
| (2) If a crack is found in any aft dihedral fittings, P/N 111.34.07.469 and/or P/N 111.34.07.470, replace with an improved fitting, P/N 557.10.09.071 and/or P/N 557.10.09.072 (as applicable or FAA-approved equivalent P/N), and modify the spar-cap bolt holes | Prior to further flight after the inspection required in paragraph (e)(1) of this AD. | Modify in accordance with Pilatus PC–7 Service Bulletin No. 57–006, Revision No. 3, dated January 15, 2003. |
| (3) If no cracks are found in any aft dihedral fittings, P/N 111.34.07.469 and P/N 111.34.07.470, modify the fittings and the spar-cap bolt holes | Prior to further flight after the inspection required in paragraph (e)(1) of this AD. | Modify in accordance with Pilatus PC–7 Service Bulletin No. 57–006, Revision No. 3, dated January 15, 2003. |
| (4) If cracks are found in any forward dihedral fittings, P/N 111.34.07.471 and/or P/N 111.34.07.472, replace with a new part | Prior to further flight after the inspection required in paragraph (e)(1) of this AD. | Not applicable. |
| (5) If no cracks are found in any forward dihedral fittings, P/N 111.34.07.471 and P/N 111.34.07.472, no further action is required | Not applicable | Not applicable. |
| (6) Only install aft dihedral fittings that have a P/N of 557.10.09.071 and P/N 557.10.09.072. You must also accomplish the spar-cap bolt hole modification | As of November 14, 2003 (the effective date of this AD). | Modify the spar-cap bolt holes in accordance with Pilatus PC–7 Service Bulletin No. 57–006, Revision No. 3, dated January 15, 2003. |

**What About Alternative Methods of Compliance?**

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13. Send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

**Is There Material Incorporated by Reference?**

(g) Actions required by this AD must be done in accordance with Pilatus PC–7 Service Bulletin No. 57–006, Revision No. 3, dated January 15, 2003. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**Is There Other Information That Relates to This Subject?**

(h) Swiss AD HB 2003–196, dated May 12, 2003, also addresses the subject of this AD.

Issued in Kansas City, Missouri, on September 24, 2003.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–24685 Filed 10–2–03; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2003–NE–27–AD; Amendment 39–13325; AD 2003–20–07]**

**RIN 2120–AA64**

## Airworthiness Directives; General Electric Company (GE) CF6–80E1A2 Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

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**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for General Electric Company (GE) CF6–80E1A2 turbofan engines with forward engine mount platforms part numbers (P/Ns) 1520M53G04 and 1846M24G15 installed. This AD requires initial and repetitive fluorescent penetrant inspections of cast material forward engine mount platforms. This AD is prompted by the airframe manufacturer's revised analyses of loads on the forward engine mount. We are issuing this AD to prevent engine separation that could result from cracking of the forward engine mount platform.

**DATES:** Effective November 3, 2003.

We must receive any comments on this AD by December 2, 2003.

**ADDRESSES:** Use one of the following addresses to submit comments on this AD:

- By mail: The Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–27–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov*.

You can get the service information referenced in this AD from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400; fax (513) 672–8422.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7192; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** GE has notified the FAA that an unsafe condition may exist on GE CF6–80E1A2 turbofan engines. GE advises that Airbus Industrie has revised their analyses of Airbus A330 airplane engine mount loads. The revised analyses predict a reduction in calculated low-cycle-fatigue (LCF) life capability for forward mount platforms made from cast material. Airbus Industrie has updated the airplane maintenance manual with revised inspection thresholds and intervals for the affected engine mount components. These revised inspection thresholds and intervals are published in Chapter 5 of the engine manual. This AD is necessary to make those inspection thresholds and intervals mandatory for all operators.

### FAA's Determination and Requirements of This AD

Although no airplanes that are registered in the United States use these GE CF6–80E1A2 turbofan engines, the possibility exists that the engines could be used on airplanes that are registered in the United States in the future. The unsafe condition described previously is likely to exist or develop on other GE CF6–80E1A2 turbofan engines of the same type design. We are issuing this AD to prevent engine separation that could result from cracking of the forward engine mount platform. This AD requires initial and repetitive fluorescent penetrant inspections of cast material forward engine mount platforms, P/Ns 1520M53G04 and 1846M24G15. The thresholds and intervals were established to be consistent with inspections required by the airframe manufacturer.

### FAA's Determination of the Effective Date

Sine there are currently no domestic operators of GE CF6–80E1A2 turbofan engines, notice and opportunity for public comment before issuing this AD are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

### Changes to 14 CFR Part 39—Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs our AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

### Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–27–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us verbally, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

### Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

### Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–27–AD" in your request.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

**2003–20–07 General Electric Company:** Amendment 39–13325. Docket No. 2003–NE–27–AD.

#### Effective Date

(a) This airworthiness directive (AD) becomes effective November 3, 2003.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to General Electric Company (GE) CF6–80E1A2 turbofan engines with forward engine mount platforms part numbers (P/Ns) 1520M53G04 and 1846M24G15 installed. These engines are installed on, but not limited to Airbus Industrie A330 airplanes.

#### Unsafe Condition

(d) This AD is prompted by revised analyses of forward engine mount loads by the airframe manufacturer. We are issuing this AD to prevent engine separation that could result from cracking of the forward engine mount platform.

#### Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

#### Platforms Previously Inspected

(f) For platforms that were inspected using a fluorescent penetrant inspection (FPI) before the effective date of this AD, repeat the FPI within 4,000 cycles-in-service-since last inspection (CSLI).

#### Platforms Not Previously Inspected

(g) For platforms that were not inspected using an FPI before the effective date of this AD, inspect the platform using an FPI at the next exposure, or before exceeding 6,360 cycles-since-new (CSN), whichever occurs first.

#### Platform Repetitive Inspections

(h) Repeat the FPI within every 4,000 CSLI.

#### Alternative Methods of Compliance

(i) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

#### Material Incorporated by Reference

(j) None.

#### Related Information

(k) GE Aircraft Engines Alert Service Bulletin No. CF6–80E1 S/B 72–A0195 pertains to the subject of this AD. Information on performing FPI can be found in the CF6 component maintenance manual, GEK 99410, section 71–21–02.

Issued in Burlington, Massachusetts, on September 25, 2003.

**Peter A. White,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 03–25000 Filed 10–2–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2003–15461; Airspace Docket No. 03–ACE–59]**

## Modification of Class E Airspace; Beatrice, NE

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; confirmation of effective date; rescission of correction.

**SUMMARY:** This document confirms the effective date of the direct final rule which revises Class E airspace at Beatrice, NE. It also rescinds a correction to that final rule.

**EFFECTIVE DATE:** 0901 UTC, October 30, 2003.

**FOR FURTHER INFORMATION CONTACT:** Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on July 31, 2003 (68 FR 44875) and subsequently published a correction to the direct final rule in the **Federal Register** on September 9, 2003 (68 FR 53034). Information in the original publication is accurate. The correction was inadvertently published and is hereby rescinded.

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 30, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Dated: Issued in Kansas City, MO on September 19, 2003.

**David W. Hope,**

*Acting Manager, Air Traffic Division, Central Region.*

[FR Doc. 03–25049 Filed 10–2–03; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 30390; Amdt. No. 3077]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective October 3, 2003. The compliance date for each

SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 3, 2003.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The Flight Inspection Area Office which originated the SIAP; or,
4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

### The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

### Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on September 26, 2003.

**James J. Ballough,**

*Director, Flight Standards Service.*

### Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

* * * *Effective October 30, 2003*

Susanville, CA, Susanville Muni, RNAV (GPS)–A, Orig
Susanville, CA, Susanville Muni, RNAV (GPS) Rwy 29, Orig
Orlando, FL, Executive, VOR/DME Rwy 25, Amdt 2
Orlando, FL, Executive, VOR/DME Rwy 7, Amdt 1
Orlando, FL, Executive, LOC BC Rwy 25, Amdt 21
Orlando, FL, Executive, NDB Rwy 7, Amdt 16
Orlando, FL, Executive, ILS OR LOC Rwy 7, Amdt 22
Orlando, FL, Executive, RNAV (GPS) Rwy 7, Orig
Orlando, FL, Executive, GPS Rwy 7, Orig–A, Cancelled
Orlando, FL, Executive, GPS Rwy 25, Orig–C, Cancelled
Orlando, FL, Executive, RNAV (GPS) Rwy 25, Orig
Indianapolis, IN, Indianapolis Brookside Airpark, VOR OR GPS Rwy 36, Amdt 6, Cancelled
Elkhart, KS, Elkhart-Morton County, RNAV (GPS) Rwy 4, Orig
Elkhart, KS, Elkhart-Morton County, RNAV (GPS) Rwy 17, Orig
Elkhart, KS, Elkhart-Morton County, RNAV (GPS) Rwy 22, Orig
Elkhart, KS, Elkhart-Morton County, RNAV (GPS) Rwy 35, Orig
Elkhart, KS, Elkhart-Morton County, NDB Rwy 35, Amdt 1

Lake Providence, LA, Byerley, NDB Rwy 17, Amdt 2
Ogdensburg, NY, Ogdensburg Intl, RNAV (GPS) Rwy 27, Orig
Ogdensburg, NY, Ogdensburg Intl, LOC Rwy 27, Amdt 2
Ogdensburg, NY, Ogdensburg Intl, NDB Rwy 27, Amdt 1
Williamson/Sodus, NY, Williamson-Sodus, RNAV (GPS) Rwy 10, Orig
Williamson/Sodus, NY, Williamson-Sodus, RNAV (GPS) Rwy 28, Orig
Williamson/Sodus, NY, Williamson-Sodus, GPS Rwy 28, Orig, Cancelled
Corpus Christi, TX, Corpus Christi Intl, RNAV (GPS) Rwy 31, Orig–A
Harlingen, TX, Valley Intl, LOC BC Rwy 35L, Amdt 13A, Cancelled

* * * *Effective December 25, 2003*

Kenai, AK, Kenai Muni, NDB–A, Amdt 3B
Rayville, LA, John H. Hooks Jr. Memorial, NDB Rwy 36, Amdt 2
North Myrtle Beach, SC, Grand Strand, NDB Rwy 23, Amdt 11
North Myrtle Beach, SC, Grand Strand, VOR Rwy 5, Amdt 21
Lubbock, TX, Lubbock Intl, VOR/DME RNAV Rwy 8, Amdt 2A, Cancelled

[FR Doc. 03–25053 Filed 10–2–03; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 30391 ; Amdt. No. 3078]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective October 3, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 3, 2003.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.
4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and section 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

### The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

### Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on September 26, 2003.

**James J. Ballough,**

*Director, Flight Standards Service.*

### Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

### §§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * Effective Upon Publication

| FDC DATE | STATE | CITY | AIRPORT | FDC NUMBER | SUBJECT |
|---|---|---|---|---|---|
| 09/03/03 | AR | HUNTSVILLE | HUNTSVILLE MUNI | 3/8267 | VOR/DME OR GPS RWY 12, AMDT 1. |
| 09/03/03 | AR | RUSSELLVILLE | RUSSELLVILLE REGIONAL. | 3/8269 | GPS RWY 25, ORIG–A. |
| 09/03/03 | AR | SILOAM SPRINGS | SMITH FIELD | 3/8270 | VOR OR GPS–A, AMDT 8A. |
| 09/03/03 | AR | JONESBORO | JONESBORO MUNI | 3/8271 | VOR OR GPS RWY 23, AMDT 9A. |
| 09/03/03 | AR | FAYETTEVILLE | DRAKE FIELD | 3/8272 | VOR OR GPS–A, AMDT 24A. |
| 09/03/03 | AR | OZARK | OZARK–FRANKLIN COUNTY. | 3/8273 | VOR/DME OR GPS–A, AMDT 3. |
| 09/03/03 | AR | FORT SMITH | FORT SMITH REGIONAL | 3/8275 | RNAV (GPS) RWY 1, ORIG. |
| 09/03/03 | AR | FORT SMITH | FORT SMITH REGIONAL | 3/8278 | NDB RWY 7, AMDT 8A. |
| 09/03/03 | AR | FORT SMITH | FORT SMITH REGIONAL | 3/8276 | NDB RWY 25, AMDT 24C. |
| 09/03/03 | AR | FORT SMITH | FORT SMITH REGIONAL | 3/8279 | VOR OR TACAN RWY 25, AMDT 20E. |
| 09/03/03 | AR | FORT SMITH | FORT SMITH REGIONAL | 3/8280 | VOR/DME OR TACAN RWY 7, AMDT 11. |
| 09/03/03 | AR | FORT SMITH | FORT SMITH REGIONAL | 3/8281 | RNAV (GPS) RWY 25, ORIG. |
| 09/03/03 | AR | FORT SMITH | FORT SMITH REGIONAL | 3/8282 | RNAV (GPS) RWY 7, ORIG. |
| 09/03/03 | AR | FORT SMITH | FORT SMITH REGIONAL | 3/8283 | ILS RWY 25, AMDT 21. |
| 09/03/03 | AR | FORT SMITH | FORT SMITH REGIONAL | 3/8284 | ILS RWY 7, ORIG. |
| 09/03/03 | AR | FORT SMITH | FORT SMITH REGIONAL | 3/8285 | RADAR–1, AMDT 8. |
| 09/03/03 | TX | COLLEGE STATION | EASTERWOOD FIELD | 3/8460 | VOR/DME RWY 28, AMDT 12B. |
| 09/03/03 | TX | BEAUMONT–PORT ARTHUR. | SOUTHEAST TEXAS REGIONAL. | 3/8462 | ILS RWY 12, AMDT 22. |
| 09/03/03 | TX | BEAUMONT–PORT ARTHUR. | SOUTHEAST TEXAS REGIONAL. | 3/8463 | VOR RWY 12, AMDT 9. |
| 09/03/03 | TX | BEAUMONT–PORT ARTHUR. | SOUTHEAST TEXAS REGIONAL. | 3/8464 | GPS RWY 12, ORIG. |
| 09/03/03 | TX | BEAUMONT–PORT ARTHUR. | SOUTHEAST TEXAS REGIONAL. | 3/8467 | VOR–B, AMDT 6. |
| 09/24/03 | TX | HOUSTON | ELLINGTON FIELD | 3/9363 | RNAV (GPS) RWY 35L, ORIG. |
| 09/04/03 | TX | AUSTIN | LAKEWAY AIRPARK | 3/8594 | GPS RWY 16, ORIG–A. |
| 09/04/03 | TX | AUSTIN | LAKEWAY AIRPARK | 3/8595 | VOR/DME–A, ORIG–A. |
| 09/04/03 | TX | CROCKETT | CROCKETT/HOUSTON COUNTY. | 3/8606 | GPS RWY 20, ORIG. |
| 09/04/03 | TX | CROCKETT | CROCKETT/HOUSTON COUNTY. | 3/8607 | GPS RWY 2, ORIG. |
| 09/04/03 | TX | LUBBOCK | LUBBOCK INTL | 3/8653 | ILS RWY 26, AMDT 2. |
| 09/04/03 | TX | LUBBOCK | LUBBOCK INTL | 3/8654 | NDB RWY 26, AMDT 2A. |
| 09/04/03 | TX | LUBBOCK | LUBBOCK INTL | 3/8657 | VOR–A, AMDT 6. |
| 09/04/03 | TX | LUBBOCK | LUBBOCK INTL | 3/8661 | VOR/DME OR TACAN RWY 26, AMDT 10C. |
| 09/16/03 | TX | LUBBOCK | LUBBOCK INTL | 3/9105 | ILS RWY 17R, AMDT 16. |
| 09/06/03 | DE | GEORGETOWN | SUSSEX COUNTY | 3/8699 | VOR RWY 22, AMDT 6. |
| 09/06/03 | DE | GEORGETOWN | SUSSEX COUNTY | 3/8698 | VOR RWY 4, AMDT 5. |
| 09/06/03 | DE | GEORGETOWN | SUSSEX COUNTY | 3/8697 | RNAV (GPS) RWY 22, ORIG–B. |
| 09/06/03 | DE | GEORGETOWN | SUSSEX COUNTY | 3/8696 | RNAV (GPS) RWY 4, ORIG–B. |
| 09/06/03 | DC | WASHINGTON | WASHINGTON DULLES INTL. | 3/8521 | ILS RWY 1R AMDT 22, ILS RWY 1R(CAT II), AMDT 22, ILS RWY 1R(CAT III), AMDT 22. |
| 09/06/03 | DC | WASHINGTON | RONALD REAGAN WASHINGTON NATIONAL. | 3/8517 | COPTER ILS 007 ORIG. |
| 09/08/03 | DC | WASHINGTON | RONALD REAGAN WASHINGTON NATIONAL. | 3/8513 | VOR/DME OR GPS RWY 19, AMDT 9. |

| FDC DATE | STATE | CITY | AIRPORT | FDC NUMBER | SUBJECT |
|---|---|---|---|---|---|
| 09/08/03 | MD | INDIAN HEAD | MARYLAND | 3/8693 | VOR–A, ORIG–A. |
| 09/06/03 | MD | INDIAN HEAD | MARYLAND | 3/8692 | RNAV (GPS) RWY 36, ORIG. |
| 09/06/03 | PA | PITTSBURGH | PITTSBURGH INTL | 3/8453 | RNAV (GPS) RWY 10C, AMDT 2. |
| 09/08/03 | VA | TANGIER | TANGIER ISLAND | 3/8516 | VOR/DME OR GPS RWY 2, ORIG–B. |
| 09/08/03 | WV | PINEVILLE | KEE FIELD | 3/8695 | GPS RWY 26, ORIG–A. |
| 09/06/03 | WV | PINEVILLE | KEE FIELD | 3/8694 | GPS RWY 8, ORIG–A. |
| 09/04/03 | GA | ELBERTON | ELBERT CO–PATZ FIELD. | 3/8354 | VOR/DME OR GPS RWY 10, AMDT 2C; CORRECTION TO TL03–21. |
| 09/12/03 | AK | BETHEL | BETHEL | 3/8912 | VOR/DME–B, ORIG. |
| 09/12/03 | AK | BETHEL | BETHEL | 3/8913 | VOR RWY 18, AMDT 8B. |
| 09/11/03 | TX | HOUSTON | ELLINGTON FIELD | 3/8976 | RNAV (GPS) RWY 4, ORIG–A. |
| 09/15/03 | AK | BETHEL | BETHEL | 3/9073 | VOR/DME RWY 18, AMDT 1. |
| 09/17/03 | MA | HYANNIS | BARNSTABLE MUNI-BOARDMAN/POLANDO FIELD. | 3/9125 REPLACES 3/8768 | VOR OR GPS RWY 6, AMDT 7C. |
| 09/17/03 | TX | LOCKHART | LOCKHART MUNI | 3/9122 | GPS RWY 36, ORIG–B. |
| 09/11/03 | CO | FORT COLLINS (LOVELAND). | FORT COLLINS-LOVELAND MUNI. | 3/8900 | NDB RWY 33, AMDT 4A. |
| 09/11/03 | CO | FORT COLLINS (LOVELAND). | FORT COLLINS-LOVELAND MUNI. | 3/8901 | ILS RWY 33, AMDT 5B. |
| 09/11/03 | PA | PITTSBURGH | PITTSBURGH INTL | 3/8948 | RNAV (GPS) Z RWY 28L, AMDT 2. |
| 09/15/03 | NY | ITHACA | ITHACA TOMPKINS REGIONAL. | 3/9037 | ILS RWY 32, AMDT 5. |
| 09/18/03 | PA | PHILADELPHIA | PHILADELPHIA | 3/9160 | NDB RWY 27L, AMDT 5B. |

[FR Doc. 03–25054 Filed 10–2–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 520

## Oral Dosage Form New Animal Drugs; Praziquantel Tablets

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The ANADA provides for the oral use of praziquantel tablets for the removal and control of certain cestode parasites in dogs.

**DATES:** This rule is effective October 3, 2003.

**FOR FURTHER INFORMATION CONTACT:** Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov*.

**SUPPLEMENTARY INFORMATION:** Phoenix Scientific, Inc., 3915 South 48th St. Terr., St. Joseph, MO 64503, filed ANADA 200–265 that provides for the use of Praziquantel Tablets for the removal and control of certain cestode parasites in dogs. Phoenix Scientific, Inc.'s Praziquantel Tablets are approved as a generic copy of Bayer HealthCare LLC's DRONCIT (praziquantel) Canine Tablets approved under NADA 111–798. The ANADA is approved as of August 28, 2003, and the regulations are amended in 21 CFR 520.1870 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

### List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 520.1870 is amended by revising paragraphs (a), (b), and (c)(1) to read as follows:

### § 520.1870 Praziquantel tablets.

(a) *Specifications.* Each tablet contains:

(1) 34 milligrams (mg) praziquantel.

(2) 11.5 or 23 mg praziquantel.

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter:

(1) No. 000859 for use of the product described in paragraph (a)(1) of this section, as in paragraph (c)(1) of this section; and for use of the product described in paragraph (a)(2) of this section, as in paragraph (c)(2) of this section.

(2) No. 059130 for use of the product described in paragraph (a)(1) of this section, as in paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(iii)(B) of this section.

(c) *Conditions of use*—(1) *Dogs*—(i) *Amount.* 5 pounds (lb) and under, 1/2 tablet (17 mg); 6 to 10 lb, 1 tablet (34 mg); 11 to 15 lb, 1 1/2 tablets (51 mg); 16 to 30 lb, 2 tablets (68 mg); 31 to 45 lb, 3 tablets (102 mg); 46 to 60 lb, 4 tablets (136 mg); over 60 lb, 5 tablets maximum (170 mg). Administer directly by mouth or crumbled and in feed.

(ii) *Indications for use*—(A) For removal of canine cestodes *Dipylidium caninum* and *Taenia pisiformis*.

(B) For removal of the canine cestode *Echinococcus granulosus*, and for removal and control of the canine cestode *Echinococcus multilocularis*.

(iii) *Limitations*—(A) If labeled only for use as in paragraph (c)(1)(ii)(A) of this section: Not intended for use in puppies less than 4 weeks of age. Consult your veterinarian before administering tablets to weak or debilitated animals and for assistance in the diagnosis, treatment, and control of parasitism.

(B) If labeled for use as in paragraph (c)(1)(ii)(B) of this section: Federal law restricts this drug to use by or on the order of a licensed veterinarian.

* * * * *

Dated: September 15, 2003.

**Linda Tollefson,**

*Deputy Director, Center for Veterinary Medicine.*

[FR Doc. 03–25090 Filed 10–2–03; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF STATE

## 22 CFR Part 120

**[Public Notice 4505]**

**RIN 1400–AB86**

## Bureau of Political-Military Affairs; Amendment to the International Traffic in Arms Regulations

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the International Traffic in Arms Regulations (ITAR) implementing section 38 of the Arms Export Control Act (AECA) (22 U.S.C. 2778), which governs the import and export of defense articles and defense services. The rule reflects the change in the Directorate of Defense Trade Controls whereby two individuals will now hold the separate positions of Deputy Assistant Secretary of State for Defense Trade Controls and Managing Director of Defense Trade Controls.

**EFFECTIVE DATE:** August 11, 2003.

**FOR FURTHER INFORMATION CONTACT:** Robert W. Maggi, Managing Director of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663–2700 or Michael T. Dixon, Office of Defense Trade Controls Management (202) 663–2798, FAX (202) 261–8199.

**SUPPLEMENTARY INFORMATION:** Effective August 11, 2003, the Department of State will have two individuals hold the separate positions of Deputy Assistant Secretary for Defense Trade Controls (DAS—Defense Trade Controls) and Managing Director of Defense Trade Controls (MD—Defense Trade Controls). Section 120.1(b)(2) is amended to reflect this change.

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Act of 1996. It will not have substantial direct effects on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this rule does not have sufficient federalism implications to warrant application of the consultation provisions of Executive Orders 12372 and 13123.

### List of Subjects in 22 CFR Part 120

Arms and munitions, Classified information, Exports.

■ Accordingly, for the reasons set forth above, title 22, chapter I, subchapter M, part 120, is being amended as follows:

## PART 120—PURPOSE AND DEFINITIONS

■ 1. The authority citation for Part 120 continues to read as follows:

**Authority:** Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; E.O. 11958, 42 FR 4311, 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2658; Pub. L. 105–261, 112 Stat. 1920.

■ 2. Section 120.1(b)(2) is revised to read as follows:

### § 120.1 General authorities and eligibility.

* * * * *

(b) * * *

(1) * * *

(2) In the Bureau of Political-Military Affairs, there is a Deputy Assistant Secretary for Defense Trade Controls (DAS—Defense Trade Controls) and a Managing Director of Defense Trade Controls (MD—Defense Trade Controls). The DAS—Defense Trade Controls and the MD—Defense Trade Controls are responsible for exercising the authorities conferred under this subchapter. The DAS—Defense Trade Controls is responsible for oversight of the defense trade controls function. The MD—Defense Trade Controls is responsible for the Directorate of Defense Trade Controls, which oversees the subordinate offices described in paragraph (b)(2)(i) of this section.

* * * * *

Dated: September 12, 2003.

**John R. Bolton,**

*Under Secretary, Arms Control and International Security, Department of State.*

[FR Doc. 03–25169 Filed 10–2–03; 8:45 am]

BILLING CODE 4710–25–P

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## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 935

**[OH–249–FOR]**

## Ohio Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We are approving a proposed amendment to the Ohio regulatory program (the "Ohio program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Ohio proposed revisions to its Ohio Administrative Code (OAC) to incorporate a variety of changes related to the certification of blasters. The amendment is intended to facilitate the certification of blasters in the State's non-coal regulatory program as well as to upgrade the coal surface mining blaster certification program.

**EFFECTIVE DATE:** October 3, 2003.

**FOR FURTHER INFORMATION CONTACT:** George Rieger, Program Manager, Oversight and Inspection Office, Telephone: 412–937–2153, Internet address: *grieger@osmre.gov*.

**SUPPLEMENTARY INFORMATION:**

I. Background on the Ohio Program
II. Submission of the Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

### I. Background on the Ohio Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Ohio program on August 16, 1982. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Ohio program in the August 10, 1982, **Federal Register** (47 FR 34688). You can also find later actions concerning Ohio program and program amendments at 30 CFR 935.11, 935.15, and 935.16.

## II. Submission of the Proposed Amendment

By letter dated June 11, 2003, Ohio sent us a proposed amendment to its program (Administrative Record Number OH–2183–00) under SMCRA (30 U.S.C. 1201 *et seq.*). Ohio sent the amendment to include changes made at its own initiative. By electronic mail dated June 18, 2003, Ohio sent us a revised version of the original submittal (Administrative Record Number OH–2183–01).

The provision of the OAC that Ohio proposes to revise is: OAC 1501:13–9–10, concerning training, examination, and certification of blasters. In its original submittal of this amendment, Ohio stated that it has passed legislation extending the requirement for blasting operations to be conducted by a certified blaster to apply to non-coal surface mining as well as coal surface mining. Therefore, Ohio is now proposing to extend OAC Section 1501:13–9–10 to also apply to non-coal surface mining as well as coal surface mining. Ohio is also proposing other amendments to OAC 1501:13–9–10. The specific amendments to OAC 1501:13–9–10 are identified below.

We announced receipt of the proposed amendment in the July 21, 2003, **Federal Register** (68 FR 43063). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendments adequacy. The public comment period ended August 20, 2003. We did not hold a public hearing or meeting as no one requested one. We did not receive any comments.

## III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes and changes with no corresponding Federal regulations.

Ohio proposed minor changes to wording, editorial, punctuation, grammatical, recodification, and changes with no corresponding Federal regulations to the following previously approved regulations that implement provisions of the OAC. Ohio proposed these changes at its own initiative in order to improve its blaster certification program.

13–9–10(A), General, is amended at 13–9–10(A)(1) by adding the word "surface" and by adding the phrase "in coal and industrial minerals mines" to the first sentence. As amended, 13–9–10(A)(1) provides as follows:

> (1) All surface blasting operations in coal and industrial minerals mines, including surface blasting operations incident to underground mining and blasting operations on coal exploration operations, shall be conducted by a certified blaster who has obtained certification pursuant to the requirements of this rule.

The addition of the word "surface" does not render the provision less effective than the Federal regulations at 30 CFR 816.61(c). There is no Federal counterpart revision governing industrial mineral mines other than coal mines, but the application of this provision to other mineral operations does not render it inconsistent with SMCRA or the Federal regulations.

13–9–10(A), General, is amended by adding new 13–9–10(A)(3) to provide as follows:

> (3) The chief may grant reciprocity to any blaster who holds a valid certification issued under any state or federal blaster certification program approved by the U.S. Department of the Interior's Office of Surface Mining. However, to obtain certification under this rule, the blaster must apply for and pass an examination on Ohio blasting regulations pertaining to coal and industrial minerals mines, and meet any other requirement deemed necessary by the chief.

There is no direct Federal counterpart to this state provision. However, because all State coal mining regulatory programs are subject to the same minimum Federal standards under SMCRA and the Federal regulations, we find that this provision does not render the Ohio program less effective than the Federal regulations concerning the training, examination and certification of blasters at 30 CFR Part 850.

13–9–10(B), Training, is amended by deleting the word "coal" immediately before the words "mining operations" in the first sentence. As amended, the sentence provides that "[t]he chief shall conduct workshops, as necessary, to inform blasters of changes in blasting rules and certification procedures, and shall ensure that courses are available to train persons responsible for the use of explosives in mining operations." The effect of this deletion is to make this requirement applicable to all mineral mining operations, rather than just coal mining operations. There is no Federal counterpart revision governing industrial mineral mines other than coal mines, but the application of this provision to other mineral operations does not render it inconsistent with SMCRA or the Federal regulations.

13–9–10(B)(7), Training, is amended by adding the words "in coal and non-coal surface mines." As amended, 13–9–10(B)(7) provides as follows: "(7) All federal and state rules applicable to the use of explosives in coal and non-coal surface mines * * *." There is no federal counterpart revision governing industrial mineral mines other than coal mines, but the application of this provision to other mineral operations does not render it inconsistent with SMCRA or the Federal regulations.

13–9–10(B)(9), Training, is amended by deleting the word "Schedules" and replacing that word with the words "Blast schedules." The counterpart Federal regulation, at 30 CFR 850.13(a)(9), uses the word "schedules." However, since 30 CFR Part 850 governs blaster certification, it can be reasonably inferred that "schedules" means "blast schedules." Therefore, the change made by Ohio does not render its program less effective than the Federal regulations at 30 CFR 850.13(a)(9).

13–9–10(B)(14), Training, is amended by deleting the word "Unpredictable" immediately before the word "hazards," and replacing that word with the word "Potential." Because potential hazards could include both predictable and unpredictable ones, the State provision is now arguably broader than its Federal counterpart at 30 CFR 850.13(a)(14), which requires training in "unpredictable" hazards. Thus, the State regulation remains no less effective than its Federal counterpart. In addition, a new item at 13–9–10(B)(14)(e) is added to read as follows: "(e) Toxic gases." The word "and" is deleted at the end of subdivision (14)(c), and the word "and" is added at the end of subdivision (14)(d). As amended, 13–9–10(B)(14) provides as follows:

(14) Potential hazards, including:
(a) Lightning;
(b) Stray currents;
(c) Radio waves;
(d) Misfires; and
(e) Toxic gases.

The addition of "toxic gases" to the list of potential hazards for which training is required makes the state provision more extensive than its Federal counterpart at 30 CFR 850.13(a)(14). Thus, the State regulation remains no less effective than its Federal counterpart.

13–9–10(C)(1), concerning minimum training for certification, is amended by adding the words "a minimum of 30 hours of" immediately before the word "training." The word "in" immediately following the word "training" is deleted and replaced with the word "covering." The words "division of reclamation" are deleted and are replaced with the word "chief." As amended, 13–9–10(C)(1) provides as follows:

> (1) Received a minimum of 30 hours of training covering all the topics set forth in paragraph (B) of this rule in a course taught under the supervision of the chief, or in a course, or series of courses, deemed equivalent by the chief;

This provision has no direct Federal counterpart, but it is consistent with the Federal regulations pertaining to blaster training, at 30 CFR 850.13.

13–9–10(C)(2), concerning experience required for certification, is amended by deleting most of the existing language and adding language to provide as follows:

> (2) Worked on a blasting crew or directly supervised a blasting crew for at least two years in mining, excavation, or an equivalent working environment;

This provision has no direct Federal counterpart, but it is consistent with the experience element of the Federal examination requirements contained in 30 CFR 850.14(a)(2).

13–9–10(C)(3), concerning on-the-job training is new and provides as follows:

> (3) Received direction and on-the-job training from a certified blaster;

This provision has no direct Federal counterpart, but it is consistent with the experience element of the Federal examination requirements contained in 30 CFR 850.14(a)(2).

13–9–10(C)(5) ((C)(4) prior to the addition of new (C)(3)), concerning written examination, is amended by correcting a typographical error. The word "if" is deleted and replaced by the word "of." This is a non-substantive change that requires no discussion.

13–9–10(D)(1), concerning certification, is amended by deleting the words "or a certifying authority designated by the chief," and replacing those words with the words "or an authorized representative." The phrase "to accept responsibility for blasting operations" is amended to read "to accept responsibility for surface blasting operations in mines." The words "under this rule and rule 1501:13–9–06 of the Administrative Code" are deleted. As amended, 13–9–10(D)(1) provides as follows:

> (1) The chief, or an authorized representative, shall certify for three years those persons examined and found to be competent and to have the necessary experience to accept responsibility for surface blasting operations in mines.

These changes, which clarify the scope of the certification authority, and also confer that authority upon additional persons, do not render the State's certification provisions less effective than the Federal regulations pertaining to certification at 30 CFR 850.15(a).

13–9–10(D)(2)(b), concerning recertification, is deleted in its entirety and replaced with new language to provide as follows:

> (b) Received a minimum of 24 hours of continuing education by attending blasting-related courses, seminars or conferences approved by the chief or an authorized representative, with at least 8 hours obtained from an organization or person other than the blaster's employer or its parent company or explosives supplier.

This provision has no direct Federal counterpart, but it is consistent with the Federal recertification requirements at 30 CFR 850.15(c).

13–9–10(E)(1), concerning conditions of certification, is amended by adding the word "mine" immediately before the words "permit area." As amended, 13–9–10(E)(1) provides as follows:

> (1) A certificate of blaster certification, shall be carried by a blaster, or shall be on file at the mine permit area, during blasting operations.

This provision, though it has no direct Federal counterpart, remains consistent with the Federal regulations at 30 CFR 850.15(e), pertaining to conditions of certification.

13–9–10(E)(2), concerning conditions of certification, is amended by deleting the words "division of reclamation" and adding in their place the word "chief." As amended, 13–9–10(E)(2) provides as follows:

> (2) Upon request by an authorized representative of the chief or other regulatory authority having jurisdiction over the use of explosives, a blaster shall immediately exhibit his or her certificate to the authorized representative.

As amended, this provision remains no less effective than the Federal regulations at 30 CFR 850.15(e)(1), pertaining to conditions of certification.

13–9–10(E)(5), concerning conditions of certification, is amended by deleting the words "and certifying authority designated by the chief." As amended, 13–9–10(E)(5) provides as follows:

> (5) A certified blaster shall take every reasonable precaution to protect his or her certificate from loss, theft, or unauthorized duplication. Any such occurrence shall be reported immediately to the chief.

As amended, this provision remains no less effective than the Federal regulations at 30 CFR 850.15(d), pertaining to protection of certification.

13–9–10(F)(1), concerning suspension and revocation, is amended by deleting the words "or a certifying authority designated by the chief." As amended, 13–9–10(F)(1) provides as follows:

> (1) Following written notice and opportunity for a hearing, the chief may, and upon a finding of willful conduct shall, suspend or revoke the certification of a blaster during the term of the certification, or take other necessary action for any of the following reasons:

As amended, this provision remains no less effective than the Federal regulations at 30 CFR 850.15(b), pertaining to suspension and revocation of blaster certification.

13–9–10(F)(1)(b), concerning suspension and revocation, is amended by adding the words "a blasting-related permit condition" immediately following the words "laws or regulations." As amended, 13–9–10(F)(1)(b) provides as follows:

> (b) Violation of any provision of state or federal explosives laws or regulations, a blasting-related permit condition, or any condition of certification;

The added phrase has no direct Federal counterpart, but it is consistent with the Federal regulations at 30 CFR 850.13(b)(1)(iii), pertaining to suspension and revocation of blaster certification.

13–9–10(F)(1)(f), concerning suspension and revocation, is new and provides as follows:

> (f) Conducting a blast where fly rock was cast beyond the permit boundary of any mine.

This provision has no direct Federal counterpart, but it is not inconsistent with the Federal regulations at 30 CFR 816/817.67(c)(3), which prohibit the casting of flyrock beyond the permit boundary, nor is it inconsistent with the Federal regulations at 30 CFR 850.15(b)(1), pertaining to suspension and revocation of blaster certification.

13–9–10(F)(3), concerning suspension and revocation, is amended by deleting the words "or a designated certifying authority," and adding in their place the words "and may work on a blasting crew only under the direct supervision of a certified blaster." As amended, 13–9–10(F)(3) provides as follows:

> (3) Upon notice of a suspension or revocation, the blaster shall immediately surrender the suspended or revoked certificate and all copies thereof to the chief, and may work on a blasting crew only under the direct supervision of a certified blaster.

These changes do not render the State provision less effective than the Federal regulations at 30 CFR 850.15(b)(3), pertaining to notice of revocation of blaster certification. Also, the added State language is consistent with 30 CFR 850.13(a)(2), which allows persons who are not certified as blasters to work on blasting crews that are under the direction of certified blasters.

13–9–10(F)(4), concerning suspension and revocation, is amended by deleting the phrase "during the term of the suspension," deleting paragraph (4)(a), paragraph (4)(b) becomes (4)(a); paragraph 4(c) becomes paragraph (4)(b) and then replacing the word "a" with the word "the" at (4)(b), and adding a new paragraph (4)(c). As amended 13–9–10(F)(4) provides as follows:

> (4) To repossess a suspended certificate the blaster must:
>
> (a) Exhibit a pattern of conduct consistent with the acceptance of responsibility for blasting operations;
>
> (b) Pass the written examination administered under paragraph (C) of this rule; and
>
> (c) Meet any other requirements imposed by the chief under the terms of the suspension.

These changes have no direct Federal counterpart, but they are not inconsistent with the Federal regulations at 30 CFR 850.15, pertaining to blaster certification. For the foregoing reasons, we are approving this Ohio amendment in its entirety.

## IV. Summary and Disposition of Comments

### *Public Comments*

We asked for public comments on the amendment (Administrative Record Number OH–2183–02), but did not receive any.

### *Federal Agency Comments*

Under 30 CFR 732.17(h)(11)(i) and section 503 (b) of SMCRA, we requested comments on the amendment from various Federal agencies with a potential interest in the Ohio program (Administrative Record Number OH–2183–03), but did not receive any.

### *Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Ohio proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not request concurrence.

On July 3, 2003, we asked for comments from EPA on the amendment (Administrative Record No. OH–2183–03). The EPA did not respond to our request.

## V. OSM's Decision

Based on the above findings, we approve the amendment Ohio sent us on June 11, 2003, and as revised on June 18, 2003.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 935, which codify decisions concerning the Ohio program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

## VI. Procedural Determinations

### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

### *Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

### *Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian lands.

### *Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

**List of Subjects in 30 CFR Part 935**

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 9, 2003.

**Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

For the reasons set out in the preamble, 30 CFR part 935 is amended as set forth below:

## PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

■ 2. Section 935.15 is amended in the table by adding a new entry in chronological order by "*Date of final publication*" to read as follows:

**§ 935.15 Approval of Ohio regulatory program amendments.**

* * * * *

| Original amendment submission date | Date of final publication | Citation/description |
|---|---|---|
| * * * | * | * * * |
| June 11, 2003 | October 3, 2003 | OAC 1501:13–9–10 (A)(1), (3), (B), (B)(7), (9), (14), (14)(e), (C)(1), (2), (3), (4), (5), (D)(1), (2)(b), (E)(1), (2), (5), (F)(1), (1)(b), (1)(f), (3), (4), (4)(a), (4)(b), and (4)(c). |

[FR Doc. 03–25056 Filed 10–2–03; 8:45 am]

BILLING CODE 4310–05–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

**33 CFR Part 117**

**[CGD09–03–215]**

**RIN 1625–AA09**

## Drawbridge Operation Regulation; Milwaukee, Menomonee, and Kinnickinnic Rivers and South Menomonee and Burnham Canals, Milwaukee, WI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard has revised the drawbridge operating regulation for the Canadian Pacific (formerly Chicago, Milwaukee, St. Paul & Pacific) railroad bridge over the Burnham Canal in Milwaukee, WI, allowing the bridge to remain closed to navigation due to infrequent use. This will allow the bridge owners to reduce maintenance and operation costs at a location where there is no known need for drawbridge openings.

**DATES:** This rule is effective November 3, 2003.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–03–215] and are available for inspection or copying at the Bridge Administration Branch, Ninth Coast Guard District, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Scot Striffler, Bridge Administration Branch, at the address above or phone (216) 902–6084.

**SUPPLEMENTARY INFORMATION:**

### Regulatory History

On July 21, 2003, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Milwaukee, Menomonee, and Kinnickinnic Rivers and South Menomonee and Burnham Canals, Milwaukee, WI, in the **Federal Register** (68 FR 43066). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

### Background and Purpose

The Canadian Pacific Railway bridge at mile 1.74 over Burnham Canal is a swing type bridge with a vertical clearance of approximately eight feet in the closed position. In accordance with 33 CFR 117.1093, it is currently required to open for vessels if at least two-hours advance notice is provided prior to passing. Canadian Pacific Railway requested the Coast Guard allow the bridge to be maintained in the closed to navigation position since there have been no requests from vessels to open the bridge since June 13, 1997. There are no active marine facilities along the canal, and the area in Milwaukee Harbor where the bridge is located is part of a city re-development project. Burnham Canal is a federal waterway. The waterway is reportedly no longer actively maintained by the Corps of Engineers. This final rule allows the bridge to be untended and maintained in the closed to navigation position as per 33 CFR 117.39. However, the Coast Guard will retain the authority, should conditions make such an action necessary, to order the bridge owner to restore the bridge to an operable condition within 12 months of notification from Commander, Ninth Coast Guard District. This rule will allow the railroad bridge to remain closed, as it has been, and still be in compliance with Coast Guard requirements.

In addition to the regulation for the railroad bridge, the current regulation refers to 'all other bridges across the Burnham Canal'. The only other bridge on the canal that falls within the jurisdiction of the Coast Guard Bridge Administration Program is the Interstate 94 bridge at mile 1.79, which is a fixed bridge, and should not be referred to in the drawbridge regulations. Therefore, the Coast Guard is removing this section from 33 CFR 117.1093.

### Discussion of Comments and Changes

The Coast Guard did not receive any comments on the NPRM. Therefore, no changes were made to the final rule.

### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

There is no known commercial or recreational use of Burnham Canal. No information was received by the Coast Guard to demonstrate impending activity on the waterway that would require the drawbridge to be operable. However, as stated, if these conditions were to change, then the bridge would be required to be operational again within 12 months of notification from the Coast Guard.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation.

### List of Subjects in 33 CFR Part 117

Bridges.

### Regulations

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. In § 117.1093, revise paragraph (f) to read as follows:

**§ 117.1093 Milwaukee, Menomonee, and Kinnickinnic Rivers and South Menomonee and Burnham Canals.**

* * * * *

(f) The draw of the Canadian Pacific Railway bridge, mile 1.74 over Burnham Canal, need not be opened for the passage of vessels.

Dated: September 22, 2003.

**R.F. Silva,**

*Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.*

[FR Doc. 03–25187 Filed 10–2–03; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[CGD08–03–029]**

**RIN 1625–AA11**

## Regulated Navigation Area; Reporting Requirements for Barges Loaded With Certain Dangerous Cargoes, Inland Rivers, Eighth Coast Guard District

**AGENCY:** Coast Guard, DHS.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** The Coast Guard is establishing a regulated navigation area (RNA) within all inland rivers of the Eighth Coast Guard District. This RNA applies to towing vessel operators and fleeting area managers who are responsible for the movement of barges carrying certain dangerous cargoes on inland rivers and requires them to report their position and other information to the Inland River Vessel Movement Center (IRVMC). This action is necessary to ensure public safety, prevent sabotage or terrorist acts, and facilitate the efforts of emergency services and law enforcement officers responding to terrorist attacks.

**DATES:** This rule is effective on November 1, 2003. Comments and related material must reach the Coast Guard on or before January 2, 2004.

**ADDRESSES:** You may mail comments and related material to Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130. Commander, Eighth Coast Guard District (m) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD08–03–029] and are available for inspection or copying at Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130 between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays. You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

**FOR FURTHER INFORMATION CONTACT:** Commander (CDR) Jerry Torok or Lieutenant (LT) Kevin Lynn, Project Managers for the Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130, telephone (504) 589–6271.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On May 2, 2003, the Coast Guard published a temporary final rule and request for comments entitled "Regulated Navigation Area; Reporting Requirements for Barges Loaded With Certain Dangerous Cargoes, Inland Rivers, Eighth Coast Guard District" in the **Federal Register** (68 FR 23393). As of July 9, 2003, we received six written comments on that temporary final rule.

On July 30, 2003, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Regulated Navigation Area; Reporting Requirements for Barges Loaded With Certain Dangerous Cargoes, Inland Rivers, Eighth Coast Guard District" in the **Federal Register** (68 FR 44696). When drafting the proposed rule in the NPRM, we considered all written comments submitted to the docket in response to the temporary final rule published on May 2, 2003 (68 FR 23393). The Coast Guard's responses to the comments are explained under the "Discussion of Comments and Changes" section of the NPRM (68 FR 44698).

As of September 15, 2003, we have received one written comment on the NPRM. No public meeting was requested so one was not held.

As indicated in our "Discussion of Comments and Changes" section below, we have considered this comment in this interim final rule and, where appropriate, we have made the rule less burdensome than the temporary final rule currently in effect. In issuing this interim final rule, we have allowed for a comment period before we impose any final rule.

### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD08–03–029], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period before issuing any final rule.

### Public Meeting

We do not now plan to hold a public meeting. You may submit a request for a meeting by writing to Commander, Eighth Coast Guard District (m) at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

### Background and Purpose

Terrorist attacks on September 11, 2001, inflicted catastrophic human casualties and property damage. These attacks highlighted the terrorists' abilities to utilize multiple means in different geographic areas thereby increasing their opportunities to maximize destruction.

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. The threat of maritime attacks is real as evidenced by the October 2002 attack on a tank vessel off the coast of Yemen and the prior attack on the USS COLE. These attacks manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002). The President found that the security of the U.S. is endangered by the September 11, 2001 attacks and terrorist attacks continue to endanger the international relations of the United States. *See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks,* (68 FR 53665, September 10, 2003); *Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism,* (68 FR 55189, September 18, 2003). The references to these Presidential Documents as they appear in this interim final rule have updated those referenced in the NPRM (68 FR 44697). The U.S. Maritime Administration (MARAD) in Advisory 02–07 advised U.S. shipping interests to maintain a heightened state of alert against possible terrorist attacks. MARAD also issued Advisory 03–03 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attacks to the transportation community in the United States. The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert due to the Al Qaeda organization and other similar organizations who have declared their intentions to conduct armed attacks on U.S. interests worldwide.

Therefore, on April 16, 2003, the Coast Guard established a temporary RNA within the inland rivers of the Eighth Coast Guard District in order to safeguard vessels, ports and waterfront facilities from sabotage or terrorist acts. The temporary RNA remains in effect and applies to barges loaded with certain dangerous cargoes (CDCs) operating on the Mississippi River above mile 235.0, Above Head of Passes, including all its tributaries; the Atchafalaya River above mile 55.0 including the Red River; the Ohio River and all its tributaries; and the Tennessee River from its confluence with the Ohio River to mile zero on the Mobile River and all other tributaries between these two rivers. The RNA affects vessels transporting barges loaded with CDCs that if used as weapons of terrorism could result in substantial loss of life, property, environmental damage, and grave economic consequences. The temporary final rule requires operators of barges loading or loaded with CDCs within the RNA to periodically report their position and other specified information to the IRVMC for protection against sabotage and terrorist acts. The temporary final rule published May 2, 2003, (68 FR 23393) expires on October 31, 2003.

The Coast Guard has determined that there is a need to continue the reporting requirements for barges loaded with CDCs operating on inland rivers and therefore we are issuing an interim rule while we continue to consider alternatives to increase maritime domain awareness on the inland rivers in the Eighth Coast Guard District. This rule allows the Coast Guard to enhance maritime security, protect ports and facilities and high-density population centers (metropolitan areas), control vessel traffic, develop contingency plans, and enforce regulations.

## Discussion of Comments and Changes

The Coast Guard appreciates the excellent and professional involvement by the maritime community in the public rulemaking process, which has greatly helped the formulation of this rule to achieve the essential purposes while minimizing its impact.

As of September 15, 2003, we received one written comment on the NPRM. The comment focused generally on 4 concerns: (a) Reporting the planned route, (b) notifying the IRVMC 4 hours prior to originating a voyage within the RNA with one or more CDC barges, (c) notifying the IRVMC upon moving one or more CDC barges from one fleeting area to another fleeting area or facility, and (d) reporting information as directed by the Coast Guard. Each section of this comment is discussed in more detail in the following six paragraphs.

*Planned Route.* The one comment we received stated that the requirement for submission of a planned route will increase the burden upon the mariner while providing no improvement on the information already required since point-to-point movements rarely allow for more than one route. We agree and have removed the requirement to report the planned route because the IRVMC will be receiving periodic updates on a CDC barge(s)'s location as the towing vessel operator checks in at designated reporting points along the planned route. The requirement to submit a report with the name and location of the destination for each CDC barge and the estimated time of arrival remains unchanged.

*Four hour advance notification.* The one comment we received stated a concern regarding the requirement to report information 4 hours before originating a voyage within the RNA with one or more CDC barges. The comment indicates that fleeting area managers do not always have 4 hours advance notice of movement between receipt of an order and origination of the voyage. The comment suggested the requirement be amended to allow fleeting area managers to notify the IRVMC as soon as possible after the fleeting area manager receives a request to make up a tow or to deliver a CDC barge at a terminal. While we agree that in certain cases a fleeting area manager will not have sufficient time to make a 4-hour advance notification of movement to the IRVMC, this regulation does not require fleeting area managers to provide such notification. This regulation requires towing vessel operators to notify the IRVMC 4 hours before originating a voyage within the RNA with one or more CDC barges. However, we believe the conceptual basis of the comment applies to this requirement. For example, an operator of a towing vessel without any CDC barges operating in the RNA may receive an order to pick up a CDC barge. If the towing vessel is in close proximity to where the CDC barge is located, the evolution of making up the new tow with the CDC barge and originating the voyage may take less than 4 hours. According to the existing requirement in the NPRM, the towing vessel operator would then qualify as originating a voyage within the RNA with one or more CDC barges and as such would be required to provide the IRVMC with a notice 4 hours before originating the voyage. The Coast Guard understands that delaying the voyage to comply with the 4-hour advance notification requirement could negatively affect commercial operations. To alleviate this potential problem, we are adding an exception to the existing requirement. This exception will permit the towing vessel operator to make the required report to the IRVMC as soon as possible before originating a voyage in the RNA with one or more CDC barges. This exception is valid only if the following conditions exist:

(a) The evolution of making up a tow with a CDC barge will take less than four hours before originating a voyage; and

(b) the towing vessel operator did not receive the order to make up a tow with a CDC barge in advance of four hours before originating the voyage with one or more CDC barges.

If the previous two conditions exist, the towing vessel operator must submit the required report to the IRVMC as soon as possible after receiving orders to make up a tow with one or more CDC barges.

*Movement of barges from fleeting area to fleeting area or facility.* The one comment we received stated that companies routinely move barges from one fleeting area to another fleeting area or facility and that reporting each of these movements would impose an excessive burden. It further states that one company may operate multiple fleeting areas within a limited geographic area. The comment recommends that the Coast Guard define fleeting areas within a certain geographic area as a "single fleet" and allow movement within that "single fleet" to occur without reporting each movement to the IRVMC. The purpose of knowing the specific location of a CDC barge is to allow for a more efficient response to an incident or threatened incident. It is the intention of this regulation to give the Coast Guard the necessary information to be able to track and have knowledge of the location of each CDC barge at all times. Under the existing requirements, we are only asking the fleeting area manager to provide limited information regarding the movement of a CDC barge from one fleeting area to another fleeting area or facility. We are not changing this requirement, however, we do feel that definitions are needed for "fleeting area", "fleet tow boat", and "towing vessel". For the purposes of this requirement, the term "fleeting area" will be defined to mean any fleet, including any facility, located within the area covered by one single port. The term "fleet tow boat" will be defined to mean any size vessel that is used to move, transport, or deliver a CDC barge within a fleeting area. The term "towing vessel" will be defined to mean any size vessel that is used to move, transport, or deliver a CDC barge to a fleet or facility that is located in a different port than where the voyage originated.

The following example is provided to illustrate the intention of these definitions: A fleeting area manager is required to provide notification to the IRVMC of the movement of a CDC barge from fleet "A" located in port "A", to fleet "B" located in port "A" when such movement is conducted by a fleet tow boat. If the movement of a CDC barge were to occur from fleet "A" located in port "A", to fleet "Z" located in port "Z", such movement is considered to have been done by a towing vessel and the notifications requirements would reside with the towing vessel operator when the CDC barge was picked up at fleet "A" and dropped off at fleet "Z".

*When directed by the IRVMC.* The one comment we received indicated that there was a lack of coordination within the Coast Guard that led to mariners having to submit duplicate reports of required information. There is a concern that a towing vessel operator may receive multiple calls from various government agencies requesting similar information. These multiple calls could create an unnecessary distraction for the towing vessel operator. The comment requested the Coast Guard clarify the information reporting requirement to read "As directed by the IRVMC." The published NPRM currently reads "When directed by the IRVMC" and as such will not be changed. However, we feel it is necessary to explain the different types of calls a towing vessel operator can expect while transporting one or more CDC barges in the RNA. The first type of call would be from the IRVMC for the following reasons: (1) Obtaining missing or illegible information, (2) investigating missed or inaccurate reports, (3) collecting information for the purposes of responding to an incident or threatened incident, (4) responding to an increase in the maritime security level, or (5) advising the mariner on new or unexpected changes in procedures. This list of reasons is not all inclusive. The second type of call would be from the United States Army Corps of Engineers (USACE) requesting information from the mariner as the towing vessel approaches a USACE controlled lock and dam. As many of the reporting points required by this regulation are located at USACE controlled locks and dams, the Coast Guard understands that some information provided by the towing vessel operator will have to be supplied twice—once to the USACE and once to the IRVMC. The Coast Guard and USACE are currently working to address the issue of duplicative reporting and are researching methods to use existing technology to serve as a single point of collection. The third type of call would be from a Coast Guard Captain of the Port office for issues pertaining to the coordination of vessel escorts or boardings or other marine safety issues. Calls for these purposes are unrelated to the information collection requirements outlined by this regulation and are necessary for the Coast Guard Captain of the Port to meet Coast Guard mission requirements. The final type of call would be from a Coast Guard vessel or boarding team located in close proximity to the towing vessel for the purposes of conducting law enforcement operations or vessel escorts. These types of calls are also unrelated to the information collection requirements outlined by this regulation and are necessary to meet Coast Guard mission requirements.

## Response to Comments Summary

In response to the received comment the Coast Guard is (1) removing the requirement to report the planned route of one or more CDC barges, (2) establishing an exception to the 4-hour advance notification for originating a voyage in the RNA with one or more CDC barges, (3) defining the terms "fleeting area", "fleet tow boat", and "towing vessel" to clarify fleeting area manager reporting requirements, and (4) explaining the different types of calls a towing vessel operator can expect while transporting one or more CDC barges in the RNA.

Portions of this regulation have been revised to reflect the usage of these new definitions. The addition of the new definitions does not create any substantial changes. The portions of the regulatory text that are affected by these new definitions include the "Applicability", "Definitions", and "Regulations" sections.

*Company Representative or Dispatcher Making Required Reports.* The NPRM indicated that a company representative or dispatcher would be allowed to report the required information to the IRVMC on behalf of the towing vessel operator or fleeting area manager. With the addition of the definitions for "fleet tow boat" and "towing vessel", we realized that allowing a company representative or dispatcher to make reports on behalf of a towing vessel operator is contrary to the intentions of this regulation. The intention of this regulation is to provide the Coast Guard with positive reports generated by towing vessel operators and fleeting area managers who have direct control over CDC barges. Because fleets and facilities typically have multiple persons who have direct control over CDC barges, we are allowing a fleeting area manager, company representative, or dispatcher to make the required reports. In contrast, a towing vessel operator is the only person who will have direct control over CDC barges in their tow. As it relates to this regulations, we have clarified the definition of "towing vessel operator" to mean the Captain or pilot who is on watch on board a towing vessel. The portions of the regulatory text that are affected by this clarification include the "Definitions" and "Regulations" sections.

**Discussion of Rule**

The Coast Guard is establishing a regulated navigation area for the Mississippi River above mile 235.0, Above Head of Passes, including all its tributaries; the Atchafalaya River above mile 55.0, including the Red River; the Ohio River and all its tributaries; and the Tennessee River from its confluence with the Ohio River to mile zero on the Mobile River and all other tributaries between these two rivers. This rule applies to: (1) Towing vessel operators responsible for one or more CDC barges within the regulated area, and (2) fleeting area managers responsible for CDC barges in a fleeting area. The terms "barge", "certain dangerous cargo or (CDC)", "CDC barge", "downbound", "Eighth Coast Guard District", "fleet tow boat", "fleeting area", "towing vessel", "towing vessel operator", and "upbound" are defined in the regulatory section of this rule.

Towing vessel operators responsible for one or more CDC barges are required to report specific information to the IRVMC under the following conditions: (1) Upon point of entry into the RNA with one or more CDC barges; (2) 4 hours prior to originating a voyage within the RNA with one or more CDC barges, except if (a) the evolution of making up a tow with a CDC barge will take less than 4 hours before originating a voyage, and (b) the towing vessel operator did not receive the order to make up a tow with a CDC barge in advance of 4 hours before originating the voyage with one or more CDC barges, in which case the towing vessel operator must submit the required report to the IRVMC as soon as possible after receiving orders to make up a tow with one or more CDC barges (3) upon dropping off one or more CDC barges at a fleeting area or facility; (4) upon picking up one or more additional CDC barges from a fleeting area or facility; (5) at designated reporting points in table 165.830(e); (6) when the estimated time of arrival (ETA) to a reporting point varies by 6 hours from the previously reported ETA; (7) any significant deviation from previously reported information; (8) upon departing the RNA with one or more CDC barges; and (9) when directed by the IRVMC.

Fleeting area managers are required to report specific information to the IRVMC under the following conditions: (1) Once daily, report all CDC barges within the fleeting area; (2) upon moving a CDC barge within a fleeting area by a fleet tow boat; (3) any significant deviation from previously reported information; and (4) when directed by the IRVMC.

A company representative or dispatcher may report the required information to the IRVMC on behalf of the fleeting area manager.

Each report made to the IRVMC by a towing vessel operator or fleeting area manager must contain all the information items specified in tables 165.830(f) and 165.830(g), respectively.

Reports must be made to the IRVMC by telephone to (866) 442–6089, by fax to (866) 442–6107, or by e-mail to *irvmc@cgstl.uscg.mil*. A reporting form and e-mail link is available at *http://www.uscg.mil/d8/Divs/M/IRVMC.htm*.

The Coast Guard will consider and approve alternative reporting methods to meet any reporting requirements if: (1) The request for the alternative is submitted in writing to Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130; and (2) the alternative provides an equivalent level of reporting to that which would be achieved by the Coast Guard with the required check-in points.

The Coast Guard encourages the submission of requests for alternative reporting methods. It is the Coast Guard's hope that companies will embrace current modern technology or future technology as it becomes available to automatically report the locations of the towing vessels and the CDC barges they are responsible for directly to the Coast Guard in real or as close to real time as possible. We believe that the development of such systems will significantly reduce the burden imposed upon the towing vessel operator and fleeting area manager who must submit the reports, as well as those Coast Guard personnel who must process those reports.

Deviation from this rule is prohibited unless specifically authorized by the Commander, Eighth Coast Guard District or the IRVMC.

**Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. We present this Regulatory Evaluation for the purposes of information.

*Evaluation*. The regulatory baseline for this rule is the existing temporary rule. The cost for complying with the rule will differ depending on the means used to make a report to the IRVMC and the type of report, either an initial report or an update. The cost of the rule presented below is based on the average number of reports received by the IRVMC in April 2003 and May 2003.

ESTIMATED ANNUAL COST AND BENEFIT OF THE RULE (2003 DOLLARS)

| Item | Cost per initial call | Cost per update call | Total |
|---|---|---|---|
| Personnel | $9462 | $17,871 | $27,333 |
| Operating expenses | 28,386 | 53,613 | 81,999 |
| Total | 37,848 | 71,484 | 109,332 |

This cost estimate assumes: (1) The average merchant mariner's hourly rate is $30, (2) the average initial call is 6 minutes, (3) the average update call is 2 minutes, (4) the average cost per cell phone call is $1.50 per minute, and (5) 15 percent of all responses are initial reports to the IRVMC. Therefore, based on 177 respondents, the average cost is $618 per CDC barge per year. The reporting requirements are necessary to provide immediate, improved security for the public, vessels, and U.S. ports and waterways. The requirements do not alter normal barge transits. The minimal hardships that may be experienced by persons or vessels, as a result of this rule, are necessary to the national interest in protecting the public, vessels, and vessel crews from the devastating consequences of acts of terrorism, and from sabotage or other subversive acts, accidents, or other causes of a similar nature.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: Towing vessel operators and fleeting area managers responsible for CDCs barges on inland waterways within the Eighth Coast Guard District. This RNA will not have a significant economic impact on a substantial number of small entities because this rule does not require any alteration of barge operations or transits. The operational communications required by this RNA do not require towing vessel operators or fleeting area managers to obtain new equipment and can be made toll free to the IRVMC.

If you are a small business entity and are significantly affected by the regulation, please contact CDR Jerry Torok or LT Kevin Lynn, Project Managers for the Eighth Coast Guard District Commander, Hale Boggs Federal Bldg, 501 Magazine Street, New Orleans, LA 70130, telephone (504) 589–6271.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247)

### Collection of Information

This rule calls for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

This rule revises an existing OMB-approved collection of information (1625–0105). The new collection of information estimate is based on data gathered as a result of the information collected under the temporary rule and is based on actual reports received by the IRVMC, as well as actual observation and tracking, for April 2003 and May 2003.

*Title:* Regulated Navigation Areas; Reporting Requirements for Barges Loaded with Certain Dangerous Cargoes, Inland Rivers, Eighth Coast Guard District and the Illinois Waterway, Ninth Coast Guard District.

*OMB Control Number:* 1625–0105.

*Summary of the Collection of Information:* The Coast Guard requires position and intended movement reporting, and fleeting operations reporting, from barges carrying CDCs in the inland rivers within the Eighth and Ninth Coast Guard Districts. This rule amends 33 CFR part 165 to require:

Towing vessel operators and fleeting area managers responsible for CDC barges must report the following information via toll free telephone, toll free fax, or e-mail:

a. Name of barge and towing vessel;
b. Name of fleeting area and facility;
c. Estimated time of arrival (ETA) at fleeting area and facility;
d. Estimated time of departure (ETD) from fleeting area and facility;
e. Upon entry into the covered geographical area;
f. Four hours prior to originating a voyage with a CDC within the RNA, except if (a) the evolution of making up a tow with a CDC barge will take less than four hours before originating a voyage, and (b) the towing vessel operator did not receive the order to make up a tow with a CDC barge in advance of four hours before originating the voyage with one or more CDC barges, in which case towing vessel operator shall submit the required report to the IRVMC as soon as possible after receiving orders to make up a tow with one or more CDC barges;
g. Upon picking up an additional CDC barge from a fleeting area or facility;
h. Upon dropping off a CDC barge at a fleeting area or facility;
i. Upon moving a CDC barge within a fleeting area by a fleet tow boat;
j. Once daily, all CDC barges within a fleeting area;
k. ETA at approximately 90 designated reporting points within the covered geographical area;
l. At any time the ETA to a reporting point varies by 6 hours from the previously reported ETA;
m. Any significant deviation from previously reported information;
n. Upon departing the covered geographical area; and
o. When directed by the IRVMC.

A company representative or dispatcher may report to the IRVMC on behalf of the fleeting area manager.

*Need for Information:* To ensure port safety and security and to ensure the uninterrupted flow of commerce, the Coast Guard is issuing regulations requiring position and intended movement reporting and fleeting operations reporting from barges carrying CDCs in the inland rivers within the Eighth and Ninth Coast Guard Districts.

*Use of Information:* The information is required to enhance maritime security, protect ports and facilities and high-density population centers (metropolitan areas), control vessel traffic, develop contingency plans, and enforce regulations. The Coast Guard will use the information to maintain continuous maritime domain awareness on the inland rivers so that we may respond as appropriate to an actual or threatened terrorist action and enhance maritime security by boarding and/or escorting CDC barges in the vicinity of high-density population areas.

*Description of the Respondents:* The respondents are owners, agents, masters, towing vessel operators, or persons in charge of barges loaded with CDCs or having CDC residue operating on the inland rivers located within the Eighth and Ninth Coast Guard Districts.

*Number of Respondents:* The existing OMB-approved collection number of respondents is 3,505. This rule will decrease the number of respondents by 3,328 to a total of 177.

*Frequency of Response:* Towing vessel operators moving barges carrying CDCs or CDC residue will submit reports as necessary. The existing OMB-approved collection annual number of responses is 7,711. This rule will increase the number of responses by 13,313 to a total of 21,024.

*Burden of Response:* The existing OMB-approved collection burden of response is 15 minutes (0.25 hours) (burden of response is the time required to complete the paperwork requirements of the rule for a single response). This rule will decrease the burden of response by 9 minutes (0.15 hours) to a total of 6 minutes (0.10 hours).

*Estimate of Total Annual Burden:* The existing OMB-approved collection total annual burden is 1,928 hours (total annual burden is the time required to complete the paperwork requirements of the rule for all responses). This rule will decrease the total annual burden by 1017 hours to a total of 911 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this rule to the Office of Management and Budget (OMB) for its review and approval of the revised collection of information. The existing OMB-approved collection (1625–1505) expires on October 31, 2003.

We ask for public comment on the collection of information to help us determine how useful the information is, whether it can help us perform our functions better, whether it is readily available elsewhere, how accurate our estimate of the burden of collection is, how valid our methods for determining burden are, how we can improve the quality, usefulness, and clarity of the information, and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under ADDRESSES, by the date under DATES.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. If and when OMB approves this revised collection of information, we will publish a separate notice in the **Federal Register**.

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1 paragraph (34)(g), of the instruction, from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in NEPA. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available where indicated under ADDRESSES.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 166 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.830 to read as follows:

### § 165.830 Regulated Navigation Area; Reporting Requirements for Barges Loaded with Certain Dangerous Cargoes, Inland Rivers, Eighth Coast Guard District.

(a) *Regulated Navigation Area.* The following waters are a regulated navigation area (RNA): the Mississippi River above mile 235.0, Above Head of Passes, including all its tributaries; the Atchafalaya River above mile 55.0, including the Red River; the Ohio River and all its tributaries; and the Tennessee River from its confluence with the Ohio River to mile zero on the Mobile River and all other tributaries between these two rivers.

(b) *Applicability.* This section applies to towing vessel operators and fleeting area managers responsible for CDC barges in the RNA. This section does not apply to:

(1) Towing vessel operators responsible for barges not carrying CDCs barges, or

(2) Fleet tow boats moving one or more CDC barges within a fleeting area.

(c) *Definitions.* As used in this section—

*Barge* means a non-self propelled vessel engaged in commerce, as set out in 33 CFR 160.204.

*Certain Dangerous Cargo* or *(CDC)* includes any of the following:

(1) Division 1.1 or 1.2 explosives as defined in 49 CFR 173.50.

(2) Division 1.5D blasting agents for which a permit is required under 49 CFR 176.415 or, for which a permit is required as a condition of a Research and Special Programs Administration exemption.

(3) Division 2.3 "poisonous gas", as listed in 49 CFR 172.101 that is also a "material poisonous by inhalation" as defined in 49 CFR 171.8, and that is in a quantity in excess of 1 metric ton per barge.

(4) Division 5.1 oxidizing materials for which a permit is required under 49 CFR 176.415 or, for which a permit is required as a condition of a Research and Special Programs Administration exemption.

(5) A liquid material that has a primary or subsidiary classification of Division 6.1 "poisonous material" as listed in 49 CFR 172.101 that is also a "material poisonous by inhalation", as defined in 49 CFR 171.8 and that is in a bulk packaging, or that is in a quantity in excess of 20 metric tons per barge when not in a bulk packaging.

(6) Class 7, "highway route controlled quantity" radioactive material or "fissile material, controlled shipment", as defined in 49 CFR 173.403.

(7) Bulk liquefied chlorine gas and bulk liquefied gas cargo that is flammable and/or toxic and carried under 46 CFR 154.7.

(8) The following bulk liquids—

(i) Acetone cyanohydrin,

(ii) Allyl alcohol,

(iii) Chlorosulfonic acid,

(iv) Crotonaldehyde,

(v) Ethylene chlorohydrin,

(vi) Ethylene dibromide,

(vii) Methacrylonitrile,

(viii) Oleum (fuming sulfuric acid), and

(ix) Propylene oxide.

*CDC barge* means a barge containing CDCs or CDC residue.

*Downbound* means the tow is traveling with the current.

*Eighth Coast Guard District* means the Coast Guard District as set out in 33 CFR 3.40–1.

*Fleeting area* means any fleet, including any facility, located within the area covered by one single port.

*Fleet tow boat* means any size vessel that is used to move, transport, or deliver a CDC barge within a fleeting area.

*Inland River Vessel Movement Center* or *(IRVMC)* means the Coast Guard office that is responsible for collecting the information required by this section.

*Towing vessel* means any size vessel that is used to move, transport, or deliver a CDC barge to a fleet or facility that is located in a different port than where the voyage originated.

*Towing vessel operator* means the Captain or pilot who is on watch on board a towing vessel.

*Upbound* means the tow is traveling against the current.

(d) *Regulations.* The following must report to the Inland River Vessel Movement Center (IRVMC):

(1) The towing vessel operator responsible for one or more CDC barges in the RNA must report all the information items specified in table 165.830(f), in paragraph (f) of this section, to the IRVMC:

(i) Upon point of entry into the RNA with one or more CDC barges;

(ii) Four hours before originating a voyage within the RNA with one or more CDC barges, except if the evolution of making up a tow with a CDC barge will take less than four hours before originating a voyage, and the towing vessel operator did not receive the order to make up a tow with a CDC barge in advance of four hours before originating the voyage with one or more CDC barges, in which case the towing vessel operator shall submit the required report to the IRVMC as soon as possible after receiving orders to make up a tow with one or more CDC barges;

(iii) Upon dropping off one or more CDC barges at a fleeting area or facility;

(iv) Upon picking up one or more additional CDC barges from a fleeting area or facility;

(v) At designated reporting points, set forth in table 165.830(e), in paragraph (e) of this section;

(vi) When the estimated time of arrival (ETA) to a reporting point varies by 6 hours from the previously reported ETA;

(vii) Any significant deviation from previously reported information;

(viii) Upon departing the RNA with one or more CDC barges; and

(ix) When directed by the IRVMC.

(2) The fleeting area manager responsible for one or more CDC barges in the RNA must report all the information items specified in table 165.830(g), in paragraph (g) of this section, to the IRVMC:

(i) Once daily, report all CDC barges within the fleeting area;

(ii) Upon moving one or more CDC barges within a fleeting area by a fleet tow boat;

(iii) Any significant deviation from previously reported information; and

(iv) When directed by the IRVMC.

(3) Reports required by this section may be made by a company representative or dispatcher on behalf of the fleeting area manager.

(4) Reports required by this section must be made to the IRVMC either by telephone to (866) 442–6089, by fax to (866) 442–6107, or by e-mail to *irvmc@cgstl.uscg.mil.* A reporting form and e-mail link are available at *http://www.uscg.mil/d8/Divs/M/IRVMC.htm.*

(5) The general regulations contained in 33 CFR 165.13 apply to this section.

(e) *Eighth Coast Guard District Inland River RNA Reporting points.* Towing vessel operators responsible for one or more CDC barges in the RNA must make reports to the IRVMC at each point listed in this paragraph (e):

(1) Lower Mississippi River (LMR), between Mile Markers (M):
  (i) M 235.0–240.0 (Entering & Exiting RNA)
  (ii) M 338.0–343.0
  (iii) M 430.0–435.0
  (iv) M 520.0–525.0
  (v) M 621.0–626.0
  (vi) M 695.0–700.0
  (vii) M 772.0–777.0
  (viii) M 859.0–864.0
  (ix) M 945.0–950.0
(2) Upper Mississippi River (UMR), between Mile Markers (M) and Departing Lock & Dam (L&D), unless otherwise indicated:
  (i) L&D 3
  (ii) L&D 4
  (iii) L&D 8
  (iv) L&D 11
  (v) L&D 14
  (vi) L&D 18
  (vii) L&D 21
  (viii) L&D 25
  (ix) Arriving Melvin Price L&D (downbound)
  (x) Departing Melvin Price L&D (upbound)
  (xi) M 150.0–145.0
  (xii) M 66.0–61.0
(3) Missouri River (MOR), between Mile Markers (M):
  (i) M 54.0–56.0
  (ii) M 115.0–117.0
  (iii) M 208.0–210.0
  (iv) M 326.0–328.0
  (v) M 397.0–399.0
  (vi) M 487.0–489.0
  (vii) M 572.0–574.0
  (viii) M 652.0–654.0
  (ix) M 745.0–750.0
(4) Illinois River (ILR), at Mile Marker (M) and Lock & Dam (L&D), as indicated:
  (i) M 0.0
  (ii) Departing New LaGrange L&D
  (iii) M 140.0
  (iv) M 187.2 (Entering & Exiting RNA)
(5) Ohio River, between Mile Markers (M) and at Lock & Dam (L&D), as indicated:
  (i) M 950.0–952.0
  (ii) Arriving Smithland L&D
  (iii) M 826.0–828.0
  (iv) M 748.0–750.0
  (v) M 673.0–675.0
  (vi) M 628.0–630.0

(vii) M 556.0–559.0
(viii) M 511.0–513.0
(ix) Departing Capt Anthony Meldahl L&D
(x) Arriving Greenup L&D (upbound)
(xi) Departing Greenup L&D (downbound)
(xii) Departing Robert C. Byrd L&D (upbound)
(xiii) Arriving Robert C. Bryd L&D (downbound)
(xiv) Departing Belleville L&D
(xv) Departing Hannibal L&D
(xvi) Departing Montgomery L&D
(6) Allegheny River at Lock & Dam (L&D), as indicated:
(i) Departing L&D 4 (upbound)
(ii) Arriving L&D 4 (downbound)
(7) Monongahela River Departing Lock & Dam (L&D):
(i) Grays Landing L&D
(ii) L&D 3
(8) Kanawha River, at Lock & Dam (L&D), as indicated:
(i) Arriving Winfield L&D (upbound)
(ii) Departing Winfield L&D (downbound)
(9) Cumberland River, between Mile Markers (M) and Departing Lock & Dam (L&D), unless otherwise indicated:
(i) Departing Old Hickory L&D (upbound)
(ii) Arriving Old Hickory L&D (downbound)
(iii) M 127.0–129.0
(iv) Barkley L&D
(10) Tennessee River, between Mile Markers (M) and when Departing Lock & Dam (L&D), unless otherwise indicated:
(i) Fort Loudon L&D
(ii) Watts Bar L&D
(iii) Departing Chickamauga L&D (upbound)
(iv) Arriving Chickamauga L&D (downbound)
(v) Nickajack L&D
(vi) Gunterville L&D
(vii) General Joe Wheeler L&D
(viii) Pickwick Landing L&D
(ix) M 122.0–124.0
(x) Kentucky L&D
(11) Tennessee-Tombigbee River, between Mile Markers (M) and when Departing Lock & Dam (L&D):
(i) Lock D
(ii) Aberdeen L&D
(iii) Aliceville L&D
(iv) M 202.0–203.0
(v) Coffeeville L&D
(12) Mobile River, at Mile Marker (M):
(i) 0.0 (Entering & Exiting RNA)
(ii) [Reserved]
(13) Black Warrior River, when Departing L&D:
(i) Holt L&D
(ii) [Reserved]
(14) Alabama River, when Departing L&D:
(i) Claiborne L&D
(ii) Henry L&D
(15) McClellan-Kerr Arkansas River Navigation System, when Departing Lock & Dam (L&D), unless otherwise indicated:
(i) Chouteau L&D
(ii) W.D. Mayo L&D
(iii) Ozark-Jeta Taylor L&D
(iv) L&D 9
(v) Arriving David D. Terry L&D (upbound)
(vi) Departing David D. Terry L&D (downbound)
(vii) L&D 2
(16) Red River, between Mile Markers (M) and when Departing Lock & Dam (L&D):
(i) L.C. Boggs L&D
(ii) Lock 3
(iii) M 178.0–180.0
(17) Atchafalaya River, at Mile Marker (M):
(i) 55.0 (Entering & Exiting RNA)
(ii) [Reserved]

(f) *Information to be reported to the IRVMC by towing vessel operators.* With the exception noted in paragraph (d)(1)(ii) of this section, towing vessel operators responsible for one or more CDC barges in the RNA must report all the information required by this section as set out in table 165.830(f) of this paragraph.

TABLE 165.830(F).—INFORMATION TO BE REPORTED TO THE IRVMC BY TOWING VESSEL OPERATORS

| | 24-hour contact number | Name of vessel moving barge(s) | Barge(s) name and official number | Type, name and amount of CDC onboard | Estimated time of departure from fleeting area or facility | Name and location of destination of CDC barge (fleeting area or facility), including estimated time of arrival | Reporting point | Estimated time of arrival (ETA) to next reporting point (If applicable) |
|---|---|---|---|---|---|---|---|---|
| (1) Upon point of entry into the RNA with a CDC barge | X | X | X | X | | X | X | X |
| (2) 4 hours before to originating a voyage within the RNA with one or more CDC barges; but see exception in paragraph (d)(1)(ii) of this section | X | X | X | X | X | X | | X |
| (3) Upon dropping off one or more CDC barges at a fleeting area or facility | | X | X | | | | | |
| (4) Upon picking up one or more additional CDC barges from a fleeting area or facility | | X | X | X | | | | |
| (5) At designated reporting points in table 165.830(e) | | X | X | (1) | | (1) | X | X |
| (6) When ETA to a reporting point varies by 6 hours from previously reported ETA | | X | (1) | (1) | | | | X |
| (7) Any significant deviation from previously reported information (all that apply) | X | X | X | X | X | X | X | X |
| (8) Upon departing the RNA with a CDC barge(s) | | X | X | | | | X | |
| (9) When directed by the IRVMC | X | X | X | X | X | X | X | X |

[1] If changed.

(g) *Information to be reported to the IRVMC by fleeting area managers.* Fleeting area managers responsible for one or more CDC barges in the RNA must report the information required by this section as set out in table 165.830(g) of this paragraph.

TABLE 165.830(G).—INFORMATION TO BE REPORTED TO THE IRVMC BY FLEETING AREA MANAGERS

| | 24-hour contact number | Barge(s) name and official number | Type, name and amount of CDC onboard | Location of CDC barge (fleeting area or facility) |
|---|---|---|---|---|
| (1) Once daily, all CDC barges in a fleeting area | X | X | X | X |
| (2) Upon moving one or more CDC barges within a fleeting area by a fleet tow boat | | X | X | X |

TABLE 165.830(G).—INFORMATION TO BE REPORTED TO THE IRVMC BY FLEETING AREA MANAGERS—Continued

| | 24-hour contact number | Barge(s) name and official number | Type, name and amount of CDC onboard | Location of CDC barge (fleeting area or facility) |
|---|---|---|---|---|
| (3) Any significant deviation from previously reported information (all that apply) | X | X | X | X |
| (4) When directed by the IRVMC | X | X | X | X |

(h) *Alternative reporting.* The Eighth Coast Guard District Commander may consider and approve alternative methods to be used by a reporting party to meet any reporting requirements if—

(1) the request is submitted in writing to Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130; and

(2) the alternative provides an equivalent level of the reporting that which would be achieved by the Coast Guard with the required check-in points.

(i) Deviation from this section is prohibited unless specifically authorized by the Commander, Eighth Coast Guard District or the IRVMC.

Dated: September 26, 2003.

**R.F. Duncan,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 03–25165 Filed 9–30–03; 4:43 pm]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

**33 CFR Part 165**

**[COTP San Diego 03–030]**

**RIN 1625–AA00**

## Safety Zone; San Diego Bay, San Diego, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing two temporary safety zones, a stationary safety zone and a moving safety zone, on the navigable waters of San Diego Bay in support of the Fleet Week Sea and Air Parade. These temporary safety zones are necessary to provide for the safety of the crews, spectators, participants of the event, participating vessels and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within these safety zones unless authorized by the Captain of the Port, or his designated representative.

**DATES:** This rule is effective from 11:30 a.m. (PDT) on October 4, 2003, to 3 p.m. (PDT) on October 4, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [COTP San Diego 03–030] and are available for inspection or copying at U.S. Coast Guard, Marine Safety Office San Diego, 2716 North Harbor Drive, San Diego, CA 92101–1064, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Petty Officer Austin Murai, USCG, c/o U.S. Coast Guard Captain of the Port, telephone (619) 683–6495.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. In keeping with the requirements of 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. The precise location of the event necessitating promulgation of this safety zone and other logistical details surrounding the event were not finalized until a date fewer than 30 days prior to the event. Delaying the effective date of this rule would be contrary to the public interest because doing such would prevent the Coast Guard from maintaining the safety of the participants of the event and users of the waterway.

### Background and Purpose

The San Diego Fleet Week Foundation is sponsoring the 2003 Fleet Week Sea and Air Parade. The Sea and Air Parade is a classic naval review consisting of Navy vessels of various classes, some of which are restricted in their maneuverability. The naval review will transit through San Diego Bay. These temporary safety zones are necessary to provide for the safety of the crews, spectators, and participants of the Fleet Week Sea and Air Parade and are also necessary to protect other vessels and users of the waterway.

### Discussion of Rule

This rule creates a stationary safety zone and a moving safety zone. The limits of the stationary safety zone will extend south from the southern shoreline on Harbor Island to the southern most limits of the navigational channel. On the west side the boundary will be a line of longitude equal to 117–12–48 W and on the east side the boundary will be a line of longitude equal to 117–12–00 W.

The limits of the moving safety zone are as follows: 1000 yards forward, 200 yards on either side, and 700 yards behind the Fleet Week parade participants while transiting through San Diego Bay.

The two safety zones will be enforced from 11:30 a.m. (PDT) to 3 p.m. (PDT) on October 4, 2003. These safety zones are necessary to provide for the safety of the crews, spectators, and participants of the Fleet Week Sea and Air Parade and to protect other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within these safety zones unless authorized by the U.S. Coast Guard Patrol Commander, or his designated representative from Activities San Diego.

### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be minimal because of its limited duration of three and a half (3½) hours and the limited geographic scope of the safety zones.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities.

The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in the portion of San Diego Bay south of Harbor Island. However, these safety zones will not have a significant economic impact on a substantial number of small entities because these zones are limited in scope and duration. In addition, the Coast Guard will publish local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via VHF–FM marine channel 16 before the safety zone is enforced.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Rick Sorrell, U.S. Coast Guard Marine Safety Office San Diego at (619) 683–6495.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are creating a safety zone.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES.**

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a new § 165.T11–048 to read as follows:

### § 165.T11–048 Safety Zone; San Diego Bay, CA.

(a) *Location.* The following areas are safety zones:

(1) *Stationary safety zone.* The limits of the stationary safety zone extend from the shoreline on Harbor Island South to the southern most limits of the navigational channel. On the west side the boundary is a line of longitude 117°12′48″ W and on the east side the boundary is a line of longitude 117°12′00″ W.

(2) *Moving safety zone.* The limits of the moving safety zone are as follows:

1000 yards forward, 200 yards on either side, and 700 yards behind the Fleet Week parade participants transiting through San Diego Bay.

(b) *Effective period.* These safety zones will be in effect from 11:30 a.m. (PDT) until 3 p.m. (PDT) on October 4, 2003. If the event concludes prior tothe scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* (1) "Official Patrol Vessels" consist of any Coast Guard, other Federal, state or local law enforcement, and any public or sponsor-provided vessels assigned or approved by the Captain of the Port San Diego, to patrol this event.

(2) In accordance with the general regulations in § 165.23 of this part, entering into, transiting through, or anchoring within these safety zones is prohibited, unless authorized by the Captain of the Port, or his designated representative such as a Patrol Commander. Mariners requesting permission to transit through a safety zone may request authorization to do so from the Captain of the Port, Patrol Commander, or other designated representative from Activities San Diego, who may be contacted via VHF-FM Channel 16.

(3) Each person in a safety zone who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order or direction.

(4) The Patrol Commander is empowered to prohibit entry into and control the movement of all vessels in the regulated area. The Patrol Commander shall be designated by the Captain of the Port San Diego; will be a U.S. Coast Guard commissioned officer, warrant officer or petty officer to act as the Captain of the Port's official representative; and will be located aboard the lead official patrol vessel.

(5) The Patrol Commander may, upon request, allow the transit of vessels through the safety zones when it is safe to do so.

Dated: September 24, 2003.

**Stephen P. Metruck,**

*Commander, U.S. Coast Guard, Captain of the Port, San Diego.*

[FR Doc. 03–25045 Filed 10–2–03; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

### 33 CFR Part 165

[COTP San Diego 03–027]

RIN 1625–AA00

## Safety Zone; Crazy Horse Campground, Lake Havasu, AZ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on Lake Havasu, Arizona in support of the International Jet Sports Boating Association World Finals, known locally as Skat Trak World Finals. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

**DATES:** This rule is effective from 7 a.m. (PDT) October 5, 2003 until 6 p.m. (PDT) October 12, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [COTP San Diego 03–027] and are available for inspection or copying at Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego, CA 92101–1064 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Petty Officer Austin Murai, USCG, c/o U.S. Coast Guard Captain of the Port, telephone (619) 683–6495.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Final approval and permitting of this event were not issued in time to engage in full notice and comment rulemaking. Publishing an NPRM and delaying the effective date would be contrary to the public interest since the event would occur before the rulemaking process was complete.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. In addition to the reasons stated above, it would be contrary to the public interest not to publish this rule because the event has been permitted and participants and the public require protection.

### Background and Purpose

The International Jet Sports Boating Association is sponsoring the Skat Trak World Finals, which is held at the Crazy Horse Campgrounds, Lake Havasu City, AZ. This temporary safety zone is established in support of the Skat Trak World Finals, a marine event that includes participating vessels racing along an established and marked course on Lake Havasu, AZ. This temporary safety zone is necessary to provide for the safety of the crews, spectators, and participants of the Skat Trak World Finals and is also necessary to protect other vessels and users of the waterway.

### Discussion of Rule

The Coast Guard proposes to establish one safety zone that will be enforced from 7 a.m. (PDT) to 6 p.m. (PDT) from October 5, 2003 to October 12, 2003. This safety zone is necessary to provide for the safety of the crews, spectators, and participants of the Skat Trak World Finals and to protect other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

The limits of this temporary safety zone are from a point on land beginning at 32°28′18″ N, 114°21′04″ W, thence northerly to a point 34°28′06″ N, 114°21′55″ W, thence easterly to a point 34°28′05″ N, 114°21′02″ W, thence southerly along the shoreline to the point of origin.

### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. The safety zone is of a limited duration, only eleven (11) hours per day for a period of eight (8) days, and is limited to a relatively small geographic area.

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### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The security zone will affect the following entities some of which may be small entities: the owners and operators of pleasure craft engaged in recreational activities and sightseeing. This safety zone would not have a significant economic impact on a substantial number of small entities for several reasons: vessel traffic can pass safely around the area, vessels engaged in recreational activities have ample space outside of the safety zone to engage in these activities, and this safety zone is limited in scope and duration as it is only in effect for only eleven (11) hours per day for a period of eight (8) days, from October 5, 2003 to October 12, 2003. In addition the Coast Guard will publish local notice to mariners (LNM) before the safety zone is enforced.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Rick Sorrell, U.S. Coast Guard Marine Safety Office San Diego at (619) 683–6495.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a safety zone.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES.**

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add new § 165.T11–045 to read as follows:

### § 165.T11–045 Safety Zone; Crazy Horse Campground, Lake Havasu, Arizona.

(a) *Location.* The limits of this temporary safety zone are from a point on land beginning at 32°28′18″ N, 114°21′04″ W, thence northerly to a point 34°28′06″ N, 114°21′55″ W, thence easterly to a point 34°28′55″ N, 114°21′02″ W, thence southerly along the shoreline to the point of origin.

(b) *Enforcement dates.* This safety zone will be enforced from 7 a.m. (PDT) to 6 p.m. (PDT), daily, from October 5, 2003 through October 12, 2003. If the need for the safety zone ends before the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative. Mariners requesting permission to transit through the safety zone may request authorization to do so from the Coast Guard designated representative.

Dated: September 24, 2003.

**Stephen P. Metruck,**

*Commander, U.S. Coast Guard, Captain of the Port, San Diego.*

[FR Doc. 03–25046 Filed 10–2–03; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[COTP San Francisco Bay 03–024]**

**RIN 1625–AA00**

## Safety Zone; San Francisco Bay, San Francisco, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the navigable waters of San Francisco Bay, California, off the San Francisco waterfront for a fireworks display in conjunction with the Pier 39 25th Anniversary Celebration sponsored by Pier 39. This safety zone is necessary to provide for the safety of mariners in the vicinity of the fireworks display and for the safety of the vessel, its crew, and technicians working the fireworks launch barge and the pyrotechnics. Persons and vessels are prohibited from entering into or transiting through the safety zone, which will encompass the navigable waters within a 1000-foot radius of the launch platform that will be located approximately 1000 feet off Pier 39, unless authorized by the Captain of the Port or his designated representative.

**DATES:** This rule is effective from 8 p.m. (PDT) on October 4, 2003, to 8:45 p.m. (PDT) on October 4, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [COTP San Francisco Bay 03–024] and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Doug L. Ebbers, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Logistical details surrounding the event were not finalized and presented to the Coast Guard in time to draft and publish an NPRM. As such, the event would occur before the rulemaking process was complete. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to temporarily close the fireworks area and to protect the maritime public from the hazards associated with the fireworks displays, which are intended for public entertainment.

For the same reasons stated above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

### Background and Purpose

Pier 39 is sponsoring a short fireworks display on October 4, 2003 in conjunction with the Pier 39 25th Anniversary Celebration event. These safety zones are necessary to protect the spectators along with vessels and other property from the hazards associated with the fireworks show. These temporary safety zones will consist of portions of the navigable waters of the San Francisco Bay immediately north of Pier 39. The Coast Guard has granted Pier 39 and Pyro Spectaculars a marine event permit for this event.

### Discussion of Rule

The temporary safety zone consists of the navigable waters of San Francisco Bay within a 1000-foot radius of the launch platform. The launch platform will be located approximately 1000 feet off Pier 39 in San Francisco, California. Entry into, transit through or anchoring within this safety zone is prohibited, unless authorized by the Captain of the Port or his designated representative.

### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Although this safety zone will restrict boating traffic within the San Francisco Bay, the effect of this regulation will not be significant as the safety zone will encompass a small portion of the waterway and will be short in duration. The entities most likely to be affected are pleasure craft engaged in recreational activities and sightseeing.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. As discussed above, the safety zone may affect the following entities, some of which may be small entities: the owners and operators of pleasure craft engaged in recreational activities and sightseeing. The safety zone will not have a significant economic impact on a substantial number of small entities for several reasons: vessel traffic can pass safely around the area, vessels engaged in recreational activities and sightseeing have ample space outside of the safety zone to engage in these activities, and this zone will encompass only a small portion of the waterway for a limited period of time in the evening when vessel traffic is low. The maritime public will be advised of this safety zone via public notice to mariners.

### Assistance For Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement

Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a safety zone.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES.**

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–096 to read as follows:

### § 165.T11–096 Safety Zone: San Francisco Bay, San Francisco, California.

(a) *Location.* This temporary safety zone shall include the navigable waters of the San Francisco Bay within a radius of 1,000 feet from a fireworks launch barge located approximately 1000 feet north of Pier 39 in approximate position 37°48′54″ N, 122°24′32″ W, San Francisco Bay, San Francisco, California.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited unless authorized by the Captain of the Port or a designated representative thereof.

(2) Persons desiring to transit the area of the safety zone may contact the Captain of the Port at telephone number 510–437–3073 or on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

(c) *Enforcement.* All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. Patrol personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(d) *Effective period.* This section becomes effective at 8 p.m. (PDT) on

October 4, 2003, and will terminate at 8:45 p.m. (PDT) on October 4, 2003.

Dated: September 23, 2003.

**Gerald M. Swanson,**

*Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.*

[FR Doc. 03–25185 Filed 10–2–03; 8:45 am]

**BILLING CODE 4910–15–P**

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## POSTAL SERVICE

## 39 CFR Part 230

## Rules Governing Compliance With Subpoenas, Summonses, and Court Orders by Postal Employees Within the Office of Inspector General Where Neither the Postal Service, the United States, Nor Any Other Federal Agency Is a Party

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service is amending the Code of Federal Regulations to state the rules that govern compliance with subpoenas, summonses, and court orders served on employees of the Office of Inspector General where neither the Postal Service, the United States, nor any other federal agency is a party.

**EFFECTIVE DATE:** October 3, 2003.

**FOR FURTHER INFORMATION CONTACT:** Marta Erceg, Director, Legal Services, Office of Inspector General, at (703) 248–2447.

**SUPPLEMENTARY INFORMATION:** The Postal Service has previously published rules that govern compliance with subpoenas, summonses, and court orders served on Postal Service and Inspection Service employees. This is the first publication of subpoena compliance rules as they apply to Office of Inspector General employees.

### List of Subjects in 39 CFR Part 230

Administrative practice and procedure.

■ For the reasons stated in the preamble, the Postal Service amends 39 CFR as follows:

## PART 230—OFFICE OF INSPECTOR GENERAL

■ 1. The authority citation for part 230 is revised to read as follows:

**Authority:** 5 U.S.C. App.3; 39 U.S.C. 401(2) and 1001.

### Subpart A—General Policy and Authority

■ 2. Sections 230.1 through § 230.5 are designated as new subpart A and a heading for subpart A is added to read as set forth above.

■ 3. Following Subpart A, add the following new subpart B:

### Subpart B—Rules Governing Compliance with Subpoenas, Summonses, and Court Orders by Postal Employees Within the Office of Inspector General Where Neither the Postal Service, the United States, Nor Any Other Federal Agency Is a Party

Sec.
230.10 What do these rules govern?
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### Subpart B—Rules Governing Compliance With Subpoenas, Summonses, and Court Orders by Postal Employees Within the Office of Inspector General Where Neither the Postal Service, the United States, Nor Any Other Federal Agency Is a Party

#### § 230.10 What do these rules govern?

(a) Subpart B governs those situations where an employee of the Office of Inspector General has been summoned, subpoenaed, or given a court order in connection with any federal, state, local court, administrative, or legislative proceeding.

(b) The rules in Subpart B do not apply to:

(1) Proceedings where the United States, the Postal Service, or any other federal agency is named as a party;

(2) Congressional requests or subpoenas for testimony or documents;

(3) Employees serving as expert witnesses in connection with professional and consultative services under Title 5, Code of Federal Regulations, Part 7001, provided they state for the record that their testimony reflects their personal opinions and should not be viewed as the official position of the Postal Service;

(4) Employees making appearances in their private capacities in proceedings that do not relate to their Postal Service employment, such as traffic accidents or domestic relations matters; and do not involve professional or consultative services;

(5) Situations where the Inspector General or an official designated by the Inspector General determines that the best interests of the public or the Office of Inspector General would be served by an exemption from the regulations.

(c) These rules should be read together with the Freedom of Information Act (FOIA), which provides additional information about access to records.

#### § 230.11 What special definitions apply to these rules?

The following definitions apply to Subpart B:

(a) Authorizing official means the Inspector General or an official designated by the Inspector General to authorize release of documents or permission to testify.

(b) Case or matter means any civil proceeding before a court of law, administrative board, hearing officer, or other body conducting a judicial or administrative proceeding in which the United States, the Postal Service, or another federal agency is not a named party.

(c) Demand includes any request, order, or subpoena for testimony or the production of documents.

(d) Document means all records, papers, or official files, including, but not limited to, official letters, telegrams, memoranda, reports, studies, calendar and diary entries, graphs, notes, charts, tabulations, data analyses, statistical or information accumulations, records of meetings and conversations, film impressions, magnetic tapes, computer discs, and sound or mechanical reproductions.

(e) Employee or Office of Inspector General employee, for the purpose of this subpart only, means a Postal Service employee currently or formerly assigned to the Postal Service Office of Inspector General, student interns, contractors, and employees of contractors who have access to Office of Inspector General information and records.

(f) General Counsel to the Inspector General means the General Counsel of the Office of Inspector General, or a person authorized by the Inspector General to give legal advice to Office of Inspector General employees. General Counsel to the Inspector General does not mean the General Counsel of the Postal Service.

(g) Nonpublic includes any material or information not subject to mandatory public disclosure under § 265.6(b) or which must be kept confidential under the Inspector General Act, 5 U.S.C. App. 3.

(h) Office of Inspector General means the organizational unit within the Postal Service as outlined in part 221 of this chapter.

(i) Office of Inspector General Manual is the document containing the standard operating procedures for criminal investigators, evaluators, and other employees of the Office of Inspector General.

(j) Reports include all written reports, letters, recordings, or other memorializations made in conjunction with the duties of an Office of Inspector General employee.

(k) Testify or testimony includes both in-person oral statements before any body conducting a judicial or administrative proceeding and statements made in depositions, answers to interrogatories, declarations, affidavits, or other similar documents.

### § 230.12 Can Office of Inspector General employees testify or produce documents that would assist me in my civil proceeding?

No current or former employee within the Office of Inspector General may testify or produce documents concerning information acquired in the course of employment or as a result of his or her relationship with the Postal Service in any proceeding to which this subpart applies (see § 230.10), unless authorized to do so by an authorizing official.

### § 230.13 Why are restrictions on Office of Inspector General employees in civil proceedings necessary?

The restrictions are intended to reduce the risk of inappropriate disclosures that might affect the operations of the Office of Inspector General; prevent the expenditure of Office of Inspector General or Postal Service resources for private purposes; and ensure that employee time is serving the best interests of the public.

### § 230.14 Who owns the written or recorded notes, memoranda, reports, and transcriptions made pursuant to an official investigation, audit, or review conducted by an employee of the Office of Inspector General?

Notes, memoranda, reports, and transcriptions, whether written or recorded and made pursuant to an official investigation, audit, or review conducted by an employee of the Office of Inspector General, are the property of the Office of Inspector General.

### § 230.15 What must an Office of Inspector General employee do if served with a demand requiring the production of documents or an appearance in court?

If an Office of Inspector General employee is served with a demand requiring the production of documents or an appearance in court, the employee must promptly inform the authorizing official of the nature of the documents or testimony sought and all relevant facts and circumstances. Office of Inspector General employees are directed to appear as the subpoena or summons may require, but may not testify or produce documents unless authorized.

### § 230.16 Is there a prohibition on presenting Office of Inspector General reports or records during an employee's testimony?

Yes, Office of Inspector General reports or records will not be presented during an employee's testimony, unless authorized by an authorizing official.

### § 230.17 If an attempt is made to compel production of reports and records during the employee's testimony, what is an Office of Inspector General employee directed to do?

If an attempt is made to compel production of reports and records during the employee's testimony, the employee is directed to decline to produce the item or information and to state that the material cannot be disclosed or produced without the approval of the authorizing official. All such requests, and any other requests for documents in judicial or administrative proceedings in which the United States is not a party, shall be deemed to be a request for records under the Freedom of Information Act and shall be handled pursuant to 39 CFR 230.5.

### § 230.18 If authorization to testify or produce documents is not obtained by the employee, what is the employee directed to do?

Absent written authorization from the authorizing official, the employee must respectfully decline to produce the requested documents, testify, or otherwise disclose the requested information. If the authorization is denied or not received by the return date, the employee, together with counsel, where appropriate, shall appear at the stated time and place, produce a copy of this section, and respectfully decline to testify or produce any document on the basis of the regulations in this section.

### § 230.19 What criteria will the authorizing official use to determine whether to authorize testimony or production of documents?

(a) The authorizing official will determine whether testimony or the production of documents will be authorized according to the following criteria:

(1) Statutory restrictions, as well as any legal objection, exemption, or privilege that may apply;

(2) Relevant legal standards for disclosure of nonpublic information and documents;

(3) Office of Inspector General rules and regulations;

(4) The public interest;

(5) Minimizing or preventing expenditures of Office of Inspector General and Postal Service time and resources solely for private purposes.

(6) Minimizing the appearance of improperly favoring one litigant over another;

(7) Minimizing the possibility that the public will misconstrue variances between personal opinions of Office of Inspector General employees and agency policy; and

(8) Preserving the integrity of the administrative process.

(b) Permission to testify or to release documents in all cases will be limited to matters outlined in the affidavit or declaration described in section 230.24 of this part or to such matters as deemed appropriate by the authorizing official.

If the authorizing official allows the release of documents or testimony to be given by an employee, arrangements shall be made for the taking of testimony or receipt of documents by the method least disruptive to the employee's official duties. Testimony may, for example, be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other means allowable by law.

(c) Upon issuance of an unfavorable final determination by the authorizing official, the party or the party's counsel seeking testimony or documents may consult or negotiate with the authorizing official to refine and limit the demand.

(d) The Office of Inspector General will offer all possible assistance to the courts, but the question of disclosing information for which an exemption may be claimed is a matter of discretion that rests with the authorizing official. If in the opinion of the authorizing official the documents should not be released or testimony should not be furnished, that determination will be final.

### § 230.20 What records will not be released?

Generally, any record demanded by a subpoena duces tecum or appropriate court order can be released by a properly authorized Office of Inspector General employee, except for the following:

(a) Records required to remain confidential by the Freedom of Information Act, the Privacy Act, and parts 230 and 262 of this chapter,

(b) Records containing information relating to an employee's security or loyalty;

(c) Original records;

(d) Office of Inspector General criminal investigative reports, unless there is specific authorization by an authorizing official, after consulting with General Counsel to the Inspector General; and

(e) The Office of Inspector General Manual and other operating instructions issued to Office of Inspector General employees, unless there is specific authorization by an authorizing official, after consultation with the General Counsel to the Inspector General. If the requested information relates to confidential investigative techniques, confidential sources of information, or information that must be kept confidential under the Inspector General Act, 5 U.S.C. app. 3, because release of the information would adversely affect the duties and obligations or law enforcement mission of the Office of Inspector General, the subpoenaed official, through the Inspector General, or an authorizing official, may request an in camera, ex parte conference to determine the necessity for the release of the information.

### § 230.21 May the General Counsel to the Inspector General and/or a U.S. Department of Justice attorney represent the employee in any appearance?

At the option of the Attorney General, or an authorizing official, an Office of Inspector General legal counsel may represent and assist the employee. The authorizing official designated by the Inspector General may also request assistance from the U.S. Department of Justice in representing and assisting the employee in any appearance.

### § 230.22 May another employee be substituted for the employee requested to appear?

The Inspector General or designee may, where appropriate, designate another Office of Inspector General employee to respond to a request for an appearance.

### § 230.23 May an Office of Inspector General employee testify as an expert or opinion witness?

No, an Office of Inspector General employee may not testify as an expert or opinion witness with regard to any matter arising out of the employee's duties or functions at the Office of Inspector General for any party other than the United States, except that in extraordinary circumstances, and where the anticipated testimony will not be adverse to the interest of the United States, the authorizing official may approve such testimony in private litigation. A litigant must first obtain the permission of an authorizing official designated by the Inspector General before designating an Office of Inspector General employee as an expert or opinion witness.

### § 230.24 How is a demand for employee documents or testimony made to the Office of Inspector General?

(a) All demands for the production of nonpublic documents or testimony of Office of Inspector General employees concerning matters relating to their official duties and subject to the conditions set forth in § 230.601(b) shall be made in writing and conform to the following requirements outlined in paragraphs (b) and (c) of this section.

(b) Before or simultaneously with service of a demand, the requesting party shall serve on the General Counsel to the Inspector General at the Office of Inspector General, 1735 North Lynn Street, Arlington, VA 22209–2020, a summons or subpoena issued in accordance with the appropriate rules of civil procedure along with an affidavit or sworn declaration containing the following information:

(1) The title of the case and the forum where it will be heard;

(2) The party's interest in the case;

(3) The reasons for the demand;

(4) A showing that the requested information is available, by law, to a party outside the Postal Service;

(5) If testimony is sought, a detailed summary of the anticipated testimony;

(6) If testimony is sought, a showing that Office of Inspector General records could not be provided and used in place of the requested testimony;

(7) The intended use of the documents or testimony; and

(8) An affirmative statement that the documents or testimony is necessary for defending or prosecuting the case at issue.

### § 230.25 Who pays the costs incurred when the Office of Inspector General responds to a demand for documents or testimony?

(a) Unless determined by 28 U.S.C. 1821 or other applicable statute, the costs of providing testimony, including the cost of transcripts, shall be borne by the requesting party. Furthermore, unless limited by statute, such costs shall also include reimbursement to the Office of Inspector General for the usual and ordinary expenses attendant upon the employee's absence from his or her official duties in connection with the case or matter, including the employee's salary and applicable overhead charges, and any necessary travel expenses as follows:

(1) The Office of Inspector General is authorized to charge reasonable fees to parties demanding documents or information. Such fees, calculated to reimburse the Office of Inspector General for the cost of responding to a demand, may include the costs of time expended by Office of Inspector General employees, including attorneys, to process and respond to the demand; attorney time for reviewing the demand and for legal work in connection with the demand; expenses generated by equipment used to search for, produce, and copy the requested information; and travel costs of the employee and the agency attorney or other representative, including lodging and per diem. Such fees shall be assessed at the rates and in the manner specified in 39 CFR 265.9.

(2) At the discretion of the Office of Inspector General where appropriate, fees and costs may be estimated and collected before testimony is given.

(b) The provisions of Subpart B do not affect rights and procedures governing public access to official documents pursuant to the Freedom of Information Act, 5 U.S.C. 552a.

**§ 230.26 Do these rules affect the service of process requirements of the Federal Rules of Civil Procedure (28 U.S.C. Appendix)?**

No, the rules in subpart B in no way modify the requirements of the Federal Rules of Civil Procedure regarding service of process.

**§ 230.27 Do these rules create any right or benefit enforceable by a party against the Postal Service?**

No, subpart B is intended to provide instructions to Office of Inspector General employees and members of the public. It does not create any right or benefit, substantive or procedural, enforceable by any party against the Office of Inspector General or the Postal Service.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 03–24619 Filed 10–2–03; 8:45 am]

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

### 50 CFR Part 622

[Docket No. 030430107–3236–02; I.D. 040703A]

RIN 0648–AN87

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Pelagic Sargassum Habitat of the South Atlantic Region

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement the Fishery Management Plan for Pelagic Sargassum Habitat of the South Atlantic Region (FMP). This final rule limits the harvest or possession of pelagic sargassum in or from the exclusive economic zone (EEZ) off the southern Atlantic states to 5,000 lb (2,268 kg) annually, restricts fishing for pelagic sargassum in the South Atlantic EEZ to an area no less than 100 nautical miles offshore of North Carolina and to the months of November through June, requires vessel owners or operators to accommodate NMFS-approved observers on all pelagic sargassum fishing trips, and restricts the mesh and frame sizes of nets used to harvest pelagic sargassum. The FMP also defines the management unit, maximum sustainable yield (MSY), optimum yield (OY), and overfishing parameters. In addition, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for those collections. The intended effects are to conserve and manage pelagic sargassum and to protect essential fish habitat.

**DATES:** This final rule is effective November 3, 2003.

**ADDRESSES:** Copies of the final regulatory flexibility analysis (FRFA) may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Robert Sadler, Southeast Region, NMFS, at the above address, and by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

**FOR FURTHER INFORMATION CONTACT:** Steve Branstetter, phone: 727–570–5305, fax: 727–570–5583, e-mail: *Steve.Branstetter@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The South Atlantic Fishery Management Council (SAFMC) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On April 17, 2003, NMFS announced the availability of the FMP and requested comments on it (68 FR 18942). NMFS published a proposed rule to implement the FMP and requested comments on the proposed rule through June 30, 2003 (68 FR 32450, May 30, 2003). NMFS partially approved the FMP on July 11, 2003; the designation of essential fish habitat (EFH), EFH-habitat areas of particular concern (EFH–HAPCs), and the estimate of maximum fishing mortality threshold (MFMT) were disapproved. The rationale for the measures in the FMP is provided in the preamble to the proposed rule and is not repeated here.

### Comments and Responses

NMFS received 22 letters on the FMP and proposed rule. Of those, 18 were in general support of the actions identified in the FMP, 2 were opposed, and 2 letters focused on future research needs regarding the role of pelagic sargassum as habitat in the open ocean environment. A summary of those comments and NMFS's responses are provided below.

*Comment 1:* Sargassum is extremely important habitat for a variety of marine species. NMFS is urged to approve this FMP and its implementing regulations, which would limit the harvest of sargassum and protect the resource as essential fish habitat (EFH) and EFH habitat areas of particular concern (EFH–HAPC).

*Response:* NMFS recognizes the importance of sargassum as EFH for managed species, and sargassum's general importance as habitat in the open ocean environment. NMFS has partially approved the FMP, and regulations implemented through this rule will prohibit the harvest of sargassum south of 34° N. lat. in the SAFMC's area of jurisdiction, and restrict the allowable harvest to 5,000 lb (2,268 kg) annually from waters greater than 100 nautical miles offshore of the North Carolina coast. These actions are intended to provide protection to sargassum habitat, which is designated as EFH for snappers, groupers, and coastal migratory pelagic fishes, and is known to be used by threatened and endangered sea turtles and large quantities of other marine life.

*Comment 2:* Because of the importance of sargassum as habitat, and its designation as EFH and HAPC for several managed finfish species, all harvest of sargassum should be prohibited.

*Response:* NMFS previously informed the SAFMC that there was insufficient justification to prohibit all harvest of sargassum. Section 303(a)(7) of the Magnuson-Stevens Act requires that the Councils minimize to the extent practicable adverse effects on EFH caused by fishing, but clearly this does not, in every instance, preclude some loss or damage to EFH from fishing impacts. Given the suggested standing crop of sargassum is 9 to 24 billion lbs (4 to 11 million mt) and there has been a documented harvest of 448,000 lb (203 mt) over a 22-year period, NMFS determined that the administrative record does not provide sufficient evidence that there has been an adverse impact on sargassum as EFH, or that harvest should be prohibited.

*Comment 3:* Quantities of sargassum found off of the east coast of Florida have declined in recent years. The ongoing harvest of sargassum is detrimental to Florida's offshore fisheries and should not be allowed.

*Response:* Given that sargassum is dispersed northward from the Sargasso Sea to the north Atlantic Ocean via the Gulf Stream and prevailing winds, NMFS does not believe that the intermittent and limited harvest of sargassum off North Carolina between 1976 and 1997 affected the quantities of sargassum occurring off of more southerly coastlines. NMFS is unaware of any harvest of sargassum in the South Atlantic EEZ during the last 6 years (see also Comment 5). The abundance and density of sargassum off Florida would more likely be affected by changes in local currents and prevailing winds, such as occurred during the El Nino events of 1998 and 2002. Nevertheless, NMFS agrees that sargassum is important habitat to numerous fishes, and many fisheries operate by fishing near sargassum habitat. Regulations implemented by the promulgation of this rule will prohibit the harvest of any sargassum except from areas more than 100 nautical miles from shore off North Carolina.

*Comment 4:* Excessive quantities of sargassum impede navigation for the U.S. Navy, Coast Guard and merchant marine vessels, clogging cooling water intake ports. Given these issues, there does not appear to be a need to restrict or prohibit harvest. The total 22-year harvest of 448,000 lb (203 mt) is minuscule compared to the potential of the sargassum standing stock to increase its biomass by as much as 1 to 2.4 billion lb (0.4 to 1.1 million mt) within a few day's time.

*Response:* NMFS agrees that the biological potential for growth of sargassum makes it a highly renewable natural resource. Nevertheless, NMFS agrees with the SAFMC regarding the benefits of maintaining adequate quantities of sargassum as habitat for numerous marine species, including sea turtles, in an environment that is otherwise devoid of much structure and protective habitat. In addition, limiting harvest to areas offshore of North Carolina, during time periods when turtles and other marine life are expected to be least abundant in the sargassum, is intended to reduce the potential incidental capture and mortality of these species.

*Comment 5:* Allowing a harvest of 5,000 lb (2,268 kg) wet weight or 500 lb (227 kg) dry weight of sargassum per year would put the one known processing firm out of business. The firm is currently processing twice that amount in a month's time, and anticipates an expansion of its sales that would require an annual harvest of 240,000 lb (108.9 mt) wet weight annually. Additionally, very little sargassum is found off North Carolina from November through June, thus year-round harvest would provide the firm with the flexibility to select times when sargassum was most abundant and weather conditions were conducive to taking a vessel offshore.

*Response:* NMFS and the SAFMC were unaware that the one known processing firm was actively engaged in processing sargassum until the firm submitted these comments. NMFS and the SAFMC were under the impression that no harvesting activity had occurred since 1997. The SAFMC's choices for optimum yield (OY) and total allowable catch (TAC) were based on average annual harvest levels from the most recent data available. To ensure that the SAFMC's proposed actions, and NMFS' decisions, were based on the best available information, NMFS contacted the firm's owner to request updated information regarding the harvest of sargassum in the SAFMC's area of jurisdiction.

The owner reported that the firm was not actively fishing for sargassum; the firm's fishing vessel had been sold. The firm was purchasing sargassum from vendors who had harvested the product from areas outside the SAFMC's area of jurisdiction. According to the firm's comment letter, its current monthly use of 10,000 lb (4.54 mt) wet weight of sargassum is approximately half its historical (1976–1997) average annual harvest. Therefore, it appears that the proposed harvesting restrictions would not affect the firm's opportunity to continue its operations. There is no information available to evaluate the firm's current mode of operation of buying raw product compared to purchasing and operating its own vessel to harvest sargassum.

*Comment 6:* Some of the preferred alternatives identified in the FMP, if modified to include additional considerations, would better address the conservation and management of sargassum.

*Response:* The Magnuson-Stevens Act, at Section 304(a)(3), provides the Secretary of Commerce (Secretary), or NMFS as the Secretary's designee, with the authority to approve, disapprove, or partially approve the preferred alternative in any FMP or FMP amendment submitted by a fishery management council. The Secretary does not have discretionary authority to select a rejected alternative, or develop a substitute alternative, for approval and implementation.

*Comment 7:* Several scientific studies have documented the use of sargassum by various forms of marine life, including sea turtles. NMFS is encouraged to develop better estimates of densities of sea turtle neonates in sargassum habitat. Additional questions that need to be addressed include: What quantity of harvest is acceptable, and what is too much? What seasons are least disruptive in regards to the use of sargassum by the various life stages of finfish and invertebrate species that associate with sargassum? The decision to establish a fishing season appears to be based entirely on an assumption of post-hatchling turtle utilization of the habitat, without accounting for seasonal use of sargassum as a nursery ground by numerous fish species.

*Response:* NMFS acknowledges that there is a paucity of data regarding the abundance of turtles in sargassum habitat. Several studies, mostly focusing on the western edge of the Gulf Stream, have reported numbers of turtles seen during transect surveys, giving a rough estimate of densities of turtles along this western boundary. The western boundary would be the area that hatchling turtles first encounter during their migration from the nesting beach. Thus, it is likely that densities may decrease toward the eastern Gulf Stream boundary and beyond into the open ocean realm. The FMP notes (page 18) that "Regional trends in the mean abundance of and biomass of young fish show a decrease in abundance across the continental shelf and into the Gulf Stream and Sargasso Sea, and a decrease from spring through fall. Species richness is generally highest on the outer shelf during spring and summer and further offshore during the fall and winter." This same kind of distribution can be assumed for sea turtles as well. To that end, this final rule will prohibit the harvest of sargassum within 100 nautical miles of shore off North Carolina, and during the spring through fall period. The intent of this restriction is to limit the interaction with bycatch during harvesting efforts. The gear restrictions imposed by this final rule are intended to limit those impacts; harvesting nets must be constructed of 4-inch (10.2-cm) stretch mesh or larger fitted to a frame no larger than 4 ft by 6 ft (1.3 m by 2.0 m), which should allow many organisms to escape.

## Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an FRFA, based on the Regulatory Impact Review, for this final rule. A summary of the FRFA follows:

The Magnuson-Stevens Act provides the statutory basis for this final rule. The objectives of the FMP are: establish a management structure to manage sargassum habitat; reduce the impact of the sargassum fishery on essential fish habitat; reduce the potential for conflict;

and direct needed research to better determine distribution, production, and ecology of sargassum habitat. The final rule prohibits all harvest and possession of sargassum from the South Atlantic EEZ south of 34° N. lat., the latitude line representing the North Carolina/South Carolina border; prohibits all harvest of sargassum from the South Atlantic EEZ within 100 nautical miles of shore between 34° N. lat. and the latitude line representing the North Carolina/Virginia border; limits harvest of sargassum from the South Atlantic EEZ to the months of November through June; establishes an annual total allowable catch (TAC) of 5,000 lbs (2,268 kg) landed wet weight; requires that a NMFS-approved observer be present on each sargassum harvesting trip; and requires that nets used to harvest sargassum be constructed of 4-inch (10.2-cm) stretch mesh or larger fitted to a frame no longer than 4 ft by 6 ft (1.3 m by 2.0 m). This action is being considered because sargassum harvest represents removal of essential fish habitat or important developmental or foraging habitat for other federally managed species including threatened/endangered sea turtles; no management structure exists to protect sargassum; potential conflicts could arise if harvest occurs where recreational fishing is occurring; and limited information on distribution, production, and ecology of sargassum exists. The rule establishes strict limits on allowable harvest of sargassum.

This final rule will require an observer on board the vessel to monitor harvest of sargassum and associated bycatch. No other projected reporting, record keeping or other compliance requirements are proposed. No duplicative, overlapping or conflicting Federal rules have been identified.

No directed fishery for sargassum currently exists in the South Atlantic. Therefore, no small business entities will be impacted by this final rule. One small business entity was a historical participant in the fishery. This firm harvested an average annual harvest of 14,333 lb (6,501 kg) wet weight (1995–1997 average harvest), valued at $43,000 per year, and employed three persons on a full-time basis and other workers on a part-time basis as needed. A total of 52 trips were made between 1976 and 1997 resulting in the harvest of 448,000 lb (203,209 kg) wet weight (44,800 lb (20,321 kg) dry weight) of sargassum. Harvest peaked at 200,000 lb (90,718 kg) wet weight in 1990. The average harvest over the entire 1976–1997 harvest period was 8,615 lb (3,908 kg) wet weight per trip. Harvest was conducted, either through contract with commercial finfish fishing vessels that harvested sargassum in conjunction with their regular fishing trip, or through the use of a converted 63-ft (19.2-m) snapper-grouper vessel acquired to conduct directed harvest trips. No information on harvesting or processing costs is available. Since a small business entity in the commercial fishery is defined as a firm that has annual gross receipts not in excess of $3.5 million, the historical firm, had it remained in the fishery, would be classified as a small business entity. However, no harvest by this firm or any other business entity has been recorded since 1997. The sole historical participant in the fishery has maintained the processing side of the business operation through the purchase of product from vendors harvesting outside the SAFMC's area of jurisdiction. There is no known harvest, therefore, within the SAFMC's area of jurisdiction that would be adversely impacted.

No significant issues were raised by public comments in response to the IRFA. Therefore, no changes were made in the final rule as a result of such comments.

The determination of significant economic impact can be ascertained by examining two criteria, disproportionality and profitability. The disproportionality question is: Will the regulations place a substantial number of small business entities at a significant competitive disadvantage to large business entities? Since no directed fishery for sargassum currently exists, no business entities, large or small, currently participate in the fishery. The sole historical participant, however, qualified as a small business entity. Since no participants in the fishery currently exist, and the sole historical participant was a small business entity, the issue of disproportionality does not arise.

The profitability question is: Will the regulations significantly reduce profit for a substantial number of small entities? Since no directed fishery for sargassum currently exists, the regulations do not significantly reduce profit for a substantial number of small entities. Had the sole historical participant in the fishery continued operation and been dependent upon product harvested from areas within the Council's jurisdiction, the allowable TAC would have reduced average harvest and revenues by 65 percent, from 14,333 lb (6,501 kg) wet weight (1995–1997 average harvest) to 5,000 lb (2,268 kg), valued at from $43,000 to $15,000. Although profit figures are not available, it is obvious that the reduction in profit would also be significant. However, as previously stated, no directed fishery exists, so no reduction in profits will occur for any small business entities.

Since there is no directed fishery for sargassum, this final rule does not generate any negative economic impacts on small entities. Therefore, the issue of significant alternatives to mitigate economic impacts is not relevant. However, in the event that directed harvest is attempted, only the harvest restrictions will result in direct economic impacts. The harvest restrictions are not believed to be sufficient to allow sustained participation in a directed fishery for sargassum since the allowable harvest is only 5,000 lb (2,268 kg) wet weight per year. Two other alternatives, allowing no harvest and prohibiting harvest after January 1, 2001, would similarly not support sustained participation in the fishery and are, therefore, not relevant significant alternatives in that they would not mitigate the negative economic impacts of the proposed rule.

The no action alternative and an alternative establishing the TAC at 100,000 metric tons wet weight would allow unrestricted harvest. Additional alternatives would specify TAC at 20,000 lb (9,072 kg) wet weight and 200,000 lb (90,718 kg) wet weight, which would allow harvests greater than the historic average harvest per year (8,615 lb (3,908 kg) wet weight for 1976–1997 or 14,333 lb (6,501 kg) wet weight for 1995–1997). Any of these alternatives would, therefore, eliminate all negative economic impacts on a directed fishery. These alternatives, however, are inconsistent with the Council's intent to both discontinue unregulated harvest of sargassum and limit expansion of a sargassum fishery. The Council concluded that severe limitation on harvest is likely to increase the productivity of marine life in the ecosystem and, thus, increase consumptive, non-consumptive, and indirect (value to other species as habitat) use values. Furthermore, the Council concluded that maintaining these consumptive, non-consumptive, and indirect use benefits greatly outweigh the costs resulting from severely limiting harvest. In addition, there was overwhelming public support for a measure to prohibit the directed harvest of sargassum.

Copies of the FRFA are available upon request (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This final rule contains the collection-of-information requirements subject to review and approval by OMB under the PRA. These requirements have been approved by OMB under OMB control number 0648–0205 for notification prior to a fishing trip and OMB control number 0648–0358 for vessel identification requirements. The public reporting burden is estimated to be 45 minutes per vessel for vessel identification requirements and 5 minutes for notification prior to a trip, per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspects of the collections of information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

**List of Subjects in 50 CFR Part 622**

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: September 29, 2003.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.1, table 1, the following entry is added in alphabetical order to read as follows:

### § 622.1 Purpose and scope.

* * * * *

TABLE 1.—FMPS IMPLEMENTED UNDER PART 622

| FMP title | Responsible fishery management council(s) | Geographical area |
|---|---|---|
| * * * | * | * * |
| FMP for Pelagic Sargassum Habitat of the South Atlantic Region. | SAFMC | South Atlantic |
| * * * | * | * * |

■ 3. In § 622.2, the definition of "Pelagic sargassum" is added in alphabetical order to read as follows:

### § 622.2 Definitions and acronyms.

* * * * *

*Pelagic sargassum* means the species *Sargassum natans* or *S. fluitans*, or a part thereof.

* * * * *

■ 4. In § 622.6, paragraph (a)(1)(i) introductory text is revised to read as follows:

### § 622.6 Vessel and gear identification.

(a) * * *

(1) * * *

(i) *Official number.* A vessel for which a permit has been issued under § 622.4, and a vessel that fishes for or possesses *pelagic sargassum* in the South Atlantic EEZ, must display its official number—

* * * * *

■ 5. In § 622.8, paragraphs (a), (b) introductory text, and (c) introductory text are revised to read as follows:

### § 622.8 At-sea observer coverage.

(a) *Required coverage*—(1) *Pelagic sargassum.* A vessel that harvests or possesses pelagic sargassum on any trip in the South Atlantic EEZ must carry a NMFS-approved observer.

(2) *Golden crab.* A vessel for which a Federal commercial permit for golden crab has been issued must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage.

(b) *Notification to the SRD.* When observer coverage is required, an owner or operator must advise the SRD in writing not less than 5 days in advance of each trip of the following:

* * * * *

(c) *Observer accommodations and access.* An owner or operator of a vessel on which a NMFS-approved observer is embarked must:

* * * * *

■ 6. In § 622.35, paragraph (g) is added to read as follows:

### § 622.35 South Atlantic EEZ seasonal and/or area closures.

* * * * *

(g) *Pelagic sargassum area and seasonal restrictions*—(1) *Area limitations.* (i) No person may harvest pelagic sargassum in the South Atlantic EEZ between 36°34′55″ N. lat. (directly east from the Virginia/North Carolina boundary) and 34° N. lat., within 100 nautical miles east of the North Carolina coast.

(ii) No person may harvest or possess pelagic sargassum in or from the South Atlantic EEZ south of 34° N. lat.

(2) *Seasonal limitation.* No person may harvest or possess pelagic sargassum in or from the South Atlantic EEZ during the months of July through October. This prohibition on possession does not apply to pelagic sargassum that was harvested and landed ashore prior to the closed period.

■ 7. In § 622.41, paragraph (k) is added to read as follows:

### § 622.41 Species specific limitations.

* * * * *

(k) *Pelagic sargassum.* The minimum allowable mesh size for a net used to fish for pelagic sargassum in the South Atlantic EEZ is 4.0 inches (10.2 cm), stretched mesh, and such net must be attached to a frame no larger than 4 ft by 6 ft (1.2 m by 1.8 m). A vessel in the South Atlantic EEZ with a net on board that does not meet these requirements may not possess any pelagic sargassum.

■ 8. In § 622.42, paragraph (g) is added to read as follows:

### § 622.42 Quotas.

* * * * *

(g) *Pelagic sargassum.* The quota for all persons who harvest pelagic sargassum in the South Atlantic EEZ is 5,000 lb (2,268 kg), wet, landed weight. See § 622.35(g)(1) for area limitations on the harvest of pelagic sargassum.

■ 9. In § 622.43, paragraph (a)(7) is added and paragraph (b)(2) is revised to read as follows:

### § 622.43 Closures.

* * * * *

(a) * * *

(7) *Pelagic sargassum.* Pelagic sargassum may not be fished for or possessed in the South Atlantic EEZ and the sale or purchase of pelagic sargassum in or from the South Atlantic EEZ is prohibited.

* * * * *

(b) * * *

(2) The prohibition on sale/purchase during a closure for allowable octocoral in paragraph (a)(2) of this section or for pelagic sargassum in paragraph (a)(7) of this section does not apply to allowable octocoral or pelagic sargassum that was

harvested and landed ashore prior to the effective date of the closure.

* * * * *

[FR Doc. 03–25149 Filed 10–2–03; 8:45 am]

BILLING CODE 3510–22–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 660

[Docket No. 030721177–3234–02; I.D. 060903C]

RIN A648–AQ96

## Fisheries off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Annual Specifications

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to implement the annual harvest guideline for Pacific mackerel in the exclusive economic zone off the Pacific coast. The Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and its implementing regulations require NMFS to set an annual harvest guideline for Pacific mackerel based on the formula in the FMP. This action adopts allowable harvest levels for Pacific mackerel off the Pacific coast.

**DATES:** Effective November 3, 2003.

**ADDRESSES:** The report *Stock Assessment of Pacific Mackerel with Recommendations for the 2003–2004 Management Season* may be obtained from Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802. An environmental assessment/regulatory impact review/final regulatory flexibility analysis (FRFA) may be obtained at this same address.

**FOR FURTHER INFORMATION CONTACT:** James J. Morgan, Southwest Region, NMFS, (562) 980–4036.

**SUPPLEMENTARY INFORMATION:** The CPS FMP, which was implemented by publication of the final rule in the **Federal Register** on December 15, 1999 (64 FR 69888), divides management unit species into the categories of actively managed and monitored. Harvest guidelines of actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Biomass estimates are not calculated for species that are only monitored (jack mackerel, northern anchovy, and market squid).

At a public meeting each year, the biomass for each actively managed species is reviewed by the Pacific Fishery Management Council's (Council) CPS Management Team (Team). The biomass, harvest guideline, and status of the fisheries are then reviewed at a public meeting of the Council's CPS Advisory Subpanel (Subpanel). This information is also reviewed by the Council's Scientific and Statistical Committee (SSC). The Council reviews reports from the Team, Subpanel, and SSC, then, after providing time for public comment, makes its recommendations to NMFS. The annual harvest guideline and season structure is published by NMFS in the **Federal Register** as soon as practicable before the beginning of the appropriate fishing season. The Pacific mackerel season begins on July 1 of each year and ends on June 30 the following year.

The Team and Subpanel meetings took place at the NMFS Southwest Regional Office in Long Beach, CA on May 21, 2003 (68 FR 23703, May 5, 2003). The SSC meeting took place in conjunction with the June 16–20, 2003, Council meeting in Foster City, CA.

A modified virtual population analysis stock assessment model is used to estimate the biomass of Pacific mackerel. The model employs both fishery dependent and fishery independent indices to estimate abundance. The biomass was calculated through the end of 2002, then estimated for the fishing season that begins July 1, 2003, based on: (1) the number of Pacific mackerel estimated to comprise each year class at the beginning of 2003, (2) modeled estimates of fishing mortality during 2002, (3) assumptions for natural and fishing mortality through the first half of 2003, and (4) estimates of age-specific growth. Based on this approach, the biomass for July 1, 2003, is 68,924 metric tons (mt). Applying the formula in the FMP results in a harvest guideline of 10,652 mt, which is lower than last year but similar to low harvest guidelines of recent years.

The formula in the FMP uses the following factors to determine the harvest guideline:

1. *The biomass of Pacific mackerel.* For 2003, this estimate is 68,924 mt.

2. *The cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established the cutoff level at 18,200 mt. The cutoff is subtracted from the biomass, leaving 50,724 mt.

3. *The portion of the Pacific mackerel biomass that is in U.S. waters.* This estimate is 70 percent, based on the historical average of larval distribution obtained from scientific cruises and the distribution of the resource obtained from logbooks of fish-spotters. Therefore, the harvestable biomass in U.S. waters is 70 percent of 50,724 mt, that is, 35,507 mt.

4. *The harvest fraction.* This is the percentage of the biomass above 18,200 mt that may be harvested. The FMP established the harvest fraction at 30 percent. The harvest fraction is multiplied by the harvestable biomass in U.S. waters (35,507 mt), which results in 10,652 mt.

Information on the fishery and the stock assessment are found in the report *Stock Assessment of Pacific Mackerel with Recommendations for the 2003–2004 Management Season*, which may be obtained at the address above (see **ADDRESSES**).

Following recommendations of the fishing industry and Subpanel for the 2002/2003 fishing season, NMFS established (1) a 9,500–mt directed fishery for Pacific mackerel beginning July 1, 2002, and (2) an incidental allowance of 40 percent of Pacific mackerel in landings of any CPS, which would be imposed only if the 9,500 mt were harvested. A 1–mt landing of Pacific mackerel per trip would have been allowed if no other CPS (northern anchovy, Pacific sardine, jack mackerel, market squid) were landed during a trip. NMFS implemented a directed and incidental fishery last season in response to concerns about how a low harvest guideline for mackerel might interfere with the sardine fishery. Pacific mackerel is often caught with sardine; therefore, mackerel might have to be discarded, which would increase bycatch of mackerel. As of June 30, 2003, the end of the 2002/2003 fishing season, only 3,884 mt of Pacific mackerel had been landed in the directed fishery; therefore, imposition of an incidental allowance was not necessary.

At its meeting on May 21, 2003, the Subpanel recommended for the 2003/2004 fishing season implementation of a 7,500–mt directed fishery, leaving the remaining 3,152 mt in the event of an incidental fishery. An incidental allowance of 40 percent of Pacific mackerel in landings of any CPS would become effective only after 7,500 mt of Pacific mackerel is estimated to have been harvested. The Subpanel also recommended to allow 1 mt of mackerel to be landed per trip by any fishing vessel during the incidental fishery without landing any other CPS. The

Subpanel recommended that an inseason review of the mackerel season be completed for the March 2004 Council meeting, with the possibility of reopening the directed fishery as an inseason action if sufficient amount of the harvest guideline reserved for the incidental fishery remains unharvested. At its June 2003 meeting, the Council made these recommendations to NMFS. A proposed rule was published on July 29, 2003 (68 FR 44518). The public comment period ended on August 13, 2003. No comments were received.

In view of the above, the following would be implemented for the fishing season that began on July 1, 2003, and continuing through June 30, 2004.

Based on the estimated biomass of 68,924 mt and the formula in the FMP, a harvest guideline of 10,652 mt will be in effect for the fishery that began on July 1, 2003. This harvest guideline will be available for harvest for the fishing season that began at 12:01 a.m. on July 1, 2003, and continues through June 30, 2004, unless the harvest guideline is attained and the fishery is closed before June 30, 2004. All landings made after July 1, 2003, will be counted toward the 2003/2004 harvest guideline of 10,652 mt. There shall be a directed fishery, followed by an incidental fishery of 3,152 mt. An incidental allowance of 40 percent of Pacific mackerel in landings of any CPS will become effective after the date 7,500 mt of Pacific mackerel is estimated to have been harvested. A landing of 1 mt of Pacific mackerel per trip will be permitted during the incidental fishery for trips in which no other CPS is landed.

## Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an initial regulatory flexibility analysis that describes the economic impact the proposed rule, if adopted, would have on small entities. No comments were received on the economic impacts of the proposed rule. NMFS prepared a FRFA for this final rule. The FRFA is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows:

A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** and in the **SUPPLEMENTARY INFORMATION** of this final rule. A harvest guideline is required by the FMP to protect the resource while providing a source of revenue for the fishing industry and other benefits to society. The FMP requires that the harvest guideline be calculated by a specific formula applied to the current estimated biomass. Separating the harvest guideline into a directed and incidental fishery is done to minimize the potential of restricting fishing for other species, such as Pacific sardine, which may occur in mixed schools with Pacific mackerel. If the harvest guideline of Pacific mackerel is reached, a prohibition on landings of Pacific mackerel will hinder the Pacific sardine fishery, increasing the cost of fishing and increasing bycatch of Pacific mackerel. If the Pacific mackerel harvest guideline is large enough to be unlikely to interfere with harvesting other species, there is no need to have an incidental fishery. When the harvest guideline is small, many alternatives to the specific amounts of the harvest guideline allocated to the directed and incidental fisheries are possible, but the amounts essential for an efficient fishery are not predictable because market demand, species availability, and the market for species other than Pacific mackerel vary widely from year to year. The preferred alternative for incidental harvest allowance of 40 percent for the current fishing season was based on experience in recent years. Although changes to the incidental harvest allowance during the fishing season can be made, the Council reserved a significant amount of Pacific mackerel for an incidental fishery and recommended a high incidental harvest rate, which would minimize the need for in-season management actions, thereby minimizing costs and potential interference with the CPS fishery.

This final rule does not duplicate overlap, or conflict with other Federal rules. There are no reporting, record-keeping, or other compliance requirements of the rule.

Approximately 83 vessels harvest Pacific mackerel off the U.S. West Coast. This includes 65 vessels with limited entry permits, which are authorized to fish south of 39° N. lat. (a point north of Monterey, CA). Approximately 18 vessels harvest CPS species in southern California for bait; however, little Pacific mackerel is used for bait. The primary harvesters of Pacific mackerel are the vessels with limited entry permits from Monterey, CA south. Some of the vessels in Monterey may move south to harvest CPS, but may not relocate to harvest Pacific mackerel in all years. All of these vessels would be considered small businesses under the Small Business Administration standards; therefore, there would be no financial impacts resulting from disproportionality between small and large vessels under the proposed action. CPS vessels typically harvest a number of other species, including anchovy, Pacific sardine, and market squid.

Cost data are not available for the 65 vessels with limited entry permits; therefore, average gross revenue per vessel is used as a proxy for changes in profitability. With an estimated increase of $960,000 in gross revenue, the average gross revenue per vessel would be $14,769. Setting a harvest guideline is required by the FMP and Federal regulations. However, for the purposes of measuring impacts, if there is sufficient biomass to allow a fishery, the fishing season begins on July 1 even if a harvest guideline is not determined. Unless action were taken to curtail the fishery, unlimited amounts of Pacific mackerel could be harvested. With such a low biomass, exceeding the MSY would be likely, which would lower the biomass estimate the following year along with the harvest guideline. This would reduce potential future revenue to the fleet. Nevertheless, market conditions and availability of Pacific mackerel in the area of the fishery have a strong effect on landings. Since 1994, fleet revenue has averaged $29.9 million and revenue obtained from Pacific mackerel has averaged 7.8 percent of that revenue. Based on the final harvest guideline, revenue from Pacific mackerel is likely to average less than 7.8 percent because squid landings contribute substantial revenue to the fleet, and squid availability is not expected to be depressed by an El Nino during the 2003–2004 Pacific mackerel season as it was in 1998. In an unrestricted Pacific mackerel fishery, average revenue would be more likely to approach 7.8 percent. In view of the above, the relatively low harvest guideline for the 2003–2004 fishing season will provide a slight increase in revenue and will not have a substantial effect on overall vessel profitability.

The average annual revenue from Pacific mackerel in 2002 in the last 10 years, from 1993 through 2002, is almost $1.8 million. This is the revenue the industry might expect on average given the amount of mackerel available for harvest and market demand. With a harvest guideline of 10,652 mt and an average ex-vessel price per ton of $144.55, potential revenue could be $1.5 million. The harvest guideline for the 2002–2003 fishing season was 12,535 mt; however, only 3,884 mt was landed, primarily because of the lack of availability of the resource in the area of the fishing fleet. Therefore, if the harvest guideline is reached during the 2003–2004 fishing season, there will be an increase of more than $978,000 in ex-vessel revenue above that of the 2002–2003 fishing season. The increase would be beneficial for fishermen and processors, and will benefit the fishing communities in southern California, where virtually all Pacific mackerel is landed. Enforcement and administrative costs (primarily port sampling) remain unchanged because calls at ports of landing are designed not only to assess the status of Pacific mackerel but all species harvested during the year by the CPS fleet. Average conditions are likely to prevail during the 2003–2004 fishing season, that is, ex-vessel revenue derived from Pacific mackerel will fall between $1.8 million and $1.4 million based on a real ex-vessel price that has varied between $172.59/mt and $126.98/mt from 1993 to 2002.

The final action will yield potentially lower revenue from Pacific mackerel than what otherwise might be possible under environmental conditions more favorable to recruitment of Pacific mackerel; however, the low harvest guideline for the 2003–2004 fishing season will provide a small increase in revenue above that of the 2002–2003 fishing season and will not have a substantial effect on overall vessel profitability.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 29, 2003.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

FR Doc. 03–25141 Filed 10–2–03; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 021122286–3036–02; I.D. 092903C]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the pollock total allowable catch (TAC) for Statistical Area 630 of the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), October 2, 2003, through 2400 hrs, A.l.t., December 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The pollock TAC in Statistical Area 630 is 10,339 metric tons (mt) as established by the final 2003 harvest specifications for groundfish of the GOA (68 FR 9924, March 3, 2003).

In accordance with § 679.20(d)(1)(i), the Regional Administrator, has determined that the pollock TAC in Statistical Area 630 has been reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 10,289 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the TAC in Statistical Area 630, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 29, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–25140 Filed 9–30–03; 4:03 pm]

**BILLING CODE 3510–22–S**

# Proposed Rules

**Federal Register**
Vol. 68, No. 192
Friday, October 3, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 58

**[Docket Number DA–03–03]**

**RIN 0581–AC32**

## Increase in Fees for Federal Dairy Grading and Inspection Services

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) proposes to increase the hourly fees charged under the Federal dairy grading and inspection program. Dairy grading and inspection services are voluntary and are financed through user-fees assessed to participants in the program. The hourly fees would be adjusted by 10.7 to 11.8 percent to reflect the increased costs of providing service and to ensure that the program operates on a financially self-supporting basis.

**DATES:** Comments must be received on or before November 3, 2003.

**ADDRESSES:** Interested persons are invited to submit written comments to Duane R. Spomer, Associate Deputy Administrator for Standards and Grading, USDA, AMS, Dairy Programs, STOP 0230, 1400 Independence Avenue, SW., Washington, DC 20250–0230. Comments may also be submitted electronically to *Duane.Spomer@usda.gov* or faxed to (202) 720–2643.

All comments should reference docket number DA–03–03 and note the date and page number of this issue of the **Federal Register**.

Comments received may be inspected at the above address between 8 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except legal holidays.

**FOR FUTHER INFORMATION CONTACT:** Duane R. Spomer, Dairy Programs, (202) 720–3171.

**SUPPLEMENTARY INFORMATION:**

### Background

The Secretary of Agriculture is authorized by the Agricultural Marketing Act of 1946 (AMA), as amended (7 U.S.C. 1621, *et seq.*), to provide voluntary Federal dairy grading and inspection services to facilitate the orderly marketing of dairy products and to enable consumers to obtain the quality of dairy products they desire. The AMA also provides for the collection of reasonable fees from users of the Federal dairy grading and inspection services that cover the cost of providing these services. The hourly fees are established by distributing the program's projected operating costs over the estimated hours of service—revenue hours—provided to users of the service on a yearly basis. Program operating costs include employee salaries and benefits—which account for nearly 80 percent of the non-travel related operating costs—training, and administrative costs. Periodically, the fees must be adjusted to ensure that the program remains financially self-supporting.

AMS regularly reviews its user-fee-financed programs to determine if the fees are adequate. The most recent review determined that the existing fee schedule, effective January 4, 1998, would not generate sufficient revenues to recover operating costs for current and near-term periods while maintaining an adequate reserve balance. Costs in FY 2004 are projected at $5.95 million. Without a fee increase, FY 2004 revenues are projected at $5.71, and the trust fund balance would be $2.09 million. With a fee increase, FY 2004 revenues are projected at $6.14 million, and the trust fund balance would be $2.52 million.

Employee salaries and benefits account for approximately 80.0 percent of the non-travel related operating budget. Travel costs are billed directly to the users of services provided by the Dairy Grading Branch on a cost-recovery basis. Since the January 4, 1998, fee increase, Federal salaries and location adjustments have increased annually. The average salary has increased approximately 17.4 percent during this 6-year period. As a result of these increases, annual salary and benefit costs to the program are approximately $556 thousand more today than in 1998. Inflation has also increased the operational and administrative costs associated with this program, and a fee increase is necessary to sustain the program. If the short fall is allowed to continue, it will place the Dairy Grading Branch in an unstable financial position that will adversely affect its ability to provide dairy grading and inspection services.

This proposal will also generate funds to automate current business practices of the Dairy Grading Branch. Automated business practices will also enhance customer services through improvements in office efficiency and timeliness of providing grading and inspection services and information to users of dairy grading and inspection services.

In view of these increased costs, AMS proposes to increase the hourly fees associated with Federal dairy grading and inspection services. Currently the fees are $51.00 per hour for continuous resident services and $56.00 per hour for non-resident services. The proposed increases would result in a fee of $57.00 per hour for continuous resident services and $62.00 per hour for nonresident services between the hours of 6 a.m. and 6 p.m. The fee for nonresident service between the hours of 6 p.m. and 6 a.m. would be $68.20 per hour. The proposed fees represent increases of $6.00 (11.8 percent) per hour for continuous resident and $6.00 (10.7 percent) per hour for nonresident services. For services performed in excess of 8 hours per day and for services performed on Saturday, Sunday, and legal holidays, 1½ times the base fee would apply and as a result, the fee would increase from $84.00 per hour to $93.00 per hour.

### Executive Order 12866

This proposed rule has been determined to be "not significant" for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

### Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the AMS has considered the economic impact of this proposed action on small entities. It has determined that its provisions would not have a significant economic effect on a substantial number of small entities.

AMS provides voluntary Federal dairy product grading and inspection services to about 350 users of services provided by the Dairy Grading Branch. Manufacturing operations participating in the voluntary plant inspection program have their facility inspected against established construction and sanitation requirements. Dairy products manufactured in facilities complying with the USDA requirements are eligible to be inspected and graded against official quality standards and specifications established by AMS and certain contract provisions between buyer and seller. Products inspected or graded under the program have certificates issued attesting to the product's quality and condition. Many of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). This rule will raise the fee charged to businesses for voluntary inspection and grading services for dairy and related products and the evaluation of food processing equipment. Even though the fee will be raised, the increase is 10.7 percent for nonresident service and 11.8 percent for resident service and will not significantly affect these entities. These businesses are under no obligation to use these voluntary user-fee based services, and any decision on their part to discontinue the use of the services would not prevent them from marketing their products. The AMS estimates that overall this rule would yield an additional $522,000 annually. The proposed rule reflects certain fee increases needed to recover the cost of inspection and grading services rendered in accordance with the Agricultural Marketing Act of 1946, as amended.

The AMS regularly reviews its user-fee financed programs to determine if fees are adequate and if costs are reasonable. The existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance (four months of costs) as called for by Agency policy (AMS Directive 408.1). Without a fee increase, total revenue projections—including travel revenue—for Fiscal Year 2004 would be $5.71 million. Total costs—including travel costs—for the same period of time are projected to increase to $5.95 million. The shortfall, if allowed to continue, would translate into a trust fund balance of $431 thousand or 0.8 months of operating reserve at the end of FY 2007.

This action would raise the hourly fees charged to users of Federal dairy inspection and grading services. AMS estimates this action would provide the Dairy Grading Branch an additional $522 thousand annually. This would generate revenue to recover program costs, automate business practices to minimize the extent of future fee increases, and enhance customer services through improvements in office efficiency and timeliness of providing grading and inspection information to users of these services.

### Civil Justice Reform

This action has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

### Paperwork Reduction Act

This action would not impose any additional reporting or recordkeeping requirements on users of Federal dairy grading and inspection services.

A thirty-day comment period is provided for interested persons to comment on this proposed rule. This period is appropriate in order to implement, as early as possible in FY 2004, any fee changes adopted as a result of this rulemaking action.

### List of Subjects in 7 CFR Part 58

Dairy Products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reason set forth in the preamble, it is proposed that 7 CFR part 58 be amended as follows:

## PART 58—GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS

1. The authority citation for 7 CFR part 58 continues to read as follows:

**Authority:** 7 U.S.C. 1621–1627.

### Subpart A—[Amended]

### § 58.43 [Amended]

2. In § 58.43, "$56.00" is removed and "$62.00" is added in its place, and $61.60" is removed and "$68.20" is added in its place.

### § 58.45 [Amended]

3. In § 58.45, "$51.00" is removed and "$57.00" is added in its place.

Dated: September 30, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03–25112 Filed 10–2–03; 8:45 am]

**BILLING CODE 3410–02–P**

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## NUCLEAR REGULATORY COMMISSION

## 10 CFR Part 52

**[Docket No. PRM 52–1]**

## Nuclear Energy Institute; Denial of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM 52–1) submitted by the Nuclear Energy Institute (NEI or the petitioner). The petitioner requested that the NRC amend its regulations to allow applicants seeking an early site permit (ESP) and a combined license (COL) to use existing information from prior licensing actions as resolved information that has been approved by the NRC and has been subject to a public hearing. The Commission is denying the petition because most of the efficiencies, regulatory stability and predictability which are the object of the petitioner's proposal can be achieved under existing regulations and the guidance that the Commission has directed the NRC staff to prepare. In addition, several key aspects of the petition are based on a misapplication of the "current licensing basis" concept and the Backfit Rule, and the petition does not represent a viable approach for achieving the desired efficiencies.

**ADDRESSES:** Copies of the petition for rulemaking, the public comments received, and the NRC's letter of denial to the petitioner are available for public inspection, or copying for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. These documents are also available on the NRC's rulemaking web site at *http://ruleforum.llnl.gov.*

**FOR FURTHER INFORMATION CONTACT:** Stephen S. Koenick, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1239, e-mail: *ssk2@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

**Background**

By letter dated July 18, 2001, NEI submitted a petition for rulemaking (PRM) to amend 10 CFR part 52. The petitioner requested that the NRC amend its regulations governing ESP and COL applications at existing reactor sites to make the development and regulatory review of the application more efficient. The petitioner proposes to incorporate by reference and treat as resolved, existing information. By so doing, the petitioner wishes to eliminate the need for what it believes is duplicate applicant preparation and NRC review of existing information relating to a licensed facility that has been previously approved by the NRC and has been subject to a public hearing. The petitioner believes that its proposed amendments would enhance the focus and efficiency of the ESP and COL licensing processes.

A notice of receipt of the petition was published in the **Federal Register** on September 24, 2001 (66 FR 48832). The comment period closed on November 8, 2001. The NRC received letters from ten commenters. Nine of the ten commenters were in favor of the petition. Seven of the favorable letters were from nuclear utilities, one was from a vendor, and one was from the petitioner. One commenter, a member of a public advocacy group, opposed the petition. The comments are discussed in this document.

Separately, the NRC is currently conducting rulemaking to amend 10 CFR Part 52. This rulemaking activity addresses lessons learned during previous design certification reviews and addresses certain elements of the ESP, design certification, and COL review processes. NEI requested in its July 18, 2001, letter forwarding the petition that this petition be incorporated into the ongoing rulemaking effort. The Commission has decided further consideration of the petition during the part 52 rulemaking is not necessary, but the Commission will consider any relevant proposals to increase efficiencies, regulatory stability and predictability for part 52 regulatory processes that may be submitted during the public comment period on the proposed Part 52 rule.

**The Petition**

The petitioner expects that existing licensees will order new nuclear power reactors in the future and that many of the new reactors will be located on sites of currently operating plants. Additionally, the petitioner anticipates that the new reactors will rely on a number of the operational programs currently being used by the existing licensees. The petitioner believes that its proposed §§ 52.16 and 52.80 should be added to part 52 to allow the use of existing information as a baseline and to limit the review and opportunity for a hearing to the consideration of changed circumstances, such as new regulations and significant new information, to improve the efficiency of the ESP and COL licensing processes. In its July 18, 2001, letter forwarding the petition, the petitioner requested that the proposed amendments be included in the part 52 rulemaking now in progress.

The petitioner notes that Subpart A of Part 52 contains provisions governing issuance of ESPs. The petitioner proposes that a new § 52.16 be added to Subpart A to allow an ESP applicant to incorporate, by reference, all or portions of the "current licensing basis" for an existing reactor site to the extent that it is valid and applicable to one or more additional nuclear power plants that "fit within the ESP envelope." The proposed § 52.16 also would require that any information incorporated by reference be augmented to include:

1. Significant new safety or environmental information that materially affects the ability of the site to support the proposed additional nuclear facility;
2. Information regarding the cumulative radiological and environmental impacts of the existing facility and the facility as described in the ESP application;
3. An analysis of the potential safety impacts of the existing facility on the suitability of the site for the facility as described in the ESP application;
4. An analysis of the potential safety impacts on the existing facility from the facility as described in the ESP application; and
5. Information that addresses regulations applicable to siting issues that became effective after licensing of the current facility to the extent that these regulations are not addressed in the current licensing basis.

The petitioner states that under proposed § 52.16, the NRC would treat those matters incorporated by reference as resolved, except to the extent that those matters are subject to augmentation with the new information described above. The petitioner also states that this section would allow the NRC to impose a change in the application with respect to the information incorporated by reference to the extent that the change satisfies the principles underlying the Backfit Rule in 10 CFR 50.109. The petitioner believes that in preparing the environmental impact statement (EIS) for the ESP, the NRC should adopt the applicable portions of the existing EIS for the site, modified or supplemented as necessary to reflect the NRC's review of the new environmental information proposed in § 52.16.

The petitioner notes that subpart C of 10 CFR part 52 contains provisions governing issuance of COLs. The petitioner states that proposed § 52.60, with provisions similar to those proposed in § 52.16, would be added to Subpart C. The petitioner also states that proposed § 52.80 would allow a COL applicant to incorporate by reference programmatic information identified in the "current licensing basis" of an existing licensed facility located at the same site or at a site owned or operated by the same licensee. Programmatic information, as identified by the petitioner, includes, but is not limited to, radiological emergency response plans, organizational structure, administrative controls to assure safe operation, plans for conducting normal operations, physical security plans, and quality assurance programs. The proposed § 52.80 would require this programmatic information to be augmented to include information on regulations that became effective after the existing facility was licensed to the extent that these regulations are not addressed by the current licensing basis for the existing facility. The petitioner states that under this proposed section, the NRC would treat those matters incorporated by reference from the existing facility as resolved, except to the extent that there is new information. The petitioner believes that the NRC could direct that a change be made in the COL application with respect to the information incorporated by reference to the extent that the change satisfies the principles underlying the Backfit Rule, 10 CFR 50.109.

The petitioner states that the proposed amendments would not only be consistent with NRC's mission to ensure adequate protection of the public health and safety, the common defense and security, and the environment, but also would focus NRC reviews on new information and "the incremental impact of an additional unit at an existing site." The petitioner also states that the proposed amendments would enhance the efficiency of the regulatory process, reduce regulatory burden by eliminating duplicate reviews of matters resolved in previous proceedings, and focus agency resources on new and material information and the impact of a potential new plant on the site.

**Public Comments on the Petition**

The NRC received ten comments in response to the petition. Nine of the ten comments were in favor of the petition. Seven of the favorable comments were from nuclear utilities, one was from a vendor, and one was from the petitioner. These commenters summarized the arguments in the petition but provided no additional bases in support of the petition. They suggested that the petition be included in the current Part 52 rulemaking activity. One commenter, a member of a public advocacy group, opposed the petition.

**Reasons for Denial**

The petition requests that the ESP and COL processes set forth in 10 CFR part 52 be amended to allow an applicant to use existing information supplied to support the license for a different facility in an ESP or a COL application and to treat the information as resolved. The petition also discusses prior NRC activities that the petitioner claims are precedent for the petitioner's proposal. The Commission recognizes the advantages of licensing plants in a mature industry environment, rather than an emerging industry as was the case for the majority of the existing plant licenses. For example, referencing already proven programs utilized by a mature industry is much less uncertain than new programs proposed for an emerging industry. To the extent practicable, the Commission expects applicants for ESPs and COLs to rely on previously filed siting and programmatic information, as is permitted under existing NRC regulations. To ensure that future license applicants and the public understand the staff's review process, the Commission has directed the staff to articulate in appropriate guidance documents the specific criteria it will use to make its determination as to whether new siting information or a program modification is necessary. However, there are limitations to using previously filed information and insufficient legal bases for the petitioner's proposals. Existing information may be referenced, however, applicants need to demonstrate the information is technically applicable to the prospective licensing action. In addition, this information cannot be treated as resolved for the purposes of a hearing, in as much as principles of res judicata and collateral estoppel would not provide sufficient legal bases to support the petitioner's rulemaking proposal. Therefore, for these reasons, the Commission is denying the petition.

In addition, certain key aspects of the proposal are based on a misapplication of the "current licensing basis" concept and the Backfit Rule. For ESPs and COLs there are no "current licensing bases" that exist with respect to a new facility-including a new facility to be located adjacent to a site of an existing licensed facility.

*Early Site Permits*

According to the petitioner's proposal, the siting information to be used as a basis for evaluating the acceptability of an ESP application for a site that is near a site for which a construction permit or license has been previously issued by the NRC[1] would be established, in part, by the siting information which the applicant proposes to "incorporate by reference" from the "current licensing basis" for the prior construction permit or license. *See* proposed § 52.16(a). The applicant would have to supplement the incorporated information to the extent that there is significant new information on, inter alia, the ability of the site to support the additional nuclear facility contemplated by the applicant, information on cumulative radiological impacts, and information addressing new regulations. *See* proposed § 52.16(b). The information incorporated by reference that need not be supplemented under paragraph (b), would be treated as resolved, unless the NRC met the Backfit Rule. *See* proposed § 52.16(d). The information incorporated by reference that must be supplemented under paragraph (b) would be subject to NRC review and approval, and the Backfit Rule would not apply. A similar approach would be used for environmental information. *See* proposed § 52.16(c) and (f) [sic].

Use of Information From Prior Licensing Actions

The petitioner's proposal implies that prior regulatory determinations by the NRC staff and licensing decisions in NRC adjudicatory proceedings with respect to siting for currently licensed plants should have preclusive effect in proceedings for ESPs to be located at or near a site for which a construction permit or operating license has been issued for another facility. The Commission recognizes that practical efficiencies may occur through incorporation of previously filed information or reference in some instances to prior adjudicatory hearings.

The Commission's regulations and guidance already afford an applicant the opportunity to use information from prior licensing decisions. Under § 50.32, "Elimination of Repetition," an applicant may incorporate by reference information already filed with the Commission. This regulatory provision may be used by an ESP applicant to reference information from existing sources, including the safety analysis report and the environmental report on the facility which is near the location that the applicant proposes to obtain an ESP for. Although the current part 52 does not contain a provision that explicitly allows ESP applicants to take advantage of § 50.32, it was the intent of the Commission that the licensing provisions in Part 50 would be applicable to the licensing processes in Part 52. *See* SECY–02–0077 (May 8, 2002; ADAMS Accession No.: ML021040011), Attachment at p.10.

With respect to the agency's compliance with the National Environmental Policy Act (NEPA), the current part 51 regulations already permit an applicant or licensee to use prior information. Following the receipt of an ESP application, the NRC would conduct a scoping process involving interested stakeholders. Under the provisions of § 51.29(a), the NRC would use the scoping process to "identify and eliminate from detailed study those issues which are peripheral or are not significant or which have been covered by prior environmental review" and to identify other environmental assessments and impact statements which are "related to but are not part of the scope of the statement under consideration." Another process to use prior information is "tiering." Tiering allows federal agencies to rely on previous environmental assessments (EAs) and EISs to aid in the presentation of issues, eliminate repetition, or reduce the size of an EIS. Tiering is encouraged by the Council on Environmental Quality (*see* 40 CFR 1520.20), and the NRC's regulations permit the use of tiering and incorporation by reference (*see* 10 CFR part 51, Appendix A.1.(b)). The Commission expects that both scoping and tiering with be used in appropriate circumstances to limit and focus the environmental issues to be addressed in an EIS for an ESP application for a site near an existing licensed facility.

The Commission also expects that the NRC staff's licensing review of an application for an ESP located at or near the same site as a current or formerly licensed facility will draw upon, and be informed by, the body of information that has already been amassed for that site as part of the previous licensing review. After demonstrating the relevance and technical adequacy of the baseline of information for that site, the ESP application and the NRC's review should be focused on determining whether (1) there is significant new information for determining site characteristics; (2) there are new methodologies or techniques for collecting and analyzing information on site characteristics which have been developed since the earlier review and which are now accepted by the staff for conducting such collections and analyses; and (3) the regulatory requirements governing the site evaluation and the criteria for acceptance of the site have changed since the earlier review. On December 23, 2002, the NRC staff issued NRR Review Standard, RS–002, "Processing Applications for Early Site Permits: Draft for Interim Use and Public Comment," (ADAMS Accession No.: ML023530045). The objective of this document is to ensure that staff reviews of ESP applications and associated environmental reports (ERs) are efficient, effective, and consistent, and that the reviews result in high-quality products. The primary source of guidance for the site safety assessment review is applicable portions of NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," as modified for the ESP review. The primary source of guidance for the ER review is applicable portions of NUREG–1555, "Standard Review Plans for Environmental Reviews for Nuclear Power Plants," as supplemented by RS–002. The Commission has directed the staff to develop specific criteria that the staff will use in making its determination whether former siting information must be supplemented and new findings made with respect to an ESP application at or near a previously licensed facility. In developing this guidance, the staff will consider the five criteria in proposed § 52.16 for augmenting information. RS–002 and the specific criteria will assist the NRC's review in determining whether the referenced information is technically relevant to the ESP and focus the review on newly identified issues of significant technical merit.

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[1] In pre-application interactions, two of the prospective ESP applicants have identified the physical locations of the proposed facilities to be at different locations on the proposed sites than were considered during the previous licensing actions.

With respect to adjudicatory decisions, it is clear that Commission and Licensing Board holdings on legal issues in an earlier proceeding constitute precedent for all subsequent proceedings where the same legal issue is presented. The Commission also believes that, apart from the issue resolution provisions in Part 52 applicable to an ESP referenced in a COL application, the doctrines of *res judicata* (or "claim preclusion") and collateral estoppel (or "issue preclusion") may be available to preclude certain claims and issues from being relitigated in an ESP proceeding where the same party has raised the claims and issues in an earlier licensing proceeding at or near a previously licensed facility. However, the Commission does not believe that either *res judicata* or collateral estoppel provides a sufficient basis for adopting the petitioner's rulemaking proposal. *Res judicata* applies where (1) there has been a final adjudication of the merits of a particular cause of action or claim by a tribunal of competent jurisdiction; and (2) one of the parties to that adjudication (or party in privity with such party) subsequently seeks to advance or defeat the same cause of action or claim in either the same proceeding or in a separate proceeding involving the parties to the first action or their privies. Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), CLI–74–12, 7 AEC 203, 212 (1974). The related doctrine of collateral estoppel applies when (1) the issue for which preclusion is sought is the same issue involved in the previous action; (2) the issue was actually litigated; (3) the issue was determined by a valid final judgment; and (4) determination of the issue was essential to the prior judgment. Carolina Power and Light Co. and North Carolina Eastern Municipal Power Agency (Shearon Harris Nuclear Power Plant), ALAB–837, 23 NRC 525, 536–37 (1986); see also Alabama Power Co. (Joseph M. Farley Nuclear Power Plant, Units 1 and 2), ALAB–182, 7 AEC 210, 213 (1974)(collateral estoppel, unlike *res judicata*, does not require an identity between two causes of action). Additionally, the party in the second litigation, who is to be bound by the judgment of the prior litigation, must be in privity to a party in the earlier litigation.[2] Id. at 1560. The primary purpose of collateral estoppel and *res judicata* is to "protec[t] litigants from the burden of relitigating an identical issue with the same party or his privy * * *." *Parklane Hosiery Co.* v. *Shore*, 439 U.S. 322, 326 (1979). Both doctrines operate in the interest of fairness and efficient case management to bar a party to a prior litigation from relitigating an issue or claim resolved adverse to it in the prior litigation. Neither of these legal doctrines provides a basis for the petitioner's rulemaking proposals, inasmuch as the petitioner's proposed rule would attempt to bar any party, including a nonparty to the original proceeding, from raising the issue in the subsequent ESP proceeding whose application references the earlier proceeding.

The Commission does not agree with the petitioner's suggestion that the petitioner's proposed rule is akin to the License Renewal Rule, 10 CFR part 54, the generic environmental impact statement (GEIS) for license renewal which was adopted by rule in part 51, or part 52, each of which provide for a delineated scope of issue resolution and a bar to litigation. The limited scope of review at license renewal under part 54 was supported by technical bases which were referenced in the part 54 rulemaking. (See 56 FR 6443; December 13, 1991, and 60 FR 22461; May 8, 1995). For the GEIS supporting license renewal, the environmental issues were resolved on their merits as part of a rulemaking adopting the GEIS. (See 10 CFR part 51, appendix B to subpart A; 61 FR 66564; December 18, 1996). By contrast, the petitioner's proposed rule does not include any reviews of the technical basis or a rulemaking finding on the merits of the issues that would be precluded in later proceedings. With respect to part 52, the Commission explicitly stated that the rule establishes a process for determining the adequacy of siting (including related environmental issues) for a period of up to 20 years for the purpose of providing issue resolution in subsequent proceedings where the ESP is referenced. (See 54 FR at 15372, 15378; April 16, 1989). The public is provided notice and opportunity to participate in the ESP through a request for hearing. Thus, Part 52 establishes a regulatory regime whereby the public has fair notice that siting issues must be raised in the ESP proceedings, inasmuch as the Commission's resolution of the adequacy of siting will ordinarily be binding in a subsequent proceeding referencing that ESP. By contrast, when a current plant's siting decisions were considered in the construction permit proceeding, there was no knowledge or contemplation that issues reviewed and resolved in that construction permit proceeding would be given preclusive effect in another proceeding for an entirely different plant to be licensed to a different location on the same site and perhaps an entirely different licensee, as is contemplated under the petitioner's proposed rule. For these reasons, the Commission does not find that any of these rulemakings constitute a valid legal model for the petitioner's proposed rulemaking.

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[2] The concept of privity is the same for *res judicata* and collateral estoppel. It pertains to the relationship between a party to a suit and a person who was not a party, but whose interest in the action was such that he will be bound by the final judgment as if he were a party

Misapplication of "Current Licensing Basis" Concept and the Backfit Rule

While the Commission expects that practical efficiencies, as described above, would be realized from using previously filed information, the petitioner's proposal to treat such information as resolved does not represent a viable approach. Paragraphs (b) through (f) of proposed § 52.16 constitute the heart of petitioner's proposal, viz., resolution of issues in an ESP proceeding. However, the NRC regards the proposal as a misapplication of the "current licensing basis" concept and the Backfit Rule. The petitioner's proposal uses the term "current licensing basis" in the context of a site for which a construction permit or license has been issued for a different facility at a different location on the site. The NRC developed this concept for renewing nuclear power plant operating licenses under 10 CFR part 54. The NRC uses the concept to determine the scope of the NRC safety review necessary to support the NRC's decision to renew a nuclear power plant's operating license. The NRC limited the scope of the NRC safety review for license renewal partly because the NRC has already made a licensing finding for the facility. Furthermore, as part of the Part 54 rulemaking, the NRC completed a comprehensive examination of NRC's post-licensing regulatory activities and determined that for all facilities the current licensing bases have been subject to continuing NRC oversight and have been appropriately updated. Thus, a broad-scope safety review against current requirements is unnecessary at license renewal. The renewed license is issued to the same facility for which the NRC previously granted operating authority, and except for aging management programs, the operating authority for the facility under the renewed license is identical to the authority under the previous operating license. By contrast, there is no "current licensing basis" for a facility not yet granted a license, even if it is located at a site for which a construction permit or operating license has been issued to another facility.

More importantly, information for an existing facility, even if updated in accordance with the NRC's regulatory requirements and oversight activities, may not be applicable from a technical basis to a new facility to be located on the same site as an existing licensed facility. The NRC considered two representative areas that could arise in reviewing an ESP application, to determine if the NRC's findings on these subjects could be used for a new facility to be constructed at the same site without change or supplementation, in order to avoid duplicative NRC review and approval. These areas are geotechnical information and meteorology. In both of these areas, which would not be expected to have significant changes from earlier reviews, the NRC concluded that simple application of the updated information would be insufficient to demonstrate compliance with regulatory requirements in effect at the time of the ESP application (which petitioner's proposal would require, see § 52.16(d)), and accordingly there would be little basis for avoiding necessary NRC review and approval.

In the geotechnical area, the NRC accepted the suitability of the site for construction and operation of a specific facility design. The NRC's findings were based upon the applicant's subsurface investigations to obtain the necessary geologic and seismic data, and the applicant's evaluations of the data to determine the suitability of the site for that facility's reactor design. Even if the proposed ESP is to be located precisely on the footprint of a previously-approved facility that has not been constructed, the NRC believes that additional information must be submitted by the applicant and evaluated by the NRC to demonstrate that the site is suitable.

The applicant would need to demonstrate that the data originally collected to determine the suitability of a specific reactor type to be constructed and operated at a specific location supports the suitability of the site for some as-yet-unspecified design. The certified designs and contemplated designs provide a range of depths of embedment and implications for hydrological radionuclide transport. In addition, the applicant needs to demonstrate that the data collected more than 20 years ago for example is still relevant, given the current knowledge of regional seismic activity, current data collection and analytical methods, and that the acceptance criteria of the previous licensing action are still relevant. There have been advances in the knowledge of seismic activity in the United States and how ground motion propagates from the seismic source to the site, particularly in seismic source zones such as the New Madrid and the Wabash Valley regions in the Midwest. There have been changes in the state-of-the-art techniques for performing subsurface investigations, (*e.g.*, cone penetrometer testing and suspension logging inside one of the deep boreholes rather than across two boreholes). Furthermore, the reactor site criteria in 10 CFR part 100 were significantly revised in 1996, (61 FR 65176, December 11, 1996). Therefore, none of the currently licensed nuclear plants utilized current reactor siting criteria. The applicant would have to supplement the geotechnic information as necessary to meet the current requirements of the revised Part 100.

The NRC would need to evaluate the geotechnical and seismic information against the current knowledge of regional seismic activity, the current data collection and analytical methods, and the current acceptance criteria to make its safety determination against the revised Part 100. Thus, even in the most favorable case, the NRC believes that additional information, analyses and evaluation is necessary to determine whether existing findings on geotechnical data are applicable to a proposed facility which may be constructed on the same footprint as a previously-approved but unconstructed facility.

These concerns about applicability of the data for the existing facility and review effort would only increase if the ESP was for an alternate location on the site. The distance between the existing licensed facility (or footprint for a facility that was authorized but not constructed) and the proposed facility may result in differences in site suitability. Localized subsurface faults which were not adequately characterized during the previous licensing action could bring representativeness of the incorporated geotechnical information into question. There may be other differences in the characteristics of local subsurface materials (*e.g.*, depth of bedrock and soil types) between the existing licensed facility (or footprint for a facility that was authorized but not constructed) and the proposed facility, that may render inapplicable the original data and findings with respect to geotechnical characteristics (or at least require supplementing the original data and findings).

In the area of meteorology, the existing licensee will have collected data that the NRC previously determined was sufficiently representative of the meteorological environment for the (then proposed) facility. While this data will have been supplemented to a certain extent by data collected throughout the period of operation of the facility, the type of data that has been collected in many cases has been reduced to a limited set necessary to support emergency action determinations. Also, as a technical matter, data collected to support the original findings may not be representative of current meteorological conditions at the proposed site. Localized changes such as changes in land use, the erection of new structures and the removal of existing structures, have the capability to significantly alter the previous characterization of the site's meteorology. These changes in local conditions may not be reflected in the licensing basis for the plant, inasmuch as they are unnecessary to support emergency action determinations. Furthermore, the meteorological data previously collected to support the existing facility's design may be insufficient to characterize the release characteristics unique to the specific design (or the envelope of designs) that may be built under the ESP. For example, the NRC guidance contains different consequence analyses, viz., elevated release versus ground-level release (and therefore the meteorological data necessary to support such analyses), depending upon whether the facility is a boiling water reactor or a pressurized water reactor. The application and review effort would only increase if the ESP was for an alternate location on the site. The distance between the existing licensed facility (or footprint for a facility that was authorized but not constructed) and the proposed facility may result in sufficient terrain differences or orientation differences to call into question the applicability of the meteorological data collected at the existing facility to a facility that may be constructed under the proposed ESP.

In summary, prior NRC findings with respect to the characteristics of a site and compliance with the then-current regulatory requirements with respect to an existing facility, updated in accordance with existing requirements and practices, does not ensure that the data is sufficiently accurate and comprehensive to support a current ESP siting determination. Thus, the petitioner's proposal to extend the concept of a "current licensing basis" in the manner contemplated by its proposed § 52.16 is technically inappropriate.

The NRC also believes that the petitioner's proposal would essentially extend the Backfit Rule to situations for which the policies underlying the Backfit Rule are not applicable. The Backfit Rule was intended to address a licensee's expectation of regulatory stability. A licensee expects that the terms and conditions of the licensee's authority under a license will not be changed after the NRC has issued the license, except as permitted in the Backfit Rule. The Backfit Rule established regulatory criteria to be used by the NRC in evaluating the application to existing facilities of proposed new and changed regulatory requirements and changes in NRC interpretations and findings with respect to compliance with those requirements.

An ESP applicant, albeit one that already possesses a construction permit or operating license at the site for which an ESP is being sought, has no regulatory expectation that the NRC's determination of whether the application complies with applicable regulatory standards would be constrained by the "current licensing basis" for the earlier-issued construction permit or operating license at the site. An ESP application, submitted years after the issuance of the construction permit or license for an existing facility on the site, cannot reasonably be viewed as implicating the "regulatory stability" concept underlying the current Backfit Rule. The NRC further notes that the petitioner's proposal would also permit an ESP applicant that does not have a construction permit or license at the site to reference and treat as resolved the "current licensing basis" of another licensee's facility located at the proposed ESP site. Again, under current regulatory practice the ESP applicant does not have any reasonable expectation of regulatory stability with respect to its new application, inasmuch as the NRC has not taken any licensing action for the ESP applicant with respect to a facility located at that site.

### Summary of Denial of Petitioner's ESP Proposal

In summary, most of the efficiencies and regulatory stability and predictability which are the object of the petitioner's proposal can be achieved under existing regulations and the guidance that the Commission has directed the staff to prepare. In addition, key aspects of the petition are based on a misapplication of the "current licensing basis" concept and the Backfit Rule, and the petition does not represent a viable approach for achieving the desired efficiencies. For these reasons, the Commission is denying the ESP proposal as set forth in the petition.

### *Combined Licenses*

According to the petitioner's proposal, a COL applicant for a facility to be located at a site with a currently licensed facility[3] and a COL applicant who holds a facility license at another site, may incorporate by reference the siting information described in proposed § 52.16 from the "current licensing basis" of the currently licensed facility. The incorporation would be subject to the requirements in proposed § 52.16. *See* proposed § 52.80(a). In addition, a COL applicant for a facility to be located at a site where the COL applicant currently holds a facility license, and a COL applicant who holds a facility license at another site, may incorporate by reference the information required to address certain NRC requirements. These "programmatic requirements," which are delineated in proposed § 52.80(b), include: (1) Emergency preparedness plans under § 50.33(g) and compliance with the emergency preparedness provisions of 10 CFR part 50, appendix E; (2) physical security plans under 10 CFR 50.34(c) and safeguard contingency plans under § 50.34(d); (3) the quality assurance (QA) program under § 50.34(f)(3)(iii); and (4) the managerial plan for design and construction activities under § 50.34(f)(3)(vii). The COL applicant would have to supplement the incorporated information to the extent that there are new regulations. *See* proposed § 52.80(b)(1).

The bases for evaluating the acceptability of the COL application would be established, in part, by the siting and programmatic information for which the applicant proposes to incorporate by reference from the "current licensing basis" of an existing licensed facility located at the same site or another site owned or operated by the COL applicant. *See* proposed § 52.80(b). The information incorporated by reference that need not be supplemented in accordance with § 52.16(b) or (c), or § 52.80(b)(1), would be treated as resolved, unless the NRC complies with the Backfit Rule. *See* proposed § 52.16(d). The information incorporated by reference that must be supplemented under § 52.16(b) or (c), or § 52.80(b)(1) would be subject to NRC review and approval, and the Backfit Rule would not apply.

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[3] The petitioner's proposal would, by its terms, permit an applicant to seek a COL at a site with a facility whose license is not held by the applicant.

## Use of Information From Prior Licensing Actions

The petitioner's proposals to give prior NRC staff regulatory determinations and NRC adjudicatory decisions preclusive effect in subsequent COL proceedings are apparently rooted in a desire to maximize regulatory efficiency and predictability. The Commission shares the petitioner's desire that the regulatory processes for review and approval of COLs be fair and efficient and maximize regulatory stability and predictability. Clearly, the nature of review of a program for a new facility, which is based, in whole or in part, on a program currently being implemented at a licensed facility, should be different in approach than where the NRC is reviewing the adequacy of the program for the first time. Moreover, the Commission also recognizes that the context in which programs are reviewed for a new plant is fundamentally different than when currently licensed plants were being reviewed and licensed. The regulatory standards and review criteria for many existing plants were being developed for the first time or were evolving concurrently with the original licensing of those plants. The NRC's review of the adequacy of an operating license applicant's proposed operational programs occurred without extensive operational experience or data, and therefore, took conservative approaches to predicting the efficacy of such programs. Today, however, the NRC has the benefit of a body of regulatory requirements developed over a 45-year time span, and substantial experience and knowledge collected over 40 years on over 100 plants with thousands of reactor-years of operation. The Commission believes that the licensing review process can take advantage of this body of information and experience to focus the NRC's review of COL applications when the application references an existing program currently being implemented at another nuclear power plant. Indeed, there are substantial regulatory advantages where an applicant proposes to implement an existing proven program at a new plant, if the applicant demonstrates that such reliance is appropriate and technically justified. A mature program is likely to have been revised to reflect corrective actions and lessons learned. Application of such a program to a similar situation at a different nuclear power plant may be preferable to developing and implementing a completely new, untested program. This approach would likely avoid the need for overly conservative program elements to compensate for unknowns and unproven assumptions or correcting errors in ineffective programs.

Therefore, the Commission expects that the licensing review for COLs that rely upon existing programs at other plants will draw upon, and be informed by, the body of information associated with that program's approval and implementation over the years, so that review will be focused on technical and legal (or regulatory) issues of merit, and the review will avoid re-review of matters for which there does not appear to be significant new information or technical considerations. In such cases, the NRC's review should be focused on determining whether (1) there is significant new information on relevant issues; (2) there are new methodologies or techniques for complying with relevant regulatory requirements, developed since the original program review and approval, which are now accepted as the "industry norm" for complying with that requirement; and (3) the relevant regulatory requirements governing the evaluation and approval of that program have changed since the earlier review and the existing program was not required to comply with the updated requirements. The Standard Review Plan (SRP) contains the staff's acceptance criteria that would be used in reviewing new applications, including COLs. The Commission has directed the staff to develop criteria for review of COL applications when the application references programmatic information from another license.[4] The Commission believes that the SRP, together with the review guidance to be developed, will provide the licensing discipline necessary to ensure that the NRC's review of COL applications is appropriately focused.

In addition, the Commission reiterates that prior adjudicatory holdings on matters of law have precedential weight in subsequent adjudicatory proceedings, and that there may be occasions where *res judicata* and collateral estoppel may be applied in a COL proceeding to avoid relitigation of claims and issues raised by the same parties in an earlier proceeding. However, for the reasons discussed in the context of ESPs, the Commission does not believe that *res judicata* or collateral estoppel would provide a legal basis for the petitioner's rulemaking proposals on COLs.

## Misapplication of "Current Licensing Basis" Concept and the Backfit Rule

As with the ESPs, the Commission expects practical efficiencies may be realized from using previously filed information. However, the petitioner's proposal to treat such information as resolved does not represent a viable approach. The fundamental objective of the petitioner's proposal, viz., resolution of issues and regulatory standards in a COL proceeding referencing an earlier licensing decision, appears to be based on a misapplication of the "current licensing basis" concept and backfitting. The "current licensing basis" concept was intended only to apply to renewal of a license for a nuclear power plant. It was not intended, and has no regulatory meaning, in the context of licensing another separate and unrelated facility that may be located at the same site—much less a separate facility located at a different site. Moreover, with respect to information on compliance with programmatic requirements which may be incorporated by reference, proposed § 52.80(b) does not require the COL applicant to demonstrate that the programmatic information is relevant and technically applicable to the proposed COL site and facility.[5] For example, under the petitioner's proposal, an applicant referencing an emergency plan from a licensee-owned facility located at a different site need not demonstrate that the siren alerting system for the referenced plant would be effective at the COL site. Thus, the petitioner's proposal to extend the "current licensing basis" concept in the manner contemplated by its proposed § 52.80 is not acceptable.

In addition, the NRC does not believe that programmatic information for an existing facility, even if that information was routinely updated in accordance with the NRC's regulatory requirements (*e.g.*, 10 CFR 50.71(e) and 10 CFR 50.59) and oversight activities, may simply be "imported" and used at a new facility either at the same site (or a different site). In general, it is unlikely that such wholesale "importation" of programmatic information without change or supplementation to reflect the new facility and its location can be justified without NRC evaluation of the acceptability of the information with respect to the specific characteristics and location of the proposed facility. The NRC examined three programmatic areas to determine whether programmatic information for an existing facility may be used without change or supplementation at a different facility, in order to avoid repetitive NRC review and approval: (1) Physical protection, (2) emergency preparedness, and (3) quality assurance (QA).

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[4] The COL guidance will use the same ESP criteria for assessing siting information developed in an earlier licensing proceeding, as described in the section on ESPs.

[5] This may have been a drafting error on the part of NEI, which could be corrected by including a provision in the proposed § 52.80 requiring the COL applicant to demonstrate that the programmatic information from the referenced site and facility is relevant and technically applicable to the proposed COL site and facility. However, inclusion of such a provision would not address the other concerns with respect to "current licensing basis," backfitting, and regulatory effectiveness.

Proposed § 52.80(c) would provide issue resolution for all or part of the physical security and safeguards contingency plans (including compliance with the provisions of 10 CFR part 73 under § 50.34(c) and § 50.34(d)), which would be incorporated by reference either from an already licensed facility at the site for the proposed COL or from a facility at another site whose license is held by the COL applicant. However, the adequacy of physical protection commitments for a nuclear power reactor depends on the design of the plant, the nature of the site, the location and configuration of the plant on the site (including its proximity to other structures), and the physical characteristics of the surrounding land. Adding a new facility to an existing site—even if located on the footprint of a previously approved but never built facility—would necessitate a reevaluation of the existing physical security plan and the safeguards contingency plan to determine if the proposed facility meets the eight elements of physical security in § 73.55 and the five categories of information for the safeguards contingency plan in appendix C to part 73.[6] For example, the existing physical barriers on the site would need to be evaluated to assure that there are two physical barriers of the appropriate size in place for the vital area of the proposed facility. With respect to the physical security organization, the NRC would evaluate whether the guard force is sufficient to perform their assigned duties and responsibilities for both the existing and proposed facility. Thus, it is unlikely that programmatic information on safeguards and security for an existing facility could be used without change or supplementation at a different facility, with a concomitant need for NRC review and approval of that safeguards and security program.

Proposed § 52.80(c) would provide issue resolution for all or part of an emergency plan (including compliance with 10 CFR part 50, appendix E, and the requirements for the size and configuration of emergency planning zones under § 50.33(g) and § 50.34(b)(6)(v)), which would be incorporated by reference either from an already licensed facility at the site for the proposed COL or from a facility at another site whose license is held by the COL applicant. If the COL applicant referenced an emergency plan for a facility at the site for which the COL would be issued, the NRC believes that the addition of a new facility could have a bearing on whether the existing plans meet the 16 planning standards in 10 CFR 50.47. In addition, the NRC must evaluate the impacts of the proposed facility on the existing facility, as well as any impact the existing facility would have on the proposed facility. The design of the facility determines the type and severity of accidents which need to be addressed by the emergency plan. If the new facility used a different design than the existing facility, the existing emergency plan would need to be evaluated to determine whether it can accommodate the type and severity of accidents associated with the new facility, or whether new provisions (*e.g.*, emergency action levels tailored to the particular accident sequences of the proposed COL facility) are necessary. If the plan cannot accommodate the accidents, the plan would have to be supplemented. For example, with respect to emergency planning zones (EPZs), the NRC would have to determine whether the specific location and configuration of the proposed facility would lead to some adjustment to the existing EPZ. Furthermore, the protective actions associated with the EPZs may not be appropriate for a different design and radioactive inventory associated with the proposed facility. For a COL applicant who references an emergency plan from another site, a new EPZ would have to be developed inasmuch as the existing facility's EPZ could not be used at the COL site. The NRC would also have to identify and consider any differences between the existing site and the proposed COL site in order to determine whether the existing emergency plan meets the § 50.47(b) planning standards. Therefore, the Commission does not believe that emergency planning information for an existing facility could be used at a different facility without change or supplementation, and a concomitant need for NRC review and approval of that emergency planning information.

Proposed § 52.80(c) would provide issue resolution for all or part of a QA program (including compliance with the provisions of appendix B to part 50, under § 50.34(b)(6)(ii), § 50.34(f)(3)(i), § 50.34(f)(3)(ii) and § 50.34(f)(3)(vii)), which would be incorporated by reference either from an already licensed facility at the site for the proposed COL or a facility at another site whose license is held by the COL applicant. The petitioner's proposal does not distinguish between construction and operation. Operational QA programs cannot be used for design and construction of a new facility because the scope and nature of activities performed during construction are different than during operation. A construction QA program focuses on design, procurement, fabrication and construction, whereas an operational QA program focuses on maintenance, modification, and operation. Furthermore, the QA organization is different for construction than for operation because a construction QA program relies heavily on an architect-engineer and an operational QA program relies on licensee personnel. If the COL applicant intended to rely on a construction QA program which it used in construction of an existing facility (either on site or at another site), an extended period of time might have elapsed since the major provisions of that construction QA program had been utilized. Thus, the construction QA program might not address the design, procurement, fabrication and construction activities that the COL applicant proposes to use in the construction of the proposed facility. Moreover, applicable industry standards and practices for construction QA have evolved, so that the NRC may not consider the original construction QA programs to be acceptable for constructing a new facility. For example, American Society of Mechanical Engineers (ASME) NQA–1, "Quality Assurance Program Requirements for Nuclear Facilities," which was referenced in the construction QA programs for many existing plants, has undergone numerous revisions since the 1970s editions. Since the original endorsement of these industry standards, the NRC has withdrawn its endorsement of several quality standards as more effective standards developed by industry groups became available. Accordingly, any construction QA program that was used for an existing facility could not be used at a new facility without substantial change, and concomitant need for NRC review and approval of those changes.

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[6] The NRC notes that a proposed facility located on a site with an existing facility could adversely affect the adequacy of the existing facility's physical security and safeguards contingency plans. However, unlike the provisions in proposed § 52.16(b)(1) and (4), § 52.80 would not require the COL applicant to address the impacts of the proposed facility on the existing facility, including cumulative impacts.

With respect to operational QA, the NRC would need to review the existing operational QA program to assure the licensee's commitments in the QA program area are applicable to the proposed facility. The adequacy of QA program elements depends upon facility design, fabrication and construction technologies, and how systems, structures, and components (SSCs) and services are procured. For example, modular construction, in which portions of the plant are prefabricated off site, transported to the site, and integrated into the portions of the plant constructed on site, will likely involve different QA programs, procedures, and considerations than those for (current generation) plants constructed entirely on site. Another example is the use of SSCs which are procured from sources outside the United States. These components may be manufactured, tested, and qualified to different standards than the standards of the COL applicant's construction QA program. While there may not be the need to make substantial changes to an operational QA program at an existing plant, the Commission believes that an operational QA program could not be used with some changes or supplementation. Those changes or supplementation would need to be reviewed and approved by the NRC.

Based upon the review of these three areas, the NRC does not believe that it is technically possible to apply programs such as physical protection, emergency preparedness, and QA from another facility to a proposed COL without evaluation and consideration of the acceptability of the information with respect to the specific characteristics and location of the proposed facility.

The NRC also believes that the petitioner's proposal would essentially extend the Backfit Rule to situations for which the policies underlying the Backfit Rule are not applicable. A COL applicant simply can have no reasonable regulatory expectation that the NRC's determination of whether the application complies with applicable regulatory standards would be constrained by the "current licensing basis" for a previously licensed facility at that site. This is even more true for a COL applicant referencing a previously licensed facility at a different site.

### Summary of Denial of Petitioner's COL Proposal

Most of the efficiencies and regulatory stability and predictability which are the object of the petitioner's proposal can be achieved under existing regulations and the guidance that the Commission has directed the staff to prepare. In addition, several key aspects of the petition are based upon a misapplication of the "current licensing basis" concept and the Backfit Rule, and the petition does not represent a viable approach for achieving the desired efficiencies. For these reasons, the Commission is denying the COL proposal as set forth in the petition.

### *NRC Regulatory Activities as Precedents for Petitioner's Proposal*

The petitioner cites several examples of NRC's practice to support the petition. The NRC does not believe that these examples are valid precedents for the petitioner's proposals. Each of these examples is addressed below.

### License Renewal

The petitioner suggests that its proposal is consistent with the regulatory concepts underlying the Commission's adoption of Parts 51 and 54 for license renewal of power reactors. *See* petition at p.7.

As discussed in the ESP section of the Reasons for Denial, the NRC disagrees with the petitioner's analogy.

### License Amendments

The petitioner compares the issuance of an ESP to the issuance of a license amendment for a facility, and argues that the NRC does not conduct a fresh assessment of issues that were thoroughly considered in initial licensing of that facility and that are not affected by the proposed amendment. *See* petition at pp.7–8.

Contrary to the petitioner's suggestion, an application for an ESP or a COL is not analogous to a license amendment. After the NRC licenses a facility, the safety and environmental findings made when NRC initially authorized the facility's construction and operation remain effective throughout the term of the license, and need not be revisited in their entirety in a subsequent license amendment proceeding of limited scope. Only those matters which are within the scope of the proposed license amendment and, therefore, are affected by the amendment, fall within the scope of the NRC's consideration of the license amendment.

The NRC's review of an ESP or COL application is the NRC's initial licensing action. As suggested in the earlier discussion on backfitting, the NRC's licensing decision for a facility located on a specific site is limited to that facility. The NRC never envisioned that its licensing decision for that facility would have any regulatory significance years later for either a new, separate facility (likely of different design) located at the same site, or a new, separate facility to be located at an entirely different site.

### Table S–3 and Spent Fuel Storage Casks

The petitioner states that the Table S–3 generic environmental rulemaking and the rulemakings approving spent fuel storage casks are regulatory precedents for making generic findings by rulemaking, and thereby reducing the scope, or eliminating the need for consideration, of matters in a facility-specific hearing.

The NRC does not regard these rulemakings as analogous to the proposed §§ 52.16 and 52.80. In the Table S–3 rulemakings, the Commission made generic environmental findings which were applicable to all light-water-cooled nuclear power plants. In every spent fuel storage cask rulemaking, the Commission made generic safety and environmental findings which were applicable to every spent fuel storage cask constructed in accordance with the specific cask design approved in that rulemaking. Moreover, each cask design was reviewed and approved by the Commission through the rulemaking for generic use across the United States. By contrast, the NRC licensing determinations, which petitioner's proposals would permit an ESP and COL applicant to reference, are not generic but are limited solely to a consideration of an applicant's proposals and relevant information available at the time of the proposal. Nor did the NRC approve the applicant's proposals with the understanding, and notice to the public, that they would be deemed by rule to be acceptable in a subsequent licensing proceeding for a different facility, without a requirement that their suitability for use in the subsequent licensing action be assessed.

### Quality Assurance and Facility Procedure Change Process

The petitioner cites the quality assurance (QA) program change process under § 50.54(a)(3)(ii), and the facility and procedure change process under § 50.59(a)(2)(ii) as examples of situations in which the NRC by rule permits a licensee to implement changes that have been previously approved by the NRC for use by other licensees. *See* petition at p.8.

While the NRC acknowledges that these two regulatory provisions permit a licensee to implement changes that have been previously approved by the NRC for use by other licensees, these provisions both require that the licensee demonstrate that the proposed change previously approved by the NRC is applicable to the licensee's facility. For example, § 50.54(a)(3)(ii) requires a licensee desiring to make a QA program change to demonstrate that "the bases of the NRC approval are applicable to the licensee's facility." Such a demonstration is not required by proposed § 52.80(b). Therefore, the petitioner's analogy to the implementation of changes without prior NRC approval is not valid for original licensing proceedings.

## Conclusion

In conclusion, the petitioner proposes to incorporate by reference existing information for the site and, by so doing, eliminate the need for what it believes is duplicate applicant preparation and NRC review of existing information relating to a licensed facility that has been previously approved by the NRC and has been subject to a public hearing. The Commission is denying the petition because most of the efficiencies and regulatory stability and predictability which are the object of the petitioner's proposal, can be achieved under existing regulations and the guidance that the Commission has directed the staff to prepare. In addition, key aspects of the petition are based on a misapplication of the "current licensing basis" concept and the Backfit Rule, and the petition does not represent a viable approach for achieving the desired efficiencies.

For these reasons, the Commission denies the petition.

Dated at Rockville, Maryland, this 26th day of September, 2003.

For the Nuclear Regulatory Commission.

**Annette Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 03-25094 Filed 10-2-03; 8:45 am]

**BILLING CODE 7590-01-P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002-CE-57-AD]**

**RIN 2120-AA64**

## Airworthiness Directives; Cessna Aircraft Company Models 402C and 414A Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); reopening of the comment period.

**SUMMARY:** This document proposes to revise an earlier proposed airworthiness directive (AD) that would supersede Airworthiness Directive (AD) 2000-23-01, which applies to all Cessna Aircraft Company (Cessna) Model 402C airplanes. AD 2000-23-01 currently requires repetitive inspections of the forward, aft, and auxiliary wing spars for cracks, and repair or replacement as necessary. Cessna has performed fatigue and crack growth analyses of the wings of these airplanes, and the Federal Aviation Administration (FAA) has evaluated this information and determined that a wing spar modification and inspections are necessary on the Model 414A airplanes as well as the Model 402C airplanes. The earlier NPRM would have required you to inspect the wing spar caps for fatigue cracks with any necessary repair or replacement and to incorporate a spar strap modification on each wing spar. We received a request to reopen the comment period for this action in order to allow more time to evaluate the impact of the actions of the proposed AD. Therefore, we are reopening the comment period to allow the public additional time to comment on the proposed AD.

**DATES:** The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before December 8, 2003.

**ADDRESSES:** Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002-CE-57-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002-CE-57-AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from the Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517-5800; facsimile: (316) 942-9006. You may also view this information at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946-4125; facsimile: (316) 946-4107.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

### *How Do I Comment on This Proposed AD?*

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the proposed rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

### *Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?*

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

### *How Can I Be Sure FAA Receives My Comment?*

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002-CE-57-AD." We will date stamp and mail the postcard back to you.

## Discussion

### *What Events Have Caused This Proposed AD?*

Reports of fatigue cracks on Cessna 401, 402, and 411 series airplanes caused FAA to take AD action (AD 79-10-15 R2, Amendment 39-3711) to require repetitive inspections of the right and left wing spar lower cap areas for fatigue cracks and to require wing spar cap repair or replacement as necessary.

Cessna Models 402C and 414A airplanes incorporate a similar design to those airplanes affected by AD 79-10-

15 R2. We issued AD 2000–23–01, Amendment 39–11971 (65 FR 70645, November 27, 2000), to require repetitive inspections of the forward, aft, and auxiliary wing spars for cracks on Cessna Models 402C airplanes with repair or replacement as necessary.

There is no similar AD action addressing the Model 414A airplanes.

Since issuance of AD 79–10–15 and AD 2000–23–01, Cessna has analyzed the wing, including fatigue and crack growth analyses, on the affected airplanes. Analysis included:

- A determination of the probable location and modes of damage based on analytical results, available test data, and service information;
- Classical fatigue analyses;
- Crack growth and residual strength analyses including use of linear elastic fracture mechanics methods;
- Full-scale ground testing to validate analytical models; and
- A flight strain survey to develop stress spectra used in the analyses.

The inspections required by AD 79–10–15 R2 in accordance with Cessna Service Bulletin ME79–16, Revision 3, are accomplished using a surface eddy current inspection method.

Based on the analysis, Cessna has found that the eddy current method will not find the crack until it is .03 inch longer than the critical crack length. When the crack reaches the critical length, it is not reliably detectable because it is under the head of the fastener. Once the main spar cap is severed, the remaining structure will no longer meet the residual strength requirements. Wing separation could then occur under loading conditions significantly less than those established for the design limit load.

Cessna reported only one instance where cracks were detected using the nondestructive inspection (NDI) eddy current procedure. There are other reported instances where cracks were detected visually in the wheel well area on the aft flange. The problem with visual inspections is the access doubler flanges cover a large percentage of the forward spar flange. This limits the effectiveness of the visual inspections.

To meet industry NDI standards, cracks need to be found on Cessna Models 402C and 414A airplanes through NDI inspection methods with a 90-percent probability of detection at a 95-percent confidence level.

Cessna's analysis indicates that the probability and confidence levels are not being met.

*What Are the Consequences if the Condition Is Not Corrected?*

This condition, if not corrected could result in wing spar cap failure due to undetected fatigue cracks. Such failure could result in loss of a wing with consequent loss of airplane control.

*Has FAA Taken Any Action to This Point?*

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Cessna Models 402C and 414A airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on May 15, 2003 (68 FR 26244). The NPRM proposed to require you to:

- Inspect the wing spar caps for fatigue cracks;
- Repair or replace the wing spar caps as necessary; and
- Incorporate a spar strap modification on each wing spar.

You would have to accomplish the proposed actions in accordance with Cessna Service Bulletin MEB02–05 and Cessna Service Kit SK402–47, both dated June 24, 2002.

*Was the Public Invited To Comment?*

The FAA encouraged interested persons to participate in the making of this amendment. During the comment period, we received requests to extend the comment period. Consequently, we extended the comment period from August 8, 2003, to September 8, 2003.

We have received an additional comment to extend the comment period an additional 6 months action in order to allow more time to evaluate the impact of the actions of the proposed AD. We have evaluated this request and determined the following:

- An additional 60 days is a more appropriate time than 6 months; and
- Instead of extending the comment period, we will need to reopen the comment period because the comment period ending date has passed.

**The Supplemental NPRM**

*The FAA's Determination?*

We have determined that an additional 60 days (total of 150 days) is a reasonable time period to allow the public to comment on the proposed AD. Therefore, we are issuing a supplemental NPRM and reopening the comment period to allow the public additional time to comment.

*How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?*

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relate to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

**Cost Impact**

*How Many Airplanes Would This Proposed AD Impact?*

We estimate that this proposed AD affects 656 airplanes in the U.S. registry.

*What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?*

We estimate the following costs to accomplish the proposed modification and initial inspection:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 485 workhours × $60 per hour = $29,100 per airplane. | $14,000 per airplane. | $29,100 + $14,000 = $43,100 airplane. | $43,100 × 656 = $28,273,600. |

The above figures do not take into account the cost of repetitive inspections. The FAA does not have any way of determining the number of repetitive inspections each owner/operator would incur during the operating life of the affected airplanes.

**Regulatory Impact**

*Would This Proposed AD Impact Various Entities?*

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

*Would This Proposed AD Involve a Significant Rule or Regulatory Action?*

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2000–23–01, Amendment 39–11971 (65 FR 70645, November 27, 2000), and by adding a new AD to read as follows:

**Cessna Aircraft Company:** Docket No. 2002–CE–57–AD; Supersedes AD 2000–23–01, Amendment 39–11971.

(a) *What airplanes are affected by this AD?* This AD affects Models 402C and 414A airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent wing spar cap failure due to undetected fatigue cracks. Such failure could result in loss of a wing with consequent loss of airplane control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must inspect the wing spar caps for fatigue cracks and repair or replace the wing spar caps as necessary and incorporate a spar strap modification on each wing spar in accordance with Cessna Service Bulletin MEB02–5, dated June 24, 2002, and Cessna Service Kit SK402–47, dated June 24, 2002, as follows:

| Compliance times | Affected airplanes |
|---|---|
| (1) Inspect and modify at whichever of the following that occurs later and repair or replace as necessary prior to further flight after the inspection, unless already accomplished (no repetitive actions necessary):<br>(i) Upon accumulating 8,500 hours time-in-service (TIS) on a wing spar; or<br>(ii) Within the next 500 hours TIS after the effective date of this AD or 12 months after the effective date of this AD, whichever occurs first | Cessna Models 402C and 414A airplanes, serial number 414A0001 through 414A0047 and 414A0049 through 414A0200. |
| (2) Inspect and modify at whichever of the following that occurs first and repair or replace as necessary prior to further flight after the inspection, unless already accomplished (no repetitive actions necessary):<br>(i) Upon accumulating 14,500 hours TIS on a wing spar;<br>(ii) Within the next 500 hours TIS after the effective date of this AD or 12 months after the effective date of this AD, whichever occurs first | Cessna Models 402C and 414A airplanes, serial numbers 414A0201 or through 414A1212. |

(e) *Can I comply with this AD in any other way?*

(1) To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Wichita Aircraft Certification Office (ACO). For information on any already approved alternative methods of compliance, contact Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4125; facsimile: (316) 946–4107.

(2) Alternative methods of compliance approved in accordance with AD 2000–23–01 and AD 99–11–13 are not approved as alternative methods of compliance with this AD.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from the Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(g) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 2000–23–01, Amendment 39–11971.

Issued in Kansas City, Missouri, on September 26, 2003.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–25088 Filed 10–2–03; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–CE–05–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Cessna Aircraft Company Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A Airplanes

**AGENCY:** Federal Aviation Administration, Transportation.

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

**SUMMARY:** This document proposes to revise an earlier proposed airworthiness directive (AD) that would supersede Airworthiness Directive (AD) 79–10–15

R2, which applies to all Cessna Aircraft Company (Cessna) Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A airplanes. AD 79–10–15 R2 currently requires repetitive inspections of the right and left wing spar lower cap areas for fatigue cracks and requires wing spar cap repair or replacement as necessary. Cessna has performed fatigue and crack growth analyses of the wings of these airplanes, and the Federal Aviation Administration (FAA) has evaluated this information and determined that a wing spar modification is necessary as well as periodic inspections. The earlier NPRM would have required you to repetitively inspect the wing spar caps for fatigue cracks with any necessary repair or replacement on all airplanes and incorporate a spar strap modification on each wing spar on certain airplanes. We received a request to reopen the comment period for this action in order to allow more time to evaluate the impact of the actions of the proposed AD. Therefore, we are reopening the comment period to allow the public additional time to comment on the proposed AD.

**DATES:** The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before December 8, 2003.

**ADDRESSES:** Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–05–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–05–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from the Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may also view this information at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4125; facsimile: (316) 946–4107.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

### *How Do I Comment on This Proposed AD?*

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the proposed rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

### *Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?*

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

### *How Can I Be Sure FAA Receives My Comment?*

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–05–AD." We will date stamp and mail the postcard back to you.

## Discussion

### *What Events Have Caused This Proposed AD?*

Reports of fatigue cracks on Cessna 401, 402, and 411 series airplanes caused FAA to take AD action (AD 79–10–15 R2, Amendment 39–3711) to require repetitive inspections of the right and left wing spar lower cap areas for fatigue cracks and to require wing spar cap repair or replacement as necessary.

Accomplishment of the inspections required by AD 79–10–15 R2 is required in accordance with Cessna Service Bulletin ME79–16, Revision 3, dated February 8, 1980.

AD 79–10–15 R2 allowed for the incorporation of Cessna Service Kit SK402–36 or SK411–56 on the front wing spar lower cap as terminating action for the repetitive inspections on the applicable wing.

Since issuance of AD 79–10–15, Cessna has analyzed the wing, including fatigue and crack growth analyses, on the affected airplanes. Analysis included:

- A determination of the probable location and modes of damage based on analytical results, available test data, and service information;
- Classical fatigue analyses;
- Crack growth and residual strength analyses including use of linear elastic fracture mechanics methods;
- Full-scale ground testing to validate analytical models; and
- A flight strain survey to develop stress spectra used in the analyses.

The inspections required by AD 79–10–15 R2 in accordance with Cessna Service Bulletin ME79–16, Revision 3, are accomplished using a surface eddy current inspection method.

Based on the analysis, Cessna has found that the eddy current method will not find the crack until it is .03 inch longer than the critical crack length. When the crack reaches the critical length, it is not reliably detectable because it is under the head of the fastener. Once the main spar cap is severed, the remaining structure will no longer meet the residual strength requirements. Wing separation could then occur under loading conditions significantly less than those established for the design limit load.

Cessna reported only one instance where cracks were detected using the nondestructive inspection (NDI) eddy current procedure. There are other reported instances where cracks were detected visually in the wheel well area on the aft flange. The problem with visual inspections is the access doubler flanges cover a large percentage of the forward spar flange. This limits the effectiveness of the visual inspections.

To meet industry NDI standards, cracks need to be found on Cessna Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A airplanes through NDI inspection methods with a 90-percent probability of detection at a 95-percent confidence level.

Cessna's analysis indicates that the probability and confidence levels are not being met.

### *What Are the Consequences if the Condition Is Not Corrected?*

This condition, if not corrected could result in wing spar cap failure due to undetected fatigue cracks. Such failure could result in loss of a wing with consequent loss of airplane control.

### *Has FAA Taken Any Action to This Point?*

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on May 15, 2003 (68 FR 26239). The NPRM proposed to require you to either (depending on the aircraft configuration):

- *For airplanes that do not incorporate one of certain Cessna Service Kits:* Repetitively inspect the wing spar caps for fatigue cracks and repair or replace the wing spar caps as necessary and incorporate a spar strap modification on each wing spar; or
- *For airplanes that incorporate one of certain Cessna Service Kits:* Repetitively inspect the wing spar caps for fatigue cracks and repair or replace the wing spar caps as necessary.

You would have to accomplish the proposed actions in accordance with Cessna Service Bulletin MEB01–06 and Cessna Service Kit SK402–46, both dated September 24, 2001; and Cessna Service Bulletin MEB01–07 and Cessna Service Kit SK411–59, both dated September 24, 2001.

### *Was the Public Invited To Comment?*

The FAA encouraged interested persons to participate in the making of this amendment. During the comment period, we received requests to extend the comment period. Consequently, we extended the comment period from August 8, 2003, to September 8, 2003.

We have received an additional comment to extend the comment period an additional 6 months action in order to allow more time to evaluate the impact of the actions of the proposed AD. We have evaluated this request and determined the following:

- An additional 60 days is a more appropriate time than 6 months; and
- Instead of extending the comment period, we will need to reopen the comment period because the comment ending date has passed.

## The Supplemental NPRM

### *The FAA's Determination?*

We have determined that an additional 60 days (total of 150 days) is a reasonable time period to allow the public to comment on the proposed AD. Therefore, we are issuing a supplemental NPRM and reopening the comment period to allow the public additional time to comment.

### *How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?*

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

## Cost Impact

### *How Many Airplanes Would This Proposed AD Impact?*

We estimate that this proposed AD affects 400 airplanes in the U.S. registry.

### *What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?*

We estimate the following costs to accomplish the proposed modification and initial inspection:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 485 workhours × $60 per hour = $29,100 per airplane. | $1,763 per airplane | $29,100 + $1,763 = $30,863 per airplane. | $30,863 × 400 = $12,345,200. |

The above figures do not take into account the cost of repetitive inspections. The FAA does not have any way of determining the number of repetitive inspections each owner/operator would incur during the operating life of the affected airplanes.

## Regulatory Impact

### *Would This Proposed AD Impact Various Entities?*

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

### *Would This Proposed AD Involve a Significant Rule or Regulatory Action?*

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 79–10–15 R2, Amendment 39–3711, and by adding a new AD to read as follows:

**Cessna Aircraft Company:** Docket No. 2002–CE–05–AD; Supersedes AD 79–10–15 R2, Amendment 39–3711.

(a) *What airplanes are affected by this AD?* This AD affects Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent wing spar cap failure due to undetected fatigue cracks. Such failure could result in loss of a wing with consequent loss of airplane control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must repetitively inspect the wing spar caps for fatigue cracks and repair or replace the wing spar caps as necessary and incorporate a spar strap modification (as specified) on each wing spar in accordance with Cessna Service Bulletin MEB01–6 and Cessna Service Kit SK402–46, both dated September 24, 2001; or Cessna Service Bulletin MEB01–7 and Cessna Service Kit SK411–59, both dated September 24, 2001, as follows:

| Initial and repetitive compliance times | Affected airplanes |
|---|---|
| (1) Inspect and modify at whichever of the following that occurs later and repair or replace as necessary prior to further flight after the inspection, unless already accomplished, and repetitively inspect at the intervals specified in paragraphs (d)(3)(i), (d)(3)(ii), and (d)(3)(iii) of this AD:<br>(i) Upon accumulating 5,500 hours time-in-service (TIS) on a wing spar; or<br>(ii) Within the next 200 hours TIS after the effective date of this AD or 12 months after the effective date of this AD, whichever occurs first | Cessna Models 411 and 411A airplanes that do not incorporate Cessna Service Kit SK411–56, SK411–56A, or SK411–56B. |
| (2) Inspect and modify at whichever of the following that occurs first and repair or replace as necessary prior to further flight after the inspection, unless already accomplished, and repetitively inspect at the intervals specified in paragraphs (d)(4)(i) and (d)(4)(ii) of this AD:<br>(i) Upon accumulating 6,500 hours TIS on a wing spar; or<br>(ii) Within the next 200 hours TIS after the effective date of this AD or 12 months after the effective date of this AD, whichever occurs first | Cessna Models 401, 401A, 401B, 402, 402A, and 402B airplanes that do not incorporate Cessna Service Kit SK402–36, SK402–36B, or SK402–36C. |
| (3) Inspect in the following areas (modification not required for these airplanes) and repair or replace as necessary prior to further flight after the inspection where cracks are found. Inspection areas are defined in the Cessna Model 411 Supplemental Inspection Document (SID):<br>(i) *Area "A" (Inspection ID 57–10–11):* Initially upon accumulating 5,400 hours TIS after incorporating the applicable service kit on a wing spar or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 2,500 hours TIS<br>(ii) *Area "B" (Inspection ID 57–10–12):* Initially upon accumulating 5,400 hours TIS after incorporating the applicable service kit on a wing spar or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 1,000 hours TIS<br>(iii) *Area "C" (Inspection ID 57–10–08):* Upon accumulating 19,900 hours TIS after incorporating the applicable service kit on a wing spar or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 2,000 hours TIS | Cessna Models 411 and 411A airplanes that incorporate Cessna Service Kit SK411–56, SK–411–56A, SK411–56B, or SK411–59. This includes airplanes that had Cessna Service Kit SK411–59 incorporated as required by paragraph (d)(1) of this AD. |
| (4) Inspect in the following areas (modification not required for these airplanes) and repair or replace as necessary prior to further flight after the inspection. Inspection areas are defined in the Cessna Model 401/402 Supplemental Inspection Document (SID):<br>(i) *Area "A" (Inspection ID 57–10–11) and Area "B" (Inspection ID 57–10–12):* Initially upon accumulating 7,400 hours TIS after incorporating the applicable service kit on a wing spar or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 5,000 hours TIS<br>(ii) *Area "C" (Inspection ID 57–10–08):* Initially upon accumulating 19,900 hours TIS after incorporating the applicable service kit on a wing spar or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 2,500 hours TIS | Cessna Models 401, 401A, 401B, 402, 402A, and 402B airplanes that incorporate Cessna Service Kit SK402–36, SK402–36A, SK402–36B, SK402–36C, or SK402–46. This includes airplanes that had Cessna Service Kit SK402–46 incorporated as required by paragraph (d)(2) of this AD. |

(e) *Can I comply with this AD in any other way?*

(1) To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Wichita Aircraft Certification Office (ACO). For information on any already approved alternative methods of compliance, contact Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4125; facsimile: (316) 946–4107.

(2) Alternative methods of compliance approved in accordance with AD 79–10–15 R2, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from the Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(g) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 79–10–15 R2, Amendment 39–3711.

Issued in Kansas City, Missouri, on September 26, 2003.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–25089 Filed 10–2–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 917

## [KY–245–FOR]

## Kentucky Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We are announcing the proposed removal of a required amendment to the Kentucky regulatory program (The "Kentucky program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or "the Act"). We are seeking comments on whether a policy letter received from the State meets the requirements of the required amendment, thereby eliminating the need for a change in the Kentucky program.

This document gives the times and locations that the Kentucky program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m., e.s.t. November 3, 2003. If requested, we will hold a public hearing on the amendment on October 28, 2003. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on October 20, 2003.

**ADDRESSES:** You should mail or hand deliver written comments and requests to speak at the hearing to Mr. William J. Kovacic at the address listed below.

You may review copies of the Kentucky program, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (859) 260–8400. E-mail: *bkovacic@osmre.gov.*

Carl E. Campbell, Commissioner, Natural Resources and Environmental Protection Cabinet, Department for Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

**FOR FURTHER INFORMATION CONTACT:** William J. Kovacic, Telephone: (859) 260–8400. Internet: *bkovacic@osmre.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Background on the Kentucky Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

### I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *;" and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, **Federal Register** (47 FR 21434). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

### II. Description of the Proposed Amendment

The required amendment at 30 CFR 917.16(k) reads as follows:

> By October 1, 1993, Kentucky shall submit to OSM either proposed amendments or a schedule for the submission of proposed amendments to Kentucky Administrative Regulations to require that the assessment conference officer's report mentioned in 405 KAR 7:092 section 4(5) be served in a manner consistent with 405 KAR 7.091 section 5, and to specify that the time allowed under 405 KAR 7:092 section 6(1)(b) to file a petition for administrative review of the proposed penalty set forth in the conference officer's report does not begin to run until service is obtained in this manner.

On April 3, 2003 (Administrative Record No. KY 1576), we received a letter from the Office of Administrative Hearings, Kentucky Natural Resources and Environmental Protection Cabinet, requesting that its policy of requiring all conference officers' reports be sent by certified mail be considered by us as fulfilling the requirements of the above-mentioned amendment. Included in its letter was a copy of a memorandum, dated April 2, 2002 (Administrative Record No. KY–1576), sent to the Hearing Officer and Assessment Conference Officer which reminded it of this requirement and its relationship to the Federal provisions for service of penalty assessment reports (Administrative Record No. KY–1576).

We are thus seeking public comment on whether Kentucky's policy as described meets the terms of the required amendment.

### III. Public Comment Procedures

#### *Written Comments*

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Lexington Field Office may not be logged in.

#### *Electronic Comments*

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. KY–245–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Lexington Field Office at (859) 260–8400.

#### *Availability of Comments*

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

*Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on October 20, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

*Public Meeting*

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

## IV. Procedural Determinations

*Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

*Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

*Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by Section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

*Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. This proposed rule applies only to the Kentucky program and therefore does not affect tribal programs.

*Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of Section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

**List of Subjects in 30 CFR Part 917**

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 18, 2003.

**Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 03–25055 Filed 10–2–03; 8:45 am]

**BILLING CODE 4310–05–P**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 622

**[I.D. 092403I]**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery Management Plan; Red Grouper Fishery of the Gulf of Mexico; Environmental Assessment for Secretarial Amendment 1

**AGENCY:** National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice announcing preparation of an environmental assessment (EA).

**SUMMARY:** NOAA Fisheries is preparing an EA, in accordance with the National Environmental Policy Act (NEPA), for Secretarial Amendment 1 to the Reef Fish FMP.

**FOR FURTHER INFORMATION CONTACT:** Phil Steele, telephone: 727–570–5305, fax: 727–570–5583, e-mail: *Phil.Steele@noaa.gov*

**SUPPLEMENTARY INFORMATION:** Red grouper in the Gulf of Mexico were declared to be overfished and undergoing overfishing by NOAA Fisheries in October 2000. Secretarial Amendment 1 was developed to establish a rebuilding plan. As the actions being considered were likely to have significant social and economic impacts under NEPA, a Draft Supplemental Environmental Impact Statement (DSEIS) was planned instead of initially preparing a less comprehensive EA. A Notice of Intent to prepare this DSEIS was published in the **Federal Register** on February 15, 2002 (32 FR 7123).

In September 2002, the Council's Reef Fish Stock Assessment Panel reviewed a new red grouper stock assessment prepared by the Southeast Fishery Science Center. The 2002 assessment confirmed the previous conclusion that red grouper were overfished in 1997, but found that the stock was in an improved condition by 2001. However, it had not yet reached the level needed to produce maximum sustainable yield on a continuing basis ($B_{MSY}$). Therefore, a rebuilding plan is still needed. Because the current (2001) stock biomass is closer to $B_{MSY}$ than the biomass in 1997, a less restrictive rebuilding plan is needed to attain $B_{MSY}$ within 10 years or less. The original version of this Secretarial Amendment proposed a rebuilding plan divided into 3–year intervals. For the first 3–year interval, the original plan called for a 45–percent reduction from the 1990–2001 average harvest, with harvest levels in subsequent years to be determined by future stock assessments. In the current version, a 9.5–percent reduction from the 1999–2001 average harvest is the first 3–year target.

The proposed actions in Secretarial Amendment 1 are not presently expected to have a significant impact on the human environment. Consequently, NOAA Fisheries is initially preparing an EA, rather than proceeding directly to a DSEIS, in support of Secretarial Amendment 1 to the Reef Fish FMP. If the EA results in a Finding of No Significant Impact (FONSI), the EA and FONSI will be the final environmental documents required by NEPA. If the EA reveals that significant environmental impacts may be reasonably expected to result from the proposed actions, NOAA Fisheries will prepare a DSEIS to further evaluate those impacts.

This announcement is intended to inform the public of the change from preparation of a DSEIS to preparation of an EA for Secretarial Amendment 1 to the Reef Fish FMP.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 29, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–25147 Filed 10–2–03; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 622

**[I.D. 092403H]**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Proposed Amendment 13 to the Fishery Management Plan (FMP) for the Shrimp Fishery of the Gulf of Mexico; Notice of Preparation of Environmental Assessment

**AGENCY:** National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice announcing preparation of an environmental assessment (EA).

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) intends to prepare an EA, in accordance with the National Environmental Policy Act (NEPA), for Amendment 13 to the Shrimp FMP.

**FOR FURTHER INFORMATION CONTACT:** Phil Steele, telephone: 727–570–5305, fax: 727–570–5583, e-mail: *Phil.Steele@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The proposed actions in Amendment 13 would establish a bycatch reporting methodology, as well as status criteria and benchmarks such as maximum sustainable yield, optimum yield, minimum stock size threshold, and maximum fishing mortality threshold, for penaeid and Royal Red shrimp stocks in the Gulf of Mexico. These actions were originally combined with other actions the Council was evaluating in Amendment 13 to the Shrimp FMP. However, this earlier Amendment 13 had become very complicated with the addition of measures to reduce effort and alternatives for a bycatch quota. The highest priorities were the establishment of status criteria and benchmarks, and development of a standardized bycatch reporting methodology. At the May 2003 meeting, the Council voted to move all other parts of Amendment 13 into Amendment 14. Amendment 14 includes alternatives for vessel permits, effort reduction, bycatch quotas and improvement of collection of effort data.

As some of the requirements being considered in the original Amendment 13 were likely to have significant social and economic impacts under NEPA, a Notice of Intent to prepare a Draft Supplemental Environmental Impact Statement (DSEIS) was published in the **Federal Register** on August 19, 2002 (67 FR 53769). Once Amendment 14 was created, however, these requirements were moved into the new amendment.

The proposed actions remaining in Amendment 13 are not presently expected to have a significant impact on the human environment. Consequently, an EA will initially be prepared rather than proceeding directly with a DSEIS. If the EA results in a Finding of No Significant Impact (FONSI), the EA and FONSI will be the final environmental documents required by NEPA. If the EA reveals that significant environmental impacts may be reasonably expected to result from the proposed actions, the Council will prepare a DSEIS to further evaluate those impacts.

This document is intended to inform the public of the change from the direct preparation of a DSEIS to the initial preparation of an EA for Amendment 13 to the Shrimp FMP.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 29, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–25148 Filed 10–2–03; 8:45 am]

BILLING CODE 3510–22–S

# Notices

**Federal Register**
Vol. 68, No. 192
Friday, October 3, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### South Manti Timber Salvage; Manti-La Sal National Forest, Sanpete and Sevier Counties, UT

**AGENCY:** Forest Service, USDA.

**ACTION:** Revised notice of intent to prepare environmental impact statement.

**SUMMARY:** On March 14, 2002, U.S. District Court Judge Dale A. Kimball issued an adverse opinion that affected the South Manti Timber Salvage project (Record of Decision was signed by acting Forest Supervisor, Crockett Dumas, on May 22, 2000). Based upon this decision, it was determined that another NEPA analysis and decision (non-significant Forest Plan Amendment) would be made to evaluate blue grouse as a Management Indicator Species (MIS) and to replace with the northern gashawk before the Forest made another decision related to the South Manti Timber Salvage project. The Forest has developed an non-significant Forest Plan Amendment that was signed on June 16, 2003. This Amendment changed one MIS from the blue grouse to the northern gashawk.

On March 20, 2003, a team met to review the existing document relative to section 18 of the Forest Service NEPA Handbook. Consequently, the Forest is developing an addendum to the Final Environmental Impact Statement (FEIS) to make simple corrections and update the document.

**FOR FURTHER INFORMATION CONTACT:** Please contact Doug Jones, Timber Program Manager and Team Leader, Manti-La Sal National Forest, phone (435) 636–2817.

**SUPPLEMENTARY INFORMATION:** Due to the court decision, the implementation of this project has been substantially delayed. It is anticipated that a new decision will be completed by December of 2003. It has not been determined if additional public scoping will be completed. If additional scoping is necessary, a legal notice will be printed in the paper of record and the original commenters will be contacted. The deciding official will be Alice Carlton. In the new decision, there will be no entry into any Inventorized Roadless Areas. This action will amend the original NOI dated February 17, 1998 (volume 63, No. 31).

Dated: July 16, 2003.

**Melissa Blackwell,**

*Acting Forest Supervisor, Manti-La Sal National Forest.*

[FR Doc. 03–25129 Filed 10–2–03; 8:45 am]

BILLING CODE 3410–11–M

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Meeting of the Land Between the Lakes Advisory Board

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Land Between the Lakes Advisory Board will hold a meeting on Thursday, October 23, 2003. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

The meeting agenda includes the following:

(1) Welcome/Introductions/Agenda.

(2) LBL Land and Resource Management Plan (LRMP).

(3) Environmental Education Programs.

(4) Board Discussion of Comments Received.

(5) Update on LBL Activities.

The meeting is open to the public. Written comments are invited and may be mailed to: William P. Lisowsky, Area Supervisor, Land Between the Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211. Written comments must be received at Land Between The Lakes by October 15, 2003, in order for copies to be provided to the members at the meeting. Board members will review written comments received, and at their request, oral clarification may be requested at a future meeting.

**DATES:** The meeting will be held on Thursday, October 23, 2003, 8:30 a.m. to 12:30 p.m., CDT.

**ADDRESSES:** The meeting will be held at Kenlake State Resort Park, Aurora, KY, and will be open to the public.

**FOR FURTHER INFORMATION CONTACT:** Sharon Byers, Advisory Board Liaison, Land Between the Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211, 270–924–2002.

**SUPPLEMENTARY INFORMATION:** None.

Dated: September 23, 2003.

**William P. Lisowsky,**

*Area Supervisor, Land Between The Lakes.*

[FR Doc. 03–25080 Filed 10–2–03; 8:45 am]

BILLING CODE 3410–11–P

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## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase from People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to and deletions from procurement list.

**SUMMARY:** The Committee is proposing to add to the Procurement List products and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

*Comments Must be Received on or Before:* November 2, 2003.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Sheryl D. Kennerly, (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

#### Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

*Regulatory Flexibility Act Certification*

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.
2. If approved, the action will result in authorizing small entities to furnish the products and service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

*End of Certification*

The following products and service are proposed for addition to Procurement List for production by the nonprofit agencies listed:

**Products**

*Product/NSN:* CD/DVD Label Kit and Refills,
7530–00–NIB–0660 (Kit)
7530–00–NIB–0688 (Refill)
*NPA:* North Central Sight Services, Inc., Williamsport, Pennsylvania
*Contract Activity:* Office Supplies & Paper Products Acquisition Center, New York, New York.
*Product/NSN:* Dustpan and Brush Set M.R. 1020
*NPA:* The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, Washington
*Contract Activity:* Defense Commissary Agency (DeCA), Ft. Lee, VA
*Product/NSN:* GOJO/SKILCRAFT Hair & Body Shampoo
8520–00–NIB–0028, 800 mL
8520–00–NIB–0029, 2000 mL
8520–00–NIB–0066, 1000 mL
*Product/NSN:* GOJO/SKILCRAFT Lotion Hand Soap
8520–00–NIB–0012, 12 oz.
8520–00–NIB–0024, 800 mL
8520–00–NIB–0025, 2000 mL
8520–00–NIB–0065, 1000 mL
*Product/NSN:* GOJO/SKILCRAFT Natural Orange Hand Cleaner with Pumice
8520–00–NIB–0069, .5 Gal
8520–00–NIB–0070, 1 Gal
*Product/NSN:* MICRELL/SKILCRAFT Antibacterial Hand Soap
8520–00–NIB–0010, 800 mL
8520–00–NIB–0027, 2000 mL
8520–00–NIB–0067, 1000 mL
*Product/NSN:* PURELL/SKILCRAFT Instant Hand Sanitizer
8520–00–NIB–0008, 800 mL
8520–00–NIB–0017, 2 oz.
8520–00–NIB–0058, 1000 mL
*Product/NSN:* PURELL/SKILCRAFT Instant Hand Sanitizer with Aloe 8520–00–NIB–0060, 4.25 oz.
8520–00–NIB–0061, 12 oz.
8520–00–NIB–0062, 800 mL
8520–00–NIB–0063, 1000 mL
*Product/NSN:* GOJO/SKILCRAFT Wall Dispenser
4510–00–NIB–0001, 800 mL
4510–00–NIB–0002, 2000 mL
4510–00–NIB–0003, 1000 mL
4510–00–NIB–0007, 1000 mL
4510–00–NIB–0008, 800 mL
4510–00–NIB–0009, 2000 mL
*Product/NSN:* PURELL/SKILCRAFT Wall Dispenser
4510–00–NIB–0005, 1000 mL
4510–00–NIB–0006, 1000 mL
*NPA:* Travis Association for the Blind, Austin, Texas
*Contract Activity:* Office Supplies & Paper Products Acquisition Center, New York, New York
*Product/NSN:* Hydration On-the-Move System
8465–00–NIB–0071, Bravo 70 oz Woodland
8465–00–NIB–0072, Bravo 70 oz Desert
8465–00–NIB–0073, Bravo 70 oz Black Night Ops
8465–00–NIB–0074, Delta 100 oz Woodland
8465–00–NIB–0075, Delta 100 oz Desert
8465–00–NIB–0076, Delta 100 oz Black Night Ops
8465–00–NIB–0077, Alpha 120 oz Woodland
8465–00–NIB–0078, Alpha 120 oz Desert
8465–00–NIB–0079, Alpha 120 oz Black Night Ops
8465–00–NIB–0092, Warrior 100 oz Woodland
8465–00–NIB–0093, Warrior 100 oz Desert
8465–00–NIB–0094, Warrior 100 oz Black Night Ops
8465–00–NIB–0095, Sierra 100 oz Woodland
8465–00–NIB–0096, Sierra 100 oz Desert
8465–00–NIB–0097, Sierra 100 oz Black Night Ops
*Product/NSN:* Canteen, One Quart, Flexible
8465–00–NIB–0041, Echo 1 qt
*NPA:* The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, Washington
*Contract Activity:* Office Supplies & Paper Products Acquisition Center, New York, New York
*Product/NSN:* Safety-Walk, Tapes & Treads
7220–00–NIB–0022, 710 Black Coarse Tape
7220–00–NIB–0031, 710 Black Coarse Tape
7220–00–NIB–0032, 610 Black General Purpose
7220–00–NIB–0046, 630 Yellow General Purpose
7220–00–NIB–0053, 510 Black Conformable
7220–00–NIB–0054, 510 Black Conformable
7220–00–NIB–0061, 530 Yellow Conformable
7220–00–NIB–0065, 310 Black Medium Resilient
7220–00–NIB–0075, 370 Gray Medium Resilient
7220–00–NIB–0136, 710 Black Coarse Tape
7220–00–NIB–0137, 610 Black General Purpose
7220–00–NIB–0138, 620 Clear General Purpose
7220–00–NIB–0139, 630 Yellow General Purpose
7220–00–NIB–0140, 660 Brown General Purpose
7220–00–NIB–0141, 510 Black Conformable
7220–00–NIB–0142, 520 Yellow Conformable
7220–00–NIB–0143, 310 Black Medium Resilient
7220–00–NIB–0144, 370 Gray Medium Resilient
*NPA:* Louisiana Association for the Blind, Shreveport, Louisiana
*Contract Activity:* Office Supplies & Paper Products Acquisition Center, New York, New York.

*Service*

*Service Type/Location:* Grounds Maintenance, Darnall Army Community Hospital/Clinics (Buildings 420, 2242, 2245, 2255, 2250, 7015, 9440, 56503, 4222, 33001, 33003, 39033, 4441, 4909, 76022, 90043, 36000, 36001, 36007, 36014, 36017) Fort Hood, Texas
*NPA:* Professional Contract Services, Inc., Austin, Texas
*Contract Activity:* III Corps and Fort Hood Contracting Command, Fort Hood, Texas

*Deletions*

*Regulatory Flexibility Act Certification*

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. If approved, the action will result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

*End of Certification*

The following products are proposed for deletion from the Procurement List:

*Products*

*Product/NSN:* Cleaner, Water Soluble
6840–01–367–2913
7930–01–367–2964
7930–01–367–2967
7930–01–367–2968
7930–01–367–2970
*NPA:* Association for the Blind & Visually Impaired & Goodwill Industries of Greater Rochester, Rochester, New York
*Contract Activity:* GSA, Southwest Supply Center, Fort Worth, Texas

*Product/NSN:* Clipboard File
7520-01-439-3404
*NPA:* Industries of the Blind, Inc., Greensboro, North Carolina
*Contract Activity:* Office Supplies & Paper Products Acquisition Center, New York, New York

**Sheryl D. Kennerly,**

*Director, Information Management.*

[FR Doc. 03-25156 Filed 10-2-03; 8:45 am]

**BILLING CODE 6353-01-P**

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## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to and deletions from procurement list.

**SUMMARY:** This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

**EFFECTIVE DATE:** November 2, 2003.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202-3259.

**FOR FURTHER INFORMATION CONTACT:** Sheryl D. Kennerly, (703) 603-7740.

**SUPPLEMENTARY INFORMATION:**

#### Additions

On July 25, August 1, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 44039, 45217) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

*Regulatory Flexibility Act Certification*

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the services proposed for addition to the Procurement List.

*End of Certification*

Accordingly, the following services are added to the Procurement List:

**Services**

*Service Type/Location:* Administrative Service, Federal Office Building, Martinsburg, West Virginia.
*NPA:* Job Squad, Inc., Clarksburg, West Virginia.
*Contract Activity:* GSA, PBS, Mid Atlantic Region (3PKC), Philadelphia, Pennsylvania.
*Service Type/Location:* Janitorial/Custodial, Bureau of Land Management, Salt Lake Field Office and Warehouse, Salt Lake City, Utah.
*NPA:* Community Foundation for the Disabled, Inc., Salt Lake City, Utah.
*Contract Activity:* Bureau of Land Management—Utah State Office, Salt Lake City, Utah.
*Service Type/Location:* Janitorial/Grounds Maintenance, Veterans Affairs Regional Office, Montgomery, Alabama.
*NPA:* Lakeview Center, Inc., Pensacola, Florida.
*Contract Activity:* Veterans Affairs Regional Office, Montgomery, Alabama.

#### Deletions

On August 1, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 45218) of proposed deletions to the Procurement List. After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

*Regulatory Flexibility Act Certification*

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the products deleted from the Procurement List.

*End of Certification*

Accordingly, the following products are deleted from the Procurement List:

**Products**

*Product/NSN:* Cushion, Chair, 7210-00-205-1173, 7210-00-205-1175.
*NPA:* None currently authorized.
*Contract Activity:* GSA, Southwest Supply Center, Fort Worth, Texas.
*Product/NSN:* Gown, Patient Examining, 6532-00-421-7828.
*NPA:* Riverside Industries, Inc., Easthampton, Massachusetts.
*Contract Activity:* Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.
*Product/NSN:* Sheet, Bed—Disposable, 7210-00-144-6082.
*NPA:* Riverside Industries, Inc., Easthampton, Massachusetts.
*Contract Activity:* Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

**Sheryl D. Kennerly,**

*Director, Information Management.*

[FR Doc. 03-25157 Filed 10-2-03; 8:45 am]

**BILLING CODE 6353-01-P**

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## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1300]**

### Approval for Expanded Manufacturing Authority (Motor Vehicles), Foreign-Trade Subzone 98A; Mercedes-Benz U.S. International, Inc., Tuscaloosa County, AL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the City of Birmingham, Alabama, grantee of Foreign-Trade Zone 98, has requested authority on behalf of Mercedes-Benz U.S. International, Inc. (MBUSI), operator of FTZ 98A, at the MBUSI motor vehicle manufacturing plant in Tuscaloosa County, Alabama, to expand the scope of manufacturing authority to include new manufacturing capacity under FTZ procedures (FTZ Doc. 59-2002, filed 12-17-2002);

*Whereas,* notice inviting public comment was given in the **Federal Register** (67 FR 79046, 12-27-2002);

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

*Now Therefore,* the Board hereby approves the request, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC this 17th day of 2003.

**James J. Jochum,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 03–25161 Filed 10–2–03; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1301]**

### Grant of Authority for Subzone Status; Lion Oil Company (Oil Refinery Complex), El Dorado, AR

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas,* the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

*Whereas,* the Arkansas Department of Economic Development, grantee of Foreign-Trade Zone 14, has made application to the Board for authority to establish special-purpose subzone status at the oil refinery complex of Lion Oil Company, located in El Dorado, Arkansas (FTZ Docket 2–2003, filed 1/15/03);

*Whereas,* notice inviting public comment was given in the **Federal Register** (68 FR 4167, 1/28/03); and,

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

*Now, therefore,* the Board hereby grants authority for subzone status at the oil refinery complex of Lion Oil Company, located in El Dorado, Arkansas (Subzone 14D), at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the petrochemical complex shall be subject to the applicable duty rate.
2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.10, #2709.00.20, #2710.11.25, #2710.11.45, #2710.19.05, #2710.19.10, #2710.19.45, #2710.91.00, #2710.99.05, #2710.99.10, #2710.99.16, #2710.99.21 and #2710.99.45 which are used in the production of:

—Petrochemical feedstocks (examiners report, Appendix "C");
—products for export;
—and, products eligible for entry under HTSUS # 9808.00.30 and # 9808.00.40 (U.S. Government purchases).

Signed at Washington, DC this 17th day of September 2003.

**James J. Jochum,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 03–25162 Filed 10–2–03; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 47–2003]**

### Foreign-Trade Zone 37—Orange County, New York; Request for Manufacturing Authority, Minolta Advance Technology, Inc. (Toner Products)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Orange County, New York, grantee of FTZ 37, on behalf of Minolta Advance Technology, Inc. (Minolta), requesting authority to manufacture bulk toner and toner cartridges under FTZ procedures within FTZ 37—Site 7. The application was formally filed on September 23, 2003.

The Minolta facility is located at (1 bldg., 88,039 sq. ft. (with a possible 125,000 sq. ft. to be added in the future) on 19.2 acres). The plant (40 employees) produces bulk toner (HTSUS 3707, 6.5%), toner cartridges for computer printers (HTSUS 8473, duty-free) and photocopiers (HTSUS 9009, duty-free to 3.7%), and remanufactures toner cartridges (HTSUS 8473 and HTSUS 9009, duty-free to 3.7%).

Foreign-sourced materials will account for some 40–80 percent of finished product value, and may include items from the following general categories: inorganic acids; artificial corundum; aluminum oxide; iron oxides; silicates; organo-sulfur compounds; heterocyclic compounds; other organic compounds; artificial and prepared waxes; chemical preparations for photographic uses, propylene/styrene/acrylic polymers; polyacetals; self-adhesive sheets/plates of plastics; other sheets/plates of plastics; plastic lids/stoppers; articles of vulcanized rubber, belts; paper and paperboard; cartons; paper; printed booklets and leaflets; seals and tapes for cartridges; aluminum foils; records, tapes and other recorded media; parts and accessories (other than carrying cases) for use with machines under HTSUS 8469 to 8472; parts sutiable for use with apparatus of HTSUS 8525 or 8528; electrical apparatus for switching or protecting electrical circuits.

Zone procedures would exempt Minolta from Customs duty payments on foreign materials used in production for export. Some 12 percent of the plant's shipments are currently exported and are projected to increase to some 30 percent in the future. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (primarily duty-free, and some up to 6.5%), rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 8 percent, weighted average 6.5%). At the outset, the company is requesting to manufacture toner cartridges for multi-function printers (HTSUS 8473.40.8000, duty-free) from bulk toner (HTSUS 3707.90.3290, 6.5%) sourced abroad. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the

Board's Executive Secretary at one of the following addresses:

1. *Submissions Via Express/Package Delivery Services:* Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. *Submissions Via the U.S. Postal Service:* Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is December 2, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 17, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 707 Westchester Avenue, Suite 209, White Plains, New York 10604.

Dated: September 23, 2003.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 03–25163 Filed 10–2–03; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Docket 49–2003]**

### Foreign-Trade Zone 171—Liberty County, TX, Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Liberty County Economic Development Corporation, grantee of Foreign-Trade Zone 171, requesting authority to expand FTZ 171, in the Liberty County, Texas, area, adjacent to the Houston Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 24, 2003.

FTZ 171 was approved on January 4, 1991 (Board Order 501, 56 FR 1166, 1/11/91) and was expanded on August 9, 1999 (Board Order 1049, 64 FR 46181, 8/24/99) and April 15, 2002 (Board Order 1225, 67 FR 20087, 4/24/02). The zone project currently consists of the following sites: *Site 1* (150 acres)—City of Cleveland's International Industrial Park, on Highway FM 2025, west of U.S. Highway 59; *Site 2* (45 acres)—Port of Liberty County Industrial Park, located on the Trinity River; *Site 3* (27 acres)—industrial park on the Trinity River, some 2 miles south of U.S. Highway 90, City of Liberty; *Site 4* (24 acres)—within the Cleveland Municipal Airport facility, Highway FM 787, Liberty County; *Site 5* (583 acres)—Sjolander Plastics Storage Railyard facility, adjacent to Highway 146, approximately 2 miles south of Dayton (Liberty County); and, *Site 6* (200 acres, 3 parcels)—located between West Bay Road and FM 1405, within the western portion of the 15,000-acre Cedar Crossing Industrial Park in the City of Baytown (Chambers County).

The applicant is now requesting authority to expand the general-purpose zone to include three additional sites (306 acres) in Huntsville (Walker County), Texas: *Proposed Site 7* (200 acres)—75 South Industrial Park, adjacent to Highway 75 and Interstate 45, Huntsville; *Proposed Site 8* (103 acres)—75 North Industrial Park, adjacent to Highway 75 and Interstate 45, Huntsville; and, *Proposed Site 9* (3 acres)—M&M Designs Industrial Park, 1981 Quality Boulevard, Huntsville. All three sites are located within a State-sponsored Enterprise Zone. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the addresses below:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099—14th Street, NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is December 2, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 17, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the U.S. Department of Commerce Export Assistance Center, 15600 John F. Kennedy Boulevard, Suite 530, Houston, Texas 77032.

Dated: September 24, 2003.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 03–25164 Filed 10–2–03; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

## Bureau of Industry and Security

**[Docket No. 02–BXA–02]**

### In the Matter of: Adbulamir Mahdi, aka Amir Mahdi and aka Jasin Khafaf, 20 Huntingwood Drive, Carborough, Ontario, Canada, M1W1A2 and Ots Refining Equipment Corporation, 7030 Woodbine Avenue, NE., Suite 500, Markham, Ontario, Canada L3R 6G2, Respondents

### Decision and Order

On November 22, 2002, the Bureau of Industry and Security (BIS)[1] issued an amended charging letter against the respondents, Abdulamir Mahdi, also known as Amir Mahdi and Jasin Khafaf ("Mahdi"), and OTS Refining Equipment Corporation (OTS), that alleged six violations of the Export Administration Regulations (EAR).[2] The charges are related to the export of U.S.-origin oil filed equipment to Iran through Canada. The specific charges as amended were: (1) One charge under section 764.2(d) of the EAR of conspiring to export the equipment to Iran without the required authorization from the U.S. Government; (2) two charges under § 764.2(a) of the EAR of making such unauthorized exports to Iran; (3) one charge under § 764.2(c) of the EAR of soliciting or attempting an unauthorized export to Iran; (4) one charge under § 764.2(g) of the EAR of making a false statement on a Shipper's Export Declaration; and (5) one charge under § 764.2(e) of the EAR of transferring and forwarding goods to Iran with knowledge that the items were exported from the United States in violation of the EAR. See BIS Amended Charging Letter of November 22, 2002.

On September 6, 2002, the ALJ issued an order that granted in part BIS's motion for summary decision. That order found Mahdi liable on the conspiracy charged based on the collateral estoppel effect of his prior criminal conviction for conspiracy. BIS's motion for summary decision was denied on other charges. See ALJ Order of September 6, 2002.

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[1] The Bureau of Industry and Security was formerly known as the Bureau of Export Administration. The name of the Bureau was changed pursuant to an order assigned by the Secretary of Commerce on April 16, 2002.

[2] The Export Administration Regulations are codified at 15 CFR 730–799.

On May 13, 2003, the ALJ conducted an evidentiary hearing in this matter. On August 26, 2003, the ALJ issued a Recommended Decision and Order, in which he found that Mahdi and OTS each committed the six violations described above. The ALJ also recommended the denial of the export privileges of Mahdi and OTS for 20 years. See Recommended Decision and Order of August 26, 2003.

Pursuant to § 766.22 of the EAR, the ALJ's Recommended Decision and Order has been referred to me for final action. Based on my review of the entire record, I find that the record supports the ALJ's findings of fact and conclusions of law regarding each of the above-referenced charges. I also find that the penalty recommended by the ALJ is appropriate, given the nature of the violations, the scope of the respondent's efforts to make unauthorized exports, and the importance of preventing future unauthorized exports to Iran, an embargoed country. I therefore affirm the findings of fact and conclusions of law in the ALJ's Recommended Decision and Order.[3]

It is hereby ordered,

First, that for a period of 20 years from the date on which this Order takes effect, Abdulamir Mahdi, also known as Amir Mahdi and Jasin Khafaf, 20 Huntingwood Drive, Scarborough, Ontario, Canada, M1W1A2, and OTS Refining Equipment Corporation, 7030 Woodbine Avenue, NE., Suite 500, Markham, Ontario, Canada, L3R6G2, (hereinafter collectively referred to as "Denied Persons" and individually referred to as "as Denied Person"), and all of their successors or assigns, officers, representatives, agents, and employees, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in connection with any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession, or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to EAR that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and that is owned, possessed, or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed, or controlled by a Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, "servicing" means installation, maintenance, repair, modification, or testing.

Third, that after notice and opportunity for comment as provided in Section 766.23 of the EAR, any person, firm, corporation, or business organization related to a Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order shall be served on the Denied Persons and on BIS, and shall be published in the **Federal Register**. In addition, the ALJ's Recommended Decision and Order, except for the section with the heading "Recommended Order," shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective upon publication in the **Federal Register**.

Dated: September 29, 2003.

**Kenneth I. Juster,**

*Under Secretary of Commerce for Industry and Security.*

## Recommended Decision and Order

Before: Hon. Peter A. Fitzpatrick, Administrative Law Judge, United States Coast Guard.

Appearances:

Philip D. Golrick, Esq.—For the Bureau of Industry and Security

Abdulamir Mahdi—PRO SE

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[3] There are two minor clarifications to the ALJ's Recommended Decision and Order that need to be made:

(1) The language in paragraph 2 of Part V of the Recommended Decision and Order indicates that Canada does not require licenses for non-munitions items of Canadian-origin to Iran. However, while Canada does not control the oil field equipment exported by Mahdi and OTS to Iran, it does in fact control the export of certain other non-munitions items of Canadian-origin to Iran.

(2) The language quoted from the Iranian Transactions Regulations at 31 CFR 560.204(a) in Part VII.A of the Recommended Order was not in effect until after the conduct at issue in this case. However, the language of § 560.204 that was in effect at the time of respondents' conduct plainly reached their actions. See *United States* v. *Ehsan*, 163 F.3d 855, 858–59 (4th Cir. 1998) (shipment to the United Arab Emirates ultimately intended for Iran "fits the plain meaning of an 'exportation' to Iran" under 31 CFR 560.204).

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## II. Summary of Decision

This case involved covert operations by Respondents Abdulamir Mahdi and, his wholly owned company, OTS Refining Equipment Corporation ("OTS"), to unlawfully ship oil field equipment from the United States to Iran through Canada in violation of the Export Administration Act of 1979 ("Act" or "EAA") and the Export Administration Regulations ("EAR"). *See* 50 U.S.C. App. Secs. 2401–2420 (1991), *amended by* Pub. L. 106–508, 114 Stat. 2360 (Supp. 2002) (EAA); 15 CFR parts 730–74 (1997–1999) (EAR). The EAA and its underlying regulations establish a "system of controlling exports by balancing national security, foreign policy and domestic supply needs with the interest of encouraging export to enhance * * * the economic well being" of the United States. *See Times Publ'g Co.* v. *United States Dep't of Commerce*, 236 F.3d 1286, 1290 (11th Cir. 2001); *see also* 50 U.S.C. App. 2401–02.[1]

Here, six violations of the EAR are alleged and the Bureau of Industry and Security, United States Department of Commerce ("Bureau" or "BIS") seeks denial of the Respondents' export privileges from the United States for a period of 20 years. This case was brought while Mr. Mahdi was serving a 4-year and 3-month sentence in Federal prison based on a Plea of Guilty to one count of conspiracy to export oil field equipment from the United States to Iran and Iraq without authorization, and in accordance with the judgment and sentence of the United States District Court for Middle District of Florida on November 22, 1999. *See United States* v. *Mahdi*, 99–128–CF0ORL–22B. Charge 1 in this administrative proceeding is nearly identical to the conspiracy charge before the District Court to which Mr. Mahdi plead Guilty and for which the court entered a judgment and sentence. At a preliminary stage in this administrative proceeding, the Bureau's Motion for Summary Decision with respect to Charge 1 was granted. The undersigned found that District Court's judgment collaterally estopped Mr. Mahdi from contesting Charge 1 relating to conspiracy. However, the Motion for Summary Decision was denied as to the remaining five charges.

At the administrative hearing, the Bureau presented substantial, reliable and probative evidence to support the remaining charges. Mr. Mahdi made a brief appearance at the hearing but refused to participate in the remainder of these proceedings. Thus, most of the evidence on this record is uncontested. Each of the remaining charges (Charges 2–6) is found Proved. The Bureau's request for a Denial Order of 20 years is well founded in view of the number of violations involved and the continuing efforts of Mr. Mahdi and his brother to unlawfully export items to Iran.

Finally, although the regulations require this proceeding to be concluded within one year from the filing of the charging letter, the undersigned Judge extended the period for issuance of the decision for good cause. *See* 15 CFR 766.17(d). In this case, the period was extended until January 17, 2004 to allow Mr. Mahdi to serve his Federal prison sentence, and afford him an opportunity to adequately prepare for the hearing. *See* Order dated October 10, 2003, at 9–10.

## III. Preliminary Statement

In an amended charging letter dated November 22, 2002, the Bureau alleged that Respondents Mahdi and OTS committed six violations of the EAR.[2] The Agency sought denial of Respondents export privileges for a period of 20 years.[3] The charges were as follows:

Charge I alleged that between in or about March 1997, and in or about April 1998, the Respondents violated §§ 746.7 and 764.2(d) of the EAR by conspiring and acting in concert with others known and unknown to obtain oil field equipment from the United States and export it to Iran through Canada.

Charge 2 and 3 alleged that on or about October 30, 1997, and on or about February 2, 1998, the Respondents violated §§ 746.7 and 764.2(a) of the EAR by exporting oil field equipment from the United States through Canada to Iran without obtaining prior authorization from the Office of Foreign Assets Control ("OFAC"), a division of the Treasury Department.

Charge 4 alleged that on or about April 21, 1998, to on or about March 17, 1999, the Respondents violated §§ 746.7 and 764.2(c) of the EAR by soliciting or attempting to export oil field equipment from the United States through Canada to Iran without obtaining prior authorization from OFAC.[4]

Charge 5 alleged that on or about October 30, 1997, the Respondents violated § 764.2(g) of the EAR by making a false and misleading statement of material fact on a Shipper's Export Declaration that the country of ultimate destination of the oil field equipment was Iran.

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[1] The EAA and all regulations under it expired on August 20, 2001. *See* 50 U.S.C. App. 2419. Three days before its expiration, the President declared that the lapse of the EAA constitutes a national emergency. *See* Exec. Order. No. 13222, reprinted in 3 C.F.R. at 783–784, 2001 Comp. (2002). Exercising authority under the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. 1701–1706 (2002), the President maintained the effectiveness of the EAA and its underlying regulations throughout the expiration period by issuing Exec. Order. No. 13222 on August 17, 2001. *Id.* The effectiveness of the export control laws and regulations were further extended by Notice issued by the President on August 14, 2002. *See* Notice of August 14, 2002: Continuation of Emergency Regarding Export Control Regulations, reprinted in 3 CFR at 306 (2003). Courts have held that the continuation of the operation and effectiveness of the EAA and its regulations through the issuance of Executive Orders by the President constitutes a valid exercise of authority. *See Wisconsin Project on Nuclear Arms Control* v. *United States Dep't of Commerce*, 317 F.3d 275, 278–79 (D.C. Cir. 2003); *Times Publ'g Co.*, *supra*, 236 F.3d at 1290.

[2] The "Bureau of Export Administration" or "BXA" issued the original charging letter on January 17, 2002. Through an internal organizational order, the Department of Commerce changed the name of BXA to BIS. *See* Industry and Security Programs: Change of Name, 67 FR 20630 (Apr. 26, 2002). Pursuant to the Savings Provision of the order, "Any actions undertaken in the name of or on behalf of the Bureau of Export Administration, whether taken before, on, or after the effective date of this rule, shall be deemed to have been taken in the name of or on behalf of the Bureau of Industry and Security." *Id.* at 20631.

[3] Neither the original charging letter, nor the amended charging letter specified the exact nature of relief sought by the Agency. In the Agency's "Pre-Hearing Memorandum" dated February 26, 2003, BIS revealed that it was seeking a 20-year denial of export privileges. The Agency also moved to withdraw the charges against a third respondent, Tech-Link Development Corporation ("Tech-Link") because BIS was unable obtain service of the charging letter on Tech-Link. The charges were dismissed without prejudice in an Order dated March 3, 2003.

[4] Charge 4 in the original charging letter alleged that Respondents exported oil field equipment from the United States, through Canada, to Iran on or about April 21, 1998. Following the partial denial of summary decision, BIS filed a Motion for Reconsideration or Clarification on September 12, 2002. On September 18, 2002, BIS filed a Partial Withdrawal of the Motion for Reconsideration or Clarification with respect to Charge 4 and moved to amend that charge because the Bureau determined that the oil field equipment was not exported to Iran as alleged. The motion to amend Charge 4 was granted in an Order dated October 10, 2002. The Bureau filed a Notice of Filing Amended Charging Letter on November 22, 2002 and served the amended charging letter on Mr. Mahdi and OTS.

Charge 6 alleged that on October 30, 1997, the Respondents violated § 764.2(e) of the EAR by transferring and forwarding the oil field equipment from Canada to Iran knowing that those goods had been exported from the United States in violation of the EAR.

By Order dated September 6, 2002, summary decision was granted against Respondent Mahdi Solely on the conspiracy to export oil field equipment to Iran through Canada in violation of 15 CFR 746.7 and 764.2(d) alleged in Charge 1. Summary decision with respect to the remaining charges was denied. The hearing in this matter was continued numerous times over 18 months to accommodate Mr. Mahdi who represented himself and his company OTS. *See* Order dated May 9, 2002; Order dated October 9, 2002; Transcript of Pre-Hearing Conference dated January 8, 2003; Order dated January 13, 2003; Order Dismissing, Without Prejudice, Charges Against Tech-Link Development Corporation and Scheduling Order dated March 3, 2003; *see also* (Transcript 24–25, 27–28, 35–47, 56–60, 73–77; Gov't Ex. 1A). The evidentiary hearing was held before this Judge in Baltimore, Maryland on May 13, 2003 at 9:30 a.m., EST. Because of the failure to secure approval of a parole application for reentry into the United States in accordance with the Immigration and Nationalization Services Regulations codified at 8 CFR part 212 (2002), Mr. Mahdi was not able to be physically present at the hearing to represent himself and OTS. *See* Transcript at 7–8, 35–47. However, arrangements were made for Mr. Mahdi to call into a telephone pool conference number and participate via telephone in the hearing. *Id.* at 5–7.[5]

Although Mr. Mahdi was advised in writing of the exact time and date of the hearing, he did not call into the telephone pool conference number until nearly 45 minutes into the proceeding. *Id.* at 3–8, 47–62; *see also* Order Dismissing, Without Prejudice, Charges Against Tech-Link Development Corporation and Scheduling Order dated March 3, 2003, at 3; Order dated April 14, 2003; Order Denying Request for Continuance dated April 15, 2003. At that time, Mr. Mahdi declared that he was mentally incompetent and did not want to participate in the hearing: then he hung up the telephone. (Transcript at 51–62). Mr. Mahdi only participated in these proceedings for a total of 15–20 minutes. Following a brief recess, connection to the telephone pool conference number was reestablished so that Mr. Mahdi could participate in the hearing if he changed his mind. *Id.* at 63. The telephone pool conference number remained open until approximately 12:30 p.m. *Id.* at 163–65. Mr. Mahdi did not change his mind and did not participate any further in the hearing or these administrative proceeding.[6]

At the hearing, one witness, Special Agent Roy Gilfix of the Office of Export Enforcement, U.S. Department of Commerce ("OEE") testified for the Agency and thirty-three exhibits were admitted into evidence. The exhibit list is provided in Attachment A. Following receipt of the transcript, Mr. Golrick also filed a Post-Hearing Submission, including proposed findings of fact and conclusion. Ruling on the proposed findings of fact and conclusions of law are contained in Attachment B. The record is now closed.

As a general rule, administrative proceedings conducted under the EAA are generally excluded from the operation of the Administrative Procedure Act ("APA"), as amended and codified in 5 U.S.C. 551–559. *See* 50 U.S.C. App. sec. 2412(a); 15 CFR 766.1. However, in administrative enforcement actions seeking impositions of civil penalties and/or sanctions, there is an exception to the general exclusion if the case involves a violation of sections 2407 or 2410. *See* 50 U.S.C. App. sec. 2412(c). Since this case involves violations of sec. 2410, the administrative proceeding was conducted in accordance with the APA.

This administrative proceeding was also conducted in accordance with 50 U.S.C. App. secs. 2410(c)(2)(B) and 2412(c), 5 U.S.C. 3344, 15 CFR part 766, 5 CFR 930.213. The conduct of this proceeding also complies with the provisions of a letter from the United States Office of Personnel Management ("OPM") and an interagency reimbursable agreement between the Coast Guard and BIS dated December 30, 2002. The OPM letter and the reimbursable agreement authorize Coast Guard Administrative Law Judges ("ALJ") to adjudicate cases involving violations of U.S. export laws and regulations.

After careful review of the facts and applicable laws in this case, I find that BIS has proved the allegations in the charging letter by substantial evidence of a reliable and probative nature.[7]

## IV. Applicable Statutes and Regulations

The acts constituting violations of the export control laws and regulations occurred between October 1997 and March 1999. Thus, the export control laws and regulations in effect on October 1997 through March 1999 govern resolution of this matter. Those laws and regulations are substantially similar to the current export control laws and regulations.

### *A. Statutes*

The relevant statutes read in pertinent part as follows:

50 U.S.C. App. 2404. National Security Controls

(a) *Authority.*

(1) In order to carry out the policy set forth in section 3(2)(A) of this Act [50 USCS App. 2402(2)(A)], the President may, in accordance with the provisions of this section, prohibit or curtail the export of any goods or technology subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. The authority contained in this subsection includes the authority to prohibit or curtail the transfer of goods or technology within the United States to embassies and affiliates of controlled countries. For purposes of the preceding sentence, the term "affiliates" includes both governmental entities and commercial entities that are controlled in fact by controlled countries. The authority contained in this subsection shall be exercised by the Secretary, in consultation with the Secretary of Defense, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export

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[5] On November 28, 2002, Mr. Mahdi was released into the custody of U.S. Immigration Officials and was subsequently deported after serving a 51-month sentence following a plea of guilty to one count of conspiracy to export oil field equipment from the United States to Iran and Iraq via Canada between March 1997 and March 1999 without authorization. Mr. Mahdi did not submit a copy of the parole application to the undersigned Judge or to BIS even though directed to do so. *See* Transcript of Pre-Hearing Conference dated January 8, 2003, at 19–20.

[6] On April 14, 2003, Ms. Lucinda Shinault, Paralegal to this Judge, served an Order memorializing a telephonic Pre-Hearing Conference by Federal Express to Respondent at the address provided by Mr. Mahdi. Respondent Mahdi received the Order, which was signed for by J. Khan. On April 15, 2003, Ms. Shinault sent an Order Denying Respondent's Request for Continuation of the May 13, 2003 hearing based on physical and mental incompetence by Federal Express. Federal Express attempted to deliver the April 15th Order on two occasions. The attempts proved unsuccessful. Federal Express also left telephone messages on an answering machine for Respondent Mahdi, who failed to return the telephone calls. On April 21, 2003, Ms. Shinault directed Federal Express to make a third attempt to deliver the April 15th Order. The Order was refused and an unidentified person sent a return to sender letter together with the Order. Thereafter, Ms. Shinault sent Mr. Mahdi the April 15th Order by regular first class mail. (Judge's Ex. 1, 2; Tr. 67–72). In view of Mr. Mahdi's brief participation in the hearing there is no doubt that he had actual notice of the hearing.

[7] While this case was pending, the United States Coast Guard transferred from the Department of Transportation to the Department of Homeland Security. Pursuant to the Savings Provision of HR 5005 § 1512 (Pub. L. 107–296), pending proceedings are continued notwithstanding the transfer of the Agency.

licenses described in section 4(a) of this Act [50 USCS App. 2403(a)].

* * * * *

(b) *Policy toward individual countries.*

(1) In administering export controls for national security purposes under this section, the President shall establish as a list of controlled countries those countries set forth in section 620(f) of the Foreign Assistance Act of 1961 [22 USCS § 2370(f)], except that the President may add any country to or remove any country from such list of controlled countries if he determines that the export of goods or technology to such country would or would not (as the case may be) make a significant contribution to the military potential of such country or a combination of countries which would prove detrimental to the national security of the United States. In determining whether a country is added to or removed from the list of controlled countries, the President shall take into account—

(A) The extent to which the country's policies are adverse to the national security interests of the United States;

(B) The country's Communist or non-Communist status;

(C) The present and potential relationship of the country with the United States;

(D) The present and potential relationships of the country with countries friendly or hostile to the United States;

(E) The country's nuclear weapons capability and the country's compliance record with respect to multilateral nuclear weapons agreements to which the United States is a party; and

(F) Such other factors as the President considers appropriate.

Nothing in the preceding sentence shall be interpreted to limit the authority of the President provided in this Act to prohibit or curtail the export of any goods or technology to any country to which exports are controlled for national security purposes other than countries on the list of controlled countries specified in this paragraph. The President shall review not less frequently than every three years in the case of controls maintained cooperatively with other nations, and annually in the case of all other controls, United States policy toward individual countries to determine whether such policy is appropriate in light of the factors set forth in this paragraph.

50 U.S.C. App. 2405. Foreign Policy Controls

(a) *Authority.*

(1) In order to carry out the policy set forth in paragraph (2)(B), (7), (8), or (13) of section 3 of this Act [50 USCS Appx. § 2402(2)(B), (7), (8), or (13)], the President may prohibit or curtail the exportation of any goods, technology, or other information subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States, to the extent necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations. The authority granted by this subjection shall be exercised by the Secretary, in consultation with the Secretary of State, the Secretary of Defense, the Secretary of Agriculture, the Secretary of the Treasury, the United States Trade Representative, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses issued by the Secretary.

50 U.S.C. App. 2410. Violations

(a) *In general.* Except as provided in subsection (b) of this section, whoever knowingly violates or conspires to or attempts to violate any provision of this Act or any regulation, order, or license issued thereunder shall be fined not more than five times the value of the exports involved or $50,000, whichever is greater, or imprisoned not more than 5 years, or both.

(b) *Willful violations.*

(1) Whoever willfully violates or conspires to or attempts to violate any provision of this Act or any regulation, order, or license issued thereunder, with knowledge that the exports involved will be used for the benefit, or that the destination or intended destination of the goods or technology involved is, any controlled country or any country to which exports are controlled for national security or foreign policy purposes—

(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and

(B) in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 10 years, or both.

* * * * *

(3) Any person who possesses any goods or technology—

(A) with the intent to export such goods or technology in violation of an export control imposed under section 5 or 6 of this Act [50 USCS Appx. §§ 2404, 2405] or any regulation, order, or license issued with respect to such control, or

(B) knowing or having reason to believe that the goods or technology would be so exported,

shall, in the case of a violation of an export control imposed under section 5 [50 USCS Appx. § 2402] (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (1) of this subsection and shall, in the case of a violation of an export control imposed under section 6 [50 USCS Appx. § 2405] (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in subsection (a).

(c) *Civil penalties; administrative sanctions.*

* * * * *

(1)(A) The authority under this Act to suspend or revoke the authority of any United States person to export goods or technology may be used with respect to any violation of the regulations issued pursuant to section 8(a) of this Act [50 USCS Appx. § 2407(a)].

(B) Any administrative sanction (including any civil penalty or any suspension or revocation of authority to export) imposed under this Act for a violation of the regulations issued pursuant to section 8(a) of this Act [50 USCS Appx. § 2407(a)] may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code [5 USCS §§ 554–557].

(C) Any charging letter or other document initiating administrative proceedings for the imposition of sanctions for violations of the regulations issued pursuant to section 8(a) of this Act [50 USCS Appx. § 2407(a)] shall be made available for public inspection and copying.

* * * * *

(h) *Prior convictions.*

(1) No person convicted of a violation of this Act (or any regulation, license, or order issued under this Act), any regulation, license, or order issued under the International Emergency Economic Powers Act [50 USCS §§ 1701 et seq.], section 793, 794, or 798 of title 18, United States Code [18 USCS §§ 793, 794, 798], section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)) [50 USCS § 783(b)], or section 38 of the Arms Export Control Act (22 U.S.C. 2778) [22 USCS § 2778] shall be eligible, at the discretion of the Secretary, to apply for or use any export license under this Act for a period of up to 10 years from the date of the conviction. The Secretary may revoke any export license under this Act in which such person has an interest at the time of the conviction.

(2) The Secretary may exercise the authority under paragraph (1) with respect to any person related, through affiliation, ownership, control, or position of responsibility, to any person convicted of any violation of law set forth in paragraph (1), upon showing of such relationship with the convicted party, and subject to the procedures set forth in section 13(c) of this Act.

50 U.S.C. App. 2415. Definitions

As used in this Act—

(1) the term "person" includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof;

* * * * *

(3) the term "good" means any article, natural or manmade substance, material, supply or manufactured product, including inspection and test equipment, and excluding technical data;

* * * * *

(5) The term "export" means—

(A) An actual shipment, transfer, or transmission of goods or technology out of the United States;

(B) A transfer of goods or technology in the United States to an embassy or affiliate of a controlled country; or

(C) A transfer to any person of goods or technology either within the United States or outside of the United States with the knowledge or intent that the goods or technology will be shipped, transferred, or transmitted to an unauthorized recipient;

(6) The term "controlled country" means a controlled country under section 5(b)(1) of this Act [50 USCS Appx. § 2404(b)(1)];

(7) The term "United States" means the States of the United States, the District of Columbia, and any commonwealth, territory, dependency, or possession of the United

States, and includes the outer Continental Shelf, as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a) [43 USCS § 1331(a)]);

*B. Regulations*

The applicable regulations read as follows:

15 CFR 746.7 Iran

The Treasury Department's Office of Foreign Assets Control (OFAC) administers a comprehensive trade and investment embargo against Iran under the authority of the International Emergency Economic Powers Act of 1977, as amended, section 505 of the International Security and Development Cooperation Act of 1985, and Executive Orders 12957 and 12959 of March 15, 1995 and May 6, 1995, respectively. This embargo includes prohibitions on export and certain reexport transactions involving Iran, including transactions dealing with items subject to the EAR. (*See* OFAC's Iranian Transactions Regulations, 31 CFR part 560.) BXA continues to maintain licensing requirements on exports and reexports to Iran under the EAR as described in paragraph (a)(2) of this section. No person may export or rexport items subject to both the EAR and OFAC's Iranian Transactions Regulations without prior OFAC authorization.

15 CFR 764.2 Violations

(a) Engaging in prohibited conduct. No person may engage in any conduct prohibited by or contrary to, or refrain from engaging in any conduct required by, the EAA, the EAR, or any order, license or authorization issued thereunder.

* * * * *

(c) Solicitation and attempt. No person may solicit or attempt a violation of the EAA, the EAR, or any order, license or authorization issued thereunder.

(d) Conspiracy. No person may conspire or act in concert with one or more persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of the EAA, the EAR, or any order, license or authorization issued thereunder.

(e) Acting with knowledge of a violation. No person may order, buy, remove, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, any item exported or to be exported from the United States, or that is otherwise subject to the EAR, with knowledge that a violation of the EAA, the EAR, or any order, license or authorization issued thereunder, has occurred, is about to occur, or is intended to occur in connection with the item.

* * * * *

(g) Misrepresentation and concealment of facts. (1) No person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, either directly to BXA, the United States Customs Service, or an official of any other United States agency, or indirectly through any other person:

(i) In the course of an investigation or other action subject to the EAR; or

(ii) In connection with the preparation, submission, issuance, use, or maintenance of any export control document or restrictive trade practice or boycott request report, as defined in § 760.6 of the EAR; or

(iii) For the purpose of or in connection with effecting an export, reexport or other activity subject to the EAR.

(2) All representations, statements, and certifications made by any person are deemed to be continuing in effect. Every person who has made any representation, statement, or certification must notify BIS and any other relevant agency, in writing, of any change of any material fact or intention from that previously represented, stated, or certified, immediately upon receipt of any information that would lead a reasonably prudent person to know that a change of material fact or intention has occurred or may occur in the future.

## V. Findings of Fact

The Findings of Fact are based on the documentary evidence, the testimony of the Bureau's witness, and the entire record. The facts of this case are as follows:

### *A. Background*

1. In the late 1940s through the 1950s, U.S. multinational corporations built the national oil extraction and processing infrastructures in Iran, Iraq, and Libya. These corporations manufactured oil field parts and equipment. Between 1995 through present, replacement parts and equipment were needed for repairs of malfunctioning oil field parts and equipment. Maintaining a repair inventory was also of interest to Iran, Iraq, and Libya. (Tr. 247–50).[8]

2. Between 1995 through present, the United States imposed an embargo that restricted the export of munitions and dual use items of U.S. origin to Iran absent consent from the Department of Treasury, OFAC. Canada's export controls for Canadian-origin commodities that are destined for Iran are minimal compared to those of the United States. Canada only requires export licenses for munitions exported to Iran. Therefore, oil-field equipment can be exported legally from Canada to Iran without a license if the equipment is of Canadian-origin. (Tr. at 266–69).

3. Because of the close historical, cultural, geographical, and other ties with Canada, the United States has relaxed export controls affecting commodities whose ultimate destination is Canada. (Tr. 262–64). If the commodities are merely transiting Canada or the Canadian company plans to transship the commodities to a third country, the relaxed export controls do not apply. (*Id.* at 263–65).

4. Mr. Mahdi knew of the United States' embargo against Iran, which restricted the export of U.S. origin commodities to Iran. (Gov't Ex. 3, at 26–27; Gov't PFF 27).

5. Mr. Mahdi is a naturalized Canadian citizen and resident of Ontario, Canada. (Gov't Ex. 2, at 16; Gov't Ex. 3, at 20–21; Gov't Ex. 6, at 1; Gov't PFF 1).

6. Mr. Mahdi was born in Iraq. He is formally known as Abdulamir Mahdi. However, he commonly uses two different names depending on whether he is transacting business with Iran or Iraq. When conducting business with Iraq, Mr. Mahdi uses an Iraqi name: Amir Mahdi. When transacting business in Iran, he goes by an Iranian name: Jasin Khafaf. Tr. 100–01; Gov't Ex. 6, at 1: Gov't PFF 2).

7. From October 1995 through March 17, 1999, Mr. Mahdi served as the sole owner and operator of OTS located in Markham, Ontario, Canada. (Gov't Ex. 2, at 16; Gov't Ex. 3, at 20–21; Gov't Ex. 6, at 2; Gov't PFF 3).

8. OTS was a Canadian corporation that served as a broker of spare parts for oil field and industrial equipment to Middle Eastern countries, including Iran and Iraq. (Gov't Ex. 1, at 6; Gov't Ex. 3, at 20; Gov't PFF 3). OTS had offices in France, and Dubai, United Arab Emirates (U.A.E.). OTS also conducted business in Saudi Arabia. (Gov't Ex. 6, at 2).

9. Mr. Tito DiMarco and Mr. Mahdi's only employee at OTS in Canada. (Tr. 188).

10. Approximately 90% of OTS's sales of equipment were to Iran and Iraq, and the remaining 10% of the sales were to Saudi Arabia. (Tr. 178, 236–238; Gov't Ex. 26; Gov't PFF 44).

11. Neither Mr. Mahdi nor OTS owns any property or liquid assets in the United States. (Entire Administrative Record).

12. At all relevant times, neither OTS nor Mr. Mahdi under his formal name or any of his aliases had an export license issued by the Department of Commerce or OFAC authorizing the export of oil field equipment from the United States to Iran. The Respondents also had not applied for such a license. (Tr. 215–17; Gov't Ex. 20; Gov't PFF 39).

13. Mr. Mahdi served a 51-month sentence in Federal prison after pleading guilty to one count of conspiracy to export oil field equipment from the United States to Iran and Iraq between March 1997 and March 1998 without required export license and

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[8] The citations in this Recommended Decision are as follows: Government Exhibit followed by exhibit number, at page number (Gov't Ex. _, at _); Transcript followed by page number, (Tr. _); Government Proposed Findings of Fact and Conclusions of Law followed by number, (Gov't PFF _); and Government Proposed Ultimate Findings of Fact and Conclusions of Law, (Gov't PUFF).

authorization in violation of the Export Administration Act and the Export Administration Regulations. (Gov't Ex. 1–5; Tr. 110–125; Gov't PFF 6).

14. Mr. Mahdi's older brother, Mahdik Mahdi owned and oeprated Zawana Trading & Marketing Establishment ("Zawana Trading") in Amman, Jordan. The company imports items into Jordan and exports the items to Iraq. (Tr. 143; Gov't Ex. 1, at 6; Gov't Ex. 2, at 1; Gov't Ex 7, at 1; Gov't PFF 4).

15. On February 28, 2003, Special Agent Gilfix of OEE performed a search for the name "Mahdi" on the Internet. The search revealed that on April 9, 2002, Respondent's brother Mahdik Mahdi in Amman, Jordan posted an advertisement soliciting bids for 140 tons of Alumina Based Catalyst to be delivered to Tartuse, Syria. (Tr. 260–62; Gov't Ex. 29).

### *B. Conspiracy To Export Oil Field Equipment From the United States to Iran via Canada*

16. In late 1996 or early 1997, Mr. Abdulamir Mahdi telephoned Brevard International Technical Services ("BITS") in Membourne, Florida. BITS was owned and operated by Dr. John Strome, a Canadian citizen, who resided in Florida and who was the co-conspirator. Mr. Mahdi advised Dr. Strome that he was an oil field and industrial equipment broker with clients in the Middle East and that he was seeking a U.S. company to serve as an exclusive supplier. (Tr. 136–38; Gov't Ex. 1, at 6; Gov't Ex. 2, at 18; Gov't Ex. 6, at 1; Gov't PFF 5, 9).

17. When Mahdi first initiated contact with BITS in late 1996 or early 1997, he was working on behalf of Tech-Link. Tech-Link was an oil field equipment broker but the company terminated operations in September 1997. After Tech-Link closed, Mr. Mahdi continued to transact business with BITS on behalf of OTS. (Gov't Ex. 3 at 21; Gov't Ex. 6, at 1; Gov't PFF 9–10).

18. In October 1997, Dr. Strome and Mr. Mahdi met in Toronto, Canada to discuss the prospects of BITS serving as OTS's exclusive supplier of U.S. origin commodities to the Middle East. Under the business proposal, BITS would export to OTS products under the BITS brand name, OTS would sell the commodities to offshore end users, and the end users would obtain replacement parts from BITS through OTS. (Tr. 138, 243–44; Gov't Ex. 6, at 1–2; Gov't PFF 10).

19. A draft "Confidentiality and Non-Disclosure Exclusive Agreement" ("Agreement") dated November 1, 1997 between BITS and OTS was prepared. In the Agreement, BITS appointed OTS as its sole agent of its products in the Middle East, including Iran, Iraq, and Libya once the restrictions were lifted. However, the Agreement was never executed or otherwise signed by Mr. Mahdi or Dr. Strome of BITS. (Tr. 251–53; Gov't Ex. 28; Gov't PFF 11).

20. Mr. Mahdi sent a follow-up letter dated November 5, 1997 to Dr. Strome of BITS. The follow-up letter was on OTS stationary. The letter memorialized their agreement and listed nineteen countries that OTS was going to try to sell BITS products. The countries were mostly in the Middle East. Iran and Iraq were both included in the list of countries. (Tr. 241–242; Gov't Ex. 27; Gov't PFF 12).

21. Neither BITS nor Dr. Strome applied for or received authorization from OFAC to export from the United States to Iran or Iraq. (Tr. 215–17; Gov't Ex. 20; Gov't PFF 39).

22. Although OTS and BITS never finalized their agreement in writing, their business relationship proceeded on the basis of a handshake and the list of countries provided by Mahdi in the November 5, 1997 letter. (Tr. 253; Gov't PFF 13).

23. In late November or early December of 1997, OEE initiated an investigation of BITS involving illegal export activities relating to Libya. (Tr. 101–04). Special Agent Gilfix of OEE obtained a federal search warrant and seized 25 to 35 boxes of business records belonging to BITS. (Tr. 105–06; Gov't Ex. 6, at 2). The BITS investigation led OEE to later investigate Respondents OTS and Mahdi for export violations. (Tr. 103–04).

24. Dr. Strome contacted Mr. Mahdi and advised him that OEE had visited BITS and taken some business records. Mr. Mahdi did not appear to be concerned and continued to do business with BITS. (Tr. 106–07; Gov't Ex. 6, at 2).

25. In September 1998, Dr. Strome visited Mahdi and his older brother Mahdik Mahdi in Canada. Mr. Mahdik Mahdi advised Dr. Strome that the Mahdi family was very affluent and owned homes near Saddam Hussein's palace in Baghdad. Mr. Madhik Mahdi further stated that the family conducted business with Iraq's elite, including ministerial and higher level staff. According to Mr. Mahdik Mahdi, the business relationship between OTS and BITS would prove to be prosperous once the embargo on Iraq was lifted. In the presence of Mr. Strome, Mr. Mahdik and Respondent Mahdi reviewed files and drawings for projects in Iraq. The Mahdis also called Iraq to discuss projects. (Tr. 253; Gov't Ex. 6, at 2; Gov't PFF 14).

26. From March 1997 through March 1999, Mr. Mahdi doing business as OTS submitted 117 Request for Quotations ("RFQ") to BITS. Of the 117 RFQs, a total of 42 requests were made on behalf of customers in Iran. Thirty-six requests were made on behalf of Zawana Trading, which OEE believes were transshipped by Mr. Mahdi's brother to Iraq. Mr. Mahdi requested quotations from numerous U.S. corporations and bought equipment from the lowest bidder. Since Dr. Strome was not always the lowest bidder, not all RFQs resulted in shipments from BITS through OTS to Iran. (Tr. 224–26, 244–47; Gov't Ex. 21, 21A, 25; Gov't PFF 40–41).

27. The RFQs submitted by OTS to BITS on behalf of customers in Iran included: a request for a quotation for parts for a Shaffer Agitator Shaft and Turbine submitted on December 8, 1997 under reference number 223–127–RSA by Mr. DiMarco of OTS on behalf of Razi Petrochemical; a request for quotation for parts for a Coppus Steam Turbine submitted on July 14, 1998 by Mr. DiMarco of OTS under reference number 463–078–ACT on behalf of Arak Petrochemical; and a request for quotation for a Coppus Steam Turbine submitted by Mr. DiMarco of OTS under reference number 529–088–ACO on behalf of Arak Petrochemical. (Tr. 228–32; Gov't Ex. 22–25; Gov't PFF 42).

### *C. The Export of Oil Field Equipment From the United States to Iran via Canada*

28. The business relationship between OTS and BITS involved Mr. Mahdi placing RFQs with BITS on behalf of Middle Eastern customers. Mr. Mahdi assigned an alphanumeric reference consisting of ten digits to each RFQ. The first letter in the reference identified the end-user/prospective purchaser. (Tr. 141; Gov't Ex. 7; Gov't PFF 10, 17).

29. OTS's code for end-user/prospective purchaser was as follows: T = Kala Naft, Tehran, Iran (a subsidiary of National Iranian Oil Co.); K = Kala Naft, Canada; R = Razi Petrochemical, Iran (an affiliate of National Petrochemical Co.); A = Arak Petrochemical, Iran (an affiliate of National Petrochemical Co.); N = National Iranian Gas Company Iran; S = Saudi Arabia; M = Saudi Arabian medical end-users; and Z = Zawana Trading. (Tr. 142–43, 150, 234; Gov't Ex. 7, 9, 25; Gov't PFF 17, 43).

30. The last two letters represented the manufacturer or commodity. For example, GE represented General Electric and WP would represent water pumps. (Gov't Ex. 7).

### 1. The October 30, 1997 Export From the United States to Iran

31. On or about July 22, 1997, Mr. Mahdi submitted an irrevocable purchase order to Dr. Strome of BITS for $41,695.46 worth of oil field equipment for a Halliburton cementing unit on OTS stationery. The reference number was 701–1320–TSI. Using OTS's established code, the "T" indicates that the end-user was Kala Naft, Tehran, Iran. The "SI" represents Smith International, a U.S. manufacturer. (Tr. 148, 152; Gov't Ex. 8; Gov't PFF 19).

32. A BITS invoice dated July 23, 1997 memorialized the sale of $42,356.56 worth of oil field equipment to OTS under reference number 701–1320–TSI. The equipment was to be shipped on October 29, 1997 to Danzas Canada, Limited ("Danzas"), a freight forwarder located in Ontario, Canada. (Tr. 151; Gov't Ex. 10; Gov't PFF 21).

33. On October 30, 1997, Forward Logistics Group, Inc. ("Forward Logistics"), a freight forwarder acting on behalf of BITS, shipped the equipment purchased by OTS under reference number 701–1320–TSI. The equipment was shipped to OTS in care of Danzas. Forward Logistics prepared the Shipper's Export Declaration ("SED") on behalf of BITS. Item 7 in the SED indicated that the country of ultimate destination was "Toronto." The true country of ultimate destination was Iran. Forward Logistics did not know the product would end in Iran. (Tr. 156–60, 166–69; Gov't Ex. 11, 12; Gov't PFF 22–24).

34. When Danzas received the comodities that were shipped on October 30, 1997, pursuant to Mr. Mahdi's directions, the oil field equipment was consolidated with other equipment OTS had purchased from another company located in Texas. All of the equipment was then sent to Iran via Cypress. In an effort to apply Canadian export law, the country of origin for the equipment was falsely identified as Canada. (Tr. 153–55, 169–72, 177–78; Gov't Ex. 10; Gov't PFF 25–26).

### 2. The February 2, 1998 Export From the United States to Iran

35. On October 23, 1997, Mr. Mahdi submitted an irrevocable purchase order to Dr. Strome of BITS for $69,478.20 worth of oil field equipment. The purchase order was prepared on OTS stationary. The reference number was 702–1360–TSI. (Tr. 180; Gov't Ex. 6, at 4; Gov't Ex. 13; Gov't PFF 28).

36. In January 1998, BITS sold approximately 845 parts for a Halliburton cementing unit to OTS under reference number 702–1360–TSI. (Tr. 183–84; Gov't Ex. 6, at 4; Gov't Ex. 14).

37. Mr. Mahdi hired Pars Maritime Cargo, Inc. ("PCMI") of Quebec, Canada to transport the parts via truck from BITS in Florida to Ontario, Canada. PCMI is the general sales agent for Iran Air. PCMI picked up the parts from BITS on February 2, 1998. (Tr. 185–187; Gov't Ex. 6, at 4; Gov't Ex. 14, 15; Gov't PFF 29–30).

### *D. The Attempt To Export Oil Field Equipment on March 17, 1999*

38. On April 21, 1998, Mr. DiMarco of OTS submitted an irrevocable purchase order under reference number 013–077–BTB to Dr. Strome of BITS. The reference number contained a typographical error. The true reference number was 013–077–TBT. (Tr. 188, 191–93, 197–98; Gov't Ex. 6, at 4; Gov't Ex. 7, at 4; Gov't Ex. 16, 17; Gov't PFF 32).

39. OTS ordered $121,082.70 worth of extracting equipment used ot remove broken drill heads from oil wells under reference number 013–077–TBT. The extracting equipment was to be manufactured by Bowen Tools, a U.S. manufacturer. Based on Madhi's transaction code, the end-user was Kala Naft, Tehran, Iran. (Tr. 196–201, 206–208; Gov't Ex. 9, 16, 18A; Gov't PFF 32–33).

40. On May 26, 1998, Mr. Mahdi, acting on behalf of OTS, wired $16,082 in U.S. currency to BITS account. The money was a deposit for the equipment ordered under reference number 013–077–TBT. (Tr. 189–91; Gov't Ex. 16, at 3; Gov't Ex. 17; Gov't PPF 34).

41. In January 1999, Dr. Strome began cooperating with OEE investigators. (Tr. 105–107).

42. On or about March 4, 1999, Mr. Mahdi instructed Dr. Strome to export the equipment ordered by OTS under reference number 013–077–TBT to Industrial Engineering Inspection Company of Iran ("I.E.I.") for inspection. (Tr. 201, 207, 210–15; Gov't Ex. 18A, at 3; Gov't Ex. 18, 19; Gov't PFF 35–36).

43. Dr. Strome advised Special Agent Gilfix of OEE that Respondent had telephoned him from Canada and ordered that $120,000 worth of oil field equipment be shipped and inspected by an Iranian inspection company. At Special Agent Gilfix's behest Dr. Strome advised Mr. Mahdi that he would not export the equipment since they were destined for Iran. Instead, Mr. Mahdi agreed to meet Dr. Strome in Melbourne, Florida where the equipment could be inspected for Iran. (Tr. 107–109).

44. In the interim, Special Agent Gilfix obtained an arrest warrant from a fedral magistrate judge in Orlando, Florida based on a criminal complaint alleging that Mr. Mahdi violated U.S. export laws and regulations. (Tr. 109).

45. In mid-March 1999, Mr. Mahdi flew to Florida to inspect the equipment for Iran. After inspecting and obtaining the oil field equipment ordered under reference number 013–077–TBT, Mr. Mahdi was arrested. (Tr. 109, 202; Gov't PFF 37–38).

## VI. Ultimate Findings of Fact and Conclusions of Law

1. Mr. Mahdi, OTS, and the subject matter of this proceeding are properly within the jurisdiction of the BIS in accordance with the Export Administration Act of 1979 (50 U.S.C. App. Secs. 2401–2420) and the Export Administration Regulations (15 CFR parts 730–774).

2. On the basis of an Order dated September 6, 2002, granting summary decision against Mr. Mahdi, Charge 1 relating to the conspiracy to export oil field equipment between March 1997 and April 1998 from the United States to Iran via Canada is found proved under the doctrine of collateral estoppel. (Gov't PUFF 49–50, 56).

3. BIS has established by a preponderance of the evidence that the Respondents violated §§ 746.7 and 764.2(a) of the EAR by exporting oil field equipment from the United States through Canada to Iran on October 30, 1997 and February 2, 1998 without obtaining prior authorization from OFAC. (Gov't PUFF 51–53, 56).

4. BIS has established by a preponderance of the evidence that the Respondents violated §§ 746.7 and 764.2(c) of the EAR by attempting to export oil field equipment from the United States through Canada to Iran on March 17, 1999 without obtaining prior authorization from OFAC. (Gov't PUFF 54, 56).

5. BIS has established by a preponderance of the evidence that the Respondents violated § 764.2(g) of the EAR by making false and misleading statements of material fact on a Shipper's Export Declaration on October 30, 1997 that the country of ultimate destination of the oil field equipment was Canada, when, in fact, the true country of ultimate destination was Iran. (Gov't PUFF 55, 56).

6. BIS has established by a preponderance of the evidence that the Respondents violated § 764.2(e) transferring and forwarding goods, on or about October 30, 1997, to Iran knowing the goods had been exported from the

United States in violation of the EAR. (Gov't PUFF 57).

7. Under the theory of respondeat superior, OTS is liable for the actions of Mr. Mahdi and the sole employee, Mr. DiMarco, who were both acting on behalf of the corporation and whose actions resulted in violations of the EAA and EAR. (Gov't PUFF 49).

8. BIS has established that denial of export privileges for 20 years against Mr. Mahdi and OTS is justified and reasonable. (Gov't PUFF 58).

## VII. Discussion

### *A. Applicability of the Export Administration Act and Regulations to Respondents*

Throughout these proceedings, the Respondents have contended that BIS lacks jurisdiction. More specifically, Mr. Mahdi claimed that U.S. export laws do not apply to him as a Canadian citizen or OTS operating in Canada. This argument is rejected.

The authority delegated by Congress to the President of the United States under the EAA is extensive. The EAA gives the President authority to regulate or prohibit the export of goods, technology, and information "to the extent necessary to further the foreign policy of the United States or fulfill its international obligation." *See* 50 U.S.C. App. Sec. 2405(a)(1). The EAA also authorizes the President to regulate or prohibit the export of goods or technology in the interest of national security. *See* 50 U.S.C. App. Secs. 2402(2)(A), 2404(a)(1). The statute makes clear that "[a]ny export control imposed under (the EAA) shall apply to any transaction or activity undertaken with the intent to evade that export control, even if that export control would not otherwise apply to that transaction or activity."

In 1987, the President invoked import sanctions against Iran to "ensure that United States imports of Iranian goods and services will not contribute financial support to terrorism." Exec. Order. No. 12613, reprinted in 52 FR 41940 (Oct. 30, 1987). In 1995, the President declared a national emergency with respect to the actions and policies of the Iranian Government. *See* Exec. Order No. 12957, reprinted in 60 FR 14615 (Mar. 15, 1995). The President expanded the sanctions imposed against Iran to prohibit both import of Iranian-origin products and export of U.S. origin goods, technology, or services to Iran. *See* Exec. Order No. 12959, reprinted in 60 FR 24757 (May 6, 1995).

Exec. Order No. 12959 and its implementing regulations generally prohibit the exportation of any goods, technology or services from the United States to Iran without express authorization from OFAC. *See* 31 CFR 560.204, 560.501. This prohibition includes the exportation of any goods "to any person in a third country undertaken with knowledge or reason to know that such goods * * * are intended specifically for supply, transshipment, or reexportation, directly or indirectly, to Iran or the Government of Iran." *See* 31 CFR 560.204(a).

Section 746.7 of the EAR incorporates the OFAC's Iran Transactions Regulations by reference. It provides: "No person may export or reexport items subject to both the EAR and OFAC's Iranian Transactions Regulations without prior OFAC authorization." 15 CFR 7467.7. The term "export" means the "actual shipment, transfer or transmission of goods or technology out of the United States; (the) transfer of goods or technology in the United States to an embassy or affiliate of a controlled country; or a transfer to any person of goods or technology either with the knowledge or intent that the goods or technology will be shipped, transferred or transmitted to an unauthorized recipient." 50 U.S.C. App. sec. 2415(5); *see also* 15 CFR 734.2(b)(1). The term "reexport" means "an actual shipment or transmission of items subject to the EAR from one foreign country to another foreign county." 15 CFR 734.2(b)(4). BIS has authority to exercise regulatory jurisdiction over all items subject to the EAR. 15 CFR 734.2(a)(1). The regulations clearly provide that "[a]ll U.S. origin items wherever located" are subject to the EAR. 15 CFR 734.4(a)(2).

From the plain language of the export laws and regulations, it is clear that the EAA and EAR were intended to apply extraterritorially regardless of a person's nationality or locality so long as U.S. origin items are involved. Counsel for BIS accurately pointed out that the EAA and EAR have an *in rem* basis, applicable to "goods * * * subject to the jurisdiction of the United States." Thus, it is immaterial that Mr. Mahdi is a naturalized Canadian citizen, OTS was a Canadian corporation, and some of the activities occurred in Canada. To hold otherwise would contravene exiting law and regulation, and would undermine the effectiveness of the EAA and the EAR.

### *B. Violations of the Export Administration Act and Regulations*

While Mr. Mahdi refused to participate in much of the hearing and did not contest much of the evidence presented, the burden of proof remains on the Agency to prove the allegations in the charging letter by reliable, probative, and substantial evidence. *See* 5 U.S.C. 556(d). The Supreme Court has held that 5 U.S.C. 556(d) adopts the traditional preponderance of the evidence standard of proof. *Steam* v. *S.E.C.*, 450 U.S. 91, 102 (1981). To prevail, BIS must establish that it is more likely than not that the Respondents commented the violations alleged in the charging letter. *See Herman & Maclean* v. *Huddleston*, 529 U.S. 375, 390 (1983). In other words, the Agency must demonstrate "that the existence of a fact is more probable than its nonexistence." *Concrete Pipe & Products* v. *Construction Laborers Pension Trust*, 508 U.S. 602, 622 (1993). To satisfy the burden of proof, BIS may rely on direct and/or circumstantial evidence. *See generally Monsanto Co.* v. *Spray-Rite Serv. Corp.*, 465 U.S. 752, 764–765 (1984).

Here, the Agency has produced quantum evidence, including witness testimony and documentary evidence, which establish that Respondents Mahdi and OTS violated the §§ 746.7 and 764.2 of the EAR. It is well settled that a corporation can be held liable for the actions of its officers and employees committed within the scope of employment and in furtherance of the employer's business. *See Untied States* v. *BI-Co Pavers, Inc.*, 741 F.2d 730, 737 (5th Cir. 1984); *United States* v. *Sherpix*, 512 F.2d 1361, 1367 n. 7 (D.C. Cir. 1975). The doctrine of respondent superior is applicable in export cases.

#### 1. Conspiracy To Obtain Oil Field Equipment From the United States

Respondent Mahdi and the corporate respondent, OTS, have been charged in Count 1 with conspiracy to export goods to Iran in violation of § 746.7 of the EAR. The conspiracy regulations provide: "No person may conspire or act in concert with one or more persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of the EAA, the EAR, or any other order, license or authorization issued thereunder." 15 CFR 764.2(d). To succeed under § 764.2(d), the Agency must establish that: (1) Two or more persons formed an agreement to violate the EAA or EAR; (2) the respondent knowingly participated in the conspiracy; and (3) an overt act was committed in furtherance of a common scheme. *See generally* 50 U.S.C. App. 2410(a). The conspiracy charge with respect to Mr. Mahdi has already been found proved on the basis of collateral estoppel.

On September 6, 2002, summary decision was entered against Mr. Mahdi on Charge 1 on the basis of collateral estoppel arising from the guilty plea in the criminal proceeding. The evidence shows that between March 1997 and April 1998, Mr. Mahdi was acting on behalf of OTS when he entered into business arrangements with Dr. Strome of BITS to provide U.S. origin oil field equipment to customers in Iran. (Tr. 138, 241–44, 251–53; Gov't Ex. 3, at 21; Gov't Ex. 6, at 1–2; Gov't Ex. 27–28; Gov't PFF 9–12, 14; Gov't PUFF 49). Mr. Mahdi and Mr. DiMarco took several actions in furtherance of the conspiracy by submitting approximately 117 RFQs to BITS on behalf of customers in Iran. (Tr. 224–26, 244–47; Gov't Ex. 21, 21A, 25; Gov't PFF 40–41; Gov't PUFF 49). The mere fact that RFQs submitted to BITS did not all result in shipments from BITS through OTS to Iran is not crucial. Conspiracy is an inchoate offense that can be committed regardless of whether object of the venture is achieved. *See United States* v. *Plummer,* 221 F.3d 1298, 1306 (11th Cir. 2000); *See also Iannelli* v. *United States,* 420 U.S. 770, 777 (1975). Since Mr. Mahdi and DiMarco's activities were performed within the scope of employment and in furtherance of OTS's business, the violations of section 764.2(d) are attributable to OTS.

2. Unauthorized Export From the United States to Iran

Charges 2 and 3 allege that the Respondents violated section 764.2(a) by unlawfully exporting oil field equipment from the United States to Iran through Canada without obtaining prior authorization from OFAC on October 30, 1997 and February 2, 1998. Both charges are found proved. The relevant regulation prohibits any person from engaging in "any conduct prohibited by or contrary to * * * the EAA (or) the EAR." 15 CFR 764.2(a). As previously stated, § 746.7 prohibits any person from exporting or reexporting goods to Iran without prior OFAC authorization.

The administrative record clearly establishes that neither BITS, nor OTS, nor Mr. Mahdi under any of his names, had applied for or received OFAC authorization to export from the United States to Iran. (Tr. 215–17; Gov't Ex. 20; Gov't PFF 39). Absent OFAC authorization, the export of goods to Iran constitutes a violation of the EAA and its underlying regulations.

The facts show that, in response to an irrevocable purchase order containing reference number 701–1320–TSI submitted by Mr. Mahdi, Dr. Strome of BIST sold $42,356.56 worth of U.S. manufactured oil field equipment to OTS. The oil field equipment was exported to OTS's freight forwarder, Danzas, located in Ontario, Canada. (Tr. 148, 152, 156–60, 166–69; Gov't 8, 11, 12; Gov't PFF 19, 22–24). The "T" in the reference number indicates that the end-user was Kala Naft, Tehran, Iran. (Tr. 148, 152; Gov't 8; Gov't PFF 19). Pursuant to Mr. Mahdi's directions, the oil field equipment was consolidated with other OTS equipment and exported to Iran via Cypress. (Tr. 153–55, 169–172, 177–178; Gov't Ex. 10; Gov't PFF 25–26). Further, to evade detection and so that Canadian law would apply, the country of origin for the products was identified as Canada when the true country of origin was the United States. *Id.*

The law contemplates that transfer of U.S. origin goods from one foreign country to another foreign country falls within the purview of the EAA and its underlying regulations. *See* 50 U.S.C. App. sec. 2415(5); *see also* 15 CFR 734.2(b). Thus, Mr. Mahdi's actions constitute a violation of § 764.2(a) on October 30, 1997 as described in Charge 2. Since the export to Iran was performed in furtherance of OTS's business, the corporate respondent is equally liable for the violation of § 764.2(a).

The Respondents are also liable for violating § 764.2(a) on February 2, 1998 as described in Charge 3. The evidence shows that, in response to purchase 702–1360–TSI, Dr. Strome of BITS sold $69,478.20 worth of U.S. manufactured oil field equipment to OTS. (Tr. 180–184; Gov't Ex. 6, at 4; Gov't Ex. 13, 14; Gov't PFF 28). Mr. Mahdi hired Pars Maritime Cargo, Inc., a general sales agent for Iran Air, to pick up the equipment from BITS in Florida and export it on February 2, 1998. (Tr. 185–187; Gov't Ex. 6, at 4; Gov't Ex. 14, 15; Gov't PFF 29–30). Although no direct evidence was presented showing that the equipment was subsequently exported to Iran, there is sufficient circumstantial evidence that the equipment was exported to Iran.

3. Soliciting or Attempting an Unauthorized Export From the United States to Iran

Charge 4 is also proved. Section 764.2(c) prohibits any person from soliciting or attempting to violate the EAA or the EAR. Solicitation is defined as "asking another person to commit an offense." *In the Matter of the Sound You Company, Ltd. and Yuzo Oshima,* 58 FR 60593, 60597 (Nov. 17, 1993). "For the offense of solicitation to be completed, the (respondent) must entice, advise, incite, order or otherwise encourage another to commit an offense." *Id.* Like conspiracy, it is not necessary that the unlawful offense to actually be completed to order to find the charge of solicitation proved. *Id.*

Attempt is another inchoate crime, like conspiracy and solicitation, which "can be committed regardless of whether the objective of the venture is achieved." *Plummer,* 221 F.3d at 1306. Attempt consists of: (1) An intent to engage in an unlawful activity; and (2) an overt act committed in furtherance of the unlawful activity. *See generally* 21 Am. Jur. 2d, Criminal Law § 175 (2003). Preparation alone or a mere statement of one's intent to commit an unlawful activity is not enough to constitute an attempt; rather the respondent must engage in some appreciable overt act. *Id.* at § 177.

Here, the activities of Mr. Mahdi and OTS go beyond mere preparation. By soliciting Dr. Strome of BITS, on March 4, 1999, to export $120,000 worth of oil filed equipment ordered by OTS under reference number 013–077–TBT to Industrial Engineering Inspection Company of Iran for inspection, Mr. Mahdi and OTS violated section 764.2(c). (Tr. 107–09, 201, 207, 210–15; Gov't Ex. 18A, at 3; Gov't Ex. 18, 19; Gov't PFF 35–36). Mr. Mahdi and OTS violated § 764.2(c) again in mid-March when Mahdi went to Florida to inspect and obtain the oil field equipment ordered under reference 013–077–TBT because Dr. Strome refused to export the equipment to Iran. (Tr. 107–09, 202; Gov't PFF 37–38). Although the Respondents committed two distinct counts of violations of § 764.2(c), BIS has charged them with a single count. That count is found proved.

4. Making a False Statement on a Shipper's Declaration

Charge 5 is also found proved. Section 764.2(g) prohibits any person from making a misrepresentation or false statement of any material fact on any export control document. *See* 15 CFR 764.2(1)(ii). A SED qualifies as an export control document. *See* 15 CFR 772.1.

The Agency charges Respondents Mahdi and OTS with making a false and misleading statement of material fact on an SED on October 30, 1997. The SED falsely stated that the country of ultimate destination of the oil field equipment ordered in reference number 701–1320–TSI was Toronto. However, the true country of ultimate destination was Iran. Neither OTS nor Mr. Mahdi prepared the SED on October 30, 1997. Forward Logistics prepared the SED as directed by Dr. Strome. (Tr. 156–60, 166–69; Gov't Ex. 11, 12; Gov't PFF 22–24). BIS relies on *Pinkerton* v. *United States,* 328 U.S. 640 (1946), to hold Mr. Mahdi and OTS liable for the violation of section 764.2(g).

The Agency's argument is well taken. In *Pinkerton*, the Supreme Court held that a participant in a conspiracy is liable for the substantive offenses committed by co-conspirators in furtherance of the common objective. 328 U.S. at 645–48. In this case, Forward Logistics prepared the SED containing false information of material fact regarding the country of ultimate destination. Forward Logistics prepared the SED as directed by Dr. Strome. The preparation of the false SED was within the scope of the conspiracy, and in a manner reasonably foreseeable by Respondents OTS and Mahdi as a natural consequence of the conspiracy. Accordingly, the violation of § 764.2(g) is attributable to OTS and Mr. Mahdi even though the Respondents did not actually prepare the SED.

5. Knowingly Violating the Export Administration Regulations

The final charge is also found proved. Charge 6 alleges that Mr. Mahdi and OTS violated § 764.2(e) by transferring and forwarding goods from Canada to Iran on or about October 30, 1997 knowing those goods had been exported from the United States in violation of the EAR. Section 764.2(e) prohibits any person from transferring, transporting, or forwarding "any item exported or to be exported from the United States, or that is otherwise subject to the EAR, with knowledge that a violation of the EAR [or] the EAR * * * has occurred." 15 CFR 764.2(e).

The evidence shows that Mr. Mahdi knew of the United States' embargo against Iran, which restricted the export of U.S. commodities to Iran (Gov't Ex. 3, at 26–27; Gov't PFF 27). As a matter of fact, during the Change of Plea Proceedings before the United States District Court for the Middle District of Florida (Honorable Anne C. Conway) in Orlando, Florida on August 24, 1999, Mr. Mahdi testified that he knew that Dr. Strome could not lawfully export the goods to Iran without the assistance of Mahdi and OTS. (Gov't Ex. 3, at 27–28). This knowledge is imputed to OTS, on whose behalf Mr. Mahdi was acting. *See generally, In re: Hellenic, Inc.*, 252 F.3d 391, 395 (5th Cir. 2001) ("An agent's knowledge is imputed to the corporation where the agent is acting within the scope of his authority and where the knowledge relates to matters within the scope of that authority * * * (C)ourts generally agree that the knowledge of directors or key officers, such as the president and vice president, is imputed to the corporation).

The facts further show that Danzas shipped the oil field equipment ordered by OTS under reference number 701–1302–TSI to Iran via Cypress. (Tr. 153–55, 169–72, 177–78; Gov't Ex. 10; Gov't PFF 25–26). Moreover, so that Canadian export law would apply, the country of origin for the equipment was falsely identified as Canada. *Id.* the true country of origin was the United States. These activities constitute a violation of § 764.2(e) for which Mr. Mahdi and OTS are liable.

## VIII. Reason for the Sanction

Based on the number and gravity of the offenses and the fact that it appears that Mr. Mahdi and OTS may resume efforts to make unauthorized exports from the United States, the Agency's proposed sanction of denial of U.S. export privileges for 20 years is deemed appropriate.

There is an on-going war against terrorism. The events of September 11, 2001 reveal that international terrorism is a real threat to the national security of the United States. To limit and curtail the financial support of terrorism the United States established an embargo against Iran. The Respondents circumvention of the embargo by exporting goods destined for Iran through Canada cannot be tolerated. The facts show that in order to achieve their objective Respondents made false statements, or caused false statements to be made, on various export documents in the United States and in Canada. The facts also show that BITS was not the only U.S. company that had business dealings with OTS. Mr. Mahdi and OTS solicited quotations on behalf of customers in Iran and other Middle Eastern countries from a number of U.S. companies and bought equipment from the lowest bidder. (Tr. 224–25, 244–47; Gov't Ex. 21, 21A, 25; Gov't PFF 40–41). As Agency counsel correctly points out, Respondents efforts were extensive and far-reaching.

The value of the goods actually exported and those that Respondents attempted to export exceeded $232,834. Dr. Strome, Mr. Mahdi, and Mahdik Mahdi all perceived that the business venture was lucrative and could prove to be prosperous. (Tr. 253; Gov't Ex. 6, at 2; Gov't PFF 14). As recent as April 2002, BIS learned that Mr. Mahdi's brother in Amman, Jordan posted an advertisement soliciting bids for a certain type of catalyst. (Tr. 260–62; Gov't Ex. 29). The record shows that Mr. Mahdi's brother, owner of Zawana Trading, had been instrumental in facilitating the unauthorized export of equipment to Middle Eastern countries such as Iraq. (Tr. 178, 224–26, 236–238, 244–47, 253; Gov't Ex. 6, at 6; Gov't Ex. 21, 21A, 25, 26; Gov't PFF 14, 40–41, 44). The Agency notes that Mr. Mahdi and OTS are well positioned in Canada where the export laws are less stringent with respect to Iran. By the same token U.S. export laws concerning Canada are minimal. Thus, Respondents have an opportunity to resume their efforts if they so choose.

In order to deter such actions and prevent Respondents from committing future violations of the EAA and EAR, a significant denial order is not only warranted. It is justifiable. Agency counsel has established that a 20-year order denying export privileges is not without precedent. *See In the Matter of Miguel Angel Fajardo*, 66 FR 30162 (Jun. 5, 2001); *In the Matter of Fawzi Mustapha Assi*, 64 FR 40816 (Jul. 28, 1999); *In the Matter of Ian Ace*, 62 FR 43505 (Aug. 14, 1997).

The Recommended Decision and Order is being referred to the Under Secretary for review and final action. As provided by § 766.17(b)(2) of the EAR, the recommended decision and order is being served by express mail. Because the Under Secretary must review the decision in a short time frame, all papers filed with the Under Secretary in response to the recommended decision and order must be sent by personal delivery, facsimile, express mail, or other overnight carrier as provided in § 766.22(a) of the EAR. Submissions by the parties must be filed with the Under Secretary for Export Administration, Bureau of Industry and Security, U.S. Department of Commerce, Room H–3898, 14th Street and Constitution Avenue, NW., Washington, DC 20230, within 12 days from the date of issuance of this Recommended Decision and Order. Thereafter, the parties have eight days from receipt of any response(s) in which to submit replies.

Within 30 days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written order, affirming, modifying or vacating the recommended decision and order. *See* 15 CFR 766.22(c).

Done and dated August 26, 2003, at Norfolk, Virginia.

**Peter A. Fitzpatrick,**

*Administrative Law Judge, Norfolk, Virginia.*

## Attachment A—Exhibit List

*A. Judge's Exhibit*

Judge's Ex. 1—Memorandum to File dated 24 April 2003 from Lucinda Shinault, Paralegal to the Administrative Law Judge

Judge's Ex. 2—Return to Sender Letter dated April 21st, 2002[9]

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[9] J. Khan signed for the Federal Express package on 4/17/2003. Thus, the unidentified correspondent

*B. Government Exhibit*

Gov. Ex. 1A—Canadian Department of Justice ("DOJ") Facsimile Memorializing Shipment of Boxes of Exhibits and Receipt thereof by Mr. Mahdi—Ruling on admissibility reserved [10]

Gov. Ex. 1B—Copy of envelope from Mr. Mahdi d/b/a OTS Refining Equipment Corporation addressed to the Bureau of Industry & Security—Ruling on admissibility reserved

Gov. Ex. 1—Two Count Criminal Indictment Filed in the United States District Court, Middle District of Florida, Orlando Division on June 15, 1999

Gov. Ex. 2—Plea Agreement between U.S. Attorney and Mr. Mahdi Filed in the United States District Court, Middle District of Florida, Orlando Division on Aug 24, 1999

Gov. Ex. 3—Transcript of Change of Plea Proceedings Before the Honorable Anne C. Conway, United States District Judge in the United States District Court, Middle District of Florida, Orlando Division on August 24, 1999

Gov. Ex. 4—Transcript of Sentencing Proceedings Before the Honorable Anne C. Conway, United States District Judge in the United States District Court, Middle District of Florida, Orlando Division on November 19, 1999

Gov. Ex. 5— Judgment & Sentencing Order in *United States* v. *Abdulamir Mahdi*, 99–128–CR–ORL–22B (Filed Nov. 22, 1999)

Gov. Ex. 6—Statement of John Strome, President of Brevard International Technical Services, Inc. (BITS) dated 1/29/99

Gov. Ex. 7—Report of Investigative Activity and Miranda Warning/ Waiver signed by Abdulamir Mahdi dated 04–20–99

Gov. Ex. 8—OTS Irrevocable Purchase Order 701–1320–TSI from Mahdi to BITS

Gov. Ex. 9—Description of Kala Naft Company downloaded from Web site *http://www.kalanaft-tehran.com/Introduction.htm* on 02/13/03

Gov. Ex. 10—BITS Invoice Document Number 004325

Gov. Ex. 11—Airway Bill MAWB# 014–81327750 dated 10/30/1997

Gov. Ex. 12—Shippers Export Declaration 10/30/1997

Gov. Ex. 13—OTS Irrevocable Purchase Order 702–1360–TSI from Mahdi to BITS

Gov. Ex. 14—Bill from PARS Maritime Cargo Inc. to OTS Invoice No. 5285 dated 02/02/98

Gov. Ex. 15—Information on PARS Maritime Cargo Inc. downloaded from Web site *http://www.openface.ca/~pars/main.html* on 1/19/99

Gov. Ex. 16—OTS Irrevocable Purchase Order 013–077–BTB to BITS[11]

Gov. Ex. 17—Royal Bank of Canada Funds Transfer dated 27 May 1998

Gov. Ex. 18A—Kala Naft Co. Tehran Purchase Order No. 08–70264575–D01 dated 19/04/98

Gov. Ex. 18—Notes of Telephone Conversations between Mr. Strome and Mr. Mahdi on 3/4/99 at 11:50 a.m. taken by Mr. Strome

Gov. Ex. 19—Website printout with Information about Industrial & Engineering Inspection Co. of Iran ("IEI")

Gov. Ex. 20—Letter dated Aug 24, 2000 from Office of Foreign Assets Control ("OFAC") to Bureau of Export Administration[12]

Gov. Ex. 21—Report of Investigative Activity dated August 25, 2000 Containing an Itemized List of Request for Quotations from Mahdi to BITS.

Gov. Ex. 21A—Information Extracted from Gov. Ex. 21 According to the Explanation Provided by Respondent Mahdi in Gov. Ex. 7

Gov. Ex. 22—OTS Request for Quotation 223–127–RSA to BITS

Gov. Ex. 23—OTS Request for Quotation 463–078–ACT to BITS

Gov. Ex. 24—OTS Request for Quotation 529–088–ACO to BITS

Gov. Ex. 25—Information on National Petrochemical Company downloaded from Web site *http://www.nipc.net/* on 2/13/03

Gov. Ex. 26—Report of Investigative Activity dated August 30, 2000 summarizing Request for Quotations

Gov. Ex. 27—OTS Letter to Dr. Strome of BITS dated No. 5, 1997 Identifying Countries Mahdi Sells To

Gov. Ex. 28—Draft Confidentiality and Non-Disclosure Exclusive Negotiations Agreement dated 11/1/97

Gov. Ex. 29—Request for Quotation on Alumina Based Catalyst Posted by M.K. Mahdi on 04/09/02 downloaded from Web site *http://globallcatalyst.com/forum.mv?command=showthread&forum+catalyst&post+000004*

**Attachment B**

*Rulings on the Bureau's Proposed Findings of Fact and Conclusions of Law and Proposed Ultimate Findings of Fact and Conclusions of Law*

On July 10, 2003 the Bureau of Industry and Security filed a Post-hearing Submission. That pleading included both Proposed Findings of Fact and Conclusions of Law (pp 11–26) and Proposed Ultimate Findings of Fact and Conclusion of Law (pp 26–33). The rulings on those proposals are set out below.

*A. Proposed Findings of Fact and Conclusions of Law*

1. Mr. Abdulamir Mahdi is a Canadian citizen and a resident of Ontario, Canada. Govt. Ex. 2 at 16; Govt. Ex. 3 at 20, lines 9–12.

Ruling: Accepted and Incorporated.

2. Mr. Abdulamir Mahdi is also known as, and conducts business using the names, Amir Mahdi and Jasin Khafaf. Govt. Ex. 2 at 1; May 13 Tr. at 100–01.

Ruling: Accepted and Incorporated.

3. From October 1995 through March 17, 1999, Mr. Mahdi was the sole owner and operator of OTS Refining Equipment Corporation (OTS) in Markham, Ontario, Canada, the business of which included exporting spare parts for oil field equipment to Middle Eastern countries. Respondent's Motion for Denial of Bureau of Industry and Security's Motion for Summary Decision ("Respondent's Motion for Denial") at 4; Govt. Ex. 2 at 16; Govt. Ex. 3 at 20, lines 20–25.

Ruling: Accepted and Incorporated.

4. From at least March 1997 to at least April 2002, a brother, Mahdik Mahdi, owned and operated the Zawana Trading and Marketing Establishment (Zawana) in Amman, Jordan, which shipped items from Jordan to Iraq. Govt. Ex. 2 at 17; Govt. Ex. 7 at 1; Govt. Ex. 6 at 2–3; May 13 Tr. at 143, line 9 to 144, line 5.

Ruling: Accepted. Although the cited materials do not support the statement, the record as a whole does support the factual assertions.

5. From at least late 1996 to at least March 1999, Brevard International Technical Services (BITS), located in Melbourne, Florida, and operated by John R. Strome, was a supplier of parts for oil field equipment. Respondent's Motion for Denial at 8; Govt. Ex. 2 at 17.

Ruling: Accepted and Incorporated:

6. On or about August 24, 1999, Mr. Mahdi pled guilty in the United States

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incorrectly dated the return to sender letter. The true date is April 21, 2003.

[10] Ruling of admissibility on Government's Exhibits 1A and 1B were reserved pending service of those documents on Respondent. Notice of Service of those exhibits was sent May 14, 2003 so those Exhibits are Admitted.

[11] The purchase order reference number contains a typographical error. The true purchase order reference number is 013–077–TBT.

[12] Now referred to as the Bureau of Industry & Security ("BIS")

District Court, Middle Division of Florida, No. 6:99–CR–128–ORL–22DAB, to a criminal conspiracy to make unauthorized exports of U.S. origin oil field and industrial equipment from the United States to Iraq and Iran. Judgment was entered against Mr. Mahdi, who was sentenced to 51 months imprisonment. Govt. Exs. 1–5; May 13 Tr. at 110, line 1 to 120, line 11; *id.* at 124, line 14 to 125, line 9. [Charge 1]

Ruling: Accepted and Incorporated.

7. The record of the criminal proceeding against Mr. Mahdi, including his admissions therein, shows that OTS was involved in the conspiracy to which Mr. Mahdi pled guilty. Govt. Ex. 1 at 5, paragraph 12 ("It was the purpose of this conspiracy for defendant MAHDI, to enrich and benefit himself and others by offering to sell and selling United States origin oil field and industrial equipment through Tech-Link and OTS in Canada to Iran and Iraq"); *id.* at paragraph 13 ("It was further part of the manner and means of this conspiracy that defendant MAHDI arranged * * * for OTS to import United States origin oil field and industrial equipment" into Canada); Govt. Ex. 2 at 13, paragraph 9, at 18, paragraphs 12 and 13 (in plea agreement, Mr. Mahdi certified that these facts were true); May 13 Tr. at 110, line 8 to 119, line 10. [Charge 1]

Ruling: Accepted and Incorporated.

8. The record of the criminal proceeding against Mr. Mahdi, including his admissions therein, shows that BITS and Mr. Strome were involved in the criminal conspiracy to which Mr. Mahdi pled guilty. In a separate proceeding, Mr. Strome also pled guilty to a charge of criminal conspiracy. Govt. Ex. 1 at 6–8, paragraphs 15a–1, 151–t, 15v ("overt acts" of the conspiracy involving Mr. Strome or BITS); Govt. Ex. 2 at 13, paragraph 9, at 18–22 paragraphs 15–23, 26–34, 36 (in plea agreement, Mr. Mahdi certified that these facts were true); May 13 Tr. at 125, lines 11–25. [Charge 1]

Ruling: Accepted and Incorporated.

9. In late 1996 or early 1997, Mr. Mahdi contacted Mr. Strome to discuss whether BITS would supply parts for oil field equipment to Mr. Mahdi for him to provide to customers, some of whom were in the Middle East. At this time, Mr. Mahdi presented himself to Mr. Strome as doing business as Tech-Link Development Corporation (Tech-Link). Respondent's Motion for Denial at 8; Govt. Ex. 2 at 18, paragraph 15; Govt. Ex. 6 at 1; May 13, 2003 Tr. at 136, line 20 to 138, line 1. [Charge 1]

Ruling: Accepted and Incorporated.

10. Mr. Strome met with Mr. Mahdi in or about October 1997 in Toronto, Canada. By this time, Mr. Mahdi had stopped doing business as Tech-Link and was doing business with Mr. Strome as OTS. At this meeting, they discussed entering into an arrangement in which BITS would serve as OTS's exclusive supplier of United States origin commodities. Under the proposed agreement, BITS would ship products manufactured under BITS's name brand to OTS in Canada, BITS would sell the products to customers overseas, and the customers would be obligated to obtain replacement parts from BITS through OTS. In fact, the business arrangement that they were able to pursue involved OTS and Mr. Mahdi placing requests for quotation and orders with BITS on behalf of overseas customers, and BITS supplying products manufactured by other suppliers to Mr. Mahdi and OTS. Govt. Ex. 2 at 19, paragraph 18; Govt. Ex. 6 at 1–2; May 13 Tr. at 161, lines 6–16; *id.* at 138, lines 2–18; *id.* at 241, line 20 to 245, line 12. [Charge 1]

Ruling: Accepted and Incorporated.

11. On or about November 1, 1997, Mr. Mahdi and Mr. Strome exchange a draft agreement between BITS and OTS, describing the proposed arrangement. Govt. Ex. 28; May 13 Tr. at 250, line 24 to 253, line 7. [Charge 1]

Ruling: Accepted and Incorporated.

12. On or about November 5, 1997, Mr. Mahdi, on behalf of OTS, sent a memorandum to Mr. Strome at BITS, which stated: "Further to our various discussions and meetings in Toronto regarding the agency agreement, name (sic) of countries are listed below." A list of 19 countries, mostly in the Middle East, followed. These countries included Iraq and Iran. Govt. Ex. 2 at 19, paragraph 21; Govt. Ex. 27; May 13 Tr. at 240, line 19 to 241, line 19. [Charge 1]

Ruling: Accepted and Incorporated.

13. Although Mr. Strome and Mr. Mahdi did not memorialize their agreement in a final document, they proceeded on the basis of a "handshake" agreement. May 13 Tr. at 253, lines 10–19. [Charge 1]

Ruling: Accepted and Incorporated.

14. Mr. Strome met with Mr. Mahdi in Canada again in or about September 1998. On this occasion, Mr. Strome met Mahdik Mahdi. Mr. Strome was told that Mahdik Mahdi was well-connected politically and commercially in Iraq. In Mr. Strome's presence, Mahdik Mahdi and Abdulamir Mahdi reviewed files and drawings for projects in Iraq and called Iraq to discuss such a project. Govt. Ex. 2 at 19, paragraph 20; Govt. Ex. 6 at 2–3; May 13 Tr. at 253, line 25 to 256, line 18. [Charge 1]

Ruling: Accepted and Incorporated.

15. Mr. Strome began to cooperate with the investigation of OTS and Mr. Mahdi in January of 1999. Throughout 1998, Mr. Strome, through counsel, was negotiating with the United States Attorney's Office in Orlando, Florida regarding the terms of a possible guilty plea and agreement to act as a cooperating witness. During this negotiating period in 1998, Mr. Strome continued to do business with Mr. Mahdi and OTS. May 13 Tr. at 105, line 25 through 107, line 1. [Charge 1]

Ruling: Accepted and Incorporated.

16. Mr. Mahdi has repeatedly admitted shipping United States origin items obtained from Mr. Strome and BITS to Iran via Canada. These admissions include:

a. Referring to paragraph 11 on page 17 of his plea agreement (Govt. Ex. 2), Mr. Mahdi testified under oath at his change of plea proceeding: "So basically, what I'm trying to say is shipment to Iran, yes, we did ship, I did ship to Iran knowingly, that it is going to Iran. And I knew there was an embargo, United States embargo against Iran." Govt. Ex. 3 at 22, lines 22–24. "Your Honor, we did ship goods to Iran. And I knew there was a U.S. embargo." *Id.* at 26, lines 14–15.

b. Referring to the same paragraph 11 at his sentencing proceeding, Mr. Mahdi testified under oath: "I pled to item 11 and shipping to Iran, yes. We did ship to Iran, true. * * * I'm trying to, what I'm saying I did ship goods to Iran from Canada." Govt. Ex. 4 at 16, lines 6–7, 11–12. "[Mr. Strome] was using me to sell to Iran." *Id.* at 61, lines 2–3.

Ruling: Accepted and Incorporated.

17. OTS and Mr. Mahdi used a system for assigning reference numbers to the requests for quotations they placed with BITS and other suppliers. This numbering system used the first letter in a reference number to identify the customer for whom the request for quotation was placed. Specifically, the initial letter T indicated the Kala Naft Company (Kala Naft) in Tehran, Iran; the initial letter R indicated the Razi Petrochemical Company in Iran; the initial letter A indicated the Arak Petrochemical Company in Iran; the initial letter N indicated the National Iranian Gas Company in Iran; and the initial letter Z indicated Zawana, the firm operated by Mahdik Mahdi in Amman, Jordan. The next two letters in the reference number could refer to a specific manufacturer or a type of commodity. Govt. Ex. 7; May 13 Tr. at 140, line 16 to 143, line 8.

Ruling: Accepted and Incorporated.

18. Mr. Mahdi has admitted that items he ordered for customers in Iran were intended to go to Iran from the earliest

stage of the transaction. Respondent's Motion for Denial at 15 ("Mr. Mahdi informed his suppliers of the fact that the requested goods were destined for Iran right from the inquiry stage" and disclosed "to John Strome of Brevard in the United States (supplier/manufacturer) that the equipment was destined for Iran.").

Ruling: Accepted and Incorporated.

19. On or about July 22, 1997, Mr. Mahdi submitted to BITS and Mr. Strome, on behalf of OTS, an irrevocable purchase order for oil field equipment valued at approximately $41,695. The OTS reference number on this irrevocable purchase order was 701–1320–TSI. The "T" in this reference number indicates that Mr. Mahdi and OTS were seeking to obtain this equipment for Kala Naft in Tehran, Iran. Govt. Ex. 8; May 13 Tr. at 147, line 6 to 148, line 25. [Charge 2, 6]

Ruling: Accepted and Incorporated.

20. Kala Naft in Tehran, Iran, is a subsidiary of the National Iranian Oil Company. Govt. Ex. 9; May 13 Tr. at 149, line 9 to 150, line 6. [Charge 2, 6]

Ruling: Accepted and Incorporated.

21. On or about July 23, 1997, BITS issued a commercial invoice for the sale of oil field equipment for approximately $42,356 in response to the purchase order with OTS reference number 701–1320–TSI. According to this invoice, the equipment was sold to OTS and to be shipped on October 29, 1997, to Danzas Canada, Ltd., a freight forwarder in Ontario, Canada. Govt. Ex. 10; May 13 Tr. at 150, line 12, to 150, line 25. [Charge 2, 6]

Ruling: Accepted and Incorporated.

22. On or about October 30, 1997, Forward Logistics Group, Inc., a freight forwarder acting on behalf of BITS, issued an air waybill for the shipment of the oil field equipment purchased by OTS under by OTS reference number 701–1320–TSI. According to this air waybill, BITS shipped the oil field equipment from Melbourne, Florida, to OTS, care of Danzas Canada Ltd., in Ontario, Canada, via Air Canada. Govt. Ex. 11; May 13 Tr. at 155, line 23, to 157, line 6. [Charge 2, 6]

Ruling: Accepted and Incorporated.

23. On or about October 30, 1997, Forward Logistics Group, Inc., acting on behalf of BITS, prepared and submitted to the United States Customs Service a Shipper's Export Declaration (SED) for the shipment of oil field equipment purchased by OTS under OTS reference number 701–1320–TSI. This SED identified BITS as the exporter, OTS care of Danzas Canada Ltd. as the ultimate consignee, Air Canada as the exporting carrier, and October 30, 1997, as the date of exportation. This SED also identified "Toronto" as the country of ultimate destination. BITS instructed Forward Logistics Group, Inc. to put this information on the SED, including the statement that Toronto was the ultimate destination for the exported equipment. Govt. Ex. 12; May 13 Tr. at 165, line 17 to 169, line 16. [Charges 2, 5]

Ruling: Accepted and Incorporated.

24. Mr. Mahdi has admitted that Mr. Strome of BITS caused the submission of this SED, which contained the false statement that Toronto was the ultimate destination for the exported equipment. Respondent's Motion for Denial at 12 ("Mr. Mahdi did not complete the Shippers export Declaration (sic), Mr. Strome of 'Brevard' in Melbourne, Florida completed the form. It was Mr. Strome, not Mr. Mahdi, how (sic) indicated that the final destination of the equipment was Canada knowing that the final destination was indeed Iran."). [Charge 5]

Ruling: Accepted and Incorporated.

25. As shown in records of Danzas Canada Ltd. that were reviewed by the Royal Canadian Mounted Police, Danzas Canada, Ltd., received the equipment obtained from BITS in the above-described transaction, consolidated it with other equipment obtained by OTS, and shipped the equipment from Canada to Iran via Cyprus in or about early November of 1997 on the instruction of Mr. Mahdi. May 13 Tr. at 153, line 12, to 155, line 18; *id.* at 169, line 17 to 170, line 15; *id.* at 176, line 12 to 178, line 18. [Charge 2, 5, 6]

Ruling: Accepted and Incorporated.

26. Mr. Mahdi has admitted that he shipped the oil field equipment obtained from BITS under OTS reference number 701–1320–TSI to Iran. Govt. Ex. 2 at 13, paragraph 9, at 20–21, paragraph 28 (in plea agreement, Mr. Mahdi certified that the following was true: "In or about November, 1997 ABDULAMIR MAHDI, a/k/a Amir Mahdi transshipped from Canada to Iran United States origin oil field equipment purchased from BITS * * * under OTS 701–1320–TSI.") [Charges 2, 5, 6]

Ruling: Accepted and Incorporated.

27. Mr. Mahdi has repeatedly admitted that he knew Mr. Strome violated United States law by exporting from the United States items destined for Iran, and that he helped Mr. Strome to make these exports to Iran:

a. At his change of plea proceedings, Mr. Mahdi testified under oath as follows:

"The Defendant: * * * [Mr. Strome] knew there's embargo on Iran. And he asked me if some other orders or shipments can be made through Canada to Iran, which we were intending to do.

"The Court: And you knew that he couldn't lawfully do it without your help?

"The Defendant: That's correct, ma'am.

"The Court: And knowing that he couldn't lawfully do it, you agreed to help him?

"The Defendant: That's correct, ma'am."

Govt. Ex. 3 at 27, lines 17–25.

b. At this sentencing proceeding, Mr. Mahdi testified similarly: "I knew [Strome] was not able to sell, to Iran. And he was using me to sell to Iran." Govt. Ex. 4 at 61, lines 2–3.

c. In this proceeding, Mr. Mahdi has stated that he "knew that it was a violation of U.S. law for Mr. Strome, on behalf of a U.S. company and acting in the United States, to export the equipment to Iran from the United States" (although Mr. Mahdi contends that he did not know "that it was a violation of U.S. law for [Mr. Mahdi] as a Canadian citizen and a Canadian company to export the equipment to Iran"). Respondent's Motion for Denial at 18. [Charge 6]

Ruling: Accepted and Incorporated.

28. On or about October 23, 1997, Mr. Mahdi submitted to BITS and Mr. Strome, on behalf of OTS, an irrevocable purchase order for oil field equipment valued at approximately $69,478. The OTS reference number on this irrevocable purchase order was 702–1360–TSI. The "T" in this reference number indicates that Mr. Mahdi and OTS were seeking to obtain this equipment for Kala Naft in Tehran, Iran. Govt. Ex. 13; May 13 Tr. at 178, line 19 to 181, line 4. [Charge 3]

Ruling: Accepted and Incorporated.

29. Mr. Mahdi arranged for Pars Maritime Cargo Inc. (Pars) of Montreal, Canada, to transport the oil field equipment purchased by OTS under OTS reference number 702–1360–TSI in Melbourne, Florida, to Montreal, Canada. On or about February 9, 1998, Pars picked up the equipment at the BITS facility in Melbourne, Florida. The truck driver for Pars gave to Mr. Strome a copy of an invoice, printed on Pars letterhead, for this shipment. This invoice, which is dated February 2, 1998, identifies OTS as both the "customer" and the "shipper." Documentation provided to BITS by OTS indicated that the equipment would be exported from Canada. Govt. Ex. 14; Govt. Ex. 6 at 4; May 13 Tr. at 181, line 9 to 185, line 1. [Charge 3]

Ruling: Accepted and Incorporated.

30. On or about January 19, 1999, Par's Web site identified Pars as the general sales agent for Iran Air. The

name "Pars" refers to Persia, *i.e.*, Iran. Govt. Ex. 15; May 13 Tr. at 185, line 20 to 187, line 14. [Charge 3]

Ruling: Accepted and Incorporated.

31. On or about April 19, 1998, Kala Naft sent a purchase order to OTS (referencing OTS employee Tito DiMarco) for specified parts for the "Overshot Series 70, Short Catch * * * for overshot 4⅛ in.," manufactured by Bowen Tools, Inc. On the first page of this purchase order, Kala Naft stated that this purchase order was "placed in accordance with * * * your [OTS's] quotation reference no. 013–077–TBT" and specified "delivery FOB Antwerp packed suitably for export shipment." On the second page of this purchase order, Kala Naft specified "shipment from Antwerp to B.Emam (Iran) by our nominated transport agent." On the third page of this purchase order, Kala Naft specified: "our nominated inspection agency for this order is I.E.I." Govt. Ex. 18A; May 13 Tr. at 200, line 3 to 201, line 13: 206, line 6 to 208, line 13. [Charge 4]

Ruling: Accepted and Incorporated.

32. On or about April 21, 1998, OTS submitted to BITS and Mr. Strome an irrevocable purchase order for "parts for 'Bowen' Overshot Series 70, Short Catch * * * for Overshot 4⅛ in." The purchase order was signed by OTS employee Tito DiMarco. The specific parts ordered by OTS from BITS corresponded with the parts ordered from OTS by Kala Naft on or about April 19, 1998. The equipment was ordered for approximately $121,082. In its irrevocable purchase order to BITS, OTS stated payment terms of "10% Deposit, Balance net 30 days" and specified packing "suitable for ocean freight." The OTS reference number on this irrevocable purchase order was "013–077–BTB;" however, since other documents related to this transaction bore OTS reference number 013–077–TBT, the suffix "–BTB" on this document appears to be a typographical error for "–TBT." The suffix "–TBT" indicates that OTS and Mr. Mahdi were seeking to obtain this equipment, originally manufactured by Bowen Tools, Inc., for Kala Naft in Tehran, Iran. Govt. Ex. 16; May 13 Tr. at 187, line 19 to 188, line 23; *id.* at 194, line 2 to 198, line 1. [Charge 4]

Ruling: Accepted and Incorporated.

33. Mr. Strome described the equipment ordered under OTS reference number 013–077–TBT as extracting equipment used to remove broken drill heads from oil wells. Govt. Ex. 6; May 13 Tr. at 194, line 2 to 195, line 2. [Charge 4]

Ruling: Accepted and Incorporated.

34. On or about May 26, 1998, Mr. Mahdi, acting on behalf of OTS, caused the Royal Bank of Canada to make a funds transfer in the amount of approximately $16,062 to be made to a bank account held by BITS. The document memorializing this funds transfer identifies OTS as the "ordering customer" and BITS as the "beneficiary customer." These funds were a partial payment of the purchase order described in paragraph 32 above, as reflected in the notation: "PLS CREDIT BREVARD INTERNATIONAL TECHNICAL SERVICES, INC. FOR ORDER #013–077–TBT." Govt. Ex. 17; May 13 Tr. at 189, line 13 to 190, line 10. [Charge 4]

Ruling: Accepted and Incorporated.

35. On or about March 4, 1999, Mr. Mahdi telephoned Mr. Strome. In this conversation, Mr. Mahdi advised Mr. Strome that the customer purchasing the equipment ordered under OTS reference number 013–077–TBT desired to have the equipment inspected by a firm known as "I.E.I." As noted above, Kala Naft's purchase order to OTS dated April 19, 1998, and referencing OTS number 013–077–TBT designated "I.E.I." as Kala Naft's inspection agent for this order. Govt. Exs. 18, 18A; May Tr. at 209, line 6 to 211, line 5. [Charge 4]

Ruling: Accepted and Incorporated.

36. The "I.E.I" in this transaction refers to the Industrial Engineering and Inspection Company of Iran, which inspects cargo bound for Iran for conformance with documents such as letters of credit and invoices. Govt. Ex. 19; May 13 Tr. at 211, line 11 to 214, line 25. [Charge 4]

Ruling: Accepted and Incorporated.

37. In March of 1999, Mr. Mahdi traveled to Florida to arrange for the shipment of the equipment purchased under OTS reference number 013–077–TBT. Investigating agents observed Mr. Mahdi inspect this equipment, and then arrested him. May 13 Tr. at 107, line 2 to 109, line 14; *id.* at 201, line 20 to 202, line 15. [Charge 4]

Ruling: Accepted and Incorporated.

38. Mr. Mahdi has admitted that he obtained the oil field equipment purchased from BITS under OTS reference number 013–077–TBT "for the National Iranian Oil Company, Tehran, Iran." Govt. Ex. 2 at 13, paragraph 9, at 21, paragraph 30.[13] [Charges 2, 5, 6]

Ruling: Accepted and Incorporated.

39. None of the following parties applied for or received an export license or other export authorization from the U.S. Department of Commerce or the Office of Foreign Assets Control (OFAC) of the U.S. Department of Treasury: OTS; Mr. Mahdi (including under the names "Amir Mahdi" and "Jasin Khafaf"); BITS; and Tech-Link. Govt. Ex. 20; May 13 Tr. at 215, line 1 to 217, line 11. [Charges 1–4]

Ruling: Accepted and Incorporated.

40. From 1997 to March of 1999, OTS and Mr. Mahdi (sometimes doing business as Tech-Link) submitted approximately 117 requests for quotations to BITS. The reference numbers on these requests for quotations indicate that approximately 42 of these requests were made on behalf of customers in Iran, as follows:

33 on behalf of Kala Naft, Tehran, Iran (indicated by the initial letter "T")
5 on behalf of Razi Petrochemical, Iran (indicated by the initial letter "R")
2 on behalf of Arak Petrochemical, Arak, Iran (indicated by the initial letter "A")
2 on behalf of the National Iranian Gas Company, Iran (indicated by the initial letter "N")

Govt. Exs. 7, 21, 21A; May 13 Tr. at 220, line 14 to 225, line 13. [Charge 1, Penalty]

Ruling: Accepted and Incorporated.

41. In addition, approximately 36 of these requests for quotation were submitted to BITS on behalf of Zawana, the firm operated by Mahdik Mahdi in Jordan, which transshipped to Iraq. Govt. Exs. 7, 21, 21A; May 13 Tr. at 225, line 14 to 22, [Penalty]

Ruling: Accepted and Incorporated.

42. The requests for quotation submitted to BITS by OTS on behalf of customers in Iran included:

a. A request for quotation dated December 8, 1997, and signed by OTS employee Tito DiMarco, with OTS reference number 223–127–RSA for specified parts for an agitator shaft and turbine. The initial letter "R" indicates that this request for quotation was submitted on behalf of Razi Petrochemical in Iran. Govt. Ex. 22, May 13 Tr. at 227, line 11 to 228, line 12. [Charge 1, Penalty]

b. A request for quotation dated July 14, 1998, and signed by OTS employee Tito DiMarco, with OTS reference number 463–078–ACT for parts for a steam turbine. The initial letter "A" indicates that this request for quotation was submitted on behalf of Arak Petrochemical in Iran. Govt. Ex. 23, May 13 Tr. at 228, line 18 to 230, line 3. [Charge 1, Penalty]

c. A request for quotation dated August 31, 1998, with OTS reference number 529–088–ACO for parts for a steam turbine. Handwritten notations on this document indicates that OTS quoted prices in response to this request. The initial Letter "A" indicates that his request for quotation was submitted on behalf of Arak Petrochemical in Iran. Govt. Ex. 24; May 13 Tr. at 230, line 8 to 232, line 9. [Change 1, Penalty]

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[13] As noted in paragraph 20 above, Kala Naft is a subsidiary of the National Iranian Oil Company.

Ruling: Accepted and Incorporated.

43. The Arak Petrochemical Company and the Razi Petrochemical Company are affiliates of the National Petrochemical Company of Iran. Govt. Ex. 25; May 13 Tr. at 232, line 10 to 234, line 18. [Change 1, Penalty]

Ruling Accepted and Incorporated.

44. From March 1997 to March 1999, Mr. Mahdi, OTS, and Tech-Link received approximately 195 requests for quotation from customers in Iran, as follows:

72 from the Razi Petrochemical Company
65 from Kala Naft, Tehran
22 from the National Iranian Gas Company
17 from the Arak Petrochemical Company

In addition, during the same time period, Mr. Mahdi, OTS, and Tech-Link received six requests for quotation directly from customers in Iraq and 1117 requests for quotation from Zawana. Govt. Ex. 26; May 13 Tr. at 219, line 21 to 220, line 9; *id.* at 235, line 7 to 238, line 2. [Change 1, Penalty]

Ruling: Accepted and Incorporated.

45. On or about April 9, 2002 Mahdik Mahdi placed on behalf of Zawana a request for quotation for the delivery of 140 tons of an alumina based catalyst to Syria. Govt. Ex. 29; May 13 Tr. at 260, line 8 to 262, line 13. [Penalty]

Ruling: Accepted for Incorporated.

46. On or about March 10, 2003, Mr. Mahdi received thirteen boxed of business records from the Canadian Department of Justice. These records had been seized by the Royal Canadian Mounted Police during searches of Mr. Mahdi's residence and OTS's business permisses in March of 1999 and transferred to the Office of Export Enforcement, U.S. Department of Commerce, trough the Office of International Affairs of the Criminal Division of the U.S. Department of Justice, had shipped these records to the Canadian Department of Justice for return to Mr. Mahdi. Govt. Ex. 1A; May 13 Tr. at 73, line 11 to 76, line 11. [Penalty]

Ruling: Accepted and Incorporated.

47. Mr. Mahdi represented to this Court that he wished to receive the above-described business records in order to present a defense in this proceeding. May 13 Tr. at 24, line 9 to 25, line 4 (quoting Mr. Mahdi; request for continuance dated April 9, 2002). The Court postponed the hearing in this matter partly to accommodate Mr. Mahdi's stated interest in using these records in the hearing in this case. May 13 Tr. at 24, line 9 to 26, line 7; *id.* at 59, line 22 to 60, line 10. However, after receiving those records on or about March 10, 2003, Mr. Mahdi for the first time asserted that health problems prevented him from participating in the hearing. Respondent's Request for Continuance, April 14, 2003; May 13 Tr. at 51, line 16 to 5, line 5; *id.* at 60, line 14 to 62, line 4. [Penalty]

Ruling: Accepted and Incorporated.

48. Mr. Mahdi used an envelope with the pre-printed logo and address of OTS when he served a copy of a pleading in this matter on counsel for BIS. This pleading was received by counsel for BIS on or about May 5, 2003. Govt. Ex. 1B; May 13 Tr. at 76, line 12 to 78, line 1. [Penalty]

Ruling: Accepted and Incorporated.

B. Proposed Ultimate Findings of Fact and Conclusions of Law

49. By order dated September 6, 2002, this Court granted summary decision against Mr. Mahdi on Charge 1, which alleges a conspiracy to export oil field equipment to Iran trough Canada in violation of § 746.7 of the EAR. Mr. Mahdi acted on behalf of OTS when he entered into the agreement with BITS and Mr. Strome to make unauthorized exports from the United States to Iran. *See* paragraphs 3, 10–13 above. Moreover, OTS, through Mr. Mahdi and another employee, Tito DiMarco, took several actions in furtherance of the conspiracy. *See* paragraphs 7, 19, 28–29, 32, 34, 42, and 44 above. Accordingly, OTs is liable for the conspiracy described in Charge 1.[14] *See, e.g.*, *United States* v. *Bi-Co Pavers, Inc.*, 741 F.2d 730, 737 (5th Cir. 1984) ("a corporation is criminally liable for the unlawful acts of its agents, provided that such conduct is within the scope of the agent's authority, actual or apparent"); *United States* v. *United States* v. *Sherpix*, 512 F.2d 1361, 1367 & n.7 (D.C. cir. 1975) ("a corporation is criminally responsible for acts of its officers and thus can be charged with their conspiracies," provided corporation is "designated as a defendant and charged as a conspirator by appropriate factual allegations").

Ruling: Accepted and Incorporated.

50. BITS and Mr. Strome were co-conspirators of OTS and Mr. Mahdi in the above-referenced conspiracy. *See* paragraphs 8–13, 40, 42–43 above; *see also* Govt. Ex. 3 at 27, lines 13–14 (Mr. Mahdi identified "Mr. Strom" (sic) as "the co-conspirator in this case" during sworn testimony at the change of plea proceeding).

Ruling: Accepted and Incorporated.

51. The tranctions described in Charges 2 and 3 were exports from the United States to Iran because Mr. Mahdi and OTs intended to transship the items in question to Iran via Canada from the time that they were exported from the United States. Similarly, the transaction described in Charge 4 was a solicited and attempted export from the United States to Iran because Mr. Mahdi and OTS intended that these items would be transhipped to Iran via Canada after they were exported from the United States. *See* 15 CFR 734.2(b)(6).

Ruling: Accepted and Incorporated.

52. By actions taken regarding the equipment purchased under OTS reference number 701–1230–TSI, Mr. Mahdi and OTS, on or about October 30, 1997,[15] exported oil field equipment, which was subject to both the EAR and to OFAC's Iranian Transaction Regulations, from the United States through Canada to Iran, without prior authorization from OFAC, in violation of § 746.7 of the EAR, thereby each committing one violation of § 764.2(a) of the EAR—engaging in conduct prohibited by the EAR. See paragraphs 19–23, 25–26 above. Mr. Mahdi and OTS are each accordingly liable for the violation described in Charge 2.

Ruling: Accepted and Incorporated.

53. By actions taken regarding the equipment purchased under OTS reference number 702–1360–TSI, Mr. Mahdi and OTS, on or about February 9, 1998,[16] exported oil field equipment,

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[14] Charge 1 alleges that this conspiracy took place "between in or about March 1997 and in about April 1998." According to testimony at the hearing, the conspiracy continued into March 1999. May 13, 2003 at Tr. at 113, lines 9–21; *id.* at 118, lines 2–24. Mr. Mahdi himself has admitted that the conspiracy continued until March 1999. Govt. Ex. 2 at 13, paragraph 9, at 17 paragraph 11 (in plea agreement, Mr. Mahdi certified to the truth of the allegation that conspiracy existed "[b]etween in or about March, 1997, and in or about March, 1999").

[15] Charge 2 states that the export occurred on or about October 30, 1997. The equipment in question was shipped from the United States to Canada on or about October 30, 1997, see paragraphs 22–23 above, and shipped from Canada to Iran in early November 1997. See paragraphs 25–26 above. Because this combination of shipments constituted an export from the United States to Iran, see paragraph 51 above, the date of export stated in Charge 2 is accurate.

[16] The equipment in question was picked up by truck in Florida on or about February 9, 1998, and transported to Montreal, Canada. See paragraph 29 above. Charge 3 describes the export as taking place "on or about February 2, 1999" (the date on the Pars invoice). This one-week variance between the date as alleged and the date as established at trial is immaterial to the validity of the charge. See *Tasty Baking Co.* v. *NLRB*, 254 F.3d 114, 122 D.C. Cir.

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which was subject to both the EAR and to OFAC's Iranian Transaction Regulations, from the United States through Canada to Iran, without prior authorization from OFAC, in violation of § 746.7 of the EAR, thereby each committing one violation of Section 764.2(a) of the EAR engaging in conduct prohibited by the Ear. See paragraphs 28–30 above.[17] Mr. Mahdi and OTS are each accordingly liable for the violation described in Charge 3.

Ruling: Accepted and Incorporated.

54. By actions taken regarding the equipment ordered under OTS reference number 013–077–TBT, Mr. Mahdi and OTS, from on or about April 21, 1998, to on or about March 17, 1999, solicited or attempted the export of oil field equipment, which was subject to both the EAR and to OFAC's Iranian Transaction Regulations, from the United States through Canada to Iran, without prior authorization from OFAC, in violation of Section 746.7 of the EAR, thereby each committing one violation of Section 764.2(c) of the Regulations—soliciting or attempting a violation of the Regulations. See paragraphs 31–37 above. Mr. Mahdi and OTS are each accordingly liable for the violation described in Charge 4.

Ruling: Accepted and Incorporated.

55. On or about October 30, 1997, BITS and Mr. Strome, through Forward Logistics Group, Inc. caused a false material statement of the ultimate destination of the export described in Charge 2 as "Toronto," when the export was in fact ultimately destined for Iran, on an SED submitted to the United States Customers Service regarding that export. See paragraph 23 above. In so doing, BITS and Mr. Strome, the co-conspirators of OTS and Mr. Mahdi, acted within the scope of the conspiracy, in furtherance of the conspiracy's objective of making unauthorized exports of oil field equipment from the United States to Iran via Canada, and in a manner reasonably foreseeable by OTS and Mr. Mahdi as a natural consequence of the conspiracy.[18] Accordingly, under the rule of *Pinkerton* v. *United States,* 328 U.S. 640, 645–46 (1946), OTS and Mr. Mahdi are liable for the violation of Section 764.2(g) of the EAR described in Charge 5: making the false statement that Toronto was the ultimate destination on the SED sumbitted on or about October 30, 1997.[19]

Ruling: Accepted and Incorporated.

56. Alternatively, Mr. Mahdi and OTS are each liable for the violations described in Charges 2, 3, and 4 because the actions taken by their co-conspirators Mr. Strome and OTS constituted the unauthorized exports and attempted export described in those charges. In taking such actions, Mr. Strome and OTS acted within the scope of the conspiracy, in furtherance of the conspiracy's objective of making unauthorized exports of oil field equipment from the United States to Iran via Canada, and in a manner reasonably foreseeable by OTS and Mr. Mahdi as a natural consequence of the conspiracy. Accordingly, Mr. Mahdi and OTS are liable for such actions of their co-conspirators under the Pinkerton rule. See BIS's Motion for Summary Decision, dated May 31, 2002, at 12 n.14, and in BIS's Pre-Hearing Memorandum, dated February 26, 2003, at 12 n.11.[20]

Ruling: Accepted and Incorporated.

57. Mr. Mahdi and OTS, acting through Danzas Canada, Ltd., transferred and forwarded from Canada to Iran the oil field equipment purchased under OTS reference number 701–1320–TSI. See paragraphs 25–26 above. Mr. Mahdi knew, at a minimum, that Mr. Strome and BITS had violated the EAR by exporting this equipment from the United States to an ultimate destination of Iran without the required license. See paragraph 27 above. Thus, Mr. Mahdi committed the violation described in Charge 6: transferring and forwarding this equipment from Canada to Iran, knowing that it had been exported from the United States in violation of the EAR.[21] Moreover, Mr. Mahdi's knowledge of Mr. Strome's violation of the EAR is attributable to OTS,[22] so that OTS committed the violation described in Charge 6 also.

Ruling: Accepted and Incorporated.

58. Based on the following factors, the Court recommends that Mr. Mahdi and OTS should be denied U.S. export privileges for twenty years, per the standard terms of a denial order set out at Supplemental No. 1 to part 764 of the EAR:

a. The scope of prior efforts to acquire U.S. origin equipment to export to customers in Iraq and Iran in violation of U.S. export controls. See paragraphs 40–44 above.

b. The importance of the foreign policy objectives furthered by controlling exports to embargoed countries, such as Iran, and of preventing exports that violated export controls on embargoed countries.

c. The significant nature of the transactions at issue in these charges, as indicated by the fact that the equipment involved in Charges 2, 3, and 4 had a collective value of over $230,000.

## Certificate of Service

I hereby certify that I have served the foregoing Recommended Decision and Order by Federal Express to the following persons:

Undersecretary, Bureau of Industry and Security, U.S. Department of

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2001, and cases cited therein ("minor variances in 'on or about' dates" are permitted in both criminal and administrative enforcement proceedings).

[17] Although BIS did not supply direct evidence that this equipment was shipped from Canada to Iran, the following facts and circumstances support the finding that such a shipment occurred: (1) Mr. Madhi's repeated admissions that he shipped equipment obtained from BITS from Canada to Iran, see paragraph 16 above; (2) the fact that the letter "T" in this OTS reference number indicates that the customer ordering this equipment was Kala Naft in Tehran, Iran, see paragraphs 17 and 28 above; (3) the fact that Pars, the carrier that OTS and Mr. Mahdi arranged to transport the equipment from Florida to Montreal, Canada, served as the general sales agent for Iran Air, see paragraph 30 above; and (4) the fact that documentation provided to BITS by OTS indicated that the equipment would be exported form Canada, see paragraph 29 above.

[18] The conspiracy count to which Mr. Mahdi plead guilty in the criminal proceeding stated that the parties conspired to ship such equipment from the United States to Canada under SED's that falsely stated the equipment's ultimate destination, see Govt. Ex. 1 at 5, paragraph 13, and Mr. Mahdi admitted in his plea agreement that this allegation was true. See Govt. Ex. 2 at 13, paragraph 9 & 18, paragraph 13.

[19] The fact that Charge 5 states that OTS and Mr. Mahdi "prepared" the SED in question, rather than stating that OTS and Mr. Mahdi are liable for the actions of their co-conspirators, does not affect the application of the Pinkerton rule. Where a conspiracy is alleged, a charging document need not plead that the Government will rely on Pinkerton to establish liability for substantive offenses; the conspiracy charge itself is sufficient notice of the Pinkerton theory of liability. See *United States* v. *Washington,* 106 F.3d 983, 1010–12 (D.C. Cir. 1996), cert. denied, 522 U.S. 984 (1997); *United States v. Sax,* 39 F.3d 1380, 1389–90 (7th Cir. 1994). Moreover, OTS and Mr. Mahdi—even if they had participated in the hearing—could not claim prejudicial surprise, because BIS's Pre-Hearing Memorandum, dated February 26, 2003, at 13–14, made clear that BIS would rely on Pinkerton to establish liability for Charge 5.

[20] If the Court were to find insufficient evidence of completed exports to Iran, as described in Charges 2 and 3, OTS and Mr. Mahdi should be found liable under Section 764.2(c) of the EAR for attempting such exports. A defendant may be found guilty of attempt even if only the completed offense is charge, provided that the attempt is itself an offense, as it is here under Section 764.2(c). *See, e.g., United States* v. *Marin,* 513 F.2d 974, 976 (2d Cir. 1975); *Simpson* v. *United States,* 195 F.2d 721, 723 (9th Cir. 1952); *Clinton Cotton Mills* v. *United States,* 164 F.2d 173, 177 (4th Cir. 1947).

[21] Charge 6 describes the transferring and forwarding of this equipment from Canada to Iran as occurring "[o]n or about October 30, 1997." The evidence shows that the equipment was shipped to Iran in early November 1997. As explained in footnote 18 above, this variance is immaterial to the validity of the charge.

[22] *See e.g., In re* Hellenic Inc., 252 F.3d 391, 395 (5th Cir. 2001) ("An agent's knowledge is imputed to the corporation where the agent is acting within the scope of his authority and where the knowledge relates to matters within the scope of that authority * * * [C]ourts generally agree that the knowledge of directors or key officers, such as the president and vice president, is imputed to the corporation. * * *").

Commerce, Room H–3839, 14th & Constitution Avenue, NW., Washington, DC 20230, Phone: 202–482–5301.
Philip D. Golrick, Esq., Office of Chief Counsel for Industry and Security, U.S. Department of Commerce, Room H–3839, 14th & Constitution Avenue, NW., Washington, DC 20230, Phone: 202–482–5301.
Abdulamir Mahdi, 20 Huntingwood Drive, Scarborough, Ontario, Canada, M1W1A2, Phone: 905–946–9551.
ALJ Docketing Center, Baltimore, 40 S. Gay Street, Room 412, Baltimore, Maryland 21202–4022, Phone: 410–962–7434.

Done and dated August 26, 2003, at Norfolk, Virginia.

**Lucinda H. Shinault, CP,**

*Certified Paralegal to the ALJ Norfolk.*

[FR Doc. 03–25076 Filed 10–2–03; 8:45 am]

**BILLING CODE 3510–BW–M**

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A-580-816]**

## Corrosion-Resistant Carbon Steel Flat Products from Korea: Initiation of New Shipper Antidumping Duty Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Initiation of New Shipper Antidumping Duty Review.

**EFFECTIVE DATE:** October 3, 2003.

**FOR FURTHER INFORMATION CONTACT:** Paul Walker or Alex Villanueva at (202) 482–0413 or (202) 482–3208 or, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 29, 2003, the Department received a timely request from Hyundai Hysco (≥Hyundai") in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on certain corrosion-resistant carbon steel flat products from Korea, which has an August anniversary date. We received a clarification to the public version of this request on September 24, 2003. *See Notice of Antidumping Duty Order: Certain Cold-Rolled Carbon Steel Flat Products from Korea*, 58 FR 44159 (August 19, 1993).

### Scope

The merchandise under review is corrosion-resistant carbon steel flat products, which covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling") for example, products which have been beveled or rounded at the edges. Excluded from this review are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this review are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this review are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

These HTS item numbers are provided for convenience and U.S. Customs purposes. The written descriptions remain dispositive.

### Initiation of Review

Hyundai has identified itself as a producer and exporter of corrosion-resistant carbon steel flat products. In its request of August 29, 2003, Hyundai, as required by 19 C.F.R. 351.214(b)(2)(i) and (iii)(A), certified that it did not export the subject merchandise to the United States during the period of investigation (≥POI"), January 1, 1992 through June 30, 1992, and, that since the investigation was initiated on July 20, 1992, (57 FR 33488, July 29, 1992), it has never been affiliated with any exporter or producer who exported subject merchandise to the United States during the POI. Pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv), Hyundai submitted documentation establishing the date on which it first entered the subject merchandise to the United States, the volume of that first shipment, and the date of its first sale to an unaffiliated customer in the United States. *Memorandum from Paul Walker, Case Analyst through Edward C. Yang, Office Director, to the File regarding the Initiation of AD New Shipper Review: Corrosion-Resistant Carbon Steel Flat Products from Korea*, dated September 30, 2003

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), we are initiating a new shipper review of the antidumping order on corrosion-resistant carbon steel flat products from Korea produced by Hyundai.[1] In accordance with 19 CFR 351.214(h)(1), we intend to issue preliminary results of this review no later than 180 days after the date of initiation.

In accordance with section 351.214(g)(1)(i)(A) of the Department's regulations, the period of review ("POR") for a new shipper review initiated in the month immediately following the annual anniversary month is the twelve-month period preceding the anniversary month. Therefore, the POR for this new shipper is August 1, 2002 through July 31, 2003.

Concurrent with publication of this notice and in accordance with 19 CFR 351.214(e), we will instruct the U.S.

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[1] We note that the Petitioners separately requested an administrative review of Hyundai. If for any reason the Department rescinds the new shipper review of Hyundai, we will then include Hyundai in the normal administrative review.

Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the subject merchandise exported by the above listed company, until the completion of this review. Hyundai has certified that it both produced and exported the subject merchandise on which it based the request for a new shipper review. Therefore, we will instruct customs to limit the bonding option only to subject merchandise for which Hyundai is the producer and exporter.

The interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305, 351.306 and 19 CFR 351.221(c)(1)(i).

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214.

Dated: September 26, 2003.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Import Administration, Group III.*

[FR Doc. 03–25160 Filed 10–2–03; 8:45 am]

**BILLING CODE 3510–DS–S**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A-533-813, A-570-851]**

### Certain Preserved Mushrooms from India and the People's Republic of China: Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Reviews and New Shipper Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** October 3, 2003.

**FOR FURTHER INFORMATION CONTACT:** Kate Johnson at (202) 482–4929, or David J. Goldberger at (202) 482–4136 (India), or Brian Smith at (202) 482–1766 (PRC), Office 2, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230.

**SUMMARY:** The Department of Commerce is extending the time limit for the preliminary results of the fourth administrative review of the antidumping duty order on certain preserved mushrooms from India and the fourth administrative review and sixth new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China, which cover the period February 1, 2002, through January 31, 2003.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

Pursuant to 751(a)(2)(B)(iv) of the Act, the Department shall make a preliminary determination in a new shipper review within 180 days after the date on which the review is initiated. However, if the case is extraordinarily complicated, it may extend the 180 day period for the preliminary results to 300 days.

The Department finds that it is not practicable to complete the preliminary results in the administrative review of certain preserved mushrooms from India as well as the administrative review of certain preserved mushrooms from the People's Republic of China within this time limit because we are unable to conduct verifications until after the date of the currently scheduled preliminary results. In addition, we determine that it would be extraordinarily complicated to complete the preliminary results in the new shipper review of certain preserved mushrooms from the People's Republic of China under the current schedule as we need additional time to conduct verifications and to analyze issues raised in that review.

Therefore, in accordance with sections 751(a)(3)(A) and 751(a)(2)(B)(iv) of the Act, the Department is extending the time for completion of the preliminary results of these reviews until February 28, 2004.

Dated: September 26, 2003.

**Jeffrey May,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 03–25158 Filed 10–2–03; 8:45 am]

**BILLING CODE 3510–DS–S**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A-428-825]**

### Stainless Steel Sheet and Strip in Coils from Germany; Antidumping Duty Administrative Review; Extension of Time Limits

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Extension of Time Limits.

**SUMMARY:** The Department of Commerce (the Department) is extending the time limits for the final results of the 2001–2002 administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Germany. This review covers one manufacturer/exporter of the subject merchandise to the United States and the period July 1, 2001 through June 30, 2002.

**EFFECTIVE DATE:** October 3, 2003

**FOR FURTHER INFORMATION CONTACT:** Patricia Tran at (202) 482–1121 or Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:** On August 7, 2003, we published the preliminary results of this administrative review. *See Stainless Steel Sheet and Strip in Coils from Germany; Notice of Preliminary Results of Antidumping Duty Administrative Review* 68 FR 47039 (August 7, 2003). Currently, the final results in this administrative review are due on December 5, 2003. Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the final results of the review within the normal statutory time limit. The Department issued a supplemental questionnaire on September 5, 2003 to respondents requesting all information on downstream sales made by Thyssen Schulte (TS). Due to the request for additional information, the Department must allot the appropriate time to review and analyze the new information. In addition, the Department must allow parties to submit briefs and rebuttal briefs. The Department determines it is not practicable to complete this review within the normal statutory time limit. Therefore, the Department is extending the time limits for completion of the final results until February 3, 2004, in accordance with section 751(a)(3)(A) of the Tariff Act.

Dated: September 25, 2003.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Import Administration, Group III.*

[FR Doc. 03–25159 Filed 10–2–03; 8:45 am]

**BILLING CODE 3510–DS–S**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 092903D]**

### Proposed Information Collection; Comment Request; Licensing of Private Land Remote-Sensing Space Systems

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before December 2, 2003.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Timothy Stryker at (301) 713–2024, ext 205, or e-mail *Timothy.Stryker@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

NOAA has established requirements for the licensing of private operators of remote-sensing space systems. The information in applications and subsequent reports is needed to ensure compliance with the Land Remote-Sensing Policy Act of 1992 and with the national security and international obligations of the United States. The requirements are contained in 15 CFR Part 960.

### II. Method of Collection

Applicants are asked to provide electronic copies of submissions.

### III. Data

*OMB Number:* 0648–0174.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 13.

*Estimated Time Per Response:* 40 hours for a license application; 10 hours for a license amendment; 2 hours for a notification of a foreign agreement; 1 hour for an executive summary; 2 hours for a notification of the demise of a system or the decision to discontinue system operations; 2 hours for a notification of any operational deviation; 5 hours for submission of a data collection restriction plan; 3 hours for submission of an operation plan for restricting collection or dissemination of dat concerning Israeli territory; 3 hours for a data flow diagram; 1 hour for a drawing of satellite sub-systems; 2 hours for submission of spacecraft operational information when a satellite becomes operational; 2 hours for a notification of a disposition/orbital change or of planned purges of information; 3 hours for an operational quarterly report; 8 hours for an annual compliance audit; and 10 hours for an annual operational audit.

*Estimated Total Annual Burden Hours:* 314.

*Estimated Total Annual Cost to Public:* $1,000.

### IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 26, 2003.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 03–25143 Filed 10–2–03; 8:45 am]

**BILLING CODE 3510–HR–S**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 092903E]**

### Proposed Information Collection; Comment Request; Fisheries Certificate of Origin

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before December 2, 2003.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Patricia Donley at 562–980–4033, or e-mail *Pat.Donley@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

The information required by the International Dolphin Conservation Program Act (IDCPA), amendments to the Marine Mammal Protection Act (MMPA), is needed: to document the dolphin-safe status of tuna import shipments and domestic deliveries of tuna by U.S.-flag purse seine fishing vessels; to verify that import shipments of fish were not harvested by large-scale, high seas driftnets; and to verify that tuna was not harvested by an embargoed nation or one that is otherwise prohibited from exporting tuna to the United States. Forms are submitted by importers, processors, and/or purse seine vessel operators.

## II. Method of Collection

Forms may be submitted by fax, mail, or electronically.

## III. Data

*OMB Number*: 0648–0335.

*Form Number*: NOAA Form 370.

*Type of Review*: Regular submission.

*Affected Public*: Business or other for-profit organizations.

*Estimated Number of Respondents*: 350.

*Estimated Time Per Response*: 20 minutes for a processor response; and 5 minutes for a Captain's statement.

*Estimated Total Annual Burden Hours*: 1,033.

*Estimated Total Annual Cost to Public*: $100.

## IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 26, 2003.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 03–25144 Filed 10–2–03; 8:45 am]

**BILLING CODE 3510–22–S**

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# DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 092903F]**

## Proposed Information Collection; Comment Request; Commercial Operator's Annual Report (COAR)

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before December 2, 2003.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy Bearden, 907–586–7008, or e-mail *Patsy.Bearden@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

Owners of catcher/processor vessels and motherships in the groundfish fisheries of the Exclusive Economic Zone off Alaska (Bering Sea and Aleutian Islands, Gulf of Alaska) are required to complete the State of Alaska, Department of Fish and Game Commercial Operator's Annual Report (COAR). The COAR provides information on ex-vessel and first wholesale values for statewide fish and shellfish products. This information enhances the socio-economic database that is used to analyze and measure the impact of proposed or enacted management measures.

## II. Method of Collection

A paper form is submitted.

## III. Data

*OMB Number:* 0648–0428.
*Form Number:* None.
*Type of Review:* Regular submission.
*Affected Public:* Business or other for-profit organizations, individuals or households.
*Estimated Number of Respondents:* 134.
*Estimated Time Per Response:* 8 hours.
*Estimated Total Annual Burden Hours:* 1,072.
*Estimated Total Annual Cost to Public:* $0.

## IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 26, 2003.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 03–25145 Filed 10–2–03; 8:45 am]

**BILLING CODE 3510–22–S**

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# DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## Federal Consistency Appeal by Islander East Pipeline Company From an Objection by the Connecticut Department of Environmental Protection

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

**ACTION:** Supplemental notice of public hearing.

**SUMMARY:** This notice provides scheduling information concerning a public hearing to be held by the National Oceanic and Atmospheric Administration in New Haven, Connecticut. The hearing involves an administrative appeal filed with the

Department of Commerce by the Islander East Pipeline Company (Consistency Appeal of Islander East Pipeline Company, L.L.C.).

**DATES:** The hearing is scheduled to begin at 9:30 a.m. on November 5, 2003. Speaker registration begins at 8:30 a.m. on the day of the hearing. Public comments on the appeal must be received by November 20, 2003.

**ADDRESSES:** The public hearing and speaker registration will be held at the Omni New Haven Hotel, 155 Temple Street, New Haven, Connecticut. Written comments may be submitted at the hearing. All e-mail comments on issues relevant to the Secretary's decision of this appeal may be submitted to *IslanderEast.comments@noaa.gov*. Apart from the hearing, comments may also be sent by mail to the Office of the General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Silver Spring, MD 20910. Materials from the appeal record are available at the Internet site *http://www.ogc.doc.gov/czma.htm* and at the Office of the General Counsel for Ocean Services. Also, public filings made by the parties to the appeal are to be available for review at the Connecticut Department of Environmental Protection, 79 Elm Street, Hartford, Connecticut.

**FOR FURTHER INFORMATION CONTACT:** Branden Blum, Senior Counselor, via email at *gcos.inquiries@noaa.gov*, or at 301–713–2967, extension 186.

**SUPPLEMENTARY INFORMATION:** The Islander East Pipeline Company filed an administrative appeal with the Department of Commerce, pursuant to the Coastal Zone Management Act of 1972 (CZMA), as amended, asking that the Secretary of Commerce (Secretary) override the State of Connecticut's (State) objection to Islander East's proposed natural gas pipeline. The pipeline would extend from near North Haven, Connecticut, across the Long Island Sound to a terminus in Suffolk County (Long Island), New York. Connecticut's objection is based on the project's potential effects on the natural resources or land and water uses of Connecticut's coastal zone.

On February 4, 2003, NOAA published a notice in the **Federal Register** announcing that it would hold a public hearing concerning the Islander East appeal at a location to be determined in the State of Connecticut. *See* 68 FR 5620. The notice also indicated the hearing was expected to be held in the Spring of 2003. Subsequently, proceedings in the appeal were temporarily halted at the request of one or both parties in order to accommodate settlement negotiations and then to allow the State of Connecticut to reconsider its objection to the pipeline project. On August 19, 2003, a **Federal Register** notice advised that processing of the appeal had resumed and that details concerning the previously announced public hearing would be forthcoming. *See* 68 FR 49760. This notice provides scheduling information for the hearing.

The hearing, to be held on November 5, 2003, will begin at 9:30 a.m. at the Omni New Haven Hotel, and continue throughout the day with afternoon and evening sessions. Intermissions are expected near noon and in the late afternoon (approximately 4:30 p.m.). In addition, a temporary recess may be scheduled for periods when all registered speakers have had an opportunity to testify. Typically the evening session is crowded, and it is suggested that, if possible, speakers attend the morning or afternoon sessions. Speakers must register on the day of the hearing, on site, at the hotel. Registration of speakers will begin at 8:30 a.m. Each organization that registers should expect to receive a total of five minutes for its representatives to present oral comments. Individuals from the general public who register will receive approximately three minutes to speak. Speakers will be recognized in the order in which they register (a first-come-first-serve basis), alternating between individuals from the general public and those representing organizations. A specific period is also expected to be designated during the morning and afternoon sessions for remarks by elected officials.

Written comments may be submitted to NOAA at the hearing by any person in attendance. For submissions at the hearing, we request, but do not require, that you provide three copies for inclusion into the administrative record. Apart from the hearing, written comments may be submitted by e-mail to *IslanderEast.comments@noaa.gov* or forwarded via mail to NOAA's Office of the General Counsel for Ocean Services. Comments must be submitted by November 20, 2003, the close of the public comment period. Comments will be made available to the parties; they are also expected to be posted on the Department of Commerce's CZMA appeals Web site at *http://www.ogc.doc.gov/czma.htm*.

This hearing is being held to obtain information on issues the Secretary will likely consider in deciding Islander East's appeal. A summary of relevant issues as well as additional background on the appeal appears in a January 24, 2003 **Federal Register** notice announcing the filing of the appeal (*see* 68 FR 3513), a copy of which can be found on the Internet at *http://www.ogc.doc.gov/czma.htm*.

Questions concerning the hearing may be sent via e-mail to *gcos.inquiries@noaa.gov* or made by telephone to 301 713–2967, extension 186.

Dated: September 26, 2003.

**James R. Walpole,**

*General Counsel.*

[FR Doc. 03–24832 Filed 10–2–03; 8:45 am]

BILLING CODE 3510–08–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 032603B]

## Small Takes of Marine Mammals Incidental to Specified Activities; Taking of California Sea Lions, Pacific Harbor Seals and Northern Elephant Seals Incidental to Research Surveys at San Nicolas Island, Ventura County, CA

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to the assessment of black abalone populations at San Nicolas Island (SNI), CA, has been issued to Dr. Glenn R. VanBlaricom, Ph.D.

**DATES:** Effective from September 18, 2003, through September 17, 2004.

**ADDRESSES:** A copy of the IHA and/or the application is available by writing to Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed here.

**FOR FURTHER INFORMATION CONTACT:** Sarah Hagedorn, Office of Protected Resources, NMFS, (301) 713–2322, ext 117; or Christina Fahy, Southwest Regional Office, NMFS, (562) 980–4023.

**SUPPLEMENTARY INFORMATION:**

## Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Under Section 3(18)(A), the MMPA defines "harassment" as:

> ...any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

The term "Level A harassment" means harassment described in subparagraph (A)(i). The term "Level B harassment" means harassment described in subparagraph (A)(ii).

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

## Summary of Request

On January 9, 2003, NMFS received a letter from Glenn R. VanBlaricom, Ph.D., Washington Cooperative Fish and Wildlife Research Unit, requesting an IHA for the possible harassment of small numbers of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina*), and northern elephant seals (*Mirounga angustirostris*) incidental to research surveys performed for the purpose of assessing trends over time in black abalone populations at permanent study sites. Population trend data for black abalone populations are important and needed for several reasons. First, the reintroduction of sea otters to SNI since 1987 raises the possibility of conflict between sea otter conservation and abalone populations because abalones are often significant prey for sea otters. Second, the appearance of a novel exotic disease, abalone withering syndrome, at SNI in 1992, has resulted in dramatically increased rates of abalone mortality at the island. Third, California populations of black abalones have been recently designated as a candidate species for listing pursuant to the Endangered Species Act of 1973 (ESA) (as amended). The concern is that the combined effects of sea otter predation and abalone withering syndrome, following several decades during which black abalones may have been over-harvested in commercial and recreational fisheries, may cause reduction of black abalone populations to the point where risk of extinction increases. Long-term abalone population trend data from SNI is needed to determine if drastic population declines continue, and if extinction risk becomes high.

## Specified Activities

Additional information of the work proposed is contained in the application, which is available upon request (see **ADDRESSES**).

## Comments and Responses

On June 25, 2003 (68 FR 37799) NMFS published a notice of receipt of application, with a 30–day comment period. That notice described the activity and anticipated effects on marine mammals. That information is not repeated here. During the 30–day comment period, comments were received from the Marine Mammal Commission (Commission).

*Comment 1:* The Commission concurs with NMFS' preliminary determination that, given the mitigation measures proposed by the applicant, the short-term impact of the subject research will result in no more than the temporary modification of behavior by California sea lions, Pacific harbor seals, and northern elephant seals. It is not clear, however, based on the information in NMFS' **Federal Register** notice and the application, whether sea otters could be disturbed by the proposed research, and, if so, whether a separate authorization is being sought from the Fish and Wildlife Service to cover such taking.

*Response:* Sea otters are not expected ashore during the time periods when the research activities would be conducted. If sea otters are sighted ashore during the abalone research, then the IHA holder (Dr. VanBlaricom) would follow similar procedures in place for other listed marine mammals. As a result of this requirement in the IHA, NMFS determines that the activity will not affect California sea otters.

*Comment 2:* The Commission believes that NMFS' preliminary determinations are reasonable, provided NMFS is satisfied that the proposed monitoring program is sufficient to detect the effects of the proposed research activities, including any mortality and/or serious injury that results from startle responses, or stampedes. NMFS' **Federal Register** notice states that no takings by injury and/or death are anticipated as a result of the proposed activities. The Commission notes, however, that while the proposed mitigation measures are expected to reduce the possibility of injury or death of animals, the potential for such taking remains. Consequently, the Commission recommends that any authorization issued to the applicant specify that, if a mortality or serious injury of a marine mammal occurs which appears to be related to the abalone research, further research activities be suspended while NMFS determines whether steps can be taken to avoid further injuries or mortalities or until such taking can be authorized by regulations promulgated under section 101(a)(5)(A) of the MMPA.

*Response:* In almost all cases, shoreline habitats near the abalone study sites are gently sloping sandy beaches or horizontal sandstone platforms with unimpeded and non-hazardous access to the water. If disturbed, hauled animals may move toward the water without risk of encountering significant hazards. In these circumstances, the risk of serious injury or death to hauled animals is very low.

One exception to the low risk of marine mammal injury or mortality associated with abalone research would be if disturbances occur during breeding season, as it is possible that mothers and dependent pups may become separated. If separated pairs don't reunite fairly quickly, risks of mortality to pups may increase. Also, adult northern elephant seals may trample elephant seal pups if disturbed. Trampling increases the risk of injury or death to the pups.

NMFS concurs that all research activities be suspended, and that NMFS immediately be notified, in the case that mortality or serious injury to a marine mammal occurs which appears to be related to the abalone research. The following required mitigation measures will both reduce the possibility of incidental harassment takes and lower the possibility of serious injury or mortality.

## Mitigation

Researchers will be judicious in the route of approach to abalone study sites, avoiding close contact with pinnipeds hauled out on shore. In no case will marine mammals be deliberately approached by abalone researchers, and in all cases every possible measure will be taken to select a pathway of approach to study sites that minimizes the number of marine mammals harassed. Each visit to a given study site will last for a maximum of 4 hours, after which the site is vacated and can be reoccupied by any hauled marine mammals that were disturbed by the presence of abalone researchers. NMFS will be notified immediately and all research activities will be suspended in the case that mortality or serious injury to a marine mammal occurs which appears to be related to the abalone research.

Researchers will avoid visiting those black abalone study sites with resident pinnipeds during periods of breeding and lactation from February through October. During these periods of time, abalone research activities will be confined to black abalone sites where pinniped breeding and post-partum nursing does not occur.

Researchers will limit visits to site 8 to the period from November through January, and suspend research activities and immediately vacate any areas upon which Guadalupe fur seals are hauled out or that California sea otters are occupying.

## Monitoring

Dr. Glenn VanBlaricom and associates will conduct marine mammal monitoring during abalone surveys in order to verify that the taking of marine mammals, by harassment, incidental to abalone research surveys, will have a negligible impact on marine mammal stocks and to ensure that these harassment takings are at the lowest level practicable.

Currently, all biological research activities at SNI are subject to approval and regulation by the Environmental Planning and Management Department (EPMD), US Navy. The US Navy owns SNI and closely regulates all civilian access to and activity on the island, including biological research. Therefore, monitoring activities will be closely coordinated with Navy marine mammal biologists located on SNI.

In addition, status and trends of pinniped aggregations at SNI are monitored by the NMFS Southwest Fisheries Science Center. Also, ongoing long-term studies of pinniped population dynamics, migratory and foraging behavior, and foraging ecology at SNI are conducted by staff at Hubbs-Sea World Research Institute (HSWRI).

Monitoring requirements in relation to Dr. VanBlaricom's abalone research surveys will include observations made by the applicant and his associates. Observations of unusual behaviors, numbers, or distributions of pinnipeds on SNI will be reported to EPMD, NMFS, and HSWRI so that any potential follow-up observations can be conducted by the appropriate personnel. In addition, observations of tag-bearing pinniped carcasses as well as any rare or unusual species of marine mammals will be reported to EPMD, allowing transmittal of this information to appropriate agencies and personnel.

## Reporting

A draft final report must be submitted to the Regional Administrator, and the Director, Office of Protected Resources, NMFS, within 60 days after the conclusion of the year-long field season. A final report must be submitted to the Regional Administrator and the Director, Office of Protected Resources, NMFS, within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

## Endangered Species Act (ESA)

NMFS has determined that the abalone research activities and the accompanying IHA will not have an effect on species listed under the ESA. Therefore, consultation under Section 7 was not required.

## National Environmental Policy Act

In accordance with the NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has determined, based on a programmatic NEPA assessment conducted on the impact of NMFS' rulemaking for the issuance of IHAs (61 FR 15884; April 10, 1996) and the content and analysis of Dr. VanBlaricom's request for an IHA, that the proposed issuance of this IHA to Dr. VanBlaricom by NMFS will not individually or cumulatively result in a significant impact on the quality of the human environment as defined in 40 CFR 1508.27. Therefore, the action of issuing an IHA for these activities meets the definition of a "Categorical Exclusion" and is exempted from further environmental review.

## Determinations

NMFS has determined that the impact of abalone research, as described in this document, in the earlier **Federal Register** notice published on June 25, 2003 (68 FR 37799), and in the application for an IHA, should result, at worst, in the temporary modification in behavior by California sea lions, Pacific harbor seals and northern elephant seals. The effects of abalone research surveys on SNI are expected to be limited to short term and localized changes in behavior involving relatively small numbers of pinnipeds. While behavioral modifications, including temporarily vacating onshore haulouts, may be made by these species to avoid the presence and nearness of abalone researchers, this action is expected to have a negligible impact on the animals. In addition, no take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of mitigation measures.

## Authorization

NMFS has issued an IHA to Dr. Glenn R. VanBlaricom to take small numbers of Pacific harbor seals, California sea lions and Northern elephant seals for a 1–year period incidental to abalone population trend research, provided the previously mentioned mitigation, monitoring, and reporting requirements described in this document are undertaken.

Dated: September 23, 2003.

**Laurie K. Allen,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 03–25142 Filed 10–2–03; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 092403A]

### Small Takes of Marine Mammals Incidental to Specified Activities; Seismic Retrofit of the Richmond-San Rafael Bridge, San Francisco Bay, CA

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

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**SUMMARY:** NMFS has received a request from the California Department of Transportation (CALTRANS) for a renewal of its Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to seismic retrofit construction of the Richmond-San Rafael Bridge (the Bridge), San Francisco Bay (SFB), CA. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to renew a small take authorization to CALTRANS to incidentally take, by harassment, small numbers of Pacific harbor seals and possibly California sea lions for 1 year.

**DATES:** Comments and information must be received no later than November 3, 2003.

**ADDRESSES:** Comments on the application should be addressed to the Acting Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. Comments cannot be accepted if submitted via e-mail or the Internet. A copy of the application, Environmental Assessment (EA) and/or monitoring reports may be obtained by writing to this address or by telephoning the contact listed here. Publications referenced in this document are available for viewing, by appointment during regular business hours, at this address.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, ext 128.

**SUPPLEMENTARY INFORMATION:**

## Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Under section 18(A), the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

## Summary of Request

On September 22, 2003, NMFS received a letter from CALTRANS, requesting reauthorization of an IHA that was first issued to it on December 16, 1997 (62 FR 67045, December 23, 1997), was renewed on January 8, 2000 (65 FR 2375, January 14, 2000), September 19, 2001 (66 FR 49165, September 26, 2001) and September 23, 2002 (67 FR 61323, September 30, 2002).

The renewed authorization request is for the possible harassment of small numbers of Pacific harbor seals (*Phoca vitulina*) and possibly some California sea lions (*Zalophus californianus*), incidental to seismic retrofit construction of the Bridge.

The Bridge is being seismically retrofitted to withstand a future severe earthquake. Construction is scheduled to extend until the year 2005. A detailed description of the work planned is contained in the Final Natural Environmental Study/Biological Assessment for the Richmond-San Rafael Bridge Seismic Retrofit Project (CALTRANS, 1996). Among other things, seismic retrofit work will include excavation around pier bases, hydro-jet cleaning, installation of steel casings around the piers with a crane, installation of micro-piles, and installation of precast concrete jackets. Foundation construction will require approximately 2 months per pier, with construction occurring on more than one pier at a time. In addition to pier retrofit, superstructure construction and tower retrofit work will also be carried out. Because seismic retrofit construction between piers 52 and 57 has the potential to disturb harbor seals hauled out on Castro Rocks, an IHA is warranted. The duration for the seismic retrofit of foundation and towers on piers 52 through 57, which began this year, will take approximately 7 to 8 months to complete.

## Description of Habitat and Marine Mammals Affected by the Activity

A description of SFB ecosystem and its associated marine mammals can be found in the CALTRANS application (CALTRANS 1997) and in CALTRANS (1996). Castro Rocks are a small chain of rocky islands located next to the Bridge and approximately 1500 ft (460 m) north of the Chevron Long Wharf. They extend in a southwesterly direction for approximately 800 ft (240 m) from pier 55. The rocks start at about 55 ft (17 m) from pier 55 (A rock) and end at approximately 250 ft (76 m) from pier 53 (F rock). The chain of rocks is exposed during low tides and inundated during high tide.

### *Marine Mammals*

General information on harbor seals and other marine mammal species found in Central California waters can be found in Forney et al. (2000, 2001), which are available at the following URL: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html*. Please refer to these documents for information on these species. The marine mammals likely to be affected by work in the Bridge area are limited to harbor seals and California sea lions.

The harbor seal is the only marine mammal species expected to be found regularly in the Bridge area. A detailed description of harbor seals was provided in the 1997 notification of proposed authorization (62 FR 46480, September 3, 1997) with corrections and clarifications provided in the notice of IHA issuance (62 FR 67045, December 23, 1997). This information is not repeated here, but may be found in the **Federal Register** notices mentioned previously in this document.

It should be noted that pups are born in mid- to late-March, peak numbers of pups are observed in early May, and, by the first week in June, all pups are weaned (Kopec and Harvey, 1995). Estimated pup counts at Castro Rocks were 35 in 1999, 40 in 2000 and 40 in 2001 (A. Bohorquez pers. comm in Green et al., 2001). This represents approximately 22–24 percent of the pups born in SFB.

The California sea lion primarily uses the Central SFB area to feed. California sea lions are periodically observed at Castro Rocks. No pupping or regular haulouts occur in the project area.

## Potential Effects on Marine Mammals

The impact to the harbor seals and California sea lions is expected to be disturbance by the presence of workers, construction noise, and construction vessel traffic. Disturbance from these activities is expected to have only a short-term negligible impact to a small number of harbor seals and sea lions. These disturbances will be reduced to the lowest level practicable by implementation of the proposed work restrictions and mitigation measures (see Mitigation).

Marine mammal monitoring under previous IHAs has been conducted at Castro Rocks and at two "control" haul-out locations in SFB, Mowry Slough and Yerba Buena Island (Green *et al.*, 2001, 2002) since 1998. To date, over 10,000 hours of observations have been conducted at these sites with two-thirds of those hours at Castro Rocks. While disturbances can consist of head alerts, approaches to the water, and flushes into the water, only the latter behavior is considered by NMFS to be Level B harassment. At Castro Rocks, of all flush disturbances monitored during the day, the major harassment sources were watercraft (e.g. motorboats, sailboats, tankers, kayaks and jet skis) with 0.128 disturbances/hr field time (d/hr); wildlife (seals and birds) with 0.075 d/hr; anthropogenic (debris, workmen on bridge with 0.040 d/hr; and "research" with 0.021 d/hr. Construction activities resulted in 0.0165 d/hr. There were fewer flushes observed at night. More detailed information on the extent of take by harassment at Castro Rocks by activities other than the requested authorization, please refer to Green *et al.* (2002).

During the work period (August 1 through February 14), the incidental harassment of harbor seals and, on rare occasions, California sea lions is expected to occur on a daily basis upon initiation of the retrofit work. In addition, the number of seals disturbed will vary daily depending upon tidal elevations. Monitoring by Green et al. (2002) indicates that although overall seal numbers each month of the year are not significantly different across years, there are differences in subsite use by seals at Castro Rocks during both the daytime and nighttime. For example, the average number of seals hauled out on Castro Rocks (rocks A and C) during the fall of 2001 (when construction activity was taking place within the area of the haul-out site) was significantly different than the average number of seals hauled out on Castro Rocks during 1998–2000, prior to the construction period. It was noted that fewer seals were using rock A, located closest to the Bridge and more seals were hauling out on rock C which was located farther from the Bridge than rock A. The number of seals hauled out on rocks B and E was not significantly different between years while the number hauled out on rocks D and F was greater during the fall of 2000 and 2001 than 1998 and 1999. For a more detailed discussion on the distribution of harbor seals during the work and non-work periods and levels of impact by various natural and anthropogenic disturbance sources, please see Green et al. (2002) which is available upon request (see ADDRESSES).

Although California sea lions have been shown to react to pile driving noise by porpoising quickly away from the site (SRS Technologies, 2001), it is not known whether they will react to general construction noise and move away from the rocks during construction activities. However, sea lions are generally thought to be more tolerant of human activities than harbor seals and are, therefore, less likely to be affected.

## Potential Effects on Habitat

Short-term impacts of the activities are expected to result in a temporary reduction in utilization of the Castro Rocks haulout site while work is in progress or until seals acclimate to the disturbance. This will not likely result in any permanent reduction in the number of seals at Castro Rocks. The abandonment of Castro Rocks as a harbor seal haulout and rookery is not anticipated since existing traffic noise from the Bridge, commercial activities at the Chevron Long Wharf used for off-loading crude oil, and considerable recreational boating and commercial shipping that currently occur within the area have not caused long-term abandonment. In addition, mitigation measures and work restrictions are designed to preclude abandonment.

Therefore, as described in detail in CALTRANS (1996), other than the potential short-term abandonment by harbor seals of part or all of Castro Rocks during retrofit construction, no impact on the habitat or food sources of marine mammals are likely from this construction project.

## Mitigation

Several mitigation measures to reduce the potential for general noise have been implemented by CALTRANS as part of their activity. General restrictions include: with the exception of the Concrete Trestle Section, no piles will be driven (i.e., no repetitive pounding of piles) on the Bridge between 9 p.m. and 7 a.m.; an imposition of a construction noise limit of 86 dBA at 50 ft (15 m) between 9 p.m. and 7 a.m.; and, a limitation on construction noise levels for 24 hrs/day in the vicinity of Castro Rocks during the pupping/molting restriction period.

To minimize potential harassment of marine mammals, previous authorizations (1997–2001) required CALTRANS to comply with the following mitigation measures: (1) A February 15 through July 31 restriction on work in the water south of the Bridge center line and retrofit work on the Bridge substructure, towers, superstructure, piers, and pilings from piers 52 through 57; (2) no watercraft will be deployed by CALTRANS employees or contractors, during the year within the exclusion zone located between piers 52 and 57, except for when construction equipment is required for seismic retrofitting of piers 52 through 57; and (3) minimize vessel traffic to the greatest extent practicable in the exclusion zone when conducting construction activities between piers 52 and 57. From 1997 through September 2002, the boundary of the exclusion zone was rectangular in shape (1700 ft (518 m) by 800 ft (244 m)), completely enclosing Castro Rocks and piers 52 through 57, inclusive. The northern boundary of the exclusion zone was located 300 ft (91 m) from the most northern tip of Castro Rocks, and the southern boundary was located 300 ft (91 m) from the most southern tip of Castro Rocks. The eastern boundary was located 300 ft (91 m) from the most eastern tip of Castro Rocks, and the western boundary was located 300 ft (91 m) from the most western tip of Castro Rocks. The exclusion zone is restricted as a controlled access area and is marked off with buoys and warning signs for the entire year.

In 2002 (see 67 FR 61323, September 30, 2002), NMFS modified the Work/Boat Exclusion Zone (W/BEZ) so that the eastern boundary was shifted from 100 ft (30.5 m) east of Pier 57 to 100 ft (30.5 m) west of Pier 57. This maintains a 400–ft (122–m) "buffer" as opposed to the previous 600–ft (183–m) buffer, between the work at Pier 57 and "A" rock. This modification is reasonable based on observed seal behavior during the construction within the W/BEZ that harbor seals adjusted their location preference on Castro Rocks by moving westerly to rocks further from the construction (see discussion previously in this document). However, CALTRANS notes that there has not been a statistically significant change in the total numbers of animals that utilize the Castro Rocks haulout.

In addition to shifting the W/BEZ, in 2002, NMFS modified the period in which work was allowed in the vicinity of Castro Rocks from February 15th to March 1st. CALTRANS requested this modification due to unforseen circumstances affecting the ability of the contractor to the seismic retrofit work on Pier 57. This modification allows the contractor to complete the work this coming season and to stay under budget. The previous Work Closure Period (February 15–July 31) was designed to encompass the entire harbor seals pupping and breeding seasons and nearly the entire molting season at Castro Rocks. Thus, the Work Closure Period included the entire pupping season at Castro Rocks and a substantial pre-pupping period when females are moving into pupping areas (see 62 FR 67045, December 23, 1997). Because moving the Work Closure Period from February 15th to March 1st still provides a 2–week window prior to the onset of successful pupping (March 15th), and because NMFS did not find scientific evidence indicating that female harbor seals need a "quiet period" from general noise in order to pup successfully, NMFS determined that shifting the Work Closure Period from February 15th to March 1st would not have a significant impact on harbor seal pupping.

In 2002, NMFS also modified the period in which work is allowed to start in the vicinity of Castro Rocks from August 1st to a new date of July 16th. As mentioned in previous documents, newborn harbor seal pups are able to swim immediately after birth (Zeiner *et al.*, 1990) and pups are weaned by the first week of June. Therefore, terminating the Closure Period on July 16th is not expected to affect pup survival. Under authorizations issued prior to the current IHA, the July 31st ending date for the Work Closure Period was established to protect harbor seals during the molting season. However, those documents also noted that NMFS believed that it is likely that harbor seals evolved adaptive mechanisms to deal with exposure to the water during the molt. For example, on some harbor seal haul-outs (such as Castro Rocks) during the molting season seals must enter the water once or even twice a day due to tidal fluctuations limiting access to the haul-out. Also, since harbor seals lose hair in patches during the molt, they are never completely hairless and would not be as vulnerable to heat loss in the water during this period compared to other seals (e.g., elephant seals) that lose their all their hair at one time. Finally, NMFS notes that if the levels of harbor seal disturbance during the molt are relatively high, seals are likely to utilize other local haul-out sites during the molt (DeLong, R., pers. commun. 1997; Hanan, D., pers. commun. 1997; Harvey, J., pers. commun. 1997). Hanan (1996) found that although harbor seals tagged at an isolated southern California haul-out tended to exhibit site-fidelity during the molt, some seals were observed molting at other nearby haul-outs. Based on these reasons therefore, NMFS determined that terminating the Closure Period on July 16th would not significantly affect harbor seals in general or molting seals at Castro Rocks in particular.

## Monitoring

NMFS will require CALTRANS to continue to monitor the impact of seismic retrofit construction activities on harbor seals at Castro Rocks. Monitoring will be conducted by one or more NMFS-approved monitors. CALTRANS is to monitor at least one additional harbor seal haulout within San Francisco Bay to evaluate whether harbor seals use alternative haulout areas as a result of seismic retrofit disturbance at Castro Rocks.

The monitoring protocol will be divided into the Work Period Phase (July 16 through February 28) and the Closure Period Phase (March 1 through July 15). During the Work Period Phase and Closure Period Phase, the monitor(s) will conduct observations of seal behavior at least 3 days/week for approximately one tidal cycle each day at Castro Rocks. The following data will be recorded: (1) Number of seals and sea lions on site; (2) date; (3) time; (4) tidal height; (5) number of adults, subadults, and pups; (6) number of individuals with red pelage; (7) number of females and males; (8) number of molting seals; and (9) details of any observed disturbances. Concurrently, the monitor(s) will record general construction activity, location, duration, and noise levels. At least 2 nights/week, the monitor will conduct a harbor seal census after midnight at Castro Rocks. In addition, during the Work Period Phase and prior to any construction between piers 52 and 57, inclusive, the monitor(s) will conduct baseline observations of seal behavior at Castro Rocks and at the alternative site(s) once a day for a period of 5 consecutive days immediately before the initiation of construction in the area to establish pre-construction behavioral patterns. During the Work Period and Closure Period Phases, the monitor(s) will conduct observations of seal behavior, and collect appropriate data, at the alternative Bay harbor seal haulout at least 3 days/week (Work Period) and 2 days/week (Closure Period), during a low tide.

In addition, NMFS will require that, immediately following the completion of the seismic retrofit construction of the Bridge, the monitor(s) will conduct observations of seal behavior, at Castro Rocks, at least 5 days/week for approximately 1 tidal cycle (high tide to high tide) each day, for one week/month during the months of April, July, October, and January. At least 2 nights/week during this same period, the monitor will conduct an additional harbor seal census after midnight.

## Reporting

Under previous IHAs, CALTRANS has provided monitoring reports (Green *et al.* (2001, 2002). The findings from these reports have been summarized previously in this document.

CALTRANS will provide weekly reports to the Southwest Regional Administrator (Regional Administrator), NMFS, including a summary of the previous week's monitoring activities and an estimate of the number of harbor seals that may have been disturbed as a result of seismic retrofit construction activities. These reports will provide dates, time, tidal height, maximum number of harbor seals ashore, number of adults, sub-adults and pups, number of females/males, number of harbor seals with a red pelage, and any observed disturbances. A description of retrofit activities at the time of observation and any sound pressure levels measurements made at the haulout will also be provided. A draft interim report must be submitted to NMFS by April 30, 2004.

Because seismic retrofit activities may continue beyond the date of expiration of this IHA (presumably under a new IHA), a draft final report must be submitted to the Regional Administrator within 90 days after the expiration of this IHA. A final report must be submitted to the Regional Administrator within 30 days after receiving comments from the Regional Administrator on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

CALTRANS will provide NMFS with a follow-up report on the post-construction monitoring activities within 18 months of project completion in order to evaluate whether haulout patterns are similar to the pre-retrofit haul-out patterns at Castro Rocks.

## National Environmental Policy Act

NMFS prepared an EA in 1997 that concluded that the impacts of CALTRANS' seismic retrofit construction of the Richmond-San Rafael Bridge will not have a significant impact on the human environment. A copy of that EA, which includes the Finding of No Significant Impact (FONSI) is available upon request (see **ADDRESSES**). This action has not changed significantly from the action analyzed in the 1997 EA. Therefore, this proposed action is not expected to change the analysis or conclusion of the 1997 EA.

## Endangered Species Act (ESA)

Under section 7 of the ESA, NMFS has begun consultation on the proposed issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded upon completion of the comment period for this proposed action and consideration of those comments prior to a determination on issuance of an IHA.

## Preliminary Conclusions

NMFS has preliminarily determined that the short-term impact of the seismic retrofit construction of the Bridge, as described in this document, should result, at worst, in the temporary modification in behavior by small numbers of harbor seals and, possibly, by small numbers of California sea lions. While behavioral modifications, including temporarily vacating the haulout, may be made by these species to avoid the resultant visual and acoustic disturbance, this action is expected to have a negligible impact on the animals. In addition, no take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document.

## Proposed Authorization

NMFS proposes to renew an IHA to CALTRANS for the potential harassment of small numbers of harbor seals and California sea lions incidental to seismic retrofit construction of the Bridge, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of harbor seals and possibly California sea lions and will have no more than a negligible impact on these marine mammal stocks.

## Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**). Prior to submitting comments, NMFS recommends reviewers of this document read the responses to comments made previously (see 62 FR 67045, December 23, 1997; 65 FR 2375, January 14, 2000; 66 FR 49165, September 26, 2001; and 67 FR 61323, September 30, 2002) for this action, as NMFS does not intend to address these issues further without the submission of additional scientific information.

Dated: September 29, 2003.

**Laurie K. Allen,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 03–25150 Filed 10–02–03; 8:45 am]

**BILLING CODE 3510–22–S**

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# COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

## Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Federative Republic of Brazil

September 29, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

**EFFECTIVE DATE:** January 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Brazil and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003. Information regarding the 2004 CORRELATION will be published in the **Federal Register** at a later date.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

September 29, 2003.

Commissioner,
*Bureau of Customs and Border Protection, Washington, DC 20229.*

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the

United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Brazil and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

| Category | Twelve-month restraint limit |
|---|---|
| Aggregate Limit | |
| 200–221, 224–227, 237, 239pt. [1], 300–326, 331pt. [2], 332–348, 351, 352, 359pt. [3], 360–363, 369pt. [4], 400–430, 433–438, 440–448, 459pt. [5], 469pt. [6], 601–605, 608-620, 623-629, 631pt. [7], 633–648, 651-652, 659pt. [8], 666pt. [9], as a group | 821,590,228 square meters equivalent. |
| Sublevels within the aggregate | |
| 218 | 10,942,191 square meters. |
| 219 | 39,948,720 square meters. |
| 225 | 19,148,836 square meters. |
| 300/301 | 14,840,130 kilograms. |
| 313 | 91,894,979 square meters. |
| 314 | 15,045,517 square meters. |
| 315 | 45,136,549 square meters. |
| 317/326 | 41,033,222 square meters. |
| 334/335 | 294,451 dozen. |
| 336 | 163,587 dozen. |
| 338/339/638/639 | 2,944,521 dozen. |
| 342/642 | 866,995 dozen. |
| 347/348 | 2,126,598 dozen. |
| 361 | 2,224,748 numbers. |
| 363 | 47,481,490 numbers. |
| 410/624 | 21,884,386 square meters of which not more than 2,973,933 square meters shall be in Category 410. |
| 433 | 20,644 dozen. |
| 445/446 | 80,872 dozen. |
| 604 | 1,038,809 kilograms of which not more than 793,948 kilograms shall be in Category 604–A [10]. |
| 647/648 | 981,509 dozen. |

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[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[3] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[4] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302,51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505.

[5] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505, 6406.99.1560.

[6] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[7] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[8] Category 659pt.: all HTS numbers except 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[9] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

[10] Category 604–A: only HTS number 5509.32.0000.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated September 3, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

The conversion factor for merged Categories 338/339/638/639 is 10 (square meters equivalent/category unit).

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–25104 Filed 10–2–03; 8:45 am]

**BILLING CODE 3510–DR–S**

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

## Request for Public Comment on Commercial Availability Request under the North American Free Trade Agreement (NAFTA)

September 29, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Request for Public Comments concerning a petition for modification of the NAFTA rules of origin for gimped yarn made from certain filament yarn of nylon.

**FOR FURTHER INFORMATION CONTACT:** Martin Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–2818.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 USC 1854); Section 202(q) of the North American Free Trade Agreement Implementation Act (19 USC 3332(q)); Executive Order 11651 of March 3, 1972, as amended.

### SUMMARY:

On September 15, 2003 the Chairman of CITA received a petition from Unifi, Inc. (Unifi). alleging that certain untextured (flat) yarns of nylon classified under subheading 5402.41.90 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that the President proclaim a modification of the NAFTA rules of origin. The yarns are described as (1) of nylon, 7 denier/5 filament nylon 66 untextured (flat) semi-dull yarn; multifilament, untwisted or with a twist not exceeding 50 turns/m. (2) of nylon, 10 denier/7 filament nylon 66 untextured (flat) semi-dull yarn; multifilament, untwisted or with a twist not exceeding 50 turns/m. (3) of nylon, 12 denier/5 filament nylon 66 untextured (flat) semi-dull yarn; multifilament, untwisted or with a twist not exceeding 50 turns/m.

Unifi requests the NAFTA rules of origin for gimped yarns classified under subheading 5606.00 of the HTSUS be modified to allow the use of non-North American yarns of the type described above.

Such a proclamation may be made only after reaching agreement with the other NAFTA countries on the modification. CITA hereby solicits public comments on this petition, in particular with regard to whether the nylon yarns described above can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by **November 3, 2003** to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, Washington, D.C. 20230.

**BACKGROUND:** Under the North American Free Trade Agreement (NAFTA), NAFTA countries are required to eliminate customs duties on textile and apparel goods that qualify as originating goods under the NAFTA rules of origin, which are set out in Annex 401 to the NAFTA. The NAFTA provides that the rules of origin for textile and apparel products may be amended through a subsequent agreement by the NAFTA countries. In consultations regarding such a change, the NAFTA countries are to consider issues of availability of supply of fibers, yarns, or fabrics in the free trade area and whether domestic producers are capable of supplying commercial quantities of the good in a timely manner. The Statement of Administrative Action (SAA) that accompanied the NAFTA Implementation Act stated that any interested person may submit to CITA a request for a modification to a particular rule of origin based on a change in the availability in North America of a particular fiber, yarn or fabric and that the requesting party would bear the burden of demonstrating that a change is warranted. The SAA provides that CITA may make a recommendation to the President regarding a change to a rule of origin for a textile or apparel good. The NAFTA Implementation Act provides the President with the authority to proclaim modifications to the NAFTA rules of origin as are necessary to implement an agreement with one or more NAFTA country on such a modification.

On September 15, 2003 the Chairman of CITA received a petition from Unifi, Inc. (Unifi), alleging that certain untextured (flat) yarns of nylon classified under subheading 5402.41.90 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that the President proclaim a modification of the NAFTA rules of origin. The yarns are described as (1) of nylon 7 denier/5 filament nylon 66 untextured (flat) semi-dull yarn; multifilament, untwisted or with a twist not exceeding 50 turns/m/10 denier/ (2) of nylon, 7 filament nylon 66 untextured (flat) semi-dull yarn; multifilament, untwisted or with a twist not exceeding 50/turns/m. (3) of nylon, 12 denier/5 filament nylon 66 untextured (flat) semi-dull yarn; multifilament, etc. Unifi uses these yarns in producing their gimped yarn, classified under 5606.00 of the HTSUS.

CITA is soliciting public comments regarding this request, particularly with respect to whether the filament yarn of nylon, classified in HTSUS heading 5402.41.90, can be supplied by the domestic industry in commercial quantities in a timely manner. The petition states that Unifi has contacted known North American suppliers of these yarns and was unable to locate a supplier who produced the yarns in commercial quantities in a timely manner. Comments must be received no later than **November 3, 2003**. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that the filament yarn of nylon can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the yarn stating that it produces the yarn that is in the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc.03–25103 Filed 10–2–03; 8:45 am]

BILLING CODE 3510–DR–S

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## DEPARTMENT OF DEFENSE

### Department of the Air Force

### HQ USAF Scientific Advisory Board

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to 10 U.S.C., Section 9355, notice is hereby given of the forthcoming meeting of the Air Force Academy Board of Visitors. The purpose of the meeting is to consider morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy. A portion of the meeting will be open to the public while other portions will be closed to the public to discuss matters listed in 5 U.S.C. subsections (2), (6), and (9)(B), section 552b(c). Open sessions will include panel discussion on the sexual assault problems at the Academy, to include actions taken in response to the Agenda for Change, The Report of the Working Group Concerning Deterrence of and Response to Incidents of Sexual Assault at the U.S. Air Force Academy, and the Report of the Panel to Review Sexual Misconduct Allegations at the U.S. Air Force Academy, as well as a discussion of the Board of Visitors charter. Closed sessions will include panel discussions with Academy cadets. The determination to close certain sessions is based on the consideration that portions of the briefings and discussion will relate solely to the internal personnel rules and practices of the Board of Visitors or the Academy; involve information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or involve discussions of information the premature disclosure of which would be likely to frustrate implementation of future agency action. Meeting sessions will be held in various facilities throughout the cadet area.

**DATES:** October 10–11, 2003.

**ADDRESSES:** U.S. Air Force Academy, CO.

**FOR FURTHER INFORMATION CONTACT:** Major Steve Sandridge, Development and Alumni Programs Division, HQ

USAFA/XPA, 2304 Cadet Drive, Suite 301, USAF Academy, CO 80840–5002, (719) 333–3668.

**Pamela D. Fitzgerald,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 03–25058 Filed 10–2–03; 8:45 am]

**BILLING CODE 5001–05–P**

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## DEPARTMENT OF DEFENSE

### Department of the Army

### Armed Forces Institute of Pathology Scientific Advisory Board

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of partially-closed meeting.

**SUMMARY:** In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following open meeting:

*Name of Committee:* Scientific Advisory Board (SAB).

*Dates of Meeting:* November 13–14, 2003.

*Place:* The Armed Forces Institute of Pathology (AFIP), Building 54, 14th St. & Alaska Ave., NW, Washington, DC 20306–6000 and Dover Air Force Base (AFB), DE.

*Time:* 8 a.m.–5 p.m. (November 13, 2003). 8:30 a.m.–12 p.m. (November 14, 2003).

**FOR FURTHER INFORMATION CONTACT:** Mr. Ridgely Rabold, Office of the Principal Deputy Director (PDD), AFIP, Building 54, Washington, D.C. 20306–6000, phone (202) 782–2553.

**SUPPLEMENTARY INFORMATION:**

*General function of the board:* The SAB provides scientific and professional advice and guidance on programs, policies and procedures of the AFIP.

*Agenda:* The Board will hear status reports from the AFIP Director, Principal Deputy Director, and each of the pathology sub-specialty departments, which the Board members will visit during the meeting. The Board will also visit the Dover AFB Mortuary Facility in Delaware during the first day of the meeting.

*Open board discussions:* Reports will be presented on all visited departments. The reports will consist of findings, recommended areas of further research, improvement, and suggested solutions. New trends and/or technologies will be discussed and goals established. The meeting is open to the public on Friday (Nov. 14) however, due to the security aspects of the Mortuary Facility and the transportation requirements, no visitors will be allowed to accompany the Board for Thursday's (Nov. 13) trip.

**Luz D. Ortiz,**

*Army Federal Register Liaison Officer.*

[FR Doc. 03–25183 Filed 10–2–03; 8:45 am]

**BILLING CODE 3710–08–M**

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## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Availability of Surplus Land and Buildings in Accordance With Public Law 103–421 Located at Fort Ritchie Military Reservation, Cascade, MD

**AGENCY:** U.S. Army Corps of Engineers, DOD.

**ACTION:** Public notice of availability.

**SUMMARY:** This notice identifies the surplus real property located at the Fort Ritchie Military Reservation, Cascade, MD. The property is located in Washington County, Northeast of Hagerstown in the community of Cascade, MD at the intersection of routes 550 and 491.

**ADDRESSES:** Notices of interest should be forwarded to Mr. Richard Rook, Executive Director, PenMar Development Corporation, P.O. Box 699, Cascade, MD 21719, telephone (301) 241–4050, fax (301) 241–4141. A copy of notices of interest should be sent to Mr. Gerry Bresee at the address below.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the particular property identified in this notice (*i.e.*, acreage, floor plans, existing sanitary facilities, exact location), contact Mr. Gerry Bresee, Real Estate Division, Army Corps of Engineers, P.O. Box 1715, Baltimore, MD 21203 (telephone 410–962–5173, fax 410–962–0866).

**SUPPLEMENTARY INFORMATION:** Surplus is available under the provisions of the Federal Property and Administrative Services Act of 1949 and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. Notice is posted to comply with property screening requirements mandated in the February 4, 2003 decision by the U.S. Court of Appeals (*Role Models America, Inc.* v. *Thomas E. White, Secretary of the Army et al.*). This notice supercedes the **Federal Register** notice of March 25, 2003 (68 FR 14412). The property available for surplus is not being screened for potential homeless use as determined by the U.S. Department of Housing and Urban Development. Parties wishing to participate in a federal Public Benefit Conveyance program are invited to visit the web sites of the General Services Administration listed below for information on the types of land uses which qualify for the program and how to apply.

1. *http://propertydisposal.gsa.gov/ResourceCenter/Laws_Regs_All/main1.htm.*
2. *http://propertydisposal.gsa.gov/Property/library/law/law_main1.asp#sales.*

Listed below are five Public Benefit Conveyance land uses which local communities often ask about. Parties are invited to contact the following offices to find out more about each agency's Public Benefit Conveyance Program and to discuss with the Agency the Party's potential for qualifying for a conveyance of property:

*For Park and Recreation Uses*—Mr. Bill Huie, Recreation Grants Division Southeast Regional Office, National Park Service, 100 Alabama Street, SW., Atlanta, GA 30303, Telephone: (404) 562–3175.

*For Educational Uses*—Mr. Peter Wieczorek, Director, Eastern Zone, Federal Real Property Assistance Program, U.S. Department of Education, J.W. McCormack PO & Courthouse (Room 536), Boston, MA 02109, Telephone (617) 223–9321.

*For Health Conveyances*—Chief, Real Property Branch, Division of Health Facilities Planning (Room 5B17), Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–2265.

*For Prison Uses*—Chief, Site Selection and Environmental Review, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, Telephone: 202–514–6470.

*For Self-Help Housing*—Ms. Janet Golrick, U.S. Department of Housing and Urban Development, Office of Multifamily Housing Programs, 451 7th Street, SW. (Room 6112), Washington, DC 20410, Telephone (202) 708–2495.

The surplus real property totals approximately 591 acres and contains 252 buildings totaling 1,384,000 square feet of space. Current range of uses include: Administrative; residential; open recreation; and special purpose space. Future uses may include generally the same types of uses.

**Luz D. Ortiz,**

*Army Federal Register Liaison Officer.*

[FR Doc. 03–25182 Filed 10–2–03; 8:45 am]

**BILLING CODE 3710–92–M**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Availability of Government-Owned Inventions; Available for Licensing

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

U.S. Patent Number 5,978,141 entitled "Optical Mirror Particularly Suited for a Quantum Well Mirror", Navy Case No. 78155, Inventor Karwacki, Issue Date November 2, 1999.//U.S. Patent Number 5,822,047 entitled "Modulator LIDAR system", Navy Case No. 77098, Inventors Contarino et al., Issue Date October 8, 1998.//U.S. Patent Number 6,486,799 entitled "Computer based human-centered display system", Inventors Still et al., Issue Date November 26, 2002.//Navy Case Number 84053 entitled "Deployable Tandem/Multiple Leading Edge Flap", Inventors Ghee et al.,//Navy Case Number 85054 entitled "Deployable Serrated Flap-Single Flap, Tandem and Multiple Flap, and Tandem Flap In-Opposition", Inventor Ghee et al.

**ADDRESSES:** Request for data and inventor interviews should be directed to Mr. Paul Fritz, Naval Air Warfare Center Aircraft Div., Business Development Office, Office of Research and Technology Applications, Bldg 304; Room 107, 22541 Millstone Road, Patuxent River, MD 20670, (301) 342–5586 or E-Mail: *Fritzpm@navair.navy.mil.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul Fritz, Naval Air Warfare Center Aircraft Div, Business Development Office, Office of Research and Technology Applications, Bldg 304; Room 107, 22541 Millstone Rd, Patuxent River, MD 20670, (301) 342–5586 or E-Mail: *Fritzpm@navair.navy.mil.*

**SUPPLEMENTARY INFORMATION:** The U.S. Navy intends to move expeditiously to license these patents. All licensing application packages and commercialization plans must be returned to Naval Air Warfare Center Aircraft Div, Business Development Office, Office of Research and Technology Applications, Bldg 304; Room 107, 22541 Millstone Road, Patuxent River, MD 20670.

The Navy, in its decision concerning the granting of licenses, will give special consideration to small business firms and consortia involving small business firms. The Navy intends to insure that its licensed inventions are broadly commercialized throughout the United States.

Any license of Navy technology will require, that material which embody the inventions licensed that are to be sold in the United States of America will be manufactured substantially in the United States.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: September 17, 2003.

**E. F. McDonnell,**

*Major, U.S. Marine Corps, Federal Register Liaison Officer.*

[FR Doc. 03–25059 Filed 10–2–03; 8:45 am]

**BILLING CODE 3810–FF–P**

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## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Availability of Government-Owned Inventions; Available for Licensing

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy:

**Laterally Disposed Nanostructures of Silicon on an Insulating Substrate**

**ADDRESSES:** Requests for copies of the Patent and Patent Application cited should be directed to the Office of Patent Counsel, Space and Naval Warfare Systems Center, San Diego, Code 20012, 53510 Silvergate Ave., Room 103, San Diego, CA 92152–5765.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter A. Lipovsky, Space and Naval Warfare Systems Center, San Diego, Code 20012, 53510 Silvergate Ave., Room 103, San Diego, CA 92152–5765, telephone (619) 553–3824.

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: September 17, 2003.

**E.F. McDonnell,**

*Major, U.S. Marine Corps, Federal Register Liaison Officer.*

[FR Doc. 03–25060 Filed 10–2–03; 8:45 am]

**BILLING CODE 3810–FF–P**

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## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Availability of Government-Owned Invention; Available for Licensing

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The invention listed below is assigned to the United States government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. Navy Case No. 84,830, entitled "Process to Make Low Loss Arsenic Sulfide Glass and Infrared Optical Fibers Using Arsenic Monosulfide ($AS_4S_4$) Compound".

**ADDRESSES:** Requests for information about the invention cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, and must include the Navy Case number.

**FOR FURTHER INFORMATION CONTACT:** Paul Regeon, Acting Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, e-mail: *regeon@nrl.navy.mil* or use courier delivery to expedite response.

Dated: September 26, 2003.

**E.F. McDonnell,**

*Major, U.S. Marine Corps, Federal Register Liaison Officer.*

[FR Doc. 03–25081 Filed 10–2–03; 8:45 am]

**BILLING CODE 3810–FF–M**

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## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Intent To Grant Exclusive or Partially Exclusive Patent License; InnovaLight, Inc.

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The Department of the Navy hereby gives notice of its intent to grant to InnovaLight Inc., a revocable, nonassignable, exclusive or partially exclusive license in the United States to practice the Government-Owned inventions described in U.S. Patent No. 5,962,863, issued October 5, 1999 and U.S. Patent No. 6,103,540, issued August 15, 2000, and both entitled "Laterally Disposed Nanostructures of Silicon on an Insulating Substrate."

**DATES:** Anyone wishing to object to the granting of this license has (15) days from the date of this notice to file written objections along with supporting evidence, if any.

**ADDRESSES:** Written objections are to be filed with the Office of Patent Counsel, Space and Naval Warfare Systems Center, San Diego, Code 20012, 53510 Silvergate Ave., Room 103, San Diego, CA 92152–5765.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter A. Lipovsky, Space and Naval Warfare Systems Center, San Diego, Code 20012, 53510 Silvergate Ave., Room 103, San Diego, CA 92152–5765, telephone (619) 553–3824.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: September 17, 2003.

**E.F. McDonnell,**

*Major, U.S. Marine Corps, Federal Register Liaison Officer.*

[FR Doc. 03–25061 Filed 10–2–03; 8:45 am]

**BILLING CODE 3810–FF–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2545–081 and Project No. 2552–058]**

### FPL Energy Maine Hydro, LLC; Notice of Intent To Conduct PubliC Meeting for the Fort Halifax Project

September 26, 2003.

On October 16, 2003, Commission staff will be hosting a technical meeting to discuss alternative means of fish passage at the Fort Halifax Project pursuant to the Commission's July 28, 2003 Order Staying License Requirement (104 FERC ¶ 61,135).

The meeting will allow Commission staff to discuss: (1) FPL Energy's August 1, 2003 status report in response to the July 28 Order; (2) information filed with the Commission by the various parties concerning the viability of fish passage alternatives; (3) the advantages and disadvantages of using fish pump technology for fish passage; (4) goals for number of adult fish returning to Sebasticook River; and (5) current estimates for returning fish to the Sebasticook River and the Kennebec River.

The meeting will specifically focus on the above topics to clarify information currently in the project file. Commission staff will review the record on file and be prepared to lead a discussion using information that has been filed by the various parties concerning fish pump technology. Commission staff ask all parties that plan to participate to be prepared to support statements with documented information.

The meeting will be held on October 16, 2003, at the Best Western/Governor's Inn, 356 Main Street, Waterville, Maine, from 1 p.m. to 4 p.m. Intervenors and other parties interested in this issue are invited to participate if they so desire. The meeting will be recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Any questions about this notice should be directed to Bob Fletcher at the Federal Energy Regulatory Commission, (202) 502–8901.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–25019 Filed 10–2–03; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EC03–138–000, et al.]**

### SOWEGA Power LLC, et al.; Electric Rate and Corporate Filings

September 25, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

#### 1. SOWEGA Power LLC

[Docket Nos. EC03–138–000 and ER99–3427–003]

Take notice that on September 17, 2003, SOWEGA Power LLC (SOWEGA), filed an application pursuant to Section 203 of the Federal Power Act, part 33 of the Commission's regulations. SOWEGA requests authorization for the disposition of all of its jurisdictional assets to a new entity, Three Rivers Energy LLC, which will take assignment of, and transact under, SOWEGA's existing rate schedules. SOWEGA also informs the Commission of a change in the facts relied upon in granting it market-based rate authority as a result of the disposition of its assets, rate schedules, and tariffs to Three Rivers Energy LLC.

*Comment Date:* October 2, 2003.

#### 2. Blue Spruce Energy Center, LLC

[Docket No. EG03–93–000]

On September 17, 2003, Blue Spruce Energy Center, LLC (Blue Spruce), filed with the Federal Energy Regulatory Commission (Commission) an amendment to its application for determination of exempt wholesale generator status filed on August 14, 2003. Blue Spruce states that copies of the amendment were served upon the United States Securities and Exchange Commission and Colorado Public Utilities Commission.

*Comment Date:* October 8, 2003.

#### 3. Three Rivers Energy LLC

[Docket No. EG03–105–000]

Take notice that on September 17, 2003, Three Rivers Energy LLC (Three Rivers), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. Three Rivers states that it owns two 50 MW (nominal summer rating) dual fuel, simple cycle, combustion turbines located in northeast Mitchell County, South of Albany, Georgia on a 34 acre site approximately one mile northeast of Georgia State Highway 93.

*Comment Date:* October 15, 2003.

#### 4. MidAmerican Energy Company v. Mid-Continent Area Power Pool; Mid-Continent Area Power Pool

[Docket Nos. EL03–130–001 and ER03–972–001]

Take notice that on September 17, 2003, the Mid-Continent Area Power Pool (MAPP), filed its revised business practice on firm redirects of point-to-point transmission service under MAPP's regional transmission tariff, Schedule F. MAPP states that the filing was made in accordance with the Commission's Order in MidAmerican Energy Company v. Mid-Continent Area Power Pool, 104 FERC ¶ 61,212.

MAPP states that a copy of this filing has been served on all MAPP members and the state commissions in the MAPP region as well as all parties listed in Docket Nos. EL03–130–000 and ER03–972–000. MAPP further states that this filing is posted on their Web site at *http://www.mapp.org.*

*Comment Date:* October 17, 2003.

#### 5. Entergy Services, Inc., Complainant v. Wrightsville Power Facility, LLC, Respondent

[Docket Nos. EL03–232–000 ER03–1378–000]

Take notice that on September 23, 2003, Entergy Services, Inc., (Entergy) on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) filed a Complaint against Wrightsville Power Facility, LLC (Wrightsville) wherein Entergy requests the Commission to order Wrightsville to forego $3,115,331.59 (plus interest) worth of transmission credits to which Wrightsville is otherwise entitled because of its financing of certain Optional System Upgrades pursuant to its Interconnection and Operating Agreement with Entergy in order to compensate Entergy for Wrightsville's default on its Generator Imbalance Agreement (GIA) liabilities. Alternatively, Entergy requests the Commission to approve Entergy's suspension of Wrightsville's GIA service.

Entergy states that copies of this Complaint have been served upon Wrightsville.

*Comment Date:* October 14, 2003.

**6. Northeast Utilities Service Company**

[Docket No. ER01–1261–002]

Take notice that on September 17, 2003 the Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company (CL&P), supplemented its July 21, 2003 filing Docket No. ER01–1261–001 by submitting a revised Licensing, Engineering and Construction Agreement (Construction Agreement) between CL&P and Milford Power Company LLC (Milford). NUSCO requests a July 21, 2003 effective date for the revised Construction Agreement and Associated Interconnection Agreement is requested.

NUSCO states that a copy of this filing has been mailed to Milford and those parties identified on the official service list in this proceeding.

*Comment Date:* October 8, 2003.

**7. Energy Cooperative of New York, Inc.**

[Docket No. ER03–1294–000]

Take notice that on September 4, 2003, Energy Cooperative of New York, Inc., (ECNY) submitted for filing a Notification of a Change of name of Energy Cooperative of Western New York, Inc., to Energy Cooperative of New York, Inc.

*Comment Date:* October 8, 2003.

**8. Empire Connection LLC**

[Docket No. ER03–1353–000]

Take notice that on September 11, 2003, Empire Connection LLC (EC) submitted for filing its FERC Electric Tariff, Original Volume No. 1 pursuant to the authorization to sell transmission rights at negotiated rates granted in Conjunction LLC, 103 FERC ¶ 61,198, and EC's Procedures for Implementation of Standards of Conduct and the Standards of Conduct required under Order No. 889.

*Comment Date:* October 2, 2003.

**9. Northeast Utilities Service Company**

[Docket No. ER03–1355–000]

Take notice that on September 26, 2003, Northeast Utilities Service Company (NUSCO) on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Public Service Company of New Hampshire, (together the NU Operating Companies) and Select Energy, Inc. (Select), submitted pursuant to Section 205 of the Federal Power Act and part 35 of the Commission's regulations rate schedule modifications for sales of electricity to the Middleton Municipal Electric Department of Middleton, Massachusetts (Middleton). In addition, NUSCO submitted a Notice of Termination of the rate schedules for sales of electricity to Middleton which terminate by their own terms on October 31, 2003.

NUSCO states that a copy of this filing has been mailed to Middleton and Select. NUSCO requests that the rate schedule modifications become effective on March 1, 2003.

*Comment Date:* October 8, 2003.

**10. Enermetrix.com**

[Docket No. ER03–1356–000]

Take notice that on September 17, 2003, Enermetrix.com tendered for filing a Notice of Cancellation of it Market-based Rate Authority under Docket No. ER00–1973–000. Enermetrix.com is requesting an effective date of January 2002.

Enermetrix.com states that it underwent a stock purchase by CES International, Inc., in May 2002. Enermetrix .com further states that the company has ceased operations and no transactions to buy or sell energy ever occurred.

*Comment Date:* October 8, 2003.

**11. California Independent System Operator Corporation**

[Docket No. ER03–1357–000]

Take notice that, on September 17, 2003, the California Independent System Operator Corporation (ISO) submitted an informational filing as to the ISO's updated Transmission Access Charge rates effective as of August 13, 2003.

The ISO states that this filing has been served upon the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, the Participating Transmission Owners, and upon all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff. In addition, the ISO is posting the filing on the ISO Home Page.

*Comment Date:* October 8, 2003.

**12. Three Rivers Energy LLC**

[Docket No. ER03–1358–000]

Take notice that on September 17, 2003, Three Rivers Energy LLC tendered for filing an Assignment Agreement relating to assignment to it of the rights and responsibilities of SOWEGA Power LLC under the Second Amended and Restated Common Bus Ownership Agreement with Baconton Power LLC. Three Rivers Energy LLC states that this rate schedule is designated as Three Rivers Energy LLC FERC Rate Schedule No. 1.

*Comment Date:* October 8, 2003.

**13. Central Hudson Gas & Electric Corporation**

[Docket No. ER03–1359–000]

Take notice that on September 17, 2003, Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 69.

Central Hudson requests waiver on the notice requirements set forth in 18 CFR 35.15 of the regulations to permit the cancellation to be effective October 31, 2003. Central Hudson states that a copy of its filing was served on the New York Power Authority and the New York Public Service Commission.

*Comment Date:* October 8, 2003.

**14. California Independent System Operator Corporation**

[Docket No. ER03–1360–000]

Take notice that on September 17, 2003, the California Independent System Operator Corporation (ISO) submitted for filing and acceptance a Utility Distribution Company Operating Agreement (UDC Operating Agreement) between the ISO and the Westside Power Authority (WPA) as a non-conforming agreement The ISO requested waiver of the Commission's 60-day prior notice requirement to allow the UDC Operating Agreement to be made effective contingent on and no sooner than the asset purchase closing date as specified in the UDC Operating Agreement. WPA has requested this flexible effective date arrangement to facilitate the commencement of operations as a UDC under the UDC Operating Agreement.

*Comment Date:* October 8, 2003.

**15. Guardian Pipeline, L.L.C.**

[Docket No. MG03–6–000]

On September 5, 2003, Guardian Pipeline, L.L.C. (Guardian) filed standards of conduct under part 161 of the Commission's regulations, 18 CFR part 161 (2003).

Guardian Pipeline, L.L.C. states that it served copies of the filing on all customers and interested state commissions.

*Comment Date:* October 10, 2003.

**16. Hershey Foods Corporation**

[Docket Nos. QF85–250–001 and ER03–1159–000]

Take notice that on September 22, 2003, Hershey Foods Corporation (Hershey) tendered for filing that its Oakdale, California cogeneration facility, previously certified as a qualifying cogeneration facility under the Public Utility Regulatory Policies Act, is not currently being operated in a manner that satisfies the Qualifying Facility operating and efficiency standards specified in the Commission regulations, 18 CFR 292.205. Hershey requests that the Commission accept this withdrawal of certification.

*Comment Date:* October 22, 2003.

**17. Three Rivers Energy LLC**

[Docket No. RT03–2–000]

Take notice that on September 17, 2003, Three Rivers Energy LLC filed an abbreviated alternate filing pursuant to Sections 35.34 (c) (2) and 35.34(g) of the Commission's regulations.

*Comment Date:* October 8, 2003.

**Standard Paragraph**

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–25018 Filed 10–2–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Project No. 12464–000]

## Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

September 26, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12464–000.

c. *Date Filed:* August 6, 2003.

d. *Applicant:* Erie Boulevard Power, L.P.

e. *Name of Project:* Stuyvesant Falls Project.

f. *Location:* The proposed project would be located on Kinderhook Creek in Columbia County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C.791(a)–825(r).

h. *Applicant Contacts:* Jerry Sebattis, Erie Boulevard Power, L.P., 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, (315) 413–2787.

i. *FERC Contact:* Mr. Robert W. Bell, (202) 502–6062.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12464–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 12438–000 and 12439–000, *Date Filed:* February 3, 2003, Date Issued: June 9, 2003, Due Date: August 9, 2003.

l. *Description of Project:* The proposed project would consist of: (1) An existing 240-foot-long, 13-foot-high, Masonry gravity dam, (2) an existing impoundment, with a surface area of 46 acres and negligible storage at normal water surface elevation 174.3 feet USGS, (3) a proposed 3,250-foot-long, 10-foot-diameter steel pipe, (4) an existing 25-foot-diameter surge tank, (5) an existing powerhouse containing 2 new and 1 upgraded generating units having a total installed capacity of 11,100 KW, and (6) appurtenant facilities. The project would have an average annual generation of 14.86 gigawatt hours.

m. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. Competing Applications—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Compliance and Administration, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Magalie R. Salas,**
*Secretary.*

[FR Doc. 03–25020 Filed 10–2–03; 8:45 am]

BILLING CODE 6717–01–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[ORD–2003–0010, FRL–7567–9]**

## Agency Information Collection Activities: Proposed Collection; Comment Request; Detroit Exposure and Aerosol Research Study (DEARS), EPA ICR Number 1887.01, OMB Control Number 20XX–XXXX

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for a new collection. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before December 2, 2003.

**ADDRESSES:** Submit your comments, referencing docket ID number ORD–2003–0010, to EPA online using EDOCKET (our preferred method), by email to *oei.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Barbara Blackwell, Environmental Protection Agency, MD E205–01, RTP, NC 27711; telephone number: (919) 541–2886; fax number: (919) 541–0905; email address: *blackwell.barbara@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has established a public docket for this ICR under Docket ID number ORD–2003–0010, which is available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

*Affected entities:* Entities potentially affected by this action are persons living in Wayne County, MI.

*Title:* Detroit Exposure and Aerosol Research Study (DEARS)

*Abstract:* EPA's Office of Research and Development proposes to conduct a residential and personal exposure field monitoring study in the city of Detroit, MI over a three-year period from 2004 to 2006. The primary goal of the study is to evaluate and describe the relationship between air toxics and PM constituents measured at a central site monitor and measurements of residential and personal concentrations. An emphasis is placed on understanding the impact of local sources (point and mobile) on outdoor residential concentrations and the impact of housing type and house operation on indoor concentrations.

Personal monitoring will be conducted to determine the impact of time spent in nonresidential locations and personal activities on exposure. Approximately 120 persons will voluntarily agree to wear certain personal air monitors and to allow their homes to be equipped with other monitors to measure indoor air quality. Each home will be monitored for five consecutive days in the summer and five consecutive days in the winter. The study is a continuation and expansion of previous OMB-approved studies of human exposure to particles, undertaken in response to recommendations of the National Academy of Sciences (EPA ICR 1887.01 and 1887.02; OMB Approval # 2080; 1997–2003). The study also extends the approach developed in the Atlanta ARIES study as recommended by Dr. John Graham of OMB.

Further details on the study design and the complete set of questionnaires are available for public viewing in the on-line EDOCKET at *http://www.epa.gov/edocket*. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Burden Statement:* Respondents will be asked to fill out a Time-Activity Diary which aids them in maintaining a log of activities over the course of each day. The following morning, a technician will go over their previous day's activity log with them and correct any omissions or mistakes. The time-activity diaries will take approximately 30 minutes to complete each day. In addition, a technician will administer a Follow-up questionnaire each day and will ask the participant questions about cooking and cleaning activities in the home over the previous 24 hours. This will take approximately 10 minutes a day. Over the course of five days in each of two seasons, the total time burden is estimated to be 450 minutes per respondent. There are projected to be 120 respondents.

The cost to each respondent will be the electrical power consumed in operating the indoor monitors. This has been estimated to amount to $5/day. Respondents will be reimbursed for this cost. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: September 24, 2003.

**Jewel F. Morris,**

*Acting Director, National Exposure Research Laboratory.*

[FR Doc. 03–25131 Filed 10–2–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[ORD–2003–0011, FRL–7568–1]**

## Agency Information Collection Activities: Proposed Collection; Comment Request; Longitudinal Field Measurement Study of Infant and Toddler's Aggregate Exposure to Pesticides and Persistent Pollutants, EPA ICR Number 2126.01, OMB Control Number 20XX–XXXX

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for a new collection. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before December 2, 2003.

**ADDRESSES:** Submit your comments, referencing docket ID number ORD–2003–0011, to EPA online using EDOCKET (our preferred method), by email to *oei.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Interested persons may obtain a copy of this ICR without charge by contacting Barbara Blackwell, National Exposure Research Laboratory, MD–E–205–01, Environmental Protection Agency, 109 TW Alexander Dr., Research Triangle Park, NC 27709; telephone number: (919) 541–2886; fax number: (919) 541–0239; email address: *blackwell.barbara@epa.gov*. For technical information on the proposed study, contact the Co-Principal investigators: Nicolle S. Tulve, National Exposure Research Laboratory, MD–E–205–04, Environmental Protection Agency, 109 TW Alexander Dr., Research Triangle Park, NC 27709; (919) 541–1077; (919) 541–0905 (fax); *tulve.nicolle@epa.gov* or Roy Fortmann, National Exposure Research Laboratory, MD–E–205–04, Environmental Protection Agency, 109 TW Alexander Dr., Research Triangle Park, NC 27709; (919) 541–1021; (919) 541–0905 (fax); *fortmann.roy@epa.gov*.

**SUPPLEMENTARY INFORMATION:** EPA has established a public docket for this ICR under Docket ID number ORD–2003–0011, which is available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov./edocket.*

*Affected entities:* Entities potentially affected by this action are persons living in Duval County, Florida.

*Title:* Longitudinal Field Measurement Study of Infant and Toddler's Aggregate Exposure to Pesticides and Persistent Pollutants.

*Abstract:* The U.S. EPA's Office of Research and Development's National Exposure Research Laboratory proposes to conduct a 2-year longitudinal field measurement study of young children's (aged 0 to 3 years) potential exposures to current-use pesticides and selected phthalates, polybrominated diphenyl ethers, and perfluorinated compounds that may be found in residential environments. The study will be conducted in Duval County, Jacksonville, Florida over a two-year period from 2004 to 2006. Sixty young children will be recruited into this study in two cohorts: (1) Infants recruited into the study soon after birth, and, (2) children recruited into the study at approximately 12 months of age. The study involves up to six monitoring events to each home during the 2-year study period during which environmental, personal, biological, and activity pattern data will be collected. Each monitoring event consists of 4 visits to each participant's home. Aggregate exposure estimates will be conducted for the current-use pesticides and selected phthalates in the study. The data collected on the polybrominated diphenyl ethers and the perfluorinated compounds will provide valuable information on concentrations of these compounds in residential environments, the potential magnitude for exposure, and the temporal and spatial variability of these chemicals in residences.

The data collected in this study is very important to the EPA's Program Offices. The reasons for collecting this data are to better identify the exposure factors, routes, and pathways of exposure for these chemicals, thus improving the Agency's ability to regulate these chemicals, conduct meaningful risk assessments, and develop future studies. Responses to the survey are completely voluntary. Further details on the peer-reviewed study design and the complete set of questionnaires are available for public viewing in the on-line EDOCKET at *http://www.epa.gov/edocket.*

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The questionnaires for this study are listed in Table 1 with their associated hour burdens.

TABLE 1.—LISTING OF QUESTIONNAIRES WITH THEIR ASSOCIATED HOUR BURDENS

[The total time burden is based on 60 people participating for the entire two-year study]

| Questionnaire | Time burden (minutes) | Number of respondents | Number of times questionnaire asked during study to each participant | Total time burden (minutes) |
|---|---|---|---|---|
| Eligibility screening questionnaire | 10 | 120 | 1 | 1200 |
| Home pesticide inventory and use screening questionnaire | 10 | 60 | 1 | 600 |
| Participant and housing characteristics questionnaire | 35 | 60 | 1 | 2100 |
| Monitoring visit questionnaire | 10 | 60 | 6 | 3600 |
| Activity time line | 15 | 60 | 18 | 16200 |
| Indirect ingestion assessment questionnaire | 13 | 60 | 6 | 4680 |
| Food diary and supplemental questionnaire | 10 | 60 | 6 | 3600 |
| Monthly pesticide purchase and use log | 5 | 60 | 24 | 3600 |
| Child care center pesticide use questionnaire | 10 | 6 | 5 | 300 |
| Antimicrobial inventory log | 10 | 60 | 1 | 600 |
| Antimicrobial use log | 1 | 60 | 24 | 1440 |
| Vineland Adaptive Behavioral Scales | 20 | 60 | 6 | 7200 |

Potential participants will be screened and recruited into the study using the Eligibility screening questionnaire and the Home pesticide inventory and use screening questionnaire. These survey instruments will be administered electronically by the field technicians. The remaining questionnaires listed in Table 1 are administered after each participant is enrolled into the study during the monitoring events. The Participant and housing characteristics questionnaire will require a one-time period of 35 minutes to complete. The Monitoring visit questionnaire will be completed at the conclusion of each monitoring event and takes 10 minutes to complete. The Activity time line will be completed by the participant for three days during the monitoring event (15 minutes to complete multiplied by 3 days of completion equals 45 minutes for the monitoring event per participant). The Indirect ingestion assessment questionnaire will be completed at the conclusion of each monitoring event. It will take 13 minutes to complete. The Food diary and supplemental questionnaire will be completed by the participant. The participant uses this questionnaire to record the foods that are collected for the duplicate diet. The Food diary and supplemental questionnaire will require 10 minutes to complete. The Monthly pesticide purchase and use log will be completed by the participant on a monthly basis. This log is used to record pesticide application and use events in the residence. It will take 5 minutes to complete this log during the month. The Child care center pesticide use questionnaire will be administered to child care center directors for those children who attend child care during the monitoring event. It is anticipated that less than 10% of the participants will attend day care, so this questionnaire will be used infrequently. However, if used, it is administered directly to the center director and takes 10 minutes to complete. The Antimicrobial inventory log is administered once during the study. It is completed by the field technician with the help of the participant and takes 10 minutes to complete. The Antimicrobial use log is completed each month by the participant. This log requires a check mark if the product was used that day. This log will require approximately 1 minute to complete. The Vineland Adaptive Behavioral Scales will be administered during each monitoring event. It will take 20 minutes to complete. Over the course of each four-day monitoring event, the total time burden will be 149 minutes per participant. There are projected to be 60 participants enrolled into the study. The total participant time burden for each monitoring event will be 8940 minutes.

There are no direct participant costs for this data collection. Participants will be reimbursed for the costs of electricity used and food collected. Compensation will be offered to defray the burden associated with participating in this study.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: September 24, 2003.

**Jewel F. Morris,**

*Acting Director, National Exposure Research Laboratory.*

[FR Doc. 03–25132 Filed 10–2–03; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6644–3]**

## Environmental Impact Statements; Notice of Availability

**RESPONSIBLE AGENCY:** Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed September 22, 2003 Through September 26, 2003

Pursuant to 40 CFR 1506.9.

*EIS No. 030429, Draft EIS, FHW, TN,* Appalachian Development Highway System Corridor K (Relocated Highway U. S. 64), Improvements from West of the Ocoee River to TN–68 near Ducktown, Funding, U.S. Army Corps Section 10 and 404 Permits, Polk County, TN, Comment Period Ends: January 15, 2004, Contact: Bobby W. Blackmon (615) 781–5770.

*EIS No. 030430, Final EIS, COE, TX,* Gulf Intracoastal Waterway in the Laguna Madre, Maintenance Dredging from the JFK Causeway to the Old Queen Isabella Causeway, Nueces, Kleberg, Kenedy, Willacy and Cameron County, TX, Wait Period Ends: November 3, 2003, Contact: Dr. Terry Roberts (409) 766–3035. This document is available on the Internet at: *http://www.swg.usace.army.mil/.*

*EIS No. 030431, Final EIS, AFS, NM,* Bluewater Ecosystem Management Project, Proposes to Initiate Vegetation Treatments to Restore Ponderosa Pine and Pinon-Juniper Stands to a Desired Condition, Cibola National Forest, Mt. Taylor Ranger District, McKinley and Cibola Counties, NM, Wait Period Ends: November 3, 2003, Contact: Chuck Hagerdon (505) 287–8833.

*EIS No. 030432, Draft EIS, AFS, OR,* Toolbox Fire Recovery Project, Promote the Recovery of the Toolbox Complex Fires of July 2002, Fremont-Winema National Forest, Silver Lake Ranger District, Lake County, OR, Comment Period Ends: November 17, 2003, Contact: Rick Elston (541) 576–7569. This document is available on the Internet at: *http://www.fs.fed.us/r6/winema/management/analyses/toolbox/index.shtm1.*

*EIS No. 030433, Final EIS, BLM, WY,* Snake River Resource Management Plan, BLM-Administrated Public Land and Resources Allocation and Management, Snake River, Jackson Hole, Teton County, WY, Wait Period Ends: November 3, 2003, Contact: Walt George (307) 775–6116.

*EIS No. 030434, Final EIS, AFS, ID,* North End Sheep Allotment Management Plan (AMP) Revision, Proposal to Authorize Continued Livestock Use, Caribou-Targhee National Forest, Soda Springs Ranger District, Caribou and Bonneville Counties, ID, Wait Period Ends: November 3, 2003, Contact: Derek Hinckley (208) 547–4356.

*EIS No. 030435, Draft EIS, BLM, OR,* Andrews Management Unit/Steens Mountain Cooperative Management and Protection Area Resource Management Plan, Implementation, Harney and Malheur Counties, OR, Comment Period Ends: December 31, 2003, Contact: Gary Foulkes (541) 573–4541.

*EIS No. 030436, Final EIS, FRC, NY,* St. Lawrence-FDR Hydroelectric Project, Application for New License (Relicense), (FERC No. 200–036), Located on the St. Lawrence River, Messina, NY, Wait Period Ends: November 3, 2003, Contact: Ed Lee (202) 502–6082. This document is available on the Internet at: *http://www.ferc.gov.*

*EIS No. 030437, Draft EIS, IBR, CA,* Pajaro Valley Water Management Agency (PVWMA) Revised Basin Management Plan Project, Connection of PVWMA Pipeline to the Santa Clara Conduit of the Central Valley Project (CVP), Santa Cruz, Monterey and San Berito Counties, CA, Comment Period Ends: December 2, 2003, Contact: Lynne Silva (559) 487–5807.

*EIS No. 030438, Final EIS, FHW, WA,* Cross-Base Highway Project (WA–704), New Roadway Construction between I–5 at the Thorne Lane Interchange and WA–7 at 176th Street South Major Investment Study (MIS) and US Army COE Section 404 Permit Issuance, Pierce County, WA, Wait Period Ends: November 14, 2003, Contact: Steve Saxton (360) 753–9411.

*EIS No. 030439, Draft EIS, AFS,* WY, Blackhall-McAnulty Analysis Area, Proposal to Reduce the Spread of Dwarf Mistletoe and Mountain Pine Beetle in Lodgepole Pine Stands, Brush Creek/ Hayden Ranger District, Medicine Bow-Routt National Forests and Thunder Basin National Grassland, Carbon County, WY, Comment Period Ends: November 17, 2003, Contact: Terry Delay (307) 326–2518. This document is available on the Internet at: *http://www.fs.fed.us/mrnf.*

*EIS No. 030440, Draft EIS, GSA, DC,* Southeast Federal Center Development, Land Transfer for Mixed-Use Development of Residences, Offices, Shops, a Waterfront Park and Cultural Amenities, Implementation, DC, Comment Period Ends: November 19, 2003, Contact: Arthur Turowski (202) 708–5891.

*EIS No. 030441, Final EIS, AFS, ID,* Salmon-Challis National Forest Noxious Weed Management Program, Integrated Series of Weed Treatment and Non-Treatment Practices Implementation, Custer, Lemhi, Butte and Blaine Counties, ID, Wait Period Ends: November 3, 2003, Contact: William Diage (208) 756–5567.

*EIS No. 030442, Draft EIS, USA, HI,* Transformation of the 2nd Brigade, 25th Infantry Division (Light) to a Stryker Brigade Combat Team in Hawai'i, Implementation, Honolulu and Hawai'i Counties, HI, Comment Period Ends: November 17, 2003, Contact: Cindy Barger (808) 438–4812. This document is available on the Internet at: *http://www.sbcteis.com.*

*EIS No. 030443, Draft EIS, FHW, OH, IN,* US–24 Transportation Improvements Project, from Interstate 469 in New Haven, Indiana to Ohio Route 15 in Defiance, Funding, NPDES Permit and US Army COE Section 404 Permit, Westernmost and Allen Counties, IN and Paulding and Defiance Counties, OH, Comment Period Ends: November 21, 2003, Contact: Mark L. Vonder Embse (614) 280–6854.

*EIS No. 030444, Final EIS, NRS, OK,* Cavalry Creek Watershed Supplemental Plan for Floodwater Retarding Structure No. 6, Washita River Basin, Washita County, OK, Wait Period Ends: November 3, 2003, Contact: M. Darrel Dominick (405) 742–1206.

*EIS No. 030445, Final EIS, NPS, MN,* Grand Portage National Monument General Management Plan, Implementation, Cook County, MN, Wait Period Ends: November 3, 2003, Contact: Tim Cochrane (218) 387–2788.

*EIS No. 030446, Draft Supplement, FTA, NC,* South Corridor Downtown Amendment Project, Evaluate a Downtown Portland Mall Light Rail Transit (LRT) Alignment to the I–205 Light Rail Transit Alternative, Funding, Clackamas and Multnomah Counties, OR, Comment Period Ends: November 17, 2003, Contact: Sharon Kelly (503) 797–1756.

*EIS No. 030447, Final EIS, SFW, CA,* Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP), Implementation, Incidental Take Permits Issuance, Riverside and Orange County, CA, Comment Period Ends: November 3, 2003, Contact: Jim Bartel (760) 431–9440.

*EIS No. 030448, Draft EIS, FHW, FL,* Indian Street Bridge PD&E Study, New Bridge Crossing of the South Fork of the St. Lucie River County Road 714 (Martin Highway)/SW 36th Street/ Indian Street from Florida's Turnpike to East of Willoughby Boulevard, Martin County, FL, Comment Period Ends: December 1, 2003, Contact: James Mathews (850) 942–9650.

## Amended Notices

*EIS No. 030333, Draft EIS, IBR, CA,* Battle Creek Salmon and Steelhead Restoration Project, Restoring Habitat in Battle Creek and Tributaries, License Amendment Issuance, Implementation, Tehama and Shasta Counties, CA, Comment Period Ends: October 16, 2003, Contact: Mary Marshall (916) 978–5248. Revision of FR Notice Published on 7/25/2003: CEQ Comment Period Ending 9/22/2003 has been Extended to 10/16/2003.

Dated: September 22, 2003.

**Ken Mittelholtz,**

*Environmental Protection Specialist, Office of Federal Activities.*

[FR Doc. 03–25139 Filed 10–2–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7568–2]**

## National Advisory Council for Environmental Policy and Technology (NACEPT) Superfund Subcommittee Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notification of public advisory NACEPT subcommittee on Superfund; open meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Superfund Subcommittee, a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), will meet on the dates and times described below. The meeting is open to the public. Seating will be on a first-come basis, and limited time will be provided for public comment on each day.

**DATES:** The meeting will be held from 8:30 a.m. to 6 p.m. on November 5, 2003; from 8 a.m. to 6 p.m. on November 6, 2003; and 8 a.m. to 1 p.m. on November 7, 2003.

**ADDRESSES:** The meeting will take place at the Four Points Sheraton Hotel, 1201 K Street, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Angelo Carasea, Designated Federal Officer for the NACEPT Superfund Subcommittee, Office of Superfund Remediation and Technology Innovation, Office of Solid Waste and Emergency Response, MC 5204G, 1200 Pennsylvania Ave., NW., Washington, DC, (703) 603–8828.

**SUPPLEMENTARY INFORMATION:**

### Agenda

This seventh meeting of the NACEPT Superfund Subcommittee will involve discussion of the latest version of the Subcommittee's draft report. The agenda for the meeting will be available one week prior to the meeting's occurrence.

### Public Attendance

The public is welcome to attend all portions of the meeting. Members of the public who plan to file written statements and/or make brief (suggested 5-minute limit) oral statements at the public sessions are encouraged to contact the Designated Federal Official. Each day will have one public comment period.

Dated: September 29, 2003.

**Angelo Carasea,**

*Designated Federal Officer, NACEPT Superfund Subcommittee.*

[FR Doc. 03–25135 Filed 10–2–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPPT–2003–0034; FRL–7328–9]**

## Draft Instructions for Reporting for the 2006 Partial Updating of the TSCA Chemical Inventory Database; Request for Comment and Notice of Public Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is convening a public meeting to receive comments from persons reporting data required by the Inventory Update Rule on the draft instructions for reporting in 2006. The instructions have been revised in response to amendments to 40 CFR part 710 promulgated on January 7, 2003, which substantially modify the information which must be reported for the partial updating of the TSCA Chemical Inventory Database beginning in 2006. The meeting is open to the public.

**DATES:** The public meeting will commence at 10:30 a.m. on Wednesday, October 15, 2003, and end at approximately 3 p.m. on the same day.

**ADDRESSES:** The public meeting will be held at the Le Meridien Chicago, 521 North Rush Street, at Michigan Avenue, Chicago, IL 60611. This meeting is being held in conjunction with the 2003 TSCA Fundamentals Workshop sponsored by the Synthetic Organic Chemicals Manufacturing Association. Information on this workshop is available at *www.socma.com/Conferences/TSCAWorkshop.htm.*

**FOR FURTHER INFORMATION CONTACT:** *For general information contact:* Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

*For technical information contact:* Fredric C. Arnold, Economics, Exposure, and Technology Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8521; e-mail address:*arnold.fred@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you manufacture chemical substances currently subject to reporting under the Inventory Update Rule (IUR) as amended on January 7, 2003, and codified as 40 CFR part 710. Persons who process chemical substances but who do not manufacture or import chemical substances are not required to comply with the requirements of 40 CFR part 710. Potentially affected entities may include, but are not limited to:

Chemical manufacturers and importers currently subject to IUR reporting, including manufacturers and importers of inorganic chemical substances (NAICS codes 325, 32411).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions at 40 CFR 710.48. If you have any questions regarding the applicability of this action to a particular entity, consult the technical contact person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPPT–2003–0034. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at: *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

### II. Background

EPA is convening a public meeting to receive comments on the Instructions for Reporting for the 2006 Partial Updating of the TSCA Chemical Substance Inventory. EPA is required by section 8(b) of the Toxic Substances Control Act (TSCA) to compile and update an inventory of chemical substances manufactured or imported in the United States. Every 4 years, manufacturers (including importers) of certain chemical substances on the Chemical Substances Inventory have been required to report data specified in the TSCA section 8(a) Inventory Update Rule (IUR), 40 CFR part 710. Past updates included information on the chemical's production volume, site-limited status, and plant site information. Amendments to the IUR promulgated on January 7, 2003 (68 FR 848) (FRL–6767–4) expanded the data reported on certain chemicals to assist EPA and others in screening potential exposures and risks resulting from manufacturing, processing, and use of TSCA chemical substances. At the same time, EPA amended the IUR regulations to increase the production volume threshold which triggers reporting requirements from 10,000 pounds per year to 25,000 pounds per year and established a new higher threshold of 300,000 pounds per year above which manufacturers must report additional information on down-stream processing and use of their chemical substances. The 2003 amendments to the IUR also revoked the exemption from reporting for inorganic chemical substances, provided a partial exemption from reporting of processing and use information for chemical substances of low current interest, and continued the current exemption from reporting for polymers, microorganisms, and naturally occurring chemical substances. These changes modify requirements for information collected in calendar year 2005 and submitted in 2006 and thereafter. The public meeting may be of interest to persons currently reporting under the IUR and to manufacturers of inorganic chemical substances.

The public meeting will include a series of presentations by representatives of EPA on the instructions for reporting for the 2006 partial updating of the TSCA chemical inventory database. Presentation topics will include reporting requirements, instructions for completing the reporting form, how to assert confidentiality claims, and how to submit completed reports to EPA. After each presentation, persons attending the public meeting will be invited to comment on the clarity, completeness, and usefulness of the instructions. Comments may also be submitted in writing following the public meeting; comments should be submitted within 30 days after the meeting to receive timely attention. The purpose of the public meeting is to receive input for improving the instructions; subsequent meetings are planned for 2004 to provide training to persons who must report in 2006 under the IUR.

Persons planning to attend the public meeting are encouraged to register with the technical contact person identified under **FOR FURTHER INFORMATION CONTACT**. Persons registering for the meeting will receive by e-mail a copy of the draft instructions prior to the meeting. Prior registration is not required to attend the focus group meeting. There is no charge for attending this public meeting.

### List of Subjects

Environmental protection, chemicals, reporting and recordkeeping requirements.

Dated: September 25, 2003.

**Margaret Schneider,**

*Acting Director, Office of Pollution Prevention and Toxics.*

[FR Doc. 03–25275 Filed 10–2–03; 8:45 am]

**BILLING CODE 6560–50–S**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7565–1]**

## Agency Policy and Guidance: Draft Small Local Governments Compliance Assistance Policy

**AGENCY:** Environmental Protection Agency.

**ACTION:** Request for public comment.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) today seeks public comment on proposed revisions to its 1995 *Policy on Flexible State Enforcement Responses to Small Community Violations* (the *Small Communities Policy*). The *Small Communities Policy* encourages states to enhance protection of public health and the environment by providing comprehensive environmental compliance assistance to the 72% of American communities that are home to 2,500 or fewer permanent residents. If the actions of the state to provide compliance assistance and the actions of the small community to achieve compliance stay within the parameters of the *Small Communities Policy*, EPA will generally defer to the state's decision to reduce or waive the noncompliance penalty that EPA guidance would normally require the state to assess for the small community's violations. During the course of the compliance assistance, the small community must work in good faith with the state to: (1) Evaluate the small community's compliance status and identify all of its environmental violations; (2) develop a priority-based schedule for the small community to achieve compliance with all applicable environmental requirements as soon as practicable; and (3) build the technical, managerial, and financial capacity the small community needs to achieve and sustain comprehensive environmental compliance. The central tenets of the *Small Communities Policy* are:

1. Good faith efforts; 2. enforceable commitments; and 3. comprehensive compliance with all environmental requirements.

The 1995 *Small Communities Policy* can be downloaded from the Internet at *http://www.epa.gov/compliance/resources/policies/incentives/smallcommunity/scpolicy.pdf*.

EPA now proposes a number of revisions intended to extend the scope of the *Small Communities Policy*. The policy will be retitled the *Small Local Governments Compliance Assistance Policy* to clarify EPA's intent that the policy benefit units of local government.

To make the benefits of the *Small Local Governments Compliance Assistance Policy* available to a greater number of small local governments, EPA proposes to:

1. Defer to states' decisions to reduce or waive the normal noncompliance penalties of local governments with 3,300 or fewer permanent residents—if the actions of the state to provide compliance assistance and the actions of the local government to achieve compliance are consistent with the parameters established by the *Small Local Governments Compliance Assistance Policy*.

2. Defer to states' decisions to reduce or waive the normal noncompliance penalties of local governments with between 3,301 and 10,000 permanent residents—if a state has followed guidelines in the *Small Local Governments Compliance Assistance Policy* to determine that the technical, managerial, and financial capacity of the local government is so limited that the local government is unlikely to achieve and sustain comprehensive environmental compliance without the state's assistance; and if the actions of the state to provide compliance assistance and the actions of the local government to achieve compliance are consistent with the parameters established by the policy.

To make the benefits of the *Small Local Governments Compliance Assistance Policy* available in a wider range of circumstances, EPA proposes to defer to states' decisions to reduce or waive the normal noncompliance penalties for eligible local governments that enter into an enforceable agreement to: 1. correct known violations; and 2. develop and implement Environmental Management Systems for their governmental operations. EPA also proposes to defer to states' decisions to reduce or waive the normal noncompliance penalties for eligible local governments with between 3,301 and 10,000 permanent residents that enter into enforceable agreements either to achieve comprehensive environmental compliance or to develop and implement environmental management systems within the "fenceline" of a subset of their government operations.

EPA also seeks public comment on whether and how the Agency could implement a policy similar to the *Small Local Governments Compliance Assistance Policy* for its compliance assistance and enforcement activities where EPA directly implements a program, where EPA retains primary enforcement authority, or where EPA takes action after consulting with a State that has primacy or has been authorized to implement a Federal program.

**DATES:** The Agency requests comments on today's proposal. Comments must be received or post-marked by midnight January 2, 2004. Comments received after this date may not be considered in decision making on the proposed policy.

**ADDRESSES:** Send written comments (in triplicate, if possible) to: the Docket Clerk, U.S. Environmental Protection Agency Enforcement and Compliance Docket and Information Center, Mail Code: 2201T), Docket Number EC–P–2001–003, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20004. Please use a font size no smaller than 12. Comments may also be sent electronically to *docket.oeca@epa.gov*, or faxed to (202) 566–1511. Attach electronic comments as an ASCii (text) file, and avoid the use of special characters and any form of encryption. Be sure to include the docket number EC–P–2001–003 on your document. In person, deliver comments to the Enforcement and Compliance Docket and Information Center, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., EPA West, Room B133, Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Harmon, telephone (202)564–7049; e-mail *harmon.kenneth@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Background and History

EPA's enforcement response policies generally provide for initiation of an enforcement action and assessment of standard penalties (which can be adjusted downward on the basis of the violator's inability to pay) if a local government entity is discovered to have violated environmental regulations. In 1994, EPA began informal discussions with the States of Oregon and Idaho, later joined by the State of Nebraska, centered on those States' planned use of enforcement discretion with respect to small community violators. These States noted that small communities may have more difficulty complying with environmental regulations than larger communities do. Small communities that lack personnel trained in environmental management may be unaware of environmental requirements. Once informed of their environmental noncompliance, small communities may not know how to correct their problems. Because small communities have a smaller tax base and a smaller pool of ratepayers, their residents often must pay higher per household costs for environmental compliance. Oregon, Idaho, and Nebraska sought assurances that EPA would defer to a State's exercise of enforcement discretion to reduce or waive the normal noncompliance penalty where a State determines that a small community violator is working diligently in good faith to identify and correct its noncompliance.

In 1995, EPA responded by issuing the *Policy on Flexible State Enforcement Responses to Small Community Violations* ("the *Small Communities Policy*"). The *Small Communities Policy* established parameters within which EPA encourages States to provide incentives for small communities to seek State assistance in identifying their environmental problems, developing a priority-based schedule for returning to full comprehensive environmental compliance, and building the technical, managerial, and financial capacity needed to achieve and sustain compliance.

## II. Overview of the Small Communities Policy

EPA's 1995 *Small Communities Policy* gives States[1] considerable freedom to tailor small community environmental compliance assistance practices or programs that meet specific local needs. EPA's deference on penalty reductions and waivers under the *Small Communities Policy* is generally restricted to agreements States enter into with communities with no more than 2,500 permanent residents. These communities must be working diligently in good faith to achieve and sustain *comprehensive* environmental compliance, *i.e.*, compliance with every environmental requirement to which their government operations are subject. If a small community cannot achieve comprehensive compliance within 180 days of the State's commencement of compliance assistance to the community, within that same 180 days, the community must enter into a written and enforceable agreement with the State that establishes a schedule for addressing and correcting all of its environmental violations as soon as practicable. A State that seeks EPA's deference to its decision to reduce a small community's noncompliance penalties must have adequate processes for:

- Responding quickly to requests for compliance assistance;
- Selecting communities to participate in the State's compliance assistance program;
- Assessing a community's good faith and compliance status;
- Establishing priorities for addressing noncompliance; and
- Ensuring prompt correction of violations

The Agency reserves all of its enforcement authorities, including its discretion to initiate an enforcement action to address any violation or circumstance that may present an imminent and substantial endangerment to, has caused or is causing actual serious harm to, or presents a serious threat to, public health or the environment.

Deference under the *Small Communities Policy* is not warranted if, in EPA's judgment, a State's program to reduce or waive small communities' noncompliance penalties in exchange for comprehensive environmental compliance fails to satisfy the conditions of the *Small Communities Policy*. Neither is deference under the *Small Communities Policy* warranted if, in EPA's judgment, a State's application of its program to reduce or waive small communities' noncompliance penalties in exchange for comprehensive environmental compliance fails to provide, in a specific case, adequate protection to human health and the environment because that application neither requires nor results in reasonable progress toward, and achievement of, environmental compliance by a date certain.

## III. Differences Among the Self-Disclosure Policies

In addition to the *Small Communities Policy*, EPA has issued *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations* (the *Audit Policy*) and the *Small Business Compliance Policy* (the *Small Business Policy*), both of which were last revised in April of 2000. These policies provide penalty relief to regulated entities who, upon discovering their violations, promptly disclose them to EPA and promptly return to compliance. Although the *Small Communities Policy* is often grouped with the *Audit Policy* and the *Small Business Policy* under the shared term "self-disclosure policies," it differs in significant ways. The *Audit Policy* and the *Small Business Policy* apply only to violations discovered outside the scope of a compliance assessment required by statute or regulation. The *Small Communities Policy* can apply to a violation no matter how discovered. It can apply to violations discovered outside the scope of required compliance assessments as well as to violations discovered during required compliance assessments and to violations discovered by the regulator during the course of an inspection. While the *Audit Policy* and the *Small Business Policy* do not provide penalty relief for repeat violations, the *Small Communities Policy* allows application of the policy to communities with a history of noncompliance if the State determines that the community has been acting in good faith and to the best of its ability to address violations and achieve compliance. The *Audit Policy* and the *Small Business Policy* generally allow disclosing violators no more than 60 days and 90 days, respectively, to correct their violations (the *Small Business Policy* will allow 180 days for corrections if the violator first submits a written schedule, and up to 360 days for corrections if the violator will correct the violations by putting pollution prevention measures in place). The *Small Communities Policy* gives communities up to 180 days to correct violations without a written agreement and schedule, but, if a community cannot achieve compliance within 180 days, the policy permits the community to enter into a written and enforceable agreement with the State establishing a schedule for the community to address all of its violations as expeditiously as practicable in order of risk-based priority. Also, the *Audit Policy* and the *Small Business Policy* do not require, as the *Small Communities Policy* does, that noncompliers evaluate their compliance with all applicable regulatory requirements. This significant difference between the *Small Communities Policy* and the other self-disclosure policies is the best illustration that the *Small Communities Policy* has a different purpose. The *Audit Policy* and the *Small Business Policy* are intended to provide incentives for regulated entities to conduct self-audits and disclose the violations they discover. The *Small Communities Policy* is intended to encourage States to conduct comprehensive evaluations of their small communities' compliance with every environmental requirement that applies to the community's governmental operations, and then work with communities to help them build the technical, managerial, and financial capacity they need to achieve and sustain comprehensive environmental compliance.

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[1] "State" means the agency of any State, Commonwealth, or territory of the United States that has received EPA's approval to implement environmental laws and regulations. An Indian Tribe can be a State if it has received EPA's approval for treatment as a State.

## IV. The January 23, 2002 Federal Register Notice

Although State comprehensive environmental compliance assistance programs have provided compliance assistance to more than 250 small communities since EPA issued the *Small Communities Policy*, most of that activity took place in just two States. In discussions with small community and State stakeholders questioning why so few States had implemented the policy, EPA learned that many stakeholders find aspects of the policy problematic. Some stakeholders believe that the *Small Communities Policy's* population cap of 2,500 is too low. Many States point out that EPA has not provided funding for States to establish programs offering comprehensive environmental compliance assistance to small communities. Many small communities do not see how participating in a State's comprehensive compliance assistance program would benefit them. These and other perceived shortcomings of the policy were seen as impediments to its more wide-spread implementation among the States.

On January 23, 2002, EPA published a **Federal Register** notice (67 FR 3185) requesting public comment on possible revisions to various aspects of the *Small Communities Policy*. The **Federal Register** notice sought comment on: (1) Raising the policy's population cap to allow participation of larger (but still small) communities; (2) allowing comprehensive environmental compliance assistance projects confined within the "fenceline" of one of a community's operations; (3) reducing the resource burdens associated with establishing and participating in comprehensive environmental compliance assistance programs; and (4) enhancing incentives for both States and small local governments to participate in such programs. The **Federal Register** notice also discussed the relationship between actions undertaken in accordance with the *Small Communities Policy* and actions undertaken as part of an environmental management system (EMS). EPA noted that if a small local government receiving comprehensive environmental compliance assistance from the State were to develop and implement an EMS as part of its strategy to address its noncompliance, the local government should incorporate its EMS activities into the written and enforceable agreement and the schedule required by the policy. Finally, EPA requested comment on more general aspects of the *Small Communities Policy*, including the policy's definition of community, the time frames for disclosure and correction of violations, and the types of violations to which the *Small Communities Policy* would apply.

EPA received comments from ten respondents. A summary of these comments and the comments themselves are available from EPA's Enforcement and Compliance Docket and Information Center (EDIC) in the EPA Docket Center (EPA/DC), EPA West Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number of the EDIC is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then type in the docket ID number identified above.

## V. The Role of the EPA Inspector in Providing Compliance Assistance During Inspections

On June 25, 2003, EPA issued a national policy titled: *The Role of the EPA Inspector in Providing Compliance Assistance During Inspections (Inspector Policy)*. EPA's *Inspector Policy* concerns the actions of EPA inspectors, not State inspectors, conducting compliance inspections, but it can provide useful guidance for States. The *Inspector Policy* encourages EPA inspectors' current practice of providing compliance assistance during on-site compliance inspections, and clarifies what compliance assistance is appropriate in such circumstances. The *Inspector Policy* can be accessed at *www.epa.gov/Compliance/resources/policies/monitoring/inspection/inspectorrole.pdf*.

## VI. Proposed Changes to the Small Communities Policy

EPA today proposes replacing the term "community" with the term "local government" as derived from U.S. Census Bureau definitions. This change, which clarifies EPA's intent to focus compliance assistance on small governmental entities, is also reflected in the title of the revised policy: the *Small Local Governments Compliance Assistance Policy*. EPA also proposes three major changes to the *Small Communities Policy*, one related to the cap on the population of participating local governments, one allowing projects of restricted scope in some circumstances, and one encouraging local governments to develop and implement EMS. These changes are intended to make it easier for more local governments to get needed compliance assistance from their States, and to promote more effective management of environmental responsibilities by local governments.

The following sections discuss the revised term used to describe entities eligible for participation under the policy, proposed revisions to the population cap and to the requirement of comprehensive assistance at all of a local government's operations, and the proposed addition of an EMS option.

### *A. Entities Eligible To Receive all Benefits*

The 1995 *Small Communities Policy* applied to "small communities", which EPA defined as "communities, generally comprised of fewer than 2,500 residents, [that are]:

- Non-profit
- Governing entities (incorporated or unincorporated)
- That own facilities that supply municipal services.

EPA now proposes to minimize possible confusion by replacing the term "community" with the term "local government", thereby designating familiar, legally-defined entities as those entities eligible to receive benefits under the policy. Although EPA originally adopted a broad definition of eligible entities to provide States flexibility to develop compliance assistance programs that addressed the State's particular needs, in the seven years the policy has been in force, EPA has seen no evidence that States wish to offer comprehensive environmental compliance assistance to communities that are not traditional units of local government. EPA's proposal derives its definition of "local government" from United States Census Bureau definitions (*see, www.census.gov/geo /www/tiger/ glossary.html#glossary*) related to "governmental unit". As used by the policy, the term "local government" can mean any organized unit of government authorized in a State's constitution and statutes, and established to provide general government for a defined area. This includes governments designated as a county, parish (in Louisiana), municipality, borough, city, village, town, township, or plantation (in Maine).

EPA acknowledges that this definition differs from "local government" as defined in Section 2 of the Homeland Security Act of 2002 (Pub. L. 107–296). For the purposes of that Act, Congress defined 'local government' as:

(A) A county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;

(B) An Indian tribe or authorized tribal organization, or in Alaska a Native village or Alaska Regional Native Corporation; and

(C) A rural community, unincorporated town or village, or other public entity.

For the *Small Local Governments Compliance Assistance Policy* EPA proposes a more restrictive definition because it is the Agency's intention to focus the benefits of the policy on small units of general purpose local government. It is EPA's belief that special districts and governmental entities comprised of more than one participating governmental unit are created specifically for the purpose of ensuring that the resulting governmental unit has the technical, managerial, and financial capacity to discharge its responsibilities. EPA also believes single-medium compliance assistance programs or compliance assistance efforts designed for that specific sector of the regulated community can best meet the needs of governmental entities created for the purpose of delivering one type of service (not general services) to the public.

EPA invites public comment on this proposed change to the definition of entities eligible to receive the full benefits of the *Small Local Governments Compliance Assistance Policy*, particularly to the extent the policy would now not apply either to unincorporated entities that provide municipal services, or to district government entities authorized by State statute to provide, not general services, but to perform a specific function (*e.g.*, school, water, or power districts).

### *B. Proposed Revisions to the Population Cap*

EPA's January 23, 2002 **Federal Register** notice sought comment on two specific questions related to the population cap: (1) Should the policy raise its current cap to allow participation of communities with more than 2,500 residents? and (2) should the population cap be replaced by a test of a community's capacity to address its environmental responsibilities?

Nine of the ten commenters addressed the population cap. All nine favored giving State programs flexibility to admit communities with more than 2,500 permanent residents. Four commenters supported raising the population cap to 10,000, both to be consistent with some of the population-dependent provisions of the Safe Drinking Water Act (in which public water systems that serve more than 10,000 users are labeled "large") and because the commenters believe communities with populations of up to 10,000 often provide essential public services to a customer base too small to fund a full-time professional environmental staff. Three commenters indicated that while a population of 2,500 could serve as a reliable rule of thumb for determining which communities need compliance assistance, they recommended that States be given discretion to justify application of the policy to larger communities if those larger communities can be shown also to need compliance assistance.

None of the eight respondents who offered comments on capacity tests supported determining a community's eligibility for compliance assistance solely on the basis of a capacity test. Three commenters rejected capacity tests outright, as they believe small local governments lack the expertise and resources needed to gather the information that would be required by such tests, and States lack the resources needed to evaluate the large number of small local governments potentially eligible for assistance. Five commenters asserted that States should have the flexibility to use a capacity test as a means of determining if a community whose population exceeds the population cap should nonetheless be eligible for participation.

After considering these comments, EPA decided to propose a hybrid approach. The proposed revised policy establishes a two-tiered population cap. EPA will defer to the States' acceptance into their programs of local governments with up to 3,300 permanent residents without analysis demonstrating a lack of technical, managerial, or financial capacity on the part of the local government. The proposed revised policy also provides that States can apply a capacity test to justify the participation of a local government with more than 3,300 but no more than 10,000 permanent residents. As a practical matter, such an upper limit is necessary if EPA wishes to focus comprehensive compliance assistance resources on small local governments who most need it while encouraging larger municipalities to use their greater technical, managerial, and financial capacity to assume more responsibility for ensuring their environmental compliance. In proposing these population levels for the population cap and the upper population limit, EPA acknowledges the desirability of consistency with the definition of small local government in environmental statutes (most notably regulations implementing the Safe Drinking Water Act, in which public water systems serving 3,300 and fewer users are labeled "small" ) and in the recent Public Health Security and Bioterrorisim Preparedness and Response Act of 2002 (Pub. L. 107–188) (which, in its amendments to the Safe Drinking Water Act, reaffirmed 3,300 as the population level below which public water systems were exempt from some requirements). EPA also acknowledges that States, in implementing the *Small Local Governments Compliance Assistance Policy* are free to adopt a more stringent population cap if they believe lower population levels are more appropriate for their local circumstances. If, for example, a State believes population levels of 2,500 without a demonstration of incapacity and up to 5,000 with a demonstration of incapacity are more appropriate to its local circumstances, the State can establish those levels for its program. A State may choose to evaluate the capacity of requiring all potential participating local governments, or choose not to conduct any capacity tests and simply limit participation in its program to local governments no larger than 3,300 permanent residents. A State also has the option of providing comprehensive environmental compliance assistance to local governments without regard to their populations, but if the State reduces or waives the normal noncompliance penalties of local governments with more than 10,000 permanent residents, EPA may find it appropriate to initiate its own enforcement action to recover additional remedies.

EPA's proposed revised policy recommends that States adopt a number of listed capacity measures the Agency has drawn from studies performed by EPA's Boise Environmental Finance Center. In the context of measuring the ability of small local governments to implement the requirements of the Safe Drinking Water Act, the Boise Environmental Finance Center identified a number of factors that influence the technical, managerial, and financial capacity of local governments (*see, http://sspa.boisestate.edu/efc/*). EPA adapted many of these measures for inclusion into the proposed revised policy, and recommends that States incorporate these measures as appropriate for their local conditions. A State that has provided compliance assistance to a small local government with more than 3,300 but no more than 10,000 permanent residents and seeks EPA deference to its decision to reduce or waive the normal noncompliance penalty of that small local government must have a capacity test in place and consistently apply it. EPA requests comment on the recommended measures presented in the proposed revised policy.

### *C. Fencelining*

Restricting the scope of activities to the boundaries of some subset of operations or facilities is called "fencelining". In its January 23, 2002, **Federal Register** notice, EPA asked if, as a cost saving measure, the *Small Local Governments Compliance Assistance Policy* should countenance "fenceline" projects. That is, should the policy apply if the State and small local government designate one of the local government's operations (*i.e.* vehicle fleet maintenance, provision of drinking water, grounds keeping, *etc.*), evaluate the local government's compliance with every environmental requirement that applies within the fenceline of that operation, and develop and implement a plan that addresses every environmental concern within that fenceline?

Nine commenters addressed this point. Four commenters advised against allowing fenceline projects. Fencelining need not be incorporated into the policy, three of these four commenters asserted, because most States already offer statute-specific compliance assistance with respect to individual local government operations. These commenters suggested that allowing fencelining would abandon the policy's primary purpose—helping small local governments achieve and sustain *comprehensive* environmental compliance. Fencelining, they feared, would perpetuate a focus on operations with known or suspected violations while leaving other potentially more serious noncompliance at other operations undiscovered and unaddressed.

Three other commenters believed fencelining's probable focus on known compliance concerns could be used to direct limited compliance assistance resources to where they are most needed. These commenters, however, advised limiting fencelining in some way. They suggested including restrictions to ensure that the policy did not become a compliance assistance program for one type of operation only, allowing fencelining only at operations EPA determines to be of particular concern, or allowing fencelining only at larger local governments where conducting comprehensive evaluations of all operations would be a prohibitive drain on available resources.

EPA does primarily intend the policy to promote the provision of comprehensive environmental compliance assistance to small local governments. The Agency, however, acknowledges that fencelining can help States limit the cost of providing comprehensive compliance assistance to a local government that engages in a wide range of operations. EPA also notes there is no compelling reason to limit the scope of a fenceline to just one of a local government's operations. A State and a participating local government may have the capacity and the desire to undertake a comprehensive compliance assistance project incorporating more than one, but less than all, of the local government's operations.

After reviewing the comments, EPA proposes to defer to States' decisions to reduce or waive the normal noncompliance penalties for fenceline projects involving only local governments with between 3,301 and 10,000 permanent residents. With respect to compliance assistance to small governments with 3,300 or fewer permanent residents, EPA will generally defer to a State's decision to reduce or waive the normal noncompliance penalty only if the effort produced an enforceable agreement to achieve comprehensive compliance at all of the small government's operations.

EPA seeks comment on whether this approach strikes an appropriate balance between the Agency's goal of encouraging States to provide truly comprehensive environmental compliance assistance to small local governments, and the Agency's goal of encouraging States to provide some form of comprehensive environmental compliance assistance to local governments with between 3,301 and 10,000 permanent residents. In developing this proposal, EPA considered that its *Audit Policy* and *Small Business Policy* currently provide fenceline-based penalty reductions and waivers to violators (including local governments) that voluntarily discover, promptly disclose, and expeditiously correct environmental noncompliance.

If the *Small Communities Policy* were revised to support fenceline projects for some local governments, it would still differ from the *Audit Policy* and the *Small Business Policy* in some important ways:

- Application of the *Small Communities Policy* is not limited to those violations that are voluntarily discovered.

- Projects under the *Small Communities Policy* must result in an assessment of the local government's compliance with all applicable environmental requirements, even if the project is confined within the fenceline of a subset of the local government's operations.
- The *Small Communities Policy* gives local governments the flexibility to prioritize among their violations and develop a schedule to address all of their noncompliance as expeditiously as practicable in order of risk-based priority.

### *D. Environmental Management Systems*

An environmental management system (EMS) is an individualized internal management system designed, documented, and implemented to identify and manage the environmental impacts of an entity's operations. Developing and implementing an EMS is an effective way for a local government to identify the environmental aspects of its operations and manage its environmental responsibilities for continual improvement. EPA noted the similarities between the goals of the *Small Communities Policy* and the goals of an EMS in its January 23, 2002, **Federal Register** notice. Both the policy and an EMS establish a mechanism for moving a small local government toward sustained environmental compliance. In the **Federal Register** notice, the Agency noted that the primary difference between the two is the policy's focus on discovering and addressing all of a local governments' environmental noncompliance and an EMS's focus on implementing a system that provides for a local government's ongoing management of all its environmental responsibilities. EPA indicated in the **Federal Register** notice that if a small local government receiving comprehensive environmental compliance assistance from the State were to develop and implement an EMS as part of its strategy to address its noncompliance, the local government should incorporate its EMS activities into the written and enforceable agreement and the schedule required by the policy.

All commenters on this point acknowledged the value of an EMS, but urged that development and implementation of an EMS, and the associated resource demands, not be made a condition of EPA deference.

After considering the comments, EPA's has decided the policy, while not making EMSs mandatory, should provide local governments an incentive to develop and implement an environmental management system. Accordingly, the proposed revisions to the *Small Communities Policy* create an EMS option that will be available to small local governments that learn of environmental noncompliance as a result of a State's inspection of some subset of the small local government's operations. The revised policy would apply to small local governments that address their environmental noncompliance by entering into a written and enforceable agreement with the State establishing a schedule for the local government to: (1) Correct, as expeditiously as practicable in order of risk-based priority, the violations the State discovered during the inspection; *and* (2) develop and implement an environmental management system for all of its governmental operations. Local governments with populations between 3,301 and 10,000 that the State has determined eligible to participate under the policy may develop and implement an EMS applicable within a fenceline that incorporates the operation at which the violations were discovered. Not later than 180 days after the State notifies the local government of the violations discovered during the inspection, the local government must enter into an enforceable agreement that establishes a schedule for correcting the violations, and for developing and implementing an EMS for its governmental operations. If the local government corrects the violations before the 180 days have passed, the written and enforceable agreement it enters into with the State can contain only provisions related to developing and implementing its EMS. In accordance with the schedule established by the EMS agreement, but in no event later than one year after entering into the EMS agreement with the State, a local government would demonstrate it has developed an EMS by producing and submitting to the State an EMS manual documenting how it will accomplish the essential elements of an environmental management system. Not less than one year, and not more than three years after the local government submits its EMS manual to the State, the State, or an independent third party approved by the State, would conduct an EMS audit to confirm that a local government has been implementing, and is continuing to implement, its EMS. This process is discussed more fully in part J of the policy.

EPA proposes the EMS option as an alternative to the process established by the prior *Small Communities Policy*. That policy encourages small local governments to ask the State to perform a comprehensive environmental evaluation of *all* the local government's operations, enter into a written and enforceable compliance agreement establishing a schedule to correct all of its violations as expeditiously as practicable in order of risk-based priority, and correct all of its violations in accordance with that schedule.

The EMS option would establish a process in which the small local government would, as expeditiously as practicable and in order of risk-based priority, correct all of the violations discovered by the State during its inspection of a *subset* of the local government's operations. In committing to develop and implement an EMS, the *small local government* would be responsible for ensuring performance of the comprehensive analysis of the environmental aspects of all of its operations (or in the case of a local government approved for a fenceline project, all of its operations within the fenceline). If at any point during the development and implementation of its EMS a small local government discovers additional noncompliance, it must disclose these violations to the State as required by laws and regulations or in accordance with EPA's self-disclosure policies. The State and the small local government may then amend the terms of their agreement under the policy's EMS option to incorporate a schedule for correction of the newly discovered violations. The State and the small local government may, however, choose to address any noncompliance discovered after the entry of the EMS option agreement in any manner consistent with this policy and other EPA enforcement policies and guidelines.

Local governments that wish to develop and implement an EMS should consult the EPA-sponsored Public Entity EMS Resource Center (PEER Center) at *www.peercenter.net*, and the nearest of its affiliated Local Resource Centers. The PEER Center provides case studies of completed local government EMS projects, process information, and guidance to local governments who wish to develop and implement an environmental management system. EPA will continue to support efforts to facilitate the development of EMS's by small local governments, will work to ensure State programs have access to EPA EMS tools, services, and funding, and will recommend that local governments that participate in State programs implementing the policy be given priority access to the Local Resource Centers.

As this option was not described in the January 23, 2002, **Federal Register** notice, EPA seeks public comment on this point.

## VII. Miscellaneous Issues

In its January 23, 2002, **Federal Register** notice, EPA solicited comments on a number of other issues, including possible ways (such as fencelining) to reduce the States' burden of developing and implementing a comprehensive environmental compliance assistance program for small local governments, incentives for States and local governments to participate in such programs, the relationship between the policy and environmental management systems, and if a separate compliance assistance policy is needed for Tribal governments. With the exception of comments related to fencelining, the comments EPA received on these issues did not indicate a need for substantive revisions to the policy in these areas.

### *A. Burden on States*

In addition to fencelining, EPA specifically asked for comment on four other possible ways to reduce a State's burden of developing and implementing a comprehensive environmental compliance assistance program: In-kind contributions from EPA; shifting costs to communities; tiering; and streamlining.

The commenters supported development and dissemination of in-kind contributions (*i.e.* compliance assistance materials, tools, and services that help implement a comprehensive environmental compliance assistance program) by EPA. Commenters advised against shifting costs to small local governments by requiring local governments to evaluate their own compliance status and devise a strategy to achieve and sustain environmental compliance as a prerequisite to receiving compliance assistance from the State. Commenters favored tiering, the provision of different levels of service to different classes of local governments, as a way to focus intensive compliance assistance where it is most needed. Streamlining drew little comment except from those commenters who pointed out that different branches of Federal government should always attempt to coordinate related mandates to the maximum extent possible.

Commenters' support for in-kind contributions from EPA was tempered by their belief that such contributions would be of limited value, as State environmental standards often differ from Federal regulations in some details, and federally-produced materials would not provide information on State contacts. Shifting costs to small local governments drew negative comment. Respondents asserted that this approach, by requiring small local governments to identify their environmental responsibilities and develop a plan to address their environmental concerns before requesting assistance from the State, would be antithetical to the policy's goal of providing compliance assistance to small local governments unable to understand and address their environmental responsibilities. Respondents also questioned the reliability of compliance evaluations performed by untrained individuals—even if conducted with checklists and guidance materials provided for that purpose.

EPA generally agrees with these comments. While the Agency's in-kind assistance may not be able to meet every need of States and local governments, EPA believes, in most instances, States will need to make only minor modifications to incorporate essential State details the Federal materials may lack. For this reason, EPA will continue its efforts to make its compliance assistance materials as useful as possible, and to facilitate dissemination of the assistance to local governments. EPA also agrees that requiring small local governments to identify compliance concerns and a strategy for addressing them as a prerequisite of participation in a State's comprehensive compliance assistance program could effectively bar entry of the very local governments the policy was intended to reach. We acknowledge, however, that States with limited available resources can always establish eligibility criteria intended to restrict the number of qualifying applicants. One option would be for a State to establish tiers of service that allow the local governments defined as small to participate without first identifying a compliance concern while requiring larger, more capable local governments to make such a showing as part of an application process.

In an attempt to promote streamlining, EPA has been an active participant in the U.S. Small Business Administration's E-Government project. E-Government is joining Federal agencies together to develop and pilot an on-line, interactive one-stop compliance assistance information source for businesses and local governments. Users will enter the system and complete a profile that describes their operations. E-Government will then generate links to compliance assistance resources available from the various Federal agencies that regulate the user's activities.

Because EPA believes flexibility will allow Federal and State agencies to make best use of in-kind contributions from EPA, strategies for shifting costs to local governments, tiering levels of service, and streamlining among related government mandates, the proposed revised policy does not require states to take specific actions in these areas. EPA welcomes comments on this approach.

### *B. Incentives for Participation*

EPA's January 23, 2002, **Federal Register** notice described potential benefits of a comprehensive environmental compliance assistance program for States and small local governments. Benefits to an implementing State include more complete and accurate assessments of the environmental compliance status of its small local governments, measurements of progress toward reducing risks to the health of its citizens and the environment, and improved ability to plan and budget for future environmental and infrastructure needs. EPA also discussed options for recognizing States for their efforts to provide comprehensive environmental compliance assistance to small local governments, providing priority access to EPA compliance assistance tools and services, and the likelihood of EPA funding for pilot projects.

All comments EPA received in response focused on Federal grants, which the commenters perceived as the only effective incentive for States to implement the policy.

To provide an incentive for local government participation, the *Small Communities Policy* contemplates that States will reduce or waive the normal noncompliance penalties for local governments that participate in their comprehensive environmental compliance assistance programs. Seven years of limited participation by local governments has shown this to be an ineffective incentive. In the January 23, 2002, **Federal Register** notice, EPA noted that achieving and sustaining comprehensive environmental compliance created other benefits for local governments. A participating local government can expect to identify all its environmental compliance concerns; develop a plan for achieving and sustaining environmental compliance; learn how to build the technical, managerial, and financial capacity necessary to meet its compliance goals; gain assurance it is keeping its residents safe from environmental risks; and plan and budget for the future operations confident they will not face surprise costs from unforeseen environmental problems. Other benefits to participating communities may include recognition from EPA or their states, priority access to EPA compliance assistance tools and services, or priority access to EPA-funded compliance grants. There are also indications that local governments that undertake a comprehensive environmental compliance evaluation and implement a program to ensure sustained compliance can improve their bond ratings and reduce their insurance premiums. Commenters generally approved of these incentives and stressed the importance of public recognition both as a means of rewarding local governments for their efforts to achieve and sustain comprehensive environmental compliance and as a way to promote interest among other local governments.

To the extent yearly budgets allow, EPA's Office of Compliance will provide pilot grants to a limited number of States to help offset the resource demands of establishing a program to provide comprehensive environmental compliance assistance to small local governments. EPA will continue to work to provide and enhance other incentives for States. EPA will also continue to develop and expand the various local government incentives discussed above. As more tools and services are developed, and as funding for local government recognition becomes available, EPA will work to ensure coordination with State compliance assistance programs.

### *C. Application of the Policy to Tribes*

EPA received no comments on whether or not the policy should create a distinction between States and Tribes that have received EPA approval for treatment as States. As a result, the proposed revised policy leaves the policy's effects on Tribal governments unchanged.

## VIII. Other Comments

Commenters also suggested that the policy extend eligibility to non-governmental water systems that supply drinking water to a population equivalent to the population of a small local government, and to governmental organizations owned by a consortium of local governments that individually meet the policy's definition of small local government, but whose aggregated populations would exceed the policy's population cap. EPA does not propose making either of these suggested changes. Non-governmental water systems, even those serving small populations, represent themselves as having the technical, managerial, and financial capacity for compliant operation at the time they contract to offer service at an agreed-upon rate. Noncomplying non-governmental water systems can obtain penalty relief if they disclose and correct violations in accordance with the *Audit Policy* or the *Small Business Policy*. Either of those policies may be a better option than the *Small Local Governments Compliance Assistance Policy* for resolving environmental concerns at a single facility that engages in only one operation. Additionally, unique aspects of the *Small Local Governments Compliance Assistance Policy* may not be appropriate (*e.g.*, including violations discovered by the regulator) or applicable (*e.g.*, performing comprehensive environmental compliance evaluations of several operations; building technical, managerial, and financial capacity; and developing a schedule for addressing all violations in order of risk-based priority) to non-governmental water systems.

With respect to governmental organizations owned by a consortium of small local governments, EPA notes that small local governments pool their resources in this fashion to ensure the resulting organization will have the technical, managerial, and financial capacity needed to perform its intended functions. Determining the organization's eligibility on the basis of the populations of the individual local governments misstates the size of the tax base and rate base that support the organization. It also fails to consider that an organization that can meet the needs of the entire population served must necessarily be greater in size and sophistication than that of a similar organization that provides services only to a single small local government.

A common sentiment among commenters was a conviction that EPA should maintain the policy's considerable flexibility. Commenters thought it important that the policy establish outer bounds within which States have latitude to design a comprehensive environmental compliance assistance program tailored to the particular needs of their small local governments. In many respects, the proposed revised policy provides States more flexibility than the 1995 policy. Local governments with populations of up to 3,300 are defined as "small" and receive all of the policy's benefits without first demonstrating need. Local governments with populations between 3,301 and 10,000 can also receive all of the policy's benefits if a State's consistently applied capacity test determines that the local government lacks the technical, managerial, or financial capacity to achieve compliance without the State's assistance. In addition, these larger communities can participate on a "fenceline" basis to reduce the resource demands on both the State and the local government. The proposed revisions also increase flexibility by providing the EMS option to States and small local governments that wish to pursue this alternative. One way in which the proposed revision may arguably have decreased the States' flexibility under the policy is in replacing the former term "small community" with the term "local government".

## IX. Possible EPA Implementation of a Federal Policy Similar to the *Small Local Governments Compliance Assistance Policy*

EPA takes the lead in providing compliance assistance to small local governments and initiating enforcement responses to their violations when the Agency is responsible for directly implementing a program, where EPA has primary enforcement authority within a jurisdiction, or where EPA takes action after consulting with the primacy or authorized State. EPA could develop a Federal policy similar to the *Small Local Governments Compliance Assistance Policy* as a tool EPA Regions could elect to use, at their discretion, in appropriate circumstances. If EPA were to adopt a similar policy, the Agency would reserve the right to determine the circumstances in which such a Federal policy would apply to the violations of small local governments. For example, EPA could choose to implement the policy only when, consistent with the Agency's priority-setting process, the Agency decides to deploy compliance assurance and enforcement resources to address small local government noncompliance that is a significant contributor to impaired waters, as part of a geographic initiative, or as part of an integrated strategy. Although EPA did not raise this issue in its January 23, 2002, **Federal Register** notice, internal Agency discussions identified the issue as one for possible clarification. EPA now seeks comment on whether and how the Agency could implement a Federal policy similar to the proposed *Small Local Governments Compliance Assistance Policy* in its compliance assistance and enforcement activities.

Dated: September 23, 2003.

**Michael M. Stahl,**

*Director, Office of Compliance.*

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## Small Local Governments Compliance Assistance Policy

### *A. Introduction and Purpose*

The *Small Local Governments Compliance Assistance Policy* is intended to promote comprehensive environmental compliance among small local governments by providing incentives for them to make use of State compliance assistance programs, environmental audits, environmental management systems (EMS), or to participate in any activities that may increase small local governments' understanding of their environmental requirements and how to comply with those requirements. The policy accomplishes this by authorizing States[1] to reduce or waive, in certain circumstances, the civil penalty EPA guidance would normally require States to assess for the small local government's environmental violations, and to use enforcement discretion to provide compliance incentives for small local governments. EPA acknowledges that States and small local governments can realize environmental benefits by negotiating, entering into, and implementing enforceable compliance agreements and schedules that require local governments to correct all of their environmental violations expeditiously while allowing the local government to prioritize among competing environmental mandates on the basis of comparative risk.[2] Small local governments can also realize environmental benefits by entering into enforceable agreements to develop and implement an EMS to manage the environmental aspects of their operations. States may provide small local governments an incentive to request compliance assistance by waiving part or all of the normal penalty for a small local government's violations if the criteria of this policy have been met. If a State acts in accordance with this policy and addresses small local government environmental noncompliance with compliance assistance in a way that results in the small local government making reasonable progress toward compliance, EPA generally will not pursue a separate Federal civil administrative or judicial action for additional penalties or additional injunctive relief.

This policy does not apply to any criminal conduct by small local governments or their employees.

### *B. Background*

This policy implements section 223 of the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996.

### *C. Who Is Eligible for Compliance Assistance Under This Policy?*

This policy applies to State comprehensive environmental compliance assistance activity related to facilities owned and operated by small local governments. A local government is defined as an organized unit of local government, authorized in a State's constitution and statutes, and established to provide general government to a county, municipality, city, town, township, village, or borough. A small local government is a local government that provides public services to 3,300 or fewer permanent residents. A local government that supplies public services to between 3,301 and 10,000 permanent residents can also qualify for treatment as a small local government if the State determines, in accordance with a capacity test (as described below), that the technical, managerial, and financial capacity of the local government is so limited that the local government is unlikely to achieve and sustain comprehensive environmental compliance without the State's assistance.

This policy supersedes the previous version of the policy titled the *Policy on Flexible State Enforcement Responses to Small Community Violations,* which became effective on November 25, 1995. To the extent this policy may differ from the terms of applicable enforcement response policies (including penalty policies) under media-specific programs, this document supersedes those policies.

### *D. How Can a Small Local Government Qualify for Penalty Reduction?*

This policy seeks to encourage small local governments to achieve sustained comprehensive environmental compliance in one of two ways. A small local government can work with the State to identify all of the local government's environmental noncompliance and then enter into a written and enforceable agreement establishing a schedule to correct all of its violations in order of risk-based priority. Alternatively, a small local government can enter into a written and enforceable agreement establishing a schedule to: 1. Correct, as expeditiously as practicable, all violations discovered by the State during an inspection of some subset of the local government's operations in order of risk-based priority; *and* 2. develop and implement an EMS for all of its governmental operations. EPA's deference to such an exercise of a State's enforcement discretion in response to a small local government's violations will be based on an assessment of the adequacy of the process the State establishes and follows in:

- Responding expeditiously to a small local government's request for compliance assistance;
- Determining which local governments with between 3,301 and 10,000 residents qualify for treatment as small local governments;
- Assessing the small local government's good faith and compliance status;
- Establishing priorities for addressing noncompliance; and
- Ensuring either prompt correction of all environmental violations discovered during the State's comprehensive environmental compliance evaluation of all the local government's operations, or prompt correction of all violations discovered during a State inspection of some subset of the local government's operations and prompt development and implementation of an EMS for all of its governmental operations.

A State must document all findings and activities that are necessary to show adherence to the terms of this policy. If the small local government commits to correct its separate violations in order of risk-based priority, the State's records must discuss the rationale for establishing priorities among the violations to be addressed and explain why the compliance agreement and schedule represents the shortest practicable time schedule feasible under the circumstances.

EPA will defer more readily to a State that has previously submitted to the Agency a description of its comprehensive compliance assistance program for small local governments, thereby allowing EPA to familiarize itself with the adequacy of the State's processes.

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[1] This policy will also apply to the actions of territories and to the actions of Native American Tribes where conditions have been met for EPA to treat the Tribe as a State.

[2] As described below, EPA does not intend that States and small local governments must prepare a formal comparative risk assessment as part of the small local government environmental compliance assistance process. Information avialable from EPA's National Center for Ecological Assessment at *www.epa.gov/ncea/ecologic.htm* will help States and local governments identify which local environmental problems pose the greatest risk to human health, ecosystem health, and quality of life.

### *E. How Should a State Select Participating Local Governments?*

EPA intends this policy to apply only to small local governments unable to satisfy all applicable environmental mandates without assistance from the State. For the purposes of this policy, local governments with 3,300 or fewer permanent residents are assumed to need the State's compliance assistance. Local governments whose permanent residents number between 3,301 and 10,000 can qualify to receive the benefits of the policy if the State determines that the technical, managerial, and financial capacity of the local government is so limited that the local government is unlikely to achieve and sustain comprehensive environmental compliance without the State's assistance. To make this determination, a state must apply a capacity test that measures such indicators as:

- The local government finds it difficult to comply with routine reporting requirements (*e.g.*, the local government has submitted less than 90 percent of the required drinking water monitoring reports in the past year);
- The local government has no operation and maintenance plan for its utility operations, or has an operation and maintenance plan that is not routinely followed (*e.g.*, maintenance logs are not regularly updated, are incomplete, or are not kept at all);
- The required drinking water sanitary survey has not been scheduled, or the sanitary survey has been performed, but the local government has not addressed all identified significant deficiencies;
- Utility operators are untrained or uncertified, or staffing of certified operators is inadequate to meet the local government's needs;
- Utility systems were installed without State oversight and approval, or began operating without receiving final operational approval from the State;
- Rights essential to the provision of public services are not clearly established and documented by contract (*e.g.*, the local government has no contract with the source from which it obtains its drinking water, or for the disposal of its solid waste);
- The local government does not have current and approved by-laws, ordinances, or tariffs in place with respect to each of its public utility operations;
- There is no formal organizational structure for operation and maintenance of the local government's public utilities clearly identifying the owner, the operator, and the staff and their responsibilities;
- Either there are no written job descriptions clearly defining the responsibilities of public utility staff, or the staff is unfamiliar with such documents;
- Staff is untrained or inadequately trained;
- Written policies covering personnel, customer service, and risk management either do not exist or are routinely ignored;
- Lines of communication between public utility staff and agencies or private sector staff that can provide assistance are inadequate or nonexistent;
- The local government does not follow standard accounting principles in the funding of its public utilities, and either has not been audited or was issued an adverse opinion following an audit;
- The local government either does not have an annual budget for operation of a public utility or has an annual budget that is inadequate to meet the demands of operation, maintenance, and environmental compliance;
- Public utility rates do not include all users or have not been recently reviewed to examine operational sustainability and viability;
- A significant percentage of accounts (either payable or receivable) are chronically delinquent;
- Periodic budget reports and balance sheets are either not produced, or, if produced, have not been approved;
- The local government's tax base is inadequate to support needed environmental expenditures; or
- There are demographic factors that present quantifiable negative impacts on the local government's capacity.

The State must document the capacity test it applied and all findings it made to support its determination of incapacity, and maintain that documentation in records accessible for EPA review.

EPA's evaluation of the appropriateness of a State's small local government comprehensive environmental compliance assistance program will depend in part on whether the State uses adequate measures of technical, managerial, and financial capacity to ensure that only those local governments that truly need assistance were assessed noncompliance penalties that were reduced or waived beyond the extent normally allowed by EPA enforcement policies and guidance.

Not less than quarterly, a State should provide EPA with a list of local governments participating in its small local government environmental compliance assistance program to ensure proper State and Federal coordination on enforcement activity. In addition to any records related to a finding of a local government's incapacity, a State must keep records of contacts between the State and participating local governments, results of compliance assessments, actions taken by the local government to achieve compliance, any written compliance agreements and schedules, and any assessments of a local government's adherence to the terms of its compliance agreement and schedule should be kept in the State's files accessible for review by EPA.

### *F. How Should a State Assess a Local Government's Good Faith?*

In considering whether a State has established and is following an adequate process for assessing a small local government's good faith, EPA generally will look at such factors as the participating local government's candor in contacts with State regulators and the local government's efforts to comply with applicable environmental requirements. Measures of a small local government's good faith include:

- Prompt self-disclosure of known violations;
- Attempts to comply or a request for compliance assistance prior to the initiation of an enforcement response;
- Willingness to participate in a comprehensive compliance evaluation;
- Prompt correction of known violations;
- Willingness to remediate harm to public health, welfare, or the environment;
- Readiness to enter into a written and enforceable compliance agreement establishing a schedule to correct all of its violations as expeditiously as practicable in order of risk-based priority, or to enter into a written and enforceable agreement establishing a schedule to correct all *known* violations as expeditiously as practicable in order of risk-based priority and to develop and implement an EMS for all of its governmental operations; and
- Adherence to the terms of the agreement and to the schedule.

### *G. What Is the Scope of Compliance Evaluation and Assistance a State Should Offer?*

EPA intends this policy to encourage States to offer local governments comprehensive compliance assistance. Accordingly, a State's actions under the policy should promote an evaluation, performed by qualified personnel, of the small local government's compliance status with respect to all applicable environmental requirements. EPA acknowledges that a comprehensive evaluation becomes more difficult to perform and requires more State resources as the size of the local government increases and as the local government offers more services to its residents. For this reason, the policy will allow "fenceline" projects at local governments with between 3,301 and 10,000 permanent residents if the State applies a capacity test consistent with the criteria described in part E of this policy and determines that the technical, managerial, and financial capacity of the local government is so limited that the local government is unlikely to achieve and sustain comprehensive environmental compliance without the State's assistance. A fenceline project is one that limits its scope to those activities conducted within a subset of the local government's operations.

A State's assessment of a local government's compliance status should include:

- A comprehensive evaluation of compliance with every applicable environmental requirement at all of the small local government's municipal operations (*see, Profile of Local Government Operations,* EPA 310–R–001, *www.epa.gov/compliance/resources/publications/assistance/sectors/notebooks/government.html;* or the Local Government Environmental Assistance Network, *www.lgean.org*) or, in the case of local governments with between 3,301 and 10,000 permanent residents that qualifies for participation after application of the State's capacity test, a comprehensive evaluation of compliance with every applicable environmental requirement within the fenceline of a defined subset of the local government's operations;
- The local government's current and anticipated future noncompliance with those requirements;
- The comparative risk to public health, welfare, or the environment of each current and anticipated future noncompliance; and
- The local government's compliance options.

In addition, EPA recommends that the process developed by the State include consideration of regionalization and restructuring as compliance alternatives. In the case of fenceline projects, the State should consider if compliance benefits can be achieved by consolidating staff and processes of the designated operations with other governmental operations within the local government. The State's process should also include consideration of the impact of promulgated regulations scheduled to become effective in the future.

This policy is also intended to encourage States to provide participating local governments incentives to develop and implement environmental management systems (EMSs). The EMS aspects of this policy are discussed in part J, below.

### *H. How Should a Small Local Government Set Priorities for Addressing Violations?*

States seeking EPA's deference should require small local governments to correct any identified violations of environmental regulations as soon as possible, taking into consideration the local government's technical, managerial, and financial capacities, and the State's ability to assist in strengthening those capacities. A small local government should address all of its violations in order of risk-based priority.[3] While information regarding assessment of environmental risks is available from EPA's National Center for Ecological Assessment at *www.epa.gov/ncea/ecologic.htm,* the Agency expects that the comparative risk between violations will, in most instances, be apparent. For example, violations presenting a risk of ingestion or inhalation of, or contact exposure to, acute toxins must be a local government's highest priority for remediation and correction. Any identified violation or circumstance that may present an imminent and substantial endangerment to, has caused or is causing actual serious harm to, or presents a serious threat to, public health, welfare, or the environment is to be addressed immediately in a manner that abates the endangerment or harm and reduces the threat. Activities necessary to abate the endangerment or harm and reduce the threat posed by such violations or circumstances are not to be delayed while the State and small local government establish and implement the process for assigning priorities for correcting other violations.

### *I. How Can the State Ensure Prompt Correction of Violations?*

If the small local government cannot correct all of its violations within 180 days of the State's commencement of compliance assistance to the local government, the State and the local government should, within 180 days of the State's commencement of compliance assistance to the local government, enter into and begin implementing a written and enforceable compliance agreement incorporating a schedule[4] that:

- Establishes a specified period for correcting all outstanding violations in order of risk-based priority;[5]
- Incorporates interim milestones that demonstrate reasonable progress toward compliance;
- Contains provisions to ensure continued compliance with all environmental requirements with which the local government is in compliance at the time the agreement is entered; and
- Incorporates provisions, where they would be applicable to the small local government, to ensure future compliance with any additional already promulgated environmental requirements that will become effective after the agreement is signed.

Consultation with EPA during the drafting of a compliance agreement and schedule and the forwarding of final compliance agreements and schedules to EPA are recommended to ensure appropriate coordination between the State and EPA.

### *J. What Is Required of a Small Local Government That Elects To Address Its Noncompliance by Developing and Implementing an Environmental Management System?*

Small local governments that learn of environmental violations as a result of the state's inspection of some subset of the small local government's operations may address their noncompliance by entering into a written and enforceable agreement establishing a schedule to: (1) Correct the violations discovered by the state; *and* (2) develop and implement an environmental management system for all of its governmental operations. Local governments with between 3,301 and 10,000 permanent residents that the State has determined eligible to participate under the policy on a fenceline basis, may develop and implement an EMS for operations within the designated fenceline. The local government must enter into such an agreement with the State not later than 180 days after the State notifies the local government of the violations discovered during the inspection. The local government must either correct those violations within the same 180 days or include, as part of the EMS agreement it enters into with the State, a written and enforceable agreement that establishes a schedule to correct the violations in accordance with the usual terms of this policy.

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[3] EPA does not intend that local governments should be permitted to delay addressing low-risk violations that can be easily and quickly corrected without impeding progress on long-term compliance efforts undertaken to address high-risk violations.

[4] Neither a State nor a local government may unilaterally alter or supersede a local government's obligations under existing Federal administrative orders or federal judicial consent decrees.

[5] States may allow weighing of unique local concerns and characteristics, but the process should be sufficiently standardized and objective that an impartial third person using the same process and the same facts would not reach significantly different results. Public notification and public participation are an importation part of the priority setting process.

As part of its schedule, the EMS agreement will include a deadline, not later than one year after entry into the agreement, for the local government's submission to the State of its EMS manual (*see* element 9, below), and a commitment to ensure the performance of an EMS audit not less than one year and not more than three years after the submission of its EMS manual (*see* element 16, below). The EMS manual must contain policies, procedures, and standards explaining and showing how the small local government's EMS conforms to and will accomplish these essential elements of an EMS:

1. *Environmental policy*—The local government must develop a statement of its commitment to environmental excellence and use this statement as a framework for planning and action.

2. *Environmental aspects*—The local government must identify which of its activities, products, and services have impacts on the environment and what those impacts are.

3. *Legal and other requirements*—The local government must identify the environmental laws and regulations that apply to its operations.

4. *Objectives and targets*—The local government must establish goals for its operations that are consistent with its environmental policy, that will eliminate the gap between the local government's current procedures and an accepted EMS framework, and that will reduce the environmental impacts of its operations.

5. *Environmental management program*—The local government must plan specific actions that will achieve its objectives and targets.

6. *Structure and responsibility*—The local government will establish roles and responsibilities for staff and management to implement the environmental management system, and provide adequate resources.

7. *Training, awareness and competence*—The local government will have a plan to ensure its employees are trained and capable of carrying out their environmental responsibilities.

8. *Communication*—The local government will establish a process for internal and external communications on environmental management issues.

9. *EMS documentation*—The local government will maintain information both on its environmental management system and necessary for its operation. As part of this effort, the local government prepare an EMS manual that contains the policies, procedures, and standards explaining and showing how the local government's EMS conforms to and will accomplish the essential EMS elements. In accordance with the schedule established by its EMS agreement, and in no event later than one year after entering into the EMS agreement, the local government will submit a copy of its EMS manual to the State as proof that the local government has developed an EMS.

10. *Document control*—The local government will establish a system to ensure effective management of documents related to the EMS and to environmental activities.

11. *Operational control*—The local government will establish a system to identify, plan, and manage its operations consistent with its objectives and targets.

12. *Emergency preparedness and response*—The local government will identify potential emergencies with environmental impacts and develop procedures for preventing them and for responding to them if unprevented.

13. *Monitoring and measurement*—The local government will monitor key EMS activities and track performance. One periodic measure will be an assessment of compliance with legal requirements.

14. *Nonconformance and corrective and preventative action*—The local government will identify and correct deviations from its EMS, and take actions to prevent their recurrence.

15. *Records*—The local government will maintain and manage records of EMS performance.

16. *EMS audit*—Not less than one year, and not more than three years after the local government submits its EMS manual to the State, the State, or an independent third approved by the State, will conduct an EMS audit to confirm that a local government has been and is continuing to implement its EMS.

17. *Management review*—The local government must provide for periodic review of its EMS by local government management, with the goal of continual improvement of both the system and environmental performance.

A fuller explanation of these 17 essential elements and of the EMS process can be found in *Environmental Management Systems: An Implementation Guide for Small and Medium-Sized Organizations* (EPA Document Number EPA 832–B–01–001; available electronically at *www.epa.gov/OW-OWM.html/iso14001/ems2001final.pdf*). Additional guidance and information regarding how to obtain assistance from a local EMS resource center can be found at *www.peercenter.net*.

During the development and implementation of its EMS, the small local government may discover violations that were unknown to it at the time of its entry into the EMS agreement with the State. Such violations must be disclosed to the State as required by regulations or in accordance with EPA self-disclosure policies. The small local government and the State may agree to modify the terms of the terms of the agreement and schedule to incorporate correction of these violations. The small local government and the State may also to consider discovery of additional violations a separate event that can be resolved in any manner consistent with the terms of this policy and EPA enforcement policies and guidelines. An assessment of whether or not the local government has corrected all discovered violations as expeditiously as practicable in order of risk-based priority should be part of the EMS audit.

### *K. What Are the Limits on EPA Deference?*

EPA reserves all of its enforcement authorities. EPA will generally defer to a State's exercise of its enforcement discretion in accordance with this policy, except that EPA may require immediate with respect to any violation or circumstance that may present an imminent and substantial endangerment to, has caused or is causing actual serious harm to, or presents a serious threat to, public health, welfare, or the environment.[6]

The *Small Local Governments Compliance Assistance Policy* does not apply if, in EPA's judgment:

- A State's small local government environmental compliance assistance program process fails to satisfy the adequacy criteria stated above; or
- A State's application of its small local government environmental compliance assistance program process fails, in a specific case, to provide adequate protection to public health and the environment because it neither

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[6] EPA will regard as a matter of national significance any violation or circumstance that may present an imminent and substantial endangerment to, has caused or is causing actual serious harm to, or presents a serious threat to, public health, welfare, or the environment that is left unaddressed by a small local government participating in a State environmental compliance assistance program. Such circumstances require consultation with or the concurrence of, as appropriate, the Assistant Administrator for Enforcement and Compliance Assurance or his or her delegatee before initiation of an EPA enforcement response.

requires nor results in reasonable progress toward either achievement of environmental compliance or implementation of an adequate EMS by a date certain.

Where EPA determines that this policy does not apply, and where EPA elects to exercise its enforcement discretion, other EPA enforcement policies remain applicable. The State's and EPA's options in these circumstances include discretion to take or not take formal enforcement action in light of factual, equitable, or local government capacity considerations with respect to violations that had been identified during compliance assistance and were not corrected. Neither the State's actions in providing, nor in failing to provide, compliance assistance shall constitute a legal defense in any enforcement action. However, a local government's good faith efforts to correct violations during compliance assistance may be considered a mitigating factor in determining the appropriate enforcement response or penalty in subsequent enforcement actions.

Nothing in this policy is intended to release a State from any obligations to supply EPA with required routinely collected and reported information. As described above, States should provide EPA with lists of participating small local governments and copies of final compliance agreements and schedules. States should also give EPA immediate notice upon discovery of a violation or circumstance that may present an imminent and substantial endangerment to, has caused or is causing actual serious harm to, or presents serious threats to, public health, welfare, or the environment.

This policy has no effect on the existing authority of citizens to initiate a legal action against a local government alleging environmental violations.

This policy sets forth factors for consideration that will guide the Agency in its exercise of enforcement discretion. It states the Agency's views as to how the Agency intends to allocate and structure enforcement resources. The policy is not final agency action, and is intended as guidance only. This policy is not intended for use in pleading, or at hearing or trial. It does not create any rights, duties, obligations, or defenses, implied or otherwise, in any third parties.

[FR Doc. 03-25137 Filed 10-2-03; 8:45 am]

**BILLING CODE 6560-50-P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL-7568-4]**

## Proposed Administrative Order on Consent Issued Pursuant to Sections 7003(a) and 3013(a) of the Resource Conservation and Recovery Act, In Re: the Former Medallic Art Facility, Danbury, CT

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed administrative settlement and request for public comment.

**SUMMARY:** In accordance with Section 7003(d) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901-6987, notice is hereby given of a proposed administrative order on consent for remediation of the former Medallic Art facility located in Danbury, Connecticut. The settling party is the Fairway Asset Management II, L.L.C. (Respondent), 52 Deer Hill Avenue, P.O. Box 1242 Danbury, CT 06813. The U.S. Environmental Protection Agency—Region I (EPA) is proposing to enter into this administrative order on consent to address claims under the Resource Conservation and Recovery Act ("RCRA"),42 U.S.C. 6901 *et. seq.*, as amended by the Hazardous and Solid Waste Amendments of 1984. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. This settlement, embodied in a RCRA Administrative Order on Consent ("AOC"), requires Respondent to adequately monitor contaminated groundwater on-site; propose an interim remedy to control or abate the spread of contamination; close a contaminated impoundment on-site; implement a groundwater recovery system; and monitor its effectiveness. The proposed order will be issued pursuant to Sections 7003(a) and 3013(a) of the Resource Conservation and Recovery Act, 42 U.S.C. 6973(a) and 6934(a).

For thirty (30) days following the date of publication of this notice, the EPA will receive written comments relating to the settlement. The EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

**DATES:** Comments must be submitted on or before November 3, 2003.

**ADDRESSES:** The proposed settlement and administrative record is available for public inspection at the Danbury Public Library, 170 Main Street, Danbury, CT 06810, (203) 797-4505; and at the EPA Records Center, 1 Congress Street, Boston, MA 02114-2023. Please call the EPA Records Center at (617) 918-1440 to schedule an appointment. A copy of the proposed settlement may be obtained from Kristin Balzano, U.S. Environmental Protection Agency, Region I, 1 Congress Street, Suite 1100 (SES), Boston, MA 02114-2023 (Telephone Number: 617-918-1772). Comments should reference the former Medallic Art facility in Danbury, Connecticut, EPA Docket No. RCRA 01-2002-0030 and should be addressed to Kristin Balzano, U.S. Environmental Protection Agency, Region I, 1 Congress Street, Suite 1100 (SES), Boston, MA 02114-2023.

The EPA's response to any comments received will be available for public inspection at the EPA Records Center, 1 Congress Street, Boston, MA 02114-2023, Telephone Number: (617) 918-1440.

**FOR FURTHER INFORMATION CONTACT:** Joshua Secunda, U.S. Environmental Protection Agency, Region I, 1 Congress Street, Suite 1100 (SEL), Boston, MA 02114-2023, Telephone Number: (617) 918-1736.

**SUPPLEMENTARY INFORMATION:** In accordance with the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 *et seq.*, notice is hereby given of a proposed administrative order on consent pursuant to Sections 7003(a) and 3013(a) of RCRA, 42 U.S.C. 6973(a) and 6934(a) concerning the former Medallic Art facility in Danbury, CT. The settlement was approved by EPA Region I, subject to review by the public pursuant to this Notice. EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this Notice.

Dated: September 23, 2003.

**Susan Studlien,**

*Acting Director, Office of Site Remediation and Restoration, EPA—Region I.*

[FR Doc. 03-25138 Filed 10-2-03; 8:45 am]

**BILLING CODE 6560-50-P**

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## FEDERAL COMMUNICATIONS COMMISSION

## Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

September 23, 2003.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other

Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 3, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0678.

*Title:* Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations.

*Form Nos:* FCC Forms 312, 312 EZ, 312–R and 312 Schedule S.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 6,274.

*Estimated Time Per Response:* 11 hours.

*Frequency of Response:* On occasion reporting requirement and third party disclosure requirement.

*Total Annual Burden:* 65,120 hours.

*Total Annual Cost:* $12,043,000.

*Needs and Uses:* The Commission adopted the Schedule S, a standardized form for space station license applications, and Form 312–EZ for earth station license applications. The implementation of the decisions in the Schedule S rulemaking will enable the Commission to review space station and earth station applications more quickly than is now possible, and therefore, increase speed of service to the public. In particular, the implementation of mandatory electronic filing of most satellite and earth station applications will result in a reduction of burden hours per submission for the applicants.

*OMB Control No.:* 3060–0681.

*Title:* Toll-Free Service Access Codes, CC Docket No. 95–155, 47 CFR part 52, subpart D, sections 52.101–52.111.

*Form No:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit, not-for-profit institutions.

*Number of Respondents:* 300.

*Estimated Time Per Response:* 15 hours.

*Frequency of Response:* On occasion reporting requirement and third party disclosure requirement.

*Total Annual Burden:* 4,500 hours.

*Total Annual Cost:* N/A.

*Needs and Uses:* Responsible Organizations (RespOrgs) who wish to make a specific toll free number unavailable must submit written request to the toll free database administrator, Database Services Management, Inc. (DSMI). This requirement will hold those RespOrgs more accountable and will decrease abuses of lag time in the process. It will prevent numbers from being held in unavailable status without demonstrated reasons, and will make more numbers available for subscribers who need and want them. If DSMI is uncertain whether a number should be placed in unavailable status, it should seek guidance from the Commission's Wireline Competition Bureau.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03–25036 Filed 10–2–03; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

September 23, 2003.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 3, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0723.

*Title:* Public Disclosure of Network Information by Bell Operating Companies (BOCs).

*Form No:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities

*Number of Respondents:* 7.

*Estimated Time Per Response:* 50 hours.

*Frequency of Response:* On occasion reporting requirement and third party disclosure requirement.

*Total Annual Burden:* 350 hours.

*Total Annual Cost:* N/A.

*Needs and Uses*: Bell Operating Companies (BOCs) must make public disclosure of network information. This will prevent them from designing new network services or changing network technical specifications to the advantage of their own payphones. The information required by the BOCs must be provided to third parties. All of the requirements would be used to ensure the BOCs comply with their obligations under the 1996 Act.

*OMB Control No.:* 3060–0775.

*Title*: Separate Affiliate Requirement for Independent Local Exchange Carrier (LEC) Provision of International, Interexchange Services (47 CFR 64.1901–64.1903).

*Form No:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities

*Number of Respondents*: 10.

*Estimated Time Per Response:* 6,056 hours.

*Frequency of Response:* Recordkeeping requirement.

*Total Annual Burden:* 60,563 hours.

*Total Annual Cost:* $1,003,000.

*Needs and Uses*: The Commission imposes this recordkeeping requirement to ensure that independent LECs providing international, interexchange services through a separate affiliate are in compliance with the Communications Act of 1934, as amended, and with Commission policies and regulations. The Commission is submitting this information collection as an extension (no change) for the full three year OMB clearance.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03–25037 Filed 10–2–03; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**AGENCY:** Federal Election Commission

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Thursday, October 2, 2003, 10 a.m., meeting open to the public. This meeting was cancelled.

**DATE AND TIME:** Wednesday, October 8, 2003 at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:** Compliance matters pursuant to 2 U.S.C. 437g. Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

**DATE AND TIME:** Thursday, October 9, 2003 at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC. (Ninth Floor).

**STATUS:** This meeting will be open to the public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes.

Draft Advisory Opinion 2003–23: Women Engaged in Leadership, Education, and Action in Democracy ("WE LEAD") by counsel, Joseph E. Sandler and Neil P. Reiff.

Draft Advisory Opinion 2003–24: National Center for Tobacco Free Kids ("NCTFK") by counsel, Michael B. Trister.

Routine Administrative Matters.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

**Mary W. Dove,**

*Secretary of the Commission.*

[FR Doc. 03–25247 Filed 10–1–03; 11:16 am]

BILLING CODE 6715–01–M

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## FEDERAL HOUSING FINANCE BOARD

### Sunshine Act Meeting Notice; Announcing a Partially Open Meeting of the Board of Directors

**TIME AND DATE:** The open portion of the meeting of the Board of Directors is scheduled to begin at 10 a.m. on Wednesday, October 8, 2003. The closed portion of the meeting will follow immediately the open portion of the meeting.

**PLACE:** Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

**STATUS:** The first portion of the meeting will be open to the public. The final portion of the meeting will be closed to the public.

**MATTERS TO BE CONSIDERED AT THE OPEN PORTION OF MEETING:**

*Appointment of Two Members of the Financing Corporation Directorate.* Section 21(b) of the Federal Home Loan Bank Act (12 U.S.C. 1441(b)) requires the agency to select two Federal Home Loan Bank presidents to serve as members of the Financing Corporation (FICO) Directorate.

*Appointment of Director—Federal Home Loan Bank of Indianapolis.* Section 7 of the Federal Home Loan Bank Act (12 U.S.C. 1427) requires the agency to appoint public interest directors to the boards of directors of the Federal Home Loan Banks.

*Final Rule Regarding the Privacy and Freedom of Information Acts.* Consideration of a final rule adopting the interim final rule approved in June 2003 without substantive change. *See* 68 FR 39810 (July 3, 2003). The revised Privacy Act regulation is written in a "user-friendly" format, reflects a reassignment of responsibility and authority for running the agency's Privacy Act program to the Office of General Counsel, and amends the Freedom of Information Act fee schedule to take into account increased salary and operational costs.

**MATTERS TO BE CONSIDERED AT THE CLOSED PORTION OF MEETING:** Periodic Update of Examination Program Development and Supervisory Findings.

**FOR FURTHER INFORMATION CONTACT:** Mary Gottlieb, Paralegal Specialist, Office of General Counsel, by telephone at 202/408–2826 or by electronic mail at gottliebm@fhfb.gov.

Dated: September 30, 2003.

By the Federal Housing Finance Board.

**Arnold Intrater,**

*General Counsel.*

[FR Doc. 03–25218 Filed 10–1–03; 9:24 am]

BILLING CODE 6725–01–P

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## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 17, 2003.

**A. Federal Reserve Bank of Kansas City** (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. *James C. Lewien*, Centennial, Colorado; as co-trustee of the Kenneth J. Freund Irrevocable Trust No. 2, to retain control of Commerce Bankshares, Inc., Aurora, Colorado, and thereby indirectly acquire Commerce Bank, Aurora, Colorado.

Board of Governors of the Federal Reserve System, September 29, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–25078 Filed 10–2–03; 8:45 am]

**BILLING CODE 6210–01–S**

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## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 28, 2003.

**A. Federal Reserve Bank of Cleveland** (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. *S & T Bancorp, Inc.*, Indiana, Pennsylvania; to acquire up to 9.9 percent of the outstanding voting shares of IBT Bancorp, Inc., Irwin, Pennsylvania, and thereby indirectly acquire Irwin Bank & Trust Co., Irwin, Pennsylvania.

2. *Town Square Financial Corporation*, Ashland, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Town Square Bank, Ashland, Kentucky.

Board of Governors of the Federal Reserve System, September 29, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–25079 Filed 10–2–03; 8:45 am]

**BILLING CODE 6210–01–S**

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## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 30, 2003.

**A. Federal Reserve Bank of Atlanta** (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. *Community Bank of Georgia, Inc.*, Baxley, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank of Georgia, Baxley, Georgia (in organization).

**B. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. *Citizens Bancshares of Sparta, Inc.*, Sparta, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens Bank of Sparta, Sparta, Missouri.

Board of Governors of the Federal Reserve System, September 30, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–25190 Filed 10–2–03; 8:45 am]

**BILLING CODE 6210–01–S**

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## FEDERAL RESERVE SYSTEM

### Consumer Advisory Council

**ACTION:** Notice of Meeting of Consumer Advisory Council.

The Consumer Advisory Council will meet on Thursday, October 23, 2003. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, D.C., in Dining Room E on the Terrace level of the Martin Building. Anyone planning to attend the meeting should, for security purposes, register no later than Tuesday, October 21, by completing the form found on-line at: *https://www.federalreserve.gov/secure/forms/cacregistration.cfm*.

Additionally, attendees must present photo identification to enter the building.

The meeting will begin at 9:00 a.m. and is expected to conclude at 1:00 p.m. The Martin Building is located on C Street, NW, between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under various consumer financial services laws and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

**Payroll Cards**: Discussion of whether there any requirements of the Electronic Fund Transfer Act, which is implemented by Regulation E, that should not apply to prepaid payroll cards.

**Funding and Long–term Sustainability of Non–profit Organizations**: Discussion of issues related to long–term sustainability and innovative programs to counter declines in operating income.

**Convenience Checks Issued in Connection with Credit Cards:** Discussion of whether Truth in Lending Act provisions for credit cards should apply and whether the disclosures provided with convenience checks are adequate.

**Committee Reports:** Council committees will report on their work.

Other matters initiated by Council members also may be discussed.

Persons wishing to submit views to the Council on any of the above topics may do so by sending written statements to Ann Bistay, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Information about this meeting may be obtained from Ms. Bistay, 202–452–6470.

Board of Governors of the Federal Reserve System, September 30, 2003.

**Jennifer J. Johnson**

*Secretary of the Board*

[FR Doc. 03–25191 Filed 10–2–03; 8:45 am]

**BILLING CODE 6210–01–S**

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## GENERAL SERVICES ADMINISTRATION

**[OMB Control No. 3090–0221]**

### GSA Board of Contract Appeals Rules Procedure

**AGENCY:** GSA Board of Contract Appeals, GSA.

**ACTION:** Notice of request for comments regarding a renewal to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding the GSA Board of Contract Appeals (GSBCA) Rules Procedures.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

**DATES:** Submit comments on or before December 2, 2003.

**FOR FURTHER INFORMATION CONTACT:** Margaret Pfunder, Chief Counsel, GSA Board of Contract Appeals, Room 7022, 1800 F Street, NW., Washington, DC 20405 or telephone (202) 501–0272.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat, General Services Administration (MVA), Room 4035, 1800 F Street, NW., Washington, DC 20405.

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

The GSBCA requires the information collected in order to conduct proceedings in contract appeals and petitions, and cost applications. Parties include those persons or entities filing appeals, petitions, cost applications, and government agencies.

### B. Annual Reporting Burden

*Respondents: 55*
*Responses Per Respondent: 1*
*Hours Per Response: .117*
*Total Burden Hours: 6.4*

### Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–0221, GSA Board of Contract Appeals Rules Procedure, in all correspondence.

Dated: September 26, 2003.

**Michael W. Carleton,**

*Chief Information Officer.*

[FR Doc. 03–25097 Filed 10–2–03; 8:45 am]

**BILLING CODE 6820–AL–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–74–03]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

*Proposed Project:* International Performance Standards Project—New—Public Health Practice Program Office (PHPPO), Centers for Disease Control and Prevention (CDC).

The Centers for Disease Control and Prevention (CDC) Public Health Practice Program Office (PHPPO), is proposing to implement a required data collection to:

a. Assess public health preparedness of countries to respond to a public health threat or emergency.

b. Assess progress of countries towards (1) identifying any gaps that need to be strengthened in their public health systems, (2) achieving the critical and enhanced capacities of their public health systems, and (3) setting optimal standards for system performance that will enhance the delivery of public health services.

c. Identify the focus of future proposed work plans, as well as help countries develop a public health research agenda.

d. Provide a consistent framework for each country to characterize the status of its public health infrastructure.

This assessment will use the International Instrument for performance measurement of Essential Public Health Functions. This instrument is used for rapid assessment of capacity at the level of the National Health Authority of countries to respond to public health threats and emergencies. This instrument focuses on the six areas of fiscal year 2002 Supplemental Funds for Public Health Preparedness and Response for Bioterrorism (Announcement Number 99051), as the framework for data collection. The six focus areas are:

- Preparedness Planning and Readiness Assessment
- Surveillance and Epidemiology Capacity
- Laboratory Capacity—Biological Agents
- Health Alert Network/ Communication and Information Technology
- Risk Communication and Health Information Dissemination (Public Information and Communication)
- Education and Training

Hard copy assessment instruments will be used in a group setting within countries to collect the data. The respondents will be individuals from all levels of the health system who are knowledgeable about the functions of their system. This process is being done in conjunction with the World Bank and the governments of the different countries who elect to undertake performance measurement of their public health systems using this methodology. The process will be funded through the Bank and the government of the countries. No Federal funds will be used in the process. It is anticipated that more than nine (9) countries may be involved. The annualized burden is estimated to be 120 hours.

| | Number of respondents | Number of responses per respondents | Avg. burden response in hrs. |
|---|---|---|---|
| Year 1 | 5 | 1 | 120 |

Dated: September 29, 2003.

**Nancy E. Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control Prevention.*

[FR Doc. 03–25083 Filed 10–2–03; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–75–03]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

*Proposed Project:* Potential Reproductive and Neurological Effects of Exposure to Acrylamide—NEW—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. Consistent with this mission, NIOSH is undertaking a study of the reproductive and neurobehavioral effects of the occupational exposure to acrylamide. Acrylamide workers and control workers (N = 100 per group) will be recruited from manufacturing, end-user and non-exposed settings. Exposure will be characterized by acrylamide hemoglobin, adduct and urinary metabolite levels, ambient area, personal air, and dermal sampling. Reproductive effects will be evaluated by examining semen quality, sperm DNA integrity, reproductive hormone levels, and prostate specific antigen (PSA) levels.

Neurobehavioral effects will be assessed using sensation-tactile, postual stability, grooved pegboard, and simple reaction time tests. Two questionnaires will be administered on one occasion. Questionnaire information will be collected concurrently to augment test interpretation, adjust for potential confounders and covariates during regression analysis, correlate specific jobs and job activities with exposure measurements, and for validation purposes. Findings from this study will clarify if the adverse reproductive effects observed in animal studies are also present in acrylamide-exposed workers, and if preclinical neurobehavioral deficits are present at acrylamide doses currently considered to be within safe limits. This study is scheduled for implementation in late 2003 and 2004. The annualized estimated burden for this data collection is 87 hours.

| Survey questionnaire | Number of respondents | Number of responses/respondent | Average burden/response (in hours) |
|---|---|---|---|
| Medical & Reproductive History Questionnaire | 100 | 1 | 13/60 |
| Occupational History Questionnaire | 100 | 1 | 34/60 |
| Non-participant Questionnaire | 250 | 1 | 2/60 |

Dated: September 29, 2003.

**Nancy E. Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control Prevention.*

[FR Doc. 03–25084 Filed 10–2–03; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–77–03]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: 2004 Methodological Study of the Youth Risk Behavior Survey (YRBS)—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

**Background**

CDC intends to conduct a methodological study of the Youth Risk Behavior Survey in the Spring of 2004 to assess the effects of setting and mode of survey administration on the reporting of health-risk behaviors among adolescents. This study will provide methodological guidance for future surveys, especially surveys of adolescents. In 2000, the Office of the Assistant Secretary for Planning and Evaluation (ASPE), Department of Health and Human Services (HHS), commissioned five expert papers written on the topic "Examining Substance Abuse Data Collection Methodologies." The papers focused on the Youth Risk Behavior Survey (YRBS), the National Survey on Drug Use and Health (NSDUH, formerly the National Household Survey on Drug Abuse, or NHSDA), and Monitoring the Future (MTF). A consensus among the authors was that disparate results across the studies are most likely a product of methodological differences across the surveys. The 2004 Methodological Study of the YRBS is designed to measure the extent to which the prevalence of health-risk behaviors among students varies by whether the survey is administered in schools versus students' homes (setting), and by whether the survey is administered using paper and pencil questionnaire booklets versus computer assisted self interviewing (mode).

Approximately 5,480 high school students will be given questionnaires in one of the four setting/mode combinations. Elucidation of the impact of these factors on prevalence will assist in reducing response effects and improving the quality of the YRBS data. The total estimated annualized burden for this data collection is 4,110 hours.

| Respondents | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|
| High school students—paper & pencil, school-based questionnaire | 1,344 | 1 | 45/60 |
| High school students—paper & pencil, home-based questionnaire | 1,344 | 1 | 45/60 |
| High school students—CASI, school based questionnaire | 1,344 | 1 | 45/60 |
| High school students—CASI, home based questionnaire | 1,344 | 1 | 45/60 |
| School administrators recruitment | 104 | 1 | 45/60 |

Dated: September 29, 2003.

**Nancy E. Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control Prevention.*

[FR Doc. 03–25085 Filed 10–2–03; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[30Day–76–03]

### Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

*Proposed Project:* WISEWOMAN Reporting System—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

**Background**

The WISEWOMAN program, which focuses on reducing cardiovascular disease risk factors among at-risk women, was in response to the "Secretary of Health and Human Services Continuous Improvement Initiative", asking for the development of programs that examine ways in which service delivery can be improved for select populations. Title XV of the Public Health Service Act, Section 1509 originally authorized the Secretary of the Department of Health and Human Services to establish up to three demonstration projects. Through appropriations language, the CDC WISEWOMAN program is now allowed to fund up to 15 projects, although current plans includes 12 demonstration projects. At full implementation, the projects are expected to screen approximately 30,000 women annually for cardiovascular disease risk factors. The program targets women already participating in the National Breast and Cervical Cancer Early Detection Program (NBCCEDP) and provides screening for select cardiovascular disease risk factors (including elevated cholesterol, hypertension, and abnormal blood glucose levels), lifestyle interventions, and medical referrals as required in an effort to improve cardiovascular health among participants.

CDC proposes to collect and analyze baseline and follow-up data (12 months post enrollment) for all participants. These data, called the minimum data elements (MDE's), includes demographic and risk factor information about women served in each program and information concerning the number and type of intervention sessions attended. The MDE data allows for an assessment of how effective WISEWOMAN is at reducing the burden of cardiovascular disease risk factors among participants. CDC also proposes to collect programmatic data for all WISEWOMAN programs. Programmatic data includes information related to grantee management, public education and outreach, professional education, service delivery, cost, and an assessment of how well each program is meeting their stated objectives.

All required data will be submitted electronically to a contractor to conduct the WISEWOMAN evaluation. MDE and cost data will be submitted twice a year, October 15 and April 15. October 15 reporting will cover all MDE's and costs for activities that took place between January 1 and June 30, and the April 15 submission will cover MDE's and costs for activities occurring between July 1 and December 31. Quarterly reports containing programmatic data will be due to RTI on January 31 (reflecting October 1–December 31 program activities), April 30 (reflecting January 1–March 31), July 31 (reflecting April 1–June 30), and October 31 (reflecting July 1–September 30). All reports will be due in a pre-determined format provided by CDC and the contractor. The contractor will provide training as requested to WISEWOMAN personnel at each location concerning data collection and submission.

All information collected as part of the WISEWOMAN evaluation will be used to assess the costs, effectiveness, and cost-effectiveness of WISEWOMAN in reducing cardiovascular disease risk factors, for obtaining more complete health data among vulnerable populations, promoting public education of disease incidence and risk-factors, improving the availability of screening and diagnostic services for under-served women, ensuring the quality of services provided to women, and developing strategies for improved interventions. Because certain demographic data are already collected as part of NBCCEDP, the additional burden on grantees will be modest. Once the infrastructure is established to capture the additional WISEWOMAN data, the response burden is expected to be reduced even further. The annualized estimated burden for this data collection is 2,160 hours.

| Form | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|
| Screening MDE report | 15 | 2 | 16 |
| Intervention MDE report | 15 | 2 | 8 |
| Cost report | 15 | 2 | 16 |
| Quarterly report | 15 | 4 | 16 |

Dated: September 29, 2003.

**Nancy E. Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.*

[FR Doc. 03–25086 Filed 10–2–03; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare and Medicaid Services

**[CMS–10000, CMS–10097, CMS–10086, CMS–10093]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Consumer Assessment of Health Plan Survey-Fee for Service (CAHPS-FFS); *Form No.:* CMS–10000 (OMB# 0938–0796); *Use:* Under the Balanced Budget Act of 1997, CMS is required to provide general and plan comparative information to beneficiaries that will help them make more informed plan choices. A CAHPS fee-for-service survey is needed to provide information comparable to those data collected from the CAHPS managed care survey; *Frequency:* Annually; *Affected Public:* Individuals or Households; *Number of Respondents:* 142,920; *Total Annual Responses:* 142,920; *Total Annual Hours:* 47,640.

2. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Medicare Contractor Provider Satisfaction Survey; *Form No.:* CMS–10097 (OMB# 0938–NEW); *Use:* CMS needs standard data about Medicare provider's satisfaction with their Medicare contractors, who are charged with all Medicare claims processing and related activities on behalf of the Agency. Respondents will be staff representatives of hospitals, skilled nursing facilities, rural health clinics, home health agencies, end-stage renal disease clinics, physicians, non-physicians, durable medical equipment suppliers, laboratories and ambulance providers. The Survey will be used as a mechanism for evaluating and improving Medicare providers' satisfaction with their Medicare contractors. The results will provide CMS with a comprehensive review of contractor-provider business relations from the perspective of the 'customer' or Provider. The information will help the Agency appropriately address provider concerns about Medicare Contractors' performance, aid in business/contracting decisions, evaluate contractor performance and assist or guide contractors in identifying/implementing 'best practices' or quality improvement initiatives.; *Frequency:* On Occasion; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 6,052; *Total Annual Responses:* 6,052; *Total Annual Hours:* 4,204.

3. *Type of Information Request:* Extension of a currently approved collection; *Type of Information Collection:* CMS/AoA Aging and Disability Resource Center Grant Program; *CMS Form Number:* CMS–10093 (OMB# 0938–0903); *Use:* Information sought by CMSO/DEHPG is needed to award competitive grants to States to develop Aging and Disability Resource Centers; *Frequency:* On occasion; *Affected Public:* State, local, or tribal government, Not-for-profit institutions, Business or other for-profit; *Number of Respondents:* 50; *Total Annual Responses:* 50; *Total Annual Burden Hours:* 160.

4. *Type of Information Request:* Extension of a currently approved collection; *Type of Information Collection:* Medicaid Program: Real Choice Systems Change Grants for Community Living; *CMS Form Number:* CMS–10086 (OMB# 0938–0901); *Use:* Executive Order 13217, "Community-Based Alternatives for Individuals with Disabilities" called upon the federal government to assist states and localities to swiftly implement the decision of the United States Supreme Court in *Olmstead* v. *L.C.*, stating: "The United States is committed to community-based alternatives for individuals with disabilities and recognizes that such services advance the best interests of the United States." State agencies and community groups will be applying for these grants; *Frequency:* On occasion;

*Affected Public:* State, local, or tribal government; not-for-profit institutions; *Number of Respondents:* 150 *Total Annual Responses:* 150; *Total Annual Burden Hours:* 1500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Melissa Musotto, Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 26, 2003.

**Julie Brown,**

*CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.*

[FR Doc. 03–25062 Filed 10–2–03; 8:45 am]

**BILLING CODE 4120–03–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare and Medicaid Services

**[Document Identifier: CMS–10024, CMS–2384, CMS–R–64]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Health Survey (MHS) and Data Collection for Administering the PACE Health Survey to Beneficiaries Enrolled in PACE and the Dual Eligible Demonstrations; *Form No.:* CMS–10024 (OMB# 0938–0844); *Use:* The Centers for Medicare & Medicaid Services has developed a survey, the PHS, that is similar to the Health Outcomes Survey (HOS). This survey was approved for PACE and the Wisconsin Partnership Program (WPP) on March 14, 2003. OMB also approved the use of the PHS to beneficiaries enrolled in Minnesota Senior Health Options and Minnesota Disability Health Options (MSHO/MnDHO) on June 3, 2003 for a 6-month period. This PRA submission combines OMB approval for PACE, WPP 0938–0844 with OMB approval for MSHO/MnDHO 0938–0899 and requests to administer the PHS to beneficiaries enrolled in MassHealth SCO as well as administer the PHS in year 2005. The main purpose of the PHS is to collect health status information that may be used to adjust Medicare payment to MSHO/MnDHO health plan organizations. It has been successfully pilot-tested to assess response rates and accuracy of responses under different distribution approaches. The pilot test enabled CMS to select an approach whereby PACE and Dual Eligible Demonstration enrollees will be sent surveys to fill out and can request assistance from family or professionals; *Frequency:* Annually; *Affected Public:* Individuals or Households and Not-for-profit institutions; *Number of Respondents:* 15,859; *Total Annual Responses:* 10,785; *Total Annual Hours:* 1,798.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Third Party Premium Billing Request and Supporting Regulations in 42 CFR 408.6 and 408.202; *Form No.:* CMS–2384; *Use:* The Third Party Premium Billing Request is used as an authorization to designate that a family member or other interested party receive the Medicare Premium Bill and pay it on behalf of a Medicare beneficiary. Section 408.202 requires a State to get written authorization from Medicare beneficiaries for CMS to send billing notices directly to the State or local government agency and to release any information required under the SMI premium surcharge agreement; *Frequency:* On occasion; *Affected Public:* Individuals or households; *Number of Respondents:* 17,350; *Total Annual Hours:* 6,446.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Indirect Medical Education (IME) and Supporting Regulations in 42 CFR 412.105; *Form No.:* HCFA-R-64 (OMB# 0938–0456); *Use:* This collection of information on interns and residents (IR) is needed to properly calculate Medicare program payments to hospitals that incur indirect costs for medical education. The agency's Intern and Resident Information System uses the information for producing automated reports of duplicate full-time equivalent IRs for IME. The reports provide contractors with information to ensure that hospitals are properly reimbursed for IME, and help eliminate duplicate reporting of IR counts which inflate payments. The collection of this information affects 1,350 hospitals which participate in approved medical education programs; *Frequency:* Annually; *Affected Public:* Not-for-profit institutions, and Business or other for-profit; *Number of Respondents:* 1,350; *Total Annual Responses:* 1,350; *Total Annual Hours:* 2,700. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 25, 2003.

**Julie Brown,**

*CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.*

[FR Doc. 03–25063 Filed 10–2–03; 8:45 am]

**BILLING CODE 4120–03–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003N–0425]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension for an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the recordkeeping requirements placed on handlers of ruminant protein to prevent the establishment and amplification of bovine spongiform encephalopathy (BSE) in the United States by ensuring that ruminant animal feed does not contain animal protein derived from mammalian tissue.

**DATES:** Submit written or electronic comments on the collection of information by December 2, 2003.

**ADDRESSES:** Submit electronic comments on the collection of information to *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

### Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed—21 CFR Part 589 (OMB Control Number 0910–0339)—Extension

Epidemiological evidence gathered in the United Kingdom suggests that BSE, a progressively degenerative central nervous system disease, is spread to ruminant animals by feeding protein derived from ruminants infected with BSE. While BSE has yet to be diagnosed in the United States, measures were necessary to prevent the establishment and amplification of this fatal disease in this country. Effective August 4, 1997, FDA amended its regulations in part 589 (21 CFR part 589) to create new § 589.2000 to regulate handlers of certain animal protein intended for use in ruminant feed. The regulation was designed to ensure that ruminant feed does not contain protein derived from mammalian tissue. It requires that firms that manufacture, blend, process or distribute both mammalian and nonmammalian materials intended for use in ruminant feed maintain written procedures to prevent commingling and cross-contamination of these materials.

Respondents to this collection of information are individuals or firms that manufacture, blend, process or distribute, or use feed or feed ingredients that contain or may contain protein that may be derived from mammalian tissue.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

| 21 CFR Section | No. of Record-keepers | Annual Frequency of Recordkeeping | Total Annual Records | Hours per Record | Total Hours |
|---|---|---|---|---|---|
| 589.2000(e)(1)(iv) | 400 | 1 | 400 | 14 | 5,600 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated number of recordkeepers, i.e., persons that separate mammalian and nonmammalian materials, is derived from inspections of firms handling animal protein intended for use in animal feed. The estimate of the time required for this recordkeeping requirement is based on agency communication with industry.

Dated: September 25, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–25042 Filed 10–2–03; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 03N–0286]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; User Fee Cover Sheet; Form FDA 3397

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by November 3, 2003.

**ADDRESSES:** The Office of Management and Budget (OMB) is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### User Fee Cover Sheet; Form FDA 3397—(OMB Control Number 0910–0297—Extension

Under sections 735 and 736 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379h), the Prescription Drug User Fee Act of 1992 (PDUFA) (Public Law 102–571), as amended by the Food and Drug Administration Modernization Act of 1997 (Public Law 105–115), and the Prescription Drug User Fee Amendments of 2002 (Public Law 107–188), FDA has the authority to assess and collect user fees for certain drug and biologics license applications and supplements. Under this authority, pharmaceutical companies pay a fee for certain new human drug applications, biologics license applications, or supplements submitted to the agency for review. Because the submission of user fees concurrently with applications and supplements is required, review of an application by FDA cannot begin until the fee is submitted. Form FDA 3397, the user fee cover sheet, is designed to provide the minimum necessary information to determine whether a fee is required for review of an application, to determine the amount of the fee required, and to account for and track user fees. The form provides a cross-reference of the fee submitted for an application with the actual application by using a unique number tracking system. The information collected is used by FDA's Center for Drug Evaluation and Research (CDER) and Center for Biologics Evaluation and Research (CBER) to initiate the administrative screening of new drug applications, biologics license applications, and supplemental applications.

Respondents to this collection of information are new drug and biologics manufacturers. Based on FDA's database system for fiscal year (FY) 2002, there are an estimated 225 manufacturers of products subject to PDUFA. However, not all manufacturers will have any submissions and some may have multiple submissions in a given year. The total number of annual responses is based on the average number of submissions received by FDA in FY 2000 through 2002. CDER estimates 2,494 annual responses that include the following submissions; 105 new drug applications; 1,557 chemistry supplements; 670 labeling supplements; and 162 efficacy supplements. CBER estimates 737 annual responses that include the following submissions; 11 biologics license applications; 640 manufacturing (chemistry) supplements; 72 labeling supplements; and 14 efficacy supplements. Based on previous estimates, the rate of submissions is not expected to change significantly in the next few years. The estimated hours per response are based on past FDA experience with the various submissions and range from 5 to 30 minutes. The hours per response are based on the average of these estimates.

In the **Federal Register** of July 3, 2003 (68 FR 39954), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

| 21 CFR Section | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| FDA 3397 | 225 | 14.36 | 3,231 | 0.30 | 969 |
| Total | | | | | 969 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: September 25, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–25043 Filed 10–2–03; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**Proposed Project: Children's Hospitals Graduate Medical Education Payment Program (CHGME PP) (OMB No. 0915–0247): Revision**

The CHGME PP was enacted by Public Law 106–129 to provide Federal support for graduate medical education (GME) to freestanding children's hospitals. This legislation attempts to provide support for GME comparable to the level of Medicare GME support received by other, non-children's hospitals. The legislation indicates that eligible children's hospitals will receive payments for both direct and indirect medical education. Direct payments are designed to offset the expenses associated with operating approved graduate medical residency training programs and indirect payments are designed to compensate hospitals for expenses associated with the treatment of more severely ill patients and the additional costs relating to teaching residents in such programs.

Technical assistance workshops and consultation with applicant hospitals resulted in an opportunity for hospital representatives to raise issues and provide suggestions resulting in proposed revisions in the CHGME application forms and instructions.

Data is collected on the number of full-time equivalent residents in applicant children's hospitals' training programs to determine the amount of direct and indirect medical education payments to be distributed to participating children's hospitals. Indirect medical education payments will also be derived from a formula that requires the reporting of discharges, beds, and case mix index information from participating children's hospitals. Hospitals will be requested to submit such information in an annual application. Hospitals will also be requested to submit data on the number of full-time equivalent residents a second time during the Federal fiscal year to participate in the reconciliation payment process.

The estimated average annual reporting for this data collection is approximately 150 hours per hospital. The estimated annual burden is as follows:

| Form | Number of respondents | Responses per respondent | Total number of responses | Hours per response | Total burden hours |
|---|---|---|---|---|---|
| HRSA 99–1 | 54 | 1 | 54 | 99.9 | 5,395 |
| HRSA 99–1 (Reconciliation of FTE counts) | 54 | 1 | 54 | 8 | 432 |
| HRSA 99–2 | 54 | 1 | 54 | 14 | 756 |
| HRSA 99–4 | 54 | 1 | 54 | 28 | 1,512 |
| Total | 54 | | 54 | | 8,095 |

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 16C–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: September 29, 2003.

**Jane M. Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 03–25092 Filed 10–2–03; 8:45 am]

**BILLING CODE 4165–15–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Advisory Committee on Interdisciplinary, Community-Based Linkages; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting.

*Name:* Advisory Committee on Interdisciplinary, Community-Based Linkages.

*Dates and Times:*

October 26, 2003, 5 p.m.–8 p.m.

October 27, 2003, 8:30 a.m.–5:30 p.m.

October 28, 2003, 8:30 a.m.–4 p.m.

*Place:* The Washington Terrace Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

*Status:* The meeting will be open to the public.

*Agenda:* Agenda items will include, but not be limited to: Welcome; plenary session on cultural competency and diversity for the grant programs under the purview of the Committee with presentations by speakers representing the Department of Health and Human Services (DHHS), constituent groups, field experts and committee members. Meeting content will focus on how cultural competency and diversity relate to health status outcomes. The following topics will be addressed at the meeting: What are the Title VII grant programs doing in the areas of cultural competency and diversity and under what authority, if any? Why should there be a culturally competent and diverse workforce? and What are the policy issues and possible recommendations relevant to these programs?

Proposed agenda items are subject to change as priorities dictate.

*Public Comments:* Public comment will be permitted before lunch and at the end of the Committee meeting on October 27, 2003. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, with a copy of their presentation to: Jennifer Donovan, Deputy Executive Secretary, Division of State, Community and Public Health, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–8044.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The Division of State, Community and Public Health will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file a request in advance for a presentation, but wish to make an oral statement may register to do so at the Washington Terrace Hotel, Washington, DC on October 27, 2003. These persons will be allocated time as the Committee meeting agenda permits.

*For Further Information Contact:* Anyone requiring information regarding the Committee should contact Jennifer Donovan, Division of State, Community and Public Health, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–8044.

Dated: September 29, 2003.

**Jane M. Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 03–25091 Filed 10–2–03; 8:45 am]

**BILLING CODE 4165–15–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Submission for OMB Review; Comment Request; NCI Cancer Information Service Demographic/ Customer Service Data Collection

**SUMMARY:** Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on June 9, 2003, Vol. 68, No. 25, pages 34405–34406 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

*Proposed Collection: Title:* The National Cancer Institute Cancer Information Service Demographic Customer Service Data Collection. *Type of Information Collection Request:* Revision with change of a currently approved collection (OMB No. 0925–0208, expires 10/31/2003). *Need and Use of Information Collection:* The National Cancer Institute's Cancer Information Service (CIS) provides the latest information on cancer, clinical trials, and tobacco cessation. Characterizing users and how they found out about the CIS is essential to customer service, program planning and promotion. This effort involves a brief survey of users of the 1–800–4–CANCER toll-free service and LiveHelp, a Web-based chat service. The telephone survey contains seven questions—3 customer service and 4 demographic—asked of a subset of callers (cancer patients, their family or friends, and the general public) at the end of usual service for an annual total of approximately 286,000 callers. 100% of these callers will be asked the three customer service questions for an annual total of approximately 286,000 callers; 25% of callers will be asked the four demographic questions for an annual total of approximately 71,500 callers. If the call is the result of a special promotion, 50% of callers will be surveyed for demographics. Special promotions account for an estimated 30% of calls for an annual total of approximately 42,900 callers. The combined annual total is 400,400 callers. The LiveHelp web survey involves asking the same seven questions to 50% of the same subset of users for an annual total of approximately 5,500 users. The combined total to be surveyed each year is 405,900 users of the telephone and LiveHelp services for total of 1,951 annual burden hours. *Frequency of Response:* Single time. *Affected Public:* Individuals or households. *Type of Respondents:* Patients, relatives, friends, and general public. The annual reporting burden is as follows:

TABLE 1.—RESPONDENT AND BURDEN ESTIMATE

| Type of respondents | Number of respondents | Frequency of response | Average time per response | Annual hour burden |
|---|---|---|---|---|
| **Individuals or Households** | | | | |
| Telephone: | | | | |
| —3 questions (100%) | 286,000 | 1 | 0.00328 | 937 |
| —4 questions (25%) | 71,500 | 1 | 0.0083 | 594 |
| —4 questions (50%) special promotions | 42,900 | 1 | 0.0083 | 356 |
| Subtotal | 400,400 | | | |
| LiveHelp: | | | | |
| —7 questions (50%) | 5,500 | 1 | 0.0116 | 64 |
| Subtotal | 5,500 | | | 64 |
| Annualized Totals | 405,900 | | | 1,951 |

The annualized cost to respondents is estimated at: $31,904. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

*Request for Comments:* Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information being collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Direct Comments to OMB:* Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Madeline La Porta, Associate Deputy Director, Cancer Information Service, OC, NCI, 6116 Executive Boulevard, MSC 8322, Room 3036A, Bethesda, MD 20892–8322, or call non-toll-free number (301) 594–8025 or e-mail your request, including your address to: *laportam@mail.nih.gov.*

*Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: September 26, 2003.

**Reesa Nichols,**

*NCI Project Clearance Liaison.*

[FR Doc. 03–25067 Filed 10–2–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Submission for OMB Review; Comment Request; Agricultural Health Study—A Prospective Cohort Study of Cancer and Other Diseases Among Men and Women in Agriculture

**SUMMARY:** Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 1, 2003, pages 45257–8 and allowed 60 days for public comment. Comments were received from two individuals, both of whom are contractors interested in the potential for conducting portions of the proposed information collection activities. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**Proposed Collection**

*Title:* Agricultural Health Study—A Prospective Cohort Study of Cancer and Other Diseases Among Men and Women in Agriculture. *Type of Information Collection Request:* Revision of a currently approved collection (0925–0406, expiration 11/31/03). *Need and Use of Information Collection:* The Agricultural Health Study is in its 5th year of follow-up data collection on a prospective cohort of 89,658 farms, their spouses, and commercial applicators of pesticides from Iowa and North Carolina. Follow-up is not yet complete for a segment of the cohort, commercial applicators (n = 4,916). An extension until November 30, 2005 is requested to complete this data collection. *Frequency of Response:* Single time reporting. *Affected Public:* Individuals. *Type of Respondents:* Commercial pesticide applicators. The annual reporting burden is as follows: *Estimated Number of Respondents:* 2,548 *Estimated Number of Responses per Respondent:* 1.0; *Average Burden Hours Per Response:* 1.74; and *Estimated Total Annual Burden Hours Requested:* 3,707. The annualized cost to respondents is estimated at: $59,312. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

**Request for Comments**

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**Direct Comments to OMB**

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments contact: Michael C.R. Alavanja, Dr. P.H., Epidemiology and Biostatistics Program, Division of Cancer Etiology, National Cancer Institute, EPN 8000, 6120 Executive Boulevard, Rockville, MD 20852, or call (310) 435–4720, or E-mail your request, including your address to: *alavanjam@mail.nih.gov*

**Comments Due Date**

Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: September 26, 2003.

**Reesa Nichols,**

*NCI Project Clearance Liaison.*

[FR Doc. 03–25068 Filed 10–2–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent application listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

**A New Target for Angiogenesis and Anti-angiogenesis Therapy**

Frank Cuttitta *et al.* (NCI).

U.S. Provisional Application No. 60/425,018 filed 07 Nov 2002 (DHHS Reference No. E–294–2002/0–US–01).

Licensing Contact: Catherine Joyce; 301/435–5031; *joycec@mail.nih.gov*.

Proadrenomedullin N-terminal 20 peptide (PAMP) is a 20 amino-acid molecule originating from the post-translational processing of pre-proadrenomedullin. PAMP has heretofore been known as a potent hypotensive and vasodilatory agent. PAMP and adrenomedullin (AM) are the two known bioactive products generated from cleavage of pre-proadrenomedullin. PAMP and AM are known to have vasodilatory and hypotensive activities. AM is also known to have angiogenic activity, whereas no such activity has previously been attributed to PAMP.

The inventors have discovered that, in addition to its hypotensive and vasodilatory effects, PAMP functions as a potent angiogenic factor. When compared to other well-known angiogenic factors such as vascular endothelial growth factor (VEGF) and basic fibroblast growth factor (bFGF), PAMP is roughly one million times more potent on a molar basis.

In one aspect, the invention relates to the use of PAMP inhibitors to inhibit angiogenesis in vivo. These methods would be useful, for example, in inhibiting the growth of tumors and in treating other diseases characterized by excessive angiogenesis including psoriasis, diabetic retinopathy, and chronic wounds. In a second aspect, the invention relates to the use of PAMP or PAMP derivatives to promote angiogenesis, for example, in subjects with coronary artery disease or cerebral ischemia.

Dated: September 27, 2003.

**Steven M. Ferguson,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 03–25072 Filed 10–2–03; 8:45 am]

BILLING CODE 4140–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Colon Cancer Screening in Primary Care Practice.

*Date:* October 23, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

*Contact Person:* C. Michael Kerwin, PhD, MPH, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, National Institutes Of Health, 6116 Executive Boulevard, Room 8057, MSC 8329, Bethesda, MD 20892–8329, 301–496–7421, *kerwinm@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 29, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25179 Filed 10–2–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Community Clinical Oncology Program & Minority-Based Community Clinical Oncology Program.

*Date:* November 19, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Executive Plaza North, 6130 Executive Blvd., Rockville, MD 20852.

*Contact Person:* Timothy C. Meeker, MD., Scientific Review Administrator, Special Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8088, Rockville, MD 20852, 301/594–1279.

(Catalogue of Federal Domestic Assistant Program Nos. 93.292, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health HHS)

Dated: September 29, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25180 Filed 10–2–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Nursing Research Special Emphasis Panel Nursing Research Core Center Grants (P30).

*Date:* November 12–13, 2003.

*Time:* November 12, 2003, 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Time:* November 13, 2003, 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* John E. Richters, PhD, Scientific Review Administrator, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd. Room 715, Bethesda, MD 20817, (301) 594–5971, *jrichters@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: September 25, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25069 Filed 10–2–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Nursing Research Special Emphasis Panel, Nursing Research Development Center Grants (P20).

*Date:* November 5–6, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* John E. Richters, PhD, Scientific Review Administrator, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health 6701 Democracy Blvd. Room 715, Bethesda, MD 20817, (301) 594–5971, *jrichters@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: September 25, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25070 Filed 10–2–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institutes of Nursing Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institutes of Nursing Research Special Emphasis Panel, Postdoctoral Fellowship Applications SEP.

*Date:* October 16, 2003.

*Time:* 5:15 p.m. to 5:35 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* Jeffrey M. Chernak, PhD., Scientific Review Administrator, Office of Review, National Institutes of Nursing Research, 6701 Democracy Plaza, Suite 712, MSC 4870, Bethesda, MD 20817, (301) 402–6959, *chernak@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institutes of Nursing Research, Special Emphasis Panel, Career Development Award Applications SEP.

*Date:* October 16, 2003.

*Time:* 5:35 p.m. to 6:05 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* Jeffrey M. Chernak, PhD., Scientific Review Administrator, Office of Review, National Institutes of Nursing Research, 6701 Democracy Plaza, Suite 712, MSC 4870, Bethesda, MD 20817, (301) 402–6959, *chernak@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: September 25, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25071 Filed 10–2–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel, Review of PO1 Applications.

*Date:* November 3–4, 2003.

*Time:* 7 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

*Contact Person:* Janice B. Allen, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, 919/541–7556.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel, E-Learning for Hazmat and Emergency Response (SBIR/STTR Initiative).

*Date:* November 5, 2003.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

*Contact Person:* Sally Eckert-Tilotta, Ph.D., National Inst. of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–1446, *eckert1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistant Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: September 29, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25174 Filed 10–2–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Atopic Dermatitis Statistical Center.

*Date:* October 29–30, 2003.

*Time:* 8 a.m to 5 p.m.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Lucy A. Ward, PhD, DVM, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, Bethesda, MD 20892–7616, 301–496–2550, *lw275a@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 29, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25175 Filed 10–2–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Bioinformatics Resource Centers for Biodefense and Emerging/Re-emerging Infectious Diseases.

*Date:* October 22–24, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

*Contact Person:* Gregory P. Jarosik, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892, 301–496–2550, *gjarosik@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 29, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25176 Filed 10–2–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Review of R21 Application.

*Date:* October 28, 2003.

*Time:* 1 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 443–2926, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards of Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: September 29, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25177 Filed 10–2–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. the grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Biodefense and Emerging Infectious Diseases Research Opportunities.

*Date:* October 20, 2003.

*Time:* 1:30 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 6700B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Quirijn Vos, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, qvos@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Programs Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 29, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25178 Filed 10–2–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Translational Research for the Prevention and Control of Diabetes.

*Date:* November 19, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Bethesda, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Michele L. Barnard, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8898. *barnardm@extra.niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Obesity/Energy Balance.

*Date:* December 11–12, 2003.

*Time:* 5 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Bethesda Suites, 6711 Democracy Blvd., Bethesda, MD 20817.

*Contact Person:* Paul A. Rushing, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 29, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25181 Filed 10–2–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Oncological Sciences Integrated Review Group, Drug Discovery and Molecular Pharmacology Study Section.

*Date:* October 15–17, 2003.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Arlington, 1325 Wilson Boulevard, Arlington, VA 22209.

*Contact Person:* Philip Perkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–1718, *perkinsp@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Biophysical and Chemical Sciences Integrated Review Group, Molecular and Cellular Biophysics Study Section.

*Date:* October 16–17, 2003.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

*Contact Person:* Nancy Lamontagne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *lamontan@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 CNNT 01S: Clinical Neuroplasticity and Neurotransmitters.

*Date:* October 16–17, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

*Contact Person:* William C. Benzing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, (301) 435–1254, *benzingw@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Small Business Innovation Research.

*Date:* October 21–22, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Gopal C. Sharman, DVM, PhD, Diplomate American Board of Toxicology, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2184, MSC 7818, Bethesda, MD 20892, (301) 435–1783, *sharmag@csr.nih.gov.*

*Name of Committee:* Cardiovascular Sciences Integrated Review Group, Cardiovascular Study Section.

*Date:* October 23–24, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

*Contact Person:* Anshumali Chaudhari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20814, (301) 435–1210.

*Name of Committee:* Health of the Population Integrated Review Group, Epidemiology of Clinical Disorders and Aging Study Section.

*Date:* October 23–24, 2003.

*Time:* 8:30 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Mary Ann Ann Guadagno, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7770, Bethesda, MD 20892, (301) 451–8011.

*Name of Committee:* Biology of Development and Aging Integrated Review Group, Development—2 Study Section, Development 1 Study Section.

*Date:* October 23–24, 2003.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Old Town Alexandria Holiday Inn Select, 480 King Street, Alexandria, VA 22314.

*Contact Person:* Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892, (301) 435–1021, *duperes@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Bacteriology and Mycology.

*Date:* October 27–28, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

*Contact Person:* Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7848, Bethesda, MD 20892, (301) 435–1147. *henry@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 BM1 02: Tuberculosis.

*Date:* October 29, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

*Contact Person:* Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7848, Bethesda, MD 20892, (301) 435–1147, *henryt@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Hearing Mechanisms: Human Subjects Studies.

*Date:* October 29, 2003.

*Time:* 1 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contcct Person:* John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Cardiovascular Regulator.

*Date:* October 30, 2003.

*Time:* 3 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7802, Bethesda, MD 20892, (301) 435–1739, *gangulyc@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, SEP for Trudi Mcfarland's Member Conflicts.

*Date:* October 30, 2003.

*Time:* 4 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Karin F. Helemrs, PhD, Scientific Review Administrator, Center for Scientific Review/SNEM IRG, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, (301) 435–1017, *helmersk@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Bioengineering.

*Date:* October 31, 2003.

*Time:* 8 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 2007.

*Contact Person:* Gopal C. Sharma, DVM, PhD, Diplomate American Board of Toxicology, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2184, MSC 7818, Bethesda, MD 20892, (301) 435–1783, *sharmag@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: September 29, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25171 Filed 10–2–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Mammalian Genetics Study Section, October 23, 2003, 9 a.m. to October 24, 2003, 1 p.m., One Washington Circle Hotel, One Washington Circle, Washington, DC, 20037 which was published in the **Federal Register** on September 16, 2003, 68 FR 54235–54237.

The meeting will end at 12 p.m. on October 24, 2003. The meeting dates and location remain the same. The meeting is closed to the public.

Dated: September 29, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25172 Filed 10–02–03; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 19, 2003, 5:30 PM to October 21, 2003, 5 p.m., Embassy Suites Hotel, 4300 Military Road, Washington, DC 20015 which was published in the **Federal Register** on September 9, 2003, 68 FR 53183–53186.

The meeting will be held at the Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC 20037. The meeting dates and time remain the same. The meeting is closed to the public.

Dated: September 29, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25173 Filed 10–02–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[USCG 2003–15506]**

### Information Collection Under Review by the Office of Management and Budget (OMB): OMB Control Numbers: 1625–0052 (Formerly 2115–0563), 1625–0057 (Formerly 2115–0578), 1625–0033 (Formerly 2115–0135), 1625–0026 (Formerly 2115–0106), and 1625–0065 (Formerly 2115–0592)

**AGENCY:** Coast Guard, DHS.

**ACTION:** Request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded the five Information Collection Requests (ICRs) abstracted below to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICRs describe the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

**DATES:** Please submit comments on or before November 3, 2003.

**ADDRESSES:** To make sure that your comments and related material do not enter the docket [USCG 2003–15506] more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(b) By mail to OIRA, 725 17th Street, NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at 202–493–2251 and (b) OIRA at 202–395–5806, or e-mail to OIRA at *oira_docket@omb.eop.gov* attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.* (b) OIRA does not have a website on which you can post your comments.

(5) Electronically through Federal eRule Portal: *http://www.regulations.gov.*

The Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 (Plaza level), 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICRs are available for inspection and copying in public dockets. They are available in docket USCG 2003–15506 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov*; and for inspection from the Commandant (G–CIM–2), U.S. Coast Guard, room 6106, 2100 Second Street, SW., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Andrea M. Jenkins, Program Manager, U.S. Department of Transportation, 202–366–0271, for questions on the docket.

**SUPPLEMENTARY INFORMATION:**

### Public Participation and Request for Comments

We encourage you to participate in this request for comment by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov,* and they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. Please see the paragraph on DOT's "Privacy Act" below.

*Submitting comments:* If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2003–15506], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

*Viewing comments and documents:* To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 [65 FR 19477], or you may visit *http://dms.dot.gov.*

**Regulatory History**

This request constitutes the 30-day notice required by OIRA. The Coast Guard has already published [68 FR 40280 (July 7, 2003)] the 60-day notice required by OIRA. That notice elicited no comments.

**Request for Comments**

The Coast Guard invites comments on the proposed collections of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the Department's estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collection on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Number of the ICR addressed. Comments to DMS must contain the docket number of this request, USCG 2003–15506. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

**Information Collection Request**

1. *Title:* Nondestructive Testing of Certain Cargo Tanks on Unmanned Barges.

*OMB Control Number:* 1625–0052.

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Owners of tank barges.

*Form:* This collection of information does not require the public to fill out forms, but does require the submittal of information to the Coast Guard in written format.

*Abstract:* The Coast Guard uses the results of nondestructive testing to evaluate the suitability of older pressure-vessel-type cargo tanks of unmanned barges to remain in service. Once every ten years, it subjects such a tank on an unmanned barge 30 years old or older to nondestructive testing.

*Annual Estimated Burden Hours:* The estimated burden is 72 hours a year.

2. *Title:* Small Passenger Vessels—46 CFR Subchapters K and T.

*OMB Control Number:* 1625–0057.

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Owners and operators of small passenger vessels.

*Form:* CG–841, CG–854, CG–948, CG–949, CG–3752 and CG–5256.

*Abstract:* The information is necessary for the proper administration and enforcement of the program on safety of commercial vessels as it affects small passenger vessels. Collecting it affects small passenger vessels (under 100 gross tons) that carry more than 6 passengers.

*Annual Estimated Burden Hours:* The estimated burden is 366,798 hours a year.

3. *Title:* Display of Fire-Control Plans for Vessels.

*OMB Control Number:* 1625–0033.

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Owners and operators of vessels.

*Form:* This collection of information does not require the public to fill out forms, but does require the posting and updating of general arrangement plans of certain vessels to minimize danger to personnel onboard, damage to the vessel and the safety of the port and environment.

*Abstract:* This collection of information takes the form of the posting or display of specific plans on certain categories of commercial vessels. The availability of these plans aids firefighters and damage-control efforts in response to emergencies.

*Annual Estimated Burden Hours:* The estimated burden is 911 hours a year.

4. *Title:* Approval of Plans and Records for Foreign Vessels Carrying Oil in Bulk.

*OMB Control Number:* 1625–0026.

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Owners and operators of vessels.

*Form:* This collection of information does not require the public to fill out forms, but does require the submittal of information to the Coast Guard in written format.

*Abstract:* The Coast Guard collects plans and records to determine whether foreign tank vessels comply with applicable standards for design and construction.

*Annual Estimated Burden Hours:* The estimated burden is 157 hours a year.

5. *Title:* Offshore Supply Vessels (OSVs)—46 CFR Subchapter L.

*OMB Control Number:* 1625–0065.

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Owners and operators of vessels.

*Form:* This collection of information does not require the public to fill out forms, but does require the submittal of information to the Coast Guard in written format.

*Abstract:* Requirements are necessary to instruct those on board of actions to take in an emergency. These requirements help verify compliance with rules without inspectors' presence to witness routine matters; they even enable OSVs based overseas to stay in compliance without undergoing reinspection here.

*Annual Estimated Burden Hours:* The estimated burden is 6,175 hours a year.

Dated: September 30, 2003.

**Clifford I. Pearson,**

*Director of Information and Technology.*

[FR Doc. 03–25186 Filed 10–2–03; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

**[USCG–2001–10486]**

**RIN 1625–AA32**

## Standards for Living Organisms in Ship's Ballast Water Discharged in U.S. Waters

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of public meetings.

**SUMMARY:** Under the direction of the National Invasive Species Act, and the National Environmental Policy Act, the Coast Guard seeks consultation with all interested and affected stakeholders to discuss issues to be addressed in the programmatic environmental impact statement for the development of ballast water discharge standards as stated in the September 26, 2003, **Federal Register** (68 FR 55559). To accomplish this, the Coast Guard will hold five regional public scoping meetings in order to expand the opportunity for public input. We seek comments from any interested or affected stakeholders and encourage all stakeholders to attend these meetings.

**DATES:** The public scoping meetings will be held on the following dates in the cities listed:

- New Orleans, LA, October 27, 2003, from 12 p.m. to 4 p.m. and 5 p.m. to 7 p.m.;
- Oakland, CA, October 29, 2003, from, 12 p.m. to 4 p.m. and 5 p.m. to 7 p.m.;
- Cleveland, OH, October 31, 2003, from, 12 p.m. to 4 p.m. and 5 p.m. to 7 p.m.;
- Norfolk, VA, November 3, 2003, from, 12 p.m. to 4 p.m. and 5 p.m. to 7 p.m.; and
- Washington DC, November 7, 2003, from 11 a.m. to 3 p.m. and 4 p.m. to 6 p.m.

**ADDRESSES:** The Coast Guard will hold the public scoping meetings at the following locations:

- New Orleans, LA—New Orleans Marriott, 555 Canal Street, New Orleans, LA 70130, 1–504–581–1000;
- Oakland, CA—Elihu Harris Building, 1515 Clay Street, Oakland, CA 94612, 1–510–622–2398;
- Cleveland, OH—Holiday Inn Select, 1111 Lakeside Avenue, Cleveland, OH 44114, 1–216–241–5100;
- Norfolk, VA—Marriott Norfolk Waterside, 235 E. Main Street, Norfolk, VA 23510, 1–757–627–4200; and
- Washington, DC—EPA East Building, Room 1153, 1201 Constitution Avenue, NW., Washington, DC 20590, 1–202–566–1200.

You may also submit your comments on this scoping effort directly to the Docket Management Facility. To ensure that your comments and related material are not entered more than once in the docket [USCG–2001–10486], please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2003–14273), U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov*.

(5) Federal eRulemaking Portal: *http://www.regulations.gov*.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, ATTN: Desk Officer, United States Coast Guard. In choosing among these means, please give due regard to the recent difficulties and delays associated with delivery of mail through the U.S. Postal Service to Coast Guard Headquarters.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** If you have any questions about the project or the meetings, contact Mr. Bivan R. Patnaik, U.S. Coast Guard at (202) 267–1744 or *bpatnaik@comdt.uscg.mil*.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

The Coast Guard encourages you to submit comments and related material on the development of the programmatic environmental impact statement. If you do so, please include your name and address, identify the docket number [USCG–2001–10486], and provide the reasons for each comment. You may submit your comments and material by mail, delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. Public comments will also be accepted at these public scoping meetings.

### Information on Service for Individuals With Disabilities

If you plan to attend these meetings and require special assistance, such as sign language interpretation or other reasonable accommodations, contact us as indicated in **FOR FURTHER INFORMATION CONTACT**.

### Public Scoping Meetings

The Coast Guard encourages interested and affected stakeholders to attend the meetings and present oral comment or written comments during the meetings. The meetings are open to members of the public. Please note that the meetings may close early if all business is finished. If you are unable to attend the meetings, we encourage you to submit comments to the Docket Management Facility as indicated under Addresses by December 26, 2003.

### Background and Purpose

On September 26, 2003, the Coast Guard published a notice of intent with request for comments in the **Federal Register** (68 FR 55559) to develop a programmatic environmental impact statement (PEIS) in preparation of a proposed rulemaking to establish standards for ballast water discharges. As part of the scoping process summarized in that notice, and authorized by 40 CFR 1508.22(b)(4), the Coast Guard will hold public meetings at the times and locations noted above under **DATES** and **ADDRESSES.** You may consult the notice of intent for further information about the proposed rule for establishing standards for ballast water discharges. Please note that information regarding the PEIS can also be found at the following Web sites: *http://www.uscg.mil/hq/g-m/mso/mso4/ans.html*; and *http://www.epa.gov/owow/invasive_species/*.

Dated: September 30, 2003.

**Joseph J. Angelo,**

*Director of Standards, Marine Safety, Security & Environmental Protection.*

[FR Doc. 03–25188 Filed 10–2–03; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4820–N–38]**

### Notice of Proposed Information Collection: Comment Request; Single Family Acquired Asset Management System (SAMS)

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* December 2, 2003.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov*.

**FOR FURTHER INFORMATION CONTACT:** Joseph McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1672 (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Single Family Acquired Asset Management System (SAMS).

*OMB Control Number, if applicable:* 2502–0486.

*Description of the need for the information and proposed use:* This information collection is an integral part of HUD's ability to create and maintain sound financial management practices, and to maintain effective internal control over the property disposition program. In managing its program of acquired single-family properties, HUD reimburses contractors and vendors for their services in maintaining, marketing, and selling HUD homes, and collects funds the sales of these properties. The information is captured in HUD's automated Single Family Acquired Asset Management System. The system also is used to record and process financial transactions.

*Agency form numbers, if applicable:* Sams–1100, 1101, 1103, 1106, 1106–C, 1108, 1110, 1111, 1111–A, and 1117.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The estimated total number of hours needed to prepare the information collection is 65,870; the number of respondents is 272,950 generating approximately 272,950 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response varies from 12 minutes to 30 minutes.

*Status of the proposed information collection:* Extension of a currently approved collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 26, 2003.

**Sean G. Cassidy,**

*General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.*

[FR Doc. 03–25038 Filed 10–2–03; 8:45 am]

**BILLING CODE 4210–27–M**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4815–N–77]**

## Notice of Submission of Proposed Information Collection to OMB: Assisted Living Conversion Program (ALCP)

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information collection is a grant application and reporting forms for HUD's Assisted Living Conversion Program (ALCP). HUD will use the grant applications to determine an applicant's need for and capacity to administer grant funds.

**DATES:** *Comments Due Date:* November 3, 2003.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0542) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at *http://mf.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

*Title of Proposal:* Assisted Living Conversion Program (ALCP).

*OMB Approval Number:* 2502–0542.

*Form Numbers:* HUD–50080–ALCP, HUD–92045, SF–269, SF–424, HUD–424B, HUD–2880, HUD–2991.

*Description of the Need for the Information and Its Proposed Use:* This information collection is a grant application and reporting forms for HUD's Assisted Living Conversion Program (ALCP). HUD will use the grant applications to determine an applicant's need for and capacity to administer grant funds.

*Respondents:* Not-for-profit institutions.

*Frequency of Submission:* On occasion, quarterly, semi-annually, annually.

*Reporting Burden:* Number of Respondents 30; Average responses per respondent 4.5; Total annual responses 135; Average burden per response 18.8 hrs.

*Total Estimated Burden Hours:* 2,550.

*Status:* Extension of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 26, 2003.

**Donna Eden,**

*Director, Office of Investment Strategies, Policy & Mngt., Office of the Chief Information Officer.*

[FR Doc. 03–25039 Filed 10–2–03; 8:45 am]

**BILLING CODE 4210–72–P**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4815–N–78]**

### Notice of Submission of Proposed Information Collection to OMB: Youthbuild Program

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Youth build Program provides disadvantaged youth, predominately high school dropouts, with educational opportunities and job skills training. Information is collected from eligible applicants for a competition to determine which entities will receive grant funds.

**DATES:** *Comments Due Date:* November 3, 2003.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2506–0142) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at *http://mf.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

*Title of Proposal:* Youthbuild Program.

*OMB Approval Number:* 2506–0142.

*Form Numbers:* HUD–40211, SF 1199A, HUD 27054.

*Description of the Need for the Information and its Proposed Use:* The Youthbuild Program provides disadvantaged youth, predominately high school drop outs, with educational opportunities and job skills training. Information is collected from eligible applicants for a competition to determine which entities will receive grant funds.

*Respondents:* State, Local, or Tribal Government.

*Frequency of Submission:* On occasion, quarterly, semi-annually.

*Reporting Burden:* Number of Respondents 300; Average responses per respondent 1.4; Total annual responses 416; Average burden per response 28hrs.

*Total Estimated Burden Hours:* 11,660.

*Status:* Extension of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 26, 2003.

**Donna Eden,**

*Director, Office of Investment Strategies, Policy & Mngt, Office of the Chief Information Officer.*

[FR Doc. 03–25040 Filed 10–2–03; 8:45 am]

**BILLING CODE 4210–72–P**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4809–N–40]**

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**EFFECTIVE DATE:** October 3, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing—and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OC (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless.

Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: September 25, 2003.

**John D. Garrity,**

*Director, Office of Special Needs Assistance Programs.*

[FR Doc. 03–24811 Filed 10–2–03; 8:45 am]

**BILLING CODE 4210–29–M**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

### Notice To Announce the Revision of the Alabama Beach Mouse Recovery Plan

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice to announce the revision of the Alabama beach mouse recovery plan; request for information.

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**SUMMARY:** We, the Fish and Wildlife Service, announce our intention to prepare a separate species recovery plan for the Alabama beach mouse (ABM) (*Peromyscus polionotus ammobates*), which is listed as endangered throughout its range, under the Endangered Species Act of 1973, as amended (Act). A 1987 multi-species recovery plan addressed recovery needs for three subspecies of the old field mouse (*Peromyscus polionotus*) that inhabit the beaches and dunes of the Gulf coast of Alabama and Florida—the ABM, the Choctawhatchee beach mouse (*P. p. allphrys*), and the Perdido Key beach mouse (*P. p. trissyllepsis*). The 1987 recovery plan is being revised to prepare a separate species recovery plan for the ABM. A separate species recovery plan is needed for the ABM in order to incorporate new information related to the range of the species, to update information regarding known habitat, and to update the framework for addressing problems of the species and for prioritizing actions necessary for recovery. The ABM recovery plan will not include recovery information on the Choctawhatchee beach mouse or the Perdido Key beach mouse. Recovery plans for the Choctawhatchee beach mouse and the Perdido Key beach mouse will be updated or revised at a later date.

To ensure a comprehensive revision, we are soliciting information on the ABM's population status and trends, threats, and conservation efforts.

**DATES:** Information related to this notice must be received by December 2, 2003, to be considered in the initial stages of the revision. However, we will accept information and comments submitted after this date for consideration at later stages in the recovery planning process until further notice.

**ADDRESSES:** Information should be mailed to the Daphne Ecological Services Field Office, U.S. Fish and Wildlife Service, P.O. Drawer 1190, Daphne, AL 36526. Information may also be sent via fax to 251–441–6222 or through the Internet Web site for the ABM recovery plan at *http://daphne.fws.gov.*

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Daphne Field Office at 1208 Main Street, Daphne, Alabama.

**FOR FURTHER INFORMATION, CONTACT:** Lori McNease at the above mailing address (telephone 251–441–5867, fax 251–441–6222, e-mail *alabamabeachmouse@fws.gov*).

**SUPPLEMENTARY INFORMATION:**

### Background

The ABM was listed as endangered under the Act on June 6, 1985 (50 FR 23884). Upon listing a species, section 4(f) of the Act requires the preparation and implementation of a recovery plan and revisions to such plans as necessary. Under section 4(f)(1)(B), each plan, at a minimum, must contain—(a) a description of such site-specific management actions as may be necessary to achieve the plan's goal for conservation and survival of the species; (b) objective, measurable criteria that, when met, would result in a determination, in accordance with the provisions of this section, that the species be removed from the list; and (c) estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal.

In addition, recovery plans must include a concise summary of the current status of the species and its life history, and an assessment of the factors that led to population declines and/or which are impeding recovery. The plan must also include a comprehensive monitoring and evaluation program for gauging the effectiveness of recovery measures and overall progress toward recovery.

In 1987, we issued a multi-species recovery plan for three listed beach mice along the Gulf coast of Alabama and Florida. The plan is being revisited at this time in order to prepare a separate species recovery plan for the ABM. An Alabama Beach Mouse Recovery Team, consisting of governmental and non-governmental organizations as well as species experts and stakeholders, was established to draft this revision.

Since the development of the 1987 plan, significant research has been accomplished and important conservation and recovery activities have been undertaken. As a result, we have a greater knowledge of the species, its status, and distribution. These advances in our understanding of the ABM make a revision of the ABM recovery plan necessary at this time. The revised ABM recovery plan will serve as a basis for future recovery efforts, guide research to ensure that new information will contribute toward the greatest research needs, and enable effective monitoring to allow us to track the status of the ABM and the factors that may affect the species.

A schedule for completing the revised ABM recovery plan will be made available on the internet website for the ABM recovery plan when it is developed by the recovery team (*see* **ADDRESSES**). Draft sections of the Work in Progress will also be made available on the internet website to provide interested stakeholders an opportunity to review and provide input on the revised plan during its development. Once all sections of the revised plan have been drafted, we will publish a notice of availability of the draft recovery plan in the **Federal Register** and will formally solicit public comment on the draft prior to finalizing the plan.

### Information Solicited

To ensure that the revised ABM recovery plan is based on the best available data, we are soliciting information on historical and current abundance; historical and current distribution and movements; population status and trends; genetics; current or planned activities that may adversely impact the species; and ongoing efforts to protect the ABM along the Alabama Gulf coast. We request that all data, information, and comments be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications.

All submissions must contain the submitter's name and address, as well as any association, institution, or business that the person represents. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. We will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives of organizations or businesses, available for public inspection in their entirety.

**Authority:** The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: September 15, 2003.

**Sam D. Hamilton,**

*Regional Director, Southeast Region, Fish and Wildlife Service.*

[FR Doc. 03–25087 Filed 10–2–03; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA–930–1430–ET, CACA 7767 and CACA 44322]**

### Public Land Order No. 7585; Partial Revocation of Executive Order dated February 26, 1852; Withdrawal of Public Lands and Transfer of Jurisdiction; California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order partially revokes an Executive Order insofar as it affects 6.15 acres of public lands withdrawn for use by the Department of Navy for military purposes. This order also withdraws the same lands from surface entry and mining, and transfers the jurisdiction to the Department of Veterans Affairs, for expansion and operation of the Fort Rosecrans National Cemetery.

**DATES:** October 3, 2003.

**FOR FURTHER INFORMATION CONTACT:** Duane Marti, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825–1886; (916) 978–4675.

**SUPPLEMENTARY INFORMATION:** The Department of Navy no longer needs the lands for military purposes and concurs with the transfer of jurisdiction. A memorandum of agreement between the Department of Navy and the Department of Veteran Affairs contains provisions relative to future use of the lands by the Department of Veterans Affairs.

### Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. The Executive Order, dated February 26, 1852, which withdrew public lands for military purposes, is hereby revoked insofar as it affects the following described lands:

**San Bernardino Meridian**

T. 17 S., R. 4 W.,
Parcels 2, 3, and 4.

The areas described aggregate 6.15 acres in San Diego County.

2. Subject to valid existing rights, the lands described in Paragraph 1, are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws, 30 U.S.C., Ch. 2 (2000), for the Department of Veterans Affairs to expand the Fort Rosecrans National Cemetery.

3. Subject to valid existing rights, the jurisdiction of the lands described in Paragraph 1 and their related resource uses are hereby transferred to the Department of Veterans Affairs, so that the lands can be managed as part of the Fort Rosecrans National Cemetery and shall thereafter be subject to all laws and regulations applicable thereto.

Dated: September 12, 2003.

**Rebecca W. Watson,**

*Assistant Secretary—Land and Minerals Management.*

[FR Doc. 03–25066 Filed 10–2–03; 8:45 am]

**BILLING CODE 4310–40–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA–340–1430–ES; CACA–43408]**

### Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action.

**SUMMARY:** The following public lands in Lake County, California have been examined and found suitable for classification for lease or conveyance to the Lake County Flood Control and Water Conservation District under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Lake County Flood Control and Water Conservation District proposes to construct and maintain a multipurpose trail system on the public lands that would tie into the trail system on their 2,550 acre of adjacent land. The trails would be constructed for non-motorized use, including hiking, equestrian and all-terrain bicycles.

Lease and/or conveyance is consistent with current BLM land use planning and would be in the public interest. The lands are located at:

**Mount Diablo Meridian, California**

T. 13 N., R. 10 W.
Section 34: NE, S2NW, N2SE.
Section 35: SWNE, W2NW, SENW, SW, W2SE.

The area described contains 720 acres.

The lease/patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provision of the Recreation and Public Purpose Act and to all applicable regulations of the Secretary of the Interior.
2. A right-of-way for ditches and canals constructed by the authority of the United States.
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.
4. A right-of-way for an access road granted to Bob Neilsen under CACA–31323.
5. A right-of-way for an access road reserved by the Bureau of Land Management on the Adobe Creek Road under CAS–076875.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Ukiah Field Office, 2550 North State Street, Ukiah, California. Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land use laws, including the general mining laws, except for lease and/or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. The segregation for exchange under CACA–30111FD will be revoked. For a period until November 17, 2003, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the Field Manager, Ukiah Field Office, 2550 North State Street, Ukiah, CA 95482.

*Classification Comments:* Interested parties may submit comments involving the suitability of the land for the development of hiking, equestrian and all-terrain bicycle trails. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

*Application Comments:* Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for hiking, equestrian and all-terrain bicycles trails. Any adverse comments will be reviewed by the State

Director. In the absence of any adverse comments, the classification will become effective.

Dated: January 17, 2003.

**Howard K. Stark,**

*Chief, Branch of Lands Management.*

**Editorial Note:** This document was received in the Office of the Federal Register on September 29, 2003.

[FR Doc. 03–25065 Filed 10–2–03; 8:45 am]

BILLING CODE 4310–40–P

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Correction

As set forth in the **Federal Register** on August 5, 2002 (68 FR 46226), Mallinckrodt, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, was granted a registration as a bulk manufacturer of certain Schedule I and II controlled substances.

By letter dated August 12, 2003, Mallinckrodt, Inc., advised that the Notice of Registration erroneously included heroin (9200) and nicomorphine (9312), basic classes of Schedule I controlled substances. Therefore, drug codes 9200 and 9312 are hereby withdrawn from the firm's bulk manufacturer registration.

Dated: September 8, 2003.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 03–25101 Filed 10–2–03; 8:45 am]

BILLING CODE 4410–09–M

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## DEPARTMENT OF JUSTICE

### Office of Justice Programs

### [OJP(OVW) Docket No. 1382]

### Meeting of the National Advisory Committee on Violence Against Women

**AGENCY:** Office on Violence Against Women, Justice.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming public meeting of the National Advisory Committee on Violence Against Women (hereinafter "the Committee").

**DATES:** The meeting will take place on October 8 from 9 a.m. to 5 p.m., and on October 9 from 9 a.m. to 4 p.m.

**ADDRESSES:** The meeting will take place at the Madison Hotel, 1177 15th Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Kristina Rose, The National Advisory Committee on Violence Against Women, 810 Seventh Street, NW., Washington, DC 20531. Telephone: (202) 307–6026. E-mail: *AskNAC@ojp.usdoj.gov.* Fax: (202) 307–3911. You may view the Committee's Web site at: *http://www.ojp.usdoj.gov/vawo/nac/welcome.html.*

**SUPPLEMENTARY INFORMATION:** The Committee is chartered by the Attorney General, and co-chaired by the Attorney General and the Secretary of Health and Human Services (the Secretary), to provide the Attorney General and the Secretary with practical and general policy advice concerning implementation of the Violence Against Women Act of 1994, the Violence Against Women Act of 2000, and related laws, and will assist in the efforts of the Department of Justice and the Department of Health and Human Services to combat violence against women, especially domestic violence, sexual assault, and stalking.

In addition, because violence is increasingly recognized as a public health problem of staggering human cost, the Committee will bring national attention to the problem of violence against women and increase public awareness of the need for prevention and enhanced victim services.

This meeting will primarily focus on the Committee's work; there will, however, be an opportunity for public comment on the Committee's role in providing general policy guidance on implementation of the Violence Against Women Act of 1994, the Violence Against Women Act of 2000, and related legislation.

#### Meeting Format

This meeting will be held according to the following schedule:

1. Date: Wednesday, October 8, 2003
Time: 9 a.m–5 p.m.; including breaks and a working lunch.
2. Date: Thursday, October 9, 2003
Time: 9 a.m.–4 p.m., including breaks and a working lunch.

The meeting schedule for October 8, 2003 will begin with presentations from invited speakers and reports on the work of the Committee's subcommittees. Time will be reserved for comments from the public, beginning at 10:30 a.m. and ending at 11 a.m. See the section below on Reserving Time for Public Comment, for information on how to reserve time on the agenda.

The meeting scheduled for October 9, 2003, will consist of reports from subcommittees and of discussions surrounding the development of the final report.

#### Attending the Meeting

The meeting will be open to the public. Registrations for public attendance will be accepted on a space available basis. Members of the public who wish to attend must register at least six (6) days in advance of the meeting by contacting Kristina Rose at the e-mail address or fax number listed above. Access to the meeting will not be allowed without registration, and all attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the meeting.

Individuals who will need special accommodations for a disability in order to attend the meetings should notify Kristina Rose at the above e-mail address or by fax, no later than October 6, 2003. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

#### Submitting Written Comments

Interested parties are invited to submit written comments to the Committee, by October 6, 2003, using one of the following methods: by e-mail to *AskNAC@ojp.usdoj.gov;* by fax on (202) 307–3911; or by U.S. mail to The National Advisory Committee on Violence Against Women, 810 Seventh Street, NW., Washington, DC, 20531.

#### Reserving Time for Public Comment

If you are interested in participating during the public comment period of the meeting, on the implementation of the Violence Against Women Act of 1994, and the Violence Against Women Act of 2000, you are requested to reserve time on the agenda by contacting the Office on Violence Against Women, Office of Justice Programs, U.S. Department of Justice, by e-mail or fax. Please include your name, the organization you represent, if appropriate, and a brief description of the issue you would like to present. Participants will be allowed approximately 3 to 5 minutes to present their comments, depending on the number of individuals who reserve time on the agenda. Participants are also encouraged to submit two written copies of their comments at the meeting.

Given the expected number of individuals interested in providing comments at the meetings, reservations for presenting comments should be made as soon as possible. Persons who are unable to obtain reservations to speak during the meetings are encouraged to submit written comments, which will be accepted at the meeting site or may be mailed to the Committee at the address listed under the section on Submitting Written Comments.

Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

**Diane M. Stuart,**

*Director, Office on Violence Against Women.*

[FR Doc. 03–25073 Filed 10–2–03; 8:45 am]

**BILLING CODE 4410–18–P**

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## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

May 27, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on (202) 693–4129 (this is not a toll-free number) or e-Mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Occupational Safety and Health Administration.

*Title:* Standard on Walking-Working Surfaces—29 CFR part 1910 Subpart D.

*OMB Number:* 1218–0199.

*Frequency:* On occasion.

*Type of Response:* Recordkeeping and Third party disclosure.

*Affected Public:* Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local or Tribal Government.

*Number of Respondents:* 10,000.

| Information collection requirement | Annual responses | Average response time (hours) | Annual burden hours |
|---|---|---|---|
| Load Limit Marking—29 CFR 1910.22(d)(1) | 2,100 | 0.33 | 693 |
| Marking of Portable Metal Ladders Having Defects—29 CFR 1910.26(c)(2)(vii) | 10,000 | 0.05 | 500 |
| Maintaining and Disclosing Drawings and Specifications of Outrigger Scaffolds Designed by a Registered Professional Engineer—29 CFR 1910.28(e)(3) | 0 | 0.00 | 0 |
| Total | 12,100 | | 1,193 |

*Total Annualized capital/startup:* $0.

*Total annual costs (operating/maintaining systems or purchasing services):* $0.

*Description:* The collections of information contained in the Walking-Working Surfaces standard are necessary to protect workers from the collapse of overloaded floors and the failure of defective portable metal ladders.

Paragraph 1910.22(d)(1) requires that load limits approved by the building official be marked on plates supplied and securely affixed by the owner of the building, or his duly authorized agent, in a conspicuous place in each space to which they relate. The plates are not to be removed or defaced but, if lost, removed, or defaced, they shall be replaced by the owner or his agent.

Under paragraph 1910.26(c)(2)(vii), ladders having defects are to be marked and taken out of service until repaired by either the maintenance department or the manufacturer.

Paragraph 1910.28(e)(3) requires that outrigger scaffolds designed by a registered professional engineer be constructed and erected in accordance with table D–16 of this section. A copy of the detailed drawings and specifications showing the sizes and spacing of members shall be kept on the job.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 03–25106 Filed 10–2–03; 8:45 am]

**BILLING CODE 4510–23–P**

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## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

September 22, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-Mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316; this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Agency:* Employment and Training Administration.

*Type of Review:* Extension of a currently approved collection.

*Title:* Application for Alien Employment Certification.

*OMB Number:* 1205–0015.

*Affected Public:* Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; and State, local, or tribal government.

*Type of Response:* Reporting.

*Frequency:* On occasion.

*Number of Respondents:* 111,200.

| Requirement | Number of responses | Average response time (hours) | Estimated burden hours |
|---|---|---|---|
| Form 750 Parts A and B | 100,000 | 2.8 | 280,000 |
| H–2A Applications (Form 750 Part A Only) | 4,200 | 1 | 4,200 |
| H–2B Applications (Form 750 Part A Only) | 7,000 | 1.4 | 9,800 |
| Totals: | 111,200 | | 294,000 |

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $0.

*Description:* Under section 212(a)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)(A)), certain aliens may not obtain a visa for entrance into the United States in order to engage in permanent employment unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that: (1) There are not sufficient U.S. workers who are able, willing, qualified and available at the time of application for a visa and admission into the U.S. and at the place where the alien is to perform the work; and (2) the employment of the alien will not adversely affect the wages and working conditions of U.S. workers similarly employed. Form ETA 750, parts A and B, is the application form submitted by employers that forms the basis for a determination as to whether the Secretary shall provide such a certification. Form ETA 750, part A, is also utilized to collect information that permits the Department to meet Federal responsibilities for administering two nonimmigrant programs: The H–2A and H–2B temporary labor certification programs. The H–2A temporary agricultural program establishes a means for agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant aliens to the U.S. to perform agricultural labor or services of a temporary or seasonal nature. The H–2B program establishes a means for employers to bring nonimmigrant aliens to the U.S. to perform nonagricultural work of a temporary or seasonal nature.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 03–25107 Filed 10–2–03; 8:45 am]

BILLING CODE 4510–23–P

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## DEPARTMENT OF LABOR

## Office of the Secretary

## Submission for OMB Review; Comment Request

September 23, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316 / this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Type of Review:* Extension of currently approved collection.

*Agency:* Employment Standards Administration.

*Title:* Regulations Governing the Administration of the Longshore and Harbor Workers' Compensation Act.

*OMB Number:* 1215–0160.

*Affected Public:* Individuals or households and Business or other for-profit.

*Frequency:* On occasion and Annually.

*Type of Response:* Recordkeeping and Reporting.

*Number of Respondents:* 170,564.

| Information Collection | Annual Responses | Average Response Time (Hours) | Annual Burden Hours |
|---|---|---|---|
| LS–200, Report of Earnings | 12,800 | 0.17 | 2,176 |
| LS–200, Report of Earnings with no earnings information to report | 3,200 | 0 | 0 |
| Liens | 10 | 0.5 | 5 |
| Certifications | 5 | 0.75 | 4 |
| Reinstatements | 2 | 0.5 | 1 |
| Settlement Applications | 4,500 | 2 | 9,000 |
| Section 8(f) Payments | 550 | 5 | 2,750 |
| ESA–100 (LS), Annual Report | 42,000 | 0.02 | 840 |
| LS–271, Application for Self-Insured Employer | 20 | 2 | 40 |
| LS–274, Report of Injury Experience of Self-Insured Employer | 412 | 1 | 412 |
| LS–201, Notice of Employee's Injury of Death | 4,500 | 0.25 | 1,125 |
| LS–513, Report of Payments | 900 | 0.5 | 450 |
| LS–267, Claimant's Statement | 1,300 | 0.033 | 43 |
| LS–203, Employee's Claim for Compensation | 10,125 | 0.25 | 2,531 |
| LS–204, Attending Physician's Supplementary Report | 90,000 | 0.5 | 45,000 |
| LS–262, Claim for Death Benefits | 240 | 0.25 | 60 |
| Total | 170,564 | | 64,437 |

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services)*: $56,984.

*Description:* The Longshore and Harbor Workers' Compensation Act, as amended (Pub. L. 98–426) pertains to the provision of benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel, as well as coverage extended to certain other employees. The regulations and associated forms cover the submission of information necessary for the processing of claims for benefits under the Longshore Act.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 03–25108 Filed 10–2–03; 8:45 am]

BILLING CODE 4510–23–P

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## DEPARTMENT OF LABOR

## Office of the Secretary

## Submission for OMB Review; Comment Request

September 17, 2003.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316/this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Employment Standards Administration.

*Title:* Health Insurance Claim Form.

*OMB Number:* 1215–0055.

*Affected Public:* Business or other for-profit; Not-for-profit institutions; and Individuals or households.

*Frequency:* On occasion.

*Number of Respondents:* 533,427.

*Number of Annual Responses:* 2,133,708.

*Estimated Time Per Response:* 7 minutes.

*Total Burden Hours:* 248,812.

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $0.

*Description:* The information collected by the Form OWCP–1500 is required to reimburse health care providers for services rendered to injured employees covered under the Federal Employees' Compensation Act, 5 U.S.C. 8101 *et seq.*, the Black Lung Benefits Act, 30 U.S.C. 901 *et seq.*, and the Energy Employees Occupational Illness Compensation Program Act of 2000 42 U.S.C. 7384 *et seq.* Appropriate reimbursement cannot be made without documentation that details services provided by health care professionals throughout the country.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Employment Standards Agency.

*Title:* Authorization for Release of Medical Information.

*OMB Number:* 1215–0057.

*Affected Public:* Individuals or households.

*Frequency:* One time.

*Number of Respondents:* 1,500.

*Number of Annual Responses:* 1,500.

*Estimated Time Per Response:* 5 minutes.

*Total Burden Hours:* 125.

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $0.

*Description:* The Black Lung Benefits Act, as amended, 30 U.S.C. 901 *et seq.*, and 20 CFR 725.405 require that all relevant medical evidence be considered before a decision can be made regarding a claimant's eligibility for benefits. The CM–936 is a form that gives the claimant's consent for release of information required by the Privacy Act of 1974, and contains information required by medical institutions and private physicians to enable them to release pertinent medical information.

**Ira L. Mills,**

*Department Clearance Officer.*

[FR Doc. 03–25109 Filed 10–2–03; 8:45 am]

**BILLING CODE 4510–23–M**

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## DEPARTMENT OF LABOR

## Employment and Training Administration

## Proposed Information Collection Request Submitted for Public Comment and Recommendations; Title 29 CFR Part 29, Labor Standards for the Registration of Apprenticeship Programs and Title 29 CFR Part 30, Equal Employment Opportunity in Apprenticeship and Training

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

**DATES:** Submit comments on or before December 2, 2003.

**ADDRESSES:** Send comments to Anthony Swoope, Administrator, Office of Apprenticeship Training, Employer and Labor Services, 200 Constitution Ave., NW., Room N–4671, Washington, DC 20210; Telephone number: (202) 693–2796 (this is not a toll-free number); E-mail Internet address: *swoope.anthony@dol.gov* and Fax number (202) 693–2808.

**FOR FURTHER INFORMATION CONTACT:** Anthony Swoope, Administrator, Office of Apprenticeship Training, Employer and Labor Services, 200 Constitution Ave., NW., Room N–4671, Washington, DC 20210; Telephone number: (202) 693–2796 (this is not a toll-free number); E-mail Internet address: *swoope.anthony@dol.gov* and Fax number (202) 693–2808.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The National Apprenticeship Act of 1937 authorizes and directs the Secretary of Labor "to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship, and to cooperate with the Secretary of Education * * *" (29 U.S.C. 50). Section 50a of the Act authorizes the Secretary of Labor to "publish information relating to existing and proposed labor standards of apprenticeship," and to "appoint national advisory committees * * *" (29 U.S.C. 50a).

Title 29 CFR part 29 sets forth labor standards to safeguard the welfare of apprentices, and to extend the application of such standards by prescribing policies and procedures concerning registration, for certain Federal purposes, of acceptable apprenticeship programs with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services (formerly known as the Bureau of Apprenticeship and Training). These labor standards, policies and procedures cover registration, cancellation, and deregistration of apprenticeship programs and apprenticeship agreements; the recognition of a State agency as the appropriate agency for registering local apprenticeship programs for certain Federal purposes; and matters relating thereto.

Title 29 CFR part 30 sets forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the U.S. Department of Labor and recognized State Apprenticeship Agencies. These policies and procedures apply to recruitment and selection of apprentices, and to all conditions of employment and training during apprenticeship. The procedures provide for review of apprenticeship programs, for registering apprenticeship programs, for processing complaints, and for deregistering noncomplying apprenticeship programs. This part also provides policies and procedures for continuation or withdrawal of recognition of State agencies which register apprenticeship programs for Federal purposes.

### II. Desired Focus of Comments

Currently, the Employment and Training Administration is soliciting comments concerning the proposed revision of the collection of information on the registered apprenticeship program under Title 29 CFR part 29 (Labor Standards for the Registration of Apprenticeship Programs) and the proposed extension of the collection of information regarding Title 29 CFR part 30 (Equal Employment Opportunity in Apprenticeship and Training) to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection requests (ICRs) can be obtained by contacting the office listed above in the addressee section of this notice.

### III. Current Actions

Recordkeeping and data collection activities regarding registered apprenticeship are by-products of the registration system. Organizations which apply for apprenticeship sponsorship enter into an agreement with the Federal Government or cognizant State government to operate their proposed programs consistent with 29 CFR part 29. Apprenticeship sponsors are not required to file reports regarding their apprentices other than individual registration and update information as an apprentice moves through their program. This revision request includes the addition of

Program Characteristics before the Title of the current form, Apprenticeship Agreement (ETA–671), to incorporate the collection of information on programs registered. It reinstates the voluntary disclosure of the apprentice's social security number. It also incorporates the identification by the applicant of his/her status as an incumbent worker prior to becoming an apprentice, the pre-apprentice hourly wage data 90 days or one quarter prior to registration, and provides instructions on those data elements that are not self-explanatory as requested previously by the Office of Management and Budget.

*Type of Review:* Revision for the Title 29 CFR part 29, Labor Standards for the Registration of Apprenticeship Programs and Extension for the Title 29 CFR part 30, Equal Employment Opportunity in Apprenticeship and Training.

*Agency:* Employment and Training Administration.

*Title:* Title 29 CFR part 29, Labor Standards for the Registration of Apprenticeship Programs and Title 29 CFR part 30, Equal Employment Opportunity in Apprenticeship and Training.

*OMB Number:* 1205–0223 for 29 CFR part 29 and 1205–0224 for 29 CFR part 30.

*Agency Number:* ETA Form 671 (1205–0223) and ETA Form 9039 (1205–0224).

*Recordkeeping:* Apprenticeship sponsors are required to keep accurate records on recruitment, selection of the applicant and/or apprentice and the employment and training activities related to the apprentice and the qualifications of each applicant/apprentice pertaining to determination of compliance with the regulation. Records must be retained, where appropriate, regarding affirmative action plans and evidence that qualification standards have been validated. State Apprenticeship Councils are also obligated to keep adequate records pertaining to determination of compliance with these regulations. All of the above records are required to be maintained for five years. If this information was not required, there would be no documentation that the apprenticeship programs were being operated in a nondiscriminatory manner. Many apprenticeship programs are 4 years or more in duration; therefore, it is important to maintain the records for at least 5 years.

*Affected Public:* Applicants, Apprentices, Sponsors, State Apprenticeship Councils or Agencies, Tribal Government.

*Cite/Reference/Form/etc:* 29 CFR part 29 and 29 CFR part 30.

*Total Respondents:* 290,531.

*Frequency:* 1-time basis.

*Total Responses:* 290,531.

*Average Time per Response: See* Chart.

*Estimated Total Burden Hours:* 60,826.

SUMMARY OF BURDEN FOR 29 CFR PART 29

| Sec. | Total respondents | Frequency | Total responses | Average time per response | Burden (hours) |
|---|---|---|---|---|---|
| 29.3(b) | 31,956 | 1-time basis | 31,956 | .33 hr./spon. | 10,546 |
| 29.3 | 136,617 | 1-time basis | 136,617 | .25 hr./app. | 34,154 |
| 29.6 | 118,786 | 1-time basis | 118,786 | .083 hr./app. | 9,859 |
| 29.5 | 1,688 | 1-time basis | 1,688 | 2 hrs./spon. | 3,376 |
| | 1,414 | 1-time basis | 1,414 | 2 hrs./SAC | 2,828 |
| 29.7 | 40 | 1-time basis | 40 | 1/12 hr. spon. | 3 |
| 29.12 | (30) | 1-time basis | (30) | 0 | 0 |
| 29.12*. | | | | | |
| 29.12 | 30 | 1-time basis | 30 | 2 hrs. SAC | 60 |
| 29.13 | 0 | 0 | 0 | 0 | 0 |
| Totals | 290,531 | | 290,531 | | 60,826 |

* (accomplished in 1977; no new state agency expected in 2002)

*Total Burden Cost (capital/startup):* 0.

*Total Burden Cost (operating/maintaining):* 0.

ETA Form 9039.
*Total Respondents:* 32,036.
*Frequency:* 1-time basis.
*Total Responses:* 53,235.

*Average Time per Response: See* Chart.

*Estimated Total Burden Hours:* 5,714.

SUMMARY OF BURDEN FOR 29 CFR PART 30

| Sec. | Total respondents | Frequency | Total responses | Average time per response | Burden (hours) |
|---|---|---|---|---|---|
| 30.3 | 1,604 | 1-time basis | 1,604 | ½ hr./spon. | 802 |
| 30.4 | 84 | 1-time basis | 84 | 1 hr./spon. | 84 |
| 30.5 | 5,750 | 1-time basis | 5,750 | ½ hr./spon. | 2,875 |
| 30.6 | 50 | 1-time basis | 50 | 5 hrs./spon. | 250 |
| 30.8 | 31,956 | 1-time/program | 31,956 | 1 min./spon. | 533 |
| 30.8 | 30 State Agencies | 1-time basis | 13,741 | 5 min./spon. | 1,145 |
| 30.11 | 31,956 | 1-time | 31,956 | Handout | |
| ETA 9039 | 50 appl./appr. | 1-time basis | 50 | ½ hr. | 25 |
| 30.15 | 30 State Agencies | 1-time | Completed | | |
| 30.19 | 30 State Agencies | varies | | | |
| Totals | 32.036 | | 53,235 | | 5,714 |

*Total Burden Cost (capital/startup):* 0.

*Total Burden Cost (operating/maintaining):* 0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

**Emily Stover DeRocco,**

*Assistant Secretary, Employment and Training Administration.*

[FR Doc. 03–25105 Filed 10–2–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

## Employment Standards Administration, Wage and Hour Division

## Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be sued in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

### Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

Rhode Island
RI030001 (Jun. 13, 2003)
RI030002 (Jun. 13, 2003)
RI030003 (Jun. 13, 2003)

*Volume II*

District of Columbia
DC030001 (Jun. 13, 2003)
DC030002 (Jun. 13, 2003)
DC030003 (Jun. 13, 2003)

*Volume III*

None

*Volume IV*

None

*Volume V*

None

*Volume VI*

Colorado
CO030001 (Jun. 13, 2003)
CO030002 (Jun. 13, 2003)
CO030003 (Jun. 13, 2003)
CO030004 (Jun. 13, 2003)
CO030005 (Jun. 13, 2003)
CO030006 (Jun. 13, 2003)
CO030007 (Jun. 13, 2003)
CO030008 (Jun. 13, 2003)
CO030009 (Jun. 13, 2003)
CO030010 (Jun. 13, 2003)
CO030011 (Jun. 13, 2003)
CO030012 (Jun. 13, 2003)
CO030013 (Jun. 13, 2003)
CO030016 (Jun. 13, 2003)
South Dakota
SD030005 (Jun. 13, 2003)
SD030009 (Jun. 13, 2003)

*Volume VII*

None

### General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts, are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC. This 25th Day of September, 2003.

**Carl J. Poleskey,**

*Chief, Branch of Construction Wage Determinations.*

[FR Doc. 03–24804 Filed 10–2–03; 8:45 am]

**BILLING CODE 4510–27–M**

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## NATIONAL COUNCIL ON DISABILITY

### Youth Advisory Committee Meeting (Conference Call)

**TIME AND DATE:** 4:30 p.m. e.s.t., October 27, 2003.

**PLACE:** National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC 20004.

**AGENCY:** National Council on Disability (NCD).

**STATUS:** All parts of this conference call will be open to the public. Those interested in participating in this conference call should contact the appropriate staff member listed below.

**AGENDA:** Roll call, announcements, reports, new business, adjournment.

**CONTACT PERSON FOR MORE INFORMATION:** Geraldine Drake Hawkins, Ph.D., Program Specialist, National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *ghawkins@ncd.gov* (e-mail).

**YOUTH ADVISORY COMMITTEE MISSION:** The purpose of NCD's Youth Advisory Committee is to provide input into NCD activities consistent with the values and goals of the Americans with Disabilities Act.

Dated: September 30, 2003.

**Ethel D. Briggs,**

*Executive Director.*

[FR Doc. 03–25102 Filed 10–2–03; 8:45 am]

**BILLING CODE 6820–MA–P**

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## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension

Rule 11Ac1–1—SEC File No. 270–404—OMB Control No. 3235–0461.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Rule 11Ac1–1, Dissemination of Quotations, contains two related collections of information necessary to disseminate market makers' published quotations to buy and sell securities to the public. The first collection of information is found in Rule 11Ac1–1(c) 17 CFR 11Ac1–1(c). This reporting requirement obligates each "responsible broker or dealer," as defined under the rule, to communicate to its exchange or association its best bids, best offers, and quotation sizes for any subject security, as defined under the rule. The second collection of information is found in Rule 11Ac1–1(b) 17 CFR11Ac1–1(b). This reporting requirement obligates each exchange and association to make available to quotation vendors for dissemination to the public the best bid, best offer, and aggregate quotation size for each subject security.[1] Brokers, dealers, other market participants, and members of the public rely on published quotation information to determine the best price and market for execution of customer orders.

It is anticipated that 721 respondents, consisting of 180 exchange specialists and 541 OTC market makers, will make 246,788,000 total annual responses pursuant to Rule 11Ac1–1, resulting in an annual aggregate burden of approximately 205,486 hours.

Written comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collections of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: September 24, 2003.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–25115 Filed 10–2–03; 8:45 am]

**BILLING CODE 8010–01–P**

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[1] A third requirement under the Rule 11Ac1–1, as amended at 17 CFR 11Ac1–1(c)(5), gives electronic communications networks ("ECNs") the option of reporting to an exchange or association for public dissemination, on behalf of their OTC market maker or exchange specialist customers, the best priced orders and the full size for such orders entered by market makers, to satisfy such market makers' reporting obligation under Rule 11Ac1–1(c). Because this reporting requirement is an alternative method of meeting the market makers' reporting obligation, and because it is directed to nine or fewer persons (ECNs), this collection of information is not subject to OMB review under the Paperwork Reduction Act.

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of October 6, 2003:

A Closed Meeting will be held on Tuesday, October 7, 2003 at 2 p.m., and an Open Meeting will be held on Wednesday, October 8, 2003 at 9:30 a.m., in Room 1C30, the William O. Douglas Room.

Commissioner Atkins, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

The subject matter of the Closed Meeting scheduled for Tuesday, October 7, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;
Institution and settlement of injunctive actions;
Formal orders of investigation;
Adjudicatory matters; and
Post-argument discussion.

The subject matter of the Open Meeting scheduled for Wednesday, October 8, 2003 will be:

1. The Commission will consider whether to propose amendments to certain Rules, Schedules and Forms under the Securities Exchange Act of 1934 and the Investment Company Act of 1940 that would require companies, under certain circumstances, to include in their proxy materials security holder nominees for election as director.

For further information, please contact Lillian Cummins Brown at (202) 942–2900.

2. The Commission will consider whether to propose rule amendments and new rules under the Securities Exchange Act of 1934 (the "Exchange Act") that would establish two separate voluntary regulatory frameworks for the Commission to supervise broker-dealers and their affiliates on a consolidated basis.

One proposal would establish an alternative method to compute certain net capital charges for broker-dealers that are part of a holding company that manages risks on a group-wide basis and whose holding company consents to group-wide Commission supervision. The broker-dealer's holding company and its affiliates, if subject to Commission supervision, would be referred to as a "consolidated supervised entity" or "CSE." The alternative method the broker-dealer would be allowed to use to compute certain market and credit risk capital charges would involve the use of internal mathematical models that the broker-dealer uses to measure its risk. The CSE would be required to comply with rules regarding its group-wide internal risk management control system and would have to periodically provide the Commission with consolidated computations of allowable capital and risk allowances (or other capital assessment) consistent with the Basel Standards. Commission supervision of the CSE would include recordkeeping, reporting, and examination requirements. Modifications to some of these requirements would be available for functionally regulated affiliates.

The other proposal would implement Section 17(i) of the Exchange Act, which created a new structure for consolidated supervision of holding companies of broker-dealers, or "investment bank holding companies" ("IBHCs") and their affiliates. Pursuant to the Act, an IBHC that meets certain, specified criteria may voluntarily register with the Commission as a supervised investment bank holding company ("SIBHC") and be subject to supervision on a group-wide basis. Pursuant to the proposed rules, registration as an SIBHC is limited to IBHCs that are not affiliated with certain types of banks and that have a substantial presence in the securities markets. The proposed rules would provide an IBHC with an application process to become supervised by the Commission as an SIBHC, and would establish regulatory requirements for those SIBHCs. Commission supervision of an SIBHC would include recordkeeping, reporting and examination requirements. Further, the SIBHC also would be required to comply with rules regarding its group-wide internal risk management control system and would have to periodically provide the Commission with a consolidated computations of allowable capital and risk allowances (or other capital assessment) consistent with Basel Standards.

The proposals would also include technical and conforming amendments to the risk assessment rules (Exchange Act Rules 17h–1T and 17h–2T). In addition, the SIBHC proposal would adjust the audit requirements for OTC derivative dealers to allow accountants to use agreed-upon procedures when conducting audits of risk management control systems.

For further information, please contact Lourdes Gonzalez or Linda Stamp Sundberg at (202) 942–0073 or Bonnie Gauch (202) 942–0765 or Rose Russo Wells as (202) 942–0143.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: September 30, 2003.

**Jonathan G. Katz,**
*Secretary.*

[FR Doc. 03–25248 Filed 10–1–03; 11:27 am]

**BILLING CODE 8010–01–M**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48555; File No. SR–Amex–2003–54]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange LLC Relating to the Limitation of Liability of the Options Clearing Corporation to Exchange Members

September 29, 2003.

On May 30, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish Amex Rule 945. This Rule would provide that the Options Clearing Corporation ("OCC") would have no liability to Amex members, with respect to the use, non-use, or inability to use the Options Intermarket Linkage ("Linkage"), and that Linkage is a facility or service afforded by the Exchange for the purposes of Article IV, Section 1(e) of the Amex Constitution. The proposed rule change was published for comment in the **Federal Register** on August 19, 2003.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of Section 6(b) of the Act[5] and the rules and regulations thereunder. The Commission finds that the rule change is consistent with Section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of the Exchange be designed to foster cooperation and coordination with persons engaged in regulation, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the Amex, along with the other exchanges that are Participants in the Linkage Plan, entered into an agreement with the OCC, which operates the central core or "hub" to and from which all Linkage orders are routed.[7] In the Agreement, the Amex committed to file a proposed rule change with the Commission that would limit the liability of the OCC to Amex members.

The Commission believes that this proposed rule change should foster cooperation and promote a relationship between the Amex and the OCC that is conducive to the effective operation of the Linkage. Further, the Commission believes that the Amex's proposal to characterize the Linkage as a facility or service of the Exchange for the purposes of Article IV, Section 1(e) of the Amex Constitution is reasonable.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 48319 (August 12, 2003), 68 FR 49825.

[4] In approving this proposed rule change the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] Linkage Project and Facilities Management Agreement ("the Agreement") (January 30, 2003).

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–Amex–2003–54) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–25117 Filed 10–2–03; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48557; File No. SR–Amex–2003–71]**

## Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to the Elimination of the Minor Floor Violation Disciplinary Committee

September 29, 2003.

On July 25, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to eliminate the Amex's Minor Floor Violation Disciplinary Committee ("MFVDC"). Under the proposed rule change, the responsibilities of the MFVDC will be transferred to the Exchange's Enforcement Department.

The proposed rule change was published for comment in the **Federal Register** on August 28, 2003.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(6)[5] of the Act which requires, among other things, that the Exchange's rules provide that its members and persons associated with its members be appropriately disciplined for violations of the federal securities laws and the Exchange's rules. The Commission believes that consolidating the responsibility for initiating disciplinary action under Amex's minor rule violation plan exclusively in the Exchange's Enforcement Department should provide a more consistent process for the disciplining of Amex's members and persons associated with its members.

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–Amex–2003–71) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–25118 Filed 10–2–03; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48553; File No. SR–NASD–2003–144]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend, for an Additional Six-Month Period, a Pilot Rule Regarding Waiver of California Arbitrator Disclosure Standards

September 26, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 24, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a "non-controversial" rule change pursuant to Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to extend the pilot rule in IM–10100(f) of the NASD Code of Arbitration Procedure, which requires industry parties in arbitration to waive application of contested California arbitrator disclosure standards, upon the request of customers, and associated persons with claims against other industry parties, for a six-month period.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In July 2002, the California Judicial Commission adopted a set of rules, "Ethics Standards for Neutral Arbitrators in Contractual Arbitration" ("California Standards"),[4] governing ethical standards for arbitrators. The rules were designed to address conflicts of interest in private arbitration forums that are not part of a federal regulatory system overseen on a uniform, national basis by the SEC. The California Standards imposed disclosure requirements on arbitrators that conflict with the disclosure rules of NASD and the New York Stock Exchange ("NYSE"). Because NASD could not both administer its arbitration program in accordance with its own rules and comply with the new California Standards at the same time, NASD initially suspended the appointment of arbitrators in cases in California, but offered parties several options for pursuing their cases.[5]

In November 2002, NASD and NYSE filed a lawsuit in federal district court seeking a declaratory judgment that the California Standards are inapplicable to arbitration forums sponsored by self-regulatory organizations ("SROs").[6] That litigation is currently pending on appeal. Since then, other lawsuits relating to the application of the California Standards to SRO-sponsored arbitration have been filed, several of which are also still pending.

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[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 48382 (August 20, 2003), 68 FR 51818.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(6).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] California Rules of Court, Division VI of the Appendix, entitled, "Ethics Standards for Neutral Arbitrators in Contractual Arbitration."

[5] These measures included providing venue changes for arbitration cases, using non-California arbitrators when appropriate, and waiving administrative fees for NASD-sponsored mediations.

To allow arbitrations to proceed in California while the litigation was pending, NASD implemented a pilot rule to require all industry parties (member firms and associated persons) to waive application of the California Standards to the case, if all the parties in the case who are customers, or associated persons with claims against industry parties, have done so.[7] In such cases, the arbitration proceeds under the NASD Code of Arbitration Procedure, which already contains extensive disclosure requirements and provisions for challenging arbitrators with potential conflicts of interest.[8]

The pilot rule, which was originally approved for six months on September 26, 2002, was extended in March 2003, and is now due to expire on September 30, 2003. Because the pending litigation regarding the California Standards is unlikely to be resolved by September 30, 2003, NASD requests that the effectiveness of the pilot rule be extended through March 31, 2004, in order to prevent NASD from having to suspend administration of cases covered by the pilot rule.

### 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that expediting the appointment of arbitrators under the waiver rule, at the request of customers and associated persons with claims against industry respondents will allow those parties to exercise their contractual rights to proceed in arbitration in California, notwithstanding the confusion caused by the disputed California Standards.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NASD has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

Pursuant to Rule 19b–4(f)(6)(iii) under the Act,[12] the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of its intent to file the proposed rule change at least five business days beforehand. NASD has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.[13] Waiving the pre-filing requirement and accelerating the operative date will merely extend a pilot program that is designed to provide investors, and associated persons with claims against industry respondents, with a mechanism to resolve their disputes. During the period of this extension, the Commission and NASD will continue to monitor the status of the previously discussed litigation. For these reasons, the Commission designates the proposed rule change as effective and operative on September 30, 2003.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–144 and should be submitted by October 24, 2003.

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[6] *See* Motion for Declaratory Judgment, *NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc. v. Judicial Council of California*, filed in the United States District Court for the Northern District of California, No. C 02 3486 SBA (July 22, 2002), available on the NASD Web site at *http://www.nasdadr.com/pdf-text/072202_ca_complaint.pdf*.

[7] Originally, the pilot rule only applied to claims by customers, or by associated persons asserting a statutory employment discrimination claim against a member, and required a written waiver by the industry respondents. In July 2003, NASD expanded the scope of the pilot rule to include all claims by associated persons against another associated person or a member. At the same time, the rule was amended to provide that when a customer, or an associated person with a claim against a member or another associated person, agrees to waive the application of the California Standards, all respondents that are members or associated persons will be deemed to have waived the application of the standards as well. The July 2003 amendment also clarified that the pilot rule applies to terminated members and associated persons. *See* Securities Exchange Act Rel. No. 48187 (July 16, 2003), 68 FR 43553 (July 23, 2003) (File No. SR–NASD–2003–106).

[8] The NYSE has a similar rule; Rule 600(g).

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–25116 Filed 10–2–03; 8:45 am]

BILLING CODE 8010–01–P

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48552; File No. SR–NYSE–2003–26]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Arbitration

September 26, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NYSE.[3] NYSE filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an extension, until March 31, 2004, of Rule 600(g).

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### 1. Purpose

The proposed rule change is intended to extend until March 31, 2004, Rule 600(g), a pilot program that was initially approved by the Commission on November 12, 2002[6] for a six-month period, and which was then extended until September 30, 2003.[7]

The Exchange's statement of purpose is contained in the Commission's Approval Order. In that Approval Order the Commission stated:

> The Exchange's Director of Arbitration will monitor the progress of the above described litigation [*NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc.* v. *Judicial Council of California*, No. C 02 3485 (N.D. Cal.)] and determine whether there is a continuing need for the waiver option.[8]

The above litigation, in which the Exchange and NASD Dispute Resolution, Inc. sought a declaratory judgment that the Ethics Standards for Neutral Arbitrators in Contractual Arbitrations (the "California Standards") are preempted by federal law, has not been concluded. On November 12, 2002, Judge Samuel Conti dismissed the action on Eleventh Amendment grounds.[9] A Notice of Appeal from Judge Conti's decision has been filed with the United States Court of Appeals for the Ninth Circuit.[10] The Exchange's Director of Arbitration has determined that, in the absence of a final judicial determination or legislative resolution of the preemption issue, there is a continuing need for the waiver option.

#### 2. Statutory Basis

The Exchange states that the proposed changes are consistent with section 6(b)(5) of the Act[11] in that they promote just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NYSE has stated that because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), it has become effective pursuant to section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Commission staff made non-substantive changes to the description of the proposed rule change with the permission of the NYSE. Telephone conversation between Robert Clemente, Director—Arbitration, NYSE, and Andrew Shipe, Special Counsel, Division of Market Regulation, Commission, September 26, 2003.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] Release No. 34–46816 (November 12, 2002), 67 FR 69793 (November 19, 2002) (SR–NYSE–2002–56).

[7] Release No. 34–47836 (May 12, 2003), 68 FR 27608 (May 20, 2003) (SR–NYSE–2003–16).

[8] Release No. 34–46816 (November 12, 2002), 67 FR 69793, 69794 (November 19, 2002) (SR–NYSE–2002–56).

[9] *NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc.* v. *Judicial Council of California*, No. C 02 3485 (N.D. Cal.).

[10] In another district court decision, *Mayo* v. *Dean Witter Reynolds, Inc., Morgan Stanley Dean Witter & Co. dba Morgan Stanley Dean Witter, and Does 1-50*, No. C–01–20336 JF, 2003 WL 1922963 (N.D. Cal., April 22, 2003), Judge Jeremy Fogel held that application of the California Standards to the Exchange and other self-regulatory organizations is preempted by the Act, the comprehensive system of federal regulation of the securities industry established pursuant to the Act, and the Federal Arbitration Act. The *Mayo* decision was not appealed. Since the decision in *Mayo*, the question of the applicability of the California Standards to SROs has been presented in another case in federal court in California, *Credit Suisse First Boston Corp.* v. *Grunwald*, No. C 02–2051 SBA (N.D. Cal. Mar. 31, 2003). The *Grunwald* court concluded that the California Standards cannot apply to SRO-appointed arbitrators because such arbitrators do not fall within the statutory definition of "neutral arbitrators." The appeal in *Grunwald* is fully briefed, and the Ninth Circuit is considering it on an expedited basis. The Commission and the Judicial Council submitted *amicus* briefs in the Ninth Circuit, and NASD Dispute Resolution and NYSE have moved to intervene on appeal. The appeal from Judge Conti's decision in *NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc.* v. *Judicial Council of California* is currently stayed pending a decision in *Grunwald*.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

Pursuant to Rule 19b–4(f)(6)(iii) under the Act,[14] the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of its intent to file the proposed rule change at least five business days beforehand. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.[15] Waiving the pre-filing requirement and accelerating the operative date will merely extend a pilot program 1 that is designed to provide investors with a mechanism to resolve disputes with broker—dealers. During the period of this extension, the Commission and NYSE will continue to monitor the status of the previously discussed litigation. For these reasons, the Commission designates the proposed rule change as effective and operative immediately.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. NYSE–2003–28 and should be submitted by October 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–25074 Filed 10–2–03; 8:45 am]

BILLING CODE 8010–01–P

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[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48547; File No. SR–NYSE–2003–24]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. to Reduce Initial and Annual Branch Office Registration Fees, Retroactive to January 1, 2003, Charged to Member Organizations With More Than One Thousand Branch Offices

September 25, 2003.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 19b–4[2] thereunder, notice is hereby given that on August 21, 2003, the New York Stock Exchange, Inc. ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On September 8, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The Exchange proposes to amend its 2003 Price List to reduce its branch office registration fees for member organizations with more than one thousand branch offices.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below of the most significant aspects of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange increased its registration and maintenance fees applicable to member organization branch offices, effective January 1, 2003.[4] The Exchange charges an initial fee upon the opening of a new branch office and an annual maintenance fee for each active branch office. A three-tiered fee structure is used for assessment of such fees in which a stepped-down rate is charged based on the applicable tier level. This structure provides an incremental reduction in fees for those branch offices that exceed the level of each breakpoint.

Prior to the January 1, 2003 increases, the following fee schedule was in effect for both initial and annual maintenance fees:

- $250 for each of the first 250 branch offices;
- $150 for each of the next 250 branch offices;
- $125 for each branch office over 500.

The January 1, 2003 fee structure amendments resulted in the following schedule, which is currently in effect:

- $350 for each of the first 1,000 branch offices;
- $250 for each of the next 2,000 branch offices;
- $225 for each branch office over 3,000.

Some member organizations have raised concerns regarding the current branch office fee schedule, contending it is unduly burdensome for certain business models, which have more offices than the average member firm but only one or two persons staffing each office.[5]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 5, 2003 ("Amendment No. 1"). In Amendment No: 1, the Exchange replaced the original rule filing in its entirety, converted it from a 19(b)(3)(A) filing to a 19(b)(2) filing, and requested accelerated approval.

[4] *See* Securities Exchange Act Release No. 47174; 68 FR 2606 (January 17, 2003) (SR–NYSE–2002–66).

[5] Telephone call between Leah Mesfin, Attorney, Division of Market Regulation, Commission, and Mary Ann Furlong, Director, Rule and Interpretive Standards, NYSE on September 24, 2003.

In response to these concerns, the Exchange proposes reductions of initial and annual branch office fees, retroactive to January 1, 2003, as follows:

- $350 for each of the first 1,000 branch offices (unchanged);
- $150 for each of the next 2,000 branch offices (reduced from $250);
- $125 for each branch office over 3,000 (reduced from $225).

2. Statutory Basis

The proposed rule change is consistent with the requirement under section 6(b)(4)[6] of the Exchange Act, which require that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange did not receive or solicit any written comments on the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–2003–24 and should be submitted by October 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–25075 Filed 10–2–03; 8:45 am]

BILLING CODE 8010–01–P

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## DEPARTMENT OF STATE

**[Public Notice 4504]**

## 30-Day Notice of Proposed Information Collection: Form DSP–122, Supplemental Registration for the Diversity Immigrant Visa Program; OMB Control Number 1405–0098

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

*Type of Request:* Revision of Currently Approved Collection.

*Originating Office:* Bureau of Consular Affairs, Department of State (CA/VO).

*Title of Information Collection:* Supplemental Registration For The Diversity Immigrant Visa Program.

*Frequency:* On occasion.

*Form Number:* DSP–122.

*Respondents:* Aliens applying for a Diversity Visa.

*Estimated Number of Respondents:* 47,000 per year.

*Average Hours Per Response:* .5 hours.

*Total Estimated Burden:* 23,500 hours per year.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

**FOR ADDITIONAL INFORMATION:** Copies of the proposed information collection and supporting documents may be obtained from Brendan Mullarkey of the Office of Visa Services, U.S. Department of State, 2401 E St., NW., RM L–703, Washington, DC 20520, who may be reached on (202) 663–1166. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on (202) 395–3897.

Dated: September 26, 2003.

**Janice L. Jacobs,**

*Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.*

[FR Doc. 03–25168 Filed 10–2–03; 8:45 am]

BILLING CODE 4710–06–P

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## DEPARTMENT OF STATE

## Office of Visa Services

**[Public Notice 4506]**

## Notice of Information Collection Under Emergency Review: Form DS–5501, Electronic Diversity Visa Entry Form; OMB Control Number 1405–xxxx

**ACTION:** Notice.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. The following summarizes the information collection proposal to be submitted to OMB:

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[6] 15 U.S.C. 78f(b)(4).

[7] 17 CFR 200.30–3(a)(12).

*Type of Request:* Emergency Review—New Collection.

*Originating Office:* Bureau of Consular Affairs, Department of State (CA/VO).

*Title of Information Collection:* Electronic Diversity Visa Entry Form.

*Frequency:* Once per respondent.

*Form Number:* DS–5501.

*Respondents:* Aliens entering the Diversity Visa Lottery.

*Estimated Number of Respondents:* 8 million per year.

*Average Hours Per Response:* .5 hours.

*Total Estimated Burden:* 4 million hours per year.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection by OMB has been requested by October 23, 2003. If granted, the emergency approval is only valid for 180 days.Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached at 202–395–3897.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until 60 days from the date that this notice is published in the **Federal Register**. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

**FOR FURTHER INFORMATION CONTACT:** Copies of public comments, or requests for additional information regarding the collection listed in this notice should be directed to Brendan Mullarkey of the Office of Visa Services, U.S. Department of State, 2401 E St., NW., RM L–703, Washington, DC 20520, who may be reached at (202) 663–1166.

Dated: September 26, 2003.

**Janice L. Jacobs,**

*Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.*

[FR Doc. 03–25170 Filed 10–2–03; 8:45 am]

BILLING CODE 4710–06–P

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## DEPARTMENT OF STATE

[Public Notice 4503]

## Bureau of Educational and Cultural Affairs Request for Grant Proposals: Congress-Bundestag Youth Exchange Program

**SUMMARY:** The Office of Citizen Exchanges, Youth Programs Division (ECA/PE/C/PY), of the Department of State's Bureau of Educational and Cultural Affairs announces an open competition for the Congress-Bundestag Youth Exchange Program (CBYX). Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to facilitate educational exchanges between American and German high school students and young professionals.

### Program Information

*Overview:* The CBYX program supports the exchange of American and German young people in order to sustain and strengthen German-American friendship based on common values of democracy and to convey lasting personal and institutional relationships to the successor generation. The primary objective of the program is to encourage American and German youth to learn about each other's society and culture through educational exchange. Additional goals for this competition include a renewed effort to promote the participants' roles as young ambassadors and the impact they can have on US-German relations, and to strengthen the linkages between US Representatives and their Bundestag counterparts. The program provides a full scholarship for an academic year experience of living and studying in the host country.

The Department of State, Bureau of Educational and Cultural Affairs administers the CBYX program in the U.S. The program is known in Germany as the Parlamentarisches Patenschafts-Programm (PPP), and is administered by the German Bundestag Administrative Office, PB4.

Inaugurated in 1983 through a bilateral agreement between the U.S. Congress and the German Bundestag, each government provides funding to exchange organizations through assistance awards for the costs of participant recruitment and selection, international airfare, orientation and debriefing, and hosting support for the respective exchange participants.

The U.S.-German agreement calls for an open grants competition every four years, and PB4 is holding a simultaneous open competition to select the German counterpart organizations that will manage the program in Germany. Up to five German high school exchange organizations will be partnered with five American high school exchange organizations, and one German vocational and one German young professionals exchange organization will be paired with American exchange organizations.

Organizations that are successful in this competition will be provided assistance awards in FY2005 to administer the recruitment and selection of participants for academic year 2005–06. Organizations for each component will be eligible for renewal awards in FY2006, 2007, 2008 for exchanges through academic year 2008–09. All assistance awards will be subject to availability of funds. (*Please note:* At the time of publication, funds have not been appropriated to support this program. As is the case with all Bureau assistance awards, final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.)

The actual number of participants exchanged each year is dependent on the amount of funding made available by the U.S. Congress and the German Bundestag. Though Congress has not yet determined the budget level for FY2005, the competition for program year 2005–06 will be based on up to 350 American and 350 German participants. Throughout the four-year grant cycle, representatives of both governments will *hold annual discussions to determine the final participant numbers for each academic year.*

Participants are chosen according to procedures and criteria established by each government. In the U.S. the CBYX program has four components.

1. *High School Component:* This component may provide up to 250 scholarships for a one-year educational and cultural homestay experience in Germany to American high school students ages 15–18. (The high school exchange is reciprocal for up to 250 American and 250 German students annually.) High school exchange organizations are invited to bid on conducting merit-based competitions among American high school students

in one or more of five designated regions of the United States, as follows:

*Northeast:* Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Ohio, Pennsylvania, Washington, DC, Delaware, Maryland.

*Southeast:* Arkansas, Louisiana, Mississippi, Alabama, Kentucky, Tennessee, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida, Puerto Rico.

*Central States:* Indiana, Illinois, Michigan, Minnesota, Wisconsin, Iowa, Missouri, Nebraska.

*Southwest:* Kansas, Texas, Oklahoma, Colorado, New Mexico, Utah, Arizona, Southern California* (*the northern border of this region includes the counties of Monterey, San Benito, Fresno, and Inyo).

*Pacific/Northwest:* Alaska, Hawaii, Washington, Oregon, Idaho, Montana, Wyoming, Nevada, North Dakota, South Dakota, Northern California* (*the southern border of this region includes the counties of Santa Cruz, Santa Clara, Merced, Madera, and Mono).

American high school exchange organizations may bid on more than one region, indicating the most preferred area(s) in priority order for up to 50 American high school students per region. A maximum of five organizations may be selected to conduct all aspects of the competition in one of each of the five regions. In coordination with its German partner organization, high school organizations may host up to 100 German and American students each.

Organizations that are awarded a grant will conduct advertising, recruitment, processing of applications, screening, selection, pre-departure orientations and debriefings, and management of all administrative and logistical matters including domestic and international travel.

In the host country, American and German partner organizations will coordinate arrival and re-entry orientation for the respective exchange students, placement of the students in host families and schools (nationwide), arrange program enrichment activities, conduct the recruitment, screening, selection and orientation of host-families, provide program monitoring, supervision and counseling to students and host families, and manage all administrative and logistical matters including in-country travel and health and accident insurance. Organizations should secure all host family and school placements at least two weeks prior to the German students' arrival in the U.S. Organizations will be required to submit to the program office a list of these placements no later than 30 days after the students' arrival.

2. *Vocational Component:* This component provides scholarships to graduating American high-school seniors with a vocational specialization for a one-year professional study and training experience in their fields of interest in Germany. One organization will be selected to conduct all aspects of the nationwide selection competition in the U.S. for up to 25 American students and programming, including advertising, recruitment, processing of applications, screening, selection, pre-departure orientations and debriefings, and management of all administrative and logistical matters including domestic and international travel. (During the selection process the grantee is encouraged to work with vocational educational offices at the state level, as well as administrators of secondary schools with vocational education curriculum.)

The German partner organization chosen for a grant by the Bundestag Administrative Office (PB4) will coordinate arrival and re-entry orientation for the students and their placement in host families and schools, arrange a practicum in the participants' field of study, arrange program enrichment activities, and conduct the recruitment, screening, selection and orientation of host families, provide program monitoring, supervision and counseling to students and host families, and manage all administrative and logistical matters including in-country travel and health and accident insurance.

3. *Young Professional Component:* This component provides scholarships for a one-year professional study and training experience in the host country in business, technical, vocational, and agricultural fields to young American and German students ages 18–24. One organization will be selected to conduct all aspects of programming for up to 75 American and 100 German Young Professionals including the nationwide competition for the Americans and placement of the German students in American homes and schools as well as advertising, recruitment, processing of applications, screening, selection and pre-departure orientations and debriefings, and management of all administrative and logistical matters including domestic and international travel.

In the host country, the American and German partner organizations will coordinate arrival and re-entry orientation for the students, the placement of the students in host families (or other suitable living quarters) and schools (colleges/universities), arrange a practicum in the participants' field of study, arrange program enrichment activities, and conduct the recruitment, screening, selection and orientation of host families, provide program monitoring, supervision and counseling to students and host families, and manage all administrative and logistical matters including in-country travel and health and accident insurance.

In the U.S., each German young professional participant will be placed in a two- or four-year college for one semester of full-time study or a minimum of 12 credit hours (which may include an English class) throughout the academic year. Each applicant is encouraged to seek tuition waivers and cost sharing with cooperating colleges. The organization will coordinate with each participant to assure that his/her practicum is based on a prospectus of the specific skills and functions that will be mastered and that there is a structured learning component that enables the participant to gain a perspective on the overall operation of the business. The selected organization will also coordinate a six-week Congressional internship on Capitol Hill or in the state office for up to five German young professionals.

A stipend for some meals, incidentals and reasonable local transportation expenses may be included in the budget, but it is anticipated that the stipend would be substantially reduced or eliminated during the second half of the program when the participants receive allowances for living expenses from the firms or agencies hosting their practicum. The current stipend range is $250 to $300 per the regional cost of living. Where possible, hosting arrangements should be found that do not require subsidization.

4. *Administrative Supplemental:* One or more organizations will be awarded administrative funds to produce materials for program advertisement and recruitment for the high school component, maintain the CBYX Scholarship Web site, and to maintain an alumni database for all CBYX participants.

One of the organizations selected for the high school component will produce program specific informational materials for the high school component. Each organization selected for the high school component will distribute the materials to a wide audience within its appointed region, including public and private secondary schools, the media, and key networks such as the American Association of Teachers of German. (Innovative methods of publicizing the program are welcome, within funding limitations. Organizations are encouraged to utilize their volunteer networks and alumni to promote the program.) The "administrative" organization will coordinate data/input from the high school organizations for production of the promotional materials. The organization will set up and maintain a web-based listing of CBYX participants/alumni designed to centrally harness alumni and encourage activities beyond their participation in the program.

Each year all grantee organizations will submit to the Department of State program office, at least 30 days after departure/arrival data lists of all current American and German participants with U.S. addresses and corresponding Congressional representatives/districts, and update the information periodically throughout the year.

Please see the POGI (Project Objectives, Goals, and Implementation) for further details and guidance regarding each of the program components and the administrative supplemental.

Guidelines: Prior German language skills are not required for American participants. The German partner organizations will provide up to two months of intensive language training, which is covered by German Government funds, to American participants upon their arrival in Germany. German participants are expected to be sufficiently proficient in English and therefore will not require (but may elect) an English language course as part of their regular studies. (No Bureau funding will be provided for English training under this program.)

Organizations must provide comprehensive pre-departure preparation and orientations that will thoroughly prepare American students for their year abroad. The pre-departure orientation for American students and the debriefing for German students normally take place in Washington, DC and include CBYX students only. The Washington orientations are designed to introduce the participants to the Federal government and issues in the U.S.-German relationship, and may be subcontracted out by the grantee organizations.

If organizations opt to conduct the American students' pre-departure orientation in another state, the orientations must include materials and activities that will provide the students with a thorough knowledge of the program and role of the scholarship as it relates to U.S.-German relations. The program guidelines are highlighted in the POGI section of the solicitation package.

Applicants may include other program elements such as mid-year enrichment and follow-on activities in their proposals, but should bear in mind that funding is limited. Mid-year enrichment activities may include informal local or regional gatherings, volunteer community projects, and volunteer internships in local congressional offices.

For follow-on activities organizations are encouraged to involve former participants in the organization's alumni activities as well as CBYX-specific activities by volunteering in various capacities such as promoting the program in their communities and/or serving on the selection committees or as local or regional representatives. Organizations should also utilize their individual web sites and newsletters to track and/or keep in touch with alumni.

To be eligible for consideration in this competition an organization must:

1. Be legally incorporated in the U.S. as described in Internal Revenue Code section 26 U.S.C. 501(c)(3), and identify a legally incorporated affiliate in Germany and/or indicate its willingness to be partnered with a German organization approved by PB4 and the Bureau.

2. Have a not-for-profit status 501(c), as determined by the Internal Revenue Service; the German affiliate must also be not-for-profit (gemeinnuetzige).

3. Be financially solvent, have a demonstrated track record of responsible fiscal management and be able to meet the accounting and reporting requirements for Bureau grants.

4. Have a minimum of four years of experience in conducting long-term exchange programs (of at least nine months duration) between the United States and Germany.

5. Have well-established volunteer and host family networks to carry out various aspects of the program; regional representatives must be situated in such a way to handle expeditiously any problems that arise regarding host family accommodations, schooling and language problems, and difficulties concerning internships.

Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

### Budget Guidelines

Applicants must submit a comprehensive budget projection for academic year 2005–06. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Costs for U.S. and German students are to be listed separately.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

*Announcement Title and Number:* All correspondence with the Bureau concerning this RFGP should reference the above title and number *ECA/PE/C/PY–04–14.*

**FOR FURTHER INFORMATION CONTACT:** The Office of Citizen Exchanges, Youth Programs Division, ECA/PE/C/PY, Room 568, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, (202) 619–6299, fax: 619–5311, *sjones@pd.state.gov,* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Shalita Jones on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

### To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Website at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

### New OMB Requirement

An OMB policy directive published in the **Federal Register** on Friday, June 27, 2003, requires that all organizations applying for Federal grants or cooperative agreements must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for all Federal grants or cooperative agreements on or after October 1, 2003. The complete OMB policy directive can be referenced at *http://www.whitehouse.gov/omb/fedreg/062703_grant_identifier.pdf.* Please also visit the ECA Web site at *http://exchanges.state.gov/education/rfgps/menu.htm* for additional information on how to comply with this new directive.

*Deadline for Proposals:* All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Friday, November 7, 2003. Faxed documents will not be accepted at any time.

Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 7 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–04–14, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Please also submit the Executive Summary, Proposal Narrative, and Budget sections of the proposal as e-mail attachments in Microsoft Word and Excel to the program officer at *sjones@pd.state.gov.* The Bureau will transmit these files electronically to the American Public Affairs staff in the partner country identified for this program, with the goal of reducing the time it takes to get post comments for the Bureau's grant review process.

### Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

### Adherence to All Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the "Responsible Officer" for the program under the terms of 22 CFR 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR 62, organizations receiving grants under this RFGP will be third parties "cooperating with or assisting the sponsor in the conduct of the sponsor's program." The actions of grantee program organizations shall be "imputed to the sponsor in evaluating the sponsor's compliance with" 22 CFR 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR 62 *et seq.*

The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 62. If the applicant has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR 62 *et. seq.*, including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping-reporting and other requirements.

### The Office of Citizen Exchanges of ECA Will Be Responsible for Issuing DS–2019 Forms to Participants in This Program

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

### Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

### Review Criteria

Technically eligible applications will be competitively reviewed according to their conformance with the objectives and guidelines stated above and the review criteria stated in the POGI.

### Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

### Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

**Notification**

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: September 26, 2003.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 03–25167 Filed 10–2–03; 8:45 am]

**BILLING CODE 4710–05–P**

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## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Identification of Countries Under Section 182 of the Trade Act of 1974: Request for Public Comment

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Request for written submissions from the public.

**SUMMARY:** Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242), requires the United States Trade Representative (USTR) to identify countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. Section 182 is commonly referred to as the "Special 301" provisions in the Trade Act. In addition, USTR is required to determine which of those countries should be identified as Priority Foreign Countries. On May 1, 2003, USTR announced the results of the 2003 Special 301 review and stated that an Out-of-Cycle Review (OCR) would be conducted in the fall for the Republic of Korea. USTR requests written comments from the public concerning the acts, policies, and practices relevant for this review under section 182 of the Trade Act.

**DATES:** Submissions must be received on or before 12 noon on Monday, October 27, 2003.

**ADDRESSES:** All comments should be sent to Sybia Harrison, Special Assistant to the Section 301 Committee, at the following e-mail address: *FR0100@USTR.GOV*, with "Special 301 Out-of-Cycle Review" in the subject line. Please not, only electronic submissions will be accepted.

**FOR FURTHER INFORMATION CONTACT:** Mark Wu, Director for Intellectual Property, (202) 395–6864; or Victoria Espinel, Associate General Counsel, (202) 395–7305, Office of the United States Trade Representative.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 182 of the Trade Act, USTR must identify those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies, or practices have the greatest adverse impact (actual or potential) on relevant U.S. products may be identified as Priority Foreign Countries. Acts, policies, or practices that are the basis of a country's designation as a Priority Foreign Country are normally the subject of an investigation under the section 301 provisions of the Trade Act.

On May 1, 2003, USTR announced the results of the 2003 Special 301 review, including an announcement that an Out-of-Cycle Review (OCR) would be conducted in the fall for the Republic of Korea. Additional countries may also be reviewed as a result of the comments received pursuant to this notice, or as warranted by events.

*Requirements for Comments:* Comments should include a description of the problems experienced and the effect of the acts, policies, and practices on U.S. industry. Comments should be as detailed as possible and should provide all necessary information for assessing the effect of the act, policies, and practice. Any comments that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses.

Comments must be in English and sent electronically. No submissions will be accepted via postal service mail. Documents should be submitted as either WordPerfect, MS Word, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel files. A submitter requesting that information contained in a comments be treated as confidential business information must certify that information is business confidential and would not customarily be released to the public by the submitter. A non-confidential information, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the character "P-". The "P" or "B" should be followed by the name of the submitter. Submissions should not include separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible,any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

All comments should be sent to Sybia Harrison, Special Assistant to the section 301 Committee, at the following e-mail address: *FR0100@USTR. GOV*, with "Special 301 Out-of-Cycle Review" in the subject line. Please note, only electronic submissions will be accepted.

*Public Inspection of Submissions:* Within one business day of receipt, non-confidential submissions will be placed in a public file, open for inspection at the USTR reading room, Office of the United States Trade Representative, Annex Building, 1724 F Street, NW., Room 1, Washington, DC. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling Harry Simpson at (202) 395–6186. The USTR reading room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

**Mark Wu,**

*Director for Intellectual Property.*

[FR Doc. 03–25057 Filed 10–2–03; 8:45 am]

**BILLING CODE 3190–01–M**

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## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Trade Policy Staff Committee; Notice of Availability and Request for Public Comment on Interim Environmental Review of United States-Morocco Free Trade Agreement

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of availability and request for public comment.

**SUMMARY:** The Office of the U.S. Trade Representative (USTR), on behalf of the Trade Policy Staff Committee (TPSC), seeks comment on the interim environmental review of the proposed U.S.-Morocco Free Trade Agreement (FTA). The interim environmental review is available at *http://www.ustr.gov/environment/environmental.shtml*. Copies of the review will also be sent to interested members of the public by mail upon request.

**DATES:** Comments on the draft environmental review are requested no later than October 31, 2003 and earlier if possible. Comments received before October 13, 2003 will be used to inform the next round of negotiations, currently scheduled for October 13–17. Comments received after October 13, 2003 will be used to inform any subsequent rounds of negotiations.

**FOR FURTHER INFORMATION CONTACT:** For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Questions concerning the environmental review, or requests for copies, should be addressed to Jennifer Prescott or David Brooks, Environment and Natural Resources Section, Office of the USTR, telephone 202–395–7320.

**SUPPLEMENTARY INFORMATION:** The Trade Act of 2002, signed by the President on August 6, 2002, provides that the President shall conduct environmental reviews of [certain] trade agreements consistent with Executive Order 13121-Environmental Review of Trade Agreements (64 FR 63169, Nov. 18, 1999) and its implementing guidelines (65 FR 79442, Dec. 19, 2000) and report on such reviews to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. The Order and guidelines are available at *http://www.ustr.gov/environment/environmental.shtml.*

The purpose of environmental reviews is to ensure that policymakers and the public are informed about reasonably foreseeable environmental impacts of trade agreements (both positive and negative), to identify complementarities between trade and environmental objectives, and to help shape appropriate responses if environmental impacts are identified. Reviews are intended to be one tool, among others, for integrating environmental information and analysis into the fluid, dynamic process of trade negotiations. USTR and the Council on Environmental Quality jointly oversee implementation of the Order and Guidelines. USTR, through the Trade Policy Staff Committee (TPSC), is responsible for conducting the individual reviews.

### Written Comments

In order to facilitate prompt processing of submissions of comments, the Office of the United States Trade Representative strongly urges and prefers e-mail submissions in response to this notice. Persons submitting comments by e-mail should use the following e-mail address: *FR0054@ustr.gov* with the subject line: “Morocco Interim Environmental Review.” Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. If submission by e-mail is impossible, comments should be made by facsimile to (202) 395–6143, attention: Gloria Blue.

Written comments will be placed in a file open to public inspection in the USTR Reading Room at 1724 F Street, NW., Washington DC. An appointment to review the file may be made by calling (202) 395–6186. The Reading Room is open to the public from 10–12 a.m. and from 1–4 p.m., Monday through Friday.

**Carmen Suro-Bredie,**

*Chair, Trade Policy Staff Committee.*

[FR Doc. 03–25189 Filed 10–2–03; 8:45 am]

BILLING CODE 3190–W3–P

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Aviation Proceedings, Agreements Filed the Week Ending September 19, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* OST–2003–16202.

*Date Filed:* September 17, 2003.

*Parties:* Members of the International Air Transport Association.

*Subject:*

PTC23 ME–TC3 0184 dated 19 September 2003.

TC23/TC123 Middle East–TC3. Expedited Resolutions r1–r20. Intended effective date: 1 November 2003.

*Docket Number:* OST–2003–16204.

*Date Filed:* September 17, 2003.

*Parties:* Members of the International Air Transport Association.

*Subject:*

PTC23 EUR–SEA 0170 dated 12 September 2003.

PTC23/123 Europe-South East Asia. Expedited Resolutions 001a, 002bu r1–r8.

PTC23 EUR–SEA 0171 dated 12 September 2003.

PTC23/123 Europe-South East Asia. Expedited Resolution 002bx r9.

Intended effective date: 1 November 2003 and 1 January 2004.

**Andrea M. Jenkins,**

*Program Manager, Docket Operations, Federal Register Liaison.*

[FR Doc. 03–25155 Filed 10–2–03; 8:45 am]

BILLING CODE 4910–62–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE–2003–57]

### Petitions for Exemption; Summary of Petitions Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before October 23, 2003.

**ADDRESSES:** Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15812 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Caren Centorelli, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–8199.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on September 24, 2003.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

### Petitions for Exemption

*Docket No.:* FAA–2003–15812.

*Petitioner:* Airbus.

*Section of 14 CFR Affected:* 14 CFR 25.562(b)(2).

*Description of Relief Sought:* Petitioner requests exemption from the floor warpage test requirements of 14 CFR 25.562(b)(2), which requires that "where floor rails or floor fittings are used to attach the seating devices to the test fixture, the rails or fittings must be misaligned with respect to the adjacent set of rails or fittings by at least 10 degrees (i.e, out of parallel) with one rolled 10 degrees." The petitioner requests this relief for flightdeck seats on Model A380 aircraft.

[FR Doc. 03–25048 Filed 10–2–03; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

**DATES:** The meeting is scheduled for October 15–16, 2003, beginning at 9 a.m. on October 15. Arrange for oral presentations by October 10.

**ADDRESSES:** Aerospace Industries Association, 1000 Wilson Boulevard, Suite 1700, Arlington, VA.

**FOR FURTHER INFORMATION CONTACT:** Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075, or e-mail at *effie.upshaw@faa.gov.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held October 15–16, 2002, in Arlington, VA.

The agenda will include:

**Wednesday, October 15**

- Opening Remarks
- FAA Report
- European Aviation Safety Agency (EASA)/Joint Aviation Authorities (JAA) Report
- Transport Canada Report
- ARAC Tasking Priorities Discussion/Moratorium
- Avionics Harmonization Working Group (HWG) Report
- Ice Protection HWG Report
- Powerplant Installation HWG Report
- Human Factors HWG Report
- Mechanical Systems HWG Report and Approval
- Airworthiness Assurance Report and Approval
- Discussion of tasking on equipment, systems, and installations on transport category airplanes

**Thursday, October 16**

- General Structures HWG Report and Approval
- 2004 meeting schedule
- Written reports and statuses may be provided for the following HWGs—Engine, Electromagnetic Effects, Flight Test, Seat Test, Flight Control, Flight Guidance, System Design and Analysis, Electrical Systems, Loads and Dynamics, and Design for Security—and the Continued Airworthiness Working Group.

Three working groups will be seeking approval of reports/documents:

1. The Mechanical Systems HWG on ventilation and cabin pressurization;
2. The Airworthiness Assurance Working Group on widespread fatigue damage; and
3. The General Structures HWG on materials, birdstrike, and fatigue and damage tolerance.

Attendance is open to the public, but will be limited to the availability of meeting room space. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than October 10. Please provide the following information: Full legal name, country of citizenship, and name of your industry association, or applicable affiliation. If you are attending as a public citizen, please indicate so.

The telephone number for participating in the teleconference will be available after October 6 by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section or by going to the ARAC calendar at *http://www.faa.gov/avr/arm/araccal.htm.* Callers outside the Washington metropolitan area will be responsible for paying long distance charges.

The public must make arrangements by October 10 to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine issues or by providing copies at the meeting. Copies of the documents to be presented to ARAC for decision or as recommendations to the FAA may be made available by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

If you are in need of assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC, on September 26, 2003.

**Tony F. Fazio,**

*Director, Office of Rulemaking.*

[FR Doc. 03–25051 Filed 10–2–03; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## DEPARTMENT OF THE INTERIOR

## National Park Service

## Notice of Meeting of the National Parks Overflights Advisory Group

**ACTION:** Notice of meeting, correction.

**SUMMARY:** The National Park Service (NPS) and Federal Aviation Administration (FAA), in accordance with the National Parks Air Tour Management Act of 2000, announce the next meeting of the National Parks Overflights Advisory Group (NPOAG). The meeting will take place October 20, 2003, in Jackson Hole, Wyoming, not October 21 as previously announced. This notice informs the public of the changed date, location, and agenda for the meeting.

**DATES:** The NPOAG will meet October 20, 2003, at the Wort Hotel, 50 N. Glenwood Street, Jackson, Wyoming 83001 (telephone (307) 733–2190). The meeting will begin at 8 a.m. on Monday, October 20, 2003.

**FOR FURTHER INFORMATION CONTACT:** Barry Brayer, Manager, Executive Resource Staff, Western Pacific Region, Federal Aviation Administration, 15000 Aviation Blvd., Hawthorne, CA 90250, telephone: (310) 725–3800, or *Barry.Brayer@faa.gov*, or Howie Thompson, National Park Service, Natural Sounds Program, 12795 W. Alameda Parkway, Denver, CO 80225, telephone: (303) 969–2461, or *Howie_Thompson@nps.gov*.

**SUPPLEMENTARY INFORMATION:**

## Background

The National Parks Air Tour Management Act of 2000, enacted on April 5, 2000, as Public Law 106–181 (Pub. L. 106–181), required the establishment of a National Parks Overflights Advisory Group within 1 year after its enactment. The NPOAG was to be a balanced group representative of general aviation, commercial air tour operations, environmental concerns, and Indian tribes. The duties of the NPOAG included providing advice, information, and recommendations to the Director, NPS, and to the Administrator, FAA, on the implementation of Public Law 106–181, on quiet aircraft technology, on other measures that might accommodate interests to visitors to national parks, and, at the request of the Director and Administrator, on safety, environmental, and other issues related to commercial air tour operations over national parks or tribal lands.

On March 12, 2001, the FAA and NPS announced the establishment of the NPOAG (48 FR 14429). Current members of the NPOAG are Heidi Williams (general aviation), David Kennedy, Richard Larew, and Alan Stephens (commercial air tour operations), Chip Dennerlein, Charles Maynard, Steve Bosak, and Susan Gunn (environmental interests), and Germaine White and Richard Deertrack (Indian tribes).

The first meeting of the advisory group was held August 28–29, 2001, in Las Vegas, Nevada; the second meeting was held October 4–5, 2002, in Tusayan, Arizona.

## Agenda for the October 20, 2003 Meeting

The NPOAG will review the status of the AMTP process to date, the data acquisition and analysis process (Hawaii Volcanoes National Park and Zion studies), receive an update on quiet technology, and discuss the status of interim operating authority for air tour operators. A final agenda will be available the day of the meeting.

## Attendance at the Meeting

Although this is not a public meeting, interested persons may attend. Because seating is limited, if you plan to attend, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT** so that meeting space may accommodate your attendance.

## Record of the Meeting

If you cannot attend the meeting, a summary record of the meeting will be made available by the Office of Rulemaking (ARM), 800 Independence Ave., SW., Washington, DC 20591. Contact is Linda Williams, (202) 267–9685, or *linda.l.williams@faa.gov*.

Issued in Washington, DC, on September 26, 2003.

**John M. Allen,**

*Acting Director, Flight Standards Service.*

[FR Doc. 03–25052 Filed 10–2–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## Notice of Intent To Rule on Application 03–04–C–00–PIH To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Pocatello Regional Airport, Submitted by the City of Pocatello, Pocatello Regional Airport, Pocatello, ID

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Pocatello Regional Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before November 3, 2003.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. J.Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Len Nelson, Airport Manager, at the following address: PO Box 4169, Pocatello, ID 83205.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Pocatello Regional Airport, under § 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Ms. Suzanne Lee-Pang, (425) 227–2654, Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250, Renton, Washington 98055—4056. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application 03–04–C–00–PIH to impose and use PFC revenue at Pocatello Regional Airport, under the provisions of 49 U.S.C. 40117, and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 23, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Pocatello, Pocatello Regional Airport, Pocatello, Idaho was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 23, 2003.

The following is a brief overview of the application.

*Level of the proposed PFC:* $4.50.

*Proposed charge effective date:* January 1, 2005.

*Proposed charge expiration date:* March 1, 2008.

*Total requested for approval:* $456,500 ($306,500 for use).

*Brief description of proposed projects:*

*Impose and Use Projects:* Renovation of Taxiway A and Connectors, Parallel Taxiway for Runway 3/21, Lighting System; Pavement Condition (PCI) Survey Update and Wildlife Hazard Study; Taxiway F, D, and B Widening and Hold Apron for Runway End 3; Snow Removal Equipment Procurement—Plow; Security Enhancement; Wildlife Fencing; Construct New Airport Rescue and Fire Fighting (ARFF) Building.

*Impose Only Project:* Construction of Midfield Taxiway E.

*Alternate Project:* Reconstruction of Terminal Building Auto Parking Lots.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: non-scheduled air taxi/commercial operators, utilizing aircraft having seating capacity of less than 20 passengers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue

SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Pocatello Regional Airport.

Issued in Renton, Washington on September 23, 2003.

**David A. Field,**

*Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.*

[FR Doc. 03–25050 Filed 10–2–03; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

## Maritime Administration

**[Docket MARAD–2003–16248]**

### Notice of Request To Transfer Maritime Security Program Operating Agreements MA/MSP–29 Through MA/MSP–43 to Maersk Line, Limited

By letter dated September 18, 2003 (which incorporates earlier correspondence of July 10, 2003), Maersk Line, Limited (Maersk) has requested approval from the Maritime Administration (MARAD) to transfer Maritime Security Program (MSP) Operating Agreements Nos. MA/MSP–29 through 43 (Agreements) from U.S. Ship Management, Inc. (USSM) to itself. The MSP was established by the Maritime Security Act of 1996, Pub. L. 104–239, and is contained in sections 651 through 656 of the Merchant Marine Act, 1936, as amended, 46 App. U.S.C. 1187—1187e. The MSP serves to maintain an active, privately owned, U.S.-flag and U.S. citizen crewed liner fleet in international trade. At present, MSP provides operating payments to 47 vessels, under single-vessel MSP Operating Agreements.

The vessels at issue here, or their predecessors, were originally operated by Sea-Land Service, Inc. (Sea-Land) as the international liner division of Sea-Land. The transportation assets of the international liner division, other than the MSP Agreements or title to the vessels, were sold to Maersk in 1999. Maersk is a company organized in the United States, but is owned by the A.P. Moller Group, a Danish consortium.

At the time of the sale to Maersk, Sea-Land proposed to transfer the MSP Agreements to USSM, a newly-created U.S. citizen company. On December 8, 1999, the Maritime Administrator authorized transfer of the MSP Agreements from Sea-Land to USSM. In order to maintain the U.S. citizen status of the vessels for MSP purposes, titles to the vessels covered by the Agreements were either transferred to trusts qualified under section 1136(c) of the Coast Guard Authorization Act of 1996, or required to remain in existing U.S. citizen trusts, as applicable. A vessel owned by a qualified section 1136(c) trust and bareboat chartered to a U.S. citizen is deemed to be owned and operated by a U.S. citizen for MSP purposes, notwithstanding foreign beneficial ownership of the trust. Sea-Land assigned the bareboat charters of all 15 vessels to USSM, the MSP contract holder, which, in turn, time chartered the 15 vessels to Maersk, through September 30, 2005, when the current MSP expires.

Maersk claims a right of election under Article 2(b)(vi) of the time charters to become the MSP contractor for the 15 vessels, at any time during the term of the time charters, subject to the qualification that the arrangement is "permitted under applicable laws and regulations and the terms of the Operating Agreement." On November 7, 2002, Maersk requested that MARAD confirm Maersk's eligibility to become the contractor for the vessels as provided in the time charters.

An opinion by MARAD's Chief Counsel, Robert B. Ostrom, issued on April 29, 2003, concluded that, "Maersk qualifies as an eligible transferee of the MSP Agreements from USSM." That opinion stated that it was limited solely to the question of Maersk's eligibility as a transferee under applicable statutes and regulations, "and in no way addresses whether MARAD would grant approval for such a transfer if an application were filed." In addition, that opinion did not address whether the proposed vessel operation and ownership arrangements would be acceptable.

On April 30, 2003, Maersk delivered to USSM a Notice of Election. In accordance with the Notice of Election, USSM was required to respond within five business days or be declared in default of the time charters. On May 9, 2003 Maersk delivered to USSM a Notice of Default, which then triggered a 60 day period for USSM to remedy said default. By letter dated July 3, 2003 USSM rejected Maersk's Notice of Default. By letter dated July 9, 2003, Maersk advised USSM that it had declared USSM in default of the time charters on that date and is unilaterally seeking to act for USSM with regard to transfer of the Agreements. Maersk asserts that it has the right to submit the subject transfer application on behalf of, or in place of, USSM.

USSM filed a complaint in U.S. District Court for the District of Columbia, styled *U.S. Ship Management, Inc.* v. *U.S. Maritime Administration*, No. 1:03–cv–00951–RJL (filed April 29, 2003), contesting the legality of MARAD's legal opinion. That case is ongoing at this time. USSM also vigorously opposes Maersk's application. USSM further asserts that Maersk cannot act as attorney-qqin-fact, because the time charters giving rise to the attorney-in-fact powers contain several conditions which have not been satisfied. One of those conditions, USSM avers, is that the MSP Agreement transfer be approved by MARAD, which has not occurred.

A copy of Maersk's request, and other documents pertinent to this request, will be available for inspection at the Department of Transportation (DOT) Dockets Facility and on the DOT Web site (address information follows). Any person, firm or corporation having an interest in this matter, and who desires to submit comments concerning it, may file such comments as follows. You should mention the docket number that appears at the top of this notice. Written comments should be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Nassif Building, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. Comments may also be filed electronically via the Internet at *http://dmses.dot.gov/submit/*. You may call Docket Management at (202) 366–9324. You may visit the docket room to inspect and copy comments at the above address between 10 a.m. and 5 p.m. ET, Monday through Friday, except holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*. Comments must be received by the close of business October 24, 2003.

This notice is published as a matter of discretion. Section 652(j) of the Act, as implemented by MARAD's regulations at 46 CFR 295.20(i), permits the transfer of an MSP Operating Agreement by the MSP contractor to a qualified transferee unless MARAD disapproves the transfer within 90 days of receiving a completed application. Due to the unusual nature of this application, wherein the MSP contractor has not itself submitted an application and in fact opposes the submission of an application, no decision has been made on whether MARAD accepts the submission as an application properly submitted under § 295.20(i). Accordingly, no transfer of the MSP Operating Agreements may be consummated unless and until expressly approved by MARAD. Further, MARAD will not permit a transfer of the Agreements unless and until satisfied that the vessels associated with those Agreements remain available for operation under those Agreements, or other acceptable vessels are available to substitute for the current vessels.

The fact of this publication should in no way be considered a favorable or unfavorable decision on the matter in question, as filed or as it may be amended. As noted above, the MARAD Chief Counsel Opinion of April 29, 2003 did not address whether MARAD would grant approval. MARAD will consider all comments submitted in a timely fashion, and will take such action thereto as may be deemed appropriate.

By Order of the Maritime Administration.

Dated: September 29, 2003.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 03–25077 Filed 10–2–03; 8:45 am]

**BILLING CODE 4910–81–P**

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# DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16250]

## Certification; Importation of Vehicles and Equipment Subject to Federal Safety and Bumper Standards; Registered Importers of Vehicles Not Originally Manufactured To Conform With the Federal Motor Vehicle Safety Standards; Schedule of Fees Authorized by 49 U.S.C. 30141

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Request for public comment on proposed collection of information.

**SUMMARY:** Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on the proposed collection of information.

This document describes a proposed collection of information under regulations that pertain to the importation by registered importers (RIs) of motor vehicles that were not manufactured to comply with all applicable Federal motor vehicle safety and bumper standards. NHTSA has proposed certain amendments to those regulations (as found at 49 CFR parts 567, 591, 592, and 594) that would, in part, clarify the requirements applicable to RIs and applicants for RI status, as well as the procedures for suspending or revoking the registrations of RIs that violate the vehicle importation laws. The proposed regulations would require RIs to retain, for a period of ten years, records pertaining to the nonconforming vehicles they import. Under the regulations that are now in effect, RIs are required to retain that information for a period of eight years. The proposed regulations would also require RIs, and applicants for RI status, to submit to NHTSA more information than is currently required to obtain and maintain a registration. The additional information would enhance the agency's ability to ensure that RIs are conducting their business activities in accordance with applicable regulations, thereby protecting the interests of those who utilize the services of an RI to import a nonconforming motor vehicle, or who purchase a motor vehicle imported by an RI.

**DATES:** Comments must be received on or before December 2, 2003.

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590 (docket hours are from 9 a.m. to 5 p.m.). Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA), before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**Certification; Importation of Vehicles and Equipment Subject to Federal Safety and Bumper Standards; Registered Importers of Vehicles Not Originally Manufactured To Conform with the Federal Motor Vehicle Safety Standards; Schedule of Fees Authorized by 49 U.S.C. 30141**

*Type of Request*— New Collection.

*OMB Clearance Number*— None.

*Requested Expiration Date of Approval*—June 30, 2006.

*Summary of Collection of Information*—Section 30112(a) of Title 49, U.S. Code prohibits, with certain exceptions, the importation into the United States of a motor vehicle manufactured after the date an applicable Federal motor vehicle safety standard (FMVSS) takes effect, unless the motor vehicle was manufactured in compliance with the standard and was so certified by its original manufacturer. Under one of the exceptions to this prohibition, found at 49 U.S.C. 30141, a nonconforming vehicle can be imported into the United States provided: (1) NHTSA decides that it is eligible for importation, based on its capability of being modified to conform to all applicable FMVSS, and (2) it is imported by an RI, or by a person who has a contract with an RI to bring the vehicle into conformity with all applicable standards. Regulations implementing this statute are found at 49 CFR parts 567, 591, 592, and 594. The regulations require a declaration to be filed (on the HS–7 Declaration Form) at the time a vehicle is imported that identifies, among other things, whether the vehicle was originally manufactured to conform to all applicable FMVSS, and if it was not, to state the basis for the importation of the vehicle. The regulations also require an RI, among other things, to furnish a bond (on the HS–474 Conformance Bond Form) at the time of entry for each nonconforming vehicle it imports, to ensure that the vehicle will be brought into conformity with all applicable safety and bumper standards within 120 days of entry or will be exported from or abandoned to the United States. After modifying the vehicle to conform to all applicable standards, the RI submits a statement of conformity to NHTSA, which issues a letter permitting the bond to be released if it is satisfied that the vehicle has been modified in the manner stated by the RI.

On April 10, 2003, NHTSA submitted to OMB a request for the extension of that agency's approval (assigned OMB No. 2127–0002) of the information collection that is incident to NHTSA's administration of the vehicle importation regulations at 49 CFR Parts 591 and 592, including information collected through the HS–7 Declaration Form and the HS–474 Conformance Bond Form. On June 4, 2003, OMB notified NHTSA that it had approved this extension request through June 30, 2006.

NHTSA published a Notice of Proposed Rulemaking (NPRM) to amend the vehicle import regulations on November 20, 2000 (65 FR 69810–38). If adopted, those amendments would slightly increase the information collection beyond that which was approved by OMB. The proposed amendments are intended, in part, to clarify the requirements applicable to RIs and applicants for RI status, as well as the procedures for suspending or revoking the registrations of RIs that violate the vehicle importation laws.

*Record Retention for 10 Years*

If the proposed amendments were adopted, RIs would be required to retain, for a period of ten years, records pertaining to the nonconforming vehicles they import (including a copy of the declaration filed for the vehicle at the time of importation, correspondence with the vehicle's owner or purchaser, identifying information on the vehicle, information to substantiate that the vehicle was brought into conformity with all applicable standards and is not subject to any outstanding safety recall campaigns, a copy of the statement certifying the vehicle's conformity that the RI furnished to NHTSA, and information on the service insurance policy procured by the RI to guarantee that it will remedy any safety-related defects or noncompliances that are determined to exist in the vehicle). Under the regulations that are now in effect, RIs are required to retain this information for a period of eight years from the vehicle's date of entry. See 49 CFR 562.6(b).

*One-Time Reporting of Information on Company's Business Structure and Key Personnel*

In addition, the proposed amendments would require RIs and applicants for RI status to submit, on a one-time basis, information on their form of business organization (*i.e.*, sole proprietorship, partnership, or corporation), and, depending upon that form of organization, identifying information (including the name, address, and social security number of the RI or applicant if the RI or applicant is organized as a sole proprietorship, all partners if the RI or applicant is organized as a partnership, and all officers, directors, managers, and persons authorized to sign documents on behalf of the RI or applicant if the RI or applicant is organized as a corporation). RIs and applicants that are organized in the form of non-public corporations would also be required to submit a statement issued by the Office of the Secretary of State, or other responsible official of the State in which the RI or applicant is incorporated, certifying that the RI or applicant is a corporation in good standing. If the RI or applicant is a public corporation, it would be required to submit a copy of its latest 10–K filing with the Securities and Exchange Commission.

*One-Time Reporting of Information on Facility Addresses and Telephone Numbers, Business Licenses, and Agents for Service of Process*

The proposed amendments would also require RIs and applicants for RI status to submit to the agency the street address and telephone number in the United States of each of its facilities for the conformance, storage, and repair of motor vehicles and for the maintenance of records which it will use to fulfill its duties as an RI. RIs and applicants for RI status would also be required to furnish the agency with a copy of a business license or other similar document issued by an appropriate State or local authority, authorizing it to do business as an importer, modifier, or seller of motor vehicles, as applicable, or a statement by the RI or applicant that it has made a bona fide inquiry and is not required by such State or local authority to have such a license or document. RIs and applicants for RI status would also be required to submit to the agency the name of each principal of the RI or applicant who is authorized to submit conformity certifications to NHTSA and the street address of the repair, storage, or conformance facility where each such principal will be located. In addition, if the RI or applicant is not a resident of the United States, it would be required to submit to NHTSA its designation of an agent for service of process in the form required by the agency's regulations at 49 CFR 551.45.

*Reporting of Information on Recalled Vehicles*

The proposed amendments would also require an RI to notify NHTSA within 30 days if it becomes aware that the manufacturer of a vehicle it has imported will not provide a remedy without charge for a defect or noncompliance that has been determined to exist in that vehicle. The agency is unaware of any circumstance to date in which a vehicle manufacturer has refused to remedy a safety-related defect or noncompliance in a vehicle imported by an RI. Should these practices continue, there will therefore be little if any need for RIs to furnish this information to NHTSA. Should a manufacturer refuse to provide a remedy, the RI would also be required to submit to the agency a copy of the notification letter it intends to send to owners of the affected vehicles to fulfill the defect and noncompliance notification requirements of 49 CFR part 577. The proposed amendments would also require an RI that provides owner notification to submit to NHTSA two progress reports on the recall campaign, containing information specified in 49 CFR 573.7(b)(1)–(4). This requirement would not apply, however, in circumstances where the vehicle's original manufacturer conducts a recall campaign that includes the vehicles imported by the RI.

*One-Time Reporting of Information on Alternate Facilities*

If an RI intends to use a facility not identified in its application for RI status, the proposed amendments would require it to notify NHTSA of that intent no later than 30 days before it begins to use that facility. In addition, the RI would be required to provide a description of the intended use, a sufficient number of photographs of the facility to fully depict the intended use, a copy of the lease or deed evidencing the RI's ownership or tenancy of the facility, and a copy of the license or similar document issued by an appropriate State or municipal authority stating that the RI is licensed to do business at that facility as an importer and/or modifier and/or seller of motor vehicles (or a statement that it has made a bona fide inquiry and is not required by State or local law to have such a license or permission). If an RI intends to change its street address or telephone number or discontinue use of a facility that was identified in its registration application, the proposed amendments would require it to notify NHTSA not less than 10 days before such change or discontinuance of such use, and identify the facility, if any, that will be used instead.

*Deadline for Fulfilling One-Time Reporting Requirements*

The proposed amendments would require those already holding RI status to submit the additional information that would have to be submitted by new applicants not later than 30 days after the effective date of the final rule adopting the amendments. However, if an RI has previously provided any of the additional information to NHTSA in its registration application, annual statement, or notification of change, it would not be required to resubmit that information under the proposed amendments. In this circumstance, the RI would be allowed to incorporate the information by reference in its response, provided it clearly indicates the date, page, and entry of the previously provided document.

*Description of the Need for the Information and Proposed Use of sthe Information*—NHTSA would rely on the information provided under the proposed amendments by RIs and applicants for RI status to better ensure that RIs are meeting their obligations under the statutes and regulations governing the importation of nonconforming vehicles and to make more informed decisions in conferring RI status on applicants and in permitting RI status to be retained by those currently holding registrations. In this manner, those lacking the capability to responsibly provide RI services, or who have committed or are associated with those who have committed past violations of the vehicle importation laws, could be more readily denied registration as an RI, or if they already hold such a registration, have that registration suspended or revoked when circumstances warrant such action.

*Description of the Likely Respondents (Including Estimated Number and Proposed Frequency of Responses to the Collection of Information)*—Currently 172 RIs are registered with NHTSA. Within 30 days from the date that a final rule adopting the amendments is published, these RIs would be required to submit information updating the information they have previously submitted to the agency, including all new information items that would be required from applicants for RI status. In recent years, NHTSA has received approximately 20 applications per year from individuals and entities seeking to acquire RI status. Over the past year, however, a number of RIs have gone out of business. From reports in the trade press, this development appears to have occurred on account of a reduction in the demand for imported used vehicles caused by currency fluctuations and the availability of incentive programs such as zero-percent financing and rebates on new cars purchased in the United States. For the first five months of this year, the number of nonconforming vehicles imported from Canada is 56 percent lower that the number imported during the first five months of 2002 (50,948 vehicles imported from January 1 through May 31 of 2003 vs. 114,930 imported in the same period of 2002). Given the profound reduction in the volume of Canadian imports, it is reasonable to assume that there will be a concomitant reduction in applications from those seeking to import such vehicles. The additional information that would be required from RIs and applicants for RI status under the proposed regulations would need to be submitted only once.

*Estimate of the Total Annual Reporting and Recordkeeping Burden of the Collection of Information in the Amended Regulations*—It is estimated that it should take each RI and applicant for RI status approximately two hours to assemble and supply the additional information that would be required under the proposed amendments. There are currently 172 RIs in active status, and the agency receives approximately 20 applications per year from those seeking to become RIs. Based on the agency's estimate that it would take approximately 2 hours to assemble and supply the additional information that would be required under the proposed amendments, the total estimated reporting burden on the entire industry would be approximately 344 hours to comply with the one-time reporting requirement (172 importers × 2 hours = 344 hours). The total estimated reporting burden on those seeking to become RIS would be approximately 40 hours per year (20 applicants × 2 hours = 40 hours). In addition, it should take each RI that is required to conduct a safety recall campaign approximately one hour to compile information for and prepare each of the two reports it would be required to submit to the agency detailing the progress of the recall campaign. Since vehicle manufacturers in most cases include vehicles imported by RIs in their own recall campaigns, it is likely that very few of these reports would have to be prepared or submitted by RIs.

*Estimate of the Total Annual Costs of the Collection of Information in the Amended Regulations*—Other than the cost of the burden hours, the only additional costs associated with this information collection are those incident to the storage, for a period of an additional two years, of records pertaining to the nonconforming vehicles that each RI imports into the United States. The agency's regulations at 49 CFR 592.6(b) state that those records must consist of "correspondence and other documents relating to the importation, modification, and substantiation of certification of conformity to the Administrator." The regulations further specify that the records to be retained must include: (1) A copy of the HS–7 Declaration Form furnished for the vehicle at the time of importation, (2) all vehicle or equipment purchase or sales orders or agreements, conformance agreements with importers other than RIs, and correspondence between the RI and the owner or purchaser of each vehicle for which the RI furnishes a certificate of conformity to NHTSA, (3) the last known name and address of the owner or purchaser of each vehicle for which the RI furnishes a certificate of conformity, and the vehicle identification number (VIN) of the vehicle, and (4) records, both photographic and documentary, reflecting the modifications made by the RI, which were submitted to NHTSA to obtain release of the conformance bond furnished for the vehicle at the time of importation. See 49 CFR 592.6(b)(1) through (b)(4).

The latter records are referred to as a "conformity package." Most conformity packages submitted to the agency covering vehicles imported from Canada are comprised of approximately six sheets of paper (including a check-off sheet identifying the vehicle and the standards that it was originally manufactured to conform to and those that it was modified to conform to, a statement identifying the recall history of the vehicle, a copy of the HS–474 conformance bond covering the vehicle, and a copy of the mandatory service insurance policy obtained by the RI to cover its recall obligations for the vehicle). In addition, most conformity packages include photographs of the vehicle, components that were modified or replaced to conform the vehicle to applicable standards, and the certification labels affixed to the vehicle. Approximately 120 conformity packages can be stored in a cubic foot of space. Based on projected imports of 100,000 nonconforming vehicles per year, 833 cubic feet of space will be needed on an industry-wide basis to store one year's worth of conformity packages. Assuming an annual cost of $20 per cubic foot to store the information, NHTSA estimates the aggregate cost to industry for storing a year's worth of conformity packages to be $16,664 per year. Over an eight-year retention period, a member of the industry would be required to retain 36 annual units of records and over a ten-year retention period 55 annual units (assuming that one annual unit were stored in the first year, two annual units in the second year, and so on). The aggregate cost to industry of the proposed two-year increase in the record retention requirement will therefore be $316,616 (55 − 36 = 19; 19 × $16,664 = $316,616).

RIs are also required under 49 CFR 592.6(b) to retain a copy of the HS–7 Declaration Form furnished to Customs at the time of entry for each nonconforming vehicle for which they submit a conformity package to NHTSA. Paper HS–7 Declaration Forms are only filed for a small fraction of the nonconforming vehicles imported into the United States. Customs brokers file entries for most nonconforming vehicles electronically by using the Automated Broker Interface (ABI) system. For example, in Calendar year 2002, 208,942 ABI entries were made for nonconforming vehicles imported into the United States, and only 3,183 paper HS–7 Declaration Forms (representing 1.5 percent of the total) were filed for such vehicles. Because HS–7 Declaration Forms are filed for only a small fraction of the nonconforming vehicles that are imported by RIs, the proposed two-year increase in the retention period for those records will have a negligible cost impact on the industry. Because the remaining records that RIs are required to retain under 49 CFR 592.6(b) may be stored electronically, the agency anticipates that the costs incident to the storage of those records for an additional two years will also be negligible.

**Authority:** 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50 and 501.8(f).

Issued on: September 29, 2003.

**Kenneth N. Weinstein,**

*Associate Administrator for Enforcement.*

[FR Doc. 03–25154 Filed 10–2–03; 8:45 am]

**BILLING CODE 4910–59–P**

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 34405]**

### Transportation Agency for Monterey County—Acquisition Exemption—Line of Union Pacific Railroad Company

The Transportation Agency for Monterey County (TAMC),[1] a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Union Pacific Railroad Company (UP) the real estate and rail assets of a 13.1-mile line of railroad, known as the Seaside Industrial Lead, extending from Castroville, CA (milepost 110.2), to Seaside, CA (milepost 123.3). TAMC proposes to acquire the line from UP for the purpose of instituting intrastate rail passenger service on the line.[2] TAMC states that it will not provide freight rail service and that UP will retain trackage rights over the line to provide freight service.[3] TAMC certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier.

According to TAMC, TAMC and UP have concluded a Purchase and Sale Agreement, which was expected to be executed by September 10, 2003, and consummation of the transaction was expected to occur on or about September 12, 2003.

If the notice contains false or misleading information, the exemption is void *ab initio.* A petition to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34405, must be filed with the Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on David J. Miller, Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP, 333 Market Street, Suite 2300, San Francisco, CA 94105–2173.

Board decisions and notices are available on our Web site at "*http://WWW.STB.DOT.GOV.*"

Decided: September 29, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 03–25098 Filed 10–2–03; 8:45 am]

**BILLING CODE 4915–00–P**

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[1] TAMC is public agency created pursuant to the State of California Government Code Section 67930 *et seq.*

[2] TAMC apparently believes that its operation of the line will not be subject to the Board's jurisdiction. However, the acquisition of an active rail line and the common carrier obligation that goes with it ordinarily requires Board approval under 49 U.S.C. 10901, if the acquiring entity is a noncarrier, including a state. *See Common Carrier Status of States, State Agencies,* 363 I.C.C. 132 (1980), *aff'd sub nom. Simmons* v. *ICC,* 697 F.2d 326 (D.C. Cir. 1982). The Board's authorization is not required, however, when the common carrier rights and obligations that attach to the line will not be transferred. *See Maine, DOT–Acq. Exemption, ME. Central R. Co.,* 8 I.C.C.2d 835, 836–37 (1991).

While TAMC did not attach a copy of the terms of its agreement with UP to this notice of exemption or file a motion to dismiss the notice, it appears on the current record that TAMC acquired a common carrier obligation to provide freight service when it acquired the line. *Compare Los Angeles to Pasadena Blue Line Construction Authority d/b/a Los Angeles to Pasadena Metro Construction Authority-Acquisition Exemption-Los Angeles County Metropolitan Transportation Authority,* STB Finance Docket No. 34076 (STB served Sept. 3, 2003).

[3] TAMC stated in its notice that UP intended to file a petition for exemption to permit UP to abandon its remaining interest in the line. However, on September 22, 2003, UP filed a verified notice of exemption in STB Docket No. AB–33 (Sub-No. 157X) to discontinue trackage rights on the line.

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–55 (Sub–No. 641X)]**

### CSX Transportation, Inc.—Discontinuance Exemption—In Knox County, TN

On September 15, 2003, CSX Transportation, Inc. (CSXT) filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to discontinue service over approximately 1.2 miles of rail line in CSXT's Central Region, Appalachian Division, KD Subdivision, Second Creek Spur, extending from Valuation Station 15304+87 to Valuation Station 15368+89, in Knoxville, Knox County, TN. The line traverses U.S. Postal Service Zip Code 37066, and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in the petitioner's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 2, 2004.

Any offer of financial assistance to subsidize continued rail service under

49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

This proceeding is exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under section 1105.8(b).[1]

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 641X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Natalie S. Rosenberg, 500 Water Street, J150, Jacksonville, FL 32202. Replies to the petition are due on or before October 23, 2003.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Service at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 25, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 03–24984 Filed 10–2–03; 8:45 am]

**BILLING CODE 4915–00–P**

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## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

September 25, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

*Dates:* Written comments should be received on or before November 3, 2003 to be assured of consideration.

**Alcohol and Tobacco Tax and Trade Bureau (TTB)**

*OMB Number:* 1513–0052.

*Recordkeeping Requirement ID Number:* TTB REC 5110/10.

*Form Number:* TTB F 5110.75.

*Type of Review:* Extension.

*Title:* Alcohol Fuel Plants (AFP) Records, Reports and Notices.

*Description:* Data is necessary (1) to determine that persons are qualified to produce alcohol for fuel purposes and to identify such persons, (2) to account for distilled spirits produced and verify its proper disposition and (3) to keep registrations current and evaluate permissible variations from prescribed procedures.

*Respondents:* Business of other for-profit, Farms.

*Estimated Number of Respondents/Recordkeepers:* 871.

*Estimated Burden Hours Per Respondent/Recordkeeper:* 1 hour.

*Frequency of Response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 871 hours.

*OMB Number:* 1513–0064.

*Recordkeeping Requirement ID Number:* TTB REC 5170/1.

*Type of Review:* Extension.

*Title:* Importer's Records and Reports.

*Description:* Importers are required to maintain usual and customary business records and file letter applications or notices related to specific regulatory activities.

*Respondents:* Federal Government.

*Estimated Number of Recordkeepers:* 500.

*Estimated Burden Hours Per Recordkeeper:* 30 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Recordkeeping Burden:* 251 hours.

*OMB Number:* 1513–0070.

*Recordkeeping Requirement ID Number:* TTB REC 5220/1.

*Type of Review:* Extension.

*Title:* Tobacco Export Warehouse—Record of Operations.

*Description:* Tobacco Export Warehouses store untaxpaid tobacco products until they are exported. Record is used to maintain accountability over these products. Allows TTB to verify that all products have been exported or tax liabilities satisfied. Protects tax revenues.

*Respondents:* Business or other for-profit.

*Estimated Number of Recordkeepers:* 221.

*Estimated Burden Hours Per Recordkeeper:* 1 hour.

*Frequency of Response:* On occasion.

*Estimated Total Recordkeeping Burden:* 1 hour.

*OMB Number:* 1513–0072.

*Recordkeeping Requirement ID Number:* TTB REC 5530/1.

*Type of Review:* Extension.

*Title:* Applications and Notices—Manufacturers of Nonbeverage Products.

*Description:* Reports (Letterhead Applications and Notices) are submitted by manufacturers of Nonbeverage Products who are using Distilled Spirits on which drawback will be claimed. Reports sensor that operations are in compliance with law: Prevents spirits from diversion to beverage use. Protects the revenue.

*Respondents:* Business or other for-profit.

*Estimated Number of Recordkeepers:* 640.

*Estimated Burden Hours Per Recordkeeper:* 1 hour.

*Frequency of Response:* On occasion.

*Estimated Total Recordkeeping Burden:* 640 hours.

*OMB Number:* 1513–0077.

*Recordkeeping Requirement ID Number:* TTB REC 5190/1.

*Type of Review:* Extension.

*Title:* Applications and Notices—Manufacturers of Nonbeverage Products.

*Description:* Records of Things of Value to Retailers, and Occasional Letter Reports from Industry Members Regarding Information on Sponsorships, Advertisements, Promotions, *etc.*, Under the Federal Alcohol Administration Act.

*Respondents:* Business of other for-profit, Individuals or households.

*Estimated Number of Recordkeepers:* 12,665.

*Estimated Burden Hours Per Recordkeeper:* 1 hour.

*Frequency of Response:* On occasion.

*Estimated Total Recordkeeping Burden:* 51 hours.

*OMB Number:* 1513–0093.

*Form Numbers:* TTB F 5600.38.

*Type of Review:* Extension.

*Title:* Applicant for Extension of Time for Payment of Tax.

*Description:* TTB uses the information on the form to determine if a taxpayer is qualified to extend payment based on circumstances beyond the taxpayer's control.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 12.

*Estimated Burden Hours Per Respondent:* 15 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 3 hours.

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[1] In addition, because this is a discontinuance proceeding and an abandonment is not proposed, trail use/rail banking and public use conditions are not appropriate.

*OMB Number:* 1513–0098.
*Form Number:* TTB F 5154.2.
*Type of Review:* Extension.
*Title:* Supporting Data for Nonbeverage Drawback Claims.

*Description:* Data required to be submitted by manufacturers of nonbeverage products are used to verify claims for drawback of taxes and hence, protect the revenue. Maintains accountability, allows office (initial) verification of claims.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 590.

*Estimated Burden Hours Per Respondent:* 1 hour.

*Frequency of Response:* Monthly, Quarterly.

*Estimated Total Reporting Burden:* 3,540 hours.

*Clearance Officer:* Jacqueline White (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

*OMB Reviewer:* Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Treasury PRA Clearance Officer.*
[FR Doc. 03–25151 Filed 10–2–03; 8:45 am]
**BILLING CODE 4810–31–P**

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## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

September 26, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

*Dates:* Written comments should be received on or before November 3, 2003 to be assured of consideration.

**Departmental Offices/Community Development Financial Institutions (CDFI) Fund**

*OMB Number:* 1559–0006.
*Form Number:* CDFI–0005.
*Type of Review:* Extension.
*Title:* The Community Development Financial Institutions (CDFI) Program—Certification/Re-Certification Application.

*Description:* The certification/re-certification application will be used to determine whether an entity seeking CDFI certification meets the Fund's requirements for such certification as set forth in 12 CFR 1805.201.

*Respondents:* Not-for-profit institutions, Business or other for-profit.

*Estimated Number of Respondents:* 315.

*Estimated Burden Hours Per Respondent:* 40 hours.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 12,600 hours.

*OMB Number:* 1559–0013.
*Form Number:* CDFI–0018.
*Type of Review:* Reinstatement.
*Title:* Native American CDFI Development Program.

*Description:* Provides grants to be used to acquire technical assistance to increase the capacity of community development financial institutions or proposed CDFIs to serve underserved Native American, Alaska Native and Native Hawaiian target markets.

*Respondents:* Not-for-profit institutions, Business or other for-profit.

*Estimated Number of Respondents:* 40.

*Estimated Burden Hours Per Respondent:* 65 hours.

*Frequency of Response:* Annually.

*Estimated Total Reporting Burden:* 2,600 hours.

*OMB Number:* 1559–0021.
*Form Number:* CDFI–0001.
*Type of Review:* Extension.
*Title:* Financial Assistance (FA) Component Application—CDFI Program.

*Description:* The CDFI Fund provides financial assistance in the form of grants, loans, equity investments and deposits to community development financial institutions providing capital and financial services to underserved markets.

*Respondents:* Not-for-profit institutions, Business or other for-profit.

*Estimated Number of Respondents:* 200.

*Estimated Burden Hours Per Respondent:* 100 hours.

*Frequency of Response:* Other (application submitted only).

*Estimated Total Reporting Burden:* 20,000 hours.

*Clearance Officer:* Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

*OMB Reviewer:* Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Treasury PRA Clearance Officer.*
[FR Doc. 03–25152 Filed 10–2–03; 8:45 am]
**BILLING CODE 4811–16–P**

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## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

September 24, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW Washington, DC 20220.

*Dates:* Written comments should be received on or before November 3, 2003 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0115.
*Form Number:* IRS Form 1099–MISC.
*Type of Review:* Extension.
*Title:* Miscellaneous Income.

*Description:* Form 1099–MISC is used by payers to report payments of $600 or more of rents, prizes and awards, medical and health care payments, nonemployee compensation, and crop insurance proceeds, $10 or more of royalties, any amount of fishing boat proceeds, certain substitute payments, golden parachute payments and an indication of direct sales of $5,000 or more.

*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

*Estimated Number of Respondents:* 4,302,217.

*Estimated Burden Hours Respondent:* 16 minutes.

*Frequency of Response:* Annually.

*Estimated Total Reporting Burden:* 21,649,027 hours.

*OMB Number:* 1545–0984.
*Form Number:* IRS Form 8586.
*Type of Review:* Revision.
*Title:* Low-Income Housing Credit.

*Description:* The Tax Reform Act of 1986 (Code section 42) permits owners of residential rental projects providing low-income housing to claim a credit against income tax for part of the cost of constructing or rehabilitating such low-income housing. Form 8586 is used by taxpayers to compute the credit and by IRS to verify that the correct credit has been claimed.

*Respondents:* Individuals or households, Business or other for-profit.

*Estimated Number of Respondents/ Recordkeepers:* 168,137.

*Estimated Burden Hours Respondent/ Recordkeeper:*

Recordkeeping—7 hr., 53 min.
Learning about the law or the form—1 hr., 37 min.
Preparing the form—3 hr., 41 min.
Copying, assembling, and sending the form to the IRS—.32 min.

*Frequency of Response:* Annually.

*Estimated Total Reporting/ Recordkeeping Burden:* 2,311,884 hours.

*OMB Number:* 1545–1282.

*Form Number:* IRS Form 8830.

*Type of Review:* Extension.

*Title:* Enhanced Oil Recovery Credit.

*Description:* The enhanced oil recovery credit is 15% of qualified costs paid or incurred during the year. The purpose is to get more oil from the wells. The IRS uses the information on the form to ensure that the credit is correctly computed.

*Respondents:* Business or other for-profit, Individuals or households.

*Estimated Number of Respondents/ Recordkeepers:* 3,623.

*Estimated Burden Hours Respondent/ Recordkeeper:*

Recordkeeping—6 hr., 56 min.
Learning about the law or the form—1 hr., 5 min.
Preparing and sending the form to the IRS—1 hr., 15 min.

*Frequency of Response:* Annually.

*Estimated Total Reporting/ Recordkeeping Burden:* 33,622 hours.

*Clearance Officer:* Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Treasury PRA Clearance Officer.*

[FR Doc. 03–25153 Filed 10–2–03; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF VETERANS AFFAIRS

### Capital Asset Realignment for Enhanced Services (CARES) Commission; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Capital Asset Realignment for Enhanced Services (CARES) Commission will hold a meeting on October 14–16, 2003, at the Hotel Washington, Pennsylvania Avenue at 15th Street, NW., Washington, DC 20004. The sessions on October 14 and 15 will begin at 10:30 a.m. and end at 4:30 p.m. and the session on October 16 will begin at 8:30 a.m. and end at 2:30 p.m. These sessions are open to the public.

The purpose of the Commission is to conduct an external assessment of VA's capital asset needs and to assure that stakeholder and beneficiary concerns are fully addressed. The Commission is reviewing recommendations in VA Under Secretary for Health's Draft National CARES Plan. The Commission will also consider recommendations submitted by veterans service organizations, individual veterans, Congress, medical and nursing school affiliates, VA employees, local governments, community groups and others. Following its assessment, the Commission will make specific recommendations to the Secretary of Veterans Affairs regarding the Draft Plan's realignment and allocation of capital assets necessary to meet the demands for and enhance veterans healthcare services over the next 20 years.

The October 14–16 meeting will be the third public meeting held by the Commission since the issuance of the Draft National CARES Plan. The Commission will review the information received from nationwide site visits and public hearings and its regular public meetings. The Commission will begin deliberations regarding the Draft National CARES Plan and its impact in the various markets.

No time will be allocated at these meetings for receiving oral presentations from the public. However, interested persons may either attend or file statements with the Commission. Written statements may be filed either before the meeting or within 10 days after the meeting and addressed to: Department of Veterans Affairs, CARES Commission (OOCARES), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing additional information should contact Mr. Richard E. Larson, Executive Director, CARES Commission, at (202) 501–2000.

Dated: September 26, 2003.

By Direction of the Secretary:

**E. Philip Riggin,**

*Committee Management Officer.*

[FR Doc. 03–25095 Filed 10–2–03; 8:45 am]

BILLING CODE 8320–01–M

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## DEPARTMENT OF VETERANS AFFAIRS

### Advisory Committee on Homeless Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Homeless Veterans will be held on Tuesday, October 21, 2003, and Wednesday, October 22, 2003, at the La Mansion del Rio Hotel, 112 College Street, El Colegio Room, San Antonio, TX 78205. On October 20, from 12 Noon until 3:30 p.m., the Committee will also conduct site visits at various San Antonio locations with programs that provide assistance to homeless persons. Those site visits will be followed with a town hall forum from 4 p.m. until 6 p.m., at the American GI Forum Service Center, 611 N. Flores Street, San Antonio, TX. On 21–22, the meeting will convene at 8:30 a.m. and end at 4:30 p.m. daily in the El Colegio Room. The meeting and town hall forum are open to the public. Members of the public must sign up at the town hall forum in order to speak at that event.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the effectiveness of the policies, organizational structures, and services of the Department in assisting homeless veterans. The Committee shall assemble and review information relating to the needs of homeless veterans and provide on-going advice on the most appropriate means of providing assistance to homeless veterans. The Committee will make recommendations to the Secretary regarding such activities.

On October 20, the Committee will visit program sites in the San Antonio area that provide housing and supportive services to homeless veterans. The town hall forum will be held to hear comments and concerns from current and formerly homeless veterans, service providers, faith-based organizations and tribal governments. On October 21–22, the Committee will review the recommendations submitted to the Secretary in its first annual report (March 2003). VA officials and others responsible for implementing those recommendations will make presentations at the meeting. Presenters will include senior managers at the Veterans Benefits Administration, the Veterans Health Administration, as well as the Departments of Health and Human Services, Housing and Urban Development, Labor and Defense.

Those wishing to attend the meeting should contact Mr. Pete Dougherty, Department of Veterans Affairs, at (202) 273–5764. No time will be allocated for receiving oral presentations from the public during the meeting on October 21–22. However, the Committee will accept written comments from interested parties on issues affecting homeless veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Homeless Veterans, Homeless Veterans Programs Office (075D), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: September 26, 2003.

By Direction of the Secretary:

**E. Philip Riggin,**

*Committee Management Officer.*

[FR Doc. 03–25096 Filed 10–2–03; 8:45 am]

BILLING CODE 8320–01–M

# Corrections

**Federal Register**
Vol. 67, No. 192
Friday, October 3, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF DEFENSE

## Department of the Army

## Proposed Mandatory Use of US Bank's PowerTrack System by Department of Defense Personal Property Transportation Service Providers

*Correction*

In notice document 03–24612 beginning on page 55947 in the issue of Monday, September 29, 2003, make the following correction:

On page 55947, in the second column, in the second to the last paragraph, in the sixth line "2003" should read "2004".

[FR Doc. C3–24612 Filed 10–2–03; 8:45 am]

**BILLING CODE 1505–01–D**

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

# Federal Register

**Friday,**
**October 3, 2003**

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## Part II

## Environmental Protection Agency

**40 CFR Part 62**
**Federal Plan Requirements for Commercial and Industrial Solid Waste Incinerators Constructed On or Before November 30, 1999; Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 62**

**[AD–FRL–7562–1]**

**RIN 2060–AJ28**

## Federal Plan Requirements for Commercial and Industrial Solid Waste Incinerators Constructed on or Before November 30, 1999

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** On December 1, 2000, the EPA adopted emission guidelines for existing commercial and industrial solid waste incineration (CISWI) units. Sections 111 and 129 of the Clean Air Act (CAA) require States with existing CISWI units subject to the emission guidelines to submit to the EPA plans that implement and enforce the emission guidelines. Indian Tribes may submit, but are not required to submit, Tribal plans to implement and enforce the emission guidelines in Indian country. State plans were due from States with CISWI units subject to the emission guidelines on December 1, 2001. If a State or Tribe with existing CISWI units does not submit an approvable plan, sections 129 and 111 of the CAA require the EPA to develop, implement, and enforce a Federal plan for CISWI units located in that State or Tribal area within 2 years after promulgation of the emission guidelines (December 1, 2002). The EPA proposed a Federal plan for CISWI units on November 25, 2002. This action promulgates a Federal plan to implement emission guidelines for CISWI units located in States and Indian country without effective State or Tribal plans. This Federal plan is an interim action because on the effective date of an approved State or Tribal plan, the Federal plan will no longer apply to CISWI units covered by the State or Tribal plan.

**EFFECTIVE DATE:** The final rule is effective November 3, 2003.

**ADDRESSES:** Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** For further information concerning specific aspects of this Federal plan, contact Mr. David Painter at (919) 541–5515, Program Implementation and Review Group, Information Transfer and Program Integration Division (E143–02), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, email: *painter.david@epa.gov.* For technical information, contact Mr. Fred Porter at (919) 541–5251, Combustion Group, Emission Standards Division (C439–01), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, email: *porter.fred@epa.gov.* For information regarding implementation of this Federal plan, contact the appropriate Regional Office (Table 1) as shown in the **SUPPLEMENTARY INFORMATION.**

**SUPPLEMENTARY INFORMATION:** *Regulated entities.* The Federal plan affects the following North American Industrial Classification System (NAICS) and Standard Industrial Classification (SIC) codes:

| Category | NAICS Code | SIC Code | Examples of potentially regulated entities |
|---|---|---|---|
| Any industry using a solid waste incinerator as defined in the regulations. | 325 ................ | 28 .................. | Manufacturers of chemicals and allied products. |
| | 334 ................ | 34 ........ ........ | Manufacturers of electronic equipment. |
| | 421 ................ | 36 .................. | Manufacturers of wholesale trade, durable goods. |
| | 321, 337 ......... | 24, 25 ............ | Manufacturers of lumber and wood furniture. |

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities the EPA expects to be regulated by this rule. This table lists examples of the types of entities that may be affected by this rule. Other types of entities not listed could also be affected. To determine whether your facility, company, business organization, etc., is regulated by this action, carefully examine the applicability criteria in 40 CFR 62.14510 through 62.14531 of subpart III. If you have any questions regarding the applicability of this action to your solid waste incineration unit, refer to the **FOR FURTHER INFORMATION CONTACT** section.

*Judicial Review:* The EPA proposed this rule for CISWI units on November 25, 2002, (67 FR 70640). This action adopting a rule for CISWI units constitutes final administrative action concerning that proposal. Under section 307(b)(1) of the CAA, judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by December 2, 2003. Under section 307(d)(7)(B) of the CAA, only an objection to this rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding brought by the EPA to enforce these requirements.

*Docket.* Docket Numbers A–2000–52 and A–94–63 contain the supporting information for the CISWI Federal plan and for the EPA's promulgation of EG for existing CISWI units, respectively. Docket A–2000–52 (OAR–2002–0069)incorporates all of the information in Docket A–94–63. The dockets are organized and complete files of all information submitted to or otherwise considered by EPA in the development of this rulemaking. The dockets are available for public inspection and copying between 8:30 a.m. and 4:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center, 1301 Constitution Avenue, NW, Room B102, Washington, DC 20460. The mailing address for the Center is Air and Radiation Docket, Mail Code 6102T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. A reasonable fee may be charged for copying docket materials. The Center may be contacted by calling (202) 566–1742 between the hours of 7:30 a.m. and 5:30 p.m., Monday through Friday. The Center may also be contacted by fax using the fax number (202) 566–1741 and by E-mail using the E-mail address "*A-and-R-Docket@epa.gov*".

*Electronic Access.* Electronic versions of the public dockets are available through EPA's electronic public docket and comment system, EPA Dockets. You may use the EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the indices of the contents of the official public dockets, and to access those documents in the public dockets that are available electronically. Once in the system, select "search" and key-in the appropriate docket identification number. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in this document.

*Worldwide Web (WWW).* In addition to being available in the dockets, an electronic copy of today's document also will be available on the World Wide Web site that the EPA has established for CISWI units. The address is *http://www.epa.gov/ttn/atw/129/ciwi/ciwipg.html.* The CISWI Web site references other Web sites for closely related rules, such as large and small municipal waste combustors (MWC), hazardous waste, and hospital/medical/infectious waste incinerators (HMIWI). The large MWC and HMIWI sites contain the respective State plan guidance documents.

*EPA Regional Office Contacts.* Table 1 lists EPA Regional Offices that can answer questions regarding implementation of this rule.

TABLE 1.—EPA REGIONAL CONTACTS FOR CISWI

| Region | Contact | Phone/fax | States and protectorates |
|---|---|---|---|
| I | EPA New England, Director, Air Compliance Program, 1 Congress Street, Suite 1100 (SEA), Boston, MA 02114–2023. | 617–918–1650<br>617–918–1505 (fax) | CT, ME, MA, NH, RI, VT. |
| II | U.S. EPA—Region 2, Air Compliance Branch, 290 Broadway, New York, New York 10007. | 212–637–4080<br>212–637–3998 (fax) | NJ, NY, Puerto Rico, Virgin Islands. |
| III | U.S. EPA—Region 3, Chief, Air Enforcement Branch (3AP12), 1650 Arch Street, Philadelphia, PA 19103–2029. | 215–814–3438<br>215–814–2134 (fax) | DE, DC, MD, PA, VA, WV. |
| IV | U.S. EPA—Region 4, Air and Radiation, Technology Branch, Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303–3104. | 404–562–9105<br>404–562–9095 (fax) | AL, FL, GA, KY, MS, NC, SC, TN. |
| V | U.S. EPA—Region 5, Air Enforcement and Compliance Assurance Branch, (AR–18J), 77 West Jackson Boulevard, Chicago, IL 60604–3590. | 312–353–2211<br>312–886–8289 (fax) | IL, IN, MN, OH, WI. |
| VI | U.S. EPA—Region 6, Chief, Toxics Enforcement, Section (6EN–AT), 1445 Ross Avenue, Dallas, TX 75202–2733. | 214–665–7224<br>214–665–7446 (fax) | AR, LA, NM, OK, TX. |
| VII | U.S. EPA—Region 7, 901 N. 5th Street, Kansas City, KS 66101. | 913–551–7020<br>913–551–7844 (fax) | IA, KS, MO, NE. |
| VIII | U.S. EPA—Region 8, Air Program Technical Unit, (Mail Code 8P–AR), 999 18th Street, Suite 500, Denver, CO 80202. | 303–312–6007<br>303–312–6064 (fax) | CO, MT, ND, SD, UT, WY. |
| IX | U.S. EPA—Region 9, Air Division, 75 Hawthorne Street, San Francisco, CA 94105. | 415–744–1219<br>415–744–1076 (fax) | AZ, CA, HI, NV, American Samoa, Guam. |
| X | U.S. EPA—Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle, WA 98101. | (206) 553–4273<br>(206) 553–0110 (fax). | |

*Organization of this document.* The following outline is provided to aid in locating information in this preamble.

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## I. Background Information

### *A. What Is the Statutory Authority for Today's Action?*

Today's action is taken under the authority of Sections 111, 114, 129, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7414, 7429, and 7601(a)). Today's action is a rulemaking subject to the provision of Clean Air Act section 307(d). *See* 42 U.S.C. 7606(d)(1).

### *B. What Is the Purpose of This Federal Plan?*

Section 129 of the CAA requires the EPA to develop emission guidelines under the authority of sections 111 and 129 of the CAA for existing "solid waste incineration units combusting commercial or industrial waste." The EPA refers to these units as "commercial and industrial solid waste incineration" (CISWI) units. The EPA proposed emission guidelines for CISWI units on November 30, 1999, and promulgated them on December 1, 2000, (65 FR 75338) (to be codified at 40 CFR part 60, subpart DDDD). In writing Section 129 of the CAA, Congress looked first to the States as the preferred implementers of emission guidelines for existing CISWI units. To make these emission guidelines enforceable, States with existing CISWI units must have submitted to the EPA within one year following promulgation of the emission guidelines (by December 1, 2001) State plans that implement and enforce the emission guidelines. For States or Tribes that do not have an EPA-approved and effective plan, the EPA must develop and implement a Federal plan within two years following promulgation of the emission guidelines (by December 1, 2002). The EPA sees this Federal plan as an interim measure to ensure that Congressionally mandated emission standards under authority of sections 111 and 129 of the CAA are implemented until States assume their role as the preferred implementers of the emissions guidelines. Thus, the EPA encourages States to either use the Federal plan as a template to reduce the effort needed to develop their own plans or to simply take delegation to directly implement and enforce the guidelines. States without any existing CISWI units are required to submit to the Administrator a letter of negative declaration certifying that there are no CISWI units in the State. No plan is required for States that do not have any CISWI units.

As discussed in section VII.E of this preamble, Indian Tribes may, but are not required to, submit Tribal plans to cover CISWI units in Indian Country. A Tribe may submit to the Administrator a letter of negative declaration certifying that no CISWI units are located in the Tribal area. No plan is required for tribes that do not have any CISWI units. CISWI units located in States or Tribal areas that mistakenly submit a letter of negative declaration would be subject to the Federal plan until a State or Tribal plan has been approved and becomes effective covering those CISWI units.

Sections 111 and 129 of the CAA and 40 CFR 60.27(c) and (d) require the EPA to develop, implement, and enforce this Federal plan to cover existing CISWI units located in States that do not have an approved plan within two years after promulgation of the emission guidelines (by December 1, 2002, for CISWI units). Today's action promulgates a Federal plan for CISWI units that are not yet covered by an approved State or Tribal plan.

### *C. What Impact Does the U.S. Appeals Court Remand and the EPA's Granting of a Request for Reconsideration Have on This Federal Plan?*

Subsequent to the EPA's promulgation of the final rule establishing the New Source Performance Standards (NSPS and the Emission Guidelines (EG)for CISWI units, two events occurred that potentially could result in substantive changes to these standards. First, in August 2001, the EPA granted a request for reconsideration, pursuant to section 307(d)(7)(B) of the CAA, submitted on behalf of the National Wildlife Federation and the Louisiana Environmental Action Network, related to the definition of "commercial and industrial solid waste incineration unit" in the EPA's CISWI rulemaking. In granting this petition for reconsideration, the EPA agreed to undertake further notice and comment proceedings related to this definition. Second, on January 30, 2001, the Sierra Club filed a petition for review in the U.S. Court of Appeals for the D.C. Circuit challenging the EPA's final CISWI rule. On Sept. 6, 2001, the Court entered an order granting the EPA's motion for a voluntary remand of the CISWI rule without vacature. The EPA's request for a voluntary remand of the final CISWI rule was intended to allow the EPA to address concerns related to the EPA's procedures for establishing MACT floors for CISWI units in light of the DC Circuit Court's decision in *Cement Kiln Recycling Coalition* v. *EPA*, 255 F.3d 855 (DC Cir. 2001).

Neither the EPA's granting of the petition for reconsideration, nor the Court's order granting a voluntary remand, stay, vacate or otherwise influence the effectiveness of the currently existing CISWI regulations. Specifically, section 307(d)(7)(B) of the CAA provides that "reconsideration shall not postpone the effectiveness of the rule," except that "[t]he effectiveness of the rule may be stayed during such reconsideration * * * by the Administrator or the court for a period not to exceed three months." In this case, neither the EPA nor the court stayed the effectiveness of the final CISWI regulations in connection with the reconsideration petition. Likewise, the DC Circuit granted the EPA's motion for a remand without vacature. Therefore, the Court's remand order had no impact on the effectiveness of the current CISWI regulations. Because the existing CISWI regulations remain in full effect, the EPA's obligation under section 129(b)(3) of the CAA to promulgate a Federal plan (to implement those regulations for existing units that are not covered by an approved and effective State plan) remains unchanged.[1] Therefore, the EPA is complying with its statutory obligations by promulgating the Federal plan for CISWI units.

To the extent that the EPA might take action in the future that results in changes in the underlying CISWI rule, in response to the petition for reconsideration or in response to the voluntary remand, the EPA will simultaneously amend this Federal plan to reflect any such changes. If such changes become necessary, interested parties, including States and sources, will have the opportunity to provide comments, and the EPA will reasonably accommodate the concerns of commenters as appropriate.

### *D. Status of State Plan Submittals*

Sections 111(d) and 129(b)(2) of the CAA, as amended, 42 U.S.C. 7411(d) and 7429(b)(2), authorize EPA to develop and implement a Federal plan for CISWI located in States with no approved and effective State plan. Table 2 summarizes the current status of State plans. The CISWI covered in EPA-approved State plans are not subject to the CISWI Federal plan, as of the effective date specified in the Federal Register notice announcing the EPA's approval of the State plan. The EPA is not expecting State plans to be submitted by the States that submitted negative declarations. However, in the unlikely event that there are CISWI units located in these States, this Federal plan would automatically apply to such CISWI units.

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[1] Similarly, the obligations of States and sources are unaffected by the reconsideration petition and the remand.

TABLE 2.—STATUS OF STATE PLANS

| |
|---|
| **I. States With EPA-Approved State Plans** |
| Alabama, Florida, Indiana, Mississippi, New Hampshire, West Virginia. |
| **II. Negative Declaration Submitted to EPA** |
| Arizona, Albuquerque in New Mexico, Clark County in Nevada, Colorado, Delaware, District of Columbia, Forsyth County in North Carolina, Kansas, Kentucky, Knox County in Tennessee, Maine, Maricopa County in Arizona, Mecklenburg County in North Carolina, Memphis/Shelby County in Tennessee, Missouri, Montana, New York, Nebraska, New Mexico, City of Philadelphia in Pennsylvania, Pima County in Arizona, Pinal County in Arizona, Rhode Island, South Dakota, Utah, Vermont, Virgin Islands, Washoe County in Nevada, Western County in North Carolina, Wyoming. |
| **III. Final State Plan Submitted to EPA** |
| Louisiana, Nashville/Davidson County in Tennessee, North Carolina, South Carolina, Puerto Rico. |
| **IV. Draft State Plan Submitted to EPA** |
| Allegheny County in Pennsylvania, Maryland, North Dakota, Ohio, Oklahoma, Virginia. |

The EPA is currently reviewing final and draft State plans submitted by the States listed in parts III and IV of Table 2. The Federal plan covers CISWI in these States until these State plans are approved by the EPA and become effective. Other States are making significant progress on their State plans and we expect many State plans to be approved in the next several months. As our Regional Offices approve State plans, they will also, in the same action, amend the appropriate subpart of 40 CFR part 62 to codify their approvals. The EPA is not aware of any Indian Tribes that are developing Tribal plans.

The EPA will maintain a list of State plan submittals and approvals on our Air Toxics Web site at *http://www.epa.gov/ttn/atw/129/ciwi/ciwipg.html.* The list will help CISWI owners or operators determine whether their CISWI is affected by a State plan, a Tribal plan, or the Federal plan. Owners and operators of CISWI units can also contact the EPA Regional Office for the State in which their CISWI units are located to determine whether there is an approved and effective State plan in place.

## II. Affected Facilities

### *A. What Is a CISWI Unit?*

A CISWI unit means any combustion device that combusts commercial and industrial waste, as defined in the final 40 CFR part 62, subpart III. Commercial and industrial waste is defined as solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility. Fifteen types of combustion units, which are listed in section 62.14525 of subpart III are conditionally exempt from the Federal plan.

### *B. Does the Federal Plan Apply to Me?*

The Federal plan applies to you if you are the owner or operator of a combustion device that combusts commercial and industrial waste (as defined in subpart III) and the device is not covered by an approved and effective State or Tribal plan as of December 1, 2002. The Federal plan covers your CISWI unit until the EPA approves a State or Tribal plan that covers your CISWI unit and that plan becomes effective.

If you began the construction of your CISWI unit on or before November 30, 1999, it is considered an existing CISWI unit and could be subject to the Federal plan. If you began the construction of your CISWI unit after November 30, 1999, it is considered a new CISWI unit and is subject to the NSPS. If you began reconstruction or modification of your CISWI unit prior to June 1, 2001, it is considered an existing CISWI unit and could be subject to the Federal plan. Likewise, if you began reconstruction or modification of your CISWI unit on or after June 1, 2001, it is considered a new CISWI unit and is subject to the NSPS.

Your CISWI unit is subject to this Federal plan if on November 3, 2003, the EPA has not approved a State or Tribal plan that covers your unit, or the EPA-approved State or Tribal plan has not become effective. The specific applicability of this plan is described in sections 62.14510 through 62.14531 of subpart III.

Once an approved State or Tribal plan is in effect, the Federal plan no longer applies to a CISWI unit covered by such plan. An approved State or Tribal plan is a plan developed by a State or Tribe that the EPA has reviewed and approved based on the requirements in 40 CFR part 60, subpart B to implement and enforce 40 CFR part 60, subpart DDDD. The State or Tribal plan is effective on the date specified in the notice published in the **Federal Register** announcing the EPA's approval of the plan.

Today's promulgation of the CISWI Federal plan does not preclude States or Tribes from submitting a plan. Once the EPA approves a State or Tribal plan, then the Federal plan will no longer apply to CISWI units covered by the State or Tribal plan as of the effective date of the State or Tribal plan. (See the discussion in "*Federal Plan Becomes Effective Prior to Approval of a State or Tribal Plan*" in section VII.C of this preamble.) If a CISWI unit were to be overlooked by a State or Tribe and the State or Tribe submitted a negative declaration letter, or if an individual CISWI unit were not to be covered by an approved and effective State or Tribal plan, the CISWI unit would be subject to this Federal plan.

### *C. How Do I Determine if My CISWI Unit Is Covered by an Approved and Effective State or Tribal Plan?*

Part 62 of Title 40 of the Code of Federal Regulations identifies the approval and promulgation of section 111(d) and section 129 State or Tribal plans for designated facilities in each State or area of Indian Country. However, part 62 is updated only once per year. Thus, if part 62 does not indicate that your State or Tribal area has an approved and effective plan, you should contact your State environmental agency's air director or your EPA Regional Office (Table 1) to determine if approval occurred since publication of the most recent version of part 62.

## III. Elements of the CISWI Federal Plan

Since this Federal plan covers CISWI units located in States and areas of Indian Country where plans are not yet in effect, the EPA has included in the Federal plan the same elements as are required for State plans: (1) Identification of legal authority and mechanisms for implementation, (2) inventory of CISWI units, (3) emissions inventory, (4) emission limitations, (5) compliance schedules, (6) waste management plan, (7) testing, monitoring, inspection, reporting, and recordkeeping, (8) operator training and qualification, (9) public hearing, and (10) progress reporting. *See* 40 CFR part 60 subparts B and C and sections 111 and 129 of the CAA. Each plan element is described below as it relates to this CISWI Federal plan. Table 3 lists each element and identifies where it is located or codified.

TABLE 3.—ELEMENTS OF THE CISWI FEDERAL PLAN

| Element of the CISWI federal plan | Location |
|---|---|
| Legal authority and enforcement mechanism | Sections 129(b)(3) 111(d), 301(a), and 301(d)(4) of the CAA. |
| Inventory of Affected MWC Units | Docket A–2000–52. |
| Inventory of Emissions | Docket A–2000–52. |
| Emission Limits | 40 CFR 62.14630–62.14645. |
| Compliance Schedules | 40 CFR 62.14535–62.14575. |
| Operator Training and Qualification | 40 CFR 62.14595–62.14625. |
| Waste Management Plan | 40 CFR 62.14580–62.14590. |
| Record of Public Hearings | Docket A–2000–52. |
| Testing, Monitoring, Recordkeeping, and Reporting | 40 CFR 62.14670–62.14760. |
| Progress Reports | Section III.J of this preamble. |

### *A. Legal Authority and Enforcement Mechanism*

#### 1. EPA's Legal Authority in States

Section 301(a) of the CAA provides the EPA with broad authority to write regulations that carry out the functions of the CAA. Sections 111(d) and 129(b)(3) of the CAA direct the EPA to develop a Federal plan for States that do not submit approvable State plans. Sections 111 and 129 of the CAA provide the EPA with the authority to implement and enforce the Federal plan in cases where the State fails to submit a satisfactory State plan. Section 129(b)(3) of the CAA requires the EPA to develop, implement, and enforce a Federal plan within two years after the date the relevant emission guidelines are promulgated (by December 1, 2002, for CISWI units). Compliance with the emission guidelines cannot be later than five years after the relevant emission guidelines are promulgated (by December 1, 2005, for CISWI units).

#### 2. EPA's Legal Authority in Indian Country

Section 301 of the CAA provides the EPA with the authority to administer Federal programs in Indian Country. *See* sections 301(a) and (d). Section 301(d)(4) of the CAA authorizes the Administrator to directly administer provisions of the CAA where Tribal implementation of those provisions is not appropriate or administratively not feasible. See section VII.E of this preamble for a more detailed discussion of the EPA's authority to administer the CISWI Federal plan in Indian Country.

This Federal plan is being promulgated under the legal authority of the CAA to implement the emission guidelines in those States and areas of Indian Country not covered by an approved plan. As discussed in section VII of this document, implementation and enforcement of the Federal plan may be delegated to eligible Tribal, State, or local agencies when requested by a State, eligible Tribal, or local agency, and when the EPA determines that such delegation is appropriate.

### *B. Inventory of Affected CISWI Units*

The Federal plan includes an inventory of CISWI units affected by the emission guidelines. (See 40 CFR 60.25(a).) Docket number A–2000–52 contains an inventory of the CISWI units that may potentially be covered by this Federal plan in the absence of State or Tribal plans. This inventory contains 99 CISWI units in 30 States and one protectorate. It is based on information collected from State and Federal databases, information collection request survey responses, and stakeholder meetings during the development of the CISWI emission guidelines. The EPA recognizes that this list may not be complete. Therefore, sources potentially subject to this Federal plan may include, but are not limited to, the CISWI units listed in the inventory memorandum in docket number A–2000–52. Any CISWI unit that meets the applicability criteria in the Federal plan rule is subject to the Federal plan, regardless of whether it is listed in the inventory.

### *C. Inventory of Emissions*

The Federal plan includes an emissions estimate for CISWI units subject to the emission guidelines. (See 40 CFR 60.25(a).) The pollutants to be inventoried are dioxins/furans, cadmium (Cd), lead (Pb), mercury (Hg), particulate matter (PM), hydrogen chloride (HCl), oxides of nitrogen ($NO_X$), carbon monoxide (CO), and sulfur dioxide ($SO_2$). The EPA has estimated the emissions from each known CISWI unit that potentially may be covered by the Federal plan for the nine pollutants regulated by the Federal plan.

The emissions inventory is based on available information about the CISWI units, emission factors, and typical emission rates developed for calculating nationwide air impacts of the CISWI emission guidelines and the Federal plan. Refer to the inventory memorandum in docket number A–2000–52, item number II–B–3 for the complete emissions inventory and details on the emissions calculations.

### *D. Emission Limitations*

The Federal plan includes emission limitations. (See 40 CFR 60.24(a).) Section 129(b)(2) of the CAA requires these emission limitations to be "at least as protective as" those in the emission guidelines. The emission limitations in this Federal plan are the same as those contained in the emission guidelines. (See Table 1 of subpart III.) Section V. of this preamble discusses the emission limitations and operating limits. Table 2 of subpart III contains operating limits for wet scrubbers.

### E. Compliance Schedules

Increments of progress are required for CISWI units that need more than 1 year from State plan approval to comply, or in the case of the Federal plan, more than 1 year after promulgation of the final Federal plan. (See 40 CFR 60.24(e)(1).) Increments of progress are included to ensure that each CISWI unit needing more time to comply is making progress toward meeting the emission limits.

For CISWI units that need more than 1 year to comply, the Federal plan includes in its compliance schedule two increments of progress from 40 CFR 60.21(h), as allowed by 40 CFR 60.24(e)(1) and required by 40 CFR part 60, subpart DDDD (§ 60.2575). The Federal plan includes defined and enforceable dates for completion of each increment. These increments of progress are (1) submit final control plan, and (2) achieve final compliance. The increments of progress are described in section V.E of this preamble.

### F. Waste Management Plan Requirements

A waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream to reduce or eliminate toxic emissions from incinerated waste. The waste management plan must be submitted no later than April 5, 2004. Sections 62.14580 through 62.14590 of subpart III contain the waste management plan requirements.

### G. Testing, Monitoring, Recordkeeping, and Reporting

The Federal plan includes testing, monitoring, recordkeeping, and reporting requirements. (See 40 CFR 60.25.) Testing, monitoring, recordkeeping, and reporting requirements are consistent with subpart DDDD, and assure initial and ongoing compliance.

### H. Operator Training and Qualification Requirements

The owner or operator must qualify operators or their supervisors (at least one per facility) by ensuring that they complete an operator training course and annual review or refresher course. Sections 62.14595 through 62.14625 of subpart III contain the operator training and qualification requirements.

### I. Record of Public Hearings

The proposed Federal plan provided opportunity for public participation in adopting the plan. No requests for a public hearing were received by the EPA.

### J. Progress Reports

Under the Federal plan, the EPA's Regional Offices will prepare annual progress reports to show progress of CISWI units in the Region toward implementation of the emission guidelines. (See 40 CFR 60.25(e).) States or Tribes that have been delegated the authority to implement and enforce this Federal plan are also required to submit annual progress reports to the appropriate EPA Regional Office.

Each progress report must include the following items: (1) Status of enforcement actions; (2) status of increments of progress; (3) identification of sources that have shut down or started operation; (4) emission inventory data for sources that were not in operation at the time of plan development, but that began operation during the reporting period; (5) additional data as necessary to update previously submitted source and emission information; and (6) copies of technical reports on any performance testing and monitoring.

## IV. Significant Issues and Changes Since Proposal

### A. Applicability of the Standards

A commenter (IV–D–05) representing electric utilities providing service to more than 95% of the nation's consumers of electricity commented in support of proposed rules. In particular, the commenter endorsed the EPA's proposed definitions of "commercial and industrial solid waste incineration unit" and the corresponding definition of "commercial and industrial waste." The commenter said that, taken together, these two definitions will ensure that the proposed Federal plan requirements do not inadvertently encompass combustion units, including electric utility boilers, that burn materials for energy recovery. The commenter amplified this endorsement noting his organization's opinion that the proposed rules clarify that the section 129 program was not intended by Congress to encompass electric utility boiler combustion practices, including those circumstances where electric utility boilers co-combust non-hazardous solid waste with fossil fuels during normal production operations. According to the commenter, it was clear from the legislative history of section 129 that Congress meant only for the EPA to regulate units whose primary function is to incinerate nonhazardous solid waste, not electric utility boilers that co-combust small amounts of nonhazardous waste with fuel during the production of electric power. The commenter sought to underscore that, for purposes of this rulemaking, the EPA correctly adopted the same definitions of CISWI and commercial and industrial waste incorporated in the EG, thereby excluding from the CISWI Federal plan combustion units, including electric utility boilers, that engage in energy recovery.

The EPA notes that a comment letter endorsing a proposed action typically requires no response on our part. Here, we remind the reader that after promulgating the final rule establishing the NSPS and the EG for the CISWI category, the EPA received and granted a petition for reconsideration related specifically to the definition of "commercial and industrial solid waste incineration unit". Thus, the EPA will undertake additional notice and comment proceedings related to this definition. Additionally, as discussed above, the EPA accepted a voluntary remand (without vacature) on the underlying NSPS and EG in connection with a petition for review filed in the Federal Court of Appeals for the D.C. Circuit. We clearly acknowledged this fact also in the proposal for this Federal plan. The EPA intends to take final action on this definitional issue in conjunction with the EPA's response to the remand. As we noted at proposal, however, since the current EG remain in effect, we have proceeded to develop a Federal plan as required by section 129(b)(3) of the CAA.

Since the Federal plan must mirror the substantive requirements of the EG, we will promulgate a Federal plan which includes the definitions endorsed by the commenter. To the extent that we might take action in the future that results in changes to the definitions in the underlying CISWI EG, we will simultaneously propose amendments to the Federal plan to reflect any such changes. If changes become necessary, interested parties, including the commenter, will have the opportunity to provide comments. We will reasonably accommodate concerns of commenters as appropriate.

One commenter (IV–D–01) representing a State air pollution control agency noted a discrepancy between the proposed Federal plan and EG requirements for air curtain incinerators (ACI) regarding the types of wastes qualifying for the exemption of ACI from CISWI emission limits. The commenter observed that the proposed plan specifies certain requirements if the ACI's burn only 100 percent wood waste and clean lumber. By contrast, the EG and NSPS specify certain requirements if the ACI burn 100 percent wood waste, 100 percent clean lumber, or 100 percent wood waste, clean lumber, and/or yard waste. The commenter asked that the EPA explain and correct the discrepancy as appropriate.

We agree that the commenter's observation was correct. The proposed regulatory language has been amended to duplicate the applicability of the EG. Further, a definition of yard waste has been included to provide clarity on the meaning of the term "yard wastes" for the purposes of this Federal plan. The term "yard wastes" as defined in the final rule for the CISWI Federal plan includes the excluded wastes listed in paragraph (1) of the definition of "wood waste" in § 62.14840 of the rule. This definition of "yard wastes" is consistent with the one previously promulgated in the NSPS for large municipal waste combustors (40 CFR Part 60 Subpart Eb). Overall, these changes will make the final rule better comport to the language in section 129(g)(1) of the CAA.

One commenter (IV–G–01) supports the rationale behind the exemption in §§ 62.14525(n)(7) and 62.2555(n)(7) which exempts "Units burning only photographic film to recover silver." However, the commenter believes that for this exemption to be effective, it should be broadened to cover photographic materials, since there is a broad range of photographic materials that are burned together to recover silver. These materials include, not only film, but paper, filters, sludges and other photosensitive materials. Accordingly, the commenter recommended changing the wording of § 62.14525(n)(7) to read as follows: "(7) Units burning only photographic materials to recover silver."

Another commenter (IV–G–04) requested a similar change to the draft rules to formalize an exemption for carbon regeneration furnaces used in the corn wet milling industry. He asked for the proposed rule to be amended to reflect the EPA's granting of a petition for exemption of these sources on September 24, 2002. To accomplish this purpose, we were asked to add language to § 62.14525(n) reading as follows: "Units burning contaminants adsorbed by spent activated carbon when the spent carbon is being regenerated for reuse in manufacturing processes."

While EPA understands the basis for both comments, in light of section 129(g) of the CAA, we do not believe that adopting additional specific exemptions in the Federal Plan is the appropriate approach. First, the appropriate mechanism for requesting exemptions beyond those expressly provided for in the EG is the petition process described in § 60.2025 of the NSPS and § 60.2558 of the EG. Second, we do not believe that it is appropriate to list in the Federal plan each exemption that EPA approves under these provisions. We are concerned that making the requested changes would cause a discrepancy between the express applicability of the EG and the Federal plan. To avoid such discrepancies, the EPA would need to simultaneously amend the Federal plan and the EG each time we approve a new exemption under § 60.2558. However, each change in the Federal plan for new exemptions would cause the Federal plan to differ from State plans.

To appropriately account for exemptions approved under §§ 60.2025 and 60.2558, while ensuring that the Federal plan is consistent with the requirements of the EG, we have amended the final rule to include a new paragraph 62.14525(n)(8). This provision exempts from the Federal plan sources which are granted exemptions from the NSPS and EG through the petition process. Thus, in order to secure an exemption from the Federal plan requirements based on a facility's status as a chemical recovery unit, the facility need only apply for and receive an exemption under the appropriate provision of the NSPS or the EG. Accordingly, we have also re-drafted § 62.14530 to advise owners/operators of chemical recovery units not listed in paragraph 62.14525(n) of the appropriate method to request exemptions.

We received comment (IV–D–03) from an operator of CISWI units in Alaska who requested changes to the proposed rules to fit circumstances deemed unique to operation of the Alaskan pipeline. The commenter suggested that a lower size cutoff should be added to the final rule to reflect the economic impacts of installing emission controls in very remote locations. The commenter further requested outright exemption of emergency-use CISWI. The primary concern given was elimination of non-hazardous debris from the cleanup of large oil spills. The commenter noted that for large oil spill response operations, incinerators would be a valuable form of equipment to environmentally and safely dispose of large amounts of boom, sorbent pads, and personal protective equipment employed in a clean-up. He said that land-filling such materials is not a viable option because of the remote locations. He considered bagging and shipping such waste away from the locale of a spill infeasible and was not aware of any Alaskan facilities that could handle the large volumes of oily waste they'd receive. While requesting that the EPA include in the final Federal plan an exemption for emergency use CISWI, the commenter would not object to establishment of minimal standards such as unit capacity limitations in such an exemption.

We see section 129(a) of the CAA providing discretion to consider cost, non-air health and environmental impacts and energy requirements in the establishment of emission standards for CISWI. However, the EPA may not consider such factors in establishing the minimum stringency for controls under section 129(a)(2). Moreover, Section 129 does not permit the EPA to exclude incinerators from coverage under the regulations based on the size of the incinerator unit. Finally, the emission limits for CISWI units were established in the manner prescribed by law for determining that minimal level during development of the EG. The function of this Federal plan is not to make substantive changes to those requirement, but to implement those requirements in States that do not adopt State plans. Section 129(b) requires us to include in the Federal plan all provisions of the guidelines. Thus, it would be inappropriate to change this Federal plan in the manner requested by the commenter.

### *B. Compliance Schedule*

Two commenters (IV–D–02, IV–G–02) asked us to revise the compliance schedule for existing CISWI units subject to Federal plan to be consistent with the compliance schedule provided in the EG. Both cited section 60.2535 of the CISWI EG, wherein the regulation requires compliance "as expeditiously as practicable," or by the earlier of two dates: three years after the effective date of State plan approval or by December 1, 2005. Both noted, however, that section 62.14535 of the proposed Federal plan provides only one year after promulgation of the CISWI Federal plan for final compliance. One writer asked us to synchronize the compliance dates for CISWI units, whether they are regulated under a State plan or the Federal plan. The other expressed concern that similar units in different States may have different compliance dates. We were asked to revise the Federal plan to require compliance as expeditiously as practicable, but not later than the earlier date of December 1, 2005, or three years after promulgation of the Federal plan.

In reply, we note our expectation that schedules for combustion units subject to section 129 requirements should differ. Because compliance schedules are often tied to the time of State plan approval, most State plans will have differing compliance dates. Hence, State plans and Federal plans are not expected to have the same compliance dates for a given category of sources. Furthermore, State plans and the Federal plan have the obligation to require compliance "as expeditiously as practicable." This is specifically required in section 129(f)(2) of the CAA as well as in 40 CFR 60.24(c) and may be sooner than the worst case dates identified in the emission guidelines.

State plans were due on December 1, 2002. If a State or Tribe with existing CISWI units did not submit an approvable plan by December 1, 2002, sections 129 and 111 of the CAA require the EPA to develop, implement, and enforce a Federal plan for units located in that State or Tribal area. By developing the Federal plan, we assumed the burden of implementing the EG for CISWI units not covered by an approved and effective State or Tribal plan. In the Federal plan, as in a State plan, the implementing agency has the discretion to apply an appropriate compliance schedule to the source category. In the case of the Federal plan, we developed our schedule to achieve compliance with provisions of the EG as expeditiously as practicable, based on the feasibility of owners or operators to retrofit combustion units with air pollution control devices.

Mindful of the requirements of section 129(f)(2), we examined the feasibility for owners or operators to retrofit combustion units with air pollution control devices prior to proposal. Based upon similarities in size and upon examination of eight case studies (Docket No. A–98–24, II–A–1) of hospital medical infectious waste incineration (HMIWI) units that completed retrofits of types of controls needed to meet the HMIWI Federal plan, we chose to require compliance within one year after publication of the final CISWI Federal plan. Our rationale for the compliance schedule is discussed fully in the proposal preamble at 67 FR 70646. Implementation of the EG and Federal plans for HMIWI have shown that our expectations were well-founded. We concluded that CISWI owners and operators could meet the final compliance date just as promptly and efficiently. Also, we noted that in addition to the one year extension provision of the Federal plan, owner/operators could have used the time between promulgation of the final CISWI EG (or proposal of the Federal plan) and promulgation of this Federal plan to plan and begin retrofits. However, the EPA expects that some CISWI units could need more than one year to comply, as did some HMIWI units, due to site-specific circumstances. For units that may have more complex retrofits or constraints that prevent them from complying within one year, the Federal plan establishes increments of progress and those units must comply within two years.

Thus, we will retain the proposed compliance schedule in the final CISWI Federal plan. Existing CISWI units must comply within one year after publication of the final rule in the **Federal Register** or meet increments of progress and comply within two years after publication of the final rule in the **Federal Register**.

We received a request (IV–G–02) to clarify the compliance schedule for CISWI units that may lose the rule exemption provided in § 62.14525(n)(4) after the effective date of the rule. Section 62.14525(n)(4) exempts chemical recovery units burning only manufacturing byproduct streams/residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts. The commenter owns an operating site which he believes qualifies for an exemption from the requirements of the CISWI Federal plan because catalyst metals in incinerator fly ash are reclaimed off site or used in making commercial grade catalysts. The commenter is concerned about the potential unavailability of an off-site reclamation facility and requested that we provide at least three years after the loss of his expected rule exemption for final compliance with the rule requirements.

As outlined above and in the preamble to the proposed rule, we respond by stating our expectation that most CISWI units will reach final compliance promptly and efficiently. Those CISWI units that become exempt through §§ 62.14525 and 62.14530 of the Federal plan, but lose that exemption after the compliance date of the Federal plan, must begin complying with the requirements of the Federal plan immediately upon loss of the exemption. Moreover, section 129(b)(3) requires that all CISWI units must be in compliance with the requirements of a State or Federal plan no later than five years after promulgation of the emission guidelines, which is December 1, 2005. Therefore, we would not have the authority to allow a compliance date three years after loss of an exemption, as suggested by the commenter.

If owners or operators of affected CISWI units anticipate that they will not be exempt in the future, we encourage them to begin plans for installation of any controls needed to meet the CISWI emission limits. According to this final Federal plan, owners or operators are required to either: (1) Reach final compliance by the date one year after publication of this final rule in the **Federal Register**; or (2) meet increments of progress and reach final compliance by the date two years after publication of this final rule in the **Federal Register**. The final compliance schedule and increments of progress are contained in §§ 62.14535 through 62.14575 of the final CISWI Federal plan. Therefore, any unit that loses its exemption after the applicable compliance date (one year from publication of this final Federal plan, or if a facility has met all the requirements related to increments of progress, two years after the publication of this final Federal Plan) must meet the applicable standards as of the date that it loses its exemption. Similarly, if a facility loses an exemption prior to the applicable compliance date, the facility must meet the required standards as of the compliance date.

The same commenter (IV–G–02) opined that the proposed petition requirements in § 62.14536 for one year compliance extensions are unnecessary. He said that the CISWI EG include no corresponding requirement for compliance extensions beyond meeting the two increments of progress. The commenter believes the increment of progress requirements in proposed § 62.14540 are sufficient and requested that EPA remove the proposed requirements in § 62.14536.

We disagree. To develop the CISWI Federal plan, we must determine how to fill in implementation details not spelled out in the EG or subpart B, including how and when to grant compliance extensions (as must States when developing State plans). The EG provide a framework for implementation, but some details need to be developed through implementation plans. Paragraph 129(f)(2) requires that the EG be applied as expeditiously as practicable. Our prior experience with similar sources shows that requiring compliance within 12 months of promulgation of the final rule is generally achievable and this is reflected in the proposed rule. Prior experience also shows that, in some instances, site-specific concerns can make a one year compliance schedule impracticable and that is also reflected in the proposed one year extension of the compliance date. Some criteria are needed to guide the EPA and the regulated community as to when it would be appropriate to allow extra time for sources to achieve final compliance and how to accomplish this procedurally. The Federal plan is being implemented under the legal authority of section 111 as well as section 129. For plans to implement EG under section 111 of the CAA, the broad procedural approach to be followed is given in the Code of Federal Regulations at 40 CFR part 60, subpart B. Specifically, paragraphs 60.24(f)(1) to (3) provide criteria for resolving the question of how to decide when it is appropriate to allow affected facilities additional time to achieve compliance. In particular, there must be a determination that meeting the initial compliance date would be unreasonably costly, physically impossible, or otherwise unreasonable. The petition requirements in § 62.14536 for sources to request one-year compliance extensions were included in the proposed rule for the express purpose of addressing these requirements.

We have consistently advised States developing State plans to look to the HMIWI Federal plan for guidance regarding a detailed process for addressing compliance extensions. Similarly, we are following the general procedural approach of the HMIWI Federal plan for the CISWI Federal plan. Our decision to take this path was based upon the knowledge that the HMIWI Federal plan approach had previously undergone notice and comment and that its efficacy had been tested in practice through implementation of the HMIWI Federal plan. Thus, we believe that the proposed criteria for compliance extensions constitute a reasonable and appropriate solution to a known problem and are leaving those criteria in the final rule.

The same commenter (IV–G–02) asked us to revise the performance test timing requirements in § 62.14665 to allow at least 180 days after final compliance date for the initial performance test. He claimed that 90 days after the final compliance date would be insufficient time to coordinate the operations and emissions test schedules and complete the final performance test. He noted that § 60.2705 of the CISWI emissions guidelines allows CISWI units subject to a State plan up to 180 days after the final compliance date for conducting an initial performance test. The commenter believes the performance test timing requirements for the CISWI units subject to Federal plan should be consistent with the performance test timing requirements for the CISWI units subject to a State plan. The commenter noted that such a change would make the CISWI Federal plan consistent with the CISWI emission guidelines.

The 180-day time period to conduct compliance testing originated in the 1970s, when industry commented that there were not enough qualified testers to perform the surge of testing that was expected as the original major rules took effect. At the time, there was enough credibility to the argument that rule writers allowed a full 180 days (6 months) to conduct compliance testing. This then became a common allowance in subsequent NSPS and EG. Under this Federal plan, there are relatively few CISWI units to be tested, qualified testers are abundant, and there is sufficient lead time for CISWI owners and operators to coordinate operations and emissions testing.

While, as the commenter observes, the EG allow States to give sources up to 180 days after the final compliance date to complete performance testing, 180 days is the maximum amount of time that may be allowed. Implementing authorities may require performance testing more quickly. As discussed above, sufficient test equipment and personnel are available. In this case, the EPA expects that 90 days is appropriate and sufficient time to coordinate the operations and emissions test schedules and complete the final performance test.

This approach has the advantage of reducing the duration of the period of uncertainty about compliance status between the actual compliance date and the time that a final test report has been submitted and approved. While sources are liable for their compliance, or lack thereof, from the compliance date onward, there exists a time of uncertainty until testing has been completed and approved by all relevant parties. Since the proposed plan allows sources two months following the initial performance test to submit test reports, the actual period of uncertainty over compliance status is potentially eight months with a 180 day testing delay. Should a source fail its performance test, it is immediately subject to enforcement consequences for its actions dating from the compliance date until such time as a performance test is successfully passed. However, the task of the agency responsible for enforcement is complicated by forced reliance upon a combination of data obtained at an unsuccessful performance test and data obtained from continuous monitoring systems. In developing the Federal plan, we have sought to reduce the potential negative impacts associated with this period of uncertainty. At the same time, we are not entirely satisfied that the complete elimination of a delay in performance testing after the compliance date is appropriate and, hence, we proposed a three month period. In this specific case, some sources may receive compliance extensions allowing up to two years from the date of publication of the this final rule. It seems reasonable that such sources would have more than enough time to arrange and complete performance testing ahead of their extended compliance date. For most sources, which will spend the next year planning and installing emission control systems, we concluded that some additional time after the compliance date may be needed to complete performance testing. Thus, we have retained the requirement to conduct the initial performance test no later than 90 days after the final compliance date. In doing so, we have balanced the need for timely assurance of compliance with the practicalities of scheduling and completing performance testing.

## *C. Air Curtain Incinerators*

We received two statements of opinion arguing against requiring title V operating permits for air curtain incinerators (ACI). One commenter (IV–D–01) representing a State air pollution control agency noted that the proposed rules were clearly written to specify that ACI would be required to obtain title V operating permits. He correctly observed that the EG and the NSPS do not specify that ACI should obtain a title V permit and requested that we change the final rule language in the Federal plan to read the same as EG and NSPS. He went on to express his opinion that doing so would result in ACI not being permitted under title V. This would be acceptable to the commenter who expressed his belief that the CAA does not require existing ACI (which burn only the particular wastes specified under the CAA) to operate under a title V permit. He presented a rationale for this belief. He first noted that section 129 of the CAA provides for State plans (and Federal plans) for CISWI under the combined authority of sections 129 and 111 of the CAA. His rationale first quotes section 129(g) of the CAA which states that the term "solid waste incineration unit" does not include, among other things, "air curtain incinerators provided that such incinerators only burn wood wastes, yard wastes and clean lumber and that such air curtain incinerators comply with opacity limitations to be established by the Administrator by rule."

His next step is to focus upon the language specific to title V operating permits in section 129(e) wherein the CAA states "Beginning (1) 36 months after the promulgation of a performance standard under subsection (a) and section 111 *applicable to a category of solid waste incineration units*, or (2) the effective date of a permit program under title V in the State in which the unit is located, whichever is later, *each unit in the category shall operate pursuant to a permit issued under this subsection and title V*." (Emphasis added by commenter) He then combines the two passages cited to conclude that, "by definition, ACIs are not solid waste incineration units as long as they burn only the wastes which are narrowly defined in the Act. Therefore, ACIs are not required to operate under a title V permit."

A second State pollution control agency (IV–G–03) echoed the preceding rationale and conclusions.

We respond by first saying that we were specific in the proposal about the need for title V permits for ACI subject to the Federal plan for the purpose of clarifying that need. We did so in order to clearly present the Agency's view of these sources' title V obligations, and to answer questions such as those voiced by the commenter resulting from the absence of such specific language in the EG and NSPS. The Agency has consistently maintained that operating permits are needed for ACI subject to the NSPS and to State plans drafted pursuant to the EG. However, communications we have received since promulgation of the EG and NSPS pointed to the advisability of specifically clarifying the matter in the preamble to the Federal plan and in the rule itself. Thus, to facilitate the application of title V to these sources, we have specifically included in this Federal plan language describing the need for title V operating permits.

We disagree with the commenters' conclusion that ACI subject to the CISWI Federal plan need not obtain title V operating permits. As noted by the commenters, section 129 directs the Agency to develop requirements for ACI under the authority of section 111, as well as section 129. Thus, there are two potential origins of title V obligations: Section 129(e) and section 502(a). Accordingly, even if section 129(e) were not applicable, sources would clearly still be subject to title V, based on the general obligation for all sources subject to rules written under the authority of section 111 to have operating permits. Thus, all ACI subject to State plans, Federal plans, or NSPS must obtain title V operating permits.

With regard to the question of when such permit applications are due, we believe that the Act provides sufficient discretion for the Agency to require title V permit applications for ACI in a manner that is consistent with the obligations of other sources regulated under section 129 and 111. While paragraph 129(g) clearly contemplates exempting certain ACI from the substantive emission standards under paragraphs 129(a) and (b), it is less clear what impact this limited exemption has on such sources' obligations under title V. In general, it is clear that section 129 is meant to apply to ACI; either in full for those ACI that do not meet the limited criteria of the section 129(g) exemption, or in a more limited fashion (including opacity standards) for those ACIs that qualify for the section 129(g) exemption. For ACIs subject to the opacity standards that EPA adopts under this section, the applicability of the 129(e) title V requirements are made somewhat ambiguous by the wording of paragraph 129(g). However, having established that title V operating permits for ACI are required as a matter of law (under either 129(e) or 502(a)), we believe that it is a reasonable exercise of the Agency's discretion to require all covered ACI (including those subject to the section 129/111 opacity standards) to apply for title V permits within the period of time permitted by section 129(e). We believe that the intent of section 129 is best served by maintaining consistency in the title V obligations among the universe of sources regulated under this section, thereby ensuring that the contemplated emissions reductions are achieved expeditiously for each category of sources regulated under this section. Moreover, for ACIs subject only to section 129/111 opacity standards, permit applications should be simpler to prepare than for sources subject to full regulation under the section 129 emission standards. Thus, the EPA is retaining the requirement for all sources regulated under section 129/111 (including ACI) to submit title V operating permit applications within the time frame described in section 129(e). Consistent with this requirement, a detailed explanation of when sources regulated under section 129/111 (again, including ACI) must apply for a title V permit, whether subject to a State plan, Federal plan, or NSPS, can be found in Table 6 included in section VIII. of the preamble (titled "Title V Operating Permits").

One of the State agency commenters (IV–G–03) also questioned the utility of requiring title V operating permits for ACI. He said that if ACI are operated properly, the opacity requirement is easily achieved and the Federal plan and the CISWI EG/NSPS rules appear to require nothing more than for the units to operate normally. If such were the case, he would see requiring ACI to obtain title V operating permits to be a very protracted administrative effort that would achieve no air quality benefits.

As we discussed above, we have concluded that ACI need to obtain title V permits. However, we do not believe that the process for ACI to obtain title V operating permits needs to be as burdensome as suggested by the commenter. In terms of the burden of permitting, it is worth noting that there are only a minimal number of requirements in the Federal plan which apply to those ACI which burn 100% wood wastes, clean lumber, and/or yard waste. And, as noted by the commenter, these requirements are straightforward. Therefore, these requirements should not be difficult to incorporate into a title V application or permit.

In terms of air quality benefits, we believe that title V permits provide air quality benefits by helping to ensure that sources comply with the requirements to which they are subject. Title V requirements help ensure compliance with applicable requirements in a number of ways. For example, title V regulations at 40 CFR part 70 and 71 require sources to self-certify compliance with applicable requirements initially and annually, require sources to promptly report deviations from a permit, and require that title V permits contain monitoring sufficient to assure compliance. This last requirement may necessitate that additional monitoring be added to a permit to supplement the monitoring required by the relevant applicable requirement. In short, title V operating permit requirements can enhance the effectiveness of rules such as this Federal plan. In terms of this particular rule, a title V permit will help ensure that an ACI operates within the parameters established by the Federal plan whether it burns 100% wood wastes, clean lumber, and/or yard waste, or whether it burns other wastes and becomes subject to all of the requirements in the Federal plan.

The commenter also noted the number of exemptions resulting in negative declarations for CISWI and the similarly structured small municipal waste combustors (small MWC) rule. He was of the opinion that since both the CISWI rule and the small MWC rule have numerous exemptions for a wide variety of sources, most states have few if any sources covered by them. As an example, he said his State submitted negative declarations for the small MWC rule and many more States submitted negative declarations for the CISWI rule. In his State, out of hundreds of potential sources, due to the number of exemptions, they found just nine units affected by the combined rules, all of which were ACI. Since, in his opinion, the Federal plan will simply require these units to operate normally, he questioned the efficacy of expending so much effort on these series of rules.

The significance of the commenter's observations regarding negative declarations is unclear. Although the number of sources ultimately regulated by these rules may be less than expected in some States, significant emissions reductions are being achieved throughout the country through the implementation of these rules.

### *D. Delegation of Authority*

A State air pollution control agency (IV–D–04) expressed concerns about the EPA's general approach to delegating authority and about specific aspects of the proposed plan. The commenter pointed to perceived inconsistencies in a number of NSPS and Federal plans and suggested the proposed plan would contribute to a pattern of inconsistency. Specific to the proposed CISWI Federal plan, the commenter observed that an inspector would need to carry around a copy of the proposal preamble in addition to the Code of Federal Regulations (CFR) because the delegation of authority provisions were placed in the preamble instead of following the previously established practice of including them in the CFR. In addition, the commenter listed specific questions about the differences in retained authorities in the CISWI NSPS and the proposed CISWI Federal plan. He posited that the EPA's general inconsistency combined with the specifics of the proposal impede the efforts of compliance inspectors. The commenter recommended an approach for the EPA to use in promulgating this Federal plan and other regulations concerning the section 129 and section 111 programs. He asked that the provisions concerning delegation of authority should be promulgated as part of the regulation and published in the CFR. They should be written so as to use the same words to express the same meaning and be based upon a consistent policy as to the provisions that are not allowed to be delegated.

Our overall response is that we delegate as much authority as possible, consistent with Congress' intent that States, Tribes, and local agencies take the primary responsibility for ensuring that the emission limitations and other requirements in the emission guidelines are achieved (as discussed at 67 FR 70647). We do withhold delegation of authorities that may have an effect on the stringency of a standard. The EPA permits delegation to a State or local agency of all the Administrator's authorities under 40 CFR part 60, except those that require rulemaking to implement, that affect the stringency of the standard, or where national oversight is the only way to ensure national consistency. In the CISWI source category, as well as the other categories cited by the commenter, authorities that could affect the stringency of the standard include approval of alternative emission standards and operating limits; alternatives to test methods; and alternatives to monitoring, recordkeeping, and reporting. For section 111 rules, these authorities are specifically listed in the general provisions of 40 CFR part 60 as authorities not to be delegated. Because each source category is different, many individual sections of 40 CFR part 60 specifically indicate that certain authorities may not be delegated. Thus, although we generally withhold delegation of these same authorities (such as approval of test methods, alternative emission standards) in the Federal plans, we customize the list for each source category to ensure that the stringency of the standard for that category is not jeopardized.

In response to the commenter's specific concern about our proposed rule, we revised the rule to assure that the provisions concerning delegation of authority will be codified in the CFR. In addition to including the delegation of authority provisions in the regulation, we revised the delegation of authority language to more closely match the equivalent sections in the NSPS. By using parallel language within the CISWI source category, we expect the requirements of the CISWI Federal plan to be more clear to State compliance inspectors. In addition, using the same language promotes consistent application of requirements for new CISWI units affected by the NSPS and existing CISWI units affected by the Federal plan.

## V. Summary of CISWI Federal Plan

### *A. What Emission Limitations Must I Meet?*

As the owner or operator of an existing CISWI unit, you will be required to meet the emission limitations specified in Table 4. See section V.E of this preamble for a discussion of the compliance schedule.

TABLE 4.—EMISSION LIMITATIONS FOR EXISTING CISWI UNITS

| For these pollutants | You must meet these emission limitations [a] | And determine compliance using these methods [b] |
|---|---|---|
| Cadmium | 0.004 mg/dscm | EPA Method 29. |
| Carbon Monoxide | 157 ppm | EPA Methods 10, 10A, or 10B. |
| Dioxins/Furans, toxic equivalent (TEQ) basis | 0.41 ng/dscm | EPA Method 23. |
| Hydrogen Chloride | 62 ppm by dry volume | EPA Method 29. |
| Lead | 0.04 mg.dscm | EPA Method 29. |
| Mercury | 0.47 mg/dscm | EPA Method 29. |
| Opacity | 10 percent | EPA Method 29. |
| Oxides of Nitrogen | 388 ppm by dry volume | EPA Method 7, 7A, 7C, 7D, or 7E. |
| Particulate Matter | 70 mg/dscm | EPA Method 5 or 29. |
| Sulfur Dioxide | 20 ppm by dry volume | EPA Method 6 or 6c. |

[a] All emission limitations (except opacity) are measured at 7 percent oxygen, dry basis at standard conditions.

[b] These methods are in 40 CFR part 60, appendix A.

### *B. What Operating Limits Must I Meet?*

If you are using a wet scrubber to comply with the emission limitations, you must establish the maximum and minimum site-specific operating limits indicated in Table 5. You must operate the CISWI unit and wet scrubber so that the operating parameters do not deviate from the established operating limits.

TABLE 5.—OPERATING LIMITS OR EXISTING CISWI UNITS USING WET SCRUBBERS

| For these operating parameters | You must establish these operating limits | And monitor continuously using these recording times |
|---|---|---|
| Charge rate | Maximum charge rate | Every hour. |
| Pressure drop across the wet scrubber, or amperage to the wet scrubber. | Minimum pressure drop or amperage | Every 15 minutes. |
| Scrubber liquor flow rate | Minimum flow rate | Every 15 minutes. |
| Scrubber liquor pH | Minimum pH | Every 15 minutes. |

**Note:** Compliance is determined on a 3-hour rolling average basis, except charge rate for batch incinerators, which is determined on a daily basis.

If you are using an air pollution control device other than a wet scrubber to comply with the emission limitations, you must petition the Administrator for other site-specific operating limits to be established during the initial performance test and continuously monitored thereafter. The required components of the petition are described in § 62.14640 of subpart III.

If you are using a fabric filter to comply with the emission limitations, in addition to other operating limits as approved by the Administrator, you must operate the fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during any 6-month period.

### *C. What Are the Requirements for Air Curtain Incinerators?*

The Federal plan establishes opacity limitations for air curtain CISWI units burning 100 percent wood wastes, clean lumber, and/or yard wastes. This opacity limitation is 10 percent, except 35 percent opacity is allowed during start-up periods that are within the first 30 minutes of operation.

### *D. What Are the Testing, Monitoring, Inspection, Recordkeeping, and Reporting Requirements?*

The owner or operator of a CISWI unit subject to the CISWI Federal plan must conduct initial performance tests for cadmium, dioxins/furans, hydrogen chloride, lead, mercury, opacity, particulate matter, and sulfur dioxide and establish operating limits (*i.e.*, maximum or minimum values for operating parameters). The initial performance test must be conducted within 90 days after the date the facility is required to achieve final compliance.

The owner or operator must conduct annual performance tests for particulate matter, hydrogen chloride, and opacity. (An owner or operator may conduct less frequent testing if the facility demonstrates that it is in compliance with the emission limitations for 3 consecutive years.)

To assure ongoing achievement of the Federal plan's provisions, an owner or operator using a wet scrubber to comply with the emission limitations will continuously monitor the following operating parameters: Charge rate, pressure drop across the wet scrubber (or amperage), and scrubber liquid flow rate and pH. If something other than a wet scrubber is used to comply with the emission limitations, the owner or operator must monitor other operating parameters, as approved by the Administrator.

If the owner or operator is using a fabric filter to comply with the emission limitations, in addition to other operating limits as approved by the Administrator, the owner or operator must install and continuously operate a bag leak detection system. The owner or operator must keep records of periods when the alarm sounds and calculate whether these periods are more than 5 percent of the operating time for each 6-month period. The owner or operator must submit information documenting compliance with these requirements as part of an annual report; and report deviations semi-annually.

In addition, the Federal plan requires CISWI unit owners and operators to maintain for five years records of the initial performance tests and all subsequent performance tests, operating parameters, any maintenance, and operator training and qualification. The owner or operator must submit the results of the initial performance tests and all subsequent performance tests and values for the operating parameters in annual reports.

### *E. What Is the Compliance Schedule?*

Each CISWI unit must either: (1) Reach final compliance by October 4, 2004, or (2) meet increments of progress and reach final compliance by October 3, 2005. In addition, the owner or operator must comply with the operator training and qualification requirements and inspection requirements by October 4, 2004, regardless of when the CISWI unit reaches final compliance.

Each owner or operator that takes more than 1 year to reach final compliance must submit a final control plan (increment 1) by April 5, 2004 and reach final compliance (increment 2) by October 3, 2005. To ensure timely progress toward implementation, the Federal plan includes a requirement for owners or operators of CISWI units seeking to take an additional year to reach final compliance to submit a request to the Administrator that documents the need for an extension.

To meet the increment 1 requirement, the owner or operator of each CISWI unit must submit a final control plan that includes five items: (1) A description of the air pollution control devices and/or process changes that will be employed so that each CISWI unit complies with the emission limits and other requirements, (2) a list of the types of waste burned, (3) the maximum design waste burning capacity, (4) the anticipated maximum charge rate, and, (5) if applicable, the petition for site-specific operating limits. A final control plan is not required for units that will be shut down, but those units must close by October 4, 2004 or must submit a closure agreement by April 5, 2004, close no later than October 3, 2005, and meet other requirements as described in section VI.A. of this preamble.

To meet the second increment of progress, the owner or operator of each CISWI unit must incorporate all process changes or complete retrofit construction in accordance with the final control plan. The owner or operator must connect the air pollution control equipment or process changes such that when the CISWI unit is brought on line all necessary process changes or air pollution control equipment will operate as designed.

### *F. How Did EPA Determine the Compliance Schedule?*

The EPA determined the compliance schedule based on the requirements of 40 CFR part 60, subpart B and the feasibility of owners or operators to retrofit combustion units with air pollution control devices. CISWI units must comply within 1 year after publication of the final Federal plan or meet increments of progress. The requirement to reach final compliance within one year is consistent with 40 CFR 60.24(c) of subpart B. Subpart B requires final compliance to be "as expeditiously as practicable * * *" and requires increments of progress if the compliance schedule is longer than one year.

The EPA believes that many CISWI units can reach final compliance within 1 year after promulgation of the Federal plan based on their similarity to hospital medical and infectious waste incinerator (HMIWI) units. In addition, units could have used the time between the proposed rule and this promulgation of the final Federal plan to plan and begin retrofits.

The compliance schedule for CISWI units is similar to the compliance schedule for HMIWI units. Most CISWI units are similar in size to HMIWI units. In addition, CISWI units require similar controls to meet the CISWI Federal plan emission limits as HMIWI units would need to meet the HMIWI Federal plan emission limits. To determine the compliance schedule for HMIWI units, the EPA conducted case studies of eight HMIWI units that completed retrofits of the types of controls needed to meet the HMIWI Federal plan (64 FR 36430, July 6, 1999). Based on these case studies (Docket No. A–98–24, II–A–1), the EPA found that many HMIWI units can meet the requirements of the HMIWI Federal plan within 1 year. Similarly, many CISWI units could meet a 1-year schedule.

The EPA expects that some CISWI units could need more than 1 year to comply, as did some HMIWI units, due to site-specific circumstances. For units that cannot comply within 1 year, the Federal plan establishes increments of progress, as required by subpart B. The date for the first increment of progress, submittal of a final control plan, is April 5, 2004. The date for the second increment of progress, final compliance, is October 3, 2005. These increments are derived from the findings of the case studies performed to characterize the retrofit of control systems for HMIWI (Docket A–98–24, Item II–A–1). The size and design of CISWI are similar to the smaller HMIWI that were the subjects of the case studies. In particular, most units are small and controls will be ordered "off-the-shelf" as assembled packages. Thus, the EPA did not see a need for increments to address details of on-site construction and installation of control systems. Also, CISWI sites are not thought to have the problems with space and access that were concerns for HMIWI retrofits. In addition, CISWI units had the time between publication of the proposed rule and today's publication of the final rule to begin developing the final control plan and to initiate retrofit activities.

The Federal plan does not include increments of progress for air curtain incinerators. Air curtain incinerators must comply with the requirements of the Federal plan one year after today's date. Delaying implementation for ACI would not be appropriate because there will be little or no need for the installation of control equipment on these units (primarily because control equipment is typically infeasible for ACI). Compliance with the opacity limits applicable to this class of units would primarily be achieved by good operation and maintenance practices. This approach is consistent with the requirement for completion of CISWI operator training by October 4, 2004.

## VI. CISWI That Have or Will Shut Down

### *A. Units That Plan To Close Rather Than Comply*

If you plan to permanently close your currently operating CISWI unit, you must do one of the following: (a) close by October 4, 2004, or (b) submit a legally binding closure agreement, including the date of closure, to the Administrator by April 5, 2004. The closure agreement must specify the date by which operation will cease. The closure date cannot be later than the final compliance date of the CISWI Federal plan (October 3, 2005). If you close your CISWI unit after October 4, 2004, but before October 3, 2005, then you must comply with the operator training and qualification requirements by October 4, 2004. In addition, while still in operation, your CISWI unit(s) is subject to the same requirement to apply for and obtain a title V operating permit that applies to a CISWI unit that will not be permanently closing.

### *B. Inoperable Units*

In cases where a CISWI unit has already shut down, has been rendered inoperable, and does not intend to restart, the CISWI unit may be left off the source inventory in a State, Tribal, or this Federal plan. A CISWI unit that has been rendered inoperable would not be covered by the Federal plan. The CISWI owner or operator may do the following to render a CISWI unit inoperable: (1) Weld the waste charge door shut, (2) remove stack (and by-pass stack, if applicable), (3) remove combustion air blowers, or (4) remove burners or fuel supply appurtenances.

### *C. CISWI Units That Have Shut Down*

CISWI units that are known to have already shut down (but are not known to be inoperable) must be included in the source inventory and identified in any State or Tribal plan submitted to the EPA.

#### 1. Restarting Before the Final Compliance Date

If the owner or operator of an inactive CISWI unit plans to restart before the final compliance date, the owner or operator must submit a control plan for the CISWI unit and meet the applicable compliance schedule. Final compliance is required for all pollutants and all CISWI units no later than the final compliance date. (See section V.E for the discussion on compliance schedules and increments of progress.)

#### 2. Restarting After the Final Compliance Date

Under this Federal plan, a control plan would not be needed for inactive CISWI units that restart after the final compliance date. However, before restarting, operators of CISWI units would have to complete the operator training and qualification requirements and inspection requirements (if applicable) and complete retrofit or process modifications before restarting the unit. Performance testing to demonstrate compliance would be required within 90 days after restarting. There is no need to show that the increments of progress have been met since these steps would have occurred before restart while the CISWI unit was shut down and not generating emissions. A CISWI unit operating out of compliance after the final compliance date would be in violation of the Federal plan and subject to enforcement action.

## VII. Implementation of the Federal Plan and Delegation

### *A. Background of Authority*

Under sections 111(d) and 129(b) of the CAA, the EPA is required to adopt emission guidelines that are applicable to existing solid waste incineration sources. These emission guidelines are not enforceable until the EPA approves a State or Tribal plan or adopts a Federal plan that implements and enforces them, and the State, Tribal, or Federal plan has become effective. As discussed above, the Federal plan regulates CISWI units in a State or Tribal area that does not have an EPA-approved plan in effect.

Congress has determined that the primary responsibility for air pollution prevention and control rests with State and local agencies. *See* section 101(a)(3) of the CAA. Consistent with that overall determination, Congress established sections 111 and 129 of the CAA with the intent that the States would assume primary responsibility for ensuring that the emission limitations and other requirements in the emission guidelines would be achieved. Also, in section 111(d) of the CAA, Congress explicitly required the EPA to establish procedures similar to those under section 110(c) for State implementation plans. Although Congress required the EPA to propose and promulgate a Federal plan for States that fail to submit approvable State plans on time, States and Tribes may submit approvable plans after today's promulgation of the CISWI Federal plan. The EPA strongly encourages States that are unable to submit approvable plans to request delegation of the Federal plan so that they can have primary responsibility for implementing the emission guidelines, consistent with Congress' intent.

Approved and effective State plans or delegation of the Federal plan is the EPA's preferred outcome since we believe that State agencies not only have the responsibility to carry out the emission guidelines, but also have the practical knowledge and enforcement resources critical to achieving the highest rate of compliance. For these reasons, the EPA will do all that it can to expedite delegation of the Federal plan to State agencies, whenever possible.

The EPA also believes that Indian Tribes should be the primary parties responsible for regulating air quality within Indian Country, if they desire to do so. See the EPA's Indian Policy ("Policy for Administration of Environmental Programs on Indian Reservations," signed by William D. Ruckelshaus, Administrator of EPA, dated November 4, 1984), reaffirmed in a 2001 memorandum ("EPA Indian Policy," signed by Christine Todd Whitman, Administrator of EPA, dated July 11, 2001).

### *B. Delegation of the Federal Plan and Retained Authorities*

If a State or Indian Tribe intends to take delegation of the Federal plan, the State or Indian Tribe must submit to the appropriate EPA Regional Office a written request for delegation of authority. The State or Indian Tribe must explain how it meets the criteria for delegation. *See* generally "Good Practices Manual for Delegation of NSPS and NESHAP" (EPA, February 1983). In order to obtain delegation, an Indian Tribe must also establish its eligibility to be treated in the same manner as a State (see section VII.E.1 of this preamble). The letter requesting delegation of authority to implement the Federal plan must demonstrate that the State or Tribe has adequate resources, as well as the legal and enforcement authority to administer and enforce the program. A memorandum of agreement between the State or Tribe and the EPA would set forth the terms and conditions of the delegation, the effective date of the agreement, and would also serve as the mechanism to transfer authority. Upon signature of the agreement, the appropriate EPA Regional Office would publish an approval notice in the **Federal Register**, thereby incorporating the delegation authority into the appropriate subpart of 40 CFR part 62.

If authority is not delegated to a State or Indian Tribe, the EPA will implement the Federal plan. Also, if a State or Tribe fails to properly implement a delegated portion of the Federal plan, the EPA will assume direct implementation and enforcement of that portion. The EPA will continue to hold enforcement authority along with the State or Tribe even when a State or Tribe has received delegation of the Federal plan. In all cases where the Federal plan is delegated, the EPA will withhold and will not transfer to a State or Tribe authority to perform several specific actions. We typically do not delegate authority to devise alternative requirements that could change the stringency of the underlying standard, which are likely to be nationally significant, or which may require a national rulemaking and subsequent **Federal Register** notice. The following authorities may not be delegated to the State, Tribal or local agencies: Approval of alternative non-opacity emission standards, approval of alternative opacity standards, approval of major alternatives to test methods, approval of major alternatives to monitoring, and waiver of recordkeeping and reporting. For this Federal plan we are also maintaining the following authorities:

(1) Alternative site-specific operating parameters established by facilities using CISWI controls other than a wet scrubber (§ 62.14640 of subpart III).

(2) Petitions to the Administrator under section 62.14530 to add a chemical recovery unit to section 62.14525(n) of subpart III, and

(3) Alternative methods of demonstrating compliance.

CISWI owners or operators who wish to establish alternative operating parameters or alternative methods of demonstrating compliance should submit a request to the Regional Office Administrator with a copy to the appropriate State or Tribe.

### *C. Mechanisms for Transferring Authority*

There are two mechanisms for transferring implementation authority to State or Tribal agencies: (1) EPA approval of a State or Tribal plan after the Federal plan is in effect; and (2) if a State or Tribe does not submit or obtain approval of its own plan, EPA delegation to a State or Tribe of the authority to implement certain portions of this Federal plan to the extent appropriate and if allowed by State or Tribal law. Both of these options are described in more detail below.

#### 1. Federal Plan Becomes Effective Prior to Approval of a State or Tribal Plan

After CISWI units in a State or Tribal area become subject to the Federal plan, the State or Tribal agency may still adopt and submit a plan to the EPA. If the EPA determines that the State or Tribal plan is as protective as the emission guidelines, we will approve the State or Tribal plan. If the EPA determines that the plan is not as protective as the emission guidelines, we will disapprove the plan and the CISWI units covered in the State or Tribal plan will remain subject to the Federal plan until a State or Tribal plan covering those CISWI units is approved and effective.

Upon the effective date of an approved State or Tribal plan, the Federal plan will no longer apply to CISWI units covered by such a plan, and the State or Tribal agency will implement and enforce the State or Tribal plan in lieu of the Federal plan. When an EPA Regional Office approves a State or Tribal plan, it will amend the appropriate subpart of 40 CFR part 62 to indicate such approval.

#### 2. State or Tribe Takes Delegation of the Federal Plan

The EPA, in its discretion, may delegate to State or eligible Tribal agencies the authority to implement this Federal plan. As discussed above, we believe that it is advantageous and the best use of resources for State or Tribal agencies to agree to undertake, on the EPA's behalf, the administrative and substantive roles in implementing the Federal plan to the extent appropriate and where authorized by State or Tribal law. If a State requests delegation, we will generally delegate the entire Federal plan to the State agency. These functions include administration and oversight of compliance reporting and recordkeeping requirements, CISWI inspections, and preparation of draft notices of violation.

The EPA also believes that it is the best use of resources for Tribal agencies to undertake a role in the implementation of the Federal plan. The Tribal Authority Rule issued on February 12, 1998 (63 FR 7254) provides Tribes the opportunity to develop and implement Clean Air Act programs. However, due to resource constraints and other factors unique to Tribal governments, it leaves to the discretion of the Tribe whether to develop these programs and which elements of the program they will adopt. Consistent with the approach of the Tribal Authority Rule, we may choose to delegate a partial Federal plan (*i.e.*, to delegate authority for some functions needed to carry out the plan) in appropriate circumstances and where consistent with Tribal law.

Both States and Tribal agencies, that have taken delegation, as well as the EPA, will have responsibility for bringing enforcement actions against sources violating Federal plan provisions. However, the EPA recognizes that Tribes have limited criminal enforcement authority, and will address in the delegation agreement with the Tribe how criminal enforcement issues are referred to the EPA.

### *D. Implementing Authority*

The EPA will delegate authority within the EPA to the EPA Regional Administrators to implement the CISWI Federal plan. All reports required by this Federal plan should be submitted to the appropriate Regional Office Administrator. Table 1 under **SUPPLEMENTARY INFORMATION** lists the contact information for the EPA Regional Offices and the States that they cover.

### *E. CISWI Federal Plan and Indian Country*

The term "Indian country," as used in this preamble, means (1) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (2) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

The CISWI Federal plan will apply throughout Indian country to ensure that there is not a regulatory gap for existing CISWI units in Indian Country. However, eligible Indian Tribes now have the authority under the CAA to develop Tribal plans in the same manner that States develop State plans. On February 12, 1998, EPA promulgated regulations that outline provisions of the CAA for which it is appropriate to treat Tribes in the same manner as States. *See* 63 FR 7254 (Final Rule for Indian Tribes: Air Quality Planning and Management, (Tribal Authority Rule)) (codified at 40 CFR part 49). As of March 16, 1998, the effective date of the Tribal Authority Rule, the EPA has had authority under the CAA to approve Tribal programs such as Tribal plans to implement and enforce the CISWI emission guidelines.

### 1. Tribal Implementation

Section 301(d) of the CAA authorizes the Administrator to treat an Indian tribe as a State under certain circumstances. The Tribal Authority Rule, which implements section 301(d) of the CAA, identifies provisions of the CAA for which it is appropriate to treat a Tribe as a State. (*See* 40 CFR 49.3 and 49.4.) Under the Tribal Authority Rule, a Tribe may be treated as a State for purposes of this Federal plan. If a Tribe meets the criteria below, the EPA can delegate to an Indian tribe authority to implement the Federal plan in the same way it can delegate authority to a State:

(1) The applicant is an Indian tribe recognized by the Secretary of the Interior;

(2) The Indian tribe has a governing body carrying out substantial governmental duties and functions;

(3) The functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction; and

(4) The Indian tribe is reasonably expected to be capable, in the EPA Regional Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the CAA and all applicable regulations. (*See* 40 CFR 49.6.)

### 2. EPA Implementation

The CAA also provides the EPA with the authority to administer Federal programs in Indian Country. This authority is based in part on the general purpose of the CAA, which is national in scope. Section 301(a) of the CAA provides the EPA broad authority to issue regulations that are necessary to carry out the functions of the CAA. Congress intended for the EPA to have the authority to operate a Federal program when Tribes choose not to develop a program, do not adopt an approvable program, or fail to adequately implement an air program authorized under section 301(d) of the CAA.

Section 301(d)(4) of the CAA authorizes the Administrator to directly administer provisions of the CAA to achieve the appropriate purpose where Tribal implementation is not appropriate or administratively not feasible. The EPA's interpretation of its authority to directly implement CAA programs in Indian country is discussed in more detail in the Tribal Authority Rule. *See* 63 FR 7262–7263. As mentioned previously, Tribes may, but are not required to, submit a CISWI plan under section 111(d) of the CAA.

### 3. Applicability in Indian Country

The Federal plan applies throughout Indian Country except where an EPA-approved plan already covers an area of Indian country. This approach is consistent with the EPA's implementation of the Federal Operating Permits program in Indian Country (*see* 64 FR 8247 (February 19, 1999)).

## VIII. Title V Operating Permits

Except for the sources specified in section 62.14830 of the Federal plan, sources subject to this CISWI Federal plan must obtain title V operating permits. These title V operating permits must assure compliance with all applicable requirements for these sources, including all applicable requirements of this Federal plan. *See* 40 CFR 70.6(a)(1), 70.2, 71.6(a)(1) and 71.2.

Owners or operators of section 129 sources (including CISWI units) subject to standards or regulations under sections 111 and 129 must operate pursuant to a title V permit not later than 36 months after promulgation of emission guidelines under sections 111 and 129 or by the effective date of the State, Tribal, or Federal title V operating permits program that covers the area in which the unit is located, whichever is later. The EPA has interpreted section 129(e) to be consistent with section 503(d) of the CAA and 40 CFR 70.7(b) and 71.7(b). (*See, e.g.*, the final Federal Plan for Hospital/Medical/Infectious Waste Incinerators, August 15, 2000 (65 FR 49868, 49878)). Section 503(d) of the CAA and 40 CFR 70.7(b) and 71.7(b) allow a source to operate without being in violation of title V once the source has submitted a timely and complete permit application, even if the source has not yet received a final title V operating permit from the permitting authority.[2] As a result, the EPA interprets the dates in section 129(e) to be the dates by which complete title V applications need to be submitted. In the absence of such an interpretation, a section 129 source may be required to prepare and submit a complete title V application and the permitting authority would have to issue a permit to this source in a very short period of time.[3]

As a result of the EPA's interpretation, existing CISWI units must submit complete title V applications by the later of the following dates: Not later than 36 months after the promulgation of 40 CFR part 60, subpart DDDD or by the effective date of the State, Tribal, or Federal title V operating permits program that covers the area in which the unit is located. As of today's action, all areas of the country are covered by effective title V programs. As a result, the relevant section 129(e) date for existing CISWI units is 36 months following promulgation of 40 CFR part 60, subpart DDDD, *i.e.*, December 1, 2003. Therefore, December 1, 2003, is the latest possible date by which complete applications for existing CISWI units can be submitted and still be considered timely. This date applies regardless of when the CISWI Federal plan becomes effective or when an EPA approved section 111(d)/129 plan for existing CISWI units becomes effective. If, however, an earlier application deadline applies to an existing CISWI unit, then this deadline must be met in order for the unit to be in compliance with section 502(a) of the CAA. To determine when an application is due for an existing CISWI unit, section 129(e) of the CAA must be read in conjunction with section 503(c) of the CAA.

As stated in section 503(c), a source has up to 12 months to apply for a title V permit once it becomes subject to a title V permitting program.[4] For example, if an existing CISWI unit becomes subject to a title V permitting program for the first time on the effective date of this Federal plan, then the source must apply for a title V permit within 12 months of the effective date of this Federal plan in order to operate after this date in compliance with Federal law.

An application deadline earlier than either of the two dates noted above, *i.e.*, December 1, 2003, or not later than 12 months after the effective date of this Federal plan, may apply to an existing CISWI unit if it is subject to title V for more than one reason. For example, an existing CISWI unit may already be subject to title V as a result of being a major source under one or more of three major source definitions in title V—section 112, section 302, or part D of title I of the CAA. *See* 40 CFR 70.3(a)(1) and 71.3(a)(1) (subjecting major sources to title V permitting) and 40 CFR 70.2 and 71.2 (defining major source for purposes of title V). *See also* 40 CFR 70.3(a) and (b) and 71.3(a) and (b) for a list of the applicability criteria which trigger the requirement to apply for a title V permit.

If an owner or operator is already subject to title V by virtue of some requirement other than this Federal plan and has submitted a timely and complete permit application, but the draft title V permit has not yet been released by the permitting authority, then the owner or operator must supplement the title V application by including the applicable requirements of this Federal plan in accordance with 40 CFR 70.5(b) or 71.5(b). If an existing CISWI unit is a major source or is part of a major source, is subject to this Federal plan, and is already covered by a title V permit with a remaining permit term of three or more years on the effective date of this Federal plan, then the owner or operator will receive from his permitting authority a notice of intent to reopen his source's title V permit to include the requirements of this Federal plan. Reopenings required for such CISWI units must be completed not later than 18 months after the effective date of this Federal plan in accordance with the procedures established in 40 CFR 70.7(f)(1)(i) or 71.7(f)(1)(i). If an existing CISWI unit subject to this Federal plan does not meet the above criteria, *e.g.*, the unit is part of a nonmajor source or is covered by a permit which has a remaining term of less than 3 years on the effective date of this Federal plan, then the permitting authority does not need to reopen the source's permit, as a matter of Federal law, to include the requirements of this Federal plan.[5] However, the owner or operator of a source subject to a section 111/129 Federal plan remains subject to, and must act in compliance with, section 111/129 requirements and all other applicable requirements to which the source is subject regardless of whether these requirements are included in a title V permit. *See* 40 CFR 70.6(a)(1), 70.2, 71.6(a)(1) and 71.2.

The EPA has recently become aware that there has been some confusion regarding the title V obligations of section 129 sources that are subject to standards or regulations under sections 111 and 129. We are therefore including Table 6 to help clarify when CISWI units (even those not subject to this Federal plan) must apply for a title V permit. While Table 6 provides specific information relative to CISWI units, the same title V obligations apply to all section 129 sources subject to standards or regulations under sections 111 and 129. Of course, specific deadlines will vary for other section 129 sources depending on when the relevant NSPS is promulgated, when the relevant State or Tribal section 111(d)/129 plan is approved by the EPA and becomes effective, etc. Lastly, Table 6 takes into account that as of the promulgation date, *i.e.*, December 1, 2000, for the NSPS (subpart CCCC of part 60) and emission guidelines (subpart DDDD of part 60) for CISWI units, every area of the country was covered by a title V permits program under 40 CFR part 70 or part 71. This point is relevant because a section 111/129 standard cannot trigger the requirement for a source to apply for a title V permit unless a title V permits program is in effect in the area in which the source is located.

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[2] A title V application should be submitted early enough for the permitting authority to find the application either complete or incomplete before the title V application deadline. In the event the application is found incomplete by the permitting authority, the source must submit the information needed to make the application complete by the application deadline in order to obtain the application shield. *See* 40 CFR 62.14835(b) and 40 CFR 70.5(a)(2) and 71.5(a)(2).

[3] For example, in the absence of such an interpretation, if a final Federal plan were to become effective more than 24 months after the promulgation of emission guidelines promulgated under sections 111 and 129, a source, if subject to the Federal plan, would have less than 12 months to prepare and submit a complete title V permit application and to have the permit issued. The EPA's interpretation allows section 129(e) to be read consistently with section 503(d) of the CAA and 40 CFR 70.7(b) and 71.7(b). The EPA's interpretation is also consistent with section 503(c) of the CAA which requires sources to submit title V applications not later than 12 months after becoming subject to a title V permits program. If a permit, as opposed to a title V application, were required by the later of the two deadlines specified in section 129(e), some section 129 sources would be required to have been issued final title V permits in potentially much less time than allotted for non-section 129 sources to submit their title V applications.

[4] If a source is subject to title V for more than one reason, the 12-month time frame for submitting a title V application is triggered by the requirement which first causes the source to become subject to title V. As provided in section 503(c) of the CAA, permitting authorities may establish permit application deadlines earlier than the 12-month deadline.

[5] *See* The CAA section 502(b)(9); 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i). Owners or operators of CISWI units, which have been permitted and are subject to this Federal plan, may wish to consult their operating permits program regulations or permitting authorities to determine whether their permits must be reopened to incorporate the requirements of this Federal plan.

TABLE 6.—DEADLINES FOR TITLE V SOURCES

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| **Submitting Title V Permit Applications** | |
| If a CISWI unit is a major source or is part of a major source, and had commenced operation as of the effective date of the relevant title V permits program. | Then a complete title V application which covers the entire source[6] is due not later than 12 months (or earlier if required by the title V permitting authority) after the effective date of the relevant title V permits source, and had program. *See* CAA section 503(c) and 40 CFR 70.4(b)(11)(i), 71.4(i)(1), 70.5(a)(1)(i) and 71.5(a)(1)(i). |
| If a CISWI unit is a major source or is part of a major source but did not commence operation until after the relevant title V permits program became effective. | Then a complete title V application which covers the entire source is due not later than 12 months (or earlier if required by the title V permitting authority) after the date the source commences operation. *See* CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i). |
| If a CISWI unit is a nonmajor source or is part of a nonmajor source, is subject to the CISWI NSPS (subpart CCCC of 40 CFR part 60), and had commenced operation as of December 1, 2000. | Then a complete title V application[7] is due not later than 12 months after subpart CCCC was promulgated, *i.e.*, December 1, 2001 (or earlier if required by the title V permitting authority). *See* CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i). |
| If a CISWI unit is a nonmajor source or is part of a nonmajor source, is subject to the CISWI NSPS (subpart CCCC of 40 CFR part 60), but did not commence operation until after December 1, 2000. | Then a complete title V application is due not later than 12 months (or earlier if required by the title V permitting authority) after the date the source commences operation. *See* CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i). |
| If a CISWI unit is a nonmajor source or is part of a nonmajor source, and is subject to an EPA approved and effective State or Tribal section 111(d)/129 plan. | Then a complete title V application is due not later than 12 months (or earlier if required by the title V permitting authority) after the effective date of the EPA approved State or Tribal section 111(d)/129 plan.[8] *See* CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i). In no event, however, can such an existing CISWI unit submit a complete title V application after December 1, 2003, and have it be considered timely. *See* CAA section 129(e) and 40 CFR 62.14835 of subpart III. |
| If a CISWI unit is a nonmajor source or is part of a nonmajor source, and is subject to the CISWI Federal plan (subpart III of 40 CFR part 62). | Then a complete title V application is due not later than 12 months (or earlier if required by the title V permitting authority) after the effective date of 40 CFR part 62, subpart III. *See* CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i). In no event, however, can such an existing CISWI unit submit a complete title V application after December 1, 2003 and have it be considered timely. *See* CAA section 129(e) and 40 CFR 62.14835 of subpart III. |
| If a CISWI unit is required to obtain a title V permit due to triggering more than one of the applicability criteria listed above or in 40 CFR 70.3(a) or 71.3(a). | Then a complete title V application is due not later than 12 months (or earlier if required by the title V permitting authority) after the unit triggers the criterion which first causes the unit to be subject to title V. *See* CAA section 503(c) and 40 CFR 70.3(a) and (b), 70.5(a)(1), 71.3(a) and (b) and 71.5(a)(1). In no event, however, can an existing CISWI unit submit a complete title V application after December 1, 2003 and have it be considered timely. *See* CAA section 129(e) and 40 CFR 62.14835 of subpart III.. |
| **Reopening Title V Permits** | |
| If a CISWI unit is a major source or is part of a major source, is subject to the CISWI NSPS (subpart CCCC of 40 CFR part 60), and is covered by a title V permit with a remaining permit term of 3 or more years on December 1, 2000. | Then the title V permitting authority must complete a reopening of the source's title V permit to incorporate the requirements of 40 CFR part 60, subpart CCCC not later than June 1, 2002. *See* CAA section 502(b)(9); 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i). |
| If a CISWI unit is a major source or is part of a major source, is subject to an EPA approved and effective State or Tribal section 111(d)/129 plan for CISWI units, and is covered by a title V permit with a remaining permit term of 3 or more years on the effective date of the EPA approved section 111(d)/129 plan. | Then the title V permitting authority must complete a reopening of the source's title V permit to incorporate the requirements of this EPA approved and effective section 111(d)/129 plan not later than 18 months after the effective date of this plan. *See* CAA section 502(b)(9); 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i). |

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[6] A title V application from a major source must address all emissions units at the title V source, not just the section 129 emissions unit. *See* 40 CFR 70.3(c)(1) and 71.3(c)(1). (For information on aggregating emissions units to determine what is a source under title V, see the definition of major source in 40 CFR 70.2, 71.2, and 63.2.)

[7] Consistent with 40 CFR 70.3(c)(2) and 71.3(c)(2), a permit application from a nonmajor title V source is only required to address the emissions units which caused the source to be subject to title V. The applicability criteria which determine the need for the owner or operator of a nonmajor source to apply for a title V permit are found in 40 CFR 70.3(a) and (b) and 71.3(a) and (b). Permits issued to these nonmajor sources must include *all* of the applicable requirements that apply to the triggering units, *e.g.*, State Implementation Plan requirements, section 111 or 112 requirements, etc. *See* footnote #2 in Change to Definition of Major Source rule, November 27, 2001 (66 FR 59161, 59163).

[8] If a CISWI unit becomes subject to an approved and effective State or Tribal section 111(d)/129 plan after being subject to an effective Federal plan, the CISWI unit is still required to file a complete title V application consistent with the application deadlines for units subject to the CISWI Federal plan.

TABLE 6.—DEADLINES FOR TITLE V SOURCES—Continued

| | |
|---|---|
| If a CISWI unit is a major source or is part of a major source, is subject to the CISWI Federal plan (subpart III of 40 CFR part 62), and is covered by a title V permit with a remaining permit term of 3 or more years on the effective date of this Federal plan. | Then the title V permitting authority must complete a reopening of the source's title V permit to incorporate the requirements of subpart III of 40 CFR part 62 not later than 18 months after the effective date of the CISWI Federal plan. *See* CAA section 502(b)(9); 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i). |
| **Updating Existing Title V Permit Applications** | |
| If a CISWI unit is subject to the CISWI NSPS (subpart CCCC of 40 CFR part 60), but first became subject to title V permitting prior to the promulgation of the NSPS, and the owner or operator of the unit has submitted a timely and complete title V permit application, but the draft title V permit has not yet been released by the permitting authority. | Then the owner or operator must supplement the title V application by including the applicable requirements of 40 CFR part 60, subpart CCCC in accordance with 40 CFR 70.5(b) or 71.5(b). |
| If a CISWI unit is subject to an EPA approved and effective State or Tribal section 111(d)/129 plan for CISWI units, but first became subject to title V permitting prior to the effective date of the section 111(d)/129 plan, and the owner or operator of the unit has submitted a timely and complete title V permit application, but the draft title V permit has not yet been released by the permitting authority. | Then the owner or operator must supplement the title V application by including the applicable requirements of the approved and effective section 111(d)/129 plan in accordance with 40 CFR 70.5(b) or 71.5(b). |
| If a CISWI unit is subject to the CISWI Federal plan (subpart III of 40 CFR part 62), but first became subject to title V permitting prior to the effective date of this Federal plan, and the owner or operator of the unit has submitted a timely and complete title V permit application, but the draft title V permit has not yet been released by the permitting authority. | Then the owner or operator must supplement the title V application by including the applicable requirements of 40 CFR part 62, subpart III in accordance with 40 CFR 70.5(b) or 71.5(b). |

### *Title V and Delegation of a Federal Plan*

For the sake of brevity, the discussion from the proposed Federal plan regarding title V and delegation of a Federal plan is not being repeated. *See* "Title V and Delegation of a Federal Plan" section of the proposed Federal plan for CISWI, November 25, 2002 (67 FR 70640, 70652). Nevertheless, the preamble language from this section in the proposed rule is hereby reaffirmed in this final rule.

## IX. Statutory and Executive Order Reviews

This section addresses the following statutory and executive order administrative requirements: Executive Orders 12866, 13132, 13175, 13045 and 13211; Paperwork Reduction Act; Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act; Unfunded Mandates Reform Act; National Technology Transfer and Advancement Act; and the Congressional Review Act. Since today's action implements the CISWI emission guidelines (40 CFR part 60, subpart DDDD) as promulgated on December 1, 2000, and does not impose any new requirements, much of the following discussion refers to the documentation of applicable requirements as discussed in the preamble to the rule promulgating the emission guidelines (65 FR 75338, December 1, 2000).

### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), the EPA must determine whether the regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The EPA considered the 2000 emission guidelines to be significant and the rules were reviewed by OMB in 2000. *See* 65 FR 75338, December 1, 2000. The Federal plan promulgated today would simply implement the 2000 emission guidelines and does not result in any additional control requirements or impose any additional costs above those previously considered during promulgation of the 2000 emission guidelines. Therefore, this regulatory action is considered "not significant" under Executive Order 12866.

### *B. Paperwork Reduction Act*

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0451. (ICR 1927.02)

This ICR reflects the burden estimate for the emission guidelines which were promulgated in the **Federal Register** on December 1, 2000. The burden estimate includes the burden associated with State or Tribal plans as well as the burden associated with the Federal plan. Consequently, the burden estimates described below overstate the information collection burden associated with the Federal plan. However, upon approval by the EPA, a State or Tribal plan becomes federally enforceable. Therefore, it is important to estimate the full burden associated with the State or Tribal plans and the Federal plan. As State or Tribal plans are approved, the Federal plan burden will decrease, but the overall burden of the State or Tribal plans and the Federal plan will remain the same.

The Federal plan contains monitoring, reporting, and recordkeeping requirements. The information will be used to ensure that the Federal plan requirements are met on a continuous basis. Records and reports will be necessary to enable us to identify waste incineration units that may not be in compliance with the Federal plan requirements. Based on reported information, the EPA would decide which units and what records or processes should be inspected. The records that owners and operators of existing CISWI units maintain will indicate to us whether personnel are operating and maintaining control equipment property.

These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to EPA policies in 40 CFR part 2, subpart B, Confidentiality of Business Information.

The estimated average annual burden for the first 3 years after promulgation of the emission guidelines for industry and the implementing agency is outlined below.

| Affected entity | Total hours | Labor costs | Capital costs | O&M costs | Total costs |
|---|---|---|---|---|---|
| Industry | 9,145 | $407,067 | 0 | 0 | $407,067 |
| Implementing agency | 1,817 | 48,386 | 0 | 0 | 48,386 |

The EPA expects the Federal plan to affect a maximum of 116 units over the first three years. (**Note:** This assumes that no State plans are in effect.) The EPA assumes that 6 existing units will be replaced by 6 new units each year. There are no capital, start-up, or operation and maintenance costs for existing units during the first three years. The implementing agency would not incur any capital or start-up costs. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this final rule and for the emissions guidelines is 2060–0451. The OMB control numbers for EPA regulations are listed in 40 CFR part 9. In addition, EPA is amending the table in 40 CFR part 9 of currently approved OMB control numbers for information requirements contained in this final rule.

### *C. Regulatory Flexibility Act (RFA)/Small Business Regulatory Enforcement Fairness Act (SBREFA)*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has less than 500 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. The SBA guidelines define a small business based on number of employees or annual revenues and the size standards vary from industry to industry. Generally, businesses covered by the North American Industrial Classification System (NAICS) codes affected by this rule are considered small if they have less than 500 employees or less than $5 million in annual sales.

During the 2000 CISWI emission guidelines rulemaking, the EPA determined that based on the low number of affected small entities in each individual market, the alternative method of waste disposal available, and the relatively low control cost, the CISWI emission guidelines should not generate a significant small business impact on a substantial number of small entities in the commercial and industrial sectors. The EPA determined that it was not necessary to prepare a regulatory flexibility analysis in connection with the final emission guidelines. The EPA has also determined that the final emission guidelines would not have a significant economic impact on a substantial number of small entities (65 FR 75348). This Federal plan does not establish any new requirements. Therefore, pursuant to the provisions of 5 U.S.C. 605(b), the EPA has determined that this Federal plan will not have a significant impact on a substantial number of small entities, and thus a regulatory flexibility analysis is not required.

### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year.

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Before establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, the EPA must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, thereby enabling officials of affected small governments to have meaningful and timely input in the development of the regulatory proposal with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million of more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The environmental impact analysis for the emission guidelines estimates the total national annualized cost impact of this regulatory action at $11.6 million per year (Docket A–94–63). This Federal plan will apply to only a subset of the units considered in the environmental impacts analysis for the emission guidelines. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA. Additionally, the EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments, because commercial and industrial units are not likely to be owned by small governments.

### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” are defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This final rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule establishes emission limits and other requirements for solid waste incineration units that are not covered by an EPA-approved and effective State or Tribal plan. The EPA is required by section 129 of the CAA, 42 U.S.C. 7429, to establish the standards for such units. This regulation primarily affects private industry and does not impose significant economic costs on State or local governments. The standards established by this rule apply to facilities that operate commercial or industrial solid waste incineration units located in States that do not have EPA-approved plans covering such units by the effective date of the Federal plan (and the owners or operators of such facilities). The regulation does not include an express provision preempting State or local regulations. However, once this Federal plan is in effect, covered facilities would be subject to the standards established by this rule, regardless of any less protective State or local regulations that contain emission limitations for the pollutants addressed by this rule. To the extent that this might preempt State or local regulations, it does not significantly affect the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Thus, the requirements of section 6 of the Executive Order do not apply to this rule; and the EPA has complied with the requirements of section 4(e), to the extent that they may be applicable to the regulations, by providing notice to potentially affected State and local officials through publication of this rule.

Although section 6 of Executive Order 13132 does not apply to this rule, the EPA consulted with representatives of State and local governments to enable them to provide meaningful and timely input into the development of the CISWI emission guidelines. This consultation took place during the Industrial Combustion Coordinated Rulemaking Federal Advisory Committee Act committee meetings, where members representing State and local governments participated in developing recommendations for our combustion-related rulemakings, including the CISWI emission guidelines. Additionally, the EPA sponsored the Small Communities Outreach Project, which involved meetings with elected officials and other government representative to provide them with information about the CISWI emission guidelines and to solicit their comments. The concerns raised by representatives of State and local governments were considered during the development of the CISWI emission guidelines.

### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 6, 2000), requires the EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes.”

This Federal plan does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified in Executive Order 13175.

The EPA knows of no CISWI units presently owned by Indian tribal governments. However, if any exist now or in the future, the rule would not have tribal implications on these tribal governments as defined by the Executive Order. This Federal plan simply implements the emission guidelines. It does not result in any additional control requirements nor imposes any additional costs above those previously considered during promulgation of the emission guidelines. Thus, the requirements of Executive Order 13175 do not apply.

### *G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, (2) concerns an environmental health or safety risk that the EPA has reason to believe may disproportionately affect children. If the regulatory action meets these criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives the EPA considered.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This Federal plan is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. Additionally, this Federal plan is not economically significant as defined by Executive Order 12866.

### *H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. No. 104–113; 15 U.S.C. 272) directs the EPA to use voluntary consensus standards in regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs the EPA to provide Congress, through annual reports to the Office of Management and Budget (OMB), with explanations when an agency does not use available and applicable voluntary consensus standards.

This Federal plan involves technical standards. The EPA includes in this plan EPA Methods 1, 3A, 3B, 5, 6, 6C, 7, 7A, 7C, 7D, 7E, 9, 10, 10A, 10B, 23, 26A, and 29. Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 7A, 7D, 9, and 10B. The search and review results have been documented and are placed in the Docket No. A–2000–52 for this Federal plan.

This search for emission measurement procedures identified 24 voluntary consensus standards. The EPA determined that 20 of these 24 standards were impractical alternatives to EPA test methods for the purposes of this Federal plan. Therefore, the EPA is not adopting these standards today. The reasons for this determination for the 20 methods are discussed below.

The standard, ASTM D3162 (1994) "Standard Test Method for Carbon Monoxide in the Atmosphere (Continuous Measurement by Nondispersive Infrared Spectrometry)," is impractical as an alternative to EPA Method 10 in the Federal plan because this ASTM standard, which is stated to be applicable in the range of 0.5–100 ppm CO, does not cover the potential range in the plan (up to 157 ppm). Whereas EPA Method 10 has a range from 20–1000 ppm CO. Also, ASTM D3162 does not provide a procedure to remove carbon dioxide interference. Therefore, this ASTM standard is not appropriate for combustion source conditions. In terms of NDIR instrument performance specifications, ASTM D3162 has much higher maximum allowable rise and fall times (5 minutes) than EPA Method 10 (which has 30 second). However, it should be noted that ASTM D3162 has more quality control requirements than EPA Method 10 in terms of instrument calibration procedures, span gas cylinder validation procedures, and operational checks.

The standard ASTM E1979–98 (1998), "Standard Practice for Ultrasonic Extraction of Paint, Dust, Soil, and Air Samples for Subsequent Determination of Lead," is impractical as an alternative to EPA Method 29 in this Federal plan. This ASTM standard does not require the use of hydrogen fluoride (HF) as in EPA Method 29 and, therefore, it cannot be used for the preparation, digestion, and analysis of Method 29 samples. Additionally, Method 29 requires the use of a glass fiber filter, whereas this ASTM standard requires cellulose filters and other probable nonglass fiber media, which cannot be considered equivalent to EPA Method 29.

The European standard EN 1911–1,2,3 (1998), "Stationary Source Emissions-Manual Method of Determination of HCl—Part 1: Sampling of Gases Ratified European Text—Part 2: Gaseous Compounds Absorption Ratified European Text—Part 3: Adsorption Solutions Analysis and Calculation Ratified European Text," is impractical as an alternative to EPA Method 26A. Part 3 of this standard cannot be considered equivalent to EPA Method 26A because the sample absorbing solution (water) would be expected to capture both HCl and chlorine gas, if present, without the ability to distinguish between the two. The EPA Method 26A uses an acidified absorbing solution to first separate HCl and chlorine gas so that they can be selectively absorbed, analyzed, and reported separately. In addition, in EN 1911 the absorption efficiency for chlorine gas would be expected to vary as the pH of the water changed during sampling.

The following ten methods are impractical alternatives to EPA test methods for the purposes of this plan because they are too general, too broad, or not sufficiently detailed to assure compliance with EPA regulatory requirements: ASTM D3154–91 (1995), "Standard Method for Average Velocity in a Duct (Pitot Tube Method)," for EPA Methods 1 and 3B; ASTM D5835–95, "Standard Practice for Sampling Stationary Source Emissions, for Automated Determination of Gas Concentration," for EPA Method 3A; ISO 10396:1993, "Stationary Source Emissions: Sampling for the Automated Determination of Gas Concentrations," for EPA Method 3A; CAN/CSA Z223.2–M86(1986), "Method for the Continuous Measurement of Oxygen, Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, and Oxides of Nitrogen in Enclosed Combustion Flue Gas Streams," for EPA Method 3A; ASME C00031 or PTC 19–10–1981—Part 10, "Flue and Exhaust Gas Analyses," for EPA Methods 6 and 7; ASTM D1608–98, "Test Method for Oxides of Nitrogen in Gaseous Combustion Products (Pheno-Disulfonic Acid Procedures)," for EPA Method 7; ISO 7934:1998, "Stationary Source Emissions—Determination of the Mass Concentration of Sulfur Dioxide—Hydrogen Peroxide/Barium Perchlorate/Thorin Method," for EPA Method 6; ISO 11564:1998, "Stationary Source Emissions—Determination of the Mass Concentration of Nitrogen Oxides—NEDA (naphthylethylenediamine)/Photometric Method," for EPA Methods 7 and 7C; CAN/CSA Z223.21–M1978, "Method for the Measurement of Carbon Monoxide: 3—Method of Analysis by Non-Dispersive Infrared Spectrometry," for EPA Methods 10 and 10A; and European Committee for Standardization (CEN) EN 1948–3 (1997), "Determination of the Mass Concentration of PCDD'S/PCDF'S—Part 3: Identification and Quantification," for EPA Method 23.

The following seven methods are impractical alternatives to EPA test methods for the purposes of this Federal plan because they lacked sufficient quality assurance and quality control requirements necessary for EPA compliance assurance requirements: ASME PTC–38–80 R85 or C00049, "Determination of the Concentration of Particulate Matter in Gas Streams," for EPA Method 5; ASTM D3685/D3685M–98, "Test Methods for Sampling and Determination of Particulate Matter in Stack Gases," for EPA Method 5; ISO 9096:1992, "Determination of Concentration and Mass Flow Rate of Particulate Matter in Gas Carrying Ducts—Manual Gravimetric Method," for EPA Method 5; CAN/CSA Z223.1–M1977, "Method for the Determination of Particulate Mass Flows in Enclosed Gas Streams," for EPA Method 5; ISO 11632:1998, "Stationary Source Emissions—Determination of the Mass Concentration of Sulfur Dioxide—Ion Chromatography," for EPA Method 6; CAN/CSA Z223.24–M1983, "Method for the Measurement of Nitric Oxide and Nitrogen Dioxide in Air," for EPA Method 7; and CAN/CSA Z223.26–M1987, "Measurement of Total Mercury in Air Cold Vapour Atomic Absorption

Spectrophotometeric Method," for EPA Method 29.

The following four of the 24 voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of this Federal plan because they are under development by a voluntary consensus body: ISO/DIS 12039, "Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods," for EPA Method 3A; ASTM Z6449Z, "Standard Method for the Determination of Sulfur Dioxide in Stationary Sources," for EPA Method 6; ASTM Z6590Z, "Manual Method for Both Speciated and Elemental Mercury," for EPA Method 29 (portion for mercury only); prEN 13211 (1998), "Air Quality—Stationary Source Emissions—Determination of the Concentration of Total Mercury," for EPA Method 29 (portion for mercury only).

Table 1 of Subpart III lists the EPA testing methods included in the Federal plan emission requirements for commercial and industrial solid waste incinerators. Under 40 CFR 63.8(f) of Subpart A of the General Provisions, a source may apply to the EPA for permission to use alternative monitoring in place of any of the EPA testing methods.

### *J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801, *et. seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency adopting the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Carbon monoxide, Metals, Nitrogen dioxide, Particulate matter, Sulfur oxides, Waste treatment and disposal.

Dated: September 12, 2003.

**Marianne Lamont Horinko,**

*Acting Administrator.*

■ 40 CFR part 62 is amended as follows:

## PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

■ 2. Amend § 62.13 by adding paragraph (d) to read as follows:

**§ 62.13 Federal plans.**

* * * * *

(d) The substantive requirements of the commercial and industrial solid waste incineration units Federal plan are contained in subpart III of this part. These requirements include emission limits, compliance schedules, testing, monitoring, and reporting and recordkeeping requirements.

■ 3. Amend part 62 by adding subpart III to read as follows:

## Subpart III—Federal Plan Requirements for Commercial and Industrial Solid Waste Incineration Units That Commenced Construction On or Before November 30, 1999

### Introduction

Sec.

62.14500 What is the purpose of this subpart?

62.14505 What are the principal components of this subpart?

### Applicability

62.14510 Am I subject to this subpart?

62.14515 Can my CISWI unit be covered by both a State plan and this subpart?

62.14520 How do I determine if my CISWI unit is covered by an approved and effective State or Tribal plan?

62.14521 If my CISWI unit is not listed in the Federal plan inventory, am I exempt from this subpart?

62.14525 Can my combustion unit be exempt from this subpart?

62.14530 What if I have a chemical recovery unit that is not listed in § 62.14525(n)?

62.14531 When must I submit any records required pursuant to an exemption allowed under § 62.14525?

### Compliance Schedule and Increments of Progress

62.14535 When must I comply with this subpart if I plan to continue operation of my CISWI unit?

62.14536 What steps are required to request an extension of the initial compliance date if I plan to continue operation of my CISWI unit?

62.14540 When must I complete each increment of progress?

62.14545 What must I include in each notification of achievement of an increment of progress?

62.14550 When must I submit a notification of achievement of the first increment of progress?

62.14555 What if I do not meet an increment of progress?

62.14560 How do I comply with the increment of progress for submittal of a control plan?

62.14565 How do I comply with the increment of progress for achieving final compliance?

62.14570 What must I do if I plan to permanently close my CISWI unit?

62.14575 What must I do if I close my CISWI unit and then restart it?

### Waste Management Plan

62.14580 What is a waste management plan?

62.14585 When must I submit my waste management plan?

62.14590 What should I include in my waste management plan?

### Operator Training and Qualification

62.14595 What are the operator training and qualification requirements?

62.14600 When must the operator training course be completed?

62.14605 How do I obtain my operator qualification?

62.14610 How do I maintain my operator qualification?

62.14615 How do I renew my lapsed operator qualification?

62.14620 What site-specific documentation is required?

62.14625 What if all the qualified operators are temporarily not accessible?

### Emission Limitations and Operating Limits

62.14630 What emission limitations must I meet and by when?

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## Introduction

### § 62.14500 What is the purpose of this subpart?

(a) This subpart establishes emission requirements and compliance schedules for the control of emissions from commercial and industrial solid waste incineration (CISWI) units that are not covered by an EPA approved and currently effective State or Tribal plan. The pollutants addressed by these emission requirements are listed in Table 1 of this subpart. These emission requirements are developed in accordance with sections 111 and 129 of the Clean Air Act and subpart B of 40 CFR part 60.

(b) In this subpart, "you" means the owner or operator of a CISWI unit.

### § 62.14505 What are the principal components of this subpart?

This subpart contains the eleven major components listed in paragraphs (a) through (k) of this section.

(a) Increments of progress toward compliance.

(b) Waste management plan.

(c) Operator training and qualification.

(d) Emission limitations and operating limits.

(e) Performance testing.

(f) Initial compliance requirements.

(g) Continuous compliance requirements.

(h) Monitoring.

(i) Recordkeeping and reporting.

(j) Definitions.

(k) Tables.

## Applicability

### § 62.14510 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a CISWI unit as defined in § 62.14840 and the CISWI unit meets the criteria described in paragraphs (a)(1) through (a)(3) of this section.

(1) Construction of your CISWI unit commenced on or before November 30, 1999.

(2) Your CISWI unit is not exempt under § 62.14525.

(3) Your CISWI unit is not regulated by an EPA approved and currently effective State or Tribal plan, or your CISWI unit is located in any State whose approved State or Tribal plan is subsequently vacated in whole or in part.

(b) If you made changes after June 1, 2001 that meet the definition of modification or reconstruction after promulgation of the final 40 CFR part 60 subpart CCCC (New Source Performance Standards for Commercial and Industrial Solid Waste Incineration Units), your CISWI unit is subject to subpart CCCC of 40 CFR part 60 and this subpart no longer applies to that unit.

(c) If you make physical or operational changes to your existing CISWI unit primarily to comply with this subpart, then such changes do not qualify as modifications or reconstructions under subpart CCCC of 40 CFR part 60.

### § 62.14515 Can my CISWI unit be covered by both a State plan and this subpart?

(a) If your CISWI unit is located in a State that does not have an EPA-approved State plan or your State's plan has not become effective, this subpart applies to your CISWI unit until the EPA approves a State plan that covers your CISWI unit and that State plan becomes effective. However, a State may enforce the requirements of a State regulation while your CISWI unit is still subject to this subpart.

(b) After the EPA approves a State plan covering your CISWI unit, and after that State plan becomes effective, you will no longer be subject to this subpart and will only be subject to the approved and effective State plan.

### § 62.14520 How do I determine if my CISWI unit is covered by an approved and effective State or Tribal plan?

This part (40 CFR part 62) contains a list of State and Tribal areas with approved Clean Air Act section 111(d) and section 129 plans along with the effective dates for such plans. The list is published annually. If this part does not indicate that your State or Tribal area has an approved and effective plan, you should contact your State environmental agency's air director or your EPA Regional Office to determine if the EPA has approved a State plan covering your unit since publication of the most recent version of this subpart.

### § 62.14521 If my CISWI unit is not listed in the Federal plan inventory, am I exempt from this subpart?

If a CISWI unit is not listed in the Federal plan inventory, it is not necessarily exempt from this subpart. Sources subject to this subpart are not limited to the inventory of sources listed in Docket A–2000–52 for the Federal plan. If your CISWI units meets the applicability criteria in § 62.14510, this subpart applies to you whether or not your unit is listed in the Federal plan inventory in the docket.

**§ 62.14525 Can my combustion unit be exempt from this subpart?**

This subpart exempts 15 types of units described in paragraphs (a) through (o) of this section from complying with the requirements of this subpart except for the requirements specified in this section and in § 62.14531.

(a) *Pathological waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in § 62.14840 are not subject to this subpart if you meet the two requirements specified in paragraphs (a)(1) and (2) of this section.

(1) Notify the Administrator that the unit meets these criteria.

(2) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(b) *Agricultural waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes as defined in § 62.14840 are not subject to this subpart if you meet the two requirements specified in paragraphs (b)(1) and (2) of this section.

(1) Notify the Administrator that the unit meets these criteria.

(2) Keep records on a calendar quarter basis of the weight of agricultural waste burned, and the weight of all other fuels and wastes burned in the unit.

(c) *Municipal waste combustion units.* Incineration units that meet either of the two criteria specified in paragraphs (c)(1) or (2) of this section.

(1) Units that are regulated under subpart Ea of 40 CFR part 60 (Standards of Performance for Municipal Waste Combustors); subpart Eb of 40 CFR part 60 (Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994); subpart Cb of 40 CFR part 60 (Emission Guidelines and Compliance Times for Large Municipal Waste Combustors Constructed on or Before September 20, 1994); subpart AAAA of 40 CFR part 60 (Standards of Performance for New Stationary Sources: Small Municipal Waste Combustion Units); subpart BBBB of 40 CFR part 60 (Emission Guidelines for Existing Stationary Sources: Small Municipal Waste Combustion Units); or subpart JJJ of 40 CFR part 62 (Federal Plan Requirements for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999).

(2) Units that burn greater than 30 percent municipal solid waste or refuse-derived fuel, as defined in 40 CFR part 60 subpart Ea, subpart Eb, subpart AAAA, and subpart BBBB, and that have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid waste or refuse-derived fuel, if you meet the two requirements in paragraphs (c)(2)(i) and (ii) of this section.

(i) Notify the Administrator that the unit meets these criteria.

(ii) Keep records on a calendar quarter basis of the weight of municipal solid waste burned, and the weight of all other fuels and wastes burned in the unit.

(d) *Medical waste incineration units.* Incineration units regulated under subpart Ec of 40 CFR part 60 (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996); 40 CFR part 60 subpart Ce (Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators); and 40 CFR part 62 subpart HHH (Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or before June 20, 1996).

(e) *Small power production facilities.* Units that meet the three requirements specified in paragraphs (e)(1) through (3) of this section.

(1) The unit qualifies as a small power-production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)).

(2) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(3) You notify the Administrator that the unit meets all of these criteria.

(f) *Cogeneration facilities.* Units that meet the three requirements specified in paragraphs (f)(1) through (3) of this section.

(1) The unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)).

(2) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(3) You notify the Administrator that the unit meets all of these criteria.

(g) *Hazardous waste combustion units.* Units regulated under subpart EEE of part 63 (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors).

(h) *Materials recovery units.* Units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters.

(i) *Air curtain incinerators.* Air curtain incinerators that burn 100 percent wood waste; 100 percent clean lumber; or a 100 percent mixture of only wood waste, clean lumber, and/or yard waste; are required to meet only the requirements under "Air Curtain Incinerators That Burn 100 Percent Wood Wastes, Clean Lumber and/or Yard Waste" (§§ 62.14765 through 62.14825) and the title V operating permit requirements (§§ 62.14830 and 62.14835).

(j) *Cyclonic barrel burners.*

(k) *Rack, part, and drum reclamation units.*

(l) *Cement kilns.*

(m) *Sewage sludge incinerators.* Incineration units regulated under subpart O of 40 CFR part 60 (Standards of Performance for Sewage Treatment Plants).

(n) *Chemical recovery units.* Combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. The eight types of units described in paragraphs (n)(1) through (8) of this section are considered chemical recovery units.

(1) Units burning only pulping liquors (*i.e.*, black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process.

(2) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.

(3) Units burning only wood or coal feedstock for the production of charcoal.

(4) Units burning only manufacturing byproduct streams/residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

(5) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

(6) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.

(7) Units burning only photographic film to recover silver.

(8) Units granted exemptions resulting from petitions submitted under the provisions of either § 60.2025 or § 60.2558.

(o) *Laboratory units.* Units that burn samples of materials for the purpose of chemical or physical analysis.

### § 62.14530 What if I have a chemical recovery unit that is not listed in § 62.14525(n)?

If you have a recovery unit that is not listed in § 62.14525(n), you can petition the Administrator to add the unit to the list of exempted units in 40 CFR 60.2020(n) or 60.2555(n) pursuant to the requirements of 40 CFR 60.2025 or 60.2558. Units granted exemptions under 40 CFR 60.2025 or 60.2558 are exempt from the requirement of this Federal plan under § 62.14525(n)(8).

### § 62.14531 When must I submit any records required pursuant to an exemption allowed under § 62.14525?

Owners or operators of sources that qualify for the exemptions in § 62.14525(a) through (o) must submit any records required to support their claims of exemption to the EPA Administrator (or delegated enforcement authority) upon request. Upon request by any person under the regulation at part 2 of this chapter (or a comparable law or regulation governing a delegated enforcement authority), the EPA Administrator (or delegated enforcement authority) must request the records in § 62.14525(a) through (o) from an owner or operator and make such records available to the requestor to the extent required by part 2 of this chapter (or a comparable law governing a delegated enforcement authority). Any records required under § 62.14525(a) through (o) must be maintained by the source for a period of at least 5 years. Notifications of exemption claims required under § 62.14525(a) through (o) of this section must be maintained by the EPA or delegated enforcement authority for a period of at least 5 years. Any information obtained from an owner or operator of a source accompanied by a claim of confidentiality will be treated in accordance with the regulations in part 2 of this chapter (or a comparable law governing a delegated enforcement authority).

## Compliance Schedule and Increments of Progress

### § 62.14535 When must I comply with this subpart if I plan to continue operation of my CISWI unit?

If you plan to continue operation of your CISWI unit, then you must follow the requirements in paragraph (a) or (b) of this section depending on when you plan to come into compliance with the requirements of this subpart.

(a) If you plan to continue operation and come into compliance with the requirements of this subpart by October 4, 2004, then you must complete the requirements of paragraphs (a)(1) through (a)(5) of this section.

(1) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart by October 4, 2004.

(2) You must submit a waste management plan no later than April 5, 2004.

(3) You must achieve final compliance by October 4, 2004. To achieve final compliance, you must incorporate all process changes and complete retrofit construction of control devices, as specified in the final control plan, so that, if the affected CISWI unit is brought online, all necessary process changes and air pollution control devices would operate as designed.

(4) You must conduct the initial performance test within 90 days after the date when you are required to achieve final compliance under paragraph (a)(3) of this section.

(5) You must submit an initial report including the results of the initial performance test no later than 60 days following the initial performance test (see §§ 62.14700 through 62.14760 for complete reporting and recordkeeping requirements).

(b) If you plan to continue operation and come into compliance with the requirements of this subpart after October 4, 2004, but before October 3, 2005 you must petition for and be granted an extension of the final compliance date specified § 62.14535(a)(3) by meeting the requirements of § 62.14536 and you must meet the requirements for increments of progress specified in § 62.14540 through § 62.14565. To achieve the final compliance increment of progress, you must complete the requirements of paragraphs (b)(1) through (b)(5) of this section.

(1) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart by October 4, 2004.

(2) You must submit a waste management plan no later than April 5, 2004.

(3) You must achieve final compliance by October 3, 2005. For the final compliance increment of progress, you must incorporate all process changes and complete retrofit construction of control devices, as specified in the final control plan, so that, when the affected CISWI unit is brought online, all necessary process changes and air pollution control devices operate as designed.

(4) You must conduct the initial performance test within 90 days after the date when you are required to achieve final compliance under paragraph (b)(3) of this section.

(5) You must submit an initial report including the result of the initial performance no later than 60 days following the initial performance test (see §§ 62.14700 through 62.14760 for complete reporting and recordkeeping requirements).

### § 62.14536 What steps are required to request an extension of the initial compliance date if I plan to continue operation of my CISWI unit?

If you plan to continue operation and want to come into compliance with the requirements of this subpart after October 4, 2004, but before October 3, 2005, then you must you must petition to the Administrator to grant you an extension by following the procedures outlined in paragraphs (a) and (b) of this section.

(a) You must submit your request for an extension to the EPA Administrator (or delegated enforcement authority) on or before December 3, 2003.

(b) Your request must include documentation of the analyses undertaken to support your need for an extension, including an explanation of why you are unable to meet the final compliance date specified in § 62.14535(a)(3) and why your requested extension date is needed to provide sufficient time for you to design, fabricate, and install the emissions control systems necessary to meet the requirements of this Subpart. A request based upon the avoidance of costs of meeting provisions of this Subpart is not acceptable and will be denied.

### § 62.14540 When must I complete each increment of progress?

If you plan to come into compliance after October 4, 2004, you must meet the two increments of progress specified in paragraphs (a) and (b) of this section.

(a) Increment 1. Submit a final control plan by April 5, 2004.

(b) Increment 2. Reach final compliance by October 3, 2005.

### § 62.14545 What must I include in each notification of achievement of an increment of progress?

Your notification of achievement of an increment of progress must include the four items specified in paragraphs (a) through (d) of this section.

(a) Notification of the date that the increment of progress has been achieved.

(b) Any items required to be submitted with each increment of progress.

(c) Signature of the owner or operator of the CISWI unit.

(d) The date you were required to complete the increment of progress.

### § 62.14550 When must I submit a notification of achievement of the first increment of progress?

Your notification for achieving the first increment of progress must be postmarked no later than April 15, 2004.

### § 62.14555 What if I do not meet an increment of progress?

Failure to meet an increment of progress is a violation of the standards under this subpart. If you fail to meet an increment of progress, you must submit a notification to the Administrator postmarked within 10 business days after the due date for that increment of progress. You must inform the Administrator that you did not meet the increment, and you must continue to submit reports each subsequent calendar month until the increment of progress is met.

### § 62.14560 How do I comply with the increment of progress for submittal of a control plan?

For your control plan increment of progress, you must satisfy the two requirements specified in paragraphs (a) and (b) of this section.

(a) Submit the final control plan that includes the six items described in paragraphs (a)(1) through (6) of this section.

(1) A description of the devices for air pollution control and process changes that you will use to comply with the emission limitations and other requirements of this subpart.

(2) The type(s) of waste to be burned.

(3) The maximum design waste burning capacity.

(4) The anticipated maximum charge rate.

(5) If applicable, the petition for site-specific operating limits under § 62.14640.

(6) A schedule that includes the date by which you will award the contracts to procure emission control equipment or related materials, initiate on-site construction, initiate on-site installation of emission control equipment, and/or incorporate process changes, and the date by which you will initiate on-site construction.

(b) Maintain an on-site copy of the final control plan.

### § 62.14565 How do I comply with the increment of progress for achieving final compliance?

For the final compliance increment of progress, you must incorporate all process changes and complete retrofit construction of control devices, as specified in the final control plan, so that, when the affected CISWI unit is brought online, all necessary process changes and air pollution control devices operate as designed.

### § 62.14570 What must I do if I plan to permanently close my CISWI unit?

If you plan to permanently close your CISWI unit, then you must follow the requirements in either paragraph (a) or (b) of this section depending on when you plan to shut down.

(a) If you plan to shut down by October 4, 2004, rather that come into compliance with the complete set of requirements in this subpart, then you must shut down by October 4, 2004. In addition, while still in operation, your CISWI unit is subject to the same requirement to apply for and obtain a title V operating permit that applies to a CISWI unit that will not be permanently closing. *See* §§ 62.14830 and 62.14835.

(b) If you plan to shut down rather than come into compliance with the complete set of requirements of this subpart, but are unable to shut down by October 4, 2004, then you must petition EPA for and be granted an extension by following the procedures outlined in paragraphs (b)(1) through (5) of this section.

(1) You must submit your request for an extension to the EPA Administrator (or delegated enforcement authority) by December 3, 2003. Your request must include:

(i) Documentation of the analyses undertaken to support your need for an extension, including an explanation of why your requested extension date is sufficient time for you to shut down while October 4, 2004 does not provide sufficient time for shut down. A request based upon the avoidance of costs of meeting provisions of this subpart is not acceptable and will be denied. Your documentation must include an evaluation of the option to transport your waste offsite to a commercial or municipal waste treatment and/or disposal facility on a temporary or permanent basis; and

(ii) Documentation of incremental steps of progress, including dates for completing the increments of progress, that you will take towards shutting down. Some suggested incremental steps of progress towards shut down are provided as follows:

| If you . . . | Then your increments of progress could be . . . |
|---|---|
| (A) Need an extension so you can install an onsite alternative waste treatment technology before you shut down your CISWI. | *(1)* Date when you will enter into a contract with an alternative treatment technology vendor,<br>*(2)* Date for initiating onsite construction or installation of the alternative technology,<br>*(3)* Date for completing onsite construction or installation of the alternative technology, and<br>*(4)* Date for shutting down the CISWI. |
| (B) Need an extension so you can acquire the services of a commercial waste disposal company before you shut down your CISWI. | *(1)* Date when price quotes will be obtained from commercial disposal companies,<br>*(2)* Date when you will enter into a contract with a commercial disposal company, and<br>*(3)* Date for shutting down the CISWI. |

(2) You must shut down no later than by October 3, 2005.

(3) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart by October 4, 2004.

(4) You must submit a legally binding closure agreement to the Administrator by April 5, 2004. The closure agreement must specify the date by which operation will cease. The closure date cannot be later than October 3, 2005.

(5) While still in operation, your CISWI unit is subject to the same requirement to apply for and obtain a title V operating permit that applies to a CISWI unit that will not be permanently closing. *See* §§ 62.14830 and 62.14835.

### § 62.14575 What must I do if I close my CISWI unit and then restart it?

If you temporarily close your CISWI unit and restart the unit for the purpose of continuing operation of your CISWI unit, then you must follow the requirements in paragraphs (a), (b), or (c) of this section depending on when you plan to come into compliance with the requirements of this subpart. You are subject to the operating permit requirements of title V of the CAA and 40 CFR part 70 or 71 until you close your CISWI unit and at the time you restart it.

(a) If you plan to continue operation and come into compliance with the requirements of this subpart by October 4, 2004, then you must complete the requirements of § 62.14535(a).

(b) If you plan to continue operation and come into compliance with the requirements of this subpart on or before October 3, 2005, then you must complete the requirements of § 62.14535(b). You must have first requested and been granted an extension from the initial compliance date by following the requirements of § 62.14536.

(c) If you restart your CISWI unit after the October 4, 2004 and resume operation, but have not previously requested an extension by meeting all of the requirements of § 62.14536, you must meet all of the requirements of § 62.14535(a)(1) through (a)(5) at the time you restart your CISWI unit. Upon restarting your CISWI unit, you must have incorporated all process changes and completed retrofit construction of control devices so that when the affected CISWI unit is brought online, all necessary process changes and air pollution control devices operate as designed.

## Waste Management Plan

### § 62.14580 What is a waste management plan?

A waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste.

### § 62.14585 When must I submit my waste management plan?

You must submit a waste management plan no later than April 5, 2004.

### § 62.14590 What should I include in my waste management plan?

A waste management plan must include consideration of the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries, or metals; or the use of recyclable materials. The plan must identify any additional waste management measures, and the source must implement those measures considered practical and feasible, based on the effectiveness of waste management measures already in place, the costs of additional measures, the emissions reductions expected to be achieved, and any other environmental or energy impacts they might have.

## Operator Training and Qualification

### § 62.14595 What are the operator training and qualification requirements?

(a) You must have a fully trained and qualified CISWI unit operator accessible at all times when the unit is in operation, either at your facility or able to be at your facility within one hour. The trained and qualified CISWI unit operator may operate the CISWI unit directly or be the direct supervisor of one or more other plant personnel who operate the unit. If all qualified CISWI unit operators are temporarily not accessible, you must follow the procedures in § 62.14625.

(b) Operator training and qualification must be obtained through a State-approved program or by completing the requirements included in paragraph (c) of this section.

(c) Training must be obtained by completing an incinerator operator training course that includes, at a minimum, the three elements described in paragraphs (c)(1) through (3) of this section.

(1) Training on the thirteen subjects listed in paragraphs (c)(1)(i) through (xiii) of this section.

(i) Environmental concerns, including types of emissions.

(ii) Basic combustion principles, including products of combustion.

(iii) Operation of the specific type of incinerator to be used by the operator, including proper startup, waste charging, and shutdown procedures.

(iv) Combustion controls and monitoring.

(v) Operation of air pollution control equipment and factors affecting performance (where applicable).

(vi) Inspection and maintenance of the incinerator and air pollution control devices.

(vii) Actions to correct malfunctions or conditions that may lead to malfunction.

(viii) Bottom and fly ash characteristics and handling procedures.

(ix) Applicable Federal, State, and local regulations, including Occupational Safety and Health Administration workplace standards.

(x) Pollution prevention.

(xi) Waste management practices.

(xii) Recordkeeping requirements.

(xiii) Methods to continuously monitor CISWI unit and air pollution control device operating parameters and monitoring equipment calibration procedures (where applicable).

(2) An examination designed and administered by the instructor.

(3) Written material covering the training course topics that can serve as reference material following completion of the course.

### § 62.14600 When must the operator training course be completed?

(a) The operator training course must be completed by the later of the two dates specified in paragraphs (a)(1) and (2) of this section.

(1) October 4, 2004.

(2) Six months after an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit.

(b) You must follow the requirements in § 63.14625 if all qualified operators are temporarily not accessible.

### § 62.14605 How do I obtain my operator qualification?

(a) You must obtain operator qualification by completing a training course that satisfies the criteria under § 62.14595(b) or (c).

(b) Qualification is valid from the date on which the training course is completed and the operator successfully passes the examination required under § 62.14595(c)(2).

### § 62.14610 How do I maintain my operator qualification?

To maintain qualification, you must complete an annual review or refresher course of at least 4 hours covering, at a minimum, the five topics described in paragraphs (a) through (e) of this section.

(a) Update of regulations.

(b) Incinerator operation, including startup and shutdown procedures, waste charging, and ash handling.

(c) Inspection and maintenance.

(d) Responses to malfunctions or conditions that may lead to malfunction.

(e) Discussion of operating problems encountered by attendees.

### § 62.14615 How do I renew my lapsed operator qualification?

You must renew a lapsed operator qualification by one of the two methods specified in paragraphs (a) and (b) of this section.

(a) For a lapse of less than 3 years, you must complete a standard annual refresher course described in § 62.14610.

(b) For a lapse of 3 years or more, you must repeat the initial qualification requirements in § 62.14605(a).

### § 62.14620 What site-specific documentation is required?

(a) Documentation must be available at the facility and readily accessible for all CISWI unit operators that addresses the ten topics described in paragraphs (a)(1) through (10) of this section. You must maintain this information and the training records required by paragraph (c) of this section in a manner that they can be readily accessed and are suitable for inspection upon request.

(1) Summary of the applicable standards under this subpart.

(2) Procedures for receiving, handling, and charging waste.

(3) Incinerator startup, shutdown, and malfunction procedures.

(4) Procedures for maintaining proper combustion air supply levels.

(5) Procedures for operating the incinerator and associated air pollution control systems within the standards established under this subpart.

(6) Monitoring procedures for demonstrating compliance with the incinerator operating limits.

(7) Reporting and recordkeeping procedures.

(8) The waste management plan required under §§ 62.14580 through 62.14590.

(9) Procedures for handling ash.

(10) A list of the wastes burned during the performance test.

(b) You must establish a program for reviewing the information listed in paragraph (a) of this section with each employee who operates your incinerator.

(1) The initial review of the information listed in paragraph (a) of this section must be conducted by the later of the two dates specified in paragraphs (b)(1)(i) through (ii) of this section.

(i) October 4, 2004.

(ii) Two months after being assigned to operate the CISWI unit.

(2) Subsequent annual reviews of the information listed in paragraph (a) of this section must be conducted no later than 12 months following the previous review.

(c) You must also maintain the information specified in paragraphs (c)(1) through (3) of this section.

(1) Records showing the names of all plant personnel who operate your CISWI unit who have completed review of the information in § 62.14620(a) as required by § 62.14620(b), including the date of the initial review and all subsequent annual reviews.

(2) Records showing the names of all plant personnel who operate your CISWI unit who have completed the operator training requirements under § 62.14595, met the criteria for qualification under § 62.14605, and maintained or renewed their qualification under § 62.14610 or § 62.14615. Records must include documentation of training, the dates of the initial refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

(3) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

### § 62.14625 What if all the qualified operators are temporarily not accessible?

If all qualified operators are temporarily not accessible (*i.e.*, not at the facility and not able to be at the facility within 1 hour), you must meet one of the two criteria specified in paragraphs (a) and (b) of this section, depending on the length of time that a qualified operator is not accessible.

(a) When all qualified operators are not accessible for more than 8 hours, but less than 2 weeks, the CISWI unit may be operated by other plant personnel familiar with the operation of the CISWI unit who have completed a review of the information specified in § 62.14620(a) within the past 12 months. However, you must record the period when all qualified operators were not accessible and include this deviation in the annual report as specified under § 62.14730.

(b) When all qualified operators are not accessible for 2 weeks or more, you must take the two actions that are described in paragraphs (b)(1) and (2) of this section.

(1) Notify the Administrator of this deviation in writing within 10 days. In the notice, state what caused this deviation, what you are doing to ensure that a qualified operator is accessible, and when you anticipate that a qualified operator will be accessible.

(2) Submit a status report to the Administrator every 4 weeks outlining what you are doing to ensure that a qualified operator is accessible, stating when you anticipate that a qualified operator will be accessible and requesting approval from the Administrator to continue operation of the CISWI unit. You must submit the first status report 4 weeks after you notify the Administrator of the deviation under paragraph (b)(1) of this section. If the Administrator notifies you that your request to continue operation of the CISWI unit is disapproved, the CISWI unit may continue operation for 90 days, then must cease operation. Operation of the unit may resume if you meet the two requirements in paragraphs (b)(2)(i) and (ii) of this section.

(i) A qualified operator is accessible as required under § 62.14595(a).

(ii) You notify the Administrator that a qualified operator is accessible and that you are resuming operation.

## Emission Limitations and Operating Limits

### § 62.14630 What emission limitations must I meet and by when?

You must meet the emission limitations specified in table 1 of this subpart by the applicable final compliance date for your CISWI unit.

### § 62.14635 What operating limits must I meet and by when?

(a) If you use a wet scrubber to comply with the emission limitations, you must establish operating limits for four operating parameters (as specified in table 2 of this subpart) as described in paragraphs (a)(1) through (4) of this section during the initial performance test.

(1) Maximum charge rate, calculated using one of the two different procedures in paragraph (a)(1)(i) or (ii) of this section, as appropriate.

(i) For continuous and intermittent units, maximum charge rate is 110 percent of the average charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(ii) For batch units, maximum charge rate is 110 percent of the daily charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(2) Minimum pressure drop across the wet scrubber, which is calculated as 90 percent of the average pressure drop across the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations; or minimum amperage to the wet scrubber, which is calculated as 90 percent of the average amperage to the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations.

(3) Minimum scrubber liquor flow rate, which is calculated as 90 percent of the average liquor flow rate at the inlet to the wet scrubber measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(4) Minimum scrubber liquor pH, which is calculated as 90 percent of the average liquor pH at the inlet to the wet scrubber measured during the most

recent performance test demonstrating compliance with the hydrogen chloride emission limitation.

(b) You must meet the operating limits established during the initial performance test on the date the initial performance test is required or completed (whichever is earlier).

(c) If you use a fabric filter to comply with the emission limitations, you must operate each fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during any 6-month period. In calculating this operating time percentage, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of 1 hour. If you take longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by you to initiate corrective action.

### § 62.14640 What if I do not use a wet scrubber to comply with the emission limitations?

If you use an air pollution control device other than a wet scrubber, or limit emissions in some other manner, to comply with the emission limitations under § 62.14630, you must petition the Administrator for specific operating limits to be established during the initial performance test and continuously monitored thereafter. You must not conduct the initial performance test until after the petition has been approved by the Administrator. Your petition must include the five items listed in paragraphs (a) through (e) of this section.

(a) Identification of the specific parameters you propose to use as additional operating limits.

(b) A discussion of the relationship between these parameters and emissions of regulated pollutants, identifying how emissions of regulated pollutants change with changes in these parameters, and how limits on these parameters will serve to limit emissions of regulated pollutants.

(c) A discussion of how you will establish the upper and/or lower values for these parameters which will establish the operating limits on these parameters.

(d) A discussion identifying the methods you will use to measure and the instruments you will use to monitor these parameters, as well as the relative accuracy and precision of these methods and instruments.

(e) A discussion identifying the frequency and methods for recalibrating the instruments you will use for monitoring these parameters.

### § 62.14645 What happens during periods of startup, shutdown, and malfunction?

(a) The emission limitations and operating limits apply at all times except during periods of CISWI unit startup, shutdown, or malfunction as defined in § 62.14840.

(b) Each malfunction must last no longer than 3 hours.

## Performance Testing

### § 62.14650 How do I conduct the initial and annual performance test?

(a) All performance tests must consist of a minimum of three test runs conducted under conditions representative of normal operations.

(b) You must document that the waste burned during the performance test is representative of the waste burned under normal operating conditions by maintaining a log of the quantity of waste burned (as required in § 62.14700(b)(1)) and the types of waste burned during the performance test.

(c) All performance tests must be conducted using the minimum run duration specified in Table 1 of this subpart.

(d) Method 1 of 40 CFR part 60, Appendix A must be used to select the sampling location and number of traverse points.

(e) Method 3A or 3B of 40 CFR part 60, Appendix A must be used for gas composition analysis, including measurement of oxygen concentration. Method 3A or 3B of 40 CFR part 60, Appendix A must be used simultaneously with each method.

(f) All pollutant concentrations, except for opacity, must be adjusted to 7 percent oxygen using Equation 1 of this section:

$$C_{adj} = C_{meas}\,(20.9 - 7)/(20.9 - \%O_2) \quad \text{(Eq. 1)}$$

Where:

$C_{adj}$ = pollutant concentration adjusted to 7 percent oxygen;

$C_{meas}$ = pollutant concentration measured on a dry basis;

$(20.9 - 7)$ = 20.9 percent oxygen − 7 percent oxygen (defined oxygen correction basis);

20.9 = oxygen concentration in air, percent; and

$\%O_2$ = oxygen concentration measured on a dry basis, percent.

(g) You must determine dioxins/furans toxic equivalency by following the procedures in paragraphs (g)(1) through (3) of this section.

(1) Measure the concentration of each dioxin/furan tetra- through octa-congener emitted using EPA Method 23.

(2) For each dioxin/furan congener measured in accordance with paragraph (g)(1) of this section, multiply the congener concentration by its corresponding toxic equivalency factor specified in Table 3 of this subpart.

(3) Sum the products calculated in accordance with paragraph (g)(2) of this section to obtain the total concentration of dioxins/furans emitted in terms of toxic equivalency.

### § 62.14655 How are the performance test data used?

You use results of performance tests to demonstrate compliance with the emission limitations in Table 1 of this subpart.

## Initial Compliance Requirements

### § 62.14660 How do I demonstrate initial compliance with the emission limitations and establish the operating limits?

You must conduct an initial performance test, as required under 40 CFR 60.8, to determine compliance with the emission limitations in Table 1 of this subpart and to establish operating limits using the procedure in § 62.14635 or § 62.14640. The initial performance test must be conducted using the test methods listed in table 1 of this subpart and the procedures in § 62.14650.

### § 62.14665 By what date must I conduct the initial performance test?

The initial performance test must be conducted no later than 90 days after your final compliance date.

## Continuous Compliance Requirements

### § 62.14670 How do I demonstrate continuous compliance with the emission limitations and the operating limits?

(a) You must conduct an annual performance test for particulate matter, hydrogen chloride, and opacity for each CISWI unit as required under 40 CFR 60.8 to determine compliance with the emission limitations. The annual performance test must be conducted using the test methods listed in table 1 of this subpart and the procedures in § 62.14650.

(b) You must continuously monitor the operating parameters specified in § 62.14635 or established under § 62.14640. Operation above the established maximum or below the established minimum operating limits constitutes a deviation from the established operating limits. Three-hour rolling average values are used to determine compliance (except for baghouse leak detection system alarms) unless a different averaging period is established under § 62.14640. Operating limits do not apply during performance tests.

(c) You must only burn the same types of waste used to establish operating limits during the performance test.

### § 62.14675 By what date must I conduct the annual performance test?

You must conduct annual performance tests for particulate matter, hydrogen chloride, and opacity within 12 months following the initial performance test. Conduct subsequent annual performance tests within 12 months following the previous one.

### § 62.14680 May I conduct performance testing less often?

(a) You can test less often for a given pollutant if you have test data for at least 3 years, and all performance tests for the pollutant (particulate matter, hydrogen chloride, or opacity) over 3 consecutive years show that you comply with the emission limitation. In this case, you do not have to conduct a performance test for that pollutant for the next 2 years. You must conduct a performance test during the third year and no later than 36 months following the previous performance test.

(b) If your CISWI unit continues to meet the emission limitation for particulate matter, hydrogen chloride, or opacity, you may choose to conduct performance tests for these pollutants every third year, but each test must be within 36 months of the previous performance test.

(c) If a performance test shows a deviation from an emission limitation for particulate matter, hydrogen chloride, or opacity, you must conduct annual performance tests for that pollutant until all performance tests over a 3-year period show compliance.

### § 62.14685 May I conduct a repeat performance test to establish new operating limits?

(a) Yes. You may conduct a repeat performance test at any time to establish new values for the operating limits. The Administrator may request a repeat performance test at any time.

(b) You must repeat the performance test if your feed stream is different than the feed streams used during any performance test used to demonstrate compliance.

## Monitoring

### § 62.14690 What monitoring equipment must I install and what parameters must I monitor?

(a) If you are using a wet scrubber to comply with the emission limitation under § 62.14630, you must install, calibrate (to manufacturers' specifications), maintain, and operate devices (or establish methods) for monitoring the value of the operating parameters used to determine compliance with the operating limits listed in table 2 of this subpart. These devices (or methods) must measure and record the values for these operating parameters at the frequencies indicated in table 2 of this subpart at all times except as specified in § 62.14695(a).

(b) If you use a fabric filter to comply with the requirements of this subpart, you must install, calibrate, maintain, and continuously operate a bag leak detection system as specified in paragraphs (b)(1) through (8) of this section.

(1) You must install and operate a bag leak detection system for each exhaust stack of the fabric filter.

(2) Each bag leak detection system must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

(3) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 milligrams per actual cubic meter or less.

(4) The bag leak detection system sensor must provide output of relative or absolute particulate matter loadings.

(5) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

(6) The bag leak detection system must be equipped with an alarm system that will sound automatically when an increase in relative particulate matter emissions over a preset level is detected. The alarm must be located where it is easily heard by plant operating personnel.

(7) For positive pressure fabric filter systems, a bag leak detection system must be installed in each baghouse compartment or cell. For negative pressure or induced air fabric filters, the bag leak detector must be installed downstream of the fabric filter.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(c) If you are using an emission control system other than a wet scrubber to comply with the emission limitations under § 62.14630, you must install, calibrate (to the manufacturers' specifications), maintain, and operate the equipment necessary to monitor compliance with the site-specific operating limits established using the procedures in § 62.14640.

### § 62.14695 Is there a minimum amount of monitoring data I must obtain?

(a) Except for monitoring malfunctions, associated repairs, and required quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments of the monitoring system), you must conduct all monitoring at all times the CISWI unit is operating.

(b) Do not use data recorded during monitor malfunctions, associated repairs, and required quality assurance or quality control activities for meeting the requirements of this subpart, including data averages and calculations. You must use all the data collected during all other periods in assessing compliance with the operating limits.

## Recordkeeping and Reporting

### § 62.14700 What records must I keep?

You must maintain the 13 items (as applicable) as specified in paragraphs (a) through (m) of this section for a period of at least 5 years:

(a) Calendar date of each record.

(b) Records of the data described in paragraphs (b)(1) through (6) of this section:

(1) The CISWI unit charge dates, times, weights, and hourly charge rates.

(2) Liquor flow rate to the wet scrubber inlet every 15 minutes of operation, as applicable.

(3) Pressure drop across the wet scrubber system every 15 minutes of operation or amperage to the wet scrubber every 15 minutes of operation, as applicable.

(4) Liquor pH as introduced to the wet scrubber every 15 minutes of operation, as applicable.

(5) For affected CISWI units that establish operating limits for controls other than wet scrubbers under § 62.14640, you must maintain data collected for all operating parameters used to determine compliance with the operating limits.

(6) If a fabric filter is used to comply with the emission limitations, you must record the date, time, and duration of each alarm and the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken. You must also record the percent of operating time during each 6-month period that the alarm sounds, calculated as specified in § 62.14635(c).

(c) Identification of calendar dates and times for which monitoring systems used to monitor operating limits were inoperative, inactive, malfunctioning, or out of control (except for downtime associated with zero and span and other routine calibration checks). Identify the operating parameters not measured, the duration, reasons for not obtaining the data, and a description of corrective actions taken.

(d) Identification of calendar dates, times, and durations of malfunctions, and a description of the malfunction and the corrective action taken.

(e) Identification of calendar dates and times for which data show a deviation from the operating limits in table 2 of this subpart or a deviation from other operating limits established under § 62.14640 with a description of the deviations, reasons for such deviations, and a description of corrective actions taken.

(f) The results of the initial, annual, and any subsequent performance tests conducted to determine compliance with the emission limits and/or to establish operating limits, as applicable. Retain a copy of the complete test report including calculations.

(g) Records showing the names of CISWI unit operators who have completed review of the information in § 62.14620(a) as required by § 62.14620(b), including the date of the initial review and all subsequent annual reviews.

(h) Records showing the names of the CISWI operators who have completed the operator training requirements under § 62.14595, met the criteria for qualification under § 62.14605, and maintained or renewed their qualification under § 62.14610 or § 62.14615. Records must include documentation of training, the dates of the initial and refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

(i) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

(j) Records of calibration of any monitoring devices as required under § 62.14690.

(k) Equipment vendor specifications and related operation and maintenance requirements for the incinerator, emission controls, and monitoring equipment.

(l) The information listed in § 62.14620(a).

(m) On a daily basis, keep a log of the quantity of waste burned and the types of waste burned (always required).

### § 62.14705 Where and in what format must I keep my records?

All records must be available onsite in either paper copy or computer-readable format that can be printed upon request, unless an alternative format is approved by the Administrator.

### § 62.14710 What reports must I submit?

See table 4 of this subpart for a summary of the reporting requirements.

### § 62.14715 When must I submit my waste management plan?

You must submit the waste management plan no later than April 5, 2004.

### § 62.14720 What information must I submit following my initial performance test?

You must submit the information specified in paragraphs (a) through (c) of this section no later than 60 days following the initial performance test. All reports must be signed by the facilities manager.

(a) The complete test report for the initial performance test results obtained under § 62.14660, as applicable.

(b) The values for the site-specific operating limits established in § 62.14635 or § 62.14640.

(c) If you are using a fabric filter to comply with the emission limitations, documentation that a bag leak detection system has been installed and is being operated, calibrated, and maintained as required by § 62.14690(b).

### § 62.14725 When must I submit my annual report?

You must submit an annual report no later than 12 months following the submission of the information in § 62.14720. You must submit subsequent reports no more than 12 months following the previous report. As with all other requirements in this subpart, the requirement to submit an annual report does not modify or replace the operating permit requirements of 40 CFR parts 70 and 71.

### § 62.14730 What information must I include in my annual report?

The annual report required under § 62.14725 must include the ten items listed in paragraphs (a) through (j) of this section. If you have a deviation from the operating limits or the emission limitations, you must also submit deviation reports as specified in §§ 62.14735, 62.14740, and 62.14745.

(a) Company name and address.

(b) Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report.

(c) Date of report and beginning and ending dates of the reporting period.

(d) The values for the operating limits established pursuant to § 62.14635 or § 62.14640.

(e) If no deviation from any emission limitation or operating limit that applies to you has been reported, a statement that there was no deviation from the emission limitations or operating limits during the reporting period, and that no monitoring system used to determine compliance with the operating limits was inoperative, inactive, malfunctioning or out of control.

(f) The highest recorded 3-hour average and the lowest recorded 3-hour average, as applicable, for each operating parameter recorded for the calendar year being reported.

(g) Information recorded under § 62.14700(b)(6) and (c) through (e) for the calendar year being reported.

(h) If a performance test was conducted during the reporting period, the results of that test.

(i) If you met the requirements of § 62.14680(a) or (b), and did not conduct a performance test during the reporting period, you must state that you met the requirements of § 62.14680(a) or (b), and, therefore, you were not required to conduct a performance test during the reporting period.

(j) Documentation of periods when all qualified CISWI unit operators were unavailable for more than 8 hours, but less than 2 weeks.

### § 62.14735 What else must I report if I have a deviation from the operating limits or the emission limitations?

(a) You must submit a deviation report if any recorded 3-hour average parameter level is above the maximum operating limit or below the minimum operating limit established under this subpart, if the bag leak detection system alarm sounds for more than 5 percent of the operating time for any 6-month reporting period, or if a performance test was conducted that yielded results that deviated from any emission limitation.

(b) The deviation report must be submitted by August 1 of that year for data collected during the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data you collected during the second half of the calendar year (July 1 to December 31).

### § 62.14740 What must I include in the deviation report?

In each report required under § 62.14735, for any pollutant or parameter that deviated from the emission limitations or operating limits specified in this subpart, include the six items described in paragraphs (a) through (f) of this section.

(a) The calendar dates and times your unit deviated from the emission limitations or operating limit requirements.

(b) The averaged and recorded data for those dates.

(c) Duration and causes of each deviation from the emission limitations or operating limits and your corrective actions.

(d) A copy of the operating limit monitoring data during each deviation and any test report that documents the emission levels.

(e) The dates, times, number, duration, and causes for monitoring downtime incidents (other than downtime associated with zero, span, and other routine calibration checks).

(f) Whether each deviation occurred during a period of startup, shutdown, or malfunction, or during another period.

### § 62.14745 What else must I report if I have a deviation from the requirement to have a qualified operator accessible?

(a) If all qualified operators are not accessible for two weeks or more, you must take the two actions in paragraphs (a)(1) and (2) of this section.

(1) Within 10 days of each deviation, you must submit a notification that includes the three items in paragraphs (a)(1)(i) through (iii) of this section.

(i) A statement of what caused the deviation.

(ii) A description of what you are doing to ensure that a qualified operator is accessible.

(iii) The date when you anticipate that a qualified operator will be available.

(2) Submit a status report to the Administrator every 4 weeks that includes the three items in paragraphs (a)(2)(i) through (iii) of this section.

(i) A description of what you are doing to ensure that a qualified operator is accessible.

(ii) The date when you anticipate that a qualified operator will be accessible.

(iii) Request approval from the Administrator to continue operation of the CISWI unit.

(b) If your unit was shut down by the Administrator, under the provisions of § 62.14625(b)(2), due to a failure to provide an accessible qualified operator, you must notify the Administrator that you are resuming operation once a qualified operator is accessible.

### § 62.14750 Are there any other notifications or reports that I must submit?

You must submit notifications as provided by 40 CFR 60.7.

### § 62.14755 In what form can I submit my reports?

Submit initial, annual, and deviation reports electronically or in paper format, postmarked on or before the submittal due dates.

### § 62.14760 Can reporting dates be changed?

If the Administrator agrees, you may change the semiannual or annual reporting dates. See 40 CFR 60.19(c) for procedures to seek approval to change your reporting date.

## Air Curtain Incinerators That Burn 100 Percent Wood Wastes, Clean Lumber and/or Yard Waste

### § 62.14765 What is an air curtain incinerator?

An air curtain incinerator operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. (Air curtain incinerators are different from conventional combustion devices which typically have enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.)

### § 62.14770 When must I achieve final compliance?

If you plan to continue operating, then you must achieve final compliance by October October 4, 2004. It is unlawful for your air curtain incinerator to operate after October 4, 2004 if you have not achieved final compliance. An air curtain incinerator that continues to operate after October 4, 2004 without being in compliance is subject to penalties.

### § 62.14795 How do I achieve final compliance?

For the final compliance, you must complete all equipment changes and retrofit installation control devices so that, when the affected air curtain incinerator is placed into service, all necessary equipment and air pollution control devices operate as designed and meet the opacity limits of § 62.14815.

### § 62.14805 What must I do if I close my air curtain incinerator and then restart it?

(a) If you close your incinerator but will reopen it prior to the final compliance date in this subpart, you must achieve final compliance by October 4, 2004.

(b) If you close your incinerator but will restart it after October 4, 2004, you must have completed any needed emission control retrofits and meet the opacity limits of § 62.14815 on the date your incinerator restarts operation.

(c) You are subject to the operating permit requirements of title V of the CAA and 40 CFR part 70 or 71 until you close your air curtain incinerator and at the time you restart it.

### § 62.14810 What must I do if I plan to permanently close my air curtain incinerator and not restart it?

If you plan to permanently close your incinerator rather than comply with this subpart, you must submit a closure notification, including the date of closure, to the Administrator by March 31, 2004. In addition, while still in operation, your air curtain incinerator is subject to the same requirement to apply for and obtain a title V operating permit that applies to an air curtain incinerator that will not be permanently closing.

### § 62.14815 What are the emission limitations for air curtain incinerators that burn 100 percent wood wastes, clean lumber and/or yard waste?

(a) After the date the initial test for opacity is required or completed (whichever is earlier), you must meet the limitations in paragraphs (a)(1) and (2) of this section.

(1) The opacity limitation is 10 percent (6-minute average), except as described in paragraph (a)(2) of this section.

(2) The opacity limitation is 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.

(b) Except during malfunctions, the requirements of this subpart apply at all times, and each malfunction must not exceed 3 hours.

### § 62.14820 How must I monitor opacity for air curtain incinerators that burn 100 percent wood wastes, clean lumber, and/or yard waste?

(a) Use Method 9 of 40 CFR part 60, Appendix A to determine compliance with the opacity limitation.

(b) Conduct an initial test for opacity as specified in § 60.8 no later than January 2, 2005.

(c) After the initial test for opacity, conduct annual tests no more than 12 calendar months following the date of your previous test.

### § 62.14825 What are the recordkeeping and reporting requirements for air curtain incinerators that burn 100 percent wood wastes, clean lumber, and/or yard waste?

(a) Keep records of results of all initial and annual opacity tests onsite in either paper copy or electronic format, unless the Administrator approves another format, for at least 5 years.

(b) Make all records available for submittal to the Administrator or for an inspector's onsite review.

(c) Submit an initial report no later than 60 days following the initial opacity test that includes the information specified in paragraphs (c)(1) and (2) of this section.

(1) The types of materials you plan to combust in your air curtain incinerator.

(2) The results (each 6-minute average) of the initial opacity tests.

(d) Submit annual opacity test results within 12 months following the previous report.

(e) Submit initial and annual opacity test reports as electronic or paper copy on or before the applicable submittal date and keep a copy onsite for a period of five years.

## Title V Requirements

### § 62.14830 Does this subpart require me to obtain an operating permit under title V of the Clean Air Act?

If you are subject to this subpart, you are required to apply for and obtain a title V operating permit unless you meet the relevant requirements specified in 40 CFR 62.14525(a) through (h) and (j) through (o) and all of the requirements specified in 40 CFR 62.14531.

### § 62.14835 When must I submit a title V permit application for my existing CISWI unit?

(a) If your existing CISWI unit is not subject to an earlier permit application deadline, a complete title V permit application must be submitted not later than the date 36 months after promulgation of 40 CFR Part 60, subpart DDDD (December 1, 2003), or by the effective date of the applicable State, Tribal, or Federal operating permits program, whichever is later. For any existing CISWI unit not subject to an earlier application deadline, this final application deadline applies regardless of when this Federal plan is effective, or when the relevant State or Tribal section 111(d)/129 plan is approved by the EPA and becomes effective. See sections 129(e), 503(c), 503(d), and 502(a) of the Clean Air Act.

(b) A "complete" title V permit application is one that has been determined or deemed complete by the relevant permitting authority under section 503(d) of the Clean Air Act and 40 CFR 70.5(a)(2) or 71.5(a)(2). You must submit a complete permit application by the relevant application deadline in order to operate after this date in compliance with Federal law. See sections 503(d) and 502(a) of the Clean Air Act; 40 CFR 70.7(b) and 71.7(b).

## Delegation of Authority

### § 62.14838 What authorities are withheld by the EPA Administrator?

The following authorities are withheld by the EPA Administrator and not transferred to the State or Tribe:

(a) Approval of alternatives to the emission limitations in table 1 of this subpart and operating limits established under § 62.14635 and table 2 of this subpart.

(b) Approval of petitions submitted pursuant to the requirements of § 62.14640 establishing operating parameters when using controls other than a dry scrubber followed by a fabric filter, a wet scrubber, or a dry scrubber followed by a fabric filter and a wet scrubber.

(c) Approval of major alternatives to test methods established under § 62.14650 and table 1 of this subpart.

(d) Approval of major alternatives to monitoring requirements established under § 62.14690, § 62.14605 and table 2 of this subpart.

(e) Approval of major alternatives to recordkeeping and reporting requirements of this subpart.

(f) Approval of petitions submitted pursuant to the requirements of § 62.14530 establishing requirements for petitions and approvals of exemptions for chemical recovery units included in § 62.14525(n).

(g) Approval of requests submitted pursuant to the requirements in § 62.14625(b)(2).

## Definitions

### § 62.14840 What definitions must I know?

Terms used but not defined in this subpart are defined in the Clean Air Act, subparts A and B of part 60 and subpart A of this part 62.

*Administrator* means the Administrator of the U.S. Environmental Protection Agency or his/her authorized representative or Administrator of a State Air Pollution Control Agency.

*Agricultural waste* means vegetative agricultural materials such as nut and grain hulls and chaff (*e.g.*, almond, walnut, peanut, rice, and wheat), bagasse, orchard prunings, corn stalks, coffee bean hulls and grounds, and other vegetative waste materials generated as a result of agricultural operations.

*Air curtain incinerator* means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. (Air curtain incinerators are different from conventional combustion devices which typically have enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.)

*Auxiliary fuel* means natural gas, liquified petroleum gas, fuel oil, or diesel fuel.

*Bag leak detection system* means an instrument that is capable of monitoring particulate matter loadings in the exhaust of a fabric filter (*i.e.*, baghouse) in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other principle to monitor relative particulate matter loadings.

*Calendar quarter* means 3 consecutive months (non-overlapping) beginning on: January 1, April 1, July 1, or October 1.

*Calendar year* means 365 consecutive days starting on January 1 and ending on December 31.

*Chemotherapeutic waste* means waste material resulting from the production or use of antineoplastic agents used for the purpose of stopping or reversing the growth of malignant cells.

*Clean lumber* means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

*Commercial and industrial solid waste incineration (CISWI) unit* means any combustion device that combusts commercial and industrial waste, as defined in this subpart. The boundaries of a CISWI unit are defined as, but not limited to, the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas:

(1) The combustion unit flue gas system, which ends immediately after the last combustion chamber.

(2) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

*Commercial and industrial waste*, for the purposes of this subpart, means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

*Contained gaseous material* means gases that are in a container when that container is combusted.

*Cyclonic barrel burner* means a combustion device for waste materials that is attached to a 55 gallon, open-head drum. The device consists of a lid, which fits onto and encloses the drum, and a blower that forces combustion air into the drum in a cyclonic manner to enhance the mixing of waste material and air.

*Deviation* means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation, operating limit, or operator qualification and accessibility requirements;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation, operating limit, or operator qualification and accessibility requirement in this subpart during startup, shutdown, or malfunction, regardless or whether or not such failure is permitted by this subpart.

*Dioxins/furans* means tetra-through octachlorinated dibenzo-p-dioxins and dibenzofurans.

*Discard* means, for purposes of this subpart and 40 CFR part 60, subpart DDDD, only, burned in an incineration unit without energy recovery.

*Drum reclamation unit* means a unit that burns residues out of drums (*e.g.,* 55 gallon drums) so that the drums can be reused.

*Energy recovery* means the process of recovering thermal energy from combustion for useful purposes such as steam generation or process heating.

*Fabric filter* means an add-on air pollution control device used to capture particulate matter by filtering gas streams through filter media, also known as a baghouse.

*Low-level radioactive waste* means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities that exceed applicable Federal or State standards for unrestricted release. Low-level radioactive waste is not high-level radioactive waste, spent nuclear fuel, or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)).

*Malfunction* means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused, in part, by poor maintenance or careless operation are not malfunctions.

*Modification* or *modified CISWI unit* means a CISWI unit you have changed later than promulgation of the final CISWI emission guidelines in 40 CFR part 60, subpart DDDD and that meets one of two criteria:

(1) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the CISWI unit (not including the cost of land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI unit used to calculate these costs, see the definition of CISWI unit.

(2) Any physical change in the CISWI unit or change in the method of operating it that increases the amount of any air pollutant emitted for which section 129 or section 111 of the Clean Air Act has established standards.

*Particulate matter* means total particulate matter emitted from CISWI units as measured by Method 5 or Method 29 of 40 CFR part 60, Appendix A.

Parts reclamation unit means a unit that burns coatings off parts (*e.g.,* tools, equipment) so that the parts can be reconditioned and reused.

*Pathological waste* means waste material consisting of only human or animal remains, anatomical parts, and/or tissue, the bags/containers used to collect and transport the waste material, and animal bedding (if applicable).

*Rack reclamation unit* means a unit that burns the coatings off racks used to hold small items for application of a coating. The unit burns the coating overspray off the rack so the rack can be reused.

*Reconstruction* means rebuilding a CISWI unit and meeting two criteria:

(1) The reconstruction begins on or after promulgation of the final CISWI emission guidelines in 40 CFR part 60, subpart DDDD.

(2) The cumulative cost of the construction over the life of the incineration unit exceeds 50 percent of the original cost of building and installing the CISWI unit (not including land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI unit used to calculate these costs, see the definition of CISWI unit.

*Refuse-derived fuel* means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including two fuels:

(1) Low-density fluff refuse-derived fuel through densified refuse-derived fuel.

(2) Pelletized refuse-derived fuel.

*Shutdown* means the period of time after all waste has been combusted in the primary chamber.

*Solid waste* means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923). For purposes of this subpart and 40 CFR part 60, subpart DDDD, only, solid waste does not include the waste burned in the fifteen types of units described in 40 CFR 60.2555 of subpart DDDD and § 62.14525 of this subpart.

*Standard conditions,* when referring to units of measure, means a temperature of 68 °F (20 °C) and a pressure of 1 atmosphere (101.3 kilopascals).

*Startup period* means the period of time between the Activation of the system and the first charge to the unit.

*Tribal plan* means a plan submitted by a Tribal Authority pursuant to 40 CFR parts 9, 35, 49, 50, and 81 that implements and enforces 40 CFR part 60, subpart DDDD.

*Wet scrubber* means an add-on air pollution control device that utilizes an aqueous or alkaline scrubbing liquor to collect particulate matter (including non-vaporous metals and condensed organics) and/or to absorb and neutralize acid gases.

*Wood waste* means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

(1) Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.

(2) Construction, renovation, or demolition wastes.

(3) Clean lumber.

*Yard waste* means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.

TABLE 1 OF SUBPART III OF PART 62.—EMISSION LIMITATIONS

| For the air pollutant | You must meet this emission limitation [a] | Using this averaging time | And determining compliance using this method |
|---|---|---|---|
| Cadmium | 0.004 milligrams per dry standard cubic meter. | 3-run average (1 hour minimum sample time per run). | Performance test (Method 29 of appendix A of part 60). |
| Carbon monoxide | 157 parts per million by dry volume. | 3-run average (1 hour minimum sample time per run). | Performance test (Method 10, 10A, or 10B, of appendix A of part 60). |
| Dioxins/furans (toxic equivalency basis). | 0.41 nanograms per dry standard cubic meter. | 3-run average (4 hour minimum sample time per run). | Performance test (Method 23 of appendix A of part 60). |
| Hydrogen chloride | 62 parts per million by dry volume | 3-run average (1 hour minimum sample time per run). | Performance test (Method 26A of appendix A of part 60). |
| Lead | 0.04 milligrams per dry standard cubic meter. | 3-run (1 hour minimum sample time per run). | Performance test (Method 29 of appendix A of part 60). |
| Mercury | 0.47 milligrams per dry standard cubic meter. | 3-run average (1 hour minimum sample time per run). | Performance test (Method 29 of appendix A of part 60). |
| Opacity | 10 percent | 6-minute averages | Performance test (Method 9 of appendix A of part 60). |
| Oxides of nitrogen | 388 parts per million by dry volume. | 3-run average (1 hour minimum sample time per run). | Performance test (Methods 7, 7A, 7C, 7D, or 7E of appendix A of part 60). |
| Particulate matter | 70 milligrams per dry standard cubic meter. | 3-run average (1 hour minimum sample time per run). | Performance test (Method 5 or 29 of appendix A of part 60). |
| Sulfur dioxide | 20 parts per million by dry volume | 3-run average (1 hour minimum sample time per run). | Performance test (Method 6 or 6c of appendix A of part 60). |

[a] All emission limitations (except for opacity) are measured at 7 percent oxygen, dry basis at standard conditions.

TABLE 2 OF SUBPART III OF PART 62.—OPERATING LIMITS FOR WET SCRUBBERS

| For these operating parameters | You must establish these operating limits | And monitor using these minimum frequencies | | |
|---|---|---|---|---|
| | | Data measurement | Data recording | Averaging time |
| Charge rate | Maximum charge rate | Continuous | Every hour | 1. Daily (batch units)<br>2. 3-hour rolling (continuous and intermittent units) [a] |
| Pressure drop across the wet scrubber or amperage to wet scrubber. | Minimum pressure drop or amperage. | Continuous | Every 15 minutes | 3-hour rolling [a] |
| Scrubber liquor flow rate | Minimum flow rate | Continuous | Every 15 minutes | 3-hour rolling [a] |
| Scrubber liquor pH | Minimum pH | Continuous | Every 15 minutes | 3-hour rolling [a] |

[a] Calculated each hour as the average of the previous 3 operating hours.

TABLE 3 OF SUBPART III OF PART 62.—TOXIC EQUIVALENCY FACTORS

| Dioxin/furan congener | Toxic equivalency factor |
|---|---|
| A. 2,3,7,8-tetrachlorinated dibenzo-p-dioxin | 1 |
| B. 12,3,7,8-pentachlorinated dibenzo-p-dioxin | 0.5 |
| C. 1,2,3,4,7,8-hexachlorinated dibenzo-p-dioxin | 0.1 |
| D. 1,2,3,7,8,9-hexachlorinated dibenzo-p-dioxin | 0.1 |
| E. 12,3,6,7,8-hexachlorinated dibenzo-p-dioxin | 0.1 |
| F. 1,2,3,4,6,7,8-heptachlorinated dibenzo-p-dioxin | 0.01 |
| G. Octachlorinated dibenzo-p-dioxin | 0.001 |
| H. 2,3,7,8-tetrachlorinated dibenzofuran | 0.1 |
| I. 2,3,4,7,8-pentachlorinated dibenzofuran | 0.5 |
| J. 1,2,3,7,8-pentachlorinated dibenzofuran | 0.05 |
| K. 1,2,3,4,7,8-hexachlorinated dibenzofuran | 0.1 |
| L. 1,2,3,6,7,8-hexachlorinated dibenzofuran | 0.1 |
| M. 1,2,3,7,8,9-hexachlorinated dibenzofuran | 0.1 |
| N. 2,3,4,6,7,8-hexachlorinated dibenzofuran | 0.1 |
| O. 1,2,3,4,6,7,8-heptachlorinated dibenzofuran | 0.01 |
| P. 1,2,3,4,7,8,9-heptachlorinated dibenzofuran | 0.01 |
| Q. Octachlorinated dibenzofuran | 0.001 |

### TABLE 4 OF SUBPART III—SUMMARY OF REPORTING REQUIREMENTS [a]

| Report | Due date | Contents | Reference |
|---|---|---|---|
| A. Waste Management Plan | No later than April 5, 2004 | Waste management plan | § 62.14715. |
| B. Initial Test Report | No later than 60 days following the initial performance test. | 1. Complete test report for the initial performance test.<br>2. The values for the site-specific operating limits.<br>3. Installation of bag leak detection systems for fabric filters. | § 62.14720. |
| C. Annual report | No later than 12 months following the submission of the initial test report. Subsequent reports are to be submitted no more than 12 months following the previous report. | 1. Name and address<br>2. Statement and signature by responsible official.<br>3. Date of report.<br>4. Values for the operating limits.<br>5. If no deviations or malfunctions were reported, a statement that no deviations occurred during the reporting period.<br>6. Highest recorded 3-hour average and the lowest 3-hour average, as applicable, for each operating parameter recorded for the calendar year being reported<br>7. Information for deviations or malfunctions recorded under § 62.14700(b)(6) and (c) through (e).<br>8. If a performance test was conducted during the reporting period, the results of the test.<br>9. If a performance test was not conducted during the reporting period, a statement that the requirements of § 62.14680(a) or (b) were met.<br>10. Documentation of periods when all qualified CISWI unit operators were unavailable for more than 8 hours but less than 2 weeks. | §§ 62.14725 and 62.14730. Subsequent reports are to be submitted no more than 12 months following the previous report. |
| D. Emission Limitation or Operating Limit Deviation Report. | By August 1 of that year for data collected during the first half of the calendar year.<br>By February 1 of the following year for data collected during the second half of the calendar year. | 1. Dates and times of deviations<br>2. Averaged and recorded data for these dates.<br>3. Duration and causes for each deviation and the corrective actions taken.<br>4. Copy of operating limit monitoring data and any test reports.<br>5. Dates, times, and causes for monitor downtime incidents.<br>6. Whether each deviation occurred during a period of startup, shutdown, or malfunction. | §§ 62.14735 and 62.14740. |
| E. Qualified Operator Deviation Notification. | Within 10 days of deviation | 1. Statement of cause of deviation.<br>2. Description of efforts to have an accessible qualified operator.<br>3. The date a qualified operator will be accessible. | § 62.14745(a)(1). |
| F. Qualified Operator Deviation Status Report. | Every 4 weeks following deviation. | 1. Description of efforts to have an accessible qualified operator.<br>2. The date a qualified operator will be accessible.<br>3. Request for approval to continue operation. | § 62.14745(a)(2). |
| G. Qualified Operator Deviation Notification of Resumed Operation. | Prior to resuming operation | Notification that you are resuming operation. | § 62.14745(b). |

[a] This table is only a summary, see the referenced sections of the rule for the complete requirements.

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# Federal Register

**Friday,**
**October 3, 2003**

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## Part III

## State Justice Institute

**Grant Guideline; Notice**

## STATE JUSTICE INSTITUTE

### Grant Guideline

**AGENCY:** State Justice Institute.

**ACTION:** Proposed grant Guideline.

**SUMMARY:** This Guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 2004 State Justice Institute grants, cooperative agreements, and contracts.

**DATES:** The Institute invites public comment on the Guideline until November 3, 2003.

**ADDRESSES:** Comments should be mailed to the State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314, or e-mailed to *kschwartz@statejustice.org*.

**FOR FURTHER INFORMATION CONTACT:** David I. Tevelin, Executive Director, or Kathy Schwartz, Deputy Director, State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314, (703) 684–6100.

**SUPPLEMENTARY INFORMATION:** Pursuant to the State Justice Institute Act of 1984, 42 U.S.C. 10701, *et seq.*, as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the quality of justice in the State courts of the United States.

### Types of Grants Available and Funding Schedules

SJI proposes to offer five types of grants in FY 2004: Project Grants, Technical Assistance (TA) Grants, Judicial Branch Education Technical Assistance (JBE TA) grants, Continuation Grants, and Scholarships.

*Project Grants.* Project Grants are awarded to support innovative education, research, demonstration, and technical assistance projects that can improve the administration of justice in State courts nationwide. As provided in section V.C. of the Guideline, Project Grants may ordinarily not exceed $150,000 a year; however, grants in excess of $100,000 are likely to be rare, and awarded only to support projects likely to have a significant national impact.

SJI also awards "think piece" Project Grants to support the development of essays of publishable quality that explore emerging issues that could result in significant changes in court processes or judicial administration. "Think pieces" are limited to no more than $10,000. *See* section II.B.

*Special Interest Categories.* Project Grants, including "think piece" grants, would be awarded only for projects that fall within one of the Guideline's five Special Interest categories: Access to the Courts, Application of Technology in the Courts, Children and Families in Court, Judicial Branch Education, and the Relationship Between State and Federal Courts. These are the same categories included in last year's Guideline; however, specific topics of interest within each category have been changed.

The deadline for submitting a Project Grant application is February 13, 2004. The Board of Directors will meet in early May 2004 to approve grant awards. *See* section VI.A. for Project Grant application procedures.

*Technical Assistance Grants.* Section II.D. reserves up to $200,000 for Technical Assistance Grants. Under this program, a State or local court may receive a grant of up to $30,000 to engage outside experts to provide technical assistance to diagnose, develop, and implement a response to a jurisdiction's problems.

Letters of application for a Technical Assistance Grant may be submitted at any time. Applicants submitting letters by September 26, 2003 will be notified of the Board's decision by December 5, 2003. Those submitting letters between September 27, 2003 and January 9, 2004 will be notified by April 2, 2004; those submitting letters between January 10 and February 27, 2004 will be notified by June 11, 2004; those submitting letters between February 28 and June 4, 2004 will be notified by August 27, 2004; and those submitting letters between June 5 and September 24, 2004 will be notified of the Board's decision by December 10, 2004. *See* section VI.D. for Technical Assistance Grant application procedures.

*Judicial Branch Education Technical Assistance Grants.* Up to $150,000 would be allocated for grants under the JBE TA grant program this year. Grants of up to $20,000 would be available to: (1) Enable a State or local court to adapt and deliver an education program that was previously developed and evaluated under an SJI project grant (*i.e.*, curriculum adaptation); and/or (2) support expert consultation in planning, developing, and administering State judicial branch education programs.

The services available through the expanded program could include consultant assistance in maintaining judicial branch education programming during the current budget crisis, or development of improved methods for evaluating judicial branch education programs. Letters requesting JBE TA Grants may be submitted at any time. The grant cycles for JBE TA Grants are the same as the grant cycles for TA Grants:

Applicants submitting letters by September 26, 2003 will be notified of the Board's decision by December 5, 2003. Those submitting letters between September 27, 2003 and January 9, 2004 will be notified by April 2, 2004; those submitting letters between January 10 and February 27, 2004 will be notified by June 11, 2004; those submitting letters between February 28 and June 4, 2004 will be notified by August 27, 2004; and those submitting letters between June 5 and September 24, 2004 will be notified of the Board's decision by December 10, 2004. *See* section VI.E. for JBE TA Grant application procedures.

*Scholarships.* The Guideline allocates up to $150,000 of FY 2004 funds for scholarships to enable judges and court managers to attend out-of-State education and training programs.

Scholarships for eligible applicants are approved largely on a "first come, first served" basis, although the Institute may approve or disapprove scholarship requests in order to achieve appropriate balances on the basis of geography, program provider, and type of court or applicant (*e.g.*, trial judge, appellate judge, trial court administrator). Scholarships will be approved only for programs that either (1) address topics included in the Guideline's Special Interest categories (section II.A.); (2) enhance the skills of judges and court managers; or (3) are part of a graduate degree program for judges or court personnel.

Applicants interested in obtaining a scholarship for a program beginning between January 1 and March 31, 2004 must submit their applications and documents between October 6 and December 1, 2003. Applicants who wish to attend programs beginning between April 1 and June 30, 2004 must submit their applications and documents between January 5 and March 1, 2004. For programs beginning between July 1 and September 30, 2004, the applications and documents must be submitted between April 5 and May 31, 2004. For programs beginning between October 1 and December 31, 2004, the applications and documents must be submitted between July 6 and August 30, 2004. For programs beginning between January 1 and March 31, 2005, the applications and documents must be submitted between October 4 and November 29, 2004. *See* section VI.F. for Scholarship application procedures.

*Continuation Grants.* Continuation Grants (see sections III.D., V.B.2., and VI.C.) are intended to enhance the specific program or service begun during the initial project grant period. The Guideline establishes a firm limit for Continuation Grants of 20% of the total amount projected to be available for all Project Grants in FY 2004. Grantees should accordingly be aware that the award of a grant to support a project does not constitute a commitment to provide continuation funding. Under the Proposed Guideline, no grant awarded in FY 2004 would be continued for more than five years.

An applicant for a Continuation Grant must submit a letter notifying the Institute of its intent to seek such funding no later than 120 days before the end of the current grant period. The Institute will then notify the applicant of the deadline for its Continuation Grant application.

**Matching Requirements**

With the exception of JBE TA grantees, grantees that can demonstrate a financial hardship, and Scholarship recipients, the Guideline proposes that all grantees must provide match, including cash match, for any Institute grant. The matching requirements are summarized below:

*State and local units of government.* The Guideline would require these grantees to provide matching support equal to 50% of a new SJI-funded project. For example, if a State court system receives a $100,000 grant from the Institute, it would be required to provide a $50,000 match. A State or local unit of government would have to provide at least 20% of the required match for a new grant ($10,000 in the example) in the form of cash rather than in-kind support (*e.g.*, the value of staff time contributed to the project).

*All other grantees.* The Guideline would require all other grantees to contribute a match of 25% to a new SJI-funded project. For example, if a non-profit organization receives a $100,000 grant from SJI, it would be required to provide a $25,000 match. A non-profit would have to provide at least 10% of the required match for a new grant ($2,500 in the example) in the form of cash.

The amount and nature of unrequired match contributed by applicants would continue to be factors the Board of Directors considers in making grant decisions. Like last year, applicants may request a waiver of the match requirement, the cash match requirement, or both. *See* section VIII.A.8.c.

*Continuation Grants.* Under section VIII.A.8., all grantees would be required to assume a greater share of project support over time. State and local units of government would be required to provide match equaling at least 50% of the amount provided by SJI in the first year of the project, 60% in the second year, 75% in the third year, 90% in the fourth year, and 100% in the fifth year. For example, if SJI awards a State court $100,000 for the first year of a grant, the court would be required to provide $50,000 in match. If the second-year grant is also $100,000, the court would be required to provide $60,000 in match. A court that wished to limit its second-year contribution to $50,000 could ask SJI for a reduced amount, *i.e.*, $83,333, in order to meet the 60% requirement.

All other grantees would be required to provide match equaling at least 25% of the amount provided by SJI in the first year of the project, 30% in the second year, 37.5% in the third year, 45% in the fourth year, and 50% in the fifth year. For example, if SJI awards a non-profit organization $100,000 for the first year of a grant, the organization would be required to provide $25,000 in match. If the second year grant is also $100,000, the court would be required to provide $30,000 in match. An organization that wished to limit its second-year contribution to $25,000 could ask SJI for a reduced amount, *i.e.*, $83,333, in order to meet the 30% requirement.

Absent extraordinary circumstances, no SJI grant awarded in FY 2004 would continue for more than five years.

**Solutions Project**

In FY 2003, the Institute allocated approximately $800,000 to support the Solutions Project, a process that will draw on State and local court initiatives to identify and exchange promising solutions to the most critical problems facing the courts, and define a national agenda to improve the quality of justice in State courts nationwide.

Nearly $400,000 of the allocation was awarded in amounts up to $20,000 to 20 States. A list of the States receiving those grants and a description of their projects may be found on the Institute's web site (*www.statejustice.org*). The remaining FY 2003 money, and an additional $400,000 of FY 2004 money, is reserved for the National Solutions Project that will be carried out under a cooperative agreement among SJI, the National Center for State Courts (NCSC), and the Center for Effective Public Policy (CEPP). The Board of Directors has approved planning grants to both organizations and anticipates making the next awards to carry out the national aspects of the Project at its meeting in early November.

**Issues Highlighted for Public Comment**

The Proposed Guideline would make four significant changes from last year's grant program. Three of those changes would reduce the allocations reserved for the Institute's three small grant programs: JBE TA Grants, Technical Assistance Grants, and Scholarships. In order to make the most money possible available for Project Grants, which are designed to have nationwide impact, the Institute would reduce the pool of money available for JBE TA Grants from $300,000 to $150,000; the pool available for Technical Assistance Grants from $300,000 to $200,000; and the amount available for scholarships from $200,000 to $150,000. The reduced amounts to be reserved for each program in FY 2004 still exceed the amounts awarded under each program in FY 2003.

In addition, the Proposed Guideline would not require recipients of JBE TA Grants to provide cash match. The Board of Directors recognizes that the serious budget problems affecting State courts nationwide have sharply reduced the amount of State funds available for judicial branch education. The Board hopes that, by eliminating the cash match requirement for JBE TA grants, more States will seek these grants next fiscal year.

**Recommendations to Grantwriters**

Recommendations to Grantwriters may be found in Appendix A.

The State Justice Institute proposes the following Grant Guideline for FY 2004:

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## I. The Mission of the State Justice Institute

The Institute was established by Public Law 98–620 to improve the administration of justice in the State courts of the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

- Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;
- Foster coordination and cooperation with the Federal judiciary;
- Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and
- Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by an 11-member Board of Directors appointed by the President, with the consent of the Senate. The Board is statutorily composed of six judges, a State court administrator, and four members of the public, no more than two of whom can be of the same political party.

Through the award of grants, contracts, and cooperative agreements, the Institute is authorized to perform the following activities:

A. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

B. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

C. Participate in joint projects with Federal agencies and other private grantors;

D. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

E. Encourage and assist in furthering judicial education;

F. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

G. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

## II. Scope of the Program

As set forth in section I., the Institute is authorized to fund projects addressing a broad range of program areas. However, during FY 2004, the Institute will consider applications for funding support that address only the topics included in the following five program categories designated by the Board as being of special interest. Funds will not be made available for the ordinary, routine operation of court systems or programs in any of these areas.

### *A. Special Interest Program Categories*

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. The Institute is especially interested in funding projects that:

- Formulate new procedures and techniques, or creatively enhance existing procedures and techniques;
- Address aspects of the State judicial systems that are in special need of serious attention;
- Have national significance by developing products, services, and techniques that may be used in other States; and
- Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems, or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

A project will be identified as a *Special Interest* project if it meets the four criteria set forth above and it falls within the scope of the *Special Interest* program categories designated below.

The Board has designated the areas set forth below as *Special Interest* program categories. The order of listing does not imply any ordering of priorities among the categories. For a complete list of projects supported in previous years in each of these categories, please visit the Institute's Internet homepage at *http://www.statejustice.org/* and click on *Grants by Category*.

### 1. Access to the Courts

This category includes demonstration, evaluation, research, and education projects designed to improve the responsiveness of courts to public concerns regarding the fairness, accessibility, timeliness, and comprehensibility of the court process.

The Institute is particularly interested in supporting innovative projects that:

- Test and evaluate approaches permitting self-represented litigants to file pleadings, responses, and other forms electronically;
- Test and evaluate new approaches to enhance public access to the courts, including demonstrations of innovative collaborative efforts between courts and community institutions (*e.g.*, bar associations, legal service agencies, schools, and public libraries) to enhance access to the courts by people without lawyers (in this regard, however, Institute funds may not be used to directly or indirectly support legal representation of individuals in specific cases); and
- Develop and test a range of strategies, methodologies, guidelines, and outcome measures to evaluate the effectiveness of programs established to assist people without lawyers.

### 2. Application of Technology in the Courts

This category includes the testing of innovative applications of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels. The Institute seeks to support local experiments with promising but untested applications of technology in the courts that include an evaluation of the impact of the technology in terms of costs, benefits, and staff workload, and a training component to assure that staff is appropriately educated about the purpose and use of the new technology. In this context, "untested" includes novel applications of technology developed for the private sector that have not previously been applied in the courts.

The Institute is particularly interested in supporting efforts to test and evaluate technologies that would:

- Test and evaluate approaches permitting self-represented litigants to file pleadings, responses, and other forms electronically;
- Demonstrate and evaluate the delivery of technology to rural courts through an Internet-based "application service provider" approach;
- Evaluate approaches for electronically filing pleadings, briefs,

and other documents; approaches to integrate electronic filing and electronic document management; and the impact of electronic court record systems on case management and court procedures;

- Test and evaluate the use of Geographic Information System (GIS) software as a means of examining and improving courts' outreach to particular segments of the communities they serve;
- Demonstrate and evaluate the use of expert system technology to assist judicial decision-making; and
- Evaluate innovative applications of technology designed to ensure the safety of all who use and work in the courts.

3. Children and Families in Court

This category includes education, demonstration, evaluation, technical assistance, and research projects to identify and inform judges of innovative, effective approaches for handling cases involving children and families. The Institute is particularly interested in projects that would:

- Test and evaluate different approaches to managing and adjudicating domestic violence cases, including domestic violence courts; integrated case management information systems; collaborations among courts, law enforcement agencies, social service agencies, women's shelters, victims support and advocacy organizations, and others; and other innovative practices intended to improve the courts' response to domestic violence.
- Demonstrate and evaluate innovative approaches to manage and coordinate cases and proceedings involving multiple members of the same family;
- Demonstrate and evaluate the effectiveness of a "one social worker/one family" or judge-social worker team approach to handling child abuse and neglect cases;
- Develop and test innovative protocols, procedures, educational programs, and other measures to address the service needs of children exposed to family violence and the methods for mitigating those effects when issuing protection, custody, visitation, or other orders;
- Educate judges about how to interpret and evaluate evidence presented by psychologists, psychiatrists, and other professionals appearing in child custody and visitation cases involving domestic violence between the parents;
- Develop and test the implementation of a differentiated case management system for handling child custody disputes;
- Develop and evaluate educational programs addressing a collaborative community approach to reducing and preventing domestic violence for a multidisciplinary audience that includes judges, prosecutors, defense attorneys, victim advocates, doctors, and social services providers;
- Evaluate the impact of court policies and procedures and collaborative community approaches designed to ensure that juvenile sex offenders have access to an appropriate array of services; and
- Create and test educational programs, guidelines, and monitoring systems to assure that the juvenile justice system meets the needs of girls and children of color.

Institute funds may not be used to provide operational support to programs offering direct services or compensation to victims of crimes. (Applicants interested in obtaining such operational support should contact the Office for Victims of Crime [OVC], Office of Justice Programs, U.S. Department of Justice, or the agency in their State that awards OVC funds to State and local victim assistance and compensation programs.)

4. Judicial Branch Education

The Institute is interested in supporting projects that will continue to strengthen and broaden the availability of court education programs at the State, regional, and national levels. This category is divided into three subsections: (a) Innovative Educational Programs; (b) Judicial Branch Education Technical Assistance Projects; and (c) Scholarships.

a. *Innovative Educational Programs.* This category includes support for the development and pilot-testing of innovative, high-quality educational programs for trial and appellate judges or court personnel that address key issues of concern to the nation's courts, or help local courts or State court systems develop or enhance their capacity to deliver quality continuing education.

Programs may be designed for presentation at the local, State, regional, or national level. Ordinarily, court education programs should be based on an assessment of the needs of the target audience; include clearly stated learning objectives that delineate the new knowledge or skills participants will acquire (as opposed to a description of what will be taught); incorporate adult education principles and multiple teaching/learning methods; and result in the development of a curriculum as defined in section III.E.

The Institute is particularly interested in supporting the development of programs that:

- Educate judges and court personnel about how to design and sustain problem-solving courts;
- Educate State court judges, law clerks, and staff counsel about capital case law, DNA evidence, and other legal and scientific issues related to the trial and appeal of capital cases;
- Educate State court judges and court personnel about special problems related to the adjudication of capital cases, including jury voir dire, jury sequestration, sentencing hearings, court security, and media management; and
- Develop and test curricula and materials designed to familiarize judges and court managers with the need for and key elements of effective assistance programs for people without lawyers, and the resources required to sustain them.

b. *Judicial Branch Education Technical Assistance Projects.* The Board is reserving up to $150,000 to support technical assistance and on-site consultation in planning, developing, and administering comprehensive and specialized State judicial branch education programs, as well as the adaptation of model curricula previously developed with SJI funds.

The goals of the Judicial Branch Education Technical Assistance Program (JBE TA) in FY 2004 are to:

(1) Provide State and local courts with the opportunity to access expert strategic assistance to enable them to maintain judicial branch education programming during the current budget crisis; and

(2) Enable courts to modify a model curriculum, course module, or conference program developed with SJI funds to meet a particular State's or local jurisdiction's educational needs; train instructors to present portions or all of the curriculum; and pilot-test it to determine its appropriateness, quality, and effectiveness. An illustrative but non-inclusive list of the curricula that may be appropriate for adaptation is contained in Appendix E.

Only State or local courts may apply for JBE TA funding. Application procedures may be found in section VI.E. State and local courts are not required to contribute cash match to JBE TA grants.

c. *Scholarships for Judges and Court Managers.* The Institute is reserving up to $150,000 to support a scholarship program for State judges and court managers. The purposes of the scholarship program are to:

- Enhance the skills, knowledge, and abilities of judges and court managers;
- Enable State court judges and court managers to attend out-of-State

educational programs sponsored by national and State providers that they could not otherwise attend because of limited State, local, and personal budgets; and

- Provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court-related education programs.

Scholarships will be granted to individuals only for the purpose of attending an out-of-State educational program within the United States. Application procedures may be found in section VI.F.

5. The Relationship Between State and Federal Courts

This category includes education, research, demonstration, and evaluation projects designed to facilitate appropriate and effective communication, cooperation, and coordination between State and Federal courts.

The Institute is particularly interested in innovative projects that:

- Evaluate State and Federal courts' experiences with capital cases to identify reasons for reversals of trial court convictions, barriers to timely disposition, and steps that can be taken to minimize reversals and undue delay;
- Educate judges about capital case law, DNA evidence, and judicial administration issues arising from death penalty cases, e.g., court security, jury sequestration, and media management;
- Establish standards for selecting qualified appointed defense counsel in capital cases, and evaluating different appointment approaches;
- Support commissions that involve members of the judiciary in reviewing and remedying errors that led to wrongful convictions in death penalty cases;
- Coordinate and process mass tort cases fairly and efficiently at the trial and appellate levels;
- Provide assistance to courts in developing plans to continue operations in the wake of a catastrophic incident, including establishing lines of succession; and
- Develop effective emergency responses to acts of terrorism.

*B. "Think Pieces"*

This category addresses the development of essays of publishable quality directed to the court community. The essays should explore emerging issues that could result in significant changes in court process or judicial administration and their implications for the future for judges, court managers, policy-makers, and the public. Grants supporting such projects are limited to no more than $10,000. Applicants should follow the procedures explained in section VI.B. of this Guideline.

Think piece topics are limited to the five Special Interest categories listed in section II.A. of this Guideline. In particular, the Institute is interested in supporting the development of essays on:

- Issues related to the institutionalization and maintenance of drug and other problem-solving courts, e.g., maintaining budgets in fiscally constrained times, finding new sources of money, identifying and selecting new judges while still maintaining the focus of the court and enthusiasm for the concept;
- What the courts have learned from problem-solving approaches that can be applied throughout the court system to enhance public trust and confidence; and
- The advantages, disadvantages, and appropriate use of anonymous juries.

*C. The Solutions Project*

The Solutions Project is a process intended to infuse the State courts with the ability to develop innovative and creative ways to address the problems they face and provide a mechanism to transfer these ideas throughout the nation. In addition to providing State courts with an array of promising solutions to their most pressing problems, the Solutions Project will generate consensus on projects, ideas, and programs that merit additional Federal funding support because of their broad appeal and promise.

In FY 2003, the Institute awarded close to $400,000 to support Solutions Project grants in 20 States. The grants support events and activities such as town hall meetings, focus groups, surveys, and other initiatives designed to (a) collect information about the problems facing the courts in a particular State, (b) assess the effectiveness of the solutions the court system has developed to respond to those problems, and (c) solicit the public's recommendations about other potential solutions.

The Board of Directors also awarded planning grants to the National Center for State Courts and the Center for Effective Public Policy to design the tasks required to carry out the national aspects of the Project. The Institute has reserved up to $400,000 in FY 03 funds and up to $400,000 in FY 04 funds to support the national phase of The Solutions Project. Visit the SJI Web site (*www.statejustice.org*) for continuing updates on the Project.

*D. Technical Assistance Grants*

The Board will set aside up to $200,000 to support the provision of technical assistance to State and local courts. The program is designed to provide State and local courts with sufficient support to obtain technical assistance to diagnose a problem, develop a response to that problem, and implement any needed changes. The Institute will reserve sufficient funds each quarter to assure the availability of Technical Assistance Grants throughout the year.

Technical Assistance Grants are limited to no more than $30,000 each, and may cover the cost of obtaining the services of expert consultants; travel by a team of officials from one court to examine a practice, program, or facility in another jurisdiction that the applicant court is interested in replicating; or both. Normally, the technical assistance must be completed within 12 months after the start date of the grant.

Only a State or local court may apply for a Technical Assistance grant. The application procedures may be found in section VI.D.

## III. Definitions

The following definitions apply for the purposes of this Guideline:

*A. Acknowledgment of SJI Support*

The prominent display of the SJI logo on the front cover of a written product or in the opening frames of a videotape developed with Institute support, and inclusion of a brief statement on the inside front cover or title page of the document or the opening frames of the videotape identifying the grant number. See section VIII.A.11.a.(2) for the precise wording of the statement.

*B. Application*

A formal request for an Institute grant. A complete application consists of: Form A—Application; Form B—Certificate of State Approval (for applications from local trial or appellate courts or agencies); Form C—Project Budget/Tabular Format or Form C1—Project Budget/Spreadsheet Format; Form D—Assurances; Disclosure of Lobbying Activities; a detailed 25-page description of the need for the project and all related tasks, including the time frame for completion of each task, and staffing requirements; and a detailed budget narrative that provides the basis for all costs. *See* section VI. for a complete description of application submission requirements. *See* appendix F for the Project Grant application forms.

*C. Close-Out*

The process by which the Institute determines that all applicable administrative and financial actions and all required grant work have been completed by both the grantee and the Institute.

*D. Continuation Grant*

A grant lasting no longer than 15 months to permit completion of activities initiated under an existing Institute grant or enhancement of the products or services produced during the prior grant period. *See* section VI.C. for a complete description of continuation application requirements.

*E. Curriculum*

The materials needed to replicate an education or training program developed with grant funds including, but not limited to: The learning objectives; the presentation methods; a sample agenda or schedule; an outline of presentations and relevant instructors' notes; copies of overhead transparencies or other visual aids; exercises, case studies, hypotheticals, quizzes, and other materials for involving the participants; background materials for participants; evaluation forms; and suggestions for replicating the program, including possible faculty or the preferred qualifications or experience of those selected as faculty.

*F. Designated Agency or Council*

The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for SJI grant funds and to receive, administer, and be accountable for those funds.

*G. Disclaimer*

A brief statement that must be included at the beginning of a document or in the opening frames of a videotape produced with Institute support that specifies that the points of view expressed in the document or tape do not necessarily represent the official position or policies of the Institute. *See* section VIII.A.11.a.(2) for the precise wording of this statement.

*H. Grant Adjustment*

A change in the design or scope of a project from that described in the approved application, acknowledged in writing by the Institute. See section X.A for a list of the types of changes requiring a formal grant adjustment. Ordinarily, changes requiring a Grant Adjustment (including budget reallocations between direct cost categories that individually or cumulatively exceed five percent of the approved original budget) should be requested at least 30 days in advance of the implementation of the requested change.

*I. Grantee*

The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court, *grantee* refers to the State Supreme Court or its designee.

*J. Human Subjects*

Individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions, and/or experiences through an interview, questionnaire, or other data collection technique.

*K. Judicial Branch Education Technical Assistance (JBE TA) Grant*

A grant of up to $20,000 awarded to a State or local court to support expert assistance in designing or delivering judicial branch education programming, and/or the adaptation of an education program based on an SJI-supported curriculum that was previously developed and evaluated under an SJI Project Grant. *See* section VI.E. for a complete description of JBE TA Grant application requirements.

*L. Match*

The portion of project costs not borne by the Institute. Match includes both in-kind and cash contributions. Cash match is the direct outlay of funds by the grantee to support the project. Examples of cash match are the dedication of funds to support a new employee or purchase new equipment to carry out the project; that portion of the grantee's Federally approved indirect cost rate that exceeds the Guideline's limit of permitted charges (75% of salaries and benefits); any other reduction in the indirect cost rate to be charged to the grant; and the application of project income (*e.g.*, tuition or the proceeds of sales of grant products) generated during the grant period to grant costs.

In-kind match consists of contributions of time and/or services of current staff members, space, supplies, etc., made to the project by the grantee or others (*e.g.*, advisory board members) working directly on the project.

Under normal circumstances, allowable match may be incurred only during the project period. When appropriate, and with the prior written permission of the Institute, match may be incurred from the date of the Board of Directors' approval of an award. Match does not include the time of participants attending an education program.

*See* section VIII.A.8. for the Institute's matching requirements.

*M. Products*

Tangible materials resulting from funded projects including, but not limited to: Curricula; monographs; reports; books; articles; manuals; handbooks; benchbooks; guidelines; videotapes; audiotapes; computer software; and CD–ROM disks.

*N. Project Grant*

An initial grant lasting up to 15 months to support an innovative education, research, demonstration, or technical assistance project that can improve the administration of justice in State courts nationwide. Ordinarily, a project grant may not exceed $150,000 a year; however, a grant in excess of $100,000 is likely to be rare and awarded only to support highly promising projects that will have a significant national impact. *See* section VI.A. for a complete description of Project Grant application requirements.

*O. Project-Related Income*

Interest, royalties, registration and tuition fees, proceeds from the sale of products, and other earnings generated as a result of an Institute grant. Registration and tuition fees, and proceeds from the sale of products generated during the grant period may be counted as match. For a more complete description of different types of project-related income, *see* section IX.G.

*P. Scholarship*

A grant of up to $1,500 awarded to a judge or court employee to cover the cost of tuition for and transportation to and from an out-of-State educational program within the United States. *See* section VI.F. for a complete description of scholarship application requirements.

*Q. Special Condition*

A requirement attached to a grant award that is unique to a particular project.

*R. State Supreme Court*

The highest appellate court in a State, or, for the purposes of the Institute program, a constitutionally or legislatively established judicial council that acts in place of that court. In States having more than one court with final appellate authority, *State Supreme Court* means that court which also has administrative responsibility for the State's judicial system. *State Supreme*

*Court* also includes the office of the court or council, if any, it designates to perform the functions described in this Guideline.

*S. Subgrantee*

A State or local court which receives Institute funds through the State Supreme Court.

*T. Technical Assistance Grant*

A grant, lasting up to 12 months, of up to $30,000 to a State or local court to support outside expert assistance in diagnosing a problem and developing and implementing a response to that problem. *See* section VI.D. for a complete description of technical assistance grant application requirements.

**IV. Eligibility for Award**

The Institute is authorized by Congress to award grants, cooperative agreements, and contracts to the following entities and types of organizations:

A. *State and local courts and their agencies (42 U.S.C.10705(b)(1)(A)).* Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section IX.C.2. of this Guideline.

B. *National nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments (42 U.S.C. 10705(b)(1)(B)).*

C. *National nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments (42 U.S.C. 10705(b)(1)(C)).* An applicant is considered a national education and training applicant under section 10705(b)(1)(C) if:

1. The principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and

2. the applicant demonstrates a record of substantial experience in the field of judicial education and training.

D. *Other eligible grant recipients (42 U.S.C.10705(b)(2)(A)–(D)).*

1. Provided that the objectives of the project can be served better, the Institute is also authorized to make awards to:

a. Nonprofit organizations with expertise in judicial administration;

b. institutions of higher education;

c. individuals, partnerships, firms, corporations (for-profit organizations must waive their fees); and

d. private agencies with expertise in judicial administration.

2. The Institute may also make awards to State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements (42 U.S.C. 10705(b)(3)).

E. *Inter-agency Agreements.* The Institute may enter into inter-agency agreements with Federal agencies (42 U.S.C. 10705(b)(4)) and private funders to support projects consistent with the purposes of the State Justice Institute Act.

**V. Types of Projects and Grants; Size of Awards**

*A. Types of Projects*

The Institute supports the following general types of projects:

1. Education and training;
2. research and evaluation;
3. demonstration; and
4. technical assistance.

*B. Types of Grants*

The Institute supports the following types of grants:

1. Project Grants

*See* sections II.A. and B., and VI.A. The Institute places no annual limitations on the overall number of project grant awards or the number of awards in each Special Interest category.

2. Continuation Grants

*See* sections III.D. and VI.C. In FY 2004, the Institute is allocating no more than 20% of available Project Grant funds for continuation grants.

3. Technical Assistance Grants

*See* sections II.D. and VI.D. In FY 2004, the Institute is reserving up to $200,000 for these grants.

4. Judicial Branch Education Technical Assistance Grants

*See* sections II.A.4.b., III.K., and VI.E. In FY 2004, the Institute is reserving up to $150,000 for Judicial Branch Education Technical Assistance Grants, which includes adaptations of curricula previously developed with SJI funding.

5. Scholarships

*See* sections II.A.4.c., III.P., and VI.F. In FY 2004, the Institute is reserving up to $150,000 for scholarships for judges and court employees. The Institute will reserve sufficient funds each quarter to assure the availability of scholarships throughout the year.

*C. Maximum Size of Awards*

1. Except as specified below, applicants for new Project Grants and continuation grants may request funding in amounts up to $150,000 for 15 months, although new and continuation awards in excess of $100,000 are likely to be rare and to be made, if at all, only for highly promising proposals that will have a significant impact nationally.

2. Applicants for Technical Assistance Grants may request funding in amounts up to $30,000.

3. Applicants for Judicial Branch Education Technical Assistance Grants may request funding in amounts up to $20,000.

4. Applicants for scholarships may request funding in amounts up to $1,500.

*D. Length of Grant Periods*

1. Grant periods for all new and continuation projects ordinarily may not exceed 15 months. Absent extraordinary circumstances, no grant will continue for more than five years.

2. Grant periods for Technical Assistance Grants and Judicial Branch Education Technical Assistance Grants ordinarily may not exceed 12 months.

**VI. Applications**

*A. Project Grants*

An application for a Project Grant must include an application form; budget forms (with appropriate documentation); a project abstract and program narrative; a disclosure of lobbying form, when applicable; and certain certifications and assurances (*see* below). *See* appendix F for the Project Grant application forms. For a summary of the application process, visit the Institute's Web site (*www.statejustice.org*) and click on On-Line Tutorials, then Project Grant.

1. Forms

a. *Application Form (FORM A).* The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding requested from the Institute. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete; that submission of the application has been authorized by the applicant; and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

b. *Certificate of State Approval (FORM B).* An application from a State or local court must include a copy of FORM B signed by the State's Chief Justice or Chief Judge, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if the Institute approved funding for the project, the court or the specified designee will receive, administer, and be accountable for the awarded funds.

c. *Budget Forms (FORM C or C1).* Applicants may submit the proposed project budget either in the tabular format of FORM C or in the spreadsheet format of FORM C1. Applicants requesting $100,000 or more are strongly encouraged to use the spreadsheet format. If the proposed project period is for more than a year, a separate form should be submitted for each year or portion of a year for which grant support is requested, as well as for the total length of the project.

In addition to FORM C or C1, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category. (*See* section VI.A.4. below.)

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

d. *Assurances (FORM D).* This form lists the statutory, regulatory, and policy requirements with which recipients of Institute funds must comply.

e. *Disclosure of Lobbying Activities.* Applicants other than units of State or local government are required to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. (*See* section VIII.A.7.)

### 2. Project Abstract

The abstract should highlight the purposes, goals, methods, and anticipated benefits of the proposed project. It should not exceed 1 single-spaced page on 8½ by 11 inch paper.

### 3. Program Narrative

The program narrative for an application may not exceed 25 double-spaced pages on 8½ by 11 inch paper. Margins must be at least 1 inch, and type size must be at least 12-point and 12 cpi. The pages should be numbered. This page limit does not include the forms, the abstract, the budget narrative, and any appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to impart a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

a. *Project Objectives.* The applicant should include a clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (*e.g.*, to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (*e.g.*, provide training for 32 judges and court managers, or review data from 300 cases).

b. *Program Areas to be Covered.* The applicant should note the Special Interest category or categories that are addressed by the proposed project (*see* section II.A.).

c. *Need for the Project.* If the project is to be conducted in any specific location(s), the applicant should discuss the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing programs, procedures, services, or other resources.

If the project is not site-specific, the applicant should discuss the problems that the proposed project would address, and why existing programs, procedures, services, or other resources cannot adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

d. *Tasks, Methods and Evaluation.* (1) *Tasks and Methods.* The applicant should delineate the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

(a) *For research and evaluation projects,* the applicant should include the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and protecting others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to human subjects, a discussion should be included that explains the value of the proposed research and the methods to be used to minimize or eliminate such risk.

(b) *For education and training projects,* the applicant should include the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty would be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars, or workshops to be conducted and the estimated number of persons who would attend them; the materials to be provided and how they would be developed; and the cost to participants.

(c) *For demonstration projects,* the applicant should include the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they would be identified and their cooperation obtained; and how the program or procedures would be implemented and monitored.

(d) *For technical assistance projects,* the applicant should explain the types of assistance that would be provided; the particular issues and problems for which assistance would be provided; how requests would be obtained and the type of assistance determined; how suitable providers would be selected and briefed; how reports would be reviewed; and the cost to recipients.

(2) *Evaluation.* Every project must include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology, or services tested; or the validity and applicability of the research conducted. In addition, where appropriate, the evaluation process should be designed to provide ongoing or periodic feedback on the effectiveness or utility of the project in order to promote its continuing improvement. The plan should present the qualifications of the evaluator(s); describe the criteria that would be used to evaluate the project's effectiveness in meeting its objectives; explain how the evaluation would be conducted, including the specific data collection and analysis techniques to be used; discuss why this approach would be appropriate; and present a schedule for completion of the evaluation within the proposed project period.

The evaluation plan should be appropriate to the type of project proposed. For example:

(a) *Research*. An evaluation approach suited to many research projects is a review by an advisory panel of the research methodology, data collection instruments, preliminary analyses, and products as they are drafted. The panel should be comprised of independent researchers and practitioners representing the perspectives affected by the proposed project.

(b) *Education and Training*. The most valuable approaches to evaluating educational or training programs reinforce the participants' learning experience while providing useful feedback on the impact of the program and possible areas for improvement. One appropriate evaluation approach is to assess the acquisition of new knowledge, skills, attitudes, or understanding through participant feedback on the seminar or training event. Such feedback might include a self-assessment of what was learned along with the participant's response to the quality and effectiveness of faculty presentations, the format of sessions, the value or usefulness of the material presented, and other relevant factors. Another appropriate approach would be to use an independent observer who might request both verbal and written responses from participants in the program. When an education project involves the development of curricular materials, an advisory panel of relevant experts can be coupled with a test of the curriculum to obtain the reactions of participants and faculty as indicated above.

(c) *Demonstration*. The evaluation plan for a demonstration project should encompass an assessment of program effectiveness (*e.g.*, how well did it work?); user satisfaction, if appropriate; the cost-effectiveness of the program; a process analysis of the program (*e.g.*, was the program implemented as designed, and/or did it provide the services intended to the targeted population?); the impact of the program (*e.g.*, what effect did the program have on the court, and/or what benefits resulted from the program?); and the replicability of the program or components of the program.

(d) *Technical Assistance*. For technical assistance projects, applicants should explain how the quality, timeliness, and impact of the assistance provided would be determined, and develop a mechanism for feedback from both the users and providers of the technical assistance.

Evaluation plans involving human subjects should include a discussion of the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and protecting others who are not the subjects of the evaluation but would be affected by it. Other than the provision of confidentiality to respondents, human subject protection issues ordinarily are not applicable to participants evaluating an education program.

e. *Project Management*. The applicant should present a detailed management plan, including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that would ensure that all tasks are performed on time, within budget, and at the highest level of quality. In preparing the project time line, Gantt Chart, or schedule, applicants should make certain that all project activities, including publication or reproduction of project products and their initial dissemination, would occur within the proposed project period. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days after the close of each calendar quarter (*i.e.*, no later than January 30, April 30, July 30, and October 30).

Applicants should be aware that the Institute is unlikely to approve more than one limited extension of the grant period. Therefore, the management plan should be as realistic as possible and fully reflect the time commitments of the proposed project staff and consultants.

f. *Products*. The program narrative in the application should contain a description of the products to be developed (*e.g.*, training curricula and materials, videotapes, articles, manuals, or handbooks), including when they would be submitted to the Institute. The budget should include the cost of producing and disseminating the product to each in-State SJI library (*See* appendix C), State chief justice, State court administrator, and other appropriate judges or court personnel.

(1) *Dissemination Plan*. The application must explain how and to whom the products would be disseminated; describe how they would benefit the State courts, including how they could be used by judges and court personnel; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant would be offered to the courts community and the public at large (*i.e.*, whether products would be distributed at no cost to recipients, or if costs are involved, the reason for charging recipients and the estimated price of the product) (*see* section VIII.A.11.b.). Ordinarily, applicants should schedule all product preparation and distribution activities within the project period.

A copy of each product must be sent to the library established in each State to collect the materials developed with Institute support. (A list of these libraries is contained in appendix C.) Applicants proposing to develop web-based products should provide for sending a hard-copy document to the SJI-designated libraries and other appropriate audiences to alert them to the availability of the web site or electronic product (*i.e.*, a written report with a reference to the web site).

Fifteen (15) copies of all project products must be submitted to the Institute, along with an electronic version in .html or .pdf format.

(2) *Types of Products and Press Releases*. The type of product to be prepared depends on the nature of the project. For example, in most instances, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that would be disseminated to the project's primary audience, or both. Applicants proposing to conduct empirical research or evaluation projects with national import should describe how they would make their data available for secondary analysis after the grant period. (*See* section VIII.A.14.a.).

The curricula and other products developed through education and training projects should be designed for use outside the classroom so that they may be used again by the original participants and others in the course of their duties.

In addition, recipients of project grants must prepare a press release describing the project and announcing the results, and distribute the release to a list of national and State judicial branch organizations. SJI will provide press release guidelines and a list of recipients to grantees at least 30 days before the end of the grant period.

(3) *Institute Review*. Applicants must submit a final draft of all written grant products to the Institute for review and approval at least 30 days before the products are submitted for publication or reproduction. For products in a videotape or CD-ROM format, applicants must provide for Institute review of the product at the treatment, script, rough-cut, and final stages of

development, or their equivalents. No grant funds may be obligated for publication or reproduction of a final grant product without the written approval of the Institute. (*See* section VIII.A.11.e.)

(4) *Acknowledgment, Disclaimer, and Logo.* Applicants must also include in all project products a prominent acknowledgment that support was received from the Institute and a disclaimer paragraph based on the example provided in section VIII.A.11.a.(2) of the Guideline. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video, unless the Institute approves another placement.

g. *Applicant Status.* An applicant that is not a State or local court and has not received a grant from the Institute within the past three years should state whether it is either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments, or a national non-profit organization for the education and training of State court judges and support personnel. *See* section IV. If the applicant is a nonjudicial unit of Federal, State, or local government, it must explain whether the proposed services could be adequately provided by non-governmental entities.

h. *Staff Capability.* The applicant should include a summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that would be used to select persons for these positions should be included. The applicant also should identify the person who would be responsible for managing and reporting on the financial aspects of the proposed project.

i. *Organizational Capacity.* Applicants that have not received a grant from the Institute within the past three years should include a statement describing their capacity to administer grant funds, including the financial systems used to monitor project expenditures (and income, if any), and a summary of their past experience in administering grants, as well as any resources or capabilities that they have that would particularly assist in the successful completion of the project.

Unless requested otherwise, an applicant that has received a grant from the Institute within the past three years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax-exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, "current" means no earlier than two years prior to the present calendar year.

If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire, which must be signed by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

j. *Statement of Lobbying Activities.* Non-governmental applicants must submit the Institute's Disclosure of Lobbying Activities Form, which documents whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on any issue, and identifies the specific subjects of their lobbying efforts. *See* appendix F.

k. *Letters of Cooperation or Support.* If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, the applicant should attach written assurances of cooperation and availability to the application, or send them under separate cover. To ensure sufficient time to bring them to the Board's attention, letters of support sent under separate cover must be received by March 15, 2004.

4. Budget Narrative

The budget narrative should provide the basis for the computation of all project-related costs. When the proposed project would be partially supported by grants from other funding sources, applicants should make clear what costs would be covered by those other grants. Additional background or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should cover the costs of all components of the project and clearly identify costs attributable to the project evaluation. Under OMB grant guidelines incorporated by reference in this Guideline, grant funds may not be used to purchase alcoholic beverages.

a. *Justification of Personnel Compensation.* The applicant should set forth the percentages of time to be devoted by the individuals who would staff the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rates of those individuals. The applicant should explain any deviations from current rates or established written organizational policies. If grant funds are requested to pay the salary and related costs for a current employee of a court or other unit of government, the applicant should explain why this would not constitute a supplantation of State or local funds in violation of 42 U.S.C. 10706(d)(1). An acceptable explanation may be that the position to be filled is a new one established in conjunction with the project or that the grant funds would support only the portion of the employee's time that would be dedicated to new or additional duties related to the project.

b. *Fringe Benefit Computation.* The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented, as well as a description of the elements included in the determination of the percentage rate.

c. *Consultant/Contractual Services and Honoraria.* The applicant should describe the tasks each consultant would perform, the estimated total amount to be paid to each consultant, the basis for compensation rates (e. *g.*, the number of days multiplied by the daily consultant rates), and the method for selection. Rates for consultant services must be set in accordance with section IX.I.2.c. Prior written Institute approval is required for any consultant rate in excess of $300 per day; Institute funds may not be used to pay a consultant more than $900 per day. Honorarium payments must be justified in the same manner as consultant payments.

d. *Travel.* Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates must be consistent with those established by the Institute or the Federal Government. (A copy of the Institute's travel policy is available upon request.) The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose of the travel should also be included in the narrative.

e. *Equipment.* Grant funds may be used to purchase only the equipment necessary to demonstrate a new technological application in a court or that is otherwise essential to accomplishing the objectives of the project. Equipment purchases to support basic court operations ordinarily will not be approved. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases of automated data processing equipment must comply with section IX.I.2.b.

f. *Supplies.* The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the basis for the amount requested for this expenditure category.

g. *Construction.* Construction expenses are prohibited except for the limited purposes set forth in section VIII.A.16.b. Any allowable construction or renovation expense should be described in detail in the budget narrative.

h. *Telephone.* Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used to calculate the monthly and long distance estimates.

i. *Postage.* Anticipated postage costs for project-related mailings, including distribution of the final product(s), should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the budget narrative.

j. *Printing/Photocopying.* Anticipated costs for printing or photocopying project documents, reports, and publications should be included in the budget narrative, along with the bases used to calculate these estimates.

k. *Indirect Costs.* Recoverable indirect costs are limited to no more than 75% of a grantee's direct personnel costs (salaries plus fringe benefits). Grantees may apply unrecoverable indirect costs to meet their required matching contributions, including the required level of cash match. *See* sections III.L. and IX.I.4.

Applicants should describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (*e.g.*, a percentage of the time of senior managers to supervise project activities), the applicant should specify that these costs are not included within its approved indirect cost rate. These rates must be established in accordance with section IX.I.4. If the applicant has an indirect cost rate or allocation plan approved by any Federal granting agency, a copy of the approved rate agreement should be attached to the application.

l. *Match.* Courts or other units of State or local government (not including publicly supported institutions of higher education) must provide a match from private or public sources of not less than 50% of the total amount of the Institute's award. 42 U.S.C. 10705(d). At least 20% of the required match for a new grant to a court or other unit of State or local government (other than a Judicial Branch Education Technical Assistance grant) must be cash. All other grantees (except scholarship recipients and individuals receiving "think piece" grants) must contribute a match of 25% to a new grant; at least 10% of the required match must be cash.

The applicant should describe the source of the matching contribution and the nature of the match provided. Any additional cash and in-kind contributions to the project should be described in this section of the budget narrative as well. If in-kind match is to be provided, the applicant should describe how the amount and value of the time, services, or materials actually contributed would be documented for audit purposes. Applicants should be aware that the time spent by participants in education courses does not qualify as in-kind match.

Applicants that do not contemplate making matching contributions continuously throughout the course of the project or on a task-by-task basis must provide a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions would be made. (*See* sections III.L., VIII.A.8., and IX.E.1.)

The Institute may waive the match and cash match requirements in certain circumstances. *See* section VIII.A.8.c.

5. Submission Requirements

a. Every applicant must submit an original and four copies of the application package consisting of FORM A; FORM B, if the application is from a State or local court, or a Disclosure of Lobbying Form, if the applicant is not a unit of State or local government; the Budget Forms (either FORM C or C–1); the Application Abstract; the Program Narrative; the Budget Narrative; and any necessary appendices.

All applications must be sent by first class or overnight mail or by courier no later than February 13, 2004. A postmark or courier receipt will constitute evidence of the submission date. Please mark APPLICATION on the application package envelope and send it to: State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

Receipt of each application will be acknowledged in writing. Extensions of the deadline for submission of applications will not be granted without good cause.

b. Applicants submitting more than one application may include material that would be identical in each application in a cover letter. This material will be incorporated by reference into each application and counted against the 25-page limit for the program narrative. A copy of the cover letter should be attached to each copy of each application.

### B. "Think Piece" Applications

1. Purpose and Scope

"Think pieces" are essays of publishable quality directed to the court community. They are intended to explore emerging issues that could result in significant changes in court process or judicial administration and their implications for the future for judges, court managers, policy-makers, and the public.

2. Forms

An application for a "think piece" must include the same forms required for a project grant. *See* A.1. above in this section.

3. Program Narrative

The program narrative should be no longer than necessary, but must not exceed 8 double-spaced pages on 8½ by 11 inch paper. Margins must be at least 1 inch and type size must be at least 12 point and 12 cpi. The pages should be numbered. The narrative should:

a. Identify the specific Special Interest category into which the "think piece" would fall;

b. describe the subject it would address;

c. explain how the essay would advance the current state of the art or knowledge about the subject;

d. discuss the benefits that would accrue to the State courts generally as a result of the essay's publication; and

e. outline plans for the publication of the "think piece," *e.g.*, the intended audience, and the types or titles of periodicals or journals to which it would be submitted.

### 4. Budget and Budget Narrative

The applicant should provide a complete budget and budget narrative conforming to the requirements set forth in A.4. above in this section; however, individuals proposing to develop "think pieces" are not required to provide match.

### 5. Submission Requirements

The submission requirements set forth in section VI.A.5 apply to all "think piece" applications.

## *C. Continuation Grant Applications*

### 1. Purpose

Continuation grants are intended to support projects that carry out the same type of activities carried out under a previous grant. They are intended to enhance the specific program or service produced or established during the prior grant period. They may be used, for example, when a project is divided into two or more sequential phases, for secondary analysis of data obtained in an Institute-supported research project, or for more extensive testing of an innovative technology, procedure, or program developed with SJI grant support.

### 2. Limitations

The award of an initial grant to support a project does not constitute a commitment by the Institute to continue funding. For a project to be considered for continuation funding, the grantee must have completed all project tasks and met all grant requirements and conditions in a timely manner, absent extenuating circumstances or prior Institute approval of changes to the project design. Continuation grants are not intended to provide support for a project for which the grantee has underestimated the amount of time or funds needed to accomplish the project tasks. Absent extraordinary circumstances, no grant will continue for more than five years.

### 3. Letters of Intent

A grantee seeking a continuation grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for continued funding becomes apparent but no less than 120 days before the end of the current grant period.

a. A letter of intent must be no more than 3 single-spaced pages on 8½ by 11 inch paper and contain a concise but thorough explanation of the need for continuation; an estimate of the funds to be requested; and a brief description of anticipated changes in the scope, focus, or audience of the project.

b. Within 30 days after receiving a letter of intent, Institute staff will review the proposed activities for the next project period and inform the grantee of specific issues to be addressed in the continuation application and the date by which the application must be submitted.

### 4. Application Format

An application for a continuation grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in A.2. of this section, a program narrative, a budget narrative, a Certificate of State Approval—FORM B (if the applicant is a State or local court), a Disclosure of Lobbying Activities form (from applicants other than units of State or local government), and any necessary appendices. *See* appendix F for the application forms.

The program narrative should conform to the length and format requirements set forth in section VI.A.3. However, rather than the topics listed there, the program narrative of a continuation application should include:

a. *Project Objectives.* The applicant should clearly and concisely state what the continuation project is intended to accomplish.

b. *Need for Continuation.* The applicant should explain why continuation of the project is necessary to achieve the goals of the project, and how the continuation would benefit the participating courts or the courts community generally, by explaining, for example, how the original goals and objectives of the project would be unfulfilled if it were not continued; or how the value of the project would be enhanced by its continuation.

c. *Report of Current Project Activities.* The applicant should discuss the status of all activities conducted during the previous project period. Applicants should identify any activities that were not completed, and explain why.

d. *Evaluation Findings.* The applicant should present the key findings, impact, or recommendations resulting from the evaluation of the project, if available, and how they would be addressed during the proposed continuation. If the findings are not yet available, the applicant should provide the date by which they would be submitted to the Institute. Ordinarily, the Board will not consider an application for continuation funding until the Institute has received the evaluator's report.

e. *Tasks, Methods, Staff, and Grantee Capability.* The applicant should fully describe any changes in the tasks to be performed, the methods to be used, the products of the project, and how and to whom those products would be disseminated, as well as any changes in the assigned staff or the grantee's organizational capacity. Applicants should include, in addition, the criteria and methods by which the proposed continuation project would be evaluated.

f. *Task Schedule.* The applicant should present a detailed task schedule and timeline for the next project period.

g. *Other Sources of Support.* The applicant should indicate why other sources of support would be inadequate, inappropriate, or unavailable.

### 5. Budget and Budget Narrative

a. *Institute Funds.* The applicant should provide a complete budget and budget narrative conforming to the requirements set forth in VI.A.4. above. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. In addition, the applicant should estimate the amount of grant funds that would remain unobligated at the end of the current grant period.

b. *Matching Contribution.*

i. *State and local units of government* must provide match equaling at least 50% of the amount provided by the Institute in the first year of the project, 60% in the second year, 75% in the third year, 90% in the fourth year, and 100% in the fifth year.

For example, if the Institute awards a State court $100,000 for the first year of a grant, the court would be required to provide $50,000 in match. If the second-year grant is also $100,000, the court would be required to provide $60,000 in match. A State or local unit of government would have to provide at least 20% of the required match in the form of cash rather than in-kind support (*e.g.*, the value of staff time contributed to the project).

ii. *All other grantees* must provide match equaling at least 25% of the amount provided by the Institute in the first year of the project, 30% in the second year, 37.5% in the third year, 45% in the fourth year, and 50% in the fifth year. For example, if the Institute awards a non-profit organization $100,000 for the first year of a grant, the organization would be required to provide $25,000 in match. If the second year grant is also $100,000, the court would be required to provide $30,000 in match. A non-profit organization must provide at least 10% of the required match in the form of cash.

iii. The Institute may waive the match and cash match requirements in certain circumstances. *See* section VIII.A.8.c.

6. References to Previously Submitted Material

A continuation application should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

7. Submission Requirements

The submission requirements set forth in section VI.A.5., other than the mailing deadline, apply to continuation applications.

*D. Technical Assistance Grants*

1. Purpose and Scope

Technical Assistance Grants are awarded to State and local courts to obtain the assistance of outside experts in diagnosing, developing, and implementing a response to a particular problem in a jurisdiction.

2. Application Procedures.

For a summary of the application procedures for Technical Assistance Grants, visit the Institute's Web site (*www.statejustice.org*) and click On-Line Tutorials, then Technical Assistance Grant.

In lieu of formal applications, applicants for Technical Assistance Grants may submit, at any time, an original and three copies of a detailed letter describing the proposed project. Letters from an individual trial or appellate court must be signed by the presiding judge or manager of that court. Letters from the State court system must be signed by the Chief Justice or State Court Administrator.

3. Application Format

Although there is no prescribed form for the letter nor a minimum or maximum page limit, letters of application should include the following information:

a. *Need for Funding.* What is the critical need facing the court? How would the proposed technical assistance help the court meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

b. *Project Description.* What tasks would the consultant be expected to perform, and how would they be accomplished? Which organization or individual would be hired to provide the assistance, and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant? (Applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services.) What specific tasks would the consultant(s) and court staff undertake? What is the schedule for completion of each required task and the entire project? How would the court oversee the project and provide guidance to the consultant, and who at the court would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time frame and for the proposed cost. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

c. *Likelihood of Implementation.* What steps have been or would be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the changes recommended by the consultant and approved by the court, how would they be involved in the review of the recommendations and development of the implementation plan?

d. *Support for the Project from the State Supreme Court or its Designated Agency or Council.* Written concurrence on the need for the technical assistance must be submitted. This concurrence may be a copy of SJI Form B (see Appendix F) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

4. Budget and Matching State Contribution

A completed Form E, *Line-Item Budget Form* (*see* appendix G), and budget narrative must be included with the letter requesting technical assistance. The estimated cost of the technical assistance services should be broken down into the categories listed on the budget form rather than aggregated under the Consultant/Contractual category.

The budget narrative should provide the basis for all project-related costs, including the basis for determining the estimated consultant costs, if compensation of the consultant is required (*e.g.*, the number of days per task times the requested daily consultant rate). Applicants should be aware that consultant rates above $300 per day must be approved in advance by the Institute, and that no consultant will be paid more than $900 per day from Institute funds. In addition, the budget should provide for submission of two copies of the consultant's final report to the Institute.

As with other awards to State or local courts, match must be provided in an amount equal to at least 50% of the grant amount requested, and 20% of the match provided must be cash. The Institute may waive the match and cash match requirements in certain circumstances. *See* section VIII.A.8.c.

Recipients of Technical Assistance Grants do not have to submit an audit but must maintain appropriate documentation to support expenditures. (*See* section VIII.A.3.)

5. Submission Requirements

Letters of application may be submitted at any time; however, all of the letters received during a calendar quarter will be considered at one time. Applicants submitting letters by September 26, 2003 will be notified of the Board's decision by December 5, 2003. Those submitting letters between September 27, 2003 and January 9, 2004 will be notified of the Institute's decision by April 2, 2004; those submitting letters between January 10 and February 27, 2004 will be notified by June 11, 2004; those submitting letters between February 28 and June 4, 2004 will be notified by August 27, 2004; and those submitting letters between June 5 and September 24, 2004 will be notified by December 10, 2004.

If the support or cooperation of agencies, funding bodies, organizations, or courts other than the applicant would be needed in order for the consultant to perform the required tasks, written assurances of such support or cooperation should accompany the application letter. Support letters also may be submitted under separate cover; however, to ensure that there is sufficient time to bring them to the attention of the Board's Technical Assistance Committee, letters sent under separate cover must be received not less than three weeks prior to the Board meeting at which the technical assistance requests will be considered (*i.e.*, by October 15, 2003; and February 12, April 8, July 2, and October 14, 2004).

### *E. Judicial Branch Education Technical Assistance Grants*

#### 1. Purpose and Scope

Judicial Branch Education Technical Assistance (JBE TA) Grants are awarded to State and local courts to support: (1) The provision of expert strategic assistance designed to enable them to maintain judicial branch education programming during the current budget crisis; and/or (2) replication or modification of a model training program originally developed with Institute funds. Ordinarily, the Institute will support the adaptation of a curriculum once (*i.e.*, with one grant) in a given State.

JBE TA Grants may support consultant assistance in maintaining or developing systematic or innovative judicial branch educational programming. The assistance might include expert consultation in developing strategic plans to ensure the continued provision of judicial branch education programming despite fiscal constraints; development of improved methods for assessing the need for, and evaluating the quality and impact of, court education programs and their administration by State or local courts; faculty development; and/or topical program presentations. Such assistance may be tailored to address the needs of a particular State or local court or specific categories of court employees throughout a State and, in certain cases, in a region, if sponsored by a court.

#### 2. Application Procedures

For a summary of the application procedures for Judicial Branch Education Technical Assistance Grants, visit the Institute's Web site (*www.statejustice.org*) and click on On-Line Tutorials, then Judicial Branch Education Technical Assistance Grant.

In lieu of formal applications, applicants should submit an original and three photocopies of a detailed letter.

#### 3. Application Format

Although there is no prescribed format for the letter, or a minimum or maximum page limit, letters of application should include the following information:

a. For on-site consultant assistance:

(1) *Need for Funding.* What is the critical judicial branch educational need facing the court? How would the proposed technical assistance help the court meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

(2) *Project Description.* What tasks would the consultant be expected to perform, and how would they be accomplished? Which organization or individual would be hired to provide the assistance, and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant? (Applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services.) What specific tasks would the consultant(s) and court staff undertake? What is the schedule for completion of each required task and the entire project? How would the court oversee the project and provide guidance to the consultant, and who at the court would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time frame and for the proposed cost. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

(3) *Likelihood of Implementation.* What steps have been or would be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the changes recommended by the consultant and approved by the court, how would they be involved in the review of the recommendations and development of the implementation plan?

(4) *Support for the Project from the State Supreme Court or its Designated Agency or Council.* Written concurrence on the need for the technical assistance must be submitted. This concurrence may be a copy of SJI Form B (see Appendix F) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

b. For adaptation of a curriculum:

(1) *Project Description.* What is the title of the model curriculum to be adapted and who originally developed it with Institute funding? Why is this education program needed at the present time? What are the project's goals? What are the learning objectives of the adapted curriculum? What program components would be implemented, and what types of modifications, if any, are anticipated in length, format, learning objectives, teaching methods, or content? Who would be responsible for adapting the model curriculum? Who would the participants be, how many would there be, how would they be recruited, and from where would they come (*e.g.*, from across the State, from a single local jurisdiction, from a multi-State region)?

(2) *Need for Funding.* Why are sufficient State or local resources unavailable to fully support the modification and presentation of the model curriculum? What is the potential for replicating or integrating the adapted curriculum in the future using State or local funds, once it has been successfully adapted and tested?

(3) *Likelihood of Implementation.* What is the proposed timeline, including the project start and end dates? On what date(s) would the judicial branch education program be presented? What process would be used to modify and present the program? Who would serve as faculty, and how were they selected? What measures would be taken to facilitate subsequent presentations of the program? (Ordinarily, an independent evaluation of a curriculum adaptation project is not required; however, the results of any evaluation should be included in the final report.)

(4) *Expressions of Interest by Judges and/or Court Personnel.* Does the proposed program have the support of the court system leadership, and of judges, court managers, and judicial branch education personnel who are expected to attend? (Applicants may demonstrate this by attaching letters of support.)

(5) *Chief Justice's Concurrence.* Local courts should attach a concurrence form signed by the Chief Justice of the State

or his or her designee. (*See* Form B, appendix F.)

### 4. Budget and Matching State Contribution

Applicants should attach a copy of budget Form E (*see* appendix G) and a budget narrative (*see* A.4. in this section) that describes the basis for the computation of all project-related costs and the source of the match offered. As with other awards to State or local courts, match must be provided in an amount equal to at least 50% of the grant amount requested. Recipients of JBE TA grants are not required to provide a cash match. The Institute may waive the match requirements in certain circumstances. *See* section VIII.A.8.c.

### 5. Submission Requirements

Letters of application may be submitted at any time; however, all of the letters received during a calendar quarter will be considered at one time. Applicants submitting letters by September 26, 2003 will be notified of the Board's decision by December 5, 2003. Those submitting letters between September 27, 2003, and January 9, 2004 will be notified of the Institute's decision by April 2, 2004; those submitting letters between January 10 and February 27, 2004 will be notified by June 11, 2004; those submitting letters between March 1 and June 4, 2004 will be notified by August 27, 2004; and those submitting letters between June 5 and September 24, 2004 will be notified by December 10, 2004.

For curriculum adaptation requests, applicants should allow at least 60 days between the notification deadline and the date of the proposed program to allow sufficient time for needed planning. For example, a court that plans to conduct an education program in June 2004 should submit its application no later than January 9, 2004, in time for the Board's decision by April 2, 2004.

## *F. Scholarships*

### 1. Purpose and Scope

The purposes of the Institute scholarship program are to enhance the skills, knowledge, and abilities of judges and court managers; enable State court judges and court managers to attend out-of-State educational programs sponsored by national and State providers that they could not otherwise attend because of limited State, local, and personal budgets; and provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court-related education programs.

Scholarships will be granted to individuals only for the purpose of attending an educational program in another State. An applicant may apply for a scholarship for only one educational program during any one application cycle.

Scholarship funds may be used only to cover the costs of tuition and transportation expenses. Transportation expenses may include round-trip coach airfare or train fare. Scholarship recipients are strongly encouraged to take advantage of excursion or other special airfares (*e.g.*, reductions offered when a ticket is purchased 21 days in advance of the travel date) when making their travel arrangements. Recipients who drive to a program site may receive $.36/mile up to the amount of the advanced-purchase round-trip airfare between their homes and the program sites. Funds to pay tuition and transportation expenses in excess of $1,500 and other costs of attending the program—such as lodging, meals, materials, transportation to and from airports, and local transportation (including rental cars)—at the program site must be obtained from other sources or borne by the scholarship recipient. Scholarship applicants are encouraged to check other sources of financial assistance and to combine aid from various sources whenever possible.

A scholarship is not transferable to another individual. It may be used only for the course specified in the application unless the applicant's request to attend a different course that meets the eligibility requirements is approved in writing by the Institute. Decisions on such requests will be made within 30 days after the receipt of the request letter.

### 2. Eligibility Requirements

For a summary of the Scholarship award process, visit the Institute's Web site at *www.statejustice.org* and click on On-Line Tutorials, then Scholarship.

a. *Recipients.* Scholarships can be awarded only to full-time judges of State or local trial and appellate courts; full-time professional, State, or local court personnel with management responsibilities; and supervisory and management probation personnel in judicial branch probation offices. Senior judges, part-time judges, quasi-judicial hearing officers including referees and commissioners, administrative law judges, staff attorneys, law clerks, line staff, law enforcement officers, and other executive branch personnel are not eligible to receive a scholarship.

b. *Courses.* A Scholarship can be awarded only for a course presented in a State other than the one in which the applicant resides or works. The course must be designed to enhance the skills of new or experienced judges and court managers; address any of the topics listed in the Institute's Special Interest categories; or be offered by a recognized graduate program for judges or court managers. The annual or mid-year meeting of a State or national organization of which the applicant is a member does not qualify as an out-of-State educational program for scholarship purposes, even though it may include workshops or other training sessions.

Applicants are encouraged not to wait for the decision on a scholarship to register for an educational program they wish to attend.

### 3. Forms

a. *Scholarship Application—FORM S–1 (Appendix H).* The Scholarship Application requests basic information about the applicant and the educational program the applicant would like to attend. It also addresses the applicant's commitment to share the skills and knowledge gained with local court colleagues and to submit an evaluation of the program the applicant attends. The Scholarship Application must bear the original signature of the applicant. Faxed or photocopied signatures will not be accepted.

b. *Scholarship Application Concurrence—FORM S–2 (Appendix H).* Judges and court managers applying for Scholarships must submit the written concurrence of the Chief Justice of the State's Supreme Court (or the Chief Justice's designee) on the Institute's Judicial Education Scholarship Concurrence form (see Appendix H). The signature of the presiding judge of the applicant's court cannot be substituted for that of the Chief Justice or the Chief Justice's designee. Court managers, other than elected clerks of court, also must submit a letter of support from their immediate supervisors.

### 4. Submission Requirements

Scholarship applications must be submitted during the periods specified below:

October 6 and December 1, 2003, for programs beginning between January 1 and March 31, 2004;

January 5 and March 1, 2004 for programs beginning between April 1 and June 30, 2004;

April 5 and May 31, 2004 for programs beginning between July 1 and September 30, 2004;

July 6 and August 30, 2004 for programs beginning between October 1 and December 31, 2004; and

October 4 and November 29, 2004 for programs beginning between January 1 and March 31, 2005.

No exceptions or extensions will be granted. Applications sent prior to the beginning of an application period will be treated as having been sent one week after the beginning of that application period. All the required items must be received for an application to be considered. If the Concurrence form or letter of support is sent separately from the application, the postmark date of the last item to be sent will be used in applying the above criteria.

All applications should be sent by mail or courier (not fax or e-mail) to: Scholarship Program Coordinator, State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

## VII. Application Review Procedures

### *A. Preliminary Inquiries*

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter acknowledging receipt of the application.

### *B. Selection Criteria*

### 1. Project Grant and Continuation Grant Applications

a. All applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

(1) The soundness of the methodology;

(2) The demonstration of need for the project;

(3) The appropriateness of the proposed evaluation design;

(4) The applicant's management plan and organizational capabilities;

(5) The qualifications of the project's staff;

(6) The products and benefits resulting from the project, including the extent to which the project will have long-term benefits for State courts across the nation;

(7) The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions;

(8) The reasonableness of the proposed budget;

(9) The demonstration of cooperation and support of other agencies that may be affected by the project; and

(10) The proposed project's relationship to one of the Special Interest categories set forth in section II.A.

b. For continuation grant applications, the key findings and recommendations of evaluations and the proposed responses to those findings and recommendations also will be considered.

c. In determining which projects to support, the Institute will also consider whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or other type of entity eligible to receive grants under the Institute's enabling legislation (*see* section IV.); the availability of financial assistance from other sources for the project; the amount and nature (cash and in-kind) of the applicant's match; the extent to which the proposed project would also benefit the Federal courts or help State courts enforce Federal constitutional and legislative requirements; and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

### 2. Technical Assistance Grant Applications

Technical Assistance Grant applications will be rated on the basis of the following criteria:

a. Whether the assistance would address a critical need of the court;

b. The soundness of the technical assistance approach to the problem;

c. The qualifications of the consultant(s) to be hired, or the specific criteria that will be used to select the consultant(s);

d. The court's commitment to act on the consultant's recommendations; and

e. The reasonableness of the proposed budget.

The Institute also will consider factors such as the level and nature of the match that would be provided, diversity of subject matter, geographic diversity, the level of appropriations available to the Institute in the current year, and the amount expected to be available in succeeding fiscal years.

### 3. Judicial Branch Education Technical Assistance Grant Applications

Judicial Branch Education Technical Assistance Grant applications will be rated on the basis of the following criteria:

a. For on-site consultant assistance:

(1) Whether the assistance would address a critical need of the court;

(2) The soundness of the technical assistance approach to the problem;

(3) The qualifications of the consultant(s) to be hired, or the specific criteria that will be used to select the consultant(s);

(4) The court's commitment to act on the consultant's recommendations; and

(5) The reasonableness of the proposed budget.

b. For curriculum adaptation projects:

(1) The goals and objectives of the proposed project;

(2) The need for outside funding to support the program;

(3) The appropriateness of the approach in achieving the project's educational objectives;

(4) The likelihood of effective implementation and integration of the modified curriculum into the State's or local jurisdiction's ongoing educational programming; and

(5) Expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project.

The Institute will also consider factors such as the reasonableness of the amount requested, compliance with match requirements, diversity of subject matter, geographic diversity, the level of appropriations available in the current year, and the amount expected to be available in succeeding fiscal years.

### 4. Scholarships

Scholarships will be awarded on the basis of:

a. The date on which the application and concurrence (and support letter, if required) were sent;

b. The unavailability of State or local funds to cover the costs of attending the program or scholarship funds from another source;

c. The absence of educational programs in the applicant's State addressing the topic(s) covered by the educational program for which the scholarship is being sought;

d. Geographic balance among the recipients;

e. The balance of scholarships among educational programs;

f. The balance of scholarships among the types of courts represented; and

g. The level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

The postmark or courier receipt will be used to determine the date on which the application form and other required items were sent.

### *C. Review and Approval Process*

### 1. Project and Continuation Grant Applications

The Institute's Board of Directors will review the applications competitively. The Institute staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion for applications that fall within the scope of the Institute's grant program and merit serious consideration by the Board. The staff will also prepare a list of those applications that, in the judgment of the Executive Director, propose projects that lie outside the scope of the Institute's program or are not likely to merit serious consideration by the Board. The staff will present the narrative summaries, rating sheets, and list of non-reviewed papers to the Board for its review. Board committees will review application summaries within assigned program areas and prepare recommendations for the full Board. The full Board of Directors will then decide which projects it will fund. The decision to fund a project is solely that of the Board of Directors.

The Chairman of the Board will sign approved awards on behalf of the Institute.

2. Technical Assistance and Judicial Branch Education Technical Assistance Grant Applications

The Institute staff will prepare a narrative summary of each application and a rating sheet assigning points for each relevant selection criterion. A committee of the Board of Directors will review the applications competitively. The Board of Directors has delegated its authority to approve Technical Assistance and Judicial Branch Education Technical Assistance Grants to the committee established for each program.

The Chairman of the Board will sign approved awards on behalf of the Institute.

3. Scholarships

A committee of the Institute's Board of Directors will review Scholarship applications quarterly. The Board of Directors has delegated its authority to approve Scholarships to the committee established for the program.

The Chairman of the Board will sign approved awards on behalf of the Institute.

*D. Return Policy*

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

*E. Notification of Board Decision*

1. The Institute will send written notice to applicants concerning all Board decisions to approve, defer, or deny their respective applications. For all applications (except Scholarships), the Institute also will convey the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but it does not prohibit resubmission of a proposal based on that application in a subsequent funding cycle. The Institute will also notify the State court administrator when grants are approved by the Board to support projects that will be conducted by or involve courts in that State.

2. The Institute intends to notify each Scholarship applicant of the Board committee's decision within 30 days after the close of the relevant application period.

*F. Response to Notification of Approval*

With the exception of those approved for Scholarships, applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) have not been submitted to the Institute within 30 days after notification, the approval may be rescinded and the application presented to the Board for reconsideration.

## VIII. Compliance Requirements

The State Justice Institute Act contains limitations and conditions on grants, contracts, and cooperative agreements awarded by the Institute. The Board of Directors has approved additional policies governing the use of Institute grant funds. These statutory and policy requirements are set forth below.

*A. Recipients of Project Grants*

1. Advocacy

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

2. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, the recipient must submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

3. Audit

Recipients of project grants must provide for an annual fiscal audit which includes an opinion on whether the financial statements of the grantee present fairly its financial position and its financial operations are in accordance with generally accepted accounting principles. (See section IX.K. of the Guideline for the requirements of such audits.) Scholarship recipients and recipients of Solutions Project State Court Information Collection Grants, Judicial Branch Education Technical Assistance Grants, and Technical Assistance Grants are not required to submit an audit, but they must maintain appropriate documentation to support all expenditures.

4. Budget Revisions

Budget revisions among direct cost categories that (i) transfer grant funds to an unbudgeted cost category or (ii) individually or cumulatively exceed five percent of the approved original budget or the most recently approved revised budget require prior Institute approval.

5. Conflict of Interest

Personnel and other officials connected with Institute-funded programs must adhere to the following requirements:

a. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where, to his or her knowledge, he or she or his or her immediate family, partners, organization other than a public agency in which he or she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

b. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

(1) Using an official position for private gain; or

(2) affecting adversely the confidence of the public in the integrity of the Institute program.

c. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work, and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

6. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, February 18, 1983, and statement of Government Patent Policy).

7. Lobbying

a. Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive Orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

b. It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

8. Matching Requirements

All grantees other than scholarship recipients and individuals who receive "think piece" grants are required to provide match. See section III.L. for the definition of match. The amount and nature of required match depends on the type of organization receiving the grant and the duration of the Institute's support.

The grantee is responsible for ensuring that the total amount of match proposed is actually contributed. If a proposed contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see section IX.E.1.).

The Board of Directors considers the amount and nature of unrequired match contributed by applicants in making grant decisions. Cash match and non-cash match may be provided, subject to the requirements of subsections a. and b. below.

a. *New Project Grants.*

(1) *State and local units of government.* All awards to courts or other units of State or local government (not including publicly supported institutions of higher education) require a match from private or public sources of not less than 50% of the total amount of the Institute's award. For example, if a State court or executive branch agency receives a $100,000 grant from the Institute, it must provide a $50,000 match (50% of the $100,000 awarded by SJI). With the exception of Judicial Branch Education Technical Assistance Grants, at least 20% of the required match for a new grant ($10,000 in the example) must be provided in the form of cash rather than in-kind support (e.g., the value of staff time contributed to the project).

(2) *All other grantees.* All other grantees are required to contribute a match of 25% to a new SJI-funded project. For example, if a non-profit organization receives a $100,000 grant from SJI, it must provide a $25,000 match. A non-profit organization must provide at least 10% of the required match for a new grant ($2,500 in the example) in the form of cash.

b. *Continuation Grants.* All grantees are required to assume a greater share of project support over time.

(1) *State and local units of government.* State and local units of government are required to provide match equaling at least 50% of the amount provided by SJI in the first year of the project, 60% in the second year, 75% in the third year, 90% in the fourth year, and 100% in the fifth year. For example, if SJI awards a State court $100,000 for the first year of a grant, the court would be required to provide $50,000 in match. If the second-year grant is also $100,000, the court is required to provide $60,000 in match. A court that wishes to limit its second-year contribution to $50,000 may ask the Institute for a reduced amount, i.e., $83,333, in order to meet the 60% requirement.

(1) *All other grantees.* All other grantees are required to provide match equaling at least 25% of the amount provided by the Institute in the first year of the project, 30% in the second year, 37.5% in the third year, 45% in the fourth year, and 50% in the fifth year. For example, if the Institute awards a non-profit organization $100,000 for the first year of a grant, the organization must provide $25,000 in match. If the second-year grant is also $100,000, the grantee is required to provide $30,000 in match. An organization that wishes to limit its second-year contribution to $25,000 may ask the Institute for a reduced amount, i.e., $83,333, in order to meet the 30% requirement.

c. *Waiver.*

(1) *Match generally.*

(a) The match requirement for State and local units of government may be waived in exceptionally rare circumstances upon the request of the Chief Justice of the highest court in the State and approval by the Board of Directors. 42 U.S.C. 10705(d).

(b) The match requirement for all other grantees required to provide match may be waived in exceptionally rare circumstances upon the request of an appropriate official and approval by the Board of Directors

(2) *Cash match.* For all grantees required to provide cash match, the requirement may be waived upon the applicant's demonstration that providing the required cash match will cause the applicant a financial hardship.

(3) The Board of Directors encourages all applicants to provide the maximum amount of in-kind and cash match possible, even if a waiver is approved. The amount and nature of match are criteria in the grant selection process. *See* section VII.B.1.c.

9. Nondiscrimination

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds. Recipients of Institute funds must immediately take any measures necessary to effectuate this provision.

10. Political Activities

No recipient may contribute or make available Institute funds, program personnel, or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

11. Products

*a. Acknowledgment, Logo, and Disclaimer.*

(1) Recipients of Institute funds must acknowledge prominently on all products developed with grant funds that support was received from the Institute. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video product, unless another placement is approved in writing by the Institute. This includes final products printed or otherwise reproduced during the grant period, as well as reprintings or reproductions of those materials following the end of the grant period. A camera-ready logo sheet is available from the Institute upon request.

(2) Recipients also must display the following disclaimer on all grant products: "This [document, film, videotape, etc.] was developed under [grant/cooperative agreement] number SJI-[insert number] from the State Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute."

*b. Charges for Grant-Related Products/Recovery of Costs.*

(1) When Institute funds fully cover the cost of developing, producing, and disseminating a product (*e.g.*, a report, curriculum, videotape, or software), the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, or dissemination costs, the grantee may, with the Institute's prior written approval, recover its costs for developing, producing, and disseminating the material to those requesting it, to the extent that those costs were not covered by Institute funds or grantee matching contributions.

(2) Applicants should disclose their intent to sell grant-related products in the application. Grantees must obtain the written prior approval of the Institute of their plans to recover project costs through the sale of grant products. Written requests to recover costs ordinarily should be received during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. If the product is to be sold for more than $25, the written request also should include a detailed itemization of costs that will be recovered and a certification that the costs were not supported by either Institute grant funds or grantee matching contributions.

(3) In the event that the sale of grant products results in revenues that exceed the costs to develop, produce, and disseminate the product, the revenue must continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act that have been approved by the Institute. See sections III.O. and IX.G. for requirements regarding project-related income realized during the project period.

*c. Copyrights.* Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

*d. Distribution.* In addition to the distribution specified in the grant application, grantees shall send:

(1) Fifteen (15) copies of each final product developed with grant funds to the Institute, unless the product was developed under either a Technical Assistance or a Judicial Branch Education Technical Assistance grant, in which case submission of 2 copies is required;

(2) An electronic version of the product in .html or .pdf format to the Institute; and

(3) One copy of each final product developed with grant funds to the library established in each State to collect materials prepared with Institute support. (A list of the libraries is contained in appendix C. Labels for these libraries are available on the Institute's Web site, *www.statejustice.org*.) Grantees that develop web-based electronic products must send a hard-copy document to the SJI-designated libraries and other appropriate audiences to alert them to the availability of the Web site or electronic product. Recipients of Judicial Branch Education Technical Assistance and Technical Assistance Grants are not required to submit final products to State libraries.

(5) A press release describing the project and announcing the results to a list of national and State judicial branch organizations provided by the Institute.

*e. Institute Approval.* No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of the Institute. Grantees shall submit a final draft of each written product to the Institute for review and approval. The draft must be submitted at least 30 days before the product is scheduled to be sent for publication or reproduction to permit Institute review and incorporation of any appropriate changes required by the Institute. Grantees must provide for timely reviews by the Institute of videotape or CD–ROM products at the treatment, script, rough cut, and final stages of development or their equivalents.

*f. Original Material.* All products prepared as the result of Institute-supported projects must be originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

12. Prohibition Against Litigation Support

No funds made available by the Institute may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

13. Reporting Requirements

a. Recipients of Institute funds other than Scholarships must submit Quarterly Progress and Financial Status Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). Two copies of each report must be sent. The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period.

b. The quarterly Financial Status Report must be submitted in accordance with section IX.H.2. of this Guideline. A final project Progress Report and Financial Status Report shall be submitted within 90 days after the end of the grant period in accordance with section IX.L.1. of this Guideline.

14. Research

a. *Availability of Research Data for Secondary Analysis.* Upon request, grantees must make available for secondary analysis a diskette(s) or data tape(s) containing research and evaluation data collected under an Institute grant and the accompanying code manual. Grantees may recover the actual cost of duplicating and mailing or otherwise transmitting the data set and manual from the person or organization requesting the data. Grantees may provide the requested data set in the format in which it was created and analyzed.

b. *Confidentiality of Information.* Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

c. *Human Subject Protection.* All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

15. State and Local Court Applications

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The Supreme Court or its designee shall receive, administer, and be accountable for all funds awarded on the basis of such an application. 42 U.S.C. 10705(b)(4).

16. Supplantation and Construction

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

a. To supplant State or local funds supporting a program or activity (such as paying the salary of court employees who would be performing their normal duties as part of the project, or paying rent for space which is part of the court's normal operations);

b. to construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

c. solely to purchase equipment.

17. Suspension of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, the Guideline, or the terms and conditions of the award. 42 U.S.C. 10708(a).

18. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to and approved by the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

### *B. Recipients of Judicial Branch Education Technical Assistance and Technical Assistance Grants*

Recipients of Judicial Branch Education Technical Assistance and Technical Assistance Grants must comply with the requirements listed in section VIII.A. (except the requirements pertaining to audits in section VIII.A.3. and product dissemination in section VIII.A.11.d. and e.) and the reporting requirements below:

1. Judicial Branch Education Technical Assistance Grant Reporting Requirements

Recipients of Judicial Branch Education Technical Assistance Grants must:

a. Submit one copy of the manuals, handbooks, conference packets, or consultant's report developed under the grant at the conclusion of the grant period, along with a final report that includes any evaluation results and explains how the grantee intends to present the educational program in the future and/or implement the consultant's recommendations, as well as two copies of the consultant's report; and

b. complete a Technical Assistance Evaluation Form at the conclusion of the grant period, if appropriate.

2. Technical Assistance Grant Reporting Requirements

Recipients of Technical Assistance Grants must:

a. Submit to the Institute one copy of a final report that explains how it intends to act on the consultant's recommendations, as well as two copies of the consultant's written report; and

b. complete a Technical Assistance Evaluation Form at the conclusion of the grant period.

### *C. Scholarship Recipients*

1. Scholarship recipients are responsible for disseminating the information received from the course to their court colleagues locally and, if possible, throughout the State (*e.g.*, by developing a formal seminar, circulating the written material, or discussing the information at a meeting or conference).

Recipients also must submit to the Institute a certificate of attendance at the program, an evaluation of the educational program they attended, and a copy of the notice of any scholarship funds received from other sources. A copy of the evaluation must be sent to the Chief Justice of the Scholarship recipient's State. A State or local jurisdiction may impose additional requirements on scholarship recipients.

2. To receive the funds authorized by a scholarship award, recipients must submit a Scholarship Payment Voucher (Form S3) together with a tuition statement from the program sponsor, and a transportation fare receipt (or statement of the driving mileage to and from the recipient's home to the site of the educational program).

Scholarship Payment Vouchers should be submitted within 90 days after the end of the course which the recipient attended.

3. Scholarship recipients are encouraged to check with their tax advisors to determine whether the scholarship constitutes taxable income under Federal and State law.

## IX. Financial Requirements

### *A. Purpose*

The purpose of this section is to establish accounting system requirements and offer guidance on procedures to assist all grantees, subgrantees, contractors, and other organizations in:

1. Complying with the statutory requirements for the award, disbursement, and accounting of funds;

2. complying with regulatory requirements of the Institute for the financial management and disposition of funds;

3. generating financial data to be used in planning, managing, and controlling projects; and

4. facilitating an effective audit of funded programs and projects.

### *B. References*

Except where inconsistent with specific provisions of this Guideline, the following circulars are applicable to Institute grants and cooperative agreements under the same terms and conditions that apply to Federal grantees. The circulars supplement the requirements of this section for accounting systems and financial record-keeping and provide additional guidance on how these requirements may be satisfied. (Circulars may be obtained from OMB by calling 202–395–3080 or visiting the OMB Web site at *www.whitehouse.gov /OMB*.)

1. *Office of Management and Budget (OMB) Circular A–21*, Cost Principles for Educational Institutions.
2. *Office of Management and Budget (OMB) Circular A–87*, Cost Principles for State and Local Governments.
3. *Office of Management and Budget (OMB) Circular A–88* (revised), Indirect Cost Rates, Audit and Audit Follow-up at Educational Institutions.
4. *Office of Management and Budget (OMB) Circular A–102*, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.
5. *Office of Management and Budget (OMB) Circular A–110*, Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.
6. *Office of Management and Budget (OMB) Circular A–122*, Cost Principles for Non-profit Organizations.
7. *Office of Management and Budget (OMB) Circular A–128*, Audits of State and Local Governments.
8. *Office of Management and Budget (OMB) Circular A–133*, Audits of Institutions of Higher Education and Other Non-profit Institutions.

### *C. Supervision and Monitoring Responsibilities*

#### 1. Grantee Responsibilities

All grantees receiving awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records, and refunding expenditures disallowed by audits.

#### *2. Responsibilities of State Supreme Court*

a. Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. (*See* section III.F.)

b. The State Supreme Court or its designee shall receive all Institute funds awarded to such courts; be responsible for assuring proper administration of Institute funds; and be responsible for all aspects of the project, including proper accounting and financial record-keeping by the subgrantee. These responsibilities include:

(1) *Reviewing Financial Operations*. The State Supreme Court or its designee should be familiar with, and periodically monitor, its subgrantees' financial operations, records system, and procedures. Particular attention should be directed to the maintenance of current financial data.

(2) *Recording Financial Activities*. The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court or its designee in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court or evidenced by report forms duly filed by the subgrantee. Matching contributions provided by subgrantees should likewise be recorded, as should any project income resulting from program operations.

(3) *Budgeting and Budget Review*. The State Supreme Court or its designee should ensure that each subgrantee prepares an adequate budget as the basis for its award commitment. The State Supreme Court maintain the detail of each project budget on file.

(4) *Accounting for Match*. The State Supreme Court or its designee will ensure that subgrantees comply with the match requirements specified in this Guideline (*see* section VIII.A.8.).

(5) *Audit Requirement*. The State Supreme Court or its designee is required to ensure that subgrantees meet the necessary audit requirements set forth by the Institute (*see* sections K. below and VIII.A.3.)

(6) *Reporting Irregularities*. The State Supreme Court, its designees, and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

### *D. Accounting System*

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);
2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;
3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;
4. Provides cost and property controls to assure optimal use of grant funds;
5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;
6. Meets the prescribed requirements for periodic financial reporting of operations; and
7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

### *E. Total Cost Budgeting and Accounting*

Accounting for all funds awarded by the Institute must be structured and executed on a total project cost basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget serve as the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

#### 1. Timing of Matching Contributions

Matching contributions need not be applied at the exact time of the obligation of Institute funds. Ordinarily, the full matching share must be obligated during the award period; however, with the written permission of the Institute, contributions made following approval of the grant by the Institute's Board of Directors but before the beginning of the grant may be counted as match. Grantees that do not contemplate making matching contributions continuously throughout the course of a project, or on a task-by-task basis, are required to submit a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. If a proposed cash or in-kind match is not fully met, the Institute may reduce the award amount accordingly to maintain the ratio of grant funds to matching funds stated in the award agreement.

2. Records for Match

All grantees must maintain records which clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section. (*See* section IX.C.2. above.)

*F. Maintenance and Retention of Records*

All financial records, including supporting documents, statistical records, and all other information pertinent to grants, subgrants, cooperative agreements, or contracts under grants, must be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this section.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, canceled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports are required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report.

3. Maintenance

Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

4. Access

Grantees and subgrantees must give any authorized representative of the Institute access to and the right to examine all records, books, papers, and documents related to an Institute grant.

*G. Project-Related Income*

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income and must be reported to the Institute. (*See* section IX.H.2. below.) The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A State and any agency or instrumentality of a State, including institutions of higher education and hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are grantees must refund any interest earned. Grantees shall ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the grant provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees may be considered as cash match with the prior written approval of the Institute. Estimates of registration and tuition fees, and any expenses to be offset by the fees, should be included in the application budget forms and narrative.

4. Income From the Sale of Grant Products

If the sale of products occurs during the project period, the income may be treated as cash match with the prior written approval of the Institute. The costs and income generated by the sales must be reported on the Quarterly Financial Status Reports and documented in an auditable manner. Whenever possible, the intent to sell a product should be disclosed in the application or reported to the Institute in writing once a decision to sell products has been made. The grantee must request approval to recover its product development, reproduction, and dissemination costs as specified in section VIII.A.11.b.

5. Other

Other project income shall be treated in accordance with disposition instructions set forth in the grant's terms and conditions.

*H. Payments and Financial Reporting Requirements*

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for Advance or Reimbursement of Funds.* Grantees will receive funds on a "check-issued" basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

b. *Continuation Awards.* For purposes of submitting Requests for Advance or Reimbursement, recipients of continuation grants should treat each grant as a new project and number the requests accordingly (*i.e.*, on a grant rather than a project basis). For example, the first request for payment from a continuation grant would be number 1, the second number 2, etc. (*See* Appendix B, Answers to Grantees' Frequently Asked Questions, for further guidance.)

c. *Termination of Advance and Reimbursement Funding.* When a grantee organization receiving cash advances from the Institute:

(1) Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

(2) engages in the improper award and administration of subgrants or contracts; or

(3) is unable to submit reliable and/or timely reports; the Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by check to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute may suspend reimbursement payments until the deficiencies are corrected.

d. *Principle of Minimum Cash on Hand.* Grantees should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days.

2. Financial Reporting

a. *General Requirements.* To obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees submit timely reports for review.

b. Two copies of the Financial Status Report are required from all grantees, other than scholarship recipients, for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, project income, and any other sources of funds for the project, as well as information on obligations and outlays. A copy of the Financial Status Report, along with instructions for its preparation, is included in each official Institute Award package. If a grantee requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, to support the Request for Advance or Reimbursement.

c. *Additional Requirements for Continuation Grants.* Grantees receiving continuation grants should number their quarterly Financial Status Reports on a grant rather than a project basis. For example, the first quarterly report for a continuation grant award should be number 1, the second number 2, etc.

3. Consequences of Non-Compliance with Submission Requirement

Failure of the grantee to submit required financial and progress reports may result in suspension or termination of grant payments.

*I. Allowability of Costs*

1. General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability is determined in accordance with the principles set forth in *OMB Circulars A–21,* Cost Principles Applicable to Grants and Contracts with Educational Institutions; *A–87,* Cost Principles for State and Local Governments; and *A–122,* Cost Principles for Non-profit Organizations. No costs may be recovered to liquidate obligations incurred after the approved grant period. Circulars may be obtained from OMB by calling 202–395–3080 or visiting the OMB Web site at *www.whitehouse.gov/OMB.*

2. Costs Requiring Prior Approval

a. *Pre-agreement Costs.* The written prior approval of the Institute is required for costs considered necessary but which occur prior to the start date of the project period.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or software to be purchased exceeds $3,000.

c. *Consultants.* The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds $300 a day. Institute funds may not be used to pay a consultant more than $900 per day.

d. *Budget Revisions.* Budget revisions among direct cost categories that (i) transfer grant funds to an unbudgeted cost category or (ii) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget require prior Institute approval. *See* section X.A.1.

3. Travel Costs

Transportation and per diem rates must comply with the policies of the grantee. If the grantee does not have an established written travel policy, then travel rates must be consistent with those established by the Institute or the Federal Government. Institute funds may not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting of that organization.

4. Indirect Costs

These are costs of an organization that are not readily assignable to a particular project but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. Although the Institute's policy requires all costs to be budgeted directly, it will accept indirect costs if a grantee has an indirect cost rate approved by a Federal agency as set forth below. However, recoverable indirect costs are limited to no more than 75% of a grantee's direct personnel costs (salaries plus fringe benefits). Grantees may apply unrecoverable indirect costs to meet their required matching contributions, including the required level of cash match. *See* sections III.L. and VI.A.4.k.

a. *Approved Plan Available.*

(1) A copy of an indirect cost rate agreement or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars must be submitted to the Institute.

(2) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

b. *Establishment of Indirect Cost Rates.* To be reimbursed for indirect costs, a grantee must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute within three months after the start of the grant period to assure recovery of the full amount of allowable indirect costs. The rate must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved as specified in the applicable OMB Circular.

c. *No Approved Plan.* If an indirect cost proposal for recovery of indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received.

### *J. Procurement and Property Management Standards*

#### 1. Procurement Standards

For State and local governments, the Institute has adopted the standards set forth in Attachment O of *OMB Circular A–102*. Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A–110*.

#### 2. Property Management Standards

The property management standards as prescribed in Attachment N of *OMB Circulars A–102* and *A–110* apply to all Institute grantees and subgrantees except as provided in section VIII.A.18. All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

### *K. Audit Requirements*

#### 1. Implementation

Each recipient of a Project Grant (other than a State court receiving an information collection grant in connection with the Solutions Project) must provide for an annual fiscal audit. This requirement also applies to a State or local court receiving a subgrant from the State Supreme Court. The audit may be of the entire grantee or subgrantee organization or of the specific project funded by the Institute. Audits conducted in accordance with the Single Audit Act of 1984 and *OMB Circular A–128*, or *OMB Circular A–133*, will satisfy the requirement for an annual fiscal audit. The audit must be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies. Grantees must send two copies of the audit report to the Institute. Grantees that receive funds from a Federal agency and satisfy audit requirements of the cognizant Federal agency must submit two copies of the audit report prepared for that Federal agency to the Institute in order to satisfy the provisions of this section.

#### 2. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grantee must have policies and procedures for acting on audit recommendations by designating officials responsible for: follow-up; maintaining a record of the actions taken on recommendations and time schedules; responding to and acting on audit recommendations; and submitting periodic reports to the Institute on recommendations and actions taken.

#### 3. Consequences of Non-Resolution of Audit Issues

Ordinarily, the Institute will not make a new grant award to an applicant that has an unresolved audit report involving Institute awards. Failure of the grantee to resolve audit questions may also result in the suspension or termination of payments for active Institute grants to that organization.

### *L. Close-Out of Grants*

#### 1. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (*see* section IX.L.2. below), the following documents must be submitted to the Institute by grantees (other than scholarship recipients):

a. *Financial Status Report.* The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Final payment requests for obligations incurred during the award period must be submitted to the Institute prior to the end of the 90-day close-out period. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no case should any unused funds remain with the grantee beyond the submission date of the final Financial Status Report.

b. *Final Progress Report.* This report should describe the project activities during the final calendar quarter of the project and the close-out period, including to whom project products have been disseminated; provide a summary of activities during the entire project; specify whether all the objectives set forth in the approved application or an approved adjustment have been met and, if any of the objectives have not been met, explain why not; and discuss what, if anything, could have been done differently that might have enhanced the impact of the project or improved its operation.

These reporting requirements apply at the conclusion of every grant other than a scholarship, even when the project will continue under a continuation grant.

#### 2. Extension of Close-out Period

Upon the written request of the grantee, the Institute may extend the close-out period to assure completion of the grantee's close-out requirements. Requests for an extension must be submitted at least 14 days before the end of the close-out period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period.

## X. Grant Adjustments

All requests for programmatic or budgetary adjustments requiring Institute approval must be submitted by the project director in a timely manner (ordinarily 30 days prior to the implementation of the adjustment being requested). All requests for changes from the approved application will be carefully reviewed for both consistency with this Guideline and the enhancement of grant goals and objectives.

### *A. Grant Adjustments Requiring Prior Written Approval*

There are several types of grant adjustments that require the prior written approval of the Institute. Examples of these adjustments include:

1. Budget revisions among direct cost categories that (a) transfer grant funds to an unbudgeted cost category or (b) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget. See section IX.I.2.d.

For continuation grants, funds from the original award may be used during the new grant period and funds awarded through a continuation grant may be used to cover project-related expenditures incurred during the original award period, with the prior written approval of the Institute.

2. A change in the scope of work to be performed or the objectives of the project (*see* D. below in this section).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (*see* E. below).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (*see* F. and G. below).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (*see* section VIII.A.2.).

8. A change in or temporary absence of the person responsible for managing and reporting on the grant's finances.

9. A change in the name of the grantee organization.

10. A transfer or contracting out of grant-supported activities (*see* H. below).

11. A transfer of the grant to another recipient.

12. Preagreement costs (*see* section IX.I.2.a.).

13. The purchase of automated data processing equipment and software (*see* section IX.I.2.b.).

14. Consultant rates (*see* section IX.I.2.c.).

15. A change in the nature or number of the products to be prepared or the manner in which a product would be distributed.

*B. Requests for Grant Adjustments*

All grantees must promptly notify their SJI program managers, in writing, of events or proposed changes that may require adjustments to the approved project design. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the program manager determines would help the Institute's review.

*C. Notification of Approval/Disapproval*

If the request is approved, the grantee will be sent a Grant Adjustment signed by the Executive Director or his designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

*D. Changes in the Scope of the Grant*

Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute. A grantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager.

*E. Date Changes*

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan should accompany a request for a no-cost extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (*see* section IX.L.2.).

*F. Temporary Absence of the Project Director*

Whenever an absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

*G. Withdrawal of/Change in Project Director*

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

*H. Transferring or Contracting Out of Grant-Supported Activities*

No principal activity of a grant-supported project may be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements must be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval of the Institute at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, will be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

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Carlos R. Garza, Esq., Administrative Judge (ret.), Round Rock, TX.

Sophia H. Hall, Administrative Presiding Judge, Circuit Court of Cook County, Chicago, IL.

Tommy Jewell, Presiding Children's Court Judge, Albuquerque, NM.

Arthur A. McGiverin, Chief Justice (ret.), Supreme Court of Iowa, Ottumwa, IA.

Florence K. Murray, Justice (ret.), Supreme Court of Rhode Island, Providence, RI.

David I. Tevelin, Executive Director (ex officio).

**David I. Tevelin,**

*Executive Director.*

## Appendix A—Recommendations to Grant Writers

Over the past 17 years, the Institute staff has reviewed almost 4,000 proposals. On the basis of those reviews, inquiries from applicants, and the views of the Board, the Institute offers the following recommendations to help potential applicants present workable, understandable proposals that can meet the funding criteria set forth in this Guideline.

The Institute suggests that applicants make certain that they address the questions and issues set forth below when preparing an application. Applications should, however, be presented in the format specified in section VI. of the Guideline.

### 1. What Is the Subject or Problem You Wish To Address?

Describe the subject or problem and how it affects the courts and the public. Discuss how your approach will improve the situation or advance the state of the art or knowledge, and explain why it is the most appropriate approach to take. When statistics or research findings are cited to support a statement or position, the source of the citation should be referenced in a footnote or a reference list.

### 2. What Do You Want To Do?

Explain the goal(s) of the project in simple, straightforward terms. The goals should describe the intended consequences or expected overall effect of the proposed project (*e.g.*, to enable judges to sentence drug-abusing offenders more effectively, or to dispose of civil cases within 24 months), rather than the tasks or activities to be conducted (*e.g.*, hold 3 training sessions, or install a new computer system).

To the greatest extent possible, an applicant should avoid a specialized vocabulary that is not readily understood by the general public. Technical jargon does not enhance a paper, nor does a clever but uninformative title.

### 3. How Will You Do It?

Describe the methodology carefully so that what you propose to do and how you would do it are clear. All proposed tasks should be set forth so that a reviewer can see a logical progression of tasks, and relate those tasks directly to the accomplishment of the project's goal(s). When in doubt about whether to provide a more detailed explanation or to assume a particular level of knowledge or expertise on the part of the reviewers, provide the additional information. A description of project tasks also will help identify necessary budget items. All staff positions and project costs should relate directly to the tasks described. The Institute encourages applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

### 4. How Will You Know It Works?

Include an evaluation component that will determine whether the proposed training, procedure, service, or technology accomplished the objectives it was designed to meet. Applications should present the criteria that will be used to evaluate the project's effectiveness; identify program elements that will require further modification; and describe how the evaluation will be conducted, when it will occur during the project period, who will conduct it, and what specific measures will be used. In most instances, the evaluation should be conducted by persons not connected with the implementation of the procedure, training, service, or technique, or the administration of the project.

The Institute has also prepared a more thorough list of recommendations to grant writers regarding the development of project evaluation plans. Those recommendations are available from the Institute upon request.

### 5. How Will Others Find Out About It?

Include a plan to disseminate the results of the training, research, or demonstration beyond the jurisdictions and individuals directly affected by the project. The plan should identify the specific methods that will be used to inform the field about the project, such as the publication of law review or journal articles, or the distribution of key materials. A statement that a report or research findings "will be made available to" the field is not sufficient. The specific means of distribution or dissemination as well as the types of recipients should be identified. Reproduction and dissemination costs are allowable budget items.

### 6. What Are the Specific Costs Involved?

The budget in an application should be presented clearly. Major budget categories such as personnel, benefits, travel, supplies, equipment, and indirect costs should be identified separately. The components of "Other" or "Miscellaneous" items should be specified in the application budget narrative, and should not include set-asides for undefined contingencies.

### 7. What, If Any, Match Is Being Offered?

Courts and other units of State and local government (not including publicly-supported institutions of higher education) are required to contribute a match of at least 50 percent of the funds requested from the Institute for a new grant. Except in the case of Judicial Branch Education Technical Assistance grants, at least 20% of the required match must be in the form of cash. All other applicants must contribute a match of 25% to a new SJI-funded project, and at least 10% of that match must be in the form of cash.

The match requirement works as follows: If, for example, a State court system receives a $100,000 grant from the Institute, it must provide a $50,000 match; at least 20% of the required match for a new grant ($10,000 in the example) must be in the form of cash rather than in-kind support (*e.g.*, the value of staff time contributed to the project). If a non-profit organization receives a $100,000 grant from SJI, it must provide a $25,000 match, and at least 10% of that match ($2,500 in the example) must be in the form of cash.

Cash match includes funds directly contributed to the project by the applicant, or by other private or authorized public sources; income generated from tuition fees or the sale of project products during the grant period; and funds dedicated to the project by the grantee's assumption of approved indirect costs.

Non-cash match refers to in-kind contributions by the applicant, or other private or authorized public sources. This includes, for example, the monetary value of time contributed by existing personnel or members of an advisory committee (but not the time spent by participants in an educational program attending program sessions). The nature of the match (cash or in-kind) should be explained, and the tasks and line items for which costs will be covered wholly or in part by match should be specified.

The Institute may waive the match and cash match requirements in certain circumstances. *See* section VIII.A.8.c.

### 8. Which of the Two Budget Forms Should Be Used?

Section VI.A.1.c. of the SJI Grant Guideline encourages use of the spreadsheet format of Form C1 if the application requests $100,000 or more. Form C1 also works well for projects with discrete tasks, regardless of the dollar value of the project. Form C, the tabular format, is preferred for projects lacking a number of discrete tasks, or for projects requiring less than $100,000 of Institute funding. Generally, use the form that best lends itself to representing most accurately the budget estimates for the project.

### 9. How Much Detail Should Be Included in the Budget Narrative?

The budget narrative of an application should provide the basis for computing all project-related costs, as indicated in section VI.A.4. of the Guideline. To avoid common shortcomings of application budget narratives, applicants should include the following information:

*Personnel estimates* that accurately provide the amount of time to be spent by personnel involved with the project and the total associated costs, including current salaries for the designated personnel (*e.g.*, Project Director, 50% for one year, annual salary of $50,000 = $25,000). If salary costs are computed using an hourly or daily rate, the annual salary and number of hours or days in a work-year should be shown.

*Estimates for supplies and expenses* supported by a complete description of the supplies to be used, the nature and extent of printing to be done, anticipated telephone charges, and other common expenditures, with the basis for computing the estimates included (*e.g.*, 100 reports × 75 pages each × .05/page = $375.00). Supply and expense estimates offered simply as "based on experience" are not sufficient.

In order to expedite Institute review of the budget, make a final comparison of the amounts listed in the budget narrative with those listed on the budget form. In the rush to complete all parts of the application on time, there may be many last-minute changes; unfortunately, when there are discrepancies between the budget narrative and the budget form or the amount listed on the application cover sheet, it is not possible for the Institute to verify the amount of the request. A final check of the numbers on the form against those in the narrative will preclude such confusion.

### 10. What Travel Regulations Apply to the Budget Estimates?

Transportation costs and per diem rates must comply with the policies of the applicant organization, and a copy of the applicant's travel policy should be submitted as an appendix to the application. If the applicant does not have a travel policy established in writing, then travel rates must be consistent with those established by the Institute or the Federal Government (a copy of the Institute's travel policy is available upon request). The budget narrative should state which policies apply to the project.

The budget narrative also should include the estimated fare, the number of persons traveling, the number of trips to be taken, and the length of stay. The estimated costs of travel, lodging, ground transportation, and other subsistence should be listed and explained separately. It is preferable for the budget to be based on the actual costs of traveling to and from the project or meeting sites. If the points of origin or destination are not known at the time the budget is prepared, an average airfare may be used to estimate the travel costs. For example, if it is anticipated that a project advisory committee will include members from around the country, a reasonable airfare from a central point to the meeting site, or the average of airfares from each coast to the meeting site, may be used. Applicants should arrange travel so as to be able to take advantage of advanced-purchase price discounts whenever possible.

### 11. May Grant Funds Be Used To Purchase Equipment?

Generally, grant funds may be used to purchase only the equipment that is necessary to demonstrate a new technological application in a court, or that is otherwise essential to accomplishing the objectives of the project. The budget narrative must list the equipment to be purchased and explain why the equipment is necessary to the success of the project. The Institute's written prior approval is required when the amount of computer hardware to be purchased or leased exceeds $10,000, or the software to be purchased exceeds $3,000.

### 12. To What Extent May Indirect Costs Be Included in the Budget Estimates?

If an indirect cost rate has been approved by a Federal agency within the last two years, an indirect cost recovery estimate may be included in the budget. Recoverable indirect costs are limited to no more than 75% of a grantee's direct personnel costs (salaries plus fringe benefits). Grantees may apply unrecoverable indirect costs to meet their required matching contributions, including the required level of cash match. A copy of the approved indirect cost rate agreement should be submitted as an appendix to the application.

If an applicant does not have an approved rate agreement and cannot budget directly for all costs, an indirect cost rate proposal should be prepared in accordance with section IX.I.4. of the Guideline, based on the applicant's audited financial statements for the prior fiscal year. (Applicants lacking an audit should budget all project costs directly.)

### 13. What Meeting Costs May Be Covered With Grant Funds?

SJI grant funds may cover the reasonable cost of meeting rooms, necessary audio-visual equipment, meeting supplies, and working meals.

### 14. Does the Budget Truly Reflect All Costs Required To Complete the Project?

After preparing the program narrative portion of the application, applicants may find it helpful to list all the major tasks or activities required by the proposed project, including the preparation of products, and note the individual expenses, including personnel time, related to each. This will help to ensure that, for all tasks described in the application (*e.g.*, development of a videotape, research site visits, distribution of a final report), the related costs appear in the budget and are explained correctly in the budget narrative.

## Appendix B—Answers to Grantees' Frequently Asked Questions

The Institute's staff works with grantees to help assure the smooth operation of the project and compliance with the Guideline. On the basis of monitoring more than 1,000 grants, the Institute staff offers the following suggestions to aid grantees in meeting the administrative and substantive requirements of their grants.

### 1. After the Grant Has Been Awarded, When Are the First Quarterly Reports Due?

Quarterly Progress Reports and Financial Status Reports must be submitted within 30 days after the end of every calendar quarter—*i.e.*, no later than January 30, April 30, July 30, and October 30—regardless of the project's start date. The reporting periods covered by each quarterly report end 30 days before the respective deadline for the report. When an award period begins December 1, for example, the first quarterly progress report describing project activities between December 1 and December 31 will be due on January 30. A Financial Status Report should be submitted even if funds have not been obligated or expended.

By documenting what has happened over the past three months, quarterly progress reports provide an opportunity for project staff and Institute staff to resolve any questions before they become problems, and make any necessary changes in the project time schedule, budget allocations, etc. The quarterly progress report should describe project activities, their relationship to the approved timeline, and any problems encountered and how they were resolved, and outline the tasks scheduled for the coming quarter. It is helpful to attach copies of relevant memos, draft products, or other requested information. An original and one copy of a quarterly progress report and attachments should be submitted to the Institute.

Additional quarterly progress report or Financial Status Report forms may be obtained from the grantee's Program Manager at SJI, or photocopies may be made from the supply received with the award.

### 2. Do Reporting Requirements Differ for Continuation Grants?

Recipients of continuation grants are required to submit quarterly progress and Financial Status Reports on the same schedule and with the same information as recipients of grants for single new projects.

A continuation grant should be considered as a separate phase of the project. The reports should be numbered on a grant rather than project basis. Thus, the first quarterly report filed under a continuation grant should be designated as number one, the second as number two, and so on, through the final progress and Financial Status Reports due within 90 days after the end of the grant period.

### 3. What Information About Project Activities Should Be Communicated to SJI?

In general, grantees should provide prior notice of critical project events such as advisory board meetings or training sessions so that the Institute Program Manager can attend, if possible. If methodological, schedule, staff, budget allocations, or other significant changes become necessary, the grantee should contact the Program Manager prior to implementing any of these changes, so that possible questions may be addressed in advance. Questions concerning the financial requirements, quarterly financial reporting, or payment requests should be addressed to the Institute's Grants Financial Manager listed in the award letter.

It is helpful to include the grant number assigned to the award on all correspondence to the Institute.

### 4. Why Are Special Conditions Attached To the Award Document?

Special conditions may be imposed to establish a schedule for reporting certain key information, assure that the Institute has an opportunity to offer suggestions at critical stages of the project, and provide reminders of pertinent Guideline requirements. Accordingly, it is important for grantees to check the special conditions carefully and discuss with their Program Managers any questions or problems they may have with the conditions. Most concerns about timing, response time, and the level of detail required can be resolved in advance through a telephone conversation. The Institute's primary concern is to work with grantees to assure that their projects accomplish their objectives, not to enforce rigid bureaucratic requirements. However, if a grantee fails to comply with a special condition or with other grant requirements, the Institute may, after proper notice, suspend payment of grant funds or terminate the grant.

Sections VIII., IX., and X. of the Grant Guideline contain the Institute's administrative and financial requirements. Institute Finance Division staff are always available to answer questions and provide assistance regarding these provisions.

### 5. What Is a Grant Adjustment?

A Grant Adjustment is the Institute's form for acknowledging the satisfaction of special conditions, or approving changes in grant activities, schedule, staffing, sites, or budget allocations requested by the project director. It also may be used to correct errors in grant documents or deobligate funds from the grant.

### 6. What Schedule Should Be Followed in Submitting Requests for Reimbursements or Advance Payments?

Requests for reimbursements or advance payments may be made at any time after the project start date and before the end of the 90-day close-out period. However, the Institute follows the U.S. Treasury's policy limiting advances to the minimum amount required to meet immediate cash needs. Given normal processing time, grantees should not seek to draw down funds for periods greater than 30 days from the date of the request.

### 7. Do Procedures for Submitting Requests for Reimbursement or Advance Payment Differ for Continuation Grants?

The basic procedures are the same for any grant. A continuation grant should be considered as a separate phase of the project. Payment requests should be numbered on a grant rather than a project basis. The first request for funds from a continuation grant should be designated as number one, the second as number two, and so on through the final payment request for that grant.

**8. If Things Change During the Grant Period, Can Funds Be Reallocated From One Budget Category to Another?**

The Institute recognizes that some flexibility is required in implementing a project design and budget. Thus, grantees may shift funds among direct cost budget categories. When any one reallocation or the cumulative total of reallocations is expected to allocate funds to a previously unbudgeted cost category or to exceed five percent (5%) of the approved project budget, a grantee must specify the proposed changes, explain the reasons for the changes, and request prior Institute approval.

The same standard applies to continuation grants. In addition, prior written Institute approval is required to shift leftover funds from the original award to cover activities to be conducted under the continuation award, or to use continuation grant monies to cover costs incurred during the original grant period.

**9. What Is the 90-Day Close-out Period?**

Following the last day of the grant, a 90-day period is provided to allow for all grant-related bills to be received and posted, and grant funds drawn down to cover these expenses. No obligations of grant funds may be incurred during this period. The last day on which an expenditure of grant funds can be obligated is the end date of the grant period. Similarly, the 90-day period is not intended as an opportunity to finish and disseminate grant products. This should occur before the end of the grant period.

During the 90 days following the end of the award period, all monies that have been obligated should be expended. All payment requests must be received by the end of the 90-day "close-out period." Any unexpended monies held by the grantee that remain after the 90-day follow-up period must be returned to the Institute. Any funds remaining in the grant that have not been drawn down by the grantee will be deobligated.

**10. Are Funds Granted by SJI "Federal" Funds?**

The State Justice Institute Act provides that, except for purposes unrelated to this question, "the Institute shall not be considered a department, agency, or instrumentality of the Federal Government." 42 U.S.C. 10704(c)(1). Because SJI receives appropriations from Congress, some grantee auditors have reported SJI grant funds as "Other Federal Assistance." This classification is acceptable to SJI but is not required.

**11. If SJI Is Not a Federal Agency, Do OMB Circulars Apply With Respect to Audits?**

Unless they are inconsistent with the express provisions of the SJI Grant Guideline, Office of Management and Budget (OMB) Circulars A–110, A–21, A–87, A–88, A–102, A–122, A–128, and A–133 are incorporated into the Grant Guideline by reference. Because the Institute's enabling legislation specifically requires the Institute to "conduct, or require each recipient to provide for, an annual fiscal audit" (*see* 42 U.S.C. 10711(c)(1)), the Grant Guideline sets forth options for grantees to comply with this statutory requirement. (*See* section IX.K.)

SJI will accept audits conducted in accordance with the Single Audit Act of 1984 and OMB Circulars A–128 or A–133 to satisfy the annual fiscal audit requirement. Grantees that are required to undertake these audits in conjunction with Federal grants may include SJI funds as part of the audit even if the receipt of SJI funds would not require such audits. This approach gives grantees an option to fold SJI funds into the governmental audit rather than to undertake a separate audit to satisfy SJI's Guideline requirements.

In sum, educational and nonprofit organizations that receive payments from the Institute that are sufficient to meet the applicability thresholds of OMB Circular A–133 must have their annual audit conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States rather than with generally accepted auditing standards. Grantees in this category that receive amounts below the minimum threshold referenced in Circular A–133 must also submit an annual audit to SJI, but they would have the option to conduct an audit of the entire grantee organization in accordance with generally accepted auditing standards; include SJI funds in an audit of Federal funds conducted in accordance with the Single Audit Act of 1984 and OMB Circulars A–128 or A–133; or conduct an audit of only the SJI funds in accordance with generally accepted auditing standards. (*See* Guideline section IX.K.) Circulars may be obtained from OMB by calling 202–395–3080 or visiting the OMB Web site at *www.whitehouse.gov/OMB.*

**12. Does SJI Have a CFDA Number?**

Auditors often request that a grantee provide the Institute's Catalog of Federal Domestic Assistance (CFDA) number for guidance in conducting an audit in accordance with Government Accounting Standards.

Because SJI is not a Federal agency, it has not been issued such a number, and there are no additional compliance tests to satisfy under the Institute's audit requirements beyond those of a standard governmental audit.

Moreover, because SJI is not a Federal agency, SJI funds should not be aggregated with Federal funds to determine if the applicability threshold of Circular A–133 has been reached. For example, if in fiscal year 2001 grantee "X" received $10,000 in Federal funds from a Department of Justice (DOJ) grant program and $20,000 in grant funds from SJI, the minimum A–133 threshold would not be met. The same distinction would preclude an auditor from considering the additional SJI funds in determining what Federal requirements apply to the DOJ funds.

Grantees who are required to satisfy either the Single Audit Act or OMB Circulars A–128 or A–133, and who include SJI grant funds in those audits, need to remember that because of its status as a private non-profit corporation, SJI is not on routing lists of cognizant Federal agencies. Therefore, the grantee needs to submit a copy of the audit report prepared for such a cognizant Federal agency directly to SJI. The Institute's audit requirements may be found in section IX.K. of the Grant Guideline.

## Appendix C—SJI Libraries: Designated Sites and Contacts

**Alabama**

*Supreme Court Library*

Mr. Timothy A. Lewis
State Law Librarian
Alabama Supreme Court Bldg. 300 Dexter Avenue
Montgomery, AL 36104
(334) 242–4347

**Alaska**

*Anchorage Law Library*

Ms. Cynthia S. Fellows
State Law Librarian
Alaska Court Libraries 820 W. Fourth Ave.
Anchorage, AK 99501
(907) 264–0583

**Arizona**

*Supreme Court Library*

Ms. Lani Orosco
Arizona Supreme Court
Supreme Court Library 1501 W. Washington, Suite 445
Phoenix, AZ 85007
(602) 542–5028 e-mail: *lorosco@supreme.sp.state.az.us*

**Arkansas**

*Administrative Office of the Courts*

Mr. James D. Gingerich
Director
Administrative Office of the Courts
Supreme Court of Arkansas
Justice Building
Little Rock, AR 72201
(501) 682–9400

**California**

*Administrative Office of the Courts*

Mr. William C. Vickrey
Administrative Director of the Courts
Administrative Office of the Courts 455 Golden Gate Avenue
San Francisco, CA 94107
(415) 865–4200

**Colorado**

*Supreme Court Library*

Ms. Linda Gruenthal
Deputy Supreme Court Law Librarian
Colorado State Judicial Building 2 East 14th Avenue
Denver, CO 80203
(303) 864–4522

**Connecticut**

*State Library*

Ms. Denise D. Jernigan
State Librarian
Connecticut State Library 231 Capital Avenue
Hartford, CT 06106
(860) 566–2516

**Delaware**

*Administrative Office of the Courts*

Mr. Michael E. McLaughlin
Deputy Director
Administrative Office of the Courts

Carvel State Office Building 820 North French Street 11th Floor
P.O. Box 8911
Wilmington, DE 19801
(302) 577–8481

**District of Columbia**

*Executive Office, District of Columbia Courts*

Ms. Anne B. Wicks
Executive Officer
District of Columbia Courts
500 Indiana Avenue, N.W., Suite 1500
Washington, D.C. 20001
(202) 879–1700

**Florida**

*Administrative Office of the Courts*

Ms. Elisabeth H. Goodner
State Courts Administrator
Florida Supreme Court Building
500 South Duval Street
Tallahassee, FL 32399–1900
(850) 922–5081 e-mail: *osca@flcourts.org*

**Georgia**

*Administrative Office of the Courts*

Mr. David Ratley
Director
Administrative Office of the Courts
47 Trinity Avenue, Suite 414
Atlanta, GA 30334
(404) 656–5171

**Hawaii**

*Supreme Court Library*

Ms. Ann Koto
State Law Librarian
The Supreme Court Law Library
417 South King St., Room 119
Honolulu, HI 96813
(808) 539–4965

**Idaho**

*AOC Judicial Education Library/State Law Library*

Ms. Beth Peterson
State Law Librarian
Idaho State Law Library
Supreme Court Building
451 West State St.
Boise, ID 83720
(208) 334–3316

**Illinois**

*Supreme Court Library*

Ms. Brenda Larison
Supreme Court of Illinois Library
200 East Capitol Avenue
Springfield, IL 62701–1791
(217) 782–2425

**Indiana**

*Supreme Court Library*

Mr. Dennis Lager
Supreme Court Librarian
Supreme Court Library
State House, Room 316
Indianapolis, IN 46204
(317) 232–2557

**Iowa**

*Administrative Office of the Court*

Dr. Jerry K. Beatty
Executive Director
Judicial Education & Planning
Office of the State Court Administrator
State Capital Building
Des Moines, IA 50319–0001
(515) 281–8279

**Kansas**

*Supreme Court Library*

Mr. Fred Knecht
Law Librarian
Kansas Supreme Court Library
301 West 10th Street
Topeka, KS 66612
(913) 296–3257

**Kentucky**

*State Law Library*

Ms. Marge Jones
State Law Librarian
State Law Library
State Capital, Room 200-A
Frankfort, KY 40601
(502) 564–4848

**Louisiana**

*State Law Library*

Ms. Carol Billings
Director
Louisiana Law Library
301 Loyola Avenue
New Orleans, LA 70112
(504) 568–5705

**Maine**

*State Law and Legislative Reference Library*

Ms. Lynn E. Randall
State Law Librarian
43 State House Station
Augusta, ME 04333
(207) 287–1600

**Maryland**

*State Law Library*

Mr. Michael S. Miller
Director
Maryland State Law Library
Court of Appeal Building
361 Rowe Boulevard
Annapolis, MD 21401
(410) 260–1430

**Massachusetts**

*Middlesex Law Library*

Ms. Sandra Lindheimer
Librarian
Middlesex Law Library
Superior Court House
40 Thorndike Street
Cambridge, MA 02141
(617) 494–4148

**Michigan**

*Michigan Judicial Institute*

Dawn F. McCarty
Interim Director
Michigan Judicial Institute
222 Washington Square North
P.O. Box 30205
Lansing, MI 48909
(517) 334–7805

**Minnesota**

*State Law Library (Minnesota Judicial Center)*

Mr. Marvin R. Anderson
State Law Librarian
Supreme Court of Minnesota
25 Constitution Avenue
St. Paul, MN 55155
(612) 297–2084

**Mississippi**

*Mississippi Judicial College*

Mr. Leslie Johnson
Director
University of Mississippi
P.O. Box 8850
University, MS 38677
(601) 232–5955

**Montana**

*State Law Library*

Ms. Judith Meadows
State Law Librarian
State Law Library of Montana
215 North Sanders
Helena, MT 59620
(406) 444–3660

**Nebraska**

*Administrative Office of the Courts*

Mr. Joseph C. Steele
State Court Administrator
Administrative Office of the Courts/Probation
State Capitol Building, Room 1220
Post Office Box 98910
Lincoln, NE 68509–8910
(402) 471–3730

**Nevada**

*National Judicial College*

Mr. Randall Snyder
Law Librarian
National Judicial College
Judicial College Building
University of Nevada
Reno, NV 89550
(775) 784–6747

**New Hampshire**

*New Hampshire Law Library*

Ms. Christine Swan
Law Librarian
New Hampshire Law Library
Supreme Court Building
One Noble Drive
Concord, NH 03301–6160
(603) 271–3777

**New Jersey**

*New Jersey State Library*

Ms. Marjorie Garwig
Supervising Law Librarian
New Jersey State Law Library
185 West State Street
P.O. Box 520
Trenton, NJ 08625–0250
(609) 292–6230

**New Mexico**

*Supreme Court Library*

Mr. Thaddeus Bejnar

Librarian
Supreme Court Library
Post Office Drawer L
Santa Fe, NM 87504
(505) 827–4850

**New York**

*Supreme Court Library*

Ms. Barbara Briggs
Principal Law Librarian
New York State Supreme Court Law Library
Onondaga County Court House
401 Montgomery Street
Syracuse, NY 13202
(315) 435–2063

**North Carolina**

Supreme Court Library
Mr. Thomas P. Davis
Librarian
North Carolina Supreme Court Library
P.O. Box 28006
2 East Morgan Street
Raleigh, NC 27601
(919) 733–3425

**North Dakota**

*Supreme Court Library*

Ms. Marcella Kramer
Assistant Law Librarian
Supreme Court Law Library
600 East Boulevard Avenue, Dept. 182
2nd Floor, Judicial Wing
Bismarck, ND 58505–0540
(701) 328–2229

**Northern Mariana Islands**

*Supreme Court of the Northern Mariana Islands*

Honorable Miguel Sablan Demapan
Chief Justice
Supreme Court of the Commonwealth of the Northern Mariana Islands
P.O. Box 2165 CK
Saipan, MP 96950
(670) 236–9700

**Ohio**

*Supreme Court Library*

Mr. Paul S. Fu
Law Librarian
Supreme Court Law Library
Supreme Court of Ohio
30 East Broad Street
Columbus, OH 43266–0419
(614) 466–2044

**Oklahoma**

*Administrative Office of the Courts*

Mr. Howard W. Conyers
Administrative Director of the Courts
1915 North Stiles, Suite 305
Oklahoma City, OK 73105
(405) 521–2450

**Oregon**

*Administrative Office of the Courts*

Ms. Kingsley W. Click
State Court Administrator
Office of the State Court Administrator
Supreme Court Building
Salem, OR 97310
(503) 986–5900

**Pennsylvania**

*State Library of Pennsylvania*

Ms. Barbara Miller
Collection Management Librarian
State Library of Pennsylvania
Office of Commonwealth Libraries
Bureau of State Library “Collection Management
333 Market Street
Harrisburg, PA 17126–1745
(717) 787–5718
barbmiller@state.pa.us

**Puerto Rico**

*Office of Court Administration*

Alfredo Rivera-Mendoza, Esq.
Director, Area of Planning and Management
Office of Court Administration
P.O. Box 917
Hato Rey, PR 00919

**Rhode Island**

*Roger Williams University*

Ms. Gail Winson
Director of the Library
Roger Williams University
School of Law Library 10 Metacom Avenue
Bristol, RI 02809

**South Carolina**

*Coleman Karesh Law Library (University of South Carolina School of Law)*

Mr. Steve Hinckley
Library Director
Coleman Karesh Law Library
U. S. C. Law Center
University of South Carolina
Columbia, SC 29208
(803) 777–5944

**South Dakota**

*State Law Library*

Librarian
500 East Capitol
Pierre, South Dakota 57501
(605) 773–4898

**Tennessee**

*Tennessee State Law Library*

Honorable Cornelia A. Clark
Director
Administrative Office of the Courts
Tennessee Supreme Court
511 Union
Nashville, TN 37243–0607
(615) 741–2687

**Texas**

*State Law Library*

Ms. Kay Schleuter
Director, State Law Library
P.O. Box 12367
Austin, TX 78711
(512) 463–1722

**U.S. Virgin Islands**

*Library of the Territorial Court of the Virgin Islands (St. Thomas)*

Librarian
The Library
Territorial Court of the Virgin Islands
Post Office Box 70
Charlotte Amalie, St. Thomas
U.S. Virgin Islands 00804

**Utah**

*Utah State Judicial Administration Library*

Ms. Debbie Christiansen
Utah State Judicial Administration Library
Administrative Office of the Courts 450 South State
P.O. Box 140241
Salt Lake City, UT 84114–0241
(801) 533–6371

**Vermont**

*Supreme Court of Vermont*

Mr. Paul J. Donovan
Law Librarian
Department of Libraries
109 State Street
Montpelier, VT 05609
(802) 828–3278

**Virginia**

*Administrative Office of the Courts*

Mr. Robert N. Baldwin
State Court Administrator
Supreme Court of Virginia
100 North Ninth Street, 3rd Floor
Richmond, VA 23219
(804) 786–6455

**Washington**

*Washington State Law Library*

Ms. Deborah Norwood
State Law Librarian
Washington State Law Library
Temple of Justice
P.O. Box 40751
Olympia, WA 98504–0751
(360) 357–2136

**West Virginia**

*Administrative Office of the Courts*

Ms. Kathleen Gross
Deputy Director of Judicial Education
West Virginia Supreme Court of Appeals
State Capitol
1900 Kanawha Boulevard East
Building 1, Room E–100
Charleston, WV 25305
(304) 558–0145

**Wisconsin**

*State Law Library*

Ms. Jane Colwin
Director of Public Services
State Law Library
310 E. State Capitol
P.O. Box 7881
Madison, WI 53707
(608) 261–2340

**Wyoming**

*Wyoming State Law Library*

Ms. Kathleen B. Carlson
Law Librarian
Wyoming State Law Library
Supreme Court Building
2301 Capitol Avenue
Cheyenne, WY 82002
(307) 777–7509

### NATIONAL

**American Judicature Society**

Mr. John Edwards
Opperman Hall
Drake University Law School
2507 University Avenue
Des Moines, IA 50311–4504
(515) 271–2141
e-mail: *John.Edwards@drake.edu*

**National Center for State Courts**

Ms. Peggy Rogers
Acquisitions/Serials Librarian
300 Newport Avenue
Williamsburg, VA 23187–8798
(757) 259–1857

**JERITT**

Dr. Maureen E. Conner
Executive Director
The JERITT Project
1407 S. Harrison
Suite 330 Nisbet
East Lansing, MI 48823–5239
(517) 353–8603
(517) 432–3965 (fax)
e-mail: *connerm@msu.edu*
website: *http://jeritt.msu.edu*

## Appendix D—Illustrative List of Technical Assistance Grants

The following list presents examples of the types of technical assistance for which State and local courts can request Institute funding. Please check with the JERITT project (*http://jeritt.msu.org* or 517/353–8603) for more information about these and other SJI-supported technical assistance projects.

### Application of Technology

Technology Plan (Office of the South Dakota State Court Administrator: SJI–99–066).

### Children and Families in Court

Expanded Unified Family Court (Ventura County, CA, Superior Court: SJI–01–122).

Trial Court Performance Standards for the Unified Family Court of Delaware (Family Court of Delaware: SJI–98–205).

### Court Planning, Management, and Financing

Job Classification and Pay Study of the New Hampshire Courts (New Hampshire Administrative Office of the Courts: SJI–98–011).

A Model for Building and Institutionalizing Judicial Branch Strategic Planning (12th Judicial Circuit, Sarasota, FL: SJI–98–266).

Strategic Planning (Fourth Judicial District Court, Hennepin County, MN: SJI–99–221).

Differentiated Case Management for the Improvement of Civil Case Processing in the Trial Courts of Texas (Texas Office of Court Administration: SJI–99–222).

### Dispute Resolution and the Courts

Evaluating the New Mexico Court of Appeals Mediation Program (New Mexico Supreme Court: SJI–00–122).

### Improving Public Confidence in the Courts

Mississippi Task Force on Gender Fairness in the Courts (Mississippi Administrative Office of the Courts: SJI–00–108).

Analysis of the Juror Debriefing Project (King County, WA, Superior Court: SJI–00–049).

### Improving the Court's Response to Family Violence

New Hampshire Fatality Reviews (New Hampshire Administrative Office of the Courts: SJI–99–142).

### Education and Training for Judges and Other Court Personnel

Iowa Supreme Court Advisory Committee on Judicial Branch Education (Iowa State Court Administrator's Office: SJI–01–200).

## Appendix E—Illustrative List of Model Curricula

The following list includes examples of model SJI-supported curricula that State judicial educators may wish to adapt for presentation in education programs for judges and other court personnel with the assistance of a Judicial Branch Education Technical Assistance Grant. Please refer to section VI.F. for information on submitting a letter of application for a Judicial Branch Education Technical Assistance Grant. A list of all SJI-supported education projects is available on the SJI Web site *(http://www.statejustice.org)*. Please also check with the JERITT project *(http://jeritt.msu.edu* or 517/353–8603) and your State SJI-designated library (*see* appendix C) for more information about these and other SJI-supported curricula that may be appropriate for in-State adaptation.

### Alternative Dispute Resolution

*Judicial Settlement Manual* (National Judicial College: SJI–89–089).

*Improving the Quality of Dispute Resolution* (Ohio State University College of Law: SJI–93–277).

*Comprehensive ADR Curriculum for Judges* (American Bar Association: SJI–95–002).

*Domestic Violence and Custody Mediation* (American Bar Association: SJI–96–038).

### Court Coordination

*Bankruptcy Issues for State Trial Court Judges* (American Bankruptcy Institute: SJI–91–027).

*Intermediate Sanctions Handbook: Experiences and Tools for Policymakers* (Center for Effective Public Policy: IAA–88–NIC–001).

*Regional Conference Cookbook: A Practical Guide to Planning and Presenting a Regional Conference on State-Federal Judicial Relationships* (U.S. Court of Appeals for the 9th Circuit: SJI–92–087).

*Bankruptcy Issues and Domestic Relations Cases* (American Bankruptcy Institute: SJI–96–175).

### Court Management

*Managing Trials Effectively: A Program for State Trial Judges* (National Center for State Courts/National Judicial College: SJI–87–066/067, SJI–89–054/055, SJI–91–025/026).

*Caseflow Management Principles and Practices* (Institute for Court Management/National Center for State Courts: SJI–87–056).

*A Manual for Workshops on Processing Felony Dispositions in Limited Jurisdiction Courts* (National Center for State Courts: SJI–90–052).

*Managerial Budgeting in the Courts; Performance Appraisal in the Courts; Managing Change in the Courts; Court Automation Design; Case Management for Trial Judges; Trial Court Performance Standards* (Institute for Court Management/National Center for State Courts: SJI–91–043).

*Strengthening Rural Courts of Limited Jurisdiction* and *Team Training for Judges and Clerks* (Rural Justice Center: SJI–90–014, SJI–91–082).

*Integrating Trial Management and Caseflow Management* (Justice Management Institute: SJI–93–214).

*Leading Organizational Change* (California Administrative Office of the Courts: SJI–94–068).

*Managing Mass Tort Cases* (National Judicial College: SJI–94–141).

*Employment Responsibilities of State Court Judges* (National Judicial College: SJI–95–025).

*Caseflow Management; Resources, Budget, and Finance; Visioning and Strategic Planning; Leadership; Purposes and Responsibilities of Courts; Information Management Technology; Human Resources Management; Education, Training, and Development; Public Information and the Media* from "NACM Core Competency Curriculum Guidelines" (National Association for Court Management: SJI–96–148).

*Dealing with the Common Law Courts: A Model Curriculum for Judges and Court Staff* (Institute for Court Management/National Center for State Courts: SJI–96–159).

*Caseflow Management* from "Innovative Educational Programs for Judges and Court Managers" (Justice Management Institute: SJI–98–041).

### Courts and Communities

*Reporting on the Courts and the Law* (American Judicature Society: SJI–88–014).

*Victim Rights and the Judiciary: A Training and Implementation Project* (National Organization for Victim Assistance: SJI–89–083).

*National Guardianship Monitoring Project: Trainer and Trainee's Manual* (American Association of Retired Persons: SJI–91–013).

*Access to Justice: The Impartial Jury and the Justice System* and *When Implementing the Court-Related Needs of Older People and Persons with Disabilities:* An Instructional Guide (National Judicial College: SJI–91–054).

*You Are the Court System: A Focus on Customer Service* (Alaska Court System: SJI–94–048).

*Serving the Public: A Curriculum for Court Employees* (American Judicature Society: SJI–96–040).

*Courts and Their Communities: Local Planning and the Renewal of Public Trust and Confidence: A California Statewide Conference* (California Administrative Office of the Courts: SJI–98–008).

*Charting the Course of Public Trust and Confidence in Our Courts* (Mid-Atlantic

Association for Court Management: SJI–98–208).

*Trial Court Judicial Leadership Program: Judges and Court Administrators Serving the Courts and Community* (National Center for State Courts: SJI–98–268).

*Public Trust and Confidence* (Arizona Courts Association: SJI–99–063).

## Diversity, Values, and Attitudes

*Troubled Families, Troubled Judges* (Brandeis University: SJI–89–071).

*The Crucial Nature of Attitudes and Values in Judicial Education* (National Council of Juvenile and Family Court Judges: SJI–90–058).

*Enhancing Diversity in the Court and Community* (Institute for Court Management/National Center for State Courts: SJI–91–043).

*Cultural Diversity Awareness in Nebraska Courts from Native American Alternatives to Incarceration Project* (Nebraska Urban Indian Health Coalition: SJI–93–028).

*Race Fairness and Cultural Awareness Faculty Development Workshop* (National Judicial College: SJI–93–063).

*A Videotape Training Program in Ethics and Professional Conduct for Nonjudicial Court Personnel and The Ethics Fieldbook: Tool For Trainers* (American Judicature Society: SJI–93–068).

*Court Interpreter Training Course for Spanish Interpreters* (International Institute of Buffalo: SJI–93–075).

*Doing Justice: Improving Equality Before the Law Through Literature-Based Seminars for Judges and Court Personnel* (Brandeis University: SJI–94–019).

*Multi-Cultural Training for Judges and Court Personnel* (St. Petersburg Junior College: SJI–95–006).

*Ethical Standards for Judicial Settlement: Developing a Judicial Education Module* (American Judicature Society: SJI–95–082).

*Code of Ethics for the Court Employees of California* (California Administrative Office of the Courts: SJI 95–245).

*Workplace Sexual Harassment Awareness and Prevention* (California Administrative Office of the Courts: SJI 96–089).

*Just Us On Justice: A Dialogue on Diversity Issues Facing Virginia Courts* (Virginia Supreme Court: SJI–96–150).

*When Bias Compounds: Insuring Equal Treatment for Women of Color in the Courts* (National Judicial Education Program: SJI 96–161).

*When Judges Speak Up: Ethics, the Public, and the Media* (American Judicature Society: SJI–96–152).

## Family Violence and Gender-Related Violent Crime

*National Judicial Response to Domestic Violence: Civil and Criminal Curricula* (Family Violence Prevention Fund: SJI–87–061, SJI–89–070, SJI–91–055).

*Domestic Violence: A Curriculum for Rural Courts* (Rural Justice Center: SJI–88–081).

*Judicial Training Materials on Spousal Support; Judicial Training Materials on Child Custody and Visitation* (Women Judges' Fund for Justice: SJI–89–062).

*Understanding Sexual Violence: The Judicial Response to Stranger and Nonstranger Rape and Sexual Assault* (National Judicial Education Program: SJI–92–003, SJI–98–133 [video curriculum]).

*Domestic Violence & Children: Resolving Custody and Visitation Disputes* (Family Violence Prevention Fund: SJI–93–255).

*Adjudicating Allegations of Child Sexual Abuse When Custody Is In Dispute* (National Judicial Education Program: SJI 95–019).

*Handling Cases of Elder Abuse: Interdisciplinary Curricula for Judges and Court Staff* (American Bar Association: SJI–93–274).

## Health and Science

*A Judge's Deskbook on the Basic Philosophies and Methods of Science: Model Curriculum* (University of Nevada, Reno: SJI–97–030).

## Judicial Education for Appellate Court Judges

*Career Writing Program for Appellate Judges* (American Academy of Judicial Education: SJI–88–086).

*Civil and Criminal Procedural Innovations for Appellate Courts* (National Center for State Courts: SJI–94–002).

## Judicial Branch Education: Faculty and Program Development

*The Leadership Institute in Judicial Education and The Advanced Leadership Institute in Judicial Education* (University of Memphis: SJI–91–021).

*"Faculty Development Instructional Program" from Curriculum Review* (National Judicial College: SJI–91–039).

*Resource Manual and Training for Judicial Education Mentors* (National Association of State Judicial Educators: SJI–95–233).

*Institute for Faculty Excellence in Judicial Education* (National Council of Juvenile and Family Court Judges: SJI–96–042; University of Memphis: SJI–01–202).

## Orientation, Mentoring, and Continuing Professional Education of Judges and Court Personnel

*Legal Institute for Special and Limited Jurisdiction Judges* (National Judicial College: SJI–89–043, SJI–91–040).

*Pre-Bench Training for New Judges* (American Judicature Society: SJI–90–028).

*A Unified Orientation and Mentoring Program for New Judges of All Arizona Trial Courts* (Arizona Supreme Court: SJI–90–078).

*Court Organization and Structure* (Institute for Court Management/National Center for State Courts: SJI–91–043).

*New Employee Orientation Facilitators Guide* (Minnesota Supreme Court: SJI–92–155).

*Magistrates Correspondence Course* (Alaska Court System: SJI–92–156).

*Bench Trial Skills and Demeanor: An Interactive Manual* (National Judicial College: SJI 94–058).

*Ethical Issues in the Election of Judges* (National Judicial College: SJI–94–142).

*Caseflow Management; Resources, Budget, and Finance; Visioning and Strategic Planning; Leadership; Purposes and Responsibilities of Courts; Information Management Technology; Human Resources Management; Education, Training, and Development; Public Information and the Media* from "NACM Core Competency Curriculum Guidelines" (National Association for Court Management: SJI–96–148).

*Innovative Approaches to Improving Competencies of General Jurisdiction Judges* (National Judicial College: SJI–98–001).

*Caseflow Management* from "Innovative Educational Programs for Judges and Court Managers" (Justice Management Institute: SJI–98–041).

## Juveniles and Families in Court

*Fundamental Skills Training Curriculum for Juvenile Probation Officers* (National Council of Juvenile and Family Court Judges: SJI–90–017).

*Child Support Across State Lines: The Uniform Interstate Family Support Act from Uniform Interstate Family Support Act: Development and Delivery of a Judicial Training Curriculum* (ABA Center on Children and the Law: SJI–94–321).

*Juvenile Justice at the Crossroads: Literature-Based Seminars for Judges, Court Personnel, and Community Leaders* (Brandeis University: SJI–99–150).

## Strategic and Futures Planning

*Minding the Courts into the Twentieth Century* Judicial SJ–89–029).

*An Approach to Long-Range Strategic Planning in the Courts.* (Center for Public Policy Studies: SJI–91–045).

## Substance Abuse

*Good Times, Bad Times: Drugs, Youth, and the Judiciary* (Professional Development and Training Center, Inc.: SJI–095).

*Gaining Momentum: A Model Curriculum for Drug Courts* (Florida Office of the State Courts Administrator: SJI–94–291).

*Judicial Response to Substance Abuse: Children, Adolescents, and Families* (National Council of Juvenile and Family Court Judges: SJI–95–030).

*Judicial Education on Substance Abuse* (American Judges Association and National Center for State Courts: SJI–01–210).

BILLING CODE 6820–SC–P

## Appendix F

# STATE JUSTICE INSTITUTE
## APPLICATION

**1. APPLICANT**
a. Applicant Name ____________________
____________________
b. Organizational Unit ____________________
c. Street/P.O. Box ____________________
d. City ____________________
e. State _____ f. Zip Code ____________________
g. Phone Number ____________________
h. Fax Number ____________________
i. Web Site Address ____________________
j. Name & Phone Number of Contact Person ____________________
____________________
k. Title ____________________
l. E-Mail Address ____________________

**2. TYPE OF APPLICANT** *(Circle appropriate letter)*
a. State court
b. National organization operating in conjunction with State court
c. National State court support organization
d. College or university
e. Other non-profit organization or agency
f. Individual
g. Corporation or partnership
h. Other unit of government
i. Other ____________________
(specify)
____________________

**3. PROPOSED START DATE** ____________________

**4. PROJECT DURATION** (Months) ____________________

**5. EMPLOYER IDENTIFICATION #** ____________________

**6. IF THIS APPLICATION HAS BEEN SUBMITTED TO OTHER FUNDING SOURCES, PLEASE PROVIDE THE FOLLOWING INFORMATION:**
Source ____________________
Date Submitted ____________________
Amount Sought ____________________
Disposition (if any) or Current Status ____________________
____________________

**7. ENTITY TO RECEIVE FUNDS** *(if different from above)*
a. Organizational Name ____________________
____________________
b. Organizational Unit ____________________
c. Street/P.O. Box ____________________
d. City ____________________
e. State _____ f. Zip Code ____________________
g. Phone Number ____________________
h. Fax Number ____________________
i. Web Site Address ____________________
j. Name & Phone Number of Contact Person ____________________
____________________
k. Title ____________________
l. E-Mail Address ____________________

**8. a. AMOUNT REQUESTED FROM SJI $**__________
**b. AMOUNT OF MATCH**
Cash match $__________
Non-cash match $__________
**c. TOTAL MATCH** $__________
**d. TOTAL PROJECT COST** $__________

**9. TITLE OF PROPOSED PROJECT**

**10. CONGRESSIONAL DISTRICT OF:** ____________________ ____________________
Name of Representative, District Number — Project (if different than applicant): Name of Representative, District Number

**11. CERTIFICATION**
**On behalf of the applicant, I hereby certify that to the best of my knowledge the information in this application is true and complete. I have read the attached assurances (Form D) and understand that if this application is approved for funding, the award will be subject to those assurances. I certify that the applicant will comply with the assurances if the application is approved, and that I am lawfully authorized to make these representations on behalf of the applicant.**

____________________ ____________________ ____________________
SIGNATURE OF RESPONSIBLE OFFICIAL OF APPLICANT — TITLE — DATE
(For applications from State and local courts, Form B, Certificate of State Approval, must be attached.)

**FOR INSTITUTE USE ONLY**

**12. a. APPLICATION NUMBER** ____________________
**b. CONCEPT PAPER NUMBER** ____________________
**c. GRANT NUMBER** ____________________

**13. DATE RECEIVED**

**14. DATE OF ACTION**

Form A 09/00

# STATE JUSTICE INSTITUTE

## INSTRUCTIONS FOR SJI APPLICATION FORM A

1. a-1 Legal **name of applicant** (court, entity or individual); **name of the organizational unit**, if any, that will conduct the project; complete **address** of applicant, including phone and fax numbers and web site address; and name, phone number, title, and e-mail address of a **contact person** who can provide further information about this application.

2. a **State court** includes all appellate, general jurisdiction, limited jurisdiction, and special jurisdiction courts, as well as all offices that are supervised by or report for administrative purposes to the chief or presiding justice or judge, or his or her designee.

2. b **National organizations operating in conjunction with State court** include national non-profit organizations controlled by, operating in conjunction with, and serving the State courts.

2. c **National state court organizations** include national non-profit organizations with the primary mission of supporting, serving, or educating judges and other personnel of the judicial branch of State government.

2. d **College or university** includes all institutions of higher education.

2. e **Other non-profit organization or agency** includes those non-profit organizations and private agencies not included in sub-paragraphs (b)-(d).

2. f **Individual** means a person not applying in conjunction with or on behalf of an entity identified in one of the other categories.

2. g **Corporation or partnership** includes for-profit and not-for-profit entities not falling within one of the other categories.

2. h **Other unit of government** includes any governmental agency, office, or organization that is not a State or local court.

3. **The proposed start date** of the project should be the earliest feasible date on which the applicant will be able to begin project activities following the date of award.

4. **Project duration** refers to the number of months the applicant estimates will be needed to complete all project tasks after the proposed start date.

Form A1 11/00 (over)

5. **Employer Identification #** as assigned by the Internal Revenue Service.

6. If this application or an application requesting support for the same project or an essentially similar project has been previously submitted to another funding source (Federal or private), enter the name of the **source**, the **date** of the submission, the **amount** of funding sought, and the **disposition** (if any).

7. a-1 **The entity to receive funds** is the court or organization that will receive, administer, and account for any monies awarded. If the applicant is a State or local court, the entity to receive funds would be the State's Supreme Court or its agency or council designated in accordance with 42 U.S.C. 10705(b) (4). **Applicants should complete this block only if the entity that will receive the funds is different from the applicant.**

8. a Insert the **amount requested** from the State Justice Institute to conduct the project.

8. b The **amount of match** is the amount, if any, to be contributed to the project by the applicant, a unit of State or local government, a Federal agency, or private sources. See 42 U.S.C. 10705 (d).

**Cash match** refers to funds directly contributed by the applicant, a unit of State or local government, a Federal agency, or private sources to support the project.

**Non-cash match** refers to in-kind contributions by the applicant, a unit of State or local government, or private sources to support the project.

8. c **Total match** refers to the sum of the cash and in-kind contributions to the project.

8. d **Total project cost** represents the sum of the amount requested from the Institute and all match contributions to the project.

9. The **title of the proposed project** should reflect the objectives of the activities to be conducted.

10. Enter the name of the applicant's Congressional Representative and the number of the applicant's **Congressional district**, along with the number of the Congressional district(s) in which most of the project activities will take place and the name(s) of the Representatives from those districts. If the project activities are not site-specific (for example, a series of training workshops that will bring together participants from around the State, the country, or from a particular region), enter *Statewide*, *national*, or *regional*, as appropriate, in the space provided.

11. **Signature** and title of a duly authorized representative of the applicant and the **date** the application was signed.

**FORM B**
**(Instructions on Reverse Side)**
**Revised 10/93**

# STATE JUSTICE INSTITUTE

## Certificate of State Approval

The ____________________________________________
*Name of State Supreme Court or Designated Agency or Council*

has reviewed the application entitled ______________________________

____________________________________________________

prepared by ____________________________________________,
*Name of Applicant*

approves its submission to the State Justice Institute, and

☐ agrees to receive and administer and be accountable for all funds awarded by the Institute pursuant to the application.

☐ designates ____________________________________________.
*Name of Designated Trial or Appellate Court or Agency*

______________________
*Signature*

______________________
*Date*

______________________
*Name*

______________________
*Title*

# INSTRUCTIONS - FORM B

The State Justice Institute Act requires that:

Each Application for funding by a state or local court shall be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts. 42 U.S.C. 10705(b) (4).

FORM B should be signed by the Chief Judge or Chief Justice of the State Supreme Court, or by the director of the designated agency or chair of the designated council. If the designated agency or council differs from the designee listed in Appendix I to the State Justice Institute Grant Guideline, evidence of the new or additional designation should be attached.

The term "State Supreme Court" refers to the court of last resort of a State. "Designated agency or council" refers to the office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer and be accountable for those funds.

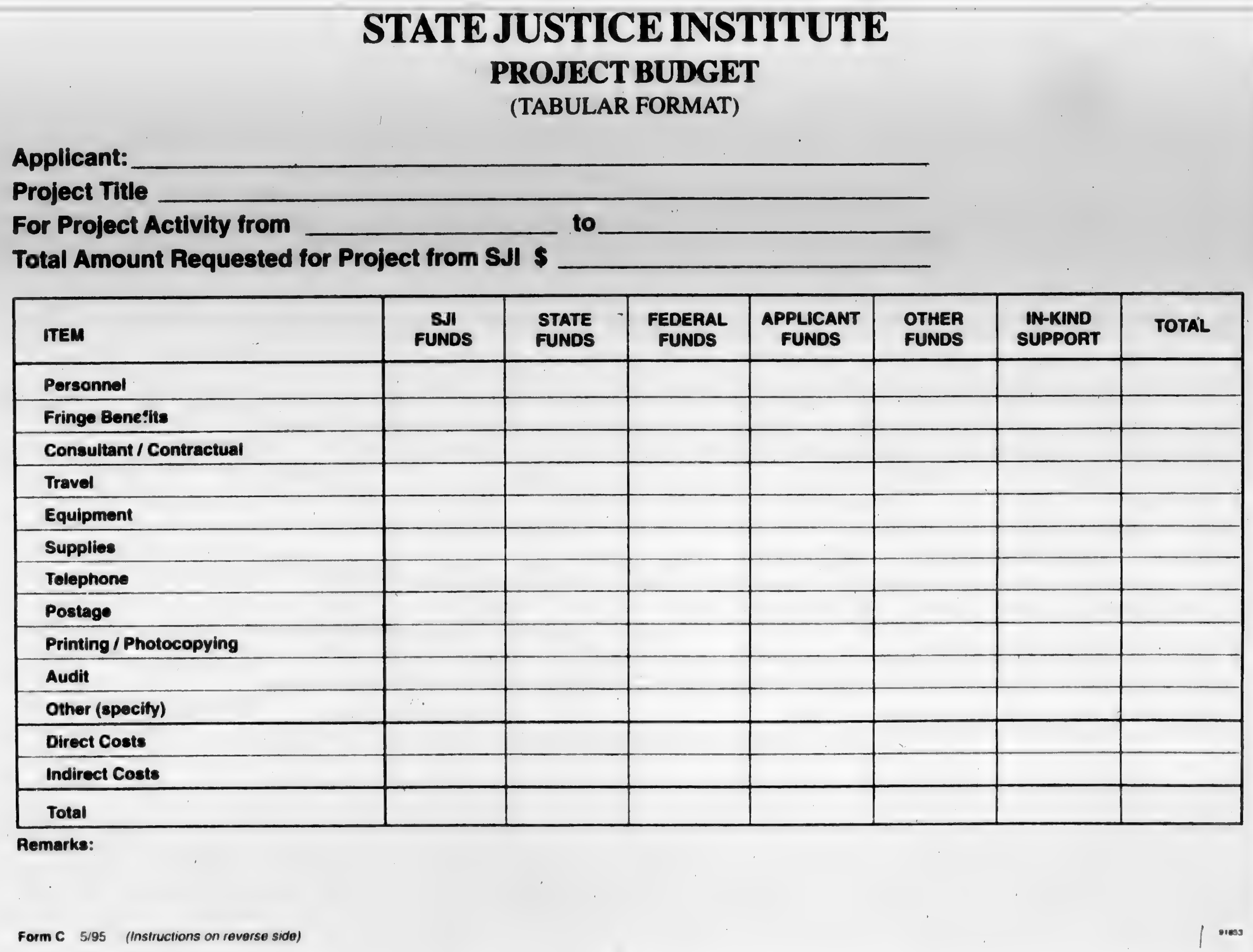

# STATE JUSTICE INSTITUTE

## PROJECT BUDGET

(TABULAR FORMAT)

**Applicant:** ______________________________

**Project Title** ______________________________

**For Project Activity from** ______________ **to** ______________

**Total Amount Requested for Project from SJI $** ______________

| ITEM | SJI FUNDS | STATE FUNDS | FEDERAL FUNDS | APPLICANT FUNDS | OTHER FUNDS | IN-KIND SUPPORT | TOTAL |
|---|---|---|---|---|---|---|---|
| Personnel | | | | | | | |
| Fringe Benefits | | | | | | | |
| Consultant / Contractual | | | | | | | |
| Travel | | | | | | | |
| Equipment | | | | | | | |
| Supplies | | | | | | | |
| Telephone | | | | | | | |
| Postage | | | | | | | |
| Printing / Photocopying | | | | | | | |
| Audit | | | | | | | |
| Other (specify) | | | | | | | |
| Direct Costs | | | | | | | |
| Indirect Costs | | | | | | | |
| Total | | | | | | | |

**Remarks:**

**Form C** 5/95 *(Instructions on reverse side)*

PAGE ____ OF ____

# STATE JUSTICE INSTITUTE
## PROJECT BUDGET
(SPEADSHEET FORMAT)

Applicant: ______________________________
Project Title ______________________________
For Project Activity from ______________ to ______________
Total Amount Requested for Project from SJI $ ______________

(See instruction regarding column headings)

| ITEM | | | | | | | |
|---|---|---|---|---|---|---|---|
| Personnel | | | | | | | |
| Fringe Benefits | | | | | | | |
| Consultant / Contractual | | | | | | | |
| Travel | | | | | | | |
| Equipment | | | | | | | |
| Supplies | | | | | | | |
| Telephone | | | | | | | |
| Postage | | | | | | | |
| Printing / Photocopying | | | | | | | |
| Audit | | | | | | | |
| Other (specify) | | | | | | | |
| Direct Costs | | | | | | | |
| Indirect Costs (%) | | | | | | | |
| SJI Total | | | | | | | |
| STATE FUNDS | | | | | | | |
| FEDERAL FUNDS | | | | | | | |
| APPLICANT FUNDS | | | | | | | |
| OTHER FUNDS | | | | | | | |
| IN-KIND FUNDS | | | | | | | |
| Total | | | | | | | |

Form C1 5/95 *(Instructions on reverse side)*

**Application Budget**

Applicants may submit the proposed project budgets either in the tabular format of Form C or in a spreadsheet format similar to Form C1. Applicants requesting more than $100,000 are encouraged to use the spreadsheet format. If the proposed project period is for more than 12 months, separate totals should be submitted for each succeeding twelve-month period or portion thereof beyond month 12.

In addition to Form C or C1, Applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category ( See Guidelines section VII.D). If the applicant is requesting indirect costs and has an indirect cost rate that has been approved by a Federal agency, the basis for that rate together with a copy of the letter or other official document stating that it has been approved should be attached.

If funds from other sources have been requested either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

COLUMN HEADINGS: For Budget Form C1 columns should be labeled consecutively by tasks, e.g., TASK #1, TASK #2, etc. At the end of each twelve month period or portion thereof beyond month 12 the following four columns must include: SJI FUNDS; MATCH; OTHER; TOTAL. Entries in these columns should include the line-item totals by source of funding per the column headings.

# STATE JUSTICE INSTITUTE

## ASSURANCES

The applicant hereby assures and certifies that it possesses legal authority to apply for the award, and that if funds are awarded by the State Justice Institute pursuant to this application, it will comply with all applicable provisions of law and the regulations, policies, guidelines and requirements of the Institute as they relate to the acceptance and use of Institute funds pursuant to this application. The applicant further assures and certifies with respect to this application, that:

1. No person will, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds, and that the applicant will immediately take any measures necessary to effectuate this assurance.

2. In accordance with 42 U.S.C. 10706(a), funds awarded to the applicant by the Institute will not be used, directly or indirectly, to influence the issuance, amendment, or revocation of any Executive order or similar promulgation by Federal, State or local agencies, or to influence the passage or defeat of any legislation or constitutional amendment by any Federal, State or local legislative body.

3. In accordance with 42 U.S.C. 10706(a) and 10707(c):

    a. It will not contribute or make available Institute funds, project personnel, or equipment to any political party or association, to the campaign of any candidate for public or party office, or to influence the passage or defeat of any ballot measure, initiative, or referendum;

    b. No officer or employee of the applicant will intentionally identify the Institute or the applicant with any partisan or nonpartisan political activity or the campaign of any candidate for public or party office; and,

    c. No officer or employee of the applicant will engage in partisan political activity while engaged in work supported in whole or in part by the Institute.

4. In accordance with 42 U.S.C. 10706(b), no funds awarded by the Institute will be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities.

5. In accordance with 42 U.S.C. 10706(d), no funds awarded by the Institute will be used to supplant State or local funds supporting a program or activity; to construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or to solely purchase equipment for a court system.

6. It will provide for an annual fiscal audit of the project.

7. It will give the Institute, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award.

8. In accordance with 42 U.S.C. 10708 (b) (as amended), research or statistical information that is furnished during the course of the project and that is identifiable to any specific individual, shall not be used or revealed for any purpose other than the purpose for which it was obtained. Such information and copies thereof shall be immune from legal process, and shall not be offered as evidence or used for any purpose in any action suit, or other judicial, legislative, or administrative proceeding without the consent of the person who furnished the information.

Form D 5/95 *(over)*

91856

9. All research involving human subjects will be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

10. All products prepared as the result of the project will be originally-developed material unless otherwise specifically provided for in the award documents, and that material not originally developed that is included in such projects must by property identified, whether the material is in a verbatim or extensive paraphrase format.

11. No funds will be obligated for publication or reproduction of a final product developed with Institute funds without the written approval of the Institute. The recipient will submit a final draft of each such product to the Institute for review and approval prior to submitting that product for publication or reproduction.

12. The following statement will be prominently displayed on all products prepared as a result of the project:

> This [document, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. Points of view expressed herein are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.

13. THE "SJI" logo will appear on the front cover of a written product or in the opening frames of a video production produced with SJI funds, unless another placement is approved in writing by the Institute.

14. Except as otherwise provided in the terms and conditions of an Institute award, the recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

15. It will submit quarterly progress and financial reports within 30 days of the close of each calendar quarter during the funding period (that is, no later than January 30, April 30, July 30, and October 30); that progress reports will include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period; and that financial reports will contain the information requested on the financial report form included in the award documents.

16. At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the court, organization or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

17. The person signing the application is authorized to do so on behalf of the applicant and to obligate the applicant to comply with the assurances enumerated above.

# DISCLOSURE OF LOBBYING ACTIVITIES

*The State Justice Institute Act prohibits grantees from using funds awarded by the Institute to directly or indirectly influence the passage or defeat of any legislation by Federal, State of local legislative bodies. 42 U.S.C. 10706 (a). It also is the policy of the Institute to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner.*

*Consistent with this policy and the provisions of 42 U.S.C. 10706 (a), the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application. As a means of implementing that prohibition, SJI requires organizations submitting applications to the Institute to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. This form must be submitted with your application.*

**Name of Applicant:**

**Title of Application:**

☐ **Yes** ☐ **No** **Has the applicant (or an entity that is part of the same organization as the applicant) directly or indirectly advocated a position before Congress on any issue within the past five years?**

## SPECIFIC SUBJECTS OF LOBBYING EFFORTS

**If you answered YES above, please list the specific subjects on which your organization (or another entity that is part of your organization) has directly or indirectly advocated a position before Congress within the past five years. If necessary, you may continue on the back of this form or on an attached sheet.**

| Subject | Year |
|---|---|
| | |
| | |
| | |
| | |
| | |
| | |

## STATEMENT OF VERIFICATION

**I declare under penalty of perjury that the information contained in this disclosure statement is correct and that I am authorized to make this verification on behalf of the applicant.**

**Signature** **Name (Typed)**

**Title** **Date**

## Appendix G

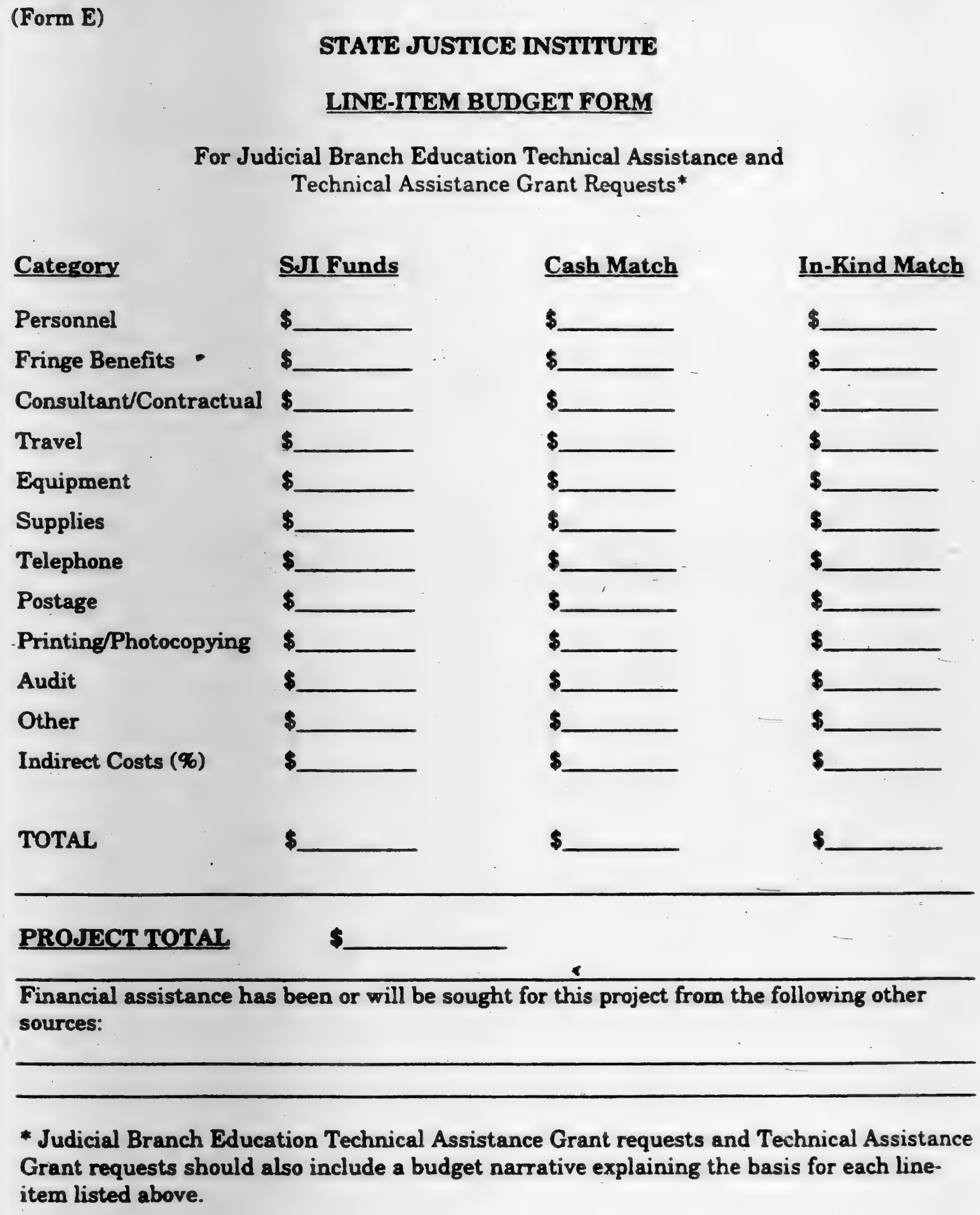

(Form E)

### STATE JUSTICE INSTITUTE

### LINE-ITEM BUDGET FORM

For Judicial Branch Education Technical Assistance and
Technical Assistance Grant Requests*

| Category | SJI Funds | Cash Match | In-Kind Match |
|---|---|---|---|
| Personnel | $______ | $______ | $______ |
| Fringe Benefits | $______ | $______ | $______ |
| Consultant/Contractual | $______ | $______ | $______ |
| Travel | $______ | $______ | $______ |
| Equipment | $______ | $______ | $______ |
| Supplies | $______ | $______ | $______ |
| Telephone | $______ | $______ | $______ |
| Postage | $______ | $______ | $______ |
| Printing/Photocopying | $______ | $______ | $______ |
| Audit | $______ | $______ | $______ |
| Other | $______ | $______ | $______ |
| Indirect Costs (%) | $______ | $______ | $______ |
| TOTAL | $______ | $______ | $______ |

**PROJECT TOTAL** $______

Financial assistance has been or will be sought for this project from the following other sources:

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* Judicial Branch Education Technical Assistance Grant requests and Technical Assistance Grant requests should also include a budget narrative explaining the basis for each line-item listed above.

## Appendix H

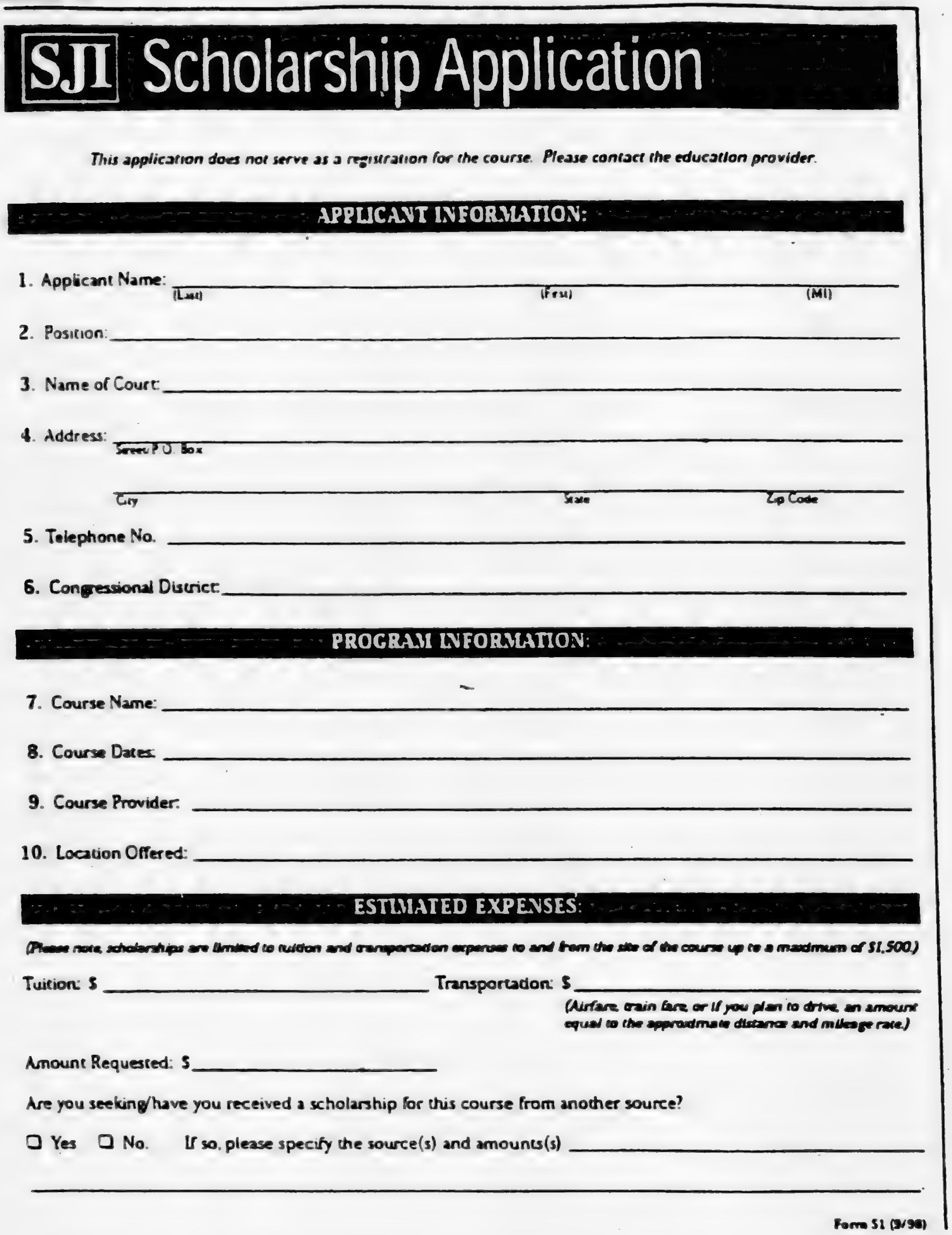

# SJI Scholarship Application

*This application does not serve as a registration for the course. Please contact the education provider.*

### APPLICANT INFORMATION:

1. Applicant Name: ______________ (Last) ______________ (First) ______ (MI)
2. Position: ______________
3. Name of Court: ______________
4. Address: ______________ Street/P.O. Box
______________ City ______ State ______ Zip Code
5. Telephone No. ______________
6. Congressional District: ______________

### PROGRAM INFORMATION:

7. Course Name: ______________
8. Course Dates: ______________
9. Course Provider: ______________
10. Location Offered: ______________

### ESTIMATED EXPENSES:

*(Please note, scholarships are limited to tuition and transportation expenses to and from the site of the course up to a maximum of $1,500.)*

Tuition: $ ______________ Transportation: $ ______________
*(Airfare, train fare, or if you plan to drive, an amount equal to the approximate distance and mileage rate.)*

Amount Requested: $ ______________

Are you seeking/have you received a scholarship for this course from another source?

☐ Yes ☐ No. If so, please specify the source(s) and amounts(s) ______________

______________

Form S1 (3/98)

## SJI SCHOLARSHIP APPLICATION PAGE 2

### ADDITIONAL INFORMATION:

*Please attach a current resume or professional summary, and provide the information requested below.*
*(You may attach additional pages if necessary.)*

1. Please describe your need to acquire the skills and knowledge taught in this course.

2. Please describe how will taking this course benefit you, your court, and the State's courts generally.

3. Is there an educational program currently available through your State on this topic?

4. Are State or local funds available to support your attendance at the proposed course?
If so, what amount(s) will be provided?

5. How long have you served as a judge or court manager? ____________________

6. How long do you anticipate serving as a judge or court manager, assuming reelection or reappointment?
☐ 0–1 year ☐ 2–4 years ☐ 5–7 years ☐ 8–10 years ☐ 11+ years

7. What continuing professional education programs have you attended in the past year? Please indicate which were mandatory (M) and which were non-mandatory (V).

### STATEMENT OF APPLICANT'S COMMITMENT

**If a scholarship is awarded, I will share the skills and knowledge I have gained with my court colleagues locally, and if possible, Statewide, and I will submit an evaluation of the educational program to the State Justice Institute and to the Chief Justice of my State.**

______________________________ Signature

______________________________ Date

*Please return this form and Form S-2 to:*

Scholarship Coordinator, State Justice Institute, 1650 King Street, Suite 600, Alexandria Virginia 22314

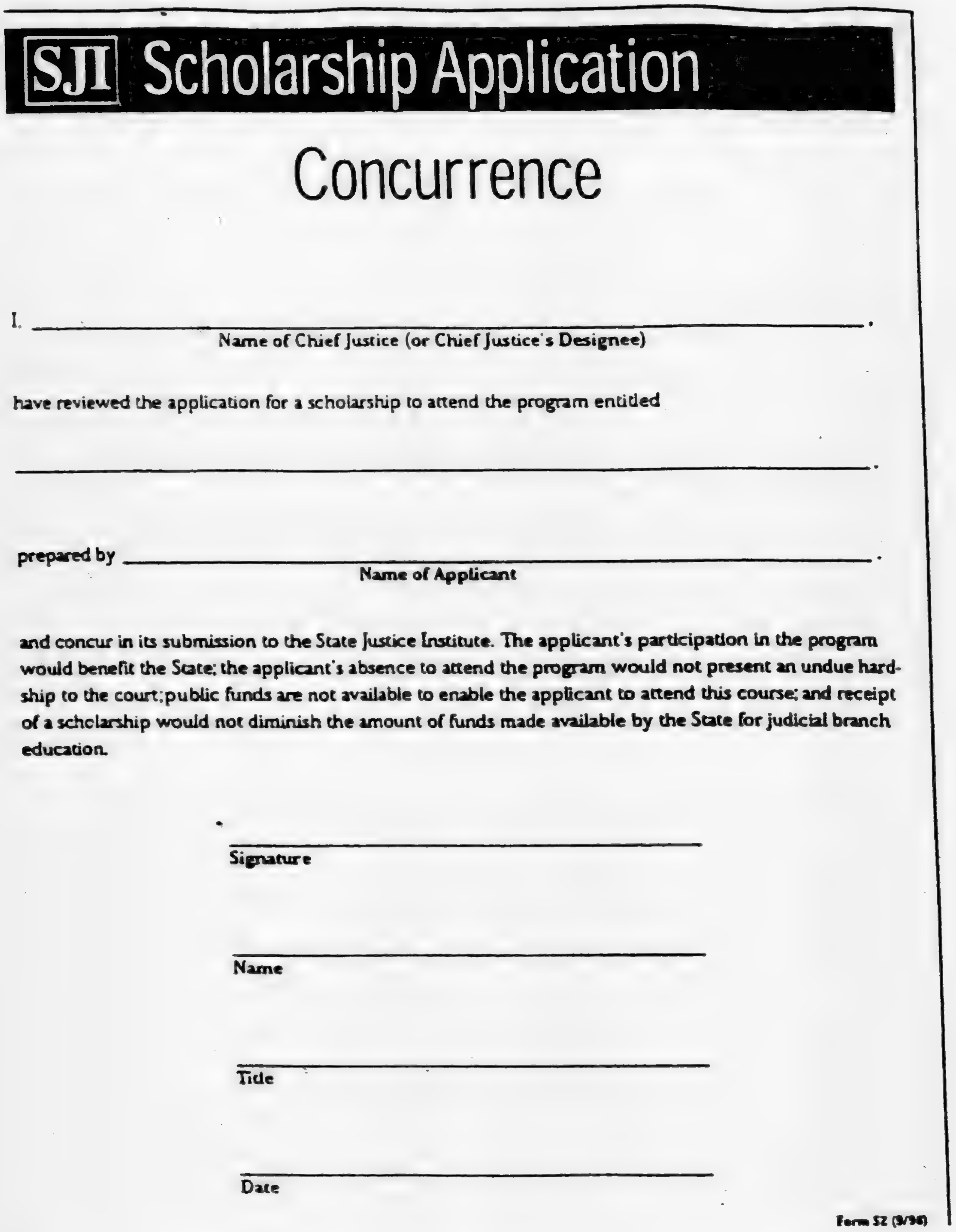

# SJI Scholarship Application

## Concurrence

I, ______________________________________________________.
Name of Chief Justice (or Chief Justice's Designee)

have reviewed the application for a scholarship to attend the program entitled

______________________________________________________.

prepared by ______________________________________________________.
Name of Applicant

and concur in its submission to the State Justice Institute. The applicant's participation in the program would benefit the State; the applicant's absence to attend the program would not present an undue hardship to the court; public funds are not available to enable the applicant to attend this course; and receipt of a scholarship would not diminish the amount of funds made available by the State for judicial branch education.

______________________________
Signature

______________________________
Name

______________________________
Title

______________________________
Date

Form S2 (9/98)

[FR Doc. 03–24592 Filed 10–2–03; 8:45 am]

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Federal Register

Friday,
October 3, 2003

## Part IV

# Housing and Urban Development

**24 CFR Parts 598 and 599**
**Designation of Round III Urban Empowerment Zones and Renewal Communities; Final Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 598 and 599**

**[Docket No. FR–4663–F–07]**

**RIN 2506–AC09**

## Designation of Round III Urban Empowerment Zones and Renewal Communities

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts without change an interim rule that governs the designation of Round III Urban Empowerment Zones (EZs) and Renewal Communities (RCs) nominated by states and local governments. The designation of an area as an EZ or an RC provides special federal income tax treatment as an incentive for businesses to locate within the area.

**DATES:** Effective Date: November 3, 2003.

**FOR FURTHER INFORMATION CONTACT:** For EZ/EC issues, Lisa Hill, and for RC issues, John Haines, at the Department of Housing and Urban Development, Room 7130, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–6339 (this is not a toll-free telephone number). Individuals with speech or hearing impairments may access these numbers via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 2001 (Omnibus Act) (Pub. L. 106–554, 114 Stat. 2763, approved December 21, 2000) enacted into law the provisions of a number of bills of the 106th Congress. One of the bills enacted into law as part of the Omnibus Act is H.R. 5662, the Community Renewal Tax Relief Act of 2000 (CRTR Act).

Section 111 of the CRTR Act added a new subsection (h), which authorized the designation of nine Round III Empowerment Zones (EZs) to section 1391 of Subchapter U of Chapter 1 of the Internal Revenue Code of 1986 (IRC). Subchapter U governs the designation and treatment of Empowerment Zones, Enterprise Communities, and Rural Development Investment Areas and provided authorization (though separate legislative enactments) for the designation of Round I EZs in 1993 and Round II EZs in 1997. The CRTR Act requires seven of the Round III EZs to be designated in urban areas by the Secretary of HUD and the remaining two Round III EZs to be designated in rural areas by the Secretary of Agriculture. The CRTR Act also conforms and enhances the tax incentives for Round I and Round II EZs and makes the new Round III EZs eligible for these incentives. The availability of the tax incentives is extended to December 31, 2009, for all EZs.

Section 101 of the CRTR Act added a new Subchapter X, consisting of sections 1400E through 1400J, to Chapter 1 of the IRC. Subchapter X governs the designation of, and tax incentives for, Renewal Communities (RCs) within which special tax incentives would be available. At least 12 of the 40 RC designations authorized by the CRTR Act must be in rural communities. Unlike the EZ program, which splits the designation responsibility between HUD and the Department of Agriculture for urban and rural areas respectively, all RC designations are to be made by HUD.

On July 9, 2001 (66 FR 35850), HUD published an interim rule to implement the designation requirements for Round III EZs and for RCs and requested public comment on the rule. HUD received four public comments, which are discussed in section III, Public Comments, of this preamble.

## II. Changes in the Final Rule

The Department has determined to adopt the July 9, 2001, interim rule as a final rule without change.

## III. Public Comments

Four municipalities submitted comments on the interim rule. The issues raised in the comments, all of them concerning the RC rule at 24 CFR part 599, followed by HUD's response, are set out under separate subject headings in this section of the preamble.

### *Too Small Areas*

Because the nominated areas will be ranked solely on statistical criteria, there is nothing to prevent small areas from winning designation. The selection formula should give added weight to areas with larger populations.

*HUD response:* The statutory authorization for the designation of RCs, at section 1400E(c)(2)(C) of the IRC, establishes maximum and minimum population limits as eligibility requirements for RC designation. The criteria that may be used to designate RCs is also specifically limited to those provided in section 1400E. Although the population of an area must be within the statutory limits for the area to be considered for RC designation, population size is not included as one of the selection criteria provided in section 1400E. Therefore, HUD must determine that an area meets the population eligibility threshold, but HUD is not permitted to use population size in the selection formula.

### *Awarding RC Designation in a City With an EZ*

If a city that already contains an EZ applies for an RC designation for an area that does not contain any census tracts from the EZ, it could receive the RC designation and also retain its EZ. This opportunity is unfair to a community that needs and deserves one of the designations.

*HUD response:* Section 1400E does not permit EZs and RCs to overlap by even a single census tract. Section 1400E(e) specifically provides that, "[T]he designation * * * of any area as an empowerment zone or enterprise community shall cease to be in effect as of the date that the designation of any portion of such area as a renewal community takes effect." Beyond this limitation, the statute does not impose any restrictions on the availability of both EZs and RCs to qualifying areas within a community.

### *Including No- or Low-Population Tracts*

A census tract with very low or no population may be critical for inclusion to create an effective RC, yet it would be ineligible unless it meets the 20 percent poverty criterion. This may result in inadequate land for business growth. HUD should allow inclusion of census tracts that are predominantly industrial or transportation uses if they are adjacent to tracts that meet the 20 percent poverty standard and if fewer than 50 households were counted in determining the poverty percentage.

*HUD response:* Although the authorizing statute for the EZ program specifically included, at 26 U.S.C. 1391(g)(3)(A)(ii), a provision permitting such treatment of census tracts with small populations, no such provision was included in the authorizing statute for the RC program. HUD hesitates to adopt such requirements absent the specific legislative authority.

### *Using Employment Tax Credits Cross-Boundary*

The employment tax credits should be available for an employee that works in one EZ or RC and lives in another. This would include allowing an employer to claim the RC employment tax credit if both an EZ and an RC are involved. HUD and the Internal Revenue Service

(IRS) should issue the rulings that are necessary to confirm that these interpretations are correct.

*HUD response:* While HUD is responsible for the designation of RCs, the implementation and administration of the tax incentives for these areas is the responsibility of the Internal Revenue Service.

*Regulation Protecting Health and Safety or Preventing Public Nuisance*

The program requires the nominating governments to commit to "economic growth promotion requirements." Specifically, they certify that they will repeal, reduce, or not enforce legal restrictions on certain types of business activities. The certifications do not apply to the extent that the regulation of businesses and occupations is necessary for, and well-tailored to, the protection of health and safety or if a public nuisance is involved, and the certifications may be limited to exclude specific businesses and occupations. The commenter recommended that HUD should allow the local governments broad discretion in determining what is a public nuisance.

*HUD response:* What constitutes a public nuisance is a determination to be made by the community at the local level.

*Using CDBG Funds To Implement Renewal Communities*

HUD should allow jurisdictions with designated RCs to use funds from the CDBG program, or, if applicable, EZ funds, for promotion and administration of RC responsibilities, perhaps with an annual cap of, say, $2.00 per RC resident.

*HUD response:* HUD is considering this suggestion, and will issue appropriate guidance to grantees.

*Retaining One State's EZ Designation*

Philadelphia and Camden request that Camden be allowed to retain its EZ status even if Philadelphia is awarded designation of an RC that includes census tracts from the Philadelphia-Camden EZ. They point out that the EZ is in two states and two cities, and each state/city combination has entered into a separate Memorandum of Agreement with HUD to implement their portions of the Round I EZ.

*HUD response:* As discussed above, section 1400E(e) of the IRC mandates that if any portion of an area designated as an EZ is given RC designation, the entire EZ designation ceases to be in effect. HUD has no authority to permit a different result.

## IV. Findings and Certifications

*Paperwork Reduction Act*

The information collection requirements contained in 24 CFR parts 598 and 599 have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control numbers 2506–0148 and 2506–0173, respectively. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

*Environmental Impact*

A Finding of No Significant Impact with respect to the environment was made for this rule at the interim rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. Because this final rule adopts the interim rule without change, the Finding of No Significant Impact continues to apply. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities as distinguished from large entities. The rule does not place any mandates on small entities. It merely authorizes them to seek designation as Renewal Communities as authorized by statute, and the burdens placed on applicants derive from the statute.

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

*Unfunded Mandates*

Executive Order 12875 calls for federal agencies to refrain, to the extent feasible and permitted by law, from promulgating any regulation that is not required by statute that would create a mandate on a state, local, or Tribal government, unless the agency provides funds for complying with the mandate or the agency first consults with affected state, local, and Tribal governments. Title II of the Unfunded Mandates Reform Act of 1995 (12 U.S.C. 1501) established requirements for federal agencies to assess the effects of their regulatory actions on state, local, and Tribal governments, and the private sector.

This rule does not impose any federal mandates on any state, local, or Tribal governments, or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995, because it does not mandate any particular action. The rule only authorizes states, localities, and tribes to apply for designation of areas within their jurisdiction as Empowerment Zones or Renewal Communities, which permits special tax treatment of business activities within the areas.

*Regulatory Review*

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, (entitled "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule after its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, Office of General Counsel, 451 Seventh Street, SW, Washington, DC 20410–0500.

*Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance Program number assigned to these programs is 14.244.

## List of Subjects

*24 CFR Part 598*

Community development, Economic development, Empowerment zones, Housing, Indians, Intergovernmental relations, Reporting and record keeping requirements, Urban renewal.

*24 CFR Part 599*

Community development, Economic development, Renewal communities, Housing, Indians, Intergovernmental relations, Reporting and recordkeeping requirements, Urban renewal.

## PART 598—URBAN EMPOWERMENT ZONES: ROUND TWO AND THREE DESIGNATIONS

## PART 599—RENEWAL COMMUNITIES

■ Accordingly, the interim rule amending 24 CFR part 598 and adding 24 CFR part 599, which was published at 66 FR 35850 on July 9, 2001, is adopted as final without change.

Dated: August 11, 2003.

**Roy A. Bernardi,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 03–25041 Filed 10–2–03; 8:45 am]

**BILLING CODE 4210–29–P**

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**H.R. 2555/P.L. 108–90**
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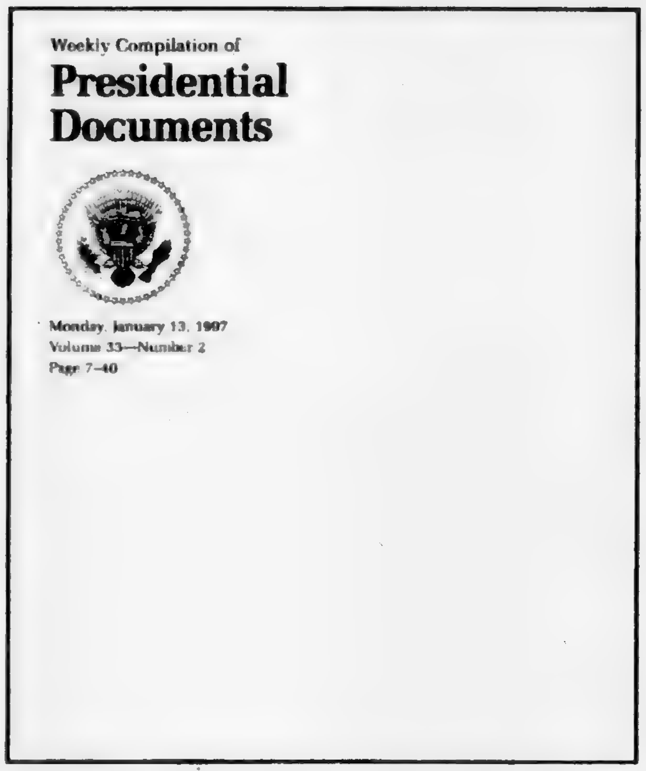
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# Rules and Regulations

**Federal Register**
Vol. 68, No. 193
Monday, October 6, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 113

**[Docket No. 01–067–2 ]**

## Viruses, Serums, Toxins, and Analogous Products; Determination of Moisture Content in Desiccated Biological Products

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the Virus-Serum-Toxin Act regulations for the determination of moisture content in desiccated biological products to require that such determinations be made using a gravimetric method that expresses moisture content as the percentage of weight a product loses during a drying cycle, and to require that the maximum percentage of moisture permitted for a satisfactory test must be specified in a filed Outline of Production. The gravimetric method has been adopted as an international standard by scientific experts and regulatory authorities in the United States, Canada, Japan, and the European Union. In addition, we are amending the regulations pertaining to general requirements for live bacterial vaccines and general requirements for live virus vaccines to specify the gravimetric method when testing for moisture content. These actions will update the regulations by providing a uniform method of determining moisture content in desiccated products and ensure the stability of that product during its dating period.

**EFFECTIVE DATE:** November 5, 2003.

**FOR FURTHER INFORMATION CONTACT:** Dr. Albert P. Morgan, Chief of Operational Support, Licensing and Policy Development, Center for Veterinary Biologics, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; (301) 734–8245.

**SUPPLEMENTARY INFORMATION:**

### Background

The Virus-Serum-Toxin Act regulations in 9 CFR part 113 (referred to below as the regulations) prescribe standard requirements for the preparation and testing of veterinary biological products. Standard requirements consist of test methods, procedures, and criteria that define the standards for purity, safety, potency, and efficacy for a given type of veterinary biologic product. When a standard procedure for testing veterinary biological products is validated and approved by the Animal and Plant Health Inspection Service (APHIS) for general use, it is proposed for codification in the regulations. Section 113.29 of the regulations sets forth the requirement for determination of moisture content in desiccated biological products.

On August 5, 2002, we published in the **Federal Register** (67 FR 50606–50608, Docket No. 01–067–1) a proposal to amend the regulations for determination of moisture content in desiccated biological products to specify that such determinations be made using a gravimetric method, and to require that the maximum percentage of moisture permitted for a satisfactory test must be specified in a filed Outline of Production. The proposed rule was intended to update the regulations by providing a uniform method of determining moisture content in desiccated products and ensure the stability of that product during its dating period.

We solicited comments on our proposed rule for 60 days ending on October 4, 2002. We received two comments by that date, from a veterinary biologics manufacturer and a national trade association representing veterinary biologics manufacturers. Both commenters supported the proposed rule. One commenter did, however, request that we "clarify the exceptions to the use of the proposed method." The commenter recommended that if we intend to handle such instances via outline exemptions, then that should be stated. Additionally, the commenter asked that we indicate whether one valid reason for an exemption would be that a firm does not have the equipment necessary to conduct the test.

In this final rule, we are adopting the gravimetric method as the standard procedure for determining moisture content. As a Standard Requirement test, the gravimetric method should be used whenever the test for moisture content is performed. However, we note that exemptions to the use of the gravimetric method, like exemptions to any test prescribed in the various standard requirements found in part 113, may be granted for any valid reason in accordance with § 113.4, "Exemptions to tests." Exemption requests are evaluated on a product-by-product basis, and in our review of such requests, we focus on the methods, equipment, and procedures that would be used in place of those prescribed in the Standard Requirement. It is the validity of the alternative methods and procedures that serves as the basis for the granting of an exemption.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

### Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are amending the Virus-Serum-Toxin Act regulations for determination of moisture content in desiccated biological products to require that such moisture determinations be made using a gravimetric method that determines residual moisture by measuring the percentage of weight a product loses during a product drying cycle. In addition, this rule provides that the maximum percentage of moisture permitted for a satisfactory test must be specified in a filed Outline of Production. The effect of this action will be to provide a standardized method for the determination of moisture content in desiccated biological products that has been adopted internationally and ensure that such moisture determinations are uniform and reproducible.

This rule will affect all licensed manufacturers of veterinary biologics that test desiccated vaccines for moisture content. Currently, there are approximately 135 veterinary biologics establishments, including permittees. According to the standards of the Small Business Administration, most veterinary biologics establishments would be classified as small entities.

We do not expect that this rule will impose any additional testing or economic burden on these manufacturers because manufacturers currently test their products for moisture content by methods specified in their filed Outline of Production and the reagents and equipment necessary to perform the gravimetric test for moisture content that will be required under this rule are expected to be comparable in cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

## Executive Order 12372

This program/activity is listed in the catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

## Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Virus-Serum-Toxin Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

## Paperwork Reduction Act

This final rule contains no new information or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

## List of Subjects in 9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 9 CFR part 113 as follows:

## PART 113—[AMENDED]

■ 1. The authority citation for part 113 continues to read as follows:

**Authority:** 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 113.29 is revised to read as follows:

### § 113.29 Determination of moisture content in desiccated biological products.

Methods provided in this section must be used when a determination of moisture content in desiccated biological products is prescribed in an applicable Standard Requirement or in the filed Outline of Production for the product. Firms currently using methods other than those provided in this section for determining the moisture content in desiccated biological products have until November 5, 2004 to update their Outlines of Production to be in compliance with this requirement.

(a) Final container samples of completed product shall be tested. The weight loss of the sample due to drying in a vacuum oven shall be determined. All procedures should be performed in an environment with a relative humidity less than 45 percent. The equipment necessary to perform the test is as follows:

(1) Cylindrical weighing bottles with airtight glass stoppers.

(2) Vacuum oven equipped with validated thermometer and thermostat. A suitable air-drying device should be attached to the inlet valve.

(3) Balance, accurate to 0.1 mg (rated precision ±0.01mg).

(4) Desiccator jar equipped with phosphorous pentoxide, silica gel, or equivalent.

(5) Desiccated vaccine in original sealed vial. Sample and control should be kept at room temperature in their original airtight containers until use.

(b) Test procedure:

(1) Thoroughly cleaned and labeled sample-weighing bottles with stoppers should be allowed to dry at 60 ±3 °C under vacuum at less than 2.5 kPa.

(i) Transfer hot bottles and stoppers into the desiccator and allow to cool to room temperature.

(ii) After bottles have cooled, insert stoppers and weigh and record the weights of the bottles as "A."

(iii) Return weighing bottles to the desiccator.

(2) Remove the sample container seal.

(i) Using a spatula, break up the sample plug and transfer the required amount of sample to the previously tared weighing bottle.

(ii) Insert the stopper and weigh and record the weights of the weighing bottles as "B."

(3) Place the weighing bottle with the stopper at an angle in the vacuum oven. Set the vacuum to < 2.5 kPa and the temperature to 60 ±3 °C.

(4) After a minimum of 3 hours of drying time, turn off the vacuum pump and allow dry air to bleed into the oven until the pressure inside the oven is equalized with the prevailing atmospheric pressure.

(5) While the bottle is still warm, replace the stopper in its normal position and transfer the weighing bottle to the desiccator.

(i) Allow a minimum of 2 hours for the weighing bottle to cool to room temperature or for its weight to reach equilibrium.

(ii) Weigh, and record the weight as "C."

(6) Calculate the percentage of moisture in the original sample as follows:

$(B - C)/(B - A) \times (100)$ = Percentage of residual moisture, where:

A = tare weight of weighing bottle

$B - A$ = weight of sample before drying

$B - C$ = weight of sample after drying

(7) The results are considered satisfactory if the percentage of residual moisture is less than or equal to the manufacturer's specification.

■ 3. In § 113.64, paragraph (e) is amended by adding a new paragraph (e)(3) to read as follows:

### § 113.64 General requirements for live bacterial vaccines.

* * * * *

(e) * * *

(3) Final container samples of completed product from each serial and subserial must be tested for moisture content in accordance with the test provided in § 113.29.

■ 4. Section 113.300 is amended by revising paragraph (e) to read as follows:

### § 113.300 General requirements for live virus vaccines.

* * * * *

(e) *Moisture content.* (1) The maximum moisture content in desiccated vaccines must be stated in the filed Outline of Production.

(2) Final container samples of completed product from each serial or subserial must be tested for moisture content in accordance with the test prescribed in § 113.29.

Done in Washington, DC, this 30th day of September 2003.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 03–25251 Filed 10–3–03; 8:45 am]

BILLING CODE 3410–34–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2002–NM–106–AD; Amendment 39–13326; AD 2003–20–08]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 747SP and 747SR; 747–100B, –200B, –200C, –200F, –300, –400, and –400D; and 767–200 and –300 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing transport category airplanes. This action requires inspection of the attachment of the shoulder restraint harness to the mounting bracket on certain observer and attendant seats to determine if a C-clip is used in the attachment, and corrective action, if necessary. This action is necessary to prevent detachment of the shoulder restraint harness of the attendant or observer seat from its mounting bracket during service, which could result in injury to the occupant of the seat. This action is intended to address the identified unsafe condition.

**DATES:** Effective October 21, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 21, 2003.

Comments for inclusion in the Rules Docket must be received on or before December 5, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–106–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain “Docket No. 2002–NM–106–AD” in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Keith Ladderud, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6435; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:** The FAA has received reports that the shoulder restraint harness of the attendant or observer seat detached from the mounting bracket during service on two Boeing Model 737–300 series airplanes. In the reported incidents, the restraint harness was attached to the mounting bracket with a C-clip. Such detachment of the shoulder restraint harness from its mounting bracket during service, if not corrected, could result in injury to the occupant of the seat.

### Similar Model Airplanes

The shoulder restraint harness installations on Boeing Model 737–300 series airplanes are identical to those on certain Boeing Model 747SP and 747SR; 747–100B, –200B, –200C, –200F, –300, –400, and –400D; and 767–200 and –300 series airplanes. Therefore, the shoulder restraint harnesses on these models may have a C-clip installed and thus be subject to the same unsafe condition.

### Related Rulemaking

On November 16, 2001, the FAA issued AD 2001–24–02 (66 FR 59681, November 30, 2001), which is applicable to certain Boeing Model 707–100, –100B, –300, and –E3A (military airplanes); 727–100 and –200; 737–200, –200C, –300, –400, and –500; 747SP and 747SR; 747–100B, –200B, –200C, –200F, –300, –400, and –400D; 757–200 and –200PF; and 767–200 and –300 series airplanes. That AD requires inspection of the attachment of the shoulder restraint harness to the mounting bracket on certain observer and attendant seats to determine if a C-clip is used in the attachment, and corrective action, if necessary. That action is necessary to prevent detachment of the shoulder restraint harness of the attendant or observer seat from its mounting bracket during service, which could result in injury to the occupant of the seat.

### Since the Issuance of That AD

Since the issuance of that AD, the FAA has determined that the same unsafe condition addressed in that AD may exist on an additional 21 Model 747SP and 747SR, 747–100B, –200B, –200C, –200F, –300, –400, and –400D series airplanes; and an additional 23 Model 767–200 and –300 series airplanes. None of the additional airplanes are on the U.S. registry.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Special Attention Service Bulletin 747–25–3244, Revision 4, dated June 26, 2003; and Boeing Service Bulletin 767–25–0288, Revision 3, dated August 1, 2002. Those service bulletins describe procedures for a one-time inspection of the attachment of the shoulder restraint harness of certain attendant or observer seats to the mounting bracket to determine if a C-clip is used in the attachment. If the shoulder restraint harness is looped through the bracket and attached to itself with a C-clip, the service bulletins provide two alternative methods for correcting this condition. One method instructs operators to attach the shoulder restraint harness directly to the mounting bracket by removing and discarding the C-clip, removing the mounting bracket, putting the mounting bracket through the loop of the shoulder harness, and attaching the mounting bracket in its original position. The service bulletin also describes a second method to correct the condition that involves installation of a second C-clip with the clip's opening positioned in the opposite direction of the opening of the existing C-clip. The service bulletins also revise the effectivity by adding certain airplanes and removing certain other airplanes. Accomplishment of either of the methods described in the service bulletins is intended to adequately address the identified unsafe condition.

### Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some time in the future, this AD is being issued to prevent detachment of the shoulder restraint harness of the attendant or observer seat from its mounting bracket during service, which could result in injury to the occupant of the seat. This AD requires inspection of the attachment of the shoulder restraint harness to the mounting bracket on certain observer and attendant seats to determine if a C-clip is used in the attachment, and corrective action, if necessary. The actions are required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

### Differences Between the Service Bulletins and This AD

Operators should note that, although the service bulletins recommend accomplishing the inspection "at the next scheduled maintenance period when manpower and equipment are available," the FAA has determined that such an indefinite compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the required actions. In light of all of these factors, the FAA finds a 36-month compliance time for initiating the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

In addition, the service bulletins do not identify the type of inspection that is involved in the procedures for inspecting the attachment of the shoulder restraint harness to determine if a C-clip is used. The FAA refers to this inspection in this AD as a "general visual" inspection.

### Changes to 14 CFR part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

### Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

### Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require between 1 hour and 5 hours (depending on the number of attendant/observer seats installed on the airplane) to accomplish the inspection, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this AD would be between $65 and $325 per airplane.

### Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

### Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–106–AD." The postcard will be date stamped and returned to the commenter.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

**2003–20–08 Boeing:** Amendment 39–13326. Docket 2002–NM–106–AD.

*Applicability:* Airplanes, certificated in any category, as listed in Table 1 of this AD below:

TABLE 1.—APPLICABILITY

| Models and series | As listed in the following Boeing Service Bulletins |
|---|---|
| Model 747SR and 747SP, and 747–100B, –200B, –200C, –200F, –300, –400, and –400D. | 747–25–3244, Revision 4, dated June 26, 2003. |
| Model 767–200 and –300. | 767–25–0288, Revision 3, dated August 1, 2002. |

*Compliance:* Required as indicated, unless accomplished previously.

To prevent detachment of the shoulder restraint harness of the attendant or observer seat from its mounting bracket during service, which could result in injury to the occupant of the seat, accomplish the following:

**Inspection and Corrective Action**

(a) Within 36 months after the effective date of this AD, do a one-time general visual inspection of the attachment of the shoulder restraint harness of each observer or attendant seat to determine if a C-clip is used in the attachment. Do the inspection according to Boeing Service Bulletin 747–25–3244, Revision 4, dated June 26, 2003; or Boeing Special Attention Service Bulletin 767–25–0288, Revision 3, dated August 1, 2002; as applicable. If the shoulder harness is looped through the bracket and attached to itself with a C-clip, do paragraph (a)(1) or (a)(2) of this AD.

**Note 1:** For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) Remove and discard the C-clip, and reattach the shoulder harness to the mounting bracket, according to the service bulletin.

(2) Install a second C-clip with the clip's opening positioned in the opposite direction of the opening of the existing C-clip, according to the optional method described in Steps 19 and 20 of Figure 1 or 2 of the applicable service bulletin.

**Acceptable for Compliance**

(b) Removing and discarding the C-clip and reattaching the shoulder harness to the mounting bracket; according to Boeing Service Bulletin 747–25–3244, Revision 1, dated May 17, 2001, Revision 2, dated April 4, 2002, or Revision 3, dated August 1, 2002; Boeing Service Bulletin 767–25–0288, Revision 1, dated May 17, 2001, or Revision 2, dated April 4, 2002; as applicable; is acceptable for compliance with the requirements of paragraph (a)(1) of this AD.

**Parts Installation**

(c) As of the effective date of this AD, do not attach the shoulder restraint harness of an observer or attendant seat on any airplane to the mounting bracket using a C-clip, unless the required actions specified in paragraph (a)(2) of this AD are done.

**Alternative Methods of Compliance**

(d) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

**Incorporation by Reference**

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–25–3244, Revision 4, dated June 26, 2003; or Boeing Special Attention Service Bulletin 767–25–0288, Revision 3, dated August 1, 2002; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Effective Date**

(f) This amendment becomes effective on October 21, 2003.

Issued in Renton, Washington, on September 26, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–24976 Filed 10–3–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–NM–143–AD; Amendment 39–13321; AD 2003–20–03]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, that requires revising the airworthiness limitations section of the Instructions for Continued Airworthiness by incorporating new structural inspection intervals for the vertical beams of the pressure bulkheads at fuselage stations 409+128 and 559; repairing the vertical beams if necessary; and submitting inspection findings to the airplane manufacturer. This action is necessary to detect and correct, in a timely manner, fatigue cracks in the vertical beams of the pressure bulkheads at fuselage stations 409+128 and 559, which could result in the reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective November 10, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 10, 2003.

**ADDRESSES:** The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York

11581; telephone (516) 256–7512; fax (516) 568–2716.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes was published in the **Federal Register** on July 9, 2003 (68 FR 40829). That action proposed to require revising the airworthiness limitations section of the Instructions for Continued Airworthiness by incorporating new structural inspection intervals for the vertical beams of the pressure bulkheads at fuselage stations 409+128 and 559; repairing the vertical beams if necessary; and submitting inspection findings to the airplane manufacturer.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

### Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Interim Action

This is considered to be interim action. The inspection reports required by this AD will enable the manufacturer to obtain better insight into the cause of the fatigue cracks in the vertical beams of the pressure bulkheads at fuselage stations 409+128 and 559. Once final action has been identified, the FAA may consider further rulemaking.

### Cost Impact

The FAA estimates that 533 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $34,645, or $65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

**2003–20–03 Bombardier, Inc. (Formerly Canadair):** Amendment 39–13321. Docket 2003–NM–143–AD.

*Applicability:* Model CL–600–2B19 (Regional Jet series 100 & 440) airplanes, serial numbers 7003 through 7999 inclusive; certificated in any category.

**Note 1:** This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance from the office identified in paragraph (d) of this AD and Sections 39.19 and 39.21 of the Federal Aviation Regulations (14 CFR 39.19 and 39.21). The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct, in a timely manner, fatigue cracks in the vertical beams of the pressure bulkheads at fuselage stations 409+128 and 559, which could result in the reduced structural integrity of the airplane, accomplish the following:

### Revise Airworthiness Limitations (AWL) Section

(a) Within 14 days after the effective date of this AD, revise the AWL section of the Instructions for Continued Airworthiness by incorporating the contents of Canadair Temporary Revision (TR) 2B–1566, dated January 31, 2003, to the Canadair Regional Jet Maintenance Requirements Manual, Part 2, Appendix B, "Airworthiness Limitations," into the AWL section. Thereafter, except as provided in paragraph (d) of this AD, no alternative structural inspection intervals may be approved for the vertical beams on the pressure bulkheads at fuselage stations 409+128 and 559.

**Note 2:** When the contents of TR 2B–1566 have been included in the general revisions of the AWL section, the general revisions may be incorporated into the AWL section, and the TR may be removed from the AWL section.

### Repair and Revise AWL Section

(b) If any crack is found during any inspection done according to the AWL section of the Instructions for Continued Airworthiness specified in paragraph (a) of this AD, do the actions specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) Before further flight: Repair per a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

(2) Within 14 days after receiving the new AWL associated with a repair: Revise the AWL section of the Instructions for Continued Airworthiness by inserting a copy of the new airworthiness limitation and inspection requirements associated with the FAA- or TCCA-approved repair referred to in paragraph (b)(1) of this AD into the Canadair Regional Jet Maintenance Requirements Manual, Part 2, Appendix B, "Airworthiness Limitations" section. Thereafter, except as provided in paragraph (d) of this AD, no alternative structural inspection intervals specified in the FAA- or TCCA-approved repair may be approved for the vertical beams on the pressure bulkheads at fuselage stations 409+128 and 559.

**Reporting**

(c) Submit a report of the findings (both positive and negative) of the inspection required by paragraph (a) of this AD to Bombardier, Inc., Canadair, Aerospace Group, CRJ Technical Help Desk, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada; fax (514) 855–8501; at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provision of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) If the inspection was done after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

**Alternative Methods of Compliance**

(d) In accordance with 14 CFR 39.19, the Manager, New York ACO, FAA, is authorized to approve alternative methods of compliance for this AD.

**Incorporation by Reference**

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with Canadair Temporary Revision 2B–1566, dated January 31, 2003, to the Canadair Regional Jet Maintenance Requirements Manual, Part 2, Appendix B, "Airworthiness Limitations." This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in Canadian airworthiness directive CF–2003–08, dated April 23, 2003.

**Effective Date**

(f) This amendment becomes effective on November 10, 2003.

Issued in Renton, Washington, on September 24, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–24679 Filed 10–3–03; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 529

### Certain Other Dosage Form New Animal Drugs; Progesterone Intravaginal Inserts

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pharmacia & Upjohn Co. The supplemental NADA provides for use of progesterone intravaginal inserts for synchronization of the return to estrus in lactating dairy cows inseminated at the immediately preceding estrus.

**DATES:** This rule is effective October 6, 2003.

**FOR FURTHER INFORMATION CONTACT:** Harlan J. Howard, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0231, e-mail: *hhoward@cvm.fda.gov*.

**SUPPLEMENTARY INFORMATION:** Pharmacia & Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199 filed a supplement to NADA 141–200 that provides for use of EAZI–BREED CIDR Progesterone Intravaginal Inserts for synchronization of the return to estrus in lactating dairy cows inseminated at the immediately preceding estrus. The NADA is approved as of July 29, 2003, and the regulations are amended in 21 CFR 529.1940 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetics Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval qualifies for 3 years of marketing exclusivity beginning July 29, 2003.

The agency has determined under 21 CFR 25.33(c) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

**List of Subjects in 21 CFR Part 529**

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 529 is amended as follows:

## PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 529 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

■ 2. Section 529.1940 is amended in paragraph (e)(3) in the first sentence by removing the phrase "; or in lactating dairy cows"; and by revising paragraphs (d)(1), (d)(2), (e)(1), and (e)(2) to read as follows:

### § 529.1940 Progesterone intravaginal inserts.

* * * * *

(d) * * *

(1) Product labeling shall bear the following warnings: "Avoid contact with skin by wearing latex gloves when handling inserts. Store removed inserts in a plastic bag or other sealable container until they can be disposed of in accordance with applicable local, State, and Federal regulations."

(2) This product is approved with the concurrent use of dinoprost solution on day 6 of the 7-day administration period when used for indications listed in paragraph (e)(2)(i) of this section. See § 522.690(c) of this chapter.

* * * * *

(e) * * *

(1) *Amount.* Administer one intravaginal insert per animal for 7 days. When used for indications listed in paragraph (e)(2)(i) of this section, administer 25 milligrams (mg) dinoprost (5 milliliters (mL) of 5 mg/mL solution as in § 522.690(a) of this chapter) as a single intramuscular injection one day prior to insert removal.

(2) *Indications for use*—(i) For synchronization of estrus in suckled beef cows and replacement beef and dairy heifers, for advancement of first postpartum estrus in suckled beef cows,

and for advancement of first pubertal estrus in replacement beef heifers.

(ii) For synchronization of the return to estrus in lactating dairy cows inseminated at the immediately preceding estrus.

* * * * *

Dated: September 24, 2003.

**Steven D. Vaughn,**

*Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 03–25249 Filed 10–3–03; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

[CGD07–03–131]

RIN 1625–AA09

## Drawbridge Operation Regulations; St. Johns River, mile 24.7 at Jacksonville, Duval County, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule; change of effective date; request for comments.

**SUMMARY:** The Coast Guard is changing the effective dates for the temporary regulations governing the operation of the Main Street Bridge, mile 24.7, St. Johns River, Jacksonville, Florida. The contractor for the bridge repairs was unable to start work as scheduled in our temporary rule published on August 11, 2003. This change in effective dates is required to allow the bridge owner to begin the work on October 1, 2003 and complete the project by January 31, 2004.

**DATES:** This rule is effective from 6:01 a.m., October 30, 2003, until 6 a.m., January 31, 2004. Comments must be received by November 1, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [CGD07–03–131] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE 1st Avenue, Room 432, Miami, FL 33131, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Barry Dragon, Project Officer, Seventh Coast Guard District, Bridge Branch, at (305) 415–6743.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–03–131], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to confirm they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received. The Coast Guard may amend this temporary final rule based on comments received.

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM was impracticable and contrary to the public interest, because the rule was needed to allow the contractor to provide for worker safety while repairing the bridge. Also, since the temporary rule provides for bridge openings during the majority of the day, during daytime hours when the area is most heavily traveled, vessel traffic will not be unduly disrupted during the repair process. A Temporary Rule was previously published as 68 FR 47462 which requested the same schedule changes but occurring on different dates. The contractor contacted the Coast Guard on August 11, 2003 and requested the date change due to delays in obtaining materials.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after **Federal Register** publication. Though the contractor submitted a letter on May 29, 2003, requesting a change to the bridge's operating schedule to effect repairs, that request was incorrectly addressed and did not reach the Seventh Coast Guard Bridge Branch until faxed there on July 7, 2003. Accordingly, there was insufficient time remaining to either publish an NPRM or delay the effective date of the rule. This temporary rule provides for a reduction in bridge openings so as to allow the contractor to safely repair the bridge while providing for the reasonable needs of navigation during daylight hours.

### Background and Purpose

The Main Street Bridge, mile 24.7, St. Johns River at Jacksonville, Duval County, Florida, has a vertical clearance of 40 feet at mean high water and a horizontal clearance of 350 feet between the fender systems. The existing operating regulation in 33 CFR 117.325 (a) requires the bridge to open on signal except that, from 7 a.m. to 8:30 a.m. and 4:30 p.m. to 6 p.m., Monday through Saturday, except Federal holidays, the draw need not open for the passage of vessels. The draw opens at any time for vessels in an emergency involving life or property.

Royal Bridge, Inc., contractors, notified the Coast Guard on July 7, 2003, that work on the vertical lift bridge was scheduled from August 18, 2003, to October 31, 2003 and we published a temporary rule (68 FR 47462, August 11, 2003) to change the bridge operating schedule to accommodate the work. On August 11, 2003 the contractor again contacted the Coast Guard and requested the same operating schedule for a different time period, October 1, 2003 until January 31, 2004. The new work period is a month and a half longer than the original work period to allow for additional holidays and winter weather delays. For worker safety reasons, there will be a 5-foot reduction in vertical clearance, due to scaffolding. This temporary rule is necessary to provide for worker safety during repairs to the bridge and does not significantly hinder navigation, as openings will be provided throughout the remainder of the day.

### Discussion of Rule

Under this temporary rule, the bridge need not open from 8 p.m. until 6 a.m., October 1, 2003, to January 31, 2004. This action is necessary for worker safety during repairs to the bridge and does not significantly hinder navigation.

### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. The temporary rule will impact vessels of greater than 35 feet in height because of the reduction in vertical clearance. The temporary rule, however, will only affect a small percentage of vessel traffic through the bridge, because of limited nighttime navigation at this location and openings are available during daylight hours.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this temporary rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this temporary rule would not have a significant economic impact on a substantial number of small entities, because the regulations will affect only a limited amount of marine traffic and will still provide for navigation needs by opening on signal from 6:01 a.m. to 7:59 p.m.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this temporary rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this temporary rule so that they can better evaluate its effects on them and comment if necessary. If this temporary rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in **FOR FURTHER INFORMATION CONTACT.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in the preamble.

**Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

**Indian Tribal Governments**

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order, because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a statement of Energy Effects under Executive Order 13211.

**Environment**

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation.

**List of Subjects in 33 CFR Part 117**

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for Part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From 6:01 a.m., October 30, 2003, until 6 a.m. on January 31, 2004, in § 117.325, paragraph (a) is suspended and a new paragraph (d) is added to read as follows:

**§ 117.325 St. Johns River.**

* * * * *

(d) The draw of the Main Street (US 17) Bridge, mile 24.7 at Jacksonville, shall open on signal, except that from 8 p.m. until 6 a.m., the draw need not open for the passage of vessels. The draw shall open at any time for vessels in an emergency involving life or property.

Dated: September 18, 2003.

**H.E. Johnson, Jr.,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 03–25047 Filed 10–3–03; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[CGD09–03–241]**

**RIN 1625–AA11**

## Regulated Navigation Area; Reporting Requirements for Barges Loaded With Certain Dangerous Cargoes, Illinois Waterway System Within the Ninth Coast Guard District

**AGENCY:** Coast Guard, DHS.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** The Coast Guard is establishing a regulated navigation area (RNA) for all portions of the Illinois Waterway System located within the Ninth Coast Guard District. This RNA applies to towing vessel operators and fleeting area managers who are responsible for the movement of barges carrying certain dangerous cargoes on the Illinois Waterway System and requires them to report their position and other information to the Inland River Vessel Movement Center (IRVMC). This action is necessary to ensure public safety, prevent sabotage or terrorist acts, and facilitate the efforts of emergency services and law enforcement officers responding to terrorist attacks.

**DATES:** This rule is effective on November 1, 2003. Comments and related material must reach the Coast Guard on or before January 5, 2004.

**ADDRESSES:** You may mail comments and related material to Commander, Ninth Coast Guard District (m), 1240 E. Ninth Street, Cleveland, Ohio, 44199–2060. Commander, Ninth Coast Guard District (m) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–03–241] and are available for inspection or copying at Commander, Ninth Coast Guard District (m), 1240 E. Ninth Street, Cleveland, Ohio, 44199–2060 between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays. You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

**FOR FURTHER INFORMATION CONTACT:** Commander Michael Gardiner or Lieutenant Matthew Colmer, Ninth Coast Guard District Marine Safety Division, at (216) 902–6045.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On May 2, 2003, the Coast Guard published a temporary final rule and request for comments entitled "Regulated Navigation Area; Reporting Requirements for Barges Loaded With Certain Dangerous Cargoes, Illinois Waterway System within the Ninth Coast Guard District" in the **Federal Register** (68 FR 23399). We did not receive any comments. However, the Eight Coast Guard District published a parallel temporary final rule on May 2, 2003 (68 FR 23393). As of July 9, 2003, the Eight Coast Guard District had received six written comments in response to their temporary final rule.

On July 30, 2003, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Regulated Navigation Area; Reporting Requirements for Barges Loaded With Certain Dangerous Cargoes, Illinois Waterway System located within the Ninth Coast Guard District" in the **Federal Register** (68 FR 44706). When drafting the NPRM, we considered all written comments submitted to the docket for the parallel temporary final rule issued by the Eight Coast Guard District that was published on May 2, 2003 (68 FR 23399). The Coast Guard's responses to those comments are explained under the "Discussion of Comments and Changes" section of the NPRM (68 FR 44706).

As of September 15, 2003, we have only received one written comment on the NPRM. No public meeting was requested so one was not held.

As indicated in our "Discussion of Comments and Changes" section below, we have considered this comment in this interim final rule and, where appropriate, we have made the rule less burdensome than the temporary final rule currently in effect. In issuing this interim final rule, we have allowed for an additional comment period before we impose any final rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. On May 2, 2003, we published a temporary final rule (TFR) entitled "Regulated Navigation Area; Reporting Requirements for Barges Loaded With Certain Dangerous Cargoes, Illinois Waterway System with the Ninth Coast Guard District" in the **Federal Register** (68 FR 23399) that is set to expire 11:59 p.m. EDT on October 31, 2003.

The continued threat of maritime attacks is real as evidenced by the October 2002 attack of a tank vessel off the coast of Yemen and the continuing threat to U.S. assets as described in the President's finding, found at Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered as evidenced by the September, 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. *See also* Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002). Additionally, a Maritime Advisory was issued to: Operators of U.S. Flag and Effective U.S. controlled Vessels and other Maritime Interests, detailing the current threat of attack, MARAD 02–07 (October 10, 2002). Consequently, heightened measures have been instituted to ensure the safety of vessels, ports and waterway users. The measures contemplated by this rule are intended to prevent future terrorist attacks against individuals, vessels or facilities on the Illinois Waterway System within the Ninth Coast Guard District. Any delay in the effective date of this TFR is impractical and contrary to the public interest. The original temporary final rule was urgently required to prevent possible terrorist strikes against the United States and more specifically the people, waterways, and properties on the navigable waters of the U.S.

### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD09–03–241], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period before issuing any final rule.

## Public Meeting

We do not now plan to hold a public meeting. You may submit a request for a meeting by writing to Commander, Ninth Coast Guard District (m) at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

## Background and Purpose

Terrorist attacks on September 11, 2001, inflicted catastrophic human casualties and property damage. These attacks highlighted the terrorists' abilities to utilize multiple means in different geographic areas thereby increasing their opportunities to maximize destruction.

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. The threat of maritime attacks is real as evidenced by the October 2002 attack on a tank vessel off the coast of Yemen and the prior attack on the USS COLE. These attacks manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002). The President found that the security of the U.S. is endangered by the September 11, 2001 attacks and terrorist attacks continue to endanger the international relations of the United States. *See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks,* (68 FR 53665, September 10, 2003); *Continuation of the National Emergency With Respect to Persons Who Commit, Threaten To Commit, or Support Terrorism,* (68 FR 55189, September 18, 2003). The references to these Presidential Documents as they appear in this interim final rule have updated those referenced in the NPRM (68 FR 44697). The U.S. Maritime Administration (MARAD) in Advisory 02–07 advised U.S. shipping interests to maintain a heightened state of alert against possible terrorist attacks. MARAD also issued Advisory 03–03 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attacks to the transportation community in the United States. The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert due to the Al Qaeda organization and other similar organizations who have declared their intentions to conduct armed attacks on U.S. interests worldwide.

Therefore, on April 16, 2003, the Coast Guard established a temporary RNA within that portion of the Illinois Waterway System located within the Ninth Coast Guard District in order to safeguard vessels, ports and waterfront facilities from sabotage or terrorist acts. The temporary RNA remains in effect and applies to barges loaded with certain dangerous cargoes (CDCs) operating on the Illinois Waterway System above mile 187.2 to the Chicago Lock on the Chicago River at mile 326.7, and to the confluence of the Calumet River and Lake Michigan at mile 333.5 of the Calumet River. The RNA affects vessels transporting barges loaded with CDCs that if used as weapons of terrorism could result in substantial loss of life, property, environmental damage, and grave economic consequences. The temporary final rule requires operators of barges loading or loaded with CDCs within the RNA to periodically report their position and other specified information to the IRVMC for protection against sabotage and terrorist acts. The temporary final rule published May 2, 2003, (68 FR 23399) expires on October 31, 2003.

The Coast Guard has determined that there is a need to continue the reporting requirements for barges loaded with CDCs operating on Illinois Waterway System and therefore we are issuing an interim rule while we continue to consider alternatives to increase maritime domain awareness on the Illinois Waterway System within the Ninth Coast Guard District. This rule allows the Coast Guard to enhance maritime security, protect ports and facilities and high-density population centers (metropolitan areas), control vessel traffic, develop contingency plans, and enforce regulations.

## Discussion of Comments and Changes

As of September 15, 2003, we received one written comment to the NPRM. The comment was addressed to both the Eighth and Ninth Coast Guard Districts. Two parts of the comment were focused specifically on the Ninth Coast Guard District. We will address those two areas of concern first.

The first concern was that rather than have specific reporting points, that operators be permitted to report while within a particular segment like what is already permitted in the Eighth Coast Guard District. The Ninth Coast Guard District is adopting this recommendation so that the reporting system process is identical whether you are in the Eighth or Ninth Coast Guard District. The second concern requested that we remove two reporting points: the Lockport Lock & Dam and the Dresden Lock & Dam. Since vessels are reporting in upon entry into the RNA, and upon dropping off or picking up a CDC barge from a fleeting area or facility, the Coast Guard will follow this recommendation.

Several other comments were received that were more general in nature. Since the Eighth Coast Guard District has a parallel rule, we are adopting their responses to those comments to ensure uniformity between the Eighth and Ninth District and the requirements of the IRVMC. The comment focused generally on 4 concerns: (a) Reporting the planned route, (b) notifying the IRVMC 4 hours prior to originating a voyage within the RNA with one or more CDC barges, (c) notifying the IRVMC upon moving one or more CDC barges from one fleeting area to another fleeting area or facility, and (d) reporting information as directed by the Coast Guard. Each section of this comment is discussed in more detail in the following six paragraphs.

*Planned Route.* The one comment we received stated that the requirement for submission of a planned route will increase the burden upon the mariner while providing no improvement on the information already required since point-to-point movements rarely allow for more than one route. We agree and have removed the requirement to report the planned route because the IRVMC will be receiving periodic updates on a CDC barge(s)'s location as the towing vessel operator checks in at designated reporting points along the planned route. The requirement to submit a report with the name and location of the destination for each CDC barge and the estimated time of arrival remains unchanged.

*Four hour advance notification.* The one comment we received stated a concern regarding the requirement to report information 4 hours before originating a voyage within the RNA with one or more CDC barges. The comment indicates that fleeting area managers do not always have 4 hours advance notice of movement between receipt of an order and origination of the voyage. The comment suggested the requirement be amended to allow fleeting area managers to notify the IRVMC as soon as possible after the fleeting area manager receives a request to make up a tow or to deliver a CDC barge at a terminal. While we agree that in certain cases a fleeting area manager will not have sufficient time to make a 4-hour advance notification of movement to the IRVMC, this regulation does not require fleeting area managers to provide such notification. This regulation requires towing vessel operators to notify the IRVMC 4 hours before originating a voyage within the RNA with one or more CDC barges. However, we believe the conceptual basis of the comment applies to this requirement. For example, an operator of a towing vessel without any CDC barges operating in the RNA may receive an order to pick up a CDC barge. If the towing vessel is in close proximity to where the CDC barge is located, the evolution of making up the new tow with the CDC barge and originating the voyage may take less than 4 hours. According to the existing requirement in the NPRM, the towing vessel operator would then qualify as originating a voyage within the RNA with one or more CDC barges and as such would be required to provide the IRVMC with a notice 4 hours before originating the voyage. The Coast Guard understands that delaying the voyage to comply with the 4-hour advance notification requirement could negatively affect commercial operations. To alleviate this potential problem, we are adding an exception to the existing requirement. This exception will permit the towing vessel operator to make the required report to the IRVMC as soon as possible before originating a voyage in the RNA with one or more CDC barges. This exception is valid only if the following conditions exist—

(a) The evolution of making up a tow with a CDC barge will take less than 4 hours before originating a voyage; and

(b) The towing vessel operator did not receive the order to make up a tow with a CDC barge in advance of 4 hours before originating the voyage with one or more CDC barges.

If the previous two conditions exist, the towing vessel operator must submit the required report to the IRVMC as soon as possible after receiving orders to make up a tow with one or more CDC barges.

*Movement of barges from fleeting area to fleeting area or facility.* The one comment we received stated that companies routinely move barges from one fleeting area to another fleeting area or facility and that reporting each of these movements would impose an excessive burden. It further states that one company may operate multiple fleeting areas within a limited geographic area. The comment recommends that the Coast Guard define fleeting areas within a certain geographic area as a "single fleet" and allow movement within that "single fleet" to occur without reporting each movement to the IRVMC. The purpose of knowing the specific location of a CDC barge is to allow for a more efficient response to an incident or threatened incident. It is the intention of this regulation to give the Coast Guard the necessary information to be able to track and have knowledge of the location of each CDC barge at all times. Under the existing requirements, we are only asking the fleeting area manager to provide limited information regarding the movement of a CDC barge from one fleeting area to another fleeting area or facility. We are not changing this requirement, however, we do feel that definitions are needed for "fleeting area", "fleet tow boat", and "towing vessel". For the purposes of this requirement, the term "fleeting area" will be defined to mean any fleet, including any facility, located within the area covered by one single port. The term "fleet tow boat" will be defined to mean any size vessel that is used to move, transport, or deliver a CDC barge within a fleeting area. The term "towing vessel" will be defined to mean any size vessel that is used to move, transport, or deliver a CDC barge to a fleet or facility that is located in a different port than where the voyage originated.

The following example is provided to illustrate the intention of these definitions: A fleeting area manager is required to provide notification to the IRVMC of the movement of a CDC barge from fleet "A" located in port "A", to fleet "B" located in port "A" when such movement is conducted by a fleet tow boat. If the movement of a CDC barge were to occur from fleet "A" located in port "A", to fleet "Z" located in port "Z", such movement is considered to have been done by a towing vessel and the notifications requirements would reside with the towing vessel operator when the CDC barge was picked up at fleet "A" and dropped off at fleet "Z".

*When directed by the IRVMC.* The one comment we received indicated that there was a lack of coordination within the Coast Guard that led to mariners having to submit duplicate reports of required information. There is a concern that a towing vessel operator may receive multiple calls from various government agencies requesting similar information. These multiple calls could create an unnecessary distraction for the towing vessel operator. The comment requested the Coast Guard clarify the information reporting requirement to read "As directed by the IRVMC." The published NPRM currently reads "When directed by the IRVMC" and as such will not be changed. However, we feel it is necessary to explain the different types of calls a towing vessel operator can expect while transporting one or more CDC barges in the RNA. The first type of call would be from the IRVMC for the following reasons: (1) Obtaining missing or illegible information, (2) investigating missed or inaccurate reports, (3) collecting information for the purposes of responding to an incident or threatened incident, (4) responding to an increase in the maritime security level, or (5) advising the mariner on new or unexpected changes in procedures. This list of reasons is not all-inclusive. The second type of call would be from the United States Army Corps of Engineers (USACE) requesting information from the mariner as the towing vessel approaches a USACE controlled lock and dam. As many of the reporting points required by this regulation are located at USACE controlled locks and dams, the Coast Guard understands that some information provided by the towing vessel operator will have to be supplied twice—once to the USACE and once to the IRVMC. The Coast Guard and USACE are currently working to address the issue of duplicative reporting and are researching methods to use existing technology to serve as a single point of collection. The third type of call would be from a Coast Guard Captain of the Port office for issues pertaining to the coordination of vessel escorts or boardings or other marine safety issues. Calls for these purposes are unrelated to the information collection requirements outlined by this regulation and are necessary for the Coast Guard Captain of the Port to meet Coast Guard mission requirements. The final type of call would be from a Coast Guard vessel or boarding team located in close proximity to the towing vessel for the purposes of conducting law enforcement operations or vessel escorts. These types of calls are also unrelated to the information collection requirements outlined by this regulation and are necessary to meet Coast Guard mission requirements.

### *Response to Comments Summary*

In response to the received comment the Coast Guard is (1) removing the requirement to report the planned route of one or more CDC barges, (2) establishing an exception to the 4-hour advance notification for originating a voyage in the RNA with one or more CDC barges, (3) defining the terms "fleeting area", fleet tow boat", and "towing vessel" to clarify fleeting area manager reporting requirements, and (4) explaining the different types of calls a towing vessel operator can expect while transporting one or more CDC barges in the RNA.

Portions of this regulation have been revised to reflect the usage of these new definitions. The addition of the new definitions does not create any substantial changes. The portions of the regulatory text that are affected by these new definitions include the "Applicability", "Definitions", and "Regulations" sections.

*Company Representative or Dispatcher Making Required Reports.* The NPRM indicated that a company representative or dispatcher would be allowed to report the required information to the IRVMC on behalf of the towing vessel operator or fleeting area manager. With the addition of the definitions for "fleet tow boat" and "towing vessel", we realized that allowing a company representative or dispatcher to make reports on behalf of a towing vessel operator is contrary to the intentions of this regulation. The intention of this regulation is to provide the Coast Guard with positive reports generated by towing vessel operators and fleeting area managers who have direct control over CDC barges. Because fleets and facilities typically have multiple persons who have direct control over CDC barges, we are allowing a fleeting area manager, company representative, or dispatcher to make the required reports. In contrast, a towing vessel operator is the only person who will have direct control over CDC barges in their tow. As it relates to this regulations, we have clarified the definition of "towing vessel operator" to mean the Captain or pilot who is on watch on board a towing vessel. The portions of the regulatory text that are affected by this clarification include the "Definitions" and "Regulations" sections.

## Discussion of Rule

The Coast Guard is establishing a regulated navigation area for the Illinois Waterway System above mile 187.2 to the Chicago Lock on the Chicago River at mile 326.7, and to the confluence of the Calumet River and Lake Michigan at mile 333.5 of the Calumet River. This rule applies to: (1) towing vessel operators responsible for one or more CDC barges within the regulated area, and (2) fleeting area managers responsible for CDC barges in a fleeting area. The terms "barge", "certain dangerous cargo or (CDC)", "CDC barge", "downbound", "fleet tow boat", "fleeting area", "Ninth Coast Guard District", "towing vessel", "towing vessel operator", and "upbound" are defined in the regulatory section of this rule.

Towing vessel operators responsible for one or more CDC barges are required to report specific information to the IRVMC under the following conditions: (1) Upon point of entry into the RNA with one or more CDC barges; (2) 4 hours prior to originating a voyage within the RNA with one or more CDC barges, except if (a) the evolution of making up a tow with a CDC barge will take less than 4 hours before originating a voyage, and (b) the towing vessel operator did not receive the order to make up a tow with a CDC barge in advance of 4 hours before originating the voyage with one or more CDC barges, in which case the towing vessel operator must submit the required report to the IRVMC as soon as possible after receiving orders to make up a tow with one or more CDC barges (3) upon dropping off one or more CDC barges at a fleeting area or facility; (4) upon picking up one or more additional CDC barges from a fleeting area or facility; (5) at designated reporting points in paragraph (e) of this section; (6) when the estimated time of arrival (ETA) to a reporting point varies by 6 hours from the previously reported ETA; (7) any significant deviation from previously reported information; (8) upon departing the RNA with one or more CDC barges; and (9) when directed by the IRVMC.

Fleeting area managers are required to report specific information to the IRVMC under the following conditions: (1) Once daily, report all CDC barges within the fleeting area; (2) upon moving a CDC barge within a fleeting area by a fleet tow boat; (3) any significant deviation from previously reported information; and (4) when directed by the IRVMC.

A company representative or dispatcher may report the required information to the IRVMC on behalf of the fleeting area manager.

Each report made to the IRVMC by a towing vessel operator or fleeting area manager must contain all the information items specified in tables 165.921(f) and 165.921(g), respectively.

Reports must be made to the IRVMC by telephone to (866) 442–6089, by fax to (866) 442–6107, or by e-mail to *irvmc@cgstl.uscg.mil*. A reporting form and e-mail link is available at *http://www.uscg.mil/d8/Divs/M/IRVMC.htm*.

The Coast Guard will consider and approve alternative reporting methods to meet any reporting requirements if: (1) the request for the alternative is submitted in writing to Commander, Ninth Coast Guard District (m), 1240 E. Ninth Street, Cleveland, Ohio, 44199–2060; and (2) the alternative provides an equivalent level of reporting to that which would be achieved by the Coast Guard with the required check-in points.

The Coast Guard encourages the submission of requests for alternative reporting methods. It is the Coast Guard's hope that companies will embrace current modern technology or future technology as it becomes available to automatically report the locations of the towing vessels and the CDC barges they are responsible for directly to the Coast Guard in real or as close to real time as possible. We believe that the development of such systems will significantly reduce the burden imposed upon the towing vessel operator and fleeting area manager who must submit the reports, as well as those Coast Guard personnel who must process those reports.

Deviation from this rule is prohibited unless specifically authorized by the Commander, Ninth Coast Guard District or the IRVMC.

## Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. We present this Regulatory Evaluation for the purposes of information.

*Evaluation.* The regulatory baseline for this rule is the existing temporary rule. The cost for complying with the rule will differ depending on the means used to make a report to the IRVMC and the type of report, either an initial report or an update. The cost of the rule presented below is based on the average number of reports received by the IRVMC in April 2003 and May 2003.

ESTIMATED ANNUAL COST AND BENEFIT OF THE RULE
[2003 Dollars]

| Item | Cost per initial call | Cost per update call | Total |
|---|---|---|---|
| Personnel | $9,462 | $17,871 | $27,333 |
| Operating Expenses | 28,386 | 53,613 | 81,999 |
| Total | $37,848 | $71,484 | $109,332 |

This cost estimate assumes: (1) The average merchant mariner's hourly rate is $30, (2) the average initial call is 6 minutes, (3) the average update call is 2 minutes, (4) the average cost per cell phone call is $1.50 per minute, and (5) 15 percent of all responses are initial reports to the IRVMC. Therefore, based on 177 respondents, the average cost is $618 per CDC barge per year. The reporting requirements are necessary to provide immediate, improved security for the public, vessels, and U.S. ports and waterways. The requirements do not alter normal barge transits. The minimal hardships that may be experienced by persons or vessels, as a result of this rule, are necessary to the national interest in protecting the public, vessels, and vessel crews from the devastating consequences of acts of terrorism, and from sabotage or other subversive acts, accidents, or other causes of a similar nature.

## Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: towing vessel operators and fleeting area managers responsible for CDCs barges on inland waterways within the Ninth Coast Guard District. This RNA will not have a significant economic impact on a substantial number of small entities because this rule does not require any alteration of barge operations or transits. The operational communications required by this RNA do not require towing vessel operators or fleeting area managers to obtain new equipment and can be made toll free to the IRVMC.

If you are a small business entity and are significantly affected by the regulation, please contact CDR Michael Gardiner or LT Matthew Colmer, Project Managers for the Ninth Coast Guard District Commander, 1240 E. Ninth Street, Cleveland, Ohio 44199–2060, telephone (216) 902–6045.

## Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

## Collection of Information

This rule calls for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

This rule revises an existing OMB-approved collection of information (1625–0105). The new collection of information estimate is based on data gathered as a result of the information collected under the temporary rule and is based on actual reports received by the IRVMC, as well as actual observation and tracking, for April 2003 and May 2003.

*Title:* Regulated Navigation Areas; Reporting Requirements for Barges Loaded with Certain Dangerous Cargoes, Inland Rivers, Eighth Coast Guard District and the Illinois Waterway, Ninth Coast Guard District.

*OMB Control Number:* 1625–0105.

*Summary of the Collection of Information:* The Coast Guard requires position and intended movement reporting, and fleeting operations reporting, from barges carrying CDCs in the inland rivers within the Eighth and Ninth Coast Guard Districts. This rule amends 33 CFR part 165 to require:

> Towing vessel operators and fleeting area managers responsible for CDC barges must report the following information via toll free telephone, toll free fax, or email:
>
> a. Name of barge and towing vessel;
>
> b. Name of fleeting area and facility;
>
> c. Estimated time of arrival (ETA) at fleeting area and facility;
>
> d. Estimated time of departure (ETD) from fleeting area and facility;
>
> e. Upon entry into the covered geographical area;
>
> f. Four hours prior to originating a voyage with a CDC within the RNA, except if (a) the evolution of making up a tow with a CDC barge will take less than 4 hours before originating a voyage, and (b) the towing vessel operator did not receive the order to make up a tow with a CDC barge in advance of 4 hours before originating the voyage with one or more CDC barges, in which case towing vessel operator shall submit the required report to the IRVMC as soon as possible after receiving orders to make up a tow with one or more CDC barges;
>
> g. Upon picking up an additional CDC barge from a fleeting area or facility;
>
> h. Upon dropping off a CDC barge at a fleeting area or facility;
>
> i. Upon moving a CDC barge within a fleeting area by a fleet tow boat;
>
> j. Once daily, all CDC barges within a fleeting area;
>
> k. ETA at approximately 90 designated reporting points within the covered geographical area;
>
> l. At any time the ETA to a reporting point varies by 6 hours from the previously reported ETA;
>
> m. Any significant deviation from previously reported information;
>
> n. Upon departing the covered geographical area; and

o. When directed by the IRVMC.

A company representative or dispatcher may report to the IRVMC on behalf of the fleeting area manager.

*Need for Information:* To ensure port safety and security and to ensure the uninterrupted flow of commerce, the Coast Guard is issuing regulations requiring position and intended movement reporting and fleeting operations reporting from barges carrying CDCs in the inland rivers within the Eighth and Ninth Coast Guard Districts.

*Use of Information:* The information is required to enhance maritime security, protect ports and facilities and high-density population centers (metropolitan areas), control vessel traffic, develop contingency plans, and enforce regulations. The Coast Guard will use the information to maintain continuous maritime domain awareness on the inland rivers so that we may respond as appropriate to an actual or threatened terrorist action and enhance maritime security by boarding and/or escorting CDC barges in the vicinity of high-density population areas.

*Description of the Respondents:* The respondents are owners, agents, masters, towing vessel operators, or persons in charge of barges loaded with CDCs or having CDC residue operating on the inland rivers located within the Eighth and Ninth Coast Guard Districts.

*Number of Respondents:* The existing OMB-approved collection number of respondents is 3,505. This rule will decrease the number of respondents by 3,328 to a total of 177.

*Frequency of Response:* Towing vessel operators moving barges carrying CDCs or CDC residue will submit reports as necessary. The existing OMB-approved collection annual number of responses is 7,711. This rule will increase the number of responses by 13,313 to a total of 21,024.

*Burden of Response:* The existing OMB-approved collection burden of response is 15 minutes (0.25 hours)(burden of response is the time required to complete the paperwork requirements of the rule for a single response). This rule will decrease the burden of response by 9 minutes (0.15 hours) to a total of 6 minutes (0.10 hours).

*Estimate of Total Annual Burden:* The existing OMB-approved collection total annual burden is 1,928 hours (total annual burden is the time required to complete the paperwork requirements of the rule for all responses). This rule will decrease the total annual burden by 1017 hours to a total of 911 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this rule to the Office of Management and Budget (OMB) for its review and approval of the revised collection of information. The existing OMB-approved collection (1625–1505) expires on October 31, 2003.

We ask for public comment on the collection of information to help us determine how useful the information is, whether it can help us perform our functions better, whether it is readily available elsewhere, how accurate our estimate of the burden of collection is, how valid our methods for determining burden are, how we can improve the quality, usefulness, and clarity of the information, and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. If and when OMB approves this revised collection of information, we will publish a separate notice in the **Federal Register**.

## Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

## Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

## Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

## Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

## Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

## Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

## Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

## Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1 paragraph (34)(g), of the instruction, from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in NEPA. A final "Environmental Analysis Check List" and a final "Categorical

Exclusion Determination" are available where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 166 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.921 to read as follows:

### § 165.921 Regulated Navigation Area; Reporting Requirements for Barges Loaded with Certain Dangerous Cargoes, Illinois Waterway System located within the Ninth Coast Guard District.

(a) *Regulated Navigation Area.* The following waters are a regulated navigation area (RNA): the Illinois Waterway System above mile 187.2 to the Chicago Lock on the Chicago River at mile 326.7 and to the confluence of the Calumet River and Lake Michigan at mile 333.5 of the Calumet River.

(b) *Applicability.* This section applies to towing vessel operators and fleeting area managers responsible for CDC barges in the RNA. This section does not apply to towing vessel operators responsible for barges not carrying CDC barges, or fleet tow boats moving one or more CDC barges within a fleeting area.

(c) *Definitions.* As used in this section—

*Barge* means a non-self propelled vessel engaged in commerce, as set out in 33 CFR 160.204.

*Certain Dangerous Cargo* or *(CDC)* includes any of the following:

(1) Division 1.1 or 1.2 explosives as defined in 49 CFR 173.50.

(2) Division 1.5D blasting agents for which a permit is required under 49 CFR 176.415 or, for which a permit is required as a condition of a Research and Special Programs Administration exemption.

(3) Division 2.3 "poisonous gas", as listed in 49 CFR 172.101 that is also a "material poisonous by inhalation" as defined in 49 CFR 171.8, and that is in a quantity in excess of 1 metric ton per barge.

(4) Division 5.1 oxidizing materials for which a permit is required under 49 CFR 176.415 or, for which a permit is required as a condition of a Research and Special Programs Administration exemption.

(5) A liquid material that has a primary or subsidiary classification of Division 6.1 "poisonous material" as listed in 49 CFR 172.101 that is also a "material poisonous by inhalation", as defined in 49 CFR 171.8 and that is in a bulk packaging, or that is in a quantity in excess of 20 metric tons per barge when not in a bulk packaging.

(6) Class 7, "highway route controlled quantity" radioactive material or "fissile material, controlled shipment", as defined in 49 CFR 173.403.

(7) Bulk liquefied chlorine gas and bulk liquefied gas cargo that is flammable and/or toxic and carried under 46 CFR 154.7.

(8) The following bulk liquids—

(i) Acetone cyanohydrin,

(ii) Allyl alcohol,

(iii) Chlorosulfonic acid,

(iv) Crotonaldehyde,

(v) Ethylene chlorohydrin,

(vi) Ethylene dibromide,

(vii) Methacrylonitrile,

(viii) Oleum (fuming sulfuric acid), and

(ix) Propylene Oxide.

*CDC barge* means a barge containing CDCs or CDC residue.

*Downbound* means the tow is traveling with the current.

*Fleet tow boat* means any size vessel that is used to move, transport, or deliver a CDC barge within a fleeting area.

*Fleeting area* means any fleet, including any facility, located within the area covered by one single port.

*Inland River Vessel Movement Center* or *(IRVMC)* means the Coast Guard office that is responsible for collecting the information required by this section.

*Ninth Coast Guard District* means the Coast Guard District as set out in 33 CFR 3.45–1.

*Towing vessel* means any size vessel that is used to move, transport, or deliver a CDC barge to a fleet or facility that is located in a different port than where the voyage originated.

*Towing vessel operator* means the Captain or pilot who is on watch on board a towing vessel.

*Upbound* means the tow is traveling against the current.

(d) *Regulations.* The following must report to the Inland River Vessel Movement Center (IRVMC):

(1) The towing vessel operator responsible for one or more CDC barges in the RNA must report all the information items specified in table 165.921(f), in paragraph (f) of this section, to the IRVMC:

(i) Upon point of entry into the RNA with one or more CDC barges;

(ii) Four hours before originating a voyage within the RNA with one or more CDC barges, except if the evolution of making up a tow with a CDC barge will take less than 4 hours before originating a voyage, and the towing vessel operator did not receive the order to make up a tow with a CDC barge in advance of 4 hours before originating the voyage with one or more CDC barges, in which case the towing vessel operator shall submit the required report to the IRVMC as soon as possible after receiving orders to make up a tow with one or more CDC barges;

(iii) Upon dropping off one or more CDC barges at a fleeting area or facility;

(iv) Upon picking up one or more additional CDC barges from a fleeting area or facility;

(v) At designated reporting points, set forth in paragraph of this section;

(vi) When the estimated time of arrival (ETA) to a reporting point varies by 6 hours from the previously reported ETA;

(vii) Any significant deviation from previously reported information;

(viii) Upon departing the RNA with one or more CDC barges; and

(ix) When directed by the IRVMC.

(2) The fleeting area manager responsible for one or more CDC barges in the RNA must report all the information items specified in table 165.921(g), in paragraph (g) of this section, to the IRVMC:

(i) Once daily, report all CDC barges within the fleeting area;

(ii) Upon moving one or more CDC barges within a fleeting area by a fleet tow boat;

(iii) Any significant deviation from previously reported information; and

(iv) When directed by the IRVMC.

(3) Reports required by this section may be made by a company representative or dispatcher on behalf of the fleeting area manager.

(4) Reports required by this section must be made to the IRVMC either by telephone to (866) 442–6089, by fax to (866) 442–6107, or by e-mail to *irvmc@cgstl.uscg.mil.* A reporting form and e-mail link are available at *http://www.uscg.mil/d8/Divs/M/IRVMC.htm.*

(5) The general regulations contained in 33 CFR 165.13 apply to this section.

(e) *Ninth Coast Guard District Illinois Waterway System RNA Reporting points.* Towing vessel operators responsible for one or more CDC barges in the RNA must make reports to the Inland River Vessel Movement Center at each point listed in this paragraph (e).

(1) Illinois River (ILR) Upbound, at Mile Markers (M) and when Departing Lock & Dam (L&D)—

(i) M 187.2 (Southern Boundary MSO Chicago AOR),

(ii) M 303.5 Junction of Chicago Sanitary Ship Canal and Calumet-Sag Channel,

(iii) M 326.4 Thomas S. O'Brien L&D, Calumet River,

(iv) M 333.5 Confluence of Calumet River and Lake Michigan, and

(v) M 326.7 Chicago L&D, Chicago River.

(2) Illinois River (ILR) Downbound Reporting Points, at Mile Markers (M) and when Departing Lock & Dam (L&D)—

(i) M 326.7 Chicago L&D, Chicago River,

(ii) M 333.5 Confluence of Calumet River and Lake Michigan,

(iii) M 326.4 Thomas S. O'Brien L&D, Calumet River,

(iv) M 303.5 Junction of Chicago Sanitary Ship Canal and Calumet-Sag Channel, and

(v) M 187.2 (Southern Boundary MSO Chicago AOR).

(f) *Information to be reported to the IRVMC by towing vessel operators.* With the exception noted in paragraph (d)(1)(ii) of this section, towing vessel operators responsible for one or more CDC barges in the RNA must report all the information required by this section as set out in table 165.921(f) of this paragraph.

TABLE 165.921(F).—INFORMATION TO BE REPORTED TO THE IRVMC BY TOWING VESSEL OPERATORS

| | 24-hour contact number | Name of vessel moving barge(s) | Barge(s) name and official number | Type, name and amount of CDC onboard | Estimated time of departure from fleeting area or facility | Name and location of destination of CDC barge (fleeting area or facility), including estimated time of arrival | Reporting point | Estimated time of arrival (ETA) to next reporting point (If applicable) |
|---|---|---|---|---|---|---|---|---|
| (1) Upon point of entry into the RNA with a CDC barge | X | X | X | X | .......... | X | X | X |
| (2) 4 hours before originating a voyage within the RNA with one or more CDC barges; but see exception in paragraph (d)(1)(ii) of this section. | X | X | X | X | X | X | .......... | X |
| (3) Upon dropping off one or more CDC barges at a fleeting area or facility | .......... | X | X | | | | | |
| (4) Upon picking up one or more additional CDC barges from a fleeting area or facility. | .......... | X | X | X | | | | |
| (5) At designated reporting points in 165.921(e) | .......... | X | X | ([1]) | .......... | ([1]) | X | X |
| (6) When ETA to a reporting point varies by 6 hours from previously reported ETA | .......... | X | ([1]) | ([1]) | .......... | .......... | .......... | X |
| (7) Any significant deviation from previously reported information (all that apply) | X | X | X | X | X | X | X | X |
| (8) Upon departing the RNA with a CDC barge (s) | .......... | X | X | .......... | .......... | .......... | X | |
| (9) When directed by the IRVMC | X | X | X | X | X | X | X | X |

[1] If changed.

(g) *Information to be reported to the IRVMC by fleeting area managers.* Fleeting area managers responsible for one or more CDC barges in the RNA must report the information required by this section as set out in table 165.921(g) to this paragraph.

TABLE 165.921(G).—INFORMATION TO BE REPORTED TO THE IRVMC BY FLEETING AREA MANAGERS

| | 24-hour contact number | Barge(s) name and official number | Type, name and amount of CDC onboard | Location of CDC barge (fleeting area or facility) |
|---|---|---|---|---|
| (1) Once daily, all CDC barges in a fleeting area | X | X | X | X |
| (2) Upon moving one or more CDC barges within a fleeting area by a fleet tow boat | .......... | X | X | X |
| (3) Any significant deviation from previously reported information (all that apply) | X | X | X | X |
| (4) When directed by the IRVMC | X | X | X | X |

(h) *Alternative reporting.* The Ninth Coast Guard District Commander may consider and approve alternative methods to be used by a reporting party to meet any reporting requirements if—

(1) The request is submitted in writing to Commander, Ninth Coast Guard District (m), 1240 E. Ninth Street, Cleveland, Ohio, 44199–2060; and

(2) The alternative provides an equivalent level of the reporting that which would be achieved by the Coast Guard with the required check-in points.

(i) Deviation from this section is prohibited unless specifically authorized by the Commander, Ninth Coast Guard District or the IRVMC.

Dated: September 29, 2003.

**Ronald F. Silva,**

*Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.*

[FR Doc. 03–25296 Filed 10–1–03; 3:55 pm]

BILLING CODE 4910–15–P

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## DEPARTMENT OF DEFENSE

## Department of the Army; Corps of Engineers

## 33 CFR Part 334

## United States Navy Restricted Area, Cooper River and Tributaries, Naval Weapons Station Charleston, Charleston, SC

**AGENCY:** United States Army Corps of Engineers, Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** The Corps of Engineers is amending existing regulations to expand the authority of the Commanding Officer, Naval Weapons Station Charleston to restrict passage of persons, watercraft and vessels within currently designated restricted areas in the Cooper River and its tributaries in the vicinity of the Naval Weapons Station in Charleston, South Carolina. The purpose of the proposed change is to provide effective security in the area of the Naval Weapons Station.

**EFFECTIVE DATE:** November 5, 2003.

**ADDRESSES:** U.S. Army Corps of Engineers, ATTN: CECW–OR, 441 G Street, NW., Washington, DC 20314–1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, DC, at (202) 761–4618, or Mr. Nathaniel Ball, Corps of Engineers, Charleston District, at (843) 329–8044.

**SUPPLEMENTARY INFORMATION:** Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and chapter XIX, of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3) the Corps is amending the restricted area regulations published at 33 CFR 334 by modifying 334.460(b)(6) to expand the authority of the Commanding Officer, Naval Weapons Station Charleston to restrict the passage of persons, watercraft and vessels within the Cooper River and its tributaries in the vicinity of the Naval Weapons Station in Charleston, South Carolina. The boundaries of restricted areas and danger zones identified in 33 CFR 334.460 (a) are unchanged. The regulation at 33 CFR 334.460(b)(6) is being amended to include restricted area (a)(8) of 334.460. The amended regulation will allow the Commanding Officer of the Naval Weapons Station to restrict the passage of persons, watercraft, and vessels, at his/her discretion in the interest of National Security until such time as he/she determines such restrictions may be terminated.

### Procedural Requirements

*a. Review Under Executive Order 12866*

This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

*b. Review Under the Regulatory Flexibility Act*

This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The Corps expects that the economic impact of this restricted area would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal will have no significant economic impact on small entities.

*c. Review Under the National Environmental Policy Act*

The Charleston District has prepared an Environmental Assessment (EA) for this action. The District has concluded, based on the minor nature of the proposed additional restricted area, that this action will not have a significant impact to the quality of the human environment, and preparation of an Environmental Impact Statement (EIS) is not required. The EA may be reviewed at the Charleston District office listed at the end of **FOR FURTHER INFORMATION CONTACT** above.

*d. Unfunded Mandates Act*

This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of section 202 or 205 of the Unfunded Mandates Act. The District has also found under section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

*e. Submission to Congress and the General Accounting Office*

Pursuant to section 801(a)(1)(A) of the Administrative Procedure Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the Army has submitted a report containing this Rule to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office. This rule is not a major rule within the meaning of section 804(2) of the Administrative Procedure Act, as amended.

### List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Restricted areas, Waterways.

■ For the reasons set out in the preamble, the Corps of Engineers is amending 33 CFR part 334 as follows:

## PART 334—DANGER ZONES AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for Part 334 continues to read as follows:

**Authority:** 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

■ 2. Amend § 334.460 by revising paragraph (b)(6) to read as follows:

### § 334.460 Cooper River and tributaries at Charleston, SC.

* * * * *

(b) * * *

(6) In the interest of National Security, Commanding Officer, U.S. Naval Weapons Station, Charleston, SC, may at his/her discretion, restrict passage of persons, watercraft and vessels in the areas described in paragraphs (a)(7), (a)(8) and (a)(11) of this section until such time as he/she determines such restriction may be terminated.

* * * * *

Dated: September 16, 2003.

**Lawrence A. Lang,**

*Deputy Chief, Operations Division, Directorate of Civil Works.*

[FR Doc. 03–25205 Filed 10–3–03; 8:45 am]

BILLING CODE 3710–92–P

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

### 44 CFR Part 65

**[Docket No. FEMA–B–7438]**

## Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Interim rule.

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**SUMMARY:** This interim rule lists communities where modification of the Base (1-percent-annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified Base Flood Elevations for new buildings and their contents.

**DATES:** These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Division Director for the Emergency Preparedness and Response Directorate reconsider the changes. The modified elevations may be changed during the 90-day period.

**ADDRESSES:** The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Doug Bellomo, P.E. Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

**SUPPLEMENTARY INFORMATION:** The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by the other Federal, State, or regional entities.

The changes in are in accordance with 44 CFR 65.4.

*National Environmental Policy Act.* This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

*Regulatory Flexibility Act.* The Mitigation Division Director for the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S. C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

*Regulatory Classification.* This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 12612, Federalism.* This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

*Executive Order 12778, Civil Justice Reform.* This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

### List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

### PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

### §65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

| State and County | Location and Case No. | Date and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Arizona: | | | | | |
| Gila | City of Globe, (03–09–0187P). | June 18, 2003, June 25, 2003, *Arizona Silver Belt*. | The Honorable Stanley Gibson, Mayor, City of Globe, 150 North Pine Street, Globe, Arizona 85501. | Sept. 24, 2003 | 040029 |
| Gila | Unincorporated Areas, (03–09–0187P). | June 18, 2003, June 25, 2003, *Arizona Silver Belt*. | The Honorable Cruz Salas, Chairman, Gila County Board of Supervisors, 1400 East Ash Street, Globe, Arizona 85501. | Sept. 24, 2003 | 040028 |
| Maricopa | City of Avondale, (02–09–190P). | May 29, 2003, June 5, 2003, *Arizona Republic*. | The Honorable Ronald J. Drake, Mayor, City of Avondale, 525 North Central Avenue, Avondale, Arizona 85323. | May 22, 2003 | 040038 |

| State and County | Location and Case No. | Date and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Maricopa | Town of Buckeye, (03–09–0245P). | June 19, 2003, June 26, 2003, *Buckeye Valley News*. | The Honorable Dusty Hull, Mayor, Town of Buckeye, 100 North Apache Road, Suite A, Buckeye, Arizona 85326. | May 20, 2003 | 040039 |
| Maricopa | City of Chandler, (03–09–0353P). | May 29, 2003, June 5, 2003, *Arizona Business Gazette*. | The Honorable Boyd Dunn, Mayor, City of Chandler, 55 North Arizona Place, Suite 301, Chandler, Arizona 85225. | May 7, 2003 | 040040 |
| Maricopa | City of El Mirage, (02–09–945P). | May 22, 2003, May 29, 2003, *Arizona Republic*. | The Honorable Robert Robles, Mayor, City of El Mirage, P.O. Box 26, El Mirage, Arizona 85335. | Aug. 28, 2003 | 040041 |
| Maricopa | Town of Gila Bend, (02–09–858P). | July 3, 2003, July 10, 2003, *Arizona Business Gazette*. | The Honorable Chuck Turner, Mayor, Town of Gila Bend, P.O. Box A, Gila Bend, Arizona 85337. | Oct. 9, 2003 | 040043 |
| Maricopa | City of Phoenix, (03–09–0290P). | June 12, 2003, June 19, 2003, *Arizona Business Gazette*. | The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003–1611. | May 29, 2003 | 040051 |
| Maricopa | City of Surprise, (02–09–945P). | May 22, 2003, May 29, 2003, *Arizona Republic*. | The Honorable Joan H. Shafer, Mayor, City of Surprise, 12425 West Bell Road, Suite D–100, Surprise, Arizona 85374. | Aug. 28, 2003 | 040053 |
| Maricopa | Unincorporated Areas, (02–09–945P). | May 22, 2003, May 29, 2003, *Arizona Republic*. | The Honorable R. Fulton Brock, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003. | Aug. 28, 2003 | 040037 |
| Maricopa | Unincorporated Areas, (02–09–858P). | July 3, 2003, July 10, 2003, *Arizona Business Gazette*. | The Honorable Don Stapley, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003. | Oct. 9, 2003 | 040037 |
| Maricopa | Town of Youngtown, (03–09–1014X). | May 22, 2003, May 29, 2003, *Arizona Republic*. | The Honorable Daphne Green, Mayor, Town of Youngtown, 12030 Clubhouse Square, Youngtown, Arizona 85363. | Aug. 28, 2003, | 040057 |
| Pima | City of Tucson, (02–09–873P). | July 17, 2003, July 24, 2003, *Daily Territorial*. | The Honorable Bob Walkup, Mayor, City of Tucson, City Hall, 255 West Alameda Street, Tucson, Arizona 85701. | Oct. 23, 2003 | 040076 |
| Pima | Unincorporated Areas, (03–09–0541P). | June 19, 2003, June 26, 2003, *Arizona Daily Star*. | The Honorable Ray Carroll, Republican County Supervisor, Pima County District Four, 130 West Congress Street, 11th Floor, Tucson, Arizona 85701. | Sept. 25, 2003 | 040073 |
| California: | | | | | |
| Contra Costa | City of Clayton, (03–09–0387P). | May 29, 2003, June 6, 2003, *Contra Costa Times*. | The Honorable Gregory J. Manning, Mayor, City of Clayton, City Hall, 6000 Heritage Trail, Clayton, California 94517. | May 9, 2003 | 060027 |
| Los Angeles | Unincorporated Areas, (02–09–404P). | May 22, 2003, May 29, 2003, *Los Angeles Times*. | The Honorable Yvonne B. Burke, Chair, Los Angeles County Board of Supervisors, 500 West Temple Street, Los Angeles, California 90012. | April 21, 2003 | 065043 |
| Placer | City of Rocklin, (02–09–810P). | May 7, 2003, May 14, 2003, *The Rocklin*. | The Honorable Kathy Lund, Mayor, City of Rocklin, 3970 Rocklin Road, Rocklin, California 95677–2720. | Aug. 13, 2003 | 060242 |
| Placer | Unincorporated Areas, (02–09–810P). | May 7, 2003, May 14, 2003, *The Rocklin*. | The Honorable Rex Bloomfield, Chairman, Placer County, Board of Supervisors, 175 Fulweiler Avenue, Auburn, California 95603. | Aug. 13, 2003 | 060239 |
| Sacramento | Unincorporated Areas, (03–09–0080P). | May 8, 2003, May 15, 2003, *Daily Recorder*. | The Honorable Illa Collin, Chair, Sacramento County Board of Supervisors, 700 H Street, Room 2450 Sacramento, California 95814. | Aug, 14, 2003 | 060262 |

| State and County | Location and Case No. | Date and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| San Diego ... | City of San Diego, (03–09–0578P). | June 26, 2003, July 3, 2003, *San Diego Union-Tribune*. | The Honorable Richard M. Murphy, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, California 92101. | June 9, 2003 ............ | 060295 |
| San Diego ... | City of San Marcos (03–09–0123P). | April 24, 2003, May 1, 2003, *The Paper*. | The Honorable F. H. "Corky" Smith Mayor, City of San Marcos, One Civic Center Drive, San Marcos, California 92069–2949. | July 31, 2003 ............ | 060296 |
| Santa Cruz .. | Unincorporated Areas, (03–09–0475P). | May 8, 2003, May 15, 2003, *Register-Pajaronian*. | The Honorable Ellen Pirie Chair, Santa Cruz County Board of Supervisors, 701 Ocean Street, Room 500, Santa Cruz, California 95060. | Aug. 14, 2003 ........... | 060353 |
| Santa Cruz .. | City of Watsonville, (03–09–0475P). | May 8, 2003, May 15, 2003, *Register-Pajaronian*. | The Honorable Richard de la Paz, Jr. Mayor, City of Watsonville, Administration Building, Second Floor, 215 Union Street Watsonville, California 95076. | Aug. 14, 2003 ........... | 060357 |
| Santa Barbara. | City of Solvang, (02–09–1302P). | May 29, 2003, June 5, 2003, *Santa Barbara News Press*. | The Honorable Beverly Russ, Mayor, City of Solvang, P.O. Box 107, Solvang, California 93464–0107. | May 7, 2003, ............ | 060756 |
| Santa Barbara. | Unincorporated Areas, (02–09–179P). | July 3, 2003, July 10, 2003, *Santa Barbara News Press*. | The Honorable Naomi Schwartz, Chair, Santa Barbara County, Board of Supervisors, 105 East Anapamu Street, Santa Barbara, California 93101. | Oct. 9, 2003 ............. | 060331 |
| Colorado: | | | | | |
| Adams ......... | Unincorporated Areas, (03–08–0104P). | May 14, 2003, May 21, 2003, *Brighton Standard-Blade*. | The Honorable Elaine T. Valente, Chairman, Adams County, Board of Commissioners, 450 South Fourth Avenue Brighton, Colorado 80601. | Aug. 20, 2003 ........... | 080001 |
| Arapahoe ..... | City of Littleton, (03–08–0030P). | May 22, 2003, May 29, 2003, *Littleton Independent*. | The Honorable Susan M. Thornton, Mayor, City of Littleton, 2255 West Berry Avenue, Littleton, Colorado 80165. | Aug. 28, 2003 ........... | 080017 |
| Broomfield ... | City and County of Broomfield, (03–08–0061P). | June 19, 2003, June 26, 2003, *Boulder Daily Camera*. | The Honorable Karen Stuart, Mayor, City and County of Broomfield, One DesCombes Drive, Broomfield, Colorado 80020. | Sept. 25, 2003 .......... | 085073 |
| Broomfield ... | City and County of Broomfield, (03–08–0270P). | July 16, 2003, July 23, 2003 *Broomfield Enterprise*. | The Honorable Karen Stuart, Mayor, City and County of Broomfield, One DesCombes Drive, Broomfield, Colorado 80020. | June 27, 2003 ........... | 085073 |
| Denver ......... | City and County of Denver, (03–08–0210P). | May 15, 2003, May 22, 2003, *Denver Post*. | The Honorable Wellington E. Webb, Mayor, City and County of Denver, 1437 Bannock Street, Suite 350, Denver, Colorado 80202. | April 24, 2003 ........... | 080046 |
| Adams, Arapahoe, Denver. | City of Aurora, (03–08–0210P). | May 15, 2003, May 22, 2003, *Denver Post*. | The Honorable Paul E. Tauer, Mayor, City of Aurora, 15151 East Alameda Parkway, Fifth Floor, Aurora, Colorado 80012. | April 24, 2003 ........... | 080002 |
| Douglas ....... | Town of Parker, (02–08–186P). | April 23, 2003, April 30, 2003, *Douglas County News-Press*. | The Honorable Gary Lasater, Mayor, Town of Parker, 20120 East Mainstreet, Parker, Colorado 80138–7334. | July 30, 2003 ............ | 080310 |
| Douglas ....... | Unincorporated Areas, (02–08–186P). | April 23, 2003, April 30, 2003, *Douglas County News-Press*. | The Honorable James R. Sullivan, Chairman, Douglas County Board of Commissioners, 100 Third Street, Castle Rock, Colorado 80104. | July 30, 2003 ............ | 080049 |
| Douglas ....... | Unincorporated Areas, (03–08–0096P). | April 23, 2003, April 30, 2003, *Douglas County News-Press*. | The Honorable James R. Sullivan, Chairman, Douglas County Board of Commissioners, 100 Third Street, Castle Rock, Colorado 801049. | July 30, 2003 ............ | 080049 |

| State and County | Location and Case No. | Date and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| El Paso | City of Colorado Springs, (02–08–394P). | April 24, 2003, May 1, 2003, *The Gazette*. | The Honorable Mary Lou Makepeace, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901. | July 31, 2003 | 080060 |
| El Paso | City of Colorado Springs, (03–08–0223P). | June 5, 2003, June 12, 2003, *The Gazette*. | The Honorable Mary Lou Makepeace, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901. | May 13, 2003 | 080060 |
| Jefferson | Unincorporated Areas, (03–08–0099P). | March 19, 2003, March 26, 2003, *Canyon Courier*. | The Honorable Richard M. Sheehan, Chairman, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, Colorado 80419. | June 25, 2003 | 080087 |
| Hawaii: | | | | | |
| Hawaii | Hawaii County, (02–09–368P). | July 10, 2003, July 17, 2003, *Hawaii Tribune Herald*. | The Honorable Harry Kim, Mayor, County of Hawaii, 25 Aupuni Street, Hilo, Hawaii 96720. | Oct. 16, 2003 | 155166 |
| Maui | Maui County, (03–09–0116P). | May 29, 2003, June 5, 2003, *Maui News*. | The Honorable Alan M. Arakawa, Mayor, Maui County, 200 South High Street, Wailuku, Hawaii 96793. | May 6, 2003 | 150003 |
| Maui | Maui County, (03–09–0107P). | July 3, 2003, July 10, 2003, *Maui News*. | The Honorable Alan M. Arawaka, Mayor, Maui County, 200 South High Street, Wailuku, Hawaii 96793. | June 13, 2003 | 150003 |
| Idaho: | | | | | |
| Bonneville | City of Ammon, (03–10–0229P). | July 3, 2003, July 10, 2003, *Post Register*. | The Honorable Bruce Ard, Mayor, City of Ammon, 2135 South Ammon Road, Ammon, Idaho 83406. | June 13, 2003 | 160028 |
| Bonneville | Unincorporated Areas, (03–10–0229P). | July 3, 2003, July 10, 2003, *Post Register*. | The Honorable Lee Stake, Chairman, Bonneville County Board of Commissioners, 605 North Capitol Avenue, Idaho Falls, Idaho 83402,. | June 13, 2003 | 160027 |
| Nevada: | | | | | |
| Independent City. | City of Carson City, (01–09–592P). | June 19, 2003, June 26, 2003, *Nevada Appeal*. | The Honorable Ray Masayko, Mayor, City of Carson City, 201 North Carson Street, Suite 2, Carson City, Nevada 89701. | May 29, 2003 | 320001 |
| Clark | City of Henderson (03–09–0861X). | May 1, 2003, May 8, 2003, *Las Vegas Review-Journal*. | The Honorable James Gibson, Mayor, City of Henderson, 240 South Water Street, Henderson, Nevada 89015. | April 21, 2003 | 320005 |
| Clark | Unincorporated Areas, (03–09–0861X). | May 1, 2003, May 8, 2003, *Las Vegas Review-Journal*. | The Honorable Mary J. Kincaid-Chauncey, Chair, Clark Country, Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, Nevada 89155. | April 21, 2003 | 320003 |
| Clark | Unincorporated Areas, (02–09–1071P). | April 24, 2003, May 1, 2003, *Las Vegas Review-Journal*. | The Honorable Mary J. Kincaid-Chauncey, Chair, Clark County, Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, Nevada 89155. | July 31, 2003 | 320003 |
| Clark | Unincorporated Areas, (02–09–718P). | July 10, 2003, July 17, 2003, *Las Vegas Review-Journal*. | The Honorable Mary J. Kincaid-Chauncey, Chair, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, Nevada 89155. | June 19, 2003 | 320003 |
| Texas: Dallas | City of Dallas, (00-06-248P). | January 31, 2002, February 7, 2002), *Dallas Morning News*. | The Honorable Ron Kirk, Mayor, City of Dallas, 1500 Marilla Street, Dallas, Texas 75201. | Nov. 8, 2000 | 480171 |

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: September 23, 2003.

**Anthony S. Lowe,**

*Mitigation Division Director, Emergency Preparedness and Response Directorate.*

[FR Doc. 03–25215 Filed 10–3–03; 8:45 am]

BILLING CODE 6718–04–P

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Part 1817

### RIN 2700–AC78

### Interagency Acquisition Approvals

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the NASA Federal Acquisition Regulation Supplement (NFS) by establishing a five-year limitation on interagency acquisitions. Individual orders or successive non-competitive orders for the same requirement with the same servicing agency that will exceed five years require approval of a deviation. This final rule also requires determinations and findings (D&Fs) for interagency acquisitions to identify the period of performance and whether the acquisition is for a non-competitive follow-on for the same requirement with the same servicing agency. These changes result from NASA's agreement with OMB on an action plan regarding the President's Management Agenda Competitive Sourcing element. These changes will establish greater consistency in the approval requirements for contracts, grants, cooperative agreements, and interagency acquisitions with anticipated periods of performance exceeding five years.

**EFFECTIVE DATE:** October 6, 2003.

**FOR FURTHER INFORMATION CONTACT:** Joseph Le Cren, NASA Headquarters, Office of Procurement, Program Operations Division (Code HS), Washington, DC 20546–0001, (202) 358–0431, e-mail: *jlecren@hq.nasa.gov.*

**SUPPLEMENTARY INFORMATION:**

### A. Background

OMB and NASA entered into an agreement on an action plan regarding the President's Management Agenda Competitive Sourcing element. That agreement called for NASA to put in place plans for reviews and recompetitions of contracts, interagency acquisitions, and partnerships identified in inventories submitted to OMB in September 2002. In developing NASA's plan for reviews and recompetitions, existing guidance pertaining to interagency acquisitions was reviewed and areas requiring revision or coverage were identified.

Contracts (inclusive of options), grants, and cooperative agreements that are planned to exceed five years, generally require the prior approval of the Assistant Administrator for Procurement. However, there are no limits for interagency acquisitions. This final rule establishes a similar requirement for interagency acquisitions, as well as the information to be provided for a deviation from the rule.

The FAR specifies information that is to be included in the D&Fs for interagency acquisitions. However, there is no requirement for the period of performance to be identified. This final rule establishes such a requirement in order to restrict the use of long-term acquisitions (greater than five years) that preclude the opportunity for competition. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This final rule is not a major rule under 5 U.S.C. 804.

### B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comment is not required. However, NASA will consider comments from small entities concerning the affected NFS Part 1817 in accordance with 5 U.S.C. 610.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose any recordkeeping or information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Part 1817

Government procurement.

**Tom Luedtke,**

*Assistant Administrator for Procurement.*

■ Accordingly, 48 CFR Part 1817 is amended as follows:

■ 1. The authority citation for 48 CFR Part 1817 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1).

## PART 1817—SPECIAL CONTRACTING METHODS

■ 2. Amend section 1817.7201 by redesignating the existing text as paragraph (a) and adding paragraphs (b) and (c) to read as follows:

### 1817.7201 Policy.

* * * * *

(b) Individual orders or successive non-competitive interagency orders for the same requirement with the same servicing agency shall not exceed five years.

(c) Requests for deviation from the five year limitation in paragraph (b) of this section shall require the approval of the Center Director if the estimated value of the order is $5 million or less, or the Assistant Administrator for Procurement (Code HS) if the estimated value of the order exceeds $5 million. Requests for deviation shall address:

(1) Why more than five years is required;

(2) Why the work must be performed by the same servicing agency; and

(3) How long beyond the current order the requirement is expected to continue.

■ 3. Amend section 1817.7202 by redesignating existing paragraphs (c) and (d) as (d) and (e) respectively, and adding a new paragraph (c) to read as follows:

### 1817.7202 Determinations and findings requirements.

* * * * *

(c) In addition to the requirements in FAR 17.503, the D&F must identify the period of performance and whether the acquisition is a non-competitive follow-on for the same services from the same servicing agency. (*See* 1817.7201(b).)

* * * * *

[FR Doc. 03–25290 Filed 10–3–03; 8:45 am]

BILLING CODE 7510–01–P

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## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### 49 CFR Parts 171, 172, 173, 175, 176, 177, 178, and 179

### [Docket No. RSPA–03–16099 (HM–189V)]

### RIN 2137–AD85

### Hazardous Materials Regulations: Minor Editorial Corrections and Clarifications

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule corrects editorial errors, makes minor regulatory changes and, in response to requests for clarification, improves the clarity of certain provisions in the Hazardous Materials Regulations (HMR). The

intended effect of this rule is to enhance the accuracy and reduce misunderstandings of the regulations. The amendments contained in this rule are minor changes and do not impose new requirements.

**DATES:** Effective date: October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Darral Relerford, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Research and Special Programs Administration (RSPA, we) annually reviews the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) to identify errors that may confuse readers. Inaccuracies corrected in this final rule include typographical and printing errors, incorrect references to regulations in the CFR, inconsistent use of terminology, and misstatements of certain regulatory requirements. In addition, we are making certain other changes to improve the clarity of certain HMR requirements.

Because these amendments do not impose new requirements, notice and public procedure are unnecessary. For this same reason, we are making these amendments effective without the customary 30-day delay following publication.

The following is a section-by-section summary of the amendments made under this final rule. It does not discuss all minor editorial corrections (for example, typographical and punctuation errors) and certain other minor adjustments to enhance the clarity of the HMR.

## II. Section-by-Section Review

### *Part 171*

*Sections 171.15 and 171.16.* In §§ 171.15(b) and 171.16(b), we are updating the term "FAA Civil Aviation Security Office" to read "FAA Regional or Field Security Office."

### *Part 172*

*Section 172.101 Hazardous Materials Table (HMT).* We are amending the HMT by correcting certain entries as follows:

- —The hazard class for the entry "Combustible liquid, n.o.s.," NA1993, is revised by correcting Column (3) to read "Combustible liquid." Due to a typographical error, the entry currently reads "Combustible."
- —For the entry "Self-reactive liquid type F," UN3229, we are correcting the reference "114" to read "224."

*Section 172.102.* We are correcting Special Provision 15 by removing text that conflicts with the assigned packaging authorization section, § 173.161, for the entries "Chemical kits," and "First aid kits." This correction is based on comments from the public stating that the text is confusing.

*Section 172.201.* We are revising paragraph (e) to clarify that the use and retention of a permanent shipping paper for multiple shipments of one or more hazardous materials being transported on a regular basis over an extended period is authorized. In the final rule published on July 12, 2002 (67 FR 46123) under Docket HM–207B, we authorized operators to retain a single copy of such permanent shipping papers for the period in which the shipping paper is used and 375 days thereafter, provided that the operator also retains a record of each shipment made under the shipping paper. Also, *see* § 177.817.

*Section 172.321.* We are editorially revising paragraph (c)(5) by removing the semi-colon and the word "and."

*Section 172.332.* We are revising paragraph (b)(3) by adding "0.25 inches" as the conversion for "18 points."

### *Part 173*

*Section 173.32.* We are editorially revising paragraph (c)(2) for clarity by changing the word "it" to read "the portable tanks."

*Section 173.134.* In paragraph (c)(1)(ii), we are changing the wording "the specific packaging requirements of this section" to read "the specific packaging requirements of § 173.197."

*Section 173.164.* We are removing paragraph (a)(2) because it is redundant with the introductory paragraph (a).

*Section 173 166.* As revised in the final rule, HM–215E (68 FR 44992), published on July 31, 2003, we are editorially revising introductory paragraph (e) by adding "as follows" to connect the introductory paragraph to its subparagraphs.

*Section 173.197.* We are revising paragraph (e)(1)(i) by correcting two American Society for Testing and Materials Standard numbers.

*Section 173.241.* In paragraph (c), we are adding a sentence to refer the reader to the portable tank requirements in § 176.340 applicable to combustible liquids being transported by vessel.

*Section 173.304a.* In the table in paragraph (d), we are correcting the entry for hydrogen sulfide, in column 3, to remove an inconsistency with provisions in §§ 173.40(b) and 173.301a(d)(3) that state the pressure of a gas at 55 °C (131 °F) may not exceed the cylinder's service pressure. The service pressure of hydrogen sulfide at 55 °C (131 °F) exceeds the marked service pressure, 480 psi, specified in the table.

*Section 173.315.* In paragraph (b)(1), we are correcting the word "That" to read "that'.

*Section 173.337.* In paragraph (a), we are removing an incorrect reference to "3ALM" cylinders.

*Section 173.412.* In paragraph (l), we are correcting "40 TBq (1000Ci)" to read "40 TBq (1080Ci)" because it is a more precise conversion of the activity of 40 TBq to curies.

*Section 173.420.* In paragraph (a)(2)(i), we are removing the edition dates for American National Standard (ANSI) N 14.1 because they are indicated in § 171.7.

### *Part 175*

*Section 175.31* In paragraph (a), we are updating the term "FAA Civil Aviation Security Office" to read "FAA Regional or Field Security Office."

### *Part 176*

*Section 176.340* We are revising paragraph (a) to clarify the type of authorized portable tanks by adding the word "Specification."

### *Part 177*

*Section 177.817* We are revising paragraph (f) to clarify that the use and retention of a permanent shipping paper for multiple shipments of one or more hazardous materials being transported on a regular basis over an extended period is authorized. Also, *see* § 172.201.

*Section 177.854.* We are revising paragraph (f)(1) by correcting the spelling of the word "motor."

### *Part 178*

*Section 178.61.* We are revising paragraph (g) to correct the location in 49 CFR for the heat treatment methods. The methods are contained in Table 1 of Appendix A to Part 178—Specifications for Steel. Currently, the paragraph incorrectly cites paragraph (b), which contains requirements for authorized steel and references Table 1 of Appendix A for chemical composition limits and makes no reference to heat treatment.

*Section 178.274.* We are revising paragraph (b)(1) to clarify that portable tanks used for Zone A or B toxic-by-inhalation liquids are required to have an ASME Certification and U Stamp.

This revision is consistent with § 178.273(b)(6). We are also correcting the section reference § 178.247(a)(2)" in paragraph (i) (1) to read "§ 178.274(a)(2)."

*Section 178.337–10.* In paragraph (a), we are revising the wording "safety relief devices" to read "pressure relief devices."

*Section 178.337–17.* In paragraph (d), we are correcting the section reference § 178.337(3)(b)" to read "§ 178.337–3(b)."

*Section 178.338–3.* In paragraphs (c)(3)(ii), (c)(3)(iii), (c)(3)(iv), (c)(3)(v), (c)(3)(vi) and (c)(4), we are removing the wording "and (c)" as an incorrect paragraph reference.

*Section 178.338–9.* In paragraph (c)(2), we are correcting the section reference § 178.320 (a) (3)" to read "§ 178.320(a)."

*Section 178.338–18.* In paragraph (d), we are removing the wording "and (c)" as an incorrect reference.

*Part 179*

*Section 179.102–4.* We are revising the section heading to correct a proper shipping name.

*Sections 179.300–12 and 179.500–12.* In paragraph (b) of each section, we are revising the wording "safety relief devices" to read "pressure relief devices."

## III. Rulemaking Analyses and Notices

### *A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This final rule is not considered a significant regulatory action under section 3 (f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Because there in no economic impact of this rule, preparation of a regulatory impact analysis is not warranted.

### *B. Executive Order 13132*

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 13132 ("Federalism"). This final rule does not adopt any regulation that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law.

RSPA is not aware of any State, local, or Indian tribe requirements that would be preempted by correcting editorial errors and making minor regulatory changes. This final rule does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

### *C. Executive Order 13175*

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this rule does not have tribal implications and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

### *D. Regulatory Flexibility Act*

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule makes minor regulatory changes which will not impose any new requirements on persons subject to the HMR; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses or other organizations.

### *E. Unfunded Mandates Reform Act of 1995*

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

### *F. Paperwork Reduction Act*

There are no new information collection requirements in this final rule.

### *G. Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

### List of Subjects

*49 CFR Part 171*

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

*49 CFR Part 172*

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

*49 CFR Part 173*

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

*49 CFR Part 175*

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

*49 CFR Part 176*

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

*49 CFR Part 177*

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

*49 CFR Part 178*

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

*49 CFR Part 179*

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

## PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 2. In § 171.15, the introductory text to paragraph (b) is revised to read as follows:

### § 171.15 Immediate notice of certain hazardous materials incidents.

* * * * *

(b) Except for transportation by aircraft, each notice required by paragraph (a) of this section shall be given to the National Response Center by telephone (toll-free) on 800–424–8802. Notice involving shipments transported by aircraft must be given to the nearest FAA Regional or Field Security Office by telephone at the earliest practical moment after each incident in place of the notice to the National Response Center. Notice involving infectious substances may be given to the Director, Centers for Disease Control, U.S. Public Health Service, Atlanta, Ga. (800) 232–0124, in place of the notice to the Department or (toll call) on 202–267–2675; however, a written report is still required as stated in paragraph (c) of this section.

* * * * *

■ 3. In § 171.16, paragraph (b) is revised to read as follows:

**§ 171.16 Detailed hazardous materials incident reports.**

* * * * *

(b) Each carrier making a report under this section shall send the report to the Information Systems Manager, DHM–63, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590–0001; and, for incidents involving transportation by aircraft, a copy of the report shall also be sent to the FAA Regional or Field Security Office, nearest the location of the incident. A copy of the report shall be retained for a period of two years at the carrier's principal place of business or at other places as authorized and approved in writing by an agency of the Department of Transportation.

* * * * *

## PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

■ 4. The authority citation for part 172 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

**§ 172.101 [Amended]**

■ 5. In § 172.101, the Hazardous Materials Table is amended as follows:

■ a. For the entry "Combustible liquid, n.o.s., NA1993", in Column (3), the word "Combustible" is removed and "Combustible liquid" is added in its place.

■ b. For the entry "Self-reactive liquid type F, UN3229", in Column (8B), as amended at 68 FR 45024, the reference "114" is removed and "224" is added in its place.

**§ 172.102 [Amended]**

■ 6. In § 172.102, paragraph (c)(1) in Special Provision 15, as amended at 68 FR 44992, the third and fourth sentences are removed.

■ 7. In § 172.201, in paragraph (e), the fifth sentence is revised to read as follows:

**§ 172.201 Preparation and retention of shipping papers.**

* * * * *

(e) * * * A motor carrier (as defined in § 390.5 of subchapter B of chapter III of subtitle B) using a shipping paper without change for multiple shipments of one or more hazardous materials having the same shipping name and identification number may retain a single copy of the shipping paper, instead of a copy for each shipment made, if the carrier also retains a record of each shipment made, to include shipping name, identification number, quantity transported, and date of shipment.

■ 8. In § 172.321, paragraph (c)(5), as amended at 68 FR 45031, is revised to read as follows:

**§ 172.321 Air eligibility mark.**

* * * * *

(c) * * *

(5) Packages or articles which are excepted from the marking requirements of this subchapter (for example, non-spillable batteries, vehicles).

* * * * *

■ 9. In § 172.332, paragraph (b)(3) is revised to read as follows:

**§ 172.332 Identification number markings.**

* * * * *

(b) * * *

(3) The name and hazard class of a material may be shown in the upper left border of the orange panel in letters not more than 18 points (0.25 in.) high.

* * * * *

## PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 10. The authority citation for part 173 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

**§ 173.32 [Amended]**

■ 11. In § 173.32, in the first sentence of paragraph (c)(2), the wording "and provided it conforms to the periodic inspection and tests" is revised to read "and provided the portable tanks conform to the periodic inspection and tests".

■ 12. In § 173.134, paragraph (c)(1)(ii) is revised to read as follows:

**§ 173.134 Class 6, Division 6.2—Definitions and exceptions.**

* * * * *

(c) * * *

(1) * * *

(ii) For other than a waste culture or stock of an infectious substance, the specific packaging requirements of § 173.197, if packaged in a rigid non-bulk packaging conforming to the general packagings requirements of §§ 173.24 and 173.24a and packaging requirements specified in 29 CFR 1910.103.

* * * * *

**§ 173.164 [Amended]**

■ 13. In § 173.164, paragraph (a) (2) is removed and reserved.

**§ 173.166 [Amended]**

■ 14. In § 173.166, as amended at 68 FR 45034, effective October 1, 2003, in introductory paragraph (e), the wording "performance level are authorized" is revised to read "performance level are authorized as follows".

■ 15. In § 173.197, paragraph (e)(1)(i) is revised to read as follows:

**§ 173.197 Regulated medical waste.**

* * * * *

(e) * * *

(1) * * *

(i) The film bag may not exceed a volume of 175 L (46 gallons). The film bag must be marked and certified by its manufacturer as having passed the tests prescribed for tear resistance in ASTM D 1922, "Standard Test Method for Propagation Tear Resistance of Plastic Film and Thin Sheeting by Pendulum Method" (IBR, § 171.7 of this subchapter) and for impact resistance in ASTM D 1709, "Standard Test Methods for Impact Resistance of Plastic Film by the Free-Falling Dart Method" (IBR, § 171.7 of this subchapter). The film bag must meet an impact resistance of 165 grams and a tearing resistance of 480 grams in both the parallel and perpendicular planes with respect to the length of the bag.

* * * * *

■ 16. In § 173.241, in paragraph (c), a new sentence is added at the end of the paragraph to read as follows:

**§ 173.241 Bulk packagings for certain low hazard liquid and solid materials.**

* * * * *

(c) * * * For transportation by vessel, also see § 176.340 of this subchapter.

* * * * *

**§ 173.304a [Amended]**

■ 17. In § 173.304a, in the paragraph (a)(2) Table entry for "Hydrogen sulfide", the third column is revised to read "DOT–3A; DOT–3AA; DOT–3B; DOT–4A; DOT–4B; DOT–4BA; DOT–4BW; DOT–3E1800; DOT–3AL."

■ 18. In § 173.315, paragraph (b) (1) is revised to read as follows:

### § 173.315 Compressed gases in cargo tanks and portable tanks.

* * * * *

(b) * * *

(1) *Odorization.* All liquefied petroleum gas shall be effectively odorized as required in Note 2 of this paragraph to indicate positively, by a distinctive odor, the presence of gas down to a concentration in air of not over one-fifth the lower limit of combustibility provided, however, that odorization is not required if harmful in the use or further processing of the liquefied petroleum gas, or if odorization will serve no useful purpose as a warning agent in such use or further processing.

* * * * *

■ 19. In § 173.337, paragraph (a) is revised to read as follows:

### § 173.337 Nitric oxide.

* * * * *

(a) Transportation in DOT 3AL cylinders is authorized only by highway or rail.

* * * * *

### § 173.412 [Amended]

■ 20. In paragraph (l), the wording "40 TBq (1000Ci)" is revised to read "40 TBq (1080Ci)".

* * * * *

■ 21. In § 173.420, paragraph (a) (2) (i) is revised to read as follows:

### § 173.420 Uranium hexafluoride (fissile, fissile excepted and non-fissile).

(a) * * *

(2) * * *

(i) ANSI N14.1 in effect at the time the packaging was manufactured;

* * * * *

## PART 175—CARRIAGE BY AIRCRAFT

■ 22. The authority citation for part 175 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 23. In § 175.31, the introductory text to paragraph (a) is revised to read as follows:

### § 175.31 Reports of discrepancies.

(a) Each person who discovers a discrepancy, as defined in paragraph (b) of this section, relative to the shipment of a hazardous material following its acceptance for transportation aboard an aircraft shall, as soon as practicable, notify the nearest FAA Regional or Field Security Office, by telephone or electronically, and shall provide the following information:

* * * * *

## PART 176—CARRIAGE BY VESSEL

■ 24. The authority citation for part 176 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 25. In § 176.340, paragraph (a) is revised to read as follows:

### § 176.340 Combustible liquids in portable tanks.

* * * * *

(a) Specification portable tanks authorized in § 173.241 of this subchapter.

* * * * *

## PART 177—CARRIAGE BY PUBLIC HIGHWAY

■ 26. The authority citation for Part 177 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 27. In § 177.817, in paragraph (f), the last sentence is revised to read as follows:

### § 177.817 Shipping papers.

* * * * *

(f) * * * A motor carrier (as defined in § 390.5 of subchapter B of chapter III of subtitle B) using a shipping paper without change for multiple shipments of one or more hazardous materials having the same shipping name and identification number may retain a single copy of the shipping paper, instead of a copy for each shipment made, if the carrier also retains a record of each shipment made that includes shipping name, identification number, quantity transported, and date of shipment.

■ 28. In § 177.854, paragraph (f) (1) is revised to read as follows:

### § 177.854 Disabled vehicles and broken or leaking packages; repairs.

* * * * *

(f) * * *

(1) For motor vehicles other than cargo tank motor vehicles used for the transportation of Class 3 (flammable liquid) or Division 2.1 (flammable gas) materials and not transporting Division 1.1, 1.2, or 1.3 (explosive) materials, warning devices must be set out in the manner prescribed in § 392.22 of this title.

* * * * *

## PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 29. The authority citation for part 178 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

### § 178.61 [Amended]

■ 30. In § 178.61, in the first sentence of paragraph (g), remove the wording "referenced in paragraph (b) of this section" and add "referenced in Table 1 of appendix A to this part" in its place.

* * * * *

### § 178.274 [Amended]

■ 31. In § 178.274, the following changes are made:

■ a. In paragraph (b)(1), in the fourth sentence, the wording "used for non-refrigerated" is revised to read "used for Zone A or B toxic by inhalation liquids or non-refrigerated".

■ b. In paragraph (i)(1), in the list following the third sentence in the fifth entry, the wording "Alternative Arrangements (*see* § 178.247(a)(2))" is revised to read "Alternative Arrangements (*see* § 178.274(a)(2))".

* * * * *

■ 32. In § 178.337–10, paragraph (a) is revised to read as follows:

### § 178.337–10 Protection of fittings.

(a) All valves, fittings, pressure relief devices, and other accessories to the tank proper shall be protected in accordance with paragraph (b) of this section against such damage as could be caused by collision with other vehicles or objects, jack-knifing and overturning. In addition, pressure relief valves shall be so protected that in the event of overturn of the vehicle onto a hard surface, their opening will not be prevented and their discharge will not be restricted.

* * * * *

■ 33. In § 178.337–17, as amended at 68 FR 19281, paragraph (d) is revised to read as follows:

### § 178.337–17 Marking.

* * * * *

(d) The design weight of lading used in determining the loading in §§ 178.337–3(b), 178.337–10(b) and (c), and 178.337–13(a) and (b), must be shown as the maximum weight of lading marking required by paragraph (c) of this section.

### § 178.338–3 [Amended]

■ 34. In § 178.338–3, in paragraphs (c)(3)(ii), (c)(3)(iii), (c)(3)(iv), (c)(3)(v), (c)(3)(vi) and (c)(4), the wording "and (c)" is removed each place it appears.

**§ 178.338–9 [Amended]**

■ 35. In § 178.338–9, in paragraph (c) (2), in the last sentence, the section reference "§ 178.320(a) (3)" is revised to read "§ 178.320 (a)".

* * * * *

■ 36. In § 178.338–18, as amended at 68 FR 19283, paragraph (d) is revised to read as follows:

**§ 178.338–18 Marking.**

* * * * *

(d) The design weight of lading used in determining the loading in §§ 178.338–3 (b), 178.338–10 (b) and (c), and 178.338–13 (b), must be shown as the maximum weight of lading marking required by paragraph (c) of this section.

## PART 179—SPECIFICATIONS FOR TANK CARS

■ 37. The authority citation for part 179 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 38. In § 179.102–4, the section heading is revised to read as follows:

**§ 179.102–4 Vinyl fluoride, stabilized.**

* * * * *

■ 39. In § 179.300–12, paragraph (b), the second sentence is revised to read as follows:

**§ 179.300–12 Protection of fittings.**

* * * * *

(b) * * * Pressure relief devices shall not be covered by the housing.

■ 40. In § 179.500–12, paragraph (b) is revised to read as follows:

**§ 179.500–12 Pressure relief devices.**

* * * * *

(b) Pressure relief devices shall open at a pressure not exceeding the marked test pressure of tank and not less than 7/10 of marked test pressure. (For tolerance for pressure relief valves, see § 179.500–16(a).)

* * * * *

Issued in Washington, DC, on September 24, 2003, under authority delegated in 49 CFR part 1.

**Samuel G. Bonasso,**

*Acting Administrator.*

[FR Doc. 03–24814 Filed 10–3–03; 8:45 am]

BILLING CODE 4910–60–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 021212307–3037–02; I.D. 092603C]**

# Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pollock in the Bering Sea Subarea

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Reallocation.

**SUMMARY:** NMFS is reallocating projected unused amounts of Bering Sea subarea (BS) pollock from the incidental catch account to the directed fisheries. This action is necessary to allow the 2003 total allowable catch (TAC) of pollock to be harvested.

**DATES:** Effective October 1, 2003, until 2400 hrs, A.l.t., December 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Andrew Smoker, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(5)(i)(A)(*1*) and the American Fisheries Act (AFA) (Public Law 105–277, Division C, Title II), NMFS specified a pollock incidental catch allowance equal to 3.5 percent of the pollock total allowable catch after subtraction of the ten percent Community Development Quota reserve in the final 2003 harvest specifications for groundfish in the BSAI (68 FR 9907, March 3, 2003).

On August 29, 2003 NMFS apportioned the projected unused amount, 6,500 mt, of pollock from the incidental catch account to the directed fishing allowances established pursuant to § 679.20(a)(5)(i)(A)(68 FR 51,928, August 29, 2003).

As of September 13, 2003, the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that approximately 8,616 metric tons (mt) of pollock remain in the incidental catch account. Based on projected harvest rates of other groundfish species and the expected incidental catch of pollock in those fisheries, the Regional Administrator has determined that 4,000 mt of pollock specified in the incidental catch account will not be necessary as incidental catch. Therefore, NMFS is apportioning the projected unused amount, 4,000 mt, of pollock from the incidental catch account to the directed fishing allowances established pursuant to § 679.20(a)(5)(i)(A).

Pursuant to the pollock allocation requirements set forth in 679.20(a)(5)(i), this transfer will increase the allocation to catcher vessels harvesting pollock for processing by the inshore component by 2,000 mt, to catcher/processors and catcher vessels harvesting pollock for processing by catcher processors in the offshore component by 1,600 mt and to catcher vessels harvesting pollock for processing by motherships in the offshore component by 400 mt. Pursuant to § 679.20(a)(5)(i)(A)(*4*), no less than 8.5 percent of the 1,600 mt allocated to catcher processors in the offshore component, 136 mt, will be available for harvest only by eligible catcher vessels delivering to listed catcher processors. Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), an additional 8 mt or 0.5 percent of the catcher/processor sector allocation of pollock will be available to unlisted AFA catcher/processors.

Pursuant to § 679.20(a)(5)(i)(A)(*3*), Table 1 revises the final 2003 BS subarea allocations for the seven inshore catcher vessel pollock cooperatives that have been approved and permitted by NMFS and the open access AFA vessels for the 2003 fishing year consistent with this reallocation.

TABLE 1.—2003 BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS

| Cooperative name and member vessels | Sum of member vessel's official catch histories[1] (mt) | Percentage of inshore sector allocation | Annual co-op allocation (mt) |
|---|---|---|---|
| *Akutan Catcher Vessel Association*<br>ALDEBARAN, ARCTIC EXPLORER, ARCTURUS, BLUE FOX, CAPE KIWANDA, COLUMBIA, DOMINATOR, EXODUS, FLYING CLOUD, GOLDEN DAWN, GOLDEN PISCES, HAZEL LORRAINE, INTREPID EXPLORER, LESLIE LEE, LISA MELINDA, MAJESTY, MARCY J, MARGARET LYN, NORDIC EXPLORER, NORTHERN PATRIOT, NORTHWEST EXPLORER, PACIFIC RAM, PACIFIC VIKING, PEGASUS, PEGGY JO, PERSEVERANCE, PREDATOR, RAVEN, ROYAL AMERICAN, SEEKER, SOVEREIGNTY, TRAVELER, VIKING EXPLORER | 245,527 | 28.085% | 183,407 |
| *Arctic Enterprise Association*<br>BRISTOL EXPLORER, OCEAN EXPLORER, PACIFIC EXPLORER | 36,807 | 4.210% | 27,494 |
| *Northern Victor Fleet Cooperative*<br>ANITA J, COLLIER BROTHERS, COMMODORE, EXCALIBUR II, GOLDRUSH, HALF MOON BAY, MISS BERDIE, NORDIC FURY, PACIFIC FURY, POSEIDON, ROYAL ATLANTIC, SUNSET BAY, STORM PETREL | 73,656 | 8.425% | 55,020 |
| *Peter Pan Fleet Cooperative*<br>AMBER DAWN, AMERICAN BEAUTY, ELIZABETH F, MORNING STAR, OCEAN LEADER, OCEANIC, PROVIDIAN, TOPAZ, WALTER N | 18,693 | 2.138% | 13,964 |
| *Unalaska Cooperative*<br>ALASKA ROSE, BERING ROSE, DESTINATION, GREAT PACIFIC, MESSIAH, MORNING STAR, MS AMY, PROGRESS, SEA WOLF, VANGUARD, WESTERN DAWN | 106,737 | 12.209% | 79,732 |
| *UniSea Fleet Cooperative*<br>ALSEA, AMERICAN EAGLE, ARGOSY, AURIGA, AURORA, DEFENDER, GUN-MAR, NORDIC STAR, PACIFIC MONARCH, SEADAWN, STARFISH, STARLITE | 201,566 | 23.056% | 150,568 |
| *Westward Fleet Cooperative*<br>A.J., ALASKAN COMMAND, ALYESKA, ARCTIC WIND, CAITLIN ANN, CHELSEA K, DONA MARTITA, FIERCE ALLEGIANCE, HICKORY WIND, OCEAN HOPE 3, PACIFIC CHALLENGER, PACIFIC KNIGHT, PACIFIC PRINCE, STARWARD, VIKING, WESTWARD I | 189,942 | 21.727% | 141,886 |
| Open access AFA vessels | 1,309 | 0.150% | 978 |
| Total inshore allocation | 874,238 | 100% | 653,047 |

[1] According to regulations at 679.62 the individual catch history for each vessel is equal to the vessel's best 2 of 3 years inshore pollock landings from 1995 through 1997 and includes landings to catcher/processors for vessels that made 500 or more mt of landings to catcher/processors from 1995 through 1997.

## Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the implementation of these measures in a timely fashion in order to allow full utilization of the pollock TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is taken under 50 CFR 679.20, and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 29, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–25264 Filed 10–1–03; 2:46 pm]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 021212306–2306–01; I.D. 093003B]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Central Regulatory Area of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Inseason adjustment; request for comments.

**SUMMARY:** NMFS issues an inseason adjustment closing the fishery for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2003 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOA.

**DATES:** Effective 2400 hrs, Alaska local time (A.l.t.), October 1, 2003, until 2400, hrs A.l.t., December 31, 2003. Comments must be received at the following address no later than 4:30 p.m., A.l.t., October 16, 2003.

**ADDRESSES:** Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall. Comments also may be sent via facsimile (fax) to 907 586 7557. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, Juneau, AK 99801.

**FOR FURTHER INFORMATION CONTACT:** Andrew Smoker, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA is 2,269 metric tons (mt) as established by the final 2003 harvest specifications for groundfish of the GOA (68 FR 9924, March 3, 2003)

As of Setember 20, 2003, 812 mt of Pacific cod remain in the 2003 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area. Regulations at § 679.23(b) specify that the time of all openings and closures of fishing seasons other than the beginning and end of the calendar fishing year is 1200 hrs, A.l.t. The fifth seasonal allowance of halibut mortality for trawl gear in the Gulf of Alaska becomes available at 1200 hrs, A.l.t., October 1, 2003. Vessels using trawl gear for catching Pacific cod for processing by the offshore component in the Central Regulatory Area will be able to begin directed fishing for Pacific cod at that time. Current information shows the catching capacity of trawl vessels catching Pacific cod for processing by the offshore component the Central Regulatory Area of the GOA is about 1,500 mt per day. The Administrator, Alaska Region, NMFS, has determined that the TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA could be exceeded if a 24–hour fishery were allowed to occur. NMFS intends that the TAC not be exceeded and, therefore, will not allow the fishery to close at 12:00 hrs on October 2, 2003. NMFS, in accordance with § 679.25(a)(1)(i), and § 679.25(a)(2)(i), is adjusting the 2003 fishing season for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA by closing the fishery at 24:00 hrs, A.l.t., October 1, 2003, at which time directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA will be prohibited.

NMFS is taking this action to allow a controlled fishery to occur, thereby preventing the overharvest of the 2003 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA. In accordance with § 679.25(a)(2)(iii), NMFS has determined that prohibiting directed fishing at 2400 hrs, A.l.t., October 1, 2003, is the least restrictive management adjustment to achieve the 2003 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA. Pursuant to § 679.25(b)(2), NMFS has considered data regarding catch per unit of effort and rate of harvest in making this adjustment.

### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA,(AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, not allow the full utilization of the Pacific cod TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA for Fisheries, NOAA, also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the remaining 2003 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until October 16, 2003.

This action is required by §§ 679.20 and 679.25 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 30, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–25265 Filed 10–1–03; 2:46 pm]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 68, No. 193
Monday, October 6, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 113

**[Docket No. 03–054–1]**

### Viruses, Serums, Toxins, and Analogous Products; Standard Requirements for Bovine Virus Diarrhea and Bovine Rhinotracheitis Vaccines

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the Virus-Serum-Toxin Act regulations concerning Standard Requirements for Bovine Virus Diarrhea Vaccine, Killed Virus, and Bovine Rhinotracheitis Vaccine, Killed Virus, to require that those vaccines elicit specific antibody titer that is at least 80 percent of the geometric mean antibody titer obtained in the vaccinates in the host animal protection study to pass the potency test. We are proposing these changes based on data showing that the 1:8 minimum antibody titer for vaccinates specified in the current standard requirement potency tests may not be adequate to protect animals challenged with virulent virus. The effect of the proposed changes would be to establish potency test requirements for these vaccines that are based on the host animal protection study performed by the licensee.

**DATES:** We will consider all comments that we receive on or before December 5, 2003.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–054–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–054–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–054–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

**FOR FURTHER INFORMATION CONTACT:** Dr. Albert P. Morgan, Chief of Operational Support, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; (301) 734–8245.

**SUPPLEMENTARY INFORMATION:**

## Background

The Virus-Serum-Toxin Act regulations in 9 CFR part 113 (referred to below as the regulations) prescribe standard requirements for the preparation and testing of veterinary biological products. A standard requirement consists of test methods, procedures, and criteria established by the Animal and Plant Health Inspection Service (APHIS) to help ensure that veterinary biological products are pure, safe, potent, and efficacious. The requirements in § 113.215 for Bovine Virus Diarrhea Vaccine, Killed Virus, and in § 113.216 for Bovine Rhinotracheitis Vaccine, Killed Virus, specify minimum potency requirements for those products. Under those regulations, a serial of vaccine must induce antibody titers of at least 1:8 in calves.

The current standard requirements state that four of the five calves vaccinated with bovine virus diarrhea vaccine or bovine rhinotracheitis vaccine in a valid potency test must respond with minimum antibody titers of at least 1:8 or greater for a satisfactory serial, but do not specify that the titers must have been shown to be protective in a host animal protection study. Post-vaccinal antibody titers of 1:8 were once considered to be the minimal index of protection for bovine virus diarrhea vaccines and bovine rhinotracheitis vaccines, but more recent data suggest that while some bovine virus diarrhea vaccines and bovine rhinotracheitis vaccines may induce antibody titers of 1:8, those titers may not be indicative of protection in all cases.

We are proposing to amend the standard requirements in §§ 113.215 and 113.216 by changing the minimum specific antibody titers that must be obtained in calves in a satisfactory potency test from at least 1:8 to at least 80 percent of the geometric mean antibody titer elicited in vaccinates challenged successfully in the manufacturer's host animal protection study. We believe that a minimum antibody titer that is based on the protective titer determined in the host animal protection study will be more indicative of an efficacious product than the 1:8 titer currently specified in the standard requirements.

We are proposing to establish minimum potency requirements for Bovine Virus Diarrhea Vaccine, Killed Virus, and Bovine Rhinotracheitis Vaccine, Killed Virus, that are specific to the products that each manufacturer has shown to be efficacious in a host animal protection study. We would set 80 percent of the geometric mean antibody titer elicited in vaccinates used in the host animal protection study as the minimum specific antibody titer that each vaccine must induce to pass the potency test. We have determined that vaccines that induce titers similar to the titers elicited in the efficacy study are more likely to protect cattle against disease.

## Potency

Under this proposed rule, vaccinates in a valid potency test would have to develop minimum antibody titers that are at least 80 percent of the geometric mean antibody titer developed by vaccinates that were protected against challenge in the manufacturer's host animal protection study.

### Miscellaneous

The regulations in §§ 113.215(c)(2)(vii) and 113.216(c)(2)(vii) provide that prevaccination and postvaccination sera from a satisfactory potency test shall be submitted to the National Veterinary Services Laboratories (NVSL) for testing by APHIS. The testing referred to in those paragraphs is now performed by APHIS' Center for Veterinary Biologics-Laboratory, and not by NVSL, so we would amend §§ 113.215(c)(2)(vii) and 113.216(c)(2)(vii) to reflect that change.

### Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Currently, only 7 of the approximately 135 licensed veterinary biologics manufacturers produce Bovine Virus Diarrhea Vaccine, Killed Virus, and Bovine Rhinotracheitis Vaccine, Killed Virus, and would thus be affected by this proposal. According to the standards of the Small Business Administration, most veterinary biologics establishments would be classified as small entities.

This proposed rule would amend the standard requirements in § 113.215 for Bovine Virus Diarrhea Vaccine, Killed Virus, and in § 113.216 for Bovine Rhinotracheitis Vaccine, Killed Virus, by specifying that the effectiveness of the antibody titers based on host animal studies is the basis for determining the potency of the vaccine. We believe that the antibody titer elicited in the manufacturer's host animal protection study would be more indicative of the efficacy of the vaccine than the titer currently specified in the regulations. This change would affect all licensed manufacturers of veterinary biologics producing Bovine Virus Diarrhea Vaccine, Killed Virus, and Bovine Rhinotracheitis Vaccine, Killed Virus. However, we do not expect that there would be any increase in costs for the biologics manufacturers affected by this proposed rule. The changes should actually be cost neutral for most affected manufacturers because those manufacturers would not be required to change the way that their products are manufactured or tested.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

### Executive Order 12372

This program/activity is listed in the category of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. The Virus-Serum-Toxin Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

### Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 113 as follows:

## PART 113—STANDARD REQUIREMENTS

1. The authority citation for part 113 would continue to read as follows:

**Authority:** 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

2. In § 113.215, paragraphs (c)(2)(v) and (c)(2)(vii) would be revised to read as follows.

### § 113.215 Bovine Virus Diarrhea Vaccine, Killed Virus.

* * * * *

(c) * * *

(2) * * *

(v) *Test interpretation.* If the controls have not remained seronegative at 1:2, the test is a No Test (NT) and may be repeated. If at least four of the five vaccinates in a valid test have not developed 50 percent endpoint titers that are at least 80 percent of the geometric mean antibody titer developed in the vaccinates in the host animal protection study provided for in paragraph (b) of this section, the serial is unsatisfactory except as provided in paragraph (c)(2)(vi) of this section.

* * * * *

(vii) The prevaccination and postvaccination sera from a satisfactory potency test shall be submitted to the Center for Veterinary Biologics-Laboratory for confirmatory testing.

3. In § 113.216, paragraphs (c)(2)(v) and (c)(2)(vii) would be revised to read as follows.

### § 113.216 Bovine Rhinotracheitis Vaccine, Killed Virus.

* * * * *

(c) * * *

(2) * * *

(v) *Test interpretation.* If the three controls have not remained seronegative at 1:2, the test is a No Test (NT), and may be repeated. If at least four of the five vaccinates in a valid test have not developed 50 percent endpoint titers that are at least 80 percent of the geometric mean antibody titer developed in the vaccinates in the host animal protection study provided for in paragraph (b) of this section, the serial is unsatisfactory, except as provided in paragraph (c)(2)(vi) of this section.

* * * * *

(vii) The prevaccination and postvaccination sera from a satisfactory potency test shall be submitted to the Center for Veterinary Biologics-Laboratory for testing by the Animal and Plant Health Inspection Service.

Done in Washington, DC, this 30th day of September 2003.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 03–25252 Filed 10–3–03; 8:45 am]

**BILLING CODE 3410–34–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–NM–49–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 767–200, –300, and –300F series airplanes. This proposal

would require repetitive inspections of the aft pressure bulkhead web, and corrective action, if necessary. This action is necessary to detect and correct fatigue cracks in the aft pressure bulkhead web, which could result in uncontrolled rapid decompression. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by November 20, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–49–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–49–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Suzanne Masterson, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6441; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–49–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–49–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The FAA has received reports of fatigue cracks at the aft pressure bulkhead web on Boeing Model 737 and 747 series airplanes. This condition, if not detected and corrected, could result in uncontrolled rapid decompression.

The aft pressure bulkhead web on Boeing Model 767–200, –300, and –300F series airplanes is almost identical to that on the affected Boeing Model 737 and 747 series airplanes. Therefore, those Boeing Model 767–200, –300, and –300F series airplanes may be subject to the unsafe condition revealed on the Boeing Model 737 and 747 series airplanes.

### Other Relevant Rulemaking

The FAA has previously issued AD 1999–08–23, amendment 39–11132 (64 FR 19879, May 10, 1999), applicable to certain Boeing Model 737 series airplanes. That AD requires repetitive inspections to detect cracking in the web of the aft pressure bulkhead at body station 1016 at the aft fastener row attachment to the "Y" chord; and corrective actions, if necessary. This proposed AD would not affect the current requirements of that AD.

The FAA has also previously issued AD 2000–15–08, amendment 39–11840 (65 FR 47255, September 6, 2000), applicable to certain Boeing Model 747 series airplanes. That AD requires repetitive inspections for damage or cracking of the aft pressure bulkhead; cracking of the bulkhead web-to-Y-ring lap joint area; cracking of the upper segment of the bulkhead web; and cracking of the upper and lower segments of the aft bulkhead web. This proposed AD would not affect the current requirements of that AD.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–53A0087, dated October 21, 1999, which describes procedures for performing repetitive high frequency eddy current inspections for fatigue cracking of the aft pressure bulkhead web and contacting Boeing for repair or inspection instructions. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of similar type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

### Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Operators should also note that, although the service bulletin specifies that the manufacturer may be contacted for certain inspection details, this proposal would require an alternative method of compliance to be approved as required by sections 39.15, 39.17, and 39.19 of the Code of Federal Regulations (14 CFR 39.15, 39.17, 39.19).

Operators should also note that, although the service bulletin does not list a grace period in the compliance times, this proposal adds a grace period to the compliance times. The FAA finds that such a grace period will keep airplanes from being grounded unnecessarily.

### Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

### Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

### Cost Impact

There are approximately 848 airplanes of the affected design in the worldwide fleet. The FAA estimates that 357 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 14 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $324,870, or $910 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Docket 2003–NM–49–AD.

*Applicability:* Model 767–200, –300, –300F series airplanes, as listed in Boeing Alert Service Bulletin 767–53A0087, dated October 21, 1999; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct fatigue cracks in the aft pressure bulkhead web, which could result in uncontrolled rapid decompression, accomplish the following:

### Initial and Repetitive Inspections

(a) Do high frequency eddy current inspections of the aft pressure bulkhead web, per the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0087, dated October 21, 1999; at the later of the applicable "Threshold" and "Grace Period" times specified in Table 1 of this AD. Table 1 as follows:

TABLE 1.—COMPLIANCE TIMES FOR INSPECTION

| For | Compliance times | |
|---|---|---|
| | Threshold | Grace period |
| (1) Group 1 airplanes as identified in the service bulletin. | Prior to the accumulation of 37,500 total flight cycles. | Within 18 months or within 3,000 flights after the effective date of this AD, whichever comes first. |
| (2) Group 2 and 3 airplanes as identified in the service bulletin. | Prior to the accumulation of 50,000 total flight cycles. | Within 18 months or within 3,000 flights after the effective date of this AD, whichever comes first. |
| (3) Group 4 airplanes as identified in the service bulletin. | Prior to the accumulation of 40,000 total flight cycles. | Within 18 months or within 3,000 flights after the effective date of this AD, whichever comes first. |

(b) If no crack is found during any inspection required by paragraph (a), repeat the high frequency eddy current inspections at intervals specified in paragraphs (b)(1) or (b)(2) of this AD, as applicable:

(1) For Group 1 and 2 airplanes, at intervals not to exceed 6,000 flight cycles, per the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0087, dated October 21, 1999.

(2) For Group 3 and 4 airplanes, at intervals not to exceed 12,000 flight cycles, per the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0087, dated October 21, 1999.

**Corrective Actions**

(c) If any crack is found during any inspection required by paragraph (a) or (b) of this AD and Boeing Alert Service Bulletin 767-53A0087, dated October 21, 1999, specifies to contact Boeing for repair: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

**Previously Installed Repairs**

(d) If previously installed repairs are installed in the inspection area, and Boeing Alert Service Bulletin 767–53A0087, dated October 21, 1999, specifies to contact Boeing for inspection details, an alternative method of compliance must be approved as required by sections 39.15, 39.17, and 39.19 of the Code of Federal Regulations (14 CFR 39.15, 39.17, 39.19).

**Alternative Methods of Compliance**

(e) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on September 29, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–25230 Filed 10–3–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 356

[Docket No. 81N–033P]

### Oral Health Care Drug Products for Over-the-Counter Human Use; Antigingivitis/Antiplaque Drug Products; Establishment of a Monograph; Extension of Comment Period; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Advance notice of proposed rulemaking; extension of comment period; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a document that appeared in the **Federal Register** of August 25, 2003 (68 FR 50991). The document announced that FDA extended to November 25, 2003, the comment period for an advance notice of proposed rulemaking (ANPR) for over-the-counter antigingivitis/antiplaque drug products. The ANPR was published in the **Federal Register** of May 29, 2003 (68 FR 32232). The document published with an inadvertent error. This document corrects that error.

**DATES:** Submit written or electronic comments by November 25, 2003. Submit reply comments by February 23, 2004.

**FOR FURTHER INFORMATION CONTACT:** Joyce Strong, Office of Policy and Planning (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 03–21669, appearing on page 50992 in the **Federal Register** of August 25, 2003, the following correction is made:

1. On page 50992, in the second column, under **IV. Comments**, in the sixth line, "two" is corrected to read "three".

Dated: September 25, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–25044 Filed 10–3–03; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### 33 CFR Part 334

### Department of the Air Force, Wisconsin Air National Guard Danger Zone Under Restricted Air Space R–6903, Lake Michigan, Sheboygan County, WI

**AGENCY:** United States Army Corps of Engineers, Department of Defense.

**ACTION:** Proposed rule and request for comments.

**SUMMARY:** The Corps of Engineers is proposing an amendment to its regulations to designate an existing military exercise area as a Danger Zone. The military exercise area is located off the Wisconsin shoreline in Lake Michigan from Manitowoc to Port Washington, as shown on National Oceanographic and Atmospheric Administration (NOAA) Chart 14901 (1999). The Danger Zone will only be activated by the Wisconsin Air National Guard (WiANG) during military exercises. The Air Guard will advise fishermen and mariners in the vicinity when a military exercise is scheduled and thus ensure their safety by alerting them of temporary, potentially hazardous conditions which may exist as a result of the military exercises. There will be no change in the use of the existing military exercise area which is currently shown on aeronautical charts as restricted air space. The area, however, needs to also be marked on navigation charts as a Danger Zone to conform with the restricted air space designation to better insure security and safety for the public.

**DATES:** Written comments must be submitted on or before November 5, 2003.

**ADDRESSES:** U.S. Army Corps of Engineers, ATTN: CECW–OR, 441 G Street, NW., Washington, DC 20314–1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, DC at (202) 761–4618, or Mr. Howard J. Ecklund, Corps of Engineers, St. Paul District, Regulatory Branch, at (262) 547–4171.

**SUPPLEMENTARY INFORMATION:** Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX, of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps proposes to amend the restricted area regulations in 33 CFR part 334 by adding § 334.145 as a Danger Zone in Lake Michigan offshore from Manitowoc and Sheboygan Counties in Wisconsin, as shown on NOAA Chart 14901 (1999). This is a revision of a similar proposal published in the **Federal Register** on March 11, 2002. This revision is being published because the earlier proposal contained incomplete information and did not adequately explain the reason for the regulation change. As a result, various interested parties expressed concerns regarding the change and its impact on boats using the area. The area to be designated as a Danger Zone already exists as restricted air space R–6903 which is shown on current aeronautical charts. This amendment of the regulation will allow WiANG to request that the U. S. Coast Guard issue a Notice to Mariners when exercises are planned and thus better inform fishermen and mariners of military activities in this area. WiANG intends to continue to schedule this area for use in a similar manner as it has been used during the past 20 years. Historical activity includes, but is not limited to, inert air-to-air and air-to-surface delivery, defensive countermeasures training, and sonar buoy drops.

**Procedural Requirements**

*a. Review Under Executive Order 12866*

This proposed rule is issued with respect to a military function of the

Defense Department and the provisions of Executive Order 12866 do not apply.

*b. Review Under the Regulatory Flexibility Act*

These proposed rules have been reviewed under the Regulatory Flexibility Act (Public Law 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The Corps expects that the economic impact of the identification of this area as a Danger Zone would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and, accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

*c. Review Under the National Environmental Policy Act*

A preliminary draft environmental assessment has been prepared for this action. Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact on the quality of the human environment and therefore preparation of an environmental impact statement will not be required. The environmental assessment will be finalized after the public notice period is closed and all comments have been received and considered. It may be reviewed at the District office listed at the end of **FOR FURTHER INFORMATION CONTACT** above.

*d. Unfunded Mandates Act*

This proposed rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

**List of Subjects in 33 CFR Part 334**

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334, as follows:

## PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR 334 continues to read as follows:

**Authority:** 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.845 would be added to read as follows:

**§ 334.845 Wisconsin Air National Guard Danger Zone, Volk Field Military Exercise Area, Lake Michigan offshore Manitowoc and Sheboygan Counties.**

(a) *The area.* The waters within an area beginning at a point at latitude 43°19′00″ N., longitude 87°41′00″ W.; to latitude 44°05′30″ N, longitude 87°29′45″ W.; to latitude 44°02′00″ N., longitude 87°02′30″ W.; to latitude 43°15′30″ N., longitude 87°14′00″ W.; thence to the point of beginning, as shown on NOAA Chart 14901 (1999) and existing aeronautical charts.

(b) *The regulation.* During specific, infrequent periods when military exercises will be conducted, as promulgated in the local notice to mariners published by the United States Coast Guard (USCG), all vessels entering the Danger Zone are advised to proceed across the area by the most direct route and without unnecessary delay. No vessel or craft of any size shall lie-to or anchor in the Danger Zone, other than a vessel operated by or for the USCG, or any other authorized agency.

(c) *Normal use.* At all other times, nothing in this section shall prohibit any lawful uses of this area.

(d) *Enforcement.* The regulation in this section shall be enforced by the Commanding Officer, VOLK Field, WI, and/or persons or agencies as he/she may designate.

Dated: September 3, 2003.

**Michael B. White,**

*Chief, Operations Division, Directorate of Civil Works.*

[FR Doc. 03–25204 Filed 10–3–03; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**RIN 1018–AI76**

## Technical Correction; Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for Five Endangered Tennessee and Cumberland River Basin Mussels

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period, announcement of public hearing, availability of draft economic analysis, possible modification of Unit 8 (Rock Creek); correction.

**SUMMARY:** We, the Fish and Wildlife Service, announce the availability of the draft economic analysis of this proposed critical habitat designation, and that we will hold a public hearing regarding the proposal on October 29, 2003, at Southwest Virginia Community College in Tazewell County, Virginia. This document makes a correction to the critical habitat legal description and gives notice of a possible 6.4-river-kilometer (rkm) (4-river-mile (rmi)) upstream extension of Unit 8 (Rock Creek). We are reopening the comment period for the proposal to designate critical habitat for these species to accommodate the public hearing and to allow all interested parties to comment on the proposed rule, including the new information presented for consideration regarding Unit 8 and the associated draft economic analysis. Comments previously submitted need not be resubmitted, because they will be fully considered in the final determination of the proposal.

**DATES:** *Public hearing:* The public hearing will be held from 7 to 10 p.m. Eastern Standard Time (EST) on October 29, 2003, at Southwest Virginia Community College on U.S. Highway 19, in Tazewell County, Virginia. The hearing will consist of an informational meeting in the lobby from 5:30 to 6:30 p.m. EST followed by the formal hearing, held in the main auditorium. Maps of the critical habitat units and information on the species will be available for public review one hour prior to the hearing (between 5:30 and 6:30 p.m.).

*Comment submission:* The comment period is hereby reopened until December 5, 2003. We must receive comments from all interested parties by the closing date. Any comments that we receive after the closing date will not be considered in the final decision on this proposal.

**ADDRESSES:** The public hearing will be held at Southwest Virginia Community College on U.S. Highway 19, in Tazewell County, Virginia. Copies of the draft economic analysis are available on the Internet at *http://cookeville.fws.gov/*; also, you may request copies by writing to the Field Supervisor, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, TN 38506, or by calling Rob Tawes, Tennessee Field Office, telephone 931/528–6481, extension 213.

Written comments and materials may be submitted to us at the hearing or by any one of the following methods:

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, TN 38501.

2. You may hand-deliver written comments and information to our Tennessee Field Office, at the above address, or fax your comments to (931) 528–7075.

3. You may send comments by electronic mail (e-mail) to *robert_tawes@fws.gov.* For directions on how to submit electronic filing of comments, *see* the "Public Comments Solicited" section.

Comments and materials received, as well as supporting documentation used in preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Rob Tawes, at the above address (telephone (931) 528–6481, extension 213; facsimile (931) 528–7075).

**SUPPLEMENTARY INFORMATION:**

## Background

We listed the Cumberland elktoe (*Alasmidonta atropurpurea*), oyster mussel (*Epioblasma capsaeformis*), Cumberlandian combshell (*Epioblasma brevidens*), purple bean (*Villosa perpurpurea*), and rough rabbitsfoot (*Quadrula cylindrica strigillata*) as endangered on January 10, 1997 (62 FR 1647).

We published a proposed critical habitat designation for these five mussels in the June 3, 2003, **Federal Register** (68 FR 33234). The proposed designation includes portions of Bear Creek (Mississippi, Alabama), the Duck River (Tennessee), Obed River (Tennessee), Powell River (Tennessee, Virginia), Clinch River and its tributaries (Copper Creek and Indian Creek) (Tennessee, Virginia), Nolichucky River (Tennessee), and Beech Creek (Tennessee) in the Tennessee River System, and portions of Rock Creek (Kentucky), the Big South Fork and its tributaries (Bone Camp Creek, White Oak Creek, North White Oak Creek, New River, Crooked Creek, Clear Fork, and North Prong Clear Fork) (Kentucky, Tennessee), Buck Creek (Kentucky), Marsh Creek (Kentucky), Sinking Creek (Kentucky), and Laurel Fork (Kentucky) in the Cumberland River System. This proposal encompasses a total of approximately 892 rkm (544 rmi) of river and stream channels. The proposed designation and associated materials can be viewed at *http://cookeville.fws.gov/.*

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided that such exclusion will not result in the extinction of the species. We have prepared a draft economic analysis concerning the proposed critical habitat designation, which is available for review and comment (*see* **ADDRESSES** section).

## Public Hearing

Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 *et seq.*) requires that a public hearing be held if it is requested within 45 days of the publication of the proposed rule. The Board of Supervisors of Tazewell County, Virginia, requested a public hearing within the allotted time period. Public hearings are designed to gather relevant information that the public may have that we should consider in the proposed designation of critical habitat or the draft economic analysis.

We will hold a public hearing in Tazewell County, Virginia, on October 29, 2003, from 7 to 10 p.m. The hearing location will be Southwest Virginia Community College on U.S. Highway 19, located in Tazewell, Virginia. All comments presented at the public hearing will be recorded by a court reporter. Maps of the critical habitat units and information on the species will be available for public review prior to the public hearing (between 5:30 and 6:30 p.m.).

## Correction to Proposed Critical Habitat Designation (68 FR 33234)

## PART 17—[CORRECTED]

In proposed rule FR Doc. 03–33234 published on June 3, 2003 (68 FR 33234), make the following corrections.

1. Amend the description of Unit 8 on page 33244, changing "Dolan" to "Dolen" in column 3.

### § 17.11 [Corrected]

2. Amend the description of Unit 8 on page 33268, changing "Sinking Creek" to "Dolen Branch" starting in column 2.

## Consideration of Additional Stream Mileage in Rock Creek

Since the publication of this proposed critical habitat rule, we have been informed by the U.S. Forest Service that we did not include a reach of Rock Creek (see "Proposed Critical Habitat Designation" section, Unit 8) upstream of Dolen Branch, in which there is a 1998 record of a live Cumberland elktoe. This specimen was collected approximately 5 rkm (3 rmi) upstream of Dolen Branch, southwest of Bell Farm. We will conduct an analysis on this reach prior to making a final determination on this proposed rule. If we determine this reach to be essential, then we intend to include it in the final designation. Inclusion of this reach would add approximately 6.4 rkm (4 rmi) to the upstream terminus of Unit 8 (Rock Creek). The new upstream terminus would be a driveway crossing of Rock Creek at rkm 25.6 (rmi 15.9) (approximately 2.6 kilometers (1.6 miles) southwest of Bell Farm). The map reflecting this extended area follows:

**BILLING CODE 4310–55–P**

# Unit 8a- Rock Creek: Upstream extension of approximately 4 miles to river mile 15.9. Critical Habitat for Cumberland elktoe

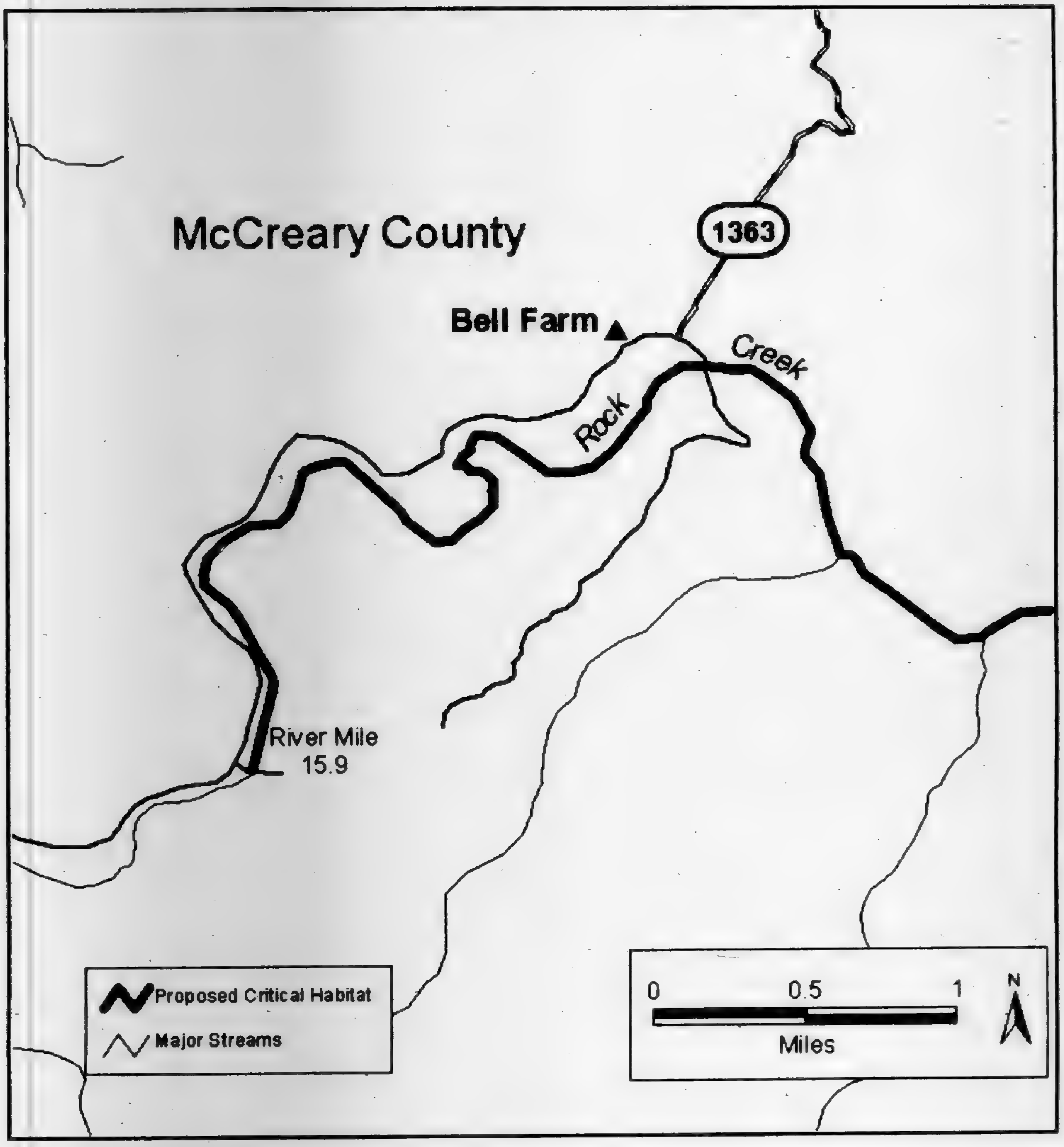
McCreary County
1363
Bell Farm
Rock
Creek
River Mile 15.9
Proposed Critical Habitat
Major Streams
0
0.5
1
Miles
N

This map is provided for illustrative purposes of critical habitat only.

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## Public Comments Solicited

We solicit comments on the draft economic analysis referred to in this document, as well as on any other aspect of the proposed critical habitat designation for the five Tennessee and Cumberland River Basin mussels. In order to accommodate the public hearing and public review of the draft economic analysis, we are now closing the comment period for both the proposed rule and the draft economic analysis on December 5, 2003. All previous comments and information submitted during the comment period need not be resubmitted. Refer to the **ADDRESSES** section for information on how to submit written comments and information. Our final determination on the proposed critical habitat will take into consideration comments and any additional information received.

Please submit electronic comments in an ASCII file format and avoid the use of special characters and encryption. Please also include "Attn: RIN 1018–AI76" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact us directly by calling our Tennessee Field Office (*see* **ADDRESSES** section).

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

We particularly seek comments concerning:

(1) Are there other types of activities, such as habitat conservation plans, related to this proposed designation of critical habitat whose costs are not reflected in the draft economic analysis? If so, please provide as much information as possible to enable us to identify those activities and address those costs.

## Author

The primary author of this document is Rob Tawes (*see* **ADDRESSES** section).

## Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 29, 2003.

**Julie MacDonald,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 03–25184 Filed 10–3–03; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

## RIN 1018–AF49

# Endangered and Threatened Wildlife and Plants; 12-Month Petition Finding and Proposed Rule To List the Tibetan Antelope as Endangered Throughout Its Range

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; notice of finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the 12-month finding that a petition to list the Tibetan antelope (*Pantholops hodgsonii*) as endangered throughout its range pursuant to the Endangered Species Act of 1973, as amended (Act, or ESA), is warranted. The best available information indicates that the total population of Tibetan antelope has declined drastically over the past three decades. This decline has resulted primarily from overutilization for commercial purposes and the inadequacy of existing regulatory mechanisms. Habitat impacts, especially those caused by domestic livestock grazing, appear to be a contributory factor in the decline, and could have potentially greater impacts in the near future. Accordingly, we herein propose to list the Tibetan antelope as endangered, pursuant to the Act. This proposed rule, if made final, would extend the Act's protection to this species. The Service seeks data and comments from the public on this proposal.

**DATES:** Comments and information may be submitted until January 5, 2004. Public hearing requests must be received by November 20, 2003.

**ADDRESSES:** Submit comments, information, and questions to the Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 750, Arlington, VA 22203 USA; or by fax, 703–358–2276; or by e-mail, *Scientificauthority@fws.gov*. Comments and supporting information will be available for public inspection, by appointment, from 8 a.m. to 4 p.m. at the above address.

To request copies of the regulations regarding listed wildlife or inquire about prohibitions or permits, write to: Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203 USA. Alternatively, you may contact us by telephone, 703–358–2104 or toll free at 1–800–358–2104; or by fax, 703–358–2276; or by e-mail, *Managementauthority@fws.gov*.

**FOR FURTHER INFORMATION CONTACT:** Eleanora Babij at the above address; or by telephone, 703–358–1708; or by fax, 703–358–2276; or by e-mail, *Scientificauthority@fws.gov*.

**SUPPLEMENTARY INFORMATION:**

## Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the U.S. Fish and Wildlife Service (Service) to make a finding on whether a petition to list, delist, or reclassify a species has presented substantial information indicating that the requested action may be warranted. To the maximum extent practicable, the finding shall be made within 90 days following receipt of the petition (this finding is referred to as the "90-day finding") and published promptly in the **Federal Register**. If the 90-day finding is positive (*i.e.*, the petition has presented substantial information indicating that the requested action may be warranted), Section 4(b)(3)(A) of the Act requires the Service to commence a status review of the species if one has not already been initiated under the Service's internal candidate assessment process. In addition, Section 4(b)(3)(B) of the Act also requires the Service to make a finding within 12 months following receipt of the petition on whether the requested action is warranted, not warranted, or warranted but precluded by higher priority listing actions (this finding is referred to as the "12-month finding"). The 12-month finding is also to be published promptly in the **Federal Register**.

## Natural History

The Tibetan antelope (*Pantholops hodgsonii* sensu Wilson and Reeder 1993) is a medium-sized bovid endemic to the Tibetan Plateau in China (Tibet Autonomous Region, Xinjiang/Uygur

Autonomous Region, and Qinghai Province) and small portions of India (Ladakh) and western Nepal (although there is no evidence that they still occur in Nepal). The Tibetan antelope is also known by its Tibetan name "chiru." These two common names will be used interchangeably in this document.

Adult males are characterized by long, slender, antelope-like black horns. Although the Tibetan antelope has been placed in the subfamily Antilopinae, recent morphological and molecular research indicates that it is most closely allied to the goats and other members of the subfamily Caprinae (Gentry 1992, Gatesy *et al.* 1992, both cited in Ginsberg *et al.*1999). The species is uniquely adapted to the high elevation and cold, dry climate of the Tibetan Plateau (Schaller 1998). The sexes segregate almost completely during the spring and early summer (May and June), when adult females and their female young migrate north to certain calving grounds and return south by late July or early August, covering distances as far as 300 kilometers (km) each way (Schaller 1998). Seasonal migrations constitute a critical aspect of the chiru's ecology and help define the ecosystem as a whole.

**Previous Federal Action**

On October 6, 1999, the Service received a petition from the Wildlife Conservation Society (Joshua R. Ginsberg, Ph.D., Director, Asia Program, and George B. Schaller, Ph.D., Director of Science) and the Tibetan Plateau Project of Earth Island Institute (Mr. Justin Lowe, Director) requesting that the Tibetan antelope (*Pantholops hodgsonii*) be listed as endangered throughout its entire range. The petition was actually dated October 7, 1999, but was received via e-mail the previous day.

On April 14, 2000, the Service made a positive 90-day finding on the Wildlife Conservation Society/Tibetan Plateau Project petition (*i.e.*, the Service found that the petition presented substantial information indicating that the requested action may be warranted). That finding was published in the **Federal Register** on April 25, 2000 (65 FR 24171), thereby initiating a public comment period and status review for the species. The public comment period remained open until June 26, 2000. We received 272 comments during the public comment period, including 1 from a range country government (People's Republic of China), 4 from non-governmental conservation organizations, 41 (letters) from individuals, 86 (postcards) from individuals, and 1 letter-petition signed by 140 individuals. All comments fully supported an endangered listing for the Tibetan antelope, although only five comments provided any new information on the status of or threats to the species. Particularly important among these was the letter from Mr. Zhen Rende, Director General of the CITES Management Authority of China, in which he expressed strong support for an endangered listing for the Tibetan antelope under the ESA.

In our 90-day finding, we stated that we had used all relevant literature and information available at that time (April 2000) on current status of and threats to the Tibetan antelope. Since then, a limited amount of relevant new information has become available as a result of the status review and public comment period. That information has been incorporated, as appropriate, in this 12-month finding.

**Summary of Factors Affecting the Species**

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species on the basis of one or more of the five factors described in section 4(a)(1). These factors and their application to the Tibetan antelope are as follows:

*A. Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range*

Tibetan antelope are endemic to the high Tibetan Plateau. Most of their range lies above 4,000 meters (m) in elevation, but they occur at elevations as low as 3,250 m in parts of Xinjiang (Schaller 1998). They prefer flat to rolling topography and alpine steppe or similar semiarid plant associations (Schaller 1998). They occasionally occur in alpine desert steppe habitats, at least on a seasonal basis, but are not known to have occurred in Qinghai's Qaidam Basin (Schaller 1998). They do not occur in alpine meadow areas receiving greater than 400 millimeters (mm) annual precipitation (Schaller 1998).

Although the current east-west distribution of chiru appears much as it was described a century ago by Bower (1894, cited in Schaller 1998), that distribution is now fragmented where previously it was continuous. Schaller (1998) determined that chiru no longer occur, or occur in low numbers, in several areas where early explorers noted them to be abundant. The current range is divided into two areas: A northern one of about 490,000 square kilometers (km2) and a central one of about 115,000 km2. Distribution between the two areas was continuous until recent decades, and there may still be rare contact near the western end. However, current chiru populations in the central Chang Tang of the Tibet Autonomous Region are highly fragmented and occur in small, scattered herds. The range has also contracted in eastern Qinghai Province (Schaller 1998).

Changes in Chinese government policy have led to increasing human development and activity on the Tibetan Plateau, including transportation development (roads and railways), resource extraction activities (minerals, oil, and gas), permanent settlement of traditionally nomadic or semi-nomadic pastoralists, and rangeland use for domestic livestock grazing (Ginsberg *et al.* 1999). These activities have already adversely modified or destroyed Tibetan antelope habitat in some areas and threaten to modify or destroy habitat over a large area in the near future.

Nomadic and semi-nomadic pastoralists have grazed a mix of domestic livestock (primarily sheep, goats, yaks, and some horses) on the Tibetan Plateau for millennia in relative harmony with the environment (Miller 2000, 2002). These livestock can directly and indirectly compete with Tibetan antelope for available vegetation resources, both within and outside established protected areas (Schaller 1998, Ginsberg *et al.* 1999). In recent decades, as a result of government policy changes, excessive livestock grazing has degraded or destroyed chiru habitat in some areas, and could eventually lead to the destruction of some portion of the species' range through physical displacement and/or overgrazing, which may contribute to desertification (Ginsberg *et al.* 1999, Miller 2001). Recent changes in Chinese Government policy have resulted in an attempt to permanently settle many Tibetan pastoralists, with a resultant proliferation of rangeland fencing on portions of the Plateau (Miller 2000, Los Angeles Times 2002). Livestock frequently graze year-round in antelope habitat, and increasingly, nomads are fencing for winter-spring grazing and fodder production, thereby excluding chiru from the fenced grassland resources. Tibetan antelope need open range to survive (Miller and Schaller 1997). Enclosure and conversion of grasslands disrupt antelope habitat, posing a particular threat in the spring, when weakened chiru are attempting to rebuild their energy reserves, and in the fall, as antelope are preparing for the harsh winter.

The Tibetan Plateau has extensive gold deposits. Gold mining can have significant impacts on chiru habitat and lead to increased poaching. Mining degrades or destroys chiru habitat through environmental contamination and disturbance, and through pollution of surface waters [U.S. Embassy, China (USEC) 1996]. Illegal mining activity also opens another avenue for profiting from poaching (USEC 1996). Bleisch (1999) noted that illegal gold mining camps in the Arjin Shan Reserve in Xinjiang have served as bases for poachers and have provided them with essential logistical support and access. Without this support, poachers would have a difficult time operating in these remote regions. As a result, "poaching has already had a profound impact on the chiru population of the reserve. Several areas where calving females formerly congregated are now empty of chiru during the calving season" (Bleisch 1999). In 2002, Rick Ridgeway and Galen Rowell spent 2 weeks on foot locating an unknown calving ground in the western Chang Tang only to discover that its location was less than 2 days' overland drive from a new gold mine that had sprung up in the previous few months (Ridgeway 2003). They wrote:

> That same dirt road [a 60-mile dirt road built by miners in the previous 3 months] gives us an easy way home, as we cart toward our waiting vehicle. But it could also give poachers easy access to the calving grounds. From the mine we estimate a four-wheel-drive vehicle could make it cross-country in 2 days.... With the chiru's calving grounds suddenly vulnerable, we feel a new urgency to report our findings.

Governments may periodically enforce mining bans in sensitive areas, and have done so in Tibet, but in general it is difficult to control illegal miners over extensive areas of remote lands with poor road access. Tibet has reserves of many other valuable minerals, among them uranium, copper, and cesium, and mining of these minerals may also impact chiru habitat and lead to poaching.

Oil exploration and some production have commenced within the chiru's range, and pose threats of destroying habitat; polluting the environment with toxic production chemicals, effluents, and emissions; increasing disturbance levels; and increasing the incidence of poaching by drawing additional settlers into the region (Ginsberg *et al.* 1999). In 2001, Chinese researchers announced the discovery of a potentially huge oil and gas deposit, extending over 100 km in length, in the Qiangtang Basin of the Tibet Autonomous Region (Global Policy Forum 2001). The deposit could potentially produce hundreds of millions of tons of oil.

Construction of the Qinghai-Tibet Railway, currently in progress, threatens to destroy important Tibetan antelope habitat, and, perhaps more importantly, significantly disrupt chiru migration corridors in southwestern Qinghai Province. One news service report mentioned that construction on the railway, the first to link the Tibet Autonomous Region with the rest of China, was temporarily suspended in June 2002 because up to 1,000 migrating chiru were unable to cross the construction area (People's Daily 2002, Xinhuanet 2002a). All activity was stopped and construction workers removed from the area until these animals had passed the construction site. Although the news service report mentioned that "a passage specially for animals will be set aside when the railway is built, so as to ensure the free migration for wildlife in the locality," it is not certain how successful such a passage would be in ensuring freedom of movement for thousands of migrating chiru.

Three contiguous protected areas have been established to protect Tibetan antelope populations and habitat in western China: Chang Tang Nature Reserve (approximately 334,000 km$^2$ in the Tibet Autonomous Region), Kekexili (aka Kokoxili or Hoh Xil) National Reserve (approximately 45,000 km$^2$ in Qinghai Province), and Arjin Shan Reserve (45,000 km$^2$ in Xinjiang Province). A fourth protected area, Xianza Reserve (40,000 km$^2$ in the Tibet Autonomous Region), also includes some chiru habitat. These reserves are only partially effective in protecting the chiru and its habitat due to a combination of inadequate management, limited enforcement capacity, an influx of settlers, and domestic livestock grazing [International Fund for Animal Welfare/Wildlife Trust of India (IFAW/WTI) 2001]. Miller (1997) has noted that, while many of the protected areas in the Tibetan Plateau region encompass high-elevation rangelands, protected areas at lower grassland elevations are scarce. It has been difficult for reserve staffs to keep poachers and illegal gold miners out, a fact that prompted the Qinghai Provincial Government in late 1999 to close the Kekexili Reserve to all activities that were not expressly authorized in advance by the State Forestry Administration (SFA) (China Daily 1999).

The Chang Tang Reserve staff lacks the funding, experience, personnel, and equipment to adequately prevent chiru poaching and other threats to the species (SFA 1998). Formerly nomadic pastoralists are establishing settlements within the Chang Tang Reserve, and immigrants from other parts of the Plateau are moving into protected areas. Increased human presence, whether temporary nomadic aggregations or permanent human settlements, can adversely affect Tibetan antelope habitat and be a detrimental disturbance factor.

### *B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

There are no accurate estimates of Tibetan antelope numbers from the past, although the few early western explorers who ventured onto the Tibetan Plateau noted the presence of large herds in many areas (Schaller 1998). For example, Rawling (1905, cited in Schaller 1998) noted: "Almost from my feet away to the north and east, as far as the eye could reach, were thousands upon thousands of doe antelope with their young * * *. Everyone in camp turned out to see this beautiful sight, and tried, with varying results, to estimate the number of animals in view. This was found very difficult * * * as we could see in the extreme distance a continuous stream of fresh herds steadily approaching; there could not have been less than 15,000 or 20,000 visible at one time." Bonvalot (1892), Wellby (1898), Deasy (1901), and Hedin (1903, 1922) made similar observations (all references cited in Schaller 1998). Schaller (1999) has suggested that upwards of 1 million Tibetan antelope roamed the Tibetan Plateau as recently as 40 to 50 years ago. Historical population estimates of 500,000 to 1,000,000 appear to be reasonable based on the limited information available.

Although data on the current population dynamics of chiru are fragmentary and preliminary (Schaller 1998), it is clear that the total population has declined drastically in the past 30 years and is continuing to decline at an alarming rate. Schaller (1998) estimated that the total population in the mid-1990s may have been as low as 65,000–75,000 individuals. More recent estimates from China quote a population figure of 70,000, although the scientific basis for the estimate is not given (Xinhuanet 2002b). If one assumes that the historical population of chiru was 500,000 individuals (an apparently conservative estimate), then the most recent estimate of 70,000 represents a population decline of greater than 85 percent.

The principal cause of the Tibetan antelope population decline has been poaching on a massive scale for the species' fur (wool), known in trade as shahtoosh ("king of wool"), which is one of the finest animal fibers known (Ginsberg *et al.* 1999). Shahtoosh is processed into high-fashion scarves and shawls in the Indian State of Jammu and Kashmir; these items are greatly valued by certain people of wealth and fashion around the world. The international demand for chiru fiber and shahtoosh products is the most serious threat to the continued existence of the Tibetan antelope. Although overall mortality rates are not known, poaching mortality was estimated to be as high as 20,000 individuals per year (SFA 1998). Poaching appears to have declined in some areas in recent years (Xinhuanet 2002a), most likely because there are not enough animals to warrant an organized poaching effort. But Chinese officials acknowledge that "poaching is still far from being eradicated in China." (Xinhuanet 2002c). Annual recruitment of young has been estimated at around 12 percent (Schaller 1998). If one assumes that the total population of chiru is 70,000 individuals and that the population is currently declining at a rate of 1,000–3,500 individuals per year (admittedly a rough estimate, given available data), then the species could go extinct within the next 20 to 70 years. The species' role as the dominant native grazing herbivore of the Tibetan Plateau ecosystem has already been significantly diminished, and its influence on ecosystem structure and function would likely be substantially reduced or eliminated well before the species actually goes extinct.

Although the shahtoosh trade has existed for centuries, killing of Tibetan antelope on a widespread, commercial basis probably began only in the 1970s or 1980s, resulting from an increase in international consumer demand and increased availability of vehicles on the Tibetan Plateau. Schaller and Gu (1994) noted that, with the increasing availability of vehicles beginning three decades ago, "truck drivers, officials, military personnel and other outsiders also began to shoot wildlife * * *." Most chiru poaching takes place in the Arjin Shan, Chang Tang, and Kekexili Nature Reserves by a variety of hunters, including local herders, residents, officials, military personnel, gold miners, and truck drivers (Schaller 1993, Schaller and Gu 1994). Organized, large-scale poaching rings have developed in some areas. Poachers always kill Tibetan antelope to collect their fiber. No cases of capture-and-release wool collection are known, nor is naturally shed fiber collected from shrubs and grass tufts, as is often claimed (primarily by people within the shahtoosh industry). Poachers shear the hides, and collect and clean the under-fur of the antelope, or sell the hides to dealers who prepare the shahtoosh (Wright and Kumar 1997).

Schaller speculated that, during the 1980s and 1990s, tens of thousands of chiru were killed for their wool (Ginsberg *et al.* 1999). One chiru carcass yields about 125–150 grams (gm) of fiber. In the winter of 1992, an estimated 2,000 kilograms (kg) of wool reached India, and consignments of 600 kg were seized (and released) in India during 1993 and 1994 (Bagla 1995, cited in Ginsberg *et al.* 1999). This amount alone represents 17,000 chiru. In October 1998, 14 poachers in the Tibet Autonomous Region were convicted of collectively killing 500 chiru and purchasing 212 hides, and were sentenced to 3 to 13 years imprisonment (Xinhua 1998, cited in Ginsberg *et al.* 1999). The largest enforcement action to date within China, involving several jurisdictions and dubbed the "Hoh Xil Number One Action" by Chinese authorities, resulted in the arrest of 66 poachers and the confiscation of 1,658 chiru hides in April and May 1999 (Liu 1999, cited in Ginsberg *et al.* 1999). The IFAW/WTI (2001) report lists 77 known seizures of chiru hides, raw shahtoosh, and finished shahtoosh scarves. Recent documented seizures have been of 39 kg of raw fiber in March 2001 along the Tibet-Nepal border (IFAW/WTI 2001) and 80 shahtoosh shawls in New Delhi in March 2002 [Wildlife Protection Society of India (WPSI) News 2002]. Most recently, a consignment of 211 kg of raw shahtoosh was seized by wildlife officials in Delhi in early April 2003 (A. Kumar, WTI, *pers. comm.* with K. Johnson, Division of Scientific Authority, April 6, 2003). This quantity of raw wool represents the killing of almost 1,800 chiru.

Shahtoosh is smuggled out of China by truck or animal caravan, through Nepal or India, and into the State of Jammu and Kashmir in India. This is in violation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) as well as domestic laws of the countries involved. The shahtoosh industry in the Srinagar region of Jammu and Kashmir is controlled by a wealthy, influential group of 12 to 20 families (Wright and Kumar 1997). There are about 100 to 120 family-run manufacturing operations that employ upwards of 20,000 people who prepare, weave, and finish the raw shahtoosh into scarves and shawls (IFAW/WTI 2001). The scarves are sold throughout India and smuggled abroad in violation of Indian law, CITES, and domestic legislation in many of the importing countries (Wright and Kumar 1997). Shahtoosh products have been made in Jammu and Kashmir for centuries, but the current high levels of poaching are a result of consumer demand in the West, including the United States.

Chiru are also killed for their horns (used in traditional medicinal practices), hides, and meat (Ginsberg *et al.* 1999), although these uses are secondary to the use of fiber.

### *C. Disease or Predation*

Schaller (1998) documented Tibetan antelope mortality caused by disease and predators such as the wolf (*Canis lupus*), snow leopard (*Uncia uncia*), lynx (*Lynx lynx*), brown bear (*Ursus arctos*), and domestic dog (*Canis familiaris*). He suggested that wolf predation may at one time have been a substantial mortality factor for chiru, particularly on the calving grounds. At the present time, neither disease nor predation is considered to threaten or endanger the species in any portion of its range. However, one or both of these factors may become more significant as populations decline and become increasingly fragmented because of other mortality factors.

### *D. Inadequacy of Existing Regulatory Mechanisms*

The Tibetan antelope was listed in Appendix II of CITES in 1975; it was transferred to Appendix I in 1979. All three countries that comprise the species' natural geographic range—China, Nepal, and India—are CITES Parties. The only reservation ever held on the species was taken by Switzerland in 1979 and withdrawn in October 1998. The Tibetan antelope is protected at a national level by China, Nepal, and India.

In China, the chiru is a Class 1 protected species under the Law of the People's Republic of China on the Protection of Wildlife (1989), which prohibits all killing except by special permit from the central government. Although China has expended considerable effort and resources in an attempt to control poaching, it has been unable to do so (SFA 1998) because of the magnitude of the poaching, the extensive geographic areas involved, and the high value of shahtoosh, which gives poachers great incentive to continue their illegal activities. On several occasions, China has appealed to other governments and organizations to eliminate the demand for and production of shahtoosh products, most recently at the 1999 International Workshop on Conservation and Control of Trade in Tibetan Antelope held in Xining, China, in October 1999 and in a Resolution adopted at the 11th Meeting of the Conference of the Parties to CITES in Kenya in April 2000 (Resolution Conf. 11.8). China re-iterated its commitment to Tibetan antelope conservation at the 12th Meeting of the Conference of the Parties to CITES in Santiago, Chile, in November 2002 (Resolution Conf. 11.8 Rev. COP12 and Decision 12.40).

In Nepal, the chiru is listed as an endangered species under Schedule I of Nepal's National Parks and Wildlife Conservation Act (1973) (Wright and Kumar 1997). Smugglers use Nepal as a transit route from China to India (Government of Nepal 1999), and recent investigations by WWF Nepal Program and TRAFFIC India have documented the routes used. Although Nepal has made some effort to stop the illegal trade, including the confiscation of several shahtoosh shipments, it has been unable to eliminate or control the trade. This has, in part, resulted from the lack of CITES-implementing legislation at a national level (Government of Nepal 1999). In its national report to the International Workshop on Conservation and Control of Trade in Tibetan Antelope in October 1999, the Government of Nepal indicated that it had recently prepared CITES-implementing legislation, which was awaiting approval by the Government (Government of Nepal 1999). That legislation apparently had not yet been enacted as of the 46th Meeting of the CITES Standing Committee (SC) in March 2002 (SC46 Doc. 11.1).

In India, the chiru is listed on Schedule I of the Wildlife Protection Act (1972), which prohibits hunting and trade in any part of the species (Wright and Kumar 1997). The northern Indian State of Jammu and Kashmir has a separate wildlife act, The Jammu and Kashmir Wild Life Protection Act (1978) (J&K Act), which is independent of national law. Chiru are listed on Schedule II of the J&K Act. Trade in Schedule II species, including shahtoosh, is permitted under certain conditions. The J&K Act specifies that state permission is required to possess Schedule II wildlife products, that unlicensed dealers are prohibited from selling these products, and that licensed dealers are required to report to the government any import of Schedule II animal products (Ginsberg *et al.* 1999). Despite the fact that no shahtoosh dealers have ever been licensed (Government of India 1999), the production and sale of shahtoosh shawls and other products have continued in Jammu and Kashmir. On May 1, 2000, in response to public interest litigation filed by the Wildlife Protection Society of India (WPSI), the High Court of Jammu and Kashmir ruled that the shahtoosh trade was in violation of the J&K Act, CITES, and India's Export-Import Policy (IFAW/WTI 2001). The Government of Jammu and Kashmir set about to bring its law into compliance with national legislation and CITES, but that has not yet been completed, and the shahtoosh trade has continued. In May 2001, WPSI and WTI filed a contempt of court petition against the Jammu and Kashmir Government.

Sale of shahtoosh shawls occurs elsewhere in India as well, although prohibited by national law. And, despite the fact that CITES and India's Customs Law prohibit the commercial import and export of shahtoosh and shahtoosh products, raw shahtoosh fiber still enters India and finished products still leave. Indian authorities have made a number of seizures of raw fiber and finished products over the years (Wright and Kumar 1997, Government of India 1999), but, because of the conflict with Jammu and Kashmir, have been unable to end the production of shahtoosh products.

In the United States, the Appendix-I listing for the Tibetan antelope has not been adequate to control the import and sale of shahtoosh products. Although several investigations have revealed a market for shahtoosh products in the United States, the first successful prosecution was in 2001. On May 29, 2001, a Los Angeles-based clothier agreed to pay a $175,000 civil settlement for importing and selling shahtoosh shawls in violation of the ESA and the Lacey Act (Press Release from the U.S. Attorney's Office, District of New Jersey, dated May 29, 2001).

CITES provisions of the Endangered Species Act prohibit engaging in trade contrary to CITES and the possession of any specimen traded contrary to CITES. Thus, once a shahtoosh shawl is successfully smuggled into the United States, enforcement officers must prove the unlawful import in order to seize that shawl. Listing the Tibetan antelope under the Act would prohibit the sale or offering for sale of shahtoosh products in interstate or foreign commerce. This would give U. S. prosecutors additional means of fighting shahtoosh smuggling and the illegal market within the United States.

### *E. Other Natural or Manmade Factors*

Tibetan antelope are known to have died from exposure and malnutrition associated with severe winter weather (Schaller 1998). A blizzard in Qinghai Province killed a disproportionate number of young and yearlings, and resulted in reproductive failure in the following year.

## Summary of Findings

The Service has reviewed the information presented in the original petition, the literature cited in that petition, all public comments received, and other available literature and information. On the basis of the best scientific and commercial information available, the Service's 12-month finding is that the petitioned action is warranted. The best available information indicates that the total population of Tibetan antelope has declined drastically over the past three decades. This decline has resulted primarily from overutilization for commercial purposes and the inadequacy of existing regulatory mechanisms. Habitat impacts, especially those caused by domestic livestock grazing, appear to be a contributory factor in the decline, and could have potentially greater impacts in the near future. Accordingly, we herein propose to list the Tibetan antelope as endangered throughout its range, pursuant to the Endangered Species Act of 1973, as amended. Public comments on this proposed rule will be solicited, as will peer review (*see* subsequent sections of this **Federal Register** document).

## Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and encourages and results in conservation actions by Federal and State governments, private agencies and groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate the impact of their actions within the United States or on the high seas on any species that is proposed or listed as endangered or threatened, and on critical habitat of an endangered or threatened species, if any is designated. Because the Tibetan antelope is not native to the United States, we are not proposing to designate critical habitat for the species, in accordance with 50 CFR 424.12(h). With respect to the Tibetan antelope, no Federal activities, other than the issuance of CITES import and export permits, are currently required. Listing of the Tibetan antelope as endangered under the Act would require the issuance of ESA import and export permits by the Service's Division of Management Authority (DMA), and consequently a consultation with the Service's Division of Scientific Authority (DSA) under Section 7 of the Act prior to the issuance of any permit.

The Act and its implementing regulations set forth a series of prohibitions and exceptions that generally apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), within U.S. territory or on the high seas, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce, any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees or agents of the Service, and State conservation agencies. The interstate commerce prohibitions will be especially useful to the Service's efforts to curtail any illegal shahtoosh trade within the United States.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific research purposes, for enhancement of the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities. Because the Tibetan antelope is listed in Appendix I of CITES, a CITES permit is already required for import to or export from the United States. Under this rulemaking, an ESA permit would also be required for import or export of Tibetan antelopes to the United States. Prior to issuance of a permit, DMA would need to consult with DSA under Section 7 of the Act, as well as make its own determination that the application satisfies the permit-issuance criteria (*i.e.*, research or enhancement of propagation or survival).

### Public Comments Solicited

The Service intends that any final action resulting from this proposal will be based on the most accurate and up-to-date information possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning biological, commercial trade, or other relevant data concerning any threat to this species. Final action on this proposed rule will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final action that differs from this proposal.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Commenters may request that we withhold their home addresses, and we will honor these requests to the extent allowable by law. In some circumstances, we may also withhold a commenter's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public comment in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of the publication of this proposal in the **Federal Register**. Such requests must be made in writing and be addressed to: Chief, Division of Scientific Authority, 4401 North Fairfax Drive, Room 750, Arlington, Virginia 22203.

### Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek expert opinions of at least three appropriate independent specialists regarding this proposed rule. The purpose of such review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analysis. We will send copies of this proposed rule immediately following publication in the **Federal Register** to these peer reviewers.

### National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended.

### Paperwork Reduction Act of 1995

This rule contains no new information collection requirements under the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

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## Author

The primary author of this proposed rule is Dr. Kurt A. Johnson, Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 750, Arlington, Virginia 22203.

## List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

## Proposed Regulation Promulgation

Accordingly, we hereby propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17— [AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| MAMMALS | | | | | | | |
| * | * | * | * | * | * | * | |
| Antelope, Tibetan (Chiru). | *Pantholops hodgsonii.* | China, India, Nepal | Entire ..................... | E | .................... | NA | NA |
| * | * | * | * | * | * | * | |

Dated: August 21, 2003.

**Marshall P. Jones,**

*Deputy Director, Fish and Wildlife Service.*

[FR Doc. 03–25207 Filed 10–3–03; 8:45 am]

**BILLING CODE 4310–55–P**

# Notices

**Federal Register**

Vol. 68, No. 193

Monday, October 6, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. 03–078–1]

### Viruses, Serums, Toxins, and Analogous Products; Standard Requirements for Bovine Virus Diarrhea and Bovine Rhinotracheitis Vaccines

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Extension of approval of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations for the interstate movement of plants and plant products from the District of Columbia.

**DATES:** We will consider all comments that we receive on or before December 5, 2003.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–078–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–078–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–078–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

**FOR FURTHER INFORMATION CONTACT:** For information regarding the regulations for the interstate movement of plants and plant products from the District of Columbia, contact Mr. Jonathan Jones, Staff Officer, Pest Detection Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737; (301) 734–5038. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

**SUPPLEMENTARY INFORMATION:**

*Title:* District of Columbia Plant Health Certificate.

*OMB Number:* 0579–0166.

*Type of Request:* Extension of approval of an information collection.

*Abstract:* Under the Plant Protection Act (7 U.S.C. 7701–7772), the Animal and Plant Health Inspection Service (APHIS) is responsible for facilitating the interstate movement of agricultural products and commodities in ways that will reduce the risk of disseminating plant pests and noxious weeds.

The regulations in 7 CFR part 302, "District of Columbia; Movement of Plants and Plant Products," set out procedures for the inspection and certification of plants and plant products moving interstate from the District of Columbia. The regulations provide that, whenever inspection and documentation of plants or plant products are required by Federal or State laws or regulations prior to the interstate movement of those plants or plant products, APHIS will provide those services. APHIS, rather than the District of Columbia, provides those services because the District of Columbia, unlike most States, has no official plant protection service. The form APHIS uses to certify the plant pest status of plants or plant products to be moved interstate from the District of Columbia is the District of Columbia Plant Health Certificate.

We are asking the Office of Management and Budget (OMB) to approve our use of this form for an additional 3 years in connection with our program to prevent the interstate spread of plant pests, diseases, and noxious weeds in the United States.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

*Estimate of burden:* The public reporting burden for this collection of information is estimated to average 0.2 hours per response.

*Respondents:* Shippers, growers of plants and plant materials.

*Estimated annual number of respondents:* 4.

*Estimated annual number of responses per respondent:* 50.

*Estimated annual number of responses:* 200.

*Estimated total annual burden on respondents:* 40 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 30th day of September 2003.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 03–25253 Filed 10–3–03; 8:45 am]

**BILLING CODE 3410–34–P**

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 03–079–1]**

### Notice of Request for Extension of Approval of an Information Collection

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Extension of approval of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations for the importation of fruits and vegetables.

**DATES:** We will consider all comments that we receive on or before December 5, 2003.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–079–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–079–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–079–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

**FOR FURTHER INFORMATION CONTACT:** For information regarding regulations for the importation of fruits and vegetables, contact Dr. Paul Gadh, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road, Unit 140, Riverdale, MD 20737; (301) 734–5210. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

**SUPPLEMENTARY INFORMATION:**

*Title:* Importation of Fruits and Vegetables.

*OMB Number:* 0579–0158.

*Type of Request:* Extension of approval of an information collection.

*Abstract:* The United States Department of Agriculture is responsible for preventing plant pests from entering the United States, preventing the spread of pests not widely distributed within the United States, and eradicating plant pests when feasible. Under the Plant Protection Act (7 U.S.C. 7701–7772), the Animal and Plant Health Inspection Service, among other things, is responsible for carrying out this mission.

The regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56 through 319.56–8) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and spread of plant pests that are new to or not widely distributed within the United States.

Before entering the United States, certain fruits and vegetables from various foreign countries are subject to inspection and disinfection at their port of first arrival to ensure that no plant pests are inadvertently brought into the United States. These precautions, along with other requirements, ensure that these articles can be imported into the United States with minimal risk of introducing exotic plant pests such as fruit flies.

Allowing these fruits and vegetables to be imported necessitates the use of certain information collection activities including the completion of import permits, phytosanitary inspection certificates, and fruit fly monitoring records.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years in connection with our efforts to prevent an introduction of fruit flies or other plant pests into the United States.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

*Estimate of burden:* The public reporting burden for this collection of information is estimated to average 0.2807 hours per response.

*Respondents:* U.S. importers of fruits and vegetables; plant health officials of exporting countries.

*Estimated annual number of respondents:* 150.

*Estimated annual number of responses per respondent:* 76.

*Estimated annual number of responses:* 11,400.

*Estimated total annual burden on respondents:* 3,200 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 30th day of September, 2003.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 03–25254 Filed 10–3–03; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 03–084–1]**

### Big Cat Symposia; Animal Care

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of informational meetings.

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**SUMMARY:** This is a notice to animal exhibitors, dealers, transporters, researchers, animal protection groups, industry groups, and other interested persons that we are holding a series of educational symposia to present current information on the care and maintenance of exotic big cats. This notice provides the agenda for the symposia and information on the location and dates of the next two symposia.

**DATES:** The next symposium will be held in Columbus, OH, on Wednesday, November 19, 2003. The following symposium will be held in Sarasota, FL, on Wednesday, January 7, 2004. Each symposium will be held from 8 a.m. to 5 p.m. Preregistration is requested for both symposia. Parties wishing to attend may preregister by e-mailing *ACE@aphis.usda.gov* or by calling the Animal Care headquarters office at (301) 734–7833. The preregistration deadline for the Columbus meeting is October 15, 2003; for the Sarasota meeting, the deadline is December 15, 2003.

On-site registration will take place from 7:30 a.m. to 8:30 a.m. on the day of each symposium.

**ADDRESSES:** The symposia will be held at the following locations:

1. *Columbus, OH:* Greater Columbus Convention Center, 400 North High Street, Columbus, OH 43215, (800) 626–0241.

2. *Sarasota, FL:* Holiday Inn Airport and Marina, 7150 North Tamiami Trail, Sarasota, FL 34243, (888) 818–2781.

**FOR FURTHER INFORMATION CONTACT:** For further information on the agenda of the symposia, contact Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833. Dr. Kohn may be contacted by e-mail at *ACE@aphis.usda.gov.*

**SUPPLEMENTARY INFORMATION:** The Animal and Plant Health Inspection Service (APHIS) is announcing a series of educational symposia on the care and maintenance of exotic big cats. The symposia will give Animal Care an opportunity to disseminate information on various topics that are key to the successful management and handling of exotic big cats. The symposia will be held in various geographical locations to facilitate attendance by regulated parties that maintain these animals.

The first symposium was held on Wednesday, March 26, 2003, at the Ramada Plaza Hotel, Fort Worth, TX, and the second symposium was at Sam's Town Hotel, Las Vegas, NV, on April 30, 2003. The next two symposia will be held on November 19, 2003, at the Greater Columbus Convention Center, Columbus, OH, and on January 7, 2004, at the Holiday Inn Airport and Marina, Sarasota, FL. We plan to hold similar symposia at some time during 2004 in another location in the Midwest and in the Washington, DC, metropolitan area.

The symposia have been developed to provide current information and ideas on a variety of topics. Each symposium will follow the same agenda, with possible minor modifications. The symposia will start with general sessions, followed by breakout sessions allowing more interaction between speakers and attendees. The agenda for these symposia is:

7:30 a.m.–8:30 a.m.—Registration.
8 a.m.–11:30 a.m.—General Session.
  Welcome.
  Nutrition.
  Veterinary Care and Tranquilization.
  Transportation.
  New Training Methods.
11:30 a.m.–1 p.m.—Lunch Break (on own).
1 p.m.–2:30 p.m.—Concurrent Breakout Session #1.
  Explaining APHIS Regulations.
  Nutrition/Zootrition.
  Heat Budgets and Shade (avoiding overheating and overcooling).
2:45 p.m.–4:15 p.m.—Concurrent Breakout Session #2.
  Training.
  Veterinary Care Issues.
  Fixed Exhibit Enclosure Design.
4:15 p.m.–5 p.m.—Questions and Answers; Closing.

Notices of these symposia are being sent to current Animal Welfare Act licensees with exotic big cats. This notice is also available on the Internet at *http://www.aphis.usda.gov/ac*, the Animal Care Web site. Copies of a brochure containing the information in this announcement can also be requested by calling the Animal Care headquarters office at (301) 734–7833 or by e-mailing a request to *ACE@aphis.usda.gov.*

Please note that these symposia are being held to provide and disseminate information on the care and maintenance of big exotic cats under the Animal Welfare Act. There will be no opportunity at these symposia to submit formal comments on proposed rules or other regulatory initiatives.

#### Preregistration

Preregistration is requested by calling the Animal Care headquarters office at (301) 734–7833 or by e-mailing Animal Care at *ACE@aphis.usda.gov* and providing your name, number of attendees, phone number, and e-mail address or other contact address. This information is needed so we may inform registrants in a timely manner if any changes are made to the schedules of the symposia. Please preregister for the Columbus symposium by October 15, 2003, and for the Sarasota symposium by December 15, 2003.

#### Travel and Lodging Information

All attendees are responsible for their own travel and lodging. No rooms have been reserved for attendees at the symposium hotels or any other hotels.

Done in Washington, DC, this 30th day of September 2003.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 03–25256 Filed 10–3–03; 8:45 am]

**BILLING CODE 3410–34–P**

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 03–083–1]**

### Fiscal Year 2004 Reimbursable Overtime Charges and Veterinary Services User Fees

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

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**SUMMARY:** This notice pertains to reimbursable overtime charged for Sunday, holiday, or other overtime work performed in connection with the inspection, laboratory testing, certification, or quarantine of certain articles and to user fees for import- and export-related services provided for animals, animal products, birds, germ plasm, organisms, and vectors. The purpose of this notice is to remind the public of the reimbursable overtime charges and user fees for fiscal year 2004 (October 1, 2003, through September 30, 2004).

**FOR FURTHER INFORMATION CONTACT:** For information concerning Plant Protection and Quarantine program operations, contact Mr. Michael Caporaletti, Senior Program Analyst, Quarantine Policy

Analysis and Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1231; (301) 734–5781.

For information concerning Veterinary Services program operations, contact Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

For information concerning reimbursable overtime rate and user fee development, contact Mrs. Kris Caraher, User Fees Section Head, Financial Services Branch, FSSB, FMD, MRP–BS, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232; (301) 734–5901.

**SUPPLEMENTARY INFORMATION:**

[**Note:** In March 2003, the agricultural import and entry inspection activities that had been performed by employees of the Animal and Plant Health Inspection Service (APHIS) were transferred to the Department of Homeland Security (DHS). The regulations cited in this notice have not yet been updated to reflect this change, so in the interests of consistency with those regulations, this notice continues to refer to "APHIS employees" and services provided or work performed by APHIS employees. Readers should be aware, however, that DHS personnel are currently performing certain of the agricultural import and entry inspection activities discussed in this notice for which overtime charges or user fees are applicable.]

## Reimbursable Overtime Charges

The regulations in 7 CFR chapter III and 9 CFR chapter I, subchapters D and G, require inspection, laboratory testing, certification, or quarantine of certain animals, poultry, animal byproducts, germ plasm, organisms, vectors, plants, plant products, or other regulated commodities or articles intended for importation into, or exportation from, the United States. With some exceptions, when these services must be provided by an APHIS employee on a Sunday or on a holiday, or at any other time outside the APHIS employee's regular duty hours, the Government charges an hourly overtime fee for the services in accordance with 7 CFR part 354 and 9 CFR part 97.

In a final rule published in the **Federal Register** on July 25, 2002 (67 FR 48519–48525, Docket No. 00–087–2), and effective August 11, 2002, we established, for fiscal years 2002 through 2006 and beyond, reimbursable overtime rates for Sunday, holiday, or other overtime work performed by APHIS employees for any person, firm, or corporation having ownership, custody, or control of animals, poultry, animal byproducts, germ plasm, organisms, vectors, plants, plant products, or other regulated commodities or articles subject to inspection, laboratory testing, certification, or quarantine. In this document we are providing notice to the public of the reimbursable overtime fees for fiscal year 2004 (October 1, 2003, through September 30, 2004).

Under the regulations in 7 CFR 354.1(a) and 9 CFR 97.1(a), any person, firm, or corporation having ownership, custody, or control of plants, plant products, animals, animal byproducts, or other commodities or articles subject to inspection, laboratory testing, certification, or quarantine who requires the services of an APHIS employee on a Sunday or holiday, or at any other time outside the regular tour of duty of that employee, shall sufficiently in advance of the period of Sunday, holiday, or overtime service request the APHIS inspector in charge to furnish the service during the overtime or Sunday or holiday period, and shall, for fiscal year 2004, pay the Government at the rate listed in the following table:

OVERTIME FOR INSPECTION, LABORATORY TESTING, CERTIFICATION, OR QUARANTINE OF PLANTS, PLANT PRODUCTS, ANIMALS, ANIMAL PRODUCTS OR OTHER REGULATED COMMODITIES

| Outside the employee's normal tour of duty | Overtime rates (per hour) Oct. 1, 2003–Sept. 30, 2004 |
|---|---|
| Monday through Saturday and holidays | $48.00 |
| Sundays | 63.00 |

As specified in 7 CFR 354.1(a)(1)(iii) and 9 CFR 97.1(a)(3), the overtime rates to be charged in fiscal year 2004 to owners or operators of aircraft at airports of entry or other places of inspection as a consequence of the operation of the aircraft, for work performed outside of the regularly established hours of service will be as follows:

OVERTIME FOR COMMERCIAL AIRLINE INSPECTION SERVICES [1]

| Outside the employee's normal tour of duty | Overtime rates (per hour) Oct. 1, 2003–Sept. 30, 2004 |
|---|---|
| Monday through Saturday and holidays | $39.00 |
| Sundays | 51.00 |

[1] These charges exclude administrative overhead costs.

A minimum charge of 2 hours shall be made for any Sunday or holiday or unscheduled overtime duty performed by an employee on a day when no work was scheduled for him or her, or which is performed by an employee on his or her regular workday beginning either at least 1 hour before his or her scheduled tour of duty or which is not in direct continuation of the employee's regular tour of duty. In addition, each such period of Sunday or holiday or unscheduled overtime work to which the 2-hour minimum charge provision applies may include a commuted traveltime period (see 7 CFR 354.1(a)(2) and 9 CFR 97.1(b)).

## User Fees for Import- and Export-Related Veterinary Services

APHIS charges user fees for import- and export-related veterinary services. The regulations in 9 CFR part 130 list user fees for import- and export-related services provided by APHIS for animals, animal products, birds, germ plasm, organisms, and vectors.

These user fees are authorized by § 2509(c)(1) of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (21 U.S.C. 136a). APHIS is authorized to establish and collect fees that will cover the cost of providing import- and export-related services for animals, animal products, birds, germ plasm, organisms, and vectors.

On August 28, 2000, we published in the **Federal Register** (65 FR 51997–52010, Docket No. 97–058–2) a final rule that amended the regulations in 9 CFR part 130 by adjusting our user fees for import- and export-related services that we provide for animals, animal products, birds, germ plasm, organisms, and vectors and by setting user fees for these services for fiscal years 2001 through 2004 and beyond. (In that final rule, we did not specify an end date for user fees that become effective on October 1, 2003 [the beginning of fiscal year 2004] because we will continue to charge the fiscal year 2004 user fees until new user fees are in effect.) Additionally, on August 1, 2001, we published in the **Federal Register** (66 FR 39628–39632, Docket No. 99–060–2) another final rule that amended the regulations by updating some of the user fees in 9 CFR part 130. When we proposed to establish the user fees for fiscal years 2001 through 2004 and beyond, we stated that, prior to the beginning of each fiscal year, we would publish a notice to remind the public of the user fees for that fiscal year. This document provides notice to the public of the user fees for fiscal year 2004 (October 1, 2003, through September 30, 2004) and beyond. The specific services and user fees are described below.

We provide standard and nonstandard housing, care, feed, and handling for individual animals and certain birds[1] quarantined in APHIS-owned or -operated animal quarantine facilities, including APHIS Animal Import Centers. As specified in § 130.2(a), the daily user fee for each animal or bird quarantined in APHIS-owned or -operated animal quarantine facilities receiving standard housing, care, feed, and handling for fiscal year 2004 and beyond will be as follows:

| Animal or bird | User fee |
|---|---|
| | Beginning Oct. 1, 2003 |
| Birds (excluding ratites and pet birds imported in accordance with 9 CFR part 93): | |
| 0–250 grams | $1.75 |
| 251–1,000 grams | 5.75 |
| Over 1,000 grams | 13.00 |
| Domestic or zoo animals (except equines, birds, and poultry): | |
| Bison, bulls, camels, cattle, or zoo animals | 102.00 |
| All others, including, but not limited to, alpacas, llamas, goats, sheep, and swine | 27.00 |
| Equines (including zoo equines, but excluding miniature horses):. | |
| 1st through 3rd day (fee per day) | 270.00 |
| 4th through 7th day (fee per day) | 195.00 |
| 8th and subsequent days (fee per day) | 166.00 |
| Miniature horses | 61.00 |
| Poultry (including zoo poultry): | |
| Doves, pigeons, quail | 3.50 |
| Chickens, ducks, grouse, guinea fowl, partridge, pea fowl, pheasants | 6.25 |
| Large poultry and large waterfowl, including, but not limited to game cocks, geese, swans, and turkeys | 15.00 |
| Ratites: | |
| Chicks (less than 3 months old) | 9.25 |
| Juveniles (3 months through 10 months old) | 14.00 |
| Adults (11 months old and older) | 27.00 |

Certain conditions or traits, such as aggression, may necessitate special requirements for certain birds or poultry. Birds and poultry receiving nonstandard housing, care, feed, or handling to meet special requirements may receive those services while quarantined in an APHIS-owned or -operated quarantine facility at the request of an importer or as required by an APHIS representative. As specified in § 130.2(b), the daily user fee for each bird or poultry receiving nonstandard housing, care, or handling while quarantined in an APHIS-owned or -operated animal quarantine facility for fiscal year 2004 and beyond is $5.75 for birds weighing 250 grams or less, and doves, pigeons, and quail; $13 for birds weighing 251 to 1,000 grams and poultry such as chickens, ducks, grouse, guinea fowl, partridge, pea fowl, and pheasants; and $25 for birds over 1,000 grams and large poultry and large waterfowl, including, but not limited to game cocks, geese, swans, and turkeys. As specified in § 130.2(c), importers of animals or birds that require a diet other than standard feed must either provide feed or pay APHIS for feed on an actual cost basis, including the cost of delivery to the APHIS-owned or -operated animal import center or quarantine facility.

We accept requests from importers to exclusively occupy a space at an APHIS animal import center. As specified in § 130.3(a)(1), the monthly user fee for exclusive use of space at the APHIS animal import center in Newburgh, NY, for fiscal year 2004 and beyond is $59,254 to occupy a space 5,396 square feet in size, $97,764 for a space 8,903 square feet in size, and $9,938 for a space 905 square feet in size. The fees listed in § 130.3(a)(1) cover all costs of quarantine[2] except feed. The importer either provides the feed or pays for it on an actual cost basis, including the cost of delivery.

We process applications for permits to import and transport certain animals, animal products, organisms, vectors, and germ plasm.[3] As specified in § 130.4, the user fees for processing import permit applications for certain animals, animal products, organisms, vectors, and germ plasm during fiscal year 2004 and beyond will be as follows:

| Service | Unit | User fee |
|---|---|---|
| | | Beginning Oct. 1, 2003 |
| Import compliance assistance: | | |
| Simple (2 hours or less) | Per release | $70.00 |
| Complicated (more than 2 hours) | Per release | 180.00 |
| Processing an application for a permit to import live animals, animal products or byproducts, organisms, vectors, or germ plasm (embryos or semen) or to transport organisms or vectors[1] | | |
| Initial permit | Per pplication | 94.00 |
| Amended permit | Per amended application | 47.00 |
| Renewed permit[2] | Per application | 61.00 |

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[1] Those animals and birds subject to quarantine are specified in 9 CFR, chapter I, subchapter D of the regulations.

[2] Paragraphs (a)(2) and (c) of § 130.3 specify that additional user fees will be charged to importers for occupancy of space for more than 30 days or nonstandard handling or care of animals or birds.

[3] Those animal products, organisms, vectors, and germ plasm that require permits for importation into the United States are specified in 9 CFR, chapter I, subchapter D of the regulations.

| Service | Unit | User fee |
|---|---|---|
| | | Beginning Oct. 1, 2003 |
| Processing an application for a permit to import fetal bovine serum when facility inspection is required. | Per application | 322.00 |

[1] Using Veterinary Services Form 16–3 "Application for Permit to Import or Transport Controlled Material or Organisms or Vectors," or Form 17–129, "Application for Import or In Transit Permit (Animals, Animal Semen, Animal Embryos, Birds, Poultry, or Hatching Eggs)."

[2] Permits to import germ plasm and live animals are not renewable.

We inspect live animals presented for importation or entry into the United States through a land border port along the United States-Mexico border. As specified in § 130.6(a), the user fees for inspection of live animals at land border ports along the United States-Mexico border for fiscal year 2004 and beyond will be as listed in the following table:

| Type of live animal | Per head user fee |
|---|---|
| | Beginning Oct. 1, 2003 |
| Any ruminants (including breeder ruminants) not covered below | $9.00 |
| Feeder | 2.50 |
| Horses, other than slaughter | 44.00 |
| In-bond or in-transit | 5.75 |
| Slaughter | 3.75 |

We also inspect live animals presented for importation into or entry into the United States through a land border port along the United States-Canada border. As specified in § 130.7(a), user fees for import or entry services for live animals at land border ports along the United States-Canada border for fiscal year 2004 and beyond will be as follows:

| Type of live animal | Unit | User fee |
|---|---|---|
| | | Beginning Oct. 1, 2003 |
| Animals being imported into the United States: | | |
| Breeding animals (grade animals, except horses): | | |
| Sheep and goats | Per head | $0.50 |
| Swine | Per head | 0.75 |
| All others | Per head | 3.25 |
| Feeder animals: | | |
| Cattle (not including calves) | Per head | 1.50 |
| Sheep and calves | Per head | 0.50 |
| Swine | Per head | 0.25 |
| Horses (including registered horses), other than slaughter and in-transit | Per head | 29.00 |
| Poultry (including eggs), imported for any purpose | Per load | 50.00 |
| Registered animals (except horses) | Per head | 6.00 |
| Slaughter animals (except poultry) | Per load | 25.00 |
| Animals transiting[1] the United States: | | |
| Cattle | Per head | 1.50 |
| Sheep and goats | Per head | 0.25 |
| Swine | Per head | 0.25 |
| Horses and all other animals | Per head | 6.75 |

[1] The user fee in this section will be charged for in-transit authorizations at the port where the authorization services are performed. For additional services provided by APHIS, at any port, the hourly user fee rate in § 130.30 will apply.

We provide a variety of other services related to the importation into or exportation from the United States of animals, animal products, birds, germ plasm, organisms, and vectors. As specified in § 130.8(a), user fees for those import-or export-related services during fiscal year 2004 and beyond are as follows:

| Service | Unit | User fee |
|---|---|---|
| | | Beginning Oct. 1, 2003 |
| Germ plasm being exported:[1] | | |
| Embryo: | | |
| Up to 5 donor pairs | Per certificate | $83.00 |

| Service | Unit | User fee |
|---|---|---|
| | | Beginning Oct. 1, 2003 |
| Each additional group of donor pairs, up to 5 donor pairs per group, on the same certificate. | Per group of donor pairs | 37.00 |
| Semen | Per certificate | 51.00 |
| Release from export agricultural hold: | | |
| Simple (2 hours or less) | Per release | 70.00 |
| Complicated (more than 2 hours) | Per release | 180.00 |

[1] This user fee includes a single inspection and resealing of the container at the APHIS employee's regular tour of duty station or at a limited port. For each subsequent inspection and resealing required, the hourly user fee in § 130.30 will apply.

We inspect lots of pet birds[4] of U.S. origin returning to the United States. As specified in § 130.10(a), user fees for the inspection of pet birds of U.S. origin returning to the United States, except pet birds of U.S. origin returning from Canada, during fiscal year 2004 and beyond are $108 per lot of birds which have been out of the United States for 60 days or less, and $257 per lot of pet birds which have been out of the United States for more than 60 days.

We also provide housing, care, feed, and handling for pet birds quarantined in APHIS-owned or -supervised quarantine facilities. The daily user fee to quarantine pet birds applies per isolette and varies based on the number of pet birds determined by an APHIS representative to be appropriate per isolette. All the birds quarantined in one isolette are covered by one fee, which is assessed daily for the duration of the quarantine. As specified in § 130.10(b), the daily user fee for each pet bird quarantined in an APHIS-owned or supervised quarantine facility for fiscal year 2004 and beyond is $9.25 for one pet bird quarantined in one isolette, $11 for two pet birds quarantined in one isolette, $13 for three pet birds quarantined in one isolette, $15 for four pet birds quarantined in one isolette, and $18 for five pet birds quarantined in one isolette.

We inspect and approve various import and export facilities and establishments.[5] As specified in § 130.11, the user fees for inspecting and approving import and export facilities and establishments during fiscal year 2004 and beyond will be as listed in the following table:

| Service | Unit | User fee |
|---|---|---|
| | | Beginning Oct. 1, 2003 |
| Embryo collection center inspection and approval (all inspections required during the year for facility approval). | Per year | $380.00 |
| Inspection for approval of biosecurity level three laboratories (all inspections related to approving the laboratory for handling one defined set of organisms or vectors). | Per inspection. | 977.00 |
| Inspection for approval of pet food manufacturing, rendering, blending, or digest facilities: | | |
| Initial approval | For all inspections required during the year. | 404.75 |
| Renewal | For all inspections required during the year. | 289.00 |
| Inspection for approval of pet food spraying and drying facilities: | | |
| Initial approval | For all inspections required during the year. | 275.00 |
| Renewal | For all inspections required during the year. | 162.00 |
| Inspection for approval of slaughter establishment: | | |
| Initial approval (all inspections) | Per year | 373.00 |
| Renewal (all inspections) | Per year | 323.00 |
| Inspection of approved establishments, warehouses, and facilities under 9 CFR parts 94 through 96: | | |
| Approval (compliance agreement) (all inspections for first year of 3-year approval) | Per year | 398.00 |
| Renewed approval (all inspections for second and third years of 3-year approval) | Per year | 230.00 |

We endorse export health certificates for animals, birds, or animal products.[6] As specified in § 130.20(a), the user fees for each export health certificate endorsed for animals, birds, or animal products that do not require the verification of tests or vaccinations, regardless of the number of animals, birds, or animal products covered by the certificate, will be $32 for animal and nonanimal products; $30 for hatching eggs; $30 for poultry, including slaughter poultry; $33 for ruminants, except slaughter ruminants moving to Canada or Mexico;[7] $35 for slaughter animals (except poultry but including ruminants) moving to Canada or Mexico; and $24 for other endorsements or certifications during fiscal year 2004 and beyond.

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[4] Provisions for the importation of pet birds into the United States are specified in 9 CFR, chapter I, subchapter D of the regulations.

[5] Requirements for the inspection and approval of various quarantine facilities are specified in 9 CFR, chapter I, subchapter D of the regulations.

[6] Those animals, birds, or animal products that require export health certificates are specified in 9 CFR, chapter I, subchapter D of the regulations.

[7] This particular fee is new, and was established in a final rule that was published in the **Federal Register** on August 29, 2003 (68 FR 51878–51887, Docket No. 02–040–2) and becomes effective on October 1, 2003.

We also endorse export health certificates for animals, birds, or animal products that require verification of tests or vaccinations. The user fees for these certificates apply to each export health certificate endorsed for animals and birds, depending on the number of animals or birds covered by the certificate and the number of tests or vaccinations required. As specified in § 130.20(b), the user fees for each export health certificate endorsed for animals and birds for fiscal year 2004 and beyond is as follows:

| Number of tests or vaccinations and number of animals or birds on the certificate | User fee<br>Beginning Oct. 1, 2003 |
|---|---|
| 1–2 tests or vaccinations: | |
| Nonslaughter horses to Canada: | |
| First animal | $38.00 |
| Each additional animal | 4.25 |
| Other animals or birds: | |
| First animal | 76.00 |
| Each additional animal | 4.25 |
| 3–6 tests or vaccinations: | |
| First animal | 94.00 |
| Each additional animal | 7.25 |
| 7 or more tests or vaccinations: | |
| First animal | 109.00 |
| Each additional animal | 8.50 |

We provide certain import-or export-related veterinary services at hourly rates[8] that may be performed during and outside of regularly established hours of service. As specified in § 130.30(a), the user fees in fiscal year 2004 for import- or export-related hourly veterinary services performed during regularly established hours of service, except those services covered by flat rate user fees, will be $84 per hour or $21 per quarter hour for each APHIS employee; the per service minimum fee is $25. When the import- or export-related veterinary services listed in § 130.30(a)(1) through (a)(13) are performed on a Sunday, holiday, or at any time outside of an APHIS employee's normal tour of duty, a premium rate user fee is charged. As specified in § 130.30(b), the user fees in fiscal year 2004 for hourly veterinary services provided at any time outside an employee's normal tour of duty Monday through Saturday and on holidays will be $100 per hour or $25 per quarter hour for each APHIS employee, and the user fees for hourly veterinary services provided on a Sunday will be $112 per hour or $28 per quarter hour for each APHIS employee.

Users who request import- or export-related services that are covered by flat rate user fees on a Sunday, holiday, or any time outside of an APHIS employee's normal tour of duty, and who are subject to the overtime rates set forth in 7 CFR 354.1 or 9 CFR 97.1, are charged the hourly overtime rates set out in § 130.50(b)(3)(i) in addition to the flat rate user fees. For fiscal year 2004, the overtime rates charged to users who request flat rate user fee services are as follows:

OVERTIME FOR FLAT RATE USER FEES [1] [2]

| | Outside of the employee's normal tour of duty | Overtime rates (per hour) Oct. 1, 2003–Sept. 30, 2004 |
|---|---|---|
| Rate for inspection, testing, certification or quarantine of animals, animal products or other commodities (*See* 7 CFR 354.3 or 9 CFR 97.1(a) for details.) | Monday–Saturday and holidays | $48.00 |
| | Sundays | 63.00 |
| Rate for commercial airline inspection services (*See* 9 CFR 97.1(a)(3) for details.) | Monday–Saturday and holidays | 39.00 |
| | Sundays | 51.00 |

[1] Minimum charge of 2 hours, unless performed on the employee's regular workday and performed in direct continuation of the regular workday or begun within an hour of the regular workday.

[2] When the 2-hour minimum applies, you may need to pay commuted travel time. (*See* 9 CFR 97.1(b) for specific information about commuted travel time.)

Done in Washington, DC, this 30th day of September 2003.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 03–25255 Filed 10–3–03; 8:45 am]

**BILLING CODE 3410–34–P**

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## DEPARTMENT OF AGRICULTURE

## Forest Service

## Sheep Creek Fire Salvage, Beaverhead-Deerlodge National Forest, Beaverhead County, MT

**AGENCY:** Forest Service, USDA.

**ACTION:** Amended notice of intent to prepare an environmental impact statement.

**SUMMARY:** This amended notice of intent to prepare an environmental impact statement is a correction of the original notice of intent published on July 11, 2003 (Volume 68, Number 133, page

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[8] Section 130.30 (a)(1) through (a)(13) lists import- or export-related veterinary services that are calculated at hourly rates for each APHIS employee required to perform the service.

41295–41296). This amendment includes text which was not included in the original notice of intent. The USDA, Forest Service, will prepare an environmental impact statement (EIS) to disclose the environmental effects of the salvage harvest of timber killed as a result of fire in the Canyon Creek, Boulder Creek, Cascade Creek, Sage Creek, and Runaway Creek drainages (herein referred to as the Sheep Creek project). The project area is located 15 miles west of Wisdom, Montana, north of State Highway 43, just west of the Placer Creek Road. The project area is outside of inventoried roadless areas.

**DATES:** Comments concerning the scope of the analysis must be postmarked by November 20, 2003. The draft environmental impact statement is expected February, 2004 and the final environmental impact statement is expected June of 2004.

**ADDRESSES:** Written comments concerning this notice or a request to be placed on the project mailing list should be addressed to Chris Tootell, TEAMS, 200 East Broadway, suite 251, Missoula, Montana, 59807. Comments may also be sent via e-mail to *r1_b-d_comments@fs.fed.us*. (Please note that there is a 'one' after the letter r, not an 'L.') The subject line in the e-mail message should contain the title "Sheep Creek Fire Salvage Project." If you choose to comment by e-mail, please include your name and regular mailing address with the comment. Comments may also be sent via facsimile to (406) 689–3245, C/O Dennis Havig, Wisdom Ranger District.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Wisdom Ranger District,Wisdom, MT. Visitors are encouraged to call ahead to (406) 689–3243 to facilitate entry to the building.

**FOR FURTHER INFORMATION CONTACT:** Chris Tootell, Environmental Resource Coordinator, TEAMS Enterprise unit, USDA Forest Service (406) 329–3459. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The proposed project area is located within sections 4,5,6,7,8,9 & 18, T.2S., R.17W., and sections 1, 12 and 13, T.2S., R.18W.

## Purpose and Need for Action

The purpose and need for the proposed action is to move toward the desired conditions as described in the Beaverhead National Forest Land and Resource Management Plan (LRMP). The proposed action is located on lands classified as "available and suitable for timber production" (LRMP, p. III–48 and III–63). Congress has recognized the importance of sustainable commodity use in laws including the Multiple-Use Sustained Yield Act, the National Forest Managment Act, and the 1872 Mining Act. There is a need to emphasize long-term production of commodities for local and regional economies, communities, and people in an environmentally sound manner (LRMP, Record of Decision, p.19). Most of the trees killed as a result of the fire are expected to fall to the ground and contribute to heavy fuel build-up over the next two decades. There is a need to break up the continuity of fuel accumulation to prevent the dead trees from becoming part of a future, long-term fuels problem. Specifically, the purpose and need is to:

- Recover and utilize timber from the trees killed as a result of the Sheep Creek Fire providing a supply of wood products to the forest products industry and ultimately to the public, and
- Break up fuel continuity and decrease fuel loads in order to decrease risks that future fires will pose to human health and safety, improvements and resources.

## Proposed Action

To address these needs the proposed action has the following components:

- Approximately 600 to 1,000 acres would be salvage harvested within the Sheep Creek Fire perimeter. Trees that are dead as a result of the fire would be salvaged by conventional ground-based and cable logging methods. An estimated 3 to 6 million board feet of merchantable timber would be recovered by the harvesting operations. As much as practicable, slash associated with harvest operations would be piled and burned on the landings.
- Where concentrations of fuels exist within proposed treatment areas, techanical or other methods of fuel treatment will occur where practicable.
- Approximately 2.5 miles of temporary road would be constructed to access proposed harvest units; the temporary roads would be reclaimed when this project is completed.

The salvage timber harvest and fuel treatments following harvest would reduce fuel loading in accordance with Beaverhead National Forest Land and Resource Management Plan (LRMP p. II–29, II–35), and Beaverhead-Deerlodge Fire Management Plan.

Operational design elements would be included to ensure compliance and consistency with direction found in the LRMP, and state and federal law, regulation and direction.

Implementation of these activities would occur as soon as possible following completion of the environmental analysis. It is proposed that the environmental analysis be completed by spring of 2004 with a signed decision document issued by 6/18/2004.

## Responsible Official

Thomas K. Reilly, Beaverhead-Deerlodge National Forest Supervisor, 420 Barrett Street, Dillon, MT 59725–3572.

## Nature of Decision To Be Made

The decisions to be made include the location and scheduling of the proposed salvage harvest activities, harvest methods and associated slash treatment and silvicultural treatments; the estimated timber volume to make available from the project area; the estimated amount of temporary road construction needed; and mitigation mesures and monitoring requirements.

## Scoping Process

Public participation is important to this analysis. Part of the goal of public involvement is to identify additional issues and to refine the general, tentaive issues. The Beaverhead-Deerlodge National Forest has developed a listing of individuals and organizations that have expressed an interest in being informed of and providing input to vegetation management and fuel redcution projects. This list of individuals and organizations include private citizens, businesses, various organizations, Native American groups, and federal, state and county agencies. All of these contacts will be sent the intial scoping document.

## Preliminary Issues

The following list of preliminary issues was developed for the project area by the Forest Service Interdisciplinary Team (ID Team). This list was developed after review of issues from previous post fire management projects, including previous public involvement, and specific internal agency scoping. General categories have been used to focus key topics. This list will be amended and/or expanded after review of the Sheep Creek Fire Salvage project public comments. During the analysis, alternatives to the proposed action will be developed responding to the final list of issues. In response to the issues, the alternatives developed may include different levels of activity and may include different prescriptions.

- Timber sale value.
- Potential reduction of big game "security cover" within harvest units may result in a need for a nonsignificant site specific Forest plan amendment for elk effective cover standards.
- Loss of future potential Lynx denning habitat by removal of heavy fuels.
- Potential for introduction and spread of noxious weeds from logging and log hauling.
- Potential soil disturbance.
- Residual fuel loads exceeding desired thresholds within treatment units.
- Potential for introduction of sediment to streams impacting fish species.
- Loss of habitat for snag dependent and cavity nesting species.

**Comment Requested**

This amended notice of intent initiates the scoping process which guides the development of the draft environmental impact statement, including the identification of the range of alternatives to be considered. While public participation is strictly optional at this stage, the Forest Service believes that it is important to give reviewers notice of several court rulings related to public participation in the subsequent environmental review process. First, reviewers of draft statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).

Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day draft environmental impact statement comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments also may address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. In addressing these points, reviewers may wish to refer to the Council on Environmental Quality regulations which implement the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.

Dated: September 23, 2003.

**Thomas K. Reilly,**

*Forest Supervisor.*

[FR Doc. 03–25235 Filed 10–3–03; 8:45 am]

BILLING CODE 3410–11–P

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## DEPARTMENT OF AGRICULTURE

## Forest Service

## Yakutat Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Yakutat Resource Advisory Committee will meet in Yakutat, Alaska. The purpose of the meeting is continue business of the Yakutat Resource Advisory Committee. The committee was formed to carry out the requirements of the Secure Rural Schools and Self-Determination Act of 2000. The agenda for this meeting is to review submitted project proposals and consider recommending projects for funding. Project proposals are due by October 1, 2003 to be considered at this meeting.

**DATES:** The meeting will be held October 24, 2003 from 6–9 p.m. and will continue on October 25, 2003 from 9–12 a.m., if necessary.

**ADDRESSES:** The meeting will be held at the Kwaan Conference Room, 712 Ocean Cape Drive, Yakutat, Alaska. Send written comments to Tricia O'Connor, c/o Forest Service, USDA, P.O. Box 327, Yakutat, AK 99689, (907) 784–3359 or electronically to *poconnor@fs.fed.us*.

**FOR FURTHER INFORMATION CONTACT:** Tricia O'Connor, District Ranger and Designated Federal Official, Yakutat Ranger District, (907) 784–3359.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Council discussion is limited to Forest Service staff and Council members. However, persons who wish to bring resource projects or other Resource Advisory Committee matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by October 17, 2003 will have the opportunity to address the Council at those sessions.

Dated: September 26, 2003.

**Patricia M. O'Connor,**

*District Ranger, Yakutat Ranger District, Tongass National Forest.*

[FR Doc. 03–25212 Filed 10–3–03; 8:45 am]

BILLING CODE 3410–11–M

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## DEPARTMENT OF AGRICULTURE

## Natural Resources Conservation Service

## Notice of Proposed Changes to Section IV of the Tennessee Field Office Technical Guide (FOTG)

**AGENCY:** Natural Resources Conservation Service (NRCS) in Tennessee, U.S. Department of Agriculture.

**ACTION:** Notice of availability of proposed changes in the Tennessee NRCS Field Office Technical Guide, Section IV, for review and comment.

**SUMMARY:** It has been determined by the NRCS State Conservationist for Tennessee that changes must be made in the NRCS Field Office Technical Guide, specifically in practice standard Residue Management, Seasonal (Code 344) to account for improved technology. This practice standard can be used in systems that treat highly erodible cropland.

**DATES:** Comments will be received for a 30-day period commencing with the date of this publication.

**FOR FURTHER INFORMATION CONTACT:** Inquire in writing to James W. Ford, State Conservationist, Natural Resources Conservation Service (NRCS), 675 U.S. Courthouse, 801 Broadway, Nashville, Tennessee, 37203, telephone number (615) 277–2531. Copies of the practice standard will be made available upon written request.

**SUPPLEMENTARY INFORMATION:** Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS state technical guides used to perform highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Tennessee will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Tennessee regarding disposition of those comments and a final determination of change will be made to the subject practice standard.

Dated: September 24, 2003.

**James W. Ford,**

*State Conservationist.*

[FR Doc. 03–25258 Filed 10–3–03; 8:45 am]

**BILLING CODE 3410–16–P**

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## DEPARTMENT OF COMMERCE

### Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* U.S. Census Bureau.

*Title:* Advance Monthly Retail Trade and Food Services Survey.

*Form Number(s):* SM–44(00)A, SM–44(00)AS, AM–44(00)AE, and SM–72(00)A.

*Agency Approval Number:* 0607–0104.

*Type of Request:* Extension of a currently approved collection.

*Burden:* 4,500 hours.

*Number of Respondents:* 4,500.

*Avg Hours Per Response:* 5 minutes.

*Needs and Uses:* The Advance Monthly Retail Sales and Food Services Survey (MARTS) was developed in response to requests by government, business, and other users to provide an early indication of current retail trade activity at the United States level. Policymakers such as the Federal Reserve board need to have the most timely estimates in order to anticipate economic trends and act accordingly. The U. S. Census Bureau tabulates the collected data to provide, with measured reliability, statistics on United States retail sales. MARTS also provides monthly sales estimates of food service establishments and drinking places. These sales estimates are used by the Council of Economic Advisers, Bureau of Economic Analysis (BEA), Federal Reserve Board, and other government agencies as well as business users in formulating economic decisions. Sales estimates from this survey provide the earliest possible look at consumer spending and are necessary for the calculation of the personal consumption portion of the Gross Domestic Product (GDP). These estimates have a high priority because of their timeliness. Without the Advance Monthly Retail Sales and Food Services Survey, the Census Bureau's earliest measure of retail sales is the "preliminary" estimate from the full monthly sample released about 40 days after the reference period.

*Affected Public:* Business or other for-profit.

*Frequency:* Monthly.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13 U.S.C., Section 182.

*OMB Desk Officer:* Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dhynek@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: September 30, 2003.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 03–25196 Filed 10–3–03; 8:45 am]

**BILLING CODE 3510–07–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

### Application for Designation of a Fair

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1955, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before December 5, 2003.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution, NW., Washington, DC 20230 or via the Internet at *dHynek@doc.gov.*

**FOR FURTHER INFORMATION, CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to: Linda Harbaugh, Department of Commerce, ITA, Office of Travel and Tourism Industries, Room 7025, 14th and Constitution Avenue, NW., Washington, DC 20230; Phone: (202) 482–2404; Fax: (202) 482–4279.

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

The International Trade Administration, Service Industries, Tourism & Finance, Office of Travel & Tourism Industries, offers trade fair guidance and assistance to trade fair organizers, trade fair operators, and other travel and trade oriented groups. These fairs open doors to promising trade markets around the world. These trade fairs provide an opportunity for showcasing quality exhibitors and products from around the world. The "Application for Designation of a Fair" is a questionnaire that is prepared and signed by an organizer to begin the certification process. It asks the fair organizer to provide details as to the date, place, and sponsor of the fair, as well as license, permit, and corporate backers, and countries participating. To apply for the U.S. Department of Commerce certification, the fair organizer must have all of the components of the application in order. Then, with the approval, the organizer is able to bring their products into the U.S. in accordance with Customs laws. Articles which may be brought in, include, but are not limited to, actual exhibit items, pamphlets, brochures, and explanatory material in reasonable quantities relating to the foreign exhibits at a trade fair, and material for use in constructing, installing, or maintaining foreign exhibits at a trade fair.

#### II. Method of Collection

The request is mailed, faxed, or e-mailed from to Department of Commerce, Office of Travel and Tourism Industries, to the Trade Fair Chairperson.

#### III. Data

*OMB Number:* 0625–0228.

*Form Number:* ITA–4135P.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 220.

*Estimated Time Per Response:* 30 minutes.

*Estimated Total Annual Burden Hours:* 110.

*Estimated Total Annual Cost:* $2200.

#### IV. Requested for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways too enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 30, 2003.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 03–25197 Filed 10–3–03; 8:45 am]

**BILLING CODE 3510–OR–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A-351-832, A-122-840, A-560-815, A-201-830, A-841-805, A-274-804, A-823-812, C-351-833, and C-122-841]**

## Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Preliminary Results of Changed Circumstances Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Preliminary Results of Changed Circumstances Review of the Antidumping Duty and Countervailing Duty Orders, and Intent To Revoke Orders, in Part.

**EFFECTIVE DATE:** October 6, 2003.

**SUMMARY:** On August 21, 2003, the Department of Commerce (the Department) published a notice of initiation of a changed circumstances review with the intent to revoke, in part, the antidumping duty orders and countervailing duty orders on carbon and certain alloy steel wire rod, as described below. *See Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Initiation of Changed Circumstances Antidumping Duty Administrative Review and Countervailing Duty Administrative Reviews, and Intent To Revoke Orders in Part*, 68 Fed. Reg. 50,513 (August 21, 2003) (*Initiation Notice*).

In our *Initiation Notice* we invited interested parties to comment. We did not receive comment concerning the technical description of the merchandise subject to this changed circumstances review. However, on August 22, 2003, petitioners[1] filed a letter stating the *Initiation Notice* contains an error in language with respect to the effective date of liquidation of entries because the *Initiation Notice* does not match the intent of petitioners' July 24, 2003 request for changed circumstances review. The Department has amended the effective date accordingly. Absent any other comments, we preliminarily conclude that producers accounting for substantially all of the production of the domestic like product to which these orders pertain lack interest in the relief provided by the order. Unless the Department receives opposition from domestic producers who's production totals more than 15 percent of the domestic like product, the Department will partially revoke the orders on carbon and certain alloy steel wire rod in its final results of this review. Therefore, we preliminarily revoke these orders, in part, with respect to products entered, or withdrawn from warehouse, for consumption on or after July 24, 2003 of carbon and certain alloy steel wire rod described below, because domestic parties have expressed no interest in the continuation of the orders on that merchandise.

**FOR FURTHER INFORMATION CONTACT:** Brian J. Sheba or Robert M. James, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0145 or (202) 482–0649.

**SUPPLEMENTARY INFORMATION:**

### Background

The Department published the antidumping duty orders on steel wire rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine on October 29, 2002. *See Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod From Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 Fed. Reg. 65,945, *and Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Carbon and Alloy Steel Wire Rod From Canada*, 67 Fed. Reg. 65,944. The Department published the countervailing duty orders on steel wire rod from Brazil and Canada on October 22, 2002. *See Notice of Countervailing Duty Orders: Carbon and Certain Alloy Steel Wire Rod From Brazil and Canada*, 67 Fed. Reg. 64,871. On July 24, 2003, petitioners requested that the Department change the technical description of certain grade 1080 tire cord quality wire rod and grade 1080 tire bead quality wire rod (hereafter, tire cord wire rod). This request arises, petitioners aver, because the original definition of the excluded tire cord wire rod was drawn too narrowly and, thus, captures within the scope certain products petitioners no longer wish to have subject to the orders.

On August 21, 2003, the Department published a notice of initiation of a changed circumstances review of the antidumping duty and countervailing duty orders on carbon and certain alloy steel wire rod products. *See Initiation Notice*. In the *Initiation Notice*, we indicated interested parties could submit comments for consideration in the Department's preliminary results not later than 14 days after publication of the initiation of the review, and submit responses to those comments no later than 5 days following the submission of comments. On August 22, 2003, petitioners filed comments that stated the *Initiation Notice* contains an error in language with respect to the effective date of liquidation of entries because the *Initiation Notice* does not match the intent of petitioners.

The *Initiation Notice* stated:

> If, as a result of this review, we revoke the order, in part, we intend to instruct the Bureau of Customs and Border Protection (Customs) to liquidate without regard to antidumping duties, as applicable, and to refund any estimated antidumping duties collected for all unliquidated entries of the tire cord wire rod products meeting the specifications indicated above, as of July 24, 2003, the date this changed circumstances review request was filed by Petitioners, in accordance with 19 CFR 351.222(g)(4).

*Initiation Notice*, 68 Fed. Reg. 50,513, at 50,515. Petitioners claim this language could be read to mean that all unliquidated entries existing as of July 24, 2003 will be subject to the terms of the changed scope. The phrase "as of July 24, 2003" could also be read to mean that entries made prior to July 24, 2003 that were subject to the original scope would now be excluded by the new scope exclusion language. Petitioners state such a result is contrary to the plain language of petitioners' request and not the intent of the Department's *Initiation Notice*. Petitioners did not otherwise comment on the scope of the orders. No other interested party commented on the *Initiation Notice*.

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[1] Petitioners are Georgetown Steel Co. (Formerly, GS Industries), North Star Steel Texas, Gerdau Ameristeel (formerly, Co-Steel Raritan), and Keystone Consolidated Industries.

## Scope of the Orders

The merchandise covered by these orders is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (i.e., products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as "tire cord quality" or "tire bead quality" indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

## Scope of Changed Circumstances Review

The products subject to this changed circumstances antidumping duty and countervailing duty administrative review are certain grade 1080 tire cord steel wire rod and grade 1080 tire bead steel wire rod. Point (iii) of the existing definition of these products reads: "having no inclusions greater than 20 microns." Petitioners suggest amending this to read "having no *non-deformable* inclusions greater than 20 microns *and no deformable inclusions greater than 35 microns*." Letter from petitioners dated July 24, 2003, at 5 (emphases in original).

Petitioners would then insert an explanatory paragraph after the existing definition of tire cord wire rod reading:

> For purposes of the grade 1080 tire cord quality wire rod and the grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis - that is, the direction of rolling - of the rod) over thickness (measured on the same inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod.

Letter from petitioners dated August 6, 2003, at 6; original emphasis deleted.

## Preliminary Results of Review and Intent to Revoke in Part the Antidumping Duty and Countervailing Duty Orders

Pursuant to sections 751(d)(1) of the Tariff Act, the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Tariff Act (i.e., a changed circumstances review). Section 751(b)(1) of the Tariff Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 782(h)(1) of the Tariff Act gives the Department the authority to revoke an order if producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the continuation of the order. Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances administrative review under 19 CFR 351.216, and may revoke an order (in whole or in part), if it concludes that (i) producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or (ii) if other changed circumstances sufficient to warrant revocation exist. Since the Department did not receive any comments during the comment period opposing the exclusion of certain grade 1080 tire cord quality wire rod and grade 1080 tire bead quality wire rod, as defined in the "Scope of Changed Circumstances Review" above, from the antidumping duty and countervailing duty orders, we preliminarily conclude that producers accounting for substantially all of the production of the domestic like product to which these orders pertain lack interest in the relief provided by the order. Unless the Department receives opposition from domestic producers who's production totals more than 15 percent of the domestic like product, the Department will partially revoke the orders on carbon and certain alloy steel wire rod in its final results of review. Therefore, the Department is preliminarily revoking the orders on carbon and certain alloy steel wire rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine, in part, for all entries after the date of the petitioners' request with regard to the products which meet the specifications above.

The Department has considered interested parties' comments concerning the effective date of liquidation of entries. As a result, we intend to instruct Customs to liquidate all entries of subject products entered for consumption on or after July 24, 2003, the effective date of the revocation, in part, of these orders, in accordance with 19 CFR 351.222(g)(4).

Interested parties wishing to comment on these preliminary results may submit briefs to the Department no later than 16 days after the publication of this notice in the **Federal Register**. Parties will have five days subsequent to this due date to submit rebuttal comments, limited to the issues raised in those comments. Parties who submit comments or rebuttal comments in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument (no longer than five pages, including footnotes). Any requests for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**.

All written comments must be submitted in accordance with 19 CFR 351.303, with the exception that only three (3) copies for each case need be served on the Department. Any comments must also be served on all interested parties on the Department's service list. The Department will issue its final results of review as soon as practicable following the above comment period, but not later than 270 days after the date on which the changed circumstances review is initiated, in accordance with 19 CFR 351.216(e), and will publish these results in the **Federal Register**. While the changed circumstances review is underway, the current requirement for a cash deposit of estimated antidumping or countervailing duties on all subject merchandise, including the merchandise that is the subject of this changed circumstances review, will continue unless and until these orders are revoked, in part, pursuant to the final results of this changed circumstances review or an administrative review.

This notice is published in accordance with sections 751(b)(1) and 777(i)(1) of the Tariff Act and 19 CFR 351.216 and 351.222 of the Department's regulations.

Dated: September 29, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–25281 Filed 10–3–03; 8:45 am]

BILLING CODE 3510–DS–S

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–122–847]

## Notice of Amended Final Determination of Sales at Less Than Fair Value: Hard Red Spring Wheat From Canada

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Amended Final Determination of Sales at Less Than Fair Value.

**EFFECTIVE DATE:** October 6, 2003.

**FOR FURTHER INFORMATION CONTACT:** Julie Santoboni or Cole Kyle, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–4194 or (202) 482–1503, respectively.

### Scope of the Investigation

For purposes of this investigation, the products covered are all varieties of hard red spring ("HRS") wheat from Canada. This includes, but is not limited to, varieties commonly referred to as Canada Western Red Spring, Canada Western Extra Strong, and Canada Prairie Spring Red. The merchandise subject to this investigation is currently classifiable under the following Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 1001.90.10.00, 1001.90.20.05, 1001.90.20.11, 1001.90.20.12, 1001.90.20.13, 1001.90.20.14, 1001.90.20.16, 1001.90.20.19, 1001.90.20.21, 1001.90.20.22, 1001.90.20.23, 1001.90.20.24, 1001.90.20.26, 1001.90.20.29, 1001.90.20.35, and 1001.90.20.96. This investigation does not cover imports of wheat that enter under the subheadings 1001.90.10.00 and 1001.90.20.96 that are not classifiable as hard red spring wheat. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

### Amended Final Determination

On August 28, 2003, the Department of Commerce ("the Department") determined that HRS wheat from Canada is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735(a) of the Tariff Act of 1930, as amended ("the Act"). *See Notice of Final Determinations of Sales at Less Than Fair Value: Certain Durum and Hard Red Spring Wheat from Canada*, 68 FR 52741 (September 5, 2003). On September 8, 2003, we received ministerial error allegations, timely filed pursuant to 19 CFR. 351.224(c)(2), from the Canadian Wheat Board ("the CWB") regarding the Department's final margin calculations. The CWB requests that we correct the errors and publish a notice of amended final determination in the **Federal Register**, pursuant to 19 CFR. 351.224(e). The CWB's submission alleges the following with regard to the Department's cost of production ("COP") calculations.

*Farmer 8*—The CWB alleges that the Department inadvertently double-counted seed cleaning costs.

*Farmer 17*—The CWB alleges that the Department inadvertently double-counted certain labor costs.

*Farmer 19*—The CWB alleges that the Department inadvertently used an incorrect production quantity for the calculation of the crop insurance offset.

*Farmer 20*—The CWB alleges that the Department inadvertently allocated water rights costs to owned and rented land, rather than just owned land. The CWB also alleges that the Department inadvertently mis-allocated fixed and variable overhead costs.

*Farmer 23*—The CWB alleges that the Department inadvertently understated actual labor costs allocated to livestock, thereby overstating the general and administrative ("G&A") and interest expenses allocated to HRS. The CWB also alleges that the Department inadvertently excluded variable overhead costs related to non-farming activities, thereby overstating the G&A and interest expenses allocated to HRS.

The North Dakota Wheat Commission ("the petitioner") submitted comments on the CWB's ministerial error allegations on September 10, 2003. The petitioner did not comment on the CWB's ministerial error allegations for Farmer 8 and the allocation of labor costs to livestock for Farmer 23. In response to the CWB's other allegations, the petitioner argues that they were not ministerial.

In accordance with section 735(e) of the Act, we have determined that certain ministerial errors were made in the calculation of the CWB's COP and constructed value ("CV") in our final margin calculations. For a detailed discussion of the above-cited ministerial error allegations and the Department's analysis, *see* Memorandum to Jeffrey A. May, "Allegation of Ministerial Errors; Final Determination in the Antidumping Duty Investigation of Certain Hard Red Spring Wheat from Canada" dated September 26, 2003, which is on file in room B–099 of the main Commerce building.

Therefore, in accordance with 19 CFR 351.224(e), we are amending the final determination of the antidumping duty investigation of HRS Wheat from Canada to correct the ministerial errors found in the calculation of the COP and CV. The final weighted-average dumping margins are:

| Exporter/manufacturer | Original weighted-average margin percentage | Amended weighted-average margin percentage |
|---|---|---|
| Canadian Wheat Board | 8.87 | 8.86 |
| All Others | 8.87 | 8.86 |

### Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B)(ii) of the Act, we are directing the U.S. Bureau of Customs and Border Protection ("BCBP") to continue to suspend liquidation of all imports of subject merchandise from Canada that are entered, or withdrawn from warehouse, for consumption on or after May 8, 2003, the date of publication of the *Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Durum and Hard Red Spring Wheat from Canada*, 68 FR 24707 (May 8, 2003) in the **Federal Register**. The BCBP shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart above. These suspension-of-liquidation instructions will remain in effect until further notice.

### ITC Notification

In accordance with section 735(d) of the Tariff Act, we have notified the International Trade Commission of our amended final determination.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: September 29, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–25279 Filed 10–3–03; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A-201-832 and A-489-812]

## Notice of Initiation of Antidumping Investigations: Light-Walled Rectangular Pipe and Tube from Mexico and Turkey

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Initiation of Antidumping Investigations.

**EFFECTIVE DATE:** October 6, 2003.

**FOR FURTHER INFORMATION CONTACT:** Maisha Cryor (Mexico) at 202–482–5831; Mark Manning (Turkey) at 202–482–5253 or Ronald Trentham at 202–482–6320, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

**SUPPLEMENTARY INFORMATION:**

### Initiation of Investigations

### The Petition

On September 9, 2003, the Department of Commerce (the Department) received a petition filed in proper form by California Steel and Tube; Hannibal Industries, Inc.; Leavitt Tube Company, LLC; Maruichi American Corporation; Northwest Pipe Company; Searing Industries, Inc.; Vest Inc.; and Western Tube and Conduit Corporation (collectively, the petitioners). *See* Letter from Schagrin Associates to Secretary Evans of the Department and Secretary Abbott of the U.S. International Trade Commission (ITC), "Petition for the Imposition of Antidumping Duties: Light-Walled Rectangular Pipe and Tube from Mexico and Turkey" (September 9, 2003) (Petition). The petitioners are domestic producers of light-walled rectangular (LWR) pipe and tube products. In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of LWR pipe and tube from Mexico and Turkey are being, or are likely to be, sold in the United States at less-than-fair value (LTFV) within the meaning of section 731 of the Act, and that such imports are materially injuring, or are threatening to materially injure an industry in the United States.

The Department issued a questionnaire to the petitioners on September 12, 2003, to clarify certain aspects of the Petition. The petitioners responded with the requested supplemental information on September 22, 2003. On September 23, 2003, two Mexican producers, and two U.S. importers of Mexican LWR pipe and tube (collectively, the Mexican industry), filed a submission in which they argued that the petitioners have not adequately established that they represent over 50 percent of the U.S. domestic industry. The Department issued a second questionnaire to the petitioners on September 24, 2003. The petitioners, on September 26, 2003, responded to the Department's second questionnaire and, in addition, provided rebuttal comments concerning the Mexican industry's allegations. On September 26 and 29, 2003, the Mexican industry responded to the petitioners' September 22, 2003 rebuttal comments and reiterated the arguments made in its September 23, 2003 submission, respectively.

After reviewing the contents of the Petition and the two amendments provided by the petitioners, the Department finds that the petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act, and they have demonstrated sufficient industry support with respect to the investigations they are presently seeking. *See*, "Determination of Industry Support for the Petitions," below.

## Period of Investigation

The period of investigation (POI) for these cases will be July 1, 2002, through June 30, 2003. See 19 CFR 351.204(b)(1).

## Scope of Investigations

The merchandise covered by these investigations are LWR pipe and tube from Mexico and Turkey, which are welded carbon-quality pipe and tube of rectangular (including square) cross-section, having a wall thickness of less than 0.156 inch. These LWR pipe and tube have rectangular cross sections ranging from 0.375 x 0.625 inches to 2 x 6 inches, or square cross sections ranging from 0.375 to 4 inches, regardless of specification. LWR pipe and tube are currently classifiable under item number 7306.60.5000 of the Harmonized Tariff System of the United States (HTSUS). The HTSUS item number is provided for convenience and customs purposes only. The written product description of the scope is dispositive.

The term "carbon-quality" applies to products in which (i) iron predominates, by weight, over each of the other contained elements, (ii) the carbon content is 2 percent or less, by weight, and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of cooper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickle, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium (also called columbium), or 0.15 percent of vanadium, or 0.15 percent of zirconium.

As discussed in the preamble to the Department's regulations, we are setting aside a period for parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). The Department encourages all interested parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. This period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

## Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (1) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (2) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The ITC, which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (Ct. Int'l Trade 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 642–44 (Ct. Int'l Trade 1988) ("the ITC does not look behind ITA's determination, but accepts ITA's determination as to which merchandise is in the class of merchandise sold at LTFV").

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like product defined in the Petition does not differ from the scope of the investigations defined in the *Scope of Investigations* section above. The Department has no basis on the record to find this definition of the domestic like product to be inaccurate. The Department, therefore, has adopted this domestic like product definition. *See Import Administration Antidumping Investigation Checklist* (September 29, 2003) at 2 (*Initiation Checklist*) (the public version on file in the Central Records Unit of the Department, Room B-099, Main Commerce Building).

The Department has further determined that, pursuant to section 732(c)(4)(A) of the Act, the Petition contains adequate evidence of industry support, and, therefore, polling is unnecessary. Information contained in the Petition demonstrates that the domestic producers or workers who support the Petition account for over 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who support the Petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. *See Initiation Checklist*, at 3–4 and Attachment I. As mentioned above, the Department received opposition to the Petition from the Mexican industry. We note that the Mexican companies opposed to the petition are not domestic producers of LWR pipe and tube. Although we reviewed and analyzed the arguments made by the Mexican industry, we continue to find that the domestic producers or workers who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the Petition. *See Initiation Checklist*, at 3 and Attachment I. Thus, the requirements of section 732(c)(4)(A)(ii) of the Act are also met.

Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *Id.* at 3–4.

**Export Price and Normal Value**

The following are descriptions of the allegations of sales at LTFV upon which the Department based its decision to initiate these investigations. The sources of data for the deductions and adjustments relating to U.S. and foreign market prices and cost of production (COP) and constructed value (CV) have been accorded treatment as business proprietary information. The petitioners' sources and methodology are discussed in greater detail in the business proprietary version of the Petition and in the Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine this information and revise the margin calculations, if appropriate.

*Mexico*

Export Price

The petitioners calculated export price (EP) through two different methods, using price quotes and the average unit value (AUV) for LWR pipe and tube imported from Mexico based upon IM-145 import data for the anticipated POI provided by the Bureau of Customs and Border Patrol (BCBP). First, the petitioners identified two sizes of LWR pipe and tube commonly sold in the U.S. market. The petitioners submitted four price quotes, two for each size of LWR pipe and tube, obtained from U.S. distributors of Mexican products, identical in size to the home market products, acquired from Mexican producers. The petitioners calculated net U.S. prices by deducting foreign inland freight, U.S. import duties, and U.S. inland freight. The petitioners stated that packing charges are included in both the home market and the United States. However, because home market packing is not significantly different from packing for export to the U.S. market, the petitioners did not make any adjustments for packing when calculating the margins. *See Initiation Checklist* at 6–7.

Second, the petitioners calculated EP using the AUV for LWR pipe and tube imported from Mexico. The petitioners did not deduct international freight because the AUV provides the free alongside ship (FAS) value at the foreign port. The petitioners deducted foreign inland freight from the AUV to calculate EP. *Id.*

Normal Value

To calculate normal value (NV), the petitioners provided two price quotes, one for each size of LWR pipe and tube, obtained through foreign market research regarding products manufactured by a major Mexican producer named in the Petition and offered for sale to unaffiliated Mexican purchasers. The petitioners calculated net Mexican prices by deducting inland freight because the price quote was for delivery to a specific location in Mexico. *See Initiation Checklist* at 7–8; *see also* Mexico Export Price section *infra* for discussion of packing charges.

Based on comparisons of EP (method derived from price quotes) to NV, calculated in accordance with section 773(a) of the Act, the estimated dumping margins for LWR pipe and tube from Mexico range from 48.42 percent to 83.86 percent.

*Turkey*

Export Price

The petitioners calculated EP for Turkey using two different methods. First, as with Mexico, the petitioners identified two sizes of LWR pipe and tube commonly sold in the U.S. market. The petitioners submitted four price quotes, two for each size of LWR pipe and tube, obtained from U.S. distributors of Turkish products, identical in size to the home market products, acquired from producers in Turkey. The petitioners calculated net U.S. prices by deducting international freight and U.S. import duties. The petitioners stated that packing charges are included in both the home market and the United States. However, because home market packing is not significantly different from packing for export to the U.S. market, the petitioners did not make any adjustments for packing when calculating the margins. *See Initiation Checklist* at 8–9.

The petitioners also calculated EP using the AUV for LWR pipe and tube imported from Turkey, based upon IM-145 import data for the anticipated POI provided by BCBP. The petitioners did not deduct international freight because the AUV provides the FAS value at the foreign port. *Id.*

Normal Value

To calculate NV, the petitioners obtained through foreign market research two price quotes, one for each size of LWR pipe and tube, from resellers in Turkey regarding products manufactured by a major Turkish producer named in the Petition. The petitioners calculated net Turkish prices by deducting the average discount offered by the Turkish resellers. *See Initiation Checklist* at 9–11; *see also* Export Price section *infra* for discussion of packing charges.

Although the petitioners provided margins based on a price-to-price and price-to-AUV comparisons, the petitioners also provided information demonstrating reasonable grounds to believe or suspect that sales of LWR pipe and tube in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. *See* Initiation of Cost Investigation section *infra* for further discussion.

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing (COM); selling, general, and administrative expenses (SG&A); financial expenses; and packing expenses. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce LWR pipe and tube in the United States and in Turkey using publicly available data. We corrected an error in converting CV from dollars per metric ton (MT) to dollars per hundred feet for one of the products. To calculate SG&A and financial expenses, the petitioners relied upon amounts reported in the 2002 financial statements of Borusan Holding A.S., which is the parent company of Mannesman Boru, a principal producer of the subject merchandise in Turkey. Packing costs were omitted from the COP calculations. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners also calculated a NV for sales in Turkey based on CV. The petitioners calculated CV using the same COM, SG&A, and financial expense figures used to compute the Turkish home market costs. Consistent with 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon amount reported in the Turkish LWR pipe & tube producer's 2002 financial statements which was zero because the producer experienced a loss.

Based on comparisons of EP (method derived from price quotes) to CV, calculated in accordance with section 773(a) of the Act, the estimated dumping margins for LWR pipe and tube from Turkey range from 27.04 percent to 34.89 percent. We note that these margins are conservative since the petitioners did not include packing in the CV calculation.

**Initiation of Cost Investigation**

As noted above, pursuant to section 773(b) of the Act, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales in the home market of Turkey were made at prices below the fully absorbed COP and, accordingly, requested that the Department conduct a country-wide sales-below-COP investigation in connection with the requested antidumping investigation for this country. The Statement of Administrative Action (SAA), submitted to the U.S. Congress in connection with the interpretation and application of the URAA, states that an allegation of sales below COP need not be specific to individual exporters or producers. SAA, H.R. Doc. No. 103–316 at 833 (1994). The SAA states that "Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation." *Id.*

Further, the SAA provides that "new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' ... exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices." *Id.* Based upon the comparison of the adjusted prices from the petition for the representative foreign like products to their COPs, we find the existence of "reasonable grounds to believe or suspect" that sales of these foreign like products in Turkey were made below their respective COPs within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigation.

**Fair Value Comparisons**

Based on the data provided by the petitioners, the Department finds that there is reason to believe that imports of LWR pipe and tube from Mexico and Turkey are being, or are likely to be, sold at LTFV.

**Allegations and Evidence of Material Injury and Causation**

With respect to Mexico and Turkey, the petitioners allege the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV.

The petitioners contend that the industry's injured condition is evident in examining market share, production, shipments, capacity utilization, lost sales, profit and employment. *See* Petition at 21–25 and Exhibits 14–29. The petitioners assert that their share of the market has declined from 2000 to 2002. *See* Petition at 21–22 and Exhibits 18–19. Finally, the petitioners note that one LWR pipe and tube manufacturer went out of business altogether in 2002, thereby taking significant domestic LWR pipe and tube production out of the market. *See* Petition at 23. For a full discussion of the allegations and evidence of material injury, *see Initiation Checklist* at Attachment II.

**Initiation of Antidumping Investigations**

Based on our examination of the Petition covering LWR pipe and tube from Mexico and Turkey, the Department finds it meets the requirements of section 732 of the Act. Therefore, we are initiating antidumping investigations to determine whether imports of LWR pipe and tube from Mexico and Turkey are being, or are likely to be, sold in the United States at LTFV. Unless this deadline is extended pursuant to section 733(b)(1)(A) of the Act, we will make our preliminary determinations no later than 140 days after the date of this initiation.

**Distribution of Copies of the Petition**

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the Petition has been provided to representatives of the governments of Mexico and Turkey. We will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided in section 19 CFR 351.203(c)(2).

**ITC Notification**

The ITC will preliminarily determine no later than October 24, 2003, whether there is reasonable indication that imports of LWR pipe and tube from Mexico and Turkey are causing, or threatening, material injury to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: September 29, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–25282 Filed 10–3–03; 8:45 am]

BILLING CODE 3510–DS–S

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–351–806]**

## Silicon Metal From Brazil: Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part.

**SUMMARY:** On July 28, 2003, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on silicon metal from Brazil. The period of review (POR) is July 1, 2001, through June 30, 2002. This review covers imports of silicon metal from one producer/exporter, Companhia Brasileira Carbureto de Calcio (CBCC). We provided interested parties an opportunity to comment on the preliminary results of this review, but received no comments.

The final results do not differ from the preliminary results of this review, where we found that sales of the subject merchandise have not been made below normal value (NV), and where we revoked the order, in part, with respect to CBCC, because we found that CBCC has met all of the requirements for revocation, as set forth in 19 C.F.R. 351.222(b). We will instruct the United States Bureau of Customs and Border Protection (BCBP) not to assess antidumping duties on the subject merchandise exported by CBCC.

**EFFECTIVE DATE:** October 6, 2003./P≤

**FOR FURTHER INFORMATION CONTACT:** Maisha Cryor at (202) 482–5831 or Ronald Trentham at (202) 482–6320, AD/CVD Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

**SUPPLEMENTARY INFORMATION:**

### Background

After the publication of the preliminary results of this administrative review,[1] the Department invited interested parties to comment on its preliminary findings. No comments were received.

### Scope of the Order

The merchandise covered by this administrative review is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this administrative review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains more aluminum than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States (HTSUS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTSUS) is not subject to the order. Although the HTSUS item numbers are provided for convenience and for customs purposes, the written description remains dispositive.

### Period of Review

The POR is July 1, 2001, through June 30, 2002.

### Fair Value Comparisons

To determine whether sales of silicon metal from Brazil to the United States were made at less than NV, we compared the constructed export price to NV. Our calculations followed the methodologies described in the *Preliminary Results.*

### Revocation

The Department "may revoke, in whole or in part" an antidumping duty order upon completion of a review under section 751 of the Tariff Act of 1930, as amended (the Act). While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation as described in 19 C.F.R. 351.222. This regulation requires, *inter alia*, that a company requesting revocation must submit the following: (1) a certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in commercial quantities in each of the three years forming the basis of the revocation request; and (3) an agreement to reinstatement in the order or suspended investigation, as long as any exporter or producer is subject to the order (or suspended investigation), if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than NV. *See* 19 C.F.R. 351.222(e)(1). Upon receipt of such a request, the Department will consider the following in determining whether to revoke the order in part: (1) whether the producer or exporter requesting revocation has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping; and (3) whether the producer or exporter requesting revocation in part has agreed in writing to the immediate reinstatement of the order, as long as any exporter or producer is subject to the order, if the Department concludes that the exporter or producer, subsequent to revocation, sold the subject merchandise at less than NV. *See* 19 C.F.R. 351.222(b)(2); *see also Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part,* 67 FR 77225, 77226 (December 17, 2002).

*I. CBCC: Determination to Revoke Order in Part*

In the preliminary results, we determined that CBCC has met the requirements for revocation. *See Preliminary Results,* 68 FR at 44286–87 (July 28, 2003). We received no comments from either the petitioners or CBCC on this revocation determination. Therefore, we continue to find that CBCC has met the requirements for revocation. Specifically, we find that (1) CBCC has demonstrated three consecutive years of sales at not less than NV; (2) CBCC's aggregate sales to the United States were made in commercial quantities during each of those three years (*see Preliminary Results,* 68 FR at 44287 (July 28, 2003)), and (3) the continued application of the antidumping order is not necessary to offset dumping. Therefore, for the final results, we find that CBCC qualifies for revocation of the order on silicon metal from Brazil, under 19 C.F.R. 351.222(b)(2).

### Final Results of Review

As a result of this review, we determine that the following percentage weighted-average margin exists for the period July 1, 2001, through June 30, 2002:

| Manufacturer/exporter | Weighted-average Margin Percentage |
|---|---|
| CBCC | 0.00 |

### Effective Date of Revocation

This revocation applies to all entries of subject merchandise that are produced and exported by CBCC, entered, or withdrawn from warehouse, for consumption on or after July 1, 2002. The Department will order the suspension of liquidation ended for all such entries and will instruct the BCBP to release any cash deposits or bonds. The Department will further instruct the BCBP to refund with interest any cash deposits on entries made on or after July 1, 2002.

### Assessment Rates

The Department will determine, and the BCBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 C.F.R. 351.212(b)(1), we have calculated an importer-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to the BCBP within 15 days of publication of these final results of review. We will direct the BCBP to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importer's entries during the review period.

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[1] *See Silicon Metal From Brazil: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review and Notice of Intent To Revoke Order in Part,* 68 FR 44285 (July 28, 2003) (*Preliminary Results*).

### Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of silicon metal from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) cash deposits for CBCC will no longer be required; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 91.06 percent, the "all others" rate made effective by the LTFV investigation. The required cash deposits shall remain in effect until publication of the final results of the next administrative review.

### Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 C.F.R. 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

### Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 C.F.R. 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: September 26, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–25280 Filed 10–3–03; 8:45 am]

**BILLING CODE 3510–DS–S**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Notice of Indirect Cost Rates for the Damage Assessment and Restoration Program for Fiscal Year 2002

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The National Oceanic Administration's (NOAA) Damage Assessment and Restoration Program (DARP) is announcing new indirect cost rates on the recovery of indirect costs for its component organizations involved in natural resource damage assessment and restoration activities for fiscal year (FY) 2002. The indirect cost rates for this fiscal year and dates of implementation are provided in this notice. More information on these rates and the DARP policy can be found at the DARP Web site at: *www.darp.noaa.gov.*

**FOR FURTHER INFORMATION:** For further information, contact Brian Julius at 301–713–3038, ext. 199, by fax at 301–713–4387, or e-mail at *Brian.Julius@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The mission of the DARP is to restore natural resource injuries caused by releases of hazardous substances or oil under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*), the Oil Pollution Act of 1990 (OPA) (33 U.S.C. 2701 *et seq.*), and support restoration of physical injuries to National Marine Sanctuary resources under the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*). The DARP consists of three component organizations: the Damage Assessment Center (DAC) within the National Ocean Service; the Restoration Center within the National Marine Fisheries Service; and the Office of the General Counsel for Natural Resources (GCNR). The DARP conducts Natural Resource Damage Assessments (NRDAs) as a basis for recovering damages from responsible parties, and uses the funds recovered to restore injured natural resources.

Consistent with Federal accounting requirements, the DARP is required to account for and report the full costs of its programs and activities. Further, the DARP is authorized by law to recover reasonable costs of damage assessment and restoration activities under CERCLA, OPA, and the NMSA.Within the constraints of these legal provisions and their regulatory applications, the DARP has the discretion to develop indirect cost rates for its component organizations and formulate policies on the recovery of indirect cost rates subject to its requirements.

### The DARP's Indirect Cost Effort

In December 1998, the DARP hired the public accounting firm Rubino & McGeehin, Chartered (R&M), to: Evaluate the cost accounting system and allocation practices; recommend the appropriate indirect cost allocation methodology; and determine the indirect cost rates for the three organizations that comprise the DARP. A **Federal Register** notice on R&M's effort, their assessment of the DARP's cost accounting system and practice, and their determination regarding the most appropriate indirect cost methodology and rates for FYs 1993 through 1999 was published on December 7, 2000 (65 FR 76611). The notice and report by R&M can also be found on the DARP Web site at: *www.darp.noaa.gov.*

R&M continued its assessment of DARP's indirect cost rate system and structure for FYs 2000 and 2001. A second federal notice specifying the DARP indirect rates for FYs 2000 and 2001 was published on December 2, 2002 (67 FR 71537).

In October 2002, DARP hired the accounting firm of Cotton and Company LLP (Cotton) to review and certify DARP costs incurred on cases for purposes of cost recovery and to develop indirect rates for FY 2002 and subsequent years. As in the prior years, Cotton concluded that the cost accounting system and allocation practices of the DARP component organizations are consistent with Federal accounting requirements. Consistent with R&M's previous analyses, Cotton also determined that the most appropriate indirect allocation method continues to be the Direct Labor Cost Base for all three DARP component organizations. The Direct Labor Cost Base is computed by allocating total indirect cost over the sum of direct labor dollars plus the application of NOAA's leave surcharge and benefits rates to direct labor. Direct labor costs for contractors from the Oak Ridge Institute for Science and Education (ORISE) also were included in the direct labor base because Cotton determined that these costs have the same relationship to the indirect cost pool as NOAA direct labor costs. ORISE provides on-site support to DARP in the areas of injury assessment, natural resource economics, restoration planning and implementation, and policy analysis. Cotton's reports on the FY 2002 DARP indirect rates can also be found on the DARP Web site at: *www.darp.noaa.gov*.

### The DARP's Indirect Cost Rates and Policies

The DARP will apply the indirect cost rates for FY 2002 as recommended by Cotton for each of the DARP component organizations as provided in the following table:

| DARP component organization | FY 2002 indirect rate (in percent) |
|---|---|
| Damage Assessment Center (DAC) | 254.17 |
| Restoration Center (RC) | 218.36 |
| General Counsel for Natural Resources (GCNR) | 251.75 |

These rates are based on the Direct Labor Cost Base allocation methodology.

The FY 2002 rates will be applied to all damage assessment and restoration case costs incurred between October 1, 2002, and September 30, 2003. DARP will use the FY 2002 indirect cost rates for future fiscal years until subsequent year-specific rates can be developed.

For cases that have settled and for cost claims paid prior to the effective date of the fiscal year in question, the DARP will not re-open any resolved matters for the purpose of applying the revised rates in this policy for these fiscal years. For cases not settled and cost claims not paid prior to the effective date of the fiscal year in question, costs will be recalculated using the revised rates in this policy for these fiscal years. Where a responsible party has agreed to pay costs using previous year's indirect rates, but has not yet made the payment because the settlement documents are not finalized, the costs will not be recalculated.

The DARP indirect cost rate policies and procedures published in the **Federal Register** on December 7, 2000 (65 FR 76611), and on December 2, 2002 (67 FR 71537), remain in effect except as updated by this notice.

Dated: September 29, 2003.

**Jamison S. Hawkins,**

*Deputy Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service.*

[FR Doc. 03–25237 Filed 10–3–03; 8:45 am]

BILLING CODE 3510–JE–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 091603C]

## Marine Mammals; File Nos. 774–1714–00 and 782–1719–00

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Receipt of applications.

**SUMMARY:** Notice is hereby given that the following Agencies have applied in due form for a permit to take various pinniped, cetacean and sea turtles during stock assessment activities for purposes of scientific research:

774–1714 - Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Dr., La Jolla, CA 92037 (Principal Investigator: Stephen B. Reilly, Ph. D.); and

782–1719 - National Marine Mammal Laboratory, National Marine Fisheries Service, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115 (Principal Investigator: Sue Moore, Ph.D.).

**DATES:** Written or telefaxed comments must be received on or before November 5, 2003.

**ADDRESSES:** The applications and related documents are available for review upon written request or by appointment in the following office(s) (SEE SUPPLEMENTARY INFORMATION)

**FOR FURTHER INFORMATION CONTACT:** Ruth Johnson, Carrie Hubard or Patrick Opay, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** The subject permits are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Southwest Fisheries Science Center (File No. 774–1714) requests a permit to take marine mammals and sea turtles during stock assessment research activities. The application consists of three projects: Project I (Pinniped Studies) is to conduct population assessments for northern elephant seals (*Mirounga angustirostris*), California sea lions (*Zalophus californianus*), Steller sea lions (*Eumetopias jubatus*) and harbor seals (*Phoca vitulina richardsi*) via aerial and ground/vessel surveys and photogrammetry to determine abundance, distribution patterns, length frequencies, breeding densities. Scat and spew will be collected from California sea lions to determine the diet of this species. This research is part of an ongoing program to assess the status of pinniped species and identify fishery-marine mammal conflicts. Each of the pinniped species requested interacts with fisheries off California. Project II (Cetacean Studies) is to determine the abundance, distribution, movement patterns, and stock structure of cetaceans in U.S. territorial and international waters. These studies are conducted through vessel surveys, aerial surveys, helicopter and small plane photogrammetry, photo-identification (from vessels and small boats), biological sample collection, and tagging and tracking of individual animals. Cetacean abundance data will be used to set limits (PBRs) of allowable human-caused mortality under the MMPA and to monitor trends in abundance through time. Genetic and other analyses of biological samples collected will be used to determine stock structure for the appropriate management of these species. Tagging and tracking activities will help address outstanding needs for data on movements and dive time correction factors for abundance estimation procedures. Project II activities also include the salvage and import/export of cetacean parts, specimens and biological samples. Project III (Sea Turtle Studies) is to determine the abundance, distribution, movement patterns, stock structure and diet of marine turtles in U.S. territorial and international waters. Project III studies will occur opportunistically to research activities conducted under Project II. Sea Turtle data opportunistically collected during cetacean surveys will be useful in determining movements and distribution of turtle species in the ETP, especially for olive ridley turtles. The research activities proposed in this application will provide information on movements and distribution from tag re-sights, genetic analyses of tissue biopsy and blood samples, and continued analyses of sea turtle distribution from sightings data. NMFS recovery plans for these species stress the need for a clarification of stock identity issues and determination of habitat needs and primary foraging areas. Project III also entails the salvage, import and export of marine turtle parts, specimens and biological samples.

In addition to import/export/re-export authorization for biological samples collected during the research activities, the Applicant requests authorization to import/export/re-export parts, salvaged specimens and biological samples or salvaged parts and specimens collected by other researchers under their own authorization.

782–1719 – National Marine Mammal Laboratory submitted a complete application on May 21, 2003 to take various cetacean species during stock assessment research activities. The application was published in the **Federal Register** on June 4, 2003 (68 FR 33477). The applicant has submitted a supplemental request to that application to take endangered marine mammals in the Antarctic.

Written comments or requests for a public hearing on these applications should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Documents for both applications may be reviewed in the following locations:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Assistant Regional Administrator for Protected Resources, Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Assistant Regional Administrator for Protected Resources, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7235; fax (907)586–7012;

Assistant Regional Administrator for Protected Resources, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4020; fax (562)980–4027; and

Assistant Administrator, Pacific Islands Regional Office, NMFS, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941.

Dated: September 30, 2003.

**Stephen L. Leathery,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 03–25271 Filed 10–3–03; 8:45 am]

BILLING CODE 3510–22–S

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## DEPARTMENT OF DEFENSE

## Department of the Air Force

## HQ USAF Scientific Advisory Board

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the AFC2ISRC Advisory Group. The purpose of the meeting is to brief the Commander of the AFC2ISR Center. This meeting will be closed to the public.

**DATE:** October 15, 2003.

**ADDRESSES:** AFC2ISRC, Langley AFB, VA.

**FOR FURTHER INFORMATION CONTACT:** Maj. Chris Berg, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

**Pamela D. Fitzgerald,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 03–25213 Filed 10–3–03; 8:45 am]

BILLING CODE 5001–05–P

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## DEPARTMENT OF DEFENSE

## Department of the Army; Corps of Engineers

## Extension of Scoping Period for the Draft Environmental Impact Statement/Environmental Impact Report for a Proposed Marine Terminal Development at Pier S in the Port of Long Beach, Los Angeles County, CA

**AGENCY:** U.S. Army Corps of Engineers, Los Angeles District, DoD.

**ACTION:** Notice of intent—extension of scoping period.

**SUMMARY:** The U.S. Army Corps of Engineers (Corps) is considering the development of Pier S Marine Terminal Project (Proposed Action). The development of Pier S would result in a 160-acre marine container terminal, and would include four elements: dredging, wharf construction, and container cranes; container yard; terminal buildings and truck gates; and an intermodal rail yard.

The primary Federal concern is the dredging and discharging of materials within waters of the U.S. and potential impacts on the human environment. Under Section 404 of the Clean Water Act, the Corps is authorized to approve discharges of dredged or fill material into waters of the U.S. Under section 10 of the Rivers and Harbors Act, the Corps may authorize activities that could affect navigable waters. The Corps is preparing an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) prior to deciding whether or not to authorize the Proposed Action. The Corps may ultimately make a determination to permit or deny the Proposed Action, or permit or deny alternatives to the Proposed Action.

Pursuant to the California Environmental Quality Act (CEQA), the Port will serve as Lead Agency for the preparation of an Environmental Impact Report (EIR) for its consideration of development approvals within its jurisdiction. The Corps and the Port have agreed to jointly prepare a Draft EIS/EIR in order to optimize efficiency and avoid duplication. The Draft EIS/EIR is intended to be sufficient in scope to address federal, state, and local requirements and environmental issues concerning the proposed activities and permit approvals.

*Scoping Process and Availability of the Draft:* The Corps previously published its NOI in the **Federal Register** on September 12th, 2003. For further information, please consult the original NOI publication.

The Corps and the Port will jointly conduct a scoping meeting for the proposed project. English and Spanish translation services will be provided at the meeting. The public scoping meeting will be held to receive public comment and assess public concerns regarding the appropriate scope of the Draft EIS/EIR. Participation in the public meeting by federal, state and local agencies and other interested organizations and persons are encouraged. Parties interested in being added to the Corps' electronic mail

notification list for the Pier S marine terminal project or other projects in the Port of Long Beach can register at: *http://www.spl.usace.army.mil/regulatory/register.html*. This list will be used in the future to notify the public about scheduled hearings and availability of future public notices.

The Corps of Engineers will also be consulting with the U.S. Fish and Wildlife Service under the Endangered Species Act and Fish and Wildlife Coordination Act, and with the National Marine Fisheries Service under the Magnuson-Stevens Act. Additionally, the EIS/EIR will assess the consistency of the proposed Action with the Coastal Zone Management Act and potential water quality impacts pursuant to Section 401 of the Clean Water Act.

The public scoping meeting for the Draft EIS/EIR will be held on September 25th, 2003, at 6 p.m, at the Port of Long Beach administration building. The Corps and the Port will separately transmit local notices of the meeting prior to the event. Written comments will now be received until October 17th, 2003. The Draft EIS/EIR is expected to be published and circulated sometime between Winter 2003 and Spring 2004, and a new public notice and public hearing will be held after its publication.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and Draft EIS/EIR can be answered by Mr. Joshua Burnam, Corps Project Manager, at 213–452–3294. Comments regarding the scope of the Draft EIS/EIR shall be addressed to: U.S. Army Corps of Engineers, Los Angeles District, Regulatory Branch, ATTN: File Number 1999–16479–JLB, P.O. Box 532711, Los Angeles, California 90053–2325. Copies should also be sent to Stacey Crouch, Port of Long Beach, P.O. Box 570, Long Beach, CA 90801–0570.

**Richard G. Thompson,**

*Colonel, U.S. Army, District Engineer.*

[FR Doc. 03–25203 Filed 10–3–03; 8:45 am]

**BILLING CODE 3710–92–P**

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## DEPARTMENT OF EDUCATION

**[CFDA No. 84.170A]**

### Office of Postsecondary Education; Notice Extending Application Transmittal Deadline Date for Jacob K. Javits Fellowship Program

**SUMMARY:** On August 1, 2003, a notice was published in the **Federal Register** (68 FR 45229) inviting applications for new awards for fiscal year (FY) 2004 for the Jacob K. Javits Fellowship Program. The notice listed a deadline date of October 3, 2003, for the transmittal of applications.

The Secretary extends the deadline date for the transmittal of applications for this competition from applicants in certain nationally declared disaster areas. The Secretary takes this action to allow more time for the preparation and submission of applications by potential applicants in certain States that have been affected by Hurricane Isabel. The extension of this deadline date is intended to help the potential applicants compete fairly with other applicants under this competition.

*Eligibility:* The extended deadline date in this notice applies to you if you are a potential applicant from an area on the following chart. The President has declared each of these locations a disaster area as a result of recent severe weather conditions. These areas are as follows:

*State:* Delaware, District of Columbia, Maryland, North Carolina, Virginia, West Virginia.

**DATES:** The new deadline date for the transmittal of applications is October 14, 2003.

**ADDRESSES:** The address and telephone number for obtaining applications for, or information about this program are in the application notice for the program.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the application notice.

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**Program Authority:** 20 U.S.C. 1134–1134d.

Dated: October 1, 2003.

**Wilbert Bryant,**

*Acting Assistant Secretary, Office of Postsecondary Education.*

[FR Doc. 03–25303 Filed 10–1–03; 3:55 pm]

**BILLING CODE 4000–01–P**

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## DEPARTMENT OF EDUCATION

### National Advisory Committee on Institutional Quality and Integrity, (National Advisory Committee); Meeting

**AGENCY:** National Advisory Committee on Institutional Quality and Integrity, Department of Education.

**What Is the Purpose of This Notice?**

The purpose of this notice is to announce the public meeting of the National Advisory Committee and invite third-party oral presentations before the Committee. This notice also presents the proposed agenda and informs the public of its opportunity to attend this meeting. The notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

**When and Where Will the Meeting Take Place?**

We will hold the public meeting on December 8, 2003 from 12:30 p.m. until approximately 5:30 p.m., and on December 9, 2003 from 8:30 a.m. until approximately 12:30 p.m. in the Ballroom at the Hilton Garden Inn, 815 14th Street, NW., Washington, DC 20005. You may call the hotel on (202) 783–7800 to inquire about rooms.

**What Assistance Will Be Provided to Individuals With Disabilities?**

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

**Who Is the Contact Person for the Meeting?**

Please contact Ms. Bonnie LeBold, the Executive Director of the National Advisory Committee on Institutional Quality and Integrity, if you have questions about the meeting. You may contact her at the U.S. Department of Education, room 7007, MS 7592, 1990 K St., NW., Washington, DC 20006, telephone: (202) 219–7009, fax: (202) 219–7008, e-mail: *Bonnie.LeBold@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

**What Is the Authority for the National Advisory Committee?**

The National Advisory Committee on Institutional Quality and Integrity is established under Section 114 of the Higher Education Act (HEA) as amended, 20 U.S.C. 1011c.

**What Are the Functions of the National Advisory Committee?**

The Committee advises the Secretary of Education about:

- The establishment and enforcement of the criteria for recognition of accrediting agencies or associations under subpart 2 of part H of Title IV, HEA.
- The recognition of specific accrediting agencies or associations.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV, HEA.
- The development of standards and criteria for specific categories of vocational training institutions and institutions of higher education for which there are no recognized accrediting agencies, associations, or State agencies in order to establish the interim eligibility of those institutions to participate in Federally funded programs.
- The relationship between: (1) Accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory functions relating to accreditation and institutional eligibility that the Secretary may prescribe.

**What Items Will Be on the Agenda for Discussion at the Meeting?**

Agenda topics will include the review of agencies that have submitted petitions for renewal of recognition, submitted progress reports, or submitted interim reports. In addition, the National Advisory Committee will discuss the current status of proposals pertaining to the reauthorization of the Higher Education Act, as amended.

Please note that the agency listed below, which was originally scheduled for review during the National Advisory Committee's December 2003 meeting, will be postponed for review until the June 2004 meeting.

- Accrediting Bureau of Health Education Schools

Any third-party written comments regarding this agency that were received by September 18, 2003, in accordance with the **Federal Register** notice published on August 4, 2003, will become part of the official record. Those comments will be considered by the National Advisory Committee when it reviews the agency's petition for renewal of recognition at the June 2004 meeting. Another opportunity to provide written comments on the agency prior to that meeting will be announced in a **Federal Register** notice requesting written comments.

**What Agencies Will the Advisory Committee Review at the Meeting?**

The Advisory Committee will review the following agencies during its December 8–9, 2003 meeting.

*Nationally Recognized Accrediting Agencies*

Interim Reports

(An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted renewed recognition to the agency.)

1. Accrediting Commission on Education for Health Services Administration.
2. American Board of Funeral Service Education.
3. Association of Advanced Rabbinical and Talmudic Schools.
4. National Council for Accreditation of Teacher Education.

Progress Reports

1. Southern Association of Colleges and Schools, Commission on Colleges (This is a report on the agency's implementation of its new standards).
2. Western Association of Schools and Colleges, Accrediting Commission for Schools (This is a report on the agency's action plan for coming into compliance with criteria for recognition).

*State Agencies Recognized for the Approval of Public Postsecondary Vocational Education*

Petition for Renewal of Recognition

1. Missouri State Board of Education (Current scope of recognition: The approval of public, postsecondary vocational education in the State of Missouri).

At its June 2003 meeting, the Advisory Committee had recommended that review of this agency's petition for continued recognition be deferred until the Committee's December 2003 meeting, and the Secretary had concurred with that recommendation.

Interim Report

1. New York Board of Regents (Public Postsecondary Vocational Education Unit).

*State Agency Recognized for the Approval of Nurse Education*

Interim Report

1. North Dakota Board of Nursing.

**Who Can Make Third-Party Oral Presentations at This Meeting?**

We invite you to make a third-party oral presentation before the National Advisory Committee concerning the recognition of any agency published in this notice.

**How Do I Request To Make an Oral Presentation?**

You must submit a written request to make an oral presentation concerning an agency listed in this notice to the contact person *so that the request is received via mail, fax, or e-mail no later than November 18, 2003.* Your request (*no more than 6 pages maximum*) must include:

1. The names, addresses, phone numbers, and fax numbers of all persons seeking an appearance,
2. The organization they represent, and
3. A brief summary of the principal points to be made during the oral presentation.

If you wish, you may attach documents illustrating the main points of your oral testimony. Please keep in mind, however, that *any attachments are included in the 6-page limit.* Please do not send materials directly to Committee members. Only materials submitted by the deadline to the contact person listed in this notice and in accordance with these instructions become part of the official record and are considered by the Committee in its deliberations. Documents received after the November 18, 2003 deadline will not be distributed to the Advisory Committee for their consideration. Individuals making oral presentations may not distribute written materials at the meeting.

**If I Cannot Attend the Meeting, Can I Submit Written Comments Regarding an Accrediting Agency in Lieu of Making an Oral Presentation?**

This notice requests third-party oral testimony, not written comment. A request for written comments on agencies that are being reviewed during this meeting was published in the **Federal Register** on August 4, 2003. The Advisory Committee will receive and consider only written comments submitted by the deadline specified in that **Federal Register** notice.

### How Do I Request To Present Comments Regarding General Issues Rather Than Specific Accrediting Agencies?

At the conclusion of the meeting, the Committee, at its discretion, may invite attendees to address the Committee briefly on issues pertaining to the functions of the Committee, which are listed earlier in this notice. If you are interested in making such comments, you should inform Ms. LeBold before or during the meeting.

### How May I Obtain Access to the Records of the Meeting?

We will record the meeting and make a transcript available for public inspection at the U.S. Department of Education, 1990 K St., NW., Washington, DC 20006 between the hours of 9 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. It is preferred that an appointment be made in advance of such inspection.

### How May I Obtain Electronic Access to This Document?

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*. To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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**Authority:** 5 U.S.C. appendix 2.

Dated: October 1, 2003.

**Wilbert Bryant,**

*Acting Assistant Secretary, Office of Postsecondary Education.*

[FR Doc. 03–25289 Filed 10–3–03; 8:45 am]

BILLING CODE 4000–01–P

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## DEPARTMENT OF ENERGY

### Office of Science Financial Assistance Program Notice DE–FG01–04ER04–04; Plasma Physics Junior Faculty Development Program

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice inviting grant applications.

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**SUMMARY:** The Office of Fusion Energy Sciences (OFES) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving grant applications for support under its Plasma Physics Junior Faculty Development Program. Applications should be from tenure-track faculty investigators who are currently involved in experimental or theoretical plasma physics research and should be submitted through a U.S. academic institution. The purpose of this program is to support the development of the individual research programs of exceptionally talented scientists and engineers early in their careers.

**DATES:** To permit timely consideration for awards in Fiscal Year 2004, formal applications in response to this notice must be received on or before December 9, 2003.

**ADDRESSES:** We require formal applications in response to this solicitation to be submitted electronically through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov*. IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS, your business official will need to register at the IIPS Web site. It is suggested that this registration be completed several days prior to the date on which you plan to submit the formal application. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. *IIPS offers the option of submitting multiple files—please limit submissions to only one file within the volume if possible, with a maximum of no more than four files.* Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: *helpdesk@pr.doe.gov*, or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html*.

**FOR FURTHER INFORMATION CONTACT:** Dr. Darlene Markevich, U.S. Department of Energy, Office of Fusion Energy Sciences, Research Division, SC–55/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290. Telephone: (301) 903–4920. E-mail: *Darlene.markevich@science.doe.gov*.

**SUPPLEMENTARY INFORMATION:** The Plasma Physics Junior Faculty Development Program was started in Fiscal Year 1997. A principal goal of this program is to identify exceptionally talented plasma faculty members early in their careers and assist and facilitate the development of their research programs. Eligibility for awards under this notice is, therefore, restricted to tenure-track regular academic faculty investigators who are conducting experimental or theoretical plasma physics research. Those Junior Faculty members presently holding career development awards will not be considered under this announcement.

Applications from Junior Faculty involved in any areas of plasma physics research, not only magnetic fusion, are welcomed and encouraged. Emphasis is to be placed on basic plasma science research. For applications to be considered for funding, certification of the status of the applicant as a tenure-track regular academic faculty member by the head of the applicant's academic department or other university/college certifying official will be required before the grant is awarded. Awards made under this program will help to maintain the vitality of university plasma physics research and assure continued excellence in the teaching of plasma physics and related disciplines.

It is anticipated that annual funding levels up to $150,000 per award may be made available for grants under this notice during Fiscal Year 2004, contingent upon the availability of appropriated funds. Funding for equipment above this level will be considered on a case-by-case basis. The number of awards during Fiscal Year 2004 will depend on the number of meritorious applications and the availability of appropriated funds. Multiple-year funding of grant awards is expected, with funding provided on an annual basis subject to availability of funds. The usual duration of these grants is three years and they will not be renewed under the Plasma Physics Junior Faculty Development Program after the project period is completed. It is anticipated that at the end of the grant period, grantees will submit new grant applications to continue their research to the Department of Energy or other Federal funding agencies. For the Office of Science, these applications should follow the usual application process.

Applications will be subjected to scientific merit review and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR part 605:

1. Scientific and/or technical merit of the project;
2. Appropriateness of the proposed method or approach;
3. Competency of applicant's personnel and adequacy of proposed resources; and
4. Reasonableness and appropriateness of the proposed budget.

An additional review criterion will address educational aspects of the proposed work including the involvement of graduate and undergraduate students. These aspects should be discussed in the application.

General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605, which is available on the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html*. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

The Catalog of Federal Domestic Assistance Number for this program is 81.049 and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC, on September 26, 2003.

**John Rodney Clark,**

*Associate Director of Science for Resource Management.*

[FR Doc. 03–25269 Filed 10–3–03; 8:45 am]

**BILLING CODE 6450–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IC03–121–000, FERC Form 121]**

### Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

September 29, 2003.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specifics of the information collection described below.

**DATES:** Comments on the collection of information are due by December 1, 2003.

**ADDRESSES:** Copies of the proposed collection of information can be obtained from Michael Miller, Office of the Executive Director, ED–30, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing.

For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC03–121–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the eLibrary link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202)502–8415, by fax at (202)273–0873, and by e-mail at *michael.miller@ferc.gov*. Copies of FERC Form 121 are available from Mr. Miller.

**SUPPLEMENTARY INFORMATION:** The information collected under the requirements of FERC Form 121 "Application for Determination of the Maximum Lawful Price Under the Natural Gas Policy Act" (OMB Control No. 1902–0038) is used by the Commission to implement the statutory provisions of Section 503 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3413. In Order No. 616, (July 14, 2000) the Commission reinstated provisions for making well category determinations under Section 503 of the Natural Gas Policy Act for certain categories of high cost gas.

When the determinations are made, natural gas producers can claim tax credits as provided for under section 29 of the Internal Revenue Code (Section 29 tax credit). Section 29 as amended by the Revenue Reconciliation Act of 1990, allows taxpayers to claim a tax credit for certain qualified fuels which (1) are produced from wells drilled after December 31, 1979, and before January 1, 1993, and (2) sold before January 1, 2003. The qualified fuels include high cost gas as defined in NGPA section 107(c)(2)–(4) (gas produced from geopressured brine, coals seams and Devonian shale), as well as some gas the Commission defined as tight formation gas pursuant to NGPA section 107(c)(5). In 1999, the *United States Court of Appeals for the Tenth Circuit in True Oil Co.* v. *Commissioner of Internal Revenue (True Oil)* (170 F.3d 1294) (10th Cir. 1999), held that, in order to obtain the tax credit, there must be a formal determination under the procedures provided for by section 503 of the Natural Gas Policy Act. Section 503 of the NGPA, set forth procedures used for determining whether gas qualified as section 107(c) "high-cost natural gas." Under that section the agency having regulatory jurisdiction with respect to the production of natural gas in question (a jurisdictional agency) makes the initial determination, and submits it to the Commission. The Commission can affirm, reverse, remand, make a preliminary finding either on, or simply takes no action regarding the agency's determination. If the Commission takes no action within 45 days after receipt of the agency's determination, the determination is final. Judicial review is available under Section 503 only if the Commission remands or reverses the determination. In Order No. 616, the Commission limited its actions to reviewing determinations by jurisdictional agencies for qualifying recompletions in already designated tight formations. Well determinations for recompletions in coal seams and Devonian shale are also accepted. The Commission estimated that there are probably at least 4,131 recompletions that were performed during the years 2000–2003 for which a determination may be sought under the Commission's regulations. FERC Form 121 (Form) is used by a natural gas producer as an application for a determination. Form 121 identifies the producer filing the application, the type of determination the producer is seeking (determination is for occluded natural gas produced from coal seams, Devonian shale or tight formation gas) and information identifying the well and the completion location of the well. An application is initially submitted to the jurisdictional agency and then sent forward to the Commission for review. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 270.

*ACTION:* The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

*Burden Statement:* Public reporting burden for this collection is estimated as:

| Number of respondents annually (1) | Number of responses per respondent (2) | Average burden hours per response (3) | Total Annual burden hours (1)×(2)×(3) |
|---|---|---|---|
| 4,131 | 1 | .25 | * 1,033 |

* Rounded off

*Estimated cost burden to respondents:* 1,033 hours/2,080 hours per year × $117,041 per year = $58,127. The cost per respondent is equal to $14.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including:

(1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.*, permitting electronic submission of responses.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–25223 Filed 10–3–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IC03–537–000, FERC–537]**

### Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

September 29, 2003.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specifics of the information collection described below.

**DATES:** Comments on the collection of information are due by December 1, 2003.

**ADDRESSES:** Copies of the proposed collection of information can be obtained from Michael Miller, Office of the Executive Director, ED–30, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing.

For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE. Washington, DC 20426 and refer to Docket No. IC03–537–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the eLibrary link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

**SUPPLEMENTARY INFORMATION:** The information collected under the requirements of FERC–537 "Gas Pipeline Certificates: Construction, Acquisition, and Abandonment" (OMB Control No. 1902–0060) is used by the Commission to implement the statutory provisions of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301–3432, and the Natural Gas Act (NGA) (15 U.S.C. 717–717w). Under the NGA, natural gas pipeline companies must obtain Commission authorization to undertake the construction or extension of any facilities, or to acquire or operate any such facilities or extensions in accordance with Section 7(c) of the NGA. A natural gas company must also obtain Commission approval under section 7(b) of the NGA prior to abandoning any jurisdictional facility or service. Under the NGPA interstate and intrastate pipelines must also obtain authorization for certain transportation arrangements.

The information collected is necessary to certificate interstate pipelines engaged in the transportation and sale of natural gas, and the construction, acquisition, and operation of facilities to be used in those activities, to authorize the abandonment of facilities and services and to authorize certain NGPA transactions. If a certificate is granted, the natural gas company can construct, acquire, or operate facilities plus engage in interstate transportation or sale of natural gas. Conversely, approval of an abandonment application permits the pipeline to cease service and/or discontinue the operation of such facilities. Authorization under NGPA section 311(a) allows the interstate or intrastate pipeline applicants to render certain transportation services.

The data required to be submitted consists of identification of the company and responsible officials, factors considered in the location of the facilities and the impact on the area for environmental considerations. Also to be submitted are flow diagrams showing design capacity of engineering design verification and safety determination, and gas reserves data for appraisal of the feasibility of the project. Market data presenting the economic basis for the proposed action are included when appropriate as cost of the proposed facilities, plans for refinancing, and estimated revenues and expenses related to the proposed facility for financial and accounting evaluation. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR parts 157.5-.11; 157.13-.20; 157.22; 157.53; 157.201-.209; 157.211; 157.214-.218; 284.8; 284.11; 284.126; 284.221; 284.223-.224; 284.227.

*Action:* The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

*Burden Statement:* Public reporting burden for this collection is estimated as:

| Number of respondents annually (1) | Number of responses per respondent (2) | Average burden hours per response (3) | Total annual burden hours (1)×(2)×(3) |
|---|---|---|---|
| 76 | 10.2 | 271.2 | *210,234 |

* Rounded off.

*Estimated cost burden to respondents:* 210,234 hours/2,080 hours per year × $117,041 per year = $11,829,807. The cost per respondent is equal to $155,655.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.*, permitting electronic submission of responses.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–25224 Filed 10–3–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IC03–568–000, FERC–568]**

### Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

September 29, 2003.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirements of section 3506(c) (2) (a) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c) (2) (A), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specifics of the information collection described below.

**DATES:** Comments on the collection of information are due by December 1, 2003.

**ADDRESSES:** Copies of the proposed collection of information can be obtained from Michael Miller, Office of the Executive Director, ED–30, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing.

For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC03-568-000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the eLibrary link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208-3676 or for TTY, contact (202)502-8659.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 502-8415, by fax at (202) 273-0873, and by e-mail at *michael.miller@ferc.gov.*

**SUPPLEMENTARY INFORMATION:** The information collected under the requirements of FERC-568 "Well Category Determinations" (OMB Control No. 1902-0112) is used by the Commission to implement the statutory provisions of section 503 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3413. In Order No. 616, (July 14, 2000) (65 FR 45859) the Commission reinstated provisions for making well category determinations under section 503 of the Natural Gas Policy Act for certain categories of high cost gas.

When a determination is made, a natural gas producer can claim tax credits as provided for under Section 29 of the Internal Revenue Code (Section 29 tax credits). Section 29 as amended by the Revenue Reconciliation Act of 1990, allows taxpayers to claim a tax credit for certain qualified fuels which (1) are produced from wells drilled after December 31, 1979, and before January 1, 1993, and (2) sold before January 1, 2003. The qualified fuels include high cost gas as defined n NGPA section 107(c)(2)-(4) (gas produced from geopressured brine, coal seams and Devonian shale), as well as some gas the Commission defined as tight formation gas pursuant to NGPA section 107(c)(5). In 1999, the United States Court of Appeals for the *Tenth Circuit in True Oil Co.* v. *Commissioner of Internal Revenue (True Oil)* (170 F.3d 1294)(10th Cir. 1999), held that, in order to obtain the tax credit, there must be a formal determination under the procedures provided for by section 503 of the Natural Gas Policy Act. Section 503 of the NGPA, set forth procedures used for determining whether gas qualified as section 107(c) "high-cost natural gas." Under that section the agency having regulatory jurisdiction with respect to the production of natural gas in question (jurisdictional agency) makes the initial determination, and submits it to the Commission. The Commission can affirm, reverse, remand, make a preliminary finding either on, or simply takes no action regarding the agency's determination. If the Commission takes no action within 45 days after receipt of the agency's determination, the determination is final. Judicial review is available under Section 503 only if the Commission remands or reverses the determination. In Order No. 616, the Commission limited its actions to reviewing determinations by jurisdictional agencies for qualifying recompletions in already designated tight formations. Well determinations for recompletions in coal seams and Devonian shale are also accepted. The Commission estimated there are probably at least 4,131 recompletions that were performed during the years 2000-2003 for which a determination may be sought under the Commission's regulations. A natural gas producer files an application (FERC Form 121) for a determination. In addition to the application, the applicant will also submit supporting documentation that includes the following: A completion report which illustrates the type of natural gas production treatment (*i.e.* perforation, acidization, fracturing etc.); logs defining the coal seams; or superimposed indications of the shale base line using gamma rays; or a map that identifies the geographic location of the well and the geographic location of post January 1, 1993 recompletions' completion location in the designated tight formation; and/or a location plat identifying the geographic location of the well and a list of tracts of land that comprise designated tight formations and an affidavit. FERC-568 covers the reporting requirements for this supporting documentation. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 270.

*Action:* The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

*Burden Statement:* Public reporting burden for this collection is estimated as:

| Number of respondents annually (1) | Number of responses per respondent (2) | Average burden hours per response (3) | Total annual burden hours (1)×(2)×(3) |
|---|---|---|---|
| 4,131 | 1 | 6.01 | 24,786 |

*Estimated cost burden to respondents:* 24,786 hours / 2,080 hours per year × $117,041 per year = $ 1,394,701. The cost per respondent is equal to $ 338.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.*, permitting electronic submission of responses.

**Magalie R. Salas,**
*Secretary.*
[FR Doc. 03–25225 Filed 10–3–03; 8:45 am]
BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[IC03–577–000 FERC–577]**

## Commission Collection Activities, Proposed Collection; Comment Request; Extension

September 29, 2003.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

**DATES:** Comments on the collection of information are due by December 1, 2003.

**ADDRESSES:** Copies of the proposed collection of information can be obtained from Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE., Washington, DC 20426. Comments on the proposed collection of information may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 and should refer to Docket No. IC03–577–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the eLibrary link. For user assistance contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact 202–502–8659.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873 and by E-mail at *michael.miller@ferc.gov.*

**SUPPLEMENTARY INFORMATION:** The information collected under the requirements of FERC–577, "Gas Pipeline Certificates: Environmental Impact Statement" (OMB No. 1902–0128) is a filing requirement of the environmental assessment of pipeline and Liquefied Natural Gas (LNG) facility construction projects. The filing collects information from all Natural Gas Act (NGA) jurisdictional pipeline companies as well as companies whose Natural Gas Policy Act (NGPA) are reviewed by the Commission.

The information collected under FERC–577 is used by the Commission to implement the statutory provisions of section 102 (2) (C) of the National Environmental Policy Act of 1969 (NEPA) (Pub. L. 91–190) (42 U.S.C. 4332). NEPA requires that all Federal agencies must include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of human environment, a detailed statement on: the environmental impact on the proposed actions; any adverse environmental effects which cannot be avoided should the proposal be implemented; alternatives to the proposed action; the relationship between local short-term uses of man's environment and the maintenance and enhancement of long term productivity; and any irreversible and irretrievable commitment of resources which would be involved in the proposed action should it be implemented. The Commission uses the pipeline's data to evaluate the environmental aspects of construction proposals and may be used in the Commission staff's independent preparation of Environmental Assessments or Environmental Impact Statements. The staff examines and projects potential effects on soils, geology, water resources, land use, recreation, aesthetics, air and noise quality, vegetation, wildlife, cultural resources and pipeline and liquefied natural gas safety. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR parts 2; 157; 284; 375 and 380.

*Action:* The Commission is requesting a three-year extension of the current expiration date with no changes to the existing collection of data.

*Burden Statement:* Public reporting burden for this collection is estimated as:

| Number of respondents (1) | Annual responses per respondent (2) | Average burden hours per response (3) | Total annual burden hours (1)×(2)×(3) |
|---|---|---|---|
| 76 | 16.57 | 185.2 | *233,226 |

* Detail may not calculate to totals because of rounding.

*Estimated Burden:* 233,226 total burden hours, 76 respondents, 1,259 responses annually, and 185.2 hours per response (average).

Estimated cost burden to respondents is $13,123,5620; (*i.e.*, 233,226 hours divided by 2,080 hours per full time employee per year multiplied by $117,041 per year equals $13,123,560)(rounded off). The cost per respondent is equal to $172,678.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.*, permitting electronic submission of responses.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–25226 Filed 10–3–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. AC03–76–000]**

## Dominion Cover Point LNG LP; Notice of Filing

September 29, 2003.

Take notice that on September 23, 2003, Dominion Cover Point LNG LP (Dominion) filed an amendment in Order 613 to update the accounting and financial reporting requirements for asset retirement obligations under its Uniform System of Accounts for natural gas pipelines as well as public utilities and licensees and oil pipelines.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

*Comment Date:* October 14, 2003.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. 03–25219 Filed 10–3–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. 2230–033]**

## City & Borough of Sitka, Alaska; Notice of Scoping Meeting, Site Visit, and Solicitation of Scoping Comments

October 1, 2003.

The Federal Energy Regulatory Commission's (Commission) regulations allow applicants to prepare their own Environmental Assessment (EA) for hydropower projects for filing with the Commission along with the license application as part of an alternative licensing procedure (ALP). On September 10, 2003, the Commission noticed the request of City & Borough of Sitka, Alaska (Sitka) to use the ALP and set a deadline for comments of October 10, 2003. Sitka wishes to hold a scoping meeting on Wednesday, October 22, 2003. Because the Commission will need ample time to fully consider comments received from interested stakeholders on Sitka's request to use the ALP, the Commission is not likely to make a decision on Sitka's request to use the ALP prior to the scoping meeting. However, the ALP allows greater flexibility than the traditional licensing process, and the Commission believes that it is in the public interest to solicit scoping comments in this notice. The Commission has not pre-judged Sitka's request to use the ALP.

### Public Meeting and Site Visit

Sitka distributed a Scoping Document 1 (SD1) for the Blue Lake Hydroelectric Project on September 17, 2003, to the mailing list for this proceeding. In addition, Sitka will hold a scoping meeting for the project. The purpose of the meeting is to review the information presented in the SD1 and to initiate the identification of areas of interest that should be addressed in the licensing and any related Applicant-Prepared Environmental Assessment (APEA) processes. The meeting will be held as follows:

### Blue Lake Scoping Meeting

*Date:* Wednesday, October 22, 2003.

*Place:* Harrigan Centennial Hall, 330 Harbor Drive, Sitka, Alaska.

*Time:* 7 p.m.

This meeting is posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Sitka will also conduct a site visit to the project on Thursday, October 23, 2003. Those wishing to attend the site visit should meet at the Blue Lake Powerhouse at 9 a.m. Please RSVP Dean Orbison, Engineering Manager, at (907) 747–6633, at least 3 days prior to the site visit if you plan on attending.

The deadline for filing comments is November 21, 2003. All documents (an original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site: *http://www.ferc.gov* under the "e-Filing" link.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of that document on that resource agency.

Based on feedback received on the SD1 and the project site visit, Sitka will prepare a Scoping Document 2 (SD2). SD2 will include a revised list of issues based on the meeting and written comments.

All interested individuals, organizations, and agencies are invited and encouraged to attend the meetings and site visit and to assist in the identification of environmental issues that should be included in SD2.

We are asking federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the Commission's EA. Agencies who would like to request cooperating agency status should file such a request (original and eight copies) with the Secretary at the aforementioned address. Please put the docket number, P–2230–033, on the first page of your filing.

For further information regarding the scoping meeting and project site visit or to be added to the mailing list for the project, please contact Mr. Dean Orbison of Sitka or Nicholas Jayjack of the Commission's staff at (202) 502–6073.

A copy of the SD1 is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "eLibrary" link. Enter the project number (P–2230) in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs* filing/esubscription.asp to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–25450 Filed 10–3–03; 8:45 a.m.]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### [Docket No. ES03–57–000]

### Texas-New Mexico Power Company; Notice of Application

September 26, 2003.

Take notice that on September 23, 2003, Texas-New Mexico Power Company (TNMP) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to enter into guarantees of up to $50 million of indebtedness of its affiliate, First Choice Power, Inc.

TNMP also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

*Comment Date:* October 10, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–25221 Filed 10–3–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### [Project No. 12334–000]

### Universal Electric Power Corporation; Notice Granting Intervention

September 29, 2003.

On February 12, 2003, the Commission issued a Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests; for the Demopolis L&D Hydroelectric Project No. 12334, located on the Tombigbee River in Marengo County, Alabama. The notice established April 12, 2003, as the deadline for filing motions to intervene.

On April 25, 2003, the Fort James Operating Company filed an untimely motion to intervene and comments. Granting the motion to intervene will not unduly delay or disrupt the proceeding, or prejudice other parties to it. Therefore, pursuant to Rule 214,[1] the motion to intervene filed by Fort James Operating Company is granted, subject to the Commission's rules and regulations.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–25227 Filed 10–3–03; 8:45 am]

BILLING CODE 6717–01–P

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[1] 18 CFR 385.214 (2003).

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ES03–58–000]**

## Valley Electric Association, Inc.; Notice of Application

September 26, 2003.

Take notice that on September 23, 2003, Valley Electric Association, Inc. (Valley) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to borrow up to $30 million under a Loan Agreement with the National Rural Utilities Cooperative Finance Corporation.

Valley also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

*Comment Date:* October 10, 2003.

**Magalie R. Salas,**
*Secretary.*

[FR Doc. 03–25222 Filed 10–3–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EC03–96–000, et al.]**

## Fresno Power Investors, L.P., et al.; Electric Rate and Corporate Filings

September 29, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

### 1. Fresno Power Investors, L.P., Harold E. Dittmer and Hanover Power (Gates), LLC

[Docket No. EC03–96–000]

Take notice that on September 24, 2003, Fresno Power Investors, L.P., Harold E. Dittmer and Hanover Power (Gates), LLC (HPG) in compliance with Commission Order dated July 7, 2003 authorizing a change in control over certain jurisdictional facilities resulting from a change in the upstream ownership interest of HPG. HPG states that it transferred it 92.5 percent ownership interest in Wellhead Power Gates, LLC to Fresno Power Investors, L.P. and Harold E. Dittmer. HPG states that the authorized transfer occurred on September 16, 2003.

*Comment Date:* October 15, 2003.

### 2. Colorado Green Holdings, LLC

[Docket No. EG03–108–000]

On September 25, 2003, Colorado Green Holdings, LLC (Colorado Green), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Colorado Green, a Delaware limited liability company, states that it will be engaged directly and exclusively in the business of owning all or part of one or more eligible facilities, and selling electric energy at wholesale. Colorado Green states that it is developing an approximately 162 megawatt wind power generation facility to be located in Prowers County, Colorado. Colorado Green states that it has served a copy of the filing on the Securities and Exchange Commission and the Public Utilities Commission of the State of Colorado, the California Public Utilities Commission, the Oregon Public Utility Commission, the Washington Utilities and Transportation Commission, the Utah Public Service Commission, the Idaho Public Utilities Commission, and the Wyoming Public Service Commission.

*Comment Date:* October 20, 2003.

### 3. Exxon Mobil Corporation; Entergy Services, Inc.

Docket No. EL03–230–000]

Take notice that on September 16, 2003, Exxon Mobil Corporation (ExxonMobil) filed a Complaint against Entergy Services, Inc. (ESI) and Entergy Gulf States, Inc. (Entergy). ExxonMobile states that on September 28, 2001, ExxonMobil and Entergy entered into an Interconnection and Operation and Generator Imbalance Agreement (2001 Agreement) to accommodate ExxonMobil's then current plan to place a single 165MW GTG unit into cogeneration service. The Complaint alleges that the original transmission facilities described in the 2001 Agreement were improperly classified as direct assignment facilities and should be re-classified to reflect their actual, current function.

ExxonMobil states that copies of this filing have been served upon ESI and Entergy.

*Comment Date:* October 14, 2003.

### 4. Eurus ToyoWest II LLC

[Docket No. EL03–233–000]

Take notice that on September 25, 2003, Eurus ToyoWest II LLC, a Delaware limited liability company (Eurus), filed a Petition for Declaratory Order finding that, under the circumstances described in the Petition, Eurus will not be considered a public utility under the Federal Power Act should it consummate the transfer of a portion of the Sagebrush Transmission Line, as more fully described in the petition.

*Comment Date:* October 24, 2003.

### 5. Nine Mile Point Nuclear Station, LLC v. Niagara Mohawk Power Corporation

[Docket No. EL03–234–000]

Take notice that on September 26, 2003, Nine Mile Point Nuclear Station, LLC, (Nine Mile) filed a Complaint against Niagara Mohawk Power Company (Niagara Mohawk). The Complaint asserts that Niagara Mohawk, in violation of the terms of the NYISO tariff and Commission precedent, will impose unlawful charges upon Nine Mile associated with Nine Mile's self-supply of station power.

*Comment Date:* October 20, 2003.

### 6. The Cincinnati Gas & Electric Company

[Docket Nos. ER96–2504–007 and ER01–1335–002]

Take notice that on September 22, 2003, The Cincinnati Gas & Electric Company (CG&E) submitted a filing informing the Commission of a non-material change in the characteristics that the Commission relied upon in granting CG&E market-based rate authorization under section 205 of the Federal Power Act.

*Comment Date:* October 14, 2003.

### 7. Powerex Corp.

[Docket No. ER01–48–002]

Take notice that on September 24, 2003, Powerex Corp. (Powerex) tendered for filing its triennial market power analysis in support of its market-based rate authority in compliance with the Commission's September 24, 1997 and September 12, 2000, Orders accepting Powerex's market-based rate schedule.

*Comment Date:* October 15, 2003.

### 8. Southern Company Services, Inc.

[Docket No. ER02–851–010]

Take notice that on September 24, 2003, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively, Southern Companies), made a compliance filing as directed by the order of the Commission issued on March 27, 2002, 98 FERC ¶ 61,328.

*Comment Date:* October 15, 2003.

### 9. Unitil Power Corp., Unitil Resources, Inc., Fitchburg Gas and Electric Light Company

[Docket Nos. ER02–999–002, ER97–2462–012 and ER97–2463–002]

Take notice that on September 25, 2003, Unitil Power Corp., Unitil Resources, Inc., and Fitchburg Gas and Electric Light Company (Unitil Companies) tendered for filing an updated generation market power analysis pursuant to Ordering Paragraph (J) Unitil Power Corp. *et al.*, 80 FERC ¶ 61,358 (1997).

The Unitil Companies indicate that a copy of the filing was served on the Massachusetts Department of Telecommunications and Energy and the New Hampshire Public Utilities Commission.

*Comment Date:* October 16, 2003.

### 10. Ameren Services Company, FirstEnergy Corp., Northern Indiana Public Service Company, National Grid USA, Midwest Independent Transmission System Operator, Inc.

[Docket No.ER02–2233–011]

Take notice that on September 25, 2003, the GridAmerica Participants and the Midwest Independent Transmission System Operator, Inc. (jointly, the Applicants) submitted a compliance filing pursuant to the Commission's September 15, 2003 Order, 104 FERC ¶ 61,292.

The Applicants state that in addition to serving the filing in accordance with the Commission's Regulations, the Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. Applicants further states that the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter.

*Comment Date:* October 16, 2003.

### 11. New York Independent System Operator, Inc.

[Docket No. ER03–18–003]

Take notice that on September 24, 2003, the New York Independent System Operator, Inc. (NYISO) tendered for filing a compliance filing in accordance with the Commission=s August 25, 2003, Order Accepting Compliance Filing in part in Docket Nos. ER03–18–001 and 002.

NYISO states that copies of this filing have been served on all parties listed on the official service list maintained by the Secretary of the Commission in these proceedings. The NYISO has also served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission, and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

*Comment Date:* October 15, 2003.

### 12. Entergy Services, Inc.

[Docket No. ER03–861–001]

Take notice that on September 25, 2003, Entergy Services, Inc. (Entergy Services), acting as agent for Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing certain corrections to the 2003 annual rate redetermination for Entergy Services' Open Access Transmission Tariff (the Update).

Entergy Services states that copies of the Update have been served upon its transmission customers and its state and local regulatory commissions.

*Comment Date:* October 16, 2003.

### 13. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–1081–001]

Take notice that on September 25, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and Section 35.13 of the Commission's regulations, 18 CFR35.13, submitted for filing a revised unexecuted Interconnection and Operating Agreement among Otter Tail Power Company, FPL Energy North Dakota Wind II, LLC, and the Midwest ISO.

Midwest ISO states that a copy of this filing was served on all parties to the proceeding.

*Comment Date:* October 16, 2003.

### 14. Michigan Electric Transmission Company

[Docket No. ER03–1341–000]

Take notice that on September 12, 2003, Michigan Electric Transmission Company, LLC (METC) pursuant to the Commission's Orders issued February 13, 2002 and March 29, 2002 in Docket Nos. EC02–23–000, *et al.* submitted a proposal to establish the elements for an overall rate of return to apply to certain deferral mechanisms previously approved by the Commission.

METC states that copies of this filing have been served upon all transmission customers within the METC pricing zone with the Midwest Independent Transmission System Operator, Inc and on the Michigan Public Service Commission.

*Comment Date:* October 14, 2003.

### 15. PJM Interconnection, L.L.C.

[Docket Nos. ER03–1390–000]

Take notice that on September 22, 2003, PJM Interconnection, L.L.C. (PJM) filed revisions to the PJM Open Access Transmission Tariff and PJM Operating Agreement to set a limit on the number of bids or offers submitted by any single market participant in the energy market or in the periodic auctions of financial transmission rights (FTRs), which would be imposed only when necessary (and with appropriate notice) to prevent system problems. PJM states that this bid/offer limit replaces the excess bidding charge that was accepted, subject to suspension and refund, in Docket No. ER03–694–000, and the FTR bid limit that was approved in Docket No. ER03–1013–000, effective July 15, 2003.

PJM it requests an effective date of November 17, 2003 for the Tariff and Operating Agreement changes. PJM states that copies of this filing have been served on all PJM members and utility regulatory commissions in the PJM Region and on all parties listed on the official service list compiled by the Secretary in this proceeding.

*Comment Date:* October 14, 2003.

**Standard Paragraph**

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

**Magalie R. Salas,**
*Secretary.*
[FR Doc. 03–25257 Filed 10–3–03; 8:45 am]
BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EG03–106–000, et al.]**

## Plymouth Energy LLC, et al.; Electric Rate and Corporate Filings

September 26, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

### 1. Plymouth Energy LLC

[EG03–106–000]

Take notice that on September 23, 2003, Plymouth Energy LLC submitted for filing an application for a determination that it is an Exempt Wholesale Generator and that the facility to be constructed by Plymouth Energy will be an eligible facility.

*Comment Date:* October 17, 2003.

### 2. Waymart Wind Farm L.P.

[Docket No. EG03–107–000]

Take notice that on September 23, 2003, Waymart Wind Farm L.P. (Waymart), filed with the Commission an application for a determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Waymart states that it is a Delaware corporation and is the owner and operator of a wind-powered electric generating facility with a nameplate capacity of 64.5 MW to be located in Wayne and Lackawanna Counties, Pennsylvania. Waymart states that the facility will sell energy, capacity, and ancillary services into the wholesale generation market.

*Comment Date:* October 17, 2003.

### 3. Calpine Energy Services, L.P.

[Docket No. ER00–3562–001]

Take notice that on September 22, 2003, Calpine Energy Services, L.P. submitted for filing its triennial market power analysis in compliance with the Commission Order issued in Docket No. ER00–3562–000 on September 21, 2000.

*Comment Date:* October 14, 2003.

### 4. Michigan Electric Transmission Company

[Docket No. ER02–562–002]

Take notice that on September 23, 2003, Michigan Electric Transmission Company (Michigan Electric) submitted for filing a Second Sub Original Sheet No. 140A of the FERC Electric Tariff, Original Volume No.1, in compliance with the September 10, 2003 Order issued in this proceeding. Michigan Electric states that the filed sheet is to be effective as of December 13, 2001. Michigan Electric also states that copies of the filing were served upon those on the official service list in this proceeding.

*Comment Date:* October 14, 2003.

### 5. ISO New England Inc.

[Docket No. ER02–2330–018]

Take notice that on September 22, 2003, ISO New England Inc. submitted a compliance filing providing a status report on the implementation of Standard Market Design in New England.

*Comment Date:* October 14, 2003.

### 6. Carolina Power & Light Company

[Docket Nos. ER03–1156–000 and ER03–1156–001]

Take notice that on September 22, 2003, Carolina Power and Light Company, d/b/a Progress Energy Carolinas, Inc. (CPL), filed a request to defer action in Docket No. ER03–1156–000 and ER03–1156–001 to allow time to fully integrate Rate Schedule No. 121, which is the Power Coordination Agreement between CPL and North Carolina Eastern Municipal Power Agency.

*Comment Date:* October 14, 2003.

### 7. Entegra North America, L.P.

[Docket No. ER03–1170–001]

Take notice that on September 22, 2003, Entegra North America, L.P. (Entegra) submitted for filing amended designations pertaining to rate filings made by Entegra on August 4, 2003, in Docket No. ER03–1170–000.

*Comment Date:* October 14, 2003.

### 8. Vineland Energy LLC

[Docket No. ER03–1283–001]

Take notice that on September 22, 2003, Vineland Energy LLC (Vineland) submitted an amendment to its Petition for Order Accepting Market-Based Rate Schedule for Filing and Granting of Waivers and Blanket Approvals and Request for Expedited Action to reflect a change in the direct ownership of Vineland from Vineland Cogeneration Limited Partnership (VCLP) to Merlot Energy LLC, a newly-formed entity with the same upstream ownership as VCLP.

*Comment Date:* October 14, 2003.

### 9. Black Hills Power, Inc., Basin Electric Power Cooperative Powder River Energy Corporation

[Docket No ER03–1354–001]

Take notice that on September 23, 2003, Black Hills Power Inc., Basin Electric Power Cooperative, and Powder River Energy Corporation filed a corrected page of their Open Access Transmission Tariff originally filed September 16, 2003.

*Comment Date:* October 14, 2003.

### 10. Pacific Gas and Electric Company

[Docket No. ER03–1361–000]

Take notice that on September 22, 2003, Pacific Gas and Electric Company (PG&E) tendered for filing a Wholesale Distribution Tariff (WDT) Service Agreement (Service Agreement) and an Interconnection Agreement (IA) between PG&E and Westside Power Authority (WPA) and a Construction Agreement between PG&E and Turlock Irrigation District (TID).

PG& E states that the Service Agreement is submitted pursuant to the PG&E WDT and permits PG&E to recover the ongoing costs for service required over PG&E's distribution facilities. The IA provides the terms and conditions for the continued interconnection of the Electric Systems of WPA and PG&E. PG&E further states that the Construction Agreement sets forth the terms and conditions for PG&E to modify existing transmission facilities to interconnect the WPA's service area.

PG&E has requested certain waivers for a proposed effective date of the asset sale closing date. Copies of this filing have been served upon Westside Power Authority, Turlock Irrigation District, the California Independent System Operator Corporation and the California Public Utilities Commission.

*Comment Date:* October 14, 2003.

### 11. Pacific Gas and Electric Company

[Docket No. ER03–1362–000]

Take notice that on September 22, 2003, Pacific Gas and Electric Company (PG&E) tendered for filing Generator Special Facilities Agreements (GSFAs) and Generator Interconnection Agreements (GIAs) between PG&E and the following parties: CalPeak Power—Panoche, LLC (CalPeak Panoch), CalPeak Power—Midway, LLC (CalPeak Midwa) and Sunrise Power Company, LLC (Sunrise II) (collectively, Parties), and a Notice of Termination of the CalPeak Midway GSFA.

PG&E states that the GSFAs permit PG&E to recover the ongoing costs associated with owning, operating and maintaining the Special Facilities for each Party. PG&E further state that the GIAs provide terms and conditions for billing, operation, maintenance, and metering. As detailed in the GSFAs, PG&E proposes to charge each of the Parties a monthly Cost of Ownership Charge equal to the rates for transmission-level, customer-financed facilities in PG&E notes that its currently effective Electric Rule 2, as filed with the California Public Utilities Commission (CPUC). PG&E's currently effective rate of 0.31% for transmission-level, customer-financed Special Facilities is contained in the CPUC's Advice Letter 1960–G/1587–E, effective August 5, 1996, a copy of which is included as Attachment 7 of this filing. PG&E has requested certain waivers.

PG&E states that copies of this filing have been served upon CalPeak Panoche, CalPeak Midway, Sunrise II, La Paloma Power Company, LLC, the California Independent System Operator Corporation, and the CPUC.

*Comment Date:* October 14, 2003.

### 12. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–1363–000]

Take notice that on September 22, 2003, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and Section 35.12 of the Commission's regulations, the submitted for filing a Load Interconnection and Operating Agreement among Indianapolis Power & Light Company and Hoosier Energy Rural Electric Cooperative, Inc.

Midwest ISO states that a copy of this filing was served on Indianapolis Power & Light Company and Hoosier Energy Rural Electric Cooperative, Inc.

*Comment Date:* October 14, 2003.

### 13. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–1364–000]

Take notice that on September 22, 2003, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and Section 35.12 of the Commission's regulations, submitted for filing an Interconnection and Operating Agreement among Kentucky Utilities Company and Smithland Hydroelectric Partners, Ltd.

Midwest ISO states that a copy of this filing was served on Kentucky Utilities Company and Smithland Hydroelectric Partners, Ltd.

*Comment Date:* October 14, 2003.

### 14. Southern California Edison Company

[Docket No. ER03–1365–000]

Take notice that on September 22, 2003, Southern California Edison Company (SCE) tendered for filing a Letter Agreement between SCE and the City of Corona, California (Corona). SCE states that the purpose of the Letter Agreement is to provide an interim arrangement pursuant to which SCE will commence the engineering, design, procurement and preparation of specifications for the interconnection facilities and system upgrades necessary to provide Distribution Service from the California Independent System Operator Controlled Grid to a proposed new SCE-Corona 12 kV interconnection in the city of Corona. SCE further states that Corona is planning to construct distribution facilities from the proposed new SCE-Corona 12 kV interconnection to serve its Wholesale Distribution Loads in a new development known as Dos Lagos.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and Corona.

*Comment Date:* October 14, 2003.

### 15. Xcel Energy Services Inc.

[Docket No. ER03–1366–000]

Take notice that on September 23, 2003, Xcel Energy Services Inc., on behalf of Northern States Power Company (NSP), submitted for filing with the Commission a Generation Interconnection Agreement between NSP and Fey Wind Farm, LLC, a 1.9 MW wind generator.

NSP requests the agreement be accepted for filing effective September 4, 2003, and requests waiver of the Commission's notice requirements in order for the Agreements to be accepted for filing on the date requested.

*Comment Date:* October 14, 2003.

### 16. Xcel Energy Services Inc.; Northern States Power Company

[Docket No. ER03–1367–000]

Take notice that on September 23, 2003, Xcel Energy Services Inc. (XES), on behalf of Northern States Power Company (NSP), submitted for filing with the Commission a Generation Interconnection Agreement between NSP and Windcurrent Farms, LLC, a 1.9 MW wind generator.

NSP requests the agreement to be accepted for filing effective September 1, 2003, and requests waiver of the Commission's notice requirements in order for the Agreements to be accepted for filing on the date requested.

*Comment Date:* October 14, 2003.

### 17. Cleco Power LLC, Cleco Marketing & Trading LLC, Perryville Energy, Partners, L.L.C., Cleco Evangeline LLC, Acadia Power Partners, LLC

[Docket Nos. ER03–1368–000, ER03–1369–00, ER03–1370–0000, ER03–1371–000, and ER03–1372–000]

Take notice that on September 23, 2003, Cleco Power LLC and its jurisdictional affiliates, Cleco Marketing & Trading LLC, Perryville Energy Partners, L.L.C., Cleco Evangeline LLC, and Acadia Power Partners, LLC (collectively referred to as the Cleco Companies) filed with the Commission First Revised Sheet Nos. 3–4, superseding Original Sheet Nos. 3–4 and Original Sheet No. 5 to FERC Electric Tariff, Original Volume No. 1 in compliance with FERC's Order Approving Stipulation and Consent Agreement and Requiring Payment of Civil Penalty issued July 25, 2003 in Docket No. IN03–1–000, 104 FERC ¶ 61,125. Cleco Companies state that these sheets contain the Statement of Policy and Code of Conduct with

Respect to the Relationship with the Cleco Companies.

*Comment Date:* October 14, 2003.

**18. Orange and Rockland Utilities, Inc.**

[Docket No. ER03–1373–000]

Take notice that on September 23, 2003, Orange and Rockland Utilities, Inc. (Orange and Rockland) requested that the Commission discontinue a service agreement under which Orange and Rockland provides for the transmission of hydropower and associated energy from New York Power Authority (Authority) to Public Service Electric and Gas Company, for transmission to members of the Public Power Association of New Jersey (Association). Orange and Rockland states that the Authority's power sales agreement with the Association, terminates on October 21, 2003. The Authority requested that Orange and Rockland waive the requirements for 90 days notice to terminate the Agreement so that service may terminate on October 31, 2002. The Authority states that Orange and Rockland is amendable to this request.

Orange and Rockland states that a copy of this filing has been served by mail to the Authority and the Association.

*Comment Date:* October 14, 2003.

**19. Plymouth Energy LLC**

[Docket No. ER03–1374–000]

Take notice that on September 23, 2003, Plymouth Energy LLC submitted for filing an initial rate schedule for sales of electricity at market-based rates. Plymouth Energy requested certain blanket approvals and the waiver of certain Commission regulations.

*Comment Date:* October 14, 2003.

**20. Golden Spread Electric Cooperative, Inc.**

[Docket No. ER03–1376–000]

Take notice that on September 23, 2003, Golden Spread Electric Cooperative, Inc. (Golden Spread) tendered for filing with the Commission a Third Informational Filing to Golden Spread Rate Schedule No. 35. The Third Informational Filing updates the formulary fixed costs associated with replacement energy sales by Golden Spread to Southwestern Public Service Company (Southwestern). Golden Spread states that a copy of this filing has been served upon Southwestern.

*Comment Date:* October 14, 2003.

**21. American Electric Power Service Corporation**

[Docket No. ER03–1377–000]

Take notice that on September 23, 2003, American Electric Power Service Corporation (AEPSC), as agent Central Power and Light Company (now known as AEP Texas Central Company), tendered for filing pursuant to Section 35.15 of the Commission's regulations, a Notice of Cancellation of Service Agreements between Central Power and Light Company and various entities under CPL FERC Electric Tariff, Second Revised Volume No. 8. AEPSC states that the Power Sales Tariff was accepted for filing by the Commission, effective July 9, 1996 in Docket ER96–2342–001. AEPSC requests an effective date of September 1, 2003 for the cancellation.

AEPSC states that it has served copies of the filing upon the parties listed in Exhibit 1 and the affected state regulatory commissions.

*Comment Date:* October 14, 2003.

**22. Florida Power CorporationDocket**

[No. ER03–1380–000]

Take notice that on September 23, 2003, Florida Power Corporation, doing business as Progress Energy Florida, Inc. (Florida Power), tendered for filing its Rate Schedule FERC No. 186, the Operating Agreement between Tampa Electric Company (Tampa Electric) and Florida Power dated August 14, 2003, and revised sheets to its First Revised Rate Schedule FERC No. 80, the Contract for Interchange Service between Florida Power and Tampa Electric dated July 21, 1977. Florida Power states that the filing is being made to implement the transfer of certain transmission facilities approved in Docket No. EC03–93–000. Florida Power requests an effective date for its filing of August 14, 2003.

Florida Power states that copies of this filing were served on Tampa Electric and the Florida Public Service Commission.

*Comment Date:* October 14, 2003.

**Standard Paragraph**

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–25220 Filed 10–3–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RM02–16–000]**

## Integrated Licensing Process Outreach; Notice of Public Outreach Meetings on the Intergrated Licensing Process

September 30, 2003.

Commission staff from the Office of Energy Projects will hold three public Outreach Meetings on the new Integrated Licensing Process at the locations and times listed below. The purpose of the Outreach program is to familiarize federal, state, and other government agencies, Indian tribes, nongovernmental organizations, licensees, and other interested parties with the new Integrated Licensing Process set forth by Order Number 2002, issued on July 23, 2003.

**Location, Date and Time**

Doubletree Seattle Airport, 187450 Pacific Highway South Seattle, WA 98188, 206–246–8600.
October 27, 2003
8:30 a.m. to 12:30 p.m.

Red Lion Hotel, 1401 Arden Way, Sacramento, CA 95815, 916–922–8041,
October 29, 2003
8:30 to 12:30 p.m.

Crown Plaza Hotel, State & Lodge Albany, NY 12207, 518–462–6611
November 5, 2003
8:30 to 12:30 p.m.

All interested parties are invited to attend. If you plan to attend, please notify Ken Hogan, fax: 202–219–0205; telephone: 202–502–8434 or David Turner (202) 502–6091. This meeting is posted on the Commission's calendar located at http://www.ferc.gov/EventCalendar/EventsList.aspx along with other related information.

**Magalie R. Salas,**
*Secretary.*
[FR Doc. 03–25451 Filed 10–3–03; 8:45 a.m.]
BILLING CODE 6717–01

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RM98–1–000]**

## Regulations Governing Off-the-Record Communications; Public Notice

September 29, 2003.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or prohibited off-the-record communication relevant to the merit's of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of prohibited and exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

| Docket No. | Date filed | Presenter or requestor |
|---|---|---|
| **Prohibited** | | |
| 1. ER03–1118–000 | 9–15–03 | Henry J. Knapp, PE |
| **Exempt** | | |
| 1. Project No. 2042–000 | 9–04–03 | Hon. George R. Nethercutt, Jr. |

**Magalie R. Salas,**
*Secretary.*
[FR Doc. 03–25228 Filed 10–3–03; 8:45 am]
BILLING CODE 6717–01–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7568–5]**

## Final Administrative Determination Document on the Question of Whether Ferric Ferrocyanide Is One of the "Cyanides" Within the Meaning of the List of Toxic Pollutants Under the Clean Water Act

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of document availability.

**SUMMARY:** By order dated October 19, 1995, the United States District Court for the District of Massachusetts stayed the proceedings in *Commonwealth of Massachusetts* v. *Blackstone Valley Electric Co.* (No. 94–2286) and referred the question of whether ferric ferrocyanide qualifies as one of the "cyanides" within the meaning of the list of toxic pollutants under the Clean Water Act to the U.S. Environmental Protection Agency (EPA). This District Court order followed a U.S. Court of Appeals decision in which the First Circuit determined that it was appropriate to refer this question to EPA for an "administrative determination." Today's notice announces the availability of EPA's final administrative determination that ferric ferrocyanide (FFC) is one of the "cyanides" within the meaning of the Toxic Pollutant List Under the Clean Water Act.

**DATES:** This final administrative determination is available on October 6, 2003.

**ADDRESSES:** The administrative record is available for inspection and copying at the Water Docket, located at the EPA Docket Center (EPA/DC) in the basement of the EPA West Building, Room B–102, 1301 Constitution Ave., NW., Washington, DC. The Final Administrative Determination and key supporting materials are also electronically available via EPA Dockets (Edocket) at *http://www.epa.gov/edocket/.*

**FOR FURTHER INFORMATION CONTACT:** For further information, contact Marion Kelly, USEPA, Office of Water, Engineering and Analysis Division (4303T), 1301 Constitution Avenue, NW., Washington, DC; or call (202) 566–1045; or e-mail *kelly.marion@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. How Can I Get Copies of This Document and Other Related Information?

A. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW–2002–0036. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B–102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

B. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listing at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

## II. EPA's Determination Regarding Ferric Ferrocyanide

EPA has prepared a final administrative determination describing the Agency's interpretation of the term "cyanides" (found in 40 CFR 401.15, 40 CFR 302.4, and Table 302.4 at 40 CFR 302.4) as that interpretation applies to ferric ferrocyanide. 40 CFR 401.15 contains the list of toxic pollutants, 40 CFR 302.4 provides the designation of hazardous substances, and Table 302.4 at 40 CFR 302.4 contains the list of hazardous substances and reportable quantities. This final administrative determination responds to a referral from the United States District Court for the District of Massachusetts. By order dated October 19, 1995, the United States District Court for the District of Massachusetts stayed the proceedings in *Commonwealth of Massachusetts* v. *Blackstone Valley Electric Co.* (No. 94–2286) and referred the question of whether ferric ferrocyanide qualifies as one of the "cyanides" within the meaning of 40 CFR 401.15, 40 CFR 302.4, and Table 302.4 to EPA. This District Court order followed a U.S. Court of Appeals decision in which the First Circuit determined that it was appropriate to refer this question to EPA for an "administrative determination." *Commonwealth of Massachusetts* v. *Blackstone Valley Electric Co.*, 67 F.3d 981 (1st Cir. 1995).

This determination is not a legislative rule; notice and comment is not required. However, in reaching this determination, EPA provided an opportunity for public comment through a **Federal Register** notice announcing the availability of the Agency's preliminary determination (January 25, 2001, 66 FR 7759). EPA originally requested public comments on the preliminary determination by March 12, 2001 and then extended the comment period twice at the request of the litigants in the Blackstone case. After the close of the comment period for the preliminary determination, EPA found additional (and potentially relevant) historical documents and scientific articles, and reopened the comment period for comment on these new materials on November 4, 2002 (November 4, 2002, 67 FR 67183; corrected November 12, 2002, 67 FR 68725). The comment period for the additional materials ended January 3, 2003. In April 2003, EPA conducted a peer review of the preliminary determination in accordance with EPA's Peer Review policies, which are described in EPA's *Science Policy Council Handbook—Peer Review, 2nd Edition* (EPA 100–B–00–001, December 2001; the "Peer-review Handbook").

EPA considered all comments and materials received, including those submitted by the peer reviewers, the litigants in the *Blackstone* case, Massachusetts, and other stakeholders. EPA has placed all comments, responses to comments, and all information used by the Agency in support of this administrative determination in the public docket. EPA also prepared, and included in the public docket, a final administrative determination document (EPA–821–R–03–014) that summarizes the Agency's analysis and rationale. EPA has determined that ferric ferrocyanide is one of the "cyanides" within the meaning of 40 CFR 401.15, 40 CFR 302.4, and Table 302.4.

Dated: September 24, 2003.

**G. Tracy Mehan III,**

*Assistant Administrator for Water.*

[FR Doc. 03–25272 Filed 10–3–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[RCRA–2003–0024; FRL–7558–5]**

## Announcement of Availability of the Results-Based Approaches and Tailored Oversight Guidance for Facilities Subject to Corrective Action Under Subtitle C of the Resource Conservation and Recovery Act

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to announce the availability of the final "Results-Based Approaches and Tailored Oversight Guidance for Facilities Subject to Corrective Action Under Subtitle C of the Resource Conservation and Recovery Act" (Guidance). This guidance is designed to provide the EPA Regions, the States, Tribes, the regulated community, members of the public, and other stakeholders with a better understanding of EPA's general results-based strategy for RCRA Corrective Action. This document provides guidance on how EPA generally intends to exercise its discretion in implementing its statutory authorities and regulations. EPA wrote this guidance because we believe greater use of results-based approaches will help us achieve our short-term goals established by the Government Performance and Results Act (GPRA).

**DATES:** This guidance was issued September 26, 2003.

**ADDRESSES:** The Agency is posting this document on the Corrective Action Web site: *http://www.epa.gov/correctiveaction.* If you would like to receive a hard copy, please call the RCRA Call Center at 800–424–0346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703–412–9810 or TDD 703–412–3323.

**FOR FURTHER INFORMATION CONTACT:** For more detailed information on specific aspects of the guidance document, contact Karen Tomimatsu, Office of Solid Waste, Mail Code 5303W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (703–605–0698), (*tomimatsu.karen@epa.gov*), or Peter Neves, Office of Enforcement and Compliance Assurance, Mail Code 2273A, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–6072, (*neves.peter@epa.gov*).

**SUPPLEMENTARY INFORMATION:** The guidance document will be issued as a memorandum from EPA headquarters to the Regional offices. It will be available on the Internet at: *http://www.epa.gov/correctiveaction.*

EPA has established an official public docket for this action under Docket ID No. RCRA–2003–0024. The official public docket is the collection of materials that is available for public viewing at the OSWER Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0270.

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. Once in the system, select "search," then key in the appropriate docket identification number.

Dated: August 18, 2003.

**Robert Springer,**

*Director, Office of Solid Waste.*

Dated: September 12, 2003.

**Susan E. Bromm,**

*Director, Office of Site Remediation Enforcement.*

[FR Doc. 03–25273 Filed 10–3–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7568–6]**

### Notice of Tentative Approval and Solicitation of Request for a Public Hearing for Public Water System Supervision Program Revisions for the State of West Virginia

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of tentative approval and solicitation of requests for a public hearing.

**SUMMARY:** Notice is hereby given in accordance with the provision of section 1413 of the Safe Drinking Water Act as amended, and the National Primary Drinking Water Regulations Implementation that the State of West Virginia is revising its approved Public Water System Supervision Program. West Virginia has amended its Public Notification Rule (set of requirements for public water systems to follow regarding the form, manner, frequency, and content of a public notice) and its Lead and Copper Rule (LCR) to streamline requirements and reduce monitoring and reporting requirements. EPA has determined that these revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has decided to tentatively approve these program revisions. All interested parties are invited to submit written comments on this determination and may request a public hearing.

**DATES:** Comments or a request for a public hearing must be submitted by November 5, 2003. This determination shall become effective on November 5, 2003, if no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, and if no comments are received which cause EPA to modify its tentative approval.

**ADDRESSES:** Comments or a request for a public hearing must be submitted to the U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

- Drinking Water Branch, Water Protection Division, U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.
- West Virginia Department of Health and Human Resources, Environmental Engineering Division, 815 Quarrier Street, Suite 418, Charleston, WV 25301.

**FOR FURTHER INFORMATION CONTACT:** Donna Weiss, Drinking Water Branch (3WP22) at the Philadelphia address given above; telephone (215) 814–2198 or fax (215) 814–2318.

**SUPPLEMENTARY INFORMATION:** All interested parties are invited to submit written comments on this determination and may request a public hearing. All comments will be considered, and, if necessary, EPA will issue a response. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by November 5, 2003, a public hearing will be held. A request for public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such a hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Dated: September 22, 2003.

**James W. Newson,**

*Acting Regional Administrator, Region III.*

[FR Doc. 03–25274 Filed 10–3–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

### Amendment of FASAB Charter

*Board Action:* Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 1999, notice is hereby given that under the authority and in furtherance of the objectives of 31 U.S.C. 3511(d), the Secretary of the Treasury, the Director of OMB, and the Comptroller General (the Sponsors) have altered the composition of the Board by adding a member from the Congressional Budget Office.

*For Further Information Contact:* Wendy Comes, Executive Director, 441 G St., NW., Suite 6814, Mail Stop 6K17V, Washington, DC 20548, or call (202) 512–7350.

**Authority:** Federal Advisory Committee Act. 31 U.S.C. 3511(d), Pub. L. 92–463.

Dated: October 1, 2003.

**Wendy M. Comes,**

*Executive Director.*

[FR Doc. 03–25276 Filed 10–3–03; 8:45 am]

**BILLING CODE 1610–01–M**

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## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) being Submitted to OMB for Review and Approval

September 24, 2003.

**SUMMARY:** The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the

Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before November 5, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kim A. Johnson, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3562 or via internet at *Kim_A._Johnson@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0483.

*Title:* Section 73.687, Transmission System Requirements.

*Form Number:* N/A.

*Type of Review:* Extension of currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 6.

*Estimated time per response:* 1.0 hours.

*Frequency of Response:* On occasion reporting requirement.

*Total annual burden:* 6 hours.

*Total annual costs:* $0.

*Needs and Uses:* 47 CFR 73.687(e)(3) requires TV broadcast stations operating on Channels 14 and 69 to take special precautions to avoid interference to adjacent spectrum land mobile operations. This requirement applies to all new Channel 14 and 69 TV broadcast stations and those authorized to change channel, increase effective radiated power (ERP), change directional antenna characteristics such that ERP increases in any azimuth direction or change location, involving an existing or proposed channel 14 or 69 assignment. Section 73.687(e)(4) requires these stations to submit evidence to the FCC that no interference is being caused before they will be permitted to transmit programming on the new facilities. FCC uses the data to ensure proper precautions have been taken to protect land mobile stations from interference. It will also both increase and improve service to the public by broadcasters and land mobile services operating in certain parts of the spectrum.

*OMB Approval Number:* 3060–0397.

*Title:* Special Temporary Authority—Section 15.7(a).

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; and Not-for-profit institutions.

*Number of Respondents:* 2.

*Estimated Time per Response:* 6 hours.

*Frequency of Response:* One time filing requirement.

*Total Annual Burden:* 12 hours.

*Total Estimated Cost:* None.

*Needs and Uses:* In exceptional situations, the FCC will issue a special temporary authorization to operate a radio frequency device not conforming to the subject rules. An applicant must show that the proposed operation is in the public interest but cannot be feasibly conducted under the applicable rules.

*OMB Approval Number:* 3060–0758.

*Title:* Amendment of Part 5 of the Commission's Rules to Revise the Experimental Radio Service Regulations, ET Docket No. 96–256.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; and Not-for-profit institutions.

*Number of Respondents:* 428.

*Estimated Time per Response:* 0.1 to 2.5 hours.

*Frequency of Response:* On occasion reporting requirement; Third party disclosure.

*Total Annual Burden:* 681 hours.

*Total Estimated Cost:* None.

*Needs and Uses:* Under 47 CFR part 5 of the FCC's Rules governing the Experimental Radio Service: (1) Pursuant to Section 5.75, if a blanket license is granted, licensees are required to notify the Commission of the specific details of each individual experiment, including location, number of base and mobile units, power, emission designator, and any other pertinent technical information not specified by the blanket license; (2) pursuant to Section 5.85(d), when applicants are using public safety frequencies to perform experiments of a public safety nature, the license may be conditioned to require coordination between the experimental licensee and appropriate frequency coordinator and/or all public safety licensees in its area of operation; (3) pursuant to Section 5.85(e), the Commission may, at its discretion, condition any experimental license or special temporary authority (STA) on the requirement that before commencing operation, the new licensee coordinate its proposed facility with other licensees that may receive interference as a result of the new licensee's operations; and (4) pursuant to Section 5.93(b), unless otherwise stated in the instrument of authorization, a license granted for the purpose of limited market studies requires the licensee to inform anyone participating in the experiment that the service or device is granted under an experimental authorization and is strictly temporary. In all cases, it is the responsibility of the licensee to coordinate with other users.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03–25200 Filed 10–3–03; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

September 24, 2003.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 5, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judith B. Herman at (202) 418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0819.

*Title:* Lifeline Assistance (Lifeline) Connection Assistance (Link-Up) Reporting Worksheet and Instructions (47 CFR 54.400–54.417).

*Form No:* FCC Form 497.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 1,500 respondents; 18,000 responses.

*Estimated Time Per Response:* 3.5 hours × 12 submissions.

*Frequency of Response:* On occasion, quarterly and monthly reporting requirements.

*Total Annual Burden:* 63,000 hours.

*Total Annual Cost:* N/A.

*Needs and Uses:* Eligible telecommunications carriers are permitted to receive universal service support reimbursement for offering certain services to qualifying low-income customers. The telecommunications carriers must file FCC Form 497 to solicit reimbursement. Applicants are encouraged to submit the filings to the administrator quarterly. For those that file quarterly, they are required to file three separate forms for each quarter—one for each month within the quarter. Collection of this data is necessary for the administrator to accurately provide settlements for the low-income programs according to Commission rules.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03–25201 Filed 10–3–03; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

September 24, 2003.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 5, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judith B. Herman at (202) 418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0893.

*Title:* Universal Licensing Service (ULS) Pre-Auction Database Corrections.

*Form No.:* N/A.

*Type of Review:* Extension of currently approved collection.

*Respondents:* Business and other for-profit, individual or household, not-for-profit institutions, and state, local or tribal government.

*Number of Respondents:* 4,442 respondents, 21,000 responses.

*Estimated Time Per Response:* .50 hours (30 minutes).

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 10,500 hours.

*Total Annual Cost:* N/A.

*Needs and Use:* This collection is necessary to ensure that the ULS database is as accurate as possible. It involves the correction of licensing data errors detected through integrity reports obtained by searching the ULS database. This data must be corrected to prepare for specific auctions of certain radio services that have been placed in the ULS but have not yet been auctioned. This data aids in spectrum management and provides for an efficient graphical user interface for each potential auction participant.

*OMB Control No.:* 3060–0270.

*Title:* Section 90.443, Content of Station Records.

*Form No.:* N/A.

*Type of Review:* Extension of currently approved collection.

*Respondents:* Business and other for-profit entities, individual or household, not-for-profit institutions, and state, local or tribal government.

*Number of Respondents:* 57,410.

*Estimated Time Per Response:* .083 hours.

*Frequency of Response:* Recordkeeping requirement.

*Total Annual Burden:* 4,765 hours.

*Total Annual Cost:* N/A.

*Needs and Use:* The rule specifies the records required to be maintained by station licensees. These records indicate maintenance performed on the licensee's equipment, and instances of tower light checks and failures, if any, and corrective action taken. The maintenance records could be used by the licensee or Commission filed personnel to note any recurring equipment problems or conditions that may lead to degraded equipment performance and/or interference generation. The records regarding tower lighting are required to ensure that the licensee is aware of tower light condition and proper operation, in order to prevent and/or correct any hazards to air navigation.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03–25202 Filed 10–3–03; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Technological Advisory Council; Notice of Meeting

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of public meeting.

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**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, this notice advises interested persons of the first of the Technological Advisory Council ("Council") under its new charter.

**DATES:** October 20, 2003 beginning at 10 a.m. and concluding at 3 p.m.

**ADDRESSES:** Federal Communications Commission, 445 12th St. SW., Room TW–C305 Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Jeffery Goldthorp, (202) 418–1096.

**SUPPLEMENTARY INFORMATION:** Continuously accelerating technological changes in telecommunications design, manufacturing, and deployment require that the Commission be promptly informed of those changes to fulfill its statutory mandate effectively. The Council was established by the Federal Communications Commission to provide a means by which a diverse array of recognized technical experts from different areas such as manufacturing, academia, communications services providers, the research community, etc., can provide advice to the FCC on innovation in the communications industry. At this third meeting under the Council's new charter, the Council will focus on Voice services over IP. Members of the public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many persons as possible. Admittance, however, will be limited to the seating available. Unless so requested by the Council's Chair, there will be no public oral participation, but the public may submit written comments to Jeffery Goldthorp, the Federal Communications Commission's Designated Federal Officer for the Technological Advisory Council, before the meeting. Mr. Goldthorp's e-mail address is *Jeffery.Goldthorp@fcc.gov*. Mail delivery address is: Federal Communications Commission, 445 12th Street, SW., Room 7–A325, Washington, DC 20554.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03–25241 Filed 10–3–03; 8:45 am]

**BILLING CODE 6712–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

*Name:* National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Populations.

*Time and Date:* 8:30 a.m. to 5 p.m., November 13, 2003, 8:30 a.m. to 5 p.m., November 14, 2003.

*Place:* The Palace Hotel, 2 New Montgomery Street, San Francisco, CA 94105, Phone: (415) 512–1111.

*Status:* Open.

*Purpose:* The Subcommittee on Populations, NCVHS, is holding a hearing to discuss issues relating to statistics for the determination of health disparities in racial and ethnic populations. The focus will be on issues related to the collection and use of data on race and ethnicity for Asian American, Native Hawaiian, and Pacific Islander populations. Invited panelists will address methodologic issues (*e.g.*, misclassification, small area analysis, confidentiality concerns) in the collection of data on race and ethnicity, use of mixed race data, language issues, measurement of ethnic identity, and perspectives on variables beyond race and ethnicity needed to determined health disparities in racial and ethnic groups.

*For Further Information Contact:* Additional information about this meeting as well as summaries of past meetings and a roster of committee members may be obtained from Audrey L. Burwell, Office of Minority Health, 1101 Wooton Parkway, 6th Floor, Room 600, Rockville, Maryland 20852, telephone: (301) 443–9923, e-mail *alburwell@osophs.dhhs.gov;* or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 2413, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone: (301) 458–4245. Information also is available on the NCVHS home page of the HHS web site: *http://www.ncvhs.hhs.gov/* where an agenda and more details about participation in the meeting or Subcommittee deliberations will be posed when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: September 23, 2003.

**James Scanlon,**

*Acting Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.*

[FR Doc. 03–25284 Filed 10–3–03; 8:45 am]

**BILLING CODE 4151–05–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Office of Budget, Technology and Finance; Statement of Organization, Functions, and Delegations of Authority

Part A, Office of the Secretary, Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) is being amended as follows: Chapter AM, Office of Budget, Technology and Finance, Office of Information Resources Management (AMM), as last amended at 68 FR 11555–11562), dated March 11, 2003. This reorganization will retitle the Office of OS IT Development and Services (AMM3), Office of Information and Resources Management (OIRM) to the Information Technology Services Center (ITSC), to reflect its expanding responsibilities in providing information technology services within the Department. The changes are as follows: Under Chapter AM, Office of Budget, Technology and Finance, Section AM.20 Functions, make the following corrections:

A. Under Paragraph C, Section AMM.10 Organization, delete in its entirety and replace with the following:

*Section AMM.10 Organization.* The Office of Information Resources Management (OIRM) is supervised by the Deputy Assistant Secretary for Budget, Technology and Finance. The CIO serves as the primary IT leader for the Department. OIRM consists of the following:

- Immediate Office (AMM1)
- Office of IT Policy Development & Implementation (AMM2)
- Information Technology Services Center (AMM3)
- Office of HHS Enterprise Operations (AMM4)
- Office of Information Security Development and Implementation (AMM5)

B. Under Section AMM..20 Functions, delete Paragraph 3, "Office of OS IT Development and Services" in its entirety, and replace with the following:

3. *Information Technology Services Center* (AMM3)—The Information Technology Service Center (ITSC) is responsible for providing Network Services, Help Desk, Call center, Desktop Support, Web Architecture, server Architectures, OPDIV IT Security, Secretary's Command Center and Continuity of Operations Planning (COOP) support, and Outreach/Customer Relationship Management

(CRM). It is directed by the Director of IT Services. It is also a primary resource for advising the HHS CIO on technology implementation, and for piloting HHS CIO special programs. ITS is responsible for the following:

a. Operating, maintaining, and enhancing the ITSC computer network and services, including services for participating HHS organizations.

b. Implementing and monitoring network policies and procedures, and developing plans and budgets for network support services.

c. Ensuring reliable, high-performance network services.

d. Implementing and operating electronic tools to enhance Secretarial communications with all HHS personnel.

e. Coordinating with OPDIVs and STAFFDIVs to develop ITSC, IT capital planning and budgeting processes, providing direct planning support to assure that IRM plans support agency business planning and mission accomplishment, as it applies to the infrastructure.

f. Implementing policies and guidance on information resources management within ITSC for acquisition and use of information technology, support of technical R model, and coordination of implementation procedures.

g. Maintaining and operating the inventory of automated data processing equipment for the ITSC participating agencies.

h. Operating and maintaining an information technology support service (Help Desk and Call Center) for participating HHS components.

i. Managing contracts for equipment and support services related to the provision of IT services in ITSC participating agencies.

j. Representing the Department through participation on interagency and Departmental work groups and task forces, as appropriate.

k. Responsible for ITSC compliance with and implementation of all applicable HHS policies and Federal Laws regarding IT Security.

l. Reviewing and facilitating acquisitions for activities related to ITSC.

Dated: July 28, 2003.

**Ed Sontag,**

*Assistant Secretary for Administration and Management.*

[FR Doc. 03–25283 Filed 10–3–03; 8:45 am]

BILLING CODE 4150–04–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

## NIOSH/NCI Joint Study Meeting

The National Institute for Occupational Safety and Health (NIOSH), and the National Institutes of Health, National Cancer Institute (NCI), announce the following meeting:

*Name:* Stakeholder informational meeting on the joint NIOSH/NCI study entitled, "A Cohort Mortality Study with a Nested Case-Control Study of Lung Cancer and Diesel Exhaust among Non-metal Miners."

*Time and Date:* 9 a.m.–12 noon, Wednesday, November 5, 2003.

*Place:* Room 705A, Hubert Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

*Status:* Open to the public, limited only by space available. The meeting room accommodates up to 50 people.

*Purpose:* To provide an overview of progress of the study, and to exchange information among government, stakeholders, and other interested parties.

*Matters To Be Discussed:* The agenda will include a short summary of the background of the NIOSH/NCI study, and reviews of progress on the different components of the study. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited. Written comments will also be considered.

*Contact Person for More Information:* Michael Attfield, Ph.D., NIOSH Project Director, Division of Respiratory Disease Studies, M/S 234, 1095 Willowdale Road, Morgantown, West Virginia 26505–2888, telephone 304/285–5737, e-mail *MDA1@CDC.GOV.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: September 30, 2003.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 03–25233 Filed 10–3–03; 8:45 am]

BILLING CODE 4163–19–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

**[Docket No. 2003D–0229]**

## Guidance for Industry on Continuous Marketing Applications: Pilot 2—Scientific Feedback and Interactions During Development of Fast Track Products Under the Prescription Drug User Fee Act of 1992

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Continuous Marketing Applications: Pilot 2—Scientific Feedback and Interactions During Development of Fast Track Products Under PDUFA." This is one in a series of guidance documents that FDA agreed to draft and implement in conjunction with the June 2002 reauthorization of the Prescription Drug User Fee Act of 1992 (PDUFA). This guidance discusses how the agency will implement a pilot program for frequent scientific feedback and interactions between FDA and applicants during the investigational phase of development for certain Fast Track drug and biological products. Applicants are being asked to apply to participate in the Pilot 2 program.

**DATES:** Submit written or electronic comments on agency guidances at any time. FDA will begin accepting applications for participation in Pilot 2 on October 6, 2003.

**ADDRESSES:** Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or to the Office of Communications, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self addressed adhesive label to assist either office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

**FOR FURTHER INFORMATION CONTACT:**

John Jenkins, CDER (HFD–020), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–3937, or

Robert A. Yetter, CBER (HFM–25), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–827–0373.

**SUPPLEMENTARY INFORMATION:**

## I. Description of the Guidance

FDA is announcing the availability of a guidance for industry entitled "Continuous Marketing Applications: Pilot 2—Scientific Feedback and Interactions During Development of Fast Track Products Under PDUFA." In conjunction with the June 2002 reauthorization of PDUFA, FDA agreed to meet specific performance goals (PDUFA Goals). The PDUFA Goals include two pilot programs to explore the continuous marketing application (CMA) concept. The CMA concept builds on the current practice of interaction between FDA and applicants during drug development and application review and proposes opportunities for improvement.

In the **Federal Register** of June 17, 2003 (68 FR 35901), FDA announced the availability of a draft version of this guidance. FDA received a number of comments when it issued the draft version of this guidance. We have considered the comments on the draft guidance carefully and have made some changes to address those comments. Among other things, we have revised the guidance to clarify the eligibility requirements and selection process for Pilot 2 and provide for public availability of additional information during the program.

Under the CMA Pilot 2 program, certain drug and biologic products that have been designated as Fast Track (i.e., products intended to treat a serious and/or life-threatening disease for which there is an unmet medical need) are eligible to be considered for participation in Pilot 2. Pilot 2 is an exploratory program and FDA will evaluate its impact on the investigational phase of drug development. Under the pilot program, a maximum of one Fast Track product per review division in CDER and CBER will be selected to participate. This guidance provides information regarding the selection of applications for Pilot 2, the formation of agreements between FDA and applicants on the investigational new drug application communication process, and other procedural aspects of Pilot 2. See **DATES** for when FDA will begin accepting applications for participation in Pilot 2.

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collection(s) of information in this guidance was approved under OMB control number 0910–0518, and will expire on March, 31, 2004. In the notice announcing the availability of the draft version of this guidance (68 FR 35901), FDA published a notice of the proposed collection of information related to the draft guidance. The **Federal Register** notice also requested comments on the burden estimated for the guidance. In the **Federal Register** of September 9, 2003 (68 FR 53174), the agency announced that it was submitting the collection of information to OMB for review and clearance under the PRA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The time required to complete this information collection is estimated to average 80 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection.

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

## II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance at any time. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

## III. Electronic Access

Persons with access to the Internet can obtain the guidance at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/cber/guidelines.htm*.

Dated: September 29, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–25305 Filed 10–1–03; 4:09 pm]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

**[Docket No. 2003D–0228]**

## Guidance for Industry on Continuous Marketing Applications: Pilot 1—Reviewable Units for Fast Track Products Under the Prescription Drug User Fee Act of 1992

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Continuous Marketing Applications: Pilot 1—Reviewable Units for Fast Track Products Under PDUFA." This is one in a series of guidance documents that FDA agreed to draft and implement in conjunction with the June 2002 reauthorization of the Prescription Drug User Fee Act of 1992 (PDUFA). Pilot 1 will enable certain applicants to receive early feedback on portions of their applications. Pilot 1 will also evaluate the benefits and costs of providing early feedback to applicants.

**DATES:** Submit written or electronic comments on agency guidances at any time.

**ADDRESSES:** Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communications, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist either office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

**FOR FURTHER INFORMATION CONTACT:**

John Jenkins, CDER (HFD–020), Food

and Drug Administration, 1451 Rockville Pike, Rockville, MD 20852, 301–594–3937, or
Robert A. Yetter, CBER (HFM–25), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–827–0373.

**SUPPLEMENTARY INFORMATION:**

## I. Description of the Guidance

FDA is announcing the availability of a guidance for industry entitled "Continuous Marketing Applications: Pilot 1—Reviewable Units for Fast Track Products Under PDUFA." In conjunction with the June 2002 reauthorization of PDUFA, FDA agreed to meet specific performance goals (PDUFA Goals). The PDUFA Goals include two pilot programs to explore the continuous marketing application (CMA) concept. The CMA concept builds on the current practice of interaction between FDA and applicants during drug development and application review and proposes opportunities for improvement.

In the **Federal Register** of June 17, 2003 (68 FR 35903), FDA announced the availability of a draft version of this guidance. FDA received a number of comments on the draft guidance. We have considered the comments carefully and have made some changes to address those comments. Among other things, we have revised the guidance to further describe the selection of marketing applications for inclusion in Pilot 1, clarify the content and submission process for reviewable units, and provide for public availability of additional information during the program.

Under the CMA pilot program, Pilot 1, applicants submitting new drug applications or biological licensing applications for products that have been designated as Fast Track drug or biological products (i.e., products intended to treat a serious and/or life-threatening disease for which there is an unmet medical need) may be eligible to submit portions of their marketing applications (reviewable units) in advance of the complete marketing application. FDA has agreed to complete reviews of reviewable units within a specified time and to provide early feedback for those presubmissions in the form of discipline review letters.

This guidance provides information on how the agency will implement Pilot 1. As described in the guidance, Pilot 1 is an exploratory program that will allow FDA to evaluate the added value, costs, and impact of early review and feedback on parts of applications (reviewable units) in advance of submission of the complete application.

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the implementation of the Pilot 1 program for reviewable units of certain Fast Track drug and biological products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

## II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance at any time. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

## III. Electronic Access

Persons with access to the Internet can obtain the guidance at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/cber/guidelines.htm*.

Dated: September 29, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–25306 Filed 10–1–03; 4:09 pm]

BILLING CODE 4160–01–S

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# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Health Resources and Services Administration

## Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

### Proposed Project: HRSA AIDS Education and Training Centers Evaluation Activities—NEW

The AIDS Education and Training Centers (AETC) Program, under the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act, supports a network of regional and cross-cutting national centers that conduct targeted, multi-disciplinary education and training programs for health care providers treating persons with HIV/AIDS. The AETCs' purpose is to increase the number of health care providers who are effectively educated and motivated to counsel, diagnose, treat, and medically manage individuals with HIV infection, and to help prevent high risk behaviors that lead to HIV transmission.

As part of a national evaluation effort of AETC activities, one questionnaire and several record-keeping forms have been developed to capture information on AETC activities. The first form is the Participant Information Form and asks trainees for information on the individual's profession, type of clinical practice, and patient population. Recordkeeping forms include (1) the Program Record which records information such as topic, training time, number of people reached, and format per training activity, (2) the Clinical Consultation Form which collects information on consults with a provider regarding a specific patient, (3) the Group Clinical Consultation Form which records information on the nature of the cases discussed and the session format during a site visit, and (4) the Agency Technical Assistance Form which collects information on activities to improve non-clinical aspects of care (*e.g.*, medical records, resource allocation). The information on the recordkeeping forms comprises a core data set that will be submitted to the HIV/AIDS Bureau (HAB) data contractor three times per year.

Each center will be required to report aggregate data from these forms on their activities to HRSA/HAB. This data collection will provide information on the number of training, consultation, and technical assistance activities by center, the number of health care providers receiving professional training or consultation, the time and effort expended on different types of training and consultation activities, the populations served by the AETC trainees, and the increase in capacity achieved through training and technical assistance activities. Collection of this information will allow HRSA/HAB to provide information on training activities, types of education and training provided to Ryan White CARE Act grantees, resource allocation, and capacity expansion.

Trainees will be asked to complete the Participant Information Form for each activity they complete. The estimated annual response burden to attendees of training programs is as follows:

| Form | Number of respondents | Responses per respondent | Total responses | Hours per response | Total burden hours |
|---|---|---|---|---|---|
| Participant Information | 75,000 | 2 | 150,000 | 0.2 | 30,000 |

The estimated annual burden to AETCs is as follows:

| Form | Number of respondents | Responses per respondent | Total responses | Hours per response | Total burden hours |
|---|---|---|---|---|---|
| Program Record | 12 | 500 | 6,000 | 0.1 | 600 |
| Clinical Consultation | 12 | 300 | 3,600 | 0.1 | 360 |
| Group Clinical Consultation | 12 | 75 | 900 | 0.1 | 90 |
| Technical Assistance | 12 | 250 | 3,000 | 0.1 | 300 |
| Aggregate Data Set | 12 | 3 | 36 | 32 | 1,152 |
| Total | 12 | .................... | 13,536 | .................... | 2,502 |

The total burden hours being requested are 32,502.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 30, 2003.

**Jane M. Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 03–25250 Filed 10–3–03; 8:45 am]

BILLING CODE 4165–15–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

## Proposed Collection; Comment Request; National Cancer Institute Science Enrichment Program Surveys

*Summary:* In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

### Proposed Collection

*Title:* NCI Science Enrichment Program (SEP) Surveys.

*Type of Information Collection Request:* New.

*Need and Use of Information Collection:* NCI SEP is a 5-week summer residential program on university campuses that serves under-represented minority and under-served students who have just completed ninth grade.

The program goals are to: (1) Encourage student participants to select careers in science, mathematics, and/or research, and (2) broaden and enrich students' science, research, and sociocultural backgrounds. The proposed data collection encompasses three surveys: (1) A follow-up survey of SEP and control group students who participated in a five-year longitudinal evaluation of the program conducted between 1998 and 2003; (2) a post-program survey of parents of SEP 2004 participants; and (3) a follow-up survey of SEP 1990–1997 alumni. The information from the proposed data collection will supplement previous evaluation results, which have been and will continue to be used to judge program process and outcomes.

*Frequency of Response:* One time.

*Affected Public:* Individuals or households.

*Type of Respondents:* High school and college students, young adults, and parents of high school students participating in the program.

*Cost to Respondents:* $4,070.

The annual reporting burden is as follows:

ESTIMATES OF HOUR BURDEN: BURDEN REQUESTED

| Type of respondents | Average number of respondents/Yr. | Frequency of response | Average time per response | Average annual hour burden |
|---|---|---|---|---|
| SEP Participants | 600 | 1 | 0.25 | 150 |
| Control Group Students | 300 | 1 | 0.25 | 75 |
| Parents of SEP Participants | 100 | 1 | 0.25 | 25 |
| SEP 1990–1997 Alumni | 627 | 1 | 0.25 | 157 |
| Total | 1,627 | .................... | .................... | 407 |

There are no Capitol Costs, Operating Costs, and/or Maintenance Costs to report.

*Request for Comments:* Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*For Further Information Contact:* To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Mr. Frank Jackson, Center to Reduce Cancer Health Disparities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Suite 602, Rockville, MD 20852, or call non-toll-free number (301) 496–8589, or E-mail your request, including your address to: *fj12i@nih.gov.*

*Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 60 days of this publication.

Dated: September 29, 2003.

**Reesa Nichols,**

*NCI Project Clearance Liaison.*

[FR Doc. 03–25294 Filed 10–6–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Submission for OMB Review; Comment Request: National Institute of Diabetes and Digestive and Kidney Diseases Information Clearinghouses Customer Satisfaction Survey

**SUMMARY:** Under the provision of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 30, 2003, pages 23150–23151 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**Proposed Collection**

*Title:* NIDDK Information Clearhinghouses Customer Satisfaction Survey.

*Type of Information Request: Extension.* The OMB control number 0925–0480 expires July 31, 2003.

*Need and Use of Information Collection:* NIDDK is conducting a survey to evaluate the efficiency and effectiveness of services provided its three information clearinghouses: National Diabetes Information Clearinghouse, National Digestive Diseases Information Clearinghouse, National Kidney and Urologic Diseases Information Clearinghouse. The survey responds to Executive Order 12862, "Setting Customer Service Standards," which requires agencies and departments to identify and "survey their customers to determine the kind and quality of service they want and their level of satisfaction with existing service."

*Frequency of Response:* On occasion.

*Affected Public:* Individuals or households; clinics or doctor's offices.

*Type of Respondents:* Physicians, nurses, patients, family.

The annual reporting burden is as follows:

*Estimated Number of Respondents:* 12,000.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Average Burden Hours Per Response:* 0.1671.

*Estimated Total Annual Burden Hours Requested:* 2,000. The annualized cost to respondents is estimated at $39,000. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

| Type or respondents | Number of respondents | Frequency of response | Estimated average response time | Estimated annual burden hours. |
|---|---|---|---|---|
| Patients/Family | 3,600 | 1.00 | 0.167 | 600 |
| Phys. Asst. | 7,200 | 1.00 | 0.167 | 1,200 |
| Physicians | 1,200 | 1.00 | 0.167 | 200 |
| Totals | 12,000 | | | 2,000 |

*Request for Comments:* Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Direct Comments to OMB:* Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimate public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Kathy Kranzfelder, Project Officer, NIDDK Information Clearinghouses, NIH, Building 31, Room 9A04, MSC2560, Bethesda, MD 20852, or call non-toll-free number (301) 435–8113 or E-mail your request, including your address, to: *kranzfeldk@hq.niddk.nih.gov.*

*Comments Due Date:* Comments regarding this information are best assured of having their full effect if received within 30 days following the date of this publication.

Dated: May 30, 2003.

**Barbara Merchant,**

*Executive Officer, NIDDK.*

[FR Doc. 03–25295 Filed 10–3–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Sickle Cell Disease Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Sickle Cell Disease Advisory Committee.

*Date:* November 3, 2003.

*Time:* 8:30 a.m. to 4:30 p.m.

*Agenda:* Discussion of program policies and issues.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Conference Rooms 9112, 9116, Bethesda, MD 20892.

*Contact Person:* Charles M. Peterson, MD, Director, Blood Diseases Program, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, NIH, Two Rockledge Center, Room 10158, MSC 7950, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–0080.

Information is also available on the Institute's/Center's home page: *http://www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 30, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25291 Filed 10–3–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 55b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Environmental Health Sciences Review Committee.

*Date:* November 6–7, 2003.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Nat'l. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

*Contact Person:* Linda K. Bass, PhD, Scientific Review Administrator, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–24, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: September 30, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25292 Filed 10–3–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Program Project (PO1) Applications.

*Date:* October 21–22, 2003.

*Time:* 7 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27713.

*Contact Person:* Leroy Worth, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, 919/541–0670, *worth@niehs.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation-Health Risks from Environmental Exposures, 93.142, NIEHS Hazardous Waste Worker Health and Safety Training, 93.143, NIEHS Superfund Hazardous Substances-Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Training, National Institutes of Health, HHS)

Dated: September 30, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25293 Filed 10–3–03; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### Radiological Emergency Preparedness: Reasonable Assurance Finding for the Indian Point Energy Center

**AGENCY:** Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** On July 25, 2003, FEMA made a finding of reasonable assurance that there is adequate offsite preparedness for the Indian Point Energy Center in Buchanan, New York.

**FOR FURTHER INFORMATION CONTACT:** Vanessa E. Quinn, Chief, Radiological Emergency Preparedness Section, Nuclear and Chemical Hazards Branch, FEMA, 500 C Street, SW., Washington, DC 20472; (202) 646–3664; *Vanessa.quinn@dhs.gov*.

**SUPPLEMENTARY INFORMATION:** On July 25, 2003, FEMA made a finding of reasonable assurance that appropriate measures to protect the health and safety of communities surrounding the Indian Point Energy Center can be taken and are capable of being implemented. A link to the full text of the document transmitting the finding to George Pataki, Governor of New York, is available at *http://www.fema.gov*.

Dated: September 29, 2003.

**R. David Paulison,**

*Director of the Preparedness Division, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–25216 Filed 10–3–03; 8:45 am]

**BILLING CODE 6718–06–P**

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## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### [UT–030–02–1610–DE–24–1A]

### Establishment of Advisory Committee

**AGENCY:** Bureau of Land Management (BLM), Utah State Office, Interior.

**ACTION:** Notice of establishment of the Grand Staircase-Escalante National Monument Advisory Committee.

**SUMMARY:** This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972, Pub. L. 92–463. Notice is hereby given that the Secretary of the Interior has established the Bureau of Land Management's Grand Staircase-Escalante National Monument Advisory Committee.

The Purpose of the Committee will be to advise Monument Managers on science and management issues and the achievement of objectives set forth in the Grand Staircase-Escalante National Monument Management Plan.

**FOR FURTHER INFORMATION CONTACT:** Steve Cohn, National Landscape Conservation System (171), Bureau of Land Management, 1620 L Street, NW., Room 301 LS, Washington, DC 20240, telephone (202) 785–6589.

#### Certification Statement

I hereby certify that the establishment of the Grand Staircase-Escalante National Monument Advisory Committee is necessary and in the public interest in connection with the Secretary of the Interior's responsibilities to manage the lands, resources, and facilities administered by the Bureau of Land Management.

Dated: September 26, 2003.

**Gale A. Horton,**

*Secretary of the Interior.*

[FR Doc. 03–25195 Filed 10–3–03; 8:45 am]

**BILLING CODE 4310–DQ–P**

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Permit Application and Safe Harbor Agreement Between the Fish and Wildlife Service and the Malpai Borderlands Group

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability and 30-day public comment period.

**SUMMARY:** The Malpai Borderlands Group (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a)(1)(A) of the Endangered Species Act (Act). The Applicants have been assigned permit number TE–073684–0. The requested permit, which is for a period of 50 years, would authorize the take of the Threatened Chiricahua leopard frog (*Rana chiricahuensis*). The proposed take could occur as a result of conservation measures implemented on the approximately 1 million acres (404,700 hectares) identified in the application and associated documents in Cochise County, Arizona and Hidalgo County, New Mexico. Conservation measures consist of stock tank development and restoration, including modification of stock tanks to enhance their use by Chiricahua leopard frogs and renovation to remove bullfrogs and other non-native predators. Currently, within the Agreement area, Chiricahua leopard frogs are only known to occur in a few locations, including three populations on the Magoffin property. These three populations on the Magoffin property exist solely due to the extraordinary efforts of the landowners to establish and maintain them prior to listing of the species. Thus, they are excluded from the baseline for the purposes of this Safe Harbor Agreement (Agreement). The Applicants, in cooperation with the Service, have prepared the Agreement to provide a conservation benefit to the species and allow for the take of the species. Based upon guidance in the Service's June 17, 1999, Final Safe Harbor Policy, if an Agreement and associated permit are not expected to individually or cumulatively have a significant impact on the quality of the human environment or other natural resources, the Agreement/permit may be categorically excluded from undergoing National Environmental Policy Act review. The Malpai Agreement qualifies as a "Low Effect" Agreement, thus, this action is a categorical exclusion. The "Low Effect" determination for the Malpai Agreement is also available for public comment. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

**DATES:** Written comments on the application should be received by November 5, 2003.

**ADDRESSES:** Persons wishing to review the application, Agreement, and "Low Effect" determination may obtain copies by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103, or by contacting the Field Supervisor, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021–4951 (602) 242–0210. Documents relating to the application will be available for public inspection by written request, by appointment only, during normal business hours (8 to 4:30) at the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, Phoenix, Arizona.

Written data or comments concerning the application and Agreement should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021–4951. Please refer to permit number TE–073684–0 (Malpai) when submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Field Supervisor at the above U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, Phoenix, Arizona (602) 242–0210.

**SUPPLEMENTARY INFORMATION:**

### Background

The Malpai Borderlands Group (Applicants) plan to implement conservation measures on approximately 1 million acres (404,700 hectares) in Cochise County, Arizona, and Hidalgo County, New Mexico. The conservation measures will improve and maintain livestock tanks and other artificial waters and use them to establish Chiricahua leopard frog populations. The Agreement as currently written is expected to provide a net conservation benefit to the Chiricahua leopard frog. The Agreement will provide protection to the Applicants against further regulation under the Endangered Species Act in the event that the Chiricahua leopard frog naturally or artificially establishes populations in the area as a result of implementation of the proposed conservation measures.

Section 9 of the Act prohibits the "taking" of threatened or endangered species. However, the Service, under limited circumstances, may issue permits to take threatened and endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22 and 50 CFR 17.32 for threatened species.

**Bryan Arroyo,**

*Acting Regional Director, Region 2, Albuquerque, New Mexico.*

[FR Doc. 03–25236 Filed 10–3–03; 8:45 am]

**BILLING CODE 4510–55–P**

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

### Recovery Plan for Coastal Plants of the Northern San Francisco Peninsula

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** The U.S. Fish and Wildlife Service ("we") announces the availability of the Recovery Plan for Coastal Plants of the Northern San Francisco Peninsula. This recovery plan includes the endangered San Francisco lessingia (*Lessingia germanorum*) and Raven's manzanita (*Arctostaphylos hookeri* ssp. *ravenii*). The portion of the plan dealing with Raven's manzanita is a revision of the 1984 Raven's Manzanita Recovery Plan. Additional species of concern that will benefit from recovery actions taken for these plants are also discussed in the recovery plan. This recovery plan includes recovery criteria and measures for the San Francisco lessingia and Raven's manzanita.

**ADDRESSES:** Hard copies of the final recovery plan will be available in 4 to 6 weeks by written request addressed to the Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, California 95825–1888. This final recovery plan is currently available on the World Wide Web at *http://endangered.fws.gov/recovery/index.html#plans.*

**FOR FURTHER INFORMATION CONTACT:** Larry Host or Kirsten Tarp, Fish and Wildlife Biologists, at the above Sacramento address (telephone 916–414–6600).

**SUPPLEMENTARY INFORMATION:**

### Background

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program and the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Act requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Draft Recovery Plan for Coastal Plants of the Northern San Francisco Peninsula was available for comment from December 4, 2001, through September 9, 2002. We sent 1,574 copies of the draft plan to affected or interested parties. About 430 comment letters were received and reviewed by us, including 5 responses from peer reviewers.

Substantive technical comments resulted in several changes to the plan. Many of these came from the National Park Service and the Presidio Trust who have been working to recover the two focus species for several years. Their comments provided helpful information about the costs and time needs for several of the actions recommended in the plan. Substantive comments regarding implementation of the plan did not necessarily result in changes to the recovery plan, but will be used to assist the work of participating Federal and other entities during the course of implementing recovery actions.

San Francisco lessingia and Raven's manzanita are restricted to the San Francisco peninsula in San Francisco County and the northern part of San Mateo County, California. San Francisco lessingia, an annual herb in the aster family, is restricted to coastal sand deposits. Raven's manzanita, a rare evergreen creeping shrub in the heath family, was historically restricted to a few scattered serpentine outcrops. Habitat loss, adverse alteration of ecological processes, and invasion of non-native plant species threaten San Francisco lessingia. Raven's manzanita has also been threatened by habitat loss. The primary current threats to Raven's manzanita include invasion of non-native vegetation; fungal pathogens; and tussock moth caterpillars, the larvae of moths from the family Lymantriidae, that eat the plants' leaves.

The plan also makes reference to several other federally listed species which are ecologically associated with San Francisco lessingia and Raven's manzanita, but which are treated comprehensively in other recovery plans. These species are beach layia (*Layia carnosa*), Presidio clarkia (*Clarkia franciscana*), Marin dwarf-flax (*Hesperolinon congestum*), Myrtle's silverspot butterfly (*Speyere zerene myrtleae*), and bay checkerspot butterfly (*Euphydryas editha bayensis*). In addition, 16 plant species of concern and 17 plant species of local or regional conservation significance are considered in this recovery plan.

The recovery plan stresses re-establishing dynamic, persistent populations of San Francisco lessingia and Raven's manzanita within plant communities which have been restored to be as "self-sustaining" as possible within urban wildland reserves. Because the species has been reduced to small remnant areas of habitat, specific recovery actions for San Francisco lessingia focus on the restoration and management of larger, dynamic mosaics of coastal dune areas supporting shifting populations within the species' narrow historic range. Recovery of Raven's manzanita will include, but will not be limited to, the strategy of the 1984 Raven's Manzanita Recovery Plan, which emphasized the stabilization of the single remaining genetic individual. The plan also seeks to re-establish multiple sexually reproducing populations of Raven's manzanita in association with its historically associated species of local serpentine outcrops.

The objectives of this recovery plan are to delist San Francisco lessingia and to downlist Raven's manzanita through implementation of a variety of recovery measures including: (1) Protection and restoration of a series of ecological reserves (often with mixed recreational and conservation park land uses); (2) promotion of population increases of San Francisco lessingia and Raven's manzanita within these sites, and reintroduction of them to restored sites; (3) management of protected sites, especially the extensive eradication or suppression of invasive dominant non-native vegetation; (4) research; and (5) public participation, outreach, and information.

**Authority:** The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 8, 2003.

**Steve Thompson,**

*Manager, California/Nevada Operations Office, Region 1, Fish and Wildlife Service.*

[FR Doc. 03–25238 Filed 10–3–03; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Office of the Special Trustee for American Indians

### Working Group on Land Consolidation Program

**AGENCIES:** Bureau of Indian Affairs, Interior; Office of the Special Trustee for American Indians, Interior.

**ACTION:** Notice.

**SUMMARY:** On April 22, 2003, the Bureau of Indian Affairs (BIA) and the Office of the Special Trustee for American Indians (OST) in the Department of the Interior filed a **Federal Register** notice (68 FR 19845) calling for nominations of Tribal officials to participate in a working group to address the rapidly increasing fractionation of ownership of Indian land. This fractionation is due to the system of allotments established by the General Allotment Act of 1887. The President's fiscal year (FY) 2004 Budget incorporates a request for a significant increase for the Indian Land Consolidation program aimed at reducing the number of individual owners in parcels of Indian lands allotted to individuals. The Department has been actively working with tribal groups on the issue and will therefore not be convening a new working group.

**DATES:** Effective on the date of publication of this notice in the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** ATTN: Terry Virden, Deputy Commissioner for Indian Affairs, Bureau of Indian Affairs, Room 4160, 1849 C Street, NW., Washington, DC 20240, or ATTN: Donna Erwin, Acting Special Trustee, Office of Special Trustee for American Indians, Room 5140, 1849 C Street, NW., Washington, DC 20240.

**SUPPLEMENTARY INFORMATION:** The allotment of Indian lands—dividing tribal lands into small parcels and allocating those parcels to individual Indians—became federal policy in 1887 with the enactment of the General Allotment Act. By the 1930s, however, it was widely accepted that the policy was a failure and, in 1934 it was ended with passage of the first Indian Reorganization Act. Interests in these alloted lands started to "fractionate" as interests divided among the heirs of the original allottees, expanding rapidly with every generation.

Today, there are approximately four million owner interests in the 10 million acres of individually-owned trust lands, and these four million interests could expand to 11 million interests by 2030. Moreover, there are an estimated 1.4 million fractional interests of 2 percent or less involving 58,000 tracks of individually-owed trust and restricted lands. There are not single pieces of property with ownership interests that are less than 0.000002 percent of the whole interest.

Addressing this issue is critical to improving the management of trust assets. The Department of the Interior, the Department in which the BIA and OST are located, is bound by its trust obligations to maintain ownership records, and in some cases to collect and distribute income for each Indian owner's interest, regardless of size. Reduction of fractional interests will increase the likelihood of more productive economic use of the land, reduce record keeping and large numbers of small dollar financial transactions, and decrease the number of interests subject to probate.

Starting in 2004, the BIA will oversee the National Indian Land Consolidation Program. The Department has established an internal working group that has actively met with tribal organizations, such as the Indian Land Working Group and the National Congress of American Indians, to discuss fractionation, the problems associated with fractionation, and possible solutions to problems. Since the Department is actively working with tribal organizations, the Department will not be convening another fractionation working group.

Dated: September 10, 2003.

**Aurene M. Martin,**

*Acting Principal Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. 03–25232 Filed 10–03–03; 8:45 am]

**BILLING CODE 4310–02–M**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Office of the Special Trustee for American Indians

### Working Group on the "As-Is" "To-Be" Process and Trust Improvement Efforts

**AGENCY:** Bureau of Indian Affairs and Office of the Special Trustee for American Indians, Interior.

**ACTION:** Notice.

**SUMMARY:** On April 22, 2003, the Bureau of Indian Affairs (BIA) and the Office of the Special Trustee for American Indians (OST) in the Department of the Interior filed a **Federal Register** notice (68 FR 19846) calling for nominations of Tribal officials to participate in a working group to discuss the "As-Is" "To-Be" processes and provide input and comments on potential alternatives on how the trust process should be improved and administered. Because mechanisms are now in place for soliciting input from Tribes on the "To-Be" processes, the Department will not be convening a new working group.

**DATES:** Effective on the date of publication of this notice in the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** ATTN: Terry Virden, Deputy Commissioner for Indian Affairs, Bureau of Indian Affairs, Room 4160, 1849 C Street, NW., Washington, DC 20240; or ATTN: Donna Erwin, Acting Special Trustee, Office of the Special Trustee for American Indians, Room 5140, 1849 C Street, NW., Washington, DC 20240.

**SUPPLEMENTARY INFORMATION:** The Electronic Data Systems Corporation, in its January 2002 Trust Reform Report, recommended that the Department develop an accurate, current state model to include business processes, internal controls, and associated information technology. The Department worked extensively on documenting the "As-Is" business processes currently employed in managing Indian trust assets. Through this "As-Is" business process, the Department established a comprehensive understanding of current trust business operations, identified needs and opportunities for improvement, and was able to understand the variances among geographic regions, and their causes.

The development of the initial "To-Be" model takes into consideration those recommendations and lessons learned from the "As-Is" process. The Department is in the process of comparing these processes to the initial "To Be" model processes to determine how existing processes can be improved. Finally, the Department will integrate the final "To-Be" model processes with universal support and operational functions, and these reengineered business processes will be documented with appropriate polices, procedures, guidelines and handbooks.

The Department has identified a reengineering core team for the purpose of engaging appropriate Interior bureaus, agencies and offices, and Tribes in the reengineering effort at different levels. The Department recognizes that Tribal assistance is critical to the identification of trust business process alternatives and opportunities for improvement. The core team is divided into a technical group (Tier 1) and a review and validation group (Tier 2). Because the activities of these core teams will involve consultations with tribes and tribal organizations, the Department will not be convening a new working group.

Dated: September 10, 2003.

**Aurene M. Martin,**

*Acting Principal Deputy Assistant Secretary—Indian Affairs.*

**Ross O. Swimmer,**

*Special Trustee.*

[FR Doc. 03–25231 Filed 10–3–03; 8:45 am]

**BILLING CODE 4310–3–M**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

### Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Mohawk Mountain Resort and Casino, Sullivan County, NY

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice advises the public that the Bureau of Indian Affairs, with the cooperation of the St. Regis Band of Mohawk Indians, intends to gather the information necessary for preparing an Environmental Impact Statement (EIS) for the proposed Mohawk Mountain Resort and Casino, Town of Thompson, Sullivan County, New York. The purpose of the proposed action is to help meet the economic development needs of the tribe. This notice also announces a public scoping meeting to identify potential issues and content for inclusion in the EIS.

**DATES:** Written comments on the scope and implementation of this proposal must arrive by October 15, 2003. The public scoping meeting will be held on October 8, 2003, at 7 p.m.

The draft EIS is expected to be completed by November 1, 2003, and to be available for public review and comment for a period of 45 days from the date the Notice of Availability of the draft EIS is published in the **Federal Register**. The final EIS is expected to be completed by January 15, 2004, and to be available to the public for a period of 30 days from the date the Notice of Availability of the final EIS is published in the **Federal Register**. The Record of Decision on the proposed action will be issued on or about March 1, 2004.

**ADDRESSES:** You may mail, hand carry or telefax written comments to Mr. Franklin Keel, Regional Director, Eastern Regional Office, Bureau of Indian Affairs, 711 Stewarts Ferry Pike, Nashville, Tennessee 37214, Telefax (615) 467–1701.

The public scoping meeting will be held at the Sullivan County Government Center, Legislative Meeting Room, 2nd Floor, 100 North Street, Monticello, New York 12701.

**FOR FURTHER INFORMATION CONTACT:** Jim Kardatzke, (615) 467–1675.

**SUPPLEMENTARY INFORMATION:** The Bureau of Indian Affairs (BIA) proposes to take 66 acres of land into trust on behalf of the St. Regis Band of Mohawk Indians (Tribe), on which the Tribe, through a development agreement with Park Place Entertainment Corporation, proposes to build a resort and casino complex to be called the Mohawk Mountain Resort and Casino. The property is located along the east side of Anawana Lake Road (C.R. 103) in the Town of Thompson, Sullivan County, New York, approximately 3 miles north of the Village of Monticello. The project design contemplates a 750 room hotel and 450,000 square foot casino and support area, a 2,000 seat theater and several restaurants spread across the 66 acres to be taken into trust, with a 5,040 stall parking garage on an adjacent 141 acre parcel.

The Tribe prepared and submitted to the BIA an Environmental Assessment (EA) on the proposed action in December 2002. Upon consideration of the EA, and of project changes made after the EA was prepared, the BIA found that an EIS would be required for the proposed action. The EA will, however, serve as a part of the scoping process for the EIS. In addition, the project is undergoing review pursuant to the New York State Environmental Quality Review Act, which has included public hearings held by the Town of Thompson to receive public comments on the EA. The comments from these hearings will also serve as a part of the scoping process for the EIS.

Issues identified to date to be addressed in the EIS include, but are not limited to the following:

- Traffic—concerns that traffic jams may result from the project and that emergency services may be compromised.
- Noise—concerns that sounds from the resort and casino will travel offsite and adversely affect nearby residences, wildlife and/or livestock.
- Water Supply/Water Quality—concerns that the project will have an adequate water supply and will not adversely affect water quality in Anawana Lake or its tributaries.
- Wetlands—the minimization and/or avoidance of wetland impacts.

Wildlife—concerns regarding the project's impact on fish and wildlife and their habitats, including threatened and endangered species.

- Sewage Disposal—concerns regarding the handling of sewage effluent.
- Land Use/Community Character—concerns regarding how the project might affect the character of surrounding lands and communities.
- Socio-economics—concerns regarding how the project might affect local business and property values.
- Air Quality "concerns regarding the additive air impacts of project-induced traffic.
- Cumulative Effects "concerns regarding the cumulative environmental impacts of the project when considered together with other reasonably foreseeable development projects in the region.
- Alternatives to the preferred alternative.

The range of issues and alternatives addressed in the EIS may be further expanded based on comments received in response to this notice, or to the scoping meeting announced in this notice.

### Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the

**ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

### Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: October 1, 2003.

**Aurene M. Martin,**

*Principal Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. 03–25394 Filed 10–2–03; 2:05 pm]

**BILLING CODE 4310–W7–P**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## Notice of Fund Availability (NOFA)

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of extension of application deadlines.

**SUMMARY:** This notice extends the deadline for submitting applications originally published on June 25, 2003.

**DATES:** Applications must be received by November 5, 2003.

**ADDRESSES:** Mail applications to Ralph Gonzales, Bureau of Indian Affairs, Office of Tribal Services, Division of Tribal Government Services, Room 320-SIB, 1951 Constitution Avenue, NW., Washington, DC 20240; or submit by facsimile (fax) message to (202) 208–5113.

**FOR FURTHER INFORMATION CONTACT:** Ralph Gonzales, (202) 513–7629.

**SUPPLEMENTARY INFORMATION:** As published in the **Federal Register** of June 25, 2003, (68 FR 37857), the Bureau of Indian Affairs announced the availability of funds for tribal courts (including Courts of Indian Offenses) and qualified tribal applicants that assume responsibility to assist the Bureau of Indian Affairs with certain Supervised Individual Indian Money (IIM) Accounts, more specifically those referenced in subparts B and C of 25 CFR part 115 (2003 ed.). The deadline for submittal of application under this NOFA was July 25, 2003. We are extending this deadline to provide an opportunity for those tribal governments that want to apply for funds to compile the relevant information regarding Supervised IIM Accounts that are under the control and management of the Bureau of Indian Affairs. Requests were received from tribal governments stating that the initial publication time was simply too short. Therefore, the application deadline date is extended from July 25, 2003, to November 5, 2003.

### Applications

Applications are due November 5, 2003 and must be postmarked by midnight on this date. Applications will be considered as meeting the deadline if they are received on or before the deadline date, or sent on or before the deadline date. Applicants may hand deliver applications to the address indicated in the **ADDRESSES** section by close-of-business (5 p.m. EST) on the deadline date. Applications will be accepted by facsimile until the close-of-business (5 p.m. EST) on the deadline date, provided the original application is postmarked by midnight the day after the due date. No applications can be transmitted by e-mail (electronic mail). Applicants are responsible for ensuring proper delivery of the application and are encouraged to contact Ralph Gonzales at (202) 513–7629 to confirm receipt.

The application packet information was included with the June 25, 2003, NOFA, and was also forwarded to the Tribal Government Services or Tribal Operations officers in the respective BIA Regional Offices. Interested applicants may contact Ralph Gonzales at the number provided above, or the Division of Tribal Government Services, (202) 513–7641, for information on application packets.

Dated: September 29, 2003.

**Aurene M. Martin,**

*Principal Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. 03–25229 Filed 10–3–03; 8:45 am]

**BILLING CODE 4310–4J–P**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[OR–030–1020–PG; G 04–0002]**

## Teleconference Meeting Motice for the John Day/Snake Resource Advisory Council

**AGENCY:** Bureau of Land Management (BLM), Vale District, Interior.

**ACTION:** Teleconference meeting notice for the John Day/Snake Resource Advisory Council.

**SUMMARY:** The John Day/Snake Resource Advisory Council (JDSRAC) will conduct a public meeting by teleconference on Tuesday, October 21 from 6:30 p.m. to 7:30 p.m. Pacific Time inclusive. The meeting is open to the public, however, teleconference lines are limited. Please call or contact Peggy Diegan at the Vale District Office, 100 Oregon Street, Vale, OR 97918 (541) 473–3144 or e-mail *Peggy_Diegan@or.blm.gov* to obtain the dial-in number. During the teleconference, the JDSRAC will come to consensus on their Program of Work for the year, Sustaining Working Landscapes and Sagegrouse Strategy.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information concerning the meeting or who wishes to submit oral or written comments should contact Debbie Lyons at the above address (541) 473–6218 or email *Debra_Lyons@or.blm.gov*. Requests for oral comments must be in writing to Debbie Lyons by October 16, 2003. For teleconference call meetings, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes total.

Dated: September 30, 2003.

**Sandra L. Guches,**

*Associate District Manager.*

[FR Doc. 03–25234 Filed 10–3–03; 8:45 am]

**BILLING CODE 4310–33–P**

## DEPARTMENT OF THE INTERIOR

## National Park Service

### Final Environmental Impact Statement on Vessel Quotas and Operating Requirements for Glacier Bay National Park and Preserve, Alaska

**AGENCIES:** National Park Service, Interior.

**ACTION:** Notice of availability of the Final Environmental Impact Statement on Vessel Quotas and Operating Requirements.

**SUMMARY:** The National Park Service (NPS) announces the availability of Final Environmental Impact Statement (EIS) on Vessel Quotas and Operating Requirements for Glacier Bay National Park and Preserve. The document describes and analyzes the environmental impacts of five action alternatives, including a preferred alternative, for managing four types of motorized vessels within Glacier Bay and Dundas Bay. A no action alternative also is evaluated.

**DATES:** A Record of Decision will be made no sooner than 30 days after the date the Environmental Protection Agency's Notice of Availability for this final EIS appears in the **Federal Register**.

**ADDRESSES:** Copies of the statement are available on request from: Nancy Swanton, EIS Project Manager, National Park Service, Alaska Support Office, 240 West 5th Avenue, Anchorage, Alaska 99501. Telephone: (907) 644–3696.

**FOR FURTHER INFORMATION CONTACT:** Nancy Swanton, EIS Project Manager, National Park Service, Alaska Support Office, 240 West 5th Avenue, Anchorage, Alaska 99501. Telephone: (907) 644–3696.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the NPS has prepared a final environmental impact statement (FEIS) that considers six alternatives to establish quotas and operating requirements for four types of motorized vessels—cruise ships and tour, charter, and private vessels—within Glacier Bay proper and/or Dundas Bay in Glacier Bay National Park and Preserve.

Glacier Bay National Park and Preserve is located in Southeast Alaska, approximately 65 miles (105 kilometers) west of Juneau. Accessible by boat and airplane, it is a popular destination due to its spectacular scenery, tidewater glaciers, wilderness, and wildlife. Vessel quotas and operating requirements have been in effect since 1979. The need for the actions considered in this FEIS stems from legislation enacted in 2001, wherein the U.S. Congress directed the Park Service to identify and analyze the possible effects of the 1996 increases in the number of vessel entries issued for Glacier Bay National Park and Preserve and set the maximum level of vessel entries, consistent with the purposes and values of the park. In this EIS, the Park Service is addressing the continuing demand for motorized vessel access into the park in a manner that assures continuing protection of park resources and values, while providing for a range of high-quality opportunities for visitors to the park.

The six alternatives evaluated in this EIS include five action alternatives and a no action alternative. Daily quotas, seasonal entries, seasonal-use days, quota season, and/or operating requirements differ among the alternatives. Alternatives 1, 2, and 3 would set vessel quotas and operating requirements for Glacier Bay proper. Alternatives 4, 5, and 6 would set quotas and operating requirements for Dundas Bay as well.

- *Alternative 1*, the no action alternative, would maintain the current vessel quotas, quota season (June 1 through August 31), and operating requirements (*see* 36 Code of Federal Regulations 13.65).

**Note:** the June 1—August 31 quota season applies to charter and private vessels for daily and seasonal quotas and to cruise ships and tour vessels for seasonal quotas. The daily quotas for cruise ships and tour vessels apply year-round.

- *Alternative 2* would set vessel quotas in accordance with those in place in 1995 and maintain the current quota season and operating requirements.
- *Alternative 3* would maintain the current vessel quotas and quota season, with one exception: it would include a provision to increase the seasonal quota for cruise ships to a maximum of two per day every day, based on the results of studies and monitoring. It would maintain the current operating requirements.
- *Alternative 4*, the environmentally preferred alternative, would maintain the current daily quota for cruise ships and decrease the daily vessel quotas for tour, charter, and private vessels in Glacier Bay. Seasonal entry quotas would not apply. This alternative would decrease the number of seasonal use days for cruise ships and tour and charter vessels and increase the number of seasonal use days for private vessels in Glacier Bay. The quota season would be May 1 through September 30 (note: the year-round daily vessel quota for cruise ships and tour vessels would be maintained). Vessel quotas would be initiated for charter vessels for Dundas Bay during a May 1 through September 30 quota season. Neither cruise ships nor tour vessels would be permitted in Dundas Bay. No quotas would be imposed for private vessels. Operating requirements would be modified.
- *Alternative 5* would maintain the current daily quotas and quota season for all four vessel types in Glacier Bay. Seasonal entry quotas would not apply. It would maintain the number of seasonal-use days for cruise ships, tour vessels, and charter vessels in Glacier Bay during the current June 1 through August 31 quota season, but decrease the number of seasonal-use days for cruise ships during May and September. It would increase the number of seasonal-use days for private vessels during the June through August quota season. Quotas would be initiated for tour and charter vessels in Dundas Bay, and the quota season would June 1 through August 31. Cruise ships would not be permitted in Dundas Bay and tour vessels would not be permitted in the upper bay (wilderness waters) on a year-round basis. No quotas would be imposed for private vessels in Dundas Bay. Operating requirements would be modified.
- *Alternative 6*, the NPS preferred alternative, would maintain the current daily vessel quotas for Glacier Bay. Seasonal entry quotas would not apply. This alternative would maintain the current seasonal use day quota for cruise ships during the current quota season (June–August), but provide for possible increases to a maximum of two ships per day each day, based on the results of studies and monitoring. It would establish a seasonal use day quota for cruise ships for May and September, with a provision to increase the number of seasonal use days to up to two per day each day, based on the results of studies and monitoring. It would maintain the current number of seasonal use days for tour and charter vessels and increase the number of seasonal use days for private vessels during the current quota season. Quotas would be initiated for tour and charter vessels in Dundas Bay, and the quota season would be June 1 through August 31. Cruise ships would not be permitted in Dundas Bay and tour vessels would not be permitted in the upper bay (wilderness waters) on a year-round basis. No quotas would be imposed for private vessels in Dundas Bay.

Operating requirements would be modified.

The responsible official for a Record of Decision on the proposed action is the NPS regional director in Alaska.

Dated: September 23, 2003.

**Victor Knox,**

*Acting Regional Director, Alaska.*

[FR Doc. 03–25208 Filed 10–3–03; 8:45 am]

BILLING CODE 4312–HX–P

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## DEPARTMENT OF THE INTERIOR

## National Park Service

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 6, 2003. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by October 21, 2003.

**Patrick W. Andrus,**

*Acting Keeper of the National Register of Historic Places.*

**COLORADO**

**Boulder County**

Shannon Farm, 1341 N. 95th St., Lafayette, 03001047

**HAWAII**

**Hawaii County**

Central Intermediate School, 1302 Queen Emma St., Honolulu, 03001049

**Honolulu County**

Kreye House, 2714 Aolani Place, Honolulu, 03001050

**Kauai County**

Kaua'i Belt Road—North Shore section, HI 560,

**Princeville, 03001048**

**IOWA**

**Muscatine County**

Pine Mills German Methodist Episcopal Church, 180th St. and Verde Ave., Muscatine, 03001051

**MISSOURI**

**Atchison County**

Thompson—Campbell Farmstead, 25579 MO U, Langdon, 03001056

**Jackson County**

Blackstone Hotel, 817 Cherry St., Kansas City, 03001057

Knight, William Baker and Mary, House, 3534 Walnut St., Kansas City, 03001054

Majestic Apartments, (Colonade Apartment Buildings of Kansas City, MO MPS) 701–707 Benton Blvd., Kansas City, 03001052

Triangle Battery and Service Company Building, 3001–03 Gillham Rd., Kansas City, 03001058

Vaccaro, Joe, Soda Water Manufacturing Company Building, 918–922 E. 5th St., Kansas City, 03001055

**St. Louis County**

Orrville Historic District, 526 amd 538 Eatherton Rd., Wildwood, 03001053

**SOUTH CAROLINA**

**Saluda County**

Spann Methodist Church and Cemetery, 150 Church St., Ward, 03001059

**WEST VIRGINIA**

**Mason County**

Smithland Farm, US 35 bet. Lower Nine Mile Rd. and Lower Five Mile Rd., Henderson, 03001061

**Mercer County**

Mercer Street Historic District, Mercer St. bet. North First St. and North St., Princeton, 03001060

A request for a MOVE has been made for the following resource:

**MISSOURI**

**Callaway County**

Pitcher Store, 8513 Pitcher Rd., Fulton vicinity, 01000235

[FR Doc. 03–25209 Filed 10–3–03; 8:45 am]

BILLING CODE 4312–51–P

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## DEPARTMENT OF THE INTERIOR

## National Park Service

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 20, 2003.

Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by October 21, 2003.

**Carol D. Shull,**

*Keeper of the National Register of Historic Places.*

**ARKANSAS**

**Garland County**

Fordyce—Ricks House Historic District, 1501 Park Ave., Hot Springs, 03001098

**GEORGIA**

**Fulton County**

Piedmont Park Apartments, 266 11th St., Atlanta, 03001104

**OHIO**

**Butler County**

Spread Eagle Tavern—Conrey, James D., House, 9797 Cincinnati-Columbus Rd., Cincinnati, 03001100

**Cuyahoga County**

Corlett Building, 1923–35 Euclid Ave., Cleveland, 03001101

National Town and Country Club, 2401 Euclid Ave., Cleveland, 03001102

**Greene County**

C. N. & I. Department Power House, Central State University Campus, Wilberforce, 03001099

**TEXAS**

**Travis County**

Oakland Cemetery Annex, (East Austin MRA) 1601 Comal St., Austin, 03001103

**WYOMING**

Park County

Absaroka Mountain Lodge, (Dude Ranches along the Yellowstone Highway in the Shoshone National Forest) 1231 North Fork Hwy, Cody, 03001105

Elephant Head Lodge, (Dude Ranches along the Yellowstone Highway in the Shoshone National Forest) 1170 North Fork Hwy., Cody, 03001107

Goff Creek Lodge, (Dude Ranches along the Yellowstone Highway in the Shoshone National Forest) 995 E. Yellowstone Hwy., Cody, 03001108

Red Star Lodge and Sawmill, (Dude Ranches along the Yellowstone Highway in the Shoshone National Forest) 349 Yellowstone Hwy., Cody, 03001106

[FR Doc. 03–25210 Filed 10–3–03; 8:45 am]

BILLING CODE 4312–51–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 13, 2003. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by October 21, 2003.

**Carol D. Shull,**

*Keeper of the National Register of Historic Places.*

**CALIFORNIA**

**Plumas County**

Drakesbad Guest Ranch, Head of Warner Creek Valley, Lassen Volcanic National Park, Chester, 03001062

**Tulare County**

Mineral King, Mineral King Rd, Sequoia National Park, Mineral King, 03001063

**LOUISIANA**

**Rapides Parish**

Pegram Plantation House, 881 Chickamaw Rd., Lecompte, 03001064

**MISSOURI**

**Greene County**

Woods—Evertz Stove Company Historic District, Area bounded by N. Jefferson Ave., E Phelps St., N. Robberson Ave. and E. Tampa St., Springfield, 03001071

**Ozark County**

Harlin, John Conkin and Clara Layton, House, 403 Harlin Dr., Gainesville, 03001065

**St. Louis Independent City**

Hotel Jefferson, 415 N. Tucker Blvd., St. Louis (Independent City), 03001066

**NEVADA**

**Humboldt County**

Martin Hotel, 94 W. Railroad St., Winnemucca, 03001067

**OREGON**

**Multnomah County**

New Imperial Hotel, 400 SW Broadway, Portland, 03001068

**RHODE ISLAND**

**Providence County**

Edgewood Historic District—Taft Estate Plat, Roughly bounded by Windsor Rd, Narragansett Bay, Circuit Dr. and Broad St. Cranston, 03001069

**SOUTH DAKOTA**

**Brookings County**

Singsaas Lutheran Church, 19716 487th Ave., Lake Hendricks Township, 03001070

**Codington County**

Beskow Barn, 15689 456th Ave., South Shore, 03001072

Puhlman Farm, 44350 176th St., Hazel, 03001075

**Hughes County**

Harrold School, (Schools in South Dakota MPS) 206 S. Nixon Ave., Harrold, 03001073

**Kingsbury County**

Lake Reston High School, (Schools in South Dakota MPS) 300 1st St., NE, Lake Preston, 03001074

**TENNESSEE**

**Davidson County**

Craig, Mrs. Edward B., House, (Forest Hills, Tennessee MPS) 1418 Chickering Rd., Forest Hills, 03001078

Dudley, Guildfor, Sr. and Anne Dallas, House, (Forest Hills, Tennessee MPS) 5401 Hillsboro Pike, Forest Hills, 03001080

Houston Jr., P.D., House, (Forest Hills, Tennessee MPS) 5617 Hillsboro Pike, Forest Hills, 03001081

Kennedy Jr., Thomas P., House, (Forest Hills, Tennessee MPS) 6231 Hillsboro Pike, Forest Hills, 03001079

Martin, Richard E., House, (Forest Hills, Tennessee MPS) 30 Castlewood Court, Forest Hills, 03001083

Neuhoff, Henry, House, (Forest Hills, Tennessee MPS) 1407 Chickering Rd., Forest Hills, 03001077

Pilcher, Dr. Cobb, House, (Forest Hills, Tennessee MPS) 5335 Stanford Dr., Forest Hills, 03001082

**VIRGINIA**

**Albemarle County**

Birdwood, 500 Birdwood Dr., Charlottesville, 03001094

**Bon Homme County**

Thompson House, (Federal Relief Construction in South Dakota MPS) 30985 421st. Ave., Springfield, 03001076

**Charlottesville Independent City**

Montebello, 1700 Stadium Rd., Charlottesville (Independent City), 03001085

Sunnyside, 2150 Barracks Rd., Charlottesville (Independent City), 03001086

**Colonial Heights Independent City**

Conjurer's Neck Archeological District, Address Restricted, Colonial Heights (Independent City), 03001090

**Dinwiddie County**

Petersburg Breakthrough Battlefield Historic District at Pamplin Historical Park, 6125 Boydton Plank Rd., 6619 Duncan Rd., Petersburg, 03001095

**Fairfax County**

Green Spring, 4601 Green Spring Rd., Alexandria, 03001089

**Fluvanna County**

Gum Creek, 1317 Stage Junction Rd., Columbia, 03001084

**Giles County**

Walker's Creek Presbyterian church, Walker's Creek Valley Rd., Pearisburg, 03001088

**King George County**

Nansattico Archeological Site, Address Restricted, Index, 03001091

**Pulaski County**

Spring Dale, Address Restricted, Dublin, 03001087

**Roanoke County**

McVitty Home, 601 W. Main St., Salem, 03001092

**Rockbridge County**

Lylburn Downing School, 300 Diamond St., Lexington, 03001093

**Russell County**

Quillen, Stephen B., House, 149 Church St., Lebanon, 03001096

**Southampton County**

Simmons—Sebrell—Camp House, Zebulon Simmons Tract, Courtland, 03001097

[FR Doc. 03–25211 Filed 10–3–03; 8:45 am]

BILLING CODE 4312–51–P

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## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Shipbuilding Research Program

Notice is hereby given that, on September 12, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Advanced Technology Institute has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of the Executive Council of the National Shipbuilding Research Program ("NSRP") and in the nature and objectives of the program. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, VT Halter Marine, Inc., Gulfport, MS, a subsidiary of Vision Technologies, Inc., has been removed as a party from this venture. The general area of planned activity of the NSRP is to establish collaborative research efforts of limited duration to manage and focus national shipbuilding research and development funding on technologies that will reduce the cost of warships to the Navy, and establish U.S. international shipbuilding competitiveness. This includes the assessment of product design and material technologies, and provides a collaborative forum to improve business and acquisition processes.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Advanced Technology Institute intends to file additional written notification disclosing all changes in membership.

On March 13, 1998, Advanced Technology Institute filed its original notification for the National Shipbuilding Research Program pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 29, 1999 (64 FR 4708).

The last notification was filed with the Department on January 13, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 3, 2003 (68 FR 10033). A Correction Notice was published in the **Federal Register** on April 24, 2003 (68 FR 20174).

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 03–25206 Filed 10–3–03; 8:45 am]

BILLING CODE 4410–11–M

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## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

September 30, 2003.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-Mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316 / this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Agency:* Occupational Safety and Health Administration.

*Type of Review:* Extension of a currently approved collection.

*Title:* Ethylene Oxide (EtO).

*OMB Number:* 1218–0108.

*Frequency:* On occasion; Quarterly; Semi-annually; and Annually.

*Affected Public:* Business or other for-profit; Federal Government; and State, local, or tribal government.

*Number of Respondents:* 5,667.

*Number of Annual Responses:* 252,395.

*Estimated Time Per Response:* Varies from 5 minutes to 2 hours.

*Total Burden Hours:* 43,972.

*Total Annualized capital/startup costs:* $0.

*Total annual costs (operating/maintaining systems or purchasing services):* $6,582,909.

*Description:* The information-collection requirements specified in the Ethylene Oxide (EtO) Standard (29 CFR 1910.1047) protect employees from the adverse health effects that may result from their exposure to EtO. The major information-collection requirements of the EtO Standard include notifying employees of their EtO exposures, implementing a written compliance program, providing examining physicians with specific information, ensuring that employees receive a copy of their medical-examination results, maintaining employees' exposure-monitoring and medical records for specific periods, and providing access to these records by OSHA, the National Institute for Occupational Safety and Health, the affected employees, and their authorized representatives.

*Agency:* Occupational Safety and Health Administration.

*Type of Review:* Extension of a currently approved collection.

*Title:* 4,4'-Methylenedianiline Construction—29 CFR 1926.60.

*OMB Number:* 1218–0183.

*Frequency:* On occasion; Quarterly; Semi-annually; and Annually.

*Affected Public:* Business or other for-profit; Federal Government; and State, local, or tribal government.

*Number of Respondents:* 66.

*Number of Annual Responses:* 3,962.

*Estimated Time Per Response:* Varies from 1 minute to 2 hours.

*Total Burden Hours:* 1,609.

*Total Annualized capital/startup costs:* $0.

*Total annual costs (operating/maintaining systems or purchasing services):* $80,437.

*Description:* The purpose of 29 CFR 1926.60 and its information collection requirements is to provide protection for employees from adverse health effects associated with occupational exposure to 4,4'-Methylenedianiline. Employers must monitor exposure, keep employee exposures within the permissible exposure limits, provide employees with medical examinations and training, and establish and maintain employee exposure-monitoring and medical records.

*Agency:* Occupational Safety and Health Administration.

*Type of Review:* Extension of a currently approved collection.

*Title:* 4,4'-Methylenedianiline General Industry—29 CFR 1910.1050.

*OMB Number:* 1218–0184.

*Frequency:* On occasion; Quarterly; Semi-annually; and Annually.

*Affected Public:* Business or other for-profit; Federal Government; and State, local, or tribal government.

*Number of Respondents:* 15.

*Number of Annual Responses:* 581.

*Estimated Time Per Response:* Varies from 1 minute to 2 hours.

*Total Burden Hours:* 295.

*Total Annualized capital/startup costs:* $0.

*Total annual costs (operating/maintaining systems or purchasing services):* $19,037.

*Description:* The purpose of 29 CFR 1910.1050 and its information collection requirements is to provide protection for employees from adverse health effects associated with occupational exposure to 4,4′-Methylenedianiline. Employers must monitor exposure, keep employee exposures within the permissible exposure limits, provide employees with medical examinations and training, and establish and maintain employee exposure-monitoring and medical records.

*Agency:* Occupational Safety and Health Administration.

*Type of Review:* Extension of a currently approved collection.

*Title:* Electrical Protective Equipment (1910.137) and Electric Power Generation, Transmission, and Distribution (1910.269).

*OMB Number:* 1218–0190.

*Frequency:* On occasion; Semi-annually; and Annually.

*Affected Public:* Business or other for-profit; Not-for-profit institutions; Federal Government; and State, local, or tribal government.

*Number of Respondents:* 12,195.

*Number of Annual Responses:* 548,886.

*Estimated Time Per Response:* Varies from 1 minute to 15 minutes.

*Total Burden Hours:* 22,685.

*Total Annualized capital/startup costs:* $0.

*Total annual costs (operating/maintaining systems or purchasing services):* $0.

*Description:* Under 29 CFR 1910.137(b)(2)(xii), employers must certify that the electrical protective equipment used by their employees passed the tests specified in paragraphs (b)(2)(viii), (b)(2)(ix), and (b)(2)(xi) of the standard. The certification must identify the equipment that passed the tests and the dates of the tests. This provision helps ensure that electrical protective equipment is reliable and safe for employee use and will provide adequate protection against electric shock. In addition, certification helps OSHA to determine if employers are in compliance with the equipment-testing requirements of the standard.

Section 1910.269(a)(2)(vii) requires employers to certify that each employee received the training specified in paragraph (a)(2) of the standard. Employers must provide certification after an employee demonstrates proficiency in the work practices involved. This certification requirement helps employers monitor the training their employees received and helps OSHA determine if employers provided the required training to their employees.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 03–25268 Filed 10–3–03; 8:45 am]

BILLING CODE 4510–23–P

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

### Proposed Extension of Information Collection Request Submitted for Public Comment; Employee Benefit Plan Claims Procedures Under ERISA

**AGENCY:** Employee Benefits Security Administration, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employee Benefits Security Administration is soliciting comments on the proposed extension of the information collection request (ICR) incorporated in regulations pertaining to Employee Benefit Plan Claims Procedures under the Employee Retirement Income Security Act of 1974 (ERISA).

A copy of the (ICR) can be obtained by contacting the individual shown in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office shown in the **ADDRESSES** section on or before December 5, 2003.

**ADDRESSES:** Gerald B. Lindrew, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Section 503 of ERISA provides that, pursuant to regulations promulgated by the Secretary of Labor, each employee benefit plan shall provide notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied. This notice must set forth the specific reasons for the denial and must be written in a manner calculated to be understood by the claimant. Plans must also afford a reasonable opportunity for a participant or beneficiary whose claim has been denied to obtain a full and fair review of the denial by the appropriate named fiduciary.

The Department first issued regulations pertaining to claims procedures in 1977. These procedures were subsequently amended by a Notice of Final Rulemaking published on November 21, 2000 (65 FR 70246). The regulatory provisions pursuant to ERISA section 503 are codified at 29 CFR 2560.503–1. These regulations require the establishment of reasonable claims procedures, and describe the timing and content of notices and disclosures that will be deemed to constitute part of a reasonable claims procedure.

#### II. Review Focus

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

#### III. Current Actions

The Office of Management and Budget's (OMB) approval of this ICR is scheduled to expire on November 30, 2003. After considering comments received in response to this notice, the Department intends to submit the ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time.

*Agency:* Employee Benefits Security Administration, Department of Labor.

*Title:* Employee Benefit Plan Claims Procedures under ERISA.

*Type of Review:* Extension of a currently approved collection of information.

*OMB Number:* 1210–0053.

*Affected Public:* Individuals or households; Business or other for-profit; Not-for-profit institutions.

*Respondents:* 6,700,000.

*Responses:* 118,000,000.

*Estimated Total Burden Hours:* 333,000.

*Estimated Total Burden Cost (Operating and Maintenance):* $90,000,000.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: September 30, 2003.

**Gerald B. Lindrew,**

*Deputy Director, Office of Policy and Research, Employee Benefits Security Administration.*

[FR Doc. 03–25267 Filed 10–3–03; 8:45 am]

**BILLING CODE 4510–29–P**

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## DEPARTMENT OF LABOR

## Employment and Training Administration

## Proposed Collection: Comment Requested

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** As part of its efforts to reduce paperwork and respondent burden the Department of Labor conducts a pre-clearance consultation program to provide the general public and other interested parties with an opportunity to comment on proposed and or/continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95); 44 U.S.C. 3056(c)(2)(A)]. This program helps ensure that requested information is provided in the desired format, the reporting burden (time and financial resources) is minimized, collection instruments are understood and the impact of the collection requirements on respondents can be assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments on the proposed extension of the existing reporting forms for the Senior Community Service Employment Program (SCSEP).

The ETA is currently preparing regulations that will implement the Older Americans Act Amendments of 2000. When final, these regulations will have a profound impact on the SCSEP and will dramatically alter the program reporting requirements while establishing performance measurement and sanction systems. The new system and the accompanying forms will not be ready for several months. Meanwhile, the Office of Management and Budget's (OMB) approval of the present reporting system will expire. In order to be in compliance with the Paperwork Reduction Act the ETA proposes to extend, without significant change, use of the existing report forms for 12 months.

**DATES:** Written comments must be received on or before December 5, 2003.

**FOR FURTHER INFORMATION COTACT:** Ria Moore Benedict, U.S. Department of Labor, Division of Older Worker Programs, Employment and Training Administration, Room S–5206, 200 Constitution Ave. NW., Washington, DC 20210. Telephone number (202) 693–3198 (This is not a toll free number); fax (202) 693–3817.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The SCSEP is authorized by Public Law 106–105, Title V of the Older Americans Act (OAA) Amendments of 2000, "Community Service Employment for Older Americans." The information collected for the SCSEP is used to administer this program of approximately $445 million which serves nearly 100,000 people each year. The Department uses three reports to administer this program. These reports are; a quarterly report of program performance data, the Quarterly Progress Report (ETA 5140), a quarterly report of financial information, The Financial Status Report (SF 269), and an Equitable Distribution Report (ETA 8705) showing the distribution of program positions by county within each State. In addition a notice, in the form of a poster, is included in the package as a required at OAA section 502(b)(1)(P) (allowable political activities).

### II. Desired Focus of Comments

The Department of Labor is particularly interested in comments that:

- Evaluate whether the proposed collection is necessary for the collection of appropriate information on SCSEP activities;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the collected information; and
- Minimize the collection burden for those who do the reporting, including the use of appropriate electronic, mechanical or other technology.

### III. Current Actions

This collection of program and financial information continues to be needed to assure that the requirements of Title V of the Older Americans Act are met. The extension of these forms will allow coverage while the new reporting system and performance measures are developed.

*Type of Review:* Extension (Without Significant Change).

*Agency:* Employment and Training Administration.

*Title:* The Senior Community Service Employment Program Reporting Package.

*OMB No.:* 1205–0040.

*Form No.:* ETA 8705, ETA 5140, SF 269, 424 and 424A.

*Record Keeping:* Agencies maintain records for 3 years after the grant period end.

*Affected Public:* Non-profit organizations state and local governments.

*Total Respondents:* 69.

*Frequency:* Annually or Quarterly as needed.

HOUR BURDEN FOR STANDARD FORMS AND SCSEP SPECIFIC FORMS

| Form | Total respondents | Frequency | Total responses | Average time per hours | Burden hrs. |
|---|---|---|---|---|---|
| Quarterly Progress Report ETA 5140 | 69 | Quarterly | 276 | 8 | 2,208 |
| Equitable Distribution report ETA–8705 | 55 | Annually | 55 | 12 | 660 |
| Poster (allowable political activities) | 69 | N/A | 69 | .5 | 35 |

HOUR BURDEN FOR STANDARD FORMS AND SCSEP SPECIFIC FORMS—Continued

| Form | Total respondents | Frequency | Total responses | Average time per hours | Burden hrs. |
|---|---|---|---|---|---|
| Total ETA Forms Activity | 69 | Varies | 400 | (1) | 2,903 |
| Financial Status Report (SF–269) | 69 | Quarterly and Final | 345 | 8 | 2,760 |
| SF 424, 424 A,B | 69 | Annually | 69 | 40 | 2,760 |
| SF Forms | 69 | Quarterly and Final | 414 | | 5,520 |
| Total ETA & SF Reports | 69 | Varies | 814 | | 8,423 |

[1] Varies.

Comments submitted in response to this request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated October 1, 2003.

**David Dye,**

*Deputy Assistant Secretary for Employment and Training.*

[FR Doc. 03–25287 Filed 10–3–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## National Advisory Committee on Ergonomics, Call for Abstracts

**AGENCY:** Occupational Safety and health Administration (OSHA), Labor

**ACTION:** Notice

**SUMMARY:** The National Advisory Committee on Ergonomics (NACE) is part of the Secretary's comprehensive approach to ergonomics designed to quickly and effectively address musculoskeletal disorders (MSDs) in the workplace. The committee has recommended that a symposium be convened to address current and project research needs and efforts relating to ergonomics, entitled *Musculoskeletal and Neurovascular Disorders—The State of Research Regarding Workplace Etiology and Prevention.* NACE will use proceedings from the symposium to make recommendations to advance OSHA's agenda of reducing the incidence of Musculoskeletal Disorders (MSDs) in the workplace. This notice announces a call for abstracts.

**DATES:** Abstract submissions are due November 5, 2003. The symposium will be held on January 27, 2004, in conjunction with the NACE's fourth meeting.

**ADDRESSES:** The symposium will be held in Washington, DC. Submit abstracts, comments, or statements in response to this notice to Mary Ann Garrahan, Director, Office of Technical Programs and Coordination Activities, OSHA, U.S. Department of Labor, Room N–3655, 200 Constitution Avenue, NW., Washington, DC 20210. Phone: (202) 693–2144; Fax (202) 693–1644.

**FOR FURTHER INFORMATION CONTACT:** OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; Phone: (202) 693–1999.

**SUPPLEMENTARY INFORMATION:** NACE was chartered for a two-year term on November 27, 2002, to provide advice and recommendations on ergonomic guidelines, research, and outreach and assistance. As part of the charter, NACE will provide OSHA with current and projected research needs and efforts relating to ergonomics. In order to provide information on known research gaps, NACE has asked that a symposium be convened to enable its members to hear from experts in the field or ergonomics. Published researchers are invited to submit abstracts on known research gaps relating to critical issues of and barriers to moving forward in the prevention of Musculoskeletal Disorders (MSDs), highlighting research issues that will help move the science into the applied world

Abstracts should focus on the state of the data-driven, scientific research concerning the relationship between the workplace and MSDs such as definitions and diagnoses, cause and work-relatedness, exposure-response relationships, intervention studies, and study design (including research methodology). Researches are expected to report on approved peer reviewed research proposals or work that has been published in peer reviewed journals. Abstracts should be no more than 600 words, and should include a page of references with a copy of the first page or each article that is cited, if applicable. Abstracts should clearly state the topic of the paper, research objective, relevant findings, and conclusion. An abstract template is available at *http://www.osha.gov/SLTC/ergonomics/nat_advis_comm.html.* Researchers should also submit a curriculum vitae. Please submit a hard copy and disk of all abstract submission by November 5, 2003 to Mary Ann Garrahan, Director, Office of Technical Programs and Coordination Activities, OSHA, U.S. Department of Labor, Room N–3655, 200 Constitution Avenue, NW., Washington, DC 20210. Phone: (202) 693–2144; Fax (202) 693–1644.

The symposium will take place in conjunction with NACE's January meeting in Washington, DC. The format of the symposium will be a one-day panel discussion expecting to consist of up to four 90-minute sessions. Between six and twelve speakers will be invited to give a short presentation each. Speakers will comprise into discussion panels. A question and answer period will follow, allowing for discussion among the panel members and NACE members.

For additional information on NACE and its objective, visit *http://www.osha.gov/SLTC/ergonomics/nat_advis_comm.html.*

**Authority:** This notice was prepared under the direction of John L. Henshaw, Assistant Secretary for Occupational Safety and Health. It is issued under the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), GSA's FACA Regulations (41 CFR part 102–3), and DLMS 3 Chapter 1600.

Dated: Signed at Washington, DC this 1st day of October, 2003.

**John L Henshaw,**

*Assistant Secretary.*

[FR Doc. 03–25266 Filed 10–3–03; 8:45 am]

BILLING CODE 4510–26–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (03–125)]**

### NASA Advisory Committee; Notice of Establishment Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. Secs. 1 et seq.

**AGENCY:** National Aeronautics and Space Administration (NASA).

The Administrator of the National Aeronautics and Space Administration has determined that the establishment of an Education Advisory Committee is necessary and in the public interest in connection with the performance of duties imposed upon NASA by law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

*Name of Committee:* Education Advisory Committee.

*Purpose and Objective:* The Committee will advise NASA Administrator on matters related to the Agency's educational program. The Committee will draw on the expertise of its members and other sources to provide its advice and recommendations to the Agency. The Committee will hold meetings and make site visits as necessary to accomplish their responsibilities. The Committee will function solely as an advisory body and will comply fully with the provisions of the Federal Advisory Committee Act.

*Balanced Membership Plans:* The Committee will consist of non-NASA employees. In addition, there may be associate members selected for Committee Subcommittees or Panels. The Committee may also request appointment of consultants to support specific tasks. Members of the Committee, Subcommittees and Panels will be chosen from among industry, academia, and government with recognized knowledge and expertise in fields relevant to education. Total membership will reflect a balanced view.

*Duration:* Continuing.

*Responsible NASA Official:* Dr. Adena Williams Loston, Associate Administrator of the Office of Education, National Aeronautics and Space Administration, 300 E Street, SW., Washington, DC 20546, telephone 202/358–0103.

**June W. Edwards,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 03–25270 Filed 10–3–03; 8:45 am]

BILLING CODE 7510–01–P

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## NATIONAL TRANSPORTATION SAFETY BOARD

### Sunshine Act Meeting Notice

**TIME AND DATE:** 9:30 a.m., Tuesday, October 7, 2003.

**PLACE:** NTSB Board Room, 429 L'Enfant Plaza, SW., Washington, DC 20594.

**STATUS:** The one item is open to the public.

**MATTER TO BE CONSIDERED:**

7561 Railroad Accident Report—Collision of Burlington Northern Santa Fe Freight Train with Metrolink Passenger Train at Placentia, California, April 23, 2002.

*News Media Contact:* Telephone: (202) 314–6000. Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, October 3, 2003.

**FOR FURTHER INFORMATION CONTACT:** Vicky D'Onofrio, (202) 314–6410.

Dated: October 2, 2003.

**Vicky D'Onofrio,**

*Federal Register Liaison Officer.*

[FR Doc. 03–25411 Filed 10–2–03; 2:46 pm]

BILLING CODE 7533–01–M

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–302]**

### Florida Power Corporation, Crystal River Unit 3 Nuclear Generating Plant; Exemption

#### 1.0 Background

Florida Power Corporation (the licensee) is the holder of Facility Operating License No. DPR–72, which authorizes operation of the Crystal River Unit 3 Nuclear Generating Plant (CR–3). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of one pressurized-water reactor located in Citrus County, Florida.

#### 2.0 Request/Action

Section 50.44 of Title 10 of the Code of Federal Regulations (10 CFR 50.44), "Standards for combustible gas control system in light-water-cooled power reactors," requires, among other items, that "[e]ach boiling or pressurized light-water nuclear power reactor fueled with oxide pellets within cylindrical zircaloy or ZIRLO cladding must, as provided in paragraphs (b) through (d) of [that] section, include means for control of hydrogen gas that may be generated, following a postulated loss-of-coolant accident (LOCA) by: (1) [m]etal-water reaction involving the fuel cladding and the reactor coolant, (2) [r]adiolytic decomposition of the reactor coolant, and (3) [c]orrosion of metals."

Section 50.46 of 10 CFR Part 50, "Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors," requires, among other items, that "[e]ach boiling or pressurized light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical zircaloy or ZIRLO cladding must be provided with an emergency core cooling system (ECCS) that must be designed so that its calculated cooling performance following postulated [LOCAs] conforms to the criteria set forth in paragraph (b) of [that] section. ECCS cooling performance must be calculated in accordance with an acceptable evaluation model and must be calculated for a number of postulated [LOCAs] of different sizes, locations, and other properties sufficient to provide assurance that the most severe postulated LOCAs are calculated."

Appendix K to 10 CFR Part 50, "ECCS Evaluation Models," requires, among other items, that the rate of energy release, hydrogen generation, and cladding oxidation from the metal/water reaction shall be calculated using the Baker-Just equation.

Finally, 10 CFR 50.44, 10 CFR 50.46, and 10 CFR part 50, appendix K make no provisions for use of fuel rods clad in a material other than zircaloy or ZIRLO. The licensee has requested the use of Framatome Cogema Fuels (FCF) "M5" advanced alloy for fuel rod cladding for the CR–3 operating Cycle 14. The M5 alloy is a proprietary zirconium-based alloy comprised of primarily zirconium (~99 percent) and niobium (~1 percent). The elimination of tin has resulted in superior corrosion resistance and reduced irradiation-induced growth relative to both standard zircaloy (1.7% tin) and low-tin zircaloy (1.2% tin). The addition of niobium increases ductility, which is desirable to avoid brittle failures. Since the chemical composition of the M5 alloy differs from the specifications for zircaloy or ZIRLO, a plant-specific exemption is required to allow the use of the M5 alloy as a cladding material at CR–3.

Section 50.12 of 10 CFR Part 50, "Specific exemptions," states, among other items, that the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. The Commission will not consider granting an exemption unless special circumstances are present. In accordance with 10 CFR 50.12(a)(2)(ii), special circumstances are present whenever application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

### 3.0 Discussion

The underlying purpose of 10 CFR 50.46 is to ensure that facilities have adequate acceptance criteria for ECCS. On February 4, 2000, the NRC staff approved Topical Report BAW–10227P, "Evaluation of Advanced Cladding and Structural Material (M5) in PWR Reactor Fuel," in which Framatome Cogema Fuels (FCF) demonstrated that the effectiveness of the ECCS will not be affected by a change from zircaloy fuel rod cladding to M5 fuel rod cladding. The analysis described in the topical report also demonstrates that the ECCS acceptance criteria applied to reactors fueled with zircaloy clad fuel are also applicable to reactors fueled with M5 fuel rod cladding.

The underlying purposes of 10 CFR 50.44 and 10 CFR part 50, appendix K, paragraph I.A.5, are to ensure that cladding oxidation and hydrogen generation are appropriately limited during a LOCA and conservatively accounted for in the ECCS evaluation model. Specifically, Appendix K requires that the Baker-Just equation be used in the ECCS evaluation model to determine the rate of energy release, cladding oxidation, and hydrogen generation. In their topical report BAW–10227P, FCF demonstrated that the Baker-Just model is conservative in all post-LOCA scenarios with respect to the use of the M5 advanced alloy as a fuel rod cladding material, and that the amount of hydrogen generated in an M5-clad core during a LOCA will remain within the CR–3 design basis.

The NRC staff has reviewed the licensee's advanced cladding and structural material, M5, for pressurized-water reactor fuel mechanical designs as described in BAW–10227P. In a safety evaluation dated February 4, 2000, for topical report BAW–10227P, the NRC staff concluded that, to the extent and limitations specified in the staff's evaluation, the M5 properties and mechanical design methodology are acceptable for referencing in fuel reload licensing applications. Therefore, since the underlying purposes of 10 CFR 50.44, 10 CFR 50.46, and 10 CFR part 50, appendix K, paragraph I.A.5 are achieved through the use of the M5 advanced alloy as a fuel rod cladding material, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of exemptions to 10 CFR 50.44 and 10 CFR part 50, appendix K, paragraph I.A.5 exist.

### 4.0 Conclusion

The Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 50.44, 10 CFR 50.46, and 10 CFR part 50, appendix K.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (68 FR 55662).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 26th day of September 2003.

For the Nuclear Regulatory Commission.

**Ledyard B. Marsh,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 03–25243 Filed 10–3–03; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–348 and 50–364]**

### Southern Nuclear Operating Company, Joseph M. Farley Nuclear Plant; Notice of Receipt and Availability of Application for Renewal of Facility Operating License Nos. NPF–2 and NPF–8 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC) has received an application from Southern Nuclear Operating Company (SNC), on September 15, 2003, filed pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, and 10 CFR part 54 for renewal of Operating License Nos. NPF–2 and NPF–8, which authorize the applicant to operate Joseph M. Farley Nuclear Plant, Units 1 and 2. Farley Nuclear Plant consists of two Westinghouse pressurized water reactor units located about 16.5 miles east of the City of Dothan, in Houston County, Alabama. The operating licenses for Farley Nuclear Plant, Units 1 and 2, expire on June 25, 2017, and March 31, 2021, respectively. The acceptability of the tendered application for docketing and other matters, including an opportunity to request a hearing, will be the subject of subsequent **Federal Register** notices.

Copies of the application are available for public inspection at the Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the Publicly Available Records (PARs) component of the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession Number ML032721356.

The ADAMS Public Electronic Reading Room is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html*. In addition, the application is available on the NRC Web page at *http://www.nrc.gov/NRC/REACTOR/LR/index.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or via e-mail to *pdr@nrc.gov*.

The license renewal application for the Farley Nuclear Plant is also available at the Houston Love Memorial Library, 212 West Burdesha Street, Dothan, Alabama.

Dated at Rockville, Maryland, the 30th day of September, 2003.

For the Nuclear Regulatory Commission.

**Pao-Tsin Kuo,**

*Program Director, License Renewal and Environmental Impacts, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

[FR Doc. 03–25242 Filed 10–3–03; 8:45 am]

**BILLING CODE 7590–01–P**

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## OVERSEAS PRIVATE INVESTMENT CORPORATION

### October 15, 2003 Board of Directors Meeting

*Time and Date:* 4 p.m., Wednesday, October 15, 2003 (Closed to Public).

*Place:* Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC

*Status:* Closed portion will commence at 4 p.m. (approx.).

*Matters to be Considered:* (Closed to the Public).

1. Discussion of OPIC Product.
2. Insurance Project in Croatia.

**FOR FURTHER INFORMATION CONTACT:** Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: October 2, 2003.

**Connie M. Downs,**

*Corporate Secretary, Overseas Private Investment Corporation.*

[FR Doc. 03–25361 Filed 10–2–03; 11:56 am]

**BILLING CODE 3210–01–M**

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## OVERSEAS PRIVATE INVESTMENT CORPORATION

### October 14, 2003 Public Hearing

*Time and Date:* 11 a.m., Tuesday, October 14, 2003.

*Place:* Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

*Status:* Hearing open to the public at 11 a.m.

*Purpose:* Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

*Procedures:*

Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m. Friday, October 10, 2003. The notice must include the individual's name, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m., October 10, 2003. Such statements must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

*For Further Information Contact:* Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov*.

Dated: October 2, 2003.

**Connie M. Downs,**

*OPIC Corporate Secretary.*

[FR Doc. 03–25362 Filed 10–2–03; 11:56 am]

**BILLING CODE 3210–01–M**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48556, File No. SR–CBOE–2001–04]**

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the Chicago Board Options Exchange, Inc., and Order Granting Partial Accelerated Approval on a Pilot Basis of the Proposed Rule Change, as Amended, To Adopt a New Rule Regarding Nullification and Adjustment of Transactions

September 29, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 14, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On August 15, 2003, the CBOE submitted Amendment No. 1 to the proposed rule change.[3] On September 12, 2003, the CBOE submitted Amendment No. 2 to the proposed rule change.[4] On September 26, 2003, the CBOE submitted Amendment No. 3 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. The Commission also grants accelerated approval of paragraphs (a)(3), (b), (c), (d), and (e) of proposed CBOE Rule 6.25, on a pilot basis until December 1, 2003.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt an obvious error trading rule. Proposed new language is *italicized;* **Federal Register** proposed deletions are in [brackets].

* * * * *

*Rule 6.25 Nullification and Adjustment of Electronic Transactions*

*This Rule governs the nullification and adjustment of options trades executed electronically and has no application to options trades executed in open outcry.*

*(a) Trades Subject to Review*

*A member or person associated with a member may have a trade adjusted or nullified if, in addition to satisfying the procedural requirements of paragraph (b) below, one of the following conditions is satisfied:*

*(1) Obvious Price Error: An obvious pricing error will be deemed to have occurred when the execution price of a transaction is above or below the fair market value of the option by at least a prescribed amount. For series trading with normal bid-ask differentials as established in Rule 8.7(b)(iv), the prescribed amount shall be: (a) the greater of $0.10 or 10% for options trading under $2.50; (b) 10% for options trading at or above $2.50 and under $5; or (c) $0.50 for options trading at $5 or higher. For series trading with bid-ask differentials that are greater than the widths established in Rule 8.7(b)(iv), the prescribed error amount shall be: (a) the greater of $0.20 or 20% for options trading under $2.50; (b) 20% for options trading at or above $2.50 and under $5; or (c) $1.00 for options trading at $5 or higher.*

*(i) Definition of Fair Market Value: For purposes of this rule only, the fair market value of an option is the midpoint of the national best bid and national best offer for the series (across all exchanges trading the option). In multiply listed issues, if there are no quotes for comparison purposes, fair market value shall be determined by Trading Officials. For singly-listed issues, fair market value shall be the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s). For transactions occurring as part of the Rapid Opening System ("ROS trades"),*

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Steve Youhn, Senior Attorney, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 14, 2003 ("Amendment No. 1"). Amendment No. 1 replaced the original proposed rule change in its entirety.

[4] *See* Letter from Steve Youhn, Senior Attorney, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated September 11, 2003 ("Amendment No. 2"). In Amendment No. 2, the CBOE replaced proposed paragraph 6.25(a)(5), relating to erroneous quotes in the underlying security, with language substantially identical to that contained in CBOE Rule 43.5(b)(4).

[5] *See* Letter from Steve Youhn, Senior Attorney, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated September 26, 2003 ("Amendment No. 3"). In Amendment No. 3, the CBOE requested that the Commission accelerate effectiveness of proposed CBOE Rule 6.25(a)(3) and proposed CBOE Rule 6.25(b), (c), (d), and (e). The CBOE also requested that these provisions operate as a pilot until December 1, 2003.

*fair market value shall be the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s).*

*(2) Obvious Quantity Error: An obvious error in the quantity term will be deemed to occur when the transaction size exceeds the responsible broker or dealer's average disseminated size over the previous four hours by a factor of five (5) times. The quantity to which a transaction shall be adjusted from an obvious quantity error shall be the responsible broker or dealer's average disseminated size over the previous four trading hours (which may include the previous trading day).*

*(3) Verifiable Disruptions or Malfunctions of Exchange Systems: Trades arising out of a "verifiable disruption or malfunction" in the use or operation of any Exchange automated quotation, dissemination, execution, or communication system may either be nullified or adjusted by Trading Officials.*

*(4) Erroneous Print in Underlying: A trade resulting from an erroneous print disseminated by the underlying market which is later cancelled or corrected by that underlying market may be adjusted or nullified. In order to be adjusted or nullified, however, the trade must be the result of an erroneous print that is higher or lower than the average trade in the underlying security during a two-minute period before and after the erroneous print by an amount at least five times greater than the average quote width for such underlying security during the same period.*

*(5) Erroneous Quote in Underlying: A trade resulting from an erroneous quote in the underlying security may be adjusted or nullified. An erroneous quote occurs when the underlying security has a width of at least $1.00 and has a width at least five times greater than the average quote width for such underlying security on the primary market during the time period encompassing two minutes before and after the dissemination of such quote. For purposes of this Rule, the average quote width shall be determined by adding the quote widths of each separate quote during the four minute time period referenced above (excluding the quote in question) and dividing by the number of quotes during such time period (excluding the quote in question).*

*(6) Trades Below Intrinsic Value: An obvious pricing error will be deemed to occur when the transaction price of an equity option is more than $0.10 below the intrinsic value of the same option (an option that trades at its intrinsic value is sometimes said to trade at parity). Provided, however, that this paragraph (6) shall not apply to transactions occurring during the last two minutes of the trading day (which is typically 3:00:01 p.m. (CT) to 3:02 p.m. (CT)) on days with regular trading hours).*

*(i) Definition of Intrinsic Value: For purposes of this rule, the intrinsic value of an equity call option equals the value of the underlying stock (measured from the bid or offer as described below) minus the strike price, and the intrinsic value of an equity put option equals the strike price minus the value of the underlying stock (measured from the bid or offer as described below), provided that in no case is the intrinsic value of an option less than zero. In the case of purchasing call options and selling put options, intrinsic value is measured by reference to the bid in the underlying security, and in the case of purchasing put options and selling call options, intrinsic value is measured by reference to the offer in the underlying security.*

*(b) Procedures for Reviewing Transactions*

*(1) Notification: Any member or person associated with a member that believes it participated in a transaction that may be adjusted or nullified in accordance with paragraph (a) must notify any Trading Official promptly but not later than fifteen (15) minutes after the execution in question. For transactions occurring after 2:45 p.m. (CST), notification must be provided promptly but not later than fifteen (15) minutes after the close of trading of that security on CBOE. Absent unusual circumstances, Trading Officials shall not grant relief under this Rule unless notification is made within the prescribed time periods. In the absence of unusual circumstances, Trading Officials (either on their own motion or upon request of a member) must initiate action pursuant to paragraph (a)(3) above within sixty (60) minutes of the occurrence of the verifiable disruption or malfunction. When Trading Officials take action pursuant to paragraph (a)(3), the members involved in the transaction(s) shall receive verbal notification as soon as is practicable.*

*(2) Review and Determination: Once a party to a transaction has applied to a Trading Official for review, the transaction shall be reviewed and a determination rendered, unless both parties to the transaction agree to withdraw the application for review prior to the time a decision is rendered.*

*Absent unusual circumstances (e.g., a large number of disputed transactions arising out of the same incident), Trading Officials must render a determination within sixty (60) minutes of receiving notification pursuant to paragraph (b)(1) above. If the transaction(s) in question occurred after 2:30 p.m., Trading Officials shall have until 9:30 a.m. the following morning to render a determination. Trading Officials shall promptly provide verbal notification of a determination to the members involved in the disputed transaction and to the control room.*

*(c) Adjustments*

*Unless otherwise specified in Rule 6.25(a)(1)–(6), transactions will be adjusted provided the adjusted price does not violate the customer's limit price. Otherwise, the transaction will be nullified. With respect to 6.25(a)(1)–(5), the price to which a transaction shall be adjusted shall be the National Best Bid (Offer) immediately following the erroneous transaction with respect to a sell (buy) order entered on the Exchange. For ROS transactions, the price to which a transaction shall be adjusted shall be based on the first non-erroneous quote after the erroneous transaction on CBOE. With respect to 6.25(a)(6), the transaction shall be adjusted to a price that is $0.10 under parity.*

*(d) Review by the Appeals Committee*

*A member affected by a determination made under this rule may appeal such determination to the Appeals Committee, in accordance with Chapter XIX of the Exchange's rules. For purposes of this Rule, a member must be aggrieved as described in Rule 19.1. Notwithstanding any provision in Rule 19.2 to the contrary, a request for review must be made in writing (in a form and manner prescribed by the Exchange) no later than the close of trading on the next trade date after the member receives verbal notification of such determination by Trading Officials.*

*(e) Negotiated Trade Nullification*

*A trade may be nullified if the parties to the trade agree to the nullification. When all parties to a trade have agreed to a trade nullification one party must promptly disseminate cancellation information in OPRA format.*

*Interpretations and Policies * * **

*.01 Applicability: Trading Officials may also allow for the execution of ROS trades (and assign those trades to participating ROS market-makers) that were not executed on the opening but that should have been executed had ROS opened the series at the non-erroneous quote. The Exchange will endeavor to notify its members as soon as practicable after the correction of an erroneous print and will indicate that*

*this may result in the adjustment of trades executed pursuant to ROS. The only trades that will be adjusted are those that were executed on the opening or those that should have executed on the opening. All adjustments will be made during the day when the correction of the erroneous print occurred.*

*.02 Trading Officials: The term "Trading Officials" means two Exchange members designated as Floor Officials and one member of the Exchange's trading floor liaison (TFL) staff.*

* * * * *

Rule 6.2A Rapid Opening System

(a)(i)–(ii) No change

(iii) [In cases where ROS opens a particular class based on an erroneous opening print disseminated by the underlying market, which is later corrected by that underlying market, two Floor Officials may adjust the trades to reflect the accurate market. Floor Officials may also allow for the execution of trades (and assign those trades to participating ROS market-makers) that were not executed on the opening but that should have been executed had ROS opened the series at the accurate price. The Exchange will endeavor to notify its members as soon as practicable after the correction of an erroneous print and will indicate that this may result in the adjustment of trades executed pursuant to ROS. The only trades that will be adjusted are those that were executed on the opening or those that should have executed on the opening. All adjustments will be made during the day when the correction of the erroneous print occurred.]

(b)–(d) No change

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## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### 1. Purpose

The Exchange proposes to adopt new CBOE Rule 6.25 to allow it to either adjust or nullify a transaction the terms of which are obviously in error. The proposed rule contains objective standards for determining when an electronic transaction constitutes an obvious error, under what circumstances a trade may be adjusted or nullified, the price to which such transaction would be adjusted, and the procedures for appealing an adverse decision.

a. *Trades Subject to Review: Proposed CBOE Rule 6.25(a).* Proposed CBOE Rule 6.25(a) specifies the transactions that may be adjusted or nullified. The price to which transactions are adjusted shall be as specified in proposed CBOE Rule 6.25(c).

i. *Obvious Price Error.* Trading Officials[6] may nullify or adjust transactions in which there is an obvious pricing error, which will be deemed to have occurred when the execution price of a transaction is higher or lower than the fair market value of the series by the following amount: (a) The greater of $0.10 or 10% for options trading under $2.50; (b) 10% for options trading at or above $2.50 and under $5; or (c) $0.50 for options trading at $5 or higher. For series trading with bid-ask differentials that are greater than the widths established in Rule 8.7(b)(iv), the prescribed error amount shall be double the requirements listed above.[7]

For purposes of the proposed Rule only, the fair market value of an option is the midpoint of the national best bid and national best offer for the series (across all exchanges trading the option). In multiply-listed issues, if there are no quotes for comparison purposes, fair market value shall be determined by Trading Officials. For singly-listed issues and transactions occurring as part of the Rapid or Hybrid Opening System[8] ("ROS or HOSS trades"), fair market value shall be the first quote after the transaction(s) in question that do not reflect the erroneous transaction(s).

ii. *Obvious Quantity Error.* An obvious error in the quantity term will be deemed to occur when the transaction size exceeds the responsible broker or dealer's average disseminated size over the previous four hours by a factor of five (5) times. The transaction size will be adjusted to the responsible broker or dealer's average disseminated size over the previous four hours (which may include a portion of the previous business day). For example, if the DPM for class XYZ has been disseminating a size of 100 in a particular class for the preceding four hours and then inadvertently disseminates a size of 1,000 contracts, which is subsequently executed against, the quantity term of that transaction may be adjusted to 100 contracts.

iii. *Verifiable Disruptions or Malfunctions of Exchange Systems.* Trading officials may nullify or adjust transactions resulting from a verifiable disruption or malfunction in the use or operation of any automated Exchange quotation, dissemination, execution, or communication system.

iv. *Erroneous Print in Underlying.* Trading Officials may adjust or nullify a trade resulting from an erroneous print disseminated by the underlying market that is later cancelled or corrected by that underlying market. In order to be adjusted or nullified, however, the trade must be the result of an erroneous print that is higher or lower than the average trade in the underlying security during a two-minute period before and after the erroneous print by an amount at least five times greater than the average quote width for such underlying security during the same period.

v. *Erroneous Quote in Underlying.* Trading Officials may adjust or nullify a trade resulting from an erroneous quote in the underlying security. An erroneous quote occurs when the underlying security has a width of at least $1.00 and has a width at least five times greater than the average quote width for such underlying security on the primary market during the time period encompassing two minutes before and after the dissemination of such quote. For purposes of the proposed Rule, the average quote width shall be determined by adding the quote widths of each separate quote during the four minute time period referenced above (excluding the quote in question) and dividing by the number of quotes during such time period (excluding the quote in question).[9]

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[6] The term "Trading Officials" means two Exchange members designated as Floor Officials and one member of the Exchange's trading floor liaison (TFL) staff.

[7] The amounts would be: (a) the greater of $0.20 or 20% for options trading under $2.50; (b) 20% for options trading at or above $2.50 and under $5; or (c) $1.00 for options trading at $5 or higher.

[8] The CBOE inadvertently omitted mention of HOSS from the rule text of proposed CBOE Rule 6.25(a)(1)(i). The CBOE has committed to submitting an amendment reflecting the changes relating to HOSS discussed herein, prior to permanent approval of the proposed rule change, as amended. Telephone conversation between Steve Youhn, Senior Attorney, CBOE and Susie Cho, Special Counsel, Division, Commission on September 26, 2003.

vi. *Trades Below Intrinsic Value.* An obvious pricing error will be deemed to occur when the transaction price of an equity option is more than $0.10 below the intrinsic value of the same option (an option that trades at its intrinsic value is sometimes said to trade at "parity").[10] Proposed CBOE Rule 6.25(a)(6) shall not apply to transactions occurring during the last two minutes of the trading day (which is typically 3:00:01 p.m. (CT) to 3:02 p.m. (CT) on days with regular trading hours).

b. *Review Procedures: Proposed CBOE Rule 6.25(b).* Proposed CBOE Rule 6.25(b) delineates objective standards regarding the review of transactions believed to have been executed in error. Pursuant to this rule, a member that believes it participated in a transaction that may be adjusted or nullified must notify any Trading Official promptly but not later than fifteen (15) minutes after the execution in question. For transactions occurring after 2:45 p.m. (CST), notification must be provided promptly but not later than fifteen (15) minutes after the close of trading of that security on CBOE on the same trading day. Absent unusual circumstances, Trading Officials shall not grant relief under the proposed Rule unless notification is made within the prescribed time periods.[11]

Once a party to a transaction has applied to a Trading Official for review, the transaction shall be reviewed and a determination rendered, unless both parties to the transaction agree to withdraw the application for review prior to the time a decision is rendered. Absent unusual circumstances (*e.g.*, a large number of disputed transactions arising out of the same incident), Trading Officials must render a determination within sixty (60) minutes of receiving notification.[12] Trading Officials shall promptly provide verbal notification of a determination to the members involved in the disputed transaction and to the control room.

c. *Price Adjustments: Proposed CBOE Rule 6.25(c).* Unless otherwise specified in proposed CBOE Rule 6.25(a)(1)–(6), transactions will be adjusted provided the adjusted price does not violate the customer's limit price. Otherwise, the transaction will be nullified. With respect to proposed CBOE Rule 6.25(a)(1)–(5), the price to which a transaction shall be adjusted shall be the National Best Bid (Offer) immediately following the erroneous transaction with respect to a sell (buy) order entered on the Exchange. For ROS transactions, the price to which a transaction shall be adjusted shall be based on the first non-erroneous quote after the erroneous transaction on CBOE. With respect to proposed CBOE Rule 6.25(a)(6), the transaction shall be adjusted to a price that is $0.10 under parity.

d. *Appeal of Floor Officials' Decision: Proposed CBOE Rule 6.25(d).* Proposed CBOE Rule 6.25(d) provides objective standards regarding the appeal of an adverse decision. A member affected by a determination made under this rule may appeal to the Appeals Committee, in accordance with Chapter XIX of the Exchange's rules.[13] Notwithstanding any provision in CBOE Rule 19.2 to the contrary, a request for review must be made in writing (in a form and manner prescribed by the Exchange) no later than the close of trading on the next trade date after the member receives verbal notification of such determination by Trading Officials.

e. *Negotiated Trade Nullification: Proposed CBOE Rule 6.25(e).* Proposed CBOE Rule 6.25(e)clarifies that a trade may be nullified if the parties to the trade agree to the nullification. When all parties to a trade have agreed to a trade nullification one party must promptly disseminate cancellation information in OPRA format.

f. *Applicability.* The Exchange represents that proposed CBOE Rule 6.25 will operate floorwide in both equity and index option products. The Exchange proposes to amend CBOE Rule 6.2A, *Rapid Opening System,* to indicate that ROS transactions that are executed at clearly erroneous prices will now be adjusted in accordance with proposed CBOE Rule 6.25. New Interpretation .01 to proposed CBOE Rule 6.25 consists of language previously contained in CBOE Rule 6.2A(a)(iii). Accordingly, the CBOE believes that the relocation of this rule language from CBOE Rule 6.2A to proposed CBOE Rule 6.25 raises no new or novel issues.

With the adoption of proposed CBOE Rule 6.25, the Exchange will withdraw the effectiveness of Regulatory Circular RG00–169.

### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[14] in general, and furthers the objectives of Section 6(b)(5)[15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The CBOE believes that the proposed rule change, as amended, will provide objective standards to use in correcting executions made as a result of an obvious error and procedures by which Trading Officials' decisions may be appealed.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange did not solicit or receive written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

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[9] Telephone conversation between Steve Youhn, Senior Attorney, CBOE and Susie Cho, Special Counsel, Division, Commission on September 16, 2003.

[10] For purposes of the proposed rule, the intrinsic value of an equity call option equals the value of the underlying stock (measured from the bid or offer as described below) minus the strike price, and the intrinsic value of an equity put option equals the strike price minus the value of the underlying stock (measured from the bid or offer as described below), provided that in no case is the intrinsic value of an option less than zero. In the case of purchasing call options and selling put options, intrinsic value is measured by reference to the bid in the underlying security, and in the case of purchasing put options and selling call options, intrinsic value is measured by reference to the offer in the underlying security.

[11] In the absence of unusual circumstances, Trading Officials (either on their own motion or upon request of a member) must initiate action pursuant to paragraph (a)(3) above within sixty (60) minutes of the occurrence of the verifiable disruption or malfunction. When Trading Officials take action pursuant to paragraph (a)(3), the members involved in the transaction(s) shall receive verbal notification as soon as is practicable.

[12] If the transaction(s) in question occurred after 2:30 p.m., Trading Officials shall have until 9:30 a.m. the following morning to render a determination.

[13] For purposes of this Rule, a member must be aggrieved as described in CBOE Rule 19.1.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2001–04 and should be submitted by October 27, 2003.

## V. Commission's Findings and Order Granting Accelerated Approval of Amendment No. 3 on a Pilot Basis

After careful review, the Commission finds that proposed paragraphs (a)(3), (b), (c), (d), and (e) of proposed CBOE Rule 6.25 are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that these proposed rules are consistent with the requirements of Section 6(b)(5)[17] of the Act, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principals of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Commission considers that in most circumstances trades that are executed between parties should be honored. On rare occasions where there has been a documented Exchange system disruption or malfunction, the execution of a trade under such circumstances indicates that an "obvious error" may exist, suggesting that it is unrealistic to expect that the parties to the trade had come to a meeting of the minds regarding the terms of the transaction. In the Commission's view, the determination of whether such an "obvious error" has occurred should be based on specific and objective criteria and subject to specific and objective procedures. The Commission believes that the CBOE's proposed rule relating to an obvious error resulting from a verifiable Exchange system disruptions and malfunctions establishes such specific and objective criteria for determining when a trade may involve an "obvious error" and thus may be adjusted or nullified. The CBOE has specified that trading officials may adjust or bust transactions resulting from a verifiable disruption or malfunction in the use or operation of any automated Exchange quotation, dissemination, execution, or communication system. The Commission also believes that the proposal establishes specific and objective procedures governing the adjustment or nullification of such trades.

The Commission finds good cause, pursuant to Section 6(b)(5)[18] and Section 19(b)[19] of the Act, to accelerate approval of paragraphs (a)(3), (b), (c), (d), and (e) of the proposed CBOE Rule 6.25 on a pilot basis, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the provisions of the proposal regarding verifiable disruptions or malfunctions of Exchange systems; procedures for reviewing transactions; adjustments of obvious error trades; review by the appeals committee; and negotiated trade nullification, are substantially similar to proposed rule changes submitted by the International Securities Exchange, Inc. and Pacific Exchange, Inc., as well as the rules for CBOEdirect, all of which the Commission has approved.[20] Furthermore, pursuant to Amendment No. 3 to the proposed rule change, these provisions of the proposed rule change are in effect on a pilot basis until December 3, 2003. The Commission finds, therefore, that granting partial accelerated approval of the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**, is appropriate and consistent with Section 6(b)(5)[21] of the Act.

## VI. Conclusion

For the reasons discussed above, the Commission finds that paragraphs (a)(3), (b), (c), (d), and (e) of CBOE Rule 6.25, as set forth in the proposed rule change, as amended, are consistent with the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[22] that paragraphs (a)(3), (b), (c), (d), and (e) of CBOE Rule 6.25, as set forth in the proposed rule change, as amended, be and hereby are approved on an accelerated basis, on a pilot basis until December 1, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–25263 Filed 10–3–03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48568; File No. SR–ISE–2003–23]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc., Relating to Payment-for-Order-Flow Fees

September 30, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 24, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which the Exchange has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[16] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b).

[20] *See* Securities Exchange Act Release No. 48538 (September 25, 2003) (SR–PCX–2002–01); Securities Exchange Act Release No. 48097 (June 26, 2003), 68 FR 39604 (July 2, 2003) (SR–ISE–2003–10); and Securities Exchange Act Release No. 47628 (April 3, 2003), 68 FR 17697 (April 10, 2003) (SR–CBOE–00–55).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

## I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to lower the cap on each payment-for-order-flow fund from $550,000 to $450,000. The text of the proposed rule change is available at the Exchange and at the Commission.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it had received. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of those statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### 1. Purpose

The Exchange operates a payment for order flow program as approved by the Commission.[3] This program is currently funded through a $.55 fee paid by ISE market makers for each customer contract they execute. The Exchange also has established a ceiling of $550,000 in each of the ten payment-for-order-flow funds it maintains.[4] The Exchanges states that it seeks to ensure that the ten payment-for-order-flow funds are sufficiently high, but no higher than necessary. The Exchange states that it continues to collect more money for the funds than its Primary Market Makers have paid out. Therefore, the Exchange proposes to reduce the ceiling on each payment-for-order-flow fund from $550,000 to $450,000, because it believes that it can adequately maintain this program with the reduced ceiling.[5]

#### 2. Statutory Basis

The basis for this proposed rule change is the requirement of section 6(b)(4) under the Act[6] that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(2) thereunder[8] because it changes an ISE fee. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–ISE–2003–23 and should be submitted by October 27, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 03–25261 Filed 10–3–03; 8:45 am]

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[3] *See* Securities Exchange Act Release No. 43833 (January 10, 2001), 66 FR 7822 (January 25, 2001) (approving File No. SR–ISE–00–10).

[4] *See* Securities Exchange Act Release Nos. 45128 (December 4, 2001), 66 FR 64325 (December 12, 2001) (File No. SR–ISE–2001–31), 45772 (April 17, 2002), 67 FR 20563 (April 25, 2002) (File No. SR–ISE–2002–09), 45857 (May 1, 2002), 67 FR 30988 (May 8, 2002) (File No. SR—ISE–2002–12), and 46976 (December 9, 2002), 67 FR 77116 (December 16, 2002) (File No. SR–ISE–2002–26). Under ISE Rule 802(b), the Exchange has divided the options it trades into ten groups, with one Primary Market Maker assigned to each group. The Exchange maintains a payment-for-order-flow fund for each group, consisting of the fees collected from market makers trading options in that group. The Primary Market Maker for the group is responsible for arranging and making all payments to Electronic Access Members for order flow sent to the Exchange in options in that group.

[5] The Commission notes that the payment for order flow fee would be suspended for a group of options when the fund balance for the group reaches $450,000, but would be reinstated when any such fund balance falls below $450,000. *See* Securities Exchange Act Release No. 45857 (May 1, 2002), 67 FR 30988 (May 8, 2002) (File No. SR–ISE–2002–12).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

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# SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48569; File No. SR–PCX–2003–52]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Exchange's Designated Examining Authority Fee Exemption

September 30, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 24, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend the regulatory fee portion of its Schedule of Fees and Charges ("Fees") in order to revise its Designated Examination Authority ("DEA") Fee exemption. The text of the proposed rule change is available at the PCX and at the Commission.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

### 1. Purpose

The Exchange is proposing to amend the regulatory fee portion of its Fees in order to revise the DEA Fee exemption. The Exchange currently charges a DEA fee in order to recover costs associated with regulation relative to those DEA member firms that do not conduct a certain portion of their trading activity on the PCX. The Exchange requires all traders to pay an initial registration fee of $75 per trader and an annual fee thereafter of $250 per trader. In addition, a $2,000 per month examination fee applies to firms for whom the PCX is the DEA. For firms that conduct a substantial portion of their business on the Exchange floor, however, these costs are deemed to be offset by contract revenue. Thus, the Exchange allows an exemption to those member organizations that can demonstrate that at least 25% of their income was derived from on-floor activities.

The Exchange seeks to make a minor amendment to the existing DEA Fee exemption. The revised DEA Fee exemption will allow an exemption for any PCX Registered Floor Broker or Market Maker[3] that effects at least 25% of all securities transactions, as measured in contract or share volume, on the PCX Floor or any other PCX Options trading facility, including PCX Plus. The Exchange believes that this amendment more accurately reflects the application of the exemption and references the Exchange's new trading platform, PCX Plus. The Exchange states that the underlying purpose of the exemption, recovery of costs[4] associated with providing regulatory services to off-floor trading firms that do not conduct their trading activity on the Exchange, remains unchanged.

### 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[5] in general, and Section 6(b)(4) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments on the proposed rule change were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4 thereunder,[8] because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to file number SR–PCX–2003–52 and should be submitted by October 27, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Jill M. Peterson,**

*Assistant Secretary.*

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[3] Pursuant to PCX Rule 6.1(c)(2), the term "Market Maker" includes Lead Market Maker, Remote Market Maker, Floor Market Maker and Supplemental Market Maker.

[4] These include costs related to advising firms on financial reporting requirements and compliance with PCX and Commission rules. There are also extensive travel costs and more complex regulation related to such firms.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48565; File No. SR–PCX–2003–20]**

## Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Amendments No. 1 and 2 and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Relating to the Limitation of Liability of the Options Clearing Corporation to Exchange Members

September 30, 2003.

## I. Introduction

On April 28, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt PCX Rule 13.5. On August 4, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On August 7, 2003, the PCX submitted Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on August 19, 2003.[5] On September 16, 2003 the PCX submitted Amendment No. 3 to the proposed rule change.[6]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Tania J. Cho, Staff Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation

The Commission received no comments on the proposed rule change, as amended. This order approves the proposed rule change, as amended, and issues notice of, and grants accelerated approval to, Amendment No. 3.

## II. Description of the Proposed Rule Change

Pursuant to the Linkage Project and Facilities Management Agreement ("Agreement"),[7] the Linkage Participants, including the Exchange, are required to file a proposed rule change with the Commission to provide the Options Clearing Corporation ("OCC") with limited liability with respect to the members" use of the Options Intermarket Linkage ("Linkage"). The PCX represents that it filed this proposed rule change to fulfill its obligation under the Agreement. The PCX proposes to adopt PCX Rule 13.5(b) to limit the liability for the OCC with respect to PCX members' use of the Linkage.

The Exchange also proposes to adopt PCX Rule 13.5(a) to provide that the Linkage, as used to send orders and other information to or from the Exchange, is a facility or service afforded by the Exchange for purposes of PCX Rule 13.2.[8] The proposed rule change provides that the OCC would have no liability to PCX members, with respect to the use, non-use, or inability to use the Linkage.

Lastly, the PCX proposed to carve out an exception for the Linkage system in existing PCX Rule 13.2(b). The Exchange represents that this rule, which addresses the Exchange's liability for the negligent acts of its employees or failure of its systems or facilities whenever custody of an unexecuted customer order is transmitted by a member through the Exchange's automated facilities, is not intended to apply to the Linkage system, and that, therefore, the carve-out is appropriate.

## III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[9] and, in particular, the requirements of section 6(b) of the Act[10] and the rules and regulations thereunder. The Commission finds that the rule change, as amended, is consistent with section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of the Exchange be designed to foster cooperation and coordination with persons engaged in regulation, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that this proposed rule change, as amended, should foster cooperation and promote a relationship between the PCX and the OCC that is conducive to the effective operation of the Linkage. Further, the Commission believes that the PCX's proposals to characterize the Linkage as a facility or service of the Exchange and to except the Linkage system from PCX Rule 13.2(b) are reasonable.

The Commission finds good cause, pursuant to section 19(b)(2) of the Act, for approving Amendment No. 3 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 3, the PCX changed the phrase "members or persons associated therewith," which was contained in the portion of the proposed rule text pertaining to the OCC's liability to such persons, to "members or associated persons." The Commission believes that this change will ensure that customers of a member or others who do business with a member, but are not under the control of, or employed by, the member, are not inadvertently affected by the proposed rule change.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–20 and should be submitted by October 27, 2003.

## V. Conclusion

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change, as amended (File No. SR–PCX–2003–20) is approved, and Amendment No. 3 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 03–25260 Filed 10–3–03; 8:45 am]

**BILLING CODE 8010–01–P**

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("Division"), Commission, dated August 1, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange submitted a new Form 19b–4, which replaced the original filing in its entirety.

[4] *See* letter from Tania J. Cho, Staff Attorney, Regulatory Policy, PCX, to Deborah L. Flynn, Assistant Director, Division, Commission, dated August 7, 2003 ("Amendment No. 2"). In Amendment No. 2, the Exchange removed a disclaimer provision contained in the proposed rule text, PCX Rule 13.5(c).

[5] Securities Exchange Act Release No. 48322 (August 12, 2003), 68 FR 49331.

[6] *See* letter from Tania J. Cho, Staff Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated September 2, 2003 ("Amendment No. 3"). In Amendment No. 3, the Exchange proposed to change the term "persons associated" to "associated persons" in proposed PCX Rule 13.5(a) and (b).

[7] Linkage Project and Facilities Management Agreement (January 30, 2003).

[8] PCX Rule 13.2, among other things, describes the extent of the Exchange's liability to members for use of the facilities and services provided by the Exchange.

[9] In approving this proposed rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *Id.*

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48563; File No. SR–Phlx–2003–30]**

## Self-Regulatory Organizations; Notice of Filing and Order Accelerating Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Implementing a Pilot Program Relating to the Book Sweep Function of the Exchange's Automated Options Market System

September 29, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 23, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by Phlx. On August 19, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On September 12, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.[4] On September 17, 2003, the Exchange filed Amendment No. 3 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal on an accelerated basis.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new Rule 1080(c)(iii) concerning a new feature of the Exchange's Automated Options Market ("AUTOM") System,[6] designed to automatically execute limit orders on the book when the Exchange's electronic options pricing system, Auto-Quote, or a specialist's quote sent to the Exchange via specialized quote feed ("SQF"), locks or crosses a limit order on the book. This feature is called "Book Sweep." Below is the text of the proposed rule change. Proposed new language is *italicized*.

* * * * *

Rule 1080. (a)–(b) No change.

(c)(i)–(ii) No change.

*(iii) Book Sweep. Book Sweep is a feature of AUTOM which, when engaged, does the following: when the bid or offer generated by the Exchange's Auto-Quote system (or by a proprietary quoting system provided for in Commentary .02 of this Rule called "Specialized Quote Feed" or "SQF") matches or crosses the Exchange's best bid or offer in a particular series as established by an order on the limit order book, orders on the limit order book in that series will be automatically executed and allocated among crowd participants signed onto the Wheel. If Book Sweep is not engaged at the time the Auto-Quote or SQF bid or offer matches or crosses the Exchange's best bid or offer represented by a limit order on the book, the specialist may manually initiate the Book Sweep feature. Book Sweep shall be engaged when AUTO–X is engaged, and shall be disengaged when AUTO–X is disengaged in accordance with Rule 1080(c)(iv) and Rule 1080(e). Eligible orders on the limit order book will be automatically executed up to the size associated with the quote that matches or crosses such limit orders.*

(iv)–(v) No change.

(d)–(j) No change.

Commentary

No change.

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to further automate options order handling by adopting a new rule reflecting a system enhancement to the Exchange's AUTOM system, called Book Sweep, that would allow certain orders resting on the limit order book[7] to be automatically executed in the situation where the bid or offer generated by the Exchange's Auto-Quote[8] system (or by a proprietary quoting system called "Specialized Quote Feed" or "SQF")[9] locks (*i.e.*, 2 bid, 2 offer) or crosses (*i.e.*, 2.10 bid, 2 offer) the Exchange's best bid or offer in a particular series as established by an order on the limit order book. Orders executed by the Book Sweep feature would be allocated among crowd participants participating on the Wheel.[10]

The Book Sweep feature should provide for more timely and efficient execution of marketable limit orders on the book. Currently, when the Auto-Quote or SQF bid or offer locks or crosses a booked order, the specialist handles the execution manually after being alerted by the system that one or more limit orders on the book are marketable and due an execution. This situation can occur for several series in the same option, requiring multiple executions of booked limit orders in each such series to be carried out by the specialist, which can be a time-consuming and burdensome process.

*Book Sweep Size.* Book Sweep would function by automatically executing a number of contracts not to exceed the size associated with the quotation that locks or crosses a limit order on the book. The purpose of this provision is to make automatic executions in the Book Sweep function consistent with the Exchange's rules relating to AUTO–X, the automatic execution feature of AUTOM. The Exchange no longer has an artificial "AUTO–X guarantee" applicable to an option. Instead, the Exchange currently provides automatic executions for eligible orders [11] delivered via AUTOM at the Exchange's disseminated price, up to the disseminated size, for both customer and broker-dealer orders.[12] Because the Exchange's disseminated size (and thus its guaranteed AUTO–X size) is fluid, in order to achieve consistency, the Exchange proposes that the number of contracts to be executed via Book Sweep be equal to the size associated with the quote that locks or crosses the limit order on the book.[13]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 18, 2003 ("Amendment No. 1"). Amendment No. 1 replaced the original Form 19b–4 in its entirety.

[4] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 11, 2003 ("Amendment No. 2"). In Amendment No. 2, Phlx amended the text of the proposed rule change to specify when the Book Sweep function would be engaged or disengaged.

[5] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 16, 2003 ("Amendment No. 3"). In Amendment No. 3, Phlx proposed to implement the Book Sweep function on a six-month pilot basis.

[6] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. *See* Exchange Rule 1080.

[7] The electronic "limit order book" is the Exchange's automated specialist limit order book, which automatically routes all unexecuted AUTOM orders to the book and displays orders real-time in order of price-time priority. Orders not delivered through AUTOM may also be entered onto the limit order book. *See* Exchange Rule 1080, Commentary .02.

[8] Auto-Quote is the Exchange's electronic options pricing system, which enables specialists to automatically monitor and instantly update quotations. *See* Exchange Rule 1080, Commentary .01(a).

[9] *See* Exchange Rule 1080, Commentary .01(b)(i).

[10] The "Wheel" is a feature of AUTOM that allocates contra-party participation respecting automatically executed trades among the specialist and Registered Options Traders ("ROTs") signed onto the Wheel for that listed option. See Exchange Rule 1080(g). *See also* Option Floor Procedure Advice ("OFPA") F–24.

When a quote generated by Auto-Quote or SQF locks or crosses a limit order on the book, there are three possible scenarios that may occur. First, if such a quote is for a number of contracts that is equal to the size associated with the limit order on the book, the entire limit order would be executed. For example, if a limit order is resting on the book with a size of 200 contracts, and the size associated with the quote that locks or crosses such a limit order is 200 contracts, the entire limit order on the book would be executed, and Auto-Quote or SQF would refresh the quote (including the size associated with such a quote).

The second possible scenario is that the size associated with a quote that locks or crosses a limit order on the book could be for a greater number of contracts than the size associated with the booked limit order. In such a situation, the entire size of the limit order would be executed. For example, if a limit order is resting on the book with a size of 200 contracts, and size associated with the quote that locks or crosses such a limit order is 300 contracts, the entire limit order would be executed. Following the execution, Auto-Quote or SQF would refresh the quote (including the size associated with such a quote).

Finally, the third possible scenario is that the size associated with the quote that locks or crosses a limit order on the book would be for fewer contracts than the size associated with the booked limit order. In this situation, the limit order would be partially executed automatically at the size associated with the quote that locks or crosses the limit order,[14] and Auto-Quote or SQF would refresh the quotation. For example, if a limit order is resting on the book with a size of 200 contracts, and the size associated with the quote that locks or crosses such a limit order is 100 contracts, Book Sweep would generate an automatic execution for 100 contracts, leaving 100 contracts resting on the limit order book, and Auto-Quote or SQF would refresh the quote. If the refreshed quote locks or crosses the remaining contracts in the limit order resting on the book, Book Sweep would initiate an automatic execution for the size associated with the refreshed quote. If the refreshed bid or offer is for a price that is inferior to the remaining contracts in the limit order on the book, such that the limit order represents the Exchange's best bid or offer, the price and size of the limit order would be disseminated by the Exchange. If the refreshed bid or offer is for a price that is superior to the price of the remaining limit order, the Exchange would disseminate the refreshed bid or offer, and the remaining limit order would rest on the limit order book until it becomes due for execution or is cancelled.

*Manual Book Sweep.* Book Sweep would be engaged when AUTO–X is engaged, and would be disengaged when AUTO–X is disengaged.[15] However, the Exchange proposes to allow specialists to engage Book Sweep manually when orders are received when AUTO–X is disengaged, and Auto-Quote or SQF matches or crosses the Exchange's best bid or offer in a particular series as established by an order on the limit order book. The purpose of this provision is to enable the specialist to execute limit orders on the book that are due for execution more efficiently by manually initiating Book Sweep (rather than executing such orders individually), thus providing more efficient executions and ensuring that the specialist may maintain a fair and orderly market when such orders become due for execution.

The Exchange expects to deploy Book Sweep as supporting systems become available, on an issue-by-issue basis over a period to be determined.

### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [16] in general and furthers the objectives of Section 6(b)(5) [17] in particular, in that it is designed to perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest. The Exchange believes that Book Sweep should help provide faster executions for investors, while reducing the burden on the Exchange's specialists with respect to the manual execution of booked orders.

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[11] For a list of circumstances in which orders otherwise eligible for AUTO–X are instead manually handled by the specialist, *see* Exchange Rule 1080(c)(iv). *See also* Securities Exchange Act Release No. 45927 (May 15, 2002), 67 FR 36289 (May 23, 2002) (SR–Phlx–2001–24).

[12] *See* Securities Exchange Act Release No. 47646 (April 8, 2003), 68 FR 17976 (April 14, 2003) (SR–Phlx–2003–18).

[13] The Exchange notes that the Chicago Board Options Exchange ("CBOE") currently has rules and systems in place regarding its "Trigger" mechanism, which includes a functionality similar to that set forth in the instant proposal. *See* CBOE Rule 6.8(d)(v). *See also* Securities Exchange Act Release No. 44462 (June 21, 2001), 66 FR 34495 (June 28, 2001) (SR–CBOE–00–22) (Order approving the CBOE Autoquote Triggered EBook Execution). The Exchange notes that, by rule, the CBOE "Trigger" function will not automatically execute a number of contracts in excess of the RAES guaranteed size. While the instant proposal is based in part on the CBOE "Trigger," it is distinguished from that function in that an order executed via Book Sweep would be executed for a number of contracts up to the size associated with the quote that locks or crosses a booked limit order.

[14] Under Exchange Rule 1082(b) all quotations made available by the Exchange and displayed by quotation vendors shall be firm for customer and broker-dealer orders at the disseminated price in an amount up to the disseminated size. *See also* Rule 11Ac1–1 under the Act, 17 CFR 240.11Ac1–1.

[15] Exchange Rule 1080(c)(iv) provides that an order otherwise eligible for AUTO–X will instead be manually handled by the specialist in the following situations:

(A) The Exchange's disseminated market is crossed (*i.e.*, 2⅛ bid, 2 offer), or crosses the disseminated market of another options exchange;

(B) One of the following order types: Stop, stop limit, market on closing, market on opening, or an all-or-none order where the full size of the order cannot be executed;

(C) The AUTOM System is not open for trading when the order is received (which is known as a pre-market order);

(D) The disseminated market is produced during an opening or other rotation;

(E) When the specialist posts a bid or offer that is better than the specialist's own bid or offer;

(F) If the NBBO Feature, described in Exchange Rule 1080(c)(i), is not engaged, and the Exchange's bid or offer is not the NBBO;

(G) When the price of a limit order is not in the appropriate minimum trading increment pursuant to Exchange Rule 1034;

(H) When the bid price is zero respecting sell orders; and

(I) When the number of contracts automatically executed within a 15 second period in an option (subject to a pilot program until November 30, 2003) exceeds the specified disengagement size, a 30 second period ensues during which subsequent orders are handled manually.

The Exchange notes that Rule 1080(c)(iv) was adopted to address the requirement in the *Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Sanctions,* Securities Exchange Act Release No. 43268 (September 11, 2000) and Administrative Proceeding File 3–10282 (the "Order") that the Exchange adopt new, or amend existing, rules concerning automatic quotation and execution systems which specify the circumstances, if any, under which automated execution systems be disengaged or operated in any manner other than the normal manner.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Phlx. All submissions should refer to File No. SR–Phlx–2003–30 and should be submitted by October 27, 2003.

## IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 of the Act.[18] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, as well as to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[19] The Commission believes that the proposed rule change, as amended, should help to facilitate the more efficient execution of orders when Auto-Quote or SQF locks or crosses the Exchange's best bid or offer in a series, as established by an order on the limit order book. Moreover, the Exchange proposes to implement the Book Sweep function as a six-month pilot program, which will enable the Exchange and the Commission to evaluate its operation before the function is permanently approved.

The Commission further finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the Exchange's proposed Book Sweep system is similar to functions that the Commission has previously approved for use on other exchanges,[20] and would be implemented on a pilot basis. Therefore, the Commission believes that it is appropriate to grant accelerated approval to the proposal.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–Phlx–2003–30) is hereby approved on an accelerated basis, as a pilot program scheduled to expire on March 31, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 03–25262 Filed 10–3–03; 8:45 am]

**BILLING CODE 8010–01–P**

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## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Building, Room 10235, 725 17th St., NW., Washington, DC 20503, Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *Continuation of Full Benefit Standard for Persons Institutionalized—20 CFR 416.212—0960–0516.* SSA is required by law to establish procedures for collecting information on whether an Supplemental Security Income (SSI) recipient who becomes institutionalized (*e.g.* hospital, nursing home) may be eligible for continued benefits, based on the full federal benefit rate, if a physician certifies that the expected period of medical confinement will last no more than 90 days. The individual (or someone acting on his/her behalf) must demonstrate the need to pay some or all of the expenses of maintaining the home. The respondents are applicants for SSI benefits.

*Type of Request:* Extension of an OMB-approved information collection.

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[18] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78f(b)(5).

[20] *See* Securities Exchange Act Release No. 44468 (June 21, 2001), 66 FR 34505 (June 28, 2001) (SR–PCX–00–03) (Order approving PCX "Auto-Ex Book" system), and Securities Exchange Act Release No. 44462 (June 21, 2001), 66 FR 34495 (June 28, 2001) (SR–CBOE–00–22) (Order approving CBOE Autoquote Triggered EBook Execution system).

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

*Number of Respondents:* 60,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 5 minutes.

*Estimated Average Burden:* 5,000 hours.

2. *Representative Payee Report of Benefits and Dedicated Account—20 CFR 416.546, 416.635, 416.640, and 416.665—0960–0576.* Form SSA–6233 is used to ensure that the representative payee is using the benefits received for the beneficiary's current maintenance and personal needs and that expenditures of funds from the dedicated account are in compliance with the law. The respondents are individuals and organizational representative payees who are required by law to establish a separate ("dedicated") account in a financial institution for certain past-due SSI benefits.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 30,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 20 minutes.

*Estimated Annual Burden:* 10,000 hours.

3. Internet Change of Address—0960–NEW. The information requested by the Social Security Administration (SSA) via the Internet will be used to report a Title II beneficiary's change of address/telephone number and to verify the identity of the individual using knowledge-based authentication. Electronic screens solicit identity information that will be verified by comparing it with information in SSA's records. The screens must be completed and identity authenticated before the requestor can change their address. This Internet option to change the address/telephone number will eliminate the need for a phone call to a teleservice center or a visit to a field office. The respondents are beneficiaries who request a change of address or telephone number via the Internet.

*Type of Request:* New information collection.

*Number of Respondents:* 80,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 10 minutes.

*Estimated Annual Burden:* 13,333 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Statement for Determining Continuing Eligibility, Supplemental Security Income Payment—20 CFR, Subpart D, 416.204—0960–0145.* SSA uses form SSA–8202–BK to conduct low- and middle-error-profile (LEP–MEP) telephone or face-to-face redetermination (RZ) interviews with SSI recipients and representative payees. The information collected during the interview is used to determine whether SSI recipients have met and continue to meet all statutory and regulatory requirements for SSI eligibility and whether they have been, and are still receiving, the correct payment amount. Form SSA–8202–OCR–SM (Optical Character Recognition Self-Mailer) collects information similar to that collected on Form SSA–8202–BK. However, it is used exclusively in LEP RZ cases on a 6-year cycle.

*Type of Request:* Extension of an OMB-approved collection.

| Forms | Respondents | Frequency of response | Average burden per response (minutes) | Estimated annual burden (hours) |
|---|---|---|---|---|
| SSA–8202–F6 | 920,000 | 1 | 19 | 291,333 |
| SSA–8202–OCR–SM | 800,000 | 1 | 9 | 120,000 |

*Total Burden Hours for this Request:* 411,333 hours.

2. *Statement for Determining Continuing Eligibility, Supplemental Security Income Payment(s)—20 CFR Subpart B, 416.204–0960–0416.* SSA uses the information collected on form SSA–8203–BK for high-error-profile (HEP) redeterminations of disability to determine whether SSI recipients have met and continue to meet all statutory and regulatory requirements for SSI eligibility and whether they have been, and are still receiving, the correct payment amount. The information is normally completed in field offices by personal contact (face-to-face or telephone interview) using the automated Modernized SSI Claim System (MSSICS). The respondents are recipients of Title XVI benefits.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 1,000,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 19 minutes.

*Estimated Annual Burden:* 316,667 hours.

Dated: September 30, 2003.

**Elizabeth A. Davidson,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. 03–25244 Filed 10–3–03; 8:45 am]

BILLING CODE 4191–02–P

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## DEPARTMENT OF STATE

**[Public Notice 4507]**

## 30-Day Notice of Proposed Information Collection: Form DS–3072, Emergency Loan Application and Evacuation Documentation, OMB Control Number 1405–0150

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

*Type of Request:* Extension of Currently Approved Collection.

*Originating Office:* Bureau of Consular Affairs (CA/OCS/PRI).

*Title of Information Collection:* Emergency Loan Application and Evacuation Documentation.

*Frequency:* On occasion.

*Form Number:* DS–3072.

*Respondents:* U.S. citizens abroad (and third country nationals, where eligible) who need evacuation, repatriation, or emergency medical and dietary assistance.

*Estimated Number of Respondents:* Approximately 500 respondents per year. The number of respondents may be much larger in emergency circumstances when lives are endangered by war, civil unrest, or natural disaster, but such circumstances are extraordinary and the number of respondents cannot be predicted.

*Average Hours Per Response:* 10 minutes.

*Total Estimated Burden:* 83.3 hours under usual circumstances.

*Public comments are being solicited to permit the agency to:*

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

**FOR FURTHER INFORMATION CONTACT:** Copies of the proposed information collection and supporting documents may be obtained from Michael Meszaros, who may be reached on 202–312–9750. Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to the State Department Desk Officer, Officer of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: September 29, 2003.

**Maura Harty,**

*Assistant Secretary, Bureau of Consular Affairs, Department of State.*

[FR Doc. 03–25278 Filed 10–3–03; 8:45 am]

BILLING CODE 4710–06–P

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## DEPARTMENT OF STATE

**[Public Notice 4508]**

### Culturally Significant Objects Imported for Exhibition; Determinations: "Jasper Johns: Numbers"

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Jasper Johns: Numbers," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Cleveland Museum of Art, Cleveland, OH, from on or about October 26, 2003, to on or about January 11, 2004, Los Angeles County Museum of Art, Los Angeles, CA, from on or about February 1, 2004, to on or about April 18, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: October 1, 2003.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 03–25277 Filed 10–3–03; 8:45 am]

BILLING CODE 4710–08–P

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## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Notice of Meeting of the Industry Sector Advisory Committee on Services (ISAC–13)

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of a partially opened meeting.

**SUMMARY:** The Industry Sector Advisory Committee on Services (ISAC–13) will hold a meeting on October 14, 2003, from 1:30 p.m. to 4:30 p.m. The meeting will be closed to the public from 2:15 p.m. to 4:30 p.m. and opened to the public from 1:30 p.m. to 2:15 p.m.

**DATES:** The meeting is scheduled for October 14, 2003, unless otherwise notified.

**ADDRESSES:** The meeting will be held at the Ronald Reagan Bldg, USA Trade Center, Training Room A.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Moll, DFO for ISAC–13 at (202) 482–1316, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230 or Christina Sevilla, Director for Intergovernmental Affairs, on (202) 395–6120.

**SUPPLEMENTARY INFORMATION:** During the opened portion of the meeting the following agenda items will be discussed.

- The General Agreement on Trade in Services (GATS) Negotiations and the WTO Cancun Ministerial, and
- The Free Trade Area of the Americas (FTAA) Negotiations.

**Christopher A. Padilla,**

*Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison.*

[FR Doc. 03–25288 Filed 10–3–03; 8:45 am]

BILLING CODE 3190–01–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement; Syracuse, UT

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed transportation improvement project on Syracuse Road (SR–108) from 1000 West to 2000 West in Syracuse City, Utah.

**FOR FURTHER INFORMATION CONTACT:** Gregory S. Punske, P.E., Environmental Program Manager, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, UT 84118, Telephone: (801) 963–0182; or Bruce Swenson, Project Manager, Utah Department of Transportation Region One Office, 169 North Wall Avenue, Ogden, UT 84412, Telephone: (801) 620–1683.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Utah Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to address current and projected transportation demand on Syracuse Road (SR–108) from 1000 West to 2000 West within Syracuse City, Utah.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public information meetings and a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

An Interagency scoping meeting is scheduled for October 15, 2003 from 10 a.m. to 12 noon at the Utah Department of Transportation Region One Office located at: 169 North Wall Avenue, Ogden, UT 84412. Contact Mr. Bruce Swenson at (801) 620–1683 for additional information or directions to the meeting.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 30, 2003.

**Gregory S. Punske,**

*Environmental Project Manager, Salt Lake City, Utah.*

[FR Doc. 03–25239 Filed 10–3–03; 8:45 am]

BILLING CODE 4910–22–M

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## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

### [STB Finance Docket No. 34398]

### BG & CM Railroad—Acquisition and Operation Exemption—Line of Camas Prairie Railnet, Inc.

BG & CM Railroad (BG & CM), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Camas Prairie Railnet, Inc. (Camas Prairie) and operate approximately 66.8 miles of rail line between Spalding and Grangeville in Lewis, Nez Perce, and Idaho Counties, ID.[1] This line, extending from milepost 0.0 to milepost 66.8, was authorized for abandonment in *Camas Prairie Railnet, Inc.—Abandonment—in Lewis, Nez Perce and Idaho Counties, ID (Between Spalding and Grangeville)*, STB Docket No. AB–564 (STB served Sept. 13, 2000).[2] BG & CM was subsequently authorized to negotiate for trail use of the line by a decision and certificate of interim trail use (CITU) served in the same docket on January 6, 2003. Trail use negotiations were successful and BG & CM has acquired all relevant, track, ties and other track materials, and sufficient real estate interests for railroad operations. BG & CM wishes to reactivate service from milepost 0.0 to milepost 52.0, but requests that the remainder of the line, from milepost 52.0 to milepost 66.8, remain rail banked pursuant to the CITU.[3]

The exemption became effective on September 23, 2003 (seven days after the notice was filed), but BG & CM intends to consummate the transaction and begin service only upon issuance of a Board decision exempting it from the regulatory requirements of 49 U.S.C., Subtitle IV. BG & CM certifies that its projected annual revenues do not exceed those that would qualify it as a Class III carrier.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34398 must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Charles H. Montange, 426 NW 162 St., Seattle, WA 98177.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 29, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 03–25099 Filed 10–3–03; 8:45 am]

BILLING CODE 4915–00–P

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[1] This notice of exemption is the subject of a motion to dismiss filed simultaneously by BG & CM based on its position that Board authorization is not necessary. Further, the operations described in this notice are also the subject of a BG & CM petition for exemption from the requirements of 49 U.S.C. Subtitle IV filed in *BG & CM Railroad, Inc.—Petition for Exemption—in Lewis, Nez Perce, and Idaho Counties, ID*, STB Finance Docket No. 34399. Both will be decided in a subsequent Board decision.

[2] Camas Prairie has discontinued service over the line, but has not consummated the abandonment thereof.

[3] As to the segment between mileposts 52.0 and 66.8 that would remain rail banked, BG & CM seeks authorization from the Board to acquire Camas Prairie's right to reactivate rail service in the future.

# Corrections

**Federal Register**
Vol. 68, No. 193
Monday, October 6, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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## GENERAL SERVICES ADMINISTRATION

**41 CFR Part 101–8**

**RIN 3090–AH33**

## Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, or Age in Programs or Activities Receiving Federal Financial Assistance; Final Rule

*Correction*

In rule document 03–21140 beginning on page 51334 in the issue of Tuesday, August 26, 2003, make the following corrections:

**§101–8.703 [Amended]**

1. On page 51375, in the first column, in §101–8.703, in amendatory instruction 13, in the first line, "Section 1101–8.703" should read "Section 101–8.703."

2. On the same page, in the same section, in the table, under the heading "Section", in the sixth entry, "101–703(l)" should read "101–8.703(l)".

[FR Doc. C3–21140 Filed 10–3–03; 8:45 am]

**BILLING CODE 1505–01–D**

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

# Federal Register

Monday,
October 6, 2003

## Part II

## Department of Health and Human Services

### Centers for Medicare & Medicaid Services

42 CFR Parts 412 and 413

### Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2004 Rates; Correction of Final Rule

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Parts 412 and 413**

**[CMS–1470–CN]**

**RIN 0938–AL89**

## Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2004 Rates; Correction

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Correction of final rule.

**SUMMARY:** This document corrects technical errors that appeared in the final rule published in the **Federal Register** on August 1, 2003 entitled "Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2004 Rates." These corrections include—(1) An error in the assignment of procedures to diagnosis-related group (DRG) 525, Heart Assist System Implant; (2) a technical error in the new technology add-on payment amount for InFUSE™ Bone Graft/LT–CAGE™ Lumbar Tapered Fusion Device (InFUSE™); and (3) technical errors in the wage index values and geographic reclassifications. As a result of the wage index and geographic reclassification corrections, we have recalculated the budget neutrality factors applicable to the operating national average standardized amounts and the capital Federal rate, which resulted in changes to the standardized amounts themselves.

**EFFECTIVE DATES:** The corrections listed in this document are effective on October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Margot Blige Holloway, (410) 786–4642.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In FR Doc. 03–19363 of August 1, 2003 (68 FR 45346), there was a factual error and a number of technical errors that are identified and corrected in the Correction of Errors section (section II) of this document. There are also typographical errors that are identified and corrected in section II of this document.

We are correcting the assignment of procedures to DRG 525 in light of the much lower charges associated with code 37.62. We are also correcting a factual error in our response to a comment we received stating that the DRG assignment of International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM) procedure codes to DRG 525 is clinically and financially inappropriate. Our response stated that this point had not been raised prior to this year's proposed rule. However, our response was incorrect. In fact, a commenter did point out in response to our proposal to create DRG 525 for FY 2003 that ICD–9–CM procedure code 37.62 was clinically and financially dissimilar to other procedures in DRG 525, and recommended this procedure code not be included in DRG 525 but should remain in DRGs 104 and 105, Cardiac Valve and Other Major Cardiothoracic Procedures With and Without Cardiac Catheterization. (*See* the August 1, 2002 **Federal Register** (68 FR 49991) for the detailed discussion of the comment and our response.)

We will remove all cases with code 37.62 from DRG 525, and reassign them to DRGs 104 and 105, respectively. Procedure codes 37.63 (Replacement and repair of heart assist system), 37.65 (Implant of an external, pulsatile heart assist system), and 37.66 (Implant of an implantable, pulsatile heart assist system) will continue to be assigned to DRG 525. This change will increase the relative weight and the payments for cases assigned to DRG 525. We now believe this correction is necessary to ensure adequate access to procedures in this DRG. As a result of these corrections, we are also making corrections to the relative weights and the geometric and arithmetic mean length of stay listed in Table 5 of the final rule. Although this change will be effective for discharges occurring on or after October 1, 2003, it requires the issuance of revised GROUPER software. At this time, we do not anticipate revised GROUPER software will be available until at least January 1, 2004. Affected claims may be resubmitted for adjusted payments after that date.

One of the technical errors involved our discussion of the approval of InFUSE™ Bone Graft/LT–CAGE™ Lumbar Tapered Fusion Device (InFUSE™) as a new technology eligible add-on payment. In that discussion, we mistakenly indicated that a single level fusion required the use of two InFUSE products, with a total cost of $17,800. Based on further review of the costs associated with this technology, we have determined that only one InFUSE product is required for a single level fusion. Accordingly, we are correcting the maximum add-on payment for a case involving the InFUSE™ to be $4,450. In addition, we have recomputed the budget neutrality adjustment factor under section 1886(d)(4)(C)(iii) to reflect the lower estimate of the total add-on payments for this new technology.

The technical errors also included several errors in the calculation of the wage index. These errors were due to the mishandling or miscalculation of data by CMS and the fiscal intermediaries. Therefore, we are making corrections to some of the average hourly wages shown in Table 2 for individual hospitals and to the corresponding average hourly wages shown in Table 3A of the Metropolitan Statistical Areas (MSA) where those hospitals are located. At least one of the computational errors also has a spill-over effect on hospitals other than the hospitals that were the subjects of the error. This error involved a few hospitals whose wage indexes were calculated as if their cost reporting periods equaled 1 month (even though the hospitals had reported a full 12 months of data). As we explained in the August 1, 2003 final rule, we annualize short cost-reporting periods to reflect a 1-year period (68 FR 45399). Annualization is accomplished by dividing the data by the number of days in the cost report and then multiplying the results by 365, and such annualization resulted in a wage index for the subject hospitals inflated by a factor of approximately 12. Correcting the error results in a decrease to the national average hourly wage rate and a concurrent general increase in the wage indexes. Consequently, we are republishing Tables 4A through 4H, reflecting corrections to hospitals' wage indexes.

After the publication of the August 1, 2003 final rule, we were notified of a wage index data error for rural Georgia. These errors appear in the average hourly wages listed in Table 2 and in the Table 3B (Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas). The errors in the average hourly wage were a result of the use of an incorrect data file. In this notice, we are correcting the average hourly wage listed in Tables 2 and 3B. However, because we did not receive notification regarding the error in enough time to make corrections to the rural Georgia wage index effective for discharges on or after October 1, 2003, we are not correcting the corresponding wage index values (which are listed in Tables 4B and 4H) in this document. These corrections will be issued in a future program memorandum and made effective prospectively with discharges occurring on or after January 1, 2004.

Also, there were technical errors in the geographic reclassifications that will result in corrections to the reclassification data displayed in Table 9 of the August 1, 2003 final rule. We note that wage index changes and geographic reclassifications are required to be budget neutral under sections 1886(d)(3)(E) and 1886(d)(8)(D) of the Social Security Act (the Act). Similarly, section 412.308(c)(4) of the regulations requires that the capital standard Federal rate be adjusted so that the annual DRG reclassification and the recalibration of DRG weights and changes in the geographic adjustment factor (GAF) are budget neutral. Therefore, in order to comply with the statutory and regulatory requirements for overall budget neutrality, we recalculated the budget neutrality factors applied to operating national average standardized amounts and the capital Federal rate. Because the wage indexes generally increased across all hospitals, the budget neutrality calculations caused the standardized amounts to decrease slightly. We have also corrected the relevant columns of Table I from the impact analysis in Appendix A to reflect these corrections to the wage index and standardized amounts. In addition, we are correcting a typographical error in the same table. We note that this correction is essentially nullified by the wage index corrections. However, we want to point out the value of the published figure should have been positive rather than negative (*see* correction to page 45662). Finally, we note that total payments to hospitals under IPPS are relatively unaffected by changes in prospective payments for capital-related costs. Since capital PPS payments constitute about 10 percent of hospital payments, a 1-percent change in the capital Federal rate yields only about 0.1 percent change in actual payments to hospitals. Thus, the impact of the −0.31 percent change in the FY 2004 capital Federal rate is negligible.

Lastly, we are republishing Table 10, Mean and .75 Standard Deviation by Diagnosis-Related Group in its entirety, due to the inadvertent publication of the incorrect version of Table 10 in the final rule.

## II. Correction of Errors

In FR Doc. 03–19363 of August 1, 2003 (68 FR 45346), make the following corrections:

1. On page 45370,

a. First column, second and third full paragraphs, the paragraphs beginning with the phrases "*Response:* In response to comments" and "While we recognize the significant" are corrected to read "*Response:* We agree it is appropriate to correct the assignment of procedures to DRG 525 in light of the lower charges associated with procedure code 37.62. Therefore, we are moving code 37.62 into DRGs 104 and 105, and leaving procedure codes 37.63, 37.65, and 37.66 in DRG 525.";

b. First column last paragraph, lines 1 through 3, the sentence "Furthermore, the volume and mix of cases in this DRG is likely to change over the next year" is corrected by deleting the sentence; and

c. Second column, first full paragraph, last line, the phrase "revising DRG 525." is corrected to read "any further revisions to these DRG assignments.".

2. On page 45371, first column, third full paragraph, line 3, the phrase "increase the harge" is corrected to read "increase the charge".

3. On page 45386, third column, first full paragraph, lines 5, the phrase "such item" is corrected to read "such items".

4. On page 45390,

a. Second column,

(1) First partial paragraph, last line, sentences are added to read "We note that, InFUSE™ Bone Graft/LT–CAGE™ Lumbar Tapered Fusion Device with recombinant human bone morphogenetic protein (rhBMP) 2 is the only rhBMP technology that has applied and met the criteria for the new technology add-on payment. Therefore, the add-on payments will apply only to this technology";

(2) Second full paragraph, lines 6 through 19, the sentences, "The average cost of the InFUSE™ is reported to be $8,900, and a single level fusion requires two of the products. Therefore, the total cost for the InFUSE™ for a single-level fusion is expected to be $17,800. Under § 412.88(a)(2), new technology add-on payments are limited to the lesser of 50 percent of the average cost of the device or 50 percent of the costs in excess of the DRG payment for the case. As a result, the maximum add-on payment for a case involving the InFUSE™ is $8,900." are corrected to read "The average cost of the InFUSE™ is reported to be $8,900 for a single level fusion. Under § 412.88(a)(2), new technology add-on payments are limited to the lesser of 50 percent of the average cost of the device or 50 percent of the costs in excess of the DRG payment for the case. As a result the maximum add-on payment for a case involving the InFUSE™ is $4,450."; and

(3) Third full paragraph,

(a) Line 11, the figure "$8,900" is corrected to read "$4,450"; and

(b) Line 14, the figure "$4.4 million" is corrected to read "$2.2 million".

b. Third column, first full paragraph, line 2, the phrase "meet the cost" is corrected to read "meets the cost".

5. On page 45399,

a. First column, fourth full paragraph, line 9, the figure "$24.8076" is corrected to read "$24.7202"; and

b. Second column, first full paragraph, line 16, the figure "$11.5905" is corrected to read "$11.6030".

6. On page 45410, first column, second full paragraph, line 3, the phrase "Of the three DRGs that" is corrected to read "Of these ten, three DRGs".

7. On page 45413, table at the top of the page, line 19 (DRG 468), fifth column, the figure "7.07" is corrected to read "-7.07".

8. On page 45416, third column, third paragraph, lines 12 through 13, the parenthetical phrase "(68 FR 37202 through 37204)." is corrected to read "(68 FR 27202 through 27204).".

9. On page 45446, first column,

a. Lines 46 through 49, the phrase "agreements that will allow hospitals to continue counting residents training in nonhospital sites for indirect and direct GME." is corrected by italicizing it to read "*agreements that will allow hospitals to continue counting residents training in nonhospital sites for indirect and direct GME.*";

b. Lines 51 through 54, the sentence "We do not believe that the agreements regarding these financial transactions will necessitate changes in the placement and training of residents." is corrected by italicizing it to read "*We do not believe that the agreements regarding these financial transactions will necessitate changes in the placement and training of residents.*"; and

c. Lines 60 through 64, the sentence "Currently the hospital is able to count the resident even though the costs for that resident may be lower during the time when the resident trains outside the hospital." is corrected by italicizing it to read "*Currently the hospital is able to count the resident even though the costs for that resident may be lower during the time when the resident trains outside the hospital.*".

10. On page 45453, second column, line 19, the phrase "condone, cost" is corrected to read "condoned, cost".

### § 413.86 [Corrected]

■ 11. On page 45472, first column, lines 3 and 4, the phrase "T. Redesignating paragraphs (i) and (j) as paragraphs (j) and (k), respectively," is corrected to read "Redesignating paragraphs (i), (j), and (k) as paragraphs (j), (k), and (l), respectively,".

12. On page 45475, third column, fifth paragraph, line 9, the figure "$14.4 million" is corrected to read "$12.2 million".

13. On page 45476, first column,

a. First full paragraph, line 3, the figure "1.005522" is corrected to read "1.002588"; and

b. Fourth full paragraph, line 16, the amount "0.992026" is corrected to read "0.991636".

14. On pages 45478 through 45479, the untitled table is corrected to read as follows:

| | Large urban | Other areas |
|---|---|---|
| FY 2003 Base Rate (after removing reclassification budget neutrality and outlier offset). | Labor—$3,213.66<br>Nonlabor—$1,306.26 | Labor—$3,162.78<br>Nonlabor—$1,285.58 |
| FY 2004 Update Factor | 1.034 | 1.034 |
| FY 2004 DRG Recalibrations and Wage Index Budget Neutrality Factor | 1.002588 | 1.002588 |
| FY 2004 Reclassification Budget Neutrality Factor | 0.991636 | 0.991636 |
| Adjusted for Blend of FY 2003 DRG Recalibration and Wage Index Budget Neutrality Factors (factor of 0.993209 effective October 1, 2002; factor of 0.993012 effective April 1, 2003). | Labor—$3,331.20<br>Nonlabor—$1,354.03 | Labor—$3,278.45<br>Nonlabor—$1,332.60 |
| FY 2004 Outlier Factor | 0.949460 | 0.949460 |
| Rate for FY 2004 (after multiplying FY 2003 base rate by above factors) | Labor—$3,136.39<br>Nonlabor—$1,274.85 | Labor—$3,086.73<br>Nonlabor—$1,254.67 |

15. On page 45479, third column, sixth full paragraph, line 16, the figure "1.005522" is corrected to be "1.002588".

16. On page 45481, first column,

a. First partial paragraph, line 12, the figure "$415.47" is corrected to read "$414.18"; and

b. First full paragraph, line 5, the figure "2.10" is corrected to read "1.78".

17. On page 45482,

a. Second column, third paragraph,

(1) Line 11, the figure "4.79" is corrected to read "4.77"; and

(2) Line 15, the figure "0.9521" is corrected to read "0.9523".

b. Third column, first paragraph,

(1) Line 4, the figures "1.0055" and "0.9521" are corrected to read "1.0057" and "0.9523", respectively; and

(2) Line 6, the figure "0.55" is corrected to read "0.57".

18. On page 45483,

a. Top of the page,

(1) Second column,

(a) Line 6, the figure "1.0002" is corrected to read "1.0003"; and

(b) Line 9, the figure "0.9965" is corrected to read "0.9966".

(2) Third column, line 10, the figures "0.9941" and "0.9973" are corrected to read "0.9908" and "0.9974", respectively.

b. Center of the page, in the table entitled Budget Neutrality Adjustment for DRG Reclassifications and Recalibration and the Geographic Adjustment Factors, the last line of the table (Fiscal Year 2004) is corrected to read as follows:

| Fiscal year | National | | | | Puerto Rico | | | |
|---|---|---|---|---|---|---|---|---|
| | Incremental adjustment | | | Cumulative | Incremental adjustment | | | Cumulative |
| | Geographic adjustment factor | DRG reclassifications and recalibration | Combined | | Geographic adjustment factor | DRG Reclassifications and recalibration | Combined | |
| 2004 | [8] 1.00175 | 1.00081 | [8] 1.00256 | 0.99083 | [8] 1.00028 | [8] 1.00081 | [8] 1.00109 | 0.99736 |

b. Lower third of the page,

(1) Second column, second paragraph, line 6, the figure "1.0059" is corrected to read "1.0026";

(2) Third column, first partial paragraph,

(a) Line 5, the figure "1.0059" is corrected to read "1.0026";

(b) Line 7, the figure "0.9941" is corrected to read "0.9908";

(c) Line 13, the figure "1.0059" is corrected to read "1.0026"; and

(d) Line 14, the figure "0.9941" is corrected to read "0.9908".

19. On page 45485,

a. Top of the page,

(1) Second column, first partial paragraph,

(a) Line 4, the figure "$415.47" is corrected to read "$414.18";

(b) Line 13, the figure "1.0059" is corrected to read "1.0026"; and

(c) Line 15, the figure "0.9521" is corrected to read "0.9523".

(2) Third column, first full paragraph,

(a) Line 11, the figure "0.59" is corrected to read "0.26";

(b) Line 13, the figure "0.55" is corrected to read "0.57"; and

(c) Line 21, the figure "2.10" is corrected to read "1.78".

b. Upper half of the page, the table entitled Comparison of Factors and Adjustments: FY 2003 Capital Federal Rate and FY 2004 Capital Federal Rate, the table is corrected to read as follows:

| | FY 2003 | FY 2004 | Change | Percent change |
|---|---|---|---|---|
| Update factor [1] | 1.0110 | 1.0070 | 1.0070 | 0.70 |
| GAF/DRG Adjustment Factor [1] | 0.9957 | 1.0026 | 1.0026 | 0.26 |
| Outlier Adjustment Factor [2] | 0.9469 | 0.9523 | 1.0057 | 0.57 |
| Exceptions Adjustment Factor [2] | 0.9970 | 0.9995 | 1.0025 | 0.25 |
| Capital Federal Rate | $406.93 | $414.18 | [3] 1.0178 | [3] 1.78 |

[1] The update factor and the GAF/DRG budget neutrality factors are built permanently into the capital rates. Thus, for example, the incremental change from FY 2003 to FY 2004 resulting from the application of the 1.0026 GAF/DRG budget neutrality factor for FY 2004 is 1.0026.

[2] The outlier reduction factor and the exceptions adjustment factor are not built permanently into the capital rates; that is, these factors are not applied cumulatively in determining the capital rates. Thus, for example, the net change resulting from the application of the FY 2004 outlier adjustment factor is 0.9523/0.9469, or 1.0057.

[3] The percent change in factors and adjustments may not sum due to rounding.

c. Lower half of the page, the table entitled Comparison of Factors and Adjustments: FY 2004 Proposed Capital Federal Rate and FY 2004 Final Capital Federal Rate, the following entries are corrected to read as follows:

| | Proposed FY 2004 | Final FY 2004 | Change | Percent change |
|---|---|---|---|---|
| GAF/DRG Adjustment Factor | 1.0038 | 1.0026 | 0.9988 | −0.12 |
| Outlier Adjustment Factor | 0.9455 | 0.9523 | 1.0072 | 0.72 |
| Capital Federal Rate | $411.72 | $414.18 | 1.0060 | 0.60 |

d. Bottom of the page, third column, first partial paragraph,

(1) Line 3, the figure "1.0002" is corrected to read "1.0003"; and

(2) Line 5, the figure "0.9973" is corrected to read "0.9974".

20. On page 45486, first column, first full paragraph, last line, the figure "$203.15" is corrected to read "$203.17".

21. On page 45487, third column, line 45, the title, "Table 6E.—vised Diagnosis Code Titles" is corrected to read "Table 6E.—Revised Diagnosis Code Titles".

22. On page 45488,

a. In Table 1A—National Adjusted Operating Standardized Amounts, Labor/Nonlabor, the table is corrected to read as follows:

TABLE 1A.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR

| Large urban areas | | Other Areas | |
|---|---|---|---|
| Labor-related | Nonlabor-related | Labor-related | Nonlabor-related |
| $3,136.39 | $1,274.85 | $3,086.73 | $1,254.67 |

b. In Table 1C—Adjusted Operating Standardized Amounts for Puerto Rico, Labor/Nonlabor, the table is corrected to read as follows:

TABLE 1C.—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

| | Large urban areas | | Other areas | |
|---|---|---|---|---|
| | Labor | Nonlabor | Labor | Nonlabor |
| National | $3,110.02 | $1,264.14 | $3,110.02 | $1,264.14 |
| Puerto Rico | 1,509.57 | 607.64 | 1,485.68 | 598.02 |

c. In Table 1D—Capital Standard Federal Payment Rate, the table is corrected to read as follows:

TABLE 1D.—CAPITAL STANDARD FEDERAL PAYMENT RATE

| | Rate |
|---|---|
| National | $414.18 |
| Puerto Rico | 203.17 |

23. On page 45504, in Table 2—Hospital Average Hourly Wage for Federal Fiscal Years 2002 (1998 Wage Data), 2003 (1999 Wage Data), and 2004 (2000 Wage Data) Wage Indexes and 3-Year Average of Hospital Average Hourly Wages, line 29 (provider number 110063),

a. Fourth column, the figure "25.0270", is corrected to read "19.4401"; and

b. Fifth column, the figure "24.4605" is corrected to read "18.6913".

24. On page 45514, in Table 2—Hospital Average Hourly Wage for Federal Fiscal Years 2002 (1998 Wage Data), 2003 (1999 Wage Data), and 2004 (2000 Wage Data) Wage Indexes and 3-Year Average of Hospital Average Hourly Wages, line 3 (provider number 170020), fifth column, the figure "9.3514", is corrected to read "19.3514".

25. On page 45521, in Table 2—Hospital Average Hourly Wage for Federal Fiscal Years 2002 (1998 Wage Data), 2003 (1999 Wage Data), and 2004 (2000 Wage Data) Wage Indexes and 3-Year Average of Hospital Average Hourly Wages, line 19 (provider number 220077),

a. Fourth column, the figure "26.7020" is corrected to read "27.0946"; and

b. Fifth column, the figure "26.6704" is corrected to read "26.8042".

26. On page 45535, in Table 2—Hospital Average Hourly Wage for Federal Fiscal Years 2002 (1998 Wage Data), 2003 (1999 Wage Data), and 2004 (2000 Wage Data) Wage Indexes and 3-Year Average of Hospital Average Hourly Wages,

a. Line 42 (provider number 330107),

(1) Fourth column, the figure "29.7378" is corrected to read "29.1958"; and

(2) Fifth column, the figure "29.5391" is corrected to read "28.6349".

b. Line 56 (provider number 330133),

(1) Fourth column, the figure "35.9692" is corrected to read "35.3136"; and

(2) Fifth column, the figure should read, "35.9945" is corrected to read "35.8603".

c. Line 64 (provider number 330152),

(1) Fourth column, the figure "32.9336" is corrected to read "32.3332".; and

(2) Fifth column, the figure "32.8160" is corrected to read "32.2000".

27. On page 45541, in Table 2—Hospital Average Hourly Wage for Federal Fiscal Years 2002 (1998 Wage Data), 2003 (1999 Wage Data), and 2004 (2000 Wage Data) Wage Indexes and 3-Year Average of Hospital Average Hourly Wages, line 62 (provider number 360118),

a. Fourth column, the figure "*" is corrected to read "23.0071"; and

b. Fifth column, the figure "20.4951" is corrected to read "21.3647".

28. On page 45549, in Table 2—Hospital Average Hourly Wage for Federal Fiscal Years 2002 (1998 Wage

Data), 2003 (1999 Wage Data), and 2004 (2000 Wage Data) Wage Indexes and 3-Year Average of Hospital Average Hourly Wages,

a. Line 19 (provider number 400019),

(1) Fourth column, the figure "13.6516" is corrected to read "13.7007"; and

(2) Fifth column, the figure "12.2168" is corrected to read "12.2324".

b. Line 32 (provider number 400098),

(1) Fourth column, the figure "13.5901" is corrected to read "13.8036"; and

(2) Fifth column, the figure "11.0612" is corrected to read "11.1197".

c. Line 38 (provider number 400109),

(1) Fourth column, the figure "12.8886" is corrected to read "12.8921"; and

(2) Fifth column, the figure "12.3304" is corrected to read "12.3316".

d. Line 51 (provider number 400124),

(1) Fourth column, the figure "14.1627" is corrected to read "14.3496"; and

(2) Fifth column, the figure "13.0714" is corrected to read "13.1360".

e. Line 52 (provider number 400125),

(1) Fourth column, the figure "10.5811" is corrected to read "10.6642"; and

(2) Fifth column, the figure "10.4664" is corrected to read "10.4990".

29. On page 45567, in Table 3A—FY 2004 and 3-Year Average Hourly Wage for Urban Areas,

a. Second set of columns, second line from the bottom (Mansfield, OH),

(1) Second column, the figure "20.3677" is corrected to read "22.6801"; and

(2) Third column, the figure "20.0909" is corrected to read "20.9208".

b. Third set of columns,

(1) Line 25 (Nassau-Suffolk, NY),

(a) Second column, the figure "32.0836" is corrected to read "32.4665"; and

(b) Third column, the figure "31.2325" is corrected to read "31.3135".

(2) Line 33 (New York, NY),

(1) Second column, the figure "34.5159" is corrected to read "34.6338"; and

(2) Third column, the figure "33.4648" is corrected to read "33.4208".

30. On page 45568, in Table 3A—FY 2004 and 3-Year Average Hourly Wage for Urban Areas,

a. First set of columns, line 37 (San Juan-Bayamon, PR),

(1) Second column, the figure "12.1065" is corrected to read "12.1291"; and

(2) Third column, the figure "11.2275" is corrected to read "11.2346".

b. Second set of columns, line 3 (Springfield, MA),

(1) Second column, the figure "25.8461" is corrected to read "26.0499"; and

(2) Third column, the figure "25.1765" is corrected to read "25.2463".

31. On page 45568, in Table 3B—FY 2004 and 3-Year* Average Hourly Wage for Rural Areas, line 10 (Georgia),

a. Third column, the figure "21.2360" is corrected to read "20.6779"; and

b. Fourth column, the figure "19.6529" is corrected to read "19.4073".

32. On pages 45569 through 45576, in Table 4A—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas, the table is corrected to read as follows:

Table 4A.—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas

| Urban area (constituent counties) | Wage index | GAF |
|---|---|---|
| 0040 [2] Abilene, TX | 0.7780 | 0.8421 |
| Taylor, TX | | |
| 0060 Aguadilla, PR | 0.4306 | 0.5616 |
| Aguada, PR | | |
| Aguadilla, PR | | |
| Moca, PR | | |
| 0080 Akron, OH | 0.9442 | 0.9614 |
| Portage, OH | | |
| Summit, OH | | |
| 0120 Albany, GA | 1.0863 | 1.0583 |
| Dougherty, GA | | |
| Lee, GA | | |
| 0160 [2] Albany-Schenectady-Troy, NY | 0.8526 | 0.8965 |
| Albany, NY | | |
| Montgomery, NY | | |
| Rensselaer, NY | | |
| Saratoga, NY | | |
| Schenectady, NY | | |
| Schoharie, NY | | |
| 0200 Albuquerque, NM | 0.9300 | 0.9515 |
| Bernalillo, NM | | |
| Sandoval, NM | | |
| Valencia, NM | | |
| 0220 Alexandria, LA | 0.8037 | 0.8610 |
| Rapides, LA | | |
| 0240 Allentown-Bethlehem-Easton, PA | 0.9721 | 0.9808 |
| Carbon, PA | | |
| Lehigh, PA | | |
| Northampton, PA | | |
| 0280 Altoona, PA | 0.8827 | 0.9181 |
| Blair, PA | | |
| 0320 Amarillo, TX | 0.8986 | 0.9294 |
| Potter, TX | | |
| Randall, TX | | |
| 0380 Anchorage, AK | 1.2351 | 1.1556 |
| Anchorage, AK | | |
| 0440 Ann Arbor, MI | 1.1074 | 1.0724 |
| Lenawee, MI | | |
| Livingston, MI | | |
| Washtenaw, MI | | |
| 0450 Anniston, AL | 0.8090 | 0.8649 |
| Calhoun, AL | | |
| 0460 [2] Appleton-Oshkosh-Neenah, WI | 0.9304 | 0.9518 |
| Calumet, WI | | |
| Outagamie, WI | | |
| Winnebago, WI | | |
| 0470 Arecibo, PR | 0.4155 | 0.5480 |
| Arecibo, PR | | |
| Camuy, PR | | |
| Hatillo, PR | | |
| 0480 Asheville, NC | 0.9720 | 0.9807 |
| Buncombe, NC | | |
| Madison, NC | | |
| 0500 Athens, GA | 0.9818 | 0.9875 |
| Clarke, GA | | |
| Madison, GA | | |
| Oconee, GA | | |
| 0520 [1] Atlanta, GA | 1.0130 | 1.0089 |
| Barrow, GA | | |
| Bartow, GA | | |
| Carroll, GA | | |
| Cherokee, GA | | |
| Clayton, GA | | |
| Cobb, GA | | |
| Coweta, GA | | |
| DeKalb, GA | | |
| Douglas, GA | | |
| Fayette, GA | | |
| Forsyth, GA | | |
| Fulton, GA | | |
| Gwinnett, GA | | |
| Henry, GA | | |
| Newton, GA | | |
| Paulding, GA | | |
| Pickens, GA | | |
| Rockdale, GA | | |
| Spalding, GA | | |
| Walton, GA | | |
| 0560 Atlantic-Cape May, NJ | 1.0795 | 1.0538 |
| Atlantic, NJ | | |
| Cape May, NJ | | |
| 0580 Auburn-Opelika, AL | 0.8494 | 0.8942 |
| Lee, AL | | |
| 0600 Augusta-Aiken, GA–SC | 0.9625 | 0.9742 |
| Columbia, GA | | |
| McDuffie, GA | | |
| Richmond, GA | | |
| Aiken, SC | | |
| Edgefield, SC | | |
| 0640 [1] Austin-San Marcos, TX | 0.9609 | 0.9731 |
| Bastrop, TX | | |
| Caldwell, TX | | |
| Hays, TX | | |
| Travis, TX | | |
| Williamson, TX | | |
| 0680 [2] Bakersfield, CA | 0.9967 | 0.9977 |
| Kern, CA | | |
| 0720 [1] Baltimore, MD | 0.9919 | 0.9944 |
| Anne Arundel, MD | | |
| Baltimore, MD | | |
| Baltimore City, MD | | |
| Carroll, MD | | |
| Harford, MD | | |

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

| Urban area (constituent counties) | Wage index | GAF |
|---|---|---|
| Howard, MD | | |
| Queen Anne's, MD | | |
| 0733 Bangor, ME | 0.9904 | 0.9934 |
| Penobscot, ME | | |
| 0743 Barnstable-Yarmouth, MA | 1.2956 | 1.1940 |
| Barnstable, MA | | |
| 0760 Baton Rouge, LA | 0.8406 | 0.8879 |
| Ascension, LA | | |
| East Baton Rouge, LA | | |
| Livingston, LA | | |
| West Baton Rouge, LA | | |
| 0840 Beaumont-Port Arthur, TX | 0.8424 | 0.8892 |
| Hardin, TX | | |
| Jefferson, TX | | |
| Orange, TX | | |
| 0860 Bellingham, WA | 1.1757 | 1.1172 |
| Whatcom, WA | | |
| 0870 Benton Harbor, MI | 0.8935 | 0.9258 |
| Berrien, MI | | |
| 0875 [1]Bergen-Passaic, NJ | 1.1731 | 1.1155 |
| Bergen, NJ | | |
| Passaic, NJ | | |
| 0880 Billings, MT | 0.8961 | 0.9276 |
| Yellowstone, MT | | |
| 0920 Biloxi-Gulfport-Pascagoula, MS | 0.9029 | 0.9324 |
| Hancock, MS | | |
| Harrison, MS | | |
| Jackson, MS | | |
| 0960 [2]Binghamton, NY | 0.8526 | 0.8965 |
| Broome, NY | | |
| Tioga, NY | | |
| 1000 Birmingham, AL | 0.9212 | 0.9453 |
| Blount, AL | | |
| Jefferson, AL | | |
| St. Clair, AL | | |
| Shelby, AL | | |
| 1010 Bismarck, ND | 0.8033 | 0.8607 |
| Burleigh, ND | | |
| Morton, ND | | |
| 1020 [2]Bloomington, IN | 0.8824 | 0.9179 |
| Monroe, IN | | |
| 1040 Bloomington-Normal, IL | 0.8832 | 0.9185 |
| McLean, IL | | |
| 1080 Boise City, ID | 0.9232 | 0.9467 |
| Ada, ID | | |
| Canyon, ID | | |
| 1123 [1]Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH | 1.1233 | 1.0829 |
| Bristol, MA | | |
| Essex, MA | | |
| Middlesex, MA | | |
| Norfolk, MA | | |
| Plymouth, MA | | |
| Suffolk, MA | | |
| Worcester, MA | | |

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

| Urban area (constituent counties) | Wage index | GAF |
|---|---|---|
| Hillsborough, NH | | |
| Merrimack, NH | | |
| Rockingham, NH | | |
| Strafford, NH | | |
| 1125 Boulder-Longmont, CO | 1.0049 | 1.0034 |
| Boulder, CO | | |
| 1145 Brazoria, TX | 0.8137 | 0.8683 |
| Brazoria, TX | | |
| 1150 Bremerton, WA | 1.0580 | 1.0394 |
| Kitsap, WA | | |
| 1240 Brownsville-Harlingen-San Benito, TX | 1.0303 | 1.0207 |
| Cameron, TX | | |
| 1260 Bryan-College Station, TX | 0.9019 | 0.9317 |
| Brazos, TX | | |
| 1280 [1]Buffalo-Niagara Falls, NY | 0.9604 | 0.9727 |
| Erie, NY | | |
| Niagara, NY | | |
| 1303 Burlington, VT | 0.9704 | 0.9796 |
| Chittenden, VT | | |
| Franklin, VT | | |
| Grand Isle, VT | | |
| 1310 Caguas, PR | 0.4201 | 0.5522 |
| Caguas, PR | | |
| Cayey, PR | | |
| Cidra, PR | | |
| Gurabo, PR | | |
| San Lorenzo, PR | | |
| 1320 Canton-Massillon, OH | 0.9071 | 0.9354 |
| Carroll, OH | | |
| Stark, OH | | |
| 1350 Casper, WY | 0.9209 | 0.9451 |
| Natrona, WY | | |
| 1360 Cedar Rapids, IA | 0.8874 | 0.9215 |
| Linn, IA | | |
| 1400 Champaign-Urbana, IL | 0.9907 | 0.9936 |
| Champaign, IL | | |
| 1440 Charleston-North Charleston, SC | 0.9332 | 0.9538 |
| Berkeley, SC | | |
| Charleston, SC | | |
| Dorchester, SC | | |
| 1480 Charleston, WV | 0.8880 | 0.9219 |
| Kanawha, WV | | |
| Putnam, WV | | |
| 1520 [1]Charlotte-Gastonia-Rock Hill, NC–SC | 0.9730 | 0.9814 |
| Cabarrus, NC | | |
| Gaston, NC | | |
| Lincoln, NC | | |
| Mecklenburg, NC | | |
| Rowan, NC | | |
| Stanly, NC | | |
| Union, NC | | |
| York, SC | | |
| 1540 Charlottesville, VA | 1.0025 | 1.0017 |
| Albemarle, VA | | |
| Charlottesville City, VA | | |
| Fluvanna, VA | | |

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

| Urban area (constituent counties) | Wage index | GAF |
|---|---|---|
| Greene, VA | | |
| 1560 Chattanooga, TN–GA | 0.9086 | 0.9365 |
| Catoosa, GA | | |
| Dade, GA | | |
| Walker, GA | | |
| Hamilton, TN | | |
| Marion, TN | | |
| 1580 [2]Cheyenne, WY | 0.9110 | 0.9382 |
| Laramie, WY | | |
| 1600 [1]Chicago, IL | 1.0892 | 1.0603 |
| Cook, IL | | |
| DeKalb, IL | | |
| DuPage, IL | | |
| Grundy, IL | | |
| Kane, IL | | |
| Kendall, IL | | |
| Lake, IL | | |
| McHenry, IL | | |
| Will, IL | | |
| 1620 Chico-Paradise, CA | 1.0193 | 1.0132 |
| Butte, CA | | |
| 1640 [1]Cincinnati, OH–KY–IN | 0.9413 | 0.9594 |
| Dearborn, IN | | |
| Ohio, IN | | |
| Boone, KY | | |
| Campbell, KY | | |
| Gallatin, KY | | |
| Grant, KY | | |
| Kenton, KY | | |
| Pendleton, KY | | |
| Brown, OH | | |
| Clermont, OH | | |
| Hamilton, OH | | |
| Warren, OH | | |
| 1660 Clarksville-Hopkinsville, TN–KY | 0.8354 | 0.8841 |
| Christian, KY | | |
| Montgomery, TN | | |
| 1680 [1]Cleveland-Lorain-Elyria, OH | 0.9671 | 0.9774 |
| Ashtabula, OH | | |
| Cuyahoga, OH | | |
| Geauga, OH | | |
| Lake, OH | | |
| Lorain, OH | | |
| Medina, OH | | |
| 1720 Colorado Springs, CO | 0.9833 | 0.9885 |
| El Paso, CO | | |
| 1740 Columbia, MO | 0.8695 | 0.9087 |
| Boone, MO | | |
| 1760 Columbia, SC | 0.8902 | 0.9234 |
| Lexington, SC | | |
| Richland, SC | | |
| 1800 Columbus, GA–AL | 0.8694 | 0.9086 |
| Russell, AL | | |
| Chattahoochee, GA | | |
| Harris, GA | | |
| Muscogee, GA | | |
| 1840 [1]Columbus, OH | 0.9648 | 0.9758 |
| Delaware, OH | | |
| Fairfield, OH | | |
| Franklin, OH | | |

### TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

| Urban area (constituent counties) | Wage index | GAF |
|---|---|---|
| Licking, OH | | |
| Madison, OH | | |
| Pickaway, OH | | |
| 1880 Corpus Christi, TX | 0.8521 | 0.8962 |
| Nueces, TX | | |
| San Patricio, TX | | |
| 1890 Corvallis, OR | 1.1516 | 1.1015 |
| Benton, OR | | |
| 1900 [2] Cumberland, MD–WV (MD Hospitals) | 0.9125 | 0.9392 |
| Allegany, MD | | |
| Mineral, WV | | |
| 1900 Cumberland, MD–WV (WV Hospitals) | 0.8200 | 0.8729 |
| Allegany, MD | | |
| Mineral, WV | | |
| 1920 [1] Dallas, TX | 0.9974 | 0.9982 |
| Collin, TX | | |
| Dallas, TX | | |
| Denton, TX | | |
| Ellis, TX | | |
| Henderson, TX | | |
| Hunt, TX | | |
| Kaufman, TX | | |
| Rockwall, TX | | |
| 1950 Danville, VA | 0.9035 | 0.9329 |
| Danville City, VA | | |
| Pittsylvania, VA | | |
| 1960 Davenport-Moline-Rock Island, IA–IL | 0.8985 | 0.9293 |
| Scott, IA | | |
| Henry, IL | | |
| Rock Island, IL | | |
| 2000 Dayton-Springfield, OH | 0.9529 | 0.9675 |
| Clark, OH | | |
| Greene, OH | | |
| Miami, OH | | |
| Montgomery, OH | | |
| 2020 Daytona Beach, FL | 0.9060 | 0.9346 |
| Flagler, FL | | |
| Volusia, FL | | |
| 2030 Decatur, AL | 0.8828 | 0.9182 |
| Lawrence, AL | | |
| Morgan, AL | | |
| 2040 [2] Decatur, IL | 0.8254 | 0.8769 |
| Macon, IL | | |
| 2080 [1] Denver, CO | 1.0837 | 1.0566 |
| Adams, CO | | |
| Arapahoe, CO | | |
| Broomfield, CO | | |
| Denver, CO | | |
| Douglas, CO | | |
| Jefferson, CO | | |
| 2120 Des Moines, IA | 0.9106 | 0.9379 |
| Dallas, IA | | |
| Polk, IA | | |
| Warren, IA | | |
| 2160 [1] Detroit, MI | 1.0101 | 1.0069 |
| Lapeer, MI | | |
| Macomb, MI | | |
| Monroe, MI | | |
| Oakland, MI | | |
| St. Clair, MI | | |
| Wayne, MI | | |
| 2180 Dothan, AL | 0.7765 | 0.8409 |
| Dale, AL | | |
| Houston, AL | | |
| 2190 Dover, DE | 0.9805 | 0.9866 |
| Kent, DE | | |
| 2200 Dubuque, IA | 0.8886 | 0.9223 |
| Dubuque, IA | | |
| 2240 Duluth-Superior, MN–WI | 1.0171 | 1.0117 |
| St. Louis, MN | | |
| Douglas, WI | | |
| 2281 Dutchess County, NY | 1.0934 | 1.0631 |
| Dutchess, NY | | |
| 2290 [2] Eau Claire, WI | 0.9304 | 0.9518 |
| Chippewa, WI | | |
| Eau Claire. WI | | |
| 2320 El Paso, TX | 0.9196 | 0.9442 |
| El Paso, TX | | |
| 2330 Elkhart-Goshen, IN | 0.9783 | 0.9851 |
| Elkhart, IN | | |
| 2335 [2] Elmira, NY | 0.8526 | 0.8965 |
| Chemung, NY | | |
| 2340 Enid, OK | 0.8559 | 0.8989 |
| Garfield, OK | | |
| 2360 Erie, PA | 0.8601 | 0.9019 |
| Erie, PA | | |
| 2400 Eugene-Springfield, OR | 1.1456 | 1.0976 |
| Lane, OR | | |
| 2440 [2] Evansville-Henderson, IN–KY (IN Hospitals) | 0.8824 | 0.9179 |
| Posey, IN | | |
| Vanderburgh, IN | | |
| Warrick, IN | | |
| Henderson, KY | | |
| 2440 Evansville-Henderson, IN–KY (KY Hospitals) | 0.8429 | 0.8896 |
| Posey, IN | | |
| Vanderburgh, IN | | |
| Warrick, IN | | |
| Henderson, KY | | |
| 2520 Fargo-Moorhead, ND–MN | 0.9797 | 0.9861 |
| Clay, MN | | |
| Cass, ND | | |
| 2560 Fayetteville, NC | 0.8986 | 0.9294 |
| Cumberland, NC | | |
| 2580 Fayetteville-Springdale-Rogers, AR | 0.8396 | 0.8872 |
| Benton, AR | | |
| Washington, AR | | |
| 2620 Flagstaff, AZ–UT | 1.1333 | 1.0895 |
| Coconino, AZ | | |
| Kane, UT | | |
| 2640 Flint, MI | 1.0858 | 1.0580 |
| Genesee, MI | | |
| 2650 Florence, AL | 0.7797 | 0.8433 |
| Colbert, AL | | |
| Lauderdale, AL | | |
| 2655 Florence, SC | 0.8709 | 0.9097 |
| Florence, SC | | |
| 2670 Fort Collins-Loveland, CO | 1.0148 | 1.0101 |
| Larimer, CO | | |
| 2680 [1] Ft. Lauderdale, FL | 1.0479 | 1.0326 |
| Broward, FL | | |
| 2700 Fort Myers-Cape Coral, FL | 0.9816 | 0.9874 |
| Lee, FL | | |
| 2710 Fort Pierce-Port St. Lucie, FL | 1.0124 | 1.0085 |
| Martin, FL | | |
| St. Lucie, FL | | |
| 2720 Fort Smith, AR–OK | 0.8424 | 0.8892 |
| Crawford, AR | | |
| Sebastian, AR | | |
| Sequoyah, OK | | |
| 2750 Fort Walton Beach, FL | 0.8966 | 0.9280 |
| Okaloosa, FL | | |
| 2760 Fort Wayne, IN | 0.9585 | 0.9714 |
| Adams, IN | | |
| Allen, IN | | |
| De Kalb, IN | | |
| Huntington, IN | | |
| Wells, IN | | |
| Whitley, IN | | |
| 2800 [1] Forth Worth-Arlington, TX | 0.9359 | 0.9556 |
| Hood, TX | | |
| Johnson, TX | | |
| Parker, TX | | |
| Tarrant, TX | | |
| 2840 Fresno, CA | 1.0142 | 1.0097 |
| Fresno, CA | | |
| Madera, CA | | |
| 2880 Gadsden, AL | 0.8229 | 0.8750 |
| Etowah, AL | | |
| 2900 Gainesville, FL | 0.9693 | 0.9789 |
| Alachua, FL | | |
| 2920 Galveston-Texas City, TX | 0.9279 | 0.9500 |
| Galveston, TX | | |
| 2960 Gary, IN | 0.9410 | 0.9592 |
| Lake, IN | | |
| Porter, IN | | |
| 2975 [2] Glens Falls, NY | 0.8526 | 0.8965 |
| Warren, NY | | |
| Washington, NY | | |
| 2980 Goldsboro, NC | 0.8622 | 0.9035 |
| Wayne, NC | | |
| 2985 Grand Forks, ND–MN (ND Hospitals) | 0.8636 | 0.9045 |
| Polk, MN | | |
| Grand Forks, ND | | |
| 2985 [2] Grand Forks, ND–MN (MN Hospitals) | 0.9345 | 0.9547 |
| Polk, MN | | |
| Grand Forks, ND | | |
| 2995 Grand Junction, CO | 0.9921 | 0.9946 |
| Mesa, CO | | |

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

| Urban area (constituent counties) | Wage index | GAF |
|---|---|---|
| 3000 [1] Grand Rapids-Muskegon-Holland, MI | 0.9469 | 0.9633 |
| Allegan, MI | | |
| Kent, MI | | |
| Muskegon, MI | | |
| Ottawa, MI | | |
| 3040 Great Falls, MT | 0.8918 | 0.9246 |
| Cascade, MT | | |
| 3060 Greeley, CO | 0.9453 | 0.9622 |
| Weld, CO | | |
| 3080 Green Bay, WI | 0.9518 | 0.9667 |
| Brown, WI | | |
| 3120 [1] Greensboro-Winston-Salem-High Point, NC | 0.9166 | 0.9421 |
| Alamance, NC | | |
| Davidson, NC | | |
| Davie, NC | | |
| Forsyth, NC | | |
| Guilford, NC | | |
| Randolph, NC | | |
| Stokes, NC | | |
| Yadkin, NC | | |
| 3150 Greenville, NC | 0.9167 | 0.9422 |
| Pitt, NC | | |
| 3160 Greenville-Spartanburg-Anderson, SC | 0.9335 | 0.9540 |
| Anderson, SC | | |
| Cherokee, SC | | |
| Greenville, SC | | |
| Pickens, SC | | |
| Spartanburg, SC | | |
| 3180 Hagerstown, MD | 0.9172 | 0.9425 |
| Washington, MD | | |
| 3200 Hamilton-Middletown, OH | 0.9214 | 0.9455 |
| Butler, OH | | |
| 3240 Harrisburg-Lebanon-Carlisle, PA | 0.9164 | 0.9420 |
| Cumberland, PA | | |
| Dauphin, PA | | |
| Lebanon, PA | | |
| Perry, PA | | |
| 3283 [1,2] Hartford, CT | 1.2183 | 1.1448 |
| Hartford, CT | | |
| Litchfield, CT | | |
| Middlesex, CT | | |
| Tolland, CT | | |
| 3285 [2] Hattiesburg, MS | 0.7778 | 0.8419 |
| Forrest, MS | | |
| Lamar, MS | | |
| 3290 Hickory-Morganton-Lenoir, NC | 0.9242 | 0.9475 |
| Alexander, NC | | |
| Burke, NC | | |
| Caldwell, NC | | |
| Catawba, NC | | |
| 3320 Honolulu, HI | 1.1116 | 1.0751 |
| Honolulu, HI | | |
| 3350 Houma, LA | 0.7771 | 0.8414 |
| Lafourche, LA | | |
| Terrebonne, LA | | |
| 3360 [1] Houston, TX | 0.9834 | 0.9886 |
| Chambers, TX | | |
| Fort Bend, TX | | |
| Harris, TX | | |
| Liberty, TX | | |
| Montgomery, TX | | |
| Waller, TX | | |
| 3400 Huntington-Ashland, WV–KY–OH | 0.9595 | 0.9721 |
| Boyd, KY | | |
| Carter, KY | | |
| Greenup, KY | | |
| Lawrence, OH | | |
| Cabell, WV | | |
| Wayne, WV | | |
| 3440 Huntsville, AL | 0.9245 | 0.9477 |
| Limestone, AL | | |
| Madison, AL | | |
| 3480 [1] Indianapolis, IN | 0.9916 | 0.9942 |
| Boone, IN | | |
| Hamilton, IN | | |
| Hancock, IN | | |
| Hendricks, IN | | |
| Johnson, IN | | |
| Madison, IN | | |
| Marion, IN | | |
| Morgan, IN | | |
| Shelby, IN | | |
| 3500 Iowa City, IA | 0.9548 | 0.9688 |
| Johnson, IA | | |
| 3520 Jackson, MI | 0.8986 | 0.9294 |
| Jackson, MI | | |
| 3560 Jackson, MS | 0.8399 | 0.8874 |
| Hinds, MS | | |
| Madison, MS | | |
| Rankin, MS | | |
| 3580 Jackson, TN | 0.8984 | 0.9293 |
| Madison, TN | | |
| Chester, TN | | |
| 3600 [1] Jacksonville, FL | 0.9563 | 0.9699 |
| Clay, FL | | |
| Duval, FL | | |
| Nassau, FL | | |
| St. Johns, FL | | |
| 3605 Jacksonville, NC | 0.8544 | 0.8978 |
| Onslow, NC | | |
| 3610 [2] Jamestown, NY | 0.8526 | 0.8965 |
| Chautauqua, NY | | |
| 3620 [2] Janesville-Beloit, WI | 0.9304 | 0.9518 |
| Rock, WI | | |
| 3640 Jersey City, NJ | 1.1115 | 1.0751 |
| Hudson, NJ | | |
| 3660 Johnson City-Kingsport-Bristol, TN–VA (TN Hospitals) | 0.8256 | 0.8770 |
| Carter, TN | | |
| Hawkins, TN | | |
| Sullivan, TN | | |
| Unicoi, TN | | |
| Washington, TN | | |
| Bristol City, VA | | |
| Scott, VA | | |
| Washington, VA | | |
| 3660 [2] Johnson City-Kingsport-Bristol, TN–VA (VA Hospitals) | 0.8498 | 0.8945 |
| Carter, TN | | |
| Hawkins, TN | | |
| Sullivan, TN | | |
| Unicoi, TN | | |
| Washington, TN | | |
| Bristol City, VA | | |
| Scott, VA | | |
| Washington, VA | | |
| 3680 [2] Johnstown, PA | 0.8378 | 0.8859 |
| Cambria, PA | | |
| Somerset, PA | | |
| 3700 Jonesboro, AR | 0.7809 | 0.8442 |
| Craighead, AR | | |
| 3710 Joplin, MO | 0.8681 | 0.9077 |
| Jasper, MO | | |
| Newton, MO | | |
| 3720 Kalamazoo-Battlecreek, MI | 1.0500 | 1.0340 |
| Calhoun, MI | | |
| Kalamazoo, MI | | |
| Van Buren, MI | | |
| 3740 Kankakee, IL | 1.0419 | 1.0285 |
| Kankakee, IL | | |
| 3760 [1] Kansas City, KS–MO | 0.9715 | 0.9804 |
| Johnson, KS | | |
| Leavenworth, KS | | |
| Miami, KS | | |
| Wyandotte, KS | | |
| Cass, MO | | |
| Clay, MO | | |
| Clinton, MO | | |
| Jackson, MO | | |
| Lafayette, MO | | |
| Platte, MO | | |
| Ray, MO | | |
| 3800 Kenosha, WI | 0.9761 | 0.9836 |
| Kenosha, WI | | |
| 3810 Killeen-Temple, TX | 0.9159 | 0.9416 |
| Bell, TX | | |
| Coryell, TX | | |
| 3840 Knoxville, TN | 0.8820 | 0.9176 |
| Anderson, TN | | |
| Blount, TN | | |
| Knox, TN | | |
| Loudon, TN | | |
| Sevier, TN | | |
| Union, TN | | |
| 3850 Kokomo, IN | 0.9045 | 0.9336 |
| Howard, IN | | |
| Tipton, IN | | |
| 3870 [2] La Crosse, WI–MN | 0.9304 | 0.9518 |
| Houston, MN | | |
| La Crosse, WI | | |
| 3880 Lafayette, LA | 0.8225 | 0.8748 |
| Acadia, LA | | |
| Lafayette, LA | | |
| St. Landry, LA | | |
| St. Martin, LA | | |
| 3920 [2] Lafayette, IN | 0.8824 | 0.9179 |
| Clinton, IN | | |
| Tippecanoe, IN | | |
| 3960 Lake Charles, LA | 0.7841 | 0.8466 |
| Calcasieu, LA | | |
| 3980 [2] Lakeland-Winter Haven, FL | 0.8855 | 0.9201 |

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

| Urban area (constituent counties) | Wage index | GAF |
|---|---|---|
| Polk, FL | | |
| 4000 Lancaster, PA | 0.9282 | 0.9503 |
| Lancaster, PA | | |
| 4040 Lansing-East Lansing, MI | 0.9714 | 0.9803 |
| Clinton, MI | | |
| Eaton, MI | | |
| Ingham, MI | | |
| 4080 Laredo, TX | 0.8091 | 0.8650 |
| Webb, TX | | |
| 4100 Las Cruces, NM | 0.8688 | 0.9082 |
| Dona Ana, NM | | |
| 4120 [1] Las Vegas, NV–AZ | 1.1528 | 1.1023 |
| Mohave, AZ | | |
| Clark, NV | | |
| Nye, NV | | |
| 4150 [2] Lawrence, KS | 0.8074 | 0.8637 |
| Douglas, KS | | |
| 4200 Lawton, OK | 0.8267 | 0.8778 |
| Comanche, OK | | |
| 4243 Lewiston-Auburn, ME | 0.9383 | 0.9573 |
| Androscoggin, ME | | |
| 4280 Lexington, KY | 0.8685 | 0.9080 |
| Bourbon, KY | | |
| Clark, KY | | |
| Fayette, KY | | |
| Jessamine, KY | | |
| Madison, KY | | |
| Scott, KY | | |
| Woodford, KY | | |
| 4320 Lima, OH | 0.9522 | 0.9670 |
| Allen, OH | | |
| Auglaize, OH | | |
| 4360 Lincoln, NE | 1.0033 | 1.0023 |
| Lancaster, NE | | |
| 4400 Little Rock-North Little Rock, AR | 0.8923 | 0.9249 |
| Faulkner, AR | | |
| Lonoke, AR | | |
| Pulaski, AR | | |
| Saline, AR | | |
| 4420 Longview-Marshall, TX | 0.9113 | 0.9384 |
| Gregg, TX | | |
| Harrison, TX | | |
| Upshur, TX | | |
| 4480 [1] Los Angeles-Long Beach, CA | 1.1832 | 1.1221 |
| Los Angeles, CA | | |
| 4520 [1] Louisville, KY–IN | 0.9242 | 0.9475 |
| Clark, IN | | |
| Floyd, IN | | |
| Harrison, IN | | |
| Scott, IN | | |
| Bullitt, KY | | |
| Jefferson, KY | | |
| Oldham, KY | | |
| 4600 Lubbock, TX | 0.8272 | 0.8782 |
| Lubbock, TX | | |
| 4640 Lynchburg, VA | 0.9134 | 0.9399 |
| Amherst, VA | | |
| Bedford, VA | | |
| Bedford City, VA | | |
| Campbell, VA | | |
| Lynchburg City, VA | | |
| 4680 Macon, GA | 0.8975 | 0.9286 |
| Bibb, GA | | |
| Houston, GA | | |
| Jones, GA | | |
| Peach, GA | | |
| Twiggs, GA | | |
| 4720 Madison, WI | 1.0264 | 1.0180 |
| Dane, WI | | |
| 4800 Mansfield, OH | 0.9180 | 0.9431 |
| Crawford, OH | | |
| Richland, OH | | |
| 4840 Mayaguez, PR | 0.4795 | 0.6045 |
| Anasco, PR | | |
| Cabo Rojo, PR | | |
| Hormigueros, PR | | |
| Mayaguez, PR | | |
| Sabana Grande, PR | | |
| San German, PR | | |
| 4880 McAllen-Edinburg-Mission, TX | 0.8381 | 0.8861 |
| Hidalgo, TX | | |
| 4890 Medford-Ashland, OR | 1.0772 | 1.0522 |
| Jackson, OR | | |
| 4900 Melbourne-Titusville-Palm Bay, FL | 0.9776 | 0.9846 |
| Brevard, Fl | | |
| 4920 [1] Memphis, TN–AR–MS | 0.9009 | 0.9310 |
| Crittenden, AR | | |
| DeSoto, MS | | |
| Fayette, TN | | |
| Shelby, TN | | |
| Tipton, TN | | |
| 4940 [2] Merced, CA | 0.9967 | 0.9977 |
| Merced, CA | | |
| 5000 [1] Miami, FL | 0.9894 | 0.9927 |
| Dade, FL | | |
| 5015 [1] Middlesex-Somerset-Hunterdon, NJ | 1.1366 | 1.0916 |
| Hunterdon, NJ | | |
| Middlesex, NJ | | |
| Somerset, NJ | | |
| 5080 [1] Milwaukee-Waukesha, WI | 0.9988 | 0.9992 |
| Milwaukee, WI | | |
| Ozaukee, WI | | |
| Washington, WI | | |
| Waukesha, WI | | |
| 5120 [1] Minneapolis-St. Paul, MN–WI | 1.1001 | 1.0675 |
| Anoka, MN | | |
| Carver, MN | | |
| Chisago, MN | | |
| Dakota, MN | | |
| Hennepin, MN | | |
| Isanti, MN | | |
| Ramsey, MN | | |
| Scott, MN | | |
| Sherburne, MN | | |
| Washington, MN | | |
| Wright, MN | | |
| Pierce, WI | | |
| St. Croix, WI | | |
| 5140 Missoula, MT | 0.8884 | 0.9222 |
| Missoula, MT | | |
| 5160 Mobile, AL | 0.7994 | 0.8579 |
| Baldwin, AL | | |
| Mobile, AL | | |
| 5170 Modesto, CA | 1.1275 | 1.0856 |
| Stanislaus, CA | | |
| 5190 [1] Monmouth-Ocean, NJ | 1.1083 | 1.0730 |
| Monmouth, NJ | | |
| Ocean, NJ | | |
| 5200 Monroe, LA | 0.7922 | 0.8526 |
| Ouachita, LA | | |
| 5240 Montgomery, AL | 0.7907 | 0.8514 |
| Autauga, AL | | |
| Elmore, AL | | |
| Montgomery, AL | | |
| 5280 [2] Muncie, IN | 0.8824 | 0.9179 |
| Delaware, IN | | |
| 5330 Myrtle Beach, SC | 0.9112 | 0.9383 |
| Horry, SC | | |
| 5345 Naples, FL | 0.9790 | 0.9856 |
| Collier, FL | | |
| 5360 [1] Nashville, TN | 0.9855 | 0.9900 |
| Cheatham, TN | | |
| Davidson, TN | | |
| Dickson, TN | | |
| Robertson, TN | | |
| Rutherford TN | | |
| Sumner, TN | | |
| Williamson, TN | | |
| Wilson, TN | | |
| 5380 [1] Nassau-Suffolk, NY | 1.3140 | 1.2056 |
| Nassau, NY | | |
| Suffolk, NY | | |
| 5483 [1] New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT | 1.2468 | 1.1631 |
| Fairfield, CT | | |
| New Haven, CT | | |
| 5523 [2] New London-Norwich, CT | 1.2183 | 1.1448 |
| New London, CT | | |
| 5560 [1] New Orleans, LA | 0.9174 | 0.9427 |
| Jefferson, LA | | |
| Orleans, LA | | |
| Plaquemines, LA | | |
| St. Bernard, LA | | |
| St. Charles, LA | | |
| St. James, LA | | |
| St. John The Baptist, LA | | |
| St. Tammany, LA | | |
| 5600 [1] New York, NY | 1.4018 | 1.2602 |
| Bronx, NY | | |
| Kings, NY | | |
| New York, NY | | |
| Putnam, NY | | |
| Queens, NY | | |
| Richmond, NY | | |
| Rockland, NY | | |
| Westchester, NY | | |

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

| Urban area (constituent counties) | Wage index | GAF |
|---|---|---|
| 5640 [1] Newark, NJ | 1.1518 | 1.1016 |
| Essex, NJ | | |
| Morris, NJ | | |
| Sussex, NJ | | |
| Union, NJ | | |
| Warren, NJ | | |
| 5660 Newburgh, NY–PA | 1.1509 | 1.1010 |
| Orange, NY | | |
| Pike, PA | | |
| 5720 [1] Norfolk-Virginia Beach-Newport News, VA–NC | 0.8619 | 0.9032 |
| Currituck, NC | | |
| Chesapeake City, VA | | |
| Gloucester, VA | | |
| Hampton City, VA | | |
| Isle of Wight, VA | | |
| James City, VA | | |
| Mathews, VA | | |
| Newport News City, VA | | |
| Norfolk City, VA | | |
| Poquoson City, VA | | |
| Portsmouth City, VA | | |
| Suffolk City, VA | | |
| Virginia Beach City VA | | |
| Williamsburg City, VA | | |
| York, VA | | |
| 5775 [1] Oakland, CA | 1.5119 | 1.3272 |
| Alameda, CA | | |
| Contra Costa, CA | | |
| 5790 Ocala, FL | 0.9728 | 0.9813 |
| Marion, FL | | |
| 5800 Odessa-Midland, TX | 0.9327 | 0.9534 |
| Ector, TX | | |
| Midland, TX | | |
| 5880 [1] Oklahoma City, OK | 0.8984 | 0.9293 |
| Canadian, OK | | |
| Cleveland, OK | | |
| Logan, OK | | |
| McClain, OK | | |
| Oklahoma, OK | | |
| Pottawatomie, OK | | |
| 5910 Olympia, WA | 1.0963 | 1.0650 |
| Thurston, WA | | |
| 5920 Omaha, NE–IA | 0.9745 | 0.9825 |
| Pottawattamie, IA | | |
| Cass, NE | | |
| Douglas, NE | | |
| Sarpy, NE | | |
| Washington, NE | | |
| 5945 [1] Orange County, CA | 1.1492 | 1.0999 |
| Orange, CA | | |
| 5960 [1] Orlando, FL | 0.9654 | 0.9762 |
| Lake, FL | | |
| Orange, FL | | |
| Osceola, FL | | |
| Seminole, FL | | |
| 5990 Owensboro, KY | 0.8374 | 0.8856 |
| Daviess, KY | | |
| 6015 [2] Panama City, FL | 0.8855 | 0.9201 |
| Bay, FL | | |
| 6020 Parkersburg-Marietta, WV–OH (WV Hospitals) | 0.8039 | 0.8612 |
| Washington, OH | | |
| Wood, WV | | |
| 6020 [2] Parkersburg-Marietta, WV–OH (OH Hospitals) | 0.8820 | 0.9176 |
| Washington, OH | | |
| Wood, WV | | |
| 6080 [2] Pensacola, FL | 0.8855 | 0.9201 |
| Escambia, FL | | |
| Santa Rosa, FL | | |
| 6120 Peoria-Pekin, IL | 0.8734 | 0.9115 |
| Peoria, IL | | |
| Tazewell, IL | | |
| Woodford, IL | | |
| 6160 [1] Philadelphia, PA–NJ | 1.0883 | 1.0597 |
| Burlington, NJ | | |
| Camden, NJ | | |
| Gloucester, NJ | | |
| Salem, NJ | | |
| Bucks, PA | | |
| Chester, PA | | |
| Delaware, PA | | |
| Montgomery, PA | | |
| Philadelphia, PA | | |
| 6200 [1] Phoenix-Mesa, AZ | 1.0129 | 1.0088 |
| Maricopa, AZ | | |
| Pinal, AZ | | |
| 6240 Pine Bluff, AR | 0.7865 | 0.8483 |
| Jefferson, AR | | |
| 6280 [1] Pittsburgh, PA | 0.8901 | 0.9234 |
| Allegheny, PA | | |
| Beaver, PA | | |
| Butler, PA | | |
| Fayette, PA | | |
| Washington, PA | | |
| Westmoreland, PA | | |
| 6323 [2] Pittsfield, MA | 1.0432 | 1.0294 |
| Berkshire, MA | | |
| 6340 Pocatello, ID | 0.9249 | 0.9479 |
| Bannock, ID | | |
| 6360 Ponce, PR | 0.4708 | 0.5970 |
| Guayanilla, PR | | |
| Juana Diaz, PR | | |
| Penuelas, PR | | |
| Ponce, PR | | |
| Villalba, PR | | |
| Yauco, PR | | |
| 6403 Portland, ME | 0.9949 | 0.9965 |
| Cumberland, ME | | |
| Sagadahoc, ME | | |
| York, ME | | |
| 6440 [1] Portland-Vancouver, OR–WA | 1.1213 | 1.0816 |
| Clackamas, OR | | |
| Columbia, OR | | |
| Multnomah, OR | | |
| Washington, OR | | |
| Yamhill, OR | | |
| Clark, WA | | |
| 6483 [1] Providence-Warwick-Pawtucket, RI | 1.0977 | 1.0659 |
| Bristol, RI | | |
| Kent, RI | | |
| Newport, RI | | |
| Providence, RI | | |
| Washington, RI | | |
| 6520 Provo-Orem, UT | 0.9976 | 0.9984 |
| Utah, UT | | |
| 6560 [2] Pueblo, CO | 0.9328 | 0.9535 |
| Pueblo, CO | | |
| 6580 Punta Gorda, FL | 0.9510 | 0.9662 |
| Charlotte, FL | | |
| 6600 [2] Racine, WI | 0.9304 | 0.9518 |
| Racine, WI | | |
| 6640 [1] Raleigh-Durham-Chapel Hill, NC | 0.9959 | 0.9972 |
| Chatham, NC | | |
| Durham, NC | | |
| Franklin, NC | | |
| Johnston, NC | | |
| Orange, NC | | |
| Wake, NC | | |
| 6660 Rapid City, SD | 0.8806 | 0.9166 |
| Pennington, SD | | |
| 6680 Reading, PA | 0.9133 | 0.9398 |
| Berks, PA | | |
| 6690 Redding, CA | 1.1352 | 1.0907 |
| Shasta, CA | | |
| 6720 Reno, NV | 1.0682 | 1.0462 |
| Washoe, NV | | |
| 6740 Richland-Kennewick-Pasco, WA | 1.0609 | 1.0413 |
| Benton, WA | | |
| Franklin, WA | | |
| 6760 Richmond-Petersburg, VA | 0.9349 | 0.9549 |
| Charles City County, VA | | |
| Chesterfield, VA | | |
| Colonial Heights City, VA | | |
| Dinwiddie, VA | | |
| Goochland, VA | | |
| Hanover, VA | | |
| Henrico, VA | | |
| Hopewell City, VA | | |
| New Kent, VA | | |
| Petersburg City, VA | | |
| Powhatan, VA | | |
| Prince George, VA | | |
| Richmond City, VA | | |
| 6780 [1] Riverside-San Bernardino, CA | 1.1348 | 1.0905 |
| Riverside, CA | | |
| San Bernardino, CA | | |
| 6800 Roanoke, VA | 0.8700 | 0.9090 |
| Botetourt, VA | | |
| Roanoke, VA | | |
| Roanoke City, VA | | |
| Salem City, VA | | |
| 6820 Rochester, MN | 1.1739 | 1.1160 |
| Olmsted, MN | | |
| 6840 [1] Rochester, NY | 0.9430 | 0.9606 |
| Genesee, NY | | |
| Livingston, NY | | |
| Monroe, NY | | |
| Ontario, NY | | |

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

| Urban area (constituent counties) | Wage index | GAF |
|---|---|---|
| Orleans, NY | | |
| Wayne, NY | | |
| 6880 Rockford, IL | 0.9666 | 0.9770 |
| Boone, IL | | |
| Ogle, IL | | |
| Winnebago, IL | | |
| 6895 Rocky Mount, NC | 0.9076 | 0.9358 |
| Edgecombe, NC | | |
| Nash, NC | | |
| 6920 [1] Sacramento, CA | 1.1845 | 1.1229 |
| El Dorado, CA | | |
| Placer, CA | | |
| Sacramento, CA | | |
| 6960 Saginaw-Bay City-Midland, MI | 1.0032 | 1.0022 |
| Bay, MI | | |
| Midland, MI | | |
| Saginaw, MI | | |
| 6980 St. Cloud, MN | 0.9679 | 0.9779 |
| Benton, MN | | |
| Stearns, MN | | |
| 7000 [2] St. Joseph, MO | 0.8056 | 0.8624 |
| Andrew, MO | | |
| Buchanan, MO | | |
| 7040 [1] St. Louis, MO–IL | 0.9033 | 0.9327 |
| Clinton, IL | | |
| Jersey, IL | | |
| Madison, IL | | |
| Monroe, IL | | |
| St. Clair, IL | | |
| Franklin, MO | | |
| Jefferson, MO | | |
| Lincoln, MO | | |
| St. Charles, MO | | |
| St. Louis, MO | | |
| St. Louis City, MO | | |
| Warren, MO | | |
| 7080 Salem, OR | 1.0482 | 1.0328 |
| Marion, OR | | |
| Polk, OR | | |
| 7120 Salinas, CA | 1.4339 | 1.2799 |
| Monterey, CA | | |
| 7160 [1] Salt Lake City-Ogden, UT | 0.9913 | 0.9940 |
| Davis, UT | | |
| Salt Lake, UT | | |
| Weber, UT | | |
| 7200 San Angelo, TX | 0.8535 | 0.8972 |
| Tom Green, TX | | |
| 7240 [1] San Antonio, TX | 0.8870 | 0.9212 |
| Bexar, TX | | |
| Comal, TX | | |
| Guadalupe, TX | | |
| Wilson, TX | | |
| 7320 [1] San Diego, CA | 1.1147 | 1.0772 |
| San Diego, CA | | |
| 7360 [1] San Francisco, CA | 1.4514 | 1.2906 |
| Marin, CA | | |
| San Francisco, CA | | |
| San Mateo, CA | | |
| 7400 [1] San Jose, CA | 1.4626 | 1.2974 |
| Santa Clara, CA | | |
| 7440 [1] San Juan-Bayamon, PR | 0.4909 | 0.6143 |
| Aguas Buenas, PR | | |
| Barceloneta, PR | | |
| Bayamon, PR | | |
| Canovanas, PR | | |
| Carolina, PR | | |
| Catano, PR | | |
| Ceiba, PR | | |
| Comerio, PR | | |
| Corozal, PR | | |
| Dorado, PR | | |
| Fajardo, PR | | |
| Florida, PR | | |
| Guaynabo, PR | | |
| Humacao, PR | | |
| Juncos, PR | | |
| Los Piedras, PR | | |
| Loiza, PR | | |
| Luguillo, PR | | |
| Manati, PR | | |
| Morovis, PR | | |
| Naguabo, PR | | |
| Naranjito, PR | | |
| Rio Grande, PR | | |
| San Juan, PR | | |
| Toa Alta, PR | | |
| Toa Baja, PR | | |
| Trujillo Alto, PR | | |
| Vega Alta, PR | | |
| Vega Baja, PR | | |
| Yabucoa, PR | | |
| 7460 San Luis Obispo-Atascadero-Paso Robles, CA | 1.1429 | 1.0958 |
| San Luis Obispo, CA | | |
| 7480 Santa Barbara-Santa Maria-Lompoc, CA | 1.0441 | 1.0300 |
| Santa Barbara, CA | | |
| 7485 Santa Cruz-Watsonville, CA | 1.2942 | 1.1932 |
| Santa Cruz, CA | | |
| 7490 Santa Fe, NM | 1.0653 | 1.0443 |
| Los Alamos, NM | | |
| Santa Fe, NM | | |
| 7500 Santa Rosa, CA | 1.2877 | 1.1891 |
| Sonoma, CA | | |
| 7510 Sarasota-Bradenton, FL | 0.9971 | 0.9980 |
| Manatee, FL | | |
| Sarasota, FL | | |
| 7520 Savannah, GA | 0.9488 | 0.9646 |
| Bryan, GA | | |
| Chatham, GA | | |
| Effingham, GA | | |
| 7560 Scranton—Wilkes-Barre—Hazleton, PA | 0.8412 | 0.8883 |
| Columbia, PA | | |
| Lackawanna, PA | | |
| Luzerne, PA | | |
| Wyoming, PA | | |
| 7600 [1] Seattle-Bellevue-Everett, WA | 1.1562 | 1.1045 |
| Island, WA | | |
| King, WA | | |
| Snohomish, WA | | |
| 7610 [2] Sharon, PA | 0.8378 | 0.8859 |
| Mercer, PA | | |
| 7620 [2] Sheboygan, WI | 0.9304 | 0.9518 |
| Sheboygan, WI | | |
| 7640 Sherman-Denison, TX | 0.9700 | 0.9794 |
| Grayson, TX | | |
| 7680 Shreveport-Bossier City, LA | 0.9083 | 0.9363 |
| Bossier, LA | | |
| Caddo, LA | | |
| Webster, LA | | |
| 7720 Sioux City, IA–NE | 0.8993 | 0.9299 |
| Woodbury, IA | | |
| Dakota, NE | | |
| 7760 Sioux Falls, SD | 0.9309 | 0.9521 |
| Lincoln, SD | | |
| Minnehaha, SD | | |
| 7800 South Bend, IN | 0.9821 | 0.9877 |
| St. Joseph, IN | | |
| 7840 Spokane, WA | 1.0901 | 1.0609 |
| Spokane, WA | | |
| 7880 Springfield, IL | 0.8944 | 0.9264 |
| Menard, IL | | |
| Sangamon, IL | | |
| 7920 Springfield, MO | 0.8457 | 0.8916 |
| Christian, MO | | |
| Greene, MO | | |
| Webster, MO | | |
| 8003 Springfield, MA | 1.0543 | 1.0369 |
| Hampden, MA | | |
| Hampshire, MA | | |
| 8050 State College, PA | 0.8740 | 0.9119 |
| Centre, PA | | |
| 8080 [2] Steubenville-Weirton, OH–WV (OH Hospitals) | 0.8820 | 0.9176 |
| Jefferson, OH | | |
| Brooke, WV | | |
| Hancock, WV | | |
| 8080 Steubenville-Weirton, OH–WV (WV Hospitals) | 0.8398 | 0.8873 |
| Jefferson, OH | | |
| Brooke, WV | | |
| Hancock, WV | | |
| 8120 Stockton-Lodi, CA | 1.0404 | 1.0275 |
| San Joaquin, CA | | |
| 8140 [2] Sumter, SC | 0.8498 | 0.8945 |
| Sumter, SC | | |
| 8160 Syracuse, NY | 0.9412 | 0.9594 |
| Cayuga, NY | | |
| Madison, NY | | |
| Onondaga, NY | | |
| Oswego, NY | | |
| 8200 Tacoma, WA | 1.1116 | 1.0751 |
| Pierce, WA | | |
| 8240 [2] Tallahassee, FL | 0.8855 | 0.9201 |
| Gadsden, FL | | |
| Leon, FL | | |
| 8280 [1] Tampa-St. Petersburg-Clearwater, FL | 0.9103 | 0.9377 |

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

| Urban area (constituent counties) | Wage index | GAF |
|---|---|---|
| Hernando, FL | | |
| Hillsborough, FL | | |
| Pasco, FL | | |
| Pinellas, FL | | |
| 8320 [2] Terre Haute, IN | 0.8824 | 0.9179 |
| Clay, IN | | |
| Vermillion, IN | | |
| Vigo, IN | | |
| 8360 Texarkana, AR—Texarkana, TX | 0.8150 | 0.8693 |
| Miller, AR | | |
| Bowie, TX | | |
| 8400 Toledo, OH | 0.9397 | 0.9583 |
| Fulton, OH | | |
| Lucas, OH | | |
| Wood, OH | | |
| 8440 Topeka, KS | 0.9108 | 0.9380 |
| Shawnee, KS | | |
| 8480 Trenton, NJ | 1.0517 | 1.0351 |
| Mercer, NJ | | |
| 8520 [2] Tucson, AZ | 0.9270 | 0.9494 |
| Pima, AZ | | |
| 8560 Tulsa, OK | 0.9185 | 0.9434 |
| Creek, OK | | |
| Osage, OK | | |
| Rogers, OK | | |
| Tulsa, OK | | |
| Wagoner, OK | | |
| 8600 Tuscaloosa, AL | 0.8212 | 0.8738 |
| Tuscaloosa, AL | | |
| 8640 Tyler, TX | 0.9404 | 0.9588 |
| Smith, TX | | |
| 8680 [2] Utica-Rome, NY | 0.8526 | 0.8965 |
| Herkimer, NY | | |
| Oneida, NY | | |
| 8720 Vallejo-Fairfield-Napa, CA | 1.3425 | 1.2235 |
| Napa, CA | | |
| Solano, CA | | |
| 8735 Ventura, CA | 1.1064 | 1.0717 |
| Ventura, CA | | |
| 8750 Victoria, TX | 0.8184 | 0.8718 |
| Victoria, TX | | |
| 8760 Vineland-Millville-Bridgeton, NJ | 1.0405 | 1.0276 |
| Cumberland, NJ | | |
| 8780 [2] Visalia-Tulare-Porterville, CA | 0.9967 | 0.9977 |
| Tulare, CA | | |
| 8800 Waco, TX | 0.8394 | 0.8870 |
| McLennan, TX | | |
| 8840 [1] Washington, DC–MD–VA–WV | 1.0904 | 1.0611 |
| District of Columbia, DC | | |
| Calvert, MD | | |
| Charles, MD | | |
| Frederick, MD | | |
| Montgomery, MD | | |
| Prince Georges, MD | | |
| Alexandria City, VA | | |
| Arlington, VA | | |
| Clarke, VA | | |
| Culpeper, VA | | |
| Fairfax, VA | | |
| Fairfax City, VA | | |
| Falls Church City, VA | | |
| Fauquier, VA | | |
| Fredericksburg City, VA | | |
| King George, VA | | |
| Loudoun, VA | | |
| Manassas City, VA | | |
| Manassas Park City, VA | | |
| Prince William, VA | | |
| Spotsylvania, VA | | |
| Stafford, VA | | |
| Warren, VA | | |
| Berkeley, WV | | |
| Jefferson, WV | | |
| 8920 [2] Waterloo-Cedar Falls, IA | 0.8416 | 0.8886 |
| Black Hawk, IA | | |
| 8940 Wausau, WI | 0.9783 | 0.9851 |
| Marathon, WI | | |
| 8960 [1] West Palm Beach-Boca Raton, FL | 0.9798 | 0.9861 |
| Palm Beach, FL | | |
| 9000 [2] Wheeling, WV–OH (WV Hospitals) | 0.8018 | 0.8596 |
| Belmont, OH | | |
| Marshall, WV | | |
| Ohio, WV | | |
| 9000 [2] Wheeling, WV–OH (OH Hospitals) | 0.8820 | 0.9176 |
| Belmont, OH | | |
| Marshall, WV | | |
| Ohio, WV | | |
| 9040 Wichita, KS | 0.9238 | 0.9472 |
| Butler, KS | | |
| Harvey, KS | | |
| Sedgwick, KS | | |
| 9080 Wichita Falls, TX | 0.8341 | 0.8832 |
| Archer, TX | | |
| Wichita, TX | | |
| 9140 [2] Williamsport, PA | 0.8378 | 0.8859 |
| Lycoming, PA | | |
| 9160 Wilmington-Newark, DE–MD | 1.0882 | 1.0596 |
| New Castle, DE | | |
| Cecil, MD | | |
| 9200 Wilmington, NC | 0.9563 | 0.9699 |
| New Hanover, NC | | |
| Brunswick, NC | | |
| 9260 [2] Yakima, WA | 1.0388 | 1.0264 |
| Yakima, WA | | |
| 9270 [2] Yolo, CA | 0.9967 | 0.9977 |
| Yolo, CA | | |
| 9280 York, PA | 0.9119 | 0.9388 |
| York, PA | | |
| 9320 Youngstown-Warren, OH | 0.9214 | 0.9455 |
| Columbiana, OH | | |
| Mahoning, OH | | |
| Trumbull, OH | | |
| 9340 Yuba City, CA | 1.0196 | 1.0134 |
| Sutter, CA | | |
| Yuba, CA | | |
| 9360 [2] Yuma, AZ | 0.9270 | 0.9494 |
| Yuma, AZ | | |

[1] Large Urban Area

[2] Hospitals geographically located in the area are assigned the statewide rural wage index for FY 2004.

33. On page 45576, in Table 4B—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas, the table is corrected to read as follows:

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS

| Nonurban area | Wage index | GAF |
|---|---|---|
| Alabama | 0.7492 | 0.8206 |
| Alaska | 1.1886 | 1.1256 |
| Arizona | 0.9270 | 0.9494 |
| Arkansas | 0.7734 | 0.8386 |
| California | 0.9967 | 0.9977 |
| Colorado | 0.9328 | 0.9535 |
| Connecticut | 1.2183 | 1.1448 |
| Delaware | 0.9595 | 0.9721 |
| Florida | 0.8855 | 0.9201 |
| Georgia | 0.8595 | 0.9015 |
| Hawaii | 0.9958 | 0.9971 |
| Idaho | 0.8974 | 0.9285 |
| Illinois | 0.8254 | 0.8769 |
| Indiana | 0.8824 | 0.9179 |
| Iowa | 0.8416 | 0.8886 |
| Kansas | 0.8074 | 0.8637 |
| Kentucky | 0.7974 | 0.8564 |
| Louisiana | 0.7467 | 0.8187 |
| Maine | 0.8812 | 0.9170 |
| Maryland | 0.9125 | 0.9392 |
| Massachusetts | 1.0432 | 1.0294 |
| Michigan | 0.8877 | 0.9217 |
| Minnesota | 0.9345 | 0.9547 |
| Mississippi | 0.7778 | 0.8419 |
| Missouri | 0.8056 | 0.8624 |
| Montana | 0.8800 | 0.9162 |
| Nebraska | 0.8822 | 0.9177 |
| Nevada | 0.9806 | 0.9867 |
| New Hampshire | 1.0030 | 1.0021 |
| New Jersey [1] | ............ | ............ |
| New Mexico | 0.8270 | 0.8780 |
| New York | 0.8526 | 0.8965 |
| North Carolina | 0.8456 | 0.8915 |
| North Dakota | 0.7778 | 0.8419 |
| Ohio | 0.8820 | 0.9176 |
| Oklahoma | 0.7537 | 0.8240 |
| Oregon | 0.9994 | 0.9996 |
| Pennsylvania | 0.8378 | 0.8859 |
| Puerto Rico | 0.4018 | 0.5356 |
| Rhode Island [1] | ............ | ............ |
| South Carolina | 0.8498 | 0.8945 |
| South Dakota | 0.8195 | 0.8726 |
| Tennessee | 0.7886 | 0.8499 |
| Texas | 0.7780 | 0.8421 |
| Utah | 0.8974 | 0.9285 |
| Vermont | 0.9534 | 0.9678 |
| Virginia | 0.8498 | 0.8945 |

### TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS—Continued

| Nonurban area | Wage index | GAF |
|---|---|---|
| Washington | 1.0388 | 1.0264 |
| West Virginia | 0.8018 | 0.8596 |
| Wisconsin | 0.9304 | 0.9518 |
| Wyoming | 0.9110 | 0.9382 |

[1] All counties within the State are classified as urban.

34. On pages 45576 through 45577, in Table 4C—Wage Index and Capital Geographic Adjustment Factor (GAF) for Hospitals that are Reclassified, the table is corrected to read as follows:

### TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED

| Area | Wage index | GAF |
|---|---|---|
| Akron, OH | 0.9442 | 0.9614 |
| Albany, GA | 1.0664 | 1.0450 |
| Albuquerque, NM (NM hospitals) | 0.9300 | 0.9515 |
| Albuquerque, NM (CO hospitals) | 0.9328 | 0.9535 |
| Alexandria, LA | 0.8037 | 0.8610 |
| Allentown-Bethlehem-Easton, PA | 0.9721 | 0.9808 |
| Altoona, PA | 0.8827 | 0.9181 |
| Amarillo, TX | 0.8858 | 0.9203 |
| Anchorage, AK | 1.2351 | 1.1556 |
| Ann Arbor, MI | 1.0846 | 1.0572 |
| Anniston, AL | 0.7975 | 0.8565 |
| Asheville, NC | 0.9477 | 0.9639 |
| Athens, GA | 0.9564 | 0.9699 |
| Atlanta, GA | 0.9990 | 0.9993 |
| Atlantic-Cape May, NJ | 1.0531 | 1.0361 |
| Augusta-Aiken, GA–SC | 0.9433 | 0.9608 |
| Austin-San Marcos, TX | 0.9609 | 0.9731 |
| Bangor, ME | 0.9904 | 0.9934 |
| Barnstable-Yarmouth, MA | 1.2720 | 1.1791 |
| Baton Rouge, LA | 0.8406 | 0.8879 |
| Bellingham, WA | 1.1305 | 1.0876 |
| Benton Harbor, MI | 0.8935 | 0.9258 |
| Bergen-Passaic, NJ | 1.1731 | 1.1155 |
| Billings, MT | 0.8961 | 0.9276 |
| Biloxi-Gulfport-Pascagoula, MS | 0.8407 | 0.8880 |
| Binghamton, NY | 0.8428 | 0.8895 |
| Birmingham, AL | 0.9212 | 0.9453 |
| Bismarck, ND | 0.8033 | 0.8607 |
| Bloomington-Normal, IL | 0.8832 | 0.9185 |
| Boise City, ID | 0.9232 | 0.9467 |
| Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH | 1.1233 | 1.0829 |
| Burlington, VT | 0.9332 | 0.9538 |
| Caguas, PR | 0.4201 | 0.5522 |
| Casper, WY | 0.9209 | 0.9451 |
| Champaign-Urbana, IL | 0.9460 | 0.9627 |
| Charleston-North Charleston, SC | 0.9332 | 0.9538 |
| Charleston, WV (WV Hospitals) | 0.8568 | 0.8996 |
| Charleston, WV (OH Hospitals) | 0.8820 | 0.9176 |
| Charlotte-Gastonia-Rock Hill, NC–SC | 0.9730 | 0.9814 |
| Charlottesville, VA | 0.9877 | 0.9916 |
| Chattanooga, TN–GA | 0.9086 | 0.9365 |
| Chicago, IL | 1.0752 | 1.0509 |
| Cincinnati, OH–KY–IN | 0.9413 | 0.9594 |
| Clarksville-Hopkinsville, TN–KY | 0.8354 | 0.8841 |
| Cleveland-Lorain-Elyria, OH | 0.9671 | 0.9774 |
| Columbia, MO | 0.8557 | 0.8988 |
| Columbia, SC | 0.8902 | 0.9234 |
| Columbus, GA–AL | 0.8595 | 0.9015 |
| Columbus, OH | 0.9648 | 0.9758 |
| Corpus Christi, TX | 0.8521 | 0.8962 |
| Corvallis, OR | 1.1241 | 1.0834 |
| Dallas, TX | 0.9974 | 0.9982 |
| Davenport-Moline-Rock Island, IA–IL | 0.8985 | 0.9293 |
| Dayton-Springfield, OH | 0.9529 | 0.9675 |
| Decatur, AL | 0.8580 | 0.9004 |
| Denver, CO | 1.0664 | 1.0450 |
| Des Moines, IA | 0.9106 | 0.9379 |
| Detroit, MI | 1.0101 | 1.0069 |
| Dothan, AL | 0.7765 | 0.8409 |
| Duluth-Superior, MN–WI | 1.0171 | 1.0117 |
| Elkhart-Goshen, IN | 0.9554 | 0.9692 |
| Erie, PA | 0.8526 | 0.8965 |
| Eugene-Springfield, OR | 1.0977 | 1.0659 |
| Fargo-Moorhead, ND–MN | 0.9501 | 0.9656 |
| Fayetteville, NC | 0.8817 | 0.9174 |
| Flagstaff, AZ–UT | 1.1079 | 1.0727 |
| Flint, MI | 1.0703 | 1.0476 |
| Florence, AL | 0.7797 | 0.8433 |
| Fort Collins-Loveland, CO | 1.0148 | 1.0101 |
| Ft. Lauderdale, FL | 1.0479 | 1.0326 |
| Fort Pierce-Port St. Lucie, FL | 1.0124 | 1.0085 |
| Fort Smith, AR–OK | 0.8077 | 0.8639 |
| Fort Walton Beach, FL | 0.8804 | 0.9165 |
| Forth Worth-Arlington, TX | 0.9359 | 0.9556 |
| Gadsden, AL | 0.8229 | 0.8750 |
| Gainesville, FL | 0.9693 | 0.9789 |
| Grand Forks, ND–MN | 0.8636 | 0.9045 |
| Grand Junction, CO | 0.9921 | 0.9946 |
| Grand Rapids-Muskegon-Holland, MI | 0.9469 | 0.9633 |
| Great Falls, MT | 0.8918 | 0.9246 |
| Greeley, CO | 0.9453 | 0.9622 |
| Green Bay, WI | 0.9518 | 0.9667 |
| Greensboro-Winston-Salem-High Point, NC | 0.9058 | 0.9345 |
| Greenville, NC | 0.9167 | 0.9422 |
| Hamilton-Middletown, OH | 0.9214 | 0.9455 |
| Harrisburg-Lebanon-Carlisle, PA | 0.9164 | 0.9420 |
| Hartford, CT | 1.1359 | 1.0912 |
| Hickory-Morganton-Lenoir, NC | 0.9113 | 0.9384 |
| Honolulu, HI | 1.1116 | 1.0751 |
| Houston, TX | 0.9834 | 0.9886 |
| Huntington-Ashland, WV–KY–OH | 0.9076 | 0.9358 |
| Huntsville, AL | 0.9120 | 0.9389 |
| Indianapolis, IN | 0.9916 | 0.9942 |
| Iowa City, IA | 0.9404 | 0.9588 |
| Jackson, MS | 0.8399 | 0.8874 |
| Jackson, TN | 0.8819 | 0.9175 |
| Jacksonville, FL | 0.9563 | 0.9699 |
| Johnson City-Kingsport-Bristol, TN–VA (VA Hospitals) | 0.8498 | 0.8945 |
| Johnson City-Kingsport-Bristol, TN–VA (KY Hospitals) | 0.8256 | 0.8770 |
| Jonesboro, AR (AR Hospitals) | 0.7809 | 0.8442 |
| Jonesboro, AR (MO Hospitals) | 0.8056 | 0.8624 |
| Joplin, MO | 0.8558 | 0.8989 |
| Kalamazoo-Battlecreek, MI | 1.0500 | 1.0340 |
| Kansas City, KS–MO | 0.9715 | 0.9804 |
| Knoxville, TN | 0.8820 | 0.9176 |
| Kokomo, IN | 0.9045 | 0.9336 |
| Lafayette, LA | 0.8225 | 0.8748 |
| Lakeland-Winter Haven, FL | 0.8855 | 0.9201 |
| Las Vegas, NV–AZ | 1.1401 | 1.0939 |
| Lawton, OK | 0.8140 | 0.8686 |
| Lexington, KY | 0.8475 | 0.8929 |
| Lima, OH | 0.9522 | 0.9670 |
| Lincoln, NE | 0.9597 | 0.9722 |
| Little Rock-North Little Rock, AR | 0.8923 | 0.9249 |
| Longview-Marshall, TX | 0.8943 | 0.9264 |
| Los Angeles-Long Beach, CA | 1.1832 | 1.1221 |
| Louisville, KY–IN | 0.9118 | 0.9387 |
| Lubbock, TX | 0.8272 | 0.8782 |
| Lynchburg, VA | 0.8941 | 0.9262 |
| Macon, GA | 0.8975 | 0.9286 |
| Madison, WI | 1.0117 | 1.0080 |
| Medford-Ashland, OR | 1.0425 | 1.0289 |
| Melbourne-Titusville-Palm Bay, FL | 0.9776 | 0.9846 |
| Memphis, TN–AR–MS | 0.8786 | 0.9152 |
| Miami, FL | 0.9894 | 0.9927 |
| Milwaukee-Waukesha, WI | 0.9829 | 0.9883 |
| Minneapolis-St. Paul, MN–WI | 1.1001 | 1.0675 |
| Missoula, MT | 0.8884 | 0.9222 |
| Mobile, AL | 0.7994 | 0.8579 |
| Modesto, CA | 1.1148 | 1.0773 |
| Monmouth-Ocean, NJ | 1.1083 | 1.0730 |
| Monroe, LA | 0.7922 | 0.8526 |
| Montgomery, AL | 0.7907 | 0.8514 |
| Nashville, TN | 0.9591 | 0.9718 |
| New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT | 1.2468 | 1.1631 |
| New Orleans, LA | 0.9174 | 0.9427 |

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

| Area | Wage index | GAF |
|---|---|---|
| New York, NY | 1.4018 | 1.2602 |
| Newark, NJ | 1.1518 | 1.1016 |
| Newburgh, NY–PA | 1.1048 | 1.0706 |
| Oakland, CA | 1.5119 | 1.3272 |
| Odessa-Midland, TX | 0.9076 | 0.9358 |
| Oklahoma City, OK | 0.8984 | 0.9293 |
| Olympia, WA | 1.0963 | 1.0650 |
| Omaha, NE–IA | 0.9745 | 0.9825 |
| Orange County, CA | 1.1492 | 1.0999 |
| Orlando, FL | 0.9654 | 0.9762 |
| Peoria-Pekin, IL | 0.8734 | 0.9115 |
| Philadelphia, PA–NJ | 1.0883 | 1.0597 |
| Phoenix-Mesa, AZ | 1.0129 | 1.0088 |
| Pittsburgh, PA | 0.8901 | 0.9234 |
| Pittsfield, MA | 0.9795 | 0.9859 |
| Pocatello, ID | 0.9249 | 0.9479 |
| Portland, ME | 0.9658 | 0.9765 |
| Portland-Vancouver, OR–WA | 1.1213 | 1.0816 |
| Provo-Orem, UT | 0.9976 | 0.9984 |
| Raleigh-Durham-Chapel Hill, NC | 0.9725 | 0.9811 |
| Rapid City, SD | 0.8806 | 0.9166 |
| Reading, PA | 0.8998 | 0.9302 |
| Redding, CA | 1.1352 | 1.0907 |
| Reno, NV | 1.0682 | 1.0462 |
| Richland-Kennewick-Pasco, WA (WA Hospitals) | 1.0388 | 1.0264 |
| Richland-Kennewick-Pasco, WA (ID Hospitals) | 1.0215 | 1.0147 |
| Richmond-Petersburg, VA | 0.9349 | 0.9549 |
| Roanoke, VA | 0.8700 | 0.9090 |
| Rochester, MN | 1.1739 | 1.1160 |
| Rockford, IL | 0.9441 | 0.9614 |
| Sacramento, CA | 1.1845 | 1.1229 |
| Saginaw-Bay City-Midland, MI | 0.9751 | 0.9829 |
| St. Cloud, MN | 0.9679 | 0.9779 |
| St. Joseph, MO | 0.8578 | 0.9003 |
| St. Louis, MO–IL | 0.9033 | 0.9327 |
| Salinas, CA | 1.4339 | 1.2799 |
| Salt Lake City-Ogden, UT | 0.9913 | 0.9940 |
| San Antonio, TX | 0.8870 | 0.9212 |
| Santa Fe, NM | 0.9524 | 0.9672 |
| Santa Rosa, CA | 1.2877 | 1.1891 |
| Sarasota-Bradenton, FL | 0.9971 | 0.9980 |
| Savannah, GA | 0.9488 | 0.9646 |
| Seattle-Bellevue-Everett, WA | 1.1562 | 1.1045 |
| Sherman-Denison, TX | 0.9203 | 0.9447 |
| Shreveport-Bossier City, LA | 0.8937 | 0.9259 |
| Sioux City, IA–NE (NE Hospitals) | 0.8822 | 0.9177 |
| Sioux City, IA–NE (SD Hospitals) | 0.8785 | 0.9151 |
| Sioux Falls, SD | 0.9184 | 0.9434 |
| South Bend, IN | 0.9715 | 0.9804 |
| Spokane, WA | 1.0717 | 1.0486 |
| Springfield, IL | 0.8944 | 0.9264 |
| Springfield, MO | 0.8259 | 0.8772 |
| Syracuse, NY | 0.9412 | 0.9594 |
| Tampa-St. Petersburg-Clearwater, FL | 0.9103 | 0.9377 |
| Texarkana, AR-Texarkana, TX | 0.7969 | 0.8560 |
| Toledo, OH | 0.9397 | 0.9583 |
| Topeka, KS | 0.9108 | 0.9380 |
| Tucson, AZ | 0.9270 | 0.9494 |
| Tulsa, OK | 0.8938 | 0.9260 |
| Tuscaloosa, AL | 0.8101 | 0.8657 |
| Tyler, TX | 0.9155 | 0.9413 |
| Vallejo-Fairfield-Napa, CA | 1.3425 | 1.2235 |
| Victoria, TX | 0.8184 | 0.8718 |
| Waco, TX | 0.8394 | 0.8870 |
| Washington, DC–MD–VA–WV | 1.0904 | 1.0611 |
| Waterloo-Cedar Falls, IA | 0.8416 | 0.8886 |
| Wausau, WI | 0.9783 | 0.9851 |
| West Palm Beach-Boca Raton, FL | 0.9798 | 0.9861 |
| Wichita, KS | 0.9004 | 0.9307 |
| Wichita Falls, TX | 0.8341 | 0.8832 |
| Wilmington-Newark, DE–MD | 1.0710 | 1.0481 |
| Wilmington, NC | 0.9424 | 0.9602 |
| Youngstown-Warren, OH | 0.9214 | 0.9455 |
| Rural Florida | 0.8699 | 0.9090 |
| Rural Illinois (IA Hospitals) | 0.8416 | 0.8886 |
| Rural Illinois (MO Hospitals) | 0.8254 | 0.8769 |
| Rural Kentucky | 0.7974 | 0.8564 |
| Rural Louisiana | 0.7467 | 0.8187 |
| Rural Minnesota | 0.9345 | 0.9547 |
| Rural Missouri | 0.8056 | 0.8624 |
| Rural Nebraska | 0.8822 | 0.9177 |
| Rural Nevada | 0.9276 | 0.9498 |
| Rural New Hampshire | 1.0030 | 1.0021 |
| Rural Texas | 0.7780 | 0.8421 |
| Rural Washington | 1.0388 | 1.0264 |
| Rural Wyoming | 0.8984 | 0.9293 |

35. On pages 45578, in Table 4F—Puerto Rico Wage Index and Capital Geographic Adjustment Factor (GAF), the table is corrected to read as follows:

TABLE 4F.—PUERTO RICO WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF)

| Area | Wage index | GAF | Wage index—Reclassified hospitals | GAF—Reclassified hospitals |
|---|---|---|---|---|
| Aguadilla, PR | 0.9170 | 0.9424 | | |
| Arecibo, PR | 0.8847 | 0.9195 | | |
| Caguas, PR | 0.8946 | 0.9266 | 0.8946 | 0.9266 |
| Mayaguez, PR | 1.0211 | 1.0144 | | |
| Ponce, PR | 1.0026 | 1.0018 | | |
| San Juan-Bayamon, PR | 1.0453 | 1.0308 | | |
| Rural Puerto Rico | 0.8557 | 0.8988 | | |

36. On pages 45578 through 45584, in Table 4G, Pre-Reclassified Wage Index for Urban Areas, the table is corrected to read as follows:

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS

| Urban area (Constituent counties) | Wage index |
|---|---|
| 0040 Abilene, TX | 0.7780 |
| Taylor, TX | |
| 0060 Aguadilla, PR | 0.4306 |
| Aguada, PR | |
| Aguadilla, PR | |
| Moca, PR | |
| 0080 Akron, OH | 0.9246 |
| Portage, OH | |

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

| Urban area (Constituent counties) | Wage index |
|---|---|
| Summit, OH | |
| 0120 Albany, GA | 1.0863 |
| Dougherty, GA | |
| Lee, GA | |
| 0160 Albany-Schenectady-Troy, NY | 0.8526 |
| Albany, NY | |
| Montgomery, NY | |
| Rensselaer, NY | |
| Saratoga, NY | |
| Schenectady, NY | |
| Schoharie, NY | |
| 0200 Albuquerque, NM | 0.9300 |
| Bernalillo, NM | |
| Sandoval, NM | |
| Valencia, NM | |
| 0220 Alexandria, LA | 0.8019 |
| Rapides, LA | |
| 0240 Allentown-Bethlehem-Easton, PA | 0.9721 |
| Carbon, PA | |
| Lehigh, PA | |
| Northampton, PA | |
| 0280 Altoona, PA | 0.8806 |
| Blair, PA | |
| 0320 Amarillo, TX | 0.8986 |
| Potter, TX | |
| Randall, TX | |
| 0380 Anchorage, AK | 1.2216 |
| Anchorage, AK | |
| 0440 Ann Arbor, MI | 1.1074 |
| Lenawee, MI | |
| Livingston, MI | |
| Washtenaw, MI | |
| 0450 Anniston, AL | 0.8090 |
| Calhoun, AL | |
| 0460 Appleton-Oshkosh-Neenah, WI | 0.9304 |
| Calumet, WI | |
| Outagamie, WI | |
| Winnebago, WI | |
| 0470 Arecibo, PR | 0.4155 |
| Arecibo, PR | |
| Camuy, PR | |
| Hatillo, PR | |
| 0480 Asheville, NC | 0.9720 |
| Buncombe, NC | |
| Madison, NC | |
| 0500 Athens, GA | 0.9818 |
| Clarke, GA | |
| Madison, GA | |
| Oconee, GA | |
| 0520 Atlanta, GA | 1.0130 |
| Barrow, GA | |
| Bartow, GA | |
| Carroll, GA | |
| Cherokee, GA | |
| Clayton, GA | |
| Cobb, GA | |
| Coweta, GA | |
| DeKalb, GA | |
| Douglas, GA | |
| Fayette, GA | |
| Forsyth, GA | |
| Fulton, GA | |
| Gwinnett, GA | |
| Henry, GA | |
| Newton, GA | |
| Paulding, GA | |
| Pickens, GA | |
| Rockdale, GA | |
| Spalding, GA | |
| Walton, GA | |
| 0560 Atlantic-Cape May, NJ | 1.0795 |
| Atlantic, NJ | |
| Cape May, NJ | |
| 0580 Auburn-Opelika, AL | 0.8494 |
| Lee, AL | |
| 0600 Augusta-Aiken, GA–SC | 0.9625 |
| Columbia, GA | |
| McDuffie, GA | |
| Richmond, GA | |
| Aiken, SC | |
| Edgefield, SC | |
| 0640 Austin-San Marcos, TX | 0.9609 |
| Bastrop, TX | |
| Caldwell, TX | |
| Hays, TX | |
| Travis, TX | |
| Williamson, TX | |
| 0680 Bakersfield, CA | 0.9967 |
| Kern, CA | |
| 0720 Baltimore, MD | 0.9919 |
| Anne Arundel, MD | |
| Baltimore, MD | |
| Baltimore City, MD | |
| Carroll, MD | |
| Harford, MD | |
| Howard, MD | |
| Queen Anne's, MD | |
| 0733 Bangor, ME | 0.9904 |
| Penobscot, ME | |
| 0743 Barnstable-Yarmouth, MA | 1.2956 |
| Barnstable, MA | |
| 0760 Baton Rouge, LA | 0.8406 |
| Ascension, LA | |
| East Baton Rouge, LA | |
| Livingston, LA | |
| West Baton Rouge, LA | |
| 0840 Beaumont-Port Arthur, TX | 0.8424 |
| Hardin, TX | |
| Jefferson, TX | |
| Orange, TX | |
| 0860 Bellingham, WA | 1.1757 |
| Whatcom, WA | |
| 0870 Benton Harbor, MI | 0.8935 |
| Berrien, MI | |
| 0875 Bergen-Passaic, NJ | 1.1692 |
| Bergen, NJ | |
| Passaic, NJ | |
| 0880 Billings, MT | 0.8961 |
| Yellowstone, MT | |
| 0920 Biloxi-Gulfport-Pascagoula, MS | 0.9029 |
| Hancock, MS | |
| Harrison, MS | |
| Jackson, MS | |
| 0960 Binghamton, NY | 0.8526 |
| Broome, NY | |
| Tioga, NY | |
| 1000 Birmingham, AL | 0.9212 |
| Blount, AL | |
| Jefferson, AL | |
| St. Clair, AL | |
| Shelby, AL | |
| 1010 Bismarck, ND | 0.7965 |
| Burleigh, ND | |
| Morton, ND | |
| 1020 Bloomington, IN | 0.8824 |
| Monroe, IN | |
| 1040 Bloomington-Normal, IL | 0.8832 |
| McLean, IL | |
| 1080 Boise City, ID | 0.9209 |
| Ada, ID | |
| Canyon, ID | |
| 1123 Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH (NH Hospitals) | 1.1233 |
| Bristol, MA | |
| Essex, MA | |
| Middlesex, MA | |
| Norfolk, MA | |
| Plymouth, MA | |
| Suffolk, MA | |
| Worcester, MA | |
| Hillsborough, NH | |
| Merrimack, NH | |
| Rockingham, NH | |
| Strafford, NH | |
| 1125 Boulder-Longmont, CO | 1.0049 |
| Boulder, CO | |
| 1145 Brazoria, TX | 0.8137 |
| Brazoria, TX | |
| 1150 Bremerton, WA | 1.0580 |
| Kitsap, WA | |
| 1240 Brownsville-Harlingen-San Benito, TX | 1.0303 |
| Cameron, TX | |
| 1260 Bryan-College Station, TX | 0.9019 |
| Brazos, TX | |
| 1280 Buffalo-Niagara Falls, NY | 0.9604 |
| Erie, NY | |
| Niagara, NY | |
| 1303 Burlington, VT | 0.9704 |
| Chittenden, VT | |
| Franklin, VT | |
| Grand Isle, VT | |
| 1310 Caguas, PR | 0.4158 |
| Caguas, PR | |
| Cayey, PR | |
| Cidra, PR | |
| Gurabo, PR | |
| San Lorenzo, PR | |
| 1320 Canton-Massillon, OH | 0.9071 |
| Carroll, OH | |
| Stark, OH | |
| 1350 Casper, WY | 0.9110 |
| Natrona, WY | |
| 1360 Cedar Rapids, IA | 0.8874 |
| Linn, IA | |
| 1400 Champaign-Urbana, IL | 0.9907 |
| Champaign, IL | |
| 1440 Charleston-North Charleston, SC | 0.9332 |
| Berkeley, SC | |
| Charleston, SC | |
| Dorchester, SC | |
| 1480 Charleston, WV | 0.8880 |
| Kanawha, WV | |
| Putnam, WV | |
| 1520 Charlotte-Gastonia-Rock Hill, NC–SC | 0.9730 |
| Cabarrus, NC | |
| Gaston, NC | |
| Lincoln, NC | |
| Mecklenburg, NC | |
| Rowan, NC | |
| Stanly, NC | |
| Union, NC | |
| York, SC | |

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

| Urban area (Constituent counties) | Wage index |
|---|---|
| 1540 Charlottesville, VA | 1.0025 |
| Albemarle, VA | |
| Charlottesville City, VA | |
| Fluvanna, VA | |
| Greene, VA | |
| 1560 Chattanooga, TN–GA | 0.9086 |
| Catoosa, GA | |
| Dade, GA | |
| Walker, GA | |
| Hamilton, TN | |
| Marion, TN | |
| 1580 Cheyenne, WY | 0.9110 |
| Laramie, WY | |
| 1600 Chicago, IL | 1.0892 |
| Cook, IL | |
| DeKalb, IL | |
| DuPage, IL | |
| Grundy, IL | |
| Kane, IL | |
| Kendall, IL | |
| Lake, IL | |
| McHenry, IL | |
| Will, IL | |
| 1620 Chico-Paradise, CA | 1.0193 |
| Butte, CA | |
| 1640 Cincinnati, OH–KY–IN | 0.9413 |
| Dearborn, IN | |
| Ohio, IN | |
| Boone, KY | |
| Campbell, KY | |
| Gallatin, KY | |
| Grant, KY | |
| Kenton, KY | |
| Pendleton, KY | |
| Brown, OH | |
| Clermont, OH | |
| Hamilton, OH | |
| Warren, OH | |
| 1660 Clarksville-Hopkinsville, TN–KY | 0.8244 |
| Christian, KY | |
| Montgomery, TN | |
| 1680 Cleveland-Lorain-Elyria, OH | 0.9671 |
| Ashtabula, OH | |
| Cuyahoga, OH | |
| Geauga, OH | |
| Lake, OH | |
| Lorain, OH | |
| Medina, OH | |
| 1720 Colorado Springs, CO | 0.9833 |
| El Paso, CO | |
| 1740 Columbia, MO | 0.8695 |
| Boone, MO | |
| 1760 Columbia, SC | 0.8902 |
| Lexington, SC | |
| Richland, SC | |
| 1800 Columbus, GA–AL | 0.8694 |
| Russell, AL | |
| Chattahoochee, GA | |
| Harris, GA | |
| Muscogee, GA | |
| 1840 Columbus, OH | 0.9648 |
| Delaware, OH | |
| Fairfield, OH | |
| Franklin, OH | |
| Licking, OH | |
| Madison, OH | |
| Pickaway, OH | |
| 1880 Corpus Christi, TX | 0.8521 |
| Nueces, TX | |
| San Patricio, TX | |
| 1890 Corvallis, OR | 1.1516 |
| Benton, OR | |
| 1900 Cumberland, MD–WV (WV Hospital) | 0.8200 |
| Allegany, MD | |
| Mineral, WV | |
| 1920 Dallas, TX | 0.9974 |
| Collin, TX | |
| Dallas, TX | |
| Denton, TX | |
| Ellis, TX | |
| Henderson, TX | |
| Hunt, TX | |
| Kaufman, TX | |
| Rockwall, TX | |
| 1950 Danville, VA | 0.9035 |
| Danville City, VA | |
| Pittsylvania, VA | |
| 1960 Davenport-Moline-Rock Island, IA–IL | 0.8985 |
| Scott, IA | |
| Henry, IL | |
| Rock Island, IL | |
| 2000 Dayton-Springfield, OH | 0.9518 |
| Clark, OH | |
| Greene, OH | |
| Miami, OH | |
| Montgomery, OH | |
| 2020 Daytona Beach, FL | 0.9060 |
| Flagler, FL | |
| Volusia, FL | |
| 2030 Decatur, AL | 0.8828 |
| Lawrence, AL | |
| Morgan, AL | |
| 2040 Decatur, IL | 0.8254 |
| Macon, IL | |
| 2080 Denver, CO | 1.0837 |
| Adams, CO | |
| Arapahoe, CO | |
| Broomfield, CO | |
| Denver, CO | |
| Douglas, CO | |
| Jefferson, CO | |
| 2120 Des Moines, IA | 0.9106 |
| Dallas, IA | |
| Polk, IA | |
| Warren, IA | |
| 2160 Detroit, MI | 1.0101 |
| Lapeer, MI | |
| Macomb, MI | |
| Monroe, MI | |
| Oakland, MI | |
| St. Clair, MI | |
| Wayne, MI | |
| 2180 Dothan, AL | 0.7741 |
| Dale, AL | |
| Houston, AL | |
| 2190 Dover, DE | 0.9805 |
| Kent, DE | |
| 2200 Dubuque, IA | 0.8886 |
| Dubuque, IA | |
| 2240 Duluth-Superior, MN–WI | 1.0171 |
| St. Louis, MN | |
| Douglas, WI | |
| 2281 Dutchess County, NY | 1.0934 |
| Dutchess, NY | |
| 2290 Eau Claire, WI | 0.9304 |
| Chippewa, WI | |
| Eau Claire, WI | |
| 2320 El Paso, TX | 0.9196 |
| El Paso, TX | |
| 2330 Elkhart-Goshen, IN | 0.9783 |
| Elkhart, IN | |
| 2335 Elmira, NY | 0.8526 |
| Chemung, NY | |
| 2340 Enid, OK | 0.8559 |
| Garfield, OK | |
| 2360 Erie, PA | 0.8601 |
| Erie, PA | |
| 2400 Eugene-Springfield, OR | 1.1456 |
| Lane, OR | |
| 2440 Evansville-Henderson, IN–KY (IN Hospitals) | 0.8824 |
| Posey, IN | |
| Vanderburgh, IN | |
| Warrick, IN | |
| Henderson, KY | |
| 2520 Fargo-Moorhead, ND–MN | 0.9797 |
| Clay, MN | |
| Cass, ND | |
| 2560 Fayetteville, NC | 0.8986 |
| Cumberland, NC | |
| 2580 Fayetteville-Springdale-Rogers, AR | 0.8396 |
| Benton, AR | |
| Washington, AR | |
| 2620 Flagstaff, AZ–UT | 1.1333 |
| Coconino, AZ | |
| Kane, UT | |
| 2640 Flint, MI | 1.0858 |
| Genesee, MI | |
| 2650 Florence, AL | 0.7747 |
| Colbert, AL | |
| Lauderdale, AL | |
| 2655 Florence, SC | 0.8709 |
| Florence, SC | |
| 2670 Fort Collins-Loveland, CO | 1.0108 |
| Larimer, CO | |
| 2680 Ft. Lauderdale, FL | 1.0163 |
| Broward, FL | |
| 2700 Fort Myers-Cape Coral, FL | 0.9816 |
| Lee, FL | |
| 2710 Fort Pierce-Port St. Lucie, FL | 1.0008 |
| Martin, FL | |
| St. Lucie, FL | |
| 2720 Fort Smith, AR–OK | 0.8424 |
| Crawford, AR | |
| Sebastian, AR | |
| Sequoyah, OK | |
| 2750 Fort Walton Beach, FL | 0.8966 |
| Okaloosa, FL | |
| 2760 Fort Wayne, IN | 0.9585 |
| Adams, IN | |
| Allen, IN | |
| De Kalb, IN | |
| Huntington, IN | |
| Wells, IN | |
| Whitley, IN | |
| 2800 Forth Worth-Arlington, TX | 0.9359 |
| Hood, TX | |
| Johnson, TX | |
| Parker, TX | |
| Tarrant, TX | |
| 2840 Fresno, CA | 1.0142 |
| Fresno, CA | |
| Madera, CA | |
| 2880 Gadsden, AL | 0.8206 |
| Etowah, AL | |

### TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

| Urban area (Constituent counties) | Wage index |
|---|---|
| 2900 Gainesville, FL | 0.9693 |
| Alachua, FL | |
| 2920 Galveston-Texas City, TX | 0.9279 |
| Galveston, TX | |
| 2960 Gary, IN | 0.9410 |
| Lake, IN | |
| Porter, IN | |
| 2975 Glens Falls, NY | 0.8526 |
| Warren, NY | |
| Washington, NY | |
| 2980 Goldsboro, NC | 0.8622 |
| Wayne, NC | |
| 2985 Grand Forks, ND–MN | 0.8636 |
| Polk, MN | |
| Grand Forks, ND | |
| 2995 Grand Junction, CO | 0.9633 |
| Mesa, CO | |
| 3000 Grand Rapids-Muskegon-Holland, MI | 0.9469 |
| Allegan, MI | |
| Kent, MI | |
| Muskegon, MI | |
| Ottawa, MI | |
| 3040 Great Falls, MT | 0.8809 |
| Cascade, MT | |
| 3060 Greeley, CO | 0.9372 |
| Weld, CO | |
| 3080 Green Bay, WI | 0.9461 |
| Brown, WI | |
| 3120 Greensboro-Winston-Salem-High Point, NC | 0.9166 |
| Alamance, NC | |
| Davidson, NC | |
| Davie, NC | |
| Forsyth, NC | |
| Guilford, NC | |
| Randolph, NC | |
| Stokes, NC | |
| Yadkin, NC | |
| 3150 Greenville, NC | 0.9098 |
| Pitt, NC | |
| 3160 Greenville-Spartanburg-Anderson, SC | 0.9335 |
| Anderson, SC | |
| Cherokee, SC | |
| Greenville, SC | |
| Pickens, SC | |
| Spartanburg, SC | |
| 3180 Hagerstown, MD | 0.9172 |
| Washington, MD | |
| 3200 Hamilton-Middletown, OH | 0.9214 |
| Butler, OH | |
| 3240 Harrisburg-Lebanon-Carlisle, PA | 0.9164 |
| Cumberland, PA | |
| Dauphin, PA | |
| Lebanon, PA | |
| Perry, PA | |
| 3283 Hartford, CT | 1.2183 |
| Hartford, CT | |
| Litchfield, CT | |
| Middlesex, CT | |
| Tolland, CT | |
| 3285 Hattiesburg, MS | 0.7778 |
| Forrest, MS | |
| Lamar, MS | |
| 3290 Hickory-Morganton-Lenoir, NC | 0.9242 |
| Alexander, NC | |
| Burke, NC | |
| Caldwell, NC | |
| Catawba, NC | |
| 3320 Honolulu, HI | 1.1098 |
| Honolulu, HI | |
| 3350 Houma, LA | 0.7771 |
| Lafourche, LA | |
| Terrebonne, LA | |
| 3360 Houston, TX | 0.9834 |
| Chambers, TX | |
| Fort Bend, TX | |
| Harris, TX | |
| Liberty, TX | |
| Montgomery, TX | |
| Waller, TX | |
| 3400 Huntington-Ashland, WV–KY–OH | 0.9595 |
| Boyd, KY | |
| Carter, KY | |
| Greenup, KY | |
| Lawrence, OH | |
| Cabell, WV | |
| Wayne, WV | |
| 3440 Huntsville, AL | 0.9245 |
| Limestone, AL | |
| Madison, AL | |
| 3480 Indianapolis, IN | 0.9916 |
| Boone, IN | |
| Hamilton, IN | |
| Hancock, IN | |
| Hendricks, IN | |
| Johnson, IN | |
| Madison, IN | |
| Marion, IN | |
| Morgan, IN | |
| Shelby, IN | |
| 3500 Iowa City, IA | 0.9548 |
| Johnson, IA | |
| 3520 Jackson, MI | 0.8986 |
| Jackson, MI | |
| 3560 Jackson, MS | 0.8357 |
| Hinds, MS | |
| Madison, MS | |
| Rankin, MS | |
| 3580 Jackson, TN | 0.8984 |
| Madison, TN | |
| Chester, TN | |
| 3600 Jacksonville, FL | 0.9529 |
| Clay, FL | |
| Duval, FL | |
| Nassau, FL | |
| St. Johns, FL | |
| 3605 Jacksonville, NC | 0.8544 |
| Onslow, NC | |
| 3610 Jamestown, NY | 0.8526 |
| Chautauqua, NY | |
| 3620 Janesville-Beloit, WI | 0.9304 |
| Rock, WI | |
| 3640 Jersey City, NJ | 1.1115 |
| Hudson, NJ | |
| 3660 Johnson City-Kingsport-Bristol, TN–VA | 0.8253 |
| Carter, TN | |
| Hawkins, TN | |
| Sullivan, TN | |
| Unicoi, TN | |
| Washington, TN | |
| Bristol City, VA | |
| Scott, VA | |
| Washington, VA | |
| 3680 Johnstown, PA | 0.8378 |
| Cambria, PA | |
| Somerset, PA | |
| 3700 Jonesboro, AR | 0.7794 |
| Craighead, AR | |
| 3710 Joplin, MO | 0.8681 |
| Jasper, MO | |
| Newton, MO | |
| 3720 Kalamazoo-Battlecreek, MI | 1.0500 |
| Calhoun, MI | |
| Kalamazoo, MI | |
| Van Buren, MI | |
| 3740 Kankakee, IL | 1.0419 |
| Kankakee, IL | |
| 3760 Kansas City, KS–MO | 0.9715 |
| Johnson, KS | |
| Leavenworth, KS | |
| Miami, KS | |
| Wyandotte, KS | |
| Cass, MO | |
| Clay, MO | |
| Clinton, MO | |
| Jackson, MO | |
| Lafayette, MO | |
| Platte, MO | |
| Ray, MO | |
| 3800 Kenosha, WI | 0.9761 |
| Kenosha, WI | |
| 3810 Killeen-Temple, TX | 0.9159 |
| Bell, TX | |
| Coryell, TX | |
| 3840 Knoxville, TN | 0.8820 |
| Anderson, TN | |
| Blount, TN | |
| Knox, TN | |
| Loudon, TN | |
| Sevier, TN | |
| Union, TN | |
| 3850 Kokomo, IN | 0.9045 |
| Howard, IN | |
| Tipton, IN | |
| 3870 La Crosse, WI–MN | 0.9304 |
| Houston, MN | |
| La Crosse, WI | |
| 3880 Lafayette, LA | 0.8207 |
| Acadia, LA | |
| Lafayette, LA | |
| St. Landry, LA | |
| St. Martin, LA | |
| 3920 Lafayette, IN | 0.8824 |
| Clinton, IN | |
| Tippecanoe, IN | |
| 3960 Lake Charles, LA | 0.7841 |
| Calcasieu, LA | |
| 3980 Lakeland-Winter Haven, FL | 0.8855 |
| Polk, FL | |
| 4000 Lancaster, PA | 0.9282 |
| Lancaster, PA | |
| 4040 Lansing-East Lansing, MI | 0.9714 |
| Clinton, MI | |
| Eaton, MI | |
| Ingham, MI | |
| 4080 Laredo, TX | 0.8091 |
| Webb, TX | |
| 4100 Las Cruces, NM | 0.8688 |
| Dona Ana, NM | |
| 4120 Las Vegas, NV–AZ | 1.1528 |
| Mohave, AZ | |
| Clark, NV | |
| Nye, NV | |
| 4150 Lawrence, KS | 0.8074 |

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

| Urban area (Constituent counties) | Wage index |
|---|---|
| Douglas, KS | |
| 4200 Lawton, OK | 0.8267 |
| Comanche, OK | |
| 4243 Lewiston-Auburn, ME | 0.9383 |
| Androscoggin, ME | |
| 4280 Lexington, KY | 0.8685 |
| Bourbon, KY | |
| Clark, KY | |
| Fayette, KY | |
| Jessamine, KY | |
| Madison, KY | |
| Scott, KY | |
| Woodford, KY | |
| 4320 Lima, OH | 0.9522 |
| Allen, OH | |
| Auglaize, OH | |
| 4360 Lincoln, NE | 1.0033 |
| Lancaster, NE | |
| 4400 Little Rock-North Little Rock, AR | 0.8923 |
| Faulkner, AR | |
| Lonoke, AR | |
| Pulaski, AR | |
| Saline, AR | |
| 4420 Longview-Marshall, TX | 0.9113 |
| Gregg, TX | |
| Harrison, TX | |
| Upshur, TX | |
| 4480 Los Angeles-Long Beach, CA | 1.1795 |
| Los Angeles, CA | |
| 4520 Louisville, KY–IN | 0.9242 |
| Clark, IN | |
| Floyd, IN | |
| Harrison, IN | |
| Scott, IN | |
| Bullitt, KY | |
| Jefferson, KY | |
| Oldham, KY | |
| 4600 Lubbock, TX | 0.8272 |
| Lubbock, TX | |
| 4640 Lynchburg, VA | 0.9134 |
| Amherst, VA | |
| Bedford, VA | |
| Bedford City, VA | |
| Campbell, VA | |
| Lynchburg City, VA | |
| 4680 Macon, GA | 0.8953 |
| Bibb, GA | |
| Houston, GA | |
| Jones, GA | |
| Peach, GA | |
| Twiggs, GA | |
| 4720 Madison, WI | 1.0264 |
| Dane, WI | |
| 4800 Mansfield, OH | 0.9180 |
| Crawford, OH | |
| Richland, OH | |
| 4840 Mayaguez, PR | 0.4795 |
| Anasco, PR | |
| Cabo Rojo, PR | |
| Hormigueros, PR | |
| Mayaguez, PR | |
| Sabana Grande, PR | |
| San German, PR | |
| 4880 McAllen-Edinburg-Mission, TX | 0.8381 |
| Hidalgo, TX | |
| 4890 Medford-Ashland, OR | 1.0772 |
| Jackson, OR | |
| 4900 Melbourne-Titusville-Palm Bay, FL | 0.9776 |
| Brevard, Fl | |
| 4920 Memphis, TN–AR–MS | 0.9009 |
| Crittenden, AR | |
| DeSoto, MS | |
| Fayette, TN | |
| Shelby, TN | |
| Tipton, TN | |
| 4940 Merced, CA | 0.9967 |
| Merced, CA | |
| 5000 Miami, FL | 0.9894 |
| Dade, FL | |
| 5015 Middlesex-Somerset-Hunterdon, NJ | 1.1366 |
| Hunterdon, NJ | |
| Middlesex, NJ | |
| Somerset, NJ | |
| 5080 Milwaukee-Waukesha, WI | 0.9988 |
| Milwaukee, WI | |
| Ozaukee, WI | |
| Washington, WI | |
| Waukesha, WI | |
| 5120 Minneapolis-St. Paul, MN–WI | 1.1001 |
| Anoka, MN | |
| Carver, MN | |
| Chisago, MN | |
| Dakota, MN | |
| Hennepin, MN | |
| Isanti, MN | |
| Ramsey, MN | |
| Scott, MN | |
| Sherburne, MN | |
| Washington, MN | |
| Wright, MN | |
| Pierce, WI | |
| St. Croix, WI | |
| 5140 Missoula, MT | 0.8800 |
| Missoula, MT | |
| 5160 Mobile, AL | 0.7994 |
| Baldwin, AL | |
| Mobile, AL | |
| 5170 Modesto, CA | 1.1275 |
| Stanislaus, CA | |
| 5190 Monmouth-Ocean, NJ | 1.0956 |
| Monmouth, NJ | |
| Ocean, NJ | |
| 5200 Monroe, LA | 0.7922 |
| Ouachita, LA | |
| 5240 Montgomery, AL | 0.7907 |
| Autauga, AL | |
| Elmore, AL | |
| Montgomery, AL | |
| 5280 Muncie, IN | 0.8824 |
| Delaware, IN | |
| 5330 Myrtle Beach, SC | 0.9112 |
| Horry, SC | |
| 5345 Naples, FL | 0.9790 |
| Collier, FL | |
| 5360 Nashville, TN | 0.9855 |
| Cheatham, TN | |
| Davidson, TN | |
| Dickson, TN | |
| Robertson, TN | |
| Rutherford TN | |
| Sumner, TN | |
| Williamson, TN | |
| Wilson, TN | |
| 5380 Nassau-Suffolk, NY | 1.3140 |
| Nassau, NY | |
| Suffolk, NY | |
| 5483 New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT | 1.2385 |
| Fairfield, CT | |
| New Haven, CT | |
| 5523 New London-Norwich, CT | 1.2183 |
| New London, CT | |
| 5560 New Orleans, LA | 0.9174 |
| Jefferson, LA | |
| Orleans, LA | |
| Plaquemines, LA | |
| St. Bernard, LA | |
| St. Charles, LA | |
| St. James, LA | |
| St. John The Baptist, LA | |
| St. Tammany, LA | |
| 5600 New York, NY | 1.4018 |
| Bronx, NY | |
| Kings, NY | |
| New York, NY | |
| Putnam, NY | |
| Queens, NY | |
| Richmond, NY | |
| Rockland, NY | |
| Westchester, NY | |
| 5640 Newark, NJ | 1.1518 |
| Essex, NJ | |
| Morris, NJ | |
| Sussex, NJ | |
| Union, NJ | |
| Warren, NJ | |
| 5660 Newburgh, NY–PA | 1.1509 |
| Orange, NY | |
| Pike, PA | |
| 5720 Norfolk-Virginia Beach-Newport News, VA–NC | 0.8619 |
| Currituck, NC | |
| Chesapeake City, VA | |
| Gloucester, VA | |
| Hampton City, VA | |
| Isle of Wight, VA | |
| James City, VA | |
| Mathews, VA | |
| Newport News City, VA | |
| Norfolk City, VA | |
| Poquoson City, VA | |
| Portsmouth City, VA | |
| Suffolk City, VA | |
| Virginia Beach City, VA | |
| Williamsburg City, VA | |
| York, VA | |
| 5775 Oakland, CA | 1.4921 |
| Alameda, CA | |
| Contra Costa, CA | |
| 5790 Ocala, FL | 0.9728 |
| Marion, FL | |
| 5800 Odessa-Midland, TX | 0.9327 |
| Ector, TX | |
| Midland, TX | |
| 5880 Oklahoma City, OK | 0.8984 |
| Canadian, OK | |
| Cleveland, OK | |
| Logan, OK | |
| McClain, OK | |
| Oklahoma, OK | |
| Pottawatomie, OK | |
| 5910 Olympia, WA | 1.0963 |
| Thurston, WA | |

### TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

| Urban area (Constituent counties) | Wage index |
|---|---|
| 5920 Omaha, NE–IA | 0.9745 |
| Pottawattamie, IA | |
| Cass, NE | |
| Douglas, NE | |
| Sarpy, NE | |
| Washington, NE | |
| 5945 Orange County, CA | 1.1372 |
| Orange, CA | |
| 5960 Orlando, FL | 0.9654 |
| Lake, FL | |
| Orange, FL | |
| Osceola, FL | |
| Seminole, FL | |
| 5990 Owensboro, KY | 0.8374 |
| Daviess, KY | |
| 6015 Panama City, FL | 0.8855 |
| Bay, FL | |
| 6020 Parkersburg-Marietta, WV–OH | 0.8039 |
| Washington, OH | |
| Wood, WV | |
| 6080 Pensacola, FL | 0.8855 |
| Escambia, FL | |
| Santa Rosa, FL | |
| 6120 Peoria-Pekin, IL | 0.8734 |
| Peoria, IL | |
| Tazewell, IL | |
| Woodford, IL | |
| 6160 Philadelphia, PA–NJ | 1.0883 |
| Burlington, NJ | |
| Camden, NJ | |
| Gloucester, NJ | |
| Salem, NJ | |
| Bucks, PA | |
| Chester, PA | |
| Delaware, PA | |
| Montgomery, PA | |
| Philadelphia, PA | |
| 6200 Phoenix-Mesa, AZ | 1.0129 |
| Maricopa, AZ | |
| Pinal, AZ | |
| 6240 Pine Bluff, AR | 0.7865 |
| Jefferson, AR | |
| 6280 Pittsburgh, PA | 0.8901 |
| Allegheny, PA | |
| Beaver, PA | |
| Butler, PA | |
| Fayette, PA | |
| Washington, PA | |
| Westmoreland, PA | |
| 6323 Pittsfield, MA | 1.0432 |
| Berkshire, MA | |
| 6340 Pocatello, ID | 0.9042 |
| Bannock, ID | |
| 6360 Ponce, PR | 0.4708 |
| Guayanilla, PR | |
| Juana Diaz, PR | |
| Penuelas, PR | |
| Ponce, PR | |
| Villalba, PR | |
| Yauco, PR | |
| 6403 Portland, ME | 0.9949 |
| Cumberland, ME | |
| Sagadahoc, ME | |
| York, ME | |
| 6440 Portland-Vancouver, OR–WA | 1.1213 |
| Clackamas, OR | |
| Columbia, OR | |
| Multnomah, OR | |
| Washington, OR | |
| Yamhill, OR | |
| Clark, WA | |
| 6483 Providence-Warwick-Pawtucket, RI | 1.0977 |
| Bristol, RI | |
| Kent, RI | |
| Newport, RI | |
| Providence, RI | |
| Washington, RI | |
| 6520 Provo-Orem, UT | 0.9976 |
| Utah, UT | |
| 6560 Pueblo, CO | 0.9328 |
| Pueblo, CO | |
| 6580 Punta Gorda, FL | 0.9510 |
| Charlotte, FL | |
| 6600 Racine, WI | 0.9304 |
| Racine, WI | |
| 6640 Raleigh-Durham-Chapel Hill, NC | 0.9959 |
| Chatham, NC | |
| Durham, NC | |
| Franklin, NC | |
| Johnston, NC | |
| Orange, NC | |
| Wake, NC | |
| 6660 Rapid City, SD | 0.8806 |
| Pennington, SD | |
| 6680 Reading, PA | 0.9133 |
| Berks, PA | |
| 6690 Redding, CA | 1.1352 |
| Shasta, CA | |
| 6720 Reno, NV | 1.0682 |
| Washoe, NV | |
| 6740 Richland-Kennewick-Pasco, WA | 1.0609 |
| Benton, WA | |
| Franklin, WA | |
| 6760 Richmond-Petersburg, VA | 0.9349 |
| Charles City County, VA | |
| Chesterfield, VA | |
| Colonial Heights City, VA | |
| Dinwiddie, VA | |
| Goochland, VA | |
| Hanover, VA | |
| Henrico, VA | |
| Hopewell City, VA | |
| New Kent, VA | |
| Petersburg City, VA | |
| Powhatan, VA | |
| Prince George, VA | |
| Richmond City, VA | |
| 6780 Riverside-San Bernardino, CA | 1.1348 |
| Riverside, CA | |
| San Bernardino, CA | |
| 6800 Roanoke, VA | 0.8700 |
| Botetourt, VA | |
| Roanoke, VA | |
| Roanoke City, VA | |
| Salem City, VA | |
| 6820 Rochester, MN | 1.1739 |
| Olmsted, MN | |
| 6840 Rochester, NY | 0.9430 |
| Genesee, NY | |
| Livingston, NY | |
| Monroe, NY | |
| Ontario, NY | |
| Orleans, NY | |
| Wayne, NY | |
| 6880 Rockford, IL | 0.9666 |
| Boone, IL | |
| Ogle, IL | |
| Winnebago, IL | |
| 6895 Rocky Mount, NC | 0.9076 |
| Edgecombe, NC | |
| Nash, NC | |
| 6920 Sacramento, CA | 1.1845 |
| El Dorado, CA | |
| Placer, CA | |
| Sacramento, CA | |
| 6960 Saginaw-Bay City-Midland, MI | 1.0032 |
| Bay, MI | |
| Midland, MI | |
| Saginaw, MI | |
| 6980 St. Cloud, MN | 0.9506 |
| Benton, MN | |
| Stearns, MN | |
| 7000 St. Joseph, MO | 0.8056 |
| Andrew, MO | |
| Buchanan, MO | |
| 7040 St. Louis, MO–IL | 0.9033 |
| Clinton, IL | |
| Jersey, IL | |
| Madison, IL | |
| Monroe, IL | |
| St. Clair, IL | |
| Franklin, MO | |
| Jefferson, MO | |
| Lincoln, MO | |
| St. Charles, MO | |
| St. Louis, MO | |
| St. Louis City, MO | |
| Warren, MO | |
| 7080 Salem, OR | 1.0482 |
| Marion, OR | |
| Polk, OR | |
| 7120 Salinas, CA | 1.4339 |
| Monterey, CA | |
| 7160 Salt Lake City-Ogden, UT | 0.9913 |
| Davis, UT | |
| Salt Lake, UT | |
| Weber, UT | |
| 7200 San Angelo, TX | 0.8535 |
| Tom Green, TX | |
| 7240 San Antonio, TX | 0.8870 |
| Bexar, TX | |
| Comal, TX | |
| Guadalupe, TX | |
| Wilson, TX | |
| 7320 San Diego, CA | 1.1147 |
| San Diego, CA | |
| 7360 San Francisco, CA | 1.4514 |
| Marin, CA | |
| San Francisco, CA | |
| San Mateo, CA | |
| 7400 San Jose, CA | 1.4626 |
| Santa Clara, CA | |
| 7440 San Juan-Bayamon, PR | 0.4909 |
| Aguas Buenas, PR | |
| Barceloneta, PR | |
| Bayamon, PR | |
| Canovanas, PR | |
| Carolina, PR | |
| Catano, PR | |
| Ceiba, PR | |
| Comerio, PR | |
| Corozal, PR | |
| Dorado, PR | |

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

| Urban area (Constituent counties) | Wage index |
|---|---|
| Fajardo, PR | |
| Florida, PR | |
| Guaynabo, PR | |
| Humacao, PR | |
| Juncos, PR | |
| Los Piedras, PR | |
| Loiza, PR | |
| Luguillo, PR | |
| Manati, PR | |
| Morovis, PR | |
| Naguabo, PR | |
| Naranjito, PR | |
| Rio Grande, PR | |
| San Juan, PR | |
| Toa Alta, PR | |
| Toa Baja, PR | |
| Trujillo Alto, PR | |
| Vega Alta, PR | |
| Vega Baja, PR | |
| Yabucoa, PR | |
| 7460 San Luis Obispo-Atascadero-Paso Robles, CA | 1.1429 |
| San Luis Obispo, CA | |
| 7480 Santa Barbara-Santa Maria-Lompoc, CA | 1.0441 |
| Santa Barbara, CA | |
| 7485 Santa Cruz-Watsonville, CA | 1.2942 |
| Santa Cruz, CA | |
| 7490 Santa Fe, NM | 1.0653 |
| Los Alamos, NM | |
| Santa Fe, NM | |
| 7500 Santa Rosa, CA | 1.2877 |
| Sonoma, CA | |
| 7510 Sarasota-Bradenton, FL | 0.9964 |
| Manatee, FL | |
| Sarasota, FL | |
| 7520 Savannah, GA | 0.9472 |
| Bryan, GA | |
| Chatham, GA | |
| Effingham, GA | |
| 7560 Scranton-Wilkes-Barre-Hazleton, PA | 0.8412 |
| Columbia, PA | |
| Lackawanna, PA | |
| Luzerne, PA | |
| Wyoming, PA | |
| 7600 Seattle-Bellevue-Everett, WA | 1.1562 |
| Island, WA | |
| King, WA | |
| Snohomish, WA | |
| 7610 Sharon, PA | 0.8378 |
| Mercer, PA | |
| 7620 Sheboygan, WI | 0.9304 |
| Sheboygan, WI | |
| 7640 Sherman-Denison, TX | 0.9700 |
| Grayson, TX | |
| 7680 Shreveport-Bossier City, LA | 0.9083 |
| Bossier, LA | |
| Caddo, LA | |
| Webster, LA | |
| 7720 Sioux City, IA–NE | 0.8993 |
| Woodbury, IA | |
| Dakota, NE | |
| 7760 Sioux Falls, SD | 0.9309 |
| Lincoln, SD | |
| Minnehaha, SD | |
| 7800 South Bend, IN | 0.9821 |
| St. Joseph, IN | |
| 7840 Spokane, WA | 1.0901 |
| Spokane, WA | |
| 7880 Springfield, IL | 0.8944 |
| Menard, IL | |
| Sangamon, IL | |
| 7920 Springfield, MO | 0.8457 |
| Christian, MO | |
| Greene, MO | |
| Webster, MO | |
| 8003 Springfield, MA | 1.0543 |
| Hampden, MA | |
| Hampshire, MA | |
| 8050 State College, PA | 0.8740 |
| Centre, PA | |
| 8080 Steubenville-Weirton, OH–WV (WV Hospitals) | 0.8398 |
| Jefferson, OH | |
| Brooke, WV | |
| Hancock, WV | |
| 8120 Stockton-Lodi, CA | 1.0404 |
| San Joaquin, CA | |
| 8140 Sumter, SC | 0.8498 |
| Sumter, SC | |
| 8160 Syracuse, NY | 0.9412 |
| Cayuga, NY | |
| Madison, NY | |
| Onondaga, NY | |
| Oswego, NY | |
| 8200 Tacoma, WA | 1.1116 |
| Pierce, WA | |
| 8240 Tallahassee, FL | 0.8855 |
| Gadsden, FL | |
| Leon, FL | |
| 8280 Tampa-St. Petersburg-Clearwater, FL | 0.9103 |
| Hernando, FL | |
| Hillsborough, FL | |
| Pasco, FL | |
| Pinellas, FL | |
| 8320 Terre Haute, IN | 0.8824 |
| Clay, IN | |
| Vermillion, IN | |
| Vigo, IN | |
| 8360 Texarkana, AR-Texarkana, TX | 0.8150 |
| Miller, AR | |
| Bowie, TX | |
| 8400 Toledo, OH | 0.9381 |
| Fulton, OH | |
| Lucas, OH | |
| Wood, OH | |
| 8440 Topeka, KS | 0.9108 |
| Shawnee, KS | |
| 8480 Trenton, NJ | 1.0517 |
| Mercer, NJ | |
| 8520 Tucson, AZ | 0.9270 |
| Pima, AZ | |
| 8560 Tulsa, OK | 0.9185 |
| Creek, OK | |
| Osage, OK | |
| Rogers, OK | |
| Tulsa, OK | |
| Wagoner, OK | |
| 8600 Tuscaloosa, AL | 0.8212 |
| Tuscaloosa, AL | |
| 8640 Tyler, TX | 0.9404 |
| Smith, TX | |
| 8680 Utica-Rome, NY | 0.8526 |
| Herkimer, NY | |
| Oneida, NY | |
| 8720 Vallejo-Fairfield-Napa, CA | 1.3377 |
| Napa, CA | |
| Solano, CA | |
| 8735 Ventura, CA | 1.1064 |
| Ventura, CA | |
| 8750 Victoria, TX | 0.8184 |
| Victoria, TX | |
| 8760 Vineland-Millville-Bridgeton, NJ | 1.0405 |
| Cumberland, NJ | |
| 8780 Visalia-Tulare-Porterville, CA | 0.9967 |
| Tulare, CA | |
| 8800 Waco, TX | 0.8394 |
| McLennan, TX | |
| 8840 Washington, DC–MD–VA–WV | 1.0904 |
| District of Columbia, DC | |
| Calvert, MD | |
| Charles, MD | |
| Frederick, MD | |
| Montgomery, MD | |
| Prince Georges, MD | |
| Alexandria City, VA | |
| Arlington, VA | |
| Clarke, VA | |
| Culpepper, VA | |
| Fairfax, VA | |
| Fairfax City, VA | |
| Falls Church City, VA | |
| Fauquier, VA | |
| Fredericksburg City, VA | |
| King George, VA | |
| Loudoun, VA | |
| Manassas City, VA | |
| Manassas Park City, VA | |
| Prince William, VA | |
| Spotsylvania, VA | |
| Stafford, VA | |
| Warren, VA | |
| Berkeley, WV | |
| Jefferson, WV | |
| 8920 Waterloo-Cedar Falls, IA | 0.8416 |
| Black Hawk, IA | |
| 8940 Wausau, WI | 0.9692 |
| Marathon, WI | |
| 8960 West Palm Beach-Boca Raton, FL | 0.9798 |
| Palm Beach, FL | |
| 9000 Wheeling, WV–OH | 0.8018 |
| Belmont, OH | |
| Marshall, WV | |
| Ohio, WV | |
| 9040 Wichita, KS | 0.9238 |
| Butler, KS | |
| Harvey, KS | |
| Sedgwick, KS | |
| 9080 Wichita Falls, TX | 0.8341 |
| Archer, TX | |
| Wichita, TX | |
| 9140 Williamsport, PA | 0.8378 |
| Lycoming, PA | |
| 9160 Wilmington-Newark, DE–MD | 1.0882 |
| New Castle, DE | |
| Cecil, MD | |
| 9200 Wilmington, NC | 0.9563 |
| New Hanover, NC | |
| Brunswick, NC | |
| 9260 Yakima, WA | 1.0388 |
| Yakima, WA | |

### TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

| Urban area (Constituent counties) | Wage index |
|---|---|
| 9270 Yolo, CA | 0.9967 |
| Yolo, CA | |
| 9280 York, PA | 0.9119 |
| York, PA | |
| 9320 Youngstown-Warren, OH | 0.9214 |
| Columbiana, OH | |
| Mahoning, OH | |
| Trumbull, OH | |
| 9340 Yuba City, CA | 1.0196 |
| Sutter, CA | |
| Yuba, CA | |
| 9360 Yuma, AZ | 0.9270 |
| Yuma, AZ | |

37. On page 45584, in Table 4H—Pre-Reclassified Wage Index for Rural Areas, the table is corrected to read as follows:

| Nonurban area | Wage index |
|---|---|
| Alabama | 0.7492 |
| Alaska | 1.1886 |
| Arizona | 0.9270 |
| Arkansas | 0.7734 |
| California | 0.9967 |
| Colorado | 0.9328 |
| Connecticut | 1.2183 |
| Delaware | 0.9557 |
| Florida | 0.8855 |
| Georgia | 0.8595 |
| Hawaii | 0.9958 |
| Idaho | 0.8974 |
| Illinois | 0.8254 |
| Indiana | 0.8824 |
| Iowa | 0.8416 |
| Kansas | 0.8074 |
| Kentucky | 0.7973 |
| Louisiana | 0.7451 |
| Maine | 0.8812 |
| Maryland | 0.9125 |
| Massachusetts | 1.0432 |
| Michigan | 0.8877 |
| Minnesota | 0.9330 |
| Mississippi | 0.7778 |
| Missouri | 0.8056 |
| Montana | 0.8800 |
| Nebraska | 0.8822 |
| Nevada | 0.9806 |
| New Hampshire | 1.0030 |
| New Jersey [1] | |
| New Mexico | 0.8270 |
| New York | 0.8526 |
| North Carolina | 0.8456 |
| North Dakota | 0.7778 |
| Ohio | 0.8820 |
| Oklahoma | 0.7537 |
| Oregon | 0.9994 |
| Pennsylvania | 0.8378 |
| Puerto Rico | 0.4018 |
| Rhode Island [1] | |
| South Carolina | 0.8498 |
| South Dakota | 0.8195 |
| Tennessee | 0.7886 |
| Texas | 0.7780 |
| Utah | 0.8974 |
| Vermont | 0.9307 |
| Virginia | 0.8498 |
| Washington | 1.0388 |
| West Virginia | 0.8018 |
| Wisconsin | 0.9304 |
| Wyoming | 0.9110 |

[1] All counties within the State are classified as urban.

38. On page 45585, in Table 5—List of Diagnosis-Related Groups (DRGs), Relative Weighting Factors, and Geometric and Arithmetic Mean Length of Stay (LOS), the fourth column (DRG Title),

a. Line 13 ((DRG 28) "Traumatic Stupor & Coma, Coma <1HR Age>17 w cc" is corrected to read "Traumatic Stupor & Coma, Coma <1HR Age>17 w cc";

b. Line 14 line 59 (DRG 29) "Traumatic Stupor & Coma, Coma >1HR Age<17 w/o cc" is corrected to read "Traumatic Stupor & Coma, Coma <1HR Age>17 w/o cc";

c. Line 53 (DRG 68), "Otitis Media & URI Age & gt;17 w cc" is corrected to read "Otitis Media & URI Age>17 w cc"; and

d. Line 54 (DRG 69), "Otitis Media & URI Age & gt;17 w/o cc" is corrected to read "Otitis Media & URI Age>17 w/o cc".

39. On page 45586, in Table 5—List of Diagnosis-Related Groups (DRGs), Relative Weighting Factors, and Geometric and Arithmetic Mean Length of Stay (LOS),

a. Line 25 (DRG 104), fifth column, the figure "7.9351" is corrected to read "7.9389"; and

b. Line 27 (DRG 105), fifth column, the figure "5.7088" is corrected to read "5.7156".

40. On page 45593, in Table 5—List of Diagnosis-Related Groups (DRGs), Relative Weighting Factors, and Geometric and Arithmetic Mean Length of Stay (LOS),

a. Line 21 (DRG 481),

(1) Sixth column, the figure "19.20" is added; and

(2) Seventh column, the figure "21.80" is added.

b. Line 22, first, second, and third columns, the figures "1", "9.20", and "21.80" are corrected by deleting these figures; and

c. Line 36 (DRG 492), the fourth column, the title "Chemotherapy w Acute Leukemia or w use of Hi Dose Chemoagent" is corrected to read "Chemotherapy w Acute Leukemia as Secondary Diagnosis or w use of High Dose Chemotherapy Agent".

d. Line 49 (DRG 504),

(1) Sixth column, the figure "0.30" is corrected to read "20.30"; and

(2) Seventh column, the figure, "8.00" is corrected to read "28.00".

41. On page 45594,

a. In Table 5—List of Diagnosis-Related Groups (DRGs), Relative Weighting Factors, and Geometric and Arithmetic Mean Length of Stay (LOS),

(1) Line 10 (DRG 525),

(a) Fifth column, the figure "11.4372" is corrected to read "14.1896";

(b) Sixth column, the figure "8.90" is corrected to read "10.2"; and

(c) Seventh column, the figure "17.00" is corrected to read "19.6".

b. In Table 6A—New Diagnosis Codes, first column, line 1, the figure "[1] 079.82" is corrected to read "079.821 [1]".

42. On page 45595, in Table 6A—New Diagnosis Codes, first column,

a. Line 12, the figure "480.31" is corrected to read "480.31 [1]"; and

b. Line 17, the figure "[1] 517.3" is corrected to read "517.3".

43. On page 45596,

a. In Table 6A—New Diagnosis Codes, first column, line 10, the figure "[1] V01.82" is corrected to read "V01.82 [1]";

b. In Table 6B—New Procedure Codes, line 3,

(1) Column 3, the figure "5" is corrected to read "Y";

(2) Column 4, the figure "525" is corrected to read "5"; and

(3) Column 5, the figure "525" is added.

44. On pages 45596 and 45597, table heading, the table entitled "Table 6C—Invalid Procedure Codes" is corrected to read "Table 6C—Invalid Diagnosis Codes".

45. On pages 45638 through 45647, Table 9—Hospital Reclassifications and Redesignations by Individual Hospital—FY 2004 is corrected by—

a. Adding the following entries (in numerical order):

| Provider No. | Actual MSA or rural area | Wage index MSA reclassification | Standardized amount MSA reclassification |
|---|---|---|---|
| 040136 | 04 | 4400 | |
| 070015 | 3283 | 5600 | |
| 070036 | 3283 | 5483 | |

| Provider No. | Actual MSA or rural area | Wage index MSA reclassification | Standardized amount MSA reclassification |
|---|---|---|---|
| 140012 | 14 | 1600 | |
| 340039 | 34 | 1520 | 1520 |
| 340129 | 34 | 1520 | |
| 340131 | 34 | 3150 | |
| 340144 | 34 | 1520 | |
| 360037 | 1680 | 0080 | |
| 360056 | 3200 | 1640 | 1640 |
| 430028 | 43 | 6660 | |

b. Correcting the standardized amount MSA reclassification for the following entries:

| Provider No. | Published standardized amount MSA reclassification | Corrected standardized amount MSA reclassification |
|---|---|---|
| 340126 | 6640 | 6895 |

c. Correcting the wage index MSA reclassification for the following entries:

| Provider No. | Published wage index MSA reclassification | Corrected wage index MSA reclassification |
|---|---|---|
| 010005 | 3440 | 1000 |
| 060049 | 2080 | 2670 |
| 100217 | 2710 | 4900 |
| 100232 | 5790 | 2900 |
| 130003 | 50 | 6740 |
| 190086 | 5200 | 7680 |
| 340039 | | 1520 |

d. Deleting the following entries:

| Provider No. | Actual MSA or rural area | Wage index MSA reclassification | Standardized amount MSA reclassification |
|---|---|---|---|
| 010044 | 01 | 25 | |
| 100211 | 8280 | 3980 | |
| 310087 | 8760 | 6160 | |
| 330386 | 33 | 5660 | |
| 390197 | 0240 | 6160 | |
| 390263 | 0240 | 6160 | |
| 460011 | 46 | 6520 | |

46. On pages 45648 through 45650, Table 10—Mean and .75 Standard Deviation by Diagnosis-Related Group (DRG)—July 2003 is corrected to read:

TABLE 10.—MEAN AND .75 STANDARD DEVIATION BY DIAGNOSIS-RELATED GROUP (DRG)—JULY 2003

| DRG | Cases | Mean + .75 standard deviation |
|---|---|---|
| 1 | 24,267 | $60,950 |
| 2 | 11,855 | $35,495 |
| 3 | 3 | $38,670 |
| 6 | 358 | $13,422 |
| 7 | 14,782 | $44,651 |
| 8 | 4,189 | $27,349 |
| 9 | 1,724 | $22,103 |
| 10 | 18,551 | $20,645 |
| 11 | 3,276 | $14,588 |
| 12 | 52,059 | $14,717 |
| 13 | 7,063 | $13,412 |
| 14 | 235,629 | $20,649 |
| 15 | 92,689 | $16,064 |

### TABLE 10.—MEAN AND .75 STANDARD DEVIATION BY DIAGNOSIS-RELATED GROUP (DRG)—JULY 2003—Continued

| DRG | Cases | Mean + .75 standard deviation |
|---|---:|---:|
| 16 | 9,895 | $20,645 |
| 17 | 2,722 | $11,711 |
| 18 | 29,545 | $16,455 |
| 19 | 8,485 | $11,848 |
| 20 | 6,179 | $45,939 |
| 21 | 1,884 | $24,848 |
| 22 | 2,759 | $17,693 |
| 23 | 11,165 | $13,566 |
| 24 | 58,700 | $16,388 |
| 25 | 27,285 | $10,243 |
| 26 | 20 | $15,481 |
| 27 | 4,447 | $21,583 |
| 28 | 13,952 | $21,942 |
| 29 | 5,298 | $11,870 |
| 30 | 3 | $15,951 |
| 31 | 3,927 | $15,129 |
| 32 | 1,914 | $9,563 |
| 34 | 23,699 | $16,230 |
| 35 | 7,411 | $10,739 |
| 36 | 2,093 | $10,243 |
| 37 | 1,375 | $17,454 |
| 38 | 95 | $7,950 |
| 39 | 556 | $10,496 |
| 40 | 1,550 | $14,867 |
| 42 | 1,575 | $11,705 |
| 43 | 94 | $9,191 |
| 44 | 1,205 | $10,735 |
| 45 | 2,656 | $12,162 |
| 46 | 3,449 | $13,222 |
| 47 | 1,389 | $9,033 |
| 49 | 2,381 | $28,970 |
| 50 | 2,411 | $13,659 |
| 51 | 242 | $14,263 |
| 52 | 218 | $13,403 |
| 53 | 2,464 | $19,840 |
| 55 | 1,481 | $15,300 |
| 56 | 471 | $14,360 |
| 57 | 708 | $17,369 |
| 59 | 114 | $13,104 |
| 61 | 253 | $20,533 |
| 62 | 2 | $17,648 |
| 63 | 3,018 | $22,970 |
| 64 | 3,109 | $21,265 |
| 65 | 39,944 | $9,647 |
| 66 | 7,774 | $9,443 |
| 67 | 383 | $12,823 |
| 68 | 11,465 | $10,817 |
| 69 | 3,694 | $8,350 |
| 70 | 31 | $5,312 |
| 71 | 79 | $10,701 |
| 72 | 959 | $11,421 |
| 73 | 7,654 | $13,387 |
| 75 | 43,245 | $50,365 |
| 76 | 44,348 | $46,358 |
| 77 | 2,472 | $20,249 |
| 78 | 39,220 | $21,219 |
| 79 | 167,196 | $26,768 |
| 80 | 7,929 | $14,141 |
| 81 | 5 | $17,492 |
| 82 | 63,922 | $23,263 |
| 83 | 6,703 | $15,965 |
| 84 | 1,598 | $9,061 |
| 85 | 22,136 | $19,978 |
| 86 | 2,226 | $11,541 |
| 87 | 60,498 | $22,477 |
| 88 | 398,325 | $14,903 |
| 89 | 525,617 | $17,228 |

### TABLE 10.—MEAN AND .75 STANDARD DEVIATION BY DIAGNOSIS-RELATED GROUP (DRG)—JULY 2003—Continued

| DRG | Cases | Mean + .75 standard deviation |
|---|---:|---:|
| 90 | 47,542 | $10,197 |
| 91 | 44 | $11,589 |
| 92 | 15,657 | $20,101 |
| 93 | 1,752 | $12,148 |
| 94 | 12,763 | $18,831 |
| 95 | 1,650 | $10,312 |
| 96 | 56,023 | $12,449 |
| 97 | 28,360 | $9,184 |
| 98 | 9 | $11,369 |
| 99 | 21,198 | $11,730 |
| 100 | 8,182 | $8,813 |
| 101 | 22,194 | $14,311 |
| 102 | 5,584 | $9,146 |
| 103 | 495 | $306,011 |
| 104 | 20,506 | $130,419 |
| 105 | 28,981 | $93,467 |
| 106 | 3,483 | $119,674 |
| 107 | 82,849 | $87,235 |
| 108 | 6,471 | $91,161 |
| 109 | 57,053 | $64,104 |
| 110 | 54,627 | $67,935 |
| 111 | 9,477 | $42,482 |
| 113 | 39,525 | $46,445 |
| 114 | 8,280 | $27,158 |
| 115 | 19,730 | $59,709 |
| 116 | 115,521 | $39,243 |
| 117 | 4,698 | $22,635 |
| 118 | 8,243 | $27,186 |
| 119 | 1,239 | $21,882 |
| 120 | 38,097 | $37,461 |
| 121 | 162,443 | $25,794 |
| 122 | 76,199 | $16,778 |
| 123 | 38,308 | $25,403 |
| 124 | 135,070 | $23,506 |
| 125 | 91,605 | $18,143 |
| 126 | 5,371 | $42,207 |
| 127 | 667,674 | $16,687 |
| 128 | 7,104 | $11,969 |
| 129 | 3,828 | $16,850 |
| 130 | 88,024 | $15,441 |
| 131 | 26,812 | $9,413 |
| 132 | 141,313 | $10,559 |
| 133 | 8,584 | $9,090 |
| 134 | 40,950 | $9,979 |
| 135 | 7,749 | $14,879 |
| 136 | 1,177 | $9,660 |
| 138 | 206,600 | $13,753 |
| 139 | 86,760 | $8,638 |
| 140 | 54,470 | $8,802 |
| 141 | 108,038 | $12,460 |
| 142 | 52,222 | $9,661 |
| 143 | 247,984 | $9,176 |
| 144 | 94,294 | $19,911 |
| 145 | 7,277 | $9,758 |
| 146 | 10,717 | $45,045 |
| 147 | 2,622 | $25,606 |
| 148 | 133,149 | $55,961 |
| 149 | 19,992 | $23,891 |
| 150 | 21,026 | $47,648 |
| 151 | 5,108 | $21,887 |
| 152 | 4,537 | $31,514 |
| 153 | 2,042 | $18,743 |
| 154 | 28,242 | $66,985 |
| 155 | 6,581 | $21,615 |
| 156 | 4 | $13,610 |
| 157 | 8,229 | $21,199 |
| 158 | 4,302 | $10,898 |

### TABLE 10.—MEAN AND .75 STANDARD DEVIATION BY DIAGNOSIS-RELATED GROUP (DRG)—JULY 2003—Continued

| DRG | Cases | Mean + .75 standard deviation |
|---|---:|---:|
| 159 | 18,005 | $22,652 |
| 160 | 12,068 | $13,727 |
| 161 | 10,697 | $18,978 |
| 162 | 6,319 | $10,842 |
| 163 | 8 | $8,496 |
| 164 | 5,354 | $38,494 |
| 165 | 2,318 | $20,220 |
| 166 | 4,177 | $23,548 |
| 167 | 4,064 | $14,643 |
| 168 | 1,430 | $21,184 |
| 169 | 808 | $12,591 |
| 170 | 15,615 | $46,595 |
| 171 | 1,508 | $20,124 |
| 172 | 31,193 | $22,687 |
| 173 | 2,456 | $12,789 |
| 174 | 249,690 | $16,591 |
| 175 | 34,572 | $9,382 |
| 176 | 13,384 | $17,977 |
| 177 | 9,012 | $15,382 |
| 178 | 3,345 | $11,611 |
| 179 | 13,115 | $17,902 |
| 180 | 89,518 | $15,767 |
| 181 | 26,863 | $9,013 |
| 182 | 270,142 | $13,570 |
| 183 | 90,281 | $9,726 |
| 184 | 75 | $7,829 |
| 185 | 5,350 | $14,122 |
| 186 | 5 | $13,840 |
| 187 | 632 | $13,047 |
| 188 | 83,496 | $18,050 |
| 189 | 13,002 | $10,094 |
| 190 | 76 | $13,314 |
| 191 | 9,509 | $70,693 |
| 192 | 1,318 | $30,582 |
| 193 | 4,791 | $56,646 |
| 194 | 646 | $27,181 |
| 195 | 3,986 | $50,267 |
| 196 | 985 | $26,442 |
| 197 | 18,180 | $42,215 |
| 198 | 5,338 | $20,057 |
| 199 | 1,639 | $40,105 |
| 200 | 1,076 | $48,840 |
| 201 | 2,132 | $60,824 |
| 202 | 26,597 | $21,538 |
| 203 | 29,851 | $22,690 |
| 204 | 65,032 | $18,780 |
| 205 | 27,308 | $19,560 |
| 206 | 2,040 | $11,756 |
| 207 | 32,486 | $19,030 |
| 208 | 10,054 | $11,133 |
| 209 | 397,136 | $32,251 |
| 210 | 122,325 | $29,402 |
| 211 | 29,910 | $20,102 |
| 212 | 10 | $24,400 |
| 213 | 9,941 | $30,927 |
| 216 | 8,759 | $35,017 |
| 217 | 17,302 | $48,569 |
| 218 | 23,856 | $26,012 |
| 219 | 19,900 | $16,947 |
| 223 | 13,264 | $17,479 |
| 224 | 11,697 | $13,087 |
| 225 | 6,458 | $19,210 |
| 226 | 5,850 | $25,118 |
| 227 | 4,833 | $13,561 |
| 228 | 2,523 | $19,156 |
| 229 | 1,259 | $11,806 |
| 230 | 2,453 | $21,335 |

TABLE 10.—MEAN AND .75 STANDARD DEVIATION BY DIAGNOSIS-RELATED GROUP (DRG)—JULY 2003—Continued

| DRG | Cases | Mean + .75 standard deviation |
|---|---|---|
| 232 | 817 | $15,763 |
| 233 | 9,955 | $33,217 |
| 234 | 5,357 | $20,460 |
| 235 | 5,077 | $12,131 |
| 236 | 39,734 | $11,649 |
| 237 | 1,762 | $9,959 |
| 238 | 8,853 | $22,389 |
| 239 | 45,836 | $17,055 |
| 240 | 11,991 | $20,968 |
| 241 | 3,139 | $10,476 |
| 242 | 2,575 | $18,916 |
| 243 | 95,842 | $12,511 |
| 244 | 14,536 | $11,855 |
| 245 | 5,794 | $8,060 |
| 246 | 1,483 | $9,996 |
| 247 | 20,262 | $9,546 |
| 248 | 13,801 | $14,154 |
| 249 | 12,889 | $10,969 |
| 250 | 3,771 | $11,727 |
| 251 | 2,358 | $7,723 |
| 253 | 21,978 | $12,388 |
| 254 | 10,705 | $7,450 |
| 256 | 6,679 | $13,456 |
| 257 | 15,630 | $14,551 |
| 258 | 15,172 | $11,527 |
| 259 | 3,515 | $15,356 |
| 260 | 4,202 | $11,332 |
| 261 | 1,785 | $14,931 |
| 262 | 663 | $15,556 |
| 263 | 23,018 | $32,927 |
| 264 | 3,859 | $17,783 |
| 265 | 4,097 | $25,386 |
| 266 | 2,544 | $14,569 |
| 267 | 240 | $16,311 |
| 268 | 921 | $19,160 |
| 269 | 9,800 | $28,934 |
| 270 | 2,790 | $13,512 |
| 271 | 19,129 | $16,800 |
| 272 | 5,696 | $16,372 |
| 273 | 1,322 | $10,402 |
| 274 | 2,283 | $19,471 |
| 275 | 227 | $9,759 |
| 276 | 1,315 | $10,938 |
| 277 | 99,585 | $14,304 |
| 278 | 31,973 | $9,001 |
| 279 | 10 | $12,862 |
| 280 | 17,758 | $11,723 |
| 281 | 7,518 | $8,138 |
| 283 | 6,010 | $11,903 |
| 284 | 2,013 | $7,089 |
| 285 | 6,942 | $34,194 |
| 286 | 2,497 | $33,219 |
| 287 | 6,223 | $30,590 |
| 288 | 5,643 | $35,074 |
| 289 | 6,933 | $15,251 |
| 290 | 9,910 | $14,457 |
| 291 | 59 | $10,867 |
| 292 | 6,506 | $45,369 |
| 293 | 366 | $23,584 |
| 294 | 97,377 | $12,578 |
| 295 | 3,548 | $13,073 |
| 296 | 277,113 | $14,025 |
| 297 | 47,860 | $8,433 |
| 298 | 115 | $7,607 |
| 299 | 1,268 | $15,188 |
| 300 | 18,635 | $18,300 |
| 301 | 3,592 | $10,394 |

TABLE 10.—MEAN AND .75 STANDARD DEVIATION BY DIAGNOSIS-RELATED GROUP (DRG)—JULY 2003—Continued

| DRG | Cases | Mean + .75 standard deviation |
|---|---|---|
| 302 | 8,919 | $52,568 |
| 303 | 21,743 | $38,927 |
| 304 | 12,600 | $38,885 |
| 305 | 3,040 | $19,958 |
| 306 | 7,011 | $20,007 |
| 307 | 2,011 | $10,074 |
| 308 | 7,246 | $25,931 |
| 309 | 4,147 | $15,113 |
| 310 | 24,762 | $18,844 |
| 311 | 7,439 | $10,426 |
| 312 | 1,516 | $17,596 |
| 313 | 554 | $11,488 |
| 314 | 2 | $322,531 |
| 315 | 34,014 | $33,973 |
| 316 | 118,639 | $21,267 |
| 317 | 2,029 | $13,340 |
| 318 | 5,737 | $19,749 |
| 319 | 408 | $11,321 |
| 320 | 185,666 | $14,359 |
| 321 | 30,824 | $9,396 |
| 322 | 54 | $7,725 |
| 323 | 19,804 | $13,565 |
| 324 | 6,943 | $8,142 |
| 325 | 9,200 | $10,835 |
| 326 | 2,722 | $7,123 |
| 327 | 7 | $5,731 |
| 328 | 742 | $12,602 |
| 329 | 91 | $8,723 |
| 331 | 51,130 | $17,377 |
| 332 | 4,964 | $10,097 |
| 333 | 268 | $14,821 |
| 334 | 10,503 | $24,076 |
| 335 | 12,644 | $17,706 |
| 336 | 35,736 | $13,949 |
| 337 | 29,363 | $9,573 |
| 338 | 930 | $19,992 |
| 339 | 1,475 | $18,262 |
| 341 | 3,579 | $21,414 |
| 342 | 687 | $12,913 |
| 344 | 3,568 | $22,429 |
| 345 | 1,361 | $18,321 |
| 346 | 4,823 | $17,335 |
| 347 | 311 | $9,389 |
| 348 | 3,394 | $12,387 |
| 349 | 611 | $7,947 |
| 350 | 6,669 | $12,143 |
| 352 | 956 | $11,679 |
| 353 | 2,555 | $29,268 |
| 354 | 7,393 | $23,963 |
| 355 | 5,523 | $14,500 |
| 356 | 25,715 | $12,441 |
| 357 | 5,609 | $37,303 |
| 358 | 21,488 | $19,224 |
| 359 | 31,686 | $13,249 |
| 360 | 15,637 | $14,188 |
| 361 | 344 | $17,957 |
| 362 | 5 | $13,102 |
| 363 | 2,508 | $15,450 |
| 364 | 1,624 | $14,985 |
| 365 | 1,828 | $33,961 |
| 366 | 4,555 | $20,584 |
| 367 | 481 | $9,537 |
| 368 | 3,547 | $19,121 |
| 369 | 3,462 | $10,155 |
| 370 | 1,377 | $15,561 |
| 371 | 1,735 | $10,212 |
| 372 | 965 | $8,800 |

TABLE 10.—MEAN AND .75 STANDARD DEVIATION BY DIAGNOSIS-RELATED GROUP (DRG)—JULY 2003—Continued

| DRG | Cases | Mean + .75 standard deviation |
|---|---|---|
| 373 | 4,195 | $6,098 |
| 374 | 99 | $11,825 |
| 376 | 328 | $8,877 |
| 377 | 53 | $17,821 |
| 378 | 171 | $12,848 |
| 379 | 360 | $5,868 |
| 380 | 96 | $7,077 |
| 381 | 194 | $8,851 |
| 382 | 49 | $3,600 |
| 383 | 2,009 | $8,066 |
| 384 | 133 | $5,926 |
| 385 | 2 | $22,090 |
| 392 | 2,277 | $53,937 |
| 394 | 2,592 | $31,013 |
| 395 | 106,920 | $13,517 |
| 396 | 19 | $11,854 |
| 397 | 18,865 | $19,906 |
| 398 | 18,054 | $20,397 |
| 399 | 1,675 | $11,244 |
| 401 | 5,843 | $48,194 |
| 402 | 1,464 | $19,205 |
| 403 | 31,718 | $29,897 |
| 404 | 4,318 | $14,782 |
| 406 | 2,416 | $44,198 |
| 407 | 641 | $20,591 |
| 408 | 2,107 | $35,182 |
| 409 | 2,155 | $20,799 |
| 410 | 28,305 | $18,044 |
| 411 | 7 | $6,308 |
| 412 | 17 | $9,840 |
| 413 | 5,303 | $22,045 |
| 414 | 632 | $12,457 |
| 415 | 43,248 | $59,623 |
| 416 | 190,961 | $25,953 |
| 417 | 41 | $16,917 |
| 418 | 25,757 | $17,318 |
| 419 | 16,258 | $14,095 |
| 420 | 3,154 | $10,282 |
| 421 | 10,646 | $11,935 |
| 422 | 68 | $10,056 |
| 423 | 8,039 | $28,618 |
| 424 | 1,258 | $39,774 |
| 425 | 16,028 | $11,214 |
| 426 | 4,549 | $8,538 |
| 427 | 1,600 | $8,463 |
| 428 | 793 | $11,410 |
| 429 | 27,000 | $13,332 |
| 430 | 64,921 | $11,267 |
| 431 | 316 | $10,220 |
| 432 | 448 | $10,690 |
| 433 | 5,537 | $4,752 |
| 439 | 1,516 | $27,413 |
| 440 | 5,775 | $29,517 |
| 441 | 684 | $15,097 |
| 442 | 17,534 | $39,029 |
| 443 | 3,910 | $16,540 |
| 444 | 5,723 | $12,286 |
| 445 | 2,544 | $8,456 |
| 447 | 6,473 | $8,222 |
| 449 | 32,997 | $13,374 |
| 450 | 7,419 | $7,054 |
| 452 | 25,608 | $16,753 |
| 453 | 5,670 | $8,623 |
| 454 | 4,756 | $13,210 |
| 455 | 1,066 | $8,058 |
| 461 | 4,964 | $19,286 |
| 462 | 9,653 | $16,368 |

TABLE 10.—MEAN AND .75 STANDARD DEVIATION BY DIAGNOSIS-RELATED GROUP (DRG)—JULY 2003—Continued

| DRG | Cases | Mean + .75 standard deviation |
|---|---|---|
| 463 | 26,785 | $11,378 |
| 464 | 7,137 | $8,327 |
| 465 | 197 | $10,114 |
| 466 | 1,716 | $11,143 |
| 467 | 1,099 | $7,982 |
| 468 | 51,309 | $63,557 |
| 470 | 860 | $28,413 |
| 471 | 13,222 | $48,749 |
| 473 | 8,064 | $53,842 |
| 475 | 109,073 | $61,001 |
| 476 | 3,631 | $38,059 |
| 477 | 26,262 | $30,961 |
| 478 | 107,707 | $39,719 |
| 479 | 23,849 | $24,028 |
| 480 | 627 | $160,255 |
| 481 | 861 | $105,050 |
| 482 | 5,284 | $57,555 |
| 483 | 45,589 | $273,650 |
| 484 | 345 | $91,730 |
| 485 | 3,244 | $52,335 |
| 486 | 2,218 | $81,989 |
| 487 | 3,885 | $32,670 |
| 488 | 752 | $79,121 |
| 489 | 13,365 | $29,515 |
| 490 | 5,439 | $17,149 |
| 491 | 15,267 | $27,730 |
| 492 | 3,092 | $62,862 |
| 493 | 59,236 | $30,239 |
| 494 | 28,580 | $16,623 |
| 495 | 199 | $139,829 |
| 496 | 2,489 | $95,191 |
| 497 | 21,941 | $56,996 |
| 498 | 15,707 | $42,663 |
| 499 | 34,575 | $23,446 |
| 500 | 49,702 | $15,440 |
| 501 | 2,596 | $42,839 |
| 502 | 774 | $23,764 |
| 503 | 5,957 | $20,407 |
| 504 | 128 | $203,606 |
| 505 | 136 | $26,710 |
| 506 | 923 | $68,196 |
| 507 | 343 | $30,206 |
| 508 | 622 | $21,886 |
| 509 | 156 | $10,594 |
| 510 | 1,634 | $18,264 |
| 511 | 586 | $10,560 |
| 512 | 505 | $87,711 |
| 513 | 214 | $97,229 |
| 515 | 8,235 | $91,055 |
| 516 | 33,015 | $38,062 |
| 517 | 68,536 | $30,211 |
| 518 | 48,849 | $29,634 |
| 519 | 9,009 | $40,231 |
| 520 | 12,990 | $26,021 |
| 521 | 30,580 | $11,606 |
| 522 | 5,993 | $8,691 |
| 523 | 15,190 | $6,564 |
| 524 | 131,223 | $12,175 |
| 525 | 583 | $195,369 |
| 526 | 51,533 | $41,296 |
| 527 | 135,957 | $33,156 |
| 528 | 1,591 | $122,442 |
| 529 | 3,656 | $36,874 |
| 530 | 2,681 | $19,867 |
| 531 | 3,839 | $51,789 |
| 532 | 2,961 | $24,910 |
| 533 | 43,024 | $27,417 |
| 534 | 51,857 | $17,726 |
| 535 | 6,061 | $135,910 |
| 536 | 20,673 | $104,255 |
| 537 | 6,861 | $30,151 |
| 538 | 6,415 | $16,597 |
| 539 | 4,443 | $55,375 |
| 540 | 1,884 | $21,594 |

47. On pages 45661 through 45662, in Table I—Impact Analysis of Final Changes for FY 2004 Operating Prospective Payment System (Percent of Changes in Payments per Case), columns 4 and 10 are corrected to read as follows:

TABLE I.—IMPACT ANALYSIS OF FINAL CHANGES FOR FY 2004 OPERATING PROSPECTIVE PAYMENT SYSTEM

(Percent changes in payments per case)

|  | Published new wage data)[4] (4) | Corrected new wage data[4] (4) | Published all FY 2004 changes[10] (10) | Corrected all FY 2004 changes[10] (10) |
|---|---|---|---|---|
| By Geographic Location |  |  |  |  |
| All hospitals | −0.3 | −0.2 | 1.8 | 1.8 |
| Urban hospitals | −0.3 | −0.2 | 1.2 | 1.2 |
| Large urban areas(populations over 1 million) | −0.3 | −0.2 | 1.1 | 1.1 |
| Other urban areas(populations of 1 million of fewer) | −0.3 | −0.3 | 1.4 | 1.4 |
| Rural hospitals | −0.3 | 0.1 | 5.8 | 5.9 |
| Bed Size (Urban): |  |  |  |  |
| 0–99 beds | 0.0 | 0.1 | 2.1 | 2.1 |
| 100–199 beds | −0.3 | −0.2 | 1.2 | 1.2 |
| 200–299 beds | −0.3 | −0.3 | 1.4 | 1.4 |
| 300–499 beds | −0.1 | 0.0 | 0.8 | 0.8 |
| 500 or more beds | −0.7 | −0.6 | 1.4 | 1.4 |
| Bed Size (Rural): |  |  |  |  |
| 0–49 beds | −0.4 | 0.1 | 6.0 | 5.8 |
| 50–99 beds | −0.3 | 0.1 | 6.2 | 6.1 |
| 100–149 beds | −0.4 | 0.0 | 6.0 | 6.1 |
| 150–199 beds | −0.2 | 0.4 | 4.4 | 4.7 |
| 200 or more beds | −0.1 | 0.2 | 5.7 | 6.1 |
| Urban by Region: |  |  |  |  |
| New England | −0.3 | −0.5 | 2.8 | 2.8 |
| Middle Atlantic | −0.9 | −0.8 | −2.8 | −2.7 |
| South Atlantic | −0.1 | −0.1 | 2.7 | 2.6 |
| East North Central | −0.6 | −0.6 | 2.7 | 2.6 |
| East South Central | 0.1 | 0.2 | 2.9 | 2.8 |
| West North Central | 0.0 | 0.1 | 3.1 | 3.1 |
| West South Central | −0.1 | 0.0 | 1.6 | 1.5 |
| Mountain | 0.5 | 0.8 | 4.4 | 4.3 |
| Pacific | −0.1 | 0.1 | −0.6 | −0.6 |
| Puerto Rico | −0.3 | −0.2 | 2.8 | 2.7 |

TABLE I.—IMPACT ANALYSIS OF FINAL CHANGES FOR FY 2004 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

(Percent changes in payments per case)

| | Published new wage data) [4] (4) | Corrected new wage data [4] (4) | Published all FY 2004 changes [10] (10) | Corrected all FY 2004 changes [10] (10) |
|---|---|---|---|---|
| Rural by Region: | | | | |
| New England | −0.2 | 0.2 | 6.8 | 6.7 |
| Middle Atlantic | −0.4 | −0.3 | 4.1 | 4.0 |
| South Atlantic | −0.1 | 0.2 | 5.3 | 5.6 |
| East North Central | 0.1 | 0.5 | 4.5 | 5.0 |
| East South Central | −0.4 | −0.2 | 4.7 | 4.7 |
| West North Central | −0.1 | 0.7 | 7.9 | 7.8 |
| West South Central | −0.6 | −0.2 | 5.8 | 5.7 |
| Mountain | −0.3 | 0.0 | 7.1 | 6.8 |
| Pacific | −0.6 | 0.0 | 8.7 | 8.5 |
| Puerto Rico | −4.2 | −4.3 | −0.3 | −0.4 |
| By Payment Classification: | | | | |
| Urban hospitals | −0.3 | −0.2 | 1.2 | 1.3 |
| Large urban areas (populations over 1 million) | −0.3 | −0.2 | 1.2 | 1.3 |
| Other urban areas (populations of 1 million of fewer) | −0.3 | −0.3 | 1.3 | 1.2 |
| Rural areas | −0.3 | 0.1 | 5.9 | 5.8 |
| Teaching Status: | | | | |
| Non-teaching | −0.2 | 0.0 | 2.6 | 2.6 |
| Fewer than 100 Residents | −0.2 | 0.0 | 1.3 | 1.3 |
| 100 or more Residents | −0.7 | −0.7 | 1.2 | 1.3 |
| Urban DSH: | | | | |
| Non-DSH | −0.2 | 0.0 | 2.5 | 2.5 |
| 100 or more beds | −0.4 | −0.3 | 0.9 | 1.0 |
| Less than 100 beds | −0.1 | 0.1 | 0.9 | 0.8 |
| Rural DSH: | | | | |
| Sole Community (SCH) | −0.2 | 0.0 | 10.0 | 9.7 |
| Referral Center (RRC) | −0.3 | 0.2 | 4.5 | 4.5 |
| Other Rural: 100 or more beds | −0.7 | −0.3 | 2.5 | 2.5 |
| Less than 100 beds | −0.6 | −0.1 | 2.8 | 2.6 |
| Urban teaching and DSH: | | | | |
| DSH | −0.4 | −0.3 | 0.9 | 0.9 |
| Teaching and no DSH | −0.3 | −0.2 | 2.1 | 2.1 |
| No teaching and DSH | −0.3 | −0.2 | 1.0 | 1.0 |
| No teaching and no DSH | −0.1 | 0.0 | 1.8 | 1.8 |
| Rural Hospital Types: | | | | |
| Non special status hospitals | −0.5 | −0.1 | 2.7 | 2.8 |
| RRC | −0.2 | 0.5 | 3.5 | 3.5 |
| SCH | −0.1 | 0.0 | 10.8 | 10.5 |
| Medicare-dependent hospitals (MDH) | −0.5 | 0.2 | 3.3 | 3.1 |
| SCH and RRC | −0.2 | 0.0 | 7.4 | 7.2 |
| Type of Ownership: | | | | |
| Voluntary | −0.3 | −0.2 | 2.2 | 2.2 |
| Proprietary | 0.0 | 0.1 | −2.1 | −2.2 |
| Government | −0.4 | −0.2 | 4.0 | 4.0 |
| Unknown 5 | −1.0 | −0.9 | 3.5 | 3.5 |
| Medicare Utilization as a Percent of Inpatient Days: | | | | |
| 0–25 | 0.1 | 0.3 | 2.5 | 2.5 |
| 25–50 | −0.4 | −0.3 | 1.2 | 1.2 |
| 50–65 | −0.3 | −0.2 | 2.8 | 2.8 |
| Over 65 | −0.2 | 0.0 | 1.1 | 1.1 |
| Unknown | 0.1 | 0.3 | 1.7 | 1.7 |
| Hospitals Reclassified by the Medicare Geographic Classification Review Board: FY 2004 Reclassifications: | | | | |
| All Reclassified Hospitals | −0.3 | 0.1 | 2.6 | 2.7 |
| Standardized Amount Only | −0.8 | −0.4 | 5.4 | 5.4 |
| Wage Index Only | −0.3 | 0.0 | 1.9 | 2.0 |
| Both | −0.3 | 0.1 | 4.1 | 5.8 |
| Nonreclassified Hospitals | −0.3 | −0.2 | 1.8 | 1.8 |
| All Reclassified Urban Hospitals | −0.3 | −0.2 | −1.8 | −1.8 |
| Standardized Amount Only | −0.9 | −0.8 | −4.6 | 4.8 |
| Wage Index Only | −0.3 | −0.3 | −4.1 | −4.2 |
| Both | 0.1 | 0.2 | 4.1 | 4.1 |
| Urban Nonreclassified Hospitals | −0.3 | −0.2 | 1.4 | 1.4 |
| All Reclassified Rural Hospitals | −0.2 | 0.2 | 5.5 | 5.7 |
| Standardized Amount Only | −0.1 | 0.4 | 2.3 | 6.9 |
| Wage Index Only | −0.3 | 0.2 | 5.7 | 5.6 |

TABLE I.—IMPACT ANALYSIS OF FINAL CHANGES FOR FY 2004 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

(Percent changes in payments per case)

| | Published new wage data)[4] (4) | Corrected new wage data[4] (4) | Published all FY 2004 changes[10] (10) | Corrected all FY 2004 changes[10] (10) |
|---|---|---|---|---|
| Both | 0.0 | 0.6 | 5.4 | 5.4 |
| Rural Nonreclassified Hospitals | −0.3 | 0.0 | 6.2 | 6.2 |
| Other Reclassified Hospitals (Section 1886(D)(8)(B)) | 0.0 | −0.3 | 3.0 | 3.5 |

[4] This column displays the impact of updating the wage index with wage data from hospitals' FY 2000 cost reports.

[10] This column shows changes in payments from FY 2003 to FY 2004. It incorporates all of the changes displayed in columns 2, 3, and 8 of the final rule (the changes displayed in columns 4, 5, and 6 are included in column 8). It also reflects the impact of the FY 2004 update, changes in hospitals' reclassification status in FY 2004 compared to FY 2003, and the difference in outlier payments from FY 2003 to FY 2004. The sum of these impacts may be different from the percentage changes shown here due to rounding and interactive effect.

48. On page 45662, in Table I—Impact Analysis of Final Changes for FY 2004 Operating Prospective Payment System (Percent of Changes in Payments per Case), line 39 (All Reclassified Hospitals—Standardized Amount Only), column 10 the figure "−4.6" is corrected to read "4.6".

49. On page 45664, bottom half of the page,

a. First column, second full paragraph, line 13, the figure "1.005522" is corrected to read "1.002588".

b. Second column, second full paragraph, lines 8 and 9, the figure "$ 4.4 million" is corrected to read "2.2 million"; and

c. Third column, first partial paragraph, line 1, the figure "1.005522" is corrected to read "1.002588".

50. On page 45670, first column, first paragraph, fourth bulleted item,

a. Line 4, the figure "1.0059" is corrected to read "1.0026"; and

b. Line 5, the figure "0.9522" is corrected to read "0.9523".

## III. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a document take effect. However, we can waive this procedure, if we find good cause that notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and the reasons for it into the notice issued. We can also waive the 30-day delayed effective date of the Administrative Procedure Act (5 U.S.C. 553(d)) when there is good cause to do so and we publish in the rule an explanation of our good cause.

In this document, we are correcting an error related to our discussion of DRG 525, and the assignment of procedure code 37.62. In light of the much lower charges associated with code 37.62, we are removing all cases with code 37.62 from DRG 525 and reassigning them to DRGs 104 and 105. This correction is necessary to ensure adequate payment for this procedure and for the other procedures that will continue to be assigned to DRG 525. Especially because these are frequently life-saving procedures, it is important that the Medicare payment amount better reflect hospitals' true costs in performing these procedures. We are concerned that, without this correction, payments for the other procedures in DRG 525, particularly procedure code 37.66, will be inadequate. As a result, Medicare beneficiaries' access to these important procedures could be limited. Accordingly, we believe there is a compelling public interest to waive notice and comment rulemaking, as well as the 30-day delay in effective date, for this correction.

We also find it unnecessary to undertake notice and comment rulemaking with respect to the other corrections contained in this document because the remainder of this document merely provides technical corrections to the final rule. We are merely correcting computational or technical errors and making a variety of typographical and grammatical corrections. We are not making changes to payment methodology or payment policy. For example, our changes to the hospital wage index and budget neutrality factor are based upon computational methodologies for which we previously provided notice and received comments. By correcting these data we are not announcing new computational methodologies, but merely ensuring that the data used in the calculations are correct. Similarly, our changes to the add-on payment for InFUSE merely incorporate the correct data into our previously published methodologies for calculating add-on payments. Thus, because the public has already had the opportunity to comment on the payment methodology used in IPPS, additional comment would be unnecessary.

In addition, we believe it is impracticable at this point in time to solicit additional comments or to delay the effective date of these corrections beyond October 1, 2003. The Social Security Act, in section 1886(d)(3), requires a national adjusted DRG prospective payment rate to be in place at the beginning of the fiscal year. Because the fiscal year begins on October 1, 2003, it is imperative that we ensure that the correct rates are in place by October 1, 2003, and it would not have been possible to publish a notice and receive comments on it in the brief period of time between discovering our errors and the October 1, 2003 effective date for the updated IPPS rates.

Finally, we believe that engaging in notice and comment prior to making these corrections or delaying the effective date beyond October 1, 2003 would be contrary to the public interest. As a matter of good public policy, the rates used in the IPPS should not be based on miscalculations or inappropriate data. The public interest is served by ensuring that the rates used in the IPPS are correct. Thus, it would be contrary to the public interest to delay implementing such corrected rates in order either to engage in notice and comment rulemaking or to provide for a 30-day delay in effective date. Therefore, we find good cause to waive notice and comment procedures, as well as the 30-day delay in effective date.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: Sepember 30, 2003.

**Ann C. Agnew,**

*Executive Secretary to the Department.*

[FR Doc. 03–25192 Filed 9–30–03; 3:27 pm]

BILLING CODE 4120–01–P

# Federal Register

Monday,
October 6, 2003

## Part III

# Securities and Exchange Commission

17 CFR Parts 230, 239, et al.

**Amendments to Investment Company Advertising Rules; Final Rule**

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 230, 239, 270, and 274**

**[Release Nos. 33–8294; 34–48558; IC–26195; File No. S7–17–02]**

**RIN 3235–AH19**

## Amendments to Investment Company Advertising Rules

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission is adopting rule and form amendments under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940 that require enhanced disclosure in investment company advertisements and that are designed to encourage advertisements that convey balanced information to prospective investors, particularly with respect to past performance. The amendments also implement section 24(g) of the Investment Company Act by permitting the use of a prospectus under section 10(b) of the Securities Act with respect to securities issued by an investment company that includes information the substance of which is not included in the investment company's statutory prospectus.

**DATES:** *Effective Date:* November 15, 2003.

*Compliance Dates:* See section II.F. of this release for information on compliance dates.

**FOR FURTHER INFORMATION CONTACT:** Christopher P. Kaiser, Special Counsel, David S. Schwartz, Senior Counsel, or Keith E. Carpenter, Senior Special Counsel, at (202) 942–0721, Office of Disclosure Regulation, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0506.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission ("Commission") is adopting amendments to rule 134 [17 CFR 230.134], rule 156 [17 CFR 230.156], and rule 482 [17 CFR 230.482] under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] ("Securities Act") and rule 34b–1 [17 CFR 270.34b–1] under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] ("Investment Company Act"). The Commission also is adopting technical amendments to Form N–1A [17 CFR 239.15A and 274.11A], Form N–3 [17 CFR 239.17a and 274.11b], Form N–4 [17 CFR 239.17b and 274.11c], and Form N–6 [17 CFR 239.17c and 274.11d], registration forms used by investment companies to register under the Investment Company Act and to offer their securities under the Securities Act.

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### I. Introduction and Background

Like most issuers of securities, when an investment company ("fund") offers its shares to the public, its promotional efforts become subject to the advertising restrictions of the Securities Act. Congress imposed these restrictions so that investors would base their investment decisions on the full disclosures contained in the "statutory prospectus," which Congress intended to be the primary selling document.[1] The advertising restrictions of the Securities Act cause special problems for many investment companies, particularly for open-end management investment companies ("mutual funds") and other investment companies that continuously offer and sell their shares.[2] For these funds, the advertising restrictions apply continuously because the offering process, in effect, is continuous.

In recognition of these problems, the Commission has adopted special advertising rules for investment companies. The most important of these is rule 482 under the Securities Act, which permits investment companies to advertise investment performance data, as well as other information.[3] Rule 482 advertisements are "prospectuses" under section 10(b) of the Securities Act (so-called "omitting prospectuses"),[4] which means that, historically, they could only contain information the "substance of which" is included in the statutory prospectus.[5]

In the National Securities Markets Improvement Act of 1996 ("NSMIA"), Congress amended the Investment Company Act to permit, subject to rules adopted by the Commission, the use of prospectuses under section 10(b) of the Securities Act that include information the substance of which is not included in the statutory prospectus.[6] In May 2002, we issued a release proposing to amend rule 482 and make other related rule and form changes to implement this provision of the legislation (the "Proposing Release").[7]

At the same time, we proposed other amendments to the fund advertising rules to reinforce antifraud protections and encourage the provision of information to investors that is more balanced and informative, particularly in the area of investment performance. These proposed amendments addressed our concern that some funds, when advertising their performance, may resort to techniques that create unrealistic investor expectations or may mislead potential investors. These concerns arose during 1999 and 2000 when many funds experienced extraordinary performance and engaged in advertising campaigns focusing on past performance.[8] In recent months, following improved market performance, commentators have already noted an increase in advertisements highlighting favorable short-term performance and have expressed concern about this practice.[9] The Commission received 29 comment letters on the proposal. Commenters generally supported the proposal, but also suggested revisions in certain areas.[10] Today, the Commission is adopting these proposed amendments, with certain modifications as described below to address the suggestions of the commenters.

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[1] "Statutory prospectus" refers to the full prospectus required by section 10(a) of the Securities Act. 15 U.S.C. 77j(a).

[2] An open-end management investment company is an investment company, other than a unit investment trust or face-amount certificate company, that offers for sale or has outstanding any redeemable security of which it is the issuer. Sections 4 and 5(a)(1) of the Investment Company Act [15 U.S.C. 80a–4 and 80a–5(a)(1)]. Mutual funds typically offer and sell their shares continuously to provide an ongoing flow of capital into their portfolios and to enable them to meet redemption requests from their shareholders.

A unit investment trust ("UIT") is "an investment company which (A) is organized under a trust indenture, contract of custodianship or agency, or similar instrument, (B) does not have a board of directors, and (C) issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities, but does not include a voting trust." Section 4(2) of the Investment Company Act [15 U.S.C. 80a–4(2)]. UITs typically have active secondary markets in which the trusts' sponsors are continuously purchasing and selling the trusts' units.

A face-amount certificate is a security that obligates the issuer to pay a stated (or determinable) amount on a fixed (or determinable) date or series of dates more than twenty-four months after the date of issuance. Section 2(a)(15) of the Investment Company Act [15 U.S.C. 80a–2(a)(15)]. A face-amount certificate company is an investment company that engages or proposes to engage in the business of issuing certain face-amount certificates. Section 4(1) of the Investment Company Act [15 U.S.C. 80a–4(1)].

[3] 17 CFR 230.482.

[4] 15 U.S.C. 77j(b).

[5] Current 17 CFR 230.482(a)(2).

[6] National Securities Markets Improvement Act of 1996, Pub. L. No. 104–290, 110 Stat. 3416, 3428, Section 204.

[7] Investment Company Act Release No. 25575 (May 17, 2002) [67 FR 36712 (May 24, 2002)] ("Proposing Release").

[8] *See* Proposing Release, *supra* note 7, 67 FR at 36713 nn. 8 and 9 and accompanying text (discussion regarding funds' advertising during

## II. Discussion

### *A. Eliminating the "Substance of Which" Requirement From Rule 482 and Rescinding Rule 134 for Funds*

We are adopting, as proposed, the amendment removing the requirement that a rule 482 advertisement contain only information the "substance of which" is included in the statutory prospectus.[11] This amendment implements section 24(g) of the Investment Company Act, added by NSMIA, which directs the Commission to adopt rules or regulations that permit registered investment companies to use prospectuses that (i) include information the substance of which is not included in the statutory prospectus, and (ii) are deemed to be permitted by section 10(b) of the Securities Act.[12] Eliminating this requirement will permit investment companies to include up-to-date information in rule 482 advertisements, such as information about current economic conditions that normally would not be included in a fund's prospectus. The amendment also will permit funds to eliminate certain information from the statutory prospectus, such as boilerplate disclosure about the methods used to calculate performance in fund advertising, that clutters the statutory prospectus and obscures other important information. As a result, investors should receive better, more understandable, and more timely information in both the statutory prospectus and fund advertisements. In addition, the costs of regulatory compliance should be reduced for funds and, ultimately, for investors.

Elimination of the "substance of which" requirement from rule 482 should not diminish investor protection. The "substance of which" requirement is a technical requirement that does not, in itself, prevent misleading statements because it does not require an advertisement to use the same words as the statutory prospectus or prohibit the use of advertising techniques that are not included in the statutory prospectus.[13] Importantly, rule 482 advertisements, as "prospectuses," will remain subject to liability under section 12(a)(2) of the Securities Act and the antifraud provisions of the federal securities laws. Also, rule 482 advertisements, as section 10(b) prospectuses under the Securities Act, are subject to the summary suspension provisions of section 10(b), which permit the Commission to suspend the use of a materially false or misleading prospectus.[14] In addition, fund advertising materials must continue to be filed with NASD Regulation, Inc. ("NASDR") or the Commission, and NASDR rules relating to fund advertising will continue to apply.[15] Finally, we are adopting additional amendments to rule 482 to reinforce antifraud protections, particularly in the area of fund performance.[16]

We are using our exemptive authority under the Securities Act to eliminate the "substance of which" requirement from rule 482 for the securities of business development companies ("BDCs") as well as registered investment companies.[17] Currently, BDCs and registered investment companies are treated similarly under rule 482. We believe that it is appropriate to extend the benefits that would result from elimination of the "substance of which" requirement to BDCs, given that elimination of this requirement should not diminish investor protection. We note, however, that BDCs, unlike mutual funds, do not continuously offer and sell their shares and do not make extensive use of advertisements.

We are also adopting amendments removing the provisions of rule 134 that apply specifically to funds and are excluding both registered investment companies and business development companies from relying on rule 134.[18] We believe that, with the elimination of the "substance of which" requirement from rule 482, funds will no longer need to rely on rule 134. Rule 134 will remain available to other issuers. We have made technical modifications to our proposed amendments to rule 134 in order to retain the existing introductory text of rule 134 for these issuers.[19] Rule 482, as amended, will provide funds with sufficient flexibility to discuss topics, such as current economic conditions, that are currently discussed in rule 134 advertisements but generally not in the statutory prospectus. We believe that investor protection will be increased if fund advertisements including this

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1999 and 2000 focused on extraordinary performance).

[9] *See* Kimberly Weisul, *Mutual Fund Ads: Reader Beware*, Business Week, September 15, 2003, at 44; Suzanne McCoy, *Performance Ads Return in Q2 as Spending Drops* (August 12, 2003) *http://www.ignites.com;* Gregg Wolper, *Buy this Fund—It's Had a Great Week!*, Morningstar Online, July 15, 2003, available at *http://news.morningstar.com/doc/document/print/1,3651,93809,00.html.*

[10] The comment letters and a summary of the comments are available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549–0102. Public comments submitted electronically and the comment summary are also available on the Commission's Internet Web site (*http://www.sec.gov*).

[11] The "substance of which" requirement is presently contained in current rule 482(a)(2) [17 CFR 230.482(a)(2)]. We are also revising the language in the note to current paragraph (a)(3) of rule 482, which states that "[t]he fact that the statements included in the advertisement are included in the section 10(a) prospectus does not relieve the issuer, underwriter, or dealer of the obligation to ensure that the advertisement is not false or misleading." [17 CFR 230.482(a)(3)]. The removal of the "substance of which" requirement makes the reference to the section 10(a) prospectus unnecessary. The revised language of this note is incorporated into the note to newly adopted paragraph (a) of rule 482 [17 CFR 230.482(a)]. *See* Section II.B., "Applicability of Antifraud Provisions to Fund Advertising," *infra.*

[12] 15 U.S.C. 80a–24(g). *See also* S. Rep. No. 293, 104th Cong., 2d Sess. 8 (1996) (stating that the "bill improves fund advertising by giving the Commission express authority to create a new investment company 'advertising prospectus' ").

[13] *See* Investment Company Act Release No. 9811 (June 8, 1977) [42 FR 30379, 30380 (June 14, 1977)] ("1977 Advertising Proposing Release") (proposing rule 434d, subsequently renumbered as rule 482).

[14] 15 U.S.C. 77j(b).

[15] Section 24(b) of the Investment Company Act [15 U.S.C. 80a–24(b)] requires the filing with the Commission of "any advertisement, pamphlet, circular, form letter, or other sales literature" for any registered investment company other than a closed-end fund. Rule 24b–3 under the Investment Company Act [17 CFR 270.24b–3] relieves funds of the obligation to file advertisements and other sales materials with the Commission if those materials are filed with NASDR.

Members of the National Association of Securities Dealers, Inc. ("NASD") also must comply with rule 2210 of the NASD Conduct Rules when sponsoring fund advertisements. Rule 2210 outlines general standards for what may constitute misleading fund advertising and specific requirements for advertising communications. Rules 2210(d)(1) and (2) of the NASD Conduct Rules.

[16] *See* discussion in Section II.B., "Applicability of Antifraud Provisions to Fund Advertising," and Section II.C., "Enhanced Disclosure Under Rule 482," *infra.*

[17] Section 28 of the Securities Act [15 U.S.C. 77z–3]. Business development companies are a category of closed-end investment companies that are not required to register under the Investment Company Act. *See* section 2(a)(48) of the Investment Company Act [15 U.S.C. 80a–2(a)(48)] (defining "business development company").

[18] 17 CFR 230.134. Rule 134, in contrast to rule 482, is a content-based rule that specifies certain categories of information that a fund may advertise. Currently, funds may advertise a broad range of information under rule 134, other than performance information. *See* Proposing Release, *supra* note 7, 67 FR at 36714.

[19] *See* 17 CFR 230.134(e) (registered investment companies and business development companies excluded from rule 134).

information are subject to rule 482 and, as a result, to liability under section 12(a)(2) of the Securities Act.[20]

A number of commenters opposed the elimination of funds' ability to rely on rule 134, objecting to the application of the more stringent liability standard under section 12(a)(2) of the Securities Act to fund advertisements that have in the past fallen within the scope of rule 134. Commenters argued that the limitations on the type of information that may be included in rule 134 advertisements provide sufficient protection against fraud or misleading statements so that the more rigorous liability standard under section 12(a)(2) is not necessary. In addition, they argued that, in the absence of evidence of significant abuse, there is no reason to eliminate funds' ability to rely on rule 134 and impose the burden of increased liability.

We are not persuaded by these comments because we believe that the standard of liability that attaches to a fund advertisement should not depend on the content of the advertisement. Nor do we believe that exactly the same content should be subject to different liability standards depending on whether that content is included in a rule 134 advertisement or a rule 482 advertisement. Assuming that commenters are correct that the limitations on the type of information that may be included in rule 134 advertisements provide protection against fraud, then it should not be problematic to apply a more rigorous liability standard to this information. Further, our elimination of funds' ability to rely on rule 134 is not intended to address significant past abuses, but to help to prevent false and misleading advertisements in the future. Finally, excluding investment companies from rule 134 is consistent with the goal of regulatory simplification. With the elimination of the "substance of which" requirement from rule 482, any advertisement that could be presented under rule 134 may also be presented under rule 482. The elimination of funds' ability to rely on rule 134 will eliminate unnecessary complexity in the regulation of fund advertising.

### *B. Applicability of Antifraud Provisions to Fund Advertising*

We are adopting, with modifications suggested by the commenters, amendments to the fund advertising rules that are intended to reemphasize that fund advertisements are subject to the antifraud provisions of the federal securities laws. When we initially proposed rule 482 in 1977, we indicated that rule 482 advertisements would be subject to section 12(a)(2) of the Securities Act and the antifraud provisions of the federal securities laws.[21] Since then, we have reiterated that compliance with the "four corners" of rule 482 does not alter the fact that funds, underwriters, and dealers are subject to the antifraud provisions of the federal securities laws with respect to fund advertisements.[22]

To emphasize this principle, we are adding a note to newly adopted paragraph (a) of rule 482 that states that an advertisement that complies with rule 482 does not relieve the fund, underwriter, or dealer of any obligations with respect to the advertisement under the antifraud provisions of the federal securities laws. We also are adding a similar note to the introductory paragraph of rule 34b–1 under the Investment Company Act with respect to supplemental sales literature. These notes include cross-references to rule 156 under the Securities Act, which provides guidance about the factors to be weighed in determining whether statements, representations, illustrations, and descriptions contained in fund advertisements and sales literature are misleading.[23]

As proposed, the language of the notes to rules 482 and 34b–1 would have stated that compliance with the rules does not relieve the fund, underwriter, or dealer of the obligation to "ensure" that the advertisement is not false or misleading. One commenter objected to the use of the term "ensure," stating that it could potentially expand the responsibility of funds, underwriters, and dealers because it might imply that they are guarantors of the accuracy of statements contained in advertisements. Our proposal incorporated language, including the term "ensure," similar to that used in an existing note to paragraph (a)(3) of rule 482, and we did not intend to alter existing standards of liability.[24] In order to address the commenter's concern, however, we have revised the language of the note to remove the term "ensure" and clarify that compliance with rules 482 and 34b–1 does not relieve the fund, underwriter, or dealer of any obligations with respect to the advertisement under the antifraud provisions of the federal securities laws. This change is intended to clarify that the scope of a fund's, underwriter's, or dealer's obligations under the antifraud provisions is drawn from the federal securities laws and relevant precedents and not from the language of rule 482 or 34b–1 itself.

Two commenters urged the Commission to confirm in the adopting release that, notwithstanding the note to rule 482(a), performance information in a rule 482 advertisement (as opposed to other disclosures included in the advertisement) will not be deemed to be false or misleading if it (i) is computed in accordance with the methodology required by the rule; and (ii) complies with the currentness requirements of the rule. We disagree with this position. An advertisement that complies with rule

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[20] Because a rule 482 advertisement is a prospectus under section 10(b) of the Securities Act, a rule 482 advertisement is subject to section 12(a)(2) of the Securities Act [15 U.S.C. 77l(a)(2)], which imposes liability for materially false or misleading statements in a prospectus or oral communication, subject to a reasonable care defense. An action under section 12(a)(2) does not require proof of scienter (*i.e.*, an intent to defraud investors), *e.g.*, *Wigand* v. *Flo-Tek, Inc.*, 609 F.2d 1028, 1034 (2d Cir. 1979), or investor reliance on a misleading statement or omission, *e.g.*, *MidAmerica Fed. S. & L. Assoc* v. *Shearson/American Express, Inc.*, 886 F.2d 1249, 1256 (10th Cir. 1989); *Sanders* v. *John Nuveen & Co.*, 619 F.2d 1222, 1225 (7th Cir. 1980), *cert. denied*, 450 U.S. 1005 (1981). In contrast, antifraud claims by investors under section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78j(b)] require proof of scienter and investor reliance. Under either type of claim, however, the plaintiff must establish that the misrepresentation or omission is material. Rule 134 advertisements are subject to the antifraud provisions under the Federal securities laws but do not create liability under section 12(a)(2) of the Securities Act because rule 134 advertisements are not considered "prospectuses." Rule 134 was adopted under section 2(a)(10)(b) of the Securities Act [15 U.S.C. 77b(a)(10)(b)], which excepts certain communications from the definition of "prospectus."

[21] 1977 Advertising Proposing Release, *supra* note, 42 FR at 30380.

[22] Investment Company Act Release No. 16245 (Feb. 2, 1988) [53 FR 3868, 3878 n. 51 (Feb. 10, 1988)]. *See also* Investment Company Act Release No. 24832 (Jan. 18, 2001) [66 FR 9002, 9008 (Feb. 5, 2001)] (compliance with rule 482 is not a safe harbor from antifraud liability); Investment Company Act Release No. 15315 (Sept. 17, 1986) [51 FR 34384, 34391 (Sept. 26, 1986)] (in proposing amendments to rule 482 to require the inclusion of a legend on advertisements, Commission stated that it was "not suggesting that the legend information contains all the material information necessary to prevent an ad from being misleading . . . [and] that whoever sponsors the ad, be it the fund, the underwriter, or the dealer, bears the primary responsibility for assuring that the ad is not false or misleading"); 1977 Advertising Proposing Release, *supra* note, 42 FR at 30380 (advertisements made pursuant to rule 434d (subsequently renumbered as rule 482) would be subject to the antifraud provisions of the securities laws); *In the Matter of The Dreyfus Corporation and Michael L. Schonberg*, Investment Advisers Act Release No. 1870 (May 10, 2000) (advertisements that comply with rule 482 are subject to the general antifraud provisions of the securities laws).

[23] 17 CFR 230.156.

[24] Note to current rule 482(a)(3) [17 CFR 230.482(a)(3)] ("The fact that the statements included in the advertisement are included in the section 10(a) prospectus does not relieve the issuer, underwriter, or dealer of the obligation to ensure that the advertisement is not false or misleading.")

482 will be deemed to be an "omitting prospectus" under section 10(b) of the Securities Act for the purposes of section 5(b)(1) of the Securities Act.[25] Rule 482, however, is not a safe harbor from antifraud liability for any information included in a rule 482 advertisement, including performance information complying with the requirements of the rule.

In addition, we are amending rule 156 to provide further guidance regarding the factors to be weighed in considering whether a statement involving a material fact in investment company sales materials is or might be misleading. As discussed in the Proposing Release, we are concerned that the advertisement of past performance without an adequate explanation of other facts may create unrealistic investor expectations or even mislead potential investors.[26] For that reason, we are modifying the language of rule 156 to state more explicitly that portrayals of past income, gain, or growth of assets may be misleading where the portrayals omit explanations, qualifications, limitations, or other statements necessary or appropriate to make these portrayals of past performance not misleading.[27] This language is intended to address our concerns with fund performance advertisements that do not provide adequate disclosure: (i) Of unusual circumstances that have contributed to fund performance; (ii) that more current performance may be lower than advertised performance; or (iii) that would permit an investor to evaluate the significance of performance that is based on selective dates.[28] We remind funds and their underwriters and dealers, however, that this language would address other circumstances that we have not specifically enumerated and that each fund, and its underwriters and dealers, is responsible for analyzing the facts and circumstances concerning its advertisements and determining whether its advertisements may be misleading.

### *C. Enhanced Disclosure Under Rule 482*

We are adopting, with modifications to address commenters' concerns, additional amendments to rule 482 that will require enhanced disclosure of certain information designed to encourage advertisements that convey balanced information to prospective investors. Our amendments require that funds that advertise performance information make available to investors total returns that are current to the most recent month-end. They also require that fund advertisements include improved narrative information and present explanatory information more prominently.

#### Availability of Month-End Performance Information

Currently, rule 482(g) requires all performance data contained in any mutual fund advertisement to be as of the most recent practicable date, provided that any advertisement containing total return quotations is considered to have complied with the requirement if the total return quotations are current to the most recent calendar quarter ended prior to submission of the advertisement for publication.[29] We are adopting a second condition for a fund advertisement to be considered to have complied with the requirement of rule 482 that performance be as of the most recent practicable date. Specifically, total return quotations current to the most recent month-end, and available to investors within seven business days of the most recent month-end, must be provided at a toll-free or collect telephone number or on a Web site, unless the advertisement contains total return quotations that are current to the most recent month ended seven business days prior to the date of use of the advertisement.[30] As a result, investors who are provided advertisements highlighting a fund's performance should have ready access to performance data that is current to the most recent month-end and will not be forced to rely on performance data that may be more than three months old at the time of use by the investor.

We have modified the proposed new condition to require that month-end performance information be available to investors within seven business days, rather than three calendar days, of the most recent month-end. A number of commenters objected to the three calendar-day timeframe as too short to gather the necessary information, particularly in cases in which funds are sold through intermediaries such as insurance companies and fund supermarkets, which sell funds from multiple complexes.[31] Some commenters suggested longer timeframes ranging up to seven business days. Other commenters indicated that it could take ten business days or more to gather all of the necessary information and that the Commission should adopt a standard permitting month-end performance information to be provided "as soon as reasonably practicable" or within a "reasonable time."

We are persuaded by the comments that the proposed timeframe should be extended to seven business days. Particularly in the case of intermediary-sold funds, it could be difficult to gather, format, and make available the necessary information in three calendar days. Based on the comments, we believe that seven business days typically will provide sufficient time for making month-end performance data available. We recognize that there may be circumstances where more time is needed. We note, however, that if a fund exceeds the seven business-day timeframe in making month-end performance data available, it may nonetheless be in compliance with the currentness provisions of rule 482, as long as the performance data contained in an advertisement is "as of the most recent practicable date considering the type of investment company and the media through which the data will be conveyed."[32]

We are also modifying the proposed condition in order to permit month-end performance information to be made available either at a toll-free or collect telephone number or on a Web site. The proposed rules would have required funds to make the information available by toll-free or collect telephone number. A number of commenters argued that funds should be permitted to make the information available through the Internet. They argued that telephone access to month-end information could be unnecessarily burdensome for both investors and funds. They argued that an automated system could be unwieldy, requiring the investor to navigate through several series of menus and numerous prompts to retrieve the requested information when, for example, an intermediary offers numerous funds or a variable insurance contract issuer offers multiple contracts with multiple underlying investment options. They also argued that funds would incur significant expense in setting up automated telephone systems or in using live telephone operators to provide updated information, whereas most funds could use existing Web sites as an efficient means of communicating month-end performance data.

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[25] Section 5(b)(1) of the Securities Act [15 U.S.C. 77e(b)(1)] makes it unlawful to use interstate commerce to transmit any prospectus relating to a security with respect to which a registration statement has been filed unless the prospectus meets the requirements of section 10 of the Securities Act. Section 10(b) of the Securities Act [15 U.S.C. 77j(b)] permits the Commission to adopt rules that provide for a prospectus that "omits in part" or "summarizes" information contained in the statutory prospectus. Rule 482 was adopted under the authority of section 10(b) of the Securities Act.

[26] *See* Proposing Release, *supra* note 7, at Section I.B., "Performance Advertising Practices," 67 FR at 36715–16.

[27] 17 CFR 230.156(b)(2)(i); *Cf.* 17 CFR 230.156(b)(1)(ii) ("A statement could be misleading because of * * * [t]he absence of explanations, qualifications, limitations or other statements necessary or appropriate to make such statement not misleading * * * ").

[28] *See* Proposing Release, *supra* note 7, 67 FR at 36715–16 (discussing concerns about lack of disclosure relating to unusual circumstances contributing to fund performance, currentness of performance information, and selective use of performance figures).

[29] Current 17 CFR 230.482(g).

[30] 17 CFR 230.482(g)(1)(ii) and (g)(2).

[31] A fund supermarket is a program offered by a broker-dealer or other financial institution through which its customers may purchase and redeem shares of a variety of funds from different fund complexes.

[32] 17 CFR 230.482(g).

We are persuaded by these comments and are revising the proposal to permit funds to make month-end data available at a toll-free or collect telephone number or at a Web site.[33] We were particularly concerned that investors could become frustrated with navigating through multiple telephone prompts to obtain information about the particular fund in which they are interested. We were persuaded that funds should be permitted to determine whether this information could be provided in a more accessible, user-friendly format on a Web site. A single table could, for example, contain performance information for multiple funds, enabling an investor to find the relevant information at a glance. We encourage funds and their intermediaries to take advantage of the rule's flexibility to present month-end performance information through a medium and in a format that is readily accessed and understood by investors.

We remind funds that the availability of month-end performance information by telephone or Web site does not alter the application of the antifraud provisions of the federal securities laws to an advertisement. The month-end information obtained through a telephone call or Web site would not be considered part of the advertisement itself and would not cure any materially misleading statement or omission in the advertisement.

We wish to clarify that a fund advertisement may provide the telephone number or Web site of a third-party intermediary as the source for obtaining month-end performance information. The Proposing Release stated that updated performance information should be available from the fund itself and that other forms of distribution of this information should supplement availability from the fund itself.[34] We recognize, however, that, in some cases, it may not be practical for month-end performance information to be available from the fund itself. For example, when a fund is sold through and advertised by a fund supermarket, it may be most practical for the fund supermarket to provide updated performance information to its customers. In the case of a variable annuity contract, fund performance net of contract charges is typically calculated by the insurance company sponsor rather than the fund and updated contract performance may perhaps be most appropriately provided by the insurance company.

Several commenters asked us to clarify whether the narrative disclosures that would normally be required in a rule 482 advertisement would be required when updated month-end performance information is provided through a toll-free or collect telephone number. These disclosures include statements regarding factors that investors should consider before investing, prospectus availability, limitations of past performance information, and sales loads.[35] These disclosures need not be provided on a toll-free or collect telephone line that is dedicated exclusively to providing updated month-end performance information to investors calling in response to a rule 482 performance advertisement because the investors would have received those disclosures in the original advertisement. If, however, the telephone number is used more broadly (*e.g.*, for all incoming calls to a fund group), the toll-free or collect telephone number should include the narrative disclosures required by rule 482 because a caller may not have seen the original advertisement with the required disclosures. Similarly, if updated month-end performance information is provided on a Web site, all of the narrative disclosures required by rule 482 should be included because the Web site is broadly accessible to the public.

We are modifying the proposal to address the concerns of several commenters who suggested that the Commission not require a fund that advertises performance current to the most recent month-end also to provide that information by toll-free or collect telephone number. The commenters argued that, in such cases, providing a telephone number for obtaining this information would confuse investors. Investors would call the telephone number, only to be given the same information that already appears in the advertisement. Accordingly, we are modifying the proposal to provide that an advertisement containing total return quotations is considered to have complied with the requirement that all performance data be as of the most recent practicable date if the total return quotations are current to the most recent month ended seven business days prior to the date of use of the advertisement.[36] A fund advertisement including information meeting this standard need not identify a toll-free or collect telephone number or a Web site where an investor may obtain performance data current to the most recent month-end.[37]

We note that the exception from the requirement to provide month-end performance information by toll-free or collect telephone number or Web site applies only to advertisements that contain total return quotations that are current to the most recent month ended seven business days prior to the date of *use* of the advertisement. It is not sufficient if the advertisement contains total return quotations that are current to the most recent month ended seven business days prior to the date of *publication or submission for publication* of the advertisement if that standard is no longer met when the advertisement is used. It also is not sufficient if the advertisement contains total return quotations that are current to the most recent month ended seven business days prior to the date of *first use* of the advertisement if that standard is not met throughout the entire period of use of the advertisement.[38] Our intent is that an investor have access to current month-end information at the time he or she reviews an advertisement, either in the advertisement itself or through a toll-free or collect telephone number or Web site.

Thus, a Web site that is continuously updated so that it always contains total return quotations that are current to the most recent month ended seven business days earlier need not identify a toll-free or collect telephone number or a Web site where an investor may obtain month-end performance data. Similarly, an advertisement in a daily newspaper that appears on one particular day and contains total return quotations that are current to the most recent month ended seven business days prior to the date that the advertisement appears need not identify a source where an investor may obtain month-end performance data. By contrast, an advertisement containing performance information for a group of funds that is intended to be distributed to investors for an extended period (*e.g.*, throughout a quarter) would be required to identify a toll-free or collect telephone number or a Web site where an investor may obtain month-end performance data even if the advertisement contains total return quotations that are current to the most recent month ended seven business days prior to the date on which the advertisement is first distributed to investors.

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[33] 17 CFR 230.482(g)(1)(ii); 17 CFR 230.482(b)(3)(i).

[34] *See* Proposing Release, *supra* note , 67 FR at 36719.

[35] 17 CFR 230.482(b)(1)(i), (b)(3)(i), and (b)(3)(ii).

[36] 17 CFR 230.482(g)(2).

[37] 17 CFR 230.482(b)(3)(i).

[38] Note to rule 482(b)(3)(i) [17 CFR 230.482(b)(3)(i)]; note to rule 482(g) [17 CFR 230.482(g)].

In determining the date of use of an advertisement, consideration should be given to all the facts and circumstances, such as the dates on which the advertisement is first published and distributed, the last date on which the advertisement is distributed, and, in the case of an advertisement appearing in a periodical, the dates on which the next issue of the periodical is first published and distributed. We would encourage funds to provide month-end performance information by toll-free or collect telephone number or Web site in any case where a question about the date of use results in a question as to whether an advertisement contains total return quotations that are current to the most recent month ended seven business days prior to the date of use.

Two commenters stated that an advertisement that includes performance information that is more current than the most recent month-end also should not be required to provide a source for month-end information. We disagree. When a fund chooses a date other than a quarter or month-end for presenting performance, there is potential for "cherry picking" the date to provide particularly favorable information. In such a case, we believe that month-end performance information should be made available to investors as a check on any such "cherry picking" and to provide investors with information from different funds for comparable periods.

Improved Narrative Disclosure

Advertising that focused on extraordinary fund performance during 1999–2000 led to increasing concerns that some funds, when advertising their performance, may resort to techniques that create unrealistic investor expectations or may mislead potential investors. These concerns have arisen again with the recent improvement in market performance, as commentators have noted an increase in advertisements highlighting favorable short-term performance.[39] To address these concerns, we are adopting, with modifications to address concerns raised by commenters, changes to the narrative disclosure that is required to accompany performance advertisements. These changes are intended to help investors understand the limitations of past performance data and enhance their ability to obtain updated performance information. In particular, these amendments will require funds to include the following information in rule 482 advertisements that contain performance data: (i) A statement that past performance does not guarantee future results; (ii) a statement that current performance may be lower or higher than the performance data quoted; and (iii) a toll-free or collect telephone number or a website where an investor may obtain performance data current to the most recent month-end, unless the advertisement includes total return quotations current to the most recent month ended seven business days prior to the date of use.[40] An advertisement may combine two or more of these required statements in a single sentence, provided that each of the required disclosures is clear and easy to understand. Similarly, an advertisement may use any language that clearly communicates the information required to be disclosed.

We have modified the proposed required disclosure regarding the availability of month-end performance data in two ways that parallel modifications that we have made to the proposed requirements regarding availability of month-end performance data. First, the rule as adopted will permit identification of *either* a Web site *or* a toll-free or collect telephone number where an investor may obtain current month-end information. Second, an advertisement containing total return quotations current to the most recent month ended seven business days prior to the date of use would not be required to identify a toll-free or collect telephone number or a Web site where an investor may obtain performance data current to the most recent month end.[41]

We are also adopting, with modifications suggested by a commenter, an amendment to rule 482 that would direct prospective investors' attention to a fund's charges and expenses. As proposed, the amendment would have required a fund to note in its rule 482 advertisement that information about charges and expenses is included in the statutory prospectus. As adopted, the rule would require rule 482 advertisements to include a statement that advises an investor to consider the fund's investment objectives, risks, and charges and expenses carefully before investing; explains that the prospectus contains this and other information about the investment company; identifies a source from which an investor may obtain a prospectus; and states that the prospectus should be read carefully before investing.[42] We were persuaded by a commenter's argument that the proposed required disclosures, while helpful, would not adequately direct investors' attention to the important factors that they should consider. We agree with the commenter that investors should consider a fund's objectives and risks, and its charges and expenses, before investing because these factors will directly affect future returns. We are concerned that the many fund advertisements highlighting performance have focused investors' attention on fund returns and that investors may be overlooking other important fund features, particularly charges and expenses, that may diminish a fund's returns.[43]

One commenter sought clarification as to how this provision would apply in the context of variable insurance products in light of recently adopted changes to disclosure requirements for variable insurance prospectuses, which require disclosure of the range of operating expenses of underlying funds in the contract prospectus, with detailed information about the expenses of each underlying fund required to be disclosed in the fund's prospectus.[44] A variable insurance product advertisement should direct investors to both the contract prospectus and the underlying fund prospectuses. Both the contract prospectus and the underlying fund prospectuses contain information relating to the product's investment objectives, risks, and charges and expenses as well as other important information.

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[39] *See supra* note 9.

[40] 17 CFR 230.482(b)(3)(i).

[41] *See* "Availability of Month-End Performance Information," *supra*.

[42] 17 CFR 230.482(b)(1)(i). Similar disclosure will also be required in an advertisement used with a profile pursuant to rule 498 under the Securities Act [17 CFR 230.498]. 17 CFR 230.482(b)(1)(ii).

Rule 482 currently does not require a fund to highlight the importance of information regarding the fund's investment objectives, risks, and charges and expenses. The rule does, however, require an advertisement to identify a source from which an investor may obtain a prospectus containing more complete information about the fund, which should be read carefully before investing. Current 17 CFR 230.482(a)(3)(i). The rule also requires that a fund that advertises performance data include some information about sales loads and other non-recurring fees. Current 17 CFR 230.482(a)(6).

[43] *See* Securities and Exchange Commission, *Mutual Fund Investing: Look at More Than a Fund's Past Performance* (last modified Jan. 24, 2000) *http://www.sec.gov/investor/pubs/mfperform.htm* (cautioning investors to look beyond performance when evaluating funds and to consider the costs relating to a fund investment). *See also* NASD Notice to Members No. 98–107 (1998) (reminding members of their obligation to ensure that discussions concerning fees and expenses in fund advertising are fair, balanced, and not misleading).

### Presentation of Explanatory Information

We are adopting, with modifications suggested by commenters, requirements that funds present certain information in their rule 482 advertisements more prominently. These prominence requirements are designed to prevent advertisements from marginalizing or minimizing the presentation of the required disclosure. The amendments will require print advertisements to present required narrative disclosures in a type size at least as large as and of a style different from, but at least as prominent as, that used in the major portion of the advertisement.[45] This requirement will apply to the required narrative disclosures about the prospectus and the performance data.[46] The amendments will also provide an exception to this requirement, which was suggested by a commenter; *i.e.*, when performance data is presented in a type size smaller than that of the major portion of the advertisement, the required narrative disclosure pertaining to the performance data may appear in a type size no smaller than that of the performance data.[47] We were persuaded that, in such cases, presenting the required performance-related narrative disclosure in a type size larger than that of the performance data itself may be distracting.

The newly adopted type size and style requirements will apply to print advertisements. We have modified the proposed requirement, as suggested by a commenter, to clarify that if an advertisement is delivered through an electronic medium, the type size and style requirements may be satisfied by presenting the required narrative disclosures in any manner reasonably calculated to draw investor attention to them.[48] This is consistent with rule 420(b) under the Securities Act, which provides that prospectuses distributed through an electronic medium may satisfy legibility requirements applicable to printed documents by presenting all required information in a format readily communicated to investors, and where indicated, in a manner reasonably calculated to draw investor attention to the specific information.[49]

We are adopting, as proposed, the requirement that radio and television advertisements give the required narrative disclosures emphasis equal to that used in the major portion of the advertisement.[50] Two commenters recommended that, with respect to television advertisements, we clarify that the required narrative disclosures need not be provided orally and that, instead, they may be provided in written text on the television screen. We do not agree that the required disclosures would have an emphasis equal to that of the major portion of the advertisement if the required disclosures are in written form, while the major portion of the advertisement is spoken. If the required disclosures appear in writing on a television screen during a spoken advertisement, we believe that they are more likely to be overlooked, and not seen as a significant part of the advertisement, than if they are included in the spoken presentation of the advertisement.

In addition, we are adopting, as proposed, a requirement that the narrative disclosures that specifically relate to fund performance be presented in close proximity to the performance data in both print and radio and television advertisements.[51] In a print advertisement, this information also would be required to appear in the body of the advertisement and not in a footnote. Rule 482 currently requires that performance advertisements identify the dates during which quoted performance occurred.[52] We are adopting, as proposed, a requirement that this information be adjacent to, and have no less prominence than, the performance quotation itself.[53] These proximity requirements are intended to help investors more readily find information necessary to understand and evaluate the performance data shown, and to remind investors of the limitations of performance data.

While the newly adopted prominence and proximity requirements apply only to certain information expressly required by rule 482, we wish to emphasize that the purpose of these requirements is to encourage fair and balanced advertisements. In that regard, we encourage funds and their underwriters and dealers to review their advertisements to ensure that the format of all the information in an advertisement results in a fair and balanced presentation. For example, an advertisement that hypes extraordinary performance but contains only footnote disclosure of unusual circumstances that have contributed to fund performance may not result in a fair and balanced presentation.[54]

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[44] Form N–4, Item 3 [17 CFR 239.17b; 17 CFR 274.11c]; Form N–6, Item 3 [17 CFR 239.17c; 17 CFR 274.11d].

[45] 17 CFR 230.482(b)(5). The presentation requirements for rule 482 are the same as those currently required under rule 134. 17 CFR 230.134(a)(iii). The presentation requirements would replace the current rule 482 requirement that certain required disclosures be "conspicuous." Current 17 CFR 230.482(a)(3).

[46] 17 CFR 230.482(b)(1) and (3). The narrative disclosure covered by the prominence requirement will also include, if applicable, the "subject to completion" legend that will be required by rule 482(b)(2) and, if the advertisement is used with a profile under rule 498 under the Securities Act [17 CFR 230.498], disclosure advising investors to consider the fund's investment objectives, risks, and charges and expenses carefully before investing, explaining that the profile contains this and other information about the fund, describing the procedures for investing in the fund, and indicating the availability of the prospectus. 17 CFR 230.482(b)(1)(ii) and (b)(2). In addition, the prominence requirement will extend to disclosures specific to money market funds. 17 CFR 230.482(b)(4).

[47] 17 CFR 230.482(b)(5).

[48] *Id.*

[49] 17 CFR 230.420(b). Rule 420 applies to rule 482 advertisements. Note to rule 482(a) [17 CFR 230.482(a)]. *See* Securities Act Release No. 7289 (May 9, 1996) [61 FR 24652, 24652 (May 15, 1996)] (amending Commission rules to provide that issuer, when delivering electronic version of document, may comply with requirements prescribing physical appearance of paper document by (i) presenting the information in a format readily communicated to investors; and (ii) where legends are required to be printed in red ink or bold-face type, or in a different font size, presenting legends in any manner reasonably calculated to draw attention to them).

[50] 17 CFR 230.482(b)(5).

[51] *Id.* The disclosure subject to the proximity requirement would include all of the disclosures required by paragraphs (b)(3)(i) and (ii) of rule 482. 17 CFR 230.482(b)(3)(i) and (ii). Paragraph (b)(3)(i) of rule 482 requires disclosure that the performance data quoted represents past performance; that past performance does not guarantee future results; in the case of a non-money market fund, that the investment return and principal value of an investment will fluctuate; that current performance may be lower or higher than the performance data quoted; and a toll-free telephone number or Web site where an investor may obtain month-end performance data. Paragraph (b)(3)(ii) of rule 482 requires that, if a sales load or any other nonrecurring fee is charged, the advertisement must disclose the maximum amount of the load or fee. In addition, if the sales load or fee is not reflected, the advertisement must also disclose that the performance data does not reflect its deduction, and that, if reflected, the load or fee would reduce the performance quoted. *Cf.* Proposing Release, *supra* note 7, 67 FR at 36721 n. 82 (omitting to state explicitly that disclosures of paragraph (b)(3)(ii) of rule 482 are covered by proximity requirement).

[52] Current 17 CFR 230.482(d)(1)(i), (e)(1)(iv), (e)(2)(v), (e)(3)(iv), (e)(4)(vi), and (e)(5)(v).

[53] 17 CFR 230.482(d)(1)(iv), (d)(2)(v), (d)(3)(iv), (d)(4)(vi), (d)(5)(v), and (e)(1)(i).

[54] *See* Section II.B., "Applicability of Antifraud Provisions to Fund Advertising," *supra* (discussing Commission's concerns with inadequate disclosure in fund performance advertising of unusual circumstances contributing to performance).

Two commenters also recommended that for purposes of spoken advertisements, such as those on radio and television, we clarify that the proximity requirements would not require that the required performance-related disclosures immediately follow any performance information so long as they are given emphasis equal to that of the major portion of the advertisement. In the case of spoken advertisements, we believe that the required performance-related disclosures should appear immediately after, immediately before, or briefly separated from the performance information. Our goal is that investors be readily able to understand the limitations of past performance data, and we would be concerned if performance information in a spoken advertisement were significantly separated from the required disclosures. On the other hand, we recognize that, in a relatively short, spoken advertisement, funds should have some flexibility to determine the appropriate placement of the required disclosures.

One commenter requested clarification of how the proximity requirements would apply to advertisements consisting of lists of fund performance information over multiple pages. The commenter stated that we should not interpret the amendments to require that the required disclosures be repeated on every page of such a listing, which could result in the required disclosures being viewed as boilerplate and ignored. We agree that, in the case of an advertisement that consists of a list of performance data longer than one page in length, the required performance-related disclosures may appear once, at the beginning of the list, such as on the cover page or first page, provided that the required disclosures are presented in conformity with the prominence requirements of the rule.[55]

Several commenters requested clarification concerning the applicability of the proximity requirements to Web site advertisements, arguing that it should be sufficient if the required performance-related disclosures appear either (i) on a screen that must be accessed prior to the investor accessing the actual performance information, or (ii) through a pop-up message or link on the screen that contains the performance information. As a general matter, we disagree with this interpretation of the proximity requirements and would expect the required performance-related disclosures to appear on the same webpage as the performance data to which the disclosures relate and in close proximity to that data. This will provide investors who are reviewing a Web site advertisement with access to the required disclosure that is substantially equivalent to that provided through a paper advertisement that meets the proximity requirements.

We are also adopting amendments to rule 34b–1 to clarify that the newly adopted prominence and proximity requirements will apply to supplemental sales literature.[56]

### *D. Reorganization of Rule 482 and Technical Form Amendments*

We are adopting, as proposed, amendments reorganizing rule 482 to make it easier to use. We are also adopting, as proposed, amendments to Forms N–1A, N–3, N–4, and N–6 to reflect the removal of the "substance of which" requirement in rule 482.[57] In addition, we are adopting additional technical amendments to Forms N–3 and N–4, also to reflect the removal of the "substance of which" requirement in rule 482.[58]

### *E. Rule 482(a)(5)(i) Relating to Variable Insurance Products*

Rule 482 generally prohibits a rule 482 advertisement from containing or being accompanied by an application to purchase fund shares.[59] However, the rule contains an exception from the prohibition against applications for unit investment trusts that offer variable annuity or variable life insurance contracts.[60] These contracts permit investors to allocate premiums among a variety of underlying mutual funds in which the unit investment trust invests. The contract prospectuses contain descriptions of the underlying mutual funds, which are considered rule 482 advertisements for the underlying funds.[61] The underlying funds are separately registered as management investment companies on Form N–1A and offer their shares through separate prospectuses. The exception from the prohibition on applications for variable insurance contracts permits an application for the contract (which provides for investor allocation of purchase payments to specific underlying funds) to accompany the contract prospectus, even though the contract prospectus constitutes a rule 482 advertisement for the underlying mutual funds and even though prospectuses for the underlying funds do not accompany the contract prospectus.[62]

By its terms, the exception permits a contract application to accompany a rule 482 advertisement for the underlying funds only when the rule 482 advertisement is a part of the contract prospectus itself. As we noted in the Proposing Release, in recent years, members of the variable insurance industry have argued that it should be permissible for a contract prospectus and application to be accompanied by other rule 482 advertisements for the underlying funds that are not a part of the prospectus itself.[63]

Advocates of this position argue that rule 482 permits either of the following: (i) delivery of a rule 482 advertisement for an underlying fund (without an application); and (ii) delivery of a contract prospectus with an application. Therefore, they argue that, under rule 482, delivery of a rule 482 advertisement for an underlying fund (without an application) could be either preceded or followed by delivery of a contract prospectus with an application. As a result, they conclude that it should be permissible for a contract prospectus and application to be accompanied by other rule 482 advertisements for the underlying funds because whether the delivery of the additional rule 482 advertisements is made together with the contract material or separately from it is a question of form rather than substance.

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[55] This clarification is limited to advertisements consisting of multi-page *paper* documents. Applicability of the presentation requirements to Web sites consisting of multiple Web pages is discussed *infra*.

[56] 17 CFR 270.34b–1(a) and (b)(1)(i).

[57] *See* Item 21 of Form N–1A [17 CFR 239.15A; 17 CFR 274.11A]; Items 4 and 25 of Form N–3 [17 CFR 239.17a; 17 CFR 274.11b]; Items 4 and 21 of Form N–4 [17 CFR 239.17b; 17 CFR 274.11c]. The amendments delete Item 25 of Form N–6 [17 CFR 239.17c; 17 CFR 274.11d].

Form N–1A is the registration form for open-end management investment companies. Form N–3 is the registration form for separate accounts organized as management investment companies that offer variable annuity contracts. Form N–4 is the registration form for separate accounts organized as unit investment trusts that offer variable annuity contracts. Form N–6 is the registration form for separate accounts that are registered as unit investment trusts and that offer variable life insurance policies.

[58] *See* General Instruction F and Item 28 of Form N–3 and General Instruction F and Item 24 of Form N–4.

[59] Current 17 CFR 230.482(a)(5); newly adopted 17 CFR 230.482(c).

[60] Current 17 CFR 230.482(a)(5)(i); newly adopted 17 CFR 230.482(c)(1).

[61] *See* Item 5(c) of Form N–4 and Item 4(c) of Form N–6 (requiring brief description of each underlying mutual fund offered through the contract). *See also* Investment Company Act Release No. 14575 (June 14, 1985) [50 FR 26145, 26155 n. 48 and accompanying text (June 25, 1985)] (describing treatment of underlying mutual funds in contract prospectus as omitting prospectuses).

[62] *See* Investment Company Act Release No. 15315 (Sept. 17, 1986) [51 FR 34384, 34391 n. 60 (Sept. 26, 1986)].

[63] Proposing Release, *supra* note, 67 FR at 36723.

We solicited comment regarding whether it should be permissible for a contract prospectus and application to be accompanied by other rule 482 advertisements for the underlying funds that are not a part of the prospectus itself. Three commenters supported permitting the practice. None opposed permitting the practice.

We agree that rule 482 advertisements for the underlying funds not contained in the contract prospectus itself should be permitted to be delivered simultaneously with the contract prospectus and the accompanying contract application, and we are adopting a revision to rule 482 to clarify that this practice is permitted.[64] We are persuaded that whether the delivery of the additional rule 482 advertisements is made together with the contract material or separately from it is a question of form rather than substance.

### *F. Compliance Dates*

The amendment eliminating the "substance of which" requirement from rule 482 will take effect on November 15, 2003. Fund advertisements submitted for publication after March 31, 2004, should comply with all other amendments adopted in this release. This timeframe is consistent with the transition period requested by most commenters. Some variable insurance commenters requested a 12-month transition period, but, in light of the modifications we have made to the proposal (*e.g.*, month-end performance may be provided by Web site rather than by telephone), we do not believe that such a lengthy transition period is necessary.

## III. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits associated with its rules. To provide funds with the ability to disclose more timely information in advertisements, the amendments adopted today remove the "substance of which" requirement contained in rule 482 under the Securities Act, and rescind the provisions in rule 134 under the Securities Act that apply to funds. In addition, the amendments reinforce the antifraud protections in the fund advertising rules, and require enhanced disclosure of certain information in fund advertisements designed to encourage advertisements that convey balanced information to prospective investors. Finally, the amendments make certain organizational changes to rule 482 and technical amendments to the registration forms.

In the Proposing Release, we provided an analysis of the costs and benefits of the amendments then proposed, and we requested comments.[65] Three commenters commented directly on this cost/benefit analysis, while others raised cost and benefit issues with regard to specific substantive provisions without specifically mentioning the cost/benefit analysis.

### *A. Benefits*

The amendments modify rule 482 of the Securities Act and related rules and forms to provide more timely, informative, and balanced information in fund advertising for the benefit of investors. The amendments also simplify and clarify the advertising rules, thus, reducing regulatory compliance costs, and these cost savings may be passed on to investors.

### 1. Enhanced Disclosure of Information to Investors

Currently, the regulations concerning advertising include significant disclosure requirements. The amendments, as adopted, enhance the disclosure required to be provided to investors in fund advertising in several respects:

- *Availability of Monthly Performance Figures.* Performance advertisements will have to disclose a toll-free or collect telephone number or a Web site where an investor may obtain performance data current to the most recent month-end, unless the advertisement includes total return quotations current to the most recent month ended seven business days prior to the date of use.[66] Easy access to and awareness of this information will benefit investors not only by providing potentially more timely performance data and reducing the ability of funds to selectively use performance data, but also by highlighting for investors the limitations of relying too heavily on any one set of performance figures. In addition, availability of updated monthly performance data will make it easier for investors to compare performance among competing funds.
- *Legend.* If an advertisement provides performance figures, the amendments require the inclusion of a legend stating that past performance does not guarantee future results, and that current performance may be lower or higher than the data quoted.[67] This legend will benefit investors by making them more aware of the limitations of relying on performance data for investment decisions and thus may result in more informed investment decisions.
- *Availability of Information Regarding Investment Objectives, Risks, and Charges and Expenses.* Rule 482 advertisements will have to highlight the availability of information concerning the fund's investment objectives, risks, and charges and expenses.[68] This provision will benefit investors by directing them to important information that could affect their returns, and will allow investors to more easily compare the objectives, risks, and costs of competing funds.
- *Prominence Requirements.* Rule 482 advertisements will be required to present certain disclosures, including those discussed above, (i) in a size and type style at least as prominent as that used in the major portion of the advertisement (or, in the case of performance-related disclosures, in a type size no smaller than that of the performance data when the performance data is presented in a type size smaller than that of the major portion of the advertisement), or (ii) in the case of radio or television advertisements, with emphasis equal to that used in the major portion of the advertisement.[69] These provisions help to ensure that advertisers do not marginalize or minimize the presentation of the required disclosure described above.
- *Proximity Requirement.* In addition, the required disclosures regarding performance data will have to be presented in the body of the advertisement in close proximity to the performance data and not in a footnote. With regard to television or radio advertisements, the required disclosures will also have to be presented in close proximity to the performance data.[70] The length of and the date of the last day in the base period used in computing yield quotations, average annual total returns, after-tax returns, and other performance measures will have to be adjacent to the performance data.[71] As with other disclosure requirements, this provision will help investors to more easily find information necessary to evaluate the performance figures shown and will

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[64] 17 CFR 230.482(c)(1).

[65] *See* Proposing Release, *supra* note, at Section IV, "Cost/Benefit Analysis," 67 FR at 36723–26.

[66] 17 CFR 230.482(b)(3)(i).

[67] *Id.*

[68] 17 CFR 230.482(b)(1)(i). This disclosure would also be required in an advertisement used with a profile pursuant to rule 498 under the Securities Act. 17 CFR 482(b)(1)(ii).

[69] 17 CFR 230.482(b)(5).

[70] *Id.*

[71] 17 CFR 230.482(d)(1)(iv), (d)(2)(v), (d)(3)(iv), (d)(4)(vi), (d)(5)(v), and (e)(1)(i).

help to remind investors of the limitations of performance data.

The benefits of these enhanced disclosure requirements to investors may be limited by the extent to which funds currently provide this disclosure voluntarily. Staff discussions with members of the fund industry indicate that most investment companies already comply with many of the requirements of the amendments, by, for example, calculating performance data on at least a monthly basis, inserting warnings in advertisements that past performance is no guarantee of future performance, and operating Web sites and telephone call banks.

Nevertheless, in the case of investment companies that do not already voluntarily comply with the requirements of the amendments, the enhanced disclosure requirements provide two benefits to investors. To the extent investment decisions are made based on advertising, the improved disclosure will result in investors making better informed investment decisions, and therefore in a more efficient distribution of assets by investors among different funds. The transparency resulting from the enhanced disclosure in fund advertising may, in turn, also contribute to increased competition among funds and result in a more efficient allocation of resources among competing investment products. Although it is not possible to precisely quantify the beneficial effects of more efficient allocation of investors' assets and increased competition, they may be significant, given the size of the mutual fund industry.[72]

### 2. Simplification and Clarification of Fund Advertising Rules

The amendments add clarifying language to rule 482 and rule 156 under the Securities Act and rule 34b–1 under the Investment Company Act to reemphasize the applicability of the antifraud provisions of the federal securities laws to fund advertisements. In addition, the amendments reorganize rule 482 to make it easier for funds to apply, by adding headings, reordering provisions, and clarifying certain language.

The reemphasis of the applicability of the antifraud provisions may help to deter presentation of misleading information in advertisements. The amendments to reorganize rule 482 may aid funds and others in understanding and complying with the advertising rules, making it easier and cheaper for funds to advertise. Both of these improvements may, in turn, contribute to an increased flow of accurate and useful investment information to investors, which may lead to better-informed investment decisions and amplify the previously discussed benefits of efficient asset allocation.[73] Although difficult to quantify, this easing of regulation may provide some reduction of burden to the funds that choose to advertise.

### 3. Elimination of the "Substance of Which" Requirement and the Rescission of Rule 134 Provisions That Apply to Funds

To simplify the current structure of fund advertising rules and to provide funds the ability to disclose more timely information in advertisements, the amendments also remove the provision contained in rule 482 limiting advertisements only to that information the "substance of which" is in the statutory prospectus. We believe that, with the elimination of the "substance of which" requirement from rule 482, funds will no longer need to rely on rule 134. As a result, the amendments also remove the provisions of rule 134 that apply specifically to funds and exclude both registered investment companies and business development companies from relying on rule 134.

The elimination of the "substance of which" requirement eliminates requirements for funds to include or update advertising related information in their prospectus or SAI, both in the initial registration statements and in post-effective amendments, before issuing an advertisement to the public. This will reduce filing costs for funds, including both internal costs and external costs such as outside legal fees. The amendments will also reduce the costs associated with printing and distributing prospectuses and SAIs. The elimination of unnecessary information from the prospectus or SAIs, because it will remove distracting clutter, may make the remaining information more understandable to investors.

Finally, the rescission of the rule 134 provisions that apply to funds consolidates the regulation of most fund advertising in rule 482, which will cover advertisements now covered by rule 134. This simplification will contribute to the benefits of easier and cheaper advertising as discussed in section III.A.2 ("Simplification and Clarification of Fund Advertising Rules") above, principally by removing the unnecessary restrictions on the content of the advertisements and the unnecessary distinction with regard to their legal classification. The transfer of fund advertising regulation from rule 134 to rule 482 may also enhance investor protection by subjecting fund advertisements formerly governed by rule 134 to potential civil liability under section 12(a)(2) of the Securities Act.[74]

One commenter disagreed that there would be a benefit to funds as a result of having to comply with only one advertising rule. The commenter stated that, in its experience, there is no correlation between the number of advertising rules and the costs of advertising. We do not believe, however, that this commenter's particular experience negates our conclusion with regard to the potential benefits of simplifying the regulation of fund advertising. In compiling the cost/benefit analysis, the staff found that some funds estimated no savings resulting from the amendments intended to simplify and clarify the advertising rules; these amendments included the rescission of rule 134 as it applies to funds, as well as other amendments such as the removal of the "substance of which" requirement. On the other hand, the staff also found that others did anticipate such a savings. Our estimate below represents an average, overall benefit for all the amendments intended to simplify and clarify the advertising rules and, as such, takes into account those funds that foresee no benefits from the simplification and clarification of the rules.

### 4. Quantification of Benefits

The Commission estimates that, on an annual basis, the amendments will save funds approximately 1.96 burden hours, or $73.03, per investment company in internal costs but only negligible amounts in external costs. We estimate that 5,025 investment companies will be affected by the amendments, and, thus, the Commission estimates that the annual internal burden associated with rule 482 will decrease by approximately 9,849 (1.96 hours per investment company × 5,025 investment companies) burden hours.[75] These burden hours represent a monetary savings of approximately $366,974 (9,849 hours × $37.26 wage rate) per year.[76]

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[72] *See* Investment Company Institute, *2001 Mutual Fund Fact Book* at 63.

[73] The trade-off between lower advertising burdens and increased advertising activity is complex and further complicated by business cycles and marketing strategy among other factors. We believe, however, that investors and funds will enjoy benefits in any event—either resources will be saved in reducing the costs and burdens of advertising or they will be spent to increase the amount and timeliness of information provided to investors in advertising.

[74] The benefits of potential direct investor suits in both remedying fraudulent advertising by funds and deterring such advertising in the future are difficult to quantify, but may be significant. The benefits will be reduced to the extent that the potential liability increases litigation and insurance costs for funds. However, because suits based on misleading advertising are relatively rare, we continue to estimate that the associated costs will be minimal.

*B. Costs*

The Commission estimates that the costs of the amendments, in the aggregate, will be minimal and limited in duration. The Commission estimates that funds will incur one-time costs in modifying their current rule 482 advertisements to meet the new disclosure and presentation requirements, although many funds already provide the disclosure that would be required. For example, funds may have to modify their layouts and typesetting in order to convert existing advertisements to meet the requirements of the rule, or alternatively, replace existing advertisements more quickly than they otherwise would.

The requirement for funds to provide access to performance figures that are current as of the last month end may also impose costs, some of which will be ongoing, both to generate such figures on a monthly basis and to provide the information by a toll-free or collect telephone number or on a Web site. This could include costs for computer time, accounting personnel, information technology staff, and additional computer and telephone equipment. The cost/benefit analysis in the Proposing Release estimated that the costs of making updated performance information available would be negligible because many, if not most, funds already provide this or more current performance information through these means and, therefore, the marginal cost for most funds for making updated performance information available is expected to be negligible.

Several commenters, however, argued that the costs associated with the proposed requirement that updated performance information be provided by toll-free or collect telephone number would be significant.[77] Such costs, commenters stated, could include those of setting up and maintaining an automated telephone system to provide the updated performance data. While two commenters did provide some specific estimates of their own anticipated costs of compliance with this proposed requirement, none of the commenters gave cost figures applicable to the industry as a whole.[78] Moreover, none of the commenters estimated the number of funds that would incur such costs. The cost/benefit analysis in the Proposing Release reached its conclusion, in part, because information gathered by the staff indicated that many, if not most, funds already had toll-free telephone systems and used them to distribute performance data that was at least as current as the month-end. The information provided by the commenters does not persuade us that our conclusion regarding aggregate costs was incorrect.

In any event, we have modified the proposal to address these commenters' concerns. The amendments, as adopted, will not require month-end performance data to be made available by toll-free or collect telephone. Rather, funds may make the information available by toll-free or collect telephone number or on the fund's Web site. In addition, we have modified the proposal to provide that where the fund advertisement includes total return quotations current to the most recent month ended seven business days prior to the date of use, the fund is not also required to make such data available by telephone or through its website. We expect that both of these revisions to the proposed amendments will further reduce any cost burden associated with disclosing month-end performance data.

The elimination of the "substance of which" requirement and the rescission of rule 134 as applicable to funds may require some funds to incur costs to convert many of their rule 134 advertisements to rule 482 advertisements. These costs, however, should be minimal and non-recurring, since the rule 482 requirements would permit advertisements that are not significantly different from those currently permitted under current rule 134.

One commenter expressed concern regarding the proposed language of the new notes to rule 482(a) and rule 34b–1 stating that compliance with the rules does not relieve the fund, underwriter, or dealer of the obligation to ensure that the advertisement is not false or misleading. The commenter was concerned that the new notes may expand liability for independent directors in connection with fund advertisements, resulting in a significant cost burden. However, as we indicate above,[79] the new notes are to make clear that liability for advertisements is based on the federal securities laws and that the advertising rule amendments are not intended to change the existing liability standards.

With regard to the rescission of rule 134 as it applies to funds, a number of commenters expressed concern over costs associated with the higher standard of liability under rule 482, but did not provide any specific figures or other quantitative analysis. As we note above, however, suits based on misleading advertising are relatively rare and we continue to estimate that the associated costs will be minimal.[80]

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[75] The estimate of the number of investment companies is based on data derived from the Commission's EDGAR filing system. The estimate of the decrease in burden hours is based on information gathered from the fund industry by the Commission staff and from the staff's experience with the various advertising regulations.

[76] These figures are based on a Commission estimate of 5025 investment companies and an estimated hourly wage rate of $37.26. The estimated wage rate figure is based on published hourly wage rates for in-house attorneys ($33.66), paralegals ($19.93), and compliance examiners ($23.16) and the estimate, based on the Commission staff's discussions with certain fund complexes, that attorneys would account for 50% of hours spent on advertising regulation and that paralegals and compliance examiners would account for the remaining 50% in equal ratio, yielding a weighted wage rate of $27.60 (($33.66 × .50) + ($19.93 × .25) + (23.16 × .25) = $27.60). Securities Industry Association, *Report on Office Salaries in the Securities Industry 2000* (Sept. 2002); Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2000* (Sept. 2002). This weighted wage rate was then adjusted upward by 35% for overhead, reflecting the costs of supervision, space, and administrative support, to obtain the total per hour internal cost of $37.26 ($27.60 × 1.35 = $37.26).

The benefits estimated in this analysis differ from those provided in the Proposing Release because of intervening changes in the number of investment companies and the wage rates. Although the Commission modified the proposed amendments, these modifications did not affect our estimates of the benefits associated with the amendments. Some commenters indicated that the cost of making updated month-end information available by toll-free or collect telephone number, as the proposal would have required, would be significant. Nonetheless, the modification to the proposed requirement to permit funds to make month-end performance data available through a toll-free or collect telephone number or Web site did not affect our estimates of costs or benefits. The staff indicated in the Proposing Release that it expected the costs of making updated month-end information available by toll-free or collect telephone number would be negligible, because many, if not most, funds already provide month-end or more current performance information through those means. See Proposing Release, *supra* note 7, 67 FR at 36726.

[77] On the other hand, one commenter did not object to the telephone-only requirement, indicating that making updated monthly performance data available in the manner contemplated by the proposal would be affordable for all funds, regardless of size.

[78] One commenter estimated that the cost of installing an automated voice response telephone system for an insurance company to provide performance information about funds underlying variable contracts would be $500,000. Another commenter cited that $500,000 estimate and added that the estimate is for hardware and software requirements only and does not include personnel expenses and further stated that expenses for companies that do not presently have automated telephone systems would likely be several times higher. It appears that the commenter that calculated the $500,000 estimate intended that this figure represent the cost the commenter itself would incur and not a projection that every insurance company or every fund would incur a $500,000 expense. Another commenter, a fund supermarket, estimated the cost of updating its website to provide toll-free numbers for the many funds offered would amount to $70,000.

[79] *See* Section II.B., "Applicability of Antifraud Provisions to Fund Advertising," *supra*.

We further note that the amendments, as adopted, extend the compliance period to two full calendar quarters after adoption, lowering conversion costs by allowing more time for planning and enabling funds to come into compliance in the regular course of quarterly advertising cycles. This extension reinforces our estimate that such expenses will be minimal.

The Commission estimates the one-time switchover costs for each investment company attributable to the amendments will be approximately 2.18 hours, or $81.23 (2.18 hours x $37.26 wage rate), in internal costs, and $2,417 in external costs.[81] In total this represents a one-time cost of approximately 10,955 (2.18 hours x 5,025 investment companies) internal burden hours (translating into approximately $408,183 (10,955 hours x $37.26 wage rate) in internal costs) and $12,145,425 ($2,417 cost per investment company x 5,025 investment companies) in external costs.[82]

### *C. Conclusion*

The Commission expects that the advertising rule amendments will encourage more informed and efficient investing, while easing the regulatory burden on fund advertising, and that these likely benefits would justify the associated costs.

## IV. Consideration of Effects on Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act, Section 2(b) of the Securities Act, and Section 3(f) of the Exchange Act require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[83]

In the Proposing Release, we requested comment on whether the proposed amendments would promote efficiency, competition, and capital formation. The Commission received one letter specifically addressing the effect of the proposed amendments on competition. This commenter objected to the rescission of rule 134 for funds on the grounds, among others, that investment companies would be treated less favorably than other issuers engaged in ongoing offerings of their securities that would continue to be able to rely on rule 134.

The amendments the Commission is adopting today seek to improve fund advertising by enhancing disclosure requirements and by simplifying and clarifying the rules, including elimination of the requirement that rule 482 advertisements contain only information the "substance of which" is included in the statutory prospectus. These changes may improve efficiency. The rule simplifications may lower the regulatory burden on funds engaged in advertising, freeing resources for more productive uses. For example, funds would no longer have to update their prospectuses or SAIs in order to change the types of performance information in advertisements. The enhanced disclosure requirements may provide greater and timelier access by investors to updated performance figures, which would promote more efficient allocation of investments by investors and more efficient allocation of assets among competing funds. The amendments may also improve competition, as enhanced disclosure may prompt funds to seek to provide better-informed investors with improved products and services. Finally, the effects of the amendments on capital formation are unclear. Although we believe that the amendments would benefit investors, the magnitude of the effect of the amendments on efficiency, competition, and capital formation is difficult to quantify, particularly given that most funds may already comply with at least some of the new disclosure requirements.

## V. Paperwork Reduction Act

### *A. Introduction*

As explained in the Proposing Release, certain provisions of the amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*]. The titles for the existing collections of information are: (i) "Form N–1A under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Open-End Management Investment Companies"; (ii) "Form N–2—Registration Statement of Closed-End Management Investment Companies"[84]; (iii) "Form N–3—Registration Statement of Separate Accounts Organized as Management Investment Companies"; (iv) "Form N–4—Registration Statement of Separate Accounts Organized as Unit Investment Trusts"; (v) "Form N–6 Under the Investment Company Act and the Securities Act of 1933, Registration Statement of Insurance Company Separate Accounts Registered as Unit Investment Trusts that Offer Variable Life Insurance Policies"; and (vi) "Rule 34b–1 of the Investment Company Act of 1940, Sales Literature Deemed To Be Misleading." A new collection of information has been created entitled "Rule 482 under the Securities Act of 1933, Advertising by an Investment Company."[85]

Form N–1A (OMB Control No. 3235–0307), Form N–2 (OMB Control No. 3235–0026), Form N–3 (OMB Control No. 3235–0316), Form N–4 (OMB Control No. 3235–0318), and Form N–6 (OMB Control No. 3235–0503) were adopted pursuant to section 5 of the Securities Act [15 U.S.C. 77e] and section 8(a) of the Investment Company Act [15 U.S.C. 80a–8(a)]. Rule 482 of Regulation C (OMB Control No. 3235–0565) was adopted pursuant to section 10(b) of the Securities Act [15 U.S.C.

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[80] *See supra* note 74.

[81] These figures are based on averages derived from information gathered from several members of the fund industry by the Commission staff and from the staff's experience with the various advertising rules. Internal costs include, for example, the cost of reviewing all fund advertisements for compliance with the revised rules. External costs include, for example, the costs of typesetting and printing for new fund advertisements.

The costs estimate in this analysis differ from those provided in the Proposing Release because of intervening changes in the number of investment companies and the wage rates. Although the Commission modified the proposed amendments, these modifications did not affect our estimate of the costs associated with the amendments. *See supra* note 76.

[82] *See* discussion in notes 75 and 76, *supra,* regarding number of investment companies, wage rates, and previous estimates of costs and benefits.

[83] 15 U.S.C. 77b(b), 78c(f), and 80a–2(c).

[84] Although the amendments do not amend Form N–2, that form is included in this Paperwork Reduction Act ("PRA") summary because the PRA burden for rule 482 has previously been included in the various investment company registration statement forms affected by rule 482, including Form N–2. As discussed below, the Commission has transferred the PRA burden associated with rule 482 from all of these registration statement forms to a new rule 482 category.

[85] The amendments modify rule 482, which is part of Regulation C under the Securities Act of 1933. Regulation C describes the disclosure that must appear in registration statements under the Securities Act and Investment Company Act. The PRA burden associated with rule 482 was previously included in the various investment company registration statement forms, not in Regulation C. However, because the amendments eliminate the rationale for allocating the PRA burden for rule 482 to the registration forms, the Commission has transferred the burden associated with rule 482 to a new category. The total PRA burden for each of the registration forms is different from that included in the PRA submissions that preceded this analysis because of the transfer of burden associated with rule 482, as well as the intervening changes in the number of filings. However, the newly adopted amendments to the forms do not have any effect on the burden hours for the forms.

77j(b)]. Rule 34b–1 (OMB Control No. 3235–0346) was adopted pursuant to section 34(b) of the Investment Company Act [15 U.S.C. 80a–33(b)].[86]

We published notice soliciting comments on the collection of information requirements in the Proposing Release and submitted these requirements to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. OMB approved these collection requirements.

The amendments modify rule 482 under the Securities Act and related rules and forms, to provide more timely, understandable, and balanced information in fund advertising for the benefit of investors, while simplifying and clarifying the advertising rules for the benefit of funds.[87] First, the amendments enhance the disclosure that funds must provide in advertisements, including by highlighting the availability of information concerning investment objectives, risks, and charges and expenses, and requiring an amended legend stating that past performance does not guarantee future results. The amendments also set forth requirements to help ensure that funds present these and other required disclosures at least as prominently as the material included in the body of the advertisement. Second, if a fund advertisement includes performance data, the fund must make month-end performance figures available to investors by a toll-free or collect telephone number or on a Web site, and disclose the availability of this month-end performance data in the advertisement, unless the advertisement includes total return quotations current to the most recent month ended seven business days prior to the date of use. Third, the amendments add clarifying language to rule 482 under the Securities Act and rule 34b–1 under the Investment Company Act to reemphasize the separate applicability of the antifraud provisions of the federal securities laws, and amend rule 156 under the Securities Act to provide further guidance regarding the factors to be weighed in determining whether a statement involving a material fact in investment company sales literature is or might be misleading. Fourth, the amendments (i) remove the provision contained in rule 482 that limits rule 482 advertisements to only that information the "substance of which" is in the statutory prospectus, and (ii) rescind the provisions in rule 134 under the Securities Act that apply to funds. Fifth, the amendments clarify portions of rule 482 (without changing their content) by adding headings, reordering provisions, and simplifying certain provisions. Finally, the amendments make technical and conforming changes to Forms N–1A, N–3, N–4, and N–6.

Compliance with the disclosure requirements is mandatory. Responses to the disclosure requirements will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

### *B. The Registration Forms Burden*

Previously, the PRA burdens imposed by rule 482 were accounted for under the various registration forms used by investment companies affected by the rule: Form N–1A, Form N–2, Form N–3, Form N–4, and Form N–6. We have transferred the burden hours associated with rule 482 from these forms to a separate rule 482 category as follows:

| Form | Hours transferred (hours) |
|---|---|
| Form N–1A | 177,514 |
| Form N–2 | 1,014 |
| Form N–3 | 792 |
| Form N–4 | 36,630 |
| Form N–16 | 9,065 |
| Total hours transferred to new rule 482 category | 225,015 |

The information required to be filed with the Commission pursuant to the information collections contained in the registration forms permits the verification of compliance with securities law requirements and assures the public availability and dissemination of the information.

### 1. Form N–1A

The purpose of Form N–1A is to meet the registration and disclosure requirements of the Securities Act and the Investment Company Act and to provide investors with information necessary to evaluate an investment in the fund. The respondents to this information collection are open-end funds registering with the Commission. Compliance with the disclosure requirements on Form N–1A is mandatory. Responses to the disclosure requirements are not confidential.

The previous hour burden for preparing an initial Form N–1A filing was 824 burden hours per portfolio, and the Commission attributed 23 of these burden hours per portfolio to compliance with rule 482, reducing the remaining burden hours per portfolio to 801.[88] The previous annual hour burden for preparing post-effective amendments on Form N–1A was 122 hours per portfolio, and the Commission attributed 23 of these burden hours per portfolio to compliance with rule 482, reducing the remaining burden hours per portfolio to 99. The Commission estimated that, on an annual basis, 193 portfolios file initial registration statements on Form N–1A and 7,525 file post-effective amendments on Form N–1A. Thus, the burden hours attributable to rule 482 transferred from Form N–1A to the new rule 482 collection of information amounted to 177,514 ((23 hours x 193 portfolios) + (23 hours x 7,525 portfolios)). After shifting the rule 482 burden hours to a new collection of information, the total burden hours that remain allocated to Form N–1A for all purposes unassociated with rule 482 amount to 899,568 ((801 hours x 193 portfolios) + (99 hours x 7,525 portfolios)).

Except for the transfer of PRA burden from Form N–1A to the new collection of information for rule 482, the Commission estimates no effect on the remaining PRA burden for Form N–1A from the amendments. The change in PRA burden resulting from the amendments is accounted for under the new rule 482 collection of information.

### 2. Form N–2

The purpose of Form N–2 is to meet the registration and disclosure requirements of the Securities Act and the Investment Company Act and to enable funds to provide investors with information necessary to evaluate an investment in the fund. The respondents to this information collection are closed-end funds registering with the Commission. Compliance with the disclosure requirements of Form N–2 is mandatory. Responses to the disclosure requirements are not confidential.

The previous hour burden for preparing an initial registration statement on Form N–2 was 542.4 burden hours per filing, and the previous hour burden for preparing a post-effective amendment on Form N–2 was 107.4 hours per filing. The Commission attributed 5.7 of these burden hours per filing to compliance with rule 482, reducing the burden hours per filing to 536.7 and 101.7, respectively. The Commission estimated that, on an annual basis, 140 respondents file an initial registration statement on Form N–2 and 38 file post-effective amendments on Form N–2. Thus, the burden hours attributable to rule 482 transferred from Form N–2 to the new rule 482 collection of information amounted to 1,014 ((5.7 hours × 140 filings) + (5.7 hours × 38 filings)). After shifting the rule 482 burden hours to a new collection of information, the total burden hours that remain allocated to Form N–2 for all purposes unassociated with rule 482 amount to 79,003 ((536.7 hours × 140 filings) + (101.7 hours × 38 filings)).

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[86] Although this release also amends rule 156, there are no burden hours assigned to that rule by OMB and it has no OMB control number.

[87] The Commission is adopting amendments to rules 134, 156, and 482 under the Securities Act, rule 34b–1 under the Investment Company Act, and Forms N–1A, N–3, N–4, and N–6 under the Investment Company Act and Securities Act.

[88] The estimate of the burden hours attributable to compliance with rule 482 for filings on Forms N–1A, and Form N–2 were based on information supplied to the Commission staff by members of the fund industry and the staff's experience with these registration forms.

Except for the transfer of PRA burden from Form N–2 to the new collection of information for rule 482, the Commission estimates no effect on the remaining Form N–2 PRA burden from the amendments. The change in PRA burden resulting from the amendments is accounted for under the new rule 482 collection of information.

### 3. Form N–3

The purpose of Form N–3 is to meet the registration and disclosure requirements of the Securities Act and the Investment Company Act and to enable funds to provide investors with information necessary to evaluate an investment in the fund. The respondents to this information collection are separate accounts, organized as management investment companies and offering variable annuities, registering with the Commission. Compliance with the disclosure requirements of Form N–3 is mandatory. Responses to the disclosure requirements are not confidential.

The previous annual hour burden for preparing an initial registration statement on Form N–3 was 910.5 hours per portfolio, and the Commission attributed 3.3 of these burden hours per portfolio to compliance with rule 482, reducing the remaining burden hours per portfolio to 907.2.[89] The previous annual hour burden for preparing post-effective amendments on Form N–3 was 151.7 hours per portfolio, and the Commission attributed 3.3 of these burden hours per portfolio to rule 482, reducing the remaining burden hours per portfolio to 148.4. The Commission estimated that, on an annual basis, no initial registration statements are filed on Form N–3 and 60 post-effective amendments, including 240 portfolios, are filed on Form N–3. Thus, the burden hours attributable to rule 482 transferred from Form N–3 to the new rule 482 collection of information amounted to 792 (3.3 hours × 240 portfolios). After shifting the rule 482 burden hours to a new collection of information, the total burden hours that remain allocated to Form N–3 for all purposes unassociated with rule 482 amount to 35,616 (148.4 × 240 portfolios) hours.

Except for the transfer of PRA burden from Form N–3 to the new collection of information for rule 482, the Commission estimates no effect on the remaining PRA burden for Form N–3 resulting from the amendments. The change in PRA burden resulting from the amendments is accounted for under the new rule 482 PRA collection of information.

### 4. Form N–4

The purpose of Form N–4 is to meet the registration and disclosure requirements of the Securities Act and the Investment Company Act and to enable separate accounts issuing variable annuity contracts to provide investors with information necessary to evaluate an investment in a contract. The respondents to this information collection are separate accounts, organized as unit investment trusts and offering variable annuities, registering with the Commission. Compliance with the disclosure requirements of Form N–4 is mandatory. Responses to the disclosure requirements are not confidential.

The previous hour burden for preparing an initial Form N–4 filing was 298 burden hours per filing, and the Commission attributed 24.8 of these burden hours per filing to rule 482, reducing the remaining burden hours per filing to 273.2.[90] The previous annual hour burden for preparing post-effective amendments on Form N–4 was 219.8 hours per filing, and the Commission attributed 24.8 of these burden hours per filing to rule 482, reducing the remaining burden hours per filing to 195. The Commission estimated that, on an annual basis, 157 respondents file initial registration statements on Form N–4 and 1320 respondents file post-effective amendments on Form N–4. Thus, the burden hours attributable to rule 482 transferred from Form N–4 to the new rule 482 collection of information amount to 36,630 ((24.8 hours × 157 filings) + (24.8 hours × 1320 filings)). After shifting the rule 482 burden hours to a new collection of information, the total hour burden that remains allocated to Form N–4 for all purposes unassociated with rule 482 amount to 300,292 ((273.2 hours × 157 filings) + (195 hours × 1320 filings)).

Except for the transfer of PRA burden from Form N–4 to the new collection of information for rule 482, the Commission estimates no effect on the remaining PRA burden for Form N–4 resulting from the amendments. The change in PRA burden resulting from the amendments is accounted for under the new rule 482 PRA collection of information.

### 5. Form N–6

The purpose of Form N–6 is to meet the registration and disclosure requirements of the Securities Act and the Investment Company Act and to enable separate accounts issuing variable life insurance policies to provide investors with information necessary to evaluate an investment in a policy. The respondents to this information collection are separate accounts, organized as unit investment trusts and offering variable life insurance policies, registering with the Commission. Compliance with the disclosure requirements of Form N–6 is mandatory. Responses to the disclosure requirements are not confidential.

The previous hour burden for preparing an initial registration statement on Form N–6 was 800 burden hours per filing and the hour burden for a post-effective amendment on Form N–6 was 100 hours per post-effective amendment filed as an annual update, and 10 hours per post-effective amendment filed for other purposes. The Commission attributed 35 of these burden hours per filing to compliance with rule 482 for both initial registration statements and post-effective amendments that are annual updates.[91] The Commission estimated no burden hours associated with rule 482 for additional post-effective amendments that are not annual updates. The Commission estimated that, on an annual basis, 59 initial registration statements will be filed on Form N–6 and 500 post-effective amendments will be filed on Form N–6, 200 as annual updates and 300 as additional post-effective amendments.[92] Thus, the burden hours attributable to rule 482 transferred from Form N–6 to the new rule 482 collection of information amounted to 9,065 ((35 hours × 59 filings) + (35 hours × 200 filings)). The total hour burden that remains allocated to Form N–6 for all purposes unassociated with rule 482 is 61,135 ((765 hours × 59 filings) + (65 hours × 200 filings) + (10 hours × 300 filings)) hours.

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[89] Estimates of the burden hours attributable to rule 482 for Forms N–3, N–4, and N–6 were derived by estimating the total burden hours for compliance with rule 482 for all variable insurance separate accounts, based on the staff's discussions with a member of the variable insurance products industry that issues both variable annuities and variable life insurance policies. We then converted this estimated number of burden hours associated with rule 482 into a percentage of the total burden hours associated with Forms N–3, N–4, and N–6 collectively. We allocated the rule 482 burden to each form by multiplying the total burden of each form by this percentage. However, we excluded burden hours attributable to initial filings on Form N–3 because we anticipated no such filings.

[90] *See* discussion in note 89, *supra*.

[91] *See* discussion in note 89, *supra*.

Except for the transfer of PRA burden from Form N–6 to the new collection of information for rule 482, the Commission estimates no effect on the remaining PRA burden for Form N–6 resulting from the amendments. The change in PRA burden resulting from the amendments is accounted for under the new rule 482 PRA collection of information.

### *C. Change in Burden Attributable to Amendments*

The information required by the amendments to the advertising rules is primarily for the use and benefit of investors. The Commission is concerned that investors receive information in advertisements that is accurate, balanced, timely, not misleading, and otherwise appropriate and helpful in making investment decisions. The additional information that is required to be disclosed to investors pursuant to the collection of information provisions of the rules affected by the amendments, addresses these concerns regarding investor protection.

#### 1. Rule 34b–1

Rule 34b–1, as amended, contains collection of information requirements. The rule applies to supplemental sales literature, *i.e.*, sales literature that is preceded or accompanied by the statutory prospectus, and requires the inclusion of standardized performance data in sales literature that includes performance data. Compliance with rule 34b–1 is mandatory for every registered investment company that issues supplemental sales literature. Responses to the disclosure requirements will not be kept confidential.

We estimated that approximately 37,000 responses are filed annually pursuant to rule 34b–1, and the burden per response is 2.9 hours. The amendments change rule 34b–1 to add language to clarify the Commission's present interpretation of its rules, namely, that compliance with rule 34b–1 does not relieve the fund, underwriter, or dealer of any obligations with respect to the sales literature under the antifraud provisions of the federal securities laws. This added language merely confirms the present state of the law and imposes no additional burden hours. In addition, the amendments to rule 34b–1 make the newly adopted changes in the narrative disclosure and presentation requirements under rule 482 applicable to supplemental sales literature, but these narrative disclosure and presentation requirements also will impose no additional burden for purposes of rule 34b–1.[93]

#### 2. Rule 482

Rule 482, as amended, contains collection of information requirements in that it permits a fund to advertise information subject to certain disclosure requirements. Compliance with rule 482 is mandatory for every fund that issues rule 482 advertisements. Responses to the disclosure requirements will not be kept confidential.

The Commission currently estimates that 41,484 responses are filed annually by 5,025 funds pursuant to rule 482. The burden associated with rule 482 was previously included in the collections of information for the investment company registration statement forms, but at the time of the Proposing Release the Commission transferred this PRA burden to a new rule 482 collection of information. The Commission then adjusted this amount to account for the estimated savings of 6,890 burden hours associated with the proposed amendments to arrive at a total annual burden for rule 482 of 218,125.[94]

The Commission's per-investment-company burden estimates calculated at the time of the Proposing Release remain unchanged.[95] However, the Commission is adjusting the total annual burden hours associated with rule 482 to reflect a decrease in the number of investment companies from 5,587 to the current number of 5,025. The Commission estimates an increase of 3,653 (0.727 hours per fund × 5,025 funds) annual burden hours will be required to comply with the amendments as adopted, as a result of one-time switchover cost of 10,959 burden hours amortized over a three-year period. The Commission also estimates a decrease of 9,849 annual burden hours (1.96 hours per fund × 5,025 funds) resulting from the amendments as adopted due to the simplification and clarification of rule 482, including the removal of the "substance of which" requirement. The net result would be an annual decrease of approximately 6,196 (3,653 hours increase − 9,849 hours decrease) hours.[96] The current estimate of the total annual burden for rule 482, as amended, is 218,819.[97]

## VI. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis ("Analysis") has been prepared in accordance with 5 U.S.C. 604, and relates to the Commission's rule and form amendments under the Securities Act and the Investment Company Act to provide investment companies with the ability to disclose more timely information in advertisements and to reinforce the antifraud protections that apply to investment company advertisements. The amendments implement a provision of NSMIA[98] by eliminating the requirement in rule 482 under the Securities Act that investment company advertisements contain only information the "substance of which" is included in the statutory prospectus. The amendments also require enhanced disclosure in investment company advertisements and are designed to encourage advertisements that convey balanced information to prospective investors, particularly with respect to past performance. The Commission is also rescinding the provisions in rule 134 under the Securities Act that apply to investment companies.

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[92] Based on its analysis of data from the EDGAR filing system from 2000–2001, the Commission estimated that there are approximately 200 variable life insurance policies, with respect to which at least one post-effective amendment must be filed per year. In addition, the Commission estimated, also based on EDGAR filing data, that 300 additional post-effective amendments are filed for these variable life insurance policies each year, generally to make non-material changes to their registration statements.

[93] The secondary effect on the burden attributable to rule 34b–1 due to the amendments to rule 482 is estimated to be negligible. Both before and after the amendments, rule 34b–1 requires any performance data included in supplemental sales literature to be accompanied by performance data computed using the standardized formulas for advertising performance under rule 482. We estimate that the changes in types of disclosure and presentation that would be required by the amendments to rule 482 would not affect the amount of review necessary for funds to ensure compliance with rule 34b–1. Therefore, all changes in burden associated with the amendments are accounted for under the category associated with the principal rule generating the burden, *i.e.*, the new rule 482 collection of information.

[94] The Commission calculated this adjustment at the proposing stage by estimating a burden hour annual increase per investment company of 0.727 hours and a burden hour annual decrease per investment company of 1.96, and then multiplying these figures by the then current number of investment companies (5,587) to arrive at an estimated net decrease of approximately 6,890 total annual burden hours (0.727 × 5,587–1.96 × 5,587 = −6,889). The Commission then subtracted this estimated annual net decrease from the rule 482 burden hours that had been transferred from the registration forms, yielding the total annual rule 482 burden of 218,125 (225,015 hours transferred—6,890 decrease = 218,125), which was used in the Proposing Release.

[95] The estimates of changes in the burden hours per investment company attributable to rule 482 are based on a survey of information conducted by the Commission staff of members of the mutual fund and variable insurance products industry at the time of the Proposing Release. The Commission estimates no change in these per-investment-company burden rates due to changes to the amendments between the proposing stage and this adoption.

[96] This estimated net decrease of 6,196 hours compares to an estimated net decrease of 6,890 in the Proposing Release. The difference of 694 hours is a result of the change in the number of investment companies since the time of the Proposing Release.

[97] 218,125 total hours (Proposing Release estimate) + 694 hours (lower net decrease) as explained in note , *supra*.

The Commission prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. 603. The Proposing Release included the IRFA and solicited comments on it. The Commission received one comment specifically addressing the IRFA.

### *A. Reasons for and Objectives of Amendments*

The Commission amended the advertising regulations described above to achieve two separate objectives. First, the Commission is simplifying and clarifying the rules governing fund advertising. Specifically, the amendments remove the "substance of which" requirement of rule 482 and rescind the provisions of rule 134 that apply to investment companies, following Congress' directive in NSMIA to adopt rules or regulations allowing funds the use of a section 10(b) prospectus that may include information the substance of which is not included in the statutory prospectus.[99] We are also adopting technical amendments to reorganize and clarify the language of rule 482. These simplifying and clarifying amendments will aid funds and others in understanding and complying with the advertising rules, making it easier and cheaper for funds to advertise.

Second, the Commission is enhancing the disclosure required in rule 482 advertising. Specifically, we are requiring rule 482 advertisements to: (i) Highlight the availability of certain additional information, such as that regarding objectives, risks, charges, and expenses, as well as updated monthly performance figures; (ii) provide an amended legend; and (iii) present certain required disclosure with prominence equal to the major portion of the advertisement. We are adopting these amendments because of our concern about fund performance advertising that could create unrealistic investor expectations or even mislead potential investors. The enhanced disclosure requirements will help to ensure that investors find advertising clear, easy to use, and balanced, and that investors are made aware of important and timely information necessary to make informed investment decisions.

### *B. Significant Issues Raised by Public Comment*

The Commission requested comment with respect to the IRFA prepared and published with the Proposing Release. Two commenters indicated that the cost of complying with the proposed requirement that updated information be made available through a toll-free or collect telephone number would be particularly burdensome for smaller fund complexes, stating that some smaller complexes do not already have automated voice response systems. The commenters cited costs of buying and maintaining an automated telephone system or dedicating employees to provide the required information. One of these commenters, the only commenter who specifically addressed the IRFA, also stated that the IRFA likely underestimated the costs that small fund complexes would incur from having to satisfy the requirement that updated monthly information be provided by a toll-free or collect telephone number.[100] One commenter indicated that making updated monthly performance data available in the manner contemplated by the proposal would be affordable for all funds, regardless of size.

None of the commenters provided additional data or figures to quantify this cost.[101] The commenters did not indicate either the number of small funds that would need to set up a telephone system (versus those that already have such a system in place that could be adapted to meet the proposed requirements) or how much small funds may have to pay to establish and maintain such systems.

### *C. Small Entities Subject to the Rule*

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[102] Approximately 237 out of 5025 investment companies meet this definition.[103]

The Commission estimates, based on the staff's discussions with members of the fund industry, that approximately two-thirds of small entity funds do not advertise and, thus, do not incur any burdens or costs associated with rule 482. For small entity funds that do advertise, the Commission estimates an internal hour burden of approximately 80 hours per small entity fund. This represents approximately 6,320 (80 hours x 79 small entities) hours, or $235,483 (6,320 hours x $37.26 wage rate) in internal costs, for all small entities. The Commission estimates that the external cost burden associated with rule 482 for small entities, as with other funds, is negligible. To the extent small entities currently advertise, the burden and costs may affect them to a greater extent because small entities are unable to take advantage of economies of scale available to larger fund complexes.[104]

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[98] National Securities Markets Improvement Act of 1996, Pub. L. No. 104–290, 110 Stat. 3416, 3428, Section 204.

[99] *Id.*

[100] The commenter stated that the only costs that the IRFA discussed for small entities were those of actual production and review of advertising. However, the IRFA also refers to other one-time switchover costs that would result from the rule and recognizes that these costs may have a relatively greater effect on small entities. The IRFA states that among these costs are those of making available updated monthly performance data by a toll-free telephone number. Proposing Release, *supra* note , 67 FR at 36731.

[101] One commenter estimated the cost of implementing an automatic voice response system for fund performance at $500,000. Another commenter cited this estimate and stated that it is for hardware and software requirements only and does not include personnel expenses. The commenter also stated that expenses for companies that do not presently have automated telephone systems would likely be several times higher than the estimate provided. Neither of these commenters specifically addressed the issue of costs incurred by small entities. Both were focusing on the costs of a system that insurance companies would use to provide information about funds underlying their variable insurance products.

[102] 17 CFR 270.0–10.

[103] This estimate is based on figures compiled by the Commission staff regarding investment companies registered on Form N–1A, N–2, N–3, N–4, and N–6. In determining whether an insurance company separate account is a small entity for purposes of the Regulatory Flexibility Act, the assets of insurance company separate accounts are aggregated with the assets of their sponsoring insurance companies. 17 CFR 270.0–10(b). Currently, no insurance company separate account filing on Form N–3, Form N–4, or Form N–6 qualifies as a small entity.

[104] We note, however, that to the extent that the amendments reduce the regulatory burden of advertising, small entities may be encouraged to increase their advertising activity.

### *D. Reporting, Recordkeeping, and Other Compliance Requirements*

The amendments will modify the disclosure requirements applicable to rule 482 advertisements. Advertisements will have to contain an amended legend, an explanation about where information about investment objectives, risks, and charges and expenses can be found, and, if performance figures are used, information about where updated performance information can be found, unless the advertisement includes total return quotations current to the most recent month ended seven business days prior to the date of use. In addition, the required disclosure will generally have to be given as much prominence in the advertisement as the major portion of the advertisement. The amendments will also rescind the requirements of rule 134 as they apply to funds, but we expect that this will not result in any appreciable change in the disclosure that funds make in their advertisements because present rule 134 advertisements will generally become rule 482 advertisements.

The Commission has considered the potential effect that the amendments will have on the preparation of advertisements. Without regard to the size of the entity, we estimate that the amendments will result in a net decrease of 1.23 hours, or $45.83 (1.23 hours x $37.26 wage rate), per investment company per year in internal costs and a net increase of $805.67 per investment company per year in external costs.[105]

The Commission estimates some one-time switchover costs and burdens that will be imposed on all funds, but which may have a relatively greater impact on smaller firms. These costs include the costs of altering existing advertisements, including those now covered by rule 134, to comply with the new provisions of rule 482; generating performance figures on a monthly basis; and making available the updated monthly performance data through a toll-free or collect telephone number or a Web site when required. The costs of making updated performance data available could include expenses for computer time, legal and accounting fees, information technology staff, and additional computer and telephone equipment. However, we believe, based on consultation with a number of fund complexes, that many funds that presently advertise already provide performance information on a basis at least as current as monthly through these means and, therefore, expect the marginal cost increases for most funds to be minimal.

The Commission anticipates that the amendments will also provide ongoing reductions in the compliance burden for all funds by clarifying the language of rule 482, eliminating the "substance of which" requirement, and simplifying fund advertising requirements through rescission of rule 134 for fund advertising. These changes will effect savings primarily by reducing the time and money funds now spend on legal review and amending their prospectuses and SAIs to comply with the "substance of which" requirement in current rule 482.

### *E. Agency Action To Minimize Effect on Small Entities*

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small entities. In connection with the amendments, the Commission considered the following alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the amendments for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the amendments, or any part thereof, for small entities.

The Commission believes at the present time that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, would not be appropriate or consistent with investor protection. The disclosure amendments will provide shareholders and the public with more balanced information about a fund's performance. Different disclosure requirements for small entities, such as reducing the level of disclosure that small entities would have to provide shareholders in advertising, may create the risk that shareholders would not receive balanced information about a fund's performance or would receive confusing, false, or misleading information. In addition, applying different standards for advertising by small and large funds might impede investors' ability to adequately compare funds. We believe it is important for the enhanced advertising disclosure required by the amendments to be provided to investors by all funds, not just funds that are not considered small entities.

The Commission also notes that current advertising requirements, and its disclosure rules in general, do not distinguish between small entities and other funds. In addition, we believe that it would be inappropriate to impose a different timetable on small entities for complying with the requirements.[106] Further clarification, consolidation, or simplification of the proposals for funds that are small entities may be inconsistent with investor protection. We do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection in the present context.

We note, however, that we have modified our proposal in several ways that will reduce burdens on funds, including small funds, and will address the concerns raised by the commenters referenced above. As adopted, the amendments will not require funds to provide updated month-end performance data by toll-free or collect telephone. Rather, funds will be permitted to choose whether to make the month-end information available by telephone or on the fund's Web site. In general, commenters indicated that making the information available over a fund Web site would be less burdensome than using a telephone system. In addition, we have modified the proposal to provide that if the advertisement includes total return quotations current to the most recent month ended seven business days prior to the date of use, the fund is not required to make such data available by telephone or on its Web site. We expect that both of these revisions to the proposed amendments will reduce the cost burden for all funds, including small entities.

## VII. Statutory Authority

The Commission is adopting amendments to rule 134 pursuant to authority set forth in sections 2(a)(10) and 19(a) of the Securities Act [15 U.S.C. 77b(a)(10) and 77s(a)]. The Commission is adopting amendments to rule 156 pursuant to authority set forth in section 19(a) of the Securities Act [15 U.S.C. 77s(a)] and sections 10(b) and 23(a) of the Exchange Act [15 U.S.C. 78j(b) and 78w(a)]. The Commission is adopting amendments to rule 482 pursuant to authority set forth in sections 5, 10(b), 19(a), and 28 of the Securities Act [15 U.S.C. 77e, 77j(b), 77s(a), and 77z–3] and sections 24(g) and 38(a) of the Investment Company Act [15 U.S.C. 80a–24(g) and 80a–37(a)]. The Commission is adopting amendments to rule 34b–1 pursuant to authority set forth in sections 34(b) and 38(a) of the Investment Company Act [15 U.S.C. 80a–33(b) and 80a–37(a)]. The Commission is adopting amendments to Form N–1A, Form N–3, Form N–4, and Form N–6 pursuant to authority set forth in sections 5, 6, 7, 10, and 19(a) of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, and 77s(a)] and sections 8, 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–24(a), 80a–29, and 80a–37].

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[105] These figures are based on the Commission staff's discussions with several fund complexes. With regard to internal costs, they represent the net of the amortized one-time switchover cost of .727 hours per fund per year and the decrease in burden associated with rule 482, for purposes of the Paperwork Reduction Act, of 1.96 hours per fund per year. With regard to external costs, the $805.67 figure represents one-time switchover costs amortized over three years.

The estimate provided here differs from that provided in the Initial Regulatory Flexibility Analysis in the Proposing Release because of a change in the number of small entities and the wage rate used. *See supra* note #76. Although the Commission modified the proposed amendments, these modifications did not affect our estimate of the burden on small entities.

[106] The Commission has expanded the proposed compliance period from 90 days from the effective date to the end of the second full calendar quarter after adoption. This revision should lessen any burden for small entities, as well as other funds.

**List of Subjects**

*17 CFR Part 230*

Advertising, Investment companies, Reporting and recordkeeping requirements, Securities.

*17 CFR Part 239*

Reporting and recordkeeping requirements, Securities.

*17 CFR Parts 270 and 274*

Investment companies, Reporting and recordkeeping requirements, Securities.

**Text of Rule and Form Amendments**

■ For the reasons set out in the preamble, the Commission amends Title 17, Chapter II, of the Code of Federal Regulations as follows.

## PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The general authority citation for Part 230 is revised to read as follows:

**Authority:** 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

■ 2. Section 230.134 is amended by:

■ a. Removing the authority citation following § 230.134;

■ b. Removing paragraphs (a)(3)(iii) and (a)(13);

■ c. Redesignating paragraphs (a)(3)(iv) and (a)(14) as paragraphs (a)(3)(iii) and (a)(13), respectively;

■ d. In newly redesignated paragraph (a)(13)(ii), revising the reference "(a)(14)(i)" to read "(a)(13)(i)"; and

■ e. Revising paragraph (e) to read as follows:

### § 230.134 Communications not deemed a prospectus.

* * * * *

(e) This § 230.134 does not apply to a notice, circular, advertisement, letter, or other communication relating to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) or a business development company as defined in section 2(a)(48) of the Investment Company Act (15 U.S.C. 80a–2(a)(48)).

■ 3. Section 230.156 is amended by:

■ a. Removing the authority citation following § 230.156; and

■ b. Revising paragraph (b)(2)(i) to read as follows:

### § 230.156 Investment company sales literature.

* * * * *

(b) * * *

(2) * * *

(i) Portrayals of past income, gain, or growth of assets convey an impression of the net investment results achieved by an actual or hypothetical investment which would not be justified under the circumstances, including portrayals that omit explanations, qualifications, limitations, or other statements necessary or appropriate to make the portrayals not misleading; and

* * * * *

■ 4. Section 230.482 is revised to read as follows:

### § 230.482 Advertising by an investment company as satisfying requirements of section 10.

(a) *Scope of rule.* This section applies to an advertisement or other sales material (*advertisement*) with respect to securities of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (*1940 Act*), or a business development company, that is selling or proposing to sell its securities pursuant to a registration statement that has been filed under the Act. This section does not apply to an advertisement that is excepted from the definition of prospectus by section 2(a)(10) of the Act (15 U.S.C. 77b(a)(10)), or a Profile under § 230.498. An advertisement that complies with this section, which may include information the substance of which is not included in the prospectus specified in section 10(a) of the Act (15 U.S.C 77j(a)), will be deemed to be a prospectus under section 10(b) of the Act (15 U.S.C. 77j(b)) for the purpose of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)).

**Note to paragraph (a):** The fact that an advertisement complies with this section does not relieve the investment company, underwriter, or dealer of any obligations with respect to the advertisement under the antifraud provisions of the federal securities laws. For guidance about factors to be weighed in determining whether statements, representations, illustrations, and descriptions contained in investment company advertisements are misleading, *see* § 230.156. In addition, an advertisement that complies with this section is subject to the legibility requirements of § 230.420.

(b) *Required disclosure.* This paragraph describes information that is required to be included in an advertisement in order to comply with this section.

(1) *Availability of additional information.* An advertisement must include a statement that:

(i) Advises an investor to consider the investment objectives, risks, and charges and expenses of the investment company carefully before investing; explains that the prospectus contains this and other information about the investment company; identifies a source from which an investor may obtain a prospectus; and states that the prospectus should be read carefully before investing; or

(ii) If used with a Profile, advises an investor to consider the investment objectives, risks, and charges and expenses of the investment company carefully before investing; explains that the accompanying Profile contains this and other information about the investment company; describes the procedures for investing in the investment company; and indicates the availability of the investment company's prospectus.

(2) *Advertisements used prior to effectiveness of registration statement.* An advertisement that is used prior to effectiveness of the investment company's registration statement or the determination of the public offering price (in the case of a registration statement that becomes effective omitting information from the prospectus contained in the registration statement in reliance upon § 230.430A) must include the "Subject to Completion" legend required by § 230.481(b)(2).

(3) *Advertisements including performance data.* An advertisement that includes performance data of an open-end management investment company or a separate account

registered under the 1940 Act as a unit investment trust offering variable annuity contracts (*trust account*) must include the following

(i) A legend disclosing that the performance data quoted represents past performance; that past performance does not guarantee future results; that the investment return and principal value of an investment will fluctuate so that an investor's shares, when redeemed, may be worth more or less than their original cost; and that current performance may be lower or higher than the performance data quoted. The legend should also identify either a toll-free (or collect) telephone number or a Web site where an investor may obtain performance data current to the most recent month-end unless the advertisement includes total return quotations current to the most recent month ended seven business days prior to the date of use. An advertisement for a money market fund may omit the disclosure about principal value fluctuation; and

**Note to paragraph (b)(3)(i):** The date of use refers to the date or dates when an advertisement is used by investors, not the date on which an advertisement is published or submitted for publication. The date of use refers to the entire period of use by investors and not simply the first date on which an advertisement is used.

(ii) If a sales load or any other nonrecurring fee is charged, the maximum amount of the load or fee, and if the sales load or fee is not reflected, a statement that the performance data does not reflect the deduction of the sales load or fee, and that, if reflected, the load or fee would reduce the performance quoted.

(4) *Money market funds.* An advertisement for an investment company that holds itself out to be a money market fund must include the following statement:

> An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it is possible to lose money by investing in the Fund.

A money market fund that does not hold itself out as maintaining a stable net asset value may omit the second sentence of this statement.

(5) *Presentation.* In a print advertisement, the statements required by paragraphs (b)(1) through (b)(4) of this section must be presented in a type size at least as large as and of a style different from, but at least as prominent as, that used in the major portion of the advertisement, provided that when performance data is presented in a type size smaller than that of the major portion of the advertisement, the statements required by paragraph (b)(3) of this section may appear in a type size no smaller than that of the performance data. If an advertisement is delivered through an electronic medium, the legibility requirements for the statements required by paragraph (b)(1) through (b)(4) of this section relating to type size and style may be satisfied by presenting the statements in any manner reasonably calculated to draw investor attention to them. In a radio or television advertisement, the statements required by paragraph (b)(1) through (b)(4) of this section must be given emphasis equal to that used in the major portion of the advertisement. The statements required by paragraph (b)(3) of this section must be presented in close proximity to the performance data, and, in a print advertisement, must be presented in the body of the advertisement and not in a footnote.

(6) *Commission legend.* An advertisement that complies with this section need not contain the Commission legend required by § 230.481(b)(1).

(c) *Use of applications.* An advertisement that complies with this section may not contain or be accompanied by any application by which a prospective investor may invest in the investment company, except that:

(1) *Variable annuity and variable life insurance contracts.* A prospectus meeting the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)) by which a unit investment trust offers variable annuity or variable life insurance contracts may contain a contract application although the prospectus includes, or is accompanied by, information about an investment company in which the unit investment trust invests that, pursuant to this section, is deemed a prospectus under section 10(b) of the Act (15 U.S.C. 77j(b)); and

(2) *Profile.* An advertisement that complies with this section may be used with a Profile that includes, or is accompanied by, an application to purchase shares of the investment company as permitted under § 230.498.

(d) *Performance data for non-money market funds.* In the case of an open-end management investment company or a trust account (other than a money market fund referred to in paragraph (e) of this section), any quotation of the company's performance contained in an advertisement shall be limited to quotations of:

(1) *Current yield.* A current yield that:

(i) Is based on the methods of computation prescribed in Form N–1A (§§ 239.15A and 274.11A of this chapter), N–3 (§§ 239.17a and 274.11b of this chapter), or N–4 (§§ 239.17b and 274.11c of this chapter);

(ii) Is accompanied by quotations of total return as provided for in paragraph (d)(3) of this section;

(iii) Is set out in no greater prominence than the required quotations of total return; and

(iv) Adjacent to the quotation and with no less prominence than the quotation, identifies the length of and the date of the last day in the base period used in computing the quotation.

(2) *Tax-equivalent yield.* A tax-equivalent yield that:

(i) Is based on the methods of computation prescribed in Form N–1A (§§ 239.15A and 274.11A of this chapter), N–3 (§§ 239.17a and 274.11b of this chapter), or N–4 (§§ 239.17b and 274.11c of this chapter);

(ii) Is accompanied by quotations of yield as provided for in paragraph (d)(1) of this section and total return as provided for in paragraph (d)(3) of this section;

(iii) Is set out in no greater prominence than the required quotations of yield and total return;

(iv) Relates to the same base period as the required quotation of yield; and

(v) Adjacent to the quotation and with no less prominence than the quotation, identifies the length of and the date of the last day in the base period used in computing the quotation.

(3) *Average annual total return.* Average annual total return for one, five, and ten year periods, except that if the company's registration statement under the Act (15 U.S.C. 77a *et seq.*) has been in effect for less than one, five, or ten years, the time period during which the registration statement was in effect is substituted for the period(s) otherwise prescribed. The quotations must:

(i) Be based on the methods of computation prescribed in Form N–1A (§§ 239.15A and 274.11A of this chapter), N–3 (§§ 239.17a and 274.11b of this chapter), or N–4 (§§ 239.17b and 274.11c of this chapter);

(ii) Be current to the most recent calendar quarter ended prior to the submission of the advertisement for publication;

(iii) Be set out with equal prominence; and

(iv) Adjacent to the quotation and with no less prominence than the quotation, identify the length of and the last day of the one, five, and ten year periods.

(4) *After-tax return.* For an open-end management investment company,

average annual total return (after taxes on distributions) and average annual total return (after taxes on distributions and redemption) for one, five, and ten year periods, except that if the company's registration statement under the Act (15 U.S.C. 77a *et seq.*) has been in effect for less than one, five, or ten years, the time period during which the registration statement was in effect is substituted for the period(s) otherwise prescribed. The quotations must:

(i) Be based on the methods of computation prescribed in Form N–1A (§§ 239.15A and 274.11A of this chapter);

(ii) Be current to the most recent calendar quarter ended prior to the submission of the advertisement for publication;

(iii) Be accompanied by quotations of total return as provided for in paragraph (d)(3) of this section;

(iv) Include both average annual total return (after taxes on distributions) and average annual total return (after taxes on distributions and redemption);

(v) Be set out with equal prominence and be set out in no greater prominence than the required quotations of total return; and

(vi) Adjacent to the quotations and with no less prominence than the quotations, identify the length of and the last day of the one, five, and ten year periods.

(5) *Other performance measures.* Any other historical measure of company performance (not subject to any prescribed method of computation) if such measurement:

(i) Reflects all elements of return;

(ii) Is accompanied by quotations of total return as provided for in paragraph (d)(3) of this section;

(iii) In the case of any measure of performance adjusted to reflect the effect of taxes, is accompanied by quotations of total return as provided for in paragraph (d)(4) of this section;

(iv) Is set out in no greater prominence than the required quotations of total return; and

(v) Adjacent to the measurement and with no less prominence than the measurement, identifies the length of and the last day of the period for which performance is measured.

(e) *Performance data for money market funds.* In the case of a money market fund:

(1) *Yield.* Any quotation of the money market fund's yield in an advertisement shall be based on the methods of computation prescribed in Form N–1A (§§ 239.15A and 274.11A of this chapter), N–3 (§§ 239.17a and 274.11b of this chapter), or N–4 (§§ 239.17b and 274.11c of this chapter) and may include:

(i) A quotation of current yield that, adjacent to the quotation and with no less prominence than the quotation, identifies the length of and the date of the last day in the base period used in computing that quotation;

(ii) A quotation of effective yield if it appears in the same advertisement as a quotation of current yield and each quotation relates to an identical base period and is presented with equal prominence; or

(iii) A quotation or quotations of tax-equivalent yield or tax-equivalent effective yield if it appears in the same advertisement as a quotation of current yield and each quotation relates to the same base period as the quotation of current yield, is presented with equal prominence, and states the income tax rate used in the calculation.

(2) *Total return.* Accompany any quotation of the money market fund's total return in an advertisement with a quotation of the money market fund's current yield under paragraph (e)(1)(i) of this section. Place the quotations of total return and current yield next to each other, in the same size print, and if there is a material difference between the quoted total return and the quoted current yield, include a statement that the yield quotation more closely reflects the current earnings of the money market fund than the total return quotation.

(f) *Advertisements that make tax representations.* An advertisement for an open-end management investment company (other than a company that is permitted under § 270.35d-1(a)(4) of this chapter to use a name suggesting that the company's distributions are exempt from federal income tax or from both federal and state income tax) that represents or implies that the company is managed to limit or control the effect of taxes on company performance must accompany any quotation of the company's performance permitted by paragraph (d) of this section with quotations of total return as provided for in paragraph (d)(4) of this section.

(g) *Timeliness of performance data.* All performance data contained in any advertisement must be as of the most recent practicable date considering the type of investment company and the media through which the data will be conveyed, except that any advertisement containing total return quotations will be considered to have complied with this paragraph provided that:

(1)(i) The total return quotations are current to the most recent calendar quarter ended prior to the submission of the advertisement for publication; and

(ii) Total return quotations current to the most recent month ended seven business days prior to the date of use are provided at the toll-free (or collect) telephone number or Web site identified pursuant to paragraph (b)(3)(i) of this section; or

(2) The total return quotations are current to the most recent month ended seven business days prior to the date of use of the advertisement.

**Note to paragraph (g):** The date of use refers to the date or dates when an advertisement is used by investors, not the date on which an advertisement is published or submitted for publication. The date of use refers to the entire period of use by investors and not simply the first date on which an advertisement is used.

(h) *Filing.* An advertisement that complies with this section need not be filed as part of the registration statement filed under the Act.

**Note to paragraph (h):** These advertisements, unless filed with NASD Regulation, Inc., are required to be filed in accordance with the requirements of § 230.497.

## PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 5. The authority citation for part 239 continues to read in part as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79l, 79m; 79n, 79q, 79t, 80a–8, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

## PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 6. The authority citation for part 270 continues to read in part as follows:

**Authority:** 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

■ 7. Section 270.34b–1 is amended by:

■ a. Adding a note following the introductory text of § 270.34b–1;

■ b. Revising paragraph (a);

■ c. Revising paragraph (b)(1)(i);

■ d. Revising the reference "(d)(1)(i) of § 230.482" in paragraph (b)(1)(ii)(A) to read "(e)(1)(i) of § 230.482";

■ e. Revising the reference "§ 230.482(d)(1)(iii)" in paragraph (b)(1)(ii)(B) to read "§ 230.482(e)(1)(iii)";

■ f. Revising the reference "(d)(1)(i) of § 230.482" in the first sentence of paragraph (b)(1)(ii)(C) to read "(e)(1)(i) of § 230.482";

■ g. Revising the reference "(e)(3) of § 230.482" in paragraph (b)(1)(iii)(A) to read "(d)(3) of § 230.482";

■ h. Revising the reference "(e)(4) of § 230.482" in paragraph (b)(1)(iii)(B) to read "(d)(4) of § 230.482";

■ i. Revising the reference "(e)(4) of § 230.482" in paragraph (b)(1)(iii)(C) to read "(d)(4) of § 230.482";

■ j. Revising the reference "(e)(1) of § 230.482" in paragraph (b)(1)(iii)(D) to read "(d)(1) of § 230.482";

■ k. Revising the references "(e)(2)" and "(e)(1) of § 230.482" in paragraph (b)(1)(iii)(E) to read "(d)(2)" and "(d)(1) of § 230.482", respectively;

■ l. Revising the reference "paragraph (f) of § 230.482" in paragraph (b)(2) to read "paragraph (g) of § 230.482"; and

■ m. Revising the reference "(e)(3)(ii), (e)(4)(ii)" in paragraph (b)(3) to read "(d)(3)(ii), (d)(4)(ii)".

The addition and revisions read as follows:

**§ 270.34b–1 Sales literature deemed to be misleading.**

* * * * *

**Note to introductory text of § 270.34b–1:** The fact that the sales literature includes the information specified in paragraphs (a) and (b) of this section does not relieve the investment company, underwriter, or dealer of any obligations with respect to the sales literature under the antifraud provisions of the federal securities laws. For guidance about factors to be weighed in determining whether statements, representations, illustrations, and descriptions contained in investment company sales literature are misleading, *see* § 230.156 of this chapter.

(a) Sales literature for a money market fund shall contain the information required by paragraph (b)(4) of § 230.482 of this chapter, presented in the manner required by paragraph (b)(5) of § 230.482 of this chapter.

(b)(1) * * *

(i) In any sales literature that contains performance data for an investment company, include the disclosure required by paragraph (b)(3) of § 230.482 of this chapter, presented in the manner required by paragraph (b)(5) of § 230.482 of this chapter.

* * * * *

## PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

## PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 8. The authority citation for Part 274 continues to read in part as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

**Note:** The text of Forms N–1A, N–3, N–4, and N–6 does not, and these amendments will not, appear in the *Code of Federal Regulations*.

■ 9. Item 21 of Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by:

a. Revising the introductory text of paragraphs (a) and (b); and

b. Removing paragraphs (a)(5) and (b)(7), to read as follows:

**Form N–1A**

* * * * *

**Item 21. Calculation of Performance Data**

(a) *Money Market Funds.* Yield quotation(s) for a Money Market Fund included in the prospectus should be calculated according to paragraphs (a)(1)–(4).

* * * * *

(b) *Other Funds.* Performance information included in the prospectus should be calculated according to paragraphs (b)(1)–(6).

* * * * *

■ 10. General Instruction F of Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by:

a. Removing General Instruction F.2; and

b. Redesignating General Instruction F.1 as General Instruction F.

■ 11. Item 4 of Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by:

a. Removing Item 4(c); and

b. Redesignating Item 4(d) as Item 4(c).

■ 12. Item 25 of Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by:

a. Removing Instruction 5 to paragraph (a); and

b. Revising paragraphs (a) and (b), and Instruction 6 to paragraph (b)(i), to read as follows:

**Form N–3**

* * * * *

**Item 25. Calculation of Performance Data**

(a) *Money Market Accounts.* Yield quotation(s) included in the prospectus for an account or sub-account that holds itself out as a "money market" account or sub-account should be calculated according to paragraphs (a)(i)–(ii).

(i) *Yield Quotation.* Based on the 7 days ended on the date of the most recent balance sheet of the Registrant included in the registration statement, calculate the yield by determining the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical pre-existing account having a balance of one accumulation unit of the account or sub-account at the beginning of the period, subtracting a hypothetical charge reflecting deductions from contractowner accounts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then multiplying the base period return by (365/7) with the resulting yield figure carried to at least the nearest hundredth of one percent.

(ii) *Effective Yield Quotation.* Based on the 7 days ended on the date of the most recent balance sheet of the Registrant included in the registration statement, calculate the effective yield, carried to at least the nearest hundredth of one percent, by determining the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical pre-existing account having a balance of one accumulation unit of the account or sub-account at the beginning of the period, subtracting a hypothetical charge reflecting deductions from contractowner accounts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then compounding the base period return by adding 1, raising the sum to a power equal to 365 divided by 7, and subtracting 1 from the result, according to the following formula:

$$\text{EFFECTIVE YIELD} = [(\text{BASE PERIOD RETURN} + 1)^{365/7}] - 1.$$

*Instructions:*

* * * * *

(b) *Other Accounts.* Performance information included in the prospectus should be calculated according to paragraphs (b)(i)–(iii).

(i) *Average Annual Total Return Quotation.* For the 1-, 5-, and 10-year periods ended on the date of the most recent balance sheet of the Registrant included in the registration statement, calculate the average annual total return by finding the average annual compounded rates of return over the 1-, 5-, and 10-year periods that would equate the initial amount invested to the ending redeemable value, according to the following formula:

$$P(1+T)^n = ERV$$

Where:

P = a hypothetical initial payment of $1,000

T = average annual total return

n = number of years

ERV = ending redeemable value of a hypothetical $1,000 payment made at the beginning of the 1-, 5-, or 10-year periods at the end of the 1-, 5-, or 10-year periods (or fractional portion).

*Instructions:*

* * * * *

6. Total return information in the prospectus need only be current to the end of the Registrant's most recent fiscal year.

(ii) *Yield Quotation.* Based on a 30-day (or one month) period ended on the date of the most recent balance sheet of the Registrant included in the registration statement, calculate yield by dividing the net investment income per accumulation unit earned during the period by the maximum offering price per unit on the last day of the period, according to the following formula:

$$\text{YIELD} = 2\left[\left(\frac{a-b}{cd}+1\right)^{6}-1\right]$$

Where:

a = dividends and interest earned during the period.

b = expenses accrued for the period (net of reimbursements).

c = the average daily number of accumulation units outstanding during the period.

d = the maximum offering price per accumulation unit on the last day of the period.

*Instructions:*

* * * * *

(iii) *Non-Standardized Performance Quotation.* A Registrant may calculate performance using any other historical measure of performance (not subject to any prescribed method of computation) if the measurement reflects all elements of return.

* * * * *

13. Item 28 of Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by:

a. Adding the word "and" after the semicolon at the end of Item 28(b)(15);

b. Removing Item 28(b)(16);

c. Redesignating Item 28(b)(17) as Item 28(b)(16); and

d. Revising Instruction 1 to Item 28 to read as follows:

**Form N–3**

* * * * *

**Item 28.**

* * * * *

(b) * * *

(15) copies of any agreements or understandings made in consideration for providing the initial capital between or among the Registrant, the Insurance Company, underwriter, adviser, or initial contractowners and written assurances from the Insurance Company or initial contractowners that the purchases were made for investment purposes without any present intention of redeeming; and

(16) copies of any codes of ethics adopted under Rule 17j–1 under the 1940 Act [17 CFR 270.17j–1] and currently applicable to the Registrant (*i.e.*, the codes of the Registrant and its investment advisers and principal underwriters). If there are no codes of ethics applicable to the Registrant, state the reason (*e.g.*, the Registrant is a Money Market Fund).

*Instructions:*

1. Subject to the Rules regarding incorporation by reference and Instruction 2 below, the foregoing exhibits shall be filed as part of the Registration Statement. Exhibits numbered 5, 12, 13, and 14 above need be filed only as part of a 1933 Act Registration Statement. Exhibits shall be lettered or numbered for convenient reference. Exhibits incorporated by reference may bear the designation given in a previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits.

* * * * *

14. General Instruction F of Form N–4 (referenced in §§ 239.17b and 274.11c) is amended by:

a. Removing General Instruction F.2; and

b. Redesignating General Instruction F.1 as General Instruction F.

15. Item 4 of Form N–4 (referenced in §§ 239.17b and 274.11c) is amended by:

a. Removing Item 4(b); and

b. Redesignating Item 4(c) as Item 4(b).

16. Item 21 of Form N–4 (referenced in §§ 239.17b and 274.11c) is amended by:

a. Removing Instruction 5 to paragraph (a); and

b. Revising paragraphs (a) and (b), and Instruction 6 to paragraph (b)(i), to read as follows:

**Form N–4**

* * * * *

**Item 21. Calculation of Performance Data**

(a) *Money Market Funded Sub-Accounts.* Yield quotation(s) included in the prospectus for an account or sub-account that holds itself out as a "money market" account or sub-account should be calculated according to paragraphs (a)(i)—(ii).

(i) *Yield Quotation.* Based on the 7 days ended on the date of the most recent balance sheet of the Registrant included in the registration statement, calculate the yield by determining the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical pre-existing account having a balance of one accumulation unit of the account or sub-account at the beginning of the period, subtracting a hypothetical charge reflecting deductions from contractowner accounts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then multiplying the base period return by (365/7) with the resulting yield figure carried to at least the nearest hundredth of one percent.

(ii) *Effective Yield Quotation.* Based on the 7 days ended on the date of the most recent balance sheet of the Registrant included in the registration statement, calculate the effective yield, carried to at least the nearest hundredth of one percent, by determining the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical pre-existing account having a balance of one accumulation unit of the account or sub-account at the beginning of the period, subtracting a hypothetical charge reflecting deductions from contractowner accounts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then compounding the base period return by adding 1, raising the sum to a power equal to 365 divided by 7, and subtracting 1 from the result, according to the following formula:

$$\text{EFFECTIVE YIELD} = [(\text{BASE PERIOD RETURN} + 1)^{365/7}] - 1.$$

*Instructions:*

* * * * *

(b) *Other Sub-Accounts.* Performance information included in the prospectus should be calculated according to paragraphs (b)(i)—(iii).

(i) *Average Annual Total Return Quotation.* For the 1-, 5-, and 10-year periods ended on the date of the most recent balance sheet of the Registrant included in the registration statement, calculate the average annual total return by finding the average annual compounded rates of return over the 1-, 5-, and 10-year periods that would equate the initial amount invested to the ending redeemable value, according to the following formula:

$$P(1+T)^{n} = ERV$$

Where:

P = a hypothetical initial payment of $1,000

T = average annual total return

n = number of years

ERV = ending redeemable value of a hypothetical $1,000 payment made at the beginning of the 1-, 5-, or 10-

year periods at the end of the 1-, 5-, or 10-year periods (or fractional portion).

*Instructions:*

* * * * *

6. Total return information in the prospectus need only be current to the end of the Registrant's most recent fiscal year.

(ii) *Yield Quotation.* Based on a 30-day (or one month) period ended on the date of the most recent balance sheet of the Registrant included in the registration statement, calculate yield by dividing the net investment income per accumulation unit earned during the period by the maximum offering price per unit on the last day of the period, according to the following formula:

$$\text{YIELD} = 2\left[\left(\frac{a-b}{cd}+1\right)^{6}-1\right]$$

Where:

a = net investment income earned during the period by the portfolio company attributable to shares owned by the sub-account.

b = expenses accrued for the period (net of reimbursements).

c = the average daily number of accumulation units outstanding during the period.

d = the maximum offering price per accumulation unit on the last day of the period.

*Instructions:*

* * * * *

(iii) *Non-Standardized Performance Quotation.* A Registrant may calculate performance using any other historical measure of performance (not subject to any prescribed method of computation) if the measurement reflects all elements of return.

* * * * *

19. Item 24 of Form N–4 (referenced in §§ 239.17b and 274.11c) is amended by:

a. Adding the word "and" after the semicolon at the end of Item 24(b)(11);

b. Removing Item 24(b)(13); and

c. Revising Instruction 1 to Item 24.

The revisions read as follows:

**Form N–4**

* * * * *

**Item 24**

* * * * *

(b) * * *

(11) all financial statements omitted from Item 23; and

(12) copies of any agreements or understandings made in consideration for providing the initial capital between or among the Registrant, the depositor, underwriter, or initial contractowners and written assurances from the depositor or initial contractowners that the purchases were made for investment purposes without any present intention of redeeming.

*Instructions:*

1. Subject to the Rules regarding incorporation by reference and Instruction 2 below, the foregoing exhibits shall be filed as part of the Registration Statement. Exhibits numbered 3, 9, 10, and 11 above need to be filed only as part of a 1933 Act Registration Statement. Exhibits shall be lettered or numbered for convenient reference. Exhibits incorporated by reference may bear the designation given in a previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits.

* * * * *

20. General Instruction B.2.(b) of Form N–6 (referenced in §§ 239.17c and 274.11d) is amended by revising the reference "Items 27(c), (k), (l), (n), and (o)" to read "Items 26(c), (k), (l), (n), and (o)".

21. Item 25 of Form N–6 (referenced in §§ 239.17c and 274.11d) is removed.

22. Form N–6 (referenced in §§ 239.17c and 274.11d) is further amended by:

a. Redesignating Items 26 through 34 as Items 25 though 33;

b. Revising the reference "Item 26" in paragraph (j) of newly redesignated Item 25 to read "Item 25"; and

c. Revising the reference "Item 26" in paragraphs (l) and (m) of newly redesignated Item 26 to read "Item 25".

By the Commission.

Dated: September 29, 2003.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–25114 Filed 10–3–03; 8:45 am]

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  Progesterone intravaginal inserts; published 10-6-03

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**H.R. 2555/P.L. 108–90**

Department of Homeland Security Appropriations Act, 2004 (Oct. 1, 2003; 117 Stat. 1137)

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| **29 Parts:** | | | |
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| 1927–End | (869–048–00108–5) | 59.00 | July 1, 2002 |
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| 700–End | (869–050–00113–6) | 57.00 | July 1, 2003 |
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| 630–699 | (869–050–00119–5) | 37.00 | [7]July 1, 2003 |
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| 1–124 | (869–048–00120–4) | 47.00 | July 1, 2002 |
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| **35** | (869–050–00128–4) | 10.00 | [6]July 1, 2003 |
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| 200–299 | (869–050–00130–6) | 37.00 | July 1, 2003 |
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| 52 (52.1019–End) | (869–048–00137–9) | 58.00 | July 1, 2002 |
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2003. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2002. The CFR volume issued as of October 1, 2001 should be retained.

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# Federal Register

10–7–03
Vol. 68 No. 194
Tuesday
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# Rules and Regulations

Federal Register
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Tuesday, October 7, 2003

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 993

**[Docket No. FV03–993–2 FIR]**

### Dried Prunes Produced in California; Temporary Suspension of the Prune Reserve and the Voluntary Producer Prune Plum Diversion Provisions

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule suspending the prune reserve and the voluntary producer prune plum diversion provisions in the California Dried Prune Marketing Order (order) and the administrative rules and regulations related to volume control restrictions for a five-year period. The order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (PMC). Suspension of these provisions ensures that volume control restrictions will not be implemented under the order. During the five-year suspension period, the industry will have the opportunity to determine whether these provisions should be modified, terminated, or continue unchanged. In the absence of additional rulemaking to modify or terminate these provisions, they will come back into effect automatically at the end of the five-year period.

**EFFECTIVE DATE:** November 6, 2003.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 993 (7 CFR part 993), both as amended, regulating the handling of dried prunes produced in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the suspension for five years of all provisions in the order and administrative rules and regulations concerning the prune reserve and voluntary producer prune plum diversion. This action was unanimously recommended by the PMC. This rule will continue to ensure that reserve percentages are not established, and that a prune plum diversion program is not implemented pursuant to these provisions. During the five-year suspension period, the industry will have the opportunity to determine whether these provisions should be modified, terminated, or remain unchanged.

#### Marketing Order Authority To Suspend

Section 993.90(a) states in part: "The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart, whenever he/she finds that such provisions do not tend to effectuate the declared policy of the act."

#### Volume Regulation Provisions

Section 993.54 of the order provides authority for volume regulation through establishing salable and reserve percentages of prunes received by handlers (prune reserve). When the prune reserve is in effect, the salable percentage of the California prune crop may be sold to any market while the reserve percentage must be held by the handlers for the account of the PMC. Reserve prunes may be sold to meet either domestic or foreign trade demand or for use in outlets noncompetitive with normal outlets for salable prunes. Net proceeds from sales of reserve prunes are ultimately distributed to producers. The prune reserve is designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns.

#### Voluntary Prune Plum Diversion Program

Section 993.62 of the order authorizes a producer diversion program, which prune producers may use when a prune reserve is implemented. Section 993.162 of the administrative rules and regulations specifies implementing procedures. Under the producer diversion program, any prune producer may divert prune plums of his own production for eligible purposes and receive a diversion certificate from the PMC. The certificate may be submitted to any handler in lieu of reserve prunes and the handler may apply the quantity represented by the certificate towards his reserve obligation. Participation in this program reduces a producer's expenses to convert prune plums into dried prunes that will ultimately be placed in a relatively low value prune reserve.

**Background and Action Taken**

The prune reserve was last implemented in 1974 and the producer diversion program was last used in 1971. These programs were controversial in the 1970's and have become increasingly so since then. Some of the independent prune handlers who are also prune producers now oppose any regulatory marketing restrictions because they want to sell all of the prunes they have produced. If additional tonnage were needed, such handlers would buy prunes from other producers to meet their market demand. In addition, if a prune reserve is implemented, it may require these handlers to contract for additional tonnage in order to meet their reserve obligation.

Recently in 2001, when the PMC recommended using supply control techniques, some of the independent handlers and producers opposed the use of these programs. Ultimately, the supply control programs were not implemented at that time. Also, some in the industry do not support the use of these supply control provisions because the industry has successfully reduced crop sizes through other means.

Through industry and USDA funded tree pull programs, the industry has removed over 18,000 acres of prune plum trees; thus reducing the annual prune production by at least 27,000 tons of prunes over the five-year suspension period.

During the five-year suspension period, the industry will have the opportunity to either recommend that these provisions be terminated through rulemaking procedures, or recommend modifications to the provisions to make them more acceptable to all segments of the industry. In the interim, the suspension of these provisions continues to ensure that these provisions are not implemented. In the absence of any additional action, the provisions will automatically come back into effect at the end of the five-year suspension period.

The PMC unanimously recommended this action at an April 3, 2003, meeting. This rule continues to suspend §§ 993.21d, 993.36(i), 993.54, 993.55, 993.56, 993.57, 993.58, 993.59, 993.62, and 993.65 of the order, and §§ 993.156, 993.157, 993.158, 993.159, 993.162, 993.165 and 993.172(e) of the administrative rules and regulations in effect under the order. Portions of §§ 993.33 and 993.41(b) of the order and portions of §§ 993.173(a)(6), 993.173(b)(3), and 993.173(c)(1) of the administrative rules and regulations continue to be suspended. These sections of the order and administrative rules and regulations pertain to the various requirements of the prune reserve and producer diversion programs.

**Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

**Industry Profile**

There are approximately 1,205 producers of dried prunes in the production area and approximately 21 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $5,000,000.

Eight of the 21 handlers (38 percent) shipped over $5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Thirteen of the 21 handlers (62 percent) shipped less than $5,000,000 worth of dried prunes and could be considered small handlers. An estimated 32 producers, or less than 3 percent of the 1,205 total producers, would be considered large growers with annual incomes over $750,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

**Summary of Rule Change**

This rule continues to suspend for five years all provisions in the order and administrative rules and regulations concerning the prune reserve and voluntary producer diversion programs. These supply control programs have been and continue to be controversial in the industry. Furthermore, the industry has successfully reduced crop sizes through other means. Through industry and USDA funded tree pull programs, over 18,000 acres of prune plum trees have been removed, reducing production by at least 27,000 tons over the five-year suspension period.

This rule continues to ensure that the reserve and diversion volume control programs will not be implemented for the five-year suspension period. Also, during the suspension period, the industry will have the opportunity to determine whether these provisions should be modified, terminated, or remain the same. In the absence of further rulemaking, these provisions will automatically come back into effect at the end of the suspension period. Authority to suspend these provisions of the marketing order and administrative rules and regulations is provided in § 993.90(a) of the order.

**Impact of Regulation**

Regarding the impact of this rule on affected entities, this action could reduce the reporting and recordkeeping burden on California prune handlers and producers and reduce some of the PMC's administrative costs. Although the prune reserve and producer diversion programs have not been implemented since the 1970s and handlers and producers have not been required to file reports pertaining to these programs, suspending these provisions continues to reduce the potential reporting burden on handlers and producers. Suspension of the provisions continues to eliminate the possibility of requiring handlers and producers to file reports associated with the programs. It also continues to reduce some of the potential PMC administrative costs of managing these programs. The PMC estimates that 21 California prune handlers are subject to these provisions and to filing reports pertaining to these programs. Also, if a producer diversion program was implemented, it is estimated that as many as 300 producers would file forms applicable to this program. If handlers filed reports under the prune reserve program, their estimated burden would be 57 hours. If growers filed reports under the diversion program, their estimated burden would be 75.58 hours. Thus, there is a potential for reducing the estimated annual burden of 132.58 hours. The benefits of this rule apply to all prune handlers and producers, regardless of their size of operation.

The forms applicable to these programs are as follows: (1) Form PMC 4.1, Reserve Prunes Held—Handler; (2) Form PMC 4.2, Prune Reserve Tonnage Sales Agreement; (3) Form PMC 4.5, Certificate of Insurance Coverage; (4) Form PMC 5.1, Notice of Proposed Intent to Store Reserve Prunes; (5) Form PMC 8.44, Request for Replacement of Draft; (6) Form PMC 8.443, Claim for Reserve Pool Proceeds; (7) Form PMC 9.1, Notification of Desire for Deferment of Reserve Withholding; (8) Form PMC 10.1, Application for Prune Plum Diversion; (9) No form number, Proof of Diversion; and (10) No form number, Notification of Report of Diversion.

It should be noted that if the PMC determines this action is having an unfavorable impact on the industry, it could meet and recommend rescinding the suspension. Also, as previously mentioned, the provisions automatically come back into effect at the end of the suspension period.

### Alternatives Considered

The PMC and industry members discussed different alternatives to this action at the PMC's April 3, 2003, meeting. The PMC discussed the possibility of amending the marketing order provisions relating to reserve and producer diversion programs but decided to eliminate the prune reserve and producer diversion provisions from the order and administrative rules and regulations in a more timely fashion. During the suspension, the industry will have the opportunity to consider possible order amendments to the volume control provisions. Another alternative was to terminate the marketing order. Many on the PMC and in the industry deemed termination too drastic an action and preferred to preserve the marketing order and make necessary changes to it to meet current industry needs and to reflect current industry marketing practices.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the applicable forms being suspended by this rule were approved previously by the Office of Management and Budget and assigned OMB No. 0581–0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

The PMC's April 3, 2003, meeting where this issue was deliberated was widely publicized throughout the prune industry and all interested persons were invited to attend the meeting and participate in the industry's deliberations. Like all PMC meetings, this meeting was a public meeting and all entities, both large and small, were able to express their views on these issues.

An interim final rule concerning this action was published in the **Federal Register** on July 9, 2003. The PMC's staff mailed copies of the rule to all PMC members, alternates, and prune handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period which ended on September 8, 2003. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the PMC's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (68 FR 40754, July 9, 2003) will tend to effectuate the declared policy of the Act.

### List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

## PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 993 which was published at 68 FR 40754 on July 9, 2003, is adopted as a final rule without change.

Dated: October 1, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03–25312 Filed 10–6–03; 8:45 am]

BILLING CODE 3410–02–P

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## NUCLEAR REGULATORY COMMISSION

## 10 CFR Part 72

## RIN 3150–AH27

## List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®–24P, –52B, –61BT, –32PT, and –24PHB Revision

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations revising the Transnuclear, Inc., Standardized NUHOMS" Horizontal Modular Storage System (Standardized NUHOMS" System) listing within the "List of approved spent fuel storage casks" to include Amendment No. 6 in Certificate of Compliance (CoC) Number 1004. Amendment No. 6 will add the NUHOMS'–24PHB cask design to the Standardized NUHOMS" System. The NUHOMS'–24PHB cask will permit a part 72 licensee to store high burnup Babcock & Wilcox 15x15 spent fuel assemblies with an average burnup of up to 55,000 megawatt-days/metric ton of uranium, enrichment equal to 4.5 weight percent uranium-235, a maximum decay heat load of 1.3 kilowatt (kW) per assembly, and a maximum heat load of 24 kW per cask, under a general license.

**DATES:** The final rule is effective December 22, 2003, unless significant adverse comments are received by November 6, 2003. A significant adverse comment is one which explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH27) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays [telephone (301) 415–1966].

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on public computers located at the NRC's Public Document Room (PDR), Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. An electronic copy of the proposed CoC and preliminary Safety Evaluation Report (SER) can be found under ADAMS Accession Nos. ML031980369 and ML031980374.

CoC No. 1004, the revised Technical Specifications (TS), the underlying SER for Amendment No. 6, and the Environmental Assessment (EA) may be viewed electronically on public computers located at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Margaret Stambaugh, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–5449, e-mail mxs8@nrc.gov.

**FOR FURTHER INFORMATION CONTACT:** Margaret Stambaugh, telephone (301) 415–5449, e-mail *mxs8@nrc.gov*, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

## Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that "[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, that "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR part 72 entitled, "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new subpart L within 10 CFR part 72, entitled "Approval of Spent Fuel Storage Casks" containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on December 22, 1994 (59 FR 65920), that approved the Standardized NUHOMS® System (NUHOMS®–24P and –52B) cask designs and added them to the list of NRC-approved cask designs in § 72.214 as CoC No. 1004. Amendments 3 and 5, respectively, added the –61BT and –32PT designs to the Standardized NUHOMS® System.

## Discussion

On August 31, 2001, and as supplemented June 13, 2002, November 18, 2002, and March 7, 2003, the certificate holder (Transnuclear, Inc.) submitted an application to the NRC to amend CoC No. 1004 to add the NUHOMS®–24PHB cask design to the Standardized NUHOMS® System. The amendment will permit a part 72 licensee to use the NUHOMS®–24PHB cask design to store high burnup Babcock & Wilcox (B&W) 15x15 spent fuel assemblies with an average burnup of up to 55,000 megawatt-days (MWd)/metric ton of uranium (MTU); enrichment equal to 4.5 weight percent U–235; maximum decay heat load of 1.3 kilowatt (kW) per assembly; and maximum heat load of 24 kW per cask, under a general license. No other changes to the Standardized NUHOMS® System were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there is still reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the Standardized NUHOMS® System listing in Section 72.214 by adding Amendment 6 to CoC No. 1004. The amended technical specifications (TS) are identified in the NRC staff's SER for Amendment 6.

The amended Standardized NUHOMS® System, when used in accordance with the conditions specified in the CoC, the TS, and NRC regulations, will meet the requirements of part 72; thus, adequate protection of public health and safety will continue to be ensured.

## Discussion of Amendments by Section

### *Section 72.214 List of Approved Spent Fuel Storage Casks*

Certificate No. 1004 is revised by adding the effective date of Amendment Number 6 and adding Model Number NUHOMS®–24PHB.

## Procedural Background

This rule is limited to the changes contained in Amendment 6 to CoC No. 1004 and does not include other aspects of the Standardized NUHOMS® System. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on December 22, 2003. However, if the NRC receives significant adverse comments by November 6, 2003, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment which explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action. However, if the NRC receives significant adverse comments by November 6, 2003, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**.

### Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC would revise the Standardized NUHOMS® System listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally applicable requirements.

### Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

### Plain Language

The Presidential Memorandum dated June 1, 1998, entitled "Plain Language in Government Writing," directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

### Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in subpart A of 10 CFR part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule would amend the CoC for the Standardized NUHOMS® System within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license by adding the NUHOMS®–24PHB cask design to the current cask system. The NUHOMS®–24PHB cask design will store high burnup B&W 15x15 spent fuel assemblies with an average burnup of up to 55,000 megawatt-days/metric ton of uranium, enrichment equal to 4.5 weight percent uranium-235, a maximum decay heat load of 1.3 kilowatt (kW) per assembly, and a maximum heat load of 24 kW per cask. The environmental assessment (EA) and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the EA and finding of no significant impact are available from Margaret Stambaugh, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–5449, e-mail *mxs8@nrc.gov*.

### Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

### Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

### Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On December 22, 1994 (59 FR 65920), the NRC issued an amendment to part 72 that approved the Standardized NUHOMS® System (NUHOMS®–24P and –52B) by adding it to the list of NRC-approved cask designs in § 72.214. Amendments 3 and 5, respectively, added the –61BT and –32PT cask designs to the Standardized NUHOMS® System. On August 31, 2001, and as supplemented June 13, 2002, November 18, 2002, and March 7, 2003, the certificate holder (Transnuclear, Inc.), submitted an application to the NRC to amend CoC No. 1004 to add the NUHOMS®–24PHB cask design to the Standardized NUHOMS® System. The proposed amendment permits a part 72 licensee to use the NUHOMS®–24PHB cask design to store high burnup B&W 15x15 spent fuel assemblies with an average burnup of up to 55,000 megawatt-days/metric ton of uranium, enrichment equal to 4.5 weight percent uranium-235, a maximum decay heat load of 1.3 kilowatt (kW) per assembly, and a maximum heat load of 24 kW per cask, under a general license.

The alternative to this action is to withhold approval of this amended cask system design and issue an exemption to the general license for each utility that decides to use the amended cask system design. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption.

Approval of the direct final rule will eliminate this problem and is consistent with previous NRC actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

### Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 [5 U.S.C. 605(b)], the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and Transnuclear, Inc. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

### Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

### Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

### List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

## PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED WASTE GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

**Authority:** Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1004 is revised to read as follows:

### § 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004.

Initial Certificate Effective Date: January 23, 1995.

Amendment Number 1 Effective Date: April 27, 2000.

Amendment Number 2 Effective Date: September 5, 2000.

Amendment Number 3 Effective Date: September 12, 2001.

Amendment Number 4 Effective Date: February 12, 2002.

Amendment Number 5 Effective Date: November 3, 2003.

Amendment Number 6 Effective Date: December 22, 2003.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular.

Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1004.

Certificate Expiration Date: January 23, 2015.

Model Number: Standardized NUHOMS®–24P, NUHOMS®–52B, NUHOMS®–61BT, NUHOMS®–32PT, and NUHOMS®–24PHB.

* * * * *

Dated at Rockville, Maryland, this 11th day of September, 2003.

For the Nuclear Regulatory Commission.

**William D. Travers,**

*Executive Director for Operations.*

[FR Doc. 03–25366 Filed 10–6–03; 8:45 am]

BILLING CODE 7590–01–P

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## FEDERAL RESERVE SYSTEM

## 12 CFR Part 204

### [Regulation D; Docket No. R–1163]

## Reserve Requirements of Depository Institutions

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Board is amending Regulation D, Reserve Requirements of Depository Institutions to reflect the annual indexing of the low reserve tranche and of the reserve requirement exemption amount for 2004. The Board is also announcing the annual indexing of the deposit cutoff level and the reduced reporting limit that will be effective beginning in September 2004. The Regulation D amendments increase the amount of net transaction accounts at each depository institution that are subject to a three percent reserve requirement in 2004 from $42.1 million to $45.4 million. This amount is known as the low reserve tranche. The Regulation D amendments also increase the amount of total reservable liabilities of each depository institution that are subject to a zero percent reserve requirement in 2004 from $6.0 million to $6.6 million. This amount is known as the reserve requirement exemption amount. The adjustments to both of these amounts are derived using statutory formulas specified in the Federal Reserve Act. The Board is also announcing increases in two other amounts, the deposit cutoff level and the reduced reporting limit, that are used to determine the frequency with which depository institutions must

submit deposit reports. The deposit cutoff level is being increased from $150.0 million in 2003 to $161.2 million in 2004, and the reduced reporting limit is being increased from $1.0 billion in 2003 to $1.074 billion in 2004. These amounts are indexed annually in order to reduce reporting burden for smaller depository institutions. Thus, beginning in September 2004, depository institutions will be required to file the FR 2900 report each week under the following conditions: if they have net transaction accounts over $6.6 million *and* have total deposits of at least $161.2 million; *or* if they have net transaction accounts of $6.6 million or less but have total deposits of at least $1.074 billion. Depository institutions will be required to file the FR 2900 report each quarter if they have net transaction accounts over $6.6 million but have total deposits of less than $161.2 million. Depository institutions will be required to file the FR 2910a report annually if they have net transaction accounts of $6.6 million or less but have total deposits greater than $6.6 million but less than $1.074 billion. Depository institutions with $6.6 million or less in total deposits are not required to file a deposit report.

**DATES:** Effective date: November 6, 2003.

*Compliance dates:* For depository institutions that report weekly, the adjusted low reserve tranche and reserve requirement exemption amount will apply to the fourteen-day reserve computation period that begins Tuesday, November 25, 2003, and the corresponding fourteen-day reserve maintenance period that begins Thursday, December 25, 2003. For depository institutions that report quarterly, the adjusted low reserve tranche and reserve requirement exemption amount will apply to the seven-day reserve computation period that begins Tuesday, December 16, 2003, and the corresponding seven-day reserve maintenance period that begins Thursday, January 15, 2004. For all depository institutions, the deposit cutoff level, the reserve requirement exemption amount, and the reduced reporting limit will be used to screen depository institutions in July of 2004 to determine reporting frequency for the twelve month period that begins in September 2004.

**FOR FURTHER INFORMATION CONTACT:** Heatherun Allison, Counsel (202/452–3565), Legal Division, or Gretchen Weinbach, Senior Economist (202/452–2841), Division of Monetary Affairs; for user of Telecommunications Device for the Deaf (TDD) only, contact (202/872–4984); Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** Section 19(b)(2) of the Federal Reserve Act (12 U.S.C. 461(b)(2)) requires each depository institution to maintain reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations, for the purpose of implementing monetary policy. Section 11(a)(2) of the Federal Reserve Act (12 U.S.C. 248(a)(2)) authorizes the Board to require reports of liabilities and assets from depository institutions to enable the Board to conduct monetary policy. The Board's actions with respect to each of these provisions are discussed in turn below.

1. Reserve Requirements. Pursuant to section 19(b)(2) of the Federal Reserve Act, transaction account balances maintained at each depository institution up to a certain amount, known as the low reserve tranche, are subject to a three percent reserve requirement. Net transaction account balances over the low reserve tranche are subject to a ten percent reserve requirement. Section 19(b)(2) also provides that, before December 31 of each year, the Board shall issue a regulation adjusting the low reserve tranche for the next calendar year. The adjustment in the low reserve tranche is to be 80 percent of the percentage increase or decrease in net transaction accounts at all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Currently, the low reserve tranche is $42.1 million. Net transaction accounts of all depository institutions rose 9.9 percent (from $611.5 billion to $671.9 billion) between June 30, 2002 and June 30, 2003. Accordingly, the Board is amending Regulation D (12 CFR part 204) to increase the low reserve tranche for net transaction accounts by $3.3 million, from $42.1 million in 2003 to $45.4 million in 2004.

Section 19(b)(11)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(11)(A)) provides that a zero percent reserve requirement shall apply to total reservable liabilities at each depository institution that do not exceed a certain amount, known as the reserve requirement exemption amount. Section 19(b)(11)(B) provides that, before December 31 of each year, the Board shall issue a regulation adjusting the reserve requirement exemption amount for the next calendar year if total reservable liabilities held at all depository institutions increase from one year to the next. Unlike the low reserve tranche, which can be adjusted upward or downward, no adjustment is made to the reserve requirement exemption amount if total reservable liabilities held at all depository institutions should decrease during the applicable time period. The percentage increase in the reserve requirement exemption amount is to be 80 percent of the increase in total reservable liabilities at all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Total reservable liabilities of all depository institutions increased by 12.9 percent (from $2,472.3 billion to $2,792.2 billion) between June 30, 2002, and June 30, 2003. Accordingly, the Board is amending Regulation D to increase the reserve requirement exemption amount by $0.6 million, from $6.0 million in 2003 to $6.6 million in 2004.[1]

For depository institutions that report weekly, the adjusted low reserve tranche and reserve requirement exemption amount will be effective for the fourteen-day reserve computation period beginning Tuesday, November 25, 2003, and for the corresponding fourteen-day reserve maintenance period beginning Thursday, December 25, 2003. For depository institutions that report quarterly, the adjusted low reserve tranche and reserve requirement exemption amount will be effective for the seven-day computation period beginning Tuesday, December 16, 2003, and for the corresponding seven-day reserve maintenance period beginning Thursday, January 15, 2004.

2. *Deposit Reports.* Section 11(b)(2) of the Federal Reserve Act authorizes the Board to require depository institutions to file reports of their liabilities and assets as the Board may determine to be necessary or desirable to enable it to discharge its responsibility to monitor and control monetary and credit aggregates. The Board screens depository institutions each year to determine whether they must file deposit reports and, if so, how frequently they must file them (weekly, quarterly, or annually). These deposit reporting assignments become effective each September.

The screening of depository institutions for assignment to one of the four deposit reporting categories is based on three amounts: The reserve requirement exemption amount, the deposit cutoff level, and the reduced reporting limit. The annual adjustment to the first amount, the reserve requirement exemption amount, is described in Section 1 above. The other two amounts, the deposit cutoff level and the reduced reporting limit, are also adjusted annually, by an amount equal to 80 percent of the increase, if any, in total deposits at all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

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[1] Consistent with Board practice, the low reserve tranche and reserve requirement exemption amounts have been rounded to the nearest $0.1 million.

Total deposits at all depository institutions increased by 9.3 percent (from $5,959.5 billion to $6,513.9 billion) between June 30, 2002 and June 30, 2003. Accordingly, the Board is adjusting the deposit cutoff level upward by $11.2 million, from its current level of $150.0 million in 2003 to $161.2 million in 2004. The Board is also adjusting the reduced reporting limit upward by $74 million, from its current level of $1.0 billion in 2003 to $1.074 billion in 2004.[2]

Beginning in September 2004, the boundaries of the four deposit reporting categories will be defined as follows. Those depository institutions with net transaction accounts over $6.6 million (the reserve requirement exemption amount) or total deposits greater than or equal to $1.074 billion (the reduced reporting limit) are subject to detailed reporting, and must file an FR 2900 report either weekly or quarterly. Of this group, those with total deposits greater than or equal to $161.2 million (the deposit cutoff level) are required to file the FR 2900 report each week, while those with total deposits less than $161.2 million are required to file the FR 2900 report each quarter. Those depository institutions with net transaction accounts less than or equal to $6.6 million (the reserve requirement exemption amount) and with total deposits less than $1.074 billion (the reduced reporting limit) are eligible for reduced reporting, and must either file a deposit report annually or not at all. Of this group, those with total deposits greater than $6.6 million (but less than $1.074 billion) are required to file the FR 2910a report annually, while those with total deposits less than or equal to $6.6 million are not required to file a deposit report. A depository institution that manipulates its reporting, however, in an attempt to qualify for less frequent reporting or to reduce its reserve requirement may be required to report the FR 2900 on a weekly basis and maintain appropriate reserve balances with its Reserve Bank, regardless of its most recent panel assignment.

*Notice and Regulatory Flexibility Act.* The provisions of 5 U.S.C. 553(b) relating to notice of proposed rulemaking have not been followed in connection with the adoption of these amendments. The amendments involve expected, ministerial adjustments prescribed by statute and by the Board's policy concerning reporting practices. The increases in the reserve requirement exemption amount, the low reserve tranche, the deposit cutoff level, and the reduced reporting limit serve to reduce regulatory burdens on depository institutions. Accordingly, the Board finds good cause for determining, and so determines, that notice in accordance with 5 U.S.C. 553(b) is unnecessary. Consequently, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, do not apply to these amendments.

### List of Subjects in 12 CFR Part 204

Banks, banking, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Board is amending 12 CFR part 204 as follows:

## PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

■ 1. The authority citation for part 204 continues to read as follows:

**Authority:** 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

■ 2. Section 204.9 is revised to read as follows:

### § 204.9 Reserve requirement ratios.

The following reserve requirement ratios are prescribed for all depository institutions, banking Edge and agreement corporations, and United States branches and agencies of foreign banks:

| Category | Reserve requirement |
|---|---|
| Net transaction accounts: | |
| $0 to $6.6 million ... | 0 percent of amount. |
| Over $6.6 million and up to $45.4 million. | 3 percent of amount. |
| Over $45.4 million | $1,164,000 plus 10 percent of amount over $45.4 million. |
| Nonpersonal time deposits. | 0 percent. |
| Eurocurrency liabilities. | 0 percent. |

By order of the Board of Governors of the Federal Reserve System, October 1, 2003.

**Jennifer J. Johnson,**

*Secretary of the Board.*

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**BILLING CODE 6210–01–P**

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**DEPARTMENT OF THE TREASURY**

**Office of Thrift Supervision**

**12 CFR Parts 559, 562, and 563**

**[No. 2003–50]**

**RIN 1550–AB55**

## Savings Associations—Transactions With Affiliates

**AGENCY:** Office of Thrift Supervision, Treasury.

**ACTION:** Final rule.

**SUMMARY:** In December 2002, the Board of Governors of the Federal Reserve System (FRB) issued a final rule implementing sections 23A and 23B of the Federal Reserve Act (FRA). FRB's rule (Regulation W) combines statutory restrictions on transactions with affiliates with new and existing interpretations and exemptions. In today's final rule, the Office of Thrift Supervision (OTS) conforms its regulations on transactions with affiliates to Regulation W and implements additional restrictions imposed on savings associations under section 11(a) of the Home Owners' Loan Act (HOLA).

**DATES:** This final rule is effective November 6, 2003.

**FOR FURTHER INFORMATION CONTACT:** Karen A. Osterloh, Special Counsel, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office, or Donna Deale, Manager, (202) 906–7488, Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 11(a)(1) of the HOLA (12 U.S.C. 1468(a)(1)) applies sections 23A and 23B of the FRA (12 U.S.C. 371c and 371c–1) to every savings association "in the same manner and to the same extent" as if the savings association were a member bank of the Federal Reserve System.

Section 23A of the FRA imposes three major limitations on a member bank's (and its subsidiaries') transactions with affiliates. First, section 23A limits the amount of "covered transactions" with any single affiliate to no more than 10 percent of the member bank's capital stock and surplus. Covered transactions with all affiliates are limited to no more than 20 percent of the member bank's capital stock and surplus. A covered transaction includes a loan or extension of credit to an affiliate, a purchase of or investment in securities issued by an affiliate, a purchase of assets from an affiliate, the acceptance of securities issued by an affiliate as collateral security for a loan or extension of credit to any person or company, and the issuance of a guarantee, acceptance, or letter of credit on behalf of an affiliate.

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[2] Consistent with Board practice, the deposit cutoff level has been rounded to the nearest $0.1 million, while the reduced reporting limit has been rounded to the nearest $1 million.

Second, section 23A requires that all covered transactions between a member bank and its affiliates be on terms and conditions that are consistent with safe and sound banking practices and prohibits a member bank from purchasing low-quality assets from an affiliate. Finally, section 23A requires that a member bank's extensions of credit to affiliates and guarantees on behalf of affiliates be appropriately secured by a statutorily defined amount of collateral.

Section 23B of the FRA protects member banks by requiring that transactions between the bank (and its subsidiaries) and its affiliates occur on market terms—on terms and under circumstances that are substantially the same, or at least as favorable to the bank, as those prevailing at the time for comparable transactions with unaffiliated companies. Section 23B applies to covered transactions under section 23A, as well as other transactions, such as the sale of securities or other assets to an affiliate and the payment of money or the furnishing of services to an affiliate. Section 23B also prohibits certain purchases and acquisitions of securities by a member bank or its subsidiary subject to certain conditions, and prohibits certain advertisements or agreements that state or suggest that the member bank is responsible for the obligations of its affiliates.

In addition to the section 23A and 23B restrictions, section 11(a)(1) of the HOLA imposes two prohibitions on savings associations. First, a savings association may not make a loan or other extension of credit to any affiliate unless that affiliate is engaged only in activities that a bank holding company may conduct. In addition, no savings association may purchase or invest in securities issued by an affiliate, other than with respect to shares of a subsidiary. Section 11(a)(4) of the HOLA authorizes OTS to impose such additional restrictions on any transaction between a savings association and any affiliate as it determines to be necessary to protect the safety and soundness of the association.

OTS issued comprehensive rules implementing section 11(a) of the HOLA in 1991.[1] These rules, which were codified at 12 CFR 563.41 and 563.42 (2002), defined and clarified the application of sections 23A and 23B to savings associations and their subsidiaries, implemented the two prohibitions imposed under section 11(a) of the HOLA, and imposed additional restrictions and safeguards, as authorized by section 11(a)(4) of the HOLA.

FRB has statutory authority to issue regulations to administer and carry out the purposes of sections 23A and 23B of the FRA.[2] Until recently, FRB had not promulgated comprehensive regulations on this subject. Instead, FRB relied on a series of regulatory interpretations and informal staff guidance.[3] On December 12, 2002, FRB issued Regulation W, a comprehensive final rule implementing sections 23A and 23B of the FRA.[4] Regulation W incorporated many existing FRB interpretations, superseded certain outdated interpretations, exempted specific types of transactions, and implemented revisions to sections 23A and 23B contained in the Gramm-Leach-Bliley Act (GLBA).[5]

Regulation W does not, by its terms, apply to savings associations. However, because sections 23A and 23B apply to every savings association in the same manner and to the same extent as if the savings association were a member bank, OTS issued an interim final rule revising its regulations on transactions with affiliates to reflect Regulation W. 67 FR 77909 (Dec. 20, 2002). The OTS interim final rule had three goals:

- To incorporate all applicable provisions and exceptions prescribed by FRB in Regulation W;
- To provide guidance concerning the relationship between the additional prohibitions under section 11(a)(1) of the HOLA and Regulation W; and
- To set out the additional restrictions OTS imposes under section 11(a)(4) of the HOLA.

The interim rule cross referenced the substantive provisions contained in Regulation W; interpreted Regulation W to the extent necessary to apply these restrictions to savings associations; incorporated the prohibitions in section 11(a)(1) of the HOLA; and imposed various additional restrictions on savings associations under section 11(a)(4) of the HOLA.[6] The interim rule became effective April 1, 2003.

The comment period on the interim rule closed on February 18, 2003. OTS received comments from a savings association and from a representative of a savings association. Both commenters generally supported the interim rule.

## II. Discussion of Comments

### *A. Affiliates*

Regulation W defines the term "affiliate" to include parent companies (any company that controls the member bank); companies under common control with the member bank; companies under other types of common control; companies with interlocking directors, trustees or general partners; companies that are sponsored and advised on a contractual basis by the member bank or an affiliate; investment companies for which a member bank or any affiliate is an investment advisor; depository institution subsidiaries of a member bank; financial subsidiaries; companies held under merchant banking or insurance company investment authority; partnerships for which the member bank or an affiliate serves as general partner; subsidiaries of affiliates, and other companies that FRB deems to be an affiliate of the member bank. 12 CFR 223.2(a). This definition specifically excludes certain companies, including most subsidiaries of member banks. 12 CFR 223.2(b).

Commenters raised various issues regarding the scope of the definition of affiliate. These matters are discussed below.

### 1. Control

One of the fundamental concepts underlying the definition of affiliate is the concept of control. Regulation W states that control by a company or shareholder over another company means that:

- The company or shareholder, directly or indirectly, or acting through one or more other persons, owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other company.
- The company or shareholder controls in any manner the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the other company.
- The Board determines, after notice and opportunity for hearing, that the company or shareholder, directly or

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[1] 56 FR 34005 (July 25, 1991).

[2] 12 U.S.C. 371c(f), 371c-1(e).

[3] FRB codified some of these interpretations at 12 CFR 250.240 through 250.250 (2002).

[4] 67 FR 76560 (Dec. 12, 2002), codified at 12 CFR part 223 (2003).

[5] Pub. L. No. 106–102, 113 Stat. 1338 (1999).

[6] The interim final rule implemented only section 11(a) of the HOLA. It did not contain every statutory or regulatory restriction on transactions between savings associations and their affiliates.

For example, the rule did not address additional restrictions on transactions with affiliates that OTS may require as prompt corrective action under section 38(f)(2)(B) of the Federal Deposit Insurance Act (FDIA). 12 U.S.C. 1831o(f)(2)(B).

indirectly, exercises a controlling influence over the management or policies of the other company. 12 CFR 223.3(g)(1).

Regulation W also includes specific provisions addressing ownership or control of shares as a fiduciary, securities by a subsidiary, convertible instruments, and nonvoting equity securities. *See* 12 CFR 223.3(g)(2)–(5).

Until today, OTS's transactions with affiliates regulation included a more expansive concept of control than prescribed by the FRB in final Regulation W. Specifically, OTS's prior rule stated that a company or shareholder has control over another company if the company or shareholder, directly or indirectly, or acting through one or more other persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other company or if the company or shareholder would be deemed to control another company under § 574.4(a) or presumed to control the company under § 574.4(b). *See* 12 CFR 563.41(b)(3) (2002). OTS also applied its own concepts of control to define a subsidiary of a savings association. 12 CFR 563.41(b)(4)(2002). This definition stated that a subsidiary of a savings association is a company that is controlled by a savings association within the meaning of part 574.

The major substantive difference between the control definitions in the prior OTS rule and final Regulation W involved the application of certain OTS rebuttable presumptions of control from part 574. For example under these control presumptions, a company will control another if it owns between 10 percent and 25 percent of any class of a company's voting stock and one or more control factors is present.[7] Regulation W does not have similar provisions.[8]

The interim final rule continued to incorporate OTS concepts of control, but requested comment on whether the OTS definition of control was appropriate. One commenter addressed this issue and urged OTS to conform its rule more closely to Regulation W.

When OTS originally promulgated its transactions with affiliates rule in 1991, FRB had promulgated no rules interpreting the meaning of control under sections 23A and 23B. In the absence of such guidance, OTS defined control for transactions with affiliates consistently with other OTS rules addressing similar concepts. At the time, part 574 represented OTS's most current and comprehensive analysis of control issues. Most savings associations had some familiarity with the control concepts in part 574.

Now that FRB has issued final rules interpreting the definition of control for sections 23A and 23B it is difficult to articulate any regulatory purpose that would be furthered by continuing to prescribe a different definition. Applying part 574 control concepts to transactions with affiliates restricts savings associations in two ways. First, it broadens the application of the section 23A and 23B restrictions for thrifts in comparison to similarly situated member banks. OTS does not believe that savings association transactions with the additional "affiliates" reached by the OTS control definitions raise safety and soundness concerns that necessitate treating them differently from similarly situated member banks. Indeed, the application of the OTS definition of control leads to anomalous results because a company with identical relationships to a bank and a savings association in the same bank holding company structure could have been an affiliate of the savings association under the OTS interim rule, but not an affiliate of the member bank under Regulation W.

Second, the application of the part 574 control concepts also expands the scope of the additional prohibitions imposed under section 11 of the HOLA. These prohibitions apply only to savings associations and were imposed to reflect the fact that affiliates of savings associations engage in a greater range of activities than affiliates of banks, which may expose the savings association to greater risk.[9] There is no indication that Congress was concerned about the risks posed by relationships with companies that do not meet the definition of affiliate in section 23A. Indeed, the statute appears to contemplate that OTS would use the same definitions of "control" and "affiliate" as set forth in section 23A and Regulation W.[10] Accordingly, to promote consistency and equal treatment of insured depository institutions to the maximum extent possible, OTS has revised the final rule to use Regulation W control concepts.

Certain companies will no longer be considered to be savings association affiliates under the revised definitions in the final rule. OTS may, nonetheless, continue to treat such a company as an affiliate if it has a relationship with a savings association or any affiliate of the savings association such that covered transactions by the savings association with the company may be affected by the relationship to the detriment of the savings association, or where the company presents a risk to the safety and soundness of the savings association.[11]

While certain companies will no longer be subject to the full range of restrictions and prohibitions under section 11 of the HOLA, some restrictions will continue to apply. For example, transactions between a savings association and a non-affiliate are subject to the "market terms" standards under section 23B, if an affiliate of the savings association has a financial interest in the non-affiliate. Thus, the market terms requirements will continue to apply to these entities.

As a related matter, OTS has identified an area where the OTS control rules may not have been as rigorous as final Regulation W. The definition of control in final Regulation W includes two provisions, not specifically addressed in section 23A, which discuss the treatment of convertible securities and nonvoting equity securities.[12] While the OTS control rules address similar concepts, the two rules are not identical.[13] As a

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[7] 12 CFR 574.4(b)(1)(i). The eight control factors are described at 12 CFR 574.4(c) and include situations where an acquiror would: (1) be one of the two largest holders of any class of voting stock; (2) hold more than 25 percent of the total stockholders' equity; or (3) hold more than 35 percent of the combined debt securities and stockholders' equity.

[8] OTS's rule is more expansive in other ways. For example, under 12 CFR 574.4(b)(1)(ii) an acquiror has rebuttable control of a company if it directly or indirectly owns more than 25 percent of any class of stock and is subject to a control factor listed at 12 CFR 574.4(c). FRB does not have a similar provision.

[9] H.R. Rep. No. 101–122, at 408 (1989).

[10] Section 11(a)(3) states: Any company that would be an affiliate (as defined in sections 23A and 23B of the Federal Reserve Act [12 U.S.C. 371c and 371c-1]) of any savings association if such savings association were a member bank (as such term is defined in such Act) shall be deemed to be an affiliate of such savings association for purposes of [section 11(a)(1) of the HOLA].

[11] Final rule at paragraph (b)(3), which incorporates 12 CFR 223.2(a)(12).

[12] 12 CFR 223.3(g)(4) and (5).

[13] Specifically, Regulation W creates a rebuttable presumption that states "[a] company or shareholder that owns or controls instruments (including options or warrants) that are convertible or exercisable, at the option of the holder or owner, into securities" will be deemed to control the securities. 12 CFR 223.3(g)(4). Options or warrants are subject to the rebuttable presumption even though the holder may not exercise the option or warrant immediately. 67 FR 76560, at 76568. OTS's comparable provision at 12 CFR 574.2(u)(3) includes convertible securities as voting stock where the holder has "the preponderant economic risk in the underlying voting stock."

In addition, final Regulation W establishes a rebuttable presumption that control includes ownership or control of 25 percent or more of a company's "equity" capital. 12 CFR 223.3(g)(5). The comparable references to ownership of equity capital in OTS's rules either: (1) Refer to the contribution of more than 25 percent of the capital result, certain entities could have been affiliates under Regulation W, but not affiliates under the OTS interim final rules. By adopting the FRB's definition of control, the OTS will conform its rules regarding the treatment of these securities.

Several regulations cross-reference the definition of "affiliate" at § 563.41. These rules include: 12 CFR 560.93(a) (loans to one borrower restrictions); 562.4 (regulatory reporting standards); and 563.142 (capital distributions). As a result of changes in this final rule, the coverage of these other rules also will change.[14]

2. Financial Subsidiaries

Regulation W defines affiliate to include a financial subsidiary of a member bank. 12 CFR 223.2(a)(8). A financial subsidiary generally is any subsidiary of a member bank that "engages, directly or indirectly, in any activity that national banks are not permitted to engage in directly or that is conducted on terms and conditions that differ from those that govern the conduct of such activity by national banks."[15]

In the preamble to the interim rule, OTS addressed whether a savings association subsidiary would be considered to be financial subsidiary and, thus, an affiliate under section 23A of the FRA. OTS concluded that there is no statutory or supervisory basis for applying affiliate restrictions to savings association subsidiaries by classifying them as financial subsidiaries. The one commenter who addressed this issue agreed with OTS's conclusion regarding financial subsidiaries.

For the reasons stated in the preamble to the interim rule, the final rule at § 563.41(b) continues to state that savings association subsidiaries do not meet the statutory definition of financial subsidiary. As a result, Regulation W references to financial subsidiaries do not apply.

*B. Prohibition of Loans and Extensions of Credit to Affiliates Engaged in Non-Bank Holding Company Activities*

As noted above, section 11 of the HOLA applies two prohibitions to a savings association's transactions with its affiliates in addition to the section 23A and 23B limitations. Commenters raised several issues regarding OTS's implementation of section 11(a)(1)(A) of the HOLA, which prohibits a savings association from making a loan or other extension of credit to an affiliate unless the affiliate is engaged only in activities that a bank holding company may conduct.

1. Reverse Repurchase Agreements

The interim rule retained a provision on repurchase agreements that was adopted in a final rule published August 13, 1998 (63 FR 43292). Specifically, the interim rule states that a purchase of assets that is subject to the affiliate's agreement to repurchase (reverse repurchase agreement)[16] is a loan or extension of credit for the purposes of the section 11 loan prohibition. As a result, a savings association may not generally enter into reverse repurchase agreements with an affiliate that engages in non-bank holding company activities. The interim rule exempted certain agreements that involve United States Treasury securities and that meet other specified requirements. OTS specifically requested comment whether it should retain the repurchase agreement provisions.

Both commenters responded to this request. One urged OTS to delete the repurchase agreement prohibition. The commenter asserted that "loan or extension of credit," as used in section 11 of the HOLA, does not encompass reverse repurchase agreements. At a minimum, both commenters urged OTS to retain the current exemption for transactions in United States Treasury securities.

Upon further review, OTS has decided to delete the repurchase agreement prohibition. In the preamble to the 1998 rule, OTS noted that section 11 of the HOLA does not define "loan or other extension of credit," and does not compel a legal conclusion that purchases of assets that are subject to an affiliate's agreement to repurchase are, or are not, prohibited by statute.

While the text of section 11 does not "compel" either legal conclusion, upon further review, OTS now believes that other factors strongly suggest that Congress did not intend for such transactions to be included as loans or extensions of credit under this section. OTS has two bases for this conclusion.

First, the definition of "covered transaction" in section 23A of the FRA treats repurchase agreements as asset purchases, rather than as loans or extensions of credit. Specifically, section 23A(b)(7)(C) of the FRA defines purchases of assets to include "assets subject to an agreement to repurchase" rather than a loan or extension of credit under section 23A(b)(7)(A). Based upon the language of the statute, FRB staff has informally indicated that it considers reverse repurchase agreements to be purchases of assets and not extensions of credit.[17]

Second, the legislative history of the statutes governing thrift transactions with affiliates reinforces the conclusion that reverse repurchase agreements should not be treated as loans or extensions of credit under section 11(a)(1)(A). Before the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101–73 (FIRREA), a savings association's transactions with affiliates were governed by section 408 of the National Housing Act (NHA). 12 U.S.C. 1730a. Under section 408(p) of the NHA, thrift transactions with affiliates engaged only in bank holding company activities were subject to sections 23A and 23B of the FRA. Section 408(d) of the NHA addressed transactions with affiliates engaged in non-bank holding company activities. This section specifically prohibited six types of transactions and, like current section 23A, listed loans and extensions of credit separately from the "purchase [of] securities or other assets or obligations under repurchase agreement from any affiliate." Compare section 408(d)(3) with (d)(4). The successor statute addressing transactions with affiliates engaged in non-bank holding company activities at section 11(a)(1)(A) of the HOLA, however, specifically prohibits only transactions within one of the original six categories—loans and extensions of credit. This suggests that Congress did not intend to prohibit transactions with affiliates that engage in non-bank holding companies activities to the extent that the transactions fell within one of the other five categories.

The 1998 rule on repurchase agreements treated reverse repurchase

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of the company and, thus, address only direct purchases from an issuer rather than secondary market purchases (12 CFR 574.4(a)(2)(vi)); or (2) require the controlling person to also hold at least 10 percent of any class of voting stock or 25 percent any class of stock (12 CFR 574.4(b)(1)(i) and (ii), and 574.4(c)(2)).

[14] The definition of "subsidiary" in OTS's loans to insider rule at 12 CFR 563.43(d) includes cross-references to the definitions of "control" and "subsidiary' in 12 CFR 563.41. OTS is examining whether it should revise § 563.43(d) to more closely follow the FRB's loan's to insiders rule at 12 CFR part 215, and may undertake a separate rulemaking proposing changes. To avoid confusion to the industry in the interim, OTS has not revised the substance of this definition.

[15] 12 CFR 223.3(p). FRB has provided several exceptions to this definition.

[16] A sale of assets subject to an agreement to repurchase is known as a "reverse repurchase agreement" when a bank or thrift is the purchaser of the assets. *See* M. Stigum, The Repo and Reverse Markets 4 (1989).

[17] As a general rule, the interim rule applies all Regulation W definitions to the additional section 11 prohibitions. The treatment of repurchase agreements was an exception to this general rule.

agreements as loans because these transactions bear some of the economic characteristics of a loan.[18] However, the typical reverse repurchase agreement structured in conformity with general market practices has economic attributes that distinguish it from other loans and extensions of credit. For example, such agreements typically involve an institution's purchase of a security, subject to an agreement by the counterparty to repurchase the same or a similar security at a fixed price at a later date. In these transactions, the "purchaser" of the securities takes title to the securities and can trade, sell or pledge the security during the term of the contract. The reverse repurchase agreement merely imposes a contractual obligation to deliver identical securities on the settlement date set by the contract. This unique feature makes it far more flexible than a standard collateralized loan, where the lender cannot obtain access to the collateral in the absence of a default.[19]

OTS may, of course, impose additional restrictions on transactions with affiliates under section 11(a)(4) of the HOLA if it determines that the restriction is necessary to protect the safety and soundness of savings associations. OTS believes that the quantitative limits, safety and soundness requirements, and low-quality asset prohibitions contained in section 23A, and the arms-length requirements in section 23B sufficiently address the safety and soundness concerns raised by repurchase agreements. To the extent that a particular savings association may attempt to evade the lending prohibition through artful restructuring of a prohibited loan as a reverse repurchase agreement, § 563.41(c)(1) (discussed below) provides OTS with sufficient authority to address the circumvention. Accordingly, the final rule treats reverse repurchase agreements as purchases of assets, and not as extensions of credit.

### 2. Attribution of Transactions and Activities

#### a. Third-party Attribution Rule

Sections 23A(a)(2) and 23B(a)(3) of the FRA require a member bank (and, thus, a savings association) to treat a transaction with any person as a transaction with an affiliate to the extent that the proceeds are used for the benefit of, or transferred to, an affiliate.[20] The text of section 11(a)(1)(A) of the HOLA does not specify a similar third party attribution requirement for the loan prohibition, and OTS has declined to infer such a requirement. To clarify this matter, the interim rule specifically stated that a loan or extension of credit to a third party is not prohibited under section 11(a)(1)(A) of the HOLA "merely because proceeds of the transaction are used for the benefit of, or transferred to, an affiliate." Interim rule at § 563.41(c)(1).

The preamble to the interim rule noted that OTS may, nonetheless, attribute a loan to a third party to an affiliate, for example, where a savings association attempts to circumvent the loan prohibition through sham transactions.[21] OTS requested comment whether it should include this additional guidance in the final rule. One commenter responded asserting that further guidance was not needed.

The final regulation continues to state that a loan or extension of credit to a third party is not prohibited under section 11(a)(1)(A) merely because proceeds of the transaction are used for the benefit of, or transferred to, an affiliate. However, OTS is concerned that savings associations and their affiliates may misinterpret this provision and incorrectly conclude that the third party attribution rule will not apply to the loan prohibition under any circumstances. Accordingly, OTS clarified the final rule to state that OTS may inform the savings association that a particular transaction is prohibited if OTS determines that the transaction is, in substance, a loan or extension of credit to an affiliate that is engaged in non-bank holding company activities, or OTS has other supervisory concerns concerning the transaction. OTS will make such a determination, for example, if a loan is a prearranged step in a series of transactions designed to channel funds to an affiliate engaged in non-bank holding company activities, or is otherwise designed to circumvent the loan prohibition. If OTS determines that a particular transaction is prohibited it may direct the savings association to divest the loan, unwind the transaction, or take other appropriate action.

#### b. Attribution of Activities Among Affiliates

When OTS originally issued its transactions with affiliates rule in 1991, it considered whether a savings association would be barred from extending credit to an affiliate that directly engaged only in activities permissible for a bank holding company, but the affiliate owned or controlled subsidiaries engaged in impermissible activities. OTS determined that activities must be attributed from a subsidiary to a parent affiliate in a vertical ownership chain up to, but not including, a controlling holding company in the corporate structure.[22] The preamble to the 1991 rule suggests that this attribution determination was intended to prevent savings associations from evading the section 11 loan prohibition by structuring transactions through "strawmen" affiliates.[23]

OTS specifically requested comment whether this interpretation should be included in the final rule. One commenter urged OTS to withdraw the guidance.

Upon reconsideration, OTS has decided to withdraw its 1991 guidance. Section 11 does not specifically require the attribution of activities from affiliated subsidiaries to their parent companies and, in the absence of information suggesting that this interpretation is necessary to protect the safety and soundness of savings associations, OTS is disinclined to interpret section 11 in a way that imposes additional burdens on savings associations. Rather than unduly restrict all savings associations, OTS believes that it can best address attempts at circumvention on a case-by-case basis. As noted above, the final rule states that OTS may prohibit a transaction if it determines that the transaction is, in substance, a loan or extension of credit to an affiliate that is engaged in non-bank holding company activities or OTS has other supervisory concerns concerning the transaction. Under this provision, OTS will prohibit a loan, for example, if it is a prearranged step in a series of transactions designed to channel funds to an affiliate engaged in non-bank holding company activities, or is otherwise designed to circumvent the loan prohibition.

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[18] The savings association transfers funds to the affiliate, expecting to be repaid when the company repurchases the assets. The purchased assets essentially amount to collateral because the savings association is required to return the assets at the time of repurchase. The savings association earns a pre-determined amount under the agreement. The principal risk to the savings association and the deposit insurance fund is credit risk—the possibility that the affiliate will default on its obligation to make the repurchase. These types of agreements are generally considered to be the functional equivalent of a loan. *See* amendments to Federal Financial Institution Examination Counsel Policy Statement on Repurchase Agreements of Depository Institutions with Securities Dealers and Others (FFIEC Policy Statement), 63 FR 6935 (Feb. 11, 1998).

[19] In addition, the bankruptcy code permits the purchaser under the agreement to liquidate securities without being subject to an automatic stay or similar delay. 11 U.S.C. 362(b)(7).

[20] Regulation W addresses the "third party attribution rule" at 12 CFR 223.16 and 223.52(b).

[21] 67 FR 77909, at 77914. Op. OTS Chief Counsel (Dec. 22, 1991) and Op. OTS Chief Counsel (Mar. 13, 1992).

[22] 56 FR 34005, at 34009. *See* also, Op. OTS Chief Counsel (Nov. 13, 1990). Activities of a parent were not, however, attributed downward to its subsidiaries.

[23] *See* 56 FR 34005, at 34008. (Discussion of attribution of transactions).

### *C. Other Matters*

OTS also wishes to clarify other guidance contained in its 1991 rulemaking. In the preamble to the 1991 final rule, OTS considered whether, for the purposes of calculating a savings association's aggregate amount of covered transactions with a particular affiliate, the savings association must include covered transactions with subsidiaries of the affiliate. To prevent savings associations from circumventing the 10 percent limit imposed under section 23A, OTS concluded that attribution of transactions was appropriate and necessary. Accordingly, OTS stated that, when computing the aggregate amount of transactions with a particular affiliate, a savings association must aggregate the amount of its covered transactions with all subsidiaries directly or indirectly controlled by the affiliate. OTS did not, however, require a savings association to attribute transactions to any holding company that controls the savings association or to attribute transactions by a parent downward to any subsidiary.[24]

FRB has not issued similar guidance regarding the attribution of transactions. To the contrary, the preamble to final Regulation W states that the 10 percent limit would prohibit a bank from engaging in a covered transaction with an affiliate only when the aggregate amount of covered transactions between the bank and that affiliate would exceed 10 percent of the bank's capital. 67 FR 76560, at 76572. Nothing in section 11 of the HOLA requires the attribution of transactions among affiliates.[25] OTS may impose additional restrictions on savings associations if it determines that a restriction is necessary to protect the safety and soundness of savings associations. However, there is no reason to impose additional burdens on savings associations, particularly in light of other safeguards in sections 23A and 23B, including the overall 20 percent quantitative limits, qualitative restrictions, and other supervisory tools available to OTS.[26]

Finally, in addition to the changes discussed above, OTS has made technical and clarifying changes to the interim rule. For example, the final rule clarifies that a savings association must comply with sections 23A and 23B of the FRA and Regulation W "as if it were a member bank," and indicates that most references to the FRB or appropriate bank federal banking agency in Regulation W should be read to refer only to OTS.[27] The latter change clarifies that OTS, rather than the FRB, has the responsibility for administering and enforcing transaction with affiliates restrictions with respect to savings associations. *See* 12 U.S.C. 1468(c).

The final rule also clarifies Regulation W's definition of "well capitalized." The sole use of this definition is in 12 CFR 223.41(d)(7), which states that a holding company and all of its subsidiary depository institutions must be "well capitalized" in order for a member bank to qualify for the internal corporate reorganization transaction exception. Section 223.3(kk) states that well capitalized has the same meaning as in 12 CFR 225.2, which prescribes various capital ratios and other capital-related requirements for bank holding companies, insured depository institutions, and uninsured depository institutions.

This requirement is not meaningful for many savings and loan holding companies. Although the activities of holding companies regulated by the FRB have expanded since GLBA, some savings and loan holding companies currently engage in a much broader range of activities. Because the universe of thrift holding companies is so diverse, the adequacy of holding company capital cannot be determined on the basis of a one-size-fits-all numeric formula or standard. Instead, OTS has found that specified capital ratios can be simultaneously too lax to support the activities of some holding companies and too restrictive for others. To recognize the diversity of the holding company universe, OTS does not impose a single consolidated or unconsolidated numerical capital requirement or ratio applicable to all holding companies. Rather, its analysis of the capital adequacy of savings and loan holding companies is a case-by-case process that reflects the overall risk profile of the organization.

To require savings associations and their holding companies to engage in a burdensome exercise merely to comply with specifications designed to address a more homogenous universe of holding companies, would serve no purpose. Rather, such a requirement would unduly obstruct some savings associations' ability to take advantage of the corporate reorganization exception, contrary to the stated intent of the FRB.[28] In addition, other savings and loan holding companies associations might attempt to claim the exception, even though their capital would be less than the amount OTS believed necessary to support their higher risk. Accordingly, to apply the internal corporate reorganization exception to savings associations in the same manner and to the same extent as to member banks OTS has clarified the "well capitalized" definition in light of the purposes of the exemption.

The stated purpose of the well capitalized requirement is to "prevent banking companies from abusing their banking units in reorganization transactions"[29] by ensuring that holding companies engaging in such transactions are appropriately capitalized and remain appropriately capitalized following the transaction. In light of the diverse activities engaged in by savings and loan holding companies, OTS believes that its case-by-case capital analysis best serves this goal. Accordingly, the final rule clarifies that for a savings and loan holding company, well-capitalized means that a holding company significantly exceeds OTS expectations for the amount of capital needed to adequately support the holding company's risk profile, as determined by OTS on a case-by-case basis. OTS emphasizes that this clarification does not substitute a relaxed standard for savings associations that avail themselves of the corporate reorganization exception. Rather, the clarification is intended to apply Regulation W meaningfully to savings associations while simultaneously recognizing the differences between bank and savings and loan holding companies and the goals of the corporate reorganization exemption.[30]

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[24] 56 FR 34005, at 34008.

[25] For purposes of determining whether an institution has reached the 10 and 20 percent quantitative limits on covered transactions, however, the covered transactions of a depository institution and its non-affiliate subsidiaries are combined.

[26] OTS has received a few inquiries concerning the continuing validity of previously issued opinion letters on transactions with affiliates. The inquirers observed that some of this guidance may be invalid based on the interpretations announced in final Regulation W. OTS will continue to handle these inquiries on a case-by-case basis and will examine whether other appropriate action is necessary. In the interim, savings associations that continue to rely on these prior opinions should carefully review whether the opinions have been affected by Regulation W or this final rule, and should consult with OTS if they have any questions.

[27] The references to the FRB at 12 CFR 223.2(a)(9)(iv), 223.3(h), 223.14(c)(4), 223.43, and 223.55 are unchanged.

[28] 67 FR 76560, at 76562 fn. 13 ("An insured savings association * * * may take advantage of Regulation W's exemptions as if it were a member bank.")

[29] 67 FR 76560, at 76590.

### III. Executive Order 12866

The Director of OTS has determined that this rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

### IV. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) does not apply to a rule for which an agency is not required to publish a notice of proposed rulemaking. 5 U.S.C. 603. In issuing the interim rule, OTS concluded, for good cause, that it was not required to publish a notice of proposed rulemaking. Accordingly, the RFA does not require an initial or final regulatory flexibility analysis.

Nonetheless, OTS considered the likely impact of this final rule on small businesses and believes that the rule will not have a significant impact on a substantial number of small entities. OTS has had comprehensive regulations implementing section 11 of the HOLA since 1991. Today's final rule updates these provisions to incorporate Regulation W, interprets Regulation W to the extent necessary to apply the FRB rule to savings associations, clarifies the relationship between section 11(a)(1) of the HOLA and Regulation W, and sets out the additional restrictions imposed under section 11(a)(4) of the HOLA. In light of these preexisting rules, OTS does not believe that the final rule will significantly increase the applicable burdens for small or large savings associations. Accordingly, a regulatory flexibility analysis is not required.

### V. Unfunded Mandates Act of 1995

The Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act) applies only when an agency is required to issue a notice of proposed rulemaking or issues a final rule for which a notice of proposed rulemaking was published. 2 U.S.C. 1532. As noted above, OTS determined that a notice of proposed rulemaking was not required for the interim final rule. Accordingly, OTS concluded that the Unfunded Mandates Act does not require an analysis of this final rule.

Nonetheless, OTS has considered the impact of the final rule under the Unfunded Mandates Act and has concluded that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. OTS has had comprehensive regulations implementing section 11 of the HOLA since 1991. Today's final rule merely updates these provisions to incorporate Regulation W, interprets Regulation W to the extent necessary to apply the FRB rule to savings associations, interprets Regulation W to the extent necessary to apply the FRB rule to savings associations, clarifies the relationship between section 11(a)(1) of the HOLA and Regulation W, and sets out the additional restrictions imposed under section 11(a)(4) of the HOLA. In light of these preexisting rules, OTS does not believe that the final rule will significantly increase the applicable burdens for savings associations and will not result in increased expenditures by these institutions. Accordingly, OTS did not prepare a budgetary impact statement or specifically address the regulatory alternatives considered.

### VI. Effective Date

Under 12 U.S.C. 4802(b), final rules that impose additional reporting, disclosure, or other new requirements on insured depository institutions must take effect on the first day of a calendar quarter that begins on or after the date of publication. The Administrative Procedure Act (5 U.S.C. 553(d)(APA) provides that a final rule cannot be made effective less than 30 days after its publication. Together, these two statutes would require OTS to establish a January 1, 2004 effective date for this final rule.

Both statutes, however, permit the OTS to find good cause for establishing an earlier effective date. Today's rule changes generally relieve burdens or recognize exceptions to requirements imposed under the interim final rule. For example, the final rule revises OTS's definition of control, generally narrowing the definition of affiliate; removes repurchase agreements from the scope of the section 11 loan prohibition; and clarifies previously issued guidance on the attribution of activities and the calculation of quantitative limits. While the final rule applies slightly broader presumptions of control for convertible securities and nonvoting equity securities and, thus, expands the definition of affiliate in these areas, OTS believes that this change should have only a marginal impact on the regulatory burdens imposed on savings associations as a whole. Accordingly, OTS finds good cause not to delay making this rule effective until the calendar quarter beginning January 1, 2004.

On the other hand, institutions will need some time to understand and adapt to the revised final rule. Consistent with the requirements of the APA, OTS believes that it is appropriate to delay the effective date of this rule for at least 30 days from publication. The effective date of this rule will be November 6, 2003.

### VII. Paperwork Reduction Act of 1995

The information collection requirements in the OTS rules were previously approved under OMB control number 1550–0078. The final rule incorporates these requirements at § 563.41(c)(3) and (4), and does not make any changes that materially affect the overall burden of compliance.

### List of Subjects

*12 CFR Part 559*

Reporting and recordkeeping requirements, Savings associations, Subsidiaries.

*12 CFR Part 562*

Accounting, Reporting and recordkeeping requirements, Savings associations.

*12 CFR Part 563*

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

■ Accordingly, the Office of Thrift Supervision adopts as final the interim rule published on December 20, 2002 at 67 FR 77909, amending parts 559, 562, and 563 in Title 12, Chapter V, Code of Federal Regulations, with the following changes:

## PART 559—SUBORDINATE ORGANIZATIONS

■ 1. The authority citation for part 559 continues to read as follows:

**Authority:** 12 U.S.C. 1462, 1462a, 1463, 1464, 1828.

■ 2. Amend § 559.3 by revising paragraph (l) to read as follows:

**§ 559.3 What are the characteristics of, and what requirements apply to, subordinate organizations of Federal savings associations?**

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[30] OTS is aware that the FRB also defined well capitalized with respect to a "holding company that is not a bank holding company" by reference to the capital requirements at § 225.2. By its own terms, Regulation W applies only to member banks. 67 FR 76560, at 76561. A holding company that is not a bank holding company would include, for example, holding companies of OCC-chartered credit card companies or trust companies.

| | Operating subsidiary | Service corporation |
|---|---|---|
| * * * | * * * | * * * |
| (l) How do the transactions with affiliates (TWA) regulations (§ 563.41 of this chapter) apply? | (1) Section 563.41 of this chapter explains how TWA applies. Generally, an operating subsidiary is not an affiliate, unless it is a depository institution; is directly controlled by another affiliate of the savings association or by shareholders that control the savings association; or is an employee stock option plan, trust, or similar organization that exists for the benefit of shareholders, partners, members, or employees of the savings association or an affiliate. A non-affiliate operating subsidiary is treated as a part of the savings association and its transactions with affiliates of the savings association are aggregated with those of the savings association. | (2) Section 563.41 of this chapter explains how TWA applies. Generally, a service corporation is not an affiliate, unless it is a depository institution; is directly controlled by another affiliate of the savings association or by shareholders that control the savings association; or is an employee stock option plan, trust, or similar organization that exists for the benefit of shareholders, partners, members, or employees of the savings association or an affiliate. If a savings association directly or indirectly controls a service corporation and the service corporation is not otherwise an affiliate under § 563.41 of this chapter, the service corporation is treated as a part of the savings association and its transactions with affiliates of the savings association are aggregated with those of the savings association. |
| * * * | * * * | * * * |

## PART 563—SAVINGS ASSOCIATIONS—OPERATIONS

■ 3. The authority citation for part 563 continues to read as follows:

**Authority:** 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831o, 3806; 42 U.S.C. 4106.

■ 4. Revise § 563.41 to read as follows:

**§ 563.41 Transactions with affiliates.**

(a) *Scope.* (1) This section implements section 11(a) of the Home Owners' Loan Act (12 U.S.C. 1468(a)). Section 11(a) applies sections 23A and 23B of the FRA (12 U.S.C. 371c and 371c1) to every savings association in the same manner and to the same extent as if the association were a member bank; prohibits certain types of transactions with affiliates; and authorizes OTS to impose additional restrictions on a savings association's transactions with affiliates.

(2) For the purposes of this section, "savings association" is defined at section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), and also includes any savings bank or any cooperative bank that is a savings association under 12 U.S.C. 1467a(l). A non-affiliate subsidiary of a savings association as described in paragraph (b)(11) of this section is treated as part of the savings association.

(b) *Sections 23A and 23B of the FRA/Regulation W.* A savings association must comply with sections 23A and 23B of the Federal Reserve Act and the implementing regulations at 12 CFR part 223 (Regulation W) as if it were a member bank, except as described in the following chart. In addition, a savings association should read all references to "the Board" or "appropriate federal banking agency" to refer only to "OTS," except for references at 12 CFR 223.2(a)(9)(iv), 223.3(h), 223.14(c)(4), 223.43, and 223.55.

| Provision of Regulation W | Application |
|---|---|
| (1) 12 CFR 223.1—Authority, purpose, and scope | Does not apply. Section 563.41(a) addresses these matters. |
| (2) 12 CFR 223.2(a)(8)—"Affiliate" includes a financial subsidiary | Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary. |
| (3) 12 CFR 223.2(a)(12)—Determination that "affiliate" includes other types of companies. | Read to include the following statement: "Affiliate also includes any company that OTS determines, by order or regulation, to present a risk to the safety and soundness of the savings association." |
| (4) 12 CFR 223.2(b)(1)(ii)—"Affiliate" includes a subsidiary that is a financial subsidiary. | Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary. |
| (5) 12 CFR 223.3(d)—Definition of "capital stock and surplus." | Does not apply. Capital stock and surplus means "unimpaired capital and unimpaired surplus," as defined in 12 CFR 560.93(b)(11). |
| (6) 12 CFR 223.3(h)(1)—Section 23A covered transactions include an extension of credit to the affiliate. | Read to incorporate § 563.41(c)(1), which prohibits loans or extensions of credit to an affiliate, unless the affiliate is engaged only in the activities described at 12 U.S.C. 1467a(c)(2)(F)(i), as defined in § 584.2–2 of this chapter. |
| (7) 12 CFR 223.3(h)(2)—Section 23A covered transactions include a purchase of or investment in securities issued by an affiliate. | Read to incorporate § 563.41(c)(2), which prohibits purchases and investments in securities issued by an affiliate, other than with respect to shares of a subsidiary. |
| (8) 12 CFR 223.3(k)—Definition of "depository institution." | Read to include the following statement: "For the purposes of this definition, a non-affiliate subsidiary of a savings association is treated as part of the depository institution." |
| (9) 12 CFR 223.3(p)—Definition of "financial subsidiary." | Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary. |
| (10) 12 CFR 223.3(w)—Definition of "member bank." | Read to include the following statement: "Member bank also includes a savings association. For purposes of this definition, a non-affiliate subsidiary of a savings association is treated as part of the savings association." |

| Provision of Regulation W | Application |
|---|---|
| (11) 12 CFR 223.3(aa)—Definition of "operating subsidiary." | Does not apply. Other OTS regulations include a conflicting definition of this same term. Instead, OTS uses the phrase "non-affiliate subsidiary." A non-affiliate subsidiary is a subsidiary of a savings association other than a subsidiary described at 12 CFR 223.2(b)(1)(i), (iii) through (v). |
| (12) 12 CFR 223.3(ii)—Definition of "subsidiary." | Read to include the following statement: "A subsidiary of a savings association means a company that is controlled by the savings association." |
| (13) 12 CFR 223.3(kk)—Definition of "well capitalized." | Read to include the following statement: "For a savings and loan holding company, however, well-capitalized means that the holding company significantly exceeds OTS expectations for the amount of capital needed to adequately support the holding company's risk profile, as determined by OTS on a case-by-case basis." |
| (14) 12 CFR 223.31—Application of section 23A to an acquisition of an affiliate that becomes an operating subsidiary. | Read to refer to "a non-affiliate subsidiary" instead of "operating subsidiary." |
| (15) 12 CFR 223.32—Rules that apply to financial subsidiaries of a bank. | Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary. |
| (16) 12 CFR 223.42(f)(2)—Exemption for purchasing certain marketable securities. | Read to refer to "Thrift Financial Report" instead of "Call Report." References to "state member bank" are unchanged. |
| (17) 12 CFR 223.42(g)(2)—Exemption for purchasing municipal securities. | Read to refer to "Thrift Financial Report" instead of "Call Report." References to "state member bank" are unchanged. |
| (18) 12 CFR 223.61—Application of sections 23A and 23B to U.S. branches and agencies of foreign banks. | Does not apply to savings associations or their subsidiaries. |

(c) *Additional prohibitions and restrictions.* A savings association must comply with the additional prohibitions and restrictions in this paragraph. Except as described in paragraph (b) of this section, the definitions in 12 CFR part 223 apply to these additional prohibitions and restrictions.

(1) *Loans and extensions of credit.* (i) A savings association may not make a loan or other extension of credit to an affiliate, unless the affiliate is solely engaged in the activities described at 12 U.S.C. 1467a(c)(2)(F)(i), as defined in § 584.2–2 of this chapter. A loan or extension of credit to a third party is not prohibited merely because proceeds of the transaction are used for the benefit of, or are transferred to, an affiliate.

(ii) If OTS determines that a particular transaction is, in substance, a loan or extension of credit to an affiliate that is engaged in activities other than those described at 12 U.S.C. 1467a(c)(2)(F)(i), as defined in § 584.2–2 of this chapter, or OTS has other supervisory concerns concerning the transaction, OTS may inform the savings association that the transaction is prohibited under this paragraph (c)(1), and require the savings association to divest the loan, unwind the transaction, or take other appropriate action.

(2) *Purchases or investments in securities.* A savings association may not purchase or invest in securities issued by any affiliate other than with respect to shares of a subsidiary. For the purposes of this paragraph (c)(2), subsidiary includes a bank and a savings association.

(3) *Recordkeeping.* A savings association must make and retain records that reflect, in reasonable detail, all transactions between the savings association and its affiliates and any other person to the extent that the proceeds of a transaction are used for the benefit of, or transferred to, an affiliate. At a minimum, these records must:

(i) Identify the affiliate;

(ii) Specify the dollar amount of the transaction and demonstrate that this amount is within the quantitative limits in 12 CFR 223.11 and 223.12, or that the transaction is not subject to those limits;

(iii) Indicate whether the transaction involves a low-quality asset;

(iv) Identify the type and amount of any collateral involved in the transaction and demonstrate that this collateral meets the requirements in 12 CFR 223.14 or that the transaction is not subject to those requirements;

(v) Demonstrate that the transaction complies with 12 CFR part 223, subpart F or that the transaction is not subject to those requirements;

(vi) Demonstrate that all loans and extensions of credit to affiliates comply with paragraph (c)(1) of this section; and

(vii) Be readily accessible for examination and supervisory purposes.

(4) *Notice requirement.* (i) OTS may require a savings association to notify the agency before the savings association may engage in a transaction with an affiliate or a subsidiary (other than exempt transactions under 12 CFR part 223). OTS may impose this requirement if:

(A) The savings association is in troubled condition as defined at § 563.555 of this part;

(B) The savings association does not meet its regulatory capital requirements;

(C) The savings association commenced *de novo* operations within the past two years;

(D) OTS approved an application or notice under 12 CFR part 574 involving the savings association or its holding company within the past two years;

(E) The savings association entered into a consent to merge or a supervisory agreement within the past two years; or

(F) OTS or another banking agency initiated a formal enforcement proceeding against the savings association and the proceeding is pending.

(ii) OTS must notify the savings association in writing that it has imposed the notice requirement and must identify the circumstance listed in paragraph (c)(4)(i) of this section that supports the imposition of the notice requirement.

(iii) If OTS has imposed the notice requirement under this paragraph, a savings association must provide a written notice to OTS at least 30 days before the savings association may enter into a transaction with an affiliate or a subsidiary. The written notice must include a full description of the transaction. If OTS does not object during the 30-day period, the savings association may proceed with the proposed transaction.

■ 5. Amend § 563.43 by revising paragraphs (d) and (e) to read as follows:

**§ 563.43 Loans by savings associations to their executive officers, directors, and principal shareholders.**

* * * * *

(d) The term *subsidiary* includes a savings association that is controlled by a company (including for this purpose an insured depository institution) that is a savings and loan holding company. A company has control over a saving association if it: directly or indirectly, or acting through one or more other persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities; or would be deemed to control the company under § 574.4(a) of this chapter or presumed to control the company under § 574.4(b) of this chapter, and in the latter case, control has not been rebutted. Notwithstanding any other provision of this section, no company shall be deemed to own or control another by virtue of its ownership or control of shares in a fiduciary capacity. When used to refer to a subsidiary of a savings association, the term *subsidiary* means a "subsidiary" that is controlled by the savings association within the meaning of 12 CFR part 574 of this chapter.

(e) References to the Reserve Bank or the Comptroller shall be deemed to include the Director of OTS; and

* * * * *

Dated: September 29, 2003.

By the Office of Thrift Supervision.

**James E. Gilleran,**
*Director.*

[FR Doc. 03–25217 Filed 10–6–03; 8:45 am]

BILLING CODE 6720–01–P

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## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1000

### Statement of Organization and Functions

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rule.

**SUMMARY:** The Consumer Product Safety Commission is amending its statement of organization and functions to reflect the transfer of the National Injury Information Clearinghouse from the Directorate for Epidemiology to the Office of the Secretary.

**EFFECTIVE DATE:** October 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Stephen Lemberg, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–7630, email *slemberg@cpsc.gov.*

**SUPPLEMENTARY INFORMATION:** The reference to the Clearinghouse in section 1000.27, Directorate for Epidemiology, is being moved to section 1000.16, Office of the Secretary.

Since this rule relates solely to internal agency management, pursuant to 5 U.S.C. 553(b) notice and other public procedures are not required and it is effective immediately upon publication in the **Federal Register**. Further, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612, and, thus, is exempt from the provisions of the Act.

**List of Subjects in 16 CFR Part 1000**

Organization and functions (government agencies).

■ Accordingly, part 1000 is amended as follows:

### PART 1000—[AMENDED]

■ 1. The authority citation for part 1000 continues to read as follows:

**Authority:** 5 U.S.C. 552(a).

**§ 1000.27 [Amended]**

■ 2. In § 1000.27, remove the last sentence.

**§ 1000.16 [Amended]**

■ 3. In § 1000.16, add at the end the sentence "It administers the National Injury Information Clearinghouse."

Dated: September 30, 2003.

**Todd A. Stevenson,**
*Secretary, Consumer Product Safety Commission.*

[FR Doc. 03–25297 Filed 10–6–03; 8:45 am]

BILLING CODE 6335–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 172

**[Docket No. 1987F–0179]**

### Food Additives Permitted for Direct Addition to Food for Human Consumption; Olestra; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of August 5, 2003 (68 FR 46403). The document denied the requests for a hearing and response to objections it has received on the final rule that amended the food additive regulations to provide for the safe use of sucrose esterified with medium and long chain fatty acids (olestra) as a replacement for fats and oils in savory snacks. The document was published with inadvertent errors. This document corrects those errors.

**FOR FURTHER INFORMATION CONTACT:** Mary Ditto, Center for Food Safety and Applied Nutrition (HFS–255), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3102.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 03–19509, appearing on page 46403 in the **Federal Register** of Tuesday, August 5, 2003, the following corrections are made:

1. On page 46408, in the second column, under the heading "*D. Adequacy of Olestra's Label Statement*[33]" the first sentence is corrected to read "In its fifth objection and request for a hearing, CSPI challenges the label statement required by the 1996 final rule, claiming that it is not sufficient to protect the public from adverse effects associated with consumption of olestra."

2. On page 46408, in the third column, under the heading "*E. Alleged Procedural Problems in the Olestra Proceeding*" the first sentence is corrected to read "In its sixth objection and hearing request, CSPI claims that there were a number of problems with the procedures utilized by FDA to reach a decision about the safety of olestra."

3. On page 46408, in the third column, under heading "*E. Alleged Procedural Problems in the Olestra Proceeding*" the second to the last sentence on that page is corrected to read "As in the case with its fifth objection and hearing request, CSPI specifically identifies no factual issue underlying any of its six procedural complaints."

Dated: September 30, 2003.

**Jeffrey Shuren,**
*Assistant Commissioner for Policy.*

[FR Doc. 03–25198 Filed 10–6–03; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### 21 CFR Parts 1300, 1309, and 1310

**[Docket No. DEA–210F]**

**RIN 1117–AA69**

### Implementation of the Methamphetamine Anti-Proliferation Act; Thresholds for Retailers and for Distributors Required To Submit Mail Order Reports; Changes to Mail Order Reporting Requirements

**AGENCY:** Drug Enforcement Administration (DEA), Justice.

**ACTION:** Final rule.

**SUMMARY:** This regulation implements the new threshold requirements and mail order reporting requirements of the Methamphetamine Anti-Proliferation Act of 2000 (MAPA), which was enacted on October 17, 2000. DEA is amending its regulations to reduce the thresholds for pseudoephedrine and phenylpropanolamine for retail distributors and for distributors required to submit mail order reports. Also, DEA is amending its regulations to require mail order reports for certain export transactions. DEA is codifying exemptions from the mail order reporting requirements for certain distributions to nonregulated persons and certain export transactions. This rule is consistent with the intent of MAPA to prevent the diversion of drug products to the clandestine manufacture of methamphetamine and amphetamine, and simultaneously reduce the industry reporting burden.

**EFFECTIVE DATE:** November 6, 2003.

**FOR FURTHER INFORMATION CONTACT:** Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

**SUPPLEMENTARY INFORMATION:**

## What Is DEA's Legal Authority for This Rule?

DEA implements the Controlled Substances Act (21 U.S.C. 801–971), as amended by the Chemical Diversion and Trafficking Act, the Domestic Chemical Diversion Control Act, the Comprehensive Methamphetamine Control Act, and the recent Methamphetamine Anti-Proliferation Act (Pub. L. 106–310, 114 Stat. 1101), among others. DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (21 CFR) parts 1300 to end. The regulations are designed to prevent the diversion of controlled substances and listed chemicals to illegal purposes.

MAPA, which is part of the Children's Health Act of 2000, amends the Controlled Substances Act (CSA) to reduce the retail and mail order thresholds for pseudoephedrine and phenylpropanolamine (PPA), to include certain export transactions under the mail order reporting requirement, and to provide certain exemptions from the mail order reporting requirement. This rule implements the Congressional mandate of MAPA.

## Why Is DEA Publishing a Final Rule?

An agency may find good cause to exempt a rule from the provisions of the Administrative Procedure Act (5 U.S.C. 553), including notice of proposed rulemaking and the opportunity for public comment, if it is determined to be unnecessary, impracticable, or contrary to the public interest. Most of the requirements of MAPA were set out in such detail as to be self-implementing. Therefore the changes in this rulemaking primarily provide conforming amendments to make the language of the regulations consistent with that of the law. Hence, DEA finds it unnecessary to publish for public notice and comment.

Specifically, Title XXXVI, Methamphetamine Anti-Proliferation Act, Section 3652 of the Children's Health Act, "Mail Order Requirements," amends 21 U.S.C. 830(b)(3)(D) to exempt certain distributions and export transactions of ephedrine, pseudoephedrine, and phenylpropanolamine and drug products containing them from the monthly mail order reporting requirement as follows [emphasis added]:

> (D) Except as provided in subparagraph (E), the following distributions to a nonregulated person, and the following export transactions, **shall not** be subject to the reporting requirement in subparagraph (B):
>
> (i) Distributions of sample packages of drug products when such packages contain not more than 2 solid dosage units or the equivalent of 2 dosage units in liquid form, not to exceed 10 milliliters of liquid per package, and not more than one package is distributed to an individual or residential address in any 30-day period.
>
> (ii) Distributions of drug products by retail distributors that may not include face-to-face transactions to the extent that such distributions are consistent with the activities authorized for a retail distributor as specified in section 102(46). [21 U.S.C. 802(46)]
>
> (iii) Distributions of drug products to a resident of a long term care facility (as the term is defined in regulations prescribed by the Attorney General) or distributions of drug products to a long term care facility for dispensing to or for use by a resident of that facility.
>
> (iv) Distributions of drug products pursuant to a valid prescription.
>
> (v) Exports which have been reported to the Attorney General pursuant to section 1004 [21 U.S.C. 954] or 1018 [21 U.S.C. 971] which are subject to a waiver granted under section 1018(e)(2) [21 U.S.C. 971(e)(2)].
>
> (vi) Any quantity, method, or type of distribution or any quantity, method, or type of distribution of a specific listed chemical (including specific formulations or drug products) or of a group of listed chemicals (including specific formulations or drug products) which the Attorney General has excluded by regulation from such reporting requirement on the basis that such reporting is not necessary for the enforcement of this title * * *

**Editor's Note:** This excerpt of the amendment is published for the convenience of the reader. The official text is published at 21 U.S.C. 830(b)(3)(D).

MAPA also specifically reduces the threshold for drug products containing pseudoephedrine and phenylpropanolamine from 24 grams to 9 grams of pseudoephedrine or phenylpropanolamine as base. MAPA further establishes a new factor in determining a regulated transaction—a package size of 3 grams of pseudoephedrine base or phenylpropanolamine base. The language in Title XXXVI, Section 3622 of the Children's Health Act of 2000, "Reduction in Retail Sales Transaction Threshold for Non-Safe Harbor Products Containing Pseudoephedrine or Phenylpropanolamine," clearly establishes without opportunity for discussion the new requirements. It amends 21 U.S.C. 802(39)(a)(iv)(II) to read as follows [emphasis added]:

> (II) the quantity of ephedrine, pseudoephedrine, phenylpropanolamine, or other listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical by the Attorney General, except that the threshold for any sale of products containing pseudoephedrine or phenylpropanolamine by retail distributors or by distributors required to submit reports by section 310(b)(3) of this title [21 U.S.C. 830(b)(3)] **shall be** 9 grams of pseudoephedrine or 9 grams of phenylpropanolamine in a single transaction and sold in package sizes of not more than 3 grams of pseudoephedrine base or 3 grams of phenylpropanolamine base; * * *

**Editor's Note:** This excerpt of the amendment is published for the convenience of the reader. The official text is published at 21 U.S.C. 802(39)(a)(iv)(II).

Under the circumstances, there is no discretion for deviation from the changes made by MAPA. Therefore, DEA is implementing these conforming amendments to the regulations through a final rule.

## Do the Thresholds Apply to All Retail Distributors and All Distributors Required To Submit Mail Order Reports?

MAPA mandated that effective October 17, 2001, both the reduction of the 24 gram transaction threshold to 9 grams and the addition of the 3 gram package size threshold for pseudoephedrine and phenylpropanolamine drug products apply to all retail distributors and all persons required to submit mail order reports under 21 U.S.C. 830(b)(3).

At the retail level, all drug products containing pseudoephedrine or phenylpropanolamine that do not meet the definition of "ordinary over-the-counter pseudoephedrine or phenylpropanolamine product" (*see* 21 U.S.C. 802(45)) are subject to the threshold requirements of MAPA. This includes the single transaction threshold of 9 grams as base and the single package size of 3 grams or less of pseudoephedrine or 3 grams or less of phenylpropanolamine as base. The requirement of registration is waived for retail distributors whose activities consist solely of below-threshold distributions to an individual for a legitimate medical purpose (21 CFR 1309.24(e)). Retail distributors who engage in single transactions at or above 9 grams of pseudoephedrine or phenylpropanolamine as base or single transactions of package sizes containing more than 3 grams of pseudoephedrine base or 3 grams of phenylpropanolamine base per package will void their waiver of the registration requirement and must register with DEA. Transactions above these thresholds are regulated transactions and subject to all requirements of the Controlled Substances Act. For retail transactions, this would include customer identification, recordkeeping, and reporting.

For those required to submit mail order reports, the 9 gram transaction threshold (as base) for a single transaction and the 3 gram package size (as base) apply to every transaction involving pseudoephedrine, phenylpropanolamine or drug products containing them—regardless of the type of packaging for the products. There are no exemptions for ordinary over-the-counter pseudoephedrine and phenylpropanolamine products. All of the requirements of the CSA apply to threshold and above transactions and to above-threshold package sizes, that is, registration, identification, recordkeeping, and reporting, as well as the monthly mail order reports submitted to DEA.

### What Are the Changes to the Mail Order Reporting Requirement?

MAPA provides the following exemptions to the mail order reporting requirement: Transactions involving sample packages of drug products, deliveries of prescriptions to consumers by retail distributors, distributions to long-term care facilities and their residents, mail order prescription deliveries, and exports already reported to DEA on a Form 486 or granted a waiver by the Administrator. These were specifically cited in the section of this rulemaking titled, "Why is DEA publishing a final rule?"

Congress also granted the Attorney General the authority (delegated to the Administrator of DEA) to develop regulations to expand the Congressional list of exemptions.

### What Action Is DEA Taking To Codify the MAPA Amendments in Its Regulations?

To implement the requirements of MAPA, DEA is adding the new definitions of "drug product" and "valid prescription" at 21 CFR 1300.02, and updating §§ 1310.03 and 1310.05 to reflect the revised reporting requirements for mail order distributions. Specifically, DEA is amending § 1310.05 to explicitly exempt from the reporting requirements the low-risk categories of mail order transactions previously listed.

DEA also reserves the right to exempt, by regulation, from the reporting requirements any other quantity, method, or type of distribution of a specific listed chemical (or drug product containing it) or group of listed chemicals (or drug products containing them) determined by the Administrator to be unnecessary for the effective enforcement of the Controlled Substances Act.

### What Is the Effect of MAPA on the Public and on Industry?

MAPA will not adversely impact the public's access to pseudoephedrine and phenylpropanolamine products. The majority of the products purchased by the public are commonly used medications most of which are available without a prescription at pharmacies, grocery stores, discount department stores, and a variety of other retail stores. Although the thresholds are being reduced, these thresholds still permit the public adequate access to these drug products for legitimate medical purposes, which include their use as decongestants for the temporary relief of nasal congestion. Each of the products is available as a single entity or in combination with antihistamines, antitussives, analgesics, and expectorants. Sale of a single package of drug product containing 3 grams or less per package of pseudoephedrine or phenylpropanolamine base is not a regulated transaction. A single transaction of less than 9 grams of pseudoephedrine or phenylpropanolamine as base is not a regulated transaction. The chart below indicates the number of tablets per package and per single transaction that constitute a regulated transaction. One tablet less would be a non-regulated transaction.

NUMBER OF TABLETS THAT CONSTITUTE A REGULATED TRANSACTION FOR DOSAGE UNITS OF MARKETED PRODUCTS*

| Product type | Number of tablets over 3-gram package size | Number of tablets per 9-gram transaction |
|---|---|---|
| **Pseudoephedrine** | | |
| 120-mg Hydrochloride | 31 | 92 |
| 120-mg Sulfate | 33 | 98 |
| 60-mg Hydrochloride | 62 | 184 |
| 60-mg Sulfate | 65 | 195 |
| 30-mg Hydrochloride | 123 | 367 |
| 30-mg Sulfate | 130 | 390 |
| **Phenylpropanolamine** | | |
| 75-mg Hydrochloride | 50 | 149 |
| 25-mg Hydrochloride | 149 | 447 |
| 12.5-mg Hydrochloride | 298 | 894 |
| 6.25-mg Hydrochloride | 596 | 1,788 |

*Calculated as base.

For example, if a member of the public purchased product containing 30-mg pseudoephedrine hydrochloride tablets in a single transaction of 366 tablets, it would not be regulated. However, if that person purchased 367 or more tablets of the same product in a single transaction, it would be a regulated transaction. The member of the public would still be permitted to make such a purchase, but would be required to provide the distributor with certain information. DEA believes that few members of the public make such large purchases for legitimate personal medical use, and thus will not be adversely impacted by this rulemaking.

Due to concerns regarding possible harmful side effects, the Food and Drug Administration initiated action in November 2000 to remove phenylpropanolamine from the market. As a result, many firms voluntarily discontinued marketing products containing it. Because MAPA specifically addresses phenylpropanolamine and there remain legitimate veterinary uses for it that will ensure some level of its continued production and availability, this action continues to apply to phenylpropanolamine.

MAPA will affect persons who sell drug products containing pseudoephedrine or phenylpropanolamine to the public. This includes retail distributors and persons required to submit mail order reports. For retail distributors, single transactions containing 9 grams or more of pseudoephedrine or phenylpropanolamine as base are regulated transactions. Single transactions in which a package contains more than 3 grams of pseudoephedrine base or more than 3 grams of phenylpropanolamine base are also regulated transactions. Above-threshold transactions will still be permitted, but will be subject to all the requirements of a regulated transaction, including registration of the distributor—as selling over-threshold amounts of these products voids the retail distributor exemption (21 CFR 1309.24(e)), identification of customers (21 CFR 1310.07), maintenance of records (21 CFR 1310.04), and the filing of reports with the Administration (21 CFR 1310.05, 1310.06). It is important to note, however, that many retail distributors have already voluntarily limited their sales in a single transaction to amounts equal to or less than those finalized in this rulemaking to help prevent diversion of these products for the illicit manufacture of methamphetamine and amphetamine.

For those required to submit mail order reports, both the 9 gram transaction threshold and the 3 gram package size for pseudoephedrine and phenylpropanolamine drug products apply to every transaction—regardless of whether the transaction is one that must be reported. Single transactions of 9 grams or more of pseudoephedrine or phenylpropanolamine as base are regulated transactions and single transactions of package sizes containing more than 3 grams of pseudoephedrine or phenylpropanolamine as base are regulated transactions. Regulated transactions subject the distributor to the following requirements—identification of the customer (21 CFR 1310.07), recordkeeping (21 CFR 1310.04), and reporting (21 CFR 1310.05 and 1310.06), in addition to the requirement to submit monthly reports of all transactions (21 U.S.C. 830(b)(3)).

MAPA added language requiring monthly mail order reports for export transactions with nonregulated persons involving ephedrine, pseudoephedrine, phenylpropanolamine, and drug products containing them which use or attempt to use the Postal Service, or any private or commercial carrier. Every export transaction for these chemicals and for drug products containing them must be reported on a monthly basis unless the export transaction is exempt. Exempt export transactions include those reported on a DEA Form 486 and those for which the Administrator has waived monthly reporting.

To reduce the burden on those who are subject to the monthly mail order reporting requirement under 21 U.S.C. 830(b)(3), MAPA added exemptions to this requirement. These exemptions include distributions of samples of drug products, deliveries of prescriptions to consumers by retail distributors, distributions of drug products to long term care facilities and their residents, mail order prescription deliveries, exports reported to DEA on a Form 486, and any quantity, method, or type of distribution of a specific listed chemical or group of listed chemicals which the Attorney General has excluded by regulation from this reporting requirement. These exemptions were previously cited in the section of this rulemaking titled, "Why is DEA publishing a final rule?" The Administrator of DEA, through the delegation of authority from the Attorney General, may exclude by regulation from the mail order reporting requirement any quantity, method, or type of distribution of listed chemicals (including specific formulations or drug products) for which such reporting is considered not necessary for the enforcement of law. DEA will consider any suggestions submitted regarding additional exemptions to the reporting requirement under 21 U.S.C. 830(b)(3) that may be warranted.

## Technical Amendment

The final regulations implementing the provisions of the Comprehensive Methamphetamine Control Act (MCA) amended the waiver of the retail registration activity found in 21 CFR 1309.24(e) to include a statement that the threshold for retail distributions of ephedrine, pseudoephedrine and phenylpropanolamine is 24 grams in a single transaction, regardless of whether the product meets the definition of "ordinary over-the-counter pseudoephedrine or phenylpropanolamine product." As MAPA amends those thresholds, as previously described, a conforming technical amendment to 21 CFR 1309.24(e) is being made to remove the reference to the 24 gram threshold.

## Regulatory Certifications

### *Administrative Procedure Act (5 U.S.C. 553)*

An agency may find good cause to exempt a rule from certain provisions of the Administrative Procedure Act (5 U.S.C. 553), including notice of proposed rulemaking and the opportunity for public comment, if it is determined to be unnecessary, impracticable, or contrary to the public interest. The requirements of MAPA included in this rulemaking were set out in such detail as to be self-implementing. Therefore the changes in this rulemaking provide conforming amendments to make the language of the regulations consistent with that of the law. Hence, DEA finds it unnecessary to publish for public notice and comment.

### *Regulatory Flexibility Act*

The Deputy Assistant Administrator, Office of Diversion Control, hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) , has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will not adversely impact the public's access to drug products containing pseudoephedrine and phenylpropanolamine. At the same time, this regulation will limit the potential for diversion of these products to the clandestine manufacture of methamphetamine and amphetamine.

For mail order reporting, this action exempts from the reporting requirements a number of transactions that currently must be reported, thus reducing the overall reporting burden on many small businesses.

*Executive Order 12866*

The Deputy Assistant Administrator further certifies that this rulemaking has been drafted in accordance with the principles of Executive Order 12866 Section 1(b). DEA has determined that this is not a significant regulatory action. Therefore, this action has not been reviewed by the Office of Management and Budget.

*Executive Order 12988*

This rulemaking meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988.

*Executive Order 13132*

This action has been analyzed in accordance with the principles and criteria in Executive Order 13132, and it has been determined that this rule does not have federalism implications and, therefore, does not warrant the preparation of a Federalism Assessment.

*Paperwork Reduction Act*

For those required to report under 21 U.S.C. 830(b)(3), MAPA adds the requirement of submitting a monthly report for certain export transactions with nonregulated persons involving ephedrine, pseudoephedrine, phenylpropanolamine, and drug products containing them. However, to reduce the burden on those affected, MAPA exempts monthly reporting of exports of the above list I chemicals and drug products containing them when they are reported to DEA pursuant to 21 U.S.C. 954 and 971.

MAPA further reduces the reporting burden on the regulated industry required to submit reports under 21 U.S.C. 830(b)(3) by exempting certain other transactions involving ephedrine, pseudoephedrine, phenylpropanolamine and drug products containing them from the requirement to submit reports as discussed in this rulemaking.

At this time it is not feasible for DEA to determine the extent of the impact of this rulemaking on the regulated industry. Once DEA has determined the impact, it will make the necessary filing with the Office of Management and Budget to adjust the burden of this information collection for the affected industry.

*Unfunded Mandates Reform Act of 1995*

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

**List of Subjects**

*21 CFR Part 1300*

Chemicals, Definitions, Drug traffic control.

*21 CFR Part 1309*

Administrative practice and procedure, Drug traffic control, List I and List II chemicals, Security measures.

*21 CFR Part 1310*

Drug traffic control, Exports, Imports, List I and List II chemicals, Reporting and recordkeeping requirements.

■ For the reasons set out above, 21 CFR parts 1300, 1309 and 1310 are amended as follows:

### PART 1300—DEFINITIONS [AMENDED]

■ 1. The authority citation for Part 1300 continues to read as follows:

**Authority:** 21 U.S.C. 802, 871(b), 951, 958(f).

■ 2. Section 1300.02 is amended by revising paragraph (b)(28)(i)(D)(*2*) and by adding paragraphs (b)(33) and (b)(34) to read as follows:

**§ 1300.02 Definitions relating to listed chemicals.**

* * * * *

(b) * * *

(28) * * *

(i) * * *

(D) * * *

(*2*) The quantity of ephedrine, pseudoephedrine, phenylpropanolamine, or other listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical, except that the threshold for any sale of products containing pseudoephedrine or phenylpropanolamine by retail distributors or by distributors required to submit reports by § 1310.03(c) shall be 9 grams of pseudoephedrine or 9 grams of phenylpropanolamine in a single transaction and sold in package sizes of not more than 3 grams of pseudoephedrine base or 3 grams of phenylpropanolamine base. For combination ephedrine products the threshold for any sale by retail distributors or by distributors required to submit reports by § 1310.03(c) shall be 24 grams of ephedrine in a single transaction.

* * * * *

(33) The term *drug product means* an active ingredient in dosage form that has been approved or otherwise may be lawfully marketed under the Food, Drug, and Cosmetic Act for distribution in the United States.

(34) The term *valid prescription* means a prescription that is issued for a legitimate medical purpose by an individual practitioner licensed by law to administer and prescribe the drugs concerned and acting in the usual course of the practitioner's professional practice.

### PART 1309—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, IMPORTERS AND EXPORTERS OF LIST I CHEMICALS [AMENDED]

■ 1. The authority citation for Part 1309 continues to read as follows:

**Authority:** 21 U.S.C. 821, 822, 823, 824, 830, 871(b), 875, 877, 958.

■ 2. Section 1309.24 is amended by revising paragraph (e) to read as follows:

**§ 1309.24 Waiver of registration requirement for certain activities.**

* * * * *

(e) The requirement of registration is waived for any retail distributor whose activities with respect to List I chemicals are limited to the distribution of below-threshold quantities of a pseudoephedrine, phenylpropanolamine, or combination ephedrine product that is regulated pursuant to § 1300.02(b)(28)(i)(D) of this chapter, in a single transaction to an individual for legitimate medical use, irrespective of whether the form of packaging of the product meets the definition of "ordinary over-the-counter pseudoephedrine or phenylpropanolamine product" under § 1300.02(b)(31) of this chapter.

* * * * *

## PART 1310—RECORDS AND REPORTS OF LISTED CHEMICALS AND CERTAIN MACHINES [AMENDED]

■ 1. The authority citation for part 1310 continues to read as follows:

**Authority:** 21 U.S.C. 802, 830, 871(b).

■ 2. Section 1310.03 is amended by revising paragraph (c) to read as follows:

### § 1310.03 Persons required to keep records and file reports.

* * * * *

(c) Each regulated person who engages in a transaction with a nonregulated person or who engages in an export transaction that involves ephedrine, pseudoephedrine, or phenylpropanolamine, including drug products containing these chemicals, and uses or attempts to use the Postal Service or any private or commercial carrier must file monthly reports of each such transaction as specified in § 1310.05 of this part.

■ 3. Section 1310.04 is amended by revising paragraphs (f)(1)(ii), (c)(1) and (c)(2), (d)(2), (e)(1) and (e)(2), and (f)(2) to read as follows:

### § 1310.04 Maintenance of records.

* * * * *

(f) * * *

(1) * * *

(ii) * * *

| Chemical | Threshold by weight |
|---|---|
| (C) * * * | |
| (1) Distributions by retail distributors | 9 grams, and sold in package sizes of not more than 3 grams of pseudoephedrine base. |
| (2) Distributions by persons required to report under § 1310.03(c) of this part. | 9 grams, and sold in package sizes of not more than 3 grams of pseudoephedrine base. |
| * * * | * * * |
| (D) * * * | |
| (2) Distributions by persons required to report under § 1310.03(c) of this part. | 9 grams, and sold in package sizes of not more than 3 grams of pseudoephedrine base. |
| * * * | * * * |
| (E) * * * | |
| (1) Distributions by retail distributors | 9 grams, and sold in package sizes of not more than 3 grams of phenylpropanolamine base. |
| (2) Distributions by persons required to report under § 1310.03(c) of this part. | 9 grams, and sold in package sizes of not more than 3 grams of phenylpropanolamine base. |
| * * * | * * * |
| (F) * * * | |
| (2) Distributions by persons required to report under § 1310.03(c) of this part. | 9 grams, and sold in package sizes of not more than 3 grams of phenylpropanolamine base. |

* * * * *

■ 4. Section 1310.05 is amended by adding new paragraphs (f) and (g) to read as follows:

### § 1310.05 Reports.

* * * * *

(f) Except as provided in paragraph (g) of this section, the following distributions to nonregulated persons, and the following export transactions, are not subject to the reporting requirements in § 1310.03(c):

(1) Distributions of sample packages of drug products when those packages contain not more than two solid dosage units or the equivalent of two dosage units in liquid form, not to exceed 10 milliliters of liquid per package, and not more than one package is distributed to an individual or residential address in any 30-day period.

(2) Distributions of drug products by retail distributors that may not include face-to-face transactions to the extent that such distributions are consistent with the activities authorized for a retail distributor as specified in § 1300.02(b)(29) of this chapter.

(3) Distributions of drug products to a resident of a long term care facility or distributions of drug products to a long term care facility for dispensing to or for use by a resident of that facility.

(4) Distributions of drug products in accordance with a valid prescription.

(5) Exports which have been reported to the Administrator under §§ 1313.31 and 1313.32 of this chapter or which are subject to a waiver granted under § 1313.21 of this chapter.

(g) The Administrator may revoke any or all of the exemptions listed in paragraph (f) of this section for an individual regulated person if the Administrator finds that drug products distributed by the regulated person are being used in violation of the regulations in this chapter or the Controlled Substances Act. The Administrator will notify the regulated person of the revocation, as provided in § 1313.41(a) of this chapter. The revocation will be effective upon receipt of the notice by the person. The regulated person has the right to an expedited hearing regarding the revocation, as provided in § 1313.56(a) of this chapter.

Dated: September 29, 2003.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control.*

[FR Doc. 03–25100 Filed 10–6–03; 8:45 am]

BILLING CODE 4410–09–P

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 982

[Docket No. FR–4759–C–04]

RIN 2577–AC39

## Housing Choice Voucher Program Homeownership Option: Eligibility of Units Owned or Controlled by a Public Housing Agency; Correction

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Final rule; correction.

**SUMMARY:** On September 17, 2003, HUD published a final rule adopting without change an October 28, 2002, interim rule establishing the eligibility of units owned or substantially controlled by a

public housing agency (PHA) for purchase under the Housing Choice Voucher Program homeownership option. The amendatory instruction in the final rule contained a technical error. The document makes the necessary correction.

**DATES:** *Effective Date:* The effective date for the September 17, 2003, final rule is unchanged. The final rule will take effect on October 17, 2003.

**FOR FURTHER INFORMATION CONTACT:** Gerald J. Benoit, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh Street, SW., Washington, DC 20410–5000; telephone (202) 708–0477. (This is not a toll-free number.) Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

■ The final rule FR Doc. 03–23636, published on September 17, 2003, (68 FR 54335) is corrected as follows:

■ On page 54336, in the second column, correct the amendatory instruction to read as follows:

■ Accordingly, for the reasons stated in the preamble, the interim rule for part 982 of title 24 of the Code of Federal Regulations, published on October 28, 2002, 67 FR 65864, as corrected on November 6, 2002, 67 FR 67522, is promulgated as final, without change.

Dated: October 1, 2003.

**Camille Acevedo,**

*Associate General Counsel for Legislation and Regulations.*

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## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 938

## [PA–144–FOR]

## Pennsylvania Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule.

**SUMMARY:** We are removing a required amendment to the Pennsylvania regulatory program (the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment required Pennsylvania to demonstrate that the revenues generated by its collection of the reclamation fee will assure that Pennsylvania's Surface Mining Conservation and Reclamation Fund can be operated in a manner that will meet the alternative bonding system requirements contained in the Federal regulations. In addition, the amendment required Pennsylvania to clarify the procedures to be used for bonding the surface impacts of underground mines and the procedures to reclaim underground mining permits where the operator has defaulted on the obligation to reclaim. In response to the amendment, Pennsylvania submitted information to us describing existing and planned changes and enhancements to its bonding program that we have found satisfactorily address the amendment's requirements.

**EFFECTIVE DATE:** October 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** George Rieger, Acting Director, Harrisburg Field Office, Telephone: (717) 782–4036, e-mail: *grieger@osmre.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Background on the Pennsylvania Program
II. Submission of the Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

### I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania's program and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

### II. Submission of the Proposed Amendment

The required amendment we are removing as a result of this rulemaking is codified at 30 CFR 938.16(h). We required the amendment in a May 31, 1991, final rule (56 FR 24687) (1991 rulemaking). By letter dated June 5, 2003 (Administrative Record No. PA 802.27), Pennsylvania sent us a document entitled, "Pennsylvania Bonding System Program Enhancements" (program enhancements document). The letter was sent in response to the October 1, 1991, notice sent to Pennsylvania under 30 CFR 732.17(c) through (e) (1991 notice). In a second letter, also dated June 5, 2003 (Administrative Record No. PA 802.28), Pennsylvania stated that the material submitted with the first letter also addresses the first part of the 1991 rulemaking dealing with its alternative bonding system (ABS). The second letter also clarified that bonding for the surface impacts of underground mines and the procedures to reclaim underground mining permits where the operator has defaulted on the obligation to reclaim, are handled by conventional bonds and are not, and have not been, a part of the alternative bonding program at issue in the first part of the 1991 rulemaking. This later information was intended to address the remainder of the 1991 rulemaking. In a letter to Pennsylvania dated June 12, 2003 (Administrative Record No. PA 802.29), we found the actions taken, as described in the attachment to the first letter, were sufficient to resolve our 1991 notice. Therefore, we terminated that notice, which addressed deficiencies in the Pennsylvania ABS. We found the letters were also responsive to the required program amendment at 30 CFR 938.16(h) and proposed removing that provision codified in the 1991 rulemaking.

We announced our proposal to remove the required amendment in the June 26, 2003, **Federal Register** (68 FR 37987). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on removing the required amendment. We did not hold a public hearing because no one requested one. We received a request for a public meeting, but it was withdrawn before the meeting was held. The public comment period ended on July 28, 2003. We received comments from two Federal agencies (the United States Environmental Protection Agency, Region III, and the United States Department of Labor, Mine Safety and Health Administration's (MSHA) New

Stanton and Wilkes-Barre Offices). We also received comments from Citizens for Pennsylvania's Future (PennFuture) and the Pennsylvania Coal Association (PCA).

## III. OSM's Findings

Following are the findings we made concerning removing the required amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are removing the required amendment at 30 CFR 938.16(h).

As we noted in our proposed rulemaking concerning removal of 30 CFR 938.16(h), our oversight activities had determined that Pennsylvania's ABS contained unfunded reclamation liabilities for backfilling, grading, and revegetation. In addition, our oversight determined that the ABS was financially incapable of abating or treating pollutional discharges from bond forfeiture sites. In the 1991 notice, we notified Pennsylvania of these deficiencies. In the course of approving a proposed program amendment to the Pennsylvania regulatory program in the 1991 rulemaking, we imposed the required amendment codified at 30 CFR 938.16(h). That amendment required Pennsylvania to demonstrate that the revenues generated by its collection of the reclamation fee will assure that its Surface Mining Conservation and Reclamation Fund (Fund) can be operated in a manner that will meet the ABS requirements contained in the Federal regulations. In addition, the amendment required Pennsylvania to clarify the procedures to be used for bonding the surface impacts of underground mines and the procedures to reclaim underground mining permits where the operator has defaulted on the obligation to reclaim. The 1991 notice stated that Pennsylvania's ABS was no longer in conformance with Federal requirements and mandated that Pennsylvania propose amendments or descriptions of amendments to address the identified deficiencies. Thus, the 1991 notice addressed the same issue covered by the 1991 rulemaking.

In the June 5, 2003, letter the Pennsylvania Department of Environmental Protection (PADEP) responded to the deficiencies noted in our 1991 notice by sending us the program enhancements document. This document, jointly prepared by OSM and PADEP, explains steps that Pennsylvania has taken, and plans to take, to assure appropriate bonding for both land reclamation and postmining discharge treatment on existing active/inactive permits and forfeited sites. In our June 12, 2003, letter to PADEP, we indicated that the actions taken by Pennsylvania, as described in its June 5, 2003, letter, were sufficient to resolve the 1991 notice. Because we have completed our administrative decision terminating the 1991 notice as a separate and distinct action not subject to the public notice and review procedures governing this rulemaking, we will not respond to comments on terminating that action in this rulemaking.

The purpose of our June 26, 2003, proposed rule was to seek public comment on whether Pennsylvania's actions taken in response to the 1991 notice were sufficient to remove the required amendment at 30 CFR 938.16(h) imposed in the 1991 rulemaking. In that rulemaking, we required the amendment as a result of our review of changes Pennsylvania made to its program at 25 Pa. Code 86.17 which describes Pennsylvania's permit and reclamation fees. In the 1991 rulemaking, we indicated that the proposed revisions raised questions concerning the ability of Pennsylvania's ABS to meet the requirements of 30 CFR 800.11(e) (56 FR at 24689). We also required information from Pennsylvania that would demonstrate that the revenues generated by the collection of the reclamation fee are sufficient.

The requirement was generated because of our uncertainty that the Fund could be operated in a manner that will meet the ABS requirements of 30 CFR 800.11(e). Our uncertainty resulted from information Pennsylvania reported that an analysis of the solvency of the Fund for 1989 and 1990 showed a deficit in both years. In addition, our review of proposed revisions to 25 Pa. Code 86.17 left questions as to the procedures to be used for bonding the surface impacts of underground mines and the procedures to reclaim underground mining permits where the operator has defaulted on the obligation to reclaim. We were uncertain about the relationship of the ABS and fees collected under 25 Pa. Code 86.17 to the reclamation of underground mining permits where bonds were forfeited.

The June 5, 2003, PADEP submission provides a complete description of ongoing and planned activities that address the issues that formed the basis for 30 CFR 938.16(h). Those activities include: (1) The appropriation of $5.5 million for land reclamation, (2) Continued collection of the permit fee at 25 Pa. Code 86.17(e), (3) Requiring new permits to post conventional bonds and requiring existing active/inactive permits to replace ABS coverage with conventional bonds, and (4) The targeting of significant resources through a number of financial, and reclamation mechanisms at discharges on current primacy forfeitures covered by the ABS.

After careful consideration of the comments we received, we have found that the actions taken, as described in the June 5, 2003, submission, including Pennsylvania's shift from an ABS to conventional bonds, adequately address the requirements of 30 CFR 938.16(h). Pennsylvania's conversion from the ABS to full cost bonding, renders moot that portion of the required amendment concerned with the solvency of the Fund. Also, the clarification that bonding for the surface effects of underground mining has not been a part of the Fund and has been (and will continue to be) handled by conventional bonds is sufficient to address the remainder of the required amendment. Therefore, 30 CFR 938.16(h) is being removed.

## IV. Summary and Disposition of Comments

### *Public Comments*

We asked for public comments on the amendment (Administrative Record No. PA 802.31), and received responses from PennFuture and PCA. We will first discuss the PennFuture comments and then the comments from PCA.

At the outset, however, we wish to clarify the scope of the subject matter for which we requested comments, particularly as it relates to satisfaction of the first portion of the 1991 rulemaking. In the June 26, 2003, **Federal Register** Notice announcing our intention to consider the removal of the required amendment at 30 CFR 938.16(h), we noted that the 1991 notice "dealt with the same subject matter, *i.e.*, the solvency of the State's Surface Mining Conservation and Reclamation Fund, as does the first portion of * * * 30 CFR 938.16(h)." We stated further that:

> Since we are now satisfied that the State's bonding program enhancements adequately address our concerns about the ability of the bonding program to ensure the completion of the reclamation plans for all operations on which the operators default on their obligations to reclaim, we are proposing the removal of the first portion of 30 CFR 938.16(h). 68 FR at 37988.

We then clarified the scope of the opportunity to comment as follows:

> We are seeking your comments on whether OSM should consider the information submitted by Pennsylvania sufficient to satisfy the required amendment at 30 CFR 938.16(h). Because we decided on June 12, 2003, that PADEP's bonding program enhancements satisfy the concerns expressed in our October 1, 1991, Part 732 Notification Letter, we are not seeking comments on the

adequacy of those bonding program enhancements.

As such, we were effectively asking for comment as to the validity of the proposition that the first portion of the required amendment and the 1991 notice were one and the same and that, therefore, there was nothing more needed from Pennsylvania to satisfy 30 CFR 938.16(h). This question, we believe, is markedly different from the question, not open for comment, of whether actions taken as described in the program enhancements document satisfied the 1991 notice on deficiencies in the ABS.

Nevertheless, we recognize that the June 26, 2003, **Federal Register** Notice may not have presented the scope of proposed action upon which comment was invited with optimal clarity and that, as a result, members of the public may have reasonably believed that they were invited to comment not only on whether resolution of the 1991 Notice also resolved the first part of 30 CFR 938.16(h), but also on the sufficiency of actions described in the program enhancements document to address the deficiencies in the ABS, and, further, on the adequacy of Pennsylvania's bonding program as a whole. For this reason, we are addressing their comments on these latter two issues. However, we continue to maintain that they are outside the scope of this rulemaking.

The PennFuture comments dated July 28, 2003 (Administrative Record No. PA 802.36), were made on behalf of the Pennsylvania Federation of Sportsmen's Clubs, Inc., the Pennsylvania Chapter of the Sierra Club, Pennsylvania Trout, Inc., Tri-State Citizens Mining Network, Inc., and Mountain Watershed Association, Inc.

On July 25, 2003 (Administrative Record No. PA 802.35), PennFuture wrote us concerning our termination of the 1991 notice. PennFuture has requested that we incorporate the comments of its July 25 letter into the comments on removal of 30 CFR 938.16(h). We will consider those comments to the extent that they address the removal of 30 CFR 938.16(h). However, comments that pertain to whether the June 5, 2003, submission satisfies the 1991 notice and comments on the 30 CFR 732.17(c) through (e) process are considered as non-responsive to this rulemaking.

PennFuture commented that OSM is refusing to hear from the public on the adequacy of the June 5, 2003, PADEP submission of the program enhancements document and that in doing so, OSM has violated the public's right to a meaningful "opportunity to participate" in this proceeding, as required by 5 U.S.C. 553(c). It claims this also violates our obligation to "consider all relevant information" in making our decision as required by 30 CFR 732.17(h)(7).

We disagree that we have violated the notice and comment requirements of 5 U.S.C. 553(c) and 30 CFR 732.17(h). We have provided the public a meaningful opportunity to participate in this rulemaking and have considered all relevant information in making our decision on the proposal to remove the required amendment at 30 CFR 938.16(h). Our June 26, 2003, proposed rule specifically identified that the proposal to remove 30 CFR 938.16(h) is based upon the information contained in the June 5, 2003, PADEP submission that was submitted in response to our 1991 notice. In addition, the proposed rule specifically requested comments on whether we should consider the information submitted by Pennsylvania sufficient to satisfy the required amendment at 30 CFR 938.16(h).

The June 12, 2003, administrative decision by OSM with regard to the satisfaction of the 1991 notice was a separate and distinct action not subject to the public notice and review procedures governing this rulemaking. To assist the public in commenting, OSM decided that it was appropriate to clarify in this rulemaking that it will consider comments to the extent that they address the satisfaction of 30 CFR 938.16(h) and that comments that address the 1991 notice will be considered as non-responsive to this rulemaking.

PennFuture commented that our pre-rulemaking commitment to finding that the program enhancements are adequate violate the notice and comment requirements of 5 U.S.C. 553(c) and 30 CFR 732.17(h) and is violating our obligation to serve as a fully informed, impartial decision maker.

We disagree with the comment's presumption that our involvement with the program enhancements document has violated the notice and comment requirements of 5 U.S.C. 553(c) and 30 CFR 732.17(h) or that it compromises our role as a decision maker. Interaction of our staff with State regulatory authorities in the administration of their programs or in the development of State policies and procedures and State program amendments is a routine practice. That interaction does not alter the fact that once material is submitted to us for consideration and a regulatory action is proposed in the **Federal Register**, as was done in this case, any final decision will be based upon the merits after full consideration of the public comments, including any information provided, on that proposal.

PennFuture commented that because OSM's proposed deletion of the actuarial study requirement from 30 CFR 938.16(h) is entirely dependent on this finding that the program enhancements are adequate, it would seem indisputable that comments or data contesting its adequacy constitute relevant information for OSM to consider under 30 CFR 732.17(h)(7). PennFuture further stated that the notice of proposed rulemaking prevents such information and that OSM will not consider comments on the adequacy of the bonding program enhancements document.

PennFuture has mischaracterized the commenting opportunities provided by this rulemaking. As discussed in response to previous comments, the notice initiating this rulemaking activity specifically identified that the proposal to remove 30 CFR 938.16(h) is based upon the information contained in the June 5, 2003, PADEP submission that addressed our 1991 notice. In addition, the notice specifically requested comments on whether we should consider the information submitted by Pennsylvania sufficient to satisfy the required amendment at 30 CFR 938.16(h). While comments addressing the basis for OSM's administrative decision that the 1991 notice has been resolved are not part of this rulemaking, OSM is considering comments to the extent that they address the satisfaction of the requirements at 30 CFR 938.16(h).

PennFuture has suggested that OSM has firmly committed itself to the positions that the program enhancements are adequate and that the actuarial study requirement of 30 CFR 938.16(h) therefore may be terminated. PennFuture stated that agencies engaged in rulemaking or similar decisions that are subject to notice and comment procedures may not foreordain the results by agreement. Additionally PennFuture stated that OSM must treat the adequacy of the "program enhancements" as an open issue that it can decide only after inviting public comment on the issue and giving due consideration to the input in receives. Finally, PennFuture stated that OSM therefore should publish a new notice of proposed rulemaking, expressly invite comment on the adequacy of the program enhancements to address the concerns about the ability of the bonding program to ensure the completion of the reclamation plans for all operations on which the operators default on their obligations to reclaim, and then make its decision whether to delete the actuarial study requirement from 30 CFR 938.16(h) only after it appropriately considers all relevant information it receives.

We disagree with the comments. The results of this rulemaking were not foreordained by agreement. The fact that OSM staff worked with PADEP staff in developing the program enhancements document does not constitute a binding agreement on OSM as it relates to this rulemaking. As provided for under 30 CFR.732.17(c) through (e), OSM has separately exercised its decision-making authority to review actions taken by PADEP to address the issues identified in the 1991 notice and concluded that the 1991 notice has been resolved. There is no requirement for public notice before revising or terminating such notices and the basis for our June 12, 2003, decision terminating the 1991 notice is beyond the scope of this rulemaking. Separately, we published a proposed rulemaking to obtain public input on whether the information submitted by Pennsylvania in the June 5, 2003, PADEP submission provides sufficient basis for the removal of the requirements at 30 CFR 938.16(h). We are now making our final decision after reviewing all responsive comments. Therefore, further public participation in this decision is not warranted.

PennFuture requested that OSM publish a new notice that completely explains why it believes the program enhancements have been adequately addressed.

Again, we have decided not to adopt the suggestion to publish a new notice with revised discussions of how the program enhancements document addresses the requirements at 30 CFR 938.16(h). The notice of proposed rulemaking for this action provides a complete description of the events leading up to the requirements imposed at 30 CFR 938.16(h). The notice also provides a summary of the activities proposed and undertaken by PADEP that potentially satisfy the outstanding issues as well as a listing of the specific documents that form the basis for our proposal. Because it was not reasonable or practical for us to publish the voluminous documents in the **Federal Register**, we made these documents available to the public in both paper and electronic form upon request. In addition, we offered the opportunity for a public hearing where interested persons could seek clarification of any points needed to facilitate their ability to provide meaningful comment. We believe that the **Federal Register** notice, the information we made available to the public, and the opportunity for a public hearing provided sufficient information to persons interested in commenting on the notice of proposed rulemaking. Further, PennFuture's extensive comments on this rulemaking exhibit an extensive review of the basis for proposing removal of 30 CFR 938.16(h).

PennFuture commented that PADEP has failed to provide the hard proof of financial soundness and sufficient reclamation performance required by 30 CFR 938.16(h) and that until PADEP submits an actuarial study or similar analysis showing that its bonding program actually guarantees complete reclamation of all permanent program sites, the first requirement of 30 CFR 938.16(h) will remain unresolved and therefore must remain in place.

We disagree with the comment, which misstates the scope of the required amendment. The scope of 30 CFR 938.16(h) was limited to deficiencies in the ABS. PADEP has terminated reliance upon the ABS for its regulatory program and demonstrated that the ABS did not play a role in bonding for the surface effects of underground mining. As such, the Pennsylvania regulatory program now operates consistent with 30 CFR 800.11(a) through (d) rather than under (e) as was cited in the required amendment. While there are residual issues in the transition from the ABS to conventional bonds, they are adequately addressed in the program enhancements document.

PennFuture commented that the fundamental reason PADEP still is unable to submit an actuarial study or similar information demonstrating the solvency of its bonding program is that the program remains insolvent and unable to guarantee treatment of all the post-mining discharges emanating from permanent program sites. PennFuture also indicated that in order to demonstrate the "soundness or financial solvency" of its bonding program, PADEP first would have to make its bonding program fiscally sound.

Again, the comment misstates the scope of the required amendment, which is limited to the ABS. In the case of a State operated ABS, the State's obligation to expend funds to reclaim a forfeited site extends to all assets of the ABS unless the scope of reclamation covered by the ABS is expressly limited. Where it is determined that an ABS lacks sufficient assets to cover the full cost of reclamation for which it is applicable, as was the case with Pennsylvania in the required amendment, the State must take steps to sufficiently increase the assets of the ABS to cover existing and reasonably anticipated obligations. Efforts to fix an ABS are evaluated on their ability to make the ABS solvent. However, a State always has the option to terminate use of its ABS and require conventional bonds to replace ABS coverage. In doing so, a State does not have an obligation to make its ABS solvent before converting to a conventional bonding system (CBS) and requiring applicants to post conventional bonds and existing permittees to replace ABS coverage with conventional bonds. Such a requirement would be well beyond what is required of a CBS under 30 CFR part 800 where posted bonds are deficient or insolvent, as well as beyond anything OSM would be able to require should it withdraw approval of a State program because of an inadequate ABS. In the case of Pennsylvania, which initiated this process in 2001, terminating reliance upon the ABS and requiring all applicants and permittees to shift to conventional bonds did not require a program amendment because the program already included a CBS, which was being applied to underground mines.

PennFuture commented that the ABS Bond Forfeiture Discharge Workplan (Workplan) and the program enhancements document attempt to balance the books not by expanding the assets of the ABS to match the long-term treatment costs it must cover, but by attempting to write off many of those liabilities, and perhaps all of them.

We disagree with the comment. We can find no provisions in the Workplan where PADEP proposes to "write-off" primacy discharges forfeited under the Pennsylvania ABS. To the contrary, the Workplan provides for continued revenue to the Fund; precludes the addition of any more potential liabilities to the Fund by halting its use for new permits; reduces potential obligations to the Fund by requiring the replacement of ABS coverage with conventional bonds or other financial guarantees at existing permits; and provides a structured approach to achieving reclamation of pollutional discharges by targeting significant resources through a variety of financial and reclamation mechanisms at current primacy forfeitures which fall under the ABS. Any initiative to eliminate the revenue to the fund would be an amendment to the program, which could not be implemented without going through the program amendment process, including opportunity for public comment.

PennFuture commented that until PADEP has actually implemented all of its "program enhancements" and actually shown that they achieve the objectives applicable to all SMCRA bonding programs, it cannot satisfy the first requirement of 30 CFR 938.16(h) to "demonstrate" the adequacy and solvency of its bonding program. PennFuture further stated that because the program enhancements document does not (and cannot) provide that proof, OSM must leave the first requirement of 30 CFR 938.16(h) in place, and must institute Part 733 proceedings based on PADEP's failure to satisfy it.

Again, the comment misstates the scope of the required amendment, which is limited to the ABS. In fact, if we were to accept the comment and initiate a Part 733 action and ultimately take over all or a portion of Pennsylvania's approved program or substitute a Federal Program, we couldn't begin to address the problems caused by the deficiencies in the ABS as well as the program enhancements document does. PADEP has provided a credible approach to addressing outstanding bond program reclamation responsibilities and OSM has concluded that the required amendment at 30 CFR 938.16(h) is satisfied. Therefore, OSM has no basis for initiating proceedings under 30 CFR part 733.

PennFuture raised questions on PADEP's June 5, 2003, letter regarding the payment of reclamation fees by underground mine operators.

The 1991 rulemaking at 30 CFR 938.16(h) required Pennsylvania to clarify the procedures to be used for bonding the surface impacts of underground mines and the procedures to reclaim underground mining permits where the operator has defaulted on the obligation to reclaim. OSM imposed the requirement to clarify bonding forfeiture funding procedures and the responsibilities of the ABS. Bond program shortfalls have been documented by the 1993 Milliman & Robertson actuarial study and the February 2000 PADEP Assessment Report. Because PADEP has clarified that it has not been relying on the ABS for bond coverage for the surface effects of underground mines that portion of the required amendment has been satisfied.

PennFuture commented that statements that underground mines are bonded under a CBS is erroneous because, lacking a mandatory site-specific bond adjustment provision, Pennsylvania's approved program has never included a conventional SMCRA bonding system.

We do not agree with this comment. The fact that Pennsylvania did not have a mandatory adjustment provision does not alter the fact that, under its approved program, it had been accepting conventional bonds as providing full bond coverage, separate from the ABS, for the surface effects of underground mines. We agree that Pennsylvania needs to modify its program to include a mandatory bond adjustment provision. However, imposing such a required amendment is beyond the scope of 30 CFR 938.16(h). In any case, a commitment to propose such an amendment was included in the program enhancement document. In fact, the proposed amendment has now been received by OSM and we have published it for comment in a separate FR notice.

PennFuture commented that because the authorization in 25 Pa. Code 86.17(e) to use reclamation fees on all bond forfeiture sites is part of the OSM-approved State regulatory program, PADEP may not deviate from the terms of that program through an unwritten policy or a mere letter to OSM. PennFuture asserted that the plain terms of the permit fee regulation at 25 Pa. Code 86.17(b), approved at primacy, required payment of the $50 per acre fee by everyone planning to engage in surface mining activities (a term that included surface activities associated with an underground mining operation). That provision was deleted in 1991 and replaced with 25 Pa. Code 86.17(e), which expressly exempts underground operators from the permit fee requirement, but does not expressly prohibit the use of fee moneys to reclaim surface effects of underground mining. PennFuture further stated that if PADEP wants to place such a restriction on the use of the funds, the only way it can do so is through a program amendment. PennFuture believes that the explanation presented in PADEP's June 5, 2003, letter does not resolve, but rather highlights, an inconsistency between the terms of the approved Pennsylvania program and its implementation and that the inconsistency can be "clarified" in only one of two ways: (1) PADEP's elimination of the unpromulgated and unapproved restriction on the use of the ABS reclamation fees, or (2) PADEP's submission and our approval of a program amendment incorporating the restriction that PADEP claims to apply in practice.

We do not agree with PennFuture's assertion that 25 Pa. Code 86.17(b) prevented PADEP from establishing and operating within the boundaries of the Pennsylvania ABS. Pennsylvania's regulation at 25 Pa. Code 86.17(b) provided the authority to collect a permit application fee. When Pennsylvania deleted subsection (b) and added subsection (e) in 1990, it stated that "[s]ection 86.17 is changed to *clarify* that the $50 per acre reclamation fee does not apply to the surface effects of underground mining." Volume 18, *Pennsylvania Bulletin*, 3385, June 16, 1990. (Emphasis added) Since the 1990 changes "clarified," rather than "created," the reclamation fee exemption for underground operators, PADEP's June 5, 2003 assertion that "[b]onding of surface impacts of underground mines has always been under a conventional bonding system" is consistent with previously approved and currently approved regulations. The discretionary authority under 25 Pa. Code 86.152 and 86.149(b)(7) provided PADEP with the option of adjusting bonds on sites it determined were covered by the ABS. In addition, there were no program restrictions preventing PADEP from allocating the reclamation fees collected to those sites where bonds were adjusted pursuant to the discretionary authority. The required amendment at 30 CFR 938.16(h) requested that Pennsylvania clarify its existing procedures with regard to that process. PADEP has done so, by stating in its June 5, 2003, letter that underground mines are not subject to the reclamation fee, and that the ABS moneys are not used for reclaiming underground mines. We believe these statements are legally supported by the flexible language contained in the State's regulations at 25 Pa. Code 86.17 and 86.152. Moreover, and as stated above, PADEP is now requiring all mine permits to post a full cost reclamation bond and PADEP has proposed a number of enhancements, as well as an amendment making it clear that bond adjustment will be mandatory when adjustment is needed.

PennFuture commented that the PADEP technical guidance document that remains in effect provides that the mine drainage treatment component for an underground anthracite (*see* PADEP Technical Guidance Document No. 563–2504–45 1, "Bonding: Anthracite Underground Mines" (February 15, 1997)) is limited to the cost of replacing the treatment system.

We appreciate the commenter pointing out that Pennsylvania's 1997 guidance document is not consistent with our 1997 acid mine drainage (AMD) policy statement issued shortly after their guidance document (while the Pennsylvania guidance document reflects Federal bonding requirements for underground mines promulgated in 1980, those requirements were simplified with that express provision limiting bonding to the cost of removing or replacing the treatment system being removed in 1983). However, that inappropriate limitation in the guidance document is not germane to the requirements of 30 CFR 938.16(h) nor our basis for proposing to remove it. Therefore, the comment is outside the scope of this action.

PennFuture indicated that the program enhancements document suggests that PADEP will include long term treatment costs in calculating the water treatment component of conventional bonds, but the formula it provides (in Appendix 1) incongruously does not take into account the costs of replacing the treatment system.

First, the approach to calculating costs for conventional bonds is outside the scope of the 1991 rulemaking codified at 30 CFR 938.16(h) and our basis for proposing to remove it. In any case, we have found that PADEP's approach to calculating the annual treatment cost includes a component for recapitalization. Our technical staff has been working with PADEP on refining treatment cost calculations and confirms that the cost of reconstructing the discharge treatment system is included. Please note that PADEP plans to address this issue through a specific guidance document that will be open to public comment. We encourage you to contact PADEP and notify them of your interest to review and comment on new and revised technical guidance documents.

PennFuture commented that the method for calculating the bond for an underground mine can be "clarified" once and for all only if it is part of the OSM-approved, OSM-enforceable State regulatory program.

Underground bond calculation procedures are part of the approved program. Consistent with Federal regulatory programs, States may implement bonding calculations and bond rates through agency guidelines. Pennsylvania maintains bond rate guidelines through its Technical Guidance Document system. We have generally not required the submission of those guidance documents as program amendments nor would we expect to unless they seemed to conflict with the approved program. In any case, the method for calculating the bond amount for conventional bonds required to be posted for the surface effects of underground mines is beyond the scope of this rulemaking which, as previously explained, is limited to the ABS.

PennFuture commented that PADEP's June 5, 2003, submission does not satisfy the first requirement of 30 CFR 938.16(h) to demonstrate that Pennsylvania's bonding program guarantees timely and complete reclamation of all bond forfeiture sites. PADEP has not submitted such proof, and the unfolding situation with C&K Coal Company shows that it is unable to do so.

Please review our responses to a number of similar comments above. PADEP's June 5, 2003, submission does satisfy the requirements of 30 CFR 938.16(h). In addition, PADEP has provided a credible approach to addressing residual reclamation obligations covered by the ABS. These include the provision of $5.5 million for land reclamation, the conversion of active mine permits to full cost bonding, and the development of a long-term treatment approach to pollutional discharges on active and forfeited mine sites. Forfeiture situations such as those presented by C&K Coal Company are unfortunate and are representative of the types of challenges that PADEP faces as it addresses those residual obligations. We have committed to a cooperative partnership with PADEP that will target the resources of both agencies towards the implementation of the bond program enhancements put forth by PADEP under the program enhancements document. We are confident that the shift from the ABS to conventional bonds (which brings the Pennsylvania program into conformance with Federal requirements) together with ongoing and planned enhancements to address the residual ABS obligations, constitutes the best approach to resolving residual obligations of the ABS such as the one referenced in the comment.

PennFuture commented that we should allow the required program amendment codified at 30 CFR 938.16(h) to remain in place, and should now institute the Parp 733 proceedings we should have initiated in early 1992 based on PADEP's failure to satisfy the two requirements codified therein.

Please see our response above to similar comments. The required amendment at 30 CFR 938.16(h) has been satisfied and we have no basis for initiating proceedings under 30 CFR part 733.

The following comments from PennFuture are derived from its letter to us dated July 25, 2003, regarding our action in terminating the 1991 notice. As we noted above, we are identifying and responding to these comments only to the extent that they arguably apply to removal of the required amendment at 30 CFR 938.16(h) and have not already been addressed above.

PennFuture stated that OSM has flip-flopped from its previous insistence that all forfeiture discharges receive timely treatment.

We do not agree with this comment. We have consistently required, in Pennsylvania as well as other states, that any ABS must have sufficient assets to complete the reclamation plan of all sites covered by the ABS. We have consistently judged efforts to correct identified deficiencies in an ABS by that same standard. However, this is the first time we have faced a situation in which a State has decided to replace ABS bond coverage for new and existing permits with conventional bonds rather than trying to fix a deficient ABS and continue reliance upon it. Again, when the bond coverage being provided to operations as part of an approved program under 30 CFR 800.11(e) is determined to be insufficient, it is appropriate to require replacement of that bond coverage with a conventional bond posted under 30 CFR 800.11(a) through (d). That is what OSM would do if we were to institute a Federal bonding program in Pennsylvania or any other State with an ABS. However, there is no obligation to make the bond coverage under subsection (e) solvent before doing so. That does not mean that the obligation to treat forfeiture discharges goes away. That obligation remains first with the permittee. Second, it resides with the bond coverage to the extent funds are available. However, Pennsylvania, or any other State, is only obligated to treat forfeiture discharges to the extent bond funds are available.

PennFuture stated that by using a watershed approach to address primacy forfeiture discharges, OSM is attempting to hide the failure of PADEP and OSM to ensure full implementation of the reclamation plan for every primacy forfeiture site.

We do not believe this comment is within the scope of this rulemaking. However, we will respond. We support PADEP's approach to address all mine drainage problems in the Commonwealth, including those from primacy forfeitures, on a watershed basis. Given the range of State and Federal government programs and citizen based mine drainage treatment efforts ongoing in Pennsylvania, PADEP must carefully consider each primacy forfeiture discharge in the context of all pollution in the watershed. Without such an approach, scarce programmatic and technical resources could be wasted. SMCRA and the 30 CFR part 800 bonding regulations do not prohibit the regulatory authority from implementing discharge abatement activities in the context of an entire watershed.

PennFuture stated that it will take years for the agencies to perform all the studies, calculate all the wasteload allocations, create the priority lists, evaluate the available funding and other mechanisms, and confront the hard decisions to formally abandon certain primacy discharges. PennFuture stated that in the meantime, the primacy forfeiture discharges will continue to flow without treatment, and the list of them will grow longer.

While we do not believe it is within the scope of this rulemaking, we agree with the comment that collecting the appropriate scientific information and developing effective abatement plans may require a considerable amount of time. However, PADEP and we have committed to a joint agency cooperative approach to developing watershed plans that will successfully abate forfeiture discharges. We acknowledge that until such time as a discharge abatement plan becomes effective, certain discharges may go untreated.

PennFuture commented that the program enhancements document fails to show that sufficient financial guarantees have been or will be posted for active and inactive discharge sites to prevent the discharges from going untreated after forfeiture occurs.

Again, while we believe this comment is outside the scope of this rulemaking, we will respond. PADEP has invested a great deal of effort in developing a remedy to the inadequacies of the classic bonding approach to long-term discharges. In the short-term, it has used its enforcement and compliance process to initiate a number of treatment trusts on active mine sites. It has invested staff resources in the development of a workable trust approach. For the long-term, PADEP has committed a process where operators will have to put up a separate bond that will provide for long-term treatment in the event of a forfeiture. If operators refuse or are unable to come up with the bond, PADEP will use its enforcement and compliance process to have the operator commit to building a financial assurance (trust) over a specified period of time. PADEP's approach is within their approved statutory and regulatory requirements and will take some time to be fully implemented. We agree that it is possible that certain sites may forfeit their bonds leaving insufficient funds for the immediate treatment of any pollutional discharges. In such cases, PADEP has committed to addressing the sites as part of their watershed approach under the Workplan.

PennFuture commented that the bond conversion program was a misdirected effort because instead of focusing on the major problem of mine drainage treatment guarantees, PADEP conducted a multi-year effort to revamp parts of its program for guaranteeing land reclamation, which consumed considerable resources of both mine operators and PADEP staff.

We do not agree with the comment. PADEP's plan for converting existing operations from the ABS to conventional bonds was designed to maximize the number of sites obtaining conventional bonds and minimize the number of forfeitures that might be triggered by the conversion process. It also addresses the water treatment component in a manner consistent with OSM's 1997 AMD policy statement as applied under programs with conventional bonds.

PennFuture submitted a list of activities ongoing in the Pennsylvania regulatory program, in support of a contention that Pennsylvania's transition to a CBS is not complete. PennFuture commented that based upon the submitted reasons, Pennsylvania is still operating an ABS.

We acknowledge that the Fund still exists. However, with regard to the comment and its relevance to the removal of the required amendment at 30 CFR 938.16(h), we note that PADEP, rather than continuing efforts to make the ABS solvent, is now requiring all mine permits to post a full cost reclamation bond. We also acknowledge that, through implementation of the workplan described in the enhancements document, PADEP is continuing efforts to further reduce the residual potential obligations to the Fund by obtaining other forms of financial guarantees for those potential obligations where possible. However, that does not alter the fact that the required actions described in 30 CFR 938.16(h) are now moot because Pennsylvania chose a different course to address the issues raised.

PennFuture commented that the Workplan is inconsistent with SMCRA because it allows primacy discharges to be lumped with all other post mining discharges under a prioritized reclamation approach. That process, PennFuture contends, is inconsistent with SMCRA. PennFuture further stated that, under SMCRA, primacy sites are legally distinctive and are not supposed to be thrown in with every other abandoned coal mine in the State and that the Workplan explicitly allows for primacy forfeiture discharges to go without treatment based on the unavailability of funds, and it effectively writes off some primacy discharges permanently because they fall below the treatment threshold on the priority list.

We do not agree that the Workplan is inconsistent with SMCRA. As we have stated in a previous decision on a Pennsylvania bonding amendment, SMCRA does not prevent regulatory authorities from prioritizing reclamation efforts to effectively allocate staff resources or to improve the environmental outcome of program operations. *See* 56 FR 55080, 55084 (October 24, 1991) ("To the extent that [State programs] provide only for a ranking of sites for reclamation without compromising the requirement that all sites for which bonds were posted be properly reclaimed, however, they are not inconsistent with * * * SMCRA * * *") Likewise, there are no provisions under SMCRA or the 30 CFR part 800 bonding regulations that prevent the regulatory authority implementing discharge abatement activities in the context of an entire watershed. OSM supports PADEP's approach to address all mine drainage problems in the Commonwealth, including those from primacy forfeitures, on a watershed basis. As we noted above, PADEP must carefully consider each primacy forfeiture discharge in the context of all pollution in the watershed. Without such an approach, programmatic and technical resources could be wasted. We disagree that the discharge Workplan would allow PADEP to "write-off" sites based upon a treatment threshold established on a priority list. We expect that some discharges will be addressed under abatement plans where treatment may not be at the specific discharge location or may be carried out in combination with non-primacy forfeiture discharges. However, we anticipate that all primacy forfeiture pollutional discharges will be addressed by PADEP.

PennFuture commented that OSM has previously ruled on the prioritization of bond forfeiture reclamation in the October 24, 1991, **Federal Register** (56 FR 55080), when it stated that "neither SMCRA nor the Federal regulations provide for prioritizing sites for reclamation, since both presume that site-specific bonds, together with necessary supplemental funding from alternative bonding systems, will be immediately available and adequate to cover reclamation costs for each site." 56 FR at 55084.

In response, we note that our October 24, 1991, finding, also stated that prioritization would be inconsistent with SMCRA where it "would allow high priority sites to be reclaimed while neglecting lower priority sites." *Id.* The Workplan calls for reclamation, including water treatment, for all permanent program sites, even though some will have to wait longer than others, and some will be treated on a watershed basis. Neither of these approaches equates to a "write-off" of permanent program site reclamation costs.

In support of its previous comment that OSM and PADEP cannot "write-off" outstanding obligations of an ABS, PennFuture referenced past OSM decisions in Missouri (56 FR at 21281), Kentucky (57 FR at 37090), and West Virginia (60 FR at 51918) (codifying quoted language at 30 CFR 948.16(lll)).

We do not agree that The Workplan will "write-off" primacy forfeiture discharges. The Workplan provides for PADEP to develop and maintain a statewide strategy and to dedicate staff resources expeditiously to address primacy forfeiture discharges. The Workplan also provides for periodic reporting on the status of the discharge inventory, reclamation accomplishments, and to provide us with information on program issues encountered during the process. In addition, the Workplan makes information on the statewide strategy, site-specific abatement plans and abatement schedules available to the public. We have concluded that the development of a statewide strategy and site-specific plans with periodic reporting and public involvement provides a process that will address all primacy forfeiture discharges in a manner that will maximize the environmental benefits on a watershed basis. At the same time, we reiterate an earlier response that pointed out that converting from an ABS that is deficient to conventional bonds is quite distinct from efforts to maintain and correct deficiencies in an ABS, as was done by Missouri, Kentucky and West Virginia. Again, Pennsylvania is not obligated to make its ABS solvent before replacing the ABS with conventional bonds.

PennFuture commented that it disagreed with the discussion in the program enhancements document that dealt with bond program "liability" versus "programmatic accountability." PennFuture stated that the document makes no effort to explain the distinction between the State not being "liable" for treatment costs on bond forfeiture sites and it having "programmatic accountability" to ensure there is sufficient funding available for that purpose.

While this comment is outside the scope of this rulemaking we will clarify the point. Again, the operator remains liable for all unfinished reclamation obligations, including water treatment at a forfeited site. The regulatory authority has an obligation to use forfeited and/or ABS funds to complete the reclamation plan to the extent funds are available. The regulatory authority also has programmatic accountability to assure that there are sufficient funds available. However, failure to fulfill its programmatic responsibility to assure that sufficient funds are available in the event of forfeiture does not make the State liable for completing the reclamation plan.

Penn Future commented that the Workplan wrongly classifies Title V primacy bond forfeiture sites as a subset of "[t]he universe of abandoned mine lands," and that PADEP has decided that discharges from primacy forfeiture sites are properly classified as nonpoint source discharges for TMDL purposes. Penn Future takes issue with the letter from the Environmental Protection Agency dated November 7, 2001, that discusses the use of TMDL's when addressing discharges on abandoned mine sites.

While we believe this comment falls outside the scope of this rule making, we will address it. We disagree with the Penn Future's characterization of the letter with regard to the Workplan. The Workplan does not address whether specific discharges are point or non-point sources. Primacy forfeiture discharges will be addressed by PADEP through a variety of financial and reclamation mechanisms consistent with Pennsylvania's approved Environmental Protection Agency (EPA) water quality program. The Workplan includes a commitment by PADEP to make discharge abatement plans available to the public. At that time, the public will have an opportunity to comment on the treatment of discharges on a site-by-site basis.

Penn Future commented that the Workplan fails to mention any discharges addressed by remining or the "rec-in-lieu" program.

While we believe this comment falls outside the scope of this rule making, we will address it. The value of remining efforts in Pennsylvania is well known and OSM and PADEP chose to not devote the considerable space needed to establish the value of the activity. Persons interested in the accomplishments of the remining program in Pennsylvania can visit the EPA website and obtain a copy of the document "Coal Remining—Best Management Practices Guidance Manual" (EPA 821–B–01–010). Under Section 6 of that document, there is a considerable amount of information on the water quality accomplishments of remining in Pennsylvania. Both reclamation mechanisms, and particularly remining, present opportunities for PADEP to address primacy forfeiture discharges.

PennFuture commented that PADEP is unable to pledge future use or availability of certain resources as part of the discharge abatement Workplan. PennFuture specifically questioned the availability of Growing Greener grants and the 10% Set-Aside under the SMCRA Abandoned Mine Land Program.

While we believe this comment falls outside the scope of this rulemaking, we will address it. We do not agree with the comment. The Workplan provides for PADEP to develop and maintain a statewide strategy using a number of financial and reclamation resources. Growing Greener Grants and the 10% Set-Aside represent potentially significant resources and have been used to achieve meaningful reclamation in the treatment of post-mining pollutional discharges. While the extent of their contribution will have to be determined on an annual basis, past accomplishments demonstrate their value to the overall Workplan approach to pollution abatement.

PennFuture commented that treatment bonds and trust funds will not prevent future primacy forfeitures. PennFuture stated that although the posting of full-cost water treatment bonds or, as an alternative to those bonds, establishment of treatment trusts may curb the rate of growth of the ABS funding shortfall, they will not prevent that shortfall from expanding or the list of untreated primacy forfeiture discharges from lengthening.

While we believe this comment is outside the scope of this rulemaking, we agree that bonds and trusts funds specifically covering the treatment of pollutional may not be a final solution for every discharge. However, we believe these efforts will significantly reduce the potential shortfall of the ABS. PADEP has invested a great deal of effort in developing a remedy to the inadequacies of the classic bonding approach to long-term discharges. In the short-term, it has used its enforcement and compliance process to initiate a number of treatment trusts on active mine sites. It has invested staff resources to the development of a workable trust approach. For the long-term, PADEP has committed to a process whereby operators will have to put up a separate bond that will provide for long-term treatment in the event of a forfeiture. If operators refuse or are unable to come up with the bond, PADEP will use its enforcement and compliance process to force the operator to commit to building a financial assurance (trust) over a specified period of time. This is an approach PennFuture supported in a request for comments on OSM's Advance Notice of Proposed Rulemaking published in the **Federal Register** on May 17, 2002 regarding AMD bonding issues (67 FR 35070). We believe that treatment bonds and trust funds will lead to successful treatment of many more discharges than could be successfully treated employing the classic approach to conventional bonding, and will also remove potential obligations to the ABS.

PCA submitted comments on July 28, 2003 (Administrative Record No. PA 802.37). PCA commented that it supported the removal of the required amendment at 30 CFR 938.16(h). However, PCA believed that it was important that the final rulemaking clarify the nature of the removal through four points. We will respond to each point in turn.

In its first point, PCA indicated that it believes that Pennsylvania's proposal for financial assurances at sites with post mining discharges is more detailed and advanced than any proposed Federal regulatory requirements. PCA wanted us to state clearly that Pennsylvania may make changes to its proposed submission and that changes will be subject to public participation.

We acknowledge PCA's support of removal of the required amendment. As we noted earlier, in our proposed rule of June 26, 2003, we requested comments on PADEP's submission of the program enhancements document as it related to removal of the required amendment at 30 CFR 938.16(h). We believe that Pennsylvania has the existing statutory and regulatory authority to implement the provisions discussed in the document. As such, there is no need for the document to be submitted to us for processing as a program amendment under 30 CFR part 732. While Pennsylvania is free to make changes to the document, we will be closely monitoring any such changes to insure that they are based on Pennsylvania's approved program. Any changes that are not based on the approved program will be subject to the program amendment standards of 30 CFR part 732, including public participation.

In its second point, PCA is concerned with Pennsylvania's plans to move ahead with implementing a trust fund system that could put operators at a competitive disadvantage because it is more detailed, comprehensive and rigorous than other states require. PCA is also concerned that the trust fund system could put some operators out of business altogether. PCA requests that PADEP implement a treatment trust fund system that is no more stringent than any Federal program.

We disagree with the premise of the comment. We believe that the steps PADEP is taking are consistent with Federal requirements and, as such, will not put Pennsylvania operators at a competitive disadvantage.

In its third point, PCA indicated that there exists a bonding crisis in the mining industry making it difficult for operators to obtain bonds and it believes that surety bonding will not be available to address postmining discharges. PCA wants us and PADEP to acknowledge the need to review options in light of the bonding crisis and to ensure that our efforts to implement the joint workplan are designed to avoid further worsening of bonding difficulties.

We acknowledge the problems operators have in securing bonds. We believe that the trust fund option described as part of the bonding enhancements document is a valid alternative that will assist operators in their meeting reclamation requirements without adding to the burden of securing conventional bonds. The trust fund provisions will also assist in securing the release of conventional bonds, thus assisting operators to secure conventional bonds for other minesites.

In its fourth and final point, PCA indicated that operators have been treating discharges from minesites for years. Often, these treated discharges are entering streams that are severely degraded which means the treatment has little or no benefit to the hydrologic balance of the receiving watershed. In those cases, PCA indicated that it may not be prudent for PADEP to require operators to post a conventional bond or a trust fund for perpetual treatment.

As previously stated, the operator remains liable for completing the reclamation plan, including water treatment, and the regulatory authority has a programmatic accountability to assure that adequate financial resources are available in the event of bond forfeiture. Therefore, we do not agree with this comment.

### *Federal Agency Comments*

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Pennsylvania program (Administrative Record No. PA 802.31). On July 3, 2003 (Administrative Record No. PA 802.32), MSHA's Wilkes-Barre Office wrote to us noting that it had no comments on the proposal.

On July 16, 2003 (Administrative Record No. PA 802.33), MSHA's New Stanton Office wrote to us indicating that before a mine is abandoned, MSHA requires that all underground mine openings are sealed and refuse piles and impoundments are abandoned according to its requirements at 30 CFR 77.215. MSHA observed that there are many impoundments in Pennsylvania attached to bankrupt mines that have not been abandoned. MSHA noted that the conversion of all active and inactive mining permits to a full cost conventional bond should allow Pennsylvania to reclaim these sites. MSHA concluded by noting that it had no objections to removing the required amendment at 30 CFR 938.16(h).

We agree with MSHA's comments.

### *Environmental Protection Agency (EPA) Comments*

Under 30 CFR 732.17(h)(11)(i) we requested comments on the amendment from EPA (Administrative Record No. PA 802.31). EPA responded on July 17, 2003 (Administrative Record No. PA 802.34) that it appears that PADEP has provided sufficient information to justify removal of the required amendment at 30 CFR 938.16(h). EPA further indicated that it determined that there are no apparent inconsistencies with the Clean Water Act or other statutes or regulations under its jurisdiction.

## V. OSM's Decision

Based on the above findings, we are removing the required amendment at 30 CFR 938.16(h).

## VI. Procedural Determinations

### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

### *Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

*Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Pennsylvania does not regulate any Native Tribal lands.

*Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon data and assumptions for the counterpart Federal regulations.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the Pennsylvania submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the Pennsylvania submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfounded mandate.

**List of Subjects in 30 CFR Part 938**

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 18, 2003.

**Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

■ For the reasons set out in the preamble, 30 CFR part 938 is amended as set forth below:

## PART 938—PENNSYLVANIA

■ 1. The authority citation for part 938 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

**§ 938.16 [Amended]**

■ 2. Section 938.16 is amended by removing and reserving paragraph (h).

[FR Doc. 03–25300 Filed 10–6–03; 8:45 am]

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## LIBRARY OF CONGRESS

## Copyright Office

## 37 CFR Part 260

**[Docket No. 2001–1 CARP DSTRA2]**

## Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings by Preexisting Subscription Services

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Final rule: technical amendment.

**SUMMARY:** The Copyright Office of the Library of Congress is making a non-substantive technical amendment to its final regulations adjusting the royalty rates and terms under the Copyright Act for the statutory license for the use of sound recordings by preexisting subscription services for the period January 1, 2002, through December 31, 2007.

**DATES:** *Effective Date:* August 4, 2003.

*Applicability Date:* The regulations apply to the license period January 1, 2002 through December 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

**SUPPLEMENTARY INFORMATION:** Section 106(6) of the Copyright Act, title 17 of the United States Code, gives copyright owners of sound recordings an exclusive right to perform their copyrighted works publicly by means of a digital audio transmission. This right is limited by section 114(d), which allows certain noninteractive digital audio services to make digital transmissions of a sound recording under a compulsory license, provided that the services pay a reasonable royalty fee and comply with the terms of the statutory license. Moreover, these services may make any necessary ephemeral reproductions to facilitate the digital transmission of the sound recording under a second license set forth in section 112(e) of the Copyright Act.

On June 18, 2003, the Copyright Office published final regulations effectuating an agreement on the terms that would govern SoundExchange[1] when it functions as the designated agent for the purpose of receiving royalty payments and statements of account from nonexempt subscription digital transmission services for transmissions of sound recordings made under a statutory license prior to January 1, 2002. 68 FR 36469 (June 18, 2003). Pursuant to the agreement, the Office amended § 260.7 by removing the word "fees" and replacing it with the word "payments." 68 FR at 36470.

On July 3, 2003, the Copyright Office published final regulations implementing an agreement to adjust the royalty rates and terms for the section 114 license for the use of sound recordings by preexisting subscription services for the current license period—January 1, 2002, through December 31, 2007. 68 FR 39837 (July 3, 2003). Pursuant to the second agreement, the Office amended § 260.7 once again; however, the amendatory language did not reflect the aforementioned amendment made on June 18. As a result, the intended amendment to the final clause of § 260.7 could not be effectuated. The technical amendment published today rectifies this oversight, correctly identifying the language being amended.

### List of Subjects in 37 CFR Part 260

Copyright, Digital audio transmissions, Performance right, Sound recordings.

### Final Regulation

■ In consideration of the foregoing, the Copyright Office amends part 260 of 37 CFR as follows:

## PART 260—RATES AND TERMS FOR PREEXISTING SUBSCRIPTION SERVICES' DIGITAL TRANSMISSIONS OF SOUND RECORDINGS AND THE MAKING OF EPHEMERAL PHONORECORDS

■ 1. The authority citation for part 260 continues to read as follows:

**Authority:** 17 U.S.C. 114, 801(b)(1).

### §260.7 [Amended]

■ 2. Section 260.7 is amended by removing "the cost of the administration of the collection and distribution of the royalty payments" and adding "any costs deductible under 17 U.S.C. 114(g)(3)" in its place.

Dated: September 5, 2003.

**Marybeth Peters,**

*Register of Copyrights.*

**James H. Billington,**

*The Librarian of Congress.*

[FR Doc. 03–25381 Filed 10–6–03; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 80

[FRL–7566–6 ]

## Use of Alternative Analytical Test Methods in the Reformulated Gasoline, Anti-Dumping, and Tier 2 Gasoline Sulfur Control Programs

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** This direct final rule allows the use of certain alternative analytical test methods for measuring sulfur in gasoline and butane to be used in the Federal reformulated gasoline (RFG) and anti-dumping program and the Federal gasoline sulfur control program. This direct final rule also establishes that a refinery may use any reasonable test method designed for measuring the sulfur content of butane until January 1, 2004. After that date, either the designated analytical test method or an allowed alternative analytical test method must be used. The purpose of today's rule is to grant temporary flexibility until we issue a comprehensive performance-based analytical test methods rule and to fulfill the terms of a recent settlement agreement related to gasoline sulfur test methods.

**DATES:** This direct final rule is effective December 8, 2003, unless we receive adverse comments or a request for a public hearing by November 6, 2003. If the Agency receives adverse comments or a request for public hearing, we will withdraw this direct final rule by publishing a timely withdrawal in the **Federal Register**.

The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of December 8, 2003.

**ADDRESSES:** To request a public hearing, please contact Anne Pastorkovich, Attorney/Advisor, Transportation & Regional Programs Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., (6406J), Washington, DC 20460 or by e-mail to *pastorkovich.anne-marie@epa.gov*. No confidential business information (CBI) should be submitted by e-mail.

EPA has established a public docket for this direct final rule under Docket ID No. OAR–2003–0050, which is available for public viewing at the Air and Radiation Docket and Information Center (EPA/DC) in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listings of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to the direct final rule should be submitted to EPA within 30 days of this notice, and according to the following detailed instructions: Submit your comments to EPA online using EDOCKET (our preferred method) or by mail to EPA Docket Center, Environmental Protection Agency (6102T), 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

EPA's policy is the public comments, whether submitted electronically or in paper format, will be made available for public viewing in EDOCKET as EPA receives them and without charge, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

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[1] SoundExchange is an unincorporated division of the Recording Industry Association of America, Inc. that administers statutory licenses.

**FOR FURTHER INFORMATION CONTACT:** If you would like further information about this rule or to request a hearing, contact Anne Pastorkovich, Attorney/Advisor, Transportation & Regional Programs Division, (202) 564–8987 or by e-mail at *pastorkovich.anne-marie@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Regulated Entities

Entities potentially regulated by the action are those that use analytical test methods to comply with the RFG, anti-dumping, and gasoline sulfur control program. Regulated categories and entities include:

| Category | NAICSs Codes[a] | SIC Codes[b] | Examples of potentially regulated parties |
|---|---|---|---|
| Industry | 324110 | 2911 | Petroleum refiners. |
| Industry | 422710 | 5171 | Gasoline Marketers and Distributors. |
| | 422720 | 5172 | |

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists all entities that we are now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated by this action. To determine whether your business is regulated by this action, you should carefully examine the applicability criteria in part 80 of Title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section of this document.

## II. Background and Summary of Today's Action

Section 211(k) of the Clean Air Act (CAA) directs EPA to establish standards requiring the greatest reduction in emissions of ozone forming volatile organic compounds (VOCs) and toxic air emissions achievable through the reformulation of conventional gasoline, considering cost, other health and environmental factors and energy requirements. The Act requires that RFG meet certain content standards for oxygen, benzene, and heavy metals. RFG must be used in certain ozone nonattainment areas, called "covered areas." The CAA also requires EPA to establish anti-dumping standards applicable to conventional gasoline used in the rest of the country. The Administrator signed the final RFG and anti-dumping regulations on December 15, 1993[1] and these regulations became effective in January 1995.

In 2000, EPA issued regulations establishing lower sulfur content requirements for all gasoline[2] and establishing stricter tailpipe emissions standards for all passenger vehicles, including sport utility vehicles (SUVs), minivans, vans and pick-up trucks. The gasoline sulfur control program begins phasing-in in 2004, and, in general, refiners must meet a refinery average sulfur standard of 30 ppm beginning in 2005 and a per gallon cap standard of 80 ppm beginning in 2006 (with the exception of challenged refiners, and gasoline sold in certain western states subject to geographic phase-in).

Under the RFG, anti-dumping and gasoline sulfur program, refiners, importers, and oxygenate blenders are required to test RFG and conventional gasoline for certain parameters, including sulfur levels, aromatic content, benzene content, and oxygen content. Test methods for determining these parameters are specified in the regulation. For the sulfur content of gasoline, 40 CFR 80.46(a)(1) specifies American Society for Testing and Materials (ASTM) standard method D–2622–98, entitled, "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry" as the designated test method. In addition, the gasoline sulfur rulemaking required a test method for determining the sulfur content of butane blended into gasoline—ASTM standard method D 3246–96, entitled "Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry."

In the gasoline sulfur control rulemaking, we specifically requested comments on the designated test method. We also requested comments on other ASTM methods. After considering comments received from the regulated industry during the gasoline sulfur rulemaking process, including comments supportive of ASTM D 2622–98 as the designated method, we decided to require the use of ASTM D 2622–98 for measuring sulfur content. We did not name any alternative analytical test methods because we anticipated that a comprehensive performance-based analytical test method approach rule would be issued in the near future. A comprehensive performance based test methods approach would allow anyone to qualify additional analytical test methods for use in demonstrating compliance with program requirements. We now know that a comprehensive performance based test methods rulemaking will take more time to complete than originally anticipated. We feel that permitting specific ASTM test methods to be used as alternative analytical test methods now provides a bridge to a more comprehensive performance based test methods approach in the future and grants refiners, importers and blenders significant flexibility and potential cost savings in meeting their testing requirements.

As discussed in a May 16, 2003 **Federal Register** notice,[3] Antek Instruments, which manufactures testing equipment, filed a petition challenging the final gasoline sulfur control rule. EPA and Antek entered into negotiations and reached a proposed settlement agreement. The proposed settlement agreement outlined a proposed rule which would identify ASTM D 5453–00$^{\epsilon1}$ as an alternative test method refiners and importers could use to comply with the requirement to test gasoline for sulfur content, provided the test result is correlated with ASTM D 2622–98. In today's action, EPA is revising its regulations to include such a provision. The proposed settlement agreement was available for comment until June 16, 2003. No adverse comments were received.

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[1] "Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline—Final Rule," 59 FR 7812 (February 16, 1994). See 40 CFR part 80 subparts D, E, and F.

[2] "Control of Air Pollution from New Motor Vehicles: Tier 2 Motor Vehicles Emissions Standards and Gasoline Sulfur Control Requirements—Final Rule," 65 FR 6698 (February 10, 2000). See also 40 CFR part 80 subpart H for regulations applicable to gasoline sulfur.

[3] *See* "Notice of Proposed Settlement Agreement; Request for Public Comment," 68 FR 26604 (May 16, 2003).

For the reasons discussed above, we are revising 40 CFR 80.46(a) to allow the use of ASTM D 5453–00$^{\epsilon1}$, entitled "Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence," ASTM D 6428–99, entitled "Test Method for Total Sulfur in Liquid Aromatic Hydrocarbons and Their Derivatives by Oxidative Combustion and Electrochemical Detection," and ASTM D 3120–96 (Reapproved 2002)$^{\epsilon1}$, entitled "Standard Test Method for Trace Quantities of Sulfur in Light Petroleum Hydrocarbons by Oxidative Microcoulometry." Refiners and importers would be able to choose which of these test methods best fits their needs for compliance measurements. We believe that permitting the use of these test methods is desirable from the standpoint of permitting regulated parties more flexibility. A refiner or importer would be able to determine gasoline sulfur content using ASTM D 5453–00$^{\epsilon1}$ or any of the specified alternative analytical test methods named in the rule, provided that the refiner or importer result is correlated to ASTM D 2622–98.

In order to "correlate" a test result from an alternative test method to the designated test method, a laboratory would have to develop and apply a "correlation equation" to the alternative test method result. Because the "correlation equation" is designed to provide a prediction of the designated test method result from the use of an alternative test method, the "correlation equation" eliminates bias between the designated test method and the alternative test method, so results may be compared between these methods. After applying the correlation equation, the results obtained from an alternative test method should be equivalent to the result you would obtain if you had used the designated test method. Users of a correlation equation should periodically verify its correlation to the designated test method.

This direct final rule also permits the use of ASTM D 4468–85 (Reapproved 2000), "Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry" as an alternative test method for butane, because it is an ASTM approved method that some refiners may elect to use. If a refiner, importer, or blender chooses to measure butane levels with this alternative analytical test method, the results must be correlated to D 3246–96, "Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry," which is the test method currently designated in the existing rule.

Some refiners and butane suppliers expressed concern that the designated test method is not currently in wide use. When we issued the final gasoline sulfur control regulations, we did not intend to require the use of this method until January 1, 2004. However, the final regulation inadvertently did not specify that date and we are clarifying the effective date by this action. Until January 1, 2004, any test method may be used to test the sulfur content of butane.

We believe that this direct final rule, and our intent to establish a comprehensive performance based test method approach in the future, will advance the purposes of the "National Technology Transfer and Advancement Act of 1995," (NTTAA) section 12(d) of Public Law 104–113, and Office of Management and Budget (OMB) Circular A–119. Both of these documents are designed to encourage the adoption of standards developed by "voluntary consensus bodies" and to reduce reliance on government-unique standards where such consensus standards would suffice. This direct final rule would provide for the use of alternative test methods for the measurement of sulfur in gasoline and butane under the RFG, anti-dumping, and gasoline sulfur control programs. Allowing these test methods, which are widely available and approved by ASTM, a "voluntary consensus body," is directly consistent with the goals of the NTTAA and OMB Circular A–119.

Any environmental effects of today's proposed action would be minimal, as it would merely grant limited flexibility to regulated parties in their choice of test method for determining the sulfur content of gasoline and butane. The economic effects of today's proposed action are expected to be positive, since it permits regulated parties the flexibility to choose the test method they will use to comply with existing regulations.

## III. Administrative Requirements

### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866, (58 FR 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

This direct final rule is not a significant regulatory action within the meaning of the Executive Order. It will not have an annual effect on the economy of $100 million or more and is not expected to have any adverse economic effects as described in the Order. This direct final rule does not raise issues of consistency with the actions taken or planned by other agencies, will not materially alter the cited budgetary impacts, and does not raise any novel legal or policy issues as defined in the Order.

### *B. Paperwork Reduction Act*

This direct final rule would not add any new requirements involving the collection of information as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. Today's rule would only permit more flexibility to parties in their choice of analytical test methods. OMB has approved the information collection requirements contained in the final reformulated gasoline (RFG) and anti-dumping rulemaking and gasoline sulfur control rulemaking has assigned OMB control number 2060–0277.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

### *C. Regulatory Flexibility Act*

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. For purposes of assessing the impacts of today's direct final rule on small entities, small entity is defined as: (1) A small business that has not more than 1,500 employees (13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

We have therefore concluded that today's direct final rule will relieve regulatory burden for all small entities. By permitting alternative analytical test methods for the measurement of sulfur in gasoline and butane, smaller entities will be granted greater flexibility in performing compliance testing.

### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local or tribal governments or the private sector. The rule imposes no enforceable duty on any state, local or tribal governments or the private sector.

### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The direct final rule is limited to permitting flexibility in the choice of test methods. Thus, Executive Order 13132 does not apply to this direct final rule.

### *F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This direct final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This proposed rule would apply to parties required to test gasoline and butane for gasoline and butane and does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

### *G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks*

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This direct final rule is not subject to E.O. 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

### *H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This direct final rule is not an economically “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it does not have a significant adverse effect on the supply, distribution, or use of energy.

### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This direct final rule advances the goals of the NTTAA by adopting test methods developed by voluntary consensus standards bodies.

### *J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This direct final rule will be effective December 8, 2003.

### *K. Statutory Provisions and Legal Authority*

Statutory authority for today's direct final rule comes from sections 211(c), 211(i) and 211(k) of the CAA (42 U.S.C. 7545(c) and (k)). Section 211(c) and 211(i) allows EPA to regulate fuels that contribute to air pollution which endangers public health or welfare, or which impairs emission control equipment. Section 211(k) prescribes requirements for RFG and conventional gasoline and requires EPA to promulgate regulations establishing these requirements. Additional support for the fuels controls in today's rule comes from sections 114(a) and 301(a) of the CAA.

### List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Diesel, Imports, Incorporation by reference, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: September 24, 2003.

**Marianne Lamont Horinko,**

*Acting Administrator.*

■ For the reasons described in the preamble, part 80 of Title 40 of the Code of Federal Regulations is amended as follows:

## PART 80—[AMENDED]

■ 1. The authority citation for part 80 continues to read as follows:

**Authority:** 42 U.S.C. 7414, 7545, and 7601(a).

* * * * *

■ 2. Section 80.46 is amended by revising paragraphs (a) and (h) to read as follows:

### § 80.46 Measurement of reformulated gasoline fuel parameters.

(a) *Sulfur.* Sulfur content of gasoline and butane must be determined by use of the following methods:

(1) The sulfur content of gasoline must be determined by use of American Society for Testing and Materials (ASTM) standard method D 2622–98, entitled “Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry” or by one of the alternative methods specified in paragraph (a)(3) of this section.

(2) Beginning January 1, 2004, the sulfur content of butane must be determined by the use of ASTM standard method D 3246–96, entitled “Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry” or by the alternative method specified in paragraph (a)(4) of this section.

(3) Any refiner or importer may use any of the following methods for determining the sulfur content of gasoline; provided the refiner or importer test result is correlated with the method specified in paragraph (a)(1) of this section:

(i) ASTM standard method D 5453–00$^{\epsilon1}$, entitled, “Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence,” or

(ii) ASTM standard method D 6428–99, entitled, “Test Method for Total Sulfur in Liquid Aromatic Hydrocarbons and Their Derivatives by Oxidative Combustion and Electrochemical Detection,” or

(iii) ASTM standard method D 3120–96 (Reapproved 2002)$^{\epsilon1}$, entitled “Standard Test Method for Trace Quantities of Sulfur in Light Petroleum Hydrocarbons by Oxidative Microcoulometry.”

(4) Beginning January 1, 2004, any refiner or importer may determine the sulfur content of butane using ASTM standard method D 4468–85 (Reapproved 2000), “Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry, “provided that the refiner or importer result is correlated with the method specified in paragraph (a)(2) of this section.

* * * * *

(h) *Incorporations by reference.* ASTM standard methods D 3606–99, entitled “Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography;” D 1319–02a, entitled “Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption;” D 4815–99, entitled “Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and $C_1$ to $C_4$ Alcohols in Gasoline by Gas Chromatography;” D 2622–98, entitled “Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry;” D 3246–96, entitled “Standard Test

Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry;" D 5191–01, entitled, "Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method);" D 5599–00, entitled, "Standard Test Method for Determination of Oxygenates in Gasoline by Gas Chromatography and Oxygen Selective Flame Ionization Detection;" D 5769–98, entitled, "Standard Test Method for Determination of Benzene, Toluene, and Total Aromatics in Finished Gasolines by Gas Chromatography/Mass Spectrometry," D 86–01, entitled, "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure;" D 5453–00$^{\epsilon1}$, entitled, "Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence;" D 6428–99, entitled, "Test Method for Total Sulfur in Liquid Aromatic Hydrocarbons and Their Derivatives by Oxidative Combustion and Electrochemical Detection;" D 3120–96 (Reapproved 2002)$^{\epsilon1}$, entitled "Standard Test Method for Trace Quantities of Sulfur in Light Petroleum Hydrocarbons by Oxidative Microcoulometry;" and D 4468–85 (Reapproved 2000), "Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry "are incorporated by reference in this section. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428–2959. Copies may be inspected at the Air Docket Center, room B–108, U.S. Environmental Protection Agency, Docket Nos. A–97–03, A–2002–15 and OAR–2003–0050, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, or at the Office of the Federal Register, National Archives and Records Administration, 800 North Capitol Street, NW, Suite 700, Washington, DC.

■ 3. Section 80.330 is amended by revising paragraph (c)(1) to read as follows:

**§ 80.330 What are the sampling and testing requirements for refiners and importers?**

* * * * *

(c) *Test method for measuring sulfur content of gasoline.* (1) For purposes of paragraph (a) of this section, refiners and importers shall use the method provided in § 80.46(a)(1) or one of the alternative test methods listed in § 80.46(a)(3) to measure the sulfur content of gasoline they produce or import.

* * * * *

■ 4. Section 80.340 is amended by revising paragraph (b)(2)(ii) to read as follows:

**§ 80.340 What standards and requirements apply to refiners producing gasoline by blending blendstocks into previously certified gasoline (PCG)?**

* * * * *

(b) * * *

(2) * * *

(ii) The testing must be performed by the method specified in § 80.46(a)(2) or by the alternative method specified in § 80.46(a)(4).

* * * * *

■ 5. Section 80.350 is amended by revising paragraph (b)(2) to read as follows:

**§ 80.350 What alternative sulfur standards and requirements apply to importers who transport gasoline by truck?**

* * * * *

(b) * * *

(2) The sampling and testing shall be performed using the methods specified in § 80.330(b) and § 80.46(a)(1) or one of the alternative test methods listed in § 80.46(a)(3), respectively.

* * * * *

[FR Doc. 03–25133 Filed 10–6–03; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 81

## [CA087–DESIG; FRL–7568–3]

## Clean Air Act Area Designations; California

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing approval of minor changes in the boundaries between areas in Southern California established under the Clean Air Act for purposes of addressing the national ambient air quality standards (NAAQS) for 1-hour ozone, particulate matter (PM–10), carbon monoxide (CO), nitrogen dioxide (NO2), and sulfur dioxide (SO2), and the prior NAAQS for total suspended particulate matter (TSP).

We are approving these boundary changes under the Clean Air Act as amended in 1990 (CAA or the Act).

**EFFECTIVE DATE:** This rule is effective on November 6, 2003.

**ADDRESSES:** You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours by appointment. If you wish to schedule a visit, please contact Dave Jesson, as indicated below. You can inspect copies of the submitted materials by appointment at the following locations:

EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

California Air Resources Board, 1001 "I" Street, Sacramento, CA 95814.

**FOR FURTHER INFORMATION CONTACT:** Dave Jesson, EPA Region IX, at (415) 972–3957, or *jesson.david@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us," and "our" refer to EPA.

### I. Proposed Action

On August 15, 2003 (68 FR 48848), we proposed to approve minor revisions to the boundaries of the Los Angeles-South Coast Air Basin Area ("South Coast Air Basin") and the Southeast Desert Air Basin.[1] These revisions were requested on November 18, 2002, by the California Air Resources Board (CARB) under CAA section 107(d)(3)(D), which authorizes States to submit revised area designations.

The purposes of CARB's request are to:

(1) enlarge the South Coast Air Basin to include the Banning Pass area, thereby excluding the area from the Southeast Desert;

(2) harmonize the boundaries of the Coachella Valley area[2] by changing them to match the PM–10 area boundaries; and

(3) correct the eastern boundary of the South Coast Air Basin with respect to CO.

We proposed to approve these redesignations and apply the boundary changes to all affected pollutants, because the revisions comply with the relevant provisions of CAA section 107(d)(3)(D) and apply equally to other pollutants for which the areas have existing designations. Our proposed action contains more information about the proposed revisions and our evaluation.

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[1] The Los Angeles-South Coast Air Basin Area includes all of Orange County and the more populated portions of Los Angeles, San Bernardino, and Riverside Counties. The Southeast Desert Air Basin includes portions of Los Angeles, San Bernardino, and Riverside Counties. For a description of the current boundaries of the basins and subareas for each pollutant, see 40 CFR 81.305.

[2] The Coachella Valley area is part of the Southeast Desert nonattainment area for ozone and is its own PM–10 nonattainment area.

## II. Public Comments and EPA Responses

Our proposed action provided a 30-day public comment period. During this period, we received no comments.

## III. EPA Action

As authorized in section 107(d)(3)(D), EPA is taking final action to:

(1) revise the boundary of the South Coast Air Basin to incorporate the Banning Pass;

(2) amend the boundary of the Coachella Valley area (Riverside County portion of the Southeast Desert Air Basin for 1-hour ozone) to correspond to the PM–10 boundary for the area; and

(3) approve the State's request to make a typographical correction to the boundary of the South Coast Air Basin with respect to CO.

We are making the first two changes for all pollutants for which the areas are designated in our regulations (40 CFR Part 81). Thus, the boundary changes apply to 1-hour ozone, PM–10, CO, $NO_2$, $SO_2$, and TSP. We are amending the descriptions of the areas in 40 CFR 81.305 for TSP, CO, 1-Hour Ozone, and $NO_2$. No changes are required in the 40 CFR 81.305 designation tables for PM–10 and $SO_2$, since the tables for these pollutants do not specify boundaries and the area names need not be changed.

## IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 8, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: September 23, 2003.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

■ Part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

■ 2. Section 81.305 is amended as follows:

■ a. In the table for "California-TSP" by revising the entry for Riverside County under "Southeast Desert Air Basin";

■ b. In the table for "California—Carbon Monoxide" by revising the entry for Riverside County (part) under "Los Angeles-South Coast Air Basin Area"; by revising the entry for San Bernandino County (part) under "Los Angeles-South Coast Air Basin Area"; and by revising the entry for Riverside County (part) under the "Southeast Desert Air Basin";

■ c. In the table for "California—Ozone (1–Hour Standard)" by revising the entry for Riverside County (part) under "Los Angeles-South Coast Air Basin Area"; and by revising the entry for Riverside County (part) under the "Southeast Desert modified AQMA area";

■ d. In the table for "California-NO2" by revising the entry for "Riverside County (portion within S.E. Desert AQMA) County"; and by revising the entry for "Riverside County, non-AQMA portion County."

The revisions read as follows:

**§ 81.305 California.**

### CALIFORNIA—TSP

| Designated area | Does not meet primary standards | Does not meet secondary standards | Cannot be classified | Better than national standards |
|---|---|---|---|---|
| * * * | * | * | * | * |
| Southeast Desert Air Basin: | | | | |
| * * * | * | * | * | * |
| Riverside County (Coachella Valley planning area) | | | X | |
| Riverside County (remainder of County). | | | | |
| * * * | * | * | * | * |

### CALIFORNIA—CARBON MONOXIDE

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| * * * | * | * | * | * |
| Los Angeles—South Coast Air Basin Area Attainment. | | | | |
| * * * | * | * | * | * |
| Riverside County (part) that portion of Riverside County which lies to the west of a line described as follows:<br>1. Beginning at the Riverside-San Diego County boundary and running north along the range line common to Range 4 East and Range 3 East, San Bernardino Base and Meridian;<br>2. then east along the Township line common to Township 8 South and Township 7 South;<br>3. then north along the range line common to Range 5 East and Range 4 East;<br>4. then west along the Township line common to Township 6 South and Township 7 South to the southwest corner of Section 34, Township 6 South, Range 4 East;<br>5. then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, Township 6 South, Range 4 East;<br>6. Then west along the Township line common to Township 5 South and Township 6 South;<br>7. Then north along the range line common to Range 4 East and Range 3 East;<br>8. Then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 5 South, Range 3 East;<br>9. then north along the range line common to Range 2 East and Range 3 East to the Riverside-San Bernardino county line. | | Nonattainment | | Serious |
| San Bernardino County (part)—that portion of San Bernardino County which lies south and west of a line described as follows:<br>1. Beginning at the San Bernardino-Riverside County boundary and running north along the range line common to Range 3 East and Range 2 East, San Bernardino Base and Meridian;<br>2. Then west along the Township line common to Township 3 North and Township 2 North to the San Bernardino-Los Angeles County boundary. | | Nonattainment | | Serious |
| * * * | * | * | * | * |
| Southeast Desert Air Basin | | | | |
| * * * | * | * | * | * |
| Riverside County (part) Portion excluding Los Angeles-South Coast Air Basin. | | Unclassifiable/Attainment. | | |
| * * * | * | * | * | * |

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[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

### CALIFORNIA—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| * * * | * | * | * | * |
| Los Angeles—South and Coast Air Basin Area | | | | |
| * * * | * | * | * | * |
| Riverside County (part) that portion of Riverside County which lies to the west of a line described as follows:<br>1. Beginning at the Riverside-San Diego County boundary and running north along the range line common to Range 4 East and Range 3 East, San Bernardino Base and Meridian;<br>2. then east along the Township line common to Township 8 South and Township 7 South;<br>3. then north along the range line common to Range 5 East and Range 4 East;<br>4. then west along the Township line common to Township 6 South and Township 7 South to the southwest corner of Section 34, Township 6 South, Range 4 East;<br>5. then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, Township 6 South, Range 4 East;<br>6. then west along the Township line common to Township 5 South and Township 6 South;<br>7. then north along the range line common to Range 4 East and Range 3 East;<br>8. then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 5 South, Range 3 East;<br>9. then north along the range line common to Range 2 East and Range 3 East to the Riverside-San Bernardino county line. | 11/15/90 | Nonattainment | 11/15/90 | Extreme. |
| * * * | * | * | * | * |
| Southeast Desert Modified AQMA Area: | | | | |
| * * * | * | * | * | * |
| Riverside County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17 |
| Coachella Valley planning area—that portion of Riverside County which lies to the east of a line described as follows:<br>1. Beginning at the Riverside-San Diego County boundary and running north along the range line common to Range 4 East and Range 3 East, San Bernardino Base and Meridian;<br>2. then east along the Township line common to Township 8 South and Township 7 South;<br>3. then north along the range line common to Range 5 East and Range 4 East;<br>4. then west along the Township line common to Township 6 South and Township 7 South to the southwest corner of Section 34, Township 6 South, Range 4 East;<br>5. then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, Township 6 South, Range 4 East;<br>6. then west along the Township line common to Township 5 South and Township 6 South;<br>7. then north along the range line common to Range 4 East and Range 3 East;<br>8. then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 5 South, Range 3 East; | | | | |

CALIFORNIA—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| 9. then north along the range line common to Range 2 East and Range 3 East to the Riverside-San Bernardino County line and that portion of Riverside County which lies to the west of a line described as follows: That segment of the southwestern boundary line of Hydrologic Unit Number 18100100 within Riverside County, further described as follows: | | | | |
| 10. Beginning at the Riverside-Imperial County boundary and running north along the range line common to Range 17 East and Range 16 East, San Bernardino Base and Meridian; | | | | |
| 11. then northwest along the ridge line of the Chuckwalla Mountains, through Township 8 South, Range 16 East and Township 7 South, Range 16 East, until the Black Butte Mountain, elevation 4504 feet; | | | | |
| 12. then west and northwest along the ridge line to the southwest corner of Township 5 South, Range 14 East; | | | | |
| 13. then north along the range line common to Range 14 East and Range 13 East; | | | | |
| 14. then west and northwest along the ridge line to Monument Mountain, elevation 4834 feet; | | | | |
| 15. then southwest and then northwest along the ridge line of the Little San Bernardino Mountains to Quail Mountain, elevation 5814 feet; | | | | |
| 16. then northwest along the ridge line to the Riverside-San Bernardino County line | | | | |
| * * * | * | * | * * | * |

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

CALIFORNIA—$NO_2$

| Designated area | Does not meet primary standards | Cannot be classified or better than national standards |
|---|---|---|
| Riverside County (Coachella Valley planning area) | | |
| * * * | * * * | * |
| Riverside County (portion not within South Coast Air Basin or Coachella Valley planning area). | .................................................. | X |
| * * * | * * * | * |

[FR Doc. 03–25136 Filed 10–6–03; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 239 and 258

## [FRL–7569–4]

## Virginia: Approval of Financial Assurance Regulations for the Commonwealth's Municipal Solid Waste Landfill Permitting Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Immediate final rule.

**SUMMARY:** In Federal Register documents of February 3, 1993 and March 31, 1994, the Commonwealth of Virginia received Federal determinations of partial program adequacy for its Municipal Solid Waste Landfill permit program under section 4005 of the Resource Conservation and Recovery Act (RCRA). This section requires states to develop and implement permit programs that ensure that Municipal Solid Waste Landfills (MSWLF) which may receive hazardous household waste or small quantity generator waste are obligated to comply

with the revised Federal MSWLF Criteria. Initially, Virginia submitted to EPA for approval relevant regulations that corresponded to all sections of 40 CFR part 258 except for Subpart G, Financial Assurance Criteria. On November 21, 2001, the Commonwealth of Virginia adopted financial assurance regulations for MSWLFs and on January 21, 2003 submitted these regulations to EPA for approval. Subject to the opportunity for public review and comment, this notice approves Virginia's financial assurance regulations.

**DATES:** This approval shall become effective December 8, 2003 unless adverse comments are received on or before November 6, 2003.

**ADDRESSES:** Written comments should be sent to Mike Giuranna, RCRA State Programs Branch, Waste & Chemicals Management Division (3WC21), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029, telephone: (215) 814–3298. Comments may also be submitted electronically through the Internet to: *giuranna.mike@epamail.epa.gov* or by facsimile at (215) 814–3163. You may examine copies of the materials submitted by Virginia during normal business hours at EPA, Region III or at the offices of the Virginia Department of Environmental Quality (VADEQ) at 629 East Main Street, Richmond, Virginia 23219, Phone Number (804) 698–4238, attn: John Ely.

**FOR FURTHER INFORMATION CONTACT:** Mike Giuranna, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone Number: (215) 814–3298, e-mail: *giuranna.mike@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In **Federal Register** notices of February 3, 1993, (58 FR 6955) and March 31, 1994, (59 FR 15201) EPA determined that all portions of Virginia's Municipal Solid Waste Landfill permitting program, with the exception of the financial assurance portion, were equivalent to EPA's regulations for such programs under 40 CFR part 258. On January 21, 2003, Virginia submitted its financial assurance regulations to EPA for approval. After a thorough review, EPA determined that Virginia's financial assurance regulations, as defined under 9 VAC 20–70, Commonwealth of Virginia Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities, are adequate to assure compliance with the Federal criteria as defined at 40 CFR part 258, subpart G (§§ 258.70 through 258.74). This determination will give full Federal approval to Virginia's Municipal Solid Waste Landfill permitting program.

### Statutory and Executive Order Reviews

This rule only approves State solid waste requirements pursuant to RCRA section 4005 and imposes no requirements other than those imposed by State law (*see* **SUPPLEMENTARY INFORMATION**, above). Therefore, this rule complies with applicable executive orders and statutory provisions as follows.

1. *Executive Order 12866: Regulatory Planning Review*—The Office of Management and Budget has exempted this rule from its review under Executive Order 12866.

2. *Paperwork Reduction Act*—This rule does not impose an information collection burden under the Paperwork Reduction Act.

3. *Regulatory Flexibility Act*—After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

4. *Unfunded Mandates Reform Act*—Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Act.

5. *Executive Order 13132: Federalism*—Executive Order 13132 does not apply to this rule because it will not have federalism implications (*i.e.*, substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government).

6. *Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*—Executive Order 13175 does not apply to this rule because it will not have tribal implications (*i.e.*, substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes).

7. *Executive Order 13045: Protection of Children from Environmental Health & Safety Risks*—This rule is not subject to Executive Order 13045 because it is not economically significant and it is not based on health or safety risks.

8. *Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*—This rule is not subject to Executive Order 13211 because it is not a significant regulatory action as defined in Executive Order 12866.

9. *National Technology Transfer Advancement Act*—EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets the requirements of RCRA. Thus, section 12(d) of the National Technology Transfer and Advance Act does not apply to this rule.

10. *Congressional Review Act*—EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U. S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective December 8, 2003.

### List of Subjects

*40 CFR Part 239*

Environmental protection, Administrative practice and procedure, Intergovernmental relations, Waste treatment and disposal.

*40 CFR Part 258*

Reporting and recordkeeping requirements, Waste treatment disposal, Water pollution control.

**Authority:** This document is issued under the authority of section 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945 and 6949(a).

**James W. Newsom,**

*Acting Regional Administrator, Region III.*

[FR Doc. 03–25398 Filed 10–6–03; 8:45 am]

BILLING CODE 6560–50–P

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## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 67

## Final Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** Base (1% annual chance) Flood Elevations (BFEs) and modified

BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**EFFECTIVE DATE:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

**ADDRESSES:** The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Doug Bellomo, P.E. Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency makes the final determinations listed below of BFEs and modified BFEs for each community listed. The proposed BFEs and proposed modified BFEs were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed BFEs and proposed modified BFEs were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

*National Environmental Policy Act.* This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

*Regulatory Flexibility Act.* The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 12612, Federalism.* This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

*Executive Order 12778, Civil Justice Reform.* This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

## List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 67 is amended to read as follows:

## PART 67—[AMENDED]

■ 1. The authority citation for Part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

### § 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD). |
|---|---|
| **CALIFORNIA** | |
| **San Luis Obispo County, (FEMA Docket No. B–7435)** | |
| *Los Berros Creek:* | |
| Approximately 750 feet downstream of El Conpo Road | *103 |
| Approximately 4,000 feet downstream of State Route 101 | None |
| Approximately 1,200 feet upstream of State Route 101 | None |
| **Maps are available for inspection** at the San Luis Obispo County Public Works Department, County Government Center, Room 207, 976 Osos Street, San Luis Obispo, California. | |

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD). | Communities affected |
|---|---|---|
| Washington: | | |
| Whatcom County and Incorporated Areas, (FEMA Docket No. B–7310). | | |
| Johnson Creek: | | |
| At the confluence with Sumas River | *38 | Whatcom County (Uninc. Areas), City of Bellingham, City of Everson, City of Ferndale, City of Lummi Indian Nation, City of Lynden, City of Nooksack, and City of Sumas |
| Samish River: | | |

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD). | Communities affected |
|---|---|---|
| Approximately 2,900 feet downstream of Wickersham Road at the County Boundary | *267 | |
| At Burlington Northern Railroad | *311 | |
| Squalicum Creek: | | |
| Approximately 200 feet upstream of Chicago, Milwaukee, St. Paul, and Pacific Railroad | *127 | |
| Approximately 2,000 feet upstream of Dewey Road | *206 | |
| Sumas River: | | |
| Approximately 1,700 feet downstream of Jones Road at the International Boundary | *34 | Whatcom County (Uninc. Areas), City of Bellingham, City of Everson, City of Ferndale, City of Lummi Indian Nation, City of Lynden, City of Nooksack, and City of Sumas |
| Approximately 1,000 feet upstream of Massey Road | *93 | |
| Sumas River Left Overbank Divided Flow: | | |
| Approximately 200 feet downstream of Telegraph Road | *56 | |
| Approximately 6,300 feet upstream of Kadin Road | *69 | |
| Terrell Creek: | | |
| Approximately 500 feet downstream of Alderson Road | *8 | |
| At Helweg Road | *10 | |

**Addresses:**

**Whatcom County (Unincorporated Areas):**

Maps are available for inspection at Whatcom County Public Works Department, Division of Engineering, 311 Grand Avenue, Suite 108, Bellingham, Washington.

**City of Bellingham:**

Maps are available for inspection at the Community Development Department, 210 Lottie Street, Bellingham, Washington.

**City of Everson:**

Maps are available for inspection at City Hall, 111 West Main Street, Everson, Washington.

**City of Ferndale:**

Maps are available for inspection at the Planning Department, 5694 Second Avenue, Ferndale, Washington.

**City of Lummi Indian Nation:**

Maps are available for inspection at the Planning Department, 2828 Kwina Road, Bellingham, Washington.

**City of Lynden:**

Maps are available for inspection at the Planning Department, 323 Front Street, Lynden, Washington.

**City of Nooksack:**

Maps are available for inspection at City Hall, 103 West Madison Street, Nooksack, Washington 98276.

**City of Sumas:**

Maps are available for inspection at City Hall, 433 Cherry Street, Sumas, Washington.

| | | |
|---|---|---|
| Washington: | | |
| Whatcom County and Incorporated Areas, (FEMA Docket No. B–7430) | | |
| Strait of Georgia at Point Roberts: | | Whatcom County (Uninc. Areas) |
| At Point Roberts Marina | *8 | |
| South Edwards Drive along Southern Shore | *11 | |
| Birch Bay Northwest Shore: | | |
| At intersection of Seahome Road and Seahome Court | *8 | Whatcom County (Uninc. Areas) |
| At Cottonwood Beach | *9 | |
| Along shoreline near intersection of Halda Road and Nitinat Road | *14 | |
| Strait of Georgia at Sandy Point: | | |
| At marina | *8 | Whatcom County (Uninc. Areas) and Lummi Indian Reservation |
| Along eastern shoreline | *9 | |
| Along western shoreline, west of marina | *14 | |
| Strait of Georgia at Village Point: | | |
| Along West Shore Drive | *9 | Whatcom County (Uninc. Areas) |
| Along southern shoreline | *10 | |
| Lummi Bay: | | |

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD). | Communities affected |
|---|---|---|
| Approximately 600 feet from intersection of East Turtle Lane and Shore Drive | *8 | Whatcom County (Uninc. Areas) |
| Along shoreline near intersection of Lummi Park Road and Lane Split Road | *10 | |
| Bellingham Bay at Hermosa Beach: | | |
| East of Lummi Shore Road | *8 | Whatcom County (Uninc. Areas) and Lummi Indian Reservation |
| Lummi Bay at Gooseberry Point: | | |
| At intersection of Lummi View Drive and Haxton Way | *8 | Whatcom County (Uninc. Areas) and Lummi Indian Reservation |
| Approximately 300 feet west of intersection of Lummi View Drive and Haxton Way | *9 | |
| Bellingham Bay at Eliza Island: | | |
| In the south-facing valley of Eliza Island | *8 | Whatcom County (Uninc. Areas) |
| At the southern shore of Eliza Island | *10 | |
| At the western shore of Eliza Island | *10 | |

**Addresses:**

**Whatcom County (Unincorporated Areas):**

Maps are available for inspection at Whatcom County Public Works Department, Division of Engineering, 311 Grand Avenue, Suite 108, Bellingham, Washington.

**Lummi Indian Reservation:**

Maps are available for inspection at the Lummi Indian Business Council Planning Department, 2828 Kwina Road, Bellingham, Washington.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: September 30, 2003.

**Anthony S. Lowe,**

*Mitigation Division Director, Emergency Preparedness and Response Directorate.*

[FR Doc. 03–25345 Filed 10–6–03; 8:45 am]

BILLING CODE 6718–04–P

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## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

### 44 CFR Part 67

### [Docket No. FEMA–7772]

### Rescission of Final Flood Elevation Determination

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** The Federal Emergency Management Agency (FEMA or Agency) rescinds the final flood elevation determination published for Collier County, Florida and Incorporated Areas (including the City of Everglades, City of Naples, City of Marco Island, and the Unincorporated Areas of Collier County), on June 2, 2003, at 68 FR 32665 and 32666. A final flood elevation determination will be made at a later date.

**EFFECTIVE DATE:** This rescission is effective as of the date of this publication.

**FOR FURTHER INFORMATION CONTACT:** Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

**SUPPLEMENTARY INFORMATION:** FEMA published a notice of final flood elevation determination for Collier County, Florida and Incorporated Areas, on June 2, 2003, at FR 68, 32665 and 32666. Following coordination with Collier County, it was determined that additional time is needed to develop flood hazard data for the Golden Gates Estates area located within the Unincorporated Areas of Collier County and the City of Naples. Therefore, the final flood elevation for Collier County, Florida and Incorporated Areas is hereby rescinded in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104 until further notice.

Dated: September 30, 2003.

**Anthony S. Lowe,**

*Mitigation Division Director, Emergency Preparedness and Response Direcorate.*

[FR Doc. 03–25344 Filed 10–6–03; 8:45 am]

BILLING CODE 6718–03–P

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 24

### [WT Docket No. 97–82; FCC 03–98]

### Competitive Bidding Procedures

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** On July 21, 2003, (68 FR 42984), the Wireless Telecommunications Bureau published final rules in the Order, addressing five petitions for reconsideration filed in response to the Commission's Part 1 *Order on Reconsideration of the Third Report and Order, and Fifth Report and Order.*

**DATES:** Effective September 19, 2003.

**FOR FURTHER INFORMATION CONTACT:** Gary Michaels, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

**SUPPLEMENTARY INFORMATION:** The Wireless Telecommunications Bureau published a document revising the general competitive bidding rules for all auctionable services in the **Federal Register** of July 21, 2003 (68 FR 42984). This document corrects the **Federal Register** as it appeared.

In rule FR Doc. 03–18430 published on July 21, 2003 (68 FR 42984) make the following correction:

■ 1. On page 42999, in the third column and on line 19, instruction 29 is corrected to read as follows:

**§ 24.720 [Corrected]**

■ 29. Amend § 24.720 by removing paragraphs (b)(3), (b)(4), (c), and (d), redesignating paragraphs (e), (f), (g), (h), (i), and (j) as paragraphs (c), (d), (e), (f), (g), and (h), redesignating the Note to Paragraph (j) as the Note to Paragraph (h) and revising paragraph (b) introductory text and newly redesignated paragraph (g) to read as follows:

Federal Communications Commission.
**Marlene Dortch,**
*Secretary.*

[FR Doc. 03–25245 Filed 10–6–03; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 03–2925, MM Docket No. 01–43, RM–10041]**

### Digital Television Broadcast Service; Jackson, MS

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, by this document, dismisses a petition for rule making filed by Civic License Holding Company, Inc. requesting the substitution of DTV channel 9 for DTV channel 51 at Jackson, Mississippi. *See* 66 FR 12749, February 28, 2001. With this action, this proceeding is terminated.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 01–43, adopted September 23, 2003, and released October 1, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

**List of Subjects in 47 CFR Part 73**

Digital television broadcasting, Television.

Federal Communications Commission.
**Barbara A. Kreisman,**
*Chief, Video Division, Media Bureau.*

[FR Doc. 03–25333 Filed 10–6–03; 8:45 am]

BILLING CODE 6712–01–P

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**RIN 1018–AG41**

### Endangered and Threatened Wildlife and Plants; Removing Eriastrum hooveri (Hoover's woolly-star) from the Federal List of Endangered and Threatened Species

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), have determined that *Eriastrum hooveri* (Hoover's woolly-star) is no longer a threatened species pursuant to the Endangered Species Act of 1973 (Act), as amended. This determination is based on the discovery of new populations and implementation of recovery actions that contributed substantially towards meeting delisting criteria outlined in the "Recovery Plan For Upland Species of the San Joaquin Valley, California" (Recovery Plan) (USFWS 1998).

Beginning in 1990, recovery efforts for this species succeeded in locating additional populations, discovering through research that *Eriastrum hooveri* is more resilient and less vulnerable to disturbance activities than previously known, and achieving protection through cooperation with Federal, State, and private entities on more than 114,400 hectares (286,000 acres) of *E. hooveri* habitat. The management practices of, and commitments by, the U.S. Bureau of Land Management (BLM), on whose land a substantial number of the new populations have been found, will afford adequate protection to the species upon delisting. Following delisting, BLM will designate *E. hooveri* as a "sensitive species" pursuant to BLM Manual 6840 and California State Manual Supplement H–6840.06, to provide for continued protection and monitoring of the species on BLM lands. The post-delisting monitoring, required under section 4 of the Act, will be facilitated by BLM's implementation of their Caliente Resource Management Plan (RMP) (BLM 1996). Under the RMP and separate agreements, BLM will monitor the species and monitor residual threats at representative sites within four *E. hooveri* metapopulations.

**DATES:** This rule is effective October 7, 2003.

**ADDRESSES:** The administrative record for this rule is available for inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office of the U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825–1864, (telephone 916/414–6600).

**FOR FURTHER INFORMATION CONTACT:** Graciela Hinshaw, Sacramento Fish and Wildlife Office, at the above address or telephone 916/414–6600.

**SUPPLEMENTARY INFORMATION:**

#### Background

*Eriastrum hooveri* (Hoover's woolly-star) was first collected in 1935 by Gregory Lyons near Little Panoche Creek, western Fresno County, in the San Joaquin Valley of California. In 1943, Willis Jepson described the plant as *Hugelia hooveri*, citing a 1937 collection by Robert Hoover (the namesake for the scientific and common names). Later, Herbert Mason (1945) transferred the species along with the rest of the woolly-stars to the genus *Eriastrum*.

*Eriastrum hooveri*, an annual herb of the phlox family (Polemoniaceae), produces many wire-like stems and tiny white to pale blue flowers that are less than 5 millimeters (mm) (0.2 inch (in)) across. The flowers are nearly hidden in tufts of woolly hair. The leaves are thread-like and may have two narrow lobes near the base. Standing 1 to 20 centimeters (cm) (0.4 to 8 in) tall, the species has grayish, fuzzy stems, which are often branched (Munz and Keck 1959; USFWS 1998). The most important characteristics for distinguishing this species from other *Eriastrum* species are the flower size and the ratio between the length of the corolla and the length of the lobes on the petals (petals are highly colored portions of the flower and collectively are called the corolla). Characteristics of the stamen (male reproductive organ) can also help identify this species (Taylor and Davilla 1986).

The seed of *Eriastrum hooveri* is small and dust-like, and dispersed by the wind. The stems of dead plants often break at the soil surface and the plants are conical-shaped, characteristic of a seed that disperses via the "tumbleweed" strategy. Laboratory germination of seeds was achieved by wetting seed on filter paper, and there was rapid and complete germination of new seed (Taylor and Davilla 1986). The small flowers of *E. hooveri* might suggest self-pollination (Taylor and Davilla 1986).

*Eriastrum hooveri* was originally thought to have a range that was mostly east of the Coastal Range in San Joaquin Valley, California, and distributed in a discontinuous fashion within valley saltbush scrub and valley sink scrub from Fresno County in the north, south to the Temblor Range (Kern and San Luis Obispo Counties), with very limited distribution south of the Temblor Range, in the Cuyama Valley (San Luis Obispo and Santa Barbara Counties) (Taylor and Davilla 1986). The San Joaquin Valley lies between the Coast Ranges and the Sierra Nevada, and on the southern end is bordered by the Transverse Ranges. The climate of the San Joaquin Valley is a product of these surrounding mountain ranges. Precipitation in the San Joaquin Valley is low; it averages less than 25 cm (10 in) per year, with localized areas averaging far less. As a result, the San Joaquin Valley climate can be classified as arid or desertic. The San Joaquin Valley floor is composed of thousands of feet of sediments deposited by runoff from the surrounding mountains. Below these sediments lie important petroleum and natural gas deposits (Schoenherr 1992). The extraction of these resources accounts for some of the native habitat loss and degradation in the San Joaquin Valley and adjacent foothills. Conversion of this arid land to pastures and agricultural farmland also has replaced native habitat and introduced nonnative grasses and shrubs.

Prior to 1986, *Eriastrum hooveri* was known from 19 sites (sites are clusters of plants that may be part of a larger population as documented by BLM) in San Luis Obispo, Kern, Fresno, and Santa Barbara Counties in California. Most of these sites occurred on private property on the San Joaquin and Cuyama valley floors or on public land located in the foothills of the southern part of the San Joaquin Valley (the Naval Petroleum Reserve (NPR–1 and NPR–2) administered by the U.S. Department of Energy, later turned over to a private interest, Occidental Petroleum Corporation).

A status survey of *Eriastrum hooveri* conducted in 1986 identified 10 historical populations as extirpated, 2 others as presumed extirpated, and approximately 40 percent of the historically reported populations as remaining (Taylor and Davilla 1986). At the time of the status survey, the majority of the *E. hooveri* known populations were from alluvial valleys. Hilly terrain was only documented in three instances, from the Temblor Range, and the authors were unable to gain access to this area during the status survey. Taylor and Davilla (1986) reported that most remaining populations were situated on "islands" of native habitat in an otherwise "sea" of intensively managed agricultural lands, thereby leaving the remaining populations vulnerable to destruction. Our subsequent listing of *E. hooveri* as a threatened species in 1990 relied heavily on the data and the threats assessment presented in the Taylor and Davilla 1986 status report, as well as on additional surveys conducted between 1986 and 1990 (55 FR 29361). The listing noted that 118 populations existed, only 9 of which occurred on public lands or in undeveloped foothills. The remaining 109 populations (92 percent) were considered to be threatened by conversion of valley floor native habitat to agricultural land, oil and gas development, urbanization, reservoir construction, uncontrolled heavy sheep grazing, disposal of nutrient-laden agricultural effluent, and nonnative invasive plants (55 FR 29361). Based on these threats, we listed *E. hooveri* as a threatened species under the Act on July 19, 1990 (55 FR 29361).

In 1990, we initiated recovery planning for 11 listed species, including *Eriastrum hooveri*, and 23 candidates or species of concern that share the same ecosystem (USFWS 1998). While the development of the final Recovery Plan was being accomplished, the recovery needs of listed species were simultaneously being addressed. During the 8 years of planning, Federal and State agencies conducted extensive surveys and research and learned new information about *E. hooveri* biology, including its abundance and distribution and its response to disturbance. The recovery strategy in the final Recovery Plan reflects pre-plan recovery efforts.

The recovery strategy, put forth in the 1998 Recovery Plan, stated that recovery for *Eriastrum hooveri* could be accomplished within four metapopulations (defined as a larger population clusters by BLM), by using existing public lands and other areas already dedicated to conservation. The four metapopulations from largest to smallest are: (1) The Kettleman Hills area in Fresno and Kings Counties; (2) the Carrizo Plain-Elkhorn Plain-Temblor Range-Caliente Mountains-Cuyama Valley-Sierra Madre Mountains area in San Luis Obispo, Santa Barbara, and extreme western Kern Counties; (3) the Lokern-Elk Hills-Buena Vista Hills-Coles Levee-Maricopa-Taft area in Kern County; and (4) the Antelope Plain-Lost Hills-Semitropic area in Kern County. Recovery goals included protecting populations throughout the species' geographic range (at the time thought to be from San Benito and Fresno Counties in the north, south to the Cuyama Valley), representing a variety of topographic positions (valley floor, slopes) and community types (chenopod scrub and grasslands), at elevations ranging from 50 to 915 meters (m) (165 to 3,000 feet (ft)). Because public lands have varying multi-use mandates, and therefore may or may not afford "protection" to plants under threat, specific commitments were needed to protect the populations from incompatible uses such as heavy oilfield development, commercial development, flooding or rising groundwater levels, and dense vegetation due to proliferation of nonnative plants or suppression of fires. Low and moderate oilfield development and grazing were not considered incompatible uses. The Recovery Plan recommended a minimum acreage and plant density for *E. hooveri* and continuation of the monitoring of trends at representative sites within each of the four recognized metapopulations. As 33 other species were also covered in this multispecies Recovery Plan, the ecosystem-level strategy recommended a network of large-scale preserves and conservation areas that represented all natural communities in the San Joaquin Valley upland ecosystems. The Recovery Plan stated that, within this network, habitat management would be compatible with traditional and ongoing land uses such as grazing and oil exploration. Prior to the completion of the Recovery Plan, it was discovered that *E. hooveri* could tolerate a certain amount of natural and man-made disturbances.

The listing and subsequent recovery planning efforts resulted in increased inventory activities for *Eriastrum hooveri* throughout its range. Surveys in the Mojave Desert area resulted in the discovery of *E. hooveri* more than 140 kilometers (km) (87 miles mi) southeast of the previously known range. Surveys into remote areas by the BLM and the Los Padres National Forest, as well as routine surveys at the NPR–1 and NPR–2, resulted in the discovery of many new occurrences (an occurrence is analogous to a population and is defined here as a cluster of plants separated from the nearest cluster by at least 0.25 mile) of *E. hooveri*. Through a section 7 consultation with the Service, the U.S. Department of Energy conducted periodic monitoring of six representative *E. hooveri* sites from the early to mid 1990s (EG&G 1994, 1996). Responses to precipitation patterns on north and south slopes and ridgetops were documented (EG&G 1996), and increased attention was focused on observations of and research into the plants' response to various levels of habitat disturbance. The pertinent recovery planning and implementation efforts, along with their results, are summarized below.

### *Surveys*

*Abundance:* The results of the 1986 status survey, which led to the *Eriastrum hooveri* listing, reflected its known distribution at the time, but did not reflect the species' larger distribution documented after 1990, probably as a consequence of the drought period and the resulting poor growing *E. hooveri* conditions during the two years preceding the survey (EG&G 1995a). Surveys by Federal agencies following the listing of the species in 1990 coincided with a change in precipitation, particularly in 1993, when abundant spring rainfall created favorable growing conditions for annual plants (EG&G 1994, 1995b). The favorable growing conditions along with the surveys resulted in a dramatic increase in the number of *E. hooveri* known populations, the size of its topographical and elevational range distribution, and a clearer understanding of its habitat associations.

*Distribution:* In 1992 and 1994, BLM staff surveyed private and public lands and estimated that about 1,000 *Eriastrum hooveri* sites occupied approximately 970 ha (2,426 ac) (BLM 1992, 1994). By 1998, the U.S. Department of Energy had comprehensively surveyed over 60 percent of NPR–1 for *E. hooveri*, and over 400 locations were documented; in addition, the species was also discovered on NPR–2 (Brian Cypher, Enterprise Advisory Services, Inc., pers. comm. 1998; Russ Lewis, BLM, pers. comm. 2002; Jay Hinshaw, Bureau of Indian Affairs, pers. comm. 2003).

*Range:* Surveys for another plant species at 820 to 910 m (2,700 to 3,000 ft) elevation in the Los Padres National Forest in 1993 led to the discovery of three populations of *Eriastrum hooveri* in Tennison Canyon, Goode Canyon, and Castro Canyon (Danielsen *et al.* 1994). These populations were 800 m (500 ft) higher in elevation than all other known populations, and the first to be located in habitat dominated by juniper. In 1998, Boyd and Porter (1999) found *E. hooveri* in two locations southeast of the Tehachapi Mountains within Antelope Valley, Los Angeles County. These occurrences in the Mojave Desert represent an extension of the range of the species by approximately 140 km (87 mi) to the southeast from the nearest population in the San Joaquin Valley. Additional surveys in the Antelope Valley, conducted through 2002, documented numerous occurrences of *E. hooveri* from near Rosamond, in Kern County, and south to Lancaster, in Los Angeles County. In 2003, 7 to 12 million plants, roughly distributed over a 100-square-mi area, were also found near Edwards Air Force Base (Ray Bransfield, USFWS, pers. comm. 2003; Patrick Buorsier, H.T. Harvey and Associates, pers. comm. 2003).

In summary, surveys have resulted in the discovery of many more valley floor sites as well as foothill sites, and have shown that *Eriastrum hooveri* populations discontinuously range in the north from the Ciervo/Panoche area of the San Joaquin Valley in Fresno and San Benito Counties, southward to Antelope Valley in Los Angeles County, a distance of approximately 314 km (196 mi). A total of 1,128 new sites have been found on BLM land. Along with the increase in the number of sites, the distribution and range of *E. hooveri* has increased. *E. hooveri* has been confirmed at elevations of 3,000 ft and has been found to occur in two additional habitat types: Juniper woodland and Mojave Desert. The species has a greater abundance, distribution, and range than previously thought.

### *Research*

At the time of listing, *Eriastrum hooveri* was identified as preferring areas with lower annual plant densities and stable, silty to sandy soils that often exhibit cryptogamic crusting (a thin microbiotic layer at the soil surface generally composed of a complex of mosses, algae, bacteria, fungi, and lichens, or a combination of these) (55 FR 29361). Since listing, *E. hooveri* has also been found on stable soils that do not exhibit crusting (BLM 1994), and on sandy loam and loamy soils (EG&G 1995a). Research results in 1994 documented that vascular plant cover at sites with *E. hooveri* ranged from a low of 5% to a high of 93%; the amount of bare ground varied between 5% and 90%, and the amount of cryptogamic crusting varied between 0% and 80% (EGG 1995b). The wide-ranging values in plant cover and bare ground for sites with *E. hooveri* indicate that, although this species does better in sparsely vegetated areas, it is found in areas of dense vegetation (E. Cypher, pers. comm. 2003). A 1995 report by EG&G documented *E. hooveri* responses to varying rainfall and found that this species, like most annual species, appears to be sensitive to changes in precipitation compared to the shrub and grass components of the community (EG&G 1996). Soils with cryptogamic crusts are naturally open surface areas where nonnative grasses do not seem to encroach (Lewis pers. comm. 1995). The association that *E. hooveri* has with cryptogamic crusting may be more related to lower annual plant densities (especially lower numbers of nonnative grasses) than to an affinity with some aspect of the crusting. Areas of crusting are found throughout the species' range (R. Lewis pers. comm. 1995), and although ground disturbance will eliminate the crusting, the complex of mosses, algae, and other cryptogamic organisms that compose the crust have been observed to come back two years after ground disturbance (Holmstead and Anderson 1998) in areas where *E. hooveri* is found.

During above-average annual rainfall periods, *Eriastrum hooveri* responds quickly and well (successful seed germination, larger plants, and a higher probability of being detected during surveys), whereas during years of below-average annual rainfall, plants that germinate reach a height of only 1 in and are less likely to be detected during surveys (Ellen Cypher, Endangered Species Recovery Program, pers. comm. 2003; Jay Hinshaw, Bureau of Indian Affairs, pers. comm. 2003).

In 1995, EG&G reported that ground disturbance did not significantly affect *Eriastrum hooveri* and that the species was found as abundantly on disturbed sites as on undisturbed sites (EG&G 1995a). The average *E. hooveri* density was higher on sites where mechanical ground disturbance (typical of oilfield development) was observed, and lower on sites where other types of disturbance (by grazing, alluvial deposit, fire, unknown) were observed (EG&G 1995a). Furthermore, a study on the effects of simulated oilfield disturbance and top soil salvage showed that, although surface disturbance negatively affected *E. hooveri* density for at least two years, this species recolonized disturbed plots within two growing seasons from seed naturally dispersed from adjacent habitat (Hinshaw *et al.* 1998).

In summary, research efforts, as part of the recovery process, have shown that *Eriastrum hooveri* is more resilient and less vulnerable than previously thought.

*Observations*

The Recovery Plan was developed for arid-land species in a part of California that receives 10 in (25 cm) or less of annual precipitation. Both below-average (drought) and above-average precipitation can cause severe population variations for *Eriastrum hooveri*, and other species covered in the Recovery Plan, if such extreme conditions extend for more than 1 year (USFWS 1998). The status survey that preceded listing of *E. hooveri* followed a 2-year drought, and during the early 1990s the southern San Joaquin valley experienced above-average rainfalls (E. Cypher pers. comm. 2003b). This above-average rainfall period coincided with initial research into disturbance responses, and it was observed by Holmstead and Anderson (1998) that *E. hooveri* responded extremely well to the increased rainfall levels. Timing of precipitation may have also played a significant role in the response of *E. hooveri* to above-average rainfall, since heavy rainfall in the study area occurred during January and March, later than during normal precipitation years (Holmstead and Anderson 1998).

*Eriastrum hooveri's* adaptability to disturbance was evident based on observations of the reestablishment of *E. hooveri* following two disturbances on NPR–1 during 1990, and on NPR–1 fire breaks that had been tilled the previous year (Holmstead and Anderson 1998). *Eriastrum hooveri* is more resilient and less vulnerable to certain activities than previously thought.

## Recovery Plan Criteria

Section 4(f) of the Act directs us to develop recovery plans for listed species. Recovery plans are written to guide recovery efforts and establish criteria for measuring recovery progress. The criteria are not intended to be absolute prerequisites for delisting and should not preclude a delisting action if such action is otherwise warranted. This section discusses the four delisting criteria identified for *Eriastrum hooveri* in the Recovery Plan (USFWS 1998).

### *(1) 75% of Occupied Habitat (as of 1998) on Public Lands in Each of the Four Metapopulations Should Be Secured and Protected From Incompatible Uses*

Although difficult to quantify due to annual variability in size of populations, we believe that the intent of this criterion has been met because a substantial amount of land, approximately 114,400 ha (286,000 ac), containing substantial portions of the four metapopulations or potential habitat is in a "protected status" (as defined in the Recovery Plan) (G. Warrick, Center for Natural Lands Management, pers. comm., 2002; Mary Ann McCrary, California Department of Fish and Game (CDFG), *in litt.* 2002; USFWS 1998, Ann Knox, BLM, *in litt.* 1997). Two BLM Areas of Critical Environmental Concern (ACEC), a National Monument, four CDFG Ecological Reserves, four privately owned mitigation sites, and NPR–2 (soon to be managed by BLM) are the protected areas that contain portions of the four metapopulations; these areas, listed by metapopulation are:

(a.) The Kettleman Hills area in Fresno and Kings Counties (includes the BLM ownership with ACEC designation of 2,692 ha (6,730 ac));

(b.) The Carrizo Plain-Elkhorn Plain-Temblor Range-Caliente Mountains-Cuyama Valley-Sierra Madre Mountains area in San Luis Obispo, Santa Barbara, and extreme western Kern Counties (includes the BLM Carrizo Plain National Monument and the CDFG Elkhorn Ecological Reserve, 101,170 ha (250,000 ac));

(c.) The Lokern-Elk Hills-Buena Vista Hills-Coles Levee-Maricopa-Taft area in Kern County (includes the BLM's Lokern ACEC, 1,244 ha (3,110 ac); the CDFG's Lokern Ecological Reserve, 330 ha (825 ac), and Buttonwillow Ecological Reserve, 540 ha (1,350 ac); and private conservation areas such as the Center for Natural Lands Management's Lokern Preserve, 1,200 ha (3000 ac), the Elk Hills Conservation Area, 2,830 ha (7,075 ac), and the Coles Levee Ecosystem Preserve, 2,424 ha (6,060 ac)); and

(d.) The Antelope Plain-Lost Hills-Semitropic area in Kern County (includes the CDFG's Semitropic Ecological Reserve, 1,912 ha (4,780 ac); and private conservation areas, such as the Center for Natural Lands Management's Semitropic Ridge Preserve, 1,200 ha (3,000 ac)).

### *(2) 260 Hectares (640 Acres) or More of Occupied Habitat on the San Joaquin Valley Floor Is Secured and Protected (This Need Not Be in Addition to the Above, But May Be Within the Above)*

The second delisting criterion has been met. Because patches of *Eriastrum hooveri* may vary in size annually due to rainfall, we considered all *E. hooveri* habitat in protected areas where the species is known to occur as occupied habitat. There are protected occurrences of *E. hooveri* found within the southern San Joaquin Valley floor, in BLM's Lokern ACEC, 1,244 ha (3,110 ac), and the Elk Hills Conservation Area, 1,408 ha (3,520 ac). Other protected areas on the San Joaquin Valley floor containing *E. hooveri* occurrences are the CDFG's Alkali Sink Ecological Reserve, 372 ha (930 ac), Lokern Ecological Reserve, 330 ha (825 ac) (USFWS 1998), and the private conservation area of Coles Levee Ecosystem Reserve, 2,424 ha (6,060 ac). The total acreage for these five protected valley floor areas that contain *E. hooveri* is approximately 5,778 ha (14,445 ac).

### *(3) Management Plans Approved and Implemented for Recovery Areas That Include Survival of Species as an Objective. Range-wide Population Monitoring Should Be Provided for in All Management Plans*

The third recovery criterion, approve and implement management plans for the recovery areas that include survival of *Eriastrum hooveri* as an objective, has also been met. A significant number of new sites (1,128) are found on BLM land, and BLM has holdings in all 4 metapopulations of this species, including the San Joaquin Valley floor metapopulation. The wider range in combination with the commitment of BLM to designate *E. hooveri* as a sensitive species is sufficient to meet the recovery criterion (E. Cypher, pers. comm. 2003a and 2003c). The BLM will ensure that actions they authorize, fund, or carry out do not contribute to the need to re-list the species. As a sensitive species, *E. hooveri* will be addressed in the National Environmental Policy Act (NEPA) documents for BLM actions requiring NEPA review. In addition, BLM will conduct on-the-ground monitoring of *E. hooveri* for a minimum of 5 years from the date of the publication of this final rule to delist the species. This monitoring will be conducted in all four metapopulations (Burke, in litt. 2002), including the San Joaquin Valley floor. We believe that BLM's Resource Management Plan (RMP) meets the criteria for specific commitments to protect *E. hooveri* from incompatible uses and that the BLM sensitive species designation will directly enhance the survival of this species. Other existing management plans (including six HCPs and private conservation areas such as the Occidental Management Plan for the Elk Hills Conservation Area and the Center for Natural Lands Management-Management Plan) will either directly cover *E. hooveri* even after delisting, or will indirectly protect this species through actions directed coexisting protected species. In addition, a provision of the West Mojave Plan, being developed by several local, State, and Federal agencies in the Mojave Desert area, would direct the establishment of a reserve for sensitive plant species in areas that may support *E. hooveri*; if established, the reserve would include prescriptions for management and monitoring of the area (Ray Bransfield, USFWS, pers. comm. 2003).

Because BLM manages land in four metapopulations, including the San Joaquin Valley floor metapopulation, they are in the best position to take on the responsibility of post-delisting monitoring *Eriastrum hooveri* after delisting. The determination that the Recovery Plan's monitoring criterion had been met was made before the disjunct Mojave population was described. The Service and the BLM will jointly produce a post-delisting monitoring (PDM) plan for *E. hooveri* over the four metapopulations. It is assumed that any population trends and information gained through the PDM period will be representative of the species range-wide including the Mojave population (see the Post-Delisting Monitoring section of this rule for specifics on BLM's proposed monitoring).

*(4) Stable or Increasing in the Four Metapopulations, Including the San Joaquin Valley Floor Metapopulation, Through One Precipitation Cycle*

The fourth recovery criterion requires demonstration of stable or increasing trends in four metapopulations, including the San Joaquin Valley floor metapopulation, through one precipitation cycle. This criterion has been met since *Eriastrum hooveri* has persisted through both drought and above-average rainfall in 5 years of monitoring. The purpose of this criterion was to show progress in achieving population goals through the most critical time for arid upland plants (either above or below average precipitation). Stability means the statistically same population size during a precipitation cycle that includes both drought and wet phases (a cycle was anticipated to be about 20 years in the Recovery Plan) (USFWS 1998). Although the monitoring has not been completed for 20 years (the anticipated precipitation cycle), baseline data exists on BLM lands and NPR–1 that, along with precipitation data, can be used to assess this species' stability. The Recovery Plan offers some flexibility in this regard; it states that if a species' population is monitored through 1 or more years through a drought cycle this data will suffice for necessary precipitation cycle data (USFWS 1998).

At the start of monitoring (in 1997) an above-average rainfall was recorded and later (2000 to 2002) monitoring data indicated below-normal rainfall. Through both extremes *Eriastrum hooveri* remained robust (E. Cypher, pers. comm. 2003a and 2003c).

In summary, this recovery criteria for *Eriastrum hooveri* is satisfied because the species is protected on approximately 114,400 ha (286,000 ac) of habitat and remains stable through a precipitation cycle.

## Previous Federal Action

On September 27, 1985, we published a revised notice of review for native plants in the **Federal Register** (50 FR 39526). This revised notice added *Eriastrum hooveri* as a category 2 candidate species. Category 2 species were those species for which information in our possession indicated that listing was possibly appropriate, but for which additional information on biological vulnerability and threats was needed to support a proposed rule. On July 27, 1989, we published a proposal to list *E. hooveri* as threatened (54 FR 31201). The final rule listing *E. hooveri* as a threatened species was published July 19, 1990 (55 FR 29361). On March 6, 2001, we published a proposed rule to remove *E. hooveri* from the Federal List of Endangered and Threatened Wildlife based on information indicating this species was more widespread and abundant than was documented at the time of listing, was more resilient and less vulnerable to certain activities than previously thought, and was sufficiently protected on Federal, State, and private land (66 FR 13474).

## Summary of Comments and Recommendations

In the March 6, 2001, proposed delisting rule (66 FR 13474) and associated notifications, we invited all interested parties to submit comments or information that might contribute to the final delisting determination for this species. The public comment period ended May 7, 2001. We contacted and sent announcements of the proposed rule to appropriate Federal and State agencies, county governments, scientific organizations, recovery team members, and other interested parties. We established an Internet web site for electronic submittal of comments and hearing requests by any party. In addition, we solicited formal scientific peer review of the proposal in accordance with our July 1, 1994, Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (59 FR 34270). We requested four individuals, who possess expertise in *Eriastrum hooveri* biology, to review the proposed rule by the close of the comment period. We received one response to our request for peer review, and her comments are discussed below. We also received one response from the public supporting the delisting. No responses were received opposing the delisting. No requests for a public hearing were received.

*Comment 1:* Recovery of *Eriastrum hooveri* should have been the rationale for delisting, rather than the wider distribution of the species and tolerance of disturbance. The threatened status of *E. hooveri* prompted the surveys and research projects that now provide partial justification for delisting. More importantly, the listing led to actions by Federal agencies to protect the species and its habitat. Delisting *E. hooveri* is appropriate because of (1) the proportion of *E. hooveri* on public lands and in conserved areas, (2) the additional lands likely to be protected during recovery efforts for other listed species, (3) the BLM's willingness to consider treating it as a sensitive species, and (4) its tolerance of disturbance.

*Our Response:* We agree and have clarified that the delisting is due in large part to recovery.

*Comment 2:* The only recovery element that has not yet been met is to demonstrate that the populations are stable.

*Our Response:* We acknowledge that this recovery criterion has not been completed, however, the Recovery Plan states that for those species with existing data on population status spanning one or more years, these data can be included in measuring population recovery goals if it is deemed scientifically valid and representative. According to the flexible approach recommended in the Recovery Plan (USFWS 1998), *Eriastrum hooveri* data from the early 1990s was used to justify that the population goal for this species was not numerical, but rather "stability" shown through monitoring during above and below-average rainfall years. See the "Recovery Plan Criteria" section in this rule for additional information.

*Comment 3:* The peer reviewer disagreed with the use of number of plants and number of "sites" in the proposed delisting rule since a very small patch can contain a large number of plants, and the number of *Eriastrum hooveri* individuals in a specified area can vary by several orders of magnitude from one year to the next. "Sites" is an arbitrary term used to describe clusters of plants that does not indicate separate populations and does not have any relationship to the ecology or reproductive biology of the species.

*Our Response:* We agree and have based this delisting action on the amount of occupied and suitable habitat that has been protected for *Eriastrum hooveri*, along with its distribution, abundance, and resilience, rather than the number of plants and sites.

*Comment 4:* Protection for *Eriastrum hooveri* will result from efforts for other listed species. Nine of the core areas identified for recovery of multiple species support *E. hooveri*. Portions of each of the core areas are already conserved by Federal and State agencies and nongovernmental conservation organizations, and additional lands are likely to be protected through ongoing recovery efforts for other listed species.

*Our Response:* We agree that *Eriastrum hooveri* has benefited from conservation efforts for other listed species, and is likely to continue to do so. We have included specific information about collateral benefits in this final rule (see "Background" and "The inadequacy of existing regulatory mechanisms" under "Summary of Factors Affecting the Species").

*Comment 5:* Residual mulch restrictions cited in the proposed rule are incorrect.

*Our Response:* We have made these corrections (see "The inadequacy of existing regulatory mechanisms" under "Summary of Factors Affecting the Species"). The BLM grazing restrictions include requirements for residual mulch (dry plant material) of 568 kilograms (kg) per ha (500 pounds (lb) per ac), and 5 cm (2 in) of green growth, or 795 kg per ha (700 lb per ac). The proposed rule to delist *Eriastrum hooveri* incorrectly stated that the required amount of residual dry mulch was 50 kg per ha (49 lb per ac) and required green growth was 318 kg per ha (238 lb per ac).

In addition, we considered and incorporated, as appropriate, into this final rule all biological information provided by the peer reviewer.

## Summary of Factors Affecting the Species

Section 4 of the Act and our regulations (50 CFR part 424) implementing the listing provisions of the Act set forth the procedures for listing, reclassifying, and delisting species. A species may be listed if one or more of the five factors described in section 4(a)(1) of the Act threatens the continued existence of the species. A species may be delisted, according to 50 CFR 424.11(d), if the best scientific and commercial data available substantiate that the species is neither endangered nor threatened because of (1) extinction, (2) recovery, and/or (3) error in the original data for classification of the species.

After a thorough review of all available information, it is evident that substantial recovery of *Eriastrum hooveri* has occurred. We have determined that none of the five factors addressed in section 4(a)(1) of the Act, and discussed below, is currently affecting the species to the extent that *E. hooveri* remains threatened with endangerment in the foreseeable future throughout all or a significant portion of its range. The five listing factors, their application to the recovery of *E. hooveri*, and the identification of which threats are considered to be residual and will be the subject of monitoring after delisting are discussed below.

### *A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

### Oil and Gas Leasing

One of the predominant threats facing *Eriastrum hooveri* at the time it was listed as a threatened species was oil and gas development, especially in the Elk Hills area (55 FR 29361). Russ Lewis of the BLM has conducted several surveys for *E. hooveri* on public and private lands since the time of listing (BLM 1992, 1994). Of the approximately 1,000 new sites found by Lewis during 1992 and 1994, oil and gas development threats were present for only about 21 percent of the sites. Threats at many of these sites are no longer significant because several oil fields are at or near their peak of development, new drilling occurs on existing wellpads, or they have already been abandoned (R. Lewis, pers. comm. 2003). Additionally, there are other listed species in these areas; HCPs and section 7 consultations coordinated for the listed species will also protect *E. hooveri*. For these reasons and the reasons discussed below, we believe that the likelihood of additional habitat loss from new activity is low.

In the Elk Hills area, oil production areas are established on the upper elevation of the hills on the former NPR–1. Exploration activities generally have failed to establish oil production in the lower elevations (BLM 1994). The majority (73 percent) of the *Eriastrum hooveri* sites occur at lower elevations (EG&G 1995a); therefore, the majority of *E. hooveri* populations in NPR–1 are in areas not likely to be developed for petroleum production (B. Cypher, pers. comm. 1998).

Mobil Oil Corporation enacted measures to protect *Eriastrum hooveri* by placing protective exclosures around all known sites on a Lost Hills leased property (BLM 1994). Lewis also noted that above-surface pipeline corridors appear to be unintentionally restricting access of off-highway vehicles to remaining undisturbed habitat and, consequently, are protecting many other sites in the area (BLM 1994). The *Eriastrum hooveri* Field Inventory Report (BLM 1994) documents the presence of *E. hooveri* in large numbers throughout fully developed oilfields, such as Lost Hills, that have been in existence for several decades.

Because *Eriastrum hooveri* establishes on disturbed substrates such as well pads and pipeline rights-of-way after a period of non-use, the species likely will continue to exist both on federally and privately owned, fully developed oilfields (BLM 1994). EG&G Energy Measurements (under sponsorship by the Department of Energy and Chevron) monitored the reestablishment of *E. hooveri* following two disturbances that occurred on NPR–1 in 1990. At both study sites, *E. hooveri* occupied all disturbed plots after one growing season and the plants increased in density from the first to second growing season (Holmstead and Anderson 1998). Holmstead and Anderson also noted that *E. hooveri* populations were observed in fire breaks on NPR–1 that had been tilled the previous year. Further, a study on the effects of simulated oilfield disturbance and top soil salvage showed that, although surface disturbance negatively affected *E. hooveri* density for at least two years, *E. hooveri* recolonized disturbed plots within two growing seasons from seed naturally dispersed from adjacent habitat (Hinshaw *et al.* 1998).

### Agricultural and Urban Development

Agricultural and urban development was also cited as a threat at the time of listing. Much of the San Joaquin Valley floor has been agriculturally developed, virtually to its fullest extent. Future agricultural development is uncertain and would require encroachment into hilly and agriculturally less desirable geographic areas. Limited water availability for additional agricultural and urban development is a severely limiting factor in the southern San Joaquin Valley. Although sites that occur within the San Joaquin Valley are experiencing threats from development, particularly urban or industrial development along the Interstate 5 corridor (R. Lewis, pers. comm. March 7, 1995), the majority of the plants are found along the hilly margins of the San Joaquin Valley, usually between 90 and 910 m (300 to 3,000 ft) in elevation (BLM 1994).

One of the largest populations of *Eriastrum hooveri* occurs along the western edge of the Interstate 5 corridor near Kettleman City. This population is within the ACEC managed by BLM, where urban or industrial development is unlikely to occur (BLM 1996a; R. Lewis, pers. comm. 2003). In addition, conservation efforts for other listed species found along the Interstate 5 corridor are likely to provide continued collateral benefits for *E. hooveri*.

Other potential threats identified for *Eriastrum hooveri* at the time it was listed as a threatened species were impacts from groundwater recharge basins, a proposed reservoir (the Arroyo Pasajero Project), and disposal of nutrient-laden agricultural effluent (55 FR 29361). The only groundwater recharge basin developed in the range of *E. hooveri* is the Kern Water Bank, which helps to conserve *E. hooveri* through HCP measures that protect habitat in perpetuity. We are not aware of impacts to *E. hooveri* from disposal of nutrient-laden agricultural effluent. Land application of manure or dairy waste seepage is typically not conducted on natural habitat and is not likely to impact *E. hooveri* (Gary Burton, Service, pers. comm. 2002). The Arroyo Pasajero Project remains a potential location for water storage for the environmental water account. However, it is anticipated that the Arroyo Pasajero Project, if it goes forward, will have an insignificant effect on E. *hooveri*.

Off-Highway Vehicles

Off-highway vehicles were identified as a threat for *Eriastrum hooveri* at the time it was listed. In 1994 the *Eriastrum hooveri* Field Inventory Report (BLM 1994) considered 15 percent of sites evaluated to have potential threats from off-highway vehicles. However, observations of the plants subsequent to listing suggest that the species appears to persist in the absence of renewed disturbance. The low number of documented impacts and the recolonizing ability of *E. hooveri* indicate that off-highway vehicles are no longer considered a threat to the long-term survival of the species (BLM 1994).

Off-highway vehicle impacts are rare occurrences and typically consist of tire tracks across occupied habitat, in many cases as a one-time occurrence by a single vehicle. On some roads located in the Caliente Mountains and Cuyama Valley, the species was found growing in tire tracks. The species has been found growing on several inactive motorcycle paths located in the Kettleman Hills, some of which were approximately 46 cm (18 in) deep. Plants also grow on the margins of dirt roads and in the strip of vegetation between tire tracks on unimproved roads in the Lokern, Elk Hills, and Lost Hills areas (E. Cypher, *in litt.* 2001).

The majority of the six *Eriastrum hooveri* populations in Los Padres National Forest are located on lightly used or abandoned roads that receive an estimated one to ten vehicle passes per year. This light road use appears to help maintain the presence of the species, although the plants do not grow in the actual tire tracks. The populations do not extend into areas, which apparently have suitable habitat, that surround the roads (Mike Foster, Forest Service, pers. comm. 1998).

Habitat disturbance will still occur in areas of potential *Eriastrum hooveri* habitat, and may occasionally occur on occupied habitat. However, the Service has determined that the level of disturbance will be such that pressures from present or threatened destruction, modification, or curtailment of *E. hooveri* habitat or range, even when taken collectively with other residual threats, are sufficiently reduced and contained that the species is no longer threatened or endangered. The Service will monitor, as part of the required post-delisting monitoring, the management commitments by BLM to limit habitat disturbance.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

Overutilization is not a factor known to affect *Eriastrum hooveri*.

*C. Disease or Predation*

*Eriastrum hooveri* tends to occupy soil surface that does not support a large amount of vegetation. Grazing by wild herbivores is not known to occur. Although cattle may trail through areas occupied by *E. hooveri* en route to areas of desirable forage, they do not appear to be grazing within the sparsely vegetated *E. hooveri* occupied habitat (BLM 1994). Furthermore, observations subsequent to the listing have shown that the wiry and low-growing *E. hooveri* plants are not desirable forage for livestock, and that monitored areas in both grazed and ungrazed areas showed no significant differences in survival, size, or reproduction (BLM 1994). Survival was higher in grazed areas possibly due to the reduced vegetation cover, and *E. hooveri* plants were taller in ungrazed areas. Therefore, predation through grazing, including trespass grazing, is no longer considered a serious threat to *E. hooveri* (with regards to management of grazing refer to Factor E "Other natural or manmade factors affecting its continued existence").

No known diseases affect *Eriastrum hooveri*.

*D. The Inadequacy of Existing Regulatory Mechanisms*

*Eriastrum hooveri* will continue to benefit from the many recovery and conservation activities that are being undertaken for the 33 other species in the Recovery Plan (collateral species benefits). Nine of the core areas identified for recovery of these collateral species support *E. hooveri* populations, and portions of these core areas are already protected (*E. Cypher*, in litt. 2001). Efforts to maintain linkages around the San Joaquin Valley edge (from the Ciervo/Panoche area in Fresno County, south to Maricopa in Kern County) focus on protection of both valley floor and hilly topography areas for San Joaquin kit fox, an endangered species present in *E. hooveri* areas, and include grassland and chenopod scrub habitat types (USFWS 1998). Protection is also afforded through habitat conservation plans for the collateral, federally listed species, including the wide-ranging San Joaquin kit fox, blunt-nosed leopard lizard, the California jewelflower, and kern mallow. All these species are protected under the Act and share the same habitat types and climatic requirements with *E. hooveri* (Taylor and Davilla 1986).

The principal mechanism that will continue to afford *Eriastrum hooveri* protection will be designation by BLM of *E. hooveri* as a sensitive species after the species is delisted (E. Hastey, BLM, *in litt.* 1995, T. Burke, BLM, *in litt.* 2002). BLM policy will minimize impacts to the species at all known sites that are under their jurisdiction. Coordination and annual reviews by the Service will ensure that appropriate minimization actions will occur. To aid in this review, *E. hooveri* population locations have been, and will continue to be, placed onto BLM's geographic information system (GIS) to help in the management of future activities that may arise within the range of the species (S. Carter, pers. comm. 2002). Part of BLM's commitment to the delisting of *E. hooveri* will be the establishment of key monitoring locations on public land in the four metapopulations (see "Background" under **SUPPLEMENTARY INFORMATION**). Additionally, BLM will evaluate the effects of any proposed management changes on *E. hooveri* and will periodically evaluate whether the objective of maintaining sufficient numbers and distribution to preclude listing is being met. Management strategies will be adapted to meet this objective if necessary (Tim Burke, Acting BLM State Director, *in litt.* 2002).

*Eriastrum hooveri* is not a State-listed species under the California Endangered Species Act.

*E. Other Natural or Manmade Factors Affecting Its Continued Existence*

Although *Eriastrum hooveri* is not a desirable forage plant for livestock, damage can occur by trampling as animals travel across the plants getting to areas they desire. Only five percent of the sites recorded by Lewis on BLM lands were affected by cattle and sheep grazing activities (BLM 1994). Occasionally sheep trespass in *E. hooveri* habitat, but sheep usually remain in one area for only a few days. Livestock trampling does not appear to constitute a serious threat to *E. hooveri*.

At the time of listing, competition with nonnative grasses was cited as a threat. Recent research and surveys have shown that *Eriastrum hooveri* prefers low densities of competing plants, whether nonnative or native. Although *E. hooveri* may initially colonize areas having low plant cover because of disturbance, it subsequently may be out-competed by nonnative plants in areas with sufficient moisture (*E. Cypher*, pers. comm. 1995). Taking into consideration the discovery of the wide distribution of this species and the abundance and extent of preferred (sparse) habitat areas, competition with nonnative grasses is no longer considered a threat to the long-term survival of *E. hooveri*.

The Service has determined that grazing and competition from nonnative plants is currently not a threat to the species at a level for which protection of the Act is necessary, but acknowledges that the potential for poorly managed grazing and the pervasive problem of nonnative invasive plants remains to some degree. We believe, however, that management commitments by BLM will protect *Eriastrum hooveri* from these situations far into the future. These residual threats, even when taken collectively with other residual threats, are sufficiently reduced and contained so that the species is no longer threatened or endangered. Because this delisting is based partly on commitments by BLM for best management practices to be utilized by all grazing lessees and other such practices that will limit encroachment by nonnative plants, the Service will monitor, as part of the required post-delisting monitoring, the commitments by BLM.

In summary, *Eriastrum hooveri* is more widespread and abundant than was documented at the time of listing and is more resilient and less vulnerable to certain activities, particularly impacts from grazing and oil and gas development, than previously thought. Consequently, *E. hooveri* is no longer likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range. This action removes *E. hooveri* from the Federal List of Endangered and Threatened Species.

*Effective Dates*

In accordance with 5 U.S.C. 553(d), we have determined that this rule relieves an existing restriction and good cause exists to make the effective date of this rule immediate. Delay in implementation of this delisting would cost government agencies staff time and monies conducting formal section 7 consultation on actions that may affect species no longer in need of the protections under the Act. Relieving the existing restrictions associated with this listed species will enable Federal agencies to focus their attention on other species in need of protection.

**Effects of the Rule**

This action removes *Eriastrum hooveri* from the List of Endangered and Threatened Plants and removes the protections afforded *E. hooveri* under the Act. However, protection provided to *E. hooveri* through incidental take permits for co-occurring listed animal species associated with HCPs issued under section 10(a)(1)(B) of the Act will continue by virtue of *E. hooveri* remaining as a covered species in HCPs developed for multiple species that remain listed under the Act. Currently, *E. hooveri* is a covered species in at least six HCPs in the San Joaquin Valley for which incidental take permits have been issued for various listed animal species. After delisting, *E. hooveri* will no longer be a covered listed species under these existing multi-species HCPs; instead *E. hooveri* becomes a covered non-listed species under the same HCP as of the effective date of this final rule. In order to receive No Surprises assurances, the permit holder must continue to abide by the original conditions of the permit (50 CFR 17.22(b)(5) and 17.32(b)(95)). If the permittee's actions violate the terms of the permit, then the permittee is outside the safety net of No Surprises should the species be relisted under the Act in the future.

After the effective date of this rule, Federal agencies will no longer be required to consult with us under section 7 of the Act to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of *Eriastrum hooveri*. However, BLM intends to designate *E. hooveri* as a sensitive species and will continue to minimize impacts to the species at all known sites that are under its jurisdiction. The use of *E. hooveri* must comply with State regulations. There is no designated critical habitat for this species. There are no specific preservation or management programs for the species that are terminated.

**Post-Delisting Monitoring**

Section 4(g)(1) of the Act requires that the Secretary of the Interior, through the Service, implement a monitoring program for not less than five years for all species that have been recovered and delisted. Post-delisting monitoring (PDM) refers to activities undertaken to verify that a species delisted due to recovery remains secure from risk of extinction after it has been removed from the protections of the Act. The primary goal of PDM is to confirm that the species does not require relisting as threatened or endangered during the period following removal of the Act's protection. Therefore, we anticipate that data collection for PDM will be but a subset of that which was collected in support of the delisting rule. In general, PDM plans will monitor demographic data over a set period of time, and may monitor residual threats (see "Definitions") or the effect on the species of the removal of the protections afforded by the Act, or be designed to detect new threats. If at any time during the PDM data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing. A PDM plan is being drafted in a cooperative effort between the Service and BLM to guide the collection and evaluation of pertinent information over the monitoring period.

**Post-Delisting Monitoring Plan Overview**

The management practices of, and commitments by, the BLM, on whose land a substantial number of the new populations have been found, will afford adequate protection to the species upon delisting, when *Eriastrum hooveri* will be designated by BLM as a sensitive species pursuant to BLM Manual 6840 and California State Manual Supplement H–6840.06. The post-delisting monitoring, required under section 4 of the Act, will be facilitated by BLM's implementation of their Caliente Resource Management Plan (RMP) (BLM 1996). Under the RMP and separate agreements, BLM will conduct species-specific monitoring as well as monitoring of residual threats at representative sites within the 4 metapopulations. Threats considered "residual" for *E. hooveri* are habitat disturbance, removal of protections afforded by the Act, and poorly managed grazing and encroachment by nonnative plants.

The Service will monitor the implementation of these commitments for the first 5 years following delisting. During this time the RMP and other BLM commitments will be reviewed annually by the Service. The Service will monitor BLM's commitment to declare *Eriastrum hooveri* a sensitive species, and BLM's implementation of the RMP with regard to residual threats. The Service will monitor the management commitments by BLM to limit habitat disturbance; the collective commitments by BLM, particularly the sensitive species designation, which provide protections similar to those afforded by the Act; and the use of best management practices by all grazing lessees and BLM's implementation of other such practices to limit encroachment by nonnative plants. Additionally, we will review the data on residual threats and *E. hooveri* collected by BLM under their monitoring plan. At the close of 5 years we will evaluate whether BLM's RMP affords the conditions necessary to maintain the species in sufficient numbers and distribution such that the status of *E. hooveri* is secure.

The BLM monitoring plan is being designed to detect changes in the status of *Eriastrum hooveri* primarily by monitoring residual threats and habitat conditions. The BLM will monitor residual threats coupled with species-specific monitoring, in a representative fashion within all four metapopulations, including the San Joaquin Valley floor metapopulation. The BLM's monitoring plan will be agreed upon by the Service.

Thresholds that would trigger an extension of monitoring or a status review will be presented in the Service's draft post-delisting monitoring plan. At the end of the 5-year period, we may end post-delisting monitoring if information indicates that the overall status of *Eriastrum hooveri* is secure (*i.e.*, BLM's RMP affords the conditions necessary to maintain the species in sufficient numbers and distribution such that the status of *E. hooveri* is secure).

## Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act, require that Federal agencies obtain approval from OMB before collecting information from the public. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Implementation of this rule does not include any collections of information that require approval by OMB under the Paperwork Reduction Act.

## National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

## References Cited

A complete list of all references cited herein is available upon request from the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service (*see* **ADDRESSES** section).

## Author

The primary author of this final rule is Graciela Hinshaw, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

## List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

## Regulation Promulgation

■ For the reasons set out in the preamble, we hereby amend part 17, subchapter B of chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

**§ 17.12 [Amended]**

■ 2. Section 17.12(h) is amended by removing the entry for "*Eriastrum hooveri*, Hoover's woolly star" under "Flowering Plants" from the List of Endangered and Threatened Plants.

Dated: September 29, 2003.

**Steve Williams,**

*Director, Fish and Wildlife Service.*

[FR Doc. 03–25364 Filed 10–6–03; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 100103B]

## Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Western Aleutian District

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Atka mackerel in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2003 Atka mackerel total allowable catch (TAC) in this area.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), October 2, 2003, until 2400 hrs, A.l.t., December 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 TAC of Atka mackerel in the Western Aleutian District of the BSAI was established by the final 2003 harvest specifications for groundfish in the BSAI (68 FR 9907, March 3, 2003) as 18,491 metric tons (mt). Regulations that are the basis for specifying this TAC are found at § 679.20(c)(3)(iii) and (c)(6).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2003 Atka mackerel TAC in the Western Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 18,441 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Western Aleutian District of the BSAI.

## Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the Atka mackerel TAC in the Western Aleutian District, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: October 1, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–25354 Filed 10–02–03; 2:05 pm]

BILLING CODE 3510–22–S

# Proposed Rules

**Federal Register**
Vol. 68, No. 194
Tuesday, October 7, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

### RIN 3150–AH27

### List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®–24P, –52B, –61BT, –32PT, and –24PHB Revision

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the Transnuclear, Inc., Standardized NUHOMS® Horizontal Modular Storage System (Standardized NUHOMS® System) listing within the "List of approved spent fuel storage casks" to include Amendment No. 6 in Certificate of Compliance Number 1004. Amendment No. 6 would add the NUHOMS®–24PHB cask design to the Standardized NUHOMS® System. The NUHOMS®–24PHB cask design would permit a Part 72 licensee to store high burnup Babcock & Wilcox 15x15 spent fuel assemblies with an average burnup of up to 55,000 megawatt-days/metric ton of uranium, enrichment equal to 4.5 weight percent uranium-235, a maximum decay heat load of 1.3 kilowatt (kW) per assembly, and a maximum heat load of 24 kW per cask, under a general license.

**DATES:** Comments on the proposed rule must be received on or before November 6, 2003.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH27) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking website. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays [telephone (301) 415–1966].

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on public computers located at the NRC's Public Document Room (PDR), Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. An electronic copy of the proposed Certificate of Compliance (CoC) and preliminary safety evaluation report (SER) can be found under ADAMS Accession Nos. ML031980369 and ML031980374.

**FOR FURTHER INFORMATION CONTACT:** Margaret Stambaugh, telephone (301) 415–5449, e-mail, *mxs8@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule published in the final rules section of this **Federal Register**.

**Procedural Background**

This rule is limited to the changes contained in Amendment 6 to CoC No. 1004 and does not include other aspects of the Standardized NUHOMS® System. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured.

Because NRC considers this action noncontroversial and routine, the proposed rule is being published concurrently as a direct final rule. The direct final rule will become effective on December 22, 2003. However, if the NRC receives significant adverse comments by November 6, 2003, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action.

### List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 72.

## PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED WASTE GREATER THAN CLASS C WASTE

1. The authority citation for part 72 continues to read as follows:

**Authority**: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1004 is revised to read as follows:

**§ 72.214 List of approved spent fuel storage casks.**

* * * * *

Certificate Number: 1004.

Initial Certificate Effective Date: January 23, 1995.

Amendment Number 1 Effective Date: April 27, 2000.

Amendment Number 2 Effective Date: September 5, 2000.

Amendment Number 3 Effective Date: September 12, 2001.

Amendment Number 4 Effective Date: February 12, 2002.

Amendment Number 5 Effective Date: November 3, 2003.

Amendment Number 6 Effective Date: December 22, 2003.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1004.

Certificate Expiration Date: January 23, 2015.

Model Number: Standardized NUHOMS®–24P, NUHOMS®–52B, NUHOMS®–61BT, NUHOMS®–32PT, and NUHOMS®–24PHB.

* * * * *

Dated at Rockville, Maryland, this 11th day of September, 2003.

For the Nuclear Regulatory Commission.

**William D. Travers,**

*Executive Director for Operations.*

[FR Doc. 03–25367 Filed 10–6–03; 8:45 am]

BILLING CODE 7590–01–P

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## DEPARTMENT OF THE TREASURY

## Alcohol and Tobacco Tax and Trade Bureau

## 27 CFR Part 9

**[Notice No. 18]**

**RIN: 1513–AA57**

## Proposed Chehalem Mountains Viticultural Area (2002R–214P)

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the Chehalem Mountains viticultural area located in Yamhill, Washington, and Clackamas Counties, Oregon. This proposed viticultural area is entirely within the approved Willamette Valley viticultural area. We designate viticultural areas to allow bottlers to better describe the origin of wines and allow consumers to better identify the wines they may purchase. We invite comments on this proposed addition to our regulations, particularly from bottlers who use brand names similar to Chehalem Mountains.

**DATES:** We must receive written comments on or before December 8, 2003.

**ADDRESSES:** You may send comments to any of the following addresses:

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 18).
- 202–927–8525 (facsimile).
- nprm@ttb.gov (e-mail).
- *http://www.ttb.gov/alcohol/rules/index.htm*. An online comment form is posted with this notice on our Web site.

You may view copies of this notice, the petition, the appropriate maps, and any comments received about this notice by appointment in our library, 1310 G Street, NW., Washington, DC 20005; phone 202–927–8210 for an appointment. You may also access copies of the notice and comments online at *http://www.ttb.gov/alcohol/rules/index.htm*.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments and for information on how to request a public hearing.

**FOR FURTHER INFORMATION CONTACT:** N.A. Sutton, Specialist, Regulations and Procedures Division (Oregon), Alcohol and Tobacco Tax and Trade Bureau, 946 Northwest Circle Blvd., #286, Corvallis, OR 97330; telephone 415–271–1254.

**SUPPLEMENTARY INFORMATION:**

### TTB Background

### Background on Viticultural Areas

*TTB Authority*

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity, while prohibiting the use of misleading information on such labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions, and the Secretary has delegated this authority to the Alcohol and Tobacco Tax and Trade Bureau.

Regulations in 27 CFR Part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Title 27 CFR Part 9, American Viticultural

Areas, contains the list of approved viticultural areas.

*Definition*

Title 27 CFR 4.25(e)(1) defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features whose boundaries have been delineated in subpart C of part 9. These designations allow consumers and vintners to attribute a given quality, reputation, or other characteristic of wine made from grapes grown in an area to its geographic origin.

*Requirements*

Section 4.25(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition TTB to establish a grape-growing region as a viticultural area. The petition must include:

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that the boundaries of the proposed viticultural area are as specified in the petition;
- Evidence of growing conditions, such as climate, soils, elevation, physical features, etc., that distinguish the proposed area from surrounding areas;
- A description of the specific boundaries of the proposed viticultural area, based on features shown on United States Geological Survey (USGS) or USGS-approved maps; and
- Copies of the appropriate map(s) with the boundaries prominently marked.

*Impact on Current Wine Labels*

As appellations of origin, viticultural area names have geographic significance. Our 27 CFR part 4 label regulations prohibit the use of a brand name with geographic significance on a wine unless the wine meets the appellation of origin requirements for the named area. Our regulations also prohibit any other label references that suggest an origin other than the true place of origin of the wine.

If we establish this proposed viticultural area, bottlers who use brand names, including trademarks, like Chehalem Mountains must ensure that their existing products are eligible to use the viticultural area's name as an appellation of origin. For a wine to be eligible, at least 85 percent of the grapes in the wine must have been grown within the viticultural area, and the wine must meet the other requirements of 27 CFR 4.25(e)(3).

If a wine is not eligible for the appellation, the bottler must change the brand name or other label reference and obtain approval of a new label. Different rules apply if a wine in this category bearing a brand name traceable to a label approved prior to July 7, 1986. See 27 CFR 4.39(i) for details.

**Chehalem Mountains Petition**

We have received a petition from Alex Sokol-Blosser, secretary of the North Willamette Valley AVA Group proposing establishment of a new viticultural area to be called "Chehalem Mountains." David Adelsheim, Paul Hart, and Richard Ponzi authored the petition. The proposed viticultural area is wholly within Oregon's Willamette Valley approved viticultural area. It is located toward the northern end of the valley and begins approximately 19 miles southwest of Portland, Oregon and 45 miles inland from the Pacific Ocean. It includes 106 square miles (67,840 acres) and straddles the boundary between Yamhill and Washington Counties and extends well into Clackamas County. As of 2002 at least 80 vineyards, totaling over 1,100 acres, plus 12 commercial wineries exist within the proposed boundaries of the Chehalem Mountains viticultural area, with more added each year.

The proposed Chehalem Mountains viticultural area constitutes a single, continuous landmass (measuring over 20 miles in length and 5 miles in width) uplifted above the floor of the Willamette Valley. The 200-foot elevation line generally defines the perimeter of the area, which consists of a series of ridges and highpoints, including two highly delineated spurs, Ribbon Ridge and Parrett Mountain. The petitioners decided to use physical features and elevation as the primary factors in defining the boundaries of the proposed area.

*Name Evidence*

The petitioners indicate the area is locally known as the Chehalem Mountains. They cite references that state the modern word "Chehalem" comes from the Indian name "Chahelim," which is listed under the heading Atfalati (Tualatin) in the "Handbook of American Indians." This name was given to the more than 20 bands of Indians living in the general vicinity of the Chehalem Mountains in the early 1800s.

Further, the petitioners state the word "Chehalem" appears to have entered the vocabulary of the early European settlers in the north Willamette Valley prior to 1840. A lumber mill was installed on Chehalem Creek in 1834, and in 1848 Joseph B. Rogers had the town of "Chehalem" platted on property he owned where Newberg, Oregon, stands today. The town had one of the earliest post offices in Yamhill County (established March 14, 1851), but the office closed within a year.

The petition supplies evidence that Chehalem has been used since that time to name a Parks and Recreation District, businesses (27 examples), housing developments, and public roads. The two public middle schools in the Newberg school district are named Chehalem Valley and Mountain View. Additionally, Chehalem has long been used in geographic names, such as Chehalem Creek, which runs through Chehalem Valley, which, in turn, forms the south side of the Chehalem Mountains. The entry for Chehalem Mountains in "Oregon Geographic Names" by Lewis L. McArthur reads, "These are the highest mountains in the Willamette Valley * * *. The Chehalem Mountains and some independent spurs extend from the Willamette River east of Newberg to the foothills of the Coast range south of Forest Grove, Oregon."

The term "Chehalem Mountains" figures prominently on four of the six USGS quadrangle maps (Newberg, Oregon; Dundee, Oregon; Laurelwood, Oregon; and Scholls, Oregon) submitted with this petition. The petitioners state that the Chehalem Mountains (including the Parrett Mountain spur, the Ribbon Ridge spur, and multiple other named hills, peaks, and ridges, such as Laurel Ridge, Bald Peak, Iowa Hill, Spring Hill, and Fern Hill) constitute a single uplifted landmass easily distinguished from the surrounding valley floor areas. Further, they contend that the historical name "Chehalem Mountains" (plural) is meant to include hilltops, ridges, and spurs, even one as large as Parrett Mountain.

*Boundary Evidence*

The petitioners state they know of no previous attempts to define the exact boundaries of the Chehalem Mountains. However, the evidence submitted uses physical features and elevation as the primary factors in defining the boundaries of the proposed area, as well as historical information relating to viticultural activity.

The petition includes maps that show the Chehalem Mountains constitute a single, continuous landmass, uplifted above the floor of the Willamette Valley, which is delineated for much of the west side and all of the north side by the valley formed by the Tualatin River and its tributaries. On the east side, it is separated from the high ground around Tonquin by wetlands of Rock Creek and

Seely Ditch. The southern boundaries are formed by the flood plain of the Willamette River in the east and by the Chehalem Valley in the west. The lowlands are all below the 200-foot level.

The petitioners used elevation, slope, and soil criteria in delineating the line between what constitutes "mountains" and what is "valley floor." They state the foot of the Chehalem Mountains generally lies between 200 and 250 feet above sea level. Therefore, the petition includes all land in the area above the 200-foot level, with the exception of two highly urbanized areas located east and north of Newberg, Oregon, and west and south of Sherwood, Oregon. The proposed area excludes flat or barely sloping lands and includes hillsides. All hillside soils, whether marine, sediment, basaltic, loess, or, in some cases, alluvial (where it is found in hillside locations) are included in the proposed boundaries of the petitioned Chehalem Mountains viticultural area.

The petitioners also assert the Chehalem Mountains are made up of a series of ridges and highpoints that include two highly delineated spurs, Ribbon Ridge and Parrett Mountain, which are both heavily planted to vineyards. When drawn around the landmass of what is historically called the Chehalem Mountains, the 200-foot contour line encloses both the Ribbon Ridge and Parrett Mountain spurs.

Regarding historical evidence, the first modern vineyard on the Chehalem Mountains dates to 1968, when Dick Erath purchased 49 acres on Dopp Road in Yamhill County. He called the property Chehalem Mountain Vineyards and planted it the following spring.

### *Growing Conditions*

The petitioners state that the proposed Chehalem Mountains viticultural area's boundaries are based primarily on a combination of terrain, elevation, and climate factors that contrast with the surrounding Willamette Valley, Coast Range, and Columbia Gorge.

#### Physical Features

The physical appearance of the Chehalem Mountains is the most significant geographical feature to distinguish them from surrounding areas. Due to their height and length (over 20 miles), the Chehalem Mountains are a significant landform in northern Willamette Valley. They can be seen from Portland's West Hills and from much of the northern Willamette Valley floor. They are the major separation between the basin of the Tualatin River and the Chehalem Valley.

The sometimes steep, sometimes gentle slopes of the Chehalem Mountains are highly differentiated from the almost flat Willamette Valley floor. In some areas (the west side of Ribbon Ridge and the southeast side of Parrett Mountain), the slope of the Mountains descends steeply, then suddenly becomes almost level, making the transition from Mountains to valley floor instantaneous and incontrovertible. However, for the majority of its perimeter, the slopes of the Chehalem Mountains shift more gradually to gentle slopes, then finally to the valley floor. The petitioners used the elevation/slope/soil criteria to determine the boundary lines in areas where the distinction is not as obvious.

#### Elevation

The Chehalem Mountains are the highest mountains within the Willamette Valley. Their tallest point is Bald Peak, which lies 7 miles northwest of Newberg and rises to 1,633 feet above sea level. The valley floors, surrounding the Mountains on all sides, drop below 200 feet. The 200-foot contour line completely encircles the Chehalem Mountains and clearly differentiates the Mountains from the valley. The petitioners state that these elevation differences are significant in distinguishing the Chehalem Mountains from the surrounding areas. Most of the existing vineyards in the proposed viticultural area are located between the 200- to 1,000-foot elevation lines. The petitioners assert that the areas below the 200-foot level have alluvial soils with greater depth, fertility, and water-holding capacity, which extend the growing period of the vine and delay the ripening of vineyards reds, as well as result in greater exposure to frost. Therefore, the alluvial soils on the valley floor are not included in the proposed boundaries.

#### Climate

The petitioners state that the element of climate that best distinguishes the Chehalem Mountains is annual precipitation. Since they are the highest mountains in the Willamette Valley, they provide the largest obstacle to eastward moving storms. As the moist air is forced over the Chehalem Mountains, the water vapor in the cooling air condenses and falls to earth as terrain-induced rain. According to data obtained from the "Atlas of Oregon," second edition (University of Oregon Press, 2001), annual rainfall within the boundaries of the proposed viticultural area ranges from 37 inches at the lowest point to almost 60 inches at the highest elevations on Bald Peak. This is in contrast to Hillsboro and Beaverton just north of the Chehalem Mountains and French Prairie just south of the Mountains with the lowest annual precipitation in the Willamette Valley—under 36 inches. The annual average rainfall for the Portland International Airport, located east of the proposed area, is 36 inches while the Coast Range, located west of the Chehalem Mountains, has an average of over 100 inches of rain per year.

The other uplifted hills in the Willamette Valley have somewhat higher rainfall levels than the surrounding valley floor (for example, Eola Hills has 40 to 48 inches and Red Hills has 40 to 44 inches), but none so dramatic as the Chehalem Mountains.

The petitioners also state that the Chehalem Mountains have the greatest variation in temperature within the Willamette Valley due to the range in elevation (200 to 1,633 feet). According to data obtained from the Oregon Climate Service, heat summation during the growing season varies from over 2,200 degree-days at the base of the south side of the Mountains to less than 1,800 degree-days on the north side of the top of the Mountains. These variations can result in three-week differences in the ripening of Pinot Noir grapes. Evapotranspiration (the loss of water from soil and plants by a combination of evaporation and transpiration) is about 3 inches less on the higher parts of the Chehalem Mountains compared to the surrounding valleys, mostly due to temperature differences.

#### Soil

The petitioners state that, in general, the proposed area contains a combination of loess, sedimentary, basaltic, and alluvial soils. These were deposited over a 17-million-year period through a series of events that included uplifting of the mountains from the shallow waters of the Pacific Ocean, huge eruptions of basaltic lava from the Columbia River Basalt Group, wind blowing silt from Eastern Oregon and Washington, and alluvial deposition from the Missoula Flood.

The diverse soils contained in the proposed Chehalem Mountains viticulture area have yielded successful vineyards since 1968. Much of the Ribbon Ridge spur is covered by sedimentary soil (Willakenzie Series) and is heavily planted to red wine grapes. The central and southern Chehalem Mountains also contain large deposits of basaltic soils (mainly Jory Series) that contain many vineyards of white grapes, as well as extensive plantings of Pinot Noir. The Laurelwood Series of the loess soils also covers much of the central Chehalem Mountains.

However, the petitioners assert that soil does not distinguish the Chehalem Mountains from the surrounding hill formations. The sedimentary western flank of the Mountains has soils that are much like those further to the west in the hills surrounding the Yamhill River Basin. The basaltic-origin soils along much of the southern slope and the Parrett Mountains spur are similar to the soils further south on the Red Hills and the east side of the Eola Hills. The eolian soils on most of the north side of the Mountains are much like those on the hills further north and east in the Tualatin basin (*e.g.*, Cooper and Bull Mountains). All the alluvial soils at the base of the Chehalem Mountains are much like those of the surrounding valley flood plains. The petitioners contend that the soils contained in the proposed viticultural area are not what make it unique. Rather, geographic features other than soil are what strongly differentiate the Chehalem Mountains from the surrounding valley floors and from the surrounding hill formations.

*Boundary Description*

See the narrative boundary description of the petitioned viticultural area in the proposed regulation published at the end of this notice.

*Maps*

The petitioner provided the required maps, and we list them in the proposed regulations.

## Public Participation

*Comments Sought*

We request comments from anyone interested. Please support your comments with specific information about the proposed area's name, growing conditions, or boundaries. All comments must include this notice number and your name and mailing address. They must be legible and written in language acceptable for public disclosure.

Because of the potential impact of a Chehalem Mountains viticultural area on current brand names that include "Chehalem," we are particularly interested in comments regarding the proposed area's name. Are there other names for this area that would not conflict with current brand names? We are also interested in suggestions for preventing conflicts between viticultural area names and brand names of geographic significance, as discussed above under "Impact on Current Wine Labels."

Although we do not acknowledge receipt, we will consider your comments if we receive them on or before the closing date. We will consider comments received after the closing date if we can. We regard all comments as originals.

*Confidentiality*

We do not recognize any submitted material as confidential. All comments are part of the public record and subject to disclosure. Do not enclose in your comments any material you consider confidential or inappropriate for public disclosure.

*Submitting Comments*

You may submit comments in any of four ways:

- By mail: You may send written comments to TTB at the address listed in the **ADDRESSES** section.
- *By facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Faxed comments must—

(1) Be on 8.5- by 11-inch paper;

(2) Contain a legible, written signature; and

(3) Be five or less pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.

- *By e-mail:* You may e-mail comments to *nprm@ttb.gov*. Comments transmitted by electronic mail must—

(1) Contain your e-mail address;

(2) Reference this notice number on the subject line; and

(3) Be legible when printed on 8.5- by 11-inch paper.

- *By online form:* We provide a comment form with the online copy of this notice on our Web site at *http://www.ttb.gov/alcohol/rules/index.htm*. Select the "Send comments via e-mail" link under this notice number.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

*Public Disclosure*

You may view copies of this notice, the petition, the appropriate maps, and any comments received by appointment in our library at 1310 G Street, NW., Washington, DC 20005. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact us at the above address or telephone 202–927–8210 to schedule an appointment or to request copies of comments.

For your convenience, we will post this notice and the comments received on the TTB Web site. We may omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in our library. To access the online copy of this notice, visit at *http://www.ttb.gov/alcohol/rules/index.htm*. Select the "View Comments" link under this notice number to view the posted comments.

## Regulatory Analyses and Notices

*Paperwork Reduction Act*

We propose no requirement to collect information. Therefore, the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, and its implementing regulations, 5 CFR part 1320, do not apply.

*Regulatory Flexibility Act*

We certify that this regulation, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses. The proposal imposes no new reporting, recordkeeping, or other administrative requirements.

The establishment of viticultural areas represents neither our endorsement nor approval of the quality of wine made from grapes grown in the designated areas. Rather, this system allows us to identify areas distinct from one another. In turn, identifying viticultural areas lets wineries describe more accurately the origin of their wines to consumers and helps consumers identify the wines they purchase. Thus, any benefit derived from using a viticultural area name results from a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

*Executive Order 12866*

This proposed rule is not a "significant regulatory action" as defined by Executive Order 12866. Therefore, no regulatory assessment is required.

## Drafting Information

B. J. Kipp of the Regulations and Procedures Division (Portland, Oregon) drafted this notice.

## List of Subjects in 27 CFR Part 9

Wine.

## Authority and Issuance

For the reasons discussed in the preamble, we propose to amend title 27, chapter 1, part 9, Code of Federal Regulations, as follows:

## PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

2. Subpart C is amended by adding Section 9._ to read as follows:

## Subpart C—Approved American Viticultural Areas

* * * * *

### §9._ Chehalem Mountains

(a) *Name.* The name of the viticultural area described in this section is "Chehalem Mountains".

(b) *Approved Maps.* The six, 1:24,000 scale, USGS, topographic maps used to determine the boundaries of the Chehalem Mountains viticultural area are titled:

(1) Newberg Quadrangle, Oregon, 7.5 Minute Series, 1961 (photorevised 1985);

(2) Dundee Quadrangle, Oregon, 7.5 Minute Series, 1956 (revised 1993);

(3) Laurelwood Quadrangle, Oregon, 7.5 Minutes Series 1956 (revised 1992);

(4) Scholls Quadrangle, Oregon, 7.5 Minute Series, 1961 (photorevised 1985);

(5) Beaverton Quadrangle, Oregon, 7.5 Minute Series, 1961 (photorevised 1984); and

(6) Sherwood Quadrangle, Oregon, 7.5 Minute Series, 1961 (photorevised 1985).

(c) *Boundary.* The Chehalem Mountains viticultural area is located in Yamhill, Washington, and Clackamas Counties, Oregon. The area's boundaries are defined as follows:

(1) The point of beginning (Newberg Quadrangle) is in Yamhill County, section 15, R2W, T3S, and 3 miles east of the city of Newberg where the 250-foot contour line crosses Oregon highway 99W, as that highway ascends the Chehalem Mountains;

(2) Proceed northwest 0.7 miles along the 250-foot contour line until that line crosses Benjamin Road (shown but unnamed on Newberg Quadrangle);

(3) Proceed west 0.5 miles along Benjamin Road across the railroad tracks until it intersects with Spring Brook Road (also unnamed);

(4) Proceed southwest 0.3 miles along Spring Brook Road (parallel to railroad tracks) to its intersection with Mountainview Drive (unnamed);

(5) Proceed west 0.35 miles on Mountainview Drive to its intersection with the unnamed Aspen Way;

(6) Proceed north and west on Aspen Way 1.2 miles to its intersection with Bell Road;

(7) Proceed west 0.3 miles to the end of Bell Road at intersection with Oregon highway 219;

(8) Proceed west across highway 219 on North Valley Road (which was Bell Road) 0.45 miles to the intersection with the 250-foot contour line;

(9) Proceed northwest 1.2 miles along the 250-foot contour line to the western edge of the Newberg Quadrangle;

(10) Proceed south 0.05 miles along the western edge of the Newberg Quadrangle, section 42, R3W, T3S, to the intersection with the 240-foot contour line;

(11) Continue onto the Dundee Quadrangle map, section 42, R3W, T3S and proceed west 2.15 miles along the 240-foot contour line to where the line crosses the unnamed Sullivan Lane (that lane is east of and parallel to Calkins Lane);

(12) Proceed south along Sullivan Lane 0.25 miles to the intersection with North Valley Road;

(13) Proceed west along North Valley Road 0.1 miles to the intersection with the 200-foot contour line;

(14) Proceed northwest along the 200-foot contour 0.9 miles to a point where the contour line crosses an unnamed creek that parallels Dopp Road;

(15) Proceed north along the creek 0.03 miles to the intersection with Dopp Road;

(16) Proceed north along Dopp Road to the intersection with the 240-foot contour line;

(17) Proceed along the 240-foot contour line, first north, then south, then west, then north to a point 2.9 miles northwest, where the contour line hits the north edge of the map. (This section coincides with the southeast, southwest, and north boundaries of the concurrently proposed Ribbon Ridge American viticultural area.);

(18) Continue onto the Laurelwood Quadrangle, section 58, R3W, T2S and proceed generally north along the 240-foot contour line 7.5 miles to where the contour line crosses Sandstrom Road;

(19) Proceed west 0.15 miles on Sandstrom Road to its third intersection with the 200-foot contour line, just prior to Spring Hill Road;

(20) Proceed northwest, then northeast, and southeast 2.7 miles along the 200-foot contour line around Fern Hill and Blooming Hill Roads to where it crosses La Follette Road;

(21) Proceed south 0.2 miles on La Follette Road to its intersection with the 240-foot contour line;

(22) Proceed generally south, then east 4 miles along the 240-foot contour line to the eastern edge of the Laurelwood Quadrangle;

(23) Continue on the western edge of the Scholls Quadrangle, section 25, R3W, T1S, (0.45 miles south of Simpson Road) and proceed south 0.5 miles along the 240-foot contour line, through a crescent shape to the western edge of the Scholls Quadrant;

(24) Continue on the Laurelwood Quadrangle in the southeast corner of section 25, R3W, T1S and proceed along the 240-foot contour line west and then south 2.3 miles to where it crosses Laurel Road West;

(25) Proceed east along Laurel Road West 0.1 miles to its intersection with the 200-foot contour line;

(26) Proceed southwest and then east along the 200-foot contour line around the Burris Creek Valley to the eastern edge of the Laurelwood Quadrangle in the northeast corner of section 12, R3W, T2S;

(27) Continue on the western edge of Scholls Quadrangle, section 12, R3W, T2S, 0.13 miles south of Laurel Road West and proceed along the 200-foot contour line generally southeast, skirting the valley of McFee Creek for 4.2 miles to the valley of Heaton Creek, to the southern edge of the Scholls map;

(28) Continue on the northern edge of the Newberg Quadrangle, section 28, R2W, T2S and proceed along the 200-foot contour line south in a brief U-shaped formation for 0.1 miles, then north back to the northern edge of the Newberg Quadrangle;

(29) Continue on Scholls Quadrangle, section 21, R2W, T2S and proceed along the 200-foot contour line generally northeast for 3.25 miles around Laurel Ridge to the southeastern edge of the Scholls Quadrangle;

(30) Continue on the Beaverton Quadrangle, section 24 R2W, T2S, 0.8 miles north of Lebeau Road and proceed along the 200-foot contour line southeast for 1 mile to the southern edge of the map, section 19, R1W, T2S.

(31) Continue onto the Sherwood Quadrangle, section 30, R1W, T2S, 0.1 miles east of Elwert Road, proceed west 0.55 miles to the northwestern edge of the Sherwood Quadrangle, and then proceed 0.05 miles across the most southwestern edge of the Beaverton Quadrangle;

(32) Continue onto Scholls Quadrangle in the southeast corner of section 24, R2W, TS2 and proceed west then southeast along the 200-foot contour line around the north fork of Chicken Creek to the southeast corner of the map;

(33) Continue onto the Newberg Quadrangle, section 25, R2W, TS2 (0.2 miles from the northeast corner of the map) and proceed along the 200-foot contour line until it exits the eastern edge of the map, 0.25 miles south of the northeast corner;

(34) Continue onto the Sherwood Quadrangle, section 25, R2W, T2S and proceed along the 200-foot contour line (0.25 miles south of the map's northwest corner) around the south fork of Chicken Creek to the western edge of the map, 0.3 miles south;

(35) Continue on the Newberg Quadrangle, section 25, R2W, T2S (0.55 miles south of the map's northeast corner and proceed along the 200-foot contour line around the Chicken Creek lowlands to the eastern edge of the map, 0.25 miles south of where it entered;

(36) Continue on the Sherwood Quadrangle, section 25, R2W, T2S (0.8 miles south of the map's northwest corner and proceed generally east 0.4 miles to Elwert Road;

(37) Proceed south on Elwert Road 0.85 miles to its intersection with Oregon highway 99W;

(38) Proceed south by southwest along highway 99W 0.45 miles across the north fork of Cedar Creek to the intersection of highway 99W and the 250-foot contour line;

(39) Proceed generally south along the 250-foot contour line 0.6 miles to its intersection with Middleton Road;

(40) Proceed southwest on Middleton Road 0.3 miles to the point where it becomes Rein Road;

(41) Proceed south on Rein Road 0.15 miles across Cedar Creek to the intersection of Rein Road and the 200-foot contour line;

(42) Proceed generally east along the 200-foot contour line 1.2 miles to its intersection with Brookman Road (shown but unnamed on map);

(43) Proceed on Brookman Road 0.35 miles east, then north 0.25 miles, then east 0.15 miles (paralleling the Clackamas/Washington County lines);

(44) Proceed east 0.85 miles across Ladd Hill Road and continue along the Clackamas/Washington County lines to the intersection with Baker Road (shown as Brown Road on the map);

(45) Now in Clackamas County, proceed along Baker Road south by southeast 1 mile to the second intersection with the 250-foot contour line;

(46) Proceed along the 250-foot contour line in a semicircle, first east, then southeast, then southwest and return to Baker Road;

(47) Proceed south along Baker Road 0.15 miles to its intersection with the 200-foot contour line;

(48) Proceed along the 200-foot contour line in a generally southwest direction 4.45 miles along the southwestern flank of the Parrett Mountain spur of the Chehalem Mountains to the western edge of the map;

(49) Continue on the Newberg Quadrangle, section 76, R2W, T4S, 0.3 miles north of the north bank of the Willamette River and proceed along the 200-foot contour line west by northwest 1.1 miles to the intersection with Wilsonville Road;

(50) Proceed northwest, then north 1.9 miles across an unnamed tributary creek of Spring Brook;

(51) Proceed along the unnamed tributary 0.25 miles in a south by southwest direction to the intersection with the 200-foot contour line;

(52) Proceed along the base of Grouse Butte, following the 200-foot contour line to a point 0.45 miles northwest to the intersection of the contour line and Wilsonville Road;

(53) Proceed east along Wilsonville Road 0.45 miles back to the intersection of the road with an unnamed tributary creek of Spring Brook;

(54) Proceed northeast along the unnamed tributary creek of Spring Brook 0.05 miles to the intersection with the 250-foot contour line;

(55) Proceed generally north along the 250-foot contour line 1.4 miles to its intersection with Corral Creek Road (misnamed Ladd Hill Road on the Newberg Quadrangle); and

(56) Proceed north along Corral Creek Road 0.6 miles to the intersection with Oregon highway 99W, which is the point of beginning.

Signed: September 17, 2003.

**Arthur J. Libertucci,**

*Administrator.*

[FR Doc. 03-25372 Filed 10-6-03; 8:45 am]

**BILLING CODE 4810-31-P**

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## DEPARTMENT OF THE TREASURY

## Alcohol and Tobacco Tax and Trade Bureau

### 27 CFR Part 9

**[Notice No. 19]**

**RIN: 1513-AA59**

## Proposed Establishment of the Yamhill-Carlton District Viticultural Area (2002R-216P)

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau proposes to establish the "Yamhill-Carlton District" viticultural area in northwest Oregon. The proposed area is located within the approved Willamette Valley viticultural area. We designate viticultural areas to allow bottlers to better describe the origin of wines and allow consumers to better identify the wines they may purchase. We invite comments on this proposed addition to our regulations, particularly from bottlers who use brand names similar to "Yamhill-Carlton District."

**DATES:** We must receive written comments on or before December 8, 2003.

**ADDRESSES:** You may send comments to any of the following addresses—

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 50221, Washington, DC 20091-0221 (Attn: Notice No. 19);
- 202-927-8525 (facsimile);
- *nprm@ttb.gov* (e-mail);
- *http://www.ttb.gov/alcohol/rules/index.htm*. An online comment form is posted with this notice on our Web site.

You may view copies of this notice, the petition, the appropriate maps, and any comments received about this notice by appointment at our library, 1310 G Street NW., Washington, DC 20202; telephone 202-927-8210 for an appointment. You may also access copies of the notice and comments online at *http://www.ttb.gov/alcohol/rules/index.htm*.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments and for information on how to request a public hearing.

**FOR FURTHER INFORMATION CONTACT:** N.A. Sutton, Specialist, Regulations and Procedures Division (Oregon), Alcohol and Tobacco Tax and Trade Bureau, 946 Northwest Circle Blvd., #286, Corvallis, OR 97330; telephone 415-271-1254.

**SUPPLEMENTARY INFORMATION:**

### Homeland Security Act Impact on Rulemaking

Effective January 24, 2003, the Homeland Security Act of 2003 divided the Bureau of Alcohol, Tobacco and Firearms (ATF) into two new agencies, the Alcohol and Tobacco Tax and Trade Bureau (TTB) in the Department of the Treasury and the Bureau of Alcohol, Tobacco, Firearms and Explosives in the Department of Justice. Regulation of alcohol beverage labels, including viticultural area designations, is the responsibility of the new TTB. References to ATF in this document relate to events that occurred prior to January 24, 2003, or to functions that the Bureau of Alcohol, Tobacco, Firearms and Explosives continues to perform.

## Background on Viticultural Areas

### *TTB Authority*

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity, while prohibiting the use of misleading information on such labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out the Act's provisions, and the Secretary has delegated this authority to the Alcohol and Tobacco Tax and Trade Bureau.

Regulations in 27 CFR Part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Title 27 CFR Part 9, American Viticultural Areas, contains the list of approved viticultural areas.

### *Definition*

Title 27 CFR 4.25(e)(1) defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features whose boundaries have been delineated in subpart C of part 9. These designations allow consumers and vintners to attribute a given quality, reputation, or other characteristic of wine made from grapes grown in an area to its geographic origin.

### *Requirements*

Section 4.25(e)(2) outlines the procedure for proposing an American viticultural area. Anyone interested may petition TTB to establish a grape-growing region as a viticultural area. The petition must include—

- Evidence that the proposed viticultural area is locally or nationally known by the name specified in the petition;
- Historical or current evidence that the boundaries of the proposed viticultural area are as specified in the petition;
- Evidence of growing conditions, such as climate, soils, elevation, physical features, etc., that distinguish the proposed area from surrounding areas;
- A description of the specific boundaries of the proposed viticultural area, based on features shown on United States Geological Survey (USGS) maps or USGS-approved maps; and
- Copies of the appropriate map(s) with the boundaries prominently marked.

### *Impact on Current Wine Labels*

As appellations of origin, viticultural area names have geographic significance. Our 27 CFR part 4 label regulations prohibit the use of a brand name with geographic significance on a wine unless the wine meets the appellation of origin requirements for the named area. Our regulations also prohibit any other label references that suggest an origin other than the true place of origin of the wine.

If we establish this proposed viticultural area, bottlers who use brand names, including trademarks like Yamhill-Carlton District, must ensure that their existing products are eligible to use the viticultural area's name as an appellation of origin. For a wine to be eligible, at least 85 percent of the grapes in the wine must have been grown within the viticultural area, and the wine must meet the other requirements of 27 CFR 4.25(e)(3). If a wine is not eligible for the appellation, the bottler must change the brand name or other label reference and obtain approval of a new label.

Different rules apply to wines in this category that have brand names traceable to labels approved prior to July 7, 1986. See 27 CFR 4.39(i) for details. In addition, if you use the viticultural area name on a wine label in a context other than an appellation of origin, the general prohibitions against misleading representation in 27 CFR part 4 apply.

## Yamhill-Carlton District Petition

### *General Background*

We have received a petition from Alex Sokol-Blosser, Secretary of the North Willamette Valley AVA Group, and Ken Wright, on behalf of the winegrowers of the proposed Yamhill-Carlton District, proposing a new viticultural area to be called the "Yamhill-Carlton District." The proposed viticultural area, which is limited to lands at or above 200 feet in elevation and below 1,000 feet in elevation, is wholly within Yamhill and Washington Counties and also falls within the approved boundaries of the Willamette Valley viticultural area in northwest Oregon. It is located approximately 35 miles southwest of Portland, Oregon, and 25 miles inland from the Pacific Ocean. It includes a total of 20,900 acres. However, when the acreage below 200 feet in elevation and above 1,000 feet in elevation is subtracted, the total acreage included in the proposed American viticultural area is 8,500 acres. The petitioner decided to use soil and elevation and, to a lesser extent, climate, as the primary factors in defining the boundaries of the proposed area. At the time of this proposal, 26 known vineyards exist in the proposed American viticultural area, with approximately 650 acres planted to grapes, with more added each year.

The petitioner's proposal is unusual in that the proposed boundaries encompass land that will not be part of the proposed viticultural area. Land below 200 feet and above 1,000 feet will be excluded due to soil and climate differences with land between those elevations. A precedent does exist for such a viticultural area. Within the boundaries of the Mendocino Ridge viticultural area, only land at or above the 1200-foot elevation is included in the viticultural area (See 27 CFR 9.158 and T.D. ATF–392 at 62 FR 55512, October 27,1997). However, because of the unusual nature of such boundaries, TTB is particularly interested in public comments on the proposed Yamhill-Carlton District boundaries. Specifically, does the evidence regarding elevation support the exclusion of some of the land lying within the proposed area's outer boundaries?

### *Name Evidence*

The petitioner indicates the area is locally known as the Yamhill-Carlton District. The cities of Yamhill and Carlton, Oregon, are 3 miles apart, lie at the center of the proposed viticultural area, and have had strong ties throughout their histories. Both were incorporated over 100 years ago and have existed as separate cities since that time. The hyphenated expression of the cities' names has been used since 1853 with the establishment of the Yamhill-Carlton Pioneer Cemetery. Also, the Yamhill-Carlton Union High School has existed since the two high schools merged in 1955 and currently operates under supervision of the Yamhill-Carlton School District, which was formed in 1996. Further evidence of the ties between the two communities was a shared newspaper, the "Carlton-Yamhill Review." The cities of Yamhill and Carlton, as well as the Yamhill-Carlton Pioneer Cemetery, are found within the boundaries of the USGS Carlton Quadrangle, 7.5 minute series, topographic map.

### *Boundary Evidence*

The petitioner submitted evidence that is based primarily on soil and elevation, and to a lesser extent, climate, as factors in defining the boundaries of the proposed area, as well as historical information relating to viticultural activity. The petitioner describes the proposed Yamhill-Carlton District as a south-facing bowl containing a series of horseshoe-shaped, eroded hills, comprised of sedimentary parent material.

The western boundary of the proposed area is based on the change of the sedimentary soils from the volcanic soils of the coastal range of hills. The higher elevations of the coastal hills to the west, generally ranging from 1,000–2,000 feet, are much cooler than the proposed area and have proven unsuitable for the production of vinifera varietals. At the southwestern boundary, the almost purely sedimentary parent material of the proposed Yamhill-Carlton District changes to a mix of basalt, slate, and sedimentary material. The southern boundary transitions to valley floor that contains deep soil comprised of Willamette silts. The frost-prone nature of this lower elevation area, combined with its high permeability and fertility, make it unsuitable for production of quality vinifera grape varieties. Abbey and Kuehne Roads serve as the eastern border of the proposed area and mark the change of sedimentary parent material to volcanic soil of the Red Hills of Dundee, as well as highlight a natural drainage between the two areas.

Millican Creek drains along this boundary, flowing from north to south and eventually joining the Yamhill River near the town of Lafayette. The Chehalem Creek estuary is a vast drainage area that separates the proposed Yamhill-Carlton District from the Ribbon Ridge area (a spur of the Chehalem Mountains) to the east. While the two areas are both based on sedimentary material, the proposed Yamhill-Carlton District sedimentary soil is generally coarser in texture and subject to more faulting, uplifts, and erosion than the soils of Ribbon Ridge.

The Wapato Lake Bed serves as a large, low drainage area on the northeastern boundary of the proposed Yamhill-Carlton District, separating it from the Chehalem Mountains. The soils of these two areas are vastly different in that the proposed Yamhill-Carlton District is highly eroded sedimentary parent material while the Chehalem Mountains, which lie across the Wapato Lake Bed, are formed from wind-blown mixed material and overlying basalt. Finally, the northern border of the proposed area coincides with the vast low areas of Patton Valley with predominately wind-blown soil.

Regarding historical evidence, two vineyards can lay claim to being first planted in the proposed Yamhill-Carlton viticultural area. In 1974, Roy and Betty Wahle planted 8 acres of vinifera grapes comprised of Pinot Noir, Chardonnay, Riesling, and Gewurztraminer. That same year, Pat and Joe Campbell planted Elk Cove Vineyards, an 8-acre plot comprised of Pinot Noir and Chardonnay. The next significant era of planting occurred between 1989 and 1992. Doe Ridge Vineyard, McCrone Vineyard, Shea Vineyard, Stag Hollow Vineyard, and Willakenzie Estate combined to plant a total of 183 acres during this period.

The first commercial wine from the proposed Yamhill-Carlton area was the 1977 Elk Cove Estate Pinot Noir. As of the date of this petition, 10 commercial wineries operate within the boundaries of the proposed area.

## *Growing Conditions*

### Distinctive Geographic Features

The petitioner describes the proposed Yamhill-Carlton District viticultural area as a south-facing bowl consisting of a horseshoe-shaped series of highly eroded hills comprised of sedimentary parent material bordered by a high-elevation coastal range to the west, a cooler maritime-influenced area to the south, and natural lowland drainage areas to the east and north. The soils contained in the proposed Yamhill-Carlton District differ from those in surrounding areas either by basic rock or age of the parent material.

### Soil

The petitioner states that the most significant feature that separates the proposed Yamhill-Carlton District from nearby grape-growing regions is the predominance of ancient sedimentary soils. He believes these soils impart distinct and unique characteristics to the fruit they grow. Wines made from grapes grown in these sedimentary soils often contain distinct aromatic flavors (coffee, cocoa, anis, cedar, tobacco) not found in wines made from the same variety of fruit grown in different soils. Also the wines made from grapes grown in these sedimentary soils are consistently lower in acidity than wines made from grapes grown in basaltic or wind-blown soils.

According to "The Roadside Geology of Oregon" (David Alt and Donald W. Hyndman), the soils of the proposed Yamhill-Carlton District, formed in the Eocene era, were derived from marine sediments and ocean floor volcanic basalt that have a high water-holding capacity with moderate to high erosion levels. A map prepared by Alan Campbell of NW Vineyards on the vineyard soils of Yamhill County shows that the western hills of the proposed Yamhill-Carlton District are comprised of two soils groups, Willakenzie on the lower elevation slopes and Peavine on the upper slopes. Peavine soils dominate the northern section of the proposed viticultural area, while the eastern slopes are comprised of Wellsdale and Willakenzie soil series. The petitioner states that the sedimentary soils of the proposed Yamhill-Carlton District are millions of years older than the soils in the surrounding areas.

By contrast, the petitioner states that the Eola Hills (south of the proposed Yamhill-Carlton District), Chehalem Mountains (north and east of the proposed Yamhill-Carlton District), and Red Hills (southeast of the proposed Yamhill-Carlton District) are dominated by volcanic-based soils formed in the Miocene Era. The Eola Hills area has predominately basalt soil series (Neika, Gelderman, Ritner) that are characterized by their low water capacity, slow permeability, and moderate erosion level. The Chehalem Mountains have a combination of Columbia River basalt, ocean sedimentation, and wind-blown loess derivation soil types. The Red Hills contain soil mainly derived from Columbia River basalt lavas (largely based on the Jory series), which are moderately fertile and well drained, with slight to moderate erosion levels.

The petition documentation also states the Ribbon Ridge area, which is immediately east of the proposed district, also contains primarily sedimentary soils. However, these were formed in the Oligocene Era and are younger, finer, and more uniform than the sedimentary soils of the proposed Yamhill-Carlton District.

### Elevation

The petitioner defines the proposed Yamhill-Carlton District viticultural area as lands, within the proposed boundaries, that are at or above 200 feet in elevation and at or below 1,000 feet in elevation. The petitioner justifies the bracketed elevation with the following information. The floor of the proposed region is comprised of fine-grained soils deposited as a result of the Missoula floods, which occurred 12,000 years ago. These soils, identified as Willamette silts, occur at elevations below 200 feet and have greater depth, fertility, and water-holding capacity than soils of the proposed viticultural area. The fertility and water-holding capacity of these low soils extends the vegetative period of the vine and delays the ripening of vines planted in this area. Further, low elevation areas are also prone to frost. Conversely, areas within the proposed area with elevations greater than 1,000 feet are significantly cooler and lack necessary heat units required to properly ripen wine grapes. For these reasons, the proposed Yamhill-Carlton District viticultural area is limited to lands at or above 200 feet in elevation and below 1,000 feet in elevation.

### Climate

The climate of the proposed Yamhill-Carlton District viticultural area is distinct from the surrounding areas in a number of ways. The area is bordered on the west by the Coast Mountains, which have far fewer degree-days (at 50° F) and are unsuitable for production of vinifera varietals. According to data obtained from the Oregon Climate Service, average rainfall for the proposed Yamhill-Carlton District is 42 inches, while the Coast Range receives between 80 and 110 inches per year. Further, the proposed Yamhill-Carlton District averages 18.3 days with temperatures above 90° F, while the Coast Range has 2 days.

The petitioner also submitted evidence that the areas immediately south of the proposed Yamhill-Carlton area are influenced by the cooling effect of weather systems flowing east from the Pacific Ocean through the Van Duzer Corridor, a mountain gap in the Coast Range. The corridor funnels cooling, marine, summer breezes inland toward Salem, which substantially lowers the average temperature achieved during the growing season.

However, the petitioner contends this effect quickly moderates as you move north through the proposed Yamhill-Carlton District from the Van Duzer Corridor entry into the Willamette Valley near Dallas, Oregon. For example, the petitioner submitted evidence from the Oregon Climate Service which demonstrated that the 30 year average rainfall for Dallas, Oregon (south of the proposed Yamhill-Carlton District) was 49.1 inches compared to 42 inches for the proposed viticultural area. Further, the Oregon Climate Service data on average temperatures shows that Dallas, Oregon has 51 fewer degree-days than McMinnville, Oregon (which is at the southern border of the proposed Yamhill-Carlton District) and 186 fewer degree-days than Forest Grove, Oregon (which lies 6 miles north of the proposed viticultural area).

The Patton Valley, a vast low area just north of the proposed Yamhill-Carlton District, has an annual rainfall average difference of slightly more than 2 inches when compared with the proposed viticultural area. However, the 30-year average temperature data from the Oregon Climate Service shows the area north of Patton Valley to have 135 more degree-days than the proposed Yamhill-Carlton District.

### *Boundary Description*

See the narrative boundary description of the petitioned viticultural area in the proposed regulation published at the end of this notice.

### *Maps*

The petitioner provided the required maps, and we list them in the proposed regulation.

## Public Participation

### *Comments Sought*

We request comments from anyone interested. Please support your comments with specific information about the proposed area's name, growing conditions, or boundaries. All comments must include this notice number and your name and mailing address. They must be legible and written in language acceptable for public disclosure.

Although we do not acknowledge receipt, we will consider your comments if we receive them on or before the closing date. We will consider comments received after the closing date if we can. We regard all comments as originals.

### *Confidentiality*

We do not recognize any submitted material as confidential. All comments are part of the public record and subject to disclosure. Do not enclose in your comments any material you consider confidential or inappropriate for public disclosure.

### *Submitting Comments*

You may submit comments in any of four ways.

- *By mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section.
- *By facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Faxed comments must—

(1) Be on 8.5- by 11-inch paper;
(2) Contain a legible, written signature; and
(3) Be five or less pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.

- *By e-mail:* You may e-mail comments to *nprm@ttb.gov*. Comments transmitted by electronic mail must—

(1) Contain your e-mail address;
(2) Reference this notice number on the subject line; and
(3) Be legible when printed on 8.5-by 11-inch paper.

- *By online form:* We provide a comment form with the online copy of this notice on our Web site at *http://www.ttb.gov/alcohol/rules/index.htm*. Select the "Send comments via email" link under this notice number.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

### *Public Disclosure*

You may view copies of this notice, the petition, the appropriate maps, and any comments received by appointment in our library at 1310 G Street NW., Washington, DC 20202. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact our librarian at the above address or telephone 202–927–8210 to schedule an appointment or to request copies of comments.

For your convenience, we will post this notice and the comments received on the TTB Web site. We may omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in our library. To access the online copy of this notice, visit *http://www.ttb.gov/alcohol/rules/index.htm*. Select the "View Comments" link under this notice number to view the posted comments.

## Regulatory Analyses and Notices

### *Paperwork Reduction Act*

We propose no requirement to collect information. Therefore, the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, and its implementing regulations, 5 CFR part 1320, do not apply.

### *Regulatory Flexibility Act*

We certify that this regulation, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses. The proposal imposes no new reporting, recordkeeping, or other administrative requirements.

The establishment of viticultural areas represents neither our endorsement nor approval of the quality of wine made from grapes grown in the designated areas. Rather, this system allows us to identify areas distinct from one another. In turn, identifying viticultural areas lets wineries describe more accurately the origin of their wines to consumers and helps consumers identify the wines they purchase. Thus, any benefit derived from using a viticultural area name results from a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

*Executive Order 12866*

This proposed rule is not a "significant regulatory action" as defined by Executive Order 12866. Therefore, no regulatory assessment is required.

**Drafting Information**

Bernard J. Kipp of the Regulations and Procedures Division drafted this notice.

**List of Subjects in 27 CFR Part 9**

Wine.

**Authority and Issuance**

For the reasons discussed in the preamble, we propose to amend title 27, chapter 1, part 9, Code of Federal Regulations, as follows:

## PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

2. Amend subpart C by adding § 9._ to read as follows:

## Subpart C—Approved American Viticultural Areas

* * * * *

### § 9._ Yamhill-Carlton District

(a) *Name.* The name of the viticultural area described in this section is "Yamhill-Carlton District'.

(b) *Approved Maps.* The appropriate maps for determining the boundary of the Yamhill-Carlton District viticultural area are eight 1:24,000 scale, United States Geological Survey, 7.5 Minute Series, topographic maps. They are titled:

(1) Gaston Quadrangle, Oregon, 1956, revised 1993;
(2) Turner Creek Quadrangle, Oregon, 1979;
(3) Fairdale Quadrangle, Oregon—Yamhill Co., 1979;
(4) Muddy Valley Quadrangle, Oregon—Yamhill Co., 1979, revised 1992;
(5) McMinnville Quadrangle, Oregon—Yamhill Co, 1957, revised 1992;
(6) Carlton Quadrangle, Oregon—Yamhill Co., 1957, revised 1992;
(7) Dundee Quadrangle, Oregon, 1956, revised 1993; and
(8) Laurelwood Quadrangle, Oregon, 1956, revised 1992.

(c) *Boundary.* The Yamhill-Carlton District viticultural area, which is limited to lands at or above 200 feet in elevation and below 1,000 feet in elevation, is located entirely in Yamhill and Washington Counties, Oregon, and also falls within the approved boundaries of the Willamette Valley viticultural area in northwest Oregon.

(1) The point of beginning is the intersection of State highway 47 and Gaston Road, which lies within the Gaston Quadrangle. From the point of beginning:

(2) Follow Gaston Road in a westerly direction approximately 0.10 mile to the intersection with the 200-foot elevation line;

(3) Follow the 200-foot elevation line in a westerly direction approximately 1.86 miles to a point at which the 200-foot elevation line crosses South Road for the fourth and final time;

(4) Follow South Road in a generally westerly direction approximately 1.90 miles to its second intersection with the Washington County/Yamhill County line. This point is 250 feet southeast of the first intersection of South and Mt. Richmond Roads;

(5) Follow the Washington County/Yamhill County line in a westerly direction approximately 2.12 miles to the western boundary of the Gaston Quadrangle/eastern boundary of the Turner Creek Quadrangle;

(6) From the eastern boundary of the Turner Creek Quadrangle, follow the Washington County/Yamhill County line in a westerly direction approximately 1.6 miles to the intersection of the County line and the 1,000-foot elevation line;

(7) Follow the 1,000-foot elevation line in a generally southeasterly, then generally westerly direction approximately 4.25 miles to the intersection of the 1,000-foot line and the Universal Transverse Mercator (UTM) line 4–77–000mE,

(8) Follow the UTM line 4–77–000mE due south approximately 2.98 miles to the intersection of the UTM line 4–77–000mE and the southern boundary of the Turner Creek Quadrangle/northern boundary of the Fairdale Quadrangle;

(9) Follow UTM line 4–77–000mE due south from the northern boundary of the Fairdale Quadrangle approximately 8.62 miles to the southern boundary of the Fairdale Quadrangle/northern boundary of the Muddy Valley Quadrangle;

(10) Follow UTM line 4–77–000mE due south from the northern boundary of the Muddy Valley Quadrangle approximately 1.51 miles to the intersection of UTM line 4–77–000mE and Baker Creek Road;

(11) Follow Baker Creek Road in a generally easterly direction approximately 0.76 miles to the intersection of Baker Creek Road and the 200-foot elevation line;

(12) Follow the 200-foot elevation line until it intersects the eastern boundary of the Muddy Valley Quadrangle/western boundary of the McMinnville Quadrangle;

(13) From the western boundary of the McMinnville Quadrangle continue to follow the same 200-foot elevation line in an easterly/northeasterly direction approximately 3.03 miles to the intersection of the 200-foot elevation line and northern boundary of the McMinnville Quadrangle/southern boundary of the Carlton Quadrangle;

(14) From the southern boundary of the Carlton Quadrangle, continue to follow the same 200-foot line in a generally northwesterly direction approximately 6.2 miles to the intersection of the 200-foot elevation line and the western boundary of the Carlton Quadrangle/eastern boundary of the Fairdale Quadrangle;

(15) From the eastern boundary of the Fairdale Quadrangle, continue to follow the same 200-foot elevation line in a generally westerly direction approximately 3.3 miles to the intersection of the 200-foot elevation line and the UTM line 4–77–000mE;

(16) Follow UTM line 44–77–000mE due north approximately 0.13 miles to the intersection of the UTM line 4–77–000mE and the same 200-foot elevation line;

(17) Follow the same 200-foot elevation line in a generally easterly direction on the north side of Panther Creek drainage approximately 5.04 miles to the intersection of the 200-foot line and the eastern boundary of the Fairdale Quadrangle/western boundary of the Carlton Quadrangle;

(18) Follow the same 200-foot elevation line in a generally easterly, then generally northerly direction approximately 21.61 miles to the upper northwest corner of the Carlton Quadrangle where the 200-foot elevation line intersects the western boundary of the Carlton Quadrangle/eastern boundary of the Fairdale Quadrangle;

(19) From the eastern boundary of the Fairdale Quadrangle, continue to follow the same 200-foot elevation line in a generally northwesterly, then easterly direction for approximately 0.23 miles to the intersection of the 200-foot elevation line and the eastern boundary of the Fairdale Quadrangle/western boundary of the Carlton Quadrangle;

(20) From the western boundary of the Carlton Quadrangle, continue to follow the same 200-foot elevation line in a generally easterly, then circular path approximately 0.45 miles back to the western boundary of the Carlton Quadrangle/eastern boundary of the Fairdale Quadrangle;

(21) From the eastern boundary of the Fairdale Quadrangle, continue to follow

the same 200-foot elevation line in a generally westerly direction south of the North Yamhill River and then in a generally easterly direction north of the North Yamhill River approximately 1.04 miles to the intersection of the 200-foot elevation line and the eastern boundary of the Fairdale Quadrangle/western boundary of the Carlton Quadrangle;

(22) From the western boundary of the Carlton Quadrangle, continue to follow the same 200-foot elevation line in a generally southeasterly direction approximately 39.26 miles to the intersection of the 200-foot elevation line and the eastern boundary of the Carlton Quadrangle/western boundary of the Dundee Quadrangle;

(23) From the western boundary of the Dundee Quadrangle, continue to follow the same 200-foot elevation line in a generally southeasterly, then southwesterly direction approximately 1.1 miles to the intersection of the 200-foot elevation line and the western boundary of the Dundee Quadrangle/eastern boundary of the Carlton Quadrangle;

(24) From the eastern boundary of the Carlton Quadrangle, continue to follow the same 200-foot line in a generally southerly direction approximately 2.55 miles to the intersection of the 200-foot line and the eastern boundary of the Carlton Quadrangle/western boundary of the Dundee Quadrangle;

(25) From the western boundary of the Dundee Quadrangle, continue to follow the same 200-foot elevation line in a generally northeasterly direction approximately 2.65 miles to the intersection of the 200-foot elevation line and Abbey Road;

(26) Follow Abbey Road in a generally northerly direction approximately 1.7 miles to the intersection of Abbey and Kuehne Roads;

(27) Follow Kuehne Road in a generally northeasterly, then northerly direction approximately 1.85 miles to the intersection of Kuehne Road and State highway 240;

(28) Follow State highway 240 in an easterly direction approximately 0.19 miles to the intersection of State highway 240 and the 200-foot elevation line;

(29) Follow the 200-foot elevation line in a generally northerly direction along the west side of the Chehalem Creek approximately 4.52 miles to the intersection of the 200-foot elevation line and the northern boundary of the Dundee Quadrangle/southern boundary of the Laurelwood Quadrangle;

(30) From the southern boundary of the Laurelwood Quadrangle, continue to follow the same 200-foot elevation line in a short loop, approximately 0.42 miles, back to the southern boundary of the Laurelwood Quadrangle/northern boundary of the Dundee Quadrangle;

(31) From the northern boundary of the Dundee Quadrangle, continue to follow the same 200-foot elevation line in a generally southerly, then northerly direction approximately 0.57 miles to the intersection of the 200-foot elevation line and the northern boundary of the Dundee Quadrangle/southern boundary of the Laurelwood Quadrangle;

(32) From the southern boundary of the Laurelwood Quadrangle, continue to follow the same 200-foot elevation line in a generally northwesterly direction approximately 3.5 miles to the intersection of the 200-foot elevation line and the western boundary of the Laurelwood Quadrangle/eastern boundary of the Gaston Quadrangle;

(33) From the eastern boundary of the Gaston Quadrangle, continue to follow the same 200-foot elevation line in a generally westerly, then northeasterly direction approximately 0.52 miles to the intersection of the 200-foot elevation line and the eastern boundary of the Gaston Quadrangle/western boundary of the Laurelwood Quadrangle;

(34) From the western boundary of the Laurelwood Quadrangle, continue to follow the same 200-foot elevation line in a generally northerly direction approximately 0.96 miles to the intersection of the 200-foot elevation line and the western boundary of the Laurelwood Quadrangle/eastern boundary of the Gaston Quadrangle; and

(35) From the eastern boundary of the Gaston Quadrangle, continue to follow the same 200-foot elevation line in a generally northwesterly direction approximately 4.55 miles to the intersection of the 200-foot elevation line and the point of beginning.

Signed: September 17, 2003.

**Arthur J. Libertucci,**

*Administrator.*

[FR Doc. 03–25373 Filed 10–6–03; 8:45 am]

BILLING CODE 4810–31–P

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 30, 31, 33, 35 and 40

**[Docket ID No. OA–2002–0001; FRL–7569–7]**

**RIN 2020–AA39**

## Public Hearings on Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency Financial Assistance Agreements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; public hearings.

**SUMMARY:** This document announces the dates and locations of Tribal public hearings wherein EPA will take comments on its proposed rule for "Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency Financial Assistance Agreements," published on July 24, 2003 at 68 FR 43824. These Tribal public hearings will be held during the 180-day public comment period for the proposed rule, which ends on January 20, 2004. EPA will publish information concerning additional public hearings and Tribal public hearings during the comment period when that information becomes available.

*DATES:* See **SUPPLEMENTARY INFORMATION** for hearing dates.

**ADDRESSES:** See **SUPPLEMENTARY INFORMATION** for addresses.

**FOR FURTHER INFORMATION CONTACT:** Mark Gordon, Attorney Advisor, at (202) 564–5951, Kimberly Patrick, Attorney Advisor, at (202) 564–5386, or David Sutton, Deputy Director at (202) 564–4444, Office of Small and Disadvantaged Business Utilization, U.S. Environmental Protection Agency, Mail Code 1230A, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:** EPA published its proposed rule for Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements on July 24, 2003 at 68 FR 43824. EPA has established an official public docket for this action under Docket ID No. OA–2002–0001. The proposed rule and supporting materials are available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information is (202) 566–1752. An electronic version of the public docket is available through EPA's electronic public docket and comment systems, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," and then key in docket identification number OA–2002–0001. You may access this Federal Register document electronically through the EPA Internet under the "Federal Register" listings at *http://www.epa.gov/fedrgstr.*

*Dates:* The Tribal public hearings addressed by this Federal Register Proposal are scheduled as follows:

1. October 8, 2003, 10:30 a.m. to 3 p.m., Worley, Idaho.
2. October 16, 2003, 3 p.m. to 5 p.m., Albuquerque, New Mexico.
3. November 18, 2003, 9 a.m. to 12 p.m., East Syracuse, New York.
4. December 9, 2003, 9 a.m. to 5 p.m., Atlanta, Georgia.
5. January 14, 2004, 9 a.m. to 5 p.m., Chicago, Illinois.

*Addresses:* The Tribal public hearings will be held at the following locations:

1. EPA Region X Tribal Leader's Summit, Coeur d'Alene Casino Resort Hotel, 27068 South Highway 95, Worley, Idaho 83876.
2. EPA Region VI Tribal Environmental Summit, Albuquerque Marriott Hotel, 2101 Louisiana Boulevard, NE., Albuquerque, New Mexico 87110.
3. EPA Region II Indian Nation Leaders Meeting, Embassy Suites Hotel Syracuse, 6646 Old Collamer Road, East Syracuse, New York 13057.
4. Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303.
5. Metcalfe Federal Building, Room 331, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Dated: October 2, 2003.

**Thomas J. Gibson,**

*Chief of Staff.*

[FR Doc. 03–25400 Filed 10–6–03; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 80

[FRL–7566–7]

## Use of Alternative Analytical Test Methods in the Reformulated Gasoline, Anti-Dumping, and Tier 2 Gasoline Sulfur Control Programs

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** EPA proposes to allow the use of certain alternative analytical test methods for measuring sulfur in gasoline and butane under the Federal reformulated gasoline (RFG) and anti-dumping program and the Federal gasoline sulfur control program. We also propose to allow refineries to use any reasonable test method designed for measuring the sulfur content of butane until January 1, 2004. After that date, either the designated analytical test method or an allowed alternative analytical test method would have to be used. The purpose of today's proposal is to grant temporary flexibility until we issue a comprehensive performance-based analytical test methods rule and to fulfill the terms of a recent settlement agreement related to gasoline sulfur test methods.

**DATES:** Comments or a request for a public hearing must be received by November 6, 2003.

**ADDRESSES:** For more information or to request a public hearing, please contact Anne Pastorkovich, Attorney/Advisor, Transportation & Regional Programs Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. (6406J), Washington, DC 20460, or by e-mail to *pastorkovich.anne-marie@epa.gov.* No confidential business information (CBI) should be submitted by e-mail.

EPA has established a public docket for this proposed rule under Docket ID No. OAR–2003–0050, which is available for public viewing at the Air and Radiation Docket and Information Center (EPA/DC) in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listings of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to the proposed rule should be submitted to EPA within 30 days of this notice, and according to the following detailed instructions: Submit your comments to EPA online using EDOCKET (our preferred method) or by mail to EPA Docket Center, Environmental Protection Agency (6102T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

EPA's policy is the public comments, whether submitted electronically or in paper format, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is otherwise restricted by statue, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

**FOR FURTHER INFORMATION CONTACT:** If you would like further information about this proposed rule or to request a hearing, contact Anne Pastorkovich, Attorney/Advisor, Transportation & Regional Programs Division, (202) 564–8987 or by e-mail at *pastorkovich.anne-marie@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Regulated Entities

Entities potentially regulated by the action are those that use analytical test methods to comply with the RFG, anti-dumping, and gasoline sulfur control program. Regulated categories and entities include:

| Category | NAICSs codes [a] | SIC codes [b] | Examples of potentially regulated parties |
|---|---|---|---|
| Industry | 324110 | 2911 | Petroleum refiners. |

| Category | NAICSs codes[a] | SIC codes[b] | Examples of potentially regulated parties |
|---|---|---|---|
| Industry | 422710 | 5171 | Gasoline Marketers and Distributors. |
| | 422720 | 5172 | |

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists all entities that we are now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated by this action. To determine whether your business is regulated by this action, you should carefully examine the applicability criteria in part 80 of title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section of this document.

## II. Background and Summary of Today's Proposed Rule

Section 211(k) of the Clean Air Act (CAA) directs EPA to establish standards requiring the greatest reduction in emissions of ozone forming volatile organic compounds (VOCs) and toxic air emissions achievable through the reformulation of conventional gasoline, considering cost, other health and environmental factors and energy requirements. The Act requires that RFG meet certain content standards for oxygen, benzene, and heavy metals. RFG must be used in certain ozone nonattainment areas, called "covered areas." The CAA also requires EPA to establish anti-dumping standards applicable to conventional gasoline used in the rest of the country. The Administrator signed the final RFG and anti-dumping regulations on December 15, 1993,[1] and these regulations became effective in January 1995.

In 2000, EPA issued regulations establishing lower sulfur content requirements for all gasoline[2] and establishing stricter tailpipe emissions standards for all passenger vehicles, including sport utility vehicles (SUVs), minivans, vans and pick-up trucks. The gasoline sulfur control program begins phasing-in in 2004, and, in general, refiners must meet a refinery average sulfur standard of 30 ppm beginning in 2005 and a per gallon cap standard of 80 ppm beginning in 2006 (with the exception of challenged refiners, and gasoline sold in certain western states subject to geographic phase-in).

Under the RFG, anti-dumping and gasoline sulfur program, refiners, importers, and oxygenate blenders are required to test RFG and conventional gasoline for certain parameters, including sulfur levels, aromatic content, benzene content, and oxygen content. Test methods for determining these parameters are specified in the regulation. For the sulfur content of gasoline, 40 CFR 80.46(a)(1) specifies American Society for Testing and Materials (ASTM) standard method D–2622–98, entitled, "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry" as the designated test method. In addition, the gasoline sulfur rulemaking required a test method for determining the sulfur content of butane blended into gasoline—ASTM standard method D 3246–96, entitled "Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry."

In the gasoline sulfur control rulemaking, we specifically requested comments on the designated test method. We also requested comments on other ASTM methods. After considering comments received from the regulated industry during the gasoline sulfur rulemaking process, including many comments supportive of ASTM D 2622–98 as the designated method, we decided to require the use of ASTM D 2622–98 for measuring sulfur content. We did not name any alternative analytical test methods because we anticipated that a comprehensive performance-based analytical test method approach rule would be issued in the near future. A comprehensive performance based test methods approach would allow anyone to qualify additional analytical test methods for use in demonstrating compliance with program requirements. We now know that a comprehensive performance based test methods rulemaking will take more time to complete than originally anticipated. We feel that permitting specific ASTM test methods to be used as alternative analytical test methods now provides a bridge to a more comprehensive performance based test methods approach in the future and grants refiners, importers and blenders significant flexibility and potential cost savings in meeting their testing requirements.

As discussed in a May 16, 2003, Federal Register notice,[3] Antek Instruments, which manufactures testing equipment, filed a petition challenging the final gasoline sulfur control rule. EPA and Antek entered into negotiations and reached a proposed settlement agreement. The proposed settlement agreement outlined a proposed rule which would identify ASTM D 5453–00$^{\epsilon1}$ as an alternative test method refiners and importers could use to comply with the requirement to test gasoline for sulfur content, provided the test result is correlated with ASTM D 2622–98. In today's action, EPA is proposing to revise its regulations to include such a provision. The proposed settlement agreement was available for comment until June 16, 2003. No adverse comments were received.

For the reasons discussed above, we are proposing to revise 40 CFR 80.46(a) to allow the use of ASTM D 5453–00$^{\epsilon1}$, entitled "Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence," ASTM D 6428–99, entitled "Test Method for Total Sulfur in Liquid Aromatic Hydrocarbons and Their Derivatives by Oxidative Combustion and Electrochemical Detection," and ASTM D 3120–96 (Reapproved 2002 )$^{\epsilon1}$, entitled "Standard Test Method for Trace Quantities of Sulfur in Light Petroleum Hydrocarbons by Oxidative Microcoulometry." Refiners and importers would be able to choose which of these test methods best fits their needs for compliance measurements. We believe that permitting the use of these test methods is desirable from the standpoint of permitting regulated parties more flexibility. A refiner or importer would be able to determine gasoline sulfur content using ASTM D 5453–00$^{\epsilon 1}$ or any of the specified alternative analytical test methods named in the rule, provided that the refiner or importer result is correlated to ASTM D 2622–98.

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[1] "Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline—Final Rule," 59 FR 7812 (February 16, 1994). *See* 40 CFR part 80 subparts D, E, and F.

[2] "Control of Air Pollution From New Motor Vehicles: Tier 2 Motor Vehicles Emissions Standards and Gasoline Sulfur Control Requirements—Final Rule," 65 FR 6698 (February 10, 2000). *See also* 40 CFR part 80 subpart H for regulations applicable to gasoline sulfur.

[3] *See* "Notice of Proposed Settlement Agreement; Request for Public Comment," 68 FR 26604 (May 16, 2003).

In order to "correlate" a test result from an alternative test method to the designated test method, a laboratory would have to develop and apply a "correlation equation" to the alternative test method result. Because the "correlation equation" is designed to provide a prediction of the designated test method result from the use of an alternative test method, the "correlation equation" eliminates bias between the designated test method and the alternative test method, so results may be compared between these methods. After applying the correlation equation, the results obtained from an alternative test method should be equivalent to the result you would obtain if you had used the designated test method. Users of a correlation equation should periodically verify its correlation to the designated test method.

This notice of proposed rulemaking also proposes to permit the use of ASTM D 4468–85 (Reapproved 2000), "Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry" as an alternative test method for butane, because it is an ASTM approved method that some refiners may elect to use. If a refiner, importer, or blender chooses to measure butane levels with this alternative analytical test method, the results would have to be correlated to D 3246–96, "Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry," which is the test method currently designated in the existing rule.

Some refiners and butane suppliers expressed concern that the designated test method is not currently in wide use. When we issued the final gasoline sulfur control regulations, we did not intend to require the use of this method until January 1, 2004. However, the final regulation inadvertently did not specify that date and we are clarifying the effective date by this action. Until January 1, 2004, any test method may be used to determine the sulfur content of butane.

We believe that this proposed rule, and our intent to establish a comprehensive performance based test method approach in the future, will advance the purposes of the "National Technology Transfer and Advancement Act of 1995," (NTTAA) section 12(d) of Public Law 104–113, and Office of Management and Budget (OMB) Circular A–119. Both of these documents are designed to encourage the adoption of standards developed by "voluntary consensus bodies" and to reduce reliance on government-unique standards where such consensus standards would suffice. This proposed rule would provide for the use of alternative test methods for the measurement of sulfur in gasoline and butane under the RFG, anti-dumping, and gasoline sulfur control programs. Allowing these test methods, which are widely available and approved by ASTM, a "voluntary consensus body," is directly consistent with the goals of the NTTAA and OMB Circular A–119.

Any environmental effects of today's proposed action would be minimal, as it would merely grant limited flexibility to regulated parties in their choice of test method for determining the sulfur content of gasoline and butane. The economic effects of today's proposed action are expected to be positive, since it permits regulated parties the flexibility to choose the test method they will use to comply with existing regulations.

## III. Administrative Requirements

### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866, (58 FR 51735; October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

This proposed rule is not a significant regulatory action within the meaning of the Executive Order. It would not have an annual effect on the economy of $100 million or more and is not expected to have any adverse economic effects as described in the Order. This proposed rule does not raise issues of consistency with the actions taken or planned by other agencies, would not materially alter the cited budgetary impacts, and does not raise any novel legal or policy issues as defined in the Order.

### *B. Paperwork Reduction Act*

This proposed rule would not add any new requirements involving the collection of information as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Today's proposed rule would only permit more flexibility to parties in their choice of analytical test methods. OMB has approved the information collection requirements contained in the final reformulated gasoline (RFG) and anti-dumping rulemaking and gasoline sulfur control rulemaking has assigned OMB control number 2060–0277.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

### *C. Regulatory Flexibility Act*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that has not more than 1,500 employees (13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action would not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

We have therefore concluded that today's proposed rule will relieve regulatory burden for all small entities. By permitting alternative analytical test methods for the measurement of sulfur in gasoline and butane, smaller entities would be granted greater flexibility in performing compliance testing. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local or tribal governments or the private sector. The proposed rule would impose no enforceable duty on any State, local or tribal governments or the private sector.

### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule is limited to permitting flexibility in the choice of test methods. Thus, Executive Order 13132 does not apply to this proposed rule.

### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This proposed rule would apply to parties required to test gasoline and butane for gasoline and butane and does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

### *G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks*

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045, entitled "Protection of Children from

Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This proposed rule is not an economically "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it does not have a significant adverse effect on the supply, distribution, or use of energy.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule advances the goals of the NTTAA by adopting test methods developed by voluntary consensus standards bodies.

*J. Statutory Provisions and Legal Authority*

Statutory authority for today's proposed rule comes from sections 211(c), 211(i) and 211(k) of the CAA (42 U.S.C. 7545(c) and (k)). Section 211(c) and 211(i) allows EPA to regulate fuels that contribute to air pollution which endangers public health or welfare, or which impairs emission control equipment. Section 211(k) prescribes requirements for RFG and conventional gasoline and requires EPA to promulgate regulations establishing these requirements. Additional support for the fuels controls in today's proposed rule comes from sections 114(a) and 301(a) of the CAA.

**List of Subjects in 40 CFR Part 80**

Environmental protection, Air pollution control, Fuel additives, Gasoline, Diesel, Imports, Incorporation by reference, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: September 24, 2003.

**Marianne Lamont Horinko,**

*Acting Administrator.*

[FR Doc. 03–25134 Filed 10–6–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 239 and 258

**[FRL–7570–1]**

### Virginia: Approval of Financial Assurance Regulations for the Commonwealth's Municipal Solid Waste Landfill Permitting Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Virginia has applied to EPA for final approval of its financial assurance regulations for Municipal Solid Waste landfills under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final approval to Virginia. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the changes by an Immediate Final Rule. EPA did not make a proposal prior to the Immediate Final Rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this approval in the preamble to the Immediate Final Rule. Unless we receive written comments which oppose this approval during the comment period, the Immediate Final Rule will become effective on the date it establishes, and we will not take further action on this proposal. If we receive comments that oppose this action, we will withdraw the Immediate Final Rule, and it will not take effect. We will then respond to public comments in a later Final Rule based on this proposal. You will not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

**DATES:** Send your written comments by November 6, 2003.

**ADDRESSES:** Written comments should be sent to Mike Giuranna, RCRA State Programs Branch, Waste & Chemicals Management Division (3WC21), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029, telephone: (215) 814–3298. Comments may also be submitted electronically through the Internet to: *giuranna.mike@epa.gov* or by facsimile at (215) 814–3163. You may examine copies of the materials submitted by Virginia during normal business hours at EPA, Region III or at the offices of the Virginia Department of Environmental Quality at 629 East Main Street, Richmond, Virginia 23219–0009, Phone Number (804) 698–4238, attn: Melissa Porterfield.

**FOR FURTHER INFORMATION CONTACT:** Mike Giuranna, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone Number: (215) 814–3298, e-mail: *giuranna.mike@epa.gov*.

**SUPPLEMENTARY INFORMATION:** For additional information, please see the Immediate Final Rule published in the "Rules and Regulations" section of today's **Federal Register**.

**James W. Newsom,**

*Acting Regional Administrator, Region III.*

[FR Doc. 03–25399 Filed 10–6–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

**[FRL–7565–3]**

### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent for partial deletion of the Rocky Mountain Arsenal National Priorities List Site from the National Priorities List; second extension of public comment periods.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 8 announced its intent to delete the Selected Perimeter Area (SPA, 68 FR 44259) and the Surface Deletion Area (SDA, 68 FR 44265) of the Rocky Mountain Arsenal National Priorities List Site (RMA/NPL Site) On-Post Operable Unit (OU) from the National Priorities List (NPL) on July 28, 2003. In response to a written request, EPA extended both public comment periods for an additional 30 days concluding on September 25, 2003 (68 FR 51221). EPA has received a request to further extend these public comment periods. In response, EPA is extending both public comment periods for an additional 30 days concluding on October 27, 2003.

The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA

promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

EPA bases its proposal to delete the SPA and SDA portions of the RMA/NPL Site on the determination by EPA and the State of Colorado, through the Colorado Department of Public Health and Environment (CDPHE), that all appropriate actions under CERCLA have been implemented to protect human health, welfare, and the environment and that no further response action by responsible parties is appropriate. This basis for deleting the SPA and SDA from the RMA/NPL Site has not changed. The **Federal Register** notice for the SPA (68 FR 44259) and the SDA (68 FR 44265) provide a discussion of the bases for the intended partial deletions.

**DATES:** Comments concerning the proposed partial deletions may be submitted to EPA on or before October 27, 2003.

**ADDRESSES:** Comments may be mailed to: Catherine Roberts, Community Involvement Coordinator (80C), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, 1–800–227–8917 or (303) 312–6025.

Comprehensive information on the RMA/NPL Site, as well as information specific to both proposed partial deletions, is available through EPA's Region 8 Superfund Records Center in Denver, Colorado. Documents are available for viewing by appointment from 8 a.m. to 4 p.m., Monday through Friday excluding holidays by calling (303) 312–6473. The Administrative Record for the RMA/NPL Site and the Deletion Dockets for these partial deletions are maintained at the Joint Administrative Records Document Facility, Building 129, Room 2024, Commerce City, Colorado 80022–1748, (303) 289–0362. Documents are available for viewing from 12 p.m. to 4 p.m., Monday through Friday or by appointment.

**FOR FURTHER INFORMATION CONTACT:** Ms. Laura Williams, Remedial Project Manager (8EPR–F), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, (303) 312–6660.

Dated: September 29, 2003.

**Robert E. Roberts,**

*Regional Administrator, Environmental Protection Agency, Region 8.*

[FR Doc. 03–25402 Filed 10–6–03; 8:45 am]

**BILLING CODE 6560–50–M**

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## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 67

**[Docket No. FEMA–B–7439]**

## Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

**FOR FURTHER INFORMATION CONTACT:** Doug Bellomo, P.E. Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

*National Environmental Policy Act.* This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

*Regulatory Flexibility Act.* The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

*Regulatory Classification.* This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 12612, Federalism.* This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

*Executive Order 12778, Civil Justice Reform.* This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

### List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

## PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376, § 67.4

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| California | Goleta (City), Santa Barbara County. | Maria Ygnacia Creek | Approximately 900 feet downstream of Hollister Avenue. | None | *36 |
| | | | Approximately 80 feet downstream of confluence of San Antonio Creek. | None | *64 |

Depth in feet above ground.

Maps are available for inspection at City Hall, 6500 Hollister Avenue, Goleta, California 93117.

Send comments to The Honorable Jack Hawxhurst, Mayor, City of Goleta, 6500 Hollister Avenue, Suite 120, Goleta, California 93117.

| | | | | | |
|---|---|---|---|---|---|
| Colorado | City and County, Broomfield. | Rock Creek | At Brainard Drive (Country Road 19) | *5,307 | *5,309 |
| | | | Approximately 200 feet upstream of West Flatiron Bridge. | None | +5,373 |

Depth in feet above ground.

Maps are available for inspection at City Hall One Descombes Drive, Broomfield, Colorado 80020.

Send comments to The Honorable Karen Stuart, Mayor, City and County of Broomfield, One Descombes Drive, Broomfield, Colorado 80020.

| | | | | | |
|---|---|---|---|---|---|
| Colorado | Pitkin County | Southside Split | Approximately 1,200 feet Flow downstream of State Highway 82 Bypass. | None | *6,558 |
| | | | Approximately 6,000 feet upstream of State Highway\ 82 Bypass. | None | *6,637 |
| | | Roaring Fork River | Approximately 5,500 feet downstream of Hooks Spur Road. | *6,524 | *6,526 |
| | | | Approximately 50 feet downstream of confluence of Snowmass Creek. | *6,844 | *6,844 |

Depth in feet above ground.

Maps are available for inspection at the GIS Department, 130 South Galena Street, Aspen, Colorado 81611.

Send comments to The Honorable Jack Hatfield, Chairperson, Pitkin County Board of Commissioners, 530 East Main Street, Third Floor, Aspen, Colorado 81611.

| | | | | | |
|---|---|---|---|---|---|
| Idaho | Kootenai County | Coeur d'Alene River | Approximately 1.5 miles downstream of Interstate Highway 90. | *2,145 | *2,145 |
| | | | Approximately 100 feet upstream of the Abandoned Union Pacific Railroad. | *2,148 | *2,151 |
| | | Coeur d'Alene River Overflow | At Tamarack Ridge Road | *2,146 | *2,145 |
| | | | Mission Flats area north of Interstate 90 | *2,146 | *2,145 |

Depth in feet above ground.

Maps are available for inspection at the Kootenai County Planning Department, 451 Government Way, Coeur d'Alene, Idaho 83816.

Send comments to The Honorable Richard Panabaker, Chairperson, Kootenai County Board of Commissioners, 451 Government Way, Coeur d'Alene, Idaho 83816.

| | | | | | |
|---|---|---|---|---|---|
| North Dakota | Bismarck (City), Burleigh County. | Missouri River | Approximately 3.8 miles upstream of confluence of Little Heart River. | *1,631 | *1,632 |
| | | | Approximately 1.7 miles upstream of Old Brunt Creek. | *1,638 | *1,639 |

Depth in feet above ground.

Maps are available for inspection at the Building Inspection Office, 1020 East Central Avenue, Bismarck, North Dakota 58501.

Send comments to The Honorable John Warford, Mayor, City of Bismarck, P.O. Box 5503, Bismarck, North Dakota 58506–5503.

| | | | | | |
|---|---|---|---|---|---|
| North Dakota | Burleigh County | Missouri River | Approximately 500 feet downstream of confluence of Apple Creek. | *1,627 | *1,628 |
| | | | Approximately 5.7 miles upstream of confluence Square Butte Creek. | *1,643 | *1,644 |
| | | Burnt Creek | At confluence with Missouri River | *1,639 | *1,640 |
| | | | Just upstream of North Dakota Highway 1804. | *1,646 | *1,650 |

Depth in feet above ground.

Maps are available for inspection at the County Building Inspections Office, 1020 East Central Avenue, Bismarck, North Dakota 58501.

Send comments to The Honorable Claus Lembke, Chairman, Burleigh County Board of Commissioners, 221 North Fifth Street, Bismarck, North Dakota 58506.

| | | | | | |
|---|---|---|---|---|---|
| North Dakota | Mandan (City), Morton County. | Missouri River | Approximately 1.1 miles downstream of Bismarck Expressway bridge. | *1,534 | *1,635 |
| | | | Approximately 2.8 miles upstream of Interstate Highway 94. | *1,638 | *1,639 |

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |

Depth in feet above ground.

Maps are available for inspection at City Hall, 205 Second Avenue, Northwest, Mandan, North Dakota 58554.

Send comments to The Honorable Ken LaMont, Mayor, City of Mandan, 205 Second Avenue, Northwest, Mandan, North Dakota 58554.

| State | City/town/county | Source of flooding | Location | Existing | Modified |
|---|---|---|---|---|---|
| North Dakota | Morton County | Missouri River | At confluence of Apple Creek | *1,627 | *1,628 |
| | | | Approximately 5.7 miles upstream of confluence of Square Butte Creek. | *1,643 | *1,644 |

Depth in feet above ground.

Maps are available for inspection at the County Courthouse, 210 Second Avenue, Northwest, Mandan, North Dakota 58554.

Send comments to The Honorable Dick Tokach, Chairman, Morton County Board of Commissioners, 210 Second Avenue, Northwest, Mandan, North Dakota 58554.

| State | City/town/county | Source of flooding | Location | Existing | Modified |
|---|---|---|---|---|---|
| South Dakota | Standing Rock Sioux Tribe. | Grand River (at Bullhead) | Approximately 4,000 feet downstream of confluence of Rock Creek. | None | +1,759 |
| | | | Approximately 4,600 feet upstream of confluence of Stink Creek. | None | +1,774 |
| | | Grand River (at Little Eagle). | Approximately 3.4 miles downstream of State Route. | None | +1,638 |
| | | | Approximately 2,000 feet upstream of State Route 63. | None | +1,651 |
| | | Oak Creek | Approximately 7,500 feet downstream of Sewage Lagoons. | None | +1,622 |
| | | | Approximately 2,900 feet upstream of Old Irrigation Dam. | None | +1,646 |
| | | Rock Creek | At confluence with Grand River (at Bullhead). | None | +1,761 |
| | | | Approximately 7,500 feet upstream of Bullhead Road. | None | +1,793 |

Depth in feet above ground.

Maps are available for inspection at the Tribal Land Management, South River Road, Fort Yates, North Dakota 58538.

Send comments to The Honorable Charles Murphy, Chairman, Standing Rock Sioux Tribe, P.O. Box D, Fort Yates, North Dakota 58538.

| State | City/town/county | Source of flooding | Location | Existing | Modified |
|---|---|---|---|---|---|
| South Dakota | Cheyenne River Sioux Tribe, Dewey and Ziebach County. | Bear Creek | Approximately 5,800 feet upstream of State Route 65. | None | +2,345 |
| | | | Just upstream of Cherry Road | None | +2,357 |
| | | | Approximately 1,200 feet upstream of U.S. Route 212. | None | +2,365 |
| | | Cherry Creek | At confluence with Cheyenne River | None | +1,723 |
| | | | Just upstream of Main Street | None | +1,729 |
| | | | Approximately 7,000 feet upstream of Main Street. | None | +1,735 |
| | | Cheyenne River | Approximately 6,200 feet upstream of Plum Creek. | None | +1,714 |
| | | | Just upstream confluence of Cherry Creek. | None | +1,723 |
| | | | Approximately 1,730 feet upstream confluence of Cherry Creek. | None | +1,728 |
| | | Virgin Creek | Approximately 5,800 feet downstream of U.S. Route 212. | None | +1,896 |
| | | | Just upstream of U.S. Route 212 | None | +1,914 |
| | | | Approximately 3 miles upstream of U.S. Route 212. | None | +1,950 |

Depth in feet above ground.

Maps are available for inspection at the Economic Development Center, P.O. Box 590, Eagle Butte, South Dakota 57625.

Send comments to The Honorable Harold Frazier, Tribal Chairman, Cheyenne River Sioux Tribe, P.O. Box 590, Eagle Butte, South Dakota 57625.

### EAGLE COUNTY, AND INCORPORATED AREAS

| Flooding source(s) | Location of referenced elevation | Elevation in feet *(NGVD) Elevation in feet + (NAVD) | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| Buffehr Creek | At confluence with Gore Creek | *7,951 | +7,956 | Eagle County. |
| | Approximately 1,700 feet upstream of Circle Drive | None | +8,180 | (Uninc. Area) and Town of Vail. |
| Black Gore Creek | At confluence with Lower Gore Creek | *8,574 | +8,575 | Town of Vail. |
| | Approximately 1,280 feet upstream of confluence with Lower Gore Creek. | *8,632 | +8,628 | |
| Bighom Creek | At confluence with Gore Creek | *8,422 | +8,431 | Town of Vail. |
| | Approximately 350 feet upstream of Columbine Drive | None | +8,639 | |
| Middle Creek | At confluence with Gore Creek | *8,112 | +8,118 | Town of Vail. |
| | Approximately 850 feet upstream of Interstate Highway 70. | *8,330 | +8,335 | |
| Pitkin Creek | At confluence with Gore Creek | *8,358 | +8,366 | Town of Vail. |
| | Approximately 200 feet upstream of Fall Line Drive | None | +8,454 | Town of Vail. |
| Red Sandstone Creek | At confluence with Gore Creek | *8,071 | +8,078 | |
| | Just upstream of Potato Patch Drive | None | +8,254 | |
| Roaring Fork River | At Eagle County/Garfield County boundary | None | +6,380 | Eagle County. |
| | Just downstream of Emma Road | None | +6,600 | (Uninc. Areas) and Town of Basalt. |
| South Side Split Flow | At confluence with Roaring Fork River | None | +6,553 | Eagle County. |
| | Approximately 1,200 feet downstream of State Highway 82 Bypass. | None | +6,563 | (Uninc. Areas) and Town of Basalt. |
| Eagle River | Approximately 500 feet downstream of U.S. Highway 6. | *6,273 | +6,277 | (Uninc. Areas). |
| | Just downstream of confluence with Brush Creek | None | +6,502 | |
| East Mill Creek | At confluence with Gore Creek | *8,168 | +8,175 | Eagle County. |
| | Just upstream of Vail Road | None | +8,292 | (Uninc. Areas) and Town of Vail. |
| Gore Creek | Just upstream of confluence with Eagle River | | | Eagle County. |
| | At confluence with Upper and Lower Gore Creek | None | +8,561 | (Uninc. Areas) and Town of Vail. |
| Lower Gore Creek | At confluence with Gore Creek | *8,555 | +8,561 | Eagle County. |
| | At Divergence from Upper Gore Creek | None | +8,610 | (Uninc. Areas) and Town of Vail. |
| Spraddle Creek | At confluence with Gore Creek | *8,132 | +8,138 | Town of Vail. |
| | Approximately 1,150 feet upstream of Interstate Highway 70. | None | +8,274 | |
| Upper Gore Creek | At confluence with Gore Creek | *8,556 | +8,562 | Eagle County. |
| | Approximately 1,000 feet upstream of Interstate Highway 70 westbound. | None | +8,682 | (Uninc. Areas) and Town of Vail. |
| West Mill Creek | Just downstream of Gore Drive | *8,176 | +8,165 | Eagle County. |
| | Just upstream of Vail Road | None | +8,292 | (Uninc. Areas) and Town of Vail. |
| Booth Creek | At confluence with Gore Creek | *8,290 | +8,296 | Town of Vail. |
| | Approximately 1,300 feet upstream of interstate Highway 70. | *8,384 | +8,392 | |

# Depth in feet above ground.
* National Geodetic Datum.
+ National American Vertical Datum.

*Addresses:* Unincorporated Areas Eagle County:
Maps are available for inspection at 500 Broadway Street, Eagle, Colorado 81631.
Send comments to the Honorable Michael Gallagher, Chairman Eagle County Board of Commissioners, P.O. Box 850, Eagle, Colorado 81631.

Town of Gypsum:
Maps are available for inspection at 50 Lundgren Boulevard, Gypsum, Colorado 81637.
Send comments to the Honorable Stephen M. Carver, Mayor, Town of Gypsum, P.O. Box 28, Gypsum, Colorado 81637.

Town of Basalt:
Maps are available for inspection at the Town Hall, 101 Midland Avenue, Basalt, Colorado 81621.
Send comments to the Honorable Richard P. Stevens, Mayor, Town of Basalt, Town Hall, 101 Midland Avenue, Basalt, Colorado 81621.

Town of Vail:
Maps are available for inspection at the Community Development Office, 75 South Frontage Road, Vail, Colorado 81657.
Send comments to the Honorable Ludwig Kurz, Mayor, Town of Vail, 75 South Frontage Road, Vail, Colorado 81657.

### CHARLES MIX COUNTY, AND INCORPORATED AREAS

| Flooding source(s) | Location of referenced elevation | Elevation in feet *(NGVD) Elevation in feet + (NAVD) | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| Unnamed Creek (near Wagner).. | Approximately 400 feet upstream of 396th Avenue | None | *1,413 | Yankton Sioux Tribe and City of Wagner. |
| | Approximately 600 feet downstream of 394th Avenue | None | *1,458 | |
| Left Bank Tributary of Mosquito Creek (near Marty). | Approximately 1,400 feet downstream of 303rd Street | None | *1,434 | Yankton Sioux Tribe. |
| | Approximately 1,950 feet upstream of 303rd Street | None | *1,458 | |

# Depth in feet above ground.

* National Geodetic Datum.

+ National American Vertical Datum.

*Addresses:* Yankton Sioux Tribe:

Maps are available for inspection at 100 North Main Street, Marty, South Dakota 57361.

Send comments to the Honorable Madonna Archambeau, Tribal Chairwoman, Yankton Sioux Tribe, 100 Main Street, Marty South Dakota 57361.

City of Wagner:

Maps are available for inspection at the City Hall, 106 Sheridan Avenue, Southeast, Wagner, South Dakota 57380.

Send comments to the Honorable Sharon Haar, Mayor, City of Wagner, 106 Sheridan Avenue, Southeast, Wagner, South Dakota 57380.

### KING COUNTY, AND INCORPORATED AREAS

| Flooding source(s) | Location of referenced elevation | Elevation in feet *(NGVD) Elevation in feet + (NAVD) | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| Snoqualmie River | Approximately 2,000 feet downstream of confluence of Middle Fork and South Fork Snoqualmie River. | *425 | *424 | King County (Uninc. Areas) and City of Snoqualmie. |
| South Fork Snoqualmie River | At confluence with Middle Fork Snoqualmie River | *427 | *425 | King County (Uninc. Areas), City of Snoqualmie, and City of North Bend. |
| | Approximately 700 feet upstream of eastbound I–90 bridge. | *475 | *475 | |
| Middle Fork Snoqualmie River. | At confluence of North Fork Snoqualmie River | *426 | *426 | King County (Uninc. Areas) and City of Snoqualmie. |
| | Approximately 260 feet downstream of Southeast Mount SI Road. | *478 | *478 | |
| Lower Overflow | At Southeast 100th Street | *429 | *428 | King County (Uninc. Areas) and City of North Bend. |
| | Approximately 1,400 feet upstream of North Pickett Avenue. | None | *449 | |
| Middle Overflow | Just upstream of Northeast 420th Avenue | *431 | *432 | King County (Uninc. Areas) and City of North Bend. |
| | At Borst Avenue Northeast | #2 | *441 | |
| Upper South Overflow | Approximately 400 feet downstream of Ballarat Avenue North. | #2 | *437 | King County (Uninc. Areas) and City of North Bend. |
| | At divergence from Middle Fork Snoqualmie River | *467 | *467 | |
| Upper North Overflow | Approximately 150 feet downstream of Ogle Avenue Northeast. | #2 | *441 | King County (Uninc. Areas) and City of North Bend. |
| | Approximately 400 feet downstream of 120th Street | *460 | *457 | |

KING COUNTY, AND INCORPORATED AREAS—Continued

| Flooding source(s) | Location of referenced elevation | Elevation in feet *(NGVD) Elevation in feet + (NAVD) | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| Gardiner Creek | At Bolch Avenue Northwest | None | *429 | King County (Uninc. Areas) and City of North Bend. |
| | Upstream of Northwest Eighth Street | None | *435 | |

# Depth in feet above ground.
* National Geodetic Datum.
+ National American Vertical Datum.

*Addresses:* Unincorporated Areas of King County:
Maps are available for inspection at the King DDES, Blackriver Corp. Park, 900 Oakesdale Avenue Southwest, Suite 100, Renton, Washington 98055.
Send comments to the Honorable Ron Sims, King County Executive, 516 Third Avenue, Suite 400, Seattle, Washington 98104.
City of North Bend:
Maps are available for inspection at 1155 East North Bend Way, North Bend, Washington 98045.
Send comments to the Honorable Joan Simpson, Mayor, City of North Bend, P.O. Box 896, North Bend, Washington 98045.
City of Snoqualmie:
Maps are available for inspection at the Planning Directors Office, 8020 Railroad Avenue Southeast, Snoqualmie, Washington 98065.
Send comments to the Honorable Randy Fletcher, Mayor, City of Snoqualmie, P.O. Box 987, Snoqualmie, Washington 98065.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: September 30, 2003.

**Anthony S. Lowe,**

*Mitigation Division Director, Emergency Preparedness and Response Directorate.*

[FR Doc. 03–25346 Filed 10–6–03; 8:45 am]

BILLING CODE 6718–04–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 03–2930, MB Docket No. 03–210, RM–10791]**

## Digital Television Broadcast Service; Elmira, NY

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Smith Television of New York License Holdings, Inc., licensee of station WETM-TV, requesting the substitution of DTV channel 33 for DTV channel 2. DTV Channel 33 can be allotted to at reference coordinates 42–06–22 N. and 76–52–17 W. with a power of 525, a height above average terrain HAAT of 363 meters. Since the community of Elmira is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government must be obtained for this allotment.

**DATES:** Comments must be filed on or before November 24, 2003, and reply comments on or before October 1, 2003.

**ADDRESSES:** The Commission permits the electronic filing of all pleadings and comments in proceedings involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings,* GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Brad C. Deutsch, Hogan & Hartson LLP, 555 Thirteenth Street, NW., Washington, DC 20004–1109 (Counsel for Smith Television of New York License Holdings, Inc.).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–210, adopted September 23, 2003, and released October 1, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail: *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

### § 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under New York is amended by removing DTV channel 2 and adding DTV channel 33 at Elmira.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Division, Media Bureau.*

[FR Doc. 03–25334 Filed 10–6–03; 8:45 am]

BILLING CODE 6712–01–P

# Notices

Federal Register

Vol. 68, No. 194

Tuesday, October 7, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

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## DEPARTMENT OF AGRICULTURE

### Agriculture Marketing Service

**[Doc. No. TM–03–10]**

### Notice of Agricultural Marketing Assistance Organic Certification Cost Share Program

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This Notice invites eligible States to submit a Standard Form 424, Application for Federal Assistance, and to enter into a Cooperative Agreement with the Agricultural Marketing Service (AMS) for the Allocation of Organic Certification Cost-Share Funds. The AMS has allocated $1.0 million for this organic certification cost-share program in Fiscal Year 2003. Funds will be available under this program to 15 designated States to assist organic crop and livestock producers certified by the Department of Agriculture (USDA) accredited certifying agents to the National Organic Program (NOP). Eligible States interested in obtaining cost-share funds for their organic producers will have to submit an Application for Federal Assistance, and will have to enter into a cooperative agreement with AMS for the allocation of such funds.

**DATES:** Completed applications for federal assistance along with signed cooperative agreements must be received by November 21, 2003 in order to participate in this program.

**ADDRESSES:** Applications for federal assistance and cooperative agreements shall be requested from and submitted to: Robert Pooler, Agricultural Marketing Specialist, National Organic Program, USDA/AMS/TMP/NOP, Room 4008-South, Ag Stop 0268, 1400 Independence Avenue, SW., Washington, DC 20250–0264; Telephone: (202) 720–3252; Fax: (202) 205–7808; E-mail: bob.pooler@usda.gov. Additional information may be found through the National Organic Program's Home page at *http://www.ams.usda.gov/nop.*

**FOR FURTHER INFORMATION CONTACT:** Robert Pooler, Agricultural Marketing Specialist, National Organic Program, USDA/AMS/TM/NOP, Room 4008-South, Ag Stop 0268, 1400 Independence Avenue, SW, Washington, DC 20250–0264; Telephone: (202) 720–3252; Fax: (202) 205–7808; E-mail: *bob.pooler@usda.gov.*

**SUPPLEMENTARY INFORMATION:** This Organic Certification Cost-Share Program is part of the Agricultural Management Assistance Program authorized under the Federal Crop Insurance Act (FCIA), as amended, (7 U.S.C. 1521). Under the applicable FCIA provisions, the Department is authorized to provide cost share assistance to producers in the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. This organic certification cost share program provides financial assistance to organic producers certified to the National Organic Program authorized under the Organic Foods Production Act of 1990, as amended (7 U.S.C. 6501 *et seq.*)

To participate in the program, eligible States must complete a Standard Form 424, Application for Federal Assistance, and enter into a written cooperative agreement with AMS. The program will provide cost-share assistance, through participating States, to organic crop and livestock producers receiving certification or update of certification by a USDA accredited certifying agent from October 1, 2003 through September 30, 2004. The Department has determined that payments will be limited to 75 percent of an individual producer's certification costs up to a maximum of $500.00.

**Authority:** 7 U.S.C. 1521.

Dated: October 2, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03–25458 Filed 10–6–03; 8:45 am]

**BILLING CODE 3410–02–P**

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Doc. # TM–03–09]**

### Notice of Meeting of the National Organic Standards Board

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) is announcing a forthcoming meeting of the National Organic Standards Board (NOSB).

**DATES:** The meeting dates are: Wednesday, October 22, 2003, 1 p.m. to 5:30 p.m., Thursday, October 23, 2003, 8 a.m. to 5:30 p.m., and Friday, October 24, 2003, 8 a.m. to 5:30 p.m. Requests from individuals and organizations wishing to make an oral presentation at the meeting are due by the close of business on October 7, 2003. A closed session will be held on Wednesday, October 22, 2003, 8:30 a.m. to 12 p.m., at which administrative matters will be handled.

**ADDRESSES:** The meeting will take place at the Radisson Barceló Hotel Washington, The Phillips Ballroom, 2121 P Street, NW., Washington, DC. Requests for copies of the NOSB meeting agenda, requests to make an oral presentation at the meeting, or written comments may be sent to Ms. Katherine Benham at USDA–AMS–TMD–NOP, 1400 Independence Avenue, SW., Room 4008-So., Ag Stop 0268, Washington, DC 20250–0200. Requests to make an oral presentation at the meeting may also be sent electronically to Ms. Katherine Benham at *katherine.benham@usda.gov.*

**FOR FURTHER INFORMATION CONTACT:** Richard Mathews, Program Manager, National Organic Program, (202) 720–3252.

**SUPPLEMENTARY INFORMATION:** Section 2119 (7 U.S.C. 6518) of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. Section 6501 *et seq.*) requires the establishment of the NOSB. The purpose of the NOSB is to make recommendations about whether a substance should be allowed or prohibited in organic production or handling, to assist in the development of standards for substances to be used in organic production and to advise the Secretary on other aspects of the implementation of the OFPA. The NOSB met for the first time in Washington, DC, in March 1992, and currently has six committees working on various aspects of the organic program. The committees are: Compliance, Accreditation, and Certification; Crops; Livestock; Materials; Handling; and Policy Development.

In August of 1994, the NOSB provided its initial recommendations for the National Organic Program (NOP) to the Secretary of Agriculture. Since that time, the NOSB has submitted 50 addenda to its recommendations and reviewed more than 256 substances for inclusion on the National List of Allowed and Prohibited Substances. The last meeting of the NOSB was held on May 13–14, 2003, in Austin, Texas.

The Department of Agriculture (USDA) published its final National Organic Program regulation in the **Federal Register** on December 21, 2000 (65 FR 80548). The rule became effective April 21, 2001.

The principal purposes of the meeting are to provide an opportunity for the NOSB to hear a presentation from FDA on their substance approval process for livestock; to hear recommendations from contractors, past and present, for enhancing petitions for the addition or removal of substances from the National List and for enhancing the statement of work between contractors and USDA; receive public comment regarding what constitutes compatibility/consistency with a system of sustainable agriculture/organic production and handling relative to substance review and evaluations; to develop a statement for public distribution on what constitutes compatibility/consistency with a system of sustainable agriculture/organic production and handling relative to substance review and evaluations; and finally to document and clarify, for the NOP, substance recommendations from the May 2003 NOSB meeting in Austin, Texas.

For further information, see *http://www.ams.usda.gov/nop*. Copies of the NOSB meeting agenda can be requested from Ms. Katherine Benham by telephone at (202) 205–7806; or by accessing the NOP Web site at *http://www.ams.usda.gov/nop*.

The meeting is open to the public. The NOSB has scheduled time for public input on Thursday, October 23, 2003, 8 a.m. to 12 p.m., for individuals to speak on the issue of what constitutes compatibility/consistency with a system of sustainable agriculture/organic production and handling. Individuals and organizations wishing to make an oral presentation at the meeting may forward their request by facsimile to Ms. Katherine Benham at (202) 205–7808. While persons wishing to make a presentation may sign up at the door, advance registration will ensure that a person has the opportunity to speak during the allotted time period and will help the NOSB to better manage the meeting and to accomplish its agenda. Individuals or organizations will be given approximately 5 minutes to present their views. All persons making an oral presentation are requested to provide their comments in writing. Written submissions may contain information other than that presented at the oral presentation.

Written comments may also be submitted at the meeting. Persons submitting written comments at the meeting are asked to provide 30 copies.

Interested persons may visit the NOSB portion of the NOP Web site *http://www.ams.usda.gov/nop* to view available documents prior to the meeting. Approximately 6 weeks following the meeting interested persons will be able to visit the NOSB portion of the NOP Web site to view documents from the meeting.

Dated: October 1, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03–25311 Filed 10–6–03; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF AGRICULTURE

## Forest Service

## Newspapers Used for Publication of Legal Notices by the Intermountain Region; Utah, Idaho, Nevada, and Wyoming

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice lists the newspapers that will be used by the ranger districts, forests and regional office of the Intermountain Region to publish legal notices required under 36 CFR part S. 215 and 217. The intended effect of this action is to inform interested members of the public which newspapers the Forest Service will use to publish notices of proposed actions and notices of decision. This will provide the public with constructive notice of Forest Service proposals and decisions, provide information on the procedures to comment or appeal, and establish the date that the Forest Service will use to determine if comments or appeals were timely.

**DATES:** Publication of legal notices in the listed newspapers will begin on or after October 1, 2003. The list of newspapers will remain in effect until April 1, 2004, when another notice will be published in **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** Priscilla McLain, Regional Appeals Coordinator, Intermountain Region, 324 25th Street, Ogden, UT 84401, and phone (801) 625–5146.

**SUPPLEMENTARY INFORMATION:** The administrative procedures at 36 CFR parts 215 and 217 require the Forest Service to publish notices in a newspaper of general circulation. The content of the notices is specified in 36 CFR part 215 and 217. In general, the notices will identify: the decision or project, by title or subject matter; the name and title of the official making the decision; how to obtain additional information; and where and how to file comments or appeals. The date the notice is published will be used to establish the official date for the beginning of the comment or appeal period. The newspapers to be used are as follows:

### Regional Forester, Intermountain Region

For decisions made by the Regional Forester affecting national Forests in Idaho:

*The Idaho Statesman*, Boise, Idaho

For decisions made by the Regional Forester affecting National Forests in Nevada:

*The Reno Gazette-Journal*, Reno, Nevada

For decisions made by the Regional Forester affecting National Forests in Wyoming:

*Casper Star-Tribune*, Casper, Wyoming

For decisions made by the Regional Forester affecting National Forests in Utah:

*Salt Lake Tribune*, Salt Lake City, Utah

For the decisions made by the Regional Forester that affect all National Forests in the Intermountain Region:

*Salt Lake Tribune*, Salt Lake City, Utah

### Ashley National Forest

Ashley Forest Supervisor decisions:

*Vernal Express*, Vernal, Utah

Duchesne District Ranger decisions:

*Uinta Basin Standard*, Roosevelt, Utah

Flaming Gorge District Ranger for decisions affecting Wyoming:
*Rocket Miner*, Rock Springs, Wyoming
Flaming Gorge District Ranger for decisions affecting Utah:
*Vernal Express*, Vernal, Utah
Roosevelt District Ranger decisions:
*Uinta Basin Standard*, Roosevelt, Utah
Vernal District Ranger decisions:
*Vernal Express*, Vernal, Utah

### Boise National Forest

Boise Forest Supervisor decisions:
*The Idaho Statesman*, Boise, Idaho
Cascade District Ranger decisions:
*The Long Valley Advocate*, Cascade, Idaho
Emmett District Ranger decisions:
*The Messenger-Index*, Emmett, Idaho
Idaho City District Ranger decisions:
*The Idaho Statesman*, Boise, Idaho
Lowman District Ranger decisions:
*The Idaho World*, Garden Valley, Idaho
Mountain Home District Ranger decisions:
*The Idaho Statesman*, Boise, Idaho

### Bridger-Teton National Forest

Bridger-Teton Forest Supervisor decisions:
*Casper Star-Tribune*, Casper, Wyoming
Big Piney District Ranger decisions:
*Casper Star-Tribune*, Casper, Wyoming
Buffalo District Ranger decisions:
*Casper Star-Tribune*, Casper, Wyoming
Greys River District Ranger decisions:
*Casper Star-Tribune*, Casper, Wyoming
Jackson District Ranger decisions:
*Casper Star-Tribune*, Casper, Wyoming
Kemmerer District Ranger decisions:
*Casper Star-Tribune*, Casper, Wyoming
Pinedale District Ranger decisions:
*Casper Star-Tribune*, Casper, Wyoming

### Caribou-Targhee National Forest

Caribou-Targhee Forest Supervisor decisions for the Caribou portion:
*Idaho State Journal*, Pocatello, Idaho
Caribou-Targhee Forest Supervisor decisions for the Targhee portion:
*The Post Register*, Idaho Falls, Idaho
Ashton District Ranger decisions:
*The Post Register*, Idaho Falls, Idaho
Dabois District Ranger decisions:
*The Post Register*, Idaho Falls, Idaho
Island Park District Ranger decisions:
*The Post Register*, Idaho Falls, Idaho
Montpelier District Ranger decisions:
*Idaho State Journal*, Pocatello, Idaho
Palisades District Ranger decisions:
*The Post Register*, Idaho Falls, Idaho
Soda Springs District Ranger decisions:
*Idaho State Journal*, Pocatello, Idaho
Teton Basin District Ranger decisions:
*The Post Register*, Idaho Falls, Idaho
Westside District Ranger decisions:
*Idaho State Journal*, Pocatello, Idaho

### Dixie National Forest

Dixie Forest Supervisor decisions:
*The Daily Spectrum*, St. George, Utah
Cedar City District Ranger decisions:
*The Daily Spectrum*, St. George, Utah
Escalante District Ranger decisions:
*The Daily Spectrum*, St. George, Utah
Pine Valley District Ranger decisions:
*The Daily Spectrum*, St. George, Utah
Powell District Ranger decisions:
*The Daily Spectrum*, St. George, Utah
Teasdale District Ranger decisions:
*The Daily Spectrum*, St. George, Utah

### Fishlake National Forest

Fishlake National Supervisor decisions:
*Richfield Reaper*, Richfield, Utah
Beaver District Ranger decisions:
*Richfield Reaper*, Richfield, Utah
Fillmore District Ranger decisions:
*Richfield Reaper*, Richfield, Utah
Loa District Ranger decisions:
*Richfield Reaper*, Richfield, Utah
Richfield District Ranger decisions:
*Richfield Reaper*, Richfield, Utah

### Humboldt-Toiyabe National Forests

Humboldt-Toiyabe Forest Supervisor decisions for the Humboldt portion:
*Elko Free Press*, Elko, Nevada
Humboldt-Toiyabe Forest Supervisor decisions for the Toiyabe portion:
*Reno Gazette-Journal*, Reno, Nevada
Austin District Ranger decisions:
*Reno Gazette-Journal*, Reno, Nevada
Bridgeport District Ranger decisions:
*The Review-Herald*, Mammoth Lakes, California
Carson District Ranger decisions:
*Reno Gazette-Journal*, Reno, Nevada
Ely District Ranger decisions:
*Ely Daily Times*, Ely Nevada
Jarbidge District Ranger decisions:
*Elko Daily Free Press*, Elko, Nevada
Mountain City District Ranger decisions:
*Elko Daily Free Press*, Elko, Nevada
Ruby Mountains District Ranger decisions:
*Elko Daily Free Press*, Elko, Nevada
Santa Rosa District Ranger decisions:
*Humboldt Sun*, Winnemucca, Nevada
Spring Mountains National Recreation Area District Ranger decisions:
*Las Vegas Review Journal*, Las Vegas, Nevada
Tonopah District Ranger decisions:
*Tonopah Times Bonanza-Goldfield News*, Tonopah, Nevada

### Manti-LaSal National Forest

Manti-LaSal Forest Supervisor decisions:
*Sun Advocate*, Price, Utah
Ferron District Ranger decisions:
*Emery County Progress*, Castle Dale, Utah
Moab District Ranger decisions:
*The Times Independent*, Moab, Utah
Monticello District Ranger decisions:
*The San Juan Record*, Monticello, Utah
Price District Ranger decisions:
*Sun Advocate*, Price, Utah
Sanpete District Ranger decisions:
*The Pyramid*, Mt. Pleasant, Utah

### Payette National Forest

Payette Forest Superevisor decisions:
*Idaho Statesman*, Boise, Idaho
Council District Ranger decisions:
*Adam County Record*, Council, Idaho
Krassel District Ranger decisions:
*Star News*, McCall, Idaho
McCall District Ranger decisions:
*Star News*, McCall, Idaho
New Meadows District Ranger decisions:
*Star News*, McCall, Idaho
Weiser District Ranger decisions:
*Signal American*, Weiser, Idaho

### Salmon-Challis National Forests

Salmon-Challis Forest Supervisor decisions for the Salmon portion:
*The Recorder-Herald*, Salmon, Idaho
Salmon-Challis Forest Supervisor decisions for the Challis portion:
*The Challis Messenger*, Challis, Idaho
Challis District Ranger decisions:
*The Challis Messenger*, Challis, Idaho
Leadore District Ranger decisions:
*The Recorder-Herald*, Salmon, Idaho
Lost River District Ranger decisions:
*The Challis Messenger*, Challis, Idaho
Middle Fork District Ranger decisions:

*The Challis Messenger*, Challis, Idaho
North Fork District Ranger decisions:
*The Recorder-Herald*, Salmon, Idaho
Salmon/Cobalt District Ranger decisions:
*The Recorder-Herald*, Salmon, Idaho
Yankee Fork District Ranger decisions:
*The Challis Messenger*, Challis, Idaho

**Sawtooth National Forest**

Sawtooth Forest Supervisor decisions:
*The Times News*, Twin Falls, Idaho
Fairfield District Ranger decisions:
*The Times News*, Twin Falls, Idaho
Ketchum District Ranger decisions:
*Idaho Mountain Express*, Ketchum, Idaho
Minidoka District Ranger decisions:
*The Times News*, Twin Falls, Idaho
Sawtooth National Recreation Area decisions:
*Challis Messenger*, Challis, Utah

**Uinta National Forest**

Unita Forest Supervisor decisions:
*The Daily Herald*, Provo, Utah
Heber District Ranger decisions:
*The Daily Herald*, Provo, Utah
Pleasant Grove District Ranger decisions:
*The Daily Herald*, Provo, Utah
Spanish Fork District Ranger decisions:
*The Daily Herald*, Provo, Utah

**Wasatch-Cache National Forest**

Wasatch-Cache Forest Supervisor decisions:
*Salt Lake Tribune*, Salt Lake City, Utah
Evanston District Ranger decisions:
*Uinta County Herald*, Evanston, Wyoming
Kamas District Ranger decisions:
*Salt Lake Tribune*, Salt Lake City, Utah
Logan District Ranger decisions:
*Logan Herald Journal*, Logan, Utah
Mountain View District Ranger decisions:
*Uinta County Herald*, Evanston, Wyoming
Ogden District Ranger decisions:
*Ogden Standard Examiner*, Ogden, Utah
Salt Lake District Ranger decisions:
*Salt Lake Tribune*, Salt Lake City, Utah

Dated: October 1, 2003.

**Jack G. Troyer,**

*Regional Forester.*

[FR Doc. 03–25327 Filed 10–6–03; 8:45 am]

**BILLING CODE 3410–11–M**

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### North Gifford Pinchot National Forest Resource Advisory Committee Meeting Notice

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The North Gifford Pinchot National Forest Resource Advisory Committee will meet on Friday, October 24, 2003, at the WSU Conference Room, located in the basement of the Lewis County Courthouse, 351 NW. North Street, Chelhalis, Washington 98532. The meeting will begin at 9 a.m. and continue until 12 noon. The purpose of the meeting is to review proposals for Title II funding of Forest projects under the Secure Rural Schools and County Self-Determination Act of 2000.

All North Gifford Pinchot National Forest Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The "open forum" provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The "open forum" is scheduled to occur at 9:15 a.m. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business any time.

**FOR FURTHER INFORMATION CONTACT:** Direct questions regarding this meeting to Roger Peterson, Public Affairs Specialist, at (360) 891–5007, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE. 51st Circle, Vancouver, WA 98682.

Dated: September 30, 2003.

**Earl W. Ford,**

*Acting Forest Supervisor.*

[FR Doc. 03–25326 Filed 10–6–03; 8:45 am]

**BILLING CODE 3410–11–M**

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## CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

### Sunshine Act Meeting

In connection with its investigation into a violent explosion that occurred in a chemical distillation tower at First Chemical Corporation in Pascagoula, Mississippi, on October 13, 2002, the United States Chemical Safety and Hazard Investigation Board announces that it will convene a Public Meeting beginning at 9:30 am Eastern Standard time on October 15, at the LaFont Inn, Highway 90, Pascagoula, Mississippi 39595.

The explosion occurred in a chemical distillation tower, sending heavy debris over a wide area. No one was seriously injured or killed in the incident, which occurred early on a Sunday morning. One nitrotoluene storage tank at the site was punctured by explosion debris, igniting a fire that burned for several hours. Three out of the 23 workers on site at the time of the incident received minor injuries, and nearby residents were temporarily sheltered in place. A producer of aniline and nitrotoluene derivatives and intermediates, First Chemical Corp. is a subsidiary of ChemFirst Inc., which was acquired by Dupont after the accident.

At the meeting CSB staff will present to the Board the results of their investigation into this incident, including an analysis of the incident together with a discussion of the key findings, root and contributing causes, and draft recommendations.

Recommendations are issued by a vote of the Board and address an identified safety deficiency uncovered during the investigation, and specify how to correct the situation. Safety recommendations are the primary tool used by the Board to motivate implementation of safety improvements and prevent future incidents. The CSB uses its unique independent accident investigation perspective to identify trends or issues that might otherwise be overlooked. CSB recommendations may be directed to corporations, trade associations, government entities, safety organizations, labor unions and others.

After the staff presentation, the Board will allow a time for public comment. Following the conclusion of the public comment period, the Board will consider whether to vote to approve the final report and recommendations. When a report and its recommendations are approved, this will begin CSB's process for disseminating the findings and recommendations of the report not only to the recipients of recommendations but also to other public and industry sectors. The CSB believes that this process will ultimately lead to the adoption of recommendations and the growing body of safety knowledge in the industry, which, in turn, should save future lives and property.

All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the issues and factors involved in this case. No factual analyses, conclusions or findings should be considered final. Only after the Board has considered the staff presentation and approved the staff report will there be an approved final record of this incident.

The meeting will be open to the public. Please notify CSB if a translator or interpreter is needed, at least 5 business days prior to the public meeting. For more information, please contact the Chemical Safety and Hazard Investigation Board at (202) 261–7600, or visit our Web site at: *http://www.csb.gov*.

**Christopher Lyon,**

*Attorney Advisor.*

[FR Doc. 03–25564 Filed 10–3–03; 3:54 pm]

BILLING CODE 6350–01–P

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## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Washington Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Washington State Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 12 p.m., on October 17, 2003 at the Westin Hotel, 1900 Fifth Avenue, Seattle, Washington 98101. The purpose of the meeting is to obtain information on education issues and plan Committee activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 30, 2003.

**Ivy L. Davis,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 03–25395 Filed 10–6–03; 8:45 am]

BILLING CODE 6335–01–P

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## DEPARTMENT OF COMMERCE

### Membership of the Departmental Performance Review Board

**AGENCY:** Department of Commerce.

**ACTION:** Notice of membership of Departmental Performance Review Board.

**SUMMARY:** In accordance with 5 U.S.C. 4313(c)(4), Department of Commerce (DOC) announces the appointment of persons to serve as members of the Departmental Performance Review Board (DPRB). The DPRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and serves as the higher level review for executives who report to an appointing authority. The appointment of these members to the DPRB will be for periods of 24 months.

**DATES:** The effective date of service of appointees to the Department of Performance Review Board is upon publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** Janet C. Hoffheins, Deputy Director for Human Resources Management, Office of Human Resources Management, Office of the Director, 14th and Constitution Ave, NW., Washington, DC 20230, (202) 482–4807.

**SUPPLEMENTARY INFORMATION:** The names and position titles of the members of the DPRB are set forth below by organization:

**2003–2005 DPRB Membership**

*Office of the Secretary*

Fred L. Schwien, Director, Executive Secretariat.

*Office of General Counsel*

Eleanor R. Lewis, Chief Counsel for International Commerce.

Roxie J. Jones, Chief Counsel for Economic Affairs.

*Office of the Chief Financial Officer and Assistant Secretary for Administration*

Richard Yamamoto, Director, Office of Security.

*Bureau of Industry and Security*

Miriam Cohen, Director of Administration.

*Economic Development Administration*

David M. Bearden, Deputy Assistant Secretary for Economic Development.

*Economics and Statistics Administration*

James K. White, Associate Under Secretary for Management.

Hermann Habermann, Deputy Director, Bureau of the Census.

Marvin D. Raines, Associate Director for Field Operations, Bureau of the Census.

J. Steven Landefeld, Director, Bureau of Economic Analysis.

Gloria A. Gutierrez, Assistant Director for Marketing and Customer Liaison, Bureau of the Census.

*International Trade Administration*

Henry P. Misisco, Director, Office Of Automotive Affairs.

Susanne S. Lotarski, Director, Office Eastern Europe, Russia, and Independent States.

Nealton J. Burnham, Deputy Assistant Secretary for Export Promotion Services.

Linda Moye-Cheatham, Chief Financial Officer and Director of Administration.

*National Oceanic and Atmospheric Administration*

Colleen N. Hartman, Deputy Assistant Administrator for Environmental Satellite Data and Information Services, National Environmental Satellite Services.

John E. Oliver, Jr., Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

Helen Hurcombe, Director, Acquisition and Grants Office.

Louisa Koch, Deputy Assistant Administrator for Oceanic and Atmospheric Research, Office of Oceanic and Atmospheric Research.

John E. Jones, Jr., Deputy Assistant Administrator for Weather Services, National Weather Service.

Jamison S. Hawkins, Deputy Assistant Administrator for Ocean and Coastal Zone.

Management, National Ocean Service.

William Brennan, Deputy Assistant Secretary for International Affairs.

*National Telecommunications and Information Administration*

Robin R. Layton, Associate Administrator, Office of International Affairs.

*Technology Administration*

Hratch G. Semerjian, Deputy Director, National Institute of Standards and Technology.

Richard F. Kayser, Jr., Director, Technology Services, National Institute of Standards and Technology.

Marilia A. Matos, Deputy Director for Management Services, National Institute of Standards and Technology.

Dated: September 30, 2003.

**Janet C. Hoffheins,**

*Deputy Director for Human Resources Management.*

[FR Doc. 03–25380 Filed 10–6–03; 8:45 am]

BILLING CODE 3510–BS–M

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 50-2003]**

### Foreign-Trade Zone 249—Pensacola, FL; Application for Subzone Status, General Electric Wind Energy and Energy Rentals (Wind Turbines), Pensacola, FL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Pensacola-Escambia County Promotion and Development Commission, grantee of FTZ 249, requesting special-purpose subzone status for the wind turbine manufacturing plant of General Electric Wind Energy and Energy Rentals (GEWE/GEER), located in Pensacola, Florida. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 25, 2003.

The GEWE/GEER plant (102 acres/375,000 sq. ft.) is located at 8301 Scenic Highway in Pensacola (Escambia County), Florida. The facility (250 employees) is used to produce 1.5 megawatt, wind-powered turbines (with potential for 3.6 megawatt units in the future) and wind turbine blades for export and the domestic market. The manufacturing process at the facility involves machining, assembly, testing, and warehousing. The plant has capacity to produce about 500 turbines and 850 wind turbine blades annually. Components that are, or may be, purchased from abroad (representing about 40–70% of finished product value) used in manufacturing include: glue, polycetal/polyester/epoxide/polyamide/polycarbonate resins (hardeners), plastic foil/film/tape, plate/sheet/film of styrene/polyvinyl polymers (foam cores), printed labels, glass fibers and fabric (root bands), glass fiber yarn (Category 201; must be admitted under privileged foreign status—19 CFR 146.41), electrical grounding rods, steel belts/bands, doors, fasteners, pumps, cylinders, hub castings, bed plates, compressors, pulleys, winches, hoists, electric motors, generators, transmissions, transmission shafts, gear boxes, bearings, flanges/couplers, gears, clutches, couplings, chains, sprockets, electrical connectors, motors, transformers, stators, rotors, ballasts, static converters, inductors, magnets, batteries (Ni-Cad, Ni-Iron, lead acid), lightning arresters, circuit breakers, relays, switches, lampholders/sockets, panel/distribution boards, speed controllers, control panels, pitch motor encoders, motor starters, terminals, connectors, diodes, transistors, bridge rectifiers, photosensitive semiconductors, conductors, revolution counters, and voltage meters (2003 duty rate range: free—8.5%).

FTZ procedures would exempt GEWE/GEER from Customs duty payments on the foreign component inputs used in export production. On its domestic shipment and exports to NAFTA markets, the company would be able to choose the duty rate that applies to finished wind turbines (2.5%) or wind turbine blades (3%) for the foreign-sourced inputs noted above. The company would be able to defer Customs duty payments on the foreign-origin finished turbines that would be admitted to the proposed subzone for U.S. distribution. Duties would be deferred or reduced on foreign production equipment admitted to the proposed subzone until which time it becomes operational. The application indicates that subzone status would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

2. *Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is December 8, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 22, 2003).

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No.1 listed above and at the Office of the Port Director, U.S. Bureau of Customs and Border Protection, Suite 102, 1 South A Street, Pensacola, FL 32501.

Dated: September 25, 2003.

**Pierre V. Duy,**

*Acting Executive Secretary.*

[FR Doc. 03–25388 Filed 10–6–03; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Action Affecting Export Privileges; Reza Moghadam Pirasteh

*ORDER*

The Bureau of Industry and Security, United States Department of Commerce ("BIS") having notified Reza Moghadam Pirasteh ("Pirasteh") of its intention to initiate an administrative proceeding against Pirasteh pursuant to Section 766.3 of the Export Administration regulations (currently codified at 15 CFR Parts 730–744 (2003)) ("Regulations"), and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. Sections 2401–2420 (2000)) ("Act"),[1] based on the proposed charging letter issued to Pirasteh that alleged Pirasteh committed four violations of the Regulations, by aiding and abetting exports of liquid injectors to Iran, items subject to the Regulations and the Iran Transactions Regulations, without authorization from the Office of Foreign Assets control, U.S. Department of Treasury (on two occasions); by acting to evade the Regulations by directing that the name of the country "Iran" not be used in communications so as to conceal the ultimate destination of the exports; and by making a false statement to a BIS investigator.

BIS and Pirasteh having entered into a Settlement Agreement pursuant to section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

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[1] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701—1707 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as last extended by the Notice of August 7, 2003 (68 FR 47833 (August 11, 2003)), has continued the Regulations in effect under IEEPA.

*It Is Therefore Ordered:*

First, that a civil penalty of $4,500 is assessed against Pirasteh. Payment of the civil penalty shall be made in seven payments to the Department of Commerce. The first payment shall be of $300 and shall be paid within 30 days from the date of entry of this Order. The next six payments shall each be of $700 and shall be made on or before; April 1, 2004, July 1, 2004, October 1, 2004, January 4, 2005, April 1, 2005, and July 1, 2005. Payments shall be made in the manner specified in the attached instructions.

Second, that pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701–3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached notice, and, if a payment is not made by the due date specified herein, Pirasteh will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

Third, that for a period of seven years from the date of this Order, Pirasteh, 2308 Arroyo Court, Plano, Texas 75074, his successors or assigns, and when acting for or on behalf of Pirasteh, his representatives, agents, or employees ("denied person") may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Fourth, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United State. For purposes of this paragraph, servicing means installations, maintenance, repair, modification or testing.

Fifth, that after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Pirasteh by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

Sixth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Seventh, that, the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action ion this matter, is effective immediately.

Entered this 30th day of September 2003.

**Lisa A. Prager,**

*Acting Assistant Secretary of Commerce for Export Enforcement.*

[FR Doc. 03–25390 Filed 10–6–03; 8:45 am]

BILLING CODE 3510–DT–M

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A-570-862]

## Notice of Preliminary Results of Antidumping Duty Administrative Review: Foundry Coke from the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Preliminary Results of Antidumping Duty Administrative Review.

**EFFECTIVE DATE:** October 7, 2003.

**SUMMARY:** The Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on foundry coke from the People's Republic of China ("PRC") in response to requests from ABC Coke, Citizens Gas & Coke Utility, Erie Coke Corporation, Sloss Industries Corporation, and Tonawanda Coke Corporation (collectively, "Domestic Producers" or "Petitioners"). The period of review ("POR") is from March 8, 2001 through August 31, 2002.

We preliminarily determine, based on adverse facts available, that CITIC Trading Company, Ltd. ("CITIC") sold subject merchandise at less than normal value ("NV"). The preliminary results are listed below in the section titled "Preliminary Results of Review." If these preliminary results are adopted in our final results, we will instruct the U.S. Bureau of Customs and Border Protection ("Customs") to assess antidumping duties based on the PRC-wide rate. We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to sumbit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

**FOR FURTHER INFORMATION CONTACT:** Michael Holton, Office of AD/CVD Enforcement 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–1324.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 31, 2001, the Department published the antidumping duty order on foundry coke from the People's Republic of China ("Foundry Coke from the PRC"). *See Notice of Final Determination of Sales at Less Than Fair Value: Foundry Coke Products From The People's Republic of China,* 66 FR 39487 (July, 31, 2001); *see also Notice of Amended Final Determination of Sales at Less Than Fair Value: Foundry Coke Products From The People's Republic of China*, 66 FR 45962 (August 31, 2001), and *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Foundry Coke Products From The People's Republic of China*, 66 FR 48025 (September 17, 2001). On September 3, 2002, the Department published a notice of opportunity to request an administrative review for this order covering the period March 8, 2001, through August 31, 2002. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 56267 (September 3, 2002). On September 30, 2002, the Department received a request from the Petitioners, requesting the review of CITIC, in accordance with 19 CFR 351.213(b). The Department initiated the review on October 24, 2002. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 65336 (October 24, 2002).

On November 8, 2002, the Department issued an antidumping questionnaire to CITIC with instructions that it and the appropriate producers/suppliers ("suppliers") of the subject merchandise are required to respond by the due dates. The original due dates were November 11, 2002, for section A and December 17, 2002, for sections C-E. After two separate extensions, the Department received a timely section A questionnaire response, in part, on December 12, 2002, from CITIC. There were multiple transactions of subject merchandise during the POR in which CITIC was the exporter and other parties were the suppliers. During the POR, CITIC obtained the foundry coke that was ultimately sold in the United States from three suppliers.

On December 16, 2002, the Department received a completed section A response from CITIC. On December 19, 2002, CITIC submitted its response to section C of the questionnaire. On January 3, 2003, CITIC requested a two-week extension for section D of the questionnaire, which was originally due on December 17, 2002. On January 7, 2003, the Department granted a one-week extension for section D of the questionnaire, setting a new deadline of January 13, 2003. CITIC did not supply the Department with a response to section D of the questionnaire by the January 13, 2003, deadline.

On April 15, 2003, the Department issued CITIC a supplemental questionnaire with a response date of April 29, 2003. After five additional extensions, CITIC responded to the supplemental questionnaire, in part, on June 5, 2003, and stated that the Department would receive the full information as soon as the information was available. CITIC did not provide a complete response to all questions of the supplemental questionnaire.

On May 1, 2003, we requested comments on surrogate-country selection and requested that parties provide surrogate factors of production values for the preliminary results no later than May 15, 2003. We received comments from the Petitioners, on May 8, 2003. On May 15, 2003, CITIC submitted publicly available Indian import statistics for valuing the subject merchandise's factors of production in this review.

On May 28, 2003, the Department determined that it was not practicable to complete the preliminary results of this review within the statutory time limit. Consequently, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(1) of the Department's regulations, the Department extended the deadline for completion of the preliminary results of the administrative review by 120 days, to September 30, 2003. *See Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Foundry Coke from the People's Republic of China*, 68 FR 31681 (May 28, 2003) ("*Extension of Time Limits*"). On July 24, 2003, the Department published a correction to the *Extension of Time Limits*, due to incorrect information regarding the deadline of the preliminary results. *Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Foundry Coke from the People's Republic of China; Correction*, 68 FR 43712 (July 24, 2003).

## Scope of Review

For purposes of this investigation, the product covered is coke larger than 100 mm (4 inches) in maximum diameter and at least 50 percent of which is retained on a 100-mm (4 inch) sieve, of a kind used in foundries.

The foundry coke products subject to this investigation were classifiable under subheading 2704.00.00.10 (as of January 1, 2000) and are currently classifiable under subheading 2704.00.00.11 (as of July 1, 2000) of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

## Nonmarket Economy Country

The Department has treated the PRC as a non-market economy ("NME") country in all past antidumping investigations (*see e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 19873 (April 13, 2000)). A designation as a NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Tariff Act of 1930, as amended ("the Act"). The respondents in this investigation have not requested a revocation of the PRC's NME status. We have, therefore, preliminarily determined to continue to treat the PRC as a NME country. When the Department is investigating imports from a NME, section 773(c)(1) of the Act directs us to base the NV on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise.

Furthermore, no interested party has requested that the foundry coke industry in the PRC be treated as a market-oriented industry and no information has been provided that would lead to such a determination. Therefore, we have not treated the foundry coke industry in the PRC as a market-oriented industry in this investigation.

## Separate Rate

Although CITIC, a mandatory respondent, submitted a response to section A of the questionnaire, it did not respond to section D of the questionnaire and other vital information requested by the Department. As a mandatory respondent, CITIC was required to provide complete questionnaire responses. Therefore, as detailed in the "Application of Adverse Facts Available" section below, adverse facts available have been assigned to CITIC. As a result, CITIC will not receive a separate rate for these preliminary results.

## Application of Facts Available

On November 8, 2002, the Department sent CITIC section D of the questionnaire, requesting CITIC and its three suppliers to provide factors of production ("FOP") information for the subject merchandise during the POR. The original deadline to file a response to section D of the questionnaire was December 17, 2002. On December 6, 2002, CITIC requested an extension of the December 17, 2002, due date for filing its response to section D of the questionnaire. On December 12, 2002, the Department granted an extension, giving CITIC until January 6, 2003, to file its section D questionnaire response.

On January 3, 2003, CITIC requested a second two-week extension for filing its section D questionnaire response. Due to the necessity of meeting the statutory time limits, the Department only granted CITIC a one week extension, until January 13, 2003, for filing its response to section D of the questionnaire. On January 13, 2003, the Department did not receive a response from CITIC, either requesting a third extension or a response to section D of the questionnaire. One week later, the Department still had not received any response from CITIC or any other communication, and on January 21, 2003, the Department sent CITIC a letter requesting that CITIC file its late section D response by the close of business of the same day. Additionally, the letter requested that CITIC provide a detailed explanation on what measures it had taken to file section D of the questionnaire and what prevented it from submitting the response on January 13, 2003.

On January 23, 2003, CITIC responded to the Department's letter of January 21, 2003, stating that because "section D requires cooperation of unrelated producers of foundry coke . . . CITIC Trading has been unable to persuade those producers to undertake the time and expense of responding to the questionnaire, despite is best efforts." *See* CITIC's response to Department's letter of January 21, 2003, dated January 23, 2003. On January 28, 2003, the Department sent a second letter requesting that CITIC file its late section D response. In addition, the Department requested that CITIC provide a detailed explanation of the measures it had taken in securing a response from it suppliers. CITIC did not provide a responses to the requested information identified in the letter of January 28, 2003.

Because it is imperative that the Department obtains the FOP information for the normal value calculation, the Department attempted to contact CITIC's suppliers directly. Due to the lack of information on the record regarding CITIC's suppliers, on February 10, 2003, the Department requested that CITIC supply additional detailed contact information for its POR suppliers. On February 10, 2003, CITIC responded by stating that the contact information was already included in the section A response. Because CITIC had not provided names of persons to contact and because the information on the record was less than complete, on March 21, 2003, the Department again requested that CITIC supply complete and detailed contact information for its suppliers. On April 4, 2003, CITIC responded, providing the Department with names of the people whom the Department should contact for only two of the three suppliers.

On April 9, 2003, using the contact information provided by CITIC, the Department attempted to fax two of the three suppliers (hereinafter "Supplier A," "Supplier B" and "Supplier C"). The Department contacted Supplier A via fax with a response due date of April 23, 2003, for the section D questionnaire. To date, we have not received a response from Supplier A, although the Department received conformation that the fax was transmitted successfully. *See* Memorandum to the File, from Michael Holton, Case Analyst, through James Doyle, Program Manager, regarding Fax Transmission Verification Report for Supplier A, dated April 10, 2003.

With regard to Supplier B, the Department was unable to contact the company via fax on April 9, 2003. On April 10, 2003, the Department attempted to contact Supplier B a second time via fax, again there was no connection. On April 16, 2003, the Department made a third attempt to send section D of the questionnaire via fax to Supplier B. Again, the Department received no fax connection. *See* Memorandum to the File, from Michael Holton, Case Analyst, through James Doyle, Program Manager, regarding Fax Transmission Verification Report for Supplier B, dated April 16, 2003. Upon closer examination of the fax number provided by CITIC, the Department discovered that the fax number appeared to be incomplete. Thus, on May 1, 2003, the Department requested that CITIC provide a complete fax number for Supplier B. On May 2, 2003, CITIC's counsel informed the Department that CITIC was unable to find any other additional information regarding the Supplier B's fax number. *See* Memorandum to the File, from Michael Holton, Case Analyst, through James Doyle, Program Manager, regarding Request for a Correction to the Fax Number, dated May 6, 2003.

Because the Department did not have the correct fax number for Supplier B and CITIC did not provide a fax number for Supplier C, the Department sent section D questionnaires via FedEx to these two suppliers on April 22, 2003. The Department received confirmation via the FedEx internet tracking system that section D of the questionnaire was delivered to Supplier B on May 15, 2003. *See* Memorandum to the File, from Michael Holton, Case Analyst, through James Doyle, Program Manager, regarding Delivery Status of Section D Questionnaire Sent to Supplier B, dated July 21, 2003. To date, we have not received a response from Supplier B. The section D questionnaire, however, for Supplier C was returned to the Department, with an indication that Supplier C was not in FedEx's service area. *See* Memorandum to the File, from Michael Holton, Case Analyst, through James Doyle, Program Manager, regarding Delivery Status of Section D Questionnaire Sent to Supplier C, dated July 21, 2003. Additionally, the Department requested assistance from its Chinese Commercial Service Division ("Division") in contacting Supplier C. The Division made several attempts in locating and contacting the supplier, but it was unsuccessful in contacting them. *See* Memorandum to the File, from Chris Cloutier, Senior Import Administration Officer, United States Embassy Beijing, regarding Foundry Coke, dated September 23, 2003.

On August 12, 2003, the Department sent CITIC a letter requesting several items with respect to Supplier C. First, the Department requested that CITIC reconsider its decision not to release Supplier C's name from APO protection, so the Department could receive aid in contacting the supplier from Chinese governmental agencies. Second, the Department requested documentation relating to CITIC's purchase of subject merchandise from Supplier C during the POR and post POR, which would contain further contact information. Third, the Department requested that CITIC reconfirm the contact information provided to the Department. Finally, the Department again requested that CITIC supply information and documentation regarding its efforts to persuade the three suppliers to respond to section D of the questionnaire. The Department requested that CITIC file its response to this letter no later than August 18, 2003. On August 18, 2003, the Department did not receive a response from CITIC with respect to the information we requested. On August 19, 2003, the Department contacted CITIC's counsel who indicated that he had faxed the letter to CITIC, yet he had not received a response from them. CITIC's counsel then requested that the Department send him an electronic copy of the letter so that he could e-mail it to CITIC. The Department sent CITIC's counsel an electronic copy of the letter on August 19, 2003, requesting that CITIC file its response no later than August 22, 2003. *See* Memorandum to the File, from Michael Holton, Case Analyst, through James Doyle, Program Manager, regarding Request for Release from APO of Supplier's C Name, dated August 28, 2003. On August 22, 2003, the Department did not receive a response from CITIC regarding the information the Department requested.

On August 27, 2003, the Department made a final request that CITIC respond to the letter sent on August 12, 2003. Despite the Department's best efforts to provide CITIC with every opportunity to respond to our requests, we did not receive a response to the letter originally sent out on August 12, 2003, nor has the Department received the FOP information necessary to calculate the a normal value.

Section 776(a)(2) of the Act provides that if an interested party or any other person: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested under the antidumping statute; (C) significantly impedes an antidumping review; or (D) provides such information but the information cannot be verified, the Department shall use the facts otherwise available in reaching the applicable determination as provided in Section 782 (d) of the Act. *See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part*, 64 FR 30481 (June 8, 1999); *Silicon Metal From The People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 63 FR 37850 (July 14, 1998); *Silicon Metal From The People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 11654 (March. 10, 1998). CITIC and its suppliers, as "interested parties," have failed to respond and CITIC has engaged in pattern of non-compliance in submitting its responses to the Department's request for information, which have impeded the Department's best efforts in conducting this review. Specifically, CITIC failed to either report or supply the Department with FOP information. For these reasons, the Department finds that use of facts otherwise available is appropriate for these preliminary results.

Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if (1) the information is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information, and (5) the information can be used without undue difficulties.

For the Department to calculate an accurate margin in an NME proceeding, it needs valid FOP information. CITIC and its suppliers failed to provide the FOP information for the transactions. There has been no alternative or substitutable information suggested for use in place of the missing FOP data. Therefore, in cognizance of CITIC's submission of section A and section C response, we find that the submitted data is nevertheless so incomplete that reliance on it would not result in an accurate measurement or reflection of CITIC's selling practices. Further, as detailed above, CITIC and its suppliers had ample time and extraordinary number of opportunities to submit the requested FOP data for this review and the requested explanation as to its efforts to secure responses from the suppliers, but they failed to do so.

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. 316, Vol. 1, 103d Cong. (1994) (SAA), establishes that the Department may employ an adverse inference ". . . to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* SAA at 870. It also instructs the Department, in employing adverse inferences, to consider ". . . the extent to which a party may benefit from its own lack of cooperation." *Id.*

When determining whether a company has acted to the best of their ability the Department "must make an objective showing that a reasonable and responsible importer would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations;" and "a subjective showing that the respondent under investigation not only has failed to promptly produce the requested information, but further that the failure to fully respond is the result of the respondent's lack of cooperation in either: (a) failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records." *See Nippon Steel Co. v. U.S.*, 337 F.3d 1373 (Fed Cir 2003) ("*Nippon*").

In this particular case, CITIC and its suppliers failed to respond to several of the Department's requests for information for which they should have known the Department would need to conduct this administrative review. We note that CITIC participated in the investigation only two years ago and one of its suppliers during this review also participated in that investigation. *See* Memorandum to the File, from Michael Holton, Case Analyst, through James Doyle, Program Manager, regarding CITIC's Suppliers in the Investigation, dated September 23, 2003. Therefore, the Department finds that, by not providing the necessary responses to the questionnaires issued by the Department, CITIC and its suppliers have failed to cooperate to the best of its ability.

First, FOP information is fundamental for calculating the a dumping margin. Section 771(35)(A) of the Act, requires that dumping margins are calculated by comparing the NV to the export price or constructed export price. For NME countries, the Act states that the NV is determined "on the basis of the value of the factors of production utilized in producing the merchandise." *See* section 773(c)(1) of the Act. Because this is an NME proceeding, it is necessary that the Department have valid FOP information in order to calculate the NV. In cases such as this, we are precluded from reviewing the FOP of the suppliers, and absent any FOP information provided, the Department cannot simply create or postulate the costs of the uncooperative suppliers. In addition, the Department has no other FOP information on the record. Because CITIC and its suppliers have failed to provided FOP information for this administrative review the Department cannot properly calculate a dumping margin in accordance with section 773(c)(1) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from* *the People's Republic of China*, 64 FR 71104, 71108 (December 20, 1999) ("*Creatine from the PRC*");*see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1997–998 Antidumping Duty Administrative Review and Final Results of New Shipper Review*, 64 FR 61837, 61846 (November 15, 1999) ("*TRBs-11*"); *see also Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504 (April 21, 2003), and accompanying Issues and Decision Memorandum, Comment 7 ("*Crawfish*"). Because CITIC and one of its suppliers had participated in the original investigation, it is reasonable to presume that CITIC should have known that the Department would request FOP information for this administrative review. Because CITIC and its suppliers failed to provide the information which they knew the Department would need to calculate a dumping margin, the Department finds that CITIC and its suppliers have not acted to the best of their ability.

Second, CITIC and the suppliers failed to provided any explanation why they were unable provide the FOP information, nor did they offer any alternative forms by which they might be able to comply with the Department's requests. As the Court of Appeals for the Federal Circuit has held, respondents must "put forth its maximum efforts" in complying with the Department's requests. *See Nippon*, 337 F.3d at 1382. The issue of cooperation from unrelated suppliers was raised by CITIC in the investigation. CITIC should have known that its claims of being unable to persuade unrelated supplies to provide FOP information would require convincing evidence of the suppliers' inability or unwillingness to supply the requested information. *See CITIC Trading Co., Ltd et al v. U.S.*, No. 01–00901, slip op. 03–23 (CIT 2003) (finding that CITIC acted to the best of its ability when in it provided Commerce with documentation that its unrelated non-responding suppliers had been shutdown). On numerous occasions, the Department requested that CITIC supply detailed information regarding its attempts to contact its suppliers for the FOP information. The only response the Department received from CITIC was a conclusory statement explaining that "section D requires cooperation of unrelated producers of foundry coke . . . CITIC Trading has been unable to persuade those producers to undertake the time and expense of responding to the questionnaire, despite is best efforts." *See* CITIC's response to Department's letter of January 21, 2003, dated January 23, 2003.

CITIC's claim that it was unable persuade it suppliers to cooperate despite its best efforts, provides the Department with no reliable basis to determine that CITIC in fact cooperated to the best of its ability. As noted earlier, the Department requested that CITIC explain and provide documentation of its efforts to persuade its supplies to respond to section D of the questionnaire. CITIC failed to provide any explanation or documentation showing that it had contacted its suppliers to respond to section D of the questionnaires. Because the information on the record is so incomplete it is impossible for the Department to determine what efforts CITIC made in contacting its suppliers regarding their cooperation in responding to section D of the questionnaire. Therefore, the Department finds that CITIC has not acted to the best of its ability.

Additionally, it has been the Department practice to apply adverse facts available when a respondent has failed to provide convincing evidence "claiming that their suppliers cannot supply requested factors of production information." *See Creatine from the PRC*, 64 FR at 71108 (applying adverse facts available because the respondent did not provide an acceptable explanation on the record for its suppliers failure to provide the FOP information); *see also TRBs-11*, 64 FR at 61846 (finding that the respondent did not act to the best of its ability when it was unable to provide letters from unrelated suppliers stating their unwillingness to supply factors of production information); *see also Notice of Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 68 FR 36767, 36768 (June 19, 2003) ("*Garlic*") (applying adverse facts available when a supplier stated that it was unwilling to provide details on its production process or its FOP; and the respondent did not provide an explanation as to why it or its supplier could not provide the FOP information); *see also Notice of Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 48612 (July 25, 2002), and accompanying Issues and Decision Memorandum, Comment 10 (finding that there was no acceptable explanation on the record for the supplier's failure to provide factor of production information, an adverse inference in applying facts available was warranted due to the supplier's failure to act to the best of its ability).

Although the Department made extensive efforts to obtain the information, it is ultimately CITIC's responsibility for submitting accurate FOP information as it is the party that is seeking the rate based on the FOP information and it is more readily available to them, and any "failures, even if made by a supplier, may provide grounds for the application of adverse facts available." *See Crawfish* 68 FR at 19504; *see also Garlic* 68 FR at 36768.

Finally, CITIC engaged in pattern of non-compliance to the Department's requests. On numerous occasions, CITIC requested extensions to the original filing dates which the Department granted. After granting CITIC's requested extensions to file its section D responses on two separate occasions, and nearly one full month from the original due date, CITIC nonetheless failed to respond to the Department's request for FOP information. Only after two further requests by the Department did CITIC respond that it was unable to get its suppliers to respond to section D of the questionnaire. The Department finds it is reasonable that CITIC could have submitted this information before the original deadline for information had passed. If CITIC was having problems in obtaining the information from its suppliers, it should have notified the Department at that time. Instead, CITIC informed the Department only after the deadline passed and after the Department had sent two requests for the information.

Similarly, on four separate occasions the Department granted CITIC's requests to extend the deadline to file its response to the Department's supplemental questionnaire. Again, only after the Department sent a letter requesting that the late information be supplied did CITIC respond. Additionally, CITIC's response to the supplemental questionnaire was incomplete, informing the Department that it would supply the missing information at a later date. To date, the Department has not received a complete supplemental questionnaire response. Further, as noted earlier, CITIC failed to respond on three separate occasions to the Department's requests for information regarding Supplier C and any documentation with respect to each of its suppliers purported inability to supply the FOP information. The information that the Department requested was for documentation relating to CITIC's purchase of subject merchandise from Supplier C (*e.g.*, contracts, payment documentation, shipment documentation, etc.). A reasonable respondent would have maintained all this documentation in anticipation the Department would request it. Finally, throughout the process the Department informed CITIC of the importance of the information and the need to respond to the requests for information.

Therefore, in accordance with the statute, the Department finds that CITIC and its suppliers, as interested parties, have not acted to the best of their ability. First, it reasonable that CITIC should have known, as a responsible exporter, that the requested FOP information was required to be kept and maintained under the applicable statutes, rules, and regulations, as CITIC and one of its suppliers participated in the original investigation. Second, it reasonable that an interested party could have provided an explanation for either its inability to respond to the Department's requested information or offer alternative forms for which to comply with the Department's requests. Further, it is the Department's procedure to apply adverse facts available when a respondent is unable to provide an explanation and documentation for its failure to supply complete FOP information, even if it is the failure of one of its suppliers. Finally, the Department finds that CITIC and its suppliers, by failing produce the requested information, engaged in a pattern of non-compliance and also failed to put forth a maximum efforts to investigate and obtain the requested information from their records. *See Nippon*, 337 F.3d at 1382. Thus, because CITIC and its suppliers have failed to act to the best of their ability the Departments finds that an adverse facts available is applicable to this review.

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act. Section 776(c) of the Act provides, however, that, when the Department relies on secondary information rather than on information obtained in the course of a review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. *See* SAA at 870. The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See id.* As discussed in *Notice of Preliminary Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) ("*TRBs*"), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

The highest rate determined in any segment of this proceeding is the PRC-wide rate from the investigation, which is 214.89 percent; it is currently the PRC-wide rate and was calculated based on information contained in the petition. *See Final Determination of Sales at Less Than Fair Value: Foundry Coke Products From The People's Republic of China*, 66 FR 39487 (July, 31, 2001). The information contained in the petition was corroborated for the final determination of the investigation. In the investigation, the Department reviewed the adequacy and accuracy of the petition. To the extent practicable, the Department examined the key elements of the U.S. price and NV calculations on which the petition margin was based and compared the sources used in the petition to publicly available information, where available, and respondent data as appropriate. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Foundry Coke From the People's Republic of China*, 66 FR 13885 (March 8, 2001). Additionally, no information has been presented in the current review that calls into question the reliability of this information. We note that this is the highest rate from the investigation and is less than two years old. Thus, the Department finds that the information continues to be reliable.

With respect to the relevance aspect of corroboration, the Department stated in TRBs that it will "consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin." *See* TRBs at 61 FR 57392; *see also Stainless Steel Sheet and Strip in Coils from Taiwan; Final Result and Rescission of Antidumping Duty Administrative Review*, 67 FR 40914, 40916 (June 14, 2002) (where the Department disregarded the highest margin for the use as adverse facts available because the margin was based on a finding of middleman dumping by another producer). The rate used is the rate currently applicable to all exporters subject to the PRC-wide rate. Further, there is no information on the administrative record of the current review that indicates the application of this rate would be inappropriate or that the margin is not relevant. Therefore, for all sales of subject merchandise by the PRC entity, we have applied, as adverse facts available, the 214.89 percent margin from the investigation and have satisfied the corroboration requirements under section 776(c) of the Act. *See Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 18439, 18441 (April 9, 2001) (employing a petition rate used as adverse facts available in a previous segment as adverse facts available in the current review).

## Preliminary Results Of The Review

As a result of the application of adverse facts available, we preliminarily determine that a dumping margin of 214.89 percent exists for the period March 8, 2001, through August 31, 2002, on all exports of foundry coke by the PRC entity.

An interested party may request a hearing within 30 days of publication of these preliminary results. Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, within 120 days of publication of this notice. *See* 19 CFR 351.213(h)(1).

## Assessment Rates

Upon issuance of the final results, the Department will determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to Customs upon completion of this review. If these preliminary results are adopted in our final results of review, we will direct Customs to assess the resulting rate against the entered customs value for the subject merchandise on each importer's/customer's entries during the POR.

### Cash-Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for all previously investigated companies which have a separate rate, the cash-deposit rates will continue to be the company specific rates published for the most recent period; (2) for all other PRC exporters, including CITIC, the cash-deposit rate will be the PRC countrywide rate, which is 214.89 percent; and (3) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

### Notification To Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: September 30, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–25384 Filed 10–6–03; 8:45 am]

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A-570-501]**

## Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) has received timely requests to conduct new shipper reviews of the antidumping duty order on natural bristle paintbrushes and brush heads from the People's Republic of China (PRC). In accordance with 19 CFR 351.214(d), we are initiating a review for Shanghai R&R Imp./Exp. Co., Ltd. (Shanghai) and its producer Zhejiang Lin'an Maxiao Brushes Factory (ZLMBF), and for Changshan Import/Export Co., Ltd. (Changshan) and its producer ZLMBF.

**EFFECTIVE DATE:** October 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Douglas Kirby or Dana Mermelstein, Office of AD/CVD Enforcement 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0961 or (202) 482–1391, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 14, 2003, the Department received timely requests from Shanghai and Changshan, pursuant to section 751(a)(2)(B) of the Tariff Act of 1930 (the Act) and in accordance with 19 CFR 351.214(c), for new shipper reviews under the antidumping duty order on natural bristle paintbrushes and brush heads from the PRC. This order has a February anniversary month and therefore an August semiannual anniversary month. On August 27, 2003, the Department issued a letter to Shanghai and Changshan noting that there were similarities in the new shipper review requests for both companies, and we asked whether Shanghai and Changshan were related in any way. Shanghai and Changshan, in their response of August 29, 2003, replied that the similarities occurred because the actions by both Shanghai and Changshan occurred shortly after their counsel conducted a program in China discussing the antidumping law and various ways of participating. Because of the schedule for filing new shipper review requests, both Shanghai and Changshan arranged their sales and made the shipments on relatively short notice. While there are similarities in the shipments, the two companies stated that they are not affiliated, and therefore they requested separate new shipper reviews. The Department will continue throughout the review to examine carefully any similarities between Shanghai and Changshan.

### Initiation of Reviews

Pursuant to 19 CFR 351.214(b)(2)(ii) and 19 CFR 351.214(b)(2)(iii)(A), in their August 14, 2003 requests for review, Shanghai and Changshan certified that they did not export the subject merchandise to the United States during the period of investigation (POI) and that they are not affiliated with any company which exported subject merchandise to the United States during the POI. Pursuant to 19 CFR 351.214(b)(ii)(B), Shanghai's and Changshan's producer, ZLMBF, certified that it did not export subject merchandise during the period of investigation. Pursuant to 19 CFR 351.214(b)(2)(iii)(B), Shanghai and Changshan further certified that their export activities are not controlled by the central government of the PRC. Also, in accordance with 19 CFR 351.214(b)(2)(iv), Shanghai and Changshan submitted documentation establishing the date on which each company first shipped the subject merchandise to the United States, the volume of its first shipment, and the date of the first sale to an unaffiliated customer in the United States. Shanghai and Changshan also stated that they had no shipments to the United States other than their first shipment.

Therefore, in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d), we are initiating new shipper reviews of the antidumping duty order on natural bristle paintbrushes and brush heads from the PRC. In accordance with 19 CFR 351.214(i), we intend to issue the preliminary results not later than 180 days from the date of initiation of these reviews. All provisions of 19 CFR 351.214 will apply to Shanghai and Changshan throughout the duration of these new shipper reviews.

In accordance with 19 CFR 351.214(g)(1)(i)(B), the POR for a new shipper review initiated in the month immediately following the semiannual anniversary month is the six-month period immediately preceding the semiannual anniversary month. Therefore, the POR for these new shipper reviews is February 1, 2003 through July 31, 2003. Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), we are initiating new shipper reviews for shipments of natural bristle paintbrushes and brush heads from the PRC: (1) produced by ZLMBF and exported by Shanghai; (2) produced by ZLMBF and exported by Changshan.

It is the Department's usual practice in cases involving non-market economies to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide *de jure* and *de facto* evidence of an absence of government control over the company's export activities. Accordingly, we will issue a questionnaire to Shanghai and Changshan (including a complete separate rates section), allowing approximately 37 days for response. If the response from each respondent provides sufficient indication that it is not subject to either *de jure* or *de facto* government control with respect to its exports of natural bristle paintbrushes and brush heads, the review will proceed. If, on the other hand, a respondent does not demonstrate its eligibility for a separate rate, then it will be deemed to be affiliated with other companies that exported during the POI and not eligible for a separate rate, and the review of that respondent will be rescinded.

| Antidumping Duty New Shipper Reviews: | Period To Be Reviewed: |
|---|---|
| Shanghai R&R Imp./Exp. Co., Ltd. / Produced by Zhejiang Lin'an Maxiao Brushes Factory | 2/1/03–7/31/03 |
| Changshan Import/Export Co., Ltd. / Produced by Zhejiang Lin'an Maxiao Brushes Factory | 2/1/03–7/31/03 |

We will instruct the U.S. Bureau of Customs and Border Protection (BCBP) to allow, at the option of the importer, the posting, until the completion of the review, of a single entry bond or security in lieu of a cash deposit for subject merchandise exported by and produced by the above listed companies. See 19 CFR 351.214(e). Shanghai and Changshan certified that they exported but did not produce the subject merchandise on which they based their new shipper review requests (i.e. ZLMBF certified that it produced the subject merchandise exported by Shanghai and Changshan). Therefore, we will instruct BCBP to limit the bonding option only to entries of subject merchandise: (1) exported by Shanghai and produced by ZLMBF; or (2) exported by Changshan and produced by ZLMBF.

Interested parties may submit applications for disclosure of business proprietary information under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act and 19 CFR 351.214.

Dated: September 30, 2003.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Import Administration, Group III.*

[FR Doc. 03–25385 Filed 10–6–03; 8:45 am]

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## DEPARTMENT OF COMMERCE

## International Trade Adminstration

[A-570–504]

## Petroleum Wax Candles from the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) has received timely requests to conduct new shipper reviews of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC). In accordance with 19 CFR 351.214(d), we are initiating a review for Shanghai R&R Imp./Exp. Co., Ltd. (Shanghai) and its producer Qing Yuan Huaxing Arts and Crafts Candle Co., Ltd. (Qing Yuan), and for Changshan Import/Export Co., Ltd. (Changshan) and its producer Shaoxing Youcheng Artcraft Knitting Co., Ltd. (Shaoxing). We are also initiating a review for Shandong Huihe Trade Co., Ltd. (Huihe), which is both the exporter and the producer.

**EFFECTIVE DATE:** October 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Douglas Kirby or Dana Mermelstein, Office of AD/CVD Enforcement 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0961 or (202) 482–1391, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 14, 2003, the Department received timely requests from Shanghai and Changshan and on August 28, 2003 the Department received a timely request from Huihe pursuant to section 751(a)(2)(B) of the Tariff Act of 1930 (the Act) and in accordance with 19 CFR 351.214(c), for new shipper reviews under the antidumping duty order on petroleum wax candles from the PRC. This order has an August anniversary month. On August 27, 2003, the Department issued a letter to Shanghai and Changshan noting that there were similarities in the new shipper review requests for both companies, and we asked whether Shanghai and Changshan were related in any way. Shanghai and Changshan, in their response of August 29, 2003, replied that the similarities occurred because the sales by both Shanghai and Changshan occurred shortly after their counsel conducted a program in China discussing the U.S. antidumping law. Shanghai and Changshan further explained that, because of the schedule for filing new shipper review requests, they both arranged the sales and made the shipments on relatively short notice. While we noted the similarities in the shipments, the two companies claimed that they are not affiliated, and therefore they requested separate new shipper reviews. The Department will continue to examine carefully any similarities between Shanghai and Changshan throughout the review.

### Initiation of Reviews

Pursuant to 19 CFR 351.214(b)(2)(i), 19 CFR 351.214(b)(2)(ii) and 19 CFR 351.214(b)(2)(iii)(A), in their August 14, 2003 requests for review, Shanghai and Changshan certified that they did not export the subject merchandise to the United States during the period of investigation (POI) and that neither they nor their producers are affiliated with any company which exported subject merchandise to the United States during the POI. Pursuant to 19 CFR 351.214(b)(ii)(B), Shanghai's producer, Qing Yuan, and Changshan's producer, Shaoxing, each certified that it did not export subject merchandise during the period of investigation. Pursuant to 19 CFR 351.214(b)(2)(i) Huihe (which is both the producer and exporter) certified that it did not export subject merchandise to the United States during the period of investigation. Pursuant to 19 CFR 351.214(b)(2)(iii)(B), Shanghai, Changshan, and Huihe further certified that their export activities are not controlled by the central government of the PRC. Also, in accordance with 19 CFR 351.214(b)(2)(iv), Shanghai, Changshan, and Huihe submitted documentation establishing the date on which each company first shipped the subject merchandise to the United States, the volume of each company's first and only shipment, and the date of the first sale to an unaffiliated customer in the United States.Therefore, in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d), we are initiating new shipper reviews under the antidumping duty order on petroleum wax candles from the PRC. In accordance with 19 CFR 351.214(i), we intend to issue the preliminary results not later than 180 days from the date of initiation of these reviews. All provisions of 19 CFR 351.214 will apply to Shanghai, Changshan and Huihe throughout the duration of these new shipper reviews.

In accordance with 19 CFR 351.214(g)(1)(i)(A), the POR for a new shipper review initiated in the month immediately following the anniversary month is the twelve-month period immediately preceding the anniversary month. Therefore, the POR for these new shipper reviews is August 1, 2002 through July 31, 2003. Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), we are initiating new shipper reviews for shipments of petroleum wax candles from the PRC: (1) produced by Qing Yuan and exported by Shanghai; (2) produced by Shaoxing and exported by Changshan; and, (3) produced and exported by Huihe.

It is the Department's usual practice in cases involving non-market economies to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide *de jure* and *de facto* evidence of an absence of government control over the company's export activities. Accordingly, we will issue a questionnaire to Shanghai and Changshan (including a complete separate rates section), allowing approximately 37 days for response. If the response from each respondent provides sufficient indication that it is not subject to either *de jure* or *de facto* government control with respect to its exports of natural bristle paintbrushes and brush heads, the review will proceed. If, on the other hand, a respondent does not demonstrate its eligibility for a separate rate, then it will be deemed to be affiliated with other companies that exported during the POI and not eligible for a separate rate, and the review of that respondent will be rescinded.

| Antidumping Duty New Shipper Reviews | Period to be reviewed |
|---|---|
| Shanghai R&R Imp./Exp. Co., Ltd./Produced by Qing YuanHuaxing Arts and Crafts Candle Co., Ltd. | 8/01/02–7/31/03 |
| Changshan Import/Export Co., Ltd./Produced by ShaoxingYoucheng Artcraft Knitting Co., Ltd. | 8/01/02–7/31/03 |
| Shandong Huihe Trade Co., Ltd./Produced by ShandongHuihe Trade Co., Ltd. | 8/01/02–7/31/03 |

We will instruct the U.S. Bureau of Customs and Border Protection (BCBP) to allow, at the option of the importer, the posting, of a single entry bond or security in lieu of a cash deposit for subject merchandise exported by and produced by the above listed companies. *See* 19 CFR 351.214(e). Shanghai and Changshan certified that they exported but did not produce the subject merchandise on which they based their new shipper review requests; Qing Yuan certified that it produced the subject merchandise exported by Shanghai and Shaoxing certified that it produced the subject merchandise exported by Changshan. Therefore, we will instruct BCBP to limit the bonding option only to entries of subject merchandise: (1) exported by Shanghai and produced by Qing Yuan; or (2) exported by Changshan and produced by Shaoxing. Shandong Huihe Trade Co., Ltd. certified that it is both the producer and exporter of the petroleum wax candles. Therefore, we will instruct BCBP to limit the bonding option only to entries of subject merchandise both produced and exported by Shandong Huihe Trade Co., Ltd.

Interested parties may submit applications for disclosure of business proprietary information under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214.

Dated: September 30, 2003.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Import Administration, Group III.*

[FR Doc. 03–25383 Filed 10–6–03; 8:45 am]

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A-570-851]

## Certain Preserved Mushrooms from the People's Republic of China: Initiation of Seventh New Shipper Antidumping Duty Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce received several requests in August 2003 to conduct a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China ("PRC"). In accordance with 19 CFR 351.214(d), we are initiating a new shipper review for two of the companies that requested such a review: Guangxi Hengxian Pro-Light Foods, Inc., a producer and exporter of certain preserved mushrooms from the PRC; and Nanning Runchao Industrial Trade Company, Ltd., an exporter of certain preserved mushrooms from the PRC.

**EFFECTIVE DATE:** October 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Brian Smith or Sophie Castro, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1766 or (202) 482–0588, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

The Department has received timely requests in August 2003 from: (1) Guangxi Hengxian Pro-Light Foods, Inc. ("Guangxi Hengxian"); (2) Nanning Runchao Industrial Trade Company, Ltd. ("Nanning Runchao"); (3) Xiamen International Trade and Industry Company, Ltd. ("XITIC"); (4) Xiamen Zhongjia Import and Export Company, Ltd. ("Zhongjia"); (5) Zhangzhou

Longhai Minhui Industry and Trade Co., Ltd. (“Minhui”); and (6) Shanghai Superlucky Import & Export Company, Ltd (“Superlucky”), in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on certain preserved mushrooms from the PRC, which has an August semi-annual anniversary month. On September 22, 2003, Superlucky withdrew its request for a new shipper review. Accordingly, we have not considered Superlucky in this new shipper review initiation.

Guangxi Hengxian identified itself as the producer of the preserved mushrooms it exports. Nanning Runchao identified itself as an exporter of preserved mushrooms produced by its supplier, Guangxi Yizhou Dongfang Cannery (“Guangxi Yizhou”). XITIC identified itself as an exporter of preserved mushrooms produced by its supplier, Inter-Foods (D.S.) Company, Ltd.[1] Zhongjia identified itself as an exporter of preserved mushrooms produced by its supplier, Zhangzhou Hongning Canned Food Factory. Minhui identified itself as an exporter of preserved mushrooms produced by its supplier, Longhai Jiuhu Longhuan Tin Food Factory.[2]

As required by 19 CFR 351.214(b)(2)(i), (ii), and (iii)(A), each company identified above has certified that it did not export certain preserved mushrooms to the United States during the period of investigation (“POI”), and that it has never been affiliated with any exporter or producer which did export certain preserved mushrooms during the POI. Each company has further certified that its export activities are not controlled by the central government of the PRC, satisfying the requirements of 19 CFR 351.214(b)(2)(iii)(B). Pursuant to 19 CFR 351.214(b)(2)(iv)(A), each company provided the date of the first sale to an unaffiliated customer in the United States. Each company submitted documentation establishing the date on which it first shipped the subject merchandise to the United States and the volume of that shipment. Nanning Runchao, Zhongjia and Minhui also provided the date of entry of that first shipment.

In accordance with section 751(a)(2)(B) of the Tariff Act of 1930 (“the Act”), as amended, and 19 CFR 351.214(b), and based on our analysis of the information and documentation provided with the new shipper review requests, as well as our analysis of proprietary import data from the U.S. Bureau of Customs and Border Protection (“Customs”), we find that Nanning Runchao and Guangxi Hengxian have met the requirements under which the Department can initiate a new shipper review (for more details, *see* New Shipper Initiation Checklists for Nanning Runchao and Guangxi Hengxian). Therefore, we are initiating a new shipper review for Nanning Runchao and Guangxi Hengxian. Furthermore, based on our analysis of the information and documentation provided with the new shipper review requests, as well as our analysis of proprietary import data from Customs, we find that XITIC, Zhongjia and Minhui all had transactions which took place outside of the relevant period of review (“POR”) and therefore do not meet the requirements under which the Department can initiate a new shipper review (for more details, *see* New Shipper Initiation Checklists for XITIC, Zhongjia and Minhui). Thus, we are not initiating a new shipper review for XITIC, Zhongjia and Minhui.

In cases involving non-market economies, it is the Department's normal practice to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide *de jure* and *de facto* evidence of an absence of government control over the company's export activities. Accordingly, we will issue a questionnaire to Nanning Runchao and Guangxi Hengxian (including a complete separate rates section), allowing approximately 37 days for response. If the response from each respondent provides sufficient indication that it is not subject to either *de jure* or *de facto* government control with respect to its exports of brake rotors, the review will proceed. If a respondent does not demonstrate its eligibility for a separate rate, then it will be deemed to be affiliated with other companies that exported during the POI and that it did not establish entitlement to a separate rate, and the review of that respondent will be rescinded.

## Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating a new shipper review of the antidumping duty order on certain preserved mushrooms from the PRC. We intend to issue the preliminary results of this review not later than 180 days after the date on which the review is initiated.

In accordance with 19 CFR 351.214(g)(1)(i)(B), the POR for a new shipper review, initiated in the month following the semi-annual anniversary month, will be the six-month period immediately proceeding the semi-annual anniversary month. Therefore, the POR for this new shipper review is:

| Antidumping Duty New Shipper Review Proceeding | Period to be Reviewed |
|---|---|
| PRC: Certain Preserved Mushrooms, A-570-851:. | |
| Nanning Runchao Industrial Trade Company, Ltd. | 02/01/03 - 07/31/03 |
| Guangxi Hengxian Pro-Light Foods, Inc. | 02/01/03 - 07/31/03 |

We will instruct Customs to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from the above-listed companies. This action is in accordance with section 751(a)(2)(B)(iii) of the Act, as amended, and 19 CFR 351.214(e). With regard to Guangxi Hengxian, because Guangxi Hengxian has certified that it both produces and exports the subject merchandise, the sale of which was the basis for its new shipper review request, we will apply the bonding privilege only to entries of subject merchandise for which it is both the producer and exporter. With regard to Nanning Runchao and its producer Guangxi Yizhou, we will apply the bonding privilege only to entries of the subject merchandise exported by Nanning Runchao which was also produced by Guangxi Yizhou.

Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

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[1] On August 7, 2003, the Department issued a memorandum notifying interested parties of its intent to rescind the new shipper review of this company, initiated on March 28, 2003 (see 68 FR 15152), because XITIC's certification failed to identify correctly the producer of the subject merchandise.

[2] On August 4, 2003, the Department preliminarily rescinded the new shipper review of Zhongjia and Minhui, initiated on October 7, 2002, because Zhongjia's and Minhui's certifications failed to identify correctly the producer of the subject merchandise (*see* 68 FR 45792 and 67 FR 62438, respectively).

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: September 30, 2003.

**Jeffrey May,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 03–25387 Filed 10–6–03; 8:45 am]

**BILLING CODE 3510–DS–S**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A-580-829]**

### Stainless Steel Wire Rod From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Preliminary Results of Antidumping Duty Administrative Review.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel wire rod (SSWR) from the Republic of Korea (Korea). The review covers two manufacturers/exporters of subject merchandise during the period of review (POR) September 1, 2001 through August 31, 2002. Based upon our analysis, the Department has preliminarily determined that dumping margins exist for both manufacturers/exporters. If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Bureau of Customs and Border Protection (BCBP) to assess antidumping duties as appropriate. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE** : October 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Karine Gziryan, Jeff Pedersen, or Crystal Scherr Crittenden, AD/CVD Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4081, (202) 482–2769 or (202) 482–0989, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On September 15, 1998, the Department published in the **Federal Register** the antidumping duty order on SSWR from Korea. *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Stainless Steel Wire Rod From Korea*, 63 FR 49331 (September 15, 1998) (*Amended Final Determination*). On September 3, 2002, the Department published a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on SSWR from Korea. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 56267 (September 3, 2002). On September 30, 2002, Changwon Specialty Steel Co., Ltd. (Changwon) and Dongbang Special Steel Co., Ltd. (Dongbang) (collectively, together with Pohang Iron and Steel Co., Ltd. (POSCO), respondent[1] (*see* the "Affiliation and Collapsing" section of this notice)) requested an administrative review of the U.S. sales of Changwon and Dongbang that were subject to the antidumping order on SSWR from Korea. On October 24, 2002, the Department initiated an administrative review of Changwon and Dongbang. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 65336 (October 24, 2002).

On October 15, 2002, the Department issued an antidumping questionnaire to Changwon and Dongbang. The Department received Changwon's and Dongbang's responses in November and December 2002. The Department issued supplemental questionnaires to Changwon and Dongbang in December 2002 and, January, February, March and April 2003, and received responses from Changwon and Dongbang in January, February, March and April 2003.

On May 16, 2003 the Department published in the **Federal Register** a notice extending the deadline for issuing the preliminary results in this case until no later than September 30, 2003. *See Stainless Steel Wire Rod from South Korea: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 26571 (May 16, 2003).

### Scope of the Review

For purposes of this review, SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar. The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches in diameter.

Two stainless steel grades are excluded from the scope of the review. SF20T and K-M35FL are excluded. The chemical makeup for the excluded grades is as follows:

SF20T

| | | | |
|---|---|---|---|
| Carbon | 0.05 max | Chromium | 19.00/21.00 |
| Manganese | 2.00 max | Molybdenum | 1.50/2.50 |
| Phosphorous | 0.05 max | Lead-added | (0.10/0.30) |
| Sulfur | 0.15 max | Tellurium-added | (0.03 min) |
| Silicon | 1.00 max | | |

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[1] Although we are treating POSCO, Changwon, and Dongbang, as a single entity, we may, in certain instances, refer to POSCO, Changwon, and Dongbang separately to distinguish the information separately reported by these companies.

K-M35FL

| | | | |
|---|---|---|---|
| Carbon | 0.015 max | Nickel | 0.30 max |
| Silicon | 0.70/1.00 | 12.50/14.00 | |
| Manganese | 0.40 max | Lead | 0.10/0.30 |
| Phosphorous | 0.04max | Aluminum | 0.20/0.35 |
| Sulfur | 0.03 max | | |

The products subject to this review are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

## Affiliation and Collapsing

A. Changwon, POSCO, and Dongbang

During the less-than-fair value (LTFV) investigation, POSCO was the sole supplier to Dongbang of black coil (unfinished SSWR). *See Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Wire Rod from Korea*, 63 FR 40404, 40410 (July 29, 1998) (*Final Determination*). Based on this fact, and the fact that Dongbang was not able to obtain suitable black coil from alternative sources, the Department determined that POSCO and its wholly-owned subsidiary, Changwon, were affiliated with Dongbang through a close supplier relationship pursuant to section 771(33)(G) of the Act and section 351.102(b) of the Department's regulations. See id. In the Final Determination, the Department also collapsed Changwon, POSCO, and Dongbang and treated them as a single entity for purposes of the dumping analysis in accordance with section 351.401(f) of the Department's regulations. *See id.*

Neither POSCO, Changwon, nor Dongbang has provided any new evidence requiring the Department to revisit this finding. Therefore, we continue to find that POSCO and Changwon are affiliated with Dongbang through a close supplier relationship.[2] Further, we have continued to treat POSCO, Changwon, and Dongbang as a single entity and to calculate a single margin for them. (*See, e.g., Frozen Concentrated Orange Juice from Brazil; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 66 FR 29930, 29931 (June 4, 2001), citing *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 64 FR 17998, 17999 (April 13, 1999) (unchanged by the final results)).

B. Affiliation Between Changwon, Dongbang and U.S. Trading Company Customers

Dongbang reported U.S. sales to trading companies whom it classified as unaffiliated parties in its November 19, and December 12, 2002 questionnaire responses. The petitioners (Carpenter Technoloy Corporation and Empire Specialty Steel) contend that Dongbang is affiliated with these trading company customers through a principal/agent relationship.

In the review of SSWR from Korea covering the period September 1, 1999 through August 31, 2000, the petitioners also contended that Changwon and Dongbang were affiliated with certain U.S. trading company customers through a principal/agent relationship. However, the Department determined that no such relationship existed. *See Stainless Steel Wire Rod From Korea; Final Results of Antidumping Duty Administrative Review*, 67 FR 6685 (February 13, 2002). *See also* Memorandum from Holly Kuga to Bernard Carreau on Whether Changwon and Dongbang are Affiliated With Certain U.S. Customers Under Section 771(33) of the Act, dated October 1, 2001. Because the petitioners have not provided any new evidence indicating a change in the relationship between these companies, we continue to find that Dongbang is not affiliated with its U.S. trading company customers through a principal/agent relationship.

## Duty Absorption

On November 5, 2002, the petitioners requested that the Department determine whether antidumping duties had been absorbed during the POR by the respondent. Section 751(a)(4) of the Tariff Act of 1930, as amended (the Act), provides for the Department, if requested, to determine, during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. Because the collapsed entity POSCO/Changwon/Dongbang (*see* "Affiliation and Collapsing" section of this notice) sold to unaffiliated customers in the United States through an importer that is affiliated, and because this review was initiated four years after the publication of the order, we will make a duty absorption determination in this segment of the proceeding within the meaning of section 751(a)(4) of the Act.

On February 21, 2003, the Department requested evidence from the respondent to demonstrate that the U.S. purchasers will pay any antidumping duties ultimately assessed on entries during the POR. In its response, submitted on February 28, 2003, Changwon, which is affiliated with the importer of the subject merchandise, stated that it negotiates a duty paid delivered price that includes the antidumping duties, and thus it sets prices so as to pass the cost of the antidumping duties to the customer. In determining whether the antidumping duties have been absorbed by the respondent during the POR we presume that the duties will be absorbed for those sales that have been made at less than normal value (NV). This presumption can be rebutted with evidence (*e.g.*, an agreement between the affiliated importer and unaffiliated purchaser) that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise.

Although Changwon claims that the price charged to the unaffiliated U.S. customer includes duties paid, it provided no evidence that these duties include antidumping duties nor did it provide an agreement between the affiliated importer and the unaffiliated purchaser stating that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise. Therefore, we preliminarily find that antidumping duties have been absorbed by POSCO/Changwon/Dongbang on all U.S. sales made through its affiliated importer.

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[2] During the POR, Changwon, and not POSCO, was Dongbang's sole supplier of black coil. However, since we continue to treat POSCO and Changwon as a single entity (as we did in the LTFV investigation), this does not change our determination that POSCO/Changwon are affiliated with Dongbang through a close supplier relationship.

### Section 201 Duties

The Department notes that merchandise subject to this review is subject to duties imposed under section 201 of the Act (section 201 duties). Because the Department has not previously addressed the appropriateness of deducting section 201 duties from export price and constructed export price, on September 9, 2003 the Department published a request for public comments on this issue (68 FR 53104). All comments are due by October 9, 2003 and rebuttal comments are due October 24, 2003. Since the Department has not made a determination on this issue at this time, for purposes of these preliminary results, no adjustment has been made.

### Normal Value Comparisons

To determine whether the respondent's sales of SSWR from Korea to the United States were made at less than NV, we compared the export price (EP) and constructed export price (CEP), as appropriate, to the NV, as described in the "Export Price," "Constructed Export Price" and "Normal Value" sections of this notice, below. We first attempted to compare contemporaneous U.S. and comparison-market sales of products that are identical with respect to the following characteristics: grade, diameter, further processing and coating. Where we were unable to compare sales of identical merchandise, we compared U.S. sales to comparison-market sales of the most similar merchandise based on the above characteristics, which are listed in order of importance for matching purposes.

### Export Price

For all reported U.S. sales, other than those made by the U.S. affiliate POSAM, in calculating U.S. price, the Department used EP, as defined in section 772(a) of the Act, because the merchandise was sold, prior to importation, to unaffiliated purchasers in the United States, or to an unaffiliated purchaser for exportation to the United States, and CEP methodology was not otherwise warranted based on the facts on the record. We calculated EP based on the packed, delivered prices charged to unaffiliated customers in the United States or to unaffiliated customers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price, where applicable, for foreign movement expenses (including brokerage and handling and inland freight), international freight, and marine insurance. We added duty drawback received on imported materials, pursuant to section 772(c)(1)(B) of the Act.

### Constructed Export Price

For all reported sales by the U.S. affiliate POSAM, in calculating U.S. price, the Department used CEP, as defined in section 772(b) of the Act, because the merchandise was sold, after importation, to unaffiliated purchasers in the United States. We calculated CEP based on delivered prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for foreign and U.S. brokerage and handling, foreign and U.S. inland freight, international freight, marine insurance, U.S. duties, and direct and indirect selling expenses to the extent that they are associated with economic activity in the United States in accordance with section 772(d)(1)(B) and (D) of the Act. These deductions included credit expenses. We added duty drawback received on imported materials pursuant to section 772(c)(1)(B) of the Act. Finally, in accordance with section 772(d)(3) of the Act, we made a deduction for CEP profit.

For further details, *see* Calculation Memorandum dated September 30, 2003, on file in the Central Records Unit, Room B-099 of the Main Commerce Building (CRU).

### Level of Trade (LOT)

In accordance with section 773(a)(1)(B) of the Act, to the extent practical, we determined NV based on sales in the comparison market at the same LOT as the EP or CEP sales. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale. For CEP sales, it is the level of the constructed sale from the exporter to the importer. The Department adjusts the CEP, pursuant to section 772(d), prior to performing the LOT analysis, as articulated by the Department's regulations at section 351.412. *See Micron Technology, Inc. v. United States*, 243 F.3rd 1301, 1315 (Fed. Cir. 2001).

To determine whether NV sales are at a different LOT than the EP or CEP sales, we examined stages in the marketing process and selling activities along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV as provided under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In determining whether separate LOTs exist, we obtained information from the collapsed entity POSCO/Changwon/Dongbang about the marketing stages for the reported U.S. and comparison-market sales, including a description of the selling activities performed by POSCO/Changwon/Dongbang for each channel of distribution. In identifying LOTs for EP and comparison-market sales, we considered the selling functions reflected in the starting price before any adjustments. *See* 19 CFR 351.412(c)(1)(i). In identifying LOTs for CEP sales, we considered the selling functions reflected in the starting price, as adjusted under section 772(d) of the Act. *See* 19 CFR 351.412(c)(ii). We expect that, if claimed LOTs are the same, the selling functions and activities of the seller at each level should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the selling functions and activities of the seller for each group should be dissimilar.

In their questionnaire responses, Changwon and Dongbang reported that, during the POR, they sold the foreign like product in the home market through one channel of distribution and in the United States through one channel of distribution. We examined the selling functions for the collapsed entity POSCO/Changwon/Dongbang and found that the selling functions performed by Changwon and Dongbang in the home market are similar. Also, we found that the selling functions performed by Changwon and Dongbang with respect to the U.S. channels of distribution are similar. Based on the similarity of the selling functions, we have determined that the collapsed entity's sales of SSWR are made at one LOT in the home market and one LOT in the U.S. market. Moreover, we examined the selling functions for the collapsed entity POSCO/Changwon/

Dongbang, and found that the selling functions performed by the collapsed respondent are sufficiently similar in the home market and the United States to consider the LOTs in the two markets to be the same LOT. Therefore, we preliminarily find that there is one LOT in the U.S. and comparison-market, and thus, no LOT adjustment is required for comparison of U.S. sales to comparison-market sales. Moreover, because there is one LOT in the U.S. and comparison market, we have denied the respondent's request for a CEP offset. For further details, *see* Memorandum regarding Level of Trade Analysis dated September 30, 2003 on file in the CRU.

**Normal Value**

After testing home market viability, whether sales to affiliates were at arm's-length prices, and whether home market sales failed the cost test, we calculated NV as noted in subsection 4, "Calculation of NV," below.

*1. Home Market Viability*

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, whether the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondents' volume of home market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1) of the Act. Because the respondents' aggregate volume of home market sales of the foreign like product is greater than five percent of its aggregate volume of U.S. sales of subject merchandise, we determined that the home market is viable for the respondent.

*2. Affiliated-Party Transactions and Arm's-Length Test*

Sales to affiliated customers in the home market not made at arm's length prices were excluded from our analysis because the Department considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102. To test whether these sales were made at arm's length prices, the Department compared, on a product-specific and quality-specific (*i.e.*, prime and non-prime quality) basis, the prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested products, prices to the affiliated party were on average 99.5 percent or more of the price to unaffiliated parties, the Department determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, the Department was unable to determine that these sales were made at arm's length prices and, therefore, excluded them from our analysis. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, the Department made a comparison to the next most similar product.

*3. Cost of Production (COP) Analysis*

In the second administrative review of SSWR from Korea, the most recently completed segment of this proceeding, the Department disregarded POSCO/Changwon/Dongbang's sales that were found to have failed the cost test. Accordingly, the Department, pursuant to section 773(b) of the Act, initiated a COP investigation of the respondent for purposes of this administrative review. We conducted the COP analysis as described below.

*A. Calculation of COP*

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, for the POR based on the sum of materials and fabrication costs, general and administrative (G&A) expenses, and packing costs.

*B. Test of Comparison-Market Sales Prices*

As required under section 773(b) of the Act, we compared the weighted-average COPs to the comparison-market sales of the foreign like product, in order to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the comparison-market prices, less any applicable movement charges and direct and indirect selling expenses.

*C. Results of the COP Test*

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of POSCO/Changwon/Dongbang's sales of a given product were made at prices below the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in "substantial quantities." Where 20 percent or more of POSCO/Changwon/Dongbang's sales of a given product were made at prices below the COP, we determined that such sales were made in substantial quantities within an extended period of time (i.e., a period of one year). Further, because we compared prices to POR-average costs, we determined that the below-cost prices would not permit recovery of all costs within a reasonable time period, and thus, we disregarded the below-cost sales in accordance with sections 773(b)(1) and (2) of the Act.

We found that for certain products, POSCO/Changwon/Dongbang made home market sales at prices below the COP within an extended period of time in substantial quantities. Further, we found that these sale prices did not permit the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis in accordance with section 773(b)(1) of the Act.

*D. Calculation of CV*

In accordance with section 773(e)(1) of the Act, we calculated POSCO/Changwon/ Dongbang's CV based on the sum of POSCO/Changwon/Dongbang's cost of materials, fabrication, SG&A, including interest expenses, and profit. We calculated the COPs included in the calculation of CV as noted above in the "Calculation of COP" section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by POSCO/Changwon/Dongbang in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

*4. Calculation of NV*

We determined price-based NVs for POSCO/Changwon/Dongbang as follows: we calculated NV based on packed, delivered and ex-factory prices to home market customers. We increased the starting price for duty drawback revenue received from customers, where applicable, and for freight revenue. We made deductions from the starting price for foreign inland freight, where applicable, pursuant to section 773(a)(6)(B)(ii) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we made circumstance-of-sale (COS) adjustments to the starting price, where appropriate, for differences in credit and warranty.

We deducted home market packing costs from, and added U.S. packing costs to, the starting price, in accordance with section 773(a)(6)(A) and (B) of the Act. Where appropriate, we made adjustments to NV to account for differences in the physical characteristics of the merchandise sold in the U.S. and comparison market, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

### Currency Conversion

Pursuant to section 773A(a) of the Act, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

### Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average margin exists for the period September 1, 2001, through August 31, 2002:

| Manufacturer/Exporter | Margin (percent) |
|---|---|
| POSCO/Changwon/ Dongbang ........................ | 1.77 |

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the publication date of this notice. *See* 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 7 days after the deadline for filing case briefs. Interested parties are invited to comment on the preliminary results. Parties who submit arguments are requested to submit with each argument: (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, the parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on a diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days from the publication date of this notice.

### Assessment Rate

Upon completion of this administrative review, the Department will determine, and the BCBP shall assess, antidumping duties on all appropriate entries. For CEP sales, since the respondent reported the entered values and importer for these sales, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping margins calculated for the examined sales to the entered value of sales used to calculate those duties. Where the importer-specific assessment rate is above *de minimis*, we will instruct the BCBP to assess the importer-specific rate uniformly on all entries made during the POR. For EP sales, since the respondent did not report the entered value for these sales, we have calculated exporter-specific per-unit duty assessment rates based on the ratio of the total amount of dumping margins calculated for the examined sales to the quantity corresponding to the sales used to calculate those duties. The Department will issue appropriate assessment instructions directly to the BCBP within 15 days of publication of the final results of review.

### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed companies will be the rate listed above (except that if the rate is *de minimis, i.e.*, less than 0.5 percent, a cash deposit rate of zero will be required); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate of 5.77 percent, which is the "all others" rate established in the LTFV investigation (*see Amended Final Determination*). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

### Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with sections 751(a)(1) and 777(I)(1) of the Act.

Dated: September 30, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–25386 Filed 10–6–03; 8:45 am]

**BILLING CODE 3510–DS–S**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A-580-844]**

### Steel Concrete Reinforcing Bar from The Republic of Korea: Notice of Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Preliminary Results of Antidumping Duty Administrative Review.

**EFFECTIVE DATE:** October 7, 2003.

**SUMMARY:** In response to a request from Dongkuk Steel Mill Corporation Ltd. ("DSM"), the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on steel concrete reinforcing bar ("rebar") from the Republic of Korea (Korea). The period of review ("POR") is January 30, 2001 through August 31, 2002.

As discussed below, the Department collapsed DSM and Korea Iron and Steel Co., Ltd. ("KISCO") into a single entity for purposes of this administrative review. We preliminarily determine that DSM/KISCO made sales at less than normal value during the POR. If these preliminary results are adopted in our final results of review, we will instruct the U.S. Bureau of Customs and Border Protection ("BCBP") to assess antidumping duties based on the difference between the United States Price ("USP") and normal value ("NV"). Interested parties are invited to comment on these preliminary results.

**FOR FURTHER INFORMATION CONTACT:** Richard Johns or Mark Manning at (202) 482–2305 or (202) 482–5253, respectively, Antidumping and Countervailing Duty Enforcement Group

II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

## Background

On September 7, 2001, the Department issued an antidumping duty order on rebar from Korea. *See Antidumping Duty Orders: Steel Concrete Reinforcing Bars From Belarus, Indonesia, Latvia, Moldova, People's Republic of China, Poland, Republic of Korea and Ukraine*, 66 FR 46777 (September 7, 2001). On September 3, 2002, the Department published a notice of opportunity to request the first administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 56267 (September 3, 2002). On September 30, 2002, in accordance with 19 CFR § 351.213(b), DSM requested an administrative review. On October 24, 2002, the Department published the notice of initiation of this administrative review, covering the period January 30, 2001, through August 31, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 65336 (October 24, 2002).

On October 18, 2002, the Department issued a questionnaire to DSM. On November 15, 2002, DSM notified the Department that its corporate structure had changed since the less-than-fair-value ("LTFV") investigation and that it is no longer affiliated with KISCO. DSM stated that it should not be required to submit information regarding KISCO's sales or costs of production, and that it would respond to the Department's questionnaire with only its own data. We received timely responses to Sections A-D of the initial questionnaire in November and December 2002. The Department issued supplemental questionnaires for Sections A-D, in addition to questions regarding the relationship between DSM and KISCO, from January through April 2003. We received timely responses from DSM from February through May 2, 2003.

Because it was not practicable to issue the preliminary results of this review within the normal time frame, on June 3, 2003, we published in the Federal Register our notice of the extension of time limits for these preliminary results. *See Steel Concrete Reinforcing Bars from the Republic of Korea: Notice of Postponement of Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 33105 (June 3, 2003). This extension established the deadline for these preliminary results as September 30, 2003.

On May 7, 2003, the Department released to DSM the results of a query of entry data obtained from the BCBP, and requested that DSM verify that all sales through an affiliated company were included in the sales data set submitted to the Department. In response, on May 14, 2003, DSM submitted additional U.S. sales, some of which had been previously unreported. On May 27, 2003, the petitioner[1] objected to the additional sales contained in DSM's May 14, 2003 letter, stating that such sales constitute untimely submitted new factual information and should be removed from the record. On June 2, 2003, DSM submitted comments objecting to the petitioner's request that the additional sales be stricken from the record. On June 23, 2003, the petitioner rebutted DSM's June 2, 2003 submission.

On August 6, 2003, the Department instructed DSM to remove the additional sales from its May 14, 2003 submission and delete all references to those sales from its June 2, 2003 submission. On August 11, 2003, DSM submitted a letter objecting to the removal of the additional sales it had reported. DSM argued that the rejected information was an appropriate and necessary response to questions posed in the Department's May 7, 2003 letter. On August 12, 2003, DSM submitted redacted versions of its May 14, 2003 and June 2, 2003 letters, as well as a revised version of its May 14, 2003 letter. The revised version of DSM's May 14, 2003 letter contains a reconciliation worksheet which shows that DSM's previously reported sales and the additional sales reported on May 14, 2003, sum to the total quantity of entries identified by the BCBP data query.

After reviewing the arguments contained in DSM's August 11 and August 12, 2003 submissions, the Department has decided to accept DSM's additional U.S. sales, as reported in its revised May 14, 2003 submission, and include them in our margin calculation for purposes of the preliminary determination. *See* DSM's May 14, 2003 submission at Attachment III.On September 12, 2003, the Department collapsed DSM and KISCO into a single entity for the purposes of this administrative review. *See* Memorandum from Thomas F. Futtner, Acting Office Director to Holly A. Kuga, Acting Deputy Assistant Secretary Group II, "Decision Memorandum: Whether to Collapse Dongkuk Steel Mill Co., Ltd., and Korea Iron and Steel Co., Ltd., Into a Single Entity," dated September 12, 2003 ("Collapsing Memorandum"), on file in the Central Records Unit, Room B-099 of the Main Commerce Building ("CRU"). On September 15, 2003, we issued the antidumping questionnaire to KISCO. Since the questionnaire was released to KISCO approximately two weeks before the fully extended deadline for the preliminary results, KISCO's sales and costs of production data are not available for inclusion in these preliminary results. For this reason, the preliminary results are based only upon DSM's data. We will provide the petitioner an opportunity to comment on KISCO's questionnaire responses and will include KISCO's information in our final results of review.

## Scope of the Review

The product covered by this administrative review is all rebar sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") under item number 7214.20.00 or any other tariff item number. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth bars) and rebar that has been further processed through bending or coating. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

## Verification

Pursuant to 19 CFR § 351.307, the Department will conduct verification of the information and data submitted by DSM and KISCO prior to the final results of administrative review.

## Fair Value Comparisons

To determine whether sales of rebar in the United States were made at LTFV, we compared USP to NV, as described in the "Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Tariff Act of 1930, as amended ("the Act"), we calculated monthly weighted-average NVs and compared these to individual U.S. transactions.

## Constructed Export Price

We calculated the constructed export price ("CEP") in accordance with subsection 772(b) of the Act, because the subject merchandise was first sold in the United States by Dongkuk International Inc. ("DKA"), a U.S. seller affiliated with DSM, to a purchaser not affiliated with the producer, DSM. We based CEP on the packed prices charged to the first unaffiliated customer in the United States. Pursuant to section 772(c)(1)(B) we increased the starting price by the amounts reported by DSM for duty drawback. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. customs duties, and U.S. brokerage and handling. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs and other direct selling expenses), and indirect selling expenses. We also made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act. *See* Memorandum from Mark Manning, Senior Import Compliance Specialist, to Ronald Trentham, Acting Program Manager, "Calculation Memorandum of the Preliminary Results of Administrative Review," dated September 30, 2003 ("Preliminary Calculation Memorandum"), on file in the CRU.

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[1] The petitioner in this administrative review is the Rebar Trade Action Coalition and its individual members (collectively, the "petitioner").

### Home Market

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Act. As DSM's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

It is the Department's practice to remove from our analysis sales to affiliated customers for consumption in the home market which are determined not to be at arm's-length. To test whether these sales were made at arm's-length, we compared the prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Pursuant to 19 CFR § 351.403(c), and in accordance with our practice, when the prices to the affiliated party are, on average, less than 99.5 percent of the prices to unaffiliated parties, we determine that the sales made to the affiliated party are not at arm's-length. See 19 CFR § 351.403(c).[2] In the instant review, we found that all sales to the single affiliated home market customer passed the arm's-length test and, for this reason, were included in our analysis. See Preliminary Calculation Memorandum.

### Cost of Production Analysis

The Department disregarded certain sales made by DSM in the investigation because these sales failed the cost test. *See Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bar from the Republic of Korea*, 66 FR 33526 (June 22, 2001); *see also Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Concrete Reinforcing Bars from the Republic of Korea*, 66 FR 8348, 8354 (January 30, 2001). Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that sales of rebar in the home market were made at prices below their cost of production ("COP") in the current review period. Accordingly, pursuant to section 773(b) of the Act, we initiated a cost investigation to determine whether sales made during the POR were at prices below their respective COP.

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses ("G&A") and interest expenses. We relied on the COP data submitted by DSM. *See* Preliminary Calculation Memorandum.

In accordance with section 773(b)(1) of the Act, in determining whether to disregard home market sales made at prices below COP, we examined whether such sales were made within an extended period of time in substantial quantities, and whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of DSM's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that model because these below-cost sales were not made in substantial quantities. Where 20 percent or more of DSM's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because such sales were made: (1) in substantial quantities within the POR (*i.e.*, within an extended period of time) in accordance with section 773(b)(2)(B) of the Act, and (2) at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act (*i.e.*, the sales were made at prices below the weighted-average per-unit COP for the POR). We used the remaining sales as the basis for determining NV in accordance with section 773(b)(1) of the Act. We did not use the constructed value ("CV"), as all U.S. sales were matched to home market merchandise.

### Normal Value

We calculated NV based on prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's length. We adjusted the starting price for the discount DSM provided to certain home market customers. We made deductions, where appropriate, for foreign inland freight and warehousing, pursuant to section 773(a)(6)(B) of the Act. In addition, when comparing sales of similar merchandise, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR § 351.411. We also adjusted the starting price for differences in circumstances of sale ("COS") in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR § 351.410. We made a COS adjustment for imputed credit expenses. *See* Preliminary Calculation Memorandum. We also made an adjustment for the CEP offset in accordance with section 773(a)(7)(B) of the Act. *See* "Level of Trade and CEP Offset" section below. Finally, we deducted home-market ("HM") packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

### Level of Trade and CEP Offset

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative ("SG&A") expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer. Moreover, for CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit, pursuant to section 772(d) of the Act. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001).

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[2] Because this review was initiated before November 23, 2002, the 99.5 percent test applies to this review. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69197 (November 15, 2002).

To determine whether the comparison-market sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV LOT is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP affect price comparability, we adjust NV under section 773(a)(7)(B) of the Act ("the CEP offset provision"). *See, e.g., Certain Carbon Steel Plate from South Africa, Final Determination of Sales at Less Than Fair Value*, 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we asked DSM to identify the specific differences and similarities in selling functions and support services between all phases of marketing in the home market and the United States. DSM identified two channels of distribution in the home market: (1) direct sales and (2) warehouse sales. For both channels DSM performs similar selling functions such as negotiating prices with customers, setting similar credit terms, arranging freight to the customer, and conducting market research and sales calls. The remaining selling activities did not differ significantly by channel of distribution. Because channels of distribution do not qualify as separate levels of trade when the selling functions performed for each customer class or channel are sufficiently similar, we determined that one level of trade exists for DSM's HM sales.

For the U.S. market, DSM reported one channel of distribution sales to unaffiliated U.S. customers through DKA, DSM's affiliated U.S. sales company. All of DSM's U.S. sales were CEP transactions and DSM performed the same selling functions in each instance. Therefore, the U.S. market has one LOT.

When we compared CEP sales (after deductions made pursuant to section 772(d) of the Act) to HM sales, we determined that for CEP sales, DSM did not have interaction with customers, did not perform market research, and did not provide inventory maintenance. However, these functions are performed for HM sales. The differences in selling functions performed for home market and CEP transactions indicate that HM sales involved a more advanced stage of distribution than CEP sales. In the home market, DSM provides services normally found further down the chain of distribution which are normally performed by the affiliated reseller in the U.S. market (*e.g.*, interaction with customers, market research).

Based on our analysis, we determined that CEP and the starting price of HM sales represent different stages in the marketing process, and are thus at different LOTs. Therefore, when we compared CEP sales to HM sales, we examined whether a LOT adjustment may be appropriate. In this case, DSM sold at one LOT in the home market; therefore, there is no basis upon which to determine whether there is a pattern of consistent price differences between levels of trade. Further, we do not have the information which would allow us to examine pricing patterns of DSM's sales of other similar products, and there is no other record evidence upon which such an analysis could be based.

Because the data available do not provide an appropriate basis for making a LOT adjustment, but the LOT in Korea for DSM is at a more advanced stage than the LOT of the CEP sales, a CEP offset is appropriate in accordance with section 773(a)(7)(B) of the Act, as claimed by DSM. Therefore, we applied the CEP offset to NV.

## Preliminary Results of Review

As a result of our review, we preliminarily determine the following weighted-average dumping margin exists for the period January 30, 2001 through August 31, 2002:

| Manufacturer / Exporter | Weighted Average Margin (percentage) |
|---|---|
| Dongkuk Steel Mill Co., Ltd./Korea Iron and Steel Co., Ltd. | 10.37 |

The Department will disclose the calculations performed within five days of the date of publication of this notice in accordance with 19 CFR § 351.224(b). An interested party may request a hearing within thirty days of publication. *See* CFR § 351.310(c). The date of any hearing, if requested, will be announced to all interested parties by the Department pursuant to 19 CFR § 351.310(d). The Department will establish a schedule for interested parties to submit case briefs regarding the preliminary results and verification findings. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 5 days after the submission of case briefs. Parties who submit argument in these proceedings are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue final results of these administrative reviews, including the results of our analysis of the issues raised in any such written comments, within 120 days of publication of these preliminary results.

The Department shall determine, and BCBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR § 351.212(b)(1), we will calculate importer-specific *ad valorem* assessment rates for the merchandise subject to this review. These rates will be assessed uniformly on all entries the respective importers made during the POR if these preliminary results are adopted in the final results of review. The Department will issue appropriate appraisement instructions directly to BCBP within fifteen days of publication of the final results of review.

Furthermore, the following cash deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of rebar from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: 1) the cash deposit rate for DSM/KISCO will be the rate established in the final results of this review; 2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 22.89 percent, the "all others" rate made effective by the LTFV investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From the Republic of Korea*, 66 FR 33526 (June 22, 2001). The required cash deposits shall remain in effect until publication of the final results of the next administrative review.

**Notification to Importers**

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR § 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 30, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–25382 Filed 10–6–03; 8:45 am]

BILLING CODE 3510–DS–S

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 100103A]

### Pacific Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The Pacific Fishery Management Council's (Council) Joint Salmon Technical Team (STT) and Scientific and Statistical Committee (SSC) Salmon Subcommittee will hold a work session to review proposed salmon methodology changes. The Council's Model Evaluation Workgroup (MEW) will hold a work session to review documentation of Fishery Regulation Assessment Models (FRAMs). The work sessions are open to the public.

**DATES:** The joint STT and SSC Salmon Subcommittee work session will be held Thursday, October 23, 2003 from 9 a.m. to noon. The MEW work session will be held Thursday, October 23, 2003 from 1 p.m. to 5 p.m.

**ADDRESSES:** The work sessions will be held at the Embassy Suites Hotel, Pine II Room, 7900 NE 82nd Ave., Portland, OR 97220; telephone: 503–460–3000.

*Council address:* Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

**FOR FURTHER INFORMATION CONTACT:** Mr. Chuck Tracy, Salmon Management Staff Officer, Pacific Fishery Management Council; telephone: (503) 820–2280.

**SUPPLEMENTARY INFORMATION:** The purpose of the joint STT & SSC Salmon Subcommittee work session is to brief the STT and SSC on changes made to or proposed for the Coho FRAM, review the scientific bases for those changes, and compare results from the updated model with those from the previous version. The purpose of the MEW work session is to further develop documentation for the Chinook and Coho FRAM.

Although non-emergency issues not contained in the meeting agendas may come before the these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: October 2, 2003.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–25374 Filed 10–6–03; 8:45 am]

BILLING CODE 3510–22–S

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP03–356–000]

### El Paso Natural Gas Company; Notice of Request for Authorization

October 1, 2003.

Take notice that on September 22, 2003, El Paso Natural Gas Company (El Paso), Post Office Box 1087, Colorado Springs, Colorado, 80904, filed in Docket No. CP03–356–000 a request pursuant to Sections 157.216(b) and 157.208(b) of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act (NGA) for authorization to abandon by removal and reconfigure segments of El Paso's 8–⅝ inch Willcox/Safford line (Line 2105), located between milepost (MP) 0+0000 and MP 11+0264, located in Cochise County, Arizona, pursuant to Section 7 of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

El Paso states the proposed abandonment and reconfiguration is necessary in order to address anomalies discovered in Line 2105 (between MP 0 and MP 11.05) during an internal inspection conducted by El Paso during 2001 and 2002. Any questions concerning this request may be directed to Robert T Tomlinson, Director, Regulatory Affairs Department, El Paso Natural Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944, at (719) 520–3788 or fax (719) 520–4318.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's under the "e-Filing" link. The Commission strongly encourages electronic filings.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00006 Filed 10–6–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER03–580–003, *et al.*]**

## Midwest Independent Transmission System Operator, Inc., *et al.*; Electric Rate and Corporate Filings

September 30, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

### 1. Midwest Independent Transmission System Operator, Inc.

[Docket Nos. ER03–580–003 EL03–119–003]

Take notice that on September 26, 2003, the GridAmerica Companies and the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) (Applicants) submitted proposed revisions to the Midwest ISO Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1. Applicants state that these revisions supplement the Compliance Filing made by the Applicants on May 30, 2003 in Docket Nos. ER03–580–001 and EL03–119–001.

The Midwest ISO has requested an effective date upon commencement of service over the GridAmerica transmission facilities under the Midwest ISO OATT.

The Midwest ISO has also requested waiver of the service requirements set forth in 18 CFR 385.2010. The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO also states that it will provide hard copies to any interested parties upon request.

*Comment Date:* October 17, 2003.

### 2. Craven County Wood Energy Limited Partnership

[Docket No. ER03–1379–000]

Take notice that on September 25, 2003, Craven County Wood Energy Limited Partnership (Craven) tendered for filing a Supplement No. 5 to Rate Schedule FERC No.1. Craven states that the Supplement consists of a letter agreement, dated January 28, 1991, amending an agreement for the sale of power dated December 21, 1983, as subsequently amended by letters dated August 5, 1987, August 1, 1988, August 9, 1988, and June 14, 1989, all previously filed with the Commission. Craven states that a review of its files caused it to be aware of the need to file the January 28, 1991 letter agreement as a Supplement to its previously filed power sales agreement with Carolina Power & Light Company.

*Comment Date:* October 16, 2003.

### 3. Southern Company Services, Inc.

[Docket No. ER03–1381–000]

Take notice that on September 24, 2003, Southern Company Services, Inc. (SCS), on behalf of Georgia Power Company (Georgia Power), tendered for filing an unexecuted Interconnection Agreement by and between Georgia Power and Live Oaks Company, LLC (Live Oaks) (the Agreement), under Southern Operating Companies' Open Access Transmission Tariff (FERC Electric Tariff, Fourth Revised Volume No. 5) designated as Service Agreement No. 464. SCS states that the Agreement provides the general terms and conditions for the interconnection and parallel operation of Live Oaks's electric generating facility located near the City of Brunswick, Georgia in Glynn County. SCS also states that the Agreement terminates forty years from the effective date unless extended or terminated earlier by mutual written agreement.

*Comment Date:* October 15, 2003.

### 4. American Electric Power Service Corporation

[Docket No. ER03–1382–000]

Take notice that on September 24, 2003, American Electric Power Service Corporation (AEPSC) as agent for Public Service Company of Oklahoma (PSO), tendered for filing pursuant to Section 35.15 of the Federal Energy Regulatory Commission's regulations, Notices of Cancellation of Service Agreements between PSO and various entities under PSO's FERC Electric Tariff, First Revised Volume No. 5. AEPSC requests an effective date of September 1, 2003 for the cancellations.

AEPSC states that it has served copies of the filing upon the parties to the cancelled service agreements and the affected state regulatory commissions.

*Comment Date:* October 15, 2003.

### 5. DeSoto County Generating Company, L.L.C.

[Docket No. ER03–1383–000]

Take notice that on September 25, 2003, Progress Energy, Inc. (Progress Energy), on behalf of DeSoto County Generating Company, L.L.C. (DeSoto), tendered for filing a request for market-based rate (MBR) authority for DeSoto. Progress Energy requests that the Commission make DeSoto's MBR tariff effective on November 25, 2003, sixty days after the date of this filing. Progress Energy also requests waiver for DeSoto from the Commission's accounting, reporting and other requirements under Parts 41,101 and 141 of the Commission's regulations.

Progress Energy states that a copy of the filing was served on each entity operating a control area in Peninsular Florida and the Florida Public Service Commission.

*Comment Date:* October 16, 2003.

### 6. Tampa Electric Company

[Docket No. ER03–1384–000]

Take notice that on September 25, 2003, Tampa Electric Company (Tampa Electric) tendered for filing amendments to Appendices Card D to its Market-Based Sales Tariff. The amendments lower the credit rating thresholds in Appendix C and update the statement of rates for services under Tampa Electric's open access transmission tariff in Appendix D. Tampa Electric proposes that the amendments be made effective on September 25, 2003.

Tampa Electric states that copies of the filing have been served on the customers under Tampa Electric's Market-Based Sales Tariff and the Florida Public Service Commission.

*Comment Date:* October 16, 2003.

### 7. Exelon Corporation

[Docket No. ER03–1385–000]

Take notice that on September 25, 2003, Exelon Corporation submitted for filing revised and redated Network Service and Network Operating Agreements between Commonwealth Edison Company and the Cities of Batavia and St. Charles, Illinois.

*Comment Date:* October 16, 2003.

**8. Cleco Power LLC**

[Docket No. ER03–1386–000]

Take notice that on September 25, 2003, Cleco Power LLC (Cleco) filed changes to Sections 3, 13.7, 14.5, and 15.7 of its Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 14, 22, 24, and 26 to incorporate charges for unauthorized use of transmission and ancillary services. Cleco states that it is submitting First Revised Sheet Nos. 14, 22, 24, and 26 and Original Sheet Nos. 14A, 22A, 24A, and 26A to its FERC Electric Tariff, Original Volume No. 1 and proposes that they be made effective October 1, 2003.

*Comment Date:* October 16, 2003.

**9. LG&E Capital Trimble County LLC**

[Docket No. ER03–1387–000]

Take notice that on September 25, 2003, LG&E Capital Trimble County LLC tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15, in order to reflect the cancellation of its Market Rate Tariff, designated as Rate Schedule FERC No. 2, Original Sheet Nos. 1–4, originally accepted for filing in Docket No. ER02–1756–000.

*Comment Date:* October 16, 2003.

**10. Electrion, Inc.**

[Docket No. ER03–1388–000]

Take notice that on September 25, 2003, Electrion, Inc. submitted for filing a Notice of Cancellation of its Market-based Rate Authority in Docket No. ER98–3171–000 issued on June 29, 1998. Electrion, Inc. is requesting an effective date of October 1, 2003.

*Comment Date:* October 16, 2003.

**11. Progress Energy, Inc., Carolina Power & Light Company, Progress Ventures, Inc., Effingham County Power, LLC, MPC Generating, LLC, Rowan County Power, LLC, Walton County Power, LLC, Washington County Power, LLC**

[Docket No. ER03–1389–000]

Take notice that on September 25, 2003, Progress Energy, Inc., (Progress Energy) on behalf of certain of its subsidiaries including: Carolina Power & Light Company; Progress Ventures, Inc.; Effingham County Power, LLC; MPC Generating, LLC (formerly known as Monroe Power Company); Rowan County Power, LLC; Walton County Power, LLC; and Washington County Power, LLC (collectively, the Progress Energy Affiliates), tendered for filing a request for clarification of the Progress Energy Affiliates' Market-based Rate (MBR) authority within Peninsular Florida, with the exception of the Florida Power Corporation (FPC) service territory. Progress Energy also submitted revised MBR tariffs for each of the Progress Energy Affiliates which describe their authority to make MBR sales within Peninsular Florida, with the exception of FPC service territory.

Progress Energy states that copies of the filing were served on the official service lists in the above-captioned proceedings, each entity operating a control area in Peninsular Florida, and the Florida Public Service Commission.

*Comment Date:* October 16, 2003.

**Standard Paragraph**

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00007 Filed 10–6–03; 8:45 am]

BILLING CODE 6717–01–P

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**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**[Docket Nos. RM01–12–000 and RT01–95–000]**

**Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, New York Independent System Operator, Inc. ; Notice of Technical Conference**

October 1, 2003.

As announced in the Notice of Technical Conference issued on August 15, 2003, a technical conference will be held on October 20, 2003, to discuss with state regulators and market participants the timetables for addressing wholesale power market design issues and to explore ways to provide flexibility the region may need to meet the requirements of the final rule in this proceeding. Members of the Commission will attend and participate in the discussion.

The conference will focus on the issues identified in the agenda, which is appended to this notice as Attachment A. However, participants/stakeholders may present their views on other important issues that relate to the development of the Wholesale Power Market Platform.

The conference will begin at 1 p.m. Eastern Time and will adjourn at about 5 p.m. Eastern Time at the offices of Consolidated Edison Company, 4 Irving Place, 19th floor auditorium, New York City, New York. The conference is open for the public to attend. Please note: to accommodate security regulations for the Consolidated Edison building, we are asking all attendees to preregister for the conference by close of business on Thursday, October 16 on-line at *http://www.ferc.gov/whats-new/registration/smd_1020-form.asp.*

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary seven calendar days after FERC receives the transcript. Additionally, Capitol Connection offers the opportunity to remotely listen to the conference via the Internet or a Phone Bridge Connection for a fee. Interested persons should make arrangements as soon as possible by visiting the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and clicking on "FERC." If you have any questions contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100).

For more information about the conference, please contact Sarah McKinley at (202) 502–8004 or *sarah.mckinley@ferc.gov*.

**Magalie R. Salas,**
*Secretary.*

## Appendix A—Agenda

1–1:20 p.m. Opening Remarks
Pat Wood, III, Chairman, Federal Energy Regulatory Commission
William Flynn, Chairman, New York Public Service Commission
Joe Oates, Consolidated Edison, Chairman, Management Committee, New York ISO
1:20–1:30 p.m. Summary of NYISO Issues
William J. Museler, President and CEO, New York ISO
1:30–2:15 p.m. Panel I Discussion:
Transmission Planning and Incentives for Infrastructure Development
Generator Owners:
- Glenn Haake, General Counsel, Independent Power Producers of New York Inc.

Public Power/Environment:
- Jim Parmelee, Director, Long Island Power Authority End Use Consumers:
- Mike Mager, Counsel, Couch White LLP, representing Multiple Intervenors

Transmission Owners:
- Masheed Rosenqvist, Vice President—Director Transmission Regulation and Policy U.S., National Grid
- Stuart Nachmias, Project Manager, Consolidated Edison Company of New York, Inc.

Other Suppliers:
- Matt Picardi, General Manager—Regulatory Affairs, Coral Power LLC

2:15–3 p.m. Panel II Discussion:
Pancaked Transmission Rates and Seams Issues
Generator Owners:
- Mark Younger, Vice President, Slater Consulting, representing Indeck and Fortistar
- William Roberts, Senior Counsel, Edison Mission Marketing & Trading, Inc.

Public Power/Environment:
- Tom Rudebusch, Counsel, Duncan Weinberg Genzer & Pembroke, representing City of Jamestown Public Utilities

End Use Consumers:
- Tariq Niazi, Chief Economist, New York State Consumer Protection Board

Transmission Owners:
- Ray Kinney, Project Manager, New York State Electric & Gas

Other Suppliers:
- Peter Brown, Brown Olson & Wilson P.C., representing Aquila

3–3:15 p.m. Break
3:15–4 p.m. Panel III Discussion: Regional Decision-making:
NYISO Governance and State/Regional Committees
Generator Owners:
- Susann Felton, Director, Regulatory Affairs, Mirant Americas Energy Marketing LP

Public Power/Environment:
- Bob Hiney, Executive Vice President, Power Generation, New York Power Authority

End Use Consumers:
- Mike Delaney, Energy Policy Advocate, City of New York

Transmission Owners:
- Paul Gioia, Counsel, LeBoeuf Lamb Greene & MacRae LLP

Other Suppliers:
- Dan Allegretti, Vice President, Regulatory Origination, Constellation

4–5 p.m. Discussion with Regulators and Industry Representatives

[FR Doc. E3–00004 Filed 10–6–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2030–036]**

### Portland General Electric and the Confederated Tribes of the Warm Springs Reservation of Oregon; Notice of Meeting To Discuss Update on Pelton Round Butte Hydroelectric Project Collaborative Settlement Process

October 1, 2003.

a. *Date and Time of Meeting:* Wednesday, October 15, 2003 at 11 a.m. Eastern Daylight Saving Time.

b. *Place:* Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC.

c. *FERC Contact:* Nicholas Jayjack.

d. *Purpose of Meeting:* Portland General Electric has requested a meeting with Commission staff to update staff on the status of ongoing settlement talks and to request procedural advice regarding the Pelton Round Butte Hydroelectric Project. The project is located on the Deschutes River in north central Oregon.

e. *Proposed Agenda:* (1) Introduction of participants; (2) Portland General Electric presentation on the purpose of the meeting; (3) Discussion; and (4) Conclusion.

f. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to participate. Please call Nicholas Jayjack at (202) 502–6073 by October 8, 2003, to RSVP and to receive instructions on how to participate in person or by phone.

**Magalie R. Salas,**
*Secretary.*

[FR Doc. E3–00005 Filed 10–6–03; 8:45 am]

BILLING CODE 6717–01–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7569–5]**

### Science Advisory Board Staff Office; Advisory Council on Clean Air Compliance Analysis; Notification of Upcoming Public Teleconferences for Its Subcommittees and Special Panel and a Public Meeting for Its Special Panel and Air Quality Modeling Subcommittee

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA Science Advisory Board Staff Office is announcing a public meeting and a public teleconference of the Advisory Council on Clean Air Compliance Analysis Special Council Panel for the Review of the Third 812 Analysis (Council Special Panel). It is also announcing a public meeting and a public teleconference of the Council's Air Quality Modeling Subcommittee and a public teleconference for the Council's Health Effects Subcommittee.

**DATES:** October 15, 2003. A public teleconference for the Health Effects Subcommittee (HES) will be held from 11 a.m. to 12:30 p.m. (Eastern Time).

October 23, 2003. A public teleconference call meeting for the Council Special Panel will be held from 11 a.m. to 12:30 p.m. (Eastern Time).

October 24, 2003. A public teleconference call meeting for the Air Quality Modeling Subcommittee (AQMS) will be held from 11 a.m. to 12:30 p.m. (Eastern Time).

November 5–6, 2003. A public meeting for the Council Special Panel will be held from 8:30 a.m. to 6 p.m. November 5, 2003 and from 8:30 a.m.to 5 p.m on November 6, 2003 (Eastern Time).

November 7, 2003. A public meeting for the AQMS will be held from 8:30 a.m. to 5 p.m on November 7, 2003 (Eastern Time).

**ADDRESSES:** The meeting location for the November 5–6, 2003 meeting of the Council Special Panel and for the November 6–7, 2003 meeting of the AQMS will be in Washington, DC. The meeting location will be announced on the SAB website, *http://www.epa/sab* in advance of the meeting. Participation in the teleconference meetings will be by teleconference only.

**FOR FURTHER INFORMATION CONTACT:** Members of the public who wish to obtain the call-in number and access code to participate in the teleconference meeting may contact Ms. Sandra

Friedman, EPA Science Advisory Board Staff Office, at telephone/voice mail: (202) 564–2526; or via e-mail at: *friedman.sandra@epa.gov*, or Ms. Delores Darden, EPA Science Advisory Board Staff Office at telephone/voice mail: (202) 564–2282; or via e-mail at *darden.delores@epa.gov*. Any member of the public wishing further information regarding the Council Special Panel or the Council's Subcommittees may contact Dr. Angela Nugent, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board (1400A), 1200 Pennsylvania Avenue NW., Washington, DC 20460; by telephone/voice mail at (202) 564–4562; or via e-mail at *nugent.angela@epa.gov*. General information about the SAB can be found in the SAB web site at *http://www.epa.gov/sab*.

**SUPPLEMENTARY INFORMATION:**

## Background

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, Notice is given that the Council Special Panel and the AQMS will each hold a public meeting and the HES will hold a public teleconference call, as described above, to advise the Agency on its plan to develop the third in a series of statutorily mandated comprehensive analyses of the total costs and benefits of programs implemented pursuant to the Clean Air Act.

Background on the Council Special Panel, the AQMS, and this advisory project was provided in a Federal Register notice published on February 14, 2003 (68 FR 7531–7534).

The Council Special Panel and the Council subcommittees will be providing advice on the review document, "Benefits and Costs of the Clean Air Act 1990–2020; Revised Analytical Plan for EPA's Second Prospective Analysis" currently found at the following website, maintained by EPA's Office of Air and Radiation at: *http://www.epa.gov/oar/sect812/* under the link "Study Blueprint and Charge Questions Electronic Copy." This link provides electronic access to the Revised Analytical Plan, the "change pages" given to the Council in July 2003, and the detailed review charge questions.

The public meeting for the Council Special Panel, described above is planned for the Council to provide advice to the Agency on remaining charge questions related to its review of the Revised Analytical Plan for EPA's Second Prospective Analysis. These charge questions include the Agency's plans for valuation and its plans for addressing uncertainties associated with the analysis.

The public teleconference for the Council Special Panel is planned to prepare the Council for its public meeting and to discuss the Council Special Panel draft report "Interim Installment: Review of the Revised Analytical Plan for EPA's Second Prospective Analysis" posted on the SAB website as a draft report (consult the following page: *http://www.epa.gov/science1/drrep.htm*).

The purpose of the public meeting for the AQMS is for the AQMS to provide advice on the Agency's plans for air quality modeling.

The public teleconference for the AQMS, also described above, is planned to prepare the AQMS for its public meeting, which will focus on the Agency's plans for air quality modeling.

The purpose of the public teleconference for the HES is to discuss a draft report entitled "Advisory on Plans for Health Effects Analysis in the Analytical Plan for EPA's Second Prospective Analysis—Benefits and Costs of the Clean Air Act, 1990–2020," developed during the HES public meeting on August 28–28, 2003. That meeting was previously announced in the **Federal Register** on July 30, 2003 (68 FR 44766–44767). The HES draft report will be posted on the SAB website (on the special page for Draft Reports at *http://www.epa.gov/science1/drrep.htm*) in advance of the meeting.

Agendas for the public meetings and teleconferences will be posted on the SAB website ten days before the dates of those events.

## Procedures for Providing Public Comment

It is the policy of the EPA Science Advisory Board (SAB) Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB Staff Office expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. Oral Comments: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For conference call meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Interested parties should contact the Designated Federal Official (DFO) identified above at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the participants and public at the meeting. Written Comments: Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

*Meeting Accommodations:* Individuals requiring special accommodation to access these meetings, should contact Dr. Nugent at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: September 30, 2003.

**Vanessa T. Vu,**

*Director, EPA Science Advisory Board Staff Office.*

[FR Doc. 03–25404 Filed 10–6–03; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–7569–6]

## Science Advisory Board Staff Office; Notification of a Consultative Meeting of the Radiation Advisory Committee of the Science Advisory Board

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA Science Advisory Board (SAB) Staff Office announces a public meeting of the Science Advisory Board's Radiation Advisory Committee (RAC). The SAB RAC will conduct a second consultation regarding the Multi Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) supplement dealing with the Multi Agency Radiation Survey and Assessment of Materials and Equipment (MARSAME).

**DATES:** *October 21, 2003:* 9 a.m. to 5 p.m. eastern standard time.

*October 22, 2003:* 8:30 a.m. to no later than 3:30 p.m. eastern standard time.

**ADDRESSES:** The meeting location for this face-to-face meeting of the RAC will be in the Washington, DC, metropolitan area and will be announced on the SAB Web site, *http://www.epa.gov/sab*) in advance prior to the meeting. Any member of the public wishing to provide comment should contact the Designated Federal Officer as indicated below.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information regarding the SAB or the RAC may contact Dr. K. Jack Kooyoomjian, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board Staff Office (1400A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by telephone/voice mail at (202) 564–4557; or via e-mail at *kooyoomjian.jack@epa.gov*. General information about the SAB can be found in the SAB Web site at *http://www.epa.gov/sab*.

**SUPPLEMENTARY INFORMATION:**

*Summary:* The EPA SAB Staff Office is announcing that the Radiation Advisory Committee (RAC), a standing committee of the SAB will conduct a second consultation regarding the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) supplement dealing with the Multi-Agency Radiation Survey and Assessment of Materials and Equipment (MARSAME). The first consultation took place on February 25 through 27, 2003 (see 68 FR, 6914-6915, February 11, 2003). The RAC will also receive an update on EPA's Office of Radiation and Indoor Air (ORIA) and the federal MARSSIM Work Group activities, receive program updates from ORIA, as well as plan other committee business for the balance of the fiscal year.

The Committee is to provide advice to the Agency as part of the SAB mission established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. This committee will comply with the provisions of the Federal Advisory Committee Act (FACA) and all appropriate SAB procedural policies.

*Background:* The RAC had previously given advice to the federal MARSSIM Work Group pertaining to the MARSAME supplement on a variety of issues, including advice on better definition of the problems and issues, better specification on monitoring and measurement technologies and a discussion on a variety of topics and approaches. This consultative advice included development of scenarios and modeling technology that could be used as a tool to guide sampling approaches to be considered by the federal MARSSIM Work Group as they develop the MARSAME supplement.

*Charge to the Panel:* The SAB's RAC was asked to provide a second round of consultative advice on the technical approach and to provide suggestions for additional approaches to the problem, and to comment on any technical issues that the federal MARSSIM Work Group might encounter in development of the MARSSIM Supplement dealing with Materials and Equipment (MARSAME).

*Further Information:* The SAB Staff Office will re-post the names and biosketches for members of the RAC on the SAB Web site for examination by the interested public and will provide copies of the biosketches at the public meeting. Additional information regarding this advisory meeting, such as the agenda and this FR notice for the meeting can be found at the SAB Web site at *http://www.epa.gov/sab*. Since this is a consultation, there are no review or background documents posted on the SAB website.

*Procedures for Providing Public Comment.* It is the policy of the EPA SAB Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB Staff Office expects that public statements presented at the SAB RAC meeting will not be repetitive of previously submitted oral or written statements. Oral Comments: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For conference call meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Interested parties should contact the Designated Federal Officer (DFO) in writing (email, fax or mail) at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the participants and public at the meeting. *Written Comments:* Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

*Definition: A SAB balanced review panel:* For the EPA SAB, A balanced review panel (*i.e.*, committee, subcommittee, or panel) is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspective (which, among other factors, can be influence by work history and affiliation), and the collective breadth of expertise to adequately address the charge. Information considered in the selection of the panel, include information provided by the public, along with information provided by candidates and information gathered by EPA SAB Staff independently on the background of each candidate (*e.g.*, financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluating an individual subcommittee member include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) scientific credibility and impartiality; and (e) ability to work constructively and effectively in committees.

*Meeting Accommodations:* Individuals requiring special accommodation to access these meetings, should contact Dr. K. Jack Kooyoomjian at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: September 30, 2003.

**Vanessa T. Vu,**

*Director, EPA Science Advisory Board Staff Office.*

[FR Doc. 03–25403 Filed 10–6–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPPT–2003–0054; FRL–7329–7]**

## Forum on State and Tribal Toxics Action; Notice of Public Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is announcing the meeting of the Forum on State and

Tribal Toxics Action (FOSTTA) to collaborate on environmental protection and toxic chemical issues. The Chemical Information and Management Project and the Tribal Affairs Project, components of FOSTTA, will be meeting October 20-21, 2003. The meeting is being held to provide the participants of the two projects an opportunity to have in depth discussions on issues concerning the environment and human health, which are affecting the States and Indian country. This notice announces the location and times for the meeting and sets forth some tentative agenda topics. EPA invites all interested parties to attend the public meeting.

**DATES:** The two projects will meet concurrently on October 20, 2003, from 10 a.m. to 5 p.m., and October 21, 2003, from 8 a.m. to noon. A plenary session is being planned for the participants on Monday, October 20,

Requests to participate in the meeting, identified by docket ID number OPPT–2003–0054, must be received on or before October 16, 2003.

**ADDRESSES:** The meeting will be held at the Washington Court Hotel, 525 New Jersey Ave., NW., Washington, DC.

Requests to participate in the meeting may be submitted to the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

**FOR FURTHER INFORMATION CONTACT:** *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

*For technical information contact:* Darlene Harrod, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8814; fax number: (202) 564–8813; e-mail address:*harrod.darlene@epa.gov.*

Christine Eppstein, Environmental Council of the States, 444 North Capitol Street, NW., Suite 445, Washington, DC 20001; telephone number: (202) 624–3661; fax number: (202) 624–3666; e-mail address: ceppstein@sso.org.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are interested in FOSTTA and hearing more about the perspectives of the States and Tribes on EPA programs and information exchange regarding important issues related to human health and environmental exposure to toxics. Potentially affected entities may include, but are not limited to:

- States and federally recognized tribes.
- State, Federal, and local environmental and public health organizations.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

### *B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPPT–2003–0054. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. EPA's Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA internet under the "**Federal Register**" listings at*http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

## II. Background

The Toxic Substances Control Act, 15 U.S.C. 2609 section 10(g), authorizes EPA and other Federal agencies to establish and coordinate a system for exchange among Federal, State, and local authorities of research and development results respecting toxic chemical substances and mixtures, including a system to facilitate and promote the development of standard data format and analysis and consistent testing procedures. Through FOSTTA, the Chemical Information and Management Project (CIMP) focuses on EPA's chemical program and works to develop a more coordinated effort involving Federal, State, and Tribal agencies. The Pollution Prevention Project (P2) promotes the prevention ethic across society, helping companies incorporate P2 approaches and techniques and integrating P2 into mainstream environmental activities at both the Federal level and among the States. The Tribal Affairs Project (TAP) concentrates on chemical and prevention issues that are most relevant to the Tribes, including lead control and abatement, Tribal traditional/subsistence lifeways, and hazard communications and outreach. FOSTTA's vision is to reinvigorate the projects, focus on major policy-level issues, recruit more senior State and Tribal leaders, increase outreach to all 50 States and some 560 federally recognized tribes, and vigorously seek ways to engage the States and Tribes in ongoing substantive discussions on complex and oftentimes controversial environmental issues that States and Tribes resolve at their respective levels of government. In January 2002, the Environmental Council of the States (ECOS), in cooperation with the National Tribal Environmental Council (NTEC), was awarded the new FOSTTA cooperative agreement. ECOS, NTEC, and EPA's Office of Pollution Prevention and Toxics (OPPT) are co-sponsoring the meetings. As part of a cooperative agreement, ECOS facilitates ongoing efforts of the State and Tribal leaders and OPPT to increase understanding and improve collaboration on toxics and pollution prevention issues and to continue a dialogue on how Federal environmental programs can best be implemented among the States, Tribes, and EPA.

### III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the technical persons, listed under **FOR FURTHER INFORMATION CONTACT.** Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID number OPPT–2003–0054, must be received on or before October 16, 2003.

### IV. The Meeting

In the interest of time and efficiency, the meetings are structured to provide maximum opportunity for State, Tribal, and EPA participants to discuss items on the predetermined agenda. At the discretion of the chair, an effort will be made to accommodate participation by observers attending the proceedings. The FOSTTA representatives and EPA will collaborate on environmental protection and prevention issues. The tentative agenda items identified by the States and the Tribes follow:

1. Tribal environmental indicators project.
2. Risk Screening Environmental Indicators model.
3. OPPTS Tribal Strategy.
4. High Production Volume (HPV) Challenge Program and data base update.
5. Practical and conceptual aspects of environmental indicators.

### List of Subjects

Environmental protection, Chemical information and management.

Dated: September 30, 2003.

**Barbara Cunningham,**

*Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 03–25405 Filed 10–6–03; 8:45 am]

**BILLING CODE 6560–50–S**

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## FARM CREDIT ADMINISTRATION

### Farm Credit Administration Board; Regular Meeting ; Sunshine Act

**AGENCY:** Farm Credit Administration.

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

**DATE AND TIME:** The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on October 9, 2003, from 9 a.m. until such time as the Board concludes its business.

**FOR FURTHER INFORMATION CONTACT:** Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

**ADDRESSES:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**SUPPLEMENTARY INFORMATION:** Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

### Open Session

*A. Approval of Minutes*

—September 11, 2003 (Open and Closed)

*B. Reports*

- Corporate/Non-corporate Approvals Report.
- Financial Institution Rating System (FIRS)—Liquidity Discussion.
- Strategic Plan—Third Quarter Goal Status Report.
- White Paper on Governance, Conflict of Interest, Compensation Disclosure, and Audit Committee Standards.

*C. New Business—Other*

- FCA Draft Strategic Plan for Fiscal Years 2003–2008.

### Closed Session*

*Reports*

- East Carolina Farm Credit, ACA Class A Cumulative Preferred Stock.

* Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(4), (8) and (9).

Dated: October 3, 2003.

**Jeanette C. Brinkley,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 03–25556 Filed 10–3–03; 3:05 pm]

**BILLING CODE 6705–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

September 25, 2003.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before November 6, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*; or Kim A. Johnson, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3562 or via Internet at *Kim_A._Johnson@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0310.

*Title:* Cable Community Registration, FCC Form 322.

*Form Number:* FCC 322.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business and other for-profit entities; not-for-profit institutions.

*Number of Respondents:* 316.

*Estimated Time Per Response:* 30 minutes.

*Frequency of Response:* One time reporting requirement.

*Total Annual Burden:* 158 hours.

*Total Annual Costs:* $15,800.

*Needs and Uses:* On March 13, 2003, the Commission adopted a Report and Order (R&O), *Amendment of the Commission's Rules for Implementation of its Cable Operations and Licensing System (COALS) to Allow for Electronic Filing of Licensing Applications, Forms,* *Registrations and Notifications in the Multichannel Video and Cable Television Service and the Cable Television Relay Service,* FCC 03–55. This R&O provided for electronic filing and standardized information collections. Under 47 CFR Section 76.1801, cable operators will be required to file FCC Form 322 with the Commission prior to commencing operation of a community unit. FCC Form 322 will collect biographical information about the operator and system as well as a list of broadcast channels carried on the system. This form will replace the requirement that cable operators send a letter containing approximately the same information.

*OMB Control Number:* 3060–XXXX.

*Title:* Operator, Mail Address, and Operational Information Changes, FCC Form 324.

*Form Number:* FCC 324.

*Type of Review:* New collection.

*Respondents:* Business and other for-profit entities; not-for-profit institutions.

*Number of Respondents:* 5,000.

*Estimated Time Per Response:* 10 minutes to 1 hour.

*Frequency of Response:* On occasion reporting requirements.

*Total Annual Burden:* 2,500 hours.

*Total Annual Costs:* None.

*Needs and Uses:* On March 13, 2003, the Commission adopted a Report and Order (R&O), *Amendment of the Commission's Rules for Implementation of its Cable Operations and Licensing System (COALS) to Allow for Electronic Filing of Licensing Applications, Forms, Registrations and Notifications in the Multichannel Video and Cable Television Service and the Cable Television Relay Service,* FCC 03–55. This R&O provided for electronic filing and standardized information collections. Under 47 CFR Section 76.1610, cable operators must notify the Commission of changes in ownership information or operating status within 30 days of such change using FCC Form 324. FCC Form 324 will cover a variety of changes related to cable operators, replacing the requirement of a letter containing approximately the same information. Every Form 324 filing will require biographical information about the operator and system—the additional information required depending largely upon the nature of the change.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03–25301 Filed 10–6–03; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

September 17, 2003.

**SUMMARY:** The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before November 6, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*; or Kim A. Johnson, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3562 or via Internet at *Kim_A._Johnson@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0113.

*Type of Review:* Extension of a currently approved collection.

*Title:* Broadcast EEO Program Report, FCC Form 396.

*Form Number:* FCC 396.

*Respondents:* Business or other for-profit entities; not-for-profit institutions.

*Number of Respondents:* 2,000.

*Estimated Time Per Response:* 1.5 hours.

*Frequency of Response:* Recordkeeping; Renewal reporting requirement.

*Total Annual Burden:* 3,000 hours.

*Total Annual Cost:* $100,000.

*Needs and Uses:* On November 7, 2002, the FCC adopted a Second Report and Order and Third NPRM (Second R&O), MM Docket No. 98–204, FCC 02–303, 68 FR 670 (2003), which established new EEO rules and forms to comply with the court's decision in *MD/DC/DE Broadcasters Association* v. *FCC.* The new rules reinstate the requirement that broadcast licensees file the FCC Form 396 at the time they file for renewal of license. The new EEO rules also ensure equal employment opportunity in broadcast and multichannel video program distributor industries through outreach to the community in recruitment and prevention of employment discrimination. Among other things, the Second R&O affords broadcasters with five or more full-time employees maximum flexibility in designing EEO programs while ensuring broad dissemination of full-time employment opportunities. These broadcasters must file annually an EEO public file report detailing their outreach efforts. In addition, licensees must include a narrative statement demonstrating how the station achieved an inclusive outreach in the prior two years and report the status of any employment discrimination complaints.

*OMB Control Number:* 3060–0120.

*Type of Review:* Extension of a currently approved collection.

*Title:* Broadcast Equal Employment Opportunity Model Program Report, FCC Form 396–A.

*Form Number:* FCC 396–A.

*Respondents:* Business or other for-profit entity; not-for-profit institutions.

*Number of Respondents:* 5,000.

*Estimated Time Per Response:* 1 hour.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 5,000 hours.

*Total Annual Cost:* None.

*Needs and Uses:* On November 7, 2002, the FCC adopted a Second Report and Order and Third NPRM (Second R&O), MM Docket No. 98–204, FCC 02–303, 68 FR 670 (2003), which established new EEO rules and forms to comply with the court's decision in *MD/*

*DC/DE Broadcasters Association* v. *FCC.* The new rules reinstate the requirement that broadcast licensees file the FCC Form 396–A at the time they file applications for construction permits, or assignments or transfers of license. The new EEO rules also ensure equal employment opportunity in broadcast and multi-channel video program distributor industries through outreach to the community in recruitment and prevention of employment discrimination. While FCC Form 396–A remains almost entirely the same as the form used under the rules adopted in 2000, the Second R&O also builds in flexibility for licensees to implement a program in compliance with the new rules, *i.e.*, it allows for a range of community outreach programs to those interested in broadcast careers, and broadcasters with five or more full-time employees may list recruitment sources they plan to use.

*OMB Control Number:* 3060–0212.

*Type of Review:* Extension of a currently approved collection.

*Title:* Section 73.2080, Equal Employment Opportunities (EEO Rule).

*Form Number:* N/A.

*Respondents:* Business or other for-profit entities; not-for-profit institutions.

*Number of Respondents:* 10,825.

*Estimated Time Per Response:* 42 hours.

*Frequency of Response:* Recordkeeping; Annual reporting requirement.

*Total Annual Burden:* 454,650 hours.

*Total Annual Cost:* None.

*Needs and Uses:* On November 7, 2002, the FCC adopted a Second Report and Order and Third NPRM (Second R&O), MM Docket No. 98–204, FCC 02–303, 68 FR 670 (2003), which established new EEO rules and forms to comply with the court's decision in *MD/DC/DE Broadcasters Association* v. *FCC.* The new EEO rules ensure equal employment opportunity in broadcast and multi-channel video program distributor industries through outreach to the community in recruitment and prevention of employment discrimination. Specifically, the Second R&O adopts EEO recordkeeping and reporting requirements; specifies which EEO materials must be kept in the public inspection file; and requires all broadcasters to adhere to the EEO rules' general anti-discrimination provisions. Only station employment units with five or more full-time employees are subject to the EEO program provisions. Among other requirements, broadcasters must widely distribute job vacancy information and provide full-time job vacancy information to requesting organizations. Broadcasters must also retain records to demonstrate that they have recruited for all full-time permanent positions, *i.e.*, full-time vacancy filled, listings of recruitment sources, dated copies of advertisements, etc., and place such types of records annually in their local public inspection file.

*OMB Control Number:* 3060–0349.

*Type of Review:* Extension of a currently approved collection.

*Title:* Equal Employment Opportunity Requirements.

*Form Number:* N/A.

*Respondents:* Business or other for-profit entities; not-for-profit institutions.

*Number of Respondents:* 2,125.

*Estimated Time Per Response:* 42 hours.

*Frequency of Response:* Recordkeeping; Annual and five year reporting requirements.

*Total Annual Burden:* 89,250 hours.

*Total Annual Cost:* None.

*Needs and Uses:* On November 7, 2002, the FCC adopted a Second Report and Order and Third NPRM (Second R&O), MM Docket No. 98–204, FCC 02–303, 68 FR 670 (2003), which established new EEO rules and forms to comply with the court's decision in *MD/DC/DE Broadcasters Association* v. *FCC.* Among other things, the Second R&O adopts several EEO recordkeeping and reporting requirements. It specifies which EEO materials must be kept in the public inspection file. All multi-channel video program distributor (MVPD) employment units with six or more full-time employees are subject to EEO program provisions and must disseminate employment information widely. These MVPDs must also retain records to demonstrate they have recruited for all full-time permanent positions and must place a listing of all full-time vacancies filled and recruitment sources used for each vacancy for the preceding year in their EEO records file.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03–25302 Filed 10–6–03; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. AUC–03–53D (Auction No. 53); DA 03–2354]**

## Auction of Licenses in the Multichannel Video Distribution and Data Service (MVDDS) Rescheduled for January 14, 2004; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the procedures and minimum opening bids for the upcoming auction of MVDDS licenses and announces that the auction has been rescheduled for January 14, 2004. This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

**DATES:** Auction No. 53 is scheduled to begin on January 14, 2004.

**FOR FURTHER INFORMATION CONTACT:** Auctions and Industry Analysis Division: Legal questions: Brian Carter at (202) 418–0660, or General auction questions: Roy Knowles or Barbara Sibert at (717) 338–2888. Media Contact: Press inquiries: Chelsea Fallon at (202) 418–0660. Public Safety and Private Wireless Division: Legal questions: Jennifer Burton at (202) 418–0680, or Technical questions: Michael Pollak at (202) 418–0680 or Steve Buenzow at (717) 338–2646.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction No. 53 Procedures Public Notice* released on August 28, 2003. The complete text of the *Auction No. 53 Procedures Public Notice,* including attachments, as well as related Commission documents, are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The *Auction No. 53 Procedures Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* When ordering documents from Qualex, please provide the appropriate FCC document number (for example, FCC 02–116 for the *Second Report and Order*). The *Auction No. 53 Procedures Public Notice* and related documents are also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/53/*.

## I. General Information

### *A. Introduction*

1. The *Auction No. 53 Procedures Public Notice,* announces that the auction of licenses in the Multichannel Video Distribution and Data Service ("MVDDS") (Auction No. 53) has been rescheduled for January 14, 2004. In addition, the Wireless Telecommunications Bureau ("Bureau") announces the procedures and minimum opening bids for this auction. On January 30, 2003, in accordance with the Balanced Budget Act of 1997, the Bureau released a public notice seeking comment on reserve prices and/or minimum opening bids and the procedures to be used in Auction No. 53. The Bureau received one comment and one reply comment in response to the *Auction No. 53 Comment Public Notice,* 68 FR 6167 (February 6, 2003).

### i. Background

2. On April 15, 2003, the Commission released the *Second Further Notice of Proposed Rule Making,* 68 FR 19486 (April 21, 2003), which sought further comment on the appropriate service area definition for MVDDS and on whether the build out requirement for this service should be modified. On July 7, 2003, the Commission released the *Third Report and Order,* 18 FCC Rcd 13468 (2003), in which it decided to license MVDDS on the basis of Designated Market Areas ("DMAs") rather than Component Economic Areas ("CEAs") and adopted a five-year build out requirement.

3. MVDDS licensees may provide any digital fixed one-way non-broadcast service including direct-to-home/office wireless service. Mobile and aeronautical services are not authorized. Two-way services may be provided by using other spectrum or media for the return or upstream path. MVDDS providers will share the 12.2–12.7 GHz band on a co-primary basis with non-geostationary satellite orbit ("NGSO") fixed-satellite services ("FSS") and on a non-harmful interference basis with incumbent Direct Broadcast Satellite ("DBS") providers. The technical criteria for sharing established in the *MVDDS Second Report and Order,* 67 FR 43031 (June 26, 2002), ET Docket No. 98–206, released May 23, 2002, are designed to protect NGSO FSS and DBS operations from harmful interference.

### ii. Licenses To Be Auctioned

4. Auction No. 53 will offer 214 licenses based on DMAs and FCC-defined DMA-like service areas encompassing the United States, Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, and American Samoa. The 214 service areas are based on the 210 DMAs delineated by Nielsen in its publication entitled "U.S. Television Household Estimates" dated September 2002 (which lists estimates of television households "as of January 2003" and can be found at Nielsen's Web site at *http://www.nielsenmedia.com*) plus the following four FCC-defined service area additions: Alaska—Balance of State (all geographic areas of Alaska not included in Nielsen's three DMAs for the state: Anchorage, Fairbanks, and Juneau), Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, and American Samoa. Potential applicants should note that the boundaries of the DMA-based service areas of the 214 licenses offered in Auction No. 53 will not change, even if Nielsen alters the boundaries of its DMAs in the future, as it has in the past. Each license will authorize the use of one block of unpaired spectrum in the 12.2–12.7 GHz band.

5. Applicants should note that Nielsen owns the copyright to the DMA listing. The Commission's assignment of MVDDS licenses will not confer on applicants or licensees the right to use Nielsen's DMA mark, regions, or data, and such right must be obtained from Nielsen. In addition, the Commission does not have the right to republish DMA regions or data. Therefore, the Commission will not provide the populations, counties, or a map of DMAs to applicants for Auction No. 53 either before or during the auction. Applicants wishing to obtain such DMA data and maps will need to acquire them from Nielsen.

6. A complete list of the licenses available in Auction No. 53 is included in Attachment A of the *Auction No. 53 Procedures Public Notice.* The characteristics of these licenses are shown in the following table:

| Frequencies | Bandwidth | Geographic Area Type | No. of Licenses |
|---|---|---|---|
| 12.2–12.7 GHz | 500 MHz | DMA | 214 |

### *B. Rules and Disclaimers*

### i. Relevant Authority

7. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to MVDDS contained in title 47, part 101, of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1, of the Code of Federal Regulations. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "terms") contained in the *Auction No. 53 Procedures Public Notice;* the *Auction No. 53 Comment Public Notice;* and the *Part 1 Fifth Report and Order,* 65 FR 52323 (August 29, 2000), as well as prior and subsequent Commission proceedings regarding competitive bidding procedures.

8. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction.

### ii. Prohibition of Collusion

9. To ensure the competitiveness of the auction process, § 1.2105(c) of the Commission's rules prohibits applicants for any of the same geographic license areas from communicating with each other during the auction about bids, bidding strategies, or settlements unless such applicants have identified each other on their FCC Form 175 applications as parties with whom they have entered into agreements under § 1.2105(a)(2)(viii). Thus, applicants for any of the same geographic license areas must affirmatively avoid all discussions with each other that affect, or in their reasonable assessment have the potential to affect, bidding or bidding strategy. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. For purposes of this prohibition, § 1.2105(c)(7)(i) defines applicant as including all controlling interests in the entity submitting a short-form application to participate in

the auction, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity.

10. Applicants for licenses in any of the same geographic license areas are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the applicants he or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or consulting firm). In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.

11. The Commission's anti-collusion rules allow applicants to form certain agreements during the auction, provided the applicants have not applied for licenses covering the same geographic areas. In Auction No. 53, for example, the rule will apply to any applicants that apply for the same DMA-based service area. In addition, applicants that apply to bid for all markets will be precluded from communicating with all other applicants until after the down payment deadline. However, all applicants may enter into bidding agreements before filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their Form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for licenses covering any of the same geographic areas. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c).

12. In addition, § 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, §§ 1.65 and 1.2105 require an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders therefore are required to make such notification to the Commission immediately upon discovery.

13. A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment G of the *Auction No. 53 Procedures Public Notice*.

### iii. Interference Protection

14. Among other licensing and technical rules, MVDDS licensees must comply with the interference protection and coordination requirements set forth in §§ 101.105, 101.1421, and 101.1440 of the Commission's rules. Generally, §§ 101.105, 101.1421, and 101.1440 establish standards for protection of co-primary NGSO FSS earth stations, incumbent and adjacent area licensees and co-primary DBS earth stations. MVDDS shall be licensed on a non-harmful interference co-primary basis to existing DBS operations and on a co-primary basis with NGSO FSS stations in this band. MVDDS licensees must also protect and/or develop sharing agreements with neighboring licensees.

#### a. Incumbent Licensees

15. Terrestrial private operational fixed point-to-point stations in the 12.2–12.7 GHz band which were licensed prior to MVDDS are incumbent point-to-point stations. However, only those stations licensed as public safety must be protected from harmful interference caused by later MVDDS entrants in the 12.2–12.7 GHz band. MVDDS operators have the responsibility of resolving any harmful interference problems that their operations may cause to these public safety incumbent point-to-point operations in the 12.2–12.7 GHz band. To aid potential bidders, a list of public safety incumbents in this band can be found at Appendix I to the MVDDS *Second Report and Order*.

#### b. Canadian and Mexican Border Regions

16. MVDDS systems in the United States within 56 km (35 miles) of the Canadian and Mexican border will be granted conditional licenses, until final international agreements are approved. MVDDS systems may not cause harmful interference to stations in Canada or Mexico. No stations are allowed within 5 miles of the borders.

#### c. Quiet Zone

17. MVDDS stations must protect the radio quiet zones. Stations are cautioned that they must receive the appropriate approvals directly from the relevant quiet zone entity prior to operating.

### iv. Due Diligence

18. Potential applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 53.

19. Potential applicants also should be aware that certain applications (including those for modification), petitions for rulemaking, requests for special temporary authority ("STA"), waiver requests, petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission and relate to particular applicants or incumbent licensees. In addition, certain judicial proceedings that may relate to particular applicants or incumbent licensees, or the licenses available in Auction No. 53, may be commenced, or may be pending, or may be subject to further review. We note that resolution of these matters could have an impact on the availability of spectrum in Auction No. 53. In addition, although the Commission will continue to act on pending applications, requests and petitions, some of these matters may not be resolved by the time of the auction.

20. In addition, potential applicants may research the licensing database for the Wireless Telecommunications Bureau on the Internet in order to determine which frequencies are already licensed to incumbent licensees. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated

into the database. Potential applicants are strongly encouraged to physically inspect any sites located in, or near, the service area for which they plan to bid.

21. Licensing records for terrestrial private operational fixed point-to-point public safety are contained in the Bureau's Universal Licensing System ("ULS") and may be researched on the Internet at *http://wireless.fcc.gov/uls*. Potential applicants may query the database online and download a copy of their search results if desired. Detailed instructions on using License Search (including frequency searches and the GeoSearch capability) and downloading query results are available online by selecting the "?" button at the upper right-hand corner of the License Search screen.

22. Potential applicants should direct questions regarding the search capabilities to the FCC Technical Support hotline at (202) 414–1250 (voice) or (202) 414–1255 (TTY), or via e-mail at *ulscomm@fcc.gov*. The hotline is available to assist with questions Monday through Friday, from 8 a.m. to 6 p.m. ET. In order to provide better service to the public, *all calls to the hotline are recorded*.

v. Bidder Alerts

23. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants and interested parties should perform their own due diligence before proceeding, as they would with any new business venture.

24. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 53 to deceive and defraud unsuspecting investors.

25. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals regarding Auction No. 53 may also call the FCC Consumer Center at (888) CALL–FCC ((888) 225–5322).

vi. National Environmental Policy Act Requirements

26. Licensees must comply with the Commission's rules regarding the National Environmental Policy Act ("NEPA"). The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission's NEPA rules for each such facility.

*C. Auction Specifics*

i. Auction Date

27. The auction will begin on Wednesday, January 14, 2004. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

ii. Auction Title

28. Auction No. 53—Multichannel Video Distribution and Data Service

iii. Bidding Methodology

29. The bidding methodology for Auction No. 53 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are permitted to bid telephonically or electronically.

iv. Pre-Auction Dates and Deadlines

30. The following is a list of important dates related to Auction No. 53:

| | |
|---|---|
| Auction Seminar | October 29, 2003. |
| Short-Form Application (FCC FORM 175) Filing Window Opens. | October 29, 2003; 12 p.m. ET. |
| Short-Form Application (FCC FORM 175) Filing Window Deadline. | November 12, 2003; 6 p.m. ET. |
| Upfront Payments (via wire transfer). | December 8, 2003; 6 p.m. ET. |
| Mock Auction | January 9, 2004. |
| Auction Begins | January 14, 2004. |

v. Requirements For Participation

31. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6:00 p.m. ET, November 12, 2003.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, December 8, 2003.
- Comply with all provisions outlined in the *Auction No. 53 Procedures Public Notice*.

vi. General Contact Information

32. The following is a list of general contact information related to Auction No. 53:

General Auction Information: General Auction Questions, Seminar Registration—FCC Auctions Hotline, (888) 225–5322, Press Option #2 or direct (717) 338–2888, Hours of service: 8 a.m.–5:30 p.m. ET, Monday through Friday.

Auction Legal Information: Auction Rules, Policies, Regulations—Auctions and Industry Analysis Division, Legal Branch (202) 418–0660.

Licensing Information: Rules, Policies, Regulations, Licensing Issues, Due Diligence, Incumbency Issues—Public Safety and Private Wireless Division (202) 418–0680.

Technical Support: Electronic Filing, FCC Automated Auction System—FCC Auctions Technical Support Hotline (202) 414–1250 (Voice), (202) 414–1255 (TTY), Hours of service: 8 a.m.–6 p.m. ET, Monday through Friday.

Payment Information: Wire Transfers, Refunds—FCC Auctions Accounting Branch (202) 418–0578, (202) 418–2843 (Fax).

Telephonic Bidding: Will be furnished only to qualified bidders.

FCC Forms: (800) 418–3676 (outside Washington, DC), (202) 418–3676 (in the Washington Area), *http://www.fcc.gov/formpage.html*

FCC Internet Sites:
*http://www.fcc.gov*
*http://wireless.fcc.gov/auctions*
*http://wireless.fcc.gov/uls*

## II. Short-Form (FCC Form 175) Application Requirements

33. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D of the *Auction No. 53 Procedures Public Notice*.

*A. License Selection*

34. In Auction No. 53, FCC Form 175 will include a mechanism that allows an applicant to create customized lists of licenses. The applicant will select the filter criteria and the system will produce a list of licenses satisfying the specified criteria. The applicant may apply for all the licenses in the list (by using the "Save all filtered licenses" option) or select and save individual licenses separately from the list.

*B. Ownership Disclosure Requirements (FCC Form 175 Exhibit A)*

35. All applicants must comply with the uniform part 1 ownership disclosure standards and in completing FCC Form 175 provide information required by §§ 1.2105 and 1.2112 of the Commission's rules.

### *C. Consortia and Joint Bidding Arrangements (FCC Form 175 Exhibit B)*

36. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid.

37. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for licenses in the same geographic license area provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

### *D. Eligibility*

#### i. Bidding Credit Eligibility (FCC Form 175 Exhibit C)

38. A bidding credit represents the amount by which a bidder's winning bids are discounted. The size of the bidding credit depends on the average of the aggregated annual gross revenues for each of the preceding three years of the bidder, its affiliates, its controlling interests, and the affiliates of its controlling interests.

39. In the *Second Report and Order,* the Commission determined that three levels of bidding credits are appropriate for MVDDS. Therefore, bidding credits will be available to entrepreneurs, small businesses, and very small businesses, and consortia thereof, as follows for Auction No. 53:

- A bidder with attributed average annual gross revenues of not more than $40 million for the preceding three years ("entrepreneur") will receive a 15 percent discount on its winning bids;
- A bidder with attributed average annual gross revenues of not more than $15 million for the preceding three years ("small business") will receive a 25 percent discount on its winning bids;
- A bidder with attributed average annual gross revenues of not more than $3 million for the preceding three years ("very small business") will receive a 35 percent discount on its winning bids.

Bidding credits are not cumulative; a qualifying applicant receives the 15 percent, 25 percent, or 35 percent bidding credit on its winning bid, but only one credit per license.

40. Bidders should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.

#### ii. Tribal Land Bidding Credit

41. To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. *See* section V.F. of the *Auction No. 53 Procedures Public Notice.*

42. *Attribution for entrepreneur, small business, and very small business eligibility.* In determining which entities qualify as entrepreneurs, small businesses, or very small business, the Commission will consider the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. The Commission does not impose specific equity requirements on controlling interest holders. Once the principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the affiliates of those principals or entities, the applicant and its affiliates, will be counted in determining small business eligibility.

43. Each member of a consortium of entrepreneurs, small businesses or very small businesses must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests.

#### iii. Eligibility Restrictions for Cable Operators

44. Applicants should note that § 101.1412 of the Commission's rules provide certain eligibility restrictions for cable operators. Specifically, no cable operator, nor any entity owning an attributable interest in a cable operator, shall have an attributable interest in an MVDDS license if such cable operator's service area significantly overlaps the MVDDS license area.

#### iv. Supporting Documentation

45. Applicants should note that they will be required to file supporting documentation to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify as entrepreneurs, small businesses, or very small businesses (or consortia of entrepreneurs, small businesses, or very small businesses) for this auction. Applicants should also note that they must fulfill the certification requirements of § 101.1412(g)(2) of the Commission's rules relating to complying with the eligibility restrictions for cable operators.

46. Applicants should further note that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

47. *Entrepreneur, small business, or very small business eligibility (Exhibit C).* Entities applying to bid as entrepreneurs, small businesses, or very small businesses (or consortia of entrepreneurs, small businesses, or very small businesses) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, *separately and in the aggregate,* the gross revenues for the preceding three years of each of the following: (i) The applicant, (ii) its affiliates, (iii) its controlling interests, and (iv) the affiliates of its controlling interests. Certification that the average annual gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, a schedule of gross revenues for each of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of entrepreneurs, small

businesses, or very small businesses, this information must be provided for each consortium member.

*E. Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit D)*

48. Each applicant must certify on its FCC Form 175 application under penalty of perjury that the applicant, its controlling interests, its affiliates, and the affiliates of its controlling interests, as defined by § 1.2110, are not in default on any payment for Commission licenses (including down payments) and not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interests, as defined by § 1.2110, have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. Applicants must include this statement as Exhibit D of the FCC Form 175.

49. "Former defaulters"—*i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 53, provided that they are otherwise qualified. However, as discussed *infra* in section III.D.iii, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

*F. Installment Payments*

50. Installment payment plans will not be available in Auction No. 53.

*G. Other Information (FCC Form 175 Exhibits E and F)*

51. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(2), may attach an exhibit (Exhibit E) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions. Applicants wishing to submit additional information may do so on Exhibit F (Miscellaneous Information) to the FCC Form 175. Applicants must also certify as an exhibit to their short-form application that they, and all parties to the application, will come into compliance with § 101.1412(a) regarding eligibility restrictions for cable operators. This certification should be included as Exhibit F.

*H. Minor Modifications to Short-Form Applications (FCC Form 175)*

52. After the short-form filing deadline (6:00 p.m. ET on November 12, 2003), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official, change control of the applicant, or change bidding credits). *See* 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: *auction53@fcc.gov*. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 53. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

53. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338–2850.

*I. Maintaining Current Information in Short-Form Applications (FCC Form 175)*

54. Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

## II. Pre-Auction Procedures

*A. Auction Seminar*

55. On Wednesday, October 29, 2003, the FCC will sponsor a free seminar for Auction No. 53 at the Federal Communications Commission, located at 445 12th Street, SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, auction conduct, the FCC Automated Auctions System, auction rules, and the MVDDS service rules. A registration form is attached as Attachment D of the *Auction No. 53 Procedures Public Notice*.

*B. Short-Form Application (FCC Form 175)—Due November 12, 2003*

56. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6 p.m. ET on November 12, 2003. Late applications will not be accepted.

57. There is no application fee required when filing an FCC Form 175.

i. Electronic Filing

58. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at noon ET on October 29, 2003, until 6 p.m. ET on November 12, 2003. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on November 12, 2003.

59. Applicants must press the "SUBMIT Application" button on the "Submission" page of the electronic form to successfully submit their FCC Form 175s. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C. Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8 AM to 6 PM ET. In order to provide better service to the public, *all calls to the hotline are recorded.*

ii. Completion of the FCC Form 175

60. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of the *Auction No. 53 Procedures Public Notice*.

iii. Electronic Review of FCC Form 175

61. The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. There is no fee for accessing this system. *See* Attachment C of the *Auction No. 53 Procedures Public Notice* for details on accessing the review system.

62. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications.

**Note:** Applicants should not include sensitive information (*i.e.*, TIN/EIN) on any exhibits to their FCC Form 175 applications.

### *C. Application Processing and Minor Corrections*

63. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) Those applications accepted for filing; (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

### *D. Upfront Payments—Due December 8, 2003*

64. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6 p.m. ET on December 8, 2003. For specific instructions regarding upfront payments, *see* section III.D. of the *Auction No. 53 Procedures Public Notice*. Failure to deliver the upfront payment by the December 8, 2003, deadline will result in dismissal of the application and disqualification from participation in the auction.

#### i. Making Auction Payments by Wire Transfer

65. Wire transfer payments must be received by 6 p.m. ET on December 8, 2003. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline.

66. Applicants must fax a completed FCC Form 159 (Revised 2/03) to Mellon Bank at (412) 209–6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 53." In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account by the deadline. Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account. Detailed instructions for completion of FCC Form 159 are included in Attachment E of the *Auction No. 53 Procedures Public Notice*.

#### ii. Amount of Upfront Payment

67. In the *Part 1 Order* the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order*, the Commission ordered that "former defaulters," *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments fifty percent greater than non-"former defaulters." For purposes of this calculation, the "applicant" includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by § 1.2110 of the Commission's rules (as amended in the Part 1 Fifth Report and Order).

68. In the *Auction No. 53 Comment Public Notice*, we proposed that the amount of the upfront payment would determine the number of bidding units on which a bidder may place bids. In order to bid on a license, otherwise qualified bidders that applied for that license on Form 175 must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses for which the applicant has applied on Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

69. In the *Auction No. 53 Comment Public Notice*, the Bureau proposed upfront payments on a license-by-license basis for both CEAs and DMAs. Upfront payment calculations for DMA licenses are based upon CEA upfront payment calculations. With respect to CEAs we proposed to use the following formula: $0.025 * License Area Population with a minimum of $1,000 per license. The Bureau received no comments on this issue. Therefore, the Bureau adopts its proposed upfront payments. The specific upfront payments and bidding units for each license are set forth in Attachment A of the *Auction No. 53 Procedures Public Notice*.

70. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units on which it may wish to be active (bidding units associated with licenses on which the bidder has the standing high bid from the previous round and licenses on which the bidder places a bid in the current round) in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to bid in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

EXAMPLE: UPFRONT PAYMENTS AND BIDDING FLEXIBILITY

| Market No. | Market Name | Bidding Units | Upfront Payment |
|---|---|---|---|
| DMA001 | New York | 480,000 | $480,000 |
| DMA004 | Philadelphia | 187,000 | $187,000 |

Note: If a bidder wishes to bid on both licenses in a round, it must have selected both on its FCC Form 175 and purchased at least 667,000 bidding units (480,000 + 187,000). If a bidder only wishes to bid on one, but not both, purchasing 480,000 bidding units would meet the requirement for either license. The bidder would be able to bid on either license, *but not both at the same time*. If the bidder purchased only 187,000 bidding units, it would have enough eligibility for the Philadelphia license but not for the New York license.

71. Former defaulters should calculate their upfront payment for all licenses by multiplying the number of bidding units they wish to purchase by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

**Note:** An applicant may, on its FCC Form 175, apply for every applicable license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

#### iii. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

72. The Commission will use wire transfers for all Auction No. 53 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC.

Name of Bank
ABA Number
Contact and Phone Number
Account Number to Credit
Name of Account Holder
FCC Registration Number (FRN)
Taxpayer Identification Number
Correspondent Bank (if applicable)
ABA Number
Account Number

Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Gail Glasser, at (202) 418–2843 by December 8, 2003. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at (202) 418–0578.

### *E. Auction Registration*

73. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

74. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, one containing the confidential bidder identification number (BIN) and the other containing the SecurID cards, both of which are required to place bids. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

75. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Wednesday, January 7, 2004, should contact the Auctions Hotline at (717) 338–2888. Receipt of both registration mailings is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

76. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing in person at the FCC headquarters, located at 445 12th St., SW., Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

### *F. Remote Electronic Bidding*

77. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are permitted to bid telephonically or electronically. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175. In either case, each authorized bidder must have its own SecurID card, which the FCC will provide at no charge. For security purposes, the SecurID cards and the FCC Automated Auction System user manual are only mailed to the contact person at the contact address listed on the FCC Form 175. Each SecurID card is tailored to a specific auction; therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 53. The telephonic bidding phone number will be supplied in the first overnight mailing, which also includes the confidential bidder identification number.

78. SecurID cards can be recycled, and the Bureau encourages bidders to return the cards to the FCC. The Bureau will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

### *G. Mock Auction*

79. All qualified bidders will be eligible to participate in a mock auction on Friday, January 9, 2004. The mock auction will enable applicants to become familiar with the FCC Automated Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

## IV. Auction Event

80. The first round of bidding for Auction No. 53 will begin on Wednesday, January 14, 2004. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

### *A. Auction Structure*

#### i. Simultaneous Multiple Round Auction

81. In the *Auction No. 53 Comment Public Notice,* we proposed to award all licenses in Auction No. 53 in a simultaneous multiple round auction. We received no comments on this issue. We conclude that it is operationally feasible and appropriate to auction the MVDDS licenses through a simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach, we believe, allows bidders to take advantage of synergies that exist among licenses and is administratively efficient.

#### ii. Maximum Eligibility and Activity Rules

82. In the *Auction No. 53 Comment Public Notice,* we proposed that the amount of the upfront payment submitted by a bidder would determine the initial (maximum) eligibility (as measured in bidding units) for each bidder. We received no comments on this issue.

83. For Auction No. 53 we adopt this proposal. The amount of the upfront payment submitted by a bidder determines the initial eligibility (in bidding units) for each bidder. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids in a round. As there is no provision for increasing a bidder's eligibility after the upfront payment deadline, applicants are cautioned to calculate their upfront payments carefully. The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.

84. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current eligibility during each round of the auction.

85. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits a bid in the current round (see "Minimum Acceptable Bids and Bid Increments" in section IV.B.iii). The minimum required activity is expressed as a percentage of the bidder's current bidding eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions (as set forth under "Auction Stages" in section IV.A.iii and "Stage Transitions" in section IV.A.iv), we adopt them for Auction No. 53.

### iii. Auction Stages

86. In the *Auction No. 53 Comment Public Notice*, we proposed to conduct the auction in three stages and employ an activity rule. We further proposed that, in each round of Stage One, a bidder desiring to maintain its current eligibility would be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. In each round of Stage Two, a bidder desiring to maintain its current eligibility would be required to be active on at least 90 percent of its current bidding eligibility. Finally, we proposed that a bidder in Stage Three, in order to maintain its current eligibility, would be required to be active on 98 percent of its current bidding eligibility. We received no comments on this proposal.

87. We adopt our proposals for the activity rules and stages. Here are the activity levels for each stage of the auction. The Bureau reserves the discretion to further alter the activity percentages before and/or during the auction.

*Stage One:* During the first stage of the auction, a bidder desiring to maintain its current eligibility will be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by five-fourths (5/4).

*Stage Two:* During the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by ten-ninths (10/9).

*Stage Three:* During the third stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). In this final stage, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by fifty-fortyninths (50/49).

CAUTION: Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding period of the first round following a stage transition. This is especially critical for bidders that have standing high bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level by using the bidding system's bidding module.

88. Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, we adopt them for Auction No. 53.

### iv. Stage Transitions

89. In the *Auction No. 53 Comment Public Notice*, we proposed that the auction would generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below 20 percent for three consecutive rounds of bidding in each Stage. We further proposed that the Bureau would retain the discretion to change stages unilaterally by announcement during the auction. This determination, we proposed, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. We received no comments on this issue.

90. We adopt our proposal. Thus, the auction will start in Stage One and will generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when, in each of three consecutive rounds of bidding, the high bid has increased on 20 percent or less of the licenses being auctioned (as measured in bidding units). In addition, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. We believe that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 53.

### v. Activity Rule Waivers and Reducing Eligibility

91. Each bidder will be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required level. An activity rule waiver applies to an entire round of bidding and not to a particular license.

92. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (i) there are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder has no waivers remaining and does not satisfy the required activity level, the current eligibility will be permanently reduced, possibly eliminating the bidder from the auction.

93. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Auction Stages" (see section IV.A.iii). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

94. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the FCC Automated Auction System) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver triggered during a round in which there are no new bids or withdrawals will not keep the auction open. **Note:** Once a proactive waiver is submitted during a round, that waiver cannot be unsubmitted.

### vi. Auction Stopping Rules

95. For Auction No. 53, the Bureau proposed to employ a simultaneous stopping rule. The Bureau also sought comment on a modified version of the stopping rule. The modified version of the stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder.

96. In addition, we proposed that the Bureau reserve the right to declare that the auction will end after a designated number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. We proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time.

97. We adopt the proposals concerning the auction stopping rules. Auction No. 53 will begin under the simultaneous stopping rule, and the Bureau will retain the discretion to invoke the other versions of the stopping rule.

### vii. Auction Delay, Suspension, or Cancellation

98. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding. Because this approach has proven effective in resolving exigent circumstances in previous auctions, we adopt our proposed auction cancellation rules. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety.

## *B. Bidding Procedures*

### i. Round Structure

99. The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the qualified bidders public notice.

100. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

### ii. Reserve Price or Minimum Opening Bid

101. For Auction No. 53, the Bureau proposed the following license-by-license basis for calculating minimum opening bids: $0.05 * License Area Population with a minimum of $1,000 per license.

102. The Bureau received no comments on this issue. Consequently, the Bureau adopts its proposed minimum opening bids for Auction No. 53. The minimum opening bids we adopt for Auction No. 53 are reducible at the discretion of the Bureau. We emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain requests to reduce the minimum opening bid on specific licenses.

103. The specific minimum opening bids for each license available in Auction No. 53 are set forth in Attachment A of the *Auction No. 53 Procedures Public Notice.*

### iii. Minimum Acceptable Bids and Bid Increments

104. In Auction No. 53 we will use a smoothing methodology to calculate minimum acceptable bids. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum percentage based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity on a license, decreasing the time it takes for licenses receiving many bids to reach their final prices. The formula used to calculate this increment is included as Attachment F of the *Auction No. 53 Procedures Public Notice.* We will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.2 (20%). Hence, at these initial settings, the percentage increment will fluctuate between 10% and 20% depending upon the number of bids for the license.

105. In each round, each eligible bidder will be able to place a bid on a particular license for which it applied in any of nine different amounts. The FCC Automated Auction System will list the nine bid amounts for each license.

106. Once there is a standing high bid on a license, the FCC Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described in Attachment F of the *Auction No. 53 Procedures Public Notice.* The difference between the minimum acceptable bid and the standing high bid for each license will define the bid increment—*i.e.*, bid increment = (minimum acceptable bid)—(standing high bid). The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

107. At the start of the auction and until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum

opening bid. Corresponding additional bid amounts will be calculated using bid increments defined as the difference between the minimum opening bid times one plus the percentage increment, rounded as described in Attachment F of the *Auction No. 53 Procedures Public Notice*, and the minimum opening bid—*i.e.*, bid increment = (minimum opening bid) (1 + percentage increment) {rounded}—(minimum opening bid). At the start of the auction and until a bid has been placed on a license, the nine acceptable bid amounts for each license consist of the minimum opening bid and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the minimum opening bid plus the bid increment, the third bid amount equals the minimum opening bid plus two times the bid increment, etc).

108. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

109. The Bureau retains the discretion to change the minimum acceptable bids and bid increments and the methodology for determining the minimum acceptable bids and bid increments if it determines that circumstances so dictate. The Bureau will do so by announcement in the FCC Automated Auction System. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant.

### iv. High Bids

110. At the end of each bidding round, the high bids will be determined based on the highest gross bid amount received for each license. A high bid from a previous round is sometimes referred to as a "standing high bid." A "standing high bid" will remain the high bid until there is a higher bid on the same license at the close of a subsequent round. Bidders are reminded that standing high bids count towards bidding activity.

111. A Sybase® SQL pseudo-random number generator based on the L'Ecuyer algorithms will be used to select a high bid in the event of identical high bids on a license in a given round (*i.e.*, tied bids). The tied bid having the highest random number will become the standing high bid. The remaining bidders, as well as the high bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in a subsequent round, the high bid from the previous round will win the license. If any bids are received on the license in a subsequent round, the high bid will once again be determined on the highest gross bid amount received for the license.

### v. Bidding

112. During a round, a bidder may submit bids for as many licenses as it wishes (subject to its eligibility), withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with licenses for which the bidder has removed or withdrawn its bid do not count towards the bidder's activity at the close of the round.

113. Please note that all bidding will take place remotely either through the FCC Automated Auction System or by telephonic bidding. Telephonic bidders are reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. (Normally, five to ten minutes are necessary to complete a bid submission).

114. A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (i) The licenses applied for on FCC Form 175 and (ii) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only those licenses for which the bidder applied on its FCC Form 175.

115. In order to access the bidding function of the FCC Automated Auction System, bidders must be logged in during the bidding round using the bidder identification number provided in the registration materials, and the password generated by the SecurID card. Bidders are strongly encouraged to print bid confirmations for each round *after* they have completed all of their activity for that round.

116. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. For each license, the FCC Automated Auction System interface will list the nine acceptable bid amounts in a drop-down box. Bidders may use the drop-down box to select from among the nine bid amounts. The FCC Automated Auction System also includes an import function that allows bidders to upload text files containing bid information and a Type Bids function that allows bidders to enter specific licenses for filtering.

117. Finally, bidders are cautioned to select their bid amounts carefully because, as explained in the following section, bidders that withdraw a standing high bid from a previous round, even if the bid was mistakenly or erroneously made, are subject to bid withdrawal payments.

### vi. Bid Removal and Bid Withdrawal

118. In the *Auction No. 53 Comment Public Notice*, the Bureau proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are used, we proposed, would be at the bidder's discretion. We received no comments on this issue.

119. Procedures. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the bidding system, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is removed does not count toward bidding activity. This procedure, about which we received no comments, will enhance bidder flexibility during the auction, and therefore we adopt these procedures for Auction No. 53.

120. Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw standing high bids from previous rounds using the withdraw bid function in the FCC Automated Auction System (assuming that the bidder has not reached its withdrawal limit). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). **Note:** Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted.

121. The Bureau will limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market.

122. Calculation. Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the high bid in the same or subsequent auction(s). In the case of multiple bid withdrawals on a single license, within the same or subsequent auctions(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s).

123. In instances in which bids have been withdrawn on a license that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the withdrawn bids. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. The *Part 1 Fifth Report and Order* provides specific examples showing application of the bid withdrawal payment rule.

vii. Round Results

124. Bids placed during a round will not be made public until the conclusion of that bidding period. After a round closes, the Bureau will compile reports of all bids placed, bids withdrawn, current high bids, new minimum acceptable bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities for Auction No. 53 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

viii. Auction Announcements

125. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available by clicking a link on the FCC Automated Auction System.

## V. Post-Auction Procedures

### *A. Down Payments and Withdrawn Bid Payments*

126. After bidding has ended, the Commission will issue a public notice declaring the auction closed and identifying winning bidders, down payments and any withdrawn bid payments due.

127. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction No. 53 to 20 percent of the net amount of its winning bids (gross bids less any applicable entrepreneur, small business, or very small business bidding credits). In addition, by the same deadline, all bidders must pay any bid withdrawal payments due under 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," section IV.B.vi. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

### *B. Final Payments*

128. Each winning bidder will be required to submit the balance of the net amount of its winning bids within 10 business days after the deadline for submitting down payments.

### *C. Auction Discount Voucher*

129. On June 8, 2000, the Commission awarded Qualcomm, Inc., a transferable Auction Discount Voucher ("ADV") in the amount of $125,273,878.00. Subject to the terms and conditions set forth in the Commission's Order, Qualcomm or its transferee could use this ADV, in whole or in part, to adjust a winning bid in any spectrum auction prior to June 8, 2003. On April 28, 2003, the Bureau granted Qualcomm an additional year, until June 8, 2004, to use the remaining amount of its ADV. Qualcomm transferred $10,848,000.00 of the ADV to a winning bidder in FCC Auction No. 35. The transferee used this amount to pay a portion of one of its winning bids in Auction No. 35. Qualcomm also transferred $50,536,998.75 of the ADV to an assignee of broadband PCS licenses that used this amount to pay the unpaid principal and interest accrued on the licenses. Qualcomm also transferred $4,020,165.65 of the ADV to an entity that made installment payments on behalf of several of the entity's affiliates, that are broadband PCS C Block licensees. On July 30, 2003, Qualcomm transferred an additional $4,020,165.65 of the ADV to the same entity. Qualcomm also used $7,607,200.00 of its ADV to make its down payment on licenses it won in Auction No. 49. The remaining $48,240,565.96 of Qualcomm's ADV could be used to adjust winning bids in another FCC Auction, including Auction No. 53.

### *D. Long-Form Application (FCC Form 601)*

130. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) and required exhibits for each license won through Auction No. 53. Winning bidders that are entrepreneurs, small businesses, or very small businesses must include an exhibit demonstrating their eligibility for entrepreneur, small business, or very small business bidding credits. *See* 47 CFR 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

### *E. Ownership Disclosure Information Report (FCC Form 602)*

131. At the time it submits its long-form application (FCC Form 601), each winning bidder also must comply with the ownership reporting requirements as set forth in 47 CFR 1.913, 1.919, and 1.2112. We remind applicants that effective December 10, 2002, electronic filing of the Ownership Disclosure Information Report (FCC Form 602) became mandatory. Accordingly, forms filed manually will not be accepted. Winning bidders without a current Form 602 already on file with the Commission must submit a properly completed Form 602 at the time they submit their long-form applications. Further filing instructions will be provided to auction winners at the close of the auction.

### *F. Tribal Land Bidding Credit*

132. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally recognized tribal lands that are unserved by any telecommunications carrier or that have a telephone service penetration rate equal to or below 70 percent is eligible to receive a tribal land bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f). A tribal land bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

133. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal land bidding credit *after* winning the auction when it files its long-form application (FCC Form 601).

134. For additional information on the tribal land bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rule making proceeding regarding tribal land bidding credits and related public notices. Relevant documents can be viewed on the Commission's Web site by going to *http://wireless.fcc.gov/auctions* and clicking on the *Tribal Land Credits* link.

*G. Default and Disqualification*

135. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at its final bid. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.

*H. Refund of Remaining Upfront Payment Balance*

136. All applicants that submit upfront payments but are not winning bidders for a license in Auction No. 53 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from the applicant after any applicable bid withdrawal payments have been paid. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

137. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions, Taxpayer Identification Number (TIN) and FCC Registration Number (FRN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser, 445 12th Street, SW., Room 1–C863, Washington, DC 20554.

138. Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418–2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

**Note:** Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Gail Glasser at (202) 418–0578.

Federal Communications Commission.

**Margaret Wiener,**

*Chief, Auctions and Industry Analysis Division, WTB.*

[FR Doc. 03–25199 Filed 10–6–03; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled: (1) Application for Consent to Exercise Trust Powers and (2) Appraisal Standards.

**DATES:** Comments must be submitted on or before December 8, 2003.

**ADDRESSES:** Interested parties are invited to submit written comments to Leneta Gregorie, Counsel (Consumer and Compliance Unit), (202) 898–3719, Legal Division, Room 3062, Attention: Comments/Legal, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to the OMB control number. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [FAX number (202) 898–3838; Internet address: *comments@fdic.gov*].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Leneta G. Gregorie, Counsel (Consumer and Compliance Unit) (202) 898–3719.

**SUPPLEMENTARY INFORMATION:** Proposal to renew the following currently approved collections of information:

1. *Title:* Application for Consent to Exercise Trust Powers.

*OMB Number:* 3064–0025.

*Form Number:* 6200/09.

*Frequency of Response:* On occasion.

*Affected Public:* All financial institutions.

*Estimated Number of Respondents:* 18.

*Estimated Time per Response:* 14 applications—8 hours; 4 applications—24 hours.

*Estimated Total Annual Burden:* 82,150 hours.

*General Description of Collection:* Insured state nonmember banks submit applications to the FDIC for consent to exercise trust powers. Applications are evaluated by the FDIC to verify qualifications of bank management to administer a trust department and to ensure that the bank's financial condition will not be jeopardized as a result of trust operations.

2. *Title:* Appraisal Standards.

*OMB Number:* 3064–0103.

*Frequency of Response:* On occasion.

*Affected Public:* All financial institutions.

*Estimated Number of Respondents:* 5,346.

*Estimated Number of Responses:* 328,600.

*Estimated Time per Response:* 15 minutes.

*Estimated Annual Burden:* 82,150 hours.

*General Description of Collection:* FIRREA directs the FDIC to prescribe appropriate standards for the performance of real estate appraisals in connection with federally related transactions under its jurisdiction. The information collection activities attributable to 12 CFR part 323 are a direct consequence of the statutory requirements and the legislative intent.

### Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated in Washington, DC, this 1st day of October, 2003.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 03–25375 Filed 10–6–03; 8:45 am]

**BILLING CODE 6714–01–P**

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## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 31, 2003.

**A. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*1. SNB Financial, Inc.*, O'Donnell, Texas; to acquire 100 percent of the voting shares of The State National Bank of Big Spring, Big Spring, Texas. SNB Financial, Inc., currently operates as O'Donnell Bancshares, Inc., O'Donnell, Texas.

Board of Governors of the Federal Reserve System, October 1, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–25319 Filed 10–6–03; 8:45 am]

**BILLING CODE 6210–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003N–0213]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Reporting and Recordkeeping Requirements and Availability of Sample Electronic Products for Manufacturers and Distributors of Electronic Products

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

**DATES:** Fax written comments on the collection of information by November 6, 2003.

**ADDRESSES:** OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Reporting and Recordkeeping Requirements and Availability of Sample Electronic Products for Manufacturers and Distributors of Electronic Products (OMB Control Number 0910–0025)—Extension**

Under sections 532 through 542 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360ii through 360ss), FDA has the responsibility to protect the public from unnecessary exposure from radiation from electronic products. The regulations issued under these authorities are listed in 21 CFR chapter I, subchapter J. Specifically, subchapter A regulations, 21 CFR 5.10(a)(3), 5.25(b), 5.35(a)(4), and 5.600 through 5.606, delegate administrative authorities to FDA.

Section 532 of the act directs the Secretary of the Department of Health and Human Services (the Secretary) to establish and carry out an electronic product radiation control program, including the development, issuance, and administration of performance standards to control the emission of electronic product radiation from electronic products. The program is designed to protect the public health and safety from electronic radiation, and the act authorizes the Secretary to procure (by negotiation or otherwise) electronic products for research and testing purposes and to sell or otherwise dispose of such products.

Section 534(g) of the act directs the Secretary to review and evaluate industry testing programs on a continuing basis; and sections 535(e) and (f) of the act direct the Secretary to immediately notify manufacturers of, and ensure correction of, radiation defects or noncompliances with performance standards.

Section 537(b) of the act contains the authority to establish and maintain records (including testing records), make reports, and provide information to determine whether the manufacturer has acted in compliance.

Parts 1002 through 1010 (21 CFR parts 1002 through 1010) specify reports to be provided by manufacturers and distributors to FDA and records to be maintained in the event of an investigation of a safety concern or a product recall.

FDA conducts laboratory compliance testing of products covered by regulations for product standards in parts 1020, 1030, 1040, and 1050 (21 CFR parts 1020, 1030, 1040, and 1050).

FDA details product-specific performance standards that specify information to be supplied with the product or require specific reports. The information collections are either specifically called for in the act or were developed to aid the agency in performing its obligations under the act. The data reported to FDA and the records maintained are used by FDA and the industry to make decisions and take actions that protect the public from radiation hazards presented by electronic products. This information refers to the identification of, location of, operational characteristics of, quality assurance programs for, and problem identification and correction of electronic products. The data provided to users and others are intended to encourage actions to reduce or eliminate radiation exposures.

FDA uses the following forms to aid respondents in the submission of information for this information collection: (1) Form FDA 2767, "Notice of Availability of Sample Electronic Product;" (2) Form FDA 2877, "Declaration for Imported Electronic Products Subject to Radiation Control Standards," and (3) Form FDA 3147, "Application for a Variance From 21 CFR 1040.11(c) for a Laser Light Show, Display, or Device."

The most likely respondents to this information collection will be electronic product and x ray manufacturers, importers, and assemblers.

In the **Federal Register** of June 12, 2003 (68 FR 35231), FDA published a 60-day notice requesting public comment on the information collection provisions. FDA received two comments on the FDA radiation program paperwork burden (under OMB control number 0910–0025). One comment pertained to the information collection. It stated that the Occupational Safety and Health Administration and the Department of Health and Human Services (DHHS) already have radiation standards and that government paperwork on radiation emissions is of dubious value until more research is conducted, particularly on nonthermal effects of microwave/radiofrequency radiation. FDA is the agency of DHHS that is responsible for radiation safety standards for electronic products. Industry paperwork on radiation safety provides the agency with critical information on radiation controls, such as safety interlocks, timers, warning labels, etc., and on radiation emissions that are compared to known bioeffects hazards, whether specified in mandatory FDA standards or more recent consensus standards. Specifically, information provided to FDA on microwave radiation is compared to levels known to cause thermal injuries.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR Section | Form No. | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|---|
| 1002.3 | | 10 | 1 | 10 | 12 | 120 |
| 1002.10 and 1010.3 | | 540 | 1.6 | 850 | 24 | 20,400 |
| 1002.11 | | 1,000 | 1.5 | 1,500 | 0.5 | 750 |
| 1002.12 | | 150 | 1 | 150 | 5 | 750 |
| 1002.13 annual | | 900 | 1 | 900 | 26 | 23,400 |
| 1002.13 quarterly | | 250 | 2.4 | 600 | 0.5 | 300 |
| 1002.20 | | 40 | 1 | 40 | 2 | 80 |
| 1002.50(a) and 1002.51 | | 10 | 1.5 | 15 | 1 | 15 |
| | FDA 2877 | 600 | 32 | 19,200 | 0.2 | 3,840 |
| 1010.2 | | 1 | 1 | 1 | 5 | 5 |
| 1010.4(b) | | 1 | 1 | 1 | 120 | 120 |
| 1010.5 and 1010.13 | | 3 | 1 | 3 | 22 | 66 |
| | FDA 2767 | 145 | 11.03 | 1,600 | 0.09 | 144 |
| 1020.20(c)(4) | | 1 | 1 | 1 | 1 | 1 |
| 1020.30(d), (d)(1), and (d)(2) | FDA 2579 | 2,345 | 8.96 | 21,000 | 0.30 | 6,300 |
| 1020.30(g) | | 200 | 1.33 | 265 | 35 | 9,275 |
| 1020.30(h)(1) through (h)(4),1020.32(a)(1) and (g) | | 200 | 1.33 | 265 | 35 | 9,275 |
| 1020.32(g) and 1020.33(c), (d), (g)(4), (j)(1), and (j)(2) | | 9 | 1 | 9 | 40 | 360 |
| 1020.40(c)(9)(i) and (c)(9)(ii) | | 8 | 1 | 8 | 40 | 320 |

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

| 21 CFR Section | Form No. | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|---|
| 1030.10(c)(4) | | 41 | 1.61 | 66 | 20 | 1,320 |
| 1030.10(c)(5)(i) through (c)(5)(iv) | | 41 | 1.61 | 66 | 20 | 1,320 |
| 1030.10(c)(6)(iii) and (c)(6)(iv) | | 1 | 1 | 1 | 1 | 1 |
| 1040.10(a)(3)(i) | | 83 | 1 | 83 | 3 | 249 |
| 1040.10(h)(1)(i) through (h)(1)(vi) | | 805 | 1 | 805 | 8 | 6,440 |
| 1040.10(h)(2)(i) and (h)(2)(ii) | | 100 | 1 | 100 | 8 | 800 |
| 1040.11(a)(2) | | 190 | 1 | 190 | 10 | 1,900 |
| 1040.11(c) | FDA 3147 | 53 | 2.2 | 115 | 0.5 | 58 |
| 1040.20 (d), (e)(1), and (e)(2) | | 110 | 1 | 110 | 10 | 1,100 |
| 1040.30(c)(1) | | 1 | 1 | 1 | 1 | 1 |
| 1040.30(c)(2) | | 7 | 1 | 7 | 1 | 7 |
| 1050.10(f)(1) through (f)(2)(iii) | | 10 | 1 | 10 | 56 | 560 |
| Total Annual Reporting Burden | | | | | | 89,278 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

| 21 CFR Section | No. of Recordkeepers | Annual Frequency of Recordkeeping | Total Annual Records | Hours per Recordkeeper | Total Hours |
|---|---|---|---|---|---|
| 1002.30 and 1002.31(a) | 1,150 | 1,655.5 | 1,903,825 | 198.7 | 228,505 |
| 1002.40 and 1002.41 | 2,950 | 49.2 | 145,140 | 2.4 | 7,080 |
| 1020.30(g)(2) | 22 | 1 | 22 | 0.5 | 11 |
| 1040.10(a)(3)(ii) | 83 | 1 | 83 | 1.0 | 83 |
| Totals | | | | | 235,679 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimates were derived by consultation with FDA and industry personnel and actual data collected from industry over the past 3 years. An evaluation of the type and scope of information requested was also used to derive some time estimates. For example, disclosure information primarily requires time only to update and maintain existing manuals. Initial development of manuals has been performed except for new firms entering the industry. When information is generally provided to users, assemblers, or dealers in the same manual, they have been grouped together in table 1 of this document.

The following information collection requirements are not subject to review by OMB because they do not constitute a "collection of information" under the PRA: Sections 1002.31(c); 1003.10(a), (b), and (c); 1003.11(a)(3) and (b); 1003.20(a) through (h); 1003.21(a) through (d); 1003.22(a) and (b); 1003.30(a) and (b); 1003.31(a) and (b); 1004.2(a) through (i); 1004.3(a) through (i); 1004.4(a) through (h); and 1005.21(a) through (c). These requirements "apply to the collection of information during the conduct of general investigations or audits" (5 CFR 1320.4(b)). According to 5 CFR 1320.3(c)(2), the following labeling requirements are also not subject to review under the PRA because they are a public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public: Sections 1020.10(c)(4), 1030.10(c)(6), 1040.10(g), 1040.30(c)(1), and 1050.10(d)(1).

Dated: September 30, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–25304 Filed 10–6–03; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

**[Docket No. 2003N–0324]**

## Certain Antibiotic New Animal Drug Products and Use Combinations Subject to Listings in the New Animal Drug Regulations; Drug Efficacy Study Implementation; Notice of Opportunity for Hearing; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a notice of opportunity for hearing that published in the **Federal Register** on August 8, 2003 (68 FR 47332). FDA is correcting a product name used by the current sponsor of NADA 141–137, the FR citation for a Drug Efficacy Study Implementation Program finding of effectiveness, and the column headings of six tables. These corrections are being made to improve the accuracy of the **Federal Register**. This notice also extends the deadline for parties who have requested a hearing to submit data and analysis upon which their request for a hearing relies. Other interested persons may submit comments on the notice of opportunity for hearing (NOOH) before the deadline.

**DATES:** Submit all written data and analysis upon which a request for a hearing relies and other written comments by November 6, 2003.

**FOR FURTHER INFORMATION CONTACT:** Andrew J. Beaulieu, Center for Veterinary Medicine (HFV–1), 7519 Standish Pl., Rockville, MD 20855, 301–827–2954, e-mail: *abeaulie@cvm.fda.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In the **Federal Register** of August 8, 2003 (68 FR 47332), FDA announced the effective conditions of use for some of the drug products and use combinations subject to the listings in §§ 510.515 and/or 558.15 (21 CFR 510.515 and/or 558.15), and proposed to withdraw the new animal drug applications (NADAs) for those products or use combinations lacking substantial evidence of effectiveness following a 90-day opportunity to supplement the NADAs with labeling conforming to the relevant findings of effectiveness. The Center for Veterinary Medicine (CVM) also provided an opportunity for hearing for applications proposed to be withdrawn. Interested persons were given until September 8, 2003, to submit written appearances and requests for a hearing; until October 7, 2003, to submit data and analysis upon which a request for a hearing relies; and until November 6, 2003, to submit supplemental NADAs. After publication of the NOOH, several errors were found by CVM and others. CVM is correcting these errors, but does not believe that these corrections alter the underlying basis of the NOOH.

## II. Corrections

In FR Doc. 03–20241, published August 8, 2003 (68 FR 47332), the following corrections are made:

1. On page 47333, in the third column, under "*A. Bacitracin Methylene Disalicylate Single-Ingredient Type A Medicated Articles*," the trade name following NADA 141–137, "FORTRACIN", is corrected to read "PENNITRACIN".

2. On pages 47335 in tables 2, 3, and 4, and on page 47336 in table 5, in the table heading "Oxytetracycline" is corrected to read "Oxytetracycline[1]"with a footnote added to read "[1]Expressed in terms of an equivalent amount of oxytetracycline hydrochloride" and "Neomycin" is corrected to read "Neomycin Sulfate".

3. On pages 47335 in tables 2, 3, and 4, and on page 47336 in table 5 in the first column heading "Oxytetracycline" is corrected to read "Oxytetracycline[1]" and "neomycin" is corrected to read "neomycin sulfate".

4. On page 47336, in the first column, under "*C. Combination Drug Type B and Type C Medicated Feeds for Poultry Containing Nicarbazin*,"the combination use following NADA 98–371 "NICARBAZIN (nicarbazin), PENICILLIN G PROCAINE (procaine penicillin), and 3-NITRO (roxarsone)" is corrected to read "nicarbazin, procaine penicillin, and roxarsone".

5. On page 47336, in the first column, under "*C. Combination Drug Type B and Type C Medicated Feeds for Poultry Containing Nicarbazin*," the combination use following NADA 98–374 "NICARBAZIN (nicarbazin) and PENICILLIN G PROCAINE (procaine penicillin)" is corrected to read "nicarbazin and procaine penicillin".

6. On page 47336, in the second column, under "*C. Combination Drug Type B and Type C Medicated Feeds for Poultry Containing Nicarbazin*," the combination use following NADA 100–853 "NICARBAZIN (nicarbazin), BACIFERM (BMD), and 3-NITRO (roxarsone)" is corrected to read "nicarbazin, bacitracin methylene disalicylate, and roxarsone".

7. On page 47336, in the third column, under "*C. Combination Drug Type B and Type C Medicated Feeds for Poultry Containing Nicarbazin*," in the fourth line, "bacitracin zinc" is corrected to read "bacitracin methylene disalicylate".

8. On page 47336, in the third column, in the eighth and ninth lines, "35 FR 12490, August 5, 1970 (bacitracin zinc)" is corrected to read "35 FR 11531, July 17, 1970, as corrected by 35 FR 15408, October 2, 1970 (bacitracin methylene disalicylate)".

9. On page 47337 in table 6, and on page 47338 in table 7, in the first three column headings "Type A article in g/ton" is corrected to read "Drug in g/ton".

Dated: October 1, 2003.

**Stephen F. Sundlof,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 03–25343 Filed 10–6–03; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Substance Abuse and Mental Health Services Administration

## Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) published in the **Federal Register** on April 11, 1988 (53 FR 11970), and revised in the **Federal Register** on June 9, 1994 (59 FR 29908) and on September 30, 1997 (62 FR 51118). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from HHS' National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov*

**FOR FURTHER INFORMATION CONTACT:** Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2, Room 815, Rockville, Maryland 20857; 301–443–6014 (voice), 301–443–3031 (fax).

**SUPPLEMENTARY INFORMATION:** The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards that laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification, a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines, the following laboratories meet the minimum standards set forth in the Mandatory Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 / 800–877–7016, (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770 / 888–290–1150.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400.

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–6870, (Formerly: Jewish Hospital of Cincinnati, Inc.).

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917.

Diagnostic Services Inc., dba DSI, 12700 Westlinks Dr., Fort Myers, FL 33913, 239–561–8200 / 800–735–5416.

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912–244–4468.

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2661 / 800–898–0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310.

Dynacare Kasper Medical Laboratories*, 10150–102 St., Suite 200, Edmonton, Alberta, Canada TJ5 5E2, 780–451–3702 / 800–661–9876.

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609.

Express Analytical Labs, 3405 7th Ave., Suite 106, Marion, IA 52302, 319–377–0500.

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4.

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6225.

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989 / 800–433–3823, (Formerly: Laboratory Specialists, Inc.).

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927 / 800–873–8845, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.).

Laboratory Corporation of America Holdings, 7207 N. Gessner Rd., Houston, TX 77040, 713–856–8288 / 800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400 / 800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Dr., Research Triangle Park, NC 27709, 919–572–6900 / 800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 10788 Roselle St., San Diego, CA 92121, 800–882–7272, (Formerly: Poisonlab, Inc.).

Laboratory Corporation of America Holdings, 1120 Stateline Rd. West, Southaven, MS 38671, 866–827–8042 / 800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734 / 800–331–3734.

MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (Formerly: NOVAMANN (Ontario) Inc.).

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466 / 800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295 / 800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Dr., Minneapolis, MN 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250 / 800–350–3515.

Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 S., Salt Lake City, UT 84124, 801–293–2300 / 800–322–3361, (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.).

One Source Toxicology Laboratory, Inc., 1705 Center St., Deer Park, TX 77536, 713–920–2559, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134.

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991 / 800–541–7891x8991.

PharmChem Laboratories, Inc., 4600 N. Beach, Haltom City, TX 76137, 817–605–5300, (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory).

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372 / 800–821–3627.

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 / 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–824–6152, (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866 / 800–433–2750, (Formerly: Associated Pathologists Laboratories, Inc.).

Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600 / 877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995 / 847–885–2010, (Formerly: SmithKline Beecham Clinical Laboratories; International Toxicology Laboratories).

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520 / 800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories).

Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130.

Sciteck Clinical Laboratories, Inc., 317 Rutledge Rd., Fletcher, NC 28732, 828–650–0409.

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* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on June 9, 1994 (59 FR 22908) and on September 30, 1997 (62 FR 51118). After receiving DOT certification, the laboratory will be included in the monthly list of HHS certified laboratories and participate in the NLCP certification maintenance program.

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300 / 800–999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x276.

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507 / 800–279–0027.

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520, (Formerly: St. Lawrence Hospital & Healthcare System).

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.

Sure-Test Laboratories, Inc., 2900 Broad Ave., Memphis, TN 38112, 901–474–6026.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273.

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

**Anna Marsh,**

*Acting Executive Officer, SAMHSA.*

[FR Doc. 03–25328 Filed 10–6–03; 8:45 am]

BILLING CODE 4160–20–P

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## DEPARTMENT OF HOMELAND SECURITY

### Directorate of Information Analysis and Infrastructure Protection; National Infrastructure Advisory Council

**Notice of Open Meeting**

The National Infrastructure Advisory Council (NIAC) will meet on Tuesday, October 14, 2003, from 2 p.m. until 4 p.m. EDT. The meeting, which will be held telephonically, will be open to the public via a "listen only" telephone bridge. The number of lines is limited and will be available on a "first-come, first-served" basis. Members of the public interested in attending by telephone should call (roll free) 1–877–888–4034 and notify the operator that they are calling for the NIAC conference.

The Council advises the President of the United States on the security of information systems for critical infrastructure supporting other sectors of the economy, including banking and finance, transportation, energy, manufacturing, and emergency government services.

**Summary of Agenda**

At this meeting, the Council will receive the findings and propose recommendations developed by its working groups on Cross Sector Interdependencies and Risk Assessment Guidance and Regulatory Guidance, respectively. In addition, the Council will receive status briefings on the continuing activities of its working groups on Vulnerability Disclosure Guidelines and the Evaluation and Enhancement of Information Sharing and Analysis. Copies of briefing materials to be used during the meeting will be posted on the *Meeting information* section of the Council's Web site at *http://www.dhs.gov/dhspublic/display?theme=9&content=1795* in advance of the meeting.

Written comments may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Council members, the Council suggests that presenters forward the public presentation materials, ten days priors to the meeting date, to the following address: Mr. Eric T. Werner, Directorate of Information Analysis and Infrastructure Protection, U.S. Department of Homeland Security, 14th Street & Constitution Avenue, NW., Room 6703, Washington, DC 20230.

For more information about the NIAC or this meeting, please refer to the Council's web site or contact Eric Werner at (202) 482–7470.

Dated: September 29, 2003

**Eric T. Werner,**

*Council Liaison Officer.*

[FR Doc. 03–25516 Filed 10–3–03; 1:50 pm]

BILLING CODE 4410–10–M

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1495–DR]**

### Delaware; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Delaware (FEMA–1495–DR), dated September 23, 2003, and related determinations.

**EFFECTIVE DATE:** September 23, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 23, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

> I have determined that the damage in certain areas of the State of Delaware resulting from Tropical Storm Henri on September 15, 2003, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Delaware.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Individual Assistance and Public Assistance in the designated areas, and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.
>
> Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Michael J. Hall, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Delaware to have been affected adversely by this declared major disaster:

> New Castle County for Individual Assistance and Public Assistance.

All counties within the State of Delaware are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services

Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–25348 Filed 10–6–03; 8:45 am]

**BILLING CODE 6718–02–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

**[FEMA–1494–DR]**

### Delaware; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Delaware (FEMA–1494–DR), dated September 20, 2003, and related determinations.

**EFFECTIVE DATE:** September 26, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Delaware is hereby amended to include the Hazard Mitigation Grant Program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 20, 2003:

All counties in the State of Delaware are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–25363 Filed 10–6–03; 8:45 am]

**BILLING CODE 6718–02–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

**[FEMA–1493–DR]**

### District of Columbia; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the District of Columbia (FEMA–1493–DR), datedSeptember 20, 2003, and related determinations.

**EFFECTIVE DATE:** September 26, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the District of Columbia is hereby amended to include the Hazard Mitigation Grant Program for the District of Columbia determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 20, 2003:

The District of Columbia is eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–25347 Filed 10–6–03; 8:45 am]

**BILLING CODE 6718–02–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

**[FEMA–1476–DR]**

### Indiana; Amendment No. 9 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–1476–DR), dated July 11, 2003, and related determinations.

**EFFECTIVE DATE:** September 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 11, 2003:

Madison County for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–25353 Filed 10–6–03; 8:45 am]

**BILLING CODE 6718–02–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA-3189-EM]**

### Michigan; Emergency and Related Determinations

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

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**SUMMARY:** This is a notice of the Presidential declaration of an emergency for the State of Michigan (FEMA-3189-EM), dated September 23, 2003, and related determinations.

**EFFECTIVE DATE:** September 23, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 23, 2003, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (Stafford Act), as follows:

> I have determined that the emergency conditions in certain areas of the State of Michigan, resulting from a severe power outage on August 14-17, 2003, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (Stafford Act). I, therefore, declare that such an emergency exists in the State of Michigan.
>
> You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B) under the Public Assistance program at 75 percent Federal funding. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. However, pursuant to 42 U.S.C. 5193(b)(1), Federal assistance under this declaration will not exceed $5 million.
>
> Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Ron Sherman, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Michigan to have been affected adversely by this declared emergency:

> Calhoun, Eaton, Genesee, Hillsdale, Ingham, Kalamazoo, Lapeer, Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties for emergency protective measures (Category B) under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03-25352 Filed 10-6-03; 8:45 am]

**BILLING CODE 6718-02-P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA-3188-EM]**

### New Jersey; Emergency and Related Determinations

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

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**SUMMARY:** This is a notice of the Presidential declaration of an emergency for the State of New Jersey (FEMA-3188-EM), dated September 23, 2003, and related determinations.

**EFFECTIVE DATE:** September 23, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 23, 2003, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (Stafford Act), as follows:

> I have determined that the emergency conditions in certain areas of the State of New Jersey, resulting from a power outage on August 14-16, 2003, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (Stafford Act). I, therefore, declare that such an emergency exists in the State of New Jersey.
>
> You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B) under the Public Assistance program at 75 percent Federal funding. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. However, pursuant to 42 U.S.C. 5193 (b) (1), Federal assistance under this declaration will not exceed $5 million.
>
> Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Justo Hernandez, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of New Jersey to have been affected adversely by this declared emergency:

> Bergen, Essex, Hudson, Passaic, and Union Counties for emergency protective measures (Category B) under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-

Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–25351 Filed 10–6–03; 8:45 am]

**BILLING CODE 6718–02–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1490–DR]**

### North Carolina; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–1490–DR), dated September 18, 2003, and related determinations.

**EFFECTIVE DATE:** September 18, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 18, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act), as follows:

> I have determined that the damage in certain areas of the State of North Carolina resulting from Hurricane Isabel on September 18, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of North Carolina.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Individual Assistance and assistance for debris removal (Category A) and emergency protective measures (Category B), under the Public Assistance program in the designated areas, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and the Other Needs Assistance under section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.
>
> Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Gracia Szczech of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Carolina to have been affected adversely by this declared major disaster:

> Individual Assistance, including direct Federal assistance is authorized for Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Edgecombe, Gates, Halifax, Hertford, Hyde, Jones, Martin, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Tyrrell and Washington Counties.
>
> Debris removal (Category A) and emergency protective measures (Category B), including direct Federal assistance under the Public Assistance program for Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Edgecombe, Gates, Halifax, Hertford, Hyde, Jones, Martin, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Tyrrell and Washington Counties.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–25355 Filed 10–6–03; 8:45 am]

**BILLING CODE 6718–02–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1490–DR]**

### North Carolina; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–1490–DR), dated September 18, 2003, and related determinations.

**EFFECTIVE DATE:** September 20, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of North Carolina is hereby amended to include the Hazard Mitigation Grant Program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 18, 2003:

> All counties in the State of North Carolina and the Eastern Band of Cherokee Indians are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–25356 Filed 10–6–03; 8:45 am]

**BILLING CODE 6718–02–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1490–DR]**

### North Carolina; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

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**SUMMARY:** This notice amends the notice of a major disaster for the State of North Carolina (FEMA–1490–DR), dated September 18, 2003, and related determinations.

**EFFECTIVE DATE:** September 26, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective September 26, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–25357 Filed 10–6–03; 8:45 am]

**BILLING CODE 6718–02–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–3187–EM]**

### Ohio; Emergency and Related Determinations

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

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**SUMMARY:** This is a notice of the Presidential declaration of an emergency for the State of Ohio (FEMA–3187–EM), dated September 23, 2003, and related determinations.

**EFFECTIVE DATE:** September 23, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 23, 2003, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

> I have determined that the emergency conditions in certain areas of the State of Ohio, resulting from a severe, statewide power outage on August 14–17, 2003, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (Stafford Act). I, therefore, declare that such an emergency exists in the State of Ohio.
>
> You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B) under the Public Assistance program at 75 percent Federal funding. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. However, pursuant to 42 U.S.C. 5193 (b) (1), Federal assistance under this declaration will not exceed $5 million.
>
> Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Ron Sherman, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following area of the State of Ohio to have been affected adversely by this declared emergency:

Cuyahoga County for emergency protective measures (Category B) under the Public Assistance program.

The following (The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–25350 Filed 10–6–03; 8:45 am]

**BILLING CODE 6718–02–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1491–DR]**

### Virginia; Amendment No. 3 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

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**SUMMARY:** This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–1491–DR), dated September 18, 2003, and related determinations.

**EFFECTIVE DATE:** September 22, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the Commonwealth of Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 18, 2003:

The Independent Cities of Bedford, Buena Vista, Charlottesville, Fredericksburg, Harrisonburg, Lynchburg, Manassas, Manassas Park, and Winchester, and the counties of Albemarle, Amelia, Amherst, Appomattox, Bedford, Buckingham, Campbell, Charlotte, Clarke, Culpeper, Cumberland, Dinwiddie, Fauquier, Frederick, Greene, Halifax, Hanover, King George, King William, King and Queen, Louisa, Loudoun, Lunenburg, Madison, Nelson, New Kent, Nottoway, Pittsylvania, Powhatan, Prince

Edward, Rappahannock, Rockingham, Shenandoah, and Warren for Individual Assistance, including direct Federal assistance, and debris removal (Category A) and emergency protective measures (Category B), under the Public Assistance program, including direct Federal assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–25358 Filed 10–6–03; 8:45 am]

**BILLING CODE 6718–02–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1491–DR]**

### Virginia; Amendment No. 4 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–1491–DR), dated September 18, 2003, and related determinations.

**EFFECTIVE DATE:** September 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the Commonwealth of Virginia is hereby amended to include Categories C through G under the Public Assistance program and the Hazard Mitigation Grant Program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 18, 2003:

The Independent Cities of Hopewell, Norfolk, and Virginia Beach, and the counties of Charles City, Gloucester, Lancaster, Mathews, Middlesex, Northumberland, Prince George, Richmond, and Westmoreland for Categories C through G under the Public Assistance program (already designated for Categories A and B, including direct Federal assistance, and Individual Assistance, including direct Federal assistance.)

All Independent Cities and counties in the Commonwealth of Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–25359 Filed 10–6–03; 8:45 am]

**BILLING CODE 6718–02–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1496–DR]**

### West Virginia; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–1496–DR), dated September 23, 2003, and related determinations.

**EFFECTIVE DATE:** September 23, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 23, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of West Virginia, resulting from Hurricane Isabel on September 18, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of West Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for debris removal (Category A) and emergency protective measures (Category B), under the Public Assistance program in the designated areas, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act, additional categories of assistance under the Public Assistance program, and Hazard Mitigation are later requested and warranted, Federal funding under these programs will also be limited to 75 percent of total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Carlos Mitchell, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of West Virginia to have been affected adversely by this declared major disaster:

The counties of Berkeley, Grant, Hampshire, Hardy, Jefferson, Mineral, Morgan, Pendleton, Randolph, and Tucker for debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance

Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security*

[FR Doc. 03–25349 Filed 10–6–03; 8:45 am]

**BILLING CODE 6718–02–P**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4820–N–39]**

### Notice of Proposed Information Collection: Comment Request;Single Family Premium Collection Subsystem-Upfront (SFPCS–U)

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Managment and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments Due Date: December 8, 2003.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne—Eddins@hud.gov*.

**FOR FURTHER INFORMATION CONTACT:** Doretha S. Dabney, Branch Chief, Single Family Insurance Operations Branch, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1994 X3471 (this is not a toll free number).

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposal information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also list the following information:

*Title of Proposal:* Single Family Premium Collection Subsystem-Upfront (SFPCS–U).

*OMB Control Number, if applicable:* 2502–0423.

*Description of the need for the information and proposed use:* The Single Family Premium Collection Subsystem-Upfront (SFPCS–U) allows the lenders to remit the Upfront Mortgage Insurance Premiums using funds obtained from the mortgagor during the closing of the mortgage transaction at settlement. The SFPCS–U strengthens HUD's ability to manage and process upfront single-family mortgage insurance premium collections and corrections to submitted data. It also improves data integrity for the Single Family Mortgage Insurance Program. Therefore, the FHA approved lenders use Automated Clearing House (ACH) and/or Electronic Data Interchange (EDI) applications for all transmissions with SFPCS–U. The authority for this collection of information is specified in 24 CFR 203.280 and 24 CFR 203.281. The collection of information is also used in calculating refunds due to former FHA mortgagors when they apply for homeowner refunds of the unearned portion of the mortgage insurance premium, 24 CFR 203.283, as appropriate. Without this information the premium collection/monitoring process would be severely impeded, and program data would be unreliable. In general, the lenders use the ACH and/or EDI applications to remit the upfront premium through SFPCS–U to obtain mortgage insurance for the homeowner.

*Agency form numbers, if applicable:* None.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The public reporting burden for this collection of information is estimated to average 5 minutes per response; the number of respondents is 9,939 generating approximately 1,349,281 annual responses; the frequency of response is on occasion; the estimated total number of burden hours needed to prepare the information collection is 71,790. The Lenders are able to key the information online or have their computer transmit the information. Since remittances are made through the ACH and/or EDI applications the upfront remittance is submitted electronically and their is no paperwork to complete and mail in.

*Status of the proposed information collection:* Extension of a currently approved collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 9, 2003.

**Sean G. Cassidy,**

*General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.*

[FR Doc. 03–25321 Filed 10–6–03; 8:45 am]

**BILLING CODE 4210–27–M**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No.FR–4815–N–79]**

### Notice of Submission of Proposed Information Collection to OMB: Multifamily Tenant Characteristics Family Report

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The subject information is collected to ascertain public housing tenant eligibility. HUD is seeking renewal of the approval for this information collection requirement.

**DATES:** *Comments Due Date:* November 6, 2003.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0083) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov*.

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh

Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at *http://mf.hud.gov:63001/po/i/icbts/collectionsearch.cfm*.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

*Title of Proposal:* Multifamily Tenant Characteristics Family Report.

*OMB Approval Number:* 2577–0083.

*Form Numbers:* 50058, 50058–MTW.

*Description of the Need for the Information and its Proposed Use:* The Department of Housing and Urban Development (HUD) intends to revise Form HUD–50058 in a manner that will require changes to the Form HUD–50058 Module in the Public and Indian Housing Information Center (PIC), but will not require changes in software systems of public housing agencies or vendors supporting public housing agencies. HUD will maintain the current information collection burden until the changes in HUD's PIC system have been completed. Therefore, HUD seeks comments on the proposed revisions to the Form HUD–50058 and on the proposal to extend the existing Form HUD–50058 (6/2001) until the revisions are fully implemented.

The Form HUD–50058 collects demographic and income data on residents participating in PIH's Public Housing, Section 8 Housing Choice Voucher, Section 8 Project Based Certificates, and Section 8 Moderate Rehabilitation programs. Public housing agencies will transmit the form electronically to HUD at least annually for each household.

The Department updated the currently approved Form HUD–50058 by removing obsolete and unnecessary data fields. These deletions will not require vendors to modify their software for reporting family data to the Public and Indian Housing Information Center (PIC)—the information system that collects electronic Form HUD–50058 data. Public housing agencies should not modify their software to reflect the deletions, but they are no longer required to send data in the fields that HUD has deleted. If public housing agencies submit data for the deleted fields using the file structure of the current form (Form HUD–50058 (6/2001)), the PIC system will ignore the data.

HUD seeks comments on the proposal to extend the existing Form HUD-50058 MTW (6/2001). The Form HUD–50058 MTW collects demographic and income data on residents participating in PIH's Public Housing, Section 8 Housing Choice Voucher, Section 8 Project Based Certificates, and Section 8 Moderate Rehabilitation programs and whose public housing agencies participate in the Moving-to-Work (MTW) program. MTW–PHA (*i.e.*, public housing agencies participating in the Moving-to-Work demonstration program) will transmit the form electronically to HUD at least annually for each household.

Form HUD–50058 MTW addresses the particular reporting requirements and constraints for public housing agencies that participate in the Moving-to-Work (MTW) demonstration program mandated by Section 206 of the 1996 HUD Appropriations Act. This information collection effort supports MTW program monitoring and evaluation, as required by Congress.

MTW–PHA will use the Form HUD–50058 MTW to collect data on MTW-families only. MTW-families include families who participate in any component of the MTW program. This includes families who receive self-sufficiency support services but pay rent under conventional program rules. Non-MTW-families include families who reside in a MTW–PHA but do not participate in any component of the MTW program. MTW–PHA will continue to use the regular Form HUD–50058 for Non-MTW families.

*Respondents:* Public housing agencies, State and local governments, individuals and households.

*Frequency of Submission:* Quarterly, monthly, annually.

*Reporting Burden:* Number of Respondents 4,526; Average responses per respondent 1,077; Total annual responses 4,874,180.

*Total Estimated Burden Hours:* 1,624,727.

*Status:* Extension of a currently approved collection; HUD is seeking renewal of the approval for this information collection requirement.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 30, 2003.

**Wayne Eddins,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 03–25322 Filed 10–6–03; 8:45 am]

BILLING CODE 4210–72–P

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–80]

## Notice of Submission of Proposed Information Collection to OMB: Mortgagees Annual Notification to Mortgagors

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Mortgagees are required to inform mortgagors of interest paid and taxes disbursed from escrow accounts for income tax purposes. Servicing lenders must maintain a toll free number, and servicing personnel for mortgagors' enquiries. Mortgagees must provide interest accounting in such a way as to allow the homeowner to easily identify the amount of any subsidy HUD paid on behalf of the homeowner. HUD is seeking renewal of the approval for this information collection requirement.

**DATES:** *Comments Due Date:* November 6, 2003.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0235) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at *http://mf.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information: *Title of Proposal:* Mortgagees Annual Notification to Mortgagors.

*OMB Approval Number:* 2502–0235.

*Form Numbers:* None.

*Description of the Need for the Information and its Proposed Use:* Mortgagees are required to inform mortgagors of interest paid and taxes disbursed from escrow accounts for income tax purposes. Servicing lenders must maintain a toll free number, and servicing personnel for mortgagors' enquiries. Mortgagees must provide interest accounting in such a way as to allow the homeowner to easily identify the amount of any subsidy HUD paid on behalf of the homeowner.

*Respondents:* For-profit institutions.

*Frequency of Submission:* Annually.

*Reporting Burden:* Number of Respondents 1,622; Average responses per respondent 3,391; Total annual responses 5,499,507.

*Total Estimated Burden Hours:* 1,689.

*Status:* Extension of a currently approved collection; HUD is seeking renewal of the approval for this information collection requirement.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 30, 2003.

**Wayne Eddins,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 03–25323 Filed 10–6–03; 8:45 am]

BILLING CODE 4210–72–P

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4679–N–07]**

## Changes in Certain Multifamily Mortgage Insurance Premiums

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice reissues as final the notice published on July 1, 2003, for public comment. That notice lowered the mortgage insurance premiums (MIP) for certain Federal Housing Administration (FHA) insurance programs whose commitments will be issued in Fiscal Year (FY) 2004. HUD received no comments from the public on that notice.

**FOR FURTHER INFORMATION CONTACT:** Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, (202) 708–1142 (this is not a toll-free number). Hearing- or speech-impaired individuals may access these numbers through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### Background

On March 17, 2003 (68 FR 12792), HUD published a final rule on "Mortgage Insurance Premiums in Multifamily Housing Programs," which revised the regulatory system for establishing the MIP. Instead of setting the MIP at a specific rate, the Secretary is permitted to charge an MIP within the full range of HUD's statutory authority of one fourth of one percent to one percent through a notice, as provided in section 203(c)(1) of the National Housing Act (the Act) (12 U.S.C. 1709(c)(1)). The March 17, 2003, final rule stated that HUD would provide a 30-day period for public comment on future notices changing mortgage insurance premiums in multifamily insured housing programs.

Pursuant to that procedure, this notice lowers mortgage insurance premiums in FY 2004 to 50 basis points for multifamily programs authorized under Sections 207, 220, and 221(d)(4) of the Act without low-income housing tax credits, Section 231 of the Act, and insured programs with HOPE VI with or without low-income housing tax credits. The effective date of these changes is October 1, 2003. Multifamily programs under the following sections of the Act will remain at 80 basis points and will continue to require a credit subsidy obligation: Section 221(d)(3) for nonprofit and cooperatives for new construction or rehabilitation, Section 223(d) for operating loss loans for both apartments and health care facilities, and Section 241(a) for supplemental loans for additions or improvements to existing apartments. The MIP for sections 223(a)(7), and 207 pursuant to 223(f), 232, 232 pursuant to 223(f), 242, and 241(a) of the Act for health care facilities, Title XI, and low-income housing tax credit projects remain unchanged at 50 basis points.

The mortgage insurance premiums in effect for FHA firm commitments issued, amended, or reissued in FY 2004, are shown in the table below:

Fiscal Year 2004

| Multifamily loan program | Basis points |
|---|---|
| Section 207—Multifamily Housing—New Constr/Sub. Rehab | 50 |
| Section 207—Manufactured Home Parks | 50 |
| Section 220—Housing In Urban Renewal Areas | 50 |
| Section 221(d)(3)—Moderate Income Housing | 80 |
| Section 221(d)(4)—Moderate Income Housing | 50 |
| Section 223(a)(7)—Refinancing of Insured Multifamily Project | 50 |
| Section 223(d)—Operating Loss Loans | 80 |
| Section 207 pursuant to 223(f)—Purchase or Refinance Housing | *50 |
| Section 213—Cooperatives | 50 |
| Section 231—Housing for the Elderly | 50 |
| Section 232—Health Care Facilities | 50 |
| Section 232 pursuant to Section 223(f)—Purchase or Refinance Health Care | *50 |
| Section 234(d)—Condominium Housing | 50 |
| Section 241(a)—Additions & Improvements for Apartments | 80 |

Fiscal Year 2004

| Multifamily loan program | Basis points |
|---|---|
| Section 241(a)—Additions & Improvements for Health Care Facilities | 50 |
| Section 242—Hospitals | 50 |
| Title XI—Group Practice | 50 |

*First Year MIP for these programs remain at 100 basis points.

### Applicable Mortgage Insurance Premium Procedures

The MIP regulations are found in 24 CFR part 207. This notice is published in accordance with the procedures stated in 24 CFR 207.252, 207.252(a), and 207.254.

### Transition Guidelines

*A. General*

If a firm commitment has been issued at a higher MIP, and FHA has not initially endorsed the note, the lender may request the field office to reprocess the commitment at the lower MIP and reissue the commitment on or after October 1, 2003. If the initial endorsement has occurred the MIP cannot be changed.

*B. Extension of Outstanding 57 and 61 Basis Points Firm Commitments*

FHA may extend outstanding firm commitments when the Hub/Program Center determines that the underwriting conclusions (rents, expenses, construction costs, mortgage amount and case required to close) are still valid.

*C. Reprocessing of Outstanding 57 and 61 Basis Points Firm Commitments*

FHA will consider requests from mortgagees to reprocess outstanding firm commitments at the lower mortgage insurance premium once the new premiums become effective in FY 2004:

1. Outstanding commitments with initial 60-day expiration dates on or after the effective date of this MIP notice.

- FHA Multifamily Hub/Program Center staff will simply reprocess these cases to reflect the impact of the lower MIP and reissue commitments with a new date.

2. Outstanding commitments with initial expiration dates prior to the effective date of this MIP notice which have pending extension requests or have had extensions granted by FHA beyond the initial 60-day period.

- These cases will require more extensive reprocessing by FHA staff. Reprocessing will include an updated FHA field staff analysis and review of rents, expenses, construction costs, particularly considering any changes in Davis-Bacon wage rates, and cash required to close. (An updated appraisal may be required from the mortgagee depending on the age of the appraisal.) If reprocessing results in favorable underwriting conclusions, Hub/Program Center staff will reissue commitments with a new date at the new MIP.

*D. Reopening of Expired 57 or 61 Basis Points Firm Commitments*

FHA will consider requests from mortgagees, which may be either updated Traditional Application Processing (TAP) firm commitment applications or updated Multifamily Accelerated Processing (MAP) applications with updated exhibits, to reopen expired 57 or 61 basis points commitments on or after the effective date of the MIP notice, provided that the reopening requests are received within 90 days of the expiration of the commitments and include the $.50 per thousand of requested mortgage reopening fee. Reopening requests will be reprocessed by FHA field staff under the instructions in paragraph C.2 above.

After expiration of the 90-day reopening period, mortgagees are required to submit new applications with the $3 per thousand application fee (MAP applications must start at the pre-application stage).

### Credit Subsidy

Mortgagee Letters will be issued from time to time to advise mortgagees of any requirements for credit subsidy and the availability of credit subsidy. In FY 2004, the same three programs will require credit subsidy as in FY 2003: Section 221(d)(3) for nonprofit and cooperatives for new construction or substantial rehabilitation, Section 223(d) for operating loss loans for both apartments and health care facilities, and Section 241(a) for supplemental loans for additions or improvements to existing apartments only. FHA will not issue amended commitments for increased mortgage amounts nor obligate additional credit subsidy for projects requiring credit subsidy in FY 2004.

Dated: September 25, 2003.

**John C. Weicher,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 03–25324 Filed 10–6–03; 8:45 am]

BILLING CODE 4210–27–P

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## DEPARTMENT OF THE INTERIOR

### Office of Federal Acknowledgment; Documented Petitions for Federal Acknowledgment as an Indian Tribe, Submission to OMB for Renewal

**AGENCY:** Office of Federal Acknowledgment, Interior.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request for Documented Petitions for Federal Acknowledgment as an Indian Tribe is submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget for extension.

**DATES:** Submit comments on or before November 6, 2003.

**ADDRESSES:** Send your written comments to Attention: Desk Officer for the Department of the Interior. You may fax comments to (202) 395–6566 or send an e-mail to *OIRA_DOCKET@omb.eop.gov.* Please send a duplicate copy to R. Lee Fleming, Director, Office of Federal Acknowledgment, Office of the Assistant Secretary—Indian Affairs, Department of the Interior, 1849 C Street, NW., MS–4660 MIB, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection submission should be directed to R. Lee Fleming, Director, Office of Federal Acknowledgment, Office of the Assistant Secretary—Indian Affairs, Department of the Interior, 1849 C Street, NW, MS–4660 MIB, Washington, DC 20240. You may also call (202) 208–3592.

**SUPPLEMENTARY INFORMATION:** A request for comments was published in the **Federal Register** on June 2, 2003 (68 FR 32765). No comments were received.

### I. Abstract

The information collection is needed to establish whether a petitioning group has the characteristics necessary to be acknowledged as having a sovereign-to-sovereign relationship with the United States. Federal acknowledgment makes the group eligible for benefits from the Federal Government.

### II. Method of Collection

The Federal acknowledgment regulations at 25 CFR Part 83 contain seven criteria (§ 83.7) which groups seeking Federal acknowledgment as Indian tribes must demonstrate that they meet. Information collected from petitioning groups under these regulations provide anthropological, genealogical and historical data used by the Assistant Secretary—Indian Affairs to establish whether a petitioning group has the characteristics necessary to be acknowledged as having a sovereign-to-sovereign relationship with the United States. Respondents are not required to retain copies of information submitted to the Bureau of Indian Affairs, but will probably maintain copies for their own use. No periodic reports are required.

*III. Data*

*Title:* Collection of Information for Federal Acknowledgment Under 25 CFR Part 83.

*OMB Control Number:* 1076–0104.

*Expiration Date:* September 30, 2003.

*Type of Review:* Extension of a currently-approved collection.

*Affected Entities:* Groups petitioning for Federal acknowledgment as Indian tribes.

*Response:* Respondents are seeking to obtain the status of a tribal entity in order to be eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes.

*Estimated Number of Petitioners:* 10.

*Estimated Time per Petition:* 2,237.7 hours.

*Estimated Total Annual Burden Hours:* 22,377.

*Estimated Annual Salary Costs:* $895,080 (2,237.7 hours × $40.00 per hour × 10).

## IV. Request for Comments

You are invited to comment on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or the forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Individual respondents may request confidentiality. If you wish to request that we consider withholding your name, street address, and other contact information (such as Internet address, fax, or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

OMB has up to 60 days to make a decision on the submission for renewal, but may make the decision after 30 days. Therefore, to receive the best consideration of your comments, you should submit them closer to 30 days than 60 days.

Dated: September 26, 2003.

**Aurene M. Martin,**

*Principal Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. 03–25406 Filed 10–6–03; 8:45 am]

BILLING CODE 4310–4J–P

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Availability of Final Environmental Impact Statement for an Incidental Take Permit for the Western Riverside County Multiple Species Habitat Conservation Plan, California

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability and receipt of application.

**SUMMARY:** Pursuant to the National Environmental Policy Act, this notice advises the public of the availability of the Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) on the application by the County of Riverside, California Department of Transportation, California Department of Parks and Recreation and 14 cities (Applicants) in western Riverside County to incidentally take 83 animal species, including 69 unlisted species should any of them become listed, under the Endangered Species Act of 1973, as amended (Act), during the term of the proposed 75-year permit. The permit is needed to authorize take of listed animal species (including harm, injury and harassment) during urban and rural development in the approximately 1.2 million-acre (1,967 square-mile) Plan Area in western Riverside County, California. The U.S. Fish and Wildlife Service (Service) is publishing this notice to inform the public of the proposed action and to make available for review the Final EIS/EIR, which includes responses to public comments received on the Draft EIS/EIR. The Environmental Protection Agency (EPA) also is publishing a similar notice for this Final EIS/EIR.

**DATES:** A Record of Decision will occur no sooner than 30 days after the publication date of the EPA notice. Comments on the Final EIS/EIR must be received by the close of the comment period as indicated in the EPA notice.

**ADDRESSES:** Comments should be sent to Mr. James Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92009; facsimile (760) 431–9624.

Copies of the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP), Implementation Agreement, and Final EIS/EIR are available for review at the Riverside County Integrated Plan website (*http://www.rcip.org*) or at the following locations in California:

1. Carlsbad—U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road
2. Riverside—Riverside County Administrative Center, 4080 Lemon Street, 7th Floor; University of California, Riverside, Tomas Rivera Library, 900 University Avenue; and Riverside Public Library, 3581 Mission Inn Avenue
3. Murrieta—Murrieta Public Library, 39589 Los Alamos Road
4. Hemet—Riverside County Library, Hemet Branch, 25757 Fairview Avenue
5. Perris—Riverside County Library, Perris Branch, 163 E. San Jacinto.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karen Goebel, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office (**SEE ADDRESSES**), telephone number (760) 431–9440.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Applicants seek an incidental take permit and assurances for 83 animal species (9 endangered, 5 threatened, and 69 unlisted), and assurances for 63 plant species (8 endangered, 3 threatened, and 52 unlisted). The animal species include 3 crustacean species (1 endangered, 1 threatened and 1 unlisted); 2 insect species (both endangered); 2 fish species (1 threatened and 1 unlisted); 5 amphibian species (2 endangered, 1 threatened, 2 unlisted); 12 reptile species (all unlisted); 45 bird species (2 endangered, 2 threatened, and 41 unlisted); and 14 mammal species (2 endangered and 12 unlisted). Collectively the 146 listed and unlisted species are referred to as Covered Species by the MSHCP. Twenty-eight of the Covered Species are identified as Covered Species for which adequate conservation has not been assured. These species would not be provided with incidental take under the permit until adequate conservation has been assured.

A permit is needed because section 9 of the Act and Federal regulations prohibit the "take" of animal species listed as endangered or threatened. Take of listed animal species is defined under the Act to include kill, harm, or harass. Harm includes significant habitat modification or degradation that actually kills or injures listed animals by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering [50 CFR 17.3(c)]. Under limited circumstances, the Service may issue permits to authorize incidental take; *i.e.* take that is incidental to, and not the purpose of, otherwise lawful activity. Although take of plant species is not prohibited under the Act, and therefore cannot be authorized under an incidental take permit, plant species are proposed to be included on the permit in recognition of the conservation benefits provided to them under the MSHCP. Assurances of no additional mitigation requirements provided under the No Surprises Rule at 50 CFR 17.3, 17.22(b)(5), and 17.32(b)(5) would extend to all species named on the permit. Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22.

The MSHCP is intended to protect viable populations of native plant and animal species and their habitats in perpetuity through the creation of a preserve system, while accommodating continued economic development and quality of life for residents of western Riverside County. In the year 2020, the Southern California Association of Governments estimates that Riverside County will be home to approximately 2.8 million people, who will occupy approximately 918,000 dwelling units. This represents a doubling of the County's present population and housing stock. Another study by the California Department of Finance estimates that the County will continue to grow to 3.5 million people by 2030 and 4.5 million people by 2040. These residents will be located within 24 incorporated cities, as well as within unincorporated areas.

The MSHCP is one part of Riverside County's Integrated Project, the purpose of which is to integrate and provide for future land use, transportation, and conservation needs in Riverside County. The MSHCP Plan Area encompasses 1.2 million acres in western Riverside County and includes the following 14 incorporated cities: Banning, Beaumont, Calimesa, Canyon Lake, Corona, Hemet, Lake Elsinore, Moreno Valley, Murrieta, Norco, Perris, Riverside, San Jacinto, and Temecula. The MSHCP is one of two large, multiple-jurisdictional habitat planning efforts in Riverside County, both of which are "subregional" plans under the State of California's Natural Community Conservation Planning Act of 1991.

In the MSHCP, the Applicants have proposed the conversion of approximately 800,000 acres from open space to non-open space uses during the 75-year permit, primarily by activities already planned for by the cities and County. These activities include residential, commercial, and industrial development; construction and maintenance of transportation facilities; construction and maintenance of flood control facilities, public utilities, and parks and trails; agricultural conversion of vegetation communities; management of reserves; and other anticipated projects.

Proposed covered activities which require discretionary action by a permittee, subject to consistency with MSHCP policies, include: two internal regional transportation facilities, maintenance of and safety improvements on existing roads, circulation element roads, single family homes on existing legal parcels, compatible uses in the reserve, and up to 10,000 new acres of agricultural activity within the Criteria Area (an area to be evaluated for inclusion in the reserve in accordance with the criteria guidelines). The MSHCP makes a provision for the inclusion of special districts and other non-permittee entities in the permit.

As described in Volumes I and II of the Public Review Draft MSHCP (November 2002) and the Draft EIS/EIR, the applicants propose to create a preserve system that protects and manages 153,000 acres of habitat for the Covered Species in addition to the identified existing 347,000 acres of Covered Species habitat in the Plan Area with conservation value in public or quasi-public ownership. The existing 347,000 acres would be monitored and managed in coordination with the 153,000 acres to achieve a conservation area of 500,000 acres. The County and cities are in the process of adopting a mitigation fee to acquire 97,000 acres as mitigation for private development in the Plan Area. The funding plan assumes that of the 97,000 acres, 41,000 acres would be conserved through the land use approval process. An additional 6,000 acres would be conserved as mitigation for State (California Department of Transportation and California Department of Recreation) projects. It is anticipated that the Service and the California Department of Fish and Game would provide an additional 50,000 acres to complement the 103,000 acres of mitigation identified in the MSHCP. The 153,000 acres of conservation area lie within a larger Criteria Area. The Criteria Area is divided into a grid consisting of 160-acre cells. Each cell or cell group has associated criteria that describe the conservation expected in that cell.

The MSHCP includes measures to avoid and minimize incidental take of the Covered Species, emphasizing project design modifications to protect both habitats and species' individuals. A monitoring and reporting plan would gauge the Plan's success based on achievement of biological species objectives and reserve design criteria, and would ensure that conservation keeps pace with open space conversion. The MSHCP also includes adaptive management which allows for changes in the conservation program if the biological species objectives are not met, or new information becomes available to improve the efficacy of the MSHCP's conservation strategy.

The MSHCP would be implemented by the permittees and the Regional Conservation Authority (RCA), a Joint Powers Authority. The RCA would be formed prior to our Record of Decision and permit decision. After the RCA is formed, it would apply to the Service for an incidental take permit to implement the MSHCP. We do not intend to notice the RCA's incidental take permit application in the **Federal Register** because the role of the RCA was identified in the Draft MSHCP that was made available for public review with the **Federal Register** Notice of the incidental take permit applications from the other Applicants (67 FR 69236) and the RCA permit application would contain no new substantive information for the public to comment upon.

On November 15, 2002, the Service published a notice in the **Federal Register** (67 69236) announcing receipt of an application for an incidental take permit from Riverside County, the 14 cities and the other Applicants, and the availability of a Draft EIS/EIR for the application. The Draft EIS/EIR analyzed the potential environmental impacts that may result from the Federal action of authorizing incidental take anticipated to occur with implementation of the MSHCP, and identified various alternatives. We received a total of 110 comment letters on the Draft EIS/EIR. A response to each comment received in these letters has been included in Final EIS/EIR.

The Draft EIS/EIR considered four alternatives in addition to the preferred alternative/proposed project described above: (1) A listed, proposed and strong candidate species alternative; (2) a listed and proposed species alternative; (3) an existing reserves alternative; and (4) a no project alternative.

The listed, proposed and strong candidate species alternative focuses on the conservation of 29 state and/or federally listed species and seven unlisted species. This alternative would conserve approximately 119,300 acres of "new" lands (*i.e.*, acreage above and beyond what is already conserved through public or quasi-public land ownership and management).

The listed and proposed species alternative focuses on the conservation of 29 state and/or federally listed or proposed species. The proposed new conservation under this alternative is approximately 93,800 acres.

The existing reserves alternative would provide coverage for six State and/or federally listed or candidate species and some unlisted species depending on management regimes in the existing reserves. It would not provide any new conservation of land.

The analysis provided in the Final EIS/EIR is intended to accomplish the following: inform the public of the proposed action; address public comments received on the Draft EIS/EIR; disclose the direct, indirect, and cumulative environmental effects of the proposed action; and indicate any irreversible commitment of resources that would result from implementation of the proposed action. This notice is provided pursuant to section 10 of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

**Robert D. Williams,**

*Deputy Manager, Region 1, California/Nevada Operations Office, Sacramento, California.*

[FR Doc. 03–25313 Filed 10–6–03; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

### Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Skull Valley Goshute Tekoi Balefield Landfill Project, Tooele County, UT

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice advises the public that the Bureau of Indian Affairs, in cooperation with the Skull Valley Band of Goshute Indians, will be gathering information needed for an Environmental Impact Statement (EIS). The information on the EIS will be used to support a lease to a private company to construct and operate a landfill and to develop the necessary infrastructure. The purpose of this project is to help provide an economic base for the tribe while helping the Salt Lake City area to dispose of non-hazardous wastes. We also are announcing public scoping meetings at this time.

**DATES:** Written comments on the scope and implementation of this proposal must arrive by November 5, 2003. The public scoping meetings will be held on October 21 and 22, 2003, from 6:30 p.m. to 8:30 p.m.

**ADDRESSES:** You may mail, hand carry or telefax written comments to either (1) Amy L. Heuslein, Regional Environmental Protection Officer, Bureau of Indian Affairs, Western Regional Office, P.O. Box 10, Phoenix, Arizona 85001, telefax (602) 379–3833; or (2) Chester Mills, Superintendent, Bureau of Indian Affairs, Uintah and Ouray Agency, P.O. Box 130, Fort Duchesne, Utah 84026, telefax (435) 722–2323.

The October 21, 2003, public scoping meeting will be held at the Utah State Extension Auditorium, 151 North Main Street, Tooele, Utah. The October 22, 2003, meeting will be held at the Little America Hotel, 500 South Main Street, Salt Lake City, Utah.

**FOR FURTHER INFORMATION CONTACT:** Amy Heuslein, (602) 379–6750, or Chester Mills, (435) 722–4300.

**SUPPLEMENTARY INFORMATION:** The EIS will assess the environmental consequences of BIA approval of a proposed lease between the CR Group, the lessee, and the Skull Valley Band of Goshute Indians (Band), the lessor, of approximately 500 acres in the southwest Section 18, Range 8W, Township 5S, NAD 27, Tooele County, Utah. This section is approximately 2 miles west of Skull Valley Road on the reservation. The leased property will occupy the southwest 75 percent of the section. The property is located approximately 50 miles southwest of Salt Lake City, Utah. The CR Group intends to construct and operate a solid waste landfill on this property for a period of 25 years, with an option to renew the lease for another 25 years.

The proposed landfill will meet or exceed all applicable criteria of the Environmental Protection Agency (EPA) for such landfills, including, without limitation, the design criteria set forth in 40 CFR part 258. The landfill will be constructed with the appropriate impermeable lining material, and will only accept non-hazardous municipal and/or industrial solid waste. Limited ancillary facilities consisting of a truck scale, scale house and small administrative office will be constructed at the site, and an approximately 3-mile long road on the reservation constructed to provide access to and from the landfill.

The solid waste will be compressed, de-watered and baled before transportation to the landfill. The baled solid waste will be transported to the landfill in containers, using primarily flatbed trucks. It is anticipated that the majority of the waste will come from the Salt Lake City, Utah area. The transportation route is expected to be via Interstate 80 westward from the Salt Lake City area, then southward approximately 27 miles on Skull Valley Road to the proposed landfill site on the reservation.

The proposed landfill will consist of separate cells. The baled solid waste will be stacked in the cells. Separate cells will be used for municipal and industrial waste. As individual cells are filled and closed, they will be covered with lining and soil and re-vegetated consistent with EPA regulations and with BIA and tribal requirements. The CR Group will provide construction and reclamation bonds suitable to both the BIA and the Band.

Water for construction and operation of the landfill will be obtained from wells drilled on the reservation. These wells will be within 1 mile of the proposed site. Electricity will be generated using the collected landfill gas in an internal combustion engine-generator set.

Significant issues to be covered during the scoping process may include, but not be limited to, air quality, geology and soils, surface and groundwater resources, biological resources, cultural resources, socioeconomic conditions, land use, aesthetics, environmental justice and Indian trust resources.

**Public Comment Availability**

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the ADDRESSES section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents who prefer confidentiality and wish to have their name and/or address withheld from public review or from disclosure under the Freedom of Information Act, must state this prominently at the beginning of their written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

**Authority**

This notice is published in accordance with § 1503.1 of the Council on Environmental Quality regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: September 26, 2003.

**Aurene M. Martin,**

*Principal Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. 03–25320 Filed 10–6–03; 8:45 am]

BILLING CODE 4310–W7–P

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[OR–010–1020–PK; HAG 04–0001]

## Meeting Notice for the Southeast Oregon Resource Advisory Council

**AGENCY:** Bureau of Land Management (BLM), Lakeview District.

**SUMMARY:** The Southeast Oregon Resource Advisory Council (SEORAC) will hold a conference call for all members on Wednesday, October 15, 2003 at 2 p.m. pacific standard time. The conference call is open to the public. Members of the public in the Lakeview area may attend the meeting in person in the Abert Rim Conference Room, Lakeview Interagency Office, 1301 South G Street, Lakeview, Oregon 97630. The meeting topics that may be discussed by the Council include a discussion of issues within Southeast Oregon related to: Birch Creek Recommendation, Sustainable Working Landscapes and Sage Grouse.

**FOR FURTHER INFORMATION CONTACT:** Additional information concerning the SEORAC conference call may be obtained from Pam Talbott, Contact Representative, Lakeview Interagency Office, 1301 South G Street, Lakeview, OR 97630 (541) 947–6107, or *ptalbott@or.blm.gov* and/or from the following Web site *http://www.or.blm.gov/SEOR-RAC.*

Dated: September 30, 2003.

**M. Joe Tague,**

*Associate District Manager.*

[FR Doc. 03–25329 Filed 10–06–03; 8:45 am]

BILLING CODE 4310–33–M

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## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## Notice of Proposed Information Collection for 1029–0047

**AGENCY:** Office of Surface Mining Reclamation and Enforcement.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for the permanent program performance standards—surface mining activities and underground mining activities at 30 CFR parts 816 and 817.

**DATES:** Comments on the proposed information collection must be received by December 8, 2003, to be assured of consideration.

**ADDRESSES:** Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to *Jtrelease@osmre.gov.*

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease, at (202) 208–2783.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collections that OSM will be submitting to OMB for extension. These collections are contained in 30 CFR 816 and 817.

OSM has consolidated two information collections relating to coal mining performance standards, revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for this information collection activity.

*Comments are invited on:* (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

*Title:* Permanent Program Performance Standards—Surface and Underground Mining Activities, 30 CFR parts 816 and 817.

*OMB Control Number:* 1029–0047.

*Summary:* Sections 515 and 516 of the Surface Mining Control and Reclamation Act of 1977 provides that permittees conducting coal mining operations shall meet all applicable performance standards of the Act. The information collected is used by the regulatory authority in monitoring and inspecting surface coal mining activities to ensure that they are conducted in compliance with the requirements of the Act.

*Bureau Form Number:* None.

*Frequency of Collection:* Once, on occasion, quarterly and annually.

*Description of Respondents:* Coal mining operators and State regulatory authorities.

*Total Annual Responses:* 186,341.

*Total Annual Burden Hours:* 870,333.

Dated: October 1, 2003.

**Richard G. Bryson,**

*Chief, Division of Regulatory Support.*

[FR Doc. 03–25299 Filed 10–6–03; 8:45 am]

**BILLING CODE 4310–05–M**

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## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 1, 2003, Cayman Chemical Company, 1180 East Ellsworth Road, Ann Arbor, Michigan 48108, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Marihauna (7360) ........................ | I |
| Tetrahydrocannabinols (7370) ..... | I |

The firm plans to manufacture small quantities of marijuana derivatives for research purpose.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration. Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than December 8, 2003.

Dated: September 17, 2003.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control.*

[FR Doc. 03–25310 Filed 10–6–03; 8:45 am]

**BILLING CODE 4410–09–M**

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## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 6, 2003, and published in the **Federal Register** on June 19, 2003, (68 FR 26841), AccusStandard Inc., 125 Market Street, New Haven, Connecticut 06513, made application by renewal and on May 7, 2003, by letter to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of Schedule I and II controlled substances listed below:

| Drug | Schedule |
|---|---|
| Cathinone (1235) ......................... | I |
| Methcathinone (1237) .................. | I |
| N-Ethylamphetamine (1475) ........ | I |
| N,N-Dimethylamphetamine (1480) | I |
| Fenethylline (1503) ....................... | I |
| Aminorex (1585) .......................... | I |
| 4-Methylaminorex (cis isomer) (1590). | I |
| Gamma hydroxybutyric acid (2010). | I |
| Methaqualone (2565) ................... | I |
| Mecloqualone (2372) ................... | I |
| Alpha-Ethyltryptamine (7249) ....... | I |
| Ibogaine (7260) ........................... | I |
| Lysergic acid diethylamide (7315) | I |
| Tetrahydrocannabinols (7370) ..... | I |
| Mescaline (7381) ......................... | I |
| 3,4,5-Trimethoxyamphetamine (7390). | I |
| 4-Bromo-2,5-dimethoxyamphetamine (7391). | I |
| 4-Bromo-2,5-dimethoxyphenethylamine (7392). | I |
| 4-methyl-2,5-dimethoxyamphetamine (7395). | I |
| 2,5-Dimethoxymphetamine (7396) | I |
| 2,5-Dimethoxy-4-ethylamphetamine (7399). | I |
| 3,5-Methylenedioxyamphetamine (7400). | I |
| 5-Methoxy-3,4-methylenedioxyamphetamine (7401). | I |
| N-Hydroxy-3,4-methylenedioxyamphetamine (7402). | I |
| 3,4-Methylenediocy-N-ethylamphetamine (7404). | I |
| 3,4-Methylenedioxymethamphetamine (7405). | I |
| 4-Methoxyamphetamine (7411) ... | I |
| Befotenine (7433) ......................... | I |
| Diethyltryptamine (7434) .............. | I |
| Dimethyltryptamine (7435) ........... | I |
| Psilocybin (7437) .......................... | I |
| Psilocyn (7438) ............................. | I |
| N-Ethyl-1-phenylcyclohexylamine (7455). | I |
| 1-(1-Phenylcyclohexyl) pyrrolidine (PCPY) (7458). | I |
| Noracymethadol (9633) ................ | I |
| Norlevorphanol (9634) .................. | I |
| Normethadone (9635) ................... | I |
| Norpipanone (9636) ...................... | I |
| Phenadoxone (9637) ..................... | I |
| Phenampromide (9638) ................. | I |
| Phenoperidine (9641) .................... | I |
| Piritramide (9642) ......................... | I |
| Proheptazine (9643) ...................... | I |
| Properidine (9644) ......................... | I |
| Racemoramide (9645) .................... | I |
| Trimeperidine (9646) ..................... | I |
| Phenomorphan (9647) .................. | I |
| Propiram (9649) ............................ | I |
| 1-Methyl-4-phenyl-4-propionoxypiperidine (9661). | I |
| 1- (2-Phenylethyl) -4-phenyl-4-acetoxypiperidine (9663). | I |
| Tilidine (9750) ............................... | I |
| Para-Fluorofentanyl (9812) .......... | I |
| 3-Methylfentanyl (9813) ................ | I |
| Alpha-Methylfentanyl (9814) ........ | I |
| Acetyl-alpha-methylfentanyl (9815). | I |
| Benzylfentanyl (9818) .................. | I |
| Beta-Hydroxyfentanyl (9830) ........ | I |
| Beta-Hydroxy-3-methylfentanyl (9831). | I |
| Alpha-Methylthiofentanyl (9832) ... | I |
| 3-Methylthiofentanyl (9833) .......... | I |
| Thenylfentanyl (9834) .................... | I |
| Thiofentanyl (9835) ....................... | I |
| Amphetamine (1100) ..................... | II |
| Methamphetamine (1105) ............ | II |
| Phenmetrazine (1631) .................. | II |
| Methylphenidate (1724) ................ | II |
| Amobarbital (2125) ....................... | II |
| Pentobarbital (2270) ..................... | II |
| Secobarbital (2315) ....................... | II |
| Glutethimide (2250) ...................... | II |
| Nabilone (7379) ............................ | II |
| 1-Phenylcylohexylamine (7460) ... | II |
| Phencyclidine (7471) ..................... | II |
| Phenylacetone (8501) ................... | II |
| 1-Piperidinocyclohexane-. carbonitrile (8603) ...................... | II |
| Alphaprodine (9010) ...................... | II |
| Anileridine (9020) .......................... | II |
| Cocaine (9041) ............................... | II |
| Codeine (9050) ............................... | II |
| Diprenorphine (9058) ..................... | II |
| Etorphine HCL (9059) ..................... | II |
| Dihydrocodeine (9120) .................... | II |
| Oxycodone (9143) ........................... | II |
| Hydromorphone (9150) ................... | II |
| Diphenoxylate (9170) ...................... | II |
| Benzoylecgonine (9180) .................. | II |
| Ecgonine (9180) .............................. | II |
| Ethylmorphine (9190) ...................... | II |
| Hydrocodone (9193) ........................ | II |
| Levomethorphan (9210) ................... | II |
| Levorphanol (9220) .......................... | II |
| Isomethadone (9226) ....................... | II |
| Meperidine (9230) ............................ | II |
| Meperidine intermediate-A (9232) | II |
| Meperidine intermediate-B (9233) | II |
| Meperidine intermediate-C (9234) | II |
| Metazocine (9240) ............................ | II |
| Methadone (9250) ............................. | II |
| Methadone intermediate (9254) ... | II |
| Metopon (9260) ................................ | II |
| Morphine (9300) ............................... | II |
| Thebaine (9333) ............................... | II |
| Dihydroetorphine (9334) ................... | II |
| Opium, raw (9600) ............................ | II |
| Opium tincture (9630) ....................... | II |
| Opium powered (9639) ..................... | II |
| Levo-alphacetylmethadol (9648) .. | II |
| Oxymorphone (9652) ......................... | II |
| Phenazocine (9715) ........................... | II |
| Piminodine (9730) .............................. | II |
| Racemethorphan (9732) ..................... | II |
| Racemorphan (9733) .......................... | II |
| Alfentanil (9737) ................................. | II |
| Remifentanil (9739) ............................ | II |

| Drug | Schedule |
|---|---|
| Sufentanil (9740) | II |
| Carfentanil (9743) | II |
| Bezitramide (9800) | II |
| Fentanyl (9801) | II |
| Moramide-intermediate (9802) | II |

The firm plans to manufacture small quantities of bulk material for use in reference standards.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of AccuStandard Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated AccuStandard Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed is granted.

Dated: September 17, 2003.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 03–25308 Filed 10–6–03; 8:45 am]

**BILLING CODE 4410–09–M**

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled substances; Notice of Registration

By Notice dated June 6, 2003, and published in the **Federal Register** on June 19, 2003, (68 FR 36843), CellTech Manufacturing CA., Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application by renewal to the Drug Enforcement Administration to be registered as a bulk manufacturer of Methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture the controlled substance to make finished dosage forms for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of CellTech Manufacturing CA. Inc. to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated CellTech Manufacturing CA., Inc. to ensure that the company's registration is consistent with the public interest.

This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed is granted.

Dated: September 17, 2003

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 03–25408 Filed 10–6–03; 8:45 am]

**BILLING CODE 4410–09–M**

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 19, 2003, National Center for Natural Products Research—NIDA MProject, University of Mississippi, 135 Coy Waller Complex, University, Mississippi 38677, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Marihuana (7360) | I |
| Tetrahydrocannabinols (7370) | I |

The firm plans to cultivate marijuana for the National Institute of Drug Abuse for research approved by the Department of Health and Human Services.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than December 8, 2003.

Dated: September 17, 2003.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control.*

[FR Doc. 03–25309 Filed 10–6–03; 8:45 am]

**BILLING CODE 4410–09–M**

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 16, 2003, and published in the **Federal Register** on June 11, 2003, (68 FR 35006), Noramco, Inc. (formerly Noramco of Delaware, Inc.), 500 Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal and on December 4 and 26, 2002, by letters to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Codeine-N-Oxide (9053) | I |
| Morphine-N-Oxide (9307) | I |
| Codeine (9050) | II |
| Oxycodone (9143) | II |
| Hydrocodone (9193) | II |
| Morphine (9300) | II |
| Thebaine (9333) | II |
| Oxymorphone (9652) | II |

The firm plans to manufacture the listed controlled substances for distribution to its customers as bulk products.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Noramco, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Noramco, Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy

Assistant Administrator, Office of Diversion control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed is granted.

Dated: September 17, 2003.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 03–25409 Filed 10–6–03; 8:45 am]

**BILLING CODE 4410–09–M**

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## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 16, 2003, and published in the **Federal Register** on June 11, 2003, (68 FR 35006), Varian, Inc., Lake Forest, 25200 Commercentre Drive, Lake Forest, California 92630–8810, made application by renewal to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Phencyclidine (7471) | II |
| 1-Piperidinocyclohexane-carbonitrile (8603) | II |
| Benzoylecgonine (9180) | II |

The firm plans to manufacture small quantities of controlled substances for use in diagnostic products.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Varian, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Varian, Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed is granted.

Dated: September 17, 2003.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 03–25407 Filed 10–6–03; 8:45 am]

**BILLING CODE 4410–09–M**

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## DEPARTMENT OF LABOR

## Office of the Secretary

### Submission for OMB Review; Comment Request

September 12, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or E-Mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316/ this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency; including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Agency:* Employment and Training Administration.

*Type of Review:* Reinstatement, with change, of a previously approved collection for which approval has expired.

*Title:* Indian and Native American Welfare-to-Work Program—Report forms and instructions.

*OMB Number:* 1205–0386.

*Affected Public:* State, local, or tribal govt.

*Frequency:* On occasion and quarterly.

*Type of Response:* Recordkeeping and reporting.

*Number of Respondents:* 40.

| Information collection requirements | Annual responses | Frequency | Average response time (hours) | Annual burden hours |
|---|---|---|---|---|
| ETA 9069 (Participation and Characteristics Report). | 160 | Quarterly | 9 | 1,440 |
| ETA 9069–1 (Financial Status Report) | 160 | Quarterly | 9 | 1,440 |
| Recordkeeping | 6,600 | Occasion | 3 | 19,800 |
| Total | 6,920 | | | 22,680 |

*Total Annualized capital/startup costs:* $0.

*Total annual costs (operating/ maintenance systems or purchasing services):* $396,000.

*Description:* This request is for reinstatement of a previously-approved reporting package that expired on 09/30/2001. The period available for expenditure of INA WtW funds has been extended by statute for an additional two years, so that the last possible report(s) submitted would be for the period (quarter) ending 09/30/2004. The proposed changes to section II of ETA 9069 are indicated in statute by the 1999 Amendments.

Other than the accompanying changes to the instructions, there are otherwise no changes to the previously-approved package.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 03–25377 Filed 10–6–03; 8:45 am]

BILLING CODE 4510–23–M

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## DEPARTMENT OF LABOR

## Employment and Training Administration

## Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed consolidation and renewal of Job Corps applicant forms. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before December 8, 2003.

**ADDRESSES:** Gayle Cody, Office of Job Corps, 200 Constitution Avenue NW., Room N–4507, Washington, DC 20210. E-Mail Internet address: *cody.gayle@dol.gov;* Telephone number: (202) 693–3105. (This is not a toll-free number); Fax number: (202) 693–3113 (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Job Corps program authorized by the Workforce Investment Act (WIA) of 1998, is designed to serve low-income young women and men, 16 through 24, who are in need of additional vocational, educational and social skills training, and other support services in order to gain meaningful employment, return to school or enter the Armed Forces. Job Corps is operated by the Department of Labor through a nationwide network of 118 Job Corps centers. The program is primarily a residential program operating 24 hours per day, 7 days per week, with non-resident enrollees limited by legislation to 20 percent of national enrollment. These centers presently accommodate more than 40,000 students. To ensure that the centers are filled with youth who are low-income, as well as capable of and committed to doing the work necessary to achieve the benefits of Job Corps, certain eligibility requirements have been established by the legislation.

The purpose of this collection is to gather information from applicants to determine their eligibility for Job Corps. These forms are critical to the screening process. They are the initial forms completed by the Job Corps admissions counselors for each applicant.

The ETA 652, Job Corps Data Sheet, is used to obtain information for screening and enrollment purposes to determine eligibility for the Job Corps program in accordance with the requirements of the Workforce Investment Act (§ 145 Recruitment, Screening, Selection and Assignment of Enrollees). It is prepared electronically by an admissions counselor for each applicant. It also provides demographic characteristics for program reporting purposes. Data for the forms are collected by interview. The information collected determines eligibility in regard to age, legal U.S. residency, family income/welfare status, school status, behavioral problems (if any), parental consent, and child care needs of each applicant.

The ETA 655, Statement from Court or Other Agency, and ETA 655A, Statement from Institution, collect essential information for determining an applicant's eligibility. They are used to document past behavior problems for all applicants, as well as provide a basis for projecting future behavior. If this information were not obtained, serious problems could result from enrolling potentially harmful or disruptive individuals in Job Corps, which is a residential program. This could have legal implications for the Federal government.

The ETA 682, Child Care Certification, is used to certify an applicant's arrangements for care of a dependent child(ren) while the applicant is in Job Corps.

### II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

### III. Current Actions

Data previously collected on the following Job Corps application forms are now being collected from data input screens that electronically transmit data to a Center Information System (CIS). Job Corps has continued to collect application data because it was necessary to the application process that youth receiving training on Job Corps centers be eligible for the benefits provided.

Job Corps has now implemented electronic collection of data during the Job Corps application process and the changes required by the WIA have been incorporated in the collection. We request that the following data used in the application process be extended under OMB 1205–0025:

ETA 652, Job Corps Data Sheet,

ETA 655, Statement from Court or Other Agency, and ETA 682, Child Care Certification.

The deletion of these forms and electronic collection of the information will result in a reduction in paperwork burden hours and a streamlined electronic application.

*Type of Review:* Extension.

*Agency:* Employment and Training Administration.

*Title:* Application Data Collection.

*OMB Number:* 1205–0025.

*Agency Numbers:* ETA 652, ETA 655, and ETA 682.

*Recordkeeping:* The applicant is not required to retain records; admissions counselors or contractor main offices are required to retain records of applicants who enroll in the program for 3 years from the date of application.

*Affected Public:* Individuals; business or other for-profit/not-for-profit institutions; State, Local or Tribal Government.

| Title | Total respondents | Frequency | Average time per respondent | Burden hours |
|---|---|---|---|---|
| Job Corps Application: ETA 652 | 102,833 | 1/person | 10 minutes | 17,139 |
| Statement from Court or Other Agency: ETA 655 | 102,833 | 1/person | 1 minute | 1,714 |
| Child Care Certification: ETA 682 | 4,886 | On occasion | 30 seconds | 41 |
| Total Burden Hours | | | | 18,894 |

*Total Burden Cost (capital/startup):* When the electronic system was initially piloted and implemented in 1996, the start-up costs totaled $2,680,000, including $2,000,000 for 925 computer workstations, $480,000 for training Job Corps admissions counselors and center staff and, in 1997, $200,000 for replacements and memory upgrades. These were one-time-only costs.

*Total Burden Cost (operating/maintaining):* Operating and maintenance services associated with this data collection are contracted yearly by the Federal government with outreach and admissions contractors, according to designated recruiting areas. This is one of the many functions the contractors perform for which precise costs cannot be identified. Based on past experience of recruitment contractors, however, the annual cost for contractor staff and related costs is estimated to be about $821,399. An additional cost of $29,191 is added for the value of applicant time, making a total cost of $850,590. For the approximately 70 percent of Job Corps applicants who have never worked, no value is determined. For the remaining 30 percent of applicants who have been in the work force previously for any length of time, whether full-time or less, the current minimum wage of $5.15 is used to determine the value of applicant time (ETA 652: $26,480, ETA 655: $2,648, and ETA 682: $63).

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

**David Dye,**

*Deputy Assistant Secretary, Employment and Training Administration.*

[FR Doc. 03–25376 Filed 10–6–03; 8:45 am]

BILLING CODE 4510–23–M

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## DEPARTMENT OF LABOR

## Mine Safety and Health Administration

## Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

### 1. Tito Coal

[Docket No. M–2003–062–C]

Tito Coal, 118 Fairview Lane, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 75.1002–1 (now 75.1002) (Installation of electric equipment and conductors; permissibility) to its White Vein Slope (MSHA I.D. No. 36–06815) located in Schuylkill County, Pennsylvania. The petitioner requests a modification in the application of the existing standard to permit the use of non-permissible electric equipment within 150 feet of the pillar line. The petitioner states that the non-permissible equipment would include drags and battery locomotives due in part to the method of mining used in pitching anthracite mines and the alternative evaluation of the mine air quality for methane on an hourly basis during operation. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

### 2. Canyon Fuel Company, LLC

[Docket No. M–2003–063–C]

Canyon Fuel Company, LLC, P.O. Box 1029, Wellington, Utah 84542 has filed a petition to modify the application of 30 CFR 75.350 (Air courses and belt haulage entries) to its Dugout Canyon Mine (MSHA I.D. No. 42–01890) located in Carbon County, Utah. The petitioner requests that its previous petition for modification, docket number M–2000–171–C, be amended to remove the following language in Paragraph V.(C): "must include a means, maintained in operating condition, to maintain the surface temperature of the exhaust system of diesel equipment below 302 degrees Fahrenheit", and to replace Paragraph V.(C) as follows: "In addition to the requirements of V.(B), diesel-powered equipment classified as heavy-duty under 30 CFR 75–1908(a), must include a means, maintained in operating condition, to prevent the spray from ruptured diesel fuel, hydraulic oil, and lubricating oil lines from being ignited by contact with engine exhaust system component surfaces such as shielding, conduit, non-absorbent insulating materials, or other similar means." The petitioner asserts that covering the exhaust systems would present a diminution of safety to the miners due to the possibility that combustible material can accumulate under the insulating material often creating a potential fire hazard.

### 3. Eastern Associated Coal Corp.

[Docket No. M–2003–064–C]

Eastern Associated Coal Corp., 1970 Barrett Court, P.O. Box 1990, Henderson, Kentucky 42419–1990 has filed a petition to modify the application of 30 CFR 75.1108(Flame-resistant conveyor belts) to its Matewan Tunnel Mine (MSHA I.D. No. 46–08610) located in Boone County, West Virginia. The petitioner proposes to use approximately 10,000 feet of the total 26,000 feet of belt in a specific location and application with safeguards in place that would guarantee and provide no less than the same degree of safety as the existing standard, in lieu of using underground belting that meets the requirements for flame-resistant conveyor belts. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

### 4. D & D Coal Co.

[Docket No. M–2003–065–C]

D & D Coal Co., 320 East Main Street, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.333(e)(1)(ii) (Ventilation controls) to its Primrose Slope Mine (MSHA I.D. No. 36–08341) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to permit the use of a 2 x 3 foot diameter fiberglass overcast in the intake slope that is 20 feet in length. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

### 5. Little Eagle Coal Company

[Docket No. M–2003–066–C]

Little Eagle Coal Company, Route 16 Fola Road, Bickmore, West Virginia 25019 has filed a petition to modify the application of 30 CFR 75.900 (Low- and medium-voltage circuits serving three-phase alternating current equipment; circuit breakers) to its Little Eagle Mine (MSHA I.D. No. 46–08560) located in Clay County, West Virginia. The petitioner proposes to use a vacuum contactor in series with the circuit breaker to perform tripping tasks normally associated with the circuit breaker. The petitioner has listed in this petition for modification specific procedures that would be followed when using vacuum contactors. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

### 6. Canyon Fuel Company, LLC

[Docket No. M–2003–067–C]

Canyon Fuel Company, LLC, P.O. Box 1029, Wellington, Utah 84542 has filed a petition to modify the application of 30 CFR 75.350 (Air courses and belt haulage entries) to its Dugout Canyon Mine (MSHA I.D. No. 42–01890) located in Carbon County, Utah. The petitioner requests that its previous petition for modification, docket number M–2000–171–C, be amended, as it relates to two-entry longwall retreat mining, to add the following paragraph: "In the event hydrogen sulfide is encountered during the development phase of a longwall panel, the petitioner shall have the option of utilizing the conveyor belt entry as a neutral split of air during retreat mining operations. The belt air shall be coursed away from the longwall section, in lieu of 'point feeding' the intake air at the mouth of the section." The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

### 7. Dynatec Mining Corporation

[Docket No. M–2003–004–M]

Dynatec Mining Corporation, 2200 South 4000 West, Salt Lake City, Utah 84120 has filed a petition to modify the application of 30 CFR 57.22606(a) and (c) (Explosive materials and blasting units (III mines)) to its FMC No. 9 Ventilation Shaft Project (MSHA I.D. No 48–00152) located in Sweetwater County, Wyoming. The petitioner proposes to use electric detonators to initiate blasts but requests a modification of the existing standard to allow the use of nonel detonators to detonate the explosives in the blast holes. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

### Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov*, or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before November 6, 2003. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 29th day of September, 2003.

**Marvin W. Nichols, Jr.,**

*Director, Office of Standards, Regulations, and Variances.*

[FR Doc. 03–25410 Filed 10–6–03; 8:45 am]

BILLING CODE 4510–43–P

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## NATIONAL COUNCIL ON DISABILITY

### Sunshine Act Meetings

**TIME AND DATES:** 8:30 a.m.–5 p.m., November 22, 2003; 8:30 a.m.–12 p.m., November 23, 2003

**PLACE:** Ritz-Carlton, Pentagon City, 1250 South Hayes Street, Arlington Virginia

**STATUS:** Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:** Reports from the Chairperson and the Executive Director, Committee Meetings and Committee Reports, Executive Session, Unfinished Business, New Business, Announcements, Adjournment

**PORTIONS OPEN TO THE PUBLIC:** Reports from the Chairperson and the Executive Director, Committee Meetings and Committee Reports, Unfinished Business, New Business, Announcements, Adjournment

**PORTIONS CLOSED TO THE PUBLIC:** Executive Session

**CONTACT PERSON FOR MORE INFORMATION:** Mark S. Quigley, Director of Communications, National Council on Disability, 1331 F Street, NW, Suite 850, Washington, D.C. 20004; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax), *mquigley@ncd.gov* (E-mail)

**AGENCY MISSION:** The National Council on Disability (NCD) is an independent federal agency composed of 15 members appointed by the President and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, including people from culturally diverse backgrounds, regardless of the nature or significance of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

**ACCOMMODATIONS:** Those needing sign language interpreters or other disability accommodations should notify NCD at least one week before this meeting.

**LANGUAGE TRANSLATION:** In accordance with Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, those people with disabilities who are limited English proficient and seek translation services for this meeting should notify NCD at least one week before this meeting.

**MULTIPLE CHEMICAL SENSITIVITY/ENVIRONMENTAL ILLNESS:** People with multiple chemical sensitivity/environmental illness must reduce their exposure to volatile chemical substances to attend this meeting. To reduce such exposure, NCD requests that attendees not wear perfumes or scented products at this meeting. Smoking is prohibited in meeting rooms and surrounding areas.

Dated: October 2, 2003.

**Ethel D. Briggs,**

*Executive Director.*

[FR Doc. 03–25498 Filed 10–3–03; 11:06 am]

BILLING CODE 6820–MA–P

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## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Arts Education section (Learning in the Arts for Children and Youth category) to the National Council on the Arts will be held on October 27–31, 2003 in Room 716 at the Nancy Hanks Center, 1100

Pennsylvania Avenue, NW., Washington, DC, 20506.

A portion of this meeting, from 12:30 p.m. to 1:30 p.m. on October 31st, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on October 27th—30th, and from 9 a.m. to 12:30 p.m. and 1:30 p.m. to 3:30 p.m. on October 31st, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: October 2, 2003.

**Kathy Plowitz-Worden, Panel Coordinator,**

*Panel Operations, National Endowment for the Arts.*

[FR Doc. 03–25332 Filed 10–6–03; 8:45 am]

BILLING CODE 7537–01–P

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## NUCLEAR REGULATORY COMMISSION

### Request To Amend a License To Import Radioactive Waste

Pursuant to 10 CFR 110.70(C) "Public notice of receipt of an application," please take notice that the Nuclear Regulatory Commission has received the following request to amend an import license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/NRC/ADAMS/index.html* at the NRC homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

The information concerning this amendment request follows.

NRC IMPORT LICENSE APPLICATION

| Name of applicant, date of application, date received, application number, docket number | Description of material | | End use | Country of origin |
|---|---|---|---|---|
| | Material type | Total qty | | |
| Philotechnics, Ltd., June 17, 2003, June 24, 2003, IW010/01, 11005216. | Class A radiocative waste, as DU aircraft counterweights. | 50,000.00 kgs DU metal, aircraft counterweights. | Amend to increase quantity, extend expiration date, add intermediate US consignee and update licensee address. Counterweights to be recycled; if disposal necessary services to be provided by Waste Control Specialists, L.L.C., Andrews County, TX. | United Kingdom. |

For the Nuclear Regulatory Commission.

Dated this 30 day of September, 2003, at Rockville Maryland.

**Edward T. Baker,**

*Deputy Director, Office of International Programs.*

[FR Doc. 03–25365 Filed 10–6–03; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meeting

**DATE:** Weeks of October 6, 13, 20, 27, November 3, 10, 2003.

**PLACE:** Commissioners' Conference Room, 11555 Rockville, Maryland.

**STATUS:** Public and closed.

**MATTERS TO BE CONSIDERED:**

**Week of October 6, 2003**

*Tuesday, October 7, 2003*

9:30 a.m. Briefing on Decommissioning Activities and Status (Public Meeting) (Contact: Claudia Craig, 301–415–7276)

This meeting will be webcast live at the Web address—*http//www.nrc.gov.*

1:30 p.m. Briefing on Strategic Workforce Planning and Human Capital Initiatives (Closed—Ex. 2)

**Week of October 13, 2003—Tentative**

*Wednesday, October 15, 2003*

1:30 p.m. Briefing on License Renewal Program, Power Uprate Activities, and High Priority Activities (Public Meeting) (Contact: Jimi Yerokun, 301–415–2292)

This meeting will be webcast live at the Web address—*http//www.nrc.gov.*

**Week of October 20, 2003—Tentative**

*Thursday, October 23, 2003*

10 a.m. Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360)

This meeting will be webcast live at the Web address—*http//www.nrc.gov*

**Week of October 27, 2003—Tentative**

*Wednesday, October 29, 2003*

9:30 a.m. Discussion of Security Issues (Closed—Ex. 1)

**Week of November 3, 2003—Tentative**

There are no meetings scheduled for the Week of November 3, 2003.

**Week of November 10, 2003—Tentative**

There are no meetings scheduled for the Week of November 10, 2003.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

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The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/what-we-do/policy-making/schedule.html.

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: October 2, 2003.

**D.L. Gamberoni,**

*Technical Coordinator, Office of the Secretary.*

[FR Doc. 03–25489 Filed 10–3–03; 10:47 am]

**BILLING CODE 7590–01–M**

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## OVERSEAS PRIVATE INVESTMENT CORPORATION

### October 23 Public Hearing; Sunshine Act

**TIME AND DATE:** 2 p.m., Thursday, October 23, 2003.

**PLACE:** Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

**STATUS:** Hearing open to the Public at 2 p.m.

**PURPOSE:** Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

**PROCEDURES:** Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m., Monday, October 20, 2003. The notice must include the individual's name, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m., Monday, October 20, 2003. Such statements must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

**FOR FURTHER INFORMATION CONTACT:** Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via email at *cdown@opic.gov*.

Dated: October 2, 2003.

**Connie M. Downs,**

*OPIC Corporate Secretary.*

[FR Doc. 03–25554 Filed 10–3–03; 2:22 pm]

**BILLING CODE 3210–01–M**

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## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Form S–2, OMB Control No. 3235–0072, SEC File No. 270–060.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for an extension of the previously approved collection of information discussed below.

Form S–2 (OMB Control No. 3235–0072; SEC File No. 270–060) is used by certain issuers to register securities under the Securities Act of 1933. The Form S–2 provides investors with the necessary information to make investment decisions regarding securities offered to the public. The likely respondents will be public companies. The information collected must be filed with the Commission and is publicly available. Form S–2 takes approximately 470 burden hours to prepare and is filed by 101 respondents for a total of 47,470 burden hours. It is estimated that 25% of the 47,470 total burden hours (11,868 hours) is prepared by the company. The remaining 75% of burden hours is attributed to outside cost.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 29, 2003.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 03–25314 Filed 10–6–03; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

*Extension:*

Rule 11a-2, SEC File No. 270–267, OMB Control No. 3235–0272.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for an extension of the previously approved collection of information discussed below.

The title for the collection of information is "Rule 11a–2 Under the Investment Company Act of 1940: Offers of Exchange by Certain Registered Separate Accounts or Others the Terms of Which Do Not Require Prior Commission Approval."

Rule 11a–2 [17 CFR 270.11a–2] permits certain registered insurance company separate accounts, subject to certain conditions, to make exchange offers without prior approval by the Commission of the terms of those offers. Rule 11a-2 requires disclosure, in certain registration statements filed pursuant to the 1933 Act, of any administrative fee or sales load imposed in connection with an exchange offer.

There are currently 711 registrants governed by Rule 11a–2. The Commission includes the estimated burden of complying with the information collection required by Rule 11a–2 in the total number of burden hours estimated for completing the relevant registration statements and reports the burden of Rule 11a–2 in the separate PRA submissions for those registration statements (*see* the separate PRA submissions for Form N–3 [17 CFR 274.11b], Form N–4 [17 CFR 274.11c] and Form N–6 [17 CFR 274.11d]). The Commission is requesting a burden of one hour for Rule 11a–2 for administrative purposes.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules or forms. With regard to Rule 11a–2, the Commission includes the estimate of burden hours in the total number of burden hours estimated for completing the relevant registration statements and reported on the separate PRA submissions for those statements (*see* the separate PRA submissions for Form N–3, Form N–4 and Form N–6).

The information collection requirements imposed by Rule 11a–2 are mandatory. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 29, 2003.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 03–25315 Filed 10–6–03; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

*Extension:*

Rule 6c–7, SEC File No. 270–269, OMB Control No. 3235–0276.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*,) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 6c–7 [17 CFR 270.6c–7] under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) ("1940 Act") provides exemption from certain provisions of Sections 22(e) and 27 of the 1940 Act for registered separate accounts offering variable annuity contracts to certain employees of Texas institutions of higher education participating in the Texas Option Retirement Program. There are approximately 80 registrants governed by Rule 6c–7. The burden of compliance with Rule 6c–7, in connection with the registrants obtaining from a purchaser, prior to or at the time of purchase, a signed document acknowledging the restrictions on redeemability imposed by Texas law, is estimated to be approximately 3 minutes per response for each of 2,600 purchasers annually (at an estimated $70 per hour), for a total annual burden of 130 hours (at a total annual cost of $9,100). Rule 6c–7 requires that the separate account's Registration Statement under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) include a representation that Rule 6c–7 is being relied upon and is being complied with. This requirement enhances the Commission's ability to monitor utilization of and compliance with the rule. There are no recordkeeping requirements with respect to Rule 6c–7.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules or forms. The Commission does not include in the estimate of average burden hours the time preparing registration statements and sales literature disclosure regarding the restrictions on redeemability imposed by Texas law. The estimate of burden hours for completing the relevant registration statements are reported on the separate PRA submissions for those statements. (See the separate PRA submissions for Form N–3 [17 CFR 274.11b] and Form N–4 [17 CFR 274.11c].)

Complying with the collection of information requirements of the rules is necessary to obtain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 26, 2003.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 03–25316 Filed 10–6–03; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549–0004.*

Extension:

Rule 27f–1 and Form N–27F–1, SEC File No. 270–487, OMB Control No. 3235–0546.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Rule 27f–1 [17 CFR 270.27f–1] is entitled "Notice of Right of Withdrawal Required To Be Mailed to Periodic Payment Plan Certificate Holders and Exemption from Section 27(f) for Certain Periodic Payment Plan Certificates." Form N–27F–1 is entitled "Notice to Periodic Payment Plan Certificate Holders of 45 Day Withdrawal Right with Respect to Periodic Payment Plan Certificates." Form N–27F–1, which is prescribed by rule 27f–1, is used to notify recent purchasers of periodic payment plan certificates of their right under section 27(f) of the Act to return the certificates within a specified period for a full refund. The Form N–27F–1 notice, which is sent directly to holders of periodic payment plan certificates, serves to alert purchasers of periodic payment plans of their rights in connection with their plan certificates.

Commission staff estimates that three issuers of periodic payment plan certificates are affected by rule 27f–1. The frequency with which each of these issuers or their representatives must file Form N–27F–1 notices varies with the number of periodic payment plans sold. The Commission estimates, however, that approximately 5,907 Form N–27F–1 notices are sent out annually. The Commission estimates that all the issuers that send Form N–27F–1 notices use outside contractors to print and distribute the notices, and incur no hourly burden. The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.[1]

Complying with the collection of information requirements of rule 27f–1 is mandatory for custodian banks of periodic payment plans for which the sales load deducted from any payment exceeds 9 percent of the payment.[2] The information provided pursuant to rule 27f–1 will be provided to third parties and, therefore, will not be kept confidential. The Commission is seeking OMB approval, because an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0004. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 29, 2003.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 03–25317 Filed 10–6–03; 8:45 am]

**BILLING CODE 8010–01–M**

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## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 26200; 812–12863]**

## Putnam American Government Income Fund, et al., Notice of Application

October 1, 2003.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 ("Act") for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

**SUMMARY OF APPLICATION:** The applicants request an order that would permit (a) certain registered management investment companies to invest uninvested cash and cash collateral in (i) affiliated money market funds and/or short-term bond funds or (ii) one or more affiliated entities that operate as cash management investment vehicles and that rely on section 3(c)(1) or 3(c)(7) of the Act, and (b) the registered investment companies and the affiliated entities to continue to engage in purchase and sale transactions involving portfolio securities in reliance on rule 17a–7 under the Act.

**APPLICANTS:** Putnam American Government Income Fund, Putnam Arizona Tax Exempt Income Fund, Putnam Asset Allocation Funds, Putnam California Tax Exempt Income Fund, Putnam Capital Appreciation Fund, Putnam Classic Equity Fund, Putnam Convertible Income-Growth Trust, Putnam Discovery Growth Fund, Putnam Diversified Growth Fund, Putnam Diversified Income Trust, Putnam Equity Income Fund, Putnam Europe Equity Fund, Putnam Florida Tax Exempt Income Fund, Putnam Funds Trust, The George Putnam Fund Of Boston, Putnam Global Equity Fund, Putnam Global Income Trust, Putnam Global Natural Resources Fund, The Putnam Fund For Growth And Income, Putnam Health Sciences Trust, Putnam High Yield Advantage Fund, Putnam High Yield Trust, Putnam Income Fund, Putnam Intermediate U.S. Government Income Fund, Putnam International Equity Fund, Putnam Investment Funds, Putnam Investors Fund, Putnam Massachusetts Tax Exempt Income Fund, Putnam Michigan Tax Exempt Income Fund, Putnam Minnesota Tax Exempt Income Fund, Putnam Money Market Fund, Putnam Municipal Income Fund, Putnam New Jersey Tax Exempt Income Fund, Putnam New Opportunities Fund, Putnam New York Tax Exempt Income Fund, Putnam New York Tax Exempt Opportunities Fund, Putnam Ohio Tax Exempt Income Fund, Putnam OTC & Emerging Growth Fund, Putnam Pennsylvania Tax Exempt Income Fund, Putnam Tax Exempt Income Fund, Putnam Tax Exempt Money Market Fund, Putnam Tax-Free Income Trust, Putnam Tax Smart Funds Trust, Putnam U.S. Government Income Trust, Putnam Utilities Growth And Income Fund, Putnam Variable Trust, Putnam Vista Fund, Putnam Voyager Fund, Putnam California Investment Grade Municipal Trust, Putnam High Income Opportunities Trust, Putnam High Income Bond Fund, Putnam High Yield Municipal Trust, Putnam Investment Grade Municipal Trust, Putnam Managed High Yield Trust, Putnam Managed Municipal Income Trust, Putnam Master Income Trust, Putnam Master Intermediate Income Trust, Putnam Municipal Bond Fund, Putnam Municipal Opportunities Trust, Putnam New York Investment Grade Municipal Trust, Putnam Premier Income Trust, and Putnam Tax-Free Health Care Fund (each a "Fund," collectively the "Funds"), and Putnam Investment Management, LLC (together with any entity controlling, controlled by or under common control with Putnam Investment Management, LLC, the "Adviser").

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[1] This estimate is based on informal conversations between the Commission staff and representatives of periodic payment plan issuers.

[2] The rule permits the issuer, the principal underwriter for, or the depositor of, the issuer or a record-keeping agent for the issuer to mail the notice if the custodian bank has delegated the mailing of the notice to any of them or if the issuer has been permitted to operate without a custodian bank by Commission order. *See* 17 CFR 270.27f–1.

*Filing Dates:* The application was filed on July 26, 2002, and amended on September 25, 2003.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 24, 2003, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, One Post Office Square, Boston, MA 02109.

**FOR FURTHER INFORMATION CONTACT:** Bruce R. MacNeil, Senior Counsel, at (202) 942–0634 or Todd Kuehl, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

## Applicants' Representations

1. The Funds are Massachusetts business trusts and are registered under the Act as open-end or closed-end management investment companies. The Adviser is an investment adviser registered under the Investment Advisers Act of 1940 and serves as investment adviser to each Fund.

2. Certain Funds, including money market Funds that comply with rule 2a–7 under the Act, (each, a "Participating Fund") have or may be expected to have cash that has not been invested in portfolio securities ("Uninvested Cash"). Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, strategic reserves, matured investments, proceeds from liquidation of investment securities, dividend payments or money from investors. Certain Participating Funds also may participate in a securities lending program ("Securities Lending Program") under which a Fund may lend its portfolio securities to registered broker-dealers or other institutional investors. The loans are secured by collateral, including cash collateral ("Cash Collateral" and together with Uninvested Cash, "Cash Balances"), equal at all times to at least the market value of the securities loaned. Currently, the Adviser can invest Cash Balances directly in money market instruments or other short-term debt obligations. All or a portion of certain Funds' Cash Balances may be managed by a sub-adviser to a Fund ("Sub-Adviser").

3. Applicants request an order to permit: (i) The Participating Funds to use their Cash Balances to purchase shares of one or more of the open-end Funds that are money market funds or short-term bond funds (the "Registered Central Funds") or private investment companies that serve as cash management vehicles, are advised by the Adviser, and rely on section 3(c)(1) or 3(c)(7) of the Act (the "Private Central Funds") (the Registered Central Funds and the Private Central Funds, collectively, the "Central Funds"); (ii) the Central Funds to sell their shares to and redeem such shares from the Participating Funds; (iii) the Participating Funds and the Private Central Funds to engage in interfund purchase and sale transactions in securities ("Interfund Transactions"); and (iv) the Adviser or a Sub-Adviser to effect the above transactions.[1]

4. The investment by each Participating Fund in shares of the Central Funds will be in accordance with that Participating Fund's investment policies and restrictions as set forth in its registration statement.[2] The Registered Central Funds are or will be taxable or tax-exempt money market funds that comply with rule 2a–7 under the Act or short-term bond funds that maintain a dollar-weighted average portfolio maturity of three years or less. Certain Private Central Funds will comply with rule 2a–7 under the Act. Other Private Central Funds will invest in high quality securities with relatively short maturities.[3]

## Applicants' Legal Analysis

### *I. Investment of Cash Balances by the Participating Funds in the Central Funds*

### A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act provides that no investment company may acquire securities of a registered investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) to permit the Participating Funds to use their Cash Balances to acquire shares of the Registered Central Funds in excess of the percentage limitations in section 12(d)(1)(A), provided however, that in all cases a Participating Fund's aggregate investment of Uninvested Cash in shares of the Central Funds will not exceed the greater of 25% of the Participating Fund's total assets or $10 million. Applicants also request relief to permit the Registered Central Funds to sell their securities to the Participating Funds in excess of the percentage limitations in section 12(d)(1)(B).

3. Applicants state that the proposed arrangement will not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that the proposed arrangement will not result in inappropriate layering of fees and that a Participating Fund's shareholders will not be subject to the

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[1] Applicants request that any relief granted also apply to any other registered management investment company or series thereof now existing or established in the future, for which the Adviser serves as investment adviser (included in the term "Funds"). All Funds that currently intend to rely on the requested order are named as applicants. Any future Fund will rely on the order only in accordance with the terms and conditions of the application.

[2] A Participating Fund that is a money market Fund will not invest in a Central Fund that does not comply with rule 2a–7 under the Act.

[3] A Private Central Fund that does not comply with rule 2a–7 may accept investments of Cash Collateral from Participating Funds (other than money market Funds), but will not accept investments from Participating Funds investing Uninvested Cash.

imposition of double investment advisory fees. If a Central Fund offers more than one class of shares in which a Participating Fund may invest, the Participating Fund will invest its Cash Balances only in the class with the lowest expense ratio at the time of investment. Applicants also state that no front-end sales charge, contingent deferred sales charge, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act ("Rule 12b–1 Fee") or service fee will be charged in connection with the purchase and sale of shares of the Central Funds. In addition, if the Adviser collects a fee from a Central Fund for acting as its investment adviser with respect to assets invested by a Participating Fund, when approving an investment advisory or sub-advisory contract under section 15 of the Act for the Participating Fund, the board of trustees of each Participating Fund ("Board"), including a majority of trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), will consider to what extent, if any, the advisory fees charged to the Participating Fund by the Adviser or Sub-Adviser should be reduced to account for reduced services provided to the Participating Fund as a result of the investment of Uninvested Cash in the Central Fund. Applicants represent that no Central Fund will acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act.

B. Section 17(a) of the Act

1. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the investment company. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person, any person 5% or more of whose outstanding securities are directly or indirectly owned, controlled, or held with power to vote by the other person, any person directly or indirectly controlling, controlled by, or under common control with the other person, and any investment adviser to the investment company. Because the Funds have the Adviser as investment adviser, they may be deemed to be under common control and thus affiliated persons of each other. In addition, if a Participating Fund purchases more than 5% of the voting securities of a Central Fund, the Central Fund and the Participating Fund may be affiliated persons of each other. As a result, section 17(a) would prohibit the sale of the shares of Central Funds to the Participating Funds, and the redemption of the shares by the Participating Funds.

2. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) of the Act if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt persons or transactions from any provision of the Act, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants submit that their request for relief to permit the purchase and redemption of shares of the Central Funds by the Participating Funds satisfies the standards in sections 6(c) and 17(b) of the Act. Applicants note that shares of the Central Funds will be purchased and redeemed at their net asset value, the same consideration paid and received for these shares by any other shareholder. Applicants state that the Participating Funds will retain their ability to invest Cash Balances directly in money market instruments as authorized by their respective investment objectives and policies if they can achieve a higher return or for any other reason. Applicants state that a Registered Central Fund has the right to discontinue selling shares to any of the Participating Funds if the Registered Central Fund's Board or the Adviser determines that such sale would adversely affect the Registered Central Fund's portfolio management and operations.

C. Section 17(d) of the Act and Rule 17d–1 under the Act

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates, unless the Commission has approved the joint arrangement. Applicants state that the Participating Funds, by purchasing shares of the Central Funds, the Adviser, and any Sub-Adviser, by managing the assets of the Participating Funds invested in the Central Funds, and each of the Central Funds, by selling Shares to and redeeming them from the Participating Funds could be deemed to be participating in a joint arrangement within the meaning of section 17(d) and rule 17d–1.

2. In considering whether to approve a joint transaction under rule 17d–1, the Commission considers whether the registered investment company's participation in the joint transaction is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants state that the investment by the Participating Funds in shares of the Central Funds would be on the same basis and no different from or less advantageous than that of other participants. Applicants submit that the proposed transactions meet the standards for an order under rule 17d–1.

*II. Interfund Transactions*

1. Applicants state that certain Funds and Private Central Funds currently rely on rule 17a–7 under the Act to conduct Interfund Transactions. Rule 17a–7 under the Act provides an exemption from section 17(a) for a purchase or sale of certain securities between a registered investment company and an affiliated person (or an affiliated person of an affiliated person), provided that certain conditions are met, including that the affiliation between the registered investment company and the affiliated person (or an affiliated person of the affiliated person) must exist solely by reason of having a common investment adviser, common directors and/or common officers. Applicants state that the Participating Funds and Private Central Funds may not be able to rely on rule 17a–7 when purchasing or selling portfolio securities to each other, because some of the Participating Funds may own 5% or more of the outstanding voting securities of a Private Central Fund and, therefore, an affiliation would not exist solely by reason of such Participating Fund and such Private Central Fund having a common investment adviser, common directors and/or common officers.

2. Applicants request relief under sections 6(c) and 17(b) of the Act to permit the Interfund Transactions. Applicants submit that the requested relief satisfies the standards for relief in sections 6(c) and 17(b). Applicants state that the Funds and the Private Central

Funds will comply with rule 17a–7(a) through (g) under the Act. Applicants state that the additional affiliation created under sections 2(a)(3)(A) and (B) does not affect the other protections provided by rule 17a–7, including the integrity of the pricing mechanism employed and oversight by each Fund's Board.

## Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. The shares of the Central Funds sold to and redeemed from the Participating Funds will not be subject to a sales load, redemption fee, Rule 12b–1 Fee, or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules).

2. If the Adviser collects a fee from a Central Fund for acting as investment adviser with respect to assets invested by a Participating Fund, the Adviser or Sub-Adviser to a Participating Fund will provide the Board of the Participating Fund, before its next meeting that is held for the purpose of voting on an advisory or sub-advisory contract under section 15 of the Act, with specific information regarding the approximate cost to the Adviser or Sub-Adviser for, or portion of the advisory or sub-advisory fee under the existing advisory or sub-advisory fee attributable to, managing the Uninvested Cash of the Participating Fund that can be expected to be invested in the Central Funds. Before approving any advisory or sub-advisory contract under section 15 for a Participating Fund, the Board of the Participating Fund, including a majority of the Independent Trustees, shall consider to what extent, if any, the advisory or sub-advisory fees charged to the Participating Fund by the Adviser or Sub-Adviser should be reduced to account for reduced services provided to the Participating Fund by the Adviser or Sub-Adviser as a result of investment of Uninvested Cash in the Central Funds. The minute books of the Participating Fund will record fully the Board's consideration in approving the investment advisory or sub-advisory contact, including the consideration relating to fees referred to above.

3. Each of the Participating Funds may invest Uninvested Cash in, and hold shares of, the Central Funds only to the extent that the Participating Fund's aggregate investment of Uninvested Cash in the Central Funds does not exceed the greater of 25% of the Participating Fund's total assets or $10 million. For purposes of this limitation, each Participating Fund or series thereof will be treated as a separate investment company.

4. Investments by a Participating Fund in shares of the Central Funds will be in accordance with each Participating Fund's respective investment restrictions and will be consistent with such Participating Fund's investment objectives and policies as set forth in its prospectus and statement of additional information. A Participating Fund that complies with rule 2a–7 under the Act will not invest its Cash Balances in a Central Fund that does not comply with rule 2a–7. A Participating Fund's Cash Collateral will be invested in a particular Central Fund only if that Central Fund has been approved for investment by the Participating Fund and if that Central Fund invests in the types of instruments that the Participating Fund has authorized for the investment of its Cash Collateral.

5. Each Participating Fund and Central Fund that may rely on the order shall be advised by the Adviser.

6. No Central Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except as permitted by a Commission order governing interfund loans.

7. Before a Participating Fund may participate in a Securities Lending Program, a majority of the Board, including a majority of the Independent Trustees, will approve the Participating Fund's participation in the Securities Lending Program. The Board will evaluate the securities lending arrangement and its results no less frequently than annually and determine that any investment of Cash Collateral in the Central Funds is in the best interest of the Participating Fund.

8. The Securities Lending Program of each Participating Fund will comply with all present and future applicable Commission and staff positions regarding securities lending arrangements.

9. To engage in Interfund Transactions, the Participating Funds and the Private Central Funds will comply with rule 17a–7 under the Act in all respects other than the requirement that the parties to the transaction be affiliated persons (or affiliated persons of affiliated persons) of each other solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common officers and/or common trustees, solely because a Participating Fund and a Private Central Fund might become affiliated persons of each other within the meaning of sections 2(a)(3)(A) and (B) of the Act.

## Operation of the Private Central Funds

10. Each Private Central Fund will comply with the requirements of sections 17(a), (d), and (e), and 18 of the Act as if the Private Central Fund were a registered open-end investment company. With respect to all redemption requests made by a Participating Fund, a Private Central Fund will comply with section 22(e) of the Act. The Adviser will adopt procedures designed to ensure that each Private Central Fund complies with sections 17(a), (d), and (e), 18 and 22(e) of the Act. The Adviser will also periodically review and update, as appropriate, the procedures, and will maintain books and records describing the procedures, and maintain the records required by rules 31a–1(b)(1), 31a–1(b)(2)(ii), and 31a–1(b)(9) under the Act. All books and records required to be made pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the Commission and its staff.

11. The net asset value per share with respect to shares of the Private Central Funds will be determined separately for each Private Central Fund by dividing the value of the assets belonging to that Private Central Fund, less the liabilities of that Private Central Fund, by the number of shares outstanding with respect to that Private Central Fund.

12. Each Participating Fund will purchase and redeem shares of a Private Central Fund as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis, as other shareholders of the Private Central Fund. A separate account will be established in the shareholder records of each Private Central Fund for the account of each Participating Fund that invests in such Private Central Fund.

13. Each Private Central Fund that operates as a money market fund and uses the amortized cost method valuation, as defined in rule 2a–7 under the Act, will comply with rule 2a–7 as though it were a registered investment company. Each such Private Central Fund will adopt the procedures described in rule 2a–7(c)(7) and the Adviser will comply with these procedures and take any other actions as are required to be taken pursuant to these procedures. A Participating Fund may only purchase shares of such a Private Central Fund if the Adviser

determines on an ongoing basis that the Private Central Fund is operating as a money market fund and is in compliance with rule 2a–7. The Adviser will preserve for a period not less than six years from the date of determination, the first two years in an easily accessible place, a record of such determination and the basis upon which the determination was made. This record will be subject to examination by the Commission and the staff.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 03–25337 Filed 10–6–03; 8:45 am]

BILLING CODE 8010–01–P

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## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 26199; 812–12988]**

## WNC Housing Tax Credit Fund VI, L.P., Series 11 and Series 12, and WNC National Partners, LLC; Notice of Application

October 1, 2003.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application for an order under sections 6(c) and 6(e) of the Investment Company Act of 1940 (the "Act") granting relief from all provisions of the Act, except sections 37 through 53 of the Act and the rules and regulations under those sections.

**APPLICANTS:** WNC Housing Tax Credit Fund VI, L.P., Series 11 and WNC Housing Tax Credit Fund VI, L.P., Series 12 (each a "Series," and collectively, the "Fund"), and WNC National Partners, LLC (the "General Partner").

**SUMMARY OF THE APPLICATION:** Applicants request an order to permit each Series to invest in limited partnerships that engage in the ownership and operation of apartment complexes for low and moderate income persons.

**FILING DATE:** The application was filed on July 23, 2003. Applicants have agreed to file an amendment to the application, the substance of which is reflected in this notice, during the notice period.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 24, 2003, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 5th Street NW, Washington, DC 20549–0609. Applicants, 17782 Skypark Circle, Irvine, California 92614.

**FOR FURTHER INFORMATION CONTACT:** Bruce R. MacNeil, Senior Counsel, (202) 942–0634, or Mary Kay Frech, Branch Chief, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

### Applicants' Representations

1. Each Series was formed in 2003 as a California limited partnership. Each Series will operate as a "two-tier" partnership, *i.e.*, each Series will invest as a limited partner in other limited partnerships ("Local Limited Partnerships"). The Local Limited Partnerships in turn will engage in the ownership and operation of apartment complexes expected to be qualified for low income housing tax credit under the Internal Revenue Code of 1986, as amended. The General Partner is a California limited liability company whose sole member is WNC & Associates, Inc. ("WNC & Associates"), a California corporation.

2. The objectives of each Series are (a) to provide current tax benefits primarily in the form of low income housing credits which investors may use to offset their Federal income tax liabilities, (b) to preserve and protect capital, and (c) to provide cash distributions from sale or refinancing transactions.

3. On July 21, 2003, the Fund filed a registration statement under the Securities Act of 1933, pursuant to which the Fund intends to offer publicly, in two series of offerings, 25,000 units of limited partnership interest ("Units") at $1,000 per unit. The minimum investment will be five Units for most investors, although employees of the General Partner and/or its affiliates and/or investors in syndications previously sponsored by the General Partner and/or its affiliates may purchase a minimum of two Units. Purchasers of the Units will become limited partners ("Limited Partners") of the Series offering the Units.

4. A Series will not accept any subscriptions for Units until the requested exemptive order is granted or the Series receives an opinion of counsel that it is exempt from registration under the Act. Subscriptions for Units must be approved by the General Partner. Such approval will be conditioned upon representations as to suitability of the investment for each subscriber. The suitability standards provide, among other things, that investment in a Series is suitable only for an investor who either (a) has a net worth (exclusive of home, furnishings, and automobiles), of at least $35,000 and an annual gross income of at least $35,000, or (b) irrespective of annual income, has a net worth (exclusive of home, furnishings, and automobiles) of at least $75,000. Units will be sold only to investors who meet these suitability standards, or such more restrictive suitability standards as may be established by certain states for purchasers of Units within their respective jurisdictions. In addition, transfers of Units will be permitted only if the transferee meets the same suitability standards as had been imposed on the transferor Limited Partner.

5. Although a Series' direct control over the management of each apartment complex will be limited, the Series' ownership of interests in Local Limited Partnerships will, in an economic sense, be tantamount to direct ownership of the apartment complexes themselves. A Series normally will acquire at least a 90% interest in the profits, losses, and tax credits of the Local Limited Partnerships. However, in certain cases, the Series may acquire a lesser interest in such partnerships. Each Local Limited Partnership's partnership agreement will provide that distributions of proceeds from a sale or refinancing of an apartment complex will be paid to a Series in the range of from 10% to 50%.

6. Each Series will have certain voting rights with respect to each Local Limited Partnership. The voting rights will include the right to dismiss and replace the local general partner on the basis of performance, to approve or disapprove a sale or refinancing of the apartment complex owned by such Local Limited Partnership, to approve or disapprove the dissolution of the Local Limited Partnership, and to approve or disapprove amendments to the Local

Limited Partnership agreement materially and adversely affecting the Series' investment.

7. Each Series will be controlled by the General Partner, pursuant to a partnership agreement (the "Partnership Agreement"). The Limited Partners, consistent with their limited liability status, will not be entitled to participate in the control of the business of the Series. However, a majority-in-interest of the Limited Partners will have the right to amend the Partnership Agreement (subject to certain limitations), to remove any General Partner and elect a replacement, and to dissolve the Series. In addition, under the Partnership Agreement, each Limited Partner is entitled to review all books and records of the Series.

8. Applicants state that the Partnership Agreement and prospectus of the Series contain provisions designed to ensure fair dealing by the General Partner with the Limited Partners. Applicants also state that all compensation to be paid to the General Partner and its affiliates is specified in the Partnership Agreement and prospectus. Applicants believe that the fees and other forms of compensation that will be paid to the General Partner and its affiliates are fair and on terms no less favorable to the Series than would be the case if such arrangements had been made with independent third parties.

9. During the offering and organizational phase, WNC Capital Corporation, an affiliate of the General Partner, will receive a dealer-manager fee and a nonaccountable underwriting expense allowance in amounts equal to 2% and 1%, respectively, of capital contributions. The General Partner or an affiliate will receive a nonaccountable organizational and offering expense reimbursement in an amount equal to 3% of capital contributions. The General Partner has agreed to pay all organizational and offering expenses (excluding selling commissions, the dealer-manager fee, the nonaccountable underwriting expense allowance and the nonaccountable expense reimbursement).

10. During the acquisition phase, each Series will pay WNC & Associates a fee equal to 7% of capital contributions for analyzing and evaluating potential investments in Local Limited Partnerships and for various other services. WNC & Associates will receive a nonaccountable acquisition expense reimbursement equal to 2% of capital contributions in consideration of which WNC & Associates will pay all acquisition expenses of each Series. Aggregate fees and expenses paid in connection with the organization of each Series, the offering of Units, and the acquisition of Local Limited Partnership interests by each Series will be limited by the Partnership Agreement and will comply with guidelines published by the North American Securities Administrators Association. These guidelines require that a specified percentage (generally 80%, but subject to reduction) of the aggregate Limited Partners' capital contributions to the Fund be committed to Local Limited Partnership interests.

11. During the operating phase, the General Partner will receive 0.1% of any cash available for distribution, and each Series may pay certain fees and reimbursements to the General Partner or its affiliates. An asset management fee will be payable for services related to the administration of the affairs of each Series and ongoing management of each Series. Other fees may be paid in consideration of property management services provided by the General Partner or its affiliates as the management and leasing agents for some of the apartment complexes. In addition, the General Partner and its affiliates generally will be allocated 0.1% of profits and losses of each Series for tax purposes and tax credits.

12. During the liquidation phase, and subject to certain prior payments to the Limited Partners, each Series will pay the General Partner or its affiliates a fee equal to 1% of the sales price of the apartment complexes sold in which the General Partner or its affiliates have provided a substantial amount of services. The General Partner also will receive 10% of any additional sale or refinancing proceeds.

13. All proceeds from a Series' public offering of Units initially will be placed in an escrow account with USbank ("Escrow Agent"). Pending release of offering proceeds to the Series, the Escrow Agent will deposit escrowed funds in short-term United States Government securities, securities issued or guaranteed by the United States Government, and certificates of deposit or time or demand deposits in commercial banks. Upon receipt of a prescribed minimum amount of capital contributions for a Series, funds in escrow will be released to the Series and held by it pending investment in Local Limited Partnerships.

14. If more than one entity that the General Partner or its affiliates advises or manages may invest in a particular investment opportunity, the decision as to the entity that will be allocated the investment will be based upon such factors as the effect of the acquisition on diversification of each entity's portfolio, the estimated income tax effects of the purchase on each entity, the amount of funds of each entity available for investment, and the length of time such funds have been available for investment. Priority generally will be given to the entity having uninvested funds for the longest period of time. However, any entity that was formed to invest primarily in apartment complexes eligible for state low income housing tax credits ("state tax credits") as well as for Federal low income housing tax credits will be given priority with respect to any investment that is eligible for state tax credits over entities which are not seeking to provide state tax credits.

## Applicants' Legal Analysis

1. Applicants believe that the Fund and its Series will not be "investment companies" under sections 3(a)(1)(A) or 3(a)(1)(C) of the Act. If the Fund and its Series are deemed to be investment companies, however, applicants request an exemption under section 6(c) and 6(e) of the Act from all provisions of the Act, except sections 37 through 53 of the Act and the rules and regulations under those sections.

2. Section 3(a)(1)(A) of the Act provides that an issuer is an "investment company" if it is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. Applicants believe that the Fund will not be an investment company under section 3(a)(1)(A) because the Fund will be in the business of investing in and being beneficial owner of apartment complexes, not securities.

3. Section 3(a)(1)(C) of the Act provides that an issuer is an "investment company" if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire "investment securities" having a value exceeding 40% of the value of such issuer's total assets (exclusive of Government securities and cash items). Applicants state that although the Local Limited Partnership interests may be deemed "investment securities," they are not readily marketable, cannot be sold without severe adverse tax consequences, and have no value apart from the value of the apartment complexes owned by the Local Limited Partnerships.

4. Applicants believe that the two-tier structure is consistent with the purposes and criteria set forth in the Commission's release concerning two-tier real estate partnerships (the

"Release").[1] The Release states that investment companies that are two-tier real estate partnerships that invest in limited partnerships engaged in the development and operation of housing for low and moderate income persons may qualify for an exemption from the Act pursuant to section 6(c). Section 6(c) provides that the Commission may exempt any person from any provision of the Act and any rule thereunder, if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 6(e) permits the Commission to require companies exempted from the registration requirements of the Act to comply with certain specified provisions of the Act as though the company were a registered investment company.

5. The Release lists two conditions, designed for the protection of investors, which must be satisfied by two-tier partnerships to qualify for the exemption under section 6(c). First, interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be unsuitable. Second, requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company.

6. Applicants assert, among other things, that the suitability standards set forth in the application, the requirements for fair dealing provided by the Partnership Agreement, and pertinent governmental regulations imposed on each Local Limited Partnership by various Federal, state, and local agencies provide protection to investors in Units. In addition, applicants assert that the requested exemption is both necessary and appropriate in the public interest.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 03–25338 Filed 10–6–03; 8:45 am]

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[1] Investment Company Act Release No. 8465 (Aug. 9, 1974).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48577; File No. SR–Amex–2003–80]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to a Pilot Program for Marketing Fee Procedures

September 30, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 24, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which the Exchange has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Commentary .11 to Amex Rule 958 specifying the procedures by which specialists and registered options traders ("ROTs") may determine whether to continue to participate in the marketing fee program recently established by the Exchange. The Exchange proposes to institute these procedures on a six-month pilot basis. The text of the proposed rule change is below. Proposed new language is *italicized.*

* * * * *

Rule 958. Options Transactions of Registered Traders

(a) through (h) No Change

Commentary

.01 through .10 No Change

*.11 Marketing Fee Program Voting Procedures. The following procedures specify how a specialist and Registered Trader determine whether to participate or not to participate in the Exchange's marketing fee program. These procedures will expire six (6) months from the date of effectiveness unless extended, or adopted on a permanent basis.*

*(a) Eligible Voters*

*(i) Eligible Registered Traders. For option classes traded by an individual specialist, Registered Traders to be eligible to participate in the vote must have transacted at least 80% of their contracts and transactions in each of the three immediately preceding calendar months in one or more option classes traded by that specialist. For cases when one specialist trades a single option class or multiple specialists trade a single option class, Registered Traders to be eligible to participate in the vote must have transacted at least 80% of their contracts and transactions in each of the three immediately preceding calendar months in that option class. Registered Traders are required to continue to trade the particular option class at the time of the vote. Eligible Registered Traders and the specialist shall each have one vote.*

*(b) Requesting a Vote. After the marketing fee initially has been in effect for three consecutive calendar months with respect to the option classes of an individual specialist, any eligible Registered Trader and specialist can request that a vote be held to determine whether or not the Registered Trader and specialist should continue to participate in the marketing fee program by submitting a written request to that effect to the Secretary of the Exchange. The Exchange shall post a notice of the time and date of any vote to be taken at least 10 calendar days prior to the time of the vote. The Marketing Fee Program Committee shall determine all other administrative procedures pertaining to the vote.*

*(c) Participation in the Marketing Fee Program. The Registered Traders and specialist shall be deemed to have indicated that they desire to participate in the Exchange's marketing fee program if a majority of those eligible Registered Traders participate in the vote and if a majority of the total votes cast are in favor of participating in the marketing fee program. Conversely, the eligible Registered Traders and the specialist shall be deemed to have indicated that they do not desire to participate in the Exchange's marketing fee program if a majority of those eligible Registered Traders participate in the vote and if a majority of the total votes cast are against participating in the marketing fee program.*

*(i) Frequency of Vote. Once eligible Registered Traders and the specialist vote to participate in the marketing fee program, subsequent votes to determine whether to continue participation may be held only once every three calendar months. Once eligible Registered Traders and the specialist vote not to participate in the marketing fee program, subsequent votes to determine whether to participate in the marketing*

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*fee program may be held only once every thirty days.*

*(ii) Tie Votes. If a vote conducted in accordance with this Commentary results in a tie, the status quo for the specialist and Registered Traders of the particular option class shall remain in effect. Accordingly, if the specialist and Registered Traders currently participate in the marketing fee program and a tie vote occurs, the marketing fee program will remain in effect for that specialist and Registered Traders. If the specialist and Registered Traders do not participate in the marketing fee at the time the tie vote occurs, the marketing fee will not be implemented for the specialist and Registered Traders at that time.*

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

### 1. Purpose

In July 2000, the Amex imposed a marketing fee of $0.40 per contract on the transactions of specialists and Registered Options Traders ("ROTs") in individual equity options. The Exchange collected the fees and distributed the funds to the specialists, who then used the funds to pay broker-dealers for orders they directed to the Amex. In August 2001, the Exchange suspended the collection of the fee. In June 2003, the Amex re-instated an equity option marketing fee on those specialist and ROT transactions resulting from orders from customers of payment accepting firms with whom the specialist has negotiated a payment for order flow arrangement.[3]

In conjunction with the re-instatement of the marketing fee program, the Amex now proposes to adopt Commentary .11 to Amex Rule 958 for the purpose of establishing procedures for specialists and ROTs to determine whether to continue participation in the Exchange's marketing fee program. The Amex proposes to institute their procedures on a six-month pilot basis. In connection with the adoption of the procedures included in new Commentary .11 to Amex Rule 958, the Amex would establish a Marketing Fee Program Committee ("Committee") to determine and administer the procedures for conducting the required vote. The Committee would be comprised of the Amex's Vice Chairman, two options specialists designated by the Chairman of the Specialists' Association and two ROTs designated by the Chairman of the Options Market Maker Association.

The proposed new Commentary .11 to Amex Rule 958 would identify which ROTs are eligible to vote for particular option classes. In connection with a required vote, the specialist and each eligible ROT would be entitled to one vote. Any decision to discontinue participation in the Amex's marketing fee program would be on a specialist-by-specialist basis, unless more than one specialist trades a single option class, in which case, the determination would be made on an option-class basis.[4] ROTs may choose to trade one or all of the option classes traded by a specialist.

The proposed voting procedures provide that a ROT would be eligible to vote on continued participation in the marketing fee program with respect to the option classes traded by an individual specialist provided that the ROT has at least 80% of its registered trader activity in each of the three immediately preceding calendar months (measured in terms of both contract volume and transactions) in one or more of the options traded by that specialist.[5] When one specialist trades a single option class or multiple specialists trade a single option class, ROTs would need to have at least 80% of their registered trader activity in each of the three immediately preceding calendar months (measured in terms of both contract volume and transactions) in that option class to be eligible to vote on whether to continue with the marketing fee program. In addition, the ROT would need to continue to trade the option class or classes at the time of the vote. The Exchange believes that these requirements assure that only those ROTs who have concentrated their activity in one or more option classes traded by a specialist over the last three months would be eligible to participate in the vote.

*Process to Request a Vote.* After the program has been in effect for the initial three calendar month period, the specialist or any eligible ROT could request that a vote be held by submitting a written request to the Secretary of the Exchange. The Amex would provide at least 10 calendar days' posted notice to the specialist and other ROTs of the time and date of the vote. The Exchange would verify that the member requesting a vote is an eligible ROT and would keep the identity of such individual confidential.

*Specialist and ROTs Participating in the Marketing Fee Program.* The specialist and ROTs could cease to participate in the marketing fee program after the initial three-month period has expired. In order to opt out of the marketing fee program, the following actions must occur: (i) The question must be presented for a vote of the specialist[6] and eligible ROTs; (ii) a majority of the eligible ROTs must participate in the vote; and (iii) a majority of the votes cast must be in favor of not continuing to participate in the marketing fee program. In the event that the vote is tied, the marketing fee program would remain in effect in those option classes for the next three consecutive months.

*Specialist and ROTs Not Participating in the Marketing Fee Program.* The proposed voting procedure set forth in Commentary .11 provides that twenty days after the specialist and eligible ROTs vote to discontinue participation in the marketing fee program, the specialist and any eligible ROT may request that another vote be held to determine whether the trading crowd should again participate in the marketing fee program.[7] In this case, if a majority of the votes cast are in favor of again participating in the marketing fee program, the program would be in effect in those option classes for the next three consecutive months. In the event that the vote is tied, the specialist and ROTs would be deemed to have indicated that they do not wish to participate in the marketing fee program.

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[3] *See* Securities Exchange Act Release No. 48053 (June 17, 2003), 68 FR 37880 (June 25, 2003) (SR–Amex–2003–50).

[4] The Amex notes that most specialists trade two or more option classes, some specialists trade only one active option class, and some actively traded option classes have two or more specialists.

[5] The Amex notes that this 80% trading activity requirement pertains to the trading activity of an individual ROT, and not to the aggregate trading activities of any group of ROTs. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Ian K. Patel, Attorney, Division of Market Regulation, Commission, on September 26, 2003.

[6] The specialist may (but is not required to) participate in the vote.

[7] The Exchange notes that actual votes may only be held once every thirty days. Because there is a ten-calendar day notice period prior to a vote, however, the specialist and any eligible ROT may request a vote twenty days after the preceding vote.

If a payment-accepting firm were to materially change its execution status or a specialist transfers its options classes to a separate organization, any eligible ROT could request that a vote be held pursuant to procedures set forth above to determine whether those option classes should continue to participate in the marketing fee program.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with section 6(b) of the Act[8] in general and furthers the objectives of section 6(b)(5) of the Act[9] in particular in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanisms of a free and open market.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The Amex neither solicited nor received written comments with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become immediately effective pursuant to section 19(b)(3)(A)(iii)[10] of the Act and Rule 19b-4(f)(6)[11] under the Act because it effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Amex has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

The Exchange has requested that the Commission waive the usual pre-operative waiting period, so that it may immediately begin implementing the proposed procedures in connection with the marketing fee program. The Exchange notes that acceleration of the operative date of the proposed rule is appropriate, given that substantially similar procedures have been adopted by the Chicago Board Options Exchange, Inc. ("CBOE") and approved by the Commission.[12]

The Commission believes that it is consistent with the protection of investors and the public interest to accelerate the operative date of the proposal.[13] The Commission notes that it has approved a substantially similar proposal filed by the CBOE. For this reason, the Commission designates that the proposal become operative immediately. At any time within sixty days after the filing of the proposed rule change, the Commission may summarily abrogate this rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR-Amex-2003–80 and should be submitted by October 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–25339 Filed 10–6–03; 8:45 am]

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# SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48581; File No. SR–NASD–2003–111]**

## Self Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the National Association of Securities Dealers, Inc., Relating to Charges for ViewSuite Services Set Forth in NASD Rule 7010(q)

October 1, 2003.

On July 17, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-6 thereunder,[2] a proposed rule change to institute a pilot program for a one-year period to simplify the structure of the fees assessed for the ViewSuite products under NASD Rule 7010(q), by combining the current DepthView, PowerView, and TotalView products into one single entitlement package. On August 11, 2003, Nasdaq filed Amendment No. 1 that entirely replaced the original rule filing.[3]

The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on August 21, 2003.[4] The Commission received no comments on the proposal. On September 22, 2003, Nasdaq filed Amendment No. 2 to the proposed rule change.[5] On September 24, 2003, Nasdaq filed Amendment No.

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[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. Section 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] *See* Securities Exchange Act Release No. 47957 (May 30, 2003), 68 FR 35035 (June 11, 2003) (SR–CBOE–2003–20).

[13] For purposes of accelerating the operative date of the proposed rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–6.

[3] *See* Letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 8, 2003 ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 48358 (August 15, 2003), 68 FR 50566 (August 21, 2003).

[5] *See* Letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated September 17, 2003 ("Amendment No. 2"). In Amendment No. 2, Nasdaq stated that it was changing the starting date of the proposed pilot to October 1, 2003. This is a technical amendment and is not subject to notice and comment.

3 to the proposed rule change.[6] On September 26, 2003, Nasdaq filed Amendment No. 4.[7] On September 29, 2003, Nasdaq filed Amendment No. 5.[8]

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[9] The Commission finds that the proposal is consistent with Section 15A of the Act[10] in general, and with Section 15A(b)(5) of the Act,[11] in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that the NASD operates or controls. The Commission notes that the pilot ViewSuite entitlement program is available to all subscribers of the ViewSuite products. All subscribers would pay a single price for the entitlement package. Thus, for most of ViewSuite's current subscribers, the ViewSuite monthly controlled device fees would be lower than what they are currently paying. The only exception would be for current DepthView professional subscribers, whose fees would increase $20 per month. The increased monthly fee for DepthView professional subscribers, however, is due to the fact that the new single ViewSuite entitlement includes NQDS data, which cannot be discounted by Nasdaq.[12]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (File No. SR–NASD–2003–111), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–25340 Filed 10–6–03; 8:45 am]

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[6] *See* Letter from Eleni Constantine, Office of General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated September 24, 2003 ("Amendment No. 3"). In Amendment No. 3, Nasdaq amended the rule text of the proposal to clarify that the starting date of the proposed pilot is October 1, 2003.

[7] *See* Letter from Eleni Constantine, Office of General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated September 25, 2003 ("Amendment No. 4"). Nasdaq filed Amendment No. 4 to correct typographical errors made in Amendment No. 3. Amendment No. 4 completely replaced and superseded Amendment No. 3.

[8] *See* Letter from Eleni Constantine, Office of General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated September 29, 2003 ("Amendment No. 5"). Nasdaq filed Amendment No. 5 to correct typographical errors made in Amendment No. 4. Amendment No. 5 completely replaced and superseded Amendment Nos. 3 and 4. This is a technical amendment and is not subject to notice and comment.

[9] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78o–3.

[11] 15 U.S.C. 78o–3(b)(5).

[12] Nasdaq has represented that the increase in Depth View pricing reflects the addition of NQDS, which cannot be discounted because it is part of the Nasdaq UTP Plan. *See* Securities Exchange Act Release No. 48358 (August 15, 2003), 68 FR 50566 (August 21, 2003).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48576; File No. SR–NASD–2003–142]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend a Pilot Amendment to NASD Rule 7010(s) Regarding Nasdaq PostData and the Associated Fees Assessed

September 30, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 24, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed this proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend a pilot amendment to NASD Rule 7010(s) regarding Nasdaq PostData and the associated fees assessed. The purpose of this filing is to extend the pilot through March 31, 2004. Nasdaq is making no substantive changes to the pilot, other than to extend its operation through March 31, 2004. There is no new proposed rule language.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On January 11, 2002, the Commission approved, as a 12-month pilot, the creation of Nasdaq PostData, a voluntary trading data distribution facility, accessible to NASD members, buy-side institutions and market data vendors through the NasdaqTrader.com Web site.[6] Nasdaq extended that pilot through February 28, 2003,[7] then through March 31, 2003,[8] and, finally, through September 30, 2003.[9] Nasdaq hereby proposes to extend the pilot period for PostData through March 31, 2004.

*Background.* PostData originally consisted of three reports provided in a single package: (1) Daily Share Volume Report, which provide subscribers with T+1 daily share volume in each Nasdaq security, listing the volume by any NASD member firm that voluntarily permits the dissemination of this information; (2) Daily Issue Data, which contains a summary of the previous day's activity for every Nasdaq issue; and (3) Monthly Summaries, which provide monthly trading volume statistics for the top 50 market participants sorted by industry sector, security, or type of trading (*e.g.* block or total). Nasdaq launched PostData on March 18, 2002.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240 19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–(f)(6).

[5] Nasdaq asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* Securities Exchange Act Release No. 45270 (January 11, 2002), 67 FR 2712 (January 18, 2002) (SR–NASD–99–12).

[7] *See* Securities Exchange Act Release No. 47210 (January 17, 2003), 68 FR 3912 (January 27, 2003)(SR–NASD–2003–02).

[8] *See* Securities Exchange Act Release No. 47503 (March 14, 2003), 68 F.R. 13745 (March 20, 2003)(SR–NASD–2003–35).

[9] *See* Securities Exchange Act Release No. 47634 (April 4, 2003), 68 FR 17714 (April 10, 2003)(SR–NASD–2003–60).

On August 5, 2002, Nasdaq expanded the information made available to PostData subscribers to include four additional reports: Buy Volume Report, Sell Volume Report, Crossed Volume Report, and Consolidated Activity Volume Report.[10] Each report offers information regarding total Nasdaq reported buy (or sell, or cross, or consolidated) volume in the security, as well as rankings of registered market makers based upon various aspects of their activity in Nasdaq. The reports also provide recipients with information about the number and character of each market maker's trades. Finally, the reports provide the information described above with respect to block volume, be it buy, sell, cross or consolidated interest.

*Extension of the Pilot.* The PostData pilot program is scheduled to expire on September 30, 2003. Nasdaq plans to request permanent approval of PostData in the coming months. Additional time is needed, however, to finalize the details of PostData as a permanent product and to fully analyze PostData fees. Nasdaq is therefore requesting an extension of the PostData pilot through March 31, 2004.

### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5)[11] and 15A(b)(6)[12] of the Act. Section 15A(b)(5) requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a national securities association. Section 15A(b)(6) requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that this program involves a reasonable fee assessed only to users and other persons utilizing the system and will provide useful information to all direct and indirect subscribers on a non-discriminatory basis.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed RuleChange Received From Members, Participants or Others*

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[13] and rule 19b–4(f)(6) thereunder.[14] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes waiving the five-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. Such waivers will allow the pilot to operate without interruption through March 31, 2004. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[15]

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–142 and should be submitted by October 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–25342 Filed 10–6–03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48579; File No. SR–NYSE–2003–26]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., To Amend an Interpretation of NYSE Rule 345 to Provide for the Elimination of "Registered Representative-In-Charge" as a Category Precluded From Being an Independent Contractor

October 1, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 3, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by NYSE.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[10] *See* Securities Exchange Act Release No. 46316 (August 6, 2002), 67 FR 52504 (August 12, 2002)(SR–NASD–2002–90).

[11] 15 U.S.C. 78o–3(b)(5).

[12] 15 U.S.C. 78o–3(b)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Commission staff made non-substantive changes to the description of the proposed rule change and the format of this Notice with the permission of the Exchange. Telephone conversations between Mary Anne Furlong, Director, Rule and Interpretive Standards, NYSE, and Andrew Shipe, Special Counsel, Division of Market Regulation, Commission, September 12 and 16, 2003.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE proposes to amend its *Interpretation Handbook* by eliminating, from an existing Interpretation of NYSE Rule 345, a prohibition on persons designated as "Registered-Representative-In-Charge" from associating with members and member organizations as independent contractors. Below is the text of the proposed rule change. Proposed new language is italicized. Proposed deletions are in [brackets].

* * * * *

Rule 345 Employees—Registration, Approval, Records

(a) Registration

/01 Exceptions

No change.

/02 "Independent Contractors"

The Exchange will not object to the assertion by a natural person registered representative of "independent contractor" status if such status will not preclude his or her characterization and treatment as an "employee" for purposes of the Constitution and Rules of the Exchange. Such salesperson and the member organization must agree that the natural person is subject to the organization's direct, detailed supervision, control and discipline and is covered by its fidelity bond.

Once a member organization approves a registered representative's status of "independent contractor" the following conditions must be met:

1. No change.
2. No change.
3. No change.
4. No change.

Written notification of the cessation of "independent contractor" status is to be given to the Qualifications and Registrations Department of the Exchange.

This interpretation does not apply to persons delegated supervisory functions (*e.g.*, Branch Office Manager[, Registered Representative-In-Charge]), pursuant to Rule 342(b)(1) nor does it permit the incorporation of registered representatives. (*See* Interpretation Memo No. 78–7 dated December 27, 1978.)

This interpretation does not preclude a registered representative who is the sole employee in a small office (*e.g.*, a residence office) *or a registered representative who is designated as "in-charge" pursuant to Rule 342.15, provided such person has not been assigned or delegated supervisory duties*, from asserting and obtaining approval for independent contractor status.

*A registered representative who is designated as "in-charge" and who seeks status as an independent contractor must submit all of the documentation required in items 1 through 4, above, as well as a written statement by the member or member organization that it has not assigned or delegated any supervisory responsibilities to the registered representative-in-charge.*

(Also see Rule 342.15/02, page 3414.)

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Rule 342 ("Offices "Approval, Supervision and Control") requires, in part, that each office of a member or member organization shall be under the supervision and control of the member or member organization establishing it and of the person delegated such authority and responsibility. Further, the structure and administration of Exchange rules mandate that all employees of members and member organizations, including registered representatives, be subject to the direct and ongoing supervision and control of their member organization employer.

In addition, Rule 342.15 provides that small offices (those with three or fewer registered representatives) may be in the charge of a qualified principal or manager who is either resident or non-resident in that location. Interpretation /02 to Rule 342.15 provides that where a qualified supervisor is not on the premises of a small office, a resident registered representative is to be designated as "in charge." However, it is still required that all supervisory functions (*e.g.*, approval of accounts, review of account activity and correspondence, etc.) are to be conducted by qualified supervisors.

Interpretation /02 to Rule 345(a) permits a registered representative to be associated with a member or member organization as an "independent contractor" provided such status does not preclude the independent contractor's characterization and treatment as an employee for purposes of the Constitution and Rules of the Exchange (*e.g.*, registration, qualification, supervision by the member or member organization, and being subject to the Exchange's jurisdiction). However, Interpretation /02 to Rule 345(a) prohibits persons delegated supervisory responsibilities including persons designated as "registered representative-in-charge," from claiming the status of independent contractor.

The Exchange believes that persons delegated supervisory responsibilities for members and member organizations generally must be full-time employees (the Exchange has exemption authority under Rule 346(e)).

Member organizations have stated that the prohibition against a registered representative-in-charge from being an independent contractor is creating unnecessary burdens in small offices with two or three registered representatives, all of whom may wish to be independent contractors. Typically, the type of office that would have independent contractors is one with limited securities sales activities, *e.g.*, the registered representatives work part-time for their member or member organizations and part-time selling products or services for affiliated or non-affiliated companies, such as banking, tax preparation, or accounting services. These individuals usually are employed by the non-member organization and conduct their limited securities activities through an independent contractor relationship with the member or member organization.

The Exchange proposes the elimination of "registered representative-in-charge" as a category of registered person precluded from being an independent contractor under this interpretation. In this regard, the Exchange has determined that members and member organizations generally assign administrative as opposed to supervisory functions to persons they designate as registered representatives-in-charge. Pursuant to an existing written interpretation (Rule 342.15/02), primary supervision is carried out by qualified branch managers, (persons who have passed the General Securities Sales Supervisor Qualification

Examination, Series 9 and 10) at designated parent branch offices or the main office of the member or member organization in accordance with its overall written plan of supervision.

Accordingly, Interpretation /02 to Rule 345(a) will be amended to permit registered representatives-in-charge to associate with members and member organizations as independent contractors provided that the member or member organization neither assigns nor delegates supervisory responsibilities to such persons. Further, in addition to the documents already required to be submitted under this Interpretation in seeking approval of independent contractor status (*e.g.*, Employment Agreement, Consent to Jurisdiction Form, written assurances that the member or member organization will supervise and control all activities of the independent contractor the same as it regulates the activities of all other registered representatives), (*see* NYSE Interpretation 345(a) /02), the member or member organization would be required to submit a written statement confirming that it has not assigned or delegated any supervisory responsibilities to such person.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5)[4] of the Exchange Act, which requires, among other things, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and in general to protect investors and the public interest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NYSE. All submissions should refer to File No. SR–NYSE–2003–26 and should be submitted by October 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–25341 Filed 10–6–03; 8:45 am]

BILLING CODE 8010–01–P

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## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3548]**

### District of Columbia (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective September 29, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on September 18, 2003 and continuing through September 29, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 19, 2003, and for economic injury the deadline is June 21, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 1, 2003.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 03–25371 Filed 10–6–03; 8:45 am]

BILLING CODE 8025–01–P

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## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3547]**

### State of Maryland (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective September 29, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on September 18, 2003 and continuing through September 29, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 18, 2003, and for economic injury the deadline is June 21, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 1, 2003.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 03–25370 Filed 10–6–03; 8:45 am]

BILLING CODE 8025–01–P

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## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3545]**

### State of North Carolina (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective September 26, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on September 18, 2003 and continuing through September 26, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 17, 2003, and for economic injury the deadline is June 18, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

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[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

Dated: September 30, 2003.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 03–25369 Filed 10–6–03; 8:45 am]

BILLING CODE 8025–01–P

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## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3552]

### Commonwealth of Pennsylvania

As a result of the President's major disaster declaration on September 26, 2003, I find that Chester County in the Commonwealth of Pennsylvania constitutes a disaster area due to damages caused by Tropical Storms Henri and Isabel, and related severe storms and flooding occurring on September 15 through September 23, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 25, 2003 and for economic injury until the close of business on June 28, 2004 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Berks, Delaware, Lancaster and Montgomery in the Commonwealth of Pennsylvania; New Castle County in the State of Delaware; and Cecil County in the State of Maryland.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners with credit available elsewhere | 5.125 |
| Homeowners without credit available elsewhere | 2.562 |
| Businesses with credit available elsewhere | 6.199 |
| Businesses and non-profit organizations without credit available elsewhere | 3.100 |
| Others (including non-profit organizations) with credit available elsewhere | 5.500 |
| For Economic Injury: | |
| Businesses and small agricultural cooperatives without credit available elsewhere | 3.100 |

The number assigned to this disaster for physical damage is 355208. For economic injury the number is 9X2100 for Pennsylvania; 9X2200 for Delaware; and 9X2300 for Maryland.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 29, 2003

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 03–25368 Filed 10–6–03; 8:45 am]

BILLING CODE 8025–01–P

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## SOCIAL SECURITY ADMINISTRATION

### Supplemental Security Income (SSI), Youth Transition Process Demonstration (YTPD)

**AGENCY:** Social Security Administration.

**ACTION:** Notice of youth demonstration and SSI waivers.

**SUMMARY:** The Commissioner of Social Security announces the following demonstration project relating to the Supplemental Security Income (SSI) program under title XVI of the Social Security Act. Under this project, the Social Security Administration (SSA) will test the effectiveness of altering certain SSI program rules as an incentive to encourage SSI recipients with disabilities or blindness to work or increase their work activity and earnings. This project, called the Youth Transition Process Demonstration (YTPD), is being conducted under the authority of section 1110 of the Act. SSA is conducting this project in six states for the purpose of helping youth with disabilities maximize their economic self-sufficiency as they transition from school to work. The projects will work with youth aged 14–25 who receive SSI, Social Security Disability Insurance (SSDI), or Childhood Disability Benefits (CDB) and those at risk of receiving such benefits, including those who have a progressive disability, who have a prognosis for decreased functioning, or who have existing disabling conditions prior to age 18 that would render them eligible except for deemed parental income. SSA is publishing this notice in accordance with 20 CFR 416.250(e).

**DATES:** The demonstration project will begin with cooperative agreement awards on September 30, 2003. Subject to the availability of funds, the demonstration project will end September 29, 2008.

**FOR FURTHER INFORMATION CONTACT:** Leola Brooks, Social Security Administration, Office of Program Development and Research, 6401 Security Blvd, 3673 Annex, Baltimore, MD 21235–6401; Phone (410) 965–2219 or through E-mail to *leola.brooks@ssa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

SSI is a federal program administered by SSA. The program is financed from general federal revenue and provides monthly benefit payments to aged, blind, and individuals with disabilities who have limited resources and income. In 2003, the federal benefit rate for an individual is $552 per month and $829 per month for a couple. In addition, many states supplement the federal benefit. The supplementary benefit amounts and the categories of persons eligible for these benefits vary from state to state. In most states, eligibility for SSI means eligibility for Medicaid; the extent of the Medicaid coverage package varies by state. SSI recipients may also be eligible to receive Food Stamps in all states but California and Wisconsin, where the state's supplementary payments are considered to include the value of Food Stamps.

To be eligible, a person must be age 65 or older, or have a severe disability and have limited resources and income, and meet certain other requirements. A person is considered to have a disability if a physical or mental impairment or combination of impairments prevents the person from doing any substantial gainful work and is expected to last for at least 12 months or to result in death. Children, as well as adults, may be eligible. SSA works cooperatively with the states, who are responsible for making disability and blindness determinations through their disability determination services (DDS). SSA takes a detailed medical history from the applicant during the initial interview and sends that information to the DDS. The DDS then secures medical records and, if needed, arranges an additional medical examination. Based upon this evidence, a disability or blindness determination is made.

In addition to age, disability or blindness, an individual or couple must meet resource, income, and residency requirements. In 2003, the resource limits are $2,000 for an individual and $3,000 for a couple. However, not everything that a person owns is counted.

An individual or couple may have earned or unearned income and still may be eligible for the SSI program. A certain amount of income is disregarded in determining eligibility and computing the SSI benefit amount. People who live in a state that supplements the federal payment may have higher amounts of income and still may qualify for some benefits.

To be eligible for SSI, a person must reside in the U.S. or the Northern Mariana Islands and be a U.S. citizen, an alien lawfully admitted for permanent residence, or an alien permanently residing in the U.S. under "color of law" (PRUCOL). PRUCOL is defined in the Code of Federal Regulations at 20 CFR 416.1618.

**Description of the YTPD Projects**

To further the President's New Freedom Initiative goal of increasing employment of individuals with disabilities, we are conducting a demonstration project, called the Youth Transition Process Demonstration (YTPD), under the authority of section 1110 of the Act. SSA is awarding cooperative agreements to state agencies and universities in six states for five years, subject to the availability of funds, for the purpose of helping youth with disabilities maximize their economic self-sufficiency as they transition from school to work. These projects will focus on youth ages 14–25 who receive SSI, Social Security Disability Insurance (SSDI), Childhood Disability Benefits (CDB), and youth who are at risk of receiving such benefits. The projects are designed to collaborate among federal, state, and local agencies to develop and implement sustainable improvements in the delivery of transition services and supports. The projects will test ways to remove other barriers to employment and economic self-sufficiency.

*YTPD Project Sites*

SSA is conducting seven YTPD projects in six states. The state, title, description and project sites for each project follow.

California

*Title:* The Bridges to Youth Self Sufficiency Project (Bridges).

*Awardee:* State of California Health and Human Services Agency Department of Rehabilitation.

*Summary:* The Bridges to Youth Self Sufficiency Project (Bridges) will serve youth ages 14–25 who receive SSI, SSDI, or CDB or youth at risk of receiving such benefits. Benefits planning and intensive service coordination are the main services provided by this project. Other specific program components are benefits training and education, outreach to specialized populations, early intervention, local partnering, youth incentives, local and state oversight bodies, and a data driven research study. The categories of outcomes to be measured are employment, education, level of independence, service participation, and quality of life.

*Project Sites:*

1. Riverside County Office of Education
2. Whittier Union High School District
3. Vallejo City Unified School Districts
4. Capistrano Unified School District/Saddleback Valley Unified School District Consortium
5. Irvine Unified School District/Newport-Mesa Unified School District Consortium

Colorado

*Title:* Colorado Youth Work Incentive Network of Supports (WINS).

*Awardee:* JFK Partners of the University of Colorado Health Sciences Center.

*Summary:* Colorado Youth Work Incentive Network of Supports (WINS) overarching goal is to assist youth, aged 14–25, who are currently receiving or are likely to receive SSI, SSDI, or CDB benefits to maximize their economic self-sufficiency and career advancement. Participants will work with a Transition Team (made up of a Consumer Navigator, Benefits Planner, and a Career Counselor) located in each selected community. The Transition Team, housed at local Workforce Centers, will provide specialized and intensive transition services to youth and their families. This project is designed to ensure that the same Transition Team members will work with youth and their families during high school and after the youth has left high school and entered the workforce. This project will collect comparison data from additional youth to determine the impact the intensive transition services and waivers have on Colorado Youth WINS participants. Comparisons will be made between participants and the control group using both direct collect and administrative data.

*Project Sites:* Larimer, El Paso/Teller and Pueblo Counties.

Iowa

*Title:* Smart Start.

*Awardee:* University of Iowa's Center for Disability and Development, Employment Policy Group.

*Summary:* Smart Start focuses on supporting the successful transition of students with disabilities from school to employment and economic self-sufficiency by addressing deficiencies and inefficiencies that exist across the system. The project concentrates on coordinating and integrating existing resources (services and benefits) available through local, state, and federal programs including Individuals with Disabilities Education Act (IDEA), Medicaid, Workforce Investment Act, Vocational Rehabilitation, SSI, and Ticket to Work. The purpose of Smart Start is to design and set into motion a system of individualized, comprehensive, and navigable transition-related services that adequately respond to the needs and aspirations of young people with disabilities. By removing customary bureaucratic constraints that impede individual choice and empowerment, Smart Start enables coordination and integration of transition services across multiple agencies by creating a service delivery system that is market driven. This effort presents an opportunity for local, state, and federal agencies to meaningfully engage in cross-departmental risk-sharing efforts. Project participants are students with disabilities enrolled in public schools and young adults with disabilities, formerly enrolled in public schools, who are unemployed (or who are employed but seeking jobs), starting with youth ages 14–25 years old who receive SSI.

*Project Sites:* Mason City and Waterloo Community School Districts.

Maryland

*Title:* The Maryland State Department of Education Youth Demonstration Project.

*Awardee:* Maryland State Department of Education.

*Summary:* The Maryland State Department of Education Youth Demonstration Project will have dedicated staff to assist the student participants and their families in the development of services and training that leads to employability and the building of a safety net for independence. In each service site there will be a dedicated Department of Rehabilitation Services Counselor, a Consumer Navigator, and a Family Support and Benefits Coordinator. Areas to be addressed include transportation, independent living, health care, and benefits planning before exiting school. The partnership with the One Stop will allow students, with the guidance of the Consumer Navigator, to develop those life skills needed for employment. As a result of participation in this project, students with disabilities will be better prepared for life choices at the completion of their public school educational program. Participating students will be more prepared for adulthood by obtaining the skills and the service agency linkages to move from dependence to independence. All participating students will receive the benefits of earlier involvement with the Division of Rehabilitation Services (DORS) and other employment support services.

*Project Sites:*

Maryland Schools for the Blind, Baltimore County, Wicomico County

Mississippi

*Title:* The Mississippi Youth Transition Innovations Project (MYTI).

*Awardee:* Mississippi Department of Rehabilitation Services (MDRS).

*Summary:* The Mississippi Youth Transition Innovations Project (MYTI) will serve youth ages 10–25 who receive SSI, SSDI, CDB, or youth at risk of receiving such benefits. MYTI will address the following issues: (a) The need for development of a model transition process that will facilitate optimal passage from school to work; (b) The elimination of barriers when feasible to effect transition at the local, state, and federal levels through interagency collaboration and elimination of policies, procedures, regulations, and statutory requirements that impede progress; and, (c) The development of natural and new/innovative supports at all levels as needed. The MYTI Project will be based upon individual person-centered planning, including the use of individual training accounts involving prospective employer buy-in to pre-career development, such as training opportunities required to earn an Occupational Diploma. As issues arise that impede the ability to accomplish this, local-level Transition Specialists will address these on an individualized basis and, if necessary, bring them to the state-level Coordination Council to facilitate barrier removal. In the final year in the local school system, participants will be referred to the appropriate MDRS program for vocational rehabilitation, supported employment, and independent living services. The program will be evaluated in terms of progress and outcome variables. Participation analysis will compare the experiences of the project group with a similar group of students with disabilities who did not receive project services.

*Project Sites:* Gulfport City and Harrison County Schools in years 1–3 and then add the Durant Public School in year 4.

New York

*Title:* Transition WORKS.

*Awardee:* Erie 1 Board of Cooperative Educational Services (BOCES) with the Office of Vocational and Educational Services for Individuals with Disabilities, New York State Department of Education.

*Summary:* Transition WORKS project is designed to increase the post-school transition success experienced by youth and young adults ages 14–25 who receive SSI, SSDI or CDB or youth at risk of receiving such benefits. Transition WORKS proposes to provide a comprehensive, collaborative transition planning and services model comprised of the most effective, research-based transition practices. A research design will test the efficacy of the component services and statistically test several hypotheses regarding transition services. The project will provide student- and family-centered planning for all participants (in and out-of-school), coordination of services, parent and family education and support, benefits advisement and work incentives advisement in addition to waivers of SSA regulations, and participation in career exploration activities as well as community-based work experiences. Youth with potential for postsecondary education will receive assistance to plan for and to enter and participate successfully in postsecondary education.

*Project Site:* Erie County.

*Title:* CUNY's Youth Transition Demonstration Project.

*Awardee:* City University of New York.

*Summary:* CUNY's Youth Transition Demonstration Project is designed to prepare youth aged 16–19, who receive SSI benefits, to achieve economic self-sufficiency. The project plans to increase coordination among public agencies and private organizations that have resources, funding, and a mandate to provide transition services. As a forum to deliver transition services, integrate systems and tap resources, the project will convene an annual, four-week, Summer Institute for participating youth. There will be a variety of workshops, information sessions, and professional development seminars to support transition. All students will be trained in self-determination skills. Tutoring in basic skills, vocational assessments, benefits counseling, and work-based learning will also be provided. College students with disabilities will serve as peer mentors. Year round activities will include student self-advocacy groups, parent support groups, and a four-course, twelve-credit Certificate in Transition Services for school personnel, staff at public and private agencies, as well as parents and CUNY students. The project will be evaluated by comparing the progress the experimental group makes, versus the control group, in completing specific and objective milestones in the transition process.

*Project Site:* Bronx County.

**Alternative SSI Program Rules that Apply to Participants in the YTPD**

Section 1110(b) of the Act authorizes the Commissioner of Social Security to waive any requirements of title XVI of the Act necessary to carry out demonstrations that, in the Commissioner's judgment, are likely to promote the objectives or facilitate the administration of the SSI program.

The following alternative SSI program rules will apply to certain project participants who receive SSI benefits or a combination of SSI and SSDI benefits.

1. Despite the finding of a continuing disability review conducted in accordance with section 221(i) or section 1614(a)(3)(H) of the Act or an age-18 medical redetermination conducted in accordance with section 1614(a)(3)(I) of the Act that an individual is no longer eligible for benefits, SSA will continue paying benefits for as long as the individual continues to be a YTPD participant.

2. The student earned-income exclusion (section 1612(b)(1) of the Act), which normally applies only to students who are age 21 or younger and neither married nor the head of a household (20 CFR 416.1866) will apply to all participants who meet school attendance requirements, without regard to their age or whether they are married or the head of a household.

3. The general earned-income exclusion (section 1612(b)(4)) normally permits the exclusion of $65 plus half of what an individual earns in excess of $65. For the YTPD, SSA will exclude the first $65 plus three-fourths of any additional earnings.

4. SSA will extend the SSI program's treatment of federally supported individual development accounts (IDAs) (section 404(h) of the Act) to IDAs that do not involve federal funds.

An IDA is a trust-like savings account. Except for certain emergencies, funds in a federally supported IDA can be used only for going to college, buying a first home, or starting a business. The individual makes deposits from his or her earned income. The individual's contributions are matched, at rates that can vary from 1:1 to 8:1, usually depending on the availability of funding.

Social Security excludes federally-supported IDAs when it determines whether someone's resources exceed the SSI limit. It also excludes matching contributions when it determines countable income. Further, Social Security deducts the beneficiary's own deposits from countable income, so that SSI benefits replace the amount deposited. As a result, an SSI beneficiary does not have to divert scarce resources from living expenses in order to save.

Nonfederally supported IDA or "IDA-like" programs have emerged in a number of states. These programs usually permit an individual to save for one or more purposes in addition to the three mentioned above, such as transportation. The exclusions that apply to federally-supported IDAs normally do not extend to these programs.

5. Ordinarily, a plan for achieving self-support (PASS) must specify an employment goal (section 1633(d) of the Act), which refers to getting a particular kind of job or starting a particular business. For the YTPD, SSA will approve an otherwise satisfactory PASS that has either career exploration or postsecondary education as its goal. If the goal is postsecondary education, the PASS must provide for developing a work goal at least one year prior to completion of the degree requirements.

Income that an individual uses for PASS expenses does not count when SSA determines SSI eligibility and payment amount. Assets that an individual uses for PASS expenses do not count as resources when SSA determines SSI eligibility.

### *Evaluation*

The seven YTPD projects will collect data for each participant regarding identifying information, educational and vocational background, services provided, education/work attempts, and outcomes and use of the alternative SSI program rules. Each YTPD project will use the data to evaluate the effectiveness of alternative SSI program rules. In addition, SSA will award a separate contract to evaluate the overall success of the YTPD, aid YTPD projects in their evaluation activities, conduct a process evaluation, and assess cost-effectiveness. The evaluation contractor is to conduct a net-outcomes and process evaluation which will provide information on the effectiveness of interventions, including the effectiveness of alternative SSI program rules, and the feasibility of using different types of comparison groups. It also will collect the project-level data and prepare methodology for measuring transition services and adult outcomes for youth with disabilities.

Dated: September 25, 2003.

**Jo Anne B. Barnhart,**

*Commissioner of Social Security.*

[FR Doc. 03–25194 Filed 10–6–03; 8:45 am]

BILLING CODE 4191–02–P

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## DEPARTMENT OF THE TREASURY

## Submission for OMB Review; Comment Request

September 29, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Office, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before November 6, 2003 to be assured of consideration.

### Financial Crimes Enforcement Network (FinCEN)

*OMB Number:* 1506–0004.
*Form Number:* FinCEN 104 (Formerly Customs Form 4789).
*Type of Review:* Revision.
*Title:* Currency Transaction Reports.
*Description:* Financial institutions file Form 104 for currency transactions in excess of $10,000 a day pursuant to 31 U.S.C. 5313(a) and 31 CFR 103.22(a)(b). The form is used by criminal investigators, and taxation and regulatory enforcement authorities, during the course of investigations involving financial crimes.
*Respondents:* Business or other for-profit, not-for-profit institutions, Federal Government.
*Estimated Number of Respondents/Recordkeeping:* 119,000.
*Estimated Burden Hours Per Respondent/Recordkeeping:* 24 minutes.
*Frequency of Response:* Other (as required).
*Estimated Total Reporting/Recordingkeeping Burden:* 4,960,000 hours.
*Clearance Officer:* Steve Rudzinski (703) 905–3845, Financial Crimes Enforcement Network, 2070 Chain Bridge Road, Suite 200, Vienna, VA 22182.
*OMB Reviewer:* Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Treasury PRA Clearance Officer.*

[FR Doc. 03–25379 Filed 10–6–03; 8:45 am]

BILLING CODE 4810–02–M

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## Proposed Collection; Comment Request for Form 706–A

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 706–A, United States Additional Estate Tax Return.

**DATES:** Written comments should be received on or before December 8, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* United States Additional Estate Tax Return.
*OMB Number:* 1545–0016.
*Form Number:* 706–A.
*Abstract:* Form 706–A is used by individuals to compute and pay the additional estate taxes due under Internal Revenue Code section 2032A(c) for an early disposition of specially valued property or for an early cessation of a qualified use of such property. The IRS uses the information to determine that the taxes have been properly computed.
*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 180.

*Estimated Time Per Respondent:* 8 hours, 11 minutes.

*Estimated Total Annual Burden Hours:* 1,475.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 30, 2003.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 03–25391 Filed 10–6–03; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[REG–109481–99]**

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–109481–99 (TD 9076), Special Rules Under Section 417(a)(7) for Written Explanation Provided by Qualified Retirement Plan After Annuity Starting Dates (§ 1.417(e)–1).

**DATES:** Written comments should be received on or before December 8, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of regulations should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, Room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Special Rules Under Section 417(a)(7) for Written Explanation Provided by Qualified Retirement Plan After Annuity Starting Dates.

*OMB Number:* 1545–1724.

*Regulation Project Number:* REG–109481–99.

*Abstract:* The collection of information requirement in section 1.417(e)–1(b)(3)(iv)(B) and 1.417(e)–1(b)(3)(v)(A) is required to ensure that a participant and the participant's spouse consent to a form of distribution from a qualified plan that may result in reduced periodic payments.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

*Estimated Number of Respondents:* 50,000.

*Estimated Time Per Respondent:* 15 minutes.

*Estimated Total Annual Burden Hours:* 12,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 30, 2003.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 03–25392 Filed 10–6–03; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Revenue Procedure 98–46 and Revenue Procedure 97–44

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 98–46 and Revenue Procedure 97–44, LIFO Conformity Requirement.

**DATES:** Written comments should be received on or before December 8, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of revenue procedures should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* LIFO Conformity Requirement.

*OMB Number:* 1545–1559.

*Revenue Procedure Number:* Revenue Procedure 98–46 and Revenue Procedure 97–44.

*Abstract:* Revenue Procedure 97–44 permits automobile dealers that comply with the terms of the revenue procedure to continue using the LIFO inventory method despite previous violations of the LIFO conformity requirements of Internal Revenue Code section 472(c) or (e)(2). Revenue Procedure 98–46 modified Revenue Procedure 97–44 by allowing medium-and heavy-duty truck dealers to take advantage of the favorable relief provided in Revenue Procedure 97–44.

*Current Actions:* There are no changes being made to these revenue procedures at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 5,000.

*Estimated Time Per Respondent:* 20 hours.

*Estimated Total Annual Burden Hours:* 100,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 30, 2003.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 03–25393 Filed 10–6–03; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0646]**

## Proposed Information Collection Activity: Proposed Collection; Comment Request

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs (VA).

**ACTION:** Notice.

**SUMMARY:** The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information necessary for VA to fill prescriptions written by non-VA physicians.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before December 8, 2003.

**ADDRESSES:** Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *ann.bickoff@mail.va.gov*. Please refer to "OMB Control No. 2900–0646" in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Ann Bickoff at (202) 273–8310.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Medication Prescribed by Non-VA Physicians; VA Transitional Pharmacy Benefit, VA Form 10–0411.

*OMB Control Number:* 2900–0646.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Under existing law and regulations, a veteran desiring medical care from VA must enroll in VA's health care system. When a veteran first enrolls in the VA system, and requests an appointment for care, VA schedules an appointment for a visit with a primary care physician. The primary care physician generally learns from the veteran what medication the veteran is taking, if any, assesses the need for the medication and writes prescriptions for any needed medication. Those prescriptions written by the VA physician are filled by a VA pharmacy. In recent years, there has been an increased in the enrollment of veterans into the health care system to obtain pharmacy benefits at no cost or at a reasonable cost. With the dramatically increased enrollment, VA has been unable to provide all enrolled veterans with health care services in a timely manner. Many of those veterans have prescriptions, written by non-VA physicians, that VA primary care physicians may subsequently confirm and renew when the veterans are able to have initial primary care visits. In an effort to ease financial burden on enrolled veterans currently waiting lengthy periods of time for their initial primary care visits, VA will provide these veterans with medication prior to their initial primary care visits at VA if these veterans present valid prescriptions from the non-VA physicians. VA will fill prescriptions written by non-VA physicians only for a period of time such veterans are awaiting a scheduled appointment with a VA health care provider. VA Form 10–0411, VA Transitional Pharmacy Benefit will be used to collect the data necessary to safely administer these medications.

*Affected Public:* Individuals or households.

*Estimated Total Annual Burden:* 30,287 hours.

*Estimated Average Burden Per Respondent:* 10 minutes.

*Frequency of Response:* One-time.

*Estimated Number of Respondents:* 363,446.

*Estimated Total Annual Responses:* 181,723.

Dated: September 25, 2003.

By direction of the Secretary.

**Jacqueline Parks,**

*IT Specialist, Records Management Service.*

[FR Doc. 03–25331 Filed 10–6–03; 8:45 am]

BILLING CODE 8320–01–P

# Corrections

Federal Register
Vol. 68, No. 194
Tuesday, October 7, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 172

**[Docket No. 1987F–0179]**

## Food Additives Permitted for Direct Addition to Food for Human Consumption; Olestra

*Correction*

In rule document 03–19509 beginning on page 46363 in the issue of Tuesday, August 5, 2003, make the following corrections:

1. On page 46405, footnote 9 should read as follows: "[9] CSPI also relies on its White Paper (CSPI exh. 1) and exhibits 3 through 7 to the White Paper. Although this reference is quite lengthy (approximately 230 pages total), CSPI fails to specify the information or data in these documents that support its assertion that FDA's position on carotenoids is a minority view. In such circumstances, reliance on the White Paper (CSPI exh. 1) and exhibits 3 through 7 cannot justify a hearing because a hearing will not be granted in the absence of available and specifically identified reliable evidence to support the factual issue asserted (§ 12.24(b)(2)).".

2. On page 46408, footnote 33 should read as follows: "[33] Elsewhere in this issue of the **Federal Register**, FDA has concluded, based upon a subsequent food additive petition submitted by P&G containing new data and information, that olestra-containing foods need not bear the information statement required by the original final rule. FDA has concluded that most of the information statement is no longer required to ensure that olestra-containing products are not misbranded. The olestra regulation, § 172.867, as revised in response to P&G's petition, requires that an asterisk appear in the ingredient list beside the added vitamins A, D, E, and K. The asterisk will reference the statement, "Dietarily insignificant." The purpose of such labeling is to inform consumers that their vitamin status will not change as a result of consuming olestra-containing products. Accordingly, CSPI's objections to the olestra label statement imposed by the 1996 final rule are arguably moot.".

3. On page 46409, in the first column, the paragraph preceding footnote 36, "First, CSPI's first objection challenges FDA's finding that olestra is safe for use in savory snacks.[37] As noted, resolving the question of olestra's safety requires the application of the legal standard ("safe") as defined by FDA's regulations ("reasonable certainty of no harm") to a set of facts. As such, the question of whether olestra is safe for its intended use is a question of law, not fact. Accordingly, FDA is denying CSPI's first objection because a hearing will not be granted on issues of policy or law (§ 12.24(b)(1))." should be inserted in the first column, as the second full paragraph.

4. On the same page, footnote 44 should read as follows: "[44] Olestra is not digested and thus will add to the weight of the stools of olestra consumers (61 FR 3118 at 3158). Thus, mere increase in stool weight of olestra consumers is not itself evidence of harm.".

[FR Doc. C3–19509 Filed 10–6–03; 8:45 am]

BILLING CODE 1505–01–D

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Tuesday,
October 7, 2003

## Part II

# Small Business Administration

13 CFR Part 120
**Development Company Loan (504) Program Changes; Final Rule**

## SMALL BUSINESS ADMINISTRATION

**13 CFR Part 120**

**RIN 3245–AE41**

### Development Company Loan (504) Program Changes

**AGENCY:** U.S. Small Business Administration (SBA).

**ACTION:** Final rule.

**SUMMARY:** The U.S. Small Business Administration ("SBA" or "the Agency") is amending the Certified Development Company ("CDC") Loan Program (the "CDC Program" or the "504 Program") in order to improve delivery of the 504 Program to small businesses. The most significant regulations changed are those governing a CDC's area of operations; a CDC's organizational structure; the requirements for a new CDC or a CDC requesting to expand its territory; the "adequately served" standard; and whether a CDC may participate in other SBA loan programs. Also, to allow for greater delegation of authority to CDCs, the rule includes expanded sections on the Accredited Lender Program ("ALP"), the Premier Certified Lender Program ("PCLP") and a simplification and clarification of the enforcement provisions for CDCs. The amendments also clarify the regulations governing fees that a small business may and may not be charged.

**DATES:** This rule is effective November 6, 2003.

**FOR FURTHER INFORMATION CONTACT:** Gail H. Hepler, Chief, 504 Loan Policy Branch, (202) 205–7530 or, by email, at *gail.hepler@sba.gov*.

**SUPPLEMENTARY INFORMATION:**

### Rulemaking History

On July 8, 2003, SBA published in the **Federal Register** a proposed rule (68 FR 40553). The proposed rule took into consideration and was based in part on over 1,900 comments SBA received in response to an Advanced Notice of Proposed Rulemaking ("ANPRM") published in the **Federal Register** by SBA on December 6, 2002. SBA received over 70 comments in response to the proposed rule.

### Statutory Basis of the 504 Program

The 504 Program, Title V of the Small Business Investment Act ("Act"), 15 U.S.C. 695, was established by Public Law 85–699 on August 21, 1958. A "development company" was defined as an enterprise formed for the purpose of furthering economic development of its community and environs, and with authority to promote and assist the growth and development of small business concerns in the areas covered by their operations. The law further stated that a local development company is a corporation chartered under any applicable State corporation law to operate in a specified area within a State and be composed of, and controlled by, persons residing or doing business in the locality. The program was amended in 1980 due to changing business conditions for small businesses. During the late 1970s and early 1980s, the prime interest rate and unemployment rate reached historically high levels. It was generally believed that long-term, fixed-rate money was not available at a reasonable cost to small businesses because of these high prevailing rates and that this was hindering job creation. Congress enacted section 503 of the Act in 1980. The 503 and 504 Programs were intended to provide long-term, fixed-rate financing to small businesses at favorable terms that were unavailable in the commercial marketplace. Congress specified in the Act that this program "foster economic development and create or preserve job opportunities in both urban and rural areas by providing long-term financing for small business concerns * * *" The statute authorizes SBA to guarantee debentures backing long-term, fixed-asset loans ("504 Loans") made by CDCs. It also authorizes SBA to pool the guarantees and sell interests in the pools to investors.

### Overview of the Changes to the 504 Regulations

SBA believes the regulatory changes will improve 504 Program delivery to small business customers by increasing customer choice of service; increase third-party lender choice of CDCs; facilitate the formation of new CDCs; facilitate the expansion of existing CDCs; and increase the number of CDCs able to take advantage of special initiatives for rural areas. By allowing market-driven forces to determine availability of 504 Program service, small businesses will have greater opportunity to negotiate the best total financing package including fees, as well as receive increased service by CDCs. In addition, the 504 Program will be more responsive to changes in market conditions.

To allow for greater delegation of authority to CDCs, this final rule includes expanded sections on the ALP and the PCLP. This final rule also simplifies and clarifies the enforcement provisions for CDCs. In addition, SBA is amending the regulations governing "job opportunity average" to permit more flexibility to adjust the average in response to increased costs as reflected by such measures as the consumer price index. This change will permit CDCs to approve more projects that do not meet the job creation criteria but do meet other statutory goals such as increasing manufacturers' productivity and competitiveness through re-tooling, robotics or modernization. The final rule also clarifies the regulations governing fees that a small business may and may not be charged. The regulations covered by the final rule are 13 CFR, Subpart A, § 120.102 and § 120.140, and Subpart H, §§ 120.800 through 120.984.

The 504 Program from 1986 to 2002 has created or retained more than 1.5 million jobs, averaging approximately $13,600 of debenture per job. However, the 504 Program has not used all of its available budgetary authority for many years. The 504 Program's authorization level for fiscal year 2002, for example, was $4.5 billion compared to the total approval level of $2.5 billion.

SBA has decided to take steps to increase the availability of the long-term, fixed-rate financing offered by the 504 Program that is vital for our nation's small business community. This final rule begins this process by establishing the State in which a CDC is incorporated as the CDC's minimum area of operations. Currently, each CDC is assigned a specific, local area, typically several counties. Only one CDC per State is permitted to be a statewide CDC. In some cases, there are geographic areas that do not have CDC coverage. Although CDCs' areas of operations often overlap, SBA believes that establishing statewide areas of operations for all CDCs will increase the availability of 504 Program assistance to small businesses. SBA also believes that it is empowering the CDCs' boards to determine what is the optimal area of operations within the State for the CDC to market and service effectively.

Next, SBA is eliminating the "adequately served" standard. Currently, a county meets the standard of "adequately served" when the CDC that includes the county in its area of operations averages at least one 504 loan approval in that county per 100,000 population per year averaged over two years. In such cases, the county is unavailable both to an existing CDC applying to expand its operations to include that county and to a new CDC applying to include that county in its proposed area of operations. In addition, the regulations currently do not permit a new CDC, or a CDC applying to expand its area of operations, to apply for a particular county if that county has become part of another CDC's area of operations within the previous 24 months. Eliminating this standard will encourage new CDC applications and existing CDCs to expand their operations within their state of incorporation without first having to go through a lengthy expansion application process. SBA is allowing the marketplace to determine the maximum number of CDCs that can co-exist within a State. With these changes SBA anticipates that small businesses, as well as lenders, will have greater choice in, and access to, capital.

To facilitate these changes, SBA is streamlining CDC organizational structure by modifying the CDCs' general membership requirements. Currently, a CDC is required to have a general membership that covers the CDC's entire area of operations. In the final rule, SBA will no longer require that a CDC's membership cover the entire area of operations, but rather will require that the CDC's members each actively support economic development within all or some portion of the CDC's area of operations. The CDC's board of directors would make the decision on how widely disbursed the CDC's general membership needs to be to meet the objective of local economic development. The result of this change and others will be that CDCs will be empowered to determine in which areas within their state of incorporation they wish to engage in 504 Program activities; they will not be required to serve the entire state but may do so if they choose. SBA also is modifying the regulations governing contracting for staff to facilitate a CDC's contracting for "back office" work with a contractor located outside of the CDC's area of operations. SBA believes that this will permit certain economies of scale by providing additional sources of expertise in 504 packaging, processing, servicing and liquidation.

For CDCs that apply to cross State lines as a multi-state CDC, the CDC also will be able to determine the geographic coverage of its general membership in the new State. Also for multi-state CDCs, SBA is relaxing the requirements for board representation from the new State by eliminating the current requirement that at least three of the CDC's board members must come from the new State. In addition, SBA is allowing a CDC that currently has ALP or PCLP authority in its State of incorporation to use that authority in its expanded area. To ensure that only those CDCs with demonstrated proficiency in the 504 Program are permitted to expand beyond their State of incorporation, SBA is requiring applicants for multi-state CDC and local economic area expansion to be ALP-qualified, among other things. Taken together, SBA believes that these changes in a CDC's area of operations, elimination of the concept of "adequately served," elimination of the requirement that a CDC's membership cover the entire area of operations, the clarification of contracting requirements, and the changes in the expansion requirements for CDCs will result in the 504 Program becoming more relevant in today's dynamic financial services marketplace.

The final rule prohibits a CDC from investing in or being affiliated with a 7(a) lender. This rule was developed after reviewing the comments on this issue received in response to the ANPRM. The majority of those commenting on this issue, as well as those that commented on the proposed rule, stated that the 504 Program should remain separate from the 7(a) Program.

The concept of permitting a CDC to invest in a Small Business Investment Company ("SBIC") generally was supported by the commenters to the ANPRM. Many writers viewed such an investment as economic development as long as the SBIC and the CDC were not affiliates. However, SBA's current regulations prohibit a CDC from owning an equity interest in a business that has received or is applying to receive SBA financing (§ 120.140). Since SBICs typically have an ownership interest in the businesses that they assist, a CDC that has invested in an SBIC also would have an ownership interest in the small business receiving financing from the SBIC and could potentially violate this regulation by providing financing directly to that small business. In addition, SBA's regulations state that a CDC must operate in its area of operations. SBA interprets this requirement to apply to all CDC activities that use funds generated from the 504 Program. In light of these concerns, at this time, SBA is prohibiting a CDC from investing in an SBIC.

## Section-by-Section Analysis

SBA is adding a definition of "SOP" to § 120.102, the definitions section applicable to the entire part 120. SBA's SOPs are available at any SBA office (see 13 CFR 102.2 and are generally available in SBA's reading room on its Web site (*http://www.SBA.GOV*).

SBA is amending § 120.140 to delete references to Associate Development Companies ("ADC") (see discussion of § 120.850).

SBA is changing the headings for § 120.800 and § 120.801 to make them consistent with the other section headings in Subpart H.

In § 120.802 the definition of "Area of Operations" is modified to define the minimum area of operations for a CDC as the State in which the CDC is incorporated. As stated in the proposed rule, SBA has decided to take steps to increase the availability of the long-term, fixed-rate financing offered by the 504 Program that is vital for our nation's small business community. Currently, each CDC is assigned a specific, local area, typically several counties. Only one CDC per State is permitted to be a statewide CDC. In some cases, there are geographic areas that do not have CDC coverage. Although CDCs' areas of operations often overlap, SBA believes that establishing statewide areas of operations for all CDCs will increase the availability of 504 Program assistance to small businesses. Most of the comments SBA received concerned the proposed change to the CDC's minimum area of operations. Several comments were opposed to the proposed change based on concerns that the changes would dilute a CDC's role in community and economic development as well as a concern that rural areas would be neglected. Some commenters also were concerned that a CDC could not provide adequate servicing to much larger geographic areas. SBA also received several comments supporting the change as proposed. One such comment explained that it would eliminate monopolies that some CDCs currently have. Another stated that competition will result in the CDC working harder to distinguish itself by attempting to provide better service at the lowest possible cost. Other commenters supported expansion of a CDC's minimum area of operations but wanted the SBA district offices' geographic jurisdiction to define the minimum area, not the State.

With regard to the concern about whether CDCs will be able to adequately provide 504 Program service to the much larger geographic area of the State in which it is incorporated, SBA did not propose to require that a CDC must serve the entire State in which it is incorporated when it proposed to change the "area of operations" definition to provide for a minimum of the State in which the CDC is incorporated. A CDC will continue to be free to concentrate its 504 Program activities in whatever portions of its State it believes it can operate effectively as a CDC.

As to the issue of the specific geographic limit of the area of operations (*i.e.*, Statewide, as proposed; district-wide, as favored by several commenters; or some even smaller geographic area), SBA is implementing the Statewide minimum. First, SBA does not believe that this necessarily will result in rural areas being neglected, as several commenters suggested. Under the current regulations many such areas are being neglected now, and SBA believes that increased competition among CDCs within a State may result in bringing additional access to capital to those areas, as CDCs focus their efforts on places where they have a competitive advantage.

SBA also does not believe that changing the minimum area of operations to statewide necessarily will result in a dilution of a CDC's role in community and economic development. A CDC will have the discretion to determine over what geographic areas within its State it has the ability, based on its membership, board, and staff, to provide economic development. Local economic development remains one of the goals of projects financed by 504 loans, pursuant to section 502(d)(2) of the Act and § 120.862(a). However, SBA does not believe that a CDC necessarily must operate only in a small geographic area in order to meet the local economic development needs of that area. In addition, the purpose of the 504 Program is not only to foster local economic development, but to meet other goals, such as the public policy goals listed in section 501(d)(3) of the Act and § 120.862(b) which are not dependent on a CDC having a local presence, are even less dependent on a CDC having a local presence.

While SBA agrees that the Agency could introduce competition to the 504 Program within smaller geographic areas than a State, the Statewide minimum will allow SBA to administer the 504 Program more efficiently, given its increasingly limited staff resources. A district-wide minimum area of operations standard would produce a double standard between the 43 States in which all CDCs would be Statewide, by virtue of the fact that there is only one district office in each of those States, and the remaining seven States with multiple districts, which would require additional monitoring by SBA. An even smaller geographic area of operations standard would require an even greater expenditure of SBA's resources to oversee and administer. For these reasons, the final rule publishes the area of operations definition in § 120.802 as proposed.

The definition of "Local Economic Area" also is revised slightly to make it consistent with the revised, statewide "Area of Operations" definition. SBA received several comments that suggested confusion on the part of the commenters in interpreting what was being changed in the definition. SBA had proposed changes only to the first sentence of the definition. Specifically, SBA did not propose to delete the reference to a "metropolitan statistical area" as an example of a local economic area and, therefore, that reference will continue to be part of the regulation.

SBA received several comments that suggested that SBA did not adequately address whether the revised definition of area of operations would mean that local economic areas adjacent to a CDC's State of incorporation would be included in a CDC's minimum area of operations. SBA did not propose a change to the concept of a local economic area, and the proposed rule expressly states that a CDC must apply to SBA to expand its area of operations into a local economic area (see § 120.835). Some comments were in favor of revising the definition of local economic area or area of operations in ways that would remove or create exceptions to the requirement that a CDC apply to SBA to serve a local economic area; one comment proposed that a CDC's minimum area of operations include all local economic areas adjacent to a CDC's state of incorporation. SBA did not propose to change the definition of local economic area in this way and considers to be beyond the scope of this rulemaking the requirement that a CDC apply to SBA to cover such areas.

The definition for "Associate Development Company" is deleted. This change is discussed in the analysis of revisions for § 120.850. SBA received several comments in support of the proposed change.

Other regulations in Subpart H of part 120 use the terms "Designated Attorney," "Lead SBA Office" and "Priority CDC." For clarification, SBA is adding definitions for those terms. Comments received supported these additional definitions. SBA did not receive any comments objecting to these new definitions.

In § 120.810, application for certification as a CDC, SBA is changing the policies governing new CDC applications to reflect the change in the definition of a CDC's "Area of Operations" to a minimum of statewide. Additionally, it deletes the current restrictions that permit existing CDCs to exclude geographic areas from being considered for a new CDC. SBA is permitting the marketplace to determine the optimum number of CDCs that may be supported. In this section and in several others (for example, § 120.812(d) and § 120.837), SBA proposed to add the phrase "The procedures of §§ 120.855 through 120.857 do not apply" to the specific action described in the proposed regulation section. Several commenters expressed confusion as to whether SBA was proposing to change existing rights or add new rights to reconsideration or appeal from the SBA action addressed in that regulation. Several commenters also requested that SBA expand these sections further to specifically provide CDCs a right of administrative appeal to SBA's Office of Hearings and Appeals (OHA), under part 134 of SBA's regulations, for each such action.

By adding this phrase to this section and others, SBA did not intend and did not propose to add any new administrative appeal rights to these sections. On the contrary, SBA was attempting to clarify that the expanded SBA enforcement and CDC administrative appeal rights proposed in §§ 120.855 through 120.857 for actions described in § 120.854 specifically would not apply to the sections in which the phrase would appear. Because this appears to have caused confusion rather than provide clarification, SBA's final rule deletes the phrase beginning with "The procedures of §§ 120.855 through 120.857* * *" wherever it appeared in the proposed rule. This results in the preservation of the procedures that currently exist under SBA regulations in subpart H of this part and in §§ 134.102(d) and (f) of this chapter, namely that only in cases in which a right of administrative appeal to OHA is specifically set forth by regulation does such a right exist. As discussed below regarding § 120.856, SBA has added § 120.856(f) clarifying that the procedures in § 120.856 only apply to actions taken by SBA pursuant to § 120.855.

Also, SBA is adding a clarification that an applicant CDC must demonstrate financial capability to meet the upfront costs of the program until the CDC's operations meet the breakeven point. This is to ensure that the CDC will be staffed sufficiently to meet the requirements of marketing, processing, closing, and servicing 504 loans. The added requirement that an applicant must demonstrate financial capability to meet the upfront costs of the 504 Program until the CDC's operations meet the breakeven point should assist in attracting only those applicants committed to devoting adequate resources (refer to § 120.802 discussion on the comments regarding changes to CDC area of operations). Several commenters objected to the proposed rule on the basis that the current "adequately served" concept applicable to new applicants, which limits the geographic areas that are available for new CDCs, assists in minimizing the number of processing and closing problems from inexperienced CDCs. SBA considered these concerns but continues to believe that the marketplace should determine the maximum number of CDCs that may be supported by 504 loan activity within a State.

SBA received several comments about the proposed deletion of the requirement in § 120.811 for public notice as well as direct notice to existing CDCs for new CDC applications (as well as in § 120.836 for CDC expansion requests). Several commenters were concerned that the deletion of the requirement for notice to the public and to existing CDCs would not give existing CDCs with knowledge of the community an opportunity to express their opinion about a new CDC application request or a CDC expansion request. SBA considered this concern but decided not to modify the proposed rule.

In SBA's experience, most of the comments received in response to such notice to CDCs and the public have been from existing CDCs concerned about "ruinous competition" that would result from CDC expansion; SBA has received very few comments concerning new CDC applications that have resulted in information that SBA had not already discovered in its own review process. With the new emphasis on competition in the 504 Program as a result of this final rule, the issue of competition resulting from a CDC's expansion will no longer be relevant to SBA's decision.

With regard to decisions on new CDC applications, SBA has an established, effective process for screening and conducting appropriate due diligence and character determinations on the officers, directors, and key staff of an applicant for certification as a CDC. SBA's current process addresses all comments SBA may receive concerning such applicant or any individual associated with the applicant. Eliminating the public notice requirement will not change that process or eliminate SBA's consideration of any comments it may receive. In addition, all new CDCs are subject to a two year probationary period (pursuant to § 120.812), during which time significant, adverse character or other issues relating to the new CDC may come to light (through comments by members of the public or otherwise).

Finally, SBA believes that elimination of the notice requirement will streamline the application process for both new CDCs and for CDC expansions and decrease the cost and time necessary for a CDC to pursue either type of application. For all of these reasons, the final rule deletes § 120.811.

Section 120.812, probationary period for newly certified CDCs, is revised to clarify how SBA will process a CDC's petition for permanent CDC status, and that the probationary period commences on the date of certification. Also SBA is deleting all references to ADCs in connection with the elimination of the ADC program (see discussion under § 120.850). In this final rule, SBA also eliminates the last sentence in this regulation that the procedures in §§ 120.855 through 120.857 do not apply, for the same reasons discussed above for § 120.810.

In § 120.820, CDC non-profit status, SBA describes what the Agency means by the term "good standing." While this is a term that has been used over the years in administering the 504 Program, SBA has not fully defined it previously. Several comments expressed concern about SBA's ability to analyze a CDC's compliance with laws, including taxation requirements. The comments seem to suggest that SBA should not have the right to consider a CDC's compliance with other laws that govern the CDC when considering whether the CDC is in good standing. SBA disagrees and continues to believe that a CDC's compliance with all laws governing a CDC should be a part of SBA's analysis, as the regulator overseeing CDCs, of whether a CDC is in good standing. SBA has no intention of ensuring that CDCs comply with all laws, but it has the means (through publicly available information, for example) to ascertain when a CDC is not in compliance with tax and other legal requirements. Therefore, SBA adopts § 120.820 as it was published in the proposed rule.

Section 120.821, CDC Area of Operations, is revised to delete the limitation of one statewide CDC since all CDCs' areas of operations will be at least statewide (see discussion of definition of the "Area of Operations" under § 120.802).

Section 120.822, CDC membership, is revised to streamline CDC membership qualifications by deleting the requirement that a CDC's membership must be representative of its entire area of operations. Currently, a CDC must have representation from each of the four groups (*i.e.*, government organizations, financial institutions, community organizations, and businesses) for its entire area of operations. With this change, SBA will still require that each of the four groups be represented in the membership, but will no longer require that such members represent the entire area of operations. SBA also is eliminating the requirement that SBA pre-approve the CDC's members representing government organizations, and is adding small business development companies ("SBDCs") and other types of community organizations that may be a source of members for a CDC. It will be up to the CDC's board to determine how broadly-based geographically the membership needs to be to meet the CDC's economic development objectives. The CDC's board may choose to have a membership that represents only a county, or some counties, while another CDC's board may choose to have a membership that represents the entire State.

Several comments suggested that the regulation may need some clarifying language by stating specifically that the membership groups need not have members that do not represent the entire area of operations. SBA considered these comments but disagrees that further clarification is required. Section 120.822(b) as proposed specifically states that "Members must be responsible for actively supporting economic development in the Area of Operations," and the preamble to the proposed rule SBA clarified that "With this change, SBA still would require that each of the four groups be represented in the membership, but would no longer require that such members represent the entire area of operations." SBA is publishing § 120.822 as proposed.

Other comments suggested that a CDC should be able to use CDC employees in meeting the membership requirements. SBA considered these comments but disagrees. The membership requirement is designed to be filled by local community leaders volunteering to assist in providing economic development in their communities through the formation of a CDC. The membership elects the CDC's board from among its members. The board, in turn, hires paid professional staff to operate the CDC on a daily basis. SBA believes that this will preserve objectivity between the CDC's membership, its board, and its staff. Therefore, SBA is publishing in the final rule § 120.822 as it was published in the proposed rule.

Section 120.823, CDC board of directors, is revised to delete the requirement that a CDC that is approved as a multi-state CDC meet the CDC board requirements for each State. SBA did not propose this specific change to § 120.823(b) in the proposed rule. However, SBA did discuss in the preamble to the proposed rule SBA's intent to change the requirement currently in § 120.823(b) that a multi-state CDC must meet the board requirements set forth in § 120.823 for each State in which it is authorized to operate (see preamble discussion, "Overview of Proposed Changes to the 504 Regulations," last full paragraph, column one, 68 FR 40556). In addition, this change is consistent with the changes SBA did specifically propose to § 120.835(c) concerning a CDC requesting a multi-state expansion. SBA also received several comments in support of this change. Because this change is consistent with SBA's intent as expressed in the proposed rule and with other changes specifically proposed and is supported by the public, SBA revises § 120.823(b) in this final rule. With this change and the change to § 120.835, a multi-state CDC will be required to meet the loan committee (§ 120.823(b)) and membership (§ 120.822(b)) requirements for each State in which it operates as a CDC, and the CDC's board would need to establish a loan committee in each such State, but would not need to meet the other board requirements (§ 120.823) for each such State.

Section 120.824, professional management and staff, is revised to modify the requirements for when and under what circumstances a CDC can contract for management services. The change clarifies the requirements regarding CDC staff provided under contract including deleting the requirement that a contractor must live or do business in the CDC's area of operations. SBA believes that a CDC may wish to contract for certain services, such as "back office" staff support, with individuals or organizations that are outside of the CDC's area of operations.

The comments were generally supportive of this change but several expressed concerns regarding SBA's current requirement that a CDC's manager must be employed directly unless contributed by a non-profit affiliate of that CDC that has the economic development of the CDC's area of operations as one of its principal activities. This is a requirement currently in § 120.824(a)(2) and SBA did not propose to change this requirement; therefore, these comments are beyond the scope of this rulemaking.

Several commenters also objected to SBA's proposed deletion of the exception in the current § 120.824(a)(1) concerning the circumstances under which a rural CDC may contract with another CDC for management services, on the basis that the exception for small rural CDCs is specified by the Act. SBA recognizes that section 503(e)(2) of the Act allows a rural CDC a waiver if it contracts with another CDC covering the same area. In SBA's experience this waiver provision has never been used. However, SBA will process all rural CDC waivers in accordance with the Act. Therefore, SBA added back to § 120.824 as proposed, a paragraph (a)(2) specifically addressing rural CDCs, to clarify that there is no change to the status quo regarding such waivers for rural CDCs.

SBA also received some comments on the changes to the proposed clarified options of the CDC board's role in hiring and terminating the CDC's manager, either as a direct employee or through a contract when provided by a non-profit affiliate. The comments suggested that there may be other ways that a CDC's manager may be hired or terminated. However, the board of a CDC bears the ultimate responsibility for the CDC and its management and SBA believes it is appropriate to expect the CDC's board to control these decisions. Except for the change discussed, SBA is publishing in the final rule § 120.824 as proposed.

As set forth in the proposed rule, § 120.826, basic requirements for operating a CDC, is slightly reworded for clarity. As also proposed, the responsibilities currently described in § 120.827(a) are moved to this section because SBA considers them to be basic requirements for operating a CDC. In addition, SBA is clarifying that all CDCs must comply with all of the 504 Program requirements imposed by statute, regulation, SOP, policy and procedural notice, loan authorization, debenture, or any agreement between SBA and the CDC. Comments generally were supportive of the changes. Therefore, SBA is adopting § 120.826, basic requirements for operating a CDC, as it was proposed.

Section 120.827, other services a CDC may provide to small businesses, is revised to focus this section only on, and clarify what is meant by, "other services" that a CDC may provide to a small business, as well as describe the regulations to which the CDC will be subject if it does provide such other services. Comments generally were supportive of the changes although a few expressed concern regarding the deletion of the current regulation § 120.827(c) which provides that a CDC may lend to a borrower the amount of the required borrower contribution. SBA had proposed to delete § 120.827(c) because that provision is already included in § 120.912, which is not being amended in this rule and, therefore, is redundant in this section. Therefore, SBA is adopting the final rule § 120.827 as proposed.

Section 120.828, minimum level of 504 loan activity and restrictions on portfolio concentrations, is reworded to clarify the minimum level of 504 loan activity a CDC must maintain. In addition, this section covers the requirement concerning portfolio concentrations currently contained in § 120.827(a) and the heading to the section is revised accordingly. Comments were generally supportive of the proposed changes, although some expressed concern that CDCs with small portfolios may not be able to meet the portfolio concentration requirements. SBA considered this concern but was not persuaded since this requirement already exists in § 120.827(a) and SBA knows of no CDC that has not met this requirement. Therefore, SBA is adopting the final rule § 120.828 as proposed.

Section 120.829, job opportunity average a CDC must maintain, modifies the job opportunity average a CDC must currently maintain by changing it to an amount specified by SBA by means of a notice published in the **Federal Register**. Currently, the average stated in § 120.829(a) is preventing many CDCs from accepting 504 loan applications from small businesses for loans that would not create jobs but would meet other statutory 504 Program objectives, such as loans to increase business efficiency through technology. In addition, the present ratio has been in effect since 1990 and does not take into account the inflationary factors in the cost of land, real estate acquisition, construction, and machinery and equipment since that time. Finally, SBA is clarifying that a new CDC is permitted two years from the date it is certified to meet the job portfolio requirement. Several commenters were concerned that the change would not give SBA enough flexibility and would eliminate the special circumstances under which a CDC's portfolio could average a higher job per dollar ratio. SBA considered these comments but believes that the rule as proposed does permit flexibility. In addition, the rule has not eliminated the special exceptions. The only thing that will change is the means by which SBA changes the job opportunity average. SBA will revise the average periodically, based on appropriate economic factors, and will publish the revised average in the **Federal Register** as a notice, rather than as a regulatory change. Therefore, SBA has adopted § 120.829 in the final rule as proposed.

Section 120.830, reports a CDC must submit, is revised to change the submission requirement for CDC annual reports to 180 days after the end of the

CDC's fiscal year to permit CDCs more time to provide financial statements with the required level of review. The final rule also clarifies the requirement by adding that the annual report must include financial statements of any affiliate or subsidiary of the CDC. In addition, it adds some clarifying language regarding the submission requirements for changes to directors or staff. Several comments requested that the submission requirement be increased further than the 120 days SBA had proposed, to 180 days, due to the complicated nature of some audits. SBA considered these concerns and agrees that a longer timeframe may be necessary. Part of the reason to increase the timeframe is that SBA is requiring the financial statements of any affiliates of the CDC. Therefore, to accommodate the more complicated audits, the final rule provides for 180 days.

Several commenters also expressed concern about SBA's proposed change that the financial statement submission includes any affiliates of the CDC. The current regulations define concerns as affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both (see § 121.103(a) of this chapter). SBA is the agency that certifies CDCs and is their sole regulatory oversight agency. As part of its oversight responsibilities, SBA believes that it should review the financial statements of those affiliates that the CDC controls or that may control the CDC, because such affiliates may have some control over the CDC's 504 Program activities even though they may not be involved directly in conducting those activities, or because such affiliates may present issues of potential conflicts of interest with or financial harm to the CDC. Therefore, the final rule concerning financial statement submission requirements adopts the rule as proposed.

Several commenters also expressed concern about SBA's proposed requirements for a statement of personal history and other information to be submitted for new associates. The commenters appeared to suggest—incorrectly—that this is a new requirement. Section 120.830 currently requires CDCs to submit to SBA for review and approval the "resumes for all new Associates and staff." SBA's longstanding procedure has been to require statements of personal history, fingerprint cards, and resumes for all such individuals, just as SBA requires for all individuals identified in the CDC's initial application for certification. (See SBA standard operating procedures 50–10(4), subpart H, chapter 4, paragraph 5(d)(1).) As the sole regulatory oversight agency for CDCs, SBA is responsible for performing the necessary due diligence to assure that new associates and staff meet certain ethical and experience standards. Therefore, in order to make the rule reflective of SBA's longstanding practice, SBA is publishing in the final rule § 120.830 as proposed.

Section 120.835, application to expand an area of operations, is revised. Currently, most of the applications SBA receives are for expansions of a CDC's area of operations within its State of incorporation. The expansion request usually is for several counties in which there currently are one or more CDCs that include those counties in their areas of operations. Because the final rule establishes the State of incorporation as the minimum area of operations for all CDCs and because SBA is allowing the marketplace to determine the optimum number of CDCs, these types of expansion requests no longer will be necessary and much of the current regulatory language is no longer required (refer to discussion of changes to § 120.802 and § 120.810). Therefore, SBA has modified the regulation to limit SBA's consideration of applications for expansion to only those requests by a CDC to expand beyond the CDC's State of incorporation either to a local economic area contiguous to the State in which the CDC is incorporated, or to an entire State contiguous to such State.

SBA also has added the requirement that CDCs must be ALP-qualified before they can request either type of expansion. Several commenters expressed concern that this new requirement will make it more difficult for a CDC to expand beyond its area of operations. SBA reiterates that with the minimum area of operations being Statewide, there will be far less need for CDCs to request the right to expand because SBA believes that the majority of CDCs will not wish to expand beyond their own State. For a CDC that wishes to expand into local economic areas or entire States outside its State of incorporation, however, it is important that such CDC be of a sufficient size and at a sufficient level of proficiency in the 504 Program to be able to adequately cover territory beyond its State. SBA is concerned about, among other things, the CDC's portfolio size and currency, performance as a CDC, and whether the CDC has sufficient proficiency with loan closing (*i.e.*, has a designated attorney and the necessary insurance coverage to be able to participate in SBA's expedited loan closing process) and that the CDC is knowledgeable of applicable law in other States, to be able to handle the additional territory without presenting an undue risk to SBA's overall 504 loan portfolio. For these reasons, the final rule requires a CDC requesting expansion of its territory beyond its State of incorporation to be ALP-qualified, as proposed.

To further streamline the application process for multi-state expansion, SBA is deleting the requirement that a multi-state CDC have at least three members from each State on its board. SBA believes that the general membership requirements (see § 120.822) and loan committee requirements (see § 120.823) for the State into which it is expanding are sufficient to demonstrate the CDC's commitment to local economic development in that State. (To be consistent with this deletion in § 120.835 regarding the board requirements, SBA also is modifying § 120.823(b).) A discussion of the comments received regarding the minimum area of operations and local economic areas may be found under § 120.802. SBA also received comments regarding multi-state CDC requirements that were not proposed for change, including membership and loan committee requirements, and were, therefore, beyond the scope of this rulemaking. They may be considered as part of a proposed rule at some future date. Therefore, SBA is publishing in the final rule § 120.835 as proposed.

Section 120.836, public notice, and opportunity for response, is deleted. SBA believes that the requirement is no longer needed for the same reasons discussed regarding § 120.811. The final rule deletes § 120.836 as proposed.

Section 120.837, SBA decision on application for a new CDC or for an existing CDC to expand an area of operations, streamlines the process by changing the paragraph on a multi-state CDC to permit any unilateral authority that a CDC has in its State of incorporation to be carried over into the additional State in which it is approved to operate as a multi-state CDC and clarifying SBA's decision process. Comments received generally were in support of the proposed changes. However, several commenters suggested that the proposed changes seemed to have deleted the decision process for new CDCs and CDCs expanding into local economic areas. After reviewing the proposed rule, including the summary which stated that the regulation was to continue to cover both new CDCs and expanding CDCs, SBA agreed with the commenters and has modified the rule. SBA reviewed the proposed rule and determined that while SBA had stated in the preamble that the regulation was to continue to cover SBA's decision with respect to new CDCs, CDCs expanding into local economic areas, and CDCs becoming multi-state CDCs, the proposed revision to the heading of the section was misleading. SBA therefore makes clarifying changes to both the heading and to § 120.837(b). Also the commenters found the reference to the enforcement regulations not applying in these cases to be confusing. SBA has deleted the reference to the enforcement regulations, §§ 120.855 through 120.857, for the same reasons discussed regarding § 120.810.

Section 120.838, expiration of existing, temporary expansions, was a short-term regulation to manage the conversion of existing temporary expansions into permanent expansions by March 1, 1996, and is no longer required. Comments received generally supported the proposed deletion of this regulation. Therefore, the final rule adopts the deletion of the regulation as was proposed.

Section 120.839, case-by-case extensions, gives a district office the authority to make all decisions concerning whether SBA will allow a CDC to make a 504 Loan outside of its area of operations (other than multi-state or local economic area expansions), and adds, as a new basis for such decision, the situation in which a State may not have a CDC. (For example, currently Alaska has no CDC.) In addition, SBA is deleting as a basis for such decision, the situation in which specific circumstances exist that prevent an existing CDC serving that area from adequately assisting the business (see § 120.839(a)(2)), because the exception has never been used and SBA's experience indicates that it is unnecessary. Comments received by SBA generally supported the proposed changes. Some commenters wanted the regulation to emphasize that the applicant CDC must demonstrate that it can properly service the 504 loan it wishes to make outside its area of operations, in addition to fulfilling its other 504 Program responsibilities for the 504 loan. Section 120.839(b) currently has this specific requirement, although SBA had proposed to expand this beyond just servicing. SBA agrees with this concern and is adding language back to the final rule that emphasizes a CDC's servicing responsibilities regarding the loan. Other commenters expressed concern that a small business may be prevented from receiving a 504 loan if CDCs covering the area are not willing to consider an application from such a business and, therefore, urged SBA to preserve existing § 120.839(a)(2). However, as SBA explained in the proposed rule, SBA's experience indicates that this provision is unnecessary since it has never been used. In addition, the change in the minimum area of operations will vastly increase many CDC's area of operations, resulting in less need for case-by-case exceptions in general since small businesses will have expanded access to and choices among CDCs. Therefore, § 120.839 is adopted as proposed except for the modifications discussed.

SBA substantially revises § 120.840, accredited lenders program to describe the ALP, the benefits a CDC will receive through the ALP, how to apply for the ALP, and how SBA will process the application. Comments received generally were supportive of the proposed change, although several expressed concern that the section does not specifically state that a CDC may seek renewal of its ALP status every two years. Even though in SBA's experience CDCs have routinely been renewed for consecutive two-year periods, SBA is modifying the regulation to state "periods" rather than the singular "period". In addition, SBA has deleted the reference to the enforcement regulations, §§ 120.855 through 120.857, for the same reasons discussed regarding § 120.810. This rule adopts § 120.840 as proposed except for the modifications discussed.

In § 120.841, SBA is establishing more detailed qualifications for the ALP. The standards are consistent with section 507 of the Act and coordinate with eligibility requirements for CDC participation in the PCLP (see § 120.845 discussion below). These changes will make it easier for SBA to provide consistent and objective evaluation of a CDC application to participate in the ALP.

Several commenters asked for additional clarity regarding the qualification requirements of the CDC's staff. In light of those comments, SBA reviewed the proposed rule and agreed there should not be two sections on CDC staff qualification requirements. Accordingly, SBA has consolidated the two paragraphs regarding staff experience into one paragraph as well as added some clarifying language.

SBA received several comments pointing out that the PCLP regulations permit some flexibility in SBA's determination of whether a CDC is in compliance with 504 Program requirements by introducing the concept of "substantially," whereas the ALP regulations do not. Since one of the requirements to be a PCLP CDC is to qualify as an ALP CDC, it would be inconsistent to not permit the same flexibility in the ALP regulations. Therefore, SBA has modified this section to apply the concept of "substantially" to compliance with ALP requirements as well.

SBA received several comments regarding proposed § 120.841(d) which indicated that a CDC must meet SBA's CDC portfolio benchmarks. The comments raised concerns regarding the accuracy of the benchmarks and alleged that the benchmarks were not developed through a public comment process. Several comments also stated that use of the benchmarks would not be fair, to the extent that a CDC's default rate was derived from loans that are approved by SBA or to the extent that a CDC's loss rate was derived from liquidation and debt-collection litigation that was handled by SBA or the Department of Justice. Since these actions were not subject to the control of the CDC, the comments contended, it would be unfair for SBA to consider the CDC to be not in compliance with 504 Program requirements based on the relevant benchmark score. These comments recommended that SBA either delete or modify the language regarding the portfolio benchmarks in § 120.841(d). Several commenters questioned SBA's authority to establish portfolio performance benchmarks in the first instance.

SBA strongly disagrees with those comments. SBA has responsibility, as 100% guarantor of each debenture issued by CDCs and as the sole regulatory oversight agency for CDCs, to protect the safety and soundness of the 504 Program. CDCs are established by SBA, with the responsibility to identify and approve only those 504 loans that are eligible, creditworthy, sufficiently collateralized, and have a reasonable expectation, based on the CDC's thorough financial analysis, of timely repayment. CDCs also are required to close 504 loans in compliance with SBA's loan authorization and other requirements. CDCs also must adequately service loans. While SBA may retain the right to review some aspects of the CDC's approval, closing, and servicing activities (depending on the status of the CDC), this review does not negate the CDC's responsibility to comply with 504 Program requirements and act in a prudent, commercially reasonable manner with respect to these activities. SBA may have a greater degree of control over 504 loan liquidation activities, depending on the status of the CDC, but the amount of loan recoveries during liquidation depends to a great degree on the initial underwriting and subsequent servicing decisions made by the CDC.

In order to more effectively fulfill SBA's responsibility to monitor and oversee CDCs' activities, several years ago SBA established a means of collecting 504 loan performance information for each CDC, in five areas: Currency, delinquency, default, liquidation, and loss. SBA then used this information to determine the level (benchmark) of performance that SBA considers to present an acceptable level of risk to SBA's overall 504 loan portfolio for each of the five areas. Beginning in 1999, SBA issued a series of notices informing CDCs about this CDC performance information system, identified where the information regarding each CDC's performance was available, and advising CDCs that SBA would be using the system to evaluate each CDC. In addition to the notices, SBA explained to the CDC community the system and the sources of information used in the system, at several national conferences as well as by providing information on SBA's internet website. Thus, the proposed rule was not the first time CDCs received notice about the benchmarks. SBA believes that evaluating the performance of each CDC is an essential part of SBA's overall responsibility to manage the 504 Program so as to minimize the financial risk to the taxpayers.

Several comments attempted to show that the benchmarks were not accurate, relying on the argument that SBA has altered its measure of the 504 Program subsidy rate over the past decade (although the comments did not clarify how this measure has any direct application to the benchmark scores). However, SBA finds it highly significant that not one comment identified a specific case where the portfolio performance scores for a particular CDC were found to be inaccurate. SBA provides CDCs with their benchmark scores on a monthly basis (the scores soon will be available to CDCs directly through the Internet rather than through their district offices), and in those few cases where CDCs have brought to SBA's attention concerns about the accuracy of a particular benchmark score SBA has consistently worked with the CDC to understand the basis for the concern and make any necessary corrections. Thus, SBA believes the benchmarks overall are accurate and are a reliable means of measuring a CDC's performance, particularly because all CDCs are subject to the same criteria and because individual CDCs are measured against other CDCs in their tier with similar portfolio sizes.

In the context of a specific finding by SBA, relying on a CDC's portfolio benchmark score as evidence that the CDC was not in compliance with 504 Program requirements, the CDC, having access to its score and having its own information about the performance of its loan portfolio, would be able to present to SBA its arguments that the benchmark score was inaccurate and SBA would carefully consider those comments before proceeding to take any action using the score as evidence in support of such action.

SBA has considered the comments concerning the portfolio benchmarks in § 120.841(d) in the proposed rule, and in the final rule modifies this section so it will be consistent with § 120.854(d), which addresses a CDC's failure to meet one or more portfolio benchmarks as evidence of its failure to perform underwriting, closing, servicing, liquidation, litigation, or other actions with respect to 504 loans in a commercially unreasonable or imprudent manner. As a result of this change, SBA will consider a CDC's performance on the portfolio benchmarks to be a measure, indicator, or evidence of how the CDC is complying with various 504 Program requirements.

This final rule adopts § 120.841 as proposed except as discussed.

Section 120.845, premier certified lenders program, is implemented as proposed except for one change. SBA added the word "substantially" to § 120.845(c)(1) for the reasons discussed for § 120.841.

The PCLP is now a permanent program pursuant to section 508 of the Act. SBA is adding considerably more detail to § 120.845 and moving some of its revised and expanded provisions to new §§ 120.846–120.848. Since CDCs participating in the PCLP must be approved to participate under the ALP or be "ALP qualified," SBA is adding some of the PCLP requirements to § 120.841.

The PCLP is designed to take advantage of the proven loan processing and servicing skills of SBA's most proficient and most active CDCs. It is a relatively new program (started in 1994 as a pilot program) with a somewhat limited operating history. Because SBA transfers substantial additional authority to CDCs, the PCLP carries potentially significant risk to SBA and the 504 Program. Therefore, SBA intends to closely monitor and control program implementation and expansion. With respect to SBA's prior review of a 504 Loan at the loan approval stage, SBA is interested in limiting/minimizing its involvement in reviewing 504 Loans made by PCLP CDCs. While, initially, SBA expects to continue to review loan eligibility while delegating virtually all credit decisions to PCLP CDCs, SBA will consider expanding or reducing that authority as warranted by the results of the program.

Participation in the PCLP, pursuant to section 508(b) of the Act, is limited to those CDCs that are active in the 504 Program; are in good standing with SBA; have demonstrated the ability to properly analyze, close and service 504 Loans; and have been active as ALP CDCs. Section 508(b)(2)(A) of the Act allows SBA to waive the requirement for those non-ALP CDCs that meet the ALP participation criteria. However, rather than developing a waiver process, SBA is incorporating the ALP participation criteria into the PCLP participation criteria (see § 120.845(c)(1)).

Based on the guidance in the statute, and following extensive discussion with the CDC industry, SBA developed more specific factors to be used in evaluating a CDC's level of activity; ability to properly analyze, close, service and liquidate 504 Loans; and good standing. Each factor represents a major and essential CDC function, and each carries significant risk to SBA and the 504 Program. Because SBA delegates substantial authority and autonomy to PCLP CDCs, it considers each factor important, and a substantive deficiency in any one may preclude participation in the PCLP. SBA will use information from onsite compliance reviews, operational reviews and other program management and oversight activities to make the determination regarding eligibility for PCLP status.

Congress, SBA and the CDC industry recognize that the success of the PCLP is highly dependent on the extent to which PCLP CDCs are familiar with SBA's credit and eligibility standards and its loan processing, closing, servicing and liquidation policies and procedures. These policies and procedures are highly complex and require processing a substantial volume of 504 Loans over an extended period of time to remain proficient. Also, SBA needs access to a significant number of a CDC's loans to evaluate its proficiency. SBA notes that ALP its participants must have processed at least twenty 504 Loans in the most recent three years (see § 120.841(b)). When considering the minimum 504 Loan volume requirement for participation in the PCLP, SBA considered the concern of smaller and rural CDCs that a high minimum 504 Loan volume requirement could exclude them from being a PCLP CDC. SBA discussed those concerns with the CDC industry and concluded that proficiency in 504 Loan policies and procedures can only be developed and maintained from regularly processing a significant number of 504 Loans. In addition, one of the main purposes of the PCLP was to improve the efficiency and expedite the loan processing of higher volume CDCs, which were being disproportionately impacted by the longer turn-around time in SBA's district offices. Also, for low volume CDCs, any potential efficiency benefits from participating in the PCLP would more than likely be offset by the cost and effort required to develop and maintain the high level of 504 Loan proficiency required in a staff that rarely processes an SBA 504 Loan. (About half of all CDCs process less than six 504 Loan applications per year.) After considering these issues, SBA proposes to require that ALP and PCLP applicants must have received approval for at least 20 504 loans in the most recent three years and have a portfolio of at least 30 active 504 loans. (SBA defines an "active" 504 Loan as a loan that was approved and closed by the CDC and has a status of either current, delinquent, or in liquidation.)

To assist in determining the proficiency of a PCLP applicant to effectively process and administer 504 Loans, SBA is requiring that SBA-conducted oversight reviews of a PCLP applicant must have found the applicant to be substantially in compliance with SBA's regulations, policies and procedures. In addition, SBA will need to assess the applicant's current proficiency, so these reviews must be relatively recent (within the past 12 months). While SBA has policy and procedural guidance in place generally requiring annual SBA oversight review, CDCs may occasionally request a postponement of those reviews. Applicants to the PCLP must recognize the need for current SBA review data and coordinate with their Lead SBA Office to ensure that the CDC is available and prepared for any required oversight reviews.

SBA has developed comprehensive management information systems to timely track and analyze the performance of a CDC's 504 Loan portfolio. As a result of an extensive examination and analysis of these performance data, SBA has determined that portfolio currency, delinquency, default, liquidation and loss rates are important measures of the quality of a CDC's portfolio and the effectiveness and diligence of its loan analysis, closing and servicing. Therefore, SBA has established benchmarks for each of these measures and SBA will use such portfolio benchmarks as an indication or measure of the CDC's compliance with 504 program requirements.

SBA and the CDC industry recognize that the training and experience of the PCLP applicant's staff are critical determinants of the quality and effectiveness of its 504 Loan program administration as well as its diligence in applying SBA's 504 Loan credit and eligibility standards. As a result, the CDC industry has developed appropriate credit, packaging, loan closing and loan servicing training programs, which the staff of many CDCs attend. As a result, SBA is requiring that the principal staff of PCLP applicants possess adequate 504 Loan training and experience.

Under the PCLP, SBA delegates authority and a certain level of autonomy to PCLP CDCs to process, close and service 504 Loans with only limited prior SBA review. As a result, SBA is requiring that applicants to the PCLP must demonstrate a particularly thorough understanding of and an applied diligence to SBA's 504 Loan credit and eligibility standards and its 504 Loan processing, closing and servicing policies and procedures. A failure to consistently apply appropriate credit analyses and standards and loan processing, closing and servicing policies or procedures exposes SBA and the taxpayer to excessive risk of loss and negatively impacts the availability of SBA financing to the small business community. A CDC's failure to adequately apply SBA's 504 Loan eligibility standards could result in 504 Loan approvals to small businesses that are expressly prohibited by statute or regulation from receiving SBA loans.

Section 508(b)(2)(A) requires that PCLP CDCs be in good standing with SBA. SBA interprets that requirement to mean both in good standing with the State in which the CDC is incorporated (as discussed in § 120.820), and in substantial compliance with the 504 Program requirements imposed by statute, regulation, SOP, policy and procedural notice, loan authorization, debenture, or any agreement between SBA and the CDC. Under the PCLP, due to the higher level of authority delegated to the PCLP CDCs and the potential risk to the Agency, SBA expects a significantly higher level of compliance with both of these requirements by PCLP CDCs.

The Lead SBA Office will consider the CDC's initial application to the PCLP, and will forward the application package, including a recommendation regarding the applicant's qualifications, to SBA's PCLP Processing Center, which then will forward the package with its recommendation to the AA/FA for final action. PCLP applicants are expected to coordinate with their Lead SBA Office early in their consideration of the PCLP to realistically assess its program requirements and their prospects for admission. When officially applying for the PCLP, an applicant will need to provide certain essential information and documentation to assist SBA in ascertaining its qualifications, including a resolution from its Boards of Directors; resumes on key staff for 504 Loan processing, servicing, liquidation, and litigation; documentation of any required insurance; and information about the qualifications of its closing attorney. While SBA will generally confer PCLP status for a period of two years, under appropriate conditions SBA may approve a lesser period.

Section 120.846, requirements for maintaining and renewing PCLP status, is added. Pursuant to section 508(b)(3) of the Act, in order to retain its PCLP status, a PCLP CDC must continue to meet the eligibility requirements of the PCLP, as described in § 120.845. While level of activity is one of those criteria, section 508(i) of the Act requires that PCLP CDCs establish a goal of processing a minimum of 50 percent of their 504 Loan applications using PCLP procedures. SBA considered establishing a requirement that PCLP CDCs process at least 30 percent of their 504 Loans using PCLP procedures immediately after becoming a PCLP CDC and gradually increasing that requirement as the PCLP CDC matures. However, following discussions with the CDC industry, SBA determined that immediately establishing such an absolute minimum could discourage participation in what is a developing program with a variety of relatively new concepts and procedures. Nevertheless, SBA recognizes that the legislation authorizing PCLP mandates that PCLP CDCs be active CDC lenders and establish a goal of processing a minimum of 50 percent of their 504 Loans using PCLP procedures. As a result, while SBA still expects PCLP CDCs to process a substantial proportion of their 504 Loans using PCLP procedures and strive to reach their 50 percent goal as mandated by statute, SBA is not immediately requiring an absolute minimum. Thus, as the PCLP matures, SBA intends to publish procedural guidance gradually incorporating and increasing the minimum number and percent of 504 Loans that PCLP CDCs must process using PCLP procedures.

Due to the delegation of authority under the PCLP, and the associated risk of loss, SBA expects PCLP CDCs to develop, implement and actively monitor effective internal control systems and processes that will ensure continued conformance with the requirements of the PCLP. These systems should provide PCLP CDCs with early information on their performance. SBA also has developed management control systems to monitor individual PCLP CDCs, specifically the portfolio benchmark data and the management oversight reviews, and SBA provides this information to PCLP CDCs. With these internal and external control systems, SBA expects PCLP CDCs to constantly monitor their performance as a CDC and as a PCLP CDC and to be in a position to take appropriate and timely corrective action when necessary. Due to the risk inherent in the delegation of authority under the PCLP, SBA will move to timely suspend, terminate or decline to renew the PCLP status of PCLP CDCs that do not comply with the requirements of the PCLP. Significant problems with respect to liquidation and litigation activities by either a PCLP CDC or its contractor may, at SBA's option, also lead to the non-renewal of PCLP status.

Section 120.847, requirements for the loan loss reserve fund, is implemented as proposed, except for one change as discussed below.

To mitigate some of the potential risk of delegating additional authority to PCLP CDCs, pursuant to section 508(c)(1) of the Act, PCLP CDCs must establish and make deposits to a Loan Loss Reserve Fund ("LLRF"). The LLRF is a restricted account established for the purpose of accumulating deposits and limiting withdrawals to those SBA specifically authorizes. The PCLP CDC may use the deposits to reimburse SBA for 10 percent of any loss sustained by SBA as a result of a default in the payment of principal or interest on a debenture issued by the PCLP CDC using PCLP procedures ("PCLP debenture"). Pursuant to section 508(c)(3) of the Act, the LLRF must be composed of: (1) Segregated deposit accounts at one or more federally insured depository institutions subject to a collateral assignment to SBA; (2) irrevocable letters of credit in favor of SBA; or (3) some combination of the above. Due to the characteristics and cost of letters of credit, and in consultation with the CDC industry, SBA has determined that letters of credit do not currently represent a feasible option for PCLP CDCs. Consequently, SBA is not addressing letters of credit in this rule. However, SBA will continue to explore this option with the CDC industry, and will promulgate regulations addressing letters of credit to the extent this becomes a feasible option.

Pursuant to section 508(b)(2)(c) of the Act, PCLP CDCs must reimburse SBA for 10 percent of any loss SBA incurs in connection with a default on a PCLP debenture and the regulation proposes how to measure SBA's loss. The statute and proposed rule also require that the LLRF maintain a deposit equal to one percent of the original principal amount of each PCLP debenture.

The LLRF must be a deposit account with a federally insured depository institution selected by the PCLP CDC. Following discussions with the CDC industry, SBA is aware that alternative accounts and financial instruments may offer greater returns on the LLRF. However, the Act restricts LLRFs to federally insured depository institutions and that language as well as other applicable law greatly limit the investment alternatives. This rule elaborates on what constitutes a deposit account acceptable to SBA. Also, to simplify the administration of the LLRF, this rule allows PCLP CDCs to pool loss reserves in a single segregated account. SBA generally does not anticipate that PCLP CDCs will incur significant fees in connection with their LLRFs, although PCLP CDCs will need to be mindful of breakage fees, should they place funds into certificates of deposit ("CDs"). This final rule goes on to make clear that the PCLP CDC will be responsible for any fees, costs and expenses incurred in connection with the LLRF.

Pursuant to section 508(c)(3) of the Act, any LLRF established by a PCLP CDC must be subject to a collateral assignment in favor of, and in a format acceptable to, SBA. Accordingly, a PCLP CDC must give SBA a first priority perfected security interest in each LLRF. The PCLP CDC must grant the security interest pursuant to a security agreement between the PCLP CDC and SBA, and the security interest must be subject to a control agreement between SBA, the PCLP CDC, and the applicable depository institution. The control agreement will include provisions requiring a depository institution to follow instructions from SBA regarding withdrawals without further consent from the PCLP CDC. The laws governing security interests in deposit accounts are complex, vary by jurisdiction, and are undergoing change. Therefore, when establishing an LLRF, a PCLP CDC must coordinate with the Lead SBA Office to develop, execute and deliver the required documentation. SBA field counsel will have a model control agreement, which they may need to modify to meet local legal requirements. This final rule provides that the CDC must provide to the Lead SBA office a fully executed original copy of the security and control agreements which the Lead SBA Office will retain in its files. All associated documents must meet SBA requirements and occasional changes may be necessary. If a depository institution will not enter into or modify a control agreement or violates the terms of any such agreement, the PCLP CDC cannot maintain an LLRF with that institution.

Pursuant to section 508(c)(4) of the Act, PCLP CDCs are allowed to make required deposits to the LLRF associated with each loan in as many as three deposits, but specifies the minimum amount and timing of those deposits. This final rule sets forth the amount and timing of those deposits.

Due to its management control and oversight responsibilities, SBA must ensure that LLRFs: (1) Are properly established; (2) contain the required reserve amounts; and (3) are appropriately administered and controlled. Periodic reporting by PCLP CDCs to SBA on the amount of funds maintained in LLRFs is critical to ensuring that LLRFs are properly established and maintained. However, while LLRFs must contain deposits equal to one percent of each PCLP debenture, the deposits associated with each PCLP debenture may be made in as many as three installments. Also, during the normal course of a PCLP CDC's operations, LLRFs will be subject to a variety of other deposits and withdrawals (*e.g.*, withdrawals associated with loans paid in full and defaults). As a result, reporting and reconciling LLRFs might become quite complex. SBA is concerned with the potential burden such reporting could represent to PCLP CDCs. SBA continues to work with the CDC industry to develop and test efficient and effective reporting procedures, and will publish appropriate procedural guidance as those procedures are finalized.

SBA will allow PCLP CDCs to withdraw any funds from the LLRFs that exceed required minimums, at SBA's discretion. Section 120.847(g) provides that requests for withdrawals must be forwarded to the Lead SBA Office, which will check the balances to ensure the required minimums are maintained and authorize withdrawals as appropriate.

Section 120.847(h) provides that when a PCLP CDC has submitted a liquidation wrap-up report to SBA, or SBA otherwise has determined that all reasonable collection efforts have been exhausted, the Lead SBA Office will calculate the SBA's loss and notify the

PCLP CDC of the amount of any reimbursement obligation and provide appropriate supporting documentation. The final rule sets forth procedures so that PCLP CDCs may appeal any problems or disagreements regarding the calculation of SBA's loss.

Section 120.847(i) requires PCLP CDCs to reimburse SBA for 10 percent of any loss and states that the reimbursement may come from the LLRF or from other funds provided by the PCLP CDC. There could also be instances where a PCLP CDC would not have sufficient funds in its LLRF to reimburse SBA for 10 percent of SBA's loss, and the regulation describes the period of time by which the CDC must reimburse the Agency.

Pursuant to section 508(c)(5) of the Act, the final rule requires that should a PCLP CDC's LLRF drop below the required minimum, the PCLP CDC must replenish the LLRF within 30 days of the time that it realizes this deficiency or of a notice from SBA that the LLRF is deficient. Thus, if a depository institution offsets from any LLRFs maintained with the institution any amounts owing by the PCLP CDC to it, the PCLP CDC must replenish the LLRF to the full amount then required within 30 days. Comments received regarding these changes concerned a perceived inconsistency in the source of reimbursement to SBA for losses. SBA considered this concern and is revising § 120.847 to clarify that a PCLP CDC may reimburse SBA for losses either from the LLRF or other funds.

Section 120.848, requirements of PCLP loan processing, closing, servicing, liquidating and litigating, is added.

Pursuant to section 508(e)(1) of the Act, PCLP CDCs are permitted to approve, authorize, close, service, and liquidate 504 Loans, subject to terms and conditions established by SBA. SBA's authority to establish such terms and conditions is limited by section 508(e)(2) of the Act, which states that the CDC's approval of a 504 Loan using its PCLP authority is subject to SBA's final approval of the PCLP debenture as to eligibility but that SBA as part of its approval may not review the creditworthiness, loan closing, and legal compliance (except with respect to eligibility) of the underlying 504 loan.

Several comments objected to the proposed § 120.848, including SBA's authority to require a PLCP CDC to process 504 Loans involving complex or problematic eligibility issues through SBA using standard loan processing procedures (§ 120.848(c)), or to require a PCLP CDC to turn over to SBA the handling of a particular PLCP loan (§ 120.848(f)). These commenters suggested that SBA does not have the authority, under section 503(e)(2) of the Act, to require that PCLP CDCs take these actions. However, SBA believes that these commenters misinterpret the Act. SBA has specific authority under section 508(e)(1) to establish the terms and conditions under which PCLP CDCs are permitted to approve, authorize, close, service, and liquidate 504 Loans, which authority encompasses all of the terms and conditions SBA proposed in the proposed rule.

Section 120.848 provides guidance on PCLP CDCs' approving, authorizing, closing, servicing, and liquidating 504 Loans and notes that all 504 Program requirements apply to 504 Loans processed by PCLP CDCs. Under § 120.848(c), PCLP CDCs are specifically authorized to determine a 504 Loan applicant's credit-worthiness; to establish the terms and conditions under which the loan will be made; and to take other processing actions as may be delegated by SBA to PCLP CDCs. SBA believes that the PCLP can be most prudently administered if SBA focuses, at least initially, on expediting the processing of routine CDC loan applications under the PCLP and handling complex or problematic eligibility issues using standard 504 Loan procedures. However, SBA will continue to study and analyze this issue and develop further guidance as the PCLP progresses.

Several comments suggested that SBA revise the requirement in § 120.848(c) that complex loan applications be processed through the Lead SBA Office, because SBA currently is expanding its centralized 504 loan processing activity. SBA considered this suggestion and agreed that this section should be modified. Therefore, in § 120.848(c) in the final rule, SBA deleted "Lead SBA Office" and added "SBA," in order to accommodate ongoing Agency changes.

Several comments also suggested that SBA consider permitting PCLP CDCs to close their own 504 loans without SBA review. SBA notes that under § 120.848(e), a PLCP CDC is required to close PCLP loans and debentures under SBA's expedited loan closing procedures, which provides for a limited review of documents relating to the debenture, but does not include an entire review of the CDC's closing of the 504 Loan underlying that debenture. This is entirely consistent with the Act and with the comments. SBA did not propose to modify SBA's current practice, in which SBA shares with the PCLP CDC joint responsibility for closing the PLCP debenture. Refer to the discussion of § 120.960, responsibility for closing, for further discussion of SBA's reasons for not changing this current practice.

Several commenters also suggested that PLCP CDCs be permitted to make eligibility determinations which involve franchise issues and issues of potential environmental hazards and liability with respect to the project property collateral, independently and without SBA's review. SBA considered these suggestions but implements the proposed rule without change on this issue. These are important issues that relate to the eligibility for 504 loan financing of the borrower and of the project itself, and SBA has the authority under section 508(e)(2) of the Act to review and approve eligibility issues. Accordingly, SBA implements § 120.484 as proposed except as discussed.

With respect to § 120.848(b), SBA's management control and oversight responsibilities require a systematic review of a PCLP CDC's 504 loan processing proficiency. As a result, SBA must periodically review the processing actions of PCLP CDCs to ensure the PCLP CDC is using appropriate and reasonable procedures. PCLP CDCs are thus expected to retain in their loan files copies of all documents associated with their processing actions. SBA may occasionally review these documents on site or request that they be forwarded to SBA for review. If SBA identifies significant problems or deviations from SBA's 504 Program requirements, SBA will take appropriate corrective action, including possible removal from the PCLP.

SBA is deleting §§ 120.850–120.852, concerning ADCs, to eliminate the ADC designation. The reasons are twofold. First, SBA is seeking to eliminate redundancy in the regulations. One aspect of the ADC program was that it established requirements for organizations to qualify to contract with CDCs for 504-related services. However, § 120.824 permits CDCs to contract for 504-related services and governs such contracts. Second, these regulations established one of the grounds (not meeting the minimum required level of 504 Loan approval activity) for removing a CDC from the 504 Program discussed under § 120.854. In the final rule, all grounds for taking enforcement action against a CDC are combined under one regulation, § 120.854.

Section 120.855, CDC ethical requirements, is redesignated as § 120.851, and reworded to clarify its meaning and to remove the reference to ADCs (see § 120.850 discussion). SBA received several comments on this regulation. SBA proposed to delete the "good cause" exception to the general rule, that an associate of a CDC may not be an officer, director, or manager of more than one CDC, and the commenters requested that such an exception remain. SBA has considered these comments but believes that, in every case, a CDC should be independently managed and operated to pursue its own economic development mission. Further, SBA believes that with the new requirement that each CDC's area of operations be statewide, a potential for a conflict of interest exists if the same individual is an officer of or on the board of two CDCs. Therefore, SBA is adopting § 120.851 as proposed.

Section 120.852 prohibits a CDC from investing in or being affiliated with a 7(a) lender or an SBIC, which SBA believes will help to avoid apparent conflicts of interest and serve the economic development mission of the CDC. However, the final rule does not require a CDC with an existing investment in an SBIC to liquidate such investment. In response to the ANPRM, commenters overwhelmingly stated that SBA should not permit a CDC to establish a 7(a) lender or permit a 7(a) lender to establish a CDC and that the two programs should remain separate. Comments in response to the proposed rule also were generally supportive of the separation of 7(a) lenders and CDCs. Several commenters suggested that there be an exception for CDCs that already are affiliated with State development companies that were authorized under section 501 of the Act that could continue to be so affiliated, even if the state development company is a 7(a) lender. SBA considered these comments and agrees to permit this exception.

SBA also received comments regarding the proposed prohibition on a CDC investing in an SBIC. A typical comment opposed the prohibition on the basis that it would eliminate a CDC's use of the SBIC program as an economic development tool (without explaining why it was believed this would occur). SBA believes the concern is unfounded. In general, if a CDC has an investment in an SBIC, then the CDC would be prohibited from referring a 504 borrower to that SBIC for that borrower's venture capital requirements. By contrast, by prohibiting a CDC itself from having an investment in an SBIC, the CDC will be free to refer its borrowers to the SBIC for venture capital, thus increasing the borrowers's access to capital. Other comments requested that the regulation be modified to be consistent with the preamble to the proposed rule, which SBA stated that the Agency would not require a CDC with an existing investment in an SBIC to liquidate such investment. SBA has considered this comment and agrees that the final rule should be modified to reflect this exception. This rule adopts § 120.882 as it was published in the proposed rule except as discussed.

Section 120.853 is identical to existing § 120.973 except that it would eliminate references to ADCs.

New § 120.854, grounds for taking enforcement action against a CDC, § 120.855, types of enforcement actions, and § 120.856, enforcement procedures, consolidate existing § 120.852 and §§ 120.982–120.984. These provisions also clarify and expand the grounds required for SBA enforcement actions against CDCs as well as SBA's and CDCs' rights and responsibilities in such actions. Section 120.981, voluntary transfer and surrender of CDC certification, is redesignated as § 120.857 to move it under the new heading entitled Enforcement Actions.

SBA received numerous comments regarding SBA's proposed changes to its enforcement procedures. Several comments expressed concern that SBA officials would abuse the authority provided by the enforcement regulations to unfairly penalize or control CDCs. Thus, one comment expressed concern that the regulations "can be open to wide interpretation by any SBA official at either the local or national level." Another comment stated that the enforcement provisions are "an attempt to give SBA personnel effective operating control of all CDCs" and that "[t]hrough the guise of oversight and evaluation SBA officials are attempting to create a web of regulations, which would enable a vindictive official to manipulate every action of a CDC under threat of suspension or termination."

These comments reflect considerable misunderstanding of the regulations and how SBA typically conducts enforcement actions. SBA's actions reflect numerous layers of careful review and various controls in order to ensure that all facts and relevant issues are considered. Notably, the regulations only authorize the AA/FA (or his or her authorized delegate) to undertake enforcement actions, not numerous agency officials. Moreover, an enforcement action usually begins with a recommendation from the district office, which is signed and approved by various officials. When the recommendation reaches SBA's Headquarters, it is reviewed by a number of officials, as well as attorneys in SBA's Office of General Counsel prior to the initiation of any proposed action. After a notice of proposed action is sent to the program participant, any response from the participant is given considerable analysis by numerous SBA officials and attorneys and a consensus is attained as to whether to proceed with a final enforcement action. This carefully considered process should allay any concerns. Nevertheless, SBA's responsibility for managing the 504 Program requires that the Agency have a wide range of enforcement options available and considerable flexibility in implementing these actions. Moreover, SBA's revision of the enforcement regulations is a direct response to problems that SBA has encountered under the current regulations in dealing with CDCs that have repeatedly failed to comply with SBA rules and regulations or which have willfully failed to comply with SBA efforts to require compliance with regulations and other requirements. Thus, SBA disagrees with those comments that sought to retain the current enforcement regulations without change.

Several comments noted that the Act already prescribes the grounds for enforcement actions to suspend or revoke an ALP CDC or a PCLP CDC's ability to participate in these programs, and, therefore, that the proposed enforcement provisions as they relate to an ALP CDC or PCLP CDC were inconsistent with the statute.

SBA inadvertently consolidated the grounds for such enforcement actions with the general enforcement provisions in the proposed rule, and agrees that the Act sets forth grounds (but not procedures) for the suspension or termination (which the statute refers to as a revocation) of a CDC's authority to act as an ALP CDC or PCLP CDC. Consequently, SBA has made minor revisions to §§ 120.854 to include, verbatim as set forth in the Act. the grounds for such enforcement actions in new paragraphs (b) and (c), and has made conforming technical changes to § 120.855. Although these grounds for enforcement were not included in the proposed rule, the final rule simply incorporates statutory language, which SBA does not have discretion to modify, and makes conforming technical changes to the proposed rule.

In the final rule, all grounds for taking enforcement action against a CDC are combined under one regulation, § 120.854. SBA received some comments that asked whether § 120.854(b) would be applied retroactively. Section 120.180, however, currently provides for prospective application of any new regulations under Part 120, and this regulation has not been amended by this final rule.

Some comments suggested that the word "knowingly" be inserted into § 120.854(c) to establish intent. SBA considered this concern but has declined to adopt it because it is based on a faulty legal premise, and because it would unduly burden the Agency's enforcement authority. Contrary to the assertion that misrepresentation is "tantamount to civil fraud or deceit", as several comments contended, the concept of negligent misrepresentation is well established in the law. *See, e.g., First National Bank, Henrietta* v. *SBA*, 429 F.2d 280 (5th Cir. 1970).

SBA emphasizes that the regulation authorizes enforcement action only if a CDC misrepresents or fails to disclose "material" information, which would include important information that the CDC would have reason to know the Agency was relying upon in making a decision about a loan or the CDC's participation in the Program. An example of such information would include a CDC's misrepresentation of or failure to disclose information in its annual report to SBA that, if accurately disclosed, would show that the CDC was in violation of SBA rules or regulations. Similarly, a CDC that was seeking authority from SBA to issue a 504 debenture and failed to disclose a significant adverse change in the borrower's financial condition that was known to the CDC would have failed to disclose a material fact.

As to such critical facts, the Agency believes that CDCs have an obligation to exercise diligence to ensure that they provide accurate information to SBA that the CDC knows, or should know, that the Agency is relying upon. Under egregious circumstances, enforcement action may be appropriate if a CDC negligently fails to do so, and SBA needs the flexibility to be able to undertake enforcement action without the unwarranted burden of having to prove that the CDC intended to deceive the Agency. If a CDC's misrepresentation or failure to disclose material was a result of inadvertence, the CDC will have the opportunity to explain this in responding to any proposed enforcement action. In doing so, however, SBA expects that the CDC would discuss the quality control measures it had implemented to prevent transmission of inaccurate or less than thorough information to the Agency. SBA will, thus, consider the "intent" of the CDC as part of its determination of whether to proceed with a proposed enforcement action.

A concern was raised regarding the use of the word "material" in § 120.854(c) because this term was considered to be too subjective and would "open the likelihood for abuse and retaliation by the Agency." SBA has considered this comment but believes that the term should be retained in the final rule for several reasons. First, use of the word "material" is important in that SBA is making it clear that trivial infractions will not trigger an enforcement action under § 120.854(c). Thus, contrary to the comment's suggestion that the word "material" could increase the risk of unfounded enforcement actions against a CDC, the intent of the Agency in using this word is just the opposite. At the same time, SBA believes that needed flexibility in applying its 504 Program enforcement procedures is retained through the word "material". SBA notes that this term has been employed as longstanding policy with respect to denials of loan guarantees under the 7(a) Program under § 120.524. Thus, SBA believes it is appropriate to retain this word in the final rule.

Several comments were received regarding language in proposed § 120.854(d) that evidence of CDC improper actions could include the CDC's failure to meet one or more of the portfolio benchmarks established by SBA to measure a CDC's portfolio performance. Many of these comments raised similar concerns regarding the accuracy or lack of public adoption of the benchmarks that were discussed above, which SBA has considered and rejected.

Moreover, these comments appear to be based on the erroneous belief that an SBA enforcement action could proceed solely upon a CDC's failure to meet a portfolio benchmark. The regulation provides that benchmark performance is merely supporting evidence that a "CDC is not performing underwriting, closing, servicing, liquidation, litigation, or other actions with respect to 504 loans in a commercially unreasonable or imprudent manner." SBA has made a minor revision to the second sentence of § 120.854(d) to emphasize this regulatory interpretation.

The need to show that a CDC's actions were imprudent or commercially unreasonable would also preclude SBA from being able to bring an enforcement action using the CDC's benchmark performance if the CDC could show that the performance score was directly related to SBA's approval or liquidation of 504 loans, and not the CDC's actions. Thus, SBA disagrees with those comments which asserted that the provision could be used to bring an enforcement action against a CDC for actions that were beyond its control.

In the context of a specific enforcement action that was relying on a CDC's benchmark score as evidence of that CDC's imprudence or commercial unreasonableness, the CDC, having access to the score, as discussed above, and having its own information about the performance of its loan portfolio, would be able to present SBA with arguments that the benchmark score was inaccurate in its opposition to the enforcement action. SBA would carefully consider those comments before proceeding with any enforcement action.

Other comments requested that SBA modify § 120.854(e) to clarify that an agency notification of deficiency to a CDC include a request to take corrective action if appropriate. SBA considered this concern, agrees with the comments, and is modifying the rule accordingly so that an agency notice of deficiency also include a request for corrective action if appropriate. SBA also agrees with, and has modified § 120.854(e) to address, those comments that stated that it would be fair to provide the CDC with a reasonable period of time to cure the deficiency. The Agency disagrees, however, with comments that a specified time for a cure should be provided because SBA needs flexibility in determining the appropriate cure period depending upon the facts of each situation. SBA further disagrees with comments suggesting that a notice of deficiency must describe with specificity the corrective action that is needed rather than simply requiring it to be corrected. Although SBA may suggest the type of corrective action that is needed, it will generally be the CDC, with the knowledge of its own operations and portfolio, that will be in the best position to make the judgment as to how best to correct a deficiency.

Comments objected to proposed language in § 120.854(f) that would permit SBA to initiate enforcement action based upon a CDC's "pattern of uncooperative behavior or an action that SBA determines is "deleterious to the 504 program" or that "undermines SBA's administration of the 504 program" or that was "not consistent with standards of good conduct." Generally, the comments expressed concern that these provisions were ambiguous and subject to subjective interpretation. The terms are so broad, one comment opined, so "as to render it useless in determining what the SBA means and what is expected of the CDC" and allows SBA "to decertify a CDC simply for convenience," and without just cause or due process.

SBA has considered these comments but believes that the provisions should be retained in order to preserve needed and justifiable flexibility in administering the 504 program, as discussed above. It has been the Agency's experience in dealing with enforcement actions in the past that it is imperative to have the type of catchall provision embodied by § 120.854(f) in order to have effective management tools available in the event that a program participant is engaging in "a pattern of uncooperative behavior" or has taken other action that warrants some enforcement action, but which does not squarely fit within the specific grounds identified in a regulation as a basis for enforcement.

Although SBA retained these provisions, the Agency is sensitive to those comments that CDCs would not be on notice of what behavior was expected by these regulations. SBA believes that the appropriate resolution of these concerns is to provide additional procedural protection to CDCs. Therefore, SBA has added language to § 120.854(f) that would ensure that SBA could only propose enforcement action based on § 120.854(f) after the Agency had: (1) Provided written notice to the CDC explaining why the CDC's actions were uncooperative, not good conduct, or undermined SBA's management of the program and that the CDC's actions could give rise to an enforcement action; and (2) providing the CDC with a reasonable time to cure the deficiency. This change reasonably addresses all of the comments that objected to these provisions.

Several comments objected to the enforcement actions authorized under § 120.855. Thus, concerns were expressed about the language in § 120.855(a) that the AA/FA or his or her delegate's decision to undertake enforcement actions "in SBA's sole discretion" would result in enforcement actions that were subjective or selective. SBA disagrees with the suggestion to delete this language because each enforcement case is different and the Agency believes that effective program administration requires maximum flexibility to determine the appropriate enforcement action appropriate for each particular action. SBA also believes that the due process rights that are provided by the regulations, including the review by the SBA OHA (which is discussed further below regarding § 120.856) protects CDCs from arbitrary enforcement actions.

Several comments objected to § 120.855(a)(3) which authorizes SBA to direct a CDC to transfer some or all of its portfolio to another entity. The comments asserted that SBA should provide the CDC with a right to cure any deficiency prior to such a transfer. Directing a CDC to transfer some or all of its portfolio to another entity is an extreme action that would generally only be considered in egregious circumstances. Typically, SBA would provide a CDC with an opportunity to cure a deficiency before the initiation of such an action. SBA, however, disagrees with the proposals to mandate a cure before initiating such an enforcement action because there may be circumstances where the opportunity to cure would not be possible, and SBA's administration of the program would be unnecessarily restricted by a mandatory cure opportunity prior to enforcement. For example, if a CDC was terminated from the program due to regulatory violations, a cure of these violations may not be possible. In such a case, SBA needs the authority to be able to direct the transfer of that CDC's portfolio to another entity without the requirement of providing the CDC with a cure opportunity.

SBA also disagrees with the comments which objected to the Agency's authority to direct the transfer of 504 loans to entities other than SBA or a CDC on the ground that transfer to banks and other for-profit entities was contrary to the public or program's interest. Although it would be SBA's clear preference that 504 loans be transferred to a CDC, there may be occasions where no other responsible CDC exists for such a transfer. SBA requires the flexibility to direct a portfolio transfer in the manner that the Agency believes is in the best interests of the program. Generally, however, it is anticipated that a transfer to an entity other than a CDC would be temporary until another responsible CDC was available.

Many comments objected to § 120.855(a)(4), which allows SBA to direct the Central Servicing Agent (CSA) to suspend payment of fees to a CDC and to direct the CSA to submit those fees to SBA to pay for any financial loss resulting from a CDC's imprudence, commercial unreasonableness or failure to comply with an SBA requirement. SBA has agreed to eliminate the provisions allowing for payment of the fees to the Agency to compensate for financial loss because it would like to study this issue further. SBA, however, has retained in the final rule the language allowing the suspension of fee payments to the CDC as an enforcement tool in the absence of any significant comments on this proposal.

A number of concerns were raised regarding § 120.856, which sets forth procedures for proposing and undertaking enforcement actions, and the affected CDC's due process and appellate rights. As discussed below, SBA has revised this section to address several of the comments the Agency received. These changes have also necessitated a renumbering of the subsections in § 120.856.

Several comments contended that § 120.856(a) should require SBA to provide details of the reasons behind a proposed enforcement action. SBA agrees with this proposal and has added language to make clear that the underlying facts and reasons for the proposed action should be reasonably detailed.

SBA received a number of comments regarding § 120.856(c) [now renumbered as § 120.856(b)], which sets forth the CDC's right to respond to a notice of proposed enforcement action or to a notice of immediate suspension. Several comments requested that the provision should specify that the period for the CDC to respond to a notice should be fixed at 30 days; others felt that the CDC should be given 60 days to respond. SBA disagrees with these comments because the Agency believes that 30 days is a sufficient amount of time, and that the Agency must retain the flexibility to permit a greater or lesser amount of time for a response to accommodate the unique circumstances of each enforcement action. SBA has, however, added language that a CDC may request additional time if it can show that there are compelling reasons why it is not able to respond within the 30-day timeframe.

SBA does, however, agree with those comments that urged that a CDC's 30-day response period should begin to run when a CDC receives the notice of proposed action or immediate suspension. For purposes of determining whether a CDC has timely responded to a notice of a proposed action or immediate suspension, the regulations will make clear that it is presumed that the notice has been received within 5 days of the date of the notice, absent compelling evidence from the CDC to the contrary.

Several comments contended that the regulations should make some or all of the following discovery procedures available to a CDC that receives a notice of a proposed action or immediate suspension: (1) The ability to undertake discovery; (2) the ability to review SBA's complete file; (3) the ability to request and review additional documents; (4) the ability to question SBA's employees; (5) the ability to obtain copies of any documentation that SBA has obtained during the course of its investigation before or after the CDC files its objection; and (6) the ability to obtain information from third parties. Absent these discovery procedures, the comments contended, the CDC would be deprived of the ability to respond meaningfully to the notice. In addition, the comments urged, a CDC that avails itself of one or more of these discovery procedures should have additional time to respond to the notice of proposed enforcement action or immediate suspension or be able to make additional submissions to SBA beyond the initial objection in opposition to the enforcement action.

The SBA does not believe that these discovery procedures are necessary to provide the CDC with meaningful review or appropriate for the enforcement action set forth in §§ 120.854–120.857. The existing procedures already provide for a meaningful review, in that the CDC will receive a written notice setting forth the proposed enforcement action or immediate suspension and a reasonably detailed description of the underlying facts and reasons for SBA's proposed action or immediate suspension, and will have the opportunity to submit its objections and opposition to that notice. A second review is then undertaken by the Agency prior to the final decision, and the CDC has further relief in seeking review from the OHA and ultimately the courts. The requested discovery procedures will likely serve to delay and frustrate SBA efforts to undertake enforcement necessary for effective program management, and result in considerable additional burden on limited Agency resources in responding to the requested discovery. Indeed, it has been the Agency's experience in attempting enforcement actions in the past that certain CDCs have attempted to repeatedly delay those efforts.

Further, it is SBA's experience that enforcement actions are typically based on documentation and information that is already available or known to the CDC, *e.g.*, loan documentation, the CDC's annual report, or correspondence between the CDC and SBA. Thus, the requested discovery procedures are generally not necessary. Nevertheless, SBA does recognize that if an enforcement action is based on information derived from a third party, *i.e.* a party other than SBA or a CDC, such as a borrower, principles of fairness suggest that that the CDC should be provided with a copy of the relevant documentation or name of the third party in the event the information was oral. SBA recognizes also, however, that there may be occasions where there may be compelling reasons for not disclosing the identity of the third party or copies of the actual documentation, such as privilege or significant impairment of SBA's ability to manage the 504 Program. Therefore, SBA has added a new section § 120.856(g) providing that if an enforcement action is based upon information derived from a third party, SBA's notice of proposed action or immediate suspension will provide copies of documentation received from such third party or the name of the third party in case of oral information unless SBA determines that there are compelling reasons not to provide such information. If compelling reasons exist, SBA will provide a summary of the information it received to the CDC. Finally, SBA disagrees that a regulation is required to allow the CDC to obtain information from these or other third parties because the CDC can pursue such information without the need for a regulation.

Several comments asserted that § 120.856(c) [now renumbered as § 120.856(b)] should provide that a CDC which has received a notice of a proposed action or immediate suspension has the right to request a more definite statement if SBA's reasons for the proposed action were unclear. Inasmuch as SBA would, as a matter of course, respond to any legitimate request for clarification, SBA agrees to amend the regulation to make clear that a CDC may request clarification of a notice. SBA does not, however, agree with those comments that suggested that the regulation should be revised so that such a request for clarification would automatically delay the time for a CDC to respond to the notice. Allowing a CDC the right to postpone its response time based on an alleged inability to understand a notice could allow the CDC to improperly delay the enforcement action by seeking clarification where none was actually needed (and potentially filing repeated requests for clarification), and by waiting until the last possible moment to respond before seeking clarification. In addition, imposing an automatic delay of the CDC's response time would add considerable confusion to the enforcement procedures by creating uncertainty as to the deadline for the CDC's response. Thus, SBA has added language that the Agency "may" consider delaying the period for the CDC's response in the event the CDC legitimately seeks clarification or has a compelling basis for needing additional time to respond. The new language would likely preclude a CDC from delaying a request for clarification or additional time or improperly making such requests. If SBA disregarded a legitimate request for clarification or an extension of time and proceeded with a termination action, the CDC would have a right to appeal that decision before the OHA or a federal court.

Several comments requested that section 120.856(d) [now renumbered as § 120.856(c)] should include a deadline for SBA to issue a final decision on a proposed termination action. The offered rationale for this request was that without a deadline, the CDC would be "in limbo" for an indefinite period of time and could not pursue its rights before the OHA and the courts. SBA disagrees with these comments, for the most part. If SBA proposes an enforcement action, the CDC would not lose any right or authority until a final decision is made, and, therefore, would not experience any prejudice in the event that SBA did not immediately issue a final decision. Similarly, there is nothing for a CDC to appeal to OHA or the courts until a final decision is rendered. In the case of an immediate suspension under § 120.855(b) [now renumbered as § 120.856(a)(2)], however, the CDC's rights and authority would be affected. Therefore, for those actions, SBA agrees that a deadline should be imposed on the issuance of a final decision to avoid any undue prejudice to the CDC. Therefore, SBA has revised § 120.856(c) to require the Agency to issue a final decision on an immediate suspension within 90 days of receiving the CDC's objection. Procedures have also been added to address this deadline in the event a CDC seeks clarification or additional time. In addition, SBA has clarified that Agency decisions must be in writing in § 120.856(c).

Although SBA did not receive any comments pertaining to § 120.856(e) [now renumbered as § 120.856(d)], the Agency has determined through its own initiative that there is a conflict between this section and § 120.856(f) [now renumbered as § 120.856(e)]. Although proposed § 120.856(e) provided that a decision under that section constitutes the final agency decision, which signifies that there is no further appeal within the agency, proposed § 120.856(f) allowed for an appeal from that section to the OHA. To address this inconsistency, § 120.856(e) has been revised to clarify that it only sets forth a right of appeal and appellate procedures for an appeal from § 120.856(c).

SBA also received a comment from the SBA OHA regarding § 120.856(f) [now renumbered as § 120.856(e)] requiring the OHA review of the appeal of an enforcement action to be consistent with legal precedent developed under the arbitrary or capricious standard of 5 U.S.C. 706 because under OHA regulations this could be construed as requiring that only the SBA Administrative Law Judge would hear such appeals. The Agency intends that Administrative Judges and the Administrative Law Judge be able to hear appeals and, therefore, has deleted the reference to the statute. Nonetheless, SBA expects that OHA judges will look to legal precedent developed under the arbitrary and capricious standard of the APA in deciding appeals from these enforcement provisions.

Many comments were received that the regulations should allow the SBA Office of Hearings and Appeals to have a de novo review of enforcement actions in § 120.856(e). Several comments contended this review was provided under current regulation (SBA does not interpret the regulation as providing such review, but acknowledges that the current regulation is unclear). One comment stated that the arbitrary and capricious standard imposes such an "excessive" burden upon the CDC that "the decision of the program office would necessarily be affirmed by OHA even if it was obviously wrong."

SBA has considered but disagrees with these contentions and has retained the original proposed regulations provision that the OHA review is limited to the arbitrary and capricious standard, a standard of review which is well established under the law. As previously noted, the fact that SBA enforcement actions are undertaken with considerable review and deliberation, and that numerous agency officials are involved in the decision, should allay those concerned about arbitrary decisionmaking. However, the decision to take an enforcement action necessarily involves policy judgments about what action is in the best interests of the Agency and the 504 Program. Therefore, SBA does not believe that it is appropriate or in the best interests of the 504 Program for the OHA, which is not a policymaking office and which does not have the familiarity and experience with the 504 Program, to be able to undertake a de novo review and to make policy for the 504 Program.

Further, the arbitrary and capricious standard, although a deferential review, requires that the Agency have a rational and reasonable basis for its decision. If such a basis is lacking, the matter should be remanded back to the Agency for further consideration. A review of the numerous cases which have applied this standard and remanded agency decisions refutes any assertion that the arbitrary and capricious review is merely a rubber stamp of an agency's decision.

Several comments took the position that de novo review by the OHA was required based upon the assertion that procedural due process under the Constitution requires that the decision be made by a "fair, neutral decision maker." These comments, however, did not argue or show a basis for any suggestion that the AA/FA was not a fair, neutral decision maker. Moreover, to the extent these comments assert that an appeal of an agency decision to an independent office of the agency is required by constitutional due process, those comments are simply mistaken. SBA could, and, indeed, has in numerous regulations, provided that the decision by the relevant agency official is the final agency action, without providing any right of appeal to the OHA. OHA review of enforcement actions is not a right, but an accommodation that SBA has chosen to provide to CDGs in order to improve the fairness of the enforcement procedures.

Several comments contended that the regulations should allow a CDC to raise arguments with the OHA that it had not made to the Agency in responding to a proposed enforcement action, and that CDCs should have a right of discovery or to subpoena third parties in the OHA to add information to the record of the agency's decision. One comment's justification for allowing new arguments to be raised before the OHA was that "the CDC may easily forget an important matter and not raise it or make a submission * * * without relying on counsel."

SBA also considered but is not persuaded by these comments. If the CDC provided the OHA with arguments or information obtained through discovery in the OHA that were not considered by the Agency, the OHA's review would not merely evaluate whether the Agency's decision was supported by the administrative record, but would necessarily entail a de novo review of the underlying matter. As stated above, SBA believes such review is inappropriate. Additionally, a CDC that is faced with a proposed enforcement action or immediate suspension would be best advised to make sure that it diligently provides all relevant information to the Agency and consults with counsel to the extent it deems such consultation to be appropriate.

Nevertheless, SBA does agree that a CDC that can show that it was unable to present facts or an argument to the AA/FA due to compelling reasons beyond its control, and that it has been prejudiced by this inability, can request that the OHA remand the matter back to the AA/FA for further consideration. This procedure is set forth in new language that has been added to § 120.856(e). Similar language has been added to newly renumbered § 120.856(b) with respect to a CDC's objection to a notice of a proposed action or immediate suspension, with conforming language added to § 120.856(e)(3).

SBA also has added language to § 120.856(e) that if the OHA decides that SBA's decision was arbitrary, capricious or contrary to law, the OHA must remand the matter to the AA/FA or the deciding official for further consideration. Although this was clearly implied in the proposed rule, it was not explicitly stated and so SBA has added this language to the final rule for clarification.

As discussed above with respect to § 120.810 and elsewhere, SBA has deleted language from the proposed regulations to the effect that the procedures in §§ 120.854 to 120.856 do not apply to those sections. SBA has added a new paragraph 120.856(f) which incorporates the concept of the deleted language to specify that the procedures in § 120.856 only apply to actions undertaken pursuant to § 120.855.

Section 120.861, job creation or retention, is revised (see discussion of revisions to § 120.829 for a description of the changes to the job requirement criteria and the comments received). The change in the criteria will be published in a **Federal Register** notice from time to time.

Section 120.862, other economic development objective, includes two technical changes. The first is the Agency-wide replacement of "SIC" codes with "NAICS" codes when identifying the types of small businesses eligible to receive SBA assistance. The second is to correct the cross-reference to the regulation that describes a minority for purposes of the public policy goal of assisting minority-owned businesses. The changes also reflect the statutory changes to section 501(d) of the Act, which added women-owned and veteran-owned businesses to the public policy goals.

Section 120.870, leasing project property, eliminates references to 504 project property being leased by the CDC to the borrower. Comments received suggested revising SBA's rules regarding leasing to be more flexible. SBA considered these comments to be beyond the scope of the proposed rule. Therefore, SBA is adopting § 120.870 as proposed.

SBA is changing the heading of § 120.871 to make the form consistent with other section headings.

Section 120.880, basic eligibility requirements, simplifies the regulation by replacing the actual size standards with a cross-reference to the size standard regulation. As the size standard regulations change, so will this regulation without requiring it to be re-written. Comments received were supportive of this change. Therefore, SBA is adopting § 120.880 as proposed.

Section 120.882, eligible project costs for 504 loans, clarifies eligible costs that may be included in 504 project costs. SBA received some comments on this regulation requesting clarification. For example, previously the regulation included accounting fees as a professional fee, but the proposed rule does not. SBA deliberately proposed to remove accounting fees because even though the regulation stated that only fees attributable to the project were to be included, borrowers were submitting as accounting costs fees charged by their accountant to prepare financial statements, which are a cost of doing business, not a project-related cost. The final rule retains this charge. Commenters were also concerned that certain items in the proposed rule were not project-related fees, such as hazard and flood insurance. SBA considered these concerns and agreed. Therefore, SBA is deleting hazard and flood insurance from the list of eligible project costs in § 120.822. Recording fees are eligible project costs, and are already covered in § 120.882(a), and therefore do not appear in § 120.882(c) in the final rule. Other comments were concerned that such fees as permit fees and utility hook-up fees were not included. SBA believes such fees are already covered by § 120.882(a), (b), and (d), which SBA did not propose to change. As a result of comments, SBA also deleted the reference to § 120.971(a)(2) which limits legal fees associated with a 504 loan and debenture closing. SBA was concerned that the limitation might be construed as also applying to legal fees that are part of eligible project costs. This rule adopts section § 120.882 as proposed except as discussed.

Section 120.883, eligible administrative costs for 504 loans, clarifies eligible administrative costs that may be paid from the proceeds of the 504 Loan and debenture. SBA received some comments on this proposed regulation that sought clarification. The comments objected to what was perceived as a stricter interpretation of eligible administrative costs for 504 loans than previously permitted. SBA intends this result, because administrative costs must be very limited in order to protect the government's lien position in the collateral. SBA's lien generally is in a second lien position behind a larger first lien securing the third party loan. The Act requires the borrower to contribute at least 10 percent towards the project costs (see section 502(3)(c) of the Act) . The calculation of the amount of SBA's share of the financing (up to a maximum of 40 percent) as well as the borrower's contribution is based on the total amount of project costs. Administrative costs were designed to permit the borrower to finance a limited number of specific fees above the project costs as part of the debenture financing that receives SBA's 100 percent guarantee. Every dollar of administrative cost that is included in the debenture increases SBA's exposure on the debenture and erodes the equity cushion provided by the borrower in the collateral. Therefore, it is SBA's intention that only the specific fees listed in the regulation be financed by the debenture and receive SBA's guaranty protection. Fees that are not eligible project costs or eligible administrative costs must be treated separately as a cost of doing business by the borrower. Accordingly, § 120.883 in the final rule refers to all of § 120.882, not just to § 120.882(c), to clarify that none of the fees that qualify as eligible project costs under § 120.882 may be included as administrative costs included in the debenture. This rule adopts § 120.883 as it was published in the proposed rule except as discussed.

Section 120.892 is revised to require a 504 loan borrower to provide to the CDC current financial statements within 120 days of 504 loan closing, instead of within 90 days. Comments received were supportive of this change. This rule adopts § 120.892 as proposed.

SBA is changing the headings of §§ 120.900 and 120.910 to make their form consistent with the other section headings in Subpart H.

Section 120.911, land contributions, makes a technical correction to the regulation by deleting the reference to CDCs. CDCs do not contribute land for a 504 loan.

Section 120.913, limitations on any SBIC contributions, clarifies the heading, and adds a cross-reference and clarifies the section.

Section 120.923, policies on subordination, changes the section heading and consolidates the current §§ 120.923 and 120.924.

Section 120.925, preferences, adds a cross-reference to another SBA regulation governing preferences.

Section 120.926, referral fee, modifies the current language by adding "reasonable" in describing the referral fee that a CDC may charge a third party lender. The changes also emphasize that neither the lender nor the CDC can charge this fee to the borrower. SBA received one comment that suggested that a CDC be permitted to charge a referral fee to a borrower. The commenter believes that it is in the best interest of a potential borrower that requires additional help in accessing capital to charge this fee directly to the borrowers. The commenter also stated that the inability to charge the fee to a borrower would be a disincentive to the CDC to find a lender for difficult or rural-based loans. SBA considered this comment but was not persuaded. SBA has observed that the fees permitted to be charged by a CDC to a borrower have generally been sufficient to reimburse a CDC for its services related to all aspects of a 504 financing. With the increase in choice among CDCs for a potential 504 borrower as a result of this rule, SBA believes the fees permitted to be charged to a borrower are sufficient incentive to CDCs to make financing available to all eligible and credit-worthy 504 borrowers.

Section 120.930, amount, eliminates the requirement that SBA must approve 504 loans between $25,000 and $50,000 on an exception basis. SBA does not believe that it ever has declined such a request. Comments received on §§ 120.900–120.930 were generally supportive. SBA is adopting § 120.900, § 120.910, § 120.911, § 120.913, § 120.923, § 120.925, § 120.926, and § 120.930 as they were proposed.

Section 120.931, 504 lending limits, increases the dollar amounts to reflect the changes to section 502(2) of the Act that became effective December 21, 2000. Comments received suggested that this section be adjusted automatically to reflect any changes established by Congress. SBA considered these comments but believes the suggestions are beyond the scope of the proposed rule. SBA is adopting § 120.931 as proposed.

Section 120.933, maturity, creates flexibility in debenture maturities. This will permit SBA to consider other maturities besides 10 and 20 years at some future date. SBA received comments regarding the proposed change that expressed concern regarding SBA's proposal to permit additional maturities. The comments suggested that this would "cause chaos in the funding markets" or "wreak havoc." SBA considered these comments and strongly disagrees. SBA notes that the home mortgage industry has expanded the number of maturities offered substantially to better serve the needs of home loan borrowers. While SBA has no immediate plans to make changes to the 10 and 20-year maturities now used, SBA believes it is important that the Agency has this flexibility in order to serve the changing needs of the small business community. Therefore, SBA is publishing the regulation as proposed to permit SBA greater flexibility in meeting the needs of the marketplace.

Section 120.934, collateral, clarifies the paragraph by rearranging and re-wording the sentences.

Section 120.935, changes the heading.

Section 120.936, subordination to CDC, is deleted. SBA believes that this regulation is a holdover from the former 501 and 502 programs. SBA knows of no instance when a CDC has requested a subordination on its 504 loans. Comments received were supportive of the changes to §§ 120.934–120.936. SBA adopts §§ 120.934, 120.935, and 120.936 as they were published in the proposed rule.

Section 120.960, responsibility for closing, describes the circumstances under which SBA can decline to close a debenture or cancel its guarantee of the debenture prior to sale. Several comments received suggested that the regulation gives too much unilateral authority to SBA. While the commenters did not suggest that SBA eliminate its right to review the debenture closing before the debenture sale, they did suggest that SBA would have too much discretion under this regulation as proposed, to decline to approve a debenture for sale. SBA considered these concerns and agrees that several changes are needed, which will make this section more consistent with SBA's long-standing practice in place for SBA-guaranteed 7(a) loans but without eliminating SBA's review of 504 loan and debenture closing prior to debenture sale. SBA has not proposed to, and does not in the final rule eliminate, this prior review by SBA, because of the significant differences between the 504 Program and the 7(a) program with regard to SBA's practice for determining SBA's liability under its guaranty. SBA believes it must have the discretion to take the actions set forth in § 120.960(c) in order to adequately protect SBA's guaranty of the debenture and minimize the credit risk to the entire 504 loan portfolio.

Section 120.524 describes the bases upon which SBA may be released from liability on its guaranty for 7(a) loans. SBA reviews the 7(a) lender's documentation after the 7(a) loan is closed and disbursed and usually only after a default. The purpose of the review is to determine whether SBA should honor its guaranty by granting a purchase request, seek a reduction in SBA's guaranty liability, deny liability in full or in part on SBA's guaranty, or seek recovery from the lender if the SBA has already purchased the loan from the secondary market holder or from the lender itself. The purchase review is a process that serves to minimize an erroneous payment by SBA, by ensuring that SBA purchases only those loans which were originated, closed, serviced and liquidated in accordance with the loan authorization, prudent lending standards, and SBA regulations and other requirements.

As discussed under § 120.848, currently there is no such purchase review process for 504 loans; SBA simply honors its guaranty to the debenture holder and generally does not seek recovery against the CDC for SBA's loss under the guaranty (although SBA has such regulatory authority). If a CDC were to close a 504 loan and debenture without SBA review, then SBA likely would need to create a new review process, to take place after SBA's purchase of the debenture upon default on the 504 loan, to ensure that the CDC had closed the 504 loan in accordance with the loan authorization, prudent lending standards and SBA regulations and other requirements, and if a deficiency were discovered, SBA would need to determine the extent to which SBA should seek recovery from the CDC for SBA's loss under its guaranty. SBA does not intend to implement such a process in the 504 Program at this time. For these reasons and based on recommendations from commenters, in the final rule SBA added the word "materially" to § 120.960(c)(1), to make it consistent with § 120.524(a)(1); and changed the phrase "a material adverse change" to "an unremedied material adverse change" to § 120.960(c)(7), to make it consistent with the terms of the 504 loan authorization. Other than these changes, § 120.960 is implemented as proposed.

Section 120.970, servicing of 504 loans and debentures, clarifies the regulation regarding a CDC's responsibility in servicing a 504 loan. Comments received on this regulation suggested that SBA establish a new borrower fee identified as a "default servicing fee." According to the commenters, the borrower would incur the fee if the borrower failed to comply with certain requirements such as submitting financial statements. Since the proposed rule did not propose this new fee to a borrower, this suggestion is beyond the scope of the proposed rule. Comments also suggested that § 120.970(c) was confusing because it seemed to suggest that the borrower, not the CDC, was responsible for filing renewals and extensions of security interests. SBA considered these comments and concurs. SBA has modified the rule to clarify that the CDC is responsible for filing renewals and extensions. This rule adopts § 120.970 as it was published in the proposed rule except as discussed.

Section 120.971, allowable fees paid by borrower, clarifies the language describing the loan closing fees that a CDC may charge. Comments received suggested a change to permit CDCs the ability to increase the servicing fee charged to an uncooperative borrower for issues such as not providing required statements of proof of insurance, evidence of tax payments or financial statements. SBA considered these comments but believe they are beyond the scope of this rulemaking. This rule adopts § 120.971 as proposed.

Section 120.972, third-party lender participation fee and CDC fee, revises the heading, deletes the language "from the Third Party Lender" from paragraph (a), and slightly clarifies paragraph (b). SBA may accept the third party lender participation fee from the third party lender, the 504 borrower, or the CDC. This final rule implements § 120.972 as proposed.

SBA is removing §§ 120.980–120.984. Comments received were supportive of these changes. This rule removes §§ 120.980–120.984.

## Compliance With Executive Orders 13132, 12988, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C., Ch. 35)

*Executive Order 13132:* For the purposes of Executive Order 13132, the SBA determined that this rule has no federalism implications warranting preparation of a federalism assessment.

*Executive Order 12988:* For purposes of Executive Order 12988, Civil Justice Reform, SBA determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in paragraph 3 of that Order.

*Executive Order 12866:* The Office of Management and Budget (OMB) has determined that this rule constitutes a significant regulatory action under Executive Order 12866, Regulatory Planning and Review. SBA received no comments regarding the Executive Order from the public. SBA believes there is a need for this regulatory action for the reasons stated in the preamble above. SBA believes these regulatory changes will improve 504 Program delivery to small business customers to increase customer choice of service; increase third party lender choice of CDCs; facilitate the formation of new CDCs; facilitate the expansion of existing CDCs; and increase the number of CDCs able to take advantage of special initiatives for rural areas. By allowing market-driven forces to determine availability of 504 Program service, small businesses will have greater opportunity to negotiate the best total financing package, including fees, as well as receive increased service by CDCs. In addition, the 504 Program will be more responsive to changes in market conditions. SBA believes that there are no viable alternatives to these changes that would produce similar positive results without imposing an additional burden on the SBA or the public.

In Fiscal Year (FY) 2002, OMB developed the Program Assessment Rating Tool (PART) to establish a systematic, consistent process for rating the performance of programs across the Federal government. The 504 Program was evaluated under the PART criteria in FY 2002. The PART review revealed that the SBA needs to increase the availability of CDCs within the 504 Program to improve customer access to loans. Additionally, increasing the availability of CDCs will enable borrowers to determine which of the SBA's loan programs best meet their needs. The SBA expects that this rule will address that recommendation from OMB. The OMB PART review on this program can be found at *http://www.whitehouse.gov/omb/budget/fy2004/pma/certifieddevelopment.pdf.*

The SBA does not have sufficient data to establish a baseline in order to measure the costs and benefits of this rule on the affected public. However, the SBA has data on the cost to SBA of the 504 Program. In FY2002, the cost of the 504 Program to SBA was approximately $15 million. The majority of the cost of the Program, 82 percent or $12.6 million, was for the cost of the field office staff support that reviewed and approved loan applications and conducted marketing and outreach to generate new loans. The cost of the 504 Program to the SBA also includes the cost of reviewing and analyzing CDC requests to expand their areas of operations by SBA's field office and Headquarters staff. The SBA would expect this cost to decline substantially as a result of this final rule because it permits all CDCs to operate at least throughout their State of incorporation. Other data on costs of the program can be found at *http://www.sba.gov/aboutsba/budgetplans.html.* Relevant information is provided on pages 23–24 of SBA's Budget Request and Performance Plan: Congressional Submission Fiscal Year 2004 and on pages 69–71 of SBA's Performance and Accountability Report Fiscal Year 2002.

*Regulatory Flexibility Act:* This rule directly affects all CDCs, of which there are approximately 270. SBA has determined that CDCs fall under the size standard for NAICS 522298, All Other Nondepository Credit Intermediaries. The size standard is $6 million in average annual receipts. SBA estimates that at least 95 percent of the CDCs do not exceed this size standard and are therefore considered small entities by this definition. Thus, SBA has determined that this rule will have an impact on a substantial number of small entities.

Even though SBA has determined that this rule will have an impact on a substantial number of small entities, SBA has determined that the impact will not be significant. SBA understands the concerns raised by some comments received that suggested that this rule may have a significant impact on many small and rural CDCs. Some comments expressed the concern that increased competition and reliance on market forces could lead to more decertifications of small and rural CDCs. Other commenters stated that small CDCs will not be able to compete in the new competitive environment this rule would create. For example, one stated concern is that larger CDCs would have an unfair advantage, and that small CDCs would be hurt by the new competition because many small CDCs will not have the resources necessary to access more profitable markets beyond their current area of operations while larger CDCs will access the more profitable markets of small and rural CDCs.

SBA considered these comments but continues to believe that the rule is not significant. SBA believes that the effect of this rule will be first to "level the playing field" by allowing CDCs more flexibility to choose the optimal area of operations within their State of incorporation. Currently, each CDC has a specific area of operations that is approved by SBA. The typical area of operations is several counties within the CDC's State of incorporation. If a CDC wishes to apply to expand into neighboring counties, it can only do so if those counties are available. A county is available to a new CDC or a CDC requesting to expand its area of operations if the CDC(s) that include that county in its area of operations is not meeting a threshold of one 504 approval per year per 100,000 population averaged over two years. If the existing CDC is meeting this threshold of activity, both an applicant wishing to become a CDC and a CDC wishing to expand its area of operations is barred from including that county in their request. This rule eliminates that threshold and permits all CDCs the opportunity to operate anywhere in their State of incorporation. This would allow CDCs in less lucrative areas to have access to the greater opportunities available in the more lucrative areas.

SBA believes that some CDCs will choose to continue to operate in those counties they presently operate in while others will choose to expand their market area into neighboring counties or throughout the State. It has been SBA's experience with CDCs that are permitted to compete with other CDCs in the same market area, that the market of eligible 504 projects itself expands, resulting in a benefit for the affected CDCs as well as a benefit to small business borrowers. A recent example was the approval of a large CDC into a small CDC's area of operations in the Midwest. As a consequence, a county in which there had been no 504 loan activity the prior year generated two 504 loans for the small CDC and three 504 loans for the large CDC.

SBA also believes that smaller, rural CDCs will derive a similar benefit by having a greater opportunity to meet the required 504 loan activity level. Since 1993, SBA has had to revoke certifications from more than 100 CDCs and transfer their 504 loan portfolios and fees to other, active CDCs due to their failure to meet the required 504 activity level of two 504 loan approvals per year averaged over two years. Most of these CDCs have been located in rural areas where there are a limited number of potential 504 projects. Competition with other, larger CDCs was not the reason why these rural CDCs could not meet the required loan volume. There was simply a lack of 504-eligible projects in the geographic area. This rule enables those small, rural CDCs the opportunity to expand their market area by doing projects in more populous areas, resulting in their more easily meeting the 504 loan activity level. The result will be that these CDCs will remain in the program and continue to be available locally to small businesses in the rural areas. At the same time, those CDCs that currently have exclusive areas that include populous urban areas resulting in substantial 504 loan activity may seek to expand their market areas into the less lucrative rural areas which will increase awareness of the program overall which may in turn be beneficial to the small, rural CDCs.

Finally, as stated previously, it has been SBA's experience that the more CDCs that market the 504 program in a particular area, the higher the 504 loan volume in that area. SBA believes that this is due to the additional marketing initiatives by the CDCs which creates an increased awareness of the 504 Program among the local lending community and improves their willingness to participate because they have a choice. SBA believes this increased awareness in the 504 Program can benefit small and rural CDCs even if they do not have the resources to increase their own marketing and outreach efforts. SBA also believes having multiple CDCs in the area improves the service provided by the CDCs, which also makes the 504 Program more useful to the local lending communities. As more and more lenders successfully use the program, they discuss it and provide information about it to other lenders which increases the impact of the marketing efforts of all CDCs serving the area. A similar phenomenon occurred in the lending industry. Over the years, lenders participating in SBA's 7(a) program have always been willing to come to lenders' meetings to describe their activity with other lenders. They do this because they recognize that as more people are aware of the program, the size of the market will increase, resulting in more overall loan activity for the lender.

This rule also permits new CDCs the opportunity to market in areas that may produce more 504 loans sooner. This in turn should permit the new CDC the ability to reach a breakeven point sooner in its operations and continue to meet the required 504 activity of two 504 approvals per year. Currently it is estimated that it takes a CDC at least two years at a cost of $200,000 or more to reach the 504 activity level where the 504 fee income covers the CDC's expenses. Very few of the new CDCs that SBA has certified in recent years have been able to remain viable. Allowing CDCs to market in multiple areas increases their ability to obtain customers.

To summarize, the expected results of this final rule are that CDCs (and existing and future 504 loan borrowers) will benefit because small, rural CDCs that currently struggle to meet the volume requirement will be retained, awareness of the 504 program among lenders will increase, new CDCs will have a greater opportunity to succeed, and borrowers will have more choice among CDCs.

In addition, SBA expects this rule will result in a reduction in the overall paperwork burden for CDCs since CDCs will no longer have to apply to SBA to expand their area of operations within their State of incorporation. SBA received and approved approximately 11 expansion requests during 2002. All were for CDCs requesting expansions into neighboring counties within the CDC's State of incorporation. The burden hours for a new CDC or a CDC wishing to expand to complete an application is estimated to be 10 hours. None of the applications for an expansion would have been necessary under this rule. In addition, applicants requesting to become CDCs also will be permitted to establish their optimal area of operations within their State of incorporation without being excluded from areas that currently have one or more CDCs. The SBA receives one or two applications to become a CDC per year. The burden hours for an application will be reduced by approximately one hour due to the changes in the general membership requirements that will allow an applicant more flexibility in meeting this requirement. The SBA believes that the economic impact of the reduction in paperwork, if any, will be minimal to small entities.

SBA also received comments expressing concern about the enforcement provisions and the perceived increased authority SBA would derive from the provisions. SBA disagrees that the new enforcement provisions will result in significant economic impact. Although SBA had proposed allowing the use of fees that CDCs receive to compensate SBA from financial losses resulting from improper CDC conduct, the final rule deletes this provision. SBA also has a history of fair and evenhanded use of enforcement authority in all of our lending, procurement, grant, and other assistance programs. CDCs are protected from unfair or biased enforcement of the rules through the notice and appeal procedures in the regulations.

Accordingly, SBA determines that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

*Paperwork Reduction Act:* For the purposes of the Paperwork Reduction Act, 44 U.S.C. Chapter 35, SBA has submitted two different reporting requirements to OMB for review: (1) the PCLP application and (2) the PCLP Loan Loss Reserve Fund (LLRF) reporting requirements. SBA received no comments from the public regarding these two information collections. SBA makes no changes to either of these information collections in this rule.

### A. Application

The PCLP application form is for the use of the 26 PCLP CDCs as provided in § 120.848(d). The application will allow SBA to collect the information it needs from the PCLP in order to extensively analyze the borrower's financing proposal, including information on the borrower's personal and business financial statements, cash flow projections, and related information to support an eligibility determination. Analysis of the application is activities are designed to control and limit the risk associated with the 504 Program and SBA's guaranty, but they do require significant SBA resources. SBA estimates the burden of this collection of information as follows: A PCLP CDC will complete these forms for each PCLP loan it processes. SBA estimates that the time needed to complete this collection is 45 minutes. SBA estimates that the cost to complete this collection will be approximately $20 per hour due to the clerical nature of most of the completion. Total estimated aggregated burden per annum is estimated to be approximately 700 hours per annum costing an aggregated $14,000 per year.

### B. LLRF Compliance Information

The LLRF Compliance form is for the use of the 26 PCLP CDCs as provided in § 120.847(f). The LLRF compliance information will document the PCLP CDC's meeting of the LLRF deposit requirements. This will require the PCLP CDC to keep track of the face amount of each PCLP debenture and then determine and record the amount that must be contributed into its LLRF. SBA estimates the burden of this collection of information one hour per PCLP debenture. PCLP debenture volume will vary significantly among participants. We expect that few PCLP CDCs will issue more than 50 PCLP debentures annually. That would mean an aggregate burden of no more than 50 hours per year. SBA estimates that the added cost would be minimal, because existing PCLP CDC support staff and ordinary bank records will cover the labor costs. At an estimate of $10 per hour, the reporting requirements would not likely exceed $500 per year for any PCLP CDC.

SBA created these information collections with the goal of collecting only the necessary information needed to successfully and efficiently operate the CDC program with minimal burden to the public.

### List of Subjects in 13 CFR Part 120

Loan Programs—business, Reporting and recordkeeping requirements, Small business.

■ For the reasons discussed in the preamble, SBA is amending 13 CFR part 120 as follows:

## PART 120—BUSINESS LOANS

■ 1. The authority citation for part 120 continues to read as follows:

**Authority:** 15 U.S.C. 634(b)(6), 636(a) and (h), 696(3) and 697(a)(2).

■ 2. Amend § 120.10 by adding a definition of "SOP" to read as follows:

* * * * *

*SOPs* are SBA Standard Operating Procedures, as issued and revised by SBA from time to time.

## Subpart A—Policies Applying to All Business Loans

■ 3. Revise the first sentence of the introductory text of § 120.140 to read as follows:

### § 120.140 What ethical requirements apply to participants?

Lenders, Intermediaries, and CDCs (in this section, collectively referred to as "Participants"), must act ethically and exhibit good character. * * *

* * * * *

## Subpart H—Development Company Loan Program (504)

■ 4. Revise the heading of § 120.800 to read as follows:

### § 120.800 The purpose of the 504 program.

* * * * *

■ 5. Revise the heading of § 120.801 to read as follows:

### § 120.801 How a 504 Project is financed.

* * * * *

■ 6. Amend § 120.802 by removing the definition of "Associate Development Company"; revising the definition of "Area of Operations"; adding definitions of "Designated Attorney", "Lead SBA Office", and "Priority CDC"; and revising the first sentence of the definition of "Local Economic Area", to read as follows:

### § 120.802 Definitions.

* * * * *

*Area of Operations* is the geographic area where SBA has approved a CDC's request to provide 504 program services to small businesses on a permanent basis. The minimum Area of Operations is the State in which the CDC is incorporated.

* * * * *

*Designated Attorney* is the CDC closing attorney that SBA has approved to close loans under an expedited closing process for a Priority CDC.

* * * * *

*Lead SBA Office* is the SBA District Office designated by SBA as the primary liaison between SBA and a CDC and with responsibility for managing SBA's relationship with that CDC.

*Local Economic Area* is an area, as determined by SBA, that is in a State other than the State in which an existing CDC (or an applicant applying to become a CDC) is incorporated, is contiguous to the CDC's existing Area of Operations (or the applicant's proposed Area of Operations) of its State of incorporation, and is a part of a local trade area that is contiguous to the CDC's Area of Operations (or applicant's proposed Area of Operations) of its State of incorporation. * * *

* * * * *

*Priority CDC* is a CDC certified to participate on a permanent basis in the 504 program (see § 120.812) that SBA has approved to participate in an expedited 504 loan and Debenture closing process.

* * * * *

■ 7. Revise § 120.810 to read as follows:

### § 120.810 Applications for certification as a CDC.

(a) An applicant for certification as a CDC must apply to the SBA District Office serving the jurisdiction in which the applicant has or proposes to locate its headquarters (see § 101.103 of this chapter).

(b) The applicant must apply for an Area of Operations. The applicant's proposed Area of Operations must include the entire State in which the applicant is incorporated, and may include Local Economic Areas. An applicant may not apply to cover an area as a Multi-State CDC.

(c) The applicant must demonstrate that it satisfies the CDC certification and operational requirements in §§ 120.820, and 120.822 through 120.824. The applicant also must include an operating budget, approved by the applicant's Board of Directors, which demonstrates the required financial ability (as described in § 120.825), and a plan to meet CDC operational requirements (without specializing in a particular industry) in §§ 120.821, and 120.826 through 120.830.

(d) The District Office will forward the application and its recommendation to the AA/FA, who will make the final decision. SBA will notify the CDC in writing of its decision, and, if the petition is declined, the reasons for the decision.

### § 120.811 [Removed]

■ 8. Remove § 120.811.

■ 9. Revise § 120.812 to read as follows:

### § 120.812 Probationary period for newly certified CDCs.

(a) Newly certified CDCs will be on probation for a period of two years from the date of certification, at the end of which the CDC must petition the Lead SBA Office for:

(1) Permanent CDC status; or

(2) A single, one-year extension of probation.

(b) SBA will consider the failure to file a petition before the end of the probationary period as a withdrawal from the 504 program. If the CDC elects withdrawal, SBA will direct the CDC to transfer all funded and/or approved loans to another CDC, SBA, or another servicer approved by SBA.

(c) The Lead SBA Office will send the petition and its recommendation to the AA/FA, who will make the final decision. SBA will determine permanent CDC status or an extension of probation, in part, based upon the CDC's compliance with the certification and operational requirements in §§ 120.820 through 120.830.

(d) SBA will notify the CDC in writing of its decision, and, if the petition is declined, the reasons for the decision.

■ 10. Revise § 120.820 to read as follows:

### § 120.820 CDC non-profit status and good standing.

A CDC must be a non-profit corporation, except that for-profit CDCs certified by SBA prior to January 1, 1987 may retain their certifications. An SBIC may not become a CDC. A CDC must be in good standing based upon the following criteria:

(a) In good standing in the State in which the CDC is incorporated and any other State in which the CDC conducts business.

(b) In compliance with all laws, including taxation requirements, in the State in which the CDC is incorporated and any other State in which the CDC conducts business.

■ 11. Revise § 120.821 to read as follows:

### § 120.821 CDC Area of Operations.

A CDC must operate only within its designated Area of Operations approved by SBA except as provided in § 120.839.

■ 12. Revise § 120.822 to read as follows:

### § 120.822 CDC membership.

(a) *CDC Membership.* A CDC must have at least 25 members (or stockholders for for-profit CDCs approved prior to January 1, 1987). The CDC membership must meet annually. No person or entity can own or control more than 10 percent of the CDC's voting membership (or stock). No employee or staff of the CDC can qualify as a member of the CDC for the purpose of meeting the membership requirements. The CDC membership must include representatives from all the groups listed in paragraph (b) of this section.

(b) *Membership groups.* Members must be responsible for actively supporting economic development in the Area of Operations and must be from one of the following groups:

(1) Government organizations responsible for economic development in the Area of Operations;

(2) Financial institutions that provide commercial long term fixed asset financing in the Area of Operations;

(3) Community organizations dedicated to economic development in the Area of Operations such as chambers of commerce, foundations, trade associations, colleges, universities, or small business development centers (as defined in section 21(a)(1) of the Act, 15 U.S.C. 648(a)(1)); and

(4) Businesses in the Area of Operations.

(c) A CDC that is incorporated in one State and is operating as a Multi-State CDC in another State must meet the membership requirements for each State.

■ 13. Amend § 120.823 by revising paragraph (b) to read as follows:

### § 120.823 CDC Board of Directors.

* * * * *

(b) If a CDC is incorporated in one State and is approved as a Multi-State CDC to operate in another State, the CDC must have a Loan Committee for each State.

■ 14. Amend § 120.824 by revising the third sentence in the introductory text and paragraph (a) to read as follows:

### § 120.824 Professional management and staff.

* * * CDCs may obtain, under written contract, management, marketing, packaging, processing, closing, servicing or liquidation services provided by qualified individuals and entities under the following circumstances:

(a) The CDC must have at least one salaried professional employee that is employed directly (not a contractor or an Associate of a contractor) full-time to manage the CDC. The CDC manager must be hired by the CDC's board of directors and subject to termination only by the board. A CDC may petition SBA to waive the requirement of the manager being employed directly if:

(1) Another non-profit entity that has the economic development of the CDC's Area of Operations as one of its principal activities will contribute the management of the CDC, and the management contributed by the other entity also may work on and operate that entity's economic development programs, but must be available to small businesses interested in the 504 program and to 504 loan borrowers during regular business hours; or

(2) The CDC petitioning SBA for such waiver is rural; has insufficient loan volume to justify having management employed directly by the CDC; and has contracted with another CDC located in the same general area to provide the management.

* * * * *

■ 15. Revise § 120.826 to read as follows:

### § 120.826 Basic requirements for operating a CDC.

A CDC must operate in accordance with all 504 program requirements imposed by statute, regulation, SOPs, SBA policy and procedural notices, loan authorizations, Debentures, and agreements between the CDC and SBA. In its Area of Operations, a CDC must market the 504 program, package and process 504 loan applications, close and service 504 loans, and if authorized by SBA, liquidate and litigate 504 loans. It must supply to SBA current and accurate information about all certification and operational requirements, and maintain the records and submit the reports required by SBA.

■ 16. Revise § 120.827 to read as follows:

### § 120.827 Other services a CDC may provide to small businesses.

A CDC may provide a small business with assistance unrelated to the 504 loan program as long as the CDC does not make such assistance a condition of the CDC accepting from that small business an application for a 504 loan. An example of other services a CDC may provide is assisting a small business in applying for a 7(a) loan (as described in § 120.2). A CDC is subject to part 103 of this chapter when providing such assistance.

■ 17. Revise § 120.828 to read as follows:

### § 120.828 Minimum level of 504 loan activity and restrictions on portfolio concentrations.

(a) A CDC is required to receive SBA approval of at least four 504 loan approvals during two consecutive fiscal years.

(b) A CDC's 504 loan portfolio must be diversified by business sector.

■ 18. Amend § 120.829 by revising paragraph (a) to read as follows:

### § 120.829 Job Opportunity average a CDC must maintain.

(a) A CDC's portfolio must maintain a minimum average of one Job Opportunity per an amount of 504 loan funding that will be specified by SBA from time to time in a **Federal Register** notice. Such Job Opportunity average remains in effect until changed by subsequent **Federal Register** publication. A CDC is permitted two years from its certification date to meet this average.

* * * * *

■ 19. Revise paragraphs (a) and (b) of, and add a new paragraph (g) to § 120.830 to read as follows:

### § 120.830 Reports a CDC must submit.

* * * * *

(a) An annual report within 180 days after the end of the CDC's fiscal year (to include financial statements of the CDC and any affiliates or subsidiaries of the CDC), and such interim reports as SBA may require;

(b) For each new associate and staff, a Statement of Personal History (for use by non-bank lenders and CDCs) and other information required by SBA;

* * * * *

(g) Other reports as required by SBA.

■ 20. Revise § 120.835 to read as follows:

### § 120.835 Application to expand an Area of Operations.

(a) *General.* A CDC that has been certified to participate in the 504 program may apply to expand its Area of Operations if it meets all requirements to be an Accredited Lender Program (ALP) CDC, as set forth in § 120.840(c), and demonstrates that it can competently fulfill its 504 program responsibilities in the proposed area.

(b) *Local Economic Area Expansion.* A CDC seeking to expand its Area of Operations into a Local Economic Area must apply in writing to the Lead SBA Office.

(c) *Multi-State CDC Expansion.* A CDC seeking to become a Multi-State CDC must apply to the SBA District Office that services the area within each State where the CDC intends to locate its principal office for that State. A CDC may apply to be a Multi-State CDC only if:

(1) The State the CDC seeks to expand into is contiguous to the State of the CDC's incorporation;

(2) The CDC demonstrates that its membership meets the requirements in § 120.822 separately for its State of incorporation and for each additional State in which it seeks to operate as a Multi-State CDC; and

(3) The CDC has a loan committee meeting the requirements of § 120.823.

### § 120.836 [Removed]

■ 21. Remove § 120.836.

■ 22. Amend § 120.837 by revising paragraph (b) and adding a new paragraph (c) to read as follows:

### § 120.837 SBA decision on application to become a new CDC or for an existing CDC to expand its Area of Operations

* * * * *

(b) SBA will notify the CDC of its decision in writing, and if the application is denied, the reasons for its decision.

(c) If a CDC is approved to operate as a Multi-State CDC, the CDC's ALP, PCLP, or Priority CDC authority will carry over into every additional State in which it is approved to operate as a Multi-State CDC.

### § 120.838 [Removed]

■ 23. Remove § 120.838.

■ 24. Revise § 120.839 to read as follows:

### § 120.839 Case-by-case application to make a 504 loan outside of a CDC's Area of Operations.

A CDC may apply to make a 504 loan for a Project outside its Area of Operations to the District Office serving the area in which the Project will be located. The applicant CDC must demonstrate that it can adequately fulfill its 504 program responsibilities for the 504 loan, including proper servicing. The District Office may approve the application if:

(a) The applicant CDC has previously assisted the business to obtain a 504 loan; or

(b) The existing CDC or CDCs serving the area agree to permit the applicant CDC to make the 504 loan; or

(c) There is no CDC within the Area of Operations.

■ 25. Revise § 120.840 to read as follows:

### § 120.840 Accredited Lenders Program (ALP).

(a) *General.* Under the ALP program, SBA designates qualified CDCs as ALP CDCs, gives them increased authority to process, close, and service 504 loans, and provides expedited processing of loan approval and servicing actions.

(b) *Application.* A CDC must apply for ALP status to the Lead SBA Office. The Lead SBA Office will send its recommendation and the application to the AA/FA for final decision.

(c) *Eligibility.* In order for a CDC to be eligible to receive ALP status, its application must show that it meets the criteria set forth in § 120.841.

(d) *Additional application requirements.* The CDC's application must include the following:

(1) Certified copy of the CDC's Board of Directors' resolution authorizing the application for ALP status.

(2) Summary of the experience of each of the CDC's loan processing, closing, and servicing staff members with significant authority.

(3) Name, address, and summary of experience of Designated Attorney.

(4) Documentation of any SBA required insurance.

(5) Any other documentation required by SBA.

(e) *Term of ALP designation.* SBA generally will designate a CDC as an ALP CDC for a two-year period. SBA may renew the designation for additional two-year periods if the CDC continues to meet the ALP program eligibility requirements.

(f) *SBA approval or decline decision.* SBA will notify the CDC in writing of an approval or decline of either an ALP application or of an ALP renewal. If the SBA approves the CDC's application, the ALP CDC may exercise its ALP authority in its entire Area of Operations. If an application or renewal is declined, SBA will notify the CDC of the reasons for the decision.

■ 26. Add a new § 120.841 to read as follows:

### § 120.841 Qualifications for the ALP.

An applicant for ALP status must show that it substantially meets the following criteria:

(a) *CDC staff experience.* The CDC's staff must have well-trained, qualified loan officers who are knowledgeable concerning SBA's lending policies and procedures for the 504 program. The CDC must have at least one loan officer with three years of 504 loan processing experience and at least one loan officer with three years of 504 servicing experience or two years experience plus satisfactory completion of SBA-approved processing and servicing training. The same loan officer may meet these qualifications. In addition, the CDC's staff must have demonstrated satisfactorily to SBA the ability to process and service 504 loans.

(b) *Number of 504 loans approved and size of portfolio.* SBA must have approved at least 20 504 loan applications by the CDC in the most recent three years, and the CDC must have a portfolio of at least 30 active 504 loans. (An "active" 504 loan is a loan that was approved and closed by the CDC and has a status of either current, delinquent, or in liquidation.)

(c) *Current reviews in compliance.* SBA-conducted oversight reviews must be current (within past 12 months) for applicants for ALP status, and these reviews must have found the CDC to be in compliance with 504 program requirements imposed by statute, regulation, SOPs, policy and procedural notices, loan authorizations, Debentures, and agreements between the CDC and SBA.

(d) *Record of compliance with 504 program requirements.* The CDC must have a record of conforming to SBA's policies and procedures and of satisfactorily underwriting, closing and servicing 504 loans. SBA will consider all relevant material information, which will include but is not limited to whether the CDC meets all SBA's CDC portfolio benchmarks, when determining the CDC's record of compliance, including:

(1) Submission of satisfactory 504 loan analyses and applications, and all required, and properly completed, loan documents.

(2) Careful and thorough analysis and screening of all 504 loan applications for conformance with SBA credit and eligibility standards;

(3) Proper completion of required 504 loan closing documents and compliance with SBA 504 loan closing policies and procedures.

(4) Compliance with SBA loan servicing policies and procedures.

(5) Compliance with the certification and operational requirements as set forth in §§ 120.820 through 120.830.

(6) Submission of timely, complete and acceptable annual reports.

(7) Compliance with CDC ethical requirements (see § 120.851).

(e) *Priority CDC.* The CDC must be a Priority CDC with a Designated Attorney and SBA required insurance.

(f) *Record of Cooperation.* The CDC must have a record of effective communication and a cooperative relationship with all SBA offices including district offices and SBA's loan processing and servicing centers.

■ 27. Revise § 120.845 to read as follows:

### § 120.845 Premier Certified Lenders Program (PCLP).

(a) *General.* Under the PCLP, SBA designates qualified CDCs as PCLP CDCs and delegates to them increased authority to process, close, service, and liquidate 504 loans. SBA also may give PCLP CDCs increased authority to litigate 504 loans.

(b) *Application.* A CDC must apply for PCLP status to the Lead SBA Office. The Lead SBA Office will send its written recommendation and the application to SBA's PCLP Loan Processing Center, which will review these materials and forward them with a recommendation to the AA/FA for final decision.

(c) *Eligibility.* In order for a CDC to be eligible to receive PCLP status, its application must show that it meets the following criteria:

(1) The CDC must be an ALP CDC in substantial compliance with 504 program requirements imposed by statute, regulation, SOP, policy and procedural notices, Debentures, loan authorizations, and any agreement between SBA and the CDC or meet the criteria to be an ALP CDC set forth in § 120.841(a) through (h).

(2) The CDC can adequately comply with SBA liquidation and litigation requirements.

(d) *Additional application requirements.* The application must include the following:

(1) Certified copy of the CDC's Board of Directors' resolution authorizing the application for PCLP status.

(2) Summary of the experience of each of the CDC's loan processing, closing, servicing and liquidation staff members with significant authority.

(3) Name, address and summary of experience of Designated Attorney.

(4) Documentation of any SBA required insurance.

(5) Any other documentation required by SBA.

(e) *Term of designation.* If approved, SBA generally will confer PCLP status for a period of two years. However, if SBA deems it appropriate, it may confer PCLP status for a period of less than two years.

(f) *Area of Operations for PCLP CDCs.* If the SBA approves the CDC's application, the PCLP CDC may exercise its PCLP authority in its entire Area of Operations.

(g) *SBA approval or decline decision.* SBA will notify the CDC in writing of an approval or decline of a PCLP application. If an application is declined, SBA will notify the CDC of the reasons for the decision.

■ 27a. Add §§ 120.846 through 120.848 to read as follows:

### § 120.846 Requirements for maintaining and renewing PCLP status.

(a) To maintain its status as a PCLP CDC, a CDC must continue to:

(1) Meet the PCLP eligibility requirements in § 120.845 .

(2) Timely conform with all requirements and deadlines set forth in SBA's regulations and policy and procedural guidance concerning properly establishing, funding and reporting a PCLP Loan Loss Reserve Fund (LLRF).

(3) Substantially comply with all 504 program requirements imposed by statute, regulation, SOPs, policy and procedural notices, loan authorizations, Debentures, and agreements between the CDC and SBA.

(4) Remain an active CDC.

(5) In accordance with statutory requirements set forth in section 508(i) of Title V, 15 U.S.C. 697e(i), establish a goal of processing at least 50 percent of its 504 loans using PCLP procedures.

(b) SBA will notify the PCLP CDC in writing of a renewal or non-renewal of PCLP status. If PCLP status is not renewed, SBA will notify the CDC of the reasons for the decision.

### § 120.847 Requirements for the Loan Loss Reserve Fund (LLRF).

(a) *General.* PCLP CDCs must establish and maintain a LLRF (or multiple accounts which together constitute one LLRF) which complies with paragraphs (b) through (g) of this section. A PCLP CDC must use the LLRF or other funds to reimburse the SBA for 10 percent of any loss sustained by SBA as a result of a default in the payment of principal or interest on a Debenture it issued under the PCLP ("PCLP Debenture"). A CDC that is participating in the PCLP as of January 1, 2004, and a CDC that has participated in the PCLP in the past but which does not have PCLP status as of that date, must establish a LLRF within 30 days of that date to cover potential losses for all 504 loans made in connection with PCLP Debentures that remain outstanding as of that date. A CDC that receives PCLP status after that date must establish and maintain a LLRF prior to closing any 504 loans processed under its PCLP status. The LLRF is the accumulation of deposits that a PCLP CDC must establish and maintain for each PCLP Debenture that it issues. PCLP CDCs must coordinate with their Lead SBA Office to ensure that the LLRF is properly established, that all necessary documentation is executed and delivered by all parties in a timely fashion, and that all required deposits are made.

(b) *PCLP CDC Exposure and LLRF deposit requirements.* A PCLP CDC's "Exposure" is defined as its reimbursement obligation to SBA with respect to default in the payment of any PCLP Debenture. The amount of a PCLP CDC's Exposure is 10 percent of any loss (including attorney's fees; litigation costs; and care of collateral, appraisal and other liquidation costs and expenses) sustained by SBA as a result of a default in the payment of principal or interest on a PCLP Debenture. For each PCLP Debenture a PCLP CDC issues, it must establish and maintain an LLRF equal to one percent of the original principal amount (the face amount) of the PCLP Debenture. The amount the PCLP CDC must maintain in the LLRF for each PCLP Debenture remains the same even as the principal balance of the PCLP Debenture is paid down over time.

(c) *Establishing a LLRF.* The LLRF must be a deposit account (or accounts) with a federally insured depository institution selected by the PCLP CDC. A "deposit account" is a demand, time, savings, or passbook account, including a certificate of deposit (CD) which is either uncertificated or, if certificated, non-transferable. A "deposit account" is not an investment account and must not contain securities or other investment properties. A deposit account may contain only cash and CDs credited to that account. A PCLP CDC may pool its deposits for multiple PCLP Debentures in a single account in one institution. The LLRF must be segregated from the PCLP CDC's other operating accounts. The PCLP CDC is responsible for all fees, costs and expenses incurred in connection with establishing, managing and maintaining the LLRF, including fees associated with transferring funds or early withdrawal of CDs, and related income tax expenses.

(d) *Creating and perfecting a security interest in a LLRF.* A PCLP CDC must give SBA a first priority, perfected security interest in the LLRF to secure the PCLP CDC's obligation to reimburse SBA for the PCLP CDC's Exposure under all of its outstanding PCLP Debentures. (If a PCLP CDC's LLRF is comprised of multiple deposit accounts, it must give SBA this security interest with respect to each such account.) The PCLP CDC must grant to SBA the security interest in the LLRF pursuant to a security agreement between the PCLP CDC and SBA, and a control agreement between the PCLP CDC, SBA, and the applicable depository institution. The control agreement must include provisions requiring the depository institution to follow SBA instructions regarding withdrawal from the account without a requirement for obtaining further consent from the PCLP CDC, and must restrict the PCLP CDC's ability to make withdrawals from the account without SBA consent. When establishing the LLRF, a PCLP CDC must coordinate with its Lead SBA Office to execute and deliver the required documentation. The PCLP CDC must provide to the Lead SBA Office a fully executed original of the security and control agreements. All documents must be satisfactory to SBA in both form and substance.

(e) *Schedule for contributions to a LLRF.* The PCLP CDC must contribute to the LLRF the required deposits for each PCLP Debenture in accordance with the following schedule:

(1) At least 50 percent of the required deposits to the LLRF on or about the date that it issues the PCLP Debenture.

(2) At least an additional 25 percent of the required deposits to the LLRF no later than one year after it issues the PCLP Debenture.

(3) Any remainder of the required deposits to the LLRF no later than two years after it issues the PCLP Debenture.

(f) *LLRF reporting requirements.* Each PCLP CDC must periodically report to SBA the amount in the LLRF in a form that will readily facilitate reconciliation of the amount maintained in the LLRF with the amount required to meet a PCLP CDC's Exposure for its entire portfolio of PCLP Debentures.

(g) *Withdrawal of excess funds.* Interest and other funds in the LLRF that exceed the required minimums as set forth in paragraph (b) of this section, within the time frames set forth in paragraph (e) of this section, accrue to the benefit of the PCLP CDC. PCLP CDCs are authorized to withdraw excess funds, including interest, from the LLRF if such funds exceed the required minimums set forth in paragraph (b) of this section. The PCLP CDC must forward requests for withdrawals to the Lead SBA Office, which will verify the existence and amount of excess funds and notify the financial institution to transfer the excess funds to the PCLP CDC.

(h) *Determining SBA loss.* When a PCLP CDC has concluded the liquidation of a defaulted 504 loan made with the proceeds of a PCLP Debenture and has submitted a liquidation wrap-up report to SBA, or when SBA otherwise determines that the PCLP CDC has exhausted all reasonable collection efforts with respect to that 504 loan, SBA will determine the amount of the loss to SBA. SBA will notify the PCLP CDC of the amount of its reimbursement obligation to SBA (if any) and will explain how SBA calculated the loss.

(1) If the PCLP CDC agrees with SBA's calculations of the loss, it must reimburse SBA for ten percent of the amount of that loss no later than 30 days after SBA's notification to the PCLP CDC of the CDC's reimbursement obligation.

(2) If the PCLP CDC disputes SBA's calculations, it must reimburse SBA for ten percent of any loss amount that is not in dispute no later than 30 days after SBA's notification to the PCLP CDC of the CDC's reimbursement obligation. No later than 30 days after SBA's notification, the PCLP CDC may submit to the AA/FA or his or her delegate a written appeal of any disagreement regarding the calculation of SBA's loss. The PCLP CDC must include with that appeal an explanation of its reasons for the disagreement. Upon the AA/FA's final decision as to the disputed amount of the loss, the PCLP CDC must promptly reimburse SBA for ten percent of that amount.

(i) *Reimbursing SBA for loss.* A PCLP CDC may use funds in the LLRF or other funds to reimburse SBA for the PCLP CDC's Exposure on a defaulted PCLP Debenture. If a PCLP CDC does not satisfy the entire reimbursement obligation within 30 days after SBA's notification to the PCLP CDC's of its reimbursement obligation, SBA may cause funds in the LLRF to be transferred to SBA in order to cover the PCLP CDC's Exposure, unless the PCLP CDC has filed an appeal under paragraph (h)(2) of this section. If the PCLP CDC has filed such an appeal, SBA may cause such a transfer of funds to SBA 30 days after the AA/FA's or his or her delegate's decision. If the LLRF does not contain sufficient funds to reimburse SBA for any unpaid Exposure with respect to any PCLP Debenture, the PCLP CDC must pay SBA the difference within 30 days after demand for payment by SBA.

(j) *Insufficient funding of LLRF.* A PCLP CDC must diligently monitor the LLRF to ensure that it contains sufficient funds to cover its Exposure for its entire portfolio of PCLP Debentures. If, at any time, the LLRF does not contain sufficient funds, the PCLP CDC must, within 30 days of the earlier of the date it becomes aware of this deficiency or the date it receives notification from SBA of this deficiency, make additional contributions to the LLRF to make up this difference.

### § 120.848 Requirements for 504 loan processing, closing, servicing, liquidating, and litigating by PCLP CDCs.

(a) *General.* In processing, closing, servicing, liquidating and litigating 504 loans under the PCLP ("PCLP Loans"), the PCLP CDC must comply with 504 program requirements imposed by statute, regulation, SOPs, policy and procedural notices, loan authorizations, Debentures, and agreements between the CDC and SBA and in accordance with prudent and commercially reasonable lending standards.

(b) *Documentation of decision making.* For each PCLP Loan, the PCLP CDC must document in its files the basis for its decisions with respect to loan processing, closing, servicing, liquidating, and litigating.

(c) *Processing requirements.* SBA expects PCLP CDCs to handle most 504 loan processing situations, although SBA may require that the PCLP CDC process 504 loans involving complex or problematic eligibility issues through the SBA using standard 504 loan processing procedures. The PCLP CDC is responsible for properly determining borrower creditworthiness and establishing the terms and conditions under which the PCLP Loan will be made. The PCLP CDC also is responsible for properly undertaking such other processing actions as SBA may delegate to the PCLP CDC.

(d) *Submission of loan documents.* A PCLP CDC must notify SBA of its approval of a 504 loan by submitting to SBA's PCLP Loan Processing Center all documentation required by SBA, including SBA's PCLP eligibility checklist, signed by an authorized representative of the PCLP CDC. The PCLP Loan Processing Center will review these documents to determine whether the PCLP CDC has identified any problems with the PCLP Loan approval, and whether SBA funds are available for the PCLP Loan. If appropriate, the PCLP Processing Center will notify the PCLP CDC of the loan number assigned to the loan.

(e) *Loan and Debenture closing.* After receiving notification from SBA PCLP Loan Processing Center, the PCLP CDC is responsible for properly undertaking all actions necessary to close the PCLP Loan and Debenture in accordance with the expedited loan closing procedures applicable to a Priority CDC and with § 120.960.

(f) *Servicing, liquidation and litigation responsibilities.* The PCLP CDC generally must service, liquidate and litigate its entire portfolio of PCLP Loans, although SBA may in certain circumstances elect to handle such duties with respect to a particular PCLP Loan or Loans.

(g) *Making a 504 loan previously considered by another CDC.* A PCLP CDC also may utilize its PCLP status to process a 504 loan application from an applicant whose application was declined or rejected by another CDC operating in that same Area of Operations, if the applicant is located within that area and as long as SBA has not previously declined that applicant's 504 loan application. This may include the processing of a 504 loan application from an applicant that has withdrawn its application from another CDC.

■ 28. Revise § 120.850 to read as follows:

### § 120.850 Expiration of Associate Development Company designation.

The designation of Associate Development Company (ADC) will cease to exist on January 1, 2004. After that date, former ADCs may continue to contract with CDCs as Lender Service Providers (see part 103 of this chapter) or to perform other services.

■ 29. Add a new undesignated center heading before § 120.851 to read as follows:

## Other CDC Requirements

■ 30. Revise § 120.851 to read as follows:

### § 120.851 CDC ethical requirements.

CDCs and their Associates must act ethically and exhibit good character.

They must meet all of the ethical requirements of § 120.140. In addition, they are subject to the following:

(a) Any benefit flowing to a CDC's Associate or his or her employer from activities as an Associate must be merely incidental (this requirement does not prevent an Associate or an Associate's employer from providing interim financing as described in § 120.890 or Third Party Loans as described in § 120.920, as long as such activity does not violate § 120.140); and

(b) A CDC's Associate may not be an officer, director, or manager of more than one CDC.

■ 31. Revise § 120.852 to read as follows:

### § 120.852 Restrictions regarding CDC participation in the Small Business Investment Company (SBIC) program and the 7(a) loan program.

(a) *7(a) loan program.* A CDC must not invest in or be an Affiliate of a Lender participating in the 7(a) loan program described in § 120.2(a). (For a definition of Affiliation, refer to § 121.103 of this chapter.) CDCs that already are affiliated with state development companies approved by SBA under section 501 of Title V, as of November 6, 2003 may remain Affiliates.

(b) *SBIC program.* A CDC must not directly or indirectly invest in a Licensee (as defined in § 107.50 of this chapter) licensed by SBA under the SBIC program authorized in Part A of Title III of the Small Business Investment Act, 15 U.S.C. 681 *et seq.* A CDC that has an SBA-approved investment in a Licensee as of November 6, 2003 may retain such investment.

■ 32. Redesignate § 120.973 as § 120.853 and revise redesignated § 120.853 to read as follows:

### § 120.853 Oversight and evaluation of CDCs.

SBA may conduct an operational review of a CDC. The SBA Office of Inspector General may also conduct, supervise or coordinate audits pursuant to the Inspector General Act. The CDC must cooperate and make its staff, records, and facilities available.

■ 33. Add a new undesignated center heading immediately preceding new § 120.853 to read as follows:

## SBA Oversight

### § 120.855 [Removed]

■ 34. Remove § 120.855.

■ 35. Add §§ 120.854 through 120.856 to read as follows:

### § 120.854 Grounds for taking enforcement action against a CDC.

(a) *General.* The AA/FA or his or her authorized delegate may undertake one or more of the enforcement actions set forth in §§ 120.855(a) and (b) with respect to a CDC, based upon a determination that one or more of the following grounds exist:

(1) The CDC has failed to receive SBA approval for at least four 504 loans during two consecutive fiscal years;

(2) The CDC has failed to comply materially with any requirement imposed by statute, regulation, SOP, policy and procedural notice, any agreement the CDC has executed with SBA, or the terms of a Debenture or loan authorization.

(3) The CDC has made a material false statement or has failed to disclose a material fact to SBA:

(i) With respect to a 504 loan;

(ii) In applying to SBA for authority to participate in the 504 program or for any change in the CDC's participation in the 504 program; or

(iii) In any report or other disclosure of information that SBA requires.

(4) The CDC is not performing underwriting, closing, servicing, liquidation, litigation, or other actions with respect to 504 loans in a commercially reasonable or prudent manner. Supporting evidence of a CDC's commercially unreasonable or imprudent action may include, but is not limited to, failure to meet one or more of the portfolio benchmarks.

(5) The CDC fails to correct an underwriting, closing, servicing, liquidation, litigation, or reporting deficiency, or fails to take other corrective action, after receiving notice from SBA of a deficiency and the need to take corrective action, if any, within the time period specified in SBA's notice of deficiency. Such a notice must give the CDC a reasonable time, as determined by SBA in its sole discretion, to correct the deficiency.

(6) The CDC has engaged in a pattern of uncooperative behavior or taken an action that SBA determines is deleterious to the 504 program, that undermines SBA's management and administration of the 504 program, or that is not consistent with standards of good conduct. Prior to issuing a notice of a proposed enforcement action or immediate suspension under § 120.855(a) or § 120.855(b) based upon this paragraph, SBA must send prior written notice to the CDC explaining why the CDC's actions were uncooperative, deleterious to the program, undermined SBA's management of the program, or were not consistent with standards of good conduct. The prior notice must also state that the CDC's actions could give rise to a specified enforcement action, and provide the CDC with a reasonable time to cure the deficiency before any further action is taken.

(b) *ALP CDCs.* The AA/FA or his or her authorized delegate may undertake one of the enforcement actions set forth in § 120.855(c) with respect to a CDC, based upon a determination that one or more of the following grounds exist:

(1) The CDC has not continued to meet the criteria for eligibility under section 507(b) of Title V, 15 U.S.C. 697d.

(2) The CDC has failed to adhere to the SBA's rules and regulations or is violating any other applicable provision of law.

(c) *PCLP CDCs.* The AA/FA or his or her authorized delegate may undertake one of the enforcement actions set forth in § 120.855(d) with respect to a CDC, based upon a determination that one or more of the following grounds exist:

(1) The CDC has not continued to meet the criteria for eligibility under section 508(b) of Title V, 15 U.S.C. 697e.

(2) The CDC has not established or maintained the loss reserve required under this paragraph (c).

(3) The CDC has failed to adhere to the SBA's rules and regulations.

(4) The CDC is violating any other applicable provision of law.

### § 120.855 Types of enforcement actions.

(a) *Enforcement.* Upon a determination that one or more of the grounds set forth in § 120.854(a) exist, the AA/FA or his or her authorized delegate may undertake, in SBA's sole discretion, one or more of the following enforcement actions:

(1) Suspend or terminate the CDC's authority to participate in the 504 program or in any pilot or program within the 504 program established by SBA other than a CDC's authority to participate as an ALP CDC or PCLP CDC, which are governed by paragraphs (c) and (d) of this section.

(2) Suspend or terminate the CDC's authority to perform underwriting, closing, servicing, liquidation, or litigation on one or more 504 loans or to perform any other function in connection with the 504 program.

(3) Require the CDC to transfer some or all of its existing 504 loan portfolio and/or some or all of its pending 504 loan applications to SBA, another CDC, or any other entity designated by SBA. Any such transfer may be on a temporary or permanent basis, in SBA's sole discretion.

(4) Instruct the CSA to withhold payment of servicing, late and/or other fee(s) to the CDC.

(b) *Immediate suspension.* If SBA determines that one or more grounds set forth in § 120.854(a) exist and further determines that immediate action is necessary to prevent the risk of significant loss to SBA or to prevent significant impairment of the integrity of the 504 program, the AA/FA may issue a written notice of immediate suspension to a CDC, suspending all or certain activities of a CDC pertaining to the 504 program, and such suspension will be effective as of the date of the notice. SBA may combine a notice of immediate suspension with any enforcement action set forth in paragraphs (a), (c) or (d) of this section.

(c) *Suspension or termination of ALP CDC.* Upon a determination that one or more of the grounds set forth in § 120.854(b) exist, the AA/FA or his or her authorized delegate may, in SBA's sole discretion, suspend or terminate a CDC's authority to participate as an ALP CDC.

(d) *Suspension or termination of PCLP CDC.* Upon a determination that one or more of the grounds set forth in § 120.854(c) exist, the AA/FA or his or her authorized delegate may, in SBA's sole discretion, suspend or terminate a CDC's authority to participate as a PCLP CDC.

(e) *Term of suspension.* Any suspension issued under this section will be for a term determined by SBA in its sole discretion.

**§ 120.856 Enforcement procedures.**

(a) *SBA's notice to CDC of enforcement action.* (1) Prior to undertaking an enforcement action set forth in § 120.855(a), (c) or (d) the AA/FA or his or her authorized delegate must issue a written notice to the affected CDC identifying the proposed enforcement action, setting forth in reasonable detail the underlying facts and reasons for the proposed action and, if a suspension also is proposed, stating the term of the proposed suspension.

(2) If the AA/FA or his or her authorized delegate undertakes an immediate suspension pursuant to § 120.855(b), he or she must issue a written notice to the affected CDC identifying the scope and term of the suspension, and setting forth in reasonable detail the underlying facts and reasons for the proposed action.

(3) If a proposed enforcement action or immediate suspension is based upon information obtained from a party other than the CDC or SBA, SBA's notice of proposed action or immediate suspension will provide copies of documentation received from such third party, or the name of the third party in case of oral information, unless SBA determines that there are compelling reasons not to provide such information. If compelling reasons exist, SBA will provide a summary of the information it received to the CDC.

(b) *CDC's opportunity to object.* (1) A CDC that desires to contest a proposed enforcement action or an immediate suspension must file, within 30 calendar days of its receipt of the notice or within some other term established by SBA in its notice, a written objection with the AA/FA or other SBA official identified in the notice. Notice will be presumed to have been received within five days of the date of the notice unless the CDC can provide compelling evidence to the contrary.

(2) The objection must set forth in detail all grounds known to the CDC to contest the proposed action or immediate suspension and all mitigating factors, and must include documentation that the CDC believes is most supportive of its objection. A CDC must exhaust this administrative remedy in order to preserve its objection to a proposed enforcement action or an immediate suspension.

(3) If a CDC can show legitimate reasons why it does not understand the reasons given by SBA in its notice of the action, the CDC may request clarification from the Agency. SBA will provide the requested clarification in writing to the CDC or notify the CDC in writing that such clarification is not necessary. SBA, in its sole discretion, will further advise in writing whether the CDC may have additional time to present its objection to the notice.

(4) A CDC may request additional time to respond to SBA's notice if it can show that there are compelling reasons why it is not able to respond within the 30-day timeframe or timeframe given by the notice for response. If such a request is submitted to the Agency, SBA may, in its sole discretion, provide the CDC with additional time to respond to the notice of proposed action or immediate suspension.

(5) Prior to the issuance of a final decision by SBA under § 120.856(c), if a CDC can show that there is newly discovered material evidence which, despite the CDC's exercise of due diligence, could not have been discovered within the timeframe given by SBA to respond to a notice, or that there are compelling reasons beyond the CDC's control why it was not able to present a material fact or argument to the AA/FA or other deciding SBA official in its objection, and that the CDC has been prejudiced by not being able to present such information, the CDC may submit such information to SBA and request that the Agency consider such information in its final decision.

(c) *SBA's decision on CDC's objection to proposed action.* (1) If the affected CDC files a timely written objection to a proposed enforcement action, the AA/FA or his or her authorized delegate must issue a written notice of decision to the affected CDC advising whether SBA is undertaking the proposed enforcement action setting forth the grounds for the decision. SBA will issue such a notice of decision whenever it deems appropriate.

(2) If the affected CDC files a timely written objection to a notice of immediate suspension, the AA/FA or his or her authorized delegate must issue a written notice of final decision to the affected CDC within 90 days of receiving the CDC's objection advising whether SBA is continuing with the immediate suspension. If the CDC submits additional information to SBA after submitting its objection pursuant to § 120.856(b)(5), SBA must issue its final decision within 90 days of receiving such information.

(3) Prior to issuing a notice of decision, SBA in its sole discretion can request additional information from the affected CDC or other parties and conduct any other investigation it deems appropriate. If SBA determines, in its sole discretion, to consider an untimely objection, it must issue a notice of decision pursuant to this paragraph.

(d) *SBA's notice of final agency decision.* If SBA chooses not to consider an untimely objection or if the affected CDC fails to file a written objection to a proposed enforcement action or an immediate suspension, and if SBA continues to believe that such proposed enforcement action or immediate suspension is appropriate, the AA/FA or his or her authorized delegate must issue a written notice of decision to the affected CDC that SBA is undertaking one or more of the proposed enforcement actions against the CDC or that SBA will continue to pursue an immediate suspension of the CDC. Such a notice of decision need not state any grounds for the action other than to reference the CDC's failure to file a timely objection, and represents the final agency decision. If the affected CDC fails to file a written objection to an immediate suspension, SBA need not issue any further notice to the CDC.

(e) *Appeal to OHA.* (1) A CDC may appeal from an SBA notice of decision issued pursuant to paragraph (c) of this section to the SBA Office of Hearings and Appeals (OHA). The rules and procedures set forth in part 134 of this chapter will govern such appeals.

(2) OHA must limit its review to a determination of whether SBA's decision was arbitrary, capricious or contrary to law, or without procedure required by law. OHA must limit its review to the record that the AA/FA or his or her authorized delegate, and any other SBA officials directly involved with the decision, considered in making the final decision. If the OHA decides that SBA's decision was arbitrary, capricious, contrary to law, or without procedure required by law, the OHA must remand the matter to the AA/FA or the original deciding official for further consideration. The CDC may appeal from a reconsidered SBA decision as set forth in this paragraph (e).

(3) (i) OHA must not consider any argument, fact or other information presented by the affected CDC unless the CDC previously submitted that information to SBA:

(A) In or with the affected CDC's objection;

(B) In response to a request for information from SBA; or

(C) Pursuant to paragraph (b)(5) of this section if such information was accepted by SBA.

(ii) However, if a CDC can show that there is newly discovered material evidence which, despite the CDC's exercise of due diligence, could not have been discovered before the Agency's final decision, or that there are compelling reasons beyond the CDC's control why it was not able to present a material fact or argument to the AA/FA or other deciding SBA official prior to such decision, and that the CDC has been prejudiced by not being able to present such information to the official, the CDC may file a motion with the OHA for a remand of the matter.

(4) A decision by OHA, other than a remand, is the final agency decision.

(f) *Limit on applicability.* The procedures in this section shall only apply to an action taken by SBA pursuant to § 120.855.

■ 35b. Add a new undesignated center heading immediately preceding new § 120.854 to read as follows:

**SBA Enforcement Actions**

■ 35c. Redesignate § 120.981 as § 120.857.

■ 36. Revise § 120.861 to read as follows:

**§ 120.861 Job creation or retention.**

A Project must create or retain one Job Opportunity per an amount of 504 loan funding that will be specified by SBA from time to time in a Federal Register notice. Such Job Opportunity average remains in effect until changed by subsequent **Federal Register** publication.

■ 37. Amend § 120.862 as follows:

■ a. By revising the parenthetical at the end of paragraph (a)(4);

■ b. By revising paragraph (b)(2);

■ c. By redesignating paragraphs (b)(3) through (b)(7) as (b)(5) through (b)(9);

■ d. By adding new paragraphs (b)(3) and (b)(4), and

■ e. By revising redesignated paragraph (b)(5). The revisions and additions read as follows:

**§ 120.862 Other economic development objectives.**

* * * * *

(a) * * *

(4) * * * (North American Industry Classification System (NAICS), Sectors 31 "33); or

* * * * *

(b) * * *

(2) Expansion of exports;

(3) Expansion of small businesses owned and controlled by women as defined in section 29(a)(3) of the Act, 15 U.S.C. 656(a)(3);

(4) Expansion of small businesses owned and controlled by veterans (especially service-disabled veterans) as defined in section 3(q) of the Act, 15 U.S.C. 632(q);

(5) Expansion of minority enterprise development (see § 124.103(b) of this chapter for minority groups who qualify for this description);

* * * * *

■ 38. Amend § 120.870 as follows:

■ a. By removing paragraph (b);

■ b. By redesignating paragraph (c) as paragraph (b); and

■ c. By revising paragraph (a) introductory text to read as follows:

**§ 120.870 Leasing Project Property.**

(a) A Borrower may use the proceeds of a 504 loan to acquire, construct, or modify buildings and improvements, and/or to purchase and install machinery and equipment located on land leased to the Borrower by an unrelated lessor if:

* * * * *

■ 39. Revise the heading of § 120.871 to read as follows:

**§ 120.871 Leasing part of Project Property to another business.**

* * * * *

■ 40. Amend § 120.880 by revising paragraph (b) to read as follows:

**§ 120.880 Basic eligibility requirements.**

* * * * *

(b) Together with its Affiliates, meet one of the size standards set forth in § 121.301(b) of this chapter.

■ 41. Revise § 120.882(c) to read as follows:

**§ 120.882 Eligible Project costs for 504 loans.**

* * * * *

(c) Professional fees directly attributable and essential to the Project, such as title insurance, opinion of title, architectural and engineering costs, appraisals, environmental studies, and legal fees related to zoning, permits, or platting; and

* * * * *

■ 42. Revise paragraph (d) of § 120.883 to read as follows:

**§ 120.883 Eligible administrative costs for 504 loans.**

* * * * *

(d) Borrower's out-of-pocket costs associated with 504 loan and Debenture closing other than legal fees (for example, certifications and the copying costs associated with them, overnight delivery, postage, and messenger services) but not to include fees and costs described in § 120.882;

* * * * *

■ 43. Amend § 120.892(b) by removing the phrase "90 days" and adding in its place the phrase "120 days".

■ 44. Revise the heading of § 120.900 to read as follows:

**§ 120.900 Sources of permanent financing.**

* * * * *

■ 45. Revise the heading of § 120.910 to read as follows:

**§ 120.910 Borrower contributions.**

* * * * *

■ 46. Revise § 120.911 to read as follows:

**§ 120.911 Land contributions.**

The Borrower's contribution may be land (including buildings, structures and other site improvements which will be part of the Project Property) previously acquired by the Borrower.

■ 47. Revise § 120.913 to read as follows:

**§ 120.913 Limitations on any contributions by a Licensee.**

Subject to part 107 of this chapter, a Licensee may provide financing for all or part of the Borrower's contribution to the Project. SBA will consider Licensee funds to be derived from federal sources if the Licensee has Leverage (as defined in § 107.50 of this chapter). If the Licensee does not have Leverage, SBA will consider the investment to be from private funds. Licensee financing must be subordinated to the 504 loan and must not be repaid at a faster rate than the Debenture. (Refer to § 120.930(a) for additional limitations.)

■ 48. Amend § 120.923 by revising the heading to read as follows:

### § 120.923 Policies on subordination.

* * * * *

■ 48a. Redesignate § 120.924 as paragraph (c) of § 120.923.

■ 49. Amend § 120.925 by adding a parenthetical at the end to read as follows:

### § 120.925 Preference.

* * * (See § 120.10 for a definition of Preference.)

■ 50. Revise § 120.926 to read as follows:

### § 120.926 Referral fee.

The CDC can receive a reasonable referral fee from the Third Party Lender if the CDC secured the Third Party Lender for the Borrower under a written contract between the CDC and the Third Party Lender. Both the CDC and the Third Party Lender are prohibited from charging this fee to the Borrower. If a CDC charges a referral fee, the CDC will be construed as a Referral Agent under part 103 of this chapter.

■ 51. Revise paragraph (b) of § 120.930 to read as follows:

### § 120.930 Amount.

* * * * *

(b) A 504 loan must not be less than $25,000.

* * * * *

■ 52. Revise § 120.931 to read as follows:

### § 120.931 504 Lending limits.

The outstanding balance of all SBA financial assistance to a Borrower and its affiliates under the 504 program covered by this part must not exceed $1,000,000 (or $1,300,000 if one or more of the public policy goals enumerated in § 120.862(b) applies to the Project).

■ 53. Revise § 120.933 to read as follows:

### § 120.933 Maturity.

From time to time, SBA will publish in the **Federal Register** the available maturities for a 504 loan and the Debenture that funds it. Such available maturities remain in effect until changed by subsequent **Federal Register** publication.

■ 54. Revise § 120.934 to read as follows:

### § 120.934 Collateral.

The CDC usually takes a second lien position on the Project Property to secure the 504 loan. Sometimes additional collateral is required. (In rare circumstances, SBA may permit other collateral substituted for Project Property.) All collateral must be insured against such hazards and risks as SBA may require, with provisions for notice to SBA and the CDC in the event of impending lapse of coverage.

■ 55. Revise the heading of § 120.935 to read as follows:

### § 120.935 Deposit from the Borrower that a CDC may require.

* * * * *

### § 120.936 [Removed]

■ 56. Remove § 120.936.

■ 57. Revise § 120.960 to read as follows:

### § 120.960 Responsibility for closing.

(a) The CDC is responsible for the 504 loan closing.

(b) The Debenture closing is the joint responsibility of the CDC and SBA.

(c) SBA may, within its sole discretion, decline to close the Debenture; direct the transfer of the 504 loan to another CDC; or cancel its guarantee of the Debenture, prior to sale, if any of the following occur:

(1) The CDC has failed to comply materially with any requirement imposed by statute, regulation, SOP, policy and procedural notice, any agreement the CDC has executed with SBA, or the terms of a Debenture or loan authorization;

(2) The CDC has failed to make or close the 504 loan or prepare the Debenture closing in a prudent or commercially reasonable manner;

(3) The CDC's improper action or inaction places SBA at risk;

(4) The CDC has failed to use required SBA forms or electronic versions of those forms;

(5) The CDC, Third Party Lender or Borrower has failed to timely disclose to SBA a material fact regarding the Project or 504 loan;

(6) The CDC, Third Party Lender or Borrower has misrepresented a material fact to SBA regarding the Project or 504 loan; or

(7) SBA determines that there has been an unremedied material adverse change, such as deterioration in the Borrower's financial condition, since the 504 loan was approved, or that approving the closing of the Debenture will put SBA at unacceptable financial risk.

■ 58. Revise the undesignated center heading immediately preceding § 120.970 to read as follows:

## Servicing

■ 59. Revise § 120.970 to read as follows:

### § 120.970 Servicing of 504 loans and Debentures.

(a) In servicing 504 loans, CDCs must comply with 504 program requirements imposed by statute, regulation, SOPs, policy and procedural notices, loan authorizations, Debentures, and agreements between the CDC and SBA, and in accordance with prudent and commercially reasonable lending standards.

(b) The CDC is responsible for routine servicing including receipt and review of the Borrower's or Operating Company's financial statements on an annual or more frequent basis and monitoring the status of the Borrower and 504 loan collateral.

(c) The CDC is responsible for assuring that the Borrower makes all required insurance premium payments and has paid all taxes when due.

(d) The CDC is responsible for filing renewals and extensions of security interests on collateral for the 504 loan, as required.

(e) The CDC must timely respond to Borrower requests for loan modifications.

(f) For any 504 loan that is more than three months past due, the CDC must promptly request that SBA purchase the Debenture unless the 504 loan has an SBA-approved deferment or is in compliance with an SBA-approved plan to allow the Borrower to catch up on delinquent loan payments.

(g) The CDC must cooperate with SBA to cure defaults and initiate workouts.

(h) SBA may negotiate agreements with CDCs to liquidate 504 loans.

■ 60. Add a new undesignated center heading immediately preceding § 120.971 to read as follows:

## Fees

■ 61. Revise paragraphs (a) (introductory text) and (a)(2) of § 120.971 to read as follows:

### § 120.971 Allowable fees paid by Borrower.

(a) *CDC fees.* The fees a CDC may charge the Borrower in connection with a 504 loan and Debenture are limited to the following:

* * * * *

(2) *Closing fee.* The CDC may charge a reasonable closing fee sufficient to reimburse it for the expenses of its in-house or outside legal counsel, and other miscellaneous closing costs (CDC Closing Fee). Some closing costs may be funded out of the Debenture proceeds (see § 120.883 for limitations);

* * * * *

■ 62. Revise § 120.972 to read as follows:

### § 120.972 Third Party Lender participation fee and CDC fee.

(a) *Participation fee.* For loans approved by SBA after September 30, 1996, SBA must collect a one-time fee equal to 50 basis points on the Third

Party Lender's participation in a Project when the Third Party Lender occupies a senior credit position to SBA in the Project.

(b) *CDC fee.* For loans approved by SBA after September 30, 1996, SBA must collect an annual fee from the CDC equal to 0.125 percent of the outstanding principal balance of the Debenture. The fee must be paid from the servicing fees collected by the CDC and cannot be paid from any additional fees imposed on the Borrower.

■ 63. Remove the undesignated center heading immediately preceding § 120.980.

■ 64. Remove §§ 120.980, 120.982, 120.983 and 120.984.

Dated: September 25, 2003.

**Hector V. Barreto,**

*Administrator.*

[FR Doc. 03–24860 Filed 10–6–03; 8:45 am]

BILLING CODE 8025–01–P

Federal Register

Tuesday,
October 7, 2003

## Part III

# Department of Health and Human Services

## Centers for Disease Control Prevention

## Agency for Toxic Substances and Disease Registry

## Availability of Funds Announced in the CDC/ATSDR Federal Assistance Funding Book; Notice

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

## Agency for Toxic Substances and Disease Registry

## Availability of Funds Announced in the CDC/ATSDR Federal Assistance Funding Book

**ACTION:** General notice.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the availability of funds in the CDC/ATSDR Federal Assistance Funding Book (FAFB) for Fiscal Year 2004. This edition of the FAFB is a review of CDC and ATSDR Fiscal Year 2004 competitive assistance programs. Financial assistance programs include grants and cooperative agreements.

The FAFB contains most of CDC's and ATSDR's new competitive opportunities; however, additional grant and cooperative agreement opportunities may become available because of programmatic planning and Congressional action. The funding opportunities will be published in the **Federal Register**, CDC's and ATSDR's Internet Web site, which can be obtained by accessing *http://www.cdc.gov/od/pgo/funding/grantmain.htm*, and in addition may be published in the *NIH Guide For Grants and Contracts*. CDC and ATSDR, as well as the Department of Health and Human Services (HHS), has been very busy this year. In support of health related disease control and prevention activities, we are striving to provide simpler avenues for eligible organizations to apply for funding. We are working in cooperation with HHS and other organizations within HHS to improve our processes related to delivering CDC funding opportunities and awarding grants to eligible applicants. We are currently planning to deploy a new grants management information system, and have implemented processes to streamline our grant making operations. We are participating in pilot programs being conducted throughout the federal government that are designed to move the granting of federal dollars into the world of electronic government. CDC's streamlining efforts are part of HHS' activities to implement the Federal Financial Assistance Management Improvement Act (Pub. L. 106–207). CDC and ATSDR are committed to maximum competition for its grants and cooperative agreement opportunities, and will strive to provide support for all eligible entities that seek to apply for CDC's and ATSDR's financial assistance programs.

Julie Louise Gerberding, M.D., M.P.H.

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1. Introduction
2. How to Use the CDC/ATSDR Federal Assistance Funding Book (FAFB)
3. Terminology
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5. Funding Opportunities by Agency and Center. This notice describes funding for the following ATSDR and CDC discretionary authorities and programs (application receipt deadlines are also provided):

**Agency for Toxic Substances and Disease Registry (ATSDR)**

Exposure to Tremolite Asbestos in Vermiculite Ore—June 2004

Program to Facilitate Environmental Justice in Minority and Under Served Communities—May 1, 2004

Surveillance of Hazardous Substances—June 1, 2004

The Great Lakes Human Health Effects Research Program—May 2004

Program to Build Capacity to Conduct Site-Specific Health Promotion Activities—July 1, 2004

A Program to Build Capacity to Develop, Implement, and Evaluate Health Education and Health Promotion Activities in Tribal Communities—July 1, 2004

Program to Build Capacity to Conduct Environmental Health Education Activities—July 1, 2004

Program to Build Environmental Public Health Capacity Within Tribal Colleges and Universities—July 2004

**Centers for Disease Control and Prevention (CDC)**

*National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP)*

Cancer Surveillance Research with Data Enhancement and Utilization—June 2004

National Programs to Improve the Health, Education, and Well-Being of Young People—December 2004

*National Center for Environmental Health (NCEH)*

Centers for Genomics and Public Health—February 15, 2004

Addressing Asthma from a Public Health Perspective—March 1, 2004

*National Center for HIV, STD, and TB Prevention (NCHSTP)*

Translating Proven Interventions for Underserved and Emergent High Risk Populations—March 2004

Public Health Conference Support Cooperative Agreement—Program for Human Immunodeficiency Virus (HIV) Prevention—April 15, 2004

*National Center for Infectious Diseases (NCID)*

Applied Research in Emerging Infections Investigations of West Nile Virus—May 15, 2004

Epidemiology and Laboratory Capacity (ELC) for Infectious Diseases—Cycle A, January 4, 2004; Cycle B, April 4, 2004

Cooperative Agreement for Research on Prevention of Lyme Disease in Humans in the United States—November 17, 2003

Cooperative Agreement for Research on the Ecology and Control of Tick Vectors of Lyme Disease in the United States—November 17, 2003

Cooperative Agreement for Research on the Laboratory Diagnosis, Immunology, and Pathogenesis of Lyme Disease in the United States—December 1, 2003

*National Center for Injury Prevention and Control (NCIPC)*

Grants for Acute Care, Rehabilitation, and Disability Prevention Research—February 3, 2004

Grants for Violence-Related Injury Prevention Research: Youth Violence, Suicide, Intimate Partner Violence, and Sexual Violence—February 3, 2004

Grants for New Investigator Training Awards for Unintentional Injury, Violence Related Injury, Biomechanics, and Acute Care, Disability, and Rehabilitation-Related Research—February 3, 2004

Grants for Traumatic Injury Biomechanics Research—February 3, 2004—Research Grants to Prevent Unintentional Injuries—February 3, 2004

Grants for Dissertation Awards for Doctoral Candidates for Violence-Related Injury Prevention Research in Minority Communities—February 3, 2004

*National Immunization Program (NIP)*

National Minority Organizations Immunization Projects—March 2004

*National Institute for Occupational Safety and Health (NIOSH)*

Occupational Safety and Health Research Grants-Investigator-Initiated—All (new competing, revised, and, supplemental applications) February 3, 2004; June 1, 2004; and October 1, 2004. Competing Continuation, Supplemental, and Revised Research Grant/Cooperative Agreements applications—March 1, 2004; July 1, 2004; and November 1, 2004.

Occupational Safety and Health Research Grants-Special Emphasis Research Career Award (K01)—All (new) February 3, 2004; June 1, 2004; and October 1, 2004. Competing Continuation, Supplemental, and Revised Research Grant/Cooperative Agreements applications—March 1, 2004; July 1, 2004; and November 1, 2004.

Occupational Safety and Health Research Grants-Small Grants (R03)—All (new) February 3, 2004; June 1, 2004; and October 1, 2004. Competing Continuation, Supplemental, and Revised Research Grant/Cooperative Agreements applications—March 1, 2004; July 1, 2004; and November 1, 2004.

Occupational Safety and Health Research Grants-Exploratory and Developmental

(R21)—All (new) February 3, 2004; June 1, 2004; and October 1, 2004. Competing Continuation, Supplemental, and Revised Research Grant/Cooperative Agreements applications—March 1, 2004; July 1, 2004; and November 1, 2004.

Occupational Safety and Health Training—July 1, 2004

Health and Safety Programs for Construction Work—February 3, 2004.

Surveillance Program—April 1, 2004

## Introduction

The purpose of the FAFB is to provide the general public with a single source of program and application information related to CDC's and ATSDR's competitive financial assistance offerings. The FAFB is designed to replace the multiple **Federal Register** notices that traditionally advertised the availability of CDC and ATSDR discretionary funding for its various programs. It should be noted that additional health promotion and disease prevention program initiatives responsive to new issues or issues unanticipated at the time of publication of the FAFB may be announced through the **Federal Register** and the CDC Web site, *http://www.cdc.gov/od/pgo/funding/grantmain.htm* or the ATSDR Web site at *http://www.atsdr.cdc.gov/*, click on "ATSDR Grants and Cooperative Agreements." This notice does not change requirements appearing elsewhere in the **Federal Register**.

The CDC/ATSDR FAFB contains a description of competitive and other financial assistance (grants and cooperative agreements) programs scheduled for awards in Fiscal Year 2004. It includes instructions on how to contact the CDC/ATSDR for information.

Applications and instructions may be downloaded from the CDC Web site listed above. The FAFB also contains instructions for how to obtain application if your organization is not Internet active. Specifically, the following information is included in the FAFB: (1) Center/Institute/Office (CIO) Offering the Funding Program; (2) the Program Announcement Title; (3) the Program Announcement Number (4) the Catalog of Federal Assistance (CFDA) Identification Number; (5) the Program Contact Person, E-Mail Address, and Phone Number; (6) a Description of the Funding Opportunity; (7) Eligible Applicants; (8)Estimated Dollar Amount for this Competition; (9) Estimated Number of Awards to be Made; (10) Estimated or Average Size of Each Award; (11) Estimated Project Period; (12) Estimated Application Availability Date, which is the date further application guidance will be available on the CDC and ATSDR Web site, and the earliest date an application can be accepted; (13) Estimated Application Deadline Date, which is the last date an application can be accepted for review and potential funding; and (14) Estimated Projected Award Date, which is the date that a successful applicant can expect to be awarded funds. Certain other information, including how to obtain and use the FAFB and grant terminology, can also be found in the FAFB.

This notice describes funding for the following CDC and ATSDR discretionary authorities and programs (application deadline dates are also provided):

### Agency for Toxic Substances and Disease Registry (ATSDR)

### Centers for Disease Control and Prevention (CDC)

The Centers, Institutes, and Offices that comprise CDC are listed below in alphabetical order:

Epidemiology Program Office (EPO)
National Center for Birth Defects and Developmental Disabilities (NCBDDD)
National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP)
National Center for Environmental Health (NCEH)
National Center for Health Statistics (NCHS)
National Center for HIV, STD, and TB Prevention (NCHSTP)
National Center for Infectious Diseases (NCID)
National Center for Injury Prevention and Control (NCIPC)
National Immunization Program (NIP)
National Institute for Occupational Safety and Health (NIOSH)
Public Health Practice Program Office (PHPPO)

### How To Use the CDC/ATSDR Federal Assistance Funding Book (FAFB)

It is recommended that you read the introductory materials, terminology section, and individual program announcements listed under each CIO in alphabetical order. At the end of the FAFB, there is an optional form entitled "Grants At A Glance." This form is provided so that you can record the funding opportunities that are of interest to you. We urge applicants to fully assess their eligibility for grants and cooperative agreements before spending the time and effort to apply.

The full descriptions of the funding opportunities, instructions for applications, application forms, and additional copies of the FAFB can be found at *http://www.cdc.gov*, click on "Funding" then click on "Grants and Cooperative Agreements." If you are not Internet active, or you have difficulty downloading this information, you may call 770–488–2700 between 8 a.m. and 4:30 p.m. Eastern Time, Monday through Friday for assistance.

## Terminology

### *Application Deadlines*

Definitive deadline information may be found in the full program announcement. For many program announcements, applications will be considered on time if they are received on or before 4 p.m. Eastern Time on the established deadline in the program announcement.

### *Authorization*

The citation of the law authorizing the various assistance programs is provided following the title in the full program announcement published on the CDC and ATSDR Web sites.

### *Budget Period*

The Budget Period is the interval of time that a multi-year period of financial assistance (project period) is divided into for budgetary and funding purposes. Budget periods are usually 12 months long but may be shorter or longer, if appropriate.

### *CFDA Number*

The Catalog of Federal Domestic Assistance (CFDA) is a Government-wide compendium of Federal Programs, projects, services, and activities that provide assistance. Programs listed therein are given a CFDA number.

### *Cooperative Agreement*

A financial assistance mechanism (grant) used when substantial Federal programmatic involvement with the recipient is anticipated by the funding agency during performance of the project. The nature of the involvement will always be specified in the offering or application guidance materials.

### *Eligibility*

The status an entity must possess to be considered for a grant. Authorizing legislation and programmatic regulations specify eligibility for individual grant programs and eligibility may be further restricted for programmatic reasons. In general, assistance is provided to nonprofit organizations and institutions, including faith-based and community-based entities, State and local governments, their agencies, Indian Tribes or tribal organizations, and occasionally to individuals. For-profit organizations are eligible to receive awards under financial assistance programs unless specifically excluded by legislation.

### *Estimated Amount for This Competition*

The funding level listed is provided only as an estimate, and is subject to the availability of funds, Congressional action, and changing program priorities.

### *Evaluation Criteria*

The evaluation criteria are listed in the full program announcement, as published on the CDC or ATSDR Web site, and are used to evaluate, score, and rank applications submitted by an applicant.

### *Funding Priorities and/or Preferences*

Funding preferences, priorities, and special considerations may come from legislation, regulations, or programmatic reasons. These are not the same as review criteria. Funding preferences are any objective factors that would be used to place a grant application ahead of others without the preference on a list of applicants recommended for funding by a review committee. Some programs give preference to organizations that have specific capabilities, or have established relationships with public health organizations that promote CDC's or ATSDR's mission of health and disease prevention. Funding priorities are factors that cause a grant or cooperative agreement application to receive a fixed amount of extra rating points, which may similarly affect the order of applicants on a funding list. Special considerations other than review criteria, preferences, and priorities *e.g.*, are considered in order to ensure an equitable geographic distribution of grant recipients, to meet requirements for urban or rural proportions.

*Grant*

A grant is a financial assistance (including cooperative agreements) in the form of money, or property in lieu of money, by the Federal government to an eligible recipient. The term does not include any Federal procurement subject to the Federal Acquisition Regulation (FAR); technical assistance (which provides services instead of money); or assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct payments of any kind to individuals.

*Letter of Intent*

A Letter of Intent is a letter that may be requested by the funding program to gauge the interest and the number of full applications anticipated so that the funding program can estimate both the proper number of reviewers and expertise needed to review the applications. A Letter of Intent may be optional or required.

*Matching Requirements*

Several CDC and ATSDR programs may require a matching amount, or percentage of the total project support, to come from sources other than Federal funds. Matching requirements are generally mandated in the authorizing legislation for specific categories. Also, ATSDR or the CDC awarding CIO may administratively require matching or other cost-sharing requirements. Such requirements are listed in the full program announcement published on the CDC and or ATSDR Web site.

*Notice of Grant Award*

The Notice of Grant Award (NGA) is the official award document, signed by the Grants Management Officer that (1) Notifies the recipient of the award of a grant; (2) contains or references all the terms and conditions of the grant and Federal funding limits and obligations; and (3) provides the documentary basis for recording the obligation of Federal funds in CDC's accounting system.

*Program Announcement Number*

The program announcement number is a unique identifier for each program funded by CDC or ATSDR. This number must be included on your application for funding.

*Project Period*

The total time stated in the Notice of Grant Award (including any amendments) that Federal support is recommended. The project period usually consists of a series of one or more budget periods of one-year duration. Once approved through initial review, continuation of each successive budget period is subject to satisfactory performance, availability of funds, and program priorities. The project period is usually from one to five years.

*Technical Assistance*

A contact person is listed for each program and his/her e-mail address and telephone number are provided. Some programs have scheduled workshops and conference calls. If you have questions concerning individual programs or the availability of technical assistance, please contact the program contact listed in the full program announcement.

**Frequently Asked Questions**

*1. Where Do I Submit Grant Applications?*

The address for submitting your grant application will be published in the full program announcement on the CDC Web site at *http://www.cdc.gov/od/pgo/funding/grantmain.htm* or the ATSDR Web site at *http://www.atsdr.cdc.gov/* and in addition may be published in the *NIH Guide to Grants and Contracts.*

For general questions about CDC or ATSDR announcements, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2700.

*2. How Do I Learn More About a Particular Grant or Cooperative Agreement Program?*

In general, the program contact person provides information about the specific grant and cooperative agreement offering and its purpose, and the grants management specialist provides information about the grant/cooperative agreement mechanism and business matters, though their responsibilities often overlap.

*3. The Dates Listed in the FAFB and the Dates on the CDC or ATSDR Web Site Do Not Agree. How Do I Know Which Is Correct?*

The CDC/ATSDR FAFB dates for estimated application availability, the estimated application deadline date, and the estimated projected award date are based upon the best-known information at the time of publication, often up to nine months in advance of the competitive cycle. Since the full program announcement is published on the CDC and ATSDR Web sites later, the dates in the full program announcement are the correct dates. Thus, the definitive date may be found in the full program announcement.

*4. Are Programs Announced in the CDC/ATSDR FAFB Ever Cancelled?*

Infrequently, announced programs may be withdrawn from competition. If this occurs, an amendment to the original FAFB **Federal Register** Notice will be published and in addition, the change will be listed on the CDC or ATSDR Web site.

*5. What Is a DUNS Number and Do I Need One?*

The Data Universal Numbering Systems (DUNS) number is a unique 9-digit identification number provided by Dun & Bradstreet (D&B). The DUNS number is site-specific. Therefore, each distinct physical location of an entity (such as branches, divisions, and headquarters) may be assigned a DUNS number. In order to provide on-the-spot DUNS Number assignment, D&B does not control or limit who may request or receive a DUNS number. It is the applicant organization's responsibility to manage their DUNS numbers. To obtain a DUNS number, call Dun and Bradstreet at 1–866–705–5711 or visit their Web site at: *http://www.dunandbradstreet.com.* There is no charge obtaining a number and the number is easy to obtain. If you are unsure whether your organization already has a DUNS number, please contact your institution's grant office for guidance. A DUNS number will be required for all new grant and cooperative agreement awards for FY 2004 including foreign applicant organizations. A DUNS number will not be required of individuals or subrecipients. There should be a field in the new PHS 5161–1 and PHS 398 application forms to include your DUNS number. If the application form you are using does not have a DUNS number field, please write your DUNS number on the top of the application, and/or include your DUNS number in the cover letter of the application. Your organization will need to have a DUNS number in order for an award to be made in FY 2004.

*6. Where Can I Find Out About Current Federal Grant and Cooperative Agreement Funding Opportunities?*

In addition to the CDC and ATSDR Web sites, the U.S. Government has created and maintains a Web site at *http://www.fedgrants.gov* and at *http://www.grants.gov.*

*7. Where Can I Obtain Applications for CDC and ATSDR Grant and Cooperative Agreement Funding Opportunities?*

For most CDC and ATSDR grant and cooperative agreement announcements, the application form PHS 5161–1 or PHS 398 is used. Please see the full program announcement to see which application to use. Applications and instructions can be found at *http://www.cdc.gov/od/pgo/forminfo.htm.* When using the PHS 398 application form for CDC grant and cooperative agreement funding opportunities, please adhere to the program announcement instructions. The full program announcement is the definitive guide on forms and location of instructions. If you need assistance, please call the program or business office listed in the full program announcement. For general questions, please call (770) 488–2700. In addition, you may visit the "Notice to Grantees" section on the CDC Web site at *http://www.cdc.gov/funding.htm.* The Web site is updated frequently and grantees and potential applicants should periodically review the Web site to stay abreast of current issues and changes.

*8. If My Institution or Organization Receives Funds From CDC or ATSDR, Are There Any Restrictions on How the Funds May Be Used?*

Yes. Page 2 of the Notice of Grant Award contains references to the rules and regulations governing the use of funds awarded by CDC or ATSDR. If you have any business questions regarding a particular award, please contact the Grants Management Specialist or Contract Specialist that is managing the grant or cooperative agreement. For programmatic questions, please contact the project officer assigned to your grant or cooperative agreement.

**CDC and ATSDR Program Competitions**

This notice describes funding for the CDC and ATSDR discretionary authorities and programs below. Receipt deadlines are provided.

**Grants At A Glance**

The "Grants At A Glance" form should assist you in reviewing the potential funding opportunities below.

BILLING CODE 4163-18-C

## The 2004 CDC Federal Assistance Funding Book.

## GRANTS AT A GLANCE

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Use this optional form to keep track of attractive grant opportunities.

| Page # | Program Comments | Interest | | |
|---|---|---|---|---|
| | | Low | Medium | High |
| ______ | ______________________ | ☐ | ☐ | ☐ |
| | ______________________ | | | |
| ______ | ______________________ | ☐ | ☐ | ☐ |
| ______ | ______________________ | | | |
| ______ | ______________________ | ☐ | ☐ | ☐ |
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| ______ | ______________________ | | | |

**Agency for Toxic Substances and Disease Registry (ATSDR)**

*Competition Title:* Exposure to Tremolite Asbestos in Vermiculite Ore.

*Program Announcement Number:* 04020.

*CFDA Number:* 93.161.

*Program Contact Person:* Kevin Horton or Maggie Warren.

*E-Mail Address: dth9@cdc.gov or mcs9@cdc.gov.*

*Phone Number:* (404) 498–0571 or (404) 498–0546.

*Competition Description:* The purpose of this program is to conduct site-specific health activities related to human exposure to contaminated vermiculite ore at sites identified by the Environmental Protection Agency (EPA) as receiving and/or processing ore from the mine in Libby, Montana.

*Eligible Applicants:* Assistance will be provided only to the health departments of States or their bona fide agents or instrumentalities. State organizations, including state universities, must establish that they meet their respective state legislature's definition of a state entity or political subdivision to be considered an eligible applicant.

*Estimated Amount of This Competition:* $300,000.

*Estimated Number of Awards to be Made:* 4.

*Estimated or Average Size of Each Award:* $10,000 to $250,000.

*Estimated Project Period:* 3 Years.

*Application Availability Date:* April 2004.

*Application Deadline:* June 2004.

*Project Award Date:* August 2004.

*Competition Title:* Program to Facilitate Environmental Justice in Minority and Under Served Communities.

*Program Announcement Number:* 04021.

*CFDA Number:* 93.161.

*Program Contact Person:* Stephanie Miles-Richardson, D.V.M., Ph.D.

*E-Mail Address: srm7@cdc.gov.*

*Phone Number:* (404) 498–0111.

*Competition Description:* The purpose of this program is to assist minority educational institutions in expanding and enhancing educational and research opportunities related to exposure to hazardous substances in the environment, and providing education and information to African American, Hispanic, and other minority and low income communities that are affected by hazardous waste sites and that have environmental justice concerns. This announcement follows a successful five-year project period, which included the development of culturally competent environmental health instructional materials for health professionals, and maintenance and distribution of environmental justice related resources. Community-based workshops on Geographic Information Systems (GIS) were conducted and strategies for assisting communities in identifying the needs of "at risk" populations were also identified. During this second five-year period, the project will continue to conduct outreach to diverse groups and organizations that focus on minority health, environment, and education with the goal of facilitating collaborations and partnerships. Strategies developed during the first program period will be implemented, evaluated, and expanded.

Eligible Applicants: Eligible applicants include: Historically Black Colleges and Universities (HBCUs) and Hispanic Serving Institutions (HSIs) with documented expertise in addressing environmental justice concerns of minority and under served communities.

*Estimated Amount of This Competition:* $125,000.

*Estimated Number of Awards to be Made:* 1.

*Estimated or Average Size of Each Award:* $125,000.

*Estimated Project Period:* October 1, 2004–September 29, 2009.

*Application Availability Date:* March 1, 2004.

*Application Deadline:* May 1, 2004.

*Project Award Date:* August 1, 2004.

*Competition Title:* Surveillance of Hazardous Substances Emergency Events.

*Program Announcement Number:* 04022.

*CFDA Number:* 93.161.

*Program Contact Person:* Wendy Kaye/Maureen Orr.

*E-Mail Address: wek1@cdc.gov/mco0@cdc.gov.*

*Phone Number:* (404) 498–0555/(404) 498–0559.

*Competition Description:* The purpose of this program is to assist state health departments in developing a state-based surveillance system for monitoring hazardous substances emergency events. This will allow the state health department to better understand the public health impact of hazardous substances emergencies through this added capacity.

*Eligible Applicants:* Official public health agencies of States or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and Federally recognized Indian Tribal governments. Also eligible are State organizations, including State universities, State colleges, and State research institutions, who must establish that they meet their respective State legislature's definition of a State entity or political subdivision to be considered an eligible applicant.

*Estimated Amount of This Competition:* $1,450,000.

*Estimated Number of Awards to be Made:* 15.

*Estimated or Average Size of Each Award:* $95,000.

*Estimated Project Period:* 5 years.

*Application Availability Date:* April 1, 2004.

*Application Deadline:* June 1, 2004.

*Project Award Date:* August 1, 2004.

*Competition Title:* The Great Lakes Human Health Effects Research Program.

*Program Announcement Number:* 04023.

*CFDA Number:* 93.161.

*Program Contact Person:* Dr. Heraline Hicks.

*E-Mail Address: heh2@cdc.gov.*

*Phone Number:* (404) 498–0717.

*Competition Description:* The purpose of the program is to assess the adverse effects of water pollutants, via contaminated fish in the Great Lakes, on the health of persons in the Great Lakes states. The research objectives of this program are to: (1) Build upon and amplify the results from past and on-going research in the Great Lakes basin; (2) develop information, databases and research methodology that will provide long-term benefit to human health effects research in the Great Lakes; (3) provide direction for future health effects research; (4) provide health information to State and local health officials, the concerned public, and their medical health care professionals; and (5) in concert with State and local health officials, increase the public awareness regarding the potential health implications of toxic pollution in the Great Lakes basin; and (6) coordinate as necessary with relevant research programs and activities of other agencies, including those of the Food and Drug Administration (FDA), Centers for Disease Control and Prevention (CDC), National Institutes of Health (NIH), and the Indian Health Service (IHS), as well as the Environmental Protection Agency (EPA), and state and local health departments, to ameliorate adverse public health impacts of persistent toxic substances in the Great Lakes.

*Eligible Applicants:* Eligible applicants are the Great Lake states and political subdivisions thereof, including federally recognized Indian tribal governments. State organizations, including state universities, state colleges, and state research institutions, must affirmatively establish that they meet their respective state's legislative definition of a state entity or political subdivision to be considered an eligible applicant. The Great Lake states include Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, New York, and Wisconsin, consistent with Section 106, subsection 118(e) of the Great Lakes Critical Programs Act of 1990 [33 U.S.C. 1268(e)]. ATSDR encourages collaborative efforts among these potential applicants.

*Estimated Amount of This Competition:* $2,000,000.

*Estimated Number of Awards to be Made:* 10.

*Estimated or Average Size of Each Award:* $200,000.

*Estimated Project Period:* FY 2004–FY 2006.

*Application Availability Date:* March 2004.

*Application Deadline:* May 2004.

*Project Award Date:* September 2004.

*Competition Title:* Program To Build Capacity To Conduct Site-Specific Health Promotion Activities.

*Program Announcement Number:* 04024.

*CFDA Number:* 93.161.

*Program Contact Person:* Robert Johnson.

*E-Mail Address: rdj2@cdc.gov.*

*Phone Number:* (404) 498–0498.

*Competition Description:* A five-year cooperative agreement program to build capacity to conduct site-specific health promotion activities. The purpose of this program is to conduct site-specific health education and promotion activities, including pediatric environmental health specialty unit (PEHSUs) activities in the areas of health professional education, site-specific medical consultations, and referrals for clinical evaluations. (**Note:** Due to the ATSDR legislative mandate, clinical treatment cannot be provided.) This program addresses the "Healthy People 2010" educational and community-based programs, environmental health, health communication, and maternal, infant, and child health focus areas.

*Eligible Applicants:* This program is only directed to national organizations of health professionals that provide environmental health education activities for their membership, as well as environmental public health promotion activities.

*Estimated Amount of This Competition:* $1,500,000.

*Estimated Number of Awards to be Made:* 1–2.

*Estimated or Average Size of Each Award:* $500,000–$1,000,000.

*Estimated Project Period:* September 30, 2004–October 1, 2009.

*Application Availability Date:* May 1, 2004.

*Application Deadline:* July 1, 2004.

*Project Award Date:* September 30, 2004.

*Competition Title:* A Program To Build Capacity To Develop, Implement, and Evaluate Health Education and Health Promotion Activities in Tribal Communities.

*Program Announcement Number:* 04025.

*CFDA Number:* 93.161.

*Program Contact Person:* Teresa Nastoff.

*E-Mail Address: tbn9@cdc.gov.*

*Phone Number:* (404) 498–0530.

*Competition Description:* A five-year cooperative agreement program to build capacity, to develop, to implement, and to evaluate health education and health promotion activities in tribal communities. This program addresses the "Healthy People 2010" educational and community-based programs and environmental health focus areas. The cooperative agreement program is designed to assist American Indian and Alaska Native (AI/AN) governments and organizations in addressing present and potential environmental health challenges related to National Priorities List (NPL), Comprehensive Environmental, Response, Compensation, and Liability Act (CERCLA), and other hazardous substances and releases on or adjacent to Indian lands. Specifically, cooperative agreement funds will be used to assist tribal and village governments in addressing community health concerns related to environmental toxins. This will be accomplished by increasing tribal capacity to develop, implement, and evaluate culturally relevant and appropriate environmental health education and promotion activities for AI/AN communities and for the health professionals and para-professionals serving these communities.

*Eligible Applicants:* This program is directed only to federally-recognized Indian tribes or consortia of Indian tribes. Indian tribes are defined in Section 101(36) [42 U.S.C. 9601 936)] as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native Village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians."

*Estimated Amount of This Competition:* $175,000.

*Estimated Number of Awards to be Made:* 5.

*Estimated or Average Size of Each Award:* $35,000.

*Estimated Project Period:* September 30, 2004–October 1, 2009.

*Application Availability Date:* May 1, 2004.

*Application Deadline:* July 1, 2004.

*Project Award Date:* September 30, 2004.

*Competition Title:* Program To Build Capacity To Conduct Environmental Health Education Activities.

*Program Announcement Number:* 04026.

*CFDA Number:* 93.161.

*Program Contact Person:* Charles Green.

*E-Mail Address: clg8@cdc.gov.*

*Phone Number:* (404) 498–0297.

*Competition Description:* A five-year cooperative agreement program to build capacity to conduct environmental health education activities. This program addresses the "Healthy People 2010" educational and community-based programs, environmental health, health communication, and maternal, infant, and child health focus areas. The purpose of this program is to establish and promote environmental health education programs within an organization's constituent members and the communities they serve. Specifically, cooperative agreement funds will be used to develop and implement environmental health education needs assessment process for the applicants' membership and communities surrounding hazardous waste sites; develop, implement, and evaluate site-specific environmental health education activities based on the results of the needs assessment process; evaluate the effectiveness of each of the implemented activities and the impact of the overall project; and develop a strategy to provide environmental health education materials and programs, and to communicate identified environmental health needs, concerns, programs, and resources to constituent groups.

*Eligible Applicants:* This program is directed only to national organizations of health professionals that provide environmental health education for their defined membership and constituencies.

*Estimated Amount of This Competition:* $700,000.

*Estimated Number of Awards to be Made:* 10.

*Estimated or Average Size of Each Award:* $70,000.

*Estimated Project Period:* September 30, 2004–up to October 1, 2009.

*Application Availability Date:* May 1, 2004.

*Application Deadline:* July 1, 2004.

*Project Award Date:* September 15, 2004.

*Competition Title:* Program to Build Environmental Public Health Capacity Within Tribal Colleges and Universities.

*Program Announcement Number:* 04027.

*CFDA Number:* 93.161.

*Program Contact Person:* Alan Crawford.

*E-Mail Address: acrawford@cdc.gov.*

*Phone Number:* (404) 498–0485.

*Competition Description:* The purpose of this request for applications is to provide a grant for one year (with a project period of up to five years) to assist tribal colleges and universities in the development of environmental health curriculum through the provision of technical assistance in environmental health science, including toxicology, assistance with materials development, and internships in environmental health nursing, education, and science. The implementation of the program will assist American Indian and Alaska Native nations in: (1) Evaluating past and present public health impacts related to hazardous substances exposure; (2) identifying and mitigate the public health impacts of exposures to hazardous substances on or near Indian lands; and, (3) determining and evaluating the scientific, technical and culturally-appropriate response to such exposure.

*Eligible Applicants:* Eligible applicants are federally recognized tribal colleges and universities as defined in Executive Order 13201.

*Estimated Amount of This Competition:* $200,000.

*Estimated Number of Awards to be Made:* 4.

*Estimated or Average Size of Each Award:* $50,000.

*Estimated Project Period:* Up to 5 Years.

*Application Availability Date:* May 2004.

*Application Deadline:* July 2004.

*Project Award Date:* September 2004.

### National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP)

*Competition Title:* Cancer Surveillance Research with Data Enhancement and Utilization.

*Program Announcement Number:* 04029.

*CFDA Number:* 93.283.

*Program Contact Person:* Kevin Brady.

*E-Mail Address: KBrady@cdc.gov.*

*Phone Number:* (770) 488–4226.

*Competition Description:* The purpose of this program is to utilize data from the National Program of Cancer Registries (NPCR) to perform enhanced surveillance and operational research to include developing, conducting and evaluating cancer surveillance research projects targeting breast, colorectal, prostate, ovarian, and oral/pharyngeal cancers.

*Eligible Applicants:* Part I: Breast, Colorectal/Prostate Patterns of Care, Recurrence, and Survival. Determination is based upon silver or gold certification by the North American Association of Central Cancer Registries (NAACCR) for the diagnosis year specified (the diagnosis year certification is the most recent available from NAACCR). Part II: Reporting Pathology Protocols (colon and rectum). Eligibility is limited to NPCR registries, which can demonstrate effective partnership with a laboratory, or laboratory vendor providing pathologic diagnostic services in a National Cancer Institute designated comprehensive cancer or clinical cancer center facility. Part III: Ovarian Cancer Patterns of Care. Eligibility is limited to NPCR registries. Determination of eligibility is based upon NAACCR silver or gold certification for the diagnosis year specified. Part IV: Oral/

Pharyngeal Cancer: Date Completeness Quality. Eligibility is limited to NPCR registries. Determination of eligibility is based upon NAACCR silver or gold certification for the year specified.

*Estimated Amount of This Competition:* $4,000,000.

*Estimated Number of Awards to be Made:* 8–10.

*Estimated or Average Size of Each Award:* $400,000.

*Estimated Project Period:* 3 Years.

*Application Availability Date:* April 2004.

*Application Deadline:* June 2004.

*Project Award Date:* September 2004.

*Competition Title:* National Programs to Improve the Health, Education, and Well-Being of Young People.

*Program Announcement Number:* 04010.

*CFDA Number:* 93.938.

*Program Contact Person:* Mike Rainey.

*E-Mail Address: mrr1@cdc.gov.*

*Phone Number:* (770) 488–6100.

*Competition Description:* The purpose of this announcement is to improve the education, health, and well-being of young people by strengthening coordinated school health programs and by enabling other youth-serving organizations to address health risks. Award recipients will emphasize efforts to help young people avoid risks (*e.g.* to avoid using tobacco, alcohol, or drugs; to avoid violence; to avoid sexual intercourse).

*Eligible Applicants:* Non-profit, non-governmental organizations with a nationwide structure and capacity to achieve the purposes of the priority area applied for. Applicants ideally should have local, state, or regional constituencies representing all states and territories, but at minimum representing 25 states/territories.

*Estimated Amount of This Competition:* $9,304,000.

*Estimated Number of Awards to be Made:* Up to 41.

*Estimated or Average Size of Each Award:* Priority 1: HIV Prevention for School-Age Youth, Category A-Schools, approx. $218,600 Category B-Youth Serving Organizations, approx. $202,000; Priority 2: Integration of School Efforts to Prevent HIV, STDs, and Unintended Pregnancy, Category A—Pregnancy Prevention, approx. $75,000, Category B–STD Prevention $100,000; Priority 3: Abstinence Collaboration and Partnerships, approx. $150,000; Priority 4: Coordinated School Health Programs and Prevention of Chronic Disease Risks, approx. $183,333; Priority 5: Prevention of Foodborne Illnesses and Related School Absence, approx. $125,000; Priority 6: Training and Professional Development, approx. $250,000.

*Estimated Project Period:* 3 Years.

*Application Availability Date:* October 2004.

*Application Deadline:* December 2004.

*Project Award Date:* March 15, 2004.

**National Center for Environmental Health (NCEH)**

*Competition Title:* Centers for Genomics and Public Health.

*Program Announcement Number:* 04034.

*CFDA Number:* 93.283.

*Program Contact Person:* Timothy G. Baker.

*E-Mail Address: tgb2@cdc.gov.*

*Phone Number:* (404) 498–1441.

*Competition Description:* The purpose of this program is to develop Centers for Genomics and Public Health at schools of public health. Each center will establish a regional hub of expertise by coordinating existing programs at the recipient institution and by creating links with local, state, or regional public health programs. Each recipient's Practice Coordinator will help strengthen linkages to health departments and community groups. Centers will also be encouraged to draw on other regional resources, such as professional organizations, the clinical community, and industry.

Funding will allow the Centers to carry out activities in three areas: (1) Contributing to the knowledge base on genomics and public health; (2) providing technical assistance to local, state, and regional public health organizations; and (3) developing and providing training for the current and future public health work force.

*Eligible Applicants:* Schools of Public Health.

*Estimated Amount of This Competition:* $3,000,000.

*Estimated Number of Awards to be Made:* 5.

*Estimated or Average Size of Each Award:* $600,000.

*Estimated Project Period:* Up to 5 Years.

*Application Availability Date:* December 1, 2003.

*Application Deadline:* February 15, 2004.

*Project Award Date:* June 30, 2004.

*Competition Title:* Addressing Asthma from a Public Health Perspective.

*Program Announcement Number:* 04035.

*CFDA Number:* 93.283.

*Program Contact Person:* Kathryn Sunnarborg.

*Phone Number:* (404) 498–1451.

*E-Mail Address: KSunnarborg@cdc.gov.*

*Competition Description:* To provide the impetus to begin development of program capacity to address asthma from a public health perspective (Part A), to continue program development and begin implementation of selected interventions (Part A Enhanced), and to conduct full asthma plan implementation (Part B). Key components of program capacity for asthma include a surveillance system, a statewide coalition, and the identification of appropriate asthma interventions. These activities are captured in a state asthma plan, which is developed in Part A, partially implemented in Part A Enhanced, and fully implemented in Part B.

*Eligible Applicants:* Part A: Any Indian tribal government, Indian Tribe, or State Public Health Department or their bona fide agents, who have NOT received funding from CDC/NCEH under Program Announcements 99109, 01106, 02085, or 03032. Part A Enhanced: State Health departments from CO, CT, Washington DC, GA, ID, MD, MO, NE, NH, TX, UT, VA, WV, and WI. Part B: Any state not currently receiving funding under Part B of RFA 01106, or under RFA 02085.

*Estimated Amount of This Competition:* $6,300,000.

*Estimated Number of Awards to be Made:* 15 (3 Part A, 7 Part A Enhanced, 5 Part B).

*Estimated Average Size of Each Award:* $200,000 (Part A), $310,000 (Part A Enhanced), $700,000 (Part B).

*Estimated Project Period:* 3 years (Part A and Part A Enhanced)/5 years (Part B).

*Application Availability Date:* December 1, 2003.

*Application Deadline:* March 1, 2004.

*Project Award Date:* July 1, 2004.

**National Center for HIV, STD, and TB Prevention (NCHSTP)**

*Competition Title:* Translating Proven Interventions for Underserved and Emergent High Risk Populations.

*Program Announcement Number:* 04038.

*CFDA Number:* 93.941.

*Program Contact Person:* Craig Studer.

*E-Mail Address: cstuder@cdc.gov.*

*Phone Number:* (404) 639–5389.

*Competition Description:* This project will develop tools for rapid assessment of populations that have been identified as having evidence of elevated HIV exposure risk, but for whom research studies identifying effective prevention interventions have not been published. After the rapid assessment of the population, the applicant will need to adapt effective interventions used for other populations to the needs of the target population. The applicant, with the direction from CDC, will compile a manual of rapid assessment procedures and steps taken to use the assessment data for adapting and evaluating the adapted intervention.

*Eligible Applicants:* State and local health departments, public and private nonprofit and for-profit organizations.

*Estimated Amount of This Competition:* $1,200,000.

*Estimated Number of Awards to be Made:* 4.

*Estimated or Average Size of Each Award:* $300,000.

*Estimated Project Period:* 3 Years.

*Application Availability Date:* January 2004.

*Application Deadline:* March 2004.

*Project Award Date:* July 15, 2004.

*Competition Title:* Public Health Conference Support Cooperative Agreement—Program for Human Immunodeficiency Virus (HIV) Prevention.

*Program Announcement Number:* 04039.

*CFDA Number:* 93.941.

*Program Contact Person:* Victoria Saho.

*E-Mail Address: vsaho@cdc.gov.*

*Phone Number:* (404) 639–5211.

*Competition Description:* The purpose of conference support funding is to provide partial support for specific non-federal conferences in the areas of health promotion and disease prevention information/education programs pertaining to HIV prevention. This program addresses the Healthy People 2010 focus area of HIV.

*Eligible Applicants:* Letters of intent (LOI) and applications may be submitted by nonprofit organizations, government agencies, tribal governments, and private corporations. These include: Community-based organizations, research institutions, state or local health departments, hospitals, universities or colleges, faith based organizations, technical school, other non-profit organizations, federally and nonfederally recognized American Indian/Alaskan Native (AI/AN) tribal governments and corporations that qualify under the Indian Civil Rights Acts, including State Charter Tribes, Urban Indian Health Programs, Indian Health Boards, Inter-tribal Councils, and other Tribal Organizations, including urban and eligible inter-tribal consortia. Faith-based organizations are eligible to apply for these funds.

*Estimated Amount of This Competition:* $112,000.

*Estimated Number of Awards to be Made:* 5.

*Estimated or Average Size of Each Award:* $20,000.

*Estimated Project Period:* Awards will begin on or about April 1, 2004 and will be made for a 12-month budget and project period. Conferences planned for April 1, 2004 through September 30, 2004 will be considered for funding.

*LOI Deadline Date:* Submit your LOI on or before January 12, 2004.

*Application Availability Date:* February 25, 2004.

*Application Deadline:* April 15, 2004.

*Project Award Date:* May 15, 2004.

**National Center for Infectious Diseases (NCID)**

*Competition Title:* Applied Research in Emerging Infections Investigations of West Nile Virus.

*Program Announcement Number:* 04052.

*CFDA Number:* 93.283.

*Program Contact Person:* Dr. John Roehrig.

*E-Mail Address: jtr1@cdc.gov.*

*Phone Number:* (970) 221–6442.

*Competition Description:* The West Nile (WN) virus outbreak continues to expand in the United States. The persistence of WN virus in overwintering mosquitoes suggests that WN virus will become enzootic in the U.S. for the foreseeable future. The natural transmission cycle of WN virus involves mosquitoes becoming infected by feeding on birds infected with the virus. Many mammal-biting mosquito species have been infected with WN virus. This observation has been accompanied by an increase in WN virus infections of mammalian species other than humans and equines (*e.g.* bats, squirrels, cats, chipmunks, rabbits, and skunks). This expanded epizootic, which again occurred during the peak southern bird migration, emphasizes the need for continued vigilance for the spread of the virus beyond the outbreak epicenter. The purpose of the program is to provide assistance to organizations in developing applied research efforts pertaining to West Nile (WN) virus and other arboviruses that occur in the United States (U.S.).

*Eligible Applicants:* Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Faith-based organizations are eligible to apply for these funds.

*Estimated Amount of This Competition:* $2,000,000.

*Estimated Number of Awards to be Made:* 12.

*Estimated or Average Size of Each Award:* $150,000.

*Estimated Project Period:* 3 Years.

*Application Availability Date:* March 14, 2004.

*Application Deadline:* May 15, 2004.

*Project Award Date:* September 1, 2004.

*Competition Title:* Epidemiology and Laboratory Capacity (ELC) for Infectious Diseases.

*Program Announcement Number:* 04040.

*CFDA Number:* 93.283.

*Program Contact Person:* Debbie Deppe, M.P.A.

*E-Mail Address: dadl@cdc.gov.*

*Phone Number:* (404) 639–4668.

*Competition Description:* The purpose of the Epidemiology and Laboratory Capacity in Infectious Diseases (ELC) program is to assist State and eligible local public health agencies in strengthening basic epidemiologic and laboratory capacity to address infectious disease threats with a focus on notifiable diseases, food-, water-, and vector-borne diseases, vaccine-preventable diseases, and drug-resistant infections. Awards are intended to support activities that enhance the ability of a program to identify and monitor the occurrence of infectious diseases of public health importance in a community, characterize disease determinants, identify and respond to disease outbreaks and other infectious disease emergencies, use public health data for priority setting and policy development, and assess the effectiveness of activities. Strengthening collaboration between laboratory and epidemiology practice is a crucial component of this program.

*Eligible Applicants:* Assistance will be provided only to the health departments of states or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, federally recognized Indian tribal governments, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. In addition, official public health agencies of city governments, with jurisdictional populations greater than 1,500,000, or county governments, with jurisdictional populations greater than 8,000,000 (based on 2000 census data), are eligible to apply.

Funding preference will be given to current ELC grantees.

*Estimated Amount of This Competition:* Cycle A: $20,000,000 Cycle B: $16,000,000.

*Estimated Number of Awards to be Made:* 45.

*Estimated or Average Size of Each Award:* $800,000.

*Estimated Project Period:* 5 Years.

*Application Availability Date:* Cycle A: November 1, 2003, Cycle B: February 3, 2004.

*Application Deadline:* Cycle A: January 4, 2004, Cycle B: April 1, 2004. Current ELC grantees should submit an application for the cycle they are currently in. New applicants may apply for either cycle, but not both.

*Project Award Date:* Cycle A: April 1, 2004, Cycle B: July 1, 2004.

*Competition Title:* Cooperative Agreement for Research on Prevention of Lyme Disease in Humans in the United States.

*Program Announcement Number:* 04008.

*CFDA Number:* 93.942.

*Program Contact Person:* Barbara Stewart.

*E-Mail Address: bsg2@cdc.gov.*

*Phone Number:* (404) 639–0044.

*Competition Description:* The incidence of Lyme disease in the United States has been increasing and is likely to continue to increase unless affected communities and populations at risk develop and implement integrated control and prevention strategies. In addition, there is a need to explore new methods of Lyme disease prevention and new treatment regimens that may yield higher levels of community and individual participation and behavior change than existing strategies. The purpose of the program is to evaluate and compare effectiveness and cost of established as well as novel methods for decreasing the incidence of Lyme disease in humans. The program's overall objective is to find the most effective strategies to lower the incidence of Lyme disease in endemic areas.

*Eligible Applicants:* Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, hospitals, other public and private nonprofit organizations, community-based organizations, state and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, political subdivisions of states (in consultation with states), federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Faith-based organizations are eligible to apply for these funds.

*Estimated Amount of This Competition:* $1,300,000.

*Estimated Number of Awards to be Made:* 2.

*Estimated or Average Size of Each Award:* $650,000.

*Estimated Project Period:* 4 Years.

*Application Availability Date:* October 1, 2003.

*Application Deadline:* November 17, 2003.

*Project Award Date:* February 28, 2004.

*Competition Title:* Cooperative Agreement for Research on the Ecology and Control of Tick Vectors of Lyme Disease in the United States.

*Program Announcement Number:* 04007.

*CFDA Number:* 93.942.

*Program Contact Person:* Joe Piesman.

*E-Mail Address: jfp2@cdc.gov.*

*Phone Number:* (970) 221–6408.

*Competition Description:* The purpose of the program is to increase the understanding of the ecology of Lyme disease in the United States, especially in high risk areas, and to test available methods for controlling tick vectors of Lyme disease that will lead directly to the design of new prevention strategies to limit the transmission of the etiologic agent of Lyme disease, Borrelia burgdorferi. Awards will be made in two separate categories, (1) tick ecology projects and (2) tick control projects.

*Eligible Applicants:* Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, hospitals, other public and private nonprofit organizations, community-based organizations, state and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, political subdivisions of states (in consultation with states), federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Faith-based organizations are eligible to apply for these funds.

*Estimated Amount of This Competition:* $1,300,000.

*Estimated Number of Awards to be Made:* 4.

*Estimated or Average Size of Each Award:* $325,000.

*Estimated Project Period:* 4 Years.

*Application Availability Date:* October 1, 2003.

*Application Deadline:* November 17, 2003.

*Project Award Date:* February 28, 2004.

*Competition Title:* Cooperative Agreement for Research on the Laboratory Diagnosis, Immunology, and Pathogenesis of Lyme Disease in the United States.

*Program Announcement Number:* 04006.

*CFDA Number:* 93.942.

*Program Contact Person:* Barbara Stewart.

*E-Mail Address: bsg2@cdc.gov.*

*Phone Number:* (404) 639–0044.

*Competition Description:* The purposes of the program are to develop improved and standardized laboratory tests to identify and characterize infection by Borrelia burgdorferi and related Borrelia species in humans and to better understand the immunology and pathogenic mechanisms of B. burgdorferi. Better laboratory methods can facilitate earlier and more accurate diagnosis and appropriate treatment of Lyme disease, thus preventing secondary consequences of infection. Better laboratory methods also can be used for improved surveillance and understanding of the epidemiology of Lyme disease in communities.

Immunology and pathogenesis studies can enhance understanding of host responses to infection, leading to improved prevention or intervention strategies such as vaccination.

*Eligible Applicants:* Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, hospitals, other public and private nonprofit organizations, community-based organizations, state and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, political subdivisions of states (in consultation with States), federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Faith-based organizations are eligible to apply for these funds.

*Estimated Amount of This Competition:* $1,300,000.

*Estimated Number of Awards to be Made:* 7.

*Estimated or Average Size of Each Award:* $200,000.

*Estimated Project Period:* 4 Years.

*Application Availability Date:* October 1, 2003.

*Application Deadline:* December 1, 2003.

*Project Award Date:* February 28, 2004.

**National Center for Injury Prevention and Control (NCIPC)**

*Competition Title:* Grants for Acute Care, Rehabilitation, and Disability Prevention Research.

*Program Announcement Number:* 04044.

*CFDA Number:* 93.136.'

*Program Contact Person:* Paul Smutz.

*E-Mail Address: pos1@cdc.gov.*

*Phone Number:* (770) 488–1508.

*Competition Description:* In conducting activities to achieve the purposes of this program, the recipient will be responsible for one of the following research activities:

1. Develop and evaluate protocols that provide onsite interventions in acute care settings or linkages to off-site services for patients at risk of injury or psychosocial problems following injury.
2. Identify methods and strategies to ensure that people with traumatic brain injury (TBI) and spinal cord injury (SCI) receive needed services.
3. Develop and evaluate methods of using point-of-care clinical information systems to report injuries and other acute health problems to public health agencies.

*Eligible Applicants:* Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, hospitals, other public and private nonprofit and for profit organizations, community-based organizations, state and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organization, and small, minority, and/or women-owned businesses. Faith-based organizations are eligible to apply for these funds.

*Estimated Amount of This Competition:* $600,000.

*Estimated Number of Awards to be Made:* 2.

*Estimated or Average Size of Each Award:* $300,000.

*Estimated Project Period:* 3 Years.

*Application Availability Date:* November 3, 2003.

*Application Deadline:* February 3, 2004.

*Project Award Date:* August 1, 2004.

*Competition Title:* Grants for Violence-Related Injury Prevention Research: Youth Violence, Suicide, Intimate Partner Violence, and Sexual Violence.

*Program Announcement Number:* 04045.

*CFDA Number:* 93.136.

*Program Contact Person:* Paul Smutz.

*E-Mail Address: pos1@cdc.gov.*

*Phone Number:* (770) 488–1508.

*Competition Description:* NCIPC is soliciting investigator-initiated research that will help expand and advance our understanding of violence, its causes, and prevention strategies. The following research themes are the focus of this investigator-initiated solicitation:

1. Evaluate strategies for disseminating and implementing evidence-based interventions or policies for the prevention of child maltreatment or youth violence;
2. Evaluate the efficacy and effectiveness of interventions, programs, and policies to prevent intimate partner violence, sexual violence (includes both sexual violence against adults and child sexual abuse), child maltreatment, youth violence or suicidal behavior; and
3. Identify shared and unique risk and protective factors for the perpetration of intimate partner violence, sexual violence, child maltreatment, youth violence, or suicidal behavior, and examine the relationships among these forms of violence.

*Eligible Applicants:* Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, hospitals, other public and private nonprofit and for profit organizations, community-based organizations, state and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organization, and small, minority, and/or women-owned businesses. Faith-based organizations are eligible to apply for these funds.

*Estimated Amount of This Competition:* $2,600,000.

*Estimated Number of Awards to be MADE:* 9.

*Estimated or Average Size of Each Award:* $275,000.

*Estimated Project Period:* 3 Years.

*Application Availability Date:* November 3, 2003.

*Application Deadline:* February 3, 2004.

*Project Award Date:* August 1, 2004.

*Competition Title:* Grants for New Investigator Training Awards for Unintentional Injury, Violence Related Injury, Biomechanics, and Acute Care, Disability, and Rehabilitation-Related Research.

*Program Announcement Number:* 04046.

*CFDA Number:* 93.136.

*Program Contact Person:* Paul Smutz.

*E-Mail Address: pos1@cdc.gov.*

*Phone Number:* (770) 488–1508.

*Competition Description:* Consideration of research that addresses one of the following research areas:

(1) Violence-dissemination and implementation of interventions for violence prevention; effectiveness of interventions, programs, and policies to prevent violence; risk and protective factors for violence perpetration.

(2) Unintentional Injury-Dissemination of effective interventions; evaluation of the usability of an intervention package for moving effective interventions to practice and policy; effectiveness of interventions; identification of risk and protective factors for injuries; development of measures of supervision and sports injuries.

(3) Acute Care, Disability, and Rehabilitation-evaluation of protocols for onsite interventions and linkage to offsite services for patients at risk of injury or psychological problems following injury; identify of strategies to ensure people with SCI and TBI receive services; evaluation of injury clinical information systems.

(4) Biomechanics-build on the basic knowledge of biomechanics and encourage interdisciplinary intervention oriented injury control research as supported in the CDC Injury Research Agenda.

*Eligible Applicants:* Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies; that is, universities and colleges (including but not limited to schools or departments of public health, medicine, nursing, criminal justice, bioengineering, or the behavioral or social sciences), technical schools, research institutions, hospitals, other public and private nonprofit and for profit organizations, community-based organizations, state and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organization, and small, minority, and/or women-owned businesses. Applicants must have a research or a health-professional doctorate-level degree from an accredited program and have demonstrated the capacity or potential for highly productive research in the period after the doctorate, commensurate with level of experience. Applicants who have been the principal investigator on an R01 or R01 equivalent health-related research grant or who have had equivalent injury related research support from an existing Injury Control Research Center (ICRC) are not eligible. Recipients of dissertation research grants or NIH Small Grant Awards are eligible to apply.

*Estimated Amount of This Competition:* $400,000.

*Estimated Number of Awards to be Made:* 4.

*Estimated or Average Size of Each Award:* $100,000.

*Estimated Project Period:* 1 Year.

*Application Availability Date:* November 3, 2003.

*Application Deadline:* February 3, 2004.

*Project Award Date:* August 1, 2004.

*Competition Title:* Grants for Traumatic Injury Biomechanics Research.

*Program Announcement Number:* 04047.

*CFDA Number:* 93.136.

*Program Contact Person:* Paul Smutz.

*E-Mail Address: pos1@cdc.gov.*

*Phone Number:* (770) 488–1508.

*Competition Description:* Consideration of research that addressees the following: High priority: (1) Use biomechanics research and knowledge of injury tolerance and mechanisms to develop and/or evaluate interventions that address falls among children and the elderly, injuries in mass trauma events, sports/physical activity/recreation injuries, motorcycling/bicycling/pedestrian injuries and motor vehicle injuries to child occupants and older drivers; (2) Identify the biomechanics and specific injuries that would be highly predictive of diagnoses of intimate partner violence and child maltreatment, and improve case definitions. Lower priority: (1) Advance the biomechanical understanding of traumatic injury though biofidelic model development, injury assessment technology improvements, and research into injury mechanisms and biomechanical responses; (2) Define human tolerance limits for injury with respect to age, fitness and gender; define injury tolerance of tissue, bone, and other structures for developing interventions; (3) Identify modifiable risk factors for and mechanisms of nonfatal neck, back, and soft tissue (whiplash-like) injuries.

*Eligible Applicants:* Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, hospitals, other public and private nonprofit and for profit organizations, community-based organizations, state and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organization, and small, minority, and/or women-owned businesses. Faith-based organizations are eligible to apply for these funds.

*Estimated Amount of This Competition:* $1,100,000.

*Estimated Number of Awards to be Made:* 3–4.

*Estimated or Average Size of Each Award:* $275,000.

*Estimated Project Period:* 3 Years.

*Application Availability Date:* November 3, 2003.

*Application Deadline:* February 3, 2004.

*Project Award Date:* August 1, 2004.

*Competition Title:* Research Grants to Prevent Unintentional Injuries.

*Program Announcement Number:* 04048.

*CFDA Number:* 93.136.

*Program Contact Person:* Paul Smutz.

*Phone Number:* (770) 488–1508.

*E-Mail Address: pos1@cdc.gov.*

*Competition Description:* Consideration of research that addresses the following:

1. Develop methods to better define and measure supervision, especially in children.
2. Evaluate existing and develop new methods to obtain exposure and injury incidence data for sports, exercise and recreation-related injuries.
3. Identify risk and protective factors related to childhood falls, safe motor vehicle use by older adults, or car crashes involving teens.
4. Evaluate environmental, behavioral, legislative, or regulatory interventions to prevent injuries related to sports, exercise, and, recreation or pedestrian crashes.
5. Develop and evaluate the usability of an intervention package for moving effective interventions to public health practice and policy, especially for older adult falls prevention or transportation safety.
6. Evaluate strategies to increase dissemination of effective interventions to reduce injuries that: Are related to alcohol-impaired driving; occur at home and in the community; are due to falls at home among older community-dwelling adults; or sports, recreation and exercise-related.

*Eligible Applicants:* Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, hospitals, other public and private nonprofit and for profit organizations, community-based organizations, state and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organization, and small, minority, and/or women-owned businesses. Faith-based organizations are eligible to apply for these funds.

*Estimated Amount of This Competition:* $800,000.

*Estimated Number of Awards to be Made:* 3.

*Estimated or Average Size of Each Award:* $265,000.

*Estimated Project Period:* 3 Years.

*Application Availability Date:* November 3, 2003.

*Application Deadline:* February 3, 2004.

*Project Award Date:* August 1, 2004.

*Competition Title:* Grants for Dissertation Awards for Doctoral Candidates for Violence-Related Injury Prevention Research in Minority Communities.

*Program Announcement Number:* 04049.

*CFDA Number:* 93.136.

*Program Contact Person:* Paul Smutz.

*E-Mail Address: pos1@cdc.gov.*

*Phone Number:* (770) 488–1508.

*Competition Description:* To achieve the purpose of this program, the recipient will be responsible for one of the following activities:

*Violence*

(1) Evaluating strategies for disseminating and implementing evidence-based interventions or policies for the prevention of intimate partner violence, sexual violence, youth violence, suicide, and child maltreatment.

(2) Evaluating the efficacy, effectiveness, and cost effectiveness of interventions, programs, and policies to prevent intimate partner violence, sexual violence, youth violence, suicide, and child maltreatment.

(3) Identifying shard and unique risk and protective factors for the perpetration of intimate partner violence and sexual violence and examine the relationships among these forms of violence and others such as child maltreatment, youth violence, or suicidal behavior.

*Unintentional Injury*

Dissemination of effective interventions; evaluation of the usability of an intervention package for moving effective interventions to practice and policy; effectiveness of interventions; identification of risk and protective factors for injuries; development of measures of supervision and sports injuries.

*Eligible Applicants:* Assistance will be provided to any United States public or private institution. The institution must support an accredited doctoral level training program. The performance site must be domestic. Applicants must be students in good standing enrolled in an accredited doctoral degree program. The applicant must have the authority and responsibility to carry out the proposed project. Applicants must be conducting or intending to conduct research in one of the areas described under the "Research Objectives" in the Program Requirement's section of this announcement. To receive this funding, applicants must have successfully defended their dissertation proposal. This must be verified in a letter of certification from the mentor (the chair or another member of the dissertation committee). CDC requests that, if available, the letter of certification be submitted with the grant application, or before the negotiation and award.

*Estimated Amount of This Competition:* $120,000.

*Estimated Number of Awards to be Made:* 6.

*Estimated or Average Size of Each Award:* $20,000.

*Estimated Project Period:* 1 Year.

*Application Availability Date:* November 3, 2003.

*Application Deadline:* February 3, 2004.

*Project Award Date:* August 1, 2004.

**National Immunization Program (NIP)**

*Competition Title:* National Minority Organizations Immunization Projects.

*Program Announcement Number:* 04051.

*CFDA Number:* 93.185.

*Program Contact Person:* Valerie Morelli.

*E-Mail Address: VMorelli@cdc.gov.*

*Phone Number:* (404) 639–8091.

*Competition Description:* The purpose of this cooperative agreement is to assist National Minority Organizations (NMOs) with the promotion and improvement of childhood, adolescent, and adult immunization coverage levels. Applicants must allocate a percentage of the funds awarded to subcontract with affiliate minority Community Based Organizations (CBOs). Focus is on technical assistance to and training of CBOs to identify and document effective models of collaboration at the community level to improve immunization access and levels among racial and ethnic minorities. Other requirements include development and dissemination of education products to be shared with other national organizations, State and local health agencies, and other CBOs. Development and implementation of a plan to ensure sustainability of program activities to ensure its continuation after the end of the project period is also necessary.

*Eligible Applicants:* Established, tax-exempt national organizations that coordinate public health or related programs serving racial or ethnic minority populations within a major portion or region of the United States through their own offices or organizational affiliates. Faith-based organizations are eligible to apply for these funds. Groups recognized as racial and ethnic minorities include (but are not limited to) African Americans, Alaskan Natives, Asian Americans, Caribbean Americans, Latinos/Hispanics, Native Americans, and Pacific Islanders.

*Estimated Amount for This Competition:* $750,000.

*Estimated Number of Awards to be Made:* 3.

*Estimated or Average Size of Each Award:* $250,000.

*Estimated Project Period:* 3 years.

*Application Availability Date:* January 2004.

*Application Deadline:* March 2004.

*Projected Award Date:* July 1, 2004.

**National Institute for Occupational Safety and Health (NIOSH)**

*Competition Title:* Occupational Safety and Health Research Grants—investigator-Initiated (R01).

*Program Announcement Number:* NIOSH–1.

*CFDA Number:* 93.262 (R01).

*Program Contact Person:* Michael Galvin.

*E-Mail Address: MGalvin@cdc.gov.*

*Phone Number:* (404) 498–2524.

*Competition Description:* NIOSH supports research to identify and investigate the relationships between hazardous working conditions and associated occupational diseases and injuries; to develop more sensitive means of evaluating hazards at work sites, as well as methods for measuring early markers of adverse health effects and injuries; to develop new protective equipment, engineering control technology, and work practices to reduce the risks of occupational hazards; and, to evaluate the technical feasibility or application of a new or improved occupational safety and health procedure, method, technique, or system.

The announcement for this program is published in the *NIH Guide.* See *http://www.cdc.gov/niosh* for links to the announcements.

*Eligible Applicants:* Eligible applicants include domestic and foreign, public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, and other public and private organizations, including state and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Racial/ethnic minority individuals, women, and persons with disabilities are encouraged to apply as Principal Investigators. Faith-based organizations are eligible to apply for these funds.

*Estimated Amount of This Competition:* $38,000,000.

*Estimated Number of Awards To Be Made:* 50.

*Estimated or Average Size of Each Award:* $30,000 to $400,000, average $300,000.

*Estimated Project Period:* Contact NIOSH Extramural Program Office, *http://www.cdc.gov/niosh/extramur.html.*

*Application Availability Date:* Contact NIOSH Extramural Program Office, *http://www.cdc.gov/niosh/extramur.html.*

*Application Deadline:* All (new) February 3, June 1, and October 1, 2004. Competing Continuation, Supplemental, and Revised Research Grant/Cooperative Agreements applications—March 1, 2004, July 1, 2004, and November 1, 2004.

*Project Award Date:* From 4 to 5 months, with an additional 4 to 5 months for program review and funding.

*Competition Title:* Occupational Safety and Health Research Grants—Special Emphasis Research Career Award (K01).

*Program Announcement Number:* NIOSH–2.

*CFDA Number:* 93.262 (K01).

*Program Contact Person:* Gwendolyn Cattledge.

*E-Mail Address: GCattledge@cdc.gov.*

*Phone Number:* (404) 498–2508.

*Competition Description:* Special Emphasis Research Career Award (SERCA) Grants (K01) are an important mechanism used in the occupational safety and health research grants program to attract new investigators into occupational safety and health. NIOSH supports research to identify and investigate the relationships between hazardous working conditions and associated occupational diseases and injuries; to develop more sensitive means of evaluating hazards at work sites, as well as methods for measuring early markers of adverse health effects and injuries; to develop new protective equipment, engineering control technology, and work practices to reduce the risks of occupational hazards; and to evaluate the technical feasibility or application of a new or improved occupational safety and health procedure, method, technique, or system.

*Eligible Applicants:* Eligible applicants include domestic and foreign, public and private nonprofit and for-profit organizations and governments and their agencies; that is, universities, colleges, research institutions, hospitals, and other public and private organizations, including state and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Racial/ethnic minority individuals, women, and persons with disabilities are encouraged to apply as Principal Investigators. Faith-based organizations are eligible to apply for these funds.

*Estimated Amount of This Competition:* $4,000,000.

*Estimated Number of Awards To Be Made:* 20.

*Estimated or Average Size of Each Award:* $30,000 to $400,000, average $200,000.

*Estimated Project Period:* Contact NIOSH Extramural Program Office, *http://www.cdc.gov/niosh/extramur.html.*

*Application Availability Date:* Contact NIOSH Extramural Program Office, *http://www.cdc.gov/niosh/extramur.html.*

*Application Deadline:* All (new) February 3, June 1, and October 1, 2004. Competing Continuation, Supplemental, and Revised Research Grant/Cooperative Agreements applications—March 1, 2004, July 1, 2004, and November 1, 2004.

*Project Award Date:* From 4 to 5 months, with an additional 4 to 5 months for program review and funding.

*Competition Title:* Occupational Safety and Health Research Grants—Small Grants (R03).

*Program Announcement Number:* NIOSH–3.

*CFDA Number:* 93.262 (R03).

*Program Contact Person:* Michael Galvin.

*E-Mail Address: MGalvin@cdc.gov.*

*Phone Number:* (404) 498–2524.

*Competition Description:* The NIOSH Small Grant (R03) program is one of the mechanisms used in the occupational safety and health research grants program. NIOSH supports research to identify and investigate the relationships between hazardous working conditions and associated occupational diseases and injuries; to develop more sensitive means of evaluating hazards at work sites, as well as methods for measuring early markers of adverse health effects and injuries; to develop new protective equipment, engineering control technology, and work practices to reduce the risks of occupational hazards; and to evaluate the technical feasibility or application of a new or improved occupational safety and health procedure, method, technique, or system.

*Eligible Applicants:* Eligible applicants include domestic and foreign, public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, and other public and private organizations, including State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Racial/ethnic minority individuals, women, and persons with disabilities are encouraged to apply as Principal Investigators. Faith-based organizations are eligible to apply for these funds.

*Estimated Amount of This Competition:* $4,000,000.

*Estimated Number of Awards to be Made:* 30.

*Estimated or Average Size of Each Award:* $30,000 to $200,000, average $130,000.

*Estimated Project Period:* Contact NIOSH Extramural Program Office or visit *http://www.cdc.gov/niosh/extramur.html.*

*Application Availability Date:* Contact NIOSH Extramural Program Office or visit *http://www.cdc.gov/niosh/extramur.html.*

*Application Deadline:* All (new) February 3, June 1, and October 1, 2004. Competing Continuation, Supplemental, and Revised Research Grant/Cooperative Agreements applications—March 1, 2004, July 1, 2004, and November 1, 2004. To request application: Please contact NIOSH Extramural Program Office or visit *http://www.cdc.gov/niosh/extramur.html.*

*Project Award Date:* From 4 to 5 months, with an additional 4 to 5 months for program review and funding.

*Competition Title:* Occupational Safety and Health Research Grants-Exploratory and Developmental (R21).

*Program Announcement Number:* NIOSH–4.

*CFDA Number:* 93.262 (R21).

*Program Contact Person:* Michael Galvin.

*E-Mail Address: MGalvin@cdc.gov.*

*Phone Number:* (404) 498–2524.

*Competition Description:* Exploratory and Developmental (R21) research program is another mechanism used in the occupational safety and health research grants program. NIOSH supports research to identify and investigate the relationships between hazardous working conditions and associated occupational diseases and injuries; to develop more sensitive means of evaluating hazards at work sites, as well as methods for measuring early markers of adverse health effects and injuries; to develop new protective equipment, engineering control technology, and work practices to reduce the risks of occupational hazards; and, to evaluate the technical feasibility or application of a new or improved occupational safety and health procedure, method, technique, or system.

*Eligible Applicants:* Eligible applicants include domestic and foreign, public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, and other public and private organizations, including state and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Racial/ethnic minority individuals, women, and persons with disabilities are encouraged to apply as Principal Investigators. Faith-based organizations are eligible to apply for these funds.

*Estimated Amount of This Competition:* $4,000,000.

*Estimated Number of Awards to be Made:* 25.

*Estimated or Average Size of Each Award:* $30,000 to $200,000, average $150,000.

*Estimated Project Period:* Contact NIOSH Extramural Program Office.

*Application Availability Date:* Contact NIOSH Extramural Program Office.

*Application Deadline:* All (new) February 3, June 1, and October 1, 2004. Competing Continuation, Supplemental, and Revised Research Grant/Cooperative Agreements applications—March 1, 2004, July 1, 2004, and November 1, 2004. For request for application: Please contact program office or visit *http://www.cdc.gov/niosh/extramur.html.*

*Project Award Date:* From 4 to 5 months, with an additional 4 to 5 months for program review and funding.

*Competition Title:* Occupational Safety and Health Training.

*Program Announcement Number:* 04001.

*CFDA Number:* 93.263.

*Program Contact Person:* John Talty.

*E-Mail Address: jtalty@cdc.gov.*

*Phone Number:* (513) 533–4687.

*Competition Description:* The National Institute for Occupational Safety and Health (NIOSH) is mandated to provide an adequate supply of qualified personnel to carry out the purposes of the Occupational Safety and Health Act. The specific purpose of this program is to provide financial assistance to eligible applicants to assist in providing an adequate supply of qualified professional occupational safety and health personnel. The objective is to develop specialized professional and paraprofessional personnel in the occupational safety and health field with training in occupational medicine, occupational health nursing, industrial hygiene, and occupational safety. Projects are funded to support Occupational Safety and Health Education and Research Center Training Grants (ERCs) and Long-Term Training Project Grants (TPGs). ERCs are academic institutions that provide interdisciplinary graduate training and continuing education in the industrial hygiene, occupational health nursing, occupational medicine, occupational safety, and closely related occupational safety and health fields. The ERCs also serve as regional resource centers for industry, labor, government, and the public. TPGs are academic institutions that primarily provide single-discipline graduate training in the industrial hygiene, occupational health nursing, occupational medicine, occupational safety, and closely related occupational safety and health fields.

*Eligible Applicants:* Any public or private educational or training agency or institution that has demonstrated competency in the occupational safety and health field and is located in a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, Wake Island, Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act, Johnston Island, and any other U.S. Territory or Trust Territory not named herein are eligible to apply for an institutional training grant. Faith-based organizations are eligible to apply for these funds.

*Estimated Amount of This Competition:* $4,000,000.

*Estimated Number of Awards to be Made:* 12.

*Estimated or Average Size of Each Award:* ERC Grants: range: $400,000 to $800,000; average $600,000. Other: $20,000 to $500,000, average $58,000.

*Estimated Project Period:* Up to five years.

*Application Availability Date:* April 2003.

*Application Deadline:* July 1, 2004.

*Project Award Date:* FY 2004. Contact program office for updated information or visit *http://www.cdc.gov/niosh/extramur.html.*

*Competition Title:* Health and Safety Programs for Construction Work.

*Program Announcement Number:* NIOSH–5.

*CFDA Number:* 93.955.

*Program Contact Person:* Michael Galvin.

*E-Mail Address: MGalvin@cdc.gov.*

*Phone Number:* (404) 498–2524.

*Competition Description:* The purposes of this cooperative agreement are to develop, implement, and evaluate a national research program in prevention intervention effectiveness research and preventive service systems research in construction safety and health. Many of the National Occupational Research Agenda (NORA) priority areas are relevant to the construction industry and should be considered when responding to this Request for Assistance. These include, preventing hearing loss, back disorders, asthma, and dermatitis and reducing or eliminating traumatic injuries (caused by falls, electrocutions, struck-bys or contact with materials/objects). In addition, other high priority problems in construction are not explicitly included in NORA, such as silicosis and lead poisoning, which should be addressed. The overall project will respond to problems that are specific to different regions, different trades, and different industry sectors.

*Eligible Applicants:* Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit and for-profit organizations, state and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Faith-based organizations are eligible to apply for these funds.

*Estimated Amount of This Competition:* $5,000,000.

*Estimated Number of Awards to be Made:* 1 or 2.

*Estimated or Average Size of Each Award:* $5,000,000.

*Estimated Project Period:* 3 to 5 years depending on availability of funds, with budget periods of 12 months.

*Application Availability Date:* November 2003. Contact program office for updated information or visit *http://www.cdc.gov/niosh/extramur.html.*

*Application Deadline:* February 3, 2004.

*Project Award Date:* FY 2004. Contact program office for updated information or visit *http://www.cdc.gov/niosh/extramur.html.*

*Competition Title:* Surveillance Program.

*Program Announcement Number:* NIOSH–6.

*CFDA Number:* 93.957.

*Program Contact Person:* Gwendolyn Cattledge.

*E-Mail Address: GCattledge@cdc.gov.*

*Phone Number:* (404) 498–2508.

*Competition Description:* To (1) Recognize new hazards; (2) define the magnitude of the problem; (3) follow trends in incidence; (4) target exceptional hazardous workplaces for intervention; and (5) evaluate the effectiveness of prevention efforts. The goal of this program is to prevent selected occupational morbidity and mortality by evaluating work situations at high risk and formulating and disseminating prevention strategies to those who can intervene in the workplace.

*Eligible Applicants:* Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit and for-profit organizations, state and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Faith-based organizations are eligible to apply for these funds.

*Estimated Amount of This Competition:* $500,000.

*Estimated Number of Awards to be Made:* varies.

*Estimated or Average Size of Each Award:* Surveillance program $100,000 to $200,000, average $150,000.

*Estimated Project Period:* Awards may be made up to 4 years as indicated below depending on availability of funds, with budget periods of 12 months. Surveillance program-up to 4 years.

*Application Availability Date:* Contact NIOSH Extramural Program Office or visit *http://www.cdc.gov/niosh/extramur.html.*

*Application Deadline:* April 1, 2004.

*Project Award Date:* Contact NIOSH Extramural Program Office or visit *http://www.cdc.gov/niosh/extramur.html.*

Dated: September 30, 2003.

**Edward J. Schultz,**

*Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 03–25240 Filed 10–6–03; 8:45 am]

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Federal Register

**Tuesday,**
**October 7, 2003**

## Part IV

# Department of Housing and Urban Development

**24 CFR Part 203**
**Up-Front Mortgage Insurance Premiums for Loans Insured Under Sections 203(k) and 234(c) of the National Housing Act; Proposed Rule**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**24 CFR Part 203**

**[Docket No. FR–4749–P–01]**

**RIN 2502–AH82**

## Up-Front Mortgage Insurance Premiums for Loans Insured Under Sections 203(k) and 234(c) of the National Housing Act

**AGENCY:** Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Proposed rule.

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**SUMMARY:** HUD charges an up-front mortgage insurance premium (MIP) for loans that are obligations of its mutual mortgage insurance fund, and of its general insurance fund only for insurance in connection with Section 8 homeownership. However, to date there has been no provision for up-front premiums for loans such as home rehabilitation loans under section 203(k) of the National Housing Act (NHA) and condominium unit loans under section 234(c) which are obligations of the general insurance fund. Recent statutory changes now provide for an up-front MIP for those programs. This rule amends HUD's regulations related to mortgage insurance to conform the regulations to the recent statutory changes.

**DATES:** *Comment Due Date:* December 8, 2003.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, at (202) 708–2121 (this is not a toll-free number). Persons with hearing- or speech-impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339 (this is a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### A. Background

Section 203(c) of the National Housing Act (NHA) authorizes the Secretary to set the premium charge for insurance of mortgages under Title II of the NHA. Prior to a recent statutory change, section 203(c)(2) provided for the establishment of an up-front premium for mutual mortgage insurance programs not to exceed 2.25 percent of the amount of the original insured principal obligation of the mortgage. The Fiscal Year (FY) 2002 HUD Appropriations Act (Pub. L. 107–73, approved November 26, 2001), amended this authority. Specifically, section 207 of the FY 2002 HUD Appropriations Act amended section 203(c) of the NHA to include mortgages insured under section 203(k) (rehabilitation loans) and section 234(c) (condominium loans) among those mortgages for which HUD collects a premium payment not to exceed 2.25 percent of the amount of the original insured mortgage (or not to exceed 2.0 percent for a first-time homebuyer who completes an approved program of homeownership counseling) at the time of insurance. Finally, the statutory amendments that are the subject of this rule only apply to mortgages that are executed after the date of enactment of the law, which was November 26, 2001. HUD, however, will only collect up-front premiums for 203(k) and 234(c) loans originated after the effective date of the final rule.

### B. This Proposed Rule

This proposed rule would amend relevant sections of HUD's regulations in 24 CFR part 203 to conform these regulations to the statutory changes. Specifically, this proposed rule would amend regulations at 24 CFR 203.284(a) and 203.285(a), on up-front premiums, and § 203.50, on rehabilitation loans under section 203(k). Part 234, which relates to condominium mortgage insurance, incorporates by reference at § 234.255 the provisions of 24 CFR 203.284 and 203.285, and, therefore, will include the latest revisions, so that further revision of part 234 is unnecessary. Transition provisions in 24 CFR 203.284 and 203.285 for older mortgage loans will remain as published in the April 1, 2003, edition of title 24 of the Code of Federal Regulations.

### Findings and Certifications

#### *Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule imposes no new obligations of any kind, but only changes the scheduling and conditions of premium payment obligations, requiring an up-front payment instead of monthly payments. Generally, these amounts are amortized in the mortgage and ultimately impose no obligations on businesses.

Notwithstanding HUD's determination that this rule does not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble.

#### *Executive Order 12866*

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866 (entitled "Regulatory Planning and Review"), which the President issued on September 30, 1993. This rule was determined economically significant under E.O. 12866. Any changes made to the proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. The Economic Analysis prepared for this rule is also available for public inspection in the Regulations Division.

#### *Environmental Impact*

This proposed rule involves the discretionary establishment of a rate or cost determination and related external administrative or fiscal requirements, which do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

#### *Executive Order 13132, Federalism*

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Order.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule does not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

*Congressional Review of Final Rules*

This rule constitutes a "major rule" as defined in the Congressional Review Act (5 U.S.C. Chapter 8). At the final rule stage, this rule will have a 60-day delayed effective date and be submitted to Congress in accordance with the requirements of the Congressional Review Act.

*Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance number applicable to this rule is 14.117.

**List of Subjects in 24 CFR Part 203**

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR part 203 as follows:

## PART 203—SINGLE FAMILY HOUSING MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 203 continues to read as follows:

**Authority:** 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

### Subpart A—Eligibility Requirements and Underwriting Procedures

2. Amend 24 CFR 203.50 by adding a paragraph (m) to read as follows:

**§ 203.50 Eligibility of rehabilitation loans.**

* * * * *

(m) With regard to loans under this section executed on or after [the effective date of the final rule], the Commissioner shall charge an up-front and annual MIP in accordance with 24 CFR 203.284 or 203.285, whichever is applicable.

### Subpart B—Contract Rights and Obligations

3. Amend 24 CFR 203.284 by revising paragraph (a) introductory text and paragraph (b) to read as follows:

**§ 203.284 Calculation of up-front and annual MIP on or after July 1991.**

* * * * *

(a) *Permanent provisions.* Any mortgage executed on or after October 1, 1994, that is an obligation of the Mutual Mortgage Insurance Fund, as well as any mortgage executed after [the effective date of the final rule], which is insured under sections 203(k) or 234(c) of the National Housing Act (12 U.S.C. 1709 (k) and 12 U.S.C. 1715y(c)) shall be subject to the following requirements:

* * * * *

(b) *Transition provisions; savings provision.* Mortgages that are obligations of the Mutual Mortgage Insurance Fund and that were insured during Fiscal Years 1991–1994, are governed by 24 CFR 203.284(b) as in effect on April 1, 2003, (see 24 CFR parts 200–499 revised as of April 1, 2003).

* * * * *

4. Amend 24 CFR 203.285 by revising the first sentence of paragraph (a) to read as follows:

**§ 203.285 Fifteen-year mortgages: Calculation of up-front and annual MIP on or after December 26, 1992.**

(a) *Up-front.* Any mortgage for a term of 15 or fewer years executed on or after December 26, 1992, that is an obligation of the Mutual Mortgage Insurance Fund, and any mortgage executed on or after [the effective date of the final rule], to be insured under sections 203(k) and 234(c) of the National Housing Act, shall be subject to a single up-front premium payment established and collected by the Commissioner in an amount not exceeding 2.0 percent of the amount of the original insured principal obligation of the mortgage. * * *

* * * * *

Dated: September 9, 2003.

**John C. Weicher,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 03–25214 Filed 10–6–03; 8:45 am]

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html.* Some laws may not yet be available.

**H.R. 659/P.L. 108–91**

Hospital Mortgage Insurance Act of 2003 (Oct. 3, 2003; 117 Stat. 1158)

**H.R. 978/P.L. 108–92**

To amend chapter 84 of title 5, United States Code, to provide that certain Federal annuity computations are adjusted by 1 percentage point relating to periods of receiving disability payments, and for other purposes. (Oct. 3, 2003; 117 Stat. 1160)

**S. 111/P.L. 108–93**

To direct the Secretary of the Interior to conduct a special resource study to determine the national significance of the Miami Circle site in the State of Florida as well as the suitability and feasibility of its inclusion in the National Park System as part of Biscayne National Park, and for other purposes. (Oct. 3, 2003; 117 Stat. 1161)

**S. 233/P.L. 108–94**

Coltsville Study Act of 2003 (Oct. 3, 2003; 117 Stat. 1163)

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Vol. 68 No. 195

Wednesday
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# Rules and Regulations

**Federal Register**
Vol. 68, No. 195
Wednesday, October 8, 2003

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 23

**[Docket No. CE198, Special Condition 23–137–SC]**

## Special Conditions; Aero Vodochody Ae-270 Propjet; Protection of Systems for High Intensity Radiated Fields (HIRF)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Aero Vodochody Ae-270 Propjet airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument system (EFIS) displays made by Chelton Flight Systems for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

**DATES:** The effective date of these special conditions is September 16, 2003. Comments must be received on or before November 7, 2003.

**ADDRESSES:** Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE198, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE198. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Wes Ryan, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4127.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

### Comments Invited

Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE198." The postcard will be date stamped and returned to the commenter.

### Background

On June 8, 1998, Aero Vodochody a.s. in the Czech Republic made application for a new Type Certificate for the Ae-270 Propjet. This application date has been extended and revised to September 10, 2002. As part of the FAA validation process for issuance of a Type Certificate in the United States for foreign applicants, the FAA is issuing these special conditions to address special certification review items for novel and unusual features of the Ae-270 Propjet. The proposed type design incorporates a novel or unusual design feature, the Chelton Flight Systems Synthetic Vision System (SVS) Primary Flight Display (PFD), that is vulnerable to HIRF external to the airplane.

### Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.17, Aero Vodochody a.s, must show that the Ae-270 Propjet aircraft meets the following provisions, or the applicable regulations in effect on the date of application for the Ae-270 Propjet: 14 CFR part 23, Amendment 55, effective March 1, 2002; exemptions, if any; and the special conditions adopted by this rulemaking action.

### Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

### Novel or Unusual Design Features

Aero Vodochody a.s. plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

*Protection of Systems from High Intensity Radiated Fields (HIRF):* Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

| Frequency | Field strength (volts per meter) | |
|---|---|---|
| | Peak | Average |
| 10 kHz–100 kHz | 50 | 50 |
| 100 kHz–500 kHz | 50 | 50 |
| 500 kHz–2 MHz | 50 | 50 |
| 2 MHz–30 MHz | 100 | 100 |
| 30 MHz–70 MHz | 50 | 50 |
| 70 MHz–100 MHz | 50 | 50 |
| 100 MHz–200 MHz | 100 | 100 |
| 200 MHz–400 MHz | 100 | 100 |
| 400 MHz–700 MHz | 700 | 50 |
| 700 MHz–1 GHz | 700 | 100 |
| 1 GHz–2 GHz | 2000 | 200 |
| 2 GHz–4 GHz | 3000 | 200 |
| 4 GHz–6 GHz | 3000 | 200 |
| 6 GHz–8 GHz | 1000 | 200 |
| 8 GHz–12 GHz | 3000 | 300 |
| 12 GHz–18 GHz | 2000 | 200 |
| 18 GHz–40 GHz | 600 | 200 |

Note: The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

## Applicability

As discussed above, these special conditions are applicable to Aero Vodochody a.s. in the Czech Republic. Should Aero Vodochody a.s. apply at a later date for a supplemental type certificate to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

### Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

### List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

### Citation

■ The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and § 21.17; and 14 CFR 11.38 and 11.19.

### The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Aero Vodochody Ae-270 Propjet airplane with the Chelton Flight Systems SVS PFD.

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies:

*Critical Functions:* Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on September 16, 2003.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–25425 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. FAA–02–ANM–07]**

## Establishment of Class E Airspace at Afton Municipal Airport, Afton, WY

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This action deletes reference to the magnetic headings in the airspace description of the Class E airspace at Afton Municipal Airport, Afton, WY, that was published on July 31, 2003 (68 FR 44874), Airspace Docket 02–ANM–07.

**EFFECTIVE DATE:** 0901 UTC, October 30, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ed Haeseker, ANM–520.7; telephone (425) 227–2527; Federal Aviation Administration, Docket No. 02–ANM–07, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

**SUPPLEMENTARY INFORMATION:**

*History:* Airspace Docket 02–ANM–07 published on July 31, 2003 (68 FR 44874), established Class E Airspace at Afton Municipal Airport, Afton, WY, effective date of October 30, 2003. Magnetic as well as true heading were used to describe parameters of the Class E Airspace for Afton Municipal Airport, Afton, WY. This action only deletes references to the magnetic headings.

### E Airspace; Airways; Routes; and Reporting Points [Amended]

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565.

### Correction to Final Rule

### § 71.1 [Amended]

■ The references to magnetic headings in the description of the Class E Airspace for Afton Municipal Airport, Afton, WY. Accordingly, pursuant to the authority delegated to me, as published in the **Federal Register** on July 31, 2003 (68 FR 44874) (Airspace Docket 02–ANM–07); page 44874, column 2, are corrected as follows:

* * * * *

**ANM UT E5 Afton, WY (Corrected)**

Afton Municipal Airport, WY

(Lat 42°42′41″ N, long. 110°56′32″ W)

That airspace extending upward from 700 feet above the surface of the earth within 6.5 mile radius of the Afton Municipal Airport, and within 2 miles either side of the 355° bearing from the airport extending from the 6.5 miles radius to 7.5 miles north of the airport, and within 2 miles either side of the 185° bearing from the airport extending from the 6.5 mile radius to 19.3 miles south of the airport.

* * * * *

Issued in Seattle, Washington, on September 22, 2003.

**ViAnne Fowler,**

*Acting Manager, Air Traffic Division, Northwest Mountain Region.*

[FR Doc. 03–25427 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[CGD05–03–062]**

**RIN 1625–AA08**

## Special Local Regulations for Marine Events; Isle of Wight Bay, Ocean City, MD.

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing permanent special local regulations for fireworks displays over the waters of Isle of Wight Bay, Ocean City, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the fireworks displays. This action is intended to restrict vessel traffic in portions of Isle of Wight Bay during the events.

**DATES:** This rule is effective November 7, 2003.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–03–062 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** S. L. Phillips, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

**SUPPLEMENTARY INFORMATION:**

## Regulatory Information

On July 8, 2003 we published a notice of proposed rulemaking (NPRM) entitled "Special Local Regulations for Marine Events; Isle of Wight Bay, Ocean City, MD" in the **Federal Register** (68 FR 40615). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

## Background and Purpose

Several times each year, O.C. Seacrets, Inc. sponsors fireworks displays over the waters of Isle of Wight Bay, Ocean City, Maryland. The fireworks are launched from two pontoon boats anchored near the O.C. Seacrets Dock in the vicinity of 117 W. 49th Street, Ocean City, Maryland. A small fleet of spectator vessels normally gathers nearby to view the event. Due to the need for vessel control during the fireworks, vessel traffic will be temporarily restricted to provide for the safety of spectators and transiting vessels.

## Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation will prevent traffic from transiting a portion of Isle of Wight Bay during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the proposed regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit Isle of Wight Bay by navigating around the regulated area.

## Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Isle of Wight Bay during the event.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only 4 days each year. Vessel traffic will be able to pass safely around the regulated area. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

## Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. We received no requests for assistance, and none was provided.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

## Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

## Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

## Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

## Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

## Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

## Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

## Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

## Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section. Under figure 2–1, paragraph (34)(h), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

### PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 100.531 to read as follows:

**§ 100.531 Isle of Wight Bay, Ocean City, MD.**

(a) *Definitions.*

*Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Eastern Shore.

*Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Group Eastern Shore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

*Regulated Area.* The regulated area includes all waters of Isle of Wight Bay enclosed by the arc of a circle 300 feet in diameter with the center located at position 38°22′30.0″ N latitude, 075°04′18.0″ W longitude. All coordinates reference Datum NAD 1983.

(b) *Special local regulations.*

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(c) *Enforcement period.* This section will be enforced annually from 9:15 p.m. to 10:15 p.m. on Memorial Day, July 4th, August 6th, and Labor Day. If the fireworks are delayed by inclement weather, the special local regulations will be enforced from 9:15 p.m. to 10:15 p.m. the next day

Dated: September 17, 2003.

**Sally Brice-O'Hara,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 03–25414 Filed 10–7–03; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

### 33 CFR Part 100

### [CGD08–03–036]

### RIN 1625–AA08

## Special Local Regulations for Marine Events; Ohio River, Miles 467.0 to 475.0 and Licking River, Miles 0.0 to 0.5; Cincinnati, OH

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary special local regulations during the "2003 Tall Stacks Heritage Festival", a marine event to be held from October 14, 2003 until October 20, 2003, on the waters of the Ohio River beginning at mile marker 467.0 and ending at mile marker 475.0, and on the waters of the Licking River beginning at mile marker 0.0 and ending at mile marker 0.5. These temporary special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to control vessel traffic along portions of the Ohio and Licking Rivers during the event.

**DATES:** This rule is effective from 8 a.m. on October 14, 2003 until 1 p.m. on October 20, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [CGD08–03–036] and are available for inspection or copying at Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, Room 1341, New Orleans, LA 70130 between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (LT) Kevin Lynn, Project Manager for the Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans LA 70130, telephone (504) 589–6271.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553 (d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to protect vessels and mariners from the hazards associated with the "2003 Tall Stacks Heritage Festival". This festival is expected to attract over 25,000 waterborne spectators, 17 paddle wheel vessels, hereafter referred to as participant vessels, and daily shoreside spectators in excess of 200,000. The potential for vessel collisions and damage to moored vessels is high. These temporary special local regulations will reduce the potential for collisions and damage by limiting the speed that vessels may transit through the regulated area.

### Background and Purpose

Commencing on October 14, 2003 and lasting until October 20, 2003, the Greater Cincinnati Tall Stacks Commission will sponsor the "2003 Tall Stacks Heritage Festival", on the waters of the Ohio River beginning at mile marker 467.0 and ending at mile marker 475.0 and on the waters of the Licking River beginning at mile marker 0.0 and ending at mile marker 0.5. The event will involve 17 participant vessels which will conduct excursions, races, parades and moored tours. Over 25,000 waterborne spectators are anticipated. Over 200,000 daily shoreside spectators are anticipated. In order to preserve the safety of the participant vessels, recreational vessels and shoreside spectators, temporary special local regulations are needed to control vessel traffic during the event. Vessel traffic will be temporarily restricted to provide for this safety. Vessels entering into the regulated area described in this rule are only authorized to do so at a no wake speed. Commercial towing vessels shall transit at the slowest safe speed to maintain steerageway and minimize wake. All vessels within the regulated area shall not anchor, loiter, impede participant vessels or pass within 20 feet of a moored participant vessel. The operator of any vessel in the regulated area shall stop the vessel immediately when directed to do so by any Coast Guard Patrol Commander and proceed as directed by any Coast Guard Patrol Commander.

## Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. This rule only prevents traffic from transiting within 20 feet of a moored participant vessel and does not otherwise effect a closure of the Ohio and Licking Rivers. All commercial, spectator and recreational vessels will be allowed to transit through the regulated area provided that they are in compliance with these temporary special local regulations. The effect of this rule will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via Local Notice to Mariners and marine information broadcasts.

## Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of recreational and commercial towing vessels intending to transit the Ohio River beginning at mile marker 467.0 and ending at mile marker 475.0 and the Licking River beginning at mile marker 0.0 and ending at mile marker 0.5, from 8 a.m. on October 14, 2003 until 1 p.m. on October 20, 2003.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period of time. All commercial, spectator and recreational vessels will be allowed to transit through the regulated area provided that they are in compliance with these temporary special local regulations. Before the effective period, we will notify the maritime community through Local Notice to Mariners and marine information broadcasts.

If you are a small business entity and are significantly affected by this regulation please contact LT Kevin Lynn, Project Manager for the Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans LA 70130, telephone (504) 589–6271.

## Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

## Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

## Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

## Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a state, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

## Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

## Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

## Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

## Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not determined it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Environment**

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Paragraph (34)(h) states that special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation.

Under figure 2–1, paragraph (34)(h), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

**List of Subjects in 33 CFR Part 100**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 100.35T–08–803 is added to read as follows:

**§ 100.35T–08–803 Ohio River, Miles 467.0 to 475.0 and Licking River, Miles 0.0 to 0.5; Cincinnati, OH.**

(a) *Definitions.*

*Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Captain of the Port Louisville.

*Participant* means all vessels participating in the "2003 Tall Stacks Heritage Festival" under the auspices of the Marine Event Permit issued to the event sponsor and approved by the Captain of the Port Louisville.

*Regulated area* means the waters of the Ohio River beginning at mile marker 467.0 and ending at mile marker 475.0, and the waters of the Licking River beginning at mile marker 0.0 and ending at mile marker 0.5.

(b) *Special local regulations.* (1) All vessels entering into the regulated area are only authorized to do so at a no wake speed.

(2) Commercial towing vessels shall transit through the regulated area at the slowest safe speed to maintain steerageway and minimize wake.

(3) All vessels within the area shall not anchor, loiter, impede participant vessels or pass within 20 feet of a moored participant vessel.

(4) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Coast Guard Patrol Commander.

(ii) Proceed as directed by any Coast Guard Patrol Commander.

(c) *Effective date.* This section is effective from 8 a.m. on October 14, 2003 until 1 p.m. on October 20, 2003.

Dated: September 18, 2003.

**R.F. Duncan,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 03–25413 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Parts 110 and 165

[CGD05–03–099]

RIN 1625–AA00 and 1625–AA01

## Anchorage Grounds and Safety Zone; Delaware Bay and River

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the Delaware Bay and River around the Weeks Dredge and Barge #312 and placing additional requirements on vessels in Anchorage 6 off Deepwater Point, Anchorage 7 off Marcus Hook, and Anchorage 9 near the entrance to Mantua Creek. The Army Corps of Engineers dredges parts of the Delaware River including the Marcus Hook Range Ship Channel to maintain congressionally authorized depths. These regulations will help ensure the safety of vessels transiting the channel as well as vessels engaged in dredging operations.

**DATES:** This rule is effective from September 29, 2003, to December 31, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD05–03–099 and are available for inspection or copying at Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania, 19147, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade Kevin Sligh or Lieutenant Junior Grade Toussaint Alston, Coast Guard Marine Safety Office Philadelphia, at (215) 271–4889.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and (d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after publication in the **Federal Register**. Allowing for a comment period is impracticable and contrary to public interest, since immediate action is needed to protect mariners against potential hazards associated with dredging operations in the Marcus Hook Range Ship Channel and to modify the anchorage regulations to facilitate vessel traffic. However, advance notification will be made to affected mariners via marine information broadcasts.

**Background and Purpose**

The U.S. Army Corps of Engineers (USACE) conducts dredging operations on the Delaware River in the vicinity of the Marcus Hook Range Ship Channel to maintain the forty-foot project depth.

To reduce the hazards associated with dredging the channel, vessel traffic that would normally transit through the Marcus Hook Range Ship Channel will be diverted through part of Anchorage 7 off Marcus Hook ("Anchorage 7") during the dredging operations. Therefore, additional requirements and restrictions on the use of Anchorage 7 are necessary. For the protection of mariners transiting in the vicinity of dredging operations, the Coast Guard is also establishing a safety zone around the dredging vessels, Weeks Dredge and Barge #312. The safety zone is intended to protect mariners from the potential hazards associated with dredging operations and equipment.

### Discussion of Temporary Final Rule

Currently in paragraph (b)(2) of 33 CFR 110.157 we allow vessels to anchor for up to 48 hours in the anchorage grounds listed in § 110.157(a), which includes Anchorage 7. However, because of the temporary re-routing of vessel traffic through Anchorage 7, the Coast Guard is adding a paragraph (b)(11) in 33 CFR 110.157 to provide additional requirements and restrictions on vessels using Anchorage 7. During the effective period, vessels desiring to use Anchorage 7 must obtain permission from the Captain of the Port Philadelphia at least 24 hours in advance. The Captain of the Port will permit only one vessel at a time to anchor in Anchorage 7 and will grant permission on a "first come, first served" basis. A vessel will be directed to a location within Anchorage 7 where it may anchor, and will not be permitted to remain in Anchorage 7 for more than 12 hours.

Any vessel that is arriving from or departing for sea requiring an examination by the public health service, customs or immigration authorities will be directed to an anchorage for the required inspection by the Captain of the Port on a case by case basis.

When Anchorage 7 is occupied, the Coast Guard expects that vessels normally permitted to anchor in Anchorage 7 will use Anchorage 6 off Deepwater Point ("Anchorage 6") or Anchorage 9 near the entrance to Mantua Creek ("Anchorage 9"), because they are the closest anchorage grounds to Anchorage 7. To control access to Anchorage 7, the Coast Guard is requiring a vessel desiring to anchor in Anchorage 7 obtain advance permission from the Captain of the Port. The Captain of the Port may be contacted by telephone at (215) 271–4807 or via VHF marine band radio, channels 13 and 16. To control access to Anchorages 6 and 9, the Coast Guard is requiring any vessel 700 feet or greater in length to obtain advance permission from the Captain of the Port before anchoring. The Coast Guard is also concerned that the holding ground in Anchorages 6 and 9 is not as solid as it is in Anchorage 7. Therefore, a vessel 700 to 750 feet in length is required to have one tug standing alongside while at anchor and a vessel over 750 feet in length must have two tugs standing alongside. The tug must be of sufficient size and horsepower to prevent an anchored vessel from swinging into the channel.

The Coast Guard is also establishing a safety zone within a 150-yard radius of the dredging operations being conducted in the Marcus Hook Range Ship Channel in the vicinity of Anchorage 7, by the Weeks Dredge Barge #312. The safety zone is intended to protect mariners transiting the area from the potential hazards associated with dredging operations. Vessels transiting the Marcus Hook Range Ship Channel will have to divert from the main ship channel through Anchorage 7 and must operate at the minimum safe speed necessary to maintain steerage and reduce wake. No vessel may enter the safety zone unless permission is received from the Captain of the Port.

### Regulatory Evaluation

This temporary rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation requires certain vessels to have one or two tugs alongside while at anchor, the requirement only applies to vessels 700 feet or greater in length that choose to anchor in Anchorages 6 and 9. Alternate anchorage grounds such as Anchorage A (Breakwater) and Anchorage 1 (Big Stone) in Delaware Bay, are reasonably close and generally available. Vessels anchoring in Anchorages A and 1 are not required to have tugs alongside, except when specifically directed to do so by the Captain of the Port because of a specific hazardous condition. Furthermore, few vessels 700 feet or greater are expected to enter the port during the effective period. The majority of vessels expected to anchor are less than 700 feet and thus will not be required to have tugs alongside.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 people.

This rule's greatest impact is on vessels greater than 700 feet in length, which choose to anchor in Anchorages 6 and 9. This rule will have virtually no impact on any small entities. Therefore, the Coast Guard certifies under section 605(b) of the regulatory Flexibility Act (5 U.S.C 605(b)) that this will not have a significant impact on a substantial number of small entities.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking.

Small businesses may send comments on the actions of federal employees who enforce or otherwise determine compliance with federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guards, call 1–888–REG–FAIR (1–888–743–3247).

### Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that this rule does not have implications for federalism.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(f) and (g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

### List of Subjects

*33 CFR Part 110*

Anchorage grounds.

*33 CFR Part 165*

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 110 and 165 as follows:

## PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

■ 2. From September 29, 2003 to December 31, 2003, in § 110.157 add a new paragraph (b)(11) to read as follows:

### § 110.157 Delaware Bay and River.

* * * * *

(b) * * *

(11) From September 29, 2003 until December 31, 2003, additional requirements and restrictions in this paragraph for the use of anchorages defined in paragraphs (a)(7), (a)(8), and (a)(10) of this section apply.

(i) Before anchoring in Anchorage 7 off Marcus Hook, as described in paragraph (a)(8) of this section, a vessel must first obtain permission from the Captain of the Port, Philadelphia, at least 24 hours in advance of arrival. Permission to anchor will be granted on a "first-come, first-served" basis. The Captain of the Port will allow only one vessel at a time to be at anchor in Anchorage 7, and no vessel may remain within Anchorage 7 for more than 12 hours. Any vessel that is arriving from or departing for sea and that requires an examination by the public health service, customs or immigration authorities will be directed to an anchorage for the required inspection by the Captain of the Port on a case by case basis.

(ii) For Anchorage 6 off Deepwater Point, as described in paragraph (a)(7) of this section, and Anchorage 9 near entrance to Mantua Creek, as described in paragraph (a)(10) of this section—

(A) Any vessel 700 feet or greater in length requesting anchorage must obtain permission from the Captain of the Port, Philadelphia, Pennsylvania, at least 24 hours in advance.

(B) Any vessel from 700 to 750 feet in length shall have one tug alongside at all times while the vessel is at anchor.

(C) Any vessel greater than 750 feet in length must have two tugs alongside at all times while the vessel is at anchor.

(D) The Master, owner or operator of a vessel at anchor must ensure that any tug required by this section is of sufficient size and horsepower to assist with necessary maneuvers to keep an anchored vessel clear of the navigation channel.

(iii) As used in this section, *Captain of the Port* means the Captain of the Port, Philadelphia, Pennsylvania or any Coast Guard commissioned, warrant, or petty officer authorized to act on his behalf. The Captain of the Port may be contacted by telephone at (215) 271–4807 or via VHF marine band radio, channels 13 and 16.

* * * * *

## PART 165—REGULATED NAVIATION AREAS AND LIMITED ACCESS AREAS

■ 3. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1(G), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 4. From September 29, 2003, to December 31, 2003, add temporary § 165.T05–099 to read as follows:

### § 165.T05–099 Safety Zone; Delaware Bay and River.

(a) *Definition.* As used in this section, *Captain of the Port* means the Captain of the Port, Philadelphia, Pennsylvania or any Coast Guard commissioned, warrant, or petty officer authorized to act on his behalf. The Captain of the Port may be contacted by telephone at (215) 271–4807 or via VHF marine band radio, channels 13 and 16.

(b) *Location.* The following area is a safety zone: All waters located within a 150-yard radius arc centered around the Weeks Dredge and Barge #312 conducting dredging operations in or near the Marcus Hook Range Ship Channel in the vicinity of Anchorage 7.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(2) All Coast Guard vessels enforcing this safety zone or watch officers aboard the Weeks Dredge and Barge #312 can be contacted on VHF marine band radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

(3) The Captain of the Port will notify the public of any changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(d) *Effective period.* This section is effective from September 29, 2003 until December 31, 2003.

Dated: September 25, 2003.

**Sally Brice-O'Hara,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 03–25416 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

**33 CFR Part 117**

**[CGD11–03–001]**

**RIN 1625–AA09**

## Drawbridge Operation Regulation; Cerritos Channel, Long Beach, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary rule.

**SUMMARY:** The Commander, Eleventh Coast Guard District, is temporarily changing the regulation governing the Heim Drawbridge, mile 4.9 Cerritos Channel, Long Beach, CA, so the drawbridge need not open for vessel traffic on weekends and evenings during October and November, 2003. California Department of Transportation ("Caltrans") requested this temporary change to perform essential deck repairs on the drawbridge.

**DATES:** This temporary rule is effective from 7 p.m. on October 2, 2003, to 6 a.m. on November 21, 2003.

**ADDRESSES:** Documents referred to in this rule are available for inspection and copying at Commander (oan), Eleventh Coast Guard District, Building 50–3, Coast Guard Island, Alameda, CA 94501–5100, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District, telephone (510) 437–3516.

**SUPPLEMENTARY INFORMATION:**

### Good Cause for Not Publishing an NPRM

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This rule is being promulgated without an NPRM due to the short time frame between the submission of the request and the start date of the scheduled repairs.

### Good Cause for Making Rule Effective in Less Than 30 Days

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard received the request for the temporary change less than 30 days prior to the scheduled repairs. Delaying the effective date of this rule would be contrary to the public interest because the deck of the bridge is in need of repairs and the repairs require the bridge to be in the closed-to-navigation position for extended periods of time. This event has been thoroughly coordinated with waterway users and no objections have been received. There is an alternative path for navigation around Terminal Island and the repair work will occur during evening hours when there is less waterway activity.

### Background and Purpose

Caltrans has requested a temporary change to the operation of the Heim Drawbridge, mile 4.9 Cerritos Channel in Long Beach, CA. The Heim Drawbridge navigation span provides vertical clearance of 37 feet above Mean High Water in the closed-to-navigation position. The waterway is navigated by commercial, recreational, and emergency response watercraft. Presently, 33 CFR 117.147 requires the draw to open on signal for the passage of vessels, except during established workday rush hours. In order to repair the deck of the bridge, Caltrans requested the drawbridge temporarily be allowed to remain closed to navigation on the weekends from 7 p.m. Friday until 6 a.m. Monday, and for the bridge to remain closed during the work week each night from 7 p.m. until 6 a.m., Monday through Friday. This temporary rule is effective from 7 p.m. on October 2, 2003, to 6 a.m. on November 21, 2003. During this time Caltrans will perform essential deck repairs on the drawspan. This temporary drawbridge operation amendment has been coordinated with the waterway users. No objections to the proposed temporary rule were raised.

### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This is because waterway traffic has an alternative route and is not likely to be delayed more than one hour.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities as none will be affected by the temporary rule.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. None were identified as being present on the waterway during the temporary rule.

### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded no factors in this case would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation as a promulgation of operating regulations or procedures for drawbridges. A Categorical Exclusion Determination is available in the docket where indicated under ADDRESSES.

### List of Subjects in 33 CFR Part 117

Bridges.

### Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1; section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From 7 p.m. on October 2 to 6 a.m. November 21, 2003, in § 117.147, paragraph (a) is suspended and a new paragraph (c) is temporarily added to read as follows:

### § 117.147 Cerritos Channel.

* * * * *

(c) From 7 p.m. on October 2, 2003, to 6 a.m. on November 21, 2003, the draw of the Commodore Schuyler F. Heim highway bridge, mile 4.9 at Long Beach, need not open for vessels on weekends from 7 p.m. each Friday until 6 a.m. each Monday, and during weekdays, the draw need not open from 7 p.m. until 6 a.m., each night, Monday through Friday. During these times, the draw may remain closed to navigation.

Dated: September 30, 2003.

**J.M. Hass,**

*Captain, U.S. Coast Guard, Acting Commander, Eleventh Coast Guard District.*

[FR Doc. 03–25415 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–15–P

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[IA 187–1187a; FRL–7569–9]

## Approval and Promulgation of State Implementation Plans; State of Iowa

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking final action to approve a revision to the State Implementation Plan (SIP) submitted by the State of Iowa. The purpose of this revision is to update the 1998 and 2000 Polk County Board of Health Rules and Regulations, Air Pollution, Chapter V. These revisions will help to ensure consistency between the applicable local agency rules and Federally-approved rules, and ensure Federal enforceability of the applicable parts of the local agency air programs.

**DATES:** This direct final rule will be effective December 8, 2003, unless EPA receives adverse comments by November 7, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Comments may be submitted either by mail or electronically. Written comments should be submitted to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Electronic comments should be sent either to Heather Hamilton at *hamilton.heather@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in "What action is EPA taking" in the SUPPLEMENTARY INFORMATION section.

Copies of documents relative to this action are available for public inspection during normal business hours at the EPA Region 7 location listed in the previous paragraph. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Heather Hamilton at 913–551–7039, or by e-mail at *hamilton.heather@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?

What is the Federal approval process for a SIP?

What does Federal approval of a state regulation mean to me?

What is being addressed in this document?

Have the requirements for approval of a SIP revision been met?

What action is EPA taking?

## What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

## What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

## What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

## What Is Being Addressed in This Document?

The Iowa Department of Natural Resources (IDNR) has requested that EPA approve changes to the Polk County Board of Health Rules and Regulations, Air Pollution, Chapter V, as a revision to the Iowa SIP. The changes were adopted by the Polk County Board of Health Supervisors on April 15, 1998, and October 4, 2000, and became effective on those same days.

The following is a description of the changes to Polk County Board of Health Rules and Regulations, Air Pollution, Chapter V, revisions which are subject to this approval action:

1. *Purpose and Ambient Air Quality Standards.* A reference to Title 40 Code of Federal Regulations (40 CFR) part 50 was added to Article I, 5–1(b) to clarify that the standards referenced in the ordinance are the standards in part 50.

2. *Changes in Definitions.* Changes were made to the following definitions found in Article I, 5–2: Allowable emissions, APCD, ASME, ASTM, Control equipment, Criteria, Distillate oil, Emission limitation, EPA reference method, Excess emission, Federally enforceable, Health officer, Heating value, Major stationary source, Natural gas, Permit conditions, Trade waste, and Volatile organic compounds. These changes make minor clarifications to the definitions or update the references contained in the definitions consistent with the state and Federal requirements.

3. *Additions to List of Definitions.* The following were added to the list of definitions found in Article I, 5–2: Fireplace, Grill, PM 2.5, PM 2.5 emissions, and Twelve month rolling period. These additions are also minor clarifications and updates.

4. *Powers of Health Officer.* Article II, 5–4(15) was added to give the Health Officer the authority to determine the characteristics of a violation, recommend civil penalties and demand payment of the applicable penalty.

5. *Allowable Visible Emissions from Incinerators.* Article III, 5–6(b)(2) was changed to lower the allowable visible emissions limit from an incinerator from forty percent to twenty percent, or such other limit specified in a permit.

6. *Exemptions from Limitations on Visible Air Contaminants from Equipment.* Article IV, 5–9(5) and (6) were changed to clarify that the exemption for the emissions from stoves or fireplaces in family dwellings requires the wood and/or coal to be untreated.

7. *Visible Air Contaminants Methodology.* Article IV, 5–10 was changed to update the reference to Method 9, 40 CFR part 60 appendix A, as amended through March 12, 1996.

8. *General Emission Standards for Industrial Processes.* Article VI, 5–14(b) was changed to clarify the allowable emission of particulate matter from process gases. Also, Article VI, 5–15(b) was updated to add the title of the referenced subrule.

9. *Specific Emission Standards.* Article VI, 5–16(d) was changed to reflect the change made in Article VI, 5–14(b) and to add emission standards for foundry cupolas with a process weight rate less than or equal to 20,000 pounds per hour.

10. *Stack Emission Tests.* The reference to Iowa's "Compliance Sampling Manual" in Article VII, 5–18(a)(2) was updated to the version revised through January 1, 1995. Also, the sampling methods, analytical determinations and minimum performance specifications referenced in Article VII, 5–18(a)(3) were changed and updated.

11. *Reporting of Continuous Monitoring Information.* Article VII, 5–19(b)(4) was amended to specify the date by which quarterly reports are due to the health officer.

12. *Conditions for Exemptions from Continuous Monitoring Requirements.* Article VII, 5–18(b)(5)(i) was changed to specify that the reference to new source performance standards are those at 40 CFR part 60 as amended through November 24, 1998. Also, Article VII 5–18(b)(7) was changed to update the reference to the Federal acid rain program as provided in 40 CFR part 75 as adopted January 11, 1993 and as corrected or amended through October 24, 1997.

13. *Issuance of Permit.* Article X, 5–31(c) was changed to add adoption by reference and incorporation of Iowa Administrative Code subrule 567–

23.1(6), "Calculation of Emission Limitations Based Upon Stack Height." This revision is consistent with the state rule which has been approved by EPA.

14. *Exemptions from Construction Permit Requirements.* Article X, 5–33(6) was changed to include certain pyrolysis cleaning furnaces in the exemption from construction permits and to specifically exclude salt bath units from the exemption. Also, Article X, 5–33(11) was changed to broaden the exemption to any storage tank with a capacity of less than 10,570 gallons and an annual throughput less than 40,000 gallons. This revision is consistent with the state rule which has been approved by EPA.

15. *Exemptions from Operating Permit Requirements.* Article X, 5–39(a)(1) was changed to include certain pyrolysis cleaning furnaces in the exemption from operating permits and to specifically exclude salt bath units from the exemption.

16. *Special Requirements for Non Attainment Areas.* The reference in Article XII, 5–58 to the "Special Requirements for Non Attainment Areas", Rule 567–22.5(455B) was updated to include any amendments or changes in the state rule through July 21, 1999. Polk County is currently in attainment for all NAAQS, so this change does not impact any sources.

The EPA is not acting on the following revisions:

1. Article I, 5–2, definition of variance: The definition of variance will not be approved in this SIP as the provisions for variances found in Article XIII are not currently a part of the EPA-approved SIP.

2. Civil Penalties. Article XVI, 5–75(b) was amended to define when separate violations exist and to add a schedule of penalties which the Health Officer shall normally request unless in the judgement of the Health Officer the offense is so minor that a lesser penalty would be appropriate. This provision will not be approved because EPA has separate authority under section 113 of the CAA to seek penalties for violations, and would apply its own policies developed under that section to determine the appropriate penalty to be sought.

### Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

### What Action Is EPA Taking?

We are taking direct final action to approve this revision with the exception of Article I, 5–2, and Article VI, 5–17 (a), (b), and (d). The revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number, IA 187–1187a, in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*a. Electronic mail.* Comments may be sent by e-mail to Heather Hamilton at *hamilton.heather@epa.gov.* Please include identification number, IA 187–1187a, in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

*b. Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov*, click on "To Search for Regulations," then select Environmental Protection Agency and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

2. *By Mail.* Written comments should be sent to the name and address listed in the **ADDRESSES** section of this document.

### Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in

Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 8, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 25, 2003.

**Nat Scurry,**

*Acting Regional Administrator, Region 7.*

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 et. seq.

## Subpart Q—Iowa

■ 2. In § 52.820 the table in paragraph (c) is amended by revising the entry for "Chapter V" under the heading "Polk County" to read as follows:

**§ 52.820 Identification of Plan.**

* * * * *

(c) * * *

EPA-APPROVED IOWA REGULATIONS

| Iowa citation | Title | State effective date | EPA approval date | Comments |
|---|---|---|---|---|
| **Iowa Department of Natural Resources, Environmental Protection Commission [567]** | | | | |
| . | . | . | . | . |
| **Polk County** | | | | |
| Chapter V | Polk County Board of Health Rules and Regulations Air Pollution Chapter V | 4/15/1998<br>10/4/2000 | *[10/8/03 and FR page citation]*. | Article I, 5–2, definition of and "variance"; Article VI, Sections 5–16(n), (o) and (p); Article IX, Sections 5–27(3) and (4) and Article XVI, Section 5–75(b) are not a part of the SIP. |

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[FR Doc. 03–25396 Filed 10–7–03; 8:45 am]

BILLING CODE 6560–50–P

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 21

## RIN 1018–AI39

## Migratory Bird Permits; Regulations for Double-Crested Cormorant Management

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule and notice of record of decision.

**SUMMARY:** Increasing populations of the double-crested cormorant have caused biological and socioeconomic resource conflicts. In November 2001, the U.S. Fish and Wildlife Service (Service or we) completed a Draft Environmental Impact Statement (DEIS) on double-crested cormorant management. In March 2003, a proposed rule was published to establish regulations to implement the DEIS proposed action, Alternative D. In August 2003, the notice of availability for a Final Environmental Impact Statement (FEIS) was published, followed by a 30-day comment period. This final rule sets forth regulations for implementing the FEIS preferred alternative, Alternative D (establishment of a public resource depredation order and revision of the aquaculture depredation order). It also provides responses to comments we received during the 60-day public comment period on the proposed rule. The Record of Decision (ROD) is also published here.

**DATES:** This final rule will go into effect on November 7, 2003.

**ADDRESSES:** Comments can be mailed to the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, MBSP–4107, Arlington, Virginia 22203;

or emailed to *cormorants@fws.gov*; or faxed to 703/358–2272.

**FOR FURTHER INFORMATION CONTACT:** Brian Millsap, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service (see **ADDRESSES**).

**SUPPLEMENTARY INFORMATION:**

## Background

The Service is the Federal agency with primary responsibility for managing migratory birds. Our authority is based on the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and Russia. The double-crested cormorant (DCCO) is Federally protected under the 1972 amendment to the Convention for the Protection of Migratory Birds and Game Mammals, February 7, 1936, United States-Mexico, as amended, 50 Stat. 1311, T.S. No. 912. The take of DCCOs is strictly prohibited except as authorized by regulations implementing the MBTA.

As we stated in the proposed rule published in the **Federal Register** in March 2003, the authority for the regulations set forth in this rule is the MBTA. The MBTA authorizes the Secretary, subject to the provisions of, and in order to carry out the purposes of, the applicable conventions, to determine when, if at all, and by what means it is compatible with the terms of the conventions to allow the killing of migratory birds. DCCOs are covered under the terms of the Convention for the Protection of Migratory Birds and Game Mammals with Mexico. The DCCO is a nongame, noninsectivorous bird for which the applicable treaty does not impose specific prohibitions or requirements other than the overall purpose of protection so as not to be exterminated and to permit rational utilization for sport, food, commerce, and industry. In the FEIS for this action, the Service has considered all of the statutory factors as well as compatibility with the provisions of the convention with Mexico. The Russian convention (Convention between the United States of America and the Union of Soviet Socialist Republics Concerning the Conservation of Migratory Birds and Their Environment, concluded November 19, 1976) provides an authority to cover DCCOs even though not listed in the Appendix. To the extent we choose to apply the convention, it contains an exception from the prohibitions that may be made for the protection against injury to persons or property. We note, therefore, that there is no conflict between our responsibility for managing migratory birds and our selected action.

Regulations governing the issuance of permits for migratory birds are contained in title 50, Code of Federal Regulations, parts 13 and 21. Regulations in subpart D of part 21 deal specifically with the control of depredating birds. Section 21.41 outlines procedures for issuing depredation permits. Sections 21.43 through 21.47 deal with special depredation orders for migratory birds to address particular problems in specific geographical areas. Section 21.47 addresses DCCOs at aquaculture facilities.

While the Service has the primary responsibility for regulating DCCO management, on-the-ground management activities are largely carried out by entities such as State fish and wildlife agencies, the Wildlife Services program of the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS/WS), and, in some cases, by private citizens. APHIS/WS was a cooperating agency in the development of the DEIS and FEIS. Additionally, States and Canadian provinces were involved through the International Association of Fish and Wildlife Agencies.

On March 17, 2003 we published a proposed rule in the **Federal Register** (68 FR 12653). We solicited comments on the proposed rule until May 16, 2003. During that time, we received approximately 9,700 letters, emails, and faxes. About 85 percent of these comments were opposed to the proposed action, the vast majority of which were driven by mass email/letter campaigns promoted by nongovernmental organizations. This final rule reflects consideration of comments received on the proposed rule. The final rule promulgates regulations to implement the selected action described in the FEIS. We published the notice of availability for the FEIS in the **Federal Register** on August 11, 2003 (68 FR 47603). Copies of the FEIS may be obtained by writing us (*see* **ADDRESSES**) or by downloading it from our Web site at *http://migratorybirds.fws.gov/issues/cormorant/cormorant.html.* The Wires *et al.* report "Status of the double-crested cormorant in North America," mentioned in a **Federal Register** notice of November 8, 1999 (64 FR 60828), may also be downloaded at *http://migratorybirds.fws.gov/issues/cormorant/status.pdf.*

The FEIS examined six management alternatives for addressing conflicts with DCCOs: (A) No Action, (B) Nonlethal Control, (C) Increased Local Damage Control, (D) Public Resource Depredation Order, (E) Regional Population Reduction, and (F) Regulated Hunting. The selected action in the FEIS is Alternative D, Public Resource Depredation Order. This alternative is intended to enhance the ability of resource agencies to deal with immediate, localized DCCO damages by giving them more management flexibility.

To address DCCO populations from a broader and more coordinated perspective, a population objectives approach will likely need to be considered over the long term. In the future, if supported by biological evidence and appropriate monitoring resources, the Service may authorize management that focuses on setting and achieving regional population goals. At that time, a cormorant management plan will be developed. Until then, our strategy will continue to focus on alleviating localized damages.

We acknowledge that there is a need for more information about DCCOs and their impacts on resources across a variety of ecological settings. We also recognize that more rigorous monitoring efforts would be helpful in thoroughly assessing the impacts of the selected action on DCCO populations. While DCCO populations are currently tracked by a number of regional and national surveys, the Service concurs with many reviewers of the proposed rule, and recognizes that better information on population status and trends is desirable. For this reason, consistent with program, Service, and Department goals and priorities and subject to available funds, the Service intends to use all reasonable means to implement an improved DCCO population monitoring program of sufficient rigor to detect meaningful population changes subsequent to implementation of this action. The Service's objective will be to use available resources to collect data that can be used to reassess the population status of DCCOs by 2009, in advance of a decision whether or not to extend the depredation orders. This assessment may involve a Service-sponsored technical workshop, with various agency and non-governmental representatives, to discuss optimum survey methodologies. Also as part of that assessment, we will compile and evaluate available data on population trends of other species of birds that nest or roost communally with DCCOs to determine if negative impacts might be occurring to these species.

The Service has weighed these deficiencies against the costs of taking no action, and we believe it is prudent to move forward as outlined in this final rule. In making a decision about whether or not to extend the depredation orders, the Service will review and consider all additional research that has been conducted that evaluates the effects of the proposed action on fish stocks and other resources. The Service strongly encourages all stakeholders to assist in gathering the needed data through well-designed scientific research. Our expectation is that the annual reports in the depredation orders, especially the monitoring and evaluation data associated with the public resource depredation order, will provide substantive increases in scientific and management knowledge of DCCOs and their impacts. We urge States, Tribes, and Federal agencies involved in DCCO control to, wherever possible, design monitoring programs to provide useful information on the effects of DCCO control on public resources. We also urge all relevant governmental and nongovernmental entities to work together, whenever possible, to coordinate research and management activities at the local and regional scale. In particular, the following needs exist: greater demographic information (age-specific survival/mortality, age at first breeding, reproductive output, and philopatry) for use in modeling to help predict population responses to management scenarios; region-wide surveys of DCCOs to document changes in breeding populations; assessments of DCCO-caused fish mortality in relation to other mortality factors at the local level; studies to examine mechanisms within fish populations that may buffer the effects of DCCO predation, including investigation of whether different fish life-stages or species complexes are differentially affected by DCCOs; studies to quantify the impacts of DCCOs on vegetation and other waterbirds; studies to determine how DCCO population processes respond to changes in population density resulting from control activities; and studies to address human dimensions of DCCO conflicts and possible solutions through education and outreach.

The selected action establishes a public resource depredation order in 50 CFR 21.48 and amends 50 CFR 21.47, the aquaculture depredation order that was originally created in 1998. In the proposed rule, we presented draft regulations and opened a 60-day public comment period. Differences between this final rule and the proposed rule reflect both our attentiveness to public comments and our deference to agency expertise. The chart below highlights these changes.

| Proposed rule | Final rule | Justification |
|---|---|---|
| ADO[1]: Winter roost control authorized from October to March. | Winter roost control authorized from October to April [21.47(c)(2)]. | Public and agency comments indicate that DCCOs continue to congregate in large numbers in April and these birds have a major impact on adjacent aquaculture facilities. |
| Both DOs[2]: Statement that take of any species protected by the Endangered Species Act (ESA) is not authorized. | Same, plus conservation measures added [21.47(d)(8); 21.48(d)(8)]. | In accordance with Section 7 of the ESA, we completed informal consultation; this led to development of conservation measures to avoid adverse effects to any species protected by the ESA. |
| Both DOs: General statement that authority under depredation orders can be revoked. | Added specific suspension and revocation procedures [21.47(d)(10); 21.48(d)(13)]. | For consistency's sake, we believe it is important to have a revocation/suspension process outlined. |
| Both DOs: OMB information collection control number not specified. | Added OMB approval number of 1018–0121 and expiration date [21.47(e); 21.48(e)]. | We received this number in May 2003, after publication of proposed rule and comment period. |
| PRDO[3]: Recipients of donations of birds killed must have a scientific collecting permit. | This requirement removed [21.48(d)(6)(i)] ...... | The proposed rule would have been more stringent than what is currently allowed in 50 CFR 21.12(b) and we do not consider stricter rules necessary. |
| PRDO: Agencies must provide a one-time notice of their intent to act under the order. | Added an advance notification requirement for take of >10% of a breeding colony [21.48(d)(9)]. | We wanted to address concerns about there being no opportunity for us to review, and even suspend, control actions before they take place. |
| PRDO: Annual reporting period set at Sept. 1 to Aug. 31. | Changed reporting period to Oct. 1 to Sept. 30 [21.48(d)(11)]. | The State of New York requested this change to better accommodate fall harassment activities. |
| PRDO: Monitoring requirements for population level activities. | Changed the word "monitor" to "evaluate"; added requirement that data from this section be included in annual report; and removed (11)(iii) [21.48(d)(12)]. | This section ensures that agencies will consider (and take action to avoid) impacts to nontarget species and will evaluate the effects of control actions at breeding colonies, without being cost-prohibitive. |

[1] Aquaculture Depredation Order.
[2] Aquaculture and Public Resource Depredation Orders.
[3] Public Resource Depredation Order.

## Population Status of the Double-Crested Cormorant

The information in this section is derived from the FEIS (to obtain a copy, *see* **ADDRESSES**). DCCOs are native to North America and range widely there. There are essentially five different breeding populations, variously described by different authors as: Alaska, Pacific Coast, Interior, Atlantic, and Southern (Hatch and Weseloh 1999, Wires *et al.* 2001). The continental population is estimated at 2 million birds (including breeders and nonbreeders). For the United States as a whole, according to Breeding Bird Survey (BBS) data, the breeding population of DCCOs increased at a statistically significant rate of approximately 7.5 percent per year from 1975–2002 (Sauer *et al.* 2003). However, growth rates for the different breeding populations vary considerably from this average.

*Atlantic.* Approximately 23 percent of the DCCO breeding population is found in the Atlantic region (Tyson *et al.* 1999), which extends along the Atlantic coast from southern Newfoundland to New York City and Long Island (Wires *et al.* 2001). Atlantic DCCOs are migratory and occur with smaller numbers of great cormorants. From the early 1970s to the early 1990s, the Atlantic population increased from about 25,000 pairs to 96,000 pairs (Hatch 1995). While this population declined by 6.5 percent overall in the early to mid-1990s, some colonies were still increasing during this period. The most recent estimate of the Atlantic population is at least 85,510 breeding pairs (Tyson *et al.* 1999).

*Interior.* Nearly 70 percent of the DCCO breeding population is found in the Interior region (Tyson *et al.* 1999), which reaches across the prairie provinces of Canada, includes the Canadian and U.S. Great Lakes, and extends west of Minnesota to southwestern Idaho (Wires *et al.* 2001). Interior DCCOs are strongly migratory and, in the breeding months, are concentrated in the northern prairies, with the Canadian province of Manitoba hosting the largest number of breeding DCCOs in North America (Wires *et al.* 2001). Additionally, large numbers of Interior DCCOs nest on or around the Great Lakes (Hatch 1995, Wires *et al.* 2001). Since 1970, when 89 nests were counted during a severe pesticide-induced population decline (Weseloh *et al.* 1995), DCCO numbers have increased rapidly in the Great Lakes, with breeding surveys in 2000 estimating 115,000 nests there (Weseloh *et al.* 2002). From 1990 to 1997, the overall growth rate in the Interior region was estimated at 6 percent with the most dramatic increases occurring in Ontario, Michigan, and Wisconsin. The Interior population (including Canada) numbers is at least 256,212 breeding pairs (Tyson *et al.* 1999).

*Southern.* The Southern region includes Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas (Wires *et al.* 2001). Most DCCOs in this region are winter migrants from the Interior and Atlantic regions; the number of these wintering birds has increased dramatically in recent years (Dolbeer 1991, Glahn and Stickley 1995, Jackson and Jackson 1995, Glahn *et al.* 2000). Surveys conducted by APHIS/WS biologists suggest that winter numbers in the delta region of Mississippi have increased by nearly 225 percent since the early 1990s (over 73,000 DCCOs were counted in the 2001–2002 winter surveys; G. Ellis, unpubl. data). Breeding DCCOs in this region are also on the rise, with some nesting occurrences representing first records and others recolonizations (Wires *et al.* 2001). Today, approximately 4 percent of the DCCO breeding population occurs in this region, numbering at least 13,604 breeding pairs (Tyson *et al.* 1999).

*Pacific Coast and Alaska.* Approximately 5–7 percent of North America's DCCOs are found in this population, which has approximately 27,500 nesting pairs (including Mexico) according to Carter *et al.* (1995b) or at least 17,084 pairs (not including Mexico) according to Tyson *et al.* (1999). Carter *et al.* (1995) documented recent increases in California and Oregon, and declines in British Columbia, Washington, and Baja California. Tyson *et al.* (1999) did not consider Mexican populations and calculated a decline for the entire West Coast-Alaska region. In the past 20 years, the largest increases in the region have taken place in the Columbia River Estuary, where East Sand Island supports the largest active colony along the coast with 6,390 pairs in 2000 (Carter *et al.* 1995b, Collis *et al.* 2000, Wires *et al.* 2001). Increases at East Sand Island coincided with declines in British Columbia, Washington, and locations in interior Oregon, and the rapid increase undoubtedly reflected some immigration from these other areas (Carter *et al.* 1995).

## Impacts of Double-Crested Cormorants on Public Resources

*Fish.* In order to fully understand fisheries impacts related to predation, DCCO diet must be evaluated in terms of the number of DCCOs in the area, the length of their residence in the area, and the size of the fish population of concern (Weseloh *et al.* 2002). While most, but not all, studies of cormorant diet have indicated that sport or other human-valued fish species do not make up high percentages of DCCO diet, conclusions about actual fisheries impacts cannot be based on diet studies alone. Nisbet (1995) referred to this as the "body-count" approach (*i.e.*, counting the numbers of prey taken rather than examining the effects on prey populations) and noted that it is necessary to also "consider functional relationships between predation and output parameters."

Stapanian (2002) observed that "Rigorous, quantitative studies suggest that the effects of cormorants on specific fisheries appear to be due in part to scale and stocks of available prey." Indeed, negative impacts are typically very site-specific and thus DCCO-fish conflicts are most likely to occur on a localized scale. Even early cormorant researcher H.F. Lewis recognized that cormorants could be a local problem at some fishing areas (Milton *et al.* 1995). In sum, the following statements about DCCO feeding habits and fisheries impacts can be concluded with confidence from the available science: (1) DCCOs are generalist predators whose diet varies considerably between seasons and locations and tends to reflect fish species composition; (2) The present composition of cormorant diet appears to have been strongly influenced by human-induced changes in the natural balance of fish stocks; (3) "Impact" can occur at different scales, such that ecological effects on fish populations are not necessarily the same as effects on recreational or commercial catches, or vice versa; (4) Cormorant impact is generally most significant in artificial, highly managed situations; and (5) Because environmental and other conditions vary locally, the degree of conflicts with cormorants will vary locally.

Research in New York's Oneida Lake and eastern Lake Ontario has examined data on DCCO diets and fish populations (walleye and yellow perch in Oneida Lake and smallmouth bass in Lake Ontario) and concluded that cormorant predation is likely a significant source of fish mortality that is negatively impacting recreational catch (Adams 1999, Rudstam 2000, Lantry *et al.* 1999). Based on these studies, the Service will allow the authorized agencies and Tribes acting under the public resource depredation order to determine whether a similar situation exists in their location, and undertake appropriate control actions to mitigate negative effects, if applicable.

*Other Birds.* Weseloh *et al.* (2002) observed that nesting DCCOs could impact other colonial waterbirds in at least three ways: by DCCO presence limiting nest site availability, by DCCOs directly taking over nest sites, or by falling guano and nesting material from DCCO nests leading to the abandonment of nests below. Habitat destruction is another concern reported by biologists (USFWS 2001). The significance of DCCO-related effects on other birds varies with scale. While large-scale impacts on regional or continental bird populations have not been documented (Cuthbert *et al.* 2002), there is evidence that species such as black-crowned night herons, common terns, and great egrets can be negatively impacted by DCCOs at a site-specific level (Jarvie *et al.* 1999, Shieldcastle and Martin 1999, USFWS 2001, Weseloh *et al.* 2002). Biologists from several States and provinces have reported or expressed concern about impacts to other bird species in relation to increased cormorant abundance (Wires *et al.* 2001, USFWS 2001). Some biologists have also expressed concern about incidental impacts to co-nesting species caused by DCCO control efforts (both lethal and nonlethal). We believe that such impacts are preventable and easily mitigated to a level of insignificance. For example, New York biologists conducting DCCO control work in eastern Lake Ontario have successfully managed to avoid negative impacts to other species such as Caspian terns, herring gulls, and ring-billed gulls (USFWS 2003).

*Vegetation and Habitat.* Cormorants destroy their nest trees by both chemical and physical means. Cormorant guano, or excrement, is highly acidic and kills ground vegetation and eventually the nest trees. In addition, cormorants damage vegetation by stripping leaves for nesting material and by breaking branches due to the combined weight of the birds and their nests. Vegetation and habitat destruction problems tend to be localized in nature. For example, resource professionals from the Great Lakes region are concerned about loss of plant diversity associated with increasing cormorant numbers at some breeding sites (Weseloh and Ewins 1994, Moore *et al.* 1995, Lemmon *et al.* 1994, Bédard *et al.* 1995, Shieldcastle and Martin 1999).

*Aquaculture.* Cormorant depredation at commercial aquaculture facilities, particularly those in the southern catfish-producing region, remains economically significant. DCCOs move extensively within the lower Mississippi valley during the winter months (Dolbeer 1990). In the delta region of Mississippi, cormorants have been found to forage relatively close to their night roosting locations with most birds traveling an average distance of less than 20 km from their night roosting locations to their day roosts (King *et al.* 1995). Cormorants that use day roosts within the catfish-producing regions of the delta typically forage at aquaculture facilities, and USDA researchers have found that as much as 75 percent of the diet of DCCOs in these areas consists of catfish (Glahn *et al.* 1999). Losses from cormorant predation on fingerling catfish in the delta region of Mississippi have been estimated at approximately 49 million fingerlings each winter, valued at $5 million. Researchers have estimated the value of catfish at harvest to be about 5 times more than the replacement cost of fingerlings, placing the total value of catfish consumed by DCCOs at approximately $25 million (Glahn *et al.* 2000). Total sales of catfish growers in Mississippi amounted to $261 million in 2001 (USDA–NASS 2002).

*Hatcheries.* DCCO impacts to hatcheries are related to predation, stress, disease, and financial losses to both hatcheries and recipients of hatchery stock. Hatchery fish may be stressed by the presence of DCCOs, wounds caused by unsuccessful attacks, and noisemakers used to scare away DCCOs. This stress can lead to a decrease in growth factors as feeding intensity decreases. Additionally, disease and parasites can be spread more easily by the presence of fish-eating birds. State and Federal hatchery managers, particularly in the upper midwest (*e.g.*, Wisconsin, Michigan) and the south (*e.g.*, Arizona, Louisiana, Oklahoma, Texas), have reported significant depredation problems at hatcheries (USFWS 2001). Currently, Director's Order No. 27, "Issuance of Permits to Kill Depredating Migratory Birds at Fish Cultural Facilities," dictates that "kill permits [for fish-eating birds] will be issued for use at public facilities only when it has been demonstrated that an emergency or near emergency exists and an [APHIS/WS] official certifies that all other deterrence devices and management practices have failed." The two depredation orders that we are proposing would supersede this Director's Order (for DCCOs only) by giving managers at State, Federal, and Tribal fish hatcheries more authority to control DCCOs to protect fish stock.

**Environmental Consequences of Action**

We analyzed our action in the FEIS. Our environmental analysis indicates that the action will cause the estimated take of <160,000 DCCOs, which is not predicted to have a significant negative impact on regional or continental DCCO populations; will cause localized disturbances to other birds but these can be minimized by taking preventive measures, leading to the action having beneficial effects overall; will help reduce localized fishery and vegetation impacts; will not adversely affect any Federally listed species; is likely to help reduce localized water quality impacts; will help reduce depredation of aquaculture and hatchery stock; is not likely to significantly benefit recreational fishing economies or commercial fishing; may indirectly reduce property damages; and will have variable effects on existence and aesthetic values, depending on perspective.

**References**

A complete list of citation references is available upon request from the Division of Migratory Bird Management (*see* **ADDRESSES**).

**Responses to Significant Comments**

During the public comment period on the proposed rule, we received approximately 9,700 emails, letters, and faxes. We provide our responses to significant comments here.

*Comment 1:* The Service should protect, not kill, DCCOs.

*Service Response:* In the wildlife management field, the control of birds through the use of humane, but lethal, techniques can be an effective means of alleviating resource damages, preventing further damages, and/or enhancing nonlethal techniques. It would be unrealistic and overly restrictive to limit a resource manager's damage management methods to nonlethal techniques, even if "nonlethal" included nest destruction and/or egg oiling. Lethal control techniques are an important, and in many cases necessary, part of a resource manager's "tool box."

*Comment 2:* States and other agencies don't have sufficient resources to effectively control DCCOs.

*Service Response:* Agencies will need to decide whether or not cormorant management is a high enough priority for them to justify committing resources to it. We have tried to keep reporting and evaluation requirements such that they are unlikely to be cost prohibitive. We have also allowed agencies to designate "agents" to act under the orders. Our budget does not currently allow us to provide financial assistance to States and other agencies for cormorant control.

*Comment 3:* The Service needs to manage DCCOs through a coordinated, regional population objectives approach.

*Service Response:* The selected action, Alternative D, in no way precludes regional coordination or consideration of population objectives, despite being chiefly a localized damage control approach. We are keeping the option open of taking this approach in the future, given greater biological information and the necessary funding.

*Comment 4:* The Service needs to reduce overall DCCO populations.

*Service Response:* At this time, we believe that the evidence better supports Alternative D, a localized damage control strategy rather than Alternative E, a largescale population reduction strategy. While many stakeholders portray cormorant conflicts as being a simple overabundance problem whose solution is population reduction, that is not clearly the case. That is, it is unclear whether fewer cormorants would actually mean fewer problems (since sometimes distribution is as important as number in determining impacts), what the necessary scale of control would be, and whether or not that scale of control is biologically, socially, and economically feasible.

*Comment 5:* States should be granted full authority to control DCCOs as needed.

*Service Response:* Under the MBTA, we have the ultimate responsibility for cormorant management. While we can grant States and other agencies increased authority, giving them "full authority" without any limitations and requirements would abdicate our responsibilities.

*Comment 6:* The final rule should authorize the use of all effective DCCO control methods at aquaculture facilities.

*Service Response:* The final rule authorizes shooting, which is considered very effective, to be used at aquaculture facilities. There is no evidence of the need for other techniques to be used.

*Comment 7:* The Service needs to more fully address other causes of fish depletion.

*Service Response:* We recognize that factors other than DCCOs contribute to resource impacts such as fishery declines. However, an exhaustive and comprehensive analysis of these myriad factors is outside the scope of the EIS. Our focus is chiefly on addressing conflicts caused by cormorants and then attempting to manage DCCOs, or the resources themselves, to alleviate those conflicts.

*Comment 8:* There should be a hunting season on DCCOs.

*Service Response:* While we recognize the validity of hunting as a wildlife management tool, we believe that the risks associated with it outweigh any potential benefits. We are gravely concerned about the negative public perception that would arise from authorizing hunting of a bird with little consumptive (or "table") value. While it is true that this has been done in the past for other species (*e.g.*, crows), public attitudes are different today than they were 30 years ago when those decisions were made. Additionally, a number of hunters commented that they did not support hunting as a means of cormorant control. Therefore, it is our position that hunting is not, on the whole, a suitable technique for reducing cormorant damages.

*Comment 9:* The Service should add Montana and New Hampshire to the public resource depredation order.

*Service Response:* We determined that the most crucial States to include in the public resource depredation order were those States with DCCOs from the increasing Interior and Southern populations or States affected by those populations (*e.g.*, those with high numbers of migrating birds). Other States with cormorant conflicts are not precluded from cormorant control but would have to obtain depredation permits.

*Comment 10:* The Service should remove DCCOs from MBTA protection.

*Service Response:* In our view, this is not a "reasonable alternative." DCCOs have been protected under the MBTA since 1972. Removing DCCOs from MBTA protection would not only be contrary to the intent and purpose of the original treaty, but would require amending it, a process involving lengthy negotiations and approval of the U.S. Senate and President. Since DCCOs are protected by family (*Phalacrocoracidae*) rather than by species, the end result could be the loss of protection for all North American cormorant species in addition to that of DCCOs. At this time, there is adequate authority for managing cormorant conflicts within the context of their MBTA protection and, thus, we believe the suggestion to remove DCCOs from MBTA protection is not practical, necessary, or in the best interest of the migratory bird resource.

*Comment 11:* Private landowners should be allowed to control DCCOs on their lands.

*Service Response:* The take of DCCOs and other migratory birds is regulated by the MBTA and, in most cases, requires a Federal permit. Under the aquaculture depredation order, private commercial aquaculture producers in 13 States are allowed to control DCCOs on their fish farms without a Federal permit. However, all other individuals who experience damages to private resources must contact the appropriate Service Regional Migratory Bird Permit Office for a depredation permit. There is not sufficient justification for authorizing "private landowners" in general to take DCCOs without a Federal permit.

*Comment 12:* The proposed action will be more effective if agencies coordinate with each other.

*Service Response:* Yes, this is true. While agencies are not required under the public resource depredation order to coordinate with each other, they are entirely free to do so.

*Comment 13:* Humaneness and the use of nonlethal methods should be emphasized.

*Service Response:* Wherever feasible, we have required the use of nonlethal methods before killing is allowed. All authorized control techniques for killing birds outside of the egg are approved by the American Veterinary Medical Association as being humane for the euthanization of birds.

*Comment 14:* The Service needs to better educate the public about DCCOs.

*Service Response:* We have prepared fact sheets for public distribution. Information about DCCOs is available at our Web site *http://migratorybirds.fws.gov/issues/cormorant/cormorant.html*. Our intention is to distribute fact sheets on the depredation orders in the near future. Beyond DCCOs, we participate in numerous outreach activities around the nation to increase public awareness about the importance of migratory birds and other Federal trust species.

*Comment 15:* The Service needs to issue permits to allow DCCOs to be shot legally at anytime.

*Service Response:* The authorization of virtually unregulated shooting of DCCOs would clearly not be a fulfillment of our responsibilities under the MBTA, since it could lead to extermination of the species. We can only allow take under appropriately adopted regulations that are consistent with our obligations and the relevant treaties. The depredation orders issued in this rulemaking only authorize take of DCCOs in certain locations and timeframes, and by certain agencies, to ensure this take is consistent with the purpose for which the depredation order was established.

*Comment 16:* DCCOs are being scapegoated for fishery declines.

*Service Response:* The Service recognizes that many factors other than DCCOs can contribute to fishery declines. However, studies have shown that in some cases cormorants are a significant contributing factor to these declines and therefore we believe that DCCO management, where there is evidence of real conflicts, is likely to have beneficial impacts.

*Comment 17:* The Service is dumping the burden of DCCO control on the States; the Service should take care of the DCCO problem since they created it.

*Service Response:* The public resource depredation order is not a requirement being forced upon the States (or any other agency). The decision ultimately lies with individual agencies to choose whether or not to use the authority granted to them by the public resource depredation order. As we were considering options for addressing DCCO conflicts more effectively, it became clear that, since many conflicts tend to be localized in nature, a sensible and flexible solution was to allow local agencies more authority in deciding when to control cormorants. The

Service did not "create" the cormorant problem. Their population increases are due to many factors, most of which are entirely out of our control.

*Comment 18:* The Service should provide financial support for DCCO control.

*Service Response:* We are currently unable to provide funding to other agencies under the public resource depredation order. However, in our Congressional budget request, we have asked for increased financial resources to implement the DCCO selected action. This figure specifically includes money that could be used in cooperative efforts with States and other agencies to conduct cormorant monitoring, research, and management.

*Comment 19:* California and Wisconsin should be added to the aquaculture depredation order.

*Service Response:* We do not believe that adding States to the aquaculture depredation order is necessary at this time. Private, commercial, freshwater aquaculture producers can obtain depredation permits to take DCCOs at their fish farms.

*Comment 20:* The final rule should allow proactive measures to be taken so problems can be dealt with before they become serious.

*Service Response:* The rule does allow for proactive measures to a certain extent. Both depredation orders allow DCCOs to be taken when "committing or about to commit depredations." The public resource depredation order takes this a step further by allowing for take of DCCOs to prevent depredations on public resources.

*Comment 21:* Expansion of the aquaculture depredation order to authorize winter roost control should not be allowed.

*Service Response:* The USDA report, "A Science-Based Initiative to Manage Double-Crested Cormorant Damage to Southern Aquaculture" notes that "Coordinated and simultaneous harassment of cormorants can disperse them from night roosts and reduce damage at nearby catfish farms" and cites three scientific studies that support this claim. It then concludes that shooting at roosts "might enable farmers to reduce the number of birds on their farms significantly * * *" Part of the logic behind this is that studies in the Mississippi Delta have shown that, while DCCOs move widely in general, they tend to exhibit high roost fidelity. This implies that shooting birds at roosts (where turnover is lower) is likely to be more effective at alleviating damages than shooting birds just at ponds (where turnover is higher).

*Comment 22:* Actions in the proposed rule should not be allowed to take place.

*Service Response:* Clearly, we and our cooperators, APHIS Wildlife Services disagree with this statement. The Record of Decision below explains our rationale.

*Comment 23:* Hatcheries and fish farms should only be allowed to use nonlethal methods.

*Service Response:* Shooting is a legitimate and effective technique for scaring away or killing depredating birds that, when done in a controlled manner, has no adverse impact on populations.

*Comment 24:* Habitat damage caused by DCCOs has not been quantified or confirmed.

*Service Response:* This statement is incorrect. Vegetation/habitat damage has been both confirmed and quantified. See the FEIS, section 4.2.4, for more details.

*Comment 25:* APHIS Wildlife Services should be granted full authority to manage migratory birds.

*Service Response:* Under the MBTA and other laws, the Service has been delegated full responsibility for authorizing the take of and management of migratory bird populations. It would require an act of Congress to grant APHIS this authority. We do not support such action.

*Comment 26:* The Service should take the lead in DCCO research.

*Service Response:* The Migratory Bird Management Program monitors over 800 bird species in North America, including cormorants. However, we are not specifically a research agency. Our involvement in research consists mainly of providing financial assistance to researchers. In fewer cases, we are involved in direct research activities (such as color banding work being done in Lake Michigan by the USFWS Green Bay Field Office). We recognize that we have a leadership role to play in encouraging DCCO research.

*Comment 27:* The proposed rule is not based on "sound science."

*Service Response:* The Service recognizes the importance of resource management being science-based, and we will always defer to well-designed scientific studies when such information is available. In this case, the Service relied on scientific studies as well as the best available biological knowledge to make its decision. Additionally, social, political, and economic factors contribute to the Service's decisions regarding whether or not to address a problem. Our position is that there is sufficient biological and socioeconomic justification to pursue a solution and sufficient biological information to meet the requirements of the MBTA and to support this rulemaking action.

*Comment 28:* The Service is caving in to "political pressure" and "special interests."

*Service Response:* Given the fact that DCCO populations are not at risk in the areas where the depredation orders are authorized, and the Service is granted management flexibility under the MBTA, we believe it is appropriate to permit control of local DCCO populations. We have considered input from all stakeholders and believe that our decision reflects an appropriate balance of the public interest. Our goal in this and every other issue under our jurisdiction is to make informed, impartial decisions based on scientific and other considerations.

*Comment 29:* The Service should stay with the No Action alternative.

*Service Response:* In recent years, it has become clear from public and professional feedback that the status quo is not adequately resolving DCCO conflicts for many stakeholders. Furthermore, our environmental analysis indicated that conflicts were more likely to be resolved under other options than under Alternative A.

*Comment 30:* The proposed rule is a wrongful abdication of the Service's MBTA responsibilities.

*Service Response:* We disagree. Rather than an abdication of our responsibilities, this rule is an exercise of them. The public resource depredation order by no means puts an end to the Federal role in migratory bird management. The conservation of migratory bird populations is and will remain the Service's responsibility. Second, while the MBTA gives the Federal Government (as opposed to individual States) the chief responsibility for ensuring the conservation of migratory birds, this role does not preclude State involvement in management efforts. Bean (1983) described the Federal/State relationship as such (emphases added):

> It is clear that the Constitution, in its treaty, property, and commerce clauses, contains ample support for the development of a comprehensive body of federal wildlife law and that, to the extent such law conflicts with state law, it takes precedence over the latter. *That narrow conclusion, however, does not automatically divest the states of any role in the regulation of wildlife or imply any preference for a particular allocation of responsibilities between the states and the federal government.* It does affirm, however, that such an allocation can be designed without serious fear of constitutional hindrance. In designing such a system, for reasons of policy, pragmatism, and political comity, *it is clear that the states will continue*

> *to play an important role either as a result of Federal forbearance or through the creation of opportunities to share in the implementation of federal wildlife programs.*

Nowhere in the MBTA is the implementation of migratory bird management activities limited to the Federal Government. In fact, the statute specifically gives the Secretary of Interior the authority to determine when take of migratory birds may be allowed and to adopt regulations for this purpose. Additionally, we've ensured that this rule does not conflict with the Convention for the Protection of Migratory Birds and Game Mammals between the U.S. and Mexico (under which cormorants are protected). Finally, the depredation orders specifically limit the authority of non-Federal entities through the terms and conditions, including suspension and revocation procedures, advance notification requirements, and other restrictions. We would also note that we have the authority to amend this rule in the future if DCCO population status or other conditions demand it.

*Comment 31:* The Service should more fully consider the economic value of DCCOs and activities associated with them such as birding and photography.

*Service Response:* Assigning economic value to any wildlife species is difficult, and it is made all the more so when that species (such as the DCCO) is of little direct use to humans. However, this should not be read to imply that we have no regard for the indirect and intangible values of cormorants as a native part of the North American avifauna. As such, we stated clearly in the FEIS (p. 6) that DCCOs "have inherent value regardless of their direct use to humans." A quantitative analysis of the economic benefits associated with DCCO was not possible at this time due to lack of studies in this area. The Service welcomes submission of such studies and will consider them in its analysis of future depredation orders, if applicable.

*Comment 32:* In addition to the Service, States and APHIS Wildlife Service should have a say in revoking authority under the depredation orders.

*Service Response:* Since, under the MBTA, the Service is the chief agency responsible for migratory bird management, it is our responsibility to decide when to revoke an agency's or individual's authority under the depredation orders. We do, however, give agencies a chance to appeal any revocation decisions.

*Comment 33:* The public resource depredation order has no sound biological underpinning.

*Service Response:* We have analyzed the available biological information in the FEIS. We believe our decision is supported by the information available at this time.

*Comment 34:* Proposed rule contains too much "red tape."

*Service Response:* We can understand that some people see the rule as having too many mandatory terms and conditions but these are necessary to ensure that the depredation orders are used for their stated purposes and to safeguard cormorant populations and other Federal trust species (*e.g.*, other migratory birds and ESA-protected species). We tried to make the final rule as flexible as we could without compromising these factors.

*Comment 35:* The public resource depredation order should be expanded to include damages to private property as well.

*Service Response:* The public resource depredation order does not provide direct relief to private landowners experiencing DCCO conflicts. This is partly because such conflicts have not been well-documented and partly because our practice is not to allow the take of migratory birds, a public resource, to alleviate minor damages to private resources (a similar example would be hawks that take privately owned game birds). While the biological and other justification for implementing the aquaculture and public resource depredation orders is strong, this is not necessarily the case for impacts to private resources. In cases of significant economic damage caused by DCCOs, private landowners may request a depredation permit from the appropriate Service Regional Migratory Bird Permit Office.

*Comment 36:* Requiring monitoring at all control sites is too much of a burden; agencies should be able to use best available information.

*Service Response:* We understand that strict monitoring requirements (*i.e.*, population surveys) can be cost prohibitive and that, to a certain degree such monitoring is the Service's responsibility. It is important that agencies thoroughly evaluate the impacts of their management actions on DCCOs and, in some cases, on other resources, but we don't want these requirements to be so cost prohibitive that agencies are unable to take any action. Thus, in the final rule, we changed slightly the wording in § 21.48(d)(12) to account for this.

*Comment 37:* Monitoring should be required no less than once every 3 years.

*Service Response:* The Service currently surveys or sponsors surveys of colonial waterbirds every 5–10 years. We believe that such frequency is adequate to ensure the long-term conservation of populations of DCCOs and other migratory birds.

*Comment 38:* The winter roost control season should be extended to include April.

*Service Response:* Since numbers of DCCOs at fish farms in the southern United States are known to peak in March and April, and to cause the most damage at that time, we added April to the months in which roost control can occur.

*Comment 39:* Monitoring requirements under the public resource depredation order are too vague.

*Service Response:* We may provide future guidelines for monitoring and evaluation for the benefit of other agencies. Until such guidelines are issued, the Service intends to rely on States, Tribes, and APHIS Wildlife Services to develop and implement protocols for evaluation of the effects of control actions.

*Comment 40:* The proposal is likely to inflame relations between tribal and nontribal interests.

*Service Response:* We have not seen sufficient evidence to evaluate whether or not this is indeed likely to occur.

*Comment 41:* The aquaculture depredation order should be expanded to include all 48 States.

*Service Response:* At this time, we do not believe the available evidence indicates that expansion beyond 13 States is necessary to further protect commercial aquaculture stock. The issuance of depredation permits for damage at private fish farms is a high priority and, therefore, it is generally a quick process for aquaculture producers to obtain a depredation permit through their Regional Migratory Bird Permit Office.

*Comment 42:* Under the public resource depredation order, nonlethal techniques (*e.g.*, harassment) should not be prescribed as a mandatory first step at multispecies breeding colonies because of the risk of disturbance.

*Service Response:* We understand that harassment efforts can have secondary impacts on other colonially nesting birds and that is precisely why we did not require such efforts to be used first but rather stated that they be used "when these are considered effective and practicable by the responsible Agency." We have since changed it to read that agencies "should first utilize nonlethal control methods such as harassment and exclusion devices when these are considered effective and practicable and not harmful to other nesting birds."

*Comment 43:* The Service should issue guidelines making it clear what constitutes depredation on a public resource.

*Service Response:* In developing the rule, USFWS wanted to maximize the flexibility of other agencies in determining what constitutes a public resource depredation. We understand that there are concerns about all of the "what ifs" that could conceivably take place in the absence of guidelines. We have made the purpose of the depredation orders clear, and we trust that our agency partners will not abuse their authority. If they do, we have the option to suspend or revoke their authority under the depredation order or to amend this rule.

*Comment 44:* In the proposed rule, the only advanced requirement for agencies to initiate a control program is to submit a one-time notice to the Service. The rule does not require evaluation of potential impacts before control actions occur.

*Service Response:* In the final rule, under the public resource depredation order, we have added a clause for advance notification of control actions that would take 10% or more of the birds in a breeding colony. This will allow us to review such actions for compliance with the purpose of the order and for impacts on overall cormorant populations. Inherent in the idea of this public resource depredation order is the Service's trust in the professionalism and conservation expertise of the States, Tribes, and APHIS Wildlife Services. At the same time, we will continue our role of providing oversight to ensure that the cumulative effects of activities under the depredation orders do not threaten the long-term conservation of DCCO populations.

*Comment 45:* There is no process outlined for disputing control at a particular site. Control activities might come into conflict with ongoing research activities.

*Service Response:* We do not intend to establish guidelines for dispute resolution or public notice of proposed control efforts. In some cases, NEPA analysis will be necessary and this will open the door for limited public input regarding specific management actions. We cannot guarantee that conflicts won't occur between control and research activities. Researchers will need to coordinate with local resource agencies (as, presumably, they are already doing) on this issue.

*Comment 46:* The public resource depredation order should have a requirement for agencies to formally assess a control site before control is carried out to determine potential impacts to other species.

*Service Response:* We do not intend to require formal assessment of control sites before control is conducted. The final rule requires that agencies must provide advance notification for certain actions, including information on the location and a description of the proposed control activity, specifying what public resources are being impacted, how many birds are likely to be taken and what approximate percentage they are of total DCCOs present, and which species of other birds are present. Additionally, in their annual reports, agencies must provide us with detailed information on why they're conducting control actions, including what they're doing to minimize effects on other species. Agencies don't have to report this information until after control actions have occurred, but we believe this process is sufficient.

*Comment 47:* The proposed rule seems to violate the Service's mission to "conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people."

*Service Response:* We do not in any way believe that the rule interferes with our conservation mission. Our responsibility is to ensure the long-term conservation of DCCO populations, and we will do so. A mission is a general statement of an agency's vision that, by its very nature, cannot encompass every potential management responsibility. We believe that managing certain species to address economic or social concerns, while ensuring the long-term conservation of such species is consistent with our mission.

*Comment 48:* The Service has not established a process by which other agencies could set population goals.

*Service Response:* At some point in the future, we may initiate a process for setting population goals. States and other agencies are fully capable of doing this on their own in local situations (DCCO management efforts on Little Galloo Island in New York are a good example). The public resource depredation order does not authorize regional population management, and, therefore, regional goals are not yet necessary.

*Comment 49:* The return of an extirpated species to its former breeding range is a positive ecological event.

*Service Response:* Weseloh *et al.* (1995, p48) wrote that DCCO population increases in North America "have involved more than just a re-occupation of areas which experienced severe population declines or extirpations * * * previously unoccupied breeding and wintering areas have now been colonized" and gave three citations supporting this hypothesis. Regardless of whether or not DCCOs had previously occurred in some parts of their range, we have to manage and conserve them by today's standards, not those of a hundred (or more) years ago. Our intent under the final rule is not to eliminate cormorants on a regional or national level but to manage them, even to the point of reducing local populations, so that there are fewer impacts to natural and human resources. We fully understand that fish-eating birds are a natural part of the ecosystem and that, within limits prescribed by the need to consider the bigger picture than "ecological" factors alone, population recovery is a positive event.

*Comment 50:* Only State wildlife agencies should be allowed to take or permit the take of DCCOs at nesting colonies in their State.

*Service Response:* Under the public resource depredation order, any agency that takes DCCOs must have landowner permission and, if required, a State permit to take DCCOs. We believe that these clauses are sufficient to avoid compromising State oversight.

*Comment 51:* Issuing a resource depredation order for DCCOs under the proposed rule would set a dangerous precedent for fish-eating birds in the United States and in other nations to our south.

*Service Response:* We do not agree with the statement that the depredation orders are a "dangerous" precedent. Each conflict must be evaluated on its own merits. If problems with other fish-eating birds arise in the future, we will give full and fair consideration to these issues.

*Comment 52:* The Service should require safe management practices when DCCO control is conducted to protect birders.

*Service Response:* Conducting DCCO control in a manner that does not threaten human health or safety is the responsibility of the agencies and individuals carrying out the actions.

*Comment 53:* The scientific and public outcry against the Service's proposed rule should be convincing. Sound science is being supplanted by perceptions fueling political cries for substantial lethal population controls.

*Service Response:* We would note that there is also public outcry against the status quo and in support of the final rule. We believe that our decision is supported by the available data. Furthermore, the rule requires that agencies who act under the public resource depredation order have sound reasoning for doing so.

*Comment 54:* The Service must publish a Final EIS, Record of Decision, and appropriate Section 7 consultation documents prior to engaging in the rulemaking process.

*Service Response:* This is not a correct statement of the requirements of either the National Environmental Policy Act or the Endangered Species Act. Issuance of these regulations is in compliance with both of these laws.

*Comment 55:* The Service cannot establish depredation orders for DCCOs because they are not a "migratory game bird" pursuant to 50 CFR 21.42.

*Service Response:* This is incorrect because our authority for issuing a depredation order comes from the MBTA, not 50 CFR 21.42. Section 21.42 is a regulation adopted by the Service that allows the Director to issue depredation orders under certain circumstances. This new regulation is in addition to 21.42.

*Comment 56:* The Service needs to specify how the depredation orders will be enforced.

*Service Response:* We have law enforcement agents in every State who investigate violations of Federal wildlife laws. Providing the details of how they work is neither necessary nor sensible since such details could prevent the prosecution of those who violate the terms and conditions of the orders.

*Comment 57:* The requirement to report unauthorized take of migratory birds or threatened and endangered species requires individuals to incriminate themselves and thus violates the Fifth Amendment to the Constitution.

*Service Response:* While any take, unless permitted, is prohibited by statute, the Service directs its enforcement efforts on those individuals or companies that take migratory bird species outside the scope of the depredation orders. It is incumbent on those who will be working under the orders to have a working knowledge of what is authorized and to properly act under its terms and conditions. Failure to report would be grounds to revoke authorization. The Service sees the reporting requirements not as an attempt to identify the unlawful take of migratory birds but as a management tool to reduce unauthorized take.

## Cormorant Regulations Under the Rule

This final rule implements the FEIS selected action in the following ways: (1) It revises the 1998 aquaculture depredation order that allows APHIS/WS to protect public and private aquacultural stock in the 13 States listed in 50 CFR 21.47 by also allowing the take of DCCOs at winter roost sites and at State and Federal fish hatcheries; and (2) it establishes a new depredation order authorizing State fish and wildlife agencies, Federally recognized Tribes, and APHIS/WS to take DCCOs without a Federal permit to protect public resources on public and private lands and freshwaters in 24 States (the 13 States listed in 50 CFR 21.47 and 11 additional States). Both of the actions revise subpart D of 50 CFR 21.

## NEPA Considerations

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), we published a DEIS in December 2001, followed by a 100-day public comment period. In August 2003, both the Service and the Environmental Protection Agency published notices of availability for the FEIS in the **Federal Register**. This FEIS is available to the public (*see* **ADDRESSES**).

## Endangered Species Act Considerations

Section 7(a)(2) of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884) provides that "Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *." We completed a biological evaluation and informal consultation (both available upon request; *see* **ADDRESSES**) under Section 7 of the ESA for the action described in this final rule. In the letter of concurrence between the Division of Migratory Bird Management and the Division of Endangered Species, we concluded that the inclusion of specific conservation measures in the final rule satisfies concerns about the four species (piping plover, interior least tern, bald eagle, and wood stork) and therefore the proposed action is not likely to adversely affect any threatened, endangered, or candidate species.

## Executive Order 12866

In accordance with the criteria in Executive Order 12866, this action is a significant regulatory action subject to Office of Management and Budget review. OMB has made this determination of significance under the Executive Order. OMB has determined that this action raises novel legal or policy issues. This rule will not have an annual economic effect of $100 million or more or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government. The purpose of this rule is to help reduce adverse effects caused by cormorants, thereby providing economic relief. The total estimated economic impact of DCCOs is less than $50 million per year. Assuming that landowners (*e.g.*, aquaculture producers) and other stakeholders utilize, informally or formally, some degree of cost-benefit analysis, the financial expenses to control cormorant problems should not exceed the damages incurred. Thus we can assume that the total annual economic effect of this rule will be less than $50 million.

This rulemaking action will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. The selected action is consistent with the policies and guidelines of other Department of the Interior bureaus. This action will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

## Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for actions that will have a significant economic effect on a substantial number of small entities, which includes small businesses, organizations, or governmental jurisdictions. Because of the structure of wildlife damage management, the economic impacts of our action will fall primarily on State governments and APHIS/WS. These do not qualify as "small governmental jurisdictions" under the Act's definition. Effects on other small entities, such as aquacultural producers, will be positive but are not predicted to be significant. Thus, we have determined that a Regulatory Flexibility Act analysis is not required.

## Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not have an annual effect on the economy of $100 million or more, nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

### Paperwork Reduction Act and Information Collection

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Office of Management and Budget (OMB) has approved the information collection requirements included in this final rule under OMB control number 1018–0121, which expires on May 31, 2006. Agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

We will collect information from State, Tribal, and Federal agencies and private aquaculture producers who conduct DCCO management under the authority of the depredation orders. The specific monitoring and reporting requirements associated with this rule are listed below. The information collected will help us to determine how many DCCOs are being taken and for what purposes.

In response to public comments on the proposed rule (68 FR 12653, March 17, 2003), we added one new information collection requirement in this final rule that was not included in the proposed rule. That new requirement is advance notification to the Service of any control actions that would take more than 10 percent of a breeding DCCO population. This new requirement is located in § 21.48 (d)(9) and adds 165 hours to the total annual hour burden of these information collection requirements.

The information collections associated with this final rule are in §§ 21.47(d)(7), (d)(8), and (d)(9) and 21.48(d)(7), (d)(8), (d)(9), (d)(10) and (d)(12) and are listed below in the amendments to 50 CFR part 21. The breakdown of the information collection burden is as follows: We estimate that §§ 21.47(d)(7) and (d)(8) will have 50 annual responses at an estimated .5 burden hours per response; we estimate that § 21.47(d)(9) will have 900 annual responses at an estimated 2 burden hours per response; we estimate that §§ 21.48(d)(7) and (d)(8) will have 10 annual responses at an estimated .5 burden hours per response; we estimate that § 21.48(d)(9) will have 75 annual responses at an estimated average of 3 burden hours per response; we estimate that § 21.48(d)(10) will have 60 annual responses at an estimated 20 burden hours per response; and we estimate that § 21.48(d)(12) will have 10 annual responses at an estimated 80 burden hours per response. Overall, we estimate that a total of 960 respondents will annually submit a total of 1,105 responses to the recordkeeping and reporting requirements associated with these depredation orders. Each response will require an average of 3.67 hours to complete, for a total of 4,055 hours per year for all of the information collection and recordkeeping requirements in this final rule.

OMB regulations at 5 CFR part 1320 require that interested members of the public and affected agencies have an opportunity to comment on information collection and record keeping activities. If you have any comments on this information collection at any time, please contact the Service Information Collection Officer, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. We have determined, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the selected action would not "significantly or uniquely" affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this action is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

### Takings Implication Assessment

In accordance with Executive Order 12630, this action does not have significant takings implications and does not affect any constitutionally protected property rights. This action will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this action will help alleviate private and public property damage and allow the exercise of otherwise unavailable privileges.

### Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given statutory responsibility over these species by the MBTA. While legally this responsibility rests solely with the Federal Government, in the best interest of the migratory bird resource we work cooperatively with States and other relevant agencies to develop and implement the various migratory bird management plans and strategies. This action does not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. It will allow, but will not require, States to develop and implement their own DCCO management programs. Therefore, in accordance with Executive Order 13132, this action does not have significant federalism effects and does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this policy does not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the Order.

### Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and Executive Order 13175, we have determined that this action has no significant effects on Federally recognized Indian Tribes. In order to promote consultation with Tribes, a copy of the DEIS was mailed to all Federally recognized Tribes in the continental United States.

### Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As the selected action is not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

### Record of Decision

The Record of Decision for management of double-crested cormorants in the United States, prepared pursuant to National Environmental Policy Act (NEPA) regulations at 40 CFR 1505.2, is herein published in its entirety.

This Record of Decision (ROD) has been developed by the U.S. Fish and Wildlife Service (Service) in compliance with the agency decision-making requirements of NEPA. The purpose of this ROD is to document the Service's decision for the selection of an alternative for managing resource damages associated with the double-crested cormorant (DCCO). Alternatives have been fully described and evaluated in the August 2003 Final Environmental Impact Statement (FEIS) on DCCO management in the United States.

This ROD is intended to: (a) State the Service's decision, present the rationale for its selection, and describe its implementation; (b) identify the alternatives considered in reaching the decision; and (c) state whether all means to avoid or minimize environmental harm from implementation of the selected alternative have been adopted (40 CFR 1505.2).

**Project Description**

Increases in DCCO populations over the past 25 years, combined with other environmental and social factors, have led to greater occurrences of both real and perceived conflicts with human and natural resources. In 1999, in response to urgings from the public and from State and Federal wildlife agencies, the Service decided to prepare a programmatic EIS, in cooperation with the Wildlife Services program of the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS/WS), to evaluate the significance of, and consider alternatives to address, conflicts associated with DCCOs.

**Key Issues**

Public involvement occurred throughout the EIS and rulemaking process. From 1999 to 2003, we held 22 public meetings over the course of more than 10 months of total public comment. Through public scoping (the first stage of public comment) and agency discussions, key issues were identified. Key issues can be placed into two general categories: (1) Impacts caused by DCCOs (including impacts to other birds, fish, vegetation, aquaculture, Federally listed species, water quality, hatcheries, recreational fishing economies, and commercial fishing); and (2) impacts caused by control actions (including impacts to DCCO populations, other birds, Federally listed species, and existence and aesthetic values). In the EIS environmental analysis, these issues made up the environmental categories for which effects of the different alternatives were considered.

The alternatives were also considered in terms of their ability to fulfill the purpose of the proposed action: to reduce resource conflicts associated with DCCOs in the contiguous United States, to enhance the flexibility of natural resource agencies in dealing with DCCO-related resource conflicts, and to ensure the long-term conservation of DCCO populations.

**Alternatives**

Since the FEIS is a programmatic document, the alternatives reflect general management approaches to the alleviation of DCCO resource damages. Six alternatives were examined in the EIS: (A) No Action, (B) Nonlethal, (C) Increased Local Damage Control, (D) Public Resource Depredation Order, (E) Regional Population Reduction, and (F) Regulated Hunting.

*Alternative A*

Alternative A is essentially the no change, or status quo, alternative. The main features of this alternative are the issuance of a small number of depredation permits to address DCCO conflicts; an aquaculture depredation order that allows commercial, freshwater aquaculture producers in 13 States to shoot DCCOs without a permit; unregulated nonlethal harassment of DCCOs; and Director's Order No. 27, which prevents most public fish hatcheries from conducting lethal take of DCCOs.

*Alternative B*

Alternative B would not allow the take of DCCOs or their eggs. Only harassment methods and physical exclusion devices would be used to prevent or control DCCO damages.

*Alternative C*

Alternative C would allow for increased take of DCCOs, through a revision of our cormorant damage management practices, but agencies and individuals would still have to obtain a depredation permit. It would also revise the aquaculture depredation order to allow winter roost control.

*Alternative D*

Alternative D, the selected action, creates a public resource depredation order to authorize State fish and wildlife agencies, Federally recognized Tribes, and APHIS/WS to take DCCOs found committing or about to commit, and to prevent, depredations on the public resources of fish (including hatchery stock at Federal, State, and Tribal facilities), wildlife, plants, and their habitats. This authority applies to all lands and freshwaters (with appropriate landowner permission) in 24 States (Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, New York, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Vermont, West Virginia, and Wisconsin). This alternative also revises the aquaculture depredation order by specifying that it is applicable to commercial freshwater facilities and State and Federal fish hatcheries, and by authorizing APHIS/WS employees to take DCCOs at roost sites in the vicinity of aquaculture facilities during the months of October, November, December, January, February, March, and April. Depredation permits would continue to be used to address conflicts outside the authority of the depredation orders.

*Alternative E*

Alternative E would reduce regional DCCO populations to pre-determined levels. Population objectives would be developed on an interdisciplinary, interagency basis and would be based on the best available data, while giving consideration to other values. Control would be carried out at nesting, roosting, wintering, and all other sites in order to achieve those objectives as rapidly as possible without adversely affecting other protected migratory birds or threatened and endangered species.

*Alternative F*

Under Alternative F, frameworks to develop seasons and bag limits for hunting DCCOs would be established jointly by Federal and State wildlife agencies. These seasons would coincide with those for waterfowl hunting.

**Decision**

The Service's decision is to implement the preferred alternative, Alternative D, as it is presented in the final rule. This decision is based on a thorough review of the alternatives and their environmental consequences.

*Other Agency Decisions*

A Record of Decision will be produced by APHIS/WS. The responsible officials at APHIS/WS will adopt the FEIS.

**Rationale for Decision**

As stated in the CEQ regulations, "the agency's preferred alternative is the alternative which the agency believes would fulfill its statutory mission and responsibilities, giving consideration to economic, environmental, technical and other factors." The preferred alternative has been selected for implementation based on consideration of a number of environmental, regulatory, and social factors. Based on our analysis, the preferred alternative would be more effective than the current program; is environmentally sound, cost effective, and flexible enough to meet different management needs around the country;

and does not threaten the long-term sustainability of DCCO populations or populations of any other natural resource.

Alternative D was selected because it allows greater responsiveness in addressing localized resource damages (and will therefore be more effective at reducing or preventing them) than the No Action Alternative. It will provide a net benefit to fish, wildlife, and plants by allowing agencies to control DCCOs to protect these resources from damages. It will also alleviate economic damages to aquaculture. Through successful implementation of mitigation measures, it will not result in negative impacts to DCCO populations, other migratory birds, or Federally listed species. As such, this alternative represents the environmentally preferable alternative.

The No Action Alternative (A) was not selected for implementation because by itself it would not adequately address resource damages caused by DCCOs. The Nonlethal Management Alternative (B) was not selected because it severely limits the scope of allowable control techniques and would not adequately address resource damages caused by DCCOs. The Increased Local Damage Control Alternative (C) was not selected because it does not provide other agencies with the flexibility needed to adequately address resource damages caused by DCCOs. The Regional Population Reduction Alternative (E) was not selected because of uncertainty about the actual relationship between cormorant numbers and distribution and subsequent damages. The Regulated Hunting Alternative (F) was not selected because hunting is not a biologically or socially acceptable means of reducing DCCO damages.

### List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ For the reasons stated in the preamble, we hereby amend part 21, of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 21—[AMENDED]

■ 1. The authority citation for part 21 is revised to read as follows:

**Authority**: Pub. L. 95–616; 92 Stat. 3112 (16 U.S.C. 712(2)); Pub. L. 106–108; Section 3 of the Migratory Bird Treaty Act (16 U.S.C. 704), 40 Stat. 755.

■ 2. In Subpart D, revise § 21.47 to read as follows:

### § 21.47 Depredation order for double-crested cormorants at aquaculture facilities.

(a) *What is the purpose of this depredation order?* The purpose of this depredation order is to help reduce depredation of aquacultural stock by double-crested cormorants at private fish farms and State and Federal fish hatcheries.

(b) *In what areas can this depredation order be implemented?* This depredation order applies to commercial freshwater aquaculture facilities and to State and Federal fish hatcheries in the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Minnesota, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.

(c) *What does this depredation order allow and who can participate?* (1) This depredation order authorizes landowners, operators, and tenants (or their employees or agents) actually engaged in the commercial, Federal, or State production of freshwater aquaculture stocks to take, without a Federal permit, double-crested cormorants when they are found committing or about to commit depredations to aquaculture stocks. This authority is applicable only during daylight hours and only within the boundaries of freshwater commercial aquaculture facilities or State and Federal hatcheries.

(2) This depredation order authorizes employees of the Wildlife Services program of the U.S. Department of Agriculture Animal and Plant Health Inspection Service to take double-crested cormorants, with appropriate landowner permission, at roost sites in the vicinity of aquaculture facilities, at any time, day or night, during the months of October, November, December, January, February, March, and April.

(3) Authorized employees of the Wildlife Services program of the U.S. Department of Agriculture Animal and Plant Health Inspection Service may designate agents to carry out control, provided these individuals act under the conditions of the order.

(d) *What are the terms and conditions of this order?* (1) Persons operating under paragraph (c)(1) of this section may only do so in conjunction with an established nonlethal harassment program as certified by officials of the Wildlife Services program of the U.S. Department of Agriculture Animal and Plant Health Inspection Service. Wildlife Services directive 2.330 outlines this certification process.

(2) Double-crested cormorants may be taken only by shooting with firearms, including rifles. Persons using shotguns are required to use nontoxic shot as listed in 50 CFR 20.21(j).

(3) Persons operating under this depredation order may use decoys, taped calls, or other devices to lure within gun range birds committing or about to commit depredations.

(4) Persons operating under this depredation order must obtain appropriate landowner permission before implementing activities authorized by the order.

(5) Double-crested cormorants may not be killed contrary to the laws or regulations of any State, and none of the privileges of this section may be exercised unless the person possesses the appropriate State or other permits, if required.

(6) Persons operating under this depredation order must properly dispose of double-crested cormorants killed in control efforts:

(i) Individuals may donate birds killed under authority of this order to museums or other such scientific and educational institutions for the purposes of scientific or educational exhibition;

(ii) Individuals may also bury or incinerate birds taken; and

(iii) Individuals may not allow birds taken under this order, or their plumage, to be sold, offered for sale, bartered, or shipped for purpose of sale or barter.

(7) Nothing in this depredation order authorizes the take of any migratory bird species other than double-crested cormorants. Two look-alike species co-occur with double-crested cormorants in the southeastern States: the anhinga, which occurs across the southeastern United States, and the neotropic cormorant, which is found in varying numbers in Texas, Louisiana, and Oklahoma. Both species can be mistaken for double-crested cormorants, but take of these two species is not authorized under this depredation order. Persons operating under this order must immediately report the take of a migratory bird species other than double-crested cormorants to the appropriate Service Regional Migratory Bird Permit Office.

(8) Nothing in this depredation order authorizes the take of any species protected by the Endangered Species Act. Persons operating under this order must immediately report the take of species protected under the Endangered Species Act to the Service.

(i) To protect wood storks and bald eagles, the following conservation measures must be observed within any geographic area where Endangered Species Act protection applies to these species: All control activities are allowed if the activities occur more than 1,500 feet from active wood stork nesting colonies, more than 1,000 feet from active wood stork roost sites, and more than 750 feet from feeding wood storks, and if they occur more than 750 feet from active bald eagle nests.

(ii) At their discretion, landowners, operators, and tenants may contact the Regional Migratory Bird Permit Office to request modification of the measures listed in paragraph (d)(8)(i) of this section. Such modification can occur only if the Regional Director determines, on the basis of coordination between the Regional Migratory Bird Permit Office and the Endangered Species Field Office, that wood storks and bald eagles will not be adversely affected.

(iii) If adverse effects are anticipated from the control activities in a geographical area where Endangered Species Act protection applies to wood storks or bald eagles, either during the intra-Service coordination discussions described above or at any other time, the Regional Migratory Bird Permit Office will initiate consultation with the Endangered Species Field Offices.

(9) Persons operating under this depredation order must:

(i) Keep a log recording the date, number, and location of all birds killed each year under this authorization;

(ii) Maintain this log for a period of 3 years (and maintain records for 3 previous years of takings at all times thereafter); and

(iii) Each year, provide the previous year's log to the appropriate Service Regional Migratory Bird Permit Office. Regional Office addresses are found in § 2.2 of subchapter A of this chapter.

(10) We reserve the right to suspend or revoke the authority of any Agency or individual granted by this order if we find that the specified purpose, terms, and conditions have not been adhered to by that Agency or individual or if the long-term sustainability of double-crested cormorant populations is threatened by that Agency's or individual's action(s). The criteria and procedures for suspension, revocation, reconsideration, and appeal are outlined in §§ 13.27 through 13.29 of this subchapter. For the purposes of this section, "issuing officer" means the Regional Director and "permit" means the authority to act under this depredation order. For purposes of § 13.29(e), appeals shall be made to the Director.

(e) *Does this section contain information collection requirements?* Yes, the information collection requirements in this section are approved by the Office of Management and Budget (OMB) under OMB control number 1018–0121. Federal agencies may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(f) *When does this depredation order expire?* This depredation order will automatically expire on April 30, 2009, unless revoked or extended prior to that date.

■ 3. In Subpart D, add § 21.48 to read as follows:

### § 21.48 Depredation order for double-crested cormorants to protect public resources.

(a) *What is the purpose of this depredation order?* The purpose of this depredation order is to reduce the occurrence and/or minimize the risk of adverse impacts to public resources (fish, wildlife, plants, and their habitats) caused by double-crested cormorants.

(b) *In what areas can this depredation order be implemented?* This depredation order applies to all lands and freshwaters in the States of Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, New York, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Vermont, West Virginia, and Wisconsin.

(c) *What does this depredation order allow and who can participate?* (1) This depredation order authorizes State fish and wildlife agencies, Federally recognized Tribes, and State Directors of the Wildlife Services program of the U.S. Department of Agriculture Animal and Plant Health Inspection Service (collectively termed "Agencies") to prevent depredations on the public resources of fish (including hatchery stock at Federal, State, and Tribal facilities), wildlife, plants, and their habitats by taking without a permit double-crested cormorants found committing or about to commit, such depredations.

(2) Agencies may designate agents to carry out control, provided those individuals act under the conditions of the order.

(3) Federally recognized Tribes and their agents may carry out control only on reservation lands or ceded lands within their jurisdiction.

(d) *What are the terms and conditions of this order?* (1) Persons operating under this order should first utilize nonlethal control methods such as harassment and exclusion devices when these are considered effective and practicable and not harmful to other nesting birds by the responsible Agency.

(2) Double-crested cormorants may be taken only by means of egg oiling, egg and nest destruction, cervical dislocation, firearms, and $CO_2$ asphyxiation. Persons using shotguns must use nontoxic shot, as listed in 50 CFR 20.21(j). Persons using egg oiling must use 100 percent corn oil, a substance exempted from regulation by the U.S. Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act.

(3) Persons operating under this depredation order may use decoys, taped calls, or other devices to lure within gun range birds committing or about to commit depredation of public resources.

(4) Persons operating under this depredation order must obtain appropriate landowner permission before implementing activities authorized by the order.

(5) Persons operating under this depredation order may not take double-crested cormorants contrary to the laws or regulations of any State, and none of the privileges of this section may be exercised unless the person possesses the appropriate State or other permits, if required.

(6) Persons operating under this depredation order must properly dispose of double-crested cormorants killed in control efforts:

(i) Individuals may donate birds killed under authority of this order to museums or other such scientific and educational institutions for the purposes of scientific or educational exhibition;

(ii) Individuals may also bury or incinerate birds taken; and

(iii) Individuals may not allow birds taken under this order, or their plumage, to be sold, offered for sale, bartered, or shipped for purpose of sale or barter.

(7) Nothing in this depredation order authorizes the take of any migratory bird species other than double-crested cormorants. Two look-alike species co-occur with double-crested cormorants in the southeastern States: the anhinga, which occurs across the southeastern United States, and the neotropic cormorant, which is found in varying numbers in Texas, Louisiana, Kansas, and Oklahoma. Both species can be mistaken for double-crested cormorants, but take of these two species is not authorized under this depredation order. Persons operating under this order must immediately report the take of a migratory bird species other than double-crested cormorants to the appropriate Service Regional Migratory Bird Permit Office.

(8) Nothing in this depredation order authorizes the take of any species protected by the Endangered Species Act. Persons operating under this order must immediately report the take of

species protected under the Endangered Species Act to the Service.

(i) To protect piping plovers, interior least terns, wood storks, and bald eagles, the following conservation measures must be observed within any geographic area where Endangered Species Act protection applies to these species:

(A) The discharge/use of firearms to kill or harass double-crested cormorants or use of other harassment methods are allowed if the control activities occur more than 1,000 feet from active piping plover or interior least tern nests or colonies; occur more than 1,500 feet from active wood stork nesting colonies, more than 1,000 feet from active wood stork roost sites, and more than 750 feet from feeding wood storks; or occur more than 750 feet from active bald eagle nests;

(B) Other control activities such as egg oiling, cervical dislocation, $CO_2$ asphyxiation, egg destruction, or nest destruction are allowed if these activities occur more than 500 feet from active piping plover or interior least tern nests or colonies; occur more than 1,500 feet from active wood stork nesting colonies, more than 1,000 feet from active wood stork roost sites, and more than 750 feet from feeding wood storks; or occur more than 750 feet from active bald eagle nests;

(C) To ensure adequate protection of piping plovers, any Agency or its agents who plan to implement control activities that may affect areas designated as piping plover critical habitat in the Great Lakes Region are to obtain prior approval from the appropriate Regional Director. Requests for approval of activities in these areas must be submitted to the Regional Migratory Bird Permit Office. The Regional Migratory Bird Permit Office will then coordinate with the Endangered Species Field Office staff to assess whether the measures in paragraph (d)(8)(i)(B) of this section are adequate.

(ii) At their discretion, Agencies or their agents may contact the Regional Migratory Bird Permit Office to request modification of the above measures. Such modification can occur only if the Regional Director determines, on the basis of coordination between the Regional Migratory Bird Permit Office and the Endangered Species Field Office, that the species listed in paragraph (d)(8)(i) of this section will not be adversely affected.

(iii) If adverse effects are anticipated from the control activities in a geographical area where Endangered Species Act protection applies to any of the four species listed in paragraph (d)(8)(i) of this section, either during the intra-Service coordination discussions described in paragraph (d)(8)(i)(C) of this section or at any other time, the Regional Migratory Bird Permit Office will initiate consultation with the Endangered Species Field Offices.

(9) Responsible Agencies must, before they initiate any control activities in a given year, provide a one-time written notice to the appropriate Service Regional Migratory Bird Permit Office indicating that they intend to act under this order.

(i) Additionally, if any Agency plans a single control action that would individually, or a succession of such actions that would cumulatively, kill more than 10 percent of the double-crested cormorants in a breeding colony, it must first provide written notification to the appropriate Service Regional Migratory Bird Permit Office. This letter must be received no later than 30 days in advance of the activity and must provide:

(A) The location (indicating specific colonies, if applicable) of the proposed control activity;

(B) A description of the proposed control activity, specifying what public resources are being impacted, how many birds are likely to be taken and what approximate percentage they are of total DCCOs present, and which species of other birds are present; and

(C) Contact information for the person in charge of the control action.

(ii) The Regional Director may prevent any such activity by notifying the agency in writing if the Regional Director deems the activity a threat to the long-term sustainability of double-crested cormorants or any other migratory bird species.

(10) Persons operating under this order must keep records of all activities, including those of designated agents, carried out under this order. On an annual basis, Agencies must provide the Service Regional Migratory Bird Permit Office with a report detailing activities conducted under the authority of this order, including:

(i) By date and location, a summary of the number of double-crested cormorants killed and/or number of nests in which eggs were oiled;

(ii) A statement of efforts being made to minimize incidental take of nontarget species and a report of the number and species of migratory birds involved in such take, if any;

(iii) A description of the impacts or anticipated impacts to public resources by double-crested cormorants and a statement of the management objectives for the area in question;

(iv) A description of the evidence supporting the conclusion that double-crested cormorants are causing or will cause these impacts;

(v) A discussion of other limiting factors affecting the resource (*e.g.*, biological, environmental, and socioeconomic); and

(vi) A discussion of how control efforts are expected to, or actually did, alleviate resource impacts.

(11) Agencies must provide annual reports to the appropriate Service Regional Migratory Bird Permit Office, as described in paragraph (d)(10) of this section, by December 31 for the reporting period October 1 of the previous year to September 30 of the same year. For example, reports for the period October 1, 2003, to September 30, 2004, would be due on or before December 31, 2004. The Service will regularly review Agency reports and will periodically assess the overall impact of this program to ensure compatibility with the long-term conservation of double-crested cormorants and other resources.

(12) In some situations, Agencies may deem it necessary to reduce or eliminate local breeding populations of double-crested cormorants to reduce the occurrence of resource impacts.

(i) For such actions, Agencies must:

(A) Comply with paragraph (d)(9) of this section;

(B) Carefully plan activities to avoid disturbance of nontarget species;

(C) Evaluate effects of management activities on cormorants at the control site;

(D) Evaluate, by means of collecting data or using best available information, effects of management activities on the public resources being protected and on nontarget species; and

(E) Include this information in the report described in paragraph (d)(10) of this section.

(ii) Agencies may coordinate with the appropriate Service Regional Migratory Bird Permit Office in the preparation of this information to attain technical or other assistance.

(13) We reserve the right to suspend or revoke the authority of any Agency, Tribe, or State Director granted by this order if we find that the specified purpose, terms, and conditions have not been adhered to or if the long-term sustainability of double-crested cormorant populations is threatened by the action(s) of that Agency, Tribe, or State Director. The criteria and procedures for suspension, revocation, reconsideration, and appeal are outlined in §§ 13.27 through 13.29 of this subchapter. For the purposes of this section, "issuing officer" means the Regional Director and "permit" means the authority to act under this

depredation order. For purposes of § 13.29(e), appeals shall be made to the Director.

(e) *Does this section contain information collection requirements?* Yes, the information collection requirements in this section are approved by the Office of Management and Budget (OMB) under OMB control number 1018–0121. Federal agencies may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(f) *When does this depredation order expire?* This depredation order will automatically expire on April 30, 2009, unless revoked or extended prior to that date.

Dated: September 25, 2003.

**Paul Hoffman,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 03–25500 Filed 10–7–03; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[Docket No. 000407096–0096–01; I.D. 092903B]**

## Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Commercial Haddock Harvest

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Removal of haddock trip limit.

**SUMMARY:** NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator) is suspending the haddock trip limit for the NE multispecies fishery for the remainder of the 2003 fishing year. The Regional Administrator has projected that less than 75 percent of the haddock target total allowable catch (TAC) will be harvested for the 2003 fishing year under the existing restrictive trip limits. This action is intended to allow fishermen to catch more of the haddock TAC, without exceeding it, and to reduce discards of haddock. Therefore, this action removes the haddock trip limit for the remainder of the 2003 fishing year, through April 30, 2004.

**DATES:** Effective beginning October 3, 2003, through April 30, 2004.

**FOR FURTHER INFORMATION CONTACT:** Susan Chinn, Fishery Management Specialist, 978–281–9218.

**SUPPLEMENTARY INFORMATION:** Framework Adjustment 33 to the NE Multispecies Fishery Management Plan, which became effective May 1, 2000, implemented the current haddock trip limit regulations (65 FR 21658, April 24, 2000). To ensure that haddock landings do not exceed the appropriate target TAC, Framework 33 established a haddock trip limit of 3,000 lb (1,361 kg) per NE multispecies day-at-sea (DAS) fished, and a maximum trip limit of 30,000 lb (13,608 kg) of haddock for the period May 1 through September 30; and 5,000 lb (2,268 kg) of haddock per DAS and 50,000 lb (22,680 kg) per trip from October 1 through April 30. Framework 33 also provided a mechanism to adjust the haddock trip limit based upon the percentage of TAC that is projected to be harvested. Section 648.86(a)(1)(iii)(B) specifies that, if the Regional Administrator projects that less than 75 percent of the haddock target TAC will be harvested in the fishing year, the haddock trip limit may be adjusted. Further, this section stipulates that NMFS will publish notification in the **Federal Register** informing the public of the date of any changes to the trip limit.

Based on the December 2002 "Declaration of Steven A. Murawski, Ph.D." to the U.S. District Court for the District of Columbia," in the case *Conservation Law Foundation et al.* v. *Evans et al.*, the Georges Bank (GB) haddock TAC calculated for the 2003 fishing year was 18,540 mt, including both U.S. and Canadian landings. The 2003 Canadian quota for eastern GB haddock is 6,934 mt. The U.S. portion of the GB haddock target TAC for the 2003 fishing year should be approximately the difference between the entire GB haddock TAC and the Canadian quota, or 11,606 mt. Based on recent historical fishing practices, the Regional Administrator has projected that, under the current suspension of the daily landing limits, with the trip limits still in effect, GB haddock landings for fishing year 2003 would be about 15 million lb (6,804 mt), accounting for about 59 percent of the estimated 2003 target TAC (11,606 mt). Based on data from the 2002 fishing year, the Regional Administrator has determined that, if trip limits were suspended starting in August 2003 for the remainder of the 2003 fishing year, GB haddock landings would be between 17.36 million lb and 24.04 million lb, or 68 to 94 percent of the target TAC. The upper-bound estimation is considered extremely liberal because it treats all GB DAS yielding any NE multispecies in fishing year 2002 as days on which GB haddock would be harvested under no trip limit in fishing year 2003.

Given that, under current management measures, less than 75 percent of the 2003 fishing year haddock target TAC is projected to be harvested by April 30, 2004, and that GB haddock landings will not exceed the target TAC if trip limits are suspended, the Regional Administrator has determined that suspending the haddock trip possession limits will provide the industry with the opportunity to harvest the target TAC for the 2003 fishing year, while minimizing discards of legal-sized haddock. In order to prevent the TAC from being exceeded, the Regional Administrator will closely monitor the GB haddock landings and may adjust this possession limit again through publication of a notification in the **Federal Register**, pursuant to § 648.86(a)(1)(iii) if projections indicate that the haddock TAC for fishing year 2003 is likely to be exceeded.

### Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: October 2, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–25510 Filed 10–3–03; 2:00 pm]

BILLING CODE 3510–22–S

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 021122286–3036–02; I.D. 100203B]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the pollock total allowable catch (TAC) for Statistical Area 610 of the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), October 4, 2003, through 2400 hrs, A.l.t., December 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The pollock TAC in Statistical Area 610 of the GOA is 16,788 metric tons (mt) as established by the final 2003 harvest specifications for groundfish of the GOA (68 FR 9924, March 3, 2003).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the pollock TAC in Statistical Area 610 has been reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 16,738 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

## Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the TAC in Statistical Area 610, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: October 2, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–25509 Filed 10–3–03; 2:00 pm]

BILLING CODE 3510–22–S

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 021122286–3036–02; I.D. 100203A]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the pollock total allowable catch (TAC) for Statistical Area 620 of the GOA.

**DATES:** Effective 1200 hrs., Alaska local time (A.l.t.), October 3, 2003, through 2400 hrs., A.l.t., December 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The pollock TAC in Statistical Area 620 of the GOA is 19,685 metric tons (mt) as established by the final 2003 harvest specifications for groundfish of the GOA (68 FR 9924, March 3, 2003).

In accordance with § 679.20(d)(1)(i), the Regional Administrator, has determined that the pollock TAC in Statistical Area 620 has been reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 19,635 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

## Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the pollock TAC in Statistical Area 620, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: October 2, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–25508 Filed 10–3–03; 2:00 pm]

BILLING CODE 3510–22–S

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 020412085–3189–02; I.D. 022102B]**

**RIN 0648–AP66**

## Fisheries of the Exclusive Economic Zone Off Alaska; Electronic Reporting Requirements

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to amend regulations governing the North Pacific Groundfish Observer Program (observer program). This action is necessary to refine requirements for the facilitation of observer data transmission and improve support for observers. The final rule is necessary to improve the timely transmission of high quality observer data for a sector of catcher vessels in these fisheries. It is intended to support the management objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (groundfish FMPs).

**DATES:** Effective January 1, 2004.

**ADDRESSES:** Copies of the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared for this regulatory action may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall. Send comments on information collection requests to NMFS and to OMB, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Jason Anderson, 907–586–7228 or e-mail at *jason.anderson@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

NMFS manages the U.S. groundfish fisheries of the Gulf of Alaska and the Bering Sea and Aleutian Islands management areas in the Exclusive Economic Zone (EEZ) under the groundfish FMPs. The North Pacific Fishery Management Council (Council) prepared the groundfish FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations at 50 CFR part 679 implement the FMPs. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600. Regulations implementing the interim observer program were published November 1, 1996 (61 FR 56425), amended December 30, 1997 (62 FR 67755) and December 15, 1998 (63 FR 69024), extended through 2002 under a final rule published December 21, 2000 (65 FR 80381), and extended again through 2007 under a final rule published December 6, 2002 (67 FR 72595). The observer program provides for the collection of observer data necessary to manage the Alaska groundfish fisheries by providing information on total catch estimation, discards, prohibited species catch (PSC) and biological samples that are used for stock assessment purposes. Observers also provide information related to compliance with regulatory requirements.

The regulations implementing the observer program at § 679.50 require observer coverage aboard fishing vessels, shoreside processors, and stationary floating processors that participate in the Alaska groundfish fisheries. Timely communication between the fishing industry and NMFS through catch reports submitted to NMFS by both industry and observers is crucial to the effective in-season monitoring of the groundfish quotas and PSC allowances. This final rule enhances timely communication by updating the hardware requirements for the observer communication system (OCS), requiring vessels to maintain OCS equipment functionality, clarifying shoreside processor requirements, and extending the OCS requirements to all catcher vessels required to have at least one NMFS certified observer on board at all times.

By extending the OCS program to catcher vessels who carry observers 100 percent of the time, several deficiencies with the current program are addressed. First, necessary timely monitoring for in-season management of PSC and discard data is not possible under the observer data reporting system currently used by catcher vessels delivering to inshore processors. Shoreside catcher vessel observers opportunistically transmit data via fax to NMFS from a shoreside processor, which can be between 5 and 14 days after a given haul was made. This delay is caused in part by the fact that an observer usually must return to sea immediately upon completion of the delivery to shoreside processors, leaving no time for the observer to compile data into a format appropriate for fax transmission to NMFS, most often several hours worth of work. Once received by NMFS, the faxed data subsequently must be hand entered into an electronic database, further delaying the availability to in-season managers.

Second, if a catcher vessel observer had time available to compile and transmit data from the shoreside processor, logistical problems remain. Shoreside processors do support OCS communication systems for transmission of observer data. However, OCS software on these systems is designed specifically for shoreside processor applications and does not support observer data collected at sea. While the shoreside system could be adapted to support data collected by vessel observers, other logistical problems prevent reliable use of these systems by catcher vessel observers. These difficulties include vessel observers having to return to sea prior to data input and transmission via the OCS communications system, as well as the lack of access to shoreside computers and communications equipment that support the OCS system. Offices that house this equipment at the shoreside processors generally are not open 24 hours a day, while deliveries may be completed at any time during the day.

Installation of OCS software, in combination with point to point modem communication capability aboard shoreside catcher vessels, would allow daily electronic transmission of catch data. This would provide NMFS with observer data from catcher vessels within 24 hours of receiving their delivery reports from the shoreside processor. At-sea discards and PSC could then be accounted for together with the landings data in real-time for each OCS-equipped vessel. Such real-time in-season management would be expected to result in fishery closures that better approximate actual quotas.

Additionally, observer data quality problems can have a significant impact on PSC estimates and fishery closure projections. Resulting management errors can include early closure of a fishery, which results in direct lost revenue to the fleet, or over harvest of a PSC fishery allowance, which can impact other fisheries as the total annual PSC limit is reached.

The OCS program provides several advantages and improvements to NMFS' current management systems which result in higher quality data. These include:

*Improved data recording efficiency. Observers using OCS initially record data on deck forms.* These data are then entered into the vessel's computer and sent electronically to NMFS. Data received by NMFS are automatically screened for errors and may be accessed by users in a database in a timely manner. Without OCS, data are transcribed from deck forms to paper and faxed to NMFS for subsequent electronic entry. Less paperwork provides observers with more time to dedicate to sampling.

*Consistent, secure communications with observer program staff and a reduction in the overall frequency of errors.* OCS communications allow NMFS to assign to each deployed observer an in-season advisor who screens data for errors and advises the observer throughout their deployment, resulting in improved observer performance and a reduction in errors. The quality of timely data available for in-season management decisions is thus greatly improved.

*Faster, more efficient, and higher quality debriefing*. The OCS application automatically screens out many potential data errors at the point of entry. These data are further screened by the in-season advisor, and all data are again screened by computer programs and corrected at the point of debriefing. These processes eliminate hand checking of paper data forms, further reducing debriefing time and allowing for faster availability of the final data.Installation and maintenance of OCS aboard catcher vessels requiring 100 percent observer coverage would eliminate 1,100 faxed observer reports and the associated processing per year. Availability of timely data on PSC by this sector of the fleet, which is largely made up of American Fisheries Act-qualified catcher vessels that are members of inshore cooperatives, would improve the in-season management of the BSAI pollock and Pacific cod trawl fisheries. In the BSAI pollock trawl fishery, salmon and herring PSC are of concern, and in the BSAI Pacific cod trawl fishery, halibut bycatch is of concern. Although the few Pacific cod trawl fishery closures that have occurred since 1998 have been based primarily on TACs being reached, prior to 1998, BSAI Pacific cod trawl fishery closures were based on halibut bycatch allowances being caught before the TAC was reached. Improved timeliness of PSC data transmission would allow NMFS resources to be reallocated to processing faxed data received from observers aboard vessels that are subject to 30 percent coverage requirements. Overall this would result in the expedited availability to managers and improved quality of all in-season data from all catcher vessels in the BSAI and the GOA. This timely information also benefits industry through access via NMFS web sites. Fleets coordinate their activity to avoid areas of high incidental catch of prohibited species, thus delaying or eliminating costly PSC closures. This coordination can only work where information is available quickly.

More timely harvest data from catcher vessels is also needed for management measures that temporally and spatially disperse some groundfish fisheries in near shore areas of the EEZ off Alaska (67 FR 956, January 8, 2002). These measures were developed as Steller Sea Lion protection measures and involve some time-area restrictions for the pollock, Pacific cod and Atka mackerel fisheries, including harvest limits in Steller sea lion critical habitat. To ensure compliance with these measures, levels of groundfish harvest must be monitored on a real-time basis.

Further background for the development of the regulatory amendments contained in this final rule and the detailed descriptions of the hardware upgrades, catcher vessel requirements and functionality of communication systems are in the proposed rule (67 FR 48604, July 25, 2002).

Comments on the proposed rule were invited for a 30–day period that ended August 26, 2002. No written comments on the proposed rule were received.

## Changes From the Proposed Rule

NMFS identified four necessary changes from the proposed rule to the final rule. Each is a technical, non-substantive correction to the proposed regulation language. The technical changes to the final rule are made as follows:

1. The paragraph designations for the regulatory amendments in the proposed rule (67 FR 48604, July 25, 2002) are revised from (f) to (g) in this final rule to ensure consistency with recent revisions to § 679.50 (67 FR 72595, December 6, 2002).

2. Regulatory text in § 679.50(g)(2) and (3) is changed from the proposed rule to clarify that OCS provisions apply to stationary floating processors. Stationary floating processors provide the same function as shoreside processors and nearly all observer program regulations that apply to shoreside processors also apply to stationary floating processors. Therefore, the regulations in paragraphs (g)(2) and (g)(3) apply to both shoreside processors and stationary floating processors. The proposed rule identified only shoreside processors in the revised language for these paragraphs. However, the Regulatory Impact Review and Initial Regulatory Flexibility Analysis (RIR/IRFA) thoroughly analyzed the effects of this action on stationary floating processors. The regulatory language for § 679.50(g)(2) and (3) is changed in the final rule from the proposed rule to apply to both shoreside processors and stationary floating processors.

3. The term "processors" in § 679.50(g)(1)(iii)(B)(1) is changed to "personal computers" to clarify potential confusion between fish processing operations and computer hardware.

4. The title to § 679.50 is revised from the proposed rule to reflect the extension of the observer program through December 31, 2007.

## Classification

This final rule has been determined to be significant for purposes of Executive Order 12866.

NMFS has prepared a Final Regulatory Flexibility Analysis (FRFA) for this action, pursuant to the requirements of the Regulatory Flexibility Act at section 604(a). The objectives of and the legal basis for this action are described earlier in the preamble.

The proposed rule was published in the **Federal Register** on July 25, 2002 (67 FR 48604). An Initial Regulatory Flexibility Analysis (IRFA) was prepared for the proposed rule, and described in the classifications section of the preamble to the rule. The public comment period ended on August 26, 2002. No comments were received on the proposed rule.

The entities that would be regulated by the proposals are the BSAI and GOA entities operating catcher-processors, motherships, shoreside processors, required to maintain one or more observers, and catcher vessels required to have 100 percent observer coverage. Data available for 2000 indicate that there were 34 small (according to Small Business Administration criteria) catcher/processors active that year, and 31 small catcher vessels. All three of the motherships were assumed to be large entities. Five directly regulated processors were identified as small. The six CDQ groups are non-profits and are therefore small by definition.

This regulation does not impose new recordkeeping or reporting requirements on the regulated small entities. Although the proposed changes in the OCS communications requirements require some new expenditures by small entities, they contain no new or revised record keeping or reporting requirements for those entities. The OCS requirements will not affect private sector record keeping requirements; they will facilitate communication of reports that are already required from observers.

Four alternatives to the proposed action were considered. The status quo was rejected because it would not meet the objectives of the action for more timely and more accurate data. An alternative that would have restricted the regulations to catcher-processors, motherships, and shoreside processors would have had a smaller impact on directly regulated small entities, because it would not have regulated catcher vessels that were required to have 100 percent observer coverage. This alternative was rejected because it would not have provided faster or more accurate observer data on this important fleet sector. An alternative that would have extended the requirements to catcher vessels with 30 percent required coverage, in addition to catcher-processors, motherships, shoreside processors, and catcher vessels with 100 percent observer coverage, was also rejected. This would have involved extending coverage to several hundred additional catcher vessels, all of which were estimated to be small entities. Concerns were also raised over the security of the OCS software on computers during periods of time when observers were not present on the vessels. A final alternative would have required OCS coverage on catcher-processors, motherships, and shoreside processors, but not catcher vessels. This alternative would have increased resources devoted to observer program data processing in order to reduce the time it took to get catcher vessel data to in-season managers for management purposes. This alternative would have reduced the impact on small catcher vessel entities, however, while it would have reduced the time to process data and provide it to in-season managers, it would not have affected the important time lag between at-sea observation by the observer and delivery to observer program data processors. In addition, it would not have addressed concerns over data quality.

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: October 2, 2003.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

## PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

■ 2. In § 679.50, paragraphs (g)(1)(iii)(A), (g)(1)(iii)(B), (g)(1)(iii)(C), (g)(2), (g)(2)(iii)(B), and (g)(2)(iii)(C) are revised and paragraph (g)(3) is added to read as follows:

■

**§ 679.50 Groundfish Observer Program applicable through December 31, 2007.**

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(g) * * *

(1) * * *

(iii) * * *

(A) *Observer use of equipment.* Allowing NMFS-certified observers to use the vessel's communications equipment and personnel, on request, for the confidential entry, transmission, and receipt of work-related messages, at no cost to the NMPS-certified observers or the nation.

(B) *Communication equipment requirements.* In the case of an operator of a catcher/processor or mothership that is required to carry one or more observers, or a catcher vessel required to carry an observer as specified in paragraph (c)(1)(iv) of this section:

(*1*) *Hardware and software.* Making available for use by the observer a personal computer in working condition that contains a full Pentium 120 Mhz or greater capacity processing chip, at least 32 megabytes of RAM, at least 75 megabytes of free hard disk storage, a Windows 9x or NT compatible operating system, an operating mouse, and a 3.5–inch (8.9 cm) floppy disk drive. The associated computer monitor must have a viewable screen size of at least 14.1 inches (35.8 cm) and minimum display settings of 600 x 800 pixels. The computer equipment specified in paragraph (g)(1)(iii)(B) of this section must be connected to a communication device that provides a point-to-point modem connection to the NMFS host computer and supports one or more of the following protocols: ITU V.22, ITU V.22bis, ITU V.32, ITU V.32bis, or ITU V.34. Personal computers utilizing a modem must have at least a 28.8kbs Hayes-compatible modem.

(*2*) *NMFS-Supplied software.* Ensuring that the catcher/processor, mothership, or catcher vessel specified in paragraph (g)(1)(iii)(B) of this section obtains and has installed the data entry software provided by the Regional Administrator for use by the observer.

(C) *Functional and operational equipment.* Ensuring that the communications equipment required at paragraph (g)(1)(iii)(B) of this section, and that is used by observers to enter and transmit data, is fully functional and operational, where "functional" means that data transmissions to NMFS can be initiated effectively aboard the vessel by such communications equipment.

* * * * *

(2) *Shoreside processor and stationary floating processor responsibilities.* A manager of a shoreside processor or a stationary floating processor that is required to maintain observer coverage as specified under paragraph (d) of this section must:

* * * * *

(iii) * * *

(B) *Communication equipment requirements*—(*1*) *Hardware and software.* Making available for use by the observer a personal computer, in working condition, with a full Pentium 120 Mhz or greater capacity processing chip, at least 32 megabytes of RAM, at least 75 megabytes of free hard disk storage, a Windows 9x or NT compatible operating system, an operating mouse, and a 3.5–inch (8.9 cm) floppy disk drive. The associated computer monitor must have a viewable screen size of at least 14.1 inches (35.8 cm) and minimum display settings of 600 x 800 pixels. The computer equipment specified in this paragraph must be connected to a communication device that provides a point-to-point modem connection to the NMFS host computer and supports one or more of the following protocols: ITU V.22, ITU V.22bis, ITU V.32, ITU V.32bis, or ITU V.34. Processors utilizing a modem must have at least a 28.8kbs Hayes-compatible modem.

(*2*) *NMFS-supplied software.* Ensuring that the shoreside processor or stationary floating processor obtains and installs the data entry software provided by the Regional Administrator for use by the observer.

(C) *Functional and operational equipment.* Ensuring that the communications equipment required at paragraph (g)(2)(iii)(B) of this section and that is used by observers to enter and transmit data, is fully functional and operational, where functional means that data transmissions to NMFS can be initiated effectively by that equipment.

* * * * *

(3) The owner of a vessel, shoreside processor, stationary floating processor, or buying station is responsible for compliance and must ensure that the operator or manager of a vessel, shoreside processor, or stationary floating processor required to maintain observer coverage under paragraphs (c) or (d) of this section complies with the requirements given in paragraphs (g)(1) and (g)(2) of this section.

* * * * *

[FR Doc. 03–25514 Filed 10–7–03; 8:45 am]

**BILLING CODE 3510–22–S**

# Proposed Rules

**Federal Register**
Vol. 68, No. 195
Wednesday, October 8, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 25

**[Docket No. NM266; Notice No. 25–03–07–SC]**

## Special Conditions: Airbus Model A320 Airplanes; Child Restraint System

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This notice proposes special conditions for Airbus Model A320 airplanes. These airplanes, as modified by AMSAFE Inc., will have novel and unusual design features associated with a child restraint system that attaches to the existing passenger lap belt. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** Comments must be received on or before November 7, 2003.

**ADDRESSES:** Comments on these proposed special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM266, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM266. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Alan Sinclair, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2195; facsimile (425) 227–1149, e-mail *alan.sinclair@faa.gov*.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these proposed special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

### Background

On February 12, 2003, AMSAFE Inc., P.O. Box 1570, Higley, Arizona 85236, applied for a supplemental type certificate for the modification of Airbus Model A320 airplanes. The modification includes a child restraint system that attaches to the existing passenger lap belt and can be installed on certain seats of Airbus Model A320 airplanes in order to reduce the potential for injury in the event of an accident. The Model A320 is a swept-wing, conventional tail, twin-engine, turbofan-powered transport airplane.

### Type Certification Basis

Under the provisions of § 21.101, AMSAFE Inc. must show that the Airbus Model A320 airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A28NM, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A28NM are as follows: 14 CFR part 25, effective February 1, 1965, including Amendments 25–1 through 25–56; SFAR 27, effective February 1, 1974, including Amendments 27–1 through 27–5; and 14 CFR part 36 effective December 1, 1969, including Amendments 36–1 through 36–12. In addition, the certification basis includes other regulations and special conditions that are not pertinent to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus Model A320 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A320 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should AMSAFE Inc. apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

### Novel or Unusual Design Features

The AMSAFE Inc. Child Safety System (CSS) is an improved harness type Child Restraint System (CRS) that utilizes the seat back and the lap belt on passenger seats to provide upper torso restraint and improve the restraint of small children. The physical characteristics of small children will govern the use of the CSS and must be defined according to accepted classification standards. The device is intended for children in the 2- to 4-year age group who are prohibited from being held in their parents' arms during taxi, take-off, and landing and must occupy their own passenger seat, typically with no supplemental restraint. The CSS is made with webbing and fastening hardware and consists of an adjustable strap that wraps horizontally around the seat back to secure the device to the passenger seat, and a double shoulder harness that is fastened around the child's upper torso. The ends of the device's shoulder harness are held in place using the existing passenger lap belt that is passed through two open loops on the lower ends of the device's shoulder straps. The current part 25 airworthiness regulations are not adequate to define the necessary certification criteria.

## Discussion

The CSS is a non-conforming CRS (that is, not approved for use on aircraft per Federal Motor Vehicle Safety Standard (FMVSS) 213 and as such the design requirements are established in these special conditions. It is a safety restraint device specifically designed for use by small children on JetBlue Airways Airbus A320 aircraft.

The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this particular design feature. Additional safety standards are therefore necessary to establish a level of safety equivalent to that established by the existing airworthiness standards for transport category airplanes.

Additionally, the operating regulations, 14 CFR 91.107 and 121.311, prohibit the use of any "vest-type child restraints, and harness-type child restraints" for commercial and private use operations. In order for the CSS, which is a harness-type child restraint, to be useable in the U.S., AMSAFE Inc., or their agent, must petition the FAA for an exemption from the operating regulations. The petition must be granted in order to allow use of the CSS.

The following special conditions can be characterized as addressing the safety performance of the system and the capability of the system to be installed and utilized without creating additional safety concerns. Because of the nature of the system and the direct interface with the crew and passengers, as well as the intended occupants, these special conditions are more rigorous from a design standpoint than for the standard lapbelt installation.

## Applicability

As discussed above, these special conditions are applicable to the Airbus Model A320 airplanes modified by AMSAFE Inc. Should AMSAFE Inc. apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A28NM to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101.

## Conclusion

This action affects only certain novel or unusual design features on Airbus Model A320 airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

## List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

## Authority Citation

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

## The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Airbus Model A320 airplanes modified by AMSAFE Inc.

1. The child restraint system (CSS) must provide child restraint protection under dynamic emergency landing conditions to prevent serious head and other injuries. It must protect a range of occupant statures for which the system is designed in accordance with Sections 2.3 and 2.4 of the Society of Automotive Engineers (SAE) document AS5276/1. The CSS must provide a consistent approach to energy absorption throughout that range.

2. Means must be provided to prevent the use of the CSS with children who are outside the range of statures for which the system was designed and tested. The range of statures for which the CSS is approved must be clearly labeled on the device.

3. There must be obvious, clear, and concise instructions readily available to the flight and cabin crew as to the proper installation and use of the CSS system for children.

4. The design of the CSS must prevent it from being incorrectly buckled and/or incorrectly installed such that the CSS would not properly perform its intended function.

5. The CSS must meet the minimum performance standards of Appendix 1 and the test conditions of Appendix 2 of Technical Standard Order C100b.

6. The CSS must not impede rapid egress of the occupant using the CSS and the occupants seated in the same row.

7. Means must be provided to prohibit the installation and use of the CSS in the emergency exit rows.

8. The CSS must be shown to operate safely in the following locations, or means must be provided to prohibit the installation and use of the CSS at these seat locations:

a. Behind any wall or seat back that has an inflatable airbag.

b. Any passenger seat that has an inflatable restraint system.

c. Side-facing seats.

9. It must be shown that the CSS will not cause the occupant's passenger seat back to fold over during a crash situation and cause injury to the occupant.

10. It must be shown that tray tables, phones or other devices installed in the seat back will not degrade the performance of the CSS.

11. Passenger seats approved for installation of the CSS must be clearly identified to the installer by location and part number.

12. The operating regulations, 14 CFR 91.107 and 14 CFR 121.311, prohibit the use of any "vest-type child restraints, and harness-type child restraints" in commercial and private use operations. It is therefore incumbent upon AMSAFE Inc., or their agent, to petition the FAA for exemption from these two regulations. The exemption must be granted in order for the system to be used by a U.S. operator.

Issued in Renton, Washington, on September 25, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–25423 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 2001–NM–183–AD]

RIN 2120–AA64

### Airworthiness Directives; McDonnell Douglas DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 Airplanes; DC–8–50 Series Airplanes; DC–8F–54 and DC–8F–55 Airplanes; DC–8–60 Series Airplanes; DC–8–60F Series Airplanes; DC–8–70 Series Airplanes; and DC–8–70F Series Airplanes; All with Flat Aft Pressure Bulkheads

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–8 airplanes. This proposal would require a one-time inspection of the aft fuselage skin panel at the longeron 28 skin splice for cracks; repair of any cracks detected; and reporting of the findings of the inspection to the manufacturer. This action is necessary to detect and correct cracks in the aft fuselage skin at the longeron 28 skin splice, which could lead to loss of structural integrity of the aft fuselage, resulting in rapid decompression of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by November 24, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–183–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–183–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

**FOR FURTHER INFORMATION CONTACT:** Jon Mowery, Aeronautical Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5322; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–183–AD." The postcard will be date stamped and returned to the commenter.

#### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–183–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

#### Discussion

The FAA has received a report indicating that a crack has been found in the aft fuselage skin at the longeron 28 skin splice. This crack was found just forward of the aft pressure bulkhead on a McDonnell Douglas Model DC–8–71F airplane, between fuselage stations Y=1704 and Y=1717. Analysis indicated that the crack is due to fatigue and could be a result of multi-site damage. Failure to detect and correct such a crack before it grows to a critical length could lead to loss of structural integrity of the aft fuselage, resulting in rapid decompression of the airplane.

The subject area on Model DC–8–71F airplanes is almost identical to that on the other Model DC–8 airplanes. Therefore, those Model DC–8 airplanes may be subject to the unsafe condition revealed on the Model DC–8–71F airplanes.

#### Explanation of Relevant Service Information

There is not yet any service information pertaining to the proposed inspection of the aft fuselage skin panel at the longeron 28 skin spice for cracks and the repair of any such cracks. The manufacturer is developing service information which may include repetitive inspections and repairs. However, several methods in the manufacturer's Non-Destructive Testing Standard Practice Manual are referenced in this proposed AD as approved methods of inspection.

#### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require performing a one-time inspection of the aft fuselage skin panel at the longeron 28 skin splice for cracks, repairing any cracks detected, and reporting results of the inspection (both negative and positive) to the manufacturer.

#### Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

#### Cost Impact

There are approximately 264 airplanes of the affected design in the worldwide fleet. The FAA estimates that 244 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed inspection and reporting of results, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed actions on U.S. operators is estimated to be $47,580, or $195 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**McDonnell Douglas:** Docket 2001–NM–183–AD.

*Applicability:* McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; DC–8–51, DC–8–52, DC8–53, and DC–8–55 airplanes; DC–8F–54 and DC–8F–55 airplanes; DC–8–61, DC–8–62, and DC–8–63 airplanes; DC–8–61F, DC–8–62F, and DC–8–63F airplanes; DC–8–71, DC–8–72, and DC–8–73 airplanes; and DC–8–71F, DC–8–72F, and DC–8–73F airplanes; all with flat aft pressure bulkheads; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct cracks in the aft fuselage skin at the longeron 28 skin splice, which could result in loss of structural integrity of the aft fuselage, resulting in a rapid decompression of the airplane; accomplish the following:

#### One-time Inspection for Cracks

(a) For airplanes that have accumulated fewer than 24,000 total flight cycles as of the effective date of this AD: Within 2 years after the effective date of this AD or prior to accumulating a total of 24,000 flight cycles, whichever occurs later, perform an inspection of the aft fuselage skin panel having part number (P/N) 5649328–3 along the rivet row common to longeron 28 from the tail joint to the aft pressure bulkhead for cracks, using one of the methods indicated in paragraph (a)(1), (a)(2), or (a)(3) of this AD.

(1) Non-Destructive Testing Standard Practice Manual MDC–93K0393, 06–10–01.001, High Frequency Eddy Current, Procedure 1, scan 48, crack direction Y, calibration N.

(2) Non-Destructive Testing Standard Practice Manual MDC–93K0393, 06–10–03.001, Magnetic-optic/Eddy Current Imager, Procedure 1.

(3) A method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

**Note 1:** The fuselage skin is 0.05 inch thick 7075–TA aluminum, and the fasteners are NAS 1097 DD $^{6}/_{32}$-inch diameter with control countersink.

**Note 2:** The tail joint is at Station 1490 for DC–8–50 series airplanes, at Station 1530 for DC–8–62, DC–8–62F, DC–8–72, and DC–8–72F airplanes, and at Station 1690 for DC–8–63, DC–8–63F, DC–8–71, and DC–8–73 airplanes.

(b) For airplanes that have accumulated 24,000 total flight cycles or more as of the effective date of this AD: Within 1 year after the effective date of this AD or within 1,000 flight cycles after the effective date of this AD, whichever occurs first, perform the inspection required by paragraph (a) of this AD.

(c) If no crack is detected during the one-time inspection required by paragraph (a) or (b) of this AD, as applicable: No further action is required by this AD, other than the reporting of the results of the inspection, as required by paragraph (e) of this AD.

#### Repair

(d) If any cracks are detected during the one-time inspection required by paragraph (a) or (b) of this AD: Prior to further flight, repair the crack or cracks per a manner approved by the Manager, Los Angeles ACO, FAA.

#### Reporting of Results

(e) Submit a report of findings (both positive and negative) of the inspection required by paragraph (a) or (b) of this AD to the Manager, Structure/Payloads, Technical and Fleet Support, Service Engineering/Commercial Aviation Services, Boeing Company at the applicable time specified in paragraph (e)(1) or (e)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane fuselage number, and the total number of landings and flight hours on the airplane. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the one-time inspection is accomplished after the effective date of this AD: Submit the report within 10 days after performing the inspection.

(2) For airplanes on which the one-time inspection was accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

#### Alternative Methods of Compliance

(f)(1) In accordance with 14 CFR 39.19, the Manager, Los Angeles ACO, FAA, is authorized to approve alternative methods of compliance for this AD.

(2) An AMOC that provides an acceptable level of safety may be used for repair of any cracks detected during the inspection required by paragraph (a) or (b) of this AD, if it is approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Los Angeles ACO, to make such findings.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Issued in Renton, Washington, on October 2, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–25492 Filed 10–7–03; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2000–NM–110–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87) and MD–88 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87) and MD–88 airplanes. This proposal would require the implementation of a program of structural inspections of baseline structure to detect and correct fatigue cracking in order to ensure the continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal. This action is necessary to detect and correct fatigue cracking that could compromise the structural integrity of these airplanes. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by November 24, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–0NM–110–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–110–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

**FOR FURTHER INFORMATION CONTACT:** Mike Lee , Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5325; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–110–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–110–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

In the early 1980's, as part of its continuing work to maintain the structural integrity of older transport category airplanes, the FAA concluded that the incidence of fatigue cracking may increase as these airplanes reach or exceed their design service goal (DSG). A significant number of these airplanes were approaching or had exceeded the DSG on which the initial type certification approval was predicated. In light of this, and as a result of increased utilization, longer operational lives, and the high levels of safety expected of the currently operated transport category airplanes, we determined that a supplemental structural inspection program (SSIP) was necessary to ensure a high level of structural integrity for all airplanes in the transport fleet.

### Issuance of Advisory Circular

As a follow-on from that determination, the FAA issued Advisory Circular (AC) No. 91–56, "Supplemental Structural Inspection Program for Large Transport Category Airplanes," dated May 6, 1981. That AC provides guidance material to manufacturers and operators for use in developing a continuing structural integrity program to ensure safe operation of older airplanes throughout their operational lives. This guidance material applies to transport airplanes that were certified under the fail-safe requirements of part 4b ("Airplane Airworthiness, Transport Categories") of the Civil Air Regulations of the Federal Aviation Regulations (FAR) (14 CFR part 25), and that have a maximum gross weight greater than 75,000 pounds. The procedures set forth in that AC are applicable to transport category airplanes operated under subpart D ("Special Flight Operations") of part 91 of the FAR (14 CFR part 91); part 121 ("Operating Requirements: Domestic, Flag, and Supplemental Operations"); part 125 ("Certification and Operations: Airplanes having a Seating Capacity of 20 or More Passengers or a Maximum Payload of 6,000 Pounds or More"); and part 135 ("Operating Requirements: Commuter and On-Demand Operations") of the FAR (14 CFR parts 121, 125, and 135). The objective of the SSIP was to establish inspection programs to ensure timely detection of fatigue cracking.

### Development of the Supplemental Structural Inspection Program

In order to evaluate the effect of increased fatigue cracking, with respect to maintaining fail-safe design and damage tolerance of the structure of McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87) and MD–88 airplanes (commonly referred to as Model MD–80 and MD–88 airplanes), Boeing conducted a structural reassessment of those airplanes, using modern damage tolerance evaluation techniques. Boeing accomplished this reassessment using the criteria contained in AC No. 91–56, as well as 14 CFR 25.571; Amdt. 25–45. During the reassessment, members of the airline industry participated with Boeing in working group sessions and developed the SSIP for Model MD–80 and MD–88 airplanes. Engineers and maintenance specialists from the FAA also attended these sessions to observe these developments. Subsequently, based on the working group's recommendations, Boeing developed the Supplemental Inspection Document (SID) for Model MD–80 and MD–88 airplanes.

### Aging Aircraft Safety Act (AASA)

In October 1991, Congress enacted Title IV of Public Law 102–143, the AASA of 1991, to address aging aircraft concerns. That Act instructed the FAA administrator to prescribe regulations that will ensure the continuing airworthiness of aging aircraft.

### SSID Team

In April 2000 the Transport Airplane Directorate (TAD) chartered a SSID Team to develop recommendations to standardize the SID/SSID ADs regarding the treatment of repairs, alterations, and modifications (RAMs). The report can be accessed at *http://www.faa.gov/certification/aircraft/transport.htm.*

### FAA Responses To AASA

In addition to the SSID Team activity, there are other on-going activities associated with FAA's Aging Aircraft Program. This includes, among other initiatives, our responses to the AASA.

On November 1, 2002, as one of the responses to the AASA, we issued the Aging Airplane Safety Interim Final Rule (AASIFR) (67 FR 72726, December 6, 2002). The applicability of that rule addresses airplanes that are operated under part 121 of the FAR (14 CFR part 121), all U.S. registered multi-engine airplanes operated under part 129 of the FAR (14 CFR part 129), and all multi-engine airplanes used in scheduled operations under part 135 of the Federal Aviation Regulations (14 CFR part 135). The AASIFR requires the maintenance programs of those airplanes to include damage tolerance-based inspections and procedures that include all major structural RAMs. Currently, the ASSIFR requires that these procedures must be established and incorporated within four years after December 8, 2003, the effective date specified by the AASIFR.

### Public Technical Meeting

The TAD also held a public meeting regarding standardization of the FAA approach to RAMs in SID/SSID ADs on February 27, 2003, in Seattle, Washington. We presented our views and heard comments from the public concerning issues regarding the standardization of the requirements of ADs for certain transport category airplanes that mandate SSIDs and that address the treatment of RAMs for those certain transport category airplanes. Our presentation included a plan for the standardization of SID/SSID ADs, the results of the SSID Team findings, and the TAD vision of how SID/SSID ADs may support compliance to the AASIFR. We also asked for input from operators on the issues addressing RAMs in SID/SSID ADs. One of the major comments presented at the public meeting was that operators do not have the capability to accomplish the damage tolerance assessments, and they will have to rely on the manufacturers to perform those assessments. Furthermore, the operators believe that the timeframes to accomplish the damage tolerance assessments will not permit manufacturers to support the operators. Another major comment presented was from the Airworthiness Assurance Working Group (AAWG) of the Aviation Rulemaking Advisory Committee (ARAC). The AAWG requested that we withdraw the damage tolerance requirements from the final rule and task AAWG to develop a new RAM damage tolerance based program with timelines to be developed by ARAC. The public meeting presentations can be accessed at *http://www.faa.gov/certification/aircraft/transport.htm.*

### Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Report No. L26–022, "MD–80 Supplemental Inspection Document (SID)," Revision B, dated March 2003, which provides a description of Principal Structural Elements (PSEs) and Non Destructive Inspection (NDI) procedures and thresholds with repetitive inspection intervals for inspections of PSEs. For the purposes of this AD, a PSE is defined as an element that contributes significantly to the carrying of flight, ground or pressurization loads, and the integrity of that element is essential in maintaining the overall structural integrity of the airplane.

The FAA also has reviewed and approved McDonnell Douglas Report No. MDC 91K0263, "DC–9/MD–80 Aging Aircraft Repair Assessment Program Document," dated July 1997, which provides procedures to determine the appropriate inspection or replacement program for certain repairs to the fuselage pressure boundary. These repairs and inspection/replacement programs are acceptable alternative methods of compliance for the repair and repair inspection programs specified in this proposed AD.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require implementation of a structural inspection program of baseline structure to detect and correct fatigue cracking in order to ensure the continued airworthiness of airplanes as they approach the manufacturer's original fatigue design life goal.

### Revision of the Maintenance Program

Paragraph (a) of the proposed AD would require a revision of the maintenance inspection program that provides for inspection(s) of the PSE per Boeing Report No. L26–022, "MD–80 SID," Revision B, dated March 2003. PSEs are also defined and specified in the SID. All references in this AD to the "SID" are to Revision B dated March 2003.

### Supplemental Inspection Program (SIP)

Paragraph (b) of the proposed AD would specify that the supplemental inspection program be implemented on a PSE-by-PSE basis before structure exceeds its 75% fatigue life threshold ($^{3}/_{4}N_{th}$), and its full fatigue life threshold ($N_{th}$). The threshold value is defined as the life of the structure measured in total landings, when the probability of failure reaches one in a billion. The MD–80 SID program is not a sampling program. All airplanes would be inspected once prior to reaching both PSE thresholds (once by $^{3}/_{4}N_{th}$ and once by $N_{th}$). In order for the inspection to have value, no PSE would be inspected prior to half of the fatigue life threshold, $^{1}/_{2}N_{th}$. The additional $^{3}/_{4}N_{th}$ threshold aids in advancing the threshold for some PSEs as explained in Section 3 of Volume I, of the SID. Inspection of each PSE should be accomplished in accordance with the NDI procedures set forth in Section 2 of Volume II, Revision B, dated March 2003.

Once threshold $N_{th}$ is passed, the PSE would be inspected at repetitive intervals not to exceed $\Delta$NDI/2 as specified in Section 3 of Volume I of the SID per the NDI procedure, which is specified in Section 2 of Volume II of the SID. $\Delta$NDI/2 is defined as half of the life for a crack to grow from a given NDI detectable crack size to instability.

### SIP Inspection Requirements

Paragraph (b) of this proposed AD also would require, for airplanes that have exceeded the $N_{th}$, that each PSE be inspected prior to reaching the established thresholds ($\frac{3}{4}N_{th}$ and $N_{th}$) or within 18 months after the effective date of this AD. The entire PSE must be inspected regardless of whether or not it has been repaired, altered, or modified. If any PSE is repaired, altered, or modified, it must be reported as "discrepant." A discrepant report indicates that a PSE could not be completely inspected because the NDI procedure could not be accomplished due to differences on the airplane from the NDI reference standard (*i.e.*, RAMs).

### Reporting Requirements

Paragraph (c) of this proposed AD would require that all negative, positive, or discrepant findings of the inspection accomplished in paragraph (b) of the AD must be reported to Boeing at the times specified, and in accordance with, the instructions contained in Section 3 of Volume 1 of the SID.

### Corrective Action

Paragraph (d) of this proposed AD would require that any cracked structure detected during any inspection required per paragraph (b) of this AD must be repaired before further flight. Additionally, paragraph (d) of this AD would require accomplishment of follow-on actions as specified in paragraphs (d)(1), (d)(2), and (d)(3) of this proposed AD, at the times specified below.

(1) Within 18 months after repair, accomplish a damage tolerance assessment (DTA) that defines the threshold for inspection and submit the assessment for approval to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) Prior to reaching 75% of the threshold, submit the inspection methods and repetitive inspections intervals for the repair for approval by the Manager of the LAACO.

(3) Prior to the threshold, the inspection method and repetitive inspection intervals are to be incorporated into the FAA-approved structural maintenance or inspection program for the airplane.

For the purposes of this proposed AD, the FAA anticipates that submissions of the damage tolerance assessment of the repair, if acceptable, should be approved within six months after submission.

### Transferability of Airplanes

Paragraph (e) of this proposed AD specifies the requirements of the inspection program for transferred airplanes. Before any airplane that is subject to this proposed AD can be added to an air carrier's operations specifications, a program for the accomplishment of the inspections required by this proposed AD must be established. Paragraph (e) of the proposed AD would require accomplishment of the following:

1. For airplanes that have been inspected per this proposed AD, the inspection of each SSI must be accomplished by the new operator per the previous operator's schedule and inspection method, or per the new operator's schedule and inspection method, at whichever time would result in the earlier accomplishment date for that SSI inspection. The compliance time for accomplishment of this inspection must be measured from the last inspection accomplished by the previous operator. After each inspection has been performed once, each subsequent inspection must be performed per the new operator's schedule and inspection method.

2. For airplanes that have not been inspected per this proposed AD, the inspection of each SSI must be accomplished either prior to adding the airplane to the air carrier's operations specification, or per a schedule and an inspection method approved by the FAA. After each inspection has been performed once, each subsequent inspection must be performed per the new operator's schedule.

Accomplishment of these actions will ensure that: (1) an operator's newly acquired airplanes comply with its SSIP before being operated; and (2) frequently transferred airplanes are not permitted to operate without accomplishment of the inspections defined in the SSID.

### Inspections Accomplished Previously

Paragraph (f) of this proposed AD merely provides approval of Revision A of the SID, dated September 2000, as acceptable compliance with the requirements of paragraph (b) of this proposed AD for inspections accomplished prior to the effective date of the proposed AD.

### Acceptable for Compliance

Paragraph (g) of this proposed AD also provides approval of McDonnell Douglas Report No. MDC 91K0263, "DC–9/MD–80 Aging Aircraft Repair Assessment Program Document," dated July 1997, as acceptable compliance with the requirements of paragraphs (b) and (d) of this proposed AD for repairs and inspection/replacement for certain repairs to the fuselage pressure shell accomplished prior to the effective date of the proposed AD.

### Interim Action

This is considered to be interim action. The FAA is currently considering requiring damage tolerance-based inspections and procedures that include all major structural RAMs, which may result in additional rulemaking. That rulemaking may include appropriate recommendations from the previously mentioned FAA team and a public meeting on how to address RAMs.

### Cost Impact

There are approximately 1,167 Model DC–9–80 and MD–88 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 665 airplanes of U.S. registry and 18 U.S. operators would be affected by this proposed AD.

Incorporation of the SID program into an operator's maintenance program is estimated to necessitate 1,062 work hours (per operator), at an average labor rate of $65 per work hour. Based on these figures, the cost to the 18 affected U.S. operators to incorporate the SID program is estimated to be $1,242,540.

The recurring inspection costs in this proposed AD are estimated to be 362 work hours per airplane per year, at an average labor rate of $65 per work hour. Based on these figures, the recurring inspection costs are estimated to be $25,530 per airplane, per inspection, or $15,647,450 for the affected U.S. fleet.

Based on the above figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,242,540 for the first year, and $15,647,450 for each year thereafter. These "total cost impact" figures assume that no operator has yet accomplished any of the requirements of this AD.

Additionally, the number of required work hours for each proposed inspection (and the SID program), as indicated above, is presented as if the accomplishment of those actions were to be conducted as "stand alone" actions. However, in actual practice, these actions for the most part will be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary additional work hours will be minimal in many instances. Further, any cost associated with special airplane scheduling can be expected to be minimal.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**McDonnell Douglas:** Docket 2000–NM–110–AD

*Applicability:* Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87) and MD–88 airplanes, certificated in any category.

### Revision of the Maintenance Inspection Program

(a) Within 12 months after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program that provides for inspection(s) of the Principal Structural Elements (PSEs), in accordance with Section 3 of Volume I, Revision B, dated March 2003, of Boeing Report No. L26–022, "MD–80 Supplemental Inspection Document (SID)." PSEs are also specified in the SID. Unless otherwise specified, all references in this AD to the "SID" are to Revision B dated March 2003.

### Non-Destructive Inspections (NDIs)

(b) For all PSEs listed in Section 3 of Volume I of the SID, perform an NDI for fatigue cracking of each PSE in accordance with the NDI procedures specified in Section 2 of Volume II of the SID, at the times specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD, as applicable.

(1) For airplanes that have less than three quarters of the fatigue life threshold ($^3/_4N_{th}$) as of the effective date of the AD: Perform an NDI for fatigue cracking no earlier than one-half of the threshold ($^1/_2N_{th}$) but prior to reaching three quarters of the threshold ($^3/_4N_{th}$), or within 18 months after the effective date of this AD, whichever occurs later. Inspect again prior to reaching the threshold ($N_{th}$), but no earlier than ($^3/_4N_{th}$). Thereafter, after passing the threshold ($N_{th}$), repeat the inspection for that PSE at intervals not to exceed $\Delta NDI/2$.

(2) For airplanes that have reached or exceeded three quarters of the fatigue life threshold ($^3/_4N_{th}$), but less than the threshold ($N_{th}$), as of the effective date of the AD: Perform an NDI inspection prior to reaching the threshold ($N_{th}$), or within 18 months after the effective date of this AD, whichever occurs later. Thereafter, after passing the threshold ($N_{th}$), repeat the inspection for that PSE at intervals not to exceed $\Delta NDI/2$.

(3) For airplanes that have reached or exceeded the fatigue life threshold ($N_{th}$) as of the effective date of the AD: Perform an NDI inspection within 18 months after the effective date of this AD. Thereafter, repeat the inspection for that PSE at intervals not to exceed $\Delta NDI/2$.

### Reporting Requirements

(c) All negative, positive, or discrepant findings (*e.g.*, differences on the airplane from the NDI reference standard, such as PSEs that have been repaired, altered, or modified) of the inspections accomplished under paragraph (b) of this AD, must be reported to Boeing, at the times specified in, and in accordance with the instructions contained in, Section 3 of Volume I of the SID. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

### Corrective Actions

(d) Any cracked structure of a PSE detected during any inspection required by paragraph (b) of this AD must be repaired before further flight in accordance with an FAA-approved method. Accomplish follow-on actions described in paragraphs (d)(1), (d)(2), and (d)(3) of this AD, at the times specified.

(1) Within 18 months after repair, perform a damage tolerance assessment (DTA) that defines the threshold for inspection of the repair and submit the assessment for approval to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) Prior to reaching 75% of the threshold, submit the inspection methods and repetitive inspection intervals for the repair for approval by the Manager of the Los Angeles ACO.

(3) Prior to the threshold determined in paragraph (d)(1) of this AD, incorporate the inspection method and repetitive inspection intervals into the FAA-approved structural maintenance or inspection program for the airplane.

**Note 1:** For the purposes of this AD, the FAA anticipates that submissions of the damage tolerance assessment of the repair, if acceptable, should be approved within six months after submission

### Inspection for Transferred Airplanes

(e) Before any airplane that is subject to this AD and that has exceeded the applicable compliance times specified in paragraph (b) of this AD can be added to an air carrier's operations specifications, a program for the accomplishment of the inspections required by this AD must be established per paragraph (e)(1) or (e)(2) of this AD, as applicable.

(1) For airplanes that have been inspected per this AD, the inspection of each SSI must be accomplished by the new operator per the previous operator's schedule and inspection method, or the new operator's schedule and inspection method, at whichever time would result in the earlier accomplishment date for that SSI inspection. The compliance time for accomplishment of this inspection must be measured from the last inspection accomplished by the previous operator. After each inspection has been performed once, each subsequent inspection must be performed per the new operator's schedule and inspection method.

(2) For airplanes that have not been inspected per this AD, the inspection of each SSI required by this AD must be accomplished either prior to adding the airplane to the air carrier's operations specification, or per a schedule and an inspection method approved by the Manager, Los Angeles ACO, FAA. After each inspection has been performed once, each subsequent inspection must be performed per the new operator's schedule.

### Inspections Accomplished Before the Effective Date of This AD

(f) Inspections per Boeing Report No. L26–022, "MD–80 Supplemental Inspection Document (SID)," Revision A, dated September 2000, accomplished prior to the effective date of this AD, are acceptable for compliance with the requirements of paragraph (b) of this AD.

**Acceptable for Compliance**

(g) McDonnell Douglas Report No. MDC 91K0263, "DC–9/MD–80 Aging Aircraft Repair Assessment Program Document," dated July 1997, provides inspection/replacement programs for certain repairs to the fuselage pressure shell. These repairs and inspection/replacement programs are considered acceptable for compliance with the requirements of paragraphs (b) and (d) of this AD for repairs subject to that document.

**Alternative Methods of Compliance**

(h) In accordance with 14 CFR 39.19, the Manager, Los Angeles ACO, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Issued in Renton, Washington, on October 1, 2003.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–25493 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 2002–NM–92–AD]

RIN 2120–AA64

## Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes Equipped with Certain Litton Air Data Inertial Reference Units

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes equipped with certain Litton air data inertial reference units (ADIRU). This proposal would require modifying the shelf (floor panel) above ADIRU 3, and for certain airplanes modifying the polycarbonate guard which covers the ADIRUs, and the ladder located in the avionics compartment, as applicable. This action is necessary to prevent failure of ADIRU 3 during flight, which could result in loss of one source of critical attitude and airspeed data and reduce the ability of the flightcrew to control the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by November 7, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–92–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain "Docket No. 2002–NM–92–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–92–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–92–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes equipped with certain Litton air data inertial reference units (ADIRU). The DGAC advises that operators have reported that "NAV IR FAULT" messages have occurred during takeoff on several of these airplanes due to failure of ADIRU 3. Investigation revealed that vibrations during takeoff may cause contact between ADIRU 3 and the shelf (floor panel) above it, due to minimal clearance between the shelf and the ADIRU. Such contact may cause excessive vertical acceleration, which could result in failure of ADIRU 3. Due to its location on the shelf, ADIRU 3 is more sensitive to vibration than the other two ADIRUs. Failure of ADIRU 3 during flight could result in loss of one source of critical attitude and airspeed data and reduce the ability of the flightcrew to control the airplane.

### Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–25–1248, dated February 16, 2001, which describes procedures for modifying the shelf (floor panel) above the Litton ADIRUs by installing shims on the webs of the shelf support structure in the avionics rack. In addition, for certain airplanes, the service bulletin includes procedures for modifying the polycarbonate guard which covers the ADIRUs, and machining the ladder located in the avionics compartment to increase the depth of the slot at the foot of the ladder, as applicable. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2002-125(B), dated March 6, 2002, to ensure the continued airworthiness of these airplanes in France.

### FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

### Differences Between the Proposed Rule and the French Airworthiness Directive

Operators should note that, although the French airworthiness directive contains operational dispatch restrictions for airplanes with one ADIRU inoperative, this proposed AD does not include these restrictions because the FAA-approved Master Minimum Equipment List already restricts operations accordingly.

### Cost Impact

The FAA estimates that 200 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed modification of the shelf, and that the average labor rate is $65 per work hour. Required parts would cost approximately $300 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $112,000, or $560 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Airbus:** Docket 2002-NM-92-AD.

*Applicability:* Model A319, A320, and A321 series airplanes; certificated in any category; equipped with Litton air data inertial reference units (ADIRU) installed per Airbus Modification 24852, 25108, 25336, 26002, or 28218; except those airplanes on which Airbus Modification 30650 or 30872 has been accomplished.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent loss of ADIRU 3 during flight, which could result in loss of one source of critical attitude and airspeed data and reduce the ability of the flightcrew to control the airplane, accomplish the following:

### Modification

(a) Within 2 years after the effective date of this AD: Do the modifications specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD, as applicable, in accordance with paragraphs A. through D. of the Accomplishment Instructions of Airbus Service Bulletin A320-25-1248, dated February 16, 2001; as applicable.

(1) For all airplanes: Modify the shelf (floor panel) above ADIRU 3 by installing shims between the shelf and the webs of the shelf support structure.

(2) For airplanes with Airbus Modification 25900P3941 or Airbus Service Bulletin A320-25-1200 accomplished as of the effective date of this AD: Modify the polycarbonate guard (umbrella) protecting the ADIRUs by installing shims between the guard and the shelf support structure.

(3) For airplanes with Airbus Modification 23027P2852 or Airbus Service Bulletin A320-52-1038 accomplished as of the effective date of this AD: Modify the ladder located in the avionics compartment by machining the slot at the foot of the ladder to increase the depth by 0.236 inch.

### *Alternative Methods of Compliance*

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

**Note 1:** The subject of this AD is addressed in French airworthiness directive 2002-125(B), dated March 6, 2002.

Issued in Renton, Washington, on October 2, 2003.

**Vi L. Lipski,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03-25494 Filed 10-7-03; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 73

**RIN 2120–AA66**

**[Docket No. FAA–2003–15410; Airspace Docket No. 03–AAL–1]**

## Establishment of Restricted Area 2204, Oliktok Point; AK

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to establish a restricted area (R–2204) in the vicinity of Oliktok Point, AK, as part of a Department of Energy (DOE) initiative. The DOE has requested the establishment of this airspace to support its Mixed-Phased Arctic Clouds experiment. This experiment utilizes a moored balloon which will fly up to 7,000 feet mean sea level (MSL). This proposed action supports the DOE, Sandia National Laboratories, National Nuclear Security Administration, climate research project.

**DATES:** Comments must be received on or before December 8, 2003.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify "FAA Docket No. FAA–2003–15529, and Airspace Docket No. 03–AAL–01," at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers (FAA Docket No. FAA–2003–15529, and Airspace Docket No. 03–ANM–03) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2003–15410, and Airspace Docket No. 03–AAL–1." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received.

All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register's** Web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see address in "Comments Invited" section) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, #14, Anchorage, AK 99513.

Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### History

The DOE is conducting the Mixed-Phased Arctic Clouds experiment to improve understanding of the process and uncertainties related to global climate change. The information obtained at this test site will be combined with information from a broad range of climates from other sites. The knowledge gained through these sites will provide a more credible prediction of global climate change.

### The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (CFR) part 73 (part 73) to establish R–2204 at Oliktok Point, AK, as part of the DOE Mixed-Phased Arctic Clouds experiment. The proposed airspace would be established northeast of Oliktok Point, AK, and would consist of a two nautical mile (nm) area radius from the surface up to but not including 7,000 feet MSL. The proposed area would contain an instrumented, moored balloon on a two-kilometer, unlighted cable for the purpose of collecting air samples during instrument flight conditions. The proposed area would be activated starting October 2004 for approximately 30 days a year, and be effective through the year 2009. The area would be activated by NOTAM 24 hours in advance. The restricted area is necessary for safety reasons.

Section 73.22 of Part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8K dated September 26, 2002.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### Environmental Review

This proposal will be subject to the appropriate environmental analysis in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, prior to any FAA final regulatory action.

### List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

## PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### § 73.22 [Amended]

2. § 73.22 is amended as follows:

* * * * *

**R–2204, Oliktok Point, AK [New]**

Boundaries. Within a 2 nautical mile radius centered at (lat. 70°30′35″ N., long. 149°51′33″ W.).

Designated altitudes. Surface to, but not including, 7,000 feet MSL.

Time of designation. By NOTAM, 24 hours in advance, not to exceed 30 days annually.

Controlling agency. FAA, Anchorage ARTCC.

Using agency. Department of Energy, Sandia National Labs/National Nuclear Security Administration, Albuquerque, NM.

* * * * *

Issued in Washington, DC, on September 17, 2003.

**Reginald C. Matthews,**

*Manager, Airspace and Rules Division.*

[FR Doc. 03–25422 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–13–P

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## NATIONAL INDIAN GAMING COMMISSION

### 25 CFR Part 514

RIN 3141–AA16

## Fees

**AGENCY:** National Indian Gaming Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The National Indian Gaming Commission (NIGC or Commission) is proposing to amend its fee regulations. The regulations are being amended to reflect changes in the statutory limit set by Congress.

**DATES:** Comments must be submitted on or before November 30, 2003.

**ADDRESSES:** Comments may be mailed to: Fee Change Comments, 1441 L Street, NW., Suite 9100, Washington, DC, 20005, delivered to that address between 8:30 a.m. and 5:30 p.m., Monday through Friday, or faxed to 202/632–7066 (this is not a toll-free number). Comments received may be inspected between 9 a.m. and noon, and between 2 p.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** John R. Hay at 202/632–7003; fax 202/632–7066 (these are not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** The Indian Gaming Regulatory Act (IGRA), enacted on October 17, 1988, established the National Indian Gaming Commission (Commission). The Commission is funded entirely from fees collected from Indian gaming operations. The Commission is proposing changing its current regulations to reflect changes in the statutory limit imposed by Congress. This regulation is being amended so that the amount of fees imposed by the Commission is directly related to congressional action. Under the current regulation the Commission may only impose fees not exceeding $8,000,000, during any fiscal year. For fiscal year 2004, Congress has increased that amount to a maximum of $12,000,000. The proposed change will allow the Commission to collect up to the statutory maximum and will eliminate the need to regularly amend this regulation as Congress raises or lowers the fee level.

### Regulatory Flexibility Act

The Commission certifies that the proposed rule will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The factual basis for this certification is as follows:

Of the 330 Indian gaming operations across the country, approximately 150 have revenues under 10 million. Of these, approximately 90 operations have gross revenues of under 3 million. Those operations that gross less than 1.5 million are exempt from fees. Since fee assessments are based on a percentage of gross revenues until the maximum allowed by Congress is reached, and new gaming operations continue to open, the amount individual tribal gaming operations will pay in fees will likely only increase slightly or may in fact decrease. For these reasons, the Commission has concluded that the proposed rule will not have a significant economic impact on those small entities subject to the rule.

### Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The proposed rule will not result in an annual effect on the economy of more than $100 million per year; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises.

### Unfunded Mandates Reform Act

The Commission is an independent regulatory agency, and, as such, is not subject to the Unfunded Mandates Reform Act. Even so, the Commission has determined that this final rule does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector, of more than $100 million per year. Thus, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*

### Takings

In accordance with Executive Order 12630, the Commission has determined that this rule does not have significant takings implications. A takings implication assessment is not required.

### Civil Justice Reform

In accordance with Executive Order 12988, the Office of General Counsel has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

### Paperwork Reduction Act

The proposed rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501–3520) would be required.

### National Environmental Policy Act

The Commission has determined that this proposed rule does not constitute a major Federal Action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Dated: October 2, 2003.

**Philip N. Hogen,**

*Chairman, National Indian Gaming Commission.*

### List of Subjects in 25 CFR Part 514

Gambling, Indians-lands, Reporting and recordkeeping requirements.

Accordingly, 25 CFR part 514 is proposed to be amended as follows:

The authority citation for part 514 continues to read as follows:

**Authority:** 25 U.S.C. 2702 *et seq.*

Section 514.1(d) is revised to read as follows:

### § 514.1 Annual fees.

* * * * *

(d) The total amount of all fees imposed during any fiscal year shall not exceed the statutory maximum imposed by Congress. The Commission shall credit pro-rata any fees collected in excess of this amount against amounts otherwise due at the end of the quarter following the quarter during which the Commission makes such determination.

(1) The Commission will notify each gaming operation as to the amount of overpayment, if any, and therefore the amount of credit to be taken against the next quarterly payment otherwise due.

(2) The notification required in paragraph (d)(1) of this section shall be made in writing addressed to the gaming operation.

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[FR Doc. 03–25472 Filed 10–7–03; 8:45 am]

**BILLING CODE 7565–01–P**

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## LIBRARY OF CONGRESS

## Copyright Office

## 37 CFR Part 201

## [Docket No. RM 2002–1D]

## Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice of inquiry.

**SUMMARY:** The Copyright Office of the Library of Congress is requesting public comment on the adoption of regulations for records of use of sound recordings performed pursuant to the statutory license for public performances of sound recordings by means of digital audio transmissions between October 28, 1998, and the effective date of soon-to-be-announced interim regulations.

**DATES:** Comments are due no later than November 24, 2003. Reply comments are due no later than December 22, 2003.

**ADDRESSES:** An original and five copies of any comment or reply comment shall be delivered by hand to: Office of the General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, SE., Washington, DC 20559–6000; or mailed to: Copyright Arbitration Royalty Panel (CARP), PO Box 70977, Southwest Station, Washington, DC 20024–0977.

**FOR FURTHER INFORMATION CONTACT:** David O. Carson, General Counsel, or William J. Roberts, Jr., Senior Attorney, PO Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380; Telefax: (202) 252–3423.

**SUPPLEMENTARY INFORMATION:**

### Background

The Copyright Act grants copyright owners of sound recordings the exclusive right to perform their works publicly by means of digital audio transmissions subject to certain limitations and exceptions. Among the limitations placed on the performance of sound recordings is a statutory license that permits certain eligible subscription, nonsubscription, satellite digital audio radio, business establishment and new subscription services to perform those sound recordings publicly by means of digital audio transmissions. 17 U.S.C. 114.

Similarly, copyright owners of sound recordings are granted the exclusive right to make copies of their works subject to certain limitations and exceptions. Among the limitations placed on the reproduction of sound recordings is a statutory license that permits certain eligible subscription, nonsubscription, satellite digital audio, business establishment and new subscription services to make ephemeral copies of those sound recordings to facilitate their digital transmission. 17 U.S.C. 112(e).

Both the section 114 and 112 licenses require services to, among other things, report to copyright owners of sound recordings on the use of their works. Both licenses direct the Librarian of Congress to establish regulations to give copyright owners reasonable notice of the use of their works and create and maintain records of use for delivery to copyright owners. 17 U.S.C. 114(f)(4)(A) and 17 U.S.C. 112(e)(4). The purpose of the exchange of data is to ensure that the royalties collected under the statutory licenses are distributed to the correct recipients.

The Copyright Office will soon be publishing interim regulations setting forth the categories of information that services making use of sound recordings under the statutory licenses must report. Those interim regulations will require services to identify performances of sound recordings that they transmit pursuant to the statutory license, providing information such as the titles of sound recordings that are transmitted, the names of the recording artists, etc. However, the interim regulations will be prospective in nature, meaning that they will not apply to the period from October 28, 1998, to the effective date of the interim rules. Consequently, there are currently no regulations establishing the requirements for creating and reporting records of use for this earlier time period.[1] While it is certain that many services have maintained few or, in many instances, no records of prior uses, a mechanism must be adopted to account for the performances that occurred during this period in order to distribute the royalty fees collected during this period. Thus, we seek public comment as to the form and content such regulations should take.

### Request for Comment

Incomplete and absent records create serious difficulties for the Copyright Office in fashioning regulations that apply to prior uses of sound recordings. If only partial prior records of use are reported, and if only some services are able to submit such reports, the data gathered from those records is likely to skew the royalty distribution process. How should the Office address this problem? Should the Office require licensees to report actual performance data for the historical period, if available; and if so, what elements should be reported, bearing in mind that the information provided must be sufficient to identify the copyright owners and performers who are the beneficiaries of these licenses? What, if any, proxies may be used in lieu of incomplete or missing prior records? Are there costs associated with using proxies, and if so, who should bear the cost of obtaining use of these proxies?

The Copyright Office seeks answers to these questions and encourages interested parties to consider the costs and benefits to both the licensees and the copyright owners when formulating a mechanism for accounting for past performances. In particular, we seek concrete proposals and proposed regulatory language to implement rules for the reporting of prior records of use. Services and copyright owners are encouraged to explore the possibility of joint submissions of comments that represent consensus among interested parties.

Dated: October 3, 2003.

**Marybeth Peters,**

*Register of Copyrights.*

[FR Doc. 03–25523 Filed 10–7–03; 8:45 am]

**BILLING CODE 1410–33–P**

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[1] There is one exception. Regulations, codified at 37 CFR 201.36, are already in place for preexisting subscription services, *i.e.*, subscription services in existence before July 31, 1998. See 17 U.S.C. 114(j)(11); see also 67 FR 5791 (February 7, 2002). This notice of inquiry seeks comments on requirements for records of use for all types of services operating under the section 114 statutory license except preexisting subscription services.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[IA 187–1187; FRL–7569–8]**

### Approval and Promulgation of Implementation Plans; State of Iowa

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve a revision to the State Implementation Plan (SIP) submitted by the state of Iowa. The purpose of this revision is to approve the 1998 and 2000 updates to the Polk County Board of Health Rules and Regulations, Air Pollution, Chapter V. These revisions will help to ensure consistency between the applicable local agency rules and Federally-approved rules, and ensure Federal enforceability of the applicable parts of the local agency air programs.

**DATES:** Comments on this proposed action must be received in writing by November 7, 2003.

**ADDRESSES:** Comments may be submitted either by mail or electronically. Written comments should be mailed to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Electronic comments should be sent either to Heather Hamilton at *hamilton.heather@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in "What action is EPA taking" in the **SUPPLEMENTARY INFORMATION** section of the direct final rule which is located in the rules section of the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Heather Hamilton at (913) 551–7039, or by e-mail at *hamilton.heather@epa.gov*.

**SUPPLEMENTARY INFORMATION:** In the final rules section of the **Federal Register**, EPA is approving the SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: September 25, 2003.

**Nat Scurry,**

*Acting Regional Administrator, Region 7.*

[FR Doc. 03–25397 Filed 10–7–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 70 and 71

**[CA102–OPP; FRL–7571–4]**

### Proposed Approval of Revision of 34 Clean Air Act Title V Operating Permits Programs

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision of the following 34 Clean Air Act (CAA) title V Operating Permits Programs in the State of California: Amador County Air Pollution Control District (APCD), Bay Area AQMD, Butte County AQMD, Calaveras County APCD, Colusa County APCD, El Dorado County APCD, Feather River AQMD, Glenn County APCD, Great Basin Unified APCD, Imperial County APCD, Kern County APCD, Lake County AQMD, Lassen County APCD, Mariposa County APCD, Mendocino County APCD, Modoc County APCD, Mojave Desert AQMD, Monterey Bay Unified APCD, North Coast Unified AQMD, Northern Sierra AQMD, Northern Sonoma County APCD, Placer County APCD, Sacramento Metro AQMD, San Diego County APCD, San Joaquin Valley Unified APCD, San Luis Obispo County APCD, Santa Barbara County APCD, Shasta County APCD, Siskiyou County APCD, South Coast AQMD, Tehama County APCD, Tuolumne County APCD, Ventura County APCD, and Yolo-Solano AQMD. (EPA's interim approval of Antelope Valley AQMD's title V program expired on January 21, 2003. (Since a full approval of Antelope Valley AQMD's title V program will be necessary to return the program to the District, EPA will address the title V program in that district in a separate rulemaking action.) This program revision is a response to a Notice of Deficiency (NOD) that EPA published in the **Federal Register**. See 67 FR 35990 (May 22, 2002). The NOD explained EPA's finding that the State's agricultural permitting exemption at Health and Safety Code 42310(e) unduly restricted the 34 local districts' ability to adequately administer and enforce their title V programs. Subsequently, we partially withdrew the title V programs of 34 air districts in California. See 67 FR 63551 (October 15, 2002). On September 22, 2003, the Governor of California signed SB 700, which revised State law to remove the agricultural permitting exemption. The legislation eliminates the exemption and therefore corrects the deficiency we identified in the May 22, 2002 NOD. Therefore, today EPA is proposing to approve a revision to the 34 district title V programs because districts now have the authority to permit all major stationary sources, including those agricultural sources that were formerly exempt from title V under State law. Finalization of this approval is contingent upon our receipt of a legal opinion from the California Attorney General that confirms that the elimination of the agricultural permitting exemption from State law provides the 34 districts with authority to issue title V permits to major stationary agricultural sources.

**DATES:** Comments on this proposed action must be received in writing by November 7, 2003.

**ADDRESSES:** Written comments on this proposed action should be addressed to Gerardo Rios, Chief, Permits Office, Air Division (AIR–3), EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105, or sent via e-mail to *rios.gerardo@epa.gov*.

**FOR FURTHER INFORMATION CONTACT:** Gerardo Rios, EPA Region IX, at (415) 972–3974 or *rios.gerardo@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us," or "our" means EPA.

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II. Description of Proposed Action
III. Effect of EPA's Rulemaking
IV. Request for Public Comment
V. Administrative Requirements

### I. Background

Title V of the CAA Amendments of 1990 required all State permitting authorities to develop operating permits programs that met certain federal criteria codified at 40 Code of Federal

Regulations (CFR) part 70. On November 30, 2001, we promulgated final full approval of 34 California districts' title V operating permits programs. See 66 FR 63503 (December 7, 2001). Our final rulemaking was challenged by several environmental and community groups alleging that the full approval was unlawfully based, in part, on an exemption in section 42310(e) of the California Health and Safety Code of major agricultural sources from title V permitting. EPA entered into a settlement of this litigation which required, in part, that the Agency propose to partially withdraw approval of the 34 fully approved title V programs in California.

Sections 70.10(b) and 70.10(c) provide that EPA may withdraw a 40 CFR part 70 program approval, in whole or in part, whenever the permitting authority's legal authority does not meet the requirements of part 70 and the permitting authority fails to take corrective action. To commence regulatory action to partially withdraw title V program approval, EPA published the NOD in the **Federal Register**. Pursuant to 40 CFR 70.10(b)(2), publication of the NOD commenced a 90-day period during which the State of California had to take significant action to assure adequate administration and enforcement of the local districts' programs. As described in EPA's NOD, the Agency determined that "significant action" in this instance meant the revision or removal of California Health and Safety Code 42310(e), so that the local air pollution control districts could adequately administer and enforce the title V permitting program for stationary agricultural sources that are major sources of air pollution.

During the 90-day period that the State was provided to take the necessary corrective action, EPA proposed to partially withdraw title V program approval in each of the 34 California districts with full program approval. *See* 67 FR 48426 (July 24, 2002). Since the State did not take the necessary action to assure adequate administration and enforcement of the title V program within the required time frame, EPA took final action, pursuant to our authority at 40 CFR 70.10(b)(2)(i), to partially withdraw approval of the title V programs for the 34 local air districts listed above.

## II. Description of Proposed Action

We are proposing to approve the program revision of the 34 Clean Air Act title V Operating Permits programs in the State of California. However, finalization of this proposed rulemaking is contingent upon our receipt of a legal opinion from the California Attorney General that confirms that the elimination of the agricultural permitting exemption from State law provides the 34 districts with authority to issue title V permits to major stationary agricultural sources. EPA will not promulgate final approval of the program revision until this legal opinion has been received.

## III. Effect of EPA's Rulemaking

Our proposal, if finalized, would result in the 34 districts having title V programs that require all major stationary sources to obtain title V operating permits. It would also terminate EPA's implementation of a part 71 Federal operating permit program for State-exempt major stationary agricultural sources within the jurisdiction of the 34 California air districts listed at the beginning of this proposal. If EPA finalizes this rule, EPA would not issue any permits to these sources, since the 34 districts would have the authority to issue title V permits to major agricultural stationary sources beginning on January 1, 2004. Therefore, if EPA finalizes this rule, EPA will no longer require major stationary agricultural sources to submit part 71 permit applications and will suspend any outstanding application deadlines.

The May 22, 2002, NOD started an 18 month sanctions clock pursuant to CAA section 179(b). CAA Sec. 502(i)(1) and (2), 40 CFR 70.4(k) and 70.10(b)(2)–(4). Finalization of today's proposal would terminate this sanctions clock.

## IV. Request for Public Comment

We are soliciting public comment on all aspects of this proposal. Written comments will be considered before taking final action. To comment on today's proposal, you should submit comments by mail (in triplicate if possible) as described in the **ADDRESSES** section listed in the front of this document. We will consider any written comments received by November 7, 2003.

## V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve an existing requirement under state law, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing revisions to state operating permit programs submitted pursuant to Title V of the CAA, EPA will approve such revisions provided that they meet the criteria of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a part 70 program revision for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a part 70 program revision, to use VCS in place of a part 70 program revision that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology

Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: September 29, 2003.

**Deborah Jordan,**

*Acting Regional Administrator, Region 9.*

[FR Doc. 03–25545 Filed 10–7–03; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 141 and 142

[FRL–7571–7]

RIN 2040–AD37

### National Primary Drinking Water Regulations: Long Term 2 Enhanced Surface Water Treatment Rule; Extension of Comment Period

**AGENCY:** Environmental Protection Agency.

**ACTION:** Extension of comment period.

**SUMMARY:** The Environmental Protection Agency (EPA) is extending by 60 days the public comment period for a proposed National Primary Drinking Water Regulation, the Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR), which was published in the Federal Register on August 11, 2003. This extended comment period will afford greater opportunity to all interested parties to review and submit comments on the proposal.

**DATES:** Comments must be received on or before January 9, 2004.

**ADDRESSES:** Comments may be submitted by mail to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2002–0039. Comments may also be submitted electronically or through hand delivery/courier by following the instructions provided in the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** For technical inquiries, contact Daniel Schmelling, Office of Ground Water and Drinking Water (MC 4607M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone (202) 564–5281. For general information contact the Safe Drinking Water Hotline, Telephone (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding legal holidays, from 9 a.m. to 5:30 p.m., eastern standard time.

**SUPPLEMENTARY INFORMATION:** The comment period for the proposed LT2ESWTR now ends January 9, 2004. This is an extension of 60 days beyond the comment period established in the **Federal Register** on August 11, 2003. Anyone seeking to submit comments must follow the procedures specified in section I.C. of the proposal as published in the **Federal Register** (68 FR 47640, August 11, 2003).

The LT2ESWTR applies to all public water systems that use surface water or ground water under the direct influence of surface water. This proposed regulation would establish additional risk-targeted treatment requirements for *Cryptosporidium*. It also contains provisions to address risks associated with uncovered finished water storage facilities and to ensure systems maintain microbial protection as they take steps to reduce the formation of disinfection byproducts. See the proposal as published in the **Federal Register** (68 FR 47640, August 11, 2003) for information regarding public health concerns, proposed regulatory requirements, implementation schedules, estimated costs and benefits, implementation tools, and other issues.

Dated: October 2, 2003.

**Michael H. Shapiro,**

*Deputy Assistant Administrator, Office of Water.*

[FR Doc. 03–25546 Filed 10–7–03; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 141, 142 and 143

[FRL–7571–8]

RIN 2040–AD38

### National Primary Drinking Water Regulations: Stage 2 Disinfectants and Disinfection Byproducts Rule; National Primary and Secondary Drinking Water Regulations: Approval of Analytical Methods for Chemical Contaminants; Extension of Comment Period

**AGENCY:** Environmental Protection Agency.

**ACTION:** Extension of comment period.

**SUMMARY:** The Environmental Protection Agency (EPA) is extending by 60 days the public comment period for a proposed National Primary Drinking Water Regulation, the Stage 2 Disinfectants and Disinfection Byproducts Rule (DBPR), which was published in the **Federal Register** on August 18, 2003. This extended comment period will afford greater opportunity to all interested parties to review and submit comments on the proposal.

**DATES:** Comments must be received on or before January 16, 2004.

**ADDRESSES:** Comments may be submitted by mail to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2002–0043. Comments may also be submitted electronically or through hand delivery/courier by following the instructions provided in the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** For technical inquiries, contact Tom Grubbs, Office of Ground Water and Drinking Water (MC 4607M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone (202) 564–5262. For general information contact the Safe Drinking Water Hotline, Telephone (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding legal holidays, from 9 a.m. to 5:30 p.m., eastern standard time.

**SUPPLEMENTARY INFORMATION:** The comment period for the proposed Stage 2 DBPR now ends January 16, 2004. This is an extension of 60 days beyond the comment period established in the **Federal Register** on August 18, 2003. Anyone seeking to submit comments must follow the procedures specified in section I.C. of the proposal as published in the **Federal Register** (68 FR 49548, August 18, 2003).

The Stage 2 DBPR applies to all public water systems that add a disinfectant other than ultraviolet light. This proposed regulation would establish revised procedures for monitoring and determining compliance with the maximum contaminant levels for trihalomethanes and haloacetic acids. It contains specific provisions for consecutive systems. *See* the proposal as published in the **Federal Register** (68 FR 49548, August 18, 2003) for information regarding public health concerns, proposed regulatory requirements, implementation schedules, estimated costs and benefits, implementation tools, and other issues.

Dated: October 2, 2003.

**Michael H. Shapiro,**

*Deputy Assistant Administrator, Office of Water.*

[FR Doc. 03–25547 Filed 10–7–03; 8:45 am]

BILLING CODE 6560–50–P

# Notices

**Federal Register**
Vol. 68, No. 195
Wednesday, October 8, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

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## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

**[Doc. No. TM–03–08]**

### Request for an Extension of and Revision to a Currently Approved Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's intention to request approval from the Office of Management and Budget, for an extension of and revision to the currently approved information collection National Organic Program Record Keeping Requirements.

**DATES:** Comments received by December 8, 2003 will be considered.

**ADDITIONAL INFORMATION OR COMMENTS:** Contact Toni Strother, National Organic Program, Transportation and Marketing Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 4008-So., Ag Stop 0268, Washington, DC 20250, telephone (202) 720–3252, fax (202) 205–7808.

**SUPPLEMENTARY INFORMATION:**

*Title:* National Organic Program.

*OMB Number:* 0581–0191.

*Expiration Date Of Approval:* January 31, 2004.

*Type of Request:* Extension and Revision of a currently approved information collection.

*Abstract:* The Organic Foods Production Act of 1990 (OFPA) as amended (7 U.S.C. 6501 *et seq.*) mandates that the Secretary develop a National Organic Program (NOP) to accredit eligible State program's governing State officials or private persons as certifying agents who would certify producers or handlers of agricultural products that have been produced using organic methods as provided for in OFPA. This regulation: (1) Established national standards governing the marketing of certain agricultural products as organically produced products; (2) assures consumers that organically produced products meet a consistent standard; and (3) facilitates interstate commerce in fresh and processed food that is organically produced. The NOP requires that agricultural products labeled "organic" be from a production or handling operation that is certified by a certifying agent who is accredited by the U.S. Department of Agriculture (USDA).

Proposed rules to implement OFPA were published in December 1997 and March 2000. Both contained information collection requirements, an estimate of the annual economic burden on the organic industry, and a request for comments about the burden. The Agricultural Marketing Service (AMS) addressed these comments in the final rule published on December 21, 2000 (65 FR 80548) to ensure that the least amount of the burden is placed on the public.

Reporting and recordkeeping are essential to the integrity of the organic certification system. They create a paper trail that is a critical element in carrying out the mandate of OFPA and NOP. They serve the AMS mission, program objectives, and management needs by providing information on the efficiency and effectiveness of the program. The information affects decisions because it is the basis for evaluating compliance with OFPA and NOP, for administering the program, for management decisions and planning, and for establishing the cost of the program. It supports administrative and regulatory actions in response to noncompliance with OFPA and NOP.

In general, the information collected is used by USDA, State program governing State officials, and certifying agents. It is created and submitted by State and foreign program officials, peer review panel members, accredited certifying agents, organic inspectors, certified organic producers and handlers, those seeking accreditation or certification, and parties interested in changing the National List. Additionally, it necessitates that all of these entities have procedures and space for recordkeeping. The burden on each entity is discussed below.

*USDA.* USDA is the accrediting authority. USDA accredits domestic and foreign certifying agents who certify domestic and foreign organic producers and handlers, using information from the agents documenting their business operations and program expertise. USDA also permits State program governing State officials to establish their own organic certification programs after the programs are approved by the Secretary, using information from the States documenting their ability to operate such programs and showing that such programs meet the requirements of OFPA and NOP.

*States.* State program governing State officials may operate their own organic certification programs. State officials obtain the Secretary's approval of their programs by submitting information to USDA documenting their ability to operate such programs and showing that such programs meet the requirements of OFPA and NOP. To date no State organic certification programs have been approved by USDA. Upon approval State organic certification programs will require reporting and recordkeeping burdens similar to those required by the NOP. The annual burden for each State will be an average of 74 hours or if calculated at a rate of $27 per hour (rounded up to the next dollar) $1,998.

*Peer review panels.* The panel assists the AMS Administrator in evaluating NOP's adherence to the accreditation procedures in subpart F of the regulations and International Organization for standards/International Electro-technical Commission Guide 61, General requirements for assessment and accreditation of certification/registration bodies, and NOP's accreditation decisions. The American National Standards Institute (ANSI) was selected by the NOP to perform the peer review assessment. The peer review panel consists of three individuals, two ANSI provided assessors and one NOP technical expert. Estimates: Three people participate in the peer review panel. The annual burden for each panel member is an average of 4 hours or if calculated at a rate of $27 per hour (rounded up to the next dollar) $108.

*Certifying agents.* Certifying agents are State program governing State officials, private entities, or foreign entities who are accredited by USDA to certify domestic and foreign producers and handlers as organic in accordance with OFPA and NOP. Each entity wanting to be an agent seeks accreditation from USDA, submitting information documenting its business operations and program expertise. Accredited agents determine if a producer or handler meets organic requirements, using detailed information from the operation documenting its specific practices and on-site inspection reports from organic inspectors. Initial estimates were based on 59 entities applying for accreditation (13 State programs, 36 private entities, 10 foreign entities). The initial burden for each State program was an average of 695 hours or if calculated at a rate of $27 per hour (rounded up to the next dollar) $18,765. The initial burden for each private or foreign entity was 700 hours or if calculated at a rate of $27 per hour (rounded up to the next dollar) $18,900. To date 87 certifying agents (15 State programs, 38 private entities, 34 foreign entities) have been accredited. The AMS anticipates receiving an estimated 10 new applications per year. Accredited certifying agents submit annual updates with an annual burden, for each certifying agent, of an average of 3 hours or if calculated at a rate of $27 per hour (rounded up to the next dollar) $81.

Administrative costs for reporting, disclosure of information, and recordkeeping vary among certifying agents. Factors affecting costs include the number and size of clients, the categories of certification provided, and the type of systems maintained.

When an entity applies for accreditation as a certifying agent, it must provide a copy of its procedures for complying with recordkeeping requirements (§ 205.504 (b)(3)). Once certified, agents have to make their records available for inspection and copying by authorized representatives of the Secretary (§ 205.501 (a)(9)). The USDA charges certifying agents for the time required to do these document reviews. Audits require less time when the documents are well organized and centrally located.

Recordkeeping requirements for certifying agents are divided into three categories of records with varying retention periods: (1) Records created by certifying agents regarding applicants for certification and certified operations, maintain 10 years, consistent with OFPA's requirement for maintaining all records concerning activities of certifying agents; (2) records obtained from applicants for certification and certified operations, maintain 5 years, the same as OFPA's requirement for the retention of records by certified operations; and (3) records created or received by certifying agents regarding accreditation, maintain 5 years, consistent with OFPA's requirement for renewal of agent's accreditation (§ 205.510 (b)).

*Organic inspectors.* Inspectors, on behalf of certifying agents, conduct on-site inspections of certified operations and operations applying for certification. They determine whether or not certification should continue or be granted and report their findings to the certifying agent. Inspectors are the agents themselves, employees of the agents, or individual contractors. We estimate that about half are certifying agents and their employees and half are individual contractors. Individuals who apply for positions as inspectors submit to the agents information documenting their qualifications to conduct such inspections. Estimates: 293 inspectors (147 certifying agents and their employees, 146 individual contractors). The annual burden for each inspector is an average of 48 hours or if calculated at $27 per hour (rounded up to the next dollar) $1,296.

*Producers and handlers.* Producers and handlers, domestic and foreign, apply to certifying agents for organic certification, submit detailed information documenting their specific practices, provide annual updates to continue their certification, and report changes in their practices. Producers include farmers, livestock and poultry producers, and wild crop harvesters. Handlers include those who transport or transform food and include millers, bulk distributors, food manufacturers, processors, repackagers, or packers. Some handlers are part of a retail operation that processes organic products in a location other than the premises of the retail outlet.

The OFPA requires certified operators to maintain their records for 5 years. Initial estimates of: 19,400 total operators (14,253 certified and 5,147 exempt), including 17,150 producers (12,176 certified and 4,974 exempt) and 2,150 handlers (1,977 certified and 173 exempt) have not changed. The annual recordkeeping burden for each certified operator is an average of 5 hours or if calculated at $24 per hour (rounded up to the next dollar) $120.

The NOP exempts certain operations from certification: (1) Producers and handlers whose gross agricultural income from organic sales totals $5,000 or less annually; (2) handlers selling only agricultural products that contain less than 70 percent organic ingredients by total weight of the finished product; (3) handlers that handle agricultural products that contain at least 70 percent organic ingredients and choose to use the word "organic" only on the information panel of a packaged product; and (4) handlers that are retail food establishments that handle organic food but do not process it. The NOP also excludes certain operations from certification: (1) Handlers selling only agricultural products labeled as organic or made with organic ingredients that are enclosed in a container prior to being received, remain in the same container, and are not otherwise processed while in the control of the operation; and (2) handlers that are retail food establishments that process or prepare, on the premises, raw and ready-to-eat food from organic agricultural products.

Administrative costs for reporting and recordkeeping vary among certified operators. Factors affecting costs include the type and size of operation, and the type of systems maintained.

Research studies have indicated that operations using product labels containing the term "organic" handle an average of 19.5 labels annually and that there are about 16,000 products with the term organic on the label. An estimate of the time needed to develop labels for products sold, labeled, or represented as "100 percent organic," "organic," "made with organic (specified ingredients)," or which use the term organic to modify an ingredient in the ingredients statement is included. Also included is the time spent deciding about use of the USDA seal, a State emblem, or the seal, logo, or other identifying marks of a private certifying agent (Sec. 205.300–Sec. 205.310). Because the labeling requirements are in addition to Food and Drug Administration and Food Safety and Inspection Service requirements, the burden measurement does not include the hours necessary to develop the entire label. For purposes of calculating the burden, it is estimated that each handler develops 20 labels annually. Estimates: 1,977 certified handlers. The annual burden for each certified handler is an average of 1 hour per product label times 20 product labels per handler or if calculated at a rate of $27 per hour (rounded up to the next dollar) $540.

*Interested parties.* Any interested party may petition the NOSB for the purpose of having a substance evaluated for recommendation to the Secretary for inclusion on or deletion from the National List. Estimates: 25 interested parties may petition the NOSB. The annual burden for each interested party is an average of 104 hours or if calculated at $24 per hour (rounded up to the next dollar) $2,496.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 1.72 hours per response.

*Respondents:* Producers, handlers, certifying agents, inspectors and State, Local or Tribal governments and interested parties.

*Estimated Number of Respondents:* 19,766.

*Estimated Number of Responses:* 345,912.

*Estimated Number of Responses Per Respondent:* 17.5.

*Estimated Total Annual Burden on Respondents:* 593,523.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Richard H. Mathews, Program Manager, National Organic Program, USDA–AMS–TM–NOP, 1400 Independence Ave., SW., Room 4008–S0., Ag Stop 0268, Washington, DC 20250 or via the Internet at: *Paperwork@usda.gov,* or by fax at: (202) 205–7808. All comments received will be available for public inspection during regular business hours at the same address. Also, all comments to this notice will be available for viewing on the NOP homepage at *http://www.ams.usda.gov/nop.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

**Authority:** 7 U.S.C. 6501–6522.

Dated: October 2, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03–25459 Filed 10–7–03; 8:45 am]

**BILLING CODE 3410–02–P**

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## DEPARTMENT OF AGRICULTURE

## Food Safety and Inspection Service

**[Docket No. 03–034N]**

## Codex Alimentarius Commission: Meeting of the Codex Committee on Food Import and Export Inspection and Certification Systems

**AGENCY:** Office of the Under Secretary for Food Safety, USDA.

**ACTION:** Notice.

**SUMMARY:** The Office of the Under Secretary for Food Safety, United States Department of Agriculture and the United States Department of Health and Human Services, Food and Drug Administration (FDA), are sponsoring two public meetings. The first meeting will be held on October 22, 2003, to review and receive comments in preparation to develop draft U.S. positions, and the second will be held on November 12, 2003, to provide information and receive public comments on the U.S. Draft positions for agenda items that will be discussed at the Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS), which will be held in Brisbane, Australia, December 1–5, 2003. The Under Secretary and FDA recognize the importance of providing interested parties with information on the Twelfth Session of CCFICS and to address items on the Agenda.

**DATES:** The public meetings are scheduled for Wednesday, October 22, 2003, from 1 p.m. to 4 p.m., and Wednesday, November 12, 2003, from 1 p.m. to 3 p.m.

**ADDRESSES:** The public meetings will be held in Room 1A001 of the Harvey W. Wiley Federal Building, 5100 Paint Branch Pkwy, College Park, MD (green line, College Park Metro stop).

To receive copies of the documents referenced in this notice, contact the Food Safety and Inspection Service (FSIS) Docket Clerk, U.S. Department of Agriculture, FSIS, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. The documents will also become available via the World Wide Web at the following address: *http://codexalimentarius.net/current.asp.* If you have comments, please send an original and two copies to the FSIS Docket Clerk and reference Docket #03–034N. All comments submitted will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Edith Kennard, Staff Officer, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Agriculture Building, 1400 Independence Avenue SW., Washington, DC 20250–3700, telephone (202) 720–5261, Fax: (202) 720–3157.

**SUPPLEMENTARY INFORMATION:**

### Background

The Codex Alimentarius Commission (Codex) was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, USDA, FDA, and EPA manage and carry out U.S. Codex.

The Codex Committee on Food Import and Export Inspection and Certification Systems was established to develop principles and guidelines for food import and export inspection and certification systems to facilitate trade through harmonization and to supply safe and quality foods to consumers. The CCFICS develops principles and guidelines for the application of measures by competent authorities to provide assurance that food comply with essential requirements. Additionally, the CCFICS develops guidelines for quality assurance systems to ensure that foods conform with essential requirements.

The following issues will be discussed during the public meetings:

1. Proposed Draft Revision to the Codex Guidelines for the Exchange of Information on Food Control Emergency Situations.
2. Discussion Paper on Traceability/Product Tracing in the Context of Food Import and Export Inspection and Certification Systems.
3. Discussion Paper on the Judgment of Equivalence of Technical Regulations Associated with Food Inspection and Certification Systems.

### *Additional Public Notification*

Public involvement in all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice and informed about the mechanism for providing their comments, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on line through the Internet at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents and stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. Through the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information, contact the Congressional and Public Affairs Office at (202) 720–9113. To be added to the free e-mail subscription service (Listserv), go to the "Constituent Update" page on the FSIS web site at *http://www.fsis.usda.gov/oa/update.htm.* Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done at Washington, DC, on October 2, 2003.

**F. Edward Scarbrough,**

*U.S. Manager for Codex.*

[FR Doc. 03–25460 Filed 10–7–03; 8:45 am]

**BILLING CODE 3410–DM–P**

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## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

### Trade Adjustment Assistance for Farmers

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted petitions filed by the Catfish Farmers of America, Indianola, Mississippi; Rutledge & Rutledge, Newport, Arkansas; and the Western Regional Chapter of Kentucky Aquaculture Association, Farmington, Kentucky, for trade adjustment assistance. The groups represent catfish producers in the states of Alabama, Arkansas, Florida, Georgia, Idaho, Illinois, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nevada, North Carolina, Ohio, Oklahoma, South Carolina, Texas, and Utah. The Administrator will determine within 40 days whether or not imports of fresh, chilled, or frozen catfish fillets, contributed importantly to a decline in domestic producer prices of 20 percent or more during calendar 2002. If the determination is positive, all catfish farmers represented by the petitioners will be eligible to apply to the Farm Service Agency for technical assistance at no cost and adjustment assistance payments.

**FOR FURTHER INFORMATION CONTACT:** Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: October 2, 2003.

**A. Ellen Terpstra,**

*Administrator, Foreign Agricultural Service.*

[FR Doc. 03–25522 Filed 10–7–03; 8:45 am]

**BILLING CODE 3410–10–M**

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Kirkwood Mountain Resort's 2003 Mountain Master Development Plan; Eldorado National Forest, Placer County, CA

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Eldorado National Forest, Amador Ranger District is preparing an Environmental Impact Statement (EIS) analyzing proposed improvements outlined in Kirkwood Mountain Resort's *2003 Mountain Master Development Plan,* which provides for long-range planning on National Forest System lands with Kirkwood's Special Use Permit (SUP) area. The *August 2001 Mountain Master Development Plan* was slightly revised in September 2003 in order to accurately reflect Kirkwood's *2003 Specific Plan,* which was recently approved via the California Environmental Policy Act review process, and provides for long-range development of private lands within the Kirkwood community. Therefore, the *August 2001 Mountain Master Development Plan* will be referred to as the 2003 MMDP. The projects detailed within the 2003 MMDP were evaluated cumulatively within the *2003 Kirkwood Recirculated Revised Final Environmental Impact Report.*

The 2003 MMDP provides a detailed account of the Kirkwood's existing and potential recreational assets, constraints, and future needs. Kirkwood is seeking site-specific NEPA review of all projects identified in the 2003 MMDP which, if approved, could be implemented within five to eight years.

The 2003 MMDP focuses on enhancing the recreational experience at Kirkwood by providing for improvements to: the lift and terrain network; on-mountain guest services; snowmaking coverage; infrastructure; and non-skiing/riding activities. Due to the nature of Kirkwood's lift and terrain network, some of the proposals contained in the 2003 MMDP overlap onto adjacent, private property; however, all proposals for NFS lands are confined to Kirkwood's existing SUP area, and the SUP area is not proposed for expansion or modification.

**DATES:** Comments concerning the scope and implementation of this proposal should be received by November 7, 2003.

**ADDRESSES:** Send comments to Anthony Botello, Project Leader, Eldorado National Forest, 26820 Silver Drive, Pioneer, CA 95666, (209) 295–5998 Fax

**FOR FURTHER INFORMATION CONTACT:** Questions and comments about this EIS should be directed to Anthony Botello, at the above address, or call him at (209) 295–5960.

**SUPPLEMENTARY INFORMATION:** Kirkwood's Alpine comfortable carrying capacity (CCC—defined as the optimum number of guests accommodated by a resort at any one time, which affords a high quality recreational experience) is derived from the resort's combined uphill hourly capacity and the estimated demand for vertical transport. The 2003 MMDP proposes to increase Alpine CCC at Kirkwood from 6,460 guests to 9,300 guests.

Six existing aerial lifts are proposed for upgrades and/or realignments, including: Caples Crest (Chair 2)—which would be renamed "Flying Carpet" with full implementation of the 2003 MMDP; Iron Horse (Chair 3); Sunrise (4); Solitude (Chair 5); Wagon Wheel (Chair 10); and Reut (Chair 11). Two new chairlifts are proposed—Caples Crest Express and Thimble Peak (lifts A and C, respectively), as well as four new surface lifts—Look Out Vista (Lift B), Covered Wagon (Lift D), Red Cliffs (Lift E) and a snowplay lift. Proposed aerial and surface lifts would provide access to existing hike-to terrain within Kirkwood's SUP area.

Proposed terrain additions and improvements are proposed within Kirkwood's SUP area which would increase Kirkwood's formalized (*i.e.,* named) trail network from approximately 567 acres to approximately 781 acres. (Off-piste (*i.e.,* natural/ungroomed) terrain is not accounted for in this trail inventory or acreage). Seasonal construction (*i.e.*, from snow only) of a terrain park under Chair 4 and miscellaneous trail widening and improvements are proposed to improve the quality and diversity of the recreational experience offered at Kirkwood. The majority of terrain additions are proposed in open bowls, natural glades, and above treeline areas. Minor amounts of vegetation removal are proposed in association with new lift access and trails.

The Proposed Action includes installation of additional snowmaking infrastructure as well as re-analysis of previously approved, unimplemented snowmaking infrastructure. At full build-out, Kirkwood would offer approximately 192 acres of snowmaking coverage (56 acres of existing plus proposed/previously approved).

An on-mountain lodge near the summit of Caples Crest with year-round casual and fine dining, 700 indoor and 500 outdoor seats, restrooms, and ski patrol facilities, is proposed.

New ski patrol duty stations would be constructed atop the Covered Wagon, Thimble Peak, and the Red Cliffs lifts. In addition, the Proposed Action provides for modifications to the Chair 10 ski patrol duty station; and replacement of the Chair 2 ski patrol duty station with ski patrol space allocated in the Caples Crest Lodge. An overnight snowcat storage facility (for one machine) atop the Wagon Wheel Chairlift (Chair 10) and storage for an additional snowcat atop the Cornice Chairlift (Chair 6) is also proposed.

Non-skiing/riding improvements include: relocation and redesign of Kirkwood's snowtubing area to a mix of NFS/private lands near the Village; a paragliding program with launch sites accessed via the Caples Crest Express, Cornice Express, and Wagon Wheel chairlifts; improved access to Kirkwood's multiple use trails and a modified scenic ride program are also proposed; and improvement of two existing Nordic trails (*Agony* and *Ecstasy*) by using limited rock blasting within the existing trail corridor.

Infrastructural improvements include updating on-mountain utilities including power, water, sewer and communication lines.

A number of other projects on private lands at Kirkwood are addressed in Kirkwood's *2003 Specific Plan.* While facilities and projects located on private lands will not be analyzed in detail in this EIS, they have been incorporated into the overall planning and will be discussed cumulatively.

The Proposed Action is consistent with the 1989 Eldorado National Forest Land and Resource Management Plan as amended by the Sierra Nevada Forest Plan Amendment Record of Decision (2001).

The decision to be made is whether to adopt and implement the Proposed Action, an alternative to the Proposed Action, or take no action.

Other alternatives will be developed based on significant issues identified during the scoping process for the Environmental Impact Statement. All alternatives will need to respond to the states Purpose and Need. Alternatives being considered at this time include: (1) No Action and (2) the Purposed Action.

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from the Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the Proposed Action. To facilitate public participation, information about the Proposed Action is being mailed to all who have expressed interest in the Proposed Action and notification of the public scoping period will be published in the Mountain Democrat, Placerville, CA.

Comments submitted during the scoping process should be specific to this proposed action. The comments should describe as clearly and completely as possible any issues the commenter has with the proposal. The scoping process includes:

(a) Identifying potential issues;

(b) Identifying issues to be analyzed in depth.

(c) Eliminating non-significant issues or those previously covered by a relevant previous environmental analysis;

(d) Exploring additional alternatives;

(e) Identifying potential environmental effects of the Proposed Action and alternatives;

The draft EIS will be filed with the Environmental Protection Agency (EPA) and is expected to be available for public review by late Spring/early Summer 2004. EPA will publish a Notice of Availability (NOA) of the draft EIS in the Federal Register at that time. The comment period on the draft EIS will be 45 days from the date the EPA NOA appears in the Federal Register. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. It is very important that those interested in the management of the Eldorado National Forest participate at that time.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. (*Vermont Yankee Nuclear Power Corp.* v. *NRDC.*, 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until after completion of the final EIS may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the Proposed Action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The final EIS is anticipated to be completed in fall 2004. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal.

Judith Yandoh, Amador District Ranger, Eldorado National Forest is the responsible official. As the responsible official she will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR part 215).

Dated: September 30, 2003.

**Anthony Botello,**

*Acting Amador District Ranger.*

[FR Doc. 03–25486 Filed 10–7–03; 8:45 am]

**BILLING CODE 3410–11–M**

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## BROADCASTING BOARD OF GOVERNORS

### Sunshine Act; Closed Meeting

**DATE AND TIME:** October 14, 2003; 1 p.m.–5 p.m.

**PLACE:** Broadcasting Board of Governors, 330 Independence Avenue, SW, Washington, DC 20237.

**CLOSED MEETING:** The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) cr would disclose information the premature disclosure of which would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

**FOR FURTHER INFORMATION CONTACT:** Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: October 6, 2003.

**Carol Booker,**

*Legal Counsel.*

[FR Doc. 03–25646 Filed 10–6–03; 2:04 pm]

**BILLING CODE 8230–01–M**

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## CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

### Sunshine Act Meeting

In connection with its investigation into a violent explosion that occurred in a chemical distillation tower at First Chemical Corporation in Pascagoula, Mississippi, on October 13, 2002, the United States Chemical Safety and Hazard Investigation Board announces that it will convene a Public Meeting beginning at 9:30 a.m. local time on October 15, at the LaFont Inn, Highway 90, Pascagoula, Mississippi 39595.

The explosion occurred in a chemical distillation tower, sending heavy debris over a wide area. No one was seriously injured or killed in the incident, which occurred early on a Sunday morning. One nitrotoluene storage tank at the site was punctured by explosion debris, igniting a fire that burned for several hours. Three out of the 23 workers on site at the time of the incident received minor injuries, and nearby residents were temporarily sheltered in place. A producer of aniline and nitrotoluene derivatives and intermediates, First Chemical Corp. is a subsidiary of ChemFirst Inc., which was acquired by Dupont after the accident.

At the meeting CSB staff will present to the Board the results of their investigation into this incident, including an analysis of the incident together with a discussion of the key findings, root and contributing causes, and draft recommendations.

Recommendations are issued by a vote of the Board and address an identified safety deficiency uncovered during the investigation, and specify how to correct the situation. Safety recommendations are the primary tool used by the Board to motivate implementation of safety improvements and prevent future incidents. The CSB uses its unique independent accident investigation perspective to identify trends or issues that might otherwise be overlooked. CSB recommendations may be directed to corporations, trade associations, government entities, safety organizations, labor unions and others.

After the staff presentation, the Board will allow a time for public comment. Following the conclusion of the public comment period, the Board will consider whether to vote to approve the final report and recommendations. When a report and its recommendations are approved, this will begin CSB's process for disseminating the findings and recommendations of the report not only to the recipients of recommendations but also to other public and industry sectors. The CSB believes that this process will ultimately lead to the adoption of recommendations and the growing body of safety knowledge in the industry, which, in turn, should save future lives and property.

All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the issues and factors involved in this case. No factual analyses, conclusions or findings should be considered final. Only after the Board has considered the staff presentation and approved the staff report will there be an approved final record of this incident.

The meeting will be open to the public. Please notify CSB if a translator or interpreter is needed, at least 5 business days prior to the public meeting. For more information, please contact the Chemical Safety and Hazard Investigation Board at (202)–261–7600, or visit our Web site at: *http://www.csb.gov.*

**Christopher Warner,**

*General Counsel.*

[FR Doc. 03–25597 Filed 10–6–03; 10:38 am]

**BILLING CODE 6350–01–P**

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## CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

### Appointment of Members of Senior Executive Service Performance Review Board

**AGENCY:** Chemical Safety and Hazard Investigation Board.

**ACTION:** Notice.

**SUMMARY:** This notice announces the membership of the Senior Executive Service Performance Review Board for the Chemical Safety and Hazard Investigation Board (CSB).

**DATES:** Effective October 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Raymond C. Porfiri, Office of the General Counsel, (202) 261–7600.

**SUPPLEMENTARY INFORMATION:** 5 U.S.C. 4314(c) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, a performance review board (PRB). The PRB reviews initial performance ratings of members of the Senior Executive Services (SES) and makes recommendations on performance ratings and awards for senior executives. Because the CSB is a small independent Federal agency, the SES members of the CSB's PRB are being drawn from other Federal agencies.

The Chairperson of the CSB has appointed the following individuals to the CSB Senior Executive Service Performance Review Board:

Chair of the PRB—John S. Bresland (CSB Board Member).

PRB Member—Dan Campbell (Managing Director, National Transportation Safety Board).

PRB Member—Kathleen O'Brien Ham (Office of Strategic Planning and Policy Analysis, Federal Communications Commission).

This notice is published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4).

Dated: October 1, 2003.

**Raymond C. Porfiri,**

*Deputy General Counsel.*

[FR Doc. 03–25478 Filed 10–7–03; 8:45 am]

**BILLING CODE 6350–01–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–848]**

### Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review; Final Rescission, in Part; and Intent to Rescind, in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC) in response to requests from the Crawfish Processors Alliance, its members, and the Domestic Parties (collectively, the Domestic Interested Parties); and from respondents Qingdao Rirong Foodstuff Co., Ltd. (Qingdao Rirong), Weishan Fukang Foodstuffs Co., Ltd. (Weishan Fukang), and Weishan Zhenyu Foodstuff Co., Ltd. (Weishan Zhenyu). The period of review (POR) is from September 1, 2001 through August 31, 2002.

We preliminarily determine that sales have been made below normal value (NV). The preliminary results are listed below in the section titled "Preliminary Results of Review." If these preliminary results are adopted in our final results, we will instruct the U.S. Bureau of Customs and Border Protection (BCBP) to assess antidumping duties based on the difference between the export price (EP) or constructed export price (CEP), as applicable, and NV. Interested parties are invited to comment on these preliminary results. *See* the "Preliminary Results of Review" section of this notice.

**EFFECTIVE DATE:** October 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Doug Campau or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–1395 or (202) 482–3020, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Department published in the **Federal Register** an antidumping duty order on freshwater crawfish tail meat from the PRC on September 15, 1997. *See Notice of Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat from the People's Republic of China*, 62 FR 48218 (September 15, 1997). Based on timely requests from various interested parties, the Department initiated an administrative review of the antidumping duty order on freshwater crawfish tail meat from the PRC for the period of September 1, 2001 through August 31, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 65336 (October 24, 2002) (*Notice of Initiation*).

The Domestic Interested Parties requested a review of the following companies: China Everbright; China Kingdom Import & Export Co., Ltd., aka China Kingdoma Import & Export Co., Ltd., aka Zhongda Import & Export Co., Ltd. (China Kingdom); Fujian Pelagic Fishery Group Co. (Fujian Pelagic); Huaiyin Foreign Trade Corporation (5) (Huaiyin 5); Huaiyin Foreign Trade Corporation (30) (Huaiyin 30); Jiangsu Cereals, Oils, & Foodstuffs Import & Export Corp. (Jiangsu Cereals); Jiangsu Hilong International Trading Co., Ltd. (Jiangsu Hilong); Nantong Delu Aquatic Food Co., Ltd. (Nantong Delu); Nantong Shengfa Frozen Food Co., Ltd. (Nantong Shengfa); Ningbo Nanlian Frozen Foods Co., Ltd. (Ningbo Nanlian); North Supreme Seafood (Zhejiang) Co., Ltd. (North Supreme); Qingdao Rirong Foodstuff Co., Ltd., aka Qingdao Rirong Foodstuffs (Qingdao Rirong); Qingdao Zhengri Seafood Co., Ltd., aka Qingdao Zhengri Seafoods (Qingdao Zhengri); Shanghai Taoen International Trading Co., Ltd. (Shanghai Taoen); Shantou SEZ Yangfeng Marine Products Co. (Shantou SEZ); Shouzhou Huaxiang Foodstuffs Co., Ltd. (Shouzhou Huaxiang); Suqian Foreign Trade Corp., aka Suqian Foreign Trading (Suqian Foreign Trade); Weishan Fukang Foodstuffs Co., Ltd. (Weishan Fukang); Weishan Zhenyu; Yancheng Baolong Biochemical Products Co., Ltd. (YBBP); Yancheng Foreign Trade Corp., aka Yancheng Foreign Trading, aka Yang Chen Foreign Trading (YFTC); Yancheng Haiteng Aquatic Products & Foods Co., Ltd. (Yancheng Haiteng); Yancheng Yaou Seafoods (Yancheng Yaou); and Yangzhou Lakebest Foods Co., Ltd. (Yangzhou Lakebest). In addition, the Domestic Interested Parties requested review, for the same POR, of "'the single PRC entity,' within the meaning of that term as it was used in the Department's previous *Notice of Initiation*, 66 FR 54195, 54196 (October 26, 2001)." *See Letter from Domestic Interested Parties* (September 30, 2002).

On September 30, 2002, Qingdao Rirong, Weishan Fukang, and Weishan Zhenyu, which were included in the Domestic Interested Parties' request for review, also requested review of their shipments of subject merchandise. The Department published a notice of initiation of this antidumping duty administrative review on October 24, 2002. *See Notice of Initiation*. We did not specifically initiate a review of the PRC entity. *See Memorandum to Barbara E. Tillman: Domestic Parties Request for a Review of the Non-Market Economy Entity* (September 30, 2003).

On June 3, 2003, the Department determined that it was not practicable to complete the preliminary results of this review within the statutory time limit. Consequently, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act) and section 351.213(h)(2) of the Department's regulations, the Department extended the deadline for completion of the preliminary results to September 30, 2002. *See Notice of Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review: Freshwater Crawfish Tail Meat from the People's Republic of China*, 68 FR 33098 (June 3, 2003).

#### Final Rescission of Administrative Review, in Part

Pursuant to the Department's regulations, the Department will rescind an administrative review "if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." *See* 19 CFR 351.213(d)(1). Since Domestic Interested Parties submitted a timely withdrawal of its request for review of China Everbright, China Kingdom, Fujian Pelagic, Huaiyin 5, Huaiyin 30, Jiangsu Cereals, Jiangsu Hilong, Nantong Delu, Ningbo Nanlian, North Supreme, Qingdao Zhengri, Shantou SEZ, Suqian Foreign Trade, YBBP, YFTC, Yancheng Haiteng, and Yancheng Yaou, and no other interested party requested a review of these companies, the Department is rescinding its antidumping administrative review of these companies, in accordance with 19 CFR 351.213(d)(1).

## Intent to Rescind Administrative Review, in Part

The Department's regulations provide that the Department "may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise, as the case may be." *See* 19 CFR 351.213(d)(3). On December 11, 2002, Nantong Shengfa informed the Department that it did not export or produce for export to the United States, nor did it produce and sell subject merchandise through others to the United States, during the POR. In addition, on January 2, 2002, Weishan Zhenyu informed the Department that it did not have any direct or indirect export sales of the subject merchandise to the United States during the POR. The Department reviewed data on entries under the order during the period of review from the BCBP, and found no reportable U.S. entries, exports, or sales of subject merchandise by Nantong Shengfa or Weishan Zhenyu during the POR. Therefore, absent the submission of any evidence that these companies had reportable U.S. entries, exports, or sales of subject merchandise, the Department intends to rescind the administrative review with respect to these companies, in accordance with 19 CFR 351.213(d)(3).

## Scope of the Antidumping Duty Order

The product covered by this antidumping duty order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the new HTS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by the BCBP in 2000, and HTS numbers 0306.19.00.10 and 0306.29.00.00, which are reserved for fish and crustaceans in general. The HTS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive.

## Shanghai Taoen

The Department has identified a significant discrepancy between the quantity and value data Shanghai Taoen reported in its questionnaire response and the quantity and value information that the Department identified through BCBP data queries. The Department contacted BCBP about this issue and will be working closely with it to determine the cause of this discrepancy. In addition, the Department will further examine this issue for the final results by requesting additional information from Shanghai Taoen.

## Application of Facts Available

### 1. Shouzhou Huaxiang

As further discussed below, pursuant to sections 776(a)(2)(A),(B) and (D) and section 776(b) of the Act, the Department determines that the application of total adverse facts available is warranted for respondent Shouzhou Huaxiang. Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act provide for the use of facts otherwise available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. Section 776(a)(2)(D) of the Act warrants the use of facts otherwise available in reaching a determination when information is provided, but cannot be verified. Shouzhou Huaxiang requested an extension of the August 8, 2003 deadline for responding to the second supplemental questionnaire on August 6, 2003. *See Letter from Shouzhou Huaxiang*, at 1 (August 6, 2003). The Department granted a 12-day extension, to August 20, 2003. *See Letter to Shouzhou Huaxiang*, at 1 (August 8, 2003). However, Shouzhou Huaxiang never submitted its response. Thus, because Shouzhou Huaxiang failed to respond to the Department's second supplemental questionnaire, pursuant to sections 776(a)(2)(A) and (B) of the Act, the Department determines that the application of facts otherwise available is warranted.

The Department further finds that the application of facts available is also warranted pursuant to section 776(a)(2)(D) of the Act, because Shouzhou Huaxiang's questionnaire responses could not be verified. On June 4, 2002, Shouzhou Huaxiang informed the Department that "due {sic} the continuing impact of the recent flooding of the Huaihe river, Shouzhou Huaxiang, the company {sic} will not be able to participate in the verification scheduled to begin on August 29, 2003." *See Letter from Shouzhou Huaxiang*, at 1 (August 18, 2003). On August 15, 2003, the Department left messages with counsel for Shouzhou Huaxiang to convey the Department's continued willingness to try to work with Shouzhou Huaxiang, and to offer to consider any alternative proposals for conducting verification (such as by shuffling the order in which each of the three entities Shouzhou Huaxiang, and its two producers would be visited). *See Memorandum to the File: Shouzhou Huaxiang Foodstuffs Co., Ltd.'s Refusal to Allow Verification*, (September 29, 2003) (*Shouzhou Huaxiang Memo*).

On August 18, 2003, prior to the extended deadline for responding to the second supplemental questionnaire, the Department again contacted counsel for Shouzhou Huaxiang, to convey the Department's continued willingness to try to work with Shouzhou Huaxiang, and to offer to consider any alternative proposals for conducting verification. The Department also asked whether Shouzhou Huaxiang's producers, Yancheng Yaou and Hubei Houhu, could still be verified. *Id.* at 3. Counsel for Shouzhou Huaxiang indicated that they would discuss the matter with Shouzhou Huaxiang, and then get back to the Department on August 19, 2003. *Id.* On August 19, 2003, the Department again contacted counsel for Shouzhou Huaxiang to find out whether they had received any feedback from Shouzhou Huaxiang, concerning the Department's offer to consider any alternative proposals for conducting verification, or whether Shouzhou Huaxiang's producers, Yancheng Yaou and Hubei Houhu, would agree to be verified. *Id.*

Shouzhou Huaxiang never offered any alternative proposals for conducting verification, and never changed its position that it would not participate in verification. This decision prevented the verification of information placed on the record. Thus, the information submitted by Shouzhou Huaxiang cannot serve as a reliable basis for reaching a determination since verification provides the Department with an opportunity to check the accuracy of the information submitted by the respondent. Because Shouzhou Huaxiang did not respond to the Department's second supplemental questionnaire, and refused to allow verification, sections 782(d) and (e) of the Act are not applicable.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of a respondent, if it determines that a party has failed to cooperate to the best of its ability. The Department finds that

Shouzhou Huaxiang has failed to cooperate to the best of its ability because evidence on the record of this review indicates that it could have complied with the Department's request for supplemental information and could have participated in verification. Information on the record indicates that the flooding referred to by Shouzhou Huaxiang was not so severe that verification could not proceed by August 29, 2003, or that the company could not respond to the Department's second supplemental questionnaire by the extended August 20, 2003 deadline. *See Shouzhou Huaxiang Memo* at 3–4. Shouzhou Huaxiang's main business is selling crawfish tail meat, and during the period of review it dealt with a limited number of crawfish tail meat processors. As such, Shouzhou Huaxiang was in a position to respond to the Department's supplemental questionnaire. The Department's determination that Shouzhou Huaxiang failed to act to the best of its ability is further supported by Shouzhou Huaxiang's failure to participate in, and even propose any alternatives to, the Department's request for verification. Shouzhou Huaxiang participated in a previous review, and was therefore aware of the Department's interest in conducting verification of Shouzhou Huaxiang's questionnaire responses. Shouzhou Huaxiang was further put on notice that the Department intended to conduct verification by the Department's letter of August 6, 2003, and by the Department's verification outline issued on August 11, 2003. *Id.* at 1–2. While Shouzhou Huaxiang initially raised concerns regarding the location and timing of the verification due to flooding in the area, Shouzhou Huaxiang failed to respond to the Department's requests that Shouzhou Huaxiang propose alternative arrangements. The Department therefore concludes that Shouzhou Huaxiang failed to cooperate to the best of its ability by refusing to allow verification, as well as for failing to respond to the Department's second supplemental questionnaire, as discussed above.

Because the Department concludes that Shouzhou Huaxiang failed to cooperate to the best of its ability, in applying the facts otherwise available, the Department finds that an adverse inference is warranted, pursuant to section 776(b) of the Act. Since Shouzhou Huaxiang did not allow verification of its questionnaire responses, the Department was unable to examine Shouzhou Huaxiang's eligibility for a separate rate. In the absence of verifiable information establishing Shouzhou Huaxiang's entitlement to a separate rate, we have preliminarily determined that it is subject to the PRC-wide rate. As AFA, and as the PRC-wide rate, the Department is assigning the rate of 223.01 percent-the highest rate determined in the current or any previous segment of this proceeding. *See Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002) (*1999–2000 Final Results*). As discussed further below, this rate has been corroborated.

2. Yangzhou Lakebest

As further discussed below, pursuant to sections 776(a)(2)(A) and (B) and section 776(b) of the Act, the Department determines that the application of total adverse facts available is warranted for respondent Yangzhou Lakebest. Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act provide for the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. Yangzhou Lakebest failed to properly file its response to the Department's May 2, 2003 supplemental questionnaire. *See Memorandum to the File: Details of Communications with Yangzhou Lakebest Foods Co. Ltd.* (September 30, 2003). The Department received Yangzhou Lakebest's response to the May 2, 2003 supplemental questionnaire on June 6, 2003. We examined the response and found numerous deficiencies. The response contained numerous errors regarding the bracketing of information for which proprietary treatment was requested in the response, and the factors of production information was incomplete and unusable. In addition, Yangzhou Lakebest did not file the required number of copies with the Department or serve the other interested parties. Therefore, we returned the response to Yangzhou Lakebest. In the accompanying letter, the Department requested that Yangzhou Lakebest remedy the procedural errors in its response and refile it and explain a number of substantive deficiencies in its response. *See Letter to Yangzhou Lakebest* (June 20, 2003). However, Yangzhou Lakebest failed to re-file its response to the Department's supplemental questionnaire, or to provide any explanation for its deficiencies. The Department received no further responses, correspondence, or other filings from Yangzhou Lakebest after the company submitted its deficient response to the Department's supplemental response on June 6, 2003. Because Yangzhou Lakebest stopped responding to the Department, section 782(e) of the Act is not applicable.

Yangzhou Lakebest failed to provide information explicitly requested by the Department; therefore, we must resort to the facts otherwise available. Section 782(c)(1) of the Act does not apply because Yangzhou Lakebest did not indicate that it was unable to submit the information required by the Department.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of the respondent, if it determines that a party has failed to cooperate to the best of its ability. The Department finds that, by not providing the necessary responses to the questionnaires issued by the Department, and not providing any explanation, Yangzhou Lakebest failed to cooperate to the best of its ability. The information requested by the Department is integral to its antidumping analysis. Without complete and reliable factors of production information, the Department cannot calculate normal value, and, therefore, a dumping margin. Yangzhou Lakebest is the only party which has access to the information requested by the Department and therefore is the only party which could have complied with the Department's supplemental request for information and provided the necessary factors of production data.

Therefore, in selecting from the facts available, the Department determines that an adverse inference is warranted. In accordance with sections 776(a)(2)(A) and (B), as well as section 776(b) of the Act, because of the breadth of the missing, unsupported and unverifiable data, we are applying total adverse facts available to Yangzhou Lakebest. As part of this adverse facts available determination, we find that Yangzhou Lakebest did not demonstrate its eligibility for a separate rate, and have preliminarily determined that it is subject to the PRC-wide rate. As noted above, as AFA, and as the PRC-wide rate, the Department is assigning the rate of 223.01 percent-the highest rate determined in the current or any previous segment of this proceeding. See 1999–2000 Final Results. As discussed below, this rate has been corroborated.

3. Weishan Fukang

As further discussed below, pursuant to sections 776(a)(2)(D) and section

776(b) of the Act, the Department determines that the application of total adverse facts available is warranted for respondent Weishan Fukang because Weishan Fukang failed to allow the Department to verify its questionnaire responses. Section 776(a)(2)(D) warrants the use of facts otherwise available in reaching a determination when information is provided, but cannot be verified. Verification of the questionnaire responses of Weishan Fukang was scheduled for August 27 through August 29, 2003. On August 28, 2003, Weishan Fukang withdrew from verification. *See Memorandum to the File: Verification of Weishan Fukang Foodstuffs Co., Ltd.* (September 26, 2003). Verification is integral to the Department's analysis because it allows the Department to satisfy itself that the information that the Department relies upon in calculating a margin is accurate and therefore enables the Department to comply with the statutory mandate to calculate the dumping margin as accurately as possible. Since Weishan Fukang withdrew from verification, the Department cannot rely on Weishan Fukang's questionnaire responses to calculate a margin for Weishan Fukang.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of a respondent, if it determines that a party has failed to cooperate to the best of its ability. The Department concludes that Weishan Fukang failed to cooperate to the best of its ability when it withdrew from verification. In applying the facts otherwise available, the Department finds that an adverse inference is warranted, pursuant to section 776(b) of the Act. Because Weishan Fukang did not demonstrate, using verifiable information, its eligibility for a separate rate, we have preliminarily determined that it is subject to the PRC-wide rate. As noted above, as AFA, and as the PRC-wide rate, the Department is assigning the rate of 223.01 percent - the highest rate determined in the current or any previous segment of this proceeding. *See 1999–2000 Final Results.* As discussed further below, this rate has been corroborated.

4. Qingdao Rirong

As further discussed below, pursuant to sections 776(a)(2)(A) and (B) and section 776(b) of the Act, the Department determines that the application of total adverse facts available is warranted for respondent Qingdao Rirong. On April 21, 2003, the Department published *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review* (*2000–2001 Final Results*), 68 FR 19504, for the review period covering September 1, 2000 through August 31, 2001 (2000/2001 POR). In the *2000–2001 Final Results*, and accompanying *Issues and Decision Memorandum*, which the Department has placed on the record of this review, the Department determined that Qingdao Rirong and its U.S. importer, Y&Z International (Y&Z), should be treated as affiliated parties for purposes of the 2000/2001 POR. In that determination, we also found that Qingdao Rirong was affiliated with Y&Z until at least December 16, 2002. *See 2000–2001 Final Results*, at comment 3.

On November 20, 2002, the Department issued its initial antidumping duty questionnaire in the instant administrative review to Qingdao Rirong. *See Qingdao Rirong Questionnaire*. In Section C of the Department's questionnaire, the Department requested that Qingdao Rirong identify its sales as either EP or CEP. *See Qingdao Rirong Questionnaire*, dated November 20, 2002, at Section C. On January 22, 2003 (and resubmitted on May 20, 2003), Qingdao Rirong responded to the Department's questionnaire. *See Qingdao Rirong Questionnaire Response*, dated May 20, 2003. In its response, Qingdao Rirong stated that "{d}uring the POR, all Rirong sales to the United States were EP sales."

Based on our determination in the *2000–2001* Final Results that Qingdao Rirong and Y&Z were affiliated throught at least December 16, 2002, the Department requested that Qingdao Rirong report U.S. sales for the current review period on a CEP basis. *See Supplemental Questionnaire from the Department to Qingdao Rirong*, dated June 10, 2003. The Department noted that "should {Qingdao Rirong} choose not to provide sales data on a CEP basis, and should the Department conclude that Qingdao Rirong and Y&Z should be considered affiliated for this period of review, and that, as a result, U.S. sales should be classified as CEP sales, the Department may apply facts available for purposes of this review." *Id.* In its July 1, 2003 response to the Department's June 10, 2003 supplemental questionnaire, Qingdao Rirong claimed that it was not affiliated with Y&Z "in any form for this fifth administrative review." *See Qingdao Rirong Supplemental Questionnaire Response*, dated July 1, 2003 at page 2.

On August 4, 2003, the Department placed on the record of this review its affiliation analysis for the current POR, incorporating information obtained during both the current and previous administrative reviews, in which it again determined that, at least through December 16, 2002, Qingdao Rirong was affiliated with Y&Z under section 771(33) of the Act. *See Memorandum to Barbara E. Tillman: Analysis of Relationship between Qingdao Rirong Foodstuff, Co., Ltd., and Y&Z International Trade Inc.* Thus, Qingdao Rirong's CEP sales data was necessary in order for the Department to be able to calculate Qingdao Rirong's antidumping margin, in accordance with sections 771(33) and 772(b) of the Act, and 19 CFR 351.402 of the Department's regulations. In light of this determination, the Department sent Qingdao Rirong a letter in which it again requested that Qingdao Rirong report its U.S. sales on a CEP basis. *See Letter to Qingdao Rirong* (August 4, 2003). On August 11, Qingdao Rirong submitted a letter to the Department indicating that it would not report its U.S. sales on a CEP basis. *See Letter from Qingdao Rirong* (August 11, 2003).

As further discussed below, pursuant to sections 776(a)(2)(A) and (B) and section 776(b) of the Act, the Department determines that the application of total adverse facts available is warranted for respondent Qingdao Rirong. Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act provide for the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in the form required. Qingdao Rirong refused to provide its U.S. sales data on the appropriate CEP basis. As the Department has determined that Qingdao Rirong and Y&Z are affiliated for purposes of this administrative review, the CEP sales data (i.e., the sales price from Y&Z to the first unaffiliated customer in the United States, and all the CEP adjustment information) requested by the Department would provide the only reliable basis for calculating a dumping margin for Qingdao Rirong. Qingdao Rirong failed to provide information explicitly requested by the Department; therefore, we must resort to the facts otherwise available. Because Qingdao Rirong refused to provide its U.S. sales data on the appropriate basis, sections 782(d) and (e) of the Act are not applicable.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of the respondent, if it determines that a party has failed to cooperate to the best of its ability. The Department concludes that Qingdao Rirong failed to cooperate to the best of its ability by refusing to provide its U.S. sales data on the appropriate basis. Without CEP sales data, none of the information submitted by Qingdao Rirong can serve as a reliable basis for reaching a determination because we do not have the appropriate U.S. sales to compare to NV. This information was in the sole possession of Qingdao Rirong, and could not be obtained otherwise. Thus, the Department is precluded from calculating a margin for Qingdao Rirong. Because the Department concludes that Qingdao Rirong failed to cooperate to the best of its ability, in applying the facts otherwise available, the Department finds that an adverse inference is warranted, pursuant to section 776(b) of the Act. Because Qingdao Rirong did not demonstrate its eligibility for a separate rate, we have preliminarily determined that it is subject to the PRC-wide rate. As AFA, and as the PRC-wide rate, the Department is assigning the rate of 223.01 percent-the highest rate determined in the current or any previous segment of this proceeding. This is a calculated dumping margin from the 1999–2000 administrative review. *See 1999–2000 Final Results.* As discussed further below, this rate has been corroborated.

**Corroboration of Secondary Information Used As Adverse Facts Available**

Section 776(c) of the Act provides that when the Department relies on the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The *Statement of Administrative Action*, H.R. Doc. 103–316 (SAA), states that "corroborate" means to determine that the information used has probative value. *See* SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for calculated margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from the current or a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. *See, e.g., Grain-Oriented Electrical Steel From Italy; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 36551, 36552 (July 11, 1996). The information used in calculating this margin was based on sales and production data of a respondent in a prior review, and on the most appropriate surrogate value information available to the Department, chosen from submissions by the parties in that review, as well as information gathered by the Department itself. Furthermore, the calculation of this margin was subject to comment from interested parties in the proceeding. *See 1999–2000 Final Results.* With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co.* v. *United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present here. As there is no information on the record of this review that indicates that this rate is not relevant as adverse facts available for the PRC-entity, including Shouzhou Huaxiang, Yangzhou Lakebest, Weishan Fukang, and Qingdao Rirong, we determine that this rate has probative value. Accordingly, we determine that the highest rate from any segment of this administrative proceeding (*i.e.*, 223.01 percent) is in accord with section 776(c)'s requirement that secondary information be corroborated (*i.e.*, that it have probative value).

**Verification**

As provided in section 782(i) of the Act, we verified the responses of Shanghai Taoen. We used standard verification procedures, including on-site inspection of the manufacturers' facilities and the examination of relevant sales and financial records. Verification of the questionnaire responses of Shanghai Taoen took place from August 18 through August 21, 2003. *See Antidumping Duty Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China (PRC) (A-570-848): Verification Report for Shanghai Taoen International Trading Co., Ltd.* (September 29, 2003).

Verification of the questionnaire responses of Weishan Fukang was scheduled for August 27 through August 29, 2003. However, as described in the "Application of Facts Available" section above, on August 28, 2003, Weishan Fukang withdrew from verification. *See Memorandum to the File: Verification of Weishan Fukang Foodstuffs Co., Ltd.* (September 26, 2003). Our verification results are on file in the CRU, Room B-099 of the main Department building.

**Separate Rates Analysis for Shanghai Taoen**

To establish whether a company operating in a non-market economy country (NME) is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994). Under this policy, exporters in NMEs are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: 1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; and 3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: 1) whether each exporter sets its own export prices independently of the government and without the approval of a government authority; 2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; 3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and 4) whether each exporter has autonomy from the government regarding the selection of management.

*De Jure Control*

In its questionnaire responses, Shanghai Taoen stated that it is an independent legal entity. Evidence on the record indicates that the government does not have *de jure* control over Shanghai Taoen's export activities. Shanghai Taoen submitted evidence of its legal right to set prices independent of all government oversight. Furthermore, the business license of Shanghai Taoen indicates that it is permitted to engage in the exportation of crawfish. We also found no evidence of *de jure* government control restricting Shanghai Taoen's exportation of crawfish.

In its responses, Shanghai Taoen stated that no export quotas apply to crawfish. Prior verifications have confirmed that there are no commodity-specific export licenses required and no quotas for the seafood category "Other," which includes crawfish, in *China's Tariff and Non-Tariff Handbook* for 1996. In addition, we have previously confirmed that crawfish is not on the list of commodities with planned quotas in the 1992 PRC Ministry of Foreign Trade and Economic Cooperation document entitled *Temporary Provisions for Administration of Export Commodities. See Freshwater Crawfish Tail Meat From the People's Republic of China; Preliminary Results of New Shipper Review*, 64 FR 8543 (February 22, 1999) and *Freshwater Crawfish Tail Meat From the People's Republic of China; Final Results of New Shipper Review*, 64 FR 27961 (May 24, 1999) (*Ningbo New Shipper Review*).

The following laws, which have been placed on the record of this review, indicate a lack of *de jure* government control. The *Company Law of the People's Republic of China*, effective as of July 1, 1994 states that a company is an enterprise legal person, that shareholders shall assume liability towards the company to the extent of their shareholdings, and that the company shall be liable for its debts to the extent of all its assets. Shanghai Taoen also provided copies of the *Foreign Trade Law of the PRC*, which identifies the rights and responsibilities of organizations engaged in foreign trade dealings, grants autonomy to foreign trade operators in management decisions, and establishes the foreign trade operator's accountability for profits and losses. Shanghai Taoen also provided a copy of its business license. We therefore preliminarily determine that there is an absence of *de jure* control over the export activities of Shanghai Taoen.

*De Facto Control*

With respect to the absence of *de facto* control over export activities, information on the record indicates that, for Shanghai Taoen, company management is responsible for all decisions concerning export strategies, export prices, profit distribution, and contract negotiations, and that there are no governmental policy directives that affect management's decisions. Furthermore, Shanghai Taoen's pricing and export strategy decisions are not subject to any outside entity's review or approval. Information on the record also indicates that there is no government involvement in the daily operations or the selection of management for Shanghai Taoen.

There are no restrictions on the use of Shanghai Taoen's export earnings. Shanghai Taoen's general manager has the right to negotiate and enter into contracts, and may delegate this authority to employees within the company. There is no evidence that this authority is subject any level of governmental approval. Shanghai Taoen has stated that its management is selected by its board of directors and/or its employees, and that there is no government involvement in the management selection process. Lastly, decisions made by Shanghai Taoen concerning purchases of subject merchandise from other suppliers are not subject to government approval. We therefore preliminarily determine that there is an absence of *de facto* control over the export activities of Shanghai Taoen.

Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over its export activities, we preliminarily determine that Shanghai Taoen is eligible for a separate rate.

**Normal Value Comparisons**

To determine whether Shanghai Taoen's sales of the subject merchandise to the United States were made at prices below NV, we compared its United States prices to NV, as described in the *United States Price* and *Normal Value* sections of this notice.

**United States Price**

For Shanghai Taoen, we based United States price on EP in accordance with section 772(a) of the Act, because the first sales to unaffiliated purchasers were made prior to importation, and CEP was not otherwise warranted by the facts on the record. We calculated EP based on packed prices from the exporter to the first unaffiliated purchaser in the United States. Where applicable, we deducted foreign inland freight, brokerage and handling expenses in the home market, and ocean freight, from the starting price (gross unit price) in accordance with Section 772(c) of the Act.

**Normal Value**

Section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the respondents contested such treatment in this review. Accordingly, we have applied surrogate values to the factors of production to determine NV. *See Factor Values Memo for the Preliminary Results of the Antidumping Duty Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China*, dated September 30, 2003 (Factor Values Memo).

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and 19 CFR 351.408(c). Consistent with the original investigation and subsequent administrative reviews of this order, we determined that India (1) is comparable to the PRC in level of economic development, and (2) is a significant producer of comparable merchandise. With the exceptions of the whole live crawfish input and the crawfish scrap by-product, for which Indian data were not available, we valued the factors of production using publicly available information from India. We adjusted the Indian import prices by adding foreign inland freight expenses to make them delivered prices.

We valued the factors of production as follows:

To value the input of whole crawfish we used publicly available data for Spanish imports of whole live crawfish from Portugal. As noted above, Indian data were not available and this data was all that was available on the record of this review. We adjusted the values of whole live crawfish to include freight costs incurred between the supplier and the factory. For transportation distances used in the calculation of freight expenses on whole live crawfish, we added, using surrogate values from India, a surrogate freight cost of the shorter of (a) the distances between the closest PRC port and the factory, or (b) the distance between the domestic supplier and the factory. (*See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China*, 62 FR 51410 (October 1, 1997) (*Roofing Nails*).)

To value a by-product, wet crawfish scrap, we used a price quote from Indonesia for wet crab and shrimp shells. (*See* Attachment 5 of the *Factor Values Memo*.) Again, Indian data were not available, and this was the best information available.

To value coal, we used Indian import data, concurrent with the POR, from the *World Trade Atlas*. We adjusted the cost of coal to include an amount for transportation. To value electricity, we used the 2001 total cost per kilowatt hour (KWH) for "Electricity for Industry" as reported in the International Energy Agency's publication, *Key World Energy Statistics*, 2002. For water, we relied upon public information from the October 1997 *Second Water Utilities Data Book: Asian and Pacific Region*, published by the Asian Development Bank.

To achieve comparability of water prices to the factors reported for the POR, we adjusted this factor value to reflect inflation through the POR using the Wholesale Price Index (WPI) for India, as published in the 2002 *International Financial Statistics*(*IFS*) by the International Monetary Fund (IMF).

To value packing materials (plastic bags, cardboard boxes and adhesive tape), we used Indian import data from the *World Trade Atlas*, concurrent with the POR. We adjusted the values of packing materials to include freight costs incurred between the supplier and the factory. For transportation distances used in the calculation of freight expenses on packing materials, we added, to surrogate values from India, a surrogate freight cost using the shorter of (a) the distances between the closest PRC port and the factory, or (b) the distance between the domestic supplier and the factory. (*See Roofing Nails*.)

To value factory overhead, selling, general, and administrative expenses (SG&A), and profit, we continued to use simple averages derived from the publicly available 1996–97 financial statements of four Indian seafood processing companies. We applied these rates to the calculated cost of manufacture. (*See Factor Values Memo*, at 6.)

For labor, we used the PRC regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2002, and corrected in February 2003. *See http://ia.ita.doc.gov/wages/*. Because of the variability of wage rates in countries with similar per capita gross domestic products, 19 CFR 351.408(c)(3) requires the use of a regression-based wage rate. The source of these wage rate data on the Import Administration's web site is the *Year Book of Labour Statistics 2000*, International Labour Office (Geneva: 2001), Chapter 5: Wages in Manufacturing.

To value truck freight expenses we used an average of nineteen Indian price quotes as reported in the February 14, 2000 issue of *The Financial Express* (an Indian business publication), which were used in the antidumping duty investigation of certain circular welded carbon-quality steel pipe from the PRC. *See Notice of Final Determination of Sales at Less than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China*, 67 FR 36570 (May 24, 2002) (*China Pipe*). We adjusted the rates to reflect inflation through the POR using the WPI for India from the *IFS*.

To value foreign brokerage and handling, we used a publicly summarized version of the average value for brokerage and handling expenses reported in *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from India*, 66 FR 50406 (October 3, 2001) (*Hot-Rolled from India*), which was also used in *China Pipe*. We used the average of the foreign brokerage and handling expenses reported in the U.S. sales listing of the public questionnaire response submitted in the antidumping investigation of Essar Steel Ltd. in *Hot-Rolled from India*. Charges were reported on a per metric ton basis, which we converted to a per pound basis. We adjusted these values to reflect inflation through the POR using the WPI for India from the *IFS*. *See Factor Values Memo*.

To value ocean freight we used September 2000 quotes from Maersk Sealand and TransOceanic from Shanghai to various U.S. ports, adjusted for inflation. *See Factor Values Memo*.

**Currency Conversions**

We made currency conversions using exchange rates obtained from the website of Import Administration at *http://ia.ita.doc.gov/exchange/index.html*.

**Preliminary Results of Review**

We preliminarily determine that the following dumping margins exist:

| Manufacturer and exporter | Period of review | Margin (percent) |
|---|---|---|
| Shanghai Taoen | 9/1/01 – 8/31/02 | 57.73 |
| PRC-Wide Rate[1] | 9/1/01 – 8/31/02 | 223.01 |

Shouzhou Huaxiang, Yangzhou Lakebest, Weishan Fukang, and Qingdao Rirong are included in the PRC-wide rate.

**Cash Deposit Requirements**

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For Shanghai Taoen, a per kilogram cash deposit rate will be established (*see Memorandum to Barbara E. Tillman through Maureen Flannery, from Mark Hoadley: Collection of Cash Deposits and Assessment of Duties on Freshwater Crawfish from the PRC*, August 27, 2001, and placed on the record of this review (*Cash Deposits Memo*)) ; (2) For all other exporters with separate rates, the deposit rate will be the company-specific per-kilogram or *ad valorem* rate established for the most recent period, as applicable; (3) For all other PRC exporters, the rate will be the PRC-wide rate, 223.01 percent; (4) For all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that exporter.

**Assessment Rates**

Upon completion of this administrative review, the Department shall determine, and the U.S. Customs

Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the BCBP upon completion of this review. For assessment purposes, for Shanghai Taoen, where appropriate, we will calculate importer-specific assessment rates for freshwater crawfish tail meat from the PRC. We will divide the total dumping margins (calculated as the difference between NV and EP) for each importer by the total quantity of subject merchandise sold by Shanghai Taoen to that importer during the POR. *See Cash Deposits Memo.* Upon the completion of this review, we will direct Customs to assess the resulting quantity-based rates against the weight in kilograms of each entry of the subject merchandise by the importer during the POR. Also upon completion of this review, for all other exporters covered by this review, we will direct BCBP to assess the resulting *ad valorem* rates against the entered value of each entry of the subject merchandise during the POR. The Department will issue appropriate assessment instructions directly to BCBP within 15 days of publication of the final results of review.

## Comments and Hearing

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Normally, case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, not later than 120 days after publication of these preliminary results, unless extended.

## Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are published in accordance with section 751(a)(1) of the Act, and 19 CFR 351.213 and 351.221.

Dated: September 30, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–25517 Filed 10–7–03; 8:45 am]

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–570–851]

## Certain Preserved Mushrooms From the People's Republic of China: Rescission of Antidumping Duty New Shipper Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Rescission of the Antidumping Duty New Shipper Review.

**SUMMARY:** In response to requests from Xiamen Zhongjia Imp. & Exp. Co., Ltd. and Zhangzhou Longhai Minhui Industry and Trade Co., Ltd., the Department of Commerce initiated a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China. The period of review is February 1, 2002, through July 31, 2002.

For the reasons discussed below, this review has now been rescinded. No party submitted comments in response to our intent to rescind this review.

**EFFECTIVE DATE:** October 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Brian C. Smith or James Mathews, Office of AD/CVD Enforcement 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230; telephone: (202) 482–1766 and (202) 482–2778, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

The Department of Commerce ("the Department") initiated a new shipper review covering Xiamen Zhongjia Imp. & Exp. Co., Ltd. ("Zhongjia") and Zhangzhou Longhai Minhui Industry and Trade Co., Ltd. ("Minhui") on September 30, 2002. This initiation was based on, among other things, each company's certification that it was both the exporter and producer of the subject merchandise for which it requested a new shipper review. *See Certain Preserved Mushrooms from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review*, 67 FR 62438 (October 7, 2002) ("*Initiation Notice*"). On July 28, 2003, we notified parties of our intent to rescind this review because during the course of conducting this review, both Zhongjia and Minhui revealed that they were not the producer of the subject merchandise they exported to the United States during the period of review ("POR") (*see Certain Preserved Mushrooms from the People's Republic of China: Intent to Rescind Antidumping Duty New Shipper Review*, 68 FR 45792 (August 4, 2003). Therefore, neither respondent provided the Department with the producer certification required for initiating this review. *See* 19 CFR 351.214(b)(2)(ii).

## Scope of the Order

The products covered by this order are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms"; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified" or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.[1]

The merchandise subject to this order is classifiable under subheading: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, and 0711.51.0000 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

## Rescission of Review

As mentioned above, both Minhui and Zhongjia stated in their respective requests for a new shipper review that each company was an exporter and producer of the subject merchandise during the POR. Therefore, for purposes of initiating this review and based on the certifications provided by both Zhongjia and Minhui in accordance with 19 CFR 351.214(b)(2)(i), the Department was led to believe that both companies also produced the merchandise for which each requested a review. However, in the course of conducting this review, both Minhui and Zhongjia's responses to the Department's antidumping questionnaire indicated that neither company is a producer of the subject merchandise. Consequently, Zhongjia and Minhui misstated the facts when each claimed in its respective new shipper review request that it was both the exporter and producer of the merchandise subject to this review.

In order to qualify for a new shipper review under 19 CFR 351.214(b)(2)(ii), a company that exports but does not produce the subject merchandise for which it requests such a review must provide, among other things, (1) a certification that it did not export subject merchandise to the United States during the period of investigation ("POI"), and (2) a certification from the person or company which produced or supplied the subject merchandise that the producer or supplier did not export the subject merchandise to the United States during the POI. *See* 19 CFR 351.214(b)(2)(ii)(A) and (B).

Because Zhongjia and Minhui did not provide a certification from the respective producers of the subject merchandise they sold or exported to the United States during the POR in accordance with 19 CFR 351.214(b)(2)(ii)(B), neither respondent met the minimum requirements for an entitlement to a new shipper review.

Therefore, for the reasons stated above and absent comments submitted by the parties in this segment of the proceeding, we have rescinded this new shipper review with respect to Zhongjia and Minhui.

## Notification

Bonding will no longer be permitted to fulfill security requirements for shipments from Minhui or Zhongjia of certain preserved mushrooms from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final rescission notice. The cash-deposit rate required for subject merchandise from the PRC NME entity (including Zhongjia and Minhui), entered, or withdrawn from warehouse, for consumption on or after the publication of the final rescission notice will continue to be the PRC-wide rate of 198.63 percent. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This rescission notice is in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR 351.214.

Dated: October 2, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–25518 Filed 10–7–03; 8:45 am]

BILLING CODE 3510–DS–S

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## DEPARTMENT OF COMMERCE

### International Trade Administration

### Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Publication of quarterly update to annual listing of foreign government subsidies on articles of cheese subject to an in-quota rate of duty.

**SUMMARY:** The Department of Commerce ("the Department"), in consultation with the Secretary of Agriculture, has prepared its quarterly update to the annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period April 1, 2003 through June 30, 2003. We are publishing the current listing of those subsidies that we have determined exist.

**EFFECTIVE DATE:** October 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Alicia Kinsey, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482–2786.

**SUPPLEMENTARY INFORMATION:** Section 702 of the Trade Agreements Act of 1979 (as amended) ("the Act") requires the Department to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on articles of cheese that were imported during the period April 1, 2003 through June 30, 2003.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration,

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[1] On June 19, 2000, the Department affirmed that "marinated," "acidified," or "pickled" mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* "Recommendation Memorandum-Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China," dated June 19, 2000.

U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: October 2, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

APPENDIX—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

| Country | Program(s) | Gross[1] subsidy ($/lb) | Net[2] subsidy ($/lb) |
|---|---|---|---|
| Austria | European Union (EU) Restitution Payments | 0.08 | 0.08 |
| Belgium | EU Restitution Payments | 0.01 | 0.01 |
| Canada | Export Assistance on Certain Types of Cheese | 0.24 | 0.24 |
| Denmark | EU Restitution Payments | 0.05 | 0.05 |
| Finland | EU Restitution Payments | 0.15 | 0.15 |
| France | EU Restitution Payments | 0.12 | 0.12 |
| Germany | EU Restitution Payments | 0.05 | 0.05 |
| Greece | EU Restitution Payments | 0.08 | 0.08 |
| Ireland | EU Restitution Payments | 0.04 | 0.04 |
| Italy | EU Restitution Payments | 0.06 | 0.06 |
| Luxembourg | EU Restitution Payments | 0.07 | 0.07 |
| Netherlands | EU Restitution | 0.05 | 0.05 |
| Norway | Indirect (Milk) Subsidy | 0.35 | 0.35 |
| | Consumer Subsidy | 0.16 | 0.16 |
| | | 0.51 | 0.51 |
| Portugal | EU Restitution Payments | 0.05 | 0.05 |
| Spain | EU Restitution Payments | 0.03 | 0.03 |
| Switzerland | Deficiency Payments | 0.06 | 0.06 |
| U.K. | EU Restitution | 0.06 | 0.06 |

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 03–25519 Filed 10–7–03; 8:45 am]

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## DEPARTMENT OF COMMERCE

## International Trade Administration

## North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

**AGENCY:** NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of first Request for Panel Review.

**SUMMARY:** On October 1, 2003, CEMEX, S.A. de C.V. ("CEMEX") filed a first Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. A second request was received on behalf of GCC Cementos, S.A. de C.V. ("GCCC"). Panel review was requested of the 12th administrative review made by the International Trade Administration, respecting Gray Portland Cement and Clinker from Mexico. This determination was published in the **Federal Register** (68 FR 54203) on September 16, 2003. The NAFTA Secretariat has assigned Case Number USA–MEX–2003–1904–03 to this request.

**FOR FURTHER INFORMATION CONTACT:** Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on October 1, 2003, requesting panel review of the determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is October 31, 2003);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is November 17, 2003); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: October 2, 2003.

**Caratina L. Alston,**

*United States Secretary, NAFTA Secretariat.*

[FR Doc. 03–25454 Filed 10–7–03; 8:45 am]

BILLING CODE 3510–GT–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Call for Application for a Representative and Alternate to the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

**AGENCY:** National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice and request for applications.

**SUMMARY:** The Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve is seeking applicants for the following vacant primary seat on its Reserve Advisory Council (Council): (1) Native Hawaiian and also for the following vacant alternate seat on the Council: (1) Research. Council Representatives and Alternates are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the State of Hawaii. The applicant who is chosen as the Native Hawaiian Representative should expect to serve the remainder of this seat's term which is due to expire in February 2004. The applicant who is chosen as the Research Alternate should expect to serve a concurrent term with the existing Research Member, which will expire in September 2006, pursuant to the Council's Charter. Persons who are interested in applying on the Council as either a Representative or Alternate may obtain an application from the person or website identified under the **ADDRESSES** section below. This notice extends and original application period that began September 8 and ended on September 19 for the Native Hawaiian Representative but also opens the application period for the Research Alternate.

**DATES:** Completed applications must be postmarked no later than November 15, 2003.

**ADDRESSES:** Applications may be obtained from Moani Pai, 6700 Kalanianaole Highway, Suite 215, Honolulu, Hawaii 96825, (808) 397–2661 or online at *http://hawaiireef.noaa.gov*. Completed applications should be sent to the same address.

**FOR FURTHER INFORMATION CONTACT:** Aulani Wilhelm, 6700 Kalanianaole Highway, Suite 215, Honolulu, Hawaii 96825, (808) 397–2657, *Aulani.Wilhelm@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The NWHI Coral Reef Ecosystem Reserve is a new marine protected area designed to conserve and protect the coral reef ecosystem and related natural and cultural resources of the area. The Reserve was established by Executive Order pursuant to the National Marine Sanctuaries Amendments Act of 2000 (Pub. L. 106–513). The NWHI Reserve was established by Executive Order 13178 (12/00), as finalized by Executive Order 13196 (1/01).

The Reserve encompasses an area of the marine waters and submerged lands of the Northwestern Hawaiian Islands, extending approximately 1200 nautical miles long and 100 nautical miles wide. The Reserve is adjacent to and seaward of the seaward boundary of Hawaii State waters and submerged lands and the Midway Atoll National Wildlife Refuge, and includes the Hawaiian Islands National Wildlife Refuge to the extent that any such refuge waters extends beyond Hawaii State waters and submerged lands. The Reserve is managed by the Secretary of Commerce pursuant to the National Marine Sanctuaries Act and the Executive Orders. The Secretary has also initiated the process to designate the Reserve as a National Marine Sanctuary. The management principles and implementation strategy and requirements for the Reserve are found in the enabling Executive Orders, which are part of the application kit and can be found on the website listed above.

In designating the Reserve, the Secretary of Commerce was directed to establish a Coral Reef Ecosystem Reserve Advisory Council, pursuant to section 315 of the National Marine Sanctuaries Act, to provide advice and recommendations on the development of the Reserve Operations Plan and the proposal to designate and manage a Northwestern Hawaiian Islands National Marine Sanctuary by the Secretary.

The National Marine Sanctuary Program (NMSP) has established the Reserve Advisory Council and is now accepting applications from interested individuals for a Council Representative for the following citizen/constituent position on the Council:

1. One (1) representative from the Native Hawaiian community with experience or knowledge regarding Native Hawaiian subsistence, cultural, religious, or other activities in the Northwestern Hawaiian Islands.

Current Reserve Council Representatives and Alternates may apply for this vacant seat.

The Council consists of 25 members, 14 of which are non-government voting members (the State of Hawaii representative is a voting member) and 10 of which are government non-voting members. The voting members are representatives of the following constituencies: Conservation, Citizen-At-Large, Ocean-Related Tourism, Recreational Fishing, Research, Commercial Fishing, Education, State of Hawaii and Native Hawaiian. The government non-voting seats are represented by the following agencies: Department of Defense, Department of the Interior, Department of State, Marine Mammal Commission, NOAA's Hawaiian Islands Humpback Whale National Marine Sanctuary, NOAA's National Marine Fisheries Service, National Science Foundation, U.S. Coast Guard, Western Pacific Regional Fishery Management Council, and NOAA's National Ocean Service.

**Authority:** 16 U.S.C. Sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: October 2, 2003.

**Jamison S. Hawkins,**

*Deputy Assistant Administrator for Management, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.*

[FR Doc. 03–25484 Filed 10–7–03; 8:45 am]

**BILLING CODE 3510–NK–M**

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## DEPARTMENT OF ENERGY

### Cumberland System of Projects

**AGENCY:** Southeastern Power Administration, DOE.

**ACTION:** Notice of rate order.

**SUMMARY:** The Deputy Secretary of the Department of Energy, confirmed and approved, on an interim basis, Rate Schedules CBR–1–E, CSI–1–E, CEK–1–E, CM–1–E, CC–1–F, CK–1–E, CTV–1–E, and SJ–1–B. The rates were approved on an interim basis, effective on October 1, 2003 and expire on September 30, 2008, and are subject to confirmation and final approval by the Federal Energy Regulatory Commission.

**DATES:** Approval of rate on an interim basis is effective through September 30, 2008.

**FOR FURTHER INFORMATION CONTACT:** Leon Jourolmon, Assistant Administrator, Finance & Marketing, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–6711, (706) 213–3800.

**SUPPLEMENTARY INFORMATION:** The Federal Energy Regulatory Commission, by Order issued March 17, 2000, in Docket No. EF99–3021–000 (rehearing denied), confirmed and approved Wholesale Power Rate Schedules CBR–1–D, CSI–1–D, CK–1–D, CM–1–D, CC–1–E, CK–1–D, CEK–1–D, CTV–1–D, and SJ–1–A. Rate schedules CBR–1–E, CSI–1–E, CEK–1–E, CM–1–E, CC–1–F, CK–1–E, CTV–1–E, and SJ–1–B replace these schedules.

Dated: September 26, 2003.

**Kyle E. McSlarrow,**

*Deputy Secretary.*

## Order Confirming and Approving Power Rates on an Interim Basis

[Rate Order; No. SEPA–43]

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (Southeastern), were transferred to and vested in the Secretary of Energy. By Delegation Order No. 00–037.00 (December 6, 2001), the Secretary of Energy delegated to the Administrator of Southeastern the authority to develop power and transmission rates, and delegated to the Deputy Secretary of the Department of Energy the authority to confirm, approve, and place in effect such rates on an interim basis, and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrator under the delegation. This rate order is issued by the Deputy Secretary pursuant to said delegation.

### Background

Power from the Cumberland System of Projects is presently sold under Wholesale Power Rate Schedules CBR–1–D, CSI–1–D, CEK–1–D, CM–1–D, CC–1–E,CK–1–D, CTV–1–D, and SJ–1–A. These rate schedules were approved by the FERC on March 17, 2000 (90 FERC 61266).

### Discussion

#### *System Repayment*

An examination of Southeastern's revised system power repayment study, prepared in July 2003, for the Cumberland System shows that with an annual revenue increase of $6,230,000 over the revenues in the current repayment study using current rates, all system power costs are paid within the 50-year repayment period required by existing law and DOE Procedure RA 6120.2. The Administrator of Southeastern has certified that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

#### *Public Notice and Comment*

Opportunities for Public Review and Comment on Wholesale Power Rate Schedules CBR–1–E, CSI–1–E, CEK–1–E, CM–1–E, CC–1–F, CK–1–E, CTV–1–E, and SJ–1–B, was announced by notice published in the **Federal Register** on March 25, 2003. A Public Information and Comment Forum was held May 1, 2003, in Nashville, Tennessee, and written comments were invited through June 23, 2003. The notice proposed rates with a revenue increase of $8,063,000 in Fiscal Year 2004 and all future years. Based on comments received, Southeastern revised the proposed rates. The proposed rate adjustment now shows a revenue increase of $6,230,000. Transcripts of the Public Information and Comment Forums are included as Exhibit A–4. A review of comments is included as Exhibit A–5. The following is a summary of the comments.

#### *Staff Evaluation of Public Comments*

Notice of proposed rate adjustment was published in the **Federal Register** March 25, 2003 (68 FR 14418). The notice advised interested parties of a public information and comment forum that would be held in Nashville, Tennessee on May 1, 2003. Written comments were accepted on or before June 23, 2003. Written comments were received from six sources pursuant to this notice.

#### *A. Comments Regarding Cost Estimates*

1. Many comments pertained to the inclusion of a plan of rehabilitation for the Cumberland Projects provided by the Corps of Engineers. The Customers, the Corps of Engineers, and Southeastern are in the process of drafting a Memorandum of Agreement (MOA) that would provide for Customer funding of Renewals and Replacements. Many of the comments stated that the customers did not believe it was appropriate to include costs in the Cumberland System rates until the MOA was executed. These comments include the following:

- The proposed rate over collects funds for the Corps Operations and Maintenance ("O&M") and Renewals and Replacements ("R&R") activities. (SeFPC, SMEPA)
- The members of the SeFPC believe that Southeastern should only include those amounts in rates for O&M and R&R that reflect the amounts that the Corps actually allocates to hydropower activities in the Cumberland System of Projects. (SeFPC)
- Unless and until an MOA is in place, the Customers believe that only those amounts that Corps will receive in appropriations should be included in the rates. (SeFPC)
- The SeFPC submits that the proposed rate increase should only include those amounts where Southeastern can verify that the funds provided to the Corps are actually spent for hydropower purposes. (SeFPC)
- If Congress does not intend to provide Construction General funds in the Fiscal Year 2004 Appropriations for the Corps and there is no MOA to provide funding of renewals, replacements, and rehabilitation work, the Customers contend that Southeastern cannot legally recover the amounts in the rates for these activities. (SeFPC)
- In light of the fact that the President's budget request does not contain any construction general funds for the projects on the Cumberland River Basin, the SeFPC notes that Southeastern should not recover any joint capitalized cost from the hydropower customers. (SeFPC)
- Only in the event that the Customers, Southeastern, and the Corps find consensus for an MOA should Southeastern include amounts in the 20-rates for renewals and replacements. Unless this occurs prior to the implementation of the rate[s] on an interim basis Southeastern should not include these amounts in the proposed rate schedule[s]. (SeFPC)
- Southeastern will be collecting revenue for capital improvements that do not have guaranteed funds available. Southeastern customers may end up paying more for less reliable power. (KU Municipals)
- TVA strongly recommends that Southeastern make the implementation of the Rehabilitation funding components of the proposed rate increase, and the proposed changes in Southeastern's billing of TVA, conditioned upon mutual agreement being reached by the various parties on a funding mechanism that will result in the Corps actually receiving the funding generated by the Rehabilitation funding component of the proposed rate increase for those Rehabilitation work items which have been approved by Southeastern customers. (TVA)
- Southeastern has included in its rates future costs of replacements or

other capital costs when Southeastern is fully aware that under the current state of affairs there is no reasonable certainty that such capital costs will be incurred. TVPPA, on behalf of the TVA area preference customers, cannot support the continued collection of funds through the Southeastern rates that simply are sent to the U.S. Treasury, and ultimately either never used, or used for some purpose other than rehabilitating the projects for which they were collected. The inclusion in the rate design of such Phantom Capital Costs is contrary to statute. (TVPPA)

- By including the Phantom Capital Costs as stated above, Southeastern fails to charge the lowest possible rates to consumers consistent with sound business practices as required by statute. (TVPPA)
- We do not see any basis for attempting to recover, in the form of proposed increases in Southeastern rates in accordance with section 5 of the Flood Control Act of 1944, costs that have not yet been incurred (and which may never be incurred unless a contractual funding mechanism is implemented), except where Southeastern customers have agreed in accordance with the type of funding mechanisms referenced earlier. It seems challenging to justify use of rate-setting methodology that is based upon amortization and repayment of appropriation investments to recover, in rates charged to TVA, investments that have not yet been made, and which might never be made. (TVA)
- Given the financial impacts that assuming the financing responsibility for as much as $260 million of Rehabilitation capital expenditures over the next 20 or more years will have on Southeastern customers, it appears appropriate that, as part of any funding mechanism, Southeastern customers should have approval and oversight rights with regard to those Cumberland Basin Project work items they would be financing. (TVA)
- Under any funding mechanism, it also would be more appropriate for the Rehabilitation funding component of Southeastern rates for any given year to be governed by the funding requirements of work items approved by Southeastern customers, and not by the amount of funding proposed for work items that are not yet approved. (TVA)
- Southeastern customers, by virtue of their assuming of future financing responsibility under a funding mechanism that offers no prospect of their being financially repaid, deserve a role in:

1. Helping determine what specific work items at the Cumberland Basin Projects warrant the funding they will provide;
2. Exercising reasonable oversight over the performance of such work to help assure that it is completed as intended; and
3. Having appropriate guarantees to help assure that they will ultimately receive the intended value from the funding they will provide. (TVA)

*Response:* Based on the comments received, Southeastern has revised the projected hydropower replacement costs for the Cumberland System. The revised projections for the cost evaluation period will reflect the amount the Corps actually allocated to hydropower activities in the Cumberland System. After the cost evaluation period, projections will be based on a statistical projection of replacements from a Corps of Engineers depreciation study.

Section 10 (l.) of DOE Procedure RA 6120.2 requires that "Future replacement costs will be included in the repayment studies by adding the estimated capital cost of replacement to the unpaid Federal Investment in the year each replacement is estimated to go into service, and adding it to the allowable unamortized investment."

If an MOA is executed and the customers agree to fund the Corps' plan to rehabilitate the Cumberland projects, it may be necessary for Southeastern to file another rate adjustment.

2. It is TVA's understanding that approximately three-fourths of the proposed rate increase is designed to recover amounts to fund, over the next 20 or more years, approximately $260 million of new projects for renewals, rehabilitations, and replacements (Rehabilitation) work at Corps hydroelectric projects in the Cumberland Basin System. (TVA)

*Response:* The comment overstates the impact of the Corps' Rehabilitation program on Southeastern's rates. Without including the Corps' 20-year plan for renewals, rehabilitations, and replacements, Southeastern will propose a rate increase of about fifteen percent (15%). The proposed rate adjustment, with the Corps' 20-year plan of renewals, rehabilitations, and replacements, is an increase of about twenty percent (20%). As such, the Corps' plan for rehabilitation of the Cumberland projects accounts for about one-fourth of the rate adjustment proposed in the **Federal Register** on March 25, 2003, (68 FR 14419).

3. Southeastern is proposing a rate that will satisfy expense and repayment requirements for capital additions over the next 50 years. However, Southeastern is not offering a 50 year contract or any guarantee that the improvements will be made or the power will be available over the next 50 years. It would be more appropriate to propose a rate for a five-year period that provides revenue for projected expenses and repayment requirements over that same 5 years. (KU Municipals)

*Response:* To conform to requirements of RA 6120.2, the repayment study must extend to the end of the repayment life of the repayment period for the last investment in service. It is Southeastern's opinion that the proposal in this comment does not conform to the requirements of RA 6120.2.

### *B. Comments Regarding Purchased Power Costs*

4. Southeastern received comments that Southeastern overstated the impact of replacement energy costs on the proposed rates. These comments included the following:

- There is little evidence to support the claim in the **Federal Register** Notice that the rate adjustment is driven by increased purchased power costs. (SeFPC)
- The SeFPC understands replacement energy expenditures have only amounted to a little over $3.5 million since the implementation of the last rate increase in 1999. There appears to be little foundation therefore for Southeastern to raise rates over $40 million for a five year period to account for purchased power costs that have averaged a little over $1 million in each year since the last rate increase. (SeFPC)

*Response:* The **Federal Register** Notice reads "Existing rates have been in effect since July 1, 1999. The Cumberland System region has incurred a severe drought since that time. This has impacted repayment in two ways. First, revenues have been reduced because Southeastern has had less energy available for sale. Second, expenses have increased because it has been necessary for Southeastern to purchase replacement energy to meet its minimum energy obligations."

The notice further states, "The Corps of Engineers has provided Southeastern with a plan of capital expenditures necessary to rehabilitate the projects in the Cumberland System. These costs are included in the proposed rates."

Cumberland System purchased power totaled about $3.5 million since rates for the Cumberland System were last adjusted in 1999. The 1999 rate adjustment for the Cumberland System included no estimate for purchased power. As such, the purchased power costs are a factor in the proposed rate adjustment. However, Southeastern does not claim that this proposed rate adjustment is driven exclusively by purchased power costs. Purchased power costs are among the factors causing this rate adjustment.

5. Some comments requested Southeastern implement a pass-though charge for purchases of replacement energy. These comments included the following:

- The SeFPC would encourage Southeastern to implement a rate recovery mechanism that would allow immediate pass through of purchased power costs for the Cumberland System of Projects. (SeFPC, SMEPA)
- When the Southeastern anticipates making expenditures for purchased power, the Customers would ask Southeastern to work with Team Cumberland Group to minimize high costs. In the event Southeastern expects to make extended replacement power purchases, the Customers would ask Southeastern to implement a consultation process that involves more frequent coordination with the Customers so that replacement power purchases are the lowest possible consistent with sound business principles. (SeFPC)
- Because of the need to raise rates in light of previous purchases of replacement energy, the SeFPC submits that Southeastern needs to revise the rate proposal to account for the purchased power costs in a more transparent manner so that the Customers can accurately measure the costs in the Customers' individual resource portfolios. In this regard, the SeFPC recommends changing the rate schedule to provide for the immediate pass through of purchased power cost and coordination with the Team Cumberland Group to ensure that such costs are incurred in a manner consistent with sound business principles. (SeFPC)

*Response:* Southeastern implemented a pass-through mechanism to recover purchases of replacement energy in Southeastern's Georgia-Alabama-South Carolina System starting in fiscal year 2003. However, marketing arrangements and rate design issues make implementation of a replacement energy pass-through rate on the Cumberland System complex. As the rates are proposed, most of the customers outside the TVA system have no energy charge. Most of Southeastern's Cumberland customers outside the TVA system receive a firm energy allocation of 1500 kilowatt-hours of energy for each kilowatt of capacity. TVA and the 160 preference entities on the TVA system receive the residual output of the Cumberland Projects.

Southeastern believes it is inappropriate to propose a pass-through to attempt to implement a replacement energy pass-through without soliciting comments from all interested parties. Southeastern will consider developing a proposed pass-through mechanism for comment from all interested parties. As such, Southeastern will give consideration to the comment and may propose a pass-through of replacement energy costs with the next proposed rate adjustment for the Cumberland Projects.

### *C. Comments Regarding Sales of Water Storage*

6. The proposed rate does not accurately capture the revenues that the Corps should be receiving from sale of water storage at Corps projects. The Southeastern should verify whether the Corps has executed all necessary contracts for water storage at facilities in the Cumberland River Basin system. To remain consistent with the Flood Control Act, Southeastern must factor into rates the recovery of the revenues to be provided in Water Storage contracts. In the event that Southeastern is aware of non-authorized use of water storage at the projects for which the Corps has not executed a water storage contract, the members of the SeFPC believe that Southeastern has an obligation to disclose such use in the rate schedules. (SeFPC, SMEPA)

*Response:* The Corps expects to execute and collect new water storage agreements for projects in the Cumberland System in the near future. When the Corps has executed these agreements and collects funds for the sale of water storage, Southeastern will include these revenues as part of the cost recovery for the Cumberland System projects.

### *D. Comments Regarding TVA Transmission*

7. The proposed rate includes Tennessee Valley Authority ("TVA") transmission charges that have not been deemed to be just and reasonable. As the Customers have held longstanding concerns regarding the appropriateness of the TVA transmission rate, the detailed concerns of the SeFPC on this specific topic, which were not addressed in Southeastern's prior rate proposal, are incorporated herein by reference. (SeFPC, SMEPA)

*Response:* The review of public comments in Southeastern's prior rate proposal states "Section 9.1 of the TVA-Southeastern Contract, executed October 1, 1997, allows TVA to adjust rates for delivering power to the points of delivery to the "Other Customers" defined as customers outside the TVA area. Section 9.1 does not provide any means for Southeastern to determine an appropriate transmission rate. TVA and "Other Customers" are disagreeing over the appropriateness of the rate increase." The comments further state "Southeastern will support discussions between TVA and the customers outside the TVA system in an effort to reach a negotiated settlement on an appropriate amount for the TVA transmission charge."

As such, Southeastern's role in this issue is as a facilitator. Southeastern remains willing to support discussions between TVA and the customers outside the TVA system in an effort to reach a negotiated settlement on an appropriate amount for the TVA transmission charge.

### *E. Comments Regarding Marketing*

8. In Southeastern's forum exhibit 6 the base energy shown for East Kentucky Power Cooperative (EKPC) is 251,618 MWh. Based on EKPC's entitlement to 1500 kWh/kW capacity (170 MW), this should be 255,000 MWh. (East Kentucky)

*Response:* Southeastern's marketing arrangements with East Kentucky provide that East Kentucky receive the entire output of the Laurel Project (70 megawatt), plus 100 megawatt from the other projects in the Cumberland System. East Kentucky receives 36,900 megawatt-hours of additional energy from the other Cumberland projects to supplement the generation available at the Laurel Project. With the additional energy from the other Cumberland projects, the Laurel Project was expected to provide an average of 1500 megawatt-hours of energy per megawatt of capacity per contract year. In actual operation during the past few years, the Laurel Project has produced less energy, on average, than was forecast. The average energy available to East Kentucky has been 251,618 megawatt-hours per year. Southeastern has revised the repayment study to show that East Kentucky is expected to receive an estimated average of 255,000 megawatt-hours of energy per contract year.

9. Since 70 MW of EKPC's total Southeastern allocation of 170 MW and related energy is to be produced by the Laurel Project, EKPC is at the mercy of the actual annual rainfall in the Laurel Lake watershed and resulting power production. EKPC asks that provisions be made to guarantee that EKPC receive its entitlement of a minimum of 255,000 MWh each and every year. (East Kentucky)

*Response:* The comment relates to Southeastern's marketing arrangements with East Kentucky, and is not pertinent to the proposed rates. Southeastern's marketing arrangements with East Kentucky are discussed in the response to comment 8 above. Southeastern is willing to consider any revisions to the contract between Southeastern and East Kentucky that East Kentucky may propose. Such revisions would have to be evaluated for their impact on other customers of the Cumberland System.

### *F. Comments Regarding Rate Design*

10. East Kentucky Power Cooperative requests that Southeastern revise its Proposed Wholesale Power Rate Schedule CEK–1–E as follows: [The design includes an energy charge for energy from the Laurel Project and reduces the capacity charge for capacity from the Laurel Project by the anticipated 1500 hours energy per year] (East Kentucky)

*Response:* Southeastern will revise the proposed rate schedule CEK–1–E to provide no energy with the capacity charge. All energy provided under this rate schedule will be billed at the additional energy rate.

## Order

In view of the foregoing and pursuant to the authority vested in me as the Deputy Secretary of Energy, I hereby confirm and approve on an interim basis, effective October 1, 2003, attached Wholesale Power Rate Schedules CBR–1–E, CSI–1–E, CEK–1–E, CM–1–E, CC–1–F, CK–1–E, CTV–1–E, and SJ–1–B.

The Rate Schedules shall remain in effect on an interim basis through September 30, 2008, unless such period is extended or until the FERC confirms and approves them or substitutes Rate Schedules on a final basis.

Dated: September 26, 2003

**Kyle E. McSlarrow,**

*Deputy Secretary.*

## Wholesale Power Rate Schedule CBR–1–E

*Availability:* This rate schedule shall be available to Big Rivers Electric Corporation and includes the City of Henderson, Kentucky, (hereinafter called the Customer).

*Applicability:* This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

*Character of Service:* The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 13,800 volts and 161,000 volts to the transmission system of Big Rivers Electric Corporation.

*Points of Delivery:* Capacity and energy delivered to the Customer will be delivered at points of interconnection of the Customer at the Barkley Project Switchyard, at a delivery point in the vicinity of the Paradise steam plant and at such other points of delivery as may hereafter be agreed upon by the Government and TVA.

*Monthly Rate:* The monthly rate for capacity and energy sold under this rate schedule shall be:

*Demand charge:* $3.373 per kilowatt/month of total contract demand.

*Energy Charge:* None.

*Energy to be Furnished by the Government:* The Government shall make available each contract year to the customer from the Projects through the customer's interconnections with TVA and the customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the customer's contract demand; provided, that the combined schedule of all Southeastern customers outside TVA and served by TVA does not exceed 240 hours per kilowatt of the total contract demands of these customers.

*Billing Month:* The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

*Conditions of Service:* The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of TVA on its side of the delivery point.

Service Interruption: When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\left(\begin{array}{c}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\begin{array}{c}\text{Number of Days in}\\ \text{Billing Month}\end{array}}\right)$$

## Wholesale Power Rate Schedule CSI–1–E

*Availability:* This rate schedule shall be available to Southern Illinois Power Cooperative (hereinafter the Customer).

*Applicability:* This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

*Character of Service:* The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 13,800 volts and 161,000 volts to the transmission system of Big Rivers Electric Corporation.

*Points of Delivery:* Capacity and energy delivered to the Customer will be delivered at points of interconnection of the Customer at the Barkley Project Switchyard, at a delivery point in the vicinity of the Paradise steam plant and at such other points of delivery as may hereafter be agreed upon by the Government and TVA.

*Monthly Rate:* The monthly rate for capacity and energy sold under this rate schedule shall be:

*Demand charge:* $3.373 per kilowatt/month of total contract demand

*Energy Charge:* None

*Energy to be Furnished by the Government:* The Government shall make available each contract year to the customer from the Projects through the customer's interconnections with TVA and the customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the customer's contract demand; provided, that the combined schedule of all Southeastern customers outside TVA and served by TVA does not exceed 240 hours per kilowatt of the total contract demands of these customers.

*Billing Month:* The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

*Service Interruption:* When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\left(\begin{array}{c}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\begin{array}{c}\text{Number of Days in}\\ \text{Billing Month}\end{array}}\right)$$

**Wholesale Power Rate Schedule CEK–1–E**

*Availability:* This rate schedule shall be available to East Kentucky Power Cooperative (hereinafter called the Customer).

*Applicability:* This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and power available from the Laurel Project and sold in wholesale quantities.

*Character of Service:* The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of the Customer.

*Points of Delivery:* The points of delivery will be the 161,000 volt bus of the Wolf Creek Power Plant and the 161,000 volt bus of the Laurel Project. Other points of delivery may be as agreed upon.

*Monthly Rate:* The monthly rate for capacity and energy sold under this rate schedule shall be:

*Demand charge:* $2.232 per kilowatt/month of total contract demand

*Energy Charge:* 9.13 mills per kilowatt-hour

*Energy to be Furnished by the Government:* The Government shall make available each contract year to the customer from the Projects through the customer's interconnections with TVA and the customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand plus 369 kilowatt-hours of energy delivered for each kilowatt of contract demand to supplement energy available at the Laurel Project. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the customer's contract demand; provided, that the combined schedule of all Southeastern customers outside TVA and served by TVA does not exceed 240 hours per kilowatt of the total contract demands of these customers.

*Billing Month:* The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

*Conditions of Service:* The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of TVA on its side of the delivery point.

*Service Interruption:* When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\left(\begin{array}{c}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\begin{array}{c}\text{Number of Days in}\\ \text{Billing Month}\end{array}}\right)$$

### Wholesale Power Rate Schedule CM–1–E

*Availability:* This rate schedule shall be available to the South Mississippi Electric Power Association, Municipal Energy Agency of Mississippi, and Mississippi Delta Energy Agency (hereinafter called the Customers).

*Applicability:* This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

*Character of Service:* The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of Mississippi Power and Light.

*Points of Delivery:* The points of delivery will be at interconnection points of the Tennessee Valley Authority system and the Mississippi Power and Light system. Other points of delivery may be as agreed upon.

*Monthly Rate:* The monthly rate for capacity and energy sold under this rate schedule shall be:

*Demand charge:* $3.373 per kilowatt/month of total contract demand

*Energy Charge:* None

*Energy to be Furnished by the Government:* The Government shall make available each contract year to the Customer from the Projects through the Customer's interconnections with TVA and the Customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the Customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the Customer's contract demand. The Customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the Customer's contract demand; provided, that the combined schedule of all Southeastern Customers outside TVA and served by TVA does not exceed 240 hours per kilowatt of the total contract demands of these Customers.

In the event that any portion of the capacity allocated to the Customers is not initially delivered to the Customers as of the beginning of a full contract year, the 1500 kilowatt hours shall be reduced 1/12 for each month of that year prior to initial delivery of such capacity.

*Billing Month:* The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective on the last day of each calendar month.

*Service Interruption:* When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\left(\begin{array}{c}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\begin{array}{c}\text{Number of Days in}\\ \text{Billing Month}\end{array}}\right)$$

### Wholesale Power Rate Schedule CC–1–F

*Availability:* This rate schedule shall be available to public bodies and cooperatives served through the facilities of Carolina Power & Light Company, Western Division (hereinafter called the Customers).

*Applicability:* This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

*Character of Service:* The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission system of Carolina Power & Light Company, Western Division.

*Points of Delivery:* The points of delivery will be at interconnecting points of the Tennessee Valley Authority system and the Carolina Power & Light Company, Western Division system. Other points of delivery may be as agreed upon.

*Monthly Rate:* The monthly rate for capacity and energy sold under this rate schedule shall be:

*Demand charge:* $3.839 per kilowatt/month of total contract demand

*Energy Charge:* None

*CP&L Transmission Charge:* $1.2493 per kilowatt/month of total contract demand

The CP&L transmission rate is subject to annual adjustment on April 1 of each year and will be computed subject to the formula in Appendix A attached to the Government—Carolina Power & Light Company contract.

*Energy to be Furnished by the Government:* The Government will sell to the customer and the customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to Carolina Power & Light Company (less six percent (6%) losses). The Customer's contract demand and accompanying energy allocation will be divided pro rata among its individual delivery points served from the Carolina Power & Light Company's, Western Division transmission system.

*Billing Month:* The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

**Wholesale Power Rate Schedule CK–1–E**

*Availability:* This rate schedule shall be available to public bodies served through the facilities of Kentucky Utilities Company, (hereinafter called the Customers.)

*Applicability:* This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

*Character of Service:* The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of Kentucky Utilities Company.

*Points of Delivery:* The points of delivery will be at interconnecting points between the Tennessee Valley Authority system and the Kentucky Utilities Company system. Other points of delivery may be as agreed upon.

*Monthly Rate:* The monthly rate for capacity and energy sold under this rate schedule shall be:

*Demand charge:* $3.373 per kilowatt/month of total contract demand

*Energy Charge:* None

*Additional Energy Charge:* 9.13 mills per kilowatt-hour

*Energy to be Furnished by the Government:* The Government shall make available each contract year to the Customer from the Projects and the Customer will accept an allocation of 1,500 kilowatt-hours of energy for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the Customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the Customer's contract demand. The Customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the Customer's contract demand; provided, that the combined schedule of all Southeastern Customers outside TVA and served by TVA does not exceed 240 hours per kilowatt of the total contract demands of these Customers.In the event that any portion of the capacity allocated to the Customers is not initially delivered to the Customers as of the beginning of a full contract year, the 1500 kilowatt hours shall be reduced 1/12 for each month of that year prior to initial delivery of such capacity.

For billing purposes, each kilowatt of capacity will include 1500 kilowatt-hours energy per year. Customers will pay for additional energy at the additional energy rate.

*Billing Month:* The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective on the last day of each calendar month.

**Wholesale Power Rate Schedule CTV–1–E**

*Availability:* This rate schedule shall be available to the Tennessee Valley Authority (hereinafter called TVA).

*Applicability:* This rate schedule shall be applicable to electric capacity and energy generated at the Dale Hollow, Center Hill, Wolf Creek, Old Hickory, Cheatham, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereafter called collectively the "Cumberland Projects") and the Laurel Project sold under agreement between the Department of Energy and TVA.

*Character of Service:* The electric capacity and energy supplied hereunder will be three-phase alternating current at a frequency of approximately 60 Hertz at the outgoing terminals of the Cumberland Projects' switchyards.

*Monthly Rates:* The monthly rate for capacity and energy sold under this rate schedule shall be:

*Demand Charge:* $1.907 per kilowatt/month of total demand as determined by the agreement between the Department of Energy and TVA.

*Energy Charge:* None

*Additional Energy Charge:* 9.13 mills per kilowatt-hour

*Energy to be Made Available:* The Department of Energy shall determine the energy that is available from the projects for declaration in the billing month.

To meet the energy requirements of the Department of Energy's customers outside the TVA area (hereinafter called Other Customers), 768,000 megawatt-hours of net energy shall be available annually (including 36,900 megawatt-hours of annual net energy to supplement energy available at Laurel Project). The energy requirement of the Other Customers shall be available annually, divided monthly such that the maximum available in any month shall not exceed 240 hours per kilowatt of total Other Customers contract demand, and the minimum amount available in any month shall not be less than 60 hours per kilowatt of total Other Customers demand.

In the event that any portion of the capacity allocated to Other Customers is not initially delivered to the Other Customers as of the beginning of a full contract year, (July through June), the 1500 hours, plus any such additional energy required as discussed above, shall be reduced 1/12 for each month of that year prior to initial delivery of such capacity.

The energy scheduled by TVA for use within the TVA System in any billing month shall be the total energy delivered to TVA less (1) an adjustment for fast or slow meters, if any, (2) an adjustment for Barkley-Kentucky Canal of 15,000 megawatt-hours of energy each month which is delivered to TVA under the agreement from the Cumberland Projects without charge to TVA, (3) the energy scheduled by the Department of Energy in said month for the Other Customers plus losses of two (2) percent, and (4) station service energy furnished by TVA.

Each kilowatt of capacity will include 1500 kilowatt-hours of energy per year, which is defined as base energy. Energy received in excess of 1500 kilowatt-hours per kilowatt will be subject to an additional energy charge identified in the monthly rates section of this rate schedule.

*Billing Month:* The billing month for capacity and energy sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

*Contract Year:* For purposes of this rate schedule, a contract year shall be as in Section 13.1 of the Southeastern Power Administration—Tennessee Valley Authority Contract.

*Service Interruption:* When delivery of capacity to TVA is interrupted or reduced due to conditions on the Department of Energy's system that are beyond its control, the Department of Energy will continue to make available the portion of its declaration of energy that can be generated with the capacity available.

For such interruption or reduction (exclusive of any restrictions provided in the agreement) due to conditions on the Department of Energy's system which have not been arranged for and agreed to in advance, the demand charge for scheduled capacity made available to TVA will be reduced as to the kilowatts of such scheduled capacity which have been so interrupted or reduced for each day in accordance with the following formula:

$$\left(\begin{array}{c}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\begin{array}{c}\text{Number of Days in}\\ \text{Billing Month}\end{array}}\right)\times\left(\frac{\text{Contract Demand}}{\text{880,000 Kilowatts}}\right)$$

*Power Factor:* TVA shall take capacity and energy from the Department of Energy at such power factor as will best serve TVA's system from time to time; provided, that TVA shall not impose a power factor of less than .85 lagging on the Department of Energy's facilities which requires operation contrary to good operating practice or results in overload or impairment of such facilities.

### Wholesale Power Rate Schedule SJ–1–B

*Availability:* This rate schedule shall be available to Monongahela Power Company for energy from the Stonewall Jackson Project (hereinafter called the Project).

*Applicability:* This rate schedule shall be applicable to energy made available by the Government from the Project and sold in wholesale quantities.

*Character of Service:* The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 cycles per second delivered at the delivery points of the customer.

*Monthly Rate:* The monthly rate for energy made available or delivered under this rate schedule shall be the lower of:

(a) The energy equivalent rate of Cumberland Rate Schedule CC–1–F, which is 38.1 mills per kwh, or;

(b) The sum, as reasonably determined by Monongahela Power Company (Buyer), of (1) and (2) below calculated for each period as to which the determination is being made, (normally monthly) based on costs and net generation of Buyer and other regulated subsidiaries of Allegheny Power System, Inc. to produce energy from: Ft. Martin Units Nos. 1 and 2, Hatfield Ferry Units Nos. 1, 2, and 3, Harrison Units Nos. 1, 2, 3, and Pleasants Units Nos. 1 and 2.

(1) The accrued expense in FERC Account 501 (fuel expense) or such appropriate similar account as the FERC may from time to time establish for fuel expense for steam power generation, divided by the actual net generation in kilowatt-hours, exclusive of plan use, plus

(2) One-half of the accrued expenses in FERC Accounts 510–514 (maintenance expense), inclusive, of such other appropriate similar accounts as FERC may from time to time establish for maintenance expense for steam power generation, divided by the actual net generation in kilowatt-hours, exclusive of plant use.

*Energy Made Available:* Project energy generated by the District at the Project except energy use in the production of such energy or utilized by the District for its operations at the location of the project.

*Billing Month:* Buyer shall read the metering devices within three business days of the end of each calendar month and will render payment within 15 days of such reading.

*Conditions of Service:* The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Monongahela Power Company on its side of the delivery point.

[FR Doc. 03–25501 Filed 10–7–03; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

### Georgia-Alabama-South Carolina System

**AGENCY:** Southeastern Power Administration, DOE.

**ACTION:** Notice of Rate Order.

**SUMMARY:** The Deputy Secretary of the Department of Energy, confirmed and approved, on an interim basis, Rate Schedules SOCO–1–B, SOCO–2–B, SOCO–3–B, SOCO–4–B, ALA–1–K, MISS–1–K, Duke-1–B, Duke-2–B, Duke-3–B, Duke-4–B, Santee-1–B, Santee-2–B, Santee-3–B, Santee-4–B, SCE&G–1–B, SCE&G–2–B, SCE&G–3–B, SCE&G–4–B, Regulation-1, Replacement-1, Pump-1–A, and Pump-2. The rates were approved on an interim basis, effective on October 1, 2003, and through September 30, 2007, and are subject to confirmation and final approval by the Federal Energy Regulatory Commission.

**DATES:** Approval of rate on an interim basis is effective through September 30, 2007.

**FOR FURTHER INFORMATION CONTACT:** Leon Jourolmon, Assistant Administrator, Finance & Marketing, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–6711, (706)–213–3800.

**SUPPLEMENTARY INFORMATION:** The Federal Energy Regulatory Commission, by Order issued July 15, 2003, in Docket No. EF02–3011–000, confirmed and approved Wholesale Power Rate Schedules SOCO–1–A, SOCO–2–A, SOCO–3–A, SOCO–4–A, ALA–1–J, MISS–1–J, Duke-1–A, Duke-2–A, Duke-3–A, Duke-4–A, Santee-1–A, Santee-2–A, Santee-3–A, Santee–4–A, SCE&G–1–A, SCE&G–2–A, SCE&G–3–A, SCE&G–4–A, Regulation-1, Replacement-1, Pump-1–A, and Pump-2. Rate schedules SOCO–1–B, SOCO–2–B, SOCO–3–B, SOCO–4–B, ALA–1–K, MISS–1–K, Duke-1–B, Duke-2–B, Duke-3–B, Duke-4–B, Santee-1–B, Santee-2–B, Santee-3–B, Santee-4–B, SCE&G–1–B, SCE&G–2–B, SCE&G–3–B, SCE&G–4–B, Regulation-1, Replacement-1, Pump-1–A, and Pump-2 replace these schedules.

Dated: September 26, 2003.

**Kyle E. McSlarrow,**

*Deputy Secretary.*

In the Matter of Southeastern Power Administration B;—Georgia-Alabama-South Carolina Rates; Rate Order; No. Southeastern-44

### Order Confirming and Approving Power Rates on an Interim Basis

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (Southeastern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 00–037.00 (December 6, 2001), the Secretary of Energy delegated to the Administrator of Southeastern the authority to develop power and transmission rates, and delegated to the Deputy Secretary of the Department of Energy the authority to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrator under the delegation. This rate order is issued by the Deputy Secretary pursuant to said delegation.

**Background**

Power from the Georgia-Alabama-South Carolina System is presently sold under Wholesale Power Rate Schedules SOCO–1–A, SOCO–2–A, SOCO–3–A, SOCO–4–A, ALA–1–J, MISS–1–J, Duke-1–A, Duke-2–A, Duke-3–A, Duke-4–A, Santee-1–A, Santee-2–A, Santee-3–A, Santee-4–A, SCE&G–1–A, SCE&G–2–A, SCE&G–3–A, SCE&G–4–A, Regulation-1, Replacement-1, Pump-1–A, and Pump-2. These rate schedules were approved by the FERC on July 15, 2003, for a period ending September 30, 2007 (104 FERC 62028).

*Public Notice and Comment*

Notice of proposed rate adjustment was published in the **Federal Register** April 16, 2003 (68 FR 18619). In the notice, Southeastern proposed a rate increase of about twenty per cent. The notice advised interested parties of a public information and comment forum to be held in Atlanta, Georgia on May 29, 2003 Written comments were accepted on or before July 15, 2003. The following is a summary of the comments:

*Staff Review of Public Comments*

Notice of proposed rate adjustment was published in the **Federal Register** April 16, 2003 (68 FR 18619). The notice advised interested parties of a proposed rate increase of about twenty percent (20%). A public information and comment forum was scheduled for May 29, 2003. Written comments were accepted on or before July 15, 2003. Written comments were received from two sources pursuant to this notice.

The following comments were received during the public comment period. Southeastern response follows each comment.

Comment 1: With respect to the Richard B. Russell Project, the Customers reserve the right to comment on the final cost allocation, once it is completed.

Response 1: Southeastern will support the Customers right to respond to the cost allocation, once the Corps has provided a completed draft to Southeastern.

Comment 2: The Customers would like to commend Southeastern for its decision to exclude from its proposed rates Interest During Construction (“IDC”) costs associated with the Russell Project from Fiscal Year 1993 going forward. These interest costs have accumulated as a result of protracted litigation between local and national environmental groups, the South Carolina Department of Natural Resources (“SCDNR”), and the Federal Government. The Customers neither initiated nor participated in the litigation, nor were they responsible for the decision to proceed with construction when there was no certainty as to whether or not the project would become commercially operable. The Customers should not be held responsible for paying the interest that has accumulated as a result of this litigation.

There is an important precedent for Southeastern’s proposed exclusion of Russell Project costs that are not properly considered used and useful for hydropower generation: the Southwestern Power Administration’s (Southwestern) treatment of hydropower’s cost allocation share at the Harry S. Truman Project in Missouri. The Customers understand that Southwestern and the Corps have completed an arrangement whereby a significant portion of hydropower’s original cost allocation has been reallocated away from hydropower, because some of the costs are not properly borne by hydropower. The Southwestern-Corps agreement for the Truman Project is based on the important concept that costs incurred for project construction that are neither used nor useful for hydropower should not be included in customer rates. For these reasons, we support the methodology that Southeastern has selected in excluding IDC costs from its rate base in the present repayment study and urge Southeastern to support permanent exclusion of IDC costs to resolve the question.

Response 2: Southeastern believes that IDC costs are legitimate costs that should be recovered. The question is when should the IDC computation end and to what purpose the IDC should be allocated. The portion of the IDC costs at the Richard B. Russell Project of concern to Southeastern are the IDC costs that accumulated over the nine-year period, from 1993 to 2002. These costs occurred when the pump-back units at the project were available for use; however, a Federal District Court enjoined their operation until 2002. Southeastern is in discussion with the Corps of Engineers on how these particular costs should be treated. Southeastern does not comment on the Customers’ characterization of the treatment of IDC costs at the Harry S. Truman Project.

Comment 3: Several comments pertained to the appropriateness and accuracy of the estimates for Corps Operation & Maintenance Expenses (O&M) and Renewals & Replacements (R&R). Examples are as follows:

- The SeFPC is particularly concerned about the Corps’ cost estimates of O&M Expenses, as reflected in its proposed rates. Southeastern’s Rate and Repayment study dated May 29, 2003, assumes an increase from $36,591,149 in fiscal year 2004 to $37,949,000 in fiscal year 2005 for Corps’ O&M expenses. We believe these projections do not accurately reflect the Corps’ annual appropriations, as provided by Congress. Proposed O&M funding for Corps’ projects in the Georgia-Alabama-South Carolina System has decreased significantly in the President’s budget request for the upcoming fiscal year. Unless Congress ignores the President’s request and increases O&M funding levels across-the-board for these projects, we fear that Southeastern’s customers may be charged for costs that will never be incurred for actual O&M.
- The Customers believe Southeastern should take a closer look at the differences between the projected R&R expenses provide by the Corps in its repayment study and the proposed Congressional appropriations for Corps’ Construction General funds in the upcoming fiscal year.
- [The Customers] would like to work closely with Southeastern and the Corps to ensure that the O&M and R&R projections in Southeastern’s rates are consistent with funds appropriated by Congress. For example, one method Southeastern may use is a three-year historical average of the amounts the Corps was appropriated.

Response 3: Southeastern is using projections of Corps O&M expenses provided by the Corps in April 2002. Southeastern believes these earlier estimates are more reasonable than those provided most recently.

However, capitalized cost projections used in developing these proposed rates are those most recently provided by the Corps. Southeastern is concerned with the disparity between the capitalized projections included in the system repayment study and the funding for capitalized item actually provided by the Corps. Section 10 (l.) of DOE Procedure RA 6120.2 requires that “Future replacement costs will be included in the repayment studies by adding the estimated capital cost of replacement to the unpaid Federal Investment in the year each replacement is estimated to go into service, and adding it to the allowable unamortized investment.” As such, Southeastern must include the best available projection of Corps replacements in the repayment study.

Comment 4: The Customers understand that at the Walter F. George project, capital additions for 2003 are projected to be in excess of $24 million. The Customers understand that portions of these costs may be for purposes other than hydropower, and therefore should be excluded from the repayment study.

Response 4: The comment refers to the costs of construction of a Secant Wall at the Walter F. George Project. This wall is necessary to prevent seepage of water under the Walter F. George Dam. Southeastern considers this investment to qualify as “Dam Safety”. Therefore, under 33 U.S.C. 467n; 100 STAT. 4263, fifteen per cent (15%) of the project cost should qualify for cost recovery as a joint cost while the remainder should be considered non-reimbursable. As of the time of this rate adjustment, the Corps has not concurred with Southeastern in this opinion. Until the Corps concurs with Southeastern in this opinion, Southeastern will include 100 percent of the joint costs allocated to power in the Repayment Study for the Georgia-Alabama-South Carolina System.

## Discussion

### *System Repayment*

An examination of Southeastern's revised system power repayment study, prepared in July 2003, for the Georgia-Alabama-South Carolina System, shows that with the proposed rates, all system power costs are paid within the 50-year repayment period required by existing law and DOE Procedure RA 6120.2. The Administrator of Southeastern has certified that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

### *Environmental Impact*

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded that, because the adjusted rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

### *Availability of Information*

Information regarding these rates, including studies, and other supporting materials is available for public review in the offices of Southeastern Power Administration, 1166 Athens Tech Road, Elberton, Georgia 30635–6711.

### *Submission to the Federal Energy Regulatory Commission*

The rates hereinafter confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis for a period beginning October 1, 2003, and ending no later than September 30, 2007.

## Order

In view of the foregoing and pursuant to the authority vested in me as the Deputy Secretary of Energy, I hereby confirm and approve on an interim basis, effective October 1, 2003, attached Wholesale Power Rate Schedules SOCO–1–B, SOCO–2–B, SOCO–3–B, SOCO–4–B, ALA–1–K, MISS–1–K, Duke-1–B, Duke-2–B, Duke-3–B, Duke-4–B, Santee-1–B, Santee-2–B, Santee-3–B, Santee-4–B, SCE&G–1–B, SCE&G–2–B, SCE&G–3–B, SCE&G–4–B, Regulation-1, Replacement-1, Pump-1–A, and Pump-2. The rate schedules shall remain in effect on an interim basis through September 30, 2007, unless such period is extended or until the FERC confirms and approves them or substitute rate schedules on a final basis.

Dated: September 26, 2003.

**Kyle E. McSlarrow,**

*Deputy Secretary.*

## Wholesale Power Rate Schedule SOCO–1–B

*Availability:* This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, and Florida to whom power may be transmitted and scheduled pursuant to contracts between the Government and Southern Company Services, Incorporated (hereinafter called the Company) and the Customer. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

*Applicability:* This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

*Character of Service:* The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

*Monthly Rate:* The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

*Capacity Charge:* $3.39 Per kilowatt of total contract demand per month.

*Energy Charge:* 8.39 Mills per kilowatt-hour.

*Generation Services:* $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

*Transmission:* $2.08 Per kilowatt of total contract demand per month as of March 2003 is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the Transmission and Distribution Charges paid by the Government. The initial monthly transmission demand charge shall be determined by multiplying the Government's Load Ratio Share time one twelfth (1/12) of Southern Companies' Annual Transmission Costs as specified in Schedule 1 of the Government-Company Contract. The transmission charges are governed by and subject to refund based upon the determination in proceedings before the Federal Energy Regulatory Commission (FERC) involving Southern Companies' Open Access Transmission Tariff (OATT). The distribution charges may be modified by FERC pursuant to application by the Company under Section 205 of the Federal Power Act or the Government under Section 206 of the Federal Power Act.

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all Southeastern rate transmission and distribution charges paid by the Government in behalf of the Customer.

*Scheduling, System Control and Dispatch Service:* $0.0806 Per kilowatt of total contract demand per month.

*Reactive Supply and Voltage Control from Generation Sources Service:* $0.11 Per kilowatt of total contract demand per month.

*Regulation and Frequency Response Service:* $0.0483 Per kilowatt of total contract demand per month.

*Transmission, System Control, Reactive, and Regulation Services:* The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

*Contract Demand:* The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

*Energy to be Furnished by the Government:* The Government will see to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. As of March 2003, applicable energy losses are as follows:

| | |
|---|---|
| Transmission Facilities | 3.0% |
| Distribution Substations | 0.9% |
| Distribution Lines | 2.25% |

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by Southern Companies under Section 205 of the Federal Power Act or Southeastern under Section 206 of the Federal Power Act or otherwise.

*Billing Month:* The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

### Wholesale Power Rate Schedule SOCO–2–B

*Availability:* This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, and Florida to whom power may be transmitted pursuant to contracts between the Government and Southern Company Services, Incorporated (hereinafter called the Company) and the Customer. The Customer is responsible for providing a scheduling arrangement with the Government. Nothing in this rate shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

*Applicability:* This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

*Character of Service:* The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

*Monthly Rate:* The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

*Capacity Charge:* $3.39 Per kilowatt of total contract demand per month.
*Energy Charge:* 8.39 Mills per kilowatt-hour.

*Generation Services:* $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

*Transmission:* $2.08 Per kilowatt of total contract demand per month as of March 2003 is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the Transmission and Distribution Charges paid by the Government. The initial monthly transmission demand charge shall be determined by multiplying the Government's Load Ratio Share time one twelfth (1/12) of Southern Companies' Annual Transmission Costs as specified in Schedule 1 of the Government-Company Contract. The transmission charges are governed by and subject to refund based upon the determination in proceedings before the Federal Energy Regulatory Commission (FERC) involving Southern Companies' Open Access Transmission Tariff (OATT). The distribution charges may be modified by FERC pursuant to application by the Company under Section 205 of the Federal Power Act or the Government under Section 206 of the Federal Power Act.

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all Southeastern rate transmission and distribution charges paid by the Government in behalf of the Customer.

*Reactive Supply and Voltage Control from Generation Sources Service:* $0.11 Per kilowatt of total contract demand per month.

*Transmission, System Control, Reactive, and Regulation Services:* The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

*Contract Demand:* The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

*Energy to be Furnished by the Government:* The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. As of March 2003, applicable energy losses are as follows:

| | |
|---|---|
| Transmission facilities | 3.0% |
| Distribution Substations | 0.9% |
| Distribution Lines | 2.25% |

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by Southern Companies under Section 205 of the Federal Power Act or Southeastern under Section 206 of the Federal Power Act or otherwise.

*Billing Month:* The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

### Wholesale Power Rate Schedule SOCO–3–B

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, and Florida to whom power may be scheduled pursuant to contracts between the Government and Southern Company Services, Incorporated (hereinafter called the Company) and the Customer. The Customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects (hereinafter referred to collectively as the Projects) and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.
Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Scheduling, System Control and Dispatch Service: $0.0806 Per kilowatt of total contract demand per month.

Regulation and Frequency Response Service: $0.0483 Per kilowatt of total contract demand per month.

Transmission, System Control, Reactive, and Regulation Services: The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

### Wholesale Power Rate Schedule SOCO–4–B

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, and Florida served through the transmission facilities of Southern Company Services, Inc. (hereinafter called the Company) or the Georgia Integrated Transmission System. The Customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects (hereinafter referred to collectively as the Projects) and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.
Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission, System Control, Reactive, and Regulation Services: The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

### Wholesale Power Rate Schedule ALA–1–K

Availability: This rate schedule shall be available to Alabama Electric Cooperative, Incorporated (hereinafter called the Cooperative).

Applicability: This rate schedule shall be applicable to power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under contract between the Cooperative and the Government. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 Hertz and and shall be delivered at the Walter F. George, West Point, and Robert F. Henry Projects.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.

Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission, System Control, Reactive, and Regulation Services: The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Energy to be Furnished by the Government: The Government will sell to the Cooperative and the Cooperative will purchase from the Government those quantities of energy specified by contract as available to the Cooperative for scheduling on a weekly basis.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

### Wholesale Power Rate Schedule MISS–1–K

Availability: This rate schedule shall be available to the South Mississippi Electric Power Association (hereinafter called the Customer) to whom power may be wheeled pursuant to contracts between the Government and Alabama Electric Cooperative, Inc. (hereinafter called AEC).

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be three phase alternating current at a nominal frequency of 60 Hertz delivered at the delivery points of the Customer on AEC's transmission and distribution system. The voltage of delivery will be maintained within the limits established by the state regulatory commission.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.

Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission: $1.88 Per kilowatt of total contract demand per month as of March 2003 is presented for illustrative purposes.

This rate is subject to annual adjustment on January 1, and will be computed subject to the Appendix A attached to the Government-AEC contract.

Transmission, System Control, Reactive, and Regulation Services: The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Cooperative and the Cooperative will purchase from the Government those quantities of energy specified by contract as available to the Cooperative for scheduling on a weekly basis.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

### Wholesale Power Rate Schedule Duke–1–B

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be transmitted and scheduled pursuant to contracts between the Government and Duke Power Company (hereinafter called the Company) and the Customer. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.

Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission: $0.87 Per kilowatt of total contract demand per month is presented for illustrative purposes.

The initial transmission charge will be the Customers' ratable share of the Transmission Distribution Charges paid by the Government. The initial monthly transmission demand charge shall reflect the Government's Load Ratio Share Responsibility. The Load Ratio Share shall be computed each month and shall be the ratio of the Network Load to the average of the Company's Transmission System load for each of the 12 preceding months. The Company's Transmission System Load shall be the load as determined in

Section 34.3 of the Company's Pro Forma Open Access Transmission Tariff (the Tariff). The Government shall pay a monthly demand charge which shall be determined by multiplying its Load Ratio Share by $\frac{1}{12}$ of the Annual Transmission Revenue Requirement set forth in Attachment H of the Company's Tariff.

Proceedings before FERC involving the Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses of three per cent (3%) as of March 2003). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by the Company under Section 205 of the Federal Power Act or Southeastern under Section 206 of the Federal Power Act or otherwise.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

### Wholesale Power Rate Schedule Duke-2-B

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be transmitted pursuant to contracts between the Government and Duke Power Company (hereinafter called the Company) and the Customer. The Customer is responsible for providing a scheduling arrangement with the Government. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.

Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission: $0.87 Per kilowatt of total contract demand per month is presented for illustrative purposes.

The initial transmission charge will be the Customers ratable share of the Transmission Distribution Charges paid by the Government. The initial monthly transmission demand charge shall reflect the Government's Load Ratio Share Responsibility. The Load Ratio Share shall be computed each month and shall be the ratio of the Network Load to the average of the Company's Transmission System load for each of the 12 preceding months. The Company's Transmission System Load shall be the load as determined in Section 34.3 of the Company's Pro Forma Open Access Transmission Tariff (the Tariff). The Government shall pay a monthly demand charge which shall be determined by multiplying its Load Ratio Share by $\frac{1}{12}$ of the Annual Transmission Revenue Requirement set forth in Attachment H of the Company's Tariff.

Proceedings before FERC involving the Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses of three per cent (3%) as of March 2003). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by the Company under Section 205 of the Federal Power Act or Southeastern under Section 206 of the Federal Power Act or otherwise.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

### Wholesale Power Rate Schedule Duke-3-B

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be scheduled pursuant to contracts between the Government and Duke Power Company (hereinafter called the Company) and the Customer. The Customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the Savannah River Projects.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.

Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

## Wholesale Power Rate Schedule Duke-4–B

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina served through the transmission facilities of Duke Power Company (hereinafter called the Company) and the Customer. The Customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement with the Company. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the Savannah River Projects.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.

Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

## Wholesale Power Rate Schedule Santee-1–B

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter call the Customer) in South Carolina to whom power may be wheeled and scheduled pursuant to contracts between the Government and South Carolina Public Service Authority (hereinafter called the Authority). Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Authority's transmission and distribution system.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.

Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Authority. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Authority's rate.

Transmission: $1.52 Per kilowatt of total contract demand per month as of March 2003 is presented for illustrative purposes.

The initial transmission rate is subject to annual adjustment on July 1 of each year, and will be computed subject to the formula contained in Appendix A to the Government-Authority Contract.

Proceedings before the Federal Energy Regulatory Commission involving the Authority's Open Access Transmission Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Authority (less applicable losses of two per cent

(2%) as of March 2003). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Authority's system.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Service Interruption: When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\left(\begin{array}{c}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in}\\ \text{any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\text{Number of Days in Billing Month}}\right)$$

## Wholesale Power Rate Schedule Santee-2-B

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter call the Customer) in South Carolina to whom power may be wheeled pursuant to contracts between the Government and South Carolina Public Service Authority (hereinafter called the Authority). The customer is responsible for providing a scheduling arrangement with the Government. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Authority's transmission and distribution system.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.

Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Authority. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Authority's rate.

Transmission: $1.52 Per kilowatt of total contract demand per month as of March 2003 is presented for illustrative purposes.

The initial transmission rate is subject to annual adjustment on July 1 of each year, and will be computed subject to the formula contained in Appendix A to the Government-Authority Contract.

Proceedings before the Federal Energy Regulatory Commission involving the Authority's Open Access Transmission Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Authority (less applicable losses of two per cent (2%) as of March 2003). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Authority's system.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Service Interruption: When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\left(\begin{array}{c}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in}\\ \text{any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\text{Number of Days in Billing Month}}\right)$$

## Wholesale Power Rate Schedule Santee-3-B

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter call the Customer) in South Carolina to whom power may be scheduled pursuant to contracts between the Government and South Carolina Public Service Authority (hereinafter called the Authority). The customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.

Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Authority. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Authority's rate.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Authority (less applicable losses).

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Service Interruption: When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\left(\begin{array}{c}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in}\\ \text{any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\text{Number of Days in Billing Month}}\right)$$

**Wholesale Power Rate Schedule Santee-4-B**

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter call the Customer) in South Carolina served through the transmission facilities of South Carolina Public Service Authority (hereinafter called the Authority). The customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.

Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Authority. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Authority's rate.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Authority (less applicable losses).

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Service Interruption: When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\left(\begin{array}{c}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in}\\ \text{any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\text{Number of Days in Billing Month}}\right)$$

**Wholesale Power Rate Schedule SCE&G-1-B**

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of which is hereinafter called the Customer) in South Carolina to whom power may be wheeled and scheduled pursuant to contracts between the Government and the South Carolina Electric & Gas Company (hereinafter called the Company). Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.
Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission: $1.01 Per kilowatt of total contract demand per month is presented for illustrative purposes.

The initial rate will be subject to monthly adjustment and will be computed subject to Section 7 of the Government-Company contract.

Proceedings before the Federal Energy Regulatory Commission involving the Company's Open Access Transmission Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Conditions of Service: The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

### Wholesale Power Rate Schedule SCE&G–2–B

Availability: This rate schedule shall be available public bodies and cooperatives (any one of which is hereinafter called the Customer) in South Carolina to whom power may be wheeled pursuant to contracts between the Government and the South Carolina Electric & Gas Company (hereinafter called the Company). The customer is responsible for providing a scheduling arrangement with the Government. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.
Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission: $1.01 Per kilowatt of total contract demand per month is presented for illustrative purposes.

The initial rate will be subject to monthly adjustment and will be computed subject to Section 7 of the Government-Company contract.

Proceedings before the Federal Energy Regulatory Commission involving the Company's Open Access Transmission Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Conditions of Service: The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

### Wholesale Power Rate Schedule SCE&G–3–B

Availability: This rate schedule shall be available public bodies and cooperatives (any one of which is hereinafter called the Customer) in South Carolina to whom power may be scheduled pursuant to contracts between the Government and the South Carolina Electric & Gas Company (hereinafter called the Company). The customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.

Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Conditions of Service: The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

## Wholesale Power Rate Schedule SCE&G-4-B

Availability: This rate schedule shall be available public bodies and cooperatives (any one of which is hereinafter called the Customer) in South Carolina served through the transmission facilities of South Carolina Electric & Gas Company (hereinafter called the Company). The customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.

Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Conditions of Service: The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

## Wholesale Power Rate Schedule Pump-1-A

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, Florida, South Carolina, or North Carolina to whom power is provided pursuant to contracts between the Government and the customer.

Applicability: This rate schedule shall be applicable to the sale at wholesale energy generated from pumping operations at the Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. The energy will be segregated from energy from other pumping operations.

Character of Service: The energy supplied hereunder will be delivered at the delivery points provided for under appropriate contracts between the Government and the Customer.

Monthly Rate: The rate for energy sold under this rate schedule for the months specified shall be:

$$\text{Energy Rate} = \left(C_{wav} \div F_{wav}\right) \div \left(1 - L_d\right)$$

[computed to the nearest $.00001 (1/100 mill) per kwh]

(The weighted average cost of energy for pumping divided by the energy conversion factor, quantity divided by one minus losses for delivery.)

Where:

$$C_{wav} = C_{T1} \div E_{T1}$$

(The weighted average cost of energy for pumping for this rate schedule is equal to the cost of energy purchased or supplied for the benefit of the customer for pumping divided by the total energy for pumping.)

$$C_{T1} = C_P + C_S$$

(Cost of energy for pumping for this rate schedule is equal to the cost of energy purchased or supplied for the benefit of the customer plus the cost of energy in storage carried over from the month preceding the specified month.)

$$E_{T1} = E_p \times (1 - L_p) + E_s^{t-1}$$

(Energy for pumping for this rate schedule is equal to the energy purchased or supplied for the benefit of the customer, after losses, plus the energy for pumping in storage as of the end of the month preceding the specified month.)

$$C_s = C_{wav}^{t-1} \times E_s^{t-1}$$

(Cost of energy in storage is equal to the weighted average cost of energy for pumping for the month preceding the specified month times the energy for pumping in storage at the end of the month preceding the specified month.)

$$C_p$$

= Dollars cost of energy purchased or supplied for the benefit of the customer for pumping during the specified month, including all direct costs to deliver energy to the project.

$$E_p$$

= Kilowatt-hours of energy purchased or supplied for the benefit of the customer for

$$L_p$$

pumping during the specified month.

= Energy loss factor for transmission on energy purchased or supplied for the benefit of the customer for pumping (Expected to be .03 or three percent.)

$$E_s^{t-1}$$

= Kilowatt-hours of energy in storage as of the end of the month immediately preceding the specified month.

$$C_{wav}^{t-1}$$

= Weighted average cost of energy for pumping for the month immediately preceding the specified month.

$$F_{wav} = E_G \div E_T$$

(Weighted average energy conversion factor is equal to the energy generated from pumping divided by the total energy for pumping)

$$E_G$$

= Energy generated from pumping.

$$L_d$$

= Weighted average energy loss factor on energy delivered by the facilitator to the customer.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Facilitator (less any losses required by the Facilitator). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Facilitator's system.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

**Wholesale Power Rate Schedule Pump-2**

Availability: This rate schedule shall be available to public bodies and cooperatives who provide their own scheduling arrangement and elect to allow Southeastern to use a portion of their allocation for pumping (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, Florida, South Carolina, or North Carolina to whom power is provided pursuant to contracts between the Government and the customer.

Applicability: This rate schedule shall be applicable to the sale at wholesale energy generated from pumping operations at the Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This energy will be segregated from energy from other pumping operations.

Character of Service: The energy supplied hereunder will be delivered at the delivery points provided for under appropriate contracts between the Government and the Customer.

Monthly Rate: The rate for energy sold under this rate schedule for the months specified shall be:

$$\text{Energy Rate} = (C_{wav} \div F_{wav}) \div (1 - L_d)$$

[computed to the nearest $.00001 (1/100 mill) per kwh]

(The weighted average cost of energy for pumping divided by the energy conversion factor, quantity divided by one minus losses for delivery.)

Where:

$$C_{wav} = C_{T2} \div E_{T2}$$

(The weighted average cost of energy for pumping for this rate schedule is equal to the cost of energy purchased or supplied for the benefit of the customer for pumping divided by the total energy for pumping.)

$$C_{T2} = C_p + C_s$$

(Cost of energy for pumping for this rate schedule is equal to the cost of energy purchased or supplied for the benefit of the customer plus the cost of energy in storage carried over from the month preceding the specified month.)

$$E_{T2} = E_p \times (1 - L_p) + E_s^{t-1}$$

(Energy for pumping for this rate schedule is equal to the energy purchased or supplied for the benefit of the customer, after losses, plus the energy for pumping in storage as of the end of the month preceding the specified month.)

$$C_s = C_{wav}^{t-1} \times E_s^{t-1}$$

(Cost of energy in storage is equal to the weighted average cost of energy for pumping for the month preceding the specified month times the energy for pumping in storage at the end of the month preceding the specified month.)

$$C_p$$

= Dollars cost of energy purchased or supplied for the benefit of the customer for pumping during the specified month, including all direct costs to deliver energy to the project.

$$E_p$$

= Kilowatt-hours of energy purchased or supplied for the benefit of the customer for

$$L_p$$

pumping during the specified month.

= Energy loss factor for transmission on energy purchased or supplied for the benefit of the customer for pumping (Expected to be .03 or three percent.)

$$E_s^{t-1}$$

= Kilowatt-hours of energy in storage as of the end of the month immediately preceding the specified month.

$$C_{wav}^{t-1}$$

= Weighted average cost of energy for pumping for the month immediately preceding the specified month.

$$F_{wav} = E_G \div E_T$$

(Weighted average energy conversion factor is equal to the energy generated from pumping divided by the total energy for pumping)

$E_G$

= Energy generated from pumping.

$L_d$

= Weighted average energy loss factor on energy delivered by the facilitator to the customer.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Facilitator (less any losses required by the Facilitator). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Facilitator's system.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

### Wholesale Rate Schedule Regulation-1

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, Florida, South Carolina, or North Carolina to whom service is provided pursuant to contracts between the government and the customer.

Applicability: This rate schedule shall be applicable to the sale of regulation services provided from the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters, and Richard B. Russell Projects (hereinafter called the Projects) and sold under appropriate contracts between the Government and the Customer.

Character of Service: The service supplied hereunder will be delivered at the Projects.

Monthly Rate: The rate for service supplied under this rate schedule for the period specified shall be:

$0.05 per kilowatt of total contract demand per month.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract to which the Government is obligated to supply and the Customer is entitled to receive regulation service.

Billing Month: The billing month for services provided under this schedule shall end at 12 midnight on the last day of each calendar month.

### Wholesale Power Rate Schedule Replacement-1

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, Florida, South Carolina, or North Carolina to whom power is provided pursuant to contracts between the Government and the customer.

Applicability: This rate schedule shall be applicable to the sale at wholesale energy purchased to meet contract minimum energy and sold under appropriate contracts between the Government and the Customer.

Character of Service: The energy supplied hereunder will be delivered at the delivery points provided for under appropriate contracts between the Government and the Customer.

Monthly Rate: The rate for energy sold under this rate schedule for the months specified shall be:

$$\text{Energy Rate} = \left(C_{wav} \div F_{wav}\right) \div \left(1 - L_d\right)$$

[computed to the nearest $.00001 (1/100 mill) per kwh]

(The weighted average cost of energy for replacement energy divided by one minus losses for delivery.)

Where:

$$C_{wav} = C_P \div \left(E_P \times \left(1 - L_P\right)\right)$$

(The weighted average cost of energy for replacement energy is equal to the cost of replacement energy purchased divided by the replacement energy purchased, net losses.)

$C_P$

= Dollars cost of energy purchased for replacement energy during the specified month, including all direct costs to deliver energy to the project.

$E_P$

= Kilowatt-hours of energy purchased for replacement energy during the specified month.

$L_P$

= Energy loss factor for transmission on replacement energy purchased (Expected to be 0 or zero percent.)

$L_d$

= Weighted average energy loss factor on energy delivered by the facilitator to the customer.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Facilitator (less any losses required by the Facilitator). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Facilitator's system.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

[FR Doc. 03–25502 Filed 10–7–03; 8:45 am]

**BILLING CODE 6450–01–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7571–5]**

## Good Neighbor Environmental Board Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of meeting.

**SUMMARY:** The next meeting of the Good Neighbor Environmental Board, a Federal advisory committee that reports to the President and Congress on environmental and infrastructure projects along the U.S. border with Mexico, will take place in Imperial Beach, California, on October 22–23, 2003. It is open to the public.

**DATES:** On October 22, the meeting will begin at 8:30 a.m. (registration at 8 a.m.) and end at 6 p.m. On October 23, the Board will hold a routine business meeting from 8 a.m. until 12 noon (registration at 7:30 a.m.).

**ADDRESSES:** The meeting site is the Dempsey Holder Safety Center, 950 Ocean Lane, Imperial Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Koerner, Designated Federal Officer for the Good Neighbor Environmental Board, U.S. Environmental Protection Agency Region 9 Office, 75 Hawthorne St., San Francisco, California 94105. Tel: (415) 972–3437; E-mail: *koerner.elaine@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Meeting Access:* Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the Designated Federal Officer at least five business days prior to the meeting so that appropriate arrangements can be made.

*Agenda:* On the morning of October 22, the first day of the meeting, guest speakers will discuss the meeting theme of "U.S.-Mexico Border Cooperation" as it relates to the activities of their organizations. The morning session will begin at 8:30 a.m. and conclude with a public comment session from 12–12:30

p.m. For this session, the Board invites comments on a wide range of issues, including the topic for its upcoming Seventh Report: Links between children's health in the border region and the region's environmental infrastructure. During the afternoon of October 22, beginning at 2 p.m., guest speakers will continue to address the meeting theme until 3 p.m. From 3–3:45 p.m., Board members will report out on the activities of their organizations. After a fifteen minute break, there will be a two-hour Joint Session with Consejos Consultivos during which the Board will discuss mutual areas of interest with two counterpart Mexican advisory groups for the northern border. The first day of the meeting will conclude at 6:00 p.m. The second day of the meeting, October 23, will begin at 8 a.m. and conclude at noon. The format will be a routine business meeting, with agenda items including approval of minutes, planning for upcoming meetings, and status of reports.

*Public Attendance:* The public is welcome to attend all portions of the meeting. Members of the public who plan to file written statements and/or make brief (suggested 5-minute limit) oral statements at the public comment session are encouraged to contact the Designated Federal Officer for the Board prior to the meeting.

*Background:* The Good Neighbor Environmental Board meets three times each calendar year at different locations along the U.S.-Mexico border and also holds an annual strategic planning session. It was created by the Enterprise for the Americas Initiative Act of 1992. An Executive Order delegates implementing authority to the Administrator of EPA. The Board is responsible for providing advice to the President and the Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico in order to improve the quality of life of persons residing on the United States side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the governments of the States of Arizona, California, New Mexico and Texas; and private organizations with expertise on environmental and infrastructure problems along the southwest border. The U.S. Environmental Protection Agency gives notice of this meeting of the Good Neighbor Environmental Board pursuant to the Federal Advisory Committee Act (Pub. L. 92–463).

Dated: September 29, 2003.

**Oscar Carrillo,**

*Acting Designated Federal Officer.*

[FR Doc. 03–25549 Filed 10–7–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## FEDERAL DEPOSIT INSURANCE CORPORATION

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

## Agency Information Collection Activities: Proposed Extension of Information Collection; Comment Request

**AGENCIES:** Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision (OTS), Treasury.

**ACTION:** Joint notice and request for comment.

**SUMMARY:** The FDIC and OTS (collectively, the Agencies), as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed revision to an existing information collection as required by the Paperwork Reduction Act of 1995. The Agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. Currently, the Agencies are soliciting comment concerning their plans to require electronic filing by directors, officers, and principal shareholders of institutions (insiders) of beneficial ownership of equity securities. Electronic filing of the reports is mandated by the Securities Exchange Act of 1934, as amended by the Sarbanes-Oxley Act of 2002.

**DATES:** Comments should be submitted by December 8, 2003.

**ADDRESSES:** Comments should be directed to the Agencies and the OMB Desk Officer for the Agencies as follows:

*FDIC:* Steven F. Hanft, Paperwork Clearance Officer, Legal Division, Room MB–3064, Attention: Comments/Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to "beneficial ownership reports." Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. FAX number (202) 898–3838; Internet address: *comments@fdic.gov.* Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC between 9 a.m. and 4:30 p.m. on business days.

*OTS:* Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: 1550–0019, FAX number (202) 906–6518, or e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

OMB Desk Officer for the Agencies: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or e-mail to *jlackeyj@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:**

*FDIC:* Steven F. Hanft, Paperwork Clearance Officer, (202) 898–3907, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

*OTS:* Marilyn K. Burton, OTS Clearance Officer, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:**

*Type of Review:* Revision of a currently approved collection.

*Titles:*

FDIC: Beneficial Ownership Reports.

OTS: 34 Act Disclosures.

*OMB Control Numbers:*

FDIC: 3064–0030.

OTS: 1550–0019.

*Form Numbers:*

FDIC: Forms 3, 4, and 5.

OTS: SEC Schedules 13D, 13G, 14A, 14C, 14D–1, and TO; SEC Forms 3, 4, 5, 10, 10–SB, 10–K, 10–KSB, 8–K, 8–A, 12b–25, 10–Q, 10–QSB, 15, and annual report.

*Abstract:* This notice seeks public comment on a planned change in filing method for reports of beneficial ownership by insiders whose equity securities are registered with the Agencies. In the past, the Agencies have required paper filings. The Securities Exchange Act of 1934 ("Exchange Act"), as amended by the Sarbanes-Oxley Act of 2002, changed this requirement to electronic filing. Currently, the Agencies are authorizing voluntary electronic filing through an electronic system, which has been available since July 30. Electronic filing will be made mandatory by a separate, later action by the Agencies. The new electronic system is an important step in the Agencies' ongoing efforts to streamline the filing and retrieval of reports filed with the Agencies under the Securities Exchange Act of 1934. It will also reduce burden on insiders who must file these reports within two business days of completing a transaction in equity securities of the institution.

Additionally, OTS collects other periodic disclosure documents required to be filed by savings associations pursuant to the Exchange Act on forms promulgated by the U.S. Securities and Exchange Commission for its registrants. In addition to seeking public comment on the planned change in filing method for reports of beneficial ownership, OTS also seeks public comment on its proposed renewal of this collection.

The Agencies' burden estimates follow.

*Affected Public:*

FDIC: Directors, officers and principal shareholders of insured financial institutions (insiders).

OTS: Directors, officers and principal shareholders of insured financial institutions (insiders); savings associations.

*Burden Estimates:*

*Estimated Number of Respondents:*

FDIC: 1,755.

OTS: 128.

*Estimated Number of Responses:*

FDIC: 2,370.

OTS: 401.

*Estimated Annual Burden Hours:*

FDIC: 1,896 hours.

OTS: 14,759 hours.

*Frequency of Response:*

FDIC: On occasion.

OTS: On occasion; quarterly; annually.

**Comments**

Comments submitted in response to this notice will be summarized in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated at Washington, DC, this 22 day of September, 2003.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

Dated: October 2, 2003.

By the Office of Thrift Supervision.

**James E. Gilleran,**

*Director.*

[FR Doc. 03–25476 Filed 10–7–03; 8:45 am]

**BILLING CODE 6714–01–P AND 6720–01–P**

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## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement No.:* 011075–063.

*Title:* Central America Discussion Agreement.

*Parties:* A.P. Moller-Maersk A/S; APL Co. PTE Ltd.; Crowley Liner Services, Inc.; Dole Ocean Cargo Express; King Ocean Services Limited; and Seaboard Marine, Ltd.

*Synopsis:* The amendment eliminates the separate geographic sections under the agreement, makes technical corrections to eliminate obsolete or repetitive language, and updates Maersk's name.

*Agreement No.:* 201110–006.

*Title:* Berths 55–56 Agreement.

*Parties:* Port of Oakland and Total Terminals International, LLC, as Hanjin Shipping Company, Ltd.'s assignee.

*Synopsis:* The modification clarifies the primary and secondary use provisions and the completion dates for the improvements of the premises. It also provides for the use of port-owned cranes.

By Order of the Federal Maritime Commission.

Dated: October 3, 2003.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 03–25527 Filed 10–7–03; 8:45 am]

**BILLING CODE 6730–01–P**

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## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number : 3981NF.
Name : All-Cargo Express Inc.
Address : Lakeview Professional Village, 12558 West Atlantic Blvd., Coral Springs, FL 33071.
Date Revoked : September 14, 2003.
Reason : Failed to maintain valid bonds.

License Number : 13243N.
Name : Clark Overseas Shipping, Inc.
Address : 121 New York Avenue, P.O. Box 438, Trenton, NJ 08603.
Date Revoked : September 4, 2003.
Reason : Surrendered license voluntarily.

License Number : 17466N.
Name : Compass Shipping, Inc.
Address : 525 Empire Blvd., Brooklyn, NY 11225.
Date Revoked : September 5, 2003.
Reason : Failed to maintain a valid bond.

License Number : 2274F.
Name : David K. Lindemuth Co., Inc.
Address : 154 South Spruce Avenue, So. San Francisco, CA 94080.
Date Revoked : August 27, 2003.
Reason : Failed to maintain a valid bond.

License Number: 3183F.
Name : DRW Transportation Services, Inc.
Address : P.O. Box 15993, North Little Rock, AR 72231.
Date Revoked : August 24, 2003.
Reason : Failed to maintain a valid bond.

License Number : 17507F.
Name : ECO Freight International Corporation.
Address : 5422 W. Rosecrans Avenue, Hawthorne, CA 90250.
Date Revoked : August 21, 2003.
Reason : Surrendered license voluntarily.

License Number : 8410N.

Name : Eugenia Shilling Shaw dba Nantrans.
Address : 978 Shoreline Drive, San Mateo, CA 94404.
Date Revoked : August 30, 2003.
Reason : Failed to maintain a valid bond.

License Number : 16199N.
Name : Global Container Line, Inc. dba Global Ocean Air Solutions.
Address : 2013 NW. 79th Avenue, Miami, FL 33122.
Date Revoked : August, 24, 2003.
Reason : Failed to maintain a valid bond.

License Number : 17945N.
Name : Jury Trans, Inc.
Address : 8244 NW. 14th Street, Miami, FL 33126.
Date Revoked : August 20, 2003.
Reason : Failed to maintain a valid bond.

License Number : 16763N.
Name : MTL Worldwide Agency, Inc.
Address : 228 51st Street, 2nd Floor, Brooklyn, NY 11220.
Date Revoked : August 30, 2003.
Reason : Failed to maintain a valid bond.

License Number : 12539N.
Name : Miller Intermodal Logistics Services, Inc.
Address : 5500 Highway 80 West, P.O. Box 1123, Jackson, MS 32915–1123.
Date Revoked : August 14, 2003.
Reason : Surrendered license voluntarily.

License Number : 16035N.
Name : Piscataqua Global Logistics, L.L.C.
Address : 583 Old Portsmouth Avenue, Greenland, NH 03840.
Date Revoked : July 19, 2003.
Reason : Failed to maintain a valid bond.

License Number : 12190N.
Name : Reliable Overseas Shipping & Trading, Inc.
Address : 239–241 Kingston Avenue, Brooklyn, NY 11213.
Date Revoked : September 5, 2003.
Reason : Failed to maintain a valid bond.

License Number : 18043F.
Name : PK Logistics Inc.
Address : 114 Maple Avenue, Red Bank, NJ 07701.
Date Revoked : September 9, 2003.
Reason : Surrendered license voluntarily.

License Number : 17251N.
Name : Shanghai Aaron Shipping & Enterprises Co., Ltd.
Address : 300 Davey Glen Road, #3429, Belmont, CA 94002.
Date Revoked : November 9, 2002.
Reason : Failed to maintain a valid bond.

License Number : 15847F.
Name : Straightline Logistics, Inc.
Address : Cargo Bldg., 80, Suite 2A, JFK Int'l.Airport, Jamaica, NY 11430.
Date Revoked : August 29, 2003.
Reason : Failed to maintain a valid bond.

License Number : 4216F.
Name : U.S. International Forwarding Agency, Inc.
Address : 10680 NW. 37th Terrace, Miami, FL 33178.
Date Revoked : August 17, 2003.
Reason : Failed to maintain a valid bond.

License Number : 14037N.
Name : Vladimir G. Manegdeg dba VGM Movers.
Address : 3836 Fenn Way, Santa Cruz, CA 95062.
Date Revoked : September 11, 2003.
Reason : Failed to maintain a valid bond.

License Number : 3972F.
Name : World Cargo Corporation.
Address : 12159 SW. 132nd Court, Suite 202, Miami, FL 33186.
Date Revoked : August 29, 2003.
Reason : Failed to maintain a valid bond.

License Number : 3116NF.
Name : Zust Bachmeier of Switzerland dba Vectura Ocean Lines.
Address : 3700 Commerce Drive, Suite 908, Baltimore, MD 21227.
Date Revoked : August 21, 2003.
Reason : Failed to maintain valid bonds.

**Sandra L. Kusumoto,**

*Director, Bureau of Consumer Complaints and Licensing.*

[FR Doc. 03–25528 Filed 10–7–03; 8:45 am]

BILLING CODE 6730–01–P

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## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

Caribbean Express Shipping Company, Inc., 2706 NW. 31 Avenue, Lauderdale Lakes, FL 33311. Officers: Chijioki Azuogu, President (Qualifying Individual), Eberechukwu Azuogu, Vice President.

R & S Trading, Lerida 310, Urb. Valencia, Rio Piedras, PR 00924, Carlos B. Sanchez, Sole Proprietor.

Air Trans Logistics (USA) Inc., 148–36 Guy R Brewster Blvd., #211, Jamaica, NY 11434. Officers: Kwok Keung Wong, Secretary (Qualifying Individual), Yim Chi Wong, Vice President.

Sta. Lucia Cargo, 765 E. Yucca Street, Oxnard, CA 93033. Officer: Paulino J. Gerardo, CFO (Qualifying Individual).

New Cargo Express Corp., 133–40 Lefferts Blvd., S. Ozone Park, NY 11420. Officers: Estervina Rodriguez, President (Qualifying Individual), Persio Rodriguez, Secretary.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Skysea Freight International USA LLC, 1400 Elmhurst Road, Elk Grove Village, IL 60007. Officers: Sherry Lynn Gocal, Member Manager (Qualifying Individual), Syed Abdul Cader, Member.

Global Express Shipping & Delivery, Inc., 433 Red Oak Lane, Lawrenceville, GA 30045. Officer: Alfred M. Khannu, President/Chairman (Qualifying Individual).

Freight Systems Inc., 147–14 182nd Street, Jamaica, NY 11413. Officers: Sandford Lobo, Vice President (Qualifying Individual), David Phillips, President.

Consolidated Shipping Line, Inc., 535 Eight Avenue, New York, NY 10018. Officer: Albert Panelli, Vice President (Qualifying Individual).

Barrow Freight System, Inc., 522 Woodlake Drive, Fairfield, CA 94534. Officer: David Wang, Vice President (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Argo Cargo, Inc., 10044 Premier Parkway, Miramar, FL 33025. Officers: Jason John Propsom, Vice President (Qualifying Individual), Daniel F. Murray, III, President.

International Freight Experts Inc., 8006 Collingwood Court, Bradenton, FL 34201–2350. Officer: Christine Ann Aron, President (Qualifying Individual).

Gorham Export Packing LLC, 7516

Lawndale, Houston, TX 77012. Officer: Gerson D. Sosa, Managing Director (Qualifying Individual).

Globe Express International, LLC, 17902 Kay Ct., Cerritos, CA 90703. Officers: Eduardo D. Flores, Vice President (Qualifying Individual), Linne D. Flores, President.

Dated: October 3, 2003.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 03–25526 Filed 10–7–03; 8:45 am]

BILLING CODE 6730–01–P

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## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

| License no. | Name/address | Date reissued |
|---|---|---|
| 16805F | E.I.B. Brokers, Inc., 2550 NW. 72nd Avenue, Miami, FL 33122 | June 26, 2003. |
| 4407F | JCC International, Inc., 6275 N. State Road 7, Madison, IN 47250 | July 17, 2003. |
| 4478F | Marina Ocean Air International, LLC, 611 Grandview Drive, South San Francisco, CA 94083 | July 23, 2003. |
| 12539F | Miller Intermodal Logistics Services, Inc., 5500 Highway 80 West, P.O. Box 1123, Jackson, MS 32915–1123. | August 14, 2003. |
| 4217F | Reliable Van & Storage Co., Inc., 550 Division Street, Elizabeth, NJ 07201 | January 15, 2003. |

**Sandra L. Kusumoto,**

*Director, Bureau of Consumer Complaints and Licensing.*

[FR Doc. 03–25529 Filed 10–7–03; 8:45 am]

BILLING CODE 6730–01–P

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## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System

**SUMMARY:** Background.

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

*Request for Comment on Information Collection Proposals.*

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Comments must be submitted on or before December 8, 2003.

**ADDRESSES:** Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e–mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Members of the public may inspect comments in Room MP–500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Cindy Ayouch, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

*Proposal to Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Reports:*

1. *Report title:* Semiannual Report of Derivatives Activity.

*Agency form number:* FR 2436.

*OMB control number:* 7100–0286.

*Frequency:* Semiannual.

*Reporters:* Large U.S. dealers of over-the-counter (OTC) derivatives.

*Annual reporting hours:* 1,400.

*Estimated average hours per response:* 100.

*Number of respondents:* 7.

*General description of report:* This information collection is voluntary (12 U.S.C. §§ 248(a), 353–359, and 461) and is given confidential treatment (5 U.S.C. § 552(b)(4)).

*Abstract:* The FR 2436 collects derivatives market statistics from seven large U.S. dealers of over-the-counter (OTC) derivatives. Data are collected on notional amounts and gross market values of the volumes outstanding of broad categories of foreign exchange, interest rate, equity- and commodity-linked over-the-counter derivatives contracts across a range of underlying currencies, interest rates, and equity markets.

This collection of information complements the ongoing triennial Survey of Foreign Exchange and Derivatives Market Activity (FR 3036; OMB No. 7100–0285). The FR 2436 collects similar data on the outstanding volume of derivatives, but not on derivatives turnover. As with the FR 3036, the Federal Reserve conducts this report in coordination with other central banks and forwards the aggregated data furnished by U.S. reporters to the Bank for International Settlements (BIS), which publishes global market statistics that are aggregations of national data.

2. *Report title:* Domestic Branch Notification.

*Agency form number:* FR 4001.

*OMB control number:* 7100–0097.

*Frequency:* On occasion.

*Reporters:* State member banks.

*Annual reporting hours:* 599 hours.

*Estimated average hours per response:* 30 minutes for expedited notifications; 1 hour for nonexpedited notifications.

*Number of respondents:* 474 expedited; 362 nonexpedited.

*General description of report:* This information collection is mandatory (12 U.S.C. 321) and is not given confidential treatment.

*Abstract:* The Federal Reserve System requires a state member bank to file a notification whenever it proposes to establish a domestic branch. There is no formal reporting form; banks notify the Federal Reserve by letter prior to making the proposed investment. The Federal Reserve uses the information to fulfill its statutory obligation to supervise state member banks.

*Proposal to Approve Under OMB Delegated Authority the Implementation of the Following Survey:*

*Report title:* Central Bank Survey of Foreign Exchange and Derivatives Market Activity.

*Agency form number:* FR 3036.

*OMB control number:* 7100–0285.

*Frequency:* One-time.

*Reporters:* Financial institutions that serve as intermediaries in the wholesale foreign exchange and derivatives market and dealers.

*Annual reporting hours:* 3,945.

*Estimated average hours per response:* Turnover survey: 51 hours; outstandings survey: 15 hours for FR 2436 reporters, 60 hours for non-FR 2436 reporters.

*Number of respondents:* 60.

*General description of report:* This information collection is voluntary (12 U.S.C. 248(a), 353–359, and 461) and is given confidential treatment (5 U.S.C. § 552(b)(4)).

*Abstract:* The FR 3036 is the U.S. part of a global data collection that is conducted by central banks every three years. More than fifty central banks plan to conduct the survey in 2004. The Bank for International Settlements (BIS) compiles national data from each central bank to produce global market statistics.

The Federal Reserve System and other government agencies use the survey to monitor activity in the foreign exchange and derivatives markets. Respondents use the published data to gauge their market share.

Board of Governors of the Federal Reserve System, October 2, 2003.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 03–25465 Filed 10–7–03; 8:45 am]

**BILLING CODE 6210–01–S**

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## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 3, 2003.

**A. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *NewFirst Financial Group, Inc.*, El Campo, Texas, and NewFirst Financial Company, Inc., Dover, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of NewFirst National Bank, El Campo, Texas.

Board of Governors of the Federal Reserve System, October 2, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–25466 Filed 10–7–03; 8:45 am]

**BILLING CODE 6210–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Notice of a Grant for Public Health Educational Efforts Conducted by the National Health Museum

**AGENCY:** Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Minority Health.

**ACTION:** Notice.

**SUMMARY:** The Office of Minority Health (OMH), Office of Public Health and Science (OPHS), announces that it will award a single source grant to the National Health Museum of Washington, DC. The purpose of this grant is to support U.S. Department of Health and Human Services (HHS) efforts to communicate emerging public health issues to the public, expand the

general audience for HHS public health initiatives such as Steps to a HealthierUS, enhance and expand the teaching of public health to students in grades K–12 by providing educational resources to health and life science teachers, and encourage health and science museums to support public health exhibitions and educational programming.

**Authority:** Section 301 of the Public Health Service (PHS) Act.

The professional audience for the National Health Museum is comprised of the nation's public health and museum and science center leaders but the end audience that will benefit from the museum is much larger. More than 800 million visits occur each year in American museums and science centers, yet only a relatively small percentage of these visits address public health issues. Funded activities will directly support efforts to reach this public audience with educational activities that incorporate public health learning objectives. Activities will be undertaken to bring public health and museum and science center leaders together to collaborate in the development of products useful to a broad, general audience. Specifically, the grant is intended to: (1) Develop a master plan for museum exhibits; (2) support implementation of the National Public Health Partnership to create a Rapid Response Network (RRN) that could help promote quicker, better-coordinated responses to public health emergencies by communicating CDC and NIH-developed information and research to the public through outreach to the nation's museums, science centers and public health educators, and (3) expand the museum Web site to provide educational resources and instructional support for middle school teachers of health and life sciences.

**DATES:** Persons requesting additional information about this notice should contact the OPHS Office of Grants Management, no later than November 7, 2003.

**ADDRESSES:** Persons requesting additional information about this notice should contact the OPHS Office of Grants Management, 1101 Wootton Parkway, 5th Floor, Rockville, MD 20852. An application kit may be requested by telephone from (301) 594–0758 or by fax from (301) 594–9399.

**SUPPLEMENTARY INFORMATION:** CFDA: Applied for.

## I. Funding Opportunity Description

### *Background*

The U.S. Department of Health and Human Services (HHS) is the agency protecting the health of all Americans and providing essential human services, especially for those least able to help themselves. HHS health agencies have responsibility for a wide range of public health activities, working closely with State and local government, public and private nonprofit organizations, schools systems, business and industry. Program responsibilities among public health agencies include but are not limited to biomedical and health services research and translation of research findings into public health practice; the safety of food, drugs, and medical devices; disease prevention and health promotion; improving and expanding access to quality of health care; public health workforce education and development; and conducting rapid and effective responses to public health emergencies. The current HHS Steps to a HealthierUS initiative, led by Secretary Tommy G. Thompson, highlights the importance of prevention in public health, particularly for diseases such as diabetes, obesity, and asthma, by promoting healthy community lifestyles and healthy behavior. The initiative has a special focus on health among youth and older Americans.

The mission of the National Health Museum, a nongovernmental 501[c][3] organization, is to educate, engage, and inspire people, young and old, to understand the past, present, and future of health and health science and empower them to act upon that information to enhance their individual, family, and community health. The goals of the museum are to educate people about the human body and health science, to motivate people to learn more about their health needs and make positive lifestyle changes, to promote appreciation of the Nation's health science and medical heritage, and to serve as an independent and unbiased center of dialogue about health issues. Providing support for the promotion of public health activities was identified by museum planners as one of the key opportunities for museum programming, by museum planners, and the museum is a convener of the National Public Health Partnership comprising 28 organizations dedicated to bridging the gap between public health and informal education in museum and science center settings. Established in 1996, the museum operates an extensive educational Web site at *http://www.accessexcellence.org*, and plans to build a Washington, DC facility that will include a "discovery center" for visitors, K–12 classroom facilities and resources, and a health conference center. Additionally, the museum will use HHS funds to support implementation of the NPHP, a nationwide network of museums, science centers, and public health organizations that will actively address public health issues. The National Health Museum conceptualized and secured funding for formative research that has resulted in a strategic plan. HHS funds will be used to undertake implementation of this plan, which will involve Partnership members in information dissemination, project collaborations and resource sharing.

The National Health Museum is uniquely qualified to accomplish the purpose of this grant because:

- It is developing an educational facility in the nation's capitol that is projected to attract over 2 million visitors each year with public health-oriented programs, exhibits and activities.
- It provides leadership to a nationwide network of museums and science centers in developing public health educational materials.
- It has an explicit mission to provide assistance to K–12 health and life science teachers and learners of all ages by furthering their understanding of public health.
- It has a Web site that attracts more than 5.7 million monthly "hits" including 650,000 health and life science educators and learners.
- It maintains a national directory that can match public and private sector health experts with schools, community groups, institutions, and media outlets who could use their expertise to develop programs and media on chronic and emerging public health issues.
- As a convener of the National Public Health Partnership which consists of 28 organizations that focus on bridging the gap between public health and education in museum and science center settings, it has strong working relationships with the primary organizations essential to the fulfillment of the public health mission of this grant.

Assistance will be provided only to the National Health Museum under this grant. Various HHS agencies have contributed funds for this effort. The OMH will award this grant on behalf of these agencies.

### *Purposes of the Grant*

The Office of Minority Health, Office of Public Health and Science, will award a single source grant to the

National Health Museum. The purpose of this grant is to support HHS efforts to communicate emerging public health issues to the public, expand the general audience for HHS public health initiatives such as Steps to a HealthierUS, enhance and expand the teaching of public health to students in grades 6–12 by providing educational resources to health and life science teachers, and encourage health and science museums to support public health exhibitions and educational programming. The grant will enable the National Health Museum to plan and implement program activities directed toward three goals.

(1) Planning

A Master Plan will be developed to establish a detailed thematic outline for National Health Museum exhibitions and programs, further articulate the key health communications and learning tactics that will be applied by the museum to support the public health mission. Planning sessions with key public health experts from the academic, government, non-profit and private sectors will inform these planning activities, to identify "best practices" from exemplary museums, science centers and other informal learning venues. Museum exhibits ultimately will serve the multi-generational annual audience of more than 2 million individuals that is expected to visit the NHM physical facility in Washington, DC, for public health-oriented programs, exhibitions, and educational activities.

(2) National Public Health Partnership

NHM will use HHS funds to support implementation of the Partnership, a nationwide network of museums, science centers, and public health organizations that will actively address public health issues. Activities will be undertaken to bring public health and museum and science center leaders together to collaborate in the development of products useful to a broad, general audience. One such product will be a Rapid Response Network (RRN) that will help promote quicker, better-coordinated responses to public health emergencies by communicating Centers for Disease Control and Prevention and National Institutes of Health-developed information and research to the public through outreach to the nation's museums, science centers and public health educators. For example, many Partnership member institutions reported receiving inquiries from their visitors recently during the heightened concern over SARS that they were not equipped to answer. Support may be directed to development of items such as resource guides, speakers bureaus, electronic presentations and "toolkits" of fast, credible information on rapidly developing public health emergencies or issues.

(3) Museum Web Site

Funds will be used to expand the Museum Web site, Access Excellence@The National Health Museum, which attracts an online audience of more than 650,000 health and life science educators and learners each month. The site, which is currently focused on serving the needs of high school life science teachers, will be expanded to reach a larger middle school audience and provide additional resources specifically designed for health teachers. These additional resources will help address the needs of health teachers who require standards-based lesson plans that are proven effective but who frequently do not have the experience, knowledge, or time to develop such resources for themselves. The expanded resources, including real-time, on-demand, and streaming video materials, will have up-to-date, quality information that is educationally sound, and uses technology to provide innovative and creative classroom activities.

## II. Award Information

OMH intends to make $1 million available to the National Health Museum for a project period of 12 months. A budget of up to $1 million total costs (direct and indirect) for this 12-month project period may be requested to cover costs of:

- Personnel
- Consultants
- Supplies
- Equipment
- Grant related travel
- Other grant related costs

Funds *may not* be used for:

- Medical treatment
- Construction
- Building alterations or renovations

The budget request must be fully justified in terms of the proposed objectives and activities and include a computational explanation of how costs were determined. The applicant is not required to provide matching funds or share in project costs.

## III. Eligibility Information

Assistance will be provided only to the National Health Museum of Washington, DC.

## IV. Application and Submission Information

Application must be submitted on Form PHS 5161–1 (Revised July 2000 and approved by OMB under Control Number 0937–0189). An applicant is advised to pay close attention to the specific program guidelines and general instructions provided in the application kit. The application kit is available from the OPHS Office of Grants Management at the address, telephone, and fax numbers previously listed.

An applicant must submit an original and 2 copies of the completed application to the OPHS Office of Grants Management at the address previously listed. The original application must be signed by the individual authorized to act for the applicant organization and to assume for the organizations the obligations imposed by the terms and conditions of the grant award.

To receive consideration, the grant application must be received by the OPHS Office of Grants Management by November 7, 2003. An application will be considered as meeting the deadline if it is (1) received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for orderly processing. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. A hand-delivered application must be received in the OPHS Office of Grants Management not later than 4:30 p.m. on the application due date. An application must be submitted in hard copy. An application submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. The applicant will receive written notification from the OPHS Office of Grants Management via Form PHS 3038–1 that its application has been received.

### *Review Under Executive Order 12372*

An application under this announcement is not subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs."

### *Program Requirements/Application Content*

This notice seeks an application from the National Health Museum to plan and implement program activities that will communicate emerging public health issues to the public, expand the general audience for HHS public health initiatives, support the teaching of public health to students in grades K–12, and encourage health and science museums to support public health exhibitions and educational programming. A successful application will focus on the following:

(1) Evidence that the applicant has experience in planning and implementing educational programming on health sciences to the general public, including young people.

(2) Evidence that the applicant thoroughly understands public health goals, methods, and programs and that the applicant has access to and working relationships with health and science teachers, and to health and science museums and centers suitable to carry out the objectives of this project.

(3) A clear description of target audiences for the messages and the strategies that will be employed to reach them.

(4) A clear description of goals and objectives for the educational and communications efforts that will be undertaken and the measures that will be used to determine success.

(5) A description of the type, length, activities, and services that will be planned and implemented as part of this effort, and a rationale for the proposed approach.

(6) Evidence that the proposed plan is appropriate, feasible, and logically sequenced to attain the stated goals.

(7) A plan to evaluate individual program activities or the program as a whole and its impact (or potential impact) on the target audiences.

(8) A detailed budget justification for the project that is reasonable, adequate, and cost efficient and which includes staffing requirements derived from the proposed activities.

*Program Evaluation*

The project is required to have an evaluation plan consistent with the scope of the proposed project and funding level that conforms to the program's stated goal and objectives. The plan should include both a process evaluation to track the implementation of program activities and, as appropriate, an outcome evaluation to track changes in knowledge, skills, or behavior that can be attributed to the program.

### V. Application Review Information

The funding decision will be determined by the HHS Deputy Assistant Secretary for Minority Health based on results of a technical review by an ad hoc, independent review group conducted by the Office of Minority Health. The application will be reviewed by an Applications will be assessed for technical merit according to the following criteria:

*(1) Methodology (35 Points)*

- Appropriateness of proposed approach
- Appropriateness of specific activities for educational programming objectives outlined
- Logic and sequencing of the planned approaches

*(2) Evaluation (20 Points)*

- Thoroughness, feasibility, and appropriateness of the evaluation design, data collection, and analysis procedures
- Clear intent and plans to document the activities and their outcomes

*(3) Background (15 Points)*

- Expertise and understanding of public health goals, methodologies, and programs
- Demonstrated access to and experience in communicating health/science information to youth and their teachers, the general public, museums, and science centers
- Demonstrated experience in networking, planning, and implementing activities at a national level
- Demonstrated outcomes of past similar efforts/activities with the target audiences

*(4) Objectives (15 Points)*

- Merit of the objectives
- Relevance to the program purpose and stated problem
- Attainability in the stated time frames

*(5) Management Plan (15 Points)*

- Demonstrated knowledge/skills in program and project management
- Demonstrated knowledge/skills in health/science education and health/science communications
- Capability to plan and coordinate efforts at a national level
- Capability to manage and evaluate the project as determined by:
- The qualifications of proposed staff or requirements for "to be hired" staff
  - —Staff level of effort
  - —Management experience of the applicant
  - —Clarity of the applicant's organizational chart

### VI. Award Administration Information

The applicant will be notified by mail regarding the outcome of its application. The Notice of Grant Award is the official document informing the applicant that its application has been approved and funded. This document specifies the amount of money awarded, the purpose of the grant, the terms and conditions of the grant award, and the amount of funding, if any, to be contributed to project costs by the grant recipient.

### VII. Agency Contacts

For technical assistance on budget and business aspects of the application or administrative requirements, please contact Karen Campbell, OPHS Office of Grants Management, (301) 594–0758.

For assistance with questions about program requirements, please contact Blake Crawford or Yvonne Johns, Division of Information and Education, Office of Minority Health, 1101 Wootton Parkway, Suite 600, Rockville, MD 20852, telephone (301) 443–5224.

Dated: September 30, 2003.

**Tuei Doong,**

*Deputy Director, Office of Minority Health.*

[FR Doc. 03–25506 Filed 10–7–03; 8:45 am]

BILLING CODE 4150–29–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[Program Announcement 04010]

### Programs to Improve the Health, Education, and Well-Being of Young People; Notice of Availability of Funds

*Application Deadline:* December 8, 2003.

### A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301(a), 311(b) and (c), and 317(k)(2) [42 U.S.C. 241(a), 243(b) and (c), and 247b(k)(2)] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.938.

### B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2004 funds for a cooperative agreement program for Programs to Improve the Health, Education, and Well-Being of Young People. This program addresses the "Healthy People 2010" focus areas of Diabetes, Educational and Community-Based Programs, Family Planning, Food Safety, HIV, Nutrition and Overweight, and Sexually Transmitted Diseases. This program also addresses Goal One, Objective Three, Strategies One, Two, and Six of CDC's HIV Prevention Strategic Plan Through 2005 (found at: *http://www.cdc.gov/nchstp/od/hiv_plan/default.htm*).

The purpose of the program is to improve the education, health, and well-being of young people by strengthening coordinated school health programs and by enabling other youth-serving organizations to address health risks. Award recipients will emphasize efforts to help young people avoid risks (*e.g.*, to avoid sexual intercourse). This may also include efforts to involve parents in programs to improve the health of youth.

Measurable outcomes of the program will be in alignment with the following performance goal and measure for the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP): Reduce the percentage of HIV/AIDS-related risk behaviors among school-aged youth through the dissemination of HIV prevention education programs. Performance is measured by the percentage of high school students who are taught about HIV/AIDS prevention in school and the proportion of adolescents (grades 9–12) who abstain from sexual intercourse or use condoms if currently sexually active.

This program announcement covers the following six priority areas:

### *Priority 1: HIV Prevention for School-Age Youth*

The purpose of Priority 1 is to build broad nationwide strategies, programs, and support to help schools and other youth-serving agencies prevent sexual risk behaviors that result in HIV infection. Strategies and programs should especially target youth most at risk for HIV infection as identified in CDC's HIV Prevention Strategic Plan Through 2005. Specific populations addressed would include:

- Adolescents who have sex with older male partners
- Adolescents who have multiple sexual partners
- Adolescents who initiate sexual activity at young ages
- Adolescents with multiple lifetime sexual partners
- Adolescents with a history of unprotected sex
- Young men who have sex with men
- Young women who have sex with men who have sex with men.

This priority also includes strategies and programs to involve parents in HIV prevention efforts.

*Category A—Schools:* These organizations will build capacity and partnerships to help the nation's schools prevent sexual risk behaviors that result in HIV infection. Strategies and programs should especially target youth who are at highest risk for HIV infection per CDC's HIV Prevention Strategic Plan Through 2005, and students in grades 7 through 12.

*Category B—Youth-Serving Organizations:* These organizations will focus on preventing HIV infection among large populations of youth, especially youth in high-risk situations as identified in CDC's HIV Prevention Strategic Plan Through 2005, Goal 1, Objective 3, Strategy 1. Funded organizations are expected to work through constituencies and networks of youth-serving, community-based agencies and institutions which have access to these young people. Examples include, but are not limited to: Recreation and service organizations, alternative schools, faith-based organizations, juvenile justice facilities, outreach services to runaway and homeless youth, programs for immigrants and limited English speaking youth, and services for youth with substance abuse or mental health problems.

### *Priority 2: Integration of School Efforts To Prevent HIV, STDs, and Unintended Pregnancy (Optional Enhancements to Priority 1, Category A)*

The purpose of Priority 2 is to help schools integrate their efforts to prevent HIV, STDs, and unintended pregnancies. HIV, STD, and unintended pregnancy share many protective factors including sexual abstinence as the most effective prevention method. Integration of efforts to prevent these outcomes will promote increased efficiency and increase the potential for effectiveness. This strategy is consistent with CDC's HIV Prevention Strategic Plan Through 2005, Goal 1, Objective 3, Strategy 6.

*Category A—Pregnancy Prevention:* These organizations will focus on strategies and programs designed to prevent unintended pregnancy, and how they can be effectively implemented and integrated with strategies and programs designed to prevent HIV and other STDs and increase abstinence from sexual intercourse.

*Category B—STD Prevention:* These organizations will focus on strategies and programs designed to prevent STDs, and how they can be effectively implemented and integrated with strategies and programs designed to prevent HIV and unintended pregnancy and increase abstinence from sexual intercourse.

### *Priority 3: Abstinence Collaboration and Partnerships*

The purpose of Priority 3 is to strengthen communication, coordination, and collaboration among agencies working to prevent sexual risk behaviors among youth that result in HIV, other STDs, or unintended pregnancy, with an emphasis on partnerships with agencies that focus exclusively on helping school-age youth not to engage in intercourse (*i.e.* to remain or become abstinent). As stated in the Guidelines for Effective School Health Education to Prevent the Spread of AIDS, abstinence from sexual intercourse is the most effective means of preventing the spread of HIV.

### *Priority 4: Coordinated School Health Programs and Prevention of Chronic Disease Risks*

The purpose of Priority 4 is to support state education and health agencies in strengthening coordinated school health programs to prevent priority health risks among youth, especially those that contribute to chronic diseases. Current funding focuses on strategies and programs to (1) prevent tobacco use and addiction, (2) improve eating patterns, (3) increase physical activity, and (4) prevent obesity among youth.

### *Priority 5: Prevention of Foodborne Illnesses*

The purpose of Priority 5 is to build the capacity of organizations and their constituents to help schools prevent foodborne illnesses within a coordinated school health program.

### *Priority 6: Training and Professional Development*

The purpose of Priority 6 is to increase non-governmental organizational capacity to be as effective as possible in working with their constituencies to reduce health problems among youth. This will be accomplished by planning and delivering learning opportunities and providing technical assistance for other non-governmental organizations.

## C. Eligible Applicants

Eligible applicants are non-profit, non-governmental organizations, including organizations that represent faith communities, parents, and families, which have the capacity to achieve the purposes of the priority area(s). Applicants ideally should have local, state, or regional constituencies representing all states and territories, but at minimum representing 25 states/territories.

Eligible applicants for Priority 1 should have a nationwide structure and capacity to help schools (Category A) or youth-serving organizations (Category B) prevent HIV among large numbers of youth. Eligible applicants may apply for both Category A and Category B, but can only be funded for one.

Eligible applicants for Priority 2 should have a nationwide structure and capacity to integrate school efforts to prevent HIV, STDs, and unintended pregnancy. Priority 2, Category A (Pregnancy Prevention) and B (STD Prevention), are optional enhancements to Priority 1, Category A. Thus, to be eligible under Priority 2, organizations must also apply for Priority 1, Category A funding. Only those organizations selected to be funded under Priority 1, Category A will then be considered in the competition for Priority 2 funding. Organizations may apply for one or both categories under Priority 2, so long as they also apply for Priority 1, Category A.

Eligible applicants for Priority 3 should have a nationwide structure and capacity to strengthen communication, coordination, and collaboration among agencies working to prevent sexual risk behaviors among youth that result in HIV, other STDs, or unintended pregnancy, with an emphasis on partnerships with agencies that focus exclusively on helping school-age youth not to engage in intercourse (*i.e.* to remain or become abstinent).

Eligible applicants for Priority 4 should have a nationwide structure and capacity to help schools implement coordinated school health programs to effectively prevent a wide range of health risks, especially organizations that can support state education and health agency chronic disease efforts.

Eligible applicants for Priority 5 should have a nationwide structure and capacity to help schools prevent foodborne illness and related school absences through school food safety programs and the credentialing of food safety professionals.

Eligible applicants for Priority 6 must demonstrate (1) significant nationwide experience with strategies and programs designed to prevent HIV infection and other health problems among youth within the context of schools or other youth-serving agencies, (2) experience with implementing high quality, training events, and (3) experience in working with other Division of Adolescent and School Health (DASH) funded or similar organizations and knowledge of their training needs.

**Note:** Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

## D. Funding

### *Availability of Funds*

Approximately $9,604,000 will be available in FY 2004 for up to 44 awards for Priorities 1 through 6. Funds expected to be available for specific priorities and categories are as follows:

### *Priority 1: HIV Prevention for School-Age Youth*

Approximately $6,879,000 is expected to be available for Priority 1, Category A and B.

*Category A—Schools:* Approximately $5,465,000 is expected to be available to fund up to 20 organizations. Awards will average $273,250 and will range from approximately $175,000 to $300,000.

*Category B—Youth-Serving Organizations:* Approximately $1,414,000 is expected to be available to fund up to six organizations. Awards will average $235,666 and will range from approximately $150,000 to $275,000.

### *Priority 2: Integration of School Efforts to Prevent HIV, STDs, and Unintended Pregnancy (Optional Enhancements to Priority 1, Category A)*

*Category A—Pregnancy Prevention:* Approximately $600,000 is expected to be available to fund up to six organizations. Awards will average $100,000 and will range from approximately $100,000 to $300,000.

*Category B—STD Prevention:* Approximately $300,000 is expected to be available to fund approximately three organizations. Awards will average $100,000 and will range from approximately $75,000 to $125,000.

### *Priority 3: Abstinence Collaboration and Partnerships*

Approximately $900,000 is expected to be available to fund approximately four organizations. Awards will average $225,000 and will range from approximately $175,000 to $275,000.

### *Priority 4: Coordinated School Health Programs and Prevention of Chronic Disease Risks*

Approximately $550,000 is expected to be available to fund approximately three organizations. Awards will average $183,333 and will range from approximately $125,000 to $200,000.

### *Priority 5: Prevention of Foodborne Illnesses*

Approximately $125,000 is expected to be available to fund one organization.

### *Priority 6: Training and Professional Development*

Approximately $250,000 is expected to be available to fund one organization.

It is expected that all awards will begin on or about May 15,2004, with a 12-month budget period, within a project period of up to two years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports, achievement of performance standards, and the availability of funds.

### *Use of Funds*

Cooperative agreement funds may be used to support personnel and to purchase equipment, supplies, and services (including travel) directly related to program activities and consistent with the scope of the cooperative agreement. Funds are not intended to be used to conduct research projects, provide direct delivery of patient care or treatment services, purchase condoms or contraceptives, or to provide clinical testing or screening services. Federal funds awarded under this Program Announcement may not be used to supplant other Federal funds.

Grantees are encouraged to leverage the maximum use of limited funds through opportunities to work with other nationwide organizations and state and local education and health agencies that are addressing the risk factors and health problems described in Priorities 1 through 6 of this announcement. These opportunities might include, but are not limited to: joint planning activities, joint funding of complementary activities based on program recipient activities, education of constituents and members, collaborative efforts in the development and implementation of strategies and program interventions, and other cost-sharing activities that complement school and youth-focused program priorities.

### *Recipient Financial Participation*

Matching funds are not required for this program.

## E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

### *1. Recipient Activities*

The following activities are applicable to all priorities and recipients:

a. Establish and maintain appropriate and qualified staff positions to implement activities funded under this announcement. With the exception of activities under Priority 2, Category B, each priority area should have at least one full-time staff position within the organization with the responsibility and authority to carry out the activities identified in the operational plan.

b. Collaborate with constituents, CDC, and other relevant federal, national, state, and local organizations to achieve the purposes of the program.

c. Emphasize efforts to help young people avoid risks (*e.g.* to avoid sexual intercourse).

d. Based on a logic model, implement specific, measurable, and feasible goals and objectives. (Logic models depict the causal mechanisms through which interventions are expected to affect health behaviors.)

e. Evaluate the effectiveness of the program in achieving goals, objectives, and performance measures.

f. Participate in DASH-sponsored conferences and meetings of funded partners.

g. Disseminate program information and materials to constituents, stakeholders, CDC, and other DASH-funded partners.

h. Assess the status of constituents with regard to the purposes of the program and their needs for training, technical assistance, materials, and other resources.

i. Build the capacity of constituents by addressing the needs identified.

j. Plan and implement training and technical assistance based on constituent needs and the purposes of the program.

k. Identify and/or develop and disseminate model strategies, guidelines, procedures, programs, materials, and other resources.

l. Help constituents develop and implement effective strategies and programs.

m. Support locally determined programs consistent with community values and needs.

n. Assist constituents in the development of state or local coalitions to support the purposes of the program.

o. Develop and/or participate in coalitions and initiatives to support the purposes of the program.

p. Collaborate with constituents; state and local education, health, and social service agencies; non-governmental partners; and CDC and other federal agencies to develop strategies to support the purposes of the program.

The following activities are applicable to programs awarded with HIV prevention funding (Priorities 1 and 3):

a. Encourage state and local constituents to work collaboratively with health departments and HIV Prevention Community Planning Groups.

b. Emphasize reaching youth at highest risk for HIV infection as identified in CDC's HIV Prevention Strategic Plan Through 2005.

The following activities are applicable to Priority 6 only:

a. Assess the training and professional development needs of other organizations specifically as it pertains to their work under this program announcement.

b. Develop and implement a professional development plan that addresses the training needs.

c. In collaboration with the CDC-sponsored Professional Development Consortium, plan and implement at least two to three training events within a 12-month period for organizations funded under this program announcement.

d. Coordinate all logistical arrangements and disburse funds for significant costs associated with these training events, including travel, hotel, and per diem expenses for participants and presenters.

e. Evaluate the training events to inform necessary changes in future training offerings and designs.

f. Participate in at least one meeting of the DASH-sponsored Professional Development Consortium each year and conference calls as needed to plan and coordinate training events.

*Performance Measures:* Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP): Reduce the percentage of HIV/AIDS-related risk behaviors among school-aged youth through the dissemination of HIV prevention education programs. Performance is measured by the percentage of high school students who are taught about HIV/AIDS prevention in school and the proportion of adolescents (grades 9–12) who abstain from sexual intercourse or use condoms if currently sexually active.

Performance under Priorities 1 through 5 will be measured by the extent to which recipients:

a. Determine the need for the program based on the reported needs of constituents. Evidence might include: needs assessment reports and/or other data which identifies and documents specific needs for training, materials, or other forms of assistance and support.

b. Address the identified needs, and build constituent's capacity to plan, implement, and evaluate effective strategies and high quality programs. Evidence might include: reports documenting assistance provided to constituents and how the assistance was consistent with identified needs; documentation of the results of the organization's efforts at the constituent level (*e.g.* the number of interventions planned, implemented, and evaluated at the local level; the results of evaluations; or the numbers of youth reached with effective interventions); and documentation of training activities designed to build knowledge and skills directly applicable to constituent activities and the purposes of the program (*e.g.* agendas, training materials, and lists of participants and other data collected with record keeping systems such as Training Tracker).

c. Collaborate effectively with constituents and local, state, national, and federal partners to achieve the purposes of the program. Evidence might include: documentation of activities with, and feedback from constituents; the results and outcomes of key meetings and events; documentation of participation, engagement, and support from constituents and other key organizations, including their involvement in the planning, implementation, and evaluation of the program.

d. Reduce health disparities by targeting efforts toward those youth at highest risk for the health problem(s) addressed. Evidence might include: data indicating the racial or ethnic characteristics of youth reached through constituent activities; documentation of grantee activities related to targeting youth at highest risk for the health problem(s) addressed; documentation of strategies utilized to reach underserved youth most in need of the program and to facilitate their participation in the program; documentation of established strategies and procedures to develop curriculum, education materials, and other information in formats that respect cultural values and meet the language and literacy needs of the target population; evidence of development and implementation of strategies to recruit, retain, train, and promote qualified, diverse, and culturally competent program personnel to address the needs of the youth being targeted; evidence, when applicable, of procedures to assess the quality and appropriateness of interpretation and translation services.

e. Monitor and evaluate program activities relative to stated goals and objectives, performance measures, and the effectiveness of selected strategies in achieving desired results. Evidence might include: progress reports indicating the degree to which goals and objectives and/or performance measures were achieved, and evaluation reports documenting the degree to which strategies and programs were delivered as intended, their effectiveness in achieving desired results, lessons learned, and how evaluation results will be used to improve the program.

Performance under Priority 6 will be measured by the extent to which the organization is able to:

a. Plan and implement training events for CDC-funded organizations consistent with their needs. Evidence might include: results of Professional Development Consortium meetings demonstrating how the training needs of organizations were considered in determining the training topics selected; and progress reports documenting the implementation of training events (e.g. agendas, lists of participants, training materials, etc.).

b. Evaluate training events to determine the degree to which desired results were achieved and to inform changes needed in future training designs. Evidence might include: summaries of participant evaluations (content, format, delivery, and recommendations for improvement); results of follow-up surveys; documentation of de-briefing meetings with CDC and the Professional Development Consortium; and revised agendas demonstrating changes made in training designs as a result of evaluations and feedback.

*2. CDC Activities*

a. Provide and periodically update information related to the purposes or activities of this program announcement.

b. Coordinate with national, state, and local education, health, social service, and other relevant organizations in planning and implementing the components of a broad strategy designed to prevent health risks among school-age youth.

c. Provide consultation and guidance to grantees on program planning, implementation, and evaluation; assessment of program objectives and performance measures; and dissemination of successful strategies, experiences, and evaluation reports.

d. Provide assistance with program planning to assure consistency with the overall strategy, including assistance with the use of logic models and other public health tools and resources.

e. Assist in the evaluation of program activities, including review and feedback of evaluation plans, and linking grantees to additional evaluation expertise from CDC or its contractors.

f. Plan and implement funded partners meetings, conferences, trainings, and work group meetings to provide forums through which grantees can increase their knowledge and skills, learn from each other, share resources, and work collaboratively together to address issues and program activities related to improving the health, education, and well being of young people.

**F. Content**

*Technical Assistance Conference Call*

Technical assistance will be available for potential applicants on two conference calls scheduled as follows:

First Call (Conference #7329384)

*Date:* 10/21/2003.
*Time:* 1–3 p.m. Eastern Time.
*Telephone Number:* 1–888–566–0007.
*Pass Code:* 22135.
*Leader:* Ms. Judy Powers.

Second Call (Conference #7329405)

*Date:* 10/23/2003.
*Time:* 1–3 p.m. Eastern Time.
*Telephone Number:* 1–866–556–1092.
*Pass Code:* 19953.
*Leader:* Ms. Judy Powers.

Potential applicants are requested to call in using only one telephone line. The pass code and leaders name will be required to join the call. The purpose of the conference calls is to help potential applicants understand the scope and intent of the program announcement, Public Health Service funding policies, and application and review procedures. Participation in these conference calls is not mandatory.

*Letter of Intent (LOI)*

A LOI is required for this program. The Program Announcement title and number must appear in the LOI, as well as the priority(ies) and category(ies) being applied for. The narrative should be no more than two pages, single-spaced, printed on one side, with one-inch margins, in 12 point, unreduced font. Your LOI will be used to provide evidence of eligibility and to plan the objective review process. Failure to submit a LOI will preclude you from submitting an application. However, it will not influence review and funding decisions. The LOI should provide evidence of eligibility; supportive documentation of eligibility may be attached.

*Applications*

The Program Announcement title and number must appear in the application, as well as the Priority and Category being applied for. A complete, separate application is required for each priority/category applied for. Use the information in the Purpose, Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. All application pages must be clearly numbered with one-inch margins. Content and narrative must be single-spaced and typewritten in unreduced 12-point font. Applications should be printed on one side only.

Applicants are required to have a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge.

To obtain a DUNS number, access the following Web site: *http://www.dunandbradstreet.com* or call 1–866–705–5711.

*Executive Summary*

All applications should begin with a clear, concise, one to two page summary, to include: (1) The priority/category being applied for, (2) the amount of funds requested, (3) a brief summary of the overall strategy and the groups and organizations to be reached, and (4) the major activities reflected in the operational plan.

1. Need and Capacity (not more than eight pages)

a. Describe the need for the proposed activities, including the specific groups targeted and the need for the particular strategies and activities planned.

b. Describe the capacity and ability of your organization to address the identified needs and implement the proposed activities, including current and past experience with the priority area and target population(s).

c. Describe the existing organizational structure and how that structure will support the proposed program activities. Include an organizational chart, which may be placed in an appendix.

2. Operational Plan (not more than 15 pages)

a. *Goals:* List goals that specifically relate to the purpose of the priority/category and program requirements, and indicate what the program will have accomplished by the end of the two-year project period.

b. *Objectives:* List objectives that are specific, measurable, and feasible to accomplish during the first 12-month budget period. The objectives should relate directly to the project goals and program requirements.

c. *Activities:* Identify and describe specific activities that will be accomplished to meet each objective. Indicate when each activity will occur, identify the person(s) responsible for each activity and display on a timetable. The plan should also address activities to be conducted over the entire two-year project period.

3. Project Management and Staffing Plan (not more than four pages, excluding items in an appendix)

a. Describe the proposed staffing for the project and provide job descriptions for existing and proposed positions, including the level of responsibility involved for each position.

b. Submit curriculum vitae (limited to two pages per person) for each professional staff member named in the proposal. These may be placed in an appendix.

c. If other organizations will participate in the proposed activities, provide the name(s) of the organization(s), and a letter from each organization describing their role and the specific activities they have agreed to implement or be involved with.

4. Program Monitoring and Evaluation (not more than four pages)

Describe a plan that will collect relevant data to be used for program accountability and to inform decisions about program changes and improvement. Plans should include the type of data to be collected, the methods of data collection and analysis, and how the data will be used. Plans should include at least two levels of data collection:

a. *Program Monitoring:* Documenting progress in meeting objectives and conducting activities during the budget period.

b. *Program Evaluation:* Assessing the quality and effectiveness of proposed activities (*e.g.* trainings, documents, dissemination efforts), and collecting data to assess the performance measures identified under Recipient Activities (Section E).

5. Budget and Accompanying Justification

Provide a detailed budget and line-item justification of all operating expenses for the first 12-month budget period. The budget should be consistent with the stated objectives and planned activities of the project.

*Contracts and Consultants:* Provide the following information for contracts and consultants: (a) Name of contractor/consultant, (b) method of selection, (c) period of performance, (d) scope of work, (e) method of accountability, and (f) itemized budget with justification.

*Travel Funds:* Budget requests should include travel funds for staff members to participate in meetings in Atlanta, Georgia or elsewhere, including: DASH annual conference and/or funded partner meetings (two to three days, applicable to all priorities), the CDC-sponsored HIV Prevention Conference (two to three days, applicable to all HIV-funded priorities) and/or the National Conference on Chronic Disease Prevention and Control (two to three days, applicable to those funded under Priority 4).

*Indirect Costs:* If indirect costs are requested, applicants must include a copy of the organization's current negotiated Federal Indirect Cost Rate Agreement.

## G. Submission and Deadline

*Letter of Intent (LOI)*

On or before November 7, 2003, submit the LOI to: Technical Information Management—LOI 04010, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146.

*Application Forms*

Submit the signed original and two copies of PHS 5161–1 OMB Approval No. 0920–0428) for each application. Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at (770) 488–2700, and forms will be mailed to you.

*Submission Date, Time, and Address*

The application must be received by 4 p.m. Eastern Time, December 8, 2003. Submit the original and two copies of each application (*i.e.*, a separate application for each priority/category applied for) to: Technical Information Management—PA# 04010, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO-TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

*Deadline*

LOIs and applications will be considered as meeting the deadline if they are received in the CDC Procurement and Grants Office before 4 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications that do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

## H. Evaluation Criteria

*Letter of Intent (LOI)*

The LOI will be used only to ascertain eligibility for the priority being applied for, and to assist in planning the objective review process. The criteria for eligibility are indicated in the section on Eligible Applicants. All organizations which are determined ineligible for the priority being applied for, whether through information provided in the LOI or in the application itself, will be notified that they are ineligible and why.

*Application*

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified purposes and objectives of the cooperative agreement. Measures of effectiveness must also relate to the applicable performance measures listed in the "Program Requirements" section. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria. All applications will be competitive and reviewed by an independent review group appointed by CDC. Points indicated in parentheses below reflect the total number possible for that section. The total number of possible points for the entire application is 100.

1. Operational Plan (40 Points)

a. *Goals:* The extent to which the applicant has submitted goals that align with Healthy People 2010 focus areas, HHS Department-wide program objectives including STEPS to a HealthierUS, and the performance goals for NCCDPHP as indicated in the purpose section of this announcement. The extent to which the applicant has submitted goals that are specific and feasible for the two-year project period and are consistent with the purpose of the priority/category and program requirements.

b. *Objectives:* The extent to which the applicant has submitted objectives for the first 12-month budget period that are specific, measurable, feasible, and directly related to the goals, purpose, and program requirements.

c. *Activities:* The extent to which the applicant describes activities that are likely to achieve the objectives identified, provides a timetable, and identifies the person(s) responsible for each activity.

d. The extent to which the overall operational plan reflects a coherent, effective strategy for achieving optimal impact and results within the priority area addressed.

e. The extent to which the applicant demonstrates realistic evidence of collaboration with federal agencies, other organizations, and state and local education and health agencies to achieve the purposes of the program.

f. The extent to which the overall operational plan includes activities to reach communities of color and youth at highest risk for health problems.

2. Need and Capacity (30 Points)

a. The extent to which the applicant justifies the need and demonstrates the ability to implement strategies that serve the greatest unmet needs for the proposed activities.

b. The extent to which the applicant demonstrates the capacity and ability of their organization and constituency to address the identified needs and implement the proposed activities.

3. Project Management and Staffing (15 Points)

The extent to which the applicant identifies staff that have the responsibility, qualifications, and authority to carry out the activities proposed, as evidenced by job descriptions, curriculum vitae, organizational charts, and letters documenting the role of collaborating organizations.

4. Program Monitoring and Evaluation (15 Points)

The extent to which the applicant describes relevant data collection plans for program monitoring and evaluation that include the type of data to be collected, methods of data collection and analysis, and how the data will be used.

5. Budget and Accompanying Justification (Not Scored)

The extent to which the applicant provides a detailed and clear budget consistent with the operational plan.

## I. Other Requirements

### *Technical Reporting Requirements*

Send an original and two copies of the following reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement:

1. Interim Progress Report and Continuation Plan

For the first year of the project, an interim progress report and continuation plan will be due by February 15, 2005. The interim progress report will be used as evidence of achievement to date in meeting approved goals, objectives, and performance measures. Continuation funding decisions will be made on the basis of satisfactory progress on performance measures and the availability of funds. The interim progress report/continuation plan should include:

a. HIV Assurance and Compliance Forms (for recipients of HIV funding only): These include the form certifying compliance with Web Site Notices, and CDC Form 0.1113 signed by the chairperson of the HIV Review Panel which lists the names of current review panel members. The applicant should also submit documentation, signed by the chairperson, of materials reviewed, and the panel's decision to approve or disapprove each item.

b. A succinct description (no longer than ten pages) of progress made to date in meeting each program objective, including discussion of any significant delays or barriers and what is being done to correct the situation.

c. A financial progress report which provides an estimate of the overall obligations for the current budget period, and the actions to be taken if unobligated or insufficient funds are anticipated.

d. An operational plan for the next budget period, which includes all goals, objectives, and activities. Descriptions of staffing or evaluation activities are necessary only if there are significant changes from those provided in the original application.

e. A line item budget and budget justification for the next budget period (including information needed for proposed contracts and consultants as described in Section F: Content, Budget and Accompanying Justification).

2. Annual Progress Report

Within 90 days after the end of the first budget period (by August 14, 2005), submit an annual progress report that includes information described in (a) above (if applicable) and (b) above, with the exception that the period covered should be the entire budget period (May 15, 2004 to May 14, 2005). Within 90 days after the end of the entire two-year project period (by August 14, 2006), submit a final progress report.

3. Financial Status Report

Within 90 days after the end of the first budget period (by August 14, 2005), submit a Financial Status Report. Within 90 days after the end of the entire two-year project period (by August 14, 2005), submit a final Financial Status Report.

### *Additional Requirements*

Projects that involve the collection of information from 10 or more individuals and funded by a cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

The following additional requirements are applicable to this program. For a complete description of each, *see* appendix D of the announcement as posted on the CDC Web site:

| | |
|---|---|
| AR–1 | Human Subjects Requirement |
| AR–5 | HIV Review Panel Requirements (HIV funded projects only) |
| AR–7 | Executive Order 12372 Review |
| AR–9 | Paperwork Reduction Act Requirements |
| AR–10 | Smoke-Free Workplace Requirements |
| AR–11 | Healthy People 2010 |
| AR–12 | Lobbying Restrictions |
| AR–13 | Prohibition on Use of CDC Funds for Certain Gun Control Activities |
| AR–15 | Proof of Non-Profit Status |
| AR–20 | Conference Support |

## J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov*. Click on "Funding," then "Grants and Cooperative Agreements."

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Nealean Austin, Grants Management Officer, Acquisitions and Assistance Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number: (770) 488–2754, E-mail address: *NEA1@cdc.gov*.

For program technical assistance, send questions in writing to the following e-mail address: *nccddashpdsbnta@cdc.gov*.

Potential applicants may obtain online copies of documents referenced in this announcement at the following addresses:

CDC's HIV Prevention Strategic Plan Through 2005: *http://www.cdc.gov/nchstp/od/news/prevention.pdf*.
Healthy People 2010: *http://www.health.gov/healthypeople*.

Further guidance is available at the DASH Web site: *http://www.cdc.gov/nccdphp/dash*.

Dated: October 2, 2003.

**Edward Schultz,**

*Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 03–25481 Filed 10–7–03; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel ZOH1 PCM (10): Occupational Safety and Health Research Program Announcement #99–143

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

*Name:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Occupational Safety and Health Research, Program Announcement #99–143.

*Times and Dates:* 1 p.m.–1:30 p.m., October 28, 2003 (Open); 1:30 p.m.–5:30 p.m., October 28, 2003 (Closed).

*Place:* Teleconference, Executive Park, Building 24, Room 1420, Atlanta, GA 30329, Telephone (800) 857–4151.

*Status:* Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters to be Discussed:* The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement Number #99–143.

*Contact Person for More Information:* Pervis C. Major, Ph.D., Scientific Review Administrator, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1095 Willowdale Road, Morgantown, WV 26505, Telephone (304) 285–5979.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: September 26, 2003.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 03–25479 Filed 10–7–03; 8:45 am]

BILLING CODE 4163–19–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

### Healthcare Infection Control Practices Advisory Committee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

*Name:* Healthcare Infection Control Practices Advisory Committee (HiCPAC).

*Times and Dates:* 8:30 a.m.–5 p.m., October 27, 2003. 8:30 a.m.–4 p.m., October 28, 2003.

*Place:* Swissôtel, 3391 Peachtree Road, NE., Atlanta, Georgia 30333.

*Status:* Open to the public, limited only by the space available.

*Purpose:* The Committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, the Director, CDC, and the Director, National Center for Infectious Diseases (NCID), regarding (1) the practice of hospital infection control; (2) strategies for surveillance, prevention, and control of infections (*e.g.*, nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

*Matters To Be Discussed:* Agenda items will include an overview of CDC's mission and activities related to patient safety; a review of issues related to isolation precautions in healthcare facilities; strategies for surveillance of healthcare-associated infections; and updates on CDC activities of interest to the committee.

Agenda items are subject to change as priorities dictate.

*For Further Information Contact:* Michele L. Pearson, M.D., Executive Secretary, HICPAC, Division of Healthcare Quality Promotion, NCID, CDC, 1600 Clifton Road, NE., M/S A–07, Atlanta, Georgia 30333, telephone 404/498–1182.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 2, 2003.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 03–25480 Filed 10–7–03; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

### Proposed Projects

*Title:* Schedule UDC: "Itemized Undistributed Collections".

*OMB No.:* New Collection.

*Description:* Although state child support enforcement agencies successfully collect and distribute billions of dollars every fiscal year, a certain portion of the collections remain undistributed. State agencies have requested a methodology by which to differentiate and report to the Office of Child Support Enforcement (OCSE) on the nature of those collections. In some instances collections remain undistributed for a short time, pending the anticipated resolution of an assortment of administrative or legal processes, while in other instances collections remain undistributed for an indefinite time as a result of circumstances beyond the control of the state agency. This support schedule, which will be submitted quarterly as an attachment to Form OCSE–34A, the "Quarterly Report of Collections," will enable each state to differentiate and itemize its undistributed collections by category and age.

*Respondents:* State IV–D agencies administering the Child Support Enforcement Program under Title IV–D of the Social Security Act.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Schedule UDC | 54 | 4 | 4 | 864 |
| Estimated Total Annual Burden Hours | | | | 864 |

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 1, 2003.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 03–25438 Filed 10–7–03; 8:45 am]

BILLING CODE 4184–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Administration for Children and Families

## Proposed Information Collection Activity; Comment Request

### Proposed Projects

*Title:* Grants Application Data Summary, Administration for Native Americans SEDS Application Information.

*OMB No.:* New Collection.

*Description:* Grant Application Data Summary (GADS) information is collected as part of a grant application. The GADS provides information used to prepare the legislatively mandated annual report to Congress on the status of American Indians, Native Alaskans, Native Hawaiians and Public Islander communities.

The purpose of this information collection is to collect information from applicants that the Administration for Native Americans can use for more accurate reporting to the Administration for Children and Families and to Congress on the status of American Indians, Native Alaskans, Native Hawaiians and Pacific Islander communities.

*Respondents:* Tribal Governments, Native Non-Profits, Tribal Colleges and Universities.

ANNUAL BURDEN ESTIMATED

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Grants Application Data Summary | 650 | 1 | 28 | 18,200 |
| Estimated Total Annual Burden Hours | | | | 18,200 |

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsrgis@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 1, 2003.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 03–25439 Filed 10–7–03; 8:45 am]

BILLING CODE 4184–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

**Proposed Projects**

*Title:* Uniform Project Description (UPD) for Discretionary Grant Application Form.

*OMB No:* 0970–0139.

*Description:* The Administration for Children and Families (ACF) has more than 40 discretionary grant programs. The proposed information collection form would be a uniform discretionary application form usable for all of these grant programs to collect the information from grant applicants needed to evaluate and rank applicants and protect the integrity of the grantee selection process. All ACF discretionary grant programs would be eligible but not required to use this application form. The application consists of general information and instructions; the Standard Form 424 series that requests basic information, budget information and assurances; the Program Narrative requesting the applicant to describe how these objectives will be reached; and certifications. Guidance for the content of information requested in the Program Narrative is found in OMB Circulars A–102 and A–110.

*Respondents:* Applicants for ACF Discretionary Grant Programs.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| UPD | 4,133 | 1 | 4 | 16,532 |
| Estimated Total Annual Burden Hours | | | | 16,532 |

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer, E-mail address: *rsargis@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, and including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 1, 2003.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 03–25440 Filed 10–7–03; 8:45 am]

BILLING CODE 4184–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

**Proposed Projects**

*Title:* Child Care and Development Fund Quarterly Financial Report (ACF–696).

*OMB No.:* 0970–0163.

*Description:* States and territories use this form to facilitate the reporting of expenditures for the Child Care and Development Fund (CCDF) on a quarterly basis. The form provides specific data regarding expenditures, obligations, and estimates. It provides states and territories with a mechanism to request grant awards and certify the availability of State matching funds. Failure to collect this data would seriously compromise the Administration for Children and Families' (ACF) ability to monitor expenditures. This form may also be used to prepare ACF budget submissions to Congress. This information collection currently uses form ACF–696, for which Office of Management and Budget approval expires on December 31, 2003, updated for electronic submission.

*Respondents:* States and Territories that are CCDF grantees.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| ACF–696 | 56 | 4 | 5 | 1,120 |
| Estimated Total Annual Burden Hours | | | | 1,120 |

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 1, 2003.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 03–25441 Filed 10–7–03; 8:45 am]

BILLING CODE 4184–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

**Proposed Projects**

*Title:* Quarterly Performance Report (ORR–6).

*OMB No.:* 0970–0036.

*Description:* We ask for the information on this form in order to determine the effectiveness of the state cash and medical assistance, social services, and targeted assistance programs as required by section 412(e) of the Immigration and Naturalization Act. We also calculate state-by-state Refugee Cash Assistance and Refugee Medical Assistance utilization rates for use in formulating program initiatives, priorities, standards, budget requests, and assistance policies. The Office of Refugee Resettlement regulations require that this form be completed in order to participate in the program.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| OOR–6 | 48 | 4 | 3.875 | 744 |
| Estimated Total Annual Burden Hours | | | | 744 |

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer, E-mail address: *rsargis@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 1, 2003

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 03–25442 Filed 10–7–03; 8:45 am]

BILLING CODE 4184–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003N–0066]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Inspection by Accredited Persons Program Under the Medical Device User Fee and Modernization Act of 2002

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

**DATES:** Submit written comments on the collection of information by November 7, 2003.

**ADDRESSES:** OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Medical Devices Inspection by Accredited Persons Program Under MDUFMA (OMB Control Number 0910–0510)—Extension

The Medical Device User Fee and Modernization Act of 2002 (MDUFMA) (Public Law 107–250) was signed into law on October 26, 2002. Section 201 of MDUFMA adds a new paragraph "g" to section 704 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 374), directing FDA to accredit third parties (accredited persons or APs) to conduct inspections of eligible manufacturers of class II or class III devices. This is a voluntary program; eligible manufacturers have the option of being inspected by an AP or by FDA. The new law requires FDA, within 180 days from the date of MDUFMA was signed into law, to publish in the **Federal Register** criteria to accredit or deny accreditation to persons who request to perform these inspections (section 704(g)(2) of the act).

In the **Federal Register** of April 28, 2003 (68 FR 22388), FDA published a notice announcing that a proposed collection of information has been submitted to OMB for emergency processing under the PRA. Interested persons were given until May 28, 2003, to comment on the notice. Elsewhere in the April 28, 2003, issue of the **Federal Register** (68 FR 22400), FDA published a document announcing the criteria it will use to accredit persons to inspect eligible device manufacturers and the availability of a guidance entitled "Implementation of the Inspection by Accredited Persons Program Under the Medical Device User Fee and Modernization Act of 2002; Accreditation Criteria: Guidance for Industry, FDA Staff, and Third Parties."

FDA received a total of three comments from a trade association, an industry association, and a consultant. These comments were not specifically related to the information collection for the submission of applications to become an accredited person. The comments addressed the implementation of the third party inspection program. FDA will take these comments into consideration in further developing its third party inspection program.

*Description of Respondents:* Businesses or other for profit organizations.

In the **Federal Register** of July 10, 2003 (68 FR 41160), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| Item | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| Request for Accreditation (First Year) | 25 | 1 | 25 | 80 | 2,000 |
| Request for Accreditation (Second Year) | 10 | 1 | 10 | 15 | 150 |
| Request for Accreditation (Third Year) | 5 | 1 | 5 | 80 | 400 |
| Total | | | | | 2,550 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based these estimates on conversations with industry, trade association representatives, and internal FDA estimates. Our expectation is that 25 bodies will apply and meet the minimum standard for being accredited. Under MDUFMA, we can only accredit 15 persons during the first year. We (FDA) expect that the lowest ranking, 10 (the ones not accredited), will reapply the following year and will submit an updated application. Five new applicants may apply the third year. Once an organization is accredited, it will not be required to reapply.

Dated: September 30, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–25444 Filed 10–7–03; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

**[Docket No. 2003N–0295]**

## Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Establishing and Maintaining a List of U.S. Dairy Product Manufacturers/Processors With Interest in Exporting to Chile

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments on the collection of information by November 7, 2003.

**ADDRESSES:** OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Establishing and Maintaining a List of U.S. Dairy Product Manufacturers/Processors With Interest in Exporting to Chile (OMB Control Number 0910–0509)—Extension

Section 701(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(h)) authorizes the Secretary of Health and Human Services (the Secretary) to develop guidance documents with public participation presenting the views of the Secretary on matters under the jurisdiction of FDA.

In the **Federal Register** of May 23, 2003 (68 FR 28237), FDA announced the availability of a guidance entitled "Establishing and Maintaining a List of U.S. Dairy Product Manufacturers/ Processors With Interest in Exporting to Chile." The guidance provided voluntary recommendations on the process for firms that wish to export dairy products to Chile. FDA is taking this action in response to discussions with Chile that have been adjunct to the negotiations of the United States-Chile Free Trade Agreement. As a result of those discussions, Chile recognized FDA as the competent food safety authority in the United States to identify U.S. dairy product manufacturers and processors eligible to export to Chile and concluded that it will not conduct individual inspections of U.S. firms identified by FDA as eligible to export to Chile.

Therefore, FDA intends to establish and maintain a list identifying U.S. manufacturers/processors that have expressed interest to FDA in exporting dairy products to Chile, are subject to FDA jurisdiction, and are not the subject of a pending judicial enforcement action (i.e. an injunction or seizure) or an unresolved warning letter. Under this guidance, FDA recommends that U.S. firms that want to be placed on the list send information to FDA (i.e., name and address of the firm and the manufacturing plant; name, telephone number, and e-mail address (if available) of contact person; list of products presently shipped and expected to be shipped in the next 3 years; identities of agencies that inspect the plant and date of last inspection plant number and copy of last inspection notice; and, if other than an FDA inspection, copy of last inspection report. The term "dairy products," for purposes of this list, is not intended to cover the raw agricultural commodity raw milk. The guidance can be found at *http://www.cfsan.fda.gov/guidance.html*.

The burden estimates presented in the following paragraphs considered the number of U.S. firms that FDA believes produce dairy products and that will be interested in exporting to Chile, which is estimated to total 75. After the first year, FDA believes that approximately eight new firms each year will be interested in exporting dairy products to Chile, and thus, being placed on the list. In the **Federal Register** of April 10, 2003 (68 FR 17655), FDA published an emergency notice requesting public comment on the information collection provisions that had been submitted to OMB for emergency processing under the PRA. Four comments were received from trade associations and private industry.

Those comments were answered in the 60-day notice.

In the **Federal Register** of July 10, 2003 (68 FR 41157), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| Type of Survey | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| Mail questionnaire | 1,000 | 1 | 1,000 | 3 | 3,000 |
| Phone Survey | 1,000 | 1 | 1,000 | .5 | 500 |
| Internet or Cable Survey | 3,000 | 1 | 3,000 | 1 | 3,000 |
| Total | | | | | 6,500 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of the number of firms is based on the actual number of U.S. firms that applied to be placed on the list as a result of the **Federal Register** of May 23, 2003 (68 FR 28237), publication of the availability of a guidance entitled "Establishing and Maintaining a List of U.S. Dairy Product Manufacturers/ Processors With Interest in Exporting to Chile." The estimate of the number of hours that it will take a firm to gather the information needed to be placed on the list is based on FDA's experience with firms submitting similar requests. FDA believes that the information to be submitted will be readily available to the firms. We (FDA) estimate that for the first year a firm will require 1.5 hours to read the **Federal Register**, gather the information needed, and to prepare a communication to FDA that contains the information and requests that the firm be placed on the list. We estimate the recurring burden in subsequent years to be 1.5 hours for a new firm to be placed on the list and 0.5 hours for reporting changes to FDA for firms already on the list.

Dated: September 30, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–25448 Filed 10–7–03; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## Anesthetic and Life Support Drugs Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

*Name of Committee*: Anesthetic and Life Support Drugs Advisory Committee.

*General Function of the Committee*: To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time*: The meeting will be held on November 18, 2003, from 8 a.m. to 5 p.m. and on November 19, 2003, from 8 a.m. to 12 noon.

*Location*: Holiday Inn, The Ballrooms, 2 Montgomery Village Ave., Gaithersburg, MD.

*Contact Person*: Johanna M. Clifford, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, or e-mail: *cliffordj@cder.fda.gov*, or FDA Advisory Committee Information Line: 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12529. Please call the Information Line for up-to-date information on this meeting.

*Agenda*: On November 18, 2003, the committee will discuss the assessment and management of risk related to QTc prolongation by Droperidol (Inapsine) Akorn, Inc., indicated for nausea and vomiting in surgical and diagnostic procedures, premedication, and neuroleptanalgesia.

*Procedure*: On November 18, 2003, the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 10, 2003. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 10, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

*Closed Committee Deliberations*: On November 19, 2003, from 8 a.m. to 12 noon, the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)).

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact John Lauttman at 301–827–7001 at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 29, 2003.

**Peter J. Pitts,**

*Associate Commissioner for External Relations.*

[FR Doc. 03–25445 Filed 10–7–03; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee.

*General Function of the Subcommittee:* To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on October 29, 2003, from 8 a.m. to 5:30 p.m. and October 30, 2003, from 8 a.m. to 3:30 p.m.

*Location:* Hilton, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD, 301–556–2046.

*Contact Person:* Thomas H. Perez, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: *perezt@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12530. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* On October 29, 2003, the subcommittee will meet between 8 a.m. and 3:30 p.m., to discuss the risk assessment and possible risk management strategies for hypothalamic pituitary adrenal (HPA) axis suppression in children who are treated for skin disorders with topical corticosteroids. Following this, from approximately 3:45 p.m. to 5:30 p.m., the agency will report to the subcommittee on Adverse Event Reporting as mandated in section 17 of the Best Pharmaceuticals for Children Act (BPCA). The products to be discussed during this portion of the meeting include ZYRTEC (cetirizine), BUSULFEX (busulfan), COZAAR (losartan), NOLVADEX (tamoxifen), ACCUPRIL (quinapril), and SERZONE (nefazodone).

On October 30, 2003, the subcommittee will meet between 8 a.m. and 3:30 p.m., to discuss how to approach long-term monitoring for cancer occurrence among patients treated for atopic dermatitis with topical immunosuppressants.

The background material for this meeting will be posted on the Internet when available or 1 working day before the meeting at *http:// www.fda.gov/ ohrms/dockets/ac/menu.htm*.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by October 21, 2003. On October 29, 2003, oral presentations from the public will be scheduled between approximately 12:30 p.m. and 1:30 p.m. for issues related to atopic dermatitis, and between approximately 4:30 p.m. and 5 p.m. for issues related to section 17 of the BPCA. On October 30, 2003, oral presentations from the public will be scheduled between approximately 12:30 p.m. and 1:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person by October 21, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please notify Thomas Perez at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 2, 2003.

**Peter J. Pitts,**

*Associate Commissioner for External Relations.*

[FR Doc. 03–25443 Filed 10–7–03; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## Drug Safety and Risk Management Advisory Committee; Notice of Postponement

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is postponing the meeting of the Drug Safety and Risk Management Advisory Committee scheduled for September 19, 2003, due to Hurricane Isabel. The future date of this meeting is to be determined. This meeting was announced in the **Federal Register** of August 5, 2003 (68 FR 46199).

**FOR FURTHER INFORMATION CONTACT:** Shalini Jain, Center for Drug Evaluation and Research (HFD–21), Food and Drug

Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, or e-mail: *JAINS@CDER.FDA.GOV*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12535. Please call the Information Line for up-to-date information on this meeting.

Dated: October 2, 2003.

**Peter J. Pitts,**

*Associate Commissioner for External Relations.*

[FR Doc. 03–25449 Filed 10–7–03; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

**[Docket No. 2003N–0338]**

## Food and Drug Administration Obesity Working Group; Public Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the following public meeting: Public Meeting on Obesity. The topic to be discussed involves issues within FDA's jurisdiction related to obesity and nutrition. The purpose of this public meeting, which is being sponsored by FDA's Obesity Working Group, is to discuss FDA's role and responsibilities in addressing the major public health problem of obesity, to focus on issues related to promoting better consumer dietary and lifestyle choices that have the potential to significantly improve the health and well-being of Americans, and to obtain stakeholder views on how best to build a framework for messages to consumers about reducing obesity and achieving better nutrition.

The agency has developed a web page for this initiative where interested persons can register to attend and/or make an oral presentation at the meeting, submit comments, and obtain related information. This Web Site is located at *http://www.fda.gov/oc/opacom/hottopics/obesity.html*.

**DATES:** The meeting will be held on October 23, 2003, from 9 a.m. to 5 p.m. Registration to attend the meeting must be received by October 17, 2003 at 5 p.m. Submit written comments by November 21, 2003.

**ADDRESSES:** The meeting will be held at the Jack Masur Auditorium, Warren Grant Magnuson Clinical Center (Bldg. 10), National Institutes of Health (NIH), 9000 Rockville Pike, Bethesda, MD. Important information about transportation and directions to the NIH campus, parking, and security procedures are found at *http://www.nih.gov/about/visitor/index.htm*.

Visitors must show two forms of identification, one of which must be a government-issued photo identification such as a Federal employee badge, driver's license, passport, green card, etc. If you are planning to drive to and park on the NIH campus, you must enter at the South Dr. entrance of the campus which is located on Wisconsin Ave. (the Medical Center Metro entrance), and allow extra time for vehicle inspection. Detailed information about security procedures is located on *http://www.nih.gov/about/visitorsecurity.htm*.

**FOR FURTHER INFORMATION CONTACT:**

*For General Information*: Brian R. Somers, Center for Food Safety and Applied Nutrition (CFSAN), Food and Drug Administration (HFS–820), 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1692, FAX: 301–436–2636, e-mail: *Brian.Somers@CFSAN.FDA.GOV*.

*For Registration Information*: Patricia A. Alexander, Office of Regulatory Affairs (HFC–150), 5600 Fishers Lane, Rockville, MD 20857, 301–827–6328, FAX: 301–443–2143, e-mail: *registration@ora.fda.gov*.

### Registration and Requests for Oral Presentations

If you would like to attend the meeting, you must register with the appropriate contact person (*see* **FOR FURTHER INFORMATION CONTACT**) by October 17, 2003, at 5 p.m. by providing your name, title, organizational affiliation, address, telephone, fax number (optional), and e-mail address (optional). Registration will be conducted on a first-come, first-served basis, and seating will be limited. To expedite processing, this registration information may also be faxed or e-mailed to Patricia A. Alexander (*see* **FOR FURTHER INFORMATION CONTACT**). If you need special accommodations due to a disability, please contact Patricia A. Alexander (*see* **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance.

If, in addition to attending, you wish to make an oral presentation during the meeting, you must inform Patricia A. Alexander (*see* **FOR FURTHER INFORMATION CONTACT**) when you register and submit the following items: (1) A brief written statement of the general nature of the views you wish to present, (2) the names and addresses of all persons who will participate in the presentation, and (3) an indication of the approximate time that you request to make your presentation. FDA asks that groups having similar interests consolidate their comments and present them through a single representative. Scheduled speakers should provide two copies of their presentation for the docket at the meeting. The agency requests that speakers annotate and organize their presentations to specifically identify which of the six questions (*see* **SUPPLEMENTARY INFORMATION**) are addressed in their presentations.

The agency will allocate the time available for the public meeting among persons who have preregistered to give an oral presentation. If time permits, FDA may allow interested persons attending the meeting who did not preregister to give a presentation to make an oral presentation at the end of the meeting.

After reviewing the requests for oral presentations and accompanying information, FDA will schedule each appearance and notify each participant of the time allotted to the person and the approximate time the person's oral presentation is scheduled to begin. The presentation schedule will be available at the meeting. After the meeting, it will be placed on file in the Division of Dockets Management under the docket number found in brackets in the heading of this document.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Obesity is a growing and urgent public health problem in the United States. There have been steady and substantial increases in adult obesity in the United States since the late 1980s. Today, almost two-thirds of all Americans are overweight; in 1988 through 1992, less than 56 percent were overweight. In 1988 through 1992, less than 23 percent of American adults were obese and by 1999 through 2000, the figure had increased by a quarter, to over 30 percent. The trends for children are even more worrisome. Recent research by the U.S. Centers for Disease Control and Prevention shows that 13 percent of children aged 6 to 11 are overweight—almost double the rate of two decades ago. World Health Organization surveys show that weight is on the rise all over the world. The health of Americans suffers as they get heavier. According to some estimates, at least 300,000 deaths each year are associated with cases of heart disease, diabetes, cancer, and other serious chronic diseases that, in many instances, result from unhealthy nutritional choices and lack of physical activity. The avoidable medical costs of obesity exceed $50 billion each year, well over 5 percent of total U.S. health expenditures, at a time when we can ill afford these costs. The total economic costs of obesity approach $100 billion each year.

Helping consumers improve their diets is one of the nation's most pressing public health problems and an increasingly urgent part of FDA's activities. The consequences of poor diets, including the growing prevalence of excess weight and growing risks of diabetes, high blood pressure, heart disease, arthritis, respiratory difficulties, and many cancers that go along with excess weight, are endangering and diminishing the lives of millions of Americans. The challenge confronting the Government, researchers, the food and restaurant industry, consumers, the medical community, schools, and the public health communitym is to determine what kind of information and assistance the public needs in order to help them improve their dietary choices and reduce the incidence of overweight and obesity.

To address the problem of obesity and to meet the challenge of helping Americans improve their diet and nutrition, Secretary Tommy G. Thompson has led the Department of Health and Human Services (DHHS) in its efforts to encourage healthy habits such as nutritious diets, more exercise, and healthy choices. Secretary Thompson has challenged DHHS agencies and the leadership of the public health community to intensify their efforts to realize these improvements.

On July 30, 2003, Secretary Thompson held a roundtable discussion on obesity and nutrition with leading scientific experts in obesity and weight management. The Secretary's roundtable on obesity/nutrition was intended to enhance a DHHS discussion with leading thinkers and experts in the public health community on the role that DHHS can play in reducing or reversing the weight gain that leads to obesity. The roundtable dialogue centered on five key questions, which are the foundation of the questions on which FDA seeks input in the forthcoming public meeting.

On August 11, 2003, FDA's Commissioner of Food and Drugs, Mark B. McClellan established FDA's Obesity Working Group to confront the current obesity epidemic in the United States and to develop new and innovative ways to help consumers lead healthier lives through better nutrition. Dr. Lester M. Crawford, FDA's Deputy Commissioner, is the Chair of the working group, and Mr. Joseph Levitt, Director of FDA's CFSAN office, is the Vice Chair. As a part of his charge to the working group, Commissioner McClellan directed that it provide for an active dialogue with external stakeholders including consumer groups, academia, the medical community, and the food and restaurant industry, on developing a framework for messages to consumers about reducing obesity and achieving better nutrition. This public meeting is one of the avenues that the working group is using to initiate this dialogue.

## II. Scope of Discussion and Format

The scope of this public meeting will be limited to the following questions:

1. What is the available evidence on the effectiveness of various education campaigns to reduce obesity?
2. What are the top priorities for nutrition research to reduce obesity in children?
3. What is the available evidence that FDA can look to in order to guide rational, effective public efforts to prevent and treat obesity by behavioral or medical interventions, or combinations of both?
4. Are there changes needed to food labeling that could result in the development of healthier, lower calorie foods by industry and the selection of healthier, lower calorie foods by consumers?
5. What opportunities exist for the development of healthier foods/diets and what research might best support the development of healthier foods?
6. Based on the scientific evidence available today, what are the most important things that FDA could do that would make a significant difference in efforts to address the problem of overweight and obesity?

This meeting will include an opening session during which FDA will present a discussion of obesity and related issues associated with the tools available to the agency to assist consumers to improve their diets. The agency may ask experts to provide presentations on specific issues. Individuals who have registered to give oral presentations in advance of the meeting will be provided with the opportunity to speak following the opening session. A schedule of oral presentations will be available at the meeting.

## III. Comments

To permit time for all interested persons to submit data, information, or views on this subject, the administrative record of this meeting will remain open for 30 days after the meeting. Interested persons may submit to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, written or electronic comments by November 21, 2003. You may also send comments to the Division of Dockets Management via e-mail to *FDADockets@oc.fda.gov.* or on FDA's Web site at *http://www.fda.gov/oc/opacom/hottopics/obesity.html.*

You should annotate and organize your comments to identify the specific questions to which your comments refer. Submit two paper copies of comments, identified with the docket number found in brackets in the heading of this document. Individuals may submit one paper copy. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Comments may be placed on the Internet and, if so, will be available for public viewing.

## IV. Transcripts

You may request a transcript of the meeting in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. You may examine the transcript of the meeting after November 10, 2003, at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, as well as on FDA's Web site at *http://www.fda.gov/oc/opacom/hottopics/obesity.html*

Dated: October 6, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–25645 Filed 10–7–03; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## Clinical Pharmacology Subcommittee of the Advisory Committee for Pharmaceutical Science; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Clinical Pharmacology Subcommittee of the

Advisory Committee for Pharmaceutical Science.

*General Function of the Committee:* To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on November 17, 2003, from 8:30 a.m. to 5:30 p.m.; and on November 18, 2003, from 8:30 a.m. to 1:30 p.m.

*Location:* Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

*Contact Person:* Hilda Scharen, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or e-mail: *SCHARENH@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* On November 17, 2003, the subcommittee will discuss: (1) Quantitative analysis using exposure-response: Proposal for End-of-Phase2A (EOP2A) meeting and use of clinical trial simulation for PK-QT study design; and (2) pediatric decision tree: Examples for applying the pediatric decision tree. On November 18, 2003, the subcommittee will discuss the pediatric decision tree: (1) Use of clinical trial simulation in pediatric population pharmacokinetics study design; (2) drug interactions; and (3) pharmacogenetics: Integration into new drug development.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by November 6, 2003. Oral presentations from the public will be scheduled between approximately 11:30 a.m. and 12 noon on November 17, 2003, and 12:30 p.m. and 1 p.m. on November 18, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 6, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Hilda Scharen at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 2, 2003.

**Peter J. Pitts,**

*Associate Commissioner for External Relations.*

[FR Doc. 03–25446 Filed 10–7–03; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## Science Board to the Food and Drug Administration; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee*: Science Board to the Food and Drug Administration.

*General Function of the Committee*: To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time*: The meeting will be held on November 6, 2003, 8 a.m. to 4:30 p.m.

*Location*: Food and Drug Administration, 5630 Fishers Lane, rm. 1066, Rockville, MD 20857.

*Contact Person*: Jan Johannessen, Office of the Commissioner, Food and Drug Administration, HF–33, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6687, *jjohannessen@fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12603. Please call the Information Line for up-to-date information on this meeting.

*Agenda*: The Board will hear about and discuss FDA's Food Security Program.

*Procedure*: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 22, 2003. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 22, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Jan Johannessen at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 3, 2003.

**Peter J. Pitts,**

*Associate Commissioner for External Relations.*

[FR Doc. 03–25555 Filed 10–7–03; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

### [Docket No. 2003D–0434]

## Guidance for Industry and FDA Staff: FDA and Industry Actions on Premarket Approval Applications: Effect on FDA Review Clock and Performance Assessment; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Guidance for Industry and FDA Staff: FDA and Industry Actions on Premarket Approval Applications: Effect on FDA Review Clock and Performance Assessment." This guidance describes how the Food and Drug Administration (FDA) will assess its performance in the premarket approval application (PMA) program relative to the goals that accompany the authorization of medical device user fees. This guidance document is immediately in effect, but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

**DATES:** Submit written or electronic comments on this guidance at any time.

**ADDRESSES:** Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled “FDA and Industry Actions on Premarket Approval Applications: Effect on FDA Review Clock and Performance Assessment” to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

**FOR FURTHER INFORMATION CONTACT:**

*For Device Issues:* Thinh Nguyen, CDRH (HFZ–402), 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

*For Biologics Issues:* Sayah Nedjar, Center for Biologics Evaluation and Research (CBER) (HFM–380), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3524.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Medical Device User Fee and Modernization Act of 2002 (Public Law 107–250), signed into law on October 26, 2002, allows FDA to assess user fees for certain premarket reviews. Performance goals, existing outside of the statute, accompany the authorization of medical device user fees. These goals represent a realistic projection of what FDA's CDRH and CBER offices can accomplish with industry cooperation.

The guidance describes premarket review cycle and decision actions and goals for original PMAs, original expedited PMAs, panel-track supplements, and 180-day PMA supplements. Although it was not feasible to obtain comments before issuing the guidance due to tight statutory deadlines, in accordance with this agency's GGP procedures, FDA will accept comments on the guidance at any time.

### II. Significance of Guidance

This guidance is being issued consistent with FDA's GGP regulation (21 CFR 10.115). The guidance represents the agency's current thinking on PMA review cycle and decision actions and performance goals. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

### III. Electronic Access

To receive “FDA and Industry Actions on Premarket Approval Applications: Effect on FDA Review Clock and Performance Assessment ”by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1218) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

### IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 USC 3501–3520). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket approval applications (21 CFR part 814, OMB control number 0910–0231).

### V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

To receive “FDA and Industry Actions on Premarket Approval Applications: Effect on FDA Review Clock and Performance Assessment ”by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1218) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Dated: September 30, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–25447 Filed 10–7–03; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

**[USCG–2003–16200]**

### National Boating Safety Activities: Funding for National Nonprofit Public Service Organizations

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Coast Guard seeks applications for fiscal year 2004 grants and cooperative agreements from national, nongovernmental, nonprofit, public service organizations. These grants and cooperative agreements would be used to fund projects on various subjects promoting recreational boating safety on the national level. This notice provides information about the grant and cooperative agreement application process and some of the subjects of particular interest to the Coast Guard.

**DATES:** Application packages may be obtained on or after October 8, 2003. Proposals for the fiscal year 2004 grant cycle must be received before 3 p.m. eastern time, January 15, 2004.

**ADDRESSES:** Application packages may be obtained by calling the Coast Guard Infoline at 800–368–5647. Submit proposals to: Commandant (G–OPB–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 3100, Washington, DC 20593–0001. This notice is available from the Coast Guard Infoline and on the Internet at *http://dms.dot.gov* in docket USCG–2003–16200 or at the Web site for the Office of Boating Safety at *http://www.uscgboating.org.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Vickie Hartberger, Office of Boating Safety, U.S. Coast Guard (G–OPB–1/room 3100), 2100 Second Street, SW., Washington, DC 20593–0001; 202–267–0974. The points of contact for the nine project areas are listed at the end of the description of each project area.

**SUPPLEMENTARY INFORMATION:** Title 46, United States Code, section 13103, allocates funds available from the Aquatic Resources Trust Fund for boating safety grants. The majority of funds are allocated to the States, and up to 5 percent of these funds may be distributed by the Coast Guard for grants and cooperative agreements to national, nonprofit, public service organizations for national recreational boating safety activities. It is anticipated that up to $2,950,000 will be made available for fiscal year 2004. Thirty-two awards totaling $2,994,500 were made in fiscal year 2003 ranging from $7,000 to $370,000. Nothing in this announcement should be construed as committing the Coast Guard to dividing available funds among qualified applicants or awarding any specified amount.

It is anticipated that several awards will be made by the Director of Operations Policy, U.S. Coast Guard. Applicants must be national, nongovernmental, nonprofit, public service organizations and must establish that their activities are, in fact, national in scope. An application package may be obtained by writing or calling the point of contact listed in **ADDRESSES** on or after October 8, 2003. The application package contains all necessary forms, an explanation of how the grant program is administered, and a checklist for submitting a grant application. Specific information on organization eligibility, proposal requirements, award procedures, and financial administration procedures may be obtained by contacting the person listed in **FOR FURTHER INFORMATION CONTACT.**

Prospective grantees may propose up to a 5-year grant with 12-month (fiscal year) increments. In effect, an award would be made for the first year and thereafter renewal is optional. Each annual increment would not be guaranteed. Under a continuation (multi-year) grant type of award the Coast Guard agrees to support a grant project at a specific level of effort for a specified period of time, with a statement of intention to provide certain additional future support, provided funds become available, the achieved results warrant further support, and are in support of the needs of the government. Award of continuation grants will be made on a strict case-by-case basis to assist planning certain large scale projects and ensure continuity. Procedures also provide for awarding noncompetitive grants or cooperative agreements on a case-by-case basis. This authority is judiciously used to fund recurring annual projects or events which can only be carried out by one organization, and projects that present targets of opportunity for timely action on new or emerging program requirements or issues.

The following list includes items of specific interest to the Coast Guard, however, potential applicants should not be constrained by the list. We welcome any initiative that supports the organizational objectives of the Recreational Boating Safety Program to save lives, reduce the number of boating accidents, injuries and property damage, and lower associated health care costs. Some project areas of continuing and particular interest for grant funding include the following:

1. *Develop and Conduct a National Annual Safe Boating Campaign.* The Coast Guard seeks a grantee to develop and conduct the year 2005 National Annual Safe Boating Campaign that targets specific boater market segments and recreational boating safety topics. This year-round campaign must support the organizational objectives of the Recreational Boating Safety Program and the nationwide grassroots activities of the many volunteer groups who coordinate local media events, education programs, and public awareness activities, as well as compliment the Coast Guard "You're In Command" campaign. The major focus of the campaign will be to affect the behavior of all boaters with special focus on boat operators being responsible for their own safety as well as the safety of their passengers. A significant emphasis should be placed on life jacket wear, safety and security issues, and the dangers of carbon monoxide, as well as boating under the influence of alcohol or a dangerous drug. Efforts will also be coordinated, year-round, with other national safety activities and special media events. Point of Contact: Ms. Jo Calkin, (202) 267–0994.

2. *Develop and Conduct a National Recreational Boating Safety Outreach and Awareness Conference.* The Coast Guard seeks a grantee to plan, implement, oversee, and conduct a National Recreational Boating Safety Outreach and Awareness Conference that supports the organizational objectives of the Recreational Boating Safety Program. The overall conference focus should have promotional strategies with special focus on boat operators being responsible for their own safety as well as the safety of their passengers. Significant emphasis should be placed on offering multiple subject matter areas that afford the participants professional development opportunities and educational enhancement. Areas should focus on, but not be limited to: life jacket wear, safety and security issues, the dangers of carbon monoxide, boating education, vessel safety, as well as boating under the influence of alcohol or a dangerous drug. Point of Contact: Ms. Jo Calkin, (202) 267–0994.

3. *State/Federal/Boating Organizations Cooperative Partnering Efforts.* The Coast Guard seeks a grantee to provide programs to encourage greater participation and uniformity in boating safety efforts. Applicants would provide a forum to encourage greater uniformity of boating laws and regulations, reciprocity among jurisdictions, and closer cooperation and assistance in developing, administering, and enforcing Federal and State laws and regulations pertaining to boating safety. Point of Contact: Ms. Audrey Pickup, (202) 267–0872.

4. *Voluntary Standards Development Support.* The Coast Guard seeks a grantee to carry out a program to encourage active participation by members of the public and other qualified persons in the development of technically sound voluntary safety standards for boats and associated equipment. Point of Contact: Mr. Peter Eikenberry, (202) 267–6984.

5. *Develop and Conduct Boating Accident Seminars.* The Coast Guard seeks a grantee to develop, provide instructional material, and conduct training courses nationwide for boating accident investigators, including three courses at the U.S. Coast Guard Reserve Training Center in Yorktown, Virginia. Point of Contact: Mr. Rick Gipe, (202) 267–0985.

6. *National Estimate of Personal Flotation Devices (PFDs) Wear Rate.* The Coast Guard seeks a grantee to develop

a statistically valid national estimate and evaluation of wear rates of PFDs by recreational boaters. Wear rate should be determined by actual observation of boaters rather than other means such as surveys. Point of Contact: Mr. Peter Eikenberry, (202) 267–6894.

7. *Recreational Boat Navigation Light Installation Practices.* The Coast Guard seeks a grantee to conduct a study of recreational boat navigation light installation practices. This study shall include both traditional incandescent and light emitting diode (LED) lights installed in recreational boats and/or available for sale as after market items. The study shall be focused on identifying issues related to compliance with Rules of the Road, and particularly instances in which the specific positioning of navigation lights may cause glare or other effects that interfere with the operator's visibility. The study shall identify instances in which compliance with Rules of the Road lighting requirements may not serve to enhance the safety of recreational boaters. The grantee shall make recommendations for changes to recreational lights that will enhance safety. Point of Contact: Mr. Richard Blackman, (202) 267–6810.

8. *Recreational Boating Study/Survey Analysis.* This project is a multiple phase project, with the first phase already in progress. The first phase of the project has been directed primarily at compiling and reviewing boating studies and reports, categorizing and summarizing research in a format that will encourage and facilitate its use by boating businesses and agencies, and in developing Web-based mechanisms to efficiently maintain this information (*e.g.*, on-line boating research tracking form, boating research discussion page). Web-based tools are also being utilized to encourage research-related dialogue and future research partnerships, identify recreational boating research priorities and opportunities for multiple purpose studies, and widely publish and disseminate the resulting literature review and project deliverables. The second phase of the project will continue to identify, compile and analyze boating studies. During the second phase, more attention will be directed to encouraging dialogue focused on identifying future research agendas for boating research, and developing partnerships that will coordinate and make studies more comparable (*e.g.*, comparable definitions, sampling, definitions). For example, instead of doing separate boating safety studies, safety issues and behaviors could be incorporated into existing research projects where appropriate. These subsequent efforts will also identify and propose uniform definitions for boating-related terms and concepts, along with other common research variables that will enhance the potential of integration and comparability across recreational boating studies. In the second phase of the project, grantee is to convene a high-level symposium with representation from industry associations, marine trade associations, state and federal boating agencies, and university researchers to: establish boating research priorities, identify ways to encourage integrated multiple-sponsor studies, and to develop a funding strategy for encouraging and supporting these initiatives. Point of Contact: Mr. Bruce Schmidt, (202) 267–0955.

9. *Navigation Lighting On Barges.* The Coast Guard seeks a grantee to research and analyze the danger posed to recreational boaters by barges, both under tow and being pushed, under the conditions of reduced visibility. The grantee would provide recommendations for additional lighting or other means to increase the visibility of the barges. Any lighting recommendations must be consistent with Rule 20 of the Navigation Rules (33 U.S.C. 2020), that is, additional lights cannot be mistaken for the lights specified in the Rules and do not impair their visibility or distinctive character. Point of Contact: Mr. Rick Gipe, (202) 267–0985.

Potential grantees should focus on partnership, *i.e.*, exploring other sources, linkages, in-kind contributions, cost sharing, and partnering with other organizations or corporations. We encourage proposals addressing other boating safety concerns.

The Boating Safety Financial Assistance Program is listed in section 20.005 of the Catalog of Federal Domestic Assistance.

Dated: September 30, 2003.

**Jeffrey J. Hathaway,**

*Rear Admiral, U. S. Coast Guard, Director of Operations Policy.*

[FR Doc. 03–25418 Filed 10–7–03; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

**[USCG–2003–16252]**

## Senior Executive Service Performance Review Board Membership

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of appointments.

**SUMMARY:** The Coast Guard is providing notice of the appointment of nine individuals to serve on its Performance Review Board.

**FOR FUTHER INFORMATION CONTACT:** David Hyde, Chief, Office of Civilian Personnel, (202) 267–0921.

**SUPPLEMENTARY INFORMATION:** Under 5 U.S.C. 4314(c)(4), the Coast Guard is required to publish the names of individuals appointed to serve on the Coast Guard Performance Review Board (CGPRB). The following nine persons have been selected to serve on the CGPRB:

Rear Admiral K. T. Venuto, Assistant Commandant for Human Resources, United States Coast Guard; Rear Admiral R. J. Papp, Director of Reserve and Training, United States Coast Guard; Rear Admiral E. M. Brown, Assistant Commandant for Systems, United States Coast Guard; Rear Admiral J. C. Olson, Director of Operations Capability, United States Coast Guard; Rear Admiral J. J. Hathaway, Director of Operations Policy, United States Coast Guard; Mr. John Matticks, Senior Planning Advisor, Federal Emergency Management Agency; Dr. Marjorie Budd, Assistant Commissioner for Training and Development, U.S. Customs and Border Protection; Mr. Thomas Grupski, Deputy Assistant Director, Protective Operations Office, U.S. Secret Service; Mr. James L. Dunlap, Deputy Assistant Director, Human Resources and Training, U.S. Secret Service.

Dated: October 1, 2003.

**David Hyde,**

*Chief, Office of Civilian Personnel.*

[FR Doc. 03–25417 Filed 10–7–03; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Bureau of Customs and Border Protection

## List of Foreign Entities Violating Textile Transshipment and Country of Origin Rules

**AGENCY:** Bureau of Customs and Border Protection, Homeland Security.

**ACTION:** General notice.

**SUMMARY:** This document notifies the public of foreign entities which have been issued a penalty claim under section 592 of the Tariff Act of 1930, for certain violations of the customs laws. This list is authorized to be published by section 333 of the Uruguay Round Agreements Act.

**DATES:** This document notifies the public of the semiannual list for the 6-month period starting October 1, 2003, and ending March 30, 2004.

**FOR FURTHER INFORMATION CONTACT:** For information regarding any of the operational aspects, contact Gregory Olsavsky, Fines, Penalties and Forfeitures Branch, Office of Field Operations, (202) 927–3119. For information regarding any of the legal aspects, contact Willem A. Daman, Office of Chief Counsel, (202) 927–6900.

**SUPPLEMENTARY INFORMATION:**

## Background

Section 333 of the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465, 108 Stat. 4809) (signed December 8, 1994), entitled Textile Transshipments, amended part V of title IV of the Tariff Act of 1930 by creating a section 592A (19 U.S.C. 1592a), which authorizes the Secretary of the Treasury to publish in the **Federal Register**, on a semiannual basis, a list of the names of any producers, manufacturers, suppliers, sellers, exporters, or other persons located outside the Customs territory of the United States, when these entities and/or persons have been issued a penalty claim under section 592 of the Tariff Act, for certain violations of the customs laws, provided that certain conditions are satisfied.

The violations of the customs laws referred to above are the following: (1) Using documentation, or providing documentation subsequently used by the importer of record, which indicates a false or fraudulent country of origin or source of textile or apparel products; (2) Using counterfeit visas, licenses, permits, bills of lading, or similar documentation, or providing counterfeit visas, licenses, permits, bills of lading, or similar documentation that is subsequently used by the importer of record, with respect to the entry into the Customs territory of the United States of textile or apparel products; (3) Manufacturing, producing, supplying, or selling textile or apparel products which are falsely or fraudulently labeled as to country of origin or source; and (4) Engaging in practices which aid or abet the transshipment, through a country other than the country of origin, of textile or apparel products in a manner which conceals the true origin of the textile or apparel products or permits the evasion of quotas on, or voluntary restraint agreements with respect to, imports of textile or apparel products.

If a penalty claim has been issued with respect to any of the above violations, and no petition in response to the claim has been filed, the name of the party to whom the penalty claim was issued will appear on the list. If a petition or supplemental petition for relief from the penalty claim is submitted under 19 U.S.C. 1618, in accord with the time periods established by sections 171.2 and 171.61, Customs Regulations (19 CFR 171.2, 171.61) and the petition is subsequently denied or the penalty is mitigated, and no further petition, if allowed, is received within 60 days of the denial or allowance of mitigation, then the administrative action shall be deemed to be final and administrative remedies will be deemed to be exhausted. Consequently, the name of the party to whom the penalty claim was issued will appear on the list. However, provision is made for an appeal to the Secretary of the Treasury (now delegated to the Secretary of Homeland Security) by the person named on the list, for the removal of its name from the list. If the Secretary finds that such person or entity has not committed any of the enumerated violations for a period of not less than 3 years after the date on which the person or entity's name was published, the name will be removed from the list as of the next publication of the list.

## Reasonable Care Required

Section 592A also requires any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products that were either directly or indirectly produced, manufactured, supplied, sold, exported, or transported by such named person to show, to the satisfaction of the Secretary, that such importer has exercised reasonable care to ensure that the textile or apparel products are accompanied by documentation, packaging, and labeling that are accurate as to its origin. Reliance solely upon information regarding the imported product from a person named on the list is clearly not the exercise of reasonable care. Thus, the textile and apparel importers who have some commercial relationship with one or more of the listed parties must exercise a degree of reasonable care in ensuring that the documentation covering the imported merchandise, as well as its packaging and labeling, is accurate as to the country of origin of the merchandise. This degree of reasonable care must involve reliance on more than information supplied by the named party.

In meeting the reasonable care standard when importing textile or apparel products and when dealing with a party named on the list published pursuant to section 592A of the Tariff Act of 1930, an importer should consider the following questions in attempting to ensure that the documentation, packaging, and labeling is accurate as to the country of origin of the imported merchandise. The list of questions is not exhaustive but is illustrative.

(1) Has the importer had a prior relationship with the named party?

(2) Has the importer had any detentions and/or seizures of textile or apparel products that were directly or indirectly produced, supplied, or transported by the named party?

(3) Has the importer visited the company's premises and ascertained that the company has the capacity to produce the merchandise?

(4) Where a claim of an origin conferring process is made in accordance with 19 CFR 102.21, has the importer ascertained that the named party actually performed the required process?

(5) Is the named party operating from the same country as is represented by that party on the documentation, packaging or labeling?

(6) Have quotas for the imported merchandise closed or are they nearing closing from the main producer countries for this commodity?

(7) What is the history of this country regarding this commodity?

(8) Have you asked questions of your supplier regarding the origin of the product?

(9) Where the importation is accompanied by a visa, permit, or license, has the importer verified with the supplier or manufacturer that the visa, permit, and/or license is both valid and accurate as to its origin? Has the importer scrutinized the visa, permit or license as to any irregularities that would call its authenticity into question?

The law authorizes a semiannual publication of the names of the foreign entities and/or persons. On May 23, 2003, Customs and Border Protection (CBP) published a notice in the **Federal Register** (68 FR 28238) which identified three (3) entities which fell within the purview of section 592A of the Tariff Act of 1930.

## 592A List

For the period ending September 30, 2003, CBP has identified 2 (two) foreign entities that fall within the purview of section 592A of the Tariff Act of 1930. This list reflects no new entities and one removal to the 3 entities named on the list published on May 23, 2003. The parties on the current list were assessed a penalty claim under 19 U.S.C. 1592, for one or more of the four above-described violations. The administrative penalty action was concluded against the parties by one of the actions noted above as having terminated the administrative process.

The names and addresses of the 2 foreign parties which have been assessed penalties by CBP for violations of section 592 are listed below pursuant to section 592A. This list supersedes any previously published list. The names and addresses of the 2 foreign parties are as follows (the parenthesis following the listing sets forth the month and year in which the name of the company was first published in the **Federal Register**):

Everlite Manufacturing Company, P.O. Box 90936, Tsimshatsui, Kowloon, Hong Kong (3/01).

Fairfield Line (HK) Co. Ltd., 60–66 Wing Tai Commer., Bldg. 1/F, Sheung Wan, Hong Kong (3/01).

Either of the above parties may petition to have its name removed from the list. Such petitions, to include any documentation that the petitioner deems pertinent to the petition, should be forwarded to the Assistant Commissioner, Office of Field Operations, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

Dated: October 1, 2003.

**Jayson P. Ahern,**

*Assistant Commissioner, Office of Field Operations.*

[FR Doc. 03–25550 Filed 10–7–03; 8:45 am]

**BILLING CODE 4820–02–P**

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Notice of Availability of Draft Comprehensive Conservation Plan and Environmental Assessment for Muleshoe National Wildlife Refuge, Muleshoe, TX and Grulla National Wildlife Refuge, Arch, NM

**AGENCY:** Fish and Wildlife Service, Department of the Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces that a Draft Comprehensive Conservation Plan (CCP) and Environmental Analysis (EA) for the Muleshoe and Grulla National Wildlife Refuges is available for review and comment. This CCP/EA, prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969, describes how the Service intends to manage these refuges over the next 15 years.

**DATES:** Written comments must be received on or before November 24, 2003.

**ADDRESSES:** Send comments to Carol Torrez, Biologist/Natural Resource Planner, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico, 87103–1306, Telephone: (505) 248–6821, Fax: (505) 248–6874. Comments may also be sent via electronic mail to: *carol_torrez@fws.gov*

The draft CCP/EA is available on compact diskette or hard copy, and may be obtained by writing, telephoning, faxing, or e-mailing Carol Torrez at the above listed address.

**FOR FURTHER INFORMATION CONTACT:** Carol Torrez, Biologist/Natural Resource Planner, 505–248–6821 or Harold Beierman, Refuge Manager, 806–946–3341.

**SUPPLEMENTARY INFORMATION:**

### Public Involvement

The draft CCP/EA is available for public review and comment for a period of 45 days. Copies of the document can be obtained as indicated in the **ADDRESSES** section. In addition, documents will be available for public inspection during normal business hours (8–4:30) at the Muleshoe NWR Headquarters Office, 20 miles south of Muleshoe, Texas, off Highway 214, and at the following libraries:

Muleshoe Public Library, 322 West 2nd Street, Muleshoe, Texas 79347,
Lamb County Library, 232 Phelps Avenue, Littlefield, Texas 79339,
Cochran County Love Memorial Library, 318 South Main Street, Morton, Texas 79346,
City of Portales Library, 218 South Avenue B, Portales, New Mexico 88130.

A public meeting to receive comments on the Draft CCP/EA will be held at the Muleshoe NWR Headquarters Office during the open comment period (in November 2003). Special mailings, newspaper articles, and/or other media announcements will be used to inform the public of the date and time of the meeting.

All comments received from individuals become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's NEPA regulations [40 CFR 1506.6 (f)].

### Background

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd-668ee *et seq.*) requires a CCP. The purpose in developing CCPs is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife science, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update these CCPs at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d).

The Muleshoe National Wildlife Refuge was established on October 24, 1935 by the authority of the Migratory Bird Conservation Act (16 U.S.C. 712d) "* * * for use as an inviolate sanctuary, or any other management purpose, for migratory birds." Located in the south plains of west Texas, the 5,809 acre refuge is comprised of three shallow playa lakes and almost 5,000 acres of native short to mid-grass prairie. Only small areas of refuge land have been farmed. Much of the refuge grasslands are pristine examples of what the surrounding area was like before agricultural development. Management efforts focus on enhancing and restoring native grassland and wetland communities for sandhill cranes, waterfowl, other migratory birds, and resident wildlife.

The Grulla National Wildlife Refuge was established on November 6, 1969 by the authority of the Migratory Bird Conservation Act (45 Stat. 1222, as amended; U.S.C. 715) "* * * for a migratory bird refuge primarily for the benefit and use of the lesser sandhill crane." Located on the High Plains of eastern New Mexico adjacent to the Texas state line, this 3,236 acre refuge consists of a 2,330 acre shallow lake (Salt Lake) and 906 acres of native grasses and shrubs. The boundary of this refuge is very irregular and runs through the lake bed in several places. Only one access point is currently available to the public and the Service. The refuge provides outstanding wildlife habitat and viewing opportunities when Salt Lake holds water; however, these opportunities are limited by local precipitation. Opportunities for active management of this refuge have been limited due to its remote location, lack of resident staff, and access issues. Future management efforts will focus on improving access and public wildlife viewing opportunities.

The Draft CCP/EA addresses a range of topics including habitat and wildlife management, public use opportunities, invasive species control, and administration and staffing for the refuges. The key refuge issues and how they are addressed in the plan alternatives are summarized below. Alternative A is the current management, or what is currently offered, at the refuge. Alternative B is the proposed action. Under Alternative C, refuge habitats would be managed solely by the uses of prescribed fire. Under Alternative D, management of refuge habitats would be accomplished through mechanical means such as haying or mowing. Alternative E would call for no active management on the refuge.

*Habitat management activities: Alternative A:* Grazing has historically been the primary grassland management tool used on the refuge. Efforts to use prescribed fire and control invasive species have been limited. *Alternative B:* The managed grazing program would be modified and integrated with prescribed fire and mechanical vegetative manipulation to encourage ecological integrity, promote native prairie restoration, control invasive plant species, and provide/enhance habitat for grassland birds and other resident wildlife. *Alternative C:* Grazing would be discontinued. Prescribed fire would be the primary tool used to manage refuge habitats and control invasive plants. *Alternative D:* Grazing would be discontinued. Mechanical means such as haying and mowing would be used to manage refuge grassland habitats and control invasive plant species. *Alternative E:* No active management of grassland habitat. Habitats would be allowed to evolve into climax conditions. Limited use of biological controls would be used as an experiment to control invasive plant species.

*Improvements to public use opportunities: Alternative A:* The public use program would remain at current levels and no new facilities would be developed on the refuge. Hunting would continue to be prohibited. *Alternative B:* The public use program would increase and/or enhance educational and outreach activities, recreational opportunities (including consideration of hunting opportunities), community involvement, and improve facilities. *Alternative C:* The public use program would be similar to *Alternative B*. *Alternative D:* The public use program would be similar to *Alternative B*. *Alternative E:* The public use program would be discontinued.

*Refuge Land and Boundary Protection: Alternative A:* There would be no acquisition and no exploration of possible refuge boundary expansion. *Alternative B:* Land protection would be accomplished through partnerships with adjacent owners. Refuge boundary expansion would only occur as a means to improve access to the public and would be considered under a separate public process. Any mention of acquisition is conceptual in nature only. *Alternative C:* Same as Alternative B. *Alternative D:* Same as Alternative B. *Alternative E:* Same as Alternative A.

Dated: August 15, 2003.

**Geoffrey L. Haskett,**

*Acting Regional Director, U.S. Fish and Wildlife Service, Albuquerque, New Mexico.*

[FR Doc. 03–25485 Filed 10–7–03; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Receipt of Applications for Permit

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications for permit.

**SUMMARY:** The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

**DATES:** Written data, comments or requests must be received by November 7, 2003.

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone: 703/358–2104.

**SUPPLEMENTARY INFORMATION:**

### Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

*Applicant: Cincinnati Zoo and Botanical Garden, Cincinnati, Ohio, PRT–077059*

The applicant requests a permit to import blood and serum samples collected from captive and wild ocelots (*Leopardus pardalis*) in Mexico for the purpose of enhancement of the survival of the species/scientific research. This notification covers activities conducted by the applicant over a five year period.

*Applicant: Archie Wilson, Batavia, OH, PRT–077669*

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant: Larry L. Hehl, Greenwood, SC, PRT–077674*

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

### Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The application(s) was/were submitted to satisfy requirements of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and/or the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR part 17) and/or marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

*Applicant: James A. Brush, Galesville, WI, PRT–074543*

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal use.

Dated: September 26, 2003.

**Monica Farris,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 03–25468 Filed 10–7–03; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Receipt of Applications for Permit

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications for permit.

**SUMMARY:** The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

**DATES:** Written data, comments or requests must be received by November 7, 2003.

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone 703/358–2104.

**SUPPLEMENTARY INFORMATION:**

### Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

*Applicant: Peter H. Johnson, St. Albans, MO, PRT–077229*

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant: Gregory B. Jacobs, New York, NY, PRT–077237*

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant: Fred Hutchinson Cancer Research Center—Trask Lab, Seattle, WA, PRT–066400*

The applicant requests a permit to acquire in interstate commerce cell line samples of gorilla (*Gorilla gorilla*) and orangutan (*Pongo pygmaeus*) for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

*Applicant: University of Central Florida, Orlando, FL, PRT–076985*

The applicant requests a permit to import biological samples obtained from hawksbill sea turtle (*Eretmochelys imbricata*), as well as loggerhead sea turtle (*Caretta caretta*), and green sea turtle (*Chelonia mydas*), obtained from the wild in Oman, for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Dated: September 19, 2003.

**Michael S. Moore,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 03–25471 Filed 10–7–03; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Withdrawal of Finding of No Significant Impact and Final Environmental Assessment on Management of Mute Swans in the Atlantic Flyway

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Fish and Wildlife Service (the Service) published a Finding of No Significant Impact (FONSI) and Final Environmental Assessment (FEA) for the Management of Mute Swans in the Atlantic Flyway on August 7, 2003. The Service is withdrawing those decision documents. Effective immediately, these documents will not be used to support the issuance of depredation permits authorizing the take of mute swans (*Cygnus olor*) under the Migratory Bird Treaty Act (MBTA). No new mute swan depredation permits will be issued pending completion of further review under the National Environmental Policy Act (NEPA).

**FOR FURTHER INFORMATION CONTACT:** Brian A. Millsap, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, Mail Stop MS MBSP–4107, 4401 North Fairfax Drive, Arlington, Virginia 22203.

**SUPPLEMENTARY INFORMATION:** On July 2, 2003, the U.S. Fish and Wildlife Service (the Service) provided notice (68 FR 39593) that a Draft Environmental Assessment for the Management of Mute Swans in the Atlantic Flyway was available for public review and comment. The 15-day public comment period ended on July 16, 2003. On August 7, 2003, the Service published a notice of availability (68 FR 47084) of the FEA and the full text of the FONSI.

On August 11, 2003, in accordance with the FEA and the FONSI, the Service issued a permit under authority of the MBTA to the Maryland Department of Natural Resources authorizing the take of up to 525 mute swans between August 27 and December 12, 2003. The Service's issuance of this permit was challenged in Federal court. A preliminary injunction enjoining the take of any mute swans under this permit pending a final ruling on the merits was issued by the U.S. District Court for the District of Columbia on September 9, 2003 ("*The Fund for Animals, et al.* v. *Norton*, Civil Action No. ECF–03–1710").

The Court's decision on the preliminary injunction raised serious issues regarding the FEA and FONSI referenced above and the Service therefore is withdrawing these documents. Effective immediately, these documents will no longer be used to support the issuance of depredation permits authorizing the take of mute swans. No new mute swan depredation permits will be issued pending completion of a new review under NEPA.

Dated: October 2, 2003.

**Matt Hogan,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 03–25644 Filed 10–8–03; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Issuance of Permits

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of issuance of permit for marine mammals.

**SUMMARY:** The following permit was issued.

**ADDRESSES:** Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone (703) 358–2104.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on the date below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

**Marine Mammals**

| Permit Number | Applicant | Receipt of application FEDERAL REGISTER notice | Permit issuance date |
|---|---|---|---|
| 071899 | Branko Terkovich | 68 FR 33734; June 5, 2003 | September 16, 2003. |

Dated: September 26, 2003.

**Monica Farris,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 03–25469 Filed 10–7–03; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Issuance of Permits

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of issuance of permits for marine mammals.

**SUMMARY:** The following permits were issued.

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax: (703) 358–2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone: (703) 358–2104.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on the dates below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein.

**Marine Mammals**

| Permit number | Applicant | Receipt of application FEDERAL REGISTER notice | Permit issuance date |
|---|---|---|---|
| 069959 | Ken G.Wilson | 68 FR 20402; April 25, 2003 | September 5, 2003. |
| 072088 | Thomas H. Essex | 68 FR 33734; June 5, 2003 | September 5, 2003. |
| 072739 | Nyle R. Swast | 68 FR 40291; July 7, 2003 | September 5, 2003. |
| 072753 | Theodore L. Hetrick, Jr | 68 FR 40291; July 7, 2003 | September 5, 2003. |
| 073481 | Gerald E. Meyer, Sr | 68 FR 41168; July 10, 2003 | September 5, 2003. |
| 073526 | Robert E. Kastle | 68 FR 41167; July 10, 2003 | September 5, 2003. |

Dated: September 19, 2003.

**Michael S. Moore,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 03–25470 Filed 10–7–03; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Aquatic Nuisance Species Task Force Gulf of Mexico Regional Panel Meeting

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force Gulf of Mexico Regional Panel. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION**.

**DATES:** The Gulf of Mexico Regional Panel will meet from 1 p.m. to 5 p.m. on Monday, October 20, 2003, and 9 a.m. to 5 p.m., on Tuesday, October 21, 2003. The Education and Outreach Work Group and Research and Development work Group of the Gulf of Mexico Regional Panel will meet from 8 a.m. to noon, on Wednesday, October 22, 2003.

**ADDRESSES:** The Gulf of Mexico Regional Panel meeting will be held at the Maison Dupuy, 1001 Toulouse Street, New Orleans, Louisiana. Phone 800–535–9177.

**FOR FURTHER INFORMATION CONTACT:** Ron Lukens, Assistant Director, Gulf States Marine Fisheries Commission at (228) 875–5912; or Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at (703) 358–2308.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) 9of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces meetings of the Aquatic Nuisance Species Task Force Gulf of Mexico Regional Panel. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

The Gulf of Mexico Regional Panel was established under the auspices of the ANS Task Force in 2000 with administration and coordination provided by the Gulf States Marine

Fisheries Commission. The purpose of the Panel is to advise and make recommendations to the Aquatic Nuisance Species Task Force on issues relating to the Gulf of Mexico region of the United States that includes five Gulf States: Alabama, Florida, Louisiana, Mississippi, and Texas. The Gulf of Mexico Regional Panel will discuss several topics at this meeting including: 2004 grant agreement; Panel operating procedures; invasive species issues in Mexico; an update from Panel working groups; updates on the development of Louisiana, Mississippi, Texas, and Florida ANS management plans; status of Caulerpa monitoring and detection in Florida, and water spinach in Texas; a discussion on the Mobile Bay Rapid Assessment project; a discussion on the need for developing a network of taxonomists; status and discussion of national legislation regarding aquatic invasive species, such as NISA re-authorization and NISC; and a discussion of the Sea grant line item in NOAA budget.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: October 1, 2003.

**Mamie A. Parker,**

*Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries & Habitat Conservation.*

[FR Doc. 03–25467 Filed 10–7–03; 8:45 am]

**BILLING CODE 4310–55–M**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[AK–910–1310–PB]**

## Notice of Public Meeting, Alaska Resource Advisory Council

**AGENCY:** Bureau of Land Management, Alaska State Office, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Alaska Resource Advisory Council will meet as indicated below.

**DATES:** The meeting will be held November 13–14, 2003, at the Anchorage Federal Office Building, located at 7th and C Street, beginning at 8:30 a.m. The public comment period will begin at 1 p.m. November 13.

**FOR FURTHER INFORMATION CONTACT:** Teresa McPherson, Alaska State Office, 222 W. 7th Avenue #13, Anchorage, AK 99513. Telephone: (907) 271–3322 or e-mail *tmcphers@ak.blm.gov*.

**SUPPLEMENTARY INFORMATION:** The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public lands in Alaska. At this meeting, topics we plan to discuss include:

- Orientation for new Council members
- The Council's 2004 Work Plan
- Status of land use planning in Alaska
- National Petroleum Reserve-Alaska (NPR–A) integrated activity plans
- Other topics the Council may raise

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allotted for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact BLM.

Dated: October 1, 2003.

**Peter J. Ditton,**

*Acting State Director.*

[FR Doc. 03–25482 Filed 10–7–03; 8:45 am]

**BILLING CODE 4310–JA–P**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[AZ–956–02–1420–BJ]**

## Arizona; Notice of Filing of Plats of Survey

September 26, 2003.

1. The plats of survey of the following described land were officially filed in the Arizona State Office, Phoenix, Arizona, on the dates indicated:

A plat representing the dependent resurvey of a portion of the Fifth Standard Parallel North (south boundary), a portion of the west boundary and a portion of the subdivisional lines, the corrective dependent resurvey of the east half mile between sections 30 and 31, the subdivision of sections 28 and 31 and a metes-and-bounds survey in sections 29 and 30, Township 21 North, Range 9 East of the Gila and Salt River Meridian, Arizona, accepted August 4, 2003 and officially filed August 8, 2003.

This plat was prepared at the request of the Phoenix Field Office, Bureau of Land Management.

A plat representing the dependent resurvey of the south, west and north boundaries and the subdivisional lines, Township 27 North, Range 15 East of the Gila and Salt River Meridian, Arizona, accepted July 24, 2003 and officially filed July 31, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

A plat representing the dependent resurvey of the south and west boundaries and a portion of the subdivisional lines and the survey of a portion of the subdivisional lines, Township 27 North, Range 16 East of the Gila and Salt River Meridian, Arizona, accepted July 24, 2003 and officially filed July 31, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

A plat representing the survey of the Eight Standard Parallel North, (south boundary), Township 33 North, Range 20 East of the Gila and Salt River Meridian, Arizona, accepted August 20, 2003 and officially filed August 27, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of the Eighth Standard Parallel North, (south boundary), Township 33 North, Range 21 East of the Gila and Salt River Meridian, Arizona, accepted August 20, 2003 and officially filed August 27, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of the east and west boundaries, and subdivisional lines, Township 32 North, Range 22 East of the Gila and Salt River Meridian, Arizona, accepted August 20, 2003 and officially filed August 27, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of the Eighth Standard Parallel North, (south boundary), Township 33 North, Range 22 East of the Gila and Salt River Meridian, Arizona, accepted August 20, 2003 and officially filed August 27, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of a portion of the Tenth Standard Parallel

North, (south boundary), Township 41 North, Range 22 East of the Gila and Salt River Meridian, Arizona, accepted August 19, 2003 and officially filed August 27, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of the south and west boundaries, and the subdivisional lines, Township 40 North, Range 23 East of the Gila and Salt River Meridian, Arizona, accepted August 19, 2003 and officially filed August 27, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of the Tenth Standard Parallel North, (south boundary), Township 41 North, Range 23 East of the Gila and Salt River Meridian, Arizona, accepted August 19, 2003 and officially filed August 27, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of the west boundary, Township 40 North, Range 24 East of the Gila and Salt River Meridian, Arizona, accepted August 19, 2003 and officially filed August 27, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the dependent resurvey of a portion of the Arizona-Utah State line between the 238 mile and 250 mile post, unsurveyed Townships 41 North, Ranges 24, 25 and 26 East of the Gila and Salt River Meridian, Arizona, accepted July 15, 2003 and officially filed July 18, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of the Tenth Standard Parallel North, (south boundary), and a portion of the west boundary, Township 41 North, Range 24 East of the Gila and Salt River Meridian, Arizona, accepted August 19, 2003 and officially filed August 27, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of the Eighth Standard Parallel North, (south boundary), and a portion of the subdivisional lines, Township 33 North, Range 31 East of the Gila and Salt River Meridian, Arizona, accepted July 14, 2003 and officially filed July 18, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of sections 9 and 10 and the metes-and-bounds survey of the Arrastra Mountain Wilderness Area boundary, Township 11 North, Range 12 West of the Gila and Salt River Meridian, Arizona, accepted August 4, 2003 and officially filed August 8, 2003.

This plat was prepared at the request of the Bureau of Land Management, Kingman Field Office.

A plat representing the dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines, the subdivision of sections 3, 4, 6 and 9, and the metes-and-bounds survey in section 4, Township 40 North, Range 15 West of the Gila and Salt River Meridian, Arizona, accepted July 9, 2003 and officially filed July 16, 2003.

This plat was prepared at the request of the Arizona Strip Field Office, Bureau of Land Management.

A plat representing the dependent resurvey of a portion of the Tenth Standard Parallel North, (south boundary) and a portion of the subdivisional lines, the subdivision of section 28, 33, 34, and 35, and metes-and-bounds surveys in sections 28 and 33, Township 41 North, Range 15 West of the Gila and Salt River Meridian, Arizona, accepted July 9, 2003 and officially filed July 16, 2003.

This plat was prepared at the request of the Arizona Strip Field Office, Bureau of Land Management.

A plat representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines and mineral survey number 1429, Sun Rise Lode, Township 14 North, Range 19 West of the Gila and Salt River Meridian, Arizona, accepted August 28, 2003 and officially filed September 4, 2003.

This plat was prepared at the request of the Lake Havasu Field Office, Bureau of Land Management.

A plat representing the survey of the Tenth Standard Parallel North, (south boundary), the Sixth Guide Meridian East, (west boundary), the east boundary and the subdivisional lines, Township 41 North, Range 25 East of the Gila and Salt River Meridian, Arizona, accepted July 15, 2003 and officially filed July 18, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of the Eighth Standard Parallel North, (south boundary), a portion of the east boundary, and a portion of the subdivisional lines, Township 33 North, Range 30 East of the Gila and Salt River Meridian, Arizona, accepted April 25, 2003 and officially filed May 1, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the dependent resurvey of a portion of the Arizona-New Mexico state line between the 53 mile post and an angle point of the 57th mile, unsurveyed Townships 32 and 33 North, Range 31 East of the Gila and Salt River Meridian, Arizona, accepted July 14, 2003 and officially filed July 30, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the dependent resurvey of portions of mineral survey 1406, Georgia Lode and mineral survey 2566, Noonday Mine Lode and the survey of Tract 39, in unsurveyed Township 23 South, Range 16 East, of the Gila and Salt River Meridian, Arizona, accepted July 9, 2003 and officially filed July 16, 2003.

This plat was prepared at the request of the Coronado National Forest, United States Forest Service.

All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, 222 N. Central Avenue, P.O. Box 1552, Phoenix, Arizona 85001–1552.

**Kenny D. Ravnikar,**

*Chief Cadastral Surveyor of Arizona.*

[FR Doc. 03–25483 Filed 10–7–03; 8:45 am]

BILLING CODE 4310–32–P

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## Notice of Availability

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of availability of the Final General Management Plan and Final Environmental Impact Statement for Grand Portage National Monument, Minnesota.

**SUMMARY:** Pursuant to section 102(2) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of the final general management plan and final environmental impact statement (FGMP/FEIS) for Grand Portage National Monument (Monument), Minnesota. This notice is being furnished as required by National Environmental Policy Act Regulations 40 CFR 1501.7.

**DATES:** The required no-action period on this GMP/FEIS will expire 30 days after the Environmental Protection Agency has published a notice of availability of the FEIS in the **Federal Register**.

**ADDRESSES:** Copies of the FEIS/FGMP are available from the Superintendent, Grand Portage National Monument, 315 E. Broadway, P.O. Box 1326, Grand Marais, Minnesota, 55604. The phone number is: 218–387–2788.

**SUPPLEMENTARY INFORMATION:** The purpose of the general management plan is to set forth the basic management philosophy for the Monument and to provide the strategies for addressing issues and achieving identified management objectives. The FGMP/FEIS describes and analyzes the environmental impacts of a proposed action and three action alternatives for the future management direction of the Monument. A no action alternative is also evaluated.

The draft GMP/EIS for the Monument was released to the public on January 22, 2002. The public comment period ended March 22, 2002. Few substantive comments were received on the draft document; consequently, only minor changes were made to the alternatives and environmental consequences.

The responsible official is Mr. Ernest Quintana, Midwest Regional Director, National Park Service.

Dated: August 21, 2003.

**Alan M. Hutchings,**

*Acting Regional Director, Midwest Region.*

[FR Doc. 03–25530 Filed 10–7–03; 8:45 am]

BILLING CODE 4312–99–P

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## DEPARTMENT OF THE INTERIOR

## National Park Service

### General Management Plan, Environmental Impact Statement, Aztec Ruins National Monument, New Mexico

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice of Intent to prepare an Environmental Impact Statement for the General Management Plan at Aztec Ruins National Monument.

**SUMMARY:** Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332 (C) the National Park Service is preparing an Environmental Impact Statement for the General Management Plan at Aztec Ruins National Monument. This effort will result in a comprehensive general management plan that encompasses preservation of natural and cultural resources—especially extensive archeology, visitor use and interpretation, and facilities development, with the input of stakeholders and up to 26 southwestern American Indian tribes, who consider the park a sacred ancestral site. In cooperation with the City of Aztec Planning Department, attention will be given to factors outside the boundaries that affect the integrity of Aztec Ruins National Monument. Alternatives to be considered include no-action and a proposed action (to be determined). Other alternatives that might be developed will be determined via the planning process.

Major planning interests and opportunities are to:

- Seek the input of interested American Indian tribes throughout the planning process. This was not done when the previous General Management Plan was produced in 1989.
- Determine long-term goals and objectives for resource management; visitor understanding, appreciation, and enjoyment; and facilities development in the nearly 300 acres of land that was added to the park boundaries in 1988, as well as in the original 27 acres; in view of inventories and knowledge about resources that have been acquired since the 1989 GMP, and with consideration of changing and projected operational needs for the future.
- Reassess and make recommendations regarding the development that was prescribed in the 1989 GMP. Some of that development has not been implemented, and some development has occurred that departed from the prescriptions.
- Explore partnership opportunities with neighbors, the City of Aztec, tribes, and others to protect resources within and surrounding the park, and to enhance opportunities for visitor enjoyment and understanding.
- Develop a range of alternatives in conjunction with neighbors, oil and gas companies, and other interested parties, to minimize impacts to the visitor experience and park resources from possible development outside park boundaries and active gas wells within the park.

A scoping information brochure has been prepared that highlights the planning interests and opportunities, describes how the public can provide input to the planning process, and invites public comment. Copies of that brochure may be obtained from the park Superintendent:

Dennis L. Carruth, Aztec Ruins National Monument, #84 County Road 2900, Aztec, NM 87410–9715, Tel: (505) 334–6174 x. 22, Fax: (505) 334–6372, E-mail: *azru_superintendent@nps.gov*.

People who would like to be placed on the park's mailing list for the project should contact the Superintendent.

**DATES:** Scoping meetings will be held to share information with the public about the GMP in the fall of 2003. Dates, times, and locations of those meetings can be obtained by contacting the Superintendent. The Park Service will accept scoping comments from the public for 30 days after the date of the last meeting.

**ADDRESSES:** Information will be available for public review and comment in the office of the Superintendent.

**SUPPLEMENTARY INFORMATION:** If you wish to comment on the scoping brochure or on any other issues associated with the plan, you may mail your comments to the Superintendent, or send them to him via e-mail. Please include your name and return address with your comments. You may also hand-deliver comments to the Superintendent at his office in the park. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

For further information contact the superintendent.

*Dated:* July 24, 2003.

**John Crowley,**

*Associate Regional Director.*

[FR Doc. 03–24651 Filed 10–7–03; 8:45 am]

BILLING CODE 4312–E7–P

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## DEPARTMENT OF THE INTERIOR

## National Park Service

### Notice of Inventory Completion: American Museum of Natural History, New York, NY

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves

Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the American Museum of Natural History, New York, NY. The human remains were removed from San Juan County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by American Museum of Natural History professional staff in consultation with representatives of the Navajo Nation, Arizona, New Mexico and Utah.

In 1900, human remains representing a minimum of one individual were collected by Dr. Ales Hrdlicka from a battlefield site in the Chuska Mountains, San Juan County, NM. No known individual was identified. No associated funerary objects are present. The site from which the human remains were removed is on the Navajo Indian Reservation.

Catalog records identify the human remains as Navajo. The area from which the human remains were removed has been documented as an area of warfare between the Navajo and other groups. The human remains are from an area that is within the exterior boundaries of the present-day Navajo Indian Reservation and within post-contact Navajo territory.

Although the lands from which the human remains were removed are currently under the jurisdiction of the U.S. Department of the Interior, Bureau of Indian Affairs, the American Museum of Natural History has control of the human remains since the removal of the human remains from tribal lands predates the permit requirements established by the Antiquities Act of 1906.

Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the American Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Navajo Nation, Arizona, New Mexico and Utah.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Luc Litwinionek, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024–5192, telephone (212) 769–5846, before November 7, 2003. Repatriation of the human remains to the Navajo Nation, Arizona, New Mexico and Utah may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying the Navajo Nation, Arizona, New Mexico and Utah that this notice has been published.

Dated: August 6, 2003.

**John Robbins,**

*Assistant Director, Cultural Resources.*

[FR Doc. 03–25532 Filed 10–7–03; 8:45 am]

BILLING CODE 4310–70–S

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## DEPARTMENT OF THE INTERIOR

## National Park Service

### Notice of Intent to Repatriate Cultural Items: Brooklyn Museum of Art, Brooklyn, NY

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.8 (f), of the intent to repatriate cultural items in the possession of the Brooklyn Museum of Art, Brooklyn, NY, that meet the definition of sacred objects and cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations within this notice.

The 11 cultural items are 1 tobacco pipe and pouch, 1 necklace, 1 pair of women's moccasins, 2 war caps, 1 war slat armor, 3 fiber caps, 1 set of arrows, and 1 dance whistle.

During an expedition to California in 1905, the curator of the Brooklyn Museum of Art, Mr. Stewart Culin, purchased the cultural items from Yurok individuals in Yurok villages.

Museum records and information provided during consultation indicate that the cultural items are affiliated with the Yurok Tribe of the Yurok Reservation, California. Tribal representatives identified the pipe and pouch as items used by Yurok medicine people in the preparation for Pir-wai (White Deerskin Dance), Wo-neek-wo-ley-go (Jump Dance), Mey-lee' (Brush Dance), Ray-ma (Kick Dance), and Lo-geen (Fish Dam) ceremonies. The deer hoof necklace, women's moccasins, war caps, and slat armor were identified as ceremonial objects associated with the War Dance. The fiber caps and set of arrows were identified as associated with the Brush Dance, and the dance whistle with the White Deerskin Dance. The Yurok tribe identified the cultural items as sacred and inalienable ceremonial objects, which were obtained without the consent of an appropriate Yurok authority. The Yurok tribe believes that if the cultural items were sold to Mr. Culin, the seller was not the rightful owner, because Yurok law prohibits the sale of ceremonial items.

Officials of the Brooklyn Museum of Art have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the 11 cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Brooklyn Museum of Art also have determined that, pursuant to 25 U.S.C. 3001 (3)(D), the 11 cultural items described above have ongoing historical, traditional, and cultural importance central to the tribe itself, and are of such central importance that they may not be alienated, appropriated, or conveyed, by any individual tribal or organization member. Lastly, officials of the Brooklyn Museum of Art have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects/cultural patrimony and the Yurok Tribe of the Yurok Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these sacred objects/cultural patrimony should contact Elizabeth Reynolds, Chief Registrar, Brooklyn Museum of Art, 200 Eastern Parkway, Brooklyn, NY 11238, telephone (718) 501–6339, before November 7, 2003. Repatriation of the sacred objects/cultural patrimony to the Yurok Tribe of the Yurok Reservation, California may proceed after that date if no additional claimants come forward.

The Brooklyn Museum of Art is responsible for notifying the Yurok Tribe of the Yurok Reservation, California that this notice has been published.

Dated: August 4, 2003.

**John Robbins,**

*Assistant Director, Cultural Resources.*

[FR Doc. 03–25531 Filed 10–7–03; 8:45 am]

**BILLING CODE 4310–70–S**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Intent to Repatriate Cultural Items: Carnegie Museum of Natural History, Pittsburgh, PA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native America Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.8 (f), of the intent to repatriate a cultural item in the possession of the Carnegie Museum of Natural History, PA, that meets the definitions of sacred object and cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations within this notice.

In the late 19th or early 20th century, John A. Beck purchased a gray slate pipe bowl of a type often referred to as a "Micmac" pipe. The pipe bowl contained a small amount of burned substance when it was acquired. Information provided to Mr. Beck indicated that the pipe came from Harbor Springs, MI. In 1925, the Beck collection was loaned to the Carnegie Museum of Natural History. In 1968, Mr. Beck's heirs donated the majority of the collection, including the pipe bowl, to the Carnegie Museum of Natural History.

The presence of the burned substance in the bowl indicates that the pipe was probably in use during the late 19th or early 20th century. Harbor Springs, MI, is located within the area occupied by the ancestors of the Little Traverse Bay Bands of Odawa Indians, Michigan during the late 19th or early 20th century. Representatives of the Little Traverse Bay Bands of Odawa Indians, Michigan have identified the pipe as a specific ceremonial object that is needed by traditional Native American religious leaders for the practice of traditional Native American religions by present-day adherents. Representatives of the Little Traverse Bay Bands of Odawa Indians, Michigan also have identified the pipe as a Manido (spirit) or grandfather that was, and is, a part of the community and as such could not have been alienated by any tribal member.

Officials of the Carnegie Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Carnegie Museum of Natural History also have determined that pursuant to 25 U.S.C. 3001 (3)(D), the cultural item has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Lastly, officials of the Carnegie Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the sacred object/object of cultural patrimony and the Little Traverse Bay Bands of Odawa Indians, Michigan.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with this sacred object/object of cultural patrimony should contact Dr. David R. Watters, Carnegie Museum of Natural History, 5800 Baum Boulevard, Pittsburgh, PA 15206–3706, telephone (412) 665–2605, before November 7, 2003. Repatriation of the sacred object/object of cultural patrimony to the Little Traverse Bay Bands of Odawa Indians, Michigan may proceed after that date if no additional claimants come forward.

The Carnegie Museum of Natural History is responsible for notifying the Little Traverse Bay Bands of Odawa Indians, Michigan that this notice has been published.

Dated: August 20, 2003.

**John Robbins,**

*Assistant Director, Cultural Resources.*

[FR Doc. 03–25537 Filed 10–7–03; 8:45 am]

**BILLING CODE 4310–70–S**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion: Denver Art Museum, Denver, CO

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Denver Art Museum, Denver, CO. The human remains were removed from an unidentified location near Prescott, Yavapai County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Denver Art Museum professional staff in consultation with representatives of the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico and Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

Prior to 1943, human remains representing one individual were removed by an unknown individual from an unidentified location near Prescott, Yavapai County, AZ. The human remains consist of 29 teeth from a single individual between 25 and 45 years old. No known individual was identified. The teeth, along with a large number of small shell beads, had been made into a necklace. On March 18, 1943, the necklace was loaned to the Denver Art Museum by Sarah Coolidge Vance. The necklace was accessioned as a gift on January 21, 1946. A catalog card identified the necklace as "prehistoric" and "[f]rom ruins near Prescott, Ariz[ona]." There is no indication that the necklace was recovered from a grave site. The shells attached to necklace do not meet the definition of associated funerary objects at 25 U.S.C. 3001 (3)(A).

The necklace was examined by Bridget Ambler, an archeologist at the Colorado Historical Society. Ms. Ambler identified the teeth as more likely than not being from a Native American individual, probably of Puebloan ancestry. Comparison of the necklace to documentation of Puebloan ruins in the area of Prescott, AZ, led Ms. Ambler to conclude that it is likely to be associated with the Prescott culture and to date to the Pueblo II period (A.D. 1100 to 1200). Ms. Ambler also concluded that a member of the Prescott culture owned and perhaps assembled the necklace.

Yavapai oral tradition indicates a possible cultural affiliation with the prehistoric Prescott culture. Some scholars believe that the Prescott culture was ancestral to modern-day Yuman speaking Yavapai, Havasupai, and other groups, but this belief is not accepted by most archeologists. Hopi oral tradition also indicates a possible cultural affiliation with the Prescott culture.

The placement of human teeth on a necklace is not a commonly observed funerary practice in the ancient Southwest. It may be reasonable to presume that the use of teeth on the necklace occurred in the context of warfare and that the teeth originated from a member of a Puebloan group that engaged in conflict with the Prescott culture. Pueblo of Laguna representative Paul Pino indicated that the Lagunas would never allow a necklace to be made out of human teeth. Mr. Pino agreed that the necklace could well have been produced by a member of the Prescott culture as a trophy to hold teeth taken from a slain enemy from a neighboring Puebloan community. Pueblo oral traditions and archeological evidence indicate that ancient Puebloan societies have a relationship of shared group identity with 21 modern Pueblo communities.

Officials of the Denver Art Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Denver Art Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Nancy J. Blomberg, Curator of Native Arts, Denver Art Museum, 100 West 14th Avenue Parkway, Denver, CO 80204, telephone (720) 913–0160, before November 7, 2003. Repatriation of the human remains to the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The Denver Art Museum is responsible for notifying the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico and Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: August 11, 2003.

**John Robbins,**

*Assistant Director, Cultural Resources.*

[FR Doc. 03–25533 Filed 10–7–03; 8:45 am]

**BILLING CODE 4310–70–S**

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## Notice of Inventory Completion: Illinois State Museum, Springfield, IL

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of Illinois State Museum, Springfield, IL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Illinois State Museum professional staff in consultation with representatives of the Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; and United Keetoowah Band of Cherokee Indians in Oklahoma.

Prior to 1962, human remains representing one individual were removed from an unknown location by an unidentified person or persons. The remains were later donated to the Quincy Museum of Natural History and Art, Quincy, IL. In 1991, the Quincy Museum of Natural History and Art transferred possession and control of the human remains to the Illinois State Museum. The transfer inventory identifies the remains as "Cherokee Indian skull." No known individual was identified. No associated funerary objects are present.

Review of the cranial morphology indicates that the individual is likely to be Native American. The Cherokee Indians are represented by three present-day Indian tribes, the Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; and United Keetoowah Band of Cherokee Indians in Oklahoma.

Officials of the Illinois State Museum have determined that, pursuant to 25

U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Illinois State Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; and United Keetoowah Band of Cherokee Indians in Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Robert E. Warren, Curator of Anthropology, Illinois State Museum, 1011 East Ash Street, Springfield, IL 62703–3535, telephone (217) 524–7903, before November 7, 2003. Repatriation of the human remains to the Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; and United Keetoowah Band of Cherokee Indians in Oklahoma may proceed after that date if no additional claimants come forward.

The Illinois State Museum is responsible for notifying the Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; and United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: August 22, 2003.

**John Robbins,**

*Assistant Director, Cultural Resources.*

[FR Doc. 03–25539 Filed 10–7–03; 8:45 am]

**BILLING CODE 4310–70–S**

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## DEPARTMENT OF THE INTERIOR

## National Park Service

### Notice of Inventory Completion: Illinois State Museum, Springfield, IL

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of Illinois State Museum, Springfield, IL. The human remains were removed from Montana.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Illinois State Museum professional staff in consultation with representatives of the Cheyenne-Arapaho Tribes of Oklahoma and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.

In the late 1960s, human remains representing one individual were removed from an unspecified site in Montana by Dr. Ronald Gordon. The human remains were reportedly removed from a road embankment which cut through a known Indian cemetery. Markings believed to have been made by Dr. Gordon on the frontal bone of the skull read "Cheyenne ♀ Montana." Prior to 1987, Dr. Gordon donated the human remains to the Dickson Mounds Museum, a branch of the Illinois State Museum. The accession card indicates that the remains are of a Cheyenne female. No known individual was identified. No associated funerary objects are present.

Review of the cranial morphology indicates that the individual is clearly Native American. The Cheyenne Indians are represented by two present-day Indian tribes, the Cheyenne-Arapaho Tribes of Oklahoma and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.

Officials of the Illinois State Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Illinois State Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Cheyenne-Arapaho Tribes of Oklahoma and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Robert E. Warren, Curator of Anthropology, Illinois State Museum, 1011 East Ash Street, Springfield, IL 62703–3535, telephone (217) 524–7903, before November 7, 2003. Repatriation of the human remains to the Cheyenne-Arapaho Tribes of Oklahoma and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana may proceed after that date if no additional claimants come forward.

The Illinois State Museum is responsible for notifying the Cheyenne-Arapaho Tribes of Oklahoma and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana that this notice has been published.

Dated: August 25, 2003.

**John Robbins,**

*Assistant Director, Cultural Resources.*

[FR Doc. 03–25541 Filed 10–7–03; 8:45 am]

**BILLING CODE 4310–70–S**

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## DEPARTMENT OF THE INTERIOR

## National Park Service

### Notice of Inventory Completion: Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of an inventory of human remains and associated funerary objects in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA. The human remains and associated funerary objects were removed from site 45KL242, also known as Millers Island site 20 and 21, Klickitat County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

An assessment of the human remains, and catalog records and associated documents relevant to the human remains, was made by Phoebe A. Hearst Museum of Anthropology professional staff in consultation with representatives of the Confederated Tribes of the Warm Springs Reservation of Oregon.

In 1926, human remains representing at least 24 individuals were excavated from site 45KL242, also known as Millers Island site 20 and 21, Klickitat County, WA, by Dr. Julian H. Steward and donated the same year to the Phoebe A. Hearst Museum of Anthropology by H.J. Biddle. No known individuals were identified. The 1,610 associated funerary objects are bracelets, metal fragments, copper fragments, copper tubes, copper pendants, copper pendant fragments, copper buttons, iron fragments, wooden pins, glass beads, ochre-stained leather fragments, matting fragments, board fragments, basketry fragments, shell beads, shell pendants, dentalium shells, a bark fragment with copper, tube pipes, bone buttons, bone point fragments, bone implement fragments, bear claws, an incised tooth pendant, whalebone war club handles and fragments, bone gaming sticks and fragments, bone carvings and fragments, an ivory pendant, metal buttons, Phoenix metal buttons, arrow points, a mortar and pestle, a stone dish, ochre fragments, awl fragments, a carved lava fragment, headdress fragments and carvings, rock fragments, and an iron tomahawk head.

The style of manufacture of associated funerary objects and burial contexts indicate that the human remains are of Native American individuals. The presence of items of Euroamerican manufacture date the burials to the 19th century. The site is located within the aboriginal territory of the Confederated Tribes of Warm Springs, specifically the Tenino, based on the territory described in Volume 12 of the Handbook of North American Indians.

Officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of at least 24 individuals of Native American ancestry. Officials of the Phoebe A. Hearst Museum of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 1,610 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Confederated Tribes of the Warm Springs Reservation of Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact C. Richard Hitchcock, NAGPRA Coordinator, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley CA 94720, telephone (510) 642–6096, before November 7, 2003. Repatriation of the human remains and associated funerary objects to the Confederated Tribes of the Warm Springs Reservation of Oregon may proceed after that date if no additional claimants come forward.

The Phoebe A. Hearst Museum of Anthropology is responsible for notifying the Confederated Tribes of the Warm Springs Reservation of Oregon that this notice has been published.

Dated: August 27, 2003.

**John Robbins,**

*Assistant Director, Cultural Resources.*

[FR Doc. 03–25540 Filed 10–7–03; 8:45 am]

**BILLING CODE 4310–70–S**

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## DEPARTMENT OF THE INTERIOR

## National Park Service

### Notice of Inventory Completion: UCLA Fowler Museum of Cultural History, University of California, Los Angeles, Los Angeles, CA, and California Department of Parks and Recreation, Sacramento, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the UCLA Fowler Museum of Cultural History, University of California, Los Angeles, Los Angeles, CA, and in the control of the California Department of Parks and Recreation, Sacramento, CA. The human remains and associated funerary objects were removed from Anza-Borrego Desert State Park, San Diego County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by UCLA Fowler Museum of Cultural History and California Department of Parks and Recreation professional staff in consultation with members of the Kumeyaay Cultural Repatriation Committee, authorized NAGPRA representative of the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California.

In 1958, human remains representing a minimum of five individuals were removed from five cremation sites (SDI–335, SDI–359, SDI–379, SDI–434, and SDI–526) in Anza-Borrego Desert State Park, San Diego County, CA, by Dr. Clement Meighan. No known individuals were identified. The 675 associated funerary objects are 3 basket fragments, 56 shell beads, 2 glass beads, 4 chipped stones, 1 deer bone, 1 worked bone, 41 flakes, 1 bag of cordage fragments, 1 bag of shell fragments, 9 shell ornaments and pendants, 1 haliotis shell fragment, 1 obsidian point, 553 ceramic sherds, and 1 bifacial mano.

In 1959, human remains representing a minimum of three individuals were removed from the Angelina Springs cremation site (SDI–453) in Anza-Borrego Desert State Park, San Diego County, CA, by Joan Townsend, a University of California, Los Angeles anthropology student. No known individuals were identified. The four associated funerary objects are one burned steatite pipe, one bag of steatite fragments, one bag of charcoal fragments, and one bag of burned animal bones.

The collections described above were made during a survey of the Anza-Borrego Desert State Park, supervised by Dr. Clement Meighan of the University of California, Los Angeles and supported by the California Department of Parks and Recreation. According to Dr. Meighan, in a 1959 article "Archaeological Resources of Borrego Desert State Park," the sites from which the cultural items were removed are located in an area formerly occupied by two Yuman groups, the Northern

Diegueno and the Kamia, both of which are ancestral to present-day Kumeyaay groups. Also according to Dr. Meighan, "the sites seem to belong to the pottery-using period, which is to say since about 1000 A.D." Some sites in the area have been dated into the Historic period. A spokesman for the Kumeyaay Cultural Repatriation Committee also identified Anza-Borrego Desert State Park as within the traditional territory of the Kumeyaay. The artifacts and burial practices are consistent with others documented as associated with the indigenous inhabitants of the area. The Kumeyaay Indians are represented by the present-day Indian tribes that are members of the Kumeyaay Cultural Repatriation Committee.

Officials of the California Department of Parks and Recreation have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of eight individuals of Native American ancestry. Officials of the California Department of Parks and Recreation also have determined that, pursuant to 25 U.S.C. 3001(3)(A), the 679 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the California Department of Parks and Recreation have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Paulette Hennum, NAGPRA Coordinator, Cultural Resources Division, California State Parks, P.O. Box 942896, Sacramento, CA 94296–0001, telephone: (916) 653–7976, before November 7, 2003. Repatriation of the human remains and associated funerary objects to the Kumeyaay Cultural Repatriation Committee on behalf of the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California may proceed after that date if no additional claimants come forward.

The California Department of Parks and Recreation is responsible for notifying the Kumeyaay Cultural Repatriation Committee, the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California that this notice has been published.

Dated: August 6, 2003.

**John Robbins,**

*Assistant Director, Cultural Resources.*

[FR Doc. 03–25534 Filed 10–7–03; 8:45 am]

BILLING CODE 4310–70–S

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## Notice of Intent to Repatriate Cultural Items: UCLA Fowler Museum of Cultural History, University of California, Los Angeles, Los Angeles, CA, and California Department of Parks and Recreation, Sacramento, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the UCLA Fowler Museum of Cultural History, University of California, Los Angeles, Los Angeles, CA, and in the control of the California Department of Parks and Recreation, Sacramento, CA, that meet the definition of "unassociated funerary objects" under 25 U.S.C. 3001. The unassociated funerary objects were removed from Anza-Borrego Desert State Park, San Diego County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations within this notice.

The 592 cultural items are 337 animal bones, 4 glass bottle fragments, 1 modified glass fragment, 6 unidentified glass fragments, 1 burned clay fragment, 1 metal button, 1 cog stone, 1 bone scraper fragment, 44 stone flakes, 189 ceramic sherds and fragments, 2 shell fragments, 1 ceramic pipe fragment, and 4 projectile point fragments.

In January and March of 1958, Dr. Clement Meighan, of the University of California, Los Angeles, and his students removed human remains and funerary objects from several sites in Anza-Borrego Desert State Park, San

Diego County, CA, during a survey project supported by the California Department of Parks and Recreation. The human remains and associated funerary objects are described in a companion notice of inventory completion. The unassociated funerary objects were collected from two apparent cremation sites within Anza-Borrego Desert State Park. Dr. Meighan and his students collected 89 ceramic sherds and 24 stone flakes from site CA-SDI–443, also known as SF–74, and 335 heavily burned and 2 unburned animal bones, 100 ceramic sherds and fragments, 20 stone flakes, 7 glass fragments, 4 projectile point fragments, 4 glass bottle fragments, 2 shell fragments, 1 ceramic pipe fragment, 1 bone scraper fragment, 1 burned clay fragment, 1 metal button, 1 cog stone, and 1 bone scraper from site CA-SDI–489.

According to Dr. Clement Meighan in a 1959 article "Archaeological Resources of Borrego Desert State Park," the two sites from which the cultural items were removed are located in an area formerly occupied by two Yuman groups, the Northern Digueno and the Kamia, both of which are ancestral to present-day Kumeyaay groups. Also according to Dr. Meighan, "the sites seem to belong to the pottery-using period, which is to say since about 1000 A.D." Some sites in the area have been dated into the Historic period. A spokesman for the Kumeyaay Cultural Repatriation Committee also identified Anza-Borrego Desert State Park as within the traditional territory of the Kumeyaay. The artifacts are consistent with others documented as associated with the indigenous inhabitants of the area. The Kumeyaay Indians are represented by the present-day Indian tribes that are members of the Kumeyaay Cultural Repatriation Committee.

Officials of the California Department of Parks and Recreation have determined that, pursuant to 25 U.S.C. 3001(3)(B), the cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the California Department of Parks and Recreation also have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Paulette Hennum, NAGPRA Coordinator, Cultural Resources Division, California State Parks, P.O. Box 942896, Sacramento, CA 94296–0001, telephone (916) 653–7976, before November 7, 2003. Repatriation of the unassociated funerary objects to the Kumeyaay Cultural Repatriation Committee on behalf of the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California may proceed after that date if no additional claimants come forward.

The California Department of Parks and Recreation is responsible for notifying the Kumeyaay Cultural Repatriation Committee, the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California that this notice has been published.

Dated: August 6, 2003.

**John Robbins,**

*Assistant Director, Cultural Resources.*

[FR Doc. 03–25536 Filed 10–7–03; 8:45 am]

**BILLING CODE 4310–70–S**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion: University of California, Riverside, Riverside, CA, and U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the University of California, Riverside, Riverside, CA, and in the control of the U.S Department of the Interior, Bureau of Indian Affairs, Washington, DC. The human remains were removed from the Agua Caliente Indian Reservation, Riverside County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the University of California, Riverside professional staff in consultation with the Cahuilla Inter-Tribal Repatriation Committee, representing the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California; Augustine Band of Cahuilla Mission Indians of the Augustine Reservation, California; Cabazon Band of Cahuilla Mission Indians of the Cabazon Reservation, California; Cahuilla Band of Mission Indians of the Cahuilla Reservation, California; Los Coyotes Band of Cahuilla Mission Indians of the Los Coyotes Reservation, California; Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California; Ramona Band or Village of Cahuilla Mission Indians of California; Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California; and Torres-Martinez Band of Cahuilla Mission Indians of California.

In 1971, human remains representing one individual were removed from site CA-RIV-513, located on the Agua Caliente Indian Reservation, Riverside County, CA. Excavations at site CA-RIV-513 were conducted by the University of California, Riverside at the request of the tribal council of the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California. The human remains consist of a single cranial fragment. No known individual was identified. No associated funerary objects are present. Site CA-RIV-513 contains abundant ceramic artifacts throughout its depth. No preceramic deposits were encountered during the excavation. The human remains are believed to have been buried during the Late Prehistoric period (A.D. 1550 to 1770). Archeological evidence indicates that site CA-RIV-513 was used by the Pass Division of the Cahuilla tribe, represented today by the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Reservation, California.

Officials of the University of California, Riverside and the Bureau of Indian Affairs have determined that, pursuant to 25 U.S.C. 3001(9-10), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the University of California, Riverside and the Bureau of Indian Affairs also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Philip J. Wilke, Department of Anthropology, 1334 Watkins Hall, University of California, Riverside, Riverside, CA 92521-0418, telephone (909) 787-5524, before November 7, 2003. Repatriation of the human remains to the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Reservation, California may proceed after that date if no additional claimants come forward.

The University of California, Riverside is responsible for notifying the Cahuilla Inter-Tribal Repatriation Committee and its constituent members, the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California; Augustine Band of Cahuilla Mission Indians of the Augustine Reservation, California; Cabazon Band of Cahuilla Mission Indians of the Cabazon Reservation, California; Cahuilla Band of Mission Indians of the Cahuilla Reservation, California; Los Coyotes Band of Cahuilla Mission Indians of the Los Coyotes Reservation, California; Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California; Ramona Band or Village of Cahuilla Mission Indians of California; Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California; and Torres-Martinez Band of Cahuilla Mission Indians of California that this notice has been published.

Dated: August 26, 2003.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 03-25538 Filed 10-7-03; 8:45 am]

BILLING CODE 4310-70-S

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## DEPARTMENT OF THE INTERIOR

## National Park Service

### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of Nebraska State Museum, Anthropology Research Division, Lincoln, NE; Correction

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Nebraska State Museum, Lincoln, NE. The human remains and associated funerary objects were removed from six localities in Knox County, NE.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

This notice corrects the list of associated funerary objects from the Ponca Fort Site (Nanza), 25KX001, in Knox County, NE. Officials of the University of Nebraska State Museum have identified the wing bone of an eagle in the museum collections and, based on museum records, have determined that it is an associated funerary object that was originally placed with the remains of an individual at this site.

In the notice of inventory completion published on behalf of the museum in the **Federal Register** of September 19, 1995 (FR doc. 95-23153, pages 48522-48523), paragraphs 4, 16 and 17 are corrected by substituting the following three paragraphs:

Human remains from the Ponca Fort Site (Nanza), 25KX001, Knox County, NE, represent 66 individuals. No known individuals were identified. A total of 5,311 cultural items are associated with these burials, including wood (bark fragments, scraper, shaft smoother, and shaft straightener), copper (beads, bracelets, bells, buttons, coils, neck rings, projectile points, rings, sheets, and cones), glass (beads and button), pipestone (banner stone and pipe fragments), bone (bison tools, pendant, hair pipe bead, and eagle wing bone), stone (grinding slab and unknown artifact), iron (ax, bracelets, projectile points and fragments), lead (bracelet and coils), leather fragments, and shell (unmodified shell and gorgets).

Officials of the University of Nebraska State Museum have determined that, pursuant to 25 U.S.C. 3001(9-10), the human remains described above represent the physical remains of 86 individuals of Native American ancestry. Officials of the University of Nebraska State Museum also have determined that, pursuant to 25 U.S.C. 3001(3)(A), the 5,928 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Nebraska State Museum have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Ponca Tribe of Indians of Oklahoma and Ponca Tribe of Nebraska.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the remains and associated funerary objects should contact Priscilla Grew, NAGPRA Coordinator, University of Nebraska-Lincoln, 301 Bessey Hall, Lincoln, NE 68588–0381, telephone (402) 472–7854, before November 7, 2003. Repatriation of the human remains and associated funerary objects to the Ponca Tribe of Indians of Oklahoma and Ponca Tribe of Nebraska may proceed after that date if no additional claimants come forward.

The University of Nebraska State Museum is responsible for notifying the Ponca Tribe of Indians of Oklahoma and Ponca Tribe of Nebraska that this notice has been published.

Dated: August 8, 2003.

**John Robbins,**

*Assistant Director, Cultural Resources.*

[FR Doc. 03–25542 Filed 10–7–03; 8:45 am]

**BILLING CODE 4310–70–S**

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## Notice of Inventory Completion: University of Oregon Museum of Natural History, Eugene, OR, and U.S. Department of Defense, Army Corps of Engineers, Portland District, Portland, OR

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects for which the University of Oregon Museum of Natural History, Eugene, OR, and the U.S. Department of Defense, Army Corps of Engineers, Portland District, Portland, OR, have joint responsibility. The human remains and associated funerary objects were removed from sites on Army Corps of Engineers land located in Morrow County, OR, and Benton County, WA, within the John Day Dam project area.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Army Corps of Engineers, Portland District and University of Oregon Museum of Natural History professional staff in consultation with representatives of the Confederated Tribes of the Umatilla Reservation, Oregon.

Native American cultural items described in this notice were excavated under Antiquities Act permits by the University of Oregon, Eugene, OR, on Army Corps of Engineers project lands. Following excavations at the sites described below, and under the provisions of the permits, the University of Oregon was allowed to retain the collections for preservation.

In 1958, human remains representing a minimum of one individual were removed from the Crow Butte site (45 BN 58), near Blalock Island, Benton County, WA, within the John Day Dam project area. No known individual was identified. The five associated funerary objects are three dentalium beads and two olivella beads.

The Crow Butte site is a campsite and burial site, and its dates of occupation are unknown. Based on the types of associated funerary objects and tooth wear, the individual has been determined to be Native American.

In 1963, human remains representing a minimum of four individuals were removed from the Eye site (45 BN 64), on Little Blalock Island, Benton County, WA, in the Columbia River, within the John Day Dam project area. No known individuals were identified. The two associated funerary objects are one projectile point and one shell bead.

The Eye site is a village and cemetery site dating after A.D. 1750. Based on the types of associated funerary objects, the individuals have been determined to be Native American.

In 1963, human remains representing a minimum of 12 individuals were removed from site 45 BN 77 on Coyote Island, Benton County, WA, in the Columbia River, within the John Day Dam project area. No known individuals were identified. The 874 associated funerary objects are 8 projectile points, 251 glass beads, 64 copper beads, 23 shell beads, 20 olivella beads, 214 shell and glass beads, 2 bone beads, 18 beads, 102 bones, 16 flakes, 103 pieces of glass, 34 pieces of copper, 3 copper pendants, 1 copper button, 1 graver, 1 scraper, 2 choppers, 2 flaked cobbles, 2 sinkers, 2 shells, 1 lot of raw material for beads, 2 shaft straighteners, 1 uniface, and 1 nail.

Site 45 BN 77 is a campsite and burial site that was occupied during the historic period. Based on the types of associated funerary objects, the individuals have been determined to be Native American.

In 1963, human remains representing a minimum of one individual were removed from site 45 BN 81 on Blalock Island, Benton County, WA, in the Columbia River within the John Day Dam project area. No known individual was identified. The 26 associated funerary objects are 10 glass beads, 14 shell beads, 1 piece of copper, and 1 copper button.

Site 45 BN 81 is a campsite and burial site dating to the protohistoric and historic periods. Based on the types of associated funerary objects, the human remains have been determined to be Native American.

In 1967, human remains representing a minimum of two individuals were removed from the Tom's Camp site (35 MW 10), 3 miles west of the former town of Boardman, Morrow County, OR, on the south bank of the Columbia River, in the John Day Dam project area. No known individuals were identified. No associated funerary objects are present.

The Tom's Camp site is a midden with burials dating from approximately 1800 B.P. to 500 B.P. Based on artifacts excavated in the general area, the individuals have been determined to be Native American.

The sites described above are within the traditional lands of the present-day Confederated Tribes of the Umatilla Indian Reservation, Oregon. The Confederated Tribes of the Umatilla Indian Reservation, Oregon was established by the Stevens Treaty of 1855 and consists of three tribes: Cayuse, Umatilla, and Walla Walla. All three tribes belong to the Sahaptin language group, each tribe's speaking a separate dialect of Sahaptin. Historically, these tribes occupied over 6 million acres of land in southeastern Washington and northeastern Oregon. The Umatilla Indian Reservation and ceded lands roughly include the areas bounded by the Columbia and Snake Rivers on the north to Willow Creek on the west to Tucannon River on the east.

Officials of the Army Corps of Engineers, Portland District have determined that, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of a minimum number of 20 individuals of Native American ancestry. Officials of the Army Corps of Engineers, Portland District also have determined that, pursuant to 25 U.S.C. 3001(3)(A), the 907 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Army Corps of Engineers, Portland District have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Confederated Tribes of the Umatilla Indian Reservation, Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Ms. Gail Celmer, NAGPRA Coordinator, Environmental Resources Branch, U.S. Department of Defense, Army Corps of Engineers, Portland District, P.O. Box 2946, Portland, OR 97208–2946, telephone (503) 808–4762, before November 7, 2003. Repatriation of the human remains and associated funerary objects to the Confederated Tribes of the Umatilla Indian Reservation, Oregon may proceed after that date if no additional claimants come forward.

The Army Corp of Engineers, Portland District is responsible for notifying the Confederated Tribes of the Umatilla Indian Reservation, Oregon that this notice has been published.

Date: August 7, 2003

**John Robbins,**

*Assistant Director, Cultural Resources*

[FR Doc. 03–25535 Filed 10–7–03; 8:45 am]

BILLING CODE 4310–70–S

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## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–495]**

### In the Matter of Certain Breath Test Systems for the Detection of Gastrointestinal Disorders and Components Thereof; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation on the Basis of a Consent Order; Issuance of Consent Order

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") (Order No. 4) terminating the above-captioned investigation on the basis of a consent order.

**FOR FURTHER INFORMATION CONTACT:** Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone: (202) 205–3090. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on July 30, 2003, based on a complaint filed by Meretek Diagnostics, Inc. of Lafayette, Colorado, and Medquest PTY, Ltd. of Perth, Australia. 68 FR 44812 (July 30, 2003). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain breath test systems for the detection of gastrointestinal disorders and components thereof by reason of infringement of claims 1, 2, 3, and 5 of U.S. Patent No. 4,830,010. The complaint and notice of investigation named Oridion Systems, Ltd.; Oridion Medical 1987 Ltd.; Oridion BreathID Ltd.; and Oridion BreathID Inc. as respondents.

On September 2, 2003, complainants and respondents filed a joint motion pursuant to Commission rule 210.21(c) to terminate the investigation as to all respondents on the basis of a consent order. The motion included a consent order stipulation and a proposed consent order. The Commission investigative attorney supported the motion. On September 12, 2003, the ALJ issued the subject ID terminating the investigation in its entirety on the basis of a consent order. No petitions for review of the ID were filed.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: October 1, 2003.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 03–25455 Filed 10–7–03; 8:45 am]

BILLING CODE 7020–02–P

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act

In accordance with 28 U.S.C. 50.7, notice is hereby given that on September 30, 2003, a proposed Consent Decree in *United States* v. *CHS Inc.*, Civil Action No. CV:03–153–BLG–RWA, was lodged with the United States District Court for Montana.

In this action, the United States sought injunctive relief and penalties against CHS Inc. ("Cenex"), pursuant to Section 113(b) of the Clean Air Act ("CAA"), 42 U.S.C. 7413(b) (1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991) for alleged CAA violations at Cenex's refinery in Laurel, Montana in a complaint that was filed simultaneously with the Consent Decree.

The proposed Consent Decree requires Cenex to implement innovative pollution control technologies to greatly reduce emissions of nitrogen oxides ("$NO_X$") and sulfur dioxide ("$SO_2$") from refinery process units and adopt facility-wide enhanced monitoring and fugitive emission control programs. In addition, Cenex will pay a civil penalty of $85,937.50 for settlement of the claims in the United States' complaint, and Cenex will pay $85,937.50 for settlement of claims raised by the State of Montana. Cenex also will perform environmentally beneficial projects. The State of Montana will join in this settlement as a signatory of the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States, et al.*, v. *CHS Inc.*, D.J. Ref. 90–5–2–1–07726.

The Consent Decree may be examined at the Office of the United States Attorney, 2929 3rd Ave North, Suite 400, Billings, MT 59101 (attn: Lorraine Gallinger), and at U.S. EPA Region 8, 999 18th Street Suite 300, Denver, CO 80202–2466 (attn: David Rochlin). During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleet@woodusdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the Consent Decree from the Consent Decree Library, please enclose a check in the amount of $40.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**Robert D. Brook,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 03–25551 Filed 10–7–03; 8:45 am]

BILLING CODE 4410–15–M

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 28 U.S.C. 50.7 and Section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622, notice is hereby given that on September 25, 2003, a proposed Consent Decree in *United States* v. *Horsehead Industries, Inc. et al.*, Civil Action No. 3:CV–98–0654, was lodged with the United States District Court for the Middle District of Pennsylvania.

In this action, the United States sought under Section 107 and 113 of CERCLA, 42 U.S.C 9607 and 9613, to recover past and future response costs incurred by EPA at the Palmerton Zinc Pile Superfund Site ("Site") located in and around the Borough of Palmerton, Carbon County, Pennsylvania.

The Site consists of a broad area impacted by emissions of contaminants from zinc smelting and recovery operations. For purposes of remediation, EPA divided the Site into four operable units. OU–1 consists of approximately 2,000 acres of Blue Mountain defoliated by heavy metals and other airborne contaminants. A portion of the area within OU–1 overlaps the Appalachian Trail and is owned and managed by the Department of the Interior ("DOI") through the National Park Service ("NPS"). OU–2 consists of an approximately 2½ mile long, ten story high, "Cinder Bank" which is composed of smelting residues and other zinc processing byproducts deposited along the base of Blue Mountain. OU–3 consists of soil contamination in the valley between Blue Mountain and Stoney Ridge, which includes the Borough of Palmerton itself. OU–4 consists primarily of area-wide surface water and groundwater contamination.

The proposed Consent Decree requires Settling Defendants to pay approximately $12.85 million in reimbursement of past response costs incurred by EPA. In addition, Settling Defendant agree to implement the remedial actions at OU–1 and OU–3, and to perform the operation and maintenance activities at OU–2, at a projected costs of $27 million. Settling Defendants also agree to pay DOI $700,000 for past and future costs related to OU–1. Finally, Settling Defendants agree to dismiss counterclaims that they filed against the United States under Sections 107 and 113 of CERCLA. The United States reserves all rights to pursue additional actions against the Settling Defendants with respect to the portions of the Site not addressed in this settlement.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Horsehead Industries, Inc. et al.*, D.J Ref. 90–11–2–271m.

The Consent Decree may be examined at the Office of the United States Attorney for the Middle District of Pennsylvania, Federal Courthouse Building, 228 Walnut Street, Suite 220, Harrisburg, PA 17108, and at U.S. EPA Region III, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103–2029. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the Consent Decree from the Consent Decree Library, please enclose a check in the amount of $33.50 (25 cents per page reproduction cost) payable to the U.S. Treasury. Copies of the appendices to the Consent Decree are also available at an additional charge of 25 cents per page.

**Robert Brook,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 03–25553 Filed 10–7–03; 8:45 am]

BILLING CODE 4410–15–M

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on September 25, 2003, a proposed Consent Decree in *United States* v. *City of Long Beach, California*, Civil Action No. CV 01–08790 PA (RCx) was lodged with the United States District Court for the Central District of California.

In this action the United States sought to recover unpaid response costs, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, ("CERCLA") incurred by the Environmental Protection Agency in connection with the release of hazardous substances at the Enviropur West Corporation Superfund Site, located in Signal Hill, California. Under the proposed Consent Decree, the City will pay $290,000 to the Hazardous Substance Superfund to reimburse the United States for a portion of its past response costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *City of Long Beach, California,* D.J. Ref. #90–11–3–1656/2.

The Consent Decree may be examined at U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**Ellen M. Mahan,**
*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 03–25552 Filed 10–7–03; 8:45 am]

BILLING CODE 4410–15–M

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## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the "Multiple Worksite Report and the Report of Federal Employment and Wages." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before December 8, 2003.

**ADDRESSES:** Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number (202) 691–7628 (this is not a toll free number).

**FOR FURTHER INFORMATION CONTACT:** Amy A. Hobby, BLS Clearance Officer, telephone number (202) 691–7628. (*See* **ADDRESSES** section).

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Covered Employment and Wages (ES–202) Program is a Federal/State cooperative effort which compiles monthly employment data, quarterly wage data, and business identification information from employers subject to State Unemployment Insurance (UI) laws. These data are collected from State Quarterly Contribution Reports (QCRs) submitted to State Employment Security Agencies (SESAs). The States send micro-level employment and wages data, supplemented with the names, addresses, and business identification information of these employers, to the BLS. The State data are used to create the BLS sampling frame, known as the Business Establishment List. This file represents the best source of detailed industrial and geographical data on employers and is used as the sampling frame for most BLS surveys. The Business Establishment List includes the individual employers' employment and wages data along with associated business identification information that is maintained by each State to administer the UI program as well as the Unemployment Compensation for Federal Employees (UCFE) program.

The ES–202 Report, produced for each calendar quarter, is a summary of these employer (micro-level) data by industry at the county level. Similar data for Federal Government employees covered by the UCFE Program also are included in each State report. These data are submitted by all 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands to the BLS which then summarizes these macro-level data to produce totals for the States and the Nation. The ES–202 Report provides a virtual census of nonagricultural employees and their wages, with about 47 percent of the workers in agriculture covered as well.

For employers having only a single physical location (worksite) in the State and, thus, operating under a single assigned industrial and geographical code, the data from the States' UI accounting files are sufficient for statistical purposes. Such data, however, are not sufficient for statistical purposes for those employers having multiple establishments or engaged in different industrial activities within the State. In such cases, the employer's QCR reflects only statewide employment and wages and is not disaggregated by establishment or worksite. Although data at this level are sufficient for many purposes of the UI Program, more detailed information is required to create a sampling frame and to meet the needs of several ongoing Federal/State statistical programs. The Multiple Worksite Report (MWR) is designed to supplement the QCR when more detailed information is needed.

As a result of the MWR, improved establishment business identification data elements have been incorporated into and maintained on the Business Establishment List. The MWR collects a physical location address, secondary name (trade name, division, subsidiary, *etc.*), and reporting unit description (store number, plant name or number, *etc.*) for each worksite of multi-establishment employers.

Employers with more than one establishment reporting under the same UI account number within a State are requested to complete the MWR if the sum of the employment in all of their secondary establishments is 10 or greater. The primary worksite is defined as the establishment with the greatest number of employees. Upon receipt of the first MWR form, each employer is requested to supply business location identification information. Thereafter, this reported information is computer printed on the MWR each quarter. The employer is requested to verify the accuracy of this business location identification information and to provide only the employment and wages for each worksite for that quarter. By using a standardized form, the reporting burden on many large employers, especially those engaged in multiple economic activities at various locations across numerous States, has been reduced.

Comparable to the MWR, the function of the Report of Federal Employment and Wages (RFEW) is to collect employment and wage data for each installation of Federal agencies. The RFEW aids in the development and maintenance of business identification information by installation. The RFEW was modeled after the MWR and is used only to collect data from Federal agencies covered by the UCFE program.

No other standardized report is available to collect current establishment-level employment and wages data by SESAs for statistical purposes each quarter from the private sector nor State and local governments. Also, no other standardized report currently is available to collect installation-level Federal employment and wages data each quarter by SESAs for statistical purposes. Completion of the MWR is required by state law in 21 States.

## II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

## III. Current Action

The BLS has taken steps to help reduce employer reporting burden by developing a standardized format for employers to use to send these data to the States in an electronic medium. The BLS also established an Electronic Data Interchange (EDI) Collection Center to improve and expedite the MWR collection process. Employers who complete the MWR for multi-location businesses can now submit employment and wages information on any electronic medium (tape, cartridge, diskette, or computer-to-computer) directly to the data collection center, rather than to each State agency, separately. The data collection center then distributes the appropriate data to the respective States. The BLS also has been working very closely with firms providing payroll and tax filing services for employers as well as the developers of payroll and tax filing software to include this electronic reporting as either a service for their clients or a new feature of their system. In addition, the BLS is developing a web-based system to collect these data from small to medium size businesses.

*Type of Review:* Extension of currently approved collection.

*Agency:* Bureau of Labor Statistics.

*Title:* Multiple Worksite Report (MWR) and the Report of Federal Employment and Wages (RFEW).

*OMB Number:* 1220–0134.

*Frequency:* Quarterly.

*Affected Public:* Business or other for-profit institutions, not for-profit institutions, Federal Government, and State, local or tribal government.

| Form number | Total respondents | Respondent | Total responses | Average time per response (minutes) | Total burden (hours) |
|---|---|---|---|---|---|
| BLS 3020 (MWR) | 116,172 | Non-Federal | 464,688 | 22.2 | 171,935 |
| BLS 3021 (RFEW) | 2,074 | Federal | 8,296 | 22.2 | 3,070 |
| Totals | 118,246 | | 472,984 | | 175,004 |

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 25th day of September, 2003.

**Cathy Kazanowski,**

*Chief, Division of Management Systems, Bureau of Labor Statistics.*

[FR Doc. 03–25515 Filed 10–7–03; 8:45 am]

BILLING CODE 4510–24–P

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## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

## Meetings; Sunshine Act

October 2, 2003.

**TIME AND DATE:** 2 p.m., Thursday, October 9, 2003.

**PLACE:** Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will hear oral argument on an appeal of Rag Shoshone Coal Corporation from the decision of an administrative law judge in *Secretary of Labor* v. *Rag Shoshone Coal Corporation,* Docket No. WEST 99–342–R, WEST 99–384–R and WEST 2000–349. (Issues include whether the judge correctly concluded that the Secretary of Labor's interpretation of 30 CFR 70.207(e)(7) was reasonable; whether the judge correctly concluded that the Secretary of Labor was not required to engage in notice-and-comment rulemaking before imposing the 060 designated occupation for purposes of sampling levels of respirable coal dust; and whether the judge correctly concluded that the Secretary of Labor's imposition of the 060 designated occupation was not arbitrary, capricious, or an abuse of discretion.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

**FOR FURTHER INFORMATION CONTACT:** Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

**Jean H. Ellen,**

*Chief Docket Clerk.*

[FR Doc. 03–25623 Filed 10–6–03; 12:29 pm]

BILLING CODE 6735–01–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (03–126)]**

### Government-Owned Inventions, Available for Licensing

**AGENCY:** National Aeronautics and Space Administration

**ACTION:** Correction.

**SUMMARY:** The invention listed below is assigned to the National Aeronautics and Space Administration, has been filed in the United States Patent and Trademark Office, and is available for licensing.

**DATES:** October 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Linda Blackburn, Patent Counsel, Langley Research Center, Mail Code 212, Hampton, VA 23681–2199; telephone (757) 864–9260; fax (757) 864–9190.

NASA Case No. LAR–15712–2-CU: Optical Path Switching Based Differential Absorption Radiometry For Substance Detection (was incorrect title) the correct title should have been:

NASA Case No. LAR–15712–2–CU: Method for the Detection of Volatile Organic Compounds Using a Catalytic Oxidation Sensor.

Dated: September 25, 2003.

**Robert M. Stephens,**

*Deputy General Counsel.*

[FR Doc. 03–25496 Filed 10–7–03; 8:45 am]

**BILLING CODE 7510–01–P**

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 03–127]**

### NASA Space Science Advisory Committee, Solar System Exploration Subcommittee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** The National Aeronautics and Space Administration announces a meeting of the NASA Space Science Advisory Committee (SScAC), Solar System Exploration Subcommittee (SSES).

**DATES:** Thursday, October 23, 2003, 8:30 a.m. to 5:15 p.m.; Friday, October 24, 2003, 8:30 a.m. to 12:30 p.m.

**ADDRESSES:** National Aeronautics and Space Administration, Room 9H40, 300 E Street, SW., Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jay Bergstralh, Code SE, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0313, *Jay.T.Bergstralh@nasa.gov.*

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Status of Solar System Exploration
—Status of Mars Exploration Program
—Mars Exploration Rover Status
—Instruments for Mars Surface Laboratory Payload
—Mars Exploration Program beyond Mars Surface Laboratory
—Prometheus Science Concept Definition Team
—Bahcall Committee Report on Hubble Space Telescope

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: full name; gender; date/place of birth; citizenship; visa/greencard information (number, type, expiration date); employer/affiliation information (name of institution, address, country, phone); title/position of attendee. Foreign nationals will be escorted at all times. To expedite admittance, all attendees can provide identifying information in advance by contacting Dr. Jay Bergstralh via e-mail at *Jay.T.Bergstralh@nasa.gov* or by telephone at 202/358–0313 or Kay Butzke via e-mail at *glenda.K.butzke@nasa.gov* or by telephone at 202/358–0730.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

**June W. Edwards,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 03–25497 Filed 10–7–03; 8:45 am]

**BILLING CODE 7510–01–P**

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## NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

### Public Hearing

**AGENCY:** National Commission on Terrorist Attacks Upon the United States.

**ACTION:** Notice of public hearing.

**SUMMARY:** The National Commission on Terrorist Attacks Upon the United States will hold its fourth public hearing on October 14, 2003 in Washington, DC. Witnesses will speak about issues related to U.S. intelligence leadership, intelligence and national security policy, and the effectiveness of warning against transnational threats. Representatives of the media should register in advance of the hearing by visiting the Commission's Web site at *http://www.9–11 commission.gov.* Seating for the general public will be on a first-come, first-served basis. Press availability will occur at the conclusion of the hearing.

**DATES:** October 14, 2003, 9 a.m. to 3:15 p.m. Press availability to follow.

**LOCATION:** Russell Senate Office Building, Room 253, Washington, DC, 20510.

**FOR FURTHER INFORMATION CONTACT:** Al Felzenberg, (202) 401–1725 or (202) 236–4878 (cellular).

**SUPPLEMENTARY INFORMATION:** Please refer to Public Law 107–306 (November 27, 2002), title VI (Legislation creating the Commission), and the Commission's Web site *http://www.9–11 commission.gov.*

Dated: October 2, 2003.

**Philip Zelikow,**

*Executive Director.*

[FR Doc. 03–25412 Filed 10–7–03; 8:45 am]

**BILLING CODE 8800–01–M**

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## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permit applications received under the Antarctic Conservation Act.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for operation of remote field camps during a skiing/climbing expedition in the Antarctic interior. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 6, 2003. Permit applications may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Nadene Kennedy at the above address or (703) 292–8030.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed Antarctic Waste Regulations, 45 CFR part 671, that requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica.

The waste permit applications received are as follows:

[Permit Application No. 2004 WM–004]

### 1. Applicant

Ralph Fedor, 2337 Granite View Road,
Waite Park, MN 56387.

*Activity for Which Permit is Requested:* The applicant is a member of the Peter 1st Ham Radio Expedition and makes this application for a Waste Management Permit for the use and release of designated pollutants. The applicant along with approximately 15 others will establish a temporary camp on Seal Island using several Weather Haven shelters for sleeping, cooking and eating, and two small lab or work areas. The camp will be established for approximately 2.5 weeks, after which it will be removed. Propane tanks for cooking and 55 gallon drums of unleaded gas will be used to operate electric generators. These items will be secured and have tarps underneath to contain any possible spills. Daily inspections will be conducted to ensure items are secure. All human, paper, kitchen wastes will be removed from Antarctica. All items brought ashore will be returned to the ship for proper disposition.

*Location:* Peter I Island.

*Dates:* January 9, 2004 to February 9, 2004.

[Permit Application No. 2004 WM–005]

### 2. Applicant

David Rootes, Environmental Manager,
Antarctic Logistics and Expeditions,
Ltd., 4350 N. Fairfax Drive, Suite 840,
Arlington, VA 22203.

*Activity for Which Permit is Requested:* Antarctic Logistics and Expeditions, Ltd (ALE) will provide logistic support for expeditions to Antarctica and will operate from Patriot Hills, Antarctica, for the 2003/2004 season. Primary logistics support and operations are offered for Mt. Vinson climbing groups as well as private expeditions along the general route to the South Pole. ALE proposes to establish a base camp in the Patriot Hills to support its expeditions. Unleaded fuel for snowmobile and generators, and white gas for cooking will be secured and spill mats and drip trays will be used to minimize possible spills. All food waste, sewage, solid wastes (*i.e.*, paper, plastics, timber, metal, glass, and fuel drums) will be removed from Antarctica or proper disposal.

*Location:* Patriot Hills, Antarctica.

*Dates:* November 1, 2003 to February 29, 2008.

[Permit Application No. 2004 WM–006]

Jennifer Miller, Solo World Challenge,
Ltd. "Polar First", Flat 2, One Onslow
Gardens, London SW7 3LX, UK.

*Activity for Which Permit is Requested:* Solo World Challenge Ltd. ("Polar First") makes application for a waste management permit for the use and release of designated pollutants and wastes generated by two pilots and a Bell 407 helicopter during their journey from Punta Arenas to the South Pole and back. Approximately 5,440 liters of Jet A1 fuel will be stored at various caches for refueling the helicopter. The Jet A1 fuel will also be used for the cooking stove. The pilots will have a fuel proof, rubberized container of suitable size to fit the drums during refueling to catch any possible spillage. The pilots will carry approximately 3 gallons of oil, and ½ liter of hydraulic fuel for maintenance purposes. Sewage, solid, and food wastes will be stored in containers and removed from Antarctica for proper disposal.

*Location:* Antarctic Peninsula area and onward toward the South Pole.

*Dates:* November 6, 2003 to January 15, 2004.

**Nadene G. Kennedy,**
*Permit Officer.*

[FR Doc. 03–25461 Filed 10–7–03; 8:45 am]

**BILLING CODE 7555–01–M**

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## NATIONAL SCIENCE FOUNDATION

## Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 6, 2003. This application may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Nadene G. Kennedy at the above address or (703) 292–7405.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

[Permit Application No. 2004–015]

### 1. Applicant

Richard R. Veit, Biology Department,
The College of Staten Island, 2800
Victory Boulevard, Staten Island, NY
10314.

*Activity for Which Permit is Requested:* Take. The applicant proposes capture and release up to 5 individuals each of Cape Petrel, Wilson's Storm Petrel, Black-bellied Storm Petrel, Brown Skua, Kelp Gull, and Antarctic Tern. The applicant plans to assess the breeding condition of the birds, and to determine diet, based on regurgitations and fecal samples about the next.

*Location:* Seal Island, Antarctic Peninsula.

*Dates:* November 23, 2003 to December 26, 2003.

[Permit Application No. 2004–016]

**2. Applicant**

Terry J. Wilson, Department of Geological Sciences, Ohio State University, 155 S. Oval Mall, Columbus, OH 43210.

*Activity for Which Permit is Requested:* Enter Antarctic Specially Protected Areas. The applicant proposes to enter Cape Crozier (ASPA #124) and Beaufort Island (ASPA #105) for the purpose of visiting the previously installed GPS monuments that were deployed to detect motion of the bedrock due to tectonism or post-glacial rebound. GPS receivers will be installed then later removed and local GPS surveys will be conducted in an area within approximately 50 meters of the monument.

*Location:* Cape Crozier, Ross Island (ASPA #124), and Beaufort Island, Ross Sea (ASPA #105).

*Dates:* November 03, 2003 to January 31, 2007.

**Nadene G. Kennedy,**

*Permit Officer, Office of Polar Programs.*

[FR Doc. 03–25462 Filed 10–7–03; 8:45 am]

BILLING CODE 7555–01–M

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## NATIONAL SCIENCE FOUNDATION

### Proposal Review Panel in Advanced Computational Infrastructure and Research Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting. This meeting was originally scheduled for September 18 and 19, 2003 and had to be cancelled due to Hurricane Isabel.

*Name:* Proposal Review Panel in Advanced Computational Infrastructure & Research (#1185).

*Date & Time:* October 23, 2003; 8 a.m.–5 p.m.—October 24, 2003; 8 a.m.–4 p.m.

*Place:* ACCESS Center, 901 N. Stuart Street, 8th Floor, Arlington, VA 22203.

*Type of Meeting:* Open.

*For Further Information Contact:* Richard Hilderbrandt, Program Director, Division of Advanced Computational Infrastructure and Research, Suite 1112, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Tel: (703) 292–8963, e-mail: *rhilderb@nsf.gov.*

*Purpose of Meeting:* To perform a reverse site visit to review and provide advice and recommendations on ACI program plans and review progress reports for NPACI, NCSA and PSC as part of the PACI activity.

*Agenda:* To review and evaluate annual reports and program plans.

Dated: October 3, 2003.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 03–25499 Filed 10–7–03; 8:45 am]

BILLING CODE 7555–01–M

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 40–7580–MLA–3; ASLBP No. 04–816–01–MLA]**

### Fansteel Inc.; Designation of Presiding Officer

Pursuant to delegation by the Commission, *see* 37 FR 28710 (Dec. 29, 1972), and the Commission's regulations, *see* 10 CFR 2.1201, 2.1207, notice is hereby given that (1) a single member of the Atomic Safety and Licensing Board Panel is designated as Presiding Officer to rule on petitions for leave to intervene and/or requests for hearing; and (2) upon making the requisite findings in accordance with 10 CFR 2.1205(h), the Presiding Officer will conduct an adjudicatory hearing in the following proceeding: Fansteel Inc., Muskogee, Oklahoma (Materials License Amendment).

The hearing will be conducted pursuant to 10 CFR part 2, subpart L, of the Commission's Regulations, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." This proceeding concerns a request for hearing submitted on September 10, 2003, by the State of Oklahoma. The request was filed in response to an August 5, 2003 notice of consideration and opportunity for a hearing regarding a July 24, 2003 amendment request from Fansteel Inc., to amend its 10 CFR part 40 source material license, which was published in the **Federal Register** on August 11, 2003 (68 FR 47621). The requested license amendment would authorize decommissioning of the Fansteel Inc. facility located in Muskogee, Oklahoma in accordance with a January 14, 2003 site decommissioning plan (as amended on May 8, 2003).

The Presiding Officer in this proceeding is Administrative Judge Alan S. Rosenthal. Pursuant to the provisions of 10 CFR 2.722, 2.1209, Administrative Judge Richard F. Cole has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judges Rosenthal and Cole in accordance with 10 CFR 2.1203. Their addresses are:

Alan S. Rosenthal, Administrative Judge, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Richard F. Cole, Administrative Judge, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Issued at Rockville, Maryland, this 2nd day of October, 2003.

**G. Paul Bollwerk, III,**

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. 03–25495 Filed 10–7–03; 8:45 am]

BILLING CODE 7590–01–P

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## OFFICE OF MANAGEMENT AND BUDGET

### Office of Federal Financial Management Policy Directive on Use of Grants.Gov FIND

**AGENCY:** Office of Management and Budget.

**ACTION:** Notice of issuance of final policy directive.

**SUMMARY:** The Office of Federal Financial Management (OFFM) is issuing a policy directive requiring Federal agencies to use the Grants.gov FIND module to electronically post synopses of funding opportunities under Federal financial assistance programs that award discretionary grants and cooperative agreements. The policy directive includes an attachment which contains the government-wide standard set of data elements to be used by Federal agencies when posting synopses at *http://www.Grants.gov* or such Web site/Internet address designated by the Office of Management and Budget (OMB). The purpose of the Grants.gov FIND module is to provide potential applicants with (1) enough information about any funding opportunity to decide whether they are interested in viewing the full announcement; (2) information on one or more ways to obtain the full announcement (*e.g.*, an Internet site, e-mail address or telephone number); and (3) one common Web site for all Federal grant opportunities searchable by key word, date, Catalog of Federal Domestic Assistance (CFDA) number or specific agency name. The Federal agencies jointly developed the standard data elements to be used for posting the synopses information as part of their grant streamlining efforts to implement the Federal Financial Assistance Management Improvement Act of 1999 (Public Law 106–107).

**FOR FURTHER INFORMATION CONTACT:** Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503; telephone: (202) 395–3993; fax: (202) 395–3952.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In a **Federal Register** notice [68 FR 37379], published on June 23, 2003, the Office of Management and Budget (OMB) finalized a standard set of data elements for use by Federal agencies to electronically post synopses of announcements of funding opportunities under programs that award discretionary grants and cooperative agreements at *http://www.Grants.gov*, the current Web site for the Grants.gov FIND module. Also on June 23, 2003, another **Federal Register** notice [68 FR 37385] proposed an OFFM policy to establish the requirement for agencies to post funding opportunity synopses in the Grants.gov FIND module.

We received comments from seven Federal agencies on the proposed policy. We considered all comments in developing this final OFFM policy directive. Comments on the policy supported establishing the requirement for agencies to post synopses of funding opportunities in the Grant.gov FIND module. The following paragraphs summarize the comments and our responses.

## II. Comments and Responses

*Comment:* One commenter noted a discrepancy in one of the FIND data elements. Specifically, the "Additional information on eligibility" data element notes that it is "Required if agency selects either category 25 or category 99 in the 'Eligible applicants' field" data element. The commenter notes there is no category 25 in the June 23, 2003, published standard [68 FR 37379].

*Response:* Agree. The commenter has correctly noted a shortcoming in the FIND data elements published on June 23, 2003. The full set of codes is available in the attachment to this policy and on the Grants.gov Web site. To clarify in this response, code 25 is for "Others (*see* text field entitled 'Additional information on eligibility' for clarification)".

*Comment:* One commenter recommended that the policy be changed to ensure the policy applies to postings of an initial announcement and any modification of the announcement.

*Response:* Agree. Section 4(a), "Applicability" of the policy directive, and the Grants.gov FIND Data Elements/Format have been revised to reflect that postings include initial announcements and modifications to announcements.

*Comment:* A commenter recommended there be a separate FIND template for modifications of announcements. In accordance with the OMB announcement format policy, agencies should only have to provide the date of the announcement and identify what has been modified.

*Response:* The Grants.gov instructions for input to the FIND module have been clarified to be consistent with the standard announcement format notice [68 FR 37376], Overview Information, Announcement Type. For a modification entry, only the date of the previous announcement synopsis and information that has been changed need to be entered. A separate FIND template for a modification is not necessary because the current FIND module accommodates any modifications.

*Comment:* The commenter recommended that Section 4, "Policy" which references the uniform resource locator (URL), be amended to add, "or such web/Internet address as may be identified by the Grants.gov Project Management Office." It is suggested that this would alleviate revising the policy directive in the event the URL changed.

*Response:* Agree. Language has been revised to reflect "or such Web site/Internet address as may be identified by the Office of Management and Budget (OMB)" since this policy is issued by OMB.

*Comment:* A commenter indicated that the second sentence of the introductory paragraph appears to make Grants.gov FIND (the terminology that will supercede "FedGrants.gov") the primary location for publication of the complete funding opportunity, since it states that agencies are required to post funding opportunities for all discretionary grant and cooperative agreement programs at that site. Their understanding is that the posting requirement is for the synopsis with a link to the full announcement (unless uploaded in Grants.gov FIND) and that agencies will continue to post their full announcements at a location(s) consistent with any applicable statutory requirements and policies. This needs to be clarified.

*Response:* Agree in part. Grants.gov has a search mechanism to be used to locate synopses and link to full announcements. As such, Grants.gov will continue to be the site used to post synopses and, for some agencies, full announcements unless, or until, another web/Internet site has been identified by OMB.

The policy has been revised to state that the synopsis should be posted with URL links through which the full announcement can be obtained. However, when agencies post the full announcement at Grants.gov, a URL link from the synopsis to the full announcement is not necessary because the synopsis and full announcement share the same URL; in this event, the synopsis must indicate that the full announcement can be found at Grants.gov FIND.

*Comment:* Two commenters indicated that under Section 4(a), "Applicability," the intent was to post synopses of funding opportunities, not grant awards.

*Response:* Agree. The language in the policy, Section 4(a), "Applicability," has been changed to "funding opportunity announcements and modifications to the announcements."

*Comment:* With respect to Section 4(a), "Applicability," several commenters recommended that limited eligibility and sole source funding opportunities be considered exceptions to the policy. One commenter wanted to add the word "competitive" before the terms "discretionary grants and cooperative agreements." In addition, a commenter wanted to add the word "grant awards" after "discretionary."

*Response:* Agree with "single-source" funding opportunities ["sole source" is an acquisition term with a definition that does not apply to grants] being excepted because a single-source award is not considered a true funding opportunity for anyone other than the intended recipient. As such, a third exception has been added to Section 4(a), indicating that synopses of single-source announcements will not need to be posted. Since an exception has been added for single-source awards, which are not competitive, adding the word "competitive" would be unnecessary.

An exception, however, was not added for limited eligibility announcements because limited eligibility announcements are, in fact, true funding opportunities which often include a competitive component. As such, these announcements must be posted to Grants.gov FIND in order to provide the public maximum opportunity to view potential funding opportunities, thereby maintaining transparency consistent with the customer service mandates prescribed in Public Law 106–107. Furthermore, this requirement should not be burdensome to agencies because most agencies use systems which automatically extract from the full announcement the information needed to develop and post the synopses to Grants.gov FIND. Inserting "grant awards" has not been added since the intent is to post announcements and not awards. As previously indicated, the policy has been changed to reflect the posting of funding opportunities rather than awards in Grants.gov FIND.

*Comment:* One commenter expressed concern about having funding opportunity announcements that are targeted for a set of pre-cleared potential applicants (in terms of top-secret or sensitive work associated with national security) included as synopses in Grants.gov FIND and requested another exception be added to meet this need.

*Response:* Disagree. The policy in Section 4 already states that "agencies should continue to post their full announcement at location(s) consistent with any applicable statutory requirements and policy." If such requirements prohibit an agency from the public posting of a funding opportunity announcement, then there would be no requirement for a synopsis to be posted in Grants.gov FIND.

*Comment:* One commenter thought the exception at Section 4a (2), is too restrictive and did not address the "nature of overseas awards." In addition, the commenter thought the definition of the exception stating, "A program with 100 percent of potential eligible applicants who live outside the United States, and who demonstrate lack of Internet access, and the agency has requested a waiver from OMB," is very narrow and potentially burdensome and questioned how it could be applied. In addition the commenter agreed with the policy, but suggested the policy should reflect flexibility with respect to posting announcements for overseas recipients and the second exception should be removed altogether.

*Response:* Agree in part. Reference to lack of internet access and requiring agencies to request a waiver from OMB has been eliminated from the policy directive. Instead, the policy exception has been revised to state, "announcements of funding opportunities for awards less than $25,000 for which 100 percent of potential eligible applicants live outside of the United States." It should be noted that while the exceptions to the policy do not require agencies to post synopses, agencies are not precluded from the option of posting a synopsis in Grants.gov FIND. The second option was therefore modified, but not eliminated.

*Comment:* One agency commenter was concerned about the effective date of postings in Grants.gov FIND. Specifically, the commenter was concerned that when a funding announcement is published that may result in the award of a contract, grant or cooperative agreement, the proposed three-day requirement is in conflict with the Federal Acquisition Regulation (FAR) 5.203(a) which requires agencies to publish a notice of solicitation at least fifteen days prior to the issuance of the solicitation (with certain exceptions).

*Response:* No change. The requirements to post the synopsis within three days of posting the full announcement represents the latest timeframe during which the synopsis must be posted. Agencies have the flexibility to post the synopsis prior to this timeframe to meet statutory or regulatory requirements.

*Comment:* Four commenters recommended changes to the policy regarding reference to the Administrative Procedures Act and suggested the reference be removed and be replaced with "statutory or regulatory requirements." Also, one commenter recommended that the word "some" be inserted before "agencies" in reference to "agencies may need to announce the funding opportunity in the **Federal Register**." As noted by the commenter, not all agencies are required to publish in the **Federal Register**.

*Response:* Agree. The reference to the Administrative Procedures Act has been replaced with "statutory or regulatory requirements." In addition, the word "some" has been inserted in front of "agencies."

*Comment:* One commenter noted that "the notice is still vague about whether agencies can post grant opportunity announcements solely at Grants.gov, and therefore, bypass the **Federal Register**." The commenter asked whether or not it was acceptable to post the full information on agency Web sites with a link from Grants.gov FIND.

*Response:* No change. The policy indicates that agencies must post synopses of funding opportunities in Grants.gov FIND, which, in turn, states methods through which an agencies' full announcement can be accessed. The policy indicates that agencies may also put an "availability notice" of the funding opportunity in the **Federal Register**, which identifies the funding opportunity availability and contact information, for those that do not have Internet access. However, the policy indicates that the agency will have to follow its own statutory or regulatory requirements with regard to publishing in the **Federal Register**. And in response to a similar comment on the Grants.gov FIND Notice of Standard Data Elements [68 FR 3780, IIA. Comments and Responses], OMB responded as follows: Grants.gov FIND and the **Federal Register** are complementary. The Grants.gov FIND's primary purposes are to provide: (1) A synopsis of each funding opportunity with the minimum information people need in order to quickly decide whether they want to review the full announcement for that opportunity; and (2) a way to access the full announcement electronically. The **Federal Register** is one place an agency may locate the full announcement to which the synopsis links electronically. Whether a given opportunity that is synopsized in Grants.gov FIND will have its full announcement published in the **Federal Register**, on the agency's web site, or at Grants.gov FIND, is a question for the agency and their program offices.

*Comment:* An agency commented that it is not required to obtain a Catalog of Federal Domestic Assistance (CFDA) number, since many of its announcements are advertised as "Broad Agency Announcements," which may result in contracts, grants or cooperative agreements.

*Response:* Agree. The Grants.gov FIND Notice of Standard Data Elements [68 FR 37382], states the following with respect to the CFDA element, "Is agency input required?" At least one entry is required (may list more than one), if the Federal agency is subject to the requirement in 31 U.S.C. Chapter 61, to report to the CFDA. Federal agencies that have programs that are not domestic assistance, and therefore, are not listed in the CFDA, may arrange with Grants.gov to insert an alternate number that will allow listing of the funding opportunity. Consistent with this approach, language has been added to clarify that agencies should work with Grants.gov to obtain an alternate number in situations where the CFDA does not apply.

**Linda M. Springer,**

*Controller.*

### To the Heads of Executive Departments and Agencies

*Subject:* Requirement to Post Funding Opportunity Announcement Synopses at Grants.gov and Related Data Elements/Format.

*1. Purpose.* This policy directive establishes a government-wide requirement for Federal agencies to electronically post synopses of announcements of funding opportunities under financial assistance programs that award discretionary grants and cooperative agreements, using a standard set of data elements. The purpose of the synopsis is to provide potential applicants (1) enough information about the funding opportunity to decide whether they are interested in viewing the full announcement; (2) one or more ways (*e.g.*, an Internet site, e-mail address or telephone number) to get the full announcement with the detailed information; and (3) one common Web site to search for all Federal grant opportunities by key word, date, Catalog of Federal Domestic Assistance (CFDA) number, specific agency or across agencies. The attached data elements are the government-wide standard developed for Federal programs that award discretionary grants and cooperative agreements.

*2. Authority.* The policy directive is part of the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Public Law 106–107). This policy is also designed to further implement the Grants.gov initiative, one of the 24 electronic government (E-Gov) initiatives under the President's Management Agenda.

*3. Background.* Public Law 106–107, requires the Office of Management and Budget (OMB) to direct, coordinate, and assist Executive Branch departments and agencies in establishing an interagency process to streamline and simplify Federal financial assistance procedures for non-Federal entities. The law also requires executive agencies to allow applicants to electronically apply for and report on the use of funds from any Federal financial assistance program administered by the agency.

The posting of standard synopses in an electronic environment provides government customers the opportunity to locate funding opportunities in one place and to decide whether or not to apply for the opportunity. Establishing data standards for the electronic format of the synopses and the posting of synopses on the Internet serve to implement Public Law 106–107 and the President's Management Agenda.

*4. Policy.* The data elements/format attached to this policy directive are the government-wide standard for posting synopses at *http://www.Grants.gov* or such Web site/Internet address that may be identified by OMB, for programs that award discretionary grants and cooperative agreements. Agencies should continue to post their full announcement at location(s) consistent with any applicable statutory requirements and policy. All Federal agencies are required to post synopses of announcements of funding opportunities for programs that award discretionary grants and cooperative agreements at the Grants.gov FIND module and are also encouraged to post other types of Federal funding opportunities at Grants.gov FIND. The synopsis shall be posted with universal resource locator (URL) links through which the full announcement can be obtained. A URL link from the synopsis to the full announcement is not necessary for full announcements posted to Grants.gov because the synopsis and full announcement share the same URL. However, in this event the synopsis must indicate that the full announcement can be found at Grants.gov FIND.

*a. Applicability.* All Federal agencies will be required to post synopses of their discretionary grant and cooperative agreement funding opportunity announcements and modifications to the announcements at Grants.gov or a Web site/Internet address identified by OMB, using the standard data elements/format, except for:

(1) Programs that only publish funding opportunities in the Catalog of Federal Domestic Assistance (CFDA).

(2) Announcements of funding opportunities for awards less than $25,000 for which 100 percent of eligible applicants live outside of the United States.

(3) Single source announcements of funding opportunities issued by an agency which are specifically directed to a known recipient.

*b. Effective Date.* This policy directive is effective thirty days from this date of publication, and all agencies shall post announcement synopses at the Grants.gov FIND module beginning November 7, 2003. A synopsis of the Federal funding opportunity shall be posted at Grants.gov FIND no later than three business days after release of the full announcement.

*c. Exemptions.* Requests for exemptions must be directed to OMB, Office of Federal Financial Management (OFFM).

*5. Agency Responsibilities.*

a. Issue any needed direction to offices that award discretionary grants and cooperative agreements on the requirement to post a synopsis at the Grants.gov FIND module, including the standard data elements/format. Synopses must follow the format to ensure all required data elements are included.

b. Ensure the synopsis posted at the Grants.gov FIND Module will have full instructions regarding where to obtain the full announcement for the funding opportunity. To further satisfy statutory, regulatory, or the agency's policy requirements, some agencies may need to announce the funding opportunity in the **Federal Register**.

c. Obtain a Catalog of Domestic Assistance (CFDA) number for all programs that post a synopsis at Grants.gov. For those programs that do not have an assigned CFDA number, the program office or agency must contact the Grants.gov Program Management Office to obtain an alternate identifier to be used in the synopsis posted at the Grants.gov FIND module.

*6. Information Contact.* Direct any requests for exemption or questions about the policy to the Office of Federal Financial Management (OFFM), 202–395–3993.

Linda M. Springer,
Controller.

GRANTS.GOV FIND DATA ELEMENTS/FORMAT

| Data element | Description | Is agency input required? |
|---|---|---|
| Federal agency user identification. | User ID of Federal agency representative who is authorized to post information to the FedGrants.gov site. | One entry required. |
| Federal agency user password. | Password of Federal agency representative who is authorized to post information in the FedGrants.gov site. | One entry required. |
| Announcement type | Type of announcement to which the synopsis relates: Initial announcement Modification to previously issued announcement. | One entry required Modification requires date and only changes made to the initial announcement. |
| Funding opportunity title | The Federal agency's title for the funding opportunity (including program subcomponent names, as the agency deems appropriate). | One entry required. |
| Funding opportunity number | The number, if any that the Federal agency assigns to the announcement. For a modification of a previously issued announcement, use the funding opportunity number of the earlier announcement. | Optional for initial announcement, if a number is not assigned, FedGrants.gov will assign one. Agency input is required for modification. |

GRANTS.GOV FIND DATA ELEMENTS/FORMAT—Continued

| Data element | Description | Is agency input required? |
|---|---|---|
| Catalog of Federal Domestic Assistance (CFDA) number. | Number(s) of the CFDA listing(s) for program(s) included in the announcement (*e.g.*, 12.300). | At least one entry required (may list more than one) if the Federal agency is subject to the requirement in 31 U.S.C. chapter 61, to report to the CFDA. Federal agencies that have programs not listed in the CFDA, may arrange with FedGrants.gov to insert an alternative number that will allow listing of the funding opportunity. |
| Federal agency name | Name of the Federal organization responsible for the announcement, including agency name and as applicable, specific subcomponent (e.g., department, bureau, directorate, or division). | Optional. If an name office name is not provided, FedGrants.gov will insert the office name provided when the agency initially registered and obtained a user ID and password. |
| Federal agency contact for electronic access problems. | Should list name of person (e.g., webmaster) to whom potential applicants should refer questions if they cannot link from FedGrants.gov to the full announcement (this person is distinct from the programmatic and other agency contacts who are listed in the full announcement). | At least one entry required. May list more than one. |
| E-mail address for Federal agency contact for electronic access problems. | E-mail address of Federal agency contact who can help with electronic access problems. | Required. May list only one. |
| Telephone number for Federal agency contact for electronic access problems. | Telephone number of Federal agency contact who can help with electronic access problems. | Required. May list only one. |
| Funding opportunity description. | A concise description of the funding opportunity, designed to contain sufficient information for potential applicants to decide whether they are interested enough to read the full announcement. | Required. |
| Funding instrument type | Types of instruments that may be awarded (codes proved for system-to-system interface):<br>Grant (G)<br>Cooperative Agreement (CA)<br>Procurement Contract (PC)<br>Other (O)<br>Note that if your announcement states that you may award procurement contracts, as well as assistance instruments, the announcement must be posted to both the procurement and assistance modules of Grants.gov FIND. | Required. Select all that apply (up to 4 codes). |
| Category of funding activity | Designed to allow potential applicants to narrow their search to programs in the CFDA categories of interest to them. Note that the terms are defined in the CFDA. List all categories that apply (codes provided for system-to- system interface):<br>Agriculture (AG)<br>Arts (AR-see "Cultural Affairs" in CFDA<br>Business and Commerce (BC)<br>Community Development (CD)<br>Consumer Protection (CP)<br>Disaster Prevention and Relief (DPR)<br>Education (ED)<br>Employment, Labor and Training (ELT)<br>Energy (EN)<br>Environment (ENV)<br>Food and Nutrition (FN)<br>Health (HL)<br>Housing (HO)<br>Humanities (HU-see "Cultural Affairs" in CFDA)<br>Income Security and Social Services (ISS)<br>Information and Statistics (IS)<br>Law, Justice and Legal Services (LJL)<br>Natural Resources (NR)<br>Regional Development (RD)<br>Science and Technology and other<br>Research and Development (ST)<br>Transportation (T)<br>Other (O-see text field entitle "Explanation of other category of funding activity" for clarification.) | At least one entry required and may list as many as needed. There is no default value. If the category of funding activity does not clearly fit in any listed category, must select, "Other." |
| Explanation of "other" category of funding activity. | A text description of "Other" category or categories of funding activity applicable to the funding opportunity. | Required if an agency selects "other" as a category of funding activity, either by itself or in combination with one or more other categories. |

GRANTS.GOV FIND DATA ELEMENTS/FORMAT—Continued

| Data element | Description | Is agency input required? |
|---|---|---|
| Estimated total program funding. | The total amount of funding the agency expects to make available for awards under this announcement. | Optional. Default, if agency does not provide input, is "not available." However, agencies should provide this information whenever possible. |
| Expected number of awards | The number of individual awards the agency expects to make under this announcement. | Optional. Default, if agency provides no input, is "not available." However, agencies are strongly encouraged to provide this information whenever possible. |
| Ceiling, if any, on amount of individual award. | The maximum dollar amount for an individual award under this announcement that the awarding agency will not exceed. | Required. Enter a number or "none." |
| Floor, if any, on amount of individual award. | Any minimum dollar amount for an individual award under this announcement (i.e., if the awarding agency will not make smaller awards under any circumstances). | Required. Enter a number or "none." |
| How to get full announcement. | Hypertext stating where to get the full announcement, if it si available on the Internet. This field should include the descriptor that precedes the URL for the full announcement (e.g., "Click on the following link to see the full text of the announcement for this funding opportunity"). | Required. |
| Electronic link to full announcement. | The URL for the full announcement, unless the announcement is uploaded in Grants.gov FIND. | Agency input is optional because there will be no URL if the agency uploads the announcement in Grants.gov FIND and does not also post it on the Internet. |
| Eligible applicants ............... | Designed to help potential applicants narrow their searches to programs where they are most likely to be eligible, although they still must read the full announcement for details because eligibility may be further limited to certain subsets of applicants within categories below (codes provided for system-to-system interface). 99-Unrestricted (i.e., open to any type of entity below), subject to any exceptions listed in the text field entitled "Additional information on eligibility.".<br>Government Codes:<br>00–State governments<br>01–County governments<br>02–City or township governments<br>04–Special district governments<br>05–Independent school districts<br>06–State controlled institutions of higher education<br>07–Native American tribal governments (Federally recognized)<br>08–Public Housing Authorities/Indian housing authorities<br>Non-Government organizations:<br>11–Native American tribal organizations (other than Federally recognized tribal governments)<br>12–Nonprofits with 501©)(3) IRS status, other than institutions of higher education.<br>13–Nonprofits without 501©)(3) IRS status, other than institutions of higher education<br>20–Private institutions of higher education<br>21–Individuals<br>22–For-profit organizations other than small businesses<br>23–Small businesses<br>25–Others (see text field entitled "Additional information on eligibility" for clarification) | Required to either select "99" for unrestricted or select all others that apply. |
| Additional information on eligibility. | Explanatory information to provide any needed clarification of the meaning of "unrestricted" (e.g., all but foreign entities) to identify types of recipients meant by "all others," or to provide further information about limitations for any other categories (*e.g.,* for categories 6 and 20, a limitation to historically Black colleges and universities). | Required if agency selects either category 25 or category 99 in "eligible applicants" field. If agency selects category 99 and there are not further limitations, enter "no restrictions." Optional for additional information related to any category other than 99 or 25. |
| Cost sharing or matching requirement. | Answer to question: Is cost sharing or matching required? (Y or N). | Required. |

GRANTS.GOV FIND DATA ELEMENTS/FORMAT—Continued

| Data element | Description | Is agency input required? |
|---|---|---|
| Due date for applications ..... | Date when applications are due (or latest date when applications accepted, if announcement has multiple due dates or is a general announcement that is open for a specified period with applications accepted at any time during that period).<br>**Note:** This field is to contain the date when pre-applications, rather than applications, are due if an applicant must submit a pre-application to be considered for an award. | Required, if Explanation of application due dates' field is not completed. Optional otherwise. |
| Explanation of application due dates. | Used by agencies wanting to post more information about due date(s) for potential applicants. For example, the field may be used to describe programs with multiple due dates or ones where applications are accepted at any point within a broad time window. The field also may be used to add information about the time when applications are field due (*e.g.*, 5 p.m. EDT on the date given in the "Due date for applications" field). | Optional (**Note:** "Due date for applications" field is required if this "Explanation of application due dates" text is not completed). |
| Date of Grants.gov FIND posting. | Month, day, and year when the agency wants the synopsis posted on Grants.gov FIND (*e.g.*, some agencies may build in delays to allow announcements to appear first in the FEDERAL REGISTER or at agencies Internet site. Format is MMDDCCYY. | Required. |
| Date for Grants.gov FIND to archive. | Month, day and year when the agency wants the synopsis archived. Format is MMDDCCYY. | Optional. Default, if agency provides no input, is 30 days after the date given in the "Due date for applications" field. |

[FR Doc. 03–25488 Filed 10–7–03; 8:45 am]

BILLING CODE 3110–01–P

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## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon written request, copies available from:
Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Form T–6—OMB Control No. 3235–0391—SEC File No. 270–344;
Form 11–K—OMB Control No. 3235–0082—SEC File No. 270–101;
Form 144—OMB Control No. 3235–0101—SEC File No. 270–112.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget the requests for extension of the previously approved collections of information discussed below.

Form T–6 (OMB Control No. 3235–0391, SEC File No. 270–344) is a statement of eligibility and qualification for a foreign corporate trustee under the Trust Indenture Act of 1939. Form T–6 provides the basis for determining if a trustee is qualified. Form T–6 is filed on occasion. The information collected must be filed with the Commission and is publicly available. Form T–6 takes approximately 17 burden hours to be prepared and is filed by 15 respondents. It is estimated that 25% of the 255 total burden hours (64 hours) is prepared by the filer. The remaining 75% of burden hours is prepared by outside counsel.

Form 11–K (OMB Control No. 3235–0082; SEC File No. 270–101) is the annual report designed for use by employee stock purchase, savings and similar plans to facilitate their compliance with the reporting requirement. The Form 11–K is necessary to provide employees with information, including financial information, with respect to the investment vehicle or plan itself. Also, Form 11–K provides employees with the necessary information to assess the performance of the investment vehicle in which their money is invested. Form 11–K is filed on occasion. The information collected must be filed with the Commission and is publicly available. Form 11–K takes approximately 30 burden hours to prepare and is filed by 2,300 respondents for a total of 69,000 burden hours.

Form 144 (OMB 3235–0101; SEC File No. 270–112) is used to report the sale of securities during any three-month period that exceeds 500 shares or other units or has an aggregate sales price in excess of $10,000. Form 144 operates in conjunction with Rule 144. If the information collection was not required, the objectives of the rule could not be met. The information collected must be filed with the Commission and is publicly available. Form 144 takes approximately 2 burden hours to prepare and is filed by 18,096 respondents for a total of 36,192 total burden hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 2, 2003.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–25511 Filed 10–7–03; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 5th Street, NW., Washington, DC 20549.

Extension:
Rule 44, SEC File No.270–162; OMB Control No. 3235–0147;

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the matters relating to the previously approved collections of information discussed below.

Rule 44, Part 250.44 [17 CFR 250.44] under the Public Utility Holding Company Act of 1935, as amended ("Act"), 15 U.S.C. 79, *et seq.*, prohibits sales of utility assets and utility securities owned by public utility holding companies registered under the Act, except pursuant to a declaration filed with, and approved by, the Commission.

The Commission estimates that the total annual reporting burden of Rule 44 is 96 hours (4 responses × 24 hours = 96 hours).

The estimate of average burden hours is made for purposes of the Paperwork Reduction Act and is not derived from a comprehensive or representative survey or study of the costs of complying with the requirements of Commission rules and forms.

An agency may not conduct, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 1, 2003.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–25512 Filed 10–7–03; 8:45 am]

BILLING CODE 8010–01–P

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## SECURITIES AND EXCHANGE COMMISSION

### Self-Regulatory Organizations; Notice of Application To Withdraw From Listing and Registration on the Philadelphia Stock Exchange, Inc. (Insignia Systems, Inc., Common Stock, $.01 Par Value) File No. 1–13471

October 2, 2003.

Insignia Systems, Inc., a Minnesota corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934, as amended ("Act"),[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value ("Security"), from listing and registration on the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange").

The Board of Directors ("Board") of the Issuer approved a resolution on April 11, 2000 to withdraw its Security from listing on the Exchange. The Issuer states that it is taking such action for the following reasons: the Security is actively traded on the Nasdaq National Market System ("Nasdaq") and the Issuer fully intends to maintain the listing and registration on Nasdaq. In addition, the Security has not traded on the Phlx since May of 1999.

The Issuer states in its application that it has met the requirements of Phlx Rule 809 governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and from registration under Section 12(b) of the Act[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before October 24, 2003 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Phlx and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 03–25453 Filed 10–7–03; 8:45 am]

BILLING CODE 8010–01–P

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[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

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## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Lifestream Technologies, Inc., Common Stock, $.001 Par Value) File No. 1–16161

October 2, 2003.

Lifestream Technologies, Inc., a Nevada corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.001 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of Nevada, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors ("Board") of the Issuer approved a resolution on September 23, 2003 to withdraw the Issuer's Security from listing on the Amex. The Board of the Issuer states that the reason it is taking such action is due, in part, to the difficulty of maintaining compliance with the continued listing standards of the Amex as well as related cost constraints. The Issuer states it is currently seeking to list its Security on the OTC Bulletin Board.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under Section 12(b) of the Act[3] shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

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[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

Any interested person may, on or before October 24, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 03–25452 Filed 10–7–03; 8:45 am]

**BILLING CODE 8010–01–P**

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[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48587; File No. SR–ISE–2003–18]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by International Securities Exchange, Inc., Relating to Trading Options on the S&P Small Cap 600 Index

October 2, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 29, 2003, the International Securities Exchange, Inc. ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On September 26, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposed rule change, as amended, on an accelerated basis.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend ISE Rules 2001, 2004, 2006 and 2009, to enable the Exchange to trade options on the S&P Small Cap 600. The text of the proposed rule change, as amended, is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

### *Rule 2001. Definitions*

(l) The term "reporting authority" with respect to a particular index means the institution or reporting service designated by the Exchange as the official source for (1) calculating the level of the index from the reported prices of the underlying securities that are the basis of the index and (2) reporting such level. The reporting authority for each index approved for options trading on the Exchange [shall be Specified (as provided in Rule 2000)] *is specified* in Supplementary Material *.01* to this Rule 2001.

* * * * *

### *Supplementary Material to Rule 2001*

*.01 The reporting authorities designated by the Exchange in respect of each index underlying an index options contract traded on the Exchange are as provided in the chart below.*

| *Underlying index* | *Reporting authority* |
|---|---|
| *S&P SmallCap 600 Index.* | *Standard & Poor's.* |

### *Rule 2004. Position Limits for Broad-Based Index Options*

(a) Rule 412 generally shall govern position limits for broad-based index options, as modified by the Rule 2004. There may be no position limits for certain Specified (as provided in Rule 2000) broad-based index options contracts. All other Broad-based index options contracts shall be subject to a contract limitation fixed by the Exchange, which shall not be larger than the limits [Specified (as provided in Rule 2000) in this paragraph] *provided in the chart below.*

| *Broad-based underlying index* | *Standard limit (on the same side of the market)* | *Restrictions* |
|---|---|---|
| *S&P SmallCap 600 Index.* | *100,000 contracts.* | *No more than 60,000 near-term.* |

* * * * *

### *Rule 2006. Exemptions from Position Limits*

(a) Broad-based Index Hedge Exemption. The broad-based index hedge exemption is in addition to the other exemptions available under Exchange Rules, interpretations and policies. The following procedures and criteria must be satisfied to qualify for a broad-based index hedge exemption:

* * * * *

(5) Positions in broad-based index options that are traded on the Exchange are exempt from the standard limits *up to 75,000 contracts (in addition to standard limit) unless otherwise* [to the extent] Specified (as provided in Rule 2000) in this subparagraph (a)(5).

* * * * *

### *Rule 2009. Terms of Index Options Contracts*

(a) General.

* * * * *

(4) "European-Style Exercise." [Specified (as provided in Rule 2000) *The following* European-style index options, some of which may be A.M.-settled as provided in paragraph (a)(5), [may be] *are* approved for trading on the Exchange[.]*:*

*(i) S&P SmallCap 600 Index.*

(5) A.M.-Settled Index Options. The last day of trading for A.M.-settled index options shall be the business day preceding the last day of trading in the underlying securities prior to expiration. The current index value at the expiration of an A.M.-settled index option shall be determined, for all purposes under these Rules and the Rules of the Clearing Corporation, on the last day of trading in the underlying securities prior to expiration, by reference to the reported level of such index as derived from first reported sale (opening) prices of the underlying securities on such day, except that:

(i) In the event that the primary market for an underlying security does not open for trading on that day, the price of that security shall be determined, for the purposes of calculating the current index value at expiration, as set forth in Rule 2008(g), unless the current index value at expiration is fixed in accordance with the Rules and By-Laws of the Clearing Corporation; and

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 25, 2003 ("Amendment No. 1"). In Amendment No. 1, the ISE represented that it would monitor the Standard and Poor's Small Cap 600 Index ("S&P Small Cap 600" or "Index") for the Index's adherence to certain parameters. The ISE represented that it would notify Commission staff if the character of the Index should change from the basic description provided in the instant proposed rule change. The Exchange also represented that it believed its surveillance procedures were adequate to monitor trading in options on the Index. The ISE also provided additional information about the membership of the Intermarket Surveillance Group ("ISG"). In addition, the ISE provided statistics about the median average daily trading volume and about the percentage of securities in the Index that would meet the listing standards applicable to underlying securities for the Exchange's stock options.

(ii) In the event that the primary market for an underlying security is open for trading on that day, but that particular security does not open for trading on that day, the price of that security, for the purposes of calculating the current index value at expiration, shall be the last reported sale price of the security.

*The following* A.M.-settled index options [that] are approved for trading on the Exchange*:* [shall be Specified (as provided in Rule 2000) in this subparagraph (a)(5).]

*(i) S&P SmallCap 600 Index.*

(b) Long-Term Index Options Series.

* * * * *

(2) Reduced Value Long Term Options Series.

(i) Reduced-value long term options series [may be approved for trading on Specified (as provided in Rule 2000) indices.] *on the following stock indices are approved for trading on the Exchange:*

*(A) S&P SmallCap 600 Index.*

* * * * *

(c) Procedures for Adding and Deleting Strike Prices. The procedures for adding and deleting strike prices for index options are provided in Rule 504, as amended by the following:

(1) The interval between strike prices will be no less than $5.00; provided, that in the case *of the following* [the certain Specified (as provided in Rule 2000)] classes of index options, the interval between strike prices will be no less than $2.50[.]*:*

*(i) S&P SmallCap 600 Index, if the strike price is less than $200.00.*

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its rules to provide for the listing and trading on the Exchange of cash-settled, European-style index options on the S&P SmallCap 600. Options on this index are currently trading on the Chicago Board Options Exchange ("CBOE").[4] The proposed rule changes adopt the same standards that are currently applied for Index options traded on the CBOE.

a. *Index Design.*

The S&P SmallCap 600 Index is designed to measure the performance of small capitalization stocks. The Index is a capitalization-weighted index of U.S. stocks with each stock affecting the Index in proportion to its market capitalization.

As of August 21, 2003, the 600 component stocks ranged in capitalization from approximately $3 billion to $56 million, and the market capitalization of the Index totaled $397 billion. The largest stock accounted for 0.74% of the total weighting of the Index, while the smallest accounted for 0.01%. The median capitalization of the components in the Index was $517 million. A breakdown of the component stocks by trading markets shows that Nasdaq is the primary market for 43% of the weight of the Index (277 issues), the New York Stock Exchange ("NYSE") represents 56% (317 issues), and the American Stock Exchange ("AMEX") represents 1% (6 issues).

A total of 10 major industry sectors are represented in the Index. Those sectors and their weights are as follows: (1) Consumer Discretionary (20.2%); (2) Industrials (19.0%); (3) Information Technology (16.6%); (4) Financials (13.9%); (5) Health Care (12.9%); (6) Energy (5.4%); (7) Materials (4.4%); (8) Utilities (3.8%); (9) Consumer Staples (3.6%); and (10) Telecommunications Services (0.2%). During the period from March through August 2003, the average daily trading volume for the Index component stocks ranged from 8,468 to 4.3 million shares. As of September 25, 2003, a significant majority of the stocks are relatively actively traded, as indicated by an Index component median average daily trading volume of 139,002 shares. The top 100 stocks account for 34.14% of the Index, while the bottom 100 stocks account for 4.12% of the Index. The prices for each of the components ranged from $2.10 to $410.60. The average price was $23.18. The shares outstanding for each of the Index component stocks ranged from approximately 4.96 million to 138.64 million with an average of 29.12 million.

S&P relies on several criteria to add or delete Index component stocks. Among other things, stocks must trade on the NYSE or Amex, or be Nasdaq NMS securities; stocks must have adequate liquidity and reasonable price evidenced by a 0.3 ratio of annual dollar value traded to market capitalization; the companies must have market capitalization between $250 million and $900 million; companies must have financial viability, measured as four consecutive quarters of positive as-reported earnings; companies must have public float of at least 40% of the stock; and companies must be operating companies, and not closed-end funds, holding companies, partnerships, investment vehicles or royalty trusts.[5]

b. *Calculation.*

The value of the Index is determined by Standard and Poor's by adding the price of each stock times the number of shares outstanding. This sum is then divided by an index divisor ("Index Divisor"), which gives the Index a value of 100 on its base date of December 31, 1993. The Index Divisor is adjusted by Standard & Poor's for pertinent changes in the component stocks. The Index had a closing value of 215.54 on May 31, 2003.

c. *Maintenance.*

The S&P Small Cap 600 is maintained by Standard and Poor's and ISE has represented that it will not influence any S&P decisions concerning the maintenance of the Index.[6] To maintain continuity of the Index, Standard and Poor's adjusts the Index Divisor to reflect certain events relating to the component stocks. These events include, but are not limited to, adjustments for company additions and deletions, share changes, stock splits, stock dividends, and stock price adjustments due to company restructurings or spinoffs. Some corporate actions, such as stock splits and stock dividends, require simple changes in the common shares outstanding and the stock prices of the companies in the Index. Other corporate actions, such as share issuances, change the market value of the Index and require an Index Divisor adjustment as well.

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[4] *See* Securities Exchange Act Release No. 35532 (March 24, 1995), 60 FR 16518 (March 30, 1995) (SR–CBOE–94–43) (Order approving the listing and trading of the S&P 600 on the CBOE).

[5] Should the character of the Index change from the basic description contained in the rule filing, ISE will so notify the Commission staff. Such a change could require filing a proposed rule change pursuant to section 19(b)(1) of the Act and Rule 19b–4 thereunder. *See* Amendment No. 1, *supra* note 3.

[6] Telephone conference between Katherine Simmons, Vice President and Associate General Counsel, ISE, and Florence Harmon, Senior Special Counsel, Division, Commission, on October 1, 2003.

Although ISE is not involved in the maintenance of the Index, it represents that it will monitor the Index semi-annually and will notify Commission staff in the event that (1) 10% of the capitalization of the Index is comprised of securities with a market capitalization of less than $100 million; (2) 10% of the capitalization of the Index is made up of components with an average daily trading volume of less than 10,000 shares over the previous six months; or (3) non-U.S. component securities (common stock or ADRs) that are not subject to a comprehensive surveillance agreement in the aggregate represent more than 20% of the weight of the Index's aggregate market capitalization.

d. *Index Options Trading.*

In addition to regular Index options, the Exchange may provide for the listing of long-term (up to three years expiration) index options series and reduced-value long-term index options on the Index. For reduced-value long-term index options, the underlying value would be computed at one-tenth of the Index level. The current and closing index value of any such reduced-value long-term index option will, after such initial computation, be rounded to the nearest one-hundredth.

The Exchange seeks to have the discretion to list series in 2½ point intervals when the Index level falls below 200. The minimum tick size (trading interval) for series trading below $3 will be $.05 ($5.00) and for series trading above $3 will be $.10 ($10.00). The trading hours for options on the Index will be from 9:30 a.m. to 4:15 p.m. Eastern time.[7]

e. *Exercise and Settlement.*

The options on the Index will be European-style index options that expire on the Saturday following the third Friday of the expiration month. Trading in the expiring contract month will normally cease at 4:15 p.m. Eastern time on the immediately preceding Thursday.[8] The Index multiplier will be 100. The exercise settlement value of the Index at option expiration will be calculated by Standard & Poor's based on the opening prices of the component securities on the business day prior to expiration ("A.M. Settlement"). If a stock fails to open for trading, the last available price on the stock will be used in the calculation of the index.

f. *Position Limits.*

The Exchange proposes to establish position limits for options on the S&P Small Cap 600 at 100,000 contracts on either side of the market, and no more than 60,000 of such contracts may be in the series in the nearest expiration month. The hedge exemption for this broad-based Index will be an additional 75,000 contracts.

g. *Exchange Rules Applicable.*

As modified herein, the Exchange Rules in Chapter 20 will be applicable to S&P Small Cap 600 options.

h. *Surveillance.*

The Exchange conducts routine surveillance for trading of equity options and has, where appropriate, incorporated all index options into its program. In addition, the Exchange has developed surveillance procedures specific to index options, which have been provided to the Commission. The ISE believes these procedures are adequate to properly monitor trading in options on the S&P Small Cap 600.[9] For surveillance purposes, the Exchange will have complete access to information regarding trading activity in the underlying securities. In addition, the Intermarket Surveillance Group Agreement ("ISG Agreement"), dated June 20, 1994, will be applicable to the trading of options on the Index.[10]

i. *Capacity.*

ISE believes it has the necessary systems capacity to support new series that will result from the introduction of S&P Small Cap 600 index options. ISE has also been informed that the Options Price Reporting Authority ("OPRA") believes that it has the capacity to support such new series.[11]

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act[12] in general, and furthers the objectives of section 6(b)(5),[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The Exchange did not receive any written comments on the proposed rule change, as amended.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–ISE–2003–18 and should be submitted by October 29, 2003.

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[7] Telephone conference between Katherine Simmons, Vice President and Associate General Counsel, ISE, and Florence Harmon, Senior Special Counsel, Division, Commission, on October 1, 2003.

[8] When the last trading day is moved because of Exchange holidays (such as when ISE is closed on the Friday before expiration), the last trading day for expiring options will be Wednesday and the exercise settlement value of Index options at expiration will be determined at the opening of regular Thursday trading.

[9] *See* Amendment No. 1, *supra* note 3.

[10] The ISE is a member of the Intermarket Surveillance Group ("ISG") under the ISG Agreement, dated June 20, 1994. The members of the ISG include all of the U.S. registered stock and options markets: the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange ("BSE"), the Chicago Board of Options Exchange ("CBOE"), the Chicago Stock Exchange ("CHX"), the Cincinnati Stock Exchange ("CSE"), the National Association of Securities Dealers ("NASD"), the New York Stock Exchange, Inc. ("NYSE") the Pacific Stock Exchange ("PCX") and the Philadelphia Stock Exchange ("Phlx"). The ISE members work together to coordinate surveillance and investigative information sharing in the stock and options markets. In addition, the major futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses. *See* Amendment No. 1, *supra* note 3.

[11] *See* letter from Joseph P. Corrigan, Executive Director, OPRA to Kathy Simmons, Vice President, Legal & Regulatory, ISE, dated August 28, 2003.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange,[14] and, in particular, with the requirements of section 6(b) of the Act[15] and the rules and regulations thereunder. The Commission finds that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act,[16] which requires, among other things, that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, protect investors and the public interest consistent with the Act.

The Commission finds that the trading of options on the Index will permit investors to participate in the price movements of the 600 securities on which the Index is based. The Commission also believes that the trading of options on the Index will allow investors holding positions in some or all of the securities underlying the Index to hedge the risks associated with their portfolios. Accordingly, the Commission believes S&P Small Cap 600 options will provide investors with an important trading and hedging mechanism that should reflect accurately the overall movement of stocks in the small-capitalization range of U.S. equity securities. By broadening the hedging and investment opportunities of investors, the Commission believes that the trading of S&P Small Cap 600 options will serve to protect investors, promote the public interest, and contribute to remove impediments to a free and open market.[17]

The trading of S&P Small Cap 600 options, however, raises several issues, including issues related to index design, customer protection, surveillance, and market impact. For the reasons discussed below, the Commission believes that the ISE has adequately addressed these issues.

### *a. Index Design and Structure*

The Commission finds that it is appropriate and consistent with the Act to classify the Index as broad-based, and therefore to permit Exchange rules applicable to the trading of broad-based index options to apply to the Index options. Specifically, the Commission believes the Index is broad-based because it reflects a substantial segment of the U.S. equities market, in general, and small-capitalization securities in particular. First, the Index consists of 600 relatively actively traded,[18] small-capitalization domestic securities. Second, the total capitalization of the Index, as of August 21, 2003, was $397 billion, with the market capitalizations of the individual stocks in the Index ranging from a $3 billion to $56 million, with a median value of $517 million. Third, the Index includes stocks of companies from a broad range of industry sectors, and no industry sector comprises more than 20.2% of the Index's total value. Fourth, as of August 21, 2003, no single stock comprised more than 0.74% of the Index's total value, and the percentage weighting of the 100 largest issues in the Index accounted for only 34.14% of the Index. Fifth, the Commission believes that the Index selection and maintenance criteria will serve to ensure that the Index maintains its broad representative sample of stocks in the small-capitalization range of U.S. equity securities. Accordingly, the Commission believes it is appropriate to classify the Index as broad-based.[19] Should the character of the Index change from the basic description contained in the rule filing, ISE will so notify the Commission staff. Such a change could require a filing pursuant to section 19(b)(1) of the Act and Rule 19b–4 thereunder.[20]

The Commission believes that the general broad diversification, capitalizations, and relatively liquid markets of the Index's component stocks significantly minimize the potential for manipulation of the Index. First, as discussed above, the Index represents a broad cross-section of domestic small capitalization stocks, with no single industry group or stock dominating the Index. Second, the majority of the stocks that comprise the Index are relatively actively traded.[21] Third, the Commission believes that the Index selection and maintenance criteria will serve to ensure that the Index will not be dominated by low-priced stocks with small capitalizations, floats, and trading volumes.[22] Fourth, the ISE will monitor the Index semi-annually, and will notify staff of the Commission in the event that (1) ten percent of the capitalization of the Index is comprised of securities with a market capitalization of less than $100 million; (2) ten percent of the capitalization of the Index is made up of components with an average daily trading volume of less than 10,000 shares over the previous six months; or (3) non-U.S. component securities (common stock or ADRs) that are not subject to a comprehensive surveillance agreement in the aggregate represent more than twenty percent weight of the Index's aggregate market capitalization.[23] Fifth, the Exchange has proposed reasonable position and exercise limits for the Index options that will serve to minimize potential manipulation and other market impact concerns. Although a position and exercise limit of 100,000 contracts is high by traditional standards, in dollar value it represents $2,155,400,000 (based on the May 31, 2003 Index closing value of 215.54), which the Commission believes is small enough to render it unlikely that attempted manipulations of the prices of the Index components would affect significantly the Index's value.[24]

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[14] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of any new option or warrant proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed options or warrants on the S&P Small Cap 600 Index will provide investors with a hedging vehicle that should reflect the overall movement of the small-capitalization stock universe. The Commission also believes that these options will provide investors with a means by which to make investment decisions in the small-capitalization equity market, allowing them to establish positions or increase existing positions in small-capitalized stocks in a cost effective manner.

[18] A significant majority of the stocks are relatively actively traded, as indicated by an Index component stock median Average Daily Trading Volume of 139,002 shares. *See* Amendment No. 1, *supra* note 3.

[19] The Commission notes that an index purportedly representing high capitalization stocks might not be deemed to have actively traded stocks if the component stocks' median Average Daily Volume was only 139,002 shares. With regard to a small capitalization index, where almost by their nature the most active stocks will likely not be included, a median average daily trading volume less than that for existing broad based indexes could be acceptable, depending upon the index's other features. For the S&P Small Cap 600, the median average daily trading volume is acceptable given the large number of component stocks and the inclusion of criteria designed to exclude inactively traded stocks from being selected. *See* Amendment No. 1, *supra* note 3.

[20] *See* Amendment No. 1, *supra* note 3.

[21] *See supra* note 18.

[22] Currently, 61% of the Index is accounted for by stocks meeting the ISE's options listing standards. These standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) The public float must be of at least 7 million shares; (2) there must be a minimum of 2,000 stockholders; (3) trading volume must have been at least 2.4 million over the preceding twelve months; and (4) the market price must have been at least $3.00 for the previous five consecutive business days if the security is a "covered security," as defined under section 18(b)(1)(A) of the Securities Act of 1933, or $7.50 for a majority of the business days during the preceding three calendar months if the security is not a "covered security." *See* ISE Rule 502.

As a general matter, for broad-based index options, the Commission prefers that at least 50% of an index's components continue to be options-eligible. Given the broad diversity of the Small Cap 600 Index and the selection and maintenance criteria, together with the fact that 61% of the Index's components are options eligible, the Commission believes that the Index will not be readily susceptible to manipulation.

*b. Customer Protection*

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Index options, can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risk of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options will be subject to the same regulatory regime as the other standardized options traded on the ISE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Index options.

*c. Surveillance*

The Commission generally believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation.[25] In this regard, the NYSE, Amex, and the NASD are all members of ISG.[26]

*d. Market Impact*

The Commission believes that the listing and trading of S&P Small Cap 600 Index Options on the ISE will not adversely affect the underlying securities markets.[27] First, as described above, the Index is broad-based and comprised of 600 stocks with no one stock or industry group dominating the Index. Second, as noted above, the stocks contained in the Index have relatively large capitalizations and are relatively actively traded. Third, existing ISE stock index options rules and surveillance procedures will apply to S&P Small Cap 600 options. Fourth, the position limits of 100,000 contracts on either side of the market, with no more than 60,000 of such contracts in a series in the nearest month expiration month, will serve to minimize potential manipulation and market impact concerns. Fifth, the risk to investors of contra-party non-performance will be minimized because the Index options will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded in the United States.

Lastly, the Commission believes that settling expiring S&P Small Cap 600 options based on the opening prices of component securities is reasonable and consistent with the Act. As noted in other contexts, valuing expiring index options for exercise settlement purposes based on opening prices rather than closing prices may help reduce adverse effects on the securities underlying options on the Index.[28]

The Commission finds good cause, pursuant to section 19(b)(2) of the Act,[29] for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The Commission believes that, the trading of these options on the Exchange will introduce price competition to the benefit of public investors, by providing investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the options promptly. In addition, the proposed rule change, as amended, reflects the listing and trading standards currently applied by the CBOE to enable their members to trade the S&P Small Cap 600.[30] Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) and 19(b)(2) of the Act,[31] to approve the proposed rule change, as amended, on an accelerated basis.

## V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the act,[32] that the proposed rule change (SR–ISE–2003–18), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[33]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–25513 Filed 10–7–03; 8:45 am]

BILLING CODE 8010–01–P

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## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3549]**

### State of Delaware (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective September 29, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on September 18, 2003 and continuing through September 29, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 19, 2003, and for economic injury the deadline is June 21, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 2, 2003.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 03–25473 Filed 10–7–03; 8:45 am]

BILLING CODE 8025–01–P

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## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3545]**

### State of North Carolina (Amendment #2)

In accordance with a notice received from the Department of Homeland

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[23] *See* Amendment No. 1, *supra* note 3.

[24] The Commission would not be inclined to approve such a high position limit if the position limit dollar equivalent amount were substantially higher than as currently proposed.

[25] *See* Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992) (SR–CBOE–91–51).

[26] *See supra* note 10.

[27] The ISE has stated that it has the necessary systems capacity to support new series that would result from the introduction of the S&P Small Cap 600 options. In addition, the OPRA has represented that additional traffic generated by options on the S&P Small Cap 600 Index is within OPRA's capacity. *See supra* note 11.

[28] *See* Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (SR–CBOE–92–09).

[29] 15 U.S.C. 78s(b)(2).

[30] *See supra* note 4.

[31] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[32] 15 U.S.C. 78s(b)(2).

[33] 17 CFR 200.30–3(a)(12).

Security—Federal Emergency Management Agency, effective October 1, 2003, the above numbered declaration is hereby amended to include Franklin, Granville, Greene, Lenoir, Nash, Person, Vance, Warren, Wayne and Wilson Counties as disaster areas due to damages caused by Hurricane Isabel occurring on September 18, 2003 and continuing through September 26, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Caswell, Durham, Johnston, Orange and Wake in the State of North Carolina; and Halifax and Mecklenburg Counties is the Commonwealth of Virginia may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 17, 2003, and for economic injury the deadline is June 18, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 2, 2003.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 03–25475 Filed 10–7–03; 8:45 am]

BILLING CODE 8025–01–P

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## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3534]

### State of Ohio (Amendment #5)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective October 1, 2003, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to October 7, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is October 7, 2003, and for economic injury the deadline is May 3, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 2, 2003.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 03–25474 Filed 10–7–03; 8:45 am]

BILLING CODE 8025–01–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Proposed Advisory Circular 23–16A, Powerplant Guide for Certification of Part 23 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of availability of proposed advisory circular AC 23–16A, and request for comments.

**SUMMARY:** This notice announces the availability of and requests comments on a proposed advisory circular, Advisory Circular (AC) 23–16A, Powerplant Guide for Certification of Part 23 Airplanes, that provides information and guidance concerning acceptable means, but not the only means of compliance with Title 14 of the Code of Federal Regulations (14 CFR) part 23, subpart E, applicable to the powerplant installation in normal, utility, acrobatic, and commuter category airplanes. The AC consolidates existing policy documents, and certain AC's that cover specific paragraphs of the regulations, into a single document. Material in the AC is neither mandatory nor regulatory in nature and does not constitute a regulation.

**DATES:** Comments must be received on or before December 8, 2003.

**ADDRESSES:** If possible, please submit your comments electronically to *Mark.Orr@faa.gov* Otherwise, send all comments on the proposed AC to: Federal Aviation Administration, Attention: Mr. Mark Orr, ACE–111, 901 Locust, Kansas City, MO 64106. Comments may be inspected at the above address between 7:30 and 4 p.m. weekdays, except Federal holidays. All comments should contain the name and telephone number of the individual or company making the comment, the paragraph and page number that the comment references, the reason for comment, and the recommended resolution.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Orr, Standards Office, Small Airplane Directorate, Aircraft Certification Service, Kansas City, Missouri 64106, telephone: (816) 329–4151, fax: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

#### Discussion

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 23–16A and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Small Airplane Directorate before issuing the final AC. The proposed AC can be found and downloaded from the Internet at *http://www.faa.gov/certification/aircraft* and taking the following steps: Select "Regulations, Policy, and Guidance," next select "Draft Advisory Circulars," and, finally, select "Open for Comment." A paper copy of the proposed AC may be obtained by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT**.

Issued in Kansas City, Missouri on September 24, 2003.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–25424 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICR) abstracted below have been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collections. The ICR describes the nature of the information collection and the expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collections of information was published on July 25, 2003, page 44137.

**DATES:** Comments must be submitted on or before November 7, 2003. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**FOR FURTHER INFORMATION CONTACT:** Judy Street on (202) 267–9895.

**SUPPLEMENTARY INFORMATION:**

#### Federal Aviation Administration (FAA)

1. *Title:* Notice and Approval of Airport Noise and Access Restrictions.

*Type of Request:* Extension of a currently approved collection.

*OMB Control Number:* 2120–0563.

*Form(s):* N/A.

*Affected Public:* A total of 8 airport operators.

*Abstract:* The Airport Noise and Capacity Act of 1990 mandates the formulation of a national noise policy. One part of that mandate is the development of a national program to review noise and access restrictions on the operation of Stage 2 and 3 aircraft. 14 CFR part 161 is the principal means. Respondents are airport operators proposing voluntary agreements and/or mandatory restrictions on Stage 2 and Stage 3 aircraft operations, and aircraft operators that request reevaluation of a restriction.

*Estimated Annual Burden Hours:* An estimated 30,000 hours annually.

2. *Title:* Associate Administrator for Commercial Space Transportation (AST) Customer Service Survey.

*Type of Request:* Extension of a currently approved collection.

*OMB Control Number:* 2120–0611.

*Form(s):* N/A.

*Affected Public:* A total of 300 commercial space transportation customers.

*Abstract:* The FAA Office of the Associate Administrator for Commercial Space Transportation (AST) conducts this survey in order to obtain industry input on customer service standards which have been developed and distributed to industry customers. This is a requirement of the White House NPR Customer Service Initiative. AST collects and analyzes the data for results.

*Estimated Annual Burden Hours:* An estimated 300 hours annually.

3. *Title:* Service Difficulty Report.

*Type of Request:* Extension of a currently approved collection.

*OMB Control Number:* 2120–0663.

*Form(s):* FAA Form 8070–1.

*Affected Public:* A total of 7,695 aircraft and repair station operators.

*Abstract:* The administrator has determined, based on evaluation of previous accidents and other incidents, that certain events involving malfunctions and defects may be precursors to the recurrence of these accidents. As a result, operators and repair stations are required to report any malfunctions and defects to the Administrator.

*Estimated Annual Burden Hours:* An estimated 6,107 hours annually.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on October 1, 2003.

**Judith D. Street,**

*FAA Information Collection Clearance Officer, Standards and Information Division, APF-100.*

[FR Doc. 03–25434 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### Noise Exposure Map Notice; Lincoln Airport, Lincoln, NE

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Lincoln Airport Authority for Lincoln Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR Part 150 are in compliance with applicable requirements.

**EFFECTIVE DATE:** The effective date of the FAA's determination on the noise exposure maps is September 26, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mark Schenkelberg, Federal Aviation Administration, Central Region, 901 Locust, Kansas City, MO 64106, 816–329–2645.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps submitted for Lincoln Airport are in compliance with applicable requirements of part 150, effective September 26, 2003. Under 49 U.S.C. section 47503, an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. 49 U.S.C. Section 47503 requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Aviation Safety and Noise Abatement Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by Lincoln Airport Authority. The documentation that constitutes the "noise exposure maps" as defined in section 150.7 of part 150 includes: "2002 Noise Exposure Map and 2007 Noise Exposure Map". The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on September 26, 2003.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under 49 U.S.C. Section 47503, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of 49 U.S.C. Section 47506. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under 49 U.S.C. Section 47503. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the full exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations: Federal Aviation Administration, Central Region, 901 Locust, Kansas City, MO 64106; Jon L. Large, Lincoln Airport, 2400 West Adams, Lincoln, NE 68504.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Kansas City, Missouri, on September 26, 2003.

**George A. Hendon,**

*Manager, Airports Division, Central Region.*

[FR Doc. 03–25437 Filed 10–7–03; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Proposed Technical Standard Order (TSO)–C168, Aviation Visual Distress Signals

**AGENCY:** Federal Aviation Administration (DOT).

**ACTION:** Notice of availability and requests for public comment.

**SUMMARY:** This notice announces the availability of and requests comments on proposed Technical Standard Order (TSO)–C168, Aviation Visual Distress Signals. This proposed TSO tells manufacturers and designers of aviation visual distress signals what minimum performance standards (MPS) their equipment must first meet to obtain approval and identification with the applicable TSO marking.

**DATES:** Comments must identify the TSO and arrive by November 7, 2003.

**ADDRESSES:** Send all comments on the proposed TSO to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Technical Programs and Continued Airworthiness Branch, AIR–120, Room 815, 800 Independence Avenue SW., Washington, DC 20591. ATTN: Mr. Dave Rich, AIR–120. Or, deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dave Rich, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Technical Programs and Continued Airworthiness Branch, AIR–120, Room 815, 800 Independence Avenue SW., Washington, DC 20591. Telephone: (202) 267–7141, fax: (202) 267–5340, e-mail: *dave.rich@faa.gov*.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

You may comment on the proposed TSO listed in this notice by sending written data, views, or arguments to the above listed address. You may also examine comments received on the proposed TSO, before and after the comment closing date, in Room 815, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director of the Aircraft Certification Service will consider all communications received by the closing date before issuing the final TSO.

#### Background

This proposed TSO gives the MPS for aviation visual distress signals. The MPS are based on Society of Automotive Engineers, Inc. (SAE) Aerospace Standard (AS) 5134, "Aviation Distress Signals," dated June 2001. The signals must also meet specific test criterion contained in RTCA Document No. RTCA/DO–160D, "Environmental Conditions and Test Procedures for Airborne Equipment," Change 4, dated July 29, 1997. This TSO's standards apply to handheld, high-intensity, stroboscopic light sources that can be added to aviation survival kits to supplement pyrotechnic devices. These light sources will significantly eliminate potential equipment and personnel hazards associated with using pyrotechnics devices in inflatable life rafts, by providing an equivalent level of safety that meets or exceeds the current performance standards for pyrotechnics devices that aid in locating and rescuing aviation accident survivors.

#### How To Get Copies

You may get a copy of the proposed TSO via the Internet at *http://www.faa.gov/certification/aircraft/TSOA.htm*, or by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on October 2, 2003.

**David W. Hempe,**

*Manager, Aircraft Engineering Division, Aircraft Certification Service.*

[FR Doc. 03–25435 Filed 10–7–03; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**[Docket No. FHWA–3–16255 ]**

### Agency Information Collection Activities; Request for Comments; Renewed Approval of Information Collection; State Right-of-Way Operations Manuals, OMB Control Number: 2125–0586

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to renew an information collection. The collection involves State Departments of Transportation (STD) providing their Right-of-Way Operations Manuals to FHWA. The information to be collected will be used to certify that the manuals are representative of the states' right-of-way procedures and the information is necessary to comply with the FHWA Final Rule for the Right-of-Way program on December 21, 1999. We are required by the Paperwork Reduction Act of 1995 to publish this notice in the **Federal Register**.

**DATES:** Please submit comments by December 8, 2003.

**ADDRESSES:** You may submit comments identified by DOT DMS Docket Number FHWA–3–16255 by any of the following methods:

- Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

*Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burdens could be minimized, including the use of electronic technology, without reducing the quality of the collected information.

**FOR FURTHER INFORMATION CONTACT:** Wayne Coil, (202) 366–2038, Office of Real Estate Services, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

*Title:* State Right-of-Way Operations Manuals.

*OMB Control No.:* 2125–0586.

*Background:* The Federal Highway Administration (FHWA) issued a final rule for the Right-of-Way Program on December 21, 1999 (**Federal Register** Volume 64, Number 244, pages 71284–71297). This issuance was a comprehensive rewrite of rules governing the use of Federal-aid funds for right-of-way acquisition, property management, and project development. The regulation reduces Federal regulatory requirements and places primary responsibility for a number of approval actions at the state level. The rule states that states must certify at 5-year intervals that their State Right-of-Way Operations Manuals are representative of their procedures, or submit an updated manual. STDs are required to update their manuals to reflect changes in Federal requirements for programs administered under Title 23 U.S.C. These manuals reflect how the STD plans to perform real estate acquisition, property management, and maintain the integrity of the right-of-way for highway and related transportation systems. The State manuals may be submitted to FHWA electronically or they can be made available by postings on state Web sites.

*Respondents:* State Departments of Transportation (52 including the District of Columbia and Puerto Rico).

*Frequency:* Once initially, then States update their operations manuals for review.

*Estimated Average Burden per Response:* 75 hours per respondent.

*Estimated Total Annual Burden Hours:* 75 hours for each of the 52 State Departments of Transportation. The total is rounded to 4,000 burden hours annually.

Issued on: October 2, 2003.

**James R. Kabel,**

*Chief, Management Programs and Analysis Division.*

[FR Doc. 03–25520 Filed 10–7–03; 8:45 am]

**BILLING CODE 4910–22–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket Nos. FMCSA–98–3298 and FMCSA–98–3299]**

### Notice of Scoping Meetings and Soliciting Scoping Comments for Programmatic Environmental Impact Statement and General Conformity Evaluation for Proposal To Promulgate North American Free Trade Agreement Regulations

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Announcement of public scoping meetings.

**SUMMARY:** The agency is in the early stages of preparing an environmental analysis, including a Programmatic Environmental Impact Statement (PEIS) and a General Conformity Evaluation (GCE), assessing the potential environmental impacts'such as impact on air quality'on its proposal to promulgate regulations allowing trucks and buses domiciled in Mexico to operate throughout the United States under conditions ensuring public safety. The FMCSA is holding several public meetings on environmental issues and concerns to be considered in the PEIS and GCE. The purpose of these meetings is to obtain the public's input on the potential range or scope of environmental impacts and alternatives that should be considered in the PEIS and GCE. FMCSA invites the public to submit comments on the environmental issues and topics that they believe are appropriate for inclusion in these analyses.

**DATES:** *See* **SUPPLEMENTARY INFORMATION** section for meeting dates.

**ADDRESSES:** *See* **SUPPLEMENTARY INFORMATION** section for meeting addresses.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles Rombro, Analysis Division, Office of Information Management, (202) 366–1861, FMCSA, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001. You may also visit FMCSA's Web site at *http://www.fmcsa.dot.gov/NAFTAEIS* or call FMCSA's toll-free hotline number at (800) 288–5634. Inquiries may be made in Spanish or English.

**SUPPLEMENTARY INFORMATION:**

### Meeting Dates and Addresses

The scoping meeting addresses, dates and times are as follows:

1. El Paso—October 21, 2003, 7 p.m. “9 p.m.; Franklin High School, 900 North Resler Drive, El Paso, TX; (915) 832–6600.
2. Phoenix—October 21, 2003; 7 p.m. “9 p.m.; Wyndham Phoenix Hotel, 50 East Adams Street, Phoenix, AZ; (602) 333–0000.
3. San Diego—October 22, 2003; 7 p.m. “9 p.m.; San Diego Concourse, 202 C Street, San Diego, CA; (619) 525–5000.
4. Nogales—October 22, 2003; 7 p.m. “9 p.m.; Santa Cruz County Complex, 2150 N. Congress Drive, Nogales, AZ; (520) 375–7812.
5. Los Angeles—October 23, 2003; 7 p.m. “9 p.m.; Los Angeles Convention Center; 1201 South Figueroa Street; Los Angeles, CA;
(213) 741–1151.
6. Las Cruces—October 27, 2003; 7 p.m. “9 p.m.; New Mexico State University, Corbett Center Student Union; Las Cruces, NM;
(505) 646–3049.
7. Laredo—October 27, 2003; 7 p.m. “ 9 p.m.; Texas A&M International University, 5201 University Blvd, Laredo, TX; (956) 326–2001.
8. Houston—October 28, 2003; 7 p.m. “9 p.m.; Reliant Arena; One Reliant Park, Houston, TX; (800) 776–4995.
9. Washington, DC—October 30, 2003; 2 p.m. “4 p.m.; Loews L'Enfant Plaza Hotel; 480 L'Enfant Plaza, Washington, DC; (202) 484–1000.

### Pre-Registration to Speak at Public Meetings

Persons wanting to speak at a public meeting are encouraged to pre-register by calling FMCSA's toll-free hotline at (800) 288–5634 and leave their name, telephone number, the name of any group, business, or agency affiliation, if applicable, and the date and location of the meeting at which they wish to speak. The deadline for pre-registration for all meetings is October 20, 2003.

Persons will be called to speak at each meeting in the following order: elected officials, those who pre-registered, and then those wishing to speak who did not pre-register. Those wishing to speak at more than one meeting will also be accommodated, after their first meeting, as time allows and after all others have had an opportunity to participate. As FMCSA would like as many persons as possible to participate and since there will be a limited amount of time at each meeting, all speakers are strongly encouraged to prepare summary oral comments, and submit detailed comments in writing at the meeting or as described below. FMCSA also encourages groups of individuals with similar comments to designate a representative to speak for them. A translator will be available at the meetings for Spanish-speakers wishing to speak.

In addition to submitting comments at the public meetings, the public may submit comments to FMSCA by November 7, 2003, via one of the following:

- Project Web site at *http://www.fmcsa.dot.gov/NAFTAEIS;*
- E-mail to *NAFTAEIS@fmcsa.dot.gov;*
- FAX at (800) 260–9702; or
- Mail to NAFTA EIS, P.O. Box 4050, Merrifield, VA 22116–4050.

After completing the scoping comment process, FMCSA will prepare a draft EIS and GCE to address the environmental concerns identified by the public. This draft EIS will be made publicly available for review and comment. FMCSA will then prepare a final EIS and issue a record of decision that considers and responds to comments concerning the draft EIS. Both the draft and final PEIS will be available to the public on the Project Web site at *http://www.fmcsa.dot.gov/NAFTAEIS.* In addition, copies can be requested by calling FMCSA's toll-free hotline at (800) 288–5634.

### Background

The FMCSA is responsible for ensuring the safe operation of commercial motor vehicles within the United States. In carrying out these responsibilities, FMCSA proposed regulations in May 2001 prescribing application procedures and procedures for monitoring the safety of Mexico-domiciled carriers seeking permission to operate within the United States. FMCSA proposed these rules pursuant to NAFTA and in anticipation of the President lifting a moratorium previously imposed by Congress on the operating authority of Mexico-domiciled carriers. The proposed regulations would permit Mexico-domiciled carriers to operate throughout the entire Unites States, rather than only in the narrow border commercial zone to which they are currently confined. The implementation of the rules was put on hold as a result of a court decision finding FMCSA should have conducted a more extensive analysis of the environmental impacts of the regulations. *See Public Citizen* v. *Department of Transportation,* 316 F. 3d 1002 (9th Cir. 2003).

FMCSA is now in the process of preparing a more extensive environmental analysis of the potential impacts of the rules. This will include a detailed analysis of the environmental impacts of the rules and other alternatives, called a "Programmatic Environmental Impact Statement" or PEIS, to be prepared pursuant to the National Environmental Policy Act of 1969. It also will include an analysis of specific air quality impacts, called a "General Conformity Evaluation" or GCE, to be prepared pursuant to the Clean Air Act of 1990. A notice of intent to prepare a PEIS and a GCE was published in the **Federal Register** on August 26, 2003 [68 FR 51322].

(Authority: 40 CFR 1506.6)

Issued on: October 3, 2003.

**Annette M. Sandberg,**

*Administrator.*

[FR Doc. 03–25618 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–EX–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Railroad Administration

### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

### Docket No. FRA–2003–16097

*Applicant:* Union Pacific Railroad Company, Mr. Phil Abaray, Chief Engineer–Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the automatic block signal system through Miller Yard, between milepost 258.1 and milepost 260.7, at Miller, Texas, on the Ennis Subdivision, Fort Worth Division, consisting of the discontinuance and removal of signal No.'s 2596, 2597, 2600, and 2603. Automatic block signals will continue southward from the end of siding location at milepost 258.1, and the northbound automatic signal located at 260.1 will be converted to a yellow "D" signal in approach to the CTC signals and controlled switch location at milepost 260.9.

The reason given for the proposed changes is that the signals were originally installed to expedite the movement of passenger trains that no longer use this line, and the ABS system inhibits switching operations in the yard.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on October 2, 2003.

**Grady C. Cothen,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 03–25419 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket Number MARAD 2003 16267]**

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel AMETHYST.

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**SUMMARY:** As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16267 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**DATES:** Submit comments on or before November 6, 2003.

**ADDRESSES:** Comments should refer to docket number MARAD–2003 16267. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel AMETHYST is:

*Intended Use:* "Sailing Excursions."

*Geographic Region:* "California".

Dated: October 2, 2003.

By order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 03–25464 Filed 10–7–03; 8:45 am]

**BILLING CODE 4910–81–P**

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket Number MARAD 2003 16268]**

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel RUBY.

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**SUMMARY:** As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16268 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**DATES:** Submit comments on or before November 7, 2003.

**ADDRESSES:** Comments should refer to docket number MARAD–2003 16268. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–0760.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel RUBY is:

*Intended Use:* "Term charter, combined with Bluewater sailing and boat handling instruction. The goal is to perpetuate the cruising lifestyle."

*Geographic Region:* "East Coast of the U.S.A."

Dated: October 2, 2003.

By order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 03–25463 Filed 10–7–03; 8:45 am]

**BILLING CODE 4910–81–P**

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## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

**[Docket No. RSPA–03–16246]**

### Pipeline Safety: Direct Assessment Workshop

**AGENCY:** Office of Pipeline Safety, Research and Special Programs Administration, DOT.

**ACTION:** Notice of workshop on direct assessment technology.

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**SUMMARY:** The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) and the National Association of Pipeline Safety Representatives (NAPSR) will cosponsor a workshop with the pipeline industry trade associations (Interstate Natural Gas Association of America, American Gas Association, NACE International,

and American Public Gas Association) to discuss direct assessment technology. The workshop is intended to provide a forum for the discussion of direct assessment technology as it relates to natural gas pipeline integrity management. RSPA/OPS will gather issues presented at the workshop needing additional clarification or guidance material development.

**DATES:** Tuesday, November 4th, 2003, from 7 a.m. to 5:30 p.m.

**ADDRESSES:** The public may attend the meeting at the Wyndham Greenspoint North Hotel, 12400 Greenspoint Drive, Houston, Texas 77060, (281) 875–2222, *http://www.wyndhamhouston.com*

Operators of natural gas transmission pipelines are urged to attend. To facilitate meeting planning, advance registration for these meetings is strongly encouraged and can be accomplished online at the following Web site: *http://primis/rspa.dot.gov/meetings*

Members of the public are welcome to attend the workshop. An opportunity will be provided for the public to ask questions or make short statements on the topics under discussion. You may submit written comments by mail or deliver to the Dockets Facility, U.S. Department of Transportation (DOT), Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. It is open from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays. You also may submit written comments to the docket electronically. To do so, log onto the following Internet Web address: *http://dms.dot.gov.* Click on "Help & Information" for instructions on how to file a document electronically. All written comments should identify the docket and notice numbers which appear in the heading of this notice. Anyone who would like confirmation of mailed comments must include a self-addressed stamped postcard.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the April 11, 2000, issue of the **Federal Register** (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

*Information on Services for Individuals with Disabilites:* For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Juan Carlos Martinez (tel: 202–366–1933; E-mail: *juan.martinez@rspa.dot.gov).*

**FOR FURTHER INFORMATION CONTACT:** Zach Barrett, (tel: 405–954–5559; E-mail *zach.barrett@rspa.dot.gov*), regarding the subject matter of this notice. Additional information about gas integrity management can be found at *http://primis.rspa.dot.gov/gasimp/index.htm.* You can read comments and other material in the docket on the Internet at: *http://dms.dot.gov.*

**SUPPLEMENTARY INFORMATION:**

Direct Assessment is an integrity assessment method that utilizes a process to evaluate certain threats to pipeline integrity. It consists of a combination of pipeline corrosion assessment techniques and data integration. The Pipeline Safety Improvement Act of 2002 required RSPA/OPS to issue regulations, not later than December 17, 2003, prescribing standards for an operator's conduct of risk analysis and adoption and implementation of an integrity management program and for defining direct assessment. RSPA/OPS issued a notice of proposed rulemaking on January 28, 2003, proposing regulations to require a gas transmission operator to conduct a risk analysis and adopt an integrity management program. As part of the required integrity management program, each operator of a gas transmission pipeline facility must conduct a baseline integrity assessment. RSPA/OPS defines direct assessment as a primary assessment technique for any transmission pipelines or as a supplement to other assessment techniques. Although the application of corrosion assessment techniques such as Close-Interval or Direct Current Voltage Gradient surveys have been in place for some time, their integration with other information in a structured process to identify integrity concerns is a new industry practice for many pipeline operators. NACE International has published Standard RPO502–2002 "Pipeline External Corrosion Direct Assessment Methodology," providing a recommended practice for external corrosion direct assessment. NACE International is also developing standards for internal corrosion and stress corrosion cracking direct assessment methodologies. The adoption of these standards into the pipeline safety regulations is being considered by RSPA/OPS. RSPA/OPS and NAPSR recently participated in several direct assessment demonstration programs sponsored by the industry to further knowledge and discussions regarding the implementation of direct assessment methodologies for integrity management.

RSPA/OPS is co-sponsoring this public workshop with NAPSR and the industry trade associations to solicit comments on improving and understanding direct assessment technology as it relates to the proposed gas integrity management regulation.

**Authority:** 49 U.S.C. 60102, 60109, 60117.

Issued in Washington, DC, on October 1, 2003.

**Stacey L. Gerard,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 03–25420 Filed 10–7–03; 8:45 am]

**BILLING CODE 4910–60–P**

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## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### Notice of Meeting

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Notice; Pipeline Safety: Final Project Review Meeting.

**SUMMARY:** RSPA's Office of Pipeline Safety (OPS) and the Gas Technology Institute (GTI), Des Plaines, IL, have funded a research program to study parameters pertinent to the application of the magnetic flux leakage (MFL) and Nonlinear Harmonics (NLH) technologies to in-line inspection of pipelines. This research was managed by GTI and performed by the Battelle Memorial Institute, Columbus, Ohio (Battelle) and the Southwest Research Institute, San Antonio, Texas, (SwRI).

RSPA/OPS and GTI invite pipeline industry, in-line inspection vendors, pipeline trade association representatives, and the public to a project review meeting. The purpose of the meeting is to present a final report on the progress and findings of the research. The meeting is open to all and no registration is required. The presentations at the meeting will include an overview of the project, a technical review, and the results of technology transfer.

**DATES:** The meeting will be held on Tuesday, October 28, 2003, from 9 a.m. to 3 p.m.

**ADDRESSES:** The meeting will be held in conference room 4438–40 at U.S. Department of Transportation, 400–7th Street, SW., Washington, DC 20590. All non-federal personnel must enter the building through the Southwest entrance at 7th and E Streets, SW., and must present a photo-ID to receive a temporary building pass.

**FOR FURTHER INFORMATION CONTACT:** Gopala (Krishna) Vinjamuri, Agreement Officer's Technical Representative, RSPA/OPS, by phone at (202) 366-4503; by fax at (202) 366–4566; or by e-mail at *gopala.vinjamuri@rspa.dot.gov*. You may also contact Dr. Albert Teitsma, Program Manager, Gas Technology Institute, by telephone at (847) 768–0974, by fax at (847) 768–0501, or by e-mail at *albert.teitsma@gastechnology.org*.

**Background**

This research program began in 1996. The first phase of the MFL technology research (DTRS56–96-C–0010, *In-Line Inspection Technologies for Mechanical Damage and Stress Corrosion Cracking (SCC) in Pipelines*, was fully funded by RSPA/OPS. Battelle worked with its research partners, SwRI and Iowa State University, to complete this phase of the research. GRI provided technical and project management assistance.

Magnetic flux leakage (MFL) is the most commonly used in-line inspection (ILI) technology for detecting pipe wall corrosion. Until about 1996, the technology was not capable of reliably detecting mechanical damage (gouges and scratches) or long, thin axial defects, both of which are common causes of pipeline failures.

Battelle designed an intelligent MFL in-line inspection tool ("smart pig") and was responsible for data acquisition and analysis using GRI's Pipeline Safety Simulation Facility (PSF) in Ohio. Natural and fabricated pipe samples with corrosion and other defects were used to evaluate the capabilities of the Battelle device. SwRI conducted mechanical testing and studied the feasibility of non-liner harmonics (NLH) for in-line inspection applications. The Iowa State University researchers attempted to develop a neural network analysis process to analyze MFL signals and determine by trained pattern recognition the extent of metallurgical damage. The 2000 final report on this part of research is available on the OPS Web site, at *primis.rspa.dot.gov*—click on > Pipeline Safety Research and Development > Recent Projects > R&D Database > Inline Inspection/Pigging and, finally, > In-Line Inspection Technologies for Mechanical Damage and SCC in Pipelines.

To continue this research, RSPA/OPS co-funded an additional $1,180,000 for a 3-year project of advanced research and development. GTI was the program manger, and Battelle and SWRI were the research partners. The project, DTRS656–00–H–0004, *Better Understanding of Mechanical Damage*, focused on designing a smart pig capable of circumferential (transverse) magnetization for detecting longitudinally oriented cracks, crack-like defects, and mechanical damage defects, particularly gouges. The project scope included the determination of criteria for assessing the relative severity of detected defects and advanced research in NLH tool design and analysis. As the research progressed, additional analyses and testing were identified that added valve to the project.

The tentative agenda for the meeting is as follows.

Welcome—Stacey Gerard
Introduction, History and Achievements—Gopala Vinjamuri
Fit with IMP Rule; Effective Technologies—Keith Leewis
Statistics; Progress in Safety; SOA—Harvey Haines
Mechanical Damage R&D—Harvey Haines
Break
Project Organization and Overview—Albert Teitsma
Battelle R&D MFL for Mechanical Damage—Bruce Nestleroth
SwRI R&D for Nonlinear Harmonics—Al Crouch
Technology Transfer—Alan Dean
Questions and Answers
Lunch
Mechanical Damage Detection/Characterization—Graham Chell, Bruce Nestleroth
Implementation of MFL Decoupling—Alan Dean
Final Questions and Answers
Conclusions—Gopala Vinjamuri

Issued in Washington, DC, on October 3, 2003.

**James K. O'Steen,**

*Deputy Associate Administrator for Pipeline Safety.*

[FR Doc. 03–25521 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–60–P

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## DEPARTMENT OF TRANSPORTATION

## Research and Special Programs Administration

## Pipeline Safety: Stress Corrosion Cracking (SCC) Threat to Gas and Hazardous Liquid Pipelines

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Notice; issuance of advisory bulletin.

**SUMMARY:** RSPA's Office of Pipeline Safety (OPS) is issuing this advisory notice to owners and operators of gas and hazardous liquid pipelines to consider the threat from stress corrosion cracking (SCC) when developing and implementing Integrity Management Plans. Operators should determine whether their pipelines are susceptible to SCC and assess the impact of SCC on pipeline integrity. Based on this evaluation, an operator should prioritize application of additional in-line inspection and hydrostatic testing and take actions to remediate problem areas.

**FOR FURTHER INFORMATION CONTACT:** Mike Israni, (202) 366–4571; or by e-mail, *mike.israni@rspa.dot.gov*. This document can be viewed at the OPS home page at *http://ops.dot.gov*. General information about the RSPA/OPS programs may be obtained by accessing RSPA's home page at *http://rspa.dot.gov*.

### I. Advisory Bulletin (ADB–03–05)

*To:* Owners and Operators of Gas and Hazardous Liquid Pipeline Systems.

*Subject:* Stress Corrosion Cracking (SCC) Threat to Gas and Hazardous Liquid Pipelines.

*Purpose:* To advise owners and operators of natural gas and hazardous liquid pipeline systems to consider stress corrosion cracking as a possible safety risk on their pipeline systems and to include SCC assessment and remediation measures in their Integrity Management Plans.

*Advisory:* Each owner and operator of a gas or hazardous liquid pipeline system should assess the risk of stress corrosion cracking (SCC). Pipeline owners and operators should evaluate their systems for the presence of risk factors for high pH (9–11) SCC or near-neutral pH (6–8) SCC. Criteria for high pH SCC can be found in Appendix A3.3 of standard ASME B31.8S. If conditions for SCC are present, a written inspection, examination, and evaluation plan should be prepared and appropriate action should be taken in accordance with Appendix A3.4 of standard ASME B31.8S. RSPA/OPS will soon publish a final rule on the integrity management program for gas transmission pipelines in high consequence areas that incorporates requirements for addressing SCC threats by referencing Appendix A3 of standard ASME B31.8S. Although criteria and mitigation plans for near-neutral pH (6–8) SCC are not addressed in this standard, NACE International (NACE) is currently developing a standard on Direct Assessment of Stress Corrosion Cracking. Also, NACE will soon issue a technical committee report, *External Stress Corrosion Cracking of Underground Pipelines*, to provide information on SCC for hazardous liquid pipelines.

The integrity management rules for both large (65 FR 75378; December 1, 2000) and small (66 FR 2136; january 16, 2002) hazardous liquid pipelines in high consequence areas did not specifically address the SCC threat. By this Advisory Bulletin, we are reminding owners and operators of both gas and hazardous liquid pipeline systems to consider the stress corrosion cracking threat as a possible risk factor when developing and implementing Integrity Management Plans. All owners and operators of pipeline systems, whether or not their pipeline systems are subject to the Integrity Management Plan rules, should determine whether their pipeline system is susceptible to SCC and assess the impact of SCC on pipeline integrity. Based on this evaluation an operator should prioritize application of internal inspection, hydrostatic testing, or other forms of integrity verification.

**SUPPLEMENTARY INFORMATION:**

## II. Background

Recent incidents throughout North America and the world, including Australia, Russia, Saudi Arabia, and South America, have highlighted the threats to pipelines from SCC failures. In the United States, SCC failures on hazardous liquid pipelines have been very rare when compared with SCC occurrences on natural gas pipelines. However, three SCC-caused failures of hazardous liquid pipelines have occurred in 2003. Another hazardous liquid pipeline operator has reported finding significant SCC defects.

SCC is the cracking induced from the combined influence of tensile stress and a corrosive medium. The impact of SCC on a material usually falls between dry cracking and the fatigue threshold of that material. The required tensile stresses may result from directly applied stresses (pressure and overburden) or in the form of residual stresses (fabrication and construction). The most effective means of preventing SCC are to: (1) properly design the pipeline using appropriate materials; (2) reduce pipeline stresses; and (3) remove critical environmental electrolytes, such as hydroxides, chlorides, and oxygen.

Most pipelines are buried. No matter how well these pipelines are designed, constructed, and protected, once in place they are subjected to environmental abuse, external damage, coating disbondment, inherent mill defects, soil movements/instability, and third party damage. SCC develops in pipelines due to a combination of environmental, stress (absolute hoop and/or tensile, fluctuating stress) and material (steel type, amount of inclusions, surface roughness) factors. Although the age of a pipeline is not indicative of the presence of SCC, it is a factor to consider when assessing pipelines that are subject to conditions that may cause crack growth.

Two types of SCC are found on pipelines: high pH (9 to 11) SCC and near-neutral pH (6 to 8) SCC. Characteristics of both forms of SCC as summarized by experts are as follows:

—Cracks usually oriented in longitudinal direction (cracks may exist at other orientations, depending on the direction of tensile stress).

—Occurrence in clusters consisting of several cracks to hundreds of cracks.

—Cracks tend to interlink to form long shallow flaws (cracks may grow to cause ruptures).

—Fractures faces are covered with magnetite and carbonate films.

High pH SCC was originally noted in gas transmission pipelines. It is typically found within 20 miles downstream of the compressor station. High pH SCC usually occurs in a relatively narrow cathodic potential range ($-600$ to $-750$ mV $Cu/CuSO_4$) in the presence of a carbonate/bicarbonate environment in a pH window from 9 to 11. Temperatures greater than 100° F are necessary for high pH SCC susceptibility. Other characteristics of high pH SCC according to experts are as follows:

—Cracks are narrow and inter-granular and, have extensive crack branching.

—Cracks are generally not associated with long seams or other metallurgical features.

—Cracks are commonly found on the bottom half of a pipe.

—Cracks are commonly associated with coal tar and asphalt coatings.

For other details on high pH SCC please refer to Appendix A3 of standard ASME B31.8S.

A Near-neutral pH SCC was initially noted in Canada and has been observed by operators in the United States. The environment primarily responsible for near-neutral pH SCC is groundwater containing dissolved $CO_2$. The $CO_2$ originates from the decay of organic matter. Cracking is exacerbated by the presence of sulfate reducing bacteria. This primarily occurs due to disbonded coatings, which normally prevent the cathodic current from reaching the pipe surface. There is a corrosion condition below the disbonded coating that results in an environment with a pH of between 6 and 8. Other characteristics of near-neutral pH SCC according to experts are as follows:

—Cracks are wide (compared with high pH SCC) and trans-granular and have limited crack branching.

—Cracks are frequently associated with long seams and other metallurgical features (dents, mechanical damage).

—Cracks are commonly associated with tape coatings.

Pipeline operators know the pipeline metallurgy, coating type, and operating pressure of each pipeline. The only remaining variable in determining the likelihood of SCC is soil type. RSPA/OPS has previously directed certain pipeline operators to evaluate and establish the extent of SCC susceptibility, utilize over the ditch coating surveys to identify locations of holidays (uncoated spots) and match them with high stress levels (60% or greater of specified minimum yield strength), and match the areas with high temperature locations. The areas where all factors are present are then excavated and evaluated.

If a pipeline is susceptible to SCC, pipeline operators are required to quantify the life cycle of the pipeline by conducting fracture mechanic calculations to estimate where in the system an SCC rupture might occur. Appropriate in-line inspection technologies can help to identify SCC in a pipeline. If the pipeline cannot accommodate internal inspection tools, an appropriately designed hydrostatic test program can be effective in exposing SCC. If excavations of suspected SCC locations do not reveal SCC, RSPA/OPS recommends continuous monitoring for SCC as part of an operator's integrity management program for corrosion.

Because of the randomness of SCC failures, RSPA/OPS has, in the past, often ordered operators to reduce operating pressure by 20% of the prefailure pressure to add a factor of safety and allow the operator to continue service. This protects the public and environment from other SCC failures, even if there is another crack on the pipeline of the same size. Based on technical studies, RSPA/OPS has often required the pipeline operator to perform a spike hydrostatic pressure test to expose other cracks and ensure a safe return to full operating pressure. The pipeline operator can then commence a rigorous SCC management program that may include in-line inspection, recoating the pipeline, or even replacing sections of pipe where SCC is present.

By the end of 2003, RSPA/OPS will invite scholars and consultants to a public meeting to discuss research and technologies that can effectively identify, assess, and manage SCC.

Issued in Washington, DC, on October 1, 2003.

**Stacey L. Gerard,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 03–25421 Filed 10–7–03; 8:45 am]

**BILLING CODE 4910–60–P**

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## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

### Release of Waybill Data

The Surface Transportation Board has received a request from the Association of American Railroads (WB463–6, September 10, 2003) for permission to use certain data from the Board's Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 565–1541.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 03–25505 Filed 10–7–03; 8:45 am]

**BILLING CODE 4915–00–P**

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## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

### [STB Finance Docket No. 34402]

### Iowa Northern Railway Company—Operation Exemption—Rail Lines of D&W Railroad, Inc.

Iowa Northern Railway Company (INAR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to operate approximately 51.95 miles of rail line, including incidental trackage rights, known as the Waterloo Industrial Lead, pursuant to an operating agreement with D&W Railroad, Inc. (D&W). The lines to be operated are located in Black Hawk, Buchanan and Fayette Counties, IA, as follows: (1) Between milepost 332.0 at Dewar, IA, and milepost 354.3 at Oelwein, IA; (2) between milepost 245.58 and milepost 245.0 at Oelwein; (3) .32 miles of wye track at Oelwein; (4) 23 miles of yard track at Oelwein; and (5) incidental trackage rights over Union Pacific Railroad Company's track between milepost 332.0 at Dewar and milepost 326.2 at Linden Street, Waterloo, IA. INAR certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier.

INAR reported that the parties intend to consummate the transaction on or soon after September 26, 2003.

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 34401, *D&W Railroad, Inc.—Acquisition Exemption—Rail Lines of Union Pacific Railroad Company,* wherein D&W seeks to acquire the above-described rail lines.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34402, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Thomas F. McFarland, 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 1, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 03–25503 Filed 10–7–03; 8:45 am]

**BILLING CODE 4915–00–P**

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## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

### [STB Finance Docket No. 34401]

### D&W Railroad, Inc.—Acquisition Exemption—Rail Lines of Union Pacific Railroad Company

D&W Railroad, Inc. (D&W), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire approximately 51.95 miles of rail line, including incidental trackage rights, known as the Waterloo Industrial Lead, from the Union Pacific Railroad Company (UP). The lines to be acquired are located in Black Hawk, Buchanan and Fayette Counties, IA, as follows (1) between milepost 332.0 at Dewar, IA, and milepost 354.3 at Oelwein, IA; (2) between milepost 245.58 and milepost 245.0 at Oelwein; (3) .32 miles of wye track at Oelwein; (4) 23 miles of yard track at Oelwein; and (5) incidental trackage rights over UP's track between milepost 332.0 at Dewar and milepost 326.2 at Linden Street, Waterloo, IA. D&W certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier.

D&E reported that the parties intend to consummate the transaction on or soon after September 26, 2003.

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 34402, *Iowa Northern Railway Company—Operation Exemption—Rail Lines of D&W Railroad, Inc.,* wherein Iowa Northern Railway Company seeks to operate the rail lines being acquired by D&W here.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34401, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Thomas F. McFarland, 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 1, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 03–25504 Filed 10–7–03; 8:45 am]

**BILLING CODE 4915–00–P**

# Corrections

**Federal Register**
Vol. 68, No. 195
Wednesday, October 8, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–879]**

### Antidumping Duty Order: Polyvinyl Alcohol from the People's Republic of China

*Correction*

In notice document 03–24899 beginning on page 56620 in the issue of October 1, 2003, make the following correction:

On page 56621, in the first column, in the table, under the heading "Margin (percent)", in the second entry, "7.86" should read "97.86".

[FR Doc. C3–24899 Filed 10–7–03; 8:45 am]

**BILLING CODE 1505–01–D**

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## COUNCIL ON ENVIRONMENTAL QUALITY

### National Environmental Policy Act Task Force

*Correction*

In notice document 03–24527 beginning on page 55954 in the issue of Monday, September 29, 2003, make the following correction:

On page 55955, in the first column, in the eighth line, "Pugel" should read, "Puget".

[FR Doc. C3–24527 Filed 10–7–03; 8:45 am]

**BILLING CODE 1505–01–D**

Federal Register

National Archives and Records Administration
1985

Wednesday,
October 8, 2003

## Part II

# Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Site Remediation; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

**[OAR 2002–0021; FRL–7549–3]**

**RIN 2060–AH–12**

## National Emission Standards for Hazardous Air Pollutants: Site Remediation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This action promulgates national emission standards for hazardous air pollutants (NESHAP) from site remediations. The final rule implements the Clean Air Act (CAA) section 112(d) to control hazardous air pollutants (HAP) emissions at major sources where remediation technologies and practices are used at the site to clean up contaminated environmental media (*e.g.*, soils, groundwaters, or surface waters) or certain stored or disposed materials that pose a reasonable potential threat to contaminate environmental media. Site remediations subject to the final rule are required to control emissions of organic HAP by meeting emissions limitations and work practice standards reflecting the application of maximum achievable control technology (MACT). The final rule applies to certain types of site remediation activities that are conducted at a facility where non-remediation sources are a major source of HAF emissions. Some site remediations already regulated by rules established under the Comprehensive Environmental Response and Compensation Liability Act (CERCLA) or the Resource Conservation and Recovery Act (RCRA) are not subject to the final rule.

The HAP emitted by site remediation activities can include benzene, ethyl benzene, toluene, vinyl chloride, xylenes, and other volatile organic compounds (VOC). The range of potential human health effects associated with exposure to these organic HAP and VOC include cancer, aplastic anemia, upper respiratory tract irritation, liver damage, and neurotoxic effects (*e.g.*, headache, dizziness, nausea, tremors).

**EFFECTIVE DATE:** October 8, 2003.

**ADDRESSES:** *Docket.* The official public docket is the collection of materials used in developing the final rule and is available for public viewing at the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** For information concerning applicability and rule determinations, contact your State or local representative or the appropriate EPA Regional Office representative. For information concerning the analyses performed in developing the final rule, contact Mr. Greg Nizich, Waste and Chemical Processes Group, Emission Standards Division (C439–03), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–3078, facsimile number (919) 541–0246, electronic mail (e-mail) address *nizich.greg@epa.gov.*

**SUPPLEMENTARY INFORMATION:** *Regulated Entities.* Categories and entities potentially regulated by this action include:

| Category | NAICS[1] | Examples of regulated entities |
|---|---|---|
| Industry | 325211, 325192, 325188, 32411, 49311, 49319, 48611, 42269, 42271. | Site remediation activities at businesses at which materials containing organic HAP currently are or have been in the past stored, processed, treated, or otherwise managed at the facility. These facilities include: organic liquid storage terminals, petroleum refineries, chemical manufacturing facilities, and other manufacturing facilities with co-located site remediation activities. |
| Federal Government | | Federal agency facilities that conduct site remediation activities to clean up materials contaminated with organic HAP. |
| State/Local/Tribal Government. | | Tribal governments that conduct site remediation activities to clean up materials contaminated with organic HAP. |

[1] North American Industry Classification System (NAICS) code. Representative industrial codes at which site remediation activities have been or are currently conducted at some but not all facilities under a given code. The list is not necessarily comprehensive as to the types of facilities at which a site remediation cleanup may potentially be required either now or in the future.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that we are now aware could potentially be regulated by this action.

A comprehensive list of NAICS codes cannot be compiled for businesses or facilities potentially regulated by the final rule due to the nature of activities regulated by the source category. The industrial code alone for a given facility does not determine whether the facility is or is not potentially subject to the final rule. The final rule may be applicable to any type of business or facility at which a site remediation is conducted to clean up media contaminated with organic HAP and other hazardous material. Thus, for many businesses and facilities subject to the final rule, the regulated sources (*i.e.*, the site remediation activities) are not the predominant activity, process, operation, or service conducted at the facility. In these cases, the industrial code indicates a primary product produced or service provided at the facility rather than the presence of a site remediation performed to support the predominant function of the facility. For example, NAICS code classifications where site remediation activities are currently being performed at some but not all facilities include, but are not limited to, petroleum refineries (NAICS code 32411), industrial organic chemical manufacturing (NAICS code 3251xx), and plastic materials and synthetics manufacturing (NAICS code 3252xx). However, we are also aware of site remediation activities potentially subject to the final rule being performed at facilities listed under NAICS codes for refuse systems, waste management, business services, miscellaneous services, and nonclassifiable.

To determine whether your facility is regulated by the action, you should carefully examine the applicability criteria in the final rule. If you have questions regarding the applicability of the final rule to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*Docket.* The EPA has established an official public docket for this action including both Docket ID No. A–99–20 and Docket ID No. OAR–2002–0021. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to the final rule. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

*Electronic Docket Access.* You may access the final rule electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in the above section. Once in the system, select "search," then key in the appropriate docket identification number.

*Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of the final rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final rule will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

*Judicial Review.* The NESHAP for site remediation was proposed on July 30, 2002 (67 FR 49398). Today's final rule announces the EPA's decision on the final rule. Under CAA section 307(b)(1), judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by December 8, 2003. Only those objections to the final rule which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under CAA section 307(b)(2), the requirements that are the subject of today's final rule may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

*Outline.* The information presented in this preamble is organized as follows:

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  C. What criteria are used in the development of the final rule?
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  B. What are the affected sources?
  C. What are my compliance options?
  D. What are the emissions limitations and work practice standards?
  E. What are the requirements for remediation material that is shipped off-site?
  F. What are the general compliance requirements?
  G. What are the initial compliance requirements?
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  I. National Technology Transfer Advancement Act
  J. Congressional Review Act

## I. Background

### *A. What Is the Statutory Authority for the Final Rule?*

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. Major sources of HAP are defined by CAA section 112(a)(1) as those sources that have the potential to emit greater than 10 tons per year (tpy) of any one HAP or 25 tpy of any combination of HAP. Area sources are stationary sources of HAP that are not major sources. The category of major sources covered by today's final NESHAP for site remediation, was listed on July 16, 1992 (57 FR 31576). We included site remediation on the source category list to address HAP emissions at major sources where remediation technologies and practices are used at the site to clean up contaminated environmental media (*e.g.*, soils, groundwaters, or surface waters) or certain stored or disposed materials that pose a reasonable potential threat to contaminate environmental media.

### *B. How Did We Develop the Final Rule?*

We proposed the Site Remediation NESHAP on July 30, 2002 (67 FR 49398). A 60-day public comment period (July 30, 2002 to September 30, 2002) was provided for the public to submit their comments on the proposed rule. Also, we offered to hold a public hearing to allow any interested persons to present their oral comments on the proposed rule. However, we did not receive a request from anyone to speak at the public hearing, so a public hearing was not held.

We received a total of 51 comment letters and e-mails regarding the proposed rule. Two commenters affiliated with the U.S. Department of the Navy independently submitted the same set of comments; and two commenters from the State of Alabama each submitted two separate and distinct sets of comments.

The final rule promulgated by this action reflects our full consideration of all the comments we received on the rule proposal. Our responses to all of the substantive public comments on the proposal are presented in the background information document (BID) titled, "National Emission Standards for Hazardous Air Pollutant (NESHAP) for Site Remediation: Background Information for Promulgated Standards." The BID is available in Docket No. OAR–2002–0021.

### *C. What Criteria Are Used in the Development of the Final Rule?*

Under CAA section 112(d), we are directed to establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires that each NESHAP reflect the maximum degree of reduction in emissions of HAP that is achievable for the source category or subcategory. This level of control is commonly referred to as the maximum achievable control technology (MACT).

The MACT floor is the minimum control level allowed for NESHAP and is defined under CAA section 112(d)(3). Establishing the MACT floor ensures that each standard is set at a level that assures that all major sources within a source category or subcategory achieve a level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in the applicable source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control achieved in practice by the best-controlled similar source. The MACT standards established for existing sources can be less stringent than standards for new sources, but the existing source standards cannot be less stringent than the average emissions limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

In developing NESHAP, we also consider control alternatives that are more stringent than the MACT floor. Section 112(d)(2) of the CAA allows us to establish standards that are more stringent than those that would be established by the MACT floor level based on the consideration of costs to achieve the emissions reductions, any health and environmental impacts, and energy requirements.

To determine MACT for the affected sources regulated by the Site Remediation NESHAP, we established at proposal that the MACT floor for existing affected sources associated with site remediation activities is some level of air emission control beyond no controls. Also, we decided to not compute an emission limitation statistically or identify specific control technology that represents the MACT floor for the site remediation sources because of the uniqueness of the site remediation source category, the extent of information available to us, and the complexities of gathering additional meaningful information (see 67 FR 49414–49415). Instead, we relied on provisions of CAA section 112(d)(2) that allow us to select MACT for a source category that is more stringent than the MACT floor.

We chose to select the MACT technology directly from alternatives beyond the MACT floor for each affected source type selected to be subject to the Site Remediation NESHAP. To do this, we looked at the types of air emission controls demonstrated to achieve control levels required under national air standards for sources similar to those sources that potentially may be associated with site remediations (particularly the NESHAP for Off-Site Waste and Recovery Operations under 40 CFR part 63, subpart DD, and the air standards for RCRA hazardous waste treatment, disposal, and facilities (TSDF) under subparts AA, BB, and CC in 40 CFR parts 264 and 265). Because the air emission controls needed to achieve the control levels required under the rules applicable to sources similar to those sources subject to the final Site Remediation NESHAP are now being implemented by facility owners and operators, we concluded that this demonstrates that these control levels are technically achievable, the costs are reasonable, and there are no adverse non-air quality health, environmental impacts, or energy requirements associated with the selected control levels.

Following proposal, we reviewed our data sources to determine the availability of additional information on air pollution controls currently in use for site remediation activities. No new data or information to update and supplement our original data were provided by commenters on the proposed rule. We concluded that our original database remains the best available source of information available to us. The control levels established by the emission limitation and work practices established by the final Site Remediation NESHAP are the same controls levels being implemented at similar sources subject to other NESHAP and related national air rules.

## II. Summary of Final Rule

The final rule amends 40 CFR part 63 by adding subpart GGGGG—National Emission Standards for Hazardous Air Pollutants for Site Remediation. At proposal, we received comments stating that the organization, reliance on presenting many rule requirements in an exclusively tabular format, and extensive cross-referencing to provisions in other subparts which we used for the proposed rule made it difficult to read and understand. We have written the final rule to reflect those comments. Many of the requirements that were presented exclusively in tables in the proposed rule have been moved back into the regulatory text of the final rule, and the applicable tables were deleted. While these editorial changes to the final rule make it appear substantially different from the proposed rule, most of the technical and administrative requirements remain the same as proposed.

### *A. Who Must Comply With the Final Rule?*

We have written the applicability requirements to clarify our intent as to what is a site remediation activity and how the final rule applies to these activities. You are subject to the final rule if you own or operate a facility that is a major source of HAP emissions and where a site remediation is conducted that meets the definitions and conditions specified in the final rule. Certain types of site remediations are explicitly exempted from being subject to the final rule.

#### Applicability Definitions and Conditions

In the final rule, we have added a new definition for the term "site remediation" and written our proposed definition of "remediation material" to clarify the final rule's applicability and to improve implementation of the final rule's requirements. Site remediation means one or more activities or processes used to remove, destroy, degrade, transform, immobilize, or otherwise manage remediation material, as defined in the final rule. Monitoring or measuring of contamination levels in media, whether by using wells, sampling, or other means, is not considered to be a site remediation.

We have written the definition of remediation material to clarify the term's meaning consistent with our intent that the final rule address HAP emissions from site remediations to clean up environmental media contaminated with HAP (*e.g.*, soils, groundwaters, surface waters), as well as clean up certain stored or disposed materials that contain HAP and pose a reasonable potential threat to contaminate environmental media. The final Site Remediation NESHAP is applicable to those site remediations that involve the cleanup of materials with the potential to emit the HAP we have listed in the final rule. Also, the revised definition of remediation material used in the final rule explicitly identifies two groups of materials considered to be remediation materials for the purpose of implementing the final rule.

Remediation material as defined for the final Site Remediation NESHAP must contain one or more of the HAP listed in Table 1 of the final rule. Table 1 of the final rule presents a list of 97 specific organic HAP compounds, isomers, and mixtures, and is the same list that we proposed with one correction. The compound 1–1 dimethyl hydrazine was incorrectly included on list published with the proposed rule, and this compound has been deleted from the list in the final rule. If your site remediation does not involve the cleanup of remediation material containing any of the HAP listed in Table 1 of the final rule, then you are not subject to the final Site Remediation NESHAP.

The first group of materials included in the definition of remediation material addresses air emissions from site remediations to clean up environmental media contaminated with HAP. These materials are found in environmental media such as soil, groundwater, surface water, and sediments, or a mixture of such materials with liquids, sludges, or solids which is inseparable by simple mechanical removal processes and is made up primarily of media. Our use of the term "media" for the final rule does not include debris as defined in 40 CFR 268.2.

The second group of materials included in the definition of remediation material addresses air emissions from site remediations to clean up materials containing HAP that are stored or disposed at a site and that pose a reasonable potential threat to contaminating environmental media. These are defined to be materials containing HAP that are found in intact or substantially intact containers, tanks, storage piles, or other storage units. Examples of these materials include solvents, oils, paints, and other volatile or semi-volatile organic liquids found in buried drums, cans, or other containers; gasoline, fuel oil, or other fuels in leaking underground storage tanks; and solid materials containing volatile or semi-volatile organics in unused or abandoned piles. We do not consider remediation material, for example, to include waste or residue generated by routine equipment maintenance activities performed at a facility such as tank bottoms and sludges removed during tank cleanouts; sludges and sediments removed from active wastewater treatment tanks, surface impoundments, or lagoons; spent catalyst removed from process equipment; residues removed from air pollution control equipment; and debris removed during heat exchanger and pipeline cleanouts. The removal and subsequent management of these types of waste and residue materials are not remediation activities, but instead, are good operating and maintenance practices that facility owners and operators perform to help sustain process and air pollution control equipment performance at the equipment's design specifications and to extend the equipment's service life.

Hereafter in this preamble, the term remediation material is used as defined in the final Site Remediation NESHAP. Not all site remediations to clean up remediation material are subject to the final Site Remediation NESHAP. Certain site remediations are explicitly exempted from being subject to the final rule. Of the site remediations not specifically exempted, only site remediations to clean up remediation material that meet both of the additional applicability conditions specified in the rule are subject to the final rule.

We have written the final rule to clarify the applicability conditions used to determine if your site remediation is subject to the final rule. These conditions have not changed from the proposed rule other than we have reworded the regulatory language to better describe the types of site remediations we intend the final rule to affect. If your site remediation is not included on the list of exempted site remediations in § 63.7881(b) of the final rule or you can qualify for the facility-wide small HAP content exemption in § 63.7881(c), then you make a determination of whether both of the applicability conditions specified in the final rule apply to your cleanup. If either of the applicability conditions do not apply to your cleanup, then your site remediation is not subject to the final Site Remediation NESHAP.

The first applicability condition is that a site remediation to clean up remediation material must be co-located with one or more stationary sources of HAP emissions within a contiguous area and under common control that meets an affected source definition specified for a source category that is regulated by another NESHAP in 40 CFR part 63. The re-wording of this condition in the final rule eliminated the need for the term "MACT activity" that was included in the proposed rule. That term no longer appears. This condition applies regardless of whether or not the non-remediation affected stationary sources at your site are subject to, or exempted from, the control standards under the applicable subpart. For example, if a site remediation is performed at a petroleum refinery subject to 40 CFR part 63, subpart CC—National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries, then a site remediation to clean up remediation materials conducted at the facility meets this applicability condition. If there are no stationary sources that meet this applicability condition at the facility where a site remediation is conducted, then you are not subject to the final rule.

We provided this condition to simplify the applicability determination process whereby an owner or operator of a site remediation with low HAP potential can easily determine that they are not subject to the Site Remediation NESHAP without having to estimate potential HAP emissions. This is a reasonable approach since we believe that remediation activities that are not collocated with a stationary source, or sources, meeting the affected source definition of another NESHAP would not be major sources by themselves. The one possible exception could be some CERCLA sites, which might themselves be major sources without regard for collocation with a major source, but these sites are exempt from the final rule.

The other applicability condition is that the facility at which you conduct a site remediation to clean up remediation material must be a major source, as defined in § 63.2 of the General Provisions to 40 CFR part 63. Your facility is a major source if it emits or has the potential to emit HAP above the threshold levels of 10 tpy for any single HAP and 25 tpy for any combination of HAP. All potential emissions of HAP from the entire facility (*i.e.*, both the remediation activity and all other facility activity) must be considered in making this calculation. It is also important to note that the determination of the major source status of a given facility is determined based on all HAP listed pursuant to CAA section 112(b) (*i.e.*, not just the HAP listed in Table 1 of the final Site Remediation NESHAP).

A source that is not a major source is an area source. If your HAP emission determination shows that when you conduct the site remediation your site will remain an area source (*i.e.*, the total potential HAP emissions from the existing sources at your site plus the estimated HAP emissions from the site remediation activities to be performed for the cleanup are less than the major source threshold levels), then your site remediation is not subject to the final Site Remediation NESHAP. If your site is currently an area source, but will become a major source when you conduct the site remediation, then your site remediation is subject to the final Site Remediation NESHAP. However, for this situation because of the uniqueness of this source category and the nature of the activities regulated by the final rule, there is a special exception to the "once in, always in" NESHAP policy as related to your facility's NESHAP compliance obligations.

Site Remediation Applicability Exemptions

The final rule does not apply to certain site remediations that are explicitly exempted, regardless of the organic HAP content of the remediation materials or the status of other stationary sources at the locations where these site remediations are conducted. In general, these exemptions apply to site remediation activities regulated under other Federal rules and requirements or which have special circumstances that make application of requirements under the final rule unnecessary or problematic. The exempted site remediations are listed in § 63.7881(b) of the final rule. The final Site Remediation NESHAP does not apply to CERCLA Superfund and RCRA corrective actions to clean up hazardous substances, hazardous wastes, and hazardous constituents. In short, we view the Superfund program under CERCLA and the hazardous waste corrective action program under RCRA as the functional equivalents of the establishment of MACT standards under CAA section 112. These programs, as part of the ROD process for Superfund cleanups and the RCRA permitting process for corrective action cleanups, require consideration of the same HAP emissions that we do in establishing MACT standards, and provide opportunity for public involvement in these site-specific remediation determinations. The RCRA and CERCLA statues apply more specifically to the remediation process than does MACT under the CAA and, unlike the CAA, authorize site specific means of dealing with remediation activities and their associated HAP emissions. Consequently, we are exempting these activities from the MACT standards promulgated in the final rule.

In response to comments on the proposed exemptions for site remediations to clean up contamination from units managing radioactive mixed waste, we collected additional information and reviewed the basis for the proposed exemption. Because the technical issues related to safety concerns for containers and other storage units managing radioactive mixed wastes do not apply to site remediation treatment unit process vents and equipment leaks, the final Site Remediation NESHAP limits the exemption for radioactive mixed waste to only remediation material management units (a term explained fully below). Remediation activities (that meet the final rule applicability criteria) to clean up radioactive mixed waste are subject to standards for treatment unit process vents and equipment leaks under the final Site Remediation NESHAP. Also, we have written the final rule language to clarify the applicability of this exemption to site remediations involved with the cleanup of radioactive mixed wastes. To be consistent with the definitions used in RCRA, mixed waste is defined in the final rule as waste that contains both hazardous waste subject to RCRA and either source, special nuclear, or byproduct material subject to the Atomic Energy Act of 1954. Also, an additional reference to the Waste Isolation Pilot Plant Land Withdrawal Act (Public Law 102–579) is added to the final rule exemption language to include the management of mixed transuranic waste within the scope of the exemption.

Finally, the final rule maintains the other exemptions we proposed. The final rule does not apply to a site remediation to clean up leaking underground storage tanks located at a gasoline service station. The final rule does not apply to any site remediation conducted at a farm or residential site. Also, the final rule does not apply to a site remediation conducted at a research and development facility that meets the requirements of CAA section 112(c)(7).

The final rule retains the proposed exemption for site remediations of short duration. However, this exemption has been modified from the proposed exemption to address public comments we received and to resolve potential issues regarding the practical implementation and enforcement of the exemption.

Under the short-term site remediation exemption, a site remediation at a facility subject to the final rule is not subject to the emissions limitations and work practice standards in the final Site Remediation NESHAP if the site remediation can be completed within 30 consecutive calendar days as determined from the day on which you actually begin work at the site to physically clean up the remediation materials. Certain administrative and site preparation activities you need to perform before you can physically begin the cleanup are not counted as part of this 30-day exemption period. These pre-activities consist of the following: activities you perform to characterize the type and extent of the contamination by collecting and analyzing samples, obtaining any permits required by State or local authorities to conduct the site remediation, scheduling workers and necessary equipment, and arranging for any contractor assistance in performing the site remediation. To qualify for the short-term site remediation exemption, you must prepare and maintain at your facility written documentation describing the exempted site remediation and listing the initiation and completion dates for the site remediation.

*B. What Are the Affected Sources?*

The final rule designates three types of affected sources subject to requirements under the final rule: process vents on in-situ and ex-situ remediation treatment processes; units used to manage remediation materials (called remediation material management units" in the final rule); and equipment leaks from pumps, valves, and other ancillary equipment associated with the remediation activities. The affected source designations in the final rule are the same as proposed.

The affected source for process vents is the entire group of process vents associated with the in-situ and ex-situ remediation processes used at your site to remove, destroy, degrade, transform, or immobilize hazardous substances in the remediation material. Examples of process vents for in-situ remediation processes include the discharge vents to the atmosphere used for soil vapor extraction and underground bioremediation processes. Examples of process vents for ex-situ remediation processes include vents for thermal desorption, bioremediation, and stripping processes (air or steam stripping).

The term remediation material management unit is used in the final rule to refer collectively to any tank, container, surface impoundment, oil-water separator, organic-water separator, or transfer system used to store, transfer, treat, or otherwise manage remediation material at the site. The affected source for remediation material management units is the entire group of tanks, surface impoundments, containers, oil-water separators, and transfer systems used for the site remediation activities involving clean up of remediation material.

The affected source for equipment leaks is the entire group of remediation equipment components (pumps, valves, etc.) that contain or contact remediation material having a total concentration of HAP listed in Table 1 of the final rule equal to or greater than 10 percent by weight, and are intended to operate for 300 hours or more during a calendar year.

### *C. What Are My Compliance Options?*

Each site remediation subject to the final Site Remediation NESHAP must meet the applicable standards specified in the final rule for the types of the affected sources associated with the site remediation unless the site remediation qualifies for an exemption provided in the final rule. Separate sets of standards are established for each of the affected source groups. These standards and exemptions were included in the proposed rule. A new section has been added to the final rule titled "General Standards" to better delineate and clarify the overall compliance options and exemptions allowed under the final rule for each affected source group.

#### Process Vents

The general standards for affected process vents describe three compliance options. The first compliance option is to control HAP emissions from the affected process vents to meet the facility-wide emissions limitations and associated work practice standards established in the final rule.

The second compliance option is to determine that the average total volatile organic HAP (VOHAP) concentration in the remediation material treated or managed by the process that is vented through the affected process vents is less than 10 parts per million by weight (ppmw). The determination of the VOHAP concentration is based on the concentration of organic HAP listed in Table 1 of the final rule using sampling and analysis procedures specified in the final rule. Affected process vents that meet this option are not subject to air pollution control requirements under the final rule.

The third compliance option is for process vents that are already using air pollution controls to comply with another subpart under 40 CFR part 61 or 40 CFR part 63. Under this option, you treat your remediation material in a process for which the HAP emissions from the affected process vent are controlled in compliance with the standards specified in the applicable subpart. This means you are complying with all applicable emissions limitations and work practice standards under the other subpart (*e.g.*, you install and operate the required air pollution control devices or have implemented the required work practice to reduce HAP emissions to levels specified by the applicable subpart). This provision only applies if the other subpart actually specifies a standard requiring control of HAP emissions from your affected process vents. It does not apply to any exemption of the affected source from using air pollution controls allowed by the other applicable subpart.

#### Remediation Material Management Units

The general standards for remediation material management units provide two compliance options that apply to all affected units. Two other compliance options are available to some affected remediation material management units that meet special conditions specified in the final rule.

The first compliance option available to all affected remediation material management units is to control HAP emissions from the affected remediation material management unit according to the emissions limitations and work practice standards specified in the final rule. Separate emissions limitations and work practice standards are established under the final rule for each type of remediation material management unit (*i.e.*, separate standards for tanks, separate standards for containers, etc.).

The second compliance option available to all affected remediation material management unit is to determine the average total VOHAP concentration of the organic HAP listed in Table 1 of the final rule that is contained in the remediation material. If the VOHAP concentration of the material is less than 500 ppmw, then the remediation material management units handling this material are not subject to the applicable emissions limitations and work practice standards established under the final rule. The VOHAP concentration determination is based on the organic HAP content of the remediation material at the "point-of-extraction" as measured or estimated using the procedures specified in the final rule. Point-of-extraction is a defined term in the final rule that means a point above ground where you can collect samples of a remediation material before or at the first point where organic constituents in the material have the potential to volatilize and be released to the atmosphere, and (in all instances) before placing the material in a remediation material management unit.

The final rule provides two other compliance options that apply to certain affected remediation material management units that operate under the special circumstances specified in the final rule. The first of these compliance options is available for any affected remediation material management unit also subject to another subpart under 40 CFR part 61 or 63. Under this option, you must control HAP emissions from the affected remediation material management unit in compliance with the standards specified in the applicable subpart. Implementation of this provision is the same as discussed above for process vents. The provision only applies to your affected remediation material management unit if the other subpart actually specifies a standard requiring control of organic HAP emissions from the same type of unit as your remediation material management unit (*i.e.*, if your affected remediation material management unit is a tank, then the other subpart must specify organic HAP emission control requirements for tanks). It does not apply to any exemption of the affected source from using air pollution controls allowed by the other applicable subpart (*e.g.*, if the other subpart exempts tanks with capacities less 10,000 gallons from the control requirements, that exemption does not apply to the affected tanks you use for your site remediation activities).

A final compliance option is available for a remediation material management unit that is an open tank or surface impoundment and is used for a biological treatment process. Under this compliance option, you must demonstrate that the treatment process meets one of HAP biodegradation or removal levels specified in the final rule.

The final rule includes a special site-specific exemption for remediation material management units that manage materials with small quantities of the organic HAP listed in Table 1 of the final rule. Due to the nature of the media contamination or other site-specific circumstances, the cleanup at a site may require use of specialized or custom equipment that meets the definition of a remediation material management unit under the final rule but this equipment's design or configuration makes it technically problematic or very expensive to install and operate the air pollution controls required under the final rule for the particular type of remediation material management unit. Therefore, the final rule provides for a site-specific exemption from the applicable emissions limitations and work practice standards under the final rule to allow use of these remediation material management units in situations where the potential for HAP emissions is relatively low. A remediation material management unit can be exempted from the applicable emissions limitations and work practice standards under the final rule provided that the owner or operator determines that the total annual quantity of the organic HAP listed in Table 1 of the final rule that is contained in the remediation material placed in the unit remains at a level less than 1 Mg/yr.

### Equipment Leaks

Under the final rule, you must control HAP emissions from equipment leaks from each equipment component that contains or contacts remediation material having a total concentration of the organic HAP listed in Table 1 of the final rule equal to or greater than 10 percent by weight, and are intended to operate for 300 hours or more during a calendar year. Control of these emissions is achieved by implementing a leak detection program and installing equipment.

## *D. What Are the Emissions Limitations and Work Practice Standards?*

The emissions limitations and work practice standards established by the final Site Remediation NESHAP remain essentially the same as proposed. The standards are the same for existing, reconstructed, and new sources.

### Process Vents

The process vent standards are the same regardless of whether the process is an in-situ or ex-situ treatment process. These standards apply to the entire group of affected process vents associated with all of the treatment processes used for your site remediation.

The first option is to reduce emissions of total organic HAP emissions listed in Table 1 of the final rule from all affected process vents at the facility to a level less than 1.4 kilograms per hour (kg/hr) and 2.8 Mg/yr, which is approximately 3.0 pounds per hour (lb/hr) and 3.1 tpy, respectively. You must achieve both the hourly and annual mass emissions limits to comply with this option under the final rule. If the total organic HAP emissions from all affected process vents associated with your site remediation exceed either the hourly or annual mass emissions limitations, then you must use appropriate controls to reduce the emission levels to comply with the emissions limits. If you can meet both the hourly and annual mass emissions limits using no controls, or with federally-enforceable controls, then no additional controls are required under the final rule for your affected process vents.

If you choose, you may demonstrate compliance with the hourly and annual emission limits based on total organic compounds (TOC) minus methane and ethane in place of total organic HAP. Because your compliance determinations based on TOC will be simpler and less expensive than if you use total organic HAP, it may be advantageous for your particular site-specific conditions to choose to comply with the emission limits based on TOC.

As an alternative, you may comply with an emission limit that requires that you reduce the total organic HAP emissions listed in Table 1 of the final rule from all of the affected process vents by at least 95 weight percent. Again, you may demonstrate compliance with this emission limit using TOC emissions (minus methane and ethane) in place of using total organic HAP emissions. At sites with multiple affected process vent streams, you may comply with this option by a combination of controlled and uncontrolled process vent streams that achieve the 95 percent reduction standard on an overall mass-weighted average. You may exclude certain low flow and low HAP concentration process vent streams explicitly specified in the final rule from the percent reduction calculation. Under this option, you must meet the operating limit and work practice standards specified in the final rule for each control device and closed vent system used to control your process vent streams.

### Remediation Material Management Units

The air pollution control requirements for remediation material management units in the final Site Remediation NESHAP are based on using the applicable national emission standards established in other subparts of 40 CFR part 63 for specific types of equipment whenever available and appropriate to do so for this source category. For applications where appropriate NESHAP are not included in the final Site Remediation NESHAP, we have relied on establishing air emission control requirements that are consistent with the requirements under 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations. Subpart DD applies to facilities that are major sources of HAP; receive wastes, used oils, or used solvents generated at off-site locations; and manage and treat these materials in units and processes collectively referred to as off-site waste and recovery operations (OSWRO). The final rule has been written to directly cross-reference the appropriate subparts of 40 CFR part 63.

*Tanks.* Under the final rule for those tanks managing remediation materials with a maximum HAP vapor pressure of the remediation material less than 76.6 kPa and required to meet the air emission control requirements, you must achieve the applicable level of control (Tank Level 1 or Tank Level 2) determined by the tank design capacity and the maximum HAP vapor pressure of the remediation material placed in the tank. For each tank required to use Tank Level 1 controls, you must use a fixed roof according to the requirements in 40 CFR part 63, subpart OO—National Emission Standards for Tanks—Level 1. For each tank required to use Tank Level 1 controls, you may also comply with the final rule by using Tank Level 2 controls if you choose to do so. For each tank required to use Tank Level 2 controls, you must comply with one of five compliance options: use a fixed roof with an internal floating roof, use an external floating roof, use a fixed roof vented to a control device, use a pressurized tank that operates as a closed system during normal operations, or locate an open tank inside a permanent total enclosure that is vented to a control device.

The final rule requirements for the Tank Level 2 internal and external floating roof control option requirements have been revised since proposal by replacing the cross-reference to the floating roof requirements in the 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations with a cross-reference to the floating roof control requirements in 40 CFR part 63, subpart WW—National Emission Standards for Storage Vessels (Tanks)—Control Level 2. The requirements for floating roofs in both rules are essentially the same. This change was made to be consistent with our format changes to the final Site Remediation NESHAP to directly cross-reference the applicable control requirement where applicable to and appropriate for the type of remediation material management units (in this case tanks) regulated by the final rule.

We stated at proposal that the basis for the selection of tank control requirements in the final Site Remediation NESHAP is the tank control requirements in the 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations (67 FR 49415). We inadvertently omitted from the version of proposed Site Remediation NESHAP published in the **Federal Register** the tank control requirements for tanks managing remediation materials with a maximum HAP vapor pressure of 76.6 kPa or greater included under 40 CFR part 63, subpart DD. For the final rule, we have corrected this omission and have added to the air pollution control requirements for tanks managing these remediation materials. The controls required under the final Site Remediation NESHAP are the same requirements in 40 CFR part 63, subpart DD. Tanks managing remediation materials with a maximum HAP vapor pressure of 76.6 kPa or greater use one of the Tank Level 2 control options other than a floating roof.

*Containers.* The final rule establishes emissions limitations and work practice standards to control organic HAP emissions from containers having a design capacity greater than 0.1 cubic meters (approximately 26 gallons). For those containers required to use air pollution controls, you must achieve the applicable level of control determined by the container design capacity, the organic content of the remediation material in the container, and whether the container is used for a waste stabilization process. You must comply with the specified requirements for the applicable control level in 40 CFR part 63, subpart PP—National Emission Standards for Containers.

*Surface impoundments.* For each surface impoundment required to use air pollution controls, you must use a floating membrane cover or a cover vented to a control device according to the requirements in 40 CFR part 63, subpart QQ—National Emission Standards for Surface Impoundments.

*Separators.* For each oil-water or organic-water separator required to use air pollution controls, you must use a fixed roof, use a floating roof, vent emissions to a control device, or use a pressurized separator according to the requirements in 40 CFR part 63, subpart VV—National Emission Standards for Oil-Water and Organic-Water Separators.

*Transfer systems.* For each individual drain system required to use air pollution controls, you must comply with the requirements in 40 CFR part 63, subpart RR—National Emission Standards for Individual Drain Systems. For an affected transfer system other than individual drain systems, you are required to comply with one of three options: use covers, use continuous hard-piping, or use an enclosure vented to a control device.

*Closed Vent Systems and Control Devices.* In final Site Remediation NESHAP we have added a separate series of sections (§§ 63.7925 through 63.7928) that specify in one part of the final rule all of the emissions limitations and work practice standards that apply to each closed-vent system and control device you use to meet the requirements in another section of the final rule. The same requirements for closed-vent systems and control devices that we proposed are now presented in these sections. Each control device you use to meet requirements under the final Site Remediation NESHAP (with the exception of the facility-wide process vent emission limits) must reduce emissions of total organic HAP listed in Table 1 of the final rule or the emissions of TOC (minus methane and ethane) by 95 percent by weight. If a combustion control device is used (thermal incinerator, catalytic incinerator, boiler, or process heater), a second compliance option available to you is for the control device to reduce the concentration of total HAP listed in Table 1 of the final rule or TOC (minus methane and ethane) to 20 parts per million by volume (ppmv) or less on a dry basis corrected to 3 percent oxygen. All control devices you use to meet requirements under the final rule (including any control devices you use to meet the facility-wide process vent emission limits) must meet operating limits for each type of control device and work practice standards for closed vent systems and certain types of control devices.

In addition, we have added to the final rule several more control device compliance options that are under 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations for emissions vented to a boiler, process heater, or fuel system but was not included in the proposed Site Remediation NESHAP. Under these compliance options, as an alternative to complying with the 95 percent reduction requirement for control devices, you may comply with any of the following work practice standards: introduce the vent stream into the flame zone of the boiler or process heater and maintain the conditions in the combustion chamber at a residence time of 0.5 seconds or longer and at a temperature of 760°C or higher, or introduce the vent stream with the fuel that provides the predominant heat input to the boiler or process heater (*i.e.*, the primary fuel), or introduce the vent stream to a boiler or process heater for which you either have been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H—Hazardous Waste Burned in Boilers and Industrial Furnaces; or has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

### Equipment Leaks

The final rule establishes work practice standards to control organic HAP emissions from leaks in pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, flanges and other connectors, and product accumulator vessels that either contain or contact a regulated material that is a fluid (liquid or gas) and has a total concentration of the organic HAP listed in Table 1 of the final rule equal to or greater than 10 percent by weight. These work practice and equipment standards do not apply to equipment that operates less than 300 hours per calendar year. You have the option of complying with the provisions of either 40 CFR part 63, subpart TT—National Emission Standards for Equipment Leaks—Control Level 1 or 40 CFR part 63, subpart UU—National Emission Standards for Equipment Leaks—Control Level 2. Both of these subparts require you to implement a leak detection and repair program (LDAR) and to make certain equipment modifications.

### *E. What Are the Requirements for Remediation Material That Is Shipped Off-Site?*

Under the final rule, where remediation material that will be required to be managed in either remediation material management units or treatment processes equipped with process vents is shipped to an off-site facility, you may need to meet certain requirements before transferring the material and maintaining records for the transferred materials. We have written the final regulatory language for the requirements for transfer of remediation wastes to reflect our original objective in establishing the requirements. Also, we have simplified the reporting and recordkeeping requirements in the final rule related to some off-site transfers of remediation materials. Finally, we have included in the final rule an explicit provision stating that the acceptance by a facility owner or operator of remediation material from a site remediation subject to the final Site Remediation NESHAP does not, by itself, require the facility owner or operator to obtain a title V permit.

### *F. What Are the General Compliance Requirements?*

Under the final rule, you must meet each applicable emission limitation and work practice standard in the final rule at all times, except during periods of startup, shutdown, and malfunction. You must develop and implement a written startup, shutdown, and malfunction plan for your site remediation according to the provisions of 40 CFR 63.6(e)(3). You also must develop and implement a site-specific monitoring plan for each continuous monitoring system required by the final rule. The plan must address installation location, performance and equipment specifications, and procedures for performance evaluations, operation and maintenance, data quality assurance, and recordkeeping and reporting. We have deleted the proposed operation and maintenance requirements for continuous parameter monitoring systems from the final rule. We are planning to develop and promulgate a single set of operation and maintenance requirements for continuous parameter monitoring systems applicable to all NESHAP under 40 CFR part 63.

### *G. What Are the Initial Compliance Requirements?*

Initial compliance with the emissions limitations and work practice standards for process vents is achieved by demonstrating compliance with the selected set of emission limits (*i.e.*, mass emission limit or percent reduction). If a control device is used to achieve compliance with the emission limits, you also must establish your operating limits for the control device based on the values measured during the performance test or determined by the design evaluation.

Initial compliance with the emissions limitations and work practice standards for remediation material management units is achieved by demonstrating that the unit meets all applicable air emission control requirements for the unit. If a control device is used, initial compliance is determined by either: performing a performance test according to 40 CFR 63.7 and using specific EPA reference test methods, or performing a design evaluation according to procedures specified in the final rule. You also must establish your operating limits for the control device based on the values measured during the performance test or determined by the design evaluation.

### *H. What Are the Continuous Compliance Provisions?*

To demonstrate continuous compliance with the applicable emissions limitations and work practice standards under the final rule, you must perform periodic inspections and continuous monitoring of certain types of air pollution control equipment you use to comply with the final rule. In those situations when a deviation from the operating limits specified for a control device is indicated by the monitoring system or when a damaged or defective component is detected during an inspection, you must implement the appropriate corrective measures.

To demonstrate continuous compliance with an emission limitation for a given affected source, you must continuously monitor air emissions or operating parameters appropriate to the type of control device you are using to comply with the standard, and keep a record of the monitoring data. Compliance is demonstrated by maintaining each of the applicable parameter values within the operating limits established during the initial compliance demonstration for the control device.

There are different requirements for demonstrating continuous compliance with the work practice standards, depending on which standards are applicable to a given affected source. To ensure that the control equipment used to meet an applicable work practice standard is properly operated and maintained, the final rule requires that you periodically inspect and monitor this equipment.

### *I. What Are the Notification, Recordkeeping, and Reporting Requirements?*

The final rule requires that you keep records and file reports consistent with the notification, recordkeeping, and reporting requirements in 40 CFR part 63, subpart A. Two basic types of reports are required: initial notification and semiannual compliance reports. The initial notification report advises the regulatory authority of applicability for existing sources or of construction for new sources.

The initial compliance report demonstrates that compliance has been achieved. This report contains the results of the initial performance test or design evaluation, which includes the determination of the reference operating parameter values or range and a list of the processes and equipment subject to the standards. Subsequent compliance reports describe any deviations of monitored parameters from reference values; failures to comply with the startup, shutdown, and malfunction plan (SSMP) for control devices; and results of LDAR monitoring and control equipment inspections.

Records required under the proposed standards must be kept for 5 years, with at least the 2 most recent years being kept on the facility premises. These records include copies of all reports that you have submitted to the responsible authority, control equipment inspection records, and monitoring data from control devices demonstrating that operating limits are being maintained. Records from the LDAR program and storage vessel inspections, and records of startups, shutdowns, and malfunctions of each control device are needed to ensure that the controls in place are continuing to be effective.

### *J. What Are the Compliance Deadlines?*

Each affected source associated with a site remediation is an existing source if you commenced construction or reconstruction of the source before July 30, 2002. Each affected source associated with a site remediation is a new source if you commenced construction or reconstruction of the affected source on or after July 30, 2002. An affected source is reconstructed if it meets the definition of "reconstruction" in 40 CFR 63.2.

Existing sources associated with a site remediation subject to the final Site Remediation NESHAP must comply with the final rule requirements by October 9, 2006. New sources, with the exception of those new sources managing remediation material that is a radioactive mixed waste, must be in compliance with the final rule requirements on the final rule's effective date or, if it is not yet operational, upon initial startup of the source.

Under the final Site Remediation NESHAP, remediation activities (which meet the final rule applicability criteria) that clean up radioactive mixed waste are subject to standards for treatment unit process vents and equipment leaks. If you have a new affected source that manages remediation material that is a radioactive mixed waste, and its initial startup date is on or before October 8, 2003, you must be in compliance with the final rule requirements no later than October 9, 2006. If the affected source's initial startup date is after October 8, 2003, you must be in compliance with the final rule requirements upon initial startup.

*K. How Does the "once in, always in" Policy Apply?*

We explained at proposal why site remediation is a unique source category (see 67 FR 49400–49401). Because of its uniqueness, we specifically evaluated how the final Site Remediation NESHAP could be implemented within the framework of our existing policies for implementing the MACT standards promulgated under CAA section 112. Our "once in, always in" policy is that once a facility or source is subject to a MACT standard, it remains subject to that standard as long as the affected source definition or criteria are met. In the preamble to the proposed rule, we discussed our decision that the once in, always in policy should not apply to the site remediation source category for those facilities that are area sources prior to and after, but not during, the cleanup activity. We received many public comments supporting this decision. We are reiterating here how we will apply the once in, always in policy to facilities that conduct site remediations in situations where a facility is an area source prior to the remediation activity, but where addition of the potential HAP emissions from the remediation activities increases the facility's potential to emit (PTE) to levels such that the facility exceeds the 10 or 25 ton HAP thresholds for a major source.

Because the facility is then a major source of HAP, another operation at the facility, such as a manufacturing process, would be subject to NESHAP for other source categories located at their facility. Furthermore, after the remediation is completed, the facility would, in terms of potential emissions, essentially be back to where it was as an area source (assuming no change in the facility plant operations). Under the once in, always in policy, the facility would remain subject to the NESHAP that was triggered by the limited duration change of source status from area to major brought about by the increase in PTE from the site remediation activity.

In the situation described above, the once in, always in policy would create an obvious disincentive for owners or operators to engage in site remediations, particularly since voluntary remediation would be affected by the final rule. Our intent is to not adopt requirements that create incentives to avoid a cleanup or result in the selection of less desirable or less protective remediation approaches. Therefore, we have determined that the once in, always in policy does not apply where a facility's status changes from area source to major source, solely as a result of remediation activities regulated by the Site Remediation NESHAP, where the facility returns to area source status after the cleanup activity.

## III. Responses to Major Comments on Proposed Rule

Our responses to all of the substantive public comments on the proposal are presented in the BID which is available in Docket No. OAR–2002–0021.

*A. Why Are We Promulgating NESHAP To Regulate HAP Emissions From Site Remediation Activities?*

*Comment:* Several commenters disagreed with our decision to establish a NESHAP regulating HAP emissions from site remediation activities. The commenters argued that such a NESHAP is not needed for several reasons: the level of HAP emissions from the sources that would be subject to the final rule is too low to warrant regulation by a NESHAP, adequate air emissions controls already are imposed at sites subject to risk assessment, and a NESHAP discourages site owners and operators from initiating and conducting voluntary cleanups.

*Response:* Section 112 of the CAA requires that we establish MACT standards for the control of HAP from both new and existing major sources of HAP. Section 112(a)(1) defines a "major source" as "* * * any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. * * *" We have codified essentially this same definition into § 63.2 of the General Provisions to part 63. We have long interpreted this definition as requiring that all sources of HAP within a plant site must be aggregated, so long as the sources are geographically adjacent and under common control (see *e.g.*, 59 FR 12412, March 16, 1994). This interpretation was sustained by the court in *National Mining Ass'n* v. *EPA*, 59 F. 3d 1351, 1355–1359 (D.C. Cir. 1995). A consequence, then, is that sources of HAP which are part of a major source, but which would not themselves (viewed separately) be major sources, are still classified as major sources and are subject to the requirements of CAA section 112(c) and (d), which command us to list all categories of major sources and establish technology-based standards for those sources. The result, for purposes of site remediation activities, is that all such remediations conducted at locations which, taken as a whole are major sources, are themselves required to be controlled by MACT standards in the final rule.

We determined that there are major sources of HAP where site remediations are now being conducted or may be conducted in the future to clean up contaminated environmental media or certain stored or disposed materials that pose a reasonable potential threat to contaminate environmental media. The levels of HAP emissions from remediation activities at a given cleanup site depend on a combination of site-specific factors including the type of remediation processes used and activities conducted; the quantity, HAP composition, and other characteristics of the remediation material; and the time required to complete the cleanup. We recognize that at some cleanup sites the levels of HAP emissions from the remediation activities will be low. However, at other cleanup sites the potential level of HAP emissions from the remediation activities can be substantial and appropriate air pollution controls are needed to protect public health and the environment.

We already have established requirements under our RCRA hazardous waste corrective action and CERCLA Superfund programs which address the air emissions from certain remediation activities based largely on site-specific risk assessments. However, these requirements do not apply universally to all site remediations with the potential to emit HAP. There are site remediations not subject to these federally-enforceable requirements. To meet our congressional directive under CAA section 112, we are promulgating the final Site Remediation NESHAP applicable to those site remediations not subject to federally-enforceable requirements that will effectively control HAP emissions.

Finally, the fundamental objective of a site remediation is to mitigate a detected risk to public health or the environment by successfully completing the cleanup of media or other materials at the site that is contaminated by a hazardous substance. It is commendable when a site owner or operator voluntarily initiates and conducts a cleanup. However, the fact that a cleanup is being conducted voluntarily as opposed to being conducted to comply with a Federal or State regulatory requirement or fulfill a court directive does not obviate or excuse the use of appropriate air pollution controls to those site remediation activities with the potential to emit substantial quantities of HAP.

### *B. How Did We Select the HAP To Be Regulated by the Final Rule?*

*Comment:* Several commenters requested that we reconsider our selection of which HAP are regulated under the final rule to include metals and inorganic compounds listed as HAP. In particular, the commenters stated that beryllium and other heavy metals should be included because these HAP cause harm to public health and welfare. Other commenters supported our decision not to regulate remediation activities that emit metal HAP or other inorganic HAP. One commenter stated that the final rule should be based on a HAP list developed specifically for site remediation instead of using the list under 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

*Response:* A site remediation potentially could be required at any of a wide variety of industrial facilities, manufacturing plants, waste treatment and disposal facilities, and other types of sites. Consequently, the contaminating substances at a site requiring cleanup could be any of the organic, metal, or inorganic chemicals or groups of chemicals that are listed as HAP pursuant to CAA section 112(b). However, some of these contamination substances that are also listed as HAP have no or minimal potential to be emitted to the atmosphere from the site remediation activities performed at the site to clean up the contamination (notwithstanding that metal and other inorganic HAP may be present in the material being remediated).

In developing the proposed Site Remediation NESHAP, we considered all of the HAP listed pursuant to CAA section 112(b) for regulation by the proposed rule (see 67 FR 49413). Based on the information available to us at proposal regarding the cleanup of media contaminated with metals or other inorganic HAP, many of the remediation techniques used for these cleanups do not release the metals or inorganic HAP to the atmosphere. In cases where remediation material containing a metal or inorganic HAP is burned in an incinerator or other combustion unit, the combustion unit must already meet air standards under the CAA and RCRA that limit organic, particulate matter, metals, and chloride emissions. Therefore, we concluded that metals and other inorganic compounds listed as HAP pursuant to CAA section 112(b) do not need to be regulated by the final Site Remediation NESHAP. We specifically requested comment at proposal on our conclusion. We received some additional information from commenters supporting our decision not to include any metal or inorganic HAP on our list of regulated HAP for the final Site Remediation NESHAP. We received no information from commenters to support a determination that metal or inorganic HAP are being emitted from site remediation activities. Therefore, we continue to believe that metal and other inorganic compounds HAP do not need to be addressed by the final Site Remediation NESHAP.

In selecting the organic HAP to be regulated by the final Site Remediation NESHAP, we chose at proposal to be consistent with the approach we used for under 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations as well as other NESHAP promulgated for source categories with large diversity in the organic chemical constituents present in the materials managed at any given facility. Under this approach, a specific list of pollutants is selected that reasonably ensures MACT control of the organic HAP emitted from the source. We used this approach to develop the HAP list for under 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations by evaluating each chemical or chemical group listed as a HAP in CAA section 112(b) with respect to its potential to be emitted from a waste management or recovery operation (see 59 FR 1921).

Subpart DD under 40 CFR part 63 does not apply to OSWRO sources managing wastes received from site remediations. However, the data base that we used to select the list of HAP for subpart DD under 40 CFR part 63 included remediation wastes sent to hazardous waste TSDF. We concluded that this data base is also representative of the range of organic HAP chemicals having the potential to be emitted from the sites requiring cleanup of media contaminated with volatile or semi-volatile organics and other remediation material. Therefore, we proposed that same list of organic HAP used for the subpart DD under 40 CFR part 63 also be used for the final Site Remediation NESHAP. We requested comment at proposal regarding the use of this list of organic HAP for the final Site Remediation NESHAP. We received no new data from commenters, and have not ourselves found additional data since proposal to cause us to alter our conclusion. These data are the best information available representative of the range of organic HAP chemicals having the potential to be emitted from site remediation activities, and that it is most appropriate to use also the HAP list from subpart DD under 40 CFR part 63 for the Site Remediation NESHAP.

When we developed the HAP list for subpart DD under 40 CFR part 63, we evaluated each organic chemical or chemical group listed as a HAP in CAA section 112(b) with respect to its potential to be emitted from a waste management or recovery operation (see 59 FR 51921). The criteria used to characterize and evaluate emission potential was based on a chemical constituent's Henry's law constant, evaluation of the aqueous and organic volatility characteristics of the chemical, and the ability of the analytical test methods to quantitate the chemical. Based on our evaluation, we developed the list of specific organic HAP compounds or compound groups to be regulated under the final rule (Table 1 in subpart DD under 40 CFR part 63). We later decided to delete eight chemicals from our initial list because we concluded that there is low potential for these compounds to be emitted from OSWRO (see 61 FR 34153). Dimethyl hydrazine was one of the eight compounds we removed from the list. Table 1 in the proposed Site Remediation NESHAP inadvertently included dimethyl hydrazine as one of the regulated HAP. We have corrected Table 1 in the final Site Remediation NESHAP to accurately reflect our intent by deleting dimethyl hydrazine from the list.

### *C. How Do We Define Site Remediation in the Final Rule?*

*Comment:* Commenters expressed the concern that, as proposed, the final rule applicability provisions are unclear and circular. Several commenters requested that we clearly define the term "remediation" or the remediation activities subject to the final rule. Commenters also stated that routine waste management activities (*e.g.*, tank clean-outs, removing spent catalyst from reactors, cleaning heat exchangers and other piping, etc.) are not site remediation activities and should be distinguished from site remediation activities subject to the final rule.

*Response:* We have written the regulatory language in the applicability section of the final rule to clarify our intent as to what is a site remediation for the purpose of implementing the Site Remediation NESHAP. The basis for all of our revisions to the proposed rule is consistency with our intent that the final rule address HAP emissions from activities to clean up environmental media contaminated with HAP as well as clean up certain stored or disposed materials at a site that contain HAP and pose a reasonable potential threat to contaminating environmental media. It was never our intention that the final rule be interpreted to apply to activities at a facility required for management of waste generated by routine equipment maintenance activities or other types of activities necessary to continue day-to-day operations at a facility.

### *D. Why Does the Final Rule Not Apply to CERCLA Superfund and RCRA Corrective Action Cleanups?*

*Comment:* We received comments supporting our proposal that site remediations conducted for CERCLA Superfund and RCRA corrective action cleanups not be subject to the final Site Remediation NESHAP. These commenters believe that these RCRA and CERCLA cleanup programs do have appropriate provisions which provide for the protection of public health and the environment from air pollutants emitted from site remediation activities on a site-specific basis. Other commenters opposed the exclusion of these site remediations from being subject to the final Site Remediation NESHAP because they assert that neither of the RCRA and CERCLA programs have air emission standards for site remediation activities and that the requirement of CAA section 112 is to establish NESHAP for HAP emissions from these activities. Among other things, such control could address any regulatory gaps in RCRA and CERCLA requirements.

*Response:* The RCRA hazardous waste corrective action and CERCLA Superfund programs do not establish national air standards for site remediations. These programs, however, do have provisions which provide for the protection of public health and the environment from air pollutants emitted from these activities on a site-specific basis. As we stated at proposal, the established Federal requirements provide an appropriate and effective regulatory approach to address air emissions from those remediation activities performed under CERCLA authority as a remedial action or a non-time critical removal action, or under RCRA authority at permitted or Federal Order RCRA corrective action sites.

The Superfund program is designed to protect public health and the environment while providing the flexibility to use effective and innovative remediation approaches that best suit the site-specific conditions at each CERCLA site (CERCLA section 121). The Superfund program conducts extensive evaluation of the contamination at each CERCLA site (see 40 CFR 300.430). As part of the evaluation process, a decision document (*i.e.*, Record of Decision (ROD)) is developed for response actions, documenting the extent of contamination and the cleanup method(s) to be used at the site. Under this process, a site-specific analysis, considering the impacts to air, soil and groundwater, is conducted and an appropriate remedy is selected. During the ROD process, the general public is given the opportunity for input in the decision-making process through public hearings and submission of written comments. The public plays an important role in identifying and characterizing site-specific factors, such as the type of contaminants, the level and extent of contamination and other site-specific factors. We believe this procedure results in selection of the best plan for cleaning up each site and achieving the program's goals.

As implemented under the requirements of RCRA, hazardous waste treatment, storage and disposal facilities must obtain a permit specifying requirements for managing hazardous waste. As a condition of obtaining this permit, facilities are required to undertake corrective action addressing releases of hazardous waste and hazardous constituents from units at the facility which do not themselves require RCRA permits (solid waste management units) (RCRA section 3004(u)). For such designated contamination areas at TSDF, requirements for the cleanup of the contamination are included in the facility's RCRA permit, or Federal Order where applicable. Such cleanup activities are known as "corrective actions." Although RCRA is a separate program from Superfund, the RCRA permitting or Federal Order process for TSDF share several significant characteristics with Superfund cleanup activities at CERCLA sites. First, it is also the intent of the RCRA corrective action program to protect public health and the environment while allowing flexibility in choosing solutions to eliminate or reduce site contamination. Second, RCRA permitting and Federal Order procedures involve the public in the decision-making process through informal public meetings, public hearings or written comment. Finally, an extensive site-specific evaluation is performed at the RCRA facility to evaluate the extent of the contamination, while considering appropriate remedies through a multi-media (*i.e.*, air, soil, groundwater) perspective (see 67 FR 49406 for additional explanation).

### *E. Why Does the Final Rule Potentially Apply to State and Voluntary Cleanup Programs?*

*Comment:* Many commenters requested that in addition to CERCLA Superfund and RCRA corrective action cleanups, that other cleanups conducted under Federal or State oversight not be subject to the final rule, where such cleanups are conducted following CERCLA or RCRA requirements. The commenters argued that these cleanups conducted under State Superfund, Brownfield, voluntary cleanup, or other similar programs are subject to emissions controls and requirements that are substantially similar to those in the CERCLA or RCRA programs.

*Response:* The final Site Remediation NESHAP applies only to site remediations that meet the three applicability conditions specified in the final rule. We have determined that site remediations at those sites that meet these applicability conditions warrant the implementation of air pollution controls to reduce the emission of organic HAP to the atmosphere. As discussed in our previous response, we are exempting from the final rule requirements those sites that meet the final rule applicability conditions where the site remediations are conducted for CERCLA (Superfund) or RCRA corrective action cleanups. This includes the site remediations in one of 39 States that the EPA has authorized to oversee cleanups at TSDF under RCRA corrective action. Site remediations administered under these federally-enforceable programs address the organic HAP emissions from the site remediations on a site-specific basis.

The overall objective of any site remediation, whether it be a Federal required, State required, or voluntary cleanup, is to remove the threat to human health and the environment posed by the presence of hazardous substances in the contaminated media and wastes that can potentially contaminate the media at the site. However, the actions taken at a given contamination site that remove the hazardous substances from water or soil by transferring those substances to the air is not in the best interest of protecting human health and the environment from exposure to these hazardous substances. Unlike CERCLA or RCRA corrective action cleanups, State regulatory and voluntary cleanup programs are not uniform on a national basis, any requirements imposed on a given site remediation are not federally-enforceable by the EPA, and the programs may not specifically address site remediation air emissions. For these reasons, we cannot view these activities as the functional equivalent of MACT, and, therefore, we cannot justify extending the same exemption we provide for CERCLA Superfund or RCRA corrective action cleanups to site remediations conducted for State regulatory and voluntary cleanup programs. Therefore, we are maintaining the applicability of the final rule to those site remediations conducted for State regulatory and voluntary cleanup programs where the site remediation meets the applicability conditions specified in the final rule.

### *F. How Does the Final Rule Apply to Cleanups of Leaking Underground Storage Tanks?*

*Comment:* Many commenters agreed with the decision to modify the site remediation source category listing to exclude remediation activities at leaking underground storage tanks (UST) located at gasoline service stations. However, commenters argued that because the types, sizes and purpose of UST used for the storage of motor fuels or heating oils at all types of commercial and industrial properties are comparable to those located at gasoline service stations, then remediation activities associated with any UST contamination cleanups regardless of location also should not be subject to the Site Remediation NESHAP.

*Response:* The rationale for our decision to modify description for the site remediation source category to exclude remediation activities from leaking UST located at gasoline service stations is based on our estimates of the total HAP emissions from a typical cleanup of contamination from the size and types of underground tanks commonly used at gasoline service station sites. These estimates indicate that the level of HAP emissions from these sites would be significantly below the major source threshold levels (*i.e.*, less than 10 tpy of a single HAP or 25 tpy of all HAP) (see 67 FR 49400). Gasoline service station sites are area sources. Site remediation was listed as a source category for MACT standard development to address HAP emissions at major sources where remediation technologies and practices also are used at the site to clean up contaminated environmental media (*e.g.*, soils, groundwaters, or surface waters) or other materials that pose a reasonable potential threat to contaminate environmental media. Our decision was not based on a determination that UST contamination cleanups regardless of location should not be included in the site remediation source category. Therefore, we believe that if a leaking UST cleanup is conducted at a major source site then it is appropriate (and indeed mandated) to require the cleanup activities comply with the final Site Remediation NESHAP requirements.

### *G. How Does the Final Rule Apply to Cleanups of Radioactive Mixed Waste?*

*Comment:* Six commenters opposed the proposal that any site remediation involving the cleanup of radioactive mixed waste not be subject to the Site Remediation NESHAP. These commenters argued that the existing Federal regulations for mixed waste are not adequately addressing the HAP emissions from remediation activities at existing facilities managing these types of wastes. Two commenters expressed support for the proposal because they believe that mixed wastes are already appropriately and protectively managed under the Atomic Energy Act and Nuclear Waste Policy Act.

*Response:* Radioactive mixed wastes (RMW) are wastes that contain radioactive materials as well as wastes listed or identified as hazardous under RCRA. Radioactive mixed wastes must be managed according to RCRA subtitle C regulations. In addition, these wastes are subject to standards administered by the Nuclear Regulatory Commission (NRC) under the Atomic Energy Act (AEA) and Nuclear Waste Policy Act (NWPA) of 1982 that address the safe handling and disposal of radioactive waste.

In developing the air standards under CAA authority for stationary sources that potentially may manage wastes also subject to requirements under other legislative authorities, we consider the management practices required for these wastes to avoid inconsistencies between any CAA requirements that might be established and existing requirements under the other applicable authorities. We reviewed the special nature of existing requirements for managing radioactive mixed wastes with respect to requirements for the control of organic HAP emissions we proposed to establish under the final Site Remediation NESHAP. In certain cases, the air pollution controls used as the basis for the standards under the final Site Remediation NESHAP are not compatible with the NRC requirements for safe handling of radioactive mixed wastes. For example, drums used to store radioactive mixed waste cannot be sealed with vapor leak-tight covers because of unacceptable pressure buildup of hydrogen gas to levels that can potentially cause rupture of the drum or create a potentially serious explosion hazard (a hazard which, by any commonsense measure, exceeds risk posed by emission of organic HAP). (See Air Docket ID No. OAR–2002–0021; see also S. Rep. No 228, 101st Cong. 1st sess. at 168 ("* * * In cases where control strategies for two or more different pollutants are in actual conflict, the Administrator shall apply the same principle—maximum protection of human health shall be the objective test. * * *").)

The generation of hydrogen gas is a result of the radiolytic decomposition of organic compounds (*i.e.*, plastics) and/or aqueous solutions within the container. Plastics are commonly used as a barrier to alpha radiation both in handling operations and in waste packaging. Over time, the alpha particle causes the hydrolysis of chemical bonds within the plastic material which results in the release of hydrogen gas. Likewise, hydrolysis of aqueous solutions will yield hydrogen. Additionally, radiation-induced degradation and biodegradation of organic low-exchange resin waste, which are also RMW, generated during water treatment at nuclear facilities, can result in the production of gaseous products (*i.e.*, hydrogen and carbon dioxide) which in turn can result in pressure buildup and failure of the container. Consequently, a drum used for storage of radioactive mixed wastes must be continuously vented through special filters in accordance with technical guidance issued by the NRC to prevent the hydrogen concentration in the drum from reaching dangerous levels. Because of pressure build-up inside the container, a vent for gaseous compounds is necessary to prevent failure of a high-integrity container (*i.e.*, vent designs incorporated into high integrity containers restrict the release of radionuclides from the container into the environment while allowing the gas to be vented). (See RCRA Docket Items F–91–CESP–00046 and F–94–CESF–S0001, which are part of the administrative record for the final rule.)

In accordance with the Waste Isolation Pilot Plant (WIPP), Carlsbad, New Mexico, Waste Acceptance Plan (WAP), wastes that are to be shipped to the WIPP must be in containers that are vented to prevent the buildup of pressure. The container vents must be filtered to ensure that no radioactive waste components are released. For example, the Hazardous Waste Permit for the WIPP, dated November 25, 2002, in section M1–1d describing container management practices states on page M1–8 "* * * Because containers at the WIPP will contain radioactive waste, safety concerns require that containers be continuously vented to obviate the buildup of gases within the container. These gases could result from radiolysis, which is the breakdown of moisture by radiation. The vents, which are nominally 0.75 in. (1.9 centimeters) in diameter, are generally installed on or near the lids of the containers. These vents are filtered so that gas can escape while particulates are retained. * * *" In addition, the permit in the section describing the requirements for the standard transuranic mixed waste drums states on page M1–2, "* * * One or more filtered vents (as described in section M1–1d) will be installed in the drum lid to prevent the escape of any radioactive particulates and to eliminate any potential of pressurization. * * *"

To comply with these requirements, the drum lid is punctured to release any buildup of potentially explosive hydrogen gas and a specially-designed, carbon composite membrane filter vent is attached. The function of this filter vent is to retain radionuclides inside a container while allowing hydrogen and other gases (*e.g.*, VOC) to pass through to the atmosphere. In particular, the carbon composite membrane used in the filter vent does not inhibit the passing of VOC from the container into the atmosphere.

Because it was judged an unsafe practice to store RMW drums and other containers with tight covers, and because the WIPP Waste Analysis Plan requires that containers be vented for shipment to the WIPP, we determined that many Department of Energy facilities may be unable to meet the tight cover control device criteria for containers as specified in the proposed Site Remediation NESHAP. In addition, we were unable to determine, if there were any available technologies that could be applied to the RMW containers that would control organic air emissions in a safe and cost-effective manner while also complying with WIPP and other AEA and NWPA requirements.

Information gathered and reviewed following proposal of the Site Remediation NESHAP does not indicate that the situation regarding the safety issue related to storage of RMW has changed since proposal. The potentially conflicting requirements for containers (and other storage units) to be vented under one set of rules versus the requirements for closed, tight fitting covers under the CAA rules remains to be resolved. We are not aware of any available device to control organic air emissions (such as an activated carbon filter) that can be used in combination with the carbon composite membrane filter vent on a RMW container. No available technologies have been identified that could be applied to the RMW containers that would control organic air emissions in a safe and cost-effective manner while also complying with WIPP and other AEA and NWPA requirements. With no known controls in place on these sources, the MACT floor for RMW sources (*e.g.*, RMW containers) appears to be no control beyond that already provided by the NRC and other applicable regulations. Codifying the same level of control already established under another regulatory authority as a MACT standard seems a needless expenditure of resources since it would not change existing practice or otherwise provide benefits not already provided by the existing regulations. Therefore, we have retained in the final rule an exemption from the air pollution control requirements under the final Site Remediation NESHAP for remediation material management units (*e.g.*, tanks, containers, and surface impoundments) managing RMW.

Although the technical information and data we have collected support inclusion of an exemption for remediation material management units managing RMW from the air pollution control requirements under the final Site Remediation NESHAP, we concluded from our review of this information that this is not the case for site remediation treatment process vents and equipment leaks. The technical and safety concerns for the required controls for organic emissions from containers and tanks managing RMW are not an issue with the controls required by the final Site Remediation NESHAP for treatment unit process vents and equipment leaks if applied to remediation material streams that are classified as RMW. We have not identified any conflicting regulatory requirements that would preclude the use of air pollution controls on these sources as is the case with tanks and containers. Also, since 1990, remediation material streams classified as RMW have been subject to, and in compliance with, the air pollution control requirements in the national air standards we promulgated under RCRA authority to control total organic emissions from hazardous waste TSDF treatment process vents (subpart AA in 40 CFR parts 264 and 265) and equipment leaks (subpart BB in 40 CFR parts 264 and 265). The air pollution control requirements under these RCRA air rules are the same as the requirements for site remediation treatment process vents and equipment leaks included in the final Site Remediation NESHAP. With demonstrated controls in place on these treatment unit and equipment component sources, MACT for these RMW sources (*i.e.*, process vents and equipment leaks) would be established at the control levels required under those rules. Because the technical issues related to safety concerns for RMW containers and other storage units do not apply to treatment unit process vents and equipment leaks, we have written the final Site Remediation NESHAP to limit the exemption to only remediation material management units managing RMW. Remediation activities involving the cleanup of RMW that meet the final rule applicability criteria are subject to standards for treatment unit process vents and equipment leaks under the final Site Remediation NESHAP.

### *H. How Does the Final Rule Apply to Short-Term Site Remediations at Affected Facilities?*

*Comment:* Commenters supported our proposal to exempt short-term cleanups from being subject to the emissions limitations and work practice standards but requested longer allowable cleanup intervals. Commenters argued that the proposed 7-day initiation period from the time the contamination occurs and 30-day cleanup period are too short because they do not account for circumstances beyond the control of an owner or operator which may delay discovery of the contamination or completing the cleanup within 30 days.

*Response:* We reviewed our proposed regulatory language for the exemption and concluded that the proposal does not accurately reflect our intent. Therefore, we have written in the final rule the approach we use to implement the exemption. This approach preserves our original intent as to which site remediations warrant exemption as well as addresses the concerns raised by commenters regarding the situations when a short-term site remediation takes longer to complete than initially planned and extends beyond the allowable time interval because of circumstances beyond their control.

The purpose of the final Site Remediation NESHAP is to control organic HAP emissions released to the atmosphere during site remediations. Organic HAP emissions from in-situ treatment processes primarily occur when an air or gas stream from the remediation process is exhausted to the atmosphere. Organic HAP emissions can be released from extraction or excavation of contaminated material and the subsequent handling, treatment, and disposal of these materials. The emissions do not occur prior to the time that these remediation activities actually start.

We recognize that activities necessary to plan, arrange, and schedule the site remediation may take more than 30 days. Also, we recognize that there may be delays in starting the site remediation due to circumstances beyond the control of a site owner or operator such as waiting for necessary permit approvals from a State or local agency, or scheduling of personnel or equipment contracted to complete the cleanup work.

Furthermore, a site remediation does not occur until a source of actual or potential hazardous substance contamination is discovered. In many cases, when the contamination is discovered may not be the same time that the contamination occurs. For example, the new owner or operator of a site may discover a contaminated source requiring remediation that occurred years earlier due to improper practices of the previous site owner. We recognize that in many situations it is difficult, if not impossible, for facility owners and operators, as well as enforcement personnel, to verify whether a given site remediation is initiated within 7 days of the contamination occurring. Therefore, we decided to eliminate any conditional requirements for the exemption related to when the contamination occurred. Instead, it is more appropriate and practical to base the time limit for the short-term exemption on the period that the on site work is performed for those activities with the actual potential to emit HAP.

For the final Site Remediation NESHAP, we adopted the approach of exempting short-term site remediations that can be completed within a given number of consecutive calendar days as determined from the day that any action is first initiated that removes, destroys, degrades, transforms, immobilizes, or otherwise manages the remediation materials. In adopting this approach, we exclude those activities that need to be completed to perform a site remediation but are not responsible for the generation of HAP emissions from site remediations, namely: activities required to characterize the type and extent of the contamination by collecting and analyzing samples, to obtain any permits required by State or local authorities to conduct the site remediation, to schedule workers and necessary equipment, and to arrange for any contractor assistance in performing the site remediation.

Given our revised regulatory approach for the short-term site remediation exemption, we re-evaluated the maximum time interval appropriate for the exemption. We proposed a maximum time interval of 30 days for the exemption. This proposed time interval included time to complete those sampling, planning, and scheduling activities that needed to perform a site remediation but are not part of the physical activities which cause HAP to be emitted at the cleanup site. Under the final rule, the exemption is based on the time interval required to complete only those remediation activities that actually emit or have a potential to emit HAP. We believe that the physical part of the site remediations we intend for this exemption to apply can reasonably be completed within a period much shorter than 30 days (*e.g.*, 1 week, 14 days). However, there are situations where a remediation at a particular site which normally should be completed within these shorter periods cannot be due to factors beyond the control of the owner or operator that curtail or delay the remediation activities (such as severe weather or machinery breakdowns). Therefore, we decided that selecting a maximum time interval of 30 days for the exemption will allow a sufficient period to complete the types of cleanups we intend for this exemption to apply to and to provide a reasonable amount of leeway to account for any unforeseen circumstances that may develop at a site.

Finally, it is our intention that the short-term exemption only be applicable to those site remediations for which the cleanup of the entire contaminated area at the site can be completed within 30 consecutive days. The exemption is not intended to be used for longer term cleanups of contaminated areas whereby the remediation activities at the site are started, stopped, and then re-started in a series of intervals with durations less than 30 days per interval for which the total time of all of the intervals required to complete the site remediation exceeds a total of 30 days.

### *I. How Does the Final Rule Apply to Remediation Materials Sent Off-Site From Affected Facilities?*

*Comment:* Commenters opposed the proposed rule requirements on the transfer of remediation material to another party or site. The commenters asserted that proposed requirements are unnecessarily burdensome on both the shipping and receiving parties. Furthermore, requiring owners and operators to submit a written certification of intent to comply with the final rule adds paperwork with little or no environmental or health benefit. The requirements also have the potential to be an especially burdensome task for the off-site facility that are now an area source.

*Response:* The objective of a site remediation is to mitigate a detected risk to public health or the environment by successfully completing the cleanup of an area contaminated by a hazardous substance. At many remediation sites, the contaminated material is excavated or extracted and then shipped to another site for treatment or disposal. Simply moving contaminated material containing organic HAP from the cleanup site to another site across town or in another community does not address the potential for these HAP to be emitted to the air and, subsequently, pose a risk to public health or the environment. It merely transfers the risk to another locale. Nor does such a practice reflect the maximum emission reduction achievable, as required by CAA section 112(d)(2) and (3). Thus, there is a need to ensure that those remediation materials with the potential to emit organic HAP are managed and treated in units using appropriate air pollution controls regardless of where those units are located. To address this need, we are including in the final Site Remediation NESHAP the requirement that remediation material transferred to another party or shipped to another facility must be managed according to the air pollution control requirements specified in the final rule.

We believe that the transfer provision under the final Site Remediation NESHAP does not establish requirements that are burdensome on either the remediation material shipping or receiving parties. We expect that, for many of those situations where a remediation material is subject to the off-site transfer requirements under the final rule, the material will be sent to a facility that is already complying with subpart DD in 40 CFR part 63 or a hazardous waste TSDF already complying with the RCRA air standards under subparts AA, BB, and CC of 40 CFR part 264 or 265. The air pollution control requirements under subpart DD in 40 CFR part 63 and RCRA TSDF air rules are effectively the same as those required under the final Site Remediation NESHAP. Consequently, it is likely that many, if not all, of the sites receiving the types of remediation materials subject to the off-site transfer requirements will already be using the necessary air pollution controls to comply with these other CAA and RCRA air rules. Thus, the off-site transfer requirements in the final Site Remediation NESHAP should not impose a need for these sites to purchase and install new air pollution controls.

While off-site waste and recovery operations and hazardous waste TSDF already should be properly equipped to receive and manage remediation materials from cleanup sites subject to the final Site Remediation NESHAP, there are no existing rules requiring all owners and operators performing cleanups of contaminated materials containing organic HAP to ship the remediation materials to such facilities. It is possible that there are special circumstances where remediation material is transferred to a facility other than a facility subject to subpart DD under 40 CFR part 63 or a hazardous waste TSDF. We also must address the potential for circumvention of the final rule's purpose at a site where the remediation material is simply excavated or extracted and then intentionally transferred outside the site's legal boundaries to avoid having to use air pollution controls. Thus, the level of control reflecting MACT provided by subpart DD under 40 CFR part 63 (and the corresponding RCRA subtitle C rules for air emissions) is not necessarily being provided for all remediation waste transfer operations, so a MACT standard would not merely duplicate existing regulatory requirements. In those cases where an off-site facility is receiving remediation material subject to regulation by the final Site Remediation NESHAP, but units at the facility currently are not using the air pollution controls required by the final Site Remediation NESHAP, the facility owner or operator has the option of declining to accept the remediation material from the cleanup site or installing the required air pollution controls on just those units that manage the remediation material.

While it is essential that the off-site transfer provision be included in the final Site Remediation NESHAP to ensure remediation materials from cleanup sites subject to the final rule are managed and treated in units using appropriate air pollution controls regardless of the units' location, we have reviewed the proposed recordkeeping, certification, and notification requirements associated with the off-site transfer provision. We can simplify the administrative requirements for the facility owners and operators and still effectively implement and enforce the off-site transfer provision. Therefore, we have written the final rule to simplify the recordkeeping and certification requirements for both owners and operators of facilities shipping as well as receiving the remediation materials.

Finally, the off-site transfer provision is not intended to trigger a title V permitting requirement for the owner or operator of a facility that currently is an area source. To address this situation, we have added in the final rule an explicit provision stating that the acceptance by a facility owner or operator of remediation material from remediation site subject to the final Site Remediation NESHAP does not, by itself, require the facility owner or operator to obtain a title V permit.

## IV. Summary of Environmental, Energy, and Economic Impacts

We prepared estimates of the environmental, energy, and economic impacts for the proposed rule based on the best information available to us including remediation waste quantity and treatment practice data for the year 1997 and earlier. No new information or data applicable to the impact estimates were provided by commenters on the proposed rule. Since proposal we have reviewed our data sources to determine the availability of additional information to update and supplement our original database used for the impact estimates. We concluded that our original database remains the best available source of information available to us for estimating impacts for the final rule.

Furthermore, the changes made since proposal for the final rule do not change any of the assumptions we made for our original impact estimates. Therefore, our impact estimates for the proposed rule remain valid and applicable for the final rule. These impact estimates are summarized below.

### *A. What Are the Air Emission Impacts?*

We estimated nationwide organic HAP emissions from the site remediations potentially subject to the final rule to be approximately 1,140 Mg/yr. Nationwide VOC emissions from regulated sources are estimated to be approximately 7,360 Mg/yr. (Although not all VOC are organic HAP, we may permissibly note the air benefits from controlling non-HAP pollutants such as VOC when considering a MACT standard. See S. Rep. 101–228, 101st Cong. 1st sess. 172). We estimate that implementation of the final rule will reduce these nationwide air emissions by approximately 50 percent to 570 Mg/yr of HAP and 3,680 Mg/yr of VOC.

### *B. What Are the Cost Impacts?*

The nationwide total capital investment cost and the annual operating cost of the control equipment required to comply with the final rule are estimated to be approximately $18 million and $6 million per year, respectively. When fully implemented, the final rule is estimated to result in a total annual cost of approximately $9 million per year.

### *C. What Are the Economic Impacts?*

The final rule will affect certain owners and operators of facilities that are major sources of HAP emissions and at which a site remediation is conducted to clean up soils, groundwaters, surface waters, or certain other materials contaminated with one or more of the organic HAP listed in the final rule. Because of the nature of activities regulated by the source category, a comprehensive list of NAICS codes cannot be compiled for businesses or facilities potentially regulated by the final rule. As a result, the economic impact analyses focused on a set of industries from the 1997 Biennial Reporting System (BRS) database that were known to be large quantity generators of hazardous waste and who were remediating hazardous waste as part of a site remediation. The data provides an adequate overview of the potential impacts of the final rule. However, we recognize that the actual industries directly impacted by the final rule in the year the final rule is implemented and the costs incurred by these industries may differ somewhat from the set of industries identified in the 1997 BRS data and the costs assigned to these industries for the purposes of the economic analysis.

In general, we did not find evidence of significant impacts at the industry level. From the BRS data, over 80 industries were predicted to have annual compliance costs as a result of the final rule, and 15 industries accounted for 91 percent of the national compliance cost estimate. We used an engineering or financial analysis to estimate impacts, which takes the form of the ratio of compliance costs to the value of sales (cost-to-sales ratio (CSR)). We calculated CSR for 12 industries and found all had CSR below 0.02 percent. The CSR are less than the lower quartile return on sales for all industries with profitability data available. We did not compute CSR for the remaining three industries because revenue data were not available.

The CSR will likely overstate the impact on firms and understate the impact on consumers. The CSR assumes that there are no changes in the market as a result of the higher costs of production faced by the firms and that the firms continue to produce the same quantities, sell at the same price and absorb the full amount of the compliance costs.

Small business impacts were particularly difficult to assess because of the uncertainty over the facilities that actually will be impacted by the final rule. As a result, we concluded that sufficient data and related information did not exist to conduct a small business screening analysis.

### *D. What Are the Non-Air Health, Environmental and Energy Impacts?*

Compliance with the standards in the final rule requires using types of control equipment commonly in use to control organic emissions from process sources at many of the industrial facilities at which site remediations are most likely to occur. The non-air environmental and energy impacts associated with implementing the requirements of the final rule primarily are expected to result from the operation of these control devices. No significant adverse water, solid waste, or energy impacts are expected as a result of the final rule.

## V. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that the final rule is not a "significant regulatory action" under the terms of Executive Order 12866, and is, therefore, not subject to OMB review.

### *B. Paperwork Reduction Act*

The information collection requirements in the final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The information to be collected for the final Site Remediation NESHAP are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions in 40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B.

The final rule requires maintenance inspections of the control devices but would not require any notifications or reports beyond those required by the General Provisions in subpart A to 40 CFR part 63. The recordkeeping requirements require only the specific information needed to determine compliance.

The annual projected burden for this information collection to owners and operators of affected sources subject to the final rule (averaged over the first 3 years after the effective date of the promulgated rule) is estimated to be 341,737 labor-hours per year, with a total annual cost of $17.7 million per year. These estimates include a one-time performance test and report (with repeat tests where needed), one-time submission of an SSMP with semiannual reports for any event when the procedures in the plan were not followed, semiannual compliance reports, maintenance inspections, notifications, and recordkeeping. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in the final rule.

### *C. Regulatory Flexibility Act*

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administrations' regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities.

The final Site Remediation NESHAP sets minimum air standards under authority of the CAA to control HAP emissions to be met if a facility owner or operator conducts a site remediation subject to the final rule. The final rule places no requirement on any facility owner or operator to initiate site remediation activities. The duty for an owner or operator to conduct a site remediation is established under RCRA, CERCLA, State, or other regulatory authorities. Given that States and other parties often decide whether site remediation activities are to be conducted at a given facility, it is extremely difficult, if not impossible, for us to predict how many or what types of small entities will undertake such site remediation activities and in which cases these activities will be subject to the final Site Remediation NESHAP.

While we cannot predict the exact number or types of small entities that will be subject to the final Site Remediation NESHAP, we have structured the final rule applicability conditions and threshold levels to minimize any impacts on those small businesses that do conduct site remediations. The final rule only applies to those site remediations conducted at a facility that is both a major source of HAP emissions (as defined in CAA section 112) and where there are other non-remediation stationary sources at the facility that meet one of the affected source definition specified for a source category which is regulated by another subpart under 40 CFR part 63. The facilities that meet these applicability conditions tend to be large businesses.

Furthermore, types of site remediations typically expected to occur at small businesses are not subject to the final Site Remediation NESHAP. For example, we specifically exclude from the final rule applicability those site remediations to clean up contamination resulting from leaking underground storage tanks at a gasoline service station, farm, or residential site (remediation activities at these sites were found not to exceed the threshold HAP emission levels required to be designated a major source). Also, we expect that the applicable thresholds for those site remediations required to use air pollution controls under the final Site Remediation NESHAP apply to few, if any, facilities that are small businesses. For example, use of air pollution controls are not required under the final rule for those site remediations that physically can be completed within 30 days or for which total quantity of organic HAP contained in the extracted remediation material is less than 1 Mg.

### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the final rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of the final rule for any year has been estimated to be about $24 million. Thus, the final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, the final rule is not subject to the requirements of section 203 of the UMRA.

### *E. Executive Order 13132: Federalism*

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to the final rule.

### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175 (65 FR 67249, November 9, 2000) requires us to develop "an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

We have concluded that the final Site Remediation NESHAP may have tribal implications since the types of site remediation activities subject to the final rule potentially could be conducted on tribal lands. However, we are not aware of any specific remediation activities on tribal lands presently being conducted that would be subject to the final rule. If a site remediation subject to the final rule is initiated on tribal lands in the future, it will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to the final rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, we nonetheless made attempts to invite tribal representatives to participate in the rulemaking activities early in the process of developing the final rule to permit them to have meaningful and timely input into its development. We contacted tribal representatives and groups directly to notify them of the final rule development activity and to solicit their participation. At proposal, we specifically requested comment on the proposed rule from tribal officials. No tribal representatives requested to participate in the rulemaking process, and we received no comments on the proposed rule from any tribal government.

### *G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant," as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, the final rule has been determined not to be "economically significant" as defined under Executive Order 12866.

### *H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

The final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

### *I. National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113; 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the Office of Management and Budget (OMB), with explanations when an agency does not use available and applicable voluntary consensus standards.

The final rule involves technical standards. The EPA cites the following standards in the final rule: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 3, 4, 9, 18 (total organic HAP or total organic compounds), 21, 22, 25, 25A, 25D, 25E, 27, 305, 316 of 40 CFR part 60 appendix A, and Method 9095A in SW 846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods." Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 9, 21, 22, 25D, 25E, 27, 305, 316, and SW 846 Method 9095A. The search and review results have been documented and are placed in the docket (Docket ID No. OAR–2002–0021) for the final rule.

The search for emissions measurement procedures identified 10 other voluntary consensus standards. The EPA determined that eight of these 10 standards identified for measuring emissions of the HAP or surrogates subject to emission standards in the final rule were impractical alternatives to EPA test methods for the purposes of the final rule. Therefore, EPA does not intend to adopt these standards for this purpose. (See Docket ID No. OAR 2002–0021.)

Sections 63.7940 through 63.7944 to the final Site Remediation NESHAP specify the EPA testing methods to be used for demonstrating compliance with the final rule requirements. Under §§ 63.7(f) and 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

### *J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. The final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: August 20, 2003.

**Marianne Lamont Horinko,**

*Acting Administrator.*

■ For the reasons stated in the preamble, title 40, chapter I, part 63, of the Code of the Federal Regulations is amended as follows:

## PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

■ 2. Part 63 is amended by adding subpart GGGGG to read as follows:

## Subpart GGGGG—National Emission Standards for Hazardous Air Pollutants: Site Remediation

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## What This Subpart Covers

### § 63.7880 What is the purpose of this subpart?

This subpart establishes national emissions limitations and work practice standards for hazardous air pollutants (HAP) emitted from site remediation activities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emissions limitations and work practice standards.

### § 63.7881 Am I subject to this subpart?

(a) This subpart applies to you if you own or operate a facility at which you conduct a site remediation, as defined in § 63.7957; and this site remediation, unless exempted under paragraph (b) or (c) of this section, meets all three of the following conditions specified in paragraphs (a)(1) through (3) of this section.

(1) Your site remediation cleans up a remediation material, as defined in § 63.7957.

(2) Your site remediation is co-located at your facility with one or more other stationary sources that emit HAP and meet an affected source definition specified for a source category that is regulated by another subpart under 40 CFR part 63. This condition applies regardless whether or not the affected stationary source(s) at your facility is subject to the standards under the applicable subpart(s).

(3) Your facility is a major source of HAP as defined in § 63.2. A major source emits or has the potential to emit any single HAP at the rate of 10 tons (9.07 megagrams) or more per year of any HAP or any combination of HAP at a rate of 25 tons (22.68 megagrams) or more per year. All emissions of HAP from every source at your facility (i.e., both the site remediation activity and all other facility activities) must be considered in making this calculation.

(b) You are not subject to this subpart if your site remediation qualifies for any of one of the exemptions listed in paragraphs (b)(1) through (6) of this section.

(1) Your site remediation is not subject to this subpart if the site remediation only cleans up material that does not contain any of the HAP listed in Table 1 of this subpart.

(2) Your site remediation is not subject to this subpart if the site remediation will be performed under the authority of the Comprehensive Environmental Response and Compensation Liability Act (CERCLA) as a remedial action or a non time-critical removal action.

(3) Your site remediation is not subject to this subpart if the site

remediation will be performed under a Resource Conservation and Recovery Act (RCRA) corrective action conducted at a treatment, storage and disposal facility (TSDF) that is either required by your permit issued by either the U.S. Environmental Protection Agency (EPA) or a State program authorized by the EPA under RCRA section 3006; required by orders authorized under RCRA; or required by orders authorized under RCRA section 7003.

(4) Your site remediation is not subject to this subpart if the site remediation is conducted at a gasoline service station to clean up remediation material from a leaking underground storage tank.

(5) Your site remediation is not subject to this subpart if the site remediation is conducted at a farm or residential site.

(6) Your site remediation is not subject to this subpart if the site remediation is conducted at a research and development facility that meets the requirements under Clean Air Act (CAA) section 112(c)(7).

(c) Your site remediation is not subject to this subpart, except for the recordkeeping requirements specified in this paragraph, if the site remediation meets the all of the conditions in paragraphs (c)(1) through (3) of this section.

(1) Before beginning the site remediation, you determine for the remediation material that you will excavate, extract, pump, or otherwise remove during your site remediation that the total quantity of the HAP listed in Table 1 of this subpart which is contained in the material is less than 1 megagram per year (Mg/yr).

(2) You prepare and maintain at your facility written documentation to support your determination of the total HAP quantity used to demonstrate compliance with paragraph (c)(1) of this section. This documentation must include a description of your methodology and data you used for determining the total HAP content of the material.

(3) This exemption may be applied to more than one site remediation at your facility provided that the total quantity of the HAP listed in Table 1 of this subpart for all of your site remediations exempted under this provision is less than 1 Mg/yr.

(d) Your site remediation is not subject to the requirements of this subpart if all remediation activities at your facility subject to this subpart are completed and you have notified the Administrator in writing that all remediation activities subject to this subpart are completed. You must maintain records of compliance, in accordance with § 63.7953, for each remediation activity that was subject to this subpart. All future remediation activity meeting the applicability criteria in this section must comply with the requirements of this subpart.

### § 63.7882 What site remediation sources at my facility does this subpart affect?

(a) This subpart applies to each new, reconstructed, or existing affected source for your site remediation as designated by paragraphs (a)(1) through (3) of this section.

(1) *Process vents.* The affected source is the entire group of process vents associated with the in-situ and ex-situ remediation processes used at your site to remove, destroy, degrade, transform, or immobilize hazardous substances in the remediation material subject to remediation. Examples of such in-situ remediation processes include, but are not limited to, soil vapor extraction and bioremediation processes. Examples of such ex-situ remediation processes include but are not limited to, thermal desorption, bioremediation, and air stripping processes.

(2) *Remediation material management units.* Remediation material management unit means a tank, surface impoundment, container, oil-water separator, organic-water separator, or transfer system, as defined in § 63.7957, and is used at your site to manage remediation material. The affected source is the entire group of remediation material management units used for the site remediations at your site. For the purpose of this subpart, a tank or container that is also equipped with a vent that serves as a process vent, as defined in § 63.7957, is not a remediation material management unit, but instead this unit is considered to be a process vent affected source under paragraph (a)(1) of this section.

(3) *Equipment leaks.* The affected source is the entire group of equipment components (pumps, valves, etc.) used to manage remediation materials and meeting both of the conditions specified in paragraphs (a)(3)(i) and (ii) of this section. If either of these conditions do not apply to an equipment component, then that component is not part of the affected source for equipment leaks.

(i) The equipment component contains or contacts remediation material having a concentration of total HAP listed in Table 1 of this subpart equal to or greater than 10 percent by weight.

(ii) The equipment component is intended to operate for 300 hours or more during a calendar year in remediation material service, as defined in § 63.7957.

(b) Each affected source for your site is existing if you commenced construction or reconstruction of the affected source before July 30, 2002.

(c) Each affected source for your site is new if you commenced construction or reconstruction of the affected source on or after July 30, 2002. An affected source is reconstructed if it meets the definition of reconstruction in § 63.2.

### § 63.7883 When do I have to comply with this subpart?

(a) If you have an existing affected source, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you no later than October 9, 2006.

(b) If you have a new affected source that manages remediation material other than a radioactive mixed waste as defined in § 63.7957, then you must meet the compliance date specified in paragraph (b)(1) or (2) of this section, as applicable to your affected source.

(1) If the affected source's initial startup date is on or before October 8, 2003, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you by October 8, 2003.

(2) If the affected source's initial startup date is after October 8, 2003, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you upon initial startup.

(c) If you have a new affected source that manages remediation material that is a radioactive mixed waste as defined in § 63.7957, then you must meet the compliance date specified in paragraph (c)(1) or (2) of this section, as applicable to your affected source.

(1) If the affected source's initial startup date is on or before October 8, 2003, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you no later than October 9, 2006.

(2) If the affected source's initial startup date is after October 8, 2003, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you upon initial startup.

(d) If your facility is an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP as defined in § 63.2, then you must meet the compliance dates specified in paragraphs (d)(1) and (2) of this section.

(1) For each source at your facility that is a new affected source subject to this subpart, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you upon initial startup.

(2) For all other affected sources subject to this subpart, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you no later than 3 years after your facility becomes a major source.

(e) You must meet the notification requirements, according to the schedule applicable to your facility, as specified in § 63.7950 and in 40 CFR part 63, subpart A. Some of the notifications must be submitted before you are required to comply with the emissions limitations and work practice standards in this subpart.

## General Standards

### § 63.7884 What are the general standards I must meet for each site remediation with affected sources?

(a) For each site remediation with affected sources designated under § 63.7882, you must meet the standards specified in §§ 63.7885 through 63.7953, as applicable to your affected sources, unless your site remediation meets the requirements for an exemption under paragraph (b) of this section.

(b) A site remediation that is completed within 30 consecutive calendar days according to the conditions in paragraphs (b)(1) and (2) of this section is not subject to the standards under paragraph (a) of this section. This exemption cannot be used for a site remediation involving the staged or intermittent cleanup of remediation material whereby the remediation activities at the site are started, stopped, and then re-started in a series of intervals with durations less than 30-days per interval for which the total time of all of the intervals required to complete the site remediation exceeds a total of 30 days.

(1) The 30-day period for a site remediation is determined from the first day that any action is initiated that removes, destroys, degrades, transforms, immobilizes, or otherwise manages the remediation materials. The end of a site remediation is determined by the last day on which treatment or disposal of the remediation materials from the cleanup is completed. The following activities, when completed before beginning this initial action, are not counted as part of the 30-day period: activities to characterize the type and extent of the contamination by collecting and analyzing samples, activities to obtain permits from Federal, State, or local authorities to conduct the site remediation, activities to schedule workers and necessary equipment, and activities to arrange for contractor or third party assistance in performing the site remediation.

(2) You must prepare and maintain at your facility written documentation describing the exempted site remediation, and listing the initiation and completion dates for the site remediation.

### § 63.7885 What are the general standards I must meet for my affected process vents?

(a) For the process vents that comprise the affected source designated under § 63.7882, you must select and meet the requirements under one of the options specified in paragraph (b) of this section.

(b) For each affected process vent, except as exempted under paragraph (c) of this section, you must meet one of the options in paragraphs (b)(1) through (3) of this section.

(1) You control HAP emissions from the affected process vents according to the standards specified in §§ 63.7890 through 63.7893.

(2) You determine for the remediation material treated or managed by the process vented through the affected process vents that the average total volatile organic hazardous air pollutant (VOHAP) concentration, as defined in § 63.7957, of this material is less than 10 parts per million by weight (ppmw). Determination of the VOHAP concentration is made using the procedures specified in § 63.7943.

(3) If the process vent is also subject to another subpart under 40 CFR part 61 or 40 CFR part 63, you control emissions of the HAP listed in Table 1 of this subpart from the affected process vent in compliance with the standards specified in the applicable subpart. This means you are complying with all applicable emissions limitations and work practice standards under the other subpart (*e.g.*, you install and operate the required air pollution controls or have implemented the required work practice to reduce HAP emissions to levels specified by the applicable subpart). This provision does not apply to any exemption of the affected source from the emissions limitations and work practice standards allowed by the other applicable subpart.

(c) A process vent that meets the exemption requirements in paragraphs (c)(1) and (2) of this section is exempted from the requirements in paragraph (b) of this section.

(1) The process vent stream exiting the process vent meets the conditions in either paragraph (c)(1)(i) or (ii) of this section.

(i) The process vent stream flow rate is less than 0.005 cubic meters per minute ($m^3$/min) at standard conditions (as defined in 40 CFR 63.2); or

(ii) The process vent stream flow rate is less than 6.0 $m^3$/min at standard conditions (as defined in 40 CFR 63.2) and the total concentration of HAP listed in Table 1 of this subpart is less than 20 parts per million by volume (ppmv).

(2) You must demonstrate that the process vent stream meets the applicable exemption conditions in paragraph (c)(1) of this section using the procedures specified in § 63.694(m). You must prepare and maintain documentation at your facility to support your determination of the process vent stream flow rate. This documentation must include identification of each process vent exempted under this paragraph and the test results used to determine the process vent stream flow rate and total HAP concentration, as applicable to the exemption conditions for your process vent. You must perform a new determination of the process vent stream flow rate and total HAP concentration, as applicable to the exemption conditions for your process vent, whenever changes to operation of the unit on which the process vent is used could cause the process vent stream conditions to exceed the maximum limits of the exemption.

### § 63.7886 What are the general standards I must meet for my affected remediation material management units?

(a) For each remediation material management unit that is part of an affected source designated by § 63.7882, you must select and meet the requirements under one of the options specified in paragraph (b) of this section except for those remediation material management units exempted under paragraph (c) or (d) of this section.

(b) For each affected remediation material management unit, you must meet one of the options in paragraphs (b)(1) through (4) of this section.

(1) You control HAP emissions from the affected remediation material management unit according to the standards specified in paragraphs (b)(1)(i) through (v) of this section, as applicable to the unit.

(i) If the remediation material management unit is a tank, then you control HAP emissions according to the standards specified in §§ 63.7895 through 63.7898.

(ii) If the remediation material management unit is a container, then you control HAP emissions according to the standards specified in §§ 63.7900 through 63.7903.

(iii) If the remediation material management unit is a surface impoundment, then you control HAP emissions according to the standards specified in §§ 63.7905 through 63.7908.

(iv) If the remediation material management unit is a oil-water or organic-water separator, then you control HAP emissions according to the standards specified in §§ 63.7910 through 63.7913.

(v) If the remediation material management unit is a transfer system, then you control HAP emissions according to the standards specified in §§ 63.7915 through 63.7918.

(2) You determine for the remediation material placed in the remediation material management unit that the average total VOHAP concentration, as defined in § 63.7957, of this material is less than 500 ppmw. Determination of the total VOHAP concentration is made based on the remediation material composition at the point-of-extraction, as defined in § 63.7957, using the procedures specified in § 63.7943.

(3) If the remediation material management unit is also subject to another subpart under 40 CFR part 61 or 40 CFR part 63, you control emissions of the HAP listed in Table 1 of this subpart from the affected remediation material management unit in compliance with the standards specified in the applicable subpart. This means you are complying with all applicable emissions limitations and work practice standards under the other subpart (*e.g.*, you install and operate the required air pollution controls or have implemented the required work practice to reduce HAP emissions to levels specified by the applicable subpart). This provision does not apply to any exemption of the affected source from the emissions limitations and work practice standards allowed by the other applicable subpart.

(4) If the remediation material management unit is an open tank or surface impoundment used for a biological treatment process, you meet the requirements as specified in paragraphs (b)(4)(i) and (ii) of this section.

(i) You demonstrate that the biological treatment process conducted in the open tank or surface impoundment meets the performance levels specified in either § 63.684(b)(4)(i) or (ii).

(ii) You monitor the biological treatment process conducted in the open tank or surface impoundment according to the requirements in § 63.684(e)(4).

(c) A remediation material management unit is exempted from the requirements in paragraph (b) of this section if this unit is used for cleanup of radioactive mixed waste, as defined in § 63.7957, that is subject to applicable regulations, directives, and other requirements under the Atomic Energy Act, the Nuclear Waste Policy Act, or the Waste Isolation Pilot Plant Land Withdrawal Act.

(d) One or a combination of remediation material management units may be exempted at your discretion from the requirements in paragraph (b) of this section provided that the total annual quantity of HAP listed in Table 1 of this subpart contained in the remediation material placed in all of the remediation material management units exempted under this paragraph is less than 1 Mg/yr. For each remediation material management unit you select to be exempted under this provision, you must meet the requirements in paragraphs (d)(1) and (2) of this section.

(1) You must designate each of the remediation material management units you are selecting to be exempted under this paragraph by either submitting to the Administrator a written notification identifying the exempt units or permanently marking the exempt units at the faculty site. If you choose to prepare and submit a written notification, this notification must include a site plan, process diagram, or other appropriate documentation identifying each of the exempt units. If you choose to permanently mark the exempt units, each exempt unit must be marked in such a manner that it can be readily identified as an exempt unit from the other remediation material management units located at the site.

(2) You must prepare an initial determination of the total annual HAP quantity in the remediation material placed in the units exempted under this paragraph. This determination is based on the total quantity of the HAP listed in Table 1 of this subpart as determined at the point where the remediation material is placed in each exempted unit. You must perform a new determination whenever the extent of changes to the quantity or composition of the remediation material placed in the exempted units could cause the total annual HAP content in the remediation material to exceed 1 Mg/yr. You must maintain documentation to support the most recent determination of the total annual HAP quantity. This documentation must include the basis and data used for determining the organic HAP content of the remediation material.

### § 63.7887 What are the general standards I must meet for my affected equipment leak sources?

You must control HAP emissions from equipment leaks from each equipment component that is part of the affected source specified in § 63.7882 by implementing leak detection and control measures according to the standards specified in §§ 63.7920 through 63.7922.

### § 63.7888 How do I implement this rule at my facility using the cross-referenced requirements in other subparts?

(a) For the purposes of this subpart, when you read the term "HAP listed in Table 1 of this subpart" in a cross-referenced section under 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations, you should refer to Table 1 of this subpart.

(b) For the purposes of this subpart, when you read the term off-site material in a cross-referenced section under 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations you should substitute the term remediation material, as defined in § 63.7957.

(c) For the purposes of this subpart, when you read the term regulated material in a cross-referenced section under 40 CFR part 63, subparts OO, PP, QQ, RR, TT, UU, WW, and VV you should substitute the term remediation material, as defined in § 63.7957.

## Process Vents

### § 63.7890 What emissions limitations and work practice standards must I meet for process vents?

(a) You must control HAP emissions from each new and existing process vent subject to § 63.7885(b)(1) according to emissions limitations and work practice standards in this section that apply to your affected process vents.

(b) For your affected process vents, you must meet one of the facility-wide emission limit options specified in paragraphs (b)(1) through (4) of this section. If you have multiple affected process vent streams, you may comply with this paragraph using a combination of controlled and uncontrolled process vent streams that achieve the facility-wide emission limit that applies to you.

(1) Reduce from all affected process vents the total emissions of the HAP

listed in Table 1 of this subpart to a level less than 1.4 kilograms per hour (kg/hr) and 2.8 Mg/yr (3.0 pounds per hour (lb/hr) and 3.1 tpy); or

(2) Reduce from all affected process vents the emissions of total organic carbon (TOC) (minus methane and ethane) to a level below 1.4 kg/hr and 2.8 Mg/yr (3.0 lb/hr and 3.1 tpy); or

(3) Reduce from all affected process vents the total emissions of the HAP listed in Table 1 of this subpart by 95 percent by weight or more; or

(4) Reduce from all affected process vents the emissions of TOC (minus methane and ethane) by 95 percent by weight or more.

(c) For each closed vent system and control device you use to comply with paragraph (b) of this section, you must meet the operating limit requirements and work practice standards in § 63.7925(c) through (j) that apply to your closed vent system and control device.

### § 63.7891 How do I demonstrate initial compliance with the emissions limitations and work practice standards for process vents?

(a) You must demonstrate initial compliance with the emissions limitations and work practice standards in § 63.7890(b) applicable to your affected process vents by meeting the requirements in paragraphs (b) through (d) of this section.

(b) You have measured or determined using the procedures for performance tests and design evaluations in § 63.7941 that emission levels from all of your affected process vents meet the facility-wide emission limits in § 63.7890(b) that apply to you, as follows in paragraphs (b)(1) through (4) of this section.

(1) If you elect to meet § 63.7890(b)(1), you demonstrate that the total emissions of the HAP listed in Table 1 of this subpart from all affected process vents at your facility are less than 1.4 kg/hr and 2.8 Mg/yr (3.0 lb/hr and 3.1 tpy).

(2) If you elect to meet § 63.7890(b)(2), you demonstrate that emissions of TOC (minus methane and ethane) from all affected process vents at your facility are less than 1.4 kg/hr and 2.8 Mg/yr (3.0 lb/hr and 3.1 tpy).

(3) If you elect to meet § 63.7890(b)(3), you demonstrate that the total emissions of the HAP listed in Table 1 of this subpart from all affected process vents are reduced by 95 percent by weight or more.

(4) If you elect to meet § 63.7890(b)(4), you demonstrate that the emissions of TOC (minus methane and ethane) from all affected process vents are reduced by 95 percent by weight or more.

(c) For each closed vent system and control device you use to comply with § 63.7890(b), you have met each requirement for demonstrating initial compliance with the emission limitations and work practice standards for a closed vent system and control device in § 63.7926.

(d) You have submitted a notification of compliance status according to the requirements in § 63.7950.

### § 63.7892 What are my inspection and monitoring requirements for process vents?

For each closed vent system and control device you use to comply with § 63.7890(b), you must monitor and inspect the closed vent system and control device according to the requirements in § 63.7927 that apply to you.

### § 63.7893 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for process vents?

(a) You must demonstrate continuous compliance with the emissions limitations and work practice standards in § 63.7890 applicable to your affected process vents by meeting the requirements in paragraphs (b) through (d) of this section.

(b) You must maintain emission levels from all of your affected process vents to meet the facility-wide emission limits in § 63.7890(b) that apply to you, as specified in the following paragraph (b)(1) through (4) of this section.

(1) If you elect to meet § 63.7890(b)(1), you maintain the total emissions of the HAP listed in Table 1 of this subpart from all affected process vents at your facility are less than 1.4 kg/hr and 2.8 Mg/yr (3.0 lb/hr and 3.1 tpy).

(2) If you elect to meet § 63.7890(b)(2), you maintain emissions of TOC (minus methane and ethane) from all affected process vents at your facility are less than 1.4 kg/hr and 2.8 Mg/yr (3.0 lb/hr and 3.1 tpy).

(3) If you elect to meet § 63.7890(b)(3), you maintain the total emissions of the HAP listed in Table 1 of this subpart from all affected process vents are reduced by 95 percent by weight or more.

(4) If you elect to meet § 63.7890(b)(4), you maintain that the emissions of TOC (minus methane and ethane) from all affected process vents are reduced by 95 percent by weight or more.

(c) For each closed vent system and control device you use to comply with § 63.7890(b), you have met each requirement for demonstrating continuous compliance with the emission limitations and work practice standards for a closed vent system and control device in § 63.7928.

(d) Keeping records to document continuous compliance with the requirements of this subpart according to the requirements in § 63.7952.

## Tanks

### § 63.7895 What emissions limitations and work practice standards must I meet for tanks?

(a) You must control HAP emissions from each new and existing tank subject to § 63.7886(b)(1)(i) according to emissions limitations and work practice standards in this section that apply to your affected tanks.

(b) For each affected tank, you must install and operate air pollution controls that meet the requirements in paragraphs (b)(1) through (4) of this section that apply to your tank.

(1) Unless your tank is used for a waste stabilization process, as defined in § 63.7957, you must determine the maximum HAP vapor pressure (expressed in kilopascals (kPa)) of the remediation material placed in your tank using the procedures specified in § 63.7944.

(2) If the maximum HAP vapor pressure of the remediation material you place in your tank is less than 76.6 kPa, then you must determine which tank level controls (*i.e.*, Tank Level 1 or Tank Level 2) apply to your tank as shown in Table 2 of this subpart, and based on your tank's design capacity (expressed in cubic meters ($m^3$)) and the maximum HAP vapor pressure of the remediation material you place in this tank. If your tank is required by Table 2 of this subpart to use Tank Level 1 controls, then you must meet the requirements in paragraph (c) of this section. If your tank is required by Table 2 of this subpart to use Tank Level 2 controls, then you must meet the requirements in paragraph (d) of this section

(3) If maximum HAP vapor pressure of the remediation material you place in your tank is 76.6 kPa or greater, then the tank must use one of the Tank Level 2 controls specified in paragraphs (d)(3) through (5) of this section. Use of floating roofs under paragraph (d)(1) or (2) of this section is not allowed for tanks managing these remediation materials.

(4) A tank used for a waste stabilization process, as defined in § 63.7957, must use one of Tank Level 2 controls, as specified in paragraph (d) of this section, that is appropriate for your waste stabilization process.

(c) If you use Tank Level 1 controls, you must install and operate a fixed roof according to the requirements in § 63.902. As an alternative to using this fixed roof, you may choose to use one of Tank Level 2 controls in paragraph (d) of this section.

(d) If you use Tank Level 2 controls, you must meet the requirements of one of the options in paragraphs (d)(1) through (5) of this section.

(1) Install and operate a fixed roof with an internal floating roof according to the requirements in § 63.1063(a)(1)(i), (a)(2), and (b); or

(2) Install and operate an external floating roof according to the requirements in § 63.1063(a)(1)(ii), (a)(2), and (b); or

(3) Install and operate a fixed roof vented through a closed vent system to a control device according to the requirements in § 63.685(g). You must meet the emissions limitations and work practice standards in § 63.7925 that apply to your closed vent system and control device; or

(4) Install and operate a pressure tank according to the requirements in § 63.685(h); or

(5) Locate the tank inside a permanent total enclosure and vent emissions from the enclosure through a closed vent system to a control device that is an enclosed combustion device according to the requirements in § 63.685(i). You must meet the emissions limitations and work practice standards in § 63.7925 that apply to your closed vent system and control device.

(e) As provided in § 63.6(g), you may request approval from the EPA to use an alternative to the work practice standards in this section that apply to your tanks. If you request for permission to use an alternative to the work practice standards, you must submit the information described in § 63.6(g)(2).

### § 63.7896 How do I demonstrate initial compliance with the emissions limitations and work practice standards for tanks?

(a) You must demonstrate initial compliance with the emissions limitations and work practice standards in § 63.7895 that apply to your affected tanks by meeting the requirements in paragraphs (b) through (h) of this section, as applicable to your containers.

(b) You have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (b)(1) and (2) of this section.

(1) You have determined the applicable tank control levels specified in § 63.7895(b) for the tanks to be used for your site remediation.

(2) You have determined, according to the procedures § 63.7944, and recorded the maximum HAP vapor pressure of the remediation material placed in each affected tank subject to § 63.7886(b)(1)(i) that does not use Tank Level 2 controls.

(c) You must demonstrate initial compliance of each tank determined under paragraph (b) of this section to require Tank Level 1 controls if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (c)(1) through (3) of this section.

(1) Each tank using Tank Level 1 controls is equipped with a fixed roof and closure devices according to the requirements in § 63.902(b) and (c) and you have records documenting the design.

(2) You have performed an initial visual inspection of the fixed roof and closure devices for defects according to the requirements in § 63.906(a) and you have records documenting the inspection results.

(3) You will operate the fixed roof and closure devices according to the requirements in § 63.902.

(d) You must demonstrate initial compliance of each tank determined under paragraph (b) of this section to require Tank Level 2 controls and using a fixed roof with an internal floating roof according to § 63.7895(d)(1) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (d)(1) through (3) of this section.

(1) Each tank is equipped with an internal floating roof that meets the requirements in § 63.1063(a) and you have records documenting the design.

(2) You will operate the internal floating roof according to the requirements in § 63.1063(b).

(3) You have performed an initial visual inspection according to the requirements in § 63.1063(d)(1) and you have a record of the inspection results.

(e) You must demonstrate initial compliance of each tank determined under paragraph (b) of this section to require Tank Level 2 controls and using an external floating roof according to § 63.7895(d)(2) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (e)(1) through (3) of this section.

(1) Each tank is equipped with an external floating roof that meets the requirements in § 63.1063(a) and you have records documenting the design.

(2) You will operate the external floating roof according to the requirements in § 63.1063(b).

(3) You have performed an initial seal gap measurement inspection according to the requirements in § 63.1063(d)(3) and you have records of the measurement results.

(f) You must demonstrate initial compliance of each tank determined under paragraph (b) of this section to require Tank Level 2 controls and using a fixed roof vented to a control device according to § 63.7895(d)(3) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (f)(1) through (4) of this section.

(1) Each tank is equipped with a fixed roof and closure devices according to the requirements in § 63.902(b) and (c) and you have records documenting the design.

(2) You have performed an initial visual inspection of fixed roof and closure devices for defects according to the requirements in § 63.695(b)(3) and you have records documenting the inspection results.

(3) You will operate the fixed roof and closure devices according to the requirements in § 63.685(g).

(4) You have met each applicable requirement for demonstrating initial compliance with the emission limitations and work practice standards for a closed vent system and control device in § 63.7926.

(g) You must demonstrate initial compliance of each tank determined under paragraph (b) of this section to require Tank Level 2 controls and operates as a pressure tank according to § 63.7895(d)(4) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (g)(1) and (2) of this section.

(1) Each tank is designed to operate as a pressure tank according to the requirements in § 63.685(h), and you have records documenting the design.

(2) You will operate the pressure tank and according to the requirements in § 63.685(h).

(h) You must demonstrate initial compliance of each tank determined under paragraph (b) of this section to require Tank Level 2 controls and using a permanent total enclosure vented to an enclosed combustion device according to § 63.7895(d)(5) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (h)(1) and (2) of this section.

(1) You have submitted as part of your notification of compliance status a

signed statement that you have performed the verification procedure according to the requirements in § 63.685(i), and you have records of the supporting calculations and measurements.

(2) You have met each applicable requirement for demonstrating initial compliance with the emission limitations and work practice standards for a closed vent system and control device in § 63.7926.

### § 63.7897 What are my inspection and monitoring requirements for tanks?

(a) You must visually inspect each of your tanks using Tank Level 1 controls for defects at least annually according to the requirements in § 63.906(a).

(b) You must inspect and monitor each of your tanks using Tank Level 2 controls according to the requirements in paragraphs (b)(1) through (5), as applicable to your tanks.

(1) If you use a fixed roof with an internal floating roof according to § 63.7895(d)(1), you must visually inspect the fixed roof and internal floating roof according to the requirements in § 63.1063(d)(1) and (2).

(2) If you use an external floating roof according to § 63.7895(d)(2), you must visually inspect the external floating roof according to the requirements in § 63.1063(d)(1) and inspect the seals according to the requirements in § 63.1063(d)(2) and (3).

(3) If you use a fixed roof vented to a control device according to § 63.7895(d)(3), you must meet requirements in paragraphs (b)(3)(i) and (ii) of this section.

(i) You must visually inspect the fixed roof and closure devices for defects according to the requirements in § 63.695(b)(3).

(ii) You must monitor and inspect the closed vent system and control device according to the requirements in § 63.7927 that apply to you.

(4) If you use a pressure tank according to § 63.7895(d)(4), you must visually inspect the tank and its closure devices for defects at least annually to ensure they are operating according to the design requirements in § 63.685(h).

(5) If you use a permanent total enclosure vented to an enclosed combustion device according to § 63.7895(d)(5), you must meet requirements in paragraphs (b)(5)(i) and (ii) of this section.

(i) You must perform the verification procedure for the permanent total enclosure at least annually according to the requirements in § 63.685(i).

(ii) You must monitor and inspect the closed vent system and control device according to the requirements in § 63.7927 that apply to you.

### § 63.7898 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for tanks?

(a) You must demonstrate continuous compliance with the emissions limitations and work practice standards in § 63.7895 applicable to your affected tanks by meeting the requirements in paragraphs (b) through (d) of this section.

(b) You must demonstrate continuous compliance with the requirement to determine the applicable tank control level specified in § 63.7895(b) for each affected tank by meeting the requirements in paragraphs (b)(1) through (3) of this section.

(1) Keeping records of the tank design capacity according to the requirements in § 63.1065(a).

(2) For tanks subject to § 63.7886(b)(1)(ii) and not using Tank Level 2 controls, meeting the requirements in paragraphs (b)(2)(i) and (ii) of this section.

(i) Keeping records of the maximum HAP vapor pressure determined according to the procedures in § 63.7944 for the remediation material placed in each affected tank.

(ii) Performing a new determination of the maximum HAP vapor pressure whenever changes to the remediation material managed in the tank could potentially cause the maximum HAP vapor pressure to increase to a level that is equal to or greater than the maximum HAP vapor pressure for the tank design capacity specified in Table 2. You must keep records of each determination.

(3) Keeping records to document compliance with the requirements of this subpart according to the requirements in § 63.7952.

(c) You must demonstrate continuous compliance for each tank determined to require Tank Level 1 controls by meeting the requirements in paragraphs (c)(1) through (5) of this section.

(1) Operating and maintaining the fixed roof and closure devices according to the requirements in § 63.902(c).

(2) Visually inspecting the fixed roof and closure devices for defects at least annually according to the requirements in § 63.906(a).

(3) Repairing defects according to the requirements in § 63.63.906(b).

(4) Recording the information specified in § 63.907(a)(3) and (b).

(5) Keeping records to document compliance with the requirements of this subpart according to the requirements in § 63.7952.

(d) You must demonstrate continuous compliance for each tank determined to require Tank Level 2 controls and using a fixed roof with an internal floating roof according to § 63.7895(d)(1) by meeting the requirements in paragraphs (d)(1) through (5) of this section.

(1) Operating and maintaining the internal floating roof according to the requirements in § 63.1063(b).

(2) Visually inspecting the internal floating roof according to the requirements in § 63.1063(d)(1) and (2).

(3) Repairing defects according to the requirements in § 63.1063(e).

(4) Recording the information specified in § 63.1065(b) through (d).

(5) Keeping records to document compliance with the requirements of this subpart according to the requirements in § 63.7952.

(e) You must demonstrate continuous compliance for each tank determined to require Tank Level 2 controls and using an external floating roof according to § 63.7895(d)(2) by meeting the requirements in paragraphs (e)(1) through (5) of this section.

(1) Operating and maintaining the external floating roof according to the requirements in § 63.1063(b).

(2) Visually inspecting the external floating roof according to the requirements in § 63.1063(d)(1) and inspecting the seals according the requirements in § 63.1063(d)(2) and (3).

(3) Repairing defects according to the requirements in § 63.1063(e).

(4) Recording the information specified in § 63.1065(b) through (d).

(5) Keeping records to document compliance with the requirements of this subpart according to the requirements in § 63.7952.

(f) You must demonstrate continuous compliance for each tank determined to require Tank Level 2 controls and using a fixed roof vented to a control device according to § 63.7895(d)(3) by meeting the requirements in paragraphs (f)(1) through (6) of this section.

(1) Operating and maintaining the fixed roof and closure devices according to the requirements in § 63.685(g).

(2) Visually inspecting the fixed roof and closure devices for defects at least annually according to the requirements in § 63.695(b)(3)(i).

(3) Repairing defects according to the requirements in § 63.695(b)(4).

(4) Recording the information specified in § 63.696(e).

(5) Meeting each applicable requirement for demonstrating continuous compliance with the emission limitations and work practice standards for a closed vent system and control device in § 63.7928.

(6) Keeping records to document compliance with the requirements of this subpart according to the requirements in § 63.7952.

(g) You must demonstrate continuous compliance for each tank determined to require Tank Level 2 controls and operated as a pressure tank according to § 63.7895(d)(4) by meeting the requirements in paragraphs (g)(1) through (3) of this section.

(1) Operating and maintaining the pressure tank and closure devices according to the requirements in § 63.685(h).

(2) Visually inspecting each pressurized tank and closure devices for defects at least annually to ensure they are operating according to the design requirements in § 63.685(h), and recording the results of each inspection.

(3) Keeping records to document compliance with the requirements of this subpart according to the requirements in § 63.7952.

(h) You must demonstrate continuous compliance for each tank determined to require Tank Level 2 controls and using a permanent total enclosure vented to an enclosed combustion device according to § 63.7895(d)(5) by meeting the requirements in paragraphs (h)(1) through (4) of this section.

(1) Performing the verification procedure for the enclosure annually according to the requirements in § 63.685(i).

(2) Recording the information specified in § 63.696(f).

(3) Meeting each applicable requirement for demonstrating continuous compliance with the emissions limitations and work practice standards for a closed vent system and control device in § 63.7928.

(4) Keeping records to document compliance with the requirements of this subpart according to the requirements in § 63.7952.

### Containers

### § 63.7900 What emissions limitations and work practice standards must I meet for containers?

(a) You must control HAP emissions from each new and existing container subject to § 63.7886(b)(1)(ii) according to emissions limitations and work practice standards in this section that apply to your affected containers.

(b) For each container having a design capacity greater than 0.1 $m^3$ you must meet the requirements in paragraph (b)(1) or (2) of this section that apply to your container except at the times the container is used for treatment of remediation material by a waste stabilization process, as defined in § 63.7957. As an alternative for any container subject to this paragraph, you may choose to meet the requirements in paragraph (d) of this section.

(1) If the design capacity of your container is less than or equal to 0.46 $m^3$, then you must use controls according to the standards for Container Level 1 controls as specified in § 63.922. As an alternative, you may choose to use controls according to either of the standards for Container Level 2 controls as specified in § 63.923.

(2) If the design capacity of your container is greater than 0.46 $m^3$, then you must use controls according to the standards for Container Level 2 controls as specified in § 63.923 except as provided for in paragraph (b)(3) of this section.

(3) As an alternative to meeting the standards in paragraph (b)(2) of this section for containers with a capacity greater than 0.46 $m^3$, if you determine that either of the conditions in paragraphs (b)(3)(i) or (ii) apply to the remediation material placed in your container, then you may use controls according to the standards for Container Level 1 controls as specified in § 63.922.

(i) Vapor pressure of every organic constituent in the remediation material placed in your container is less than 0.3 kPa at 20°C; or

(ii) Total concentration of the pure organic constituents having a vapor pressure greater than 0.3 kPa at 20°C in the remediation material placed in your container is less than 20 percent by weight.

(c) At times when a container having a design capacity greater than 0.1 $m^3$ is used for treatment of a remediation material by a waste stabilization process as defined in § 63.7957, you must control air emissions from the container during the process whenever the remediation material in the container is exposed to the atmosphere according to the standards for Container Level 3 controls as specified in § 63.924. You must meet the emissions limitations and work practice standards in § 63.7925 that apply to your closed vent system and control device.

(d) As an alternative to meeting the requirements in paragraph (b) of this section, you may choose to use controls on your container according to the standards for Container Level 3 controls as specified in § 63.924. You must meet the emissions limitations and work practice standards in § 63.7925 that apply to your closed vent system and control device.

(e) As provided in § 63.6(g), you may request approval from the EPA to use an alternative to the work practice standards in this section that apply to your containers. If you request for permission to use an alternative to the work practice standards, you must submit the information described in § 63.6(g)(2).

### § 63.7901 How do I demonstrate initial compliance with the emissions limitations and work practice standards for containers?

(a) You must demonstrate initial compliance with the emissions limitations and work practice standards in § 63.7990 that apply to your affected containers by meeting the requirements in paragraphs (b) through (e) of this section, as applicable to your containers.

(b) You have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (b)(1) and (2) of this section.

(1) You have determined the applicable container control levels specified in § 63.7990 for the containers to be used for your site remediation.

(2) You have determined and recorded the maximum vapor pressure or total organic concentration for the remediation material placed in containers with a design capacity greater than 0.46 $m^3$, and do not use Container Level 2 or Level 3 controls.

(c) You must demonstrate initial compliance of each container determined under paragraph (b) of this section to require Container Level 1 controls if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (c)(1) and (2) of this section.

(1) Each container using Container Level 1 controls will be one of the containers specified in § 63.922(b).

(2) You will operate each container cover and closure device according to the requirements in § 63.922(d).

(d) You must demonstrate initial compliance of each container determined under paragraph (b) of this section to require Container Level 2 controls if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (d)(1) through (4) of this section.

(1) Each container using Container Level 2 controls will be one of the containers specified in § 63.923(b).

(2) You will transfer remediation materials into and out of each container according to the procedures in § 63.923(d).

(3) You will operate and maintain the container covers and closure devices according to the requirements in § 63.923(d).

(4) You have records that the container meets the applicable U.S. Department of Transportation

regulations, or you have conducted an initial test of each container for no detectable organic emissions using the procedures in § 63.925(a), and have records documenting the test results, or you have demonstrated within the last 12 months that each container is vapor-tight according to the procedures in § 63.925(a) and have records documenting the test results.

(e) You must demonstrate initial compliance of each container determined under paragraph (b) of this section to require Container Level 3 controls if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (e)(1) and (2) of this section.

(1) For each permanent total enclosure you use to comply with § 63.7900, you have performed the verification procedure according to the requirements in § 63.924(c)(1), and prepare records of the supporting calculations and measurements.

(2) You have met each applicable requirement for demonstrating initial compliance with the emission limitations and work practice standards for a closed vent system and control device in § 63.7926.

### § 63.7902 What are my inspection and monitoring requirements for containers?

(a) You must inspect each container using Container Level 1 or Container Level 2 controls according to the requirements in § 63.926(a).

(b) If you use Container Level 3 controls, you must meet requirements in paragraphs (b)(1) and (2) of this section, as applicable to your site remediation.

(1) You must perform the verification procedure for each permanent total enclosure annually according to the requirements in § 63.924(c)(1).

(2) You must monitor and inspect each closed vent system and control device according to the requirements in § 63.7927 that apply to you.

### § 63.7903 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for containers?

(a) You must demonstrate continuous compliance with the emissions limitations and work practice standards in § 63.7990 applicable to your affected containers by meeting the requirements in paragraphs (b) through (e) of this section.

(b) You must demonstrate continuous compliance with the requirement to determine the applicable container control level specified in § 63.7990(b) for each affected tank by meeting the requirements in paragraphs (b)(1) through (3) of this section.

(1) Keeping records of the quantity and design capacity for each type of container used for your site remediation and subject to § 63.7886(b)(1)(ii).

(2) For containers subject to § 63.7886(b)(1)(ii) with a design capacity greater than 0.46 m$^3$ and not using Container Level 2 or Container Level 3 controls, meeting the requirements in paragraphs (b)(2)(i) and (ii) of this section.

(i) Keeping records of the maximum vapor pressure or total organic concentration for the remediation material placed in the containers, as applicable to the conditions in § 63.7900(b)(3)(i) or (ii) for which your containers qualify to use Container Level 1 controls.

(ii) Performing a new determination whenever changes to the remediation material placed in the containers could potentially cause the maximum vapor pressure or total organic concentration to increase to a level that is equal to or greater than the conditions specified in § 63.7900(b)(3)(i) or (ii), as applicable to your containers. You must keep records of each determination.

(3) Keeping records to document compliance with the requirements according to the requirements in § 63.7952.

(c) You must demonstrate continuous compliance for each container determined to require Container Level 1 controls by meeting the requirements in paragraphs (c)(1) through (5) of this section.

(1) Operating and maintaining covers for each container according to the requirements in § 63.922(d).

(2) Inspecting each container annually according to the requirements in § 63.926(a)(2).

(3) Emptying or repairing each container according to the requirements in § 63.926(a)(3).

(4) Keeping records of an inspection that includes the information in paragraphs (a)(4)(i) and (ii) of this section.

(i) Date of each inspection; and

(ii) If a defect is detected during an inspection, the location of the defect, a description of the defect, the date of detection, the corrective action taken to repair the defect, and if repair is delayed, the reason for any delay and the date completion of the repair is expected.

(5) Keeping records to document compliance with the requirements according to the requirements in § 63.7952.

(d) You must demonstrate continuous compliance for each container determined to require Container Level 2 controls by meeting the requirements in paragraphs (d)(1) through (6) of this section.

(1) Transferring remediation material in and out of the container according to the requirements in § 63.923(c).

(2) Operating and maintaining container covers according to the requirements in § 63.923(d).

(3) Inspecting each container annually according to the requirements in § 63.926(a)(2).

(4) Emptying or repairing containers according to the requirements in § 63.926(a)(3).

(5) Keeping records of each inspection that include the information in paragraphs (d)(5)(i) and (ii) of this section.

(i) Date of each inspection; and

(ii) If a defect is detected during an inspection, the location of the defect, a description of the defect, the date of detection, the corrective action taken to repair the defect, and if repair is delayed, the reason for any delay and the date completion of the repair is expected.

(6) Keeping records to document compliance with the requirements of this subpart according to the requirements in § 63.7952.

(e) You must demonstrate continuous compliance for each container determined to require Container Level 3 controls by meeting the requirements in paragraphs (e)(1) through (4) of this section.

(1) Performing the verification procedure for the enclosure annually according to the requirements in § 63.685(i).

(2) Recording the information specified in § 63.696(f).

(3) Meeting each applicable requirement for demonstrating continuous compliance with the emissions limitations and work practice standards for a closed vent system and control device in § 63.7928.

(4) Keeping records to document compliance with the requirements of this subpart according to the requirements in § 63.7952.

## Surface Impoundments

### § 63.7905 What emissions limitations or work practice standards must I meet for surface impoundments?

(a) You must control HAP emissions from each new and existing surface impoundment subject to § 63.7886(b)(1)(iii) according to emissions limitations and work practice standards in this section that apply to your affected surface impoundments.

(b) For each affected surface impoundment, you must install and operate air pollution controls that meet either of the options in paragraphs (b)(1) or (2) of this section.

(1) Install and operate a floating membrane cover according to the requirements in § 63.942; or

(2) Install and operate a cover vented through a closed vent system to a control device according to the requirements in § 63.943. You must meet the emissions limitations and work practice standards in § 63.7925 that apply to your closed vent system and control device.

(c) As provided in § 63.6(g), you may request approval from the EPA to use an alternative to the work practice standards in this section that apply to your surface impoundments. If you request for permission to use an alternative to the work practice standards, you must submit the information described in § 63.6(g)(2).

### § 63.7906 How do I demonstrate initial compliance with the emissions limitations or work practice standards for surface impoundments?

(a) You must demonstrate initial compliance with the emissions limitations and work practice standards in § 63.7905 that apply to your affected surface impoundments by meeting the requirements in paragraphs (b) and (c) of this section, as applicable to your surface impoundments.

(b) You must demonstrate initial compliance of each surface impoundment using a floating membrane cover according to § 63.7905(b)(1) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (b)(1) through (3) of this section.

(1) You have installed a floating membrane cover and closure devices that meet the requirements in § 63.942(b), and you have records documenting the design and installation.

(2) You will operate the cover and closure devices according to the requirements in § 63.942(c).

(3) You have performed an initial visual inspection of each surface impoundment and closure devices according to the requirements in § 63.946(a), and you have records documenting the inspection results.

(c) You must demonstrate initial compliance of each surface impoundment using a cover vented to a control device according to § 63.7905(b)(2) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (c)(1) through (4) of this section.

(1) You have installed a cover and closure devices that meet the requirements in § 63.943(b), and have records documenting the design and installation.

(2) You will operate the cover and closure devices according to the requirements in § 63.943(c).

(3) You have performed an initial visual inspection of each cover and closure devices according to the requirements in § 63.946(b), and have records documenting the inspection results.

(4) You have met each applicable requirement for demonstrating initial compliance with the emission limitations and work practice standards for a closed vent system and control device in § 63.7926.

### § 63.7907 What are my inspection and monitoring requirements for surface impoundments?

(a) If you use a floating membrane cover according to § 63.7905(b)(1), you must visually inspect the floating membrane cover and its closure devices at least annually according to the requirements in § 63.946(a).

(b) If you use a cover vented to a control device according to § 63.7905(b)(2), you must meet requirements in paragraphs (b)(1) and (2) of this section.

(1) You must visually inspect the cover and its closure devices for defects according to the requirements in § 63.946(b).

(2) You must monitor and inspect the closed vent system and control device according to the requirements in § 63.7927 that apply to you.

### § 63.7908 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for surface impoundments?

(a) You must demonstrate continuous compliance with the emissions limitations and work practice standards in § 63.7905 applicable to your affected surface impoundments by meeting the requirements in paragraphs (b) and (c) of this section as applicable to your surface impoundments.

(b) You must demonstrate continuous compliance for each surface impoundment using a floating membrane cover according to § 63.7905(b)(1) by meeting the requirements in paragraphs (b)(1) through (5) of this section.

(1) Operating and maintaining the floating membrane cover and closure devices according to the requirements in § 63.942(c).

(2) Visually inspecting the floating membrane cover and closure devices for defects at least annually according to the requirements in § 63.946(a).

(3) Repairing defects according to the requirements in § 63.946(c).

(4) Recording the information specified in § 63.947(a)(2) and (a)(3).

(5) Keeping records to document compliance with the requirements according to the requirements in § 63.7952.

(c) You must demonstrate continuous compliance for each surface impoundment using a cover vented to a control device according to § 63.7905(b)(2) by meeting the requirements in paragraphs (c)(1) through (6) of this section.

(1) Operating and maintaining the cover and its closure devices according to the requirements in § 63.943(c).

(2) Visually inspecting the cover and its closure devices for defects at least annually according to the requirements in § 63.946(b).

(3) Repairing defects according to the requirements in § 63.946(c).

(4) Recording the information specified in § 63.947(a)(2) and (a)(3).

(5) Meeting each applicable requirement for demonstrating continuous compliance with the emission limitations and work practice standards for a closed vent system and control device in § 63.7928.

(6) Keeping records to document compliance with the requirements according to the requirements in § 63.7952.

## Separators

### § 63.7910 What emissions limitations and work practice standards must I meet for separators?

(a) You must control HAP emissions from each new and existing oil-water separator and organic-water separator subject to § 63.7886(b)(1)(iv) according to emissions limitations and work practice standards in this section that apply to your affected separators.

(b) For each affected separator, you must install and operate air pollution controls that meet one of the options in paragraphs (b)(1) through (3) of this section.

(1) Install and operate a floating roof according to the requirements in § 63.1043. For portions of the separator where it is infeasible to install and operate a floating roof, such as over a weir mechanism, you must comply with the requirements specified in paragraph (b)(2) of this section.

(2) Install and operate a fixed roof vented through a closed vent system to a control device according to the requirements in § 63.1044. You must

meet the emissions limitations and work practice standards in § 63.7925 that apply to your closed vent system and control device.

(3) Install and operate a pressurized separator according to the requirements in § 63.1045.

(c) As provided in § 63.6(g), you may request approval from the EPA to use an alternative to the work practice standards in this section that apply to your separators. If you request for permission to use an alternative to the work practice standards, you must submit the information described in § 63.6(g)(2).

### § 63.7911 How do I demonstrate initial compliance with the emissions limitations and work practice standards for separators?

(a) You must demonstrate initial compliance with the emissions limitations and work practice standards in § 63.7910 that apply to your affected separators by meeting the requirements in paragraphs (b) through (d) of this section, as applicable to your separators.

(b) You must demonstrate initial compliance of each separator using a floating roof according to § 63.7910(b)(1) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (b)(1) through (4) of this section.

(1) You have installed a floating roof and closure devices that meet the requirements in § 63.1043(b), and you have records documenting the design and installation.

(2) You will operate the floating roof and closure devices according to the requirements in § 63.1043(c).

(3) You have performed an initial seal gap measurement inspection using the procedures in § 63.1046(b), and you have records documenting the measurement results.

(4) You have performed an initial visual inspection of the floating roof and closure devices for defects according to the requirements in § 63.1047(b)(2), and you have records documenting the inspection results.

(5) For any portions of the separator using a fixed roof vented to a control device according to § 63.7910(b)(1), you have met the requirements in paragraphs (c)(1) through (4) of this section.

(c) You must demonstrate initial compliance of each separator using a fixed roof vented to a control device according to § 63.7910(b)(2) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (c)(1) through (4) of this section.

(1) You have installed a fixed roof and closure devices that meet the requirements in § 63.1042(b), and you have records documenting the design and installation.

(2) You will operate the fixed roof and its closure devices according to the requirements in § 63.1042(c).

(3) You have performed an initial visual inspection of the fixed roof and closure devices for defects according to the requirements in § 63.1047(a).

(4) You have met each applicable requirement for demonstrating initial compliance with the emission limitations and work practice standards for a closed vent system and control device in § 63.7926.

(d) You must demonstrate initial compliance of each pressurized separator that operates as a closed system according to § 63.7910(b)(3) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (d)(1) and (2) of this section.

(1) You have installed a pressurized separator that operates as a closed system according to the requirements in § 63.1045(b)(1) and (b)(2), and you have records of the design and installation.

(2) You will operate the pressurized separator as a closed system according to the requirements in § 63.1045(b)(3).

### § 63.7912 What are my inspection and monitoring requirements for separators?

(a) If you use a floating roof according to § 63.7910(b)(1), you must meet requirements in paragraphs (a)(1) and (2) of this section.

(1) Measure the seal gaps at least annually according to the requirements in § 63.1047(b)(1).

(2) Visually inspect the floating roof at least annually according to the requirements in § 63.1047(b)(2).

(b) If you use a cover vented to a control device according to § 63.7910(b)(1) or (2), you must meet requirements in paragraphs (b)(1) and (2) of this section.

(1) You must visually inspect the cover and its closure devices for defects according to the requirements in § 63.1047(c).

(2) You must monitor and inspect the closed vent system and control device according to the requirements in § 63.7927 that apply to you.

(c) If you use a pressurized separator that operates as a closed system according to § 63.7910(b)(3), you must visually inspect each pressurized separator and closure devices for defects at least annually to ensure they are operating according to the design requirements in § 63.1045(b).

### § 63.7913 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for separators?

(a) You must demonstrate continuous compliance with the emissions limitations and work practice standards in § 63.7910 applicable to your affected separators by meeting the requirements in paragraphs (b) through (d) of this section as applicable to your surface impoundments.

(b) You must demonstrate continuous compliance for each separator using a floating roof according to § 63.7910(b)(1) by meeting the requirements in paragraphs (b)(1) through (6) of this section.

(1) Operating and maintaining the floating roof according to the requirements in § 63.1043(b).

(2) Performing seal gap measurement inspections at least annually according to the requirements in § 63.1047(b)(1).

(3) Visually inspecting the floating roof at least annually according to the requirements in § 63.1047(b)(2).

(4) Repairing defects according to the requirements in § 63.1047(d).

(5) Recording the information specified in § 63.1048(a) and (b).

(6) Keeping records to document compliance with the requirements according to the requirements in § 63.7952.

(c) You must demonstrate continuous compliance for each separator using a cover vented to a control device according to § 63.7905(b)(1) or (2) by meeting the requirements in paragraphs (c)(1) through (6) of this section.

(1) Operating and maintaining the fixed roof and its closure devices according to the requirements in § 63.1042.

(2) Performing visual inspections of the fixed roof and its closure devices for defects at least annually according to the requirements in § 63.1047(a).

(3) Repairing defects according to the requirements in § 63.1047(d).

(4) Recording the information specified in § 63.1048(a).

(5) Meeting each applicable requirement for demonstrating continuous compliance with the emission limitations and work practice standards for a closed vent system and control device in § 63.7928.

(6) Keeping records to document compliance with the requirements of this subpart according to the requirements in § 63.7952.

(d) You must demonstrate continuous compliance for each pressurized separator operated as a closed system according to § 63.7910(b)(3) by meeting the requirements in paragraphs (d)(1) and (2) of this section.

(1) Operating the pressurized separator at all times according to the requirements in § 63.1045.

(2) Visually inspecting each pressurized tank and closure devices for defects at least annually to ensure they are operating according to the design requirements in § 63.1045(b), and recording the results of each inspection.

## Transfer Systems

### § 63.7915 What emissions limitations and work practice standards must I meet for transfer systems?

(a) You must control HAP emissions from each new and existing transfer system subject to § 63.7886(b)(1)(v) according to emissions limitations and work practice standards in this section that apply to your affected transfer systems.

(b) For each affected transfer system that is an individual drain system as defined in § 63.7957, you must install and operate controls according to the requirements in § 63.962.

(c) For each affected transfer system that is not an individual drain system as defined in § 63.7957, you must use one of the transfer systems specified in paragraphs (c)(1) through (3) of this section.

(1) A transfer system that uses covers according to the requirements in § 63.689(d).

(2) A transfer system that consists of continuous hard-piping. All joints or seams between the pipe sections shall be permanently or semi-permanently sealed (e.g., a welded joint between two sections of metal pipe or a bolted and gasketed flange).

(3) A transfer system that is enclosed and vented through a closed vent system to a control device according to the requirements specified in paragraphs (c)(3)(i) and (ii) of this section.

(i) The transfer system is designed and operated such that an internal pressure in the vapor headspace in the enclosure is maintained at a level less than atmospheric pressure when the control device is operating, and

(ii) The closed vent system and control device are designed and operated to meet the emissions limitations and work practice standards in § 63.7925 that apply to your closed vent system and control device.

(d) As provided in § 63.6(g), you may request approval from the EPA to use an alternative to the work practice standards in this section that apply to your transfer systems. If you request for permission to use an alternative to the work practice standards, you must submit the information described in § 63.6(g)(2).

### § 63.7916 How do I demonstrate initial compliance with the emissions limitations and work practice standards for transfer systems?

(a) You must demonstrate initial compliance with the emissions limitations and work practice standards in § 63.7915 that apply to your affected transfer systems by meeting the requirements in paragraphs (b) through (e) of this section, as applicable to your transfer systems.

(b) You must demonstrate initial compliance of each individual drain system using controls according to § 63.7915(b) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (b)(1) through (3) of this section.

(1) You have installed air emission controls for each individual drain system and junction box according to the requirements in § 63.962(a) and (b), and you have records documenting the installation and design.

(2) You will operate the air emission controls according to the requirements in § 63.962(b)(5).

(3) You have performed an initial visual inspection of each individual drain system according to the requirements in § 63.964(a), and you have records documenting the inspection results.

(c) You must demonstrate initial compliance of each transfer system using covers according to § 63.7915(c)(1) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (c)(1) through (3) of this section.

(1) Each transfer system is equipped with covers and closure devices according to the requirements in § 63.689(d)(1) through (4), and you have records documenting the design and installation.

(2) You have performed an initial inspection of each cover and its closure devices for defects according to the requirements in § 63.695(d)(1) through (5), and you have records documenting the inspection results.

(3) You will operate each cover and its closure devices according to the requirements in § 63.689(5).

(d) You must demonstrate initial compliance of each transfer system that consists of hard piping according to § 63.7915(c)(2) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (d)(1) and (2) of this section.

(1) You have installed a transfer system that consists entirely of hard piping and meets the requirements in § 63.7915(c)(2), and you have records documenting the design and installation.

(2) You have performed an initial inspection of the entire transfer system to verify that all joints or seams between the pipe sections are permanently or semi-permanently sealed (*e.g.*, a welded joint between two sections of metal pipe or a bolted and gasketed flange), and you have records documenting the inspection results.

(e) You must demonstrate initial compliance of each transfer system that is enclosed and vented to a control device according to § 63.7915(e)(3) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (e)(1) and (2) of this section.

(1) You have installed a transfer system that is designed and operated such that an internal pressure in the vapor headspace in the enclosure is maintained at a level less than atmospheric pressure when the control device is operating, and you have records documenting the design and installation.

(2) You have met each applicable requirement for demonstrating initial compliance with the emission limitations and work practice standards for a closed vent system and control device in § 63.7926.

### § 63.7917 What are my inspection and monitoring requirements for transfer systems?

(a) If you operate an individual drain system as a transfer system according to § 63.7915(b), you must visually inspect each individual drain system at least annually according to the requirements in § 63.964(a).

(b) If you operate a transfer system using covers according to § 63.7915(c)(1), you must inspect each cover and its closure devices for defects according to the requirements in § 63.695(d)(1) through (5).

(c) If you operate a transfer system consisting of hard piping according to § 63.7915(c)(2), you must annually inspect the entire pipeline and all joints for leaks and other defects. In the event that a defect is detected, you must repair the leak or defect according to the requirements of paragraph (e) of this section.

(d) If you operate a transfer system that is enclosed and vented to a control device according to § 63.7915(c)(3), you must meet requirements in paragraphs (d)(1) and (2) of this section.

(1) You must annually inspect all enclosure components (e.g., enclosure sections, closure devices, fans) for defects that would prevent an internal pressure in the vapor headspace in the enclosure from continuously being maintained at a level less than atmospheric pressure when the control device is operating. In the event that a defect is detected, you must repair the defect according to the requirements of paragraph (e) of this section.

(2) You must monitor and inspect the closed vent system and control device according to the requirements in § 63.7927 that apply to you.

(e) If you are subject to paragraph (c) or (d) of this section, you must repair all detected defects as specified in paragraphs (e)(1) through (3) of this section.

(1) You must make first efforts at repair of the defect no later than 5 calendar days after detection and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in paragraph (e)(2) of this section.

(2) Repair of a defect may be delayed beyond 45 calendar days if you determine that repair of the defect requires emptying or temporary removal from service of the transfer system and no alternative transfer system is available at the site to accept the material normally handled by the system. In this case, you must repair the defect the next time the process or unit that is generating the material handled by the transfer system stops operation. Repair of the defect must be completed before the process or unit resumes operation.

(3) You must maintain a record of the defect repair according to the requirements specified in § 63.7952.

### § 63.7918 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for transfer systems?

(a) You must demonstrate continuous compliance with the emissions limitations and work practice standards in § 63.7915 applicable to your affected transfer system by meeting the requirements in paragraphs (b) through (e) of this section as applicable to your transfer systems.

(b) You must demonstrate continuous compliance for each individual drain system using controls according to § 63.7915(b) by meeting the requirements in paragraphs (b)(1) through (5) of this section.

(1) Operating and maintaining the air emission controls for individual drain systems according to the requirements in § 63.962.

(2) Visually inspecting each individual drain system at least annually according to the requirements in § 63.964(a).

(3) Repairing defects according to the requirements in § 63.964(b).

(4) Recording the information specified in § 63.965(a).

(5) Keeping records to document compliance with the requirements of this subpart according to the requirements in § 63.7952.

(c) You must demonstrate continuous compliance for each transfer system using covers according to § 63.7915(c)(1) by meeting the requirements in paragraphs (c)(1) through (4) of this section.

(1) Operating and maintaining each cover and its closure devices according to the requirements in § 63.689(d)(1) through (5).

(2) Performing inspections of each cover and its closure devices for defects at least annually according to the requirements in § 63.695(d)(1) through (5).

(3) Repairing defects according to the requirements in § 63.695(5)

(4) Keeping records to document compliance with the requirements of this subpart according to the requirements in § 63.7952.

(d) You must demonstrate continuous compliance for each transfer system that consists of hard piping according to § 63.7915(c)(2) by meeting the requirements in paragraphs (d)(1) through (4) of this section.

(1) Operating and maintaining the pipeline to ensure that all joints or seams between the pipe sections remain permanently or semi-permanently sealed (*e.g.*, a welded joint between two sections of metal pipe or a bolted and gasketed flange).

(2) Inspecting the pipeline for defects at least annually according to the requirements in § 63.7918(c).

(3) Repairing defects according to the requirements in § 63.7918(e).

(4) Keeping records to document compliance with the requirements of this subpart according to the requirements in § 63.7952.

(e) You must demonstrate continuous compliance for each transfer system that is enclosed and vented to a control device according to § 63.7915(e)(3) by meeting the requirements in paragraphs (e)(1) through (5) of this section.

(1) Operating and maintaining the enclosure to ensure that the internal pressure in the vapor headspace in the enclosure is maintained continuously at a level less than atmospheric pressure when the control device is operating.

(2) Inspecting the enclosure and its closure devices for defects at least annually according to the requirements in § 63.7918(d).

(3) Repairing defects according to the requirements in § 63.7918(e).

(4) Meeting each applicable requirement for demonstrating continuous compliance with the emission limitations and work practice standards for a closed vent system and control device in § 63.7928.

(5) Keeping records to document compliance with the requirements according to the requirements in § 63.7952.

## Equipment Leaks

### § 63.7920 What emissions limitations and work practice standards must I meet for equipment leaks?

(a) You must control HAP emissions from each new and existing equipment subject to § 63.7887 according to emissions limitations and work practice standards in this section that apply to your affected equipment.

(b) For your affected equipment, you must meet the requirements in either paragraph (b)(1) or (2) of this section.

(1) Control equipment leaks according to all applicable requirements under 40 CFR part 63, subpart TT—National Emission Standards for Equipment Leaks—Control Level 1; or

(2) Control equipment leaks according to all applicable requirements under 40 CFR part 63, subpart UU—National Emission Standards for Equipment Leaks—Control Level 2.

(c) If you use a closed vent system and control device to comply with this section, as an alternative to meeting the standards in § 63.1015 or § 63.1034 for closed vent systems and control devices, you may elect to meet the requirements in §§ 63.7925 through 63.7928 that apply to your closed vent system and control device.

(d) As provided in § 63.6(g), you may request approval from the EPA to use an alternative to the work practice standards in this section that apply to your equipment. If you request for permission to use an alternative to the work practice standards, you must submit the information described in § 63.6(g)(2).

### § 63.7921 How do I demonstrate initial compliance with the emissions limitations and work practice standards for equipment leaks?

(a) You must demonstrate initial compliance with the emissions limitations and work practice standards in § 63.7920 that apply to your affected equipment by meeting the requirements in paragraphs (b) and (c) of this section, as applicable to your affected sources.

(b) If you control equipment leaks according to the requirements under § 63.7920(b)(1), you must demonstrate initial compliance if you have met the requirements in paragraphs (b)(1) and (2) of this section.

(1) You include the information required in § 63.1018(a)(1) in your notification of compliance status report.

(2) You have submitted as part of your notification of compliance status a signed statement that:

(i) You will meet the requirements in §§ 63.1002 through 63.1016 that apply to your affected equipment.

(ii) You have identified the equipment subject to control according to the requirements in § 63.1003, including equipment designated as unsafe to monitor, and have records supporting the determinations with a written plan for monitoring the equipment according to the requirements in § 63.1003(c)(4).

(c) If you control equipment leaks according to the requirements under § 63.7920(b)(2), you must demonstrate initial compliance if you have met the requirements in paragraphs (c)(1) and (2) of this section.

(1) You have included the information required in § 63.1039(a) in your notification of compliance status report.

(2) You have submitted as part of your notification of compliance status a signed statement that:

(i) You will meet the requirements in §§ 63.1021 through 63.1037 that apply to your affected equipment.

(ii) You have identified the equipment subject to control according to the requirements in § 63.1022, including equipment designated as unsafe to monitor, and have records supporting the determinations with a written plan for monitoring the equipment according to the requirements in § 63.1022(c)(4).

### § 63.7922 How do I demonstrate continuous compliance with the work practice standards for equipment leaks?

(a) You must demonstrate continuous compliance with the emissions limitations and work practice standards in § 63.7920 applicable to your affected equipment by meeting the requirements in paragraphs (b) through (d) of this section that apply to you.

(b) If you control equipment leaks according to the requirements under § 63.7920(b)(1), you must demonstrate continuous compliance by inspecting, monitoring, repairing, and maintaining records according to the requirements in §§ 63.1002 through 63.1018 that apply to your affected equipment.

(c) If you control equipment leaks according to the requirements under § 63.7920(b)(2), you must demonstrate continuous compliance by inspecting, monitoring, repairing, and maintaining records according to the requirements in §§ 63.1021 through 63.1039 that apply to your affected equipment.

(d) You must keep records to demonstrate compliance with the requirements according to the requirements in § 63.7952.

## Closed Vent Systems and Control Devices

### § 63.7925 What emissions limitations and work practice standards must I meet for closed vent systems and control devices?

(a) For each closed-vent system and control device you use to comply with requirements in §§ 63.7890 through 63.7922, as applicable to your affected sources, you must meet the emissions limitations and work practice standards in this section.

(b) Whenever gases or vapors containing HAP are vented through the closed-vent system to the control device, the control device must be operating except at those times listed in either paragraph (b)(1) or (2) of this section.

(1) The control device may be bypassed for the purpose of performing planned routine maintenance of the closed-vent system or control device in situations when the routine maintenance cannot be performed during periods that the emission point vented to the control device is shutdown. On an annual basis, the total time that the closed-vent system or control device is bypassed to perform routine maintenance must not exceed 240 hours per each calendar year.

(2) The control device may be bypassed for the purpose of correcting a malfunction of the closed-vent system or control device. You must perform the adjustments or repairs necessary to correct the malfunction as soon as practicable after the malfunction is detected.

(c) For each closed vent system, you must meet the work practice standards in § 63.693(c).

(d) For each control device other than a flare or a control device used to comply with the facility-wide process vent emission limits in § 63.7890(b), you must control HAP emissions to meet either of the emissions limits in paragraphs (d)(1) or (2) of this section except as provided for in paragraph (f) of this section.

(1) Reduce emissions of total HAP listed in Table 1 of this subpart or TOC (minus methane and ethane) from each control device by 95 percent by weight; or

(2) Limit the concentration of total HAP listed in Table 1 of this subpart or TOC (minus methane and ethane) from each combustion control device (a thermal incinerator, catalytic incinerator, boiler, or process heater) to 20 ppmv or less on a dry basis corrected to 3 percent oxygen.

(e) If you use a flare for your control device, then you must meet the requirements for flares in § 63.11(b).

(f) If you use a process heater or boiler for your control device, then as alternative to meeting the emissions limits in paragraph (d) of this section you may choose to comply with one of the work practice standards in paragraphs (f)(1) through (3) of this section.

(1) Introduce the vent stream into the flame zone of the boiler or process heater and maintain the conditions in the combustion chamber at a residence time of 0.5 seconds or longer and at a temperature of 760°C or higher; or

(2) Introduce the vent stream with the fuel that provides the predominate heat input to the boiler or process heater (*i.e.*, the primary fuel); or

(3) Introduce the vent stream to a boiler or process heater for which you either have been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H—Hazardous Waste Burned in Boilers and Industrial Furnaces; or has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(g) For each control device other than a flare, you must meet each operating limit in paragraphs (g)(1) through (6) of this section that applies to your control device.

(1) If you use a regenerable carbon adsorption system, you must:

(i) Maintain the hourly average total regeneration stream mass flow during the adsorption bed regeneration cycle greater than or equal to the stream mass flow established in the design evaluation or performance test.

(ii) Maintain the hourly average temperature of the adsorption bed during regeneration (except during the cooling cycle) greater than or equal to the temperature established during the design evaluation or performance test.

(iii) Maintain the hourly average temperature of the adsorption bed after regeneration (and within 15 minutes after completing any cooling cycle) less than or equal to the temperature established during the design evaluation.

(iv) Maintain the frequency of regeneration greater than or equal to the frequency established during the design evaluation.

(2) If you use a nonregenerable carbon adsorption system, you must maintain the hourly average temperature of the adsorption bed less than or equal to the temperature established during the design evaluation or performance test.

(3) If you use a condenser, you must maintain the daily average condenser exit temperature less than or equal to the temperature established during the design evaluation or performance test.

(4) If you use a thermal incinerator, you must maintain the daily average firebox temperature greater than or equal to the temperature established in the design evaluation or during the performance test.

(5) If you use a catalytic incinerator, you must maintain the daily average temperature difference across the catalyst bed greater than or equal to the minimum temperature difference established during the performance test or design evaluation.

(6) If you use a boiler or process heater to comply with an emission limit in paragraph (d) of this section, you must maintain the daily average firebox temperature within the operating level established during the design evaluation or performance test.

(h) If you use a carbon adsorption system as your control, you must meet each work practice standard in paragraphs (h)(1) through (3) of this section that applies to your control device.

(1) If you use a regenerable carbon adsorption system, you must:

(i) Replace the existing adsorbent in each segment of the bed with an adsorbent that meets the replacement specifications established during the design evaluation before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation.

(ii) Follow the disposal requirements for spent carbon in § 63.693(d)(4).

(2) If you use a nonregenerable carbon adsorption system, you must:

(i) Replace the existing adsorbent in each segment of the bed with an adsorbent that meets the replacement specifications established during the design evaluation before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation.

(ii) Meet the disposal requirements for spent carbon in § 63.693(d)(4)(ii).

(3) If you use a nonregenerative carbon adsorption system, you may choose to comply with the requirements in paragraphs (h)(3)(i) and (ii) of this section as an alternative to the requirements in paragraph (h)(2) of this section. You must:

(i) Immediately replace the carbon canister or carbon in the control device when the monitoring device indicates breakthrough has occurred according to the requirements in § 63.693(d)(4)(iii)(A), or replace the carbon canister or carbon in the control device at regular intervals according to the requirements in § 63.693(d)(4)(iii)(B).

(ii) Follow the disposal requirements for spent carbon in § 63.693(d)(4)(ii).

(i) If you use a catalytic incinerator, you must replace the existing catalyst bed with a bed that meets the replacement specifications before the age of the bed exceeds the maximum allowable age established in the design evaluation or during the performance test.

(j) As provided in § 63.6(g), you may request approval from the EPA to use an alternative to the work practice standards in this section that apply to your closed vent systems and control devices. If you request for permission to use an alternative to the work practice standards, you must submit the information described in § 63.6(g)(2).

### § 63.7926 How do I demonstrate initial compliance with the emission limitations and work practice standards for closed vent systems and control devices?

(a) You must demonstrate initial compliance with the emissions limitations and work practice standards in this subpart applicable to your closed vent system and control device by meeting the requirements in paragraphs (b) through (h) of this section that apply to your closed vent system and control device.

(b) You must demonstrate initial compliance with the closed vent system work practice standards in § 63.7925(c) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (b)(1) and (2) of this section.

(1) You have installed a closed vent system that meets the requirements in § 63.695(c)(1) and (2), and you have records documenting the equipment design and installation.

(2) You have performed the initial inspection of the closed vent system according to the requirements in § 63.695(c)(1)(i) or (ii), and you have records documenting the inspection results.

(c) You must demonstrate initial compliance of each control device subject to the emissions limits in § 63.7925(d) with the applicable emissions limit in § 63.7925(d) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (c)(1) and (2) of this section that apply to you.

(1) For the emissions limit in § 63.7925(d)(1), the emissions of total HAP listed in Table 1 of this subpart or TOC (minus methane and ethane) from the control device, measured or determined according to the procedures for performance tests and design evaluations in § 63.7941, are reduced by at least 95 percent by weight.

(2) For the emissions limit in § 63.7925(d)(2), the concentration of total HAP listed in Table 1 of this subpart or TOC (minus methane and ethane) from the combustion control device, measured by a performance test or determined by a design evaluation according to the procedures in § 63.7941, do not exceed 20 ppmv on a dry basis corrected to 3 percent oxygen.

(d) You must demonstrate initial compliance of each control device subject to operating limits in § 63.7925(g) with the applicable limits if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (d)(1) and (2) of this section.

(1) You have established an appropriate operating limit(s) for each of the operating parameter applicable to your control device as specified in § 63.7925(g)(1) through (6).

(2) You have a record of the applicable operating parameter data during the performance test or design evaluation during which the emissions met the applicable limit.

(e) You must demonstrate initial compliance with the spent carbon replacement and disposal work practice standards for carbon adsorption systems in § 63.7925(h) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you will comply with each work practice standard that applies to your carbon adsorption system.

(f) You must demonstrate initial compliance with the catalyst replacement work practice standards for catalytic incinerators in § 63.7925(i) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you will comply with the specified work practice standard.

(g) You must demonstrate initial compliance of each flare with the work practice standards in § 63.7925(e) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (g)(1) through (3) of this section.

(1) Each flare meets the requirements in § 63.11(b).

(2) You have performed a visible emissions test, determined the net heating value of gas being combusted, and determined the flare exit velocity as required in § 63.693(h)(2).

(3) You will operate each flare according to the requirements in § 63.11(b).

(h) You must demonstrate initial compliance of each boiler or process heater with the work practice standards in § 63.7925(f) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (h)(1) through (3) of this section.

(1) For the work practice standards in § 63.7925(f)(1), you have records documenting that the boiler or process heater is designed to operate at a residence time of 0.5 seconds or greater and maintain the combustion zone temperature at 760°C or greater.

(2) For the work practice standard in § 63.7925(f)(2), you have records documenting that the vent stream is introduced with the fuel according to the requirements in § 63.693(g)(1)(iv), or that the vent stream is introduced to a boiler or process heater that meets the requirements in § 63.693(g)(1)(v).

(3) For the work practice standard in § 63.7925(f)(3), you have records documenting you either have been issued a final permit under 40 CFR part 270 and your boiler or process heater complies with the requirements of 40 CFR part 266, subpart H—Hazardous Waste Burned in Boilers and Industrial Furnaces; or has been certified in compliance with the interim status requirements of 40 CFR part 266, subpart H.

### § 63.7927 What are my inspection and monitoring requirements for closed vent systems and control devices?

(a) You must comply with the requirements in paragraphs (a)(1) and (2) of this section for each closed vent system.

(1) You must monitor and inspect each closed vent system according to the requirements in either paragraph (a)(1)(i) or (ii) of this section.

(i) You must monitor, inspect, and repair defects according to the requirements in § 63.695(c)(1)(ii) through (c)(3); or

(ii) You must monitor and inspect the closed vent system according to the requirements in § 63.172(f) through (j) and record the information in § 63.181.

(2) If your closed vent system includes a bypass device, you must meet the requirements in either paragraph (a)(2)(i) or (ii) of this section.

(i) Use a flow indicator to determine if the presence of flow according to the requirements in § 63.693(c)(2)(i); or

(ii) Use a seal or locking device and make monthly inspections as required by § 63.693(c)(2)(ii).

(b) If you use a regenerable carbon adsorption system, you must meet the requirements in paragraphs (b)(1) through (3) of this section.

(1) Use a continuous parameter monitoring system (CPMS) to measure and record the hourly average total regeneration stream mass flow during each carbon adsorption cycle.

(2) Use a CPMS to measure and record the hourly average temperature of the adsorption bed during regeneration (except during the cooling cycle).

(3) Use a CPMS to measure and record the hourly average temperature of the adsorption bed after regeneration (and within 15 minutes of after completing any cooling cycle).

(c) If you use a nonregenerable carbon adsorption system, you must use a CPMS to measure and record the hourly average temperature of the adsorption bed or you must monitor the concentration of organic compounds in the exhaust vent stream according to the requirements in § 63.693(d)(4)(iii)(A).

(d) If you use a condenser, you must use a CPMS to measure and record the hourly average condenser exit temperature and determine and record the daily average condenser exit temperature.

(e) If you use a thermal incinerator, you must use a CPMS to measure and record the hourly average firebox temperature and determine and record the daily average firebox temperature.

(f) If you use a catalytic incinerator, you must use a CPMS with two temperature sensors to measure and record the hourly average temperature at the inlet of the catalyst bed, the hourly average temperature at the outlet of the catalyst bed, the hourly average temperature difference across the catalyst bed, and to determine and record the daily average temperature difference across the catalyst bed.

(g) If you use a boiler or process heater to meet an emission limitation, you must use a CPMS to measure and record the hourly average firebox temperature and determine and record the daily average firebox temperature.

(h) If you use a flare, you must monitor the operation of the flare using a heat sensing monitoring device according to the requirements in § 63.693(h)(3).

(i) If you introduce the vent stream into the flame zone of a boiler or process heater according to the requirements in § 63.7925(f)(1), you must use a CPMS to measure and record the combustion zone temperature.

### § 63.7928 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for closed vent systems and control devices?

(a) You must demonstrate continuous compliance with the emissions limitations and work practice standards in this subpart applicable to your closed vent system and control device by meeting the requirements in paragraphs (b) through (j) of this section as applicable to your closed vent system and control device.

(b) You must demonstrate continuous compliance with the closed vent system work practice standards in § 63.7925(c) by meeting the requirements in paragraphs (b)(1) through (7) of this section.

(1) For a closed vent system designed to operate with no detectable organic emissions, visually inspecting the closed vent system at least annually, monitoring after a repair or replacement using the procedures in § 63.694(k), and monitoring at least annually according to the requirements in § 63.695(c)(1)(ii).

(2) For a closed vent system designed to operate below atmospheric pressure, visually inspecting the closed vent system at least annually according to the requirements in § 63.695(c)(2)(ii).

(3) Repairing defects according to the requirements in § 63.695(c)(3).

(4) Keeping records of each inspection that include the information in paragraphs (b)(4)(i) through (iii) of this section:

(i) A closed vent system identification number (or other unique identification description you select).

(ii) Date of each inspection.

(iii) If a defect is detected during an inspection, the location of the defect, a description of the defect, the date of detection, the corrective action taken to repair the defect, and if repair is delayed, the reason for any delay and the date completion of the repair is expected.

(5) If you elect to monitor the closed vent system according to the requirements in § 63.172(f) through (j), recording the information in § 63.181.

(6) If the closed vent system is equipped with a flow indicator, recording the information in § 63.693(c)(ii)(i).

(7) If the closed vent system is equipped with a seal or locking device,

visually inspecting the seal or closure mechanism at least monthly according to the requirements in § 63.693(c)(ii)(i), and recording the results of each inspection.

(c) You must demonstrate continuous compliance of each control device subject to the emissions limits in § 63.7925(d) with the applicable emissions limit in § 63.7925(d) by meeting the requirements in paragraphs (c)(1) and (2) of this section.

(1) For the emission limit in § 63.7925(d)(1), maintaining the reduction in emissions of total HAP listed in Table 1 of this subpart or TOC (minus methane and ethane) from the control device at 95 percent by weight or greater.

(2) For the emission limit in § 63.7925(d)(2), maintaining the concentration of total HAP listed in Table 1 of this subpart or TOC (minus methane and ethane) from the control device at 20 ppmv or less.

(d) You must demonstrate continuous compliance of each control device subject to operating limits in § 63.7925(g) with the applicable limits by meeting the requirements in paragraphs (d)(1) through (4) of this section.

(1) Maintaining each operating limit according to the requirements in § 63.7925(g) as applicable to the control device.

(2) Monitoring and inspecting each control device according to the requirements in § 63.7927(b) through (i) as applicable to the control device.

(3) Operating and maintaining each continuous monitoring system according to the requirements in § 63.7945, and collecting and reducing data according to the requirements in § 63.7946.

(4) Keeping records to document compliance with the requirements of this subpart according to the requirements in § 63.7952.

(e) You must demonstrate continuous compliance with the spent carbon replacement and disposal work practice standards for regenerable carbon adsorption systems in § 63.7925(h)(1) by meeting the requirements in paragraphs (e)(1) through (3) of this section.

(1) Replacing the adsorbent as required by § 63.7925(h)(1)(i).

(2) Following the disposal requirements for spent carbon in § 63.693(d)(4)(ii).

(3) Keeping records to document compliance with the requirements of the work practice standards.

(f) You must demonstrate continuous compliance with the spent carbon replacement and disposal work practice standards for nonregenerable carbon adsorption systems in § 63.7925(h)(2) by meeting the requirements in paragraphs (f)(1) through (3) of this section.

(1) Replacing the adsorbent as required by the work practice standard in § 63.7925(h)(2)(i).

(2) Following the disposal requirements for spent carbon in § 63.693(d)(4)(ii).

(3) Keeping records to document compliance with the requirements of the work practice standards.

(g) You must demonstrate continuous compliance with the spent carbon replacement and disposal work practice standards for nonregenerable carbon adsorption systems in § 63.7925(h)(3) by meeting the requirements in paragraphs (g)(1) through (3) of this section.

(1) Monitoring the concentration level of the organic compounds in the exhaust vent for the carbon adsorption system as required in § 63.7927(c), immediately replacing the carbon canister or carbon in the control device when breakthrough is indicated by the monitoring device, and recording the date of breakthrough and carbon replacement. Or, you must replace the carbon canister or carbon in the control device at regular intervals and record the date of carbon replacement.

(2) Following the disposal requirements for spent carbon in § 63.693(d)(4)(ii).

(3) Keeping records to document compliance with the requirements of the work practice standards.

(h) You must demonstrate continuous compliance with the catalyst replacement work practice standards for catalytic incinerators in § 63.7925(i) by meeting the requirements in paragraphs (h)(1) and (2) of this section.

(1) Replacing the existing catalyst bed as required in § 63.7925(i).

(2) Keeping records to document compliance with the requirements of the work practice standards.

(i) You must demonstrate continuous compliance of each flare with the work practice standards in § 63.7925(e) by meeting the requirements in paragraphs (i)(1) through (5) of this section.

(1) Operating the flare with no visible emissions except for up to 5 minutes in any 2 consecutive hours according to the requirements in § 63.11(b)(4).

(2) Monitoring the presence of a pilot flare according to the requirements in § 63.7927(h) and maintaining a pilot flame and flare flame at all times that emissions are not vented to the flare according to the requirements in § 63.11(b)(5).

(3) Operating the flare with an exit velocity according to the requirements in § 63.11(b)(6) through (8).

(4) Operating the flare with a net heating value of the gas being combusted according to the requirements in § 63.11(b)(6)(ii).

(5) Keeping records to document compliance with the requirements of the work practice standards.

(j) You must demonstrate continuous compliance of each boiler or process heater with the work practice standards in § 63.7925(f) by meeting the requirements in paragraphs (j)(1) through (3) of this section.

(1) For the work practice standards in § 63.7925(f)(1), you must demonstrate continuous compliance by meeting the requirements in paragraphs (j)(1)(i) through (iv).

(i) Maintaining conditions in the combustion chamber at a residence time of 0.5 seconds or longer and at a combustion zone temperature at 760°C or greater whenever the vent stream is introduced to the flame zone of the boiler or process heater.

(ii) Monitoring each boiler or process heater according to the requirements in § 63.7927(i).

(iii) Operating and maintaining each continuous monitoring system according to the requirements in § 63.7945, and collecting and reducing data according to the requirements in § 63.7946.

(iv) Keeping records to document compliance with residence time design requirement.

(2) For the work practice standards in § 63.7925(f)(2), you maintain the boiler or process heater operations such that the vent stream is introduced with the fuel according to the requirements in § 63.693(g)(1)(iv), or that the vent stream is introduced to a boiler or process heater that meets the requirements in § 63.693(g)(1)(v).

(3) For the work practice standard in § 63.7925(f)(3), you remain in compliance with all terms and conditions of the final permit under 40 CFR part 270 and your boiler or process heater complies with the requirements of 40 CFR part 266, subpart H—Hazardous Waste Burned in Boilers and Industrial Furnaces; or in compliance with the interim status requirements of 40 CFR part 266, subpart H, as applicable to your boiler or process heater.

## General Compliance Requirements

### § 63.7935 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emissions limitations (including operating limits) and the work practice standards in this subpart at all times, except during periods of startup, shutdown, and malfunction.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) You must develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

(d) During periods of startup, shutdown, and malfunction, you must operate according to the SSMP.

(e) You must report each instance in which you did not meet each emissions limitation and each operating limit that applies to you. This includes periods of startup, shutdown, and malfunction. You must also report each instance in which you did not meet the requirements for work practice standards that apply to you. These instances are deviations from the emissions limitations and work practice standards in this subpart. These deviations must be reported according to the requirements in § 63.7951.

(f) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating according to the SSMP. We will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

(g) For each monitoring system required in this section, you must develop and make available for inspection by the permitting authority, upon request, a site-specific monitoring plan that addresses the following:

(1) Installation of the continuous monitoring system sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.*, on or downstream of the last control device).

(2) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system.

(3) Performance evaluation procedures and acceptance criteria (*e.g.*, calibrations).

(h) In your site-specific monitoring plan, you must also address the following:

(1) Ongoing operation and maintenance procedures according to the general requirements of § 63.8(c)(1), (3), (4)(ii), (7), and (8).

(2) Ongoing data quality assurance procedures according to the general requirements of § 63.8(d).

(3) Ongoing recordkeeping and reporting procedures according to the general requirements of § 63.10(c), (e)(1), and (e)(2)(i).

(i) You must operate and maintain the continuous monitoring system according to the site-specific monitoring plan.

(j) You must conduct a performance evaluation of each continuous monitoring according to your site-specific monitoring plan.

### § 63.7936 What requirements must I meet if I transfer remediation material off-site to another facility?

(a) If you transfer to another facility a remediation material generated by your remediation activities and having an average total VOHAP concentration equal to or greater than 10 ppmw (as determined using the procedures specified in § 63.7943), then you must transfer the remediation material to a facility that meets the requirements in paragraph (b) of this section. You must record the name, street address, and telephone number of the facility where you send this remediation material.

(b) You may elect to transfer the remediation material to one of the following facilities:

(1) A facility where your remediation material will be directly disposed in a landfill or other land disposal unit according to all applicable Federal and State requirements.

(2) A facility subject to 40 CFR part 63, subpart DD where the exemption under § 63.680(b)(2)(iii) is waived and air emissions from the management of your remediation material at the facility are controlled according to all applicable requirements in the subpart for an off-site material. Prior to sending your remediation material, you must obtain a written statement from the owner or operator of the facility to which you send your remediation material acknowledging that the exemption under § 63.680(b)(2)(iii) will be waived for all remediation material received at the facility from you and your material will be managed as an off-site material at the facility according to all applicable requirements. This statement must be signed by the responsible official of the receiving facility, provide the name and address of the receiving facility, and a copy sent to the appropriate EPA Regional Office at the addresses listed in 40 CFR 63.13.

(3) A facility where your remediation material will be managed according to all applicable requirements under this Subpart.

(i) You must prepare and include a notice with each shipment or transport of remediation material from your site. This notice must state that the remediation material contains organic HAP that are to be treated according to the provisions of this subpart. When the transport is continuous or ongoing (for example, discharge to a publicly owned treatment works), the notice must be submitted to the receiving facility owner or operator initially and whenever there is a change in the required treatment.

(ii) You may not transfer the remediation material unless the owner or operator of the facility receiving your remediation material has submitted to the EPA a written certification that he or she will manage remediation material received from you according to the requirements of §§ 63.7885 through 63.7957. The receiving facility owner or operator may revoke the written certification by sending a written statement to the EPA and to you providing at least 90 days notice that they rescind acceptance of responsibility for compliance with the regulatory provisions listed in this section. Upon expiration of the notice period, you may not transfer your remediation material to the facility.

(iii) By providing the written certification to the EPA, the receiving facility owner or operator accepts responsibility for compliance with the regulatory provisions listed in paragraph (b)(3) of this section with respect to any shipment of remediation material covered by the written certification. Failure to abide by any of those provisions with respect to such shipments may result in enforcement action by the EPA against the certifying entity according to the enforcement provisions applicable to violations of these provisions by owners or operators of sources.

(iv) Written certifications and revocation statements to the EPA from the receiving facility owner or operator must be signed by the responsible official of the receiving facility, provide the name and address of the receiving facility, and a copy sent to the appropriate EPA Regional Office at the addresses listed in 40 CFR 63.13. Such written certifications are not transferable.

(c) Acceptance by a facility owner or operator of remediation material from a site remediation subject to this Subpart does not, by itself, require the facility owner or operator to obtain a title V permit under 40 CFR 70.3 or 40 CFR 71.3.

### § 63.7937 How do I demonstrate initial compliance with the general standards?

(a) You must demonstrate initial compliance with the general standards in §§ 63.7884 through 63.7887 that apply to your affected sources by meeting the requirements in paragraphs (b) through (d) of this section, as applicable to you.

(b) You must demonstrate initial compliance with the general standards in § 63.7885 that apply to your affected process vents by meeting the requirements in paragraphs (b)(1) through (4) of this section, as applicable to your process vents.

(1) If HAP emissions are controlled from the affected process vents according to the emission limitations and work practice standards specified in § 63.7885(b)(1), you have met the initial compliance requirements in § 63.7891.

(2) If the remediation material treated or managed by the process vented through the affected process vents has an average total VOHAP less than 10 ppmw according to § 63.7885(b)(2), you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have determined, according to the procedures § 63.7943, and recorded the average VOHAP concentration of the remediation material placed in the affected remediation material management unit.

(3) If HAP emissions are controlled from the affected process vents to meet standards in another subpart under 40 CFR part 61 or 40 CFR part 63 according to § 63.7885(b)(3), you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (b)(3)(i) and (ii) of this section.

(i) You include in your statement the citations for the specific emission limitations and work practice standards that apply to the process vents under the subpart in 40 CFR part 61 or 40 CFR part 63 that the vents are also subject.

(ii) You are complying with all applicable emissions limitations and work practice standards specified by the applicable subpart.

(4) For each process vent exempted according to § 63.7885(c), you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (b)(4)(i) and (ii) of this section.

(i) You identify in your statement each process vent that qualifies for an exemption and the exemption conditions in § 63.7885(c)(1)(i) or (ii) that apply to each exempted process vent.

(ii) You have performed the measurements and prepared the documentation required in § 63.7885(c)(2) that demonstrates that each exempted process vent stream meets the applicable exemption conditions in § 63.7885(c)(1).

(c) You must demonstrate initial compliance with the general standards in § 63.7886 that apply to your affected remediation material management units by meeting the requirements in paragraphs (c)(1) through (6) of this section, as applicable to your remediation material management units.

(1) If the remediation material management unit uses air pollution controls according to the standards specified in § 63.7886(b)(1), you have met the initial compliance requirements applicable to the remediation material management unit in §§ 63.7896, 63.7901, 63.7906, 63.7911, or 63.7816.

(2) If the remediation material managed in the affected remediation material managements has an average total VOHAP less than 500 ppmw according to § 63.7886(b)(2), you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have determined, according to the procedures § 63.7943, and recorded the average VOHAP concentration of the remediation material placed in the affected remediation material management unit.

(3) If HAP emissions are controlled from the affected remediation material management units to meet standards in another subpart under 40 CFR part 61 or 40 CFR part 63 according to § 63.7886(b)(3), you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (c)(3)(i) and (ii) of this section.

(i) You include in your statement the citations for the specific emission limitations and work practice standards that apply to the remediation material management units under the subpart in 40 CFR part 61 or 40 CFR part 63 that the units are also subject.

(ii) You are complying with all applicable emissions limitations and work practice standards specified by the applicable subpart.

(4) If HAP emissions are controlled from the affected remediation material management unit that is an open tank or surface impoundment used for a biological treatment process according to § 63.7886(b)(4), you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (c)(4)(i) and (ii) of this section.

(i) You have performed the measurements and prepared the documentation required in § 63.7886(b)(4)(i) that demonstrates that each unit meets the applicable performance levels.

(ii) You will monitor the biological treatment process conducted in each unit according the requirements in § 63.7886(4)(i).

(5) For each remediation material management unit used for cleanup of radioactive mixed waste and exempted according to § 63.7886(c), you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (c)(5)(i) and (ii) of this section.

(i) You include in your statement the citations for the specific requirements that apply to the remediation material management units under regulations, directives, and other requirements under the Atomic Energy Act, the Nuclear Waste Policy Act, or the Waste Isolation Pilot Plant Land Withdrawal Act.

(ii) You are complying with all requirements that apply to the remediation material management units under the applicable regulations or directives.

(6) For each remediation material management unit exempted according to § 63.7886(d), you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (c)(6)(i) and (ii) of this section.

(i) You have designated according to the requirements in § 63.7886(d)(1) each of the remediation material management units you are selecting to be exempted.

(ii) You have performed an initial determination and prepared the documentation required in § 63.7886(d)(2) that demonstrates that the total annual HAP quantity (based on the HAP listed in Table 1 of this subpart) in the remediation material placed in all of the designated exempted remediation material management units will be less than 1 Mg/yr.

(d) You must demonstrate initial compliance with the general standards in § 63.7887 that apply to your affected equipment leak sources by meeting the requirements in § 63.7921.

### § 63.7938 How do I demonstrate continuous compliance with the general standards?

(a) You must demonstrate continuous compliance with the general standards in §§ 63.7884 through 63.7887 that apply to your affected sources by meeting the requirements in paragraphs (b) through (d) of this section, as applicable to you.

(b) You have demonstrated continuous compliance with the general standards in § 63.7885 that apply to your affected process vents by meeting the requirements in paragraphs (b)(1) through (4) of this section, as applicable to your process vents.

(1) If HAP emissions are controlled from the affected process vents according to the emission limitations and work practice standards specified in § 63.7885(b)(1), you must demonstrate continuous compliance by meeting the requirements in § 63.7893.

(2) If the remediation material treated or managed by the process vented through the affected process vents has an average total VOHAP less than 10 ppmw according to § 63.7885(b)(2), you must demonstrate continuous compliance by performing a new determination and preparing new documentation as required in § 63.7886(c)(2) to show that the total VOHAP concentration of the remediation material remains less than 10 ppmw.

(3) If HAP emissions are controlled from the affected process vents to meet standards in another subpart under 40 CFR part 61 or 40 CFR part 63 according to § 63.7885(b)(3), you must demonstrate continuous compliance by complying with all applicable emissions limitations and work practice standards specified by the applicable subpart.

(4) For each process vent exempted according to § 63.7885(c), you must demonstrate continuous compliance by performing new measurements and preparing new documentation as required in § 63.7885(c)(2) that demonstrates that each exempted process vent stream meets the applicable exemption conditions in § 63.7885(c)(1).

(c) You must demonstrate continuous compliance with the general standards in § 63.7886 that apply to your affected remediation material management units by meeting the requirements in paragraphs (c)(1) through (6) of this section, as applicable to your remediation material management units.

(1) If the remediation material management unit uses air pollution controls according to the standards specified in § 63.7886(b)(1), you must demonstrate continuous compliance by meeting the requirements applicable to the remediation material management unit in §§ 63.7898, 63.7903, 63.7908, 63.7913, or 63.7818.

(2) If the remediation material managed in the affected remediation material managements has an average total VOHAP concentration less than 500 ppmw according to § 63.7886(b)(2), you must demonstrate continuous compliance by performing a new determination and preparing new documentation as required in § 63.7886(c)(2) to show that the total VOHAP concentration of the remediation material remains less than 500 ppmw.

(3) If HAP emissions are controlled from the affected remediation material management units to meet standards in another subpart under 40 CFR part 61 or 40 CFR part 63 according to § 63.7886(b)(3), you must demonstrate continuous compliance by meeting all applicable emissions limitations and work practice standards specified by the applicable subpart.

(4) If HAP emissions are controlled from the affected remediation material management unit that is an open tank or surface impoundment used for a biological treatment process according to § 63.7886(b)(4), you must demonstrate continuous compliance by meeting the requirements in paragraphs (c)(4)(i) and (ii) of this section.

(i) Performing new measurements and preparing new documentation as required in § 63.7886(4)(i) that demonstrates that each unit meets the applicable performance levels.

(ii) Monitoring the biological treatment process conducted in each unit according the requirements in § 63.7886(4)(i).

(5) For each remediation material management unit used for cleanup of radioactive mixed waste and exempted according to § 63.7886(c), you must demonstrate continuous compliance by meeting all requirements that apply to the remediation material management units under the applicable regulations or directives.

(6) For each remediation material management unit exempted according to § 63.7886(d), you must demonstrate continuous compliance by performing new measurements and preparing new documentation as required in § 63.7886(d)(2) to show that the total annual HAP quantity (based on the HAP listed in Table 1 of this subpart) in the remediation material placed in all of the designated exempted remediation material management units remains less than 1 Mg/yr.

(d) You have demonstrated continuous compliance with the general standards in § 63.7887 that apply to your affected equipment leak sources by meeting the requirements in § 63.7923.

## Performance Tests

### § 63.7940 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) You must conduct a performance test or design evaluation for each existing affected source within 180 calendar days after the compliance date that is specified in § 63.7883.

(b) For each work practice standard that applies to you where initial compliance is not demonstrated using a performance test or design evaluation, you must demonstrate initial compliance within 30 calendar days after the compliance date that is specified in § 63.7883 for your affected source.

(c) For new sources, you must conduct initial performance tests and other initial compliance demonstrations according to the provisions in § 63.7(a)(2)(i) and (ii).

### § 63.7941 How do I conduct a performance test, design evaluation, or other type of initial compliance demonstration?

(a) You must conduct a performance test or design evaluation to demonstrate initial compliance for each new or existing affected source that is subject to an emission limit in this subpart. You must report the results of the performance test or design evaluation according to the requirements in § 63.7950(e)(1).

(b) If you choose to conduct a performance test to demonstrate initial compliance, you must conduct the test according to the requirements in § 63.7(e)(1) and paragraphs (b)(1) through (5) of this section.

(1) You must conduct three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3). Each test run must last at least 1 hour.

(2) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(3) You must conduct each performance test using the test methods and procedures in § 63.694(l).

(4) Follow the procedures in paragraphs (b)(4)(i) through (iii) of this section to determine compliance with the facility-wide total organic mass emissions rate in § 63.7890(a)(1)(i).

(i) Determine compliance with the total organic mass flow rate using Equation 1 of this section as follows:

$$E_h = \left(0.0416 \times 10^{-6}\right) Q_{sd} \sum_{i=1}^{n} \left(C_i \times MW_i\right) \qquad \text{(Eq. 1)}$$

Where:

$E_h$ = Total organic mass flow rate, kg/h;

$Q_{sd}$ = Volumetric flow rate of gases entering or exiting control device (or exiting the process vent if no control device is used), as determined by Method 2 of 40 CFR part 60, appendix A, dscm/h;

n = Number of organic compounds in the vent gas;

$C_i$ = Organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 18 of 40 CFR part 60, appendix A;

$MW_i$ = Molecular weight of organic compound i in the vent gas,kg/kg-mol;

(ii) Determine compliance with the annual total organic emissions rate using Equation 2 of this section as follows:

$$E_A = E_h \times H \qquad \text{(Eq. 2)}$$

Where:

$E_A$ = Total organic mass emissions rate, kilograms per year;

$E_h$ = Total organic mass flow rate for the process vent, kg/h;

H = Total annual hours of operation for the affected unit, h.

(iii) Determine compliance with the total organic emissions limit from all affected process vents at the facility by summing the total hourly organic mass emissions rates ($E_h$ as determined in Equation 1 of this section) and summing the total annual organic mass emissions rates ($E_A$, as determined in Equation 2 of this section) for all affected process vents at the facility.

(5) Determine compliance with the 95 percent reduction limit in § 63.7890(a)(2)(i) for the combination of all affected process vents at the facility using Equations 3 and 4 of this section to calculate control device inlet and outlet concentrations and Equation 5 of this section to calculate control device emission reductions for process vents as follows:

$$E_i = K_2 \left( \sum_{j=1}^{n} C_{ij} M_{ij} \right) Q_i \qquad \text{(Eq. 3)}$$

$$E_o = K_2 \left( \sum_{j=1}^{n} C_{oj} M_{oj} \right) Q_o \qquad \text{(Eq. 4)}$$

Where:

$C_{ij}$, $C_{oj}$ = Concentration of sample component j of the gas stream at the inlet and outlet of the control device, dry basis, parts per million by volume. For uncontrolled vents, $C_{ij}$ = $C_{oj}$ and equal the concentration exiting the vent;

$E_i$, $E_o$ = Mass rate of total organic compounds (TOC) (minus methane and ethane) or total HAP, from Table 1 of this subpart, at the inlet and outlet of the control device, respectively, dry basis, kilogram per hour. For uncontrolled vents, $E_i$ = $E_o$ and equal the concentration exiting the vent;

$M_{ij}$, $M_{oj}$ = Molecular weight of sample component j of the gas stream at the inlet and outlet of the control device, respectively, gram/gram-mole. For uncontrolled vents, $M_{ij}$ = $M_{oj}$ and equal the gas stream molecular weight exiting the vent;

$Q_i$, $Q_o$ = Flowrate of gas stream at the inlet and outlet of the control device, respectively, dry standard cubic meters per minute (dscm/min). For uncontrolled vents, $Q_i$ = $Q_o$ and equals the flowrate exiting the vent;

$K_2$ = Constant, $2.494 \times 10^{-6}$ (parts per million) $^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram)(minute/hour, where standard temperature (gram-mole per standard cubic meter) is 20°C);

n = the number of components in the sample.

$$R_v = \frac{\sum_{j=1}^{n} E_i - \sum_{j=1}^{n} E_o}{\sum_{j=1}^{n} E_i} \times 100 \qquad \text{(Eq. 5)}$$

Where:

$R_v$ = Overall emissions reduction for all affected process vents, percent

$E_i$ = Mass rate of TOC (minus methane and ethane) or total HAP, from Table 1 of this subpart, at the inlet to the control device, or exiting the vent for uncontrolled vents, as calculated in this section, kilograms TOC per hour or kilograms HAP per hour;

$E_o$ = Mass rate of TOC (minus methane and ethane) or total HAP, from Table 1 of this subpart, at the outlet to the control device, or exiting the vent for uncontrolled vents, as calculated in this section, kilograms TOC per hour or kilograms HAP per hour. For vents without a control device, $E_o$ = $E_i$;

n = number of affected source process vents.

(c) If you use a carbon adsorption system, condenser, vapor incinerator, boiler, or process heater to meet an emission limit in this subpart, you may choose to perform a design evaluation to demonstrate initial compliance instead of a performance test. You must perform a design evaluation according to the general requirements in § 63.693(b)(8) and the specific requirements in § 63.694(d)(2)(ii) for a carbon adsorption system (including establishing carbon replacement schedules and associated requirements), § 63.694(e)(2)(ii) for a condenser, § 63.694(f)(2)(ii) for a vapor incinerator, or § 63.694(g)(2)(i)(B) for a boiler or process heater.

(d) During the performance test or design evaluation, you must collect the appropriate operating parameter monitoring system data, average the operating parameter data over each test run, and set operating limits, whether a minimum or maximum value, based on the average of values for each of the three test runs. If you use a control device design analysis to demonstrate control device performance, then the minimum or maximum operating parameter value must be established based on the control device design analysis and supplemented, as necessary, by the control device manufacturer recommendations or other applicable information.

(e) If you control air emissions from an affected source by introducing the vent stream into the flame zone of a boiler or process heater according to the requirements in § 63.693(g)(1)(iii), you must conduct a performance test or design evaluation to demonstrate that the boiler or process heater meets the applicable emission limit while operating at a residence time of 0.5 seconds or greater and at a combustion zone temperature of 760°C or higher.

(f) You must conduct a performance evaluation for each continuous monitoring system according to the requirements in § 63.8(e).

(g) If you are required to conduct a visual inspection of an affected source, you must conduct the inspection according to the procedures in § 63.906(a)(1) for Tank Level 1 controls, § 63.1063(d) for Tank Level 2 controls, § 63.946(a) for a surface impoundment equipped with a floating membrane cover, § 63.946(b) for a surface impoundment equipped with a cover and vented to a control device, § 63.1047(a) for a separator with a fixed roof, § 63.1047(c) for a separator equipped with a fixed roof and vented to a control device, § 63.695(c)(1)(i) or (c)(2)(i) for a closed vent system, and § 63.964(a) for individual drain systems.

(h) If you use Container Level 1 controls, you must conduct a test to demonstrate that the container operates with no detectable organic emissions using Method 21 (40 CFR part 60, appendix A) and the procedures in § 63.925(a).

(i) If you use Container Level 2 controls, you must conduct a test to demonstrate that the container operates with no detectable organic emissions or that the container is vapor-tight. You must conduct the test using Method 21 (40 CFR part 60, appendix A) and the procedures in § 63.925(a) to demonstrate that the container operates with no detectable organic emissions or Method 27 (40 CFR part 60, appendix A) and the procedures in § 63.925(b) to demonstrate that the container is vapor-tight.

(j) If you locate an affected source inside a permanent total enclosure that is vented to a control device, you must demonstrate that the enclosure meets the verification criteria in section 5 of Procedure T in 40 CFR 52.741, appendix B.

(k) If you use a fixed roof or a floating roof to control air emissions from a separator, you must conduct a test to demonstrate that the roof operates with no detectable organic emissions using Method 21 (40 CFR part 60, appendix A) and the procedures in § 63.1046(a). If you use a floating roof, you also must measure the seal gaps according to the procedures in § 63.1046(b).

(l) If you use a flare to control air emissions, you must conduct a visible emissions test using Method 22 in 40 CFR part 60, appendix A, and the procedures in § 63.11(b)(4).

(m) For each initial compliance demonstration that requires a performance test or design evaluation, you must report the results in your notification of compliance status according to the requirements in § 63.7950(e)(1). For each initial compliance demonstration that does not require a performance test or design evaluation, you must submit a notification of compliance status according to the requirements in § 63.7950(e)(2).

### § 63.7942 When must I conduct subsequent performance tests?

For non-flare control devices, you must conduct performance tests at any time the EPA requires you to according to § 63.7(3).

### § 63.7943 How do I determine the average VOHAP concentration of my remediation material?

(a) General requirements. You must determine the average total VOHAP concentration of a remediation material at the point-of-extraction using either direct measurement as specified in paragraph (b) of this section or by knowledge as specified in paragraph (c) of this section.

(b) Direct measurement. To determine the average total VOHAP concentration of a remediation material at the point-of-extraction using direct measurement, you must use the procedures in paragraphs (b)(1) through (3) of this section.

(1) Sampling. Samples of each material stream must be collected at the point-of-extraction in a manner such that volatilization of organics contained in the sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

(i) The averaging period to be used for determining the average total VOHAP concentration for the material stream on a mass-weighted average basis must be designated and recorded. The averaging period can represent any time interval that you determine is appropriate for the material stream but must not exceed 1 year. For streams that are combined, an averaging period representative for all streams must be selected.

(ii) No less than four samples must be collected to represent the complete range of HAP compositions and HAP quantities that occur in each material stream during the entire averaging period due to normal variations in the material stream(s). Examples of such normal variations are variation of the HAP concentration within a contamination area.

(iii) All samples must be collected and handled according to written procedures you prepare and document in a site sampling plan. This plan must describe the procedure by which representative samples of the material stream(s) are collected such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan must be maintained on site in the facility operating records. An example of an acceptable sampling plan includes a plan incorporating sample collection and handling procedures according to the guidance found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW–846 or Method 25D in 40 CFR part 60, appendix A.

(2) Analysis. Each collected sample must be prepared and analyzed according to either one of the methods listed in § 63.694(b)(2)(ii), or any current EPA Contracts Lab Program method (or future revisions) capable of identifying all the HAP in Table 1 of this subpart.

(3) Calculations. The average total VOHAP concentration ($\bar{C}$) on a mass-weighted basis must be calculated by using the results for all samples analyzed according to paragraph (c)(2) of this section and Equation 1 of this section as follows:

$$\bar{C} = \frac{1}{Q_T} \times \sum_{i=1}^{n} \left(Q_i \times C_i\right) \qquad \text{(Eq. 1)}$$

Where:

$\bar{C}$ = Average VOHAP concentration of the material on a mass-weighted basis, ppmw.

i = Individual sample "i" of the material.

n = Total number of samples of the material collected (at least 4 per stream) for the averaging period (not to exceed 1 year).

$Q_i$ = Mass quantity of material stream represented by $C_i$, kilograms per hour (kg/hr).

$Q_T$ = Total mass quantity of all material during the averaging period, kg/hr.

$C_i$ = Measured VOHAP concentration of sample "i" as determined according to the requirements of paragraph (a)(3)(ii) of this section, ppmw.

(c) Knowledge of the material. To determine the average total VOHAP concentration of a remediation material at the point-of-extraction using knowledge, you must use the procedures in paragraphs (c)(1) through (3) of this section.

(1) Documentation must be prepared that presents the information used as the basis for your knowledge of the material stream's average VOHAP concentration. Examples of information that may be used as the basis for knowledge include: material balances for the source(s) generating each material stream; species-specific chemical test data for the material stream from previous testing that are still applicable to the current material stream; test data for material from the contamination area(s) being remediated.

(2) If test data are used as the basis for knowledge, then you must document

the test method, sampling protocol, and the means by which sampling variability and analytical variability are accounted for in the determination of the average VOHAP concentration. For example, you may use HAP concentration test data for the material stream that are validated according to Method 301 in 40 CFR part 63, appendix A as the basis for knowledge of the material. This information must be provided for each material stream where streams are combined.

(3) If you use species-specific chemical concentration test data as the basis for knowledge of the material, you may adjust the test data to the corresponding average VOHAP concentration value which would be obtained had the material samples been analyzed using Method 305. To adjust these data, the measured concentration for each individual HAP chemical species contained in the material is multiplied by the appropriate species-specific adjustment factor ($f_{m305}$) listed in Table 1 of this subpart.

(d) In the event that you and us disagree on a determination using knowledge of the average total VOHAP concentration for a remediation material, then the results from a determination of VOHAP concentration using direct measurement by Method 305 in 40 CFR part 60 appendix A, as specified in paragraph (b) of this section, will be used to determine compliance with the applicable requirements of this subpart. We may perform or request that you perform this determination using direct measurement.

### § 63.7944 How do I determine the maximum HAP vapor pressure of my remediation material?

(a) You must determine the maximum HAP vapor pressure of your remediation material using either direct measurement as specified in paragraph (b) of this section or by knowledge as specified in paragraph (c) of this section.

(b) Direct measurement to determine the maximum HAP vapor pressure.

(1) Sampling. A sufficient number of samples must be collected to be representative of the remediation material contained in the tank. All samples must be collected and handled according to written procedures prepared by you and documented in a site sampling plan. This plan must describe the procedure by which representative samples of the remediation material are collected such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan must be maintained on site in the facility site operating records. An example of an acceptable sampling plan includes a plan incorporating sample collection and handling procedures according to the guidance found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW–846 or Method 25D in 40 CFR part 60, appendix A.

(2) Analysis. Any one of the following methods may be used to analyze the samples and compute the maximum HAP vapor pressure of the remediation material:

(i) Method 25E in 40 CFR part 60 appendix A;

(ii) Methods described in American Petroleum Institute Bulletin 2517, "Evaporation Loss from External Floating Roof Tanks,";

(iii) Methods obtained from standard reference texts;

(iv) ASTM Method 2879–83; or

(v) Any other method approved by the Administrator.

(c) Use of knowledge to determine the maximum HAP vapor pressure. Documentation must be prepared and recorded that presents the information used as the basis for your knowledge that the maximum HAP vapor pressure of the remediation material is less than the maximum vapor pressure limit listed in Table 2 of this subpart for the applicable tank design capacity category.

(d) In the event that you and us disagree on a determination using knowledge of the maximum HAP vapor pressure of the remediation material, then the results from a determination of maximum HAP vapor pressure using direct measurement by Method 25E in 40 CFR part 60 appendix A, as specified in paragraph (b) of this section, will be used to determine compliance with the applicable requirements of this subpart. We may perform or request that you perform this determination using direct measurement.

## Continuous Monitoring Systems

### § 63.7945 What are my monitoring installation, operation, and maintenance requirements?

(a) Each CPMS must meet the requirements in paragraphs (a)(1) through (4) of this section.

(1) Complete a minimum of one cycle of operation for each successive 15-minute period.

(2) To calculate a valid hourly value, you must have at least three of four equally spaced data values (or at least two, if that condition is included to allow for periodic calibration checks) for that hour from a CPMS that is not out of control according to the monitoring plan referenced in § 63.7935.

(3) To calculate the average emissions for each averaging period, you must have at least 75 percent of the hourly averages for that period using only block hourly average values that are based on valid data (*i.e.*, not from out-of-control periods).

(4) Unless otherwise specified, each CPMS must determine the hourly average of all recorded readings and daily average, if required.

(b) You must record the results of each inspection, calibration, and validation check.

(c) You must conduct a performance evaluation for each CPMS according to the requirements in § 63.8(e) and your site-specific monitoring plan.

### § 63.7946 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section and your site-specific monitoring plan required in § 63.7935.

(b) Except for monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times that the affected source is operating.

(c) You may not use data recorded during monitoring malfunctions, associated repairs, out of control periods and required quality assurance or control activities in data averages and calculations used to report emissions or operating levels, nor may such data be used in fulfilling a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

### § 63.7947 What are my monitoring alternatives?

(a) As an alternative to the parametric monitoring required in this subpart, you may install, calibrate, and operate a continuous emission monitoring system (CEMS) to measure the control device outlet total organic emissions or organic HAP emissions concentration.

(1) The CEMS used on combustion control devices must include a diluent gas monitoring system (for $O_2$ or $CO_2$) with the pollutant monitoring system in order to correct for dilution (*e.g.*, to 0 percent excess air).

(2) Each CEMS must complete a minimum of one cycle of operation

(sampling, analyzing, and data recording) for each successive 15-minute period. Data must be reduced as specified in § 63.8(g)(2).

(3) You must conduct a performance evaluation of the CEMS according to the requirements in § 63.8 and Performance Specification 8 (for a total organic emissions CEMS) or Performance Specification 9 (for a HAP emissions CEMS) and Performance Specification 3 (for an $O_2$ or $CO_2$ CEMS) of 40 CFR part 60, appendix B. The relative accuracy provision of Performance Specification 8, sections 2.4 and 3 need not be conducted.

(4) You must prepare a site-specific monitoring plan for operating, calibrating, and verifying the operation of your CEMS according to the requirements in §§ 63.8(c), (d), and (e).

(5) You must establish the emissions concentration operating limit according to paragraphs (a)(5)(i) and (ii) of this section.

(i) During the performance test, you must monitor and record the total organic or HAP emissions concentration at least once every 15 minutes during each of the three test runs.

(ii) Use the data collected during the performance test to calculate and record the average total organic or HAP emissions concentration maintained during the performance test. The average total organic or HAP emissions concentration, corrected for dilution as appropriate, is the maximum operating limit for your control device.

(b) You must maintain the daily (24-hour) average total organic or HAP emissions concentration in the exhaust vent stream of the control device outlet less than or equal to the site-specific operating limit established during the performance test.

## Notification, Reports, and Records

### § 63.7950 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(e), 63.8(f)(4) and (6), and 63.9(b) through (h) that apply to you.

(b) As specified in § 63.9(b)(2), if you start up your affected source before October 8, 2003, you must submit an Initial Notification not later than 120 calendar days after October 8, 2003.

(c) As specified in § 63.9(b)(3), if you start up your new or reconstructed affected source on or after October 8, 2003, you must submit an Initial Notification no later than 120 calendar days after initial startup.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test, design evaluation, or other initial compliance demonstration, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii).

(1) For each initial compliance demonstration that includes a performance test or design evaluation, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2). You must submit the complete design evaluation and supporting documentation.

(2) For each initial compliance demonstration that does not include a performance test, you must submit the Notification of Compliance Status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration.

(f) You must provide written notification to the Administrator of the alternative standard selected under § 63.1006(b)(5) or (6) before implementing either of the provisions.

### § 63.7951 What reports must I submit and when?

(a) *Compliance report due dates.* Unless the Administrator has approved a different schedule, you must submit a semiannual compliance report to your permitting authority according to the requirements specified in paragraphs (a)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.7883 and ending on June 30 or December 31, whichever date comes first after the compliance date that is specified for your affected source.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after your first compliance report is due.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of the dates specified in paragraphs (a)(1) through (4) of this section.

(b) *Compliance report contents.* Each compliance report must include the information specified in paragraphs (b)(1) through (3) of this section and, as applicable, paragraphs (b)(4) through (9) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took action consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there were no deviations from any emissions limitations (including operating limit), work practice standards, or operation and maintenance requirements, a statement that there were no deviations from the emissions limitations, work practice standards, or operation and maintenance requirements during the reporting period.

(6) If there were no periods during which a continuous monitoring system (including a CPMS or CEMS) was out-of-control as specified by § 63.8(c)(7), a statement that there were no periods during which the CPMS was out-of-control during the reporting period.

(7) For each deviation from an emissions limitation (including an operating limit) that occurs at an affected source for which you are not using a continuous monitoring system (including a CPMS or CEMS) to comply with an emissions limitation or work practice standard required in this subpart, the compliance report must contain the information specified in paragraphs (b)(1) through (4) and (b)(7)(i) and (ii) of this section. This requirement includes periods of startup, shutdown, and malfunction.

(i) The total operating time of each affected source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause) as applicable and the corrective action taken.

(8) For each deviation from an emissions limitation (including an operating limit) or work practice standard occurring at an affected source where you are using a continuous monitoring system (including a CPMS or CEMS) to comply with the emissions limitations or work practice standard in this subpart, you must include the information specified in paragraphs (b)(1) through (4) and (b)(8)(i) through (xi) of this section. This requirement includes periods of startup, shutdown, and malfunction.

(i) The date and time that each malfunction started and stopped.

(ii) The date and time that each continuous monitoring system was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time, and duration that each continuous monitoring system was out-of-control, including the information in § 63.8(c)(8).

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(v) A summary of the total duration of the deviations during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(vi) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and unknown causes.

(vii) A summary of the total duration of continuous monitoring system downtime during the reporting period and the total duration of continuous monitoring system downtime as a percent of the total source operating time during the reporting period.

(viii) A brief description of the process units.

(ix) A brief description of the continuous monitoring system.

(x) The date of the latest continuous monitoring system certification or audit.

(xi) A description of any changes in continuous monitoring systems, processes, or controls since the last reporting period.

(9) You must include the information on equipment leaks required in periodic reports by § 63.1018(a) or § 63.1039(b).

(c) Immediate startup, shutdown, and malfunction report. If you had a startup, shutdown, or malfunction during the semiannual reporting period that was not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown, and malfunction report according to the requirements of § 63.10(d)(5)(ii).

(d) Part 70 monitoring report. If you have obtained a title V operating permit for an affected source pursuant to 40 CFR part 70 or 40 CFR part 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report for an affected source along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all the required information concerning deviations from any emissions limitation or operation and maintenance requirement in this subpart, submission of the compliance report satisfies any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report does not otherwise affect any obligation you may have to report deviations from permit requirements for an affected source to your permitting authority.

### § 63.7952 What records must I keep?

(a) You must keep the records specified in paragraphs (a)(1) through (4) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(1) and (b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startups, shutdowns, and malfunctions.

(3) Results of performance tests and performance evaluations as required by § 63.10(b)(2)(viii).

(4) The records of initial and ongoing determinations for affected sources that are exempt from control requirements under this subpart.

(b) For each continuous monitoring system, you must keep the records as described in paragraphs (b)(1) and (2) of this section.

(1) Records described in § 63.10(b)(2)(vi) through (xi) that apply to your continuous monitoring system.

(2) Performance evaluation plans, including previous (i.e., superseded) versions of the plan as required in § 63.8(d)(3).

(c) You must keep the records required by this subpart to show continuous compliance with each emissions limitation, work practice standard, and operation and maintenance requirement that applies to you.

(d) You must record, on a semiannual basis, the information in § 63.696(g) for planned routine maintenance of a control device for emissions from process vents.

### § 63.7953 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep your files of all information (including all reports and notifications) for 5 years following the date of each occurrence, measurement, maintenance, action taken to correct the cause of a deviation, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records off-site for the remaining 3 years.

(d) If, after the remediation activity is completed, there is no other remediation activity at the facility, and you are no longer the owner of the facility, you may keep all records for the completed remediation activity at an off-site location provided you notify the Administrator in writing of the name, address and contact person for the off-site location.

## Other Requirements and Information

### § 63.7955 What parts of the General Provisions apply to me?

Table 3 of this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

### § 63.7956 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the EPA, or a delegated authority such as your State, local, or tribal agency. If the EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the EPA, has the authority to implement and enforce this subpart. You should contact your EPA Regional Office (see list in § 63.13) to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under section 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the

Administrator of EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are listed in paragraphs (a)(1) through (4) of this section.

(1) Approval of alternatives to the non-opacity emissions limitations and work practice standards in this subpart under § 63.6(g).

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

### § 63.7957 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in § 63.2, and in this section. If a term is defined both in this section and in another subpart cross-referenced by this subpart, then the term will have the meaning given in this section for purposes of this subpart.

*Boiler* means an enclosed combustion device that extracts useful energy in the form of steam and is not an incinerator or a process heater.

*Closed vent system* means a system that is not open to the atmosphere and is composed of hard-piping, ductwork, connections, and, if necessary, fans, blowers, or other flow-inducing device that conveys gas or vapor from an emissions point to a control device.

*Closure device* means a cap, hatch, lid, plug, seal, valve, or other type of fitting that prevents or reduces air pollutant emissions to the atmosphere by blocking an opening in a cover when the device is secured in the closed position. Closure devices include devices that are detachable from the cover (*e.g.*, a sampling port cap), manually operated (*e.g.*, a hinged access lid or hatch), or automatically operated (*e.g.*, a spring-loaded pressure relief valve).

*Container* means a portable unit used to hold material. Examples of containers include, but are not limited to drums, dumpsters, roll-off boxes, bulk cargo containers commonly known as portable tanks or totes, cargo tank trucks, dump trucks, and rail cars. For the purpose of this subpart, a front-end loader, excavator, backhoe, or other type of self-propelled excavation equipment is not a container.

*Continuous record* means documentation of data values measured at least once every 15 minutes and recorded at the frequency specified in this subpart.

*Continuous recorder* means a data recording device that either records an instantaneous data value at least once every 15 minutes or records 15-minutes or more frequent block averages.

*Control device* means equipment used recovering, removing, oxidizing, or destroying organic vapors. Examples of such equipment include but are not limited to carbon adsorbers, condensers, vapor incinerators, flares, boilers, and process heaters.

*Cover* means a device that prevents or reduces air pollutant emissions to the atmosphere by forming a continuous barrier over the remediation material managed in a unit. A cover may have openings (such as access hatches, sampling ports, gauge wells) that are necessary for operation, inspection, maintenance, and repair of the unit on which the cover is used. A cover may be a separate piece of equipment which can be detached and removed from the unit (such as a tarp) or a cover may be formed by structural features permanently integrated into the design of the unit.

*Deviation* means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emissions limitation (including any operating limit), or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emissions limitation,(including any operating limit), or work practice standard in this subpart during startup, shutdown, or malfunction, regardless or whether or not such failure is permitted by this subpart.

*Emissions limitation* means any emissions limit, opacity limit, operating limit, or visible emissions limit.

*Emissions point* means an individual tank, surface impoundment, container, oil-water, organic-water separator, transfer system, vent, or enclosure.

*Enclosure* means a structure that surrounds a tank or container, captures organic vapors emitted from the tank or container, and vents the captured vapor through a closed vent system to a control device.

*Equipment* means each pump, pressure relief device, sampling connection system, valve, and connector used in remediation material service at a facility.

*External floating roof* means a pontoon-type or double-deck type cover that rests on the liquid surface in a tank with no fixed roof.

*Facility* means all contiguous or adjoining property that is under common control including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof. A unit or group of units within a contiguous property that are not under common control (*e.g.*, a wastewater treatment unit located at the facility but is owned by a different company) is a different facility.

*Fixed roof* means a cover that is mounted on a unit in a stationary position and does not move with fluctuations in the level of the liquid managed in the unit.

*Flame zone* means the portion of the combustion chamber in a boiler or process heater occupied by the flame envelope.

*Floating roof* means a cover consisting of a double deck, pontoon single deck, or internal floating cover which rests upon and is supported by the liquid being contained, and is equipped with a continuous seal.

*Flow indicator* means a device that indicates whether gas is flowing, or whether the valve position would allow gas to flow in a bypass line.

*Hard-piping* means pipe or tubing that is manufactured and properly installed according to relevant standards and good engineering practices.

*Individual drain system* means a stationary system used to convey wastewater streams or residuals to a remediation material management unit or to discharge or disposal. The term includes hard-piping, all drains and junction boxes, together with their associated sewer lines and other junction boxes (*e.g.*, manholes, sumps, and lift stations) conveying wastewater streams or residuals. For the purpose of this subpart, an individual drain system is not a drain and collection system that is designed and operated for the sole purpose of collecting rainfall runoff (*e.g.*, stormwater sewer system) and is segregated from all other individual drain systems.

*Internal floating roof* means a cover that rests or floats on the liquid surface (but not necessarily in complete contact with it inside a tank that has a fixed roof).

*Maximum HAP vapor pressure* means the sum of the individual HAP equilibrium partial pressure exerted by remediation material at the temperature equal to either: the monthly average temperature as reported by the National Weather Service when the remediation material is stored or treated at ambient temperature; or the highest calendar-month average temperature of the remediation material when the remediation material is stored at temperatures above the ambient temperature or when the remediation material is stored or treated at temperatures below the ambient temperature. For the purpose of this subpart, maximum HAP vapor pressure is determined using the procedures specified in § 63.7944.

*No detectable organic emissions* means no escape of organics to the atmosphere as determined using the procedure specified in § 63.694(k).

*Oil-water separator* means a separator as defined for this subpart that is used to separate oil from water.

*Operating parameter value* means a minimum or maximum value established for a control device or treatment process parameter which, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator has complied with an applicable emissions limitation or standard.

*Organic-water separator* means a separator as defined for this subpart that is used to separate organics from water.

*Point-of-extraction* means a point above ground where you can collect samples of a remediation material before or at the first point where organic constituents in the material have the potential to volatilize and be released to the atmosphere and before placing the material in a remediation material management unit or treatment process. For the purpose this subpart, the first point where the organic constituents in the remediation material have the potential to volatilize and be released to the atmosphere is not a fugitive emissions point due to an equipment leak from any of the following equipment components: pumps, compressors, valves, connectors, instrumentation systems, or safety devices.

*Process heater* means an enclosed combustion device that transfers heat released by burning fuel directly to process streams or to heat transfer liquids other than water.

*Process vent* means any open-ended pipe, stack, duct, or other opening intended to allow the passage of gases, vapors, or fumes to the atmosphere and this passage is caused by mechanical means (such as compressors, vacuum-producing systems or fans) or by process-related means (such as volatilization produced by heating). For the purposes of this subpart, a process vent is neither a safety device (as defined in this section) nor a stack, duct or other opening used to exhaust combustion products from a boiler, furnace, heater, incinerator, or other combustion device.

*Radioactive mixed waste* means a material that contains both hazardous waste subject to RCRA and source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954.

*Remediation material* means a material that contains one or more of the HAP listed in Table 1 of this subpart, and this material is one of the following:

(1) A material found in naturally occurring media such as soil, groundwater, surface water, sediments, or a mixture of such materials with liquids, sludges, or solids which is inseparable by simple mechanical removal processes and is made up primarily of media. This material does not include debris as defined in 40 CFR 268.2.

(2) A material found in intact or substantially intact containers, tanks, storage piles, or other storage units that requires clean up because this material poses a reasonable potential threat to contaminating media. Examples of these materials include, but are not limited to, solvents, oils, paints, and other volatile or semi-volatile organic liquids found in buried drums, cans, or other containers; gasoline, fuel oil, or other fuels in leaking underground storage tanks; and solid materials containing volatile or semi-volatile organics in unused or abandoned piles. Remediation material is not a waste or residue generated by routine equipment maintenance activities performed at a facility such as, but not limited to, tank bottoms and sludges removed during tank cleanouts; sludges and sediments removed from active wastewater treatment tanks, surface impoundments, or lagoons; spent catalyst removed from process equipment; residues removed from air pollution control equipment; and debris removed during heat exchanger and pipeline cleanouts.

*Remediation material management unit* means a tank, container, surface impoundment, oil-water separator, organic-water separator, or transfer system used to remove, destroy, degrade, transform, immobilize, or otherwise manage remediation material.

*Remediation material service* means any time when a pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, or instrumentation system contains or contacts remediation material.

*Responsible official* means responsible official as defined in 40 CFR 70.2.

*Safety device* means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions to prevent physical damage or permanent deformation to equipment by venting gases or vapors during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of this Subpart, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, combustible, explosive, reactive, or hazardous materials.

*Separator* means a remediation material management unit, generally a tank, used to separate oil or organics from water. A separator consists of not only the separation unit but also the forebay and other separator basins, skimmers, weirs, grit chambers, sludge hoppers, and bar screens that are located directly after the individual drain system and prior to any additional treatment units such as an air flotation unit clarifier or biological treatment unit. Examples of a separator include, but are not limited to, an API separator, parallel-plate interceptor, and corrugated-plate interceptor with the associated ancillary equipment.

*Site remediation* means one or more activities or processes used to remove, destroy, degrade, transform, immobilize, or otherwise manage remediation material. The monitoring or measuring of contamination levels in environmental media using wells or by sampling is not considered to be a site remediation.

*Sludge* means sludge as defined in § 260.10 of this chapter.

*Soil* means unconsolidated earth material composing the superficial geologic strata (material overlying bedrock), consisting of clay, silt, sand, or gravel size particles (sizes as classified by the U.S. Soil Conservation Service), or a mixture of such materials with liquids, sludges, or solids which is inseparable by simple mechanical removal processes and is made up primarily of soil.

*Stabilization process* means any physical or chemical process used to either reduce the mobility of contaminants in media or eliminate free liquids as determined by Test Method 9095—Paint Filter Liquids Test in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW–846, Third Edition, September 1986, as amended by Update I, November 15, 1992. (As an alternative, you may use any more recent, updated version of Method 9095 approved by the EPA). A stabilization process includes mixing remediation material with binders or other materials, and curing the resulting remediation material and binder mixture. Other synonymous terms used to refer to this process are fixation or solidification. A stabilization process does not include the adding of absorbent materials to the surface of remediation material, without mixing, agitation, or subsequent curing, to absorb free liquid.

*Surface impoundment* means a unit that is a natural topographical depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquids. Examples of surface impoundments include holding, storage, settling, and aeration pits, ponds, and lagoons.

*Tank* means a stationary unit that is constructed primarily of nonearthen materials (such as wood, concrete, steel, fiberglass, or plastic) which provide structural support and is designed to hold an accumulation of liquids or other materials.

*Temperature monitoring device* means a piece of equipment used to monitor temperature and having an accuracy of ±1 percent of the temperature being monitored expressed in degrees Celsius (°C) or ±1.2 degrees °C, whichever value is greater.

*Transfer system* means a stationary system for which the predominant function is to convey liquids or solid materials from one point to another point within waste management operation or recovery operation. For the purpose of this subpart, the conveyance of material using a container (as defined of this subpart) or self-propelled vehicle (*e.g.*, a front-end loader) is not a transfer system. Examples of a transfer system include but are not limited to a pipeline, an individual drain system, a gravity-operated conveyor (such as a chute), and a mechanically-powered conveyor (such as a belt or screw conveyor).

*Treatment process* means a process in which remediation material is physically, chemically, thermally, or biologically treated to destroy, degrade, or remove hazardous air pollutants contained in the material. A treatment process can be composed of a single unit (*e.g.*, a steam stripper) or a series of units (*e.g.*, a wastewater treatment system). A treatment process can be used to treat one or more remediation material streams at the same time.

*Volatile organic hazardous air pollutant (VOHAP) concentration* means the fraction by weight of the HAP listed in Table 1 of this subpart that are contained in the remediation material as measured using Method 305, 40 CFR part 63, appendix A and expressed in terms of parts per million (ppm). As an alternative to using Method 305, 40 CFR part 63, appendix A, you may determine the HAP concentration of the remediation material using any one of the other test methods specified in § 63.694(b)(2)(ii). When a test method specified in § 63.694(b)(2)(ii) other than Method 305 in 40 CFR part 63, appendix A is used to determine the speciated HAP concentration of the contaminated material, the individual compound concentration may be adjusted by the corresponding $f_{m305}$ listed in Table 1 of this subpart to determine a VOHAP concentration.

*Work practice standard* means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the CAA.

## Tables to Subpart GGGGG of Part 63

TABLE 1 TO SUBPART GGGGG OF PART 63.—LIST OF HAZARDOUS AIR POLLUTANTS.

| CAS No.[a] | Compound name | $f_{m305}$ |
|---|---|---|
| 75070 | Acetaldehyde | 1.000 |
| 75058 | Acetonitrile | 0.989 |
| 98862 | Acetophenone | 0.314 |
| 107028 | Acrolein | 1.000 |
| 107131 | Acrylonitrile | 0.999 |
| 107051 | Allyl chloride | 1.000 |
| 71432 | Benzene (includes benzene in gasoline) | 1.000 |
| 98077 | Benzotrichloride (isomers and mixture) | 0.958 |
| 100447 | Benzyl chloride | 1.000 |
| 92524 | Biphenyl | 0.864 |
| 542881 | Bis(chloromethyl)ether[b] | 0.999 |
| 75252 | Bromoform | 0.998 |
| 106990 | 1,3-Butadiene | 1.000 |
| 75150 | Carbon disulfide | 1.000 |
| 56235 | Carbon Tetrachloride | 1.000 |
| 43581 | Carbonyl sulfide | 1.000 |
| 133904 | Chloramben | 0.633 |
| 108907 | Chlorobenzene | 1.000 |
| 67663 | Chloroform | 1.000 |
| 107302 | Chloromethyl methyl ether[b] | 1.000 |
| 126998 | Chloroprene | 1.000 |
| 98828 | Cumene | 1.000 |
| 94757 | 2,4-D, salts and esters | 0.167 |
| 334883 | Diazomethane[c] | 0.999 |
| 132649 | Dibenzofurans | 0.967 |
| 96128 | 1,2-Dibromo-3-chloropropane | 1.000 |
| 106467 | 1,4-Dichlorobenzene(p) | 1.000 |
| 107062 | Dichloroethane (Ethylene dichloride) | 1.000 |
| 111444 | Dichloroethyl ether (Bis(2-chloroethyl ether)) | 0.757 |

TABLE 1 TO SUBPART GGGGG OF PART 63.—LIST OF HAZARDOUS AIR POLLUTANTS.—Continued

| CAS No.[a] | Compound name | $f_{m305}$ |
|---|---|---|
| 542756 | 1,3-Dichloropropene | 1.000 |
| 79447 | Dimethyl carbamoyl chloride[c] | 0.150 |
| 57147 | 1,1-Dimethyl hydrazine | |
| 64675 | Diethyl sulfate | 0.0025 |
| 77781 | Dimethyl sulfate | 0.086 |
| 121697 | N,N-Dimethylaniline | 0.0008 |
| 51285 | 2,4-Dinitrophenol | 0.0077 |
| 121142 | 2,4-Dinitrotoluene | 0.0848 |
| 123911 | 1,4-Dioxane (1,4-Diethyleneoxide) | 0.869 |
| 106898 | Epichlorohydrin (1-Chloro-2,3-epoxypropane) | 0.939 |
| 106887 | 1,2-Epoxybutane | 1.000 |
| 140885 | Ethyl acrylate | 1.000 |
| 100414 | Ethyl benzene | 1.000 |
| 75003 | Ethyl chloride (Chloroethane) | 1.000 |
| 106934 | Ethylene dibromide (Dibromoethane) | 0.999 |
| 107062 | Ethylene dichloride (1,2-Dichloroethane) | 1.000 |
| 151564 | Ethylene imine (Aziridine) | 0.867 |
| 75218 | Ethylene oxide | 1.000 |
| 75343 | Ethylidene dichloride (1,1-Dichloroethane) | 1.000 |
| | Glycol ethers[d] that have a Henry's Law constant value equal to or greater than 0.1 Y/X($1.8 \times 10^{-6}$ atm/gm-mole/m$^3$) at 25° C. | (e) |
| 118741 | Hexachlorobenzene | 0.97 |
| 87683 | Hexachlorobutadiene | 0.88 |
| 67721 | Hexachloroethane | 0.499 |
| 110543 | Hexane | 1.000 |
| 78591 | Isophorone | 0.506 |
| 58899 | Lindane (all isomers) | 1.000 |
| 67561 | Methanol | 0.855 |
| 74839 | Methyl bromide (Bromomethane) | 1.000 |
| 74873 | Methyl chloride (Chloromethane) | 1.000 |
| 71556 | Methyl chloroform (1,1,1-Trichloroethane) | 1.000 |
| 78933 | Methyl ethyl ketone (2-Butanone) | 0.990 |
| 74884 | Methyl iodide (Iodomethane) | 1.000 |
| 108101 | Methyl isobutyl ketone (Hexone) | 0.979 |
| 624839 | Methyl isocyanate | 1.000 |
| 80626 | Methyl methacrylate | 0.999 |
| 1634044 | Methyl tert butyl ether | 1.000 |
| 75092 | Methylene chloride (Dichloromethane) | 1.000 |
| 91203 | Naphthalene | 0.994 |
| 98953 | Nitrobenzene | 0.394 |
| 79469 | 2-Nitropropane | 0.989 |
| 82688 | Pentachloronitrobenzene (Quintobenzene) | 0.839 |
| 87865 | Pentachlorophenol | 0.0898 |
| 75445 | Phosgene[c] | 1.000 |
| 123386 | Propionaldehyde | 0.999 |
| 78875 | Propylene dichloride (1,2-Dichloropropane) | 1.000 |
| 75569 | Propylene oxide | 1.000 |
| 75558 | 1,2-Propylenimine (2-Methyl aziridine) | 0.945 |
| 100425 | Styrene | 1.000 |
| 96093 | Styrene oxide | 0.830 |
| 79345 | 1,1,2,2-Tetrachloroethane | 0.999 |
| 127184 | Tetrachloroethylene (Perchloroethylene) | 1.000 |
| 108883 | Toluene | 1.000 |
| 95534 | o-Toluidine | 0.152 |
| 120821 | 1,2,4-Trichlorobenzene | 1.000 |
| 71556 | 1,1,1-Trichloroethane (Methyl chloroform) | 1.000 |
| 79005 | 1,1,2-Trichloroethane (Vinyl trichloride) | 1.000 |
| 79016 | Trichloroethylene | 1.000 |
| 95954 | 2,4,5-Trichlorophenol | 0.108 |
| 88062 | 2,4,6-Trichlorophenol | 0.132 |
| 121448 | Triethylamine | 1.000 |
| 540841 | 2,2,4-Trimethylpentane | 1.000 |
| 108054 | Vinyl acetate | 1.000 |
| 593602 | Vinyl bromide | 1.000 |
| 75014 | Vinyl chloride | 1.000 |
| 75354 | Vinylidene chloride (1,1-Dichloroethylene) | 1.000 |
| 1330207 | Xylenes (isomers and mixture) | 1.000 |
| 95476 | o-Xylenes | 1.000 |
| 108383 | m-Xylenes | 1.000 |
| 106423 | p-Xylenes | 1.000 |

**Notes:**

1. $f_{m305}$ = Fraction measure factor in Method 305, 40 CFR part 63, appendix A.

[a] CAS numbers refer to the Chemical Abstracts Services registry number assigned to specific compounds, isomers, or mixtures of compounds.

[b] Denotes a HAP that hydrolyzes quickly in water, but the hydrolysis products are also HAP chemicals.

[c] Denotes a HAP that may react violently with water.

[d] Denotes a HAP that hydrolyzes slowly in water.

[e] The $f_{m305}$ factors for some of the more common glycol ethers can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

## TABLE 2 TO SUBPART GGGGG OF PART 63.—CONTROL LEVELS AS REQUIRED BY §63.7895(a) FOR TANKS MANAGING REMEDIATION MATERIAL WITH A MAXIMUM HAP VAPOR PRESSURE LESS THAN 76.6 kPa

| If your tank design capacity is . . . | And the maximum HAP vapor pressure of the remediation material placed in your tank is . . . | Then your tank must use . . . |
|---|---|---|
| 1. Less than 38 m$^3$ | Less than 76.6 kPa | Tank Level 1 controls under §63.7895(b). |
| 2. At least 38 m$^3$ but less than 151 m$^3$ | Less than 13.1 kPa | Tank Level 1 controls under §63.7895(b). |
| 3. 151 m$^3$ or greater | Less than 0.7 kPa | Tank Level 1 controls under §63.7895(b). |
| 4. at least 38 m$^3$ but less than 151 m$^3$ | 13.1 kPa or greater | Tank Level 2 controls under §63.7895(c). |
| 5. 151 m$^3$ or greater | 0.7 kPa or greater | Tank Level 2 controls under §63.7895(c) |

As stated in §63.7940, you must comply with the applicable General Provisions requirements according to the following table:

## TABLE 3 TO SUBPART GGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG

| Citation | Subject | Brief description | Applies to subpart GGGGG |
|---|---|---|---|
| §63.1 | Applicability | Initial Applicability Determination; Applicability After Standard Established; Permit Requirements; Extensions, Notifications. | Yes. |
| §63.2 | Definitions | Definitions for part 63 standards | Yes. |
| §63.3 | Units and Abbreviations | Units and abbreviations for part 63 standards | Yes. |
| §63.4 | Prohibited Activities | Prohibited Activities; Compliance date; Circumvention, Severability. | Yes. |
| §63.5 | Construction/Reconstruction | Applicability; applications; approvals | Yes. |
| §63.6(a) | Applicability | General Provisions (GP) apply unless compliance extension GP apply to area sources that become major. | Yes. |
| §63.6(b)(1)–(4) | Compliance Dates for New and Reconstructed sources. | Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for 112(f). | Yes. |
| §63.6(b)(5) | Notification | Must notify if commenced construction or reconstruction after proposal. | Yes. |
| §63.6(b)(6) | [Reserved] | | |
| §63.6(b)(7) | Compliance Dates for New and Reconstructed Area Sources That Become Major. | Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were an area source. | Yes. |
| §63.6(c)(1)–(2) | Compliance Dates for Existing Sources | Comply according to date in subpart, which must be no later than 3 years after effective date. For 112(f) standards, comply within 90 days of effective date unless compliance extension. | Yes. |
| §63.6(c)(3)–(4) | [Reserved] | | |
| §63.6(c)(5) | Compliance Dates for Existing Area Sources That Become Major. | Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years). | Yes. |
| §63.6(d) | [Reserved] | | |
| §63.6(e)(1)–(2) | Operation & Maintenance | Operate to minimize emissions at all times. Correct malfunctions as soon as practicable. Operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met. | Yes. |
| §63.6(e)(3) | Startup, Shutdown, and Malfunction Plan (SSMP). | Requirement for startup, shutdown and malfunction (SSM) and SSMP. Content of SSMP. | Yes with the exception of containers using either Level 1 or Level 2 controls. |

### TABLE 3 TO SUBPART GGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG—Continued

| Citation | Subject | Brief description | Applies to subpart GGGGG |
|---|---|---|---|
| § 63.6(f)(1) | Compliance Except During SSM | You must comply with emissions standards at all times except during SSM. | Yes. |
| § 63.6(f)(2)–(3) | Methods for Determining Compliance | Compliance based on performance test, operation and maintenance plans, records, inspection. | Yes. |
| § 63.6(g)(1)–(3) | Alternative Standard | Procedures for getting an alternative standard | Yes. |
| § 63.6(h) | Opacity/Visible Emissions (VE) Standards | Requirements for opacity and visible emissions limits. | No. No opacity standards. |
| § 63.6(i)(1)–(14) | Compliance Extension | Procedures and criteria for Administrator to grant compliance extension. | Yes. |
| § 63.6(j) | Presidential Compliance Exemption | President may exempt source category from requirement to comply with final rule. | Yes. |
| § 63.7(a)(1)–(2) | Performance Test Dates | Dates for Conducting Initial Performance Testing and Other Compliance Demonstrations. Must conduct 180 days after first subject to final rule. | Yes. |
| § 63.7(a)(3) | CAA Section 114 Authority | Administrator may require a performance test under CAA section 114 at any time. | Yes. |
| § 63.7(b)(1) | Notification of Performance Test | Must notify Administrator 60 days before the test. | Yes. |
| § 63.7(b)(2) | Notification of Rescheduling | If rescheduling a performance test is necessary, must notify Administrator 5 days before scheduled date of rescheduled date. | Yes. |
| § 63.7(c) | Quality Assurance/Test Plan | Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with: Test plan approval procedures; performance audit requirements; internal and External QA procedures for testing. | |
| § 63.7(d) | Testing Facilities | Requirements for testing facilities | Yes. |
| § 63.7(e)(1) | Conditions for Conducting Performance Tests | Performance tests must be conducted under representative conditions. Cannot conduct performance tests during SSM. Not a violation to exceed standard during SSM. | Yes. |
| § 63.7(e)(2) | Conditions for Conducting Performance Tests | Must conduct according to rule and EPA test methods unless Administrator approves alternative. | Yes. |
| § 63.7(e)(3) | Test Run Duration | Must have three test runs of at least one hour each. Compliance is based on arithmetic mean of three runs. Conditions when data from an additional test run can be used. | Yes. |
| § 63.7(f) | Alternative Test Method | Procedures by which Administrator can grant approval to use an alternative test method. | Yes. |
| § 63.7(g) | Performance Test Data Analysis | Must include raw data in performance test report. Must submit performance test data 60 days after end of test with the Notification of Compliance Status. Keep data for 5 years. | Yes. |
| § 63.7(h) | Waiver of Tests | Procedures for Administrator to waive performance test. | Yes. |
| § 63.8(a)(1) | Applicability of Monitoring Requirements | Subject to all monitoring requirements in standard. | Yes. |
| § 63.8(a)(2) | Performance Specifications | Performance Specifications in appendix B of part 60 apply. | Yes. |
| § 63.8(a)(3) | [Reserved]. | | |
| § 63.8(a)(4) | Monitoring with Flares | Unless your rule says otherwise, the requirements for flares in 63.11 apply. | Yes. |
| § 63.8(b)(1) | Monitoring | Must conduct monitoring according to standard unless Administrator approves alternative. | Yes. |
| § 63.8(b)(2)–(3) | Multiple Effluents and Multiple Monitoring Systems. | Specific requirements for installing monitoring systems. Must install on each effluent before it is combined and before it is released to the atmosphere unless Administrator approves otherwise. If more than one monitoring system on an emissions point, must report all monitoring system results, unless one monitoring system is a backup. | Yes. |

TABLE 3 TO SUBPART GGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG—Continued

| Citation | Subject | Brief description | Applies to subpart GGGGG |
|---|---|---|---|
| § 63.8(c)(1) | Monitoring System Operation and Maintenance. | Maintain monitoring system in a manner consistent with good air pollution control practices. | Yes. |
| § 63.8(c)(1)(i) | Routine and Predictable SSM | Follow the SSM plan for routine repairs. Keep parts for routine repairs readily available. Reporting requirements for SSM when action is described in SSM plan. | Yes |
| § 63.8(c)(1)(ii) | SSM not in SSMP | Reporting requirements for SSM when action is not described in SSM plan. | Yes. |
| § 63.8(c)(1)(iii) | Compliance with Operation and Maintenance (O&M) Requirements. | How Administrator determines if source complying with operation and maintenance requirements. Review of source O&M procedures, records, Manufacturer's instructions, recommendations, and inspection of monitoring system. | Yes. |
| § 63.8(c)(2)–(3) | Monitoring System Installation | Must install to get representative emissions and parameter measurements. Must verify operational status before or at performance test. | Yes. |
| § 63.8(c)(4) | Continuous Monitoring System (CMS) Requirements. | CMS must be operating except during breakdown, out-of-control, repair, maintenance, and high-level calibration drifts. | No. |
| § 63.8(c)(4)(i)–(ii) | Continuous Monitoring System (CMS) Requirements. | COMS must have a minimum of one cycle of sampling and analysis for each successive 10-second period and one cycle of data recording for each successive 6-minute period. CEMS must have a minimum of one cycle of operation for each successive 15-minute period. | Yes. However, COMS are not applicable. Requirements for CPMS are listed in §§ 63.7900 and 63.7913. |
| § 63.8(c)(5) | COMS Minimum Procedures | COMS minimum procedures | No. |
| § 63.8(c)(6) | CMS Requirements | Zero and High level calibration check requirements. | Yes. However requirements for CPMS are addressed in §§ 63.7900 and 63.7913. |
| § 63.8(c)(7)–(8) | CMS Requirements | Out-of-control periods, including reporting | Yes. |
| § 63.8(d) | CMS Quality Control | Requirements for CMS quality control, including calibration, etc. Must keep quality control plan on record for 5 years. Keep old versions for 5 years after revisions. | Yes. |
| § 63.8(e) | CMS Performance Evaluation | Notification, performance evaluation test plan, reports. | Yes. |
| § 63.8(f)(1)–(5) | Alternative Monitoring Method | Procedures for Administrator to approve alternative monitoring. | Yes. |
| § 63.8(f)(6) | Alternative to Relative Accuracy Test | Procedures for Administrator to approve alternative relative accuracy tests for CEMS. | No. |
| § 63.8(g)(1)–(4) | Data Reduction | COMS 6-minute averages calculated over at least 36 evenly spaced data points. CEMS 1-hour averages computed over at least four equally spaced data points. | Yes. However, COMS are not applicable. Requirements for CPMS are addressed in §§ 63.7900 and 63.7913. |
| § 63.8(g)(5) | Data Reduction | Data that cannot be used in computing averages for CEMS and COMS. | No. |
| § 63.9(a) | Notification Requirements | Applicability and State Delegation | Yes. |
| § 63.9(b)(1)–(5) | Initial Notifications. | Submit notification 120 days after effective date. Notification of intent to construct/reconstruct; Notification of commencement of construct/reconstruct; Notification of startup. Contents of each. | Yes. |
| § 63.9(c) | Request for Compliance Extension | Can request if cannot comply by date or if installed BACT/LAER. | Yes. |
| § 63.9(d) | Notification of Special Compliance Requirements for New Source. | For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date. | Yes. |
| § 63.9(e) | Notification of Performance Test | Notify Administrator 60 days prior | Yes. |
| § 63.9(f) | Notification of VE/Opacity Test | Notify Administrator 30 days prior | No. |

### TABLE 3 TO SUBPART GGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG—Continued

| Citation | Subject | Brief description | Applies to subpart GGGGG |
|---|---|---|---|
| § 63.9(g) | Additional Notifications When Using CMS | Notification of performance evaluation. Notification using COMS data. Notification that exceeded criterion for relative accuracy. | Yes. However, there are no opacity standards. |
| § 63.9(h)(1)–(6) | Notification of Compliance Status | Contents. Due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after. When to submit to Federal vs. State authority. | Yes. |
| § 63.9(i) | Adjustment of Submittal Deadlines | Procedures for Administrator to approve change in when notifications must be submitted. | Yes. |
| § 63.9(j) | Change in Previous Information | Must submit within 15 days after the change | Yes. |
| § 63.10(a) | Recordkeeping/Reporting | Applies to all, unless compliance extension. When to submit to Federal vs. State authority. Procedures for owners of more than 1 source. | Yes. |
| § 63.10(b)(1) | Recordkeeping/Reporting | General Requirements. Keep all records readily available. Keep for 5 years. | Yes. |
| § 63.10(b)(2)(i)–(iv) | Records related to SSM | Occurrence of each of operation (process equipment). Occurrence of each malfunction of air pollution equipment. Maintenance on air pollution control equipment. Actions during startup, shutdown, and malfunction. | Yes. |
| § 63.10(b)(2)(vi) and (x–xi). | CMS Records | Malfunctions, inoperative, out-of-control. Calibration checks. Adjustments, maintenance. | Yes. |
| § 63.10(b)(2)(vii)–(ix) | Records | Measurements to demonstrate compliance with emissions limitations. Performance test, performance evaluation, and visible emissions observation results. Measurements to determine conditions of performance tests and performance evaluations. | Yes. |
| § 63.10(b)(2)(xii) | Records | Records when under waiver | Yes. |
| § 63.10(b)(2)(xiii) | Records | Records when using alternative to relative accuracy test. | No. |
| § 63.10(b)(2)(xiv) | Records | All documentation supporting Initial Notification and Notification of Compliance Status. | Yes. |
| § 63.10(b)(3) | Records | Applicability Determinations | Yes. |
| § 63.10(c) | Records | Additional Records for CMS | No. |
| § 63.10(d)(1) | General Reporting Requirements | Requirement to report | Yes. |
| § 63.10(d)(2) | Report of Performance Test Results | When to submit to Federal or State authority | Yes. |
| § 63.10(d)(3) | Reporting Opacity or VE Observations | What to report and when | No. |
| § 63.10(d)(4) | Progress Reports | Must submit progress reports on schedule if under compliance extension. | Yes. |
| § 63.10(d)(5) | Startup, Shutdown, and Malfunction Reports | Contents and submission | Yes. |
| § 63.10(e)(1)–(2) | Additional CMS Reports | Must report results for each CEM on a unit Written copy of performance evaluation Three copies of COMS performance evaluation. | Yes. However, COMS are not applicable. |
| § 63.10(e)(3) | Reports | Excess Emissions Reports | No. |
| § 63.10(e)(3)(i–iii) | Reports | Schedule for reporting excess emissions and parameter monitor exceedance (now defined as deviations). | No. |
| § 63.10(e)(3)(iv–v) | Excess Emissions Reports | Requirement to revert to quarterly submission if there is an excess emissions and parameter monitor exceedance (now defined as deviations). Provision to request semiannual reporting after compliance for one year. Submit report by 30th day following end of quarter or calendar half. If there has not been an exceedance or excess emissions (now defined as deviations), report contents is a statement that there have been no deviations. | No. |
| § 63.10(e)(3)(iv–v) | Excess Emissions Reports | Must submit report containing all of the information in §§ 63.10(c)(5–13) and 63.8(c)(7–8). | No. |

### TABLE 3 TO SUBPART GGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG—Continued

| Citation | Subject | Brief description | Applies to subpart GGGGG |
|---|---|---|---|
| §63.10(e)(3)(vi–viii) | Excess Emissions Report and Summary Report. | Requirements for reporting excess emissions for CMSs (now called deviations). Requires all of the information in §§63.10(c)(5–13) and 63.8(c)(7–8). | No. |
| §63.10(e)(4) | Reporting COMS data | Must submit COMS data with performance test data. | No. |
| §63.10(f) | Waiver for Recordkeeping/Reporting | Procedures for Administrator to waive | Yes. |
| §63.11 | Flares | Requirements for flares | Yes. |
| §63.12 | Delegation | State authority to enforce standards | Yes. |
| §63.13 | Addresses | Addresses where reports, notifications, and requests are sent. | Yes. |
| §63.14 | Incorporation by Reference | Test methods incorporated by reference | Yes. |
| §63.15 | Availability of Information | Public and confidential information | Yes |

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1985

# Federal Register

Wednesday,
October 8, 2003

Part III

## Securities and Exchange Commission

17 CFR Parts 239, 274, and 275
Fund of Funds Investments; Proposed Rule

## SECURITIES AND EXCHANGE COMMISSION

**17 CFR Parts 239, 274, and 275**

**[Release Nos. 33–8297; IC–26198; File No. S7–18–03]**

**RIN 3235–AI30**

## Fund of Funds Investments

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rules.

**SUMMARY:** The Commission is proposing three new rules under the Investment Company Act of 1940 that address the ability of an investment company to acquire shares of another investment company. Section 12(d)(1) of the Act prohibits, subject to certain exceptions, so-called "fund of funds" arrangements, in which one investment company invests in the shares of another. The proposed rules would broaden the ability of an investment company to invest in shares of another investment company consistent with the protection of investors and the purposes of the Act. The Commission also is proposing amendments to forms used by investment companies to register under the Investment Company Act and offer their shares under the Securities Act of 1933. The proposed amendments would improve the transparency of the expenses of funds of funds by requiring that the expenses of the acquired funds be aggregated and shown as an additional expense in the fee table of the fund of funds.

**DATES:** Comments must be received by December 3, 2003.

**ADDRESSES:** To help us process and review your comments more efficiently, comments should be sent by hard copy or e-mail, but not by both methods. Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following E-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–18–03; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[1]

**FOR FURTHER INFORMATION CONTACT:** Penelope W. Saltzman, Senior Counsel, or C. Hunter Jones, Assistant Director, Office of Regulatory Policy, (202) 942–0690, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0506.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission (the "Commission") today is proposing for public comment new rules 12d1–1 [17 CFR 270.12d1–1], 12d1–2 [17 CFR 270.12d1–2], and 12d1–3 [17 CFR 270.12d1–3] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Investment Company Act" or the "Act") that address the ability of an investment company ("fund" or "acquiring fund") registered under the Act to invest in shares of another investment company ("fund" or "acquired fund"). We also are proposing amendments to Forms N–1A [17 CFR 239.15A; 17 CFR 274.11A], N–2 [17 CFR 239.14; 17 CFR 274.11a–1], N–3 [17 CFR 239.17a; 17 CFR 274.11b], N–4 [17 CFR 239.17b; 17 CFR 274.11c], and N–6 [17 CFR 239.17c; 17 CFR 274.11d] to require that prospectuses of funds of funds disclose all of the expenses investors in the fund will bear, including those of any acquired funds. Forms N–1A and N–2 are the registration forms used by open-end management funds and closed-end management funds, respectively, to register under the Act and to offer their shares under the Securities Act of 1933 [15 U.S.C. 77a] ("Securities Act"). Form N–3 is the registration form used by separate accounts that are organized as management investment companies and offer variable annuity contracts to register under the Act and to offer their shares under the Securities Act. Forms N–4 and N–6 are the forms used by separate accounts organized as unit investment trusts ("UITs") that offer variable annuity and variable life insurance contracts, respectively, to register under the Act and to offer their shares under the Securities Act.

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## I. Background

Today, the federal securities laws restrict substantially the ability of a fund to invest in shares of other funds. Before the enactment of the Investment Company Act in 1940, however, a fund was free to purchase an unlimited number of shares of another fund. These "fund of funds" arrangements yielded numerous abuses, which were catalogued in the Commission's study of funds that preceded the Act ("Investment Trust Study").[2]

Using a relatively small amount of money, individuals could acquire control of a fund and use its assets to acquire control of the assets of another fund, which, in turn, could use its assets to control a third fund.[3] As a result, a few individuals effectively could control millions of dollars in shareholder assets invested in various acquired funds. These "pyramiding" schemes were used to enrich the individuals at the expense of fund shareholders in a number of ways. In some cases, controlling individuals caused the acquired funds to purchase securities in companies in which the individuals had an interest. In other cases, these individuals caused funds to direct underwriting and brokerage business to broker-dealers they controlled—often on terms favorable to the broker-dealer. Controlling persons also profited when fund shareholders paid excessive charges due to duplicative fees at the acquiring and acquired fund levels.[4]

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[1] We do not edit personal, identifying information, such as names or E-mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

[2] Investment Trusts and Investment Companies, Report of the Securities and Exchange Commission, pt. 3, ch. 7, H.R. Doc. No. 136, 77th Cong., 1st Sess. 2721–95 (1941).

[3] *See* Investment Trust Study, *supra* note 2, pt. 3, ch. 4, at 1031–39 and 1040–41, nn. 58–59 (discussing how individuals and other investors were able to make relatively small investments and gain control of funds); ch. 7, at 2742–50.

The complex structures that resulted from pyramiding created additional problems for shareholders. These structures permitted acquiring funds to circumvent investment restrictions and limitations, and made it impossible for shareholders to understand who really controlled the fund or the true value of their investments.[5] A fund shareholder might know that he owned shares in a fund that invested in equity securities of large companies without understanding that the large companies were large funds that exposed him to substantial risks associated with smaller issuers, foreign currencies, or interest rates.[6]

In response to these findings in the Investment Trust Study, Congress included in the Act a provision designed to restrict fund of funds arrangements. As originally enacted, section 12(d)(1) prohibited a registered investment company (and any companies it controlled) from purchasing more than five percent of the outstanding shares of any fund that concentrated its investments in a particular industry, or more than three percent of the shares of any other type of fund.[7]

Section 12(d)(1) proved flawed, however, because it did not prevent *unregistered* investment companies from acquiring the securities of *registered* funds. In the 1960s, Fund of Funds, Ltd., an unregistered fund operated in Geneva, Switzerland, began to exploit that flaw by marketing to members of the U.S. military stationed overseas shares of foreign investment companies that had controlling interests in several registered U.S. funds.[8] Fund of Funds, Ltd. engaged in many of the abusive activities identified in the Investment Trust Study. These included charging duplicative advisory fees at the acquiring and acquired fund levels, providing sales loads to an affiliated broker for each investment the acquiring fund made in an acquired fund, and directing brokerage business to an affiliate of the fund of funds (which then rebated half the commission).[9] In addition, Fund of Funds, Ltd. could exert undue influence on the management of acquired funds by threatening advisers to those funds with large redemptions.[10]

In 1970, Congress revisited section 12(d)(1) of the Act. Among other things, it tightened the restrictions on funds of funds and extended them to unregistered funds that invest in registered funds.[11] Today, funds are subject to two sets of prohibitions. First, section 12(d)(1)(A) prohibits a registered fund (and companies or funds it controls) from—

- Acquiring more than three percent of a fund's voting securities;
- Investing more than five percent of its total assets in any one acquired fund; or
- Investing more than ten percent of its total assets in all acquired funds.[12]

Second, section 12(d)(1)(B) prohibits a registered open-end fund from selling securities to any fund (including unregistered funds) if, after the sale, the acquiring fund would—

- Together with companies and funds it controls, own more than three percent of the acquired fund's voting securities; or
- Together with other funds (and companies they control) own more than ten percent of the acquired fund's voting securities.[13]

By limiting the *sale* of registered fund shares to other funds, section 12(d)(1)(B) prevents the creation of a fund of registered funds regardless of the limitations of U.S. law to regulate the activities of foreign funds, such as Fund of Funds, Ltd. Together, these two provisions of section 12(d)(1) have proven quite effective in putting a stop to the abusive practices that characterized previous fund of funds arrangements.

Congress recognized that these restrictions would have the effect of preventing legitimate fund of funds arrangements and has, over the years, created three exceptions under which different types of fund of funds arrangements are permitted today:

*Conduit Arrangements.* The Act permits arrangements under which a registered fund invests *all* of its assets in shares of one other fund so that the acquiring fund is, in effect, a conduit through which investors may access the acquired fund.[14] The exception currently provided in section 12(d)(1)(E) was originally designed to preserve the arrangements under which periodic payment plan certificates were issued.[15] Today, this section is relied upon by most insurance company separate accounts, which are organized as UITs,[16] and invest the proceeds from the sale of interests in variable annuity and variable life insurance contracts in shares of a mutual fund.[17] This exemption also is used by "master-feeder funds"—arrangements in which two or more funds with identical investment objectives pool their assets by investing in a single fund with the same investment objective. Investors purchase securities in the "feeder" fund, which is an open-end fund and a conduit to the "master" fund.[18]

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[4] *See* Investment Trust Study, *supra* note 2, pt. 3, ch. 7, at 2725–39, 2760–75.

[5] *See id.* at 2776–77 (discussing examples of fund investment policy changes that conformed to management interests), 2781–82 (discussing examples of management policies that resulted in confusing or misleading asset valuations).

[6] *See id.* at 2721–95.

[7] *See* Pub. L. No. 76–768, 54 Stat. 789, 809–10 § 12(d)(1) (1940) (codified at 15 U.S.C. 80a–12(d)(1) (1940)).

[8] *See* H.R. Rep. No. 1382, 91st Cong., 2d Sess., 23 (1970) ("H.R. Rep. No. 1382"); Charles Raw, *et al.*, Do You Sincerely Want to be Rich? 61–66 (1971). Fund of Funds, Ltd. was incorporated in Ontario, Canada. *See* Public Policy Implications of Investment Company Growth, H.R. Rep. No. 2337, 89th Cong., 2d Sess., 312–24 (1966) ("1966 Study").

[9] *See Arthur Lipper Corp. et al.* v. *SEC*, Securities Exchange Act Release No. 11773, 46 S.E.C. 78 (Oct. 24, 1975), *sanction modified*, 547 F.2d 171 (2d Cir. 1976).

[10] *See* 1966 Study, *supra* note 8, at 315–16.

[11] *See* Pub. L. No. 91–547, 84 Stat. 1413, 1417 § 7 (1970) ("1970 Amendments") (codified at 15 U.S.C. 80a–12(d)(1)(A)). *See also* Sen. Rep. No. 184, 91st Cong., 1st Sess., at 31 (1969) ("Sen. Rep. No. 184").

[12] *See* 15 U.S.C. 80a–12(d)(1)(A). If the acquiring fund is not registered under the Act, the prohibitions apply only with respect to its acquisition of securities in funds that are registered under the Act.

[13] *See* 15 U.S.C. 80a–12(d)(1)(B).

[14] *See* 15 U.S.C. 80a–12(d)(1)(E).

[15] The exception for periodic payment plan arrangements originally was set forth in section 12(d)(1)(B). Section 12(d)(1)(E) was added by the 1970 Amendments. *See* S. Rep. No. 184, *supra* note 11, at 31; 1970 Amendments, *supra* note 11, § 7 (codified at 15 U.S.C. 80a–12(d)(1)(E)). Section 12(d)(1)(E) permits a fund's acquisition of securities issued by another fund provided that (i) the acquiring fund's depositor or principal underwriter is a broker or dealer registered under the Securities Exchange Act of 1934, (or a person the broker-dealer controls), (ii) the security is the only investment security the acquiring fund holds (or the securities are the only investment securities the acquiring fund holds if it is a registered UIT that issues two or more classes or series of securities, each of which provides for the accumulation of shares of a different fund), and (iii) the acquiring fund is obligated (a) to seek instructions from its shareholders with regard to voting the acquired fund's securities or to vote the acquired fund's shares in the same proportion as the vote of all other acquired fund shareholders, and (b) if unregistered, to obtain Commission approval before substituting the investment security.

[16] The Act defines a "unit investment trust" as a fund that (i) is organized under a trust indenture, contract of custodianship or agency, or similar instrument, (ii) does not have a board of directors, and (iii) issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities, but does not include a voting trust. 15 U.S.C. 80a–4(2).

[17] *See* Securities and Exchange Commission, Protecting Investors: A Half Century of Investment Company Regulation 373–74 (1992) ("1992 Study"); Request for Comments on Issues Arising Under the Investment Company Act of 1940 Relating to Flexible Premium Variable Life Insurance, Investment Company Act Release No. 13632 (Nov. 23, 1983) [48 FR 54043 (Nov. 30, 1983)].

*Unaffiliated Fund of Funds Arrangements.* The Act also permits a registered fund to take small positions in an unlimited number of other funds (an "unaffiliated fund of funds").[19] A fund taking advantage of the exception provided in section 12(d)(1)(F) of the Act (and its affiliated persons) may acquire no more than three percent of another fund's securities;[20] cannot charge a sales load greater than 1½ percent;[21] is restricted in its ability to redeem shares of the acquired fund;[22] and is unable to use its voting power to influence the outcome of shareholder votes held by the acquired fund.[23] The exception was designed to give limited relief to fund of funds arrangements in existence in 1970 when section 12(d)(1) was amended, subject to restrictions designed to prevent abuses.[24]

*Affiliated Fund of Funds Arrangements.* The Act also permits a fund to invest in one or more funds in the same fund complex. Enacted as part of the National Securities Markets Improvement Act of 1996 ("NSMIA"),[25] section 12(d)(1)(G) permits a registered open-end fund or UIT to acquire an unlimited amount of shares of other registered open-end funds and UITs that are part of the same "group of investment companies."[26] A fund taking advantage of this exception (an "affiliated fund of funds") is restricted in the types of other securities it can hold in addition to shares of registered funds in the same group of investment companies.[27] The acquired funds must have a policy against investing in shares of other funds in reliance on section 12(d)(1)(F) or 12(d)(1)(G) (to prevent multi-tiered structures),[28] and overall distribution expenses are limited (to prevent excessive sales loads).[29] Under this provision, which codified Commission exemptive orders,[30] several large fund complexes offer a fund of funds, which allocates and periodically reallocates its assets among funds in the complex.[31]

## II. Discussion

Since 1940 we have provided limited relief for funds to acquire shares of other funds when the proposed arrangements did not present the risk of abuses that section 12(d)(1) was designed to prevent. We issued those orders under our general exemptive authority in section 6(c) of the Act.[32] In 1996, when Congress added section 12(d)(1)(G), it gave us specific authority to exempt any person, security, or transaction, or any class or classes of transactions, from section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.[33] The House Report accompanying NSMIA urged the Commission to use the additional exemptive authority under section 12(d)(1)(J) "in a progressive way as the fund of funds concept continues to evolve over time."[34]

Today we are proposing three new rules. Two of these provide exemptions in addition to the statutory exceptions to the fund of funds limits. The third provides an exemption from a statutory condition for a fund of funds arrangement. These rules would codify and expand upon a number of exemptive orders we have issued that permit funds to invest in other funds. We also are proposing amendments to Forms N–1A, N–2, N–3, N–4, and N–6 that will require funds of funds to disclose in their prospectuses the expenses of acquired funds, which investors in a fund of funds will bear indirectly.

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[18] *See* H.R. Rep. No. 622, 104th Cong., 2d Sess., at 41 (1996) ("H.R. Rep. No. 622"); Exemption for Open-End Management Investment Companies Issuing Multiple Classes of Shares; Disclosure by Multiple Class and Master Feeder Funds; Voting on Distribution Plans; Final Rules and Proposed Rule, Investment Company Act Release No. 20915 (Feb. 23, 1995) [60 FR 11876, 11876–77 (Mar. 2, 1995)]; Division of Investment Management, Securities and Exchange Commission, Hub and Spoke Funds: A Report Prepared by the Division of Investment Management, submitted with letter to the Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives from Richard C. Breeden, Chairman, Securities and Exchange Commission (Apr. 15, 1992), *available in* LEXIS, Fedsec library, Noact File.

[19] *See* 15 U.S.C. 80a–12(d)(1)(F).

[20] A registered fund relying on section 12(d)(1)(F) may acquire securities issued by another fund if, immediately after acquiring the securities, not more than three percent of the total outstanding stock of the acquired fund is owned by the acquiring fund and all its affiliates. *See* 15 U.S.C. 80a–12(d)(1)(F)(i). Section 12(d)(1)(F) does not limit acquiring fund investments in securities other than those issued by other funds.

[21] A fund relying on section 12(d)(1)(F) may not offer or sell (or propose to offer or sell through a principal underwriter) a security it issues at a public offering price that includes a sales load of more than 1½ percent. *See* 15 U.S.C. 80a–12(d)(1)(F)(ii).

[22] A fund whose shares are acquired pursuant to section 12(d)(1)(F) is not obligated to redeem more than 1 percent of those securities during any period of less than 30 days. 15 U.S.C. 80a–12(d)(1)(F).

[23] Section 12(d)(1)(F), by reference to section 12(d)(1)(E), requires the acquiring fund to vote shares of an acquired fund either by seeking instructions from the acquiring fund's shareholders, or to vote the shares in the same proportion as the vote of all other shareholders of the acquired fund. *Id.*

[24] *See* H.R. Rep. No. 1382, *supra* note 8, at 11.

[25] Pub. L. No. 104–290, 110 Stat. 3416 (1996).

[26] *See* 15 U.S.C. 12(d)(1)(G). For purposes of the exception, the term "group of investment companies" means "any 2 or more registered investment companies that hold themselves out to investors as related companies for purposes of investment and investor services." 15 U.S.C. 80a–12(d)(1)(G)(ii).

[27] In addition to investing in securities of registered funds in the same group of investment companies, the Act permits these funds to invest only in government securities and short-term paper. *See* 15 U.S.C. 80a–12(d)(1)(G)(i)(II).

[28] *See* 15 U.S.C. 80a–12(d)(1)(G)(i)(IV).

[29] *See* 15 U.S.C. 80a–12(d)(1)(G)(i)(III). The provision permits a fund to invest in shares of another fund only if either (i) the acquiring fund does not charge a sales load or distribution-related fee or does not pay (and is not assessed) sales loads or distribution-related fees on securities of the acquired fund, or (ii) the aggregate distribution-related fees (or loads) charged by the acquiring fund on its securities and paid by the acquiring fund on acquired fund securities are not excessive under rules adopted under section 22(b) [15 U.S.C. 80a–22(b)] or 22(c) [15 U.S.C. 80a–22(c)] by a securities association registered under section 15A of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78*o*–3] or the Commission. The NASD has adopted limits on sales loads and distribution-related fees applicable to funds as well as to funds of funds. *See* NASD Rule 2830(d)(2), (3) ("NASD Sales Charge Rule").

Under the NASD Sales Charge Rule for funds of funds, if neither the acquiring nor acquired fund has an asset-based sales charge (12b–1 fee), the maximum front-end and deferred sales charge that can be charged by the acquiring fund, the acquired fund, and both in combination cannot exceed 8.5 percent of the offering price of the shares. *See* NASD Sales Charge Rule 2830(d)(3)(A). Any acquiring or acquired fund that has an asset-based sales charge must individually comply with the sales charge limitations on funds with an asset-based sales charge, provided, among other conditions, that if both funds have an asset-based sales charge, the maximum aggregate asset-based sales charge cannot exceed .75 of 1 percent per year of the average annual net assets of the fund; and the maximum aggregate sales load may not exceed 7.25 percent of the amount invested, or 6.25 percent if either fund pays a service fee. *See* NASD Sales Charge Rule 2830(d)(2)(A), (B).

[30] *See* Vanguard STAR Fund, Investment Company Act Release No. 21372 (Sept. 22, 1995) [60 FR 50656 (Sept. 29, 1995)] (notice), Investment Company Act Release No. 21426 (Oct. 18, 1995) (order) (revising conditions on the 1985 Vanguard Order); T. Rowe Price Spectrum Fund, Investment Company Act Release No. 21371 (Sept. 22, 1995) [60 FR 50654 (Sept. 29, 1995)] (notice), Investment Company Act Release No. 21425 (Oct. 18, 1995) (order) (revising conditions on the 1989 T. Rowe Price Order); T. Rowe Price Spectrum Fund, Investment Company Act Release No. 17198 (Oct. 31, 1989) [54 FR 47010 (Nov. 8, 1989)] (notice), Investment Company Act Release No. 17242 (Nov. 29, 1989) (order) ("1989 T. Rowe Price Order"); Vanguard Special Tax-Advanced Retirement Fund, Investment Company Act Release No. 14153 (Sept. 12, 1984) [49 FR 36582 (Sept. 18, 1984)] (notice), Investment Company Act Release No. 14361 (Feb. 7, 1985) (order) ("1985 Vanguard Order").

[31] *See, e.g.*, T. Rowe Price, Retirement Funds, Prospectus 1–4 (Mar. 14, 2003).

[32] 15 U.S.C. 80a–6(c). Section 6(c) provides that "[t]he Commission, by rules and regulations upon its own motion, or by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this title or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title."

[33] *See* NSMIA, *supra* note 25, § 202 (codified at 15 U.S.C. 80a–12(d)(1)(J)). Congress added section 12(d)(1)(J) to resolve questions regarding the scope of our authority under section 6(c). *See* 1985 Vanguard Order, *supra* note 30, dissenting opinion of Commissioners Treadway and Peters (concluding that applicants failed to establish an adequate record on which Commission could find exemption from section 12(d)(1)(A) to meet the standards of section 6(c) of the Act).

[34] H.R. Rep. No. 622, *supra* note 18, at 44–45. The House Report explained that, in exercising its exemptive authority, the Commission should consider factors that relate to the protection of investors, including the extent to which a proposed arrangement is subject to conditions that are designed to address conflicts of interest and overreaching by a participant in the arrangement, so as to avoid the abuses that gave rise to the initial adoption of the Act's restrictions against funds investing in other funds. *See id.* at 45.

### *A. Rule 12d1–1: Investments in Money Market Funds*

We are proposing a new rule that would permit funds to invest in shares of money market funds. Rule 12d1–1 would permit "cash sweep" arrangements in which a fund invests all or a portion of its available cash in a money market fund rather than directly in short-term instruments.[35] Since 1982, we have issued more than 80 exemptive orders permitting these types of arrangements.[36] Funds have represented that use of a money market fund may be expected to achieve greater efficiencies, reduce fund management expenses, and increase returns.[37] Moreover, use of a money market fund may permit fund portfolio managers to focus on the management of the principal investments of the fund.

Fund investments in money market funds, which did not exist in 1940, do not appear to raise the concerns that underlie section 12(d)(1). Money market funds are designed to accommodate significant daily inflows and outflows of cash and therefore their management seems unlikely to be influenced by investors who could threaten large redemptions.[38] There is little value to obtaining a control position in a money market fund, and money market funds do not control valuable brokerage commissions that can be directed to affiliates.[39] A fund's investment in shares of a money market fund does, however, present the opportunity for layering of advisory fees and distribution expenses, which we propose to address as discussed in section II.D below.

#### 1. Scope of Exemption

(a) *Affiliated Money Market Funds.* Funds that intend to invest in money market funds in the same fund complex ("affiliated money market funds") also need exemptions from sections 17(a)[40] and 17(d) of the Act, and rule 17d–1 thereunder,[41] which restrict transactions and joint arrangements with affiliated persons. In addition, a fund that acquires more than five percent of the securities of a money market fund in another fund complex would become an affiliated person of the money market fund, and would need relief from these section 17 prohibitions before making any additional investments in the money market fund.[42] Proposed rule 12d1–1 would provide this relief. An acquiring fund's purchase and redemption of money market fund shares at the net asset value would seem to provide little opportunity for insider self-dealing or overreaching, and thus an exemption from these provisions appears to be appropriate. We seek comment on this proposal. Does an acquiring fund's investment in an affiliated money market fund create other opportunities for self-dealing or overreaching?

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[35] A fund may have uninvested cash from new purchases of shares by investors, receipt of dividends and interest from portfolio investments, and matured investments, as well as cash collateral from securities lending activities. The proposed rule would permit a fund to invest in one or more money market funds.

[36] *See, e.g.*, Diamond Hill Funds, Investment Company Act Release No. 26058 (May 28, 2003) [68 FR 33213 (June 3, 2003)] (notice), Investment Company Act Release No. 26079 (June 24, 2003) (order); SEI Index Funds, Investment Company Act Release No. 26008 (Apr. 22, 2003) [68 FR 22423 (Apr. 28, 2003)] (notice), Investment Company Act Release No. 26048 (May 19, 2003) (order). These orders contain a number of conditions, including: (i) Shares of the acquired money market fund will not be subject to sales loads, distribution-related fees, or service fees, or if they are, the acquiring fund's adviser will waive its advisory fee in an amount to offset the amount of fees incurred by the acquiring fund; (ii) before approving any advisory contract for the acquiring fund, its board of directors, including a majority of directors who are not interested persons under section 2(a)(19) of the Act [15 U.S.C. 80a–2(a)(19)] ("independent directors"), will consider the extent to which (if any) the advisory fees charged by the adviser should be reduced to account for reduced services as a result of investing cash in the money market fund; (iii) the acquiring fund's investment in money market funds will be limited to 25 percent of the acquiring fund's total assets; (iv) the acquiring fund's investment in the money market fund is consistent with the acquiring fund's policies as set forth in its registration statement; (v) the acquiring fund and money market fund are advised by the same adviser (or are part of the same group of investment companies); and (vi) the acquired money market fund will not acquire securities in another fund in excess of the limits of section 12(d)(1)(A) of the Act.

[37] *See, e.g.*, Pioneer America Income Trust, First Amended and Restated Application pursuant to Section 12(d)(1)(J) of the Investment Company Act of 1940, section IV (filed June 4, 2002) ("Pioneer Application"); Bear Stearns Funds, *et al.*, Amended Application for an Order under Section 12(d)(1)(J) of the Investment Company Act of 1940, section III.C (filed Jan. 8, 1999).

[38] *See* Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 21837 (Mar. 21, 1996) [61 FR 13956, 13957 (Mar. 28, 1996)] (among money market fund objectives is preservation of capital and liquidity); Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 17589 at text preceding n.7 (July 17, 1990) [55 FR 30239 (July 25, 1990)] (many investors use money market accounts as alternatives to checking accounts).

[39] We note that in the context of rule 2a–7, the Commission has permitted an exception that allows money market funds to invest in other money market funds in excess of the diversification requirements for other issuers provided the board of directors of the acquiring fund reasonably believes that the acquired fund is in compliance with rule 2a–7. *See* 17 CFR 270.2a–7(c)(4)(ii)(E). Under rule 2a–7, shares of money market funds are considered first-tier securities that without the exception would be subject to the rule's issuer diversification standards for first-tier securities. *See* 17 CFR 270.2a–7(a)(12).

[40] Section 17(a)(1) prohibits an affiliated person of a registered fund, a promoter or principal underwriter for a registered fund, or an affiliated person of the foregoing, acting as principal, from selling securities or other property to the fund, unless (A) the buyer is the issuer of the securities, (B) the seller is the issuer of the securities and the securities are part of a general offering to the holders of a class of the seller's securities, or (C) a depositor has deposited the securities with the trust of a UIT or periodic payment plan. 15 U.S.C. 80a–17(a)(1). Section 17(a)(2) prohibits an affiliated person from knowingly buying from a registered fund (or companies it controls) any security or other property unless the seller is the issuer of the securities. 15 U.S.C. 80a–17(a)(2). Affiliated persons of a fund include any person directly or indirectly controlling, controlled by, or under common control with the fund. *See* 15 U.S.C. 80a–2(a)(3)(C) (definition of "affiliated person"). Most funds today are organized by an investment adviser that advises or provides administrative services to a number of other funds in the same fund complex. Funds in a fund complex are under the common control of an investment adviser or other person when the adviser or other person exercises a controlling influence over the management or policies of the funds. *See* 15 U.S.C. 80a–2(a)(9). Not all advisers control funds they advise. The determination of whether a fund is under the control of its adviser, officers, or directors depends on all the relevant facts and circumstances. *See* Investment Company Mergers, Investment Company Act Release No. 25259, n.14 (Nov. 8, 2001) [66 FR 57602 (Nov. 15, 2001)]. For purposes of this release, we presume that funds in a fund complex are under common control because funds that are not affiliated persons would not require, and thus not rely on, the proposed exemptions from section 17(a) and rule 17d–1.

[41] Section 17(d) of the Act makes it unlawful for an affiliated person of a registered fund ("first-tier affiliate"), an affiliated person of an affiliated person of a registered fund ("second-tier affiliate"), the fund's principal underwriters, or affiliated persons of the fund's principal underwriters, acting as principal, to effect any transaction in which the fund, or a company it controls, is a joint or a joint and several participant "in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such registered or controlled company on a basis different from or less advantageous than that of such other participant." 15 U.S.C. 80a–17(d). Rule 17d–1(a) prohibits first- and second-tier affiliates of a registered fund, the fund's principal underwriter, and affiliated persons of the fund's principal underwriter, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan in which the fund (or company it controls) is a participant "unless an application regarding such joint enterprise, arrangement or profit-sharing plan has been filed with the Commission and has been granted by an order * * *." 17 CFR 270.17d–1. When an acquiring fund purchases securities from an affiliated money market fund on the advice of an adviser who also manages the money market fund, the arrangement and transactions could be deemed to be a joint enterprise in which the two funds and the adviser are joint participants.

[42] An affiliated person of a fund includes: (i) Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting securities of the fund; and (ii) any person five percent or more of whose assets or securities are directly or indirectly owned, controlled, or held with power to vote by the fund. *See* 15 U.S.C. 80a–2(a)(3)(A), (B) (definition of "affiliated person").

*(b) Unaffiliated Money Market Funds.* Although our exemptive orders have permitted funds to invest their cash only in money market funds advised by the same adviser, we are proposing to expand that relief to funds that do not share the same adviser.[43] As a result, funds would be able to invest cash in money market funds that are members of other fund complexes. The exemption would permit funds in smaller complexes that do not have a money market fund to engage in a cash sweep arrangement.[44] Because of the nature of money market funds, which we discussed above, we do not believe that investments in money market funds that do not share the same adviser would create any greater risks than investments in money market funds with a common adviser.

If a fund acquires more than five percent of a money market fund's securities, the two funds would become affiliated persons of each other.[45] As a result, principal transactions other than purchases and redemptions of fund shares would not be exempt under the proposed rule, and thus the two funds would be precluded from entering into certain types of transactions with each other.[46] Moreover, the acquiring fund would be restricted with respect to the purchase or sale of securities through a broker-dealer affiliated with the money market fund.[47] We seek comment on whether funds would be likely to invest cash in money market funds in other fund complexes? If so, would additional exemptive relief under the proposed rule be appropriate?[48]

*(c) Unregistered Money Market Funds.* Proposed rule 12d1–1 also would codify our exemptive orders that permit funds to invest in money market funds that are not registered investment companies ("unregistered money market funds").[49] Unregistered money market funds are typically organized by a fund adviser for the purposes of managing the cash of other funds in a fund complex and operate in almost all respects as a registered money market fund, except that their securities are privately offered and thus not registered under the Securities Act of 1933.[50] Although a fund's investments in unregistered money market funds is no longer restricted by section 12(d)(1),[51] these investments are subject to the affiliate transaction restrictions in the Act and rules thereunder and thus require exemptions from sections 17(a) and 17(d), and rule 17d–1.[52]

Under the proposed rule, the exemption would be available only for investments in an unregistered money market fund that operates like a money market fund registered under the Act.[53] To be eligible, an unregistered money market fund would be required to (i) limit its investments to those in which a money market fund may invest under rule 2a–7 under the Act,[54] and (ii) undertake to comply with all the other provisions of rule 2a–7.[55] In addition, the acquiring fund would have to reasonably believe that the unregistered money market fund operates like a registered money market fund and that it complies with certain provisions of the Act.[56] Finally, the unregistered money market fund's adviser would be required to register as an investment adviser with the Commission.[57] This final requirement would allow the Commission to examine the activities of the unregistered money market fund to ensure that it is meeting the requirements of the rule.

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[43] Some applicants have sought, and we have granted, broader exemptive relief permitting funds to invest in funds that are not part of the same group of investment companies in excess of the limitations of section 12(d)(1). *See infra* notes 73, 75. Under those orders, funds in which the applicants could invest include money market funds.

[44] *See* H.R. Rep. No. 622, *supra* note 18, at 43 ("The Committee intends the rulemaking and exemptive authority in new Section 12(d)(1)(J) to be used by the Commission so that the benefits of funds [of funds] are not limited only to investors in the largest fund complexes, but, in appropriate circumstances, are available to investors through a variety of different types and sizes of investment company complexes.").

[45] *See* 15 U.S.C. 80a–2(a)(3)(A), (B).

[46] *See* discussion above in section II.A.1(a). We note that rule 17a–7 provides an exemption for purchase and sale transactions between registered funds (or series of registered funds) that are affiliated and that meet certain conditions regardless of the nature of the funds' affiliation. 17 CFR 270.17a–7.

[47] Section 17(e) of the Act prohibits a first or second-tier affiliate of a registered fund that acts as broker, in connection with the sale of securities to or by the fund, from receiving from any source a commission, fee, or other remuneration for effecting the transaction that exceeds specified limits. *See* 15 U.S.C. 80a–17(e)(2).

[48] We have provided relief for transactions between a fund and another entity that are affiliated as a result of the fund's investments in a money market fund that is affiliated with the other entity. *See, e.g.*, Credit Suisse Asset Management, LLC, Investment Company Act Release No. 25789 (Oct. 29, 2002) [67 FR 67220 (Nov. 4, 2002)] (notice), Investment Company Act Release No. 25832 (Nov. 22, 2002) (order) ("Credit Suisse Notice and Order"). This relief generally has been provided in connection with applications regarding securities lending programs. We are considering separate rulemaking in this area that would address those issues.

[49] *See, e.g.*, Pioneer America Income Trust, Investment Company Act Release No. 25607 (June 7, 2002) [67 FR 40757 (June 13, 2002)] (notice), Investment Company Act Release No. 25647 (July 3, 2002) (order) ("Pioneer Notice and Order"); Bear Stearns Funds et al., Investment Company Act Release No. 25467 (Mar. 20, 2002) [67 FR 13809 (Mar. 26, 2002)] (notice), Investment Company Act Release No. 25527 (Apr. 16, 2002) (order); GE Funds, et al., Investment Company Act Release No. 22187 (Aug. 29, 1996) [61 FR 46876 (Sept. 5, 1996)] (notice), Investment Company Act Release No. 22247 (Sept. 25, 1996) (order). The exemptive relief provided in these orders includes conditions requiring that: (i) The unregistered money market fund comply with rule 2a–7; (ii) the investment adviser to the unregistered money market fund (or the fund with approval of its board of directors) adopt and monitor the procedures described in rule 2a–7 and take any other actions required to be taken under the procedures; (iii) an acquiring fund purchase shares of an unregistered money market fund only if the unregistered money market fund's adviser determines on an ongoing basis that the unregistered money market fund is in compliance with rule 2a–7 and preserves for a period not less than six years from the date of determination, the first two years in an easily accessible place, a record of the determination and the basis on which it was made, and the record is subject to examination by Commission staff; (iv) the unregistered money market fund comply with the requirements of sections 17(a), (d), and (e), 18, and 22(e) of the Act as if it were a registered open-end fund; (v) the investment adviser to the unregistered money market fund adopt procedures designed to ensure that the fund complies with those provisions of the Act, periodically reviews and updates as appropriate the procedures, and maintains books and records describing the procedures; (vi) the investment adviser to the unregistered money market fund maintains the records required by rules 31(a)–1(b)(1), 31a–1(b)(ii)(2), and 31a–1(b)(9) under the Act for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place and subject to examination by Commission staff; (vii) the net asset value per share with respect to unregistered money market fund shares is determined by dividing the value of the assets belonging to the fund, less the liabilities of the fund, by the number of outstanding shares of the fund; (viii) the acquiring fund purchase and redeem shares of the unregistered money market fund as of the same time and at the same price, and receive dividends and bear its proportionate share of expenses on the same basis, as other shareholders of the unregistered money market fund; and (ix) a separate account is established in the shareholder records of the unregistered money market fund for the account of the acquiring fund. These orders provide exemptions for funds with the same adviser as the unregistered money market funds. The proposed rule would permit funds to invest in unregistered money market funds with the same or a different adviser.

[50] *See, e.g.*, Pioneer Application, *supra* note 37, conditions 7 8 *See also* 15 U.S.C. 80a–3(c)(1) (excepting from the definition of "investment company" issuers whose securities are owned by no more than 100 persons and which is not making and does not presently propose to make a public offering of its securities); 15 U.S.C. 80a–3(c)(7) (excepting from the definition of "investment company" issuers whose securities are owned exclusively by "qualified purchasers" and which is not making and does not presently propose to make a public offering of its securities).

[51] Before 1996, a fund that was excepted from the definition of "investment company" by section 3(c)(1) of the Act (because its shares were held by fewer than 100 beneficial owners and was not making and did not propose to make a public offering of its securities) was nonetheless deemed to be an "investment company" for purposes of section 12(d)(1). In 1996, Congress narrowed this provision of section 3(c)(1) to make section 12(d)(1) limitations inapplicable to an investment by a registered fund in shares of a fund that is not registered with us in reliance on section 3(c)(1). *See* NSMIA, *supra* note 25 § 209(a). A parallel provision was incorporated into section 3(c)(7), which excepts from the definition of "investment company" funds whose outstanding securities are owned exclusively by "qualified purchasers" and that is not making and does not propose to make a public offering of its securities. *See* section 3(c)(7)(D) [15 U.S.C 80a–3(c)(7)(D)]. *See also* 1992 Study, *supra* note 17, at 105–110.

[52] *See* discussion above in section II.A.1(a) of this Release.

[53] Proposed rule 12d1–1(c)(3)(ii).

*(d) Closed-End Funds of Funds.* The restrictions of section 12(d)(1) on a fund of funds also apply to closed-end funds and business development companies,[58] which are closed-end funds that are exempted from registration under the Act.[59] We have issued several exemptive orders to closed-end funds, subject to similar conditions as open-end funds.[60] Today, we propose to make the new rule available to both types of funds so that either can invest available cash in a money market fund.[61] Would business development companies benefit from this exemption? Are there reasons not to extend the exemption to business development companies?

*(e) Unregistered Funds of Funds.* Unregistered funds also are subject to the section 12(d)(1) restrictions on the acquisition of shares of registered funds.[62] The proposed rule would permit unregistered funds to invest their cash in shares of a registered money market fund.[63] Thus, a hedge fund could sweep its cash into a registered money market fund pending investment or distribution of the cash to investors. We request comment on whether any special concerns arise with respect to unregistered funds' use of registered money market funds in cash sweep arrangements.

2. Conditions

We propose to eliminate most of the conditions included in the exemptive orders provided to cash sweep arrangements.[64] We would not, for example, preclude a fund from investing more than 25 percent of its assets in shares of money market funds and would, instead, rely on a fund's own investment restrictions to provide appropriate limitations. We also would not require directors to make any special findings that investors are not paying multiple advisory fees for the same services. A fund could pay duplicative fees if an adviser invests a fund's cash in a money market fund (which itself pays an advisory fee) without reducing its advisory fee by an amount it was compensated to manage the cash.[65] Fund directors have fiduciary duties,[66] which obligate them to protect funds from being overcharged for services provided to the fund, regardless of any special findings we might require.[67] Moreover, and as we describe in more detail below, we would require a registered fund of funds to disclose to shareholders expenses paid by both the acquiring and acquired funds so that shareholders may better evaluate the costs of investing in a fund with a cash sweep arrangement.[68]

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[54] Proposed rule 12d1–1(c)(3)(ii)(A).

[55] Proposed rule 12d1–1(c)(3)(ii)(B).

[56] Proposed rule 12d1–1(b)(2)(i)(A), (B). The acquiring fund would be required to reasonably believe that the unregistered money market fund (i) operates in compliance with rule 2a–7, (ii) complies, as if it were a registered open-end fund, with provisions of the Act that limit affiliate transactions (sections 17(a), (d), and (e)), issuance of senior securities (section 18), and suspension of redemption rights (section 22(e)), (iii) has adopted, and periodically reviews, procedures designed to ensure compliance with these requirements, and maintains books and records describing the procedures, and (iv) maintains and preserves the books and records required under rules 31a–1(b)(1) [17 CFR 31a–1(b)(1)], 31a–1(b)(2)(ii) [17 CFR 31a–1(b)(2)(ii)], 31a–1(b)(2)(iv) [17 CFR 31a–1(b)(2)(iv)], and 31a–1(b)(9) [17 CFR 31a–1(b)(9)]. Proposed rule 12d1–1(b)(2)(i). The proposed rule would require that the acquiring fund "reasonably believe" that, among other things, the acquired money market fund complies with rule 2a–7 in order to avoid the acquiring fund's loss of the exemption as the result of a minor or inadvertent violation of rule 2a–7 by the acquired money market fund.

[57] Proposed rule 12d1–1(b)(2)(ii). If an unregistered money market fund does not have a board of directors (because, for example, it is organized as a limited partnership), the proposed rule also would require the fund's investment adviser to perform the duties required of a money market fund's board of directors under rule 2a–7. Proposed rule 12d1–1(c)(3)(ii)(B).

[58] A business development company is any closed-end company that: (i) Is organized under the laws of, and has its principal place in, any state or states; (ii) is operated for the purpose of investing in securities described in section 55(a)(1)–(3) of the Act [15 U.S.C. 80a–54(a)(1)–(3)] and makes available "significant managerial assistance" to the issuers of those securities, subject to certain conditions; and (iii) has elected under section 54(a) of the Act to be subject to the sections addressing activities of business development companies under the Act. *See* 15 U.S.C. 80a–2(a)(48). Section 60 of the Act [15 U.S.C. 80a–59] extends the limits of section 12(d) to a business development company to the same extent as if it were a registered closed-end fund.

[59] Section 6(f) of the Act [15 U.S.C. 80a–6(f)] exempts business development companies that have made the election under section 54 [15 U.S.C. 80a–53] from registration and other provisions of the Act.

[60] *See, e.g.*, Pioneer Notice and Order, *supra* note 49; Credit Suisse Notice and Order, *supra* note 48.

[61] The amount of assets a business development company could invest in a money market fund may be limited by Section 55 of the Act [15 U.S.C. 80a–54].

[62] *See* 15 U.S.C. 12(d)(1)(A); 15 U.S.C. 12(d)(1)(B). In the case of unregistered investment companies (such as a foreign fund or business development company) the full restrictions of sections 12(d)(1)(A) and (B) apply. Companies that are unregistered because they are excepted from the definition of investment company under sections 3(c)(1) and 3(c)(7) of the Act are prohibited from acquiring more than three percent of a registered fund. Both section 3(c)(1) and section 3(c)(7) deem issuers that rely on these sections to be investment companies for the purposes of sections 12(d)(1)(A)(i) and 12(d)(1)(B)(i) with respect to their acquisition of registered funds. As a result, these companies cannot acquire more than three percent of the shares of a registered fund. *See* 15 U.S.C. 80a–3(c)(1); 15 U.S.C. 80a–3(c)(7)(D).

[63] Proposed rule 12d1–1(a).

[64] *See supra* note 36.

[65] Our earlier orders required the acquiring fund's adviser to waive that portion of the advisory fee attributable to the management service that would be performed by the adviser to the acquired fund. *See, e.g.*, The Brinson Funds, Investment Company Act Release No. 21814 (Feb. 12, 1996) [61 FR 6398, 6399 (Feb. 20, 1996)] (notice), Investment Company Act. Release No. 21741 (Mar. 11, 1996) (order); Janus Investment Fund, Investment Company Act Release No. 21042 (May 4, 1995) [60 F.R. 24955, (May 10, 1995)] (notice), Investment Company Act Release No. 21103 (May 31, 1995) (order).

[66] *See* 15 U.S.C. 80a–35(a). *See generally*, 2 Tamar Frankel, The Regulation of Money Managers, § 9.05 (2001). Section 15(c) of the Act requires the board of directors to evaluate the terms (which would include fees, or the elimination of fees, for services provided by an acquired fund's adviser) of any advisory contract. *See* 15 U.S.C. 80a–15(c). Moreover, we believe that, section 36(b) [15 U.S.C. 80a–35(b)], which imposes on fund advisers a fiduciary duty with respect to their compensation, would require an adviser to waive that portion of its fee that represents compensation for services being performed by another person, such as the adviser to an acquired money market fund. *See SEC v. American Birthright Trust Management Company, Inc.*, Litigation Release No. 9266 (Dec. 30, 1980), available in LEXIS, Fedsec Library, Litrel File (settlement of civil injunctive action in which defendant investment adviser was permanently enjoined from engaging in acts and practices that would constitute violations of sections 36(a) and (b) of the Act, and in which the Commission alleged that the compensation paid to fund's adviser was excessive in light of the services performed, and that most of the advisory services had been provided by a "sub-adviser" retained by the adviser).

[67] We also would eliminate the prohibition on an acquired money market fund investing in other funds in excess of the limits in section 12(d)(1)(A). This would permit the money market fund itself to have a cash sweep arrangement. As discussed above, we do not believe that investments in money market funds create the concerns that led to the limitations in section 12(d)(1). *See supra* notes 38–39 and accompanying text. We also would omit a condition that the acquiring fund's investment in the acquired money market fund must be consistent with the policies set forth in the acquiring fund's registration statement. We believe that the fund already is required to make investments consistent with those policies without an additional requirement in the rule. For a discussion of the other conditions, *see supra* notes 43–44 and accompanying text.

[68] Although not contained in the text of proposed rule 12d1–1, the proposed disclosure requirements are a critical element of the relief we are proposing today and of our decision that the proposal omit required directors' findings from the rule. We note that when it enacted section 12(d)(1)(G) in 1996, Congress did not include any provision addressing the duplication of advisory fees, although it understood that our previous exemptive orders to permit these arrangements included a requirement

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We would, however, retain one of the conditions of our orders relating to fees. Under proposed rule 12d1–1, the acquiring fund either would not pay any sales load, distribution fees, or service fees on acquiring fund shares, or if it did, the acquiring fund's investment adviser would have to waive a sufficient amount of its advisory fee to offset the cost of the loads or distribution fees.[69] Rarely do institutional investors (such as an acquiring fund) pay sales loads or bear distribution expenses on an investment in a money market fund. Thus, a money market fund that charges a sales load or distribution fees to the acquiring fund may not be an appropriate investment for that fund.

Comment is requested on the proposed rule. Should we retain any of the other conditions of the exemptive orders? Should a fund be limited in the amount of assets it can invest in one or more money market funds? If so, what is the appropriate limit? Should the proposed rule require fund directors to make findings regarding duplicative fees? Do the sponsors, advisers, or directors of money market funds have any concerns about other funds making large investments in their money market funds? Should we include any restrictions on the ability of an acquiring fund to redeem shares of a money market fund that is not part of the same group of investment companies?[70] Should we restrict the ability of an acquiring fund to vote shares of a money market fund that is not part of the same group of investment companies?[71] Are there reasons to restrict the ability of an acquired money market fund itself to have a cash sweep arrangement?

Some funds considering a cash sweep arrangement may not have an investment policy that specifically addresses such an arrangement. Should we require funds to adopt a policy before investing in shares of a money market fund? Alternatively, should we interpret fund investment policies and restrictions that apply to investments in money market instruments as applying to investments in money market funds?

### *B. Rule 12d1–2: Affiliated Funds of Funds*

As discussed above, section 12(d)(1)(G) permits a registered fund to acquire an unlimited amount of shares of registered open-end funds and UITs that are part of the same "group of investment companies" as the acquiring fund. Since 1996, when the section was added to the Act, we have issued exemptive orders for a variety of fund of funds arrangements that we concluded were consistent with the public interest and the protection of investors, but that did not conform to section 12(d)(1)(G) limits.[72]

Proposed rule 12d1–2 would codify, and in some cases expand, three types of relief provided to affiliated funds of funds.[73] In each case, the proposed rule provides relief from section 12(d)(1)(G) limitations on investments an affiliated fund of funds can make in addition to shares of funds in the same group of investment companies. The other limitations in section 12(d)(1)(G) would continue to apply to a fund of funds relying on that provision.[74]

#### 1. Investments in Unaffiliated Funds

Section 12(d)(1)(G) permits a fund to acquire only funds that are part of the same group of investment companies. We propose to permit an affiliated fund of funds also to acquire up to three percent of the securities of funds that are not part of the same group of investment companies, subject to the limits in section 12(d)(1)(A) or 12(d)(1)(F).[75] This exemption would, in effect, permit funds to combine the relief provided by the statutory exceptions.[76] There do not appear to be any greater risks to an acquired fund or its shareholders if three percent of its shares are acquired by an affiliated fund of funds as opposed to being acquired by other types of mutual funds specifically permitted to purchase the shares by section 12(d)(1)(A) or 12(d)(1)(F). We seek comment on the proposed exemption. Are there greater risks to an acquired fund if the investor in these circumstances is an affiliated fund of funds?

#### 2. Investments in Other Types of Issuers

To restrict the use of the exemption provided by section 12(d)(1)(G) to a "bona fide" fund of funds, Congress

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that acquiring fund directors determine that fees for advisory services provided to the acquiring fund are in addition to and not duplicative of fees paid for advisory services provided to the acquired funds. In his testimony before the House Subcommittee considering amendments to section 12(d)(1), the Director of our Division of Investment Management explained that such a condition was unnecessary because "[t]he Commission would be able to use its authority under the Securities Act [of 1933] to * * * address the potential for excessive layering of advisory fees by requiring an acquiring fund to disclose in the prospectus fee table the cumulative advisory fees paid by the acquiring and acquired funds." *Hearing on H.R. 1495 Before the Subcomm. On Telecommunications and Finance of the House Comm. on Commerce*, 104th Cong., 1st Sess. 19 (1995) (statement of Barry P. Barbash, Director, Division of Investment Management, Securities & Exchange Commission). *See also Hearing on S. 1815 Before the Senate Comm. on Banking, Housing and Urban Affairs*, 104th Cong., 2d Sess. 38 (1996) (statement of Arthur Levitt, Jr. Chairman, Securities and Exchange Commission).

[69] Proposed rule 12d1–1(b)(1). The proposed rule refers to "administrative fees," which it would define as "any sales charge, as defined in rule 2830(b)(8) of the Conduct Rules of the NASD or service fee, as defined in rule 2830(b)(9) of the Conduct Rules of the NASD, charged in connection with the purchase, sale, or redemption of securities issued by a Money Market Fund."

[70] A fund relying on section 12(d)(1)(F) may not redeem more than 1 percent of an acquired fund's shares during any period of less than 30 days. 15 U.S.C. 80a–12(d)(1)(F).

[71] A fund relying on section 12(d)(1)(F) must vote shares of an acquired fund either by seeking instructions from its shareholders, or in the same proportion as the vote of all other shareholders of the acquired fund. 15 U.S.C. 80a–12(d)(1)(F) (referencing 15 U.S.C. 80a–12(d)(1)(E)).

[72] *See, e.g.*, Scudder Kemper Investments, Inc., Investment Company Act Release No. 23691 (Feb. 11, 1999) [64 FR 8153 (Feb. 18, 1999)] (notice), Investment Company Act Release No. 23731 (Mar. 8, 1999) (order) (permitting a fund to invest in funds in the same group of investment companies and in limited amounts of funds in different fund companies); Nations Fund Trust, Investment Company Act Release No. 24781 (Dec. 1, 2000) [65 FR 77050 (Dec. 8, 2000)] (notice), Investment Company Act Release No. 24804 (Dec: 27, 2000) (order) (permitting a fund to invest in funds in the same group of investment companies and in other securities (not issued by another fund)).

[73] We are not at this time proposing to codify the broader relief we have granted to permit an affiliated fund of funds to acquire shares of funds in different groups of investment companies in excess of the limits of section 12(d)(1)(F). *See* Nationwide Life Insurance Co., Investment Company Act Release No. 25492 (Mar. 21, 2002) [67 FR 14735 (Mar. 27, 2002)] (notice), Investment Company Act Release No. 25528 (Apr. 16, 2002) (order); Schwab Capital Trust, Investment Company Act Release No. 24067 (Oct. 1, 1999) [64 FR 54939 (Oct. 8, 1999)] (notice), Investment Company Act Release No. 24113 (Oct. 27, 1999) (order).

[74] *See supra* notes 28–29, and accompanying text.

[75] Proposed rule 12d1–2(a)(1). A fund relying on section 12(d)(1)(A) (together with any companies or funds it controls) could not acquire more than 3 percent of the securities of any other fund in a different fund group. In addition, the acquiring fund would be limited to investing no more than 5 percent of its own assets (together with assets of any companies it controls) in the securities of any one fund in a different fund group, and no more than 10 percent of its assets (together with assets of any companies it controls) in securities of other funds in one or more different fund groups, in the aggregate. *See* 15 U.S.C. 80a–12(d)(1)(A)(i)–(iii). A fund relying on section 12(d)(1)(F) (together with its affiliates), could not acquire more than 3 percent of the securities of any other fund in a different fund group. The acquiring fund also would be required either to seek instructions from its shareholders as to how to vote shares of those acquired funds, or to vote the shares in the same proportion as the vote of all other shareholders of the acquired fund. See 15 U.S.C. 80a–12(d)(1)(F) (referencing 15 U.S.C. 80a–12(d)(1)(E)). In addition, the acquiring fund would be limited to charging a sales load of 1½ percent on its shares and would be prevented from redeeming more than 1 percent of the shares of any acquired fund during any period of less than 30 days. *Id.*

[76] We have issued a number of exemptive orders granting similar relief. *See, e.g.*, Sage Life Assurance of America, Inc., Investment Company Act Release No. 25098 (Aug. 1, 2001) [66 FR 41272 (Aug. 7, 2001)] (notice), Investment Company Act Release No. 25142 (Aug. 28, 2001) (order); Scudder Kemper Investments, Inc., Investment Company Act Release No. 23691 (Feb. 11, 1999) [64 FR 8153 (Feb. 18, 1999)] (notice), Investment Company Act Release No. 23731 (Mar. 8, 1999) (order).

required a fund relying on the exemption to invest all of its assets in shares of funds in the same group of investment companies, and permitted other investments to include only government securities and short-term paper, which would provide the fund with a source of liquidity to redeem shares.[77] Congress encouraged us, however, to provide exemptions from these limitations "in a progressive way," taking into account factors that related to the protection of investors.[78]

We propose to permit an affiliated fund of funds to invest in any other securities (*i.e.*, securities not issued by a fund).[79] This exemption would permit an affiliated fund of funds to invest directly in stocks, bonds, and other types of securities if such investments are consistent with the fund's investment policies. These investments would allow an acquiring fund greater flexibility to meet investment objectives that may not be met as well by investments in other funds in the same fund group, while the investments would not seem to present any additional concerns that section 12(d)(1)(G) was intended to address.[80]

A potentially significant consequence of the proposed rule would be that an equity fund or bond fund could invest any portion of its assets in an affiliated fund if such an acquisition is consistent with the investment policies of the fund and the restrictions of the rule. Our exemptive orders have permitted arrangements under which fund complexes have, for example, established a fund investing in foreign securities and made that fund available exclusively to other funds in the fund complex. The other funds used an investment in the international fund to obtain exposure to foreign securities consistent with their investment objectives.[81] Investments in an affiliated fund by a fund investing in other types of securities would not seem to raise any greater concerns than would an investment by a fund investing entirely in shares of affiliated funds. We note that section 12(d)(1)(G) already addresses concerns regarding excessive distribution-related fees in its fee limitations.[82] In addition, as noted above, we would address the concerns regarding excessive advisory fees through the proposed amendments to Forms N–1A and N–2 requiring disclosure of acquired fund expenses.[83] We seek comment on this proposal. Would any concerns arise if an affiliated fund of funds could invest directly in stocks, bonds, or other types of securities?

### 3. Investments in Money Market Funds

Proposed rule 12d1–2 would permit an affiliated fund of funds to invest in affiliated or unaffiliated money market funds in reliance on proposed rule 12d1–1, which, as discussed above, is designed to permit cash sweep arrangements involving money market funds.[84] An affiliated fund of funds currently is permitted to invest in money market funds in the same fund complex. The proposed rule would permit an affiliated fund of funds to invest in money market funds in a different fund complex. This will allow affiliated funds of funds the same opportunities as any other fund to invest in a cash sweep arrangement that will provide the greatest benefit to the acquiring fund. We are conditioning the investment on compliance with proposed rule 12d1–1 in order to ensure that the same limitations on sales loads and distribution expenses apply to any fund's investment in a money market fund.

We request comment on proposed rule 12d1–2. Are there reasons not to permit an affiliated fund of funds to invest its assets in any securities other than affiliated funds, government securities, or short-term paper? If so, are there conditions we should include in the proposed rule to protect against the risks that underlie the section 12(d)(1)(G)(i)(III) limitations?

## *C. Rule 12d1–3: Unaffiliated Funds of Funds*

Section 12(d)(1)(F) of the Act provides an exemption from section 12(d)(1)(A) that allows a registered fund to invest all its assets in other registered funds if: (i) the acquiring fund (together with its affiliates) acquires no more than 3 percent of any acquired fund; and (ii) the sales load charged on the acquiring fund's shares is no greater than 1½ percent.[85]

Proposed rule 12d1–3 would permit funds relying on section 12(d)(1)(F) to charge sales loads greater than 1½ percent provided that the aggregate sales load any investor pays (*i.e.*, the combined distribution expenses of both the acquiring and acquired funds) does not exceed the limits on sales loads established by NASD for funds of funds.[86] The rule would codify a number of our exemptive orders.[87] Moreover, the limitations on distribution expenses reflect Congress's intent under NSMIA that the NASD regulate duplicative and excessive sales charges, as provided in section 12(d)(1)(G).[88] Our proposal would

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[77] *See* H.R. Rep. No. 622, *supra* note 18, at 42.

[78] *Id.* at 43–44.

[79] Proposed rule 12d1–2(a)(2).

[80] Unlike section 12(d)(1)(G), section 12(d)(1)(F) does not restrict the other types of securities in which an unaffiliated fund of funds may invest.

[81] *See* Van Kampen American Capital Comstock Fund, Inc., Investment Company Act Release No. 21977 (May 23, 1996) [61 FR 27118 (May 30, 1996)] (notice), Investment Company Act Release No. 22025 (June 18, 1996) (order). *See also* Smith Breeden Trust, Investment Company Act Release No. 23918 (July 21, 1999) [64 FR 40923 (July 28, 1999)] (notice), Investment Company Act Release No. 23947 (Aug. 17, 1999) (order) (permitting funds to acquire shares of another fund in the same group of investment companies that invests primarily in mortgage-backed securities issued by the U.S. government, its agencies, and instrumentalities).

[82] *See* 15 U.S.C. 80a–12(d)(1)(G)(i)(III). *See also supra* note 29.

[83] As noted above, we would expect directors to address the issue of duplicative fees in the exercise of their fiduciary duties. *See supra* notes 66–68, and accompanying text.

[84] Proposed rule 12d1–2(a)(3). *See supra* notes 35–57, 64–71 and accompanying text. A collateral effect of our rule proposals would be to permit an affiliated fund of funds to invest in an acquired fund that itself had a cash sweep arrangement. As discussed above, section 12(d)(1)(G) prohibits a fund from acquiring shares of another fund that does not have an investment policy prohibiting it from investing in shares of funds in reliance on section 12(d)(1)(F) or (G). An acquired fund investing in a money market fund under a cash sweep arrangement permitted under proposed rule 12d1–1 would not be relying on either of those sections. The fees and expenses of acquired funds would be aggregated and shown in the fee table in the acquiring fund's prospectus. *See* discussion below at section II.D of this Release.

[85] *See* 15 U.S.C. 80a–12(d)(1)(F)(i)–(ii). Section 12(d)(1)(F) also provides that the acquired fund is not obligated to redeem more than 1 percent of its outstanding securities held by the acquiring fund in any period of less than 30 days, and requires the acquiring fund to vote shares of an acquired fund either by seeking instructions from the acquired fund's shareholders or by voting in the same proportion as the other shareholders of the acquired fund. 15 U.S.C. 80a–12(d)(1)(F).

[86] *See* NASD Sales Charge Rule 2830(d)(3), *supra* note 29.

[87] The conditions in these orders limit aggregate sales charges to the limits imposed under the NASD Sales Charge Rule. *See, e.g.*, Investec Ernst Company, Investment Company Act Release No. 25507 (Apr. 3, 2002) [67 FR 16775 (Apr. 8, 2002)] (notice), Investment Company Act Release No. 25552 (Apr. 24, 2002) (order); Lifetime Achievement Fund, Inc., Investment Company Act Release No. 24453 (May 12, 2000) [65 FR 31948 (May 19, 2000)] (notice), Investment Company Act Release No. 24489 (June 7, 2000) (order).

[88] *See* 15 U.S.C. 80a–12(d)(1)(G)(i)(III)(bb) (a fund relying on section 12(d)(1)(G) is limited from imposing sales loads and other distribution-related fees that, when aggregated with sales loads and distribution fees paid on acquired fund shares, are excessive under rules adopted under section 22(b) or 22(c) of the Act by a securities association registered under section 15A of the Securities Exchange Act or the Commission). In 1970, sales loads commonly were 8½ percent of the total payment, *see* Sen. Rep. No. 184, *supra* note 11, at 7, which would have resulted in an aggregate load of 10 percent of the total payment under the sales load limitation in section 12(d)(1)(F). The NASD Sales Charge Rule limits the aggregate sales loads on a fund of funds to 8½ percent if neither the acquiring fund nor the acquired fund in a fund of funds charges an asset-based sales charge, and to less than 8½ percent if they do. In addition, the

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provide funds greater flexibility in structuring sales loads, consistent with the approach Congress took in section 12(d)(1)(G) to prevent excessive sales loads in affiliated funds of funds, while providing shareholders greater protection by requiring that funds relying on the rule limit overall distribution fees (rather than only sales loads). We seek comment on the proposed rule. Are there reasons to retain the 1½ percent sales load limit under an unaffiliated fund of funds arrangement rather than limit sales loads and distribution fees in conformance with section 12(d)(1)(G)(i)(III) limits for affiliated funds of funds?

### *D. Amendments to Forms N–1A, N–2, N–3, N–4, and N–6*

We also are proposing amendments to Forms N–1A, N–2, N–3, N–4, and N–6 that would require that investors in a registered fund of funds receive better disclosure of the costs of investing in these arrangements. The proposed disclosure is designed to help investors understand the full costs of investing in a fund of funds, both to assist them in comparing the costs of investing in alternative funds of funds and in comparing the cost of an investment in a fund of funds with the cost of a more traditional fund.[89]

Our current disclosure rules do not require funds (other than feeder funds) to provide information about the cost associated with investments in acquired funds.[90] Some funds of funds disclose expenses of acquired funds as an item of the acquired fund's annual operating expenses.[91] Other funds list the operating expense ratios of each acquired fund, without relating those costs to the acquiring fund's expenses.[92] Still other funds merely note that the shareholder will indirectly bear a proportionate share of fees and expenses charged by acquired funds. In some cases, funds of funds provide no information regarding acquired funds' expenses. As a result, investors cannot always appreciate the total costs of investing in a fund of funds. Currently they have no direct means to determine whether the indirect costs of acquired funds will result in a higher overall cost of investing in a fund of funds when compared with another fund of funds, or a more traditional fund.

Under the proposed amendments to Form N–1A, any registered open-end fund investing in shares of another fund would be required to include in the fee table in its prospectus an additional line item under the section that discloses annual operating expenses.[93] The line item would set forth the acquiring fund's pro rata portion of the cumulative expenses charged by funds in which the acquiring fund invests. Those costs would be included in the acquiring funds' total annual operating expenses, which would be reflected in the "Example" portion of the fee table.[94] We seek comment on the proposed disclosure. Will the additional disclosure provide helpful information to investors? Is there a more informative means of providing investors information about the costs of acquired funds? Should the subcaption be included in Form N–1A with an instruction that it may be omitted for funds that do not invest in other funds?

We also are proposing instructions to the fee table to assist an acquiring fund in determining the amount of fees and expenses associated with acquired funds that must be reflected in the acquiring fund's fee table. The instructions would reflect expenses associated with the historical holdings in each acquired fund. The calculation would require the acquiring fund to aggregate the operating expenses of acquired funds and transaction costs and express them as a percentage of average net assets of the acquiring fund.[95] Under this approach, the acquiring fund would calculate the average invested balance and number of actual days invested in each acquired fund.[96] We ask for comment on these instructions. Are they consistent with the current fee table? Is there another way to determine acquired funds' fees and expenses that would provide better disclosure of these costs?[97] The instructions require the calculation of an average invested balance, which is based on a monthly average.[98] Should the average be calculated on a more frequent basis?

Expenses of the acquiring fund would be based on actual expenses or those reported in the most recent communication from the acquired fund.[99] Expenses of an acquired fund that is part of the same group of investment companies should reflect actual expenses of the fund. Expenses of other funds may be based on annual expenses reported in the most recent report or other communication received by the fund of funds.[100] If the acquiring fund paid any sales load to acquire shares of a fund during the past fiscal year, it must include that amount in its

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NASD Sales Charge Rule limits aggregate asset-based sales charges the funds may impose. *See supra* note 29.

[89] A fund of funds may have higher fees and expenses than a fund that invests directly in debt and equity securities. *See* John Shipman, *Diversifying Through Funds of Funds—Small Investors Get Exposure to a Variety of Categories, But Fees, Overlap Are Issues*, Wall St. J., Nov. 7, 2002, at D11 ("[a]t least half of the funds of funds available to investors charge fees—amounting to more than 2% of assets in some cases—on the overlying portfolio, in addition to the costs of the underlying portfolios."); Yuka Hayashi, *Schwab Abandons "Fund of Funds"—High Fees Were Obstacle to Drqwing Investors; New Managers to Step In*, Wall St. J., June 17, 2002, at C17 ("[t]he biggest problem was the high fees that Schwab had to charge in order to cover its own asset-management costs, as well as those of underlying funds. * * *").

[90] A feeder fund must disclose in its fee table the aggregate expenses of the feeder fund and master fund. *See* Instruction 1(d)(i) to Item 3, Form N–1A. For a description of feeder funds, *see* text accompanying note 18, *supra*.

[91] *See, e.g.*, GE Lifestyle Funds, Prospectus 10 (January 27, 2003), available at *http://www.sec.gov/Archives/edgar/data/1018218/000091205702002852/0000912057-02-002852-index.htm*.

[92] Some of these funds note that expenses will differ depending on the acquiring fund's asset allocation in the acquired funds.

[93] The item would appear directly above the line item titled "Total Annual Fund Operating Expenses."

[94] The fee table example requires the fund to disclose the cumulative amount of fund expenses of 1, 3, 5, and 10 years based on a hypothetical investment of $10,000 and an annual 5% return. *See* Item 3, Form N–1A.

[95] This approach is consistent with the current requirement that a feeder fund disclose the aggregate expenses of the feeder fund and master fund. *See supra* note 90.

[96] *See* proposed instruction 3(f)(ii) to Item 3, Form N–1A (to calculate the pro rata share of total operating expenses for each acquired fund, an acquiring fund would divide the acquired fund's total operating expense ratio by 365 days, and multiply the result by the average daily balance invested in the acquired fund and the number of days invested in the acquired fund).

[97] For example, the instructions could require an acquiring fund to take the amounts invested in each acquired fund as of a current measurement date and multiply those amounts by the corresponding total annual fund operating expense ratio for the acquired fund. This would require a fairly simple calculation based on investments on a single day that would reflect the acquired fund's asset size on the measurement date, rather than the actual results that are indirectly included in the acquiring fund's operations. Because it would be based on the most recent allocation of fund assets, this method may also disclose the expenses an investor is more likely to pay. The proposed instructions, however, are less likely to result in an understatement or overstatement of actual expenses paid by the acquiring fund.

[98] *See* proposed instruction 3(f) to Item 3, Form N–1A.

[99] The operating expenses for acquired funds are likely to be for a different period than that of the acquiring fund's fiscal year. If the acquiring and acquired funds are not part of the same fund complex, the acquiring fund would rely on operating expenses the acquired fund has disclosed in its most recent semi-annual report. Those expenses would be for a period that ended before publication of the report, and thus was before the acquiring fund's most recent fiscal year. If the acquiring and acquired funds are part of the same fund complex, the two funds may still have different fiscal years.

[100] *See* proposed instruction 3(f)(iv) to Item 3, Form N–1A.

fee table (even if it no longer holds shares of that fund).[101]

The proposed disclosure requirements also would apply with respect to investments in any unregistered fund that would be an investment company under section 3(a) of the Act but for the exceptions provided in sections 3(c)(1) and 3(c)(7) of the Act.[102] We do not see any reason to treat fund investments in these unregistered funds differently from investments in registered funds. Thus, a fund with a cash sweep arrangement could not avoid reporting the unregistered money market fund's expenses merely because the fund was not registered under the Act. Is there a basis for treating disclosure of unregistered and registered fund expenses differently?

Because we also are proposing to amend Form N–2, a registered closed-end fund of hedge funds would be required to include a pro rata portion of the hedge funds' expenses in its fee table.[103] In the case of a newly offered fund, including a newly offered fund of hedge funds, the fee table would reflect expenses the fund expects to incur based on its initial investments.[104] This approach is similar to that required of new funds.[105] We seek comment on the proposed amendments to Form N–2. In addition to the proposed instructions, are there additional matters our instructions should cover?

Our proposal also would require separate accounts to include in their registration forms, disclosures regarding the expenses of acquired funds. The proposal includes amendments to Forms N–3, N–4, and N–6.[106] We seek comment on the amendments to these forms. Are the different instructions appropriate to the respective forms?[107]

## III. General Request for Comments

We request comment on the proposed rules and form amendments that are the subject of this release, suggestions for additional provisions or changes to the rules and form amendments, and comments on other matters that might have an effect on the proposals contained in this release. We encourage commenters to provide data to support their views.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[108] we also request information regarding the potential effect of the proposals on the U.S. economy on an annual basis. Commenters are requested to provide empirical data to support their views. The Commission strives to draft its rules according to principles outlined in its Plain English Handbook.[109] We invite your comments on how to make the proposed rules and form amendments more consistent with those principles and easier to understand.

## IV. Cost-Benefit Analysis

We are sensitive to the costs and benefits imposed by our rules. The proposed rules would provide relief to investment companies by providing additional exemptions from the limitations on fund of fund arrangements without requiring the funds to obtain an exemptive order. The proposed amendments to Forms N–1A, N–2, N–3, N–4, and N–6 would provide additional information to shareholders regarding the costs of acquired funds in a fund of funds arrangement. We have identified costs and benefits that may result from the proposed rules and form amendments, as described below.

### A. Background on Proposed Rules 12d1–1, 12d1–2, and 12d1–3

Under current law, a fund is limited in the amount of securities it can acquire from another fund. In general under the Act, a registered fund (and companies it controls) cannot:

- Acquire more than three percent of another fund's securities;
- Invest more than five percent of its own assets in another fund; or
- Invest more than ten percent of its own assets in other funds in the aggregate.[110]

In addition, a registered open-end fund, its principal underwriter, and any registered broker or dealer cannot sell the fund's shares to another fund if, as a result:

- The acquiring fund (and any companies it controls) owns more than three percent of the acquired fund's stock; or
- All acquiring funds (and companies they control) in the aggregate own more than ten percent of the acquired fund's stock.[111]

The Act provides three exceptions from these limitations that permit certain fund of funds arrangements. First, section 12(d)(1)(E) permits a fund to invest all its assets in *one* other fund, provided that (i) the depositor of or principal underwriter for the fund is a registered broker or dealer (or a person it controls), and (ii) the acquiring fund is subject to certain voting restrictions on the shares of acquired funds.[112] Second, under section 12(d)(1)(F), a registered fund may invest any amount of its assets in other funds, provided that the acquiring fund (together with its affiliates) acquires no more than three percent of the securities of any other fund.[113] These unaffiliated funds of funds are limited to charging a 1½ percent sales load on their shares and are subject to voting restrictions regarding shares of acquired funds.[114] Finally, section 12(d)(1)(G) allows a registered open-end fund or UIT to invest any amount of its own assets in one or more other registered funds or UITs in the same group of investment companies.[115] These affiliated funds of funds are limited to investing in government securities and short-term paper in addition to funds in the same fund group.[116] The exemption also limits sales loads and distribution charges on fund shares, and requires that the acquired fund have a policy that it cannot acquire other fund shares in reliance on section 12(d)(1)(F) or 12(d)(1)(G) of the Act.[117]

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[101] *See* proposed instruction 3(f)(ii) to Item 3 ("transaction fees" included in the calculation for acquired funds' fees and expenses include the total amount of sales loads, redemption fees, or other transaction fees paid by the acquiring fund in connection with acquiring shares in acquired funds during the year).

[102] *See* proposed instruction 3(f)(1) to Item 3. *See also* 15 U.S.C. 80a–3(c)(1), 80a–3(c)(7), and *supra* note 50. High fees also are a concern with funds of hedge funds. *See* NASD Investor Alert, Funds of Hedge Funds—Higher Costs and Risks for Higher Potential Returns (Aug. 23, 2002) (available at: *http://www.nasd.com/Investor/alerts/alert_hedgefunds.htm*) ("Expenses in funds of hedge funds are significantly higher than most mutual funds."); Stephen J. Brown, William N. Goetzmann, and Bing Lang, Fees on Fees in Funds of Funds 18 (National Bureau of Econ. Research Working Paper No. 9464, 2003) ("The chief disadvantage of [funds of hedge funds] is the high fees that are typically charged * * *."). *See also* Daniel Kadlac, *Affordable Hedge Funds*, Time.com, *http://www.time.com/globalbusiness/html* ("The big drawback [of a fund of hedge funds] is that you pay two layers of fees: one to the fund-of-funds manager, who in turn gets charged by each fund in the portfolio.").

[103] *See* proposed instruction 10 to Item 3, Form N–2.

[104] *See* proposed instruction 3(f)(vi) to Item 3, Form N–1A. *See also* instruction 6 to Item 3, Form N–2.

[105] *See* Instruction 5(a) to Item 3, Form N–1A (new funds are instructed to base percentages to be included in the "Annual Fund Operating Expense" portion of the fee table on amounts that will be incurred (without reduction for expense reimbursement or fee waiver arrangements), estimating amounts of "Other Expenses").

[106] The proposed instructions to Form N–3 would require the same disclosure and calculation as required in the proposed instructions to Forms N–1A and N–2. The proposed instructions for Forms N–4 and N–6 are different, however, because those forms already require registrants to disclose expenses of funds ("portfolio companies") in which the separate account invests. *See* Item 3, Form N–4, Item 3, Form N–6. Accordingly, the proposed instructions to Forms N–4 and N–6 require that if a portfolio company invests in other funds, the registrant must include in the item disclosing the portfolio company's "other expenses," the Acquired Fund's fees and expenses calculated according to the proposed instructions to Form N–1A.

[107] *See supra* note 106.

[108] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

[109] Office of Investor Education and Assistance, U.S. Securities and Exchange Commission, A Plain English Handbook (1998) (available on the Commission's Web site at <*http://www.sec.gov*>).

[110] *See* 15 U.S.C. 80a–12(d)(1)(A). If an acquiring fund is not registered, these limitations apply only with respect to the acquiring fund's acquisition of registered funds.

[111] *See* 15 U.S.C. 80a–12(d)(1)(B).

[112] *See* 15 U.S.C. 80a–12(d)(1)(E). The acquiring fund must either seek instruction from its shareholders with regard to voting all proxies with respect to the acquired fund's securities or vote the acquired fund shares in the same proportion as the vote of all other shareholders. In addition, in the event the acquiring fund is not registered, it cannot substitute the acquired fund shares without Commission approval.

[113] *See* 15 U.S.C. 80a–12(d)(1)(F)(i).

We also have issued a number of exemptive orders that have broadened the ability of funds to invest in other funds. Over the past decade, we have issued over 80 orders that permit registered funds to invest in a money market fund advised by the same adviser.[118] Many of those orders also have permitted funds to invest in an unregistered fund operated as a money market fund.[119] In addition to these orders, we have permitted an affiliated fund of funds relying on section 12(d)(1)(G) to invest in funds outside the same fund group subject to the limitations of section 12(d)(1)(F), as well as in other securities not issued by a fund.[120]

The orders discussed above provide exemptions from statutory limitations. A fund that obtains the benefit of the exemption incurs costs of applying for an exemptive order as well as costs of satisfying any conditions imposed in the order. The application costs are primarily legal and include costs of drafting the application and analyzing the ways in which the conditions fit the fund's business model. By contrast, the costs of satisfying conditions include ongoing compliance costs of meeting those conditions. We assume that a fund only seeks an exemptive order if the benefits of the additional flexibility provided by the exemption outweigh the costs of obtaining and satisfying the conditions of an order.

### 1. Benefits

Proposed rule 12d1–1 would codify our orders that permit a fund to acquire an unlimited number of shares of a registered money market fund. The proposed rule would retain only one condition included in the orders: no sales load, distribution-related fees, or service fees could be imposed on the acquisition of money market fund shares unless the adviser waived an equivalent amount of its fee. The proposed rule would not limit a fund to investing 25 percent of its assets in a money market fund. We believe that any restrictions on an acquiring fund's investments in money market funds should be governed by the fund's investment policies and limitations. Consequently, the proposed rule may provide some additional flexibility to certain funds. We do not know whether many funds are likely to invest more than 25 percent of their assets in money market funds as a result of this change, and we seek comment on the issue.

Under the proposed rule, funds also would be allowed to invest in money market funds advised by a different adviser. We believe that this would allow all funds, particularly small funds without a money market fund in their fund group, the opportunity currently available to large funds to acquire money market fund shares. This might allow smaller funds to be more competitive with larger funds. We seek comment on whether many funds are likely to invest in money market funds outside their fund group.[121]

Proposed rule 12d1–1 also would codify our orders permitting funds to invest cash in unregistered money market funds that comply with rule 2a–7. The proposed rule would require the acquiring fund to "reasonably believe" that the unregistered money market fund operates in compliance with rule 2a–7, complies with certain provisions of the Act,[122] as well as other requirements. This standard is slightly different than the condition in our exemptive orders, which requires the acquired fund's compliance with rule 2a–7 and certain provisions of the Act. An acquiring fund could "reasonably believe" that an acquired fund is complying with these provisions even if there is a minor or inadvertent violation of one by the acquired fund. In those circumstances, the violation would not cause the acquiring fund to lose its exemption, while a strict standard of compliance could result in the acquiring fund's loss of the exemption. The proposed rule does not include certain conditions imposed in the orders that we believe are addressed by other provisions of the Act or rules thereunder, and with which the unregistered fund would have to comply.

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[114] *See* 15 U.S.C. 80a–12(d)(1)(F). The acquiring fund is subject to the voting restrictions imposed under section 12(d)(1)(E). *See supra* note 112. In addition, no issuer of securities held by the acquiring fund is obligated to redeem more than 1 percent of its securities during any period of less than 30 days.

[115] *See* 15 U.S.C. 80a–12(d)(1)(G).

[116] *See* 15 U.S.C. 80a–12(d)(1)(G)(II).

[117] *See* 15 U.S.C. 80a–12(d)(1)(G)(III), (IV). Section 12(d)(1)(G)(III) provides that either (i) the acquiring company does not pay any distribution-related charges with respect to the acquired shares or the acquiring fund does not charge sales loads or distribution-related fees itself, or (ii) sales loads and distribution-related charges with respect to acquiring fund shares and acquired fund shares, when aggregated, are not excessive under rules adopted under section 22(b) or 22(c) of the Act by a securities association registered under section 15A of the Securities Exchange Act or the Commission.

[118] *See supra* note 36. These orders have included the following conditions: (i) Shares of the acquired money market fund are not subject to sales loads, distribution-related fees, or service fees, or if they are, the acquiring fund's adviser will waive its advisory fee in an amount to offset the amount of fees incurred by the acquiring fund; (ii) before approving any advisory contract for the acquiring fund, its board of directors, including a majority of independent directors, considers the extent to which (if any) the advisory fees charged by the adviser should be reduced to account for reduced services as a result of investing cash in the money market fund; (iii) the acquiring fund's investment in money market funds is limited to 25 percent of the acquiring fund's total assets; (iv) the acquiring fund's investment in the money market fund is consistent with the acquiring fund's policies as set forth in its registration statement; (v) the acquiring fund and money market fund are advised by the same adviser; and (vi) the acquired money market fund cannot acquire securities in another fund in excess of the limits of section 12(d)(1)(A) of the Act.

[119] Investments in unregistered funds have been subject to the following conditions: (i) The unregistered money market fund complies with rule 2a–7; (ii) the investment adviser to the unregistered money market fund (or the fund with approval of its board of directors) adopts and monitors the procedures described in rule 2a–7 and takes the other actions required to be taken under the procedures; (iii) an acquiring fund purchases shares of an unregistered money market fund only if the unregistered fund's adviser determines on an ongoing basis that the unregistered money market fund is in compliance with rule 2a–7 and preserves for a period of not less than six years from the date of determination, the first two years in an easily accessible place, a record of the determination and the basis on which it was made, and the record is subject to examination by Commission staff; (iv) the unregistered money market fund complies with the requirements of sections 17(a), (d), and (e), 18, and 22(e) of the Act as if it were a registered open-end fund; (v) the investment adviser to the unregistered money market fund adopts procedures designed to ensure that the fund complies with those provisions of the Act, periodically reviews and updates as appropriate the procedures, and maintains books and records describing those procedures; (vi) the investment adviser to the unregistered money market fund maintains the records required by rules 31(a)–1(b)(1), 31a–1(b)(ii)(2), and 31a–1(b)(9) under the Act for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place and subject to examination by Commission staff; (vii) the net asset value per share with respect to unregistered money market fund shares is determined by dividing the value of the assets belonging to the fund, less the liabilities of the fund, by the number of outstanding shares of the fund; (viii) the acquiring fund purchases and redeems shares of the unregistered money market fund as of the same time and at the same price, and receives dividends and bears its proportionate share of expenses on the same basis, as other shareholders of the unregistered money market fund; and (ix) a separate account is established in the shareholder records of the unregistered money market fund for the account of the acquiring fund.

[120] The orders permitting affiliated funds of funds to invest in funds outside the fund group have required that the acquiring fund's board of directors, including the independent directors, must find that the fees charged under the acquiring fund's advisory contract are based on services that are not duplicative of services provided under any acquired fund's advisory contract.

[121] The other conditions included in our exemptive orders are addressed by requirements under the Act and rules thereunder. Thus, we do not believe that any benefits or costs are associated with eliminating those conditions in the proposed rule.

[122] *See supra* note 119.

Proposed rule 12d1–2 would codify our exemptive orders that permit an affiliated fund of funds to acquire securities issued by a fund in a different fund group under section 12(d)(1)(F) or 12(d)(1)(A). The proposed rule also would permit an affiliated fund of funds to acquire securities not issued by a fund. An affiliated fund of funds that invests in another fund under section 12(d)(1)(A) or (F) could acquire no more than 3 percent of the shares of any acquired fund in a different fund group. An acquiring fund that invests in securities issued by a fund in a different group under section 12(d)(1)(A) could invest no more than 5 percent of its assets in any one fund in a different group, or 10 percent of its assets in funds in a different group (or groups) in the aggregate. A fund that acquires securities under section 12(d)(1)(F) would not be limited in the amount of assets it could invest in funds in a different fund group. The acquiring fund would, however, be limited to charging a 1½ percent sales load on its shares, subject to voting restrictions with respect to acquired fund securities, and limited in the amount of an acquired fund's securities it could redeem in any period of less than 30 days.[123] The proposed rule would allow funds to choose from one of two sets of conditions under which they may invest in funds outside the fund group. We believe that there may be benefits to permitting funds the ability to invest under either section, whichever may be more beneficial to the fund, and we seek comment on this issue.

Proposed rule 12d1–3 codifies the exemptive orders we have issued permitting funds relying on section 12(d)(1)(F) to charge a sales load in excess of 1½ percent, provided the aggregate sales load and distribution fees on acquiring and acquired fund shares are not excessive under the NASD Sales Charge Rule. This exemption also would be available to an affiliated fund of funds relying on proposed rule 12d1–2 to invest in funds in a different fund group.[124] We seek comment on the benefits and costs of this proposal.

We anticipate that funds and their shareholders would benefit from the proposed rules. As discussed above, funds increasingly have sought exemptive orders (which the Commission has granted) to engage in most of the activities the proposed rules would permit. The application process involved in obtaining exemptive orders imposes direct costs on funds, including preparation and revision of an application, as well as consultations with the staff. The proposed rules would benefit funds and their shareholders by eliminating the direct costs of applying to engage in activities permitted under the rule.[125] The proposed rules would further benefit funds by eliminating the uncertainty that a particular applicant might not obtain relief to engage in the activities permitted under the proposed rules.

The exemptive application process also involves other indirect costs. Funds that apply for an order to permit additional investments forego beneficial investments until they receive the order, while other funds forego the investment entirely rather than seek an exemptive order because the cost would exceed the anticipated benefit of the investment. Eliminating direct and indirect costs of the proposed activities also eliminates factors that discriminate against smaller funds, for which the cost of an exemptive application consistently exceeds the potential benefit.

### 2. Costs

We do not believe that the proposed rules would impose mandatory costs on any fund. As discussed above, the rules are exemptive, and we believe that no fund would rely on any of them if the benefits did not outweigh the costs of relying on the rule.

We believe the costs of relying on the proposed rules would be the same as or less than the costs to a fund that relies on an existing exemptive order because each of the proposed rules includes the same or fewer conditions than existing orders that provide equivalent exemptive relief.[126] As noted earlier, we assume a fund would only bear the costs of obtaining and complying with an order if the benefits of the order outweighed those costs.

The rule will affect different types of funds in different ways. For a fund that has not sought and would not seek exemptive relief from the statute, the proposed rules would have no effect. For a fund that currently relies on an exemptive order there may be one-time "learning costs" in determining the difference between the order and the rule. After making this determination, the costs of relying on any of the rules would be the same as or less than the costs of relying on an order providing similar exemptive relief. In addition, a fund that currently relies on an exemptive order could satisfy all the conditions of any of the proposed rules that provide similar exemptive relief without changing its operation. In the case of rule 12d1–1, the fund would simply be satisfying conditions that are no longer required.

A fund that has not relied on an exemptive order and that intends to rely on one of the proposed rules in the future would have to determine how that rule fits into the fund's business model and the potential costs associated with complying with the rule. Nevertheless, if the Commission never promulgated the rule, those funds would bear the same costs if they considered applying for an exemptive order. Moreover, in the absence of the proposed rules, if these funds applied for exemptive orders and obtained them, their total costs would be the same as or greater than the costs associated with the proposed rules.

### *B. Proposed Amendments to Forms N–1A, N–2, N–3, N–4, and N–6*

Forms N–1A, N–2, and N–3 currently do not require registered funds to disclose information regarding the expenses associated with acquired funds. The proposed amendments to Form N–1A would require a registered open-end fund that invests in other funds to include a line item in its fee table, under the fund's annual operating expenses, that lists the aggregate fees and costs of acquired funds. The proposed amendment to Form N–2 would require registered closed-end funds that invest in other funds to provide the same disclosure. The proposed amendment to Form N–3 would require the same disclosure for separate accounts organized as management investment companies that offer variable annuity contracts. The proposal includes instructions on calculating the fees and operating costs of acquired funds. The calculation would aggregate indirect operating expenses of acquired funds and transaction costs and express them as a percentage of average net assets of the acquiring fund.

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[123] *See supra* note 114.

[124] *See supra* note 123 and accompanying text.

[125] For example, in calendar years 2001 and 2002, 24 funds sought exemptive relief to invest uninvested cash and/or cash collateral from securities lending activities in money market funds, and 8 of those funds also sought exemptive relief to invest cash collateral in unregistered money market funds. In the past 5 years, 13 funds investing in other funds in the same fund group in reliance on section 12(d)(1)(G) have sought exemptive relief to invest in securities other than government securities or short-term paper. During that time, 11 funds investing in other funds in reliance on section 12(d)(1)(F) have sought exemptive relief to charge a sales load greater than 1½ percent, subject to the NASD Sales Charge Rule. The cost to a fund for submitting one of these applications ranges from approximately $7,000 to $67,000. These figures are based on conversations with attorneys and fund employees who have been involved in submitting applications to the Commission.

[126] Under the current system, a fund could obtain the proposed relief by obtaining an exemptive order and complying with the conditions in the order, and a fund incurs costs in obtaining exemptive relief under this system. Our analysis compares the costs a fund would bear to comply with the proposed rules with the costs a fund would bear under the current system to obtain equivalent exemptive relief. Because the conditions in the proposed rules are the same or less onerous than the conditions in the exemptive orders, the costs discussed in this section primarily are costs that a fund would bear to obtain an exemptive order and comply with its conditions.

Forms N–4 and N–6 currently require separate accounts organized as UITs that offer variable annuity and variable life contracts, respectively, to disclose the range of minimum and maximum operating expenses of the portfolio companies in which they invest. The proposed amendment to each of these forms would require a separate account organized as a UIT that invests in a portfolio company that itself invests in other funds, to include the portfolio company's costs of investing in other funds in the portfolio company's operating expenses disclosed in the N–4 or N–6 fee table.

### 1. Benefits

Under current disclosure requirements, a fund's shareholders may not understand the fees and operating costs of a fund's investment in acquired funds, costs that investors bear indirectly. We believe that the proposed amendments to Forms N–1A, N–2, N–3, N–4, and N–6 would enable shareholders to better understand the expenses that relate to acquired funds, and provide investors the means to compare directly the costs of investing in alternative funds of funds, or the costs of investing in a fund of funds to a more traditional fund. The increased transparency may provide further benefits by allowing investors to choose funds that more closely reflect their preferences for fees and performance. We have no means by which to quantify these benefits, however. We seek comment on the benefits of the proposed amendments (and any alternatives suggested by commenters) as well as any data quantifying those benefits.

### 2. Costs

The proposed amendments to Forms N–1A, N–2, N–3, N–4, and N–6 would result in costs to registered open-end and closed-end funds, and to separate accounts that offer variable annuity and variable life contracts, which may be passed on to those funds' shareholders. The proposal would require a new disclosure to the annual operating expense item in the fee table for funds that invest in other funds. It also would require separate accounts organized as UITs that offer variable annuity and variable life contracts to include an additional expense in its calculation of annual portfolio company operating expenses. The costs of the proposed disclosures would include both internal costs (for attorneys and accountants) to prepare and review the disclosure, and external costs (for printing and typesetting the disclosure).

First, with respect to Forms N–1A, N–2, and N–3, the proposed disclosures would add a single line item to the fee table for funds that invest in other funds. In the context of the prospectus, we believe that the external costs of including this additional line of disclosure per registered fund would be minimal. With respect to Forms N–4 and N–6, the proposal would require registrants to include in the item for annual portfolio company operating expenses, any fees and expenses of acquired companies, as disclosed in the portfolio company's most recent prospectus.

Second, for purposes of the Paperwork Reduction Act, Commission staff has estimated that the disclosure requirement for calculating the line item according to the proposed instructions would add up to 7 hours to the burden of completing Forms N–1A, N–2, and N–3. Thus, we estimate that the additional annual cost of including the line item per portfolio would equal $410.[127] Commission staff also has estimated that including the additional item in the disclosure of portfolio company expenses on Forms N–4 and N–6 would add approximately 0.5 hours per portfolio, for an annual cost per portfolio of $15.[128] Commission staff estimates that there are 224 fund of funds portfolios.[129] Accordingly, we estimate that, at a minimum, the total annual internal costs of complying with the proposed form amendments would equal $92,000.[130] In addition, Commission staff estimates that half the funds registered under Forms N–1A and N–2 invest in other funds, and 5 separate accounts (with 7 portfolios) registered under Form N–3 invest in other funds and would be required to make the proposed disclosure on an annual basis.[131] For purposes of the Paperwork Reduction Act analysis, Commission staff has estimated that on an annual basis, registrants file (i) initial registration statements covering 483 portfolios and post effective amendments covering 6,542 portfolios on Form N–1A, (ii) 234 initial registration statements and 38 post-effective amendments on Form N–2, and (iii) initial registration statements covering 12 portfolios and post-effective amendments covering 152 portfolios on Form N–3. In addition, Commission staff also estimates that each year, 157 separate accounts file initial registrations and 1,242 separate accounts file post-effective amendments on Form N–4, and 50 separate accounts file initial registrations and 500 separate accounts file post-effective amendments on Form N–6.[132] Of the filings on Forms N–4 and N–6, Commission staff estimates that half the separate accounts invest in portfolio companies that themselves invest in other funds. Thus, Commission staff estimates that the cost of the proposed amendments to Forms N–1A, N–2, N–3, N–4, and N–6 using the calculation in the proposed instructions would be $1.5 million.[133]

We do not know the number of funds that would be likely to begin investing in other funds under the proposed rules.

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[127] Commission staff estimated the cost to equal six hours for an intermediate-level accountant at $30 per hour to perform the calculation and one hour for a deputy general counsel at $230 per hour to review the calculation ((6 × $30) + (1 × $230) = $410).

[128] Commission staff estimated the cost to equal one-half hour for an intermediate level accountant to include the expense item in the calculation. The estimated cost is based on the following calculation: 0.5 × $30 = $15.

[129] The estimate of fund of funds portfolios is based on information gathered from Morningstar, Inc.

[130] The estimate is based on the following calculation: 224 portfolios × $410 = $91,840.

[131] *See infra* notes 139, 145, 151, and accompanying text.

[132] Of these post-effective amendments, 150 are updates and 350 are additional post-effective amendments. Separate accounts file initial post-effective amendments to update their financial statements and provide any other material updates. The additional post-effective amendments generally are filed pursuant to Securities Act rule 485(b) to make non-material changes to the registration statement and are generally more limited and much simpler to prepare than post-effective amendments filed as annual updates. We assume that registered funds would include the proposed disclosure only in a post-effective amendment for the annual update.

[133] The estimate is based on the following calculation: ((483 + 6,542/2) × $410) + ((234 + 38/2 × $410) + (7 separate account portfolios × $410) + ((157 + 1,242/2) × $15) + (200 separate accounts/2 × $15) = $1,510,747.5.

Accordingly, we seek comment as to how many funds that do not now invest in other funds, would invest in funds under the proposed rules and be required to report the expenses of acquired funds under the proposed form amendments.

### *C. Request for Comments*

The Commission requests comment on the potential costs and benefits identified in the proposal and any other costs or benefits that may result from the proposal. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[134] we also request comment regarding the potential impact of the proposed rule on the economy on an annual basis. Commenters are requested to provide data to support their views.

## V. Paperwork Reduction Act

Proposed rule 12d1–1 would impose a new "collection of information" requirement within the meaning of the Paperwork Reduction Act of 1995.[135] If adopted, this collection of information would not be mandatory. In addition, the Commission is proposing amendments to certain forms that currently contain "collection of information" requirements. The title of the new collection is "Rule 12d1–1." The titles for the existing collections are: (i) "Form N–1A under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Open-End Management Companies;" (ii) "Form N–2—Registration Statement of Closed-End Management Investment Companies;" (iii) "Form N–3—Registration Statement of Separate Accounts Organized as Management Investment Companies;" (iv) "Form N–4—Registration Statement of Separate Accounts Organized as Unit Investment Trusts;" and (v) "Form N–6—Registration Statement of Separate Accounts Organized as Unit Investment Trusts that Offer Variable Life Insurance Policies." An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

**The Commission has submitted these proposals to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. OMB has not yet assigned a control number to the new collection for proposed rule 12d1–1.**

### *A. Proposed Rule 12d1–1*

Proposed rule 12d1–1 would permit a fund to invest in registered money market funds and in unregistered money market funds that meet certain conditions in excess of the limits of section 12(d)(1). A registered fund may invest in an unregistered money market fund as long as the unregistered money market fund (i) is limited to investing in the types of securities and other investments in which a money market fund may invest under rule 2a–7; and (ii) undertakes to comply with all other requirements of rule 2a–7. In addition, the acquiring fund must reasonably believe that the unregistered money market fund (i) operates in compliance with rule 2a–7; (ii) complies with sections 17(a), (d), (e), 18, and 22(c) of the Act; (iii) has adopted procedures to ensure that it complies with these statutory provisions; and maintains records to describe those procedures; (iv) maintains the records required under rules 31a–1(b)(1), 31a–1–1(b)(2)(ii), 31a–1(b)(2)(iv), and 31a–1(b)(9) under the Act; and (v) preserves those records permanently, the first two years in an easily accessible place. Rule 2a–7 contains certain collection of information requirements. In addition, the recordkeeping requirements under rule 31 are collections of information. We believe that this exemptive rule will provide funds greater options for cash management. We believe that unregistered money market funds must comply with certain collection of information requirements for registered money market funds to ensure that unregistered money market funds have established procedures for collecting the information necessary to make adequate credit reviews of securities in their portfolios, as well as other recordkeeping requirements that will assist the acquiring fund (and Commission staff in its examination of the unregistered money market fund's adviser) in overseeing the unregistered money market fund.

Based on exemptive orders issued by the Commission, Commission staff estimates that registered funds currently invest in 35 unregistered money market funds in excess of the limits imposed by section 12(d)(1).[136] Under the terms of the exemptive orders, those unregistered money market funds must comply with the requirements of rule 2a–7. Commission staff also estimates that 4 new unregistered money market funds would be established each year that would have to meet the requirements of the proposed rule. We seek comments on these estimates. For purposes of the Paperwork Reduction Act requirements, Commission staff has estimated that a registered money market fund each year spends an average of approximately 539 hours of professional time to record credit risk analyses and determinations regarding adjustable rate securities, asset-backed securities and securities subject to a demand feature or guarantee. Commission staff also estimated that in the first year of operation the board of directors, counsel, and staff of a new registered money market fund spend 38.5 hours to formulate and establish written procedures for stabilizing the fund's NAV and guidelines for delegating certain of the board's responsibilities to the fund's adviser.[137] Based on this estimate, Commission staff estimates the annual hour burden of the proposed rule's paperwork requirements for unregistered money market fund compliance with rule 2a–7 would be 21,175 hours.[138]

Rules 31a–1(b)(1), 31a–1(b)(2)(ii), 31a–1(b)(2)(iv), and 31a–1(b)(9) require registered funds to keep certain records, which include journals and general and auxiliary ledgers, including ledgers for each portfolio security and each shareholder of record of the fund. Most of the records required to be maintained by the rule are the type that generally would be maintained as a matter of good business practice and to prepare the unregistered money market fund's financial statements. Accordingly, Commission staff estimates that the requirements under rules 31a–1(b)(1), 31a–1(b)(2)(ii), 31a–1(b)(2)(iv), and 31a–1(b)(9) would not impose any additional burden because the costs of maintaining these records would be incurred by unregistered money market funds in any case to keep books and records that are necessary to prepare financial statements for shareholders, to prepare the fund's annual income tax returns, and as a normal business custom.

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[134] Pub. L. No. 104–113, Title II, 109 Stat. 163 (1995).

[135] 44 U.S.C. 3501 to 3520.

[136] This estimate may be understated because applicants generally do not identify the unregistered money market funds in which registered funds will invest, and exemptive orders provide relief for unregistered money market funds that may be organized in the future.

[137] These estimates were included in the Commission's most recent Paperwork Reduction Act submission for approval of the collection of information burden for rule 2a–7. The estimates are based on discussions with individuals at money market funds and their advisers who responded to a random survey of 9 money market funds. The actual number of burden hours for credit risk analyses and determinations regarding adjustable rate securities, asset backed securities, and securities subject to a demand feature or guarantee may vary significantly depending on the type and number of portfolio securities held by the individual fund.

In addition, in its Paperwork Reduction Act submission, Commission staff estimated that in a year, only 0.3% of registered money market funds spends 0.5 hours to record board determinations and actions in response to certain events of default or insolvency, and to notify the Commission of the event. We have not included this burden estimate in our estimate for unregistered funds because 0.3 percent of 35 unregistered money market funds is less than 1.

[138] This estimate is based on the following calculation: (35 unregistered money market funds × 539 hours) + (4 new unregistered money market funds × (539 + 38.5 hours) = 21,175. To the extent that unregistered money market funds would keep these records in any case as a matter of good business practice, this estimate may be greater than the actual annual burden.

### *B. Forms for Registration Statements*

We are proposing amendments to require registered open-end and closed-end funds, and separate accounts organized as management investment companies that invest in other funds to disclose aggregate fees of acquired funds. The disclosure would be a line item appearing under the item for annual operating expenses of the fund. We also are proposing that separate accounts organized as UITs that invest in portfolio companies that themselves invest in other funds, include the costs of investing in those other funds in the disclosure on portfolio companies' operating expenses. We believe that the proposed amendments will enable shareholders to understand better the expenses of acquired funds and to compare overall costs of investing in a fund of funds with the costs of an alternative fund of funds, and with the costs of a more traditional fund.

### 1. Form N–1A

Form N–1A (OMB Control No. 3235–0307), including the proposed amendment, contains collection of information requirements. The likely respondents to this information collection are open-end funds registering with the Commission on Form N–1A. Compliance with the disclosure requirements of Form N–1A is mandatory. Responses to the disclosure requirements are not confidential.

The current burden for preparing an initial Form N–1A filing is 809 hours per portfolio. The current annual hour burden for preparing post-effective amendments on Form N–1A is 101 hours per portfolio. The Commission estimates that, on an annual basis, registrants file initial registration statements covering 483 portfolios, and post-effective amendments covering 6,542 portfolios on Form N–1A.[139] Thus, the Commission estimates that the current total annual hour burden for the preparation and filing of Form N–1A is 1,051,489.[140]

We estimate that a line item prepared according to the proposed instructions would increase the hour burden per portfolio per filing of an initial registration or a post-effective amendment to a registration statement by 7 hours.[141] Commission staff estimates that ½ of funds registered under Form N–1A invest in another fund, and would be required to make the proposed disclosure.[142] We seek comment on these estimates. Thus, if the proposed amendments to Form N–1A instructions were adopted, the total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments to Form N–1A would be 1,076,080.[143]

### 2. Form N–2

Form N–2 (OMB Control No. 3235–0026), including the proposed amendment, contains collection of information requirements. The likely respondents to this information collection are closed-end funds registering with the Commission on Form N–2. Compliance with the disclosure requirements of Form N–2 is mandatory. Responses to the disclosure requirements are not confidential.

The current burden for preparing an initial Form N–2 filing is 544.7 hours per fund.[144] The current burden for preparing a post-effective amendment on Form N–2 is 103.7 hours. Commission staff estimates that an average of 234 closed-end funds file an initial registration statement and 38 file a post-effective amendment on Form N–2 each year.[145] Thus, the Commission estimates that the current annual hour burden for preparing an N–2 is 131,400.[146]

Commission staff estimates that it would take the same amount of time to prepare the line item disclosure in Form N–2 as it would to prepare the disclosure in Form N–1A (see previous discussion). As with funds registered under Form N–1A, we are assuming that ½ of funds registered under Form N–2 invest in another fund, and would be required to make the proposed disclosure. We seek comment on those numbers. Accordingly, if the proposed amendments to Form N–2 were adopted, we estimate the total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments to Form N–2 would be 132,352.[147]

### 3. Form N–3

Form N–3 (OMB Control No. 3235–0316), including the proposed amendment, contains collection of information requirements. The likely respondents to this information collection are separate accounts organized as management investment companies registering with the Commission on Form N–3. Compliance with the disclosure requirements of Form N–3 is mandatory. Responses to the disclosure requirements are not confidential.

The current burden for preparing an initial Form N–3 filing is 915.2 hours per portfolio. The current burden for preparing a post-effective amendment on Form N–3 is 150.4 hours per portfolio. Commission staff estimates that 3 initial registrations and 38 post effective amendments are filed annually with an average of 4 portfolios per filing, for a total of 12 portfolios covered by initial registrations and 152 portfolios covered by post-effective amendments annually.[148] Thus, the Commission estimates that the current annual hour burden for preparing an N–3 is 33,843.[149]

We estimate that it would take the same amount of time to prepare a line item according to the proposed instructions in Form N–3, as in Forms N–1A and N–2. Thus we estimate the proposed line item would increase the hour burden per portfolio per filing of an initial registration or a post-effective amendment to a registration statement by 7 hours.[150] Commission staff estimates that 5 registrants with 7 portfolios registered on Form N–3 invest in another fund, and would be required to make the proposed disclosure.[151] We seek comment on these numbers. Thus, if the proposed amendments to Form N–3 instructions were adopted, the Commission estimates that the total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments to Form N–3 would be 33,934.[152]

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[139] These estimates are based on information in the Commission's filing database and from Morningstar databases. They assume that of the 3,075 registered open-end funds, 179 registrants will file an initial registration statement and 2,423 registrants will file one post-effective amendment with material differences each year with an average of 2.7 portfolios per registrant.

[40] This estimate is based on the following calculation: ((483 × 809) + (6,542 × 101) = 1,051,489). The total annual hour burden approved for N–1A is 916,162. The increase over the approved annual burden is due to an increase in the number of registrants filing initial registration statements on Form N–1A.

[141] *See supra* note 119.

[142] This is based on information in the Commission's database of Form N–SAR filings.

[143] This estimate is based on the following calculation: (1,051,489 + (483/2 × 7) + (6,542/2 × 7)) = 1,076,080).

[144] Initial registration statements and post-effective amendments filed on Form N–2 generally cover only one portfolio.

[145] This estimate is based on information in the Commission's database.

[146] This estimate is based on the following calculation: ((234 × 544.7) + (38 × 103.7) = 131,400.4). The total annual hour burden approved for Form N–2 is 80,198.6. The increase is due to an increase in the number of initial registration statements filed on Form N–2.

[147] This estimate is based on the following calculation: (131,400 + (234/2 × 7) + (38/2 × 7) = 132,352).

[148] This estimate is based on information in the Commission's database.

[149] This estimate is based on the following calculation: (12 portfolios × 915.2) + (152 portfolios × 150.4 hours) = 33,843.2. The total annual hour burden approved for Form N–3 is 36,096. The decrease is due to a decrease in the number of post-effective amendments filed on Form N–3.

4. Form N–4

Form N–4 (OMB Control No. 3235–0318), including the proposed amendments, contains collection of information requirements. The likely respondents to this information collection are separate accounts organized as UITs that offer variable annuity contracts registering with the Commission on Form N–4. Compliance with the disclosure requirements of Form N–4 is mandatory. Responses to the disclosure requirements are not confidential.

The current burden for preparing an initial registration on Form N–4 is 273.2 hours per separate account. The current annual burden for preparing a post-effective amendment on Form N–4 is 195 hours per separate account. Commission staff estimates that an average of 157 separate accounts organized as UITs that offer variable annuity contracts file an initial registration statement and 1,242 file a post-effective amendment on Form N–4 each year.[153] Thus, the Commission estimates that the current annual hour burden for preparing an N–4 is 285,082.[154]

Commission staff estimates that it would take ½ hour to include in the disclosure of total annual portfolio company operating expenses, the line item from the portfolio company's prospectus disclosing acquired fund fees and expenses. We estimate that ½ of separate accounts registering on Form N–4 invest in portfolio companies that invest in other funds, and would be required to make the proposed disclosure.[155] We seek comment on those numbers. Accordingly, if the proposed amendments to Form N–4 were adopted, the total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments to Form N–4 would be 285,432.[156]

5. Form N–6

Form N–6 (OMB Control No. 3235–0503), including the proposed amendments, contains collection of information requirements. The likely respondents to this information collection are separate accounts organized as UITs that offer variable life insurance contracts registering with the Commission on Form N–6. Compliance with the disclosure requirements of Form N–6 is mandatory. Responses to the disclosure requirements are not confidential.

The current burden for preparing an initial registration on Form N–6 is 765 hours. The current annual burdens for preparing a post-effective amendment for an annual update and an additional post-effective amendment on Form N–6 are 65 hours and 10 hours, respectively.[157] Commission staff estimates that an average of 50 initial registration statements, 150 post-effective amendments for an annual update, and 350 additional post-effective amendments will be filed by variable life insurance policies issued by separate accounts on Form N–6 each year.[158] Thus, the Commission estimates that the current annual hour burden for preparing Form N–6 is 51,500.[159]

Commission staff estimates that it would take ½ hour to include in the disclosure of total annual portfolio company operating expenses, the line item from the portfolio company's prospectus disclosing acquired fund fees and expenses. We estimate that ½ of separate accounts registering on Form N–6 invest in portfolio companies that invest in other funds, and would be required to make the proposed disclosure.[160] We seek comment on those numbers. Accordingly, if the proposed amendments to Form N–6 were adopted, the total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments to Form N–6 would be 51,550.[161]

### *C. Request for Comments*

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements of the proposed rules and form amendments should direct them to the Office of Management and Budget, Attention Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 10102, New Executive Office Building, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–18–03. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this Release; therefore a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–18–03, and be submitted to the Securities and Exchange Commission, Records

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[150] *See supra* note 127.

[151] This estimate is based on information in the Commission's database of Form N–SAR filings.

[152] This estimate is based on the following calculation: 33,843 + (7 × 7) + (12/2 × 7) = 33,934.

[153] This estimate is based on information in the Commission's database.

[154] This estimate is based on the following calculation: (157 × 273.2) + (1242 × 195) = 285,082.4. The total annual hour burden approved for Form N–4 is 300,292. The decrease is due to a decrease in the number of registrants filing post-effective amendments on Form N–4.

[155] Commission staff estimates that each portfolio would be required to include the disclosure either in one initial registration or post-effective amendment each year.

[156] This estimate is based on the following calculation: (285,082.4 + (157/2 × 0.5) + (1,242/2 × 0.5) = 285,432.2).

[157] The hour burden for filing additional post-effective amendments is significantly less than that for the post-effective amendment for the annual update. *See supra* note 132.

[158] This estimate is based on information in the Commission's database.

[159] This estimate is based on the following calculation: (50 × 765) + (150 × 65) + (350 × 10) = 51,500). The total annual hour burden approved for Form N–6 is 61,135. The approved burden was based on estimates of filings at the time Form N–6 was proposed, and was not based on actual form filings.

[160] Commission staff estimates that each portfolio would be required to include the disclosure either in an initial registration or post-effective amendment each year.

[161] This estimate is based on the following calculation: (51,500 + (50/2 × 0.5) + (150/2 × 0.5) = 51,550).

Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

## VI. Consideration of Promotion of Efficiency, Competition and Capital Formation

Section 2(c) of the Investment Company Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.[162]

### *A. Proposed Rules 12d1–1, 12d1–2, and 12d1–3*

Proposed rules 12d1–1, 12d1–2, and 12d1–3 will expand the circumstances in which funds can invest in other funds without first obtaining an exemptive order from the Commission, which can be costly and time-consuming. We anticipate that the proposed rules will promote efficiency and competition. Proposed rule 12d1–1 would permit funds to acquire shares of money market funds in the same or in a different fund group in excess of the limitations in section 12(d)(1). This exemption should allow funds, particularly small funds without a money market fund in their complex, to allocate their uninvested cash more efficiently and thereby increase competition among funds. Proposed rule 12d1–2 would permit an affiliated fund of funds to acquire limited amounts of securities issued by funds outside the same fund group and securities not issued by a fund, as well as permit a traditional equity or bond fund to invest in funds within the same fund complex. We believe that this expansion of investment opportunities also will permit funds to allocate their investments more efficiently. The effects of the proposed rules on capital formation are unclear.

### *B. Proposed Amendments to Forms N–1A, N–2, N–3, N–4, and N–6*

The proposed form amendments are intended to provide better transparency for fund shareholders with respect to the costs of investing in funds of funds. The enhanced disclosure requirements would provide shareholders with greater access to information regarding the indirect costs they bear when a fund in which they invest purchases shares of other funds. This information should promote more efficient allocation of investments by investors and more efficient allocation of assets among competing funds because investors may compare and choose funds based on their preferences for cost more easily. The proposed amendments may also improve competition, as enhanced disclosure may prompt funds to provide improved products and services that may have a greater appeal to better-informed investors. Enhanced disclosure also may prompt acquiring funds to invest in acquired funds with lower costs. Finally, the effects of the proposed amendments on capital formation are unclear. Although, as noted above, we believe that the proposed amendments would benefit investors, the magnitude of the effect of the proposed amendments on efficiency, competition, and capital formation is difficult to quantify, particularly given that most funds do not currently provide the type of disclosure contemplated by the proposed amendments.

### *C. Request for Comment*

We request comment on whether the proposed rules and form amendments, if adopted, would promote efficiency, competition, and capital formation. We also request comment on whether the proposed rules and form amendments, if adopted, would impose a burden on competition. Commenters are requested to provide empirical data and other factual support for their views, if possible.

## VII. Summary of Initial Regulatory Flexibility Analysis

We have prepared an Initial Regulatory Flexibility Analysis ("IRFA") under 5 U.S.C. 603 regarding proposed rules 12d1–1, 12d1–2, and 12d1–3, and proposed amendments to Forms N–1A, N–2, N–3, N–4, and N–6 under the Investment Company Act. The following summarizes the IRFA. The IRFA summarizes the reasons, objectives, and legal basis for the proposed rules and form amendments. The IRFA also discusses the effect of the proposed rules and form amendments on small entities. The staff estimates, based upon Commission filings, that there are approximately 5,025 active registered funds and 48 business development companies, of which approximately 209 and 28 are small entities, respectively.[163] The staff estimates that few, if any, registered separate accounts are small entities. Funds that are small entities, like other funds, may rely on the proposed rules if they satisfy the conditions. Under the proposed form amendments, a fund that invests in another fund would be required to disclose the aggregate expenses of acquired funds.

We believe that the proposed rules would have little impact on small entities. Like other funds, small entities would be affected by the proposed rules only if they determined to use the exemptions provided under the proposed rules. Few small entities have applied for relief to engage in the activities that would be permitted under the proposed rules.[164] The proposed amendments to Forms N–1A and N–2 would likely have a greater impact on small entities.

As noted above, compliance with the proposed rules is voluntary, and therefore the proposed rules would not impose mandatory reporting or recordkeeping requirements and would not materially increase other compliance requirements. No federal rules duplicate or conflict with the proposed rules. The Commission is seeking comment on the proposed amendments to Forms N–1A, N–2, N–3, N–4, and N–6. Commission staff has estimated that the burden per small fund portfolio would be up to 7 hours, at a cost of $410.[165] Assuming half of small funds invest in other funds and were required to comply with the form amendments, we estimate the annual disclosure cost for small entities would be $93,685.[166]

We have considered significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. We considered: (a) Differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (c) performance rather than design standards; and (d) an exemption from coverage of the rule, or any part thereof, for small entities. The rule requirements, as explained above, are designed to protect the interests of all fund investors, and an exemption from the conditions in the proposed rules for small entities would not be consistent with the protection of investors. Further clarification, consolidation, or simplification of the requirements is not necessary. The conditions of the rules are design rather than performance standards.

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[162] 15 U.S.C. 80a–2(c).

[163] For purposes of the Regulatory Flexibility Act, a fund is a small entity if the fund, together with other funds in the same group of related funds, has net assets of $50 million or less as of the end of its most recent fiscal year. Rule 0–10 [17 CFR 270.0–10]. The number of small entities is derived from analyzing information from databases such as Morningstar, Inc. and Lipper. Some or all of these entities may contain multiple series or portfolios, which are also small entities.

[164] If the rules were adopted more small entities may use the relief provided, but the number of small entities engaging in these activities would probably remain small.

[165] If each portfolio of a registered fund includes the proposed disclosure, staff estimates the disclosure required by the proposed instructions would take up to 6 hours for an intermediate accountant at a rate of $30 per hour plus one hour for a deputy general counsel at a rate of $230 per hour to perform ((6 × $30) + (1 × $230) = $410). *See* Securities Industry Association, *Report on Management and Professional Earnings in the Securities Industry* (2002).

[166] There are 157 small funds registered under Form N–1A, with an average of 2.7 portfolios per registrant. There are 33 small funds registered under Form N–2, with an average of 1 portfolio per registrant. Thus, Commission staff estimates there are a total of 457 portfolios ((157 × 2.7) + 33 = (423.9 + 33) = 456.9) reporting under Forms N–1A and N–2. The estimate of annual disclosure cost is based on the following calculation: 457/2 portfolios × $410 = $93,685.

We encourage comment on the IRFA, especially with regard to the number of small entities that are likely to rely on the proposed rules and the impact of the proposed form amendments on small entities. A copy of the IRFA is available from Penelope W. Saltzman, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0506.

## VIII. Statutory Authority

The Commission is proposing rules 12d1–1, 12d1–2, and 12d1–3 under the authority set forth in sections 6(c), 12(d)(1)(J), and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–12(d)(1)(J), 80a–37(a)]. The Commission is proposing amendments to registration forms under the authority set forth in sections 6, 7(a), 10 and 19(a) of the Securities Act of 1933 [15 U.S.C. 77f, 77g(a), 77j, 77s(a)], and sections 8(b), 24(a), and 30 of the Act [15 U.S.C. 80a–8(b), 80a–24(a), and 80a–29].

## List of Subjects

### *17 CFR Part 239*

Reporting and recordkeeping requirements, Securities.

### *17 CFR Parts 270 and 274*

Investment companies, Reporting and recordkeeping requirements, Securities.

## Text of Proposed Rules and Form Amendments

For the reasons set out in the preamble, the Commission proposes to amend Title 17, Chapter II of the Code of Federal Regulations to read as follows:

## PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 is amended by revising the subauthority for § 270.12d1–1 to read as follows:

**Authority:** 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted;

* * * * *

Sections 270.12d1–1, 270.12d1–2, and 270.12d1–3 are also issued under 15 U.S.C. 80a–6(c), 80a–12(d)(1)(J), and 80a–37(a).

* * * * *

2. Sections 270.12d1–1, 270.12d1–2, and 270.12d1–3 are added to read as follows:

### § 270.12d1–1 Exemptions for investments in money market funds.

(a) *Exemptions.* If the conditions of paragraph (b) of this section are satisfied, notwithstanding sections 12(d)(1)(A), 12(d)(1)(B), and 17(a) of the Act (15 U.S.C. 80a–12(d)(1)(A), 80a–12(d)(1)(B), and 80a–17(a)), and § 270.17d–1:

(1) An investment company ("Acquiring Fund") may purchase and redeem shares issued by a Money Market Fund; and

(2) A Money Market Fund, any principal underwriter therefor, and a broker or a dealer may sell or otherwise dispose of shares issued by the Money Market Fund to an Acquiring Fund.

(b) *Conditions.*

(1) *Administrative fees.* The Acquiring Fund pays no Administrative Fees, or the Acquiring Fund's investment adviser waives its advisory fee in an amount necessary to offset any Administrative Fees.

(2) *Unregistered money market funds.* If the Money Market Fund is not an investment company registered under the Act:

(i) The Acquiring Fund reasonably believes that the Money Market Fund:

(A) Operates in compliance with § 270.2a–7;

(B) Complies with sections 17(a), (d), (e), 18, and 22(e) of the Act (15 U.S.C. 80a–17(a), (d), (e), 80a–18, and 80a–22(e)) as if it were a registered open-end investment company; and

(C) Has adopted procedures designed to ensure that it complies with sections 17(a), (d), (e), 18, and 22(e) of the Act (15 U.S.C. 80a–17(a), (d), (e), 80a–18, and 80a–22(e)) as if it were a registered open-end investment company, periodically reviews and updates those procedures, and maintains books and records describing those procedures;

(D) Maintains the records required by §§ 270.31a–1(b)(1), 270.31a–1(b)(2)(ii), 270.31a–1(b)(2)(iv), and 270.31a–1(b)(9); and

(E) Preserves permanently, the first two years in an easily accessible place, all books and records required to be made under paragraphs (b)(2)(i)(C) and (D) of this section, and makes those records available for examination on request by the Commission or its staff; and

(ii) The adviser to the Money Market Fund is registered with the Commission as an investment adviser under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3).

(c) *Definitions.*

(1) *Administrative Fees* means any sales charge, as defined in rule 2830(b)(8) of the Conduct Rules of the NASD, or service fee, as defined in rule 2830(b)(9) of the Conduct Rules of the NASD, charged in connection with the purchase, sale, or redemption of securities issued by a Money Market Fund.

(2) *Investment company* includes a company that would be an investment company under section 3(a) of the Act (15 U.S.C. 80a–3(a)) but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the Act (15 U.S.C. 80a–3(c)(1) and 80a–3(c)(7)).

(3) *Money Market Fund* means:

(i) An open-end management investment company registered under the Act that is regulated as a money market fund under § 270.2a–7; or

(ii) A company that would be an investment company under section 3(a) of the Act (15 U.S.C. 80a–3(a)) but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the Act (15 U.S.C. 80a–3(c)(1) and 80a–3(c)(7)) and that:

(A) Is limited to investing in the types of securities and other investments in which a money market fund may invest under § 270.2a–7; and

(B) Undertakes to comply with all the other requirements of § 270.2a–7, except that, if the company has no board of directors, the company's investment adviser performs the duties of the board of directors.

### § 270.12d1–2 Exemptions for investment companies relying on section 12(d)(1)(G) of the Act.

(a) *Exemption to acquire other securities.* Notwithstanding section 12(d)(1)(G)(i)(II) of the Act (15 U.S.C. 80a–12(d)(1)(G)(i)(II)), a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act (15 U.S.C. 80a–12(d)(1)(G)) to acquire securities issued by another registered investment company that is in the same group of investment companies may acquire, in addition to Government securities and short-term paper:

(1) Securities issued by an investment company, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act (15 U.S.C. 80a–12(d)(1)(A) or 80a–12(d)(1)(F));

(2) Securities (other than securities issued by an investment company); and

(3) Securities issued by a Money Market Fund, when the acquisition is in reliance on § 270.12d1–1.

(b) *Definitions.* For purposes of this section, *Money Market Fund* has the same meaning as in § 270.12d1–1(c)(3).

**§ 270.12d1–3 Exemptions for investment companies relying on section 12(d)(1)(F) of the Act.**

(a) *Exemption from sales charge limits.* A registered investment company ("Acquiring Company") that relies on section 12(d)(1)(F) of the Act (15 U.S.C. 80a–12(d)(1)(F)) to acquire securities issued by an investment company ("Acquired Company") may offer or sell any security it issues through a principal underwriter or otherwise at a public offering price that includes a sales load of more than 1½ percent if any sales charges and service fees charged with respect to the Acquiring Company's securities, when aggregated with the sales charges and service fees charged with respect to the Acquired Company's securities, do not exceed the limits set forth in rule 2830 of the Conduct Rules of the National Association of Securities Dealers, Inc. applicable to a fund of funds.

(b) *Definitions.* For purposes of this section, the terms *fund of funds, sales charge,* and *service fee* have the same meanings as is attributed to those terms in rule 2830(b) of the National Association of Securities Dealers, Inc. Rules.

## PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

## PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

3. The authority citation for Part 239 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

4. The authority citation for part 274 continues to read in part as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

5. Item 3 of Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by adding paragraph (f) to Instruction 3 to read as follows:

**Note:** The text of Form N–1A does not, and this amendment will not, appear in the Code of Federal Regulations.

**Form N–1A**

* * * * *

**Item 3. Risk/Return Summary: Fee Table**

* * * * *

*Instructions.*

* * * * *

3. Annual Fund Operating Expenses.

* * * * *

(f)(i) If the Fund (unless it is a Feeder Fund) invests in shares of one or more "Acquired Funds," add a subcaption to the "Annual Fund Operating Expenses" portion of the table directly above the subcaption titled "Total Annual Fund Operating Expenses." Title the additional subcaption: "[Acquired Fund] Fees and Expenses." Disclose in the subcaption fees and expenses incurred indirectly by the Fund as a result of investment in shares of one or more "Acquired Funds." For purposes of this item, an "Acquired Fund" means any company in which the Fund invests that (A) is an investment company or (B) would be an investment company under section 3(a) of the Investment Company Act (15 U.S.C. 80a–3(a)) but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the Investment Company Act (15 U.S.C. 80a–3(c)(1) and 80a–3(c)(7)).

(ii) Determine the "[Acquired Fund] Fees and Expenses" according to the following formula:

$$\text{AFFE} = \frac{\left[(F_1/365) * AI_1 * D_1\right] + \left[(F_2/365) * AI_2 * D_2\right] + \left[(F_3/365) * AI_3 * D_3\right] + \text{Transaction Fees}}{\text{Average Net Assets of the Fund}}$$

Where:

AFFE = Acquired Fund fee expense;
$F_1, F_2, F_3, \ldots$ = Total annual fund operating expense ratio (gross) for each Acquired Fund;
$AI_1, AI_2, AI_3, \ldots$ = Average invested balance in each Acquired Fund;
$D_1, D_2, D_3, \ldots$ = Number of days invested in each Acquired Fund; and
"Transaction Fees" = The total amount of sales loads, redemption fees, or other transaction fees paid by the Fund in connection with acquiring shares in any Acquired Funds during the most recent fiscal year.

(iii) Calculate the average net assets of the Fund for the most recent fiscal year, as provided in Item 9(a) (*see* Instruction 4 to Item 9(a)).

(iv) If the Acquired Fund and the Fund are part of the same "group of investment companies" (as defined in section 12(d)(1)(G)(ii) of the Investment Company Act (15 U.S.C. 80a–12(d)(1)(G)(ii))), the total annual expense ratio used for purposes of this calculation ($F_1$) is the actual total annual expense ratio of the Acquired Fund for the Acquiring Fund's most recent fiscal year. If the Acquired Fund and the Fund are not part of the same "group of investment companies," the total annual expense ratio used for purposes of this calculation ($F_1$) is: (A) the gross total annual fund operating expense ratio for the Acquired Fund's most recent fiscal year disclosed in the financial highlights table of the Acquired Fund's most recent semi-annual report filed with the Commission; or (B) in the case of an Acquired Fund that does not provide a gross total annual expense ratio in its semi-annual report or does not file semi-annual reports with the Commission, the ratio of total annual operating expenses of the Acquired Fund to average total annual net assets of the Acquired Fund for its most recent fiscal year, as disclosed in the most recent communication from the Acquired Fund to the Fund. In each case, the total annual expense ratio used should not include the effect of waivers or reimbursements by the Acquired Funds' investment advisers or sponsors. The Fund may disclose the AFFE determined based on the net expenses of the Acquired Funds in a footnote to the fee table.

(v) To determine the average invested balance ($AI_1$), the numerator is the sum of the amount initially invested in an Acquired Fund during the most recent fiscal year (if the investment was held at the end of the previous fiscal year, use the amount invested as of the end of the previous fiscal year) and the amounts invested in the Acquired Fund as of each month end during the period the investment is held by the Fund (if the investment was held through the end of the fiscal year, use each month-end through and including the fiscal year-end). Divide the numerator by the number of measurement points included in the calculation of the numerator (*i.e.*, if an investment is made during the fiscal year and held for 3 succeeding months, the denominator would be 4).

(vi) A New Fund should base the "[Acquired Fund] Fees and Expenses" on assumptions as to the specific Acquired Funds in which the New Fund expects to invest. Disclose in a footnote to the table that [Acquired Fund] Fees and Expenses are based on estimated amounts for the current fiscal year.

(vii) The Fund may substitute the term used in the prospectus to refer to the Acquired Funds for the bracketed portion of the caption provided.

* * * * *

6. Item 3 of Form N–2 [referenced in §§ 239.14 and 274.11a–1] is amended by:

a. Redesignating paragraph 10 under the Instructions titled "Example" as paragraph 11; and

b. Adding new paragraph 10 before the heading "Example" to read as follows:

**Note:** The text of Form N–2 does not, and this amendment will not, appear in the Code of Federal Regulations.

**Form N–2**

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**Item 3. Fee Table and Synopsis**

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*Instructions*

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*Annual Expenses*

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10. a. If the Registrant invests in shares of one or more "Acquired Funds," add a subcaption to the "Annual Expenses" portion of the table directly above the subcaption titled "Total Annual Expenses." Title the additional subcaption: "[Acquired Fund] Fees and Expenses." Disclose in the subcaption fees and expenses incurred indirectly by the Registrant as a result of investment in shares of one or more "Acquired Funds." For purposes of this item, an "Acquired Fund" means any company in which the Registrant invests (A) that is an investment company or (B) that would be an investment company under section 3(a) of the 1940 Act (15 U.S.C. 80a–3(a)) but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a–3(c)(1) and 80a–3(c)(7)).

b. Determine the "[Acquired Fund] Fee and Expenses" according to the following formula:

$$\mathrm{AFFE} = \frac{\left[(F_1/365) * AI_1 * D_1\right] + \left[(F_2/365) * AI_2 * D_2\right] + \left[(F_3/365) * AI_3 * D_3\right] + \text{Transaction Fees}}{\text{Average Net Assets of the Registrant}}$$

Where:

AFFE = Acquired Fund fee expense;
$F_1, F_2, F_3, \ldots$ = Total annual fund operating expense ratio for each Acquired Fund;
$AI_1, AI_2, AI_3, \ldots$ = Average invested balance in each Acquired Fund;
$D_1, D_2, D_3, \ldots$ = Number of days invested in each Acquired Fund; and
"Transaction Fees" = The total amount of sales loads, redemption fees, or other transaction fees paid by the Registrant in connection with acquiring shares in any Acquired Funds during the most recent fiscal year.

c. Calculate the average net assets of the Registrant for the most recent fiscal year, as provided in Item 4.1 (*see* Instruction 15 to Item 4).

d. If the Acquired Fund and the Registrant are part of the same "group of investment companies" (as defined in section 12(d)(1)(G)(ii) of the 1940 Act (15 U.S.C. 80a–12(d)(1)(G)(ii))), the total annual expense ratio used for purposes of this calculation ($F_1$) is the actual total annual expense ratio of the Acquired Fund for the Acquiring Fund's most recent fiscal year. If the Acquired Fund and the Registrant are not part of the same "group of investment companies," the total annual expense ratio used for purposes of this calculation ($F_1$) is: (A) the total annual fund operating expense ratio for the Acquired Fund's most recent fiscal year disclosed in the financial highlights table of the Acquired Fund's most semi-annual report filed with the Commission; or (B) in the case of an Acquired Fund that does not provide a total annual expense ratio in its semi-annual report or does not file semi-annual reports with the Commission, the ratio of total annual operating expenses of the Acquired Fund to average total annual net assets of the Acquired Fund for its most recent fiscal year, as disclosed in the most recent communication from the Acquired Fund to the Registrant.

e. To determine the average invested balance ($AI_1$), the numerator is the sum of the amount initially invested in an Acquired Fund during the most recent fiscal year (if the investment was held at the end of the previous fiscal year, use the amount invested as of the end of the previous fiscal year) and the amounts invested in the Acquired Fund as of each month end during the period the investment is held by the Registrant (if the investment was held through the end of the fiscal year, use each month-end through and including the fiscal year-end). Divide the numerator by the number of measurement points included in the calculation of the numerator (*i.e.*, if an investment is made during the fiscal year and held for 3 succeeding months, the denominator would be 4).

f. Base the "[Acquired Fund] Fees and Expenses" on (i) assumptions about specific funds in which the Registrant expects to invest, and (ii) estimates of the amount of assets the Registrant expects to invest in each of those Acquired Funds with the proceeds of the offering.

g. The Registrant may substitute the term used in the prospectus to refer to the Acquired Funds for the bracketed portion of the caption provided.

* * * * *

7. Item 3 of Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by:

a. Redesignating paragraph 19 under the Instructions titled "Example" as paragraph 20; and

b. Adding new paragraph 19 before the heading "Example" to read as follows:

**Note:** The text of Form N–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

**Form N–3**

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**Item 3. Synopsis**

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*Instructions*

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*Annual Expenses*

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19. (a) If the Registrant invests in shares of one or more "Acquired Funds," add a subcaption to the "Annual Expenses" portion of the table directly above the subcaption titled "Total Annual Expenses." Title the additional subcaption: "[Acquired Fund] Fees and Expenses." Disclose in the subcaption fees and expenses incurred indirectly by the Registrant as a result of investment in shares of one or more "Acquired Funds." For purposes of this Item, an "Acquired Fund" means any company in which the Fund invests that (i) is an investment company or (ii) would be an investment company under section 3(a) of the 1940 Act (15 U.S.C. 80a–3(a)) but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a–3(c)(1) and 80a–3(c)(7)).

(b) Determine the "[Acquired Fund] Fees and Expenses" according to the following formula:

$$AFFE = \frac{\left[(F_1/365)*AI_1*D_1\right]+\left[(F_2/365)*AI_2*D_2\right]+\left[(F_3/365)*AI_3*D_3\right]+\text{Transaction Fees}}{\text{Average Net Assets of the Fund}}$$

Where:

AFFE = Acquired Fund fee expense;

$F_1, F_2, F_3, \ldots$ = Total annual fund operating expense ratio for each Acquired Fund;

$AI_1, AI_2, AI_3, \ldots$ = Average invested balance in each Acquired Fund;

$D_1, D_2, D_3, \ldots$ = Number of days invested in each Acquired Fund; and

"Transaction Fees" = The total amount of sales loads, redemption fees, or other transaction fees paid by the Registrant in connection with acquiring shares in any Acquired Funds during the most recent fiscal year.

(c) Calculate the average net assets of the Registrant for the most recent fiscal year, as provided in Item 4(a) (*see* Instruction 10 to Item 4(a)).

(d) If the Acquired Fund and the Registrant are part of the same "group of investment companies" (as defined in section 12(d)(1)(G)(ii) of the 1940 Act (15 U.S.C. 80a–12(d)(1)(G)(ii))), the total annual expense ratio used for purposes of this calculation (F1) is the actual total annual expense ratio of the Acquired Fund for the Acquiring Fund's most recent fiscal year. If the Acquired Fund and the Registrant are not part of the same "group of investment companies," the total annual expense ratio used for purposes of this calculation (F1) is: (i) the total annual fund operating expense ratio for the Acquired Fund's most recent fiscal year disclosed in the financial highlights table of the Acquired Fund's most recent semi-annual report filed with the Commission; or (ii) in the case of an Acquired Fund that does not provide a total annual expense ratio in its semi-annual report or does not file a semi-annual report with the Commission, the ratio of total annual operating expenses of the Acquired Fund to average total annual net assets of the Acquired Fund for its most recent fiscal year, as disclosed in the most recent communication from the Acquired Fund to the Registrant.

(e) To determine the average invested balance ($AI_1$), the numerator is the sum of the amount initially invested in an Acquired Fund during the most recent fiscal year (if the investment was held at the end of the previous fiscal year, use the amount invested as of the end of the previous fiscal year) and the amounts invested in the Acquired Fund as of each month end during the period the investment is held by the Registrant (if the investment was held through the end of the fiscal year, use each month-end through and including the fiscal year-end). Divide the numerator by the number of measurement points included in the calculation of the numerator (*i.e.*, if an investment is made during the fiscal year and held for 3 succeeding months, the denominator would be 4).

(f) A New Registrant should base the "[Acquired Fund] Fees and Expenses" on assumptions as to the specific funds in which the New Registrant assumes it will invest. Disclose in a footnote to the table that "[Acquired Fund] Fees and Expenses" are based on estimated amounts for the current fiscal year.

(g) The Registrant may substitute the term used in the prospectus to refer to the Acquired Funds for the bracketed portion of the caption provided.

* * * * *

8. Item 3 of Form N–4 (referenced in §§ 239.17b and 274.11c) is amended by adding a sentence at the end of paragraph 17(a) under the Instructions to read as follows:

**Note:** The text of Form N–4 does not, and this amendment will not, appear in the Code of Federal Regulations.

**Form N–4**

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**Item 3. Synopsis**

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*Instructions*

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*Total Annual [Portfolio Company] Operating Expenses*

* * * * *

17. (a) * * * If any portfolio company invests in shares of one or more "Acquired Funds," "Total Annual [Portfolio Company] Operating Expenses" for the portfolio company must also include fees and expenses of the Acquiring Funds, calculated in accordance with instruction 3(f) of Item 3 of Form N–1A (17 CFR 239.15A; 17 CFR 274.11A). For purposes of this paragraph, an "Acquired Fund" means any company in which the portfolio company invests that (i) is an investment company or (ii) would be an investment company under section 3(a) of the 1940 Act (15 U.S.C. 80a–3(a)) but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a–3(c)(1) and 80a–3(c)(7)).

9. Item 3 of Form N–6 (referenced in §§ 239.17c and 274.11d) is amended by adding a sentence at the end of paragraph 4(b) under the Instructions to read as follows:

**Note:** The text of Form N–6 does not, and this amendment will not, appear in the Code of Federal Regulations.

**Form N–6**

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**Item 3. Risk/Benefit Summary: Fee Table**

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*Instructions*

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*4. Total Annual [Portfolio Company] Operating Expenses*

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(b) * * * If any Portfolio Company invests in shares of one or more "Acquired Funds," "Total Annual

[Portfolio Company] Operating Expenses" for the Portfolio Company must also include fees and expenses of the Acquiring Funds, calculated in accordance with instruction 3(f) of Item 3 of Form N–1A (17 CFR 239.15A; 17 CFR 274.11A). For purposes of this section, an "Acquired Fund" means any company in which the Portfolio Company invests that (i) is an investment company or (ii) would be an investment company under section 3(a) of the Investment Company Act (15 U.S.C. 80a–3(a)) but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the Investment Company Act (15 U.S.C. 80a–3(c)(1) and 80a–3(c)(7)).

* * * * *

Dated: October 1, 2003.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–25336 Filed 10–7–03; 8:45 am]

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# Federal Register

Wednesday,
October 8, 2003

## Part IV

## The President

Proclamation 7711—National Breast Cancer Awareness Month, 2003

Proclamation 7712—National Disability Employment Awareness Month, 2003

Proclamation 7713—Fire Prevention Week, 2003

Proclamation 7714—Marriage Protection Week, 2003

Proclamation 7715—German-American Day, 2003

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# Presidential Documents

**Title 3—**

**The President**

## Proclamation 7711 of October 3, 2003

## National Breast Cancer Awareness Month, 2003

**By the President of the United States of America**

**A Proclamation**

Breast cancer touches the lives of many Americans, either directly or through the diagnosis of a family member or friend. We have made considerable progress in diagnosing this disease and improving treatments, but we have not ended it. While overall death rates are declining, breast cancer remains the second leading cause of cancer deaths among women. During this 19th annual National Breast Cancer Awareness Month, we recognize the efforts being made to fight breast cancer through prevention, early detection, and aggressive research into new treatments and therapies.

Monthly self exams and mammograms are still the best ways to detect breast cancer at an early, treatable stage. The National Cancer Institute (NCI) and the United States Preventive Services Task Force agree that for women who are 40 or over, a mammogram every 1 to 2 years can greatly reduce the risk of dying from breast cancer. I encourage all women to consult with their physicians to obtain appropriate screenings to help with early detection.

This year in the United States, an estimated 212,000 individuals will be diagnosed with breast cancer and an estimated 40,000 will die of the disease. My Administration is committed to building on the research that has already advanced our knowledge of the causes of and possible cures for breast cancer. The NCI invested an estimated $564.6 million this year in breast cancer research and will spend approximately $584 million next year. Continued research provides the opportunity to better understand the causes of breast cancer and how we can better prevent, detect, and treat it. The United States Postal Service is also helping with the fight. Proceeds from the Postal Service's Breast Cancer Awareness stamp go to breast cancer research. Since the launch of this special stamp, more than $33 million has been raised to help search for a cure.

I urge all Americans to raise awareness of breast cancer by talking with family members and friends about the importance of screening and early detection. By educating ourselves and working together, we will improve our ability to prevent, detect, treat, and ultimately cure breast cancer.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the month of October 2003 as National Breast Cancer Awareness Month. I call upon Government officials, businesses, communities, healthcare professionals, educators, volunteers, and all the people of the United States to continue our Nation's strong commitment to controlling and curing breast cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of October, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.

[FR Doc. 03–25649
Filed 10–7–03; 8:45 am]
Billing code 3195–01–P

# Presidential Documents

## Proclamation 7712 of October 3, 2003

## National Disability Employment Awareness Month, 2003

**By the President of the United States of America**

**A Proclamation**

For Americans with disabilities, employment is vital to independence, empowerment, and quality of life. During National Disability Employment Awareness Month, we recognize the many contributions citizens with disabilities make to our society, and we reaffirm our commitment to helping them achieve their full inclusion in our workforce.

Today, Americans with disabilities enjoy improved access to education, government services, public accommodations, transportation, telecommunications, and employment opportunities. The landmark Americans with Disabilities Act of 1990 (ADA) removed barriers and enabled many individuals with disabilities to find more opportunities to use their gifts and talents in the workplace. This progress has made our Nation stronger, more productive, and more just. People with disabilities still encounter challenges, however, to their full participation in American society.

In February 2001, I launched the New Freedom Initiative to address these challenges, to fulfill the promises of the ADA, and to move toward an America where all our citizens live and work with dignity and freedom. This comprehensive plan is helping Americans with disabilities learn and develop skills, engage in productive work, make choices about their daily lives, and participate fully in their communities.

A key component of the New Freedom Initiative is our commitment to integrate individuals with disabilities into the workforce. We have made substantial progress toward this goal. The Department of Justice has established an ADA Business Connection, a series of meetings between representatives of the business and disability communities to open dialogue that will promote greater understanding and increased voluntary compliance with the ADA. Also, the Department of Health and Human Services and the Social Security Administration are implementing the landmark "Ticket to Work" program that makes it possible for millions of Americans with disabilities to no longer have to choose between having a job and receiving health care. And the Department of Labor has established two national technical assistance centers on workforce and disability that offer training, technical assistance, and information to improve access for all in the workforce development system.

By working together to open doors of opportunity for citizens with disabilities, we can help fulfill the promise of our great Nation.

To recognize the contributions of Americans with disabilities and to encourage all citizens to help ensure their full inclusion in the workforce, the Congress, by joint resolution approved August 11, 1945, as amended (36 U.S.C. 121), has designated October of each year as "National Disability Employment Awareness Month."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 2003 as National Disability Employment Awareness Month. I call upon government officials, labor leaders, employers, and all the people of the United States to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of October, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.

# Presidential Documents

**Proclamation 7713 of October 3, 2003**

## Fire Prevention Week, 2003

**By the President of the United States of America**

**A Proclamation**

More than 1.7 million fires strike American homes, parks, and businesses each year. This devastation costs lives, causes injuries, ruins property, and disrupts businesses. While fires are powerful and destructive, many fires are preventable. During Fire Prevention Week, we join with our Nation's first responders to help prevent fires and ensure the safety of our homes and communities.

As the official sponsor of Fire Prevention Week, the National Fire Protection Association is joining forces with the Department of Homeland Security's Federal Emergency Management Agency and the United States Fire Administration to emphasize the importance of being prepared to protect ourselves, our families, and our communities. This year's Fire Prevention Week theme is "When Fire Strikes: Get Out! Stay Out!"

Across our country, most fire-related deaths occur where people feel safest—in their own homes. National surveys reveal that most Americans underestimate the risk of fire in their homes and lack an emergency response plan. Fires can grow quickly, and individuals may have as few as 2 minutes to evacuate. Working smoke detectors give people more time to escape fires. At least 94 percent of American homes are equipped with smoke alarms, yet most home fire deaths happen in homes where smoke alarms are not working. By installing and maintaining working smoke alarms on every level of the home, having a fire emergency response plan, and evacuating if the alarm sounds, families and individuals can be ready to respond to a fire.

This week also reminds us of the dangers that brave first responders face as they risk their lives to fight fires and protect our communities, our people, and our natural resources. Our fire services respond to more than 20 million emergency calls a year. Americans are grateful for their courage, skill, and commitment to public safety, and we honor the sacrifice of those who have been injured or killed in their efforts to protect us. Through fire safety and prevention, we can save lives, including those of our firefighters and other first responders.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 5 through October 11, 2003, as Fire Prevention Week. On Sunday, October 5, 2003, in accordance with Public Law 107–51, flags will be flown at half staff on all Federal office buildings in honor of the National Fallen Firefighters Memorial Service. I urge all Americans to protect their homes by installing smoke detectors where needed and regularly checking their existing smoke detectors. These small efforts will help make our communities safer for all.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of October, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.

[FR Doc. 03–25651
Filed 10–7–03; 8:45 am]
Billing code 3195–01–P

# Presidential Documents

**Proclamation 7714 of October 3, 2003**

## Marriage Protection Week, 2003

**By the President of the United States of America**

**A Proclamation**

Marriage is a sacred institution, and its protection is essential to the continued strength of our society. Marriage Protection Week provides an opportunity to focus our efforts on preserving the sanctity of marriage and on building strong and healthy marriages in America.

Marriage is a union between a man and a woman, and my Administration is working to support the institution of marriage by helping couples build successful marriages and be good parents.

To encourage marriage and promote the well-being of children, I have proposed a healthy marriage initiative to help couples develop the skills and knowledge to form and sustain healthy marriages. Research has shown that, on average, children raised in households headed by married parents fare better than children who grow up in other family structures. Through education and counseling programs, faith-based, community, and government organizations promote healthy marriages and a better quality of life for children. By supporting responsible child-rearing and strong families, my Administration is seeking to ensure that every child can grow up in a safe and loving home.

We are also working to make sure that the Federal Government does not penalize marriage. My tax relief package eliminated the marriage penalty. And as part of the welfare reform package I have proposed, we will do away with the rules that have made it more difficult for married couples to move out of poverty.

We must support the institution of marriage and help parents build stronger families. And we must continue our work to create a compassionate, welcoming society, where all people are treated with dignity and respect.

During Marriage Protection Week, I call on all Americans to join me in expressing support for the institution of marriage with all its benefits to our people, our culture, and our society.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of October 12 through October 18, 2003, as Marriage Protection Week. I call upon the people of the United States to observe this week with appropriate programs, activities, and ceremonies.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of October, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.

[FR Doc. 03–25652
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# Presidential Documents

## Proclamation 7715 of October 3, 2003

## German-American Day, 2003

**By the President of the United States of America**

**A Proclamation**

German-American Day celebrates more than 300 years of German immigration to our shores, beginning with the arrival of 13 Mennonite families from Krefeld on October 6, 1683. Seeking a new life of freedom and opportunity, these immigrants settled in Pennsylvania and founded Germantown near the city of Philadelphia. On this day, we recognize the contributions of those German pioneers, and millions of other German-American immigrants and their descendants, to the life and culture of our great Nation.

As one of the largest ethnic groups in the United States, German Americans have greatly influenced our country in the fields of business, government, law, science, athletics, the arts, and many others. Henry Engelhard Steinway and his sons founded Steinway & Sons in 1853. The 300,000th Steinway piano, the "golden grand," was presented to President Franklin Roosevelt in 1938, and is still on display at the White House. John Augustus Roebling and his son pioneered the development of suspension bridges and wire cable. Their construction of the Brooklyn Bridge is a lasting landmark to their skill, determination, and innovation. And entrepreneurs such as John Davison Rockefeller, John Wanamaker, and Milton Snavely Hershey helped to strengthen the American economy and inspire others to reach for the American Dream.

In addition to their many professional achievements, German Americans have influenced American culture. From Christmas trees to kindergartens, the United States has adopted many German traditions and institutions. By celebrating and sharing their customs and traditions, German Americans help to preserve their rich heritage and enhance the cultural diversity of our Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 6, 2003, as German-American Day. I encourage all Americans to recognize the contributions to the liberty and prosperity of the United States of our citizens of German descent.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of October, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.

[FR Doc. 03–25653
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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**H.R. 659/P.L. 108–91**

Hospital Mortgage Insurance Act of 2003 (Oct. 3, 2003; 117 Stat. 1158)

**H.R. 978/P.L. 108–92**

To amend chapter 84 of title 5, United States Code, to provide that certain Federal annuity computations are adjusted by 1 percentage point relating to periods of receiving disability payments, and for other purposes. (Oct. 3, 2003; 117 Stat. 1160)

**S. 111/P.L. 108–93**

To direct the Secretary of the Interior to conduct a special resource study to determine the national significance of the Miami Circle site in the State of Florida as well as the suitability and feasibility of its inclusion in the National Park System as part of Biscayne National Park, and for other purposes. (Oct. 3, 2003; 117 Stat. 1161)

**S. 233/P.L. 108–94**

Coltsville Study Act of 2003 (Oct. 3, 2003; 117 Stat. 1163)

**S. 278/P.L. 108–95**

Mount Naomi Wilderness Boundary Adjustment Act (Oct. 3, 2003; 117 Stat. 1165)

**Last List October 3, 2003**

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# Federal Register

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**Vol. 68 No. 196**

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**Pages 58261–58574**

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# Presidential Documents

**Title 3—**

## The President

**Presidential Determination No. 2003–41 of September 30, 2003**

## Transfer of Funds from International Organizations and Programs (IO&P) Funds to the Child Survival and Health Programs Fund

**Memorandum for the Secretary of State**

Consistent with the authority vested in me by the Constitution and laws of the United States, including section 610 of the Foreign Assistance Act of 1961, as amended (FAA), I hereby determine it is necessary for the purposes of the FAA that the $25 million in FY 2003 International Organizations and Programs funds that were reserved to be allocated for the United Nations Population Fund be transferred to, and consolidated with, the Child Survival and Health Programs Fund, and such funds are hereby transferred and consolidated.

You are hereby authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.

THE WHITE HOUSE,
*Washington, September 30, 2003.*

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# Rules and Regulations

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2003–CE–36–AD; Amendment 39–13327; AD 2003–20–09]**

**RIN 2120–AA64**

## Airworthiness Directives; Stemme GmbH & Co. KG Model STEMME S10–VT Sailplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all Stemme GmbH & Co. KG Model STEMME S10–VT sailplanes that incorporate a certain gear box. This AD requires you to incorporate flight restrictions into the Limitations Section of the sailplane flight manual and fabricate and install a placard close to the throttle lever indicating these restrictions. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to prevent the potential for the lower cog wheel in the gear box to rupture, which could result in loss of power and possible loss of control of the sailplane.

**DATES:** This AD becomes effective on October 20, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of October 20, 2003.

We must receive any comments on this AD by November 3, 2003.

**ADDRESSES:** Use one of the following to submit comments on this AD:

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–36–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2003–CE–36–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this AD from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany; telephone: 49.33.41.31.11.70; facsimile: 49.33.41.31.11.73.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–36–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

### Discussion

*What Events Have Caused This AD?*

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on all Stemme GmbH & Co. KG Model STEMME S10–VT sailplanes that incorporate a part number 11AG gear box (serial numbers 43YYQ001 through 43YYQ093). The LBA reports two incidents where the lower cog wheels of the affected gear box failed. In both cases, the web of the cog wheel separated from the shaft.

*What Are the Consequences if the Condition Is Not Corrected?*

This condition, if not prevented, could cause the lower cog wheel in the gear box to rupture, which could result in loss of power and possible loss of control of the sailplane.

*Is There Service Information That Applies to This Subject?*

Stemme GmbH & Co. KG has issued Stemme Service Bulletin A31–10–065, Am.-Index: 92a, dated February 21, 2003.

*What Are the Provisions of This Service Information?*

The service bulletin is divided into two parts as follows:

1. Flight manual limitations and placard installation:

—*Flight manual limitation:* "The operation of the engine will be limited to maximum 100% power (max. continuous power)."

—*Flight manual limitation:* "Hence the take-off procedure (take-off with take-off power 115%, see section 4.5.2.2. of the Flight Manual) must not be selected. Alternative procedures (*i.e.*, take-off with max. continuous power 100%) are published in the Flight Manual."

—*Placard:* Installation of a placard close to the throttle lever with the following: "Operation above 100% continuous power is not allowed! (see SB A31–10–1065)."

2. Replacement of the lower cog wheel (P/N: 43.15.0028) with a modified cog wheel (P/N: 43:15:0043).

*What Action Did the LBA Take?*

The LBA classified this service bulletin as mandatory and issued German AD Number 2002–389/2, Effective date: April 17, 2003, in order to ensure the continued airworthiness of these sailplanes in Germany.

*Was This in Accordance With the Bilateral Airworthiness Agreement?*

These Stemme GmbH & Co. KG Model STEMME S10–VT sailplanes are manufactured in Germany and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Per this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above.

### FAA's Determination and Requirements of the Proposed AD

*What Has FAA Decided?*

We have examined the LBA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other Stemme GmbH & Co. KG Model STEMME S10–VT sailplanes of the same type design that are registered in the United States, this AD is being issued to prevent the potential for the lower cog wheel in the gear box to rupture, which could result in loss of power and possible loss of control of the sailplane.

#### *What Does This AD Require?*

This AD requires you to incorporate restrictions into the Limitations Section of the flight manual and incorporate a placard close to the throttle lever indicating these restrictions. These restrictions and the placard are referenced in Stemme Service Bulletin A31–10–065, Am.-Index: 02a, dated February 25, 2003.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included, in the rulemaking docket, a discussion of any information that may have influenced this action.

#### *Why Is the FAA Not Mandating the Cog Wheel Replacement?*

We are not mandating the cog wheel replacement (as specified in the service information) in this AD action because of the "bootstrapping requirement." When we issue an AD that involves requirements affecting flight safety where we do not first provide notice and an opportunity for public comment, then we are only able to include a short-term action that immediately corrects the unsafe condition. The Administrative Procedures Act does not permit combining a long-term requirement with a short-term action when we do not provide prior public comment. We analyze the short-term action and the long-term action separately for justification to bypass public notice.

The FAA may initiate future AD action with public comment to mandate the cog wheel replacement as terminating action for the AFM requirements of this AD. This cog wheel replacement is optional in this AD as terminating action.

#### *How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?*

On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

### Comments Invited

#### *Will I Have the Opportunity To Comment Prior to the Issuance of the Rule?*

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under ADDRESSES. Include "AD Docket No. 2003–CE–36–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

### Regulatory Findings

#### *Will This AD Impact Various Entities?*

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

#### *Will This AD involve a significant rule or regulatory action?*

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under ADDRESSES. Include "AD Docket No. 2003–CE–36–AD" in your request.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1.The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**2003–20–09 Stemme GmbH & Co. KG:** Amendment 39–13327; Docket No. 2003–CE–36–AD.

#### When Does This AD Become Effective?

(a) This AD becomes effective on October 20, 2003.

#### Are Any Other ADs Affected by This Action?

(b) None.

#### What Sailplanes Are Affected by This AD?

(c) This AD affects all Model STEMME S10-VT sailplanes that:

(1) Incorporate a part number (P/N) 11AG gear box (serial numbers 43YYQ001 through 43YYQ093); and

(2) Are certificated in any category:

#### What is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to prevent the potential for the lower cog wheel in the gear box to rupture, which could result in loss of power and possible loss of control of the sailplane.

#### What Must I Do To Address This Problem?

(e) To address this problem, you must accomplish the following:

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Incorporate the following flight restrictions into the Limitations Section of the flight manual:<br>(i) "The operation of the engine will be limited to maximum 100% power (max. continuous power)." and<br>(ii) "Hence the take-off procedure (take-off with take-off power 115%, see section 4.5.2.2, of the Flight Manual) must not be selectd. Alternative procedures (*i.e.,* take-off with max. continuous power 100%) are published in the flight Manual." | Within the next 10 days after October 20, 2003 (the effective date of this AD), unless already accomplished. | Either insert a copy of this portion of the AD or Stemme Service Bulletin A31–10–065, Am.-Index: 02a, dated February 25, 2003, into the Limitations Section of this of the AFM. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 Federal Aviation Regulations (14 CFR 43.7) may do this flight manual insertion. Make an entry into the aircraft records showing compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation regulations (14 CFR 43.9). |
| (2) Fabricate a placard that incorporates the following words (using at least 1/8-inch letters) and install this placard close to the throttle lever: "Operation above 100% continuous power is not allowed! (see SB A31–10–1065)." | Within the next 10 days after October 20, 2003 (the effective date of this AD), unless already accomplished. | No specific procedures are necessary for this action. Stemme Service Bulletin A31–10–065, Am.-Index: 02a, dated February 25, 2003, references this action. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR the throttle 43.7) may do the placard requirements. Make an entry into the aircraft records showing compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation (14 CFR 43.9). |
| (3) As an alternative method of compliance to this AD, replace the lower cog wheel (P/N: 43.15.0028) with a modified cog wheel (P/N: 43:15:0043). | At any time as terminating action for the limitations and placard requirements of this AD. | Use the instructions in Stemme Service Bulletin A31–10–065, Am.-Index: 02a, dated February 25, 2003. |

### Why Is the FAA Not Mandating the Cog Wheel Replacement?

(f) We are not mandating the cog wheel replacement (as specified in the service information) in this AD action because of the "bootstrapping requirement." When we issue an AD that involves requirements affecting flight safety where we do not first provide notice and an opportunity for public comment, then we are only able to include a short-term action that immediately corrects the unsafe condition.

(1) The Administrative Procedures Act does not permit combining a long-term requirement with a short-term action when we do not provide prior public comment. The short-term action and the long-term action are analyzed separately for justification to bypass public notice.

(2) We may initiate future AD action with public comment to mandate the cog wheel replacement as terminating action for the AFM requirements of this AD. This cog wheel replacement is optional in this AD as terminating action.

### What About Alternative Methods of Compliance?

(g) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13. Send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

### Is There Material Incorporated by Reference?

(h) If you choose to do the replacement required by this AD, then you must use Stemme Service Bulletin A31–10–065, Am.-Index: 02a, dated February 25, 2003. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany; telephone: 49.33.41.31.11.70; facsimile: 49.33.41.31.11.73. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

### Is There Other Information That Relates to This Subject?

(i) German AD Number 2002–389/2, Effective date: April 17, 2003, also addresses the subject of this AD.

Issued in Kansas City, Missouri, on September 30, 2003.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–25330 Filed 10–8–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–CE–42–AD; Amendment 39–13333; AD 2003–20–15]**

**RIN 2120–AA64**

## Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This AD requires you to inspect for certain installed fuel booster pumps and replace that fuel booster pump, inspect other certain fuel booster pumps for defects, and either install lead protection spiral wrap or replace the defective fuel booster pumps, depending on whether defects are found. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. We are issuing this AD to detect and correct any defective fuel booster pump, which could result in electrical arcing from the leads in an air/fuel mixture.

Such failure could lead to a fire or explosion of a fuel tank.

**DATES:** This AD becomes effective on October 10, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of October 10, 2003.

We must receive any comments on this AD by December 10, 2003.

**ADDRESSES:** Use one of the following to submit comments on this AD:

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–42–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2003–CE–42–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this AD from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–42–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

## Discussion

### *What Events Have Caused This AD?*

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA reports 11 reports of damaged fuel booster pump wires from 9 different aircraft. Within the FAA service difficulty/accident report system, we found eight occurrences of damaged fuel booster pump wires. This damage to the electrical wires could possibly cause electrical arcing when the wires get in an air/fuel mixture.

### *What Are the Consequences if the Condition Is Not Corrected?*

Such electrical arcing could lead to a fire or explosion of a fuel tank.

### *Is There Service Information That Applies to This Subject?*

Pilatus has issued:

Pilatus PC12 Service Bulletin No. 28–011, Revision No. 1, dated July 11, 2003;

Pilatus PC12 Maintenance Manual Temporary Revision No. 12–03 (12–10–01), dated June 6, 2003; and

Pilatus PC12 Maintenance Manual Temporary Revision No. 28–02 (28–20–04), dated June 6, 2003.

### *What Are the Provisions of This Service Information?*

The service information includes procedures for:

- —Inspecting the fuel booster pumps for defects;
- —Replacing fuel booster pumps;
- —Installing lead protection spiral wrap; and
- —Incorporating Temporary Revision No. 7, dated June 6, 2003, or Temporary Revision No. 37, dated June 6, 2003, to the *Section 2—Limitations* section of the applicable pilot's operating handbook (POH). This is a temporary option and replacing the subject fuel booster pump or installing the lead protection spiral wrap is mandatory within a certain time frame.

### *What Action Did the FOCA Take?*

The FOCA classified this service bulletin as mandatory and issued Swiss AD Number HB 2003–301, dated July 17, 2003, in order to ensure the continued airworthiness of these airplanes in Switzerland.

### *Was This in Accordance With the Bilateral Airworthiness Agreement?*

The Pilatus Models PC–12 and PC–12/45 are manufactured in Switzerland and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Per this bilateral airworthiness agreement, the FOCA has kept us informed of the situation described above.

## FAA's Determination and Requirements of This AD

### *What Has FAA decided?*

We have examined the FOCA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other Pilatus Models PC–12 and PC–12/45 airplanes of the same type design that are registered in the United States, this AD is being issued to detect and correct any defective fuel booster pump, which could result in electrical arcing from the leads in an air/fuel mixture. Such failure could lead to a fire or explosion of a fuel tank.

### *What Does This AD Require?*

This AD requires you to incorporate the actions in the previously-referenced service information.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included, in the rulemaking docket, a discussion of any information that may have influenced this action.

### *How Does the Revision to 14 CFR Part 39 Affect This AD?*

On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

## Compliance Time of This AD

### *What Would Be the Compliance Time of This AD?*

The compliance time of this AD is within the next 7 calendar days after October 10, 2003 (the effective date of this AD).

### *Why Is This Compliance Time Presented in Calendar Time Instead of Hours TIS?*

The leads may rub and arc as a result of aircraft operation. Therefore, FAA has determined that a compliance based on calendar time should be utilized in this AD in order to ensure that the unsafe condition is addressed on all aircraft in a reasonable time period.

## Comments Invited

### *Will I Have the Opportunity To Comment Prior to the Issuance of the Rule?*

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–CE–42–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

## Regulatory Findings

### *Will This AD Impact Various Entities?*

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

### *Will This AD Involve a Significant Rule or Regulatory Action?*

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–CE–42–AD" in your request.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**2003–20–15 Pilatus Aircraft Ltd.:** Amendment 39–13333; Docket No. 2003–CE–42–AD.

### When Does This AD Become Effective?

(a) This AD becomes effective on October 10, 2003.

### Are Any Other ADs Affected By This Action?

(b) None.

### What Airplanes Are Affected by This AD?

(c) This AD affects Models PC–12 and PC–12/45 airplanes, serial numbers 101 through 520, with fuel booster pump (fuel pump) part number (P/N) 969.84.11.401, 968.84.11.403, or 968.84.11.404 installed, that are certificated in any category.

### What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. We are issuing this AD to detect and correct any defective fuel booster pump, which could result in electrical arcing from the leads in an air/fuel mixture. Such electrical arcing could lead to a fire or explosion of a fuel tank.

### What Must I Do To Address This Problem?

(e) To address this problem, you must accomplish the following unless already accomplished:

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Replace any installed fuel booster pump part number (P/N) 969.84.11.401 with a fuel pump that has the Pilatus PC12 Service Bulletin No. 28–011, Revision No. 1, dated July 11, 2003, modification incorporated. | Within the next 7 calendar days after October 10, 2003 (the effective date of this AD). | Per Pilatus PC12 Service Bulletin No. 28-011, Revision No. 1, dated July 11, 2003, Pilatus PC12 Maintenance Manual Temporary Revision No. 12–03 (12–10–01), dated June 6, 2003, and Pilatus PC12 Maintenance Manual Temporary Revision No. 28–02 (28–20–04), dated June 6, 2003. |
| (2) Inspect the installed fuel booster pump P/N 968.84.11.403 or 968.84.11.404 for defects:<br>(i) If defects are found, replace the fuel booster pump with a fuel booster pump that has the modification referenced in Pilatus PC12 Service Bulletin No. 28–011, Revision No. 1, dated July 11, 2003. | Within the next 7 calendar days after October 10, 2003 (the effective date of this AD). | Per Pilatus PC12 Service Bulletin No. 28–011, Revision No. 1, dated July 11, 2003, Pilatus PC12 Maintenance Manual Temporary Revision No. 12–03 (12–10–01), dated June 6, 2003, and Pilatus PC12 Maintenance Manual Temporary Revision No. 28–02 (28–20–04), dated June 6, 2003, and Pilatus PC12 Maintenance Manual Temporary Revision No. 28–02 (28–20–04), dated June 6, 2003. |
| (ii) If no defects are found:<br>(B) Re-identify the fuel booster pump P/N and 968.84.11.403 or 968.84.11.404 by adding the suffix letter "B" adjacent to the serial Maintenance number on the fuel pump identification plate. | | |
| (3) Do not install any part referenced in paragraph (e)(1) or (e)(2) of this AD unless it has been modified per Pilatus PC12 Service Bulletin No. 28–011, Revision No. 1, dated July 11, 2003. | As of October 10, 2003 (the effective date of this AD). | Not applicable. |

| Actions | Compliance | Procedures |
|---|---|---|
| (4) If you have scheduled the replacement or installation required by paragraphs (e)(1) and (e)(2) of this AD, but the schedule puts you beyond the time to comply, you may insert Temporary Revision No. 7, dated June 6, 2003, or Temporary Revision No. 37, dated June 6, 2003, in the *Section 2—Limitations* section of the applicable pilot's operating handbook (POH) and operate the aircraft according. | Prior to further flight after scheduling the replacement of installation. The replacement or installation of paragraphs (e)(1) and (e)(2) of this AD must be accomplished within 50 hours time-in-service after October 10, 2003 (the effective date of this AD). After compliance with paragraphs (e)(1) and (e)(2) of this AD, you may remove Temporary Revision No. 7, dated June 6, 2003, or Temporary Revision No. 37, dated June 6, 2003, from the POH. | Anyone who holds at least a private pilot certificate, as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), may incorporate the POH revision required by this AD. You must make an entry into the aircraft records that shows compliance with this AD, per section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). Send the following to the Small Airplane Directorate using the procedures described in paragraph (f) of this AD: the airplane model and serial number designation; the number of hours TIS on the airplane; the scheduled date for the replacement/installation; and the name and location of the authorized repair shop. |

**What About Alternative Methods of Compliance?**

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13. Send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

**Is There Material Incorporated by Reference?**

(g) You must do the actions required by this AD per Pilatus PC12 Service Bulletin No. 28–011, Revision No. 1, dated July 11, 2003, Pilatus PC12 Maintenance Manual Temporary Revision No. 12–03 (12–10–01), dated June 6, 2003, and Pilatus PC12 Maintenance Manual Temporary Revision No. 28–02 (28–20–04), dated June 6, 2003. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040.

You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Is There Other Information That Relates to This Subject?**

(h) Swiss AD Number HB 2003–301, dated July 17, 2003, also addresses the subject of this AD.

Issued in Kansas City, Missouri, on October 2, 2003.

**Dorenda D. Baker,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–25477 Filed 10–8–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2001–NM–326–AD; Amendment 39–13331; AD 2003–20–13]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 737–400, –500, –600, –700, and –800 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–400, –500, –600, –700, and –800 series airplanes, that requires either modification of the wiring to the windshield wiper motors in the flight compartment or replacement of those windshield wiper motor/converters with new motor/converters. This action is necessary to prevent a reduction in flight crew visibility due to stalled wiper motors during heavy precipitation and a period of substantial crew workload, which could result in damage to the airplane structure and injury to flight crew, passengers, or ground personnel during final approach for landing. This action is intended to address the identified unsafe condition.

**DATES:** Effective November 13, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 13, 2003.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Don Eiford, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6465; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–400, –500, –600, –700, and –800 series airplanes was published in the **Federal Register** on December 2, 2002 (67 FR 71500). That action proposed to require modification of the wiring to the windshield wiper motors in the flight compartment and nose wheel well areas. For certain airplanes, that action also provided for optional replacement of the windshield wiper motor/converters in the flight compartment.

**Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

*Request To Remove Prior/Concurrent Requirement for Optional Replacement*

The airplane manufacturer requests that the FAA remove the requirement specified in paragraph (b) of the proposed AD to accomplish the modification prior to or concurrently with the replacement. The airplane manufacturer states that the current production airplanes with the new wiper motor/converters, and the equivalent service bulletins (discussed below), include the proposed wiring modification. It asserts that, if new wiper motor/converters are installed, accomplishing the airplane wiring modification prior to or concurrent with the wiper motor/converter replacement is redundant and does not add to the safety of the airplane. The airplane manufacturer also states that it will revise Boeing Service Bulletins 737–30–1054 and 737–30–1055 to remove the recommendation to accomplish the airplane wiring modification prior to or concurrent with the wiper motor/converter replacement.

The FAA agrees. We find that replacement of the new wiper motor/converters, without referencing the concurrent requirements of paragraph (a) of the proposed AD, will correct the root cause of the wiper motor stalls. Therefore, we have removed the requirement to accomplish the airplane wiring modification specified in paragraph (b) of this final rule (paragraph (a) of the proposed AD) prior to or concurrent with the replacement specified in paragraphs (c) and (d) of this final rule (paragraph (b) of the proposed AD).

*Request To Mandate Optional Replacement*

One commenter requests that we mandate the proposed optional replacement of the windshield wiper motor/converters provided in paragraph (b) of the proposed AD, because the proposed wiring modification and wiper blade load reduction specified in paragraph (a) of the proposed AD would only make the flight crew's visibility worse due to wiper blade load reduction. This commenter also requested an extension of compliance time to allow adequate time to produce enough replacements. The other commenter, the airplane manufacturer, requests that we allow operators to accomplish either the modification or replacement.

We partially agree with the commenters' requests. We do not agree that the optional replacement should be mandated. While we do agree that replacing the windshield wiper motor/converters is preferable to modifying the wiring to the windshield wiper motor, we have determined that the required modification will provide an acceptable level of safety for the affected airplanes. Therefore, we have changed this final rule to add a new paragraph (a), and re-lettered subsequent paragraphs accordingly, to clarify that operators have the option of accomplishing either the modification or replacement.

Although we do not agree to mandate the replacement, we do agree that the compliance time of this final rule for accomplishing either the modification or replacement may be extended. The wiper motor/converter manufacturer has confirmed that 36 months will allow it sufficient time to manufacture/refurbish motor/converters in the new configuration, provided operators order the motor/converters in a timely manner after the effective date of this final rule. We have determined that a compliance time of 36 months will not adversely affect safety and will ensure enough time for production of new motor/converters and enable operators to comply using the preferred method. We have revised this final rule accordingly.

*Request To Reference Additional Service Information*

Both commenters request that Boeing Service Bulletin 737–30–1055, Revision 1, dated March 6, 2003, which describes procedures for replacement of the wiper motor/converters for Model 737–400 and "500 series airplanes equipped with brushless windshield wiper motor/converters, be added to the proposed AD for accomplishing the optional replacement for those airplanes. Both commenters further point out that this service bulletin was not included in the proposed AD.

We agree. Since the issuance of the proposed AD, we have reviewed and approved Revision 1 of Boeing Service Bulletins 737–30–1054 and 737–30–1055, both dated March 6, 2003, which describe procedures for the replacement of the wiper motor/converters. The proposed AD referenced the original issue of Boeing Service Bulletin 737–30–1054 as the appropriate source of service information for accomplishment of the replacement for Model 737–600, –700, and –800 series airplanes. The procedures specified in Revision 1 are essentially similar to those in the original issue of the service bulletins. We have changed this final rule to reference Revision 1 of those service bulletins as the appropriate sources of service information for the replacement. We have also added paragraph (d) to this final rule to add the replacement for Model 737–400 and –500 series airplanes, and added new paragraphs (e) and (f) to this final rule to give credit to operators for replacements accomplished before the effective date of this AD per the original issue of Boeing Service Bulletins 737–30–1054 and 737–30–1055. Replacement, accomplished after the effective date of this AD, shall be done in accordance with Boeing Service Bulletin 737–30–1055, Revision 1, dated March 6, 2003.

*Request To Remove References to Windshield Wiper Blade Flutter*

The airplane manufacturer also states that Boeing Service Bulletin 737–30–1055 will be revised to state that it corrects the wiper stalling problem, not the wiper blade flutter as described in the original issue of Boeing Service Bulletin 737–30–1054. The airplane manufacturer asserts that the wiper blade flutter was a Boeing production issue, neither affecting safe operation of the system nor prevalent in the fleet.

From this statement, we infer that the airplane manufacturer is requesting that we remove references to loss of wiper blade load leading to flutter of the wiper arm from the proposed AD. We agree and have revised this final rule accordingly.

*Request To Clarify Description of Cause of Unsafe Condition*

The airplane manufacturer requests that we clarify the cause of the reported incidents stated in the Discussion section of the proposed AD. The airplane manufacturer explains that further investigation of the windshield wiper stalling problem revealed the root cause of the stalling to be inadequate backlash or clearance between the gears inside the wiper motor's converter, causing large internal losses due to friction between the gears, not the result of inadequate torque caused by insufficient electrical current as described in the proposed AD.

In light of the results of the additional investigation described previously, we agree that the cause of the wiper motor/converter stalling could be more accurately described. However, the Discussion section is not repeated in a final rule, so no change to this final rule is necessary in this regard.

*Request To Revise the Description of Location of the Modification*

The other commenter requests that we revise the proposed AD to exclude references to the "nose wheel well areas." The commenter points out that Boeing Alert Service Bulletin 737–30A1052 does not specify a wiring modification in the those areas. We agree and have revised this final rule to remove references to the nose wheel well areas.

*Request To Allow Designated Engineering Representative (DER) Approval*

The airplane manufacturer requests that certification of the new wiper motor/converter installed on airplanes without the wiring modification or production equivalent be accomplished by DER approval of revised Boeing

Service Bulletins 737–30–1054 and 737–30–1055.

We do not agree. Because we have revised this final rule to allow operators to accomplish the replacement per Boeing Service Bulletins 737–30–1054 and 737–30–1055, as applicable, as explained previously, there is no need for DER approval. No change to this final rule is necessary in this regard.

### Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

### Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

### Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

### Cost Impact

There are approximately 483 airplanes of the affected design in the worldwide fleet. The FAA estimates that 162 Model 737–600, –700, and –800 series airplanes of U.S. registry will be affected by this AD.

The wiring modification, if accomplished in lieu of the wiper motor/converter replacement, will take approximately 15 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts will be provided by the airplane manufacturer at no cost to operators. Based on these figures, the cost impact of the wiring modification required by this AD on U.S. operators is estimated to be $157,950, or $975 per airplane.

The wiper motor/converter replacement, if accomplished in lieu of the wiring modification, will take approximately 3 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Parts cost will be minimal. Based on these figures, the cost impact of the replacement required by this AD is estimated to be $31,590, or $195 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Currently, there are no affected Model 737–400 or –500 series airplanes on the U.S. Register. However, should an airplane be imported and placed on the U.S. Register in the future, the wiring modification, if accomplished in lieu of the wiper motor/converter replacement, will take approximately 20 work hours to accomplish, at an average labor rate of $65 per work hour. Required parts will be provided by the airplane manufacturer at no cost to operators. Based on these figures, the cost impact of the wiring modification will be $1,300 per airplane.

Should an affected Model 737–400 or –500 series airplane be imported and placed on the U.S. Register in the future, wiper motor/converter replacement, if accomplished in lieu of the wiring modification, will take approximately 4 work hours to accomplish the replacement of the wiper motor/converters, at an average labor rate of $65 per work hour. Parts cost will be minimal. Based on these figures, the cost impact of the replacement will be $260 per airplane.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

**2003–20–13 Boeing:** Amendment 39–13331. Docket 2001–NM–326–AD.

*Applicability:* Model 737–400 and –500 series airplanes, as listed in Boeing Alert Service Bulletin 737–30A1052, dated October 12, 2000; and Model 737–600, –700, and –800 series airplanes, as listed in Boeing Alert Service Bulletin 737–30A1049, dated June 1, 2000; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent a reduction in flight crew visibility due to stalled wiper motors during heavy precipitation and a period of substantial crew workload, which could result in damage to the airplane structure and injury to flight crew, passengers, or ground personnel during final approach for landing; accomplish the following:

### Compliance Time

(a) For all airplanes: Within 36 months after the effective date of this AD, do the actions specified in paragraph (b) of this AD, or paragraph (c) or (d) of this AD, as applicable.

### Modification

(b) Modify the wiring to the left and right windshield wiper motors in the flight compartment (including changing certain wire bundles, reducing the windshield wiper blade force to between 3.5 and 4.5 pounds, and doing an operational test of the windshield wiper system), per Boeing Alert Service Bulletin 737–30A1052, dated October 12, 2000 (for Model 737–400 and –500 series airplanes); or Boeing Alert Service Bulletin 737–30A1049, dated June 1, 2000 (for Model 737–600, –700, and –800 series airplanes); as applicable.

### Replacement

(c) For Model 737–600, –700, and –800 series airplanes: Replace the left and right windshield wiper motor/converters in the flight compartment (including increasing the blade force of the windshield wipers to between 6.5 and 7.5 pounds; and doing an operational test of the windshield wiper system), per Boeing Service Bulletin 737–30–1054, Revision 1, dated March 6, 2003.

(d) For Model 737–400 and –500 series airplanes equipped with brushless windshield wiper motor/converters: Replace the left and right windshield wiper motor/converters in the flight compartment (including increasing the blade force of the windshield wipers to between 6.5 and 7.5 pounds; and doing an operational test of the windshield wiper system), per Boeing Service Bulletin 737–30–1055, Revision 1, dated March 6, 2003.

### Credit for Previously Accomplished Replacements

(e) Replacement of the left and right windshield wiper motor/converters accomplished prior to the effective date of this AD per Boeing Service Bulletin 737–30–1054, dated May 9, 2002, is considered acceptable for compliance with the requirements of paragraph (c) of this AD.

(f) Replacement of the left and right windshield wiper motor/converters accomplished prior to the effective date of this AD per Boeing Service Bulletin 737–30–1055, dated November 14, 2002, is considered acceptable for compliance with the requirements of paragraph (d) of this AD.

### Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

### Special Flight Permit

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

### Incorporation by Reference

(i) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 737–30A1049, dated June 1, 2000; Boeing Alert Service Bulletin 737–30A1052, dated October 12, 2000; Boeing Service Bulletin 737–30–1054, Revision 1, dated March 6, 2003; or Boeing Service Bulletin 737–30–1055, Revision 1, dated March 6, 2003; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

### Effective Date

(j) This amendment becomes effective on November 13, 2003.

Issued in Renton, Washington, on October 2, 2003.

**Vi L. Lipski,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–25491 Filed 10–8–03; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–NM–48–AD; Amendment 39–13332; AD 2003–20–14]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 727–200 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727–200 series airplanes, that requires installation of four lanyards on the forward access panel/door. This action is necessary to prevent the forward ceiling access panel/door from falling down and blocking the aisle, which would impede evacuation in an emergency. This action is intended to address the identified unsafe condition.

**DATES:** Effective November 13, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 13, 2003.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Keith Ladderud, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6435; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 727–200 series airplanes was published in the **Federal Register** on April 16, 2003 (68 FR 18569). That action proposed to require installation of four lanyards on the forward access panel/door.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

### Request To Revise Applicability

The commenter, the manufacturer, requests that the applicability of the proposed AD be revised to include only those airplanes that remain in a passenger configuration and to exclude those certified to permanently fly in a cargo configuration. The commenter also requests that special consideration be given to airplanes that are presently parked (out of service). The commenter states that, of the total number of airplanes affected by the proposed AD and still in flying condition, approximately 50 percent have been converted to a cargo configuration. The commenter adds that there are 20 affected airplanes in active service that have retained the passenger configuration, which represents 22 percent of the total affected fleet, and that the remaining flyable passenger fleet is presently parked.

The FAA does not agree that the applicability of the AD should be revised. Airplanes that have been modified to fly in a cargo configuration may still be subject to the unsafe condition addressed by this AD. Numerous supplemental type certificates (STC) exist, which, depending on the configuration, may or may not have the forward ceiling access panel/door installed. Airplanes in the cargo configuration, which do have the forward ceiling access panel/door installed are still subject to this AD. However, operators of airplanes in the cargo configuration that do not have the forward ceiling panel/door installed may request that the cargo modification be approved as an alternate method of compliance, as explained in Note 1 of this AD pertaining to altered products. No change to the final rule is necessary in this regard.

We do not agree that special consideration is necessary for airplanes that have been parked. Those airplanes need only comply with the requirements of this AD before they return to service. No change to the final rule is necessary in this regard.

### Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

### Change To Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

### Cost Impact

There are approximately 100 airplanes of the affected design in the worldwide fleet. The FAA estimates that 78 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $5,070, or $65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

**2003–20–14 Boeing:** Amendment 39–13332. Docket 2003–NM–48–AD.

*Applicability:* Model 727–200 series airplanes, certificated in any category, as listed in Boeing Special Attention Service Bulletin 727–25–0298, dated February 13, 2003.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the forward ceiling access panel/door from falling down and blocking the aisle, which would impede evacuation in an emergency, accomplish the following:

### Lanyard Installation

(a) Within 18 months after the effective date of this AD, install 4 lanyards on the forward ceiling access panel/door, in accordance with Boeing Special Attention Service Bulletin 727–25–0298, dated February 13, 2003.

### Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

### Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR

21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(d) The actions shall be done in accordance with Boeing Special Attention Service Bulletin 727–25–0298, dated February 13, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Effective Date**

(e) This amendment becomes effective on November 13, 2003.

Issued in Renton, Washington, on October 2, 2003.

**Vi L. Lipski,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–25490 Filed 10–8–03; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2000–NE–47–AD; Amendment 39–13318; AD 2003–19–15]**

**RIN 2120–AA64**

### Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines; Correction

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This document makes a correction to Airworthiness Directive (AD) 2003–19–15, applicable to Pratt & Whitney PW4000 series turbofan engines. AD 2003–19–15 was published in the **Federal Register** on September 30, 2003 (68 FR 56143). In the amendatory language, under § 39.13 [Amended], the amendment number of the new action was inadvertently omitted. This document corrects that omission. In all other respects, the original document remains the same.

**EFFECTIVE DATE:** October 9, 2003.

**FOR FURTHER INFORMATION CONTACT:** Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7133; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** A final rule airworthiness directive, FR Doc. 03–24486, applicable to Pratt & Whitney PW4000 series turbofan engines, was published in the **Federal Register** on September 30, 2003 (68 FR 56143). The following correction is needed:

■ On page 56145, in the second column, under § 39.13 [Amended], in the sixth line, add "Amendment 39–13318." after "Pratt & Whitney:".

Issued in Burlington, MA, on October 3, 2003.

**Jay J. Pardee,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 03–25577 Filed 10–8–03; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

### 21 CFR Part 347

**[Docket No. 78N–021A]**

**RIN 0910–AA01**

### Skin Protectant Drug Products for Over-the-Counter Human Use; Astringent Drug Products; Final Monograph; Direct Final Rule; Confirmation of Effective Date

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** The Food and Drug Administration (FDA) is confirming the effective date of October 27, 2003, for the final rule that appeared in the **Federal Register** of June 13, 2003 (68 FR 35290). The direct final rule amends the regulation that established conditions under which over-the-counter (OTC) skin protectant astringent drug products are generally recognized as safe and effective and not misbranded. This action revises some labeling for astringent drug products to be consistent with the final rule for OTC skin protectant drug products (68 FR 33362, June 4, 2003) and adds labeling for certain small packages (styptic pencils). This document confirms the effective date of the direct final rule. This action is part of FDA's ongoing review of OTC drug products.

**DATES:** Effective date confirmed: October 27, 2003.

**FOR FURTHER INFORMATION CONTACT:** Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2307.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of June 13, 2003 (68 FR 35290), FDA solicited comments concerning the direct final rule for a 75-day period ending August 27, 2003. FDA stated that the effective date of the direct final rule would be on October 27, 2003, 60 days after the end of the comment period, unless any significant adverse comment was submitted to FDA during the comment period. FDA did not receive any significant adverse comments.

**Authority:** 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

Accordingly, the amendments issued thereby are effective.

Dated: October 3, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–25648 Filed 10–8–03; 8:45 am]

**BILLING CODE 4160–01–S**

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## POSTAL SERVICE

### 39 CFR Part 111

### Eligibility Requirements for Certain Nonprofit Standard Mail Matter

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** In this final rule, the Postal Service adopts an amendment to Domestic Mail Manual standards that expands eligibility for Nonprofit Standard Mail rates by exempting certain matter soliciting monetary donations from application of the cooperative mail rule.

**EFFECTIVE DATE:** November 13, 2003.

**FOR FURTHER INFORMATION CONTACT:** Jerome M. Lease, Mailing Standards, United States Postal Service, 703–292–4184.

**SUPPLEMENTARY INFORMATION:** In a proposed rule published in the **Federal Register** on May 6, 2003 (68 FR 23937–23939), the Postal Service proposed to expand the eligibility for Nonprofit Standard Mail rates by exempting certain fundraising mailings from the application of the cooperative mail rule. For the reasons explained herein, the Postal Service adopts the proposal, with minor modifications.

The proposal provided background concerning Nonprofit Standard Mail eligibility; the traditional role of Congress in expansion of eligibility for these rates; the history of the cooperative mail rule and its application to fundraising mailings; recent concerns raised by nonprofit representatives concerning application of the cooperative mail rule on fundraising mail and potential effects on nonprofit organizations; and proposed legislation to exempt certain fundraising mail from application of the rule. The proposal also explained the Postal Service's reluctance to propose a rulemaking on these issues since expansion of eligibility for nonprofit rates has traditionally been accomplished through legislation. Nevertheless, as the proposal discussed, the Postal Service determined to embark upon this rulemaking with the understanding that it represented the consensus of parties with an interest in nonprofit issues, including bipartisan Congressional support, representatives of both nonprofit organizations and professional fundraisers, and the Postal Service; that it was needed to assist nonprofit organizations in obtaining support necessary to fund their programs; and that this result could be accomplished more quickly administratively than legislatively.

The Postal Service received 67 comments concerning its proposal, including one that was received late but was considered. The commenters were diverse, including nonprofit organizations and organizations representing such organizations; professional fundraisers and organizations representing these commercial entities; Congressional representatives; private individuals; and an organization representing state officials that regulate charities. The comments also presented a broad range of views. A significant majority of the comments urged the Postal Service to adopt the rule as proposed. A small number of comments, concerned with potential abuses, recommended limitation of the proposed rule. Of these commenters, a small number recommended that the Postal Service withdraw the proposal, while the remainder recommended that it be adopted with additional restrictions. In contrast, a lesser number of comments recommended that the exemption from application of the cooperative mail rule be expanded even further. Additionally, several comments recommended that the rule should be retroactive.

One of the comments that urged withdrawal of the rule argued that the rule would primarily benefit commercial fundraisers, rather than nonprofit organizations, while the other spoke more generally of potential abuse. If the former assertion were proven to be true, it would give the Postal Service reason to consider withdrawing the proposal. That is, the Postal Service understands that the primary concern of Congress and the nonprofit industry in seeking changes in this area was to benefit nonprofit organizations. Admittedly, the Postal Service does not have independent knowledge to verify the accuracy of the commenter's claims, since the Postal Service does not monitor or regulate the business relationships between nonprofit organizations and professional fundraisers. The comment did not provide evidence to substantiate its claim. Moreover, both nonprofit organizations and associations representing them, who obviously have an interest in this question, urge adoption of the proposal or a modified version of it. This suggests, and some of these comments specifically state, that the change will benefit at least some nonprofit organizations. Accordingly, the Postal Service does not find it appropriate to reject the proposal, as urged by this comment.

The comments that urge the imposition of restrictions narrowing the proposed exemption from the cooperative mail rule do so for reasons related to those raised by comments seeking withdrawal of the proposal. That is, although they do not urge rejection of the new policy, these comments express concern that some professional fundraisers may use the new rules to take advantage of inexperienced or unsophisticated nonprofit organizations.

At the outset, it should be noted that the proposed rule does not dictate the terms of the relationship between nonprofit organizations and fundraisers. If anything, it increases the options available to the parties. For instance, it does not prevent nonprofits from entering the type of principal-agent relationship with fundraisers contemplated by the cooperative mail rule. And, as urged by the numerous parties that sought the Postal Service rulemaking in this area, it allows the nonprofits to consider other relationships to retain the services of professional fundraisers.

The Postal Service does not doubt that the proposed change in its standards will provide individual nonprofit organizations the freedom to enter agreements that, in hindsight, at least a few will conclude to have been unwise. However, the Postal Service does not believe that this provides the justification, at least at this time, to adopt the additional restrictions urged by some comments. Those proposals recommend that the Postal Service require nonprofits and fundraisers to adhere, and certify their compliance, to a variety of conditions concerning their relationship. The conditions suggested include: (1) A restriction against any officer, director, principal, or fiduciary of the party that is ineligible to mail at nonprofit rates (hereafter "ineligible participant") or a corporate affiliate or close relative of the ineligible participant serving as an officer, director, or key employee of the nonprofit; (2) a requirement that the arrangement between the nonprofit and ineligible participant be governed by a written contract, and that this contract be signed by a board member or officer of the nonprofit; (3) a requirement that the donations be deposited in a bank account under the nonprofit's exclusive control; (4) a requirement that the ineligible participant have no ownership or control over the list of donors responding to the solicitation, beyond a limited contingent security interest; (5) a requirement that the ineligible participant not retain ownership rights to intellectual property in the fundraising package developed at the nonprofit's expense; (6) a requirement that, in instances where the ineligible participant extends credit to the nonprofit, the credit terms are not conditioned upon the continued employment of the ineligible participant; and (7) a requirement that the mailing not constitute an excess benefit transaction as defined by the Internal Revenue Service. As explained, the Postal Service has determined to adopt the fourth suggestion, in part. Other than that item, for the reasons discussed below, the Postal Service has determined not to adopt the restrictions suggested by these commenters.

First, based on comments received by the Postal Service, it is clear there is significant disagreement as to whether any, much less these, additional restrictions should be adopted. As discussed above, and in the earlier **Federal Register** notice, the Postal Service proposed its rule change reluctantly, based on an understanding there was a broad consensus among interested parties supporting it. Although there appears to remain a general consensus in support of the proposal, there is no consensus supporting any of the suggested additional restrictions.

Second, even if the Postal Service found it appropriate to consider additional postal standards in this area, it is not convinced that the standards suggested are necessarily appropriate. The Postal Service understands the nonprofit universe to be diverse. For example, nonprofits may be large or small, well-established or relatively new, relatively well-funded or not well-funded, run by a permanent paid staff or all-volunteer. It seems to us difficult to impose a set of restrictions that should be universally applied to all of these organizations. However, that is what the comments suggest.

Third, even if the terms suggested by the commenters are reasonable, the need to impose them by regulation is not clear to the Postal Service. That is, although the need to ensure that nonprofit organizations are not subject to abuses by commercial entities is a laudable objective, it might be accomplished, or at least attempted, through alternatives to regulation. For example, education or training of nonprofits may prove to be sufficient, particularly if it is true that adherence to the suggestions is financially beneficial for the nonprofit. There are a number of interested entities that might provide this education and training: associations representing nonprofit organizations; associations representing fundraisers; and government entities that regulate professional fundraisers and nonprofits. The Postal Service encourages these associations and government agencies to undertake efforts to educate nonprofit organizations and to take other appropriate measures to protect nonprofits from potential abuses. We also encourage nonprofit organizations to utilize these resources and to review their existing and proposed fundraising arrangements and consider whether the terms of those arrangements are in their best interests. The Postal Service will be happy to assist, as appropriate, in these efforts.

Fourth, the Postal Service also has doubts that the procedures suggested by some of the comments are administratively feasible. The comments did not appear to suggest that the Postal Service undertake the difficult task of independently verifying mailers' compliance with the proposed conditions. Rather, they suggested that the parties each sign the postage statements certifying compliance with the new standards and that the Postal Service rely upon these statements. However, the Postal Service does not require all parties to sign the postage statement at this time and, when analogous proposals have been raised in the past, mailers have pointed out the logistical problems they would face if required to sign postage statements for mail prepared and entered by their agents. Moreover, even if it is not contemplated by the commenters that the Postal Service will seek to enforce the suggested conditions beyond ensuring that the parties sign the postage statement, it is unlikely that the Postal Service can avoid all other enforcement activity. For instance, if it is alleged that parties are not in compliance, despite mailing at the nonprofit rates while certifying they did comply, it is likely that the Postal Service would be expected to investigate the assertions. Unlike violations of the current cooperative mail rule, which often can be determined by examination of the parties' contractual arrangements, some of the proposed conditions would likely require a more extensive investigation. For example, the restriction against officers and others with close ties to the ineligible participant (including the close relatives of these individuals) serving as officers, directors, or key employees of the nonprofit would require an exhaustive examination of the organization charts and employment rolls of each organization. Determining whether there is a violation of the IRS excess benefit transaction standard would require Postal Service employees to develop expertise in these standards and to obtain the information needed to apply them. Given the possibility of IRS investigations of the parties under the same standard, this requirement would create the risk of duplicative government efforts.

There is also the likelihood that the proposed conditions will create practical, administrative hardships for some nonprofits. For example, the requirement that the donated funds be deposited in a bank account controlled exclusively by the nonprofit could prove difficult for nonprofits that, because of size or other concerns, are ill-equipped to handle such accounts. Similarly, the requirement that the board members or officers sign fundraising agreements could create difficulties for organizations that delegate these responsibilities to other parties. As the Postal Service is aware from its own purchasing procedures, it is not unusual for employees that are not officers to be given authority to sign contracts.

Adoption of the proposed conditions also could work to the financial detriment of some nonprofits. The proposed rule provides additional options for nonprofits, thereby giving them additional choices in their efforts to find the arrangement that will maximize the benefit to the nonprofit. For instance, it may be beneficial for some nonprofits to consider arrangements concerning donor lists, intellectual property rights, and credit terms beyond those that would be permitted under the proposed conditions. Limiting the choices available to nonprofits might, in some instances, take away the option that would be best for some organizations. Of course, it could be argued that increasing the options available to nonprofits will increase the likelihood that some, particularly the least sophisticated, will make the wrong choice. However, as observed above, the appropriate safeguard against this possibility would seem to be the education of nonprofits to make the best choices in their particular circumstances, rather than eliminating options that might be prove to be the best choice for some of them.

Finally, the Postal Service is concerned that adoption of the proposed conditions may create conflicts with state or federal statutes and that, if such conflicts occur, mailers would be placed in the untenable position of determining whether to comply with the statutes or with postal regulations. Indeed, as discussed in the notice announcing the proposed rule in 65 FR 23939 , ensuring that our customers "do not unintentionally violate the laws of those states that regulate the financial arrangements between nonprofits and certain types of professional fundraisers" was one of the motives underlying the rulemaking. The Postal Service is aware that all states have agencies with oversight over charitable solicitations, including state Attorney Generals; Secretaries of State; and Departments of Consumer Protection, Consumer and Regulatory Affairs, Agriculture and Consumer Services, Commerce, Commerce and Consumer Protection, Professional and Financial Regulation, Business Regulation, or Regulation and Licensing, or a combination of such state agencies. The Postal Service is aware also that most states have laws regulating the relationship between professional fundraisers and their nonprofit clients. At the present time, it appears that at least 28 states have enacted some type of financial distribution requirement on charitable fundraisers and, if anything, we understand that the trend toward such state oversight is increasing. Additionally, there are a number of federal agencies with the authority and expertise to enact and enforce standards concerning these relationships, such as the Federal Trade Commission, Internal Revenue Service, and Department of Justice. Under an exemption of fundraising mailings from the cooperative mail rule, the states and federal agencies will be able to adopt and enforce their standards without concern that such action might be in conflict with postal rules.

As alluded to above, the Postal Service has determined to adopt a condition concerning donor lists (*i.e.*, the lists of persons contributing donations in response to the solicitation). Under this condition, the exemption from application of the cooperative mail rule will apply only where the nonprofit organization is given a list of the donors, contact information for those persons, and the amount of their donations. Based on past reviews of fundraising agreements, the Postal Service believes that this condition is already generally followed in the fundraising industry. Moreover, compliance with this condition generally can be determined by postal officials from review of the agreement between the fundraiser and the nonprofit. Finally, to guard against the possibility that some nonprofits will be better served financially if not subject to this condition, postal standards will allow them to waive the receipt of this listing, as long as that is done in writing.

Based on these considerations, the Postal Service has determined not to adopt at this time the remaining restrictions suggested by some comments. Nevertheless, they do raise significant concerns and the Postal Service's Consumer Advocate will monitor implementation of the rule to determine whether abuses are occurring. As promised in the proposal, if such abuses or other unintended consequences occur after the rulemaking, the Postal Service will consider a further rulemaking or other administrative actions.

Several commenters, although in favor of the proposal, assert that the rulemaking did not go far enough. They assert that the exemption from the cooperative mail rule should also cover the sale of products and services, at least those of nominal value, as well as a variety of documents including brochures, thank you letters, letters confirming the amount of donations, newsletters, and "chase" letters. The Postal Service understands the latter to refer to letters that follow up on telemarketing fundraising campaigns and remind donors that their pledges have not been paid. Assuming that understanding of "chase" letters is correct, the Postal Service considers them to be a solicitation for monetary donations within the proposal. Accordingly, as long as they do not contain other disqualifying material, such letters would be exempt from application of the cooperative mail rule.

The Postal Service has determined not to expand the proposal to provide that pieces promoting the sale of products and services also be exempted from application of the cooperative mail rule. As explained in the proposal, the exemption is strictly limited to fundraising mailings seeking monetary donations and does not apply to mailings promoting any goods or services. The suggestion goes beyond the consensus agreement that led to the rulemaking. Moreover, as the Postal Service explained in the notice discussing the proposal, adoption of the suggestion would create significant potential for abuse by commercial organizations and may place small businesses and other for-profit organizations who sell similar goods and services at a competitive disadvantage. The suggestion that the proposal be expanded to cover only products and services of nominal value does not alter these considerations; if anything, it could create concerns in administering what is included within that standard.

The Postal Service also has determined not to expand this rulemaking to cover the other documents (*e.g.*, thank you letters, newsletters, confirmations of donations) identified in the comments. These suggestions are beyond the scope of the rulemaking as well as the consensus favoring the exemption of certain fundraising mailings from application of the cooperative mail rule. Moreover, the need for a rulemaking to address these documents is unclear. The Postal Service is not aware of any general concern regarding its policies involving these documents. Some of them may, in fact, be generally sent as First-Class Mail, and thereby they are not eligible for Nonprofit Standard Mail rates in any case.

Finally, several commenters suggest that the proposed policy be made retroactive. The Postal Service has determined not to do so and, as explained in its proposal, the change in policy is prospective only, effective on the date of enactment. A retroactive change could open the Postal Service to an undetermined number of refund claims.

For these reasons, the Postal Service adopts the rule as proposed but, in addition to the condition described above, makes three minor changes. First, the proposed revision was to apply only to nonprofit organizations authorized to mail at the nonprofit rates. The rule is changed to apply to all customers authorized to mail at Nonprofit Standard Mail rates. Second, the proposed rule is revised to make clear that the exception from application of the cooperative mail rule applies only where the monetary donations solicited are for the entity authorized to mail at nonprofit rates. Finally, the language is revised to make clear that the exception is prospective only.

**List of Subjects in 39 CFR Part 111**

Administrative practice and procedure, Postal Service.

## PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Add the following to Domestic Mail Manual section E670.5.3: "Exception: effective November 13, 2003, this standard no longer applies to mailings by an organization authorized to mail at Nonprofit Standard Mail rates soliciting monetary donations to the authorized mailer and not promoting or otherwise facilitating the sale or lease of any goods or service. This exception applies only where the organization authorized to mail at Nonprofit Standard Mail rates is given a list of each donor, contact information (*e.g.*, address, telephone number) for each, and the amount of the donation or waives in writing the receipt of this list."

An appropriate amendment to 39 CFR part 111 to reflect these changes will be published.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 03–25643 Filed 10–8–03; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[NM–46–1–7615a; FRL–7571–1]**

## Approval and Promulgation of Implementation Plans; New Mexico; Revision to Motor Vehicle Emission Budgets in Bernalillo County, New Mexico Carbon Monoxide Air Quality Maintenance Plan Using MOBILE6

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is taking direct final action approving the State Implementation Plan (SIP) revisions for Bernalillo County, New Mexico, which is a carbon monoxide maintenance area. This SIP revision was submitted to EPA by the Governor of New Mexico on May 15, 2003. More specifically, EPA is approving the county's revised Motor Vehicle Emissions Budget (MVEB) for carbon monoxide (CO) for 1996, 1999, 2002, 2005 and 2006. This budget was developed using EPA's latest emissions

modeling program, MOBILE6. This submittal updates the maintenance plan by establishing new transportation conformity MVEBs for use by the Mid-Region Council of Governments, the area's Metropolitan Planning Organization (MPO). These budgets will continue to maintain the total on-road mobile source emissions for the area at or below the attainment level for the CO National Ambient Air Quality Standard (NAAQS).

**DATES:** This rule is effective on November 24, 2003 without further notice, unless EPA receives adverse comment by November 10, 2003. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 office listed below. Electronic comments should be sent either to *Diggs.Thomas@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in the Final Action part of this document. Copies of the State's submittal and other documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas, 75202–2733.

City of Albuquerque Environmental Health Department, 1 Civic Plaza, Albuquerque, New Mexico 87103. Telephone 505–768–2600.

**FOR FURTHER INFORMATION CONTACT:** Ms. Peggy Wade, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas, 75202–2733, telephone (214) 665–7247 or *Wade.Peggy@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we", "us", or "our" is used, we mean the EPA.

**Outline**

I. Background
II. What Is MOBILE6?
III. Analysis of the State's Submittal
  A. Why Were Updated Carbon Monoxide Budgets Established?
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## I. Background

In 1990, the City of Albuquerque/Bernalillo County (Albuquerque) in New Mexico had a CO design value of 11.1 parts per million, exceeding the National Ambient Air Quality Standard (NAAQS) of 9 parts per million (8-hour average basis). Consequently, Albuquerque was classified as a moderate nonattainment area for CO under the Clean Air Act (the Act). As required by the Act, on November 5, 1992, New Mexico submitted for EPA approval a revision to the SIP to address Albuquerque's CO nonattainment.

Different parts of the November 1992 SIP submittal were approved at different times, with approval of all aspects completed in June of 1996.

Air quality data in the Albuquerque area showed no violations of the CO NAAQS between 1992 and 1995, meeting the first criterion for redesignation. On April 14, 1995, New Mexico submitted a request that Albuquerque be redesignated to attainment for CO. EPA proposed approval of this request on February 16, 1996. This approval was made effective on July 15, 1996.

The Act also requires a periodic inventory of all emissions from area, mobile, and stationary sources. The 1993 emission inventory found the following CO emissions levels, in tons per day: Stationary sources, 3.18; area sources, 111.60; On-road mobile sources, 274.16; and nonroad mobile sources, 45.74. Total CO emissions were 434.69 tons per day.

This inventory was further updated in 1996. This updated inventory reflected the following CO emissions levels, in tons per day: On-road mobile sources, 266.99; nonroad mobile sources, 50.90; area sources, 67.19; and stationary sources, 3.92. Total CO emissions were inventoried at 389.0 tons per day.

The Albuquerque/Bernalillo County area submitted further revisions to its maintenance plan emissions budgets on February 4, 1999, using the MOBILE5 emission factor modeling program. These revisions, for years 1996–2006, increased the budgets for mobile and stationary source emissions but decreased the budget for area source emissions, resulting in an overall decrease in budgeted emissions. These revisions also established a 2010 emissions budget. A direct final rule approving these revisions was published December 20, 1999. However, adverse comments were received and the direct final approval was withdrawn. After addressing the comments received, the EPA gave final approval to the budget revisions for 1996–2010 on May 24, 2000 (65 FR 33455). The revised MVEBs are as follows, in tons of CO emissions per day: 1996, 266.99; 1999, 229.09; 2002, 209.1; 2005, 205.67; 2006, 205.86; and 2010, 222.46.

## II. What Is MOBILE6?

MOBILE6 is the latest in a series of EPA emissions factor models for estimating pollution from on-road motor vehicles in states outside of California and represents the first major update of the preexisting MOBILE model since 1993. The release of this model was announced in a **Federal Register** notice published on January 29, 2002 (67 FR 4254). This date marks the beginning of the two-year grace period, after which all areas must use MOBILE6 for emissions factor modeling for transportation conformity purposes. MOBILE6 calculates emissions of carbon monoxide and other pollutants from passenger cars, motorcycles, buses, and light-duty and heavy-duty trucks. The model accounts for the emission impacts of factors such as changes in vehicle emissions standards, changes in vehicle populations, and variation in local conditions such as temperature, humidity, fuel quality, and air quality programs.

MOBILE6 is used to calculate current and future inventories of motor vehicle emissions at the national and local level. These inventories are used to make decisions about air pollution policies and programs at the local, state and national level. Inventories based on MOBILE6 are also used to meet the federal Clean Air Act's SIP and transportation conformity requirements.

The MOBILE model was first developed in 1978 and MOBILE6 is the first major update of the model since 1993. It has been updated many times to reflect changes in vehicle fleet composition and fuels, to incorporate EPA's growing understanding of vehicle emissions, and to cover new emissions regulations and modeling needs.

## III. Analysis of the State's Submittal

### *A. Why Were Updated Carbon Monoxide Budgets Established?*

The existing MVEBs for CO were last modified through a SIP revision approved and made effective by EPA on May 24, 2000 (65 FR 33455).

To address and accommodate the release of MOBILE6 as the latest EPA-approved emissions factor model, the governor of New Mexico submitted a SIP revision to EPA on May 15, 2003. The MVEBs contained in the current CO maintenance plan were calculated with a previous emissions factor model, MOBILE5a. This submittal revises the Motor Vehicle Emissions Budgets for the years 1996, 1999, 2002, 2005 and 2006 using MOBILE6. Note that only the MVEBs are being revised using the MOBILE6 model; budgets for the other source categories will remain unchanged as the MOBILE6 model does not affect these categories. However, changes in the estimated amount of CO produced by the on-road mobile source category will affect the CO baseline level and the CO totals by year. Therefore, the baseline level and amounts of total CO by year will be revised in response to the MOBILE6 analysis.

The EPA guidance document, Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity, issued by John Seitz on January 18, 2002 ("MOBILE6 Guidance"), states that nonattainment and maintenance areas may forgo the requirement to update all planning assumptions when updating the MVEBs with MOBILE6, if the area can demonstrate that these assumptions have not changed since the last budget revision. For CO, population is the most important assumption underlying the CO forecasts as it has a direct impact on the number of miles driven. Comparing the Albuquerque/Bernalillo County population figure for the year 2000 used in the last SIP revision (556,248) to the population for the same area recorded in the 2000 Census (556,678) results in a difference of 0.077%, less than 1%. Because the estimated figure matches so closely with the actual census count, the requirement that the latest planning assumptions continue to be valid is met and this SIP revision continues to use these estimates. Additionally, work has already begun on the required second ten-year maintenance plan, due to EPA in June of 2004. With this expected submission, the MPO will update the emissions inventory in its entirety with the latest planning assumptions and demographic data.

### *B. Recalculating the Motor Vehicle Emissions Budget With MOBILE6*

Because of the significant difference in modeling results between the previous version of the emissions factor model, MOBILE5a, and the updated version, MOBILE6, the on-road mobile source category in the emissions inventory was recalculated for all years represented in the ten-year maintenance time frame of the SIP using MOBILE6. This inventory provides the basis for determining the MVEBs for CO. The MVEBs are the same as the total estimated CO, in tons per day, for the on-road mobile source category in the emissions inventory. For all years beyond 2006 (the last modeled year), the MVEB will be held at the 2006 level.

The table below compares the existing MVEBs with the revised MVEBs submitted with this SIP revision.

MOTOR VEHICLE EMISSION BUDGETS

| Year | Existing (CO in tpd) | Proposed (CO in tpd) | Change |
|---|---|---|---|
| 1996 | 266.90 | 416.31 | 149.32 |
| 1999 | 229.09 | 373.05 | 143.96 |
| 2002 | 209.01 | 369.53 | 160.52 |
| 2005 | 205.67 | 367.28 | 161.61 |
| 2006 | 205.86 | 312.65 | 106.79 |

For all budget years, MOBILE6 estimates a greater production of CO than MOBILE5a. Although the MOBILE6 emissions are estimated to be higher than that previously predicted by MOBILE5a, the model still demonstrates greater relative emissions reductions benefits. Recall that only the budget estimates for on-road mobile source emissions (the MVEBs) are being revised with the MOBILE6 model. Changes in the MVEBs will, however, affect the overall CO budgets and CO baseline level even though the amount of CO in the other source categories (nonroad mobile, area, and stationary) will remain unchanged. The MOBILE6 Guidance provides that nonattainment and maintenance areas may revise the on-road mobile emissions inventory and MVEBs without revising the entire SIP and other emission inventory categories, if the SIP continues to demonstrate maintenance of the standard when the MOBILE5a-based on-road mobile source inventories are replaced with MOBILE6 inventories. To demonstrate this, the following table shows the entire emission inventory, with the on-road mobile source category replaced with the resultant MOBILE6-derived estimates. The revised MVEBs are shown, along with the currently approved inventories from the other source categories. These inventories were approved in a revision to the CO maintenance plan on May 24, 2000 (65 FR 33455).

INVENTORY SOURCE CATEGORY

[CO in tpd]

| Year | Proposed MOBILE6 MVEBs | Off-road mobile sources | Area sources | Stationary sources | Revised total inventory |
|---|---|---|---|---|---|
| 1996 | 416.31 | 50.90 | 67.19 | 3.92 | 538.32 |
| 1999 | 373.05 | 52.68 | 69.87 | 27.40 | 523.00 |
| 2002 | 369.53 | 54.46 | 72.60 | 27.54 | 524.13 |
| 2005 | 367.28 | 56.25 | 75.25 | 27.68 | 526.46 |
| 2006 | 312.65 | 56.84 | 76.09 | 27.72 | 473.30 |

The 1996 figure found in the revised total column, 538.32 tpd, is the new CO baseline level as calculated with MOBILE6. The original baseline level, as approved on May 24, 2000, was 389.0 tpd. This level represents the amount of CO, in tons per day, which may be emitted by all sources and still allow the Albuquerque/Bernalillo County area to be in attainment of the NAAQS. Essentially, this baseline represents the "cap" of emissions from all sources. The results of MOBILE6 modeling, which raises the baseline level, indicates that the initial CO baseline, as determined using MOBILE5a, was set too low. This new analysis indicates that the Albuquerque/Bernalillo County area actually had a larger amount of CO in the airshed in 1996, yet still met the NAAQS. The following table illustrates the relative gain in emissions reductions when comparing the MOBILE5a-derived estimates with those of MOBILE6.

| Year | Cap under MOBILE5a (in tpd) | Cap under MOBILE6 (in tpd) | Difference (in tpd) |
|---|---|---|---|
| 1996 | 389.0 | 538.32 | 164 |
| 2006 | 366.51 | 473.30 | 106.79 |
| Decrease in CO Emissions (in tpd) | −22.49 | −65.02 | |
| Percent Reduction | 5.78 | 12.08 | |

The greater decline in emissions seen with MOBILE6 between 1996 and 2006 can be attributed to the sensitivity of the model to local parameters incorporated into MOBILE6 and the control programs in place in Albuquerque/Bernalillo County. So, although the emissions cap is higher with MOBILE6, that difference is due to the sensitivity of the newer model.

MOBILE6 offers a more robust and accurate estimate of emissions than prior versions of the model. Comparing just the MOBILE5a and MOBILE6 on-road mobile source estimates indicates that MOBILE6 shows a relative reduction in CO emissions that is approximately twice as much as that seen with MOBILE5a.

## IV. Final Action

We have evaluated the State's submittal and have determined that it meets the applicable requirements of the Act and EPA regulations, and is consistent with EPA policy. Therefore, we are approving Albuquerque's request to revise the MVEBs in its carbon monoxide maintenance SIP using MOBILE6, EPA's latest emission factor modeling program.

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are received. This rule will be effective on November 24, 2003 without further notice unless we receive adverse comment by November 10, 2003. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

### *A. How Can I Get Copies of This Document and Other Related Information?*

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* The EPA has established an official public rulemaking file for this action under NM–46–1–7615. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official record, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Planning Section, EPA Region 6, 1445 Ross Avenue, Dallas, Texas, 75202. The EPA requests that, if at all possible, you contact the rulemaking contact listed as the Further Information Contact to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

2. *Copies of the State submittal are also available for public inspection during official business hours, by appointment at the local air agency.* City of Albuquerque Environmental Health Department, 1 Civic Plaza, Albuquerque, New Mexico 87103. Telephone 505–768–2600.

3. *Electronic Access.* You may access this **Federal Register** document electronically through the Regulations.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, which are open for comment.

The EPA's policy on public comments indicates that, whether submitted electronically or in paper, all comments will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, included the copyrighted material, will be available at the Regional Office for public inspection.

### *B. How and To Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number, NM–46–1–7615, in the subject line on the first page of your comment. Please ensure your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures you can be identified as the source of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. The EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public file, and made available in EPA's electronic public record. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider you comment.

i. *Electronic Mail (e-mail).* Comments may be sent by e-mail to Thomas Diggs *(Diggs.Thomas@epa.gov).* The EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public file, and made available in EPA's electronic public record.

ii. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov*, then select EPA at the top of the page and to "Go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word, or ASCII file format. Avoid the use of special characters and any form of encryption.

iv. *By Mail.* Send your comments to Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas, 75202–2733, Attention: NM–46–1–7615.

v. *By Hand Delivery or Courier.* Deliver your comments to: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas, 75202–2733. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

## V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 8, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Reporting and recordkeeping requirements.

Dated: September 30, 2003.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

■ 40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart GG—New Mexico

■ 2. In § 52.1620, the table in paragraph (e) entitled "EPA approved nonregulatory provisions and quasi-regulatory measures in the New Mexico SIP" is amended by adding one new entry to the end of the table to read as follows:

### § 52.1620 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE NEW MEXICO SIP

| Name of SIP provision | Applicable geographic or nonattainment area | State submittal/effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| * * * | * | * | * | * |
| Maintenance plan for carbon monoxide—Albuquerque/Bernalillo County, New Mexico: Update of carbon monoxide budgets using MOBILE6. | Bernalillo County ......... | February 12, 2003 ...... | [October 9, 2003 and FR page citation]. | ............... |
| * * * | * | * | * | * |

[FR Doc. 03–25543 Filed 10–8–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

### 49 CFR Part 1503

**[Docket No. TSA–2003–14702; Amendment Nos. 1500–1, 1502–1, 1503–1, 1510–3, 1511–2, 1540–5, 1542–1, 1544–4, 1546–1 1548–1, and 1550–1]**

**RIN 1652–AA20**

## Transportation Security Administration Transition to Department of Homeland Security; Technical Amendments Reflecting Organizational Changes; Correction

**AGENCY:** Transportation Security Administration (TSA), DHS.

**ACTION:** Final rule; correction.

**SUMMARY:** The document contains a correction to the final rule published in the **Federal Register** on August 19, 2003. That rule makes technical changes to various provisions of chapter XII, title 49 of the Code of Federal Regulations, mainly in response to enactment of the Homeland Security Act of 2002. In addition, the rule revises any references to our location address or mailing address, as necessary due to TSA's physical move of its headquarters facilities and personnel from Washington, DC, to Arlington, Virginia. TSA inadvertently left out the correct mailing address for the Enforcement Docket in certain sections of part 1503. This document adds the correct mailing address to these sections.

**DATES:** Effective October 9, 2003.

**FOR FURTHER INFORMATION CONTACT:** Marisa Mullen, Office of the Chief Counsel, TSA–2, Transportation Security Administration, West Building, Floor 8, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 277–2706; e-mail *marisa.mullen@dhs.gov*.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 19, 2003, TSA published a final rule in the **Federal Register** (68 FR 49718), making technical changes to various provisions of chapter XII, title 49 (Transportation) of the Code of Federal Regulations (CFR), mainly in response to enactment of the Homeland Security Act of 2002 (HSA). In addition, the rule revises any references to our location address or mailing address, as necessary due to TSA's physical move of its headquarters facilites and personnel from Washington, DC, to Arlington, Virginia. TSA inadvertently left out the correct mailing address for the Enforcement Docket in certain sections of part 1503. This document adds the correct mailing address to these sections, changing the address from 400 Seventh Street, SW., Washington, DC 20590 to 601 South 12th Street, Arlington, VA 22202–4220.

### Correction

In rule FR Doc. 03–20927, published on August 19, 2003 (68 FR 49718), make the following correction:

On page 49720, in the second column, add to the end of amendatory instruction 9. for §§ 1503.5(b)(2), 1503.16(f), 1503.209(b), 1503.210(a), and 1503–233(a) the following instructions: "and remove the words '400 Seventh Street, SW., Washington, DC 20590' and add in their place, the words '601 South 12th Street, Arlington, VA 22202–4220'."

Issued in Arlington, Virginia, on October 3, 2003.

**Mardi Ruth Thompson,**

*Deputy Chief Counsel for Regulations.*

[FR Doc. 03–25574 Filed 10–8–03; 8:45 am]

**BILLING CODE 4910–62–M**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[I.D. 092603D]**

## Fisheries of the Northeastern United States; Tilefish Fishery; Continuation of Specifications for the 2004 Fishing Year

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notification of continuation of specifications for fishing year 2004.

**SUMMARY:** NMFS announces that it will continue the 2003 quota specifications for the golden tilefish fishery for the 2004 fishing year. Accordingly, the total allowable landings (TAL) for the 2004 fishing year will remain at 1.995–million lb (905,172–kg). The intent of this action is to notify the public that there will be no change in the fishery specifications for tilefish for the fishing year beginning November 1, 2003.

**DATES:** Effective from November 1, 2003, through October 31, 2004.

**FOR FURTHER INFORMATION CONTACT:** Douglas W. Christel, 978–281–9141; fax 978–281–9135; e-mail *Douglas.Christel@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

### Background

The final rule implementing the Tilefish Fishery Management Plan (FMP) became effective on November 1, 2001 (66 FR 49136, September 26, 2001). Pursuant to the tilefish regulations at 50 CFR 648.290, the Tilefish FMP Monitoring Committee (Monitoring Committee) will meet after the completion of each stock assessment, or at the request of the Mid-Atlantic Fishery Management Council (Council) Chairman, to review tilefish landings information and any other relevant annual available data to determine if the annual quota requires modification to respond to changes to the stock's biological reference points or to ensure that the rebuilding schedule is maintained. Additional management measures or revisions to existing measures could also be considered at this time to ensure that the TAL would not be exceeded. Furthermore, up to 3 percent of the TAL could be set aside for a given fishing year for the purpose of funding research. In the event that a new stock assessment is not completed or the Council Chairman does not request that the Monitoring Committee meet, the regulations further specify that the previous year's specifications will remain effective and that NMFS will issue notification in the **Federal Register** to inform the public.

A new tilefish stock assessment is not scheduled to occur until 2004. Consequently, the Council Chairman did not request that the Monitoring Committee meet to determine if the annual quota requires modification to respond to stock conditions. Furthermore, the Council, at its August 2003 meeting, voted on research set-aside proposals that did not include a request for a tilefish research set-aside allocation for the upcoming fishing year. Therefore, NMFS informs the public that the 2003 quota specifications of 1.995–million lb (905,172–kg) for the golden tilefish fishery will remain in effect for the 2004 fishing year (November 1, 2003, through October 31, 2004).

A recent decision in the case of *Hadaja* v. *Evans* set aside the permit categories for the tilefish fishery. However, the TAL for the fishery is not affected by this decision. Accordingly, for the 2004 fishing year, unless otherwise modified by the Council and NMFS, the 1.995–million lb (905,172–kg) TAL is applicable to the entire fishery and will not be distributed among permit categories according to the regulations at § 648.290(b).

## Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

**Authority:** : 16 U.S.C. 1801 *et seq.*

October 3, 2003.Bruce C. Morehead,Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–25641 Filed 10–8–03; 8:45 am]

**BILLING CODE 3510–22–S**

# Proposed Rules

**Federal Register**
Vol. 68, No. 196
Thursday, October 9, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2001–NM–266–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Bombardier DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes, that currently requires inspections to detect breakage in the struts of the rear mount strut assemblies on the left and right engine nacelles, and replacement of any broken struts. The existing AD also requires eventual replacement of all currently installed struts with new and/or reworked struts, as terminating action for the inspections. This action would require new repetitive inspections of the strut assemblies for cracking of struts replaced per the existing AD, and replacement of any cracked strut with a new, machined strut. This action also would change the applicability of the existing AD by adding certain airplanes and removing certain other airplanes, and would include an optional terminating action for the repetitive inspections. The actions specified by the proposed AD are intended to prevent failure of the engine rear mount struts, which could result in reduced structural integrity of the nacelle and engine support structure. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by November 10, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–266–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–266–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

**FOR FURTHER INFORMATION CONTACT:** Jon Hjelm, Aerospace Engineer, Airframe Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7523; fax (516) 568–2716.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–266–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–266–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

On February 14, 1994, the FAA issued AD 94–04–09, amendment 39–8829 (59 FR 8393, February 22, 1994), applicable to certain Bombardier Model DHC–8–100 and DHC–8–300 airplanes, to require inspections to detect breakage in the engine rear mount strut assemblies, and replacement of broken struts. That AD also requires eventual replacement of all currently installed struts with new and/or reworked struts, as terminating action for the inspections. That action was prompted by several reports of failure of the engine rear mount struts, due to fracture at one of the rosette welds on the shank of the strut where full weld depth was not achieved during manufacture. The requirements of that AD are intended to prevent failure of the engine rear mount struts, which could reduce the structural integrity of the nacelle and engine support structure.

### Actions Since Issuance of Previous Rule

Since the issuance of AD 94–04–09, we have been advised by Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, of reports from the manufacturer and operators of Model DHC–8–100 and DHC–8–300 airplanes indicating that replacement struts installed per that AD have developed cracks. Therefore, the engine rear mount strut has been redesigned and is pressed fit assembled instead of welded which improves the endurance of the strut to prevent failure due to cracking and/or fracture.

### Explanation of Relevant Service Information

Bombardier has issued Service Bulletin 8–71–24, dated August 21, 2001, which describes procedures for replacing the existing rear mount struts in a nacelle with new, improved struts. TCCA previously issued Canadian airworthiness directive CF–2001–20, dated May 16, 2001, to ensure the continued airworthiness of these airplanes in Canada.

### FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept us informed of the situation described above. We have examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 94–04–09 to require new repetitive inspections of the strut assemblies for cracking of the struts replaced per the existing AD, and replacement of any cracked strut with a new, machined strut. This proposed AD also would change the applicability of the existing AD by adding certain airplanes and removing certain other airplanes, and would include an optional terminating action for the repetitive inspections.

Consistent with the findings of TCCA, this proposed AD would allow repetitive inspections to continue in lieu of the terminating action. In making this determination we considered that long-term continued operational safety in this case will be adequately ensured by repetitive inspections to find cracking before it represents a hazard to the airplane.

### Changes to the Applicability of the Existing AD

This proposed AD would expand the applicability in the existing AD to include Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes; serial numbers 003 through 509 inclusive. Model DHC–8–102 and –103 series airplanes, serial numbers 003 through 310 inclusive; and Model DHC–8–301, –311, and –314 series airplanes, serial numbers 100 through 311 inclusive, were identified in the existing AD.

Additionally, this proposed AD would remove Model DHC–8–314 airplanes, which were added to the applicability of the existing AD but are not U.S. type-certificated.

### Cost Impact

There are approximately 192 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 94–04–09 take approximately 16 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts are provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the currently required actions is estimated to be $1,040 per airplane.

The new detailed inspection that is proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $12,480, or $65 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

The optional terminating action, if done, would take approximately 16 work hours per strut to accomplish, at an average labor rate of $65 per work hour. Required parts would cost approximately $800 per strut. Based on these figures, the cost impact of the optional terminating action is estimated to be $1,840 per strut, per airplane.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8829 (59 FR 8393, February 22, 1994), and by adding a new airworthiness directive (AD), to read as follows:

**Bombardier, Inc. (Formerly de Havilland, Inc.):** Docket 2001–NM–266–AD. Supersedes AD 94–04–09, amendment 39–8829.

*Applicability:* Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes; serial numbers 003 through 509 inclusive; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the engine rear mount struts on the left and right engine nacelles, which could result in reduced structural integrity of the nacelle and engine support structure, accomplish the following:

**Repetitive Inspections**

(a) Within 1,000 flight hours since installation of any new or reworked rear mount strut per the replacement required by paragraph (b) of AD 94–04–09, amendment 39–8829, or within 250 flight hours after the effective date of this AD, whichever is later; do a detailed inspection for cracking of each rear mount strut in the left and right engine nacelles.

**Note 1:** Bombardier Service Bulletin 8–71–24, dated August 21, 2001, does not contain inspection procedures for the detailed inspection required by paragraph (a) of this AD; however, the definition of a detailed inspection is specified in Note 2 of this AD.

**Note 2:** For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If no crack is found, repeat the inspection at intervals not to exceed 250 flight hours, until accomplishment of paragraph (b) of this AD.

(2) If any crack is found, before further flight, replace the strut with a new, improved strut per Bombardier Service Bulletin 8–71–24, dated August 21, 2001. Repeat the inspection thereafter at intervals not to exceed 500 flight hours, for that nacelle only.

**Optional Terminating Action**

(b) Replacement of both rear mount struts in a nacelle with new, improved struts, by doing all the actions specified in the Job Set-up, Procedure, and Close-out sections of the Accomplishment Instructions of Bombardier Service Bulletin 8–71–24, dated August 21, 2001, ends the repetitive inspections required by this AD for that nacelle only. Replacement of both rear mount struts on both the left and right engine nacelles ends the repetitive inspections required by this AD.

**Parts Installation**

(c) As of the effective date of this AD, no person shall install an engine rear mount strut, P/N 87110016–001, –003, –005, –007, –009, or –011, on any airplane.

**Alternative Methods of Compliance**

(d) In accordance with 14 CFR 39.19, the Manager, New York Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

**Note 3:** The subject of this AD is addressed in Canadian airworthiness directive CF–2001–20, dated May 16, 2001.

Issued in Renton, Washington, on October 3, 2003.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–25590 Filed 10–8–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NM–283–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Dassault Model Falcon 900EX Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dassault Model Falcon 900EX series airplanes. This proposal would require modification of the front attachment area of the No. 2 engine. This action is necessary to prevent failure of the fail-safe lugs of the hoisting plate of the forward engine mount, and subsequent cracking of the pick-up folded sheet of the pylon forward rib. Such cracking could rupture the mast case box, which could result in loss of the two forward engine mounts and consequent separation of the engine from the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by November 10, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–283–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain "Docket No. 2001–NM–283–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–283–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–283–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Dassault Model Falcon 900EX series airplanes. The DGAC advises that fatigue tests revealed that the fail-safe lugs of the forward engine mount may not have adequate fatigue strength. Failure of the lugs could result in cracking of the pick-up folded sheet of the pylon forward rib, and consequent rupture of the mast case box. Such conditions, if not corrected, could result in loss of the two forward engine mounts and consequent separation of the engine from the airplane.

### Explanation of Relevant Service Information

Dassault has issued Service Bulletin F900EX–103, dated May 23, 2001, which describes procedures for modification of the No. 2 engine front attachment area. The modification involves replacing the No. 2 engine hoisting shield with a reinforced shield at the safety device attachments, and replacing the front attachment pickup doublers with new, thicker doublers. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2001–160–027(B), dated May 2, 2001, to ensure the continued airworthiness of these airplanes in France.

### FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept us informed of the situation described above. We have examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

### Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

### Difference Between Proposed AD and French Airworthiness Directive

The French airworthiness directive specifies a compliance time of "Before 3,750 flights since new," for accomplishment of the modification of the front attachment area of the No. 2 engine. However, this proposed AD would require a compliance time of "Prior to the accumulation of 3,750 flight cycles since the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, whichever occurs first." This decision is based on our determination that "since new" may be interpreted differently by different operators. We find that our proposed terminology is generally understood within the industry, and records will always exist that establish these dates with certainty.

### Cost Impact

We estimate that 36 airplanes of U.S. registry would be affected by this proposed AD, that it would take about 85 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $65 per work hour. Required parts would cost about $14,479 per airplane. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be $720,144, or $20,004 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Dassault Aviation:** Docket 2001–NM–283–AD.

*Applicability:* Model Falcon 900EX series airplanes, serial numbers 1 through 60 inclusive; certificated in any category; except those on which Dassault Modifications M2754 and M2925, identified in Dassault Service Bulletin F900EX–103, dated May 23, 2001, have been accomplished.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the fail-safe lugs of the forward engine mount, and consequent cracking of the pick-up folded sheet of the pylon forward rib, which could rupture the mast case box and result in loss of the two forward engine mounts and consequent separation of the engine from the airplane, accomplish the following:

### Modification

(a) Prior to the accumulation of 3,750 flight cycles since the date of issuance of the

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original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, whichever occurs first: Modify the front attachment area of the No. 2 engine by doing all the actions per Paragraphs 2.A. through 2.D. of the Accomplishment Instructions of Dassault Service Bulletin F900EX–103, dated May 23, 2001.

**Alternative Methods of Compliance**

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

**Note 1:** The subject of this AD is addressed in French airworthiness directive 2001–160–027(B), dated May 2, 2001.

Issued in Renton, Washington, on October 3, 2003.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–25589 Filed 10–8–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### 14 CFR Part 39

### [Docket No. 2002–NM–78–AD]

### RIN 2120–AA64

## Airworthiness Directives; Bombardier Model DHC–8–400, –401, and –402 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–400, –401, and –402 airplanes. This proposal would require a one-time inspection of the forward engine mount assemblies on the left and right engine nacelles for installation of pre-production engine mount assemblies, and follow-on corrective actions if necessary. This action is necessary to prevent failure of the forward engine mount, which could result in reduced structural integrity of the nacelle and engine support structure. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by November 10, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–78–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–78–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

**FOR FURTHER INFORMATION CONTACT:** Douglas G. Wagner, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7506; fax (516) 568–2716.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–78–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–78–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC–8–400, –401, and –402 airplanes. TCCA advises that the manufacturer of the forward engine mount assembly has indicated that an unapproved pre-production engine mount assembly was found installed in place of a production engine mount assembly. Pre-production engine mount assemblies are more susceptible to fatigue cracking than production engine mount assemblies. In addition, there is a possibility that pre-production assemblies having part number (P/N) 96042–07 are incorrectly marked with P/N 96042–09, which is the P/N on the production assemblies. Operation with pre-production engine mount assemblies could result in failure of the forward engine mount, and consequent reduced structural integrity of the nacelle and engine support structure.

### Explanation of Relevant Service Information

Bombardier has issued Alert Service Bulletin A84–71–06, Revision "A," dated December 5, 2001, which describes procedures for a visual inspection to determine the P/N and configuration of the forward engine mount assemblies on the left and right engine nacelles. If the inspection shows that any pre-production engine mount assembly is installed, the service bulletin describes procedures for follow-on corrective actions for that assembly.

Those actions include repetitive detailed visual inspections of each assembly for cracking at intervals of 250 flight cycles, and replacement of the pre-production engine mount assembly with a production engine mount assembly before further flight if cracking is found. If no cracking is found, the service bulletin specifies that the pre-production engine mount assembly may remain in service for up to 1,000 flight cycles after the initial inspection, and then reworked or replaced with a production engine mount assembly. If both engine mounts on the same nacelle have the pre-production configuration, the service bulletin specifies that one pre-production engine mount assembly must be replaced with a production engine mount assembly before further flight. The service bulletin also includes a repair letter issued by the engine manufacturer which contains rework procedures for the pre-production engine mount assembly. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–2002–07, dated January 21, 2002, to ensure the continued airworthiness of these airplanes in Canada.

### FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept us informed of the situation described above. We have examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

### Differences Between Canadian Airworthiness Directive, Service Bulletin, and Proposed Rule

The service bulletin and Canadian airworthiness directive specify a visual inspection to determine the P/N and configuration of the forward engine mount assemblies, but this proposed rule would require a general visual inspection. A note has been added to the proposed rule to define that inspection.

The service bulletin and Canadian airworthiness directive also specify a detailed visual inspection for cracking if a pre-production engine mount is installed, but this proposed rule would require a detailed inspection. A note has been added to the proposed rule to define that inspection.

### Cost Impact

We estimate that 11 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,430, or $130 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Bombardier, Inc. (Formerly de Havilland, Inc.):** Docket 2002–NM–78–AD.

*Applicability:* Model DHC–8–400, –401, and –402 airplanes; serial numbers 4005, 4006, 4008 through 4016 inclusive, 4018 through 4051 inclusive, and 4053; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the forward engine mount, which could result in reduced structural integrity of the nacelle and engine support structure, accomplish the following:

### Inspection

(a) Within 100 flight cycles after the effective date of this AD: Do a general visual inspection of the forward engine mount assemblies on the left and right engine nacelles for installation of pre-production assemblies (determine the part number and configuration for each assembly), per the Accomplishment Instructions of Bombardier Alert Service Bulletin A84–71–06, Revision "A," dated December 5, 2001. If no pre-production engine mount assembly is installed, no further action is required by this AD.

**Note 1:** For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

### Follow-On Corrective Actions

(b) If any pre-production engine mount assembly is installed, do all the applicable follow-on corrective actions (including repetitive detailed inspections for cracking, and rework or replacement of the pre-production engine mount assembly, if necessary) per all the actions specified in the Accomplishment Instructions of the service bulletin, at the applicable times specified in Paragraph I., Part D., "Compliance," of the service bulletin. Any replacement due to cracking must be done before further flight.

**Note 2:** For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

### Optional Terminating Action for Follow-On Repetitive Inspections

(c) Installation of production engine mount assemblies on all four forward engine mounts ends the repetitive inspection requirements of paragraph (b) of this AD.

### Part Installation

(d) As of the effective date of this AD, no person may install an engine mount assembly having a pre-production configuration and/or part number 96042-07 on any airplane, unless the assembly has been reworked per Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A84-71-06, Revision "A," dated December 5, 2001.

### Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, New York Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

**Note 3:** The subject of this AD is addressed in Canadian airworthiness directive CF-2002-07, dated January 21, 2002.

Issued in Renton, Washington, on October 3, 2003.

**Vi L. Lipski,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03-25588 Filed 10-8-03; 8:45 am]

BILLING CODE 4910-13-P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003-CE-32-AD]**

**RIN 2120-AA64**

# Airworthiness Directives; The New Piper Aircraft, Inc. Model PA-46-500TP Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain The New Piper Aircraft, Inc. (Piper) Model PA-46-500TP airplanes. This proposed AD would require you to replace all electronic control modules in the airplane electrical system with newly designed modules. This proposed AD is the result of reports of smoke in the cockpit and loss of electrical systems function. We are issuing this proposed AD to prevent short circuit failure and electrical arcing of the electronic control modules, which could result in loss of the electrical systems components or burning of wiring insulation and cause smoke in the cockpit. Such a condition could lead to the inability to properly control the airplane.

**DATES:** We must receive any comments on this proposed AD by December 9, 2003.

**ADDRESSES:** Use one of the following to submit comments on this proposed AD:

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-CE-32-AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329-3771.
- *By e-mail: 9-ACE-7-Docket@faa.gov.*

Comments sent electronically must contain "Docket No. 2003-CE-32-AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567-4361; facsimile: (772) 978-6584.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-CE-32-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kenneth B. Mobley, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703-6046; facsimile: (770) 703-6097.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

*How Do I Comment on This Proposed AD?*

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 2003-CE-32-AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-stamp your postcard and mail it back to you.

*Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?*

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

### Discussion

*What Events Have Caused This Proposed AD?*

We have received several reports that a condition exists in some of the electrical control modules in the airplane electrical system.

FAA analysis indicates that there is inadequate clearance and inadequate electrical isolation between the load terminal and metal case. The modules load terminal is cutting through the rubber insulating grommet and contacting the module's metal case. This causes the electrical short circuit and electrical arcing.

The following electrical system components are potentially affected by this condition:

Engine start
Strobe light
Left/right taxi light

Liquid crystal display (LCD) dimming
Dual flasher (recognition light)
Left/right pitot heat
Avionics dimming (Bezel buttons for radios)
Prop heat
Left/right fuel pump
Position light landing light
Instrument panel light dimming
Ice light
Vent defog (vent blower)
Hi/low blower
Stall heat
Dimmer switch lighting (overhead switch panel switches)

*What Are the Consequences if the Condition Is Not Corrected?*

If not corrected, short circuit failure and electrical arcing of the electronic control modules could result in loss of the electrical systems components or burning of wiring insulation and cause smoke in the cockpit. Such a condition could lead to the inability to properly control the airplane.

*Is There Service Information That Applies to This Subject?*

Piper has issued the Service Bulletin No. 1132, dated June 4, 2003.

*What Are the Provisions of This Service Information?*

The service bulletin includes procedures for:

—Removing the pilot's circuit breaker panel assembly (part-number (P/N) 102228–002); the co-pilot's circuit breaker panel assembly (P/N 102228–006); the dimmer lighting module assembly (P/N 102226–002); the stall vane heat module assembly (P/N 102227–002); and the propeller heat module assembly (P/N 102227–006);
—Returning the panel assemblies and remote module parts to the manufacture for modification;
—Visually inspecting all remaining exposed wires and equipment for evidence of heat damage;
—Repairing any damage found; and
—Installing the newly modified panel assemblies and remote module parts.

## FAA's Determination and Requirements of This Proposed AD

*What Has FAA Decided?*

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing AD action.

*What Would This Proposed AD Require?*

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

*How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?*

On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

## Costs of Compliance

*How Many Airplanes Would This Proposed AD Impact?*

We estimate that this proposed AD affects 130 airplanes in the U.S. registry.

*What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?*

We estimate the following costs to accomplish this proposed modification:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 22 × $65 per hour = $1,430 | Parts will be covered under warranty by the manufacturer. | $1,430 | $1,430 × 130 = $185,900 |

## Regulatory Findings

*Would This Proposed AD Impact Various Entities?*

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

*Would This Proposed AD Involve a Significant Rule or Regulatory Action?*

For the reasons discussed above, I certify that this proposed AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2003–CE–32–AD" in your request.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**The New Piper Aircraft, Inc.:** Docket No. 2003–CE–32–AD

### When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by December 9, 2003.

### What Other ADs Are Affected by This Action?

(b) None.

### What Airplanes Are Affected by This AD?

(c) This AD affects Model PA–46–500TP airplanes, serial numbers 4697001 through 4697140 and 4697142 through 4697153, that are certificated in any category.

### What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of reports of smoke in the cockpit and loss of electrical system functions. We are issuing this AD to prevent short circuit failure of the electronic control modules, which could result in loss of the electrical system components or burning of wiring insulation and cause smoke in the cockpit. Such a condition could lead to the inability to properly control the airplane.

### What Must I Do To Address This Problem?

(e) To address this problem, you must accomplish the following:

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Remove the following parts:<br>(i) The pilot's circuit breaker panel assembly (part-number (P/N) 102228–002);<br>(ii) The co-pilot's circuit breaker panel assembly (P/N 102228–006);<br>(iii) The dimmer lighting module assembly (P/N 102226–002);<br>(iv) The stall vane heat module assembly (P/N 102227–002); and<br>(v) The propeller heat module assembly (P/N 102227–006) | Within the next 100 hours time-in-service (TIS) after the effective date of this AD. | Per the instructions in Piper Service Bulletin No. 1132, dated June 4, 2003. |
| (2) Return the circuit breaker panels and the remote modules identified in paragraph (e)(1) of this AD to the manufacturer listed in paragraph (g) of this AD for modification. | Prior to further flight after doing the actions required in paragraph (e)(1) of this AD. | Per the instructions in Piper Service Bulletin No. 1132, dated June 4, 2003. |
| (3) Visually inspect all remaining exposed wires and equipment for evidence of heat damage and repair any damage found. | Prior to further flight after doing the actions required in paragraph (c)(1) of this AD. | Per the instructions in Piper Service Bulletin No. 1132, dated June 4, 2003. |
| (4) Install the modified circuit breaker panel assemblies and the remote modules received from the manufacturer. | Prior to further flight after doing the actions required in paragraphs (e)(1), (e)(2), and (e)(3) of this AD. | Use the instructions in Piper Service Bulletin No. 1132, dated June 4, 2003. |
| (5) Do not install any part referenced in paragraph (e)(1) of this AD unless it has been modified per Piper Service Bulletin No. 1132, dated June 4, 2003. | As of the effective date of this AD .................. | Not applicable. |

### What About Alternative Methods of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13. Send your request to the Manager, Atlanta Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Kenneth B. Mobley, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6046; facsimile: (770) 703–6097.

### How Do I Get Copies of the Documents Referenced in This AD?

(g) You may get copies of the documents referenced in this AD from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; facsimile: (772) 978–6584. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 3, 2003.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–25581 Filed 10–8–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–NE–31–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Rolls-Royce plc RB211–535 Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for Rolls-Royce plc (RR) models RB211–535C–37, RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines with radial drive steady bearing part number (P/N) LK76084 installed. This proposed AD would require initial and repetitive visual inspections of the engine oil scavenge filter for evidence of radial drive steady bearing failure, and if necessary radial drive steady bearing inspection for damage and evidence of bearing debris. This proposed AD is prompted by reports of seven low time failures of radial drive steady bearings within a four-month period. We are proposing this AD to prevent a possible dual-engine in-flight shutdown caused by radial drive steady bearing failure.

**DATES:** We must receive any comments on this proposed AD by December 8, 2003.

**ADDRESSES:** Use one of the following addresses to submit comments on this proposed AD:

- *By mail:* Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–31–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- *By fax:* (781) 238–7055.
- *By e-mail: 9-ane-adcomment@faa.gov.*

You can get the service information identified in this proposed AD from Rolls-Royce plc, P.O. Box 31 Derby, DE24 8BJ, United Kingdom (UK); telephone 011–44–1332–242424; fax 011–44–1332–249936.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–31–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

### Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. *See* **ADDRESSES** for the location.

### Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the U.K., recently notified the FAA that an unsafe condition may exist on RR models RB211–535C–37, RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines with radial drive steady bearing P/N LK76084 installed. The CAA received reports of seven low time failures of radial drive steady bearings within a four-month period. These failures were not detected through routine magnetic chip detector monitoring because the failed bronze bearing cages are nonmagnetic, and the cage failure mode is rapid.

### Relevant Service Information

We have reviewed and approved the technical contents of RR Mandatory Service Bulletin (MSB) No. RB.211–72–C815, Revision 3, dated October 5, 2000, that describes procedures for scavenge filter inspection, and if necessary, radial drive steady bearing inspection for failure debris. The CAA classified this MSB as mandatory and issued airworthiness directive 005–07–99, dated July 30, 1999, in order to ensure the airworthiness of these RR models RB211–535C–37, RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines in the U.K.

### Differences Between This Proposed AD and the Manufacturer's Service Information

Although RR MSB No. RB.211–72–C815, Revision 3, dated October 5, 2000, Accomplishment Instructions require an engine acceptance inspection, this proposal does not require an engine acceptance inspection because pre-Service Bulletin RB.211–72–C925 new or low time radial drive steady bearings are no longer available. Also, instead of the MSB requirement that inspections be triggered when a continuous illumination of the filter blockage warning light occurs, this proposal adds a repetitive inspection at 500 engine operating hour intervals after initial inspection to coincide with every airframe "A" check.

### FAA's Determination and Requirements of the Proposed AD

These RR models RB211–535C–37, RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines, manufactured in the U.K., are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept us informed of the situation described above. We have examined the CAA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Therefore, we are proposing this AD, which would require initial and repetitive visual inspections of the engine oil scavenge filter for evidence of radial drive steady bearing failure, and if necessary, radial drive steady bearing inspection for damage and evidence of bearing debris. Radial drive steady bearings with engine operating hours of 3,000 or more are not affected by this proposed AD. The proposed AD would require you to use the service information described previously to perform these actions.

### Changes to 14 CFR Part 39—Effect on the Proposed AD

On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

### Costs of Compliance

There are about 1,078 RR model RB211–535C–37, RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines of the affected design in the worldwide fleet. We estimate that 288 of these model engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take about four work hours per engine to perform the proposed actions, and that the average labor rate is $65 per work hour. Required replacement scavenge filters would cost about $100 per engine. Based on these figures, we estimate the total cost of one inspection per year in the proposed AD, to U.S. operators to be $97,920.

### Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–31–AD" in your request.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

**Rolls-Royce plc:** Docket No. 2003–NE–31–AD.

### Comments Due Date

(a) The FAA must receive comments on this airworthiness directive (AD) action by December 8, 2003.

### Affected ADs

(b) None.

### Applicability

(c) This AD applies to Rolls-Royce plc (RR) models RB211–535C–37, RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines with radial drive steady bearing part number LK76084 installed with fewer than 3,000 engine operating hours accumulated on the bearing. Radial drive steady bearings with engine operating hours of 3,000 or more are not affected by this proposed AD. These engines are installed on, but not limited to Boeing 757 and Tupolev Tu204 airplanes.

### Unsafe Condition

(d) This AD was prompted by reports of seven low time failures of radial drive steady bearings within a four-month period. We are issuing this AD to prevent a possible dual-engine in-flight shutdown caused by radial drive steady bearing failure.

### Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

### Initial Visual Inspection

(f) Perform an initial inspection of the engine scavenge filter for evidence of radial drive steady bearing failure, within 300 engine operating hours or 45 days after the effective date of this AD, whichever occurs first, and replace parts as necessary. Use paragraph 3.B. of Accomplishment Instructions of RR Mandatory Service Bulletin (MSB) No. RB.211–72–C815, Revision 3, dated October 5, 2000, to do the inspection and parts replacements.

### Repetitive Visual Inspections

(g) Thereafter, for radial drive steady bearings with less than 3,000 engine operating hours, perform repetitive inspections of the engine scavenge filter for evidence of radial drive steady bearing failure, at intervals not to exceed 500 engine operating hours since the previous inspection, and replace parts as necessary. Use paragraph 3.C. of Accomplishment Instructions of RR MSB No. RB.211–72–C815, Revision 3, dated October 5, 2000, to do the inspections and parts replacements.

### Rejected Bearings

(h) Send rejected bearings, together with the associated scavenge filter, to Rolls-Royce for analysis.

### Reporting Requirements

(i) The Office of Management and Budget (OMB) has approved the reporting requirements specified in paragraph 3. of RR MSB No. RB.211–72–C815, Revision 3, dated October 5, 2000, and assigned OMB control number 2120–0056.

### Alternative Methods of Compliance

(j) You must request AMOCs as specified in 14 CFR 39.19. All AMOCs must be approved by the Manager, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803–5299.

### Material Incorporated by Reference

(k) You must use Rolls-Royce plc Mandatory Service Bulletin No. RB.211–72–C815, Revision 3, dated October 5, 2000, to perform the inspections and parts replacements required by this AD. Approval of incorporation by reference from the Office of the Federal Register is pending.

### Related Information

(l) CAA airworthiness directive 005–07–99, dated July 30, 1999, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on October 3, 2003.

**Jay J. Pardee,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 03–25578 Filed 10–8–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF VETERANS AFFAIRS

## 38 CFR Part 36

## RIN 2900–AL54

## Loan Guaranty: Hybrid Adjustable Rate Mortgages

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its loan guaranty regulations by making two changes to conform to the Veterans Benefits Act of 2002. To implement section 303 of the law, VA proposes to incorporate into the regulations a new authority for hybrid adjustable rate mortgages. This will allow VA to guarantee loans with interest rates that remain fixed for a period of not less than the first three years of the loan, after which the rate can be adjusted annually. To implement section 307 of the law, VA proposes to increase the fee paid for assuming a VA guaranteed loan from .50 percent to 1.00 percent of the loan amount. The fee increase is already being carried out under the authority of the statute.

**DATES:** Comments must be received on or before November 10, 2003.

**ADDRESSES:** Mail or hand deliver written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or fax comments to (202) 273–9026; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AL54." All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert D. Finneran, Assistant Director for Policy and Valuation (262), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 273–7368.

**SUPPLEMENTARY INFORMATION:**

### A. Background

Under 38 U.S.C. chapter 37, VA guarantees loans made by private lenders to veterans for the purchase, construction, and refinancing of homes owned and occupied by veterans. Prior to fiscal year 1993, VA had authority to guarantee fixed rate mortgages only. During fiscal years 1993, 1994, and 1995 VA was authorized to guarantee loans with adjustable interest rates. These rates were adjusted on an annual basis, except that the first adjustment had to occur no sooner than 12 months nor later than 18 months from the date of the borrower's first mortgage payment. Authority for these loans expired at the end of fiscal year 1995.

Section 303 of Pub. L. 107–330 authorizes a demonstration project during fiscal years 2004 and 2005, whereby VA will guarantee loans with hybrid adjustable interest rates. Effective October 1, 2003, or as soon thereafter as practicable, VA proposes to guarantee loans that have interest rate adjustment provisions that (1) specify an initial rate that is fixed for a period of not less than the first three years of the loan; and (2) provide for an initial adjustment in the interest rate at the end of the initial fixed rate period. While the initial adjustment may not occur until 36 months after the first payment is due, it is not required to occur prior to any set date.

In connection with its previous adjustable rate mortgage program VA issued regulations which are currently at 38 CFR 36.4311. VA proposes to amend that section to provide for a hybrid adjustable rate mortgage with adjustment provisions that conform to the requirements of section 303 of Pub. L. 107–330.

### B. Proposed Rule

This proposed rule would make changes to the time at which the initial interest rate must occur and minor changes to the wording of the regulations. Except for these changes the proposed regulations are the same as those for the previous adjustable rate mortgage program. They provide that the interest rate adjustments: (1) Correspond to changes in the weekly average yield on one year Treasury bills adjusted to a constant maturity; (2) be made by adjusting the monthly payment on an annual basis; (3) be limited with respect to any single annual interest rate adjustment, to a maximum increase or decrease of 1 percentage point; and (4) be limited, over the term of the mortgage, to a maximum increase of 5 percentage points above the initial contract interest rate.

Because the new program is proposed to become effective October 1, 2003, VA proposes to add the words "Effective October 1, 2003," to the beginning of the introductory text of paragraph (d) of § 36.4311.

VA proposes to change the time at which the initial interest rate adjustment must occur, as required by Pub. L. 107–330. Section 36.4311(d)(2) provides "that the first adjustment may occur no sooner than 12 months nor later than 18 months from the date of the borrower's first mortgage payment." This proposed rule would amend the first sentence of this paragraph by changing "12 months" to "36 months" and by deleting the words "nor later than 18 months."

Because VA no longer sets maximum interest rates this proposed rule would remove from paragraph (d)(4) of § 36.4311 the second sentence which reads, "The rate must be reflective of adjustable rate lending." The interest rate on all VA loans is negotiated between the borrower and the lender.

VA proposes to change language concerning the pre-loan disclosure in paragraph (d)(6) of § 36.4311. This proposed rule would remove the second part of the first sentence, which states that the lender must explain the nature of the obligation "no later than on the date upon which the lender provides the prospective borrower with an application," and in its place add "at the time of loan application." This change is necessary to conform with industry practice whereby lenders make a copy of the loan application available to the borrower for review prior to the actual beginning of the loan application process. This proposed rule would also remove the language that states a copy of the signed certification shall be "included in the loan submission to VA" and in its place add "furnished to VA upon request." This change is necessary to conform to current practice whereby paper copies of loan application papers are retained by lenders until such time as they are requested by VA.

The VA guaranteed hybrid adjustable rate mortgage with the above features will be similar to the adjustable rate mortgages eligible for Federal Housing Administration (FHA) insurance. This should facilitate pooling of these mortgages together in Government National Mortgage Association (GNMA) mortgage-backed securities pools.

Because there has been no activity in the manufactured home loan program for the past several years, this pilot program for VA hybrid adjustable rate mortgages will not be made available for manufactured homes under the provisions of 38 U.S.C. 3712. However, manufactured housing which qualifies as conventional housing under the provisions of 38 U.S.C. 3710 (a)(9) will be eligible.

Section 307 of Pub. L. 107–330 increases the fee payable to VA by a person assuming a VA guaranteed loan from .50 percent to 1.00 percent of the loan amount. VA is making conforming changes to 38 CFR 36.4312 to reflect the increase. Under the provisions of Pub. L. 107–330, this increase is effective for the period beginning December 13, 2002, and ending September 30, 2003.

### Administrative Procedure Act

Section 6(a)(1) of Executive Order 12866 indicates that, in most cases, a comment period should be "not less than 60 days." However, section 303 of Pub. L. 107–330 only permits a limited, 2 year test program for Hybrid ARMs between October 1, 2003 and September 30, 2005. We believe that this proposed rule is essential to the efficient and consistent implementation of the Hybrid Adjustable Rate Mortgage demonstration program created by that section. In order to avoid delays in implementing this program, we believe it is important that final regulations be published expeditiously. For this reason, we have shortened the comment period for this rulemaking action to 30 days.

### Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

### Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

### Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

### Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The addition of hybrid adjustable rate mortgages will benefit lenders by providing an additional loan product for use in making VA-guaranteed loans. Therefore, pursuant to 5 U.S.C. 605(b) this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Program numbers applicable to this rule are 64.114 and 64.119.

### List of Subjects in 38 CFR Part 36

Condominiums, Flood insurance, Housing, Indians, Individuals with disabilities, Loan programs—housing and community development, Loan programs—Indians, Loan programs—veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Approved: August 20, 2003.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR part 36 is proposed to be amended as set forth below.

## PART 36—LOAN GUARANTY

1. The authority citation for part 36 continues to read as follows:

**Authority:** 38 U.S.C. 501, 3701–3704, 3707, 3710–3714, 3719, 3720, 3729, 3762, unless otherwise noted.

2. Section 36.4311 is amended by:

a. Revising paragraph (d) introductory text;

b. In paragraph (d)(2), removing "12 months nor later than 18 months", and adding, in it's place, "36 months";

c. Revising paragraph (d)(4) introductory text;

d. In paragraph (d)(5) introductory text, removing "no later than on the date upon which the lender provides the prospective borrower with a", and adding, in its place, "at the time of"; and by removing, "included in the loan submission to VA", and adding, in its place, "furnished to VA upon request"; and

e. Revising the authority citation at the end of the section.

The revisions read as follows:

### § 36.4311 Interest rates.

* * * * *

(d) Effective October 1, 2003, adjustable rate mortgage loans which comply with the requirements of this paragraph (d) are eligible for guaranty.

* * * * *

(4) *Initial rate and magnitude of changes.* The initial contract interest rate of an adjustable rate mortgage shall be agreed upon by the lender and the veteran. Annual adjustments in the interest rate shall correspond to annual changes in the interest rate index, subject to the following conditions and limitations:

* * * * *

(Authority: 38 U.S.C. 3707A, 3710)

3. In § 36.4312, paragraph (e)(2), in the first sentence, is amended by removing "one-half of"; and by revising the authority citation at the end of the paragraph to read as follows:

### § 36.4312 Charges and fees.

* * * * *

(Authority: 38 U. S. C 3729(b))

[FR Doc. 03–25560 Filed 10–8–03; 8:45 am]

BILLING CODE 8320–01–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

[NM–46–1–7615b; FRL–7571–2]

## Approval and Promulgation of Implementation Plans; New Mexico; Revision to Motor Vehicle Emission Budgets in Bernalillo County, NM Carbon Monoxide Air Quality Maintenance Plan Using MOBILE6

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve the State Implementation Plan (SIP) revisions for Bernalillo County, New Mexico, which is a carbon monoxide maintenance area. This SIP revision was submitted to EPA by the Governor of New Mexico on May 15, 2003. More specifically, EPA is proposing approval of the county's revised Motor Vehicle Emissions Budget (MVEB) for carbon monoxide (CO) for 1996, 1999, 2002, 2005 and 2006. This budget was developed using EPA's latest emissions modeling program, MOBILE6. This submittal updates the maintenance plan by establishing new transportation conformity MVEBs for use by the Mid-Region Council of Governments, the area's Metropolitan Planning Organization (MPO). These budgets will continue to maintain the total on-road mobile source emissions for the area at or below the attainment level for the CO National Ambient Air Quality Standard (NAAQS).

**DATES:** Written comments must be received on or before November 10, 2003.

**ADDRESSES:** Comments on this action may submitted either by mail or electronically. Written comments should be mailed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L),U.S. Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Comments may also be submitted electronically via email to *Diggs.Thomas@epa.gov* or to *http://www.regulations.gov* which is an alternative method for submitted electronic comments to EPA. To submit comments, please follow the detailed instructions described in the "Final Action" section of the direct final rule which is located in the Rules and Regulations section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ms. Peggy Wade of the EPA Region 6 Air Planning Section at (214)665–7247 or *Wade.Peggy@epa.gov*.

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comment. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the Direct Final rule which is located in the Rules and Regulations section of this **Federal Register**.

Dated: September 30, 2003.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

[FR Doc. 03–25544 Filed 10–8–03; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 228

[FRL–7572–2]

## Ocean Disposal; Proposed Rule; Proposed Designation of Dredged Material Disposal Sites in the Central and Western Portions of Long Island Sound, CT; Extension of Comment Period and Addition of One Public Hearing; Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; extension of comment period; correction.

**SUMMARY:** In response to public request, EPA is extending the comment period for its proposed action to designate dredged material disposal sites in the Central and Western Long Island Sound, Connecticut. EPA is extending the comment period by an additional 21 days, announcing the addition of a public hearing and correcting site location information in the proposed rulemaking published on September 12, 2003 (68 FR 53687–53696).

**DATES:** Comments must be received by 5 p.m. on or before November 17, 2003. Public comments on this document are requested and will be considered before taking final action on this designation.

**ADDRESSES:** Comments may be mailed to Ms. Ann Rodney, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA—New England, One Congress Street, Suite 1100 (CWQ), Boston, MA 02114–2023 or electronically to *Rodney.Ann@epa.gov*.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ann Rodney, (617) 918–1538 or e-mail *Rodney.Ann@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

EPA is extending the public comment period for the Draft Environmental Impact Statement for the proposed designation of dredged material disposal sites in the Central and Western Long Island Sound, Connecticut, and announcing the addition of a public hearing.

## Corrections

The September 12, 2003 document (68 FR 53687–53696), is corrected on page 53688, 53689, 53690 and 53695 as follows:

1. On page 53688 in the preamble, first column, following the caption **DATES:**, the language is corrected to read: "Comments must be received by 5 p.m. on or before November 17, 2003. The additional public hearing date is November 13, 2003 from 4p.m.–8p.m.". On page 53689 the language is corrected to read as follows: "Comments must be received by 5 p.m. on or before November 17, 2003.".

2. On page 53688, in the preamble, first column, following the caption **ADDRESSES:**, Public Hearing Locations section, the language is corrected to read: "The Public Hearing locations are: 1. September 30, 2003—New York at SUNY, Stony Brook, NY 11794–1603—Charles B. Wang Asian-American Center 2. October 1, 2003 and November 13, 2003—Westin Stamford, One First Stamford Place, Stamford, CT 06902.".

3. On page 53688, in the preamble, first column, following the caption **SUPPLEMENTARY INFORMATION:**, the language is corrected to include the addition of libraries and is corrected to read: "Public Review of Documents: The file supporting this proposed designation is available for inspection at the following locations: In person. The Proposed Rule and the Draft Environmental Impact Statement (DEIS) which includes the Site Management and Monitoring Plans (Appendix J), are available for inspection at the following locations: A. EPA New England Library, 11th Floor, One Congress Street, Suite 1100 (CWQ), Boston, MA 02114–2023. For access to the documents, call Peg Nelson at (617) 918–1991 between 10 a.m. and 3 p.m. Monday through Thursday, excluding legal holidays, for an appointment. B. Mamaroneck Public Library Inc., 136 Prospect Ave., Mamaroneck, NY. C. Port Jefferson Free Library, 100 Thompson Street, Port Jefferson, NY. D. E. Bridgeport Public Library, 925 Broad Street, Bridgeport, CT. E. Milford City Library, 57 New Haven Ave., Milford, CT. F. New Haven Free Public Library, 133 Elm Street, New Haven, CT. G. New London Public Library, 63 Huntington Street, New London, CT. H. Norwalk Public Library, 1 Belden Ave., Norwalk, CT. I. Acton Public Library, 60 Old Boston Post Road, Old Saybrook, CT. J. Ferguson Library, 752 High Ridge Road, Stamford, CT. K. Boston Public Library, 700 Boylston Street, Copley Square, Boston, MA . L. New York State Library, Cultural Education Center, 6th Floor, Empire State Center, Albany, NY. M. Information Service Division, CT State Library, 231 Capital Ave., Hartford, CT. Electronically. You also may review and/or obtain electronic copies of these documents and various support documents from the EPA home page at the **Federal Register**, *http://www.epa.gov/fedrgstr/*, or on the EPA New England Region's home page at *http://www.epa.gov/region1/eco/lisdreg/*."

4. On page 53690, Section D. Site Descriptions, second column is corrected to read as follows: CLIS 41°9.5′ N., 72°54.4′ W.; 41°9.5′ N., 72°51.5′ W.; 41°8.4′ N., 72°51.5′ W.; 41°8.4′ N., 72°54.4′ W. The third column is corrected to read as follows: WLIS 41°001′ N., 73°29.8′ W.; 41°00.1′ N., 73°28.0′ W.; 40°58.9′ N., 73°28.1′ W.; 40°58.9′ N.,73°29.8′ W.

### § 228.15 [Corrected]

5. On page 53695, in amendment 2. for § 228.15 paragraph (b)(3)(i) is corrected to read as follows: (i) Location: Corner Coordinates (NAD1983) 41°9.5′ N., 72°54.4′ W.; 41°9.5′ N., 72°51.5′ W.; 41°8.4′ N., 72°51.5′ W.; 41°8.4′ N., 72°54.4′ W. Paragraph (b)(4)(i) is corrected to read as follows: (i) Location: Corner Coordinates (NAD1983) 41°00.1′ N., 73°29.8′ W.; 41°00.1′ N., 73°28.0′ W.; 40°58.9′ N., 73°28.1′ W.; 40°58.9′ N., 73°29.8′ W.

Dated: October 3, 2003.

**Ira W. Leighton,**

*Acting Regional Administrator, EPA New England.*

[FR Doc. 03–25636 Filed 10–8–03; 8:45 am]

BILLING CODE 6560–50–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 300

**[I.D. 091603E]**

## National Marine Fisheries Service, Notice of Intent to Prepare an Environmental Assessment

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of intent to prepare an environmental assessment (EA); request for written comments; notice of public scoping meetings.

**SUMMARY:** NMFS announces its intent to prepare an EA and to hold scoping meetings to inform interested parties of the potential impacts on the human environment of the implementation of the regulatory changes resulting from the recently extended Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (Treaty). As part of this process, NMFS intends to conduct two scoping meetings to allow stakeholders the opportunity to express their views regarding information that NMFS should consider in preparing the EA for the implementation of the regulatory changes required under the recently re-negotiated Treaty.

**DATES:** The dates for the public scoping meetings are:

1. October 24, 2003, in San Diego, California.
2. November 13, 2003, in Pago Pago, American Samoa.

**ADDRESSES:** The scoping meeting locations are:

1. Embassy Suites Hotel, San Diego Bay, 4 p.m. – 10 p.m.
2. Utulei Convention Center, 4 p.m. – 7 p.m.

Written comments on the issues, range of alternatives, impacts that should be discussed in the EA, and requests to be included on a mailing list of persons interested in the EA should be sent to Raymond Clarke, International Affairs Division, Pacific Islands Regional Office, NMFS, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814. Comments may be sent to the Regional Office via facsimile (fax) at 808–973–2941 and must be received by December 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Charles Karnella or Raymond Clarke, telephone (808) 973–2937.

**SUPPLEMENTARY INFORMATION:**

## Background

The Treaty entered into force in 1988. The Treaty is between the 16 members of the Pacific Islands Forum, an intergovernmental body that represents 16 sovereign Pacific Island Countries (PICs), and the United States of America. After an initial 5–year agreement, the Treaty was renewed in 1993 allowing access for up to 50 U.S. purse seiners (with an option for 5 more if agreed to by all parties) to the Exclusive Economic Zones (EEZs) of the following countries: Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, New Zealand, Nauru, Niue, Palau, Papua New Guinea, Solomon Islands, Tonga, Tuvalu, Vanuatu, Samoa. The Treaty Area is approximately 10 million square miles in the western and central Pacific Ocean.

The Treaty sets out the terms and conditions associated with certain aspects of U.S. purse seine vessel operations and obtaining access to the PICs= EEZs. Treaty terms and conditions include, but are not limited to, various fees, area closures, reporting, and observer coverage requirements. Additionally, the United States Government has certain Treaty obligations that include, but are not limited to, administrative requirements, economic assistance fees, as well as the collection, compilation, and summarization of fishery related data.

Commencing in 2000, the U.S. and the PICs entered into a series of negotiations that led to an agreement to amend and extend the Treaty for 10 years or until June 14, 2012. The agreement recognizes that all parties involved in the negotiations were required to obtain the consent of their various legislative and/or executive bodies before the Treaty entered into law. The parties agreed to abide by the negotiated terms and conditions of the extension of the Treaty after June 15, 2003 B or when key provisions of the previous Treaty expired. This allowed the U.S. purse seine fleet to continue to operate and allowed the PICs to continue to benefit from the economic assistance associated with the Treaty. As of this writing all the parties have not ratified the re-negotiated Treaty.

Under the current agreement, the U.S. is obligated to pay an annual amount of $21 million. The U.S. Government annually provides $18 million under a technical assistance agreement, and the U.S. purse seine tuna industry, provides the additional $3 million. These funds are paid to the Forum Fisheries Agency (FFA) located in Honiara, Solomon Islands. Under the current (re-negotiated) Treaty, the U.S. is now limited to 40 vessels (and up to 5 additional vessels operating under joint venture agreements with PICs).

The changes to the operational requirements of the Treaty include: recognition of electronic media as an allowed method for meeting reporting requirements and information transmittal by the purse seine vessels, the use of electronic vessel monitoring systems while vessels operate in the Treaty Area, modifications by certain PICs to the areas in which fishing is permitted by U.S. purse seine vessels and correcting an unintended consequence of the drafting of the Treaty that prohibited pelagic longlining by U.S. vessels on the high seas areas (areas outside the 200- mile EEZ of any country) within the Treaty Area.

## NEPA Process

The authorization by NMFS to the FFA to provide U.S. purse seine vessels a license to fish in the Treaty Area, which includes access to the EEZs of PICs is a Federal action. Under the National Environmental Policy Act (NEPA), Federal agencies must insure that analysis of the environmental impacts of a range of alternative proposals is available to public officials and citizens before Federal decisions are made and before Federal actions are taken. The purpose is to promote management and policy decisions that will prevent or eliminate damage to the environment, stimulate the health and welfare of the public, and enrich the understanding of the ecological systems and natural resources important to the nation. A key element of the NEPA process is the identification of the proposed action as well as a set of alternatives to the proposed action. The NEPA process, involving public review of the alternatives, is designed to provide the agency with information that enables identification of issues, concerns and reasonable alternatives. The proposed action now under consideration and the subject of this EA is the FFA's authorization of U.S. purse seine vessels to operate in the EEZs of certain PICs under the terms and conditions of the Treaty as amended and extended until June 2012.

NMFS is accepting written comments on the range of actions, alternatives, and impacts it should consider in the EA. These comments will be part of the public record.

## Alternatives

At present the range of alternatives to be considered in the EA will probably include, but would not be limited to:

*NMFS does not propose a regulation to implement the changes proposed for the Third Extension of the Treaty (No Action Alternative).* Under this alternative, the Treaty would continue in the manner it has since June 15, 2003, pursuant to the Memorandum of Understanding (MOU) signed on May 9, 2002. That non-legally binding document represents the political commitment of the signatories to apply the amendments to the Treaty and Annexes that were not in force by June 15, 2003.

*NMFS proposes a regulation to implement the changes proposed for the Third Extension of the Treaty.* Under this alternative, the U.S. would implement the regulatory changes that have been agreed upon for the third extension of the Treaty. No new legislation would be required for the United States to implement such changes. Regulations would, however, have to be promulgated to require that U.S. tuna purse seine vessels licensed to fish under the Treaty comply with the prescribed vessel monitoring system (VMS) procedures and requirements. This action would implement VMS requirements that are consistent with FFA specifications and be applicable to persons and vessels subject to the Treaty and the jurisdiction of the United States. Operators wishing to fish under the Treaty would be required to install, carry, activate and operate, repair or replace a VMS unit while in the Treaty Area. This alternative also includes modifications to the regulations that would allow U.S. longline vessels to fish on the high seas within the Treaty Area, as well as modifications to the areas of fishing in the EEZs of the Solomon Islands and Papua New Guinea.

*NMFS recommends that the U.S. withdraw from the Treaty.* In effecting withdrawal, the U.S. would first submit an instrument signifying withdrawal to the depositary, after which it would become effective 1 year later. The decision to withdraw from the Treaty could be taken if the U.S. believed it was no longer in the nation=s best interest to continue participation. There are several scenarios under which such a withdrawal might occur.

*The termination of U.S. Purse Seine industry participation in the Treaty.* The organization of the Treaty provides the potential that the Treaty could continue without the participation of the U.S. purse seine industry. For instance, the United States Government could continue to provide economic assistance to the PICs called for under the Treaty. This economic assistance is now the only significant source of U.S. economic support to the region (outside payments made to the Compact States of the Republic of the Marshall Islands, the Federated States of Micronesia and the Republic of Palau).

Other alternatives that may be explored may address non-target, associated and dependent species related to purse seine fishing. Comments on these alternatives, as well as issues and concerns are invited.

### Additional Information Available

Information on the text of the Treaty, the authorizing legislation or the implementing regulations are available from the NOAA Fisheries Pacific Islands Regional Office.

### Special Accommodations

These meetings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Raymond Clarke, telephone 808–973–2937, fax 808–973–2941 at least 5 days before the scheduled meeting date.

**Authority:** 973–973r. *et seq.*

Dated: October 3, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–25640 Filed 10–8–03; 8:45 am]

BILLING CODE 3510–22–S

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 402

**[ID 092603B]**

**RIN 1018–AJ02; RIN 0648–AR05**

# National Marine Fisheries Service; Joint Counterpart Endangered Species Act Section 7 Consultation Regulations

**AGENCIES:** U.S. Fish and Wildlife Service, Interior; Bureau of Land Management, Interior; National Park Service, Interior; Bureau of Indian Affairs, Interior; Forest Service, Agriculture; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Proposed rule; reopening of comment period and notice of availability of Environmental Assessment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service and National Marine Fisheries Service, (Services) announce the reopening of the comment period for the proposed joint counterpart regulations and the availability of the Environmental Assessment for the Healthy Forests Initiative Counterpart Regulations. The Services are evaluating the environmental effects of establishing counterpart regulations pursuant to Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA). These counterpart regulations are being proposed in cooperation with the U.S. Department of Agriculture, Forest Service (FS) and the Department of the Interior's Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), and National Park Service (NPS) (jointly, Action Agencies). The proposal supports the President's Healthy Forests initiative and is intended to streamline ESA section 7 consultations on proposed projects that support the National Fire Plan (NFP).

We are reopening the comment period to allow all interested parties to comment simultaneously on the proposed rule and the associated Environmental Assessment. Comments previously submitted on the proposed rule that was published in the **Federal Register** on June 5, 2003 (68 FR 33805), need not be resubmitted as they will be incorporated into the public record as part of this reopened comment period and will be fully considered in the final rule.

**DATES:** Comments on this environmental assessment or the associated proposed rule must be received by November 10, 2003 to be considered in the final decision.

**ADDRESSES:** Electronic copies of this Environmental Assessment or the associated proposed rule may be obtained from the USFWS World Wide Web Consultation Home Page at: *http://endangered.fws.gov/consultations/forestplan.html.* Written copies of this Environmental Assessment or the associated proposed rule may be obtained from the Chief of the Division of Consultation, Habitat Conservation Planning, Recovery, and State Grants, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, Virginia 22203, or the Chief of the Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, Maryland 20910.

Comments or materials concerning the Environmental Assessment or the associated proposed rule should be sent to the Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, Virginia 22203. Comments can also be accepted if submitted via e-mail to *healthyforests@fws.gov.* Comments and materials received in conjunction with this rulemaking will be available for inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, at the above address (Telephone 703/358–2171, Facsimile 703/358–1735) or Phil Williams, Chief, Endangered Species Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 (301/713–1401; facsimile 301/713–0376).

**SUPPLEMENTARY INFORMATION:**

### Background

In response to several years of catastrophic wildland fires throughout the United States culminating in the particularly severe fire season of 2000, when over 6.5 million acres of wildland areas burned, President Clinton directed the Departments of the Interior and Agriculture to develop a report outlining a new approach to managing wildland fires and restoring fire-adapted ecosystems. The report, entitled Managing the Impact of Wildfires on Communities and the Environment, was issued September 8, 2000. This report set forth ways to reduce the impacts of fires on rural communities, a short-term plan for rehabilitation of fire-damaged ecosystems, and ways to limit the introduction of invasive species and address natural restoration processes. The report, and the accompanying budget requests, strategies, plans, and direction, have become known as the NFP. The NFP is intended to reduce risk to communities and natural resources from wildland fires through rehabilitation, restoration and maintenance of fire-adapted ecosystems, and by the reduction of accumulated fuels or highly combustible fuels on forests, woodlands, grasslands, and rangelands.

In August 2002, during another severe wildland fire season in which over 7.1 million acres of wildlands burned, President Bush announced the Healthy Forests Initiative. The initiative was intended to accelerate implementation of the fuels reduction and ecosystem restoration goals of the NFP in order to minimize the damage caused by catastrophic wildfires by reducing unnecessary regulatory obstacles that have at times delayed and frustrated active land management activities. As part of the initiative, the agencies were tasked with streamlining the section 7 consultation process for projects implementing the NFP.

The Action Agencies published a proposed rule to establish Joint Counterpart Endangered Species Act section 7 regulations on June 5, 2003 (68 FR 33805). The proposed counterpart regulations, authorized in general at 50 CFR 402.04, will provide an optional alternative to the existing section 7 consultation process described in 50 CFR part 402, subparts A and B. The counterpart regulations complement the general consultation regulations in part 402 by providing an alternative process for completing section 7 consultation for agency projects that authorize, fund, or carry out actions that support the NFP.

In the Environmental Assessment, we considered three alternatives that would streamline the consultation process. The Memorandum of Understanding/Programmatic consultation alternative was eliminated from further consideration. The no action alternative would keep the current section 7 consultation process in place. The preferred alternative is to finalize the proposed counterpart regulation. The proposed action is to establish an alternative consultation process that would eliminate the need to conduct informal consultation and eliminate the requirement to obtain written concurrence from the applicable Service for those NFP actions that the Action Agency determines are "not likely to adversely affect" (NLAA) any listed species or designated critical habitat.

**Authority:** The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 3, 2003.

**Julie MacDonald,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

Dated: October 3, 2003.

**William T. Hogarth,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–25621 Filed 10–8–03; 8:45 am]

BILLING CODE 3510–22–P; 4310–55–P

# Notices

**Federal Register**

Vol. 68, No. 196

Thursday, October 9, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Doc. No. CN–03–006]**

### Notice of Request for Extension and Revision of a Currently Approved Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget, for an extension for and revision to a currently approved information collection for the National Research, Promotion, and Consumer Information Programs.

**DATES:** Comments must be received by December 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Interested persons are invited to submit written comments concerning this notice to Whitney A. Rick, Research and Promotion Staff, Cotton Program, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Washington, DC 20250–0224, telephone (202) 720–2259 and facsimile (202) 690–1718. Comments should be submitted in triplicate. Comments may also be submitted electronically to *cottoncomments@usda.gov*. All comments should reference the docket number and page number of this issue of the **Federal Register**. All comments received will be made available for public inspection at Cotton Program, AMS, USDA, Room 2641–S, 1400 Independence Ave., SW., Washington, DC 20250 during regular business hours. A copy of this notice may be found at *http://www.usda.gov/cotton/rulemaking.htm*.

Whitney Rick, Research and Promotion Staff, Cotton Program, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Washington, DC 20250–0224, telephone (202) 720–2259, facsimile (202) 690–1718, or e-mail at *whitney.rick@usda.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* National Research, Promotion, and Consumer Information Programs.

*OMB Number:* 0581–0093.

*Expiration Date of Approval:* Current expiration date is 07/31/04.

*Type of Request:* Extension and revision of a currently approved information collection.

*Abstract:* National research and promotion programs are designed to strengthen the position of a commodity in the marketplace, maintain and expand existing domestic and foreign markets, and develop new uses and markets for specified agricultural commodities. The U.S. Department of Agriculture has the responsibility for implementing and overseeing programs for a variety of commodities including cotton, dairy, eggs, beef, pork, soybeans, honey, potatoes, watermelons, mushrooms, hass avocados, popcorn, and peanuts. The enabling legislation includes the Beef Promotion and Research Act of 1985 [7 U.S.C. 2901–2911]; Cotton Research and Promotion Act of 1966 [7 U.S.C. 2101–2118]; the Dairy Production Stabilization Act of 1983 [7 U.S.C. 4501–4514]; the Fluid Milk Promotion Act of 1990 [7 U.S.C. 6401–6417]; the Egg Research and Consumer Information Act [7 U.S.C. 2701–2718]; the Pork Promotion, Research and Consumer Information Act of 1985 [7 U.S.C. 4801–4819]; the Soybean Promotion, Research, and Consumer Information Act [7 U.S.C. 6301–6311]; the Honey Research, Promotion, and Consumer Information Act, as amended [7 U.S.C. 4601–4613]; the Potato Research and Promotion Act [7 U.S.C. 2611–2627]; the Watermelon Research and Promotion Act [7 U.S.C. 4901–4916]; the Hass Avocado Promotion, Research, and Information Act [7 U.S.C. 7801–7813]; the Mushroom Promotion, Research, and Consumer Information Act of 1990 [7 U.S.C. 6101–6112]; the Popcorn Promotion, Research and Consumer Information Act [7 U.S.C. 7481–7491]; and the Commodity Promotion, Research, and Information Act of 1996 [7 U.S.C. 7411–7425].

These programs carry out projects relating to research, consumer information, advertising, sales promotion, producer information, market development, and product research to assist, improve, or promote the marketing, distribution, and utilization of their respective commodities. Approval of the programs is required through referendum of those who would be covered. Industry boards administer the programs. These boards usually composed of producer, handler, processor, and in some cases, importer and public members, are appointed by the Secretary of Agriculture to administer the programs. The funding for such programs is from assessments on designated industry segments. The appointed boards are responsible for collecting assessments from the affected persons covered under these programs.

The Secretary also approves the boards' budgets, plans, and projects. These responsibilities have been delegated to the Agricultural Marketing Service (AMS). The applicable commodity program areas within AMS have direct oversight of the respective programs.

The information collection requirements in this request are essential to carry out the intents of the various Acts authorizing such programs, thereby providing a means of administering the programs. The objective in carrying out this responsibility includes assuring the following: (1) Funds are collected and properly accounted for; (2) expenditures of all funds are for the purposes authorized by the enabling legislation; and (3) the board's administration of the programs conforms to USDA policy. The applicable commodity programs within AMS have direct oversight of these freestanding programs. The forms covered under this collection require the minimum information necessary to effectively carry out the requirements of the respective orders, and their use is necessary to fulfill the intents of the Acts as expressed in the orders. The information collected is used only by authorized employees of the various boards and authorized employees of USDA.

The boards administering the various programs utilize a variety of forms to carry out the responsibilities. Such forms may include reports concerning status information such as handler and importer reports; transaction reports; exemption from assessment forms and reimbursement forms; forms and information concerning referenda including ballots; forms and informaiton concerning board nominations and selection and acceptance statements; certification of industry organizations; and recordkeeping requirements. The forms and information covered under this information collection require the minimum information necessary to effectively carry out the requirements of the programs and their use is necessary to fulfill the intent of the applicable authorities.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average .08 hours per response.

*Respondents:* Producers, processors, handlers, and/or importers of a variety of agricultural commodities.

*Estimated Number of Respondents:* 321,098.

*Estimated Number of Responses:* 4,469,027.

*Estimated Number of Responses per Respondent:* 13.9.

*Estimated Total Annual Burden on Respondents:* Estimated total annual burden is 350,920 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Whitney A. Rick, Research and Promotion Staff, Cotton Program, AMS, USDA, Stop 0224, Room 2641–S, 1400 Independence Ave., SW. Washington, DC 20250–0224, or by e-mail at *cottoncomments@usda.gov.* All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

AMS is committed to implementation of the Government Paperwork Elimination Act, which provides for the use of information resources to improve the efficiency and effectiveness of governmental operations, including providing the public with the option of submitting information or transacting business electronically to the extent possible.

Dated: October 6, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03–25619 Filed 10–8–03; 8:45 am]

**BILLING CODE 3410–02–P**

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Crawford Timber Sale, Malheur National Forest, Grant County, Oregon

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The USDA Forest Service will prepare an environmental impact statement (EIS) on a proposal action to treat forested stands, using harvest methods to decrease tree density, increase representation of fire-adapted tree species, as well as decrease existing and activity fuel levels. The connected actions of log hauling will require constructing new road and temporary road, and maintaining and reconstructing existing road. This proposed action would implement a Road Access Travel Management Plan that would close and decommission roads. The alternatives will include the proposed action, no action, and additional alternatives that respond to issues identified during scoping. The agency will give notice of the full environmental analysis and decision making process so interested and affected people may participate and contribute to the final decision.

**DATES:** Comments concerning the scope of the analysis must be received by November 15, 2003.

**ADDRESSES:** Send written comments to Michelle Putz, District Writer Editor, Blue Mountain Ranger District, P.O. Box 909, John Day, Oregon 97845 or on-line at *comments-pacificnorthwest-malheur-bluemountain@fs.fed.us.*

**FOR FURTHER INFORMATION CONTACT:** Michelle Putz, District Writer Editor, Blue Mountain Ranger District. Phone: (541) 575–3000.

**SUPPLEMENTARY INFORMATION:** The alternatives being considered were proposed in the original Crawford Vegetative Management Environmental Assessment (EA). The Decision Notice, which selected Alternative 3 was signed on April 26, 2002, was appealed and then remanded back to the Forest for further work following appeal; this EIS has been renamed and is intended to address many of the same needs. Some items in the original EA have been removed from the proposed actions in this EIS, including pre-commercial thinning that is outside of the harvest units to decrease small diameter trees, planting hardwoods, conifer removal from hardwood areas and meadows, cutting hardwoods to stimulate reproduction, caging shrubs, fencing to protect hardwoods, and slashing junipers to create barriers to hardwoods. These items will be addressed in other types of environmental documents under the heading of a categorical exclusion. In addition, this document plans to keep 5.4 miles of Forest Road 1940 open to travel (there had been 4.3 miles of Road 1940 planned for closure in previous NEPA documents). The regeneration Salvage Treatment was dropped for wildlife habitat objectives, following interdisciplinary team review.

*Purpose and Need for Action.* The purposes and needs for action in this project now are: *Move vegetation towards* a status more closely resembling *historical conditions* while protecting soil productivity and protecting or enhancing water quality and *reduce fuels* to decrease potential fire severity. This project would change the species composition and structure of the vegetation to improve the resiliency of the forested component of the ecosystem. *Existing stand densities are higher than historical stand densities,* and retard growth to the large tree stage, thus there is *a need to increase the number of large trees* across the landscape *and increase* the representation of *fire tolerate tree species.*

*Move toward an efficient, properly located road system* that provides adequate public and administrative access, while reducing the risk of sediment reaching streams. Maintain and/or reconstruct remaining roads to limit delivery of sediment into streams and to facilitate harvest activities while improving water quality. To protect water quality and to decrease movement of sediment into streams, unneeded roads causing resource damage need to be decommissioned or closed.

*Three* previously designated *Dedicated Old Growth areas have no Replacement Old Growth (ROG)* areas designated; three ROG areas need to be designated. The Malheur National Forest Plan directs the Forest to provide Replacement Old Growth and to complete this process in conjunction with the timber sale planning process.

*Capture economic value* of material and help achieve a stable economy in the local area.

*Proposed Action.* The proposal would decrease tree density by harvesting and thinning. Stand treatments include the following harvest methods: shelterwood (167 acres); partial cut (1,343 acres); and commercial thinning (2,568 acres). Treatment would decrease small tree density, reducing competition for nutrients for remaining trees. Timber yarding systems to be utilized are tractor (3,522 acres) and skyline (556 acres). The estimated volume of timber harvested is 11.1 million board feet. Fire and fuel reduction treatments include the following activities: prescribed burning (9,498 acres); fuel reduction (2,130 acres); and burning within harvest units (517 acres). Three new areas for Replacement Old Growth (ROGs) areas to Dedicated Old Growth (DOGs) stands are provided for pileated woodpecker and pine marten.

The Crawford Roads Analysis reviewed a portion of the roads within the analysis area. Roads needed for the proposal would include the following: new construction (12.8 miles), temporary construction (4.6 miles), reconstructed (0.1 miles), maintained (60.9 miles), closed (15.2 miles) and decommissioned (24.5 miles). The Road Analysis concentrated on roads within Riparian Habitat Conservation Areas (RHCAs) and roads that might be needed for proposed activities, as haul routes. Roads within RHCAs contributing sediment or which potentially could contribute sediment were considered as candidates for decommissioning. No new road construction is proposed within RHCAs. This is permanent, new road construction that remains a part of the transportation system.

Proposed activities would occur in the Crawford Creek, Mill Creek, Phipps Meadow, Dry Fork, Clear Creek, Bridge Creek, Squaw Creek, and Idaho/Summit Creek subwatersheds of the Upper Middle Fork John Day watershed.

*Issues.* Preliminary issues were identified and include the potential effects of the proposed action on: management indicator species, threatened, endangered, and sensitive species, and neotropical migratory birds associated with dense forest habitat; soil compaction; increase sediment movement into streams; reduce water quality; and continued vehicle access in the area.

*Alternatives.* A full range of alternatives will be considered including a "No Action" alternative in which none of the activities proposed above would be implemented. Based on the issues gathered through scoping, the action alternatives could differ in the silvicultural and post-harvest treatments prescribed, the amount and location of harvest, or the amount and location of fuels reduction activity.

*Scoping Process.* The public will have an opportunity to participate at several points during the analysis including the scoping period after publication of the Notice of Intent, and the draft EIS in the **Federal Register.** Notification of these opportunities will also appear in subsequent issues of the Malheur National Forest's Schedule of Proposed Activities; letters to agencies, organizations, and individuals who have previously indicated their interest in such activities; and in the Blue Mountain Eagle. Public meetings may be scheduled during the winter of 2003/2004 and the spring of 2004. The scoping process will include identifying potential issues, identifying major issues to be analyzed in depth, eliminating non-significant issues, considering additional alternatives based on themes which will be derived from issues recognized during scoping activities, and identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects).

*Comments.* Public comments about this proposal are requested in order to assist in properly scoping issues, to determine how to best manage the resources, and to fully analyze environmental effects. Comments received to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 and 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality and, where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The draft EIS will be filed with Environmental Protection Agency (EPA) and available for public review by May 2004. The comment period on the draft EIS will be 45 days from the date EPA publishes the notice of availability of the draft in the **Federal Register.** The final EIS will be released in September 2004.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft ESI. The Forest Service is the lead agency. The Responsible Official is the Forest Supervisor for the Malheur National Forest. The Responsible Official will decide where and whether or not to implement the proposed projects and will document the Crawford Timber Sale and Thinning decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: September 30, 2003.

**Roger W. Williams,**

*Forest Supervisor.*

[FR Doc. 03–25584 Filed 10–8–03; 8:45 am]

**BILLING CODE 3410–11–M**

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## DEPARTMENT OF AGRICULTURE

## Forest Service

### Southwestern Region, Arizona, New Mexico, West Texas, and West Oklahoma Amendment of Land and Resource Management Plans in the Southwestern Region

**AGENCY:** Forest Service, USDA.

**ACTION:** Cancellation notice.

**SUMMARY:** On August 7, 2001, a Notice of Intent (NOI) to prepare an environmental impact statement to amend National Forest land and resource management plans in the Southwestern Region to modify standards and guidelines for Mexican spotted owl and northern goshawk within wildland-urban interface areas and to emphasize the management of wildland-urban interface areas throughout the southwest was published in the **Federal Register** (66 FR 41198–41200). This 2001 NOI is hereby rescinded.

**FOR FURTHER INFORMATION CONTACT:** Peter Gaulke, Regional Environmental Coordinator, USDA Forest Service Southwestern Regional Office, 333 Broadway Blvd., SE., Albuquerque, NM 87102–3498, telephone (505) 842–3256.

**SUPPLEMENTARY INFORMATION:** The need to amend forest plans to modify standards and guidelines for Mexican spotted owl and northern goshawk within wildland-urban interface areas varied throughout the forests and grasslands of the Southwestern Region. As such, a region wide amendment of all forest plans was not deemed necessary. Those forest that have a need to their respective plans may do so on a case-by-case basis. As the forests of the Southwestern Region begin the Forest Plan revision process in Fiscal Year 2004, they can address this need in context with other resource and social issues.

Dated: September 29, 2003.

**Lucia M. Turner,**

*Deputy Regional Forester.*

[FR Doc. 03–25565 Filed 10–8–03; 8:45 am]

**BILLING CODE 3410–11–M**

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## DEPARTMENT OF AGRICULTURE

## Forest Service

### Glenn/Colusa County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting

**SUMMARY:** The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Brochure for Glenn/Colusa, (5) Ski-High Project/Possible Action, (6) How to Solicit Projects, (7) Bear Wallow Trail, (8) Status of Members, (9) General Discussion, (10) Next Agenda.

**DATES:** The meeting will be held on October 27, 2003, from 1:30 p.m. and end at approximately 4:30 p.m.

**ADDRESSES:** The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

**FOR FURTHER INFORMATION CONTACT:** Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by October 22, 2003, will have the opportunity to address the committee at those sessions.

Dated: October 2, 2003.

**James F. Giachino,**

*Designated Federal Official.*

[FR Doc. 03–25570 Filed 10–8–03; 8:45 am]

**BILLING CODE 3410–11–M**

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## DEPARTMENT OF AGRICULTURE

## Forest Service

### Eastern Idaho Resource Advisory Committee; Caribou-Targhee National Forest, Idaho Falls, ID

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Caribou-Targhee National Forests' Eastern Idaho Resource Advisory Committee will meet Wednesday, November 12, 2003 in Idaho Falls for a business meeting. The meeting is open to the public.

**DATES:** The business meeting will be held on November 12, 2003 from 10 a.m. to 1 p.m.

**ADDRESSES:** The meeting location is the Caribou-Targhee National Forest Headquarters Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83402.

**FOR FURTHER INFORMATION CONTACT:** Jerry Reese, Caribou-Targhee National Forest Supervisor and Designated Federal Officer, at (208) 524–7500.

**SUPPLEMENTARY INFORMATION:** The business meeting on November 12, 2003, begins at 10 a.m., at the Caribou-Targhee National Forest Headquarters Office, 1405 Hollipark Drive, Idaho Falls, Idaho. Agenda topics will include looking at funding for this upcoming year, briefed on project status from last year's approved projects, and welcoming new members.

Dated: October 2, 2003.

**Jerry B. Reese,**

*Caribou-Targhee Forest Supervisor.*

[FR Doc. 03–25587 Filed 10–8–03; 8:45 am]

**BILLING CODE 3410–11–M**

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## APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMMISSION

### Annual Meeting

**TIME AND DATE:** 10 a.m.–12 p.m., October 28, 2003.

**PLACE:** Harrisburg Hilton and Towers, One North Second Street, Harrisburg, PA 17101.

**STATUS:** Most of the meeting will be open to the public. If there is a need for an executive session (closed to the public), it will be held at about 9:30 a.m.

### Matters To Be Considered

**PORTIONS OPEN TO THE PUBLIC:** The primary purpose of this meeting is to (1) Review the independent auditors' report of Commission's financial statements for fiscal year 2002–2003; (2) Review the Low-Level Radioactive Waste (LLRW) generation information for 2002; (3) Consider a proposal budget for fiscal year 2004–2005; (4) Review recent national developments regarding LLRW management and disposal; (5) Review and discuss issues concerning waste from the Safety Light Site in Pennsylvania and the Aberdeen Proving Grounds in Maryland; and (6) Elect the Commission's Officers.

**PORTIONS CLOSED TO THE PUBLIC:** Executive Session, if deemed necessary, will be held at about 9:30 a.m.

**FOR FURTHER INFORMATION CONTACT:** Richard R. Janati, Pennsylvania Staff member on the Commission, at 717–787–2163.

**Richard R. Janati,**

*PA Staff Member on the Commission.*

[FR Doc. 03–25601 Filed 10–8–03; 8:45 am]

**BILLING CODE 0000–00–P**

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## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 51–2003]**

### Foreign-Trade Zone 25—Broward County, FL; Proposed Foreign-Trade Subzone, Chevron Products Company (Petroleum Product Storage), Port Everglades, FL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Broward County, Florida, grantee of FTZ 25, requesting special-purpose subzone status for the petroleum product storage facility of Chevron Products Company (Chevron), located in Port Everglades, Florida. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 2, 2003.

The Chevron terminal facility (21.53 acres) consists of a single site of two parcels and a pipeline in Port Everglades, Florida, (Broward County): *Parcel 1*, East Tank Farm (15 tanks, 434,327 barrel capacity, 10.56 acres) located at 1400 S.E. 24th St.; and, *Parcel 2*, West Tank Farm (3 tanks, 137,953 barrel capacity, 9.39 acres) located at 900 S.E. 24th St. The Chevron connecting pipeline is used for routing of petroleum products to the storage terminals from arriving vessels at the docks.

The storage facility is primarily used for the receipt, storage, and distribution of jet fuel by pipeline to the Miami and Fort Lauderdale International Airports. The company also uses the facility to store and distribute gasoline, diesel fuel, distillate fuels, and blending stocks. Some of the products are or will be sourced from abroad or from U.S. refineries under FTZ procedures.

Zone procedures would exempt Chevron from Customs duties and federal excise taxes on foreign status jet fuel used for international flights. On domestic sales, the company would be able to defer Customs duty payments until the products leave the facility. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

No specific manufacturing request is being made at this time. Such a request would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions Via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or
2. *Submissions Via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is December 8, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 23, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 200 E. las Olas Blvd. (Sun Sentinel Bldg.), Suite 1600, Ft. Lauderdale, Florida 33301–2284.

Dated: October 2, 2003.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 03–25628 Filed 10–8–03; 8:45 am]

**BILLING CODE 3510–DS–U**

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## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1302]**

### Approval for Expansion of Subzone 2J, Murphy Oil USA, Inc. (Oil Refinery), Meraux, Louisiana

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the Port of New Orleans, grantee of FTZ 2, has requested authority on behalf of Murphy Oil USA, Inc. (Murphy), to expand the scope of authority under zone procedures within the Murphy refinery in Meraux Louisiana (FTZ Docket 4–2003, filed 1/17/2003);

*Whereas,* notice inviting public comment has been given in the **Federal Register** (68 FR 4757, 1/30/03);

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

*Now, therefore,* the Board hereby orders:

The application to expand the scope of authority under zone procedures within Subzone 2J, is approved, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the petrochemical complex shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.10, #2709.00.20, #2710.11.25, #2710.11.45, #2710.19.05, #2710.19.10, #2710.19.45, #2710.91.00, #2710.99.05, #2710.99.10, #2710.99.16, #2710.99.21 and #2710.99.45 which are used in the production of:

—Petrochemical feedstocks (examiners report, Appendix "C");

—Products for export;

—And, products eligible for entry under HTSUS #9808.00.30 and#9808.00.40 (U.S. Government purchases).

Signed at Washington, DC, this 24th day of September 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 03–25629 Filed 10–8–03; 8:45 am]

BILLING CODE 3510–DS–U

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## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

[Order No. 1303]

### Approval for Expanded Manufacturing Authority (Addition of Medical Imaging Products, and Expansion of Production of Color Negative Photographic Film and Paper) Within Foreign-Trade Subzone 38C; Fuji Photo Film, Inc.; Greenwood, South Carolina

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the South Carolina State Ports Authority, grantee of Foreign-Trade Zone 38, has applied on behalf of Fuji Photo Film, Inc. (Fuji), to expand the scope of manufacturing authority under zone procedures within Subzone 38C, at the Fuji plant in Greenwood, South Carolina, to include additional finished products (medical imaging products, components, and related products), and to increase the overall level of production authorized under FTZ procedures of color negative photographic paper and film (FTZ Doc. 63–2002; filed 12–17–2002);

*Whereas,* notice inviting public comment was given in the **Federal Register** (67 FR 79048–79049, 12–27–2002); and,

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

*Now, therefore,* the Board hereby approves the request subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 24th day of September, 2003.

**James J. Jochum,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 03–25630 Filed 10–8–03; 8:45 am]

BILLING CODE 3510–DS–U

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–357–812]

### Honey From Argentina: Rescission of Antidumping Duty New Shipper Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of rescission of antidumping duty new shipper review.

**SUMMARY:** On February 6, 2003, the Department published the initiation of a new shipper review of the antidumping duty order of honey from Argentina covering the period of May 11, 2001 to November 30, 2002. *See Honey From Argentina: Initiation of New Shipper Antidumping Duty Administrative Review,* 68 FR 6114 (February 6, 2003) (New Shipper Initiation). This review covers one exporter, Nutrin S.A. (Nutrin) of Argentina. For the reasons discussed below, we are rescinding this new shipper review in its entirety.

**EFFECTIVE DATE:** October 9, 2003.

**FOR FURTHER INFORMATION CONTACT:** Angela Strom or Donna Kinsella at (202) 482–2704 and (202) 482–0194, respectively; AD/CVD Enforcement, Office 8, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

#### Scope of the Review

The merchandise under review is honey from Argentina. For purposes of this review, the products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise under review is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and U.S. Bureau of Customs and Border Protection purposes, the Department's written description of the merchandise under this order is dispositive.

#### Background

On February 6, 2003, the Department published the initiation of a new shipper review of the antidumping duty order of honey from Argentina. This review involves one exporter, Nutrin S.A. of Argentina, and covers the period of May 11, 2001 through November 30, 2002. *See* New Shipper Initiation. On July 14, 2003, the Department extended the time limit for the completion of the preliminary results of this new shipper review until November 28, 2003. *See Honey From Argentina: Extension of Time Limit for Preliminary Results of New Shipper Review* 68 FR 41557 (July 14, 2003).

On February 19, 2003, the Department issued Sections A through C of the Department's antidumping questionnaire to Nutrin. Nutrin responded on March 14, 2003 and April 7, 2003. Petitioners submitted comments on Nutrin's questionnaire responses on April 4, 2003 and May 2, 2003. On May 23, 2003, the Department issued its first supplemental questionnaire, and Nutrin submitted its supplemental questionnaire response on June 13, 2003. Petitioners again commented on Nutrin's responses on July 1, 2003, and August 4, 2003.

#### Analysis of New Shipper Review

On August 15, 2003, the Department issued a memorandum detailing our analysis of the *bona fides* of Nutrin's U.S. sale and our intent to rescind this review because we preliminarily determined that Nutrin's U.S. sale was not a bona fide transaction based on the totality of the circumstances of the sale. See Memorandum from Angela Strom through Richard Weible to Barbara E. Tillman: New Shipper Review of the Antidumping Duty Order on Honey from Argentina: Intent to Rescind, dated August 21, 2003 (Nutrin Intent to Rescind Memo). In this memorandum, the Department preliminarily determined that the single U.S. sale made by Nutrin was not *bona fide* due to (1) the conflicting information contained in different copies of the sales invoice for Nutrin's U.S. sale; (2) Nutrin's failure to disclose other apparent changes in the terms of the U.S. sale; (3) conflicting information and insufficient documentation regarding the date on which the essential terms of sale and final destination of goods were established; (4) inconsistent invoicing practices regarding the U.S. sale and other like sales; (5) atypical payment terms and (6) highly unusual sales and shipping arrangements. The totality of the facts on the record lead the Department to conclude that the sale was neither commercially reasonable nor *bona fide*.

## Comments

The Department provided parties an opportunity to comment on the Intent to Rescind Memo dated August 21, 2003. The initial deadline for comments for all parties was August 29, 2003; however, Nutrin requested a seven day extension of time to file its comments. The Department granted the extension and set an extended due date of September 5, 2003. On September 5, 2003, Nutrin requested yet another extension of time; however, the Department denied this additional request given its statutory and regulatory time constraints in completing this review. Nutrin did not submit comments regarding the Department's Intent to Rescind even though it had two weeks to do so. Petitioners submitted comments supporting the Department's position to rescind the new shipper review with respect to Nutrin.

## Rescission of New Shipper Reviews

We received no comments rebutting or in disaccord with the Department's findings in its Intent to Rescind Memo regarding Nutrin. Therefore, for the reasons stated above and pursuant to section 751(a)(2)(B) and 19 CFR 351.214(f), we are rescinding this new shipper review.

## Notification

The Department will notify the U.S. Bureau of Customs and Border Protection that bonding is no longer permitted to fulfill security requirements for shipments of Argentine honey by Nutrin entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this rescission notice in the **Federal Register**, and that a cash deposit of 30.24 percent ad valorem should be collected for any entries exported by Nutrin.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(2)(B) and 777(i) of the Act.

Dated: October 2, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–25627 Filed 10–8–03; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–570–001]

# Potassium Permanganate From the People's Republic of China: Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of rescission of the antidumping duty administrative review of potassium permanganate from the People's Republic of China.

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**SUMMARY:** In response to requests from the petitioner, Carus Chemical Company (Carus), and a U.S. importer, Groupstars Chemicals, LLC, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on potassium permanganate from the People's Republic of China (PRC) covering the period January 1, 2002 through December 31, 2002. Because Carus withdrew its review request, and Groupstars Chemicals, LLC's review request does not identify the PRC exporter to be reviewed, the Department is rescinding this administrative review.

**EFFECTIVE DATE:** October 9, 2003.

**FOR FURTHER INFORMATION CONTACT:** John Conniff or Drew Jackson, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1009 and (202) 482–4406, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On January 31, 1984, the Department published in the **Federal Register** (49 FR 3897) the antidumping duty order on potassium permanganate from the PRC (the order). On January 2, 2003, the Department issued a notice of "Opportunity to Request Administrative Review" of the order on a number of products including potassium permanganate from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 80. On January 28, 2003, Groupstars Chemicals, LLC requested that the Department conduct an administrative review of the order. On January 31, 2003, Carus requested an administrative review of Groupstars Chemicals Co., Ltd.-Shandong, Groupstars Chemical Co., Ltd.-Yunan (a joint venture owned by Groupstars Chemicals, LLC and the Yunan Jianshui County Chemical Industry Factory (JCC)), JCC and the Jianshui Chemical Plant (also translated as Jianshui Chemical Factory and Jianshui General Chemical Plant).

On February 27, 2003, and March 25, 2003, the Department published in the **Federal Register** notices initiating administrative reviews of the requested companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 68 FR 9048 and *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 14394 (this notice includes companies inadvertently omitted from the February 27, 2003, initiation notice).

On March 17, 2003, the Department issued its antidumping questionnaire to the respondents. Groupstars Chemicals Co., Ltd. (which includes both the Shandong and Yunan operations) (Groupstars) responded to the Department's questionnaire on April 21, 2003 and May 8, 2003. On May 29, 2003, Groupstars submitted a letter to the Department on behalf of JCC (also referred to as Jianshui County Chemical Industry Factory) stating that JCC and the Jianshui General Chemical Plant are the same company, and this company did not have any sales to the United States during the POR. The Department issued a supplemental questionnaire to Groupstars on May 15, 2003. In Groupstars' June 10, 2003, response to the supplemental questionnaire, it stated that Groupstars Chemical Co., Ltd.-Yunan did not have any sales of the subject merchandise to the United States during the POR. *See* Groupstars' June 10, 2003, supplemental response at 6.

In a letter dated September 11, 2003, Groupstars notified the Department that it will no longer participate in the administrative review. On September 16, 2003, Carus withdrew its request for an administrative review and urged the Department to immediately rescind the administrative review.

The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

## Rescission of Review

On January 28, 2003, Groupstars Chemicals, LLC submitted a letter to the Department in which it requested "an antidumping administrative review in the above-referenced matter {potassium permanganate from the People's Republic of China;} for the review period covering January 1, 2002 to December 31, 2002." On January 31, 2003, Carus requested an administrative review of Groupstars Chemicals Co., Ltd.-Shandong, Groupstars Chemical Co., Ltd.-Yunan, JCC and the Jianshui Chemical Plant. Based on these requests, the Department initiated an administrative review of Groupstars Chemicals, LLC, Groupstars Chemicals Co., Ltd.-Shandong, Groupstars Chemical Co., Ltd.-Yunnan, JCC and the Jianshui Chemical Plant.

The Department is rescinding its review of the companies named in Carus' request for review because Carus has withdrawn its request. *See* Carus' September 16, 2003 letter to the Department. Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Although Carus withdrew its request after the 90-day period, there were no other requests to review any of the companies for which Carus requested a review, and the review for these companies had not yet progressed beyond a point where it would have been unreasonable to allow Carus to withdraw its request for a review. This action is consistent with the approach taken in past antidumping proceedings. *See Frozen Concentrated Orange Juice From Brazil; Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 67 FR 40913, 40914 (June 14, 2002) where, pursuant to a request filed after the 90 day deadline, the Department rescinded the review. Additionally, 19 CFR 351.213(d)(1) provides that the Secretary may extend the time limit for withdrawal requests where it is reasonable. Therefore, for the above stated reasons, the Department pursuant to 19 CFR 351.213(d)(1), has decided that it is reasonable to accept Carus' withdrawal of its request for review.

Furthermore, with respect to the remaining review request, we have determined that it is appropriate to rescind the review of Groupstars Chemicals, LLC because this company is a U.S. importer, rather than an exporter or producer, of subject merchandise and it failed to identify the exporter(s) or producer(s) to be reviewed. *See* Groupstars Chemicals, LLC's January 28, 2003 letter to the Department. Section 351.213(b) of the Department regulations requires that reviews be requested for particular exporters or producers. *See* 19 CFR 351.213(b)(1) stating that domestic interested parties may request an administrative review of "specified individual exporters or producers"; 19 CFR 351.213(b)(2) stating that an exporter or producer may request an "administrative review of only that person;" 19 CFR 351(b)(3) stating that an importer of subject merchandise may request an administrative review of only an "exporter or producer * * * of the subject merchandise imported by that importer." Moreover, the courts have held that the party requesting the review, not the Department, bears the burden of naming and selecting the proper party to be reviewed. *See e.g., Floral Trade Council* v. *United States,* 888 F.2d 1366, 1369 (Fed. Cir. 1989) (where the Court of Appeals for the Federal Circuit held that a request for an administrative review must be for review of "specified individual * * * producers [] or exporters"). Additionally, in past PRC cases, the Department has rescinded administrative reviews when requesting parties failed to identify the actual PRC exporter of the subject merchandise in their review requests. *See Iron Construction Castings from the People's Republic of China: Rescission of Antidumping Duty Administrative Review,* 68 FR 33103–01 (June 3, 2003) (in which the Department rescinded the review because the company for which the review was requested and initiated was not an exporter of subject merchandise, but a producer of subject merchandise); *see also Certain Cased Pencils From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 66 FR 1638–02 (January 9, 2001) (in which a party requested a review of the producer of subject merchandise, rather than the exporter of subject merchandise); *see also* Laizhou City Guangming Pencil-Making Co. Ltd., Et Al., v. United States, No. 02–151, Slip Op. 02–151, 01–00047 (Ct. Int'l Trade December 18, 2002). Because Groupstars Chemicals, LLC is not a PRC exporter of the subject merchandise, and failed to identify any PRC exporter(s) of the subject merchandise in its review request, and with Carus' withdrawal of its review requests, the Department is rescinding this review with respect to Groupstars Chemicals, LLC.

The Department will issue appropriate assessment instructions to the U.S. Bureau of Customs and Border Protection.

## Notification to Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with 19 CFR 351.213(d)(4) and, sections 751(a)(2)(c)) and 777(i)(1) of the Act.

Dated: October 2, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–25631 Filed 10–8–03; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

## North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Request for Panel Review

**AGENCY:** NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of First Request for Panel Review.

**SUMMARY:** On October 3, 2003, the Canadian Wheat Board filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final determination of Sales at Less Than Fair Value made by the United States Department of Commerce, International Trade Administration, respecting Certain Durum Wheat and Hard Red Spring Wheat from Canada. This determination was published in the **Federal Register**, (68 FR 52741) on September 5, 2003. The NAFTA Secretariat has assigned Case Number USA–CDA–2003–1904–04 to this request.

**FOR FURTHER INFORMATION CONTACT:** Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite

2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on October 3, 2003, requesting panel review of the final determination described above.

The Rules provide that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is November 3, 2003);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is November 18, 2003); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: October 6, 2003.

**Caratina L. Alston,**

*United States Secretary, NAFTA Secretariat.*

[FR Doc. 03–25632 Filed 10–8–03; 8:45 am]

**BILLING CODE 3510–GT–P**

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## DEPARTMENT OF COMMERCE

## International Trade Administration

### North American Free-Trade Agreement, Article 1904, NAFTA Panel Reviews; Request for Panel Review

**AGENCY:** NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of First Request for Panel Review.

**SUMMARY:** On October 3, 2003, the Government of Canada filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Second requests were filed on behalf of the Canadian Wheat Board, the Government of Saskatchewan, and the Government of Alberta, respectively. Panel review was requested of the final affirmative Countervailing Duty determination made by the United States Department of Commerce, International Trade Administration, respecting Certain Durum Wheat and Hard Red Spring Wheat from Canada. This determination was published in the **Federal Register**, (68 FR 52747) on September 5, 2003. The NAFTA Secretariat has assigned Case Number USA–CDA–2003–1904–05 to this request.

**FOR FURTHER INFORMATION CONTACT:** Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

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(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: October 6, 2003.

**Caratina L. Alston,**

*United States Secretary, NAFTA Secretariat.*

[FR Doc. 03–25633 Filed 10–8–03; 8:45 am]

**BILLING CODE 3510–GT–P**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 090903C]**

### Small Takes of Marine Mammals Incidental to Specified Activities; Oceanographic Survey in the Northwest Atlantic Ocean Near Bermuda

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of receipt of application and proposed incidental take authorization; request for comments.

**SUMMARY:** NMFS has received an application from the Lamont-Doherty Earth Observatory (LDEO) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting an oceanographic survey in

the Northwest Atlantic Ocean near Bermuda. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to LDEO to incidentally take, by harassment, small numbers of several species of cetaceans and pinnipeds for a limited period of time within the next year.

**DATES:** Comments and information must be received no later than November 7, 2003.

**ADDRESSES:** Comments on the application should be addressed to the Acting Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here. Comments cannot be accepted if submitted via e-mail or the Internet.

**FOR FURTHER INFORMATION CONTACT:** Sarah C. Hagedorn, Office of Protected Resources, NMFS, (301) 713–2322, ext 117.

**SUPPLEMENTARY INFORMATION:**

## Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Under Section 3(18)(A), the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

The term "Level A harassment" means harassment described in subparagraph (A)(i). The term "Level B harassment" means harassment described in subparagraph (A)(ii).

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

## Summary of Request

On July 16, 2003, NMFS received an application from LDEO for the taking, by harassment, of several species of marine mammals incidental to conducting a seismic survey by the *R/V Maurice Ewing* within the Northwest Atlantic Ocean off the coast of Bermuda near the Bermuda Rise area, between 29° and 35° N and between 61° and 68° W, during November and early December 2003. These operations will take place within the Exclusive Economic Zone (EEZ) of Bermuda and adjacent international waters. Clearance to conduct the seismic survey in the foreign EEZ has been requested from Bermuda (U.K.). The purpose of this project is to determine what physical and chemical changes have been imparted to the tectonic plate as a result of the eruption of the Bermuda volcano. By understanding what portion of the uplift of the seafloor is caused by thermal (temporary) versus chemical (permanent) changes to the plate, it will be possible to predict the rate that volcanoes in the middle of plates will sink beneath the waves.

## Description of the Activity

The seismic survey will involve a single vessel, the *R/V Maurice Ewing*, which will conduct the seismic work. The *Maurice Ewing* will deploy an array of 20 airguns as an energy source, and a receiving system consisting of Ocean Bottom Hydrophones (OBH's), 96 sonobuoys, and/or a 6–km (3.2–nm) towed hydrophone streamer. The energy to the airgun array is compressed air supplied by compressors on board the source vessel. As the airgun array is towed along the survey lines, the towed hydrophone streamer or OBH's will receive the returning acoustic signals and transfer the data to the on-board processing system. The OBH's and sonobuoys will be deployed by the *R/V Maurice Ewing*.

All planned geophysical data acquisition activities will be conducted by LDEO scientists, with on-board assistance from the scientists who have proposed the study. The survey will be conducted in the deep ocean depths (>1000 m or 3281 ft) of the Bermuda Rise. The survey program will consist of approximately 2400 km (1296 nm) of survey lines. There will be two intersecting seismic reflection and refraction lines, each approximately 600 km (324 nm) long. One line will be oriented north-south along a magnetic isochron, and the other line will be oriented east-west along the presumed track of the hotspot. The point of intersection of these two lines will be in close vicinity of Bermuda Island. Each of the two lines will be surveyed twice. Along each line, the upper crustal structure will be determined by acquiring multibeam sonar, multichannel seismic (MCS), and sonobuoy refraction data. Then, a linear array of OBH's will be deployed for refraction shooting. The specific configuration of the airgun array will differ between the MCS and OBH surveys (described later in this document). There will be additional operations associated with equipment testing, startup, line changes, and repeat coverage of any areas where initial data quality is sub-standard.

The procedures to be used for the 2003 seismic survey will be similar to those used during previous seismic surveys by LDEO, e.g., in the equatorial Pacific Ocean (Carbotte *et al.*, 1998, 2000). The proposed program will use conventional seismic methodology with a towed airgun array as the energy source and a towed streamer containing hydrophones as the receiver system. In addition, sonobuoys and OBH's will also be used at times as the receiver system. In addition, a multi-beam bathymetric sonar will be operated from the source vessel continuously throughout the entire cruise, and a lower-energy sub-bottom profiler will also be operated during most of the survey. Seismic surveys will likely commence on November 6, 2003, and continue until the first week of December, 2003. Exact dates of the activity may vary by a few days due to weather conditions of the need to repeat some lines if data quality is substandard.

The *R/V Maurice Ewing* will be used as the source vessel. It will tow the 20–airgun array and a streamer containing hydrophones along predetermined lines. During seismic acquisition, the vessel will travel at 4–5 knots (7.4–9.3 km/hr). During the MCS survey, the airgun array to be used will consist of 20 2000–psi Bolt airguns. The standard 20–gun array will include airguns ranging in chamber volume from 80 to 850 $in^3$, with a total volume of 8,575 $in^3$. These airguns will be spaced in an approximate rectangle of dimensions of 35 m (115 ft)(across track) by 9 m (30 ft)(along track). Seismic pulses will be emitted at intervals of approximately 20 seconds. The 20–sec spacing corresponds to a shot interval of about 50 m (164 ft). After the line has been surveyed using MCS, the hydrophone streamer will be retrieved and OBH's will be deployed. During the OBH refraction survey, an augmented 20–gun array will be used and configured for a total volume of approximately 11,000 in3 by changing smaller gun chambers for larger volume chambers (ranging from 145 to 875 $in^3$) after the completion of the MCS reflection lines. Seismic pulses will be emitted at intervals of 240 seconds during OBH acquisition. LDEO believes that even though the augmented 20–gun array will have a total air discharge volume of approximately 2400 $in^3$ more than the standard 20–gun array, this will not significantly increase the source output since the number of guns has a greater effect on source output than discharge volume.

The dominant frequency components for both airgun arrays is 0 – 188 Hz. The standard 20–airgun array (MCS survey) will have a peak sound source level of 255 dB re 1 µPa or 262 dB peak-to-peak (P-P), and will be towed at a depth of 7.5 m (24.5 ft). The augmented 20–airgun array (OBH survey) will have a peak sound source level of 256 dB re 1 µPa or 263 dB P-P, and will be towed at a depth of 9.0 m (29.5 ft). Because the actual source is a distributed sound source (20 guns) rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level. Also, because of the directional nature of the sound from the airgun array, the effective source level for sound propagating in near-horizontal directions will be substantially lower.

Along with the airgun operations, two additional acoustical data acquisition systems will be operated during most or all of the cruise. The ocean floor will be mapped with an Atlas Hydrosweep DS–2 multibeam 15.5–kHz bathymetric sonar, and a 3.5–kHz sub-bottom profiler will also be operated along with the multi-beam sonar. These mid-frequency sound sources are commonly operated from the *Maurice Ewing* simultaneous with the airgun array.

The Atlas Hydrosweep is mounted in the hull of the *R/V Maurice Ewing*, and it operates in three modes, depending on the water depth. The first is a shallow-water mode when water depth is <400 m (1312.3 ft). The source output is 210 dB re 1 µPa-m rms and a single 1–millisec pulse or "ping" per second is transmitted, with a beamwidth of 2.67 degrees fore-aft and 90 degrees in athwartship. The beamwidth is measured to the 3 dB point, as is usually quoted for sonars. The other two modes are deep-water modes. The Omni mode is identical to the shallow-water mode except that the source output is 220 dB rms. The Omni mode is normally used only during start up. The Rotational Directional Transmission (RDT) mode is normally used during deep-water operation and has a 237–dB rms source output. In the RDT mode, each "ping" consists of five successive transmissions, each ensonifying a beam that extends 2.67 degrees fore-aft and approximately 30 degrees in the cross-track direction. The five successive transmissions (segments) sweep from port to starboard with minor overlap, spanning an overall cross-track angular extent of about 140 degrees, with tiny (<1 millisec) gaps between the pulses for successive 30–degree segments. The total duration of the "ping", including all 5 successive segments, varies with water depth but is 1 millisec in water depths <500 m (1640.5 ft) and 10 millisec in the deepest water. For each segment, ping duration, is 1/5th of these values or 2/5th for a receiver in the overlap area ensonified by two beam segments. The "ping" interval during RDT operations depends on water depth and varies from once per second in <500 m (1640.5 ft) water depth to once per 15 seconds in the deepest water.

The sub-bottom profiler is normally operated to provide information about the sedimentary features and bottom topography that is simultaneously being mapped by the Hydrosweep. The energy from the sub-bottom profiler is directed downward by a 3.5–kHz transducer mounted in the hull of the *Maurice Ewing*. The output varies with water depth from 50 watts in shallow water to 800 watts in deep water. Pulse interval is 1 second but a common mode of operation is to broadcast five pulses at 1–s intervals followed by a 5–s pause. Most of the energy in the sound pulses emitted by this multi-beam sonar is at mid-frequencies, centered at 3.5 kHz. The beamwidth is approximately 30° and is directed downward. Maximum source output is 204 dB re 1 µPa, 800 watts, while nominal source output is 200 dB re 1 µPa, 500 watts. Pulse duration will be 4, 2, or 1 ms, and the bandwith of pulses will be 1.0 kHz, 0.5 kHz, or 0.25 kHz, respectively.

Along the two selected seismic lines, data will first be acquired using multibeam sonar, multichannel seismic, and sonobuoys. A total of 96 sonobuoys will be available, and the Ewing system allows two sonobuoys to be recorded at any time. The sonobuoy profiles will be analyzed during the MCS shooting and streamer recovery on each line. The preliminary results from the sonobuoy refraction will be used to plan the OBH deployment pattern on the subsequent deep refraction survey. Twenty OBH's will be deployed for each line.

Additional information on the airgun arrays, Atlas Hydrosweep, and sub-bottom profiler specifications is contained in the application, which is available upon request (see **ADDRESSES**).

## Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Northwest Atlantic Ocean and its associated marine mammals can be found in a number of documents referenced in the LDEO application as well as in the LDEO application itself, and is not repeated here. Approximately 32 species of cetaceans may be found within the proposed study area near Bermuda. These species are the sperm whale (*Physeter macrocephalus*), pygmy sperm whale (*Kogia breviceps*), dwarf sperm whale (*Kogia sima*), Cuvier's beaked whale (*Ziphius cavirostris*), True's beaked whale (*Mesoplodon mirus*), Gervais' beaked whale (*Mesoplodon europaeus*), Sowerby's beaked whale (*Mesoplodon bidens*), Blainville's beaked whale (*Mesoplodon densirostris*), rough-toothed dolphin (*Steno bredanensis*), bottlenose dolphin (*Tursiops truncatus*), Pantropical spotted dolphin (*Stenella attenuata*), Atlantic spotted dolphin (*Stenella frontalis*), spinner dolphin (*Stenella longirostris*), clymene dolphin (*Stenella clymene*), striped dolphin (*Stenella coeruleoalba*), short-beaked common dolphin (*Delphinus delphis*), Fraser's dolphin (*Lagenodelphis hosei*), Atlantic white-sided dolphin (*Lagenorhynchus acutus*), Risso's dolphin (*Grampus griseus*), melon-headed whale (*Peponocephala electra*), pygmy killer whale (*Feresa attenuata*), false killer whale (*Pseudorca crassidens*), killer whale (*Orcinus orca*), long-finned pilot whale (*Globicephala melas*), short-finned pilot whale (*Globicephala macrorhynchus*), North Atlantic right whale (*Eubalaena glacialis*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), Bryde's whale (*Balaenoptera edeni*), sei whale (*Balaenoptera borealis*), fin whale (*Balaenoptera physalus*), and the blue whale (*Balaenoptera musculus*). Another three species are known to occur just outside of the study area and are not likely to be seen within the study area - the northern bottlenose whale (*Hyperoodon ampullatus* (not usually found south of Nova Scotia)), the white-beaked dolphin (*Lagenorhynchus albirostris* (does not normally occur south of Cape Cod)), and Fraser's dolphin (*Lagenodelphis hosei* (usually found further south)). Pinnipeds are unlikely to be seen in the study area although vagrants of grey (*Halichoerus grypus*) and hooded (*Cystophora cristata*) seals could occur. Additional information on most of these species is contained in Caretta et al. (2001, 2002) which is available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html.*

## Potential Effects on Marine Mammals

The sound pressure fields for the standard and augmented 20–gun arrays have been modeled by LDEO, in relation to distance and direction from the airguns. As determined by the models, the pressure fields are similar for both the 8575 in3 and the 11,000 in3 arrays. Table 1 in the application (LDEO Bermuda 2003) shows the maximum distances from both 20–airgun array configurations where sound levels of ≥190, 180, 170, and 160 dB re 1 μPa (rms) are predicted to be received:

| 20–Airgun Array Volume | Predicted RMS Radii in meters/ft | | | |
|---|---|---|---|---|
| | 190 dB | 180 dB | 170 dB | 160 dB |
| 8575 in$^3$ | 275/902 | 900/2953 | 2600/8531 | 9000/29,529 |
| 11,000 in$^3$ | 300/984 | 925/3035 | 2900/9515 | 9200/30,185 |

An earlier notice of an LDEO application and proposed IHA was published in the **Federal Register** on April 14, 2003 (68 FR 17909). That notice described, in detail, the characteristics of the *Ewing's* acoustic sources and, in general, the anticipated effects on marine mammals including masking, disturbance, and potential hearing impairment and other physical effects. That information is not repeated here. In addition, details on acoustic sources from, and possible effects of, the sub-bottom profiler, which was not used in the project described in the April 14, 2003, notice, were described on July 28, 2003 (68 FR 44294). The subject LDEO Bermuda application also provides information on what is known about the effects on marine mammals of the types of seismic operations planned by LDEO.

## Estimates of Take by Harassment for the Bermuda Cruise

As described previously (68 FR 17909, April 14 2003), animals subjected to sound levels ≥160 dB may alter their behavior or distribution, and therefore might be considered to be taken by Level B harassment. However, the 160–dB criterion is based on studies of baleen whales. Odontocete hearing at low frequencies is relatively insensitive, and dolphins and pilot whales generally appear to be more tolerant of strong sounds than are most baleen whales. Delphinidae have their best hearing in the higher frequencies and are unlikely to be as sensitive as the mysticete whales to the low frequency of the airgun array. Therefore, they are less likely to experience Level B harassment at 160 dB. A more likely threshold for onset of Level B harassment in response to seismic sounds is at about 170 dB.

The estimates of takes by harassment are based on the number of marine mammals that might be exposed to seismic sounds ≥160 dB re 1 μPa (rms) by operations with the 20–airgun array planned for the project. Taken from year-round marine mammal density aerial survey data that has been summarized by geographic location and calendar season (CETAP 1982), LDEO used densities for the "Entire Atlantic Stratum" during the autumn period to estimate the numbers of marine mammals that are likely to be present in the proposed survey area near Bermuda. These densities are probably overestimates of the numbers that are likely to be present, because much of the proposed seismic survey area is farther from shore, in greater water depths, and in generally much less productive waters. Because the CETAP (1982) surveys were conducted from an airplane, few beaked whales were seen or identified, and densities of beaked whales were estimated to be zero during the autumn surveys. More than likely there are small numbers of beaked whales in the proposed survey area throughout the year, so LDEO used the mean density for the entire year to estimate the densities of beaked whales that might be present.

Except for beaked whales, LDEO used its best estimate of density to compute a best estimate of the number of marine mammals that may be exposed to seismic sounds≥160 dB re 1 μPa (rms) (NMFS' current criterion for onset of Level B harassment). The best density estimates were multiplied by the linear extent of the proposed survey (1200 km or 648 n.mi. for each of the 8575 and approximately 11,000 in3 arrays) and by twice the 160–dB safety radius around the applicable 20–airgun arrays to estimate the "best estimate" of the numbers of animals of each species that might be exposed to sound levels ≥160 dB re 1 μPa (rms) during the proposed seismic survey program.

Based on this method, Table 3 in the LDEO application gives the best estimates, as well as maximum estimates, of densities for each species or species group of marine mammal that might be exposed to received levels ≥160 dB re 1 μPa (rms), and thus potentially taken by Level B harassment during seismic surveys in the proposed study area of the Northwest Atlantic Ocean near Bermuda. It is assumed that the 20–airgun array would be used for all surveys but that air volume would be 8575 in$^3$ for half of the survey and approximately 11,000 in$^3$ for half of the survey.

Delphinidae would account for 94 percent of the overall estimate for potential taking by harassment (i.e., 10,292 of 10,910), with short-beaked common dolphins (3941) and pilot whales (3345) believed to account for about 71 percent of all delphinids in the area of the proposed seismic survey, and with smaller numbers of bottlenose dolphins (1871), Risso's dolphins (858), and striped dolphins (277) accounting for most of the remaining 29 percent. While there is no agreement regarding any alternative "take" criterion for dolphins exposed to airgun pulses, if only those dolphins exposed to ≥170 dB re 1 μPa (rms) were to be affected sufficiently to be considered taken by Level B harassment, then the best estimate for common dolphins would be 1191 rather than 3941 during the Bermuda Rise cruise, and for pilot whales it would be 1011 instead of

3345. These are based on the predicted 170–dB radius around the 20–airgun arrays (2600 m or 8530 ft for the 8575 in$^3$ array and 2900 m or 9514 ft for the approximately 11,000 in$^3$ array), and are considered to be more realistic estimates of the number of these species that may be disturbed. Therefore, the total number of animals likely to be harassed is considerably lower than the 10,910 animals that LDEO has estimated in Table 3 (LDEO Bermuda 2003).

*Conclusions-Effects on Cetaceans*

The proposed airgun array configurations are larger than those used in many seismic projects; however, shot intervals are longer than during many surveys and so marine mammals will be exposed to fewer seismic pulses than during many other similar seismic surveys. The pulse interval for the 8575 in$^3$ gun array is 20 seconds and is 240 seconds for the 11,000 in$^3$ array.

Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 6 to 8 km (3.2 to 4.3 n.mi.) and occasionally as far as 20–30 km (10.8–16.2 n.mi.) from the source vessel. Some bowhead whales avoided waters within 30 km (16.2 n.mi.) of the seismic operation. However, reactions at such long distances appear to be atypical of other species of mysticetes, and even for bowheads may only apply during migration.

Odontocete reactions to seismic pulses, or at least those of dolphins, are expected to extend to lesser distances than are those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen from seismic vessels. In fact, there are documented instances of dolphins approaching active seismic vessels. However, dolphins as well as some other types of odontocetes sometimes show avoidance responses and/or other changes in behavior when near operating seismic vessels.

Taking account of the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of the area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of “Level B harassment.” In the cases of mysticetes, these reactions are expected to involve small numbers of individual cetaceans. LDEO's best estimate is that 501 fin whales, or 1.1 percent of the estimated North Atlantic fin whale population (IWC 2003) will be exposed to sound levels ≥160 dB re 1 μPa (rms) and potentially affected during the proposed cruise near Bermuda. In light of all these factors, these potential takings by Level B harassment are expected to have no more than a negligible impact on the affected species or stock.

Larger numbers of odontocetes may be affected by the proposed activities, but the population sizes of the main species also are larger and the numbers potentially affected are small relative to the population sizes. 38 sperm whales or 0.3 percent of the estimated North Atlantic sperm whale population would receive seismic sounds ≥160 dB. Similarly, only 78 beaked whales from the 5 beaked whale species may be affected by the proposed activities. This is 2.4 percent of the estimated total of all 5 species of beaked whales (3196) that occur along the northeast coast of the U.S. Because the CETAP (1982) surveys were conducted from an airplane, few beaked whales were seen, or at least identified, and densities of beaked whales were estimated to be zero during the autumn surveys. However, LDEO believes there are probably small numbers of beaked whales in the proposed survey area throughout the year, so LDEO used the mean density for the entire year to estimate the densities of beaked whales that might be present during autumn. Most of the proposed seismic survey area is outside of the area for which this 3196 estimate was made, and only a very small part of beaked whale habitat in the North Atlantic was included in the estimate. Thus the actual estimate is more than likely much larger than 3196, and the percentage of animals that might receive seismic sounds ≥160 dB during the proposed cruise is believed to be less than 1 percent of the 3196 estimated North Atlantic population of the 5 species of beaked whales.

The best estimate of the total number of common dolphins, pilot whales, bottlenose dolphins, Risso's dolphins and striped dolphins that might be exposed to ≥160 dB re 1 μPa (rms) in the proposed survey area near Bermuda are 3941, 3345, 1871, 858 and 277, respectively. Of these, about 1191, 1011, 565, 259 and 84, respectively might be exposed to ≥170 dB. These figures are <0.1 to <1.1 percent of the North Atlantic population estimates of these species. However, the actual population sizes are much larger than the estimates so the percentage of the various populations that might be affected are considerably lower than the <0.1 to <1.1 percent mentioned above. The values based on the ≥170 dB criterion are believed to be a more accurate estimate of the number potentially affected.

Mitigation measures such as controlled speed, look-outs, non-pursuit, ramp-ups, and power- and shut-down procedures when within defined ranges (See Mitigation) should further reduce short-term reactions to disturbance, and minimize any effects on hearing sensitivity.

*Conclusions-effects on Pinnipeds*

Very few if any pinnipeds are expected to be encountered during the proposed seismic survey near Bermuda. However, a few stray hooded and grey seals could be encountered. The best estimate of the numbers of each of the more common (but unlikely) species that might be taken by Level B harassment is no more than two and is most likely zero. It is estimated that a maximum of 10 pinnipeds (five for each species) may be affected by the proposed seismic surveys. None of the pinniped species is considered endangered or vulnerable.

No pinnipeds regularly occur in the proposed survey area and thus none are expected to be encountered. If pinnipeds are encountered, the proposed seismic activities would have, at most, a short-term effect on their behavior and no long-term impacts on individual seals or their populations. Responses of pinnipeds to acoustic disturbance are variable, but usually quite limited. Effects are expected to be limited to short-term and localized behavioral changes falling within the MMPA definition of Level B harassment. Taking these factors into account, impacts are expected to be no more than negligible.

## Mitigation

For the proposed seismic operations in the Bermuda Rise area in 2003, LDEO will use a 20–airgun array. The airguns comprising these arrays will be spread out horizontally, so that the energy from the arrays will be directed mostly downward.

The sound pressure fields have been modeled by LDEO in relation to distance and direction from the standard and augmented 20–gun array as shown in Figures 5 and 6, respectively (LDEO Bermuda 2003). Since the sound pressure fields around both configurations of the 20–gun array are similar, the marine mammal safety radii for the augmented 20–gun array will be used for the duration of the cruise. The radius around the augmented 20–gun array where the received level would be 180 dB re 1 μPa (rms) (the level for onset of Level A harassment applicable to cetaceans) is estimated as 925 m (3035 ft). The radius around the augmented 20–gun array where the received level would be 190 dB re 1 μPa (rms), (the level for onset of Level A harassment applicable to pinnipeds), is estimated as 300 m (984 ft).

Vessel-based observers will monitor marine mammals in the vicinity of the arrays. LDEO proposes to power-down the seismic source if marine mammals are observed within the proposed safety radii. Also, LDEO proposes to use a ramp-up procedure when commencing operations using the 20–gun array. Ramp-up will begin with the smallest gun in the array (80 in$^3$ for the standard array and 145 in$^3$ for the augmented array), and guns will be added in a sequence such that the source level of the array will increase at a rate no greater than 6 dB per 5–minute period over a total duration of about 25 minutes. Please refer to LDEO's application for more detailed information about the mitigation measures that are an integral part of the planned activity.

*Operational Mitigation*

The directional nature of the airgun array to be used in this project is an important mitigating factor, resulting in lower sound levels at any given horizontal distance than would be expected at that distance if the source were omnidirectional with the stated nominal source level. Because the actual seismic source is a distributed sound source rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level.

*Proposed Safety Radii*

Received sound levels have been modeled for the 20–gun array. Based on the modeling, estimates of the 190-, 180-, 170-, and 160–dB re 1 μPa (rms) distances (safety radii) for these arrays have been provided previously in this document.

Airgun operations will be suspended immediately when cetaceans are seen within or about to enter the appropriate 180–dB (rms) radius, or if pinnipeds are seen within or about to enter the 190–dB (rms) radius. These 180- and 190–dB criteria are consistent with guidelines listed for cetaceans and pinnipeds by NMFS (2000) and other guidance by NMFS. A calibration study was conducted prior to these surveys to determine the actual radii corresponding to each sound level. These actual radii will be implemented for this study. Until then, or if those measurements appear defective, LDEO will use a precautionary 1.5 times the modeled 180–dB (cetaceans) and 190–dB (pinnipeds) radii predicted by the model as the safety radii.

*Mitigation During Operations*

The following mitigation measures, as well as marine mammal monitoring, will be adopted during the proposed seismic survey program, provided that doing so will not compromise operational safety requirements: (1) Speed or course alteration; (2) power-down procedures; (3) shut-down procedures; and (4) ramp-up procedures.

**Course Alteration**

If a marine mammal is detected outside the safety radius and, based on its position and the relative motion, is likely to enter the safety radius, the vessel's speed and/or direct course will be changed in a manner that also minimizes the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety radius. If the mammal appears likely to enter the safey radius, further mitigative actions will be taken, i.e., either further course alterations or power-down of the airguns.

**Power-down and Shut-down Procedures**

If a marine mammal is detected outside the safety radius but is likely to enter the safety radius, and if the vessel's course and/or speed cannot be changed to avoid having the marine mammal enter the safety radius, the airguns will be powered-down before the mammal is within the safety radius. Likewise, if a mammal is already within the safety zone when first detected, the airguns will be powered-down immediately. A power-down involves decreasing the number of airguns in use such that the radius of the 180–dB zone is decreased to the extent that marine mammals are not in the safety radii. A power-down may also occur when the vessel is moving from one seismic line to another.

For the power-down procedure, one airgun (either 80 or 145 in$^3$) will be operated during the interruption of seismic survey. Airgun activity (after both power-down and shut-down procedures) will not resume until the marine mammal has cleared the safety radii. The animal has cleared the safety radii if it is visually observed to have left the safety radii, or if it has not been seen within the radii for 15 min (small odontocetes and pinnipeds) or 30 min (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales).

If a cetacean is detected close to the airgun array during a power-down, modeled safety radii for a single gun will be maintained. If the standard 20–gun array is used, the single gun that will be firing is 80 in$^3$, and for the augmented array, it is 145 in$^3$. The safety radii for the larger 145 in$^3$ gun will be used for mitigation purposes. Since no calibrations have been done to confirm the modeled safety radii for this single gun, conservative (1.5 times the safety radius) radii will be used: 48 m or 158 ft (the conservative radius is 72 m or 236 ft) for cetaceans, and 17 m or 56 ft (the conservative radius is 26 m or 85 ft) for pinnipeds. If a marine mammal is seen within the appropriate safety radius of the array while the guns are powered-down, airgun operations will be shut-down. Airgun operations will not resume until the marine mammal is outside the safety radius.

**Ramp-up Procedure**

A "ramp-up" procedure will be followed when the airgun array begins operating after a specified-duration period without airgun operations. Under normal operational conditions (vessel speed of about 4 knots or 7.4 km/hr), the *Maurice Ewing* would travel 900 m (3117 ft) in about 8 minutes and a ramp-up would be required after a power-down or shut-down period lasting 8 minutes or longer if the Ewing tows a 20–airgun array. Based on the same calculation, a ramp-up procedure would be required after a 6 minute period if the speed of the source vessel was 5 knots. During the ramp-up procedures, the safety zone for the full-gun array will be maintained.

If the airguns are started up at night, two marine mammal observers will monitor for marine mammals near the source vessel for 30 minutes prior to start up of airgun operations and during the subsequent ramp-up procedures. If the safety radius has not been visible for that 30 minute period (e.g., during darkness or fog), ramp-up will not commence unless at least one airgun was operating during the interruption of seismic survey operations.

**Monitoring and Reporting**

LDEO proposes to conduct marine mammal monitoring of its 2003 seismic program near Bermuda in order to satisfy the anticipated requirements of the IHA.

Vessel-based Visual Monitoring

At least two vessel-based observers dedicated to marine mammal observations will be stationed aboard LDEO's seismic survey vessel for the seismic survey near Bermuda. At least one experienced marine mammal observer will be on duty aboard the seismic vessel, and observers will be appointed by LDEO with NMFS concurrence. Observers will be on duty in shifts of duration no longer than 4 hours. Use of two simultaneous observers will increase the proportion of the marine mammals present near the source vessel that are detected.

It is proposed that one or two marine mammal observers aboard the seismic vessel will search for and observe marine mammals whenever seismic operations are in progress during daylight hours, and if feasible, observations will also be made during periods without seismic activity. Two observers will monitor for marine mammals near the seismic source vessel for at least 30 minutes prior to and during all daylight airgun operations including ramp-ups, after an extended shut-down, and during any nighttime startups of the airguns. Airgun operations will be suspended when marine mammals are observed within, or about to enter, designated safety radii, where there is a possibility of Level A harassment. Observers will not be on duty during ongoing seismic operations at night; bridge personnel will watch for marine mammals during this period and will call for the airguns to be powered-down if marine mammals are observed in or about to enter the safety radii. At least one marine mammal observer will be on "standby" at night, in case bridge personnel see a marine mammal. An image-intensifier night-vision device (NVD) will be available for use at night. Ramp-up will not occur if the safety radius has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime. The 30–minute observation period is only required prior to commencing seismic operations following a shut-down of the 20–gun array for more than 1 hour. After 30 minutes of observation, the ramp-up procedure will be followed.

The *R/V Maurice Ewing* is a suitable platform for marine mammal observations. Observers will watch for marine mammals from the highest practical vantagepoint on the vessel, which is either the bridge or the flying bridge. The observer's eye level will be approximately 11 m (36 ft) above sea level when stationed on the bridge, allowing for good visibility within a 210° arc for each observer. If observers are stationed on the flying bridge, the eye level will be 14.4 m (47.2 ft) above sea level. The proposed monitoring plan is summarized later in this document. The observer(s) will systematically scan the area around the vessel with 7 X 50 Fujinon reticle binoculars or with the naked eye during the daytime. At night, night vision equipment will be available (ITT F500 Series Generation 3 binocular image intensifier or equivalent). Laser rangefinding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. If a marine mammal is seen well outside the safety radius, the vessel may be maneuvered to avoid having the mammal come within the safety radius (see Mitigation). When mammals are detected within or about to enter the designated safety radii, the airguns will be powered-down immediately. The observer(s) will continue to maintain watch to determine when the animal is outside the safety radius. Airgun operations will not resume until the animal is outside the safety radius or until the specified intervals (15 or 30 min) have passed without a re-sighting.

### *Reporting*

The vessel-based monitoring will provide data required to estimate the numbers of marine mammals exposed to various received sound levels, to document any apparent disturbance reactions, and thus to estimate the numbers of mammals potentially taken by Level B harassment. It will also provide the information needed in order to shut down the airguns at times when mammals are present in or near the safety zone. When a mammal sighting is made, the following information about the sighting will be recorded: (1) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to seismic vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace; and (2) time, location, heading, speed, activity of the vessel (shooting or not), sea state, visibility, cloud cover, and sun glare. The data listed under (2) will also be recorded at the start and end of each observation watch and during a watch, whenever there is a change in one or more of the variables.

All mammal observations and airgun shutdowns will be recorded in a standardized format. Data will be entered into a custom database using a laptop computer when observers are off-duty. The accuracy of the data entry will be verified by computerized validity data checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical or other programs for further processing and archiving.

Results from the vessel-based observations will provide (1) the basis for real-time mitigation (airgun power-down); (2) information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS; (3) data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted; (4) information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity; and (5) data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

A report will be submitted to NMFS within 90 days after the end of the seismic program in the Bermuda Rise area. The end of the seismic program is predicted to occur on or about December 9, 2003. The report will describe the operations that were conducted and the marine mammals that were detected near the operations, and will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all monitoring tasks. The 90–day report will summarize the dates and locations of seismic operations, sound measurement data, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential "take" of marine mammals by harassment or in other ways. The draft report will be considered the final report unless comments and suggestions are provided by NMFS within 60 days of its receipt of the draft report.

## Endangered Species Act (ESA)

Under section 7 of the ESA, NMFS has begun consultation on the proposed issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to the issuance of an IHA.

## National Environmental Policy Act (NEPA)

The National Science Foundation has prepared an EA for the Bermuda Rise survey. NMFS is reviewing this EA and will either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA. A copy of the NSF EA for this activity is available upon request (see **ADDRESSES**).

## Preliminary Conclusions

NMFS has preliminarily determined that the impact of conducting a seismic survey program in the Bermuda Rise portion of the Northwest Atlantic Ocean will result, at worst, in a temporary modification in behavior by certain species of marine mammals. This activity is expected to result in no more than a negligible impact on the affected species.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of the mitigation measures mentioned in this document. In addition, the proposed seismic program will not take place in or near subsistence hunting areas.

Proposed Authorization

NMFS proposes to issue an IHA to LDEO for conducting a seismic survey program in the Bermuda Rise portion of the Northwest Atlantic Ocean, provided the proposed mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of stocks for subsistence uses.

### Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: October 3, 2003.

**Laurie K. Allen,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 03–25639 Filed 10–08–03; 8:45 am]

BILLING CODE 3510–22–S

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 100603A]

## North Pacific Fishery Management Council; Notice of Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Meeting of the North Pacific Fishery Management Council's Scallop Plan Team.

**SUMMARY:** The Scallop Plan Team will meet October 29–30, 2003, at the NMFS Sustainable Fisheries Conference Room in Juneau, AK. You may call in on the conference line at 907–586–7977.

**DATES:** The meeting will meet on October 29–30, 2003, 9 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at the NMFS, 709 W 9th Avenue, Juneau, AK 99801.

*Council address:* North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** Diana Stram, Council staff, Phone: 907–271–2809.

**SUPPLEMENTARY INFORMATION:** Agenda – (1) Membership and Officers (2) Draft Terms of Reference for Scallop Plan Team (3) Review Status of Stocks and Stock Assessment and Fishery Evaluation report (4) Discuss updating the Scallop Fishery Management Plan (5) Update on Alaska Board of Fisheries regulation changes from the 2003 meeting (6) New Business.

Although other non-emergency issue not on the agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions of the Council will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been informed of the Council's intent to take action to address the emergency.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: October 06, 2003.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–25642 Filed 10–8–03; 8:45 am]

BILLING CODE 3510–22–S

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 100303A]

## South Atlantic Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Joint meeting of the South Atlantic Council's Habitat Advisory Panel and Coral Advisory Panel (AP).

**SUMMARY:** The South Atlantic Fishery Management Council (Council) will hold a joint meeting of its Habitat AP and Coral AP to further the Council's integrated process to update Essential Fish Habitat information and consider ecosystem-based management through the development of a Fishery Ecosystem Plan for the South Atlantic Region.

**DATES:** The joint meeting will take place October 22 and 23, 2003.

**ADDRESSES:** The meeting will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC, 29407; phone: 800–334–6660 or 843–571–1000.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, S.C., 29407; phone 843–571–4366 or 866–SAFMC–10; FAX 843–769–4520.

**SUPPLEMENTARY INFORMATION:** Meeting participants will meet from 1 until 5 p.m. on October 22, 2003, and again from 8:30 a.m. until 5 p.m. on October 23, 2003. Items for discussion at the joint meeting include: (1) a summary of the workshop process to facilitate revision of Essential Fish Habitat (EFH) and EFH Habitat Areas of Particular Concern (EFH-HAPC) designations and development of a South Atlantic Fishery Ecosystem Plan; (2) deepwater coral habitat research and protection; (3) habitat policy statement review and development; (4) review of regulations protecting EFH and any remaining fishing and non-fishing activities impacting habitat; and (5) research and monitoring needs to refine the designation and protection of EFH and EFH-HAPCs and to support ecosystem-based management.

Although non-emergency issues not contained in this notice may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by October 21,2003.

Dated: October 03, 2003.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–25557 Filed 10–8–03; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## DEPARTMENT OF THE INTERIOR

## U.S. Fish and Wildlife Service

**[I.D. 082803]**

## Marine Mammals and Endangered Species; National Marine Fisheries Service File Nos. 764–1703, 1038–1693, and 116–1691; U.S. Fish and Wildlife Service File Nos. PRT–068532, PRT–064776, and PRT–062475

**AGENCIES:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; U.S. Fish and Wildlife Service (FWS), Interior.

**ACTION:** Receipt of applications for permits from NMFS and FWS.

**SUMMARY:** Notice is hereby given that the following applicants have applied in due form for permits from NMFS and FWS to take parts from species of marine mammals for purposes of scientific research: (1) The National Museum of Natural History, Department of Systematic Biology, MRC 108, P.O. Box 37012, Washington, D.C. 20013–7012 (File No. 764–1703/PRT–068532, Charles Potter, Principal Investigator (PI)); (2) Darla Rae Ewalt, USDA, APHIS, National Veterinary Services Laboratories, 1800 Dayton Road, Ames, Iowa 50010 (File No. 1038–1693/PRT–064776); and (3) Sea World, Inc., 7007 Sea World Drive, Orlando, Florida 32821 (File No. 116–1691/PRT–062475, Dr. Todd Robeck, PI).

**DATES:** Written or telefaxed comments must be received on or before November 10, 2003.

**ADDRESSES:** The application requests and related documents are available for review upon written request or by appointment in the following office(s): see **SUPPLEMENTARY INFORMATION**.

Written comments or requests for a public hearing on these requests should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Skidmore, Amy Sloan, or Ruth Johnson (301)713–2289 or email: Jennifer.Skidmore@noaa.gov or Amy.Sloan@noaa.gov, Ruth.Johnson@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The subject permits are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR parts 18 and 216), the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 17 and 222–226).

The National Museum of Natural History (File No. 764–1703/PRT–068532) requests a permit to salvage, collect, import/export, analyze samples, carcasses, hard and soft parts taken from pinnipeds, sirenians, sea and marine otters, and cetaceans to obtain information about the biology and life history of marine mammals and the role they play in the environment. Additionally, samples will be archived and curated at the Natural History Museum. No live animal takes are requested. A permit is requested for a period of five years.

Darla Ewalt (File No. 1038–1693/PRT–064776) requests authorization to receive from Canada tissue samples taken from legally harvested beluga whales (Delphinapterus leucas), narwhals (Monodon monoceros), walrus (Odobenus rosmarus) and ringed seals (Phoca hispida). Tissues to be imported include blood, lymph nodes, lungs and reproductive organs. These samples will be utilized in brucellosis research investigating the presence of Brucella in subsistence harvested marine mammals. The applicant is requesting a five year permit.

Sea World, Inc. (File No. 116–1691/PRT–062475) requests authorization to collect, receive, import, and export an unlimited number of pinniped and cetacean specimens including but not limited to reproductive cells and organs, urine, feces, saliva, ocular secretions, and whole blood taken from dead or captive individuals to study reproductive physiology, including endocrinology, gamete biology, and cryophysiology. Specimens may be collected under the following circumstances for dead animals: directly taken in fisheries for such animals, in countries or situations where such activity is permitted; killed incidental to fishing or other operations; found dead at sea or beached; or that died of natural causes. For captive animals, specimens may be collected from animals that are being housed in countries or situations where such activity is legal and from animals that have been behaviorally conditioned for specimen donation as part of routine husbandry procedures. Specimens may be taken at anytime of the year and in all areas worldwide where pinnipeds and cetaceans are found. The requested duration of the permit is five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Documents may be reviewed in the following locations:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018;

Protected Species Coordinator, Pacific Area Office, NMFS, 1601 Kapiolani Blvd., Rm, 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371;

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320; and

U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Arlington, VA 22203 (1–800–358–2104).

Dated: October 2, 2003.

*Stephen L. Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

Dated: October 2, 2003.

*Charlie R. Chandler, Chief, Branch of Permits, Division of Management Authority, U.S. Fish and Wildlife Service.*

[FR Doc. 03–25558 Filed 10–8–03; 8:45 am]

BILLING CODE 3510–22–S

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## COMMISSION OF FINE ARTS

### Notice of Schedule of Meetings

Listed below are the schedule of meetings of the Commission of Fine Arts for 2004. The Commission's office is located at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. The meetings are held on the 3rd Thursday of each month, excluding August. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, September 29, 2003.

**Charles H. Atherton,**

*Secretary.*

| Commission meetings | Submission deadlines |
|---|---|
| January 15 | December 31, 2003*. |
| February 19 | February 5. |
| March 18 | March 4. |
| April 15 | April 1. |
| May 20 | May 6. |
| June 17 | June 3. |
| July 15 | July 1. |
| September 21* | September 2. |
| October 21 | October 7. |
| November 18 | November 4. |
| December 16 | December 2. |

*The 31 December 2003 Commission deadline and the 21 September Commission meeting have been changed from the regular Thursday dates because of proximity to holidays.

[FR Doc. 03–25624 Filed 10–8–03; 8:45 am]

BILLING CODE 6330–01–M

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## COMMISSION OF FINE ARTS

### Notice of Schedule of Meetings

Listed below are the schedule of meetings of the Old Georgetown Board for 2004. The Commission's office is located at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. The Old Georgetown Board meetings are held on the 1st Thursday of each month, excluding August. Items of discussion affecting the appearance of Georgetown in Washington, DC, may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our web site: *www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed in Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, September 29, 2003.

**Charles H. Atherton,**

*Secretary.*

| Georgetown meetings | Submission deadlines |
|---|---|
| January 5* | December 11, 2003. |
| February 5 | January 15. |
| March 4 | February 12. |
| April 1 | March 11. |
| May 6 | April 15. |
| June 3 | May 13. |
| July 1 | June 10. |
| September 2 | August 12. |
| October 7 | September 16. |
| November 4 | October 14. |
| December 2 | November 11. |

*The 5 January Old Georgetown Board meeting has been changed from the regular Thursday date because of proximity to the holiday.

[FR Doc. 03–25625 Filed 10–8–03; 8:45 am]

BILLING CODE 6330–01–M

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## COMMISSION OF FINE ARTS

### Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for October 16, 2003 at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call (202) 504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, 29 September 2003.

**Charles H. Atherton,**

*Secretary.*

[FR Doc. 03–25626 Filed 10–18–03; 8:45 am]

BILLING CODE 6330–01–M

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## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Coastal Engineering Research Board

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of open meeting.

**SUMMARY:** In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

*Name of Committee:* Coastal Engineering Research Board (CERB).

*Dates of Meeting:* October 28–30, 2003.

*Place:* The Hilton Portland, Portland, Oregon.

*Time:* 4:45 p.m. to 8 p.m. (October 28, 2003). 8 a.m. to 5 p.m. (October 29, 2003). 7:30 a.m. to 6:15 p.m. (October 30, 2003).

**FOR FURTHER INFORMATION CONTACT:** Inquiries and notice of intent to attend the meeting may be addressed to Thomas W. Richardson, Acting Executive Secretary, Coastal and Hydraulics Laboratory, U.S. Army Engineer Research and Development Center, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180–6199.

**SUPPLEMENTARY INFORMATION:** *Proposed Agenda:* The theme of the meeting is "Navigation and Regional Sediment Management in the Northwest." On Tuesday evening, October 28, there will be a joint icebreaker boat trip with PIANC. On Wednesday, October 29, presentations will include: "Functional Performance of Navigation Projects;" "Northwest Harbor Operational Issues;" "IOOS Regional Coastal Program for the Northwest;" "Northwest Regional Sediment Management (RSM) Issues;" "Mouth of the Columbia (MCR) RSM Project;" "Environmental Challenges at the MCR;" "Environmental Data Collection Challenges at the MCR;" "RSM in the Columbia River Basin;" "Wave Data Needs and Analysis in the North Pacific;" "Climatic Variability and Trends in the Columbia River Basin from 1750–2003 and Projections of Climate Change Impacts for the 21st Century;" "Columbia River Littoral Cell (Geological Framework);""Developing Analytical Tools to Support RSM, Grays Harbor, and Willapa Bay;" and "Applying Technology for Project RSM Grays Harbor and Willapa Bay." On Thursday morning, October 30, of the Board will tour the Mouth of the Columbia River Basin via helicopter and will meet in an Executive Session Thursday afternoon.

These meetings are open to the public; participation by the public is scheduled for 4 p.m. on October 29.

The entire meeting is open to the public, but since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

**Thomas W. Richardson,**

*Director, Coastal and Hydraulics Laboratory, Acting Executive Secretary.*

[FR Doc. 03–25622 Filed 10–8–03; 8:45 am]

**BILLING CODE 3710–61–M**

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## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Availability of Government-Owned Invention; Available for Licensing

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

Patent application 10/601,893: TWO BAND IMAGING SYSTEM. A two band imaging system with two infrared focal plane array detectors, two filters of known band-pass, a dichroic beam splitter and an image processor. Each filter is placed in front of a corresponding infrared focal plane array detector, and the dichroic beam splitter is disposed within the system at a 45-degree angle to the optical axis such that light entering the system is split and is simultaneously directed to each of the two infrared focal plane array detectors. The image processor simultaneously converts the light entering the two infrared focal plane array detectors into a real time absolute image.

**ADDRESSES:** Requests for copies of the invention cited should be directed to the Naval Surface Warfare Center, Crane Div., Code OCF, Bldg. 64, 300 Highway 361, Crane, IN 47522–5001.

**FOR FURTHER INFORMATION CONTACT:** Mr. Darrell Boggess, Naval Surface Warfare Center, Crane Div., Code OCF, Bldg. 64, 300 Highway 361, Crane, IN 47522–5001, telephone (812) 854–1130. To download an application for license, see: *http://www.crane.navy.mil/foia_pa/CranePatents.asp.*

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: September 29, 2003.

**E.F. McDonnell,**

*Major, U.S. Marine Corps, Federal Register Liaison Officer.*

[FR Doc. 03–25566 Filed 10–8–03; 8:45 am]

**BILLING CODE 3810–FF–P**

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## DELAWARE RIVER BASIN COMMISSION

### Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Wednesday, October 15. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

The conference among the commissioners and staff will begin at 9:30 a.m. Topics of discussion will include: an update on development of the Water Resources Plan for the Delaware River Basin, including a proposed resolution authorizing the executive director to solicit public comment on the draft plan; an update on establishment of the TMDLs for PCBs in the Delaware Estuary; an update on activities concerning the TMDL Implementation Advisory Committee (IAC), including a summary of a meeting among the regulatory agency participants, IAC membership status, fundraising and plans for an initial two-day meeting on October 21–22; a discussion on the status of the Lake Wallenpaupack drought operating plan approved by Resolution No. 2002–33 on November 25, 2002, including a proposal to extend beyond December 3, 2003 the credit granted PPL to satisfy its consumptive use compensation requirement; and a presentation by a representative from PSEG, updating their Estuary Enhancement Program.

The subjects of the public hearing to be held during the 1:30 p.m. business meeting include the dockets listed below:

1. *Borough of Jim Thorpe D–81–71 CP RENEWAL 3.* An application for the renewal of a ground water withdrawal project to continue withdrawal of 14.1 million gallons per 30 days (mg/30 days) to supply the applicant's public distribution system from existing Wells Nos. 1 and 4 in the Maunch Chunk Formation in the Silkmill Run Watershed. The project is located in Jim Thorpe Borough, Carbon County, Pennsylvania.

2. *Borough of Alpha D–87–62 CP RENEWAL 2.* An application to renew a ground water withdrawal of 13.0 mg/30 days to supply the applicant's public distribution system from existing Wells Nos. 1, 2, and 3 in the Lopatcong Creek and Pohatcong Creek watersheds. The

project is located in Alpha Borough, Warren County, New Jersey.

3. *City of Bridgeton D–98–50 CP.* An application to replace Wells Nos. 3, 6, 7, 8, and 9 in the applicant's public water distribution system, which have become unreliable, with replacement Wells Nos. 18, 19, 20, and 21; and to add new Wells Nos. 22, 23, and 24. The applicant requests that the combined allocation for the new wells be limited to 60 mg/30 days of water, and that the total withdrawal from all wells be limited to 170 mg/30 days. The project is located in the Cohansey River Watershed in the City of Bridgeton, Cumberland County, New Jersey.

4. *Saville Rustin Water Company D–2003–19 CP.* An application for approval of a ground water withdrawal project to supply up to 1.296 mg/30 days of water to the applicant's public water distribution system from new Well No. 6, and to retain the existing withdrawal from all wells of 7.5 mg/30 days. The project well is located in the Little Bushkill Watershed in Lehman Township, Pike County, Pennsylvania.

5. *East Penn Manufacturing D–2003–23.* An application for approval of a ground water withdrawal project to supply up to 15 mg/30 days of water to the applicant's industrial facility from new Wells Nos. 2, 4, 5, 6, 7, 8, and 9 in the Leithsville and Hardyston Formations, and to establish the withdrawal from all wells at 15 mg/30 days. The project wells are located in the Moselem Creek Watershed in Richmond Township, Berks County, Pennsylvania.

6. *Great Lakes Companies, Inc. D–2003–25.* An application to construct a 0.09 mgd STP to provide tertiary treatment of wastewater from the proposed Great Wolf Lodge, a 400-unit hotel with an indoor water park. The project is located on the northwest corner of the intersection of State Route 611 and Interstate Route 80 in Pocono Township, Monroe County, Pennsylvania. Following tertiary treatment, a portion of the effluent will be spray applied to on-site areas. The remaining effluent will be discharged to Scot Run, a tributary of Pocono Creek in the Brodhead Creek Watershed, approximately 18 river miles upstream from DRBC Special Protection Waters.

In addition to the public hearing items, the Commission will address the following at its 1:30 p.m. business meeting: Minutes of the September 3, 2003 business meeting; announcements; a report on Basin hydrologic conditions; a report by the executive director; a report by the Commission's general counsel; a resolution suspending the authority of the applicant to proceed with its project set forth in Docket D–98–11 CP ("the Cornog Quarry Project"), at the applicant's request, pending a further decision of the Commission; a resolution authorizing the executive director to solicit public comment on the draft Water Resources Plan for the Delaware River Basin; a resolution authorizing the executive director to enter into a contract for the development of public outreach materials for the Basin Plan; and a resolution for the minutes amending the Administrative Manual: By-Laws, Management and Personnel by increasing the limit on employee contributions to Unreimbursed Medical Spending Accounts (UMSAs), in accordance with Section 125 of the Federal Internal Revenue Code.

Draft dockets scheduled for public hearing on October 15, 2003 are posted on the Commission's Web site, *http://www.drbc.net,* where they can be accessed through the Notice of Commission Meeting and Public Hearing. Additional documents relating to the dockets and other items may be examined at the Commission's offices. Please contact Thomas L. Brand at 609–883–9500 ext. 221 with any docket-related questions.

Persons wishing to testify at this hearing are requested to register in advance with the Commission secretary at 609–883–9500 ext. 203. Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the hearing should contact the Commission secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how the Commission may accommodate your needs.

Dated: October 1, 2003.

**Pamela M. Bush,**

*Commission Secretary.*

[FR Doc. 03–25571 Filed 10–8–03; 8:45 am]

BILLING CODE 6360–01–P

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## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before November 10, 2003.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or recordkeeping burden. OMB invites public comment.

Dated: October 6, 2003.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

**Office of Postsecondary Education**

*Type of Review:* New.

*Title:* Annual Performance Report for the Gaining Early Awareness for Undergraduate Programs (GEAR UP) Program.

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 316.
Burden Hours: 11,060.

*Abstract:* The purpose of this information collection is accountability for program implementation and student outcomes for the Gaining Early Awareness and Readiness for

Undergraduate Programs (GEAR UP). The information collected enables the U.S. Department of Education to demonstrate its progress in meeting the GEAR UP performance objectives as reflected in the indicators.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2294. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivan.Reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–25607 Filed 10–8–03; 8:45 am]

**BILLING CODE 4000–01–P**

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## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before November 10, 2003.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov*.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 6, 2003.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

**Office of Postsecondary Education**

*Type of Review:* Reinstatement.

*Title:* European Community-United States Cooperation Program.

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 60.

Burden Hours: 1,800.

*Abstract:* The European Community-United States Programs will support new types of cooperation in curriculum development and student exchange between the U.S. and the European union.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2349. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–25608 Filed 10–8–03; 8:45 am]

**BILLING CODE 4000–01–P**

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## DEPARTMENT OF ENERGY

**[Docket Nos. PP–66–2 and PP–82–3]**

### Application To Amend Presidential Permits; Vermont Electric Power Company, Inc.

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** Vermont Electric Power Company, Inc. (VELCO) has applied to amend Presidential Permit PP–66 to change way the subject facilities are authorized to operate. VELCO also has applied to amend Presidential Permit PP–82 to change the names of the owners of the interconnection facilities and to increase the amount of power imports allowed over these facilities.

**DATES:** Comments, protests or requests to intervene must be submitted on or before November 10, 2003.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–318–7761).

**FOR FURTHER INFORMATION CONTACT:** Dr. Jerry Pell (Program Office) 202–586–3362, *Jerry.Pell@hq.doe.gov*, or Michael Skinker (Program Attorney) 202–586–2793.

**SUPPLEMENTARY INFORMATION:** The construction, operation, maintenance, and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038. Upon issuance of such a Presidential permit, no material change may be made in the way the facilities are operated unless such change has been approved by the Department of Energy (DOE).

On June 21, 1979, DOE issued Presidential Permit PP–66 to Citizens Utilities Company (now Citizens Communications Company; "Citizens") for one 120,000-volt (120-kV) electric transmission line that crosses the United States border with Canada near Derby Line, Vermont, and interconnects with similar transmission facilities in Canada owned by Hydro Quebec. On August 21, 2003, Citizens and VELCO (collectively, the "Applicants") jointly filed an application with DOE to transfer Presidential Permit PP–66 from Citizens to VELCO. VELCO is a Vermont corporation comprised of several electric utilities operating in Vermont (as further described in the application). VELCO currently owns and operates most of the bulk transmission facilities in Vermont, other than those currently owned by Citizens.

VELCO has proposed to purchase from Citizens transmission facilities in northern Vermont, including the international transmission facilities authorized by Presidential Permit PP–66. Notice of the VELCO and Citizens' application to transfer PP–66 appeared in the **Federal Register** on September 2, 2003, (68 FR 52187) and that matter is still pending.

On September 3, 2003, VELCO applied to amend Presidential Permit PP–66 to authorize a change in the operation of the facilities ("Derby Interconnection Facilities") as part of VELCO's Northern Loop Project. VELCO claims that the "Northern Loop Project" would improve the reliability of VELCO's bulk transmission system in northern Vermont and that the requested change will reduce peak imports over the Derby Interconnection Facilities from TransEnergie in the Canadian Province of Quebec. In that same application, VELCO also requested that Presidential Permit PP–82 be amended to change the names of the companies that comprise the Joint Owners of the Highgate Project (the permit holder) and to increase the allowable level of imports over the PP–82 facilities to 250 MW.

In its application, VELCO states that the effect of the Northern Loop Project would be to shift load supplied in Northwestern Vermont from the PP–66 facilities to the PP–82 facilities. This would result in a decrease in electricity imports from Canada over the PP–66 facilities and an increase in imports over the PP–82 facilities.

In its application, VELCO states that implementation of the Northern Loop Project may require the following physical modifications:

- Replacement of the existing 48-kilovolt (kV) transmission line between VELCO's Irasburg Substation and the so-called "Mosher's Tap" with a new, double-circuit 115 kV/48 kV line;
- Connection of this line's 115-kV circuit to one circuit of the existing Mosher's Tap-Highgate Substation line, now operated at 120 kV but to be operated thereafter at 115 kV;
- Connection of this 115-kV circuit at Highgate Substation to VELCO's existing 115-kV line from Georgia to Highgate via a new bus constructed at the Highgate Substation;
- Consolidation of VELCO's and Citizens' now-separate substations in Highgate, a project that may also connect the Highgate Interconnection Facilities (north of the converter terminal) to the 120-kV bus in Highgate Substation (the "Highgate Tap"); and,
- Related improvements to VELCO's St. Johnsbury, Irasburg and St. Albans Substations.

## Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on VELCO's application to amend the Presidential Permit PP–66 for the Derby Interconnection Facilities should be clearly marked with Docket PP–66–2. Comments on VELCO's application to amend Presidential Permit PP–82 should be clearly marked with Docket PP–82–3. Additional copies are to be filed directly with L. Russell Mitten, Esq., V.P., General Counsel, Citizens Communications Company, 3 High Ridge Park, Stamford, CT 06905; Mr. Gary Parker, V.P., Director of Planning, Engineering, Construction and Transmission, Vermont Electric Power Company, Inc., 366 Pinnacle Ridge Road, Rutland, VT 05701; *AND* Kenneth G. Hurwitz, Esq., Haynes and Boone, LLP, 550 11th Street, NW., Suite 650, Washington, DC 20004–1314; and John H. Marshall, Esq., Downs Rachlin Martin PLLC, 90 Prospect Street, P.O. Box 99, St. Johnsbury, VT 05819–0099.

Before a Presidential permit may be issued or amended, DOE must determine that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system. In addition, DOE must consider the environmental impacts of the proposed action (*i.e.*, granting the Presidential permit with any conditions and limitations, or denying it) pursuant to the National Environmental Policy Act of 1969. DOE also must obtain the concurrence of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Electricity Regulation home page at *http://www.fe.doe.gov/programs/electricityregulation/*. Select "Pending Proceedings" from the options menu.

Issued in Washington, DC, on October 3, 2003.

**Anthony J. Como,**

*Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.*

[FR Doc. 03–25620 Filed 10–8–03; 8:45 am]

**BILLING CODE 6450–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP99–301–085]**

## ANR Pipeline Company; Notice of Service Agreement Filing

October 2, 2003.

Take notice that on September 24, 2003 subject to Section 4 of the Natural Gas Act (NGA) and Part 154 of the Regulations of the Federal Energy Regulatory Commission (Commission), ANR Pipeline Company (ANR), 9 E Greenway Plaza, Houston, Texas 77046, tendered for filing and approval, ten service agreements (Agreements) between ANR and Kaztex Energy Management Inc., pursuant to ANR's Rate Schedule FTS–1. ANR requests the Commission find that the Agreements contain acceptable material deviations from ANR's Form of Service Agreement and accept the attached tariff sheet which references the Agreements as non-conforming agreements.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the eFiling link.

*Protest Date:* October 6, 2003.

**Magalie R. Salas,**
*Secretary.*
[FR Doc. E3–00032 Filed 10–8–03; 8:45 am]
**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### [Project 2210–090]

### Appalachian Power Company; Notice of Extension of Comment Period

October 2, 2003.

This notice applies to the Smith Mountain Pumped Storage Project, FERC No. 2210. The project is licensed to Appalachian Power Company, a part of American Electric Power and is located on the Roanoke River, in Bedford, Pittsylvania, Franklin, and Roanoke Counties, Virginia.

On September 10, 2003, a Notice of Application for Amendment of License andSoliciting Comments, Motions to Intervene, and Protests was issued for the amendment of license to approve a shoreline management plan filed on September 3, 2003. The comment period ends October 10, 2003. This notice extends the comment period for 90 days until January 10, 2004.

The Commission staff will prepare a Draft Environmental Assessment (DEA) of the application. Once this DEA is completed, it will be noticed to provide an opportunity for Federal, state, and local agencies, as well as the public, to provide comments. All comments will be used in preparing the Final Environmental Assessment to be considered by the Commission when acting on this application.

For further information, contact Heather Campbell at (202) 502–6182.

**Magalie R. Salas,**
*Secretary.*
[FR Doc. E3–00011 Filed 10–8–03; 8:45 am]
**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### [Docket No. EF03–2011–000]

### United States Department of Energy, Bonneville Power Administration; Order Approving Rates on an Interim Basis and Providing Opportunity for Additional Comments

Issued: October 1, 2003.

Before Commissioners: Pat Wood III, Chairman; William L. Massey, and Nora Mead Brownell.

1. In this order we approve on an interim basis, pending our full review for final approval, the Bonneville Power Administration's (Bonneville) proposed modification to the Safety-Net and Financial-Based Cost Recovery Adjustment Clauses (CRACs), and to the Dividend Distribution Clause, under the 2002 Wholesale Power Rate Schedule General Rate Schedule Provisions (GRSPs). We also provide an additional period of time for the parties to file comments. The proposed rates will allow Bonneville to recover its costs and repay the U.S. Treasury for the Federal investment.

**Background**

2. On July 29, 2003, Bonneville filed a request for interim and final approval to modify its CRACs and the Dividend Distribution Clause under the 2002 Wholesale Power Rate Schedule General Rate Schedule Provisions (GRSPs), in accordance with the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act)[1] and subpart B of part 300 of the Commission's regulations.[2] The Commission previously granted final approval of the 2002 GRSPs for a five-year period ending September 30, 2006.[3] Bonneville contends that the CRACs allowed BPA to keep rates low while still addressing any financial shortfalls, rather than instituting higher base rates for the entire rate period.

3. In accordance with the statutory procedure,[4] Bonneville seeks interim approval of this adjustment effective October 1, 2003, and final approval effective October 1, 2003 through September 30, 2006.

**Notice of Filing and Interventions**

4. Notice of Bonneville's filing was published in the **Federal Register**, 68 FR 47561 (2003), with comments, protests, or motions to intervene due on or before September 3, 2003.

5. Avista Corporation, Generating Public Utilities, Eugene Water & Electric Board, Golden Northwest Aluminum, Inc., PacifiCorp, Portland General Electric, Puget Sound Energy, Inc., and the City of Tacoma, Department of Public Utilities, Light Division, d/b/a Tacoma Power filed timely motions to intervene raising no issues. Northwest Requirements Utilities (NRU) filed a motion to intervene out of time.

6. In addition, Alcoa, Inc., Generating Public Utilities, Industrial Customers of Northwest Utilities, Golden Northwest Aluminum, Inc., Pacific Northwest Generating Cooperative, Public Power Council, and the Columbia River Inter-Tribal Fish Commission, Confederated Tribes of the Umatilla Reservation, and the Yakama Nation (collectively, Protesters) filed timely motions to intervene and protests.

**Discussion**

*Procedural Matters*

7. Under Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2003), the notices of intervention and timely, unopposed motions to intervene make the entities that filed them parties to this proceeding. We will grant NRU's untimely, unopposed motion to intervene because: NRU's interests cannot be adequately represented by other parties; NRU intervened at an early stage of the proceeding; and no prejudice or additional burden upon existing parties will result from permitting the intervention.

**Standard of Review**

8. Under the Northwest Power Act, the Commission's review of Bonneville's regional power and transmission rates is limited to determining whether Bonneville's proposed rates meet the three specific requirements of section 7(a)(2):

> They must be sufficient to assure repayment of the Federal investment in the Federal Columbia River Power System over

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[1] Sections 7(a) and 7(i)(6) of the Northwest Power Act, 16 U.S.C. 839e(a)(2) and 839e(i)(6) (2000).

[2] 18 CFR part 300 (2003).

[3] United States Department of Energy—Bonneville Power Administration, 104 FERC ¶61,093 (2003).

[4] Sections 7(a) and 7(i)(6) of the Northwest Power Act, 16 U.S.C. 839e(a)(2) and 839e(i)(6) (2000).

a reasonable number of years after first meeting the Administrator's other costs;

They must be based upon the Administrator's total system costs; and

Insofar as transmission rates are concerned, they must equitably allocate the costs of the Federal transmission system between Federal and non-Federal power.[5]

9. Commission review of Bonneville's non-regional, non-firm rates also is limited. Review is restricted to determining whether such rates meet the requirements of section 7(k) of the Northwest Act,[6] which requires that they comply with the Bonneville Project Act, the Flood Control Act of 1944, and the Federal Columbia River Transmission System Act (Transmission System Act). Taken together, those statutes require Bonneville to design its non-regional, non-firm rates:

(1) To recover the cost of generation and transmission of such electric energy, including the amortization of investments in the power projects within a reasonable period;

(2) To encourage the most widespread use of Bonneville power; and

(3) To provide the lowest possible rates to consumers consistent with sound business principles.

10. Unlike the Commission's statutory authority under the Federal Power Act, the Commission's authority under sections 7(a) and 7(k) of the Northwest Power Act does not include the power to modify the rates. The responsibility for developing rates in the first instance is vested with Bonneville's Administrator. The rates are then submitted to the Commission for approval or disapproval. In this regard, the Commission's role can be viewed as an appellate one: To affirm or remand the rates submitted to it for review.[7]

11. Moreover, review at this interim stage is further limited. In view of the volume and complexity of a Bonneville rate application, such as the one now before the Commission in this filing, and the limited period in advance of the requested effective date in which to review the application,[8] the Commission generally defers resolution of issues on the merits of Bonneville's application until the order on final confirmation. Thus, the proposed rates, if not patently deficient, generally are approved on an interim basis and the parties are afforded an additional opportunity to raise issues.[9]

### *Interim Approval*

12. Protesters contend that Bonneville has not shown the need for the rate increase. They argue that the proposed GRSPs will operate to preclude the Commission's statutorily mandated review of future SN CRAC rate adjustments, as required under the Northwest Power Act. They contend that Bonneville has not based the rates on its total system costs, as required by the Northwest Power Act. Protesters also argue, among other things, that (1) Bonneville's application is deficient and fails to comply with the Northwest Power Act, (2) Bonneville failed to file a complete evidentiary record, (3) Bonneville relied on data and information that was not included in the evidentiary record, (4) Bonneville denied the parties in this proceeding due process, and (5) Bonneville submitted materials and a Notice of Filing that do not comply with the Commission's regulations.

13. The Commission's preliminary review indicates that Bonneville's filing appears to meet the minimum threshold filing requirements of part 300 of the Commission's regulations and the statutory standards. Because the Commission's preliminary review of Bonneville's submittal indicates that they do not contain any patent deficiencies, the proposed modifications will be approved on an interim basis pending our full review for final approval. We note, as well, that no one will be harmed by this decision because interim approval allows Bonneville's rates to go into effect subject to refunds with interest if the Commission later determines in its final decision not to approve the rates.[10]

14. In addition, we will provide an additional period of time for the parties to file comments and reply comments on all issues related to final confirmation and approval of Bonneville's proposed rates. This will ensure that the record in this proceeding is complete.

### *The Commission Orders*

(A) Protesters' requests to reject Bonneville's filing are hereby denied.

(B) Interim approval of Bonneville's filing is hereby granted, to become effective on October 1, 2003, subject to refund with interest as set forth in section 300.20(c) of the Commission's regulations, 18 CFR 300.20(c) (2003), pending final action on either its approval or disapproval.

(C) Within thirty (30) days of the date of this order, all parties who wish to do so may file additional comments regarding final confirmation and approval of Bonneville's proposed rates. All parties who wish to do so may file reply comments within twenty (20) days thereafter.

(D) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–25573 Filed 10–8–03; 8:45 am]

**BILLING CODE 6717–01–P**

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[5] 16 U.S.C. 839e(a)(2) (2000). Bonneville also must comply with the financial, accounting, and ratemaking requirements in Department of Energy Order No. RA 6120.2.

[6] 16 U.S.C. 839e(k) (2000).

[7] *E.g.*, United States Department of Energy—Bonneville Power Administration, 67 FERC ¶ 61351 at 62216–17 (1994); *see also, e.g., Aluminum Company of America* v. *Bonneville Power Administration*, 903 F.2d 585, 592–93 (9th Cir. 1989) and cases cited therein.

[8] 18 CFR 300.10(a)(3)(ii) (2003).

[9] *See, e.g.*, United States Department of Energy—Bonneville Power Administration, 64 FERC ¶ 61375 at 63606 (1993); United States Department of Energy—Bonneville Power Administration, 40 FERC ¶ 61351 at 62059–60 (1987).

[10] 18 CFR 300.20(c) (2003).

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP03–621–000]**

### CenterPoint Energy-Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 2, 2003.

Take notice that on September 29, 2003, CenterPoint Energy Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheet to be effective October 1, 2003:

Seventh Revised Sheet No. 11
Third Revised Sheet No. 249A

MRT states that the purpose of this filing is to revise the provisions of the General Terms and Conditions of MRT's tariff in order to clarify that it possesses the authority to bill taxes, levies, and other charges imposed on Customers by regulatory agencies or taxing authorities where MRT is required by law to collect such amounts from Customer(s) and remit these amounts to the respective agencies or authorities.

MRT states that copies of the revised tariff sheet are being mailed to all parties on MRT's official service list, to MRT's jurisdictional customers, and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Comment Date*: October 14, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00024 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP03–407–002]**

### CenterPoint Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

October 2, 2003.

Take notice that on September 24, 2003, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised tariff sheet:

Second Substitute Original Sheet No. 556C

This tariff sheet has a July 1, 2003 effective date. CEGT states that the purpose of this filing is to comply with the Commission's Letter Order issued September 9, 2003 in the above-referenced docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eFiling link.

*Protest Date:* October 6, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00013 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP03–617–000]**

### Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 2, 2003.

Take notice that on September 26, 2003 Colorado Interstate Gas Company (CIG) tendered for filing three Firm Transportation Service Agreements (FTSAs), a Letter Agreement and Ninth Revised Sheet No. 1 to its FERC Gas Tariff, First Revised Volume No. 1.

CIG states that the FTSAs and Letter Agreement are being submitted for Commission review under the Commission's material deviation policies and have been listed on the tendered tariff sheet as non-conforming agreements. GIG states that two of the FTSAs are being submitted for review under the Commission's negotiated rate policies. CIG request that the tariff sheet is proposed to become effective October 27, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

*Comment Date:* October 8, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00020 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP03–619–000]**

### Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 2, 2003.

Take notice that on September 26, 2003, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to, bearing a proposed effective date of October 26, 2003:

Seventh Revised Sheet No. 501
Second Revised Sheet No. 501A
Seventh Revised Sheet No. 503
Second Revised Sheet No. 503.01

Columbia states it is filing to revise its Tariff to insert a footnote, along with associated ADQ and DDQ columns in Appendix A to its Rate Schedule FTS, NTS and OPT pro forma service agreements. Columbia further states the inclusion of the proposed language will help make the pro forma service agreements for all of Columbia's firm transportation services consistent in this regard.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Comment Date:* October 8, 2003.

**Magalie R. Salas,**
*Secretary.*

[FR Doc. E3–00022 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP03–627–000]**

### Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 2, 2003.

Take notice that on September 30, 2003, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised the following revised tariff sheets Second Revised Volume No. 1, the following revised tariff sheets bearing a proposed effective date of November 1, 2003:

Sixty-fifth Revised Sheet No. 25
Sixty-fifth Revised Sheet No. 26
Sixty-fifth Revised Sheet No. 27
Twenty-ninth Revised Sheet No. 30A

Columbia states that this filing is being submitted pursuant to Stipulation I, Article I, Section E, True-up Mechanism, of the Settlement (Settlement) in Docket No. RP95–408, *et al.* Pursuant to the true-up mechanism, Columbia is required to true-up its collections from the Settlement Component for twelve-month periods commencing November 1, 1996. In accordance with the Settlement, the true-up component of the Settlement Component is to be removed effective November 1 of each year. Columbia states that the instant filing is being made to remove such true-up component from the currently effective Settlement Component effective November 1, 2003.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

*Comment Date:* October 14, 2003.

**Magalie R. Salas,**
*Secretary.*

[FR Doc. E3–00028 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP03–623–000]**

### Dominion Transmission, Inc.; Notice of Annual TCRA Filing

October 2, 2003.

Take notice that on September 29, 2003, Dominion Transmission Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 2003:

Eighteenth Revised Sheet No. 31
Twenty-Second Revised Sheet No. 32
Twelfth Revised Sheet No. 34
Fifteenth Revised Sheet No. 35
Eighth Revised Sheet No. 39

DTI states that the purpose of this filing is to update DTI's effective Transportation Cost Rate Adjustment through the mechanism described in Section 15 of the General Terms and Conditions of DTI's tariff.

DTI states that copies of the filing have been sent to DTI's customers and interested stated commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Comment Date:* October 14, 2003.

**Magalie R. Salas,**
*Secretary.*

[FR Doc. E3–00025 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP03–624–000]**

### Dominion Transmission, Inc.; Notice of Annual EPCA Filing

October 2, 2003.

Take notice that on September 29, 2003, Dominion Transmission Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets, with an effective date of November 1, 2003:

Seventeenth Revised Sheet No. 31
Twenty First Revised Sheet No. 32
Eleventh Revised Sheet No. 34
Fourteenth Revised Sheet No. 35
Seventh Revised Sheet No. 39

DTI states that the purpose of its filing is comply with the Electric Power Cost Adjustment provision of Section 17 of its the General Terms and Conditions of its FERC Gas Tariff.

DTI states that copies of the filing have been sent to DTI's customers and interested stated commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact *FERC Online Support at FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Comment Date:* October 14, 2003.

**Magalie R. Salas,**
*Secretary.*

[FR Doc. E3–00026 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–13–008]**

### East Tennessee Natural Gas Company; Notice of Negotiated Rate Filing

October 2, 2003.

Take notice that on September 24, 2003, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fourth Revised Sheet No. 177, included in Appendix A thereto, proposed to be effective on November 1, 2003, or such later date as the facilities constructed for the Patriot Project are placed into service.

East Tennessee states that the purpose of this filing is to implement four negotiated rate agreements and one discounted rate agreement for firm service to be rendered to four customers on East Tennessee's Patriot Project (Docket No. CP01–415), and to update the list of non-conforming agreements contained in Section 45 of the General Terms and Conditions.

East Tennessee requests that the Commission accept this filing by October 15, 2003. In addition, East Tennessee requests that the Commission grant any authorizations and waivers of the Commission's regulations to the extent necessary to permit the tariff sheet and the agreements to be made effective as proposed.

East Tennessee states that copies of the filing were mailed to all affected customers of East Tennessee and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC OnlineSupport at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the eFiling link.

*Protest Date:* October 6, 2003.

**Magalie R. Salas,**
*Secretary.*

[FR Doc. E3–00030 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP03–357–000]**

### Eastern Shore Natural Gas Company; Notice of Application

October 2, 2003.

Take notice that on September 26, 2003, Eastern Shore Natural Gas Company (Eastern Shore), 417 Bank Lane, Dover, Delaware 19904, filed an application with the Commission in Docket No. CP03–357–000 under Section 7 of the Natural Gas Act, as amended, seeking authority to construct and operate a metering and regulating station in Seaford, Sussex County, Delaware, to serve an existing customer, all as more fully stated in the application.

Any questions regarding the application should be directed to Elaine B. Bittner, Director of Eastern Shore Natural Gas Company, Eastern Natural Gas Company, 417 Bank Lane, Dover Delaware 19904, or at (302) 734–6710.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Comment Date:* October 23, 2003.

**Magalie R. Salas,**
*Secretary.*
[FR Doc. E3–00034 Filed 10–8–03; 8:45 am]
BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–485–002]**

### Honeoye Storage Corporation; Notice of Proposed Change in FERC Gas Tariff

October 2, 2003.

Take notice that on September 24, 2003, Honeoye Storage Corporation (Honeoye) tendered for filing as part of its FERC Gas Tariff, First Revised Volume 1A, one revised tariff sheet to be effective July 1, 2003. The revised tariff sheet is designated as:

Substitute Third Revised Sheet No. 105
Superceding Third Revised Sheet No. 105

Honeoye states that the purpose of this filing is to comply with the Commission's September 12, 2003 Letter Order which directed Honeoye to remove the reference to certain WGQ Standards incorporated by reference in section 11.12 of its tariff.

Honeoye states that copies of the filing are being mailed to Honeoye's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eFiling link.

*Protest Date:* October 6, 2003.

**Magalie R. Salas,**
*Secretary.*
[FR Doc. E3–00014 Filed 10–8–03; 8:45 am]
BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–626–000]**

### Iroquois Gas Transmission System, L.P.; Notice Filing

October 2, 2003.

Take notice that on September 30, 2003, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing its report relating to its Deferred Asset Surcharge. Iroquois states that there is no change in the Deferred Asset Surcharge, no tariff sheet is being submitted.

Iroquois states that it is filing the supporting workpapers as part of its annual update of its Deferred Asset Surcharge to reflect the annual revenue requirement associated with the Deferred Asset for the amortization period commencing November 1, 2003. Iroquois further states as shown in those workpapers, there is no change in the rate for the Deferred Asset Surcharge for the period commencing November 1, 2003; accordingly, no revised tariff sheet is necessary.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Comment Date:* October 14, 2003.

**Magalie R. Salas,**
*Secretary.*
[FR Doc. E3–00027 Filed 10–8–03; 8:45 am]
BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. PR03–18–000]**

### Katy Storage and Transportation, L.P.; Notice of Petition for Rate Approval

October 2, 2003.

Take notice that on September 23, 2003, Katy Storage and Transportation, L.P. (KST) filed a petition for rate approval of market-based rates for storage services pursuant to § 284.123(b)(2) of the Commission's Regulations. KST requests approval of its proposed rates as being fair and equitable as it will lack the requisite market power to charge rates in excess of amounts that interstate pipelines and storage providers could charge for similar services.

KST affirms that it is an intrastate pipeline within the meaning of section 2(16) of the Natural Gas Policy Act (NGPA). Consistent with the Commission's approval of its Section 311 rates in Docket No. PR03–18–000, KST proposes to make its section 311 rates effective as of September 23, 2003.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal

Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits I the docket number field to access the document. For Assistance, call (866) 208–3676 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Comment Date:* October 23, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00012 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### [Docket No. RP03–618–000]

## Midwestern Gas Transmission Company ; Notice of Proposed Changes in FERC Gas Tariff

October 2, 2003.

Take notice that on September 26, 2003, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of Midwestern's FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective November 1, 2003:

Second Revised Sheet No. 90
Original Sheet No. 100B
First Revised Sheet No. 90A
Second Revised Sheet No. 91
Original Sheet No. 100C
First Revised Sheet No. 91A
Original Sheet No. 91A.01
Second Revised Sheet No. 101
Second Revised Sheet No. 92
Third Revised Sheet No. 100
Second Revised Sheet No. 102
First Revised Sheet No. 100A
Fourth Revised Sheet No. 230B
Third Revised Sheet No. 266B
First Revised Sheet No. 266C

Midwestern states that the purpose it its filing is to: (1) Eliminate the OBA PAL Scheduling Penalty in Rate Schedule LMS–MA, (2) provide further clarification regarding the applicability of its Daily Imbalance Charge, and (3) clarify the procedures to be utilized to avoid penalty charges.

Midwestern states that it is not proposing any substantive changes to its remaining penalty provisions under Rate Schedules LMS–MA and LMS–PA, it is only seeking minor clarifications to more clearly articulate the applicability of the penalty provisions thereby minimizing any confusion and reducing the potential imposition of a penalty charge.

Midwestern states that copies of this filing have been sent to all of Midwestern's shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Comment Date*: October 8, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00021 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### [Docket No. RP03–615–000]

## MIGC, Inc.; Notice of Filing

October 2, 2003.

Take notice that on September 24, 2003, MIGC, Inc. (MIGC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No.1, the following tariff sheets, to become effective November 1, 2003:

Sixth Revised Sheet No. 90A
Second Revised Sheet No. 90B

MIGC states that the purpose of this filing is to update MIGC's tariff to combine revisions which were previously approved in separate proceedings. MIGC further states that these proposed revisions are necessary to finalize MIGC's compliance with FERC Order's No. 587–O and 587–R.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link.

*Comment Date:* October 6, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00018 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99-518-050]**

### PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

October 2, 2003.

Take notice that on September 30, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1–A., Eighteenth Revised Sheet No. 15, First Revised Sheet No. 17, Fourth Revised Sheet No. 18, and Third Revised Sheet No. 21B, with an effective date of October 1, 2003.

GTN states that these sheets are being filed to update GTN's reporting of negotiated rate transactions that it has entered into.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

*Protest Date:* October 14, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00008 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP03–620–000]**

### Portland Natural Gas Transmission System; Notice of Proposed Changes in FERC Gas Tariff

October 2, 2003.

Take notice that on September 26, 2003, Portland Natural Gas Transmission System (PNGTS) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, with an effective date of November 1, 2003:

Seventh Revised Sheet No. 100

PNGTS states that it is also tendered for filing two alternate tariff sheets:

Alternate Fifth Revised Sheet No. 100, to be effectiveNovember 12, 2002; and
Alternate Sixth Revised Sheet No. 100, to be effectiveJune 1, 2003.

PNGTS states that its filing proposes to reduce the Firm Transportation (FT) Seasonal Recourse Reservation Rate so that it is equal to 1.9 times the FT Recourse Reservation Rate. PNGTS states that the purpose of this change is to ensure that PNGTS offers seasonal service on a nondiscriminatory basis as directed by the Commission and to ensure that no existing or future seasonal contracts inadvertently raise issues regarding a trigger of the discount clause (referred to as Most Favored Nations or MFN clause) in PNGTS's FT contracts. PNGTS states that the primary tariff sheet reduces the seasonal recourse rate to equal 1.9 times the FT recourse rate effective November 1, 2003. PNGTS further states that, along with the primary tariff sheet, PNGTS is requesting that the Commission reconsider and vacate its June 9, 2003 Order in Docket No. RP02–13–010, which accepted the current seasonal recourse rate. PNGTS's alternate tariff sheets would reduce the seasonal recourse rate to equal 1.9 times the FT recourse rate effective as of November 12, 2002. PNGTS states that finally, in the event that the Commission declines to adopt the primary or alternate proposals, PNGTS requests that the Commission "grandfather" the two existing negotiated seasonal contracts, and continue to recognize those contracts as negotiated relative to the FT recourse rate.

PNGTS states that copies of this filing are being served on all jurisdictional customers and interested state commissions, as well as all parties in Docket No. RP02–13–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Comment Date*: October 8, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00023 Filed 10–8–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP03–612–000]**

### Questar Southern Trails Pipeline Company; Notice of Tariff Filing

October 2, 2003.

Take notice that on September 24, 2003, Questar Southern Trails Pipeline Company (Southern Trails) pursuant to 18 CFR 154.7 of the Commission's Regulations, submitted for filing the following tariff sheets to Original Volume No. 1 of its FERC Gas Tariff to be effective October 24, 2003.

Original Volume No. 1
First Revised Sheet Nos. 72 through 78

Southern Trails is proposing to update the Measurement section of its tariff to comport with current industry measurement standards and practices.

Southern Trails states that a copy of this filing has been served upon its customers and the Public Service Commissions of Utah, New Mexico, Arizona, and California.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link.

*Comment Date:* October 6, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00015 Filed 10–8–03; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–255–060]**

### TransColorado Gas Transmission Company; Notice of Compliance Filing

October 2, 2003.

Take notice that on September 30, 2003, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Fourth First Revised Volume No. 1, Fourth Revised Sheet Nos. 21 and Fourth Revised Sheet No. 22A to Tariff to be effective October 1, 2003.

TransColorado states that the filing is being made in compliance with the Commission's Letter Order issued March 20, 1997, in Docket No. RP97–255–000.

TransColorado states that the tendered tariff sheets propose to revise TransColorado's Tariff to reflect a negotiated-rate contract with Chevron USA, Inc.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the e-Filing link.

*Protest Date:* October 14, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00031 Filed 10–8–03; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–613–000]**

### Transwestern Pipeline Company; Notice of Tariff Filing

October 2, 2003.

Take notice that on September 24, 2003, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 (Tariff), the following tariff sheet to become effective November 1, 2003:

Second Revised Volume No. 1
Fifteenth Revised Sheet No. 5B.02

Transwestern's states that its Stipulation and Agreement filed on May 2, 1995, in Docket Nos. RP95–271, *et al.*, as amended by Transwestern's Stipulation and Agreement filed on May 21, 1996, provided for annual adjustments to the Settlement Base Rates (SBRs) beginning November 1, 1998.

Transwestern states that the purpose of the instant filing is to set forth the factors and calculations used in determining the adjustments to the SBRs and to revise the SBRs to be effective November 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link.

*Comment Date:* October 6, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00016 Filed 10–8–03; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–614–000]**

### Transwestern Pipeline Company; Notice of Tariff Filing

October 2, 2003.

Take notice that on September 24, 2003, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 (Tariff), the following tariff sheet to become effective November 1, 2003:

Second Revised Volume No. 1
Thirteenth Revised Sheet No. 5B.03

Pursuant to section 25 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Transwestern states that it is filing a tariff sheet, which sets forth the new TCR II Reservation Surcharges that Transwestern proposes to put into effect on November 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link.

*Comment Date:* October 6, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00017 Filed 10–8–03; 8:45 am]

**BILLING CODE 6717–01–P**

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**DEPARTMENT OF ENERGY**

## Federal Energy Regulatory Commission

**[Docket No. RP03–616–000]**

### Viking Gas Transmission Company; Notice of Tariff Filing

October 2, 2003.

Take notice that on September 25, 2003, Viking Gas Transmission Company (Viking) tendered for filing to become part of Viking's FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 34, to become effective November 1, 2003.

Viking states that the purpose of this filing is to add language to Rate Schedule LMS which would automatically cause a monthly imbalance of less than 1000 Dekatherms to be cashed out at the 0–5 "no penalty" percentage level regardless of the actual monthly imbalance percentage. Viking states that it does not desire to penalize parties whose monthly imbalances are less than 1000 Dekatherms because such imbalance is insignificant in nature and not a source of major harm to its pipeline system.

Viking states that copies of this filing have been sent to all of Viking's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" (FERRIS). Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Comment Date:* October 7, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00019 Filed 10–8–03; 8:45 am]

**BILLING CODE 6717–01–P**

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**DEPARTMENT OF ENERGY**

## Federal Energy Regulatory Commission

**[Docket No. RP99–301–086]**

### ANR Pipeline Company; Notice of Negotiated Rate Filing

October 2, 2003.

Take notice that on September 25, 2003, ANR Pipeline Company (ANR) tendered for filing and approval amendments to two Service Agreements between ANR and Aquila, Inc., which terminate the negotiated rate agreements between the parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the eFiling link.

*Protest Date:* October 7, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00033 Filed 10–8–03; 8:45 am]

**BILLING CODE 6717–01–P**

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**DEPARTMENT OF ENERGY**

## Federal Energy Regulatory Commission

**[Docket No. RP97–13–009]**

### East Tennessee Natural Gas Company; Notice of Negotiated Rates

October 2, 2003.

Take notice that on September 30, 2003, East Tennessee Natural Gas Company (East Tennessee) tendered for filing a corrected Exhibit A for Carolina Power & Light Company Contract No. 410103.

East Tennessee states the various contracts and negotiated rate agreements were filed with the Commission on September 24, 2003 in Docket No. RP97–13–008. Footnote 16 to the transmittal letter for such filing noted that there was a typographical error on Exhibit A to the service agreement with Carolina Power & Light (Contract No. 410103), and that the parties were in the process of correcting the error. The parties have now corrected the error, and East Tennessee hereby files the corrected Exhibit A.

East Tennessee states that copies of the filing were mailed to all affected customers of East Tennessee and interested state commissions, and all parties on the service lists.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Comment Date:* October 14, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00029 Filed 10–8–03; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Notice of Draft License Application and Preliminary Draft Environmental Assessment and Request for Preliminary Terms and Conditions

October 2, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* P–2150–026.

c. *Date Filed:* October 1, 2003.

d. *Applicant:* Puget Sound Energy, Inc.

e. *Name of Project:* Baker River Hydroelectric Project.

f. *Location:* On the Baker River, near the Town of Concrete, in Whatcom and Skagit Counties, Washington. The project occupies about 5,168.5 acres of lands within the Mt. Baker-Snoqualmie National Forest managed by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Connie Freeland, Puget Sound Energy, Inc. P.O. Box 97034 PSE–09S Bellevue, WA 98009–9734; (425) 462–3556 or *connie.freeland@pse.com.*

i. *FERC Contact:* Steve Hocking, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; (202) 502–8753 or *steve.hocking@ferc.gov.*

j. *Status of Project:* With this notice the Commission is soliciting (1) preliminary terms, conditions, and recommendations on the Preliminary Draft Environmental Assessment (PDEA), and (2) comments on the Draft License Application.

k. *Deadline for filing:* January 2, 2004.

All comments on the PDEA and Draft License Application should be sent to the addresses noted above in Item (h), with one copy filed with FERC at the following address: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All comments must include the project name and number and bear the heading Preliminary Comments, Preliminary Recommendations, Preliminary Terms and Conditions, or Preliminary Prescriptions.

Comments and preliminary recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

l. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Puget Sound Energy, Inc. has mailed copies of the PDEA and Draft License Application to interested entities and parties. Additional copies may be obtained from the contact person listed in item (h) above.

m. With this notice, we are initiating consultation with the Washington State Historic Preservation Officer as required by Section 106 of National Historic Preservation Act and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00009 Filed 10–8–03; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Notice of Draft License Application and Draft Preliminary Draft Environmental Impact Statement (DPDEIS) and Request for Preliminary Terms and Conditions

October 2, 2003.

Take notice that the following draft hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2195.

c. *Applicant:* Portland General Electric Company.

d. *Name of Project:* Clackamas River Hydroelectric Project P–2195 (formerly Oak Grove, P–135 and North Fork P–2195 projects).

e. *Location:* On the Oak Grove Fork of the Clackamas River on the Mount Hood National Forest, and on the Clackamas River, in Clackamas County, Oregon, near Estacada, Oregon.

f. *Applicant Contact:* Julie Keil, Portland General Electric, 121 SW Salmon Street, 3WTC–BRHL, Portland, Oregon, 97204, Phone: 503–464–8864.

g. *FERC Contact:* John Blair at (202) 502–6092; e-mail *john.blair@ferc.gov.*

h. PGE mailed a copy of the Clackamas River Hydroelectric Project draft Preliminary Draft Environmental Impact Statement (dPDEIS) and Draft Application to interested parties on September 30, 2003. A copy of the dPDEIS and Draft application was filed with Commission on September 29, 2003.

i. With this notice we are soliciting preliminary terms, conditions, prescriptions and recommendations on the dPDEIS and draft license application. All comments on the dPDEIS and draft license application should be sent to Portland General Electric at the address above in item (f), with one copy filed with the Commission at the following address: Federal Energy Regulatory Commission, Magalie R. Salas, Secretary, 888 First St. NE, Washington, DC 20426. All comments must include the project name and number, and bear the heading "Preliminary Comments," Preliminary Recommendations," "Preliminary Terms and Conditions," or "Preliminary Prescriptions." Any party interested in commenting must do so by December 31, 2003.

j. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by Section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

k. *Locations of the application:* A copy of the application is available for review at the Commission's Public Reference Room, located at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "e-library link—Dockets" Enter the project number P–2195. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, (202) 502–8659. The application also can be provided by Portland General Electric from the contact name and telephone number in item (f) above.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00010 Filed 10–8–03; 8:45 am]

**BILLING CODE 6717–01–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7569–3]**

## Watershed Initiative: Call for Nominations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Following the completion of its inaugural year, EPA is announcing the continuation of the Watershed Initiative by issuing the second call for nominations of watershed proposals. The Watershed Initiative is a competitive grant program designed to support studies of a series of approaches to watershed protection and restoration to determine if those approaches produce short-term environmental results and have the potential for long term maintenance in a watershed. The President's fiscal year (FY) 2004 budget, which is now before Congress, incorporates a request for $21 million for the Watershed Initiative. Subject to the availability of appropriations for this purpose, EPA plans to select through a competitive process up to 20 watersheds throughout the country for grants to support the study of promising watershed-based approaches to improving water quality. This notice sets forth the process that will be used for selecting the watersheds and serves as the call for nominations from Governors and Tribal Leaders. For the most part, this process is similar to that of the FY 2003 solicitation. This year, however, EPA will place a somewhat larger emphasis on studies of (1) market-based approaches to water quality protection and restoration, and (2) specific approaches to decreasing hypoxia in the Gulf of Mexico.

**DATES:** The deadline for EPA receipt of nominations, both in hard copy and in electronic form, is January 15, 2004. Nominations and supporting materials received after this deadline will not be considered.

**ADDRESSES:** Two hard copies of the nomination packages must be submitted in their entirety by express mail or courier service. Deliver the original to Carol Peterson, Office of Wetlands, Oceans, and Watersheds, USEPA, Room 7136, 1301 Constitution Avenue, NW., Washington, DC 20004; telephone 202–566–1304. The other copy of the nomination package is to be delivered to the appropriate EPA Regional office (see section IV.C for names and addresses for the regions). Please mark all submissions ATTN: Watershed Initiative.

In addition to the hard copies, a portion of the nomination package must also be submitted electronically to the e-mail address provided. Please follow the detailed instructions provided in section IV of the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** Carol Peterson, USEPA, 1200 Pennsylvania Ave., NW (4501T), Washington, DC, 20460; telephone: 202–566–1304; e-mail: *initiative.watershed@epa.gov* or one of the regional contacts listed in section IV.C of the **SUPPLEMENTARY INFORMATION** section below. Additional information and any updated guidance will be posted on EPA's Watershed Initiative Web site at *http://www.epa.gov/owow/watershed/initiative.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

*A. The Watershed Initiative*

The Watershed Initiative is predicated on the fundamental concept of the Agency's holistic watershed approach to water resources management. Both the watershed approach and the Watershed Initiative focus on multi-faceted plans for protecting and restoring water resources. Isolated efforts do not provide comprehensive and effective protection and restoration of the resources. Rather, the nominations selected to receive Watershed Initiative funding will be for studies of approaches that go beyond implementing separate, detached activities and will, instead, focus on the effectiveness of an integrated ecosystem-based approach to conservation and restoration throughout a watershed. The selected nominations will include water quality and ecosystem monitoring and evaluation to provide quantitative data to determine the effectiveness of addressing water quality issues at the watershed level.

Last year the Agency conducted a national competition and in May 2003 selected 20 watersheds to award $15 million in grants appropriated for the new Watershed Initiative. The selected nominations were those that were most ready to go and likely to achieve environmental results in a relatively short time period. Those grants will fund watershed partnerships that are undertaking studies of a variety of promising activities to support comprehensive watershed-based approaches to protecting and restoring water resources. For example, over seventy percent of the selected projects address agricultural pollution; fifty percent address urban and industrial runoff; fifty percent address the relationship between water quality and habitat restoration for wildlife and endangered and/or threatened species; and thirty percent have projects aimed at the homeowner. Moreover, several projects will study a more innovative, market-based approach to attaining water quality. These latter watershed partnerships will test possibilities such as pollutant trading and crop insurance. More information on these projects can be found on the Watershed Initiative's Web site listed above.

*B. Goals for 2004*

The 2004 Watershed Initiative will continue to build upon the Agency's watershed approach to water resources management. The Initiative will support studies of coalition-based strategies for activities, such as attaining water quality standards, protecting and restoring the natural and beneficial uses of floodplains, and, in general, improving water resources on a watershed level. Water quality standards establish water quality goals for specific water bodies and play an important role in watershed management. Coalition-based strategies that focus on addressing designated uses in watershed initiatives can help build support for control actions at the watershed level.

The goal of the Watershed Initiative is to study practical and efficient models that can be adapted to local circumstances across the country. The cornerstone of the Initiative is to provide study results that will help advance the successes of partnerships and coalitions that have completed the necessary watershed assessments and have a technically sound watershed plan ready to carry out. EPA believes the Watershed Initiative will help document the kind of pro-active, incentive-based protection and restoration measures that will ultimately yield cleaner water.

In 2004, the Agency plans to continue its focus on studies of approaches aimed to provide quick, measurable results; partnerships; innovation; and integration (formerly called program compatibility). More emphasis, however, will be placed on studies of (1) market-based approaches and other socio-economic strategies, and (2) the serious and growing hypoxia problem facing the Gulf of Mexico. A portion of the appropriation will be devoted to study projects in the Mississippi River basin that address nutrient loadings related to hypoxia. EPA hopes that this targeted approach to the problem of hypoxia will help promote needed changes that are essential to attaining and maintaining clean water and that can be adapted to other areas throughout the country.

### 1. Studies of Market-Based Approaches

Finding solutions to complex water quality problems requires innovative approaches that can be aligned with core water programs. Market-based approaches create social and economic incentives for the implementation of creative pollution reduction strategies, emerging technologies, and watershed protection measures. Properly designed programs can improve water quality at substantially lower costs and provide incentives for voluntary reductions from all sources, point and nonpoint.

Water quality trading is one important approach that offers flexibility and efficiency in achieving water quality goals on a watershed basis. Trading allows a source with relatively higher pollution control costs to meet a water quality goal or requirement by using pollution reduction credits created by another source with lower costs. This approach enables sources in the same watershed to work together to meet a common goal. EPA considers trading to be an important component of the Watershed Initiative. Properly designed trading programs can improve water quality at substantially lower costs and provide incentives for voluntary reductions from all sources, especially sources that are not regulated under the Clean Water Act (CWA).

One example is a nonpoint source selenium load trading program in the Grassland's Drainage Area in California's San Joaquin Valley. The selenium load trading program is a cap-and-trade environmental program. A regulatory agency sets the cap on the selenium that the Grassland Area Farmers, a group of irrigation and drainage districts, administer through an internal selenium load trading program. Pursuant to the trading program, the total allowable selenium load is allocated among the member irrigation and drainage districts. The districts can either meet their load allocation or buy selenium load allocations from other districts. The tradeable loads program has assisted Grassland Area Farmers in meeting environmental goals in a cost-effective manner.

To promote the concept of trading in relation to fostering environmental progress, EPA has developed a new Water Quality Trading Policy, published in the **Federal Register** on January 13, 2003 (68 FR 1608) and posted on the Web site *http://www.epa.gov/owow/watershed/trading/*. The purpose of this policy is to encourage States, interstate agencies, and Tribes to develop and implement water quality trading programs for nutrients, sediments, and other pollutants where opportunities exist to achieve water quality improvements at reduced costs. More specifically, the policy is intended to encourage voluntary trading programs that facilitate the implementation of Total Maximum Daily Loads (TMDL), reduce the costs of compliance with CWA regulations, establish incentives for voluntary reductions and promote watershed-based initiatives. Any trading nominations submitted in response to this solicitation must conform to this policy.

Some market-based programs already in progress blend regulatory components and nonregulatory components to achieve environmental improvements. Market-based approaches can include incentive programs to encourage conservation land use or management practices. For example, King County, Washington provides rebates and other tax breaks as an incentive for property owners to reduce impervious surfaces within the County. The money raised through this levy on impervious surfaces is used to provide myriad surface water management services for the County. Other examples of market-based approaches include flood insurance programs that insure against loss through investment in the creation or restoration of wetlands and floodplains, or programs that insure against agricultural crop loss where management practices to reduce pollution have been implemented. Still other examples of market-based approaches involve state-private partnership programs to reduce regulatory compliance costs, implement pollution controls, or institute operational changes that benefit water quality.

Market-based approaches have tremendous potential to instigate change. Trading programs and other market-based approaches can be powerful tools to encourage innovative pollution control technologies and land management practices. EPA wants to fund Watershed Initiative projects that utilize market-based approaches and other socio-economic strategies to determine if they produce real, measurable environmental results.

### 2. Studies of Hypoxia in the Gulf of Mexico

By far, the largest watershed within the United States is the Mississippi River Basin. Draining all or parts of 31 States, it covers 1.2 million square miles (40% of the US) and travels over 2,300 miles before discharging 612,000 cubic feet of water per second into the Gulf of Mexico. On the Gulf's Texas-Louisiana continental shelf, an area of hypoxia forms during the summer months. This "dead zone," characterized by diminished sunlight and low oxygen levels, is an area virtually devoid of marine life. The hypoxic area has been growing significantly over the years and, at 7,000 square miles, it is double the size it was in 1993. While there are many factors contributing to the Gulf hypoxia, scientific evidence indicates that excess nutrients, particularly nitrogen and to a lesser extent phosphorus, from the Mississippi River drainage basin drive its onset and duration. Studies show that a significant portion (90%) of the nitrates entering the Gulf comes from a variety of human activities, including discharges from sewage treatment plants, and stormwater runoff from city streets and agricultural farms. Much of the nutrient load comes from wastewater discharges and agricultural lands in Iowa, Illinois, Indiana, Minnesota and Ohio.

Reducing hypoxia in the Gulf of Mexico has been an Agency priority since the 1998 passage of the Harmful Algal Bloom and Hypoxia Research and Control Act. The Act called for the creation of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force, which was then charged with developing an Action Plan to reduce hypoxia in the Gulf. The Action Plan was completed and delivered to Congress in January 2001. The Action Plan can be found at *http://www.epa.gov/msbasin/actionplan.htm.*

EPA sees the Watershed Initiative as an opportunity to invoke watershed approaches in the Mississippi drainage basin to ascertain if they result in real, measurable reductions in excessive nutrient levels. As part of this year's Initiative, the Agency is seeking proposals that look at holistic strategies consistent with the Action Plan to reduce the amount of nutrients, particularly nitrogen and phosphorus, entering the Gulf with the goal of testing approaches to stay the further growth of the hypoxic area. Such field studies may include, for example, determining the measurable results of: improving nutrient management programs on farms, restoring or constructing wetlands and vegetated riparian areas, floodplain management and restoration, and enhancing denitrification and nitrogen retention opportunities throughout the river basin and along the coastal plain of Louisiana.

From a national perspective, the nutrient enrichment and resultant hypoxic condition in the Gulf of Mexico is significant in terms of its sheer size, persistence, and location. However, the concern about coastal eutrophication is not limited to the inner shelf off Louisiana. In 1990, it was estimated that nearly half of the nation's estuaries were susceptible to eutrophication. EPA envisions that results from the selected watersheds within the Mississippi River basin will enhance knowledge and understanding of hypoxia and that successful nutrient reduction approaches related to the causes of hypoxia can be adapted to other bays and estuaries along our coasts.

### *C. Funding Availability*

The Administration has requested $21 million for FY 2004 which is subject to the availability of Federal appropriations. EPA will announce when funds become available on its Web site *(http://www.epa.gov/owow/watershed/initiative/)*, and provide, to the extent possible, information regarding the appropriation request as it goes through the Congressional budget process.

EPA expects to use most of the money to support competitive grants for up to 20 selected watersheds—a portion of those watersheds being within the Mississippi River Basin. EPA anticipates that typical grant awards for the selected watersheds will range from $300,000 to $1,300,000, depending on the amount requested and the overall size and need of the project. The total number and amount of the awards will depend on the amount of funds Congress appropriates.

Also, as in 2003, about five percent of the total appropriation will go toward (1) a national conference for the watershed organizations selected to receive grants, and (2) assistance agreements to organizations offering capacity building programs for all watershed organizations. This latter effort will entail enhancing national tools, training, and technical assistance that will help local partnerships be more effective at improving watershed health, so that all watershed organizations, from fledgling groups to sophisticated coalitions, will benefit from the Initiative.

## II. Statutory Authority and Eligibility Requirements

### *A. Authority*

EPA expects to award the Watershed Initiative grants under the authority of section 104(b)(3) of the Clean Water Act. Regulations pertaining to EPA grants and other assistance agreements are in Title 40 of the Code of Federal Regulations (CFR) parts, 30, 31, and 40.

All costs incurred under this program must be allowable under the applicable OMB Cost Circulars: A–87 (States and local governments), A–122 (nonprofit organizations), or A–21 (universities). Copies of these circulars can be found at *http://www.whitehouse.gov/omb/circulars/*. In accordance with EPA policy and the OMB circulars, as appropriate, any recipient of funding must agree not to use assistance funds for lobbying, fund-raising, or political activities (*e.g.*, lobbying members of Congress or lobbying for other Federal grants, cooperative agreements or contracts).

### *B. Eligible Activities*

Section 104(b)(3) of the Clean Water Act authorizes the Agency to award grants to "conduct and promote the coordination and acceleration of, research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of [water] pollution." Grant funds awarded as part of this Initiative may only be used for these activities and all grant-funded activities must support the watershed workplan submitted.

These activities seek to advance the state of knowledge, gather information, or transfer information. Demonstrations are projects that exhibit new or experimental technologies, methods, or approaches and disseminate the results so that others can benefit from the knowledge gained. Research projects may include the application of established practices when they contribute to learning about an environmental concept or problem.

*1. The Watershed Initiative under 104(b)(3).* The Watershed Initiative is designed to award grants to support studies of a series of possible approaches to watershed restoration to determine if those approaches produce short-term measurable environmental results in a watershed, or to support demonstration projects to test new and innovative approaches to water quality. For example, if a watershed organization identifies particular environmental threats or impairments to its waters, and proposes to look at a group or series of interrelated projects to address those impairments and includes measurement tools to achieve and judge their success, the proposal could be considered a study under section 104(b)(3). Activities involving the implementation of pollution control measures are eligible for funding only to the extent they are necessary to carry out the study or demonstration project(s). Activities involving wildlife are eligible only to the extent they are conducted as part of a study or demonstration relating to the causes, effects, extent, prevention, reduction or elimination of water pollution.

*2. Exceptions.* While certain projects may fall within the scope of section 104(b)(3), the Agency has decided that particular activities do not fit the goals or intentions of the Watershed Initiative. These include any proposals to directly support regulatory activities required under the CWA. Primarily this entails funds for the development of TMDLs, Phase II Stormwater projects, and other Office of Water regulatory programs.

Proposals to study the effectiveness of implementing TMDLs, however, are eligible. The construction of buildings or other major structures also will not be funded under this Initiative. Proposals containing subgrant programs (also called pass-through grants) are allowed, but the subgrant portion must account for no more than 20% of the requested funding amount.

### *C. Eligible Applicants*

Under section 104(b)(3) of the CWA, the following entities are eligible to receive grants: State and Tribal water pollution control agencies, interstate or inter-tribal agencies, other public or non-profit private agencies, institutions, organizations, and individuals. The term "State" is defined to include the District of Columbia, Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. All non-profit watershed organizations are eligible, including those in the Agency's National Estuary Program. Watershed organizations that were selected for funding in 2003 can not apply until their previous Watershed Initiative funding is exhausted.

## III. Competing for a Watershed Initiative Grant

EPA will select watersheds and the watershed grantees through a national competition. Activities proposed for funding via the Watershed Initiative are not necessarily expected to address the entire watershed, but they are expected to have been developed based on comprehensive assessments and plans for the watershed. Interjurisdictional watershed partnerships, that is, those that involve adjacent authorities, or that transcend international boundaries, are encouraged. Watershed nominations that encompass more than governmental authority will be considered interjurisdictional provided that the appropriate water agency in the adjacent jurisdiction is a partner or otherwise supports the project(s).

For practical purposes, in this context, the term "nomination" is meant to include the proposed workplan along with the required supporting materials. The "nominee" in this case is the watershed organization that is vying for the grant. Watershed nominations may include a single project or multiple projects within the watershed. Nominations will be selected based on the quality of the written materials received, and adherence to the selection criteria and goals of the Initiative. Emphasis will be placed on those proposed projects with clear, measurable environmental indicators and an executable monitoring plan. Funding decisions will be made based on the evaluation criteria outlined in section III.C of this notice. EPA will invite only nominees whose initial proposals are selected under this Initiative to submit detailed final proposals (see section V.A).

### *A. Nomination and Selection Process*

Watersheds must be nominated by Governors or Tribal Leaders. (For the purposes of this notice, a tribal nomination may be submitted by a Tribal Official.) Each Governor or Tribal Leader may prepare or solicit watershed proposals from eligible entities in a manner most appropriate to their State or Tribe, and nominate the most meritorious to EPA.

Governors or Tribal Leaders are invited to nominate a maximum of two State or Tribal watersheds each. There is, however, no limit on the number of inter-state or joint State and Tribal watersheds that can be nominated. For inter-state or joint State and Tribal watersheds, any of the involved Governors/Tribal Leaders may submit the nomination. Such watershed nominations must include the endorsement of all partnering State Governors or Tribal Leaders or Officials in their nomination package.

Governors and Tribal Leaders are to submit their watershed nominations to EPA (see section IV for details). All nominations will be screened by EPA staff prior to review to determine if they are eligible, complete, and in accordance with the instructions provided in this notice. If any of the required elements of the nomination package are not submitted, EPA may choose to contact the nominee.

Once received by EPA, the nominations will undergo two levels of review—one at the regional level and one at the national level. Each of the Agency's Regional Offices will convene a Review and Evaluation Panel that will assess how well the nominations meet the evaluation criteria described below. Regions 3, 4, 5, 6, 7 and 8 will convene a separate panel session to review and evaluate hypoxia plans. Hypoxia proposals not ranked sufficiently high to merit recommendation for the hypoxia funds will be placed in competition with the other nominations received for general Watershed Initiative funds. Based on the panel review and recommendation, each Regional Administrator will then forward the Region's top four candidates to EPA's Office of Water at Headquarters. Regions 3, 4, 5, 6, 7 and 8 will seek to include a minimum of one hypoxia nomination in their transmittal.

Upon receipt of the Regional recommendations, the Office of Water will convene a Technical Advisory Panel at the national level consisting of representatives from the Agency's Program and Regional Offices to review and rank the watershed nominations. Other Federal agencies may be invited to participate in this review. Again, hypoxia proposals will be evaluated and scored separately. In addition to the evaluation criteria listed below, factors such as geographic diversity, project diversity, watershed size, urban/rural mix, and cost will be considered in ranking nominations for consideration by the Administrator. The Administrator will select the watersheds to be funded.

EPA expects to announce the watershed nominations selected under this Initiative early in calendar year 2004 and to complete the grant award process, including final grant workplan negotiations through the appropriate EPA Regional Office, by spring 2004. In general, grants awarded will be one-time awards and grant recipients should use the funds within 2–3 years. Subsequent funding would involve a new call for watershed nominations and is predicated on continued appropriations. Therefore, any proposal for work beyond the initial funding period would need to be submitted through the competitive process and will not receive preferential consideration based on the applicant's previous award.

### *B. Required Components of the Nomination Package*

In preparing nomination materials, nominees are to keep in mind the evaluation criteria by which their overall nomination, *i.e*, interrelated individual projects, will be judged. Within these required components, nominees should address completely and to the best of their ability the criteria the Agency will be using in its evaluation as outlined in section III.C below.

Each nomination package must contain the components listed in this section. Failure to include any of this information could result in disqualification and removal from the selection process. Conversely, additional, unsolicited material is strongly discouraged and any such material submitted will not be considered.

1. *Nomination Letter.* A letter signed by the Governor or Tribal Leader formally nominating the watershed for consideration for funding under the Watershed Initiative must accompany each nomination package.

2. *Title Page.* The title page must indicate: (1) The name of the watershed along with the designated 8-digit HUC code(s), (2) nominee contact information, *i.e.*, name, affiliation, address, telephone, and e-mail of the person with whom the Agency should correspond, and (3) whether the nomination is devoted to hypoxia in the Gulf of Mexico.

3. *Abstract.* A 150-word or less summary of the nomination.

4. *Workplan Description.* The narrative description of the workplan components is limited to a total of ten, double-spaced pages in which the following components described below are addressed. Note that the page limits for each component below add up to greater than 10 pages and that nominees should adjust their nomination packages in a manner that best fits their needs. (See section IV.A for complete formatting instructions.)

(a) Introduction (2 pages maximum)

Characterize the watershed and overall watershed planning efforts. Describe what efforts have been undertaken to improve watershed health, next steps, and future plans. An assessment of the natural resource and environmental conditions, and an identification of problem sources and areas for treatment are required. These include:

(1) A description of the watershed's biological, physical, and, if relevant, social and/or cultural characteristics.

(2) An identification of the threats and impairments facing the watershed, focusing on those that will be addressed by the proposal.

(3) An overall description of the watershed plan including short- and long-term watershed goals.

(4) An identification of the assessments and plans that have been completed to date.

(b) Description of the Proposed Study Projects (7 pages maximum)

Describe the projects to be funded under the Watershed Initiative grant. These should be described in terms of applied field studies or demonstrations to yield potentially positive environmental results. The following information must be included:

(1) An explanation of how the project or aggregation of the individual projects is expected to affect watershed health.

(2) A detailed description of each project (if more than one) including: (i) a description of the components and goals of the project(s), (ii) a schedule for implementing the project(s); (iii) a summary of the costs of the project(s) with reference to the appended itemized budget for details; and (iv) milestones for determining whether or not the intended goals of the watershed study project(s) are being realized.

(3) A monitoring and evaluation component along with identified environmental indicators. Attention should be given to baseline data requirements. This component should include performance measures and progress goals, as well as a description of how the ultimate success of the projects will be measured. Performance measures must be environmental (*e.g.*, chemical or microbial levels attained). Other measures to be monitored should be infrastructural (*e.g.*, additional partnerships formed) and implementational (*e.g.*, best management practices instituted). The progress and performance of the projects must be measurable by technically sound practices.

(4) A description of how the projects complement or are consistent with other EPA, Federal, and/or State programs or mandates. Other Federal contributors or supporting partners should also be identified.

(c) Description of Project Management (2 pages maximum)

Provide a biography on the project leader(s) (not to exceed one-half page each) describing qualifications for managing the project(s) and focusing on grant management and watershed management capabilities and experience. Identify the entity that will be the grantee and thus responsible for the administration of the grant workplan and for being the fiscal agent receiving the funds. Include academic experience only if relevant to the proposal. Do not send resumes.

(d) Description of Outreach Activities (1 page maximum)

Describe the information and outreach plan that will be used to enhance public understanding of the watershed and encourage participation in the local project or projects, and future activities regarding implementing the goals of the watershed plan. Because the selected watersheds are intended to serve as models for other communities, this outreach plan must include activities for transferring the knowledge gained from this effort to other areas.

5. *Budget.* Provide a detailed breakdown of cost by category for each project.

(a) Standard Budget Form. To facilitate the compilation and review of financial information, the Agency is providing a standard form for potential applicants to use when submitting project budgets. This form (Table 1) may be reconstructed or downloaded from the Watershed Initiative Web site at *http://www.epa.gov/owow/watershed/initiative/budget.form.* All budget information, including matching funds and other leveraged services, and travel cost to the annual conference, must be provided on this form. (Information on matching funds and the annual conference is described in sections III.B(b) and (c) below). Nominees should include cost estimates for each of the proposed project activities to be conducted under the grant. Explanations of the costs associated with each entry should be included in the narrative description portion of the nomination package.

TABLE 1. BUDGET INFORMATION—EPA WATERSHED INITIATIVE GRANT PROGRAM [1]

SECTION A—BUDGET SUMMARY

| Watershed Project, Activity or Work Plan Element | Federal | Non-Federal | Total |
|---|---|---|---|
| 1. | $ | $ | $ |
| 2. | $ | $ | $ |
| 3. | $ | $ | $ |
| 4. | $ | $ | $ |
| Totals | $ | $ | $ |

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TABLE 1. BUDGET INFORMATION—EPA WATERSHED INITIATIVE GRANT PROGRAM [1]—Continued

SECTION B—BUDGET CATEGORIES

| Budget Categories | Watershed Project, Activity or Work Plan Element | | | | Total |
|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | |
| a. Personal<br>b. Fringe Benefits | $ | $ | $ | $ | $ |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges (sum line a–h) | | | | | |
| j. Indirect Charges | | | | | |
| Totals (sum line i–j) | $ | $ | $ | $ | $ |

[1] Excerpted from Standard Form 424A, OMB Circular A–102.

(b) Matching Requirement. EPA is requiring applicants to demonstrate a minimum non-Federal match of 25% of the total cost of the project or projects (*i.e.*, EPA will fund a maximum of 75% of the total cost, including matching funds). The Agency considers this matching contribution as evidence of community support and commitment, and an opportunity to increase the overall scope of the proposed project. EPA encourages applicants to leverage as much investment as possible. In addition to cash, matching funds can come from in-kind goods and services such as the use of volunteers and their donated time, equipment, expertise, etc., consistent with the regulation governing matching fund requirements (40 CFR 31.24 or 40 CFR 30.23). Other Federal funds may not be used to meet the match requirement for this grant program unless authorized by the statute governing the use of the other Federal funds.

Tribes and Tribal watershed groups may be exempt from this match requirement if they are constrained to such an extent that fulfilling the match requirement would impose undue hardship. EPA acknowledges the limited means of many Tribes and the difficulty they may have in obtaining non-Federal matching contributions. Tribes wishing to be exempt from the minimum 25% match requirement must submit a one-page written request with justification. Exemption requests should be sent directly to the EPA Headquarters contact listed in section IV.C 45 days prior to the nomination deadline. If approved, the nomination will be scored as if it met the minimum 25% match.

(c) Annual Conference. Watershed organizations selected for grant funding will be required to attend an annual two-day National Watershed Initiative Conference. The purpose of this conference is to provide these watershed organizations with training and support to better restore, protect, and manage their watersheds, and to help position them to teach other watershed groups by their example. The goals of this conference are to:

(1) Transfer information about innovative technical tools available for watershed restoration, protection and management. Provide assistance on how and where to get more information at the Federal, State, Tribal and local levels.

(2) Provide training to conference attendees on how to maximize the use of Federal programs in implementing their Watershed Initiative projects, for example, integration and use of other resources available under the CWA and Safe Drinking Water Act.

(3) Plan for translating individual project successes into models to be replicated by other local watershed organizations across the country.

(4) Provide grant recipients with opportunities to share successful approaches with each other and other peer-to-peer learning opportunities.

Attendance at the conference will be mandatory and will be one of the Terms and Conditions of the grant. The grantee will be allowed to use the grant funds to pay for travel and lodging. The cost of holding the conference will be paid for by EPA. If the recipient wishes to use the award money for travel expenses, these costs must be included in the submitted proposed budget. The Agency will make every effort to hold the two-day conference in a central location to minimize travel costs.

(d) Information Technology. Also as a Term and Condition of the grant, recipients will be required to institute standardized reporting requirements into their workplans and include such costs in their budgets. All environmental data will be required to be entered into the Agency's Storage and Retrieval (STORET) data system. STORET is a repository for water quality, biological, and other physical data used by State environmental agencies, EPA and other Federal agencies, universities, private citizens, and many other organizations. Training on how to use STORET will be provided at the annual conference. Watershed organizations may also want to contact their State agency responsible for entering data into the system. More information about STORET can be found at *http://www.epa.gov/STORET*.

6. *Appendices.* To substantiate the information contained in the narrative portion of the submission, documentation to verify partnerships and matching funds is required. Items that must accompany the narrative

description and may be submitted as appendices include the following.

(a) Signed letter(s) from active partners indicating their commitment to implementing the workplan or for specific proposed projects.

(b) A minimum of one signed letter from an entity committing to provide matching funds, either in cash or in-kind goods and services, including the total value of the commitment toward the projects.

(c) For interjurisdictional nominations, a signed letter(s) from the appropriate organization in the adjacent State, Tribe, or country expressing their support and participation in the proposed project(s). For example, a letter from another governor, Tribal leader, State water commissioner, State water quality director, environmental director, or similar positions in Canada or Mexico is acceptable.

(d) Maps (optional).

(e) Supplementary Technical Information (optional). If the proposal includes a new or otherwise not widely known technology or methodology, a one-page description may be appended.

### *C. Evaluation Criteria*

Watershed nominations will be reviewed, evaluated, and scored based on the following criteria with a possible total score of 60 points. In addition to the points awarded for the criteria, up to 5 additional points will be awarded to nominations that are interjurisdictional and have been submitted with the proper supporting letter(s). Rather than having a bonus category, these points will be a subsection of the Broad Support category described below.

1. *Innovation* (10 points). Reviewers will be looking for progressive and forward-thinking projects when evaluating the nominations, and as such, watershed nominations that undertake unique, innovative, or novel approaches to environmental problem-solving will be scored higher. While the Agency recognizes that there can be innovative approaches that are not market-based, maximum points will be awarded to nominations that incorporate market-based approaches to water quality.

2. *Measurement of Environmental Results* (total of 30 points). Successful nominees must demonstrate an in-depth knowledge of the watershed ecology and present a sound approach for potentially combating threats or impairments to the water system. For this criteria, reviewers will focus on the following components:

(a) Feasibility (10 points). Reviewers will look at the readiness of the nomination. Those projects that can be implemented quickly will receive more points. Nominations will be evaluated on the technical merit and adequacy of each project. Reviewers will favor nominations that describe projects that are part of larger comprehensive watershed assessments and plans, and reflect an ecosystem-based approach to conservation and restoration. Points will be awarded based on the overall soundness of the nomination from both an ecological and design perspective. In summary, higher scores will be given to those nominees that have demonstrated an understanding of priority water resource problems within the watershed, have substantially completed the assessment and planning phase, and are prepared to begin work.

(b) Experience (5 points). Nominations will be scored based on the qualifications of the nominee focusing on management and technical capabilities. Reviewers will assess the past experience of project leader(s) and/or partners in designing, implementing, and effectively managing and coordinating activities. Communities or organizations that have no prior experience and have developed their preliminary workplan will be evaluated on the basis of their proposal and their potential to effectively manage and oversee all phases of the proposed workplan and demonstrated working relationship with their partners.

(c) Tangible Measures (10 points). A nomination will be scored based on how well it is supported by a clearly articulated set of performance and progress measures, and identified environmental indicators. A more detailed monitoring and data collection strategy will be preferred. Reviewers will evaluate the workplan in relation to its likelihood to achieve predicted measurable, defensible environmental results in a relatively short time period, including potentially attaining performance expectations, reaching project goals, and producing on-the-ground, quantifiable environmental change using sound science.

(d) Integration (5 points). Reviewers will evaluate the extent to which the workplan and proposed project(s) are linked to other existing State or Federal programs. Points will be awarded to those watershed nominations that integrate the common goals and complement the ongoing efforts occurring at the Federal, State, or local level.

3. *Broad Support* (total of 10 points). Acknowledging and responding to representative interests from a broad and varied perspective is quintessential to any successful watershed enterprise. This criteria can be met by illustrating and substantiating a strong collaborative effort.

(a) Partnerships (5 points). Watershed nominations that incorporate a wide variety of public, private, and non-profit participation will be favored. The score for this criterion will be based on the level to which a nominee can demonstrate strong and diverse stakeholder stewardship and support. Reviewers will look for documented, effective working relationships among State and local entities, along with evidence of broad-based community involvement.

(b) Interjurisdictionality (5 points). Points will be awarded to nominations that actively involve more than one governmental entity, be it municipal, county, State, Tribe, Federal or country. Reviewers will look at the depth and breadth of jurisdictional participation and will also take into consideration any significant parties that are noticeably absent in lending their support of the nomination.

4. *Outreach* (5 points). Proposals will be judged on the design and breadth of their outreach program. Those proposals that demonstrate a clear strategy for transferring the knowledge and experience garnered over the next few years to other watersheds with similar environmental conditions will score higher. Points will also be awarded for training and educational approaches to disseminating watershed information.

5. *Financial Integrity* (5 points). Points will be awarded based on the adequacy of the budget information provided, and whether the budget is reasonable and clearly presented. Proposals that exceed the minimum match requirement or can certify a broad range of leveraging capacity will be scored higher.

## IV. Call for Nominations

EPA invites each Governor and Tribal Leader to submit nominations for grants under the 2004 Watershed Initiative.

### *A. Format of Nomination Package*

Each nomination package must contain: (1) A one-page cover letter signed by the Governor or Tribal Leader, (2) a title page with appropriate information, (3) an abstract, (4) a workplan description, (5) the budget form, and (6) letter(s) and certification(s) of support. Maps and supplementary technical information are optional. The workplan description of the nomination must be no more than ten double-spaced pages long, using a 12-point conventional font and one inch margins. This section must include all of the required components listed in section III.B. To ensure a fair and equitable evaluation of the nominations, please do not exceed the above limits. A nomination that contains a workplan narrative that exceeds ten double-spaced pages will not be considered. The title page and 150-word or less abstract will not count toward the 10-page limit. The entire nomination package should be printed on one side only of 8½″x11″ paper and unbound. Appended project budget form, maps, letters of support, and match certifications will not count toward the 10-page limit.

### *B. Submission of Nominations*

1. *Electronic*. EPA is requiring that a portion of the nomination be submitted electronically. Please send an electronic copy of *only* the title page, abstract, workplan description, and budget form to the electronic mailbox at *initiative.watershed@epa.gov*. Electronic submissions are limited to 120 KB in size and one submission per nomination. Please *do not* send maps, letters of support, match certifications, or pictures of any kind via the electronic mailbox. The subject line must be in the format "STATE—Watershed Name" (*e.g.*, MD—Rock Creek). No confidential business information should be sent via e-mail. The deadline for all electronic submissions is 12:00 pm Eastern time on January 15, 2004. If unusual or extraordinary circumstances prevent electronic submission of the nomination, please contact the appropriate Regional contact person listed below to discuss alternate arrangements.

2. *Paper*. Two hard copies of the complete nomination package (including all nominating and support letters) are required to be delivered—the original package to EPA Headquarters and a copy to the appropriate Regional Office. All names and addresses are listed below. Mark all submissions: ATTN: EPA Watershed Initiative.

All paper nominations must be received by EPA by January 15, 2004.

### *C. Addresses and EPA Contacts*

Please direct questions to your Regional contact person listed below.

Headquarters

Submissions must be delivered to: Carol Peterson, Office of Wetlands, Oceans, and Watersheds; U.S. EPA; Rm. 7136; 1301 Constitution Avenue; NW, Washington, DC 20004. Headquarters Contact: Carol Peterson, telephone 202–566–1034; e-mail *initiative.watershed@epa.gov*.

Regions

Region I—Connecticut, Maine, Massachusetts, Rhode Island, Vermont, New Hampshire

Submissions must be delivered to: William Walsh-Rogalski; U.S. EPA Region 1; 1 Congress Street, Suite 1100-Mail Code RAA; Boston, MA 02114–2023. Contacts: William Walsh-Rogalski or Lynne Hamjian, telephones 617–918–1035 and 617–918–1601; e-mails *walshrogalski.william@epa.gov* and *hamjian.lynne@epa.gov*, respectively.

Region II—New Jersey, New York, Puerto Rico, U.S. Virgin Islands

Submissions must be delivered to: Paul Molinari; U.S. EPA Region 2; 290 Broadway; 24th Floor; New York, NY 10007–1866; telephone 212–637–3886.

Contacts: Theresa Faber or Cyndy Belz, telephones 212–637–3844 and 212–637–3832; e-mails *faber.theresa@epa.gov* and *belz.cyndy@epa.gov*, respectively.

Region III—Delaware, Maryland, Pennsylvania, Virginia, West Virginia, Washington, DC

Submissions must be delivered to: Marion White; U.S. EPA Region 3; Mail Code 3WP12; 1650 Arch Street; Philadelphia, PA 19103–2029.

Contact: Marion White, telephone 315–814–5714; e-mail *white.marion@epa.gov*.

Region IV—Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Kentucky, Tennessee

Submissions must be delivered to: William L. Cox; U.S. EPA Region 4; Sam Nunn Atlanta Federal Center; 15th Floor; 61 Forsyth Street, SW; Atlanta, GA 30303–3104.

Contact: William L. Cox, telephone 404–562–9351; e-mail *cox.williaml@epa.gov*.

Region V—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Submissions must be delivered to: Paul Thomas; U.S. EPA Region 5; Mail code WW–16J; 77 W. Jackson Blvd; Chicago, IL 60604.

Contact: Paul Thomas, telephone 312–886–7742; e-mail *thomas.paul@epa.gov*.

Region VI—Louisiana, Texas, Oklahoma, Arkansas, New Mexico

Submissions must be delivered to: Brad Lamb; U.S. EPA Region 6; Mail Code 6WQ–EW; 1445 Ross Avenue; Dallas, TX 75202.

Contact: Brad Lamb, telephone 214–665–6683; e-mail *lamb.brad@epa.gov*.

Region VII—Iowa, Kansas, Missouri, Nebraska

Submissions must be delivered to: Julie Elfving; U.S. EPA Region 7; WWPD/GPCB; 901 North 5th Street; Kansas City, KS 66101.

Contact: Julie Elfving, telephone 913–551–7475; e-mail *elfving.julie@epa.gov*.

Region VIII—Colorado, Montana, North Dakota, South Dakota, Utah

Submissions must be delivered to: Ayn Schmit; U.S. EPA Region 8; Mail code 999; 18th Street, Suite 300; Denver, CO 80202–2466.

Contact: Ayn Schmit, telephone 303–312–6220; e-mail *schmit.ayn@epa.gov*.

Region IX—Arizona, California, Hawaii, Nevada, American Samoa, Mariana Islands, Guam

Submissions must be delivered to: Sam Ziegler; U.S. EPA Region 9; Mail Code WTR–3; 75 Hawthorne Street; San Francisco, CA 94105.

Contact: Sam Ziegler, telephone 415–972–3399; e-mail *ziegler.sam@epa.gov*.

Region X—Alaska, Idaho, Oregon, Washington

Submissions must be delivered to: Bevin Reid; U.S. EPA Region 10; Mail code ECO–086; 1200 Sixth Avenue; Seattle, WA 98101.

Contact: Bevin Reid, telephone 206–553–1566; e-mail *reid.bevin@epa.gov*.

## V. Post-Selection Regulatory Requirements

### *A. Applying for a Grant*

EPA will invite only nominees whose initial nominations are selected under this Initiative to submit detailed final proposals. Once selected to submit a grant application, the nominees will have 60 days to complete the formal grant application process (*i.e.*, Application for Federal Assistance, Standard Form 424 *et al*). The standard EPA grants application package must be filed according to Agency guidelines. Detailed information and assistance, including an application kit, required forms, and a check list, can be found at *http://www.epa.gov/ogd/AppKit/*. In anticipation of this process, all potential nominees may want to explore the above Web site for useful and pertinent information prior to preparing and submitting their nomination materials.

The Catalog of Federal Domestic Assistance number for this program is 66.439 Targeted Watershed Initiative. Any disputes regarding proposals or applications submitted in response to these guidelines will be resolved in accordance with 40 CFR 30.63 and part 31, subpart F. Applicants should clearly mark information they consider confidential. EPA will make final confidentiality determinations in accordance with regulations in 40 CFR part 2, subpart B.

Although the selections will be announced at the national level, Watershed Initiative grants will be awarded and managed by the respective EPA Regional Offices. Selected nominees may be asked to modify objectives, workplans, or budgets prior to final approval of the grant award. The exact amount of funds to be awarded, the final scope of activities, the duration of the projects, and specific role of the EPA Regional project coordinator will be determined in the pre-award negotiations between the selected nominee and EPA. The designated EPA Regional Contact listed in section IV.C will be available to provide additional guidance in completing the grant application, and other necessary forms, and answering any questions. EPA will also work with the applicant to comply with the Intergovernmental review requirements of Executive Order 12372 and 40 CFR part 29. EPA reserves the right reject all proposals and make no awards.

### *B. Project Implementation and Management*

Project monitoring and reporting requirements can be found in 40 CFR 30.50–30.54, 40 CFR 31.40–31.45 and 40 CFR 40.160. In general, grantees are responsible for managing the day-to-day operations and activities supported by the grant to assure compliance with applicable Federal requirements, and for ensuring that established milestones and performance goals are being achieved. Performance reports and financial reports must be submitted quarterly and are due 30 days after the reporting period. The final report is due 90 days after the grant has expired. Grant managers should consult, and work closely with, their Regional contact person throughout the award period.

Certain quality assurance and/or quality control (QA/QC) and peer review requirements are applicable to the collection of environmental data. Applicants should allow sufficient time and resources for this process in their proposed projects. Environmental data are any measurements or information that describe environmental processes, location, or condition; ecological or health effects and consequences; or the performance of environmental technology. Environmental data also include information collected directly from measurements, produced from models, and obtained from other sources such as data bases or published literature.

Regulations pertaining to QA/QC requirements can be found in 40 CFR 30.54 and 31.45. Additional guidance can be found at *http://www.epa.gov/quality/qa_docs.html#noeparqt.*

Dated: September 29, 2003.

**G. Tracy Mehan,**

*Assistant Administrator for Water.*

[FR Doc. 03–25401 Filed 10–8–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPPT–2003–0057; FRL–7330–5]**

## Certain New Chemicals; Receipt and Status Information

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from August 18, 2003 to September 5, 2003, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

**DATES:** Comments identified by the docket ID number OPPT–2003–0057 and the specific PMN number or TME number, must be received on or before November 10, 2003.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Copies of This Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0057. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

### *C. How and To Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT–2003–0057. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2003–0057 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0057 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

### *D. How Should I Submit CBI To the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

### *E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from August 18, 2003 to September 5, 2003, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

## III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 28 PREMANUFACTURE NOTICES RECEIVED FROM: 08/18/03 TO 09/05/03

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–03–0773 | 08/18/03 | 11/15/03 | CBI | (G) Industrial intermediate which is compounded with pigments and binders before being coated onto paper for carbonless copy paper applications. | (G) Zincated resin system |
| P–03–0774 | 08/19/03 | 11/16/03 | PPG Industries, Inc. | (G) Coating with open use | (G) Cationic acrylic copolymer |
| P–03–0775 | 08/19/03 | 11/16/03 | PPG Industries, Inc. | (G) Coating with open use | (G) Cationic acrylic copolymer |
| P–03–0776 | 08/19/03 | 11/16/03 | PPG Industries, Inc. | (G) Coating with open use | (G) Cationic acrylic copolymer |
| P–03–0777 | 08/19/03 | 11/16/03 | CBI | (G) Emulsifier | (G) Polyalkyl carboxylic acid polyol esters |
| P–03–0778 | 08/20/03 | 11/17/03 | The Dow Chemical Company | (G) Additive for plastics | (G) Phenol, polymer with formaldehyde and phenol derivative |
| P–03–0779 | 08/20/03 | 11/17/03 | CBI | (G) Intermediate used in closed processes | (S) 3-oxatricyclo[4.1.1.02,4]octane, 2,7,7-trimethyl-, (1r,2r,4s,6r)- |
| P–03–0780 | 08/20/03 | 11/17/03 | CBI | (G) Dehydration agent | (G) Polyester |
| P–03–0781 | 08/22/03 | 11/19/03 | Petroferm Inc. | (S) Slip and leveling additive to uv- and eb-cured inks, paints and coatings; oligomer in the manufacture of polymeric materials | (G) Allyl ethoxylate methacrylate |
| P–03–0782 | 08/22/03 | 11/19/03 | Petroferm Inc. | (S) Slip and leveling additive to uv- and eb-cured inks, paints and coatings; oligomer in the manufacture of polymeric materials | (G) Combed silicone acrylate |
| P–03–0783 | 08/22/03 | 11/19/03 | Petroferm Inc. | (S) Slip and leveling additive to uv- and eb-cured inks, paints and coatings; oligomer in the manufacture of polymeric materials | (G) Combed silicone methacrylate |
| P–03–0784 | 08/22/03 | 11/19/03 | Petroferm Inc. | (S) Slip and leveling additive to uv- and eb-cured inks, paints and coatings; oligomer in the manufacture of polymeric materials | (G) Linear silicone methacrylate |
| P–03–0785 | 08/22/03 | 11/19/03 | CBI | (G) Defoamer | (G) Propoxylated fatty alcohol esters |
| P–03–0786 | 08/22/03 | 11/19/03 | Ashland Inc., Environmental Health and Safety | (G) Lamination adhesive | (G) Polyurethane dispersion - lamination adhesive |
| P–03–0787 | 08/22/03 | 11/19/03 | Crompton Corporation | (S) By-product of erucamide production to be recycled | (S) 13-docosenoic acid, potassium salt, (13z)- |

I. 28 PREMANUFACTURE NOTICES RECEIVED FROM: 08/18/03 TO 09/05/03—Continued

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–03–0788 | 08/22/03 | 11/19/03 | Crompton Corporation | (S) By-product of amide production to be recycled | (S) Docosanoic acid, potassium salt |
| P–03–0789 | 08/22/03 | 11/19/03 | CBI | (S) Polymerisable photoinitiator for uv-curable coatings | (G) Derivatized butyl ester photoinitiator |
| P–03–0790 | 08/25/03 | 11/22/03 | CBI | (G) Component of foam | (G) Polyester polyol |
| P–03–0791 | 08/25/03 | 11/22/03 | E.I. Du Pont De Nemours and Company, Inc. (dupont) | (G) Molding resin | (G) Ethylene interpolymer |
| P–03–0792 | 08/25/03 | 11/22/03 | Dupont Textiles and Interiors | (S) Emulsifier, corrosion inhibitor, and lubricant for metalworking fluid | (S) Cyclododecane, oxidized, by-products from, acidified, oil phase |
| P–03–0793 | 08/26/03 | 11/23/03 | UBE America Inc. | (S) External donor for olefin polymerization | (S) Silanamine, 1,1,1-triethoxy-n,n-diethyl- |
| P–03–0794 | 08/29/03 | 11/26/03 | BASF Corporation Perfomance Chemicals | (G) Oxidation catalyst | (S) Alanine, n,n-bis (carboxymethyl)-, iron sodium complexes |
| P–03–0795 | 08/29/03 | 11/26/03 | CIBA Specialty Chemicals Corporation | (S) Photo-cure for imaging / electronics industry | (G) Organo-titanium complex |
| P–03–0796 | 08/29/03 | 11/26/03 | CBI | (G) Raw material | (G) Halogenated heteropolycycle |
| P–03–0797 | 08/29/03 | 11/26/03 | CBI | (G) Raw material | (G) Halogenated heteropolycycle |
| P–03–0798 | 08/29/03 | 11/26/03 | CBI | (G) Synthetic industrial lubricant for contained use. | (G) Pentaerythritol, mixed esters with straight and branched fatty acids |
| P–03–0799 | 08/29/03 | 11/26/03 | CBI | (G) Synthetic industrial lubricant for contained use. | (G) Dipentaerythritol, mixed esters with straight and branched fatty acids |
| P–03–0800 | 08/29/03 | 11/26/03 | CBI | (G) Synthetic industrial lubricant for contained use | (G) Pentaerythritol, mixed esters with straight chain and branched fatty acids |
| P–03–0801 | 08/29/03 | 11/26/03 | CBI | (G) Synthetic industrial lubricant for contained use | (G) Dipentaerythritol, mixed esters with straight chain and branched fatty acids |

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 17 NOTICES OF COMMENCEMENT FROM: 08/18/03 TO 09/05/03

| Case No. | Received Date | Commencement/ Import Date | Chemical |
|---|---|---|---|
| P–00–0552 | 08/25/03 | 07/26/03 | (G) Salicylic acid, zirconium salt |
| P–01–0443 | 08/26/03 | 08/07/03 | (G) Copolymer of polyoxyethylene allyl methyl ether |
| P–01–0813 | 08/22/03 | 07/29/03 | (G) Cerium-based organic compound |
| P–02–0574 | 08/22/03 | 08/16/03 | (G) Amine functional epoxy based resin salted with an organic acid |
| P–02–0638 | 08/25/03 | 07/13/03 | (G) Hexanedioic acid, polymer with 2,2-dimethyl-1,3-propanediol, 1,6-hexanediol, hexanedioic acid amide derivative, 3-hydroxy-2-(hydroxymethyl)-2-methylpropanoic acid and 1,1′-methylenebis[4-isocyanatocyclohexane], compound with nu, nu-diethylethaneamine |
| P–02–0946 | 08/19/03 | 07/22/03 | (G) Substituted benzoic acid, alkali salt |
| P–02–0992 | 08/26/03 | 07/25/03 | (G) Ethylene oxide-propylene oxide copolymer allyl alkyl ether |
| P–03–0067 | 08/25/03 | 07/31/03 | (G) Fluoroalkene substitutedalkene polymer |
| P–03–0078 | 08/20/03 | 07/27/03 | (G) Sulphonated azo dye |
| P–03–0291 | 08/25/03 | 08/11/03 | (G) Corn by product |
| P–03–0292 | 08/25/03 | 08/13/03 | (G) ThermoChemical mechanical processed maize fiber |
| P–03–0325 | 08/20/03 | 08/07/03 | (S) Oxazolidine, 3,3′-methylenebis[5-methyl- |
| P–03–0398 | 08/27/03 | 06/09/03 | (G) Modified hydrocarbylpolysilicate |
| P–03–0410 | 08/25/03 | 08/15/03 | (G) Styrene acrylic copolymer |
| P–03–0462 | 08/21/03 | 08/01/03 | (G) Bisphenol a type epoxy resin, salt |
| P–03–0474 | 08/20/03 | 08/11/03 | (G) Hydrophobically modified acetylenic glycol |
| P–99–1225 | 08/26/03 | 07/22/03 | (G) Acrylic copolymer resin |

**List of Subjects**

Environmental protection, Chemicals, Premanufacture notices

Dated: October 2, 2003.

**Sandra Wilkins,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 03–25638 Filed 10–8–03; 8:45 am]

BILLING CODE 6560–50–S

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–7572–1]

## New York State Prohibition on Marine Discharges of Vessel Sewage; Final Affirmative Determination

Notice is hereby given that EPA has made a final affirmative determination regarding the petition received from the State of New York on April 29, 1999 requesting a determination by the Regional Administrator, Environmental Protection Agency (EPA), pursuant to Section 312(f)(3) of Public Law 92–500, as amended by Public Law 95–217 and Public Law 100–4 (the Clean Water Act), that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of the Hudson River and its tributaries including, but not limited to, Rondout Creek, Esopus Creek and Catskill Creek. This petition was made by the New York State Department of State, in conjunction with the New York State Department of Environmental Conservation. New York State certified in the petition a need for greater protection and enhancement. The certification states that the discharge of vessel waste often contain chemical additives such as formaldehyde, phenols and chlorine. These wastes increase loadings of nutrients, pathogens and chemical loading particularly in shallow, poorly flushed waterbodies, and may adversely affect water quality, sensitive and important resources, and uses of these waters. The Hudson River provides habitat for fish and wildlife species. Congress has designated the Hudson River as a National Heritage Area under the purview of the National Park Service, and in 1998, the Hudson River was designated an American Heritage River. Upon receipt of this final affirmative determination, the State of New York will completely prohibit the discharge of sewage, whether treated or not, from any vessel, with the exception of commercial vessels that are greater than 225 feet in overall length or are greater than 20 feet in draft, on the Hudson River in the area north of the Battery in Manhattan, New York and south of Federal Dam in Troy, New York in accordance with Section 312(f)(3) of the Clean Water Act and 40 CFR 140.4(a). For vessels that are greater than 225 feet in overall length or are greater than 20 feet in draft, the prohibition will be applicable one year from the date of publication in the **Federal Register**.

Previously, EPA established on December 13, 1995 two No Discharge Areas (NDAs) to protect drinking water intake zones. Zone 1 is bounded by the northern confluence of the Mohawk River on the south and Lock 2 on the north. It is approximately 8 miles long. Zone 2 is bounded on the south by the Village of Roseton on the western shore and bounded on the north by the southern end of Houghtaling Island. Zone 2 is approximately 60 miles long.

The southern boundary of the proposed NDA in this application would begin at the Battery in Manhattan, New York and the northern boundary would be the Federal Dam in Troy, New York. This area includes waters up to the New Jersey-New York boundary and does not include waters in New Jersey. The area proposed by the State of New York is 153 miles long and encompasses approximately 81,000 acres of tidal waters and wetlands.

On October 24, 2000, EPA published a Receipt of Petition and Tentative Determination and accepted comments from the public for a thirty (30) day period. The comment period was extended until December 22, 2000 at the request of one of the commenters. EPA received letters from the following individuals:

1. Harold Gorman, 2332 Fort Lyon Drive, Stanton, VA
2. Edward V. Weber, 60 Round Hill Road, Poughkeepsie, NY 12603–5125
3. Ned Sullivan, Executive Director, Scenic Hudson, Inc., 9 Vassar Street, Poughkeepsie, NY 12601
4. Andrew J. Spano, County Executive, Westchester County, Michaelian Office Building, White Plains, NY 10601
5. Manna Jo Greene, Environmental Director, Clearwater, Inc., 112 Little Market Street, Poughkeepsie, NY 12601
6. Joseph P. Gehegan, Jr., Vice President, Spentonbush/Red Star Companies, P.O. Box 392, Brooklyn, NY 11231
7. Joseph Tesoriero, Safety Director, McAllister Towing and Transportation Company, Inc., 17 Battery Place, New York, NY 10004–1260
8. Kenneth L. Peterson, Jr., Port Captain, Reinauer Transportation Companies, 1983 Richmond Terrace, Staten Island, NY 10302
9. Robert J. Hughes, Jr., Hughes Marine Firms, Raritan Plaza I, Raritan Center, Edison, NJ 08837
10. John C. Tobin, New York State Waterways Association, Inc., 174 Washington Avenue, Albany, NY 12210
11. Kevin A. Nugent, Vice President, Bouchard Transportation Co., Inc., 77 Newbridge Road, Hicksville, NY 11801
12. Richard M. Larrabee, Director, Port Commerce Dept., The Port Authority of New York & New Jersey, One World Trade Center, 34S, New York, NY 10048–0682
13. Linda O'Leary, Vice President—Atlantic Coast Region, American Waterways Operators, 241 Water Street, New York, NY 10038

One commenter expressed confusion over the boundaries of the Hudson River NDA. His confusion was caused by the statement that some vessel operators while docked at the Brooklyn Naval Yard have their holding tanks pumped out by waste haulers. Since the Brooklyn Naval Yard is on the East River, he asked whether the prohibition included the East River. It does not include the East River, but boaters may choose to use pumpout facilities located outside of the NDA because the facilities are more convenient for them. For example, a boater who keeps his boat in a Staten Island marina may choose to use the pumpout at his home marina because it is convenient. The southern boundary of the proposed No Discharge Area (NDA) in this application would begin at the Battery in Manhattan, New York and the northern boundary would be the Federal Dam in Troy, New York. This area includes waters up to the New Jersey-New York boundary and does not include waters in New Jersey. It does not include the East River, the Harlem River, the Long Island Sound nor the Raritan Bay. No change to the determination is necessary based on this comment.

Three commenters expressed their support for the complete prohibition of the discharge of sewage from vessels. They believe that this determination is an important step in maintaining the vitality of the Hudson River. No change to the determination is necessary based on these comments.

One commenter compared the prohibition to a "chamber pot" approach and questioned whether making waste disposal more difficult for boaters effectively eliminates sewage. The commenter stated that marine sanitation devices (MSDs) must be allowed to operate and discharge. In response, EPA notes that the pumpout and subsequent treatment of wastes at a sewage treatment plant generally results in a higher level of treatment than an MSD can provide. A holding tank is a total retention/no discharge alternative. A flow through device (Type I or Type II) treats the waste to some degree and then discharges into the water. This discharge contains pathogens, nutrients and various chemicals. This commenter also expressed concern about the capacity of a holding tank capacity (2 days of waste), the distance between pumpouts (15.5 miles) and the speed at which most vessels travel (5 knots per hour). The capacity of a holding tank is determined by several factors, volume, size of the crew, and the use of shore bathroom facilities when available. The greatest distance between pumpout facilities, based on the charts submitted in the application, is 12 miles. The speed at which vessels travel is determined by whether the vessel is a sailing or power vessel. These are all factors, including fuel, weather, supplies and charts, which the operator of the vessel needs to consider when planning his trip. No changes to the determination are necessary based on these comments.

Several commenters expressed concerns regarding the ability of large commercial vessels to dispose of sewage due to the lack of facilities and the draft restriction at pumpout facilities. These vessels may exceed 200 feet in length and have drafts in excess of 20 feet. The commenters also stated that many, if not all, of these commercial vessels have been equipped with Type II marine sanitation devices, which are a flow-through type treatment devices as opposed to a Type III MSD which are a holding tank. They stated that to retrofit tugs and barges with holding tanks would cost several thousand dollars and the time in dry dock would cost several thousand dollars in lost revenue. Some commenters requested that commercial vessels be exempted from the prohibition since no pumpout facilities were available for their vessels due to size and draft requirements. The same commenters requested that the NDA apply only to recreational boaters. While many of the commercial vessels are equipped with Type II MSDs, there are several commercial operators that utilize Type III MSDs and have their holding tanks pumped out at facilities that are available in their home ports or that make arrangements with waste haulers to pumpout their holding tanks when they dock to load, unload or take on supplies and fuels. EPA concludes that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available. One commenter stated that 50% of the petroleum transported by tug/barge units was delivered to Albany, 29% of the petroleum was delivered to Newburgh and 21% of the petroleum was delivered to various terminals along the Hudson River. This commenter contended that the imposition of the NDA on all vessels will cause a disruption in the petroleum delivery system, unduly harm the tug and barge industry, result in hardship to the residents of New York State and serve no useful purpose in terms of improving water quality or protecting environmental resources. Based on this information, EPA has decided that the complete prohibition of discharge of vessel sewage will not apply for one year from the date of **Federal Register** publication of this notice to commercial vessels which are greater than 225 feet in length or are greater than 20 feet in draft. The prohibition of discharge of vessel sewage will apply to all other vessels upon publication of this determination in the **Federal Register**.

The EPA hereby makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Hudson River, New York. A final determination on this matter will result in a New York State prohibition of any sewage discharges from vessels, with the exception of commercial vessels that are greater than 225 feet in length or are greater than 20 feet in draft, on the Hudson River from the Battery in Manhattan, New York to the Federal Dam at Troy, New York. For vessels that are greater than 225 feet in overall length or are greater than 20 feet in draft, the prohibition will be applicable on October 8, 2004.

Any questions regarding this notice should be addressed to Walter E. Andrews, U.S. Environmental Protection Agency, Region 2, Water Programs Branch, 290 Broadway, 24th Floor, New York, New York, 10007-1866. Telephone: (212) 637-3880.

Dated: September 3, 2003.

**Jane M. Kenny,**

*Regional Administrator, Region 2.*

[FR Doc. 03-25637 Filed 10-8-03; 8:45 am]

BILLING CODE 6560-50-P

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## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

September 29, 2003.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Persons wishing to comment on this information collection should submit comments December 8, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judith B. Herman at (202) 418-0214 or via the Internet at Judith-*B.Herman@fcc.gov*.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060-0711.

*Title:* Implementation of Section 34(a)(1) of the Public Utility Holding Company Act of 1935, as amended by the Telecommunications Act of 1996, (47 CFR Sections 1.5001–1.5007).

*Form No.:* N/A.

*Type of Review:* Extension of currently approved collection.

*Respondents:* Business or other for profit.

*Number of Respondents:* 15.

*Estimated Time Per Response:* 10 hours.

*Frequency of Response:* Third party disclosure and on occasion reporting requirements.

*Total Annual Burden:* 150 hours.

*Total Annual Cost:* $48,000.

*Needs and Uses:* 47 CFR Sections 1.5001–1.5007 implement Sction 34(a) of the Public Utility Holding Company Act. The rules provide filing requirements and procedures to expedite public utility holding company entry into the telecommunications industry. Persons seekings a determination of ETC status must file in good faith for determination by the Commission. The information will be used by the Commission to determine whether persons satisfy the statutory criteria for exempt telecommunications company status.

*OMB Control No.:* 3060–0745.

*Title:* Implementation of the Local Exchange Carrier Tariff Streamlining Provisions in the Telecommunications Act of 1996, CC Docket No. 96–187.

*Form No.:* N/A.

*Type of Review:* Extension of currently approved collection.

*Respondents:* Business or other for profit.

*Number of Respondents:* 1,520.

*Estimated Time Per Response:* 0.33–9.0 hours.

*Frequency of Response:* Recordkeeping, third party disclosure and on occasion reporting requirements.

*Total Annual Burden:* 1,150 hours.

*Total Annual Cost:* $5,100,000.

*Needs and Uses:* In CC Docket No. 96–187, the Commission adopted measures to streamline tariff filing requirements for local exchange carriers (LECs) of the Telecommunications Act of 1996. In order to achieve a streamlined and deregulatory environment for local exchanged carrier tariff filings, local exchange carriers are required to file tariffs electronically. Other carriers are permitted to file their tariffs electronically.

*OMB Control No.:* 3060–0943.

*Title:* 47 CFR Section 54.809, Carrier Certification.

*Form No.:* N/A.

*Type of Review:* Extension of currently approved collection.

*Respondents:* Business or other for profit.

*Number of Respondents:* 27.

*Estimated Time Per Response:* 1.5 hours.

*Frequency of Response:* Third Party Disclosure and annual reporting requirements.

*Total Annual Burden:* 41 hours.

*Total Annual Cost:* N/A.

*Needs and Uses:* Section 54.809 of the Commission's rules requires each price cap or competitve LEC that wishes to receive universal support to file an annual certification with the Universal Service Administrative Company and the Commission. The certification must state that the carrier will use its interstate access universal service support only for the provision, maintenance, and upgrading of facilities and service for which the support is intended.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03–25598 Filed 10–8–03; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

Previously Announced Date & Time: *Wednesday, October 8, 2003 Meeting Closed to the Public. This Meeting Was Rescheduled for Thursday, October 9, 2003, Following the Open Meeting*

**DATE AND TIME:** Wednesday, October 15, 2003 at 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

**DATE AND TIME:** Thursday, October 16, 2003 at 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC (ninth floor).

**STATUS:** This meeting will be open to the public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes.

Draft Advisory Opinion 2003–25: Weinzapfel for Mayor Committee by counsel, Neil P. Reiff.

Notice of Availability—Petition for Rulemaking Filed by America's Community Bankers.

Administrative Matters.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

**Mary W. Dove,**

*Secretary of the Commission.*

[FR Doc. 03–25832 Filed 10–7–03; 2:39 pm]

BILLING CODE 6715–01–M

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## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 3, 2003.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. *Partners Financial Holdings, Inc.*, Glen Carbon, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Partners Bank, Alton, Illinois.

Board of Governors of the Federal Reserve System, October 3, 2003.

**Margaret M. Shanks,**

*Assistant Secretary of the Board.*

[FR Doc. 03–25575 Filed 10–8–03; 8:45 am]

**BILLING CODE 6210–01–S**

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## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### Sunshine Act Meeting

**TIME AND DATE:** 9:30 a.m. (CDT), October 20, 2003.

**PLACE:** National Finance Center, Building 350, Conference Room 6, 13800 Old Gentilly Road, New Orleans, Louisiana.

**STATUS:** Parts will be open to the public and parts closed to the public.

**MATTERS TO BE CONSIDERED:**

**Parts Open to the Public**

9:30 a.m. (CDT) Convene meeting

1. Approval of minutes of the September 15, 2003, Board meeting.
2. Thrift Savings Plan report by the Executive Director.

**Parts Closed to the Public**

3. Discussion of draft selection criteria for call center services.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: October 6, 2003.

**Elizabeth S. Woodruff,**

*Secretary to the Board, Federal Retirement Thrift Investment Board.*

[FR Doc. 03–25684 Filed 10–6–03; 4:46 pm]

**BILLING CODE 6760–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Advisory Board on Radiation and Worker Health, National Institute for Occupational Safety and Health

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

*Name:* Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH).

*Times and Dates:* 8:30 a.m.–5 p.m., October 28, 2003. 8:30 a.m.–4:30 p.m., October 29, 2003.

*Place:* Adams Mark St. Louis, 315 Chestnut Street (at 4th Street), St. Louis, Missouri 63102, telephone (314) 241–7400, fax (314) 241–0889.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 120 people.

*Background:* The Advisory Board on Radiation and Worker Health ("the Board") was established under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000 to advise the President, through the Secretary of Health and Human Services (HHS), on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by HHS as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, evaluation of the scientific validity and quality of dose reconstructions conducted by the National Institute for Occupational Safety and Health (NIOSH) for qualified cancer claimants, and advice on the addition of classes of workers to the Special Exposure Cohort.

In December 2000, the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was renewed on August 3, 2003 and the President has completed the appointment of members to the Board to ensure a balanced representation on the Board.

*Purpose:* This board is charged with (a) providing advice to the Secretary, HHS on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

*Matters to be Discussed:* Agenda for this meeting will focus on Program Status Reports from NIOSH, Department of Labor, and Department of Energy; Research Issues; Dose Reconstruction Workgroup Report; Scientific Issues Workgroup Report; and a closed session to discuss Independent Government Cost Estimates.

Agenda items are subject to change as priorities dictate.

*For Further Information Contact:* Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone (513) 533–6825, fax (513) 533–6826.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC, the Agency for Toxic Substances and Disease Registry.

Dated: October 2, 2003.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 03–25582 Filed 10–8–03; 8:45 am]

**BILLING CODE 4163–19–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Final Recommendations for Protecting Human Health From Potential Adverse Effects of Exposure to Agents GA (Tabun), GB (Sarin), and VX

The National Center for Environmental Health published a document in the September 17, 2003, edition (Volume 68, Number 180, Pages 54460–54462) of the **Federal Register** entitled "Final Recommendations for Protecting Human Health from Potential Adverse Effects of Exposure to Agents GA (Tabun), GB (Sarin), and VX." A printing error altered a value in Table 1. The error has since been corrected. The document is being republished in its entirety for the convenience of the reader.

**AGENCY:** Centers for Disease Control and Prevention (CDC), Public Health Service, Department of Health and Human Services.

**ACTION:** Notice of final recommendations for protecting human health from potential adverse effects of exposure to agents GA, GB, and VX.

**SUMMARY:** Agents GA, GB, and VX are stored and are in the process of being destroyed by the Department of Defense (DoD). Public Law 99–145 (50 U.S.C. 1521) mandates that all unitary (self-contained) lethal chemical munitions be destroyed. Public Law 91–121 and Public Law 91–441 (50 U.S.C 1512) mandate that the Department of Health and Human Services (DHHS) review DoD plans for disposing of these munitions and make recommendations to protect public health.

**EFFECTIVE DATE:** January 1, 2005. An implementation period is necessary to allow the DoD to make program adjustments and allow time for changes to environmental permits as required.

**FOR FURTHER INFORMATION CONTACT:** Dr. Paul Joe, Acting Chief, Chemical Demilitarization Branch, National Center for Environmental Health, CDC, 4770 Buford Highway, M/S F–16, Atlanta, Georgia 30341.

**SUPPLEMENTARY INFORMATION:** On January 8, 2002, DHHS, CDC published proposed "Airborne Exposure Limits for Chemical Warfare Agents GA (tabun), GB (sarin) and VX" in the **Federal Register** (Vol. 67, No. 5, Pages 894–901, Tuesday, January 8, 2002), seeking public comment. This notice discusses major comments received, describes decisions regarding the public comments, and states the final recommendations. CDC received comments from the U.S. Army, the Agency for Toxic Substances and Disease Registry (ATSDR), the CDC's National Institute for Occupational Safety and Health (NIOSH), state of Utah, U.S. Army contractors, and two individuals.

The comments fell into the following general categories: assumptions used in the risk assessment, selection of uncertainty factors, determination of the relative potency factor for the VX exposure limits, and technical feasibility of air monitoring at the lower exposure limits. The key comments potentially impacting CDC's recommendations are discussed below.

The U.S. Army recommended that adjustment in the risk assessment algorithm for breathing rate be eliminated because the critical endpoint in deriving the exposure limits is miosis, a clinical sign that is recognized as a local effect on the muscles of the iris of the eye. This biologic endpoint is widely considered to be a direct effect of the nerve agent vapor on the surface of the eye (not related to breathing rate). Scientists from CDC/NIOSH however, indicated that the data do not completely rule out the potential contribution of inhaled agent to the miosis effect. The weight of the scientific data appears to support the Army's recommendation on this matter, and CDC has decided to eliminate the breathing rate adjustment. Eliminating the breathing rate adjustment increases the worker population limit (WPL) by a factor of slightly more than two. No significant change in the general population limit (GPL) would occur by eliminating the breathing rate adjustment.

In the derivation of the WPL for GB, CDC/NIOSH experts recommended that an additional uncertainty factor of three be added to account for individual worker variability. Although workers are medically screened, the recommendation is a reasonable public health decision. CDC therefore has incorporated the additional uncertainty factor of three into the risk assessment algorithm. Making this adjustment lowers the exposure limits by a factor of three. This adjustment and elimination of the breathing rate factor suggested above essentially cancel each other.

In the derivation of the VX exposure limits by using relative potency, the Army questioned the use of a relative potency of 12 with the application of a modification factor of three for the incomplete VX data set. The application of a relative potency of 12 with a modifying factor of three effectively resulted in a relative potency of 36 between the calculated exposure limits for GB and VX. As discussed in the January 8, 2002, **Federal Register** proposal, the relative potency factor of 12 was based on a 1971 British study that measured the ability of VX to cause 90 percent pupil constriction in rabbits. Because the critical effect in the study used to derive the GB exposure limit was miosis, CDC believes that miosis was appropriate to use as the health effect in determining the relative potency of VX. CDC/NIOSH experts and the state of Utah supported the proposed relative potency of 12 with a modifying factor of three. Therefore, CDC is retaining its relative potency assumptions for deriving the VX exposure limits.

As discussed in the January 8, 2002, **Federal Register** proposal, CDC adjusted the VX GPL because available air-monitoring methods do not reliably detect VX at the calculated value of $3 \times 10^{-8}$ mg/m$^3$. In the adjustment, CDC assumed that potential exposure would be identified and corrected within three days, precluding chronic exposure. Several people who provided comments pointed out that a similar adjustment also could have been made for the GB GPL. CDC recognizes that the assumptions used to derive the GPLs for GB and VX differ. Indeed, this adjustment could be applied to the GB exposure limits; however, the air-monitoring technology is currently functioning near the recommended level. CDC recommends no upward adjustment of the GB exposure limits; this recommendation is consistent with the accepted industrial hygiene practice of keeping exposure to the minimum practicable level.

The derivation of the VX exposure limits may be biased low because of the inadequate VX toxicity database. CDC believes that reliable air monitoring is a crucial aspect for implementing the exposure limits. Although CDC would have preferred a better toxicity database for VX, as well as improved air-monitoring methods for VX, these items are not currently available. Consequently, CDC is not further adjusting the final recommendation to the GPL for VX. However, CDC will reevaluate the VX exposure limits in the future if significant new VX toxicity data are available for setting exposure limits, new risk assessment evaluation methods are demonstrated superior to methods used herein, or substantive technological advances in air monitoring methods are made.

Army contractors and CDC/NIOSH experts expressed concerns about the technical feasibility of meeting the new exposure limits. On the basis of these comments, CDC has adjusted the VX short-term exposure limit (STEL) to $1 \times 10^{-5}$ mg/m$^3$ but added the provision that excursions to this special VX STEL should not occur more than once per day (in the typical STEL, four excursions per day are allowed). A lower STEL value would have required a longer response time for near real-time instruments; the recommended STEL is a result of balancing the detection capabilities and response time. A shorter instrument response time associated with the recommended STEL will minimize exposures. This adjustment to the VX STEL should not affect worker health.

To account for other technical feasibility concerns, CDC recommends that the GB and VX STEL be evaluated with near-real-time instrumentation, whereas the GB and VX WPLs and GPLs may be evaluated with longer-term historical air monitoring methods. CDC further recommends that, in implementing the WPLs, STELs and GPLs, specific reduction factors for statistical assurance of action at the exposure limits are not needed because of safety factors already built into the derivation of the exposure limit. This recommendation assumes that the sampling and analytical methods are measuring within ±25% of the true concentration 95% of the time. If this criterion is not met, an alarm level or action level below the exposure limit may be required.

The Army recently indicated to CDC that the exposure limits as listed and implemented in this announcement are technically feasible to detect with the instrumentation and methods currently in use. However, whether the agent destruction sites can monitor at these exposure limits and still meet current quality control standards has not been determined. To allow the Army to implement program changes, regulatory adjustments, and to evaluate quality control issues, the final recommended exposure limits will become effective January 1, 2005.

Final Recommendations: CDC presents final recommendations for airborne exposure limits (AELs) for the chemical warfare agents GA (tabun or ethyl N,N-dimethyl-phosphoramidocyanidate, CAS 77–81–6); GB (sarin or O-isopropylmethylphosphonofluoridate, CAS 107–44–8); and VX (O-ethyl-S-(2-diisopropylaminoethyl)-methylphosphonothiolate, CAS 50782–69–9). CDC based its recommendations on comments by scientific experts at a public meeting convened by CDC on August 23–24, 2000, in Atlanta, Georgia; the latest available technical reviews; and the risk assessment approach frequently used by regulatory agencies and other organizations. Additionally, CDC reviewed the substantial background information provided in the recent U.S. Army evaluations of the airborne exposure criteria for chemical warfare agents. AELs for chemical warfare agents GA, GB, and VX were reevaluated by using the conventional reference concentration risk assessment methodology for developing AELs described by the U.S. Environmental Protection Agency. This methodology is considered conservative; however, the calculated exposure limits are neither numerically precise values that differentiate between nonharmful and dangerous conditions, nor are they precise thresholds of potential human toxicity. The recommended changes to the AELs do not reflect change in, nor a refined understanding of, demonstrated human toxicity of these substances but rather the changes resulted from updated and minimally modified risk assessment assumptions. Overt adverse health effects have not been noted in association with the previously recommended exposure limits. This may be due to rigorous exposure prevention efforts in recent years as well as the conservative implementation of the existing limits (*i.e.*, 8-hour time-weighted average exposure limits have been implemented as short-duration ceiling values).

*Recommended AELs for GB:* CDC recommends a WPL value of $3 \times 10^{-5}$ mg/m$^3$, expressed as an 8-hour time-weighted average (TWA). Additionally, CDC recommends a STEL of $1 \times 10^{-4}$ mg/m$^3$ to be used in conjunction with the WPL. Exposures at the STEL should not be longer than 15 minutes and should not occur more than four times per day, and at least 60 minutes should elapse between successive exposures in this range. The STEL should not be exceeded during the work day, even if the cumulative exposure over the 8-hour TWA is not exceeded. CDC recommends a decrease in the GPL to $1 \times 10^{-6}$ mg/m$^3$. The WPLs and GPLs values are approximately threefold lower than levels previously recommended by CDC in 1988. An immediately-dangerous-to-life-or-health (IDLH) value of 0.1 mg/m$^3$ is recommended for GB.

*Recommended AELs for GA:* Although not as well-studied as GB, GA is believed to be approximately equal in potency to GB. Therefore, CDC recommends the same exposure limits for GA as for GB.

*Recommended AELs for VX:* CDC recommends that the VX WPL, expressed as an 8-hour TWA, be decreased to $1 \times 10^{-6}$ mg/m$^3$. Additionally, CDC recommends a VX STEL of $1 \times 10^{-5}$ mg/m$^3$. An excursion to the STEL should not occur more than one time per day (compared to four times per day for a typical STEL). The recommended WPL is a factor of 10 lower than the CDC's 1988 recommendation. CDC recommends that the GPL for VX be decreased to $6 \times 10^{-7}$ mg/m$^3$ (a factor of five lower than CDC's 1988 recommendation). An IDLH value of 0.003 mg/m$^3$ is recommended for VX. CDC's final recommendations are summarized in Table 1 below.

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Table 1 - Final Recommended Airborne Exposure Limits (AELs) for GA, GB, and VX

| **AEL (mg/m$^3$)** | **General Population Limit (GPL)*** | **Worker Population Limit (WPL)*** | **Short-Term Exposure Limit (STEL)*** (Workers) | **Immediately Dangerous to Life or Health (IDLH)** (Workers) |
|---|---|---|---|---|
| **GA, GB** | $1 \times 10^{-6}$ | $3 \times 10^{-5}$ | $1 \times 10^{-4}$ | 0.1 |
| *GA, GB - Previous (1988)* | *$3 \times 10^{-6}$* | *$1 \times 10^{-4}$* | -- | *0.2 (Army)* |
| **VX** | $6 \times 10^{-7}$ | $1 \times 10^{-6}$ | $1 \times 10^{-5}$** | 0.003 |
| *VX - Previous (1988)* | *$3 \times 10^{-6}$* | *$1 \times 10^{-5}$* | -- | *0.02 (Army)* |
| **Averaging Time** | 24 hours | 8 hours | 15 minutes | ≤30 minutes |
| **Monitoring Method for Recommended Exposure Criteria** | Historical monitor*** | Historical monitor | Near-real-time monitor | Near-real-time monitor |

* An additional reduction factor for statistical assurance of action at the exposure limit is not needed because of safety factors already built into the derivation of the exposure limit.

** VX STEL has been adjusted from $4 \times 10^{-6}$ mg/m$^3$ (up to four times per day) as proposed in the **Federal Register** announcement to $1 \times 10^{-5}$ mg/m$^3$ (not more than one time per day) based on technical capabilities of existing air-monitoring technologies.

*** Historical monitoring typically refers to long-term sampling and analytical methods. Air-monitoring results from historical methods are not known until laboratory analyses are complete.

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CDC does not specifically recommend the use of these AELs for uses other than transportation, worker protection during the destruction process, or general population protection. For example, the 8-hour WPL historically has been used for the Army-designated 3X decontamination, surveillance activities of leaking containers in storage, and charcoal unit mid-beds. CDC did not evaluate the applicability of the WPLs for these activities; the specific technical and safety requirements for each activity need to be considered individually.

This announcement does not address the allowable stack concentration (ASC). The ASC is a ceiling value that serves as a destruction process source emission limit and not as a health standard. It typically is used for monitoring the furnace ducts and final exhaust stack, providing an early indication of an upset condition. Modeling of worst-case credible events and conditions at each installation should confirm that the WPL is not exceeded on-site or that the GPL is not exceeded at the installation boundary as a consequence of a release at or below the ASC.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: October 3, 2003.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 03–25583 Filed 10–8–03; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### President's Committee for People With Intellectual Disabilities (PCPID): Notice of Meeting

**AGENCY:** President's Committee for People With Intellectual Disabilities (PCPID), HHS.

**ACTION:** Notice of meeting.

**DATES:** Thursday, October 16, from 8:30 a.m. to 1:30 p.m. The full Committee meeting of the President's Committee for People with Intellectual Disabilities will be open to the public on Thursday, October 16, from 8:30 a.m. to 1:30 p.m.

**ADDRESSES:** The meeting will be held at the Aerospace Center Building, Aerospace Auditorium, 6th Floor East, 370 L'Enfant Promenade, SW., Washington, DC 20447. Individuals with disabilities who need special accommodations in order to attend and participate in the meeting (*i.e.*, interpreting services, assistive listening devices, materials in alternative format) should notify Executive Director, Sally Atwater, at 202–619–0634 no later than October 1, 2003. Effort will be made to meet special requests received after that date, but availability of special needs accommodations to respond to these requests cannot be guaranteed. All meeting sites are barrier free.

*Agenda:* The Committee plans to discuss critical issues relating to individuals with intellectual disabilities concerning education and transition, family services and support, public awareness, employment, and assistive technology and information.

**FOR FURTHER INFORMATION CONTACT:** Sally Atwater, Executive Director, President's Committee for People with Intellectual Disabilities, Aerospace Center Building, Suite 701, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone—(202) 619–0634, Fax—(202) 205–9519, E-mail—*satwater@acf.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** The PCPID acts in an advisory capacity to the President and the Secretary of the U.S. Department of Health and Human Services on a broad range of topics relating to programs, services, and supports for persons with intellectual disabilities. The Committee, by Executive Order, is responsible for evaluating the adequacy of current practices in programs, services and supports for persons with intellectual disabilities, and for reviewing legislative proposals that impact the quality of life that is experienced by citizens with intellectual disabilities and their families.

Dated: September 25, 2003.

**Sally Atwater,**

*Executive Director, President's Committee for People with Intellectual Disabilities.*

[FR Doc. 03–25559 Filed 10–8–03; 8:45 am]

BILLING CODE 4184–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 1995N–0071]

### Amirul Islam; Grant of Special Termination; Final Order Terminating Debarment

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) granting special termination of the debarment of Amirul Islam. FDA bases this order on a finding that Mr. Islam provided substantial assistance in the investigations or prosecutions of offenses relating to a matter under FDA's jurisdiction and that special termination of Mr. Islam's debarment serves the interest of justice and does not threaten the integrity of the drug approval process.

**DATES:** This order is effective October 9, 2003.

**ADDRESSES:** Comments should reference Docket No. 1995N–0071 and be sent to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Nicole K. Mueller, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

**SUPPLEMENTARY INFORMATION:** In a **Federal Register** notice dated August 27, 1997 (62 FR 45423), Amirul Islam, the former vice president of technical services for Halsey Drug Co. Inc. (Halsey), and supervisor of Halsey's Quality Control Laboratory, was permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under sections 306(c)(1)(B) and (c)(2)(A)(ii) of the act (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and section 201(dd) of the act (21 U.S.C. 321(dd))). The debarment was based on FDA's finding that Mr. Islam was convicted of a felony under Federal law for conduct relating to the development or approval of any drug product, or otherwise relating to the regulation of a drug product (21 U.S.C. 335a(a)(2)). On December 12, 1997, Mr. Islam applied for special termination of debarment under section 306(d)(4)(a) of the act, as amended by the Generic Drug Enforcement Act (GDEA).

Under section 306(d)(4)(C) and (D) of the act, FDA may limit the period of debarment of a permanently debarred individual if the agency finds that: (1) The debarred individual has provided substantial assistance in the investigation or prosecution of offenses described in section 306(a) or (b) of the act or relating to a matter under FDA's jurisdiction, (2) termination of the debarment serves the interest of justice, and (3) termination of the debarment does not threaten the integrity of the drug approval process. Special termination of debarment is discretionary with FDA.

FDA considers a determination by the Department of Justice concerning the substantial assistance of a debarred individual conclusive in most cases. Mr. Islam cooperated with the Department of Justice investigations and prosecutions of others, as substantiated by the letters submitted to the agency by the Assistant U.S. Attorney who prosecuted Mr. Islam's case. Accordingly, FDA finds that Mr. Islam provided substantial assistance as required by section 306(d)(4)(C) of the act.

The additional requisite showings that termination of debarment serves the interest of justice and poses no threat to the integrity of the drug approval process are difficult standards to satisfy. In determining whether these have been met, the agency weighs the significance of all favorable and unfavorable factors in light of the remedial, public health-related purposes underlying debarment. Termination of debarment will not be granted unless, weighing all favorable and unfavorable information, there is a high level of assurance that the conduct that formed the basis for the debarment has not recurred and will not recur, and that the individual will not otherwise pose a threat to the integrity of the drug approval process.

The evidence presented to FDA in support of termination shows that Mr. Islam was convicted for a first offense, that he has no prior or subsequent convictions for conduct described under the GDEA and has committed no other wrongful acts affecting the drug approval process, and that his character and scientific ability are highly regarded by his professional peers. The evidence presented supports the conclusion that the conduct upon which Mr. Islam's debarment was based is unlikely to recur. For these reasons, the agency finds that termination of Mr. Islam's debarment serves the interest of justice and will not pose a threat to the integrity of the drug approval process. FDA's analysis in reaching this conclusion is contained in the docket.

Under section 306(d)(4)(D)(ii) of the act, the period of debarment of an individual who qualifies for special termination may be limited to less than permanent but to no less than 1 year. Mr. Islam's period of debarment has lasted more than 1 year. Accordingly, the Associate Commissioner for Regulatory Affairs, under section 306(d)(4) of the act and under authority delegated to him (21 CFR 5.20), finds that Amirul Islam's application for special termination of debarment should be granted, and that the period of debarment should terminate immediately, thereby allowing him to provide services in any capacity to a person with an approved or pending drug product application. The Associate Commissioner for Regulatory Affairs further finds that because Mr. Islam has waived his right to a hearing, and the agency is granting Mr. Islam's application, an informal hearing under section 306(d)(4)(C) of the act is unnecessary.

As a result of the foregoing findings, Amirul Islam's debarment is terminated effective October 9, 2003 (21 U.S.C. 335a(d)(4)(C) and (d)(4)(D)).

Dated: October 1, 2003.

**John Marzilli,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 03–25594 Filed 10–8–03; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

### Reports, Forms, and Recordkeeping Requirements: Agency Information Collection Activity Under OMB Review; Transportation Worker Identification Credential (TWIC); Satisfaction and Effectiveness Measurement Data Collection Instruments

**AGENCY:** Transportation Security Administration (TSA), DHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces that TSA has forwarded the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on June 24, 2003, 68 FR 37510.

**DATES:** Send your comments by November 10, 2003. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**ADDRESSES:** Comments may be faxed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS–TSA Desk Officer, at (202) 395–5806.

**FOR FURTHER INFORMATION CONTACT:** Conrad Huygen, Office of Information Management Programs, TSA HQ, West Tower, Floor 4, TSA–17, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–1954; facsimile (571) 227–2912.

**SUPPLEMENTARY INFORMATION:**

**Transportation Security Administration (TSA)**

*Title:* Transportation Worker Identification Credential; Satisfaction and Effectiveness Measurement Data Collection Instruments.

*Type of Request:* New collection.

*OMB Control Number:* Not yet assigned.

*Forms(s):* Transportation Worker Survey; Port Security Interview Guide.

*Affected Public:* Transportation Workers; Lead Stakeholders.

*Abstract:* TSA intends to evaluate and test certain technologies and business processes in the Technology Evaluation and Prototype Phases of the pilot project to fully develop the Transportation Worker Identification Credential (TWIC). TSA will gather demographic information required to issue credentials to a select group of transportation workers and then administer two instruments to collect data on the effectiveness of the TWIC credential. The first instrument will be a survey of a small representative percent of the TWIC users and the second instrument will be interviews conducted with the lead stakeholder at each site participating in the Technology Evaluation and Prototype Phases. Surveys and interviews will be voluntary and anonymous.

*Number of Respondents:* 30,780.

*Estimated Annual Burden Hours:* 5,195.

TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Issued in Arlington, Virginia, on October 3, 2003.

**Susan T. Tracey,**

*Deputy Chief Administrative Officer.*

[FR Doc. 03–25562 Filed 10–8–03; 8:45 am]

**BILLING CODE 4910–62–P**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4820–N–40]**

### Notice of Proposed Information Collection: Comment Request; Rental Schedule—Low Rent Housing

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* December 8, 2003.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410, or *Wayne_Eddins@hud.gov*.

**FOR FURTHER INFORMATION CONTACT:** Beverly J. Miller, Director, Office of Multifamily Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–3730 (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Rental Schedule—Low Rent Housing.

*OMB Control Number, if applicable:* 2502–0012.

*Description of the need for the information and proposed use:* This information is necessary for HUD to ensure that tenant rents are approved in accordance with HUD administrative procedures. Project owners utilize form HUD–92458 when requesting an adjustment to project rents due to anticipated or unavoidable increases in operating costs.

*Agency form numbers, if applicable:* HUD–92458.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The estimated number of respondents is 16,000 generating approximately 16,000 annual responses; the frequency of response is on occasion; the estimated time needed to prepare the response is 20 minutes; and the estimated total number of annual burden hours is 5,280.

*Status of the proposed information collection:* Extension of a currently approved collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: October 1, 2003.

**Sean G. Cassidy,**

*General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.*

[FR Doc. 03–25561 Filed 10–8–03; 8:45 am]

**BILLING CODE 4210–27–M**

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Endangered Species Recovery Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of permit applications.

**SUMMARY:** The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 USC 1531 *et seq.*). The U.S. Fish and Wildlife Service ("we") solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests.

**DATES:** Comments on these permit applications must be received on or before November 10, 2003 to receive our consideration.

**ADDRESSES:** Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

**FOR FURTHER INFORMATION CONTACT:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to the address above (telephone: 503–231–2063). Please refer to the respective permit number for each application when requesting copies of documents.

**SUPPLEMENTARY INFORMATION:**

### Permit No. TE–075898

*Applicant:* Sue Orloff, San Rafael, California.

The applicant requests a permit to take (harass by survey, capture, handle, and release) the Sonoma County distinct population segment of the California tiger salamander (*Ambystoma californiense*) in conjunction with surveys in Sonoma County, California, for the purpose of enhancing its survival.

### Permit No. TE–076322

*Applicant:* Kimberly Toal, La Crescenta, California.

The applicant requests a permit to take (capture, handle, and release) the Stephen's kangaroo rat (*Dipodomys stephensii*) in conjunction with surveys in Riverside, San Bernardino, and San Diego Counties, California, for the purpose of enhancing its survival.

### Permit No. TE–076257

*Applicant:* San Luis Obispo Public Works Department, San Luis Obispo, California.

The applicant requests a permit to take (harass by survey) the Morro shoulderband snail (*Helminthoglypta walkeriana*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

### Permit No. TE–076768

*Applicant:* Lisa Schicker, Los Osos, California.

The applicant requests a permit to take (harass by survey) the Morro shoulderband snail (*Helminthoglypta walkeriana*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

### Permit No. TE–003483

*Applicant:* U.S. Geological Survey, Biological Resources Division, Hawaii National Park, Hawaii.

The permittee requests an amendment to take (translocate) the Laysan duck (*Anas laysanensis*) in conjunction with translocation activities and scientific research from Laysan to Midway Atoll, Hawaiian Islands, for the purpose of enhancing its survival.

### Permit No. TE–006333

*Applicant:* Oregon State University, Department of Fish and Wildlife, Corvallis, Oregon.

The permittee requests an amendment to take (collect larvae) the Borax Lake chub (*Gila boraxobius*) in conjunction with research in Harney County, Oregon, for the purpose of enhancing its survival.

### Permit No. TE–077053

*Applicant:* Jeffrey Manning, Fallbrook, California.

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys in Los Angeles, Orange, Riverside, San Diego, San Bernardino, and Imperial Counties, California, for the purpose of enhancing its survival.

**Permit No. TE–050450**

*Applicant:* Lisa Allen, Dana Point, California.

The permittee requests an amendment to take (harass by survey and collect and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

**Permit No. TE–074658**

*Applicant:* Cecilia Meyer Lovell, San Diego, California.

The applicant requests a permit to take (harass by survey and collect and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

**Permit No. TE–077388**

*Applicant:* Oregon Zoo, Portland, Oregon.

The applicant requests a permit to take (captive breed) the California condor (*Gymnogyps californianus*) in conjunction with a recovery program for the species in Multnomah County, Oregon, for the purpose of enhancing its survival.

**Permit No. TE–077392**

*Applicant:* Peter Waldburger, Los Osos, California.

The applicant requests a permit to take (harass by survey) the Morro shoulderband snail (*Helminthoglypta walkeriana*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications.

Dated: October 2, 2003.

**David J. Wesley,**

*Deputy Regional Director, Region 1, U.S. Fish and Wildlife Service.*

[FR Doc. 03–25580 Filed 10–8–03; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Re-Opening of the Comment Period for the Draft Recovery Plan for the Sierra Nevada Bighorn Sheep

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Notice of re-opening of public comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce a re-opening of the comment period for public review of the Draft Recovery Plan for the Sierra Nevada Bighorn Sheep (*Ovis canadensis californiana*) for an additional 60 days. The original comment period closed on September 29, 2003. We are re-opening the comment period in response to specific requests from the Natural Resources Defense Council and the Sierra Nevada Bighorn Sheep Foundation to allow additional time for public review of this draft recovery plan. This draft recovery plan includes recovery criteria and measures for the Sierra Nevada bighorn sheep.

**DATES:** Comments on the draft recovery plan must be received on or before December 8, 2003.

**ADDRESSES:** Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003 (telephone 805–644–1766). Requests for copies of the draft recovery plan and written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. An electronic copy of this draft recovery plan is also available at *http://www.r1.fws.gov/ecoservices/endangered/recovery/default.htm.*

**FOR FURTHER INFORMATION CONTACT:** Carl Benz, Fish and Wildlife Biologist, at the above address.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 30, 2003, we published a Notice of Availability of the Draft Recovery Plan for the Sierra Nevada Bighorn Sheep, opening a 60-day public comment period that is scheduled to end on September 29, 2003. We have received requests from the Natural Resources Defense Council, the Wilderness Society, and the Sierra Nevada Bighorn Sheep Foundation to extend the comment period so that they might more thoroughly review the plan. Based on these requests, we determined to re-open the comment period for public review of this draft recovery plan.

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program and the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Act requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments may result in changes to the plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions.

This draft recovery plan was developed by the Sierra Nevada Bighorn Sheep Recovery Team. We coordinated with the California Department of Fish and Game, and a team of stakeholders, which included ranchers, landowners and managers, agency representatives, and non-government organizations.

The population of bighorn sheep in the Sierra Nevada of California was listed as an endangered species on January 3, 2000, (65 FR 20) following emergency listing on April 20, 1999, (64 FR 19300). At the time of listing, the bighorn sheep population was very small, with only about 125 adults known to exist among 5 geographic areas, with little probability of interchange among those areas. The bighorn sheep is threatened primarily by transmission of disease from domestic sheep and goats, and predation by mountain lions. Key elements for immediate action are: (1) Predator management; (2) augmentation of small herds with sheep from larger ones; and (3) elimination of the threat of a pneumonia epizootic resulting from contact with domestic sheep or goats. Actions needed to recover the bighorn sheep include: (1) Protection of bighorn sheep habitat; (2) increase population growth by enhancing survivorship and reproductive output of bighorn sheep; (3) increase the numbers of herds, and thereby the number of bighorn sheep; (4) develop and implement a genetic management plan to maintain genetic diversity; (5) monitor status and trends of bighorn sheep herds and their habitat; (6) research; and (7) providing information to the public.

**Public Comments Solicited**

We solicit written comments on the draft recovery plan described. All comments received by the date specified above will be considered in developing a final recovery plan.

**Authority:** The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 24, 2003.

**Steve Thompson,**

*Manager, California/Nevada Operations Office, Region 1, U.S. Fish and Wildlife Service.*

[FR Doc. 03–25576 Filed 10–8–03; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Aquatic Nuisance Species Task Force Meeting

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION** section.

**DATES:** The Aquatic Nuisance Species Task Force will meet from 8 a.m. to 5:30 p.m. on Tuesday, November 4, and from 8 a.m. to 5 p.m. on Wednesday, November 5, 2003.

**ADDRESSES:** The ANS Task Force meeting will be held at the Holiday Inn, 4610 North Fairfax Drive, Arlington, Virginia 22203. Phone 703–243–9800.

**FOR FURTHER INFORMATION CONTACT:** Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force, at 703–358–2308, or by e-mail, at *sharon_gross@fws.gov*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

Topics to be covered during the ANS Task Force meeting include: an update of activities from each of the Task Force's regional panels; status and updates from several other Task Force committees and working groups including the Prevention Committee, the Asian Carp working group, and the New Zealand mud snail working group, review of State ANS Management Plans from Hawaii, Indiana and Wisconsin; an update on ballast water management activities; an update on the activities of the National Invasive Species Council; a discussion on the National Aquatic Invasive Species Act; and other topics.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: October 2, 2003.

**Mamie Parker,**

*Co-chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries and Habitat Conservation.*

[FR Doc. 03–25647 Filed 10–8–03; 8:45 am]

BILLING CODE 4310–55–M

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

## [NM–070–03–1610–DR]

## Notice of Availability of the Record of Decision for Proposed Farmington Resource Management Plan Revision and Environmental Impact Statement

**AGENCY:** Bureau of Land Management, New Mexico State Office, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the National Environmental Policy Act, the Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Proposed Farmington Resource Management Plan (RMP) revision and Final Environmental Impact Statement (EIS). The revised plan addressed the oil and gas estate administered by BLM in the Farmington Field Office and the Albuquerque Field Office; the U.S. Forest Service (USFS), Jicarilla District of the Carson National Forest; portions of the Coyote and Cuba Districts of the Santa Fe National Forest, and the Bureau of Reclamation (BOR) for lands surrounding Navajo Reservoir. Other issues relating to landownership adjustments, Off-Highway Vehicle management, Specially Designated Areas, and coal leasing suitability were addressed only for lands administered by the Farmington Field Office. The USFS and BOR were cooperating agencies in preparation of the RMP. The Final EIS and Proposed RMP were available for protest from April 4, 2003, to May 5, 2003. All protests and comments were considered during the preparation of the ROD.

**ADDRESSES:** Copies of the ROD have been sent to affected Federal, State, and local Government agencies and to interested parties. The document will be available electronically on the following Web site: *http://www.nm.blm.gov/*. Copies of the ROD are available for public inspection at the following BLM office locations: Farmington Field Office, 1235 La Plata Highway, Farmington, NM 87401; and Albuquerque Field Office, 435 Montano Rd. NE, Albuquerque, NM 87107.

**FOR FURTHER INFORMATION CONTACT:** James Ramakka, RMP Project Manager, Bureau of Land Management, Farmington Field Office, 1235 La Plata Highway, Farmington, NM 87401 (505–599–6307).

**SUPPLEMENTARY INFORMATION:** This ROD approves the proposed revision to the Farmington RMP. The RMP provides guidance for managing approximately 1,415,300 acres of public land and 3,020,693 acres of Federal minerals in San Juan, McKinley, Rio Arriba and Sandoval Counties. The overall planning area encompasses 8,274,100 acres.

The ROD approves new decisions concerning oil and gas leasing and development, Off-Highway Vehicle (OHV) designations, landownership adjustments, management of Specially Designated Areas, and coal leasing suitability. These decisions are intended to replace goals, objectives, management actions and conditions of use described in the 1988 Farmington RMP and subsequent amendments related to these matters. No other decisions of the 1988 Farmington RMP or amendments are affected.

Dated: August 14, 2003.

**Linda S.C. Rundell,**

*New Mexico State Director.*

[FR Doc. 03–25616 Filed 10–8–03; 8:45 am]

BILLING CODE 4310–FB–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO-200-0777-XM-241A]**

### Notice of Amendment of Meeting Date, Front Range Resource Advisory Council (Colorado)

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Front Range Resource Advisory Council (RAC), will meet as indicated below.

**DATES:** The meeting will be held on November 13, 2003, at the Holy Cross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado beginning at 9:15 a.m. The public comment period will begin at approximately 9:30 a.m. and the meeting will adjourn at approximately 4 p.m.

**SUPPLEMENTARY INFORMATION:** The 15 member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the Front Range Center, Colorado. Planned agenda topics include Manager updates on current land management issues and an update on the Gold Belt Travel Management Plan.

All meetings are open to the public. The public is encouraged to make oral comments to the Council at 9:30 a.m. or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Council Meeting will be maintained in the Front Range Center Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management (BLM), Attn: Ken Smith, 3170 East Main Street, Canon City, Colorado 81212. Phone (719) 269–8500.

Dated: October 2, 2003.

**John L. Carochi,**

*Acting Front Range Center Manager.*

[FR Doc. 03–25586 Filed 10–8–03; 8:45 am]

BILLING CODE 4310–JB–M

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO–530–1430–ES; COC–63839]**

### Notice of Realty Action: Proposed Classification of Public Lands for Recreation and Public Purposes Lease in Rio Grande County, CO

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Correction.

**SUMMARY:** This action corrects Notice of Realty Action: Proposed Classification of Public Lands for Recreation and Public Purposes lease in Rio Grande County, Colorado, 68 FR 35691, published June 16, 2003.

On page 35691, third column, top of the page, should be corrected from sec. 27, metes and bounds tract in lot 9 and the *NE1/44NE1/4* to sec. 27, metes and bounds tract in lot 9 and the *NE1/4SE1/4*.

Dated: September 15, 2003.

**Dean H. Erhard,**

*Del Norte Field Manager.*

[FR Doc. 03–25617 Filed 10–8–03; 8:45 am]

BILLING CODE 4310–JB–P

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ES–032–03–1430–EQ; MNES–050222]**

### Notice of Realty Action; Noncompetitive Permit of Public Lands, Minnesota

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The surface estate of land located in St. Louis County, Minnesota is being considered for a noncompetitive permit pursuant to section 302 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1732).

**FOR FURTHER INFORMATION CONTACT:** Paul J. Salvatore, Realty Specialist, Bureau of Land Management, Milwaukee Field Office, 310 W. Wisconsin Ave., Suite 450, Milwaukee, Wisconsin 53203, (414) 297–4413.

**SUPPLEMENTARY INFORMATION:** The Bureau of Land Management proposes to offer the use of the surface estate of the following described lands to Mr. David M. Stanton, by noncompetitive permit, at fair market value. The permit will allow for continued habitation on the site by Mr. Stanton and will resolve an inadvertent unauthorized use of public land.

**Fourth Principal Meridian**

Township 62 North, Range 17 West, Tract 37

The above lands aggregate 0.18 acre more or less.

The permit will be issued for 3 years. The permit may be renewed, in accordance with 43 CFR 2920.1–1(b) with the right of renewal through the remainder of Mr. Stanton's life. Upon expiration of the permitted use, all improvements will be removed from the public lands and the site rehabilitated. This action is consistent with the Minnesota Management Framework Plan and would serve important public objectives, which could not be achieved by other means. The planning document and environmental assessment covering the proposed permit are available for review at the Bureau of Land Management, Milwaukee Field Office, Milwaukee, Wisconsin.

For a period until November 24, 2003, interested parties may submit comments to the Field Manager, Milwaukee Field Office, Bureau of Land Management, 626 E. Wisconsin Avenue, Suite 200, Milwaukee, Wisconsin 53202–4617. Any adverse comments will be evaluated by the State Director, Eastern States Office, who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposed realty action will become final.

This notice is being published in accordance with the regulations contained in 43 CFR 2920.4.

Dated: September 17, 2003.

**James W. Dryden,**

*Milwaukee Field Manager.*

[FR Doc. 03–25615 Filed 10–8–03; 8:45 am]

BILLING CODE 4310–PN–P

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–050–1430–ES; N–74355]**

### Notice of Realty Action: Conveyance for Recreation and Public Purposes

**AGENCY:** Bureau of Land Management.

**ACTION:** Notice of realty action.

**SUMMARY:** The following described public land in the Las Vegas Valley, Clark County, Nevada, has been examined and found suitable for conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et. seq.*).

**FOR FURTHER INFORMATION CONTACT:** Anna Wharton, Supervisory Realty Specialist, (702) 515–5095.

**SUPPLEMENTARY INFORMATION:** The following described public land in the

Las Vegas Valley, Clark County, Nevada, has been examined and found suitable for conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et. seq.*).

The Clark County School District proposes to use the land for the maintenance, parking, cleaning, and fueling of school busses and as a radio communications center.

**Mount Diablo Meridian, Nevada**

T. 23 S., R. 61 E., MDM
  Sec. 08: S½NW¼NW¼SE¼, SW¼NW¼SE¼, SW¼SE¼, NW¼NW¼SE¼SE¼
  N½SW¼SE¼SE¼, N½SE¼SE¼SE¼ (that portion west of centerline of US 91).
  Containing approximately 65.44 acres.

The land is not required for any Federal purpose. The conveyance is consistent with current Bureau planning for this area and would be in the public interest. The patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe, and will be subject to:

1. All valid and existing rights. The lands have been segregated from all forms of appropriation under the Southern Nevada Public Lands Management Act (Pub. L. 105–263). Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV, or by calling (702) 515–5000.

On October 9, 2003, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposal under the mineral material disposal laws.

For a period until November 24, 2003, interested parties may submit comments regarding the proposed conveyance for classification of the lands to the Las Vegas Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130–2301.

*Classification Comments:* Interested parties may submit comments involving the suitability of the land for a bus yard/communications center. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

*Application Comments:* Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the lands for a bus yard/communications center. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, these realty actions will become the final determination of the Department of the Interior. The classification of the land described in this Notice will become effective December 8, 2003. The lands will not be offered for conveyance until after the classification becomes effective.

Dated: August 22, 2003.

**Sharon DiPinto,**

*Acting Assistant Field Manager, Division of Lands, Las Vegas, NV.*

[FR Doc. 03–25612 Filed 10–8–03; 8:45 am]

BILLING CODE 4310–HC–P

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[ID–075–2822–JL–F9947]

### Notice of Closure; Bannock County, ID

**AGENCY:** Bureau of Land Management, Interior

**ACTION:** Notice of Closure to Off-Highway Vehicle and recreation Use on public lands in Bannock County, Idaho.

**SUMMARY:** With the publication of this notice, all public lands administered by the Bureau of Land Management within the 2,234 acres of the Blackrock Fire (F947), including designated roads and trails are closed to all motorized vehicles, mountain biking, camping, horseback riding and other recreational activities. The closure will remain in effect until July 15, 2006 or until such time as the authorized officer of the Pocatello Field Office determines the closure may be lifted.

*Exceptions to this Order are Granted to the Following:* Law enforcement patrol, emergency services, and administratively approved access for actions such as monitoring, research studies, and access to private lands.

Other actions would be considered on a case-by-case basis by the authorized officer.

**FOR FURTHER INFORMATION CONTACT:** Philip Damon, (208) 467–6340, the BLM Pocatello Filed Office, 1111 North 8th Ave., Pocatello, ID 83201.

**SUPPLEMENTARY INFORMATION:** This closure is a direct result of the Blackrook Fire, which burned this area in July, 2003 and of the subsequent rehabilitation efforts of the BLM. The closure will promote the reestablishment of vegetation, improve the potential for recovery of wildlife habitat, and reduce the potential for erosion and noxious weed invasion.

The closure is in accordance with 43 CFR 9268.3(d)(1). Violation of this order is punishable by a fine not to exceed $1,000.00 and/or imprisonment not to exceed 12 months.

The area of closure and impoundment affected by this notice is the burned portion of public lands administered by the BLM, specially described wholly or partially:

**Boise Meridian:**

T. 7 S., R. 35 E., Sec. 11, 12, 13, 14, and
T. 7 S., R 36 E., Sec. 7, 8, 17, 18, 19, 20.

Detailed maps of the area closed to OHV and recreational use are available at the Pocatello Field Office at the address above.

Dated: August 26, 2003.

**Philip Damon,**

*Pocatello Field Manager.*

[FR Doc. 03–25614 Filed 10–8–03; 8:45 am]

BILLING CODE 4310–GG–P

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[MT–926–04–1420–BJ]

### Montana: Filing of Plats of Amended Protraction Diagrams

**AGENCY:** Bureau of Land Management, Montana State Office, Interior.

**ACTION:** Notice of Filing of Plats of Amended Protraction Diagrams.

**SUMMARY:** The Bureau of Land Management (BLM) will file the plats of the amended protraction diagrams of the lands described below in the BLM Montana State Office, Billings, Montana, (30) days from the date of publication in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Brockie, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107–6800, telephone (406) 896–5125 or (406) 896–5009.

**SUPPLEMENTARY INFORMATION:** The amended protraction diagrams were prepared at the request of the U.S. Forest Service and are necessary to accommodate Revision of Primary Base Quadrangle Maps for the Geometronics Service Center. The lands for the prepared amended protraction diagrams are:

**Principal Meridian, Montana**

Tps. 11, 12, 13, 14, and 15 S., Rs. 5 E.

The plat, representing the Amended Protraction Diagram 3 Index of unsurveyedTownships 11, 12, 13, 14, and 15 South, Ranges 5 East, Principal Meridian, Montana, was accepted September 10, 2003.

T. 11 S., R. 5 E.

The plat, representing Amended Protraction Diagram 3 of unsurveyedTownship 11 South, Range 5 East, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 12 S., R. 5 E.

The plat, representing Amended Protraction Diagram 3 of unsurveyedTownship 12 South, Range 5 East, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 13 S., R. 5 E.

The plat, representing Amended Protraction Diagram 3 of unsurveyedTownship 13 South, Range 5 East, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 14 S., R. 5 E.

The plat, representing Amended Protraction Diagram 3 of unsurveyedTownship 14 South, Range 5 East, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 15 S., R. 5 E.

The plat, representing Amended Protraction Diagram 3 of unsurveyedTownship 15 South, Range 5 East, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

Tps. 1 and 2 N., Rs. 9, 10, and 12 W.

The plat, representing the Amended Protraction Diagram 13 Index of unsurveyedTownships 1 and 2 North, Ranges 9, 10, and 12 West, Principal Meridian,Montana, was accepted September 10, 2003.

T. 1 N., R. 10 W.

The plat, representing Amended Protraction Diagram 13 of unsurveyedTownship 1 North, Range 10 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 1 N., R. 12 W.

The plat, representing Amended Protraction Diagram 13 of unsurveyedTownship 1 North, Range 12 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 2 N., R. 9 W.

The plat, representing Amended Protraction Diagram 13 of unsurveyedTownship 2 North, Range 9 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 2 N., R. 10 W.

The plat, representing Amended Protraction Diagram 13 of unsurveyedTownship 2 North, Range 10 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

Tps. 1, 2, 3, and 4 N., Rs. 14 and 15 W.

The plat, representing the Amended Protraction Diagram 14 Index of unsurveyedTownships 1, 2, 3, and 4 North, Ranges 14 and 15 West, Principal Meridian,Montana, was accepted September 10, 2003.

T. 1 N., R. 14 W.

The plat, representing Amended Protraction Diagram 14 of unsurveyedTownship 1 North, Range 14 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 2 N., R. 14 W.

The plat, representing Amended Protraction Diagram 14 of unsurveyedTownship 2 North, Range 14 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 3 N., R. 14 W.

The plat, representing Amended Protraction Diagram 14 of unsurveyedTownship 3 North, Range 14 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 4 N., R. 14 W.

The plat, representing Amended Protraction Diagram 14 of unsurveyedTownship 4 North, Range 14 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 1 N., R. 15 W.

The plat, representing Amended Protraction Diagram 14 of unsurveyedTownship 1 North, Range 15 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 2 N., R. 15 W.

The plat, representing Amended Protraction Diagram 14 of unsurveyedTownship 2 North, Range 15 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 3 N., R. 15 W.

The plat, representing Amended Protraction Diagram 14 of unsurveyedTownship 3 North, Range 15 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 4 N., R. 15 W.

The plat, representing Amended Protraction Diagram 14 of unsurveyedTownship 4 North, Range 15 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

Tps. 21, 22, 23, and 24 N., Rs. 12, 13, 14, 15, and 16 W.

The plat, representing the Amended Protraction Diagram 34 Index of unsurveyedTownships 21, 22, 23, and 24 North, Ranges 12, 13, 14, 15, and 16 West,Principal Meridian, Montana, was accepted September 12, 2003.

T. 21 N., R. 12 W.

The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 21 North, Range 12 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 21 N., R. 13 W.

The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 21 North, Range 13 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 21 N., R. 14 W.

The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 21 North, Range 14 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 22 N., R. 12 W.

The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 22 North, Range 12 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 22 N., R. 13 W.

The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 22 North, Range 13 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 22 N., R. 14 W.

The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 22 North, Range 14 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 22 N., R. 15 W.

The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 22 North, Range 15 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 23 N., R. 12 W.

The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 23 North, Range 12 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 23 N., R. 13 W.

The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 23 North, Range 13 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 23 N., R. 14 W.

The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 23 North, Range 14 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 23 N., R. 15 W.

The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 23 North, Range 15 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 23 N., R. 16 W.

The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 23 North, Range 16 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 24 N., R. 12 W.

The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 24 North, Range 12 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 24 N., R. 13 W.

The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 24 North, Range 13 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 24 N., R. 14 W.

The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 24 North, Range 14 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 24 N., R. 15 W.

The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 24 North, Range 15 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 24 N., R. 16 W.

The plat, representing Amended Protraction Diagram 34 of unsurveyedTownship 24 North, Range 16 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

Tps. 25, 26, 27, and 28 N., Rs. 13, 14, 15, and 16 W.

The plat, representing the Amended Protraction Diagram 37 Index of unsurveyedTownships 25, 26, 27, and 28 North, Ranges 13, 14, 15, and 16 West, PrincipalMeridian, Montana, was accepted September 12, 2003.

T. 25 N., R. 13 W.

The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 25 North, Range 13 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 25 N., R. 14 W.

The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 25 North, Range 14 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 25 N., R. 15 W.

The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 25 North, Range 15 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 25 N., R. 16 W.

The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 25 North, Range 16 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 26 N., R. 13 W.

The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 26 North, Range 13 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 26 N., R. 14 W.

The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 26 North, Range 14 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 26 N., R. 15 W.

The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 26 North, Range 15 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 26 N., R. 16 W.

The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 26 North, Range 16 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 27 N., R. 13 W.

The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 27 North, Range 13 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 27 N., R. 14 W.

The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 27 North, Range 14 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 27 N., R. 15 W.

The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 27 North, Range 15 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 27 N., R. 16 W.

The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 27 North, Range 16 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 28 N., R. 13 W.

The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 28 North, Range 13 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 28 N., R. 14 W.

The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 28 North, Range 14 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 28 N., R. 15 W.

The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 28 North, Range 15 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

T. 28 N., R. 16 W.

The plat, representing Amended Protraction Diagram 37 of unsurveyedTownship 28 North, Range 16 West, Principal Meridian, Montana, was acceptedSeptember 12, 2003.

Tps. 3 and 4 S., Rs. 17 and 18 W.

The plat, representing the Amended Protraction Diagram 53 Index of unsurveyed Townships 3 and 4 South, Ranges 17 and 18 West, Principal Meridian, Montana, was accepted September 10, 2003.

T. 3 S., R. 18 W.

The plat, representing Amended Protraction Diagram 53 of unsurveyedTownship 3 South, Range 18 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 4 S., R. 17 W.

The plat, representing Amended Protraction Diagram 53 of unsurveyedTownship 4 South, Range 17 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 4 S., R. 18 W.

The plat, representing Amended Protraction Diagram 53 of unsurveyedTownship 4 South, Range 18 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

Tps. 5, 6, 7, and 8 S., Rs. 16, 17, and 18 W.

The plat, representing the Amended Protraction Diagram 54 Index of unsurveyedTownships 5, 6, 7, and 8 South, Ranges 16, 17, and 18 West, PrincipalMeridian, Montana, was accepted September 10, 2003.

T. 5 S., R. 16 W.

The plat, representing Amended Protraction Diagram 54 of unsurveyedTownship 5 South, Range 16 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 5 S., R. 17 W.

The plat, representing Amended Protraction Diagram 54 of unsurveyedTownship 5 South, Range 17 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 5 S., R. 18 W.

The plat, representing Amended Protraction Diagram 54 of unsurveyedTownship 5 South, Range 18 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 6 S., R. 17 W.

The plat, representing Amended Protraction Diagram 54 of unsurveyedTownship 6 South, Range 17 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 7 S., R. 16 W.

The plat, representing Amended Protraction Diagram 54 of unsurveyedTownship 7 South, Range 16 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 7 S., R. 17 W.

The plat, representing Amended Protraction Diagram 54 of unsurveyedTownship 7 South, Range 17 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

T. 8 S., R. 16 W.

The plat, representing Amended Protraction Diagram 54 of unsurveyedTownship 8 South, Range 16 West, Principal Meridian, Montana, was acceptedSeptember 10, 2003.

We will place copies of the plats of the amended protraction diagrams we described in the open files. They will be available to the public as a matter of information.

If BLM receives a protest against these amended protraction diagrams, as shown on these plats, prior to the date of the official filings, we will stay the filings pending our consideration of the protest.

We will not officially file these plats of the amended protraction diagrams until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Dated: October 1, 2003.

**Thomas M. Deiling,**

*Chief Cadastral Surveyor, Division of Resources.*

[FR Doc. 03–25579 Filed 10–8–03; 8:45 am]

**BILLING CODE 4310–$$–P**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[AZ–933–03, 5410–10–A500; AZA–32409]**

## Notice of Receipt of Conveyance of Mineral Interest Application

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of minerals segregation.

**SUMMARY:** The reserved Federally-owned mineral interest, in the private lands described in this notice, aggregating approximately 4,000 acres, are segregated and made unavailable for filings under the general mining laws and the mineral leasing laws. The segregation is in response to an application for mineral conveyance under section 209 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1719).

**FOR FURTHER INFORMATION CONTACT:** Vivian Titus, Land Law Examiner, Arizona State Office, 222 N. Central Ave., Phoenix, Arizona 85004, (602) 417–9598.

**SUPPLEMENTARY INFORMATION:**

**Gila and Salt River Base and Meridian, Yavapai County, Arizona**

T. 4 N., R. 5 W.,
  sec. 3, SW¼;
  sec. 5, SE¼, SW¼;
  sec. 8, W½;
  sec. 9, All.
  sec. 10, SE¼;
  sec. 11, SE¼;
  sec. 13, NW¼;
  sec. 14, E½, SW¼;
  sec. 15, W½, NE¼;
  sec. 17, E½;
  sec. 22, NE¼, SE¼;
  sec. 23, W½, NE¼.

The reserved Federal mineral interests will be conveyed in whole or in part upon completion of a mineral examination. The purpose is to allow consolidation of surface and subsurface minerals ownership where there are no known mineral values or in those instances where the Federal mineral interest reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development. Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the lands covered by the mineral conveyance application are segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining and mineral leasing laws. The segregative effect shall terminate upon: issuance of a patent or deed of such mineral interest; upon final rejection of the mineral conveyance application; or October 11, 2005, whichever occurs first.

Dated: September 17, 2003.

**Carl Rountree,**

*Associate State Director.*

[FR Doc. 03–25613 Filed 10–8–03; 8:45 am]

**BILLING CODE 4310–32–P**

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## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

## Nixon Presidential Historical Materials; Opening of Materials

**AGENCY:** National Archives and Records Administration.

**ACTION:** Notice of opening of materials.

**SUMMARY:** This notice announces the opening of additional Nixon presidential historical materials. Notice is hereby given that, in accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act (PRMPA, 44 U.S.C. 2111 note) and 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR part 1275), the agency has identified, inventoried, and prepared for public access approximately 240 hours of Nixon White House tape recordings among the Nixon Presidential historical materials.

**DATES:** The National Archives and Records Administration (NARA) intends to make the materials described in this notice available to the public beginning December 10, 2003. In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials should notify the Archivist of the United States in writing of the claimed right, privilege, or defense on or before November 10, 2003.

**ADDRESSES:** The materials will be made available to the public at the National Archives at College Park research room, located at 8601 Adelphi Road, College Park, Maryland, beginning at 8:45 a.m.

Petitions asserting a legal or constitutional right or privilege which would prevent or limit access must be sent to the Archivist of the United States, National Archives at College Park, 8601 Adelphi Road, College Park, Maryland 20740–6001.

**FOR FURTHER INFORMATION CONTACT:** Karl Weissenbach, Director, Nixon Presidential Materials Staff, 301–837–3117.

**SUPPLEMENTARY INFORMATION:** NARA is proposing to open approximately 3073 conversations which were recorded at the Nixon White House from July 1972 to October 1972. These tape segments total approximately 240 hours of listening time.

This is the tenth opening of Nixon White House tapes since 1980. Previous releases included conversations constituting "abuses of governmental power" and conversations recorded in the Cabinet Room of the Nixon White House. NARA is processing the remaining tapes, which cover the period February 1971 to July 1973. The tapes now being proposed for opening consist of the fourth of five segments.

There are no transcripts for these tapes. Tape logs, prepared by NARA, are offered for public access as a finding aid to the tape segments and a guide for the listener. There is a separate tape log entry for each segment of conversation released. Each tape log entry includes the names of participants; date, time, and location of the conversation; and an outline of the content of the conversation.

The tape recordings will be made available to the general public in the research room at 8601 Adelphi Road, College Park, Maryland, Monday through Friday between 8:45 a.m. and 4:30 p.m. Researchers must have a NARA researcher card, which they may obtain when they arrive at the facility. Listening stations will be available for public use on a first come, first served basis. NARA reserves the right to limit listening time in response to heavy demand. Copies of the tape log will be available for a fee in accordance with 36 CFR 1258.12.

Dated: October 1, 2003.

**John W. Carlin,**

*Archivist of the United States.*

[FR Doc. 03–25563 Filed 10–8–03; 8:45 am]

**BILLING CODE 7515–01–P**

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## NATIONAL SCIENCE FOUNDATION

### National Science Board and Its Subdivisions; Sunshine Act Meeting

**DATE AND TIME:** October 15, 2003: 8 a.m.–5:30 p.m.

Concurrent Sessions:

8 a.m.–9:40 a.m.—Open Session
9:40 a.m.–10 a.m.—Closed Session
9 a.m.–10 a.m.—Open Session
10 a.m.–10:20 a.m.—Closed Session
10:20 a.m.–12 Noon—Open Session
12 Noon–12:30 p.m.—Open Session
12:30 p.m.–1 p.m.—Closed Session
1 p.m.–1:45 p.m.—Open Session
1:45 p.m.–2 p.m.—Closed Session
2 p.m.–4 p.m.—Open Session
4 p.m.–5 p.m.—Open Session

October 16, 2003: 8 a.m.–3:35 p.m.

Concurrent Sessions:

8 a.m.–9:15 a.m.—Closed Session
9:15 a.m.–10:30 a.m.—Open Session
10:45 a.m.–12:30 p.m.—Closed Session
1 p.m.–3:45 p.m.—Open Session

**PLACE:** The National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, *http://www.nsf.gov/nsb.*

**FOR FURTHER INFORMATION CONTACT:** NSF Information Center (703) 292–5111.

**STATUS:** Part of this meeting will be closed to the public. Part of this meeting will be open to the public.

**Matters To Be Considered**

*Wednesday, October 15, 2003*

Open

Committee on Audit and Oversight (8 a.m.–9:40 a.m.) Room 1235:

- Minutes
- CFP Update
    - Advisory Committee on GPRA Performance Assessment
    - Business Analysis Update
    - National Academy of Public Administration's Review of NSF—Update
    - Federal Manager's Financial Integrity Act Reporting for FY 2003
    - Cost Sharing
- Presentation of the OIG FY 2004 Audit Plan

Subcommittee on S&E Indicators (9 a.m.–10 a.m.) Room 1295:

- Approval of Minutes
- Results of Agency Review
    - S&E Indicators 2004 Cover
    - S&E Indicators 2004 Companion Piece

Committee on Strategy and Budget (10:20 a.m.–12 noon) Room 1235:

- Approval of Minutes
- Review of Draft Report (required by Section 22 of the NSF Authorization Act)

Executive Committee (12 noon–12:30 p.m.) Room 1295:

- Minutes
- Guidelines for Closed NSB Sessions

Subcommittee on Polar Issues (1 p.m.–1:45 p.m.) Room 1235:

- Approval of Minutes
- OPP Director's Report:
    - International Polar Year Planning
    - Icebreaker Availability
    - Antarctic Treaty Issues
    - Tourism
    - Canada to Join ATCM
- Briefing on International Arctic Research Center
- Update on MREFC Projects
    - South Pole Station Modernization
    - LC–130 Conversion

Committee on Education and Human Resources (2 p.m.—4 p.m.) Room 1235:

- Minutes
    - Approval of Minutes
    - Comments from the Chair
    - Status of NWP Task Force Report
    - Reports form Working Groups (K–12, Undergraduate & Graduate)
    - Report from Subcommittee on S&E Indicators
    - Status Report on follow-up of the August 12th Workshop on Broadening Participation
    - Report from the EHR AD
    - New Business

Ad Hoc Task Group on Long-Lived Data Collections (4 p.m.–5 p.m.) Room 1235:

- Status Report on Workshop
    - Terms of Reference
    - Date
    - Invitees
    - Agenda
    - White Paper

Closed

Audit & Oversight (9:40 a.m.–10 a.m.) Room 1235:

- Briefing on an Active Investigation

Committee on Strategy & Budget (10 a.m.–10:20 a.m.) Room 1235:

- Budget Update

Executive Committee (12:30 p.m.–1 p.m.) Room 1295:

- Director's Items
    - Specific Personnel Matters
    - Future Budgets

*Thursday, October 16, 2003*

Open

Committee on Programs and Plans (9:15 a.m.–10:30 a.m.) Room 1235:

- Minutes/Announcements
- Long-lived Data Collections: Status Report
- Status of the Science & Technology Centers: Integrative Partnership Program
- Cyberinfrastructure
- Polar Subcommittee

Plenary Session of the Board (1 p.m.–3:45 p.m.) Room 1235:

- Minutes
- Closed Items, November 2003
- Chairman's Items
- Director's Items
- Discussion: Update on NSB Elections
- Presentation: Update on S&E visas
- Presentation: OMB Draft Peer Review Standards
- Committee Reports

Closed

Committee on Programs and Plans (8 a.m.–9:15 a.m.) Room 1235:

- NSB Award Action: Division of Ocean Sciences
- NSB Award Action: Division of Biological Infrastructure
- NSB Award Action: Office of Polar Programs

Plenary Session of the Board (10:45 a.m.–12:30 p.m.) Room 1235:

- Closed Minutes
- Award Actions
- Closed Session Committee Reports

**Michael P. Crosby,**

*Executive Officer, NSB.*

[FR Doc. 03–25847 Filed 10–7–03; 3:38 pm]

**BILLING CODE 7555–01–M**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–335 and 389]**

### Florida Power and Light Company, et al., St. Lucie Plant, Unit Nos. 1 and 2; Notice of Issuance of Renewed Facility Operating License Nos. DPR–67 and NPF–16 for an Additional 20-Year Period

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Renewed Facility Operating License Nos. DPR–67 and NPF–16 to Florida Power and Light Company (the licensee), the operator of the St. Lucie Plant, Unit Nos. 1 and 2 (St. Lucie, Units 1 and 2). Renewed Facility Operating License No. DPR–67 authorizes operation of St. Lucie, Unit 1, by the licensee at reactor core power levels not in excess of 2700 megawatts thermal in accordance with the provisions of the St. Lucie, Unit 1, renewed license and its Technical Specifications. Renewed Facility Operating License No. NPF–16 authorizes operation of St. Lucie, Unit 2, by the licensee at reactor core power levels not in excess of 2700 megawatts thermal in accordance with the provisions of the St. Lucie, Unit 2, renewed license and its Technical Specifications.

St. Lucie, Units 1 and 2, are pressurized, light water moderated and cooled, nuclear reactors located on Hutchinson Island in St. Lucie County, Florida.

The applications for the renewed licenses complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. As required by the Act and the Commission's regulations in 10 CFR chapter I, the Commission has made appropriate findings, which are set forth in each license. Prior public notice of the action involving the proposed issuance of these renewed licenses and of an opportunity for a hearing regarding the proposed issuance of these renewed licenses was published in the **Federal Register** on December 27, 2001 (66 FR 66946).

For further details with respect to this action, see (1) the Florida Power and Light Company's renewal application for St. Lucie, Units 1 and 2, dated November 29, 2001, as supplemented by letters dated January 8, June 25, August 26, September 26 (four letters), October 3, October 10, November 27, December 23, 2002, and January 9, February 4, March 27 (two letters), March 28, April 25, May 30, June 10, and June 23, 2003; (2) the Commission's safety evaluation report, September 2003 (NUREG–1779); (3) the licensee's updated final safety analysis report; and (4) the Commission's final environmental impact statements (NUREG–1437), Supplement 11, for St. Lucie, Units 1 and 2, dated May 19, 2003. These documents are available at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike, first floor, Rockville, Maryland 20852, and can be viewed from the NRC Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*.

Copies of Renewed Facility Operating License Nos. DPR–67 and NFP–16 may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Director, Division of Regulatory Improvement Programs. Copies of the safety evaluation report (NUREG–1779), and the final environmental impact statements (NUREG–1437), Supplement 11, for St. Lucie, Units 1 and 2 may be purchased from the National Technical Information Service, Springfield, Virginia 22161–0002 (*http://www.ntis.gov*), 1–800–553–6847, or the Superintendent of Documents, U.S. Government Printing Office, requestor's Government Printing Office deposit account number or VISA or MasterCard number and expiration date.

Dated at Rockville, Maryland, this 2 day of October, 2003.

For The Nuclear Regulatory Commission.

**Pao-Tsin Kuo,**

*Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

[FR Doc. 03–25604 Filed 10–8–03; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–423]**

### Dominion Nuclear Connecticut, Inc., Millstone Power Station, Unit No. 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of exemptions from Title 10 of the Code of Federal Regulations (10 CFR) part 50, section 50.44, section 50.46, and appendix K, for Facility Operating License No. NPF–49, issued to Dominion Nuclear Connecticut (the licensee), for operation of the Millstone Power Station, Unit No. 3 (MP3), located in Waterford, Connecticut. Therefore, pursuant to 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed action would exempt MP3 from the requirements of 10 CFR part 50, section 50.44, section 50.46 and appendix K, to allow the use of up to eight Lead Test Assemblies (LTAs) fabricated with Optimized ZIRLO, a cladding material that contains a nominally lower tin content than previously approved cladding materials.

The proposed action is in accordance with the licensee's application dated July 1, 2003.

*The Need for the Proposed Action*

As the nuclear industry pursues longer operating cycles with increased fuel discharge burnups and more aggressive fuel management, the corrosion performance specifications for the nuclear fuel cladding become more demanding. Industry data indicates that corrosion resistance improves for cladding with a lower tin content. The optimum tin level provides a reduced corrosion rate while maintaining the benefits of mechanical strengthening and resistance to accelerated corrosion from abnormal chemistry conditions. In addition, fuel rod internal pressures (resulting from the increased fuel duty, use of integral fuel burnable absorbers and corrosion/temperature feedback effects) have become more limiting with respect to fuel rod design criteria. By reducing the associated corrosion buildup, and thus, minimizing temperature feedback effects, additional margin to fuel rod internal pressure design criteria is obtained.

As part of a program to address these issues, the Westinghouse Electric Company has developed an LTA program, in cooperation with the licensee, that includes a fuel cladding with a tin content lower than the currently licensed range for ZIRLO. The NRC's regulations in 10 CFR part 50, section 50.44, section 50.46, and appendix K, make no provision for use of fuel rods clad in a material other than Zircalloy or ZIRLO. The licensee has requested the use of up to eight LTAs with a tin composition that is less than that specified in the licensing basis for ZIRLO, as defined in Westinghouse design specifications. Therefore, use of the LTAs calls for exemptions from 10 CFR part 50, section 50.44, section 50.46, and appendix k.

*Environmental Impacts of the Proposed Action*

The NRC staff has completed its environmental evaluation of the proposed action and concludes that the proposed exemptions would not increase the probability or consequences of accidents previously analyzed, and would not affect facility radiation levels or facility radiological effluents.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC staff concludes that there are no significant environmental impacts associated with the proposed action.

### *Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

### *Alternative Use of Resources*

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for MP3, dated December 1984.

### *Agencies and Persons Consulted*

On August 22, 2003, the staff consulted with the Connecticut State official, Mr. Michael Firsick, of the Connecticut Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

## Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated July 1, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 2nd day of October 2003.

For The Nuclear Regulatory Commission.

**James W. Clifford,**

*Chief, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 03–25605 Filed 10–8–03; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Nuclear Waste Meeting on Planning and Procedures, Revised Notice of Meeting

The ACNW will hold a Planning and Procedures meeting on October 21, 2003, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

**Tuesday, October 21, 2003—8:30 a.m.–10 a.m.**

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Howard J. Larson (Telephone: 301/415–6805) between 7:30 a.m. and 4:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: October 2, 2003.

**Sher Bahadur,**

*Associate Director for Technical Support, ACRS/ACNW.*

[FR Doc. 03–25600 Filed 10–8–03; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 146th meeting on October 21–23, 2003, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

**Tuesday, October 21, 2003**

*10:30 a.m.–10:40 a.m.: Opening Statement* (Open)—The Chairman will open the meeting with brief opening remarks, outline the topics to be discussed, and indicate items of interest.

*10:40 a.m.–12 Noon.: Summer Intern Project* (Open)—The ACNW summer intern will provide her final report to the Committee on the project titled, "Assessment Model Uncertainty in Performance Assessment."

*1 p.m.–1:30 p.m.: Biosphere Scenarios and Dose Calculation Working Group* (Open)—The Committee will review the agenda and speakers for the Biosphere Working Group scheduled for February 24–26, 2004 in Rockville, Maryland.

*1:30 p.m.–2 p.m.: Site Visit—Yucca Mountain, Nevada* (Open)—The Committee will finalize its November 18, 2003, trip to Yucca Mountain and the Amargosa Valley, and its subsequent technical discussions in Las Vegas, NV with DOE representatives and stakeholders during the 147th ACNW Meeting, November 19–20, 3004.

*2:15 p.m.–6 p.m.: Committee Retreat* (Open/Closed)—The Committee will continue its discussion (from the 145th meeting) on technical topics it intends to examine over the next 12 to 18 months and ACNW activities and related matters.

**Note:** A portion of this session may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

**Wednesday, October 22, 2003**

*8:30 a.m.–8:35 a.m.: Opening Statement* (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

*8:35 a.m.–12:15 p.m.: Yucca Mountain Pre-Closure Safety and Drift Degradation Issues* (Open)—The Committee will hear from representatives of the NRC staff on these issues. Presentations will include a summation of the status of related agreements, a demonstration of the pre-closure safety analysis tool, and the MECH–FAIL computer code used to evaluate drift degradation within a geologic repository.

*1:30 p.m.–3:30 p.m.: Updated Staff Performance Assessment Code TPA 5.0 and Peer Review Comments* (Open)—The Committee will hear from representatives of the NRC staff on the updated TPA Code 5.0 and how external peer review comments were incorporated into the code.

*3:45 p.m.–4 p.m.: Waste Management—Related Safety Research Report* (Open)—The Committee will discuss plans for ACNW review of NRC waste management-related safety research.

*4 p.m.–6 p.m.: Preparation for Meeting with the NRC Commissioners* (Open)—The next meeting with the NRC Commissioners is scheduled to be held at 10 a.m. in the Commissioners' Conference Room, One White Flint North on October 23, 2003. The Committee will review its proposed presentations.

**Thursday, October 23, 2003**

*8:30 a.m.–8:35 a.m.: Opening Statement* (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

*8:35 a.m.–9:30 a.m.: Update on Waste Management Topics* (Open)—The Committee will receive its semi-annual update on waste management topics from the Director, Division of Waste Management, NMSS.

*9:30 a.m.–9:45 a.m.: Discussion of Topics for Meeting with the NRC Commissioners* (Open)—The Committee will discuss topics scheduled for the ACNW Meeting with the NRC Commissioners at 10 a.m.

*10 a.m.–12 Noon: Meeting with the NRC Commissioners* (Open)—The Committee will meet with the NRC Commissioners in the Commissioners' Conference Room, One White Flint North to discuss the following:

- Chairman's Report
- Status and Pathway to Closure on Key Technical Issues
- High-Level Waste Risk Insights
- Total System Performance Assessment (TSPA/TPA) Working Group
- Performance Confirmation Working Group

*1 p.m.–2:45 p.m.: Preparation of ACNW Report* (Open)—The Committee will discuss potential reports on Yucca Mountain Pre-Closure Safety and Drift Degradation Issues and Updated Staff Performance Code TPA 5.0 (tentative).

*2:45 p.m.–3 p.m.: Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 11, 2002 (67 FR 63459). In accordance with these procedures, oral or written statements may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Mr. Howard J. Larson, Special Assistant (Telephone 301/415–6805), between 7:30 a.m. and 4 p.m. ET, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Howard J. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson.

ACNW meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: October 3, 2003.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 03–25602 Filed 10–8–03; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

## Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Consideration; Correction

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Biweekly notice; correction.

**SUMMARY:** This document corrects a notice appearing in the **Federal Register** on September 18, 2003 (68 FR 54747). This action is necessary to correct an erroneous date.

**FOR FURTHER INFORMATION CONTACT:** Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–

0001, telephone (301) 415–7163, e-mail *mtl@nrc.gov*.

**SUPPLEMENTARY INFORMATION:** On page 54748, in the first column, in the fourth complete paragraph, in the first line, the date "October 16, 2003" should read "October 20, 2003."

Dated at Rockville, Maryland, this 3rd day of October, 2003.

For the Nuclear Regulatory Commission.

**Michael T. Lesar,**

*Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.*

[FR Doc. 03–25603 Filed 10–8–03; 8:45 am]

**BILLING CODE 7590–01–P**

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## OFFICE OF MANAGEMENT AND BUDGET

### Circular A–4, Regulatory Analysis

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Notice.

**SUMMARY:** OMB announces the issuance of Circular A–4, Regulatory Analysis. This Circular provides the Office of Management and Budget's (OMB's) guidance to Federal agencies on the development of regulatory analysis as required under Section 6(a)(3)(c) of Executive Order 12866, "Regulatory Planning and Review," the Regulatory Right-to-Know Act, and a variety of related authorities. The Circular also provides guidance to agencies on the regulatory accounting statements that are required under the Regulatory Right-to-Know Act. The new Circular can be accessed through the OMB Web site (*http://www.whitehouse.gov/omb/circulars/index.html*).

This Circular refines OMB's "best practices" document of 1996 (*http://www.whitehouse.gov/omb/inforeg/riaguide.html*), which was issued as a guidance in 2000 (*http://www.whitehouse.gov/omb/memoranda/m00-08.pdf*), and reaffirmed in 2001 (*http://www.whitehouse.gov/omb/memoranda/m01-23.html*). It replaces both the 1996 "best practices" and the 2000 guidance.

The effective date of this Circular is January 1, 2004 for regulatory analyses received by OMB in support of proposed rules, and January 1, 2005 for regulatory analyses received by OMB in support of final rules. In other words, this Circular applies to the regulatory analyses for draft proposed rules that are formally submitted to OIRA after December 31, 2003, and for draft final rules that are formally submitted to OIRA after December 31, 2004. (However, if the draft proposed rule is subject to the Circular, then the draft final rule will also be subject to the Circular, even if it is submitted prior to January 1, 2005.) To the extent practicable, agencies should comply earlier than these effective dates. Agencies may, on a case-by-case basis, seek a waiver from OMB if these effective dates are impractical.

A draft of this Circular was developed by OMB and the Council of Economic Advisors (CEA). The draft was subject to public comment, external peer review, and interagency review.

**FOR FURTHER INFORMATION CONTACT:** Keith Belton, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., New Executive Office Building, Room 10201, Washington, DC 20503 (tel. (202) 395–4815).

**John D. Graham,**

*Administrator, Office of Information and Regulatory Affairs.*

[FR Doc. 03–25606 Filed 10–8–03; 8:45 am]

**BILLING CODE 3110–01–P**

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## PRESIDIO TRUST

### Notice of Public Meeting

**AGENCY:** The Presidio Trust.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with § 103(c)(6) of the Presidio Trust Act, 16 U.S.C. § 460bb note, Title I of Public Law 104–333, 110 Stat. 4097, and in accordance with the Presidio Trust's bylaws, notice is hereby given that a public meeting of the Presidio Trust Board of Directors will be held commencing 6:30 p.m. on Wednesday, October 29, 2003, at the Officers' Club, 50 Moraga Avenue, Presidio of San Francisco, California. The Presidio Trust was created by Congress in 1996 to manage approximately eighty percent of the former U.S. Army base known as the Presidio, in San Francisco, California.

The purposes of this meeting are to: (1) Introduce the new members of the Board of the Trust; (2) provide the Executive Director's general status report; (3) hear from the three short-listed teams responding to a Request for Proposals for the rehabilitation and reuse of the Public Health Service Hospital (PHSH) complex; (4) receive oral scoping comments under the National Environmental Policy Act on the Trust's proposed environmental review for the PHSH project; and (5) receive public comment in accordance with the Trust's Public Outreach Policy.

**TIME:** The meeting will be held commencing at 6:30 p.m. on Wednesday, October 29, 2003.

**ADDRESSES:** The meeting will be held at the Officers' Club, 50 Moraga Avenue, Presidio of San Francisco.

**FOR FURTHER INFORMATION CONTACT:** Karen Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, California 94129–0052, Telephone: (415) 561–5300.

Dated: October 3, 2003.

**Karen A. Cook,**

*General Counsel.*

[FR Doc. 03–25585 Filed 10–8–03; 8:45 am]

**BILLING CODE 4310–4R–P**

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## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

**Summary of Proposal(s)**

(1) *Collection title:* Vocational Report.

(2) *Form(s) submitted:* G–251.

(3) *OMB Number:* 3220–0141.

(4) *Expiration date of current OMB clearance:* 11/30/2003.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 6,000.

(8) *Total annual responses:* 6,000.

(9) *Total annual reporting hours:* 3,045.

(10) *Collection description:* Section 2 the Railroad Retirement Act provides for the payment of disability annuities to qualified employees and widower(s). The collection obtains the information needed to determine their ability to work.

*Additional Information or Comments:* Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room

10230, New Executive Office Building, Washington, DC 20503.

**Chuck Mierzwa,**

*Clearance Officer.*

[FR Doc. 03–25567 Filed 10–8–03; 8:45 am]

**BILLING CODE 7905–01–M**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–27733]**

## Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

October 3, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 27, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After October 27, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

### Gulf Power Company (70–10154)

Gulf Power Company ("Gulf"), One Energy Place, Pensacola, Florida 32520, a wholly owned electric utility subsidiary of The Southern Company ("Southern"), 270 Peachtree Street, NW., Atlanta, Georgia 30303, a registered holding company, has filed an application-declaration ("Application") under sections 6(a), 7, 9(a), 10 and 12 (b) of the Act and rules 45, 52 and 54. Gulf proposes to organize one or more subsidiaries for the purpose of effecting various financing transactions involving the issuance and sale of an aggregate of $150,000,000 of preferred securities, from time to time, through December 31, 2006.

In connection with the issuance of the preferred securities, Gulf proposes to organize one or more separate subsidiaries as a business trust under the laws of the State of Florida or a statutory trust under the laws of the State of Delaware or another comparable trust in any jurisdiction, or any other entity or structure, foreign or domestic, that is considered advantageous by Gulf (individually a "Trust" and collectively the "Trusts").[1] Gulf proposes that the Trusts will issue and sell from time to time preferred securities, as described in this Application (the "Preferred Securities"), with a specified par or stated value or liquidation amount or preference per security. Gulf requests the Commission to reserve jurisdiction over the use of a foreign entity as a Trust.

Gulf has a total amount of $115,000,000 of Preferred Securities issued and outstanding through Trusts, as of June 30, 2003. The outstanding Preferred Securities were issued through Trusts rather than directly by Gulf as subordinated debt because certain rating agencies recognize preferred securities of this kind, issued through trusts, as having some equity content, rather than directly issued subordinated debt, which has no equity content. Gulf states that transactions of the Trusts are reported by Gulf on its financial statements and asserts that it is desirable for Gulf to continue to maintain a degree of similarity in its financial statements by issuing Preferred Securities through the Trusts rather than directly issuing subordinated debt.[2]

Gulf currently is authorized to issue Preferred Securities in an aggregate amount of up to $30,000,000 through December 31, 2005, pursuant to Commission orders dated January 16, 1998 and June 8, 2001 (HCAR No. 26817 and HCAR No. 27417, respectively). Gulf proposes that this Application's authorization of $150,000,000 supersede and replace the amounts remaining in these previous authorizations.

Gulf states that it will acquire all of the common stock of any Trust for an amount not less than the minimum required by any applicable law and not exceeding 21% of the total equity capitalization from time to time of the Trust (*i.e.*, the aggregate of the equity accounts of such Trust).[3] The aggregate of such investment by Gulf hereafter is referred to as the "Equity Contribution." Gulf may issue and sell to any Trust, at any time or from time to time in one or more series, subordinated debentures, promissory notes or other debt instruments (individually a "Note" and collectively the "Notes") governed by an indenture or other document. The Trust will apply both the Equity Contribution made to it and the proceeds from the sale of Preferred Securities by it, from time to time, to purchase Notes. Alternatively, Gulf may enter into a loan agreement or agreements with any Trust under which the Trust will lend Gulf (individually a "Loan" and collectively the "Loans") both the Equity Contribution to the Trust and the proceeds from the sale of the Preferred Securities by the Trust, from time to time. Gulf will issue Notes, evidencing such borrowings, to the Trust.

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[1] Applicants state that the ability to use trusts in financing transactions can sometimes offer increased state and/or federal tax efficiency. Increased tax efficiency can result if a trust is located in a state or country that has tax laws that make the proposed financing transaction more tax efficient relative to the company's existing taxing jurisdiction. Decreasing tax exposure, however, is usually not the primary goal when establishing a trust. Use of a trust can provide potentially significant benefits to a company, even without a net improvement in its tax position. Trusts can increase a company's ability to access new sources of capital by enabling it to undertake financing transactions with features and terms attractive to a wider investor base. Trusts can be established in jurisdictions or on terms favorable to the sponsoring company and, at the same time, give targeted investors attractive incentives to invest and so provide financing. Many of these investors would not be participants in the company's bank group and, typically, would not hold company bonds or commercial paper. Consequently, they represent potential new sources of capital.

[2] Gulf notes that it reclassified $115,000,000 of outstanding mandatorily redeemable Preferred Securities as liabilities, effective July 1, 2003, pursuant to Financial Accounting Standards Board ("FASB") Statement No. 150 "Accounting for Certain Financial Instruments with the Characteristics of both Liabilities and Equity." In May 2003, FASB issued Statement 150, which requires reclassification of certain financial instruments within its scope, including shares that are mandatorily redeemable as liabilities, and Statement No. 150 is currently effective. Gulf states that the reclassification as a result of implementation of Statement No. 150 did not have a material effect on its Statements of Income and Cash Flows.

[3] The constituent instruments of each Trust, including its Trust Agreement, will provide, among other things, that the Trust's activities will be limited to the issuance and sale of Preferred Securities, from time to time, and the lending to Gulf of (i) the resulting proceeds, (ii) the Equity Contribution to the Trust, and (iii) certain other related activities. Consequently, Gulf proposes that a Trust's constituent instruments will not include any interest or dividend coverage nor will a Trust have capitalization ratio restrictions on its ability to issue and sell Preferred Securities. Because each issuance will be supported by a Note and Guaranty, capitalization ratio restrictions would not be relevant or necessary to enable a Trust to maintain an appropriate capital structure. Furthermore, each Trust's constituent instruments will state that its common stock is not transferable (except to certain permitted successors), that its business and affairs will be managed and controlled by Gulf (or permitted successor), and that Gulf (or permitted successor) will pay all expenses of the Trust.

Gulf also proposes to guarantee (individually a "Guaranty" and collectively the "Guaranties") (i) payment of dividends or distributions on the Preferred Securities of any Trust if, and to the extent, the Trust has funds legally available, (ii) payments to the Preferred Securities holders of amounts due upon liquidation of the Trust or redemption of the Preferred Securities of such Trust and (iii) certain additional amounts that may be payable by the Preferred Securities. Gulf's credit would support any Guaranty.

Gulf states that each Note will have a term of up to fifty (50) years. Prior to maturity, Gulf will pay interest only on the Notes at a rate equal to the dividend or distribution rate on the related series of Preferred Securities, which dividend or distribution rate may be either fixed or adjustable, to be determined on a periodic basis by auction or remarketing procedures, in accordance with a formula or formulae based upon certain reference rates, or by other predetermined methods.[4]

The interest payments will constitute each respective Trust's only income and will be used by it to pay dividends or distributions on its Preferred Securities and dividends or distributions on its common stock. Dividend payments or distributions on the Preferred Securities will be made on a monthly or other periodic basis and must be made to the extent that the Trust issuing the Preferred Securities has legally available funds and cash sufficient for such purposes. However, Gulf may have the right to defer payment of interest on any issue of Notes for five or more years. Each Trust will have the parallel right to defer dividend payments or distributions on the related series of Preferred Securities for five or more years, provided that, if dividends or distributions on the Preferred Securities of any series are not paid for eighteen (18) or more consecutive months, then the holders of the Preferred Securities of such series may have the right to appoint a trustee, special general partner or other special representative to enforce the Trust's rights under the related Note and Guaranty. The dividend or distribution rates, payment dates, redemption and other similar provisions of each series of Preferred Securities will be substantially identical to the interest rates, payment dates, redemption and other provisions of the Notes issued.

Gulf states that the Notes and related Guaranties will be subordinate to all other existing and future unsubordinated indebtedness for borrowed money of Gulf and will have no cross-default provisions with respect to other indebtedness of Gulf (*i.e.*, a default under any other outstanding indebtedness of Gulf would not result in a default under any Note or Guaranty). However, Gulf may be prohibited from declaring and paying dividends on its outstanding capital stock and making payments in respect of *pari passu* debt unless all payments then due under the Notes and Guaranties (without giving effect to the deferral rights discussed above) have been made.

The distribution rate to be borne by the Preferred Securities and the interest rate on the Notes will not exceed the greater of (i) 300 basis points over U.S. Treasury securities having comparable maturities or (ii) a gross spread over U.S. Treasury securities that is consistent with similar securities issued by other companies having comparable maturities and credit quality.

Gulf will use the proceeds from the sale of the securities in connection with its ongoing construction program, to pay scheduled maturities and/or refundings of its securities, to repay short-term indebtedness to the extent outstanding and for other general corporate purposes.

Gulf represents that it will maintain its common equity as a percentage of capitalization (inclusive of short-term debt) at no less than thirty (30) percent. Gulf further represents that no guaranties or other securities may be issued in reliance upon the requested authorization, unless (i) the security to be issued, if rated, is rated investment grade; (ii) all outstanding securities of Gulf that are rated are rated investment grade; and (iii) all outstanding securities of Southern that are rated are rate investment grade. For purposes of this provision, a security will be deemed to be rated "investment grade" if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the Securities Exchange Act of 1934, as amended. Gulf requests that it, nevertheless, be permitted to issue a security that does not satisfy these conditions if the requirements of rule 52(a)(i) and rule 52(a)(iii) are met and the issue and sale of the security have been expressly authorized by the Florida Public Service Commission.[5] Gulf also requests the Commission to reserve jurisdiction over any guaranties or securities that do not satisfy these conditions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–25568 Filed 10–8–03; 8:45 am]

BILLING CODE 8010–01–P

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[4] The Preferred Securities of any series may be redeemable at the option of the Trust issuing the series (with the consent or at the direction of Gulf) at a price equal to their par or stated value or liquidation amount or preference, plus any accrued and unpaid dividends or distributions, (i) at any time after a specified date not later than approximately ten (10) years from their date of issuance, or (ii) upon the occurrence of certain events, among them that (a) the Trust is required to withhold or deduct certain amounts in connection with dividend, distribution or other payments or is subject to federal income tax with respect to interest received on the Notes issued to the Trust, or (b) it is determined that the interest payments by Gulf on the related Notes are not deductible for income tax purposes, or (c) the Trust becomes subject to regulation as an "investment company" under the Investment Company Act of 1940, as amended. The Preferred Securities of any series may also be subject to mandatory redemption upon the occurrence of certain events. Gulf also may have the right in certain cases, or in its discretion, to exchange the Preferred Securities of any Trust for the Notes or other junior subordinated debt issued to the Trust. In addition, rather than issuing Preferred Securities of a Trust, Gulf may instead issue Notes or other junior subordinated debt directly to purchasers.

[5] Gulf is a Maine corporation doing business in the State of Florida and does not do business in the State of Maine.

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48584; File No. SR–CSE–2003–13]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Cincinnati Stock Exchange, Inc., To Extend Its Liquidity Provider Fee and Rebate Pilot Program

October 2, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 29, 2003, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has filed this proposal pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The CSE asked the Commission to waive the 5-day pre-filing notice requirement and the 30-day

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend its pilot program for the Liquidity Provider Fee and Rebate ("Program") through December 31, 2003. The pilot was originally proposed in SR–CSE–2002–16,[6] and is set to expire on September 30, 2003.[7] The CSE proposes no substantive changes to the Program, other than extending its operation through December 31, 2003. The text of the proposed rule change is available at the CSE and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On October 22, 2002, CSE filed SR–CSE–2002–16,[8] which proposed to establish a pilot transaction credit for liquidity providers that is paid by liquidity takers on each intra-CSE execution[9] in Nasdaq securities. Under the pilot, the Exchange amended CSE Rule 11.10A(g)(1) by adding subparagraph (B) to charge the liquidity taker, *i.e.*, the party executing against a previously displayed quote/order, $0.004 per share. The Exchange then passes on to the liquidity provider, *i.e.*, the party providing the displayed quote/order, $0.003 per share with the Exchange retaining $0.001 per share. With this rule filing, CSE is extending the Program through December 31, 2003.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act[10] in general, and furthers the objectives of section 6(b)(5)[11] in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, generally, in that it protects investors and the public interest. The CSE believes that the proposed rule change is also consistent with section 6(b)(4) of the Act,[12] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CSE members by crediting members on a pro rata basis.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants orOthers*

No written comments were solicited or received in connection with the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6)[14] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay. The Commission believes that such waivers are consistent with the protection of investors and the public interest, for they will allow the pilot to continue without interruption. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[15]

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CSE–2003–13 and should be submitted by October 30, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–25569 Filed 10–8–03; 8:45 am]

**BILLING CODE 8010–01–P**

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## DEPARTMENT OF VETERANS AFFAIRS

### Advisory Committee on Cemeteries and Memorials; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–

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operative delay. See Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] Securities Exchange Act Release No. 46848 (November 19, 2002), 67 FR 70793 (November 26, 2002) ("Original Pilot").

[7] The pilot, which was originally set to expire on March 31, 2003, was subsequently extended until September 30, 2003. Securities Exchange Act Release No. 47596 (March 28, 2003), 68 FR 16594 (April 4, 2003) (SR–CSE–2003–03).

[8] See Original Pilot, supra note 6.

[9] An "intra-CSE execution" is any transaction that is executed on the Exchange for which the executing member on the buy-side of the transaction differs from the executing member on the sell-side of the transaction.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] For purposes only of accelerating the operative date of the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Cemeteries and Memorials will be held November 5–6, 2003, at the Department of Veterans Affairs Central Office, 810 Vermont Ave, NW., Washington, DC. The meeting will be held in Room 930, beginning at 8 a.m. and concluding at 4:30 p.m. on both days. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of national cemeteries and soldiers' lots and plots and on the selection of new national cemetery sites, the erection of appropriate memorials, and the adequacy of Federal burial benefits. The Committee will make recommendations to the Secretary regarding these activities.

On November 5, the Committee will receive updates on the National Cemetery Administration's National Shrine Commitment, organizational assessment, and other issues related to the administration and maintenance of national cemeteries. The Committee will travel to Alexandria National Cemetery for talks related to the National Shrine Commitment.

On November 6, the Committee will receive an update on the construction of new national cemeteries and meeting veterans' burial needs. The meeting will conclude with any unfinished business and recommendations for future programs, meeting sites, and agenda topics.

No time will be allocated for receiving oral presentations from the public. Any member of the public wishing to attend the meeting is requested to contact Ms. Cynthia Riddle, Designated Federal Officer, at (202) 273–5223. The Committee will accept written comments; however, the writers must identify themselves and state the organizations, associations, or person(s) they represent. Comments can be transmitted electronically to the Committee at *Cynthia.riddle@mail.va.gov* or mailed to National Cemetery Administration (40), 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: October 2, 2003.

By Direction of the Secretary.

**E. Philip Riggin,**

*Committee Management Officer.*

[FR Doc. 03–25596 Filed 10–8–03; 8:45 am]

BILLING CODE 8320–01–M

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## DEPARTMENT OF VETERANS AFFAIRS

## Research Advisory Committee On Gulf War Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on October 27–28, 2003 at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 630, Washington, DC. The meeting on October 27 will convene at 8:30 a.m. and adjourn at 5 p.m. The meeting on October 28 will convene at 8:30 a.m. and adjourn at 3:30 p.m. Both meetings will be open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans and research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Persian Gulf War.

On October 27, the Committee will hear research presentations on birth defects and family health and identifying possible molecular targets of neurotoxic exposures in Gulf War illnesses. The Committee will also receive an update on VA-sponsored Gulf War research activities. On October 28, the committee will receive an update on published research. The committee will hear presentations on the following topics: possible role of vaccines in Gulf War veterans' illnesses, monitoring health outcomes in Gulf War veterans at VA and overview of federal research funding for Gulf War illnesses and chemical defense. Time will be available for public comment on both days.

Members of the public may submit written statements for the Committee's review to Ms. Laura O'Shea, Designated Federal Officer, Department of Veterans Affairs (008A1), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public seeking additional information should contact Ms. Laura O'Shea at (202) 273–5031.

Dated: October 1, 2003.

By Direction of the Secretary.

**E. Philip Riggin,**

*Committee Management Officer.*

[FR Doc. 03–25595 Filed 10–8–03; 8:45 am]

BILLING CODE 8320–01–M

# Corrections

**Federal Register**
Vol. 68, No. 196
Thursday, October 9, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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## DEPARTMENT OF HOMELAND SECURITY

## Bureau of Customs and Border Protection

**19 CFR Part 12**

**[CBP Decision 03–28]**

**RIN 1515-AD34**

## Import Restrictions Imposed on Archaeological Materials From Cambodia

*Correction*

In rule document 03–24085 beginning on page 55000 in the issue of Monday, September 22, 2003, make the following correction:

**§12.104g [Corrected]**

On page 55004, in §12.104g(a), in the table, under the heading "T.D. No.", "CBP Dec. 03–BC28" should read "CBP Dec. 03–28".

[FR Doc. C3–24085 Filed 10–8–03; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

# Federal Register

Thursday,
October 9, 2003

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## Part II

# Department of Labor

## Office of Labor-Management Standards

29 CFR Parts 403 and 408
Labor Organization Annual Financial
Reports; Final Rule

## DEPARTMENT OF LABOR

## Office of Labor-Management Standards

## 29 CFR Parts 403 and 408

**RIN 1215–AB34**

## Labor Organization Annual Financial Reports

**AGENCY:** Office of Labor-Management Standards, Employment Standards Administration, Department of Labor.

**ACTION:** Final rule.

**SUMMARY:** The Department proposed to revise the forms used by labor organizations to file the annual financial report required by the Labor-Management Reporting and Disclosure Act (LMRDA). This document sets forth the Department's review of and response to comments on the proposal and the changes that will be made to the Form LM–2 used by the largest labor organizations to file the required report. The Department will require each labor organization that has annual receipts of $250,000 or more to file a Form LM–2 electronically and to itemize receipts and disbursements of $5,000 or more, as well as receipts not reported elsewhere from, or disbursements to, a single entity that total $5,000 or more in the reporting year, in specified categories. The Department has combined two proposed categories ("Contract Negotiation and Administration" and "Organizing") into a single schedule entitled "Representational Activities," added a category entitled "Union Administration," combined the proposed categories for "Political Activities" and "Lobbying" into a single schedule, and eliminated the category entitled "Other Disbursements." Reporting labor organizations will be permitted, however, to report sensitive information for some categories that might harm legitimate union or privacy interests with other non-itemized receipts and disbursements, provided the labor organization indicates that it has done so. Using this procedure, however, will constitute just cause for any union member to review the underlying data upon request. Moreover, under the statute (29 U.S.C. 436), the labor organization must maintain the records for inspection by the Department. The new Form LM–2 will have schedules for reporting information regarding delinquent accounts payable and receivable, but specific information need only be reported for accounts that total $5,000 or more during the reporting year. The revised Form LM–2 will require labor organizations to report investments that have a book value of over $5,000 and exceed 5% or more of the union's investments. A new schedule will require labor organizations to report the number of members by category, but will allow each labor organization to define the categories used for reporting. Reporting labor organizations must estimate the proportion of each officer's and employee's time spent in each of the functional categories on the Form LM–2 and report that percentage of gross salary in the relevant schedule.

Labor organizations that have $250,000 or more in annual receipts will be required to file a Form T–1 for any trust in which the labor organization is interested, if the trust has $250,000 or more in annual receipts and the labor organization contributed $10,000 or more to the trust during the reporting year, or that amount was contributed on the labor organization's behalf. Unions with less than $250,000 in annual receipts will not be subject to this requirement. No Form T–1 will be required if the trust files a report pursuant to 26 U.S.C. 527, or pursuant to the requirements of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1023 (ERISA), or if the organization files publicly available reports with a Federal or state agency as a Political Action Committee (PAC). Finally, a labor organization may substitute an audit that meets the criteria set forth in the Instructions for the financial information otherwise reported on a Form T–1 for a qualifying trust.

**EFFECTIVE DATE:** This rule will be effective on January 1, 2004, but will apply only to annual financial reports filed by unions for fiscal years beginning on or after January 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Lary Yud, Deputy Director, Office of Labor-Management Standards (OLMS), U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5605, Washington, D.C., *olms-public@dol.gov*, (202) 693–1265 (this is not a toll-free number). Individuals with hearing impairments may call 1–800–877–8339 (TTY/TDD).

**SUPPLEMENTARY INFORMATION:**

### I. Background

On December 27, 2002, the Department issued a notice of proposed rulemaking (67 FR 79820) proposing revisions of the forms used by labor organizations to file the annual financial reports required by section 201(b) of the LMRDA, 29 U.S.C. 431(b). As the notice explained, the proposed revisions were based upon the fact that the American workforce and labor organizations have changed dramatically over the last forty years and the fact that the form used by labor organizations to report financial information has not changed significantly in the same time period. The proposed revisions also reflected the Department's belief, based on the accumulated experience of investigators and other staff in the Employment Standards Administration's (ESA's) OLMS, that more detailed and transparent reporting of labor organizations' financial information would be more useful to union members, more effectively deter fraud, and enable OLMS investigators to more easily discover fraud when it occurs. Finally, the proposal noted the Department's view that, because of technological advances, these revisions will impose less burden on labor organizations than revisions proposed in previous years.

Before issuing this proposal, various Department officials met with many representatives of the regulated community, including union officials and their legal counsel, to hear their views on the need for reform and the likely impact of changes that might be made. The Department's proposal, developed with these discussions in mind, requested comments on numerous specific issues in order to base any revisions on a complete record reflecting the views of the parties affected and the Department's responses. In addition, the Department contracted with a professional provider of information technology services, SRA International (SRA), to assess the technical feasibility of electronically collecting and reporting the information that would be required by the proposed changes. The Department initially provided for a 60-day comment period, but later extended that period for an additional 30 days.

When the comment period closed, on March 27, 2003, ESA/OLMS had received over 35,000 comments. Most of the comments received were copies of approximately 110 different form letters signed by individuals who said they were members or officers of unions and commented in general terms. Although many of these form letters expressed opposition to the Department's proposal to revise the forms, many other form letters expressed support for the proposal. In addition, approximately 1,200 unique comments, including lengthy, substantive and specific comments, were received from union members, local, intermediate, national and international labor organizations, employers and trade organizations, public interest groups, accountants, accounting firms, academicians, and Members of Congress. Some commenters addressed their comments to specific limited issues, others—most notably, the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO)—commented on virtually all aspects of the proposal. All comments have been carefully reviewed and considered. The Department's analysis of and responses to the comments are set forth below (*see* Sections II, III, and IV).

In addition, this rule makes minor changes to the forms and the Instructions that did not directly result from any comments. Many of these changes reflect the differences between the proposed and final rule, requiring the addition of lines to the forms, the re-labeling of others, and the combination of schedules. Many of the minor changes to the Instructions also reflect these differences. These differences are discussed in detail below in the Department's analysis of the comments. Many of the changes in the Instructions, however, simply correspond to changes in the format of the form and the need to rework the Instructions so that they inform the filers and the public, whether they rely on the electronic or paper formats, about how to complete and use the forms. In analyzing the comments and preparing the final rule, some inadvertent omissions were discovered, as were some ambiguities in the text of the Instructions, requiring the redrafting of some of the Instructions and, in some instances, changes to the form. In reviewing the schedules for reporting disbursements to officers and employees, it became apparent that a filer would benefit from seeing the names of the schedules from which information was to be obtained, and therefore line I in each schedule was revised to include the names of the five schedules.

The Department's review revealed some inadvertent omissions from the proposed Form LM–2. For example, in Schedule 12, lines 7 and 8 were omitted. The final form includes these lines. Line 7 will provide space for "totals from continuation pages (if any)," and line 8 will be used to report the "total of lines 1–7." In Item 30, "Schedule 8" was omitted from the "Form Schedule Number" column. This omission has been corrected. The language of the attestation has been changed slightly to ensure that it complies substantially with 28 U.S.C. 1746.

In several other places, additional lines were added in order to reflect changes in the Instructions, including the need for additional lines to reflect subtotals of itemized and aggregated amounts for some categories or the need to add amounts from other parts of the form. Several titles of categories were revised to better reflect the information to be reported. Thus, the title of Item 36, "Dues and Other Payments," has been changed to "Dues and Agency Fees," the title of Schedule 1 was changed to "Accounts Receivable Aging Schedule," and the title of Schedule 8 was changed to "Accounts Payable Aging Schedule." In Schedule 9, "Loans Payable," the Instructions were revised to state that interest paid must be reported in Schedule 18, "General Overhead," in place of the reference to the now obsolete "Other Disbursements Schedule."

The text of the Instructions pertaining to some schedules and categories was revised where greater clarity was needed. Additional examples were included to assist filers in completing certain categories. For example, in Section X, a building corporation was added as an example of types of trusts, and new examples for "Other Receipts" were provided to better reflect the transactions to be reported on the schedule. Additional explanation for the "Detailed Summary Page" and the "Initial Itemization Page" was added. The "Continuation Itemization Page" was created for labor organizations that utilize the hardship exemption and do not file electronically. Some terms that might be unfamiliar to filers were explained, including terms such as "net," "basis," and "book value." In Items 39 and 60, the following were added to illustrate items to be reported as supplies: union logo clothing, lapel pins, and bumper stickers.

Additional information about compliance assistance also was added. In the "How to File" section, filers are provided a website address for obtaining the filing software *www.olms.dol.gov;* the reference in the proposed instructions to a CD–ROM accompanying the report package was deleted as obsolete. Updated information is provided in the "If You Need Assistance" section at the end of the instructions. In Item 18, "Changes in Constitution and Bylaws or Practices and Procedures," the language was revised to indicate that if the form is filed electronically, the constitution and bylaws must be submitted as an electronic attachment. In the second paragraph of the general instructions for completing Schedules 14 through 22, the statement relating to the compatibility of the Department's software was revised to reflect that the software will be compatible with the most commonly used electronic recordkeeping systems. A sentence was also added to indicate that information about the software and the technical specifications can be found at the OLMS Web site.

## II. Comments on the Proposal and Responses to the Comments

### *A. General Comments*

Before discussing the many specific comments that the Department received, it should be noted that the Department also received many comments that simply expressed general support for, or opposition to, the proposal. Union members, employers, and public interest organizations filed numerous general comments in support of the Department's proposed reform. One union member asked, "Government is accountable to taxpayers and corporations are accountable to shareholders, shouldn't unions be accountable to dues-paying members?" The commenters included a former vice president of a local union who expressed "full support of the proposed anti-corruption initiative" and wrote, "We should all know how the money is being spent at every level." Other union members suggested that the proposal was "long overdue."

Some union members advocated more sweeping change. One union member commented, "We need protection from our supposed labor leaders." Another commented, "Just please be sure the unions cannot get around these [proposed] requirements through creative accounting tricks." A commenter who described himself as having been a union member for 33 years, wrote, "I do not believe that these new regulations go far enough to hold unions more accountable."

Some comments from union members centered on their difficulties in obtaining financial information from their union under the current reporting scheme. A shop steward said that repeated requests for information to the union leadership had "gone unanswered" and that he "feel[s] it is time that unions be required to account for every penny of the dues they collect." Numerous other commenters joined in describing futile, or largely futile, attempts made to obtain information about union finances from the union leadership. Some commenters indicated that such requests for information generate resentment or invite retaliation from union leaders. Another union member wrote, "You shouldn't have to beg or plead with your Business Manager/Agent to see financial reports for an organization you finance."

Other commenters claimed to have witnessed questionable union expenditures, which increased disclosure would have revealed. Another comment asserted, "Significant money is spent on items which many would consider a waste of funds if only the members knew." Others said that the greater detail in the proposed form "will make thefts harder to cover up." Another member supported the initiative to "help prevent fraud and corruption," as well as to permit "informed decisions about workplace issues." A public interest organization commented that "the information provided by the AFL–CIO in the Form LM–2 is not sufficient to give the average union member an accurate picture of how the AFL–CIO spends much of the dues collected." One commenter noted that requiring unions to estimate the amount of time spent by union officers and employees performing various duties will provide significant new information to union members. The commenter also stated that, together with reporting receipts and disbursements by functional categories, the proposed rule will provide information that will help ensure that union leadership is acting in the interests of its membership. Another public interest organization commented that more "detailed financial reporting is needed" to avoid "waste, fraud and corruption." A 25-year union member stated, "It will be a great victory for [the union's] membership when the reform is passed."

Many commenters opposed the proposed changes, expressing their beliefs that the proposed rule is: political payback designed to punish organized labor; designed to weaken the union movement; intended to hamper the ability of unions to service their members; designed to strain union budgets; intended to expand the requirements of *Communication Workers of America* v. *Beck*, 487 U.S. 735 (1988); and intended to secure additional information for employers and anti-union organizations rather than union members. Although a number of unions and their members submitted helpful comments on the substance of the rule, some of the general comments in opposition simply criticized the Administration and Department officials, and lacked specific recommendations on the substance of the proposal. They nevertheless expressed strongly held feelings in opposition to the proposed changes.

Acknowledging that there are strong views on both sides of the issue, the Department has carefully considered all of the comments and the arguments made for and against the proposed revision of the forms used by labor organizations to report annual financial information as required by the LMRDA.

### *B. The Secretary's Statutory Authority*

Some of the commenters questioned the Department's authority to make the proposed changes, arguing that the Department is upsetting the delicate balance between labor and management that was recognized by Congress in the National Labor Relations Act. Some unions complained that the proposal would require that labor organizations disclose confidential trade secrets, such as organizing strategy and negotiating plans, which some courts have ruled are not discoverable by union members and would give adversaries a greater knowledge of the inner workings of the labor organizations with which they may deal in connection with collective bargaining or organizing activities. These commenters argue that the Department's proposal is inconsistent with the principle that governmental intrusion into the affairs of labor organizations should be limited because the Constitution protects the right of association, there purportedly is no evidence that union members want this information, and, they alleged, other voluntary organizations are not subjected to this level of disclosure.

The Department takes seriously the concerns expressed that the proposed rule would intrude too deeply in the internal affairs of labor organizations and provide unfair advantages to the adversaries and competitors of such organizations. Accordingly, the Department has made numerous changes, described below, to avoid these unintended and unwanted results. In the Department's view, however, none of these changes is necessitated by any lack of authority on the part of the Department to revise the reporting forms or the manner in which reports must be filed. On the contrary, the LMRDA gives the Secretary of Labor authority to make such changes, for the reasons outlined in the Notice of Proposed Rulemaking (NPRM) and in this rule. Section 201(b) of the LMRDA, 29 U.S.C. 431(b), requires that:

> Every labor organization shall file annually with the Secretary a financial report signed by its president and treasurer or corresponding principal officers containing the following information *in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year* * * *

(Emphasis added.) In addition, section 208 of the LMRDA, 29 U.S.C. 438, states in part:

> The Secretary shall have authority to issue, amend and rescind rules and regulations prescribing the form and publication of reports required to be filed under this title and such other reasonable rules and regulations (including rules prescribing reports concerning trusts in which a labor organization is interested) as he may find necessary to prevent the circumvention or evasion of such reporting requirements.

These provisions make it clear that the Secretary has discretion to determine the format in which the information required by the statute must be provided, as well as the detail in which the information must be reported.

The statutory language describing the information that labor organizations are required to report is broad. Each labor organization must include in its annual financial report:

(1) Assets and liabilities at the beginning and end of the fiscal year;

(2) receipts of any kind and the sources thereof;

(3) salary, allowances and other direct or indirect disbursements (including reimbursed expenses) to each officer and also to each employee who, during such fiscal year, received more than $10,000 in the aggregate from such labor organization and any other labor organization affiliated with it or with which it is affiliated, or which is affiliated with the same national or international labor organization;

(4) direct and indirect loans made to any officer, employee, or member, which aggregated more than $250 during the fiscal year, together with a statement of the purposes, security, if any, and arrangements for repayment;

(5) direct and indirect loans to any business enterprise, together with a statement of the purpose, security, if any, and arrangements for repayment; and

(6) other disbursements made by it including the purposes thereof; all in such categories as the Secretary may prescribe.

29 U.S.C. 431(b)(1)–(6). Comments that the Secretary lacks authority to require that receipts and disbursements be itemized or that disbursements be reported in categories are inconsistent with the plain language of the statute. In fact, the statute authorizes the Secretary to require labor organizations to report every receipt and disbursement, in any amount, and in any categories prescribed by the Secretary. The statute's requirement that labor organizations report "receipts" and "disbursements" does not, as some comments argue, call for only aggregated receipts and disbursements. Neither the fact that the Secretary has not heretofore exercised the full extent

of her statutory authority nor the fact that forms previously required less detailed reporting diminishes the authority provided the Secretary by the LMRDA as enacted in 1959.

In the Department's view, this rule meets both the letter and the spirit of the LMRDA, both generally and with respect to its provisions specific to union reporting requirements. The rule promotes the two related overarching purposes of union reporting: to fully inform union members, on a yearly basis, about their union's "financial condition and operations," 29 U.S.C. 431(b); and, by public disclosure of this information, to deter union officials and employees from abusing their stewardship duties and to allow members, the Department, and the public an opportunity to review a union's financial information as a check on the actions of its officials and employees. *See United States* v. *Budzanoski*, 462 F.2d 443, 450 (3d Cir.), *cert. denied*, 409 U.S. 949 (1972); *Int'l Bhd. of Teamsters, et al.* v. *Wirtz*, 346 F.2d 827, 831 (D.C. Cir. 1965). The Department's reforms also advance the LMRDA's declared purpose "that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations." 29 U.S.C. 401(a).

The AFL–CIO commented that the proposed rule attempts to dictate to unions what they should treat as their "most * * * important purposes" in structuring their budgets and accounts and is contrary to the LMRDA insofar as the statute reflects the theory that, "[g]iven certain minimum standards, 'individual members are fully competent to regulate union affairs' " (*quoting* S. Rep. No. 85–1684, at 4–5 (1958)). In the view of the AFL–CIO, Congress deliberately established a two-step process, found in 29 U.S.C. 431, to inform members about their union's finances and operations. The process was established to protect unions from improper government intervention in their affairs and harassment from members that would divert them from their representational function. The first step requires the preparation of a financial report in such detail as needed to disclose the union's financial condition (29 U.S.C. 431(b)); the second step requires a union, upon a member's showing of just cause, to disclose additional information (29 U.S.C. 431(c)). In the AFL–CIO's view, the proposed rule collapses this two-part process and destroys protections for a union's confidentiality and trade secrets in violation of established protections.

In the Department's view, this argument is unpersuasive. The revised form calls for more detail than the previous form, but does not require disclosure of the underlying records necessary to verify the report. *See* 29 U.S.C. 431(c). The fact that the Secretary has exercised her authority to determine that more detailed financial information should be reported on a Form LM–2 than previously does not limit a union's ability to maintain additional information, in any format it desires, including the physical evidence of financial transactions (such as cancelled checks, bills, or receipts), nor does it eliminate each union member's right to examine such information, enforceable in district court upon a showing of "just cause." Congress conditioned a union member's right to examine records necessary to verify the union's annual financial report on a showing of just cause in order to relieve unions from the harassment of repeated requests for documents based simply on curiosity. *See Kinslow* v. *American Postal Workers Union, Chicago Local*, 222 F.3d 269, 273 (7th Cir. 2000). This requirement, however, "simply entails a showing that the union member had some reasonable basis to question the accuracy of the LM–2 or the documents on which it was based, or that information in the LM–2 has inspired reasonable questions about the way union funds were handled." *Id.* at 274; *see also Mallick* v. *Int'l Bhd. of Elec. Workers*, 749 F.2d 771, 781 (D.C. Cir. 1984). No matter how much detail a union provides on its Form LM–2, members have a right to examine the actual documents or other evidence of recorded transactions to determine, for example, whether the union accurately recorded the information. Moreover, as explained more fully below, in Section III(B)(2), in response to comments from numerous unions that making certain information available to the public at large would be harmful to legitimate interests, the Department will permit labor organizations to report some receipts and disbursements as part of the aggregated total, without specificity, provided, with limited exceptions, it indicates on the Form LM–2 that it has done so. If a labor organization uses this option, only those of its members who satisfy the "just cause" standard and the Department will be entitled to review the specific information related to these disbursements. Far from eliminating the method Congress provided members to review their union's finances in more detail pursuant to section 201(c), 29 U.S.C. 431(c), that statutory tool is central to these reforms.

### *C. Comparison With Reporting Requirements for Corporations and Non-Profit Organizations*

Several commenters, asserting that corporate scandals have surpassed any union misconduct in recent years, argued that corporations should first be made to file disclosure reports like those proposed by the Department before unions are asked to do so. Some union members argued that labor organizations are already subject to more stringent reporting requirements than corporations or other non-profit organizations. Many commenters felt that unions are like small businesses and should be provided the same protections from intrusive reporting requirements that, they assert, small businesses are provided by the Department and other regulatory agencies.

Other commenters noted that corporations and their executives are subject to significantly more burdensome reporting requirements than are unions. One commenter noted that labor organizations, unlike corporations, are not subject to various external controls and scrutiny by such entities as Wall Street investment analysts, portfolio managers, financial media, and millions of shareholders. Another commenter found the comparison between labor organizations and corporations irrelevant because unlike commercial entities, which are accountable based on their profit or loss, labor unions are accountable only in terms of the stewardship responsibilities of their officers. One commenter also noted that like corporate disclosure requirements, which have been amended periodically, union disclosure requirements should be changed in order to keep pace with the times. Another commenter estimated that the reporting and disclosure burdens on businesses are many times the burden on labor organizations.

The Department has concluded that, while there are important differences among corporations, public interest organizations, and labor organizations, increased transparency is as important for labor organizations as for other such organizations. Moreover, for the reasons set forth below, the Department is not persuaded that the requirements imposed by this rule are more restrictive than those that apply to other entities. If anything, these requirements are less intrusive, less burdensome, and require less disclosure than reporting requirements governing other entities.

First, no comparison should be drawn between union reporting requirements and requirements imposed on a privately held enterprise where the operator of the business is also the source of much of the venture's financing. Legally mandated financial disclosure regimes for both unions and publicly held corporations are designed primarily to address a fundamental problem common to both institutions: that managerial control of an entity lies beyond the direct control of the people who fund the entity. *See generally* Henn & Alexander, *Hornbook on Laws of Corporations § 186 et seq.* (1983). Corporate and union financial disclosure regimes are intended to reduce the informational advantages agents have over principals and permit principals to monitor and assess the performance of agents. *See* Fletcher, *Cyclopedia of the Law of Private Corporations §§ 2213 et seq.*, 6842–43 (perm. ed.), available on Westlaw at Fletcher-CYC. Adequate transparency encourages union officers and corporate directors (agents) who are elected by union members and corporate shareholders (principals) to conduct the business of their organizations in the best interests of the people who provide the operating funds. Agents failing to do so can be removed through the mechanisms of corporate and union democracy. *See Cyclopedia of the Law of Private Corporations § 351 et seq.*

In a privately held enterprise, where the operator of the business is also the source of the venture's financing, there is no principal to perform the monitoring and no agent to be monitored. *See generally Laws of Corporations § 257 et seq.; see also* Soderquist, *Understanding the Securities Laws* § 2:2.2 (2001), available on Westlaw at PLIREF–SECLAW. While privately held companies are required to make certain financial disclosures related to franchise taxes, Small Business Administration loans, Federal Communications Commission licenses and other regulatory schemes, these disclosures are designed to assess taxes, fees, or eligibility for government-provided benefits, not to ensure transparency of managerial performance. *See generally Cyclopedia of the Law of Private Corporations § 6666 et seq.* The only scenario in which it is instructive to compare the financial disclosure regime of a privately held company to a union is when a privately held firm creates a principal/agent relationship by accepting funding through the venture capital markets. This scenario, however, also offers no basis for comparison with the relationship between a union and its members because financial institutions and other entities that provide such funding can condition it on the disclosure of any financial information concerning the company seeking funding, can demand that the information be provided in any level of detail desired, and can use contractual remedies to enforce the condition. Union members, by contrast, are entitled only to the report that their union files with the Department of Labor pursuant to the LMRDA and, upon a showing of just cause, "to examine any books, records, and accounts necessary to verify such report." 29 U.S.C. 431(b), (c).

Accordingly, the only reporting requirements applied to businesses that are relevant for comparison with the annual union financial report are those applied to publicly-traded companies. Generally speaking, the regulatory regime governing financial reporting by large and small public companies is much more extensive than the system that exists for labor organizations. *See generally* Hazen, *Law of Securities Regulation* §§ 3.2–3.7, 9.4 (2002), available on Westlaw at LAWSECREG; *Understanding the Securities Laws* § 2:2.2. Furthermore, the reporting requirements under the securities laws have been substantially increased since the enactment of the Sarbanes-Oxley Act, Pub. L. 107–204, 116 Stat. 745. *See generally* 68 FR 36636–01 *et seq.* (June 18, 2003) (amending various disclosure rules established by the Securities and Exchange Commission ("SEC"), including 17 CFR 240.13a–14, 240.13a–15, 240.15d–14, 240.15d–15, 249.220f). Labor organizations must file only one form a year, need not disclose qualitative information, and are not required to conduct certified audits of their financial statements. *See* 29 U.S.C. 431. The financial reporting scheme for public companies, as amended by the Sarbanes-Oxley Act, requires the disclosure of both quantitative and qualitative information and imposes strict audits and significant internal controls on public companies, their officers, directors, auditors, accountants and attorneys. *See generally* 17 CFR Parts 210–211, 228–32, 239, 241, 249 (Subparts A–D) (2003) (particularly provisions amended by 68 FR 4820 (Jan. 30, 2003), 68 FR 5110 (Jan. 31, 2003), 68 FR 15354–02 (Mar. 31, 2003), 68 FR 36636–01 (June 18, 2003). *See also* Bloomenthal, *Sarbanes-Oxley Act in Perspective* § 10 (2002), available on Westlaw at SEC–SOAP S 10. Small and large public companies are required to file annual and quarterly reports. *See* 17 CFR 240.13a–1 *et seq.*; *Cyclopedia of the Law of Private Corporations § 6842; Law of Securities Regulation* § 9.6(4). All public companies must certify audits for the accuracy of information in their annual and quarterly reports. See 68 FR 36636 *et seq.* (discussed above); Bloomenthal & Wolff, *Securities and Federal Corporate Law* § 7:35.13 (2002). A substantial amount of quantitative financial information is contained in both annual and quarterly reports. These reports must disclose "material" financial information. *See Law of Securities Regulation* §§ 3.2–3.7, 9.4; *Understanding the Securities Laws* § 12–8; *Cyclopedia of the Law of Private Corporations* § 6862. In its Statement of Financial Accounting Concepts No. 2 (SFAC No. 2), the Financial Accounting Standards Board (FASB) stated the essence of the concept of materiality as follows:

> The omission or misstatement of an item in a financial report is material if, in the light of surrounding circumstances, the magnitude of the item is such that it is probable that the judgment of a reasonable person relying upon the report would have been changed or influenced by the inclusion or correction of the item.

*Id.* at ¶ 132. *See* discussion below in Section (II)(D). Due to the myriad factors involved in determining whether financial information meets this rather vague threshold, professional assistance is required. *See id.* at ¶¶ 123–132. As noted above, the SEC generally requires public companies to disclose in their annual reports "material" quantitative information on balance sheets or income statements related to numerous types of assets, accounts, and expenditures. *See Law of Securities Regulation* §§ 3.2–3.7, 9.4. Public companies must disclose "material" financial data on executive compensation, including: annual salary; bonuses; other annual compensation; restricted stock; and options. *Id.* They must also provide "material" quantitative information on computation of per share earnings and market risk. *Id.* The Sarbanes-Oxley Act added several additional categories of material, quantitative data that public companies must disclose, including disclosing in each annual and quarterly report all "material" off-balance sheet transactions, arrangements and obligations (including contingent obligations). *See* Title III, 116 Stat. 775, and Title IV, 116 Stat. 785.

Since its inception, the LM–2 reporting system has eschewed the use of a vague standard based on individualized judgments regarding materiality for determining what quantitative data a union must report, and has instead required specific information regarding all assets, liabilities and transactions. The Department has determined that it will continue with this approach. This avoids forcing labor organizations to incur the expenses and burdens associated with making determinations about whether given items are "material." Even those commenters that suggested that the Department should consider implementing a materiality standard recognized that such a standard would introduce an element of judgment in the reporting process with potential for complicating the investigative process. Although a commenter argued that such tradeoffs are similar to those necessitated by dollar thresholds for reporting, the Department believes that a dollar threshold is easier for reporting unions to apply, for the Department to enforce, and for union members to understand.

In addition to the detailed quantitative data, the annual and quarterly reports of large and small public companies must also disclose "material" qualitative data. *See Law of Securities Regulation* §§ 3.4, 3.6, 9.4. This includes narrative descriptions of "material" aspects of a company's businesses and principal products. *Id.* Public companies must also disclose information on relationships the company has that may have a "material" effect on current or future financial condition, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses of the company. *Id.* This includes an explanation of a company's dependence on customers whose loss would materially affect the company's financial health and an explanation of material changes in the mode of conducting business. *Id.* "Material" legal proceedings must be reported, including full identification of parties and the circumstances and basis of the proceedings. *Id.* "Material" property holdings must also be identified and described, including their use and any encumbrances upon them. *Id.*

Public companies are also required to make forward-looking statements about the future financial performance of the company, including analysis of all "material" risks facing the company. *Id.* Public companies must also report "material" information about market risk, such as potential loss in future earnings of cash flow based on changes in interest rates, foreign currency exchange rates, commodity prices and other relevant market factors. *Id.* A detailed explanation of internal controls and procedures must also be provided. *Id; see also* 68 FR 36636–01. The Department has decided not to require labor organizations to provide their members with any qualitative information on its finances, much less the detailed qualitative analysis public companies are required to disclose.

Following the passage of Sarbanes-Oxley, the SEC and the Public Company Accounting Oversight Board ("the Board") oversee the audits of public companies; establish accounting and audit report standards and rules for public companies; and certify, investigate, inspect, and enforce compliance with standards applicable to professionals involved in the preparation of audits and financial reports by public companies. *See* Title I, 116 Stat. 750. Annual audits and financial reporting by public companies must be under the control of an audit committee composed exclusively of independent directors. *See* Title II, § 202, 116 Stat. 772–73; Title III, 116 Stat. 775–77. These independent committees must include at least one "financial expert" and are directly responsible for the appointment, compensation, and oversight of the certified firms that do private audits of public companies. *See* Title IV, § 408, 116 Stat. 790–91. To effectuate the whistleblower provisions of the Sarbanes-Oxley Act, these audit committees must also establish procedures for the receipt, retention and review of anonymous complaints by a public company's employees regarding accounting practices, internal financial controls, and auditing matters. *See* Title III, §§ 301–04, 116 Stat. 775–78. Public companies must give their audit committees the financial resources necessary to hire any independent advisors or attorneys required to carry out these responsibilities. *Id.*

The LMRDA does not require labor unions to perform any audits. It does not mandate that unions use governance structures that ensure independent oversight of financial operations, such as independent audit committees. Union members have no whistleblower rights. The Department does not enforce any independent system of certification, quality control, ethics, independence standards or other regulation of firms that some unions use to prepare annual Form LM–2 reports. There are also no restrictions on other services that a firm preparing Form LM–2 reports may perform for a labor organization. In contrast to the reviews the SEC performs on public companies not less than once every three years (*see* 15 U.S.C. 7266(c)), labor unions currently can expect, on average, to be audited by the Department of Labor approximately once every 150 years. Ten of the 25 largest unions have never been audited because of OLMS's limited resources.

Several commenters suggested that unions be required to file annual independent audits. Many unions, one individual commented, have constitutional provisions that already require an audit by an outside accounting firm. While some commenters argued that requiring unions to obtain annual audits is within the Department's statutory authority, no provision of the LMRDA vests the Secretary of Labor with any express authority to require unions to obtain audits and the Department has chosen not to attempt to impose such a requirement, to avoid imposing on the labor organizations that are not currently obtaining private audits any need to hire financial experts to conduct a qualitative analysis of the union's records. Simply permitting those unions that currently obtain annual audits to file whatever audit is currently performed is not likely to ensure that all of the statutorily-required information is reported, nor would it ensure that the information is provided in a standard format that is both readily understandable and accessible to union members. Information that may be meaningful to trained financial analysts or auditors may not be useful to many union members.

Accordingly, the statutory requirements, and the Secretary's longstanding implementation of those requirements, have been framed in terms of assets, liabilities, disbursements and receipts, rather than more general financial terms. The Department has concluded that continuing to require unions to report holdings and transactions, rather than third-party descriptions of their financial conditions, will provide understandable information to members, permit members to compare reports of different years, permit members to compare reports with those of other unions, and enhance the detection and deterrence of fraud.

Alternatively, commenters suggested the Department should annually conduct a compliance audit of each union. The Department's responsibility for insuring the financial integrity of unions involves both requiring adequate reporting and conducting compliance audits. The statute does not contemplate the two components as mutually exclusive; in fact, the Department intends to increase the number of compliance audits, as resources permit, at the same time it implements the revised Form LM–2. Additional compliance audits would not, however, constitute a satisfactory alternative to the reforms embodied in the revised Form LM–2, as compliance audits would address the accuracy of the information provided in the existing

Form LM–2, but would not improve the transparency of labor organizations' finances, increase the information available to members, or make the data disclosed in reports more understandable and accessible.

As one commenter noted, it is even more difficult to deter financial mismanagement by labor organization officials than it is in a corporate setting because of the absence of natural market influences and because there are fewer regularly occurring checks on the financial performance of unions. The same commenter noted that the additional disclosure as a result of the proposed changes would make it more difficult, and more expensive, to hide fraud. Recognizing that achieving this goal will also make it more expensive for unions to report, and that disclosure alone will reduce but not entirely overcome fraud, the Department has attempted to achieve a balance in this rule between the benefits and burdens of more detailed disclosure, and intends to follow promulgation of the rule both with more effective enforcement, using the additional information disclosed to uncover fraud when it occurs, and with more compliance assistance to respond to questions and concerns.

The Department is also not persuaded by the comments that suggest that the reporting requirements for labor organizations should be comparable to those that govern non-profit organizations. The LMRDA was enacted in the aftermath of a congressional investigation in the 1950's that found corruption in union leadership and a disregard for the rights of the rank-and-file. *See Wirtz* v. *Hotel, Motel & Club Emp. Union, Local 6*, 391 U.S. 492, 497–98 (1968). The over-riding purpose of the reporting provisions of the LMRDA is to provide union members with "all the vital information necessary for them to take effective action in regulating affairs of their organization." *See* S. Rep. 187, 86th Cong., 1st Session, p.9, 1959 U.S.C.C.A.N. 2318, 2325 (1959). The Senate Labor Committee declared: "A union treasury should not be managed as the private property of union officers, however well intentioned, but as a fund governed by fiduciary standards appropriate to this type of organization. The members who are the real owners of the money and property of the organization are entitled to a full accounting of all transactions involving their property." *See* S. Rep. 187 at p. 8, 1959 U.S.C.C.A.N. at 2324. In light of these congressional directives, the Department is not persuaded as a general matter that a comparison between labor organizations and ordinary non-profit organizations is apt in the context of determining reporting standards. Nevertheless, although other reporting standards will not be treated as benchmarks or models, the Department has considered the specific comments of labor organizations and others in assessing the appropriateness of each proposed change to the reporting forms, as discussed in the succeeding sections.

### *D. Application of Generally Accepted Accounting Principles*

Some commenters argued that the changes proposed by the Department depart from the generally accepted accounting principles (GAAP) promulgated by the FASB and the American Institute of Certified Public Accountants (AICPA). In particular, this position was advanced by a professor of accountancy whose comments were made on behalf of, and attached to the comment of, the AFL–CIO. This commenter said that many of the terms used and information required by the Department's proposal are inconsistent with various interpretations of GAAP. These assertions fail to recognize, however, that not all GAAP standards are consistent with the disclosure requirement of the LMRDA. 29 U.S.C. 431(b). Although the Department has considered the GAAP standards, and has accepted them in principle where they further the purposes of the LMRDA, the Department will not adopt GAAP standards when they are not consistent with these purposes. For example, as many commenters noted, the current Form LM–2 mandates reporting on a cash accounting basis, which is inconsistent with GAAP, but some cash accounting procedures are made necessary by the statute's requirement that the union disclose "receipts" and "disbursements." *See* 29 U.S.C. 431(b). Further, Form LM–2 is a special-purpose financial report prepared for compliance with the LMRDA. Special financial reports to government regulatory bodies are generally prepared in conformity with Other Comprehensive Basis Of Accounting (OCBOA).

This commenter also argued that the Department's proposal calls for the presentation of disaggregated information, which is contrary to GAAP and confusing for the user of the reported information. Although GAAP precepts do not control the inquiry, the revised Form LM–2, like the current Form LM–2, includes Statements A and B, which provide aggregated totals of financial information. Form LM–2 users do not have to rely solely on the itemized information contained in the schedules to obtain an overall understanding of the reporting labor organization's financial performance. The Department proposed requiring labor organizations to provide certain itemized information in addition to the aggregated totals in order to provide users of the Form LM–2 with additional financial information on specific financial issues. In fact, the FASB recognizes the appropriate inclusion of disaggregated information in financial reporting:

> Disaggregated information that permits users of financial information to relate components of revenues to components of expenses also is often preferable to information provided by their aggregated amounts.

Financial Accounting Standard 117 (FAS 117), ¶ 118.

Several commenters asserted that the individual items reported on the Form LM–2 supporting schedules in and of themselves are not material financial information that will be relevant to the user. The FASB states that materiality of information is not measured solely on its magnitude. SFAC No. 2. "Materiality is a pervasive concept that relates to the qualitative characteristics, especially relevance and reliability." *Id.* The Supreme Court, in deciding whether an omitted fact was material, described a general standard of materiality as:

> A substantial likelihood that, under all the circumstances, the omitted fact would have assumed actual significance in the deliberations of the reasonable shareholder. Put another way, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available.

*TSC Industries Inc.* v. *Northway Inc.*, 426 U.S. 438, 449 (1976). The FASB agrees that the "usefulness of information must be evaluated in relation to the purposes to be served, and the objectives of financial reporting are focused on the use of accounting information in decision making." *Id.* The Department has concluded, based on the experience of its investigators and the comments received from many union members, that the information that will be reported as a result of this revision of the Form LM–2, in fact, will have the capacity to make a difference in the ability of union members to make decisions regarding workplace and union governance issues. As indicated in Section III(B)(3), (4), the proper threshold for when a union must itemize and separately report a receipt or expenditure is subject to competing arguments. Setting the threshold lower (or eliminating it entirely) increases the number of receipts and expenditures that must be reported, which correspondingly increases the information available for inspection. The availability of this information makes concealment of fraud more difficult, and allows members to evaluate the wisdom of the union's financial transactions. The threshold is significant: union members ordinarily protect their rights by reviewing these reports, unlike investors in public corporations and other individuals protected by the audit, oversight, and whistleblower provisions discussed in Section II(C). While a strong argument could be made that all expenditures are thus significant and should be itemized, a lower threshold would increase the accounting burden. The $5,000 threshold adopted strikes a balance between the opposing viewpoints. Thus, while the revised form neither permits nor necessitates individual assessments of the materiality of information about particular transactions, it requires the disclosure of information that is significant to union members.

Commenters also argued that proposed Form LM–2 violates GAAP because the costs of reporting the information exceed the benefits to users of the information. While the costs of the revised Form LM–2 are addressed in more detail in the Regulatory Flexibility and Paperwork Reduction Act Analyses, *see* Section V, the Department has determined that these costs are outweighed by benefits. FASB and other government regulatory bodies have discovered that the total benefits derived from shared information are nearly impossible to quantify. Information is different from other commodities because the benefits from information can extend beyond the immediate users. The revised Form LM–2 directly benefits union members because increased disclosure permits members to make better decisions about union governance and helps deter and detect fraud. The public also benefits from the deterrence of fraud, due to the costs fraud imposes on, for example, the criminal justice system, and from the promotion of ethical conduct in the administration of labor organization affairs, which increases the stability of labor organizations, and thus promotes the flow of commerce. *See* 29 U.S.C. 401 ("Declaration of Findings, Purposes, and Policy"). The information required on the revised Form LM–2 thus benefits a wide variety of users, which is consistent with SFAC No. 2, ¶ 143.

Commenters noted several issues related to the application of FAS 117, Financial Statements of Not-For-Profit Organizations, to labor organization financial reporting. The FASB has opined regarding the appropriate scope of financial statements for not-for-profit organizations:

> A complete set of financial statements of a not-for-profit organization shall include a statement of financial position as of the end of the reporting period, a statement of activities and a statement of cash flows for the reporting period, and accompanying notes to financial statements. FAS 117, ¶ 6.

FAS 117, however, applies only broad, general standards for reporting information in not-for-profit organization financial statements (FAS 117, ¶ 48), and the FASB recognizes that general purpose financial statements may not fulfill the special-purpose needs of regulatory requirements like those imposed by the LMRDA (FAS 117, ¶ 45). Even not-for-profit organizations subject to FAS 17 are required to report expenses by functional categories and to allocate costs among significant programs as applicable (*see* FAS 117, ¶ ¶ 26–28) because of differences in indicators of performance as compared to for-profit business organizations (FAS 117, ¶ 61).

Comments on the Department's proposal indicate some confusion regarding the question whether revisions to Form LM–2 will require labor organizations to maintain their financial records using a cash basis or accrual method. Some unions and individuals have read the proposed rules to require unions to maintain their financial records system on an accrual basis. In this regard, some of the commenters noted that Schedule 1 of the proposed Form LM–2 requires reporting of receivables, a concept associated with accrual accounting. Some of the commenters also expressed their view that the majority of unions use the cash method of accounting and that it would be a substantial burden for them to make the conversion to the accrual method. Some of the commenters also noted that cash basis reporting comports with IRS requirements.

A local union explained that its accounting system uses the cash basis method. It noted that the proposed Schedule 1 (Accounts Receivable) and Schedule 8 (Accounts Payable) call for information maintained by systems set up on the accrual method of accounting. The local explained that this information is not readily available from cash basis systems, noting that commercial accounting systems track income and expenses, not receipts and disbursements. The local expressed its concern that it would be able to provide the accounts receivable and accounts payable information only by undertaking manual searches through voluminous records. It also noted a specific concern regarding the reporting of membership information, noting that its system to track membership is not integrated with its general ledger, with the result that it has no general ledger account set up to capture written off or uncollected dues income. Similarly, one labor organization noted concerns with regard to reporting accounts receivable and accounts payable (insofar as they require "aging" information). The commenter explained that this change would require it to spend considerable additional time to properly complete a Form LM–2. It explained that many local unions have members' dues sent to third parties or their particular international and that the locals' portion of the dues is only later remitted to the locals. One commenter stated that the cash basis method better effectuates the LMRDA's focus on receipts and disbursements.

Some commenters, however, read the proposed rules as continuing the cash basis requirement. In their comments, they requested that the Department, as part of the final rule, allow unions the option to utilize the accrual method of accounting. In support of this approach, they noted that accrual accounting is required by GAAP, reflecting, in their view, the belief that accrual accounting provides a more effective gauge of an organization's financial condition. In this regard, one commenter noted that the Department itself once recognized, when it proposed revisions to the Form LM–2 in 1992 (later withdrawn in part), that "accrual accounting generally provides a more accurate indication of an organization's financial condition and operations," 57 FR 49282 (Oct. 30, 1992). Other commenters noted that the current cash basis requirement forces them to convert information in their accrual-based system for the sole purpose of submitting a Form LM–2, an expensive and time-consuming undertaking. One labor organization noted that its accounting personnel last year spent nearly half of the 1,200 hours it spent in preparing the Form LM–2 in converting information from its accrual-based system to a cash basis mode. Several commenters also noted that the IRS accepts reports using the accrual method of accounting.

An international labor organization, the Air Line Pilots Association (ALPA), explained that it uses an accrual system to collect detailed information for its payroll, employee expense reports, member accounts receivable, and flight pay loss. ALPA noted that the current requirement that unions employ the cash method in preparing a Form LM–2 requires time-consuming conversion of ALPA's financial information, preventing it from ever meeting the March 31 deadline imposed by the LMRDA. Another international, the International Brotherhood of Electrical Workers (IBEW), stated that it maintains its books on an accrual basis for two reasons: first, it enables the organization to match revenue and expenses to the proper time period; and second, it enables the organization to comply with accounting rules and to receive an "unqualified" opinion from an independent auditor as to the organization's financial health.

In the Department's 1992 rulemaking, the Department specifically proposed that unions would be required to utilize the accrual accounting method. In response to the comments submitted, however, the 1992 final rule allowed unions the option to utilize either the cash or accrual method of accounting in reporting their finances. This option was rescinded in December 1993. This action was taken in response to comments that only relatively few of the larger unions used the accrual method and to correct the mistaken perception held by some unions that the Department's rule, in practice, was encouraging unions to utilize accrual accounting, a departure from the cash basis method that had been prescribed for reports in the past and the method used by the vast majority of unions. One union commenter on the current rule, however, asserted that the option concept was well thought-out because it recognized that although some unions used the accrual method of accounting, imposing this method on many smaller unions would present a real hardship to these unions because they rely on volunteers, not accountants, to prepare the Form LM–2. As discussed immediately below, this option is indeed available to unions, which may choose to track their finances on a cash basis, accrual basis or some other method of accounting.

Since the 1992 rule was rescinded, the Form LM–2 has, in fact, required that receipts and disbursements be reported on a cash basis, but has also required the reporting of certain information more typically maintained in an accrual-based system (*e.g.*, Schedule 1 "Loans Receivable, Schedule 8 "Loans Payable, Accounts Payable, Mortgages Payable). Thus, requiring a combination of both types of information in one form, which might be characterized as modified cash basis accounting, represents no change from the existing Form LM–2 and was not identified as a change in the NPRM. The statement in the Instructions to the existing Form LM–2 that the form "must be prepared using the cash method of accounting," was dropped, however, as it was not wholly accurate and could be misleading.

As explained in greater detail below, the Department has not proposed to require unions to establish a particular method to account for, and manage, their finances. Unions, for various reasons, may choose to track their finances on a cash basis, accrual basis, a hybrid of the two, or some other method of accounting. As noted by some commenters, the Form LM–2 reporting format requires unions to utilize some elements of both cash basis and accrual accounting. To a large extent, however, that format is driven by the fact that the statute itself requires both types of information. For example, the statement of "receipts and disbursements" required by the LMRDA is basically an accounting of the inflow and outflow of an organization's cash during the fiscal period. Consequently, a "profit and loss" statement prepared on the accrual basis is unacceptable as compliance with the Act since it reflects the income and expenses of an organization in the fiscal period and not the disposition of its cash. *See* 29 U.S.C. 431(b).

In contrast, the statement of "assets and liabilities" required by the LMRDA is essentially an accrual type of statement and provides for reporting all receivables, payables, accruals and deferred items. Consequently, it should be unnecessary for an organization that maintains its records on the accrual system of accounting to change its procedures in order to prepare the statement of assets and liabilities. Preparation of a "cash receipts and disbursement" statement when the accrual method of accounting is used normally requires only an analysis of the organization's cash receipts and disbursements records in order to properly reclassify the necessary cash transactions to conform to the types of accounting classifications represented by like items on the prescribed forms. More importantly, the necessary modifications to either a cash based or accrual based system that may be necessary to comply with the format of the revised Form LM–2 are no different than modifications that labor organizations currently perform to file the existing Form LM–2.

The Department believes it would be inappropriate to dictate the particular system by which a union keeps track of its finances. While some unions may find it easier to use the accrual method of accounting and convert information to complete Form LM–2 items reporting the inflow and outflow of funds, the reporting goals can be achieved without directing all unions to use accrual accounting as the foundation of their financial management systems. Such a mandate is unnecessary and has been rejected in light of the comments that most unions maintain their books on the cash basis. Nor is the Department persuaded that accrual accounting should be mandated because it accords with GAAP. As discussed above, GAAP practices are neither binding nor necessarily appropriate for all aspects of financial reporting, particularly insofar as the operations of not-for-profit entities are concerned. The Department's concern is in ensuring the disclosure of information that satisfies the statutory requirements of the LMRDA in a manner best suited to meet the purposes of the statute, which can be accomplished without requiring a labor organization to use an accounting method that may not be best suited to its overall needs.

### *E. Additional Reforms Considered*

Several commenters suggested that the Department should undertake other reforms, in addition to those proposed. While some comments expressed general support for wide dissemination of information filed with the Department of Labor on the labor organization annual financial reports, others thought that more specific dissemination requirements should be imposed. One commenter suggested that unions be required to post their most recent labor organization annual financial report on union bulletin boards in union halls and on employer bulletin boards reserved for union use in employer workplaces, while another suggested that labor organizations should make their annual financial reports available at their membership meetings. One comment suggested that information reported on the labor organization annual financial reports should be sent by unions to their members by mail or included in newsletters, as well as be made available on the Internet. Finally, one comment urged the Department to implement the provisions of section 105 of the LMRDA, requiring "[e]very labor organization [to] inform its members concerning the provisions of this Act." *See* 29 U.S.C. 415.

Section 205 of the LMRDA provides that the reports filed with the Department under Title II of the Act "shall be public information" and permits the Secretary of Labor to publish any information obtained. *See* 29 U.S.C. 435. Section 208 gives the Secretary of Labor authority to issue rules and regulations prescribing the form and publication of reports required to be filed under Title II. *See* 29 U.S.C. 438. Neither sections 205 and 208 nor any other provision of the Act expressly vest the Secretary of Labor with any authority to require labor organizations to disseminate information filed with the Department of Labor on labor organization annual financial reports at membership meetings, on labor organization websites, in labor organization newsletters or otherwise by mail to the members, or on union or employer bulletin boards. Neither the terms of section 105, nor of any other provision of the LMRDA, vest the Secretary of Labor with any express authority to enforce section 105. *See* 29 U.S.C. 415.

The Department, however, has developed and implemented, with direction from Congress to do so, an extensive system for making available on the Internet the labor organization annual financial reports filed with the Department for the years 2000 and thereafter, as well as reports filed under section 203 of the LMRDA by labor relations consultants who engage in persuader activity and the employers who enter into agreements for such services. *See* 29 U.S.C. 433. Using this system, any member of a labor organization or the general public with Internet access can review all such reports (at *http://union-reports.dol.gov*) except those for the approximately 600 very small labor organizations whose national organizations file summary reports on their behalf pursuant to 29 CFR 403.4(b) because those small unions had no assets, liabilities, receipts, or disbursements during the reporting period.

## III. Responses to Comments on Proposed Changes to Form LM–2

### A. Which Labor Organizations Must File a Form LM–2

### 1. The Filing Threshold

Since 1994, only labor organizations with $200,000 or more in annual receipts have been required to file a Form LM–2; smaller unions are permitted to use the simpler Forms LM–3 or LM–4. Although the Department considered raising the threshold for filing a Form LM–2 in its 2002 NPRM, thus reducing the number of labor organizations affected by most of the changes proposed, it did not propose an increase. The Department did solicit comments, however, on the appropriate level of annual receipts to trigger a Form LM–2 obligation. Some commenters expressed the view that the current threshold is too high and some argued that all unions should be required to file the expanded form, without regard to the amount of their annual receipts. Other commenters argued that the current threshold is too low and should be raised.

Shortly after the LMRDA was enacted in 1959, the threshold for filing the more detailed Form LM–2 was set by the Secretary at $20,000. The threshold was raised by the Secretary in 1962 to $30,000 and again in 1981 to $100,000. If any of these levels were now adjusted for inflation, the amount would be less than the current threshold of $200,000. Nevertheless, the Department has decided to raise the threshold to $250,000, an amount that approximates an inflation adjustment of the current threshold. Although the overwhelming majority (79%) of all reporting labor organizations are currently exempt from filing Form LM–2, changing the threshold to $250,000 will reduce the recordkeeping and reporting burden for approximately 500 labor organizations. The Department will continue its past practice of periodically assessing the appropriateness of the filing threshold to ensure that it is relevant in terms of the current economy.

A number of labor organizations commented that the Department should permit unions to "pass through" funds received during the reporting period like per capita fees collected by local unions for transmission to a national or international labor organization and/or to use net dollar figures in order to avoid meeting the filing threshold. This concern should be alleviated somewhat by increasing the filing threshold to $250,000 but, more importantly, the Department does not agree that the concern is valid. Labor organizations should be accountable for all funds received and in their custody or control during the reporting period. Members who pay dues and per capita fees to their locals have a right to know what action their local took with respect to those funds. Similarly, members have a right to know how much money came into their union during the year, not just the net amount left at year's end.

Several commenters, including the AFL–CIO, cited the situation where a small labor organization with a history of filing either Form LM–3 or LM–4, *i.e.*, one with annual receipts below $200,000, by virtue of an unusual event during the year had receipts boosted to in excess of $200,000. For example, a small union with consistent annual receipts of $50,000 sells a surplus piece of real estate for $200,000, resulting in annual receipts for that year of $250,000. Under current practice, the union would be required to file Form LM–2, and under the new rule it would also meet the Form LM–2 filing level.

In this example, by virtue of a one-time-only event, annual receipts would be quintupled. This union would likely not keep records conducive to providing the kind of details required by Form LM–2—and particularly the details and new schedules envisioned in the revised Form LM–2. In addition, labor organizations with such small annual receipts would be less likely to have electronic recordkeeping than their larger counterparts.

In this situation, if a labor organization lacks the capability of filing electronically, it could invoke the continuing hardship exemption, and thereby be excused from filing electronically for that year. The Department has concluded that providing any other relief is unnecessary and could undermine the purpose of these reforms in situations where transparency and full disclosure are most important. First, union members are likely to be especially interested in how "windfall" funds are handled. Second, if a union's annual receipts meet the filing threshold only because of a one-time event, the union is unlikely to have many other transactions within the reporting period and fewer subject to the disclosure thresholds of the final rule. The union therefore will not face substantial burdens in collecting the information necessary to file a Form LM–2, even though it has not been required to keep track of this information in the past. There is no sound reason to permit a union that has $250,000 in annual receipts to avoid the reporting obligation imposed on all other unions with similar receipts simply because the union has not had similar receipts in other years.

### 2. Intermediate Unions Without Private Employee Members

Three labor organizations—the National Education Association (NEA), the American Federation of Teachers (AFT), and the AFL–CIO—and one individual union member submitted comments on the Department's proposal to adopt the holding of the U.S. Court of Appeals for the Ninth Circuit in *Chao* v. *Bremerton Metal Trades Council, AFL–CIO*, 294 F.3d 1114 (2002), interpreting section 3(j) of the LMRDA. In that case, the court of appeals ruled that an intermediate labor organization that has no dealings itself with private employers and no members who are employed in the private sector may nevertheless be a labor organization engaged in an industry affecting commerce within the meaning of section 3(j) of the LMRDA if the intermediate body is "subordinate to a national or international labor organization which includes a labor organization engaged in commerce." The Department proposed to follow this holding by adding language to the instructions for Forms LM–2, LM–3, and LM–4 clarifying that any "conference, general committee, joint or system board, or joint council" that is subordinate to a national or international labor organization will be required to file an annual financial report if the national or international labor organization is a labor organization engaged in an industry affecting commerce within the meaning of section 3(j) of the LMRDA.

The three union commenters objected to the application of the LMRDA to wholly public sector intermediate bodies pursuant to *Bremerton* as contrary to the statutory language, established case law, and Department of Labor regulations at 29 CFR 451.3(a)(4). Additionally, the NEA and AFT opposed the extension of the LMRDA to wholly public sector bodies through the regulatory process and commented that such an extension should require Congressional action. They further commented that the decision in *Bremerton* does not bring wholly public sector intermediate bodies within LMRDA coverage, and any reference to *Bremerton* should, therefore, be taken out of the new rules where such reference is used to attempt coverage of wholly public sector organizations.

The expanded language in the instructions merely incorporates and restates the language of section 3(j) of the statute. The reference to the *Bremerton* decision clarifies that the Department intends to interpret this language in a manner consistent with that decision. *Bremerton* is the most recent court decision interpreting section 3(j). The Department recognizes that the interpretation of section 3(j) set forth in *Bremerton* represents a departure from previous court decisions and the Department's prior administration of the Act. However, the Department has concluded that the *Bremerton* court's interpretation is the correct reading of the statutory language. Further, neither the Department nor the court has added statutory language or otherwise encroached on Congressional prerogatives here. The court, pursuant to its constitutional authority, interpreted terms contained in the statute, and the Department, operating within its authority to administer the statute, has stated its intention to adopt that interpretation. The stated intent of Congress was to exempt "wholly public sector" labor organizations from the coverage of the Act. The *Bremerton* court found that an intermediate labor organization is not "wholly public sector" and exempt from the Act where it is subordinate to a parent organization that meets the definition of a labor organization engaged in an industry affecting commerce. The Department's regulation at 29 CFR 451.3(a)(4) is not contrary to the *Bremerton* decision when the regulation is read as giving effect to the court's interpretation of the term "wholly public sector labor organization." The Department concludes that none of the commenters provides a persuasive argument for disagreeing with the *Bremerton* court's reading of the statute and therefore will maintain the expanded language in the instructions for the Form LM–2. The expanded language adopting the *Bremerton* court's construction of the statute will also be added to the instructions for Forms LM–3 and LM–4, but since no other changes will be made to those forms, neither the forms nor the instructions for those forms will be reprinted in the appendix.

In its comments, the NEA incorporated by reference the arguments presented by its state affiliates in *Alabama Education Association, et al.* v. *Chao*, No. 1:03CV00253 (D.D.C. filed Feb. 14, 2003). There, the NEA's state affiliates argue that they represent only public employees and are self governing, autonomous organizations affiliated with the NEA, not subordinate bodies within the meaning of section 3(j)(5) of the LMRDA and, therefore, not subject to the LMRDA, even if the NEA is subject. The AFL–CIO, in a comment related to the NEA state affiliates' argument in *Alabama Education Association, et al.* v. *Chao*, cautioned that neither the Department of Labor nor the Ninth Circuit can do away with the statutory limitation of the section 3(j) proviso to entities that are "subordinate" to a national or international union covered by the LMRDA. The AFL–CIO further commented that the proposal to amend coverage language should not be used to preempt pending litigation, and the NPRM preamble should not be used to create an argument in litigation that the Department of Labor's adoption of this statutory instruction is entitled to deference.

The question whether a particular labor organization falls within the *Bremerton* test is not decided by the proposed language of the instructions or the references to *Bremerton* in the NPRM. That coverage issue involves a factual determination that will turn on the application of the statutory terms to the circumstances of each case. While this rulemaking provides a vehicle for making clear the Department's interpretation of the statutory term, after notice and comment, the factual question whether a particular labor organization meets the statutory test applying that interpretation cannot and should not be resolved in this context. The NEA's state affiliates and other entities are free to challenge the application of the *Bremerton* interpretation to their organizations and to pursue any avenues relative to the issue of their coverage under the LMRDA. The proposed language in the instructions and accompanying references are not intended to forestall any such action, but rather to make clear the Department's views regarding the general meaning of the statutory terms.

One commenter mistakenly read the instructions and the preamble language to include state or local central bodies among those organizations that must file. The LMRDA and the Department's regulations at 29 CFR 451.5 make clear that a "state or local central body" is excepted from the definition of labor organization in section 3(i) and the definition of a labor organization deemed to be engaged in an industry affecting commerce in section 3(j). The Department's adoption of the reasoning of the *Bremerton* court does not bring these organizations within the ambit of the LMRDA, either explicitly or implicitly.

An additional comment urged the Department to continue to seek full disclosure from the Washington State Education Association, as state law provided no comparable protection for public sector employees. The Department will seek compliance from all organizations required by the LMRDA to file labor organization reports.

### *B. Itemization of Major Receipts and Disbursements*

#### 1. General Comments Concerning Itemization

The Department received numerous comments concerning proposed Schedules 14 through 19. These Schedules call for individual identification of certain receipts and disbursements for various categories that reflect the services provided to union members. Receipts and disbursements are allocated to Schedules 14 through 19 and are either listed as individual entries or as aggregated entries. Individual (or "major") receipts and disbursements, as well as payments to or from a single entity or individual that aggregate to meet the disclosure threshold, must be reported.

The Department received several comments supporting itemization. Most of these comments expressed general approval for requiring disclosure of financial information in greater detail. A common theme of these comments was a belief that the Department's proposal would increase the accountability of union officials to union members, serve to discourage union corruption, and improve overall union democracy. One comment cited a specific instance in which union officials concealed improper transactions within aggregated disbursements, which could have been prevented (or at least identified) by itemized reporting. Similarly, commenters related well-publicized situations involving union officers who allegedly misappropriated funds as examples of instances where itemization, by allowing members to detect questionable transactions, would have limited the damage to the union and its finances and, perhaps, deterred the individuals involved from breaching the obligations entrusted to them. Other commenters stated that without itemization "and the transparency it brings to union finances "union members have little defense against the potential mismanagement and misappropriation of union funds. Unusual spending patterns or shifts in expenses, as revealed in a Form LM–2, a commenter stated, may tip union members off to fraud and abuse, allowing them the option of disciplining or removing wasteful or corrupt union leaders.

Other comments supported itemization because it replaces broad categories with more useable, informative, and detailed data. These commenters emphasized the members' right and need to know how a union is spending their money to ensure that it is being managed well and spent wisely. Members expressed particular concerns about the lack of information about various categories of expenses, among them political activities, joint labor-management programs, and the transfer of funds to other entities. The Regulatory Studies Program of the Mercatus Center at George Mason University commented, "By increasing the number of classification categories, lowering the dollar level of disclosures, and by potentially increasing the number of people who must participate in a potential fraud, the revised reports * * * should make committing fraud more costly than it is under current disclosure rules."

Many commenters turned to recent corporate finance scandals in describing their general support for greater transparency among institutions, whether governmental, business, or labor organizations. They stated that greed can infect any organization and that disclosure is its best remedy. As noted by some commenters, the fiscal integrity of labor organizations has a profound impact on the financial stability and security of employees. The mismanagement, or failure, of labor organizations can cause major disruptions in work relationships, retirement plans, and overall employee well being.

The Department received voluminous comments opposing itemization and raising a number of concerns about the necessity of reporting this information; potential problems involving adequate accounting systems; possible adverse consequences from disclosing the required information; and a variety of other issues.

Several comments opposed itemization in general as too costly or burdensome because current union accounting systems or practices do not capture all of the information required by the criteria, and that electronic record keeping systems will have to be reconfigured to comport with the revised form. The Department believes the comments overstate the technological difficulties involved in transforming existing accounting systems to accommodate itemization procedures. Preliminarily, union officers and employees will need to study the instructions and forms, and thereby gain an understanding of the new requirements. The Department will launch a compliance assistance initiative that includes an overview of the requirements, a comparison to the old requirements, a tentative schedule of seminars for international, national, intermediate and local unions hosted throughout the country, an email list-serve to provide periodic updates to interested parties, web-based materials that include frequently asked questions, a description of the Form T–1 registration process, and other topics of interest to filers.

Once union officials understand the new reporting requirements, it may be necessary to make some adjustments to their recordkeeping systems. The most important change that should be made immediately involves the tracking of disbursements and "other" receipts to ensure that each disbursement and "other" receipt is allocated to the proper disbursement category with a descriptive purpose. Although some commenters asserted that this is a dramatic policy shift tantamount to imposing a new accounting system, unions have always been required to allocate each disbursement to one or more disbursement categories on the Form LM–2. The revised form alters the categories but not the underlying method of allocating these disbursements. Indeed, there are fewer disbursement categories on the new form. After allocating the disbursement, the union officer or bookkeeper makes a brief entry on the "purpose" for each transaction in a memo field. These sorts of operations are routine within accounting systems; organizations change the way disbursements are classified in the normal course of business.

The AFL–CIO's survey data also suggests that many unions already maintain their records and accounting systems in ways that are readily compatible with the requirements of the final rule. For example, the AFL–CIO's survey data suggest: 59% of national and international unions record expenses by type of activity or functional category; 62% of unions can generate the required itemization detail; 86% of unions do not have trouble downloading information from their account systems into a spreadsheet; 40% of national and international unions have a system of accounts receivable that is immediately compatible with the final rule, and 66% of national and international unions have a system of accounts payable that is immediately compatible with the final rule. Labor organizations that do not currently maintain electronic books, or that use accounting software that cannot be modified to track the data required by the revised form, will experience an increased burden, but as the analysis under the Paperwork Reduction Act indicates in Section V, the burden is, on average, a modest one.

The burden of reporting the individual items required by Schedules 14–19 is minimized by the electronic reporting system, which creates efficiency gains by performing the administrative functions of the reporting system. To this end, the Department has provided technical specifications to assist labor organizations in converting financial data into a form supported by the Department's electronic filing software. The technical specifications contained in the appended Data Specifications Document (DSD) inform affected unions of the various data formats that can be exported into the electronic form. Filers will have the option of exporting itemized data from standard accounting reports in one of several common file formats. There will be a non-recurring burden as the filers create the proper reports, which can then be used in future years. It is important to note that smaller filers that would only report a handful of itemized transactions for the year may choose to complete the form manually through copy-and-paste techniques rather than using the DSD to set up the necessary accounting reports to export the itemized data. As the analysis of the burden associated with making the changes required by the revised form, set forth in Section V, demonstrates, the burdens anticipated by many commenters are overstated.

As explained in Section V, the Department agrees with some of the comments that, even though the Department has received no comments over the years regarding its published assessments of the burden of filing the current Form LM–2, the burden of filing the current form may have been underestimated. The Department has revised its assessment of the burden associated with the current form upward in response to the comments it received in order to improve the estimate of the additional time and cost involved in filing the revised form. Even using these higher estimates and acknowledging that there will be increased costs for reporting labor organizations as a result of these reforms, the Department has concluded that the advantages derived from the more detailed reporting outweigh the extra burden imposed on unions. As noted above, the FASB acknowledges the utility of itemized (or "disaggregated") financial data. FAS No. 117, ¶ 118. By contrast, reporting in general "bottom-line" amounts does not provide the level of detailed information that will effectively answer an interested member's inquiry. Moreover, generalized reporting places the burden on the member to obtain the information from the union, including resort to litigation if the union fails or refuses to disclose the requested information voluntarily. OLMS experience over years of auditing and investigating union financial activities indicates that increased access to information concerning a union's financial picture will enable its members to protect their own interests through more effective vigilance over union funds, and will aid OLMS in future enforcement efforts. Disclosure of basic information about major transactions is the most effective means of providing information to union members who are interested in their organization's financial affairs. Together with reporting receipts and disbursements by functional categories, the proposed rule will provide information that will help ensure that union leadership is acting in the interests of its membership.

The Department disagrees with those comments that suggest itemization will overwhelm interested parties with information. These comments rest on the erroneous premise that an individual seeking information must rely on hard-copy documents to review the Form LM–2. Labor organizations (with few exceptions), however, must file the form electronically. The new procedures provide more detailed, and more accessible, information than the existing system by utilizing the advantages of computer technology. Electronic filing permits the reviewer to focus his or her review using a search engine to guide the inquiry; on-screen (or paper) review of each entry is unnecessary. Further, the current Form LM–2 informs the member only of the aggregate disbursements (or receipts); the member must go through the trouble of obtaining more detailed information from the union concerning the individual transactions in order to find any meaningful information regarding specific receipts and disbursements. Itemized reporting provides the detailed information in a searchable format as an initial matter. Finally, Statement B of the revised Form LM–2 provides aggregate figures for each disbursement Schedule. A member reviewing the revised Form LM–2, therefore, has access to *both* the aggregate and the individual disbursements for each category. Resort to the more detailed information remains at the member's discretion.

In a related vein, one comment contended that the level of detail required by itemization will inevitably result in unintentional reporting errors, "costly criminal investigations" for misreporting, and "prosecutorial abuse." Two comments expressed an additional concern that the errors could be used to prosecute union officers under the LMRDA because the officers must certify the correctness of the reported information. The commenters' suggestion that increased reporting errors may prompt unwarranted investigations and prosecutions is speculative and unsupported by any evidence in the rulemaking record. Moreover, only willful violations, not inadvertent errors, can result in criminal liability. *See* 29 U.S.C. 439.

Several comments argued that itemization imposes a unique reporting standard on unions that no other oversight agency requires and no other entity or organization must meet. The argument is neither accurate nor persuasive. First, as explained in detail in Section II(C), this argument is based upon incorrect assumptions. Second, other agencies do, in fact, require itemized reporting of financial transactions by certain kinds of organizations (for example, the Internal Revenue Service requires itemized reporting of disbursements by Section 527 organizations and the Federal Election Commission requires itemized reporting of receipts and disbursements by federal political committees. Third, reporting practices for a regulated community may vary depending on the particular requirements imposed by various laws. The appropriate standards for financial disclosure by labor organizations must be determined in light of the LMRDA, and not the practices, policies or criteria of other laws. In that vein, the LMRDA sought to address the particular problems posed by labor organization reporting by requiring reports containing "such detail as may be necessary to disclose its financial conditions and operations." *See* 29 U.S.C. 431(b). The fact that other agencies, administering other laws, utilize different reporting criteria and practices is not a valid objection to requiring itemization for purposes of the LMRDA.

### *2. Itemization of Confidential Information*

One of the most significant concerns expressed by many comments concerned the potential harm to union interests in disclosing confidential financial and personal information required by Schedules 14–19. Commenters contended that such detailed disclosure could adversely affect union interests and activities that should be kept confidential as a matter of law or public policy. The comments focused principally on disclosure of the information to individuals or organizations outside the union that might use the information to impede legitimate union activities or otherwise harm union interests. The comments cited a variety of examples in which such itemization could be detrimental to the union itself or other organizations and individuals involved with the union and its activities: (i) Identifying individuals paid by the union to seek employment with a non-union employer in order to assist the union in organizing its workforce; (ii) revealing "job-targeting" or "market recovery" programs; (iii) discouraging the union from seeking legal advice if fee disclosure reveals the attorney-client relationship; (iv) violating legal rules that limit discovery about experts in litigation (*e.g.*, FRCP 26(b)(4)(B)); (v) violating confidentiality agreements in settlements; (vi) revealing information about union organizing campaigns, political activities and legal strategies; (vii) affording tactical advantages to service vendors and opposing parties in contract negotiations; and (viii) endangering the lives of foreign labor activists supported by the union. In some cases, the comments viewed disclosure as the direct cause of a potential harm; in other cases, the comments contended that disclosure may provide clues from which an adverse party could educate itself about union activities, relationships, and strategic goals. Some commenters made similar arguments with respect to the proposal to require itemization of receipts.

The Department agrees that there may be some situations in which the potential harm to union interests occasioned by disclosing certain types of confidential information warrants an exception from the requirement to provide itemized information regarding major receipts that are not reported elsewhere on the form and major disbursements. These situations are likely to be far more limited, however, than suggested by some comments. Unions are not required to provide non-financial information regarding organizing strategy, notes of meetings, or names of volunteers on a Form LM–2. Rather, they are required only to provide certain information regarding financial transactions. Generally speaking, the information disclosed will indicate simply that a disbursement was made to, or money received from, a particular individual for a purpose described by the union. Although there may be certain consequences as a result of such disclosure—as where, for example, a union indicates that a payment has been made for "job targeting" that some might consider inappropriate—such consequences must be both serious and beyond the scope of consequences intended by the LMRDA to warrant consideration of overriding the interest in disclosure embodied in that statute.

The Department has decided, however, that commenters have made a persuasive argument that certain information need not be made available to the general public and that disclosure could be sufficiently adverse to union interests that the modification described below is warranted to permit labor organizations to protect certain confidential information on certain schedules. Specifically, the Department has concluded that this special procedure should be made available for the following types of information:

- Information that might identify individuals paid by the union to work in a non-union facility in order to assist the union in organizing employees, provided that such individuals are not employees of the union who receive more than $10,000 in the aggregate in the reporting year from the union (in which case the statute requires that it be reported, *see* 29 U.S.C. 431(b)(3));
- Information that might provide insight into the reporting union's organizing strategy; and
- Information that might provide a tactical advantage to parties with whom the reporting union or an affiliated union is engaged or will be engaged in contract negotiations.

With respect to these specific types of information, if the reporting union believes that itemized disclosure of a specific major disbursement or aggregated disbursement would be adverse to the union's legitimate interests, it may report the disbursement in the "All Other Disbursements" portion of either Schedule 15 (Representational Activities) or Schedule 19 (Union Administration) on the Detailed Summary Page. The union must also enter a notation in Item 69 ("Additional Information") identifying the Schedule(s) from which the union excluded any itemized receipts or disbursements because of an asserted legitimate interest in confidentiality.

A union member, however, has the statutory right "to examine any books, records, and accounts necessary to verify" the union's financial report if the member can establish "just cause" for access to the information. 29 U.S.C. 431(c); 29 CFR 403.8 (2002). In the Department's view, any exclusion of itemized disbursements from Schedules 15–19 would constitute a *per se* demonstration of "just cause" for purposes of the Act. Consequently, any union member (and the Department, which need not establish "just cause"), but not a member of the public, upon request, has the right to review the undisclosed information that otherwise would have appeared in the applicable Schedule if the union withholds the information in order to protect confidentiality interests. The Department has added to the final rule a provision that clarifies the Department's interpretation of the statute in light of the specific modification of the proposed itemization requirement in response to the numerous comments received in this regard.

Some courts have held that a finding of just cause "requires balancing the [union's] financial interest in nondisclosure against the injury to the interest of [a requesting union member] and other union members in determining how funds held in trust for them are being spent." *Mallick* v. *Int'l Bhd. of Elec. Workers, supra*, 749 F.2d at 785. In the Department's view, this result is not required by the statute and is, in fact, inconsistent with the statutory mandate that any member be permitted to examine records to verify the union's financial report merely upon a showing of just cause, without regard to any competing interest of the union. Accordingly, language has been added to § 403.8 to make clear the Department's view that the fact that a union has chosen not to disclose the identity of an entity that has received a disbursement of $5,000 or more, on the ground that disclosure to third parties might be adverse to the union's interests, is just cause for union members to inquire as to the identity of the recipient or donor and the reason for the transfer of funds. The statute requires no additional showing to require the union to permit a member to examine the underlying records.

Further, a reporting union will also be permitted to report amounts received or disbursed pursuant to a settlement that is subject to a confidentiality agreement, or that the union is otherwise prohibited by law from disclosing, in the "All Other Receipts" or "All Other Disbursements" portion of the applicable Schedule on the Detailed Summary Page. Similarly, the Department agrees that in the extremely rare situation where disclosure would endanger the health or safety of an individual, the information need only be reported in the "All Other Receipts/Disbursements" portion of the applicable Schedule. In these circumstances, non-itemized reporting of the information, by itself, will not constitute just cause for additional disclosure.

Finally, some commenters asserted that disclosure of itemized information regarding benefits provided to individuals, such as, for example, burial expense benefits, would invade the privacy of those individuals. This argument, while persuasive, affects only disbursements that may properly be reported in Schedule 20 (Benefits). Accordingly, as discussed below, the Department has decided to retain the previous Schedule for Benefits, rather than the one proposed in the NPRM, and to continue to permit labor organizations to report these disbursements only in the aggregate.

The Department believes that the modified disclosure procedures for confidential financial information satisfactorily address the privacy concerns raised by the comments. The comments focus primarily on the potential harm in disclosing a union's confidential information about a particular disbursement to the general public, especially individuals and entities whose interests may conflict with the union's interests. The union must report the disbursement in some form. The modified procedures enable the union to withhold the confidential information from general public disclosure while complying with the Act's reporting requirements. The union, however, may not withhold the information from its members because they have a statutory right to examine the information underlying the reported data if "just cause" exists.

Unless disclosure is prohibited by law or would endanger an individual, the concerns justifying the decision to permit nondisclosure of specific information derive from an interest in preventing members of the public, other than union members and the Department, from gaining access to that information. In the Department's view, withholding on these grounds information that should otherwise be disclosed in the Form LM–2 is a sufficient basis for "just cause." The union's concerns regarding disclosure to third parties arise outside the context of the members' right to information. In order to protect both the union's and its members' competing interests, recognizing that the failure to report specific information for a major receipt or disbursement constitutes "just cause" for examining withheld information in these circumstances, together with the aggregate reporting of disbursements for benefits, strikes an appropriate balance.

Unions will have ample opportunity to argue that the Department's interpretation of the "just cause" provision of the statute (29 U.S.C. 431(c)) is in error before it discloses information that it has reported only in the non-itemized total. Unless a union voluntarily discloses information when it is requested by a member, the member will still be forced to seek enforcement of the right to this information in federal district court and the union will be able to argue to the court that the Department's interpretation of the statutory requirement is incorrect. Even if the court agrees that use of this reporting procedure is sufficient to support a finding of just cause, the union may argue that it has a legitimate concern that a union member may further disclose the underlying records, or information about the underlying records, in a manner detrimental to the union. In these circumstances, there is nothing in the revised regulation or forms that would prevent the union from seeking a protective order or some other means of protecting its interests.

The Department disagrees with the comment that a union's compelled disclosure of information relating to legal fees associated with an organizing campaign would improperly intrude upon the union's attorney-client privilege. This privilege does not generally extend to the fact of consultation or employment, including the payment and amount of fees. *See McCormick on Evidence*, § 90, (5th ed. 1999, updated 2003). Further, while the privilege might protect the identity of a client when sought from an attorney, a client can be required to divulge the name of its attorney, which would be relevant here. *Id.* Similarly, the Department has concluded that the rule that limits discovery about experts in litigation to "exceptional circumstances" is not relevant, in that the language of the rule protects the "facts known or opinions held" of the expert, which would not be revealed in a Form LM–2. *See* FRCP 26(b)(4)(B). Nor is the mere fact that a disbursement has been made likely to reveal a union's legal strategies. Further, to the extent that a payment to an attorney or expert can meet the standards for non-itemized disclosure—that is, for example, because disclosure of a payment to an attorney would somehow provide a tactical advantage to a party with whom the reporting union is engaged in contract negotiations—a union may utilize those procedures. The Department does not agree that it is necessary to permit unions to avoid the itemized reporting obligation simply because disclosure might reveal the union's political activities. Indeed, as demonstrated by the comments discussed in Section C (4), such disbursements are likely to be of particular interest to union members and no convincing argument has been advanced regarding any legitimate need to keep such information confidential.

Other comments objected to reporting a recipient's address because the information was unnecessary or impinged on the recipient's privacy through its publication. The Department disagrees. The schedules only require the disclosure of business addresses, if available, but at least the recipient's city and state. This information is necessary for verifying the recipient's existence and identity. The privacy concern is questionable given the public availability of most addresses for individuals and business entities on the Internet and in telephone books. Finally, labor organizations may resolve any serious privacy concerns with respect to the types of information specified above by exercising their option to report the disbursement in question in the "All Other Disbursements" entry for the schedule on the Detailed Summary Page. While concealing the identity of individuals or entities receiving disbursements may raise questions concerning the disbursement's legitimacy, such questions are precisely the reason that labor organizations will be required to indicate in Item 69 ("Additional Information") that they have used this procedure and that use of this procedure will constitute "just cause" for union members who request access to the underlying information.

### 3. Itemization of Major Receipts

The Department proposed changes to Schedule 14 to require additional information for reporting "other receipts" in the reporting period. "Other receipts" consist of all receipts that the labor organization does not report elsewhere in Statement B of Form LM–2. Specifically, the Department proposed requiring a labor organization to identify all the other receipts that are "major" receipts. A "major" receipt is either an individual receipt of $5,000 or more, or the aggregate receipts from an individual source over the reporting period totaling $5,000 or more. Each such receipt must be listed by payee with the following information: the name and address of the entity providing the receipt; the type of business or job classification of the entity; the purpose of the receipt; the date of the receipt; and the amount of the receipt.

A variety of comments addressed the proposed $5,000 threshold for "major" receipts. Some comments considered the threshold too high because $5,000 allows a margin within which union officials may still commit financial improprieties, and prevents union members from reviewing the smaller amounts for potential improprieties, *i.e.*, complete transparency for union finances. The comments recommended thresholds ranging from zero to $2,000 as a means of obtaining greater (or complete) information about a union's receipts. Other comments considered the threshold too low. The majority of these comments recommended $25,000 as an appropriate figure; others suggested basing the threshold on a percentage of the union's receipts (the higher of either 4% or $15,000, or a level related to the GAAP concept of materiality). A related recommendation applied a graduated threshold that increases with the increase in a union's income. In general, the proponents of higher thresholds contended that the $5,000 figure results in burdensome reporting requirements and excessive detail.

The Department believes that $5,000 is an appropriate threshold for reporting "other" receipts. The comments underscore the competing interests in setting a reasonable figure. Setting the threshold lower (or eliminating it entirely) increases the number of receipts that must be reported, which correspondingly increases the information available for inspection. A lower threshold, however, also would increase the burden, particularly for aggregated receipts from individual sources. Raising the threshold would reduce the reporting burden, but it also would reduce the financial information captured for review and thereby undermine the goal of transparency. While a strong argument could be made that all disbursements are significant and should be itemized, the Department concludes that some threshold must be used that accommodates both the purpose behind the disclosure of such information and the concerns about the burden of tracking and reporting the information. The $5,000 threshold strikes a balance between the opposing viewpoints. Full-time workers who were union members had median usual weekly earnings of $740 in 2002. *See Union Members in 2002,* Bureau of Labor Statistics News Release (USDL–03–88) (*http://www.bls.gov/news.release/union2.nr0.htm*). Thus, it is reasonable to assume that to union members, $5,000 represents a significant amount of money. A receipt (or aggregated receipts from an individual source) in this amount may reasonably attract interest in the payment's source. The Department will continue to be mindful of the need for any future adjustment in the threshold for itemization in order to ensure that the information reported is meaningful.

The Department rejects the suggested use of percentage-based thresholds rather than defined dollar amounts. A percentage-based threshold will vary annually depending on the figure (*e.g.*, annual receipts) from which it is derived. This figure cannot be determined until the close of the fiscal year. In any given year, moreover, the base figure itself may be controversial if the Department and the union disagree as to the monies that should be included in that figure. A percentage-based threshold is therefore unstable and more difficult to enforce. A defined dollar threshold provides an unequivocal and predictable standard by which each union may determine whether a receipt must be reported as a major receipt, as well as one that members may use with ease and certainty in reviewing the Form LM–2. Some commenters recommended that the Department index the threshold annually for inflation. The Department disagrees for the same reason it rejects the use of a percentage-based threshold: adopting a figure that is subject to annual fluctuation creates an unpredictable standard. The Department believes all parties will benefit from a defined standard that applies to all unions. The Department also rejects the use of a graduated threshold linked to union income. This approach suffers from the same defects as percentage-based thresholds and thresholds indexed to inflation, discussed above. Furthermore, a single standard unrelated to union income promotes the purposes of the LMRDA. Although the economic significance to the union of $5,000 may vary with the size of a union's income, the interest of the membership in having access to a broad array of information concerning the sources and uses of union finances, and in the detection and deterrence of fraud, remains constant.

The proposed Schedule 14 requires a union to report aggregated receipts from each individual source if the total amount received from the individual source is $5,000 or more. Some comments opposed aggregation because tracking each receipt throughout the fiscal year to determine whether all receipts from a specific source ultimately reach the threshold is burdensome. The Department believes that aggregation of receipts is appropriate. In terms of its interest to a union member, there is no difference between a single $5,000 (or more) receipt from one source and several receipts from one source totaling $5,000 or more. Consequently, reporting aggregated receipts is equally important in terms of achieving transparency for a union's financial picture.

Despite the concerns expressed by numerous commenters, tracking multiple receipts from a specific source throughout the fiscal year will not impose unreasonable additional burden on a reporting union. The revised form alters the categories but not the underlying method of allocating these disbursements, and, indeed, reduces the number of disbursement categories. After allocating the disbursement to the proper category, the union officer need only make a brief entry on the "purpose" for each transaction in a memo field. These sorts of operations are routine within accounting systems. As demonstrated in the Paperwork Reduction Act Analysis, in Section V, the cost of maintaining sufficient information to permit the aggregation of major receipts not reported elsewhere from, and disbursements to, a single entity over the course of the year, combined with all of the other changes as a result of this rule, were estimated in order to arrive at a realistic assessment of the overall cost of these reforms. Balancing this cost for reporting unions against the benefits for union members, and for unions themselves, resulting from increased transparency—including the enhancement of the ability of members to fully participate in the democratic governance of their unions and the deterrent value of disclosure in preventing mismanagement and misappropriation of union funds—the Department has concluded that itemization, to which only a portion of this cost is attributable, is not only a worthwhile, but an essential, element of this reform.

### 4. Itemization of Major Disbursements

The Department also proposed to require labor organizations to report "major" disbursements in specified categories. A "major" disbursement is either an individual disbursement meeting the threshold-reporting amount or a series of payments to an individual that, in the aggregate, reach the threshold, in a single category. The Department requested comments on the appropriate threshold for a "major" disbursement, proposing a $2,000–$5,000 range. The Department also requested comments on whether individual disbursements among different categories should be aggregated to reach the threshold.

The Department received numerous comments concerning the appropriate threshold for itemizing disbursements on the various Schedules. Several comments recommended setting the threshold in the $200–$500 range to increase the amount of information about disbursements that the unions must disclose; one comment suggested setting the threshold at zero for the same reason. Conversely, many comments criticized the proposed threshold as too low. Several comments expressed general opposition but did not provide a specific alternative. Commenters that did propose an alternative threshold typically recommended using a $25,000 figure. A few comments suggested indexing the threshold to some other figure (*e.g.*, total assets, disbursements or annual revenues) to establish a floating threshold linking it to the union's size or financial activity. As with itemization of "other" receipts, the proponents of higher thresholds contended that a lower baseline would result in burdensome and excessive detail.

The Department has decided to adopt $5,000, the highest proposed amount, as the threshold for itemizing disbursements. As with the "other" receipts threshold, the fundamental issue involves a balancing of competing interests. Advocates of a low (or no) threshold emphasized the need for transparency of union finances; by lowering or eliminating the threshold, the union must divulge a greater amount of financial information. Ultimately, greater transparency enhances the deterrence of union financial misconduct and provides union members with more knowledge about the union's activities, regardless of any potential financial mismanagement. Greater transparency, however, also involves a greater burden on the unions in terms of reporting. Proponents of a higher threshold focused on this aspect, and urged the Department to set a high standard, *e.g.*, $25,000. After consideration of both viewpoints, the Department believes that a $5,000 threshold strikes the proper balance between the benefits and costs of itemization. First, it is plain that virtually any disbursement is significant in that it provides information on how the union is being run, and provides a potential avenue for fraud. Second, the Department has concluded that the threshold should be set at an amount that will, in effect, establish a uniform standard for determining that a particular transaction, or set of transactions, is reportable. Third, the threshold must accommodate the concerns about the burden of tracking and reporting the information. The Department will continue to be mindful of the need for any future adjustment in the threshold for itemization in order to ensure that the information reported is meaningful. Several comments recommended using indexed thresholds rather than defined dollar amounts. The comments contended that indexed thresholds provide a more accurate basis for determining whether a disbursement is significant in light of the union's overall level of outlay. Two comments merely suggested adopting an indexed threshold as a general proposition. Other comments identified specific alternative formulae: 5% of total union assets; 5% of total disbursements; or a percentage based on the GAAP concept of materiality.

The Department rejects the indexed threshold approach because it does not provide a desirable level of certainty for the reporting community. An indexed threshold will vary annually depending on the base figure from which the threshold is derived. This figure cannot be determined until the close of the fiscal year. In any given year, moreover, the base figure itself may be controversial if the Department and the union disagree as to the monies that should be included in the base figure, complicating a union's ability to comply with, and the Department's ability to enforce, the reporting requirements. Any disagreement over the base figure will necessarily affect the indexed threshold and disrupt the reporting of disbursements. Thus, a figure that is subject to annual fluctuation creates an unpredictable standard. A defined dollar threshold provides an unequivocal and predictable standard by which each union may determine whether a disbursement must be reported. Although the economic significance to the union of $5,000 may vary with the size of a union's income, the interest of the membership in having access to a broad array of information concerning the sources and uses of union finances, and in the detection and deterrence of fraud, remains constant.

The proponents of an indexed threshold or a materiality standard premised their arguments on the belief that a bright line threshold will require reporting of immaterial disbursements. As explained above, the Department's adoption of a $5,000 threshold is based in large part upon the view that receipts and disbursements of that amount are significant to union members. Further, the Department does not believe that the GAAP's test for materiality is persuasive in this context. As a commenter noted, unlike commercial entities, which are accountable based on their profit or loss, labor unions are accountable in terms of the stewardship responsibilities of their officers. Consequently, the use of a sum that would have little effect on an entity's viability may be safely ignored by an investor who cares only for return on investment, but may be of considerable interest to a union member when spent by his or her union, as the union member's interest extends well beyond a concern with the union's bottom line, to the furtherance of its overall mission. A materiality standard would not give sufficient weight to these non-economic concerns, for a union member is interested not solely in the funds themselves, but the activities of the union. See Statement of Financial Accounting Concepts No. 2 (SFAC No. 2), ¶¶123–132. Further, adoption of the vague materiality standard as the threshold for itemization would require unions to obtain substantial professional assistance, thus increasing the burden on the labor organization. *See id.*

A few comments opposed reporting aggregated disbursements to a single entity or individual if the total amount meets the threshold because the union would have to track each disbursement through the fiscal year to determine whether the aggregated amount meets the threshold at the end of the year. Other comments treated aggregation as part of itemization and opposed both requirements because they perceived the entire reporting process as imposing burdensome and costly compliance requirements; providing too much information to be useful; imposing a unique and more rigorous standard on labor unions than applies to any other organization; and requiring significant and costly changes to the union's current accounting system.

With respect to tracking minor (less than $5,000) disbursements through the fiscal year, the Department does not believe the comments identify a substantial basis for abandoning the aggregation principle. Once the union installs or modifies its accounting software to appropriately chart each disbursement, tracking every disbursement regardless of amount will not be burdensome. Indeed, unions already must track every disbursement, and must know the type and amount of each disbursement, in order to report them in the appropriate aggregate amounts for each category on the existing Form LM–2. Furthermore, the advantages of aggregation offset any additional burden from tracking all disbursements. Aggregation denies the incentive to break up a "major" disbursement to a single entity or individual in order to avoid the threshold for itemizing the payment to circumvent the reporting requirements of the statute. Aggregation therefore provides a more accurate picture of a union's disbursements because it focuses on the total amount of money the union pays a particular entity or individual, rather than only the "major" disbursements. Given the benefits of aggregation and the fact that unions are already required to track each disbursement, the Department rejects the position that aggregation will be overly burdensome by requiring the union to track all disbursements, including those that ultimately will not be reported as itemized payments.

The Department invited comments on whether to require itemization of disbursements to an individual or entity that, in the aggregate, total less than the threshold amount in a particular Schedule once the threshold has been reached either in another Schedule or in a combination of Schedules. The comments reflected little or no support for aggregation among the Schedules. Although virtually all disbursements are significant, cross-Schedule aggregation would perceptibly increase the burden on unions, as it would require an additional modification to the union's accounting programs or procedures, and would require internal accounting reports to be generated for all payees under all Schedules, rather than permitting more focused inquiries on a Schedule-by-Schedule basis. As noted elsewhere, the Department believes that the $5,000 threshold strikes a balance between the benefits of transparent financial disclosure and the burdens caused by detailed reporting. The most effective means of preserving this compromise in the context of categorical reporting is to apply the threshold to each individual Schedule. Further, each Schedule reflects the distinctiveness of the disbursements in that particular category. If disbursements to an entity or individual in a particular category are minor as measured by the threshold for reporting, then the union should not have to itemize those disbursements (and all other categories of disbursements) simply because dissimilar disbursements in another category are comparatively more substantial and do meet the threshold. Disbursements to an entity or individual must therefore reach the threshold for each Schedule before a union must itemize the disbursements attributable to that specific category. Meeting the threshold for any one Schedule will have no effect on the obligation to itemize disbursements for any other Schedule. This approach not only reduces the overall reporting burden, but also preserves the distinction among the various categories of disbursements established by the Schedules.

The Form LM–2 requires the union to provide the following information for each itemized disbursement in Schedules 15–19: The recipient's name and address; the recipient's business or job classification; the purpose or reason for making the disbursement; the date on which the union made the disbursement; and the disbursement's amount. The Department received numerous comments objecting to reporting this information. A few comments expressed specific concerns about the difficulty in tracking and recording all of the required information for credit cards, *e.g.*, the date of payment (rather than charge), and the full name and address of the recipient. In this context, one union stated that the proposed treatment of credit cards, which requires that each vendor paid with a credit card be treated as a separate disbursement, is an example of a new burden that the Department's analysis simply ignored. The union also noted that this recordkeeping requirement was far from a standard business practice. Although another union noted that the proposed changes in reporting expenses paid by credit card would vastly increase the number of individual transactions that must be entered, processed and reported. this union stated that it currently follows standard business practices and divides the charges that are paid with a credit card into separate accounting entries for each underlying type of expense and responsible department. The union also noted that any credit card charge that is required to be reported as a disbursement to an individual officer or employee (per the instructions for current Schedules 9 and 10) is coded so that information is available for the current Form LM–2 report. As noted by the preceding comment, unions are now required to break out credit card disbursements by category on the current form, rather than simply treating the payment as a transaction solely involving the creditor bank. To the extent any union may have misapprehended this requirement, the revised Form LM–2 makes this point explicitly.

Another union commented that many credit card transactions involve plane tickets or hotel bills and frequently have charges issued when a trip is booked and a credit issued if the trip is cancelled or changed and that the charges and credits may appear in different monthly statements—sometimes in amounts that are not exactly the same. The union stated that it is not clear from the proposed instructions if the Department intends that such charges and refunds be matched or reported separately. Such amounts must be tracked in the current and revised Form LM–2, as they constitute receipts and disbursements. The method by which these amounts should be tracked is set forth in the instructions. Otherwise, as the union itself noted, if the transactions are reported without any attempt to match them, anyone trying to read and understand the report will find it virtually impossible to calculate the amount of true expenses.

The Department recognizes that filers will not always have the same access to information regarding credit card payments as with other transactions. Filers should report all of the information required in the itemization schedules that is available to the union. For instance, in the case of credit card transactions for which the union's receipts and monthly statements do not provide the full legal name of a payee and the union does not have possession of any other documents that would contain the information, the union should report the name as it appears on its receipts and statements. Similarly, if the union's credit card receipts and statements do not include a full street address, the union should report as much information as is available, but no less than the city and state. A labor organization may choose to report either the date of the charge or the date of the payment for a credit card transaction as long as the method of reporting is consistent throughout the form.

The Department has considered the comments that assert that an unreasonable burden will be incurred by the filers in recording each transaction in their recordkeeping systems, but is not persuaded by them. The burden is similar to the burden already imposed by the current Form LM–2 reporting requirements. The current Form LM–2 requires unions to track all credit card transactions to determine whether each transaction must be reported on one of the disbursement schedules or elsewhere in the report. The current form does not treat a payment to a credit card company as a single disbursement. For instance, a single payment to a credit card company may include amounts that must be reported in "Disbursements for Official Business" in column (F) of Schedule 9, "Other Disbursements" in column (G) of Schedule 9, and "Office and Administrative Expenses" on Schedule 13. This has always been a requirement. Many credit card companies have made it easier to track information regarding vendors for specific charges by allowing their customers to download the contents of monthly statements or individual transactions electronically via the Internet. Once these transactions have been incorporated into the union's record keeping system they can be treated like any other transaction for purposes of assigning a description and purpose.

### *C. Disbursement Schedules 14–19*

#### 1. Reporting by Functional Category

The Department received a large number of comments on its proposal to require unions to report their disbursements by defined categories based, in part, on a grouping of functional activities performed by a union, its officers, and employees. The Department proposed to include eight reporting categories on the Form LM–2: (1) Contract negotiation and administration, (2) organizing, (3) political activities, (4) lobbying, (5) contributions/gifts/grants, (6) general overhead, (7) benefits, and (8) other disbursements. Almost all the national and international unions that submitted comments addressed this issue, as did most of the trade associations and public interest organizations. A number of local union officials and members submitted comments, as did many "agency fee payers" (and other individuals who did not indicate whether they worked in units represented by unions).

The Department received several comments from trade associations, public interest organizations, union members and others in support of the proposal. They asserted that the proposed changes in reporting requirements are necessary to allow members and potential members to better understand the operation of particular unions and to make informed choices about whether to join, or retain their membership in, these unions. They stated that the proposed Form LM–2 would permit a member to determine the union's priorities and whether they accord with the member's own priorities and those of the general membership. The same information would inform individuals who may be considering voting for or joining a particular union. Several commenters also expressed the view that functional reporting would better enable members, the Department, and the public to uncover any improper use of union funds and deter union officials or employees from embezzling or otherwise making improper use of such funds.

Although some commenters stated that the proposed changes would impose some burdens on unions, these costs, in their opinion, are outweighed by the gain in transparency. Today's electronic recordkeeping systems, in one commenter's opinion, make it possible for labor unions to provide a wealth of financial information with minimal burden. The commenter also stated that the burden would decrease once unions learn of the need to code transactions in ways that fit the reporting categories.

A number of labor organizations stated that the proposed system, if adopted, would entail very substantial burdens and costs to the union without significant gain, if any, in informing union members about the operation of their union. A few commenters indicated that there would be severe practical problems posed by the need to "code," by function, virtually all the union's financial transactions, which they characterized as a burdensome and time-consuming undertaking. Union commenters asserted that they lack the present capability to maintain their records in a way that would allow them to meet the proposal's requirements. The Department finds these contentions unpersuasive. Unions have always been required to allocate each disbursement to a category on the Form LM–2. The revised form alters and reduces the number of categories, but not the allocation process. Accounting software will need to be adjusted to reflect the revised categories, but these sorts of operations are routine within accounting systems and do not present an unreasonable burden. One union commenter noted that long distance charges and utility payments, under the revised rule, must be allocated across multiple functional schedules and that such a process would pose a significant burden. This commenter has failed to note, however, that these telephone and utility payments would have to be coded to a category under the existing form, and further classified by general groupings or bookkeeping categories.

Several labor organizations acknowledged that they already categorize their activities, including disbursements, by functional category. Some explained that they do so in order to comply with Beck, but others explained that functional reporting is a useful financial management tool. Still others said that they categorize for the functions reported on the current form. At the same time, however, some commenters explained that even with sophisticated functional accounting systems in place, it would be difficult for unions to program their systems to meet the Department's proposed requirements. As demonstrated in the Section V, in the Paperwork Reduction Act analysis, the Department has considered these burdens and determined that the burden is reasonable.

The AFL–CIO stated that the Department's proposal would force each union to conform its operations to the manner in which the Department assumes all unions operate or should operate. In this connection, some of the unions state that the Department's proposal misapprehends the way in which unions conduct their affairs. Many unions argued that the Department's proposal represents the first time that unions have been required to collect and report information by functional categories.

Several commenters expressed concern that the proposal, in spite of the burden and expense it would impose on unions, would fail to achieve its goal of better informing members about union finances and operations. As put by one commenter, the proposal creates artificial and misleading categories of disbursements that will overwhelm a member with a deluge of detail, not enlighten him. These comments rest on the erroneous premise that an individual seeking information must sort through a paper submission to review the Form LM–2. Electronic reporting permits a union member to focus his or her review using a search engine to guide the inquiry; on-screen (or paper) review of each entry is unnecessary. Further, the current Form LM–2 informs the member only of the aggregate disbursements (or receipts); the member must go through the trouble of obtaining more detailed information from the union concerning the individual transactions in order to find any meaningful information regarding specific receipts and disbursements. Itemized reporting provides the detailed information in a searchable format as an initial matter. Finally, Statement B of the Form LM–2 provides aggregate figures for each disbursement Schedule. A member reviewing the revised Form LM–2, therefore, has access to both the aggregate and the individual disbursements for each category. Resort to the more detailed information remains at the member's discretion.

Instead of putting unions to the burden and expense of creating the detail required by the Department's proposal, one union expressed the view that the Department should rely on a union member's ability to vote out officials who are pursuing an unpopular agenda, not by imposing additional paperwork requirements. Another commenter suggested that the Department could achieve its goal by permitting unions to allocate their expenditures, based on the estimates of its officers and staff, and thus dispensing with the need to exhaustively "account for every sheet of paper, every pen and pencil, etc." The Department has considered these proposals and has determined that they would not effectively provide an adequate amount of reliable information to union members concerning the union's financial operations and conditions. The revised reporting requirements will enhance union democracy, by providing members with information needed to cast an informed vote. In addition, the suggestion that unions should be allowed to allocate disbursements by estimate would necessarily produce reports of questionable accuracy.

One union stated that the Department could achieve its goal without such drastic changes in the requirements by using the methodology in the current Form LM–2. In its view, the Department could have taken the "natural categories" on the present Form LM–2 and divided them into natural "subcategories," or it could have developed schedules similar to those presently required for "Office and Administrative Expenses" or "Benefits." While such revisions would still involve reporting disbursements in the aggregate, members would have the right under Section 201(c) of the LMRDA, 29 U.S.C. 431(c), to obtain more detailed data directly from their union. The Department rejects the suggestion that unions should be allowed to design their own functional reporting categories or add categories to those prescribed by the Department. As explained by the FASB in the Qualitative Characteristics of Accounting Information, at ¶ 16, not even the FASB expects "all its policy decisions to accord exactly with the preferences of every one of its constituents."

> Indeed, they clearly cannot do so, for the preferences of its constituents do not accord with each other. Left to themselves, business enterprises, even in the same industry, would probably choose to adopt different reporting methods for similar circumstances. But in return for the sacrifice of some of that freedom, there is a gain from the greater comparability and consistency that adherence to externally imposed standards brings with it. There also is a gain in credibility. The public is naturally skeptical about the reliability of financial reporting if two enterprises account differently for the same economic phenomena.

Statement of Financial Accounting Concepts No. 2 (SFAC No. 2), ¶ 16. On this point, the FASB also explained:

> Information about an enterprise gains greatly in usefulness if it can be compared with similar information about other enterprises and with similar information about the same enterprise for some other period or some other point in time. The significance of information, especially quantitative information, depends to a great extent on the user's ability to relate it to some benchmark.

Id., ¶ 111. Further, a union member's statutory right, under Section 201(c) of the LMRDA, to examine records underlying the report is a complement to, but does not supplant, a union's statutory duty to report. In light of the comments from union members concerning the difficulties members have faced in obtaining review of these records, the Department has determined that altering the categories, rather than merely relying on Section 201(c), would more effectively further the transparency goals of the LMRDA. See 29 U.S.C. 431(c).

The Department does not agree with the assertion that the better course is to simply disaggregate the categories in the existing Form LM–2 to effect more detailed reporting. In response to specific comments, the Department has combined two proposed categories ("Contract Negotiation and Administration" and "Organizing") into a single schedule entitled "Representational Activities," added a category entitled "Union Administration," combined the proposed categories for "Political Activities" and "Lobbying" into a single schedule, and eliminated the category entitled "Other Disbursements." The categories that remain are tailored to reflect the activities performed by unions, and will allow union members to readily gauge whether the union is committing its resources in the sums and proportions they consider appropriate. Requiring itemization of major disbursements within the current categories would not serve this purpose.

Union commenters faulted the proposal for failing to address the Department's prior position, articulated in 1993, that functional reporting imposed a very substantial burden on unions without significantly advancing a member's understanding of his or her union's operations and finances. There is no merit to the assertion that the Department's proposal failed to address the Department's earlier position. The NPRM described the Department's rulemaking efforts in 1992 and 1993; its discussion addressed the same basic points that were the focus of the 1992 and 1993 rulemaking and outlined the reasons why the Department's current proposals are appropriate. The NPRM also identified aspects of the proposal that differ from the 1992 final rules, thereby providing the public with a full exposition of the Department's position and its views on the various points addressed in 1992 and 1993.

The commenters correctly noted that the Department's current proposals resemble the views expressed in support of the Department's 1992 final rule more closely than the later concerns that led to the Department's reconsideration of functional reporting and the rescission of the final rule. Although the 1993 rulemaking identified some perceived problems with the 1992 final rule, which the Department addresses in the instant rulemaking, the tension between the positions was based largely on policy assessments as to the relative utility and burden associated with the change in reporting requirements. While the Department does not hold the same views on this issue as it did in 1993, the statute provides—now, as in 1993—the Department latitude in determining the form and amount of detail that should be reported by unions. Most significantly, there have been advances in technology (including its availability and application) in the last 10 years, as computers and financial management programs have become much more widely used. Internet access is more commonly available and the benefit of making information available over the Internet has been generally, and congressionally, recognized. These changes make it possible to provide substantially more information to union members and the public with less burden on unions than the changes considered in 1992 and 1993 would have imposed at that time.

Union commenters challenged assumptions that underlie the Department's functional category proposal on two related grounds. First, they contended that unions are not required to collect and report their expenses in the categories prescribed by the proposed rule by either "standard business practices" as reflected in GAAP or by "existing [federal] forms" such as the IRS Form 990. Second, the unions asserted that the categories proposed by the Department do not "describe the most common important purposes for which unions spend money." GAAP and the IRS Form 990, they assert, leave it to the reporting organization to identify what the organization believes to be its most important functions. The union commenters contended, in effect, that the Department seeks to impose one artificial, static functional reporting system on all unions without any regard as to how they presently account for their expenditures. In support of these arguments, the comments provided few, if any, examples of the most common purposes for which unions spend money, or appropriate reporting categories. The AFL–CIO argued that the relevant accounting standards provide for two basic types of expense classification. The first type is "natural expense classification," which "group[s] expenses according to the kinds of economic benefits received in incurring th[e] expenses," for example, "salaries and wages, employee benefits, supplies, rent, and utilities" (citing, AICPA Not-For Profits Guide 514). The AFL–CIO asserted that the other basic type is "functional classification," which "group[s] expenses according to the purpose for which the costs are incurred." Id. at 513. "The primary functional classifications are program services and supporting activities." Id. The AFL–CIO then proceeded to argue that the categories proposed by the Department have no inherent rationality since some, like organizing and contract administration, relate to functions or programs, and others, like benefits, have no functional or programmatic relevance.

As discussed, in Section II(D), the GAAP standards do not govern the content of LM Forms, and are not entirely consistent with the congressionally imposed disclosure requirements of the LMRDA, 29 U.S.C. 431(b). Further, the Department disagrees with the assertion that the use of functional categories is either unauthorized or inappropriate in any respect. In the Department's view, the increased use of functional reporting categories in the Form LM–2 will promote transparency and accountability in the reporting of a union's financial condition and operations. The revised Form LM–2, utilizing both functional and "natural" categories, will provide detailed information about financial transactions of labor organizations in an easily understood format. The new reports will be usefully organized according to the services and functions provided to union members. By using the new Form LM–2, members will be able to identify major receipts and disbursements for a variety of activities. The new Form LM–2 strengthens enforcement of the LMRDA by giving members and the public a more complete account of the financial operations of a union than provided by the current Form LM–2. Moreover, achieving this improvement has been made easier and less costly by technological advances that enable electronic recordkeeping and filing.

Functional accounting is not a new concept to labor organizations. The current Form LM–2, through its use of categories, requires labor organizations to report certain disbursements by function. Although the types of functional categories are being updated to make them more useful to union members, it is unlikely that this would require Form LM–2 filers to make wholesale changes in their accounting systems. The Department has, however, included time in its burden hour estimates to account for acquiring any new or updated accounting software and modifying existing accounting, recordkeeping, and reporting systems. Moreover, functional accounting is required of not-for-profit organizations under the standards established by the FASB. Many of the labor organizations that submitted comments acknowledged that they use functional reporting as a management tool and none of the larger unions has claimed an inability to categorize receipts and disbursements. Labor unions are not-for-profit organizations and, as such, should utilize functional reporting in preparing financial statements. FAS 117, ¶ 26. As stated by the FASB, "[S]pecialized accounting and reporting principles and practices that require certain organizations to provide information about their expenses by both functional and natural classifications are not inconsistent with the requirements of this Statement." It also noted that not-for-profit organizations often provide that information in regulatory filings to the IRS and certain state agencies, which are available to the public. FAS 117, ¶ 3. The IRS requires not-for-profit organizations, including unions, to report their expenditures by certain categories and the IRS uses several functional categories that parallel, in many respects, the categories in the proposed Form LM–2. For example, both the Form 990 and the new Form LM–2 require political and lobbying disbursements to be reported.

There is no merit to the contention that the proposed rule would unlawfully intrude upon the ability of unions to follow their own accounting procedures for their own internal purposes. The report calls for the submission of data in certain categories, but does not preclude the use of other, internal manipulations of the data. Unions may track expenses in any way they believe appropriate and, for their own purposes or the purposes of third parties (for example, as required by a financial institution for a loan or a state agency), they may report financial matters in the manner appropriate to that purpose. Further, contrary to some commenters' contentions, the Department's proposals effectuate the broad purposes of the LMRDA, while, at the same time, serving the law's purpose to ensure that members be fully apprised of their union's financial condition and operations. As noted above, these commenters have given insufficient weight to the Department's responsibility to determine the detail necessary to accurately disclose the unions' financial conditions and operations and to establish categories that will identify the purpose of disbursements, 29 U.S.C. 431(b), and to "[prescribe] the form of publications and reports" required by Title II of the LMRDA, 29 U.S.C. 438.

The argument that, because neither the IRS nor the Beck line of authority require labor organizations to collect or report information in the categories proposed by the Department, the Department cannot reasonably impose such a requirement is unpersuasive. These comments appear to overlook the Department's responsibility to require reports that best fit the disclosure purposes of the LMRDA, not a revenue statute or a methodology developed under a statute administered by the National Labor Relations Board (NLRB). Each agency has the responsibility to require information relevant to the role established by its enabling statute.

The union commenters have provided no support for the proposition that the interests served by the LMRDA are obviated by other reporting obligations, internal or external. Similar reporting requirements apply in the regulation of securities, public utilities, and health care. In those settings, it would be inaccurate to suggest that a corporation could meet its responsibility under a particular securities, tax, employment or other statute simply by submitting a copy of a report filed with a particular agency without regard to whether it conformed to the purposes of the actual statute involved. The argument is also unpersuasive in the context of the LMRDA.

2. Beck Requirements

A number of commenters expressed views regarding the effect of the Department's proposals on the obligation, imposed on some labor organizations by the National Labor Relations Act (NLRA), to allocate expenditures in a way that distinguishes between activities that are germane to the union's representational function and those that are not. *See Communication Workers of America* v. *Beck*, 487 U.S. 735 (1988). Labor organizations that receive dues from non-member "agency fee payers" in states permitting union security agreements requiring such payments as a condition of employment must make such an allocation to ensure that agency fee payers who object to paying the equivalent of full dues are not charged more than their fair per capita share of the union's costs involved in providing representational services to them. These reporting and allocation requirements are often referred to as *Beck* requirements, a shorthand reference to a leading Supreme Court case addressing the obligation of unions to individuals who pay agency fees to unions in lieu of membership dues.

Comments generally supportive of the Department's various reporting proposals were received from trade associations, public interest groups, union members, agency fee payers, and individuals apparently unrepresented by unions. Several commented that the proposed rule would make it easier for agency fee payers to enforce the unions' obligation to allocate between their representational and non-representational functions upon the request of agency fee payers represented by a particular union as required by *Beck*. In the current system, a union member states, union officials have a powerful incentive to classify non-representational activities as representational, and the existing reporting forms permit this to be done without detection. This problem, in the member's view, will be remedied by the Department's proposals, because they will enable an agency fee payer to identify the percentage of receipts used for non-representational activities. This member also asserted that the enhanced reporting would permit access to information without having to use a potentially adversarial process. Another commenter stated that while it generally approved of the Department's proposals, the Department should require unions to keep contemporaneous records in order to meet *Beck* standards.

Other comments challenged the Department's proposals on the following grounds: first, that they represent an attempt to impose *Beck* requirements generally on unions, even though the NLRB, not the Labor Department, is responsible for *Beck* enforcement and the *Beck* requirements only apply to unions with agency fee payers; second, they will cause an unnecessary burden on unions that already prepare *Beck* reports; and third, the Department's proposal to establish categories that do not replicate *Beck* requirements will create confusion and promote unnecessary and harassing litigation.

*Beck* requires affected unions, upon objection by an agency fee payer (a request by a member of the union does not trigger the obligation), to subtract from the amount of the dues required of members a sum that reflects the per capita share of the union's non-representational activities. In general terms, the "chargeable" representational activities have been held to include such activities as collective bargaining, contract administration, grievance arbitration, business meetings and social events open to members and non-member employees, union publications (to the extent they reflect the union's representational activities), administration of benefits available to members and non-members alike, national conventions, and expenses of litigation related to negotiating and administering the agreement, handling grievances within the bargaining unit, fulfilling its duty of fair representation, handling jurisdictional disputes with other unions, and litigation before administrative agencies and the courts involving members of the unit. Also in general terms, the non-chargeable activities have been held to include activities such as advocating political support or opposition in elections of government officials, lobbying, including promoting or opposing legislation, advertising relating to non-chargeable matters, administration of union benefits unavailable to non-members, union building fund activities, the publication of newspapers or similar activities (to the extent they report on non-representational matters), and litigation services that do not directly concern the unit. *See generally The Developing Labor Law* (4th ed. 2001) 1970–75, 2046–54; *The Developing Labor Law* (2002 Supplement) 330–32; NLRB General Counsel Memorandum (Aug. 17, 1998), available at 1998 WL 1806351; NLRB General Counsel Memorandum (Nov. 15, 1988), available at 1988 WL 236187.

It is not and has not been the intent of the Department to collect information specific to the *Beck* requirements. The NLRB, not the Department of Labor, is responsible for enforcing compliance with *Beck*. At the same time, the partial overlap of categories under the proposed rule and those established by *Beck* is unremarkable. The Form LM–2 functional categories for reporting a union's disbursements and estimating the time expended by union officers and employees in performing various union activities were designed to capture the various kinds of disbursements and activities associated with conducting union business. *Beck* seeks to identify union activities that are not germane to the representation provided to agency fee payers and therefore not properly assessed to agency fee payers if they object to subsidizing the union's non-representational activities. The information reported in the new Form LM–2 may be helpful to an agency fee payer to roughly evaluate his or her union's *Beck* compliance, but it is not designed as a substitute for the *Beck*-specific reporting requirements, which are established by the NLRB, as guided by judicial precedent. The Department takes no position on whether disclosure of the information required by the Form LM–2 satisfies *Beck* requirements. Similarly, *Beck* reports, principally because they lack the individual and transaction-specific information required by the revised Form LM–2, do not provide a useful alternative to the Form LM–2. The Department is not persuaded that the partial overlap between the Form LM–2 and *Beck* reports will lead to confusion among members or that such overlap will lead to an increase in litigation by agency fee payers.

### 3. Schedule 15 (Representational Activities)

The NPRM proposed a Schedule 15 (Contract Negotiation and Administration) and a separate Schedule 16 (Organizing). The proposed Schedule for contract negotiation and administration called for reporting of disbursements for preparation for, and participation in, the negotiation of collective bargaining agreements and the administration and enforcement of collective bargaining agreements, including the administration and arbitration of union member grievances. The proposed Schedule for organizing required reporting of disbursements for activities in connection with becoming the exclusive bargaining representative for any unit of employees, or to keep from losing a unit in a decertification election or to another labor organization, or to recruit new members. Based on comments received from labor organizations and others, the Department has decided to eliminate the separate category for reporting organizing disbursements and to require that disbursements for organizing be reported in combination with contract negotiation and administration disbursements in a single Schedule entitled "Representational Activities."

Several commenters expressed the view that organizing activities should be reported in the same category as contract negotiation and administration, both to avoid unduly burdening labor organizations that must meet *Beck* requirements and to avoid disclosing sensitive information regarding a labor organization's organizing strategy. Some union commenters asserted that it is inconsistent with NLRB practice and precedent to separate organizing from the category for collective bargaining/contract administration. The NLRB, they stated, recognizes that the two activities are sometimes tightly intertwined.

Several labor organizations, including most notably the Building and Construction Trades Department of the AFL–CIO (BCTD), commented that it simply is not possible in the construction industry to separate disbursements made in connection with organizing efforts from disbursements made for contract negotiations and administration. In this regard, they refer to section 8(f) of the NLRA (29 U.S.C. 158(f)). This section provides, *inter alia*, that it is not an unfair labor practice for a construction industry employer to enter into pre-hire collective bargaining agreements with a labor organization whose majority status has not previously been established and which agreement requires membership in the union as a condition of employment. In these "top down" bargaining situations, the BCTD explains, the terms and conditions of employment are negotiated and agreed upon before any employees express support for or actually become members of the union. The BCTD and others expressed the view that it is not possible in these situations to separate disbursements into contract negotiations differentiated from organizing.

Further complicating the situation for building trades unions, these unions assert, is the fact that often these same unions also engage in traditional "bottom up" organizing. For such purposes, these unions would have to separately allocate disbursements for organizing and contract negotiations. Several commenters who supported the proposal to establish the organizing schedule argued that union members needed detailed information on their union's organizing activities to enable them to accurately assess their union's overall success or failure in its organizing efforts. The commenters argued that if, as the Department has concluded, separate allocations cannot be made in the pre-hire situation arising pursuant to section 8(f) of the NLRA, but separate allocations could be made for other traditional organizing efforts by the same union, a member would at best get an incomplete picture and at worst an inaccurate and misleading impression of the union's disbursements and overall effectiveness in organizing.

Labor organizations generally opposed the creation of a separate category for organizing. Comments from officers of labor organizations at both the national/international and local levels expressed strong opposition to the proposal to create a new Form LM–2 schedule on which all major disbursements relating to a union's organizing efforts would be reported and then made publicly available over the DOL website. The common thread to these comments was a significant concern that employers would become privy to sensitive union information not otherwise available, such as organizing strategies or the extent of a union's financial commitment to a given campaign. As one union member who was active in organizing his workplace stated, the new requirements to list major disbursements within eight categories "would do nothing to help union members achieve better representation but would literally put the union at a disadvantage when organizing or negotiating contracts with companies." These regulations, he argued, "would give the company inside information to whether or not the union would have the ability to sustain a strike or the ability to fight unfair tactics by the company during organizing drives."

Several labor organizations commented that sensitive information of this type has generally not been available to members, except on a showing of just cause. *See* 29 U.S.C. 431(c). Moreover, they asserted that where just cause has been demonstrated, access to the information is given to union members only, whereas the Department's proposal would provide Internet access to this sensitive information to the world, regardless of the strength of the union's interest in confidentiality or the potential damage that release of this information might cause to the union—and without any showing of "just cause." The AFL–CIO noted that unions would have no opportunity to protect their confidentiality interests by seeking protective orders. It further argued that information that the courts have held is not subject to disclosure, even when the § 201(c) standard of just cause is met, cannot, *a fortiori*, be subject to routine annual disclosure under § 201(b) of the LMRDA.

Numerous labor organizations complained that under the Department's proposal unions would be required to list the names of union "salts," individuals who receive subsidies from a union to assist in its organizational activities while working for an employer that is the subject of the organizing drive. Two specific concerns were raised by the commenters: (1) The listed individuals can be targeted by an employer and subjected to discharge or other retaliatory action; and (2) by identifying these individuals by name on the new schedule, employers would be able to learn of an organizing drive in its early stages and take action to undermine the union's efforts.

In the view of the AFL–CIO, publication of detailed information about what types of investigators and consultants a union is using and for what purposes carried with it the potential to undermine the success of the union organizing efforts. In its view, the Department's concession that unions would not be required to reveal the "name of the employer" or the "specific bargaining unit" that is the subject of organizing activities is insufficient to protect the union's interest in the confidentiality of these campaigns. The AFL–CIO noted that with regard to smaller local unions (or larger unions attempting to organize a workplace in a new geographic area), employers would be able to easily discern from a labor organization's Form LM–2 what workplaces the union campaign is targeting and what steps the union is taking in pursuit of that campaign.

Several organizations urged the Department to protect from disclosure information that, they asserted, could be used to reveal the target and location of an organizing drive. For example, by requiring that the schedule contain discrete data showing substantial disbursements to a hotel where union organizers are staying (particularly in a small town or remote location, or one with only a single industry or employer) the Department's proposal would enable an employer to learn of the organizing drive and initiate action to undermine the campaign. The unions stated that they attempt to keep such information from an employer whose workforce is being organized. The Steelworkers explained that until they receive a substantial majority of signed authorization cards, they do not disclose to an employer that they have an organizing drive underway.

Another commenter, an employer association, suggested that in lieu of shielding the employer's name or the bargaining unit identity, the reporting unions should be given an opportunity to submit both redacted and unredacted versions of the Schedule and an accompanying "Confidential Treatment Request." Under this procedure, a reporting union could offer grounds to the Department in support of its request for identity exemption, and specify the time period sought for such exemption. The Department would then review the request, and either grant or deny the requested redactions before making the Form LM–2 publicly available.

Based on these comments, the Department has decided to eliminate the separate category for reporting organizing disbursements and to require that disbursements for these activities be reported in combination with Contract Negotiation and Administration disbursements in a single Schedule entitled "Representational Activities." The Department agrees with the comments that organizing strategies deserve some level of protection. In crafting the final rule, the Department has balanced the legitimate need for members to be apprised of how union funds are expended for this important function with the need to minimize the risk of disclosing sensitive information. By combining the categories, the Department also meets the concerns expressed by the building trades unions that they would be unable to allocate precise amounts to contract negotiations and organizing efforts.

By combining these Schedules, the Department believes that an employer would be far less likely to be able to identify itself as an organizing target merely by examining Schedule entries. Unless one or more disbursements to an individual meet the threshold to constitute a "major disbursement," disbursements would be aggregated with other non-major disbursements for contract negotiations and administration and organizing, thus further shielding such data. Further, the confidentiality procedures, explained in Section III(b)(2), allow a labor organization to withhold any information that would disclose the recipient or target of an organizing expense in reporting the disbursement on the Form LM–2.

The Department decided that this approach is preferable to the suggestion by one commenter that unions submit both a redacted and unredacted schedule for organizing expenses and a request that certain expenses be withheld from public disclosure. The statute requires the Secretary to publicly disclose the information it receives. 29 U.S.C. 435. ("The contents of the reports and documents filed with the Secretary * * * shall be public information.") Further, the concerns raised by the comments concerning sensitive information, confidentiality, and the burden involved in distinguishing organizing activities from contract negotiation and administration can be addressed without the need to redact a schedule, and thus more effectively serve the transparency objectives of the statute.

Substantial case law under the NLRA recognizes the employee status of individuals paid by a union to seek employment with an employer in order to assist the union in organizing its workforce and the need to protect them from retaliatory conduct by their employer. *See, e.g., NLRB* v. *Town & Country Electric, Inc.*, 516 U.S. 85 (1995); *Willmar Electric Service, Inc.* v. *NLRB*, 968 F.2d 1327 (D.C. Cir. 1992), *cert. denied*, 507 U.S. 909 (1993). At the same time, the individual's status as an employee of the union and the amount of the payments received by him affects the obligation of the union to disclose information that may reveal his identity. On both the existing and the revised LM forms, if a "salt" is paid $10,000 or more per year as an employee of the union, the union is obliged by statute to list him by name on the Form LM–2 and to report the amount of his compensation. If a labor organization makes payments to an individual for services as a "salt" in organizing an employer that exceed $5,000 but not $10,000, the labor organization may choose to refrain from disclosing specific information regarding such payments on the Form LM–2, but only if it indicates that this reporting procedure has been used and provides the underlying information to any union member who requests it. *See* Section III(b)(2).

The Department disagrees with the view that it has applied the LMRDA more stringently to unions than to employers. Unlike the situation with regard to labor organizations, for over 40 years employers and their consultants have been statutorily required (29 U.S.C. 433(a) and (b)) to include particular "persuader" information in their annual reports, while labor organizations have not. Implementation of this statutory scheme by the Department cannot be considered as evidence of either anti-union or anti-employer bias, and the suggestion of a double standard is unwarranted.

The Department also rejects the comment that strike benefits should be reported in the same category as other representational activities. The AFL–CIO argued that because economic pressure devices, such as strikes, work stoppages and lockouts, are "part and parcel of the system" of collective bargaining, this exclusion is bound to create a seriously distorted presentation of the reporting union's collective bargaining disbursements. This argument is unconvincing. The amount that a labor organization spends on representational activities, including strike benefits, will be readily apparent by adding the total disbursements in both schedules together. On the other hand, only by maintaining a separate line item for Strike Benefits will union members be able to discern the true cost of the use of this economic weapon.

Finally, we disagree with the comment that a union's compelled disclosure of information relating to legal fees associated with an organizing campaign would improperly intrude upon the union's attorney-client privilege. This concern is misplaced, as this privilege does not generally extend to the fact of attorney consultation, retention, or employment, including the payment and amount of fees. *See McCormick on Evidence*, § 90 (5th ed. 1999, updated 2003). Further, while the privilege might protect the identity of a client when sought from an attorney, a client can be required to divulge the name of its attorney, which would be relevant here. *Id.*

### 4. Schedules 16 (Political Activities) and 17 (Lobbying)

The Department proposed separate Schedules on the Form LM–2 for reporting disbursements for "political activities"—intended to influence the selection, nomination, election, or appointment of anyone to a public office, or a particular outcome in a ballot initiative, or for material assessing a political candidate's views on issues—and for "lobbying"—for the purpose of passing or defeating new legislation, advancing the repeal of existing laws, or the promulgation of rules or regulations (including litigation expenses). The Department received some comments supportive of the proposed category for political activities. Labor organizations did not oppose the Schedules and the AFL–CIO did not challenge (apart from its general opposition to any functional reporting) the Department's premise that such information should be reported. The AFL–CIO, however, contends that the separate "political activities" and "lobbying" Schedules should be combined into a single category. Based on the concerns expressed by comments from labor organizations and others, and for the reasons described below, the Department agrees that the two Schedules should be combined into a single revised Schedule 16, "Political Activities and Lobbying."

One commenter stated its belief that the categories are closely related to each other and that each is likely to draw a relatively insignificant portion of the reporting union's resources. It explained that political activity and lobbying by unions typically involve communications with, and mobilization of, the union's membership concerning issues of interest to the membership. Lobbying, as distinct from membership mobilization, it argued, thus is likely to consume a relatively small amount of union resources. The AFL–CIO added that the Department's proposal to require the separate reporting of "political activity" and "lobbying" is exacerbated by the requirement that time estimates be recorded in 10% increments. It asserted that many unions have programs that are at least as important to their members, and often consume more resources, than either "political activity" or "lobbying." Some labor organizations noted that the Department's current reporting rules do not require that payments by a political action committee be reported if such information already is reported to federal, state, or local government agencies. The proposal, it argued, layers another burden on the local unions, adding unnecessary administrative time and cost.

Several commenters supported the itemization of political disbursements by unions without distinguishing between electoral politics and lobbying, the distinction crafted by the Department's proposal. No commenters expressed any opposition to combining the categories. A labor policy group supported the Department's expansive definition for political activities, recognizing that under the definition unions "would be required to report any and all expenditures that are made for any type of political activity, including political activity directed at a union's own membership." It asserted that union members deserve to know the nature and extent of political activities, lauding the Department's efforts at transparency. The same commenter also supported the Department's proposal with regard to the reporting of lobbying expenses. In this connection, it asserted that a labor organization, as a practical matter, can avoid reporting its lobbying and political expenses to the IRS. The commenter supported the Department's effort to require unions to follow the same reporting requirements as generally applicable to tax exempt organizations (but not unions) under the IRS rules. It suggested, however, that the Department clarify the meaning of "lobbying" so that it includes "any attempt to influence the general public, or segments thereof, with respect to public policy and legislative matters." Another policy group, while supportive overall of the proposal, asserted that the Department's proposed categories need to be modified to expressly include "grassroots lobbying" and "issue advocacy" by unions.

The comments support the Department's view, embodied in its proposal, that the itemization and aggregation of disbursements undertaken by unions in the political arena will provide information that is useful to union members and allow them to better understand the amount and purpose of their union's activities in this area. This information will supplement the limited information now available to members under other statutory programs. *See, e.g.*, Federal Election Campaign Act (FECA), 2 U.S.C. 431; Lobbying Disclosure Act of 1995, 2 U.S.C. 1601; IRS Form 990. While there are similarities between the information required under these other reporting regimes and the LMRDA, Form LM–2 is designed for the special purpose of providing meaningful information to union members who are not necessarily informed regarding the various exceptions and interpretations applicable to these other regimes. The Department has devised a definition, reflected in the examples set forth in the Instructions to Form LM–2, expressly designed to provide a reasonable amount of usable information to union members.

The revised Form LM–2 is intended to require unions to report many of the disbursements that would not otherwise be reported. Labor unions, unlike most tax exempt organizations under 26 U.S.C. 501(c), are not required to report lobbying expenses to the IRS. *See* Instructions for Form 990 (for line 85); Judith E. Kindall and John Francis Reilly, *Lobbying Issues* 336 (IRS publication available at IRS Web site), *see also* Rev. Proc. 95–35 (Aug. 7, 1995); Rev. Proc. 98–19 (Feb. 2, 1998). In contrast, labor organizations must include in Schedule 16 (Political Activities and Lobbying) "disbursements for political communications with members (or agency fee paying non-members) and their families, registration, get-out-the-vote and voter education campaigns, and the expenses of establishing, administering and soliciting contributions to union segregated political funds (or PACs) and other political disbursements." Under the revised Form LM–2, labor organizations also are required to report disbursements supporting their dealings with the executive and legislative branches of the Federal, State, and local governments and with independent agencies and staffs, including disbursements for advocating or opposing legislation (including litigation challenging such legislation), and advocating or opposing regulations (including litigation challenging such regulations). Thus, the Form LM–2 will gather information not otherwise reported, and further, the activities that must be reported in the Form LM–2 are much broader than those included in the IRS definition and easier to apply than the more nuanced IRS application (as evidenced by the three pages of instructions the IRS devotes to reporting membership dues and lobbying expenses). Labor organizations also will be required to report disbursements on the Form LM–2 that would not be reported to the FEC because they are directed only at the union's employees and members and their families. Viewed from this perspective, the Form LM–2 does not duplicate any reports filed by unions with the IRS or the FEC.

The Department believes that the unions' comments understate the overall amount of disbursements and officer and employee time that will be reported as lobbying or political activity. In part, this may be based on the unions' misapprehension of the proposal. As discussed above, the Department's proposed schedule is more comprehensive than the FEC and IRS requirements that limit the activities that must be reported. For example, under the Department's proposed and final rules, unions are required to report funds that they use in setting up a PAC and raising funds for it, as well as lobbying activities normally associated with "governmental relations" and "member communications." Further, the Department's decision to combine the two Schedules will increase the likelihood that the Schedule will be used to report a sufficient amount of information to prove useful to union members.

As discussed, the revised Form LM–2 will provide union members with a better understanding of their union's political activities, providing them a measure of the union's financial and human resources dedicated to these activities. Upon consideration of the comments, however, the Department is persuaded that there is merit to the suggestion that the two schedules should be combined into a single schedule. Distinguishing between "political activities," in the election-specific sense of that term, and "lobbying" is not always easy. And, for most union members, the distinction is likely to be much less important than being assured that they can ascertain the purpose and amount of their union's resource disbursements in the political arena. In the Department's view, this new schedule will provide meaningful information to union members without requiring unions to submit separate schedules for this purpose. Thus, the Department has decided to include a single schedule (16) for political activities and lobbying in the revised Form LM–2.

### 5. Schedule 20 (Benefits)

This category, which tracks a category in the current Form LM–2, captures information relating to all direct and indirect benefit payments made by the union, including, for example, disbursements relating to life insurance, health insurance, and pensions. Direct payments are made from the union's funds directly to its officers, employees, members, and their beneficiaries. Indirect disbursements include, for example, a union's payment of the premium on group life insurance to a separate and independent entity such as a trust or insurance company. The Department proposed that labor organizations would be required to separately identify all "major" disbursements during the reporting period in this category.

The Department received only a few comments specific to this category. The AFL–CIO opposed the collection of benefits to employees and members in a single category. In its view, "employee benefits" is a "natural expense classification," and the inclusion of "member benefits" cannot be justified on the grounds that the schedule has been amended to convey more information about union program activities or supporting services. One labor policy group recommended that "benefits" should be removed as a category and, instead, reported as "other disbursements." The same group stated that unions should have to specifically identify other disbursements in order to minimize embezzlement. Several comments related to the issue of itemization, however, noted that a requirement to disclose specific information about benefit payments could result in unwarranted invasions of the privacy of individuals.

In light of the comments received, the Department is persuaded that the privacy of individual benefit recipients, including those receiving payments for medical procedures, insurance or pension claims, or burial benefits, should be protected. Accordingly, the Department has decided to retain the current schedule for reporting these types of disbursements, rather than using an itemized schedule, and all payments to individuals for such purposes should be reported only on this schedule. A reporting labor organization, thus, will be required to report an aggregate amount of any direct benefit disbursements, which are those made to officers, employees, members, and their beneficiaries from the union's funds, and need only identify the recipients of such disbursements by a general description, for example, "union members." Indirect disbursements—those made to a separate and independent entity, such as an insurance company that pays benefits to covered individuals—will also be reported in the aggregate and the entity to which the payment is made will be identified by a general descriptive term. These changes also address the comments made by labor organizations concerning the reporting burden.

The Department is not persuaded, however, that this schedule should be modified in any other respect. As discussed in Section II(D) and Section III(C)(I), accounting principles do not restrict a regulatory agency from combining "natural expense" and program functions in a report. Moreover, a union's aggregated disbursement of benefits provides information that may be of interest to members as a measure of the union's "fixed expenses," allowing them to evaluate the cost-benefit of the policies providing for the benefit payments.

6. Schedules 19 (Union Administration) and 18 (General Overhead)

The Department proposed a Schedule for general overhead, which would include disbursements for overhead that do not support a specific function, such as support personnel at the union's headquarters, and that, therefore, cannot be reasonably allocated to the other disbursement schedules. Several labor organizations noted that the categories proposed by the Department would force a large portion of the union's important and recurring activities into overhead or other expenses. The SEIU estimates that this latter category will contain 90% of all its disbursements. Several labor organizations expressed the fear that reporting disbursements in the manner proposed by the Department will provide misleading information that will be used by those antagonistic to unions to suggest that the union is diverting its funds to interests unconnected with the union's core representational function. Several labor organizations sought clarification concerning particular activities. In the AFL–CIO's view, for example, the Department seems to indicate that certain governance expenses, like meetings and conventions, are to be reported as "general overhead expenses," even though accounting principles counsel in favor of including such expenses as "general management expenses." In this regard, the AFL–CIO states that under *Beck* standards union governance activities are treated as entirely chargeable whereas those same standards provide that union overhead costs generally should be allocated between chargeable and non-chargeable categories. Several commenters expressed the view that the categories prescribed by the Department's proposal fail to account for many basic, recurring union activities.

In response to these comments about the large number of disbursements relating to union administration, the Department has added a new Schedule 19 (Union Administration) to capture this information. In this schedule, labor organizations will report disbursements relating to the nomination and election of union officers, the union's regular membership meetings, intermediate, national, and international meetings, union disciplinary proceedings, the administration of trusteeships, and the administration of apprenticeship and member education programs (other than political education, as discussed above). By adding this category, labor organizations will be able to accurately characterize the disbursements made for the many activities they undertake because of the requirements of the LMRDA or other activities associated with union administration.

With the creation of this new category, there no longer is a need for a category designated simply as "Other Disbursements," and the Department will eliminate this category from the Form LM–2. The "General Overhead" category will be retained. This schedule includes disbursements that do not support a specific function—for example, disbursements to support personnel, such as maintenance and security staff at the union's headquarters—and that, therefore, cannot be reasonably allocated to the other disbursement schedules. Wherever possible, however, the salary paid to support staff and other disbursements for overhead that the union tracks in relation to specific programs or functions should be allocated to the relevant category. For example, if a union has an organizing department and a political affairs department and currently apportions telephone and utilities payments to both functional schedules, those disbursements should be allocated to the corresponding schedule. Similarly, the salary paid to other support staff should be allocated at the same ratio as the program staff they support. For example, if the union's secretary-treasurer employs a staff of ten employees and the secretary-treasurer reports 60% of his time on activities relating to union administration, 10% on political or lobbying activities, and 20% on representational activities, the staff salaries should be allocated to the corresponding schedules using these percentages rather than reporting the salaries as "general overhead." If the labor organization does not currently apportion disbursements for utilities or similar expenses according to program or function, it will not be required to do so on the Form LM–2, but may choose to do so to provide greater clarity for its members. In any event, the labor organization should accurately describe the purpose of the disbursement, whether it is reported in a specific functional category or as "General Overhead."

7. Schedule 17 (Contributions, Gifts and Grants)

The existing Form LM–2 requires reports of all disbursements for contributions, gifts and grants during the reporting year. The NPRM proposed that labor organizations be required to separately identify any "major" receipts during the reporting period. Although the Department proposed no changes to this category, a few comments specific to this category were received. The AFL–CIO asserted that the Department was mistaken in establishing a separate category for "contributions, gifts and grants." It noted that such funds, as recognized by the Department itself in its proposal, should be reported in any specific services category to which they relate (not as part of the residual schedule). The AFL–CIO asserted that this recognition by the Department evinces that the schedule does not constitute a separate major program service. The AFL–CIO also submitted a report prepared by Dr. Ruth Ruttenberg as an attachment to its comments, which argued, based on a survey of 65 national and international AFL–CIO affiliates, that only 60% of all reporting national and international unions capture the required data and of these unions "less than 18% of reporting unions are currently able to report contributions to an entity aggregating to $2,000 or more and then allocate the disbursements by prescribed functional category."

These particular comments appear to reflect a misunderstanding about what unions now are required to report under the current Form LM–2. First, unions are currently required to report information about disbursements for "contributions, gifts and grants," thus calling into question the validity of the statement that only approximately 40% of unions capture data related to this category. Second, the reported inability of a few unions to report contributions at the lowest proposed threshold level and then "allocate the disbursement by prescribed functional category" suggests that the Ruttenberg report confuses this aspect of the Department's current proposal with the Department's 1992 reporting rule. While that rule contained such a requirement, the Department's current proposal requires only that contributions, gifts and grants be reported in Schedule 17, without any further allocation to any additional "functional" categories. Other aspects of the AFL-CIO's Ruttenberg report are discussed below.

Some commenters who supported the proposal suggested some modifications. One policy group recommended that "contributions, gifts, and grants" should be removed as a category and, instead, should be reported as "other disbursements" and that unions should have to specifically identify other disbursements in order to minimize embezzlement.

In the Department's view, it is appropriate to keep this schedule. As noted in the Department's proposal, such funds should be reported in the other functional categories as appropriate (and, where in excess of the $5,000 threshold, itemized as a contribution, gift, or grant). Nonetheless, there will be some disbursements that cannot be easily allocated to another functional category. By keeping this category, union members will be able to more easily identify such disbursements. If the reported aggregated amount warrants further inquiry, members may request further information from the union to determine whether such voluntary payments conform to the union's internal rules and to evaluate whether they were made for legitimate and worthy purposes.

### 8. Job Targeting

The Department received a few comments requesting that the Department establish an explicit requirement that unions report particular details for certain "job-targeting funds" (and funds serving the same purpose, but labeled as "industry advancement," or "market recovery" funds). One commenter asserted that these funds have become widespread in the construction industry and that express reporting requirements are essential to correct widespread violations of the Davis-Bacon Act. The commenter asserted that the Labor Department, the NLRB, and two courts of appeal (D.C. and Ninth Circuits) recognize that job targeting programs are antithetical to the purposes of the Davis-Bacon Act because they represent an unlawful payment from the workers' wages to the contractors performing Davis-Bacon jobs and tend to distort local prevailing wages. The commenter argued that the Department has allowed this practice to continue unchecked. As a result, according to the commenter, millions of dollars are being misappropriated by unions from their members' Davis-Bacon wages, through the device of compulsory dues (as well as payroll deductions), and returned to the benefit of employers via job targeting funds.

The commenter recommended that the Department require unions to report: the employers receiving the job targeting funds; the amounts paid to each employer; the project(s) for which the employer received the funds; and the source of the funds. As an alternative, the commenter suggested that such accounting could be avoided if a union certifies under penalty of perjury that no funds used in a job targeting program have been derived from wages paid to employees on Davis-Bacon covered projects. The commenter also asserted that similar modifications should be made to the Department's T–1 proposals.

The Department has determined that it would be inappropriate in this rulemaking to require reporting requirements specific to job targeting funds. In the Department's view, receipts and disbursement of job targeting funds that exceed the itemization threshold will be disclosed as a result of the general reforms implemented by this rule. Additionally, the Department notes that the NPRM made no reference to the possibility of creating reporting requirements specific to job targeting funds. The unions and the organizations that engage in job targeting initiatives have an obvious interest in whether specific reporting requirements should apply. They should be provided a full opportunity to address this issue before the Department promulgates a rule specific to the concern identified by the commenter. If, however, a labor organization has an interest in, and contributes $10,000 or more to, an entity that meets the definition of a trust and that entity makes targeted disbursements for the purpose of increasing employment opportunities for its members, the labor organization must file a Form T–1 if the entity has $250,000 or more in annual receipts.

### *D. Schedules 1 and 8—Accounts Receivable and Payable Aging Schedules*

The Department proposed the creation of new aging schedules for accounts receivable and accounts payable that would require labor organizations to report: (1) Individual accounts that are valued at $1,000 or more and that are more than 90 days past due at the end of the reporting period or were liquidated, reduced or written off during the reporting period; and (2) the total aggregated value of all other accounts (that is, those that are less than $1,000) that are more than 90 days past due at the end of the reporting period or were liquidated, reduced or written off during the reporting period.

A number of comments criticized as too low the $1,000 threshold for itemizing individual accounts payable and receivable that are more than 90 days past due at the end of the reporting period. Some unions with substantial receipts asserted that the Department was mistaken in stating that "[t]he threshold of $1,000 eliminates the burden of individually reporting routine collections of dues and other fees," 67 FR 79285. The unions stated that union dues would routinely be reported on the accounts receivable aging schedule under the $1,000 threshold. Some unions stated that for unions with substantial dues it is not that unusual for union members to fall more than $1,000 behind in dues payments. Unions stated that the itemization of $1,000 accounts would be unduly burdensome (resulting in thousands of small entries), would invade the privacy rights of union members, and would be of little informational value. One organization commented that in the context of Schedule 5 (individual marketable securities), the notice of proposed rulemaking stated, "$1,000 can now be considered a de minimis amount." 67 FR 79285. This organization suggested that the Department set the thresholds for Accounts Receivable Aging Schedule (Schedule 1), Accounts Payable Aging Schedule (Schedule 8), and Investments Other Than U.S. Treasury Securities (Schedule 5) at $5,000 in order to be consistent. Several other unions advocated raising the accounts payable and receivable threshold to at least $5,000. One commenter proposed a new threshold of $10,000. On the other side, one organization asserted that the $1,000 threshold was too high and should be lowered to require disclosure of smaller accounts. One organization stated $1,000 was the correct level, and one union stated that the requested information would not be a burden at the $1,000 level. Finally, a few unions recommended eliminating the dollar amount altogether and replacing it with an alternative threshold, such as, for example, 10% of the union's aggregate receipts. These commenters noted that such an approach is consistent with the Department's regulation of employee benefit plans investments.

In response to these comments, the Department has decided to raise the threshold for itemization in Form LM–2 Schedules 1 and 8 to $5,000. This dollar threshold is consistent with the weight of the comments and corresponds with the itemization threshold developed for other disclosure requirements under Form LM–2 including: (1) Investments Other Than U.S. Treasury Securities (Schedule 5); and (2) Itemization of Receipts and Disbursements (Schedules 14–21). In the Department's view, the higher threshold will significantly reduce the burden identified by some unions of having to itemize accounts, such as individual union dues receivable, which in their view are relatively insignificant in light of the very substantial finances of some unions. By setting the threshold at $5,000, the interests of union members will still be adequately served by ensuring the disclosure of significant union accounts that have not been paid or collected in a timely manner.

Several unions also broadly criticized the itemization requirement, disputing that itemization would benefit anyone. These commenters stated that reporting aggregate numbers for accounts payable and receivable would be far less burdensome to unions without diluting the value of the information to members. The commenters explained that accounts more than 90 days past due are relevant, if at all, only as they relate to an individual union's overall cash flow. Several organizations stated that there is no analogous requirement of itemization placed on public companies, as the SEC requires only aggregate reporting. Itemized accounting is also inconsistent with GAAP, these commenters argued. Finally, a number of unions proposed an alternative that unions disclose only those accounts payable or receivable that are liquidated or written off at the end of the reporting period.

In the Department's view, itemized disclosure is important because it provides a vital early warning signal of financial distress. In setting the reporting threshold at 90 days, the Department took into account the typical payment cycle of 30 days for most accounts and determined that an account unpaid after three payment intervals warrants "flagging" as a matter of good business practice. Union members similarly will benefit from this information as a gauge of their union's overall fiscal management and provide them with the ability to identify particular transactions or a series of transactions that may merit further review. Although there is no general accounting principle that holds that 90 days is a significant time period, it is a benchmark often used, inasmuch as the normal pay cycle for accounts is closer to 30 days. As one commenter pointed out, the Washington Teachers' Union had failed to timely pay many of its bills in the years leading up to the discovery of embezzlement and misappropriation of funds by union officials.

As the commenter noted, early reporting of delinquent accounts payable might have prevented the fraud against the teachers' union before millions of dollars were diverted. The Department's own investigations in other cases reveal situations where a union's failure to pay its per capita taxes is part of a pattern of delinquency on accounts that may be symptomatic of embezzlement by union officers or employees. Under the new schedules, such delinquencies would have been reported and such disclosure might have deterred the fraud, in the first instance.

Itemization of delinquent accounts is also preferable to either aggregate reporting or sole itemization of liquidated accounts in that it provides union members with a more detailed picture of the union's finances, including with whom the union conducts business and the manner in which that business is conducted. The itemization requirement is tailored to a union member's legitimate interest in knowing, for example, whether the union continues to do business with an entity that fails to pay its debts or whether the union continually falls behind in payments to a certain vendor.

Some unions complained that the ordinary interaction between national and international unions and their locals regarding per capita tax payments routinely results in delayed payment of locals' per capita taxes until more than 90 days after the tax is technically due. Reporting these payments on the accounts receivable schedule, they argued, would be burdensome and uninformative. The Department believes that a national or international union may set the specific date (and manner of collection) of these per capita tax payments, but once the date is chosen, that date controls when the per capita payment is due. If, at the end of the reporting period, a local union has failed to pay $5,000 or more for 90 days or more past the specified date—irrespective of the customary interaction between union and local—that delinquent account must be disclosed on the Form LM–2. The union is free to provide any explanatory information concerning the delayed payment along with these per capita aged accounts.

Several unions also criticized the accounts payable and receivable schedules on the basis that these schedules require accrual-based accounting and many unions only keep accounting records on a cash basis. Many union accounting systems, other commenters argued, track only income and expenses, not receipts and disbursements. Moreover, one accounting firm commented that unions that operate on a cash basis system will have to review their books and records to tabulate each individual account irrespective of the precise threshold for itemized reporting. As noted above, the LMRDA itself requires some accrual basis accounting information, such as assets and liabilities. *See* 29 U.S.C.

431(b)(1)–(3). Because the current Form LM–2 requires this information, the new Form LM–2 imposes no qualitative change in the nature of union financial disclosure, even if the specific schedules for accounts payable and receivable are new. Moreover, no unions will be forced to manually review previous books and records to identify delinquent accounts because the new rule only applies to fiscal years beginning January 1, 2004, or thereafter. Every union will thus have approximately three months (at least, and as many as 14 months depending on the union's fiscal calendar) from publication of the rule to make any necessary adjustments to their record keeping practices before the first fiscal year for which such information must be reported even begins.

One union asserted that the Secretary lacks authority to require itemization of accounts payable and accounts receivable and that the Secretary is only authorized under section 201(b) of the LMRDA to require disclosure of categories of financial information—not itemized information. A number of unions similarly commented that the underlying individual financial data composing the aggregate categories is already available to union members upon a showing of just cause under 29 U.S.C. 431(c). The Department's response to these arguments is set forth above.

Several commenters raised concerns about individual privacy if unions were forced to itemize accounts payable and receivable over $1,000, including concern that, for example, union members owing dues would be identified by name on the Department website. Commenters requested therefore that the Department clarify that all union dues—both individual and per capita—are exempt from the accounts receivable aging schedule as suggested by the notice of proposed rulemaking. The Department notes the increased threshold of $5,000 should eliminate nearly all concerns about individual union dues appearing on the accounts receivable schedule. It would be unusual—and likely take years—for a union member to become more than $5,000 delinquent on union dues. If a union member is more than 90 days delinquent on dues in excess of $5,000, that fact should be disclosed. Per capita tax payments do not implicate privacy concerns and, as discussed above, must be disclosed when an account is over 90 days past due and exceeds $5,000.

Several unions contended the accounts payable aging schedule will falter on its stated purposes of deterring financial fraud because, irrespective of what the schedule looks like, union insiders who wish to embezzle money or to defraud the union will willfully evade Department reporting requirements. Commenters stated that corrupt officials are not likely to record their activities on disclosure forms. The Department acknowledges this problem—one that is a recurring concern in any reporting or disclosure system. While it is true that even the most thorough disclosure form will not be entirely effective in eradicating fraud, the new requirements significantly advance the cause by making financial fraud more difficult to hide. The new financial disclosure forms require greater specificity and accountability for union funds across the board, including delinquent accounts payable and receivable. In the Department's view, the more detailed reporting required by the revised Form LM–2 will allow the Department and union members to more closely scrutinize a union's finances and more easily identify "gaps" or apparent inconsistencies in reports. The greater the risk to the actual or would be perpetrator that improper conduct will be discovered, the less likely such conduct will occur or go undetected. The revised disclosure forms are thus a critical part of the oversight by the Department and union members over the financial operations of unions. Both this Department and the Department of Justice, in prosecuting criminal fraud, rely heavily on union members to review and evaluate the financial disclosures of their unions and report any suspected activity for investigation, as may be appropriate.

### *E. Schedule 5—Investments Other Than U.S. Treasury Securities*

The Department's proposed Schedule 5 required a labor organization to list: each marketable security that has a book value of more than $5,000 and constitutes more than 5% of the total book value of all the union's marketable securities; and each other investment (*e.g.*, mortgages purchased on a block basis or investments in a trust) that has a book value of more than $5,000 and constitutes more than 5% of the total book value of all the union's other investments. The current Schedule 2 of the Form LM–2 requires labor organizations to list such securities and investments if they have a book value of $1,000 and exceed 20% of the total book value of the respective securities and investments of the union. The Department invited comments regarding whether the two thresholds of the proposal are appropriate.

None of the comments indicated that the Department's proposal would constitute a significant burden on reporting labor organizations. Rather, the comments expressed various views of the usefulness of the information that would be disclosed under the Department's proposal as compared to information that would be disclosed under alternative thresholds suggested by the comments.

Two local labor organizations stated that the itemization of marketable securities under the Department's proposal would pose no difficulty for reporting labor organizations, but asserted that the schedule would provide no information that would assist union members. In the view of these locals, the existing schedule on the current Form LM–2 was adequate. One commenter stated that the information required to be reported under the Department's proposal would be intrusive without providing any useful information.

The AFL–CIO expressed the view that the $1,000 threshold of the current Form LM–2, given contemporary financial reality, could be considered *de minimis*, and that only more substantial investments should be required to be itemized under the Department's proposal. The AFL–CIO also suggested that any lower threshold might exceed the Department's authority because, in the AFL–CIO's view, the Department is constrained to require unions to report only information material to the financial condition and operations of unions. In its view, most transactions lower than $1,000 would not be material to even a union with meager revenues.

A trade association supported the Department's proposal to raise the threshold for reporting individual securities and other investments to $5,000. In the association's view, investments worth only $1,000 should be considered *de minimis*. The association further suggested that the Department should also set a $5,000 threshold for individual accounts to be reported in Schedule 1—Accounts Receivable Aging Schedule and proposed Schedule 8—Accounts Payable Aging Schedule, two new schedules proposed by the Department. A labor relations foundation, contrary to the Department's proposal to raise the threshold dollar amount to $5,000, argued that $1,000 was not *de minimis* and that a higher threshold would invite corruption.

Two intermediate labor organizations agreed that $5,000 was appropriate as a dollar threshold, but they urged the Department to raise the percentage threshold from 5% to 15% of the total book value of the reporting labor organization's marketable securities and other investments. Two other comments from local labor organizations recommended that the threshold for requiring itemization of individual investments be based solely on a percentage of the total book value of all of the union's marketable securities or other investments. Finally, the comment of a firm of certified public accountants also recommended a single threshold but suggested that the threshold be based solely on the book value of the individual security or other investment. The commenter recommended that such a threshold be set at a book value of between $25,000 and $100,000.

Upon careful consideration of the varying views on reporting investments, the Department has concluded that the proposed dual thresholds of $5,000 and 5% are appropriate to provide union members with useful information about the union's investments without unnecessarily burdening unions. The Department has not been persuaded that it should require unions to report individual union investments with less than a book value of $5,000. The Department believes that the current threshold of $1,000 (on Schedule 2 of the current Form LM–2), especially considered in light of the asset price increases that have occurred since 1962, when the reporting threshold was set at that level, would require a union to report holdings too small to provide significant, useful information to union members. This would be true whether such holdings represented at least 20% of the union's total investments (in each of the covered investment categories: "marketable securities" and "other investments"), the requirement prescribed by the current From LM–2, or as little as 5% of the union's total investments, as proposed by the Department.

Under the Department's proposal, a union is required to report for each of the two investment categories its nineteen largest investments, if any, over $5,000, as measured by the book value of the investments. For example, unions with total marketable securities valued at less than $20,000 would only have to report a maximum of four holdings in each category.

The Department does not find persuasive the comments that argued that the Department's proposals were intrusive; not useful, or not material. As noted above, because only investments that exceed 5% of the union's holdings are reported and no union can have more than 19 such investments (5% × 20 = 100%), the proposed Schedule 5 will never require any labor organization to disclose to members of the labor organization more than 19 of the largest marketable securities and 19 of its largest other investments. By providing this information to union members, they will be able to make their own judgments regarding the value and appropriateness of the union's holdings and thereby the soundness of that important aspect of their union's financial operations and condition.

The Department also has concluded that neither of the proposed thresholds should be either raised or deleted. Raising the threshold percentage for proposed Schedule 5, for example, from 5% to 15% of the total book value of a labor organization's marketable securities and other investments would require a labor organization to list at most six marketable securities and a maximum of six other investments (because 15% × 7 = 105%), rather than a maximum of nineteen of each type. Reporting these few investments would portray a limited picture of a union's numerous and very diverse investments. The 5% threshold will disclose to union members a fuller, more accurate picture of the soundness of the union's selection of investments and of that important aspect of the overall financial condition and operations of the union without imposing a significant reporting burden on the organization.

Similarly, raising the book value threshold of individual marketable securities and individual other investments to amounts from $25,000 to $100,000 would foreclose disclosure of all but the very largest union holdings. Especially among labor organizations that file the Form LM–2 or other Form LM–2 filers without extensive investment holdings, thresholds set at book values of $25,000 to $100,000 might except any investment from being disclosed. In the Department's view, members of such unions would have a substantial interest in examining, and reaching conclusions regarding, the value and appropriateness of the union's limited holdings and the implications with respect to the general condition and operations of the organization.

As indicated above, two commenters recommended that the Department adopt a single threshold based on a percentage of the total book value of the union's investments as the basis for determining when a union must report individual investments for both marketable securities and other investments. The Department recognizes that in some circumstances the use of a single threshold percentage, such as the Department's proposed threshold of 5% of the total book value of investments, would not change the number or mix of marketable securities and other investments that would be itemized under the Department's dual thresholds of 5% and $5,000. The Department believes that ordinarily the disclosure of an investment equal to 5% of a labor organization's total holdings would provide useful information to members regarding the soundness and appropriateness of a union's management of that aspect of its financial affairs.

### *F. Schedules 11 and 12—Disbursements to Officers and Employees*

The Department received more than 150 comments on its proposal to revise the information to be reported by unions about disbursements to their officers and employees and to require unions to report, by estimation and category, how these individuals expend their working time on behalf of the union. The Department proposed that unions would report for each officer and certain employees (all those paid a yearly salary of more than $10,000) their net salaries and the amounts of withholdings for each individual, along with the amount of taxes paid by the union in connection with the individual's compensation. Under the current report, only gross salaries are required to be reported for each officer and employee. Withholdings and taxes are reported, but only on an aggregated basis.

The Department also proposed to require unions to provide an estimate of the time expended by their officers and employees in each of eight functional categories prescribed generally for union receipts and disbursements. The Department proposed that unions report each individual's work time, per category, rounded to the nearest 10%. The proposed categories are discussed in greater detail at Section III(C)(1). In 1992, the Department issued a final rule, later rescinded, that also would have required unions to identify, on an individual-by-individual basis, how their officers and employees expended their work time. The 1992 rule also required unions to report disbursements, including officer and employee salaries, in various categories. That rule, however, required unions to report the actual percentages of time expended by the officers and employees in each of the categories.

The Department's current proposal also invited comments on whether unions should be required to more exactly calculate, by category, how the officers and employees expended their time. The Department inquired whether a precise accounting of their time would be more useful to union members than the proposal to allow estimates that are rounded to 10%.

Several commenters supported the Department's proposal. One commenter stated that an estimate of the amount of time spent by union employees and officers in performing their various duties will provide significant new evidence to union members about the priorities of their union leadership. Together with the proposed requirement that unions report receipts and disbursements by functional category, a commenter wrote, these requirements will provide information that will be very helpful to employees in making decisions about whether to support or join a union. Another commenter asserted that the estimates would enable union members to understand how their leaders are spending their time and help ensure that union leadership is acting in the interests of its membership.

A trade association stated that it strongly supports the Department's proposal, adding, however, that unions should be required to identify more specifically any time allegedly spent in the category of "other disbursements." One local union stated that the estimation requirement strikes the right balance between the need for information and the burden imposed on labor organizations. The same union, however, stated that it would object to any requirement for more detailed time keeping than proposed by the Department.

Another commenter asserted that the time reports would enable agency fee payers to quickly identify the percentage of time used for non-representational matters and, therefore, determine whether their agency fees have been properly calculated. In this commenter's view, the proposed changes would reduce the burden on unions to defend suits from agency fee payers attempting to determine the proper amount of their agency fees.

One labor consultant expressed the view that implementation of the proposed functional time reporting proposal would not result in significant and costly changes to most unions' accounting systems. He stated that many unions already have their officers and employees completing activity report forms or time sheets that categorize their time into major program areas and that the automated accounting systems used by these unions can be modified easily, if necessary, to conform to the Department's proposed categories. He added that unions that do not utilize time reporting systems could adopt the policies and procedures followed by unions with systems already in place. The same commenter asserted that officers should be required to report actual time, not estimated time.

A labor policy group expressed the view that the timekeeping requirement would be burdensome, especially for larger unions. It nonetheless supported the Department's proposal because the salaries and duties of a union's officers and employees are an important part of union expenditures and reflect the priorities established by union leadership.

Unions generally opposed the proposal, typically for the same reasons they objected to the Department's proposed requirement that they categorize their receipts and disbursements by functional category. See discussion at Section III(C)(1). One international union predicted that if the contemplated changes are adopted: (1) Union officers would be prevented from fulfilling their responsibilities; (2) unions would be forced to hire employees to track disbursements and allocate expenditures; (3) local unions would have to reconfigure their accounting systems; (4) union officers and employees would have to be trained on how to translate their daily activities to fit the categories; (5) unions would become the target of inappropriate government intervention; and (6) union officers would be subjected to criminal penalties for inadvertent discrepancies in completing the form.

The AFL–CIO stated that there is no way to "exactly calculate" how officers and employees spend their time. The AFL–CIO submitted a survey that, it contended, demonstrates that any attempt to require something more exact than good faith estimations would impose significant new costs on unions. According to its survey, only 4% of the unions that responded now have the capability to allocate officer and staff time by the functions proposed by the Department. The AFL–CIO stated that only 10%-20% of responding unions stated that they have any type of electronic systems to keep track of officer or employee time by category.

The AFL–CIO noted that any requirement that unions maintain contemporaneous timekeeping records would greatly increase the burden on the union without any corresponding gain in the value of the information obtained. The AFL–CIO also contended that the Department's authority does not extend to prescribing particular types of recordkeeping. Another union complained that the recordkeeping requirement would limit the services provided by the union. It estimated that even if recordkeeping requires only 20 minutes per day to perform, this translates into the loss of many hours that could be devoted to delivering services to the union's members.

One commenter expressed the view that the provision for reporting in 10% increments does not relieve any of the administrative burden imposed by the Department's timekeeping proposal. In its view, detailed records must be kept just to approximate the time expended by each officer or employee. The commenter stated that it is unfair to require union officers and staff to keep time records, when, in its view, this obligation is not required of top business executives or government officials.

One commenter stated that the Department's proposed schedules fail to reflect the wide variety of tasks performed by the union officers in order to serve their members' interests, *e.g.*, attending union meetings, preparing newsletters, providing union-sponsored health/safety services, and operating job training and enhancement programs. According to this commenter, the proposed categories are misleading in that they suggest that besides collective bargaining, union officers and employees only participate in political and lobbying activities. This commenter suggested that all of the other activities would be considered as "other" suggesting that the individuals spend the majority of their time on matters less significant to members.

The AFL–CIO contended that two of the categories proposed by this Department ("benefits" and "contributions, gifts, and grants") have no employee activity associated with them. These are pure expense categories, and the only employee activity associated with them will be the relatively minor activity connected to disbursement. Thus, in the AFL–CIO's opinion, it is highly misleading to include these as two of the eight categories in which officer and staff time is allocated. In its view, two other categories ("general overhead" and "other") are largely residual and do not relate directly to any major union programs. By narrowing the choice of program categories to only four categories—contract negotiation and administration, organizing, political and lobbying—it asserts that the form will inflate the amount of staff time reported as "other."

One individual commenter asked the Department to clarify whether an individual should record all the time he or she expends on union business (typically 60 hours or more per week in his estimate). This commenter questioned the proper reporting of attendance at a Labor Day parade on a legal holiday or a political rally that takes place during regular working hours. Another commenter questioned the proper reporting of time spent by an officer attending a funeral for an employer representative on a joint union-employer committee.

A union sought clarification whether a union can report all the hours worked by its support staff (*e.g.*, receptionists, stenographers, secretaries, and mail room personnel) under a single category, or is required to provide an estimate for each individual by each of the functional categories.

The AFL–CIO contended that the proposed rule has the potential for reporting misleading information. In this regard, it states that the NPRM, but not the proposed instructions, indicates "[t]he time allocated among the categories for each officer [or employee] should total 100% of that [individual's] time." This possible requirement, coupled with the 10% increment for estimates, creates the risk of distorting how the individual spends his or her time. The AFL–CIO posed the question of how a union should report an employee's time if she spends 85% to 90% of her time on "contract negotiation and administration," 5% to 7% of her time on "political activities," and the same amount of her time on "lobbying." A union expressed concern about the liability of union officials who will be required to sign the union's report. In its view, it is unfair to impose this obligation upon the reporting officials, given what it considers the subjective nature of the reporting and the official's inability to verify any estimates provided by other individuals.

The Department believes that requiring unions to report the estimated amount of time expended by their officers and employees will provide useful information to their members. It will enable members to determine better how the union utilizes its human resources. A union's own labor costs represent a substantial portion of its yearly disbursements, and the allocation of the time expended by the officers and employees serves the same purpose as the allocation of a union's other disbursements. Moreover, by reporting how its officers and employee spend their time, by functional category, union members are better able to gauge the union's total investment of resources—labor and capital—to a group of activities. Based on its review of the entire record, the Department concludes that such reporting will not impose undue burden on the union or the individuals on its payroll. While union officials will be required to exercise judgment in making the necessary estimates, it should be remembered that only a good faith estimate, not precise reporting, is required. Union officials should be guided by the purpose of the reporting requirement—providing accurate information to union members—in deciding how best to characterize their activities for reporting estimated time. Finally, no official who makes a good faith, reasonable effort to accurately report estimated time need fear criminal liability, even if the estimate proves arguably inaccurate. *See* 29 U.S.C. 439.

The Department has determined, as a general rule, that it is unnecessary to impose on unions a requirement that they report their time on a more precise basis than a 10% estimation. The Department is not requiring unions to keep detailed time records. The labor organization need only estimate the time spent on each activity. It is up to the labor organization to determine the least burdensome way to provide the information. However, the Department believes the 10% estimation will be sufficient to enable members to evaluate how the time of the union's officers and employees is directed and whether it reflects an appropriate use of the union's financial resources. To avoid the misperception that a union's officers and employees spend no time in a category (or categories)—a possibility if time in a category is less than 5%—we have revised the instructions to provide that where the time reported by an individual in an activity is less than 5% of his total work time, he should use his or her best estimate to the nearest percentage and report this amount. Similarly, in reporting aggregate totals of time, the union, instead of rounding down to zero, must report its best estimate to the nearest percentage and report this amount. This change should enable unions to ensure that reported time estimates add up to 100% for each employee and this requirement has been made clear in the instructions.

The Department does not believe that allowing unions to customize categories or establish subcategories of existing categories, as some commenters proposed, would promote the purposes of the statute. As discussed in further detail above with respect to the use of functional categories for reporting disbursements, a "customizing" approach would result in vast differences in reporting formats from union to union. This divergence would eliminate a baseline of comparison, result in confusion, and decrease the value of information reported to members and the public. Similarly, the concerns about the difficulty of attesting to the time estimates appear to be overstated. The union should be able to determine without difficulty the manner in which time estimates are to be made. So long as the union has a reasonable operating procedure in place and takes reasonable steps to ensure that officers and employees are following that procedure, the individual responsible for submitting the report generally has no reason for concern. Only "willful" violations—actions that are intentional or taken in reckless disregard of legal requirements—will give rise to liability. *See* 29 U.S.C. 439. While the responsible official's reporting duties have increased, the standard by which this duty is measured has remained unchanged.

The final Form LM–2 instructions have been revised to clarify how particular activities should be reported and how some common multi-task activities may be allocated. See Section III(C). As discussed in the final instructions, union officers and employees should provide estimates based on the total number of hours they work on union business, not merely the first 40 hours or other measure of an individual's paid workweek. Despite the Department's efforts to provide clear instructions, the quality of the estimates reported will ultimately depend upon the care taken by the reporting unions in making them. Nevertheless, the Department believes that permitting unions to estimate the time spent in specific activities provides a appropriate balance between the dual objectives of providing as much useful and relevant information to union members while reducing, to the extent practicable and appropriate, any burden on reporting unions. Reporting unions will be encouraged to provide information that is objective, accurate, and reliable because they will want their members to be aware of the time spent by their union's officers and employees in activities on their behalf. Moreover, because the information will be presented in a clear and complete manner, union members will be in a position to determine whether the time reported appears to be appropriate and accurate, thus encouraging unbiased reporting. Because union members elect their officers and are responsible for the governance of their union, even estimated reporting of the manner in which officers and employees spend their time will be far more useful than the total lack of any such information in Form LM–2 prior to these revisions. Accordingly, even though allocating time by estimated percentages is not as precise as exact measurements of time, the fact that the estimates will be reviewed with interest by union members is itself an incentive that is likely to ensure the quality of the information reported.

Several commenters opposed the $10,000 salary threshold. The law's purpose, as stated by one commenter, was to require unions to report the salaries of only their highest paid officers and staff. Under the Department's rules, however, unions are required to report the salaries of virtually all their employees. The $10,000 threshold is established by statute, 29 U.S.C. 431(b), and therefore the Department is without authority to change the threshold amount.

No commenters specifically supported the proposal to require unions to report the net pay, withholdings, and tax payments for each officer and employee, but a number of comments opposing the proposal were submitted. An international union argued that the proposed reporting of net salaries is contrary to standard business practices and governmental regulations involving an organization's payroll. It asserted (as did one individual) that no other profit or nonprofit organization reports net wages. Moreover, it observed that a publicly traded corporation is required only to disclose the gross compensations of its chief executive officer (CEO) and four senior executive officers if, and only if, that compensation exceeds $100,000.

The AFL–CIO stated that the Department's current requirement that unions report the gross salaries of their officers and employees provides members with sufficient information to meet any legitimate purpose under the LMRDA. It contended further that the LMRDA provides no statutory authorization for the Department to collect this type of personal financial information about union officers and employees. In this regard, it asserted that the statute does not authorize the Department to inquire, even indirectly, into such matters as whether an individual officer elects to purchase supplemental insurance or allocates substantial portions of his or her paycheck to the United Way.

Based on the concern that the Department's proposal could interfere with the legitimate privacy interests of union officers and employees, the Department has determined that the better course is to maintain the current practice of requiring unions to report the gross salary (before taxes and other deductions) for each officer and employee, on an individual basis. Accordingly, in keeping with the current Form LM–2, Schedules 11 and 12 have been adjusted to reflect this change and a line item added to Statement B on which the reporting labor organization will report the aggregate amount of withholding taxes and other payroll deductions from all salaries, the total disbursed, and the total withheld but not disbursed. This change will protect individual privacy and also reduce the union's reporting burden for these schedules. The reporting union must then allocate each officer's and employee's gross salary, based on a good faith estimate, rounded to the nearest 10%, among five specified schedules (Representational Activities, Political Activities and Lobbying, Contributions, General Overhead, and Administration).

### *G. Schedule 13—Membership Categories*

Several commenters indicated their support for the Department's proposal to require unions to report the total number of members according to various types of membership categories. These commenters agreed that the newly required information would be useful to union members. A number of commenters, including several International unions, disagreed with the proposed changes to the unions' annual reporting requirements. Some commenters expressed doubt about the authority of the Department to require unions to submit detailed demographic information in their annual reports. Others expressed doubt that union members were interested in the more detailed membership information. Some commenters, while supporting the basic approach of the NPRM, suggested that the Department require unions to report information in additional categories. These suggested categories included information on:

- Members working on projects covered by the Davis-Bacon Act
- All employers with whom the union has collective bargaining agreements (CBA)
- The length and duration of each CBA
- The number of employees in each covered bargaining unit
- Male and female members
- Members in each state for unions that cover more than one state.

The purpose of the Department's proposed Schedule 13 is to give members a clearer sense of the current health and future viability of their union and to give members a sense of what changes should be made to the union in order to improve the organization. Over time, this information will enable members to judge how effectively their dues are being spent on organizing and if any additional resources should be devoted to that activity. None of the proposed additional categories appears to advance these goals. Consequently, the Department has decided not to require labor organizations to report membership in these categories.

Most comments indicated that, contrary to statements in the NPRM, unions do not currently keep membership information in the categories required by the new Schedule 13. Commenters provided several examples of different methods of categorizing members, including:

- The International Union of Operating Engineers (IUOE) does not maintain information on members by category.
- The American Federation of Teachers (AFT) tracks members, for accounting purposes, by "full membership equivalents."
- The International Brotherhood of Electrical Workers (IBEW) tracks members by industry.
- The building trades unions do not track apprentice, retired or inactive members.
- One union indicated that they classify members as "active" and "retired."
- Retired members in the United Association of Plumbers (UA) maintain active status (and pay dues) to maintain certain benefits.

It thus appears that while each union maintains membership information in some manner, it may not maintain that information in the precise categories contemplated by the proposed new Schedule 13. Union commenters also indicated that, because they do not maintain membership information in the categories contained in the new Schedule 13, it would be similarly difficult for unions to report the total amount of dues paid by each of the various categories of members and the amount that the union paid or received in per capita dues for each category.

While the Department continues to believe that information regarding the number and type of members of a reporting labor organization is information that is important to the members of that organization, the Department also agrees that each labor organization should be able to maintain such information in the manner that the union believes will be most useful to it as an institution. Accordingly, the Department has concluded that each reporting labor organization should be permitted to name and report on its own categories of members so long as the union provides a definition of each category in Item 69 (Additional Information). For example, if a union feels that it is best for it to maintain membership statistics on "active," "retired" and "apprentice" members, then it should report that information in the appropriate place on the schedule and provide a definition of each category in Item 69. The union will not be required to manufacture or report information for membership categories it does not keep.

This change will address the most prominent areas of concern highlighted by the comments. First, unions, and their members, presumably have some interest in the statistics if the union is already keeping them. Second, it should be no great burden for unions to report membership statistics that they are already keeping in the normal course of business. The Department recognizes that the requirements for reporting membership in the final rule may not disclose as much information to the members as the original proposal. The Department believes, however, that the final rule will disclose more needed information to the members concerning their unions without undue burden.

At least one organization, a provider of information regarding labor organizations to companies, labor attorneys, union democracy groups and academics, cited the tendency of labor organizations that have national, intermediate and local bodies to double-count members and to report the same persons as members of more than one of the related organizations. This practice, according to this commenter, can give members an inaccurate picture of a labor organization's overall strength and is due, at least in part, to the differences in the definition of "member" used by different labor organizations. In this regard, the Department notes that the statute defines the term "member" to include

> any person who has fulfilled the requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and bylaws of such organization.

29 U.S.C. 402(o). Every labor organization should use this definition to determine whether an individual is a member of the labor organization for purposes of Schedule 13. Applying this definition, however, may well result in two or more labor organizations reporting certain individuals as members because those individuals pay dues to, and fulfill all other requirements for membership in, a local labor organization and in an affiliated intermediate and/or national or international labor organization. In fact, membership in an affiliated local labor organization may well be a requirement for membership in an intermediate or international union. In some respects—as where, for example, an international union derives substantial support and funding from the members of affiliated subordinate unions—such "double reporting" may not necessarily be an inaccurate reflection of the financial health of the labor organization.

### *H. Mandatory Electronic Filing*

For several years, and with substantial Congressional urging, assistance and leadership, the Department has pursued the development and implementation of electronic filing of annual reports required by the LMRDA, along with an indexed and easily searchable computer database of the information submitted, accessible by the public over the Internet. *See* H.R. Conf. Rep. 105–390, 1997 U.S.C.C.A.N. 2061; H.R. Conf. Rep. 105–825; H.R. Conf. Rep. 106–419; H.R. Conf. Rep. 106–479; H.R. Conf. Rep. 106–1033; H.R. Conf. Rep. 107–342, 2002 U.S.C.C.A.N. 1690; H.R. Conf. Rep. 108–10, 2003 U.S.C.C.A.N. 4. In furtherance of that goal, the Department proposed that all Form LM–2 annual reports be filed electronically and proposed to develop software to enable that process.

The Department received several comments, including comments from members of Congress, accountants, and other organizations, that supported mandatory electronic filing. The commenters indicated that electronic filing is consistent with the recordkeeping requirements for human resource professionals working under other federal statutes and would bring the financial disclosure requirements of unions under the LMRDA into the modern era. The commenters pointed out that millions of people of all economic groups now conduct their financial business, including managing their 401(k) and IRA accounts, on the Internet. The commenters explained that mandatory electronic filing would also be consistent with the Congressional directives to ESA every year since 1997 to establish an electronic filing system to provide greater public access to the materials filed under the LMRDA.

A few commenters did not think the Department's proposal went far enough. These commenters suggested that all unions, even those with receipts of less than $200,000, be required to file their LM forms electronically. In addition, at least one commenter suggested that labor organizations be required to provide a link on their own website to the union's electronically posted LM form, whether located at the Department's LM website or elsewhere on the union's website. Many labor organizations, however, expressed their disagreement with the proposal that unions begin to file Form LM–2 and Form T–1 electronically after the issuance of the final rule. These commenters indicated that mandatory electronic filing would be a considerable burden to unions, particularly those unions with volunteer or part-time officers and staff. The union commenters noted that the Department's claim that electronic filing will be more efficient is untested, particularly because the software that will allow unions to transfer their electronic data to the reports is not yet available. One commenter also noted that the Department had indicated in a Government Accounting Office (GAO) report that any electronic filing of reports should be voluntary. The Department notes that its earlier views were shaped by the less mature technology that then existed and without the benefit of continued and repeated Congressional urging to make all such reports available on line. The Department's present view is shaped by today's technology, its impact on the ability to obtain, process, disclose, and utilize information, as well as the increased awareness of the importance of transparency to the governance of institutions.

In addition, several unions commented that the Department has overestimated unions' capability to file reports electronically. For example, the International Union of Operating Engineers (IUOE) stated that despite a concerted effort on their part to have locals file their per capita reports electronically, only 21 of the 147 IUOE locals do so. In addition, the International Longshoremen's Association (ILA) reports that none of its over 100 locals that file LM–2 reports currently files electronically. A survey conducted by the AFL–CIO indicates that only 14% of the national and international unions and only 9% of the local unions file their Form LM–2 reports electronically. The Department notes, however, that, in fact, a much smaller percentage of unions have actually filed their Form LM–2 reports electronically, a circumstance that is hardly surprising inasmuch as this filing option did not exist until December of 2002, when the Department's system became able to utilize digital signatures. The Department's experience further reflects that far more of the reports filed in paper are actually prepared electronically, even though they are submitted by mail to the Department. The fact that the AFL–CIO reports many more reports filed electronically than actually have been filed suggests confusion on the part of those asking the survey questions, or those answering them, or both.

The unions that commented stated that it would be expensive and perhaps not feasible for them to develop the new accounting systems, purchase the new computers, and train their staff to make the changeover to electronic filing within the timeframe required by the proposed effective date. For example, the United Food and Commercial Workers (UFCW) estimates that it will cost two million dollars and take two years to make the necessary changes. Similarly, a study conducted for the AFL–CIO estimates that it will take two to four years for unions to make the conversion to electronic filing. Therefore, the commenters suggested that the Department conduct a pilot program during which some, but not all, unions are required to file electronically. In the alternative, the commenters suggested that the Department devise a phase-in period during which the requirement for electronic filing is postponed, giving unions time to adapt their systems and train their people to meet the new requirements.

These comments suggest that the relevant issue with respect to electronic filing is not whether it should be required, but rather how and when it should be accomplished. Indeed, in light of the Congressional direction that these reports should be filed and made available electronically, and the delay and expense attendant to scanning paper forms in order to make them available on the Internet, electronic filing is clearly necessary and beneficial. In response to numerous comments arguing that more lead-time is required, the Department has modified the proposed effective date for electronic filing, but remains firmly convinced that the technological concerns associated with electronic filing are overstated.

First, the electronic filing requirement applies only to the largest labor organizations, those that have over $250,000 in annual receipts. Thus, 4,732 unions (about 19% of the total) will be required to file their reports electronically. Unions with annual receipts less than this threshold (62,668 or about 81% of the total) will not be subject to this requirement. See discussion in the Paperwork Reduction Act analysis (Section V(F), from which these numbers are derived. These unions, which are less likely than the larger unions to have full-time staff familiar with electronic bookkeeping and reporting, can still file the simpler Form LM–3 or Form LM–4 reports manually, if they wish. The technical feasibility study performed by SRA for the Department indicated that the proposal could be implemented with relative ease, and this understanding is consistent with the Department's own familiarity with recordkeeping software and union recordkeeping practices. While the AFL–CIO disputes the number of current electronic filers of Form LM–2, it argues that there are actually nearly twice as many electronic accounting programs in use by labor organizations than the Department assumed. In fact, many of the larger labor organizations that commented on the proposal argued not that they were unfamiliar with electronic accounting programs but that their own sophisticated programs capture different data than that required by the Department's proposal.

The NPRM noted a substantial number of filers using the Department's software to complete the existing LM reports; in fact, more recent data indicate that 76% of the Form LM–2 reports filed in 2002 were completed using the Department's software. The AFL–CIO figures cited above, indicating that far fewer labor organizations use the software, cannot refute the Department's actual usage data. First, the Department's data is based on review of all reports filed during the year, whereas the AFL–CIO survey is based upon questions answered by a relatively small number of filers. Second, the AFL–CIO provided only survey results, not the actual survey instrument, and there is little information provided by which to assess its validity. Finally, as noted above, if the AFL–CIO's assertions regarding its numbers are read literally, they are higher, in some respects, than the Department's own numbers, indicating, at best, some confusion on the part either of those asking the AFL–CIO survey questions, or those answering them, or both.

The most comprehensive response to the SRA technical feasibility report, a study performed by Beaconfire Consulting, Inc., was submitted along with the AFL–CIO's comment. This study does not claim that labor organizations cannot file their annual Form LM–2 reports electronically, but that the Department has underestimated the cost and time involved in converting to an electronic filing system. Most of the issues raised by the Beaconfire study relate not to the cost of compliance for labor organizations, but rather to the cost to the Department to develop the software that will allow labor organizations to submit their reports electronically. The Department is committed, however, to taking the steps necessary to effectuate the new system with minimal problems.

Although the Beaconfire study also suggests that costs to labor organizations may be higher than the Department assumed, Beaconfire acknowledges that their figures, like those developed by SRA, are merely estimates. Beaconfire assumed, without explanation, that the average data file to be transmitted by unions to the Department will be substantially larger than the size assumed by SRA. SRA, by contrast, stated that it extrapolated file size requirements based on the data types and volume currently being reported on Form LM–2, taking into account the fact that data volume varies significantly from union to union. For data that is not currently being reported, SRA made "worst case" assumptions that it viewed as conservative. See Technical Feasibility Study for an On-Line Financial Downloading System, SRA, Sec. 3.4.1. Without an explanation of Beaconfire's contrary assumptions, it is difficult to assess their validity, particularly in light of the recognized incentive on the part of regulatees "to inflate cost estimates in the hope of securing a less stringent regulation." McGarity and Ruttenberg, Counting the Cost of Health, Safety, and Environmental Regulation, 80 Texas Law Review 1997, 2044–45 (2002).

In addition, the Beaconfire study fails to recognize that the information required by the new Form LM–2 is not structurally complex or fundamentally different from the information that has been reported on the current form. The study, which notes problems encountered in the initial development of the Department's e.LORS program, also fails to take into account the Department's plans to leverage existing hardware and software components and to integrate the enhanced reporting system into the Department's existing infrastructure.

In revising its estimates of the likely cost of compliance with this rule, and in particular of compliance with the requirement that labor organizations file the Form LM–2 electronically, the Department carefully considered the information in the record regarding the existing capabilities of labor organizations. The AFL–CIO submitted survey data from its affiliates that suggests: 12.5% of local unions do not use computer accounting software; 21% of national and international unions and 33% of local unions would need new hardware; 62% of national and international unions and 75% of local unions would need new or upgraded software; and 14% of all unions said it would be impossible to expand the recordkeeping capacity of their current accounting systems to accommodate the additional data required by the proposed rule. The AFL–CIO survey also found that all national and international unions maintain their accounting data on in-house computer systems—but many of those systems are incapable of interfacing with the Department's software. Information submitted by the AFL–CIO also suggests, however, that: 79% of national and international unions and 67% of local unions will not need any new computer hardware; 38% of national and international unions and 25% of local unions will not need any new or upgraded computer software; and 86% can expand their current accounting systems to include the additional fields to accommodate functional reporting. Moreover, raising the Form LM–2 filing threshold to $250,000 will enable 501 of the smallest filers, and those most likely to have software and hardware issues, to file the less burdensome Form LM–3. Further, as identified in the technical feasibility study performed by SRA, the Department is committed to developing reporting software for LM–2 filers that is compatible with the major export formats available in commercial, off-the-shelf accounting software. Finally, in the event that a labor organization encounters severe difficulties, the hardship exemption will be available for its use.

One union noted that it is going to be very difficult and maybe impossible for unions using a commercial off-the-shelf bookkeeping system (Quickbooks, Peachtree, etc.) to find a way to incorporate these details into their accounting databases. Almost all unions, it observed, will have to do special programming to find a way to do this. For the integrity of all the other accounting functions, the system must show the payee of the check (*e.g.*, American Express), but for the revised Form LM–2 the system will have to ignore that vendor and instead insert the names of the hotels, airlines, restaurants, etc. Finally, one union asserted that the Department's burden estimates are completely mistaken, and are based on alleged efficiencies to be gained from using software that the Department purports will seamlessly export financial data. In its view, it is impossible to determine which, if any, financial software packages will be compatible with the Department's software. There is no way, in its opinion, to comment meaningfully on the burden associated with the proposed rule without knowing how the software will work.

In light of all of these concerns, the Department reassessed its estimate of the burden and cost of complying with this revision of Form LM–2 and revised its estimate significantly upward. The Department has never contended that the changes would be without cost; the real question is whether the increase in cost, once it is accurately measured, is justified by the increased benefits to union members. The Department has concluded, on balance, that technological advances have made it possible to provide the level of detail necessary for union members to have a more accurate picture of their union's financial condition and operations without imposing an unwarranted burden on reporting unions.

OLMS staff who review the reports filed and provide compliance assistance to unions have found that a majority of unions required to file Form LM–2 use computerized recordkeeping systems and have embraced the technology necessary to provide reports in electronic form. Several OLMS field offices report that even smaller unions that file Form LM–3 reports keep electronic books. The development of electronic software that will permit unions that keep their records electronically to import data from their programs to the Form LM–2 software should reduce the burden of reporting financial information with the specificity required by the final rule. While labor organizations have not previously been required to report all of this information, they have been required to make judgments regarding the appropriate characterization of disbursements in order to report those disbursements by category in the current form. Once the necessary adjustments have been made to electronic recordkeeping systems, no additional burden will be entailed by the need to make similar judgments with respect to fewer categories. Labor organizations that do not currently maintain electronic books, or that use accounting software that proves incompatible with the software developed by the Department, will experience an increased burden.

The Department has given serious consideration to the comments suggesting that the Department employ a pilot program before implementing a final rule or allow a delayed phase-in of the electronic reporting requirement. As explained (and further elaborated below), the Department's final rule builds upon the existing technology used by large and small businesses, labor unions, and other organizations to manage their finances. This technology has been available for several years and is used by many individuals to manage their family finances. As discussed elsewhere, the changes that need to be made by unions in their bookkeeping and accounting practices are incremental ones. The Department believes that most unions' existing financial software will accommodate the minimal changes required to comply with the rule. For data entry purposes, the only changes required will be the modification of the categories and fields to chart the union's accounts in a way that tracks the reporting categories. While the Department acknowledges that it will take the individuals responsible for tracking each union's financial matters some time to familiarize themselves with the instructions in order to modify categories, the actual time required to add the modified accounts to the tracking software will be nominal (from a few days to a week or more). Similarly, as discussed below, there is no apparent obstacle for unions to comply with the actual electronic submission of the information to the Department, an obligation that no union will have to meet until about 18 months after the publication of the final rule.

After considering the comments regarding implementation, the Department has chosen to delay the effective date of the rule to provide additional time for all labor organizations to make the adjustments necessary to record the information required. The Department believes that a pilot program is unnecessary. If the technology was not mature or the rule was introducing a concept or requirement unfamiliar to unions, a pilot program might have served a useful purpose. The rule, however, relies on mature technology that is in common use among unions, businesses, and other organizations. The Department's investigative and audit experience reflects that unions are well experienced in tracking receipts and disbursements and reporting this information to members. Unions also have demonstrated considerable proficiency in using software to obtain these results.

For similar reasons, the Department believes it unnecessary to phase-in the new rule. As discussed, the Department does not believe that unions will encounter significant problems in revising their current bookkeeping and accounting procedures to meet the reporting requirements. And, to the extent unions are concerned about the actual submission of the data to the Labor Department, that will not occur until about 18 months after this rule issues (and then only for unions that have fiscal years beginning on January 1, 2004). Moreover, the rule has a built-in "phase-in" component that will allow for adjustments to be made, if and when problems arise. Because each labor organization's filing date is dependent on its chosen fiscal year, the filing of annual financial reports is staggered throughout the year.

In the event that any labor organization encounters serious difficulties with electronic filing, the hardship exemption will be available. The Department proposed a hardship exemption modeled after the procedures used by the SEC (17 CFR 232.201–202) and invited comments regarding whether the hardship exemption procedures are appropriate and whether there are any alternative procedures that might better address legitimate problems. International unions commented that the hardship exemption should be broadened to permit a reasonable phase-in period and that smaller Form LM–2 filers be given permanent exemptions because of the burden and cost of electronic filing. Trade associations, on the other hand, argue that hardship exemptions should be narrowly limited and that labor organizations should be required to affirmatively prove hardship. Some commenters asked for clarification of the standards to be used when evaluating hardship claims. An attorney for a local union expressed concerns over the possible criminalization of innocent errors given the present lack of clear guidance on the proposed rule. One association commenter suggested that individual union members be permitted to appeal the grant of an exemption to their union.

The Department has decided to retain the hardship exemption and not to attempt to define with more particularity the circumstances in which it might be available. The exemption was left deliberately broad in order to permit accommodation of a wide range of variable situations. Moreover, the Department is unaware of any problem experienced by the SEC in using a similar formulation. If, however, unions have serious difficulty with electronic filing, the hardship exemption presents a fail-safe option for any reporting labor organization that needs it. With respect to the suggestion that a union member be allowed to challenge his or her union's exercise of the hardship exemption, the Department does not believe that such an appeal would be practical. Exemptions will be granted only upon a proper showing of need by the union and the exemption will be only temporary. As noted above, the concerns expressed about "criminalization" of innocent mistakes are misplaced because sanctions are available only for willful violations and thus depend upon intentional or reckless actions by responsible officers.

Finally, the Department continues to be fully committed to providing extensive compliance assistance at all stages of implementation. OLMS is developing compliance assistance materials outlining and explaining the changes to Form LM–2 and new Form T–1 and will present seminars and workshops advising union officers of the new reporting requirements. Contemporaneously with the publication of this rule, the Department is making available a Data Specifications Document that will enable the unions' staffs to prepare their bookkeeping systems in order to submit their reports electronically to the Department. If unions do not complete this interface, they will still be able to use the Form LM–2 software by the "cut and paste" method or by keying information directly into the electronic form. The Form LM–2 software will be available to download from the OLMS website at *www.olms.dol.gov* well before any labor organization will have to use it to file their reports, which will give the Department plenty of time to conduct compliance assistance and answer questions posed by the filing community.

The Department's extensive compliance assistance will include some or all of the following actions:

- Mass mailings to all reporting unions explaining the final rule and the effective date.
- Briefings for national/international unions, including meetings with national/international secretary-treasurers and their staffs and follow-up training sessions.
- Training OLMS staff on the new forms software and how to respond to inquiries from users.
- Establishing and publicizing a toll-free telephone number for software trouble-shooting.
- Maintaining a help desk with a toll-free telephone number and a dedicated email address for handling reporting inquiries.
- Development of users' guides for the new forms software.
- Development of Powerpoint briefings on the new forms software.
- Presentation of Powerpoint briefings by OLMS field offices in compliance assistance sessions with filers.
- Establishing a section on the OLMS website devoted to the revised Form LM–2 and making regular updates to it.
- Developing a "list serve" system to send email messages to unions, accountants, union members, and other interested individuals to provide up-to-the-minute information to assist in meeting the reporting requirements for the revised Form LM–2.
- Developing guidance to assist unions to configure off-the-shelf software to best capture the information needed to provide the data required for submitting the LM–2 and T–1 reports.

### *I. Effective Date*

The Department proposed to make the use of the revised Form LM–2 and the new Form T–1 mandatory for reports for fiscal years commencing after the publication of the final rule. The Department specifically invited comments concerning whether one year is an appropriate time period before labor organizations are required to use the new forms and whether labor organizations should be required to use the revised form to report information for a fiscal year that begins within 30 days of the date that a final rule is issued. One commenter said the effective date was appropriate observing that "[t]he proposed electronic filing procedures and effective dates strike a reasonable balance between limiting reporting burdens and increasing members' access to important information." Two other comments from organizations proposed that the effective date should be even earlier. These commenters indicated that while the new rule would require additional reporting burdens, the essential information to be reported remained unchanged. These commenters also expressed concern that unions would file the new forms late as many unions do with the current forms.

The majority of the comments specifically dealing with the rule's effective date opposed the proposed effective date saying that it was too soon. The commenters, most of whom were labor organizations, argued that the final rule should not be imposed until the software that will be provided by the Department is tested, implemented and fully operational. Several unions suggested that the effective date be delayed six months to two years. Some commenters said that given the Department's experience with e.LORS and the SEC's experience with its reporting system, a delay of two to four years before full implementation was more realistic. Other commenters suggested that the Department's software be subject to a separate review and comment process after it is issued.

The Department continues to believe that an earlier or immediate effective date would not be appropriate for a proposed rule of this magnitude. Some interim period will be needed for unions to adapt their recordkeeping practices to the new requirements. Similarly, there will be a later need for the Department and labor organizations to test and implement the reporting software that will be provided by the Department. The aim of the Department is to balance some reasonable amount of time that unions will need to adapt to the new reporting requirements and the members' immediate interest in knowing how their dues money is spent. This member interest is reflected in the numerous comments from members indicating general support for the proposed changes and emphasizing the members' right to have information concerning their union.

In addressing unions' concerns, it is appropriate to sketch the tasks to be undertaken by unions to meet the requirements of the new reporting regime. The tasks involve two phases of preparation. First, filers will need to study and understand the new requirements, make adjustments to the union's recordkeeping system, and train staff. Second, filers that choose to take advantage of the electronic importation features of the Department's reporting software will need to create reports within their accounting systems that will be used to export their data to populate the reporting forms. As discussed in greater detail below, the first phase likely can be completed within a few weeks of the rule's publication and certainly by the effective date of the rule, whereas the second phase need not be completed until the form is filed, at the earliest, nearly 18 months after publication of this rule (and then only for unions that have fiscal years beginning on January 1, 2004).

The grace period of about three months is relevant to the first phase discussed above, which begins immediately upon publication of the final rule. The preamble, instructions and forms will be the authoritative source of information regarding the new reporting requirements. Union officials will use these documents to understand what is required of them. Additionally, the Department will provide substantial compliance assistance that will include an overview of the requirements, a comparison to the old requirements, guidance to assist unions to configure off-the-shelf software to best capture the information needed to provide the data required for submitting the LM–2 and T–1 reports, a tentative schedule of seminars for international, national, intermediate and local unions hosted throughout the country, an email list-serve to provide periodic updates to interested parties, web-based materials that include frequently asked questions, a description of the Form T–1 registration process, and other topics of interest to filers.

Once union officials understand the new reporting requirements it will be necessary to make some adjustments to their recordkeeping systems. Most changes will be very minor. The most crucial change involves the tracking of disbursements to ensure that each disbursement is allocated to the proper disbursement category with a descriptive purpose. Each union will track new disbursements according to the account classifications created by that union and classify them according to the disbursement categories of the revised Form LM–2. Some commenters asserted that this is a dramatic policy shift tantamount to imposing a new recordkeeping system, which would cause a significant burden, but this ignores the fact that unions have always been required to allocate each disbursement to one or more disbursement categories on the Form LM–2. For example, unions have always been required to allocate credit card payments to multiple categories of the Form LM–2 based upon the purposes of each charge. A single credit card charge to a travel agent may include expenses that must be allocated to three or more different places on the Form LM–2. The Department has changed the categories but not the underlying method of allocating these disbursements. In fact, there actually fewer disbursement categories on the new form and the five new categories are thoroughly defined in the instructions to the form. After allocating the disbursement, they will enter a brief purpose for each transaction in a memo field. These sorts of operations should be easy to perform since such changes to the classification of transactions and the creation or modification of accounts are made on a week-to-week or day-to-day basis in the normal course of business. It may require some retraining to understand the new categories and the use of the memo field, but this is guidance that bookkeepers are accustomed to receiving. Nothing during this phase is particularly time consuming, difficult, or outside the common routine of individuals engaged in bookkeeping and accounting. In sum, the Department believes that Form LM–2 filers will be able to make any needed adjustments to their bookkeeping and data processing practices to capture and allocate transactions in the categories prescribed by the Form LM–2 and to later transmit such data without incurring an undue burden.

Addressing unions' additional concerns, it is the Department's position that neither the time spent by the SEC in the development of its Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system nor the time required for the Department to implement its e.LORS system provide appropriate paradigms for determining the time necessary to implement mandatory electronic filing of the Form LM–2. First, the phase-in of the mandatory electronic filing on the SEC's EDGAR system was completed on May 6, 1996, over seven years ago. See 61 FR 13544; *http://www.sec.gov/info/edgar/regoverview.htm*. Since then, technology has continued to develop, building, in part, on experience gained from using systems like EDGAR, and computerized recordkeeping and communication have become more accessible and better understood. As the SEC itself commented, in implementing recent improvements:

> Recent technological advances, most notably the rapidly expanding use of the Internet, have led to unprecedented changes in the means available to corporations, government agencies, and the investing public to obtain and disseminate information. Today many companies, regardless of size, make information available to the public through Internet web sites. On those sites and through links from one web site to others, individuals may obtain a vast amount of information in a matter of seconds. Advanced data presentation methods using audio, video, and graphic and image material are now available through even the most inexpensive personal computers or laptops.

65 FR 24788–89.

Moreover, the EDGAR system is far more complex and multi-faceted than the filing of the one or two forms contemplated by this rule. In fact, EDGAR accommodates the filing of over 75 separate forms by a variety of different types of entities. *See http://www.sec.gov/info/edgar/forms.htm#common*. The fact that such a massive system could be implemented with a three-year phase-in period over seven years ago lends support to the Department's assertion that the far simpler architecture required to permit similar organizations to file two forms, at most, can be implemented in much less time. In addition, the Department will be able to utilize both the architecture developed for e.LORS, as well as experience gained in developing and implementing that system, to facilitate the establishment of a system of mandatory electronic filing for the current Form LM–2. Although some commenters also pointed to delays in publication of recordkeeping rules by the Occupational Safety and Health Administration, those delays are irrelevant inasmuch as they were related to policy changes, not technical difficulties. See 68 FR 38601.

The Department continues to believe that labor organizations will have adequate time to conform to the revised forms and comply with the more detailed reporting requirements. As indicated above, unions will have a minimum of approximately 18 months before their first report on the new forms is due. During this time, they already will have made changes to their bookkeeping practices needed to capture the information that will be reported. Thus, the unions will be able to focus their efforts on training their staff in the new requirements of the actual reporting software. As the Department has acknowledged, there were some complications with the implementation of the previous e.LORS system. The Department has learned from this process. Building upon the existing infrastructure, the Department is employing more advanced technology in developing the reporting software than was the case in the initial e.LORS project. Similar software has proven efficient with other government agencies.

As discussed above, the Department has decided to delay the effective date of the final rule by postponing its application until unions begin their next fiscal year *after* December 31, 2003, *i.e.*, about three months after publication of this rule. Approximately two thirds (⅔) of the reporting unions begin their fiscal year on January 1. The first report containing the information required under the new rule for these unions would be due on March 31, 2005. Labor organizations that use a fiscal year beginning on a date other than January 1 will have even more time to comply.

## IV. Summary of Changes to the Proposal to Require Form T–1 Reporting for Trusts

The Department proposed to require all unions to report the assets, liabilities, receipts, and disbursements of all funds or organizations that are not wholly owned by the union, but that meet the statutory definition of a "trust in which a labor organization is interested," that have annual receipts of $200,000 or more and to which the labor organization contributes at least $10,000 during the reporting year on a new Form T–1 (Trust Annual Report) in order to fulfill the purpose of the statutory reporting requirements.

A "trust in which a labor organization is interested" is defined in Section 3(l) of the LMRDA (29 U.S.C. 402(l)) as follows:

> * * * a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

The Department sought comments on a number of issues relating to this new form, which are discussed below.

### *A. Who Should Be Required To File a Form T–1*

#### 1. Labor Organizations That File Forms LM–3 and LM–4

The Department proposed that all labor organizations, including smaller labor organizations eligible to file their labor organization annual financial report on Forms LM–3 and LM–4, as well as larger labor organizations required to file Form LM–2, would be required to file Form T–1 for any trust in which a labor organization is interested if the total annual receipts of the trust were at least $200,000 and to which the labor organization contributed at least $10,000, or to which $10,000 was contributed on behalf of the labor organization, during the reported year. The proposed Form T–1 is designed to require unions to report financial information about union funds that have been invested in such trusts, information that has not been disclosed under the current reporting regimen for unions. The proposed reporting scheme was established to discourage circumvention or evasion of the reporting requirements for such trusts, while imposing minimal burdens on labor organizations. The Department invited comments on whether this aspect of the Department's proposal strikes an appropriate balance between the need for transparency and any burden on labor organizations.

Numerous commenters expressed their views on the reporting burden that the proposal would entail. Some commenters discussed the likely impact on unions without substantial resources invested in covered trusts. A business/trade association asserted that the reporting burden on such unions would be significantly less than on unions with more substantial assets, given that the burden likely would be proportional to the size of a union's overall finances. The association also suggested that it might be appropriate to require smaller labor organizations, otherwise eligible to file their labor organization annual financial report on Forms LM–3 or LM–4, to file their annual reports on the more detailed Form LM–2 for any year in which such organizations meet the requirement for filing the Form T–1.

Many unions submitted comments that would except some unions from the Department's proposal. These commenters stated that unions, regardless of the size of their membership or their financial resources would have virtually the same responsibility and tasks, even though only a small number of the unions would have the staff or other resources to obtain, prepare, and file timely and accurate information on Form T–1.

Many commenters stressed the limited human resources available to some unions. These commenters observed that many unions have no clerical employees and must rely either on part-time officers or, in very many cases, unpaid members who volunteer their services after work hours. In the view of these commenters, very few of those officials and employees have the computer or accounting experience or training sufficient to readily process and submit the necessary financial information for the Form T–1 in electronic format.

Commenters stated that many labor organizations conduct and record their financial and other union affairs by hand and seldom have ready access to current-generation computers, software, and other electronic equipment. These commenters expressed concern that these organizations, which already often find it necessary to hire professional assistance to meet current reporting requirements, in many cases would be constrained further to hire and rely on computer, accounting, legal, and other consulting assistance to comply with the Department's Form T–1 proposal. Additionally, these commenters stated that such unions would find it necessary to expend significant amounts of their resources for training on how to meet their reporting obligations. The commenters further stated that, because there is a significant turnover of the organization's part-time and unpaid officials and employees, those costs may not only be a significant but also a recurring expense for small organizations. Commenters stated that many organizations would be faced with the dilemma of raising the dues of, or cutting services to, their members.

The Department has been persuaded that the relative size of a union, as measured by its overall finances, will affect its ability to comply with the proposed requirements relating to trusts in which the union has an interest. For this reason, the Department has decided to limit the requirement for filing Form T–1 to labor unions that have receipts of at least $250,000 per year, the same filing threshold that applies to organizations that must file their annual financial reports on Form LM–2. Accordingly, the Department's final rule excepts from the trust reporting requirement labor unions that are eligible to file Forms LM–3 and LM–4.

Because the proposed requirement that Form LM–3 and –4 filers file a Form T–1 for trusts in which they are interested was the only significant change proposed with respect to Forms LM–3 and LM–4, neither these forms nor the Instructions for them will be included in the appendix to this rule. In addition, a change will be made to the Instructions for Form LM–2 to make them consistent with the unchanged Instructions for Forms LM–3 and –4, which provide that the term "total annual receipts" includes receipts of any subsidiary organization, defined as

> * * * any separate organization of which the ownership is wholly vested in the reporting labor organization or its officers or its membership, which is governed or controlled by the officers, employees, or members of the reporting labor organization, and which is wholly financed by the reporting labor organization.

While an entity that meets the definition of a subsidiary will also be a trust in which the union is interested, the assets of which would not normally be included in "total annual receipts" of the reporting union, an exception to the normal rule will be added to the Instructions to make clear that the assets of a trust should not be included unless the trust is also a subsidiary, as defined above. The NPRM pointed out that one alternative to the proposed criteria for filing a Form T–1 would be to require a report for any entity that is dominated or controlled to such a degree that assets, liabilities, receipts and disbursements of the entity effectively are those of the union itself. Commenters were specifically invited to comment on the fact that assets and receipts of such an entity "would be reportable as assets and receipts of the union itself (rather than assets of an organization in which the union has an interest)" and that the addition of such amounts might require a union to file a Form LM–2 rather than a Form LM–3 or LM–4. See 67 FR 79285. Although, as explained in Section IV. A. 3, the Department has rejected reporting based on "single entity" status in favor of the statutory definition of a trust in which a labor organization is interested, it is appropriate to retain the existing inclusion of the receipts of a subsidiary (which is more clearly and more narrowly defined than a single entity) in the receipts of a reporting union for the sole purpose of deciding whether the union must file a Form LM–2. Otherwise, removing the requirement for unions with annual receipts of $250,000 or less to file a report regarding trusts in which they are interested would permit unions to allocate assets to a wholly owned, controlled and financed entity and avoid even the reporting requirements imposed with respect to such entities before these reforms.

### 2. Other Exemptions

The Department originally proposed four express exemptions to the Form T–1 Trust Annual Report: (1) Where an organization makes freely available, and specifies the location of, an audit of the trust pursuant to 29 U.S.C. 186(c)(5)(B); (2) where an organization files publicly available reports about the trust as a Political Action Committee (PAC) with a state or federal agency; (3) where a report about the trust as a political organization is filed with the Internal Revenue Service pursuant to 26 U.S.C. 527; or (4) where the trust is required to file an annual report pursuant to ERISA (29 U.S.C. 1023). The Department invited comments concerning whether the proposed Form T–1 procedures—including the enumerated exemptions to Form T–1 filing—were appropriate given the facts and circumstances of current union reporting.

Many labor organizations supported the proposed Form T–1 exemptions as a reasonable approach that provides valuable financial disclosure, while avoiding needless duplication of effort. Other unions, apparently either mistaken about, or unaware of, the parameters of the exemptions, criticized the Form T–1 on the ground that many trusts are heavily regulated by ERISA (and other federal laws) and are already required to file similar financial reports with government agencies. In the Department's view, these comments are best read to provide implicit support for the proposed exemptions. Several commenters suggested that the Department extend the Form T–1 exemption to any entity willing to be audited by an independent certified public accountant and willing to make that audit publicly available, irrespective of whether the trust currently files an audit or report with a government agency. Finally, several trade associations suggested that the Form T–1 permit no exemptions at all. These organizations stated that, at a minimum, unions be required to append to their Form LM–2 filings the pertinent audit or annual report filed with the other government agency.

In response to these comments, the Department has continued to provide four exceptions to the Form T–1 requirements: (1) A PAC fund, if publicly available reports on the PAC's funds are filed with federal or state agencies; (2) any political organization for which reports are filed with the IRS under 26 U.S.C. 527; (3) employee benefit plans filing a complete and timely report under ERISA; and (4) any covered trust or fund for which an independent audit has been conducted in accordance with standards prescribed in the final rule. For the first three categories, the exception is complete. No Form T–1 is required. For the fourth category, a union must file the Form T–1, but can file the independent audit in lieu of providing the financial information otherwise required by Form T–1. The audit will be required to meet either the requirements of 29 CFR 2520.103–1 *et seq.* (relating to annual reports and financial statements required to be filed under ERISA) or the standards described in detail in the Instructions to Form T–1.

The standards prescribed in the Form T–1 Instructions, generally, require that the audit be performed by an independent qualified public accountant who, after examining the financial statements and other books and records of the trust, as the accountant deems necessary, certifies that the trust's financial statements are presented fairly in conformity with accepted accounting principles. Notes to the financial statements included in the audit must disclose, for the preceding twelve month period: Losses, shortages, or other discrepancies in the trust's finances; the acquisition or disposition of assets, other than by purchase or sale; liabilities and loans liquidated, reduced, or written off without the disbursement of cash; and loans made to union officers or employees. The audit must be accompanied by schedules that disclose, for the preceding twelve month period: A statement of the assets and liabilities of the trust, valued at current value, and the same data displayed in comparative form for the end of the previous fiscal year of the trust; a statement of trust receipts and disbursements; and a list of all entities, including the name and description of the entity, with which the trust conducted $10,000 or more of commerce during the reporting period, as well as the aggregated total of all receipts/disbursements with each such entity during the reporting period.

These standards overlap partially with the standards required by the ERISA rule, with changes necessary to serve the particular needs of the Department in administering the "interested trust" provisions of the LMRDA, as discussed throughout this section of the preamble. See generally AICPA, Professional Standards, Special Reports, AU §§ 600 and 623; FASB, FAS 117, Final Statements for Not-for-Profit Organizations, ¶¶ 45, 47, 63.

The new audit alternative is aimed at promoting disclosure while avoiding duplication for trusts that are already subject to an independent audit. The audit option enables unions to avoid reporting the detailed financial information on a Form T–1 if they are already receiving an audit that meets the specifications set forth above, by simply filing a copy of such an audit along with the first page of a Form T–1, which provides identifying information. The criteria set forth above are in line with standard business practices (*id.*) and provide the kind of information in which union members who submitted comments on this issue demonstrated an interest. The information required in such an audit, however, is somewhat more general than that otherwise required on a Form T–1. For example, an audit need not specify the purpose for disbursements of $10,000 or more by the trust, but need only list the identities of those with whom the trust engaged in $10,000 transactions.

As discussed earlier, no union is required to file an audit for a covered trust. Instead, the union may choose to meet the reporting requirement by submitting either: (1) A statement that a qualifying report (as identified above in the categories listed) has been filed with a separate government agency; (2) a copy of an independent audit meeting the standards prescribed above; or (3) a completed T–1 Form. These requirements should not be read as diminishing or affecting in any way a trust's disclosure obligations under other applicable law including, but not limited to, ERISA, state and federal reporting laws governing PAC funds, IRS regulations governing political organizations, and Section 302(c) of the Labor Management Relations Act (LMRA), 29 U.S.C. 186(c).

The audit process provides a valuable qualitative check on the entity's finances by an independent examiner. Among other regulatory schemes, the SEC, as noted above, recognizes the important, rigorous role independent audits serve in its regulation of public companies. The Department recognizes that the audit option may not provide the same detail as the Form T–1, but in this context the need for itemization is less significant than it is in reporting the union's non-trust assets because the Form T–1 does not apply to disbursements by labor organizations directly. The Form LM–2 already captures specific union disbursements and accounts payable to trusts. The Form T–1 is designed to provide information about an entity created by the labor organization, or trustees or members of the governing body of which are selected or appointed by the labor organization, a primary purpose of which is to provide benefits for the labor organization's members or their beneficiaries.

Many union members recommended generally greater scrutiny of joint employer-union funds authorized under the LMRA. Moreover, while many union members were critical of the current state of joint funds disclosure and sought greater Department oversight of these funds, these comments can be read equally as supporting the requirements that unions specify where the audit is available. At least one union member stated that the critical problem was that requests for information about these funds were ignored—not that the substance of the information provided was insufficient. Similar reasoning supports extending the opportunity to reporting labor organizations to file a qualifying audit in place of a Form T–1 for any trust. The Department believes, however, that such audits should be filed with the Department, rather than maintained separately from the labor organization's other financial information. Their filing with the Department will promote transparency and accountability by allowing union members to access all trust information quickly and easily in one location.

### 3. Form T–1 Reporting Threshold

The Department proposed a reporting threshold based on the trust's annual receipts and a union's annual contributions to the trust (or the contribution made on the labor organization's behalf, or as a result of a negotiated agreement to which the labor organization is a party). The Department proposed $200,000 in annual receipts as the trust threshold and $10,000 as the threshold for a union's contributions to the trust. Although most of the comments received focused on the size of a labor organization's contribution, rather than the size of a reportable trust, the Department has decided to raise the reporting threshold to require unions to report only trusts with annual receipts of $250,000 or more, consistent with the increase in the reporting threshold for the Form LM–2.

One comment suggested that in some circumstances the $10,000 threshold for labor organization contributions to a trust was too high. That comment urged the Department to modify the proposal so that a union that contributes either $10,000 or 10% of its total annual receipts, whichever is less, would be required to file Form T–1. The comment reasoned that amounts of less than $10,000 may be significant, relative to the organizations overall finances, for some unions, and that members of such unions should have the benefit of knowing how their money is being spent. As noted above, the Department invited comments about the impact that the proposed trust reporting requirement would have on unions with relatively small assets. The commenters have persuaded the Department that some smaller unions could encounter significant and recurring difficulties in complying with the Department's proposal. The Department's decision to limit the requirement for filing Form T–1 to those unions with annual receipts of at least $250,000 has rendered moot the suggestion to adopt an alternative Form T–1 filing threshold for union contributions of the lesser of $10,000 or 10% of the union's total annual receipts.

The Department recognizes that amounts less than $10,000 may be comparatively more significant to some unions. However, the Department believes that the value of such information to union members is outweighed by the burden such reporting could have on unions without a professional or even full-time staff. Such unions also may have comparatively more difficulty in obtaining the detailed information and preparing the detailed trust report on Form T–1, especially in electronic format.

A number of commenters expressed the view that the $10,000 union contribution threshold for filing Form T–1 was too low and recommended various alternatives:

- Two comments suggested that the $10,000 threshold served a limited purpose because a benefit program would readily meet that threshold; the comments cited as an example the fact that a union with as few as 49 members who work full-time and contribute $.10 per hour to a benefit program would meet the threshold. A third comment suggested that the union annual contribution threshold be raised to $25,000.
- Two comments stated that the Department's proposal would require a union to file detailed reports on Form

T–1 regarding trusts in which a union may have only a 5% ownership interest. Those comments urged the Department to revise the proposal so that the threshold was based on ownership or control of at least 50% of the trust.

- For similar reasons, three comments suggested that a threshold of 20% or 25% or some other percentage of the receipts of the trust would be a better measure of the union's relationship with the trust that would permit the union to obtain details of the trust's financial operations to be reported on the Form T–1.

The Department has not been persuaded that these comments provide a sufficiently balanced and workable alternative to the Department's proposal. The $10,000 threshold for union contributions proposed by the Department represents, in the Department's view, the most appropriate compromise between an amount that is sufficiently high so that an undue reporting burden is not imposed on unions with limited finances and an amount that is sufficiently low so that trusts will be reported if they receive contributions equal to a significant proportion of the reporting union's other financial affairs. Thus, a threshold contribution of $25,000 seems excessively high, especially in relation to the other financial affairs of labor organizations. Setting the threshold at this level would deny members information about financial transactions involving a significant amount of money relative to the union's overall finances and other reportable financial transactions.

Basing a union's obligation to file a trust report on the percentage of the union's ownership or control of the trust also does not appear to be a workable or appropriate approach. Union ownership and control in the context of a union's participation in a trust that provides benefits to the union membership are very difficult concepts to quantify. Even if percentages of ownership or control were susceptible to reasonably precise calculations, in view of the many variables present in these situations, there is no readily apparent figure that would ensure the cooperation of the various trusts.

In any event, it seems unlikely that significant ownership or control need be vested in a single reporting labor organization in order to ensure trust cooperation so that the labor organization may obtain trust information sufficient for filing a Form T–1. A trust in which a labor organization is interested is defined in section 3(l) of the LMRDA to mean an organization that was created or established by a labor organization or one or more of the members of the governing body of which is selected or appointed by a labor organization. Thus, by definition one or more labor organizations probably will have significant involvement in the affairs of the trust. As a result, the Department anticipates that in most instances the reporting union, either by itself or in combination with other reporting unions, in practice will exercise sufficient influence to require or persuade the trust to provide the information necessary to file a Form T–1. It seems likely that in the great preponderance of circumstances it would not be necessary for a reporting union to have anything approaching 50% ownership or control of the trust in order to obtain the necessary information from the trust to prepare and file Form T–1.

The Department disagrees with the suggestion that a union's reporting threshold be based on the union's share of a particular trust's annual receipts. Under this approach, for example, a union would have to file a Form T–1 only if the union's per annum contribution reflects 20% or 25% of the total contributions received by the trust during this period. This approach would operate to except from reporting information relating to substantial contributions by a union, even though such contributions could represent the primary investment of the union. Moreover, this approach would deny members information, given the purpose of the trust, that is uniquely important to them as union members, even though the contributions of their particular union represents only a relatively small fraction of the contributions received by the trust. A formula setting the threshold at 20% or 25% of the annual receipts of the trust might exclude from the reporting requirement those large trusts that have numerous participating unions. Thus, even though the trust's entire contributions come from unions, no information would be disclosed by this trust unless a contributing union exceeds the suggested percentage of total contributions. For example, if a union need only file a Form T–1 for a trust if it contributes 20% of the trust's annual receipts, no disclosure will be required for even the smallest reportable trust, *i.e.*, a trust with annual receipts of $250,000, unless a single union contributes at least $50,000 annually to the trust, even though the trust receives all or most of its funding from a group of six or more unions.

The Department recognizes that where one or more labor organizations participate in a trust and fewer than all such labor organizations meet the annual contribution threshold that would trigger the obligations to file Form T–1 under the Department's proposal, all labor organizations that are required to file Form T–1 will submit virtually the same report. Members of the other participating labor organizations that do not meet the annual contribution threshold and that are not required to file Form T–1 would have access to those trust reports because the reports are public information under section 205 of the LMRDA, 29 U.S.C. 435. However, the Department believes that it is impractical to restrict the reporting to a single labor organization. Although it might be possible to impose the reporting obligation only on the labor organization that makes the largest contribution to the trust, this rule might be difficult to apply unless trusts were mandated to maintain an easily accessible and dynamic report of contributions by each participant in the trust, a condition that the Department is unable to impose. Allowing self-selection among unions also would be a possible option, but there is no guarantee that this would be workable. There is no mechanism by which this obligation could be enforced, and a particular union's failure to abide by any voluntary arrangement would deny members of several unions information to which they are entitled. Thus, in the Department's view, this alternative does not ensure that members would receive information about their union's trust holdings on a regular, predictable, and enforceable basis.

The Department also sought comments on an alternative "single entity" test to identify those funds or other organizations for which a union should report assets, liabilities, receipts and disbursements. The NPRM defined a "single entity" as one that is "dominated or controlled by the labor organization to such a degree that assets, liabilities, receipts and disbursements of the entity effectively are those of the union itself." Id. The test focuses on such factors as commonality of ownership, directors and/or officers, exercise of control, personnel policies, and operations. If a related organization and the union are effectively a "single entity," then the union would be required to include the related organization's financial information as part of the union's own finances on the appropriate LM form. The Department invited comments on the following specific issues: (i) Whether requiring a union to report financial data for any organization qualifying as a "single entity" would provide better information to interested union members than the current requirements for reporting trusts in which the union has an interest; (ii) whether a union could easily identify organizations that satisfy the "single entity" test; and (iii) whether the proposed "single entity" rule may affect some smaller unions if the combined assets and receipts of the union and the related organization exceed the $200,000 threshold for requiring use of the proposed Form LM–2.

The Department received very few comments addressing the "single entity" test, all of which opposed the proposal. One comment criticized the proposed test because it would be more costly to enforce and less effective than the current "bright-line" standard (*i.e.*, the $10,000 contribution threshold). The comment suggested that a union could simply deny that a related organization qualifies as a deemed "single entity" and not disclose the financial information; interested union members would then have to litigate the issue. According to the commenter, the relationship between the union and the other organization might not be apparent to the union members and, as a consequence, members would have no reason to make inquiries about the relationship between the organizations. With respect to the impact on smaller unions, the comment noted that the proposal might encourage those unions to under-report assets to avoid the Form LM–2 threshold. The comment suggested lowering the Form LM–2 threshold or importing the proposed Form LM–2 changes into the Form LM–3 if the Department is concerned about under-reporting. Another comment rejected the Department's view that the related organization's finances must be combined with the union's finances for all purposes. The comment believed "single entity" reporting only requires the union to report the related organization's finances, but not to combine the two organizations' income to determine the applicable LM form. Determining the LM Form filing threshold on the combined receipts of both entities is "absurd on its face," stated the comment, because a "single entity" finding recognizes two discrete legal entities and is thus unlike a finding that an organization is a "subsidiary" of a labor organization under the current Form LM–2. A third comment broadly rejected the "single entity" test because it would create "misleading" information about local unions and generate "useless" financial data.

After consideration of the comments received, the Department has decided against adopting the proposed "single entity" test. The Department agrees that the test is less effective than other criteria for determining whether a union is responsible for reporting financial information from related organizations. The criticisms underscore the difficulties faced by union members in obtaining financial information from a union: A union could conceal its relationship with the related organization, which would deny interested union members the information necessary for initiating inquiries; or a union could refuse to disclose information on the basis that the organization does not meet the standard for a "single entity" relationship. In either case, the Department would have to resort to litigation to obtain the withheld financial information. The "single entity" test does not reduce these obstacles. Moreover, the Department acknowledges that the test may be difficult to apply in some cases. The test requires close scrutiny of the related organization to determine whether a sufficient commonality of personnel, policies and operations exists to deem the union and the organization a "single entity." Union members may encounter significant difficulties in obtaining the necessary information to make the comparison, which could reduce the incentive to conduct such inquiries. Even a fully informed investigation may not produce a conclusive answer because reasonable minds could differ about the relationship between the organizations. In contrast, a "bright line" standard based on a specified dollar threshold is unambiguous and easy to apply. The threshold determines whether the union's "interest" in another entity is sufficient to require its disclosure. This approach imposes no significant burden on interested union members.

### *B. Information Required for a Trust in Which a Labor Organization Is Interested*

The Department proposed requiring labor organizations to report, on a Form T–1, itemized receipts and disbursements of a covered trust. The comments on this proposal, in large part, mirrored those with respect to itemization on Form LM–2. Several commenters suggested that itemization was likely to significantly burden affected unions with little corresponding benefit. Labor organizations, they argued, do not currently have accounting systems for this type of itemization and the number of entries alone for large trusts would be overwhelming. Other commenters supported itemization of Form T–1 receipts and disbursements. One organization cited the recent Washington Teachers' Union embezzlement case as an example of financial corruption that might have been prevented by Form T–1 itemization. Commenters noted that the Form T–1 included a schedule to report officer and employee salaries but comments that argued generally that the form was too burdensome did not specifically address that schedule. After carefully considering the comments, the Department continues to believe that unions should provide their members with financial information about its significant financial investments with covered trusts. However, the final rule reduces the burden of reporting information about such trusts.

As is the case with respect to itemization on Form LM–2, the Department believes the benefits of disclosure to union members will outweigh any corresponding burdens upon union officials. Union members have expressed through their comments serious concern over union dues that are deposited into trusts and joint ventures and unaccounted for thereafter. Large trusts will be required to itemize numerous entries. These trusts, however, will have available to them the same bookkeeping and accounting software available to unions. Thus, for the reasons discussed with respect to the Form LM–2, no undue burden is imposed upon covered trusts in compiling the information needed for the union to file the Form T–1. Moreover, there has been no suggestion that covered trusts are ill equipped to comply with the bookkeeping or reporting requirements established by the final rule. Moreover, the trust information will be readily accessible to any union member with access to the Internet. In sum, unions have not asserted that a trust in which a union is interested will encounter any significant burden in connection with the collection of information needed to complete a Form T–1, and none is apparent. The unions also have failed to demonstrate that they will encounter any significant burden in providing the information to the Department, a burden that, in any event, is less significant than the preparation of the Form LM–2. Unlike the Form T–1, the Form LM–2 imposes on the reporting union the direct responsibility to capture the information needed to prepare the required report with this Department.

Many commenters opposed the specific threshold of $10,000 for itemized receipts or disbursements on the Form T–1. Again, these comments were similar to those on thresholds in Form LM–2. Some commenters suggested a greater dollar figure such as $25,000 (possibly indexed to inflation) or a percentage of the total receipts or disbursements of the trust such as 20% or 25%. Commenters asserted that the use of a percentage threshold would be more consistent with the Department's current regulation of employee benefit plans. One organization recommended a disjunctive threshold for itemization of $10,000 or 10%, the latter to capture those instances where a union contributes less than $10,000 but still controls a significant portion of the trust. Finally, one union member recommended that every disbursement be itemized regardless of size.

As discussed in greater detail above, the Department continues to believe that $10,000 is the appropriate threshold for itemization. This amount, in the Department's view, represents a substantial transaction that would be of interest to union members. For that same reason, a percentage threshold would be inappropriate, as it would deny information to members of unions with considerable assets about substantial transactions, denying them information about transactions that might have a significant impact on the union's finances. Conversely, the Department believes that the other proposals to eliminate any threshold, or to replace it with a lower dollar figure or a percentage of the assets of the union (or the trust) (which could operate to require itemization of transactions of less than $10,000) would impose an unwarranted burden on the unions without corresponding benefit to the members, given the unlikely impact on the overall financial health of most unions of transactions that are between $10,000 and a de minimis amount. In the Department's view, the difference between the reporting threshold for itemized transactions under the Form LM–2 ($5,000) and the threshold under Form T–1 ($10,000) is appropriate because the finances of a trust are less likely to directly impact union members than the expenditures by the union itself.

One commenter questioned the wisdom of setting a $250 reporting threshold under Schedule 4 for loans to officers, employees, or members. The commenter stated that such threshold would require the reporting of routine transactions, including relatively small credit card balances and most loans from a credit union trust. In response, the Department has decided to eliminate this Schedule from the Form T–1, and, in its place, require the union to state whether the trust has loaned money to officers or employees of the union during the reporting period on terms that are substantially more favorable than terms available to others, or has forgiven loans to officers or employees of the union during the reporting period. If the union answers in the affirmative, information about the loan must be provided in Item 25 (Additional Information). This information will be beneficial to union members without burdening every reporting union.

Several labor organizations raised privacy challenges to the Form T–1 itemization requirement, specifically that disclosing the name and address of individuals receiving trust funds (as well as the date, purpose, and amount of the transfer) would be unwise and likely unlawful under federal privacy laws. Some commenters recommended aggregating all disbursement amounts. While aggregating all disbursements would substantially reduce the amount and quality of the information reported on a Form T–1, the Department is sympathetic to the concerns that the disclosure of information in a Form T–1, which will be available on the Internet, should not result in the disclosure of private information regarding individuals. Accordingly, the Department has concluded that labor organizations will be permitted to use a procedure similar to that used with respect to sensitive information reported on the Form LM–2 itself. If the labor organization concludes that disclosure of specific information about a trust's disbursements to, or receipts from, individuals will result in the inappropriate disclosure of private information regarding such individuals, the disbursement or receipt may be aggregated with, and reported only as a part of, the total amount of disbursements and receipts below the itemized reporting threshold. The labor organization that elects to use this procedure, however, must indicate on the Form T–1 that it has done so and the use of this procedure will constitute "just cause" for union members to examine more specific information regarding these transactions, unless disclosure is prohibited by law or would endanger the health or safety of an individual.

### *C. Deadline for Filing a Form T–1*

Comments from two unions stated that requiring the Form T–1 to be filed within ninety days after a trust's fiscal year would not provide sufficient time for labor organizations to take all necessary steps for filing Form T–1, including: determining whether the filing threshold is met; communicating with the trust; communicating with other participating labor organizations; obtaining the necessary information; and preparing and filing the Form T–1. A comment from a third union stated that the governing rules of its national union require its books and LM report to be audited and filed with the national union before the deadline for filing the local union's LM form and that requiring Form T–1 to be filed at the same time would make it even more difficult for locals of that national to meet their reporting deadline for their annual reports.

The Department's intention in permitting a union to file its Form T–1 within ninety days after the trust's fiscal year was to ease the burden for both the trust and the union. The Department anticipates that a trust more readily will be able to provide necessary information to the reporting labor organization at the conclusion of the trust's fiscal year and that a labor organization will have correspondingly less difficulty in obtaining information at that time.

The Department recognizes that reporting labor organizations must obtain this information from their trusts, but most of the steps outlined by the commenters above should take little time. A labor organization should readily be able to determine from its own records whether the labor organization's own contributions to the trust equaled or exceeded $10,000 annually. A labor organization is likely to know from past audits or other information provided by the trust whether the trust's annual receipts approximate $250,000 or more, and, whether or not the labor organization has that information, the labor organization's request to the trust for information necessary for filing Form T–1 could simply be conditioned on the trust having that level of annual receipts. It should not be necessary to seek any information or assistance from other unions that participate in the trust. Even the assembly of information by the trust and the subsequent preparation of Form T–1 by union officials should not require substantial expenditures of time, inasmuch as the Form T–1 requires only relatively basic information regarding receipts, disbursements and payments to officers and employees of the trust. The time and difficulty a labor organization may experience in obtaining and filing information on Form T–1 is thus minimized.

Two commenters, a union and an accountant, observed that reporting unions may not control a trust for which information must be filed on Form T–1 and that it may be difficult for some unions to obtain the necessary information from trusts. Though the trusts may have legal identities separate from reporting unions, the Department anticipates that in many and probably most instances the reporting union either by itself or in combination with other reporting unions will in practice exercise sufficient influence to require or persuade the trust to provide the necessary information. In this connection, if the union's members request further information about a particular trust or further details about a reported transaction, the union must disclose to the member any relevant information within its possession at the time of the inquiry and make a good faith effort to obtain additional information from the trust.

The Department recognizes that there may be some instances in which a trust will not fully cooperate in providing timely information to the reporting union. However, the Department expects that, in those infrequent instances, the reporting union officials will be able to demonstrate that they made a good-faith effort to obtain timely information from the trust. In such situations, the Department is prepared to exercise any available investigative and other authority to assist the reporting union to obtain the necessary information. One commenter, an accountant, suggested that some of the information required to be reported on Form T–1 may be reported by the trusts under other federal reporting requirements with later reporting deadlines and that unions that file reports regarding those trusts should be permitted to use those later deadlines. The Department concludes that a rule with such uncertain deadlines would be difficult to administer and would not be easily ascertained and applied by all parties, including labor organizations, their members, the trusts, the Department, and the public.

One commenter, a union business representative, urged the Department to include a procedure for granting extensions of time to labor organizations for filing their financial reports. The commenter argued that some labor organizations already find it difficult to file current LM forms in a timely manner. Section 207 of the LMRDA expressly states that each labor organization annual financial report must be filed within ninety days after the organization's fiscal year. This requirement is consistent with the evident intention of Congress that union members and others have access to regular and timely annual reports as a means to effectuate union self-government. The statute provides no authority to waive this deadline, even when a union has made a good faith effort to comply with the deadline. The Department has concluded that neither the current nor the revised reporting forms for labor organizations are likely to pose unreasonable difficulties for union officials who are reasonably diligent in their efforts to timely file the union's Form LM–2 and any Form T–1.

Another commenter, also an accountant, suggested that a reporting labor organization be permitted to file information from the "latest available" report by the trust and that it would be simpler to require Form T–1 to be filed at the same time that the labor organization must file its annual report, namely within ninety days after the end of the labor organization's fiscal year, rather than ninety days after the end of the trust's fiscal year. As discussed above, only certain reports will be acceptable as substitutes for the Form T–1. Nonetheless, this comment suggests a reasonable approach that will ensure that union members are able to obtain relevant information about a trust in which his or her union has an interest, while reducing any burden for the reporting union. Thus, the Department has decided to require a reporting labor organization to file its Form T–1(s), or qualifying audits in substitution for Form T–1(s), at the same time as it files its own Form LM–2. The Form T–1, or qualifying audit, however, need not cover the same reporting year as the Form LM–2. Rather, the reporting labor organization must provide, at the time it files its Form LM–2, a Form T–1 or qualifying audit for the trust's most recent fiscal year that ended during the labor organization's reporting year—essentially the "latest available" report. If the trust's fiscal year coincides with the reporting labor organization, the labor organization will have 90 days in which to obtain the necessary information to complete a Form T–1, or the audit. If a trust's fiscal year ends on a different date than the labor organization's, the reporting union will have, in addition, any time between the end of the trust's most recent fiscal year and the end of the union's own fiscal year to obtain the information. Moreover, this requirement, like all other changes made by this rule, will be effective for fiscal years beginning on or after January 1, 2004. Accordingly, a union will be required to file a Form T–1 only for fiscal years beginning on or after January 1, 2004, of trusts in which it has an interest. Because a union need only file the "latest available" report for its trusts, it is unlikely that many Form T–1 reports, if any, will be required in the first year. For example, if a union's fiscal year begins on January 1, 2004, its Form LM–2 will be due at the end of March of 2005. If that union has an interest in a trust that begins its fiscal year on October 1, the first fiscal year for which a Form T–1 will be required for such a trust is the fiscal year that ends on September 30, 2005. Obviously, no Form T–1 will be available to file with the union's first revised Form LM–2 filed in March. If, however, a union that begins its fiscal year on January 1, 2004, has an interest in a trust that also begins its fiscal year on January 1, 2004, the union should file a Form T–1 covering the trust's 2004 fiscal year when the union files its Form LM–2 in March of 2005.

## V. Regulatory Procedures

### *A. Executive Order 12866*

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is not an "economically significant" regulatory action under section 3(f)(1) of Executive Order 12866. Based on an analysis of the data the rule is not likely to: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; or (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. The Department estimates the total cost of the final rule to be $79.9 million in the first year, $44.1 million in the second year, and $43.2 million in the third year (see the following Paperwork Reduction Act section for a description of how these costs were estimated). The three-year average cost of the rule is $55.7 million per year. The Department also estimates a benefit of $2.6 million per year in savings for 501 smaller unions because they can file the less burdensome Form LM–3 as a result of increasing the new Form LM–2 reporting threshold to $250,000. Further, there are substantial unquantifiable benefits that result from the greater transparency of labor organizations' financial information to its members and other benefits of deterring fraud or discovering it earlier. As a result, the Department has concluded that a full economic impact and cost/benefit analysis is not required for the rule under section 6(a)(3) of the Order. However, because of its importance to the public, the rule was treated as an otherwise significant regulatory action and was reviewed by the Office of Management and Budget (OMB).

One commenter stated that the Department failed to meet certain requirements of Executive Order 12866. Specifically, the comment asserted that the Department failed in several respects to adhere to the "Principles of Regulation" set forth in Section 1(b) of the Order:

a. The Notice of Proposed Rulemaking did not demonstrate that the Department engaged in any investigation and assessment of the problems addressed by the proposed rule.

b. The Notice of Proposed Rulemaking did not demonstrate that the Department considered any non-regulatory alternatives for accomplishing the objectives of the proposed rule.

c. The Notice of Proposed Rulemaking provided no evidence that the proposed rule would reduce financial mismanagement of labor organizations or was the most cost effective means to address the objectives of the rule.

d. There is no documentation that the Department's proposed rule is based on the best reasonably obtainable information.

e. The proposed rule ignores the preference expressed in Section 1(b)(8) of Executive Order 12866 for performance objectives rather than design standards.

The comment also asserted that the requirements for significant regulatory action set forth in Executive Order 12866 were not properly observed in that:

a. The Department did not engage in any cost-benefit analysis of the proposed rule.

b. The Department did not seek the involvement of those intended to benefit from and expected to be burdened by the proposed rule.

c. The Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) did not take sufficient time to review the Department's proposed rule for purposes of Executive Order 12866.

As an initial matter, the Department firmly believes it has complied fully with E.O. 12866 in all relevant respects. The comment appears to have a fundamental misapprehension of the purpose and function of Executive Order 12866 and of the Department's efforts to comply with the requirements of the Order. As explained below, the purpose of Executive Order 12866 is to facilitate the effective internal management of the Federal Government with respect to the development of regulatory actions. Indeed, Sections 6(a)(3)(E) and 6(b)(4)(D) in fact provide that an agency and OIRA will make available to the public various information and documents regarding the development of agency rules only "[a]fter the regulatory action has been published in the **Federal Register** or otherwise issued to the public."

Inasmuch as Executive Order 12866 is intended solely for the internal management of federal regulatory actions, the Order does not provide for judicial review or other public review of the procedures and substantive requirements of the Order during the developmental stages of a rule. That is underscored in several provisions of the Order. For example, Section 10 of the Order states: "This Executive Order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person."

The nature of Executive Order 12866 as a tool for the development and internal review of federal rules also is evident throughout the text of the Order. For example, "The Principles of Regulation," which the comment appears to have treated as setting forth substantive legal requirements, is introduced by the statement that agencies "should" adhere to those principles "where applicable." Section 1(b)(8), as the comment suggests, expresses a preference for rules that establish performance objectives rather than rules that mandate specific behavior or the specific manner of compliance, but states that this should be sought "to the extent feasible." Section 1(b)(6), as suggested by the comment, provides for an assessment of the costs and benefits of a proposed rule but adds, "recognizing that some costs and benefits are difficult to quantify." In the instant rulemaking, the Department has assessed fully the costs and benefits associated with the final rule.

The commenter's demand that the efforts of the Department and OIRA to comply with the procedural and substantive principles, objectives, and requirements of Executive Order 12866 be documented in detail, be described exhaustively for the review of the public at this time, and be evidenced in the Notice of Proposed Rulemaking is misplaced, as is the objection that its view of the most cost effective alternative was not proposed. The principles, objectives, and requirements of Executive Order 12866 are designed to guide and assist the agency and OIRA during the development of the agency rule and are not addressed to the public. The remedy for any agency failure to comply with some requirement of the Executive Order, as the excerpt from Section 10 referred to above makes clear, is not judicial review at the behest of the regulated or benefited community under the proposed rule; rather, the remedy is the President's directive in Section 8 of the Order that the agency's rule may not be published in the **Federal Register** or otherwise issued to the public until OIRA either waives or completes its review.

Some of the procedural and substantive requirements of Executive Order 12866, as expressly indicated in Section 1(b)(6) ("recognizing that some costs and benefits are difficult to quantify"), are not susceptible to precise definition and measurement. The insistence of the comment that the Department did not choose "the most cost effective means to address the alleged problem" is itself not a statement that can be assessed with objective precision. Any calculus of the costs and benefits of the proposed rule is based in significant part on the value of transparency and accountability in union financial affairs as well as on very difficult projections regarding the impact of the accessibility of financial information on sound union financial management and union democracy generally. That increased transparency in union financial affairs will deter some mismanagement and malfeasance, promote democratic values in unions, and prevent the loss of trust by members and the loss of confidence by the public generally in unions and their officials cannot be seriously doubted. But the Department recognizes that it is very difficult to quantify and balance the associated costs and benefits of those matters with any precision.

The Department has concluded, therefore, that to the extent feasible, appropriate, and necessary, the Department has disclosed in the Notice of Proposed Rulemaking and, more extensively, in this preamble to the final rule the pertinent aspects of the Department's assessment of the problem, the information relied on, the costs and benefits involved, the alternatives considered, and the most appropriate remedy. For the various reasons outlined above and contrary to the apparent assumption of the comment, Executive Order 12866 did not require the Department to set forth in the Notice of Proposed Rulemaking or in this preamble other evidence of the Department's efforts to comply with the Order in developing and submitting this proposal to OIRA for review.

### *B. Small Business Regulatory Enforcement Fairness Act*

The Department has concluded that this rule is not a "major" rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). In reaching this conclusion, the Department has determined that the rule will not likely result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

### *C. Unfunded Mandates Reform*

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include a Federal mandate that might result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million in any one year. The basis for the Department's estimate of the likely cost of compliance with this rule is set forth above.

### *D. Executive Order 13132 (Federalism)*

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism and has determined that the rule does not have federalism implications. Because the economic effects under the rule will not be substantial for the reasons noted above and because the rule has no direct effect on States or their relationship to the Federal government, the rule does not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

### *E. Regulatory Flexibility Analysis*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, requires agencies to prepare regulatory flexibility analyses, and to develop alternatives wherever possible, in drafting regulations that will have a significant impact on a substantial number of small entities. The Small Business Administration (SBA) determined, in a regulation that became effective on October 1, 2000, that the maximum annual receipts allowed for a labor union or similar labor organization and its affiliates to be considered a small organization or entity under section 601(4), (6) of the Regulatory Flexibility Act was $5.0 million. 13 CFR 121.201 [Code Listing 813930]. This amount was adjusted for inflation to $6.0 million by a regulation that became effective on February 22, 2002. Accordingly, the following analysis assesses the impact of these regulations on small entities as defined by the applicable SBA size standards.

#### 1. Statement of the Need for, and Objectives of, the Rule

The following is a summary of the need for, and the objectives of, the final rule. A more complete discussion is contained in the preamble above.

The Department is revising the forms labor organizations use to file the annual financial reports required by the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA or Act). This final rule modifies Form LM–2, which is the report required to be filed by the largest labor organizations and creates a new Form T–1 for these unions to report the assets, liabilities, receipts, and disbursements of trusts in which a labor organization has an interest. To reduce the burden on smaller labor organizations, the final rule also raises the threshold for filing Form LM–3 to annual receipts of between $10,000 and $249,999 to correspond with the higher Form LM–2 threshold ($250,000). These forms are prescribed by the Secretary of Labor to implement the Act and incorporated by reference in the applicable regulations.

Over the past forty years, the functions and operations of unions have evolved while the forms used by unions to file annual financial reports required by the LMRDA have remained substantially unchanged. The forms no longer serve their underlying purpose because they fail to provide union members with sufficient information to reasonably disclose to them "the financial condition and operation[s]" of labor organizations as required by the LMRDA. As noted previously, it is impossible for union members to evaluate in any meaningful way the operations or management of their unions when the financial disclosure reports filed with OLMS simply report large expenditures (*e.g.*, $62 million) for broad, general categories like "Grants to Joint Projects with State and Local Affiliates." The large dollar amount and vague description of such entries make it essentially impossible for anyone to determine with any degree of specificity what union operations their dues are spent on, without which the purposes of the LMRDA are not met.

Today's union members need relevant information provided in a usable format in order to make the decisions necessary to exercise their rights as members of democratic institutions. The information provided members on the current forms lags well behind the financial information available to them in other contexts of their lives as consumers, citizens, and investors. The Department is committed to maintaining accountability and promoting transparency with full and fair disclosure by labor organizations. Providing additional detail on Form LM–2 and requiring similar disclosure on the new Form T–1 of information about trusts in which the labor organization has an interest is necessary to give union members an accurate picture of their labor organization's financial condition and operations and to prevent the circumvention or evasion of the statutory reporting requirements.

The revision of Form LM–2 is also necessary to improve its usefulness as a deterrent to financial fraud and mismanagement. OLMS case files repeatedly demonstrate that this goal of the Act is not being met. Over the past five years, OLMS investigations resulted in over 640 criminal convictions. As a remedy, the courts ordered the responsible officials to pay $15,446,896 in restitution, in addition to debarring them from union service for a combined total of almost ten thousand years. In many cases the broad aggregated categories on the existing forms enabled union officers to hide embezzlements and financial mismanagement. More detailed reporting of all financial transactions is likely to discourage and reduce corruption because it would be more difficult to hide financial mismanagement from members and strengthen the effective and efficient enforcement of the Act by the Department.

The objective of this rule is to increase the transparency of union financial reporting by revising the LMRDA disclosure forms and to take advantage of modern technology to reduce the reporting burden. This will enable workers to be responsible, informed, and effective participants in the governance of their unions; discourage embezzlement and financial mismanagement; prevent the circumvention or evasion of the statutory reporting requirements; and strengthen the effective and efficient enforcement of the Act by OLMS.

2. Summary and Assessment of the Significant Issues Raised by Comments and Changes Made to the Proposed Rule as a Result of Such Comments

Many comments, although not directed specifically at the initial regulatory flexibility analysis, raised issues related to the effect of the proposed rule on small entities, and in response, the Department made many significant changes to its proposal. These issues and changes are discussed in detail above. The following addresses comments that are specifically related to the Department's initial regulatory flexibility analysis.

The AFL–CIO argues that the Department did not meet the standards of the Regulatory Flexibility Act and its requirements that agencies consider the impact of rules on small entities. Although the AFL–CIO acknowledges that the Department included a Regulatory Flexibility Analysis describing the impact of the proposed rule on small entities, the AFL–CIO claims that a purported lack of analysis indicates that the Department's inquiry was not conducted in good faith. For example, the AFL–CIO argues that the Department never seriously considered the alternatives listed in the initial Regulatory Flexibility Act analysis. The AFL–CIO contends that these alternatives were just "straw men" that the Department considered only briefly, knowing that they would be discarded. Among the alternatives that the Department should have considered and proposed for small unions, according to the AFL–CIO, were: (1) The "phasing in" of the effective date for the rule; (2) a permanent waiver of the electronic filing requirement; and (3) an exemption from functional reporting. These alternatives are addressed in the preamble and the discussion below.

The Department noted in the NPRM that the SBA's definition of "small entity" may not be appropriate in the context of labor unions and their regulation under the LMRDA. Nonetheless, the Department performed an Initial Regulatory Flexibility Analysis for the NPRM and addressed each of the categories, applying the SBA's definition as required by 5 U.S.C. 603. The Department has also submitted a Final Regulatory Flexibility Analysis with this final rule as required by 5 U.S.C. 604. Thus, the Department has met the procedural requirements of the Act.

The Department specifically considered and discussed in some detail five options in its Initial Regulatory Flexibility Analysis. Despite the AFL–CIO's disagreement with the Department's choice of options discussed or the Department's ultimate decisions concerning these options, the AFL–CIO has not shown and cannot show that the Department did not consider the options or acted in bad faith by not proposing them. In order to reduce the burden on smaller unions, the Department, among other revisions for the same purpose, adopted the alternative, identified in the NPRM, to raise the reporting threshold for the Form LM–2 from $200,000 to $250,000. As discussed in detail in the preamble, other revisions, adopted in response to comments, should make compliance by smaller unions easier than if the Department's proposal was left unchanged.

The AFL–CIO contended that the Department failed to satisfy its obligation under the Regulatory Flexibility Act to actively solicit the participation of small entities as part of its planning for this rulemakings. The Department disagrees with this view and notes that it engaged in a substantial outreach effort, even before publication of the NPRM, in order to solicit ideas for improving the effectiveness of the annual financial report to achieve the disclosure intended by Congress in establishing the LMRDA's reporting requirements. To this end, Department officials conducted numerous consultations with union representatives, including face-to-face meetings with 39 unions. After publication of the proposal, Department officials continued to meet with unions that requested meetings and added notes of meetings with six unions during the public comment period to the rulemaking record.

An alternative suggested by commenters that directly affects the smallest unions to whom the new rule applies was to adjust upward for inflation the Form LM–2 filing threshold from $200,000, the adjusted amount set in 1994. The Department has adopted this alternative and increased the Form LM–2 threshold to $250,000 in the final rule. As a result, 501 unions that currently file a Form LM–2 will now be able to satisfy the requirements of the LMRDA by filing the simpler Form LM–3. It should also be noted that the final $250,000 threshold is significantly higher than the earlier thresholds for filing the Form LM–2 when they are adjusted for inflation—1959 ($20,000), 1962 ($30,000), and 1981 ($100,000). The Department will continue to monitor this threshold, as well as all other thresholds established by this rule, and may make future adjustments if economic conditions warrant such a change.

Another alternative considered by the Department was to phase-in the effective date for the Form LM–2 changes in order to provide smaller Form LM–2 filers additional lead time to modify their recordkeeping systems to comply with the new reporting requirements. This alternative also was supported by a number of commenters. After reviewing the comments, the Department has changed its proposal, which would have required unions to use the new Form LM–2 to file the report for any fiscal year beginning immediately after the publication of the final rule, and instead is requiring labor organizations to use the revised Form LM–2 to file the report for the fiscal years that begin on or after January 1, 2004, about three months after publication of this rule. This change provides approximately two-thirds of reporting unions with sufficient lead time within which to adjust their procedures to keep track of the information they will need to prepare a Form LM–2 and to submit, 15 months after the start of their next fiscal year (beginning on January 1, 2004), or nearly 18 months after the publication of this rule, the report to the Department, and even more time to the remaining third of reporting unions that use different dates for their fiscal years. Thus, no union will have less than about three months to change its bookkeeping and accounting systems to capture data that later will be needed to submit the Form LM–2.

With this change, unions will have adequate time to conform to the revised forms and comply with the more detailed reporting requirements. The public comments and OLMS auditing and accounting experience confirm that many local (and therefore generally smaller) unions already collect and maintain some (and in some cases most) of the information required by the new form. Moreover, unions must already track and maintain records for all disbursements in order to report total disbursements for the variety of functional categories on the current Form LM–2. The survey data submitted by the AFL-CIO suggests that 16 to 22% of local unions already have the capability to itemize and track receipts and disbursements (including credit card transactions), as required by the final Form LM–2. Further, after the research and review of different types of commercial-off-the-shelf accounting software, the Department believes that updating and modifying accounting systems to track all of the information required by the revised forms should be accomplished easily, given the lead time built into the final rule. The steps required of unions to adjust their bookkeeping and accounting procedures are discussed in the preamble. OLMS also plans to provide compliance assistance to any labor organization that requests it. In addition, a review of the proposed revisions was undertaken to reduce paperwork burden for all Form LM–2 filers and an effort was made during the review to identify ways to reduce the impact on small entities. The Department believes it has minimized the economic impact of the form revision on small unions to the extent possible while recognizing workers' and the Department's need for information to protect the rights of union members under the LMRDA.

To reduce the burden on small labor organizations, several commenters suggested that unions be required to file annual independent audits as an alternative to filing the Form LM–2. Although some commenters argued that requiring unions to obtain annual audits is within the Department's statutory authority, no provision of the LMRDA vests the Secretary of Labor with any express authority to require unions to obtain audits and the Department has chosen not to attempt to impose such a requirement. Moreover, an annual audit requirement would require a reporting union to incur the expense of obtaining the services of an independent auditor and thus impose an additional burden on small unions, many of which, in the Department's experience, are not currently obtaining private audits. Finally, this alternative was rejected because audits typically do not reveal the detail on the financial operations of unions that is required by the statute (29 U.S.C. 431) and requiring such detail with the appropriate audit standards would be no less burdensome than the final forms.

A union, however, could meet its trust reporting obligation under the final rule by utilizing any exceptions provided for in the rule, including the submission of an independent audit of the trust that meets the minimum standards prescribed by the rule. In permitting this last exception, the Department recognizes that although most audits do not provide an adequate substitute for the full disclosure of information generally required under the LMRDA, this statutory purpose can be achieved in the trust reporting context so long as the information is verified by an independent examiner and meets the standards prescribed by the rule. By permitting a labor organization to submit an audit in place of a Form T–1, smaller labor organizations that file a Form LM–2 are relieved of the burden of compiling a separate form and need only insist that entities with annual receipts of $250,000 or more, to which they contribute $10,000 or more, or to which that amount is contributed on their behalf, provide only very basic information regarding their fiscal operations.

Another commenter suggested that a reporting labor organization be permitted to file information from the "latest available" report by the trust. This commenter observed that it would be simpler to require Form T–1 to be filed at the same time that the labor organization must file its annual report, namely within ninety days after the end of the labor organization's fiscal year, rather than ninety days after the end of the trust's fiscal year. Although the "latest available" report of the trust may not be a sufficient substitute for a Form T–1 (depending on whether it meets the prescribed audit criteria as discussed in the preamble), this suggestion presents a reasonable alternative that should both alleviate burden for the reporting labor organization and minimize confusion for those interested in this information. Thus, the Department has decided to require a reporting labor organization to file all Form T–1s, or qualifying audits in substitution for Form T–1s, if it so chooses, at the same time that it files its own Form LM–2.

To reduce the burden on smaller labor organizations, a few commenters, including the AFL–CIO, suggested that the Department establish a permanent waiver for electronic filing and/or pilot testing of electronic filing as alternatives to the Department's proposal. As discussed in the preamble, the Department has rejected the permanent waiver alternative because for several years Congress has urged the Department to implement the electronic filing of annual reports required by the LMRDA, along with an indexed and easily searchable computer database of the information submitted, accessible by the public over the Internet. *See* H.R. Conf. Rep. 105–390, 1997 U.S.C.C.A.N. 2061; H.R. Conf. Rep. 105–825; H.R. Conf. Rep. 106–419; H.R. Conf. Rep. 106–479; H.R. Conf. Rep. 106–1033; H.R. Conf. Rep. 107–342, 2002 U.S.C.C.A.N. 1690; H.R. Conf. Rep. 108–10, 2003 U.S.C.C.A.N. 4. Moreover, as the public comments suggest, the relevant inquiry with respect to electronic filing is not whether it should be required, but rather how and when it should be accomplished. After significant research and analysis (as discussed above), the Department has decided that the best method to address any legitimate excessive burden associated with electronic filing is not through a permanent waiver, but through a hardship exemption (a term borrowed from the SEC's electronic filing procedures), and that, for the majority of filers, electronic filing is the least burdensome option.

The Department gave serious consideration to the comments suggesting a pilot program or a delayed phase-in of the reporting requirements, but has concluded that such alternatives are unnecessary. After reviewing the recordkeeping and reporting requirements of the current Form LM–2, the public comments that were received, and the modifications that unions may have to make to their accounting and recordkeeping systems to comply with the final rule, the Department believes that Form LM–2 filers will be able to make the adjustments before the start of their first reporting period under the final rule—a minimum of about three months from the date of the rule's publication—without incurring an undue burden. The most important change involves the tracking of receipts reported in Schedule 14 and disbursements to ensure that each disbursement is allocated to the proper disbursement category on the revised Form LM–2 with a descriptive purpose and that all of the required information (name, address, purpose, date, and amount) is captured for each "other" receipt and disbursement.

Some commenters stated that this is a dramatic change in the Form LM–2 and would impose a significant burden on unions in order to change their recordkeeping systems before the effective date of the final rule. However, this position fails to recognize that unions have always been required to allocate each disbursement to one or more disbursement categories on the current Form LM–2 (and to maintain those records). For example, unions have always been required to allocate credit card payments to multiple categories of the LM–2 based upon the purposes of each charge. A single credit card charge to a travel agent may include expenses that must be allocated to three or more different places on the current LM–2. Although the Department has changed the functional categories on the final form, the underlying method of allocating these disbursements and maintaining the records remains the same.

Changing accounting and recordkeeping systems to capture all of the required information (name, address, purpose, date, and amount) for each other receipt and disbursement can be accomplished before January 1, 2004.

Filers will need to study and understand the new requirements and may have to work with their staff or vendors to make adjustments to the union's accounting and recordkeeping systems, and then train the staff However, these sorts of operations—changing the way disbursements are classified and the types of information recorded—are routine in the normal course of business and relatively easy to perform within accounting systems. Moreover, as discussed in the preamble, the public comments suggest that 60% of the national and international unions already maintain written records for the information required by the new "other receipts" schedule and that many unions already maintain records as part of their normal business practice that reflect the required detail for disbursements for the revised form (even though between 10 and 40% of unions could not provide all of the required detail). Finally, because each labor organization's filing date is dependent on its chosen fiscal year, many unions will have more than three months to complete any changes they may have to make to their accounting and recordkeeping systems.

Additionally, the Department will provide substantial compliance assistance to unions to assist them in understanding the new requirements and making adjustments to their recordkeeping and reporting practices. This initiative will include guidance that provides an overview of the requirements, a comparison of the old and new requirements, the types of account changes unions may have to make, guidance to assist unions to configure off-the-shelf software to best capture the information needed to provide the data required for submitting the LM–2 and T–1 reports, a schedule of seminars for unions hosted throughout the country, an email list-serve to provide periodic updates to interested parties, web-based materials that include frequently asked questions, a description of the Form T–1 registration process, and other topics of interest to filers.

Filers that choose to take advantage of the electronic importation features of the Department's reporting software will need to create reports within their accounting systems that will be used to complete the revised Form LM–2 and new Form T–1. However, this work need not be completed until the form is ready to be filed, no earlier than 15 months after the effective date of the final rule and nearly 18 months after publication. Further, in the event that any labor organization encounters severe difficulties concerning electronic filing, a hardship exemption will be available.

A few commenters suggested that unions only be required to report the debts they have written off as a less burdensome alternative to reporting all debts above the proposed $1,000 threshold that are 90 days or more past due. This alternative was rejected because: (1) The Department believes that raising the itemization threshold to $5,000 for reporting debts will alleviate much of the burden suggested by commenters as a multitude of relatively small accounts will no longer have to be listed, particularly for smaller unions; (2) as discussed above, itemized disclosure is important because it provides a vital early warning signal of financial distress and possible fraud as in the Washington Teachers' Union case; and (3) the itemization requirement is tailored to a union member's legitimate interest in knowing, for example, whether the union continues to do business with an entity that fails to pay its debts or whether the union continually falls behind in payments to a certain vendor. Moreover, the public comments suggest that the majority of unions already collect most, if not all, of the information required by the accounts receivable and accounts payable schedules on the final form, which is not surprising considering the current Form LM–2 requires aggregate reporting of accounts receivable and accounts payable.

Finally, a few commenters, together with the AFL–CIO, suggested an exemption from functional reporting to reduce the burden on smaller labor organizations. The Department has rejected this alternative because it would: (1) Eliminate the availability of meaningful information to over 12.3 million union members in unions with less than $6.0 million in annual receipts (the current SBA small entity standard for unions) and significantly reduce the transparency and accountability in the reporting of union financial condition and operations, which may have far greater impact on, and relevance to, union members, particularly since such lower levels of union organizations generally set and collect dues and provide representational and other services for their members; and (2) not provide any additional deterrence to fraud and embezzlement by officials in smaller labor organizations.

Moreover, functional accounting is not a new concept to labor organizations, large or small. The current Form LM–2, through its use of categories, requires labor organizations to report certain expenditures by function. Moreover, functional accounting is required of not-for-profit organizations under the standards established by the FASB and some of the labor organizations that submitted comments acknowledged that they use functional reporting as a management tool. Furthermore, many commenters overlooked the fact that the IRS requires not-for-profit organizations, including unions, to report their expenditures by certain categories and that the IRS uses several functional categories that parallel, in many respects, the categories in the proposed Form LM–2. For example, both the IRS Form 990 and the new Form LM–2 require disclosure of disbursements related to political activity and lobbying (even though, unions typically report no information under these categories to the IRS). Finally, as explained above, the Department has made significant changes to the functional categories and associated schedules in the new Form LM–2 to minimize the burden, particularly on small unions.

3. Number of Small Entities Covered Under the Rule

The primary impact of this final rule will be on the largest labor organizations, defined as those that have $250,000 or more in annual receipts. There are approximately 4,778 labor organizations of this size that are required to file Form LM–2 reports under the LMRDA (just 19.0% of all labor organizations covered by the LMRDA). The Department estimates that 4,463 of these unions, or 93.4%, are considered small under the current SBA standard (annual receipts less than $6.0 million). These unions have average annual receipts of approximately $1.1 million and an average of 14 officers and 4 employees. The rule will also reduce the burden on 501 small unions that will be able to file Form LM–3 instead of Form LM–2 because of raising the LM–2 threshold to $250,000. These estimates are based on 2001 and 2002 data from the Office of Labor-Management Standards e.LORS system. This system contains annual receipt data on all Form LM–2, LM–3, and LM–4 filers. Although these estimates may not be predictive of the exact number of small unions that will be impacted by this final rule in the future, the Department believes these estimates to be sound and are derived from the best available information.

4. Reporting, Recordkeeping and Other Compliance Requirements of the Rule

This final rule is not expected to have a significant economic impact on a substantial number of small entities.

The LMRDA is primarily a reporting and disclosure statute. It establishes various reporting requirements for labor organizations, labor organization officers and employees, employers, surety companies, and employer consultants pursuant to Title II of the Act. Accordingly, the primary economic impact of the final rule will be the cost to reporting unions of compiling, recording, and reporting required information. The final rule establishes a new set of reporting requirements for those labor organizations with receipts of $250,000 or more. See the following Paperwork Reduction Act section (Overview of Changes to Form LM–2, and Overview of the New Form T–1) for greater detail on the reporting, recordkeeping, and other compliance requirements of the rule. In order to comply with these requirements, reporting unions may need to make adjustments in their recordkeeping and bookkeeping procedures and, in some instances, to make changes in computing hardware or software to file the reports electronically. None of these expenses is expected to have a substantial impact on the 4,463 unions considered to be small by SBA standards (because they amount to only 1.7% of these unions' average annual receipts over three years), in large part because the public comments and OLMS's auditing experience confirm that labor organizations, like most small entities following standard business practices, already maintain at least some of the receipt and disbursement records required by the final rule.

The average annual reporting and recordkeeping burden for the current Form LM–2 is $8,381 or 0.3% of average annual receipts for all Form LM–2 filers. The average additional first year cost (including first year non-recurring implementation costs) of the final rule for the 4,463 unions considered to be small by SBA standards for filing both the revised Form LM–2 and new Form T–1 is less than $17,876, or 1.6% of average annual receipts (see Table 1). The average total first year cost of the revised Form LM–2 and new Form T–1 on small unions is $26,257, or 2.3% of total annual receipts. Further, the average total cost for small unions falls to $18,322 or 1.6% of total annual receipts in the second year.

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## Table 1 - Summary of Regulatory Flexibility Analysis

| For Unions that Meet the SBA Small Entity Standard | Total Burden Hours per Respondent | Total Cost per Respondent |
|---|---|---|
| Average Cost of Current Form LM-2 | 292.0 | $8,381 |
| Average First Year Cost of Revised Form LM-2 & New Form T-1 | 781.7 | $26,257 |
| Percent of Average Annual Receipts | n.a. | 2.3% |
| Average Second Year Cost | 573.3 | $18,322 |
| Percent of Average Annual Receipts | n.a. | 1.6% |
| Average Increase or Cost of Final Rule, First Year | 489.7 | $17,876 |
| Percent of Average Annual Receipts | n.a. | 1.6% |
| Average Increase or Cost of Final Rule, Second Year | 281.3 | $9,941 |
| Percent of Average Annual Receipts | n.a. | 0.9% |
| Maximum First Year Cost of Revised Form LM-2 and New Form T-1 for Unions with $250,000 to $499,999 in Annual Receipts (1) | 812.9 | $28,977 |
| Maximum Second Year Cost (1) | 585.2 | $19,587 |
| Maximum Increase or Cost of Final Rule, First Year (2) | 520.9 | $20,596 |
| Percent of Annual Receipts for $250,000 Union | n.a. | 8.2% |
| Percent of Annual Receipts for $500,000 Union | n.a. | 4.1% |
| Maximum Increase or Cost of Final Rule, Second Year (2) | 293.2 | $11,206 |
| Percent of Annual Receipts for $250,000 Union | n.a. | 4.5% |
| Percent of Annual Receipts for $500,000 Union | n.a. | 2.2% |
| Impact on Small Unions From Raising the Form LM-2 Reporting Threshold to $250,000 | | |
| Burden Hour Savings for 501 Small Unions for Being Able to Use Current Form LM-3 Instead of Current Form LM-2 | 176.0 | $5,104 |
| Burden Hour Savings for 501 Small Unions for Not Being Required to File Revised Form LM-2 | 595.2 | $19,640 |
| Burden Hour Savings for 501 Small Unions for Not Being Required to File New Form T-1 | 45.3 | $1,253 |

Note: (1) Assumed to be the average burden hours for unions with annual receipts of $500,000 to $49.9 million. It is highly unlikely that the smallest Form LM-2 filers with annual receipts of $250,000 to $499,999 would incur these costs.

(2) For comparison the AFL-CIO submitted data that estimates unions with annual receipts of less than $500,000 would incur an average cost of just $3,750 for the more burdensome proposed Form LM-2. It is highly unlikely that the smallest Form LM-2 filers with annual receipts of $250,000 to $499,999 would incur these costs for the less burdensome final rule.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Labor Management Standards.

The Department believes that it is very unlikely that small unions with about $250,000 in annual receipts would incur many of the costs incurred by the typical Form LM–2 filer. (For example, unions near this amount of receipts are likely to have far less complicated accounts covering far fewer transactions than the typical Form LM–

2 filer (with receipts between $500,000 and $49.9 million).) However, to assess the "maximum" or "worst-case" impact on small unions, the Department considered the unlikely event that a small union with $250,000 in annual receipts could incur the average compliance burden for unions with annual receipts of $500,000 to $49.9 million for the revised Form LM–2 and the new Form T–1. Under this unlikely scenario, the total additional cost of the final rule would be $20,596 in the first year, or 8.2% of annual receipts, and $11,206 in the second year, or 4.5% of annual receipts (see Table 1). For a small union with $500,000 in annual receipts, the maximum additional cost of the final rule would be 4.1% of receipts in the first year and 2.2% in the second year.

As noted in section 3 above, the final rule will apply to 4,463 unions that meet the SBA standard for small entities, or just 18.0% of all unions with annual receipts of less than $6 million that must file an annual financial report under the LMRDA (the other, even smaller, unions can file the less burdensome Form LM–3 or Form LM–4). Further, just 1,574 unions with annual receipts from $250,000 to $499,999, or 6.3% of all unions covered by the LMRDA, would be affected by the final rule. Even less (than 6.3% of the total) would incur the maximum additional costs of the final rule described above. Therefore, the Department has decided that the final rule does not have a significant impact on a substantial number of small entities. Moreover, raising the Form LM–2 filing threshold from $200,000 to $250,000 will enable 501 of the smallest LM–2 filers to use the less burdensome Form LM–3 and save them an average of $5,104 per year compared to filing the current Form LM–2. Smaller unions that file Form LM–3 or LM–4 also will not have to file any Form T–1.

### 5. Steps Taken To Minimize the Impact on Small Entities

The Department has raised the reporting threshold for the final Form LM–2 and new Form T–1 to $250,000 from the $200,000 threshold in the proposed rule. The Department has also determined that the itemization threshold for disbursements should be set at the high end of the range proposed ($2,000 to $5,000) and that specific information be required only if the amount of an "other receipt" or disbursement is $5,000 or more or, if such receipts from or disbursements to a single entity, aggregate to $5,000 or more during the reporting year. This change will reduce the number of disbursements that will have to be individually itemized and reported by smaller labor organizations. (OLMS experience in reviewing union records over the years in the course of audits and investigations suggests that smaller unions typically have fewer large disbursements). As noted above, the Department will continue to monitor all of the reporting thresholds in the Form LM–2 to attempt to ensure that both the level of reporting and the information reported remain relevant and meaningful in light of changes in the economy.

Raising the threshold for filing a Form LM–2 from $200,00 to $250,000 will enable 501 of the smallest unions that previously were required to file a Form LM–2 to now use the Form LM–3. The latter form requires significantly less recordkeeping and reporting requirements than Form LM–2, thus reducing the burden on unions with annual receipts between $200,000 and $249,999. The 501 unions affected will save an average of $5,104 from the cost of filing the current Form LM–2, because they can file the less burdensome Form LM–3 rather than the current Form LM–2. In addition, each of these unions also will avoid an average $19,640 per year in costs that they would incur if they had to file the new Form LM–2 and an average $1,253 per year because they will not have to file a Form T–1. Thus, each of the 501 unions affected by raising the Form LM–2 threshold from $200,000 to $250,000 will avoid $17,616 in potential costs increases (*i.e.*, $19,640 + $1,253—$3,277) by virtue of this change.

Burden hour differences between the smaller labor organizations that are large enough to be required to file Form LM–2 and the largest labor organizations are more likely to result from differences in the financial operations of the unions themselves. Only the largest filers, those that have annual receipts in the millions, are likely to have extensive financial transactions. Unions with receipts of between $250,000 and $1.0 million, which account for over 2,833 of the 4,778, or 59.3% of Form LM–2 filers, are likely to have less difficulty using the revised form. A survey of affiliated unions submitted by the AFL–CIO during the public comment process suggests that the median cost of the final rule will be just $5,724 per year for unions with less than $1.0 million in receipts compared to more than $820,000 for unions with $100.0 million to $250.0 million in annual receipts. As explained more fully below, the predictive value of the AFL–CIO survey is open to question in some respects. The Department's own experience, based on years of reviewing union records in audits and investigations, suggests that the AFL–CIO estimates of costs are more likely to be too high than too low.

Unions with total annual receipts of less than $250,000 (81.0% of all LMRDA covered unions) can still elect to file a simplified report. Over 47.3% of all labor organizations may file a Form LM–3 that entails a lesser burden than the Form LM–2. The final rule makes no change to the Form LM–3 and the only changes to its instructions clarify the reporting obligation of intermediate bodies that have no private employee members, but are subordinate to national or international labor organizations that are covered by the LMRDA. The instructions state that such intermediate bodies must file an annual financial report. The very smallest unions, with total annual receipts of less than $10,000 (33.7% of all LMRDA covered unions), can elect to file an abbreviated report, Form LM–4, which further reduces their recordkeeping and reporting burden.

The Department also has made several other changes to the proposed rule that will reduce the burden on small unions. Raising the reporting threshold for itemizing accounts receivable and accounts payable to $5,000 will reduce the number of items that must be reported, particularly for small unions that have few accounts receivable and accounts payable. Removing the itemization requirement for the benefits schedule will reduce the reporting burden for all unions and protect the privacy of individual benefit recipients, including those receiving payments for medical procedures, insurance or pension claims, or burial benefits. Changing the reporting requirements on the membership schedule will enable union members to easily obtain useful information without requiring unions to manufacture or report information for membership categories it does not keep. Finally, the new audit alternative for Form T–1 is aimed at promoting disclosure while reducing the recordkeeping and reporting burdens for unions with trusts that are already subject to an independent audit.

Small entities will also benefit from OLMS's electronic labor organization reporting system (e.LORS), which utilizes technology to collect, maintain, and disclose the information it collects. The objectives of e.LORS are: (1) The electronic filing of Forms LM–2, LM–3, and LM–4 via the Internet; (2) LMRDA program enhancements to improve accuracy, completeness, and timeliness of Forms LM–2, LM–3, and LM–4; and (3) the public disclosure of reports with a searchable database via the Internet. Labor organizations are directed to use an electronic reporting format and OLMS will make software available for downloading over the Internet that enables labor organizations to report financial information that can be electronically compiled in the proper format for electronic filing.

The use of electronic forms makes it possible to download information from previously filed reports directly into the form; enables officer and employee information to be imported onto the form; makes it easier to enter information by manually typing in the data, by electronically importing data by schedule, or by electronically importing data for the entire form; automatically performs calculations and checks for typographical and mathematical errors and other discrepancies, which reduces the likelihood of having to file an amended report; and allows the submission of the form electronically via the Internet. The error summaries provided by the software, combined with the speed and ease of electronic filing, will also make it easier for both the reporting labor organization and OLMS to identify errors in both current and previously filed reports and to file amended reports to correct them.

OLMS also has revised the instructions for the final Form LM–2 and Form T–1 to provide examples and guidance on how to complete the report and maintain records, and will provide compliance assistance for any questions or difficulties that may arise from using the software. A help desk is staffed during normal business hours and can be reached by calling a toll-free telephone number: 1–866–4–USA–DOL (1–800–487–2365).

### *F. Paperwork Reduction Act*

This statement is prepared in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 (PRA). See 5 CFR 1320.9. As discussed in the preamble to this final rule and the analysis that follows, the rule implements an information collection that meets the requirement of the Act in that: (1) The information collection has practical utility to labor organizations, their members, other members of the public, and the Department; (2) the rule does not require the collection of information that is duplicative of other reasonably accessible information; (3) the provisions reduce to the extent practicable and appropriate the burden on unions that must provide the information, including small unions; (4) the forms, instructions, and explanatory information in the preamble are written in plain language that will be understandable by reporting unions; (5) the disclosure requirements are implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of unions that must comply with them; (6) this preamble informs unions of the reasons that the information will be collected, the way in which it will be used, the Department's estimate of the average burden of compliance, which is mandatory, the fact that all information collected will be made public, and the fact that they need not respond unless the form displays a currently valid OMB control number; (7) the Department has explained its plans for the efficient and effective management and use of the information to be collected, to enhance its utility to the Department and the public; (8) the Department has explained why the method of collecting information is "appropriate to the purpose for which the information is to be collected"; and (9) the changes implemented by this rule make extensive, appropriate use of information technology "to reduce burden and improve data quality, agency efficiency and responsiveness to the public." See 5 CFR 1320.9; 44 U.S.C. 3506(c). The Department's PRA analysis contains a summary, background on the current Form LM–2, an overview of changes to each form, and the burden associated with the current forms and final rule. The Department also discusses various comments, specific to the PRA, that are not fully addressed elsewhere in the preamble. As discussed, the Department has revised its burden estimates for the final rule, based upon its review of the comments and adjustments to its baseline estimate of the costs associated with the requirements of the Department's current rule relating to the submission of annual financial reports by labor organizations.

In this rulemaking, the Department has sought to improve the usefulness and accessibility of information to members of labor organizations subject to the LMRDA. The LMRDA reporting provisions were devised to protect the basic rights of union members and to guarantee the democratic procedures and financial integrity of labor organizations. The 1959 Senate report on the version of the bill later enacted as the LMRDA stated clearly, "the members who are the real owners of the money and property of the organization are entitled to a full accounting of all transactions involving their property." A full accounting was described as "full reporting and public disclosure of union internal processes and financial operations."

As labor organizations have become more multifaceted and have created hybrid structures for their various activities, the form used to report financial information with respect to these activities has remained relatively unchanged and has become a barrier to the complete and transparent reporting of labor organization's financial information intended by the LMRDA. Moreover, just as in the corporate sector, there have been a number of financial failures and irregularities involving pension funds and other member accounts maintained by labor organizations. These failures and irregularities result in direct financial harm to union members. If union members had more complete, understandable information about their unions' financial transactions, investments, and solvency, they would be in a much better position than they are today to protect their personal financial interests and to exercise their rights of self-governance. The purpose of the final rule is to provide them with such information. The information collection achieved by this rule is integral to this purpose. The paperwork requirements associated with the rule are necessary to enable workers to be responsible, informed, and effective participants in the governance of their unions; discourage embezzlement and financial mismanagement; prevent the circumvention or evasion of the statutory reporting requirements; and strengthen the effective and efficient enforcement of the Act by the Department.

Pursuant to the PRA, the information collection requirements contained in this final rule have been submitted to OMB for approval. Within 30 days from the date of publication of this final rule, you may direct comments by fax (202–395–6974) to: Desk Officer for the Department of Labor/ESA, Office of Management and Budget.

#### 1. Summary

This final rule modifies the annual reports required to be filed by the largest labor organizations, prescribed by the Secretary of Labor to implement the Act and incorporated by reference in the applicable regulations. As discussed above and throughout the preamble to the final rule, the revised paperwork requirements are necessary to effectuate the purposes of the LMRDA by providing union members with information about their unions that will enable them to be responsible, informed, and effective participants in the governance of their unions;

discourage embezzlement and financial mismanagement; prevent the circumvention or evasion of the statutory reporting requirements; and strengthen the effective and efficient enforcement of the Act by the Department. The manner in which the collected information will serve these purposes is discussed throughout the preamble to the final rule.

Two forms that will implement the new reporting requirements and their instructions are published in the appendix to this final rule: the revised Form LM–2, a form now filed by the largest unions to report their annual financial information, and the new Form T–1, a form also to be filed by the largest unions to report the assets, liabilities, receipts, and disbursements of trusts in which they have an interest. The forms are designed to take advantage of technology that makes it possible to increase the detail of information that is required to be reported, while at the same time making it easier to file and publish the contents of the reports. Union members thus will be able to obtain a more accurate and complete picture of their union's financial condition and operations without imposing an unwarranted burden on reporting unions. The rule also includes a clarification of the Department's interpretation of Section 3(j)(5) (29 U.S.C. 402(j)(5)) of the LMRDA, in agreement with the recent decision of the U.S. Court of Appeals for the Ninth Circuit in *Chao* v. *Bremerton Metal Trades Council, AFL–CIO*, 294 F. 3d 1114 (2002). The Department adopts that court's view that any “conference, general committee, joint, or system board, or joint council” that is subordinate to a national or international labor organization is itself a labor organization under the LMRDA and will be required to file an annual financial report if the national or international labor organization is a labor organization engaged in an industry affecting commerce within the meaning of section 3(j) of the LMRDA. This clarification applies to all financial reports required to be filed under the LMRDA. The final rule also increases the filing threshold for the Form LM–3, a form filed by unions with less annual receipts than Form LM–2 filers and requiring a less detailed accounting than Form LM–2, a change that will reduce the recordkeeping and reporting burden for smaller unions. The final rule did not raise the filing threshold for Form LM–4 and did not otherwise revise the Form LM–4, although the instructions for Form LM–4 have been altered to reflect the Department's decision to adopt the holding of Bremerton Metal Trades Council, AFL–CIO. Supporting documentation need not be submitted with the forms, but labor organizations are required, pursuant to the LMRDA, to maintain, assemble, and produce such documentation in the event of an inquiry from a union member or an audit by an OLMS investigator.

The Department's NPRM in this rulemaking contained an initial PRA analysis, which was also submitted to, and approved by, OMB. Based upon careful consideration of the comments and the changes made to the Department's proposal in this final rule, the Department has made significant adjustments to its burdens estimates. The costs to the Department for administering the annual financial report requirements of the LMRDA also were adjusted. These federal annualized costs, undifferentiated by form, are separately discussed after the burdens on the reporting unions are considered.

Based upon the analysis presented below, the Department estimates that the total first year burden to comply with the revised Forms LM–2 and LM–3 and the new Form T–1 to be 3.4 million hours, 1.4 million hours and 0.2 million hours, respectively. The total first year compliance costs associated with this burden, including the cost for computer hardware and software, are estimated to be $116.0 million for the Form LM–2, $39.0 million for the Form LM–3 and $5.5 million for the new Form T–1. The actual cost of the final rule, however, is not $160.5 million in the first year. It is the difference between cost of the current forms and the revised Form LM–2 and new Form T–1, or $79.9 million the first year ($160.5 million—$80.6 million). The average three-year cost of the final rule is $55.7 million. Therefore, this final rule is not a major economic rule.

Both the burden hours and the compliance costs associated with the revised Form LM–2 and the new Form T–1 decline in subsequent years. The Department estimates that the total burden averaged over the first three years to comply with the revised Form LM–2 and the new Form T–1 to be 2.8 million hours and 0.1 million hours, respectively. The total compliance costs associated with this burden averaged over the first three years are estimated to be $93.8 million for the Form LM–2 and $3.5 million for the new Form T–1.

### 2. Background on Current Form LM–2

Every labor organization whose total annual receipts are $200,000 or more and those organizations that are in trusteeship must currently file an annual financial report on the current Form LM–2, Labor Organization Annual Report, within 90 days after the end of the union's fiscal year, to disclose its financial condition and operations for the preceding fiscal year. The current Form LM–2 is also used by covered labor organizations with total annual receipts of $200,000 or more to file a terminal report upon losing their identity by merger, consolidation or other reason.

The current Form LM–2 consists of 24 questions that identify the labor organization and provide basic information (in primarily a yes/no format); a statement of 11 financial items on different assets and liabilities; a statement of receipts and disbursements; and 15 supporting schedules. The information that is reported includes: whether the union has any subsidiary organizations and trusts; whether the union has a political action committee; whether the union discovered any loss or shortage of funds; the number of members; rates of dues and fees; the dollar amount for seven asset categories, such as accounts receivable, cash, and investments; the dollar amount for four liability categories, such as accounts payable and mortgages payable; the dollar amount for 16 categories of receipts such as dues and interest; and the dollar amount for 18 categories of disbursements such as payments to officers and repayment of loans obtained. Five of the supporting schedules include a detailed itemization of loans receivable and payable, the sale and purchase of investments and fixed assets, and payments to officers. There are also 10 supporting schedules for receipts and disbursements that provide union members with more detailed information by general groupings or bookkeeping categories to identify their purpose. Unions are required to track their receipts and disbursements in order to correctly group them into the categories on the current form.

The Department also has developed an electronic reporting system for labor organizations, e.LORS, which uses information technology to perform some of the administrative functions for the current forms. The objectives of the e.LORS system include the electronic filing of current Forms LM–2, LM–3, and LM–4, as well as other LMRDA disclosure documents; disclosure of reports via a searchable Internet database; improving the accuracy, completeness and timeliness of reports; and creating efficiency gains in the reporting system. Effective use of the system reduces the burden on reporting organizations, provides increased information to union members, and enhances LMRDA enforcement by OLMS. The OLMS Internet Disclosure site is available for public use. The site contains a copy of each labor organization's annual financial report for reporting year 2000 and thereafter as well as an indexed computer database on the information for each report that is searchable through the Internet. The Department is developing an enhanced e.LORS system for the revised Form LM–2 and new Form T–1.

To ease the transition to electronic disclosure, OLMS includes e.LORS information in its outreach program, including compliance assistance information on the OLMS website, individual guidance provided through responses to e-mail, written, or telephone inquiries, and formal group sessions conducted for union officials regarding compliance. The current forms are provided on CD–ROM discs at no cost to labor organizations, can be downloaded from the OLMS website, and are available from OLMS field offices and from the OLMS National Office. OLMS has also implemented a system to permit union officers to submit forms electronically with digital signatures. Unions are currently required, however, to pay a minimal fee to obtain electronic signature capability for the two officers who sign the form. Information about this system can be obtained on the OLMS Web site at *www.olms.dol.gov.* Digital signatures ensure the authenticity of Form LM–2 reports without compromising efficiency. As discussed in the Regulatory Flexibility Analysis and the preamble, additional compliance assistance will be provided in connection with the new reporting and filing requirements.

Filing labor organizations have several advantages with the current electronic filing system. With e.LORS, information from previously filed reports and officer or employee information can be directly imported to Form LM–2. Not only is entry of the information eased, the software also makes mathematical calculations and checks for errors or discrepancies. Ready acceptance of the benefits of electronic reporting is predictable based on experience with software that OLMS has developed and distributed to labor organizations for completing the current Forms LM–2, LM–3, and LM–4. Approximately 76% of unions that currently file Form LM–2, LM–3, and LM–4 take advantage of the ability to enter data electronically on a computerized form.

3. Overview of Changes to Form LM–2

The Department, among other revisions for the purpose of reducing the burden on small unions, adopted the alternative, identified in the NPRM, to raise the reporting threshold for the Form LM–2 from $200,000 to $250,000. The new rule adjusts upward the Form LM–2 filing threshold of $200,000 set in 1994 to account for inflation. As a result of raising the Form LM–2 threshold to $250,000 in the final rule, 501 unions that currently file a Form LM–2 will now be able to satisfy the requirements of the LMRDA by filing the simpler Form LM–3. It should also be noted that the final $250,000 threshold is significantly higher than the earlier thresholds for filing the Form LM–2—1959 ($20,000), 1962 ($30,000), and 1981 ($100,000).

In comparison to the current Form LM–2, the revised Form LM–2 includes: three fewer questions (21 instead of 24) that identify the labor organization and provide basic information (in the same general yes/no format); the same 11 financial items on assets and liabilities in Statement A; an updated Statement B that asks for information on fewer categories of receipts (13 instead of 16) and disbursements (17 instead of 19); and five additional supporting schedules (20 instead of 15). The updated Statement B (Receipts and Disbursements) also drops six old categories of disbursements and adds five new categories that will provide more useful information to union members on the amount of union funds spent on representational activities, strike benefits, union administration, general overhead, and political activities and lobbying.

Over half (8) of the 15 current supporting schedules are not changing. These include loans receivable, loans payable, other assets, other liabilities, fixed assets, sale of investments and fixed assets, purchase of investments and fixed assets, and benefits. The schedule for itemizing investments has only a minor modification involving information that is maintained in the normal course of business—the reporting threshold has changed from over $1,000 and 20% of the total book value of the union's investments to over $5,000 and 5% of the total. Two other supporting schedules (Office and Administrative Expense, and Other Disbursements) on the current form have been dropped from the revised form and the disbursements that were reported on those schedules will now be reported elsewhere on the revised Form LM–2 (such as the schedules for union administration or general overhead).

One change to Form LM–2 is the requirement that unions provide an estimate of the time expended by their officers and employees on each of the several categories prescribed generally for union receipts and disbursements including: representational activities; union administration; general overhead; political activities and lobbying; and contributions, gifts, and grants. However, the Department is not requiring unions to keep detailed time records, and it is left up to the labor organization to determine the least burdensome way to provide the information.

Another change to the Form LM–2 is the addition of two new schedules for accounts receivable and accounts payable. The new schedules require the reporting of (1) The name of any entity or individual with which the labor organization had an account payable valued at $5,000 or more that was more than 90 days past due at the end of the reporting period or that was liquidated, reduced or written off during the reporting period, and (2) the name of any entity or individual with which the labor organization had an account receivable valued at $5,000 or more that was more than 90 days past due at the end of the reporting period or that was liquidated, reduced or written off during the reporting period. However, as noted above, the Department is not requiring Form LM–2 filers to use accrual accounting. Although the LMRDA and the current Form LM–2 already require some accrual basis accounting information, under the final rule unions may choose the method by which to track their finances "on a cash basis, accrual basis, a hybrid of the two, or some other method of accounting "so long as they can accurately report the information required by the Form LM–2.

The revised Form LM–2 also includes a new schedule for reporting their number of members by membership category. Each labor organization, however, is permitted to name and report on its own membership categories (in the same manner as it keeps its membership records). It appears from the public comments received on the Department's proposal that each union maintains membership information in some manner; however, a union will not be required to manufacture or report information for membership categories it does not keep.

The Form LM–2 also has been revised to require unions to individually identify receipts and disbursements for two of the current supporting schedules (Other Receipts and Contributions, Gifts, and Grants) and four of the new supporting schedules (Representational Activities, Union Administration, General Overhead, and Political and Lobbying Activities). Currently, two of these schedules provide some detail about various receipts and disbursements by general groupings or bookkeeping categories to identify their purpose. However, the revised Form LM–2 will require labor organizations to individually identify receipts or disbursements, reported in six supporting schedules, of $5,000 or more, or total receipts or total disbursements, reported in each of those schedules, from an entity or individual that aggregate to $5,000 or more during the reporting period. For individually identified receipts and disbursements, unions will have to report the name, address, purpose, date, and amount associated with the transaction.

Under the final rule, labor organizations that file the Form LM–2 are required to report the major receipts and disbursements of trusts in which the labor organization has an interest. Currently, a union only has to report information about subsidiary organizations, defined as "wholly owned, wholly controlled, and wholly financed by the reporting union." Under the final rule, if a union's financial contribution to a trust, or a contribution made on the union's behalf, is less than $10,000 or the union has an interest in a trust that has annual receipts of less than $250,000, the union only has to report on Form LM–2 the existence of the trust and the amount of the union's contribution or the contribution made on the union's behalf. If the contribution is $10,000 or more and the annual receipts of the trust are $250,000 or more, the labor organization will be required to report the receipts and disbursements of the trust on the new Form T–1. Unions will be required to separately identify each entity or individual from which the trust received $10,000 or more during the reporting period. Unions will also be required to separately identify any entity or individual to which the trust made disbursements of $10,000 or more, or that aggregated to $10,000 or more, during the reporting period. For individually identified receipts and disbursements, unions will have to report the name, address, purpose, date, and amount associated with the transaction.

Unions will not have to file a Form T–1 for organizations that meet the statutory definition of a trust if the trust files a report pursuant to 26 U.S.C. 527, or pursuant to the requirements of ERISA, or if the organization is a Political Action Committee (PAC) and files publicly available reports with a Federal or state agency. For such trusts, the union is required only to state on the Form LM–2 that such a report has been filed and where union members can obtain the report. In addition, a labor organization may substitute an independent audit for most of the information that otherwise would be required on a Form T–1, provided the audit meets certain criteria described in the preamble above.

As discussed above, the instructions to Form LM–2 also adopt the recent holding in Chao v. Bremerton Metal Trades Council, AFL–CIO, clarifying that any "conference, general committee, joint, or system board, or joint council," which is subordinate to a national or international labor organization is itself a labor organization under the LMRDA and will be required to file an annual financial report if the national or international labor organization is a labor organization engaged in an industry affecting commerce within the meaning of section 3(j) of the LMRDA. See 29 U.S.C. 402(j)(5). The Department estimates that this will add 100 new Form LM–2 filers.

Finally, under the rule, each labor organization that has annual receipts of $250,000 or more is required to file a Form LM–2 electronically with the Department. Based on reports filed with OLMS and the experience of its investigators, the Department recognizes that a majority of current Form LM–2 filers currently use computerized recordkeeping systems and now possess, or can easily acquire, the technology necessary to submit reports in electronic form. Several OLMS field offices report that even smaller unions that file Form LM–3 reports now maintain their accounts electronically. The availability of electronic software that will permit unions that keep their records electronically to export data from their programs to the Form LM–2 software should reduce the burden of reporting financial information with the specificity required by the final rule. Under the final rule, unions have the choice to complete the reports for submission by either utilizing the Department's software to automatically transmit the information or by "cutting and pasting" the information into the Department's on-line form. If, however, a labor organization is unable to file electronically without undue burden or expense, it can request a hardship exemption from the Department. If the Department determines that the grant of the exemption is appropriate and consistent with the public interest and the protection of union members, the union will be excused from filing electronically for the period of the exemption.

4. Overview of Changes to Form LM–3

The only revision in the final rule to Form LM–3 is the change that increases the size of labor organizations that are permitted to file the form from $199,999.99 to $249,999.99 in total annual receipts. This is required because the Form LM–2 reporting threshold is increasing to $250,000.

The instructions to Form LM–3 also adopt the holding in Chao v. Bremerton Metal Trades Council, AFL–CIO, as the Department's interpretation of section 3(j)(5) of the LMRDA. The Department estimates that this will add 50 new Form LM–3 filers.

5. Overview of the Form LM–4

After carefully reviewing the comments, the Department has decided not to change the Form–LM–4 in the final rule.

6. Overview of the New Form T–1

A labor organization will be required to file Form T–1 if it has an interest in a trust, as defined in the LMRDA; if the union and the trust each have annual receipts of $250,000 or more; and the union makes a financial contribution to the trust, or a contribution is made on the labor organization's behalf, of $10,000 or more. If a union's financial contribution to a trust, or a contribution made on the union's behalf, is less than $10,000 or the union has an interest in a trust that has annual receipts of less than $250,000, the union only has to report the existence of the trust and the amount of the union's contribution or the contribution made on the union's behalf.

Also to minimize the burden, unions will not have to file a Form T–1 for organizations that meet the statutory definition of a trust if the trust files a report pursuant to 26 U.S.C. 527, or pursuant to the requirements of ERISA, or if the organization is a Political Action Committee (PAC) and files publicly available reports with a Federal or state agency. For such trusts, the union need only state on the Form LM–2 that such a report has been filed and where union members can obtain the report. In addition, a labor organization may choose to substitute an independent audit for most of the information that otherwise would be required on a Form T–1, provided the audit meets the criteria prescribed by the final rule. In such instances, the union is not required to provide the financial details for the trust otherwise required of filers.

The new Form T–1 follows the format of the revised Form LM–2. The Form T–1, however, is similar to Form LM–4 in that it is much shorter and requires less information than the Form LM–2. The Form T–1 includes: 20 questions that identify the trust, provide basic information (in a yes/no format), and the total amount of assets, liabilities, receipts and disbursements of the trust; a schedule that separately identifies any individual or entity from which the trust receives $10,000 or more during the reporting period; a schedule that separately identifies any entity or individual that received disbursements that aggregate to $10,000 or more from the trust during the reporting period and the purpose of disbursement; and a schedule of disbursements to officers and employees of the trust.

### 7. Recordkeeping and Reporting Burden Hour Estimates for the Current, Revised, and New Forms

The Department received several comments on the recordkeeping and reporting burdens associated with the current Form LM–2, and the proposed Form LM–2 and Form T–1, and the Department's initial PRA analysis. Many union members and a number of nonprofit organizations commented on the usefulness of the information provided on the proposed forms and expressed the view that the benefits of the additional information outweighed the marginal increase in recordkeeping and reporting costs. Other commenters expressed strong contrary views. Many of these comments already have been addressed in the preamble.

Although the Department received only a few comments that were specific to the Department's compliance with the requirements of the PRA, it did receive many comments on the NPRM PRA analysis and burden hour estimates. The AFL–CIO and the Mercatus Center, the latter an economic policy group based at George Mason University in Virginia, submitted detailed comments and data. A third commenter, the Center for Progressive Regulation (CPR), self-described in its comments as a newly formed, Washington, D.C.-based, organization of academics specializing in legal, economic and scientific issues surrounding federal regulation, expressed views critical of the Department's initial burden analysis. The latter organization, however, did not include in its submission any alternative data for the Department to consider. Some unions also submitted comments critical of the Department's analysis and provided some alternatives for the Department to consider.

The Department has carefully considered these various comments as well as the rest of the record and has relied on many of the commenters' observations in refining its burden analysis. In many instances, as identified below, the Department has used the data supplied by the commenters to better estimate how much time filers take to complete the current Form LM–2 and could take to complete the revised Form LM–2. By taking this information into account, the Department has increased the baseline burden assumptions for the current Form LM–2 that underlie most of the Department's estimates. At the same time, the Department could not use all of the data submitted by the commenters in refining burden estimates. Some of the data, for example, was no longer relevant to the analysis because a proposed requirement was revised or eliminated altogether in the final rule necessitating the revision or elimination of the burden associated with the proposed requirement. In other instances, the information, while illustrative of problems that had been identified by a particular union or unions, could not be used to arrive at an average burden hour estimate for unions generally or within one of the defined tiers. For example, ALPA explained that it uses a particularly sophisticated accounting program in maintaining its financial information and would incur significant burden in converting their program to comply with the proposed rule, but this information could not be used to accurately estimate how many other unions have similarly sophisticated accounting programs and could incur similar burdens. Other information was not used because it was based on a misunderstanding of the NPRM. For example, some commenters stated that local unions would incur significant costs associated with converting to an accrual accounting method when the NPRM proposed no such requirement.

In most cases, the Department has reported data regarding its burden hour estimates to the nearest hundredth, as it did in the NPRM. Contrary to the perception of a few commenters, the Department's practice is not intended to suggest greater precision than the underlying data would reflect. Instead, the figures used by the Department are derived from the Department's computations based on assumptions, rounded to the nearest hundredth by an Excel spreadsheet.

### a. General Comments

The AFL–CIO argued that the proposed information gathering is not necessary for the proper functioning of the Department. The AFL–CIO contends that the Department's paperwork analysis in the NPRM was fundamentally flawed and dramatically underestimated the paperwork burdens and costs to unions in complying with the proposed reporting requirements. The AFL–CIO also argued that the proposed rule is not the least burdensome approach that the Department could have taken to achieve the goal of the LMRDA and the rulemaking to make union financial reports and underlying data more useful and accessible to their members. And, as a final observation, the AFL–CIO stated that the proposed rule might shift the cost of developing and implementing electronic filing upon the reporting unions.

The AFL–CIO's contention that the changes in the reporting requirements are not necessary for the proper functioning of the Department lacks merit. The Secretary is charged under section 208 of the LMRDA, 29 U.S.C. 438, with the authority and responsibility for determining "the form and publication of reports required to be filed under this title." Unions, in turn, are required to file annual reports containing certain listed minimum information "in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year." 29 U.S.C. 431(b). These reports are statutorily required, not primarily for the proper functioning of the Department, but for disclosing to the members of the organization how their dues money has been used in the past year. As stated in its proposal and supported by many of the public comments received on the proposal, the Department believes that the minimal information reported on the current Form LM–2 forms is inadequate to ensure that unions are reporting and using funds in ways their members would approve. As discussed in the preamble, comments by union members explained their difficulties in obtaining information about their union's finances and expressed frustration in their inability to find out where their dues money was going. The more detailed reporting requirements in the final rule will increase members' awareness of how their dues money is being spent by their unions. This is consistent with the intent of the LMRDA and highlights the purpose served by the rule's information collection provisions.

The suggestion that the Department's initial burden analysis was fundamentally flawed is unpersuasive. The AFL–CIO has failed to identify any analytical shortcomings in the

Department's approach. Instead, the AFL–CIO's contention rests, in large part, on its view that the Department has underestimated the baseline burden hour data used by the Department for the current Form LM–2 and that, therefore, the Department has underestimated the burden for the revised form. As discussed below, this baseline was based on what the Department believed was the accepted burden associated with the current Form LM–2, as reflected in the Department's numerous, unchallenged submissions to OMB in obtaining OMB's approval to continue using the form. Based on the information submitted by the AFL–CIO and other commenters in response to the Department's proposal, and the Departments own analysis, however, the Department has adjusted its burden hour estimates upward for the current form. These adjustments are discussed in detail below.

Contrary to the AFL–CIO's view, the Department's paperwork analysis in the NPRM was well reasoned, especially in the absence of any earlier challenge to the Department's prior assessment of the time required to prepare the current Form LM–2. As discussed below, the Department has revised its estimates in preparing the PRA analysis for the final rule and presents a more refined assessment by the Department of any burden imposed on reporting unions under the new Form LM–2.

The Department used the AFL–CIO and other commenters' estimates when they provided information that the Department did not have and that increased the accuracy of its estimates by adding to the Department's own data and auditing experience. The Department used the following AFL–CIO data estimating the average burden for completing the current Form LM–2: 1,500 hours each for 141 national and international unions and 200 hours each for 5,038 local unions. The latter number reflects the number of unions in the 2002 OLMS e.LORS data. These figures yield a weighted average of 239 hours, which the Department rounded up to 240 hours for use in making additional burden assessments. The Department had to make some assumptions about the local unions due to the scarcity of data. The AFL–CIO only surveyed 23 local unions on their actual experience with the current form. Since the AFL–CIO did not include estimates for consulting, accounting, legal, or similar costs, the Department had to assume additional hours for these activities in order to arrive at a weighted average for computing a total burden estimate for filers for completing the current Form LM–2.

The AFL–CIO provided some information that appears to contradict the burden hour estimates discussed above. The AFL–CIO's report included an estimate of burden for the current Form LM–2, based on an average of 52 hours for each individual employed by a union (but without specifying the average number of individuals it used as a divisor). This figure is not consistent with its 1,500 and 200 burden hour estimate, when applied to the Department's 2001 or 2002 e.LORS data that contains the reported number of employees and officers for all Form LM–2 filers. Thus, in the Department's view, the AFL–CIO's per employee estimate may not accurately reflect a true average. For this reason, the Department chose, instead, to rely on the AFL–CIO's alternative, per union, estimate of the number of hours required to complete the current Form LM–2.

Some of the AFL–CIO data involved broad subjective or qualitative categories that could not be used to estimate burden hours. For example, the estimate that 45% of local unions said that it would be quite difficult to extremely difficult to compile the name, address, date, amount, and purpose for all charges by functional category, is illustrative of the effort associated with the itemization requirement in the final rule but can not be used to develop actual burden hour estimates. Moreover, this estimate also demonstrates that 55%, or a majority, of local unions find the change less difficult. Of course, the Department did not use the AFL–CIO's data in computing the burden of complying with the revised Form LM–2 to the extent that the data pertained to requirements that were addressed in the Department's proposal, but not embodied in the final rule.

The Department also used the AFL–CIO data on the number of unions using functional reporting to refine its recordkeeping burden estimates. Specifically, the AFL–CIO data relating to the unions' ability to itemize disbursements were used to corroborate the Department's data and auditing experience. The Department notes, however, that the data either understate the unions' capacity to report information by functional categories or by implication shows that a substantial number of unions are not in compliance with the current reporting requirements (the current report requires the tracking of all receipts and disbursements in order to place them in the appropriate schedule and category on the current form). However, the Department did not use the AFL–CIO data relating to problems that unions might encounter in classifying information by the categories included in the Department's proposals in developing burden hour estimates because of the subjective/qualitative nature of the information. The Department used almost all of the AFL–CIO information concerning the computer software and hardware capabilities of unions. This information added accuracy to the Department's own data and estimates.

The argument that the Department's proposal shifted the cost of developing and implementing electronic filing to unions by making unions responsible, in part, for some of the software development ignores the fact that the Department will provide, at no cost to unions, the software that allows unions to file electronically with the Department. Reporting unions, however, may be required to make changes to the way that they record the information in order to prepare the revised Form LM–2 and submit it electronically, and the Department has included the costs of such changes in the estimates discussed below. The AFL–CIO's disagreement with the Department's burden estimate in the NPRM was based, in part, on its view that unions currently experience considerable difficulty in timely reporting annual financial information, and that the Department's proposals, by adding new requirements, are overly burdensome. In support of this position, the AFL–CIO included information about the unions' current record on timeliness. While, as discussed above, the Department has used the burden hour estimates provided by the AFL–CIO to reassess the Department's estimate of the time required for completing the current forms, qualitative assessments of difficulty or timely-submission data could not be used to develop burden hour estimates. The Department also did not utilize the information used by the AFL–CIO to support its assertion that the Department had failed to consider whether, and the extent to which, unions might need additional resources to comply with the proposal. Although this information illustrates the need to use external support staff or the need to hire additional in-house staff to address the higher burden hours associated with the revised Form LM–2, the information is not helpful for estimating average or total burden hours, but simply illustrates the choices unions have to comply with the current and final rule.

The AFL–CIO's contention that the Department could have chosen less burdensome alternatives to achieve the same objectives is unpersuasive. As demonstrated by the final rule, the

Department has made numerous changes to its proposal that reduce the paperwork burden associated with the rule. Throughout the preamble, the Department has explained its position on adopting, or not, alternative proposals suggested by the commenters. The Department, in crafting the final rule, has sought to reduce the paperwork burden on unions, without compromising the Department's statutory obligation to ensure that union members are provided annual reports on their unions' finances. Both the NPRM and the final rule, in the Department's view, fully comply with its responsibilities under the LMRDA and the PRA. The final rule establishes the least burdensome approach practicable to provide union members and the Department with the information required by the LMRDA.

The comments submitted by the Mercatus Center were largely supportive of the Department's proposal, including the Department's effort to specifically estimate the burden hours associated with the unions' compliance with the proposal. The organization, however, suggested that the burden estimates could be improved if the Department capitalized its estimates of costs and provided additional documentation of the Department's own costs associated with the rule. Although capitalization would be a reasonable alternative to the direct cost approach used in this rulemaking, the Department believes that averaging the costs over the first three years, as the Department has done here, yields approximately the same result in estimating burden. Moreover, in this rulemaking, there was relatively little to be capitalized. Only the computer equipment and software and the one-time labor costs could be considered for capitalization. In its analysis, the Department has assumed that most of the computer equipment and software would be purchased for normal business operations. The minimal additional costs associated with the final rule have been allocated in the first year. This same procedure was used for the one-time labor costs. While the procedure used by DOL does not include any "opportunity costs" for capital (*e.g.*, interest charges), DOL believes that its estimates, by using, in effect, a three year life cycle for all such costs has reasonably estimated the burden.

Mercatus estimated that the average burden associated with the Department's proposal, per union, at about 180 hours. It broke down its estimates as follows: install new software, 4 hours; design/adjust report forms and format structures, 72 hours; modify existing accounting systems, 32 hours; incorporate electric signatures, 16 hours, systems testing, 24 hours, and employee training, 32 hours (8 hours x 4 employees). To compute the compensation costs associated with these tasks, it used $27.80 as "fully loaded wage rate of union employees."

Mercatus also noted that the Department's analysis did not appropriately recognize that the Department's proposal would have an impact beyond the union's bookkeeping and accounting staff. Mercatus noted that the rule likely would affect the manner by which union staff document or record their activities, and that such costs, though minimal on a transaction basis, will have a measurable cost in the aggregate. The Department has considered such costs in its analysis of the final rule.

### b. Methodology for the Burden Estimates

In reaching its estimates, the Department considered both the one-time and recurring costs associated with the final rule. Separate estimates are included for the initial year of implementation as well as the second and third years. For filers, the Department included separate estimates, based on the relative size of unions as measured by the amount of their annual receipts. The size of a union, as measured by the amount of its annual receipts, will affect the burden on reporting unions. For example, larger unions have more receipts and disbursements to itemize and more employees who have to estimate their time allocation.

The primary impact of this final rule will be on the largest labor organizations, defined as those that have $250,000 or more in annual receipts. There are approximately 4,778 labor organizations of this size that are required to file Form LM–2 reports under the LMRDA (just 19.0 percent of all labor organizations covered by the LMRDA). The rule will also reduce the burden on 501 small unions that will be able to file Form LM–3 instead of Form LM–2 because of raising the LM–2 threshold to $250,000. These estimates are based on 2001 and 2002 data from the OLMS e.LORS system. This system contains annual receipt data on all Form LM–2, LM–3, and LM–4 filers. Although these estimates may not be predictive of the exact number of small unions that will be impacted by this final rule in the future, the Department believes these estimates to be sound and are derived from the best available information.

The Department's estimates include costs for both labor and equipment that will be incurred by filers. The labor costs reflect the Department's assumption that the unions will rely upon the services of some or all of the following positions (either internal or external staff, including union president, union secretary-treasurer, accountant, bookkeeper, computer programmer, lawyer, consultant) and the compensation costs for these positions, as measured by wage rates and employer costs published by the Bureau of Labor Statistics or derived from data reported in e.LORS. The Department also made assumptions relating to the time that particular tasks or activities would take. The activities generally involve only one of the three distinct "operational" phases of the rule: first, tasks associated with modifying bookkeeping and accounting practices, including the modification or purchase of software, to capture data needed to prepare the required reports; and second, tasks associated with recordkeeping; and third, tasks associated with sending or exporting the data in an electronic format that can be processed by the Department's import software. Since the analysis is designed to provide estimates for a "representative" union the Department's estimates largely reflect weighted averages. Where an estimate depends upon the number of unions subject to the LMRDA or included in one of the tier groups, the Department has relied upon data in the e.LORS system (for the years stated for each example in the text or tables).

The following methodology and assumptions underlie the Department's burden estimates:

- The size of a union, as measured by the amount of its annual receipts, will affect the burden on reporting unions. Larger unions have more receipts and disbursements to itemize and more employees who have to estimate their time allocation. Three tiers, based on annual receipts, have been constructed to differentiate the burdens among Form LM–2 filers.
- A union's use of computer technology, or not, to maintain its financial accounts and prepare annual financial reports under the current rule, will affect the burden on reporting unions. Although few LM–2 filers do not have computers, the larger the union the greater likelihood that it will be using a specialized accounting program instead of commercial-off-the-shelf accounting software.
- Relative burden associated with the final rule will correspond to the following predictable stages: review of the rule, instructions, and forms; adjustments to or acquisition of

accounting software and computer hardware; installation, testing, and review of the Department's reporting software; changing accounting structures and developing, testing, reviewing, and documenting accounting software queries as well as designing query reports; training union officers and employees involved in bookkeeping and accounting functions; training union officers and employees to maintain information relating to transactions and estimating the amount of time they expend in prescribed categories; the actual recordkeeping of data under the revised procedures associated with itemizing receipts and disbursements and allocating them by functional categories; aging accounts receivable and accounts payable; allocating time for officers and employees by functional categories; preparing a download methodology to either submit electronic reports using "cut and paste" methods or the import/export technology allowing for a more automated transfer of data to the Department; the development, testing, and review of any translator software that may be required between a union's accounting software and Department's reporting software; obtaining digital signatures for the union officers; additional review by the president and secretary-treasurer; and completing a continuing hardship exemption request if necessary.

- Burden can be categorized as recurring or non-recurring, with the latter primarily associated with the initial implementation stages. Recordkeeping burden, as distinct from reporting burden, will predominate during the first months of implementation.
- Burden can be reasonably estimated to vary over time with the greatest burden in the initial year, decreasing in later years as users gain experience. Estimates for each of the first three years and a three-year average will provide useful information to assess the burden. A weighted average provides a "snapshot" of the burden associated with the form for an individual reporting union.
- Burden can be usefully reported as an overall total for all filers in terms of hours and cost. This burden, for most purposes, can be differentiated for each individual form. The Federal burden cannot be reasonably estimated by form.
- The estimated burden associated with the current LM-forms is the appropriate baseline for estimating the burden and cost associated with the final rule.

c. Baseline Adjustments: Current Forms

After reviewing the public comments, the Department assumes that 5,038 local unions now take 200 hours and 141 national and international unions take 1,500 hours to collect and report their information on the current Form LM–2 for a weighted average of approximately 240.0 hours for each of the 5,179 respondents. In addition, the Department assumes that Form LM–2 filers take an average 24.0 hours for accounting, 16.0 hours for programming, 8.0 hours for legal review, and 4.0 hours for consulting assistance to complete the current form for an average total burden of 292.0 hours per respondent (see Table 2). Further, the Department estimates that 160.0 hours of the total is for recordkeeping burden and 132.0 hours is for reporting burden. The difference in the number of responses in Table 2 reflects that fewer unions filed LM–2's and LM–3's in 2002 than in 2001 according to OLMS e.LORS data.

The Department also estimates that 11,356 local unions will take an average 104.0 hours to collect and report their information on the current Form LM–3. In addition, the Department assumes that all Form LM–3 filers will take an average 8.0 hours for accounting and 4.0 hours for legal review to complete the current form for an average total burden of 116.0 hours per respondent (see Table 2). Further, the Department estimates that 64.0 hours of the total is for recordkeeping burden and 52.0 hours is for reporting burden. These estimates and assumptions are based on the similarity of the Form LM–3 and Form LM–2 recordkeeping and reporting requirements, as well as the relative differences in the size of the unions that complete the two forms.

The Department has also updated the average annual cost of complying with the current Form LM–2 and LM–3 recordkeeping and reporting requirements as follows: The average total cost per respondent is $8,381 for the current Form LM–2 and $3,277 for Form LM–3. These figures include estimates for consulting, accounting, legal, and programming costs and are weighted averages across all respondents and are based on total compensation rates not hourly wage rates. The total annual cost for all respondents is estimated to be $43.4 million for Form LM–2 and $37.2 million for Form LM–3 (see Table 2). It should be noted that although it may appear that the Department has applied inconsistent dollar costs per hour to the burden hour estimates, the dollar costs per hour naturally differ between forms because of the varying amounts of accountant time, bookkeeping time, and the time of the union secretary-treasurer and president associated with each form, which yield different weighted average costs per hour.

### Table 2 - Adjustments to the Annual Recordkeeping and Reporting Burden for the Current Form LM-2 and Form LM-3

| Form | Number of Responses (2) | Reporting Hours per Respondent | Total Reporting Hours | Recordkeeping Hours Per Respondent | Total Recordkeeping Hours | Total Burden Hours Per Respondent | Total Burden Hours | Average Cost Per Respondent | Total Cost |
|---|---|---|---|---|---|---|---|---|---|
| Current Form LM-2 | | | | | | | | | |
| Current Estimate | 5,932 | 14.75 | 87,497 | 0.50 | 2,966 | 15.25 | 90,463 | $330 | $1,955,429 |
| Adjusted Estimate (1) | 5,179 | 132.00 | 683,628 | 160.00 | 828,640 | 292.00 | 1,512,268 | $8,381 | $43,405,199 |
| Difference | -753 | 117.25 | 596,131 | 159.50 | 825,674 | 276.75 | 1,421,805 | $8,051 | $41,449,770 |
| Current Form LM-3 | | | | | | | | | |
| Current Estimate | 12,722 | 6.50 | 82,693 | 0.25 | 3,181 | 6.75 | 85,874 | $137 | $1,748,686 |
| Adjusted Estimate (1) | 11,356 | 52.00 | 590,512 | 64.00 | 726,784 | 116.00 | 1,317,296 | $3,277 | $37,213,612 |
| Difference | -1,366 | 45.50 | 507,819 | 63.75 | 723,604 | 109.25 | 1,231,423 | $3,140 | $35,464,926 |

Notes: (1) Adjusted burden hour estimates for the current forms are based on public comments received from Notice of Proposed Rulemaking published in the Federal Register on December 27, 2002 and 2002 OLMS e.LORS data.

(2) The difference in the number of responses results from fewer unions filing LM-2's and LM-3's in 2002 compared to 2001. Some numbers may not add due to rounding.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Labor Management Standards.

d. New Form LM–2

To estimate the burden hours and costs for the revised Form LM–2 and the new Form T–1 the Department divided Form LM–2 filers into three groups or tiers, based on the amount of unions' annual receipts. In Tier 1, there are 1,574 unions with annual receipts from $250,000 to $499,999.99. The Department assumes that unions within this tier probably use some type of commercial off-the-shelf accounting software program and will most likely use the "cut and paste" feature of the new reporting software (see Table 3). In Tier 2, there are 3,158 unions with annual receipts from $500,000 to $49.9 million. The Department assumes that unions within this tier most likely use some type of commercial off-the-shelf accounting software program and will use all of the electronic filing features of the new reporting software. Finally, in Tier 3, there are the 46 unions with annual receipts of $50.0 million or more. The Department assumes that unions within this tier most likely use some type of specialized accounting software program and also will use all of the electronic filing features of the new reporting software. Table 3 summarizes the Characteristics of Form LM–2 filers by annual receipts.

**Table 3 - The Characteristics of Form LM-2 Filers by Annual Receipts**

| | Average Annual Receipts | | | |
|---|---|---|---|---|
| Characteristic | $250,000 to $499,999 | $500,000 to $49.999 million | $50.0 million or more | Total |
| Number of LM-2 Filers | 1,574 | 3,158 | 46 | 4,778 |
| Total Receipts | $565,711,158 | $8,719,227,392 | $7,599,663,402 | $16,884,601,951 |
| Average | $359,410 | $2,760,997 | $165,210,074 | $3,533,822 |
| Other Receipts | $47,101,405 | $768,857,540 | $665,172,551 | $1,481,131,496 |
| Percent of Total | 8.3% | 8.8% | 8.8% | 8.8% |
| Average | $29,925 | $243,463 | $14,460,273 | $309,990 |
| Disbursements | $152,412,897 | $2,072,856,566 | $1,706,799,568 | $3,932,069,031 |
| Percent of Total | 26.9% | 23.8% | 22.5% | 23.3% |
| Average | $96,832 | $656,383 | $37,104,338 | $822,953 |
| Accounts Receivable | $3,868,013 | $176,381,709 | $332,880,993 | $513,130,715 |
| Average | $2,457 | $55,852 | $7,236,543 | $107,394 |
| Accounts Payable | $7,293,258 | $144,695,215 | $188,315,873 | $340,304,346 |
| Average | $4,634 | $45,819 | $4,093,823 | $71,223 |
| Average Number of Officers | 8 | 19 | 44 | |
| Average Number of Employees | 1 | 7 | 297 | |

Source: U.S. Department of Labor, Employment Standards Administration, Office of Labor Management Standards, 2002 e.LORS data.

For each of the three tiers, the Department estimated burden hours for the additional nonrecurring (first year) recordkeeping and reporting requirements, the additional recurring recordkeeping and reporting burden hours, and a three-year annual average for the additional nonrecurring and recurring burden hours.

The Department estimates that LM–2 filers will spend an average of nearly $1,000 for computer hardware, hardware upgrades, accounting software, and software upgrades, and 14.6 hours to install and set up, or reconfigure the computer hardware and accounting software (these are weighted averages of $1,500 for computer hardware and $250 for accounting software across all LM–2 filers). Although many unions currently have the hardware and software that is necessary for the recordkeeping and reporting requirements of the final rule, data submitted by the AFL–CIO suggests that 21% of national and international unions and 33% of local unions would need to purchase and install new computer hardware; 11% of national and international unions and 40% of local unions would need new software; and 51% of national and international unions and 35% of local unions would need to upgrade their software. An additional 12.5% of local unions do not use computers; however, the Department assumes that 86.4% (501) of these unions will no longer have to file the Form LM–2 because of the higher reporting threshold ($250,000) for the form. For those unions without computers, the Department also estimated that it would take an average of 14.6 (nonrecurring) hours to install and/or upgrade the computer hardware and software. In addition, for all unions the Department estimated that it would take an average of 8.9 (nonrecurring) hours to install, test, and review the OLMS reporting software.

The Department estimates that it will take unions an average of 76.8 (nonrecurring) hours to change their accounting structures; develop, test, review, and document accounting software queries; design query reports; and train accounting personnel. Unions that use a fiscal year beginning on January 1 will need to spend less than half of these hours (32.5) making changes before January 1, 2004, in order to be ready to begin the recordkeeping necessary to be able to file the revised Form LM–2. Unions will have until 90 days following the end of their fiscal year to spend the remainder of these hours (44.3) making changes that will be necessary to actually populate the Form LM–2, which will be due, at the earliest, at the end of March 2005. These estimates are based on the Department's review of a variety of accounting software packages, its evaluation of the recordkeeping requirements of the current Form LM–2, and its review of the public comments. The Department relied upon the expertise of investigators with first-hand knowledge of union financial reporting, including the use of software, to determine which four commercial off-the-shelf software packages were most commonly used by unions to maintain their finances and prepare financial reports. Using these four common off-the-shelf software packages, Department investigators determined that it was possible to set up categories or accounts tailored to capture the information necessary to comply with the requirements of the rule. The software packages tested utilize a common processing format.

Many unions with commercial-off-the-shelf accounting software will take less time and other, typically larger, unions with specialized accounting systems may take more time. Further, the public comments suggest that many unions already have accounting systems that maintain at least some, if not all, of the required information for disbursements and other receipts. Therefore, as discussed above, the Department continues to believe that unions will have adequate time to conform their accounting systems to the revised forms before the start of the first reporting period for which they will be required to report on the new Form LM–2 (no earlier than January 1, 2004).

The Department estimates an average 30-minute reduction in burden for the changes to pages one and two and Statement B of the Form LM–2 (for all three tiers) for reporting three fewer yes/no questions and 5 fewer minutes for reporting three fewer receipt categories and two less disbursement category on Statement B. The burden reduction is less for Statement B because the information that is currently reported on four lines must be still be gathered for the revised form, but are added together and reported on just one line of the revised form.

The Department estimates no reduction or increase in burden for Tier 1 filers associated with the eight unchanged schedules on the revised Form LM–2. It is assumed that Tier 1 respondents will use the same features in the new software that are in the existing OLMS software to complete these schedules. However, for Tier 2 and Tier 3 filers the Department estimates a 50% decrease (12.5 hours or 1.6 hours per unchanged schedule) in reporting burden that results from moving from the current manual or "cut and paste" method on the existing form to an electronic data export capability for the unchanged schedules on the revised form.

The Department estimated the burden associated with the three Form LM–2 schedules that are being revised: investments, all officers and disbursements to officers, and disbursements to employees. Each has a nonrecurring burden for respondents to adapt to the revisions (*e.g.*, new schedule reporting thresholds and additional detail) of 4.7, 15.6 and 7.8 hours, respectively. For the revised officer and employee schedules, the Department estimates an average of 60 minutes of training for each officer and employee and from 30 to 60 minutes per month and an additional 60 minutes per year for each officer and employee to estimate the amount of time spent on each of the functional categories on the schedule each month and then sum them for the entire year (as described in the preamble, the Department is only requiring officers and employees, as a general rule, to estimate their time to the nearest 10%). In calculating the average time union officers and employees will spend estimating their time, the Department assumed that the task will be more time consuming for officers and employees of larger unions. For example, while the Department assumed that officers and employees of the smallest Form LM–2 filers (Tier 1, with annual receipts of less than $500,000) would spend 30 minutes a month during the year (approximately seven minutes a week) and an hour at the end of the year, the Department assumed that officers of the largest Form LM–2 files (Tier 3, with annual receipts of $50 million or more) will spend 60 minutes a month during the year (approximately 14 minutes a week) and an hour at the end of the year.

It is also assumed that Tier 1 respondents will use the same features in the new software that are in the existing OLMS software to complete the officer and employee schedules, and that it will take them an average of 2.0 additional hours to complete each schedule in addition to the average of 6.0 hours to complete the officer schedule and 10.0 hours to complete the existing schedules. However, for Tier 2 and Tier 3 filers, the Department estimates an additional 6 hours to export and transmit data for the officer and employee schedules (3 hours for each schedule) and a 25% decrease in reporting burden that results from moving from the current manual or "cut and paste" method on the existing form to an electronic data export capability on the revised form. No additional recordkeeping burden is estimated for the officer and employee disbursement schedules because the Department is not requiring unions to maintain detailed time records.

For the two new schedules for accounts receivable and accounts payable, the Department estimates that on average unions will take 4.9 additional hours (of nonrecurring burden) to develop, test, review, and document accounting software queries; design query reports; prepare a download methodology; and train personnel.

The Department also estimates that on average unions will take an additional (recurring) 0.8 hours of recordkeeping burden to age their accounts receivable and accounts payable, and an additional 1.4 (recurring) hours to prepare the new schedules. OLMS e.LORS data and the public comments suggest that many Form LM–2 filers with receipts of less than $50 million (99% of all filers) have few or no accounts receivable or accounts payable that meet the threshold for the relevant schedule and that 50% of the national and international unions already maintain accounts receivable and accounts payable in the format required by the final rule. Therefore, the Department has included a relatively small amount of additional recordkeeping and reporting burden hours associated with these schedules.

For the new "other receipts" schedule, the Department estimates that on average unions will take 10.3

additional hours (of nonrecurring recordkeeping and reporting burden) to change accounting structures; develop, test, review, and document accounting software queries; design query reports; prepare a download methodology; and train personnel. Further, the Department also estimates that on average unions will take an additional (recurring) 0.6 hours to prepare the new schedule. The additional reporting burden is a net estimate that includes a 50% decrease in reporting burden that results from moving from the current manual or "cut and paste" method for the existing schedule to an electronic data export capability on the revised form for the Tier 2 and Tier 3 filers. Moreover, OLMS e.LORS data indicates that "other receipts" represent only 8.8% of total receipts and that the average amount that would have to be itemized on the schedule is $309,999. Therefore, Form LM–2 filers would have to electronically report at most an average of just 62 other receipts per year (and probably far less since some receipts will be more than $5,000). The Department also estimates that on average unions will take an additional (recurring) 2.7 hours of recordkeeping burden. Currently, this supporting schedule requires some detail (description and amount) for other receipts but does not require the date or name and address. The public comments also suggest that 60% of the national and international unions already maintain written records for the information required by the new "other receipts" schedule.

For the five new disbursement schedules (representational activities; union administration; general overhead; contributions, gifts and grants; and political activities and lobbying), the Department estimates that on average unions will take 10.3 additional hours (of nonrecurring recordkeeping and reporting burden) to change accounting structures; develop, test, review, and document accounting software queries; design query reports; prepare a download methodology; and train personnel. Further, the Department also estimates that on average unions will take an additional (recurring) 6.0 hours time to prepare the new schedules. This additional reporting burden is a net estimate that includes a 50% decrease in reporting burden that results from moving from the current manual or "cut and paste" method for the existing "other disbursements," "office and administrative expense," and "contributions, gifts, and grants" schedules to an electronic data export capability on the revised form for the Tier 2 and Tier 3 filers. Moreover, OLMS e.LORS data indicates that disbursements on these five schedules account for just 23.2% of total disbursements and that the average amount that would have to be itemized on the schedules is $822,953, or $164,591 per schedule. Therefore, Form LM–2 filers would have to electronically report at most an average of just 33 disbursements per schedule per year (and probably less since some disbursements will be more than $5,000).

The Department also estimates that on average unions will take an additional (recurring) 22.0 hours of recordkeeping burden to record the name, address, and date of disbursements. Currently, three disbursement supporting schedules require some detail (description and amount) but do not require the date or name and address. The public comments also suggest that many unions maintain records as part of their normal business practice that reflect the required detail for disbursements, but that 10 to 40% of unions could not provide all of the detail required by the Department's proposal.

For the new membership schedule, the Department estimates that on average unions will take 4.9 additional hours (of nonrecurring burden) to develop, test, review, and document accounting software queries; design query reports; prepare a download methodology; and train personnel.

The Department also estimates that on average unions will take an additional 2.1 (recurring) hours to prepare the new schedules. Since the final rule does not require unions to manufacture or report information for membership categories they do not keep, the Department has not estimated any additional recordkeeping burden for this schedule.

For the revised Form LM–2, the Department estimates that unions will take an average of two hours to obtain each electronic signature (two signatures are needed). There is also a charge of $45 to obtain each electronic signature and a $5 processing fee. The Department also estimates that the union president and secretary-treasurer will take an average of 4 additional hours (two hours each) to review and sign the form on top of the 2.4 hours they already spend reviewing the current form. The additional time for the president and secretary-treasurer to review and sign the form declines to two hours the second year and one hour the third year as they become more familiar with the revised form.

Finally, the Department estimates that 5% of Form LM–2 filers will submit a Continuing Hardship Exemption Request in the first year and that it will take 1.0 hour to prepare this request. The Department further estimates that 3% of Form LM–2 filers will submit a hardship request in the second year and that 1% will submit a request in the third year. The Department assumes that most, if not all, of the hardship exemptions that will be requested will come from the smaller tier 1 Form LM–2 filers. Therefore, the Department estimates that there will not be a reduction or increase in reporting burden hours aside from the additional 1.0 hour to make the request since the amount of time to "cut and paste" and print the reports is not much different on average than the time to "cut and paste" and electronically submit.

**Table 4 - Summary of Average Additional First Year Burden for the Revised Form LM-2**

| Reporting or Recordkeeping Requirement | Nonrecurring Recordkeeping Burden Hours | Nonrecurring Reporting Burden Hours | Recurring Recordkeeping Burden Hours | Recurring - Reporting Burden Hours |
|---|---|---|---|---|
| Review Revised Form LM-2 and Instructions | 0.0 | 0.0 | 0.0 | 4.0 |
| Computer Hardware and Software Installation | 14.6 | 0.0 | 0.0 | 0.0 |
| Install, Test, and Review OLMS Software | 0.0 | 8.0 | 0.0 | 0.0 |
| Page 1: No Changes | 0.0 | 0.0 | 0.0 | 0.0 |
| Page 2: Three Fewer Yes/No Questions | 0.0 | 0.0 | 0.0 | -0.5 |
| Statement A: No Changes | 0.0 | 0.0 | 0.0 | 0.0 |
| Statement B: Three Fewer Summary Numbers | 0.0 | 0.0 | 0.0 | -0.1 |
| Unchanged Schedules: | | | | |
| Loans Receivable (1) | 0.0 | 0.0 | 0.0 | -1.6 |
| Sale of Investments and Fixed Assets (1) | 0.0 | 0.0 | 0.0 | -1.6 |
| Purchase of Investments and Fixed Assets (1) | 0.0 | 0.0 | 0.0 | -1.6 |
| Fixed Assets (1) | 0.0 | 0.0 | 0.0 | -1.6 |
| Other Assets (1) | 0.0 | 0.0 | 0.0 | -1.6 |
| Loans Payable (1) | 0.0 | 0.0 | 0.0 | -1.6 |
| Other Liabilities (1) | 0.0 | 0.0 | 0.0 | -1.6 |
| Benefits (1) | 0.0 | 0.0 | 0.0 | -1.6 |
| Revised Schedules: | | | | |
| Investments (1) | 0.0 | 4.7 | 0.0 | -1.6 |
| All Officers and Disbursements to Officers (1) | 15.6 | 0.0 | 133.9 | 17.5 |
| Disbursements to Employees (1) | 7.8 | 0.0 | 69.3 | 8.9 |
| New Schedules: | | | | |
| Accounts Receivable | 0.0 | 4.9 | 0.8 | 1.4 |
| Accounts Payable | 0.0 | 4.9 | 0.8 | 1.4 |
| Membership Information | 0.0 | 4.9 | 0.0 | 2.1 |
| Other Receipts (1) | 5.4 | 4.9 | 2.7 | 0.6 |
| Representational Activities | 5.4 | 4.9 | 4.4 | 2.1 |
| Political and Lobbying Activities | 5.4 | 4.9 | 4.4 | 2.1 |
| Contributions, Gifts, and Grants (1) | 5.4 | 4.9 | 4.4 | 0.6 |
| General Overhead (1) | 5.4 | 4.9 | 4.4 | 0.6 |
| Union Administration (1) | 5.4 | 4.9 | 4.4 | 0.6 |
| Subtotal: Hours Required to Adapt Accounting Systems for New and Revised Schedules (2) | 32.5 | 44.3 | 0.0 | 0.0 |
| Develop, Test, and Review Translator Software | 0.0 | 27.9 | 0.0 | 0.0 |
| Obtain Electronic Signature | 0.0 | 0.0 | 0.0 | 2.0 |
| President Review and Sign Off | 0.0 | 0.0 | 0.0 | 2.0 |
| Treasurer Review and Sign Off | 0.0 | 0.0 | 0.0 | 2.0 |
| Continuing Hardship Exemption Request | 0.0 | 0.0 | 0.0 | 0.1 |
| Total Additional First Year Burden | 70.5 | 84.8 | 229.6 | 33.2 |
| Burden for Current Form LM-2 | 0.0 | 0.0 | 132.0 | 160.0 |
| Grand Total First Year Burden for Revised Form LM-2 | 70.5 | 84.8 | 361.6 | 193.2 |

Notes: (1) Includes burden hours savings from electronic filing.
(2) For revised investment schedule and new receipt and disbursement schedules.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards, Paperwork Reduction Act Analysis.

The Department estimates the average reporting and recordkeeping burden for the revised Form LM–2 to be 710.1 hours per respondent in the first year (including non-recurring implementation costs), 539.4 hours per respondent in the second year, and 536.0 hours per respondent in the third year. The Department estimates the total annual burden hours for respondents for the revised Form LM–2 to be 3.4 million hours in the first year, 2.6 million hours in the second and third years.

The Department estimates the average annual cost for the revised Form LM–2 to be $24,271 per respondent in the first year (including non-recurring implementation costs), $17,387 per respondent in the second year, and $17,262 per respondent in the third year. The Department also estimates the total annual cost to respondents for the revised Form LM–2 to be $116.0 million in the first year, $83.1 million in the second year, and $82.5 million in the third year (see Table 5). These amounts include the total cost of the revised Form LM–2; the cost of the changes implemented in this final rule, as noted above, is $79.9 million the first year (the difference between the combined costs of the revised Form LM–2 plus the new Form T–1 and the cost of the current Form LM–2). The average three-year cost of the final rule is $55.7 million. Moreover, as explained above, the Department believes that it is very unlikely that small unions with $250,000 in annual receipts would incur many of the costs incurred by the typical Form LM–2 filer. Even the AFL–CIO, in commenting on the more burdensome proposed Form LM–2 estimated that unions with annual receipts of less than $500,000 would incur an average cost of just $3,750 for the proposed changes.

### Table 5 - Reporting and Recordkeeping Burden Hours and Costs for Revised Form LM-2

| Form | Number of Responses | Reporting Hours Per Respondent | Total Reporting Hours | Recordkeeping Hours per Respondent | Total Recordkeeping Hours | Total Burden Hours Per Respondent | Total Burden Hours | Average Cost Per Respondent | Total Cost |
|---|---|---|---|---|---|---|---|---|---|
| Current Form LM-2 | 5,179 | 132.0 | 683,628 | 160.0 | 828,640 | 292.0 | 1,512,268 | $8,381 | $43,405,199 |
| Revised Form LM-2 | | | | | | | | | |
| First Year | 4,778 | 165.2 | 789,279 | 544.9 | 2,603,391 | 710.1 | 3,392,670 | $24,271 | $115,968,841 |
| Second Year | 4,778 | 149.8 | 715,893 | 389.6 | 1,861,442 | 539.4 | 2,577,335 | $17,387 | $83,076,269 |
| Third Year | 4,778 | 146.4 | 699,464 | 389.6 | 1,861,442 | 536.0 | 2,560,906 | $17,262 | $82,475,711 |
| Three Year Average | 4,778 | 153.8 | 734,879 | 441.3 | 2,108,758 | 595.2 | 2,843,637 | $19,640 | $93,840,274 |

Note: The number of responses for revised Form LM-2 reflects a reduction of 501 filers from raising the threshold to $250,000 and an increase of 100 from including filers associated with the Bremerton decision.

Estimates for current forms are the latest adjusted estimates (see Table 2).

Some numbers may not add due to rounding.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Labor Management Standards.

Adjusted burden hour estimates for the current forms are based on public comments received from Notice of Proposed Rulemaking published in the Federal Register on December 27, 2002 and 2002 OLMS e.LORS data.

e. Form LM–3

The Department also estimates that 11,356 local unions take an average 104.0 hours to collect and report their information on the current Form LM–3. In addition, the Department assumes that all Form LM–3 filers will take an average 8.0 hours for accounting and 4.0 hours for legal review to complete the current form for an average total burden of 116.0 hours per respondent (see Table 2). Further, the Department estimates that 64.0 hours of the total is for recordkeeping burden and 52.0 hours is for reporting burden. These estimates and assumptions are based on the similarity of the Form LM–3 and Form LM–2 recordkeeping and reporting requirements, the fewer number of schedules that need to be reported on the Form LM–3, as well as the relative differences in the size of the unions that complete the two forms.

The Department has also updated the average annual cost of complying with the current Form LM–3 recordkeeping and reporting requirements to $3,277. Again, this figure includes estimates for consulting, accounting, legal, and programming costs and is a weighted average across all respondents. The dollar cost estimate is also based on total compensation costs and not hourly wage rates. The total annual cost for all respondents is estimated to be $39.0 million for Form LM–3 (see Table 6). It should be noted that although it may appear that the Department has applied inconsistent dollar costs per hour to the burden hour estimates, the dollar costs per hour naturally differ between forms because of the varying amounts of accountant time, bookkeeping time, and the time of the union secretary-treasurer and president associated with each form, that yield different weighted average costs per hour.

### Table 6 - Reporting and Recordkeeping Burden Hours and Costs for Revised Form LM-3

| Form | Number of Responses | Reporting Hours Per Respondent | Total Reporting Hours | Recordkeeping Hours per Respondent | Total Recordkeeping Hours | Total Burden Hours Per Respondent | Total Burden Hours | Average Cost Per Respondent | Total Cost |
|---|---|---|---|---|---|---|---|---|---|
| Current Form LM-3 | 11,356 | 52.0 | 590,512 | 64.0 | 726,784 | 116.0 | 1,317,296 | $3,277 | $37,213,612 |
| Revised Form LM-3 | | | | | | | | | |
| First Year | 11,907 | 52.0 | 619,164 | 64.0 | 762,048 | 116.0 | 1,381,212 | $3,277 | $39,019,239 |
| Second Year | 11,907 | 52.0 | 619,164 | 64.0 | 762,048 | 116.0 | 1,381,212 | $3,277 | $39,019,239 |
| Third Year | 11,907 | 52.0 | 619,164 | 64.0 | 762,048 | 116.0 | 1,381,212 | $3,277 | $39,019,239 |
| Three Year Average | 11,907 | 52.0 | 619,164 | 64.0 | 762,048 | 116.0 | 1,381,212 | $3,277 | $39,019,239 |

Note: The number of responses for revised Form LM-3 reflects an increase of 501 filers from raising the threshold to $250,000 and an increase of 50 from including filers associated with the Bremerton decision.
Estimates for current forms are the latest adjusted estimates (see Table 2).
Some numbers may not add due to rounding.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Labor Management Standards.
Adjusted burden hour estimates for the current forms are based on public comments received from Notice of Proposed Rulemaking published in the Federal Register on December 27, 2002 and 2002 OLMS e.LORS data.

It should also be noted that by increasing the filing threshold for Form LM–2, 501 small unions who currently file Form LM–2 would only have to file the less burdensome Form LM–3. Each of these unions will save an average of 176 hours per year (116 hours for Form LM–3 compared to the 292 hours that they are expending to file the current

Form LM–2) and altogether save 88,176 hours. In monetary savings, the increased threshold amounts to an average savings of $5,104 per year, or a total $2.6 million per year. These savings accrue because unions with annual receipts above $200,000 but less than $250,000 will be able to file the less burdensome and less costly Form LM–3. Additionally, these unions will not be required to file Form T–1 if they have a trust nor will they incur the increased costs related to the revised Form LM–2.

### f. New Form T–1

To estimate the burden hours and costs for the new Form T–1 three important assumptions were made to estimate the number of responses. First, it was assumed that 15% of the 1,574 tier 1 LM–2 filers with annual revenues of from $250,000 to $499,999.99 would file one Form T–1. Second, it was assumed that 35% of the 3,158 tier 2 Form LM–2 filers with annual revenues of from $500,000 to $49.9 million would file an average of 2.6 Form T–1s. Third, it was assumed that 100% of the 46 tier 3 Form LM–2 filers with annual revenues of $50 million or more would file an average of five T–1 reports each. Although 939 Form LM–2 filers report having a subsidiary, it is difficult to estimate how many more entities fall within the broader definition of trusts or funds to be reported under the final rule.

For each of the three tiers, the Department estimated burden hours for the additional nonrecurring (first year) recordkeeping and reporting requirements, the recurring recordkeeping and reporting burden hours, and a three year annual average for the nonrecurring and recurring burden hours similar to the way it estimated the burden hours for Form LM–2 filers (see previous discussion).

The Department estimates the burden required for preparing to complete the Form T–1 for all three tiers to be 2.4 non-recurring hours to provide the new Form T–1 requirements to the trust, 4.3 hours for reviewing the new form and instructions, and 8.0 non-recurring (first year) hours for installing, testing, and reviewing the OLMS provided software. The time to read and review the form and instructions is estimated to decline to 2.0 hours the second year and 1.0 hour the third year as unions and trusts become more familiar with the revised form. (see Table 7)

The Department estimates the average reporting burden required to complete pages one and two of the Form T–1 for each of the three tiers to be 6.1 hours and the average recordkeeping burden associated with the items on pages one and two to be 1.6 hours. These estimates are proportionally based on the recordkeeping and reporting burden estimate for the first two pages of the current Form LM–4, which are very similar to the first two pages of the new Form T–1. The first two pages of Form LM–4 have 21 items (8 questions that identify the union, four yes/no questions, seven summary numbers for: Maximum amount of bonding, number of members, total assets, liabilities, receipts, and disbursements, total disbursements to officers, and a space for additional information). The first two pages of Form T–1 have 25 items (14 questions that identify the union and trust, six yes/no questions, just four summary numbers for total assets, liabilities, receipts, and disbursements, and a space for additional information). For comparison, the first part of Form LM–3 (before the schedules) has 56 items with two statements on assets, liabilities, receipts, and disbursements.

For the new receipt and disbursement schedules the Department estimates that on average T–1 respondents will take 9.8 hours (of nonrecurring burden) to develop, test, review, and document accounting software queries; design query reports; prepare a download methodology; and train personnel for each of the schedules. Further, the Department also estimates that on average Form T–1 respondents will take 1.2 (recurring) hours to prepare, transmit/report, and report the new receipts schedule and 1.4 hours to report the new disbursements schedule. The Department also estimates that on average Form T–1 respondents will take 8.3 hours (recurring) of recordkeeping burden for each schedule to maintain the additional information required by the final rule.

For the new Form T–1 disbursements to officers and employees of the trust schedule the Department estimates that it will take respondents an average 2.8 hours (of nonrecurring burden) to develop, test, review, and document accounting software queries; design query reports; prepare a download methodology; and train personnel. Further, the Department estimates it will take on average 0.8 hours to prepare, export and transmit or report the new schedule. No additional recordkeeping burden is estimated for the officer and employee disbursement schedule because the Department is not requiring trusts to maintain detailed time records over what is kept as normal business practice.

The Department also estimates that it will take 2.0 hours for the Trust to review the Form T–1 and 1.0 hours for this information to be sent to Form LM–2 filer. In addition, the Department estimates that the union president and secretary-treasurer will take 4.0 hours to review and sign the form. The time for the president and secretary-treasurer to review and sign the form declines to 2.0 hours the second year and 1.0 hour the third year as they become more familiar with the revised form.

**Table 7 - Summary of Average Additional First Year Burden for the New Form T-1**

| Reporting or Recordkeeping Requirement | Nonrecurring Burden Hours | Reporting Burden Hours | Recordkeeping Burden Hours |
|---|---|---|---|
| Information on New Form T-1 Provided to Trust | 0.0 | 2.4 | 0.0 |
| Review New Form T-1 and Instructions | 0.0 | 4.3 | 0.0 |
| Install, Test, and Review OLMS Software | 8.0 | 0.0 | 0.0 |
| Pages 1 and 2 | 0.0 | 6.1 | 1.6 |
| New Schedules: | | | |
| Individually Identified Receipts | 9.8 | 1.2 | 8.3 |
| Individually Identified Disbursements | 9.8 | 1.4 | 8.3 |
| Disbursements to Officers and Employees | 2.8 | 0.8 | 0.0 |
| Review by Trust | 0.0 | 2.0 | 0.0 |
| Form/Information sent to Union | 0.0 | 1.0 | 0.0 |
| President Review and Sign Off | 0.0 | 2.0 | 0.0 |
| Treasurer Review and Sign Off | 0.0 | 2.0 | 0.0 |
| Total First Year Burden for New Form T-1 | 30.4 | 23.2 | 18.1 |

Note: Some numbers may not add due to rounding.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards, Paperwork Reduction Act Analysis.

The Department estimates the average reporting and recordkeeping burden for the new Form T–1 to be 71.7 hours per respondent in the first year (including non-recurring implementation costs), 33.9 hours per respondent in the second year, and 30.4 hours per respondent in the third year (see Table 8). The Department estimates the total annual burden hours for respondents for the new Form T–1 to be 199,000 hours in the first year, 94,000 hours in the second year, and 84,000 hours in the third year. The Department estimates the average annual cost for the new Form T–1 to be $1,986 per respondent in the first year (including non-recurring implementation costs), $934 per respondent in the second year, and $838 per respondent in the third year.

The Department also estimates the total annual cost to respondents for the new Form T–1 to be $5.5 million in the first year, $2.6 million in the second year, and $2.3 million in the third year.

The cost estimates are based on wage-rate data obtained from the Department's Bureau of Labor Statistics (BLS) for personnel employed in service industries (*i.e.*, accountant, bookkeeper, etc.) and adjusted to be total compensation estimates based on the BLS Employer Cost data. The estimates used for salaries of labor organization officers and employees are obtained from the annual financial reports filed with OLMS and are also adjusted to be total compensation estimates.

**Table 8 - Reporting and Recordkeeping Burden Hours and Costs for New Form T-1**

| Form | Number of Responses | Reporting Hours Per Respondent | Total Reporting Hours | Recordkeeping Hours per Respondent | Total Recordkeeping Hours | Total Burden Hours Per Respondent | Total Burden Hours | Average Cost Per Respondent | Total Cost |
|---|---|---|---|---|---|---|---|---|---|
| New Form T-1 | | | | | | | | | |
| First Year | 2,769 | 23.2 | 64,241 | 48.5 | 134,297 | 71.7 | 198,537 | $1,986 | $5,499,067 |
| Second Year | 2,769 | 15.8 | 43,750 | 18.1 | 50,119 | 33.9 | 93,869 | $934 | $2,587,368 |
| Third Year | 2,769 | 12.3 | 34,059 | 18.1 | 50,119 | 30.4 | 84,178 | $838 | $2,319,873 |
| Three Year Average | 2,769 | 17.1 | 47,350 | 28.2 | 78,178 | 45.3 | 125,528 | $1,253 | $3,468,769 |

Note: Some numbers may not add due to rounding.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Labor Management Standards. Adjusted burden hour estimates for the current forms are based on public comments received from Notice of Proposed Rulemaking published in the Federal Register on December 27, 2002 and 2002 OLMS e.LORS data.

h. Federal Costs Associated With Final Rule

The annualized federal cost associated with revised Form LM–2 and the new Form T–1 is estimated to be $7.9 million. This includes operational expenses such as equipment, overhead, and printing as well as salaries and benefits for the OLMS staff in the National Office and field offices that are involved with reporting and disclosure activities. The estimate also includes the annualized cost for redesigning the forms, developing and implementing the electronic software, and implementing digital signature capability.

*G. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)*

In accordance with Executive Order 13045, the Department has evaluated the environmental safety and health effects of the final rule on children. The Department has determined that the final rule will have no effect on children.

*H. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)*

The Department has reviewed this final rule in accordance with Executive Order 13175, and has determined that it does not have "tribal implications." The final rule does not "have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

*I. Executive Order 12630 (Governmental Actions and Interference With Constitutionally Protected Property Rights)*

This final rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

*J. Executive Order 12988 (Civil Justice Reform)*

This final rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The final rule has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

*K. Environmental Impact Assessment*

The Department has reviewed the final rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 U.S.C. part 1500), and the Department's NEPA procedures (29 CFR part 11). The final rule will not have a significant impact on the quality of the human environment, and, thus, the Department has not conducted an environmental assessment or an environmental impact statement.

*L. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)*

This final rule is not subject to Executive Order 13211, because it will not have a significant adverse effect on the supply, distribution, or use of energy.

**List of Subjects in 29 CFR Parts 403 and 408**

Labor unions, Reporting and recordkeeping requirements.

**Text of Final Rule**

■ In consideration of the foregoing, the Department of Labor, Office of Labor-Management Standards, hereby amends parts 403 and 408 of title 29 of the Code of Federal Regulations as set forth below.

## PART 403—LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

■ 1. The authority citation for part 403 is revised to read as follows:

**Authority:** Secs. 202, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 432, 437, 438); Secretary's Order No. 4–2001, 66 FR 29656, May 31, 2001.

**§ 403.2 [Amended]**

■ 2. Section 403.2 is amended by:

a. Removing the words "together with a true copy thereof" at the end of paragraph (a) and removing the comma preceding those words.

■ b. Adding paragraph (d) to read as follows:

**§ 403.2 Annual financial report.**

* * * * *

(d) Every labor organization with annual receipts of $250,000 or more shall, except as otherwise provided, file a report on Form T–1 for every trust in which the labor organization is interested, as defined in section 3(l) of the Act, 29 U.S.C. 402(l), that has gross annual receipts of $250,000 or more, and to which $10,000 or more was contributed during the reporting period by the labor organization or on the labor organization's behalf or as a result of a negotiated agreement to which the labor organization is a party. A separate report shall be filed on Form T–1 for each such trust within 90 days after the end of the labor organization's fiscal year in the detail required by the instructions accompanying the form and constituting a part thereof, and shall be signed by the president and treasurer, or corresponding principal officers, of the labor organization. No Form T–1 need be filed for a trust if an annual financial report providing the same information and a similar level of detail is filed with another agency pursuant to federal or state law, as specified in the instructions accompanying Form T–1. In addition, an audit that meets the criteria specified in the Instructions for Form T–1 may be substituted for all but page 1 of the Form T–1. If, on the date for filing the annual financial report of such trust, such labor organization is in trusteeship, the labor organization that has assumed trusteeship over such subordinate labor organization shall file such report as provided in § 408.5 of this chapter.

■ 3. Section 403.5 is amended by:

■ a. In paragraph (a), removing the words "and one copy" and removing the commas preceding and following those words.

■ b. In paragraph (b), removing the words "and one copy" and removing the commas preceding and following those words.

■ c. Adding a new paragraph (d) to read as follows:

**§ 403.5 Terminal financial report.**

* * * * *

(d) If a trust in which a labor organization with $250,000 or more in annual receipts is interested loses its identity through merger, consolidation, or otherwise, the labor organization shall, within 30 days after such loss, file a terminal report on Form T–1, with the Office of Labor-Management Standards, signed by the president and treasurer or corresponding principal officers of the labor organization. For purposes of the report required by this paragraph, the period covered thereby shall be the portion of the trust's fiscal year ending on the effective date of the loss of its reporting identity.

■ 4. Section 403.8 is amended to:

■ a. Designate the existing text as paragraph (a).

■ b. Add new paragraphs (b) and (c) to read as follows:

### § 403.8 Dissemination and verification of reports.

* * * * *

(b)(1) If a labor organization is required to file a report under this part using the Form LM–2 and indicates that it has failed or refused to disclose information required by the Form concerning any disbursement, or receipt not otherwise reported on Statement B, to an individual or entity in the amount of $5,000 or more, or any two or more disbursements, or receipts not otherwise reported on Statement B, to an individual or entity that, in the aggregate, amount to $5,000 or more, because disclosure of such information may be adverse to the organization's legitimate interests, then the failure or refusal to disclose the information shall be deemed "just cause" for purposes of paragraph (a) of this section.

(2) Disclosure may be adverse to a labor organization's legitimate interests under this paragraph if disclosure would reveal confidential information concerning the organization's organizing or negotiating strategy or individuals paid by the labor organization to work in a non-union facility in order to assist the labor organization in organizing employees, provided that such individuals are not employees of the labor organization who receive more than $10,000 in the aggregate in the reporting year from the union.

(3) This provision does not apply to disclosure that is otherwise prohibited by law or that would endanger the health or safety of an individual.

(c) In all other cases, a union member has the burden of establishing "just cause" for purposes of paragraph (a) of this section.

## PART 408—LABOR ORGANIZATION TRUSTEESHIP REPORTS

■ 5. The authority citation for part 408 is revised to read as follows:

**Authority:** Secs. 202, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 432, 437, 438); Secretary's Order No. 4–2001, 66 FR 29656, May 31, 2001.

### § 408.5 [Amended]

■ 6. Section 408.5 is amended by:

■ a. Adding the words "and any Form T–1 reports" after the words "on behalf of the subordinate labor organization the annual financial report" and before the words "required by part 403 of this chapter".

■ b. Removing the words "together with a true copy thereof" at the end of the section and removing the comma preceding those words.

Signed in Washington, DC this 2 day of October, 2003.

**Victoria A. Lipnic,**

*Assistant Secretary for Employment Standards.*

## Appendix

**Note:** This appendix, which will not appear in the Code of Federal Regulations, contains the revised Form LM–2 and the new Form T–1 and the instructions for these forms.

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
Washington, DC 20210

# FORM LM-2 LABOR ORGANIZATION ANNUAL REPORT

Form Approved
Office of Management and Budget
No. xxxxxxxx
Expires: xx-xx-xxxx

**MUST BE USED BY LABOR ORGANIZATIONS WITH $250,000 OR MORE IN TOTAL ANNUAL RECEIPTS AND LABOR ORGANIZATIONS IN TRUSTEESHIP**

This report is mandatory under P.L. 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 439 or 440.

READ THE INSTRUCTIONS CAREFULLY BEFORE PREPARING THIS REPORT.

For Official Use Only

1. FILE NUMBER ☐☐☐ - ☐☐☐

2. PERIOD COVERED

| | MO | DAY | YEAR |
|---|---|---|---|
| From | ☐☐ | ☐☐ | ☐☐☐☐ |
| Through | ☐☐ | ☐☐ | ☐☐☐☐ |

3. (a) AMENDED - If this is an amended report correcting a previously filed report, check here: ☐
(b) HARDSHIP - If filing under the Hardship Exemption Procedures, check here: ☐
(c) TERMINAL - If your organization ceased to exist and this is its terminal report, see Section XII of the instructions and check here: ☐

4. AFFILIATION OR ORGANIZATION NAME

5. DESIGNATION (Local, *Lodge, etc.*)

6. DESIGNATION NUMBER

7. UNIT NAME *(if any)*

9. Are your organization's records kept at its mailing address? Yes ☐ No ☐
(If "No," provide address in Item 69.)

8. MAILING ADDRESS (Type or print in capital letters.)

First Name

Last Name

P.O. Box - Building and Room Number *(if any)*

Number and Street

City

State ZIP Code + 4

69. ADDITIONAL INFORMATION *(if more space is needed, attach Continuation pages properly identified.)*

Item Number

Each of the undersigned, duly authorized officers of the above labor organization, declares, under penalty of perjury and other applicable law, that all of the information submitted in this report (including the information contained in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct, and complete. *(See Section VI on penalties in the instructions.)*

70. SIGNED: ______________________ PRESIDENT *(If other title, see instructions.)*
___/___/___ Date ( ) - Telephone Number

71. SIGNED: ______________________ TREASURER *(If other title, see instructions.)*
___/___/___ Date ( ) - Telephone Number

## FORM LM-2 LABOR ORGANIZATION ANNUAL REPORT

FILE NUMBER: ☐☐☐ - ☐☐☐

10. During the reporting period did the labor organization create or participate in the administration of a trust or other fund or organization, as defined in the instructions, which provides benefits for members or their beneficiaries? Yes ☐ No ☐

11. During the reporting period did the labor organization have a political action committee (PAC) fund? Yes ☐ No ☐

12. During the reporting period did the labor organization have an audit or review of its books and records by an outside accountant or by a parent body auditor/representative? Yes ☐ No ☐

13. During the reporting period did the labor organization discover any loss or shortage of funds or other assets? (Answer "Yes" even if there has been repayment or recovery.) Yes ☐ No ☐

14. What is the maximum amount recoverable under the labor organization's fidelity bond for a loss caused by any officer, employee or agent of the labor organization who handled union funds? $ ☐

15. During the reporting period did the labor organization acquire or dispose of any assets in any manner other than by purchase or sale? Yes ☐ No ☐

16. Were any of the labor organization's assets pledged as security or encumbered in any other way at the end of the reporting period? Yes ☐ No ☐

17. Did the labor organization have any contingent liabilities at the end of the reporting period? Yes ☐ No ☐

18. During the reporting period did the labor organization have any changes in its constitution and bylaws, other than rates of dues and fees, or in practices/procedures listed in the instructions? Yes ☐ No ☐

19. What is the date of the labor organization's next regular election of officers? ☐

20. How many members did the labor organization have at the end of the reporting period? (Total from Line 8 Column (B) in Schedule 13) ☐

21. What are the labor organization's rates of dues and fees? (Enter a minimum and maximum if more than one rate applies for any line.)

### Rates of Dues and Fees

| Dues/Fees | Amount | Unit | Minimum | Maximum |
|---|---|---|---|---|
| (a) Regular Dues/Fees | $ | per | | |
| (b) Working Dues/Fees | | | | |
| (c) Initiation Fees | $ | | | |
| (d) Transfer Fees | $ | | | |
| (e) Work Permits | $ | per | | |

If the answer to any of the above questions is "Yes," provide details in Item 69 (Additional Information) as explained in the instructions for each item.

## STATEMENT A — ASSETS AND LIABILITIES

FILE NUMBER: ☐☐☐ - ☐☐☐

Complete Schedules 1 Through 20 Before Completing Statement A

Enter Amounts in Dollars Only - Do Not Enter Cents

**Assets**

| ASSETS (Items) | From Schedule Number | Start of Reporting Period (A) | End of Reporting Period (B) |
|---|---|---|---|
| 22. Cash | | | |
| 23. Accounts Receivable | 1 | | |
| 24. Loans Receivable | 2 | | |
| 25. U.S. Treasury Securities | | | |
| 26. Investments | 5 | | |
| 27. Fixed Assets | 6 | | |
| 28. Other Assets | 7 | | |
| 29. TOTAL ASSETS | | | |

**Liabilities**

| LIABILITIES (Items) | From Schedule Number | Start of Reporting Period (C) | End of Reporting Period (D) |
|---|---|---|---|
| 30. Accounts Payable | 8 | | |
| 31. Loans Payable | 9 | | |
| 32. Mortgages Payable | | | |
| 33. Other Liabilities | 10 | | |
| 34. TOTAL LIABILITIES | | | |
| 35. NET ASSETS (Item 29 less Item 34) | | | |

# STATEMENT B — RECEIPTS AND DISBURSEMENTS

FILE NUMBER: ☐☐☐ - ☐☐☐

Complete Schedules 1 Through 20 Before Completing Statement B

Enter Amounts in Dollars Only - Do Not Enter Cents

| Item CASH RECEIPTS | SCH # | AMOUNT |
|---|---|---|
| 36. Dues and Agency Fees | | |
| 37. Per Capita Tax | | |
| 38. Fees, Fines, Assessments, Work Permits | | |
| 39. Sale of Supplies | | |
| 40. Interest | | |
| 41. Dividends | | |
| 42. Rents | | |
| 43. Sale of Investments and Fixed Assets | 3 | |
| 44. Loans Obtained | 9 | |
| 45. Repayments of Loans Made | 2 | |
| 46. On Behalf of Affiliates for Transmittal to Them | | |
| 47. From Members for Disbursement on Their Behalf | | |
| 48. Other Receipts | 14 | |
| 49. TOTAL RECEIPTS | | |

| Item CASH DISBURSEMENTS | SCH # | AMOUNT |
|---|---|---|
| 50. Representational Activities | 15 | |
| 51. Political Activities and Lobbying | 16 | |
| 52. Contributions, Gifts, and Grants | 17 | |
| 53. General Overhead | 18 | |
| 54. Union Administration | 19 | |
| 55. Benefits | 20 | |
| 56. Per Capita Tax | | |
| 57. Strike Benefit | | |
| 58. Fees, Fines, Assessments, etc. | | |
| 59. Supplies for Resale | | |
| 60. Purchase of Investments and Fixed Assets | 4 | |
| 61. Loans Made | 2 | |
| 62. Repayment of Loans Obtained | 9 | |
| 63. To Affiliates of Funds Collected on Their Behalf | | |
| 64. On Behalf of Individual Members | | |
| 65. Direct Taxes | | |
| | | |
| 66. Subtotal | | |
| 67. Withholding Taxes and Payroll Deductions | | |
| 67a. Total Withheld | | |
| 67b. Less Total Disbursed | | |
| 67c. Total Withheld But Not Disbursed | | (  ) |
| 68. TOTAL DISBURSEMENTS (Line 66-Line 67c) | | |

## SCHEDULE 1 — ACCOUNTS RECEIVABLE AGING SCHEDULE

FILE NUMBER: ☐☐☐ - ☐☐☐

| | (A) ENTITY OR INDIVIDUAL NAME | (B) TOTAL ACCOUNT RECEIVABLE | (C) 90-180 DAYS PAST DUE | (D) 180+ DAYS PAST DUE | (E) LIQUIDATED ACCOUNT RECEIVABLE |
|---|---|---|---|---|---|
| 1 | | | | | |
| 2 | | | | | |
| 3 | | | | | |
| 4 | | | | | |
| 5 | | | | | |
| 6 | | | | | |
| 7 | | | | | |
| 8 | | | | | |
| 9 | | | | | |
| 10 | | | | | |
| 11 | | | | | |
| 12 | | | | | |
| 13 | | | | | |
| 14 | | | | | |
| 15 | | | | | |
| 16 | | | | | |
| 17 | | | | | |
| 18 | | | | | |
| 19 | | | | | |
| 20 | | | | | |
| 21 | | | | | |
| 22 | | | | | |
| 23 | | | | | |
| 24 | | | | | |
| 25 | **Totals from Continuation pages (if any)** | | | | |
| 26 | **Totals of Lines 1 through 25** | | | | |
| 27 | **Totals from all other accounts receivable** | | | | |
| 28 | **Totals of Lines 26 and 27** | | | | |
| | Enter the Total from Line 28 in ---------------------------------- | Item 23, Column (B) | | | |

## SCHEDULE 2 — LOANS RECEIVABLE

FILE NUMBER: ☐☐☐ - ☐☐☐

**Enter Amounts in Dollars Only - Do Not Enter Cents**

| List below loans to officers, employees, or members which at any time during the reporting period exceeded $250 and list all loans to business enterprises regardless of amount. (A) | Loans Outstanding at Start of Period (B) | Loans Made During Period (C) | Repayments Received During Period | | Loans Outstanding at End of Period (E) |
|---|---|---|---|---|---|
| | | | Cash (D)(1) | Other Than Cash (D)(2) | |
| **1. Name:** ____<br>**Purpose:** ____<br>**Security:** ____<br>**Terms of Repayment:** ____ | | | | | |
| **2. Name:** ____<br>**Purpose:** ____<br>**Security:** ____<br>**Terms of Repayment:** ____ | | | | | |
| **3. Name:** ____<br>**Purpose:** ____<br>**Security:** ____<br>**Terms of Repayment:** ____ | | | | | |
| **4. Totals from Continuation pages (if any)** | | | | | |
| **5. Totals of loans not listed above** | | | | | |
| **6. Totals of Lines 1 through 5** | | | | | |
| Enter the Totals from Line 6 in | Item 24 Column (A) | Item 61 | Item 45 | Item 69 with Explanation | Item 24 Column (B) |

FILE NUMBER: ☐☐☐ - ☐☐☐

## SCHEDULE 3 — SALE OF INVESTMENTS AND FIXED ASSETS

| Description *(if land or buildings, give location)* (A) | Cost (B) | Book Value (C) | Gross Sales Price (D) | Amount Received (E) |
|---|---|---|---|---|
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |
| 7. | | | | |
| 8. | | | | |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. Totals from Continuation pages *(if any)* | | | | |
| 13. Totals of Lines 1 through 12 | | | | |
| | | 14. Less Reinvestments | | |
| | | 15. Net Sales | | |

Enter the Total from Line 15 in ........ Item 43

## SCHEDULE 4 — PURCHASE OF INVESTMENTS AND FIXED ASSETS

FILE NUMBER: ☐☐☐ – ☐☐☐

| Description *(if land or buildings, give location)* (A) | Cost (B) | Book Value (C) | Cash Paid (D) |
|---|---|---|---|
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |
| 5. | | | |
| 6. | | | |
| 7. | | | |
| 8. | | | |
| 9. | | | |
| 10. | | | |
| 11. | | | |
| 12. Totals from Continuation pages *(if any)* | | | |
| 13. Totals of Lines 1 through 12 | | | |
| | 14. Less Reinvestments | | |
| | 15. Net Purchases | | |

Enter the Total from Line 15 in .................................................. Item 60

FILE NUMBER: ☐☐☐ - ☐☐☐

## SCHEDULE 5 — INVESTMENTS
(OTHER THAN U.S. TREASURY SECURITIES)

| Description (A) | Amount (B) |
|---|---|
| **Marketable Securities** | |
| 1. Total Cost | |
| 2. Total Book Value | |
| 3. List each marketable security which has a book value over $5,000 and exceeds 5% of Line 2. | |
| (a) | |
| (b) | |
| (c) | |
| (d) Total from Continuation pages (if any) | |
| **Other Investments** | |
| 4. Total Cost | |
| 5. Total Book Value | |
| 6. List each other investment which has a book value over $5,000 and exceeds 5% of Line 5. Also list each Trust which is an investment. | |
| (a) | |
| (b) | |
| (c) | |
| (d) | |
| (e) Total from Continuation pages (if any) | |
| 7. Total of Lines 2 and 5 | |

Enter the Total from Line 7 in ........ Item 26, Column (B)

FILE NUMBER: ☐☐☐ – ☐☐☐

## SCHEDULE 6 — FIXED ASSETS

| Description (A) | Cost or Other Basis (B) | Total Depreciation or Amount Expensed (C) | Book Value (D) | Value (E) |
|---|---|---|---|---|
| 1. Land (give *location*): | | | | |
| 2. Totals from Continuation pages *(if any)* | | | | |
| 3. Buildings (give *location*): | | | | |
| 4. Totals from Continuation pages *(if any)* | | | | |
| 5. Automobiles and Other Vehicles | | | | |
| 6. Office Furniture and Equipment | | | | |
| 7. Other Fixed Assets | | | | |
| 8. Totals of Lines 1 through 7 | | | | |

Enter the Total from Line 8, Column (D) in .................................................... Item 27, Column (B)

FILE NUMBER: ☐☐☐ - ☐☐☐

## SCHEDULE 7— OTHER ASSETS

| Description<br>(A) | Book Value<br>(B) |
|---|---|
| 1. | |
| 2. | |
| 3. | |
| 4. | |
| 5. | |
| 6. | |
| 7. | |
| 8. | |
| 9. | |
| 10. | |
| 11. | |
| 12. | |
| 13. | |
| 14. Total from Continuation pages (if any) | |
| 15. Total of Lines 1 through 14 | |
| Enter the Total from Line 15 in ............ | Item 28, Column (B) |

## SCHEDULE 8 — ACCOUNTS PAYABLE AGING SCHEDULE

FILE NUMBER: ☐☐☐ - ☐☐☐

|  | (A) ENTITY OR INDIVIDUAL NAME | (B) TOTAL ACCOUNT PAYABLE | (C) 90-180 DAYS PAST DUE | (D) 180+ DAYS PAST DUE | (E) LIQUIDATED ACCOUNT PAYABLE |
|---|---|---|---|---|---|
| 1 |  |  |  |  |  |
| 2 |  |  |  |  |  |
| 3 |  |  |  |  |  |
| 4 |  |  |  |  |  |
| 5 |  |  |  |  |  |
| 6 |  |  |  |  |  |
| 7 |  |  |  |  |  |
| 8 |  |  |  |  |  |
| 9 |  |  |  |  |  |
| 10 |  |  |  |  |  |
| 11 |  |  |  |  |  |
| 12 |  |  |  |  |  |
| 13 |  |  |  |  |  |
| 14 |  |  |  |  |  |
| 15 |  |  |  |  |  |
| 16 |  |  |  |  |  |
| 17 |  |  |  |  |  |
| 18 |  |  |  |  |  |
| 19 |  |  |  |  |  |
| 20 |  |  |  |  |  |
| 21 |  |  |  |  |  |
| 22 |  |  |  |  |  |
| 23 |  |  |  |  |  |
| 24 |  |  |  |  |  |
| **25** | **Totals from Continuation pages (if any)** |  |  |  |  |
| **26** | **Totals of Lines 1 through 25** |  |  |  |  |
| **27** | **Totals from all other accounts payable** |  |  |  |  |
| **28** | **Totals of Lines 26 and 27** |  |  |  |  |
|  | Enter the Total from Line 28 in -------------------------------- | Item 30, Column (D) |  |  |  |

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FILE NUMBER: ☐☐☐ - ☐☐☐

## SCHEDULE 9 — LOANS PAYABLE

| Source of Loans Payable at Any Time During the Reporting Period (A) | Loans Owed at Start of Period (B) | Loans Obtained During Period (C) | Repayment Made During Period | | Loans Owed at End of Period (E) |
|---|---|---|---|---|---|
| | | | Cash (D)(1) | Other Than Cash (D)(2) | |
| 1. | | | | | |
| 2. | | | | | |
| 3. | | | | | |
| 4. | | | | | |
| 5. | | | | | |
| 6. | | | | | |
| 7. | | | | | |
| 8. | | | | | |
| 9. | | | | | |
| 10. | | | | | |
| 11. | | | | | |
| 12. Totals from Continuation pages *(if any)* | | | | | |
| 13. Totals of Lines 1 through 12 | | | | | |
| Enter the Totals from Line 13 in | Item 31 Column (C) | Item 44 | Item 62 | Item 69 with Explanation | Item 31 Column (D) |

FILE NUMBER: ☐☐☐ - ☐☐☐

## SCHEDULE 10 — OTHER LIABILITIES

| Description (A) | Amount at End of Period (B) |
|---|---|
| 1. | |
| 2. | |
| 3. | |
| 4. | |
| 5. | |
| 6. | |
| 7. | |
| 8. | |
| 9. | |
| 10. | |
| 11. | |
| 12. | |
| 13. Total from Continuation pages (if any) | |
| **14. Total of Lines 1 through 13** | |

Enter the Total from Line 14 in ........ Item 33, Column (D)

## SCHEDULE 11— ALL OFFICERS AND DISBURSEMENTS TO OFFICERS

FILE NUMBER: ☐☐☐ - ☐☐☐

| | (A)* Name (B)* Title (C)* Status | (D) Gross Salary Disbursements (before any deductions) | (E) Allowances Disbursed | (F) Disbursements for Official Business | (G) Other Disbursements not reported in (D) through (F) | (H) TOTAL |
|---|---|---|---|---|---|---|
| A* | | | | | | |
| B* | | | | | | |
| C* | | | | | | |
| I* | Schedule 15 Representational Activities % | Schedule 16 Political Activities and Lobbying % | Schedule 17 Contributions % | Schedule 18 General Overhead % | Schedule 19 Administration % | |
| A* | | | | | | |
| B* | | | | | | |
| C* | | | | | | |
| I* | Schedule 15 Representational Activities % | Schedule 16 Political Activities and Lobbying % | Schedule 17 Contributions % | Schedule 18 General Overhead % | Schedule 19 Administration % | |
| A* | | | | | | |
| B* | | | | | | |
| C* | | | | | | |
| I* | Schedule 15 Representational Activities % | Schedule 16 Political Activities and Lobbying % | Schedule 17 Contributions % | Schedule 18 General Overhead % | Schedule 19 Administration % | |
| A* | | | | | | |
| B* | | | | | | |
| C* | | | | | | |
| I* | Schedule 15 Representational Activities % | Schedule 16 Political Activities and Lobbying % | Schedule 17 Contributions % | Schedule 18 General Overhead % | Schedule 19 Administration % | |
| A* | | | | | | |
| B* | | | | | | |
| C* | | | | | | |
| I* | Schedule 15 Representational Activities % | Schedule 16 Political Activities and Lobbying % | Schedule 17 Contributions % | Schedule 18 General Overhead % | Schedule 19 Administration % | |
| 6. TOTALS FROM CONTINUATION PAGES (if any) | | | | | | |
| 7. TOTAL OF LINES 1-6 | | | | | | |
| 8. LESS DEDUCTIONS | | | | | | |
| 9. NET DISBURSEMENTS | | | | | | |

*(A) Enter the full name in the following format: **Last Name, First Name Middle Initial.** List all persons who held office during the reporting period even if they received no salary or other disbursements. *(B) Enter officer title, e.g. PRESIDENT or TREASURER. *(C) Code for Status: **past officer - P; continuing officer - C; new officer during the reporting period** - N. (If any officer was not elected at a regular election in accordance with the labor organization's constitution and bylaws, explain in Item 69.) *(I) Enter the PERCENTAGE (%) of time officer worked on activities covered in the corresponding Schedules 15-19.

## SCHEDULE 12— DISBURSEMENTS TO EMPLOYEES

FILE NUMBER: ☐☐☐ - ☐☐☐

| | (A)* Name (B)* Title (C)* Other Payer | (D) Gross Salary Disbursements (before any deductions) | (E) Allowances Disbursed | (F) Disbursements for Official Business | (G) Other Disbursements not reported in (D) through (F) | (H) TOTAL |
|---|---|---|---|---|---|---|
| 1 A* | | | | | | |
| B* | | | | | | |
| C* | | | | | | |
| I* | Schedule 15 Representational Activities % | Schedule 16 Political Activities and Lobbying % | Schedule 17 Contributions % | Schedule 18 General Overhead % | Schedule 19 Administration % | |
| 2 A* | | | | | | |
| B* | | | | | | |
| C* | | | | | | |
| I* | Schedule 15 Representational Activities % | Schedule 16 Political Activities and Lobbying % | Schedule 17 Contributions % | Schedule 18 General Overhead % | Schedule 19 Administration % | |
| 3 A* | | | | | | |
| B* | | | | | | |
| C* | | | | | | |
| I* | Schedule 15 Representational Activities % | Schedule 16 Political Activities and Lobbying % | Schedule 17 Contributions % | Schedule 18 General Overhead % | Schedule 19 Administration % | |
| 4 A* | | | | | | |
| B* | | | | | | |
| C* | | | | | | |
| I* | Schedule 15 Representational Activities % | Schedule 16 Political Activities and Lobbyings % | Schedule 17 Contributions % | Schedule 18 General Overhead % | Schedule 19 Administration % | |
| 5 A* | | | | | | |
| B* | | | | | | |
| C* | | | | | | |
| I* | Schedule 15 Representational Activities % | Schedule 16 Political Activities and Lobbying % | Schedule 17 Contributions % | Schedule 18 General Overhead % | Schedule 19 Administration % | |
| 6. TOTAL RECEIVED BY ALL OTHER EMPLOYEES | | | | | | |
| I* | Schedule 15 Representational Activities % | Schedule 16 Political Activities and Lobbying % | Schedule 17 Contributions % | Schedule 18 General Overhead % | Schedule 19 Administration % | |
| 7. TOTALS FROM CONTINUATION PAGES (if any) | | | | | | |
| 8. TOTAL OF LINES 1-7 | | | | | | |
| 9. LESS DEDUCTIONS | | | | | | |
| 10. NET DISBURSEMENTS | | | | | | |

## SCHEDULE 13 — MEMBERSHIP STATUS

FILE NUMBER: ☐☐☐ - ☐☐☐

| CATEGORY OF MEMBERSHIP (A) | NUMBER (B) | VOTING ELIGIBILITY (C) |
|---|---|---|
| 1. | | |
| 2. | | |
| 3. | | |
| 4. | | |
| 5. | | |
| 6. | | |
| 7. Total from Continuation Page(s) | | |
| 8. Members (Total of Lines 1 through 7) | | |
| 9. Agency Fee Payers* | | |
| 10. Total Members/Fee Payers (Total of Lines 8 and 9) | | |
| | Enter the Total from Line 8 in Item 20. | |

*Agency Fee Payers are not considered members of the labor organization.

## SCHEDULE 13 — MEMBERSHIP STATUS

FILE NUMBER: ☐☐☐ - ☐☐☐

| CATEGORY OF MEMBERSHIP (A) | NUMBER (B) | VOTING ELIGIBILITY (C) |
|---|---|---|
| 1. | | |
| 2. | | |
| 3. | | |
| 4. | | |
| 5. | | |
| 6. | | |
| **7. Total from Continuation Page(s)** | | |
| **8. Members (Total of Lines 1 through 7)** | | |
| **9. Agency Fee Payers*** | | |
| **10. Total Members/Fee Payers (Total of Lines 8 and 9)** | | |
| | Enter the Total from Line 8 in Item 20. | |

*Agency Fee Payers are not considered members of the labor organization.

# DETAILED SUMMARY PAGE — SCHEDULES 14 THROUGH 19

FILE NUMBER: ☐☐☐ - ☐☐☐

**Complete Itemization Pages for Schedules 14 through 19 Before Completing Summary Schedules**

| | | | |
|---|---|---|---|
| SCHEDULE 14<br>OTHER RECEIPTS | 1. Named Payer Itemized Receipts | | |
| | 2. Named Payer Non-itemized Receipts | | |
| | 3. All Other Receipts | | |
| | 4. **TOTAL RECEIPTS** *(add Lines 1 through 3)* | | Item 48 |

| | | | |
|---|---|---|---|
| SCHEDULE 15<br>[illegible] ACTIVITIES | 1. Named Payee Itemized Disbursements | | |
| | 2. Named Payee Non-itemized Disbursements | | |
| | 3. To Officers | | |
| | 4. To Employees | | |
| | 5. All Other Disbursements | | |
| | 6. **TOTAL DISBURSEMENTS** *(add Lines 1 through 5)* | | Item 50 |

| | | | |
|---|---|---|---|
| SCHEDULE 16<br>POLITICAL ACTIVITIES AND LOBBYING | 1. Named Payee Itemized Disbursements | | |
| | 2. Named Payee Non-itemized Disbursements | | |
| | 3. To Officers | | |
| | 4. To Employees | | |
| | 5. All Other Disbursements | | |
| | 6. **TOTAL DISBURSEMENTS** *(add Lines 1 through 5)* | | Item 51 |

| | | | |
|---|---|---|---|
| SCHEDULE 17<br>[illegible] | 1. Named Payee Itemized Disbursements | | |
| | 2. Named Payee Non-itemized Disbursements | | |
| | 3. To Officers | | |
| | 4. To Employees | | |
| | 5. All Other Disbursements | | |
| | 6. **TOTAL DISBURSEMENTS** *(add Lines 1 through 5)* | | Item 52 |

| | | | |
|---|---|---|---|
| SCHEDULE 18<br>[illegible] | 1. Named Payee Itemized Disbursements | | |
| | 2. Named Payee Non-itemized Disbursements | | |
| | 3. To Officers | | |
| | 4. To Employees | | |
| | 5. All Other Disbursements | | |
| | 6. **TOTAL DISBURSEMENTS** *(add Lines 1 through 5)* | | Item 53 |

| | | | |
|---|---|---|---|
| SCHEDULE 19<br>[illegible] | 1. Named Payee Itemized Disbursements | | |
| | 2. Named Payee Non-itemized Disbursements | | |
| | 3. To Officers | | |
| | 4. To Employees | | |
| | 5. All Other Disbursements | | |
| | 6. **TOTAL DISBURSEMENTS** *(add Lines 1 through 5)* | | Item 54 |

FILE NUMBER: ☐☐☐ - ☐☐☐

## INITIAL ITEMIZATION PAGE FOR RECEIPTS/DISBURSEMENTS SCHEDULES 14-19

| Schedule | Page Number | Total Number of Continuation Pages |
|---|---|---|
| | | |

*Complete Itemization Pages BEFORE the Detailed Summary Page*

**Enter Amounts In Dollars Only - Do Not Enter Cents**

| (A) NAME AND ADDRESS | (C) PURPOSE | (D) DATE | (E) AMOUNT |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| (B) TYPE OR CLASSIFICATION | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | (F) Total of Transactions Listed Above | | |
| | (G) Total of All Transactions from Continuation Pages with this Payee/Payer | | |
| | (H) Total of All Itemized Transactions with this Payee/Payer *(Sum of (F) and (G))* | | |
| | (I) Total of All Non-Itemized Transactions with this Payee/Payer | | |
| | (J) Total of All Transactions with This Payee/Payer for This Schedule *(Sum of (H) and (I))* | | |

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## DETAILED SUMMARY PAGE — SCHEDULES 14 THROUGH 19

FILE NUMBER ☐☐☐ - ☐☐☐

**Complete Itemization Pages for Schedules 14 through 19 Before Completing Summary Schedules**

| | | | |
|---|---|---|---|
| **SCHEDULE 14**<br>OTHER RECEIPTS | 1 Named Payer Itemized Receipts | | |
| | 2 Named Payer Non-itemized Receipts | | |
| | 3 All Other Receipts | | |
| | 4 **TOTAL RECEIPTS** *(add Lines 1 through 3)* | | **Item 48** |

| | | | |
|---|---|---|---|
| **SCHEDULE 15**<br>REPRESENTATIONAL ACTIVITIES | 1 Named Payee Itemized Disbursements | | |
| | 2 Named Payee Non-itemized Disbursements | | |
| | 3 To Officers | | |
| | 4 To Employees | | |
| | 5 All Other Disbursements | | |
| | 6 **TOTAL DISBURSEMENTS** *(add Lines 1 through 5)* | | **Item 50** |

| | | | |
|---|---|---|---|
| **SCHEDULE 16**<br>POLITICAL ACTIVITIES and LOBBYING | 1 Named Payee Itemized Disbursements | | |
| | 2 Named Payee Non-itemized Disbursements | | |
| | 3 To Officers | | |
| | 4 To Employees | | |
| | 5 All Other Disbursements | | |
| | 6 **TOTAL DISBURSEMENTS** *(add Lines 1 through 5)* | | **Item 51** |

| | | | |
|---|---|---|---|
| **SCHEDULE 17**<br>CONTRIBUTIONS, GIFTS AND GRANTS | 1 Named Payee Itemized Disbursements | | |
| | 2 Named Payee Non-itemized Disbursements | | |
| | 3 To Officers | | |
| | 4 To Employees | | |
| | 5 All Other Disbursements | | |
| | 6 **TOTAL DISBURSEMENTS** *(add Lines 1 through 5)* | | **Item 52** |

| | | | |
|---|---|---|---|
| **SCHEDULE 18**<br>GENERAL OVERHEAD | 1 Named Payee Itemized Disbursements | | |
| | 2 Named Payee Non-itemized Disbursements | | |
| | 3 To Officers | | |
| | 4 To Employees | | |
| | 5 All Other Disbursements | | |
| | 6 **TOTAL DISBURSEMENTS** *(add Lines 1 through 5)* | | **Item 53** |

| | | | |
|---|---|---|---|
| **SCHEDULE 19**<br>UNION ADMINISTRATION | 1 Named Payee Itemized Disbursements | | |
| | 2 Named Payee Non-itemized Disbursements | | |
| | 3 To Officers | | |
| | 4 To Employees | | |
| | 5 All Other Disbursements | | |
| | 6 **TOTAL DISBURSEMENTS** *(add Lines 1 through 5)* | | **Item 54** |

FILE NUMBER: ☐☐☐ - ☐☐☐

## INITIAL ITEMIZATION PAGE FOR RECEIPTS/DISBURSEMENTS SCHEDULES 14-19

| Schedule | Page Number | Total Number of Continuation Pages |
|---|---|---|
| | | |

***Complete Itemization Pages BEFORE the Detailed Summary Page***

**Enter Amounts in Dollars Only - Do Not Enter Cents**

| (A) NAME AND ADDRESS | (C) PURPOSE | (D) DATE | (E) AMOUNT |
|---|---|---|---|
| | | | |
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| | | | |
| **(B) TYPE OR CLASSIFICATION** | | | |
| | | | |
| | | | |
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| | | | |
| | (F) Total of Transactions Listed Above | | |
| | (G) Total of All Transactions from Continuation Pages with this Payee/Payer | | |
| | (H) Total of All Itemized Transactions with this Payee/Payer *(Sum of (F) and (G))* | | |
| | (I) Total of All Non-Itemized Transactions with this Payee/Payer | | |
| | (J) Total of All Transactions with This Payee/Payer for This Schedule *(Sum of (H) and (I))* | | |

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Page 19 of 20

## SCHEDULE 20 — BENEFITS

FILE NUMBER: ☐☐☐ - ☐☐☐

| (A) Description | (B) To Whom Paid | (C) Amount |
|---|---|---|
| 1. | | |
| 2. | | |
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| 6. | | |
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| 13. | | |
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| 15. | | |
| 16. | | |
| 17. | | |
| 18. | | |
| 19. | | |
| 20. | | |
| 21. | | |
| 22. Total of Continuation pages (If any) | | |
| 23. Total of Lines 1 through 22 | | |
| | Enter the Total from Line 23 in............................ | ..........Item 55 |

FILE NUMBER: ☐☐☐ - ☐☐☐

## CONTINUATION ITEMIZATION PAGE FOR RECEIPTS/DISBURSEMENTS SCHEDULES 14-19

| Schedule | Page Number | Total Number of Continuation Pages |
|---|---|---|
| | | |

**Enter Amounts in Dollars Only - Do Not Enter Cents**

| (A) NAME AND ADDRESS | (C) PURPOSE | (D) DATE | (E) AMOUNT |
|---|---|---|---|
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| (B) TYPE OR CLASSIFICATION | | | |
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| | | | |
| | (F) Total of All Transactions Listed Above | | |

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FILE NUMBER. ☐☐☐ – ☐☐☐

## CONTINUATION ITEMIZATION PAGE FOR RECEIPTS/DISBURSEMENTS SCHEDULES 14-19

| Schedule | Page Number | Total Number of Continuation Pages |
|---|---|---|
| | | |

Enter Amounts in Dollars Only - Do Not Enter Cents

| (A) NAME AND ADDRESS | (C) PURPOSE | (D) DATE | (E) AMOUNT |
|---|---|---|---|
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| (B) TYPE OR CLASSIFICATION | | | |
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| | | | |
| | (F) Total of All Transactions Listed Above | | |

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## SCHEDULE 11— ALL OFFICERS AND DISBURSEMENTS TO OFFICERS (continued)

FILE NUMBER: ☐☐☐ - ☐☐☐

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | (A)* Name | (B)* Title | (C)* Status | (D) Gross Salary Disbursements (before any deductions) | | (E) Allowances Disbursed | (F) Disbursements for Official Business | (G) Other Disbursements not reported in (D) through (F) | (H) TOTAL | |
| A* | | | | | | | | | | |
| B* | | | | | | | | | | |
| C* | | | | | | | | | | |
| I* | Schedule 15 Representational Activities | % | Schedule 16 Political Activities and Lobbying | % | Schedule 17 Contributions | % | Schedule 18 General Overhead | % | Schedule 19 Administration | % |
| A* | | | | | | | | | | |
| B* | | | | | | | | | | |
| C* | | | | | | | | | | |
| I* | Schedule 15 Representational Activities | % | Schedule 16 Political Activities and Lobbying | % | Schedule 17 Contributions | % | Schedule 18 General Overhead | % | Schedule 19 Administration | % |
| A* | | | | | | | | | | |
| B* | | | | | | | | | | |
| C* | | | | | | | | | | |
| I* | Schedule 15 Representational Activities | % | Schedule 16 Political Activities and Lobbying | % | Schedule 17 Contributions | % | Schedule 18 General Overhead | % | Schedule 19 Administration | % |
| A* | | | | | | | | | | |
| B* | | | | | | | | | | |
| C* | | | | | | | | | | |
| I* | Schedule 15 Representational Activities | % | Schedule 16 Political Activities and Lobbying | % | Schedule 17 Contributions | % | Schedule 18 General Overhead | % | Schedule 19 Administration | % |
| A* | | | | | | | | | | |
| B* | | | | | | | | | | |
| C* | | | | | | | | | | |
| I* | Schedule 15 Representational Activities | % | Schedule 16 Political Activities and Lobbying | % | Schedule 17 Contributions | % | Schedule 18 General Overhead | % | Schedule 19 Administration | % |
| A* | | | | | | | | | | |
| B* | | | | | | | | | | |
| C* | | | | | | | | | | |
| I* | Schedule 15 Representational Activities | % | Schedule 16 Political Activities and Lobbying | % | Schedule 17 Contributions | % | Schedule 18 General Overhead | % | Schedule 19 Administration | % |
| Column Totals | | | | $ | | $ | $ | $ | $ | |

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## SCHEDULE 12— DISBURSEMENTS TO EMPLOYEES (continued)

FILE NUMBER: ☐☐☐ - ☐☐☐

| | (A)* Name | (B)* Title | (C)* Other Payer | (D) Gross Salary Disbursements (before any deductions) | (E) Allowances Disbursed | (F) Disbursements for Official Business | (G) Other Disbursements not reported in (D) through (F) | (H) TOTAL | | |
|---|---|---|---|---|---|---|---|---|---|---|
| A* | | | | | | | | | | |
| B* | | | | | | | | | | |
| C* | | | | | | | | | | |
| I* | Schedule 15 Representational Activities | % | Schedule 16 Political Activities and Lobbyings | % | Schedule 17 Contributions | % | Schedule 18 General Overhead | % | Schedule 19 Administration | % |
| A* | | | | | | | | | | |
| B* | | | | | | | | | | |
| C* | | | | | | | | | | |
| I* | Schedule 15 Representational Activities | % | Schedule 16 Political Activities and Lobbying | % | Schedule 17 Contributions | % | Schedule 18 General Overhead | % | Schedule 19 Administration | % |
| A* | | | | | | | | | | |
| B* | | | | | | | | | | |
| C* | | | | | | | | | | |
| I* | Schedule 15 Representational Activities | % | Schedule 16 Political Activities and Lobbying | % | Schedule 17 Contributions | % | Schedule 18 General Overhead | % | Schedule 19 Administration | % |
| A* | | | | | | | | | | |
| B* | | | | | | | | | | |
| C* | | | | | | | | | | |
| I* | Schedule 15 Representational Activities | % | Schedule 16 Political Activities and Lobbying | % | Schedule 17 Contributions | % | Schedule 18 General Overhead | % | Schedule 19 Administration | % |
| A* | | | | | | | | | | |
| B* | | | | | | | | | | |
| C* | | | | | | | | | | |
| I* | Schedule 15 Representational Activities | % | Schedule 16 Political Activities and Lobbying | % | Schedule 17 Contributions | % | Schedule 18 General Overhead | % | Schedule 19 Administration | % |
| A* | | | | | | | | | | |
| B* | | | | | | | | | | |
| C* | | | | | | | | | | |
| I* | Schedule 15 Representational Activities | % | Schedule 16 Political Activities and Lobbying | % | Schedule 17 Contributions | % | Schedule 18 General Overhead | % | Schedule 19 Administration | % |
| | Column Totals | | | $ | $ | $ | $ | $ | | |

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FILE NUMBER: ☐☐☐ - ☐☐☐

## SCHEDULE 13 — MEMBERSHIP STATUS CONTINUATION PAGE

| CATEGORY OF MEMBERSHIP (A) | NUMBER (B) | VOTING ELIGIBILITY (C) |
|---|---|---|
| 1. | | |
| 2. | | |
| 3. | | |
| 4. | | |
| 5. | | |
| 6. | | |
| 7. | | |
| 8. | | |
| 9. | | |
| **10. Total Members Reported on This Page** | | |
| | Enter the Total from Line 10 in Item 7, Column (B) of the Initial Page for this schedule. | |

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Public reporting burden for this collection of information is estimated to average 710 hours per response in the first year, 539 hours per response in the second year, and 536 hours per response in the third year. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Reporting of this information is mandatory and is required by the Labor-Management Reporting and Disclosure Act of 1959, as amended, for the purpose of public disclosure. As this is public information, there are no assurances of confidentiality. If you have any comments regarding this estimate or any other aspect of this information collection, including suggestions for reducing this burden, please send them to the U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards, Division of Interpretations and Standards, Room N-5605, 200 Constitution Avenue, NW, Washington, DC 20210.

# INSTRUCTIONS FOR FORM LM-2 LABOR ORGANIZATION ANNUAL REPORT

## GENERAL INSTRUCTIONS

### I. WHO MUST FILE

Every labor organization subject to the Labor-Management Reporting and Disclosure Act, as amended (LMRDA), the Civil Service Reform Act (CSRA), or the Foreign Service Act (FSA) must file a financial report, Form LM-2, LM-3, or LM-4, each year with the Office of Labor-Management Standards (OLMS) of the U.S. Department of Labor's (Department) Employment Standards Administration. These laws cover labor organizations that represent employees who work in private industry, employees of the U.S. Postal Service, and most Federal government employees. Labor organizations that represent only state, county, or municipal government employees are not covered by these laws and, therefore, are not required to file, except that any "conference, general committee, joint or system board, or joint council" that is subordinate to a national or international labor organization is a labor organization under the LMRDA and is required to file a financial report if the national or international labor organization is a labor organization engaged in an industry affecting commerce within the meaning of section 3(j) of the LMRDA. If you have a question about whether the labor organization is required to file, contact the nearest OLMS field office listed at the end of these instructions.

### II. WHAT FORM TO FILE

Every labor organization subject to the LMRDA, CSRA, or FSA with total annual receipts of $250,000 or more must file Form LM-2. The term "total annual receipts" means all financial receipts of the labor organization during its fiscal year, regardless of the source, including receipts of any special funds as described in Section VIII (Funds To Be Reported) of these instructions. Receipts of a trust in which the labor organization is interested should not be included in the total annual receipts of the labor organization when determining which form to file unless the trust is wholly owned, wholly controlled, and wholly financed by the labor organization.

Labor organizations with total annual receipts of less than $250,000 may file the simplified annual report Form LM-3, if not in trusteeship as defined in Section IX (Labor Organizations In Trusteeship) of these instructions. Labor organizations with total annual receipts of less than $10,000 may file the abbreviated annual report Form LM-4, if not in trusteeship.

***NOTE:*** *Certain labor organizations are required to file Form 990, Return of Organization Exempt from Income Tax, with the Internal Revenue Service (IRS).*

*The IRS has accepted a copy of the labor organization's Form LM-2 in the past to provide some of the information required by Form 990. See the instructions for the current Form 990 for details. Filing Form LM-2 with the IRS does not satisfy the labor organization's reporting requirement with the U.S. Department of Labor.*

## III. WHEN TO FILE

Form LM-2 must be filed within 90 days after the end of the labor organization's fiscal year (12-month reporting period). The law does not authorize the Department to grant an extension of time for filing reports. The penalties for delinquency are described in Section VI (Officer Responsibilities and Penalties) of these instructions.

If the labor organization went out of existence during its fiscal year, a terminal financial report must be filed within 30 days after the date it ceased to exist. See Section XII (Labor Organizations That Have Ceased to Exist) of these instructions for information on filing a terminal financial report.

## IV. HOW TO FILE

Form LM-2, and Form T-1 Trust Annual Report as described in Section X (Trusts in Which a Labor Organization is Interested) of these instructions, must be prepared using software obtained from the Department and must be submitted electronically to the Department. Information on obtaining the software is available at http://www.olms.dol.gov. A Form LM-2 and T-1 filer will be able to file a report in paper format only if it asserts a temporary hardship exemption or applies for and is granted a continuing hardship exemption. Forms LM-3 and LM-4 may be prepared and submitted electronically but it is not required.

A detailed user guide is included with the electronic filing software.

### HARDSHIP EXEMPTIONS

A labor organization that must file Form LM-2 or T-1 may assert a temporary hardship exemption or apply for a continuing hardship exemption to prepare and submit the report in paper format. If a labor organization files both Form LM-2 and Form T-1, the exemption must be separately asserted for each report, although in appropriate circumstances the same reasons may be used to support both exemptions. If it is possible to file Form LM-2, or one or more Form T-1s electronically, no exemption should be claimed for those reports, even though an exemption is warranted for a related report.

TEMPORARY HARDSHIP EXEMPTION:

If a labor organization experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing, the organization may file Form LM-2 or T-1 in paper format by the required due date. An electronic format copy of the filed paper format document shall be submitted to the Department within ten business days after the required due date. Indicate in Item 3 (Amended, Hardship Exempted, or Terminal Report) that the labor organization is filing under the hardship exemption procedures. Unanticipated technical difficulties that may result in additional delays should be brought to the attention of the nearest OLMS field office listed at the end of these instructions.

***Note:** If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.*

CONTINUING HARDSHIP EXEMPTION:

(a) A labor organization may apply in writing for a continuing hardship exemption if Form LM-2 or T-1 cannot be filed electronically without undue burden or expense. Such written application shall be received at least thirty days prior to the required due date of the report(s). The written application shall contain the information set forth in paragraph (b).

The application must be mailed to the following address:

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-5605
Washington, DC 20210-0001

Questions regarding the application should be directed to the OLMS Division of Interpretations and Standards, which can be reached at the above address, by e-mail at OLMS-Public@dol.gov, by phone at 202-693-0123, or by fax at 202-693-1340.

(b) The request for the continuing hardship exemption shall include, but not be limited to, the following: (1) the justification for the requested time period of the exemption; (2) the burden and expense that the labor organization would incur if it was required to make an electronic submission; and (3) the reasons for not submitting the report(s) electronically. The applicant must specify a time period not to exceed one year.

(c) The continuing hardship exemption shall not be deemed granted until the Department notifies the applicant in writing. If the Department denies the application for an exemption, the labor organization shall file the report(s) in electronic format by the required due date. If the Department determines that the grant of the exemption is appropriate and consistent with the public interest and the protection of union members and so notifies the applicant, the labor organization shall follow the procedures set forth in paragraph (d).

(d) If the request is granted, the labor organization shall submit the report(s) in paper format by the required due date. The filer may be required to submit Form LM-2 or T-1 in electronic format upon the expiration of the period for which the exemption is granted. Indicate in Item 3 (Amended, Hardship Exempted, or Terminal Report) that the labor organization is filing under the hardship exemption procedures.

***Note:*** *If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.*

SPECIAL INSTRUCTIONS FOR SUBMITTING FORMS LM-2 AND T-1 IN PAPER FORMAT:

Those labor organizations that are granted an exemption will be provided with a report package in paper format, which must be completed and filed at the following address:

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-5616
Washington, DC 20210-0001

**Number of Copies**

Complete one of the two blank copies included in the report package; do not use a photocopy of the form. The completed report must be filed with OLMS. A copy should also be maintained in the labor organization's records.

**Information Entry**

Entries on the report should be typed or clearly printed in black ink. Do not use a pencil or any other color ink.

In all Items and Schedules dealing with monetary values report amounts in dollars only. Do not enter cents. Round cents to the nearest dollar. Enter a single "0" in the boxes for reporting dollars if the labor organization has nothing to report.

*Entering Dollars:*

$1,573,844 – do not enter cents

*Entering Zero:*

$ _ , _ _ _ , _ _ 0

*Entering "Yes" or "No"*

For items requiring a "Yes" or "No" answer, enter an "X" in the appropriate box. Do not use check marks or other marks.

**Schedules 1 Through 20 Continuation Pages**

If the union is completing the report in paper format and there is not enough space to report all the required information and amounts in Schedules 1 through 20, use the preprinted continuation pages included in the report package. More copies of these pages may be ordered from any OLMS office. For Schedules 14 through 19, multiple copies of the Initial Itemization Page and the Continuation Itemization Page are included in the report package. More copies of these pages may also be ordered from any OLMS office.

Enter the requested identifying information at the top of each continuation page. Totals from any continuation pages must be entered on the line provided in the schedules.

**Additional Pages for Item 69**

Some of the items on the report require that further details be provided in Item 69 (Additional Information). If there is not enough space in Item 69, enter the additional information on a separate letter-size (8 ½ x 11) page(s), giving the number of the item to which the information applies. At the top of each attached page clearly enter the name of the labor organization, its 6-digit file number as reported in Item 1 (File Number), and the ending date of the reporting period as reported on the second line of Item 2 (Period Covered), the page number for each additional page, and the total number of additional pages attached.

## V. PUBLIC DISCLOSURE

The LMRDA requires that the Department make labor organization financial reports available for inspection by the public. Reports may be viewed and downloaded from the OLMS Web site at http://www.union-reports.dol.gov. Copies of reports and union constitutions and bylaws can also be ordered at the same Web site. Reports may also be examined and copies purchased at the OLMS Public Disclosure Room at the following address:

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-5608
Washington, DC 20210-0001

## VI. OFFICER RESPONSIBILITIES AND PENALTIES

The president and treasurer or the corresponding principal officers of the labor organization required to sign Form LM-2 are personally responsible for its filing and accuracy. Under the LMRDA, officers are subject to criminal penalties for willful failure to file a required report and for false reporting. False reporting includes making any false statement or misrepresentation of a material fact while knowing it to be false, or for knowingly failing to disclose a material fact in a required report or in the information required to be contained in it or in any information required to be submitted with it.

The reporting labor organization and the officers required to sign Form LM-2 are also subject to civil prosecution for violations of the filing requirements. Section 210 of the LMRDA (29 U.S.C. 440) provides that "whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate."

Under the CSRA and FSA and implementing regulations, false reporting and failure to report may result in administrative enforcement action and litigation. The officers responsible for signing Form LM-2 are also subject to criminal penalties for false reporting and perjury under Sections 1001 of Title 18 and 1746 of Title 28 of the United States Code.

## VII. RECORDKEEPING

The officers required to file Form LM-2 are responsible for maintaining records that will provide in sufficient detail the information and data necessary to verify the accuracy and completeness of the report. The records must be kept for at least 5 years after the date the report is filed. Any record necessary to verify, explain or clarify the report must be retained, including, but not limited to, vouchers, worksheets, receipts, applicable resolutions, and any electronic documents, including recordkeeping software, used to complete, read, and file the report.

## VIII. FUNDS TO BE REPORTED

The labor organization must report financial information on Form LM-2 for all funds of the labor organization. Include any special purpose funds or accounts, such as strike funds, vacation funds, and scholarship funds even if they are not part of the labor organization's general treasury.

The labor organization is required to report information about any trust in which it is interested on the Form T-1. See Sections X (Trusts In Which A Labor Organization Is Interested).

# SPECIAL INSTRUCTIONS FOR CERTAIN ORGANIZATIONS

## IX. LABOR ORGANIZATIONS IN TRUSTEESHIP

Any labor organization that has placed a subordinate labor organization in trusteeship is responsible for filing the subordinate's annual financial report. A trusteeship is defined in section 3(h) of the LMRDA (29 U.S.C. 402) as "any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws."

Annual financial reports filed for any labor organization in trusteeship must be filed on Form LM-2. The report must be signed by the president and treasurer or corresponding principal officers of the labor organization that imposed the trusteeship and by the trustees of the subordinate labor organization. Trustees must sign and date Form LM-2 in the space below the officers' signatures and telephone numbers in Items 70 and 71 (Signatures).

## X. TRUSTS IN WHICH A LABOR ORGANIZATION IS INTERESTED

The labor organization must disclose assets, liabilities, receipts, and disbursements of a significant trust in which the labor organization is interested.

A trust in which a labor organization is interested is defined in Section 3(l) of the LMRDA (29 U.S.C. 402(l)) as

> ...a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor

> organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

The definition of a trust in which a labor organization is interested may include, but is not limited to, joint funds administered by a union and an employer pursuant to a collective bargaining agreement, educational or training institutions, banks or credit unions created for the benefit of union members, and redevelopment or investment groups established by the union for the benefit of its members. The determination whether a particular entity is a trust in which a labor organization is interested must be based on the facts in each case. A trust will be considered significant, and therefore must be reported on Form T-1, if (1) it had annual receipts of $250,000 or more during its most recent fiscal year, and (2) the labor organization's financial contribution to the trust or the contribution made on the labor organization's behalf, or as a result of a negotiated agreement to which the labor organization is a party, is $10,000 or more annually.

If a trust has annual receipts of less than $250,000 or if the labor organization's financial contribution to a trust that has annual receipts of $250,000 or more, or the contribution made on the labor organization's behalf, or as a result of a negotiated agreement to which the labor organization is a party, is less than $10,000 annually, the labor organization need only report the existence of the trust and the amount of the contribution. This information should be reported in Item 69 as required by the instructions for Item 10 and, if the contribution was made by the labor organization itself, in the appropriate disbursement item in Statement B.

If the labor organization's financial contribution to a trust, or the contribution made on the labor organization's behalf, or as a result of a negotiated agreement to which the labor organization is a party, is $10,000 or more annually, the labor organization must file a Form T-1 to report all of the assets, liabilities, receipts, and disbursements of the trust and other information about the trust.

No Form T-1 should be filed for any labor organization that already files a Form LM-2, LM-3, or LM-4, nor should a report be filed for any entity that is expressly exempted from reporting in the Act. No separate report need be filed for Political Action Committee (PAC) funds if publicly available reports on the PAC funds are filed with a Federal or state agency, or for a political organization for which reports are filed with the Internal Revenue Service pursuant to 26 U.S.C. 527. No separate report is required for an employee benefit plan that filed a complete and timely annual report pursuant to the requirements of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1023, 1024(a), and 1030, and 29 C.F.R. 2520.103-1, for a plan year ending during the reporting period of the union (a notice filed with the Secretary of Labor pursuant to an exemption from reporting and disclosure does not constitute a complete annual financial report).

A labor organization may complete only Items 1 through 15 and Items 26-27 (Signatures) of Form T-1 if annual audits prepared according to standards set forth in the Form T-1 instructions are freely available on demand under § 302(c)(5)(B) of the Labor Management Relations Act, 1947 (LMRA), 29 U.S.C.186(c)(5)(B), and a copy of the audit is filed with the Form T-1.

Form T-1, or a qualifying audit, must be filed within 90 days after the end of the union's fiscal year. If the trust's fiscal year is not the same as the labor organization's fiscal year, state when the trust's fiscal year ends in Item 69 as required by the instructions for Item 10. See Instructions for Form T-1, Trust Annual Report.

Questions regarding these reporting requirements should be directed to the

OLMS Division of Interpretations and Standards, which can be reached at the above address, by email at OLMS-Public@dol.gov, by phone at 202-693-0123 or by fax at 202-693-1340. The Department will publish additional information giving further practical guidance on the reporting requirements for trusts on the OLMS Web site at http://www.olms.dol.gov.

Examples of a trust in which a labor organization is interested may include, but are not limited to, the following entities:

**Example A: The Building Corporation** – A labor organization creates a corporation which owns the building where the union has its offices. The building corporation must be reported as a trust in which the labor organization is interested.

**Example B: The Redevelopment Corporation** – A labor organization creates an entity named the Redevelopment Corporation, or appoints one or more of the members of the governing board of the Corporation, which is established primarily to enable members of the labor organization to obtain low cost housing constructed with Federal Housing and Urban Development (HUD) grants. The Redevelopment Corporation must be reported as a trust in which it is interested. A labor organization that neither participated in the creation of the Corporation, nor appointed members of its governing board, but loaned money to the Corporation to use as matching money for HUD grants need not report the Corporation as a trust in which it is interested.

**Example C: The Educational Institute** – Five reporting labor organizations form the Educational Institute to provide educational services primarily for the benefit of their members. Similar services are also provided to the general public. Each labor organization contributes funds to start the Educational Institute, which will then offer various educational programs that will generate revenue. Each labor organization that participated in forming the Institute, or that appoints a member to its governing body, must report the Educational Institute as a trust in which it is interested.

**Example D: The Bank** – A reporting labor organization forms a bank that is chartered and licensed under federal and state laws, or selects a member of the board of directors of a bank that is already in existence, for the purpose of ensuring that banking services are available to members at reasonable cost, or as an investment for the purpose of increasing funds available for union activities for the benefit of union members. Any labor organization that participated in forming the bank, or that appoints a member to the bank's board of directors, must report the bank as a trust in which it has an interest.

**Example E: Joint Funds** – A reporting labor organization that forms a "joint fund" with a large national manufacturer to offer a variety of training and jobs skills programs for members of the labor organization, or appoints a member to the governing body of such a fund, must report the joint fund as a trust in which the labor organization has an interest.

**Example F: Job Targeting Fund**–A reporting labor organization creates an entity for the purpose of making targeted disbursements to increase employment opportunities for its members. The fund must be reported as a trust in which the labor organization is interested.

**Example G: 302(c)(5) through (9) Plans** – A reporting labor organization forms a plan permitted under Section 302(c)(5) through (9) of the LMRA (29 U.S.C. 186 (c)(5) through (9)), and files a complete annual financial report as required under ERISA. The labor organization reports only that the plan exists and states where the ERISA annual financial report may be viewed. This information should be reported in Item 69. No Form T-1 need be filed even if the labor organization contributes more than $10,000 to the plan.

## XI. COMPLETING FORM LM-2

### INFORMATION ITEMS 1–21

Answer Items 1 through 21 as instructed. Enter an "X" in the appropriate box for those questions requiring a "Yes" or "No" answer; do not leave both boxes blank. Enter a single "0" in the boxes for items requiring a number or dollar amount if there is nothing to report.

**1. FILE NUMBER** — Enter the 6-digit file number that OLMS assigned to the labor organization. If the labor organization does not have the number on file and cannot obtain the number from prior reports filed with the Department, the number can be obtained from the OLMS Web site at http://www.union-reports.dol.gov, or by contacting the nearest OLMS field office listed at the end of these instructions. The labor organization's 6-digit file number must also be entered in the File Number boxes at the top of each page of Form LM-2.

**2. PERIOD COVERED** — Enter the beginning and ending dates of the period covered by this report. The labor organization's report should never cover more than a 12-month period. For example, if the labor organization's 12-month fiscal year begins on January 1 and ends on December 31, enter these dates as 01/01/20XX and 12/31/20XX. It would be incorrect to enter January 1 of one year through January 1 of the next year.

If the labor organization changed its fiscal year, enter in Item 2 (Period Covered) the ending date for the period of less than 12 months, which is the labor organization's new fiscal year ending date, and report in Item 69 (Additional Information) that the labor organization changed its fiscal year. For example, if the labor organization's fiscal year ending date changes from June 30 to December 31, a report must be filed for the partial year from July 1 to December 31. Thereafter, the labor organization's annual report should cover a full 12-month period from January 1 to December 31.

**3. AMENDED, HARDSHIP EXEMPTED, OR TERMINAL REPORT** — Do not complete this item unless this report is an amended, hardship exempted, or terminal report. Enter an "X" in the box in Item 3(a) if the labor organization is filing an amended report correcting a previously filed report. Enter an "X" in the box in Item 3(b) if the labor organization is filing under the hardship exemption procedures defined in Section IV. Enter an "X" in the box in Item 3(c) if the labor organization has gone out of business by disbanding, merging into another labor organization, or being merged and consolidated with one or more labor organizations to form a new labor organization, and this is the labor organization's terminal report. Be sure the date the labor organization ceased to exist is entered in Item 2 (Period Covered) after the word "Through." See Section XII (Labor Organizations That Have Ceased to Exist) of these instructions for more information on filing a terminal report.

**4. AFFILIATION OR ORGANIZATION NAME** — Enter the name of the national or international labor organization that granted the labor organization a charter. "Affiliates," within the meaning of these instructions, are labor organizations chartered by the same parent body, governed by the same constitution and bylaws, or having the relationship of parent and subordinate. For example, a parent body is an affiliate of all of its subordinate bodies, and all subordinate bodies of the same parent body are affiliates of each other.

If the labor organization has no such affiliation, enter the name of the labor organization as currently identified in the labor organization's constitution and bylaws or other organizational documents.

**5. DESIGNATION** — Enter the specific designation that is used to identify the labor organization, such as Local, Lodge, Branch, Joint Board, Joint Council, District Council, etc.

**6. DESIGNATION NUMBER** — Enter the number or other identifier, if any, by which the labor organization is known.

**7. UNIT NAME** — Enter any additional or alternate name by which the labor organization is known, such as "Chicago Area Local."

**8. MAILING ADDRESS** — Enter the current address where mail is most likely to reach the labor organization as quickly as possible. Be sure to indicate the first and last name of the person, if any, to whom such mail should be sent and include any building and room number.

**9. PLACE WHERE RECORDS ARE KEPT** — If the records required to be kept by the labor organization to verify this report are kept at the address reported in Item 8 (Mailing Address), or the address on the address label, answer "Yes." If not, answer "No" and provide in Item 69 (Additional Information) the address where the labor organization's records are kept.

**10. TRUSTS OR FUNDS** — Answer "Yes" to Item 10, if the labor organization has an interest in a trust as defined in 29 U.S.C. 402(l) (see Section X of these Instructions). Provide in Item 69 (Additional Information) the full name, address, and purpose of each trust. Also include in Item 69 the fiscal year ending date for any trust for which a Form T-1 is filed if the trust's fiscal year is different from that of the labor organization. If no Form T-1 is required to be filed on the trust because (1) the trust had annual receipts of less than $250,000 during the trust's most recent fiscal year or (2) the labor organization's financial contribution to the trust or the contribution made on the labor organization's behalf, or as a result of a negotiated agreement to which the labor organization is a party, is less than $10,000, the labor organization should also report the amount of the contribution in Item 69 and, if the contribution was made by the labor organization itself, in the appropriate disbursement item in Statement B. Additionally, if no Form T-1 is filed because financial information is already available as a result of the disclosure requirements of another Federal statute, list the name of any government agency, such as the Securities and Exchange Commission (SEC) or the Employee Benefits Security Administration (EBSA) of the Department of Labor, with which the trust files a publicly available report, and the relevant file number of the trust, or otherwise indicate where the relevant report may be viewed. See Instructions for Form T-1, Trust Annual Report, for guidance on reporting the assets, liabilities, receipts, disbursements, and other information about these entities.

**11. POLITICAL ACTION COMMITTEE FUNDS** — If the labor organization answered "Yes" to Item 11, provide in Item 69 (Additional Information) the full name of each separate political action committee (PAC) and list the name of any government agency, such as the Federal Election Commission or a state agency, with which the PAC has filed a publicly available report, and the relevant file number of the PAC. (PAC funds kept separate from the labor organization's treasury need not be included in the labor organization's Form LM-2 if publicly available reports on the PAC funds are filed with a Federal or state agency.)

**12. AUDIT OR REVIEW OF BOOKS AND RECORDS** — If the labor organization answered "Yes" to Item 12, indicate in Item 69 (Additional Information) whether the audit or review was performed by an outside accountant or a parent body auditor/representative. If an outside accountant performed the audit or review, provide the name of the accountant or accounting firm. Report any audit or review by an outside accountant or a parent body auditor/representative in which the labor organization's books and records were examined to verify their accuracy and validity. The term "audit or review" does not include providing assistance in developing a bookkeeping system, providing routine bookkeeping services, or merely compiling information from the labor organization's books and records to prepare Form LM-2 or other financial reports. Also, do not answer "Yes" to Item 12 if an audit committee or trustees of the labor organization performed the audit or review.

**13. LOSSES OR SHORTAGES** — Answer "Yes" to Item 13 if the labor organization experienced a loss, shortage, or other discrepancy in its finances during the period covered. Describe the loss or shortage in detail in Item 69 (Additional Information), including such information as the amount of the loss or shortage of funds or a description of the property that was lost, how it was lost, and to what extent, if any, there has been an agreement to make restitution or any recovery by means of repayment, fidelity bond, insurance, or other means.

**14. FIDELITY BOND** — Enter the maximum amount recoverable for a loss caused by any officer, employee, or agent of the labor organization who handled the labor organization's funds. Enter "0" if the labor organization was not covered by a fidelity bond during the reporting period.

**NOTE:** *If a labor organization has property and annual financial receipts that totaled $5,000 or more, each of the labor organization's officers, employees, and agents who handles funds or other property of the labor organization must be bonded. The amount of the bond must be at least 10% of the value of the funds handled by the individual during the last reporting period, up to a maximum bond of $500,000. The bond must be obtained from a surety company approved by the Secretary of the Treasury. If you have any questions or need more information about bonding requirements, contact the nearest OLMS field office listed at the end of these instructions.*

**15. ACQUISITION OR DISPOSITION OF ASSETS** — If the labor organization answered "Yes" to Item 15, describe in Item 69 (Additional Information) the manner in which the labor organization acquired or disposed of the asset(s), such as donating office furniture or equipment to charitable organizations, trading in assets, writing off a receivable, or giving away other tangible or intangible property of the labor organization. Include the type of asset, its value, and the identity of the recipient or donor, if any. Also report in Item 69 the cost or other basis at which any acquired assets were entered on the labor organization's books or the cost or other basis at which any assets disposed of were carried on the labor organization's books. For example, assets may be entered on the labor organization's books at cost and carried at that value; carried at cost less accumulated depreciation; or carried at scrap value or other nominal value because the assets were fully depreciated or were expensed when purchased (that is, the cost was charged to current expenses rather than entered on the books and periodically depreciated).

For assets that were traded in, enter in Item 69 the cost, book value, and trade-in allowance.

**16. PLEDGED OR ENCUMBERED ASSETS** — If the labor organization answered "Yes" to Item 16, identify in Item 69 (Additional Information) all of the labor organization's assets pledged or encumbered in any way (such as those pledged as collateral for a loan) at the end of the reporting period. Also report in Item 69 their fair market value, and provide details of transactions related to the encumbrance.

**17. CONTINGENT LIABILITIES** — If the labor organization answered "Yes" to Item 17, describe in Item 69 (Additional Information) the transactions or events resulting in the contingent liabilities and include the identity of the claimant or creditor. Contingent liabilities are potential obligations that may or may not develop into actual liabilities in the future. Examples of a contingent liability are a loan co-signed by the labor organization, or a pending lawsuit that could result in the labor organization being ordered to pay damages or make other payments.

A pending administrative or judicial action is considered a contingent liability that must be reported in Item 17 if, in the opinion of legal counsel, it is reasonably possible that the labor organization will be required to make some payment. Such administrative or judicial actions must be reported as contingent liabilities regardless of whether or not the possible losses would have a materially adverse effect on the labor organization's financial condition. List in Item 69 each administrative or judicial action, including the case number, court, and caption.

**18. CHANGES IN CONSTITUTION AND BYLAWS OR PRACTICES AND PROCEDURES** — If the labor organization answered "Yes" to Item 18 because the labor organization's constitution and bylaws were changed during the reporting period (other than rates of dues and fees), a dated copy of the new constitution and bylaws must be submitted to OLMS with the labor organization's Form LM-2. If the Form LM-2 is submitted electronically, the new constitution and bylaws must be submitted as an electronic attachment to the form.

If the labor organization is governed by a uniform or model constitution and bylaws prescribed by the labor organization's parent national or international body, the labor organization's parent body may file the constitution and bylaws on the labor organization's behalf. If the parent body files a constitution and bylaws on the labor organization's behalf, answer "Yes" to Item 18 and state that fact in Item 69 (Additional Information). If the labor organization has any supplemental governing documents or has modified a model constitution and bylaws, the labor organization must file these documents.

If the labor organization answered "Yes" to Item 18 because the labor organization changed any of the practices/procedures listed below during the reporting period and the practices/procedures are not described in the labor organization's constitution or bylaws, the labor organization must file an amended Form LM-1 (Labor Organization Information Report) to update information on file with the Department:

- qualifications for or restrictions on membership;
- levying assessments;
- participating in insurance or other benefit plans;
- authorizing disbursement of labor organization funds;
- auditing financial transactions of the labor organization;
- calling regular and special meetings;
- authorizing bargaining demands;
- ratifying contract terms;
- authorizing strikes;
- disciplining or removing officers or agents for breaches of their trust;
- imposing fines and suspending or expelling members including the grounds for such action and any provision made for notice, hearing, judgment on the evidence, and appeal procedures;
- selecting officers and stewards and any representatives to other bodies composed of labor organizations' representatives;
- invoking procedures by which a member may protest a defect in the election of officers (including not only all procedures for initiating an election protest but also all procedures for subsequently appealing an adverse decision, e.g., procedures for appeals to superior or parent bodies, if any); and
- issuing work permits.

Information on obtaining Form LM-1 may be obtained from the OLMS Web site at http://www.olms.dol.gov or from any OLMS field office listed at the end of these instructions.

**NOTE:** *Federal employee labor organizations subject solely to the Civil Service Reform Act or Foreign Service Act are not required to submit an amended Form LM-1 to describe revised or changed practices/procedures.*

**19. NEXT REGULAR ELECTION** — Enter the month and year of the labor organization's next regular election of general officers (president, vice president, treasurer, secretary, etc.). Do not report the date of any interim election to fill vacancies.

**20. NUMBER OF MEMBERS** — Enter the total reported on Line 8, Column (B) of Schedule 13 (Membership Status).

**21. DUES AND FEES** — Enter the dues and fees established by the labor organization. If more than one rate applies, enter the minimum and maximum rates. Enter "None" where appropriate.

**Line (a):** Enter the regular dues, fees or other periodic payments that a member must pay to be in good standing in the labor organization, including the calendar basis for the payment (per month, per year, etc.). Include only the dues or fees of regular members and not dues or fees of members with special rates, such as apprentices, retirees, or unemployed members.

**Line (b)** If individuals covered by your organization's collective bargaining agreement(s) pay "working" dues in addition to their regular dues, enter the amount or percent of "working" dues, including the basis for the payment (per hour, per month, etc.).

**Line (c):** Enter the initiation fees required from new members.

**Line (d):** Enter the fees other than dues required from transferred members. Such fees are those charged to persons applying for a transfer of membership to the labor organization from another labor organization with the same affiliation. Do not report fees charged to members transferring from one class of membership to another within the labor organization.

**Line (e):** If the labor organization issues work permits, enter the fees required and enter the calendar basis for the payment (per month, per year, etc.). Work permit fees are fees charged to nonmembers of the labor organization who work within its jurisdiction. Do not report as work permit fees those fees charged to nonmember applicants for membership pending acceptance of their membership application, or fees charged to persons applying for transfer of membership to the labor organization pending acceptance of their application for transfer.

## FINANCIAL DETAILS

### REPORT ONLY DOLLAR AMOUNTS

Report all amounts in dollars only. Round cents to the nearest dollar. Amounts ending in $.01 through $.49 should be rounded down. Amounts ending in $.50 through $.99 should be rounded up.

### REPORTING CLASSIFICATIONS

Complete all items and lines on the form as given. Do not use different accounting classifications or change the wording of any item or line.

### BEGINNING AND ENDING AMOUNTS

Entries in Schedules 2 and 9 and in Statement A must report amounts for both the start and the end of the reporting period. The amounts entered for the start of the reporting period on the labor organization's report should be identical to the amounts entered for the end of the reporting period on last year's report. If the amounts are not the same, fully explain the difference in Item 69 (Additional Information).

### COMPLETE SCHEDULES FIRST

Complete Schedules 1 through 20 and transfer the totals as indicated before completing Statements A and B. Be sure to complete all applicable lines in Schedules 1 through 20.

**COMPLETE ALL ITEMS 22 THROUGH 68**

Complete all items in Statement A and Statement B. Enter "0" where appropriate.

## SCHEDULES 1 THROUGH 12

**SCHEDULE 1 – ACCOUNTS RECEIVABLE AGING SCHEDULE –** The labor organization must report 1) all accounts with an entity or individual that aggregate to a value of $5,000 or more and that are more than 90 days past due at the end of the reporting period or were liquidated, reduced or written off during the reporting period; and 2) the total aggregated value of all other accounts.

**Column (A):** Enter on Lines 1 through 24 the name of any entity or individual with which the labor organization has an account receivable of $5,000 or more that is 90 days or more past due at the end of the reporting period or that was liquidated, reduced or written off during the reporting period without the receipt of cash sufficient to cover the total value of the account receivable.

**Column (B):** Enter on Lines 1 through 24 the total amount of money owed to the labor organization by the entity or individual at the end of the reporting period. Enter on Line 25 the total from any continuation pages. Add Lines 1 through 25 and enter the total on Line 26. Enter on Line 27 the total amount of money owed to the labor organization in all other accounts receivable not required to be reported above. Add Lines 26 and 27 and enter the total on Line 28. The total from Line 28, Column (B) will be forwarded to Item 23, Column (B) of Statement A.

**Column (C):** Enter on Lines 1 through 24 the total amount of money owed to the labor organization by the entity or individual at the end of the reporting period that is 90 to 180 days past due. Enter on Line 25 the total from any continuation pages. Add Lines 1 through 25 and enter the total on Line 26. Enter on Line 27 the total amount of money owed to the labor organization in all other accounts receivable (those of less than $5,000) that are 90 to 180 days past due. Add Lines 26 and 27 and enter the total on Line 28.

**Column (D):** Enter on Lines 1 through 24 the total amount of money owed to the labor organization by the entity or individual at the end of the reporting period that is more than 180 days past due. Enter on Line 25 the total from any continuation pages. Add Lines 1 through 25 and enter the total on Line 26. Enter on Line 27 the total amount of money owed to the labor organization in all other accounts receivable (those of less than $5,000) that are more than 180 days past due. Add Lines 26 and 27 and enter the total on Line 28.

**Column (E):** Enter on Lines 1 through 24 the total amount of money owed to the labor organization by the entity or individual that was liquidated, reduced or written off during the reporting period by the reporting labor organization without the receipt of cash sufficient to cover the total value of the account receivable. Enter on Line 25 the total from any continuation pages. Add Lines 1 through 25 and enter the total on Line 26. Enter on Line 27 the total amount of money owed to the labor organization in all other accounts receivable (those of less than $5,000) that was liquidated, reduced or written off during the reporting period by the reporting labor organization without the receipt of cash sufficient to cover the total value of the account receivable. Add Lines 26 and 27 and enter the total on Line 28.

Provide in Item 69 (Additional Information) all details and circumstances in connection with the liquidation, reduction or writing off of any account receivable, in accordance with the instructions for Item 15 (Acquisition or Disposition of Assets).

**SCHEDULE 2 – LOANS RECEIVABLE** — Report details of all direct and indirect loans (whether or not evidenced by promissory notes or secured by mortgages) owed to the labor organization at any time during the reporting period by individuals, business enterprises, benefit plans, and other entities including labor organizations. An example of an indirect loan is a disbursement by the labor organization to an educational institution for the tuition expense of an officer, employee, or member that must be repaid to the labor organization by that individual. Be sure to report all loans that were made and repaid in full during the reporting period. Do not include investments in corporate bonds or mortgages purchased on a block basis through a bank or similar institution, which must be reported in Schedule 5 (Investments Other Than U.S. Treasury Securities).

***NOTE:*** *Advances, including salary advances, are considered loans and must be reported in Schedule 2 (Loans Receivable). However, advances to officers and employees of the labor organization for travel expenses necessary for conducting official business are not considered loans if the following conditions are met:*

- *The amount of an advance for a specific trip does not exceed the amount of expenses reasonably expected to be incurred for official travel in the near future, and the amount of the advance is fully repaid or fully accounted for by vouchers or paid receipts within 30 days after the completion or cancellation of the travel.*

- *The amount of a standing advance to an officer or employee who must frequently travel on official business does not unreasonably exceed the average monthly travel expenses for which the individual is separately reimbursed after submission of vouchers or paid receipts, and the individual does not exceed 60 days without engaging in official travel.*

*See the instructions for Schedules 7 (Other Assets), 11 (All Officers and Disbursements to Officers) and 12 (Disbursements to Employees) for reporting travel advances that meet these criteria.*

**Column (A):** Enter the following information on Lines 1 through 3 (and on continuation pages if necessary):

- The name of each officer, employee, or member whose total loan indebtedness to the labor organization at any time during the reporting period exceeded $250, and the name of each business enterprise which had any loan indebtedness, regardless of amount, at any time during the reporting period;

- The purpose of each loan;

- The security given for each loan; and

- The terms of repayment for each loan.

For each officer or employee listed, indicate after each name either "O" (officer) or "E" (employee).

**Column (B):** Enter on Lines 1 through 3 the loan amounts outstanding at the start of the reporting period from each listed individual and business enterprise. Enter on Line 4 the total from any continuation pages. Enter on Line 5 the total of loans made to officers, employees, or members whose total individual loan indebtedness to the labor organization at any time during the reporting period did not exceed $250, and all loans, regardless of amount, made to other individuals and entities. Add Lines 1 through 5 and enter the total on Line 6 and in Item 24 (Loans Receivable), Column (A) of Statement A.

**Column (C):** Enter on Lines 1 through 3 the amount of loans made during the reporting period to each listed individual and business enterprise. Enter on Line 4 the total from any continuation pages. Enter on Line 5 the total of all other loans made during the reporting period. Add Lines 1 through 5 and enter the total on Line 6 and in Item 61 (Loans Made) of Statement B.

**Columns (D)(1) and (D)(2):** Enter on Lines 1 through 3 the amount of loan repayments during the reporting period from each listed individual and business enterprise. Report in these columns only the portion of the payments applied toward principal; interest received must be reported in Item 40 (Interest). Use Column (D)(1) to report repayments received in cash. Use Column (D)(2) to report repayments made in a manner other than cash, such as repayments made by officers or employees by means of deductions from their salaries. Enter on Line 4 the totals from any additional pages. Enter on Line 5 the amount of loan repayments from all other loans. Add Lines 1 through 5, Columns (D)(1) and (D)(2), and enter the totals on Line 6. Enter the total from Line 6, Column (D)(1) in Item 45 (Repayments of Loans Made) of Statement B. Explain in Item 69 (Additional Information) any non-cash amounts reported in Column (D)(2).

**Column (E):** Enter on Lines 1 through 3 the loan amounts outstanding at the end of the reporting period for each listed individual and business enterprise. Enter on Line 4 the total from any continuation pages. Enter on Line 5 the total amount outstanding at the end of the reporting period for all other loans. Add Lines 1 through 5 and enter the total on Line 6 and in Item 24 (Loans Receivable), Column (B) of Statement A. If any loans receivable were liquidated, reduced or written off during the reporting period, the reason and the amount must be reported in Item 69 (Additional Information).

***NOTE:** Section 503(a) of the LMRDA (29 U.S.C. 503) prohibits labor organizations from making direct or indirect loans to any officer or employee of the labor organization which results in a total indebtedness on the part of such officer or employee to the labor organization in excess of $2,000 at any time.*

**SCHEDULE 3 – SALE OF INVESTMENTS AND FIXED ASSETS —** Report details of the sale or redemption by the labor organization of U.S. Treasury securities, marketable securities, other investments, and fixed assets, including those fixed assets that were expensed (that is, the cost of the asset was charged to current expenses, rather than entered on the books and periodically depreciated), during the reporting period. Include receipts from sales of mortgages that were purchased on a block basis through a bank or similar institution. Do not include the receipts from repayments by individual mortgagors, which must be reported in Schedule 2 (Loans Receivable) as loan repayments.

**Column (A):** Enter on Lines 1 through 11 (and on additional pages, if necessary) a general description of the type of investment or fixed asset sold, such as U.S. Treasury securities, stocks, bonds, land, automobiles, etc. If land or buildings were sold, enter the location of the property, including the street address, if appropriate.

**Column (B):** Enter the total cost of each type of investment (including any transaction costs) or fixed asset described in Column (A).

**Column (C):** Enter the value at which the investments or fixed assets were shown on the labor organization's books.

**Column (D):** Enter the gross sales (or contract) price of the investments or fixed assets.

**Column (E):** Enter the net amount received from the sale of the investments or fixed assets. If the amount received during the reporting period is less than the amount due (gross sales price less any deductions for selling expenses and repayments of secured loans or mortgages), the additional amount due to the labor organization must be reported in Schedule 7 (Other Assets) with a description sufficient to identify the type of asset. However, if a mortgage or note is taken back, it must be reported as a new loan in Schedule 2 (Loans Receivable).

Enter on Line 12, Columns (B) through (E) the totals from any continuation pages. Add Lines 1 through 12, Columns (B) through (E), and enter the totals on Line 13.

Enter on Line 14 the total amount from the sale or redemption of U.S. Treasury securities, marketable securities, or other investments that was promptly reinvested (i.e., "rolled over") in U.S. Treasury securities, marketable securities, or other investments during the reporting period. Calculate the total amount reinvested by adding, for each investment, the lower of each investment's original cost or the amount received from the sale or redemption that was actually reinvested. If only a portion of the amount received was reinvested, only the reinvested portion may be included on Line 14. Interest and dividends received during the reporting period must be reported in Items 40 (Interest) and 41 (Dividends).

Subtract Line 14 from Line 13, Column (E), and enter the difference on Line 15 and in Item 43 (Sale of Investments and Fixed Assets) of Statement B.

**SCHEDULE 4 – PURCHASE OF INVESTMENTS AND FIXED ASSETS —** Report details of the purchase by the labor organization of U.S. Treasury securities, marketable securities, other investments, and fixed assets, including those fixed assets that were expensed (that is, the cost of the asset was charged to current expenses, rather than entered on the books and periodically depreciated), during the reporting period. Include disbursements for mortgages that were purchased on a block basis through a bank or similar institution.

**Column (A):** Enter on Lines 1 through 11 (and on additional pages, if necessary) a general description of the type of investment or fixed asset purchased, such as U.S. Treasury securities, stocks, bonds, land, automobiles, etc. If land or buildings were purchased, enter the location of the property, including the street address, if appropriate.

**Column (B):** Enter the total cost of each type of investment (including any transaction costs) or fixed asset described in Column (A).

**Column (C):** Enter the value at which the investments or fixed assets were entered on the labor organization's books. If assets were traded in on assets purchased, answer Item 15 (Acquisition or Disposition of Assets) "Yes," and provide in Item 69 the cost, book value, and trade-in allowance in accordance with the instructions for Item 15.

**Column (D):** Enter the total amount disbursed for each type of investment or fixed asset purchased during the reporting period. Do not include any unpaid balance that must be reported in Schedule 9 (Loans Payable) or Item 32 (Mortgages Payable) of Statement A.

Enter on Line 12, Columns (B) through (D), the totals from any continuation pages. Add Lines 1 through 12, Columns (B) through (D), and enter the totals on Line 13.

Enter on Line 14 the total amount from the sale or redemption of U.S. Treasury securities, marketable securities, or other investments that was promptly reinvested (i.e., "rolled over") in U.S. Treasury securities, marketable securities, or other investments during the reporting period. Calculate the total amount reinvested by adding, for each investment, the lower of each investment's original cost or the amount received from the sale or redemption that was actually reinvested. If only a portion of the amount received was reinvested, only the reinvested portion may be included on Line 14. Interest and dividends received during the reporting period must be reported in Items 40 (Interest) and 41 (Dividends). The total on Line 14 must agree with the amount reported on Line 14 of Schedule 3 (Sale of Investments and Fixed Assets).

Subtract Line 14 from Line 13, Column (D), and enter the difference on Line 15 and in Item 60 (Purchase of Investments and Fixed Assets) of Statement B.

**SCHEDULE 5 – INVESTMENTS OTHER THAN U.S. TREASURY SECURITIES —** Report details of all the labor organization's investments at the end of the reporting period, other than U.S. Treasury securities. Include mortgages purchased on a block basis and any investments in a trust as defined in Section X (Trusts in Which a Labor Organization is Interested) of these instructions. Do not include savings accounts, certificates of deposit, or money market accounts, which must be reported in Item 22 (Cash) of Statement A.

**Line 1:** Enter in Column (B) the total cost of all the labor organization's marketable securities including transaction costs such as brokerage commissions. Marketable securities are those for which current market values can be obtained from published reports of transactions in listed securities or in securities traded "over the counter," such as corporate stocks and bonds, stock and bond mutual funds, state and municipal bonds, and foreign government securities.

**Line 2:** Enter in Column (B) the total book value of all the labor organization's marketable securities. Book value is the lower of cost or market value.

**Line 3:** List in Column (A) each marketable security that has a book value over $5,000 and exceeds 5% of the total book value entered on Line 2 and enter its book value in Column (B).

**Line 4:** Enter the total cost, including any transaction costs, of all the labor organization's other investments (that is, those that are not U.S. Treasury securities or marketable securities). Include mortgages purchased on a block basis.

**Line 5:** Enter the total book value of such other investments. Book value is the lower of cost or market value.

**Line 6:** List in Column (A) each other investment that has a book value over $5,000 and exceeds 5% of the total book value entered on Line 5 and enter its book value in Column (B).

***NOTE:*** *All trusts in which the labor organization is interested which are investments of the labor organization (such as real estate trusts, building corporations, etc.) must be reported in Schedule 5. On Lines 6(a) through (d) enter the name of each trust in Column (A) and the labor organization's share of its book value in Column (B).*

Enter on Line 6(e) the total from any continuation pages.

**Line 7:** Add Lines 2 and 5 and enter the total on Line 7 and in Item 26 (Investments), Column (B) of Statement A.

**SCHEDULE 6 – FIXED ASSETS —** Report details of all fixed assets, such as land, buildings, automobiles and other vehicles, and office furniture and equipment owned by the labor organization at the end of the reporting period. Land and buildings must be itemized, whereas automobiles and other vehicles, and office furniture and equipment should be aggregated. Include fixed assets that were expensed (that is, the cost of the asset was charged to current expenses, rather than entered on the books and periodically depreciated), fully depreciated, or carried on the labor organization's books at scrap value or other nominal value.

**Column (A):** Enter on Line 1 the location of any land and on Line 3 the location of any buildings owned by the labor organization. Use continuation pages if the labor organization owns multiple parcels or buildings.

**Column (B):** Enter the cost or other basis of the fixed assets listed in Column (A), including totals from any continuation pages.

**Column (C):** Enter the accumulated depreciation, if any, of the fixed assets (except land) listed in Column (A) whose cost or other basis is reported in Column (B), including totals from any continuation pages. If the labor organization "expenses" fixed assets, also include in Column (C) the amount that the labor organization charged to expenses when the assets were purchased.

**Column (D):** Enter the amount at which the fixed assets listed in Column (A) are carried on the labor organization's books, including totals from any additional pages. Include the nominal amount, if any, at which fully depreciated assets are carried on the labor organization's books. The amount reported in Column (D) should be the difference between Columns (B) and (C).

**Column (E):** Enter the fair market value of land and of all assets listed in Column (A) that were expensed, fully depreciated, or depreciated to scrap value or nominal value, including totals from any additional pages. It is not necessary to secure a formal appraisal of the assets; a good faith estimate is sufficient. The value used for insurance purposes or for tax appraisals, for example, will normally be acceptable as representing the fair market value.

Add Lines 1 through 7 for each of Columns (B) through (E), and enter the totals on Line 8. Enter the total from Line 8, Column (D) in Item 27 (Fixed Assets), Column (B) of Statement A.

**SCHEDULE 7 – OTHER ASSETS —** Report details of all the labor organization's assets at the end of the reporting period other than Item 22 (Cash), Item 23 (Accounts Receivable), Item 24 (Loans Receivable), Item 25 (U.S. Treasury Securities), Item 26 (Investments), and Item 27 (Fixed Assets).

The labor organization's other assets must be described in Column (A) and may be classified by general groupings or bookkeeping categories, such as utility deposits, inventory of supplies for resale, or travel advances that are not required to be reported as loans as explained in the instructions for Schedule 2 (Loans Receivable), if the description is sufficient to identify the type of assets. Enter in Column (B) the value as shown on the labor organization's books of each asset or group of assets described in Column (A).

***NOTE:** If the labor organization has an ownership interest of a non-investment nature in a trust in which it is interested (such as a training fund) the value of the labor organization's ownership interest in the entity as shown on the labor organization's books must be reported in Schedule 7 (Other Assets). Enter in Column (A) the name of any such entity. Enter in Column (B) the value as shown on the labor organization's books of its share of the net assets of any such entity.*

Enter on Line 14 the total from any continuation pages. Add Lines 1 through 14 and enter the total on Line 15 and in Item 28 (Other Assets), Column (B) of Statement A.

**SCHEDULE 8 – ACCOUNTS PAYABLE AGING SCHEDULE –** The labor organization must report 1) individual accounts that are valued at $5,000 or more and that are more than 90 days past due at the end of the reporting period or were liquidated, reduced or written off during the reporting period; and 2) the total aggregated value of all other accounts.

**Column (A):** Enter on Lines 1 through 24 the name of any entity or individual with which the labor organization has an account payable of $5,000 or more that is 90 days or more past due at the end of the reporting period or that was liquidated, reduced or written off during the reporting period without the disbursement of cash sufficient to cover the total value of the account payable.

**Column (B):** Enter on Lines 1 through 24 the total amount of money owed by the labor organization to the entity or individual at the end of the reporting period. Enter on Line 25 the total from any continuation pages. Add Lines 1 through 25 and enter the total on Line 26. Enter on Line 27 the total amount of money owed by the labor organization in all other accounts payable not required to be reported above. Add Lines 26 and 27 and enter the total on Line 28. The total from Line 28, Column (B) should be entered in Item 30, Column (D) of Statement A.

**Column (C):** Enter on Lines 1 through 24 the total amount of money owed by the labor organization to the entity or individual at the end of the reporting period that is 90 to 180 days past due. Enter on Line 25 the total from any continuation pages. Add Lines 1 through 25 and enter the total on Line 26. Enter on Line 26 the total amount of money owed by the labor organization in all other accounts payable (those of less than $5,000) that are 90 to 180 days past due. Add Lines 26 and 27 and enter the total on Line 28.

**Column (D):** Enter on Lines 1 through 24 the total amount of money owed by the labor organization to the entity or individual at the end of the reporting period that is more than 180 days past due. Enter on Line 25 the total from any continuation pages. Add Lines 1 through 25 and enter the total on Line 26. Enter on Line 27 the total amount of money owed by the labor organization in all other accounts payable (those of less than $5,000) that are more than 180 days past due. Add Lines 26 and 27 and enter the total on Line 28.

**Column (E):** Enter on Lines 1 through 24 the total amount of money owed by the labor organization to the entity or individual that was written off during the reporting period by the reporting labor organization without the disbursement of cash sufficient to cover the total value of the account payable. Enter on Line 25 the total from any continuation pages. Add Lines 1 through 25 and enter the total on Line 26. Enter on Line 27 the total amount of money owed by the labor organization in all other accounts payable (those of less than $5,000) that was written off during the reporting period by the reporting labor organization without the disbursement of cash sufficient to cover the total value of the account payable. Add Lines 26 and 27 and enter the total on Line 28.

Provide in Item 69 (Additional Information) all details and circumstances in connection with the writing off of the account payable, including the reason and amount.

**SCHEDULE 9 – LOANS PAYABLE —** Report details of all loans payable on which the labor organization owed money at any time during the reporting period except those secured by mortgages or similar liens on real property (land or buildings) that must be reported in Item 32 (Mortgages Payable) of Statement A.

**Column (A):** Enter on Lines 1 through 11 (and on continuation pages, if necessary) the name of each business enterprise to which a loan was payable. Also list the source of all other loans by general categories, such as labor organizations, individuals, etc.

**Column (B):** For each loan source listed in Column (A), enter the amount, if any, owed by the labor organization at the start of the reporting period. Enter on Line 12 the total from any continuation pages. Add Lines 1 through 12 and enter the total on Line 13 and in Item 31 (Loans Payable), Column (C) of Statement A.

**Column (C):** For each loan source listed in Column (A), enter the amount, if any, obtained by the labor organization during the reporting period. Enter on Line 12 the total from any continuation pages. If, due to discounting by a bank or for any other reason, the amount received from a loan was less than the face value of the note or the amount repayable, enter the amount actually received and explain in Item 69 (Additional Information). Add Lines 1 through 12 and enter the total on Line 13 and in Item 44 (Loans Obtained) of Statement B.

**Columns (D)(1) and (D)(2):** For each loan source listed in Column (A), enter the amount, if any, that the labor organization repaid to the lender during the reporting period. Report only repayments of principal; interest paid must be reported in Schedule 18 (General Overhead). Use Column (D)(1) to report repayments made in cash. Use Column (D)(2) to report repayments made in a manner other than by cash, such as repayments made to a creditor by offsetting an amount owed by the creditor to the labor organization. Enter on Line 12 the totals from any additional pages. Add Lines 1 through 12, Columns (D)(1) and (D)(2), and enter the totals on Line 13. Enter the total from Line 13, Column (D)(1) in Item 62 (Repayment of Loans Obtained) of Statement B. Explain in Item 69 (Additional Information) any non-cash amounts reported in Column (D)(2).

**Column (E):** For each loan source listed in Column (A), enter the balance, if any, that the labor organization owed the listed lender at the end of the reporting period. Enter on Line 12 the total from any continuation pages. If any loans payable were written off during the reporting period, the reason and amount must be reported in Item 69 (Additional Information). Add Lines 1 through 12 and enter the total on Line 13 and in Item 31 (Loans Payable), Column (D) of Statement A.

**SCHEDULE 10 – OTHER LIABILITIES —** Report details of all the labor organization's liabilities at the end of the reporting period other than Item 30 (Accounts Payable), Item 31 (Loans Payable), and Item 32 (Mortgages Payable) of Statement A.

Any portion of withheld taxes or any other payroll or other deductions, which have not been transmitted at the end of the reporting period, are liabilities of the labor organization and must be reported in Schedule 10. Payroll or other deductions that are retained by the labor organization (such as repayments of loans to officers or employees) must be fully explained in Item 69 (Additional Information).

The labor organization's other liabilities must be described in Column (A) and may be classified by general groupings or bookkeeping categories if the description is sufficient to identify the type of liability. List separately any payroll taxes withheld but not yet paid, other unpaid payroll taxes of the labor organization, such as FICA taxes, and any funds collected on behalf of affiliates or members and not disbursed by the end of the reporting period. Do not include reserves for special purposes (for example, "Reserve for Building Fund") that are actually an allocation of certain assets for specific purposes rather than a liability.

Enter in Column (B) the amount of each liability described in Column (A). Enter on Line 13 the total from any additional pages. Add Lines 1 through 13 and enter the total on Line 14 and in Item 33 (Other Liabilities), Column (D) of Statement A.

**SCHEDULE 11 – ALL OFFICERS AND DISBURSEMENTS TO OFFICERS —** List all the labor organization's officers and report all salaries and other direct and indirect disbursements to officers during the reporting period. Also report the percentage of time spent by each officer in the categories provided.

***NOTE:*** *A "direct disbursement" to an officer is a payment made by the labor organization to the officer in the form of cash, property, goods, services, or other things of value.*

*An "indirect disbursement" to an officer is a payment made by the labor organization to another party for cash, property, goods, services, or other things of value received by or on behalf of the officer. "On behalf of the officer" refers to a payment received by a party other than the officer or the labor organization for the personal interest or benefit of the officer. Such payments include those made through a credit arrangement under which charges are made to the account of the labor organization and are paid by the labor organization. For example, when a union, through its credit arrangements, is billed directly and pays the hotel bills of an officer who, during his workweek, resides at a hotel in the city where the union headquarters is located away from his legal residence in another city, the payments must be reported as disbursements to the officer.*

**Column (A):** Enter in (A) the last name, first name, and middle initial of each person who held office in the labor organization at any time during the reporting period. Include all the labor organization's officers whether or not any salary or other disbursements were made to them or on their behalf by the labor organization. "Officer" is defined in section 3(n) of the LMRDA (29 U.S.C. 402) as "any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body."

**Column (B):** Enter in (B) the title of the position each officer listed held during the reporting period. If an officer held more than one position during the reporting period, list each position and the dates on which the officer held the position.

**Column (C):** Enter in (C) the status of each officer: "New" for a new officer who took office during the reporting period; "Past" for a past officer who was not in office at the end of the reporting period; or "Continuing" for a continuing officer who was in office before the reporting period and was still in office at the end of the reporting period. If any officer was not elected at a regular election in accordance with the labor organization's constitution and bylaws or other governing documents on file with OLMS, explain the manner in which the officer was chosen in Item 69 (Additional Information).

**Column (D):** Enter the gross salary of each officer (before tax withholdings and other payroll deductions). Include disbursements for "lost time" or time devoted to union activities.

**Column (E):** Enter the total allowances made by direct and indirect disbursements to each officer on a daily, weekly, monthly, or other periodic basis. Do not include allowances paid on the basis of mileage or meals which must be reported in Column (F) or (G), as applicable.

**Column (F):** Enter all direct and indirect disbursements to each officer that were necessary for conducting official business of the labor organization, except salaries or allowances which must be reported in Columns (D) and (E), respectively.

Examples of disbursements to be reported in Column (F) include: all expenses that were reimbursed directly to an officer, meal allowances and mileage allowances, expenses for officers' meals and entertainment, and various goods and services furnished to officers but charged to the labor organization. Such disbursements should be included in Column (F) only if they were necessary for conducting official business; otherwise, report them in Column (G). Also include in Column (F) travel advances that are not considered loans as explained in the instructions for Schedule 2 (Loans Receivable).

Do not report the following disbursements in Schedule 11:

- Reimbursements to an officer for the purchase of investments or fixed assets, such as reimbursing an officer for a file cabinet purchased for office use, which must be reported in Schedule 4 (Purchase of Investments and Fixed Assets) and explained in Item 69 (Additional Information);
- Indirect disbursements for temporary lodging (room rent charges only) or transportation by public carrier necessary for conducting official business while the officer is in travel status away from his or her home and principal place of employment with the labor organization if payment is made by the labor organization directly to the provider or through a credit arrangement and these disbursements are reported in disbursement Schedules 15 through 20;
- Disbursements made by the labor organization to someone other than an officer as a result of transactions arranged by an officer in which property, goods, services, or other things of value were received by or on behalf of the labor organization rather than the officer, such as rental of offices and meeting rooms, purchase of office supplies, refreshments and other expenses of membership banquets or meetings, and food and refreshments for the entertainment of groups other than the officers and membership on official business;
- Office supplies, equipment, and facilities furnished to officers by the labor organization for use in conducting official business; and
- Maintenance and operating costs of the labor organization's assets, including buildings, office furniture, and office equipment; however, see "Special Rules for Automobiles" below.

**Column (G):** Enter all other direct and indirect disbursements to each officer. Include all disbursements for which cash, property, goods, services, or other things of value were received by or on behalf of each officer and were essentially for the personal benefit of the officer and not necessary for conducting official business of the labor organization.

Include in Column (G) all disbursements for transportation by public carrier between the officer's home and place of employment or for other transportation not involving the conduct of official business. Also, include the operating and maintenance costs of all the labor organization's assets (automobiles, etc.) furnished to officers essentially for the officers' personal use rather than for use in conducting official business.

Do not include in Column (G) loans to officers, which must be reported in Schedule 2 (Loans Receivable) or disbursements for benefits to officers, which must be reported in disbursement Schedule 20 (Benefits).

**Column (H):** Add Columns (D) through (G) of each Line and enter the totals in Column (H). The totals in Column (H) must be allocated to Schedules 15 through 19 according to the instructions for those schedules.

Enter on Line 6 the totals from any continuation pages for Schedule 11.

Enter the totals of lines 1 through 6 for each Column (D) through (H) on Line 7.

Enter on line 8 the total amount of withheld taxes, payroll deductions, and all other deductions. Subtract line 8 from line 7, Column (H), and enter the difference on line 9.

**Line (I):** Enter the estimated percentage of time spent by the officer on activities that fall within Schedules 15 through 19 in the box next to that schedule. You may round to the nearest 10%. When the time reported by an individual in an activity is less than 5% of his or her total work time, the officer's best estimate to the nearest percentage should be reported rather than rounding to zero. The total must equal 100%. It is understood that these figures may be imprecise. For instance, the president of an intermediate body may spend four months working intensely on a multi-state contract negotiation, two months lobbying against a state referendum, two more months on a contentious organizing drive, and throughout these activities he had to keep up with his other duties as president. The president's good-faith estimate might be to report 50% on Schedule 15 – Representational Activities, 17% on Schedule 16 – Political Activities and Lobbying, 3% on Schedule 17 – Contributions, Gifts, and Grants, and 30% on Schedule 19 – Union Administration. The example is not intended to be a representation of a typical allocation of time but it should be used to help understand the rationale that should be employed when making these determinations.

Using these percentages, aggregate the amount of total disbursements (Column (H)) allocated to each schedule for every officer and report the total on Line 3 of the Detailed Summary Page. It may be helpful to create an intermediate worksheet to sum the salary disbursements for each schedule, but only the totals need to be reported on the Detailed Summary Page.

## SPECIAL RULES FOR AUTOMOBILES

Include in Column (G) of Schedule 11 that portion of the operating and maintenance costs of any automobile owned or leased by the labor organization to the extent that the use was for the personal benefit of the officer to whom it was assigned. This portion may be computed on the basis of the mileage driven on official business compared with the mileage for personal use. The portion not included in Column (G) must be reported in Column (F).

Alternatively, rather than allocating these operating and maintenance costs between Columns (F) and (G), if 50% or more of the officer's use of the vehicle was for official business, the labor organization may enter in Column (F) all disbursements relative to that vehicle with an explanation in Item 69 (Additional Information) indicating that the vehicle was also used part of the time for personal business. Likewise, if less than 50% of the officer's use of the vehicle was for official business, the labor organization may report all disbursements relative to the vehicle in Column (G) with an explanation in Item 69 indicating that the vehicle was also used part of the time on official business.

The amount of decrease in the market value of an automobile used over 50% for the personal benefit of an officer must also be reported in Item 69.

**SCHEDULE 12 – DISBURSEMENTS TO EMPLOYEES —** Report all direct and indirect disbursements to employees of the labor organization during the reporting period. Also report the percentage of time spent by each officer in the categories provided.

Include disbursements to individuals other than officers who receive lost time payments even if the labor organization does not otherwise consider them to be employees or does not make any other direct or indirect disbursements to them. The definitions of "direct disbursements" and "indirect disbursements" are the same as the definitions stated above in Schedule 11.

**Column (A):** Enter the last name, first name, and middle initial of each employee who during the reporting period received

$10,000 or more in gross salaries, allowances, and other direct and indirect disbursements from the labor organization or from the labor organization and any affiliates and/or trusts of the labor organization. ("Affiliates" means labor organizations chartered by the same parent body, governed by the same constitution and bylaws, or having the relation of parent and subordinate.) The labor organization's report, however, should not include disbursements made by affiliates or trusts but should include only the disbursements made by the labor organization.

**Column (B):** Enter the position each listed employee held in the labor organization.

**Column (C):** Enter the name of any affiliate or trust that paid any salaries, allowances, or expenses on behalf of a listed employee.

**Columns (D) through (G):** To complete Columns (D) through (G), follow the instructions for Columns (D) through (G) of Schedule 11.

Enter on Line 6, Columns (D) through (G) the totals of all gross salaries, allowances, and other disbursements for all employees of the labor organization not required to be listed above.

Enter on Line 7 the totals from any continuation pages for Schedule 12.

Add Columns (D) through (G) for each of Lines 1 through 7 and enter the totals in Column (H). The totals in Column (H) must be allocated to Schedules 15 through 19 in Line (I) by the same process described in Schedule 11. The totals must be reported on Line 4 of the appropriate schedule on the Detailed Summary Page.

Enter the totals of Lines 1 through 7 for each Column (D) through (H) on Line 8.

Enter on Line 9 the total amount of withheld taxes, payroll deductions, and all other deductions. Subtract Line 9 from Line 8, Column (H), and enter the difference on Line 10.

**SCHEDULE 13 – MEMBERSHIP STATUS INFORMATION—** Enter in Column (A) the categories of membership tracked by the reporting labor organization. Define each category of membership in Item 69 (Additional Information). The definition should include a description of the members covered by the category and indicate whether the members pay full dues.

In Column (B) enter the number of members for each of the membership categories listed in Column (A).

**Members (Line 8)** – Enter the total of all members of the labor organization (Total of Lines 1 through 7). Do not include Agency Fee Payers. Enter the total from line 8 in Item 20 (Number of Members).

**Agency Fee Paying Nonmembers (Line 9)** – Agency fee paying nonmembers are those who make payments in lieu of dues to the reporting labor organization as a condition of employment under a union security provision in a collective bargaining agreement.

**Total Members/Fee Payers (Line 10)** – Enter the total of Lines 8 and 9, which will include all members and agency fee payers. The total in Column (B) is not the total number of members of the labor organization.

Enter "Yes" in Column (C) if the category of membership listed in Column (A) is generally eligible to vote in all union elections held by the labor organization. Enter "No" if the category is generally ineligible to vote in some or all elections. Describe in Item 69 (Additional Information) any voting restrictions that apply to a category in Column (A).

## SCHEDULES 14 THROUGH 19

Schedules 14 through 19 provide detailed information on the financial operations of the labor organization in categories that reflect the services provided to union members. Receipts and disbursements are allocated to Schedules 14 through 19 and are either listed as individual entries or as aggregated entries. **Note that before completing the Detailed Summary Page for Schedules 14 through 19, you must complete the itemization pages as described below.**

These schedules will be populated for the filer by the electronic filing software as long as the labor organization uses a properly configured electronic recordkeeping system that is compatible with the software provided by the Department. The system will allocate receipts and disbursements to the proper categories and determine whether a receipt or disbursement will be individually identified or aggregated within the appropriate schedule. Information about the electronic filing software and the technical specifications can be found on the OLMS website at http://www.olms.dol.gov.

Allocating Receipts

Each receipt of the labor organization must be allocated to one of the receipt items in Statement B. Some of these items have backup schedules that require more detailed information. If a receipt does not conform to one of the defined items in Statement B it must be included in Schedule 14 (Other Receipts) in which any "major" receipts during the reporting period must be separately identified. A "major" receipt includes: 1) any individual receipt of $5,000 or more; or 2) total receipts from any single entity or individual that aggregate to $5,000 or more during the reporting period. All other receipts in this schedule are aggregated. This process is discussed further below.

Allocating Disbursements

Each disbursement of the labor organization must be allocated to one of the disbursement items in Statement B. Some of these items have backup schedules that require more detailed information. Schedules 15 through 19 reflect various services provided to union members by the union in which all "major" disbursements during the reporting period in the various categories must be separately identified. A "major" disbursement includes: 1) any individual disbursement of $5,000 or more; or 2) total disbursements to any single entity or individual that aggregate to $5,000 or more during the reporting period. All other disbursements in these schedules are aggregated.

All disbursements, other than those reported elsewhere in Statement B, must be allocated to Schedules 15 though 19, as appropriate.

**Example 1:** If the labor organization received a settlement of $4,999 in a small claims lawsuit, the receipt would not be individually identified, as long as the settlement was the only receipt from the entity or individual during the reporting period. The receipt would be aggregated with other small receipts in Line 5 of Schedule 14 (Other Receipts) on the Detailed Summary Page as discussed below.

**Example 2:** If the labor organization made three payments of $1,800 each to an office supplies vendor for office supplies used by employees engaged in contract negotiations during the reporting period, a single disbursement to the vendor of $5,400 would be listed in Line I on an Initial Itemization Page for that vendor for Schedule 15 (Representational Activities) as discussed below.

**Example 3:** If a union pays a total of $5,500 to a printing company during the reporting year and determines that $5,050 of that bill should be allocated to organizing costs, that amount must be identified in an Initial Itemization Page for the printing company for Schedule 15 (Representational Activities). If the remaining $450 paid to the same printer over the course of the year was attributable to charitable expenses, that amount will be reported in Line 5 of Schedule 17 (Contributions, Gifts, and Grants) on the Detailed Summary Page but the printer need not be identified as a recipient of any funds expended for Contributions, Gifts, and Grants, since the total paid to the printer during the reporting year for services related to Contributions, Gifts, and Grants did not exceed $5,000.

**Example 4**: The labor organization has an ongoing contract with a law firm that provides a wide range of legal services. The labor organization makes a single payment of $10,000 each month to the law firm. In a particular month the law firm spent 50% of its time on contract negotiation litigation and 50% advising the labor organization regarding, and working for the enactment of, a new Federal law. The labor organization must allocate the payment for that month as two distinct disbursements of $5,000 each to Schedule 15 (Representational Activities), and Schedule 16 (Political Activities and Lobbying).

## Procedures for Completing Schedules 14 Through 19.

Before completing the Detailed Summary Page for Schedules 14 through 19, complete an Initial Itemization Page and a Continuation Itemization Page(s), as necessary, for each payer/payee for whom there is (1) an individual receipt/disbursement of $5,000 or more or (2) total receipts/disbursements that aggregate to $5,000 or more during the reporting period. Do not complete an Initial Itemization Page for disbursements to officers or employees because these disbursements are reported in Lines 3 and 4 of the Detailed Summary Page. A separate set of continuation pages must be used for each receipt and disbursement schedule.

An Initial Itemization Page must be completed for each such payee/payer (except payees who are officers or employees of the union). If the union is using the reporting software provided by the Department, the Initial Itemization Page will expand to fit the number of receipts/disbursements from the payee/payer. If the union is completing the report in paper format and more than one page is needed for a single payee/payer, the Continuation Itemization Page should be used for all subsequent pages.

Enter in Column (A) the full name and business address of the entity or individual from which the receipt was received or to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably attain the full address, the city and state are sufficient.

Enter in Column (B) the type of business or job classification of the entity or individual, such as printing company, office supplies vendor, lobbyist, think tank, marketing firm, legal counsel, etc.

Enter in Column (C) the purpose of each individual receipt/disbursement for that payee/payer of $5,000 or more, which means a brief statement or description of the reason the receipt/disbursement was made. Examples of adequate descriptions include the following: preparing organizing campaign pamphlets, staffing a help desk, opposition research, litigation regarding representation issues, litigation regarding a refusal to bargain charge, grievance arbitration, get-out-the-vote, voter education, advocating or opposing legislation, job retraining, etc.

Enter in Column (D) the date that the receipt/disbursement was made. The date of receipt/disbursement for reporting purposes is the date the labor organization actually received or disbursed the money.

Enter in Column (E) the amount of the

receipt/disbursement.

Enter in Line (F) the total of all transactions listed in Column (E).

Enter in Line (G) the totals from any Continuation Itemization Pages for this payee/payer.

Enter in Line (H) the total of all itemized transactions with this payee/payer (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all non-itemized transactions for the payee/payer (that is, all individual transactions of less than $5,000 each).

Enter in Line (J) the total of all transactions with the payee/payer for this schedule (the sum of Lines (H) and (I)).

### Special Instructions for Reporting Credit Card Disbursements

Disbursements to credit card companies may not be reported as a single disbursement to the credit card company as the vendor. Instead, charges appearing on credit card bills paid during the reporting period must be allocated to the recipient of the payment by the credit card company according to the same process as described above.

The Department recognizes that filers will not always have the same access to information regarding credit card payments as with other transactions. Filers should report all of the information required in the itemization schedules that is available to the union.

For instance, in the case of a credit card transaction for which the receipt(s) and monthly statement(s) do not provide the full legal name of a payee and the union does not have access to any other documents that would contain the information, the union should report the name as it appears on the receipt(s) and statement(s). Similarly, if the receipt(s) and statement(s) do not include a full street address, the union should report as much information as is available and no less than the city and state. A filer may choose to report either the date of the charge or the date of the payment for a credit card transaction as long as the method of reporting is consistent throughout the form.

Once these transactions have been incorporated into the union's recordkeeping system they can be treated like any other transaction for purposes of assigning a description and purpose.

In instances when a credit card transaction is canceled and the charge is refunded in whole or part by entry of a credit on the credit card statement, the charge should be treated as a disbursement, and the credit should be treated as a receipt. In reporting the credit as a receipt, Column (C) must indicate that the receipt was in refund of a disbursement, and must identify the disbursement by date and amount.

### Special Procedures for Reporting Confidential Information

Filers may use the procedure described below to report the following types of information:

- Information that would identify individuals paid by the union to work in a non-union bargaining unit in order to assist the union in organizing employees, provided that such individuals are not employees of the union who receive more than $10,000 in the aggregate in the reporting year from the union. Employees receiving more than $10,000 must be reported on Schedule 12 – Disbursements to Employees;

- Information that would expose the reporting union's prospective organizing strategy. The union must be prepared to demonstrate that disclosure of the information would harm an organizing drive. Absent unusual circumstances information about past organizing drives should not be treated as confidential;

- Information that would provide a tactical advantage to parties with whom the reporting union or an affiliated union is engaged or will be engaged in contract negotiations. The union must be prepared to demonstrate that disclosure of the information would harm a contract negotiation. Absent unusual circumstances information about past contract negotiations should not be treated as confidential;

- Information pursuant to a settlement that is subject to a confidentiality agreement, or that the union is otherwise prohibited by law from disclosing; and,

- Information in those situations where disclosure would endanger the health or safety of an individual.

With respect to these specific types of information, if the reporting union can demonstrate that itemized disclosure of a specific major receipt or disbursement, or aggregated receipt or disbursement would be adverse to the union's legitimate interests, the union may include the receipt or disbursement in Line 3 of Summary Schedule 14 (Other Receipts) or in Line 5 of Summary Schedules 15 (Representational Activities) or 19 (Union Administration). In Item 69 (Additional Information) the union must identify each schedule from which any itemized receipts or disbursements were excluded because of an asserted legitimate interest in confidentiality. The notation must describe the general types of information that were omitted from the schedule, but the name of the payer/payee, date, and amount of the transaction(s) is not required. This procedure may not be used for Schedules 16 through 18.

A union member, however, has the statutory right "to examine any books, records, and accounts necessary to verify" the union's financial report if the member can establish "just cause" for access to the information. 29 U.S.C. 431(c); 29 U.S.C. CFR 403.8 (2002). Any exclusion of itemized receipts or disbursements from Schedules 14, 15, or 19 would constitute a *per se* demonstration of "just cause" for purposes of this Act. Consequently, any union member (and the Department), upon request, has the right to review the undisclosed information that otherwise would have appeared in the applicable schedule if the union withholds the information in order to protect confidentiality interests.

### Procedures for Completing the Detailed Summary Page

The Detailed Summary Page is used to summarize Schedules 14 through 19.

For Summary Schedule 14 (Other Receipts) enter in Line 1 the total of all itemized receipts during the reporting period from named payers. This is the sum of the amounts entered in Line (H) on all Initial Itemization Pages for the schedule.

Enter in Line 2 the total of all non-itemized receipts from named payers. This is the sum of the amounts entered in Line (I) on all Initial Itemization Pages for the schedule.

Enter in Line 3 the total of all other receipts during the reporting period relating to the schedule. This is the total from your organization's books of all receipts during the reporting period relating to this schedule for payers who did not have a single receipt of $5,000 or more or receipts that aggregated $5,000 or more.

Enter in Line 4 the total of Lines 1 through 3. Forward this total to Item 48 of

Statement B.

For Summary Schedules 15 – 19 enter in Line 1 the total of all itemized disbursements during the reporting period to named vendors. This is the sum of the amounts entered in Line (H) on all Initial Itemization Pages for the schedule.

Enter in Line 2 the total of all non-itemized disbursements to named vendors. This is the sum of the amounts entered in Line (I) on all Initial Itemization Pages for the schedule.

Enter in Line 3 the total of all disbursements to officers allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (I) of Schedule 11.

Enter in Line 4 the total of all disbursements to employees allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (I) of Schedule 12.

Enter in Line 5 the total of all other disbursements during the reporting period relating to the schedule. This is the total from your organization's books of all disbursements during the reporting period relating to this schedule for payees who did not have a single disbursement of $5,000 or more or disbursements that aggregated $5,000 or more.

Enter in Line 6 the total of Lines 1 through 5. Forward this total to the appropriate line item of Statement B.

For example, if in Schedule 15 (Representational Activities) a labor organization has $200,000 in itemized disbursements of $5,000 or more to vendors, $35,000 in non-itemized disbursements of less than $5,000 each to those vendors, $100,000 in salary disbursements to officers, $50,000 in salary disbursements to employees, and $7,000 in disbursements to vendors who did not receive a major disbursement for representational activities, then the labor organization will enter $200,000 in Line 1, $35,000 in Line 2, $100,000 in Line 3, $50,000 in Line 4, and $7,000 in Line 5 of Schedule 15 on the Detailed Summary Page. The total of Lines 1 through 5 is $392,000, which is entered in Line 6 of the summary schedule and Item 50 (Representational Activities) of Statement B.

**SCHEDULE 14 – OTHER RECEIPTS —** Report the labor organization's receipts from all sources during the reporting period, other than those that must be reported elsewhere in Statement B, such as reimbursements from officers and employees for excess expense payments or travel advances not reported as loans in Schedule 2 (Loans Receivable); receipts from fundraising activities such as raffles, bingo games, and dances; funds received from a parent body, other unions, or the public for strike fund assistance; and receipts from another labor organization which merged into the labor organization.

For all major receipts in this category:

Enter in Column (A) of an Initial Itemization Page the full name and business address of the entity or individual from which the union received $5,000 or more in Other Receipts during the reporting period. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the city and state are sufficient.

Enter in Column (B) the type of business or job classification of the entity or individual from which the union received $5,000 or more in Other Receipts during the reporting period.

Enter in Column (C) the purpose of each individual receipt of $5,000 or more from the payer in sufficient detail to determine why the receipt cannot be allocated to another schedule.

Enter in Column (D) the date that the receipt of $5,000 or more was received. The date of receipt for reporting purposes is the date the labor organization actually received the money.

Enter in Column (E) the amount of the receipt of $5,000 or more.

Enter in Line (F) the total of all transactions listed in Column (E).

Enter in Line (G) the totals from any Continuation Itemization Pages for this payer.

Enter in Line (H) the total of all itemized receipts from this payer (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all non-itemized receipts from this payer (that is, all individual receipts of less than $5,000 each).

Enter in Line (J) the total of all transactions with the payer for this schedule (the sum of Lines (H) and (I)).

An Initial Itemization Page must be completed for each payer. Only one payer should be reported per page. If the Initial Itemization Page does not provide enough space, the Continuation Itemization Page(s) should be used to report additional receipts from the payer.

Add the total amount of itemized receipts from named vendors (the sum of the amounts entered in Line (H) on all Initial Itemization Pages for Schedule 14) and enter the total on Line 1 of Summary Schedule 14 on the Detailed Summary Page. Add the total amount of non-itemized receipts from named vendors (the sum of the amounts entered in Line (I) on all Initial Itemization Pages for Schedule 14) and enter the total on Line 2 of Summary Schedule 14. Enter the total amount of all other receipts relating to this schedule from other payers during the reporting period on Line 3 of Summary Schedule 14. This is the total from your organization's books of all receipts relating to this schedule from payers who did not provide a single receipt of $5,000 or more or receipts that aggregated $5,000 or more. Add Lines 1 through 3 and enter the total on Line 4 of Summary Schedule 14 and in Item 48 (Other Receipts) of Statement B.

**SCHEDULE 15 – REPRESENTATIONAL ACTIVITIES –** Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with preparation for, and participation in, the negotiation of collective bargaining agreements and the administration and enforcement of the agreements made by the labor organization. Do not include strike benefits that must be reported in Item 57 (Strike Benefits) of Statement B. The union must also report disbursements associated with efforts to become the exclusive bargaining representative for any unit of employees, or to keep from losing a unit in a decertification election or to another labor organization, or to recruit new members.

For all major disbursements in this category:

Enter in Column (A) of an Initial Itemization Page the full name and business address of the entity or individual to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the city and state are sufficient.

Enter in Column (B) the type of business or job classification of the entity or individual to which the union disbursed $5,000 or more in Representational Activities during the reporting period, such as printing company, office supplies vendor, legal counsel, etc.

Enter in Column (C) the purpose of the disbursement of $5,000 or more, which means a brief statement or description of the reason the disbursement was made. Examples of adequate descriptions include the following: contract negotiation, grievance arbitration, litigation regarding the interpretation of a collective bargaining agreement, preparing organizing campaign pamphlets, staffing a help desk, opposition research, litigation regarding representation issues, litigation regarding a refusal to bargain, etc. Neither the name of the employer nor the specific bargaining unit that is the subject of the organizing activity need be identified.

Enter in Column (D) the date that the disbursement of $5,000 or more was made. The date of disbursement for reporting purposes is the date the labor organization actually disbursed the money.

Enter in Column (E) the amount of the disbursement of $5,000 or more.

Enter in Line (F) the total of all disbursements listed in Column (E).

Enter in Line (G) the totals from any Continuation Itemization Pages for this payee.

Enter in Line (H) the total of all itemized disbursements to this payee (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all non-itemized disbursements to this payee (that is, all individual disbursements of less than $5,000 each).

Enter in Line (J) the total of all transactions with this payee for this schedule (the sum of Lines (H) and (I)).

An Initial Itemization Page must be completed for each payee. Only one payee should be reported per page. If the Initial Itemization Page does not provide enough space, the Continuation Itemization Page(s) should be used to report additional disbursements to the payee.

Add the total amount of itemized disbursements to named vendors (the sum of the amounts entered in Line (H) on all Initial Itemization Pages for Schedule 15) and enter the total on Line 1 of Summary Schedule 15 on the Detailed Summary Page. Add the total amount of non-itemized disbursements to named vendors (the sum of the amounts entered in Line (I) on all Initial Itemization Pages for Schedule 15) and enter the total on Line 2 of Summary Schedule 15. Enter in Line 3 of Summary Schedule 15 the total of all disbursements to officers allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (I) of Schedule 11. Enter in Line 4 of Summary Schedule 15 the total of all disbursements to employees allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (I) of Schedule 12. Enter the total amount of all other disbursements relating to this schedule made to other payees during the reporting period on Line 5 of Summary Schedule 15. This is the total from your organization's books of all disbursements relating to this schedule made to payees who did not have a single disbursement of $5,000 or more or disbursements that aggregated $5,000 or more. Add Lines 1 through 5 and enter the total on Line 6 of Summary Schedule 15 and in Item 50 (Representational Activities) of Statement B.

**SCHEDULE 16 – POLITICAL ACTIVITIES AND LOBBYING–** Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with political disbursements or contributions in money. Also report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with dealing with the executive and legislative branches of the Federal, state, and local governments and with independent agencies and staffs to advance the passage or defeat of existing or potential laws or the promulgation or any other action with respect to rules or regulations (including litigation expenses). It does not matter whether the lobbying attempt succeeds.

A political disbursement or contribution is one that is intended to influence the selection, nomination, election, or appointment of anyone to a Federal, state, or local executive, legislative or judicial public office, or office in a political organization, or the election of Presidential or Vice Presidential electors, and support for or opposition to ballot referenda. It does not matter whether the attempt succeeds. Include disbursements for communications with members (or agency fee paying nonmembers) and their families for registration, get-out-the-vote and voter education campaigns, the expenses of establishing, administering and soliciting contributions to union segregated political funds (or PACs), disbursements to political organizations as defined by the IRS in 26 U.S.C. 527, and other political disbursements.

For all major disbursements in this category:

Enter in Column (A) of an Initial Itemization Page the full name and business address of the entity or individual to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the union may report only the city and state.

Enter in Column (B) the type of business or job classification of the entity or individual to which the union disbursed $5,000 or more for Political Activities and Lobbying during the reporting period, such as campaign advisor, lobbyist, marketing firm, fund raiser, think tank, issue advocacy group, printing company, office supplies vendor, legal counsel, etc.

Enter in Column (C) the purpose of the disbursement of $5,000 or more, which means a brief statement or description of the reason the disbursement was made. Examples of adequate descriptions include the following: a registration drive, get-out-the-vote campaign, voter education campaign, fund raising, advocating or opposing legislation (including litigation challenging such legislation) advocating or opposing regulations (including litigation challenging such regulations), etc. The specific campaign, legislation, regulation, referendum, etc. should be identified whenever possible. Distinguish between activities in the United States and activities in foreign countries.

Enter in Column (D) the date that the disbursement of $5,000 or more was made. The date of disbursement for reporting purposes is the date the labor organization actually disbursed the money.

Enter in Column (E) the amount of the disbursement of $5,000 or more.

Enter in Line (F) the total of all disbursements listed in Column (E).

Enter in Line (G) the totals from any Continuation Itemization Pages for this payee.

Enter in Line (H) the total of all itemized disbursements to this payee (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all non-itemized disbursements to this payee (that is, all individual disbursements of less than $5,000 each).

Enter in Line (J) the total of all transactions with this payee for this schedule (the sum of Lines (H) and (I)).

An Initial Itemization Page must be completed for each payee. Only one payee should be reported per page. If the Initial Itemization Page does not provide enough space, the Continuation Itemization Page(s) should be used to report additional disbursements to the payee.

Add the total amount of itemized disbursements to named vendors (the sum of the amounts entered in Line (H) on all Initial Itemization Pages for Schedule 16 and enter the total on Line 1 of Summary Schedule 16 on the Detailed Summary Page. Add the total amount of non-itemized disbursements to named vendors (the sum of the amounts entered in Line (I) on all Initial Itemization Pages for Schedule 16) and enter the total on Line 2 of Summary Schedule 16. Enter in Line 3 of Summary Schedule 16 the total of all disbursements to officers allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (I) of Schedule 11. Enter in Line 4 of Summary Schedule 16 the total of all disbursements to employees allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (I) of Schedule 12. Enter the total amount of all other disbursements relating to other payees during the reporting period on Line 5 of Summary Schedule 16. This is the total from your organization's books of all disbursements relating to this schedule made to payees who did not have a single disbursement of $5,000 or more or disbursements that aggregated $5,000 or more. Add Lines 1 through 5 and enter the total on Line 6 of Summary Schedule 16 and in Item 51 (Political Activities and Lobbying) of Statement B.

**SCHEDULE 17 – CONTRIBUTIONS, GIFTS, AND GRANTS –** Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with contributions, gifts, and grants, other than those listed on Schedules 15, 16, and 20. Include, for example, charitable contributions, contributions to scholarship funds, etc.

For all major disbursements in this category:

Enter in Column (A) of an Initial Itemization Page the full name and business address of the entity or individual to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the union may report only the city and state.

Enter in Column (B) the type of business or job classification of the entity or individual to which the union disbursed $5,000 or more in Contributions, Gifts, and Grants during the reporting period, such as charity, scholarship fund, state or local affiliate, etc.

Enter in Column (C) the purpose of the disbursement of $5,000 or more, which means a brief statement or description of the reason the disbursement was made. Examples of adequate descriptions include the following: medical research, community development, job retraining, education, disaster and relief assistance, athletic and youth sponsorships, etc.

Enter in Column (D) the date that the disbursement of $5,000 or more was made. The date of disbursement for reporting purposes is the date the labor organization actually disbursed the money.

Enter in Column (E) the amount of the disbursement of $5,000 or more.

Enter in Line (F) the total of all disbursements listed in Column (E).

Enter in Line (G) the totals from any Continuation Itemization Pages for this payee.

Enter in Line (H) the total of all itemized disbursements to this payee (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all non-itemized disbursements to this payee (that is, all individual disbursements of less than $5,000 each).

Enter in Line (J) the total of all transactions with this payee for this schedule (the sum of Lines (H) and (I)).

An Initial Itemization Page must be completed for each payee. Only one payee should be reported per page. If the Initial Itemization Page does not provide enough space, the Continuation Itemization Page(s) should be used to report additional disbursements to the payee.

Add the total amount of itemized disbursements to named vendors (the sum of the amounts entered in Line (H) on all Initial Itemization Pages for Schedule 17 and enter the total on Line 1 of Summary Schedule 17 on the Detailed Summary Page. Add the total amount of non-itemized disbursements to named vendors (the sum of the amounts entered in Line (I) on all Initial Itemization Pages for Schedule 17) and enter the total on Line 2 of Summary Schedule 17. Enter in Line 3 of Summary Schedule 17 the total of all disbursements to officers allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (I) of Schedule 11. Enter in Line 4 of Summary Schedule 17 the total of all disbursements to employees allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (I) of Schedule 12. Enter the total amount of all other disbursements relating to this schedule made to other payees during the reporting period on Line 5 of Summary Schedule 17. This is the total from your organization's books of all disbursements relating to this schedule made to payees who did not have a single disbursement of $5,000 or more or disbursements that aggregated $5,000 or more. Add Lines 1 through 5 and enter the total on Line 6 of Summary Schedule 17 and in Item 52 (Contributions, Gifts and Grants) of Statement B.

**SCHEDULE 18 – GENERAL OVERHEAD** – Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with general overhead that cannot be allocated to any of the other disbursement categories in Statement B.

Some disbursements for overhead do not support a specific function, so these disbursements should be reported in this schedule. Include support personnel at the labor organization's headquarters, such as building maintenance personnel and security guards, and other overhead costs. Not all support staff should be included in General Overhead. For instance, the salary of an assistant, whenever possible, should be allocated at the same ratio as the person or persons to whom they provide support.

For all major disbursements in this category:

Enter in Column (A) of an Initial Itemization Page the full name and business address of the entity or individual to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the union may report only the city and state.

Enter in Column (B) the type of business or job classification of the entity or individual to which the union disbursed $5,000 or more in General Overhead during the reporting period, such as office supplies vendor, landlord, mortgage lender, cleaning firm, security firm, etc.

Enter in Column (C) the purpose of the disbursement of $5,000 or more, in sufficient detail to determine why the disbursement cannot be allocated to another schedule.

Enter in Column (D) the date that the disbursement of $5,000 or more was made. The date of disbursement for reporting purposes is the date the labor organization actually disbursed the money.

Enter in Column (E) the amount of the disbursement of $5,000 or more.

Enter in Line (F) the total of all disbursements listed in Column (E).

Enter in Line (G) the totals from any Continuation Itemization Pages for this payee.

Enter in Line (H) the total of all itemized disbursements to this payee (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all non-itemized disbursements to this payee (that is, all individual disbursements of less than $5,000 each).

Enter in Line (J) the total of all transactions with this payee for this schedule (the sum of Lines (H) and (I)).

An Initial Itemization Page must be completed for each payee. Only one payee should be reported per page. If the Initial Itemization Page does not provide enough space, the Continuation Itemization Page(s) should be used to report additional disbursements to the payee.

Add the total amount of itemized disbursements to named vendors (the sum of the amounts entered in Line (H) on all Initial Itemization Pages for Schedule 18 and enter the total on Line 1 of Summary Schedule 18 on the Detailed Summary Page. Add the total amount of non-itemized disbursements to named vendors (the sum of the amounts entered in Line (I) on all Initial Itemization Pages for Schedule 18) and enter the total on Line 2 of Summary Schedule 18. Enter in Line 3 of Summary Schedule 18 the total of all disbursements to officers allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (I) of Schedule 11. Enter in Line 4 of Summary Schedule 18 the total of all disbursements to employees allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (I) of Schedule 12. Enter the total amount of all other disbursements relating to this schedule made to other payees during the reporting period on Line 5 of Summary Schedule 18. This is the total from your organization's books of all disbursements relating to this schedule made to payees who did not have a single disbursement of $5,000 or more or disbursements that aggregated $5,000 or more. Add Lines 1 through 5 and enter the total on Line 6 of Summary Schedule 18 and in Item 53 (General Overhead) of Statement B.

**SCHEDULE 19 – UNION ADMINISTRATION** — Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with union administration. Union administration includes disbursements relating to the nomination and election of union officers, the union's regular membership meetings, intermediate, national and international meetings, union disciplinary proceedings, the administration of trusteeships, and the administration of apprenticeship and member education programs (not including political education which should be reported in Schedule 16).

For all major disbursements in this category:

Enter in Column (A) of an Initial Itemization Page the full name and business address of the entity or individual to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the union may report only the city and state.

Enter in Column (B) the type of business or job classification of the entity or individual to which the union disbursed

$5,000 or more for Union Administration during the reporting period, such as printing company, office supplies vendor, legal counsel, etc.

Enter in Column (C) the purpose of the disbursement of $5,000 or more in sufficient detail to determine why the disbursement cannot be allocated to another schedule. For example, printing of election ballots, rental of meeting facilities for a union convention, printing of transcripts of trusteeship hearing, etc.

Enter in Column (D) the date that the disbursement of $5,000 or more was made. The date of disbursement for reporting purposes is the date the labor organization actually disbursed the money.

Enter in Column (E) the amount of the disbursement of $5,000 or more.

Enter in Line (F) the total of all disbursements listed in Column (E).

Enter in Line (G) the totals from any Continuation Itemization Pages for this payee.

Enter in Line (H) the total of all itemized disbursements to this payee (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all non-itemized disbursements to this payee (that is, all individual disbursements of less than $5,000 each).

Enter in Line (J) the total of all transactions with this payee for this schedule (the sum of Lines (H) and (I)).

An Initial Itemization Page must be completed for each payee. Only one payee should be reported per page. If the Initial Itemization Page does not provide enough space, the Continuation Itemization Page(s) should be used to report additional disbursements to the payee.

Add the total amount of itemized disbursements to named vendors (the sum of the amounts entered in Line (H) on all Initial Itemization Pages for Schedule 19 and enter the total on Line 1 of Summary Schedule 19 on the Detailed Summary Page. Add the total amount of non-itemized disbursements to named vendors (the sum of the amounts entered in Line (I) on all Initial Itemization Pages for Schedule 19) and enter the total on Line 2 of Summary Schedule 19. Enter in Line 3 of Summary Schedule 19 the total of all disbursements to officers allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (I) of Schedule 11. Enter in Line 4 of Summary Schedule 19 the total of all disbursements to employees allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (I) of Schedule 12. Enter the total amount of all other disbursements relating to this schedule made to other payees during the reporting period on Line 5 of Summary Schedule 19. This is the total from your organization's books of all disbursements relating to this schedule made to payees who did not have a single disbursement of $5,000 or more or disbursements that aggregated $5,000 or more. Add Lines 1 through 5 and enter the total on Line 6 of Summary Schedule 19 and in Item 54 (Union Administration) of Statement B.

**SCHEDULE 20 – BENEFITS – [Note: Do not use the Itemization Pages for Schedule 20. Instead use the separate Schedule 20]** Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with direct and indirect benefits for officers, employees, members, and their beneficiaries. Benefit disbursements to be reported in Schedule 20 include, for example, disbursements for life insurance, health insurance, and pensions. Do not include salary bonuses, severance payments, or payments for accrued vacation, which should be reported in Column (D) of Schedule 11 or 12.

Direct benefit disbursements are those made to officers, employees, members, and their beneficiaries from the labor organization's funds. Indirect benefit disbursements are those made from the labor organization's funds to a separate and independent entity, such as a trust or insurance company, which in turn and under certain conditions will pay benefits to the covered individuals. An example of an indirect benefit disbursement is the premium on group life insurance.

Enter in Column (A) the type of benefit, such as pension, welfare, etc.

Enter in Column (B) to whom payment was made; for example, union members, insurance company, etc. Individual union members and their beneficiaries are not required to be listed by name.

Enter in Column (C) the amount disbursed for each type of benefit.

Enter on Line 22 the total from any additional pages. Add Lines 1 through 22 and enter the total on Line 23 and in Item 55 (Benefits) of Statement B.

## STATEMENT A ASSETS AND LIABILITIES

### ASSETS

**22. CASH** — Enter the total of all the labor organization's cash on hand and on deposit at the start and end of the reporting period in Columns (A) and (B), respectively. Include all cash on hand, such as undeposited cash, checks, and money orders; petty cash; and cash in safe deposit boxes. Cash on deposit includes funds in banks, credit unions, and other financial institutions, such as checking accounts, savings accounts, certificates of deposit, and money market accounts. Also, include any interest credited to the labor organization's account during the reporting period.

***NOTE:*** *The checking account balances reported should be obtained from the labor organization's books as reconciled with the balances shown on bank statements.*

**23. ACCOUNTS RECEIVABLE** — Ordinarily, accounts receivable are moneys due for goods sold or services rendered evidenced by notes, statements, invoices, or other written evidence of a present obligation. Enter in Column (A) the total of all gross accounts receivable at the start of the reporting period. Enter in Column (B) the total of all gross accounts receivable at the end of the reporting period, which is also reported on Line 28, Column B of Schedule 1 (Accounts Receivable Aging Schedule). If accounts receivable are carried on the labor organization's books at net (gross accounts receivable less the allowance for doubtful accounts), the labor organization may report the allowance for doubtful accounts in Item 69 (Additional Information).

**24. LOANS RECEIVABLE** — Enter in Column (A) the total of all gross loans receivable at the start of the reporting period, which is also reported on Line 6, Column (B) of Schedule 2 (Loans Receivable). Enter in Column (B) the total of all gross loans receivable at the end of the reporting period, which is also reported on Line 6, Column (E) of Schedule 2.

**25. U.S. TREASURY SECURITIES** — Enter the total value of all U.S. Treasury securities as shown on the labor organization's books at the start and end of the reporting period in Columns (A) and (B), respectively. If the value reported is different from the original cost, the original cost must be reported in Item 69 (Additional Information). Other U.S. Government obligations, state and municipal bonds, and foreign government securities must be reported in Schedule 5 (Investments Other Than U.S. Treasury

Securities) under "Marketable Securities" and in Item 26 (Investments).

**26. INVESTMENTS** — Enter in Column (A) the total book value at the start of the reporting period of all investments other than U.S. Treasury securities, which are reported in Item 25 (U.S. Treasury Securities). Enter in Column (B) the total reported on Line 7 of Schedule 5 (Investments Other Than U.S. Treasury Securities).

**27. FIXED ASSETS** — Enter in Column (A) the total value as shown on the labor organization's books at the start of the reporting period of all fixed assets, such as land, buildings, automobiles, and office furniture and equipment. Enter in Column (B) the total reported on Line 8, Column (D) of Schedule 6 (Fixed Assets).

**28. OTHER ASSETS** — Enter in Column (A) the total value as shown on the labor organization's books at the start of the reporting period of all assets not reported in Items 22 through 27. Enter in Column (B) the total reported on Line 15 of Schedule 7 (Other Assets).

**29. TOTAL ASSETS** — Add Items 22 through 28, Columns (A) and (B), and enter the respective totals in Item 29.

### LIABILITIES

**30. ACCOUNTS PAYABLE** — Ordinarily, accounts payable are those obligations incurred on an open account for goods and services rendered. Enter in Column (C) the total of all gross accounts payable at the start of the reporting period. Enter in Column (D) the total of all gross accounts payable at the end of the reporting period, which is also reported on Line 28, Column B of Schedule 8 (Accounts Payable Aging Schedule).

**31. LOANS PAYABLE** — Enter in Column (C) the total of all gross loans payable at the start of the reporting period, which is also reported on Line 13, Column (B) of Schedule 9 (Loans Payable). Enter in Column (D) the total of all gross loans payable at the end of the reporting period, which is also reported on Line 13, Column (E) of Schedule 9.

**32. MORTGAGES PAYABLE** — Enter the total amount of the labor organization's obligations that were secured by mortgages or similar liens on real property (land or buildings) at the start and end of the reporting period in Columns (C) and (D), respectively.

**33. OTHER LIABILITIES** — Enter in Column (C) the total amount as shown on the labor organization's books at the start of the reporting period of all liabilities not reported in Items 30 through 32. Enter in Column (D) the total reported on Line 14 of Schedule 10 (Other Liabilities).

**34. TOTAL LIABILITIES** — Add Items 30 through 33, Columns (C) and (D), and enter the respective totals in Item 34.

**35. NET ASSETS** — Subtract Item 34 (Total Liabilities), Column (C) from Item 29 (Total Assets), Column (A) and enter the difference in Item 35, Column (C). Subtract Item 34, Column (D) from Item 29, Column (B) and enter the difference in Item 35, Column (D).

## STATEMENT B RECEIPTS AND DISBURSEMENTS

Under Statement B, receipts must be recorded when money is actually received by the labor organization and disbursements must be recorded when money is actually paid out by the labor organization.

The purpose of Statement B is to report the flow of cash in and out of the labor organization during the reporting period. Transfers between separate bank accounts or between special funds of the labor organization, such as vacation or strike funds, do not represent the flow of cash in and out of the labor organization.

Therefore, these transfers should not be reported as receipts and disbursements of the labor organization. For example, do not report a transfer of cash from the labor organization's savings account to its checking account. Likewise, the use of funds reported in Item 22 (Cash) of Statement A to purchase certificates of deposit and the redemption of certificates of deposit should not be reported in Statement B.

Since Statement B reports all cash flowing in and out of the labor organization, "netting" is not permitted. "Netting" is the offsetting of receipts against disbursements and reporting only the balance (net) as either a receipt or disbursement. For example, if an officer received $1,000 from the labor organization for convention expenses, used only $800 and returned the remaining $200, the $1,000 disbursement must be reported in Schedule 11 (All Officers and Disbursements to Officers) and the appropriate disbursement Schedule 15 through 21, and the $200 receipt must be reported in Schedule 14 (Other Receipts). It would be incorrect to report only an $800 net disbursement to the officer.

Receipts and disbursements by an agent on behalf of the labor organization are considered receipts and disbursements of the labor organization and must be reported in the same detail as other receipts and disbursements. For example, if the labor organization owns a building managed by a rental agent, the agent's rental receipts and disbursements for expenses must be reported on the labor organization's Form LM-2. Also, if the labor organization's parent body or an intermediate body functions as an agent receiving and disbursing funds of the labor organization to third parties, these receipts and disbursements must be reported on the labor organization's Form LM-2. For example, if a parent body receives the labor organization's dues and makes disbursements from that money to pay the labor organization's bills (such as payments to an attorney for legal services), those receipts and disbursements must be reported on the labor organization's Form LM-2.

## CASH RECEIPTS

**36. DUES AND AGENCY FEES –** Enter the total dues including regular dues, working dues, etc. received by the labor organization. Include dues received directly by the organization from members, dues received from employers through a checkoff arrangement, and dues transmitted to the organization by a parent body or other affiliate. Report the full dues received, including any portion that will later be transmitted to an intermediate or parent body as per capita tax. Also report in Item 36 payments in lieu of dues received from any nonmember employees as a condition of employment under a union security provision in a collective bargaining agreement.

If an intermediate or parent body receives dues checkoff directly from an employer on behalf of the reporting organization, do not report in Item 36 the portion retained by that organization for per capita tax or other purposes, such as a special assessment. Any amounts retained by the intermediate body or parent body other than per capita tax must be explained in Item 69 (Additional Information). For example, if the intermediate body or parent body retained $500 of the reporting organization's dues checkoff as payment for supplies purchased from that body by the reporting organization, this should be explained in Item 69, but the $500 should not be reported as a receipt or disbursement on either organization's Form LM-2. If, however, the intermediate body or parent body disbursed part of the reporting organization's dues checkoff on that organization's behalf, this amount should be included in Item 36 and in the appropriate disbursement item on the reporting organization's Form LM-2. For example, if the intermediate body or parent body disbursed $500 of the reporting organization's dues checkoff to an attorney who had provided lobbying services to the reporting organization, this amount should be reported in Item 36 and as a disbursement in Schedule 16 (Political Activities and Lobbying) of the reporting organization's Form LM-2.

Do not report in Item 36 dues that the reporting organization collected on behalf of other organizations for transmittal to them. For example, if the reporting organization received dues from a member of an affiliate who worked in the reporting organization's jurisdiction, the dues collected on the affiliate's behalf must be reported in Item 46.

**37. PER CAPITA TAX** — Enter the total per capita tax received by your organization if your organization is an intermediate or parent body; otherwise, enter "0" in Item 37. Include the per capita tax portion of dues received directly by your organization from members of affiliates, per capita tax received from subordinates, either directly or through intermediaries, and the per capita tax portion of dues received through a checkoff arrangement whereby local dues are remitted directly to an intermediate or parent body by employers. Do not include dues collected on behalf of subordinate organizations for transmittal to them. For example, if a parent body received dues checkoff directly from an employer and returned the local's portion of the dues, the parent body must report the dues received on behalf of the local in Item 46 (On Behalf of Affiliates for Transmittal to Them).

**38. FEES, FINES, ASSESSMENTS, WORK PERMITS** — Enter the labor organization's receipts from fees, fines, assessments, and work permits. Receipts by the labor organization on behalf of affiliates for transmittal to them must be reported in Item 46 (On Behalf of Affiliates for Transmittal to Them).

**39. SALE OF SUPPLIES** — Enter the total amount received by the labor organization from the sale of supplies such as union logo clothing, lapel pins, bumper stickers, etc.

**40. INTEREST** — Enter the total amount of interest received by the labor organization from savings accounts, bonds, mortgages, loans, and all other sources.

**41. DIVIDENDS** — Enter the total amount of dividends from stocks and other investments received by the labor organization. Do not include "dividends" from credit unions, savings and loan associations, etc., which must be reported in Item 40 (Interest).

**42. RENTS** — Enter the total amount of rents received by the labor organization.

**43. SALE OF INVESTMENTS AND FIXED ASSETS** — Enter the total reported on Line 15 of Schedule 3 (Sale of Investments and Fixed Assets).

**44. LOANS OBTAINED** — Enter the total reported on Line 13, Column (C) of Schedule 9 (Loans Payable).

**45. REPAYMENTS OF LOANS MADE** — Enter the total reported on Line 6, Column (D)(1) of Schedule 2 (Loans Receivable).

**46. ON BEHALF OF AFFILIATES FOR TRANSMITTAL TO THEM** — Enter the total amount of dues, fees, fines, assessments, and work permit fees received by the labor organization, through a checkoff arrangement or otherwise, on behalf of affiliates for transmittal to them. Do not include the amount withheld by the labor organization for per capita taxes or other purposes, such as loan repayments, which must be reported elsewhere in Statement B. When the receipts reported in Item 46 are transmitted, the disbursement must be reported in related Item 63 (To Affiliates of Funds Collected on Their Behalf).

**47. FROM MEMBERS FOR DISBURSEMENT ON THEIR BEHALF** —

Enter the total receipts from members that are specifically designated by them for disbursement on their behalf; for example, contributions from members for transmittal by the labor organization to charities. When receipts that are reported in Item 47 are transmitted, the disbursement must be reported in related Item 64 (On Behalf of Individual Members).

**48. OTHER RECEIPTS** — Enter the total reported on Summary Schedule 14, Line 3.

**49. TOTAL RECEIPTS** — Add Items 36 through 48 and enter the total in Item 49.

## CASH DISBURSEMENTS

**50. REPRESENTATIONAL ACTIVITIES** – Enter the total from Summary Schedule 15, Line 6.

**51. POLITICAL ACTIVITIES AND LOBBYING** – Enter the total from Summary Schedule 16, Line 6.

**52. CONTRIBUTIONS, GIFTS, AND GRANTS** – Enter the total from Summary Schedule 17, Line 6.

**53. GENERAL OVERHEAD** – Enter the total from Summary Schedule 18, Line 6.

**54. UNION ADMINISTRATION** – Enter the total from Summary Schedule 19, Line 6.

**55. BENEFITS** – Enter the total from Line 23 of Schedule 20.

**56. PER CAPITA TAX** — Enter your organization's total amount of per capita tax paid as a condition or requirement of affiliation with your parent national or international union, state and local central bodies, a conference, joint or system board, joint council, federation, or other labor organization.

**57. STRIKE BENEFITS** – Enter the total amount of all disbursements made to, or on behalf of the members (or agency fee paying nonmembers) of the labor organization, and others, associated with strikes (including recognitional strikes), work stoppages and lockouts during the reporting period.

**58. FEES, FINES, ASSESSMENTS, ETC.** — Enter the total amount of fees, fines, assessments, and similar disbursements made by the labor organization to a parent body or other labor organization.

**59. SUPPLIES FOR RESALE** — Enter the labor organization's total disbursements for purchases of supplies such as union logo clothing, lapel pins, bumper stickers, etc. for resale.

**60. PURCHASE OF INVESTMENTS AND FIXED ASSETS** — Enter the total reported on Line 15 of Schedule 4 (Purchase of Investments and Fixed Assets).

**61. LOANS MADE** — Enter the total reported on Line 6, Column (C) of Schedule 2 (Loans Receivable).

**62. REPAYMENT OF LOANS OBTAINED** — Enter the total reported on Line 13, Column (D)(1) of Schedule 9 (Loans Payable).

**63. TO AFFILIATES OF FUNDS COLLECTED ON THEIR BEHALF** — Enter the total disbursements of funds collected on behalf of affiliates by the labor organization. This amount usually is the same as the amount reported in related Item 46 (On Behalf of Affiliate for Transmittal to Them). Any such funds not disbursed by the end of the reporting period are liabilities of the labor organization and must be reported in Schedule 10 (Other Liabilities).

**64. ON BEHALF OF INDIVIDUAL MEMBERS** — Enter the total disbursements of funds collected from members by the labor organization that were specifically designated by them for disbursement on their behalf. This amount usually is the same as the amount reported in related Item 47 (From Members for Disbursement on Their Behalf). Any such funds not disbursed by the end of the reporting period are liabilities of the labor organization and must be reported in Schedule 10 (Other Liabilities).

**65. DIRECT TAXES** – Enter all taxes assessed against and paid by your organization, including your organization's FICA taxes as an employer. Do not include disbursements for the transmittal of taxes withheld from the salaries of officers and employees which must be reported in Item 67 (Withholding Taxes and Other Payroll Deductions). Also, do not include indirect taxes, such as sales and excise taxes, for purchases reported in other disbursement items.

**66. SUBTOTAL** — Add Items 50 through 65 and enter the result in Item 66.

**67. WITHHOLDING TAXES AND OTHER PAYROLL DEDUCTIONS** –

a. Total Withheld—Enter the total amount of withholding taxes and all other payroll deductions during the reporting period.

b. Total Disbursed—Enter the total amount of withholding taxes and all other payroll deductions that were disbursed by your organization during the reporting period. This includes your organization's total disbursements to Federal, state, county, and municipal government agencies for the transmittal of taxes withheld from the salaries of officers and employees, including officers' and employees' portion of FICA taxes and all disbursements for the transmittal of other payroll deductions.

c. Total Withheld But Not Disbursed—Subtract Item 67b from Item 67a and enter the result in Item 67c.

**68. TOTAL DISBURSEMENTS** – Subtract Item 67c from Item 66 and enter the result in Item 68.

***NOTE:*** *The following worktable may be used to determine that the figures for receipts, disbursements, and cash are correctly reported on the labor organization's Form LM-2:*

| | |
|---|---|
| A. Cash at Start of Reporting Period — Item 22, Column (A) | $ |
| B. Add: Total Receipts — Item 49 | $ |
| C. Total of Lines A and B | $ |
| D. Subtract: Total Disbursements — Item 68 | $ |
| E. Cash at End of Period | $ |

*If Line E does not equal the amount reported in Item 22, Column (B), there is an error in the labor organization's report, which should be corrected.*

## ADDITIONAL INFORMATION AND SIGNATURES

**69. ADDITIONAL INFORMATION** — Use Item 69 to provide additional information as indicated on Form LM-2 and in these instructions. Enter the number of the item to which the information relates in the Item Number column.

**70-71. SIGNATURES** — The completed Form LM-2 that is filed with OLMS must be signed by both the president and treasurer, or corresponding principal officers, of the labor organization. If an officer other than the president or treasurer performs the duties of the principal executive or principal financial officer, the other officer may sign the report. If an officer other than the president or treasurer signs the report, enter the correct title in Item 70 or 71, and explain in Item 69 (Additional Information) why the president or treasurer did not sign the report. Electronically submitted forms must be signed with digital signatures which will automatically enter the date. Information about this system can be obtained on the OLMS Web site at http://www.olms.dol.gov.

Enter the date the report was signed and the telephone number at which the signatories conduct official business. On a paper Form LM-2 submitted pursuant to an exemption, original signatures are required; stamped or mechanical signatures are not acceptable.

## XII. LABOR ORGANIZATIONS THAT HAVE CEASED TO EXIST

If a labor organization has gone out of existence as a reporting labor organization, the last president and treasurer or the officials responsible for winding up the affairs of the labor organization must file a terminal financial report for the period from the beginning of the fiscal year to the date of termination. A terminal financial report must be filed if the labor organization has gone out of business by disbanding, merging into another organization, or being merged and consolidated with one or more labor organizations to form a new labor organization. A terminal financial report is not required if the labor organization changed its affiliation but continues to function as a separate reporting labor organization.

The terminal financial report must be filed on Form LM-2 if the labor organization filed its previous annual report on Form LM-2 and must be submitted within 30 days after the date of termination.

To complete a terminal report on Form LM-2, follow the instructions in Section XI and, in addition:

- Enter the date the labor organization ceased to exist in Item 2 after the word "Through."

- Enter an "X" in the box in Item 3(c) indicating that the labor organization ceased to exist during the reporting period and that this is the labor organization's terminal Form LM-2.

- Enter "3(c)" in the Item Number column in Item 69 (Additional Information) and provide a detailed statement of the reason the labor organization ceased to exist. Also report in Item 69 plans for the disposition of the labor organization's cash and other assets, if any (for example, transfer of cash and assets to the parent body). Provide the name and address of the person or organization that will retain the records of the terminated organization. If the labor organization merged with another labor organization, report that organization's name, address, and 6-digit file number.

Contact the nearest OLMS field office listed below if you have questions about filing a terminal report.

## *If You Need Assistance*

The Office of Labor-Management Standards has field offices located in the following cities to assist you if you have any questions concerning LMRDA and CSRA reporting requirements.

Atlanta, GA
Birmingham, AL
Boston, MA
Buffalo, NY
Chicago, IL
Cincinnati, OH
Cleveland, OH
Dallas, TX
Denver, CO
Detroit, MI
Grand Rapids, MI
Guaynabo, PR
Honolulu, HI
Houston, TX
Kansas City, MO
Los Angeles, CA
Miami (Ft. Lauderdale), FL
Milwaukee, WI
Minneapolis, MN
Nashville, TN
New Haven, CT
New Orleans, LA
New York, NY
Newark (Iselin), NJ
Philadelphia, PA

Pittsburgh, PA
St. Louis, MO
San Francisco, CA
Seattle, WA
Tampa, FL
Washington, DC

Consult the OLMS Web site listed below or local telephone directory listings under United States Government, Labor Department, Office of Labor-Management Standards, for the address and telephone number of the nearest field office.

Copies of labor organization annual financial reports, employer reports, and labor relations consultant reports filed for the year 2000 and after can be viewed and printed at http://www.union-reports.dol.gov. Copies of reports for the year 1999 and earlier can be ordered through the Web site.

Information about OLMS, including key personnel and telephone numbers, compliance assistance materials, the text of the LMRDA, and related Federal Register and Code of Federal Regulations documents, is also available on the Internet at:

**http://www.olms.dol.gov**

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
Washington, DC 20210

# FORM T-1 TRUST ANNUAL REPORT

Form Approved
Office of Management and Budget
No. xxxxxxxx
Expires: xx-xx-xxxx

This report is mandatory under P.L. 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 439 or 440.

READ THE INSTRUCTIONS CAREFULLY BEFORE PREPARING THIS REPORT.

| | | | |
|---|---|---|---|
| For Official Use Only | 1. FILE NUMBERS<br>UNION a) ☐☐☐ - ☐☐☐<br>TRUST b) T☐☐☐ - ☐☐☐ | 2. PERIOD COVERED<br>MO DAY YEAR<br>From ☐☐ ☐☐ ☐☐☐☐<br>Through ☐☐ ☐☐ ☐☐☐☐ | 3. (a) AMENDED - If this is an amended report, check here: ☐<br>(b) HARDSHIP - If filing under the hardship procedures, check here: ☐<br>(c) TERMINAL - If this is a terminal report, check here: ☐ |

| | | | |
|---|---|---|---|
| 4. NAME OF UNION | | 10. NAME OF TRUST | |
| 5. DESIGNATION (Local, Lodge, etc.) | 6. DESIGNATION NUMBER | 11. TAX STATUS OF TRUST | |
| 7. UNIT NAME OF UNION (if any) | | 12. PURPOSE OF TRUST | |
| 8. MAILING ADDRESS OF UNION (use capital letters) | | 13. MAILING ADDRESS OF TRUST (use capital letters) | |
| First Name | Last Name | First Name | Last Name |
| P.O. Box - Building and Room Number (if any) | | P.O. Box - Building and Room Number (if any) | |
| Number and Street | | Number and Street | |
| City | | City | |
| State | Zip Code + 4 | State | Zip Code + 4 |

9. Are the union's records kept at its mailing address? (If "No," provide address in Item 25.)

Yes ☐ No ☐

14. Are the trust's records kept at its mailing address? (If "No," provide address in Item 25.)

Yes ☐ No ☐

15. Will the labor organization be submitting an independent, certified audit in place of the remainder of Form T-1?

Yes ☐ No ☐

Each of the undersigned, duly authorized officers of the above labor organization, declares, under penalty of perjury and other applicable penalties of law, that all of the information submitted in this report (including the information contained in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct, and complete. (See Section V on penalties in the instructions.)

26. SIGNED: ______________________ PRESIDENT
on ____/____/____ (____) ____-______
Date Telephone Number

27. SIGNED: ______________________ TREASURER
on ____/____/____ (____) ____-______
Date Telephone Number

**COMPLETE ITEMS 16 THROUGH 25**

UNION FILE NUMBER (a): ☐☐☐ – ☐☐☐

TRUST FILE NUMBER (b): T☐☐☐ – ☐☐☐

16. During the reporting period did the trust discover any loss or shortage of funds or other property? *(Answer "Yes" even if there has been repayment or recovery.)* Yes ☐ No ☐

17. During the reporting period did the trust acquire or dispose of any goods or property in any manner other than by purchase or sale? Yes ☐ No ☐

18. During the reporting period did the trust liquidate, reduce or write-off any liabilities without full payment of principal and interest? Yes ☐ No ☐

19. Has the trust extended any loan or credit during the reporting period to any officer or employee of the reporting labor organization at terms below market rates? Yes ☐ No ☐

20. During the reporting period did the trust liquidate, reduce or write-off any loans receivable due from officers or employees of the reporting labor organization without full receipt of principal and interest? Yes ☐ No ☐

**If the answer to any of the above questions is "Yes," provide details in Item 25 (Additional Information) as explained in the instructions for each item.**

21. Enter the total assets of the trust at the end of the reporting period. $

22. Enter the total liabilities (debts) of the trust at the end of the reporting period. $

23. Enter the total receipts of the trust during the reporting period. $

24. Enter the total disbursements of the trust during the reporting period. $

Please be sure to:

- Enter your labor organization's 6-digit file number and the trust's 7-digit file number in Item 1.
- Have your labor organization's president and treasurer sign the Form T-1 in Items 26 and 27.
- Complete Schedules 1 through 3

25. ADDITIONAL INFORMATION *(if more space is needed, attach additional pages properly identified.)*

| Item Number | |
|---|---|
| | |

## SCHEDULE 1 - INDIVIDUALLY IDENTIFIED RECEIPTS

(List all entities from whom the trust received a total of $10,000 or more during the reporting period.)

UNION FILE NUMBER (a): ☐☐☐ - ☐☐☐

TRUST FILE NUMBER (b): T☐☐☐ - ☐☐☐

### Initial Itemization Page

| Name and Address (A) | Purpose (C) | Date (D) | Amount (E) |
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| (B) Type or Classification | | | |
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| | (F) Total of Receipts Listed Above | | |
| | (G) Total of All Receipts from Continuation Pages with this Payer | | |
| | (H) Total of All Itemized Receipts with this Payer (Sum of (F) and (G)) | | |
| | (I) Total of All Non-Itemized Receipts with this Payer | | |
| | (J) **Total of All Receipts with this Payer** (Sum of (H) and (I)) | | |

UNION FILE NUMBER (a): ☐☐☐ - ☐☐☐

TRUST FILE NUMBER (b): T☐☐ - ☐☐☐

## SCHEDULE 2 - INDIVIDUALLY IDENTIFIED DISBURSEMENTS

(List all entities that received $10,000 or more in total disbursements from the trust during the reporting period.)

### Initial Itemization Page

| Name and Address (A) | Purpose (C) | Date (D) | Amount (E) |
|---|---|---|---|
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| (B) Type or Classification | | | |
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| | (F) Total of Disbursements Listed Above | | |
| | (G) Total of All Disbursements from Continuation Pages with this Payee | | |
| | (H) Total of All Itemized Disbursements to this Payee (Sum of (F) and (G)) | | |
| | (I) Total of All Non-Itemized Disbursements to this Payee | | |
| | (J) **Total of All Disbursements to this Payee** (Sum of (H) and (I)) | | |

## SCHEDULE 3 - DISBURSEMENTS TO OFFICERS AND EMPLOYEES OF THE TRUST

UNION FILE NUMBER (a): ☐☐☐ – ☐☐☐

TRUST FILE NUMBER (b): T☐☐ – ☐☐☐

Page 1 of ____________________

| Full Name | (A) LAST, FIRST, MIDDLE INITIAL | Gross Salary Disbursements (before any deductions) (B) | Allowances (C) | Disbursements for Official Business (D) | Other Disbursements (E) | (F) TOTAL |
|---|---|---|---|---|---|---|
| Title | Treasurer, Trustee, Attorney, etc. | | | | | |
| 1. Full Name | | | | | | |
| Title | | | | | | |
| 2. Full Name | | | | | | |
| Title | | | | | | |
| 3. Full Name | | | | | | |
| Title | | | | | | |
| 4. Full Name | | | | | | |
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| 6. Full Name | | | | | | |
| Title | | | | | | |
| 7. Full Name | | | | | | |
| Title | | | | | | |
| 8. Full Name | | | | | | |
| Title | | | | | | |
| 9. Full Name | | | | | | |
| Title | | | | | | |
| 10. Total from Continuation pages (if any) | | | | | | |
| 11. Total of Lines 1 through 10 | | | | | | |

## CONTINUATION ITEMIZATION PAGE FOR RECEIPTS/DISBURSEMENTS SCHEDULES 1 and 2

UNION FILE NUMBER (a): ☐☐☐ – ☐☐☐

TRUST FILE NUMBER (b): T☐☐ – ☐☐☐

| Schedule | Page Number | Total Number of Continuation Pages |
|---|---|---|
| | | |

### Continuation Itemization Page

| Name and Address<br>(A) | Purpose<br>(C) | Date<br>(D) | Amount<br>(E) |
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| (B) Type or Classification | | | |
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| | (F) Total of All Transactions Listed Above | | |

Form T-1 (2003)

## SCHEDULE 3 - DISBURSEMENTS TO OFFICERS AND EMPLOYEES OF THE TRUST

UNION FILE NUMBER (a): ☐☐☐ - ☐☐☐

TRUST FILE NUMBER (b): T☐☐☐ - ☐☐☐

Page ________________ of ________________

### Continuation Page

| Full Name | (A) LAST, FIRST, MIDDLE INITIAL | Gross Salary Disbursements (before any deductions) (B) | Allowances (C) | Disbursements for Official Business (D) | Other Disbursements (E) | TOTAL (F) |
|---|---|---|---|---|---|---|
| Title | Treasurer, Trustee, Attorney, etc. | | | | | |
| 1. Full Name | | | | | | |
| Title | | | | | | |
| 2. Full Name | | | | | | |
| Title | | | | | | |
| 3. Full Name | | | | | | |
| Title | | | | | | |
| 4. Full Name | | | | | | |
| Title | | | | | | |
| 5. Full Name | | | | | | |
| Title | | | | | | |
| 6. Full Name | | | | | | |
| Title | | | | | | |
| 7. Full Name | | | | | | |
| Title | | | | | | |
| 8. Full Name | | | | | | |
| Title | | | | | | |
| 9. Full Name | | | | | | |
| Title | | | | | | |
| 10. Total of Lines 1 through 9 | | | | | | |

Public reporting burden for this collection of information is estimated to average 72 hours per response in the first year, 34 hours per response in the second year, and 30 hours per response in the third year. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Reporting of this information is mandatory and is required by the Labor-Management Reporting and Disclosure Act of 1959, as amended, for the purpose of public disclosure. As this is public information, there are no assurances of confidentiality. If you have any comments regarding this estimate or any other aspect of this information collection, including suggestions for reducing this burden, please send them to the U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards, Division of Interpretations and Standards, Room N-5605, 200 Constitution Avenue, NW, Washington, DC 20210.

# INSTRUCTIONS FOR FORM T-1 TRUST ANNUAL REPORT

## GENERAL INSTRUCTIONS

### I. WHO MUST FILE

Every labor organization subject to the Labor-Management Reporting and Disclosure Act, as amended (LMRDA), the Civil Service Reform Act (CSRA), or the Foreign Service Act (FSA), with total annual receipts of $250,000 or more, must file Form T-1 each year for each trust in which it is interested, as defined in the LMRDA at 29 U.S.C. 402(l), if the union's financial contribution to the trust, or a contribution made on the union's behalf or as a result of a negotiated agreement to which the union is a party, was $10,000 or more during the reporting year and the trust had $250,000 or more in annual receipts. No Form T-1 should be filed for any union that meets the statutory definition of a labor organization and already files a Form LM-2, LM-3, or LM-4, nor should a report be filed for any entity that is expressly exempted from reporting in the LMRDA. No separate report need be filed for Political Action Committee (PAC) funds if publicly available reports on the PAC funds are filed with a Federal or state agency, or for a political organization for which reports are filed with the Internal Revenue Service pursuant to 26 U.S.C. 527. No separate report is required for an employee benefit plan that filed a complete and timely annual report pursuant to the requirements of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1023, 1024(a), and 1030, and 29 C.F.R. 2520.103-1, for a plan year ending during the reporting period of the union (a notice filed with the Secretary of Labor pursuant to an exemption from reporting and disclosure does not constitute a complete annual financial report.

A labor organization may complete only Items 1 through 15 and Items 26-27 (Signatures) of Form T-1 if annual audits are prepared according to the following standards and a copy of the audit is filed with the Form T-1. The audit must be performed by an independent qualified public accountant, who after examining the financial statements and other books and records of the trust, as the accountant deems necessary, certifies that the trust's financial statements are presented fairly in conformity with Generally Accepted Accounting Principles (GAAP) or Other Comprehensive Basis of Accounting (OCBOA). The audit must include notes to the financial statements that disclose, for the preceding twelve-month period: losses, shortages, or other discrepancies in the trust's finances; the acquisition or disposition of assets, other than by purchase or sale; liabilities and loans liquidated, reduced, or written off without the disbursement of cash; loans made to union officers or employees that were granted at more favorable terms than were available to others; and loans made to officers and employees that were liquidated, reduced, or written off. The audit must be accompanied by schedules that disclose, for the preceding twelve-month period: a statement of the assets and liabilities of the trust, aggregated by categories and valued at current value, and the same data displayed in comparative form for the end of the previous fiscal year of the trust; a statement of trust receipts and disbursements aggregated by general sources and applications, which must include the names of the parties with which the trust engaged in $10,000 or more of commerce and the total of the transactions with each party.

Form T-1 must be filed with the Office of Labor-Management Standards (OLMS) of the U.S. Department of Labor's (Department) Employment Standards Administration. The labor organization must file a separate Form T-1 for each trust that meets the above requirements. The LMRDA, CSRA, and FSA cover labor organizations that represent employees who work in private industry, employees of the U.S. Postal Service, and most Federal government employees. Questions about whether a labor organization is required to file should be referred to the nearest OLMS field office listed at the end of these instructions.

## II. WHEN TO FILE

Form T-1 must be filed within 90 days of the end of the labor organization's fiscal year. The penalties for delinquency are described in Section V (Officer Responsibilities And Penalties) of these instructions.

If a trust for which a labor organization was required to file a Form T-1 goes out of existence, a terminal financial report must be filed within 30 days after the date it ceased to exist. Similarly, if a trust for which a labor organization was required to file a Form T-1 continues to exist, but the labor organization's interest in that trust ceases, a terminal financial report must be filed within 30 days after the date that the labor organization's interest in the trust ceased. See Section IX (Trusts That Have Ceased to Exist) of these instructions for information on filing a terminal financial report.

## III. HOW TO FILE

Form T-1 must be prepared using software obtained from the Department and must be submitted electronically to the Department. A Form T-1 filer will be able to file a report in paper format only if it applies for and is granted a continuing hardship exemption of up to one year, but a paper format copy may be submitted initially if the filer asserts a temporary hardship and files electronically thereafter.

Information on obtaining the electronic filing software and a detailed user guide can be found on the OLMS Web site at http://www.olms.dol.gov.

### HARDSHIP EXEMPTIONS

A labor organization that must file Form T-1 may assert a temporary hardship exemption or apply for a continuing hardship exemption to prepare and submit the report in paper format. If a labor organization files both Form LM-2 and Form T-1, the exemption must be separately asserted for each report, although in appropriate circumstances the same reasons may be used to support both exemptions. If it is possible to file Form LM-2, or one or more Form T-1s, electronically, no exemption should be claimed for those reports, even though an exemption is warranted for a related report.

TEMPORARY HARDSHIP EXEMPTION:

If a labor organization experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing of Form T-1, it may be filed in paper format by the required due date. An electronic format copy of the filed paper format document shall be submitted to the Department within ten business days after the required due date. Indicate in Item 3 (Amended, Hardship Exempted, or Terminal Report) that the labor organization is filing this form under the hardship exemption procedures. Unanticipated technical difficulties that may result in additional delays should be brought to the attention of the OLMS Division of Interpretations and Standards, which can be reached at the above address, by email at OLMS-Public@dol.gov, by phone at 202-693-0123, or by fax at 202-693-1340.

***Note:*** *If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.*

CONTINUING HARDSHIP EXEMPTION:

(a) The labor organization may apply in writing for a continuing hardship exemption if Form T-1 cannot be filed electronically without undue burden or expense. Such written application shall be received at least thirty days prior to the required due date of the report(s). The written application shall contain the information set forth in paragraph (b).

The application must be mailed to the following address:

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-5605
Washington, DC 20210-0001

Questions regarding the application should be directed to the OLMS Division of Interpretations and Standards, which can be reached at the above address, by e-mail at OLMS-Public@dol.gov, by phone at 202-693-0123, or by fax at 202-693-1340.

(b) The request for the continuing hardship exemption shall include, but not be limited to, the following: (1) the justification for the requested time period of the exemption; (2) the burden and expense that the union would incur if it was required to make an electronic submission; and (3) the reasons for not submitting the report(s) electronically. The applicant must specify a time period not to exceed one year.

(c) The continuing hardship exemption shall not be deemed granted until the Department notifies the applicant in writing. If the Department denies the application for an exemption, the labor organization shall file the report(s) in electronic format by the required due date. If the Department determines that the grant of the exemption is appropriate and consistent with the public interest and the protection of union members and so notifies the applicant, the labor organization shall follow the procedures set forth in paragraph (d).

(d) If the request is granted, the labor organization shall submit the report(s) in paper format by the required due date. The filer may be required to submit Form T-1 in electronic format upon the expiration of the period for which the exemption is granted. Indicate in Item 3 (Amended, Hardship Exempted, or Terminal Report) that the labor organization is filing under the hardship exemption procedures.

***Note:*** *If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.*

SPECIAL INSTRUCTIONS FOR SUBMITTING FORM T-1 IN PAPER FORMAT:

Those labor organizations that are granted an exemption will be provided with a report package in paper format, which must be completed and filed at the following address:

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-5616
Washington, DC 20210-0001

**Number of Copies**

Complete one of the two blank copies included in the report package; do not use a photocopy of the form. The completed report must be filed with OLMS. A copy should also be maintained in the labor organization's records.

**Information Entry**

Entries on the report should be typed or clearly printed in black ink. Do not use a pencil or any other color ink.

In all Items and Schedules dealing with monetary values, report amounts in dollars only. Do not enter cents. Round cents to the nearest dollar. Enter a single "0" in the boxes for reporting dollars if the labor organization has nothing to report.

*Entering Dollars:*

$1,573,844 – do not enter cents

*Entering Zero:*

$ _, _ _ _, _ _ 0

*Entering "Yes" or "No"*

For items requiring a "Yes" or "No" answer, enter an "X" in the appropriate box. Do not use check marks or other marks.

**Schedules 1 Through 3 Continuation Pages**

If the union is completing the report in paper format, multiple copies of the Initial Itemization Page and the Continuation Itemization Pages for Schedules 1 and 2 are included in the report package. More copies of these pages may be ordered from any OLMS office.

If there is not enough space to report all the required information in Schedule 3, report additional information on the preprinted continuation pages that are included in the report package. More copies of these continuation pages may be ordered from any OLMS office.

In the space provided at the top of the page, enter the 6-digit (###-###) file number of the labor organization and the 7-digit (T###-###) file number of the trust as reported in Item 1 (File Number), the page number for each continuation page, and the total number of additional pages attached. Totals from any additional pages must be entered on the line provided in each schedule.

**Additional Pages**

Some of the items on the report require that further details be provided in Item 25 (Additional Information). If there is not enough space in Item 25, enter the additional information on a separate letter-size (8 ½ x 11) page(s), giving the number of the item to which the information applies. At the top of the page, enter the 6-digit (###-###) file number of the labor organization and the 7-digit (T###-###) file number of the trust as reported in Item 1 (File Number), the page number for each additional page, and the total number of additional pages attached.

## IV. PUBLIC DISCLOSURE

The LMRDA requires that the Department make reports filed by labor organizations available for inspection by the public. Reports may be viewed and downloaded from the OLMS Web site at http://www.union-reports.dol.gov. Reports may also be examined and copies purchased through the OLMS Public Disclosure Room (telephone: 202-693-0125) at the following address:

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-5608
Washington, DC 20210-0001

### V. OFFICER RESPONSIBILITIES AND PENALTIES

The president and treasurer or the corresponding principal officers of the labor organization required to sign Form T-1 are personally responsible for its filing and accuracy. Under the LMRDA, officers are subject to criminal penalties for willful failure to file a required report and for false reporting. False reporting includes making any false statement or misrepresentation of a material fact while knowing it to be false, or for knowingly failing to disclose a material fact in a required report or in the information required to be contained in the report or in any information required to be submitted with it. Under the CSRA and FSA and implementing regulations, false reporting and failure to report may result in administrative enforcement action and litigation. The officers responsible for signing Form T-1 are also subject to criminal penalties for false reporting and perjury under Sections 1001 of Title 18 and 1746 of Title 28 of the United States Code.

The reporting labor organization and the officers required to sign Form T-1 are also subject to civil prosecution for violations of the filing requirements. Section 210 of the LMRDA (29 U.S.C. 440), provides that "whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate."

### VI. RECORDKEEPING

The officers required to file Form T-1 are responsible for maintaining records that will provide in sufficient detail the information and data necessary to verify the accuracy and completeness of the report. The records must be kept for at least five years after the date the report is filed. Any record necessary to verify, explain, or clarify the report must be retained, including, but not limited to, vouchers, worksheets, receipts, applicable resolutions, and any electronic documents used to complete and file the report.

## SPECIAL INSTRUCTIONS FOR CERTAIN ORGANIZATIONS

### VII. LABOR ORGANIZATIONS IN TRUSTEESHIP

Any labor organization that has placed a subordinate labor organization in trusteeship is responsible for filing the subordinate's annual financial reports. This obligation includes the requirement to file Form T-1 for any trusts in which the subordinate labor organization is interested. A trusteeship is defined in section 3(h) of the LMRDA (29 U.S.C. 402) as "any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws."

The report must be signed by the president and treasurer or corresponding principal officers of the labor organization that imposed the trusteeship and by the trustees of the subordinate labor organization. Trustees must sign and date Form T-1 in the space below the officers' signatures and telephone numbers in Items 26 and 27 (Signatures).

### VIII. COMPLETING FORM T-1

#### ITEMS 1 THROUGH 20

Answer Items 1 through 20 as instructed. Enter an "X" in the appropriate box for those questions requiring a "Yes" or "No" answer; do not leave both boxes blank.

**1. FILE NUMBER** — Enter in Item 1(a) the 6-digit (###-###) file number that OLMS assigned to the labor organization. If the labor organization does not have the number on file and cannot obtain the number from prior reports filed with the Department, the number can be obtained from the OLMS Web site at http://www.union-reports.dol.gov or by contacting the nearest OLMS field office listed at the end of these instructions. The labor organization's 6-digit (###-###) file number must also be entered in the File Number boxes at the top of each page of Form T-1.

Enter in Item 1(b) the 7-digit (T###-###) file number that OLMS assigned to the trust. For an initial filing of a Form T-1, this number may be obtained by calling the OLMS Division of Reports, Disclosure & Audits at (202) 693-0124 or by contacting OLMS at the following address:

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-5616
Washington, DC 20210-0001

For future filings, if the labor organization does not have the number on file and cannot obtain the number from the trust or from prior reports filed with the Department, information on obtaining the number can be found on the OLMS website at http://www.olms.dol.gov. The trust's 7-digit (T###-###) file number must also be entered in the File Number boxes at the top of each page of Form T-1.

**2. PERIOD COVERED** — Enter the beginning and ending dates of the period covered by this report. The report should never cover more than a 12-month period. For example, if the trust's 12-month fiscal year begins on January 1 and ends on December 31, enter these dates as 01/01/20XX and 12/31/20XX. It would be incorrect to enter January 1 of one year through January 1 of the next year.

If the fiscal year changed, enter in Item 2 (Period Covered) the ending date for the period of less than 12 months, which is the new fiscal year ending date, and report in Item 25 (Additional Information) that the trust changed its fiscal year. For example, if the fiscal year ending date changes from June 30 to December 31, a report must be filed for the partial year from July 1 to December 31. Thereafter, the annual report should cover a full 12-month period from January 1 to December 31.

**3. AMENDED, HARDSHIP EXEMPTED, OR TERMINAL REPORT** — Do not complete this item unless this report is an amended, hardship exempted, or terminal report. Enter an "X" in the box in Item 3(a) if the labor organization is filing an amended Form T-1 correcting a previously filed Form T-1. Enter an "X" in the box in Item 3(b) if the labor organization is filing under the hardship exemption procedures defined in Section III. Enter an "X" in the box in Item 3(c) if the trust has gone out of business by disbanding, merging into another organization, or being merged and consolidated with one or more trusts to form a new trust, or if the labor organization's interest in the trust has ceased and this is the terminal report for the trust. Be sure the date the trust ceased to exist is entered in Item 2 (Period Covered) after the word "Through." See Section IX (Trusts That Have Ceased to Exist) of these instructions for more information on filing a terminal report.

**4. AFFILIATION OR ORGANIZATION NAME** — Enter the name of the national or international labor organization that granted the labor organization a charter.

If the labor organization has no such affiliation, enter the name of the labor organization as currently identified in the labor organization's constitution and bylaws or other organizational documents.

**5. DESIGNATION** — Enter the specific designation, if any, that is used to identify the labor organization, such as Local, Lodge, Branch, Joint Board, Joint Council, District Council, etc.

**6. DESIGNATION NUMBER** — Enter the number or other identifier, if any, by which the labor organization is known.

**7. UNIT NAME** — Enter any additional or alternate name by which the labor organization is known, such as "Chicago Area Local."

**8. MAILING ADDRESS OF UNION** — Enter the current address where mail is most likely to reach the labor organization as quickly as possible. Be sure to indicate the first and last name of the person, if any, to whom such mail should be sent and include any building and room number.

**9. PLACE WHERE UNION RECORDS ARE KEPT** — If the records required to be kept by the labor organization to verify this report are kept at the address reported in Item 8 (Mailing Address of Union), answer "Yes." If not, answer "No" and provide in Item 25 (Additional Information) the address where the labor organization's records are kept.

**10. NAME OF TRUST** — Enter the name of the trust.

**11. TAX STATUS OF TRUST** — Enter the tax status of the trust. For instance, a nonprofit trust may have a 501(C)(3) tax designation.

**12. PURPOSE** — Enter the purpose of the trust. For example, if the trust is a credit union that provides loans to union members, the purpose may be "credit union."

**13. MAILING ADDRESS OF TRUST** — Enter the current address where mail is most likely to reach the trust as quickly as possible. Be sure to indicate the first and last name of the person, if any, to whom such mail should be sent and include any building and room number.

**14. PLACE WHERE TRUST RECORDS ARE KEPT** — If the records required to be kept to verify this report are kept at the address reported in Item 13 (Mailing Address of Trust), answer "Yes." If not, answer "No" and provide in Item 25 (Additional Information) the address where the trust's records are kept. The labor organization need not keep separate copies of these records at its own location, as long as members have the same access to such records from the trust as they would be entitled to have from the labor organization.

*Note: The president and treasurer of the labor organization are responsible for maintaining the records used to prepare the report.*

**15. AUDIT EXEMPTION** — Answer "Yes" to Item 15 if the labor organization will be submitting an independent, certified audit in place of the remainder of Form T-1. If an audit report meeting the standards described in Section I (Who Must File) is submitted with a Form T-1 that has been completed for Items 1 through 15 then it is not necessary to complete Items 16 through 25, and Schedules 1 through 3. However, Items 26-27 (Signatures) must be completed.

**16. LOSSES OR SHORTAGES** — Answer "Yes" to Item 16 if the trust experienced a loss, shortage, or other discrepancy in its finances during the period covered. Describe the loss or shortage in detail in Item 25 (Additional Information), including such information as the amount of the loss or shortage of funds or a description of the property that was lost, how it was lost, and to what extent, if any, there has been an agreement to make restitution or any recovery by means of repayment, fidelity bond, insurance, or other means.

**17. ACQUISITION OR DISPOSITION OF**

**ASSETS** — If Item 17 is answered "Yes," describe in Item 25 (Additional Information) the manner in which the trust acquired or disposed of the asset(s), such as donating office furniture or equipment to charitable organizations, trading in assets, writing off a receivable, or giving away other tangible or intangible property of the trust. Include the type of asset, its value, and the identity of the recipient or donor, if any. Also report in Item 25 the cost or other basis at which any acquired assets were entered on the trust's books or the cost or other basis at which any assets disposed of were carried on the trust's books.

For assets that were traded in, enter in Item 25 the cost, book value, and trade-in allowance.

**18. LIQUIDATION OF LIABILITIES** — If Item 18 is answered "Yes," provide in Item 25 (Additional Information) all details in connection with the liquidation, reduction, or writing off of the trust's liabilities without the disbursement of cash.

**19. LOANS AT FAVORABLE TERMS** — If Item 19 is answered "Yes," provide in Item 25 (Additional Information) all details in connection with each such loan, including the name of the union officer or employee, the amount of the loan, the amount that was still owed at the end of the reporting period, the purpose of the loan, terms for repayment, any security for the loan, and a description of how the terms of the loan were more favorable than those available to others.

**20. WRITING OFF OF LOANS** — If Item 20 is answered "Yes," describe in Item 25 (Additional Information) all details in connection with each such loan, including the amount of the loan and the reasons for the writing off, liquidation, or reduction.

## FINANCIAL DETAILS

### REPORT ONLY DOLLAR AMOUNTS

Report all amounts in dollars only. Round cents to the nearest dollar. Amounts ending in $.01 through $.49 should be rounded down. Amounts ending in $.50 through $.99 should be rounded up.

Enter a single "0" if there is nothing to report.

### REPORTING CLASSIFICATIONS

Complete all items and lines on the form as given. Do not use different accounting classifications or change the wording of any item or line.

## ITEMS 21 THROUGH 24

**21. ASSETS** — Enter the total value of all the trust's assets at the end of the reporting period including, for example, cash on hand and in banks, property, loans owed to the trust, investments, office furniture, automobiles, and anything else owned by the trust. Enter "0" if the trust had no assets at the end of the reporting period.

**22. LIABILITIES** — Enter the total amount of all the trust's liabilities at the end of the reporting period including, for example, unpaid bills, loans owed, the total amount of mortgages owed, payroll withholdings not transmitted by the end of the reporting period, and other debts of the trust. Enter "0" if the trust had no liabilities at the end of the reporting period.

**23. RECEIPTS** — Enter the total amount of all receipts of the trust during the reporting period including, for example, interest, dividends, rent, money from the sale of assets, and loans received by the trust. Enter "0" if the trust had no receipts during the reporting period.

**24. DISBURSEMENTS** — Enter the total amount of all disbursements made by the trust during the reporting period including, for example, net payments to officers and employees of the trust, payments for administrative expenses, loans made by the trust, taxes paid, and disbursements for the transmittal of withheld taxes and other payroll deductions. Enter "0" if the trust made no disbursements during the reporting period.

## SCHEDULES 1 THROUGH 3

### SCHEDULES 1 AND 2 — RECEIPTS AND DISBURSEMENTS

Schedules 1 and 2 provide detailed information on the financial operations of the trust. These schedules will be populated by the electronic filing software as long as the trust's records are maintaining using a properly configured electronic recordkeeping system that is compatible with the software provided by the Department. Information about the electronic filing software and the technical specifications can be found on the OLMS Web site at http://www.olms.dol.gov. A detailed user guide is included with the electronic filing software.

All "major" receipts during the reporting period must be separately identified in Schedule 1. A "major" receipt includes: 1) any individual receipt of $10,000 or more; or 2) total receipts from any single entity or individual that aggregate to $10,000 or more during the reporting period. This process is discussed further below.

All "major" disbursements during the reporting period must be separately identified in Schedule 2. A "major" disbursement includes: 1) any individual disbursement of $10,000 or more; or 2) total disbursements to any single entity or individual that aggregate to $10,000 or more during the reporting period. This process is discussed further below.

*Note: Disbursements to officers and employees of the trust who received more than $10,000 from the trust during the reporting period should be reported in Schedule 3, and need not also be reported in Schedule 2.*

**Example 1:** The trust has an ongoing contract with a law firm that provides a wide range of legal services to which a single payment of $10,000 is made each month. Each payment would be listed in Schedule 2.

**Example 2:** The trust received a settlement of $14,000 in a small claims lawsuit. The receipt would be individually identified in Schedule 1.

**Example 3:** The trust made three payments of $4,000 each to an office supplies vendor for office supplies during the reporting period. The $12,000 in disbursements to the vendor would be reported in Schedule 2 in line I of an Initial Itemization Page for that vendor.

Procedures for Completing Schedules 1 and 2

Complete an Initial Itemization Page and a Continuation Itemization Page(s), as necessary, for each payer/payee for whom there is (1) an individual receipt/disbursement of $10,000 or more or (2) total receipts/disbursements that aggregate to $10,000 or more during the reporting period. For each major receipt/disbursement, provide the full name and business address of the entity or individual, type of business or job classification of the entity or individual, purpose of the receipt/disbursement, date, and amount of the receipt/disbursement. Receipts/disbursements must be listed in chronological order.

An Initial Itemization Page must be completed for each payer/payee described above. If the Form T-1 is being prepared using the reporting software provided by the Department, the Initial Itemization Page will expand to fit the number of major receipts/disbursements for the payer/payee. If the report is being completed in paper format and more than one page is needed for a single payer/payee, the Continuation Itemization Page should be used for all subsequent pages.

Enter in Column (A) the full name and business address of the entity or individual from which the receipt was received or to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not have access to the full address, the city and state is sufficient.

Enter in Column (B) the type of business or job classification of the entity or individual, such as printing company, office supplies vendor, lobbyist, think tank, marketing firm, bookkeeper, receptionist, shop steward, legal counsel, union member, etc.

Enter in Column (C) the purpose of the receipt/disbursement, which means a brief statement or description of the reason the receipt/disbursement was made.

Enter in Column (D) the date that the receipt/disbursement was made. The date of receipt/disbursement for reporting purposes is the date the trust actually received or disbursed the money, rather than the date that the right to receive, or the obligation to disburse, was incurred.

Enter in Column (E) the amount of the receipt/disbursement.

Enter in Line (F) the total of all transactions listed in Column (E).

Enter in Line (G) the totals from any Continuation Itemization Pages for this payer/payee.

Enter in Line (H) the total of all itemized transactions with this payer/payee (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all other transactions with this payer/payee (that is, all individual transactions of less than $10,000 each).

Enter in Line (J) the total of all transactions with this payer/payee (the sum of Lines (H) and (I)).

## Special Instructions for Reporting Credit Card Disbursements

Disbursements to credit card companies may not be reported as a single disbursement to the credit card company as the vendor. Instead, charges appearing on credit card bills paid during the reporting period must be allocated to the recipient of the payment by the credit card company according to the same process as described above.

The Department recognizes that filers will not always have the same access to information regarding credit card payments as with other transactions. Filers should report all of the information required in the itemization schedule that is available to the union.

For instance, in the case of a credit card transaction for which the receipt(s) and monthly statement(s) do not provide the full legal name of a payee and the trust does not have access to any other documents that would contain the information, the union should report the name as it appears on the receipt(s) and statement(s). Similarly, if the receipt(s) and statement(s) do not include a full street address, the union should report as much information as is available and no less than the city and state. A filer may choose to report either the date of the charge or the date of the payment for a credit card transaction as long as the method of reporting is consistent throughout the form.

Once these transactions have been incorporated into the recordkeeping system they can be treated like any other transaction for purposes of assigning a description and purpose.

In instances when a credit card transaction is canceled and the charge is refunded in whole or part by entry of a credit on the credit card statement, the charge should be treated as a disbursement, and the credit should be treated as a receipt. In reporting the credit as a receipt, Column (C) of Schedule 1 must indicate that the receipt was in refund of a disbursement, and must identify the disbursement by date and amount.

### Special Procedures for Reporting Confidential Information

Filers may use the procedure described below to report the following types of information:

- Information that would identify individuals paid by the trust to work in a non-union bargaining unit in order to assist the union in organizing employees, provided that such individuals are not employees of the trust who receive more than $10,000 in the aggregate in the reporting year from the trust. Employees receiving more than $10,000 must be reported on Schedule 3;
- Information that would expose the reporting union's prospective organizing strategy. The union must be prepared to demonstrate that disclosure of the information would harm an organizing drive. Absent unusual circumstances information about past organizing drives should not be treated as confidential;
- Information that would provide a tactical advantage to parties with whom the reporting union or an affiliated union is engaged or will be engaged in contract negotiations. The union must be prepared to demonstrate that disclosure of the information would harm a contract negotiation. Absent unusual circumstances information about past contract negotiations should not be treated as confidential;
- Information pursuant to a settlement that is subject to a confidentiality agreement, or that the union or trust is otherwise prohibited by law from disclosing; and,
- Information in those situations where disclosure would endanger the health or safety of an individual.

With respect to these specific types of information, if the reporting union can demonstrate that itemized disclosure of a specific major receipt or disbursement, or aggregated receipt or disbursement would be adverse to the union or trust's legitimate interests, the union may exclude the transaction from Schedules 1 and 2. In Item 25 (Additional Information) the union must identify each schedule from which any itemized receipts or disbursements were excluded because of an asserted legitimate interest in confidentiality. The notation must describe the general types of information that were omitted from the schedule, but the name of the payer/payee, date, and amount of the transaction(s) is not required.

A union member, however, has the statutory right "to examine any books, records, and accounts necessary to verify" the financial report if the member can establish "just cause" for access to the information. 29 U.S.C. 431(c); 29 U.S.C. CFR 403.8 (2002). Any exclusion of itemized receipts or disbursements from Schedules 1 or 2 would constitute a *per se* demonstration of "just cause" for purposes of this Act. Consequently, any union member (and the Department), upon request, has the right to review the undisclosed information in the union's possession at the time of the request that otherwise would have appeared in the applicable schedule if the information is withheld in order to protect confidentiality interests. The union also must make a good faith effort to obtain additional information from the trust.

## SCHEDULE 3 — DISBURSEMENTS TO OFFICERS AND EMPLOYEES OF THE

**TRUST**

List the names and titles of all officers of the trust, whether or not any salary or disbursements were made to them or on their behalf by the trust. Report all direct and indirect disbursements to all officers of the trust and to all employees of the trust who received more than $10,000 in gross salaries, allowances, and other direct and indirect disbursements from the trust during the reporting period. If no direct or indirect disbursements were made to any officer of the trust enter 0 in Columns (B) through (F) opposite the officer's name.

***NOTE:*** *A "direct disbursement" to an officer or employee is a payment made by the trust to the officer or employee in the form of cash, property, goods, services, or other things of value.*

*An "indirect disbursement" to an officer or employee is a payment made by the trust to another party for cash, property, goods, services, or other things of value received by or on behalf of the officer or employee. "On behalf of the officer or employee" means received by a party other than the officer or employee of the trust for the personal interest or benefit of the officer or employee. Such payments include payments made by the trust for charges on an account of the trust for credit extended to or purchases by, or on behalf of, the officer or employee.*

**Column (A):** Enter in Column (A) the last name, first name, and middle initial of each person who was either (1) an officer of the trust at any time during the reporting period or (2) an employee of the trust who received $10,000 or more in total disbursements from the trust during the reporting period. Also enter the title or the position held by each officer or employee listed. If an officer or employee held more than one position during the reporting period, in Item 25 (Additional Information) list each position and the dates during which the person held the position.

**Column (B):** Enter the gross salary of each officer (before tax withholdings and other payroll deductions). Include disbursements for "lost time" or time devoted to trust activities.

**Column (C):** Enter the total allowances made by direct and indirect disbursements to each officer or employee on a daily, weekly, monthly, or other periodic basis. Do not include allowances paid on the basis of mileage or meals which must be reported in Column (D) or (E), as applicable.

**Column (D):** Enter all direct and indirect disbursements to each officer or employee that were necessary for conducting official business of the trust, except salaries or allowances which must be reported in Columns (B) and (C), respectively.

Examples of disbursements to be reported in Column (D) include: all expenses that were reimbursed directly to an officer or employee, meal allowances and mileage allowances, expenses for officers' or employees' meals and entertainment, and various goods and services furnished to officers or employees but charged to the trust. Such disbursements should be included in Column (D) only if they were necessary for conducting official business; otherwise, report them in Column (E). Include in Column (D) travel advances that meet the following conditions:

- The amount of an advance for a specific trip does not exceed the amount of expenses reasonably expected to be incurred for official travel in the near future, and the amount of the advance is fully repaid or fully accounted for by vouchers or paid receipts within 30 days after the completion or cancellation of the travel.
- The amount of a standing advance to an officer or employee who must frequently travel on official business does not unreasonably exceed the average monthly travel

expenses for which the individual is separately reimbursed after submission of vouchers or paid receipts, and the individual does not exceed 60 days without engaging in official travel.

Do not report the following disbursements in Schedule 3, but should be reported in Schedule 2 if they meet the definition of a major disbursement:

- Reimbursements to an officer or employee for the purchase of investments or fixed assets, such as reimbursing an officer or employee for a file cabinet purchased for office use;
- Indirect disbursements for temporary lodging (room rent charges only) or transportation by public carrier necessary for conducting official business while the officer or employee is in travel status away from his or her home and principal place of employment with the trust if payment is made by the trust directly to the provider or through a credit arrangement;
- Disbursements made by the trust to someone other than an officer or employee as a result of transactions arranged by an officer or employee in which property, goods, services, or other things of value were received by or on behalf of the trust rather than the officer or employee, such as rental of offices and meeting rooms, purchase of office supplies, refreshments and other expenses of meetings, and food and refreshments for the entertainment of groups other than the officers or employees on official business;
- Office supplies, equipment, and facilities furnished to officers or employees by the trust for use in conducting official business; and
- Maintenance and operating costs of the trust's assets, including buildings, office furniture, and office equipment; however, see "Special Rules for Automobiles" below.

**Column (E):** Enter all other direct and indirect disbursements to each officer or employee. Include all disbursements for which cash, property, goods, services, or other things of value were received by or on behalf of each officer or employee and were essentially for the personal benefit of the officer or employee and not necessary for conducting official business of the trust.

Include in Column (E) all disbursements for transportation by public carrier between the officer or employee's home and place of employment or for other transportation not involving the conduct of official business. Also, include the operating and maintenance costs of all the trust's assets (automobiles, etc.) furnished to officers or employees essentially for the officers or employees' personal use rather than for use in conducting official business.

**Column (F):** Add Columns (B) through (E) of each Line and enter the totals in Column (F).

Enter on Line 10 the totals from any continuation pages for Schedule 3.

Enter the totals of Lines 1 through 10 for each Column on Line 11.

## SPECIAL RULES FOR AUTOMOBILES

Include in Column (E) of Schedule 3 that portion of the operating and maintenance costs of any automobile owned or leased by the trust to the extent that the use was for the personal benefit of the officer or employee to whom it was assigned. This portion may be computed on the basis of the mileage driven on official business compared with the mileage for personal use. The portion not included in Column (E) must be reported in Column (D).

Alternatively, rather than allocating these operating and maintenance costs between

Columns (D) and (E), if 50% or more of the officer or employee's use of the vehicle was for official business, the trust may enter in Column (D) all disbursements relative to that vehicle with an explanation in Item 25 (Additional Information) indicating that the vehicle was also used part of the time for personal business. Likewise, if less than 50% of the officer or employee's use of the vehicle was for official business, the trust may report all disbursements relative to the vehicle in Column (E) with an explanation in Item 25 indicating that the vehicle was also used part of the time on official business.

The amount of decrease in the market value of an automobile used over 50% of the time for the personal benefit of an officer or employee must also be reported in Item 25.

## ADDITIONAL INFORMATION AND SIGNATURES

**25. ADDITIONAL INFORMATION** — Use Item 25 to provide additional information as indicated on Form T-1 and in these instructions. If you are filing the Form T-1 in a paper format and there is not enough space in Item 25, see the instructions for continuation pages in Section III (How to File).

**26-27. SIGNATURES** — The completed Form T-1 that is filed with OLMS must be signed by both the president and treasurer, or corresponding principal officers, of the labor organization. If an officer other than the president or treasurer performs the duties of the principal executive or principal financial officer, the other officer may sign the report. If an officer other than the president or treasurer signs the report, enter the correct title in Item 26 or 27, and explain in Item 25 (Additional Information) why the president or treasurer did not sign the report. Electronically submitted forms must be signed with digital signatures which will automatically enter the date. Information about this system can be obtained on the OLMS Web site at http://www.olms.dol.gov.

Enter the date the report was signed and the telephone number at which the signatories conduct official business; a private, unlisted telephone number does not have to be reported. On a paper Form T-1 submitted pursuant to an exemption, original signatures are required; stamped or mechanical signatures are not acceptable.

## IX. TRUSTS THAT HAVE CEASED TO EXIST

If a trust has gone out of existence as a trust in which a labor organization is interested, the president and treasurer of the labor organization must file a terminal financial report for the period from the beginning of the trust's fiscal year to the date of termination. A terminal financial report must be filed if the trust has gone out of business by disbanding, merging into another organization, or being merged and consolidated with one or more trusts to form a new trust. Similarly, if a trust in which a labor organization previously was interested continues to exist, but the labor organization's interest terminates, the labor organization must file a terminal financial report for that trust.

The terminal financial report must be filed within 30 days after the date of termination to the following address:

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-5616
Washington, DC 20210-0001

To complete a terminal report on Form T-1, follow the instructions in Section VIII and, in addition:

- Enter the date the trust, or the labor organization's interest in the trust, ceased to exist in Item 2 after the word

"Through."

- Enter an "X" in the box in Item 3(c) indicating that the trust, or the labor organization's interest in the trust, ceased to exist during the reporting period and that this is the terminal Form T-1 for the trust from the labor organization.

- Enter "3(c)" in the Item Number column in Item 25 (Additional Information) and provide a detailed statement of the reason the trust, or the labor organization's interest in the trust, ceased to exist. If the trust ceased to exist, also report in Item 25 plans for the disposition of the trust's cash and other assets, if any. Provide the name and address of the person or organization that will retain the records of the terminated organization. If the trust merged with another trust, report that organization's name and address.

Contact the nearest OLMS field office listed below if you have questions about filing a terminal report.

## *If You Need Assistance*

The Office of Labor-Management Standards has field offices located in the following cities to assist you if you have any questions concerning LMRDA and CSRA reporting requirements.

Atlanta, GA
Birmingham, AL
Boston, MA
Buffalo, NY
Chicago, IL
Cincinnati, OH
Cleveland, OH
Dallas, TX
Denver, CO
Detroit, MI
Grand Rapids, MI
Guaynabo, PR
Honolulu, HI
Houston, TX
Kansas City, MO
Los Angeles, CA
Miami (Ft. Lauderdale), FL
Milwaukee, WI
Minneapolis, MN
Nashville, TN
New Haven, CT
New Orleans, LA
New York, NY
Newark (Iselin), NJ
Philadelphia, PA
Pittsburgh, PA
St. Louis, MO
San Francisco, CA
Seattle, WA
Tampa, FL
Washington, DC

Consult the OLMS Web site listed below or local telephone directory listings under United States Government, Labor Department, Office of Labor-Management Standards, for the address and telephone number of the nearest field office.

Copies of labor organization annual financial reports, employer reports, and labor relations consultant reports filed for the year 2000 and after can be viewed and printed at http://www.union-reports.dol.gov. Copies of reports for the year 1999 and earlier can be ordered through the Web site.

Information about OLMS, including key personnel and telephone numbers, compliance assistance materials, the text of the LMRDA, and related Federal Register and Code of Federal Regulations documents, is also available at:

**http://www.olms.dol.gov**

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# Federal Register

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October 9, 2003

## Part III

## Department of Labor

### Employment and Training Administration

20 CFR Part 604
Unemployment Compensation—Trust Fund Integrity Rule; Birth and Adoption Unemployment Compensation; Removal of Regulations; Final Rule

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**20 CFR Part 604**

**RIN 1205–AB33**

## Unemployment Compensation—Trust Fund Integrity Rule; Birth and Adoption Unemployment Compensation; Removal of Regulations

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Final rule.

**SUMMARY:** The Department of Labor (Department) is issuing this final rule to remove the Birth and Adoption Unemployment Compensation (BAA–UC) regulations. Those regulations permitted an experimental opportunity for states to provide, in the form of unemployment compensation (UC), partial wage replacement for parents taking approved leave or otherwise leaving employment while caring for their newborns or newly-adopted children.

**EFFECTIVE DATE:** This final rule is effective November 10, 2003.

**FOR FURTHER INFORMATION CONTACT:** Gerard Hildebrand, Office of Workforce Security, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4518, Washington, DC 20210. Telephone: (202) 693–3038 (voice) (this is not a toll-free number); 1–800–326–2577 (TDD); facsimile: (202) 693–2874; e-mail: *hildebrand.gerard@dol.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

*A. Overview*

On June 13, 2000, the Department published the BAA–UC Final Rule in the **Federal Register** at 65 FR 37210. The rule was codified at 20 CFR Part 604. It implemented an experimental opportunity for state agencies responsible for administering the Federal-State UC program to provide partial wage replacement for parents taking approved leave, or otherwise leaving employment, following the birth or placement for adoption of a child. On December 4, 2002, the Department published a Notice of Proposed Rulemaking (NPRM) proposing to remove the BAA–UC regulations in the **Federal Register**. (67 FR 72122 (December 4, 2002).) The NPRM invited the public to comment over a 60-day period, ending February 3, 2003. Comments were accepted by mail and electronic media.

The preamble to the NPRM contained a detailed explanation of the reasons for the removal of the BAA–UC regulations. In order to adequately respond to comments, and to eliminate the need for readers to refer to the NPRM for context, much of the material in the NPRM is repeated in this document.

*B. Background on BAA–UC*

Under BAA–UC, states were permitted, as part of a voluntary experiment, to amend their state UC laws to provide partial wage replacement for parents taking approved leave, or otherwise leaving employment, following the birth or placement for adoption of a child. In qualifying for UC, the individual would not have to be able and available (A&A) for work in the sense traditionally used by the Department. Instead, parents of newborns and newly-adopted children would be viewed as meeting the federal A&A requirements (as implemented through state law) under the premise that the parents' long-term attachment to the workforce would be strengthened and promoted by the payment of UC, which would provide some financial support to accompany the introduction of a new child into the family.

As the Department noted during the final rulemaking in 2000, the BAA–UC experiment was "a reversal of our position taken in 1997," when the Department advised a state that UC could not be used in this manner. (65 FR 37212 (June 13, 2000).) The BAA–UC experiment was described as "part of an evolving interpretation of the federal A&A requirements that recognizes practical and economic realities." *(Id.)* Simply stated, the Department interpreted the A&A requirements in a new and different way that emphasized the individual's potential long-term attachment to the workforce. BAA–UC was intended to test whether individuals would be more attached to the workforce, even if their current separation from the workforce was a conscious decision on their part due to personal and family reasons relating to the birth or adoption of a child. Significantly, since the Department made the BAA–UC experiment available in 2000, no state has elected to participate.

Following a review of the BAA–UC Final Rule as part of a Department-wide review of all regulations, the Department announced, in the NPRM, that it proposed to remove the BAA–UC regulations because it had determined that "the BAA–UC experiment is poor policy and a misapplication of federal UC law relating to the A&A requirements." (67 FR 72122 (December 4, 2002).) After thoroughly analyzing the A&A requirement, the Department concluded that "A&A tests involuntary unemployment due to a continuing lack of suitable work" and that the "BAA–UC rule not only failed to recognize this, but is in fact contrary to the A&A requirement." (*Id.* at 72125.)

*C. Effect of Repeal*

To date no state has elected to participate in the BAA–UC experiment. Therefore, terminating the experiment will not result in any state withdrawing benefits it previously granted. The only effect of the removal of the regulations is that it arguably reduces state flexibility because a state could no longer elect to use its unemployment fund to pay BAA–UC. The Department's position on federal law requirements will revert to that in existence before publication of the BAA–UC rule. Thus, a state must require that to be eligible for UC an individual must, among other things, demonstrate current labor force attachment by meeting the A&A requirements. Each state remains free to create a paid family leave-type program using state moneys from sources other than the state's unemployment taxes deposited into its unemployment fund.

*D. Policy Reasons for Repeal*

The UC program is designed to provide temporary wage insurance for individuals who are unemployed due to lack of suitable work. This would generally not be the case for parents who would avail themselves of BAA–UC. Such parents would be out of work because they both initiated their separation from the workforce and are currently unavailable for work; they would have effectively withdrawn from the labor market for a period of time. To the extent that BAA–UC is based on labor force attachment, it is based on an assumption of increased *future* attachment to the labor force. Individuals who take approved leave when an employer is holding a job open for them are not available for that work or other suitable work. As a result, BAA–UC paid to these individuals would be a payment for voluntarily taking time off work rather than payment due to lack of suitable work. As such, it would be paid leave, which was not envisioned in the design of the UC program.

We again note that no state has enacted BAA–UC legislation. The limited flexibility provided under BAA–UC may be one factor. In 2002, California passed legislation (enacted Senate Bill 1661; Chapter No. 901) that contains features of BAA–UC, as well as many features beyond the scope of

BAA–UC. Notably, it authorizes payments beyond the scope of BAA–UC to certain individuals who take time off from work to care for a sick or injured child, spouse, parent or domestic partner as well as for foster care placements of a new child. The California law does not use its unemployment fund as a funding source, but instead uses employee contributions to its Temporary Disability Insurance fund. Similarly, the BAA–UC rule limits the types of eligibility conditions that may be imposed on individuals. For example, the BAA–UC rule at 20 CFR 604.20 lists industry, employer size, or the unemployment status of a family member as unacceptable eligibility factors.

Other flexibility issues have also been identified. For example, the Department expressed concern with a state bill that appeared to be close to enactment because it appeared to be inconsistent with Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA). This bill would have made BAA–UC mandatory for all services performed in the state, except for services performed for certain governmental and nonprofit entities that could elect to participate. Because Section 3304(a)(6)(A), FUTA, requires that, with respect to these governmental and nonprofit services, UC must be paid "in the same amount, on the same terms, and subject to the same conditions" as UC payable on other services performed under state law, the Department advised the state that this legislation, if enacted, would be inconsistent with FUTA.

Finally, when the BAA–UC Final Rule was issued in 2000, state unemployment funds were in sounder financial condition than today. Since the publication of the rule, many states have seen a drastic decline in their unemployment fund balances, and most states are below our recommended 1.00 average high-cost multiple. (The average high-cost multiple indicates how many years of benefits a state has available under a recessionary scenario. A rating of 1.00 indicates the state has one year's worth of benefits on hand. The Department recommends a 1.00 high-cost multiple as a reasonable margin of safety to ensure fund solvency in periods of high unemployment.) Indeed, at the time BAA–UC was created, one of the policy arguments made for using a state's unemployment fund for BAA–UC was the claim that states had "surpluses" in their unemployment funds, which could be made immediately available to implement a BAA–UC experiment. The sudden and rapid decline in fund balances undercuts this argument and emphasizes the need for states to preserve the integrity of their unemployment funds for providing temporary income support to the involuntarily unemployed.

### *E. Legal Reasons for Repeal*

The Department and its predecessors (the Social Security Board and the Federal Security Agency) have interpreted and enforced federal A&A requirements since the inception of the federal-state UC program. Although no A&A requirements are explicitly stated in federal law, the Department and its predecessors interpreted four provisions of federal UC law, contained in the Social Security Act (SSA) and FUTA, as requiring that states condition the payment of UC upon a claimant being able to and available for work. Two of these provisions, at Section 3304(a)(4), FUTA, and Section 303(a)(5), SSA, limit withdrawals, with specific exceptions, from a state's unemployment fund to the payment of "compensation." Section 3306(h), FUTA, defines "compensation" as "cash benefits payable to individuals with respect to their unemployment." The A&A requirements provide a federal test of an individual's continuing "unemployment." (The meaning of "unemployment" in this statutory framework is discussed below.) The other two provisions, found in Section 3304(a)(1), FUTA, and Section 303(a)(2), SSA, require that compensation "be paid through public employment offices." The requirement that UC be paid through the public employment system (the purpose of which is to find people jobs) ties the payment of UC to both an individual's ability to work and availability for work. These A&A requirements serve, in effect, to limit UC eligibility.

The basis for the federal A&A requirements was summarized in a March 11, 1939, letter from the Chair of the Social Security Board to the Governor of California, concerning whether the state could make payments with respect to temporary disability from its unemployment fund:

> The entire legislative history [of the UC titles of the original SSA] including the Report to the President of the Committee on Economic Security, the report of the House Committee on Ways and Means, the report of the Senate Committee on Finance, and the Congressional debates all indicate, either expressly or by implication, the compensation contemplated under [these titles] is compensation to individuals who are able to work but are unemployed by reason of lack of work. Several provisions of those titles are meaningful only if applied to State laws for the payment of such compensation. For example, the requirement that compensation be paid through public employment offices, or the requirement that States make [certain information] available to agencies of the United States charged with the administration of public works or assistance through public employment, are obviously without reasonable basis if applied to payments to disabled individuals. Many of the standards contained [in the experience rating provisions] are similarly without reasonable basis if applied to a State law for the payment of disability compensation.
>
> For these reasons, the Board is of the opinion that the [UC titles of the SSA] are applicable solely to State laws for the payment of compensation to individuals who are *able to work and are unemployed by reason of lack of work*. [Emphasis added.]

That involuntary unemployment due to lack of suitable work was the key test is supported by the Congressional Committee Reports:

> The essential idea in unemployment compensation* * * is the accumulation of reserves in time of employment from which partial compensation may be paid to workers who become unemployed and are unable to find work. * * * In normal times it will enable most workers who lose their jobs to tide themselves over, until they get back to their old work or find other employment without having to resort to relief. * * * [H. Rep. 615, 74th Cong. 1st Sess. 1935 Page 5.]
>
> The essential idea in unemployment compensation is the creation of reserves during periods of employment from which compensation is paid to workmen who lose their positions when employment slackens and who cannot find other work. Unemployment compensation differs from relief in that payments are made as a matter of right, not on a needs basis, but only while the worker is involuntarily unemployed. * * * Payment of compensation is conditioned upon continued involuntary unemployment. Beneficiaries must accept suitable employment offered them or they lose their right to compensation. [S. Rep. 628, 74th Cong. 1st Sess. 1935 Page 11.]
>
> For the great bulk of industrial workers unemployment compensation will mean security during the period following unemployment while they are seeking another job, or are waiting to return to their old position. [*Id.* Page 12.]

As illustrated by this history, the UC program is designed to provide temporary wage insurance for individuals who are unemployed due to lack of suitable work. *In order to be eligible for UC, an individual must be able to accept suitable work if it is offered, must be available to accept that work and must not refuse suitable work if offered. In other words, an individual may not voluntarily make him/herself unavailable for offered suitable work. Rather, a fundamental premise of the UC program is that benefits are only available to individuals who are involuntarily unemployed because there is no suitable work available to them.*

The federal A&A requirements implement this design by testing whether the fact that an individual did not work for any week was *involuntary* due to the *unavailability of work*. (Note that the A&A test looks only to whether the unemployment is due to lack of work for each given week of benefits claimed. That is, it looks to why the individual is unemployed for a given week; it does not look to why the individual was separated from employment, except to the extent that the individual may have not been A&A for the week of the separation.) Since the BAA–UC experiment did not examine the federal A&A requirements from this perspective, it permits the payment of UC to individuals for whom suitable work may exist, thus contradicting the basic purpose of the A&A requirements.

The legislative history quoted above indicates that eligibility for UC is not based on the individual's personal need, except to the extent that his/her "need" is created by lack of suitable work. BAA–UC, however, extended eligibility for UC to parents based on considerations of compelling personal or family need regardless of whether there is a lack of suitable work. While the idea of providing financial assistance to parents or families experiencing birth or adoption may be admirable, it is not in keeping with the fundamental limitation of paying UC only to individuals who are unemployed due to lack of suitable work.

The legislative history also establishes a link between the public works programs in existence in 1935 and the UC program that bears on the A&A requirements. As noted in the Social Security Board's contemporaneous interpretation, an SSA provision (Section 303(a)(7)) requires that states make available to agencies of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of UC recipients. This requirement is predicated upon the understanding that UC recipients must be out of work due to lack of available work. It would make no sense to refer an individual, for whom work was available, to a public works program, which should be the employer of last resort. Senator Wagner, who introduced the SSA in the Senate, described the relationship between the proposed UC program and the government's public works programs (as well as public employment offices) as follows in the floor debate on the SSA:

> [Unemployment insurance] is not designed to supplant, but rather to supplement the public-works projects which must absorb the bulk of persons who may be disinherited for long periods of time by private industry. * * * A provision in the present bill requires that the Federal tax rebate shall be used to encourage a close connection between State job-insurance laws and unemployment-exchange offices. This provision emphasizes the fact that the [monetary] relief of existent unemployment is but a subordinate phase of the main task of providing work for all who are strong and willing. [79 Cong. Rec. 9284 (June 14, 1934).]

Thus, Congress intended the UC system to be subordinate to the main task of getting people back to work, which is, as noted above, implemented through the A&A requirements. BAA–UC is not consistent with this goal because it encourages parents to refuse available work.

Finally, as noted in the Social Security Board's letter, experience rating standards are meaningless if the test of involuntary unemployment due to lack of work is not used. Experience rating was originally established to ensure an equitable distribution among employers of the cost of the system, and to encourage employers to stabilize their work forces. ("Credits" will be provided "in the form of lower contribution rates * * * to employers who have stabilized their employment." (S. Rep. 628, 74th Cong. 1st Sess. 1935 Page 14.)) BAA–UC contradicts the intent of experience rating because it allows payments based on an individual's own actions without regard to an employer's attempt to stabilize employment by offering suitable work to its current and former employees. Although experience rating was discussed in the BAA–UC final rulemaking, that discussion did not recognize that stabilization of employment is one of the primary purposes of experience rating.

## II. Responses to Comments

### *A. Overview*

About 6,200 pieces of correspondence commenting on the NPRM were submitted by the close of the comment period on February 3, 2003. Roughly 74 percent of the commenters favored removal of the BAA–UC rule while the remainder opposed removal. Some commenters addressed areas beyond the scope of the NPRM, which was the removal of the BAA–UC regulation. These commenters addressed such matters as reforms to the UC program, including the eligibility of part-time workers and other expansions of eligibility. Because these areas are beyond the scope of the proposed rulemaking, they are not discussed in this preamble. All timely comments were considered and all correspondence is included in the rulemaking record.

Most commenters were individuals, including many who identified themselves as human resource professionals. Comments were also received from employers; groups representing employer interests; groups representing the human resource community; labor unions and groups representing various other interests.

### *B. Reasons for Repeal*

#### (1) Need for Paid Family Leave

Many commenters opposing removal of the rule argued that paid family leave is needed because of financial barriers to taking family leave. Some noted that the final rule creating BAA–UC cited research supporting this need and that the NPRM proposing removal did not refute this research. Some also noted that the NPRM did not refute research that paid family leave might have positive effects on workforce attachment. Others claimed the rulemaking would have a negative effect on family life.

This rulemaking does not address whether paid family leave is needed or desirable. Thus, there is no need to discuss the research discussed in the BAA–UC Final Rule. The purpose of this rulemaking is to address whether a state's unemployment fund is the appropriate vehicle to fund family leave payments. As will be discussed in the next section, the removal of the BAA–UC rule does not prohibit states from establishing paid family leave programs nor does it prohibit integrating administration of these programs into a state's UC administrative infrastructure. Because no state will be required to repeal an existing BAA–UC program, and because other avenues are available to states for creating a paid leave program, the Department does not believe the rule would preclude paid family leave or have a negative effect on family life. Rather, by preserving the integrity of state unemployment funds, this rule helps assure that adequate funds will be available to benefit workers unemployed due to lack of suitable work (and, as a result, the families of those workers) under the UC program.

#### (2) Flexibility

Many commenters opposing removal of the rule cited preservation of state flexibility as a reason for maintaining the rule. Commenters opposing removal argued that there is state interest in flexible approaches, including BAA–UC, as indicated by the number of

BAA–UC legislative proposals in the states. Several observed that "in 2002, over 20 states had legislation introduced looking at this issue." One commenter argued that repeal would have a "chilling effect" on state legislatures' attempts to create paid family leave while others asserted that the Department made the BAA–UC experiment available only two years ago and many states have just begun the process of deciding whether to adopt it. It was also observed that the approach taken in California (discussed above) is not available in all states, while the UC system offers a long-standing, stable infrastructure available in all states.

The only lack of flexibility that will be caused by removal of the BAA–UC rule, however, is that states will not be able to use their unemployment fund moneys to pay workers who take approved leave, or otherwise leave employment, following the birth or placement for adoption of a child. States can use other means of funding paid leave programs. Protecting the integrity of unemployment fund moneys against use for non-UC purposes was a major area of concern for most commenters supporting removal. Among other things, these commenters characterized BAA–UC as a "back door" expansion of the Family and Medical Leave Act (FMLA); as putting "at risk the safety net for unemployed workers;" as "illegal;" and a "misuse" of the UC program. We agree that, as discussed elsewhere, BAA–UC fundamentally differs from UC.

While we acknowledge that California's approach is limited to those states with temporary disability programs, nothing in federal law prohibits a state from using the existing UC administrative infrastructure for other programs, providing it properly allocates the costs of administration between the UC and non-UC programs. We also note that one commenter, citing state interest in paid leave, indicated the innovation and flexibility that several states have already demonstrated in fashioning an "at-home infant care" program where "low-income working parents receive subsidies" from non-UC funds for caring for infants at home.

### (3) Unemployment Fund Balances

Most of the commenters supporting removal of the BAA–UC rule expressed concern with the solvency of state unemployment funds. Several commenters opposing removal disagreed with our assessment of the solvency of state funds, which is that most states have seen a drastic decline in fund balances and most states are below the Department's recommended level of solvency. For example, one commenter indicated that even though reserves have dropped from pre-recession levels, the UC "funding situation is exceptionally well positioned to handle the demand for benefits." We believe our characterization of the fund balance situation is accurate. Indeed, arguments that the funds are well positioned can be made only because Congress distributed $8 billion to states to assist in the payment of UC and for other purposes, in recognition that fund levels were dropping. (Section 209 of Public Law 107–147, March 9, 2002.) This infusion of funds on average increased state balances by about 20 percent at the time of the distribution and cannot be expected to recur in future downturns.

Some commenters opposing removal of the BAA–UC rule objected to including all states, even those with "abundant reserves," in our solvency arguments. One commenter noted that the Department could establish a solvency standard as a condition of a state adopting or implementing BAA–UC, and indicated that several commenters on the NPRM proposing the BAA–UC experiment had suggested establishing such a standard. Other commenters criticized the Department for not taking action to stop state tax cuts which they claim precipitated solvency problems. However, as the Department noted in the final rule creating the BAA–UC experiment, it has "never interpreted Federal law to require "solvency"' of state unemployment funds. (65 FR 37216 (June 13, 2000).) Even if the Department had authority to mandate a solvency standard, we believe it would be poor public policy to create a federal standard that would require states to deny specific types of benefits based on fund balances.

### (4) Whether Certain Situations Are Exceptions to A&A

Most commenters agreed with the Department's position that BAA–UC is inconsistent with the federal A&A requirements. Some also argued that there is an "involuntariness" requirement in federal UC law. Others disagreed, stating that the Department has allowed exceptions to A&A; that there are no specific A&A requirements in federal law; that Congress expressly rejected A&A requirements; and that federal law contains no "involuntariness" requirement (which is a basic underpinning of the federal A&A requirements).

Commenters addressed four situations—illness, jury duty, approved training, and temporary lay-offs "as they relate to the A&A requirements. Generally, those favoring removal of the rule supported the Department's analysis that these situations are materially different from the BAA–UC experiment and could not be used as a basis for supporting BAA–UC. Opponents of removing the rule argued that these situations are approved "exceptions" to the A&A requirement.

The preamble to the BAA–UC Final Rule noted that these four situations affect individuals' ability "to meet the stricter interpretations of the A&A requirements." (65 FR 37213 (June 13, 2000).) Although that preamble also noted that none of these situations "precisely parallels the payment of BAA–UC, they do operate on the same premises: that situations exist in which it is important to allow a flexible demonstration of availability and in which attachment to the workforce can be demonstrated, and indeed strengthened, without requiring a current demonstration of availability." (*Id.*) However, the preamble also noted that "paying BAA–UC is a departure from past interpretations." (*Id.*) The preamble of the NPRM (67 FR 72124–72125 (December 4, 2002)) noted that, unlike BAA–UC, none of these situations permit a voluntary withdrawal from the workforce. Instead, all of these situations require that an individual initially be A&A for work. These situations represent a practical response to situations in which it does not seem sensible to apply a strict application of A&A to an individual who is initially A&A for suitable work. In particular:

- *Illness.* The interpretation pertaining to illness applies only to individuals who initially meet the A&A requirements, but who then become ill *and* who do not refuse suitable work. Until work is refused, the unemployment is due to lack of work, which is what the A&A requirements are designed to test. The A&A requirements are preserved because the individual must initially demonstrate availability before the illness and must be held ineligible if s/he refuses suitable work offered during the illness.
- *Jury Duty.* The interpretation pertaining to jury duty applies only to individuals who initially meet the A&A requirements, but who are then called for jury duty. The unemployment continues to be due to a lack of work. The A&A requirements are preserved because the individual must initially demonstrate availability before being called for jury duty and because attendance at jury duty may be taken as evidence that the individual would otherwise be available for work. Even if

the individual has a job, the individual would have to report for jury duty.

- *Approved training.* Approved training is limited to situations where the state, not the individual, determines that short-term training will improve an individual's job prospects and is appropriate and necessary. In other words, the state has determined that the training enhances the individual's availability for work by making him/her qualified for a wider range of jobs. The Committee Report explaining this provision noted that Congress considered "training in occupational skills * * * so important to the employability of the individual" because "training is frequently necessary for obtaining new employment." S. Rep. 91–752 U.S.C.C.A.N. 3606, 3625 (1970). Attendance at such training is accepted as evidence of availability for work. Indeed, if the individual refuses training, or fails to attend training, the states must evaluate eligibility under their A&A provisions.
- *Temporary lay-offs.* An individual on temporary lay-off must be available to work for the employer who laid-off the individual as soon as the employer again has work for the individual. While this requires an individual's availability for work with only one employer, it is nonetheless a test of whether the unemployment is due to lack of suitable work.

As we noted above, unlike BAA–UC, none of these situations permit a voluntary withdrawal from the workforce. Unlike BAA–UC, all of these situations contain some link to involuntary unemployment caused by a lack of suitable work.

Also, as the Department noted in the NPRM, none of these situations apply to BAA–UC. Under BAA–UC, unlike the illness exception, an offer of suitable work could be refused with no effect on eligibility. Unlike the illness and jury duty exceptions, no initial establishment of A&A was required to determine if the unemployment was linked to a lack of suitable work despite the individual's availability for work. Unlike approved training, BAA–UC did not address a situation where an individual is attempting to remedy his or her continuing unemployment; indeed, BAA–UC addressed a situation where a job is already available to the parent. Also, for approved training, the state must approve the training as increasing the individual's job prospects; no similar requirement existed for BAA–UC, with the result that increased attachment to the workforce for any one individual is highly speculative. Finally, unlike temporary lay-offs, BAA–UC did not require that the individual be available for at least one job; an offer of suitable work could be refused with no effect on eligibility. (One commenter noted a provision of a state's law that "waived" availability for individuals on temporary lay-off. In response, we note that, even under this provision, individuals must remain available for the job from which they were laid off.) These precedents differ from BAA–UC in that they do not permit an individual to *voluntarily remove* him/herself from being available for suitable work for a given week. BAA–UC, on the other hand, allowed payment to parents who have initiated their separation from the workforce and whose personal situation, rather than the lack of available suitable work, makes them unavailable for employment.

One commenter noted that individuals on temporary lay-off are "not "involuntarily [unemployed] due to lack of work" since they voluntarily work in an industry that "only provides work part of the year" and that they are required to "accept work from a single employer, regardless of what opportunities may otherwise exist for them in the job market." Similarly, the commenter noted work remains available for those on jury duty.

In response, we note that as these situations indicate, the Department has been liberal and flexible in construing A&A. Concerning temporary lay-offs, it is sufficient that the individual be available for a single job opportunity. (Indeed, payment of UC to individuals on temporary lay-off allows employers to preserve their skilled workforces, which has been cited as one of the purposes of the UC program.) For jury duty, the Department believes it is unreasonable to deny UC to an individual, who has initially met the A&A requirement, because of a governmental compulsion to serve on a jury. If suitable work was available prior to the individual being called to serve on a jury, the individual would have been required to accept such work to meet the A&A requirement. Indeed, serving on a jury indicates an individual was otherwise available for work; even individuals who are employed must by law serve on juries and employers must permit them to serve.

We also note that, as a practical matter, it makes little sense to require individuals on temporary lay-off who intend to return to work with their former employers to be available for work that they will leave when their old job again becomes available. This creates unreasonable expectations for both the individual and the firms looking for new workers; indeed, most employers will not hire individuals on temporary lay-offs.

It does not follow that these situations support an argument that BAA–UC-eligible individuals are A&A. In all of the above situations an individual could be denied for failing to be A&A. Failure to attend jury duty or approved training will result in a denial for failure to be A&A; failure by an ill individual to accept suitable employment or failure to accept recall from a temporary lay-off will, at a minimum, result in a denial due to failure to be A&A. (We note that states also impose a disqualification for failure to accept suitable employment.)

Conversely, under BAA–UC, an individual could refuse work without any effect on current eligibility. As one commenter supporting removal noted, the BAA–UC rule was "premised on the extraordinary assertion that "able and available" somehow can be interpreted to mean 'unavailable now but perhaps available in 3 months or later. * * * This interpretation * * * contradicts the plain meaning of the word 'available' by covering employed workers who take leave from employment *when the employer has work available* but the worker cannot, or does not wish to work." (Emphasis in original.)

### (5) Voluntary Leaving and Other Situations

#### (a) Voluntary Leaving

Some commenters opposing removal of the rule argued that the Department had approved other exceptions to the A&A requirement. These commenters noted provisions of state UC laws that address voluntarily leaving a job to escape domestic violence, to escape sexual harassment, to follow a spouse, due to loss of child care, due to pregnancy or pregnancy-related disability, and due to the individual's illness. Others used these provisions as proof that there is no "involuntariness" requirement in federal law. Conversely, some commenters favoring removal of the rule argued that there is a specific "involuntariness" requirement.

The examples addressing voluntary leaving are distinct from the A&A requirement. The A&A requirement, a test of whether an individual is unemployed due to lack of suitable work, "looks only to whether the unemployment is due to lack of work for each given week of benefits claimed. That is, it does not require that states hold an individual ineligible based on the reason for separation from employment, except to the extent that the individual may have not been A&A

for the particular week of the separation." (67 FR 72124 (December 4, 2002).) There is, simply put, no federal requirement that the initial separation be involuntary for an individual to be eligible for UC; however, the individual must be A&A for suitable employment. Indeed, in the early days of the UC program, many state laws did not contain any provision addressing voluntary separations from employment, but they all had provisions requiring an individual to be A&A for suitable work.

An example may help explain how voluntary leaving provisions are distinct from the A&A requirements. If an individual left work to care for an ill child, certain states will not disqualify that individual for voluntarily leaving employment. However, the individual must still be A&A to be eligible for UC. If caring for the ill child prevents the individual from being available for a new job, the individual will be held ineligible for not meeting the state's A&A requirements because the individual is not involuntarily unemployed due to lack of suitable work. However, after the child no longer needs care and the individual becomes available for work, the individual may immediately commence collecting UC. Thus, this voluntary leaving provision does not affect the requirement that the individual must be A&A.

(b) Other Situations

One commenter noted a state law provision relating to short-time compensation (more commonly known as "worksharing") under which an individual would not be denied UC "by reason of application of provisions relating to availability for work" as evidence that exceptions to the A&A requirement exist. (Under "worksharing," an employer and its employees agree that the employees will work a reduced work week in lieu of having some employees totally laid-off.) In response, we note that worksharing is expressly permitted by federal law as an exception to the A&A requirements, and that, like temporary lay-offs, the individual must still be available to work for his/her employer. Section 401(d)(1)(C) of Public Law 102–318 provides that, under worksharing, individuals "are not required to meet the availability for work or work search test requirements * * *, but are required to be available for their normal workweek."

The same commenter noted a state law that permits individuals with a history of part-time work to limit their availability to part-time work under certain conditions. This is consistent with federal law because those individuals are available for work. They are involuntarily unemployed due to lack of suitable work, which, in their case, is limited to part-time work.

(6) Test Requires Changes in State Law

Some commenters expressed concern that our basis for A&A—to test whether an individual's unemployment was involuntary due to lack of suitable work—could result in states having to repeal several current provisions of state law. For example, one commenter noted that the Department "indicates its approval of exceptions [to the A&A requirement] such as temporary lay-offs, jury duty, and other situations that do not comply with the narrow rule the Department" articulated in the NPRM. These provisions of state law were discussed in sections (2) and (3) above as being consistent with the Department's position on A&A. Therefore, the Department's basis for A&A will not require any states to repeal such provisions.

(7) Legislative History

Several commenters favoring removal agreed with the Department's analysis that the legislative history supports the A&A requirements. Some commenters opposing removal noted that no specific A&A requirements exist in federal law. One such commenter disagreed with our analysis of legislative history, noting that the "lack of a federal availability requirement is confirmed not only by the plain language of FUTA and SSA, but by their legislative histories, which show that [Congress] expressly declined to impose specific federal requirements for availability" and, further, that Congress could clearly display its intention to create eligibility requirements as it did when it required individuals claiming "extended and emergency benefits to apply for and accept suitable work and to actively engage in such work." This commenter further noted that even if "widespread involuntary unemployment" was the original impetus for UC provisions of the 1935 SSA, "nothing in federal [UC] law limits states's ability to provide more expansive coverage." In support of this, the commenter also cited a 1936 Social Security Board statement that "It is desirable that a State law should be at least as broad in its coverage as the Federal act. * * * The State may, of course, go further and adopt a wider coverage."

Although several members of Congress wrote in opposition to removing the BAA–UC rule, the Department's extensive review of the legislative history and the provisions of the original 1935 SSA and subsequent enactments indicate a Congressional expectation that individuals must be A&A for suitable work as a condition of benefit eligibility. While the Department agrees that FUTA and SSA do not explicitly set forth an A&A requirement, the Department must, in its supervisory role in the administration of these laws, make reasonable interpretations of the requirements set forth therein. Not all of the statutory requirements are unambiguous. Thus, although a requirement may not be explicit, it may be implicit, especially when viewed in the light of the legislative history. Further, although the states are free "to provide more expansive coverage" than that contemplated in these federal laws, they are nevertheless constrained by the requirements of this legislation as interpreted by the Department. The Department's construction of an implicit federal A&A requirement is reasonable based on the statutory language, the Social Security Board's contemporaneous interpretation of this language, the purpose of the UC program as set forth in the legislative history, and subsequent acts of Congress, discussed below.

In subsequent enactments, Congress has acted several times to reaffirm that UC is payable only to individuals who are able and available for work. When Congress first enacted a provision requiring the reduction of UC due to receipt of retirement pay, it explained that it was establishing a "uniform rule" to address the fact that some recipients of these retirement payments "have actually withdrawn from the labor force," that is, are not A&A. (S. Rep No. 1265, 94th Cong. 2d Sess. 22 (1976).) In 1993, Congress required that states refer individuals likely to exhaust UC to reemployment services and deny UC to individuals who failed to participate in these services. (Sections 303(a)(10) and (j), SSA.) This reflected Congress's interest in helping UC claimants get back to work, especially those expected to have the hardest time returning to work quickly, and its willingness to deny UC to those individuals unwilling to take positive steps toward reemployment. Providing reemployment services to individuals who are not able or willing to accept employment (that is, who are not A&A) would waste resources on some while denying reemployment services to others who could benefit.

Congress has also created several extensions of UC to address "widespread involuntary unemployment" during economic downturns. In Public Law 91–373, it created the permanent federal-state extended benefit program (EB) to pay benefits "during periods of high unemployment." (H. Rep. No. 752, 91st Cong. 2d Sess. Page 6 (1970).) Indeed, one of the "triggers" for determining if a high unemployment period exists is the total unemployment rate, which includes only workers who have recently demonstrated their availability by looking for work. Several temporary extensions have also been enacted during periods of high unemployment, including the current Temporary Extended Unemployment Compensation program. When Congress extended the Emergency Unemployment Compensation program in the early 1990's, it noted that "[m]any people who have lost their jobs are spending months, and months and months, sometimes a year or more seeking the next job." (H. Rep. 268 103rd Cong. 1st Sess. Page 2 (1993).) The purpose behind these programs was clearly to pay individuals unable to find employment because of economic downturns.

As noted above, one commenter stated that special eligibility requirements exist for the EB program. Specifically, an individual claiming EB must conduct a sustained and systematic search for suitable work and must submit tangible proof of this work search. Although many commenters appeared to believe that an active work search is a federal requirement for regular UC and/or is necessary component of availability, this is not the case. Though an active work search is one way for the individual to indicate availability, it is not the only way. An individual's active registration with the state's employment service or the individual's use of union hiring halls or private recruiting firms are all acceptable indications of availability absent an active work search by the individual. Aside from the EB provisions, federal law does not require an active search for work and, as a result, one state (Pennsylvania) does not require any work search for the regular UC program. Thus, the fact that Congress required an active search for work for the long-term unemployed is unrelated to whether an A&A requirement exists for the regular program.

We note that the work search requirement was not part of the original 1970 enactment of the EB program, having been added in 1980. Also, Congress completely suspended the EB work search requirement in the early 1990's when it extended the Emergency Unemployment Compensation program. This EB requirement also is not applicable to the Temporary Extended Unemployment Compensation Program. The effect of these suspensions was that state law eligibility requirements, including the state A&A requirements, were used for determining eligibility for programs that were designed to ameliorate widespread involuntary unemployment. In sum, the EB work search provisions do not support the argument that there is no federal A&A requirement.

We note that even Congressional prohibitions on the denial of UC assume that individuals must be available for work. When it passed a federal prohibition on denying UC solely due to pregnancy, Congress noted that an individual must be "able to work * * * and be available for employment" (H. Rep. No. 752, 91st Cong. 2d Sess. Page 19 (1970)) and that pregnant workers must continue to meet the "availability for work and ability to work" requirements. (*Id.* at 21.)

Finally, we note that Congress indicated its expectation that an "able" requirement existed for UC when it permitted states to withdraw certain employee contributions from their unemployment funds for the payment of "cash benefits with respect to their disability." (Current Sections 3304(a)(4)(A), FUTA, and 303(a)(5), SSA.) Individuals who lose their jobs because of a disability, and who are unable to perform any work because of such disability, are not unemployed due to a lack of suitable work. They are unemployed due to the disability. Thus, explicit statutory authority was necessary to permit payment to disabled individuals from state unemployment funds.

(8) Supreme Court Decisions

Two commenters cited *New York Tel. Co.* v. *New York State Dep't of Labor*, 440 U.S. 519, 537 (1979). One commenter noted that "[i]t is unclear whether states have authority to use UI [that is, UC] funds to provide family leave absent a Department of Labor regulation" and then cited *New York Tel. Co.* for the proposition that "states have broad discretion to legislate in the area of UI." The other commenter citing *New York Tel. Co.* noted that the U.S. Supreme Court has treated the absence of "explicit prerequisites" for UC eligibility "as a strong indication that Congress did not intend to restrict the States' freedom to legislate in this area" and that "as the Supreme Court has noted, 'when Congress wished to impose or forbid a condition for compensation, it did so explicitly.'" Therefore, this commenter argues, the omission of a specific availability requirement in FUTA or SSA "reflects the absence of any congressional intent to condition eligibility for regular UI benefits on claimants' availability for work, as a matter of federal law."

As a general rule, we agree that where Congress has not imposed specific requirements related to FUTA or SSA, states are free to operate and determine whether to impose their own requirements. However, the principle that Congress intended to grant states freedom to design their UC systems in areas in which it did not impose explicit requirements does not mean that the Department is precluded from making reasonable interpretations of the specific requirements of FUTA and SSA. We note that (1) the interpretation of an "able and available" requirement was made contemporaneously with the passage of SSA by the first agency with responsibility for interpreting SSA; (2) the Department has consistently interpreted FUTA and SSA to include a federal A&A requirement; and (3) *New York Tel. Co.* does not discuss either a specific federal A&A requirement or its absence. Therefore, the conclusion that the second commenter draws that the general language of *New York Tel. Co.* means that there is no federal A&A requirement or that it is beyond the authority of the Department to construe such a requirement is not a persuasive position.

The language in *New York Tel. Co.*, cited by the second commenter, was used by the Court to discuss its prior holding in *Ohio Bureau of Employment Services* v. *Hodory*, 431 U.S. 471, 482–483 (1977). In *Hodory*, the Court affirmed Ohio's denial of benefits to workers unemployed by labor disputes even if the unemployed workers were not strikers themselves. (*Hodory*, 431 U.S. at 482–83.) *Hodory* held that benefits could thus be denied under certain circumstances even when a worker is *involuntarily* unemployed. (*Id.*) *New York Tel. Co.* also involved the issue of workers involved in labor disputes. Unlike Ohio, New York permitted strikers to obtain UC after a certain period of time had elapsed. 440 U.S. at 523. The Court recognized that New York's law required all individuals seeking UC to be A&A, including strikers, as demonstrated by the Court's quote of that law, which required an individual's "capability and readiness,* but inability to gain work." (*Id.* at 523, n.2, emphasis added.) Thus, although the striking individual's initial separation may be voluntary, his/her continued unemployment is involuntary, unlike BAA–UC where the individual is not available for any work.

In the course of its discussion of *Hodory*, the Court in *New York Tel. Co.*

emphasized that "the issue of public benefits for strikers became a matter of express congressional concern in 1935 during the hearings and debates on the Social Security Act" and that Congress left that matter specifically to the states. (*Id.* at 542.) The Court remarked that "[t]he drafters of the Act apparently concluded that such proposals [to prohibit States from providing benefits to strikers] should be addressed to the individual state legislatures without dictation from Washington." (*Id.* at 542–43.)

However, the Court also noted that not all matters concerning UC were left to the States. The Court recognized that "[f]rom the beginning * * * the Act has required a few specific requirements for federal approval." (*Id.* at 542.) The Court explained that these requirements included those found in Section 3304(a)(5), FUTA, which provide, among other things, that a "State may not deny compensation to an otherwise qualified applicant because he had refused to accept work as a strikebreaker, or had refused to resign from a union as a condition of employment." (*Id.*) The Court also noted that Section 3304(a)(5), FUTA, "from the start had provided" that "compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions" and then listed the specific conditions under which an otherwise eligible individual could refuse to accept new work.

The Court's recognition of certain universal UC requirements is further supported by its quotation from the Senate Report: "Except for a few standards which are necessary to render certain that the State unemployment compensation laws are genuine unemployment compensation acts and not merely relief measures, the States are free to set up any unemployment compensation system they wish * * *." (*Id.* at 543, n. 42.) Allowing payment of BAA–UC from unemployment funds would transform a "genuine unemployment compensation" program into relief measures for those who have a job available and choose not to work and, thus, *New York Tel. Co.* does not in any way support allowing a state to do so.

In a later case, the Court recognized that there are limits on its broad statement about state discretion in *New York Tel. Co.* In *Baker* v. *General Motors Corp.*, 478 U.S. 621, 633 (1986), the Court, citing *Hodory* and the Report of the Committee on Economic Security, recognized that involuntary unemployment, although nowhere specifically mentioned in FUTA or the SSA, "is thus generally a necessary condition to eligibility for compensation." Athough *Baker* did not specifically refer to the A&A requirement, that requirement is the test of "involuntary" unemployment under the FUTA and the SSA.

In sum, while we agree with the commenter's statement and the Court's observation that states are free to design their UC systems as they choose as long as those systems meet federal requirements, we disagree with the commenter's conclusion that this principle voids the A&A requirement. As we have shown, the federal A&A requirement is part of the foundation that makes a UC system a true UC system, not a relief system. The Department has the authority to interpret what the test of continued "involuntary" unemployment requires, so long as its interpretation is based on a reasonable construction of FUTA and SSA. As discussed above, the Department and its predecessors have consistently interpreted federal law to require that individuals must be A&A as a condition of receiving UC.

### (9) Whether BAA–UC Is Paid Leave

In the BAA–UC Final Rule, the Department addressed what were termed "misconceptions" regarding BAA–UC. The Department noted that "[m]any respondents referred to BAA–UC as 'paid FMLA' leave or 'paid family leave.' " The Department responded that "[a]lthough there may be many cases where parents of newborns and newly-adopted children will be simultaneously eligible for BAA–UC and leave under the FMLA, the two are legally unrelated to each other." (65 FR 37212 (June 13, 2000).) The Department also said that BAA–UC is "not a new program." (*Id.*)

Although the Department did not ask commenters to address this distinction, the overwhelming majority did comment about FMLA and/or paid leave. As previously noted, many of those supporting removal of the rule described BAA–UC as a "back door" expansion of the FMLA, while many of those opposing removal cited the need for "paid family leave" and discussed BAA–UC as though it were paid family leave. In other words, despite the Department's explanation of differences between UC and paid leave, these commenters viewed BAA–UC as paid family leave.

As one commenter supporting removal noted, the purpose of UC "is to compensate a worker who becomes temporarily unemployed when the employer no longer has suitable work available * * *" Family leave, the commenter noted, citing Section 2(b)(1) of FMLA, is "to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity." This commenter concluded, "Clearly, these are two entirely separate systems." Concerning the Department's rationale that BAA–UC might strengthen long-term attachment to the workforce, another commenter also noted that one "could argue that paid leave programs for any purpose permitted by the FMLA might strengthen long-term attachment to the workforce," as might "any leave policy" and raised the concern that "UC funds might be used not just for leave programs, but for other social benefits such as health or pension benefits."

Thus, most commenters did not view the Department's attempts in the original BAA–UC rulemaking to distinguish between "paid leave" and BAA–UC as being sound. We agree. As we noted above, for individuals who were taking approved leave when an employer is holding a job open for them, BAA–UC would be a payment for voluntarily taking time off work rather than payment due to lack of suitable work. This makes the payment more in the nature of paid leave than UC. The payment is not made due to involuntary unemployment due to lack of suitable work, but due to the individual's decision to take time off from an existing job that is still available to the worker.

### (10) Justification for Changes in Position

Commenters also addressed the soundness of the Department's justification for changing its position, both in the BAA–UC final rule and the NPRM. One commenter opposing removal argued, among other things, that repealing BAA–UC represents a "radical shift in the agency's position [that] undermines [its] credibility. * * *" Some commenters supporting removal took the opposite approach. One, for example, argued that the rulemaking creating BAA–UC "failed to justify the Department's radical departure from over 60 years of precedent."

We agree that the original BAA–UC rulemaking did not adequately justify a reversal of the Department's longstanding position. As previously noted, the BAA–UC rule failed to discuss why an A&A test exists, which is to test involuntary unemployment due to a continuing lack of suitable work. Due to this failure, the BAA–UC rulemaking resulted in a misapplication of federal law.

### Executive Order 12866

The removal of 20 CFR part 604 is a "significant regulatory action" within the meaning of Section 3(f)(4) of Executive Order 12866 because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, this final rule was submitted to, and reviewed by, the Office of Management and Budget.

Before publication of the BAA–UC final rule (65 FR 37210 (June 13, 2000)), the Department prepared a Regulatory Impact Analysis which estimated that the rule would result in annual costs ranging from zero to $196 million, depending upon the number of states choosing to enact this voluntary program. (To establish the upper end of the cost range, the Regulatory Impact Analysis grouped the states into size groups—large, medium and small—and used the extent of state enactment of five representative types of UC benefit expansions (alternative base period, unrestricted good cause for voluntary quits, short-time compensation, dependents' allowances, and supplemental (or "additional") benefits) as an indicator of the likelihood of state enactment.) Since publication of the BAA–UC final rule, no state enacted BAA–UC, which means that no benefits have been paid, nor administrative costs expended. Removing the BAA–UC rule ends the possibility that BAA–UC and its associated administrative costs will be paid out of state unemployment funds with the result that the estimated costs would not be incurred. Therefore, the removal of the rule results in no costs or cost savings and potentially prevents costs from being incurred in the future. Because the Department expects the immediate economic impact of removing the rule to involve no costs, this regulatory action is unlikely to have an annual effect on the economy of $100 million or more and, consequently, is not "economically significant" within the meaning of Section 3(f)(1) of that Executive Order. No commenter claimed that there were any costs associated with removing the BAA–UC rule.

Finally, we have evaluated this regulatory action and find it consistent with the regulatory philosophy and principles set forth in Executive Order 12866. Though this action removes authority for states to fund a form of family leave from their unemployment funds, states continue to have flexibility to provide paid family leave from other funding sources. Further, because no state has enacted BAA–UC, no state is adversely affected in a material way by having to dismantle such an experiment. Finally, this action removes a regulation and imposes no alternative regulatory requirements.

### Paperwork Reduction Act

This regulatory action contains no information collection requirements.

### Executive Order 13132

We have reviewed this regulatory action in accordance with Executive Order 13132 regarding federalism. This Executive Order requires agencies, when formulating and implementing policies that have federalism implications, to the extent possible, to refrain from limiting state policy options, to consult with states before taking any action which would restrict states' policy options, and to take such action only where there is clear statutory and constitutional authority and the presence of a problem of national scope. The UC program is a matter of national scope, as evidenced by existing federal legislation, which limits state flexibility in certain areas. As discussed above, the Department has the authority to interpret what the test of continued "involuntary" unemployment requires, so long as its interpretation is based on a reasonable construction of FUTA and SSA. Policies with federalism implications are those with substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Because this regulatory action would limit state policy options, by eliminating authority to pay for family leave out of unemployment funds, we consulted with organizations representing state elected officials, who did not object to removal of the BAA–UC rule.

### Executive Order 13175

This regulatory action does not have "substantial direct effects on one or more Indian tribes, or the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." It affects primarily states and state agencies.

### Executive Order 12988

This regulatory action has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the federal court system. The proposal, a mere one sentence, removes 20 CFR part 604. Given its brevity, it is not likely to lead to litigation resulting from drafting errors or ambiguities.

### Unfunded Mandates Reform Act of 1995

This regulatory action has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and does not include any unfunded federal mandate.

### Regulatory Flexibility Act

This regulatory action will not have a significant economic impact on a substantial number of small entities. This action affects states and state agencies, which are not within the definition of "small entity" under 5 U.S.C. 601(6). Under 5 U.S.C. 605(b), the Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

### Effect on Family Life

We certify that this regulatory action has been assessed in accordance with Section 654 of Public Law 105–277, 112 Stat. 2681, for its effect on family well-being. As discussed earlier in this preamble, we conclude that this action would not adversely affect the well-being of the nation's families. No state has enacted BAA–UC; consequently no families would experience a termination of BAA–UC benefits. Though the rule withdraws authorization for states to amend their UC laws to pay for such benefits from the state's unemployment fund, paid family leave could be provided from other funding sources. This rule preserves the availability of state unemployment funds for times when workers, who may support families, are unemployed due to lack of work.

### Congressional Review Act

Consistent with the Congressional Review Act, 5 U.S.C. 801, *et seq.*, we will submit to Congress and the Comptroller General of the United States, a report regarding the issuance of this Final Rule prior to the effective date set forth at the outset of this document.

OMB has determined that this rule is not a "major rule" as defined by the Congressional Review Act (Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996). It is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

### Catalogue of Federal Domestic Assistance Number

20 CFR Part 604 is listed in the Catalogue of Federal Domestic Assistance at No. 17.225, Unemployment Insurance.

### List of Subjects in 20 CFR Part 604

Unemployment compensation.

Signed at Washington, DC on October 3, 2003.

**Emily Stover DeRocco,**
*Assistant Secretary of Labor.*

### Words of Issuance

■ For the reasons set forth in this preamble, and under the authority of 42 U.S.C. 503(a)(2) and (5) and 1302(a); 26 U.S.C. 3304(a)(1) and (4) and 3306(h); Secretary's Order No. 4–75 (40 FR 18515); and Secretary's Order No. 14–75 (November 12, 1975), Chapter V, Title 20, Code of Federal Regulations, is amended by removing part 604.

[FR Doc. 03–25507 Filed 10–8–03; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

# Federal Register

Thursday,
October 9, 2003

## Part IV

## Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1206

**Mango Promotion, Research, and Information Order; Subpart B—Referendum Procedures; Referendum Order; Final Rule and Proposed Rule**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 1206**

**[Doc. # FV–02–708–FR]**

## Mango Promotion, Research, and Information Order; Subpart B—Referendum Procedures

**AGENCY:** Agricultural Marketing Service, Agriculture.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes procedures which the Department of Agriculture (USDA or the Department) will use in conducting a referendum to determine whether the issuance of the proposed Mango Promotion, Research, and Information Order (Order) is favored by first handlers and importers of mangos. The Order will be implemented if it is approved by a majority of the eligible first handlers and importers voting in the referendum. These procedures will also be used for any subsequent referendum under the Order, if it is approved in the initial referendum. The proposed Order is being published separately in this issue of the **Federal Register**. This proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996.

**EFFECTIVE DATE:** November 10, 2003.

**FOR FURTHER INFORMATION CONTACT:** Kathie M. Birdsell, RP, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535–8, Washington, DC 20250–0244; telephone 202–720–4835, fax 202–205–2800, or *kathie.birdsell@usda.gov*.

**SUPPLEMENTARY INFORMATION:** A referendum will be conducted among eligible first handlers and importers of mangos to determine whether they favor issuance of the proposed Mango Promotion, Research, and Information Order (Order) [7 CFR part 1206]. The program will be implemented if it is approved by a majority of the first handlers and importers voting in the referendum. The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (Act) [Pub. L. 104–127, 7 U.S.C. 7411–7425]. It would cover domestic and imported mangos of the *Mangifera indica L.* variety from the family of *Anacardiaceae*. A proposed Order is being published separately in this issue of the **Federal Register**.

### Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

### Executive Order 12988

This rule has been reviewed under E.O. 12988, Civil Justice Reform. It is not intended to have retroactive effect.

Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under Section 519 of the Act, a person subject to an order may file a petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and requesting a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall be the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of entry of USDA's final ruling.

### Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agency is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be disproportionately burdened.

The Act, which authorizes the Department to consider industry proposals for generic programs of promotion, research, and information for agricultural commodities, became effective on April 4, 1996. The Act provides for alternatives within the terms of a variety of provisions.

Paragraph (e) of Section 518 of the Act provides three options for determining industry approval of a new research and promotion program: (1) By a majority of those voting; (2) by a majority of the volume of the agricultural commodity voted in the referendum; or (3) by a majority of those persons voting who also represent a majority of the volume of the agricultural commodity voted in the referendum. In addition, Section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under an order. The Fresh Produce Association of the Americas (Association) has recommended that the Department conduct a referendum in which approval of an order would be based on a majority of the first handlers and importers voting. The Association also has recommended that a referendum be conducted prior to the proposed Order going into effect.

This rule establishes the procedures under which first handlers and importers of mangos may vote on whether they want a mango promotion, research, and information program to be implemented. This action adds a new subpart which establishes procedures to conduct an initial and future referenda. The new subpart covers definitions, voting instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

There are approximately 5 first handlers and 55 importers of mangos who would be subject to the program and eligible to vote in the first referendum. The Small Business Administration [13 CFR 121.201] defines small agricultural service firms as those having annual receipts of $5 million or less. First handlers and importers would be considered agricultural service firms. Using these criteria, most first handlers and importers to be covered by the proposed program would be considered small businesses.

U.S. production of mangos is located in California, Florida, Hawaii, and Puerto Rico, according to the most recent U.S. Census of Agriculture (Census) which was in 1997. The Census does not include California production because California has so few producers that publishing production data would reveal confidential information. In 1997, production in Florida totaled 6.1 million pounds, Hawaii's production was 0.1 million pounds, and Puerto Rico's production as approximately 32.9 million pounds. For Florida and Hawaii combined, production fell from 16.6 million pounds in 1992 to 6.2 million pounds in 1997. Census data are published every five years. USDA does not report the value of U.S. production.

Seven countries account for 99 percent of the mangos imported into the United States. These countries and their share of the imports (from September 1, 2000, through June 30, 2001) are: Mexico (57 percent); Brazil (11 percent);

Ecuador (10 percent); Peru (10 percent); Guatemala (7 percent); Haiti (3 percent); and Costa Rica (1 percent). For the period from September 1, 2000, through June 30, 2001, the United States imported a total of 170,445 tons of mangos, valued at $106 million. In the previous full season (September 1, 1999, through August 31, 2000), 253,591 tons, valued at $141 million, were imported into the United States.

A preliminary estimate of per capita consumption of mangos by USDA's Economic Research Service (ERS) was 1.80 pounds in 2000. Per capita consumption has been trending upwards for several decades. In 1979 per capita consumption was 0.21 pounds, and in 1989 was 0.51 pounds.

This rule provides the procedures under which first handlers and importers of mangos may vote on whether they want the Order to be implemented. In accordance with the provisions of the Act, subsequent referenda may be conducted, and it is anticipated that the proposed procedures would apply. There are approximately 5 first handlers and 55 importers who will be eligible to vote in the first referendum. First handlers and importers of less than 500,000 pounds of mangos annually will be exempt from assessments and not eligible to vote in the referendum.

USDA will keep these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. USDA will also publicize information regarding the referendum process so that trade associations and related industry media can be kept informed. Further, the information will be available electronically.

Voting in the referendum is optional. However, if first handlers and importers choose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether or not they want to be covered by the program.

The information collection requirements contained in this rule are designed to minimize the burden on first handlers and importers. This rule provides for a ballot to be used by eligible first handlers and importers to vote in the referendum. The estimated annual cost of providing the information by an estimated 5 first handlers and for an estimated 55 importers would be $5.00 for all first handlers or $1.00 per first handler and $55.00 for all importers or $1.00 per importer.

USDA considered requiring eligible voters to vote in person at various USDA offices across the country. USDA also considered electronic voting, but the use of computers is not universal. Conducting the referendum from one central location by mail ballot would also be more cost-effective and reliable. USDA will provide easy access to information for potential voters through a toll-free telephone line and the Internet.

There are no federal rules that duplicate, overlap, or conflict with this rule.

This Final Regulatory Flexibility Analysis has a conforming change to the Order's Final Regulatory Flexibility Analysis. This change includes production information from Puerto Rico to address a concern of one commenter raised in a comment concerning the proposed Order's Initial Regulatory Flexibility Analysis. This commenter noted that Puerto Rico is covered by the Order as part of the United States, but Puerto Rico's production was not included in the economic information on the mango industry. Therefore, information on Puerto Rico was added to the analysis.

## Paperwork Reduction Act

In accordance with the OMB regulation [5 CFR 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the referendum ballot, which represents the information collection and recordkeeping requirements that will be imposed by this rule, has been approved by OMB.

*Title:* National Research, Promotion, and Consumer Information Programs.

*OMB Number:* 0581–0209.

*Expiration Date of Approval:* February 28, 2006.

*Type of Request:* New information collection for research and promotion programs.

*Abstract:* The information collection requirements in this request are essential to carry out the intent of the Act. The burden associated with the ballot is as follows:

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.5 hours per response for each first handler and importer.

*Respondents:* First handlers and importers.

*Estimated Number of Respondents:* 60.

*Estimated Number of Responses per Respondent:* 1 every 5 years (0.2).

*Estimated Total Annual Burden on Respondents:* 6.0 hours.

The estimated annual cost of providing the information by an estimated 5 first handlers would be $5.00 or $1.00 per first handler and for an estimated 55 importers would be $55.00 or $1.00 per importer.

## Background

The Act, which became effective on April 4, 1996, authorizes the Department to establish a national research and promotion program covering domestic and imported mangos. The Association submitted an entire proposed Order on June 29, 2001, and revisions to the proposal on November 1, 2001. The proposal was published in the **Federal Register** on August 26, 2002 [67 FR 54908]. A slightly revised proposal that will be voted upon in the referendum is published in this issue of the **Federal Register**.

The proposed Order would provide for the development and financing of an effective and coordinated program of promotion, research, and consumer and industry information for mangos in the United States. The program would be funded by an assessment levied on first handlers and importers (to be collected by the Customs and Border Protection at time of entry into the United States) at an initial rate of ½ cent per pound. First handlers and importers of less than 500,000 pounds of mangos annually would be exempt from paying assessments. In addition, exports of U.S. mangos would be exempt from assessments.

The assessments would be used to pay for promotion, research, and consumer and industry information; administration, maintenance, and functioning of the National Mango Promotion Board; and expenses incurred by the Department in implementing and administering the Order, including referendum costs.

Section 1206 of the Act requires that a referendum be conducted among eligible first handlers and importers of mangos to determine whether they favor implementation of the Order.

That section also requires the Order to be approved by a majority of the first handlers and importers voting.

This final rule establishes the procedures under which first handlers and importers of mangos may vote on whether they want the mango promotion, research, and information program to be implemented. There are approximately 60 eligible voters.

This action adds a new subpart establishing procedures to be used in this and future referenda. This subpart covers definitions, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

Proposed referendum procedures were published in the **Federal Register** on August 26, 2002, [67 FR 54920], with a sixty-day comment period ending on October 25, 2002.

One comment was received from a producer. In addition to noting that the Regulatory Flexibility Analysis did not contain production information from Puerto Rico, the commenter argued that since the Order would be implemented if it is approved by a majority of eligible first handlers and importers voting in the referendum, this would be assessment without representation for growers. The commenter expressed the view that growers would pay for program assessments in the form of lower returns, without any direct benefit. We disagree. Domestic producers are not responsible for paying assessments under the proposed program. Although it is possible that an assessment may be passed back to producers in some form, only importers and first handlers of 500,000 or more pounds of mangos per calendar year would be responsible for paying assessments and eligible to vote in a referendum. Domestic producers, however, would be represented on the board, with two of the 18 voting positions.

The definitions of eligible first handler and eligible importer are modified in this final rule. The definitions of first handlers and importer have been modified in the proposed order rulemaking published separately in this issue of the **Federal Register**. In that action, the definition of first handler was revised based upon a comment received and was further clarified by the Department. As a result, an appropriate conforming change was made to the definition of importer in that rulemaking action. This final rule revises the definition of eligible first handler and eligible importer to conform to and reflect the changes that appear in the order definitions.

### List of Subjects in 7 CFR Part 1206

Administrative practice and procedure, Advertising, Consumer information, Mangos, Marketing agreements, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Title 7, Chapter XI of the Code of Federal Regulations is amended as follows:

1. Part 1206 is added to read as follows:

## PART 1206—MANGO PROMOTION, RESEARCH, AND INFORMATION

**Subpart A [Reserved]**

**Subpart B—Referendum Procedures.**

Sec.
1206.100 General.
1206.101 Definitions.
1206.102 Voting.
1206.103 Instructions.
1206.104 Subagents.
1206.105 Ballots.
1206.106 Referendum report.
1206.107 Confidential information.
1206.108 OMB control number.

**Authority:** 7 U.S.C. 7411–7425.

### Subpart A [Reserved]

### Subpart B—Referendum Procedures.

#### § 1206.100 General.

Referenda to determine whether eligible first handlers and importers of mangos favor the issuance, amendment, suspension, or termination of the Mango Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

#### § 1206.101 Definitions.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Department* means the U.S. Department of Agriculture or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(c) *Eligible first handler* means any person, (excluding a common or contract carrier), receiving 500,000 or more pounds of mangos from producers in a calendar year and who as owner, agent, or otherwise ships or causes mangos to be shipped as specified in this Order. This definition includes those engaged in the business of buying, selling and/or offering for sale; receiving; packing; grading; marketing; or distributing mangos in commercial quantities. The term first handler includes a producer who handles or markets mangos of the producer's own production.

(d) *Eligible importer* means any person importing 500,000 or more pounds of mangos into the United States in a calendar year as a principal or as an agent, broker, or consignee of any person who produces or handles mangos outside of the United States for sale in the United States, and who is listed as the importer of record for such mangos that are identified in the Harmonized Tariff Schedule of the United States by the numbers 0804.50.4040 and 0804.50.6040, during the representative period. Importation occurs when mangos originating outside of the United States are released from custody by the Customs and Border Protection and introduced into the stream of commerce in the United States. Included are persons who hold title to foreign-produced mangos immediately upon release by the Customs and Border Protection, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of mangos from the Customs and Border Protection when such mangos are entered or withdrawn for consumption in the United States.

(e) *Mangos* means all fresh fruit of *Mangifera indica L.* of the family *Anacardiaceae.*

(f) *Order* means the Mango Promotion, Research, and Information Order.

(g) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term "partnership" includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a mango farm as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called "joint ventures" wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

(h) *Referendum agent* or *agent* means the individual or individuals designated by the Department to conduct the referendum.

(i) *Representative period* means the period designated by the Department.

(j) *United States* or *U.S.* means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

#### § 1206.102 Voting.

(a) Each eligible first handler and eligible importer of mangos shall be entitled to cast only one ballot in the referendum.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate first handler or importer, or an administrator, executor, or trustee or an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail, as instructed by the Department.

### § 1206.103 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions of this subpart, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible first handlers and importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

### § 1206.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions of this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence or such appointment, shall be performed by the agent.

### § 1206.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

### § 1206.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

### § 1206.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

### § 1206.108 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 is OMB control number 0581–0209.

Dated: October 2, 2003.

**A.J. Yates,**

*Administrator.*

[FR Doc. 03–25456 Filed 10–8–03; 8:45 am]

BILLING CODE 3410–02–U

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1206

**[Doc. # FV–02–707–PR2]**

**RIN 0581–AC05**

## Mango Promotion, Research, and Information Order; Referendum Order

**AGENCY:** Agricultural Marketing Service, Agriculture.

**ACTION:** Proposed rule and referendum order.

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**SUMMARY:** This proposed rule would establish an industry-funded promotion, research, and information program for fresh mangos. The proposed program—the Mango Promotion, Research, and Information Order (Order)—was submitted to the Department (the Department or USDA) by the Fresh Produce Association of the Americas (Association). Under the proposed Order, first handlers and importers of 500,000 or more pounds of mangos would pay an assessment of ½ cent per pound on domestic and imported mangos to the National Mango Promotion Board (Board). The Board would be appointed by the Department to conduct a program of research and promotion, industry information, and consumer information needed for the maintenance, expansion, and development of domestic markets for fresh mangos. The Order would be implemented if it is approved by a majority of the eligible first handlers and importers voting in a referendum. A separate final rule on referendum procedures is being published in this issue of the **Federal Register**.

**DATES:** To be eligible to vote, mango importers and first handlers must have imported or handled 500,000 or more pounds of mangos during the representative period from January 1 through December 31, 2002. The voting period for the referendum will be from November 10, 2003 through November 28, 2003. Ballots must be received by the referendum agents no later than the close of business, Eastern daylight-standard time, November 28, 2003, to be counted.

**FOR FURTHER INFORMATION CONTACT:** Kathie M. Birdsell, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535–S, Washington, DC 20250–0244, telephone 888–720–9917 (toll free), fax 202–205–2800, e-mail *kathie.birdsell@usda.gov*.

**SUPPLEMENTARY INFORMATION:** This proposed Order is issued under the Commodity Promotion, Research, and Information Act of 1996 (Act) (7 U.S.C. 7411–7425; Public Law 104–127; 110 Stat. 1029), or any amendments thereto.

*Prior Documents:* A proposed rule was published in the **Federal Register** on August 26, 2002 [67 FR 54908], with a 60-day comment period. In addition, the USDA published a proposed rule on the referendum procedures in the **Federal Register** on August 26, 2002 [67 FR 54920], also with a 60-day comment period.

### Question and Answer Overview

*Why Is USDA Proposing a Program for Mangos?*

The Department received a proposal from the Association for this program. The Department issued a proposed rule to obtain comments on the proposal and to obtain information on the potential impact of the program on the mango industry before developing a final proposed program and conducting a referendum on it.

### What Is the Purpose of the Mango Program?

The purpose of the program is to maintain, expand, and develop domestic markets for fresh mangos.

*How Will the Mango Program Be Implemented?*

A referendum will be conducted on the proposed Order. The Order will be implemented if it is approved by a majority of the eligible voters in the referendum.

*When Will the Referendum Be Held?*

The voting period for the referendum will be November 10, 2003 through November 28, 2003.

*Who Will Be Covered by the Program?*

Domestic first handlers and importers of 500,000 or more pounds of mangos per calendar year will pay assessments under the program. Domestic mangos that are exported will not be assessed under the Order.

*Who Will Sit on the Board?*

Under the proposal, there will be a 20-member Board consisting of eight U.S. importers, one U.S. first handler, two U.S. producers, seven foreign producers, and two non-voting U.S. wholesalers and/or retailers of mangos. The chairperson shall reside in the United States.

*How Will Members of the Board Be Selected?*

The U.S. importers, first handlers, and producers would be nominated by U.S. importers, first handlers, and producers, respectively. Foreign producers would be nominated by foreign producer associations. The U.S. wholesalers and/or retailers would be nominated by the Board. Two names must be submitted for each position. From the names submitted, the Department will appoint the members.

*If the Mango Program Is Implemented and There Are Concerns About How It Is Operating, Can the Program Be Terminated?*

Yes. After the program is implemented, the Department will conduct a referendum to determine whether the mango industry continues to support the program: (1) Every 5 years after the program is in effect, (2) at the request of the Board established under the proposed Order, or (3) when requested by 10 percent or more of first handlers and importers covered by the proposed Order. In addition, the Department may conduct a referendum at any time. If a majority of the first handlers and importers voting in the referendum do not favor continuation, the program will be terminated.

### Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect.

Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the Act, a person subject to the Order may file a petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and requesting a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of entry of USDA's final ruling.

**Regulatory Flexibility Act**

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), USDA is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

The Act authorizes generic programs of promotion, research, and information for agricultural commodities. Congress found that it is in the national public interest and vital to the welfare of the agricultural economy of the United States to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, government-supervised, generic commodity promotion programs.

The Association submitted a proposal on June 29, 2001, for this program to: (1) Develop and finance an effective and coordinated program of research, promotion, industry information, and consumer information regarding mangos; (2) strengthen the position of the mango industry in U.S. markets; and (3) maintain, develop, and expand domestic markets for mangos. The Association submitted changes to their proposal on November 1, 2001.

First handlers and importers of mangos must approve the program in a referendum in advance of its implementation. These persons would also serve on the proposed 20-member Board. The Board would be composed of eight U.S. importers, one U.S. first handler, two U.S. producers, seven foreign producers, and two non-voting wholesalers and/or retailers. If domestic production increases, additional U.S. first handlers would be added to the Board. The Board would administer the program under the Department's supervision. In addition, any person subject to the program may file with the Department a petition stating that the Order or any provision of the Order is not in accordance with the law and requesting a modification of the Order or an exemption from the Order. Administrative proceedings were discussed earlier in this proposed rule.

In this program, first handlers would be required to pay assessments, file reports, and submit assessments to the Board. Importers would be required to remit to the Board assessments not collected by the Customs and Border Protection (Customs) and to file reports with the Board. First handlers and importers of less than 500,000 pounds of mangos per calendar year and exports of U.S. mangos would be exempt from assessment. While the proposed Order would impose certain recordkeeping requirements on first handlers and importers, information required under the proposed Order could be compiled from records currently maintained and would involve clerical or accounting skills. The forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act.

An estimated 89 respondents would provide information to the Board. They would be: 5 first handlers covered by the program, 3 exempt first handlers, 55 importers covered by the program, 3 exempt importers, 4 domestic producer nominees, 1 foreign producer organization, 14 foreign producer nominees, and 4 wholesaler and/or retailer nominees. The estimated total cost of providing information to the Board by all respondents would be $790.01. The estimated cost for all first handlers covered by the program would be $336.66 or $67.33 per first handler covered by the program; $7.50 for all exempt first handlers or $2.50 per exempt first handler; $393.34 for all importers covered by the program or $7.15 per importer covered by the program; $7.50 for all exempt importers or $2.50 for each exempt importer; $13.34 for all domestic producers or $3.34 per domestic producer; $1.67 for the foreign producer organization; $23.33 for all foreign producer nominees or $1.67 per foreign producer nominee; and $6.67 for the wholesaler and/or retailer nominees or $1.67 per wholesaler and/or retailer nominee. These totals have been estimated by multiplying total burden hours requested by $10.00 per hour, a sum deemed to be reasonable should the respondents be compensated for their time.

The Department would oversee the operation of the program. Every five years, the Department would conduct a referendum to determine whether the mango industry supports continuation of the program. In addition, the Secretary may conduct a referendum at any time, at the request of 10 percent or more of the first handlers and importers required to pay assessments, or at the request of the Board.

There are approximately 5 first handlers and 55 importers of mangos that would be covered by the program. First handlers and importers of less than 500,000 pounds of mangos per calendar year and exports of U.S. mangos would be exempt from assessments. The program would also affect domestic and foreign mango producers, an association of foreign mango producers, and wholesalers and retailers. These entities would serve on the Board or participate in the nomination process.

The Small Business Administration [13 CFR 121.201] defines small agricultural producers as those having annual receipts of $750,000 or less annually and small agricultural service firms as those having annual receipts of $5 million or less. First handlers, importers, wholesalers, and retailers would be considered agricultural service firms. Using these criteria, most producers, first handlers, and importers would be considered small businesses while wholesalers and retailers would not. The foreign producer association would consist of producers and would reflect the size of these entities.

U.S. production of mangos is located in California, Florida, Hawaii, and Puerto Rico according to the most recent U.S. Census of Agriculture (Census) which was in 1997. The Census does not include California production because California has so few producers that publishing production data would reveal confidential information. In 1997, production in Florida totaled 6.1 million pounds, Hawaii's production was 0.1 million pounds, and Puerto Rico's 1998 production was approximately 32.9 million pounds. For Florida and Hawaii combined, production fell from 16.6 million pounds in 1992 to 6.2 million pounds in 1997. Census data is published every five years. USDA does not report the value of U.S. production. Although domestic production accounts for only 8 percent of U.S. consumption of mangos, we anticipate that any increase in demand for mangos resulting from this program may lead to a corresponding increase in domestic production.

Seven countries account for 99 percent of the mangos imported into the United Sates. These countries and their share of the imports (from September 1, 2000, through June 30, 2001) are: Mexico (57 percent); Brazil (11 percent); Ecuador (10 percent); Peru (10 percent); Guatemala (7 percent); Haiti (3 percent); and Costa Rica (1 percent). For the period from September 1, 2000, through June 30, 2001, the United States imported a total of 170,445 tons of mangos, valued at $106 million. In the previous full season (September 1, 1999, through August 31, 2000), 253,591 tons, valued at $141 million, were imported into the United States. A preliminary estimate of per capita consumption of mangos by USDA's Economic Research

Service (ERS) was 1.8 pounds in 2000. Per capita consumption has been trending upwards for several decades. Per capita consumption was 0.21 pounds in 1979 and 0.51 pounds in 1989.

The proposed Order would authorize assessments on first handlers and on importers (collected by Customs) of mangos at a rate of ½ cent per pound. This would generate about $2.5 million to administer the program: About 8 percent from domestic production and 92 percent from imports. First handlers and importers of less than 500,000 pounds of mangos per year will be exempt. U.S. produced mangos that are exported are also exempt.

The cost of the assessment and reporting requirements for first handlers and importers is likely to be offset by the benefit of increased demand for mangos in the United States. The Association's goal for the program is to increase consumption of mangos in the United States by 30 percent after one year. In addition, U.S. consumers would benefit from additional information regarding mangos. Another benefit to first handlers and importers of mangos would be that they could serve on the Board and direct the Board's programs.

Associations and related industry media would receive news releases and other information regarding the implementation and referendum process. Furthermore, all information would be available electronically.

The Board would develop guidelines for compliance with the program. The Board would recommend changes in the assessment rate, programs, plans, projects, budgets, and any rules and regulations that might be necessary for the administration of the program. The administrative expenses of the Board are limited by the Act to no more than 15 percent of its assessment income.

There are no federal or state programs that duplicate, overlap, or conflict with this proposed rule.

With regard to alternatives to this proposed rule, the Act itself provides for authority to tailor a program according to the individual needs of an industry. A provision is made for permissive terms in an order under section 516 of the Act, and other sections provide for alternatives. For example, section 514 of the Act provides for orders applicable to: (1) Producers; (2) first handlers and other persons in the marketing chain as appropriate; and (3) importers (if imports are subject to assessment).

Section 515 of the Act provides for the establishment of a board to administer a program established under the Act. This section states that the board will consist of members considered by the Department, in consultation with the agricultural commodity industry involved, to be appropriate. The Act authorizes the following types of board members: Producers, first handlers, others in the marketing chain as appropriate, importers (if importers are subject to assessment), and members of the general public. The Association's proposal specified that the Board would consist of eight U.S. importers, one U.S. first handler, seven foreign producers, one public member, and two non-voting U.S. wholesalers and/or retailers of mangos. In reviewing the Association's proposal, the Department determined that an alternative composition of the Board would be more appropriate. Therefore, this proposed rule provides for the Board to consist of eight U.S. importers, one U.S. first handler, two U.S. producers, seven foreign producers, and two non-voting U.S. wholesalers and/or retailers.

Section 516 authorizes an order to provide for exemption of *de minimis* quantities of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic and branded activities; and assessment of imports.

In addition, section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within 3 years after assessments first begin under the order. An order also may provide for its approval in a referendum to be based upon: (1) Approval by a majority of those persons voting; (2) persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity.

This proposal includes provisions for domestic market expansion and improvement, reserve funds, and an initial referendum to be conducted prior to the Order going into effect. Approval would be based upon a majority of the first handlers and importers of mangos represented by those voting in the referendum.

We received comments on the initial regulatory flexibility analysis. One commenter questioned a statement in the analysis that indicated that an increase in demand for mangos resulting from this program may lead to a corresponding increase in production. We continue to believe that this statement has merit. Another commenter noted that Puerto Rico is covered by the Order as part of the United States, but Puerto Rico's production was not included in the economic information on the mango industry. Therefore, information on Puerto Rico was added to the analysis. Finally, one commenter noted that the 500,000 pound exemption for first handlers and importers would eliminate the regulatory burden on small packers and importers and also would benefit the program administratively.

## Paperwork Reduction Act

In accordance with OMB regulations [5 CFR part 1320], which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that may be imposed by this Order were submitted to OMB for review. Those requirements would become effective only upon implementation of the Order if the referendum passes and after OMB approval.

*Title:* National Research, Promotion, and Consumer Information Programs.

*OMB Number for background form (number 1 below):* 0505–0001.

*Expiration date of approval:* February 28, 2006.

*OMB Number for other information collections:* 0581–0209.

*Expiration Date of Approval:* February 28, 2006.

*Type of Request:* New information collection for research and promotion programs.

*Abstract:* The information collection requirements in the request are essential to carry out the intent of the Act.

In addition, there will be the additional burden on first handlers and importers voting in referenda. The referendum ballot, which represents the information collection requirement relating to referenda, is addressed in a proposed rule on referendum procedures which is published separately in this issue of the **Federal Register**.

Under the proposed program, first handlers would be required to pay assessments and file reports with and submit assessments to the Board. While the proposed Order would impose certain recordkeeping requirements on first handlers, information required under the proposed Order could be compiled from records currently maintained. Such records shall be retained for at least two years beyond the marketing year of their applicability.

An estimated 89 respondents would provide information to the Board. They would be: 5 first handlers covered by the program, 3 exempt first handlers, 55 importers covered by the program, 3 exempt importers, 4 domestic producer nominees, 1 foreign producer organization, 14 foreign producer nominees, and 4 wholesaler and/or retailer nominees. The estimated total cost of providing information to the Board by all respondents would be $790.01. The estimated cost for all first handlers covered by the program would be $336.66 or $67.33 per first handler covered by the program; $7.50 for all exempt first handlers or $2.50 per exempt first handler; $393.34 for all importers covered by the program or $7.15 per importer covered by the program; $7.50 for all exempt importers or $2.50 for each exempt importer; $13.34 for all domestic producers or $3.34 per domestic producer; $1.67 for the foreign producer organization; $23.33 for all foreign producer nominees or $1.67 per foreign producer nominee; and $6.67 for the wholesaler and/or retailer nominees or $1.67 per wholesaler and/or retailer nominee. These totals have been estimated by multiplying total burden hours requested by $10.00 per hour, a sum deemed to be reasonable should the respondents be compensated for their time.

The proposed Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other mango programs administered by USDA.

The proposed forms would require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information monthly during the production season would coincide with normal industry business practices. Reporting, other than monthly, would impose an additional and unnecessary recordkeeping burden on first handlers and importers. The timing and frequency of collecting information are intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports. In addition, the information to be included on these forms is not available from other sources because such information relates specifically to individual first handlers who are subject to the provisions of the Act. The requirement to keep records for two years is consistent with normal industry practices.

Therefore, there is no practical method for collecting the required information without the use of these forms.

Information collection requirements that are included in this proposal include:

(1) A Background Information Form (OMB Form 0505–0001).

*Estimate of Burden:* Public reporting for this collection of information is estimated to average 0.5 hours per response for each Board nominee.

*Respondents:* First handlers, importers, domestic producers, foreign producers, and wholesalers and/or retailers.

*Estimated number of Respondents:* 40 for initial nominations, 13 in subsequent years.

*Estimated number of Responses per Respondent:* 1 every 3 years. (0.3)

*Estimated Total Annual Burden on Respondents:* 20 hours for the initial nominations and 6.7 hours annually thereafter.

(2) Voting in the nomination process

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.5 hours per response.

*Respondents:* First handlers, importers, domestic producers, and a foreign producer organization.

*Estimated number of Respondents:* 65.

*Estimated Number of Responses per Respondent:* 1 every 3 years. (0.3)

*Estimated Total Annual Burden on Respondents:* 11 hours.

(3) An exemption application for first handlers and importers who will be exempt from assessments

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.25 hours per response for each exempt first handler and importer.

*Respondents:* Exempt First handlers and importers.

*Estimated Number of Respondents:* 6.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 1.5 hours.

(4) Monthly report by each first handler of mangos

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.5 hours per each first handler reporting on mangos handled.

*Respondents:* First handlers.

*Estimated number of Respondents:* 5.

*Estimated number of Responses per Respondent:* 12.

*Estimated Total Annual Burden on Respondents:* 30 hours.

(5) A requirement to maintain records sufficient to verify reports submitted under the Order.

*Estimate of Burden:* Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per recordkeeper maintaining such records.

*Respondents:* First handlers and importers.

*Estimated Number of Respondents:* 60.

*Estimated Total Annual Burden of Respondents:* 30 hours.

## Background

The Act authorizes the Department, under a generic authority, to establish agricultural commodity research and promotion orders. The Act provides for a number of optional provisions that allow the tailoring of orders for different commodities. Section 516 of the Act provides permissive terms for orders, and other sections provide for alternatives. For example, section 514 of the Act provides for orders applicable to: (1) Producers; (2) first handlers and others in the marketing chain as appropriate; and (3) importers (if importers are subject to assessment). Section 516 authorizes an order to provide for exemption of *de minimis* quantities of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic and branded activities; and assessment of imports. In addition, section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within 3 years after assessments first begin under an order. An order also may provide for its approval in a referendum based upon different voting patterns. Section 515 provides for establishment of a board from among producers, first handlers and others in the marketing chain as appropriate, and importers, if imports are subject to assessment.

This proposed Order includes provisions for domestic market expansion and improvement, reserve funds, and an initial referendum to be conducted prior to the program going into effect. Approval would be based upon a majority of the first handlers and importers voting in the referendum.

The Association has requested the establishment of a Mango Promotion, Research, and Information Order (Order) pursuant to the Act. The Act authorizes the establishment and operation of generic promotion programs which may include a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments. These programs are designed to maintain and expand markets and uses for agricultural commodities. This proposal would provide for the development and financing of an effective and coordinated program of research, promotion, and information for mangos. The purpose of the program is to maintain, expand, and develop domestic markets for fresh mangos.

The program would not become effective until approved in a referendum conducted by USDA. Section 518 of the Act provides for USDA to: (1) Conduct an initial referendum, preceding a proposed Order's effective date, among persons who would pay assessments under the program; or (2) implement a proposed Order, pending the conduct of a referendum, among persons subject to assessments, within three years after assessments first begin.

In accordance with section 518(e) of the Act, the results of the referendum must be determined one of three ways: (1) By a majority of those persons voting; (2) by persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) by a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity.

The Association has recommended that the Department conduct a referendum in which approval of the proposed Order would be based on a majority of the eligible first handlers and importers voting in the referendum. The Association has also recommended that a referendum be conducted prior to the proposed Order going into effect.

In accordance with the Act, USDA would oversee the program's operations. In addition, the Act requires the Department to conduct subsequent referenda: (1) Not later than 7 years after assessments first begin under the proposed Order; or (2) at the request of the Board established under the proposed Order; or (3) at the request of 10 percent or more of the number of persons eligible to vote. The Association has requested that a referendum be conducted every five years to determine if first handlers and importers want the program to continue.

In addition to these criteria, the Act provides that the Department may conduct a referendum at any time to determine whether the continuation, suspension, or termination of the proposed Order or a provision of the proposed Order is favored by persons eligible to vote.

A national research and promotion program for mangos would help the industry to increase consumption of mangos in the United States.

Worldwide, mangos rank first in terms of overall fruit consumption per capita. In the United States, mango consumption currently ranked sixteenth at 1.8 pounds per capita in 2000, according to ERS. In contrast, bananas ranked number one in the United States with a per capita consumption of 29.2 pounds. According to the Association, the low level of mango consumption is due, in part, to lack of product awareness. U.S. consumers are largely unfamiliar with the varieties of mangos, their nutritional benefits, and how to handle them.

Except for a pilot project conducted by the Association with voluntary contributions in 1999, mango promotion has been virtually nonexistent in the United States. There are no large industry members capable of promoting the commodity independently. The mango industry is fragmented. Distribution is conducted by a large number of small importers receiving product from multiple countries of origin. This makes coordinated research and promotion efforts extremely difficult in the absence of a national program.

Average annual U.S. mango prices have been declining since 1990. Increased supply accompanied by current demand levels will most likely yield lower wholesale prices in the future.

A national program would generate funds through mandatory assessments on domestic and imported mangos to be used to conduct research and market development strategies such as sales promotion, publicity, public relations, and advertising. Such a program would also provide centralized communications and facilitate better distribution management for industry members. Section 516(f) of the Act allows an order to authorize the levying of assessments on imports of the commodity covered by the program or on products containing that commodity, at a rate comparable to the rate determined for the domestic agricultural commodity covered by the proposed Order. The Association has proposed to assess imports.

The assessment levied on domestically-produced and imported mangos would be used to pay for promotion, research, and consumer and industry information as well as administration, maintenance, and functioning of the Board. Expenses incurred by the Department in implementing and administering the proposed Order, including referenda costs, also would be paid from assessments. Sections 516(e)(1) and (2) of the Act state that an order may provide for credits of assessments for generic and branded activities. The Association has elected not to propose credits for generic or branded activities. Therefore, the terms "generic activities" and "branded activities" are not defined in the proposed Order, and credits for assessments would not be allowed.

The Association's initial proposal, dated June 29, 2001, provided for the assessments to be paid by producers and included no exemptions. Subsequently, the Association sent a letter to the Department to revise its proposal by changing the U.S. producer assessment to a U.S. first handler assessment and to exempt handlers and importers of less than 500,000 pounds of mangos per calendar year and exports of U.S. mangos. These modifications reflected a change in industry preferences for program coverage.

First handlers would be required to pay assessments to the Board and maintain records on all mangos handled, including mangos produced by a first handler.

Assessments on imported mangos would be collected by Customs at the time of entry into the United States and remitted to the Board.

All information obtained from persons subject to this proposed Order as a result of recordkeeping and reporting requirements would be kept confidential by all officers, employees, and agents of USDA and of the Board. However, this information may be disclosed only if the Department considers the information relevant, and the information is revealed in a judicial proceeding or administrative hearing brought at the direction or on the request of the Department or to which the Department or any officer of USDA is a party. Other exceptions for disclosure of confidential information would include the issuance of general statements based on reports or on information relating to a number of persons subject to an order if the statements do not identify the information furnished by any person or the publication, by direction of the Department of the name of any person violating an order and a statement of the particular provisions of an order violated by the person.

The proposed Order provides for USDA to conduct an initial referendum preceding the proposed Order's effective date. Therefore, approval of the proposed Order will be determined by a majority of the eligible first handlers and importers voting in the referendum. The proposed Order also provides for subsequent referenda to be conducted (1) every 5 years after the program is in effect; (2) at the request of the Board established under the proposed Order; or (3) when requested by 10 percent or more of first handlers and importers of mangos covered by the proposed Order. In addition, the Department may conduct a referendum at any time.

The Act requires that an order provide for the establishment of a board to administer the program under USDA supervision. The Department modified the Association's proposal by adding two domestic producers and eliminating the public member position to help ensure that the program will benefit the domestic mango industry. Therefore, the proposed Order provides for a 20-member Board consisting of eight U.S. importers, one U.S. first handler, two U.S. producers, seven foreign producers, and two non-voting wholesalers and/or retailers. In addition, the Department included a separate definition for foreign producers.

To ensure fair and equitable representation of the mango industry on the Board, the Act requires membership on the Board to reflect the geographical distribution of the production of mangos and the quantity or value of imports. We anticipate that this program will assist domestic producers by increasing the demand for mangos. It is possible that domestic production will expand accordingly, in which case reapportioning of the Board would be required under the Order.

Upon implementation of the proposed Order and pursuant to the Act, at least once every five years, the Board will review the geographical distribution of production of mangos in the United States, the geographical distribution of the importation of mangos into the United States, the quantity of mangos produced in the United States, and the quantity of mangos imported into the United States. The review will be based on Board assessment records and statistics from the Department. If warranted, the Board will recommend to the Department that membership on the Board be altered to reflect any changes in geographical distribution of domestic mango production and importation and the quantity of domestic production and imports. To help ensure equitable representation of importers and first handlers on the Board, additional first handlers may be added to the Board if the quantity of domestic production increases to a level where first handlers would be entitled to an additional member on the Board. Currently, each importer member represents about 42.6 million pounds of imported mangos, and the first handler member represents about 6.2 million pounds of domestic mango production.

Board members will serve terms of three years and be able to serve a maximum of two consecutive terms, except that the wholesaler/retailer positions shall carry a term of one year. Wholesaler and retailer members may serve three consecutive one-year terms. When the Board is first established, the U.S. first handler, two U.S. importers, one U.S. producer, and two foreign producers will be assigned initial terms of four years; three U.S. importers, one U.S. producer, and two foreign producers will be assigned initial terms of three years; and three U.S. importers, and three foreign producers will be assigned initial terms of two years. Thereafter, these positions will carry a three-year term. Members serving initial terms of two or four years will be eligible to serve a second term of three years. Each term of office will end on December 31, with new terms of office beginning on January 1.

*Comments*

The proposal was published in the **Federal Register** on August 26, 2002 [67 FR 54908], with a 60-day comment period ending on October 25, 2002. In addition, the USDA published a proposed rule on the referendum procedures in the **Federal Register** on August 26, 2002 [67 FR 54920], with the same 60-day comment period. Twenty-two comments from 21 persons or organizations were received by the deadline. Commenters included domestic packers, private farms, four foreign interests, and an American produce association. Nineteen of the 22 comments were in support of the proposed program while three were opposed. Two comments were received late, however, they did not raise any issues different from those timely received. Some of the favorable comments recommended changes to the proposal. Recommendations that have been adopted are discussed herein.

The opposing comments also raised additional issues and concerns regarding the proposed program. These commenters questioned the constitutionality of the program; offered their own views of the impact of the proposed program on the domestic mango industry; discussed the state of the domestic mango industry and the comparative advantages and disadvantages for U.S. mango growers in terms of regulatory requirements, ability to export, costs of production and the like; and questioned the make-up of the proposed board. Questions were raised as to program focus with regard to imports. Two of the commenters referenced an agricultural economic study conducted in Florida, at the state level, to support their views. The commenters believe the proposed program would not benefit U.S. growers. Two opponents concluded that the proposed program should not be applied to domestic production (producers) and that domestic production should be exempt from assessments. We disagree. We are of the view that this program is constitutional and consistent with the provisions of the Act and that the benefits of this program would outweigh program costs. In addition, a favorable comment also supported one exemption for U.S. producers based upon the volume of U.S. production.

The commenters from Florida and Puerto Rico also expressed the belief that the proposed mango program represents, for domestic producers, taxation without representation. However, domestic producers are not responsible for paying assessments under the proposed program. Although it is possible that the assessment will be passed back to the producers, only importers and first handlers of fresh mangos would be responsible for paying assessments into the program. Handlers and importers of less than 500,000 pounds of mangos, per calendar year, are exempt from paying assessments. Further, 92 percent of the assessment funds would come from imported mangos. USDA recognized the interests of domestic producers by adding two U.S. producers to the Board. These two members represent two of the 18 voting positions on the Board which represents 11 percent of the seats on the Board.

In contrast, six other commenters stated that they supported USDA adding domestic producer seats to the Board. In addition, five of these commenters noted that they were also satisfied that the proposal requires that, at least once every five years, the Board would review the geographic distribution and production of mangos to ensure equitable Board composition and that additional U.S. first handlers would be added if domestic production increases.

One commenter who supported the program requested that the definition of first handler in § 1206.6 be revised for clarity. The commenter proposed a rewrite of the definition, including in the text the time frame of a calendar year for the handling of 500,000 pounds or more of mangos. Specifying the time frame has merit. However, we believe that with one additional change, the definition of first handler is clear and consistent with the overall regulatory provisions. A separate reference to retailer in the definition of first handler is not needed. All persons, including retailers who meet the terms of the definition of first handler as provided in § 1206.6 would be covered under the provisions of the Mango Order. Accordingly, the reference is deleted. Further, as a result of the time frame change to § 1206.6, an appropriate conforming change has been made to the definition of importer in § 1206.9.

Another commenter expressed support for the program and recommended that the definition of foreign producer in § 1206.8 more closely reflect the definition of domestic producers in § 1206.16 to ensure that foreign producer members on the Board are actually producers of mangos and not merely exporters of mangos to the United States. This comment has merit and § 1206.8 is revised accordingly.

Three commenters in support of the program recommend that the term of office for the wholesaler/retailer position be reduced from three years to one year. This would expose the Board to a wider range of firms with marketing and consumer sales experience and allow a broader base of wholesalers and retailers. This comment has merit. Accordingly, USDA has added a term limitation for these positions of three, one-year terms in § 1206.32.

The same three commenters also recommended a three-week voting period for the referendum instead of four. Due to the relatively small number of eligible voters in a referendum, this comment has been adopted and requires no change in the text of the Order.

Regarding the foreign producer positions on the Board, one commenter stated support for the definition of foreign producer in the Order because the definition excludes persons who are solely exporters or brokers. The commenter also stated that there is no well recognized organization that represents the interests of producers in exporting countries. This commenter also expressed the view that a single organization representing each exporting country would be more feasible and practical than one organization representing the interests of the producers of all exporting countries. This comment has merit and we have eliminated the requirement that there be one foreign producer organization from § 1206.31(g) of the Order. This would provide flexibility in the Order concerning foreign producer organizations.

This commenter also recommended that the Order be changed to allow the government of an exporting country to nominate foreign producer members if there is no national producer organization in that country. We disagree with this comment. As stated above, we have removed the limitation on the number of foreign producer organizations. In countries where there is currently no such organization, producers may create one in order to submit nominees for the foreign producer positions on the Board. This would be consistent with other national research and promotion programs supervised by USDA. Another commenter recommended that each of the seven major exporting countries be represented on the Board. Section 1206.31(g) already provides that foreign producer member nominees be representative of the major countries exporting mangos to the United States.

Two of the commenters who supported the Order stated that they would like a means of expressing their views to the Board if they do not have a member on the Board. All Board meetings will be open to the public, and any person will have the opportunity to contact the Board's staff or members at any time without making any changes to the Order. Accordingly, no change to the Order is made as a result of this comment.

One commenter who supported the Order requested that USDA develop grade standards for mangos. The Board will not have the authority to develop grade standards, and this issue is best addressed to the USDA's fruit and vegetable grading service. Therefore, this comment is denied.

Another commenter who favored the program requested that the Board's promotional campaigns disseminate variety-specific information on mangos. The Board, once it is appointed and has a staff, will make decisions regarding the types of promotional campaigns it will conduct. This may include dissemination of information on all different varieties of mangos. The Act requires mangos of all origins be promoted generically and § 1206.50(d) of the Order requires that all varieties of mangos be treated equally.

Two of the commenters who are opposed to the program expressed the belief that USDA should have notified them when USDA received the proposal from the Association. USDA does not announce to the public when a proposal is received because, at that point, it is not known whether the proposal will be accepted by USDA. Notice to all potentially affected parties is made by publishing in the **Federal Register** the initial proposed rule requesting comments. In addition to that proposed rule, USDA issued a news release. Further, fruit and vegetable industry trade paper and magazine coverage of the proposal from the development stages, prior to the submission to USDA, and to date has been extensive. Therefore, the industry received substantial advance notice.

Finally, miscellaneous non-substantive changes are made by the Department for clarity in the definition of Market and Marketing in § 1206.12 and § 1206.78 to update the OMB control number.

The proposed Order is summarized as follows:

Sections 1206.1 through 1206.24 of the proposed Order define certain terms, such as mango, first handler and importer, which are used in the proposed Order. The definitions of eligible first handler and eligible importer were modified to improve clarity and be consistent with current Agency rules.

Sections 1206.30 through 1206.37 include provisions relating to the Board. These provisions cover establishment and membership, nominations and appointments, term of office, vacancies, procedures, compensation and reimbursement, powers, duties and prohibited activities of the Board, which is the governing body authorized to administer the proposed Order through the implementation of programs, plans, projects, budgets, and contracts to promote and disseminate information about mangos, subject to oversight of the Department.

Sections 1206.40 through 1206.43 cover budget review and approval; financial statements; authorize the collection of assessments; specify how assessments would be used; specify who pays the assessment and how; exemptions; and authorize the imposition of a late-payment charge on past-due assessments.

The Association recommends a proposed assessment rate of ½ cent per pound for domestic mangos and imported mangos. The assessment rate will be reviewed and may be modified with the approval of the Department, after the first referendum is conducted as stated in § 1206.71(b). Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures as set forth in 7 CFR 3.1 through 3.36 for all research and promotion programs administered by USDA [60 FR 12533, March 7, 1995].

Sections 1206.50 through 1206.52 address programs, plans, and projects; require the Board to periodically conduct an independent review of its overall program; and address patents, copyrights, trademarks, information, publications, and product formulations developed through the use of assessment funds.

Sections 1206.60 through 1206.62 concern reporting and recordkeeping requirements for persons subject to the Order and protect the confidentiality of information from such books, records, or reports.

Sections 1206.70 through 1206.78 describe the rights of the Secretary of Agriculture (Secretary); address referenda; authorize the Secretary to suspend or terminate the Order when deemed appropriate; prescribe proceedings after suspension or termination; and address personal liability, separability, amendments, and the OMB control number.

In addition to adding a definition of foreign producer and changing the composition of the Board, the Department made minor changes to the Association's proposal which do not materially affect the program.

The Department has determined that this proposed Order is consistent with and will effectuate the purposes of the Act.

For the proposed Order to become effective, it must be approved by a majority of the eligible importers and first handlers voting in the referendum.

**Referendum Order**

It is hereby directed that a referendum be conducted among eligible mango importers and first handlers to determine whether they favor implementation of the Mango Promotion, Research, and Information Order.

The referendum shall be conducted from November 10, 2003 through November 28, 2003. Ballots will be mailed to all known mango importers and first handlers on or before October 27, 2003. First handlers and importers who handled or imported 500,000 pounds or more of fresh mangos, respectively, from January 1 through December 31, 2002, are eligible to vote. Eligible voters who do not receive a ballot by mail should call the following toll-free telephone number to receive a ballot: 1 (888) 720–9917. All ballots will be subject to verification. Ballots must be received by the referendum agents no later than the close of business, Eastern daylight-standard time, November 28, 2003, to be counted.

Kathie M. Birdsell and Margaret B. Irby, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2535-S, Stop 0244, Washington, DC 20250–0244, are designated as the referendum agents of the Department to conduct the referendum. The Procedure for the Conduct of Referenda in connection with the Mango Promotion, Research, and Information Order, 7 CFR 1206.100–1206.108, which is being published separately in this issue of the **Federal Register**, shall be used to conduct the referendum.

**List of Subjects in 7 CFR Part 1206**

Administrative practice and procedure, Advertising, Consumer information, Mangos, Marketing agreements, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations be amended as follows:

1. The authority citation for part 1206 continues to read as follows:

**Authority:** 7 U.S.C. 7411–7425.

2. Subpart A is added Part 1206 to read as follows:

## PART 1206—MANGO PROMOTION, RESEARCH, AND INFORMATION

### Subpart A—Mango Promotion, Research, and Information Order Definitions

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1206.78 OMB control number.

**Authority:** 7 U.S.C. 7411–7425.

### Subpart A—Mango Promotion, Research, and Information Order Definitions

#### § 1206.1 Act.

*Act* means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425; Public Law 104–127; 110 Stat. 1029), or any amendments thereto.

#### § 1206.2 Board.

*Board* or National Mango Promotion Board means the administrative body established pursuant to § 1206.30, or such other name as recommended by the Board and approved by the Department.

#### § 1206.3 Conflict of interest.

*Conflict of interest* means a situation in which a member or employee of the Board has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Board for anything of economic value.

#### § 1206.4 Customs.

*Customs* means the Customs and Border Protection of the U.S. Department of Homeland Security.

### § 1206.5 Department.

*Department* means the U.S. Department of Agriculture or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

### § 1206.6 First handler.

*First handler* means any person, (excluding a common or contract carrier), receiving 500,000 or more pounds of mangos from producers in a calendar year and who as owner, agent, or otherwise ships or causes mangos to be shipped as specified in this Order. This definition includes those engaged in the business of buying, selling and/or offering for sale; receiving; packing; grading; marketing; or distributing mangos in commercial quantities. The term first handler includes a producer who handles or markets mangos of the producer's own production.

### § 1206.7 Fiscal period.

*Fiscal period* means a calendar year from January 1 through December 31, or such other period as recommended by the Board and approved by the Department.

### § 1206.8 Foreign producer.

*Foreign producer* means any person who is engaged in the production and sale of mangos outside of the United States and who owns, or shares the ownership and risk of loss of the crop for sale in the U.S. market or who is engaged, outside of the United States, in the business of producing, or causing to be produced, mangos beyond the person's own family use and having value at first point of sale.

### § 1206.9 Importer.

*Importer* means any person importing 500,000 or more pounds of mangos into the United States in a calendar year as a principal or as an agent, broker, or consignee of any person who produces or handles mangos outside of the United States for sale in the United States, and who is listed as the importer of record for such mangos.

### § 1206.10 Information.

*Information* means information and programs that are designed to develop new markets, marketing strategies, increase market efficiency, and activities that are designed to enhance the image of mangos in the United States. These include:

(a) Consumer information, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of mangos; and

(b) Industry information, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the mango industry, and activities to enhance the image of the mango industry.

### § 1206.11 Mangos.

*Mangos* means all fresh fruit of *Mangifera indica L.* of the family *Anacardiaceae.*

### § 1206.12 Market or marketing.

*Marketing* means the sale or other disposition of mangos in the U.S. domestic market. To market means to sell or otherwise dispose of mangos in interstate or intrastate channels of commerce.

### § 1206.13 Order.

*Order* means an order issued by the Department under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

### § 1206.14 Part and subpart.

*Part* means the Mango Promotion, Research, and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a subpart of such part.

### § 1206.15 Person.

*Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

### § 1206.16 Producer.

*Producer* means any person who is engaged in the production and sale of mangos in the United States and who owns, or shares the ownership and risk of loss of, the crop or a person who is engaged in the business of producing, or causing to be produced, mangos beyond the person's own family use and having value at first point of sale.

### § 1206.17 Promotion.

*Promotion* means any action taken to present a favorable image of mangos to the general public and the food industry for the purpose of improving the competitive position of mangos and stimulating the sale of mangos in the United States. This includes paid advertising and public relations.

### § 1206.18 Research.

*Research* means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of mangos, including research relating to nutritional value, cost of production, new product development, varietal development, nutritional value and benefits, and marketing of mangos.

### § 1206.19 Retailer.

*Retailer* means a person engaged in the business of selling mangos only to consumers.

### § 1206.20 Secretary.

*Secretary* means the Secretary of Agriculture of the United States.

### § 1206.21 Suspend.

*Suspend* means to issue a rule under section 553 of title 5, U.S.C., to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

### § 1206.22 Terminate.

*Terminate* means to issue a rule under section 553 of title 5, U.S.C., to cancel permanently the operation of an order or part thereof beginning on a certain date specified in the rule.

### § 1206.23 United States.

*United States or U.S.* means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

### § 1206.24 Wholesaler.

*Wholesaler* means any person engaged in the purchase, assembly, transportation, storage, and distribution of mangos for sale to other wholesalers, retailers, and foodservice firms.

## National Mango Promotion Board

### § 1206.30 Establishment and membership.

(a) *Establishment of the National Mango Promotion Board.* There is hereby established a National Mango Promotion Board composed of eight importers, one first handler, two domestic producers, seven foreign producers, and two non-voting wholesalers and/or retailers of mangos in the United States. The chairperson shall reside in the United States and the Board office shall also be located in the United States.

(b) *Importer districts.* The importer seats shall be allocated based on the volume of mangos imported into the Customs Districts identified by their name and Code Number as defined in the Harmonized Tariff Schedule of the United States. The initial allocation will be two seats for District I, three seats for District II, two seats for District III, and one seat for District IV.

(1) *District I* includes the Customs Districts of Portland, ME (01), St. Albans, VT (02), Boston, MA (04), Providence, RI (05), Ogdensburg, NY (07), Buffalo, NY (09), New York City, NY (10), Philadelphia, PA (11), Baltimore, MD (13), Norfolk, VA (14), Charlotte, NC (15), Charleston, SC (16), Savannah, GA (17), Tampa, FL (18), San Juan, PR (49), Virgin Islands of the United States (51), Miami, FL (52) and Washington, DC (54).

(2) *District II* includes the Customs Districts of Mobile, AL (19), New Orleans, LA (20), Port Arthur, TX (21), Laredo, TX (23), Minneapolis, MN (35), Duluth, MN (36), Milwaukee, WI (37), Detroit, MI (38), Chicago, IL (39), Cleveland, OH (41), St. Louis, MO (45), Houston, TX (53), and Dallas-Fort Worth, TX (55).

(3) *District III* includes the Customs Districts of El Paso, TX (24), Nogales, AZ (26), Great Falls, MT (33), and Pembina, ND (34).

(4) *District IV* includes the Customs Districts of San Diego, CA (25), Los Angeles, CA (27), San Francisco, CA (28), Columbia-Snake, OR (29), Seattle, WA (30), Anchorage, AK (31), and Honolulu, HI (32).

(c) Adjustment of membership. At least once every five years, the Board will review the geographical distribution of production of mangos in the United States, the geographical distribution of the importation of mangos into the United States, the quantity of mangos produced in the United States, and the quantity of mangos imported into the United States. The review will be based on Board assessment records and statistics from the Department. If warranted, the Board will recommend to the Department that membership on the Board be altered to reflect any changes in geographical distribution of domestic mango production and importation and the quantity of domestic production and imports. To ensure equitable representation, additional first handlers may be added to the Board to reflect increases in domestic production.

### § 1206.31 Nominations and appointments.

(a) Voting for first handler, importer, and domestic producer members will be made by mail ballot.

(b) There shall be two nominees for each position on the Board.

(c) Nominations for the initial Board will be handled by the Department. Subsequent nominations will be handled by the Board's staff.

(d) Nominees to fill the first handler member position on the Board shall be solicited from all known first handlers. The nominees shall be placed on a ballot which will be sent to all first handlers for a vote. The nominee receiving the highest number of votes and the nominee receiving the second highest number of votes shall be submitted to the Department as the first handlers' first and second choice nominees.

(e) Nominees to fill the importer positions on the Board shall be solicited from all known importers of mangos. The members from each district shall select the nominees for two positions on the Board. Two nominees shall be submitted for each position. The nominees shall be placed on a ballot which will be sent to importers in the districts for a vote. For each position, the nominee receiving the highest number of votes and the nominee receiving the second highest number of votes shall be submitted to the Department as the importers' first and second choice nominees.

(f) Nominees to fill the domestic producer member positions on the Board shall be solicited from all known domestic producers. The nominees shall be placed on a ballot which will be sent to all domestic producers for a vote. The nominee receiving the highest number of votes and the nominee receiving the second highest number of votes shall be submitted to the Department as the producers' first and second choice nominees.

(g) Nominees to fill the foreign producer member positions on the Board shall be solicited from organizations of foreign mango producers. Each organization shall submit two nominees for each position, and the nominees shall be representative of the major countries exporting mangos to the United States.

(h) The Board will nominate the wholesaler and/or retailer members.

(i) From the nominations, the Department shall select the members of the Board.

### § 1206.32 Term of office.

The term of office for first handler, importer, domestic producer, and foreign producer members of the Board will be three years, and these members may serve a maximum of two consecutive three-year terms. The term of office for wholesaler/retailer members shall be one year, and these members may serve a maximum of three consecutive one-year terms. When the Board is first established, the first handler, two importers, one domestic producer, and two foreign producers will be assigned initial terms of four years; three importers, one domestic producer, and two foreign producers will be assigned initial terms of three years; and three importers and three foreign producers will be assigned initial terms of two years. Thereafter, each of these positions will carry a full three-year term. Members serving initial terms of two or four years will be eligible to serve a second term of three years. Each term of office will end on December 31, with new terms of office beginning on January 1.

### § 1206.33 Vacancies.

(a) In the event that any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant.

(b) If a member of the Board consistently refuses to perform the duties of a Board member, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Department that the member be removed from office. If the Department finds the recommendation of the Board shows adequate cause, the Department shall remove such member from office.

(c) Should any member position become vacant, successors for the unexpired term of the member shall be appointed in the manner specified in § 1206.31, except that nomination and replacement shall not be required if the unexpired term is less than six months.

### § 1206.34 Procedure.

(a) At a Board meeting, it will be considered a quorum when at least ten voting members are present.

(b) At the start of each fiscal period, the Board will select a chairperson and vice chairperson who will conduct meetings throughout that period.

(c) All Board members will be notified at least 30 days in advance of all Board and committee meetings unless an emergency meeting is declared.

(d) Each voting member of the Board will be entitled to one vote on any matter put to the Board, and the motion will carry if supported by one vote more than 50 percent of the total votes represented by the Board members present.

(e) It will be considered a quorum at a committee meeting when at least one more than half of those assigned to the committee are present. Committees may consist of individuals other than Board members, and such individuals may vote in committee meetings. Committee members shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board.

(f) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may take action if supported by one vote more than 50 percent of the members by mail, telephone, electronic mail, facsimile, or any other means of communication. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board. All telephone votes shall be confirmed promptly in writing. All votes shall be recorded in Board minutes.

(g) There shall be no voting by proxy.

(h) The chairperson shall be a voting member and shall reside in the U.S.

(i) The organization of the Board and the procedures for conducting meetings of the Board shall be in accordance with its bylaws, which shall be established by the Board and approved by the Department.

### § 1206.35 Compensation and reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board, incurred by them in the performance of their duties as Board members.

### § 1206.36 Powers and duties.

The Board shall have the following powers and duties:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Department for approval such bylaws as may be necessary for the functioning of the Board, and such rules as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet, organize, and select from among the members of the Board a chairperson, other officers, committees, and subcommittees, as the Board determines appropriate;

(d) To employ persons, other than the members, as the Board considers necessary to assist the Board in carrying out its duties and to determine the compensation and specify the duties of such persons;

(e) To develop programs, plans, and projects, and enter into contracts or agreements, which must be approved by the Department before becoming effective, for the development and carrying out of programs or projects of research, information, or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that: any person who enters into a contract or agreement with the Board shall develop and submit to the Board a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Board of activities conducted under the contract or agreement; and, make such other reports available as the Board or the Department considers relevant. Furthermore, any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Department or the Board may require;

(3) The Department may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.

(f) To prepare and submit for approval of the Department calendar year budgets in accordance with § 1206.40;

(g) To maintain such records and books and prepare and submit such reports and records from time to time to the Department as the Department may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(h) To cause its books to be audited by a competent auditor at the end of each calendar year and at such other times as the Department may request, and to submit a report of the audit directly to the Department;

(i) To give the Department the same notice of Board and committee meetings as is given to members in order that the Department's representative(s) may attend such meetings.

(j) To act as intermediary between the Department and any first handler or importer;

(k) To furnish to the Department any information or records that the Department may request;

(l) To receive, investigate, and report to the Department complaints of violations of the Order;

(m) To recommend to the Department such amendments to the Order as the Board considers appropriate; and

(n) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the mango industry's position in the U.S. domestic market; maintain and expand existing markets and uses for mangos; and to carry out programs, plans, and projects designed to provide maximum benefits to the mango industry.

### § 1206.37 Prohibited activities.

The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(a) Any action that would be a conflict of interest; and

(b) Using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments, other than recommending to the Department amendments to the Order.

## Expenses and Assessments

### § 1206.40 Budget and expenses.

(a) At least 60 days prior to the beginning of each calendar year, and as may be necessary thereafter, the Board shall prepare and submit to the Department a budget for the calendar year covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data or at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Department, including shifting funds from one program, plan, or project to another. Shifts of funds which do not cause an increase in the Board's approved budget and which are consistent with governing bylaws need not have prior approval by the Department.

(d) The Board is authorized to incur such expenses, including provision for a reserve, as the Department finds reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(e) With approval of the Department, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for startup costs and capital outlays and are limited to the first year of operation of the Board.

(f) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Voluntary contributions shall be free from any encumbrance by the donor, and the Board shall retain complete control of their use.

(g) The Board shall reimburse the Department for all expenses incurred by the Department in the implementation, administration, and supervision of the Order, including all referendum costs in connection with the Order.

(h) The Board may not expend for administration, maintenance, and functioning of the Board in any calendar year an amount that exceeds 15 percent of the assessments and other income received by the Board for that calendar year. Reimbursements to the Department required under paragraph (g) of this section, are excluded from this limitation on spending.

(i) The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: Provided that the funds in the reserve do not exceed one fiscal period's budget. Subject to approval by the Department, such reserve funds may be used to defray any expenses authorized under this part.

### § 1206.41 Financial statements.

(a) As requested by the Department, the Board shall prepare and submit financial statements to the Department on a periodic basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Department within 30 days after the end of the time period to which it applies.

(c) The Board shall submit annually to the Department an annual financial statement within 90 days after the end of the calendar year to which it applies.

### § 1206.42 Assessments.

(a) The funds to cover the Board's expenses shall be paid from assessments on first handlers and importers, donations from any person not subject to assessments under this Order, and other funds available to the Board and subject to the limitations contained therein.

(b) The assessment rate shall be ½ cent per pound on all mangos. The assessment rate will be reviewed and may be modified by the Board with the approval of the Department, after the first referendum is conducted as stated in § 1206.71(b).

(c) *Domestic mangos.* First handlers of domestic mangos are required to pay assessments on all mangos handled for the U.S. market. This includes mangos of the first handler's own production.

(d) *Imported mangos.* Each importer of mangos shall pay an assessment to the Board through Customs on mangos imported for marketing in the United States.

(1) The assessment rate for imported mangos shall be the same or equivalent to the rate for mangos produced in the United States.

(2) The import assessment shall be uniformly applied to imported mangos that are identified by the numbers 0804.50.4040 and 0804.50.6040 in the Harmonized Tariff Schedule of the United States.

(3) The assessments due on imported mangos shall be paid when they enter or are withdrawn for consumption in the United States.

(e) Each person responsible for remitting assessments under paragraph (c) of this section shall remit the amounts due to the Board's office on a monthly basis no later than the fifteenth day of the month following the month in which the mangos were marketed, in such manner as prescribed by the Board.

(f) A late payment charge shall be imposed on any person failing to remit to the Board the total amount for which the person is liable by the payment due date established under this section. The amount of the late payment charge shall be prescribed by the Department.

(g) An additional charge shall be imposed on any person subject to a late payment charge in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed by the Department.

(h) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(i) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Department.

### § 1206.43 Exemptions.

(a) Any first handler or importer of less than 500,000 pounds of mangos per calendar year may claim an exemption from the assessments required under § 1206.42. Mangos produced domestically and exported from the United States may annually claim an exemption from the assessments required under § 1206.42.

(b) A first handler or importer desiring an exemption shall apply to the Board, on a form provided by the Board, for a certificate of exemption. A first handler shall certify that the first handler will handle less than 500,000 pounds of domestic mangos for the fiscal period for which the exemption is claimed. An importer shall certify that the importer will import less than 500,000 pounds of mangos during the fiscal period for which the exemption is claimed.

(c) Upon receipt of an application, the Board shall determine whether an exemption may be granted. The Board then will issue, if deemed appropriate, a certificate of exemption to each person who is eligible to receive one. It is the responsibility of these persons to retain a copy of the certificate of exemption.

(d) Importers who receive a certificate of exemption shall be eligible for reimbursement of assessments collected by Customs. These importers shall apply to the Board for reimbursement of any assessments paid. No interest will be paid on the assessments collected by Customs. Requests for reimbursement shall be submitted to the Board within 90 days of the last day of the calendar year the mangos were actually imported.

(e) Any person who desires an exemption from assessments for a subsequent calendar year shall reapply to the Board, on a form provided by the Board, for a certificate of exemption.

(f) The Board may require persons receiving an exemption from assessments to provide to the Board reports on the disposition of exempt mangos and, in the case of importers, proof of payment of assessments.

## Promotion, Research, and Information

### § 1206.50 Programs, plans, and projects.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Department for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including producer and consumer information, with respect to mangos; and

(2) The establishment and conduct of research with respect to: the use, nutritional value and benefits, sale, distribution, and marketing of mangos in the United States; the creation of new products thereof, to the end that the marketing and use of mangos in the United States may be encouraged, expanded, improved, or made more acceptable; and to advance the image, desirability, or quality of mangos in the United States.

(b) No program, plan, or project shall be implemented prior to its approval by the Department. Once a program, plan, or project is so approved, the Board shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of promotion, research, or information. If it is found by the Board that any such program, plan, or project does not contribute to an effective program of promotion, research, or information, then the Board shall terminate such program, plan, or project.

(d) No program, plan, or project including advertising shall be false or misleading or disparaging to another agricultural commodity. Mangos of all origins shall be treated equally.

### § 1206.51 Independent evaluation.

The Board shall, not less often than every five years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and other programs conducted by the Board pursuant to the Act. The Board shall submit to the Department, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

### § 1206.52 Patents, copyrights, trademarks, information, publications, and product formulations.

Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the Board under this subpart shall be the property of the U.S. Government, as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Department. Upon termination of this subpart, § 1206.73 shall apply to determine disposition of all such property.

## Reports, Books, and Records

### § 1206.60 Reports.

(a) Each first handler will be required to provide to the Board periodically such information as may be required by the Board, with the approval of the Department, which may include but not be limited to the following:

(1) Number of pounds of domestic mangos handled;

(2) Number of pounds of domestic mangos on which an assessment was paid;

(3) Name and address of the producers from whom the first handler has received mangos;

(4) Date that assessment payments were made on each pound of domestic mangos handled;

(5) Number of pounds of domestic mangos exported;

(6) The first handler's tax identification number;

(b) Each importer may be required to provide to the Board periodically such information as may be required by the Board, with the approval of the Department, which may include but not be limited to the following:

(1) Number of pounds of mangos imported;

(2) Number of pounds of mangos on which an assessment was paid;

(3) Name, address, and tax identification number of the importer; and

(4) Date that assessment payments were made on each pound imported.

### § 1206.61 Books and records.

Each first handler and importer shall maintain and make available for inspection by the Department such books and records as are necessary to carry out the provisions of this part, any regulations issued under this part, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

### § 1206.62 Confidential treatment.

All information obtained from books, records, or reports under the Act and this part shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members, first handlers, or importers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this part, together with a statement of the particular provisions of this part violated by such person.

## Miscellaneous

### § 1206.70 Right of the Secretary.

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

### § 1206.71 Referenda.

(a) *Initial Referendum.* The Order shall not become effective unless:

(1) The Department determines that the Order is consistent with and will effectuate the purposes of the Act; and

(2) The Order is approved by a majority of the first handlers and importers voting, who, during a representative period determined by the Department, have been engaged in the handling or importation of mangos.

(b) *Subsequent referenda.* Every five years, the Department shall hold a referendum to determine whether first handlers and importers of mangos favor the continuation of the Order. The

Order shall continue if it is favored by a majority of the first handlers and importers voting who, during a representative period determined by the Department, have been engaged in the handling or importation of mangos. The Department will also conduct a referendum if 10 percent or more of all non-exempt, first handlers and importers of mangos request the Department to hold a referendum. In addition, the Department may hold a referendum at any time.

### § 1206.72 Suspension and termination.

(a) The Department shall suspend or terminate this part or subpart or a provision thereof if the Department finds that the subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Department determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) The Department shall suspend or terminate this subpart at the end of the marketing year whenever the Department determines that its suspension or termination is approved or favored by a majority of the first handlers and importers voting who, during a representative period determined by the Department, have been engaged in the handling or importation of mangos.

(c) If, as a result of a referendum the Department determines that this subpart is not approved, the Department shall:

(1) Not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

### § 1206.73 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its members to the Department to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Department, shall become trustees of all of the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Department;

(2) Carry out the obligations of the Board under any contracts or agreements entered into pursuant to the Order;

(3) From time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and the trustees, to such person or persons as the Department may direct; and

(4) Upon request of the Department, execute such assignments or other instruments necessary and appropriate to vest in such persons title and right to all funds, property and claims vested in the Board or the trustees pursuant to the Order.

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to the Order shall be subject to the same obligations imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Department to be disposed of, to the extent practical, to one or more mango industry organizations in the interest of continuing mango promotion, research, and information programs.

### § 1206.74 Effect of termination or amendment.

Unless otherwise expressly provided by the Department, the termination or amendment of this part or any subpart thereof, shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this part; or

(b) Release or extinguish any violation of this part; or

(c) Affect or impair any rights or remedies of the United States, or of the Department, or of any other persons with respect to any such violation.

### § 1206.75 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

### § 1206.76 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

### § 1206.77 Amendments.

Amendments to this subpart may be proposed from time to time by the Board or by any interested person affected by the provisions of the Act, including the Department.

### § 1206.78 OMB control number.

The control numbers assigned to the information collection requirements of this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, are OMB control number 0505–0001 and OMB control number 0581–0209.

Dated: October 2, 2003.

**A.J. Yates,**

*Administrator.*

[FR Doc. 03–25457 Filed 10–8–03; 8:45 am]

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# Federal Register

**Thursday,**
**October 9, 2003**

## Part V

## The President

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# Presidential Documents

**Title 3—**

**The President**

**Proclamation 7716 of October 6, 2003**

## Child Health Day, 2003

**By the President of the United States of America**

Parents, teachers, and mentors play a critical role in helping children learn to make healthy choices in life. On Child Health Day, we emphasize our commitment to teaching our children the benefits of good health.

The safety and well-being of our children is a priority shared by all Americans. As children grow and develop, they face many risks and dangers. Through the HealthierUS Initiative and the President's Challenge, my Administration is working to help children learn the benefits of a healthy body and mind.

Across our country, parents and caregivers can play a vital part in creating a more healthy America by teaching children good nutrition and important safety procedures. We can all help young Americans improve their health by encouraging them to eat healthy foods and to get regular exercise. Good nutrition can improve students' ability to concentrate and help them succeed in the classroom. Families must encourage our young people to avoid harmful activities. Families can also protect their children by ensuring that they are immunized against preventable diseases and making sure that homes, day care centers, and schools have been checked for potential hazards. Parents can help prevent accidents and injuries by securing infants, toddlers, and small children in child safety seats and booster seats, checking consumer safety warnings, and making sure young people wear protective gear during recreational activities.

By teaching our children to make safe, healthy decisions, families and all Americans can help our young people reach their full potential, become responsible leaders in their communities, and make our Nation better.

The Congress, by a joint resolution approved May 18, 1928, as amended (36 U.S.C. 105), has called for the designation of the first Monday in October as "Child Health Day" and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim Monday, October 6, 2003, as Child Health Day. I call upon families, schools, child health professionals, communities, and governments to help all our children discover the rewards of good health and wellness.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of October, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.

[FR Doc. 03–25879
Filed 10–8–03; 11:27 am]
Billing code 3195–01–P

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**H.R. 659/P.L. 108–91**

Hospital Mortgage Insurance Act of 2003 (Oct. 3, 2003; 117 Stat. 1158)

**H.R. 978/P.L. 108–92**

To amend chapter 84 of title 5, United States Code, to provide that certain Federal annuity computations are adjusted by 1 percentage point relating to periods of receiving disability payments, and for other purposes. (Oct. 3, 2003; 117 Stat. 1160)

**S. 111/P.L. 108–93**

To direct the Secretary of the Interior to conduct a special resource study to determine the national significance of the Miami Circle site in the State of Florida as well as the suitability and feasibility of its inclusion in the National Park System as part of Biscayne National Park, and for other purposes. (Oct. 3, 2003; 117 Stat. 1161)

**S. 233/P.L. 108–94**

Coltsville Study Act of 2003 (Oct. 3, 2003; 117 Stat. 1163)

**S. 278/P.L. 108–95**

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To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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# Rules and Regulations

**Federal Register**
Vol. 68, No. 197
Friday, October 10, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

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## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

**9 CFR Parts 1, 2, and 3**

**[Docket No. 02–012–1]**

**RIN 0579–AB51**

## Animal Welfare; Transportation of Animals on Foreign Air Carriers

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Determination to regulate and request for comments.

**SUMMARY:** In this document, we are giving notice of, and requesting comment on, our intent to begin applying the Animal Welfare Act (AWA) regulations and standards for the humane transportation of animals in commerce to all foreign air carriers operating to or from any point within the United States, its territories, possessions, or the District of Columbia. While these AWA regulations and standards have been enforced on U.S. air carriers, foreign air carriers, as a matter of policy, have not been asked to comply with the regulations, although some have done so voluntarily. Our determination to begin regulating foreign air carriers will ensure that any animal covered by the AWA, whether coming into, traveling from point to point in, or leaving the United States, its territories, possessions, or the District of Columbia, will be provided the protection of the AWA regulations and standards. We intend to begin applying these AWA regulations and standards unless substantial issues bearing on the effects of this action are brought to our attention.

**DATES:** This determination to regulate will be effective on April 7, 2004, unless we receive comments raising substantial issues bearing on the effects of this action by December 9, 2003 (*see* "Effective Date and Request for Comments" under **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–012–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–012–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–012–1" on the subject line.

You may read any comments that we receive in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jerry DePoyster, Senior Veterinary Medical Officer, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1236; (301) 734–7586.

**SUPPLEMENTARY INFORMATION:**

### Background

The Animal Welfare regulations contained in 9 CFR chapter I, subchapter A, part 3 (referred to below as "the regulations") provide standards for the humane handling, care, treatment, and transportation, by regulated entities, of animals covered by the Animal Welfare Act (AWA, 7 U.S.C. 2131 *et seq.*). The regulations in part 3 are divided into six subparts, designated as subparts A through F, each of which contains facility and operating standards, animal health and husbandry standards, and transportation standards for a specific category of animals. These subparts consist of the following: Subpart A—dogs and cats; subpart B—guinea pigs and hamsters; subpart C—rabbits; subpart D—nonhuman primates; subpart E—marine mammals; and subpart F—warmblooded animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates, and marine mammals. Transportation standards for dogs and cats are contained in §§ 3.13 through 3.19; for guinea pigs and hamsters, in §§ 3.35 through 3.41; for rabbits, in §§ 3.60 through 3.66; for nonhuman primates, in §§ 3.86 through 3.92; for marine mammals, in §§ 3.112 through 3.118; and for all other warmblooded animals, in §§ 3.136 through 3.142.

A carrier is defined in § 1.1 as "the operator of any airline, railroad, motor carrier, shipping line, or other enterprise which is engaged in the business of transporting animals for hire."

While the Animal Care unit of the U.S. Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service (APHIS) currently enforces the AWA regulations and standards on U.S. air carriers, foreign air carriers (as defined in 49 U.S.C 40102) operating in the United States have not been regulated as a matter of policy. We believe that animals being transported by foreign air carriers operating to or from any point within the United States, its territories, possessions, or the District of Columbia should be afforded the same protection under the AWA as if they were being transported by U.S. air carriers. This determination to regulate gives notice that APHIS intends to begin applying the AWA transportation regulations and standards to all foreign air carriers operating to or from any point within the United States, its territories, possessions, or the District of Columbia.

There are approximately 517 foreign air carriers which hold currently effective economic authority from the U.S. Department of Transportation to conduct operations in foreign air transportation to and from the United States. In order to ensure the widest possible notice of our determination to begin applying AWA regulations and standards on foreign air carriers, we intend to mail these carriers copies of this notice. In this way, the airlines will be informed that, beginning 180 days after the publication of this determination to regulate, they will be subject to the transportation regulations and standards of the AWA while in the United States, its territories, possessions, or the District of Columbia. Also, copies of this notice will be sent to trade organizations involved with air transportation of animals, such as the Animal Transportation Association, Air Transport Association, and International Air Transportation Association (IATA), with a request that copies be included in newsletters they send to their members. These organizations have been consulted with regard to this determination to regulate, and we have been coordinating with them on a regular basis.

### *Effective Date and Request for Comments*

Although we have been consulting and coordinating with the trade organizations cited above and, by extension, their member airlines, we believe it is appropriate to provide an opportunity for affected entities to comment prior to this determination to regulate becoming effective. Therefore, we are soliciting comments on this determination to regulate for a period of 60 days. If, through the comments we receive, substantial issues bearing on the effects of this action are brought to our attention, we will publish a notice in the **Federal Register** prior to the effective date of this determination to regulate to inform the public as to what action we will be taking to address those issues. Conversely, if the comments we receive yield no substantial issues, we will publish a notice in the **Federal Register** confirming the effective date.

### *Effects of This Determination to Regulate*

Within 180 days after publication of this notice, each foreign air carrier will need to complete an AWA registration form pursuant to § 2.25 of the AWA regulations, which may be obtained by calling the APHIS Animal Care Western Regional Office at (970) 494–7478 or the Eastern Regional Office at (919) 716–5532. Registered foreign air carriers will need to provide Animal Care with a U.S. business address or the address of an agent where the records required to be kept pursuant to the AWA regulations will be available for inspection. Animal Care inspectors will conduct unannounced inspections of the overall health and condition of the animals being transported, their enclosures, environmental factors, and required records upon the foreign air carrier's arrival within the United States, its territories, possessions, or the District of Columbia. Carriers that violate the AWA by failing to meet the AWA transportation regulations and standards are subject to fines and/or penalties.

We believe that the 180-day delay in the effective date of applying AWA regulations and standards to the operations of foreign air carriers should allow adequate time for them to become familiar with the provisions of the AWA and the AWA transportation regulations and standards and to make any necessary changes in procedure. Many foreign air carriers are members of the IATA and may already be in compliance with most of the physical requirements of the regulations and standards of the AWA. The IATA regulations generally meet or exceed the intent of the AWA in ensuring the humane and safe transportation of animals, but diverge from the USDA regulations primarily in their recordkeeping requirements. Under this determination to regulate, where such divergences exist, the AWA regulations will take precedence.

This action will require foreign air carriers operating to or from any point within the United States, its territories, possessions, or the District of Columbia to meet certain requirements of the AWA transportation regulations and standards that are not contained in the IATA regulations. For example, various sections of the transportation standards in 9 CFR part 3 require that no live animals can be presented to a carrier more than 4 hours before the scheduled departure time of the flight on which the animal is to be transported. With prior arrangements, this time may be extended to 6 hours. The IATA regulations contain no such provision. Various sections of the transportation standards in 9 CFR part 3 also have specific primary enclosure requirements which differ from those of the IATA. Most often, the IATA space requirements for animals are consistent with the AWA requirements, but with at least one species—the guinea pig—the space requirements are not consistent with the AWA requirements. Various sections of the transportation standards in 9 CFR part 3 also have minimum and maximum temperature requirements for holding areas for animals in transit (usually 45 or 50 °F to 85 °F). The IATA regulations, in contrast, do not mandate minimum or maximum temperatures. Instead, guidelines are offered for acceptable temperature ranges for various species in transport.

In addition to the physical requirements, foreign air carriers operating to or from any point within the United States, its territories, possessions, or the District of Columbia, will have to meet recordkeeping requirements set out in the AWA regulations. Records that foreign air carriers will have to keep and maintain include a copy of the consignor's written guarantee of payment for transportation for C.O.D. shipments, a shipping document, and an animal health certificate executed and issued by a licensed veterinarian. In addition, depending on the species, the AWA regulations may require that instructions for the administration of drugs, medication, other special care, food, and water, as well as other shipping documents, be attached to the outside of the animal's primary enclosure.

This determination to regulate will not necessitate any changes to the current AWA transportation regulations or standards but will increase Animal Care's inspection activities. The increased burden on Animal Care is not likely to be significant, however, because Animal Care inspectors already perform inspections at the airports that foreign air carriers use.

This determination to regulate will ensure that any animal covered by the AWA, whether coming into, traveling from point to point in, or leaving the United States, its territories, possessions, or the District of Columbia, will be provided the protection of the AWA regulations and standards.

Therefore, unless substantial issues bearing on the effects of this action are brought to our attention, APHIS intends to begin applying the AWA transportation regulations and standards to foreign air carriers operating to or from any point within the United States, its territories, possessions, or the District of Columbia 180 days from the date of publication in the **Federal Register** of this notice.

## Executive Order 12866 and Regulatory Flexibility Act

This determination to regulate rule has been reviewed under Executive Order 12866. The determination to regulate has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This document gives notice that we intend to begin applying the AWA regulations and standards for the humane transportation of animals in commerce to all foreign air carriers operating to or from any point within the United States, its territories, possessions, or the District of Columbia.

For the reasons discussed earlier in this document, we do not expect that there will be any significant economic effects on entities affected by this determination to regulate (*i.e.*, foreign air carriers and APHIS). We note that many foreign air carriers are members of the IATA and observe that organization's regulations regarding animal transport, which generally meet or exceed the intent of the AWA in ensuring the humane and safe transportation of animals. Thus, many foreign air carriers may already be in compliance with most of the physical requirements of the regulations and standards of the AWA. The primary aspect in which the IATA regulations diverge from the USDA regulations is in their recordkeeping requirements; as we note below under "Paperwork Reduction Act, "we expect that the additional time that foreign air carriers will need to expend in order to comply with the reporting and recordkeeping requirements of the AWA regulations will be minimal. While the routine inspection of foreign air carriers will lead to an increased inspection burden on APHIS' Animal Care inspectors, that burden is not likely to be significant because those inspectors already perform inspections at the airports that foreign air carriers use.

As an alternative to this determination to regulate, we considered maintaining the status quo, *i.e.*, continuing with our policy of not applying the requirements of the regulations to foreign air carriers. While some foreign air carriers voluntarily comply with the regulations and many others observe the IATA's regulations regarding animal transport, such compliance or observance is not universal. To ensure that animals being transported to or from any point within the United States, its territories, possessions, or the District of Columbia are afforded consistent protection, regardless of whether they are being transported by foreign air carriers or U.S. air carriers, we have determined that it is necessary to begin applying the AWA transportation regulations and standards to all foreign air carriers operating to or from any point within the United States, its territories, possessions, or the District of Columbia.

We believe that the small additional costs associated with this determination to regulate will be outweighed by the benefits of ensuring that animals being transported by foreign air carriers operating to or from any point within the United States, its territories, possessions, or the District of Columbia are afforded the same protection under the AWA as if they were being transported by U.S. air carriers.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this determination to regulate will not have a significant economic impact on a substantial number of small entities.

## Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this determination to regulate have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments concerning the information collection or recordkeeping requirements included in this determination to regulate to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 02–012–1. Please send a copy of your comments to: (1) Docket No. 02–012–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

Within 180 days after publication of this determination to regulate, every foreign air carrier operating to or from any point within the United States, its territories, possessions, or the District of Columbia will need to complete a registration form. Registered foreign air carriers will also be required to keep and maintain records required under the AWA regulations pertaining to animal transport. These records may include a copy of the consignor's written guarantee of payment for transportation for C.O.D. shipments; a shipping document; an animal health certificate executed and issued by a licensed veterinarian; and, if needed, an acclimation statement indicating that the animal being transported can withstand temperatures colder or warmer than the minimums or maximums specified in the regulations. In addition, depending on the species, the regulations may require that instructions for the administration of drugs, medication, other special care, food, and water, as well as other shipping documents, be attached to the outside of the animal's primary enclosure.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 0.162037 hours per response.

*Respondents:* Foreign air carriers transporting animals covered by the Animal Welfare Act.

*Estimated annual number of respondents:* 20.

*Estimated annual number of responses per respondent:* 54.

*Estimated annual number of responses:* 1,080.

*Estimated total annual burden on respondents:* 175 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS" Information Collection Coordinator, at (301) 734–7477.

## Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this interim rule, please contact

**Authority:** 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

Done in Washington, DC, this 6th day of October, 2003.

**Bill Hawks,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 03–25788 Filed 10–9–03; 8:45 am]

**BILLING CODE 3410–34–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2003–CE–43–AD; Amendment 39–13328; AD 2003–20–10]**

**RIN 2120–AA64**

## Airworthiness Directives; Raytheon Aircraft Company Beech Models 1900, 1900C, and 1900D Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

---

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) that applies to all Raytheon Aircraft Company (Raytheon) Beech Models 1900, 1900C, and 1900D airplanes. This AD requires you to make a correction to the elevator trim system maintenance procedures, incorporate a temporary revision to the applicable maintenance manual, and incorporate procedures that will enhance the existing elevator trim operational check every time you have maintenance done on the elevator trim system. This AD is the result of an analysis of the maintenance procedures of the elevator trim system. We are issuing this AD to detect and correct any maintenance-induced problems with the elevator trim system installation before problems occur during operation. Such a condition could lead to difficulties in controlling the airplane or a total loss of pitch control.

**DATES:** This AD becomes effective on October 15, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of October 15, 2003.

We must receive any comments on this AD by December 7, 2003.

**ADDRESSES:** Use one of the following to submit comments on this AD:

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–43–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9-ACE-7-Docket@faa.gov.*

Comments sent electronically must contain "Docket No. 2003–CE–43–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–43–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Chris B. Morgan, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4154; facsimile: (316) 946–4107.

**SUPPLEMENTARY INFORMATION:**

### Discussion

*What Events Have Caused This AD?*

On August 26, 2003, a Raytheon Model Beech 1900D twin-turboprop airplane was involved in an accident in the Nantucket Sound off southeastern Massachusetts. The Raytheon Beech Model 1900D is designed to carry 19 passengers. According to initial reports, the airplane took off of Runway 24 at Barnstable Municipal Airport on Cape Cod. The pilot immediately declared an emergency and, while en route to make an emergency landing on Runway 33, crashed into the water.

While there is no determination of the cause of the accident and the investigation is ongoing, FAA's review of the current maintenance procedures of the elevator trim system reveals the following:

—The figures in the applicable maintenance manuals depict the elevator trim cable drum at 180 degrees from the installed position and show the open, keyed side of the drum instead of the flat side of the drum. Following these figures when installing the control cables on the forward control cable drum could reverse the action of the elevator manual trim system; and

—The existing procedure can be enhanced by visually confirming the trim wheel position and the trim tab position are consistent. Such a check would detect and correct any problems with the elevator trim system installation before problems occur during operation.

Although the figures (figure 9 for the 1900/1900C and figure 201 for the 1900D) in the existing maintenance manuals are incorrectly depicted, following the step-by-step written instructions in the existing procedure and referring to the orientation of the parts removed would result in the correct installation and action of the elevator trim system.

*What Are the Consequences if the Condition Is Not Corrected?*

An incorrectly installed elevator trim system component, if not detected and corrected, could result in difficulties in controlling the airplane or a total loss of pitch control.

*Is There Service Information That Applies to This Subject?*

Raytheon has issued Safety Communiqué No. 234, dated September 2003, to address this issue.

*What Are the Provisions of This Service Information?*

The safety communiqué includes information about the incorrect depictions of the figures in the applicable maintenance manuals and also references the following temporary maintenance manual revisions:

—Temporary Revision No. 27–5 to the Model 1900/1900C Airliner Maintenance Manual: Revised ELEVATOR TRIM OPERATIONAL CHECK; and

—Temporary Revision No. 27–9 to the Model 1900D Airliner Maintenance Manual: Added MANUAL ELEVATOR TRIM OPERATIONAL CHECK.

### FAA's Determination and Requirements of the AD

*What Has FAA Decided?*

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design.

Since the unsafe condition described previously is likely to exist or develop on other Raytheon Beech Models 1900, 1900C, and 1900D airplanes of the same type design, this AD is being issued to detect and correct any maintenance-induced problems with the elevator trim system installation before problems occur during operation. Such a condition could lead to difficulties in controlling the airplane or a total loss of pitch control.

*What Does This AD Require?*

This AD requires you to:

—Make a correction to the elevator trim system maintenance procedures;

—Incorporate a temporary revision to the applicable maintenance manual; and

—Incorporate procedures that will enhance the existing elevator trim operational check every time you have maintenance done on the elevator trim system.

*How Does the Revision to 14 CFR Part 39 Affect This AD?*

On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

**Comments Invited**

*Will I Have the Opportunity To Comment Prior to the Issuance of the Rule?*

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under ADDRESSES. Include "AD Docket No. 2003–CE–43–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

**Regulatory Findings**

*Will This AD Impact Various Entities?*

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

*Will This AD Involve a Significant Rule or Regulatory Action?*

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under ADDRESSES. Include "AD Docket No. 2003–CE–43–AD" in your request.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**2003–20–10 Raytheon Aircraft Company:** Amendment 39–13328; Docket No. 2003–CE–43–AD.

**When Does This AD Become Effective?**

(a) This AD becomes effective on October 15, 2003.

**Are Any Other ADs Affected by This Action?**

(b) None.

**What Airplanes Are Affected by This AD?**

(c) This AD affects Models Beech 1900, 1900C, and 1900D airplanes, all serial numbers, that are certificated in any category.

**What Is the Unsafe Condition Presented in This AD?**

(d) This AD is the result of an analysis of the maintenance procedures of the elevator trim system. We are issuing this AD to detect and correct any maintenance-induced problems with the elevator trim system installation before problems occur during operation. Such a condition could lead to difficulties in controlling the airplane or a total loss of pitch control.

**What Must I Do To Address This Problem?**

(e) To address this problem, you must accomplish the following:

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Using pen and ink, mark the applicable figure in the maintenance manual as referenced below. The depiction in the referenced figures is incorrect for the elevator trim drum only and depicts the cable drum at 180 degrees from the installed position and shows the open, keyed side of the drum instead of the flat side of the drum. Insert corrected figure (Figure 1 of this AD) into the applicable maintenance manual and identify it accordingly:<br>(i) Figure 9 of Chapter 27–10–00 of the Model 1900/1900C Airliner Maintenance Manual (114–590021–7B) Clearly note in pen that existing portion of Figure 9 is correct for the aileron trim drum only and insert corrected figure (Figure 1 of this AD) marked in pen as correct for the elevator trim drum only; or | Before the next time you have maintenance done on the elevator trim system. | As specified in Raytheon Safety Communiqué No. 234, dated September 2003. |

| Actions | Compliance | Procedures |
|---|---|---|
| (ii) Mark out Figure 201 of Chapter 27–30–04 of the Model 1900D Airliner Maintenance Manual (125–590000–15). Insert corrected figure (Figure 1 of this AD) | | |
| (2) Incorporate the applicable temporary revision into the maintenance manuals as follows:<br>(i) Temporary Revision No. 27–5 to the Model 1900/1900C Airliner Maintenance Manual: Revised ELEVATOR TRIM OPERATIONAL CHECK; or<br>(ii) Temporary Revision No. 27–9 to the Model 1900D Airliner Maintenance Manual: Added MANUAL ELEVATOR TRIM OPERATIONAL CHECK. | Before the next time you have maintenance done on the elevator trim system. | As specified in Raytheon Safety Communiqué No. 234, dated September 2003. |
| (3) Do the elevator trim operational check that is specified in the applicable maintenance manual and temporary revisions to the maintenance manual as referenced in paragraph (e)(2) of this AD | Prior to further flight after each time you have maintenance done on the elevator trim system. | As specified in Raytheon Safety Communiqué No. 234, dated September 2003: and Temporary Revision No. 27–5 to the Model 1900/1900C Airliner Maintenance Manual: Revised ELEVATOR TRIM OPERATIONAL CHECK; or Temporary Revision No. 27–9 to the Model 1900D Airliner Maintenance Manual: Added MANUAL ELEVATOR TRIM OPERATIONAL CHECK, both dated September 12, 2003, as applicable. |

BILLING CODE 4910–13–P

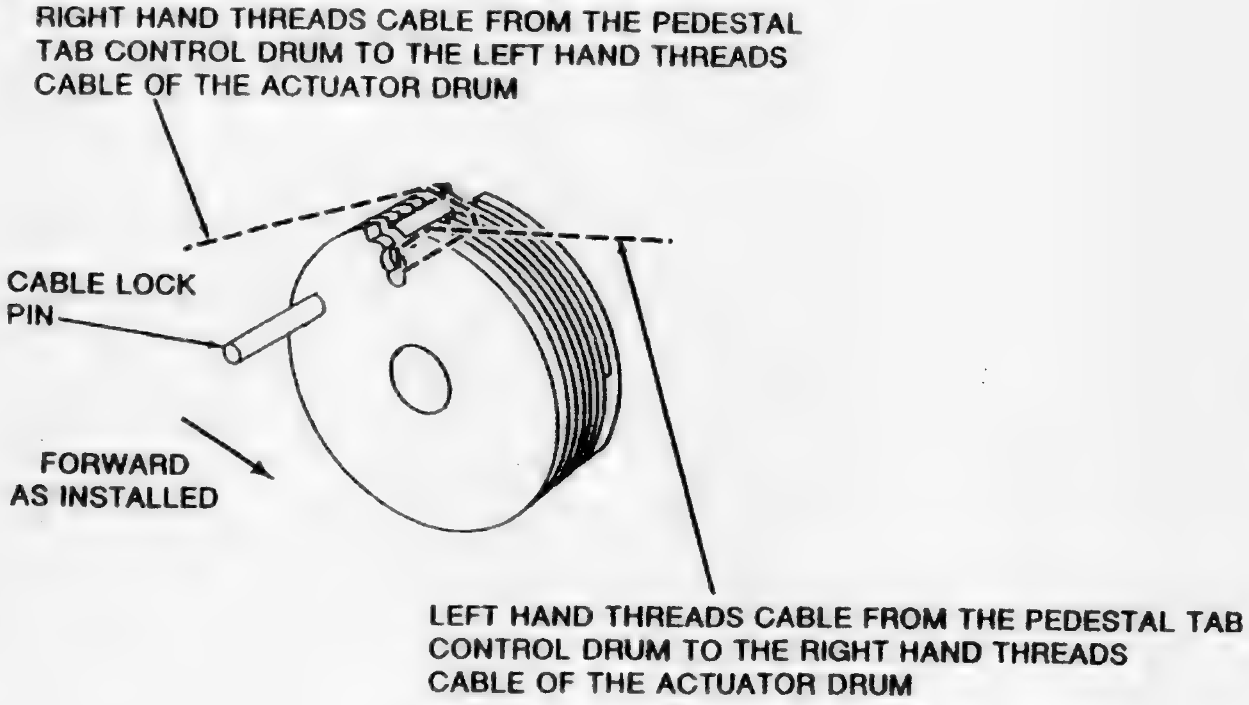
RIGHT HAND THREADS CABLE FROM THE PEDESTAL TAB CONTROL DRUM TO THE LEFT HAND THREADS CABLE OF THE ACTUATOR DRUM
CABLE LOCK PIN
FORWARD AS INSTALLED
LEFT HAND THREADS CABLE FROM THE PEDESTAL TAB CONTROL DRUM TO THE RIGHT HAND THREADS CABLE OF THE ACTUATOR DRUM

Figure 1

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### What About Alternative Methods of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13. Send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Chris B. Morgan, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4154; facsimile: (316) 946–4107.

### Is There Material Incorporated by Reference?

(g) You must do the actions required by this AD per Raytheon Safety Communiqué No. 234, dated September 2003; and either Raytheon Temporary Revision No. 27–5 to the Model 1900/1900C Airliner Maintenance Manual: Revised ELEVATOR TRIM OPERATIONAL CHECK, or Raytheon Temporary Revision No. 27–9 to the Model 1900D Airliner Maintenance Manual: Added MANUAL ELEVATOR TRIM OPERATIONAL CHECK, both dated September 12, 2003. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Issued in Kansas City, Missouri, on October 2, 2003.

**Dorenda D. Baker,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–25591 Filed 10–9–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 2003–SW–08–AD; Amendment 39–13329; AD 2003–20–11]

RIN 2120–AA64

## Airworthiness Directives; Eurocopter Deutschland GmbH Model EC135 P1, P2, T1, and T2 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD) for Eurocopter Deutschland GmbH (ECD) Model EC135 P1 and EC135 T1 helicopters. That AD currently requires adding the AD or a statement to the Rotorcraft Flight Manual (RFM) informing the pilot to reduce power and land as soon as practicable if a thump-like sound followed by unusual vibration occurs during flight. That AD also requires visually inspecting the main rotor drive torque strut assembly (strut) for a crack or a break, recording the inspections in the historical or equivalent record, and re-marking and relocating the strut, as appropriate, and replacing any unairworthy strut with an airworthy strut. Also, that AD establishes life limits for certain struts and revises the life limit for other struts. This amendment retains the same requirements but adds the ECD Model EC135 P2 and EC135 T2 helicopters to the applicability and requires replacing certain life-limited struts with titanium struts. This amendment is prompted by the manufacture of a titanium strut that provides a permanent correction to the unsafe condition that led to limiting the life of other struts that have failed. The actions specified by this AD are intended to prevent failure of a strut and subsequent loss of control of the helicopter.

**DATES:** Effective November 14, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 14, 2003.

**ADDRESSES:** The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:** A proposal to amend 14 CFR part 39 by superseding AD 2001–18–13, Amendment 39–12439 (66 FR 47878, September 14, 2001), for the specified model helicopters was published in the **Federal Register** on June 5, 2003 (68 FR 33663). The action proposed retaining the requirements to add the AD or a statement to the Rotorcraft Flight Manual (RFM) informing the pilot to reduce power and land as soon as practicable if a thump-like sound followed by unusual vibration occurs during flight. Also, the action proposed retaining the requirements to visually inspect each strut for a crack or a break; to record the inspections in the historical or equivalent record; to re-mark and relocate the strut, as appropriate; to replace any unairworthy strut with an airworthy strut; and to establish or revise life limits for certain struts. In addition to the requirements in the current AD, that action proposed adding the ECD Model EC135 P2 and EC135 T2 helicopters to the applicability and replacing certain life-limited struts with titanium struts.

The Luftfahrt-Bundesamt (LBA), the airworthiness authority for the Federal Republic of Germany, advises that struts, (P/N) L633M1001 103 and L633M1001 105, should not be used beyond December 31, 2004. The LBA advises replacing those struts with torque struts, P/N L633M1001 104, after January 1, 2005.

ECD has issued Alert Service Bulletin EC135–63A–002, Revision 2, dated June 26, 2002 (ASB), which specifies inspecting for a crack, marking strut locations and serial numbers, and transferring the location side of the torque struts or replacing each strut, P/N L633M1001 103 or L633M10001 105, with a torque strut, P/N L633M1001 104, that is anodized and not coated with paint, which have no life limit. The LBA classified this ASB as mandatory and issued AD No. 2001–107/2, dated September 19, 2002, to ensure the continued airworthiness of these helicopters in the Federal Republic of Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we have not included it in this AD action.

The FAA estimates that this AD will affect 50 helicopters of U.S. registry. The AD will take approximately ½ work hour for the flashlight and mirror inspection; 2.5 work hours to remark, relocate, and inspect with a magnifying glass; and 1 hour to replace both struts.

The average labor rate is $60 per work hour. Required parts will cost approximately $9,696 per helicopter. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $496,800.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

■ 2. Section 39.13 is amended by removing Amendment 39–12439 (66 FR 47878, September 14, 2001), and by adding a new airworthiness directive (AD), Amendment 39–13329 to read as follows:

**2003–20–11 Eurocopter Deutschland GmbH:** Amendment 39–13329. Docket No. 2003–SW–08–AD. Supersedes AD 2001–18–13, Amendment 39–12439, Docket No. 2001-SW-19-AD.

*Applicability:* Model EC135 P1, P2, T1, and T2 helicopters, with main rotor drive torque strut assembly (strut), part number (P/N) L633M1001 103 or L633M1001 105, installed, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the strut and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, insert a copy of this AD or a statement into the Emergency Procedures Section of the Rotorcraft Flight Manual (RFM) to inform the pilot to reduce power and land as soon as practicable if a thump-like sound followed by unusual vibration occurs during flight.

(b) Within 10 hours time-in-service (TIS), visually inspect each strut with 950 or more hours TIS for a crack or a break using a flashlight and a mirror in accordance with the Accomplishment Instructions, paragraph 3.B.(1) and 3.B.(2), of Eurocopter Alert Service Bulletin EC135–63A–002, Revision 2, dated June 26, 2002 (ASB). Replace any cracked or broken strut with an airworthy strut before further flight.

(c) Inspect the following struts for a crack or a break, using a 6-power or higher magnifying glass, and re-mark and relocate each strut in accordance with the Accomplishment Instructions, paragraph 3.C., of the ASB. This AD does not require you to return any part to the manufacturer.

(1) For a strut with less than 950 hours TIS, inspect before accumulating 1000 hours TIS.

(2) For a strut with 950 or more hours TIS, inspect within 50 hours TIS.

(3) Replace any cracked or broken strut with an airworthy strut before further flight.

(d) This AD revises the Airworthiness Limitations section of the maintenance manual by establishing a life limit of 1000 hours TIS for each strut, P/N L633M1001 103 and L633M1001 105, in its original location, with an additional 1000 hours TIS if properly re-marked and relocated (2000 hours total TIS) in accordance with the Accomplishment Instructions, paragraph 3.C.(3) of the ASB.

(e) Record details of the inspections in the historical or equivalent records in accordance with the Accomplishment Instructions, paragraph 3.C.(4) of the ASB.

(f) When a strut, P/N L633M1001 103 or L633M1001 105, reaches its life limit, replace it with a titanium strut, P/N L633M1001 104, which must be used in pairs, one strut on each side of the transmission. The titanium struts have no life limit. After installing a strut, P/N L633M1001 104, adjust the weight and balance by using the weight and moment stated in the Planning Information, paragraph 1.H., of the ASB.

(g) On or before December 31, 2004, replace each strut, P/N L633M1001 103 or L633M1001 105, with a strut, P/N L633M1001 104.

(h) Replacing struts, P/N L633M1001 103 and L633M1001 105, with titanium struts, P/N L633M1001 104, constitutes terminating action for the requirements of this AD.

(i) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group for information about previously approved alternative methods of compliance.

(j) The inspections and replacement of the struts shall be done in accordance with Eurocopter Deutschland (GmbH) Alert Service Bulletin EC135–63A–002, Revision 2, dated June 26, 2002. The Director of the Federal Register approved the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note:** The subject of this AD is addressed in Luftfahrt-Bundesamt (Federal Republic of Germany) AD 2001–107/2, dated September 19, 2002.

Issued in Fort Worth, Texas, on September 29, 2003.

**David A. Downey,**

*Manager, Rotorcraft Directorate, , Aircraft Certification Service.*

[FR Doc. 03–25592 Filed 10–9–03; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2003–15718; Airspace Docket No. 03–ACE–60]**

## Modification of Class E Airspace; Wayne, NE

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This document confirms the effective date of the direct final rule which revises Class E airspace at Wayne, NE.

**EFFECTIVE DATE:** 0901 UTC, December 25, 2003.

**FOR FURTHER INFORMATION CONTACT:** Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on August 18, 2003 (68 FR 49349). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 25, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on September 25, 2003.

**Paul J. Sheridan,**

*Acting Manager, Air Traffic Division, Central Region.*

[FR Doc. 03–25748 Filed 10–9–03; 8:45 am]

BILLING CODE 4910–13–M

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## COMMODITY FUTURES TRADING COMMISSION

## 17 CFR Part 30

## Foreign Futures and Options Transactions

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Order.

**SUMMARY:** By this Order, the Commodity Futures Trading Commission ("Commission") is consolidating and updating the relief set forth in prior orders issued pursuant to Commission Rule 30.10 regarding the offer and sale of foreign futures and options contracts to customers located in the U.S. by firms located in the U.K. to reflect the substitution of the Financial Services Authority for various U.K. regulatory and self-regulatory organizations.

**EFFECTIVE DATE:** October 10, 2003.

**FOR FURTHER INFORMATION CONTACT:** Lawrence B. Patent, Esq., Deputy Director, or Andrew V. Chapin, Esq., Special Counsel, Compliance and Registration Section, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC, 20581. Telephone: (202) 418–5430. E-mail: *lpatent@cftc.gov* or *achapin@cftc.gov*, respectively.

**SUPPLEMENTARY INFORMATION:** The Commission has issued the following Order:

### Order Substituting the Financial Services Authority as the Sole Regulatory Authority in the United Kingdom in Prior Commission Orders and Amending Certain Terms and Conditions

*Existing Rule 30.10 Relief*

In 1989, the Commission issued a series of orders pursuant to Rule 30.10 authorizing certain firms located in the U.K. to conduct brokerage activities for U.S. customers on certain non-U.S. exchanges without having to register with the Commission as a futures commission merchant or otherwise comply with certain other requirements set forth in Parts 1 and 30 of the Commission's rules.[1] The Orders were issued to the Securities Investment Board ("SIB"), the Investment Management Regulatory Organisation ("IMRO"), the Association of Futures Brokers and Dealers ("AFBD"), and The Securities Association ("TSA").[2] The U.K. Rule 30.10 Orders applied to brokerage activities on or subject to the rules of Recognized Investment Exchanges ("RIES") in the U.K. or any non-U.S. exchange designated by the SIB as an investment exchange (referred to as Designated Investment Exchanges or "DIEs") undertaken by firms authorized to conduct investment business in the U.K. from a location in the U.K.

Since 1989, the Commission has amended and supplemented the U.K. 30.10 Orders to reflect changes in the U.K. regulatory structure, clarify the terms and conditions set forth therein, and provide related relief. First, effective April 1, 1991, the TSA and AFBD merged to form the SFA. Accordingly, the Commission issued an order acknowledging the substitution of SFA as a party to several ongoing information sharing and financial intermediary recognition arrangements entered into with the AFBD, TSA and SIB pursuant to Part 30 of the Commissions' rules.[3] In particular, the Commission acknowledged that all confirmations of Rule 30.10 relief previously extended to AFBD and TSA firms remained effective with respect to such firms in their capacity as members of SFA.[4]

Second, in 1992, the Commission issued an order commonly referred to as the Limited Marketing Order.[5] The Limited Marketing Order permits firms that have received confirmation of Rule 30.10 relief, without prior notice to the Commission, to engage in limited marketing conduct with respect to foreign futures or option contracts within the U.S. through their employees or other representatives, subject to the terms and conditions set forth therein. As part of the Limited Marketing Order, the Commission confirmed that the relief set forth therein applied to those firms having received confirmation of relief under the Rule 30.10 orders issued to the SIB, SFA and IMRO.

Third, in 1997, the Commission clarified the procedures set forth in prior Rule 30.10 Orders applicable to the treatment of customer funds for transactions occurring on or subject to the rules of a board of trade located outside the jurisdiction of the recipient of the Rule 30.10 Order. In doing so, the Commission interpreted prior Rule 30.10 Orders to require firms having received confirmation of Rule 30.10 relief to comply with requirements consistent with the secured amount requirement applicable to futures commission merchants as set forth in Rule 30.7.[6] Specifically, the Commission interpreted Rule 30.7 to require each FCM and Rule 30.10 firm to: (a) obtain and retain in its files an acknowledgment from the depository maintaining customer funds or property that the depositor was informed that such money or property was held on behalf of foreign futures and foreign options customer funds in accordance with Rule 30.7; and (b) take appropriate action (*i.e.*, set aside funds in a "mirror" account) in the event that it became aware that foreign futures and foreign options customer funds were not being held in the appropriate manner. With respect to the U.K., the Commission clarified the procedures with which SFA and IMRO members should comply when dealing on behalf of U.S. customers on a DIE.[7]

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[1] Commission rules referred to herein are found at 17 CFR Ch. I (2003). Rule 30.10 permits a person affected by the requirements contained in Part 30 of the Commission's rules to petition the Commission for an exemption from such requirements. Appendix A to the Part 30 rules provides an interpretative statement that clarifies that a foreign regulator or self-regulatory organization ("SRO") can petition the Commission under Rule 30.10 for an order to permit regulatees or members to conduct business from locations outside the U.S. for U.S. persons on non-U.S. exchanges without registering as a futures commission merchant under the Commodity Exchange Act ("Act"), based upon the person's substituted compliance with a foreign regulatory structure found comparable to that administered by the Commission under the Act.

[2] 54 FR 21599 (May 9, 1989) (SIB); 54 FR 21604 (May 19, 1989) (AFBD); 54 FR 21609 (May 19, 1989) (TSA); 54 FR 21614 (May 19, 1989) (IMRO) (along with the SFA Order, collectively, the "U.K. Rule 30.10 Orders").

[3] 56 FR 14017 (April 5, 1991).

[4] *Id.* at 14018.

[5] 57 FR 49644 (November 3, 1992). In 1994, the Commission expanded the category of persons to whom qualified firms may direct limited marketing conduct. 59 FR 42156 (August 17, 1994).

[6] Rule 30.7 requires FCMs who accept money, securities or property from foreign futures and foreign options customers to maintain in a separate account or accounts, such money, securities or property in an amount at least sufficient to cover or satisfy all of its current obligations to those customers. The separate account or accounts must be maintained under an account name that clearly identifies the funds as belonging to foreign futures and foreign options customers at a depository that meets the requirements of Rule 30.7(c).

Fourth, in 2000, the Commission further clarified the procedures applicable to the treatment of customer funds by FCMs and Rule 30.10 firms. In new Appendix B to Part 30[8] and an order amending prior Rule 30.10 orders,[9] the Commission revised its prior interpretation of the Rule 30.7 secured amount requirement. In particular, the Commission stated that, subject to an additional disclosure requirement, the Rule 30.7 acknowledgment only applies to the maintenance of the account or accounts containing foreign futures and foreign options customer funds by the initial depository, and not to the manner in which any subsequent depository holds or subsequently transmits those funds. Only if an FCM or Rule 30.10 firm fails to receive the required acknowledgment from the initial depository or provide the necessary disclosure statement, must it then set aside funds with an acceptable depository and receive from such depository the required acknowledgment. With respect to the U.K., the Commission clarified the procedures with which SFA and IMRO members should comply when dealing on behalf of U.S. customers on a DIE.[10]

### *Information Sharing*

Prior to the issuance of the U.K. Rule 30.10 Orders, the Commission entered into the Financial Information Sharing Memorandum of Understanding ("FISMOU") with, among others, SIB, AFBD, TSA and IMRO.[11] In order to facilitate the exchange of information related to the U.K. Rule 30.10 Orders, the Commission subsequently entered into the "Addendum dated May 15, 1989 to Financial Information Sharing Memorandum of Understanding" ("Addendum") with, among others, SIB, AFBD, TSA and IMRO.[12] The Commission and SIB also exchanged letters, referred to as the Side Letter and the Note to the Side Letter, regarding the continued application of a separate information sharing arrangement between U.S. and U.K. regulators entered into originally in 1986.[13]

### *Recent Changes to the U.K. Regulatory Structure*

On December 1, 2001, pursuant to the Financial Services and Markets Act 2000 ("2000 Act"), the Financial Services Authority ("FSA"), as the successor organization to SIB,[14] assumed its role as the single U.K. regulator directly responsible for the regulation of investment business, including the offer and sale of commodity futures and options. Prior to the enactment of the 2000 Act, the responsibility for supervising commodity futures markets and intermediaries rested with FSA and certain SROs, including the SFA and IMRO. Pursuant to the 1986 Financial Services Act ("FSAct"), FSA regulated the U.K. financial markets and established general standards for investor protection. The SROs conferred the status of authorization for intermediaries and promulgated general fitness standards, financial requirements, sales practice rules and rules designed to ensure the integrity of the market. With the enactment of the 2000 Act, the responsibility for each of these tasks has been assumed by FSA as the single supervisory authority, the U.K. SROs have been wound up, and the members of these now-defunct organizations are deemed to have been authorized by FSA. In addition, the FSA Handbook replaces all prior rules and regulations regarding firm conduct and operations. In light of its new regulatory role, FSA has requested that the Commission amend the U.K. 30.10 Orders to reflect this change in regulatory oversight.

### *Recent Changes Under the Commodity Futures Modernization Act*

The Commission notes that the Commodity Futures Modernization Act[15] amended the Act to provide the Commission greater regulatory flexibility to streamline and eliminate unnecessary regulation for the entities regulated under the Act. With this in mind, Commission staff has reviewed the Commission Orders issued pursuant to Rule 30.10. As part of this review, Commission staff has discussed with each Rule 30.10 Order recipient how best to update, if necessary, the information contained in the Order, whether some or all of the terms and conditions of the order continue to be necessary, and whether new conditions may be required based upon developments in the relevant jurisdiction.

In response to Commission staff's discussion with it, FSA has requested further that the Commission amend certain terms and conditions set forth within the U.K. Rule 30.10 Orders.[16] Specifically, FSA requested the following changes:

1. *Risk Disclosure.* Subsequent to the Commission issuing the U.K. Rule 30.10 Orders, it adopted Appendix A to Rule 1.55(c).[17] In doing so, the Commission noted that the generic risk disclosure statement set forth in Appendix A may be used in lieu of the statements required by Commission Rules 1.55, Rule 33.7 and the special bankruptcy disclosures of Commission Rule 190.1(c).[18] The Commission determined further that all firms operating pursuant to confirmed Rule 30.10 relief may elect to use the generic risk disclosure statement or the risk disclosure statements mandated by Commission Rules 1.55 and 33.7 and applicable Commission orders, as appropriate.[19] FSA has provided DCIO with the written disclosures required to be provided to prospective customers pursuant to FSA conduct of business rules and DCIO has determined that such disclosures track the language set forth in the generic risk disclosure statement. Accordingly, FSA requested that the Commission exempt firms designated by FSA from compliance with the Commission's risk disclosure requirements as they apply to transactions under Part 30.

2. *Segregation of Customer Funds.* At the time that the Commission issued the U.K. Rule 30.10 Orders, U.S. customers were not permitted to opt out of segregation. Accordingly, each U.K. firm receiving

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[7] 62 FR 10447 (March 7, 1997) (SFA); 62 FR 10449 (March 7, 1997) (IMRO).

[8] 65 FR 60558 (October 11, 2000).

[9] 65 FR 60560 (October 11, 2000) (referred to herein as the "Supplemental Client Money Order").

[10] 65 FR at 60563–64.

[11] Dated September 1, 1988.

[12] *See, e.g.*, 54 FR 21604, 21607–08.

[13] *See, e.g.*, 54 FR 21604, 21608. The Side Letter and Note to the Side Letter referred to the 1986 Memorandum of Understanding Between the United States Securities and Exchange Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Securities and between the United States Commodity Futures Trading Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Futures (dated September 23, 1986), as supplemented by the Memorandum Relating to US/UK MOU (dated November 22, 1988), and superseded by the Memorandum of Understanding on Mutual Assistance and the Exchange of Information Between United States Securities and Exchange Commission and Commodity Futures Trading Commission and the United Kingdom Department of Trade and Industry and the Securities and Investment Board (dated September 25, 1991) (collectively, the "US/UK MOU"). After the 1991 update to the US/UK MOU, the SIB and CFTC exchanged letters confirming the continued applicability of the Side Letter and the Note to the Side Letter. *See* Letters exchanged by Wendy L. Gramm, Chairman, Commission, and Sir David Walker, Chairman, SIB, dated September 25, 1991.

[14] In 1977, SIB's name was formally changed to FSA as a first step to unite banking supervision and investment services regulation under one body. In 1998, banking supervision was transferred to FSA from the Bank of England.

[15] Pub. L. 106–554, 114 Stat. 2763 (December 21, 2000).

[16] *See* Letter from Michael Folger, Director of Conduct of Business Standards, FSA, to Jane Kang Thorpe, Director for the Division of Clearing and Intermediary Oversight, dated July 24, 2003 ("July 24 Letter"). As part of its policy to promote more transparency to the activities of the Commission and to permit affected parties to voice their support or concerns, the July 24 Letter was posted on the Commission's Web site and interested parties were provided a two-week period to submit any comments. No comments were received.

[17] 59 FR 34376 (July 5, 1994).

[18] *Id.* 34378.

[19] *Id.* 34379.

confirmation of relief was required to consent to refuse U.S. customers the option of not segregating funds notwithstanding relevant provisions of the U.K. regulatory system.[20] The Act recently was amended, however, to permit intermediaries conducting business on a derivatives transaction execution facility ("DTEF") to offer any customer that is an eligible contract participant ("ECP") the right to opt out of segregation for any transactions entered into on the DTEF. Pursuant to this authority, the Commission adopted Rule 1.68, which permits a DTEF to adopt rules allowing futures commission merchants ("FCMs") to offer certain sophisticated customers the right to elect not to have funds, that are being carried by the FCM for purposes of margining, guaranteeing, or securing the customers' trades on or through a DTEF, separately accounted for and segregated.[21] Given that the bulk of foreign futures and options activity undertaken by U.S. persons is conducted by sophisticated customers, FSA requested that the Commission authorize U.K. firms to permit U.S. customers that are ECPs to opt out of segregation with respect to those foreign futures and options transactions entered into pursuant to the revised Order.

3. *Bank Undertakings.* Currently, each U.K. firm using an approved bank undertaking to meet any part of its financial resources requirement is subject to a notification requirement should the value of customer funds segregated on behalf of U.S. customers exceed a specified multiple of the firm's minimum financial requirement. If such an event were to occur, the firm consents to notify FSA on its quarterly financial statement to FSA, or at such other times as may be specified by FSA, the value of funds required to be segregated on behalf of U.S. customers. This notification requirement was designed to take into account the impact of bank undertakings in the context of the Commission's minimum financial resource requirement for futures commission merchants (*i.e.*, four percent of segregated funds). FSA has represented that the European Union's Capital Adequacy Directive forbids certain regulated financial institutions, including firms authorized by FSA to conduct futures business and hold customer funds, from using bank undertakings. Accordingly, FSA requested that the Commission eliminate the notification requirement for firms using an approved bank undertaking.

4. *Regulated Markets.* Currently, the scope of the U.K. Rule 30.10 Orders is limited to foreign futures and options traded on a Recognized Investment Exchange ("RIE") or a Designated Investment Exchange ("DIE"). As part of the European Union's ("E.U.'s") attempt to create a single marketplace among all member states, the Investment Services Directive applicable to all E.U. members created a category of markets known as a Regulated Market. A Regulated Market is an exchange organized and operating from within one of the E.U. member states that has been recognized by the E.U. as meeting certain standards for financial integrity and customer protection. With the exception of the London Metal Exchange, the International Petroleum Exchange and EDX London, all U.K. exchanges that are RIEs are now also Regulated Markets within the meaning of the Investment Services Directive. Non-U.K. Regulated Markets have been progressively removed from the category of DIEs because they are exempt from the requirement to be authorized in order to conduct investment business in the U.K. The DIE classification presently includes only non-U.K., non-E.U. markets recognized by FSA. Accordingly, FSA has requested that the Commission expand the scope of the revised Order to include transactions executed on or subject to the rules of RIEs, DIEs, and Regulated Markets, subject to the existing limitation that an exempt firm may not intermediate transactions on behalf of U.S. customers on U.S. exchanges.

Upon consideration of the foregoing, the Commission has determined to consolidate and amend the Orders into a single Order restating the terms and conditions for relief as requested by FSA. Accordingly, the Commission hereby:

(1) Acknowledges that:

(a) Pursuant to the Financial Services and Markets Act 2000, FSA has succeeded the SIB, SFA and IMRO as the relevant U.K. regulatory organization for the supervision of commodity futures and options transactions conducted within the U.K.;

(b) Firms authorized under the Financial Services act 1986 are now authorized to carry on designated investment business under the Financial Services and Markets Act 2000;

(c) Provisions made under the Financial Services Act of 1986 have been replaced by generally equivalent provisions of the FSA Handbook for rules and guidance under the Financial Services and Markets Act 2000;

(d) All confirmations of Rule 30.10 relief previously extended and then in effect by Commission staff or the National Futures Association ("NFA")[22] to SIB, SFA and IMRO firms remain effective with respect to such firms in their capacity as new regulatees of FSA;

(e) The Financial Information Sharing Memorandum of Understanding and related information-sharing arrangements remain applicable, and that firms authorized to carry on designated investment business by FSA shall be entitled to all of the benefits, subject to the remaining parties' performance of their respective responsibilities, including compliance with the Side Letter and Note to the Side Letter; and

(f) The relief set forth previously in the Limited Marketing Orders and the Supplemental Client Money Order remains effective with respect to each firm that has received confirmation of Rule 30.10 relief pursuant to this Order; and

(2) Confirms that the relief granted pursuant to this Order extends to brokerage activities conducted on or subject to the rules of an RIE, DIE or Regulated Market, but does not extend to rules or regulations relating to trading, directly or indirectly, on U.S. contract markets or derivatives transaction execution facilities; and

(3) Revokes the relief set forth in Orders dated May 19, 1989 and April 5, 1991, issued previously to the now-defunct SIB (54 FR 21599), IMRO (54 FR 21614), and SFA (56 FR 14017).

In connection with the Rule 30.10 relief previously granted to the U.K. regulatory and self-regulatory organizations, Commission staff has issued certain no-action letters regarding the treatment of customer funds attributable to trading on the LME.[23] In light of the changes to the U.K. regulatory program, the Commission believes that it is appropriate to amend these letters by substituting all prior references to AFBD and SFA with FSA.

Based upon the Commission's prior determination to issue relief under Rule 30.10, the information provided to the Commission by FSA describing the recent changes to the U.K. regulatory framework, and the recommendation of Commission staff, the Commission has concluded that the standards for relief set forth in Rule 30.10 and, in particular, Appendix A thereof, generally have been satisfied and that compliance with applicable U.K. law and FSA rules may be substituted for compliance with those sections of the Act and rules thereunder more particularly set forth herein.

By this Order, the Commission hereby exempts, subject to specified conditions, those firms identified to the Commission by FSA as eligible for the relief granted herein from:

—Registration with the Commission for firms and for firm representatives;
—The separate account requirements contained in Commission Rule 30.7, 17 CFR 30.7;
—The requirement in Commission Rule 30.6(a) and (d), 17 CFR 30.6(a) and

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[20] The Part 30 Orders mandated compliance with Rule 30.7's secured amount requirement or foreign equivalent. The secured amount requirement set forth in Rule 30.7, and described more fully in Appendix B to Part 30, is similar to the segregation requirement set forth in Section 4d of the Act and rules promulgated thereunder.

[21] 66 FR 20740 (April 25, 2001). At the time of the rulemaking, the Commission determined to defer its decision whether to extend the choice to opt out of segregation to ECPs trading on designated contract markets, but noted that it may reconsider the issue in the future. *Id.* at 20743.

[22] *See infra* n.37.

[23] *See* Letter from Andrea Corcoran, Director, Division of Trading and Markets, to the Hon. Christopher J. Sharples, Chairman, AFBD, dated October 10, 1989; Letter from Andrea Corcoran, Director, Division, to A.R.G. Frase, AFBD, dated June 19, 1990; Letter from Andrea Corcoran, Director, Division of Trading and Markets, to Phillip Thorpe, Chief Executive, AFBD, and Chief Designate, SFA, dated April 1, 1991; Letter from John C. Lawton, Acting Director, Division of Trading and Markets, to Alan Whiting, Executive Director for Regulation and Compliance, LME, dated April 3, 2000.

(d), that firms provide customers located in the U.S. with the risk disclosure statements in Commission Rule 1.55(b), 17 CFR 1.55(b) and Commission Rule 33.7, 17 CFR 33.7, or as otherwise approved under Commission Rule 1.55(c), 17 CFR 1.55(c);

—Those sections of Part 1 of the Commission's financial rules that apply to foreign futures and options sold in the U.S. as set forth in Part 30; and

—Those sections of Part 1 of the Commission's rules relating to books and records which apply to transactions subject to Part 30,

based upon substituted compliance by such persons with the applicable statutes and regulations in effect in the U.K.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory scheme governing persons in U.K. who would be exempted hereunder provides:

(1) A system of qualification or authorization of firms who deal in transactions subject top regulation under Part 30 that includes, for example, criteria and procedures for granting, monitoring, suspending and revoking licenses, and provisions for requiring and obtaining access to information about authorized firms and persons who act on behalf of such firms.

(2) Financial requirements for firms including, without limitation, a requirement that all firms immediately notify FSA if the firms' adjusted net capital falls below a specified level and daily mark-to-market settlement and/or accounting procedures;

(3) A system for the protection of assets of appropriate customers that is designed to preclude the use of such customer assets to satisfy house obligations and requires separate accounting for such assets, augmented by a compensation scheme designed to compensate customers whose assets are segregated and who have suffered a loss as a result of fraud and/or insolvency of a firm;

(4) Recordkeeping and reporting requirements pertaining to financial and trade information including, without limitation, order tickets, trade confirmations, monthly customer account statements, customers' segregation records, accounting records for customer and proprietary trades and discretionary account documentation;

(5) Sales practice standards for firms and persons acting on their behalf that include, for example, a requirement that authorized persons know their customers, required disclosures to prospective customers and prohibitions on misleading advertising and improper trading activities;

(6) Procedures to audit for compliance with, and to redress violations of, customer protection and sales practice requirements including, without limitation, an affirmative surveillance program designed to detect trading activities that take advantage of customers, and the existence of broad powers of investigation relating to sales practice abuses; and

(7) Mechanisms for sharing of information between the Commission and FSA and the availability of related mechanisms for sharing monitoring information with the Commission on an "as needed" basis including, without limitation, confirmation data, data necessary to trace funds related to trading futures products subject to regulation in U.K., position data, data on firms' standing to do business and financial condition, and for cooperating with the Commission and NFA in inquiries, compliance matters, investigations and enforcement proceedings.

This Order does not provide an exemption from any provision of the Act or rules thereunder not specified herein, for example, without limitation, the antifraud provision in Rule 30.9. Moreover, the relief granted is limited to brokerage activities undertaken on behalf of customers located in the U.S. with respect to transactions on or subject to the rules of an RIE, DIE, or a regulated Market for products that customers located in the U.S. may trade.[24] The relief does not extend to rules relating to trading, directly or indirectly, on U.S. exchanges. For example, a firm trading in U.S. markets for its own account would be subject to the Commission's large trader reporting requirements.[25] Similarly, if such a firm were carrying a position on a U.S. exchange on behalf of foreign clients, it would be subject to the reporting requirements applicable to foreign brokers.[26] The relief herein is inapplicable where the firm solicits or accepts orders from customers located in the U.S. for transactions on U.S. markets.[27] In that case, the firm must comply with all applicable U.S. laws and regulations, including the requirement to register in the appropriate capacity.

The eligibility of any firm to seek relief under this exemptive Order is subject to the following conditions:

(1) The FSA must present in writing to the Commission that:

(a) Each firm of which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards in place in the U.K.; such firm is engaged in business with customers in the U.K. as well as in the U.S.; and such firm and its principals and employees who engage in activities subject to Part 30 would not be statutorily disqualified from registration under Section 89a(2) of the Act, 7 U.S.C. § 12(a)(2);

(b) It will monitor firms to which relief is granted for compliance with the regulatory requirements for which substituted compliance is accepted and will promptly notify the Commission or the NFA of any change in status of a firm that would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the U.S.;

(c) It will provide the Commission with prompt notice of all material changes to the relevant laws in the U.K., or any rules promulgated thereunder;

(d) Customers located in the U.S. will be provided no less stringent regulatory protection than U.K. customers under all relevant provisions of U.K. law; and

(e) It will cooperate with the Commission in connection with information sharing pursuant to the FISMOU.

(2) Each firm seeking relief hereunder must represent in writing that it:

(a) Is located outside the U.S., its territories and possessions, and where applicable, has subsidiaries or affiliates domiciled in the U.S. with a related business (*e.g.*, banks and broker/dealer affiliates) along with a brief description of each subsidiary's or affiliate's identify and principal business in the U.S.;

(b) Consents to jurisdiction in the U.S. under the Act by filing a valid and binding appointment of an agent in the U.S. for service of process in accordance with the requirements set forth in Rule 30.5;

(c) Acknowledges that it can be required by FSA to provide to FSA immediate access to its books and records related to transactions under Part 30 required to be maintained under the applicable statutes and regulations in effect in the U.K. and that FSA will cooperate in providing access to such books and records in accordance with the FISMOU;

(d) Consents that all futures and options transactions with respect to customers located in the U.S. will be made on or subject to the rules of an RIE, DIE located outside the U.S., or Regulated Market, and will be undertaken consistent with the Financial Services and Markets Act 2000 and the rules and guidance set forth in the FSA Handbook;

(e) Has no principal, or employee who solicits or accepts orders from customers located in the U.S., who would be disqualified from directly applying to do business in the U.S. under Section 8a(2) of the Act, 7 U.S.C. § 12(a)(2);

(f) Consents to participate in any NFA arbitration program that offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under Part 30, even in circumstances where the claim involves a matter arising primarily out of delivery, clearing, settlement or floor practices, and consents to notify customers located in the U.S. of the availability of such a program; provided, however, that the firm may require its customers resident in the U.S. to execute the consent attached hereto as

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[24] *See, e.g.*, Sections 2(a)(1)(C) and (D) of the Commodity Exchange Act.

[25] *See, e.g.*, 17 CFR Part 18 (2000).

[26] *See, e.g.*, 17 CFR Parts 17 and 21 (2000).

[27] *See, also*, CFTC Interpretative Letter 03–28 [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 29,559 (July 25, 2003) (no-action letter permitting a specific foreiign entity that has previously been granted exemption from registration by a Commission order issued under Rule 30.10 in connection with foreign futures and options to also act as an introducing broker with respect to trades executed on U.S. markets for U.S. institutional customers without registering as an introducing broker).

Exhibit A concerning the exhaustion of certain mediation or conciliation procedures made available by FSA prior to bringing an NFA arbitration proceeding; and provided further, that the firm must undertake to provide the customer with information concerning how to commence such procedures and documentation of the commencement of such procedures pursuant to the consent attached hereto as Exhibit A;

(g) Consents to refuse those customers resident in the U.S. that do not satisfy the criteria for being an Eligible Contract Participant, as defined in section 1a(12) of the Commodity Exchange Act, 7 U.S.C. 1a(12), the option of not segregating funds notwithstanding relevant provisions of the U.K. regulatory system;

(h) Consents to provide all customers resident in the U.S. no less stringent regulatory protection than U.K. customers under all relevant provisions of U.K. law; and

(i) Undertakes to comply with the applicable provisions of U.K. law and FSA rules and guidance that form the basis upon which this exemption from certain provisions of the Act and rules thereunder is granted.

As set forth in the Commission's September 11, 1997 Order delegating to NFA certain responsibilities, the written representations set forth in paragraph (2) shall be filed with NFA.[28] Each firm seeking relief hereunder has an ongoing obligation to notify NFA should there be a material change to any of the representations required in the firm's application for relief.

Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its findings that the standards for relief set forth in Commission Rule 30.10 and, in particular, Appendix A thereof, have generally been satisfied. In addition, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular firm, would be contrary to the public interest, or other circumstances to not warrant continuation of the exemptive relief granted therein, the Commission may condition, modify, suspend, terminate, withhold as to a specific firm or otherwise restrict, the exemptive relief granted, as appropriate on its own motion.

■ Accordingly, 17 CFR part 30 is amended as follows:

## PART 30—FOREIGN FUTURES AND OPTIONS TRANSACTIONS

■ 1. The authority citation for part 30 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

■ 2. Appendix C to part 30 is amended by:

■ A. Removing the entries for:

Firms designated by the Securities and Investment Board;

Firms designated by the Association of Futures Brokers and Dealers;

Firms designated by the Securities Association; and

Firms designated by the Investment Management Regulatory Organization

■ B. Adding the following entry at the end of the appendix:

### Appendix C—Foreign Petitioners Granted Relief From the Application of Certain of the Part 30 Rules Pursuant to § 30.10

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Firms designated by the Financial Services Authority ("FSA").

FR date and citation: October 10, 2003, [insert FR citation].

Issued in Washington, DC, on September 30, 2003.

**Jean A. Webb,**

*Secretary of the Commission.*

**Note:** The following Exhibit A will not appear in the Code of Federal Regulations.

### Exhibit A—Form of Consent

In the event that a dispute arises between you, __________, and __________ with respect to transactions subject to Part 30 of the Commodity Futures Trading Commission's Rules, various forums may be available for resolving the dispute, including courts of competent jurisdiction in the United States and United Kingdom and arbitration programs made available both in the United States and United Kingdom.

In the event you wish to initiate an arbitration proceeding against the firm to resolve such dispute under the applicable rules of the National Futures Association ("NFA") in the United States, you hereby consent that you will first commence conciliation in accordance with such procedures as may be made available by the relevant United Kingdom regulator, details of which are provided to you herewith. The outcome of such United Kingdom conciliation is non binding. You may subsequently accept this resolution, or you may proceed either to binding arbitration under the rules of the relevant United Kingdom regulator or to binding arbitration in the United States under the rules of NFA. If you accept the conciliated resolution or elect to proceed to arbitration, or to any other form of binding resolution, under the rules of the relevant United Kingdom regulator or foreign exchange, you will be precluded from subsequently initiating an arbitration proceeding at NFA.

You may initiate an NFA arbitration proceeding upon receipt of documentation from the relevant United Kingdom regulator:

(i) Evidencing completion of the conciliation process and reminding you of your right of access to NFA's arbitration proceeding, or

(ii) Representing that more than nine months have elapsed since you commenced the conciliation process and that such process is not yet complete and reminding you of your right of access to NFA's arbitration proceeding.

The documentation referred to above must be presented to NFA at the time you initiate the NFA arbitration proceeding. NFA will exercise its discretion not to accept your demand for arbitration in the absence of such documentation.

By signing this consent, you are not waiving any other rights to any other legal remedies available under law.

____________________

Customer Signature

____________________

Date

[FR Doc. 03–25298 Filed 10–9–03; 8:45 am]

BILLING CODE 6351–01–M

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## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

## 21 CFR Part 1301

[Docket No. DEA–232F]

RIN 1117–AA70

## Controlled Substances Registration and Reregistration Application Fees

**AGENCY:** Drug Enforcement Administration (DEA), Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes the fee schedule for DEA registration and reregistration fees relating to the registration and control of the manufacture, distribution and the dispensing of controlled substances. DEA is required to adequately recover necessary costs associated with the Diversion Control Program (DCP) as mandated by the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993.

**EFFECTIVE DATE:** December 1, 2003. The new fee schedule will be in effect for all new applications postmarked on or after December 1, 2003 and for all renewal applications postmarked on or after December 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537; Telephone (202) 307–7297.

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[28] 62 FR 47792, 47793 (September 11, 1999). Among other duties, the Commission authorized NFA to receive requests for confirmation of Rule 30.10 relief on behalf of particular firms, to verify such firms' fitness and compliance with the conditions of the appropriate Rule 30.10 Order and to grant exemptive relief from registration to qualify firms.

**SUPPLEMENTARY INFORMATION:**

## I. Introduction and Statutory Authority

The Drug Enforcement Administration (DEA) published a notice of proposed rulemaking in the **Federal Register** on February 18, 2003 (68 FR 7728) to adjust the registration and reregistration fees for controlled substances handlers. DEA's authority to collect registration fees derives from three statutory provisions.

DEA is authorized by 21 U.S.C. 821 to collect "reasonable fees relating to the registration and control of the manufacture, distribution and dispensing of controlled substances and to the registration and control of regulated persons and of regulated transactions." Secondly, 21 U.S.C. 958(f) permits DEA to collect "reasonable fees relating to the registration of importers and exporters of controlled substances or List I chemicals."

Thirdly and importantly, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993 (Pub. L. 102–395) requires that DEA collect fees to ensure the recovery of the *full costs* of operating the Diversion Control Program (DCP). Section 111(b)(3) of the act, codified at 21 U.S.C. 886a(3), requires that "fees charged by the Drug Enforcement Administration under its Diversion Control Program shall be set at a level that ensures the recovery of the full costs of operating the various aspects of that program." Section 111(b)(1) of the act also requires that "there shall be deposited as offsetting receipts into that account all fees collected by the Drug Enforcement Administration, in excess of $15,000,000, for the operation of its Diversion Control Program."

Following an adjustment in registration fees in 1993, the American Medical Association (AMA) and others filed a complaint in the United States District Court for the District of Columbia objecting to the new fees. After the district court issued its final order granting the government's motion for summary judgment and disposing of all claims, the AMA appealed. In the ensuing case, *AMA* v. *Reno*, the United States Court of Appeals for the District of Columbia Circuit found DEA's rulemaking to be inadequate and remanded, without vacating, the rule to DEA, requiring the agency to provide an opportunity for meaningful notice and comment on the fee-funded components of the Diversion Control Program (DCP). In doing so, however, the court also confirmed the boundaries of the DCP that DEA can fund by registration fees (*AMA* v. *Reno*, 57 F.3d 1129, 1135 (D.C. Cir. 1995)). More specifically, the court found that the current statutory scheme requires DEA to set registration fees to recover the full costs of the DCP, while requiring DEA to charge "reasonable" fees relating to the registration and control of the manufacture, distribution and dispensing of controlled substances and the registration and control of regulated persons and of regulated transactions.

DEA responded to the remand requirement through a notice in the **Federal Register** on December 30, 1996 (61 FR 68624), describing the fee-funded components and activities of the DCP with an explanation of how each satisfies the statutory requirements for fee-funding. A final rule was subsequently published on August 9, 2002 (67 FR 51988).

DEA, therefore, is bound by the above-referenced statutory requirements in setting fees that recover the full cost of the Diversion Control Program and its activities. DEA has developed its rulemaking according to these legislative mandates.

## II. Comments Received

Following publication of the Notice of Proposed Rulemaking on February 18, 2003, DEA received 36 comments to the notice, objecting to the fee schedule contained in the proposed rule. Twenty-seven comments were received from physicians (5 comments) and veterinary (22 comments); two comments were received from pharmacists, and seven comments were received from national or state associations representing different registrant groups. Late comments were also sent by another national group after the close of the comment period. Its comments were already raised by other commenters and, therefore, are addressed accordingly in this final rule.

Most commenters objected to the proposed increase in registration and reregistration fees, most noting that the increase was "too much" despite the ten-year period since fees were last adjusted; one commenter wrote that he had no problem with the proposed fee increase for practitioners from $70 to $131. One commenter also raised concern that the proposed fees were based on estimated budgets for Fiscal Years 2004–2006 and that, because the fee schedule would extend only to Fiscal Year 2006, DEA could raise the fees again at that time. Several commenters inaccurately characterized the proposed registration fee as either a "tax" or as a "user fee."

Four commenters expressed concern about the programmatic and operational costs of the DCP that necessitated the proposed increase in fees. Commenters specifically addressed why the DCP budget authority has doubled since Fiscal Year 1994 and what activities, including what new initiatives, would be supported through registration fees.

Three commenters expressed concern about the potential effect of the proposed increase in fees on small businesses, particularly in the current economy.

Three comments were received regarding individual registrations. One commenter wrote that the ability of residents and hospital- and clinic-based physicians to use their employer's registration number instead of being required by DEA to maintain individual registrations causes confusion with pharmacies. Another commenter argued that veterinarians unfairly support a disproportionate share of DCP costs because veterinary clinics as free-standing hospitals must purchase separate DEA registrations unlike physicians and other practitioners affiliated with human hospitals that may work under the hospital's registration under certain circumstances. Comments also noted that a fee increase would encourage practices, especially large practices, to forego licensure of all practitioners in the practice. Similarly, two commenters requested that registration fees be calculated based on the volume of controlled substances used, as usage differs by type of registrant.

Four commenters expressed concern that Internet pharmaceutical companies selling veterinary products at discounted prices are undermining veterinarian revenue. Other areas addressed by commenters included eliminating the mandatory annual $15 million transfer to the U.S. Treasury; finding alternative sources for funding the Diversion Control Program such as fines to violators of controlled substances laws, fines to insurance companies and health care providers that use DEA registrations for identification purposes, "taxes" on Internet pharmacies, fees to large drug companies that "have billions of dollars," and Congressional appropriations; and the provision of additional time beyond the 30 days following publication of the final rule for the new fees to go into effect.

Each of the points raised by commenters is addressed below.

## III. Objections to Fee Increase

All but one of the commenters objected to the increase in registration and reregistration fees, many characterizing them as "arbitrary" and "exorbitant." Multiple commenters noted that physicians and other practitioners have been experiencing declining reimbursements and increasing operating costs, malpractice insurance costs, and costs of complying with other Federal and State requirements combined with high medical school debt. Several commenters suggested that the fee be raised 1.6 percent consistent with the 2003 increase in Medicare reimbursements; others suggested a 3–4 percent annual increase or a flat $5–10 increase. One commenter questioned how the fee increase compares with the rate of inflation. One commenter alleged that DEA was "arbitrarily" raising fees, and several others commented that DEA had not provided adequate justification for the fee increase.

As described above, DEA's authority to charge registration fees to support the Diversion Control Program derives from three statutory provisions. DEA is authorized by 21 U.S.C. 821 to collect reasonable fees relating to the registration and control of the manufacture, distribution and dispensing of controlled substances. Secondly, 21 U.S.C. 958(f) permits DEA to collect reasonable fees relating to the registration of importers and exporters of controlled substances.

Thirdly, the 1993 Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act established the Drug Diversion Control Fee Account (DDCFA) and specifically mandated that fees "shall be set at a level that ensures the recovery of the full costs of operating the various aspects of that program." 21 U.S.C. 886a(3). Congress, in using the mandatory term "shall" as opposed to the discretionary "may," unambiguously required DEA to increase its then-existing registration fees resulting in registrants fully funding DCP expenses. DEA, therefore, lacks discretion in this matter and must fund its DCP totally from registration fees (that is, not from fines, Congressional appropriations or other potential sources). Assuming for the sake of argument that there is some doubt as to whether Congress intended DEA to entirely fund the DCP from registration fees due to its use of the phrase "various aspects" of the DCP as opposed to something like "all aspects," the House Conference Report notes that the act's language "requires the Drug Enforcement Administration to set fees to recover the full cost of their Diversion Control Program." H.R. Conf. Rep. No. 918, 102nd Cong., 2d Sess. 44 (1992).

Congress also mandated fulfillment of the requirements of the Appropriations Act "(n)otwithstanding (a)ny (o)ther (p)rovision of (l)aw," thus making its provisions supersede all other provisions of law that would otherwise prevent or impede DEA's recovery of the full costs of the DCP through registration fees. H.R. 5678, 102nd Cong., 2d Sess. 111 (1992).

Accordingly, while DEA recognizes the economic pressures facing practitioners such as declining Medicaid reimbursements and increasing operating, equipment, and insurance costs, the current statutory scheme requires DEA to set registration fees to recover the full costs of the DCP, while limiting DEA to charge "reasonable" fees relating to the registration and control of the manufacture, distribution and dispensing of controlled substances. DEA does not have the discretion to partially fund the DCP or to find alternative sources of funding for the program. Rather it is mandated by law to fund the DCP fully through registration fees.

DEA has not adjusted the registration and reregistration fees since March 22, 1993 when it published a final rule in the **Federal Register**, establishing registration fees for controlled substances registrants (58 FR 15272). (This fee schedule then went into effect for all registration applications postmarked on April 21, 1993 or later and all renewal applications with an expiration date of May 21, 1993 or later). Following publication of the final rule, the American Medical Association (AMA) and others filed a complaint in the United States District Court for the District of Columbia objecting to the new fees. The district court issued its final order granting the government's motion for summary judgment and disposing of all claims. Following an appeal by the AMA, the United States Court of Appeals for the District of Columbia Circuit found DEA's rulemaking to be inadequate and remanded, without vacating, the rule to DEA, requiring the agency to provide an opportunity for meaningful notice and comment on the fee-funded components of the Diversion Control Program. DEA responded to the remand requirement through a final rule published in the **Federal Register** on December 30, 1996 (61 FR 68624). DEA then published its Final Rule on the Drug Diversion Control Fee Account and Diversion Control Program funding, responding to comments and clarifying the activities to be funded as part of the DCP, on August 9, 2002 through publication in the **Federal Register** (67 FR 51988).

Over the period of ten years the costs of operating the Diversion Control Program (DCP) have increased, necessitating a review of fees and an increase in those fees that support the program as mandated by statute. Such increase in operating costs, detailed below, include a greater number of diversion investigators, increased investigation costs, additional diversion control efforts such as controlling diversion of licit controlled substances on the Internet, inflation, and increases in salaries and compensation for employees. In setting the fees, DEA is mandated to recover the "*full costs*" (emphasis added) of the DCP and does not have the discretion to adjust the fees according to Medicare reimbursements or inflation as suggested by some commenters. DEA is also mandated to charge "reasonable" fees. Because the fees do not represent a significant financial burden on registrants (see discussion below regarding the impact on small businesses), DEA has determined that the fees contained in this final rule are reasonable. The individual effect on registrants is minimal, representing from 0.21% to as little as 0.01% of average annual sales (or income) for those registrants qualifying as small businesses. For registrants that are large businesses with higher sales, the impact of the fee is even less.

## IV. Fees as a Tax or User Fee

Several commenters inaccurately characterized the registration fee as a tax or user fee. One commenter expressed that the DCP is a program from which the general public benefits and from which physicians do not derive a benefit despite paying a fee. User fees are charges that may be assessed only when a fee-funded service provides special benefits to an identifiable recipient beyond those that accrue to the general public, pursuant to the Independent Offices Appropriations Act (IOAA) (OMB Circular A–25, July 15, 1993). Examples of such services include activities that: Enable the beneficiary to obtain more immediate or substantial gains or values than those that accrue to the general public (*e.g.*, receiving a patent, insurance, or guarantee provision, or a license to carry on a specific activity or business); provide business stability or contributes to public confidence in the business activity of the beneficiary (*e.g.*, insuring deposits in commercial banks); or that are performed at the request of or for the convenience of the recipient, and are beyond the services regularly received by other members of the same industry or group or by the general public (*e.g.*, receiving a passport, visa, airman's certificate, or a Custom's inspection after regular duty hours).

However, the IOAA applies "only when there is no independent statutory source for the charging of a fee or where a fee statute fails to define fee-setting criteria" *AMA* v. *Reno*, 857 F. Supp. at 84 (D.D.C. 1994). Accordingly, the controlled substances registration fees that are the subject of this rulemaking *do not constitute user fees* because other statutory authority (as described above) set specific criteria and funding guidelines. Moreover, in the 1993 Appropriations Act, Congress mandated fulfillment of the requirements of the Act "(n)otwithstanding (a)ny (o)ther (p)rovision of (l)aw," thus making its provisions supersede all other provisions of law that would otherwise prevent or impede DEA's recovery of the full costs of the DCP through registration fees. H.R. 5678, 102nd Cong., 2d Sess. 111 (1992).

However, with that said, registrants who pay the fees *do* receive special benefits not conveyed on the general public. Specifically by registering with the DEA, registrants are able to handle controlled substances, an immediate "gain or value" not provided to the general public. Because of the closed system of drug distribution and the diversion control activities of the DCP, there are some tangential public benefits as well, much in the same way that the system of driver's licenses (by which individual drivers receive a specific benefit not conveyed on the public at large) increases the general safety on public roads thus also conveying an ancillary public benefit.

Because Congress specified in the 1993 Appropriations Act (with collection and spending criteria established by prior law (21 U.S.C. 821 and 958(f)), that "(f)ees charged by the Drug Enforcement Administration under its Diversion Control Program shall be set at a level that ensures the recovery of the full costs of operating the various aspects of that program" and funds from the Drug Diversion Control Fee Account (DDCFA) to fund the DCP will be raised "in accordance with estimates made in the budget request of the Attorney General" (21 U.S.C. 886a(3) and (4)), the registration fees charged by DEA pursuant to this act are not user fees subject to the IOAA because the Appropriations Act and related statutory authorities constitute independent statutory sources for charging the fee and define fee-setting criteria, *i.e.*, to cover the full costs of the DCP. *AMA* v. *Reno*, 857 F. Supp. 80 (D.D.C. 1994).

Thus, the appropriate test for fee-funding DCP activities is not whether they convey a special benefit to registrants but whether the fees are "reasonable" and "relat(e) to the registration and control of the manufacture, distribution, and dispensing of controlled substances" or relate to the registration of importers and exporters, and are set "at a level that ensures the recovery of the full costs of operating the various aspects of (the Diversion Control) program." 21 U.S.C. 821, 958(f) and 886a(3). DEA has concluded that the fees meet both of these criteria.

## V. Diversion Control Programmatic and Operational Costs

Several commenters wrote that DEA had not provided adequate justification for the fee raise with some requesting detailed descriptions of the costs and expenditures made by the DCP. Commenters questioned the programmatic and operational costs of the DCP and raised concern about the rising costs of DCP activities over the past ten years that necessitated the fee increase.

This section describes fee-fundable activities that constitute the DCP, the budget justification for the fee increase, and how the fees were calculated and addresses related comments regarding the operation of the DCP.

### *A. Fee-Fundable Activities*

DEA's mission with respect to licit controlled pharmaceuticals is to prevent, detect and eliminate the diversion of controlled pharmaceuticals from legitimate channels to illegal use, while at the same time ensuring their availability for legitimate medical and scientific purposes. To facilitate these goals, Congress, through the Controlled Substances Act, established a closed system of controlled substance distribution encompassing manufacturers, distributors, pharmacies and practitioners; that is, within this closed system a controlled substance can be traced from the time it is manufactured to the time it is dispensed to the ultimate user. This system has proven effective in reducing the diversion of these substances from legitimate channels to the illicit market. Components of this closed system include scheduling of all controlled substances, registration of all controlled substance handlers, recordkeeping for accountability, security, and manufacturing quotas, all under the oversight of the DCP. (The DCP also possesses similar chemical control responsibilities pursuant to the Chemical Diversion and Trafficking Act (CDTA) and subsequent legislation. The chemical diversion control program and/or its registration and reregistration fees are outside the domain of this rulemaking and therefore are not affected by this rulemaking.)

The plain language of the 1993 Appropriations Act requires DEA to set and collect registration fees to cover the full costs of operating the DCP. In its 1993 final rule publication setting new registration fees, DEA examined all activities that relate to the registration and control of the manufacture, distribution and dispensing of controlled substances and to the registration (and control) of importers and exporters. DEA determined that "activities contained in the [diversion] program which give rise to the fees consist of diversion investigators, analysts, technicians, and clerical personnel salaries and expenses; and travel, rent, utilities, supplies, equipment and services associated with these positions for the registration and control of the manufacture, distribution and dispensing of controlled substances" (58 FR 15273). DEA determined that it would not fee-fund costs associated with chemical control efforts (see below), clandestine laboratory efforts, overseas staff (specifically diversion investigators assigned to foreign posts), DEA's Office of Chief Counsel or executive direction (58 FR 15273). DEA concluded that these activities were excluded from the Attorney General's budget delineation for the category of "Diversion Control" and thus not included in the determination of the fees. *Id.*

At the time this initial rule was published on March 22, 1993, 21 U.S.C. 821 did not extend to chemical control activities ("regulated transactions"). Accordingly, there were no registration or fee requirements for handlers of List I chemicals, and chemical control activities were not included among those to be supported by controlled substances fees. Congress amended 21 U.S.C. 821 on December 17, 1993 to require reasonable fees relating to "the registration and control of regulated persons and of regulated transactions." Domestic Chemical Diversion Control Act of 1993, 3(a), Pub. L. 103–200, 107 Stat. 2333. Despite this amendment, to date DEA's chemical control activities have continued to be supported by appropriated funds and *not* by the controlled substances fees through the Drug Diversion Control Fee Account (DDCFA). Again, DEA's chemical control activities are not the subject of this rulemaking.

In its December 1996 **Federal Register** notice, DEA further excluded from fee-funding those activities that incidentally support the DCP but are funded elsewhere in the DEA Salaries Budget (and thus not fee-funded). Specific examples listed in the notice include "support provided by the Attorneys in DEA's office of Chief Counsel Diversion Regulatory Section; certain laboratory service support; DEA Automated Data Processing Systems support (except the Automation of Reports and Consolidated Orders System (ARCOS) and the Controlled Substances Act (CSA) database); Office of Training staff; DEA Management and Administrative Support; Office of Congressional and Public Affairs; Intelligence Support and Diversion Investigators assigned overseas" (61 FR 68631).

In its August 2002 Final Rule published in the **Federal Register**, DEA reviewed the history and statutory authority of fee-fundable activities in detail and further described what activities would be fee-funded via the DDCFA. These activities include: Scheduling, registration, investigation, inspection, data collection and analysis, training, establishing production quotas, cooperative efforts with state, local and other federal agencies, cooperative efforts with the regulated industry, international activities relating to the registration and control of the manufacture, distribution and dispensing of controlled substances, and attendant management, personnel, administrative and clerical oversight for the DCP because they too relate to the fee-funding criteria of 21 U.S.C. 821 and 958(f). Fee-fundable activities also include travel, rent, utilities, supplies, equipment and services associated with the above-listed activities (67 FR 51988).

Certain international activities also are supported through fee funds because they relate to the registration and control of the lawful manufacture, distribution and dispensing of controlled substances. Controlled substances lawfully imported or exported relate to Section 821 requirements because imported substances are subsequently distributed to other DEA registrants, and exported substances are initially manufactured and/or distributed domestically prior to export. As explained in the December 30, 1996 **Federal Register** notice, the Controlled Substances Act's closed system of controls over manufacturing, distribution and dispensing was not established and is not administered within the isolation of our domestic borders. Rather, the controls are part of a global system of national and international laws designed to establish an interrelated, worldwide structure of control over the manufacture, distribution, dispensing, import and export of controlled substances, so that controls or lack of controls in one country do not undermine controls in another. Congress found and declared that illegal importation, along with illegal manufacture, distribution, possession and improper use of controlled substances, has a detrimental effect on the health and welfare of the American people, recognizing that "(a) major portion of the traffic in controlled substances flows through interstate and foreign commerce." 21 U.S.C. 801(2) and (3).

The international drug control treaties to which the United States is a signatory require that each party establish a program of controls relating to the registration and control of the manufacture, distribution, dispensing, import and export of controlled substances. The specific language of the Controlled Substances Act and its implementing regulations recognize the obligations of the United States under the international conventions. *See* 21 U.S.C. 801, 801a, 811(d)(1), 823(a) and 958(a), and 21 CFR 1307.02.

The Controlled Substances Act expressly recognized that the United States is a party to the Single Convention on Narcotic Drugs of 1961 and other conventions "designed to establish effective control over international and domestic traffic in controlled substances." 21 U.S.C. 801(7). Likewise, Congress recognized that the abuse of psychotropic substances has become "a phenomenon common to many countries" that "is not confined to national borders," making it "essential that the United States cooperate with other nations in establishing effective controls over international traffic in such substances." (21 U.S.C. 801a(1)). Congress further recognized that the United States joined with other countries in executing the Convention on Psychotropic Substances, "which is designed to establish suitable controls over the manufacture, distribution, transfer, and use of certain psychotropic substances." (21 U.S.C. 801a(2)). Congress acknowledged that before the Senate could ratify the convention, the Controlled Substances Act required amending to bring it into compliance with the requirements of the convention. Congress thus recognized that the conventions are an integral part of the United States' programs regarding the registration and control of the manufacture, distribution, and dispensing of controlled substances. By implementing and ratifying the international treaties, Congress recognized that a strong domestic program relating to the registration and control of the manufacture, distribution, dispensing, import or export of controlled substances depends on establishing and maintaining strong controls within other individual nations.

Thus, DEA is obligated to conduct, as part of its Diversion Control Program, certain international activities relating to the lawful manufacture, distribution, dispensing, import and export of controlled substances. DEA fee-funds most international diversion control activities that it had historically conducted since 1971, considering each related to 21 U.S.C. 821 and 958(f) criteria. Among those international activities that are excluded from DDCFA funding are international chemical control activities.

Additional detail on specific international activities supported through fee-funds as part of the DCP is contained in the August 9, 2002 **Federal Register** notice (67 FR 51988).

While diversion control and registration activities are conducted by DEA's Office of Diversion Control, other DEA elements undertake activities in support of the DCP in addition to supporting nonfee-fundable activities. As such, these other elements expend fee-funds to support those fee-fundable DCP activities. For example, the Office of Administration provides office space, makes appropriate office renovations and supplies the security guard force to the diversion groups. The Office of Administration pays rent and other expenses with fee funds. The Office of Resource Management expends fee funds for payroll and employment benefits for the DCP workforce. The Office of Training trains the DCP workforce and spends fee funds on training in support of fee-fundable activities, for example seminars for industry on controlled substances (but not on staff; see below).

Not included among fee-fundable diversion control activities are several elements of DEA operations that, though not part of the DCP, incidentally support the activities of the DCP. To date these activities have been funded through Congressional appropriations rather than through fee funds. Examples of such elements include two sections within the Office of Chief Counsel that (a) litigate administrative actions related to DEA registrants and (b) provide legal support on regulatory policy matters; staff salaries and related staff expenses within a section of the Office of Training that is specifically dedicated to the DCP (note, certain eligible training activities are fee-funded as noted above); a portion of the Office of Forensic Sciences Special Testing Laboratory that supports authentic sample analyses for licit drugs; and a portion of the budget for DEA's agency-wide computer network, "Firebird", related to the work of the DCP. As was discussed more fully in previous rulemakings regarding the use of controlled substances fee funds, while these elements incidentally support diversion control efforts, because their overall function is not primarily devoted to diversion control, they have been included elsewhere in the DEA budget and not as part of fee-fundable activities. In the absence of specific guidance in the 1993 Appropriations Act as to which activities were encompassed within the DCP and thus fee-fundable, DEA has followed the plain language of the act and used the budget categories that had historically been included in the DCP budget request of the Attorney General. As described in DEA's 1996 **Federal Register** notice, for the purposes of budget formulation and appropriation, DEA historically has identified only those resources (with their overhead costs) that were specifically devoted to diversion control efforts as part of the DCP in its annual budget submission to Congress. Other resources which support a broad range of DEA activities, including diversion control, therefore have been included in the budget formulation and appropriation process and not funded through fee funds (61 FR 68631). At this time these activities will continue to be funded through appropriated funds as DEA considers how to better comply with the applicable laws in the future.

### B. Budget Justification for Fee Increase

Several commenters questioned the justification for the budget increase necessitating the raise in registration and reregistration fees. Since the fees were last raised in 1993, costs of operating the Diversion Control Program (DCP) have increased. As described above, fee-fundable activities of the DCP include: scheduling, registration, investigation, inspection, data collection and analysis, training, establishing production quotas, cooperative efforts with state, local and other federal agencies, cooperative efforts with the regulated industry, certain international activities relating to the registration and control of the manufacture, distribution and dispensing of controlled substances, and attendant management, personnel, administrative and clerical oversight for the DCP. Fee-fundable activities also include travel, rent, utilities, supplies, equipment and services associated with the above-listed activities.

The costs of the DCP have increased due to both the rising costs of "doing business" over the past ten years as well as the implementation of a number of new initiatives and programs. One commenter raised concern that the increase in fees seemed to cover the increased costs of operating the DCP with less emphasis on new programs and activities. As summarized below, the increased costs of operating the DCP to date as well as the anticipated costs through Fiscal Year 2006 have included/include a number of new initiatives including: the creation of Tactical Diversion Squads in Fiscal Year 1997, responding to OxyContin® diversion, responding to Internet-based diversion, development of a system to permit electronic transmission of controlled substances prescriptions, development of controlled substances electronic order forms, upgrades to the Automation of Reports and Consolidated Orders System (ARCOS), significant improvements to registration customer/forms service, and increases in the number of diversion investigators.

In Fiscal Year 1994 the Budget Authority for the DCP was $57.1 million. The Budget Authority for Fiscal Year 2004, based on the President's Budget, is $ 118.6 million. The growth in the DCP has been driven by a number of factors some of which have been reflected in the DEA budget submissions such as the creation of Tactical Diversion Squads in Fiscal Year 1997. Other areas of DCP expansion include the costs of responding to the diversion of OxyContin® which involved opening 247 cases between October 1999 and March 2002, including 159 cases in Fiscal Year 2001 alone—a 270 percent increase from Fiscal Year 2000. These cases, for example, have led to 328 arrests.

DEA also has expended increased time and resources in responding to the diversion of licit controlled substances over the Internet, a concern of several commenters. DEA has opened a number of cases leading to arrests and convictions for illegal diversion over the Internet. In total the number of diversion arrests more than doubled in the five year period of Fiscal Year 1995 (444 arrests) to Fiscal Year 2000 (941 arrests). In Fiscal Year 2001 DEA made 871 diversion arrests. In Fiscal Year 2002 DEA made 714 arrests, and in the first six months of Fiscal Year 2003, DEA made 364 arrests.

The additional investigative and programmatic responsibilities to support investigations have required additional diversion investigators, headquarters staff and increased financial resources to support these staff and their efforts to prevent the diversion of licit controlled substances. Over the past ten years the costs of supporting personnel and the costs of simply "doing business" have increased as a result of inflation and general rises in costs. These increases affect staff salaries, benefits, as well as the cost of program-related travel, rent, utilities, supplies, equipment and services associated with diversion control activities. The increasing costs of personnel, activities and general operations— including new initiatives— are shown in the following table that outlines the budget authority for each year from Fiscal Year 1994 to Fiscal Year 2006 (estimated). Note these figures do not include the required $15 million transfer to the U.S. Treasury.

| Fiscal year | Budget authority (millions) |
|---|---|
| FY94 | $57.1 |
| FY95 | 58.4 |
| FY96 | 62.2 |
| FY97 | 67.8 |
| FY98 | 73.2 |
| FY99 | 76.7 |
| FY00 | 80.3 |
| FY01 | 83.5 |
| FY02 | 86.2 |
| FY03 | 89 |
| FY04 | 118.6 |
| FY05 (est.) | 139.4 |
| FY06 (est.) | 147 |

### *C. Use of Estimated Budget Authorities*

For Fiscal Years 2005 and 2006 the above budget authority estimates were derived using the President's Budget for Fiscal Year 2004. One commenter expressed concern that DEA was using estimated budget figures in its calculations for the Fiscal Year 2004–2006 period. Use of estimated budgets for future years is a common practice in budgeting to forecast future expenditures and plan future budgets. Because the President's Budget Request for the upcoming fiscal year is typically submitted to Congress in the spring of the prior year with approval following that, if DEA were to wait and use "actual", Congressionally-enacted budgets on which to base the fee schedule as suggested by the commenter, significant delays would result in calculating the fees, resulting in potential shortfalls to the fee account which, by statute, must support all activities of the DCP. Importantly too, adjusting the registration and especially the reregistration fees each year would cause significant confusion among registrants as to the correct amount to pay, particularly as the adjustment often would be effective immediately in order to comply with the statute that fees support the "full costs" of the DCP. The process also would result in increased fee calculation, fee collection, and related operating costs for the DCP which would translate to higher registration fees.

*D. Calculation of Current Fee*

The President's Fiscal Year 2004 budget was calculated using the Fiscal Year 2003 budget as a base and adjusting for inflation, salary increases and programmatic increases or enhancements. The Fiscal Year 2004 budget of $118,561,000 for the DCP was submitted by the President to Congress on February 3, 2003. The Fiscal Year 2004 budget authority of $118,561,000 (that does not include the $15 million transfer to the U.S. Treasury) accounts for increases in program costs due to inflation, increases in federal staff salaries, and additional funds to undertake a number of new initiatives to prevent, detect and eliminate the diversion of controlled substances while ensuring an adequate supply for legitimate medical and scientific purposes. Additional funds would support diversion investigation (93 positions), OxyContin® diversion control, and implementation of a system to detect Internet sites that may divert controlled substances and investigation of those sites, as warranted. Because the registration fees have not been raised since 1993, in recent years the DCP has not been operating with the ideal staffing level of diversion investigators due to budget constraints. The additional funds for OxyContin® and improved Internet diversion control will permit DEA to conduct additional and more complex investigations into the diversion of pharmaceutical controlled substances. Additional funds also would support forty positions and the development of systems to permit the electronic transmission of controlled substances orders and controlled substances prescriptions. These electronic alternatives will provide a similar or higher degree of security/integrity than current paper-based systems and will help DEA to meet its legal mandates under the Government Paperwork Elimination Act. Several commenters highly praised the electronic systems and the increased efficiencies afforded to industry. By increasing reliance on technological resources, the electronic systems also will help to control DCP costs in the future; two commenters raised the issue of streamlining DCP operations and controlling costs through greater reliance on technological resources. The total cost of program enhancements for Fiscal Year 2004 is $27,062,000. Including the mandatory transfer to Treasury of $15 million, the total amount required to be recovered for Fiscal Year 2004 is $133,561,000.

To calculate the anticipated President's Budget Request for Fiscal Year 2005, DEA used a baseline of the Fiscal Year 2004 President's Budget of $118,561,000 (described above) and adjusted the baseline figure for increases in program costs due to inflation (including such items as postage rate increases, increases in cost of employee health benefits, increases in GSA rent, etc.), and costs of federal staff pay increases. The anticipated President's Budget Request for Fiscal Year 2005 is $139,364,000. This figure, revised since the Notice of Proposed Rulemaking in February 2003 because of new guidance on inflationary figures and updated capital asset planning and budgetary information, includes costs to support systems to permit the electronic transmission of controlled substances prescriptions and electronic orders of Schedule I and II controlled substances (systems highly desired and praised by industry, including commenters to the proposed rule), the support and operation of DEA's Internet investigations, a major upgrade to the Automation of Reports and Consolidated Orders System (ARCOS), significant improvements to registration customer/forms service, and 39 additional positions related to these activities. Other funds accounted for include liaison, policy, regulatory, and analytical activities of the Diversion Control Program. Including the mandatory transfer to Treasury of $15 million, the total amount required to be recovered for Fiscal Year 2005 is $154,364,000.

The anticipated President's Budget Request for Fiscal Year 2006 of $147,028,000 was calculated using the same method. This figure also has been revised since the proposed rule based on updated budget figures and reflecting changes in inflationary growth guidance from the Department of Justice. DEA used the anticipated budget request for Fiscal Year 2005 and adjusted that figure for inflationary growth and increases in federal staff salaries, rent and other overhead costs. Including the mandatory transfer to Treasury of $15 million, the total amount anticipated to be required to be recovered for Fiscal Year 2006 is $162,028,000.

In calculating inflationary growth, DEA used inflation figures of 1.5 percent for Fiscal Year 2004, 1.5 percent for Fiscal Year 2005 and 1.6 percent for Fiscal Year 2006 and salary increase assumptions of 4.1 percent for Fiscal Year 2004 and 3.4 percent for both Fiscal Year 2005 and Fiscal Year 2006, based on the Fiscal Year 2005 Department of Justice Modular Cost Standards and the President's Economic Assumptions, respectively.

To calculate the fee schedule for Fiscal Year 2004–2006, DEA used the total amount necessary to collect for the Fiscal Year 2004–2006 period of $449,953,000 and, based on specific statistical calculations, then calculated the fee for each registrant category. To comply with the law that DEA recover the full costs of the DCP, DEA then developed the specific fee levels for each registrant category.

To calculate the fee for each registrant category, DEA first estimated the number of paying registrants for the Fiscal Year 2004–2006 period and then used this figure combined with the full amount required to be collected for this period to set the new fee rate. To calculate the number of paying registrants, DEA used logarithmic regression analysis to project the yearly registrant figures based on historical registrant data for the period of Fiscal Year 1994 through Fiscal Year 2001.

DEA then estimated the number of registrants for each registrant category since different registrant categories pay different fees. Because there were insufficient data for some activities to perform regression analysis, DEA used the percentage for each category using data from the corresponding cycle years in the past.

Finally, based on the analyses conducted, DEA developed the fees for each registrant category consistent with its current fee structure. In doing so, DEA opted to set the fee level for a three-year period (Fiscal Years 2004–2006) to avoid the heavy burden on registrants and the additional administrative expenses to DEA that resetting the fee each year would impose. Accordingly, the fee schedule (see below) developed reflects the total amount necessary to be collected for the full three-year period (Fiscal Years 2004–2006) divided by projected registrants and accounting for projected registrant growth by category for each fiscal year. Because different categories of registrants pay different amounts, DEA weighted the number of registrants in each category to ensure the appropriate reflection in the fee schedule. Because the registrant fees reflect the total amount necessary to be collected for the Fiscal Year 2004–2006 period, there is the possibility that DEA may accumulate additional funds beyond those necessary for actual program operations in the initial year (Fiscal Year 2004), but in the final year of the period (Fiscal Year 2006) fee collections are anticipated to fall short of the amount necessary to cover expenditures in that year, so DEA will then draw down the previously collected surplus. The alternatives to this approach would be to reset the fee each year or to set a different fee for each fiscal year; both of these options would cause unnecessary confusion and would impose greater administrative burdens on DEA and registrants.

Because of the updated and slightly reduced budget figures for Fiscal Year 2005 and Fiscal Year 2006, it was necessary for DEA to recalculate the fee levels for each category of registrant. As a result, the resulting fee schedule reflects minor changes to the fee levels as indicated below. For most registrants, this change represents a reduction in fee from that included in the Notice of Proposed Rulemaking.

| Registrant class | Annual cost |
|---|---|
| Manufacturers | $1,625 |
| Distributors, Importers/Exporters | 813 |
| Dispensers/Practitioners** | 130 |
| Researchers, Narcotic Treatment Programs | 130 |

** The three-year registration and reregistration fee for dispensers (including practitioners, hospitals/clinics, and retail pharmacies) and teaching institutions is $390.

This rulemaking supplants the fee structure proposed in the Notice of Proposed Rulemaking published in the **Federal Register** on February 18, 2003.

### *E. Other DCP Operational Issues*

Several commenters questioned the efficiency of DCP operations as related to the rising cost of operating the program, with some raising the issue of streamlining DCP operations through enhanced use of technology, computer upgrades, and improved business practices to negate the need for a fee increase. The mission of the DCP is to prevent the diversion of licit controlled substances which is done in the most efficient and streamlined manner possible. This mission requires the outlay of funds to support diversion investigations and monitoring of the closed system that was created by the Controlled Substances Act to ensure that registrants maintain controls over their activities with controlled substances to prevent and detect their diversion.

DEA works diligently to achieve administrative efficiencies in all of its programs, including the Diversion Control Program. Through a scheduled, periodic review process, virtually all aspects of the DCP are inspected to detect any waste, fraud or abuse. All expenditures charged to the DDCFA also are reviewed and approved by an independent unit charged with this task. Moreover, each of DEA's annual budget requests to Congress, which contains all components of each DEA program, including the DCP, is available for public review. Each budget request is examined and approved by both the Department of Justice and the Office of Management and Budget. DEA will continue to review expenditures through Fiscal Year 2006 and will adjust the fee schedule as necessary again at that time as a result of budget reviews. In February 2003 DEA also established a separate unit, the Diversion Fee Account Validation Unit, to review, approve, and audit fee-funded expenditures.

DEA has undertaken several initiatives to streamline aspects of the DCP both for the DEA and for registrants. For example, DEA is currently developing a system to permit the electronic transmission of controlled substances prescriptions which will significantly increase the efficiency by which prescriptions are transmitted from prescriber to pharmacy. This system, however, will not reduce the review requirements of DEA employees that monitor the prescription process for controlled substances. DEA also is developing a system to permit the electronic transmission of controlled substances orders which, again, will increase efficiencies for industry. DEA is also pursuing upgrades to the Automation of Reports and Consolidated Orders System (ARCOS) and other technological improvements to its information management systems to increase internal efficiencies. In general, consistent with the performance objectives and goals outlined in its Strategic Plan, DEA is constantly monitoring its operations for areas that can be improved through better use of technology and streamlining of business practices.

One commenter also questioned the exclusion of specific goals and performance standards in the notice of proposed rulemaking. Specific performance goals are included in DEA's Strategic Plan and are therefore not duplicated in rulemaking notices. Moreover, in terms of performance measures, as mandated by the Government Performance and Results Act (GPRA) and the President's Management Agenda, DEA, like all other agencies and components, is required to provide a budget summary that incorporates performance information on a quarterly basis. That is, DEA already integrates budget and performance in order to evaluate the effectiveness of programs relative to long-term, measurable outcome goals.

More specifically, in response to GPRA and the President's Management Agenda, the DCP has restructured its budgetary reporting on the Drug Diversion Control Fee Account (DDCFA) to include performance measures that are consistent with DEA's Strategic Plan and reflect the effectiveness of programmatic activities funded by registrant fees. Among the objectives included in the DEA Strategic Plan is continued support to the registrant population through improved technology, including E-commerce and customer support, while maintaining cooperation, support, and assistance from the regulated industry. These efforts, funded through registration fees, will provide immediate benefits to the registrant population such as streamlined processing and improved access to information. They also will reduce the paperwork burden on small businesses; reduce forged or stolen prescriptions; improve authenticity verification of the prescribing or ordering party and reduce processing time; increase overall security; and improve DEA's data quality, agency efficiency and responsiveness in carrying out its mission.

## VI. Effects on Small Businesses

As part of its notice of proposed rulemaking published on February 18, 2003, DEA noted that the rulemaking does not constitute a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. While the actual fee collections as part of the registration fee process (independent of this rulemaking) result in an annual effect on the economy of $100,000,000 or more, the net effect of the fee changes captured in this rulemaking on the economy will be less than $100,000,000 and will not result in a major increase in costs or prices or cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. Moreover, the individual effect on small business registrants is minimal ranging from $130 to $1,625 per year with the majority of affected registrants paying an annual fee of $130 (or $390 for three years). In categories of registrants qualifying as small businesses (see below), the fee represents less than 0.21% of average annual sales (or income) based on U.S. Census and Bureau of Labor Statistics data (latest available data from 1997). A breakdown of the effect of the fees on these categories of registrants is provided below.

Based on an evaluation of U.S. Census data, a certain percentage of manufacturers, hospitals/clinics, and pharmacies, narcotic treatment programs and all practitioners that are registrants with the DEA are likely to be small, as defined by the Small Business Administration. All distributors, importers and exporters are likely to be large. All exporters are likely to be large as they usually are also distributors or manufacturers, and only large manufacturers are likely to be involved in exporting. Researchers, teaching institutions, and analytical labs are assumed to be associated with large institutions or government entities and therefore not qualifying as small businesses.

Manufacturers fall into one of two industry classifications: pharmaceutical preparation or medicinal and botanical manufacturing. Based on DEA data on registered manufacturers, DEA estimates that 381 of the 460 manufacturers registered with DEA qualify as small businesses (Small Business Administration definition of less than 750 employees). For manufacturers in the small business category of 20–49 employees, the fee of $1,625 represents less than 0.02% of the average annual sales of $9.7 million (U.S. Census figures).

There are 61,463 pharmacies registered with the DEA and eligible to handle controlled substances. According to the National Association of Chain Drug Stores (NACDS) and census data on mail order prescription firms, there were 35,428 chain pharmacies, mass merchant pharmacies, supermarket pharmacies, and mail order pharmacies in 2001 (latest data available). It is assumed that the remaining 26,035 DEA registrants are independent pharmacies and that these independent pharmacies are small businesses. The chain drug stores, mass merchant pharmacies, supermarket pharmacies, and mail order pharmacies are assumed to be large establishments. For pharmacies in the $250,000–$499,000 category of annual sales, a fee of $130 per year represents 0.05% of average annual sales. In this category, the mean value of annual sales is $429,853 according to the U.S. Census data of which the annual registration fee represents 0.03%.

There are 14,796 hospitals registered with DEA to handle controlled substances. U.S. Census data indicate there are 6,590 hospitals; thus the remaining 8,206 registrants are assumed to be clinics. Census data also indicate there are 4,434 large hospitals; therefore, assuming all hospitals are registered with the DEA, DEA estimates there are 2,156 small hospitals. There are 3,260 clinics that can be defined as large. Thus, assuming that all large clinics are registered with DEA, DEA assumes that the remaining 4,946 clinics that are DEA registrants are small. For hospitals in the small business category of $1 million–$2.5 million in annual revenue, the annual fee of $130 represents less than 0.01% of average annual revenues. For clinics and narcotic treatment programs with annual revenues of less than $100,000 the annual fee of $130 represents 0.13% of annual revenue. Or for entities with the mean annual revenue of $61,909 in this group, the fee represents 0.21% of annual revenue. There are 1,166 narcotic treatment programs registered with the DEA.

Finally, there are 1,038,000 practitioners registered with the DEA to handle controlled substances—the largest registrant category. Because practitioners may hold multiple registrations and because practitioners register for three-year cycles, this figure may double count some practitioners and, accordingly, represents a high estimate. The majority of registered practitioners are physicians, followed by dentists and veterinarians. As of May 2003, there are 736,449 physician registrants, 164,630 dentist registrants, 51,101 veterinarian registrants, 44,800 nurse practitioner registrants, and 24,077 physician assistant registrants. Other practitioner registrants include optometrists, nursing homes, animal shelters, ambulances, naturopaths, euthanasia technicians, certain pharmacists in the state of Washington, certain veterinarian technicians in the state of California, and doctors of oriental medicine.

For the three largest groups of registrants in this category, data from the Bureau of Labor Statistics (2001 survey data) indicate the average annual salary of physicians to be $110,020, of dentists to be $110,790 and of veterinarians to be $69,150. For practitioners with average annual salaries of less than $100,000 the annual fee of $130 represents 0.13% of annual revenue. Of the mean annual salary of practitioners in this category ($63,688 per U.S. Census data), the fee represents 0.20%. For physicians and dentists which account for 87% of practitioner registrants, the fee represents 0.12% of annual average salary.

In summary, while the changes in fee structure will affect a substantial number of individual entities that qualify as small businesses, the impact will be minimal when evaluated as a percentage of average annual sales, revenue or income. Consequently, this rule does not create a significant adverse effect on a substantial number of small entities. In addition, the rule is not a discretionary action but rather responds to a statutory mandate to fully fund the costs of the Diversion Control Program through registrant fees.

## VII. Registration Fee

### *A. Effective Date of New Fee Structure*

Based on the methodology described in section V–D of this rulemaking and current calculations, to recover the full costs of the DCP as required by law, DEA plans to incrementally raise the fees in accordance the fee structure summarized in Section V. This fee structure replaces the fee structure proposed in the February 18, 2003 Notice of Proposed Rulemaking.

This fee schedule will go into effect on December 1, 2003. To be as clear as possible about the effective date and to ease processing, this effective date represents the first day of the month following the mandatory 30 days after the publication of the final rule in the **Federal Register**. The new fee schedule will be in effect for all new registration applications postmarked on or after December 1, 2003 and all reregistration applications postmarked on or after December 1, 2003. Registration or reregistration applications postmarked on or after this date must, therefore, include the new fee payment.

Because DEA is required by statute to recover through fees the “full costs” of the DCP, DEA will continue to monitor the costs and expenditures of the DCP and will revise the fee structure as necessary. DEA does not expect to revise the fee structure again until Fiscal Year 2006 (to be effective Fiscal Year 2007); however, DEA cannot anticipate events or other catalysts that may necessitate major diversion control initiatives by the DEA in future years.

### *B. Individual Registrations*

Several comments were received relating to the use of individual registrations for practitioners as opposed to clinics or medical facilities. One pharmacist commenter objected to the ability of residents and hospital- and clinic-based physicians to use their employer's registration number instead of being required by DEA to maintain individual registrations. The commenter noted that use of an employer's number leads to confusion among pharmacists when the computer, cross-checking the number against the practitioner's name, indicates that they do not match. The commenter argued that the ability to use employer's registration numbers is unfair to those who must pay individual registration fees and suggested that before registration fees are increased that DEA require all prescribers of controlled substances to be individually registered. Two commenters noted that it is expensive to license multiple practitioners in a practice and that a fee increase would encourage practitioners to forego licensure of all practitioners especially in large practices. One also noted that it would be beneficial if practitioners could work under an umbrella license for the whole clinic.

The Controlled Substances Act requires that every person who manufactures, distributes or dispenses any controlled substance or who proposes to engage in the manufacture, distribution or dispensing of any controlled substance obtain an annual registration. 21 U.S.C. 822(a)(1) and 822(a)(2). However, the Controlled Substances Act also provides for certain exceptions, including "an agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance or list I chemical if such agent or employee is acting in the usual course of his business or employment." 21 U.S.C. 822(c)(1).

More specifically, "an individual practitioner who is an agent or employee of another practitioner (other than a mid-level practitioner) registered to dispense controlled substances" may be exempted from securing his or her own registration but may "when acting in the normal course of business or employment, administer or dispense (other than by issuance of prescription) controlled substances if and to the extent that such individual practitioner is authorized or permitted to do so by the jurisdiction in which he or she practices, under the registration of the employer or principal practitioner in lieu of being registered him/herself." 21 CFR 1301.22. That is, within a group practice, for example, one DEA-registered physician may take the responsibility for ordering a stock of controlled substances from which other physicians in the practice could dispense. However, only the DEA-registered physician would be authorized to issue prescriptions for controlled substances. That is, prescriptions written under a particular DEA number may *only* be written by the physician possessing that registration number.

Additionally, an individual practitioner who is an agent or employee of a hospital or other institution also may administer, dispense, or prescribe controlled substances under the registration of the hospital or other institution which is registered in lieu of being registered him/herself (much like a pharmacist operates under the pharmacy's DEA registration). However, such registration is permissible only if: (1) Such dispensing, administering or prescribing is done in the usual course of his/her professional practice; (2) Such individual practitioner is authorized or permitted to do so by the jurisdiction in which he/she is practicing; (3) The hospital or other institution by which he/she is employed has verified that the individual practitioner is so permitted to dispense, administer, or prescribe drugs within the jurisdiction; (4) Such individual practitioner is acting only within the scope of his/her employment in the hospital or institution; (5) The hospital or other institution authorizes the individual practitioner to administer, dispense or prescribe under the hospital registration and designates a specific internal code number for each individual practitioner so authorized; and (6) A current list of internal codes and the corresponding individual practitioners is kept by the hospital or other institution and is made available at all times to other registrants and law enforcement agencies upon request for the purpose of verifying the authority of the prescribing individual practitioner (21 CFR 1301.22). Other registrants would include pharmacies wishing to verify the identity and authority of individual practitioners to prescribe controlled substances. Note, state laws differ with regard to clinic registration and the use of "umbrella" registration numbers for employees of such clinics.

A separate registration is required for each principal place of business or professional practice at one general physical location where controlled substances are manufactured, distributed, imported, exported, or dispensed by a person (21 U.S.C. 822(e)).

### C. Allocation of Fee Based on Usage

Four commenters raised issues related to allocation of the registration fee according to usage of controlled substances. Three commenters wrote that, because veterinarians use a limited amount of controlled substances, they should not be expected to be equal partners with other practitioners in funding the DCP. Another commenter stated that, as staff write only 12 controlled substances prescriptions per year, the fee increase would dramatically increase the cost of each of these prescriptions per unit.

The Controlled Substances Act mandates that "every person" who manufactures, distributes or dispenses any controlled substance or who proposes to engage in the manufacture, distribution or dispensing of any controlled substance obtain an annual registration (21 U.S.C. 822(a)(1) and 822(a)(2)). This statute mandates such registration irrespective of the extent such persons handle controlled substances. Accordingly, DEA may not alter the fee structure to account for the extent to which registrants handle controlled substances.

## VIII. Enforcement of Controlled Substances Act

Several commenters expressed concern that Internet pharmaceutical companies selling veterinary products at discounted prices are undermining veterinarian revenue, with one commenter alleging that Internet and catalog pharmacies sell prescription medications directly to consumers without a prescription from a veterinarian. Three commenters wrote that it is "not in my profession['s] best interest to pay such exuberant fees * * * while the internet companies undercut the veterinarian." Another commenter stated that Internet pharmacies selling controlled substances to consumers without a prescription should be fined severely.

The mission of the Diversion Control Program, as outlined above, is to prevent the diversion of licit controlled substances in conformance with the Controlled Substances Act. All manufacturers, distributors and dispensers of controlled substances are required to obtain a registration with the DEA (21 U.S.C. 822(a)(1) and 822(a)(2)). This requirement includes Internet-based pharmaceutical companies that dispense controlled substances. No dispenser, including Internet-based companies, is permitted to dispense controlled substances without the prescription of a registered physician or other appropriate practitioner. DEA investigates and prosecutes violations of the Controlled Substances Act, including the dispensing of controlled substances without a legal prescription from an authorized and registered practitioner.

Four commenters, three from the same institution, objected to the ability of Internet pharmaceutical companies to sell veterinary products directly to consumers thus affecting sales directly through the veterinary clinics. Commenters expressed concern that clients were purchasing veterinary pharmaceutical supplies through the Internet companies when veterinarians "must write prescriptions," thus eroding pharmaceutical sales by veterinarians and undermining the veterinarian-client relationship. One commenter also alleged that Internet pharmacies are selling pharmaceuticals without prescriptions from authorized practitioners. Three commenters from the same institution suggested that the DEA tax the Internet drug companies to fund the DCP and leave the current controlled substance handlers fees at the same level.

DEA assures the commenters that any violations of the Controlled Substances Act, including the unauthorized dispensing of controlled substances, are subject to prosecution to the fullest extent of the law. Over the past several years, DEA has undertaken a number of concerted initiatives to control and prevent the diversion of licit controlled substances over the Internet, with the number of diversion arrests more than doubling between Fiscal Year 1995 and Fiscal Year 2000. DEA's diversion control actions do not cover legal commerce transactions such as the legal dispensing of controlled substances through Internet sites or the sale of non-controlled substances (such as other veterinary products) which is outside the purview of the DEA. DEA also notes that Internet pharmaceutical companies, like other dispensers of controlled substances, must register with the DEA in order to handle controlled substances and as such already pay a registration fee like other registered dispensers.

## IX. Miscellaneous Issues

### *A. Mandatory $15 Million Transfer to U.S. Treasury*

One commenter objected to registrant fees supporting the mandatory transfer of $15 million to the U.S. Treasury, noting that this burden should not be placed on registrants and requesting that DEA petition Congress to appropriate the required $15 million, so that all fee funds are used to support DCP activities.

DEA is required by the Appropriations Act of 1993 to transfer the first $15 million of fee revenue to the General Fund of the Treasury each year (21 U.S.C. 886a(1)). Calculation of the fees, therefore, must account for this mandated transfer. That is, DEA has no discretion in that matter, and the fees collected by DEA must represent the total amount necessary to "fully fund" the DCP by law *plus* an additional $15 million. For the period of Fiscal Year 1993 through Fiscal Year 1998, Congress appropriated an additional $15 million to offset the transfer requirement (a total infusion to the DDCFA of $90 million). However, beginning in Fiscal Year 1999, Congress discontinued this additional appropriation, and the additional $15 million became an additional net expense to the DCP at that time. Congress has not agreed to appropriate the additional $15 million towards the mandatory transfer since that time.

### *B. Alternative Funding Sources for DCP*

Seven commenters raised the issue of finding alternative sources of funding for the DCP to replace the registration fees, including congressional funding and collecting fees from other non-registrant entities (*e.g.*, health insurance companies). As has been detailed above, DEA's authority to charge registration fees to support the DCP derives from three statutory provisions. Of these provisions, the Appropriations Act of 1993 specifically mandates that DEA collect through fees an amount sufficient to ensure the recovery of the "*full costs*" (emphasis added) of the DCP (21 U.S.C. 886(a)(3)). That is, DEA is required by statute to fully fund DCP expenses *through registration fees*. For the period of Fiscal Year 1993 through Fiscal Year 1998, Congress appropriated an additional $15 million to the DDCFA to offset the annual mandatory $15 million transfer to the U.S. Treasury described in the previous section. Such appropriations were discontinued beginning in Fiscal Year 1999, and the DCP remains entirely funded through registration fees.

### *C. Clarification of Fee Amount*

Certain registrants pay a single fee for a three-year registration period. Such registrants include dispensers (including practitioners, hospitals/clinics, and retail pharmacies) and teaching institutions. Since publication of the February 18, 2003 notice of proposed rulemaking, DEA has finalized a number of other regulatory actions which affect the CFR sections amended by this final rule. On June 24, 2003, DEA finalized regulations regarding the use of central fill pharmacies to fill controlled substances prescriptions on behalf of retail pharmacies (68 FR 37405). This final rule amended 21 CFR 1301.13(e)(1)(iii) to add "central fill pharmacy" as a business activity under dispensing (effective July 24, 2003). Consequently, central fill pharmacies are subject to the same fee as all other dispensers, including pharmacies and teaching institutions. Effective with this rulemaking, the registration/reregistration fee for dispensers, including central fill pharmacies, and teaching institutions is $390 for a three-year period.

Because other categories of registrants secure a registration on an annual basis, much of the discussion in this rulemaking addressed the value of annual registration. In such discussions, DEA often referred to an annual value of $130 which is one-third of $390.

The annual registration and reregistration fee for researchers, narcotic treatment programs (including compounders), effective with this rulemaking, is $130. These categories of registrants obtain a registration and pay the associated fee on an annual basis.

This rulemaking also establishes new annual registration/reregistration fee amounts for manufacturers of $1,625, for distributors of $813, for importers of $813, and for exporters of $813. Reverse distributors are subject to the same annual fee of $813 as distributors as a result of an interim rule published by DEA on July 11, 2003 defining "reverse distributor" and establishing reverse distributor as a new category of registration. (68 FR 41222). This interim rule amended 21 CFR 1301.13 by redesignating paragraph (e)(1)(iii) which contained dispensing activities as paragraph (e)(1)(iv) and adding a new paragraph (e)(1)(iii) "reverse distributors". In its February 18, 2003 **Federal Register** notice proposing new registration and reregistration application fees, DEA inadvertently included language in the regulatory text regarding fees to be assessed to reverse distributors (referred to as "disposers" in the proposed rulemaking), although regulations establishing reverse distributor as a new registration category had not yet been established. As regulations establishing reverse distributors as a new category of registration have now been established, the fees included in this final rule are now accurate and apply as delineated above to this category of registrants. In its February 18, 2003 proposed rule DEA also inadvertently assigned an incorrect annual fee of $131 to disposers. As described above, reverse distributors or disposers, like other distributors, are subject to an annual fee of $813.

## Regulatory Analyses

### *Regulatory Flexibility Act*

The Deputy Assistant Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. DEA recognizes that this regulation will have a financial effect on a substantial number of registrants with the increase in fees; however, DEA believes that, based on the length of time between fee adjustment, the program growth and cost increases, and the overall size of the increase in fees, the change in fees is not significant, and the economic impact of the fees on individual registrants is not significant. The fee represents from 0.21% to as little as 0.01% of average annual sales (or income) for registrants qualifying as small businesses. Moreover, the fees have not been changed in ten years, and DEA is legally mandated to collect fees to cover the full costs of the Diversion Control Program. The appropriations process was used to determine the budget on which the fees are based. The increase in fees after ten years covers both inflation and enhancements to address additional responsibilities assumed by the Diversion Control Program.

In considering options for collecting the full costs of the Diversion Control Program as mandated by law (21 U.S.C. 886a(3)), DEA considered several alternatives to the approach used in this regulation. One alternative would be to reset the fee each year for each category of registrant according to the budget authority. Another alternative would be to set a different fee for each fiscal year. Commenters suggested both of these approaches. DEA determined that both of these options would cause unnecessary confusion with fee changes each year and would impose greater administrative and financial burdens on DEA and registrants than the approach used in this regulation. Moreover, resetting the fee each year, for example, would unfairly affect practitioners differently depending on their registration renewal year; some practitioners would pay more than others. Using actual budget authority figures instead of estimated budget authority figures, as used in this rulemaking, would not give registrants sufficient notice as to fee changes. Doing so also could result in DEA not collecting the full costs of the DCP as required by law in a timely manner. In calculating the fees contained in this rule, DEA used estimated budget authorities based on expected inflation and program enhancements as is standard government practice for forecasting future budgets.

### *Executive Order 12866*

The Deputy Assistant Administrator certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 Section 1(b). This action has been reviewed by the Office of Management and Budget.

### *Executive Order 12988*

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

### *Executive Order 13132*

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

### *Unfunded Mandates Reform Act of 1995*

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. While it will affect the private sector in excess of $100,000,000 per year, the effect on individual entities is minimal. The majority of the affected entities will pay $130 per year (or $390 for a three-year registration period). Moreover, this rule is promulgated in compliance with Congressional mandate that the full cost of operating the DCP be collected through registrant fees as stipulated in the 1993 Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act (Pub. L. 102–395) and codified in 21 U.S.C. 886a(3). Detailed estimates and analyses, including specific fee amounts for individual registrants, are included in the preamble text.

### *Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. The net effect of the fee changes captured in this rulemaking on the economy will be less than $100,000,000 and will not result in a major increase in costs or prices or cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. This rule is not a discretionary action but rather responds to the Congressional mandate that the full operating costs of the DCP be collected through registrant fees as described above. The individual effect on small business registrants is minimal ranging from $130 to $1,625 per year with the majority of affected registrants paying an annual fee of $130 (or $390 for three years). As discussed in detail in the preamble, the fee represents less than 0.21% of annual sales or income for the smallest categories of registrants qualifying as small businesses according to Small Business Administration definitions.

### List of Subjects in 21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

■ For the reasons set out above, 21 CFR part 1301 is amended as follows:

## PART 1301—[AMENDED]

■ 1. The authority citation for part 1301 continues to read as follows:

**Authority:** 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

■ 2. Section 1301.13 is amended by revising paragraph (e)(1) to read as follows:

**§ 1301.13 Application for registration; time for application; expiration date; registration for independent activities; application forms, fees, contents and signature; coincident activities.**

* * * * *

(e) * * *

(1)

| Business activity | Controlled substances | DEA application forms | Application fee ($) | Registration period (years) | Coincident activities allowed |
|---|---|---|---|---|---|
| (i) Manufacturing | Schedules I–V | New—225<br>Renewal—225a | 1,625<br>1,625 | 1 | Schedules I–V: May distribute that substance or class for which registration was issued; may not distribute or dispose any substance or class for which not registered. Schedules II–V: except a person registered to dispose of any controlled substance may conduct chemical analysis and preclinical research (including quality control analysis) with substances listed in those schedules for which authorization as a mfg. Was issued. |
| (ii) Distributing | Schedules I–V | New—225<br>Renewal—225a | 813<br>813 | 1 | |
| (iii) Reverse distributing. | Schedules I–V | New—225<br>Renewal 225a | 813<br>813 | 1 | |
| (iv) Dispensing or instructing (includes Practitioner, Hospital/Clinic, Retail Pharmacy, Central Fill Pharmacy, Teaching Institution). | Schedules II–V | New—224<br>Renewal—224a | 390<br>390 | 3 | May conduct research and instructional activities with those substances for which registration was granted, except that a mid-level practitioner may conduct such research only to the extent expressly authorized under state statute. A pharmacist may manufacture an aqueous or oleaginous solution or solid dosage form containing a narcotic controlled substance in Schedule II–V in a proportion not exceeding 20% of the complete solution, compound or mixture. A retail pharmacy may perform central fill pharmacy activities. |
| (v) Research | Schedule I | New—225<br>Renewal—225a | 130<br>130 | 1 | A researcher may manufacture or import the basic class of substance or substances for which registration was issued, provided that such manufacture or import is set forth in the protocol required in Section 1301.18 and to distribute such class to persons registered or authorized to conduct research with such class of substance or registered or authorized to conduct chemical analysis with controlled substances. |
| (vi) Research | Schedules II–V | New—225<br>Renewal—225a | 130<br>130 | 1 | May conduct chemical analysis with controlled substances in those schedules for which registration was issued; manufacture such substances if and to the extent that such manufacture is set forth in a statement filed with the application for registration or reregistration and provided that the manufacture is not for the purposes of dosage form development; import such substances for research purposes; distribute such substances to persons registered or authorized to conduct chemical analysis, instructional activities or research with such substances, and to persons exempted from registration pursuant to Section 1301.24; and conduct instructional activities with controlled substances. |
| (vii) Narcotic Treatment Program (including compounder). | Narcotic Drugs in Schedules II–V. | New—363<br>Renewal 363a | 130<br>130 | 1 | |
| (viii) Importing | Schedules I–V | New—225<br>Renewal—225a | 813<br>813 | 1 | May distribute that substance or class for which registration was issued; may not distribute any substance or class for which not registered. |
| (ix) Exporting | Schedules I–V | New—225<br>Renewal—225a | 813<br>813 | 1 | |

| Business activity | Controlled substances | DEA application forms | Application fee ($) | Registration period (years) | Coincident activities allowed |
|---|---|---|---|---|---|
| (x) Chemical Analysis | Schedules I–V ....... | New—225 ............<br>Renewal—225a .... | 130<br>130 | 1 | May manufacture and import controlled substances for analytical or instructional activities; may distribute such substances to persons registered or authorized to conduct chemical analysis, instructional activities, or research with such substances and to persons exempted from registration pursuant to section 1301.24; may export such substances to persons in other countries performing chemical analysis or enforcing laws related to controlled substances or drugs in those countries; and may conduct instructional activities with controlled substances. |

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Dated: October 7, 2003.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control.*

[FR Doc. 03–25817 Filed 10–9–03; 8:45 am]

**BILLING CODE 4410–09–P**

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**DEPARTMENT OF THE TREASURY**

**Alcohol and Tobacco Tax and Trade Bureau**

**27 CFR Part 73**

**[T.D. TTB–5; Notice No. 5]**

**RIN 1513–AA61**

## Electronic Signatures; Electronic Submission of Forms (2000R–458P)

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

**ACTION:** Treasury decision, final rule.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) amends its regulations to permit industry members to use electronic technology to reduce the need for and storage of paper documents. In order to accomplish our goals, we are adding a new part 73 that will allow you to use electronic, rather than handwritten, signatures to sign certain forms, and to submit certain forms to TTB electronically through a TTB-approved electronic document receiving system.

**EFFECTIVE DATE:** October 10, 2003.

**FOR FURTHER INFORMATION CONTACT:** Lisa M. Gesser, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 128, Morganza, MD 20660; telephone 301–290–1460.

**SUPPLEMENTARY INFORMATION:**

### What Will This Final Rule Do?

This final rule amends the regulations to allow you to:

- Use electronic signatures to sign certain forms you submit to us instead of using traditional handwritten signatures; and
- Submit certain forms to TTB electronically through an electronic document receiving system that we approve.

### Why Does TTB Want To Allow You To Submit Certain Forms Electronically?

We believe that by giving you the option to submit certain forms electronically, instead of requiring paper documents, we can:

- Reduce the costs associated with submitting and maintaining large volumes of paper documents;
- Improve the quality and accessibility of data;
- Allow for the faster review and approval of a variety of documents; and
- Allow for a variety of our documents to be available around the clock.

### What Is TTB's Authority To Implement These Regulations?

Our authority to implement these regulations comes from:

(1) *Government Paperwork Elimination Act (GPEA).* GPEA was signed into law on October 21, 1998. GPEA directs Federal agencies to provide for the optional use and acceptance of electronic documents and signatures, and electronic recordkeeping, where practical, by October 2003. (*See* Secs. 1702–1710 of Pub. L. 105–277.)

(2) *Internal Revenue Code of 1986 (26 U.S.C.)* The Internal Revenue Code of 1986 authorizes the Secretary of the Treasury to, by regulation, encourage electronic filing, address what constitutes a timely filed electronic document, and develop procedures for the acceptance of signatures in digital or other electronic form. (*See* 26 U.S.C. 6011, 6061, and 7502.)

(3) *Electronic Signatures in Global and National Commerce Act of 2000 (E–SIGN).* E–SIGN provides that no contract, signature, or record relating to a transaction shall be denied legal effect solely because it is in electronic form, nor may a document be denied legal effect solely because an electronic signature or record was used in its formation. E–SIGN applies to documents that are created in a commercial, consumer, or business transaction. It does not cover transactions that are uniquely governmental such as a compliance report. (*See* Public Law 106–229.)

(4) *Office of Management and Budget Circular A–130.* OMB's Circular A–130 requires agencies to employ electronic information collection techniques where such means will reduce the burden on the public, increase efficiency, reduce costs, and help provide better service. (*See* Circular A–130, Para. 8.a.1(k).)

### How Does TTB Plan on Implementing Electronic Filing?

We are creating a new part 73 in title 27 CFR, chapter I, entitled "Electronic Signatures; Electronic Submission of Forms." Part 73 explains our overall policy regarding electronic signatures and the electronic submission of certain forms to TTB.

*Electronic Signatures*

Upon the effective date of this final rule, we recognize electronic signatures executed to certain electronic forms as the full equivalent of, and having the same legal effect as, traditional handwritten signatures executed on paper. We will notify you, by publishing a general notice in the **Federal Register** and on our Web site (*http://*

*www.ttb.gov*), when you may use electronic signatures to execute certain electronic forms. The general notice will provide you with specific instructions about how to submit and what technology will be acceptable to TTB.

*Electronic Submission of Forms to TTB*

We are in the process of developing the means to allow you to submit forms electronically. This is a lengthy process; we will need to develop the hardware and software components to accept each different type of form. Once we are able to accept a certain form, we will announce in the **Federal Register** and on our Web site that you may register to submit that form electronically. The announcement will provide you with instructions on how to register.

### Will I Still Have To Maintain Paper Copies?

If the regulations require you to maintain certain documents in paper format, you must continue to maintain those documents in paper format even if you submit them to us electronically. Nothing in part 73 alters any other regulatory or statutory requirement that records be maintained in paper format. This part does provide that TTB may publish a general notice in the **Federal Register** authorizing you to maintain certain documents electronically instead of in paper form.

### Notice of Proposed Rulemaking

On April 11, 2003, we published a notice of proposed rulemaking, Notice No. 5, in the **Federal Register** (68 FR 17760) to solicit comments regarding our proposal to add the new part 73 to chapter I of title 27. The notice requested comments from interested persons by May 12, 2003.

### Comments on Notice of Proposed Rulemaking

We did not receive any comments as a result of Notice No. 5.

### Regulatory Analyses and Notices

*Paperwork Reduction Act*

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because there are no new reporting or recordkeeping requirements.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires an agency to conduct a regulatory flexibility analysis of any rule that may have a significant economic impact on a substantial number of small entities. We certify that this final rule will not have such an impact because the electronic submission of forms to TTB and the use of electronic signatures are voluntary. This final rule only applies to those people who seek our approval to transmit certain forms electronically to us.

*Executive Order 12866*

This regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this rule is not subject to the analysis required by this Executive Order.

*Executive Order 13132*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires Federal agencies to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." This rule does not have federalism implications. This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule will not require States to accept electronic reports. The effect of this rule will be to provide additional regulatory flexibility to States because States could choose to accept electronic data that would also satisfy our reporting requirements.

### Drafting Information

The principal author of this document is Lisa M. Gesser, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau.

### List of Subjects in 27 CFR Part 73

Electronic signatures, Reporting and recordkeeping requirements.

### Authority and Issuance

■ For the reasons set out in the preamble, we amend chapter I of title 27 of the Code of Federal Regulations by adding a new part 73 to read as follows:

## PART 73—ELECTRONIC SIGNATURES; ELECTRONIC SUBMISSION OF FORMS

### Subpart A—General Provisions

Sec.

#### Scope

73.1 What does this part do?

#### Definitions

73.3 What terms must I know to understand this part?

### Subpart B—Electronic Signatures

73.10 What does subpart B cover?
73.11 What are the required components and controls for acceptable electronic signatures?
73.12 What security controls must I use for identification codes and passwords?

### Subpart C—Electronic Filing of Documents With TTB

73.30 What does subpart C cover?
73.31 May I submit forms electronically to TTB?
73.32 May I electronically sign forms I submit electronically to TTB?
73.33 Am I legally bound by a form I sign electronically?
73.34 When is an electronically submitted form considered timely filed?
73.35 Do I need to keep paper copies of forms I submit to TTB electronically?

**Authority:** 26 U.S.C. 6011, 6061, 7502; 15 U.S.C. 7001, 7004.

### Subpart A—General Provisions

#### Scope

#### § 73.1 What does this part do?

(a) This part provides the conditions under which we will allow you to:

(1) Use electronic signatures or digital signatures executed to electronic forms instead of traditional handwritten signatures executed on paper forms; and

(2) Electronically submit certain forms to TTB.

(b) This part does not require you to submit forms to us electronically.

#### Definitions

#### § 73.3 What terms must I know to understand this part?

You need to know the following terms to understand this part:

*27 CFR.* Title 27 of the Code of Federal Regulations, chapter I.

*Biometrics.* A method of verifying an individual's identity based on measurement of the individual's physical feature(s) or repeatable action(s) where those features and/or actions are both unique to that individual and measurable.

*Digital signature.* An electronic signature based upon cryptographic methods of originator authentication, computed by using a set of rules and a set of parameters such that the identity of the signer and the integrity of the data can be verified. A signer creates a digital signature by using public-key encryption to transform a message digest of an electronic message. If a recipient of the digital signature has an electronic message, message digest function, and the signer's public key, the recipient can verify:

(1) Whether the transformation was accomplished with the private key that

corresponds to the signer's public key; and

(2) Whether the electronic message has been altered since the transformation was made.

*Electronic document receiving system.* Any set of apparatus, procedures, software, records, or documentation used to receive documents communicated to it via a telecommunications network.

*Electronic signature.* A computer data compilation of any symbol or series of symbols executed, adopted, or authorized by an individual to be the legally binding equivalent of the individual's handwritten signature, and that:

(1) Identifies and authenticates a particular person as the source of the electronic message; and

(2) Indicates such person's approval of the information contained in the electronic message.

*Form(s).* The term form(s), when used in this part, includes all documents required by 27 CFR, chapter I, to be submitted to TTB.

*Handwritten signature.* The scripted name or legal mark of an individual handwritten by that individual and executed or adopted with the present intention to authenticate a writing in a permanent form. The act of signing with a writing or marking instrument such as a pen or stylus is preserved. The scripted name or legal mark, while conventionally applied to paper, may also be applied to other materials or devices that capture the name or mark.

*Paper format.* A paper document.

*TTB.* Refers to the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury.

*You and I.* "You" and "I" refer to the organization or person who must maintain records or submit documents to TTB to satisfy the requirements of 27 CFR, chapter I.

## Subpart B—Electronic Signatures

### § 73.10 What does subpart B cover?

This subpart provides the conditions under which TTB will allow you to use electronic signatures executed to electronic forms instead of traditional handwritten signatures executed on paper forms. Where electronic signatures and their associated electronic forms meet the requirements of this part, TTB will consider the electronic signatures to be the equivalent of full handwritten signatures, initials, and other general signings this chapter requires.

### § 73.11 What are the required components and controls for acceptable electronic signatures?

(a) *Electronic signatures not based on biometrics.* If you use electronic signatures that are not based upon biometrics you must:

(1) Employ at least two distinct identification components such as an identification code and a password;

(2) Use both identification components when executing an electronic signature to an electronic document; and

(3) Ensure that the electronic signature can only be used by the authorized user.

(b) *Electronic signatures based on biometrics.* If you use electronic signatures based upon biometrics, they must be designed to ensure that they cannot be used by anyone other than their genuine owners.

### § 73.12 What security controls must I use for identification codes and passwords?

If you use electronic signatures based upon use of identification codes in combination with passwords, you must employ controls to ensure their security and integrity. These controls must include:

(a) Maintaining the uniqueness of each combined identification code and password, such that no two individuals have the same combination of identification code and password;

(b) Ensuring that identification code and password issuances are periodically checked, recalled, or revised (*e.g.*, to cover such events as password aging);

(c) Following loss management procedures to electronically deauthorize lost, stolen, missing, or otherwise potentially compromised tokens, cards, or other devices that bear or generate identification code or password information, and to issue temporary or permanent replacements using suitable, rigorous controls;

(d) Using transaction safeguards to prevent unauthorized use of passwords and/or identification codes, and to detect and report in an immediate and urgent manner any attempts at their unauthorized use to the system security unit and, as appropriate, to organizational management; and

(e) Initial and periodic testing of devices, such as tokens or cards, that bear or generate identification code or password information to ensure that they function properly and have not been altered in any unauthorized manner.

## Subpart C—Electronic Filing of Documents with TTB

### § 73.30 What does subpart C cover?

This subpart provides the conditions under which we will allow you to satisfy certain reporting requirements of this chapter by submitting forms to us electronically.

### § 73.31 May I submit forms electronically to TTB?

Yes; you may submit an electronic form, instead of a paper form, to satisfy any reporting requirement in this chapter, only if:

(a) We have published a notice in the **Federal Register** and on our Web site (*http://www.ttb.gov*) announcing that we are prepared to receive a particular form electronically;

(b) You have registered to do so pursuant to the instructions in a notice published in the **Federal Register** and on our Web site as stated above;

(c) You submit the electronic form to an electronic document receiving system that we have designated for the receipt of that specific form; and

(d) The electronic form bears valid electronic signatures, as provided in subpart B of this part, to the same extent that the paper submission for which it substitutes would bear handwritten signatures.

### § 73.32 May I electronically sign forms I submit electronically to TTB?

You may electronically sign the electronic form you submit to us if:

(a) You have registered with TTB to do so and have certified, prior to the time of such use, that the electronic signatures or digital signatures in your system are intended to be the legally binding equivalent of traditional handwritten signatures;

(b) The electronic or digital signature meets the standards of this part and is authorized by TTB in accordance with this part; and

(c) The electronic or digital signature is sufficiently trustworthy and reliable that the signing party may not repudiate the signature.

### § 73.33 Am I legally bound by a form I sign electronically?

Yes; by electronically signing a form you submit to us, you are agreeing to be legally bound to the same extent as if you applied a traditional handwritten signature on a paper document submitted to satisfy the same reporting requirement. Persons using electronic signatures shall, upon TTB's request, provide additional certification or testimony that a specific electronic signature is the legally binding equivalent of the signer's handwritten signature.

**§ 73.34 When is an electronically submitted form considered timely filed?**

If you submit a form to our electronic document receiving system, your report will be considered filed on the date of the electronic postmark given by that system.

**§ 73.35 Do I need to keep paper copies of forms I submit to TTB electronically?**

Nothing in this part alters any other regulatory or statutory requirement that records be maintained in paper format. If the regulations in this chapter require you to keep paper copies of certain forms, you must continue to do so unless TTB otherwise authorizes you to maintain electronic copies of these documents through a general notice in the **Federal Register** or through a variance.

Dated: May 29, 2003.

**Arthur J. Libertucci,**

*Administrator.*

Approved: September 5, 2003.

**Timothy E. Skud,**

*Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).*

[FR Doc. 03–25524 Filed 10–9–03; 8:45 am]

BILLING CODE 4810–31–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

### 33 CFR Part 100

[CGD05–03–031]

RIN 1625–AA08

## Special Local Regulations for Marine Events; Prospect Bay, Kent Island Narrows, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing permanent special local regulations for the "Thunder on the Narrows" boat races, an annual marine event held on the waters of Prospect Bay near Kent Island Narrows, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of Prospect Bay during the event.

**DATES:** This rule is effective November 10, 2003.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–03–031 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** S. L. Phillips, Project Manager, Auxiliary and Recreational Boating Safety Branch at (757) 398–6204.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On March 31, 2003, we published a notice of proposed rulemaking (NPRM) entitled "Special Local Regulations for Marine Events; Prospect Bay, Kent Island Narrows, MD" in the **Federal Register** (68 FR 15417). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

### Background and Purpose

Each year on the first Saturday and Sunday of August, the Kent Narrows Racing Association sponsors the "Thunder on the Narrows" powerboat races. The event consists of 75 Hydroplanes and Jersey Speed Skiffs racing in heats counter-clockwise around a 1.5-mile oval racecourse on the waters of Prospect Bay, Kent Island Narrows, Maryland. A fleet of approximately 200 spectator vessels normally gathers nearby to view the event. Due to the need for vessel control during the races, vessel traffic will be temporarily restricted to provide for the safety of the spectators, participants and transiting vessels.

### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation will prevent traffic from transiting a portion of Prospect Bay during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the proposed regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit Prospect Bay and Kent Narrows by navigating around the regulated area.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605 (b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Prospect Bay during the event.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only 2 days each year. Vessel traffic will be able to pass safely around the regulated area. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

### Assistance for Small Entities

Under section 213 (a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. No assistance was requested and none was provided.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3 (a) and 3 (b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We prepared an "Environmental Assessment" in accordance with Commandant Instruction M16475.1D, and determined that this rule will not significantly affect the quality of the human environment. The "Environmental Assessment" and "Finding of No Significant Impact" is available in the docket where indicated under **ADDRESSES.**

### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233 through 1236; Department of Homeland Security Delegation No. 0170.1, 33 CFR 100.35.

■ 2. Add § 100.530 to read as follows:

### § 100.530 Prospect Bay, Kent Island Narrows, Maryland.

(a) *Regulated Area.* The regulated area includes all waters of Prospect Bay enclosed by the following points:

| *Latitude* | *Longitude* |
|---|---|
| 38°57′52.0″ N | 076°14′48.0″ W, to |
| 38°58′02.0″ N | 076°15′05.0″ W, to |
| 38°57′38.0″ N | 076°15′29.0″ W, to |
| 38°57′28.0″ N | 076°15′23.0″ W, to |
| 38°57′52.0″ N | 076°14′48.0″ W. |

All coordinates reference Datum NAD 1983.

(b) *Definitions.* The following definitions apply to this section:

*Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

*Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Activities Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations:*

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(d) *Enforcement period.* This section will be enforced annually from 9:30 a.m. to 6:30 p.m. on the first Saturday and Sunday in August. Notice of the enforcement period will be given via Marine Safety Radio Broadcast on VHF-FM marine band radio, Channel 22 (157.1 MHz).

Dated: September 17, 2003.

**Sally Brice-O'Hara,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 03–25747 Filed 10–9–03; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

### 33 CFR Part 165

**[CGD13–03–028]**

**RIN 2115–AA00**

## Safety Zone: Fort Vancouver Celebrate America Fireworks Display

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone on the Columbia River during a fireworks display. The Captain of the Port, Portland, is taking this action to safeguard watercraft and their occupants from safety hazards associated with the

fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

**DATES:** This rule is effective from 8:30 p.m. (PDT) to 9:30 p.m. (PDT) on October 12, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [CGD 13–03–028] and are available for inspection or copying at the U.S. Coast Guard MSO/Group Portland, 6767 N. Basin Ave, Portland, Oregon 97217 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LTJG Ryan Wagner, c/o Captain of the Port Portland, 6767 N. Basin Ave, Portland, OR 97217 at 503–240–9370.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. A Final Rule, which established safety zones around fireworks displays for the Captain of the Port Portland area of responsibility, was recently published in the **Federal Register** (CGD13–03–008, 33 CFR 165.1315, 68 FR 32366, May 30, 2003). An amendment cannot successfully be made to 33 CFR 165.1315 in time to ensure the safety of vessels and spectators gathering in the vicinity of this fireworks display. The Coast Guard intends to amend 33 CFR 165.1315 using normal rule-making procedures in the near future by adding this safety zone to that regulation.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Waiting 30 days for this rule to be effective is contrary to public interest. Due to the complex planning and coordination of the event, the event sponsor was unable to provide the Coast Guard with notice of details of the event in time to allow for notice and comment and a 30-day waiting period prior to the effective date after publication. Because immediate action is necessary to ensure the safety of vessels and spectators gathered in the vicinity of the fireworks launching barge it is in the public interest to make the rule effective less than 30 days after publication in the **Federal Register**.

### Background and Purpose

The Coast Guard is establishing a temporary safety zone regulation to allow for a safe fireworks display. This safety zone will be in effect from 8:30 p.m. (PDT) to 9:30 p.m. (PDT) on October 12, 2003 located on the Columbia River. This event will result in a large number of vessels congregating near the fireworks launching area. This safety zone is needed to provide for the safety of spectators and their watercraft from the inherent safety hazards associated with fireworks displays. Without providing an adequate safety zone, the public could be exposed to falling burning debris and would likely be within the blast range should a catastrophic accident occur on the launching barge. This safety zone will be enforced by representatives of the Captain of the Port, Portland, Oregon. The Captain of the Port may be assisted by other federal and local agencies.

### Discussion of Rule

This rule, for safety concerns, will control vessel movements in a regulated area surrounding a fireworks launching barge. Entry into this zone is prohibited unless authorized by the Captain of the Port, Portland or his designated representative. Coast Guard personnel will enforce this safety zone. The Captain of the Port may be assisted by other federal and local agencies.

### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security. The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under the regulatory policies and procedures of DHS is unnecessary.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the designated area at the corresponding time as drafted in this rule. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for one hour in the evening when vessel traffic is low. Traffic will be allowed to pass through the zone with the permission of the Captain of the Port or his designated representatives on scene, if safe to do so. Because the impacts of this proposal are expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this final rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

### Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

The Coast Guard has considered the environmental impact of this action and has concluded that under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A final "Environmental Analysis Checklist" and a final "Categorical Exclusion Determination" is available in the docket we have indicated under ADDRESSES.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A temporary § 165.T13–018 is added to read as follows:

### § 165.T13–018 Safety Zone: Fort Vancouver Celebrate America Fireworks Display, Portland, OR.

(a) The following area is a safety zone:

(1) *Description.* Fort Vancouver Celebrate America Fireworks Display, Portland, OR.

(2) *Location.* All waters of the Columbia River bounded by a line commencing at the southern base of the Interstate 5 highway bridge at latitude 45° 36′ 51.1″ N, longitude 122° 40′ 38.2″ W; thence north along the Interstate 5 highway bridge to latitude 45° 37′ 3″ N, longitude 122° 40′ 31″ W; thence east along the Columbia River to latitude 45° 36′ 54.5″ N, longitude 122° 40′ 2″ W; thence south to the Oregon shoreline at latitude 45° 36′ 40.7″ N, longitude 122° 40′ 12.7″ W; thence west along the Oregon shoreline to the point of origin.

(b) *Enforcement period.* October 12, 2003 from 8:30 p.m. (PDT) to 9:30 p.m. (PDT).

(c) *Regulations.* In accordance with § 165.23, entry into these zones is prohibited unless authorized by the Coast Guard Captain of the Port, Portland or his designated representatives. Section 165.23 also contains other general requirements. Announcement of enforcement periods may be made by the methods described in 33 CFR 165.7, or any other reasonable method.

(d) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

Dated: September 17, 2003.

**Paul D. Jewell,**

*Captain, Coast Guard, Captain of the Port.*

[FR Doc. 03–25681 Filed 10–9–03; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

[COTP Louisville–03–009]

RIN 1625–AA00

## Safety Zone; Ohio River, Miles 469.6 to 470.5, Extending 900 Feet from the Ohio Shoreline, Cincinnati, OH

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for all waters of the Ohio River extending 900 feet from the Ohio shoreline beginning at mile marker 469.6 and ending at mile marker 470.5. This zone is necessary to protect participants, spectators and vessels from the potential safety hazards associated with the 2003 Tall Stacks Heritage Festival. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port Louisville or a designated representative.

**DATES:** This rule is effective from 8 a.m. on October 14, 2003 until 1 p.m. on October 20, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [COTP Louisville-03-009] and are available for inspection or copying at Marine Safety Office Louisville, 600 Martin Luther King Junior Place, Room 360, Louisville, KY 40202–2230, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (LT) Tom Lake, Marine Safety Office Louisville, Planning Department, at (502) 582–5194.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to protect participants, vessels and mariners from the hazards associated with the 2003 Tall Stacks Heritage Festival.

### Background and Purpose

The Captain of the Port Louisville is establishing a safety zone for all waters of the Ohio River extending 900 feet from Ohio shoreline beginning at mile marker 469.6 and ending at mile marker 470.5. The event requires a safety zone due to the number of commercial vessels that regularly transit the area, the potential for a large spectator vessel turnout and the need to control vessel traffic in the vicinity of the 2003 Tall Stacks Heritage Festival. 17 paddle wheel vessels will be moored in this zone. Over 25,000 waterborne spectators are expected to be in the vicinity of these paddle wheel vessels at any one time. Unauthorized access by a recreational or commercial vessel could create a hazardous condition that would endanger the safety of participants or spectators. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port Louisville or a designated representative.

### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This rule will only be in effect for a short period of time and notifications to the maritime community will be made through broadcast notice to mariners. The impacts on routine navigation are expected to be minimal as this safety zone will only extend 900 feet from the Ohio shoreline. Vessels intending to transit between miles 469.6 and 470.5 may do so if they transit at a distance no closer than 900 feet from the Ohio shoreline.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of recreational and commercial towing vessels intending to transit within 900 feet of the Ohio shoreline from mile marker 469.6 to mile marker 470.5, from 8 a.m. on October 14, 2003 until 1 p.m. on October 20, 2003. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will be in effect for only a short period of time, and the safety zone will not extend the entire width of the river. Vessels intending to transit between miles 469.6 and 470.5 may do so if they transit at a distance no closer than 900 feet from the Ohio shoreline.

If you are a small business entity and are significantly affected by this regulation please contact LT Tom Lake, Marine Safety Office Louisville, Planning Department, at (502) 582–5194.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a state, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not determined it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Environment**

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in NEPA. Paragraph (34)(g) is applicable because this rule is establishing a safety zone that will be effective for a period greater than one week. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 103–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T08–129 is added to read as follows:

**§ 165.T08–129 Safety Zone; Ohio River, Miles 469.6 to 470.5, Extending 900 feet from the Ohio shoreline, Cincinnati, OH.**

(a) *Location.* The following area is safety zone: All waters of the Ohio River extending 900 feet from the Ohio shoreline beginning at mile marker 469.6 and ending at mile marker 470.5.

(b) *Effective date.* This section is effective from 8 a.m. on October 14, 2003 until 1 p.m. on October 20, 2003.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Louisville or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Louisville or a designated representative. They may be contacted on VHF Channel 13 or 16.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Louisville and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: September 12, 2003.

**T.D. Gilbreath,**

*Commander, U.S. Coast Guard, Captain of the Port Louisville.*

[FR Doc. 03–25683 Filed 10–9–03; 8:45 am]

BILLING CODE 4910–15–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

[PA 201–4401a; FRL–7570–4]

# Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revised MOBILE6-Based Motor Vehicle Emission Budget for the Pennsylvania Portion of the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the Pennsylvania State Implementation Plan (SIP). Specifically, EPA is acting to approve a revised 2005 highway motor vehicle emission inventory for the Pennsylvania portion of the Philadelphia-Wilmington-Trenton (the Philadelphia area) 1-hour ozone attainment plan. This revised highway vehicle emissions inventory also serves as the 2005 motor vehicle emissions budget for purposes of determining transportation conformity under the Clean Air Act. The revised mobile emissions budget was developed using MOBILE6—the most recent available version of the EPA-developed MOBILE highway motor vehicle emission factor model. Revision of the mobile budget was a requirement of EPA's prior approval of the Commonwealth's 1-hour ozone National Ambient Air Quality Standard (NAAQS) attainment demonstration for the Philadelphia severe ozone nonattainment area. The intended effect of this direct final approval action is to approve a SIP revision that will assist Pennsylvania in attaining and conforming to attainment of the 1-hour ozone NAAQS standard in the Philadelphia area. This action is being taken by EPA in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on December 9, 2003 without further notice, unless EPA receives adverse written comment by November 10, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in Part III of the **SUPPLEMENTARY INFORMATION** section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Brian Rehn, Air Quality Planning Branch, U.S. EPA, 1650 Arch Street, Mail Code 3AP21, Philadelphia, Pennsylvania 19103–2029, by telephone at (215) 814–2176, or by e-mail at *rehn.brian@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. Pennsylvania's SIP-Approved Attainment Demonstration and Mobile Budget*

On October 21, 2001, EPA approved Pennsylvania's 1-hour ozone attainment demonstration SIP for the Philadelphia area (66 FR 54143). As part of that approval action, EPA required the Commonwealth to revise the SIP to include a recalculated 2005 attainment year motor vehicle transportation conformity emission budget. This 2005 highway mobile budget was to be updated using the latest version EPA's newest emission factor model (MOBILE6) within one year of the availability of that new version of the model. EPA released the MOBILE6 model on January 29, 2002, and therefore Pennsylvania was required to submit its revised mobile budget SIP for the Philadelphia area by January 29, 2003.

On January 17, 2003, Pennsylvania formally submitted a revision to its SIP containing the updated mobile budget, revising using MOBILE6, for the Philadelphia ozone nonattainment area. On May 28, 2003, EPA published a notice in the **Federal Register** (68 FR 31700) declaring this revised Philadelphia mobile budget adequate for transportation conformity purposes.

### *B. Background on the MOBILE Emission Factor Model and Related EPA Policy*

MOBILE is an EPA emissions factor model for estimating pollution from on-road motor vehicles in states (with the exception of California, which has developed its own model). The MOBILE model calculates emissions of volatile organic compounds (VOCs), nitrogen oxides ($NO_X$) and carbon monoxide (CO) from passenger cars, motorcycles, buses, and light-duty and heavy-duty trucks. The model accounts for the emission impacts of factors such as changes in vehicle emission standards, changes in vehicle populations and activity, and variation in local conditions such as temperature, humidity, fuel quality, and air quality programs. Among other uses, the MOBILE model helps to calculate current and future inventories of motor vehicle emissions at the national and local level. These inventories are used to make decisions about air pollution policy and programs at the local, state and national level. Inventories based on MOBILE are also used to meet the federal Clean Air Act's SIP and transportation conformity requirements.

The MOBILE model, first developed in 1978, has been updated many times to reflect changes to motor vehicles and fuel composition, to incorporate better understanding of vehicle emissions, and to reflect new emissions programs. EPA announced the release of the MOBILE6 version of the MOBILE model in the January 29, 2002 edition of the **Federal Register** (67 FR 4254), as a replacement for a MOBILE5 version of the model.

In November of 1999, EPA issued two memoranda[1] to articulate its policy regarding states that incorporated MOBILE5-based interim Tier 2 standard[2] benefits into their attainment demonstration plans and those plans' associated motor vehicle emissions budgets (or budgets).

EPA has implemented this policy in all ozone nonattainment areas where a state assumed federal Tier 2 benefits in its attainment demonstration plans according to EPA's April 2000 MOBILE5 guidance, "MOBILE5 Information Sheet #8: Tier 2 Benefits Using MOBILE5." States whose attainment demonstrations or maintenance plans include interim MOBILE5-based estimates of the Tier 2 standards were required to revise and resubmit their budgets within either one or two years of the final release of MOBILE6.

EPA's October 21, 2001 (66 FR 54143) approval of Pennsylvania's 1-hour ozone attainment demonstration plan for the Philadelphia area was based upon an interim mobile budget, with projected reductions from Tier 2 motor vehicle standards estimated using the MOBILE5 model. EPA's October 2001 approval of Pennsylvania's 1-hour ozone attainment demonstration for the Philadelphia area required a MOBILE6-based motor vehicle emissions budget SIP revision within one year after EPA released the MOBILE6 model. EPA released the MOBILE6 model on January 29, 2002, therefore Pennsylvania's MOBILE6 mobile budget SIP was due January 29, 2003.

## II. Summary of SIP Revision and EPA's Review

On January 17, 2003, the Commonwealth of Pennsylvania submitted a SIP revision containing updated inventories of emissions of the ozone precursors VOC and $NO_X$ from highway mobile sources operating in the Philadelphia ozone attainment area. These summertime inventories were generated for summertime periods in 1990 and for 2005, the year Philadelphia is to attain the 1-hour ozone standard. This updated motor vehicle emissions modeling was generated through use of the newly released MOBILE6 model. The 2005 motor vehicle emissions inventory projection also serves as the motor vehicle emissions budget, or mobile budget, for transportation conformity planning. The Commonwealth's January 2003 SIP revision is intended to demonstrate that the updated projections of motor vehicle emissions (calculated using the MOBILE6 emissions factor model) continue to support the demonstrations of attainment of the 1-hour ozone NAAQS for the Philadelphia area by 2005.

Table 1 below contrasts Pennsylvania's revised MOBILE6-based motor vehicle emissions inventories with the previously approved MOBILE5-based inventories for the Philadelphia area, by pollutant, expressed in units of tons per summer day (tpd). These revised inventories were developed using the latest available planning assumptions, including 1999 Pennsylvania Department of Transportation vehicle registration data and 1999 traffic data and information vehicle miles traveled (VMT). Updated information was used for atmospheric model input (*i.e.*, temperature and humidity conditions). Rates of growth for highway mobile sources have also been updated.

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[1] Memoranda, "Guidance on Motor Vehicle Emissions Budgets in 1-Hour Ozone Attainment Demonstrations," issued November 3, 1999, and "1-Hour Ozone Attainment Demonstrations and Tier2/Sulfur Rulemaking," issued November 8, 1999. Copies of these memoranda can be found on EPA's Web site at *http://www.epa.gov/otaq/transp/traqconf.htm*.

[2] The final rule on Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements ("Tier 2 standards") for passenger cars, light trucks, and larger passenger vehicles was published on February 10, 2000 (65 FR 6698).

TABLE 1.—COMPARISON OF PENNSYLVANIA'S MOBILE5 AND REVISED MOBILE6-BASED HIGHWAY MOBILE EMISSIONS INVENTORIES FOR THE PHILADELPHIA 1-HOUR OZONE ATTAINMENT PLAN

| Philadelphia 5-county area | 1990 | | 2005 | |
|---|---|---|---|---|
| | VOC (tpd) | $NO_X$ (tpd) | VOC (tpd) | $NO_X$ (tpd) |
| MOBILE5-based inventory | 187.90 | 158.33 | 60.18 | 77.46 |
| MOBILE6-based (revised) inventory | 239.95 | 252.93 | 79.69 | 144.73 |

EPA's articulated its policy regarding its policy on the use of MOBILE6 modeling for purposes of SIP development in several guidance documents entitled "Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity"[3] and "Clarification of Policy Guidance for MOBILE6 in Mid-course Review Areas."[4]

Pennsylvania's January 17, 2003 SIP revision includes an explanation of the differences between the MOBILE5 and MOBILE6-based inventories. The SIP also provides a comparison of the relative reduction, by percentage, between the 1990 and 2005 inventories generated using the two different versions of the models to ensure that the approved Philadelphia 1-hour ozone attainment demonstration will continue to demonstrate attainment by 2005. The methodology for this relative reduction comparison consists of comparing the revised MOBILE6 baseline and attainment case inventories, by pollutant, with the previously approved (66 FR 54143) MOBILE5 inventory totals for the 5-county Philadelphia area to determine if attainment can still be predicted by the attainment date. The Commonwealth then compared these relative reduction percentages for the MOBILE5 versus MOBILE6 inventories for 1995 and 2005. It should be noted that since the latest available planning assumptions were used the revised, MOBILE6-based modeling, this relative reduction comparison is not an exact comparison of only the differences between the different versions of the MOBILE models.

Pennsylvania's relative reduction comparison shows that the reduction in VOC emissions, on a percentage basis, is greater in the revised MOBILE 6-based inventories than in the previously approved MOBILE5 inventories. However, the there is a slight increase, on a percentage basis, in $NO_X$ in the revised MOBILE6-based inventories compared to the previous MOBILE5 inventories. The Commonwealth argues that the benefit of additional reduction in VOCs outweighs the slight $NO_X$ increase—which the Commonwealth justifies quantitatively by using a 1.3 to 1 VOC to $NO_X$ substitution ratio to weigh directly the actual VOC to $NO_X$ emissions resultant from the MOBILE5 and MOBILE6-based inventories. This method of weighting VOC versus $NO_X$ emissions shows that the increased reductions in VOC emissions outweigh the increase in $NO_X$ emissions demonstrated by the MOBILE6-based inventories. Pennsylvania's choice of VOC to $NO_X$ substitution ratios for this comparison stems from its use in New Source Review emission trading in the Philadelphia ozone nonattainment area.

EPA's relevant policy guidance also required the Commonwealth to consider whether growth and control strategy assumptions for other sources (*i.e.*, point, area, and non-road mobile sources) were still accurate at the time the revised MOBILE6 budget SIP submission (*i.e.*, January 2003). Pennsylvania's SIP revision states that growth and control strategy assumptions for these other emissions sources have been reevaluated, with the conclusion that these assumptions for growth and control strategies continue to be valid for the Philadelphia 1-hour ozone attainment demonstration.

Pennsylvania's January 17, 2003 SIP revision satisfies the conditions outlined in EPA's MOBILE6 Policy guidance, and demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6 continue to support achievement of the projected attainment of the 1-Hour Ozone NAAQS by the attainment date of 2005 for Pennsylvania portion of the Philadelphia-Wilmington-Trenton area.

### *The Revised Mobile Budget*

For Pennsylvania's Philadelphia area attainment plan, the mobile budgets are the on-road components of VOC and $NO_X$ emissions of the 2005 attainment inventories. Table 2 below summarizes Pennsylvania's revised budgets contained in the January 17, 2003 submittal. These budgets were developed using the latest planning assumptions, including 1999 vehicle registration data and VMT. Because Pennsylvania's January 2003 submittal satisfies the conditions outlined in EPA's MOBILE6 Policy guidance, and demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6 continue to support achievement of the projected attainment of the 1-Hour Ozone NAAQS, EPA is taking rulemaking action to approve this mobile emissions budget.

TABLE 2.—PHILADELPHIA MOTOR VEHICLE EMISSIONS BUDGET

| Type of Control Strategy SIP | VOC (tpd) | $NO_X$ (tpd) |
|---|---|---|
| 1-Hour ozone attainment demonstration SIP | 79.69 | 144.73 |

## III. Final Action

Pennsylvania has adequately demonstrated to EPA that its 1-hour attainment demonstration SIP for the Philadelphia area (as revised in by the January 2003 MOBILE6-based highway emissions inventory) will continue to demonstrate attainment of the ozone NAAQS with the incorporation of the updated highway emissions inventory. EPA is therefore approving the Pennsylvania SIP revision submitted on January 17, 2003 to revise the Philadelphia 1990 and 2005 highway mobile VOC and $NO_X$ emissions inventories and the revised 2005 motor vehicle emissions budget.

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[3] Memorandum, "Policy Guidance on the Use of MOBILE6 for SIP development and Transportation Conformity," issued January 18, 2002. A copy of this memorandum can be found on EPA's Web site at *http://www.epa.gov/otaq/transp/traqconf.htm.*

[4] Memorandum, "Clarification of Policy Guidance for MOBILE6 SIPs in Mid-course Review Areas," issued February 12, 2003. A copy of this memorandum can be found on EPA's Web site at *http://www.epa.gov/otaq/transp/traqconf.htm.*

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment, as this revision serves the purpose of updating the highway mobile emissions inventory using the latest version of EPA's mobile source emission factor model and the most recently available emissions modeling planning assumptions. This SIP revision is the result of a requirement to update the highway mobile inventory using MOBILE6 specified by EPA's October 26, 2001 approval of the Pennsylvania's 1-hour ozone attainment demonstration for the Philadelphia area. Also, EPA declared the mobile source inventory adequate for transportation conformity purposes on May 28, 2003.

However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve this SIP revision if adverse comments are filed. This rule will be effective on December 9, 2003 without further notice unless EPA receives adverse comment by November 10, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number (PA 201–4401) in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to: *morris.makeba@epa.gov,* attention PA 201–4401. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov,* then select "Environmental Protection Agency" at the top of the page and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document. For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

### *Submittal of CBI Comments*

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

### *Considerations When Preparing Comments to EPA*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

## IV. Statutory and Executive Order Reviews

### *A. General Requirements*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### *B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 9, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 29, 2003.

**James W. Newsom,**

*Acting Regional Administrator, Region III.*

■ 40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart NN—Pennsylvania

■ 2. Section 52.2037 is amended by:

■ a. Removing and reserving paragraph (j)(2);

■ b. Revising paragraph (k);

■ c. Adding paragraph (l).

The revision and addition read as follows:

### § 52.2037 Control strategy and rate-of-progress plans: ozone.

* * * * *

(j) * * *

(2) [Reserved]

* * * * *

(k) EPA approves the following mobile budgets of the post-1996 rate of progress plans and the 2005 attainment plan:

TRANSPORTATION CONFORMITY BUDGETS FOR THE PHILADELPHIA AREA

| Type of control strategy SIP | Year | VOC (tpd) | $NO_x$ | Date of adequacy determination |
|---|---|---|---|---|
| Post-1996 ROP Plan | 1999 | 88.6 | 109.6 | June 23, 2000 (65 FR 36438, June 8, 2000) |
| Post-1996 ROP Plan | 2002 | 69.52 | 93.13 | June 23, 2000 (65 FR 36438, June 8, 2000) |
| Post-1996 ROP Plan | 2005 | 61.76 | 86.42 | June 23, 2000 (65 FR 36438, June 8, 2000) |
| Attainment Demonstration | 2005 | 79.69 | 144.73 | June 12, 2003 (68 FR 31700, May 28, 2003) |

(1) [Reserved]

(2) [Reserved]

(l) EPA approves the Commonwealth of Pennsylvania's revised 1990 and the 2005 VOC and $NO_X$ highway mobile emissions inventories and the 2005 motor vehicle emissions budgets for the 1-hour ozone attainment SIP for the Philadelphia-Wilmington-Trenton severe ozone nonattainment area. These revisions were submitted by the Pennsylvania Department of Environmental Protection on January 17, 2003. Submission of these revised MOBILE6-based motor vehicle emissions inventories was a requirement of EPA's approval of the attainment demonstration under paragraph (j) of this section.

[FR Doc. 03–25634 Filed 10–9–03; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 62

[NV–AM–NMI–103–NEGDECa; FRL–7572–5]

## Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerator Units; Control of Emissions From Existing Large Municipal Waste Combustors; Nevada; American Samoa; Northern Mariana Islands

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve negative declarations submitted by American Samoa, Northern Mariana Islands, and Nevada. The negative declarations from American Samoa and Northern Mariana Islands certify that large municipal waste combustors, subject to the requirements of sections 111(d) and 129 of the Clean Air Act, do not exist within the air pollution control jurisdiction of these agencies. The negative declaration from Nevada certifies that there are no existing hospital/medical/infectious waste incinerator units within the Nevada Division of Environmental Protection's air pollution control jurisdiction.

**DATES:** This rule is effective on December 9, 2003 without further notice, unless EPA receives adverse comments by November 10, 2003. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**ADDRESSES:** Send comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Sections 111(d) and 129 of the Clean Air Act (CAA or the Act) require States to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines (EG) for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources. However, section 129 of the CAA also requires EPA to promulgate EG for hospital/medical/infectious waste incinerator units (HMIWIs) and large municipal waste combustors (MWCs) that emit a mixture of air pollutants. These pollutants include particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans. The EG for HMIWI were published in final form on September 15, 1997 (62 FR 48348), and are located at 40 CFR part 60, subpart Ce. The EG for large MWC were promulgated on December 19, 1995, and are located at 40 CFR part 60, subpart Cb (*see* 60 FR 65387). On August 25, 1997, EPA amended subpart Cb to apply only to MWC units with an individual capacity to combust more than 250 tpd of MSW (*see* 62 FR 45116).

Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of State plans for controlling designated pollutants. Also, 40 CFR part 62 provides the procedural framework for the submission of these plans. When designated facilities are located in a State, the State must then develop and submit a plan for the control of the designated pollutant. However, 40 CFR 60.23(b) and 62.06 provide that if there are no existing sources of the designated pollutant in the State, the State may submit a letter of certification to that effect (*i.e.*, negative declaration) in lieu of a plan. The negative declaration exempts the State from the requirements of subpart B for the submittal of a 111(d)/129 plan.

### II. Final EPA Action

The Nevada Division of Environmental Protection has determined that there are no designated facilities subject to the HMIWI EG requirements in its air pollution control jurisdiction. The American Samoa Environmental Protection Agency and the Commonwealth of the Northern Mariana Islands Division of Environmental Quality have determined that there are no designated facilities subject to the large MWC EG requirements in their respective air pollution control jurisdictions. Accordingly, each air pollution control agency has submitted to EPA a negative declaration letter certifying this fact. EPA is amending part 62 to reflect the receipt of these negative declaration letters from the noted air pollution control agencies. The submittal dates of these letters are listed in the following table:

| Air pollution control agency | Date of negative declaration |
|---|---|
| Nevada DEP (HMIWI) ......... | May 26, 1998. |
| American Samoa (large MWC). | Jan. 20, 1998. |
| Northern Mariana Islands (large MWC). | Jan. 27, 1998. |

After publication of this **Federal Register** notice, if a large MWC or HMIWI facility is later found within these jurisdictions, then the overlooked facility will become subject to the requirements of the appropriate Federal 111(d)/129 plan, contained in 40 CFR part 62. The Federal plan would no longer apply if EPA subsequently were to receive and approve a 111(d)/129 plan from the jurisdiction with the overlooked facility.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action simply reflects already existing Federal requirements for State air pollution control agencies under 40 CFR parts 60 and 62. In the Proposed Rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve each negative declaration should relevant adverse or critical comments be filed.

This rule will be effective December 9, 2003 without further notice unless the Agency receives relevant adverse comments by November 10, 2003. If EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, then EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## III. Statutory and Executive Order Reviews

### *A. General Requirements*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State certifications as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves State certifications implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing 111(d)/129 plan submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U S.C. 3501 *et seq.*).

### *B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 9, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the section 111(d)/129 negative declarations submitted by the air pollution control agencies in Nevada, American Samoa, and Northern Mariana Islands may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

## List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfuric acid plants, Waste treatment and disposal.

Dated: September 25, 2003.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

■ Part 62, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

## Subpart DD—Nevada

■ 2. Subpart DD is amended by adding an undesignated center heading and § 62.7135 to read as follows:

### Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

### § 62.7135 Identification of plan—negative declaration.

Letter from the Nevada Division of Environmental Protection, submitted on May 26, 1998, certifying that there are no existing hospital/medical/infectious waste incineration units subject to 40 CFR part 60, subpart Ce, of this chapter.

■ 3. Part 62 is amended by adding Subpart AAA to read as follows:

### Subpart AAA—American Samoa

### Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons per Day of Municipal Solid Waste

**§ 62.12900 Identification of plan—negative declaration.**

Letter from the American Samoa Environmental Protection Agency, submitted on January 20, 1998, certifying that there are no municipal waste combustion units subject to part 60, subpart Cb, of this chapter.

■ 4. Part 62 is amended by adding Subpart DDD to read as follows:

### Subpart DDD—Northern Mariana Islands

### Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons per Day of Municipal Solid Waste

**§ 62.13600 Identification of plan—negative declaration.**

Letter from the Commonwealth of the Northern Mariana Islands Division of Environmental Quality, submitted on January 27, 1998, certifying that there are no municipal waste combustion units subject to part 60, subpart Cb, of this chapter.

[FR Doc. 03–25802 Filed 10–9–03; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 63

**[Docket ID No. OAR–2002–0043; FRL–7551–4]**

**RIN 2060–AH03**

## National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This action promulgates national emission standards for hazardous air pollutants (NESHAP) for primary magnesium refining facilities. The EPA has identified primary magnesium refining facilities as a major source of hazardous air pollutant (HAP) emissions. The NESHAP implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting application of the maximum achievable control technology (MACT).

The HAP emitted by facilities in the primary magnesium refining source category include chlorine, hydrochloric acid, dioxin/furan, and trace amounts of several HAP metals. Exposure to these substances has been demonstrated to cause adverse health effects, including chronic and acute disorders of the blood, heart, kidneys, reproductive system, and central nervous system. Some of these pollutants are considered to be carcinogens, and all can cause toxic effects in humans following sufficient exposure.

**EFFECTIVE DATE:** October 10, 2003.

**ADDRESSES:** The official public docket is the collection of materials used in developing the final rule and is available for public viewing at the EPA Docket Center (EPA/DC), EPA West, Room B–102, 1301 Constitution Ave., NW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Lula Melton, Metals Group, Emission Standards Division (C439–02), U.S. EPA, Research Triangle Park, NC 27711, telephone number: (919) 541–2910, electronic mail address: *melton.lula@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

*Regulated Entities.* Categories and entities potentially regulated by this action include:

| Category | NAICS [1] | Examples of regulated entities |
|---|---|---|
| Industry | 331419 | Primary refiners of nonferrous metals (magnesium) by electrolytic methods. |

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.9881 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*Docket.* The EPA has established an official public docket for this action including both Docket ID No. OAR–2002–0043 and Docket ID No. A–2002–0027. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to the final rule. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is available for public viewing at the EPA Docket Center (Air Docket), EPA West, Room B–102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

*Electronic Docket Access.* You may access the final rule electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through EPA Dockets. Once in the system, select "search," then key in the appropriate docket identification number.

*Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of the final rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

*Judicial Review.* Under CAA section 307(b)(1), judicial review of the final NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by December 9, 2003. Only those objections to the NESHAP which were raised with reasonable specificity during the public comment period may be raised during judicial review. Under CAA section 307(b)(2), the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding brought by the EPA to enforce these requirements.

*Outline.* The information presented in this preamble is organized as follows:

I. Background
II. Summary of the Final Rule
  A. What are the affected sources and emission points?
  B. What are the compliance deadlines?
  C. What are the emission limitations and work practice standards?
  D. What are the operation and maintenance requirements?
  E. What are the initial compliance requirements?
  F. What are the continuous compliance requirements?
  G. What are the notification, recordkeeping, and reporting requirements?
III. Summary of Responses to Major Comments
IV. Summary of Environmental, Energy, and Economic Impacts
V. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Reform Act
  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
  G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks
  H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
  I. National Technology Transfer Advancement Act
  J. Congressional Review Act

## I. Background

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The category of major sources covered by today's final NESHAP for Primary Magnesium Refining, was listed on July 16, 1992 (57 FR 31576). Major sources of HAP are those that emit or have the potential to emit greater than 10 tons per year (tpy) of any one HAP or 25 tpy of any combination of HAP. Additional information on the NESHAP development process can be found in the preamble to the proposed rule (68 FR 2970).

We received one letter with substantive comments on the proposed NESHAP. Today's final rule reflects our full consideration of the comments we received. Additional information is available in the Response to Comments document in Docket No. OAR–2002–0043.

In addition to responding to comments, we made two minor clarifications from the proposed rule that are discussed in the final rule summary. These minor clarifications are not new requirements but simply ensure consistency in the final rule.

## II. Summary of the Final Rule

### *A. What Are the Affected Sources and Emission Points?*

The affected source is each new or existing primary magnesium refining facility. An existing affected source is one constructed or reconstructed on or before January 22, 2003. We have identified one existing affected source (US Magnesium Corporation) that will be subject to the final rule. This plant produces magnesium from brine (salt water) taken from the Great Salt Lake. A new affected source is one constructed or reconstructed after January 22, 2003. The final rule covers emissions from spray dryers, the melt reactor system, the launder off-gas system, and magnesium chloride storage bins. The final rule also covers fugitive dust emissions.

### *B. What Are the Compliance Deadlines?*

The owner or operator of an existing affected source must comply by October 11, 2004. New or reconstructed sources that startup on or before October 10, 2003 must comply by October 10, 2003. New or reconstructed sources that startup after October 10, 2003 must comply upon initial startup.

### *C. What Are the Emission Limitations and Work Practice Standards?*

The final rule includes mass rate emission limits in pounds per hour (lbs/hr) for chlorine, hydrochloric acid (HCl), particulate matter (PM), and particulate matter less than 10 microns ($PM_{10}$). Additional emission limits in grains per dry standard cubic foot (gr/dscf) apply to magnesium chloride storage bins. We clarified that both the mass emission rate limit and concentration limit for $PM_{10}$ and HC1 apply to emissions from magnesium chloride storage bins. This clarification was made to be consistent with the requirements in the current operating permit for the affected source. The emission limits are shown in Table 1 of this preamble.

TABLE 1.—MASS RATE EMISSION LIMITS (LBS/HR)

| Emission point | Chlorine | HCl | PM | $PM_{10}$ |
|---|---|---|---|---|
| Spray dryers | | 200 | 100 | |
| Magnesium chloride storage bins [1] | | 47.5 | | 2.7 |
| Melt/reactor system | 100 | 7.2 | | 13.1 |
| Launder off-gas system | 26.0 | 46.0 | 37.5 | |

[1] Additional limits are 0.35 gr/dscf of HCl and 0.016 gr/dscf of $PM_{10}$.

The final rule also includes an emission limit for each melt/reactor system of 36 nanograms of dioxin/furan toxicity equivalents per dry standard cubic meter (ng TEQ/dscm) corrected to 7 percent oxygen. Dioxins/furans include a group of 17 chemicals or congeners that share certain similar chemical structures and biological characteristics. The 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) congener is the most well studied and the most toxic of these compounds. Scientists believe that dioxins cause effects in similar ways. Because of this and because exposure is typically to variable mixtures of dioxin-like compounds, we use toxicity equivalency factors (TEF) that compare the potential toxicity of each of the individual dioxin-like compounds to the relative toxicity of TCDD. With such factors, the toxicity for a mixture can be expressed in terms of its TEQ, which is the amount of TCDD it would take to equal the combined toxic effect of all the dioxin-like compounds found in the mixture. To calculate the TEQ, the concentration of each dioxin-like compound is multiplied by its respective TEF. We examined a beyond-the-floor alternative for dioxins/furans and determined that the high cost coupled with the small reduction in dioxin/furan emissions does not justify the beyond-the-floor alternative.

The emission limitations include operating limits for control devices. All owners or operators using a wet scrubber to meet an emission limit in the final rule must establish and meet operating limits for pressure drop and scrubber water flow rate.

The work practice standards require owners or operators to prepare a written plan that describes the measures that will be used to control fugitive dust emissions from all unpaved roads and other unpaved operational areas. The fugitive dust emissions control plan must be approved by the Administrator, and the requirement to operate according to the provisions in the plan must be incorporated by reference in the title V operating permit. In the final rule, we clarified the compliance and recordkeeping requirements for the fugitive dust control plan to be consistent with the work practice requirements in general, such as those in the operation and maintenance plan. The control of fugitive dust emissions will reduce PM which is a surrogate for metal HAP.

### *D. What Are the Operation and Maintenance Requirements?*

All owners or operators of plants subject to the final rule are required to prepare and implement a written startup, shutdown, and malfunction plan according to the requirements in § 63.6(e) of the NESHAP General Provisions (40 CFR part 63, subpart A). A written operation and maintenance plan is also required for control devices subject to an operating limit. The plan must describe procedures for monthly inspections and preventative maintenance requirements for control devices.

### *E. What Are the Initial Compliance Requirements?*

The final rule requires a performance test for each control device to demonstrate initial compliance with the applicable emission limits of chlorine, HCl, PM, $PM_{10}$, and dioxin/furan. The EPA Method 26 or 26A in 40 CFR part 60, appendix A, is the reference method for chlorine and HCl. The reference method for PM is EPA Method 5 or 5D in 40 CFR part 60, appendix A. The reference method for $PM_{10}$ is EPA Method 201 or 201A in 40 CFR part 60, appendix A. The EPA Method 23 of 40 CFR part 60, appendix A, is the reference method for dioxin/furan. The final rule also requires owners or operators to establish operating limits for scrubber pressure drop and scrubber water flow rate concurrent with the initial performance tests.

### *F. What Are the Continuous Compliance Requirements?*

The final rule requires primary magnesium refineries to conduct performance tests at least twice during each title V operating permit term (at midterm and renewal) to demonstrate continuous compliance with the emission limits. Owners or operators are also required to monitor operating parameters for control devices subject to operating limits and carry out the procedures in their fugitive dust emissions control plan and their operation and maintenance plan.

For wet scrubbers, owners or operators are required to use continuous parameter monitoring systems (CPMS) to measure and record the hourly average pressure drop and scrubber water flow rate. To demonstrate continuous compliance, owners or operators must keep records documenting conformance with the monitoring requirements and the installation, operation, and maintenance requirements for CPMS.

### *G. What Are the Notification, Recordkeeping, and Reporting Requirements?*

We selected the notification, recordkeeping, and reporting requirements to be consistent with the NESHAP General Provisions (40 CFR part 63, subpart A). One-time notifications are required by EPA to know what facilities are subject to the final standards, if a facility has complied with the final rule requirements, and when certain events, such as performance tests, are scheduled. Semiannual compliance reports containing information on any deviation from the final rule requirements are also required. These reports include information on any deviation that occurred during the reporting period; if no deviation occurred, only summary information is required. Consistent with the NESHAP General Provisions, we also require an immediate report of any startup, shutdown, or malfunction where the actions taken in response were not consistent with the startup, shutdown, and malfunction plan. This information is needed to determine if changes need to be made to the plan. By-passing the control device for maintenance activities is not considered a startup, shutdown, or malfunction event. Records of information needed to document compliance with the final rule requirements are required. These notifications, reports, and records are the minimum needed to ensure initial and continuous compliance.

## III. Summary of Responses to Major Comments

We received substantive comments from only one commenter, and this commenter represents the primary magnesium plant affected by the final rule.

*Comment:* The commenter stated that a dioxin/furan emission limit is not appropriate for the primary magnesium industry because EPA has applied these limits primarily to facilities that burn wastes. Other industries, such as petroleum refineries and iron and steel foundries, are known to emit dioxin/furan; however, EPA did not propose limits for them. The commenter also stated that the dioxin/furan limit cannot be justified on the basis of health risk because the facility is in a remote location, and the nearest resident is 25 miles away. The commenter recommended that EPA use PM as a surrogate for dioxin/furan emissions from the melt reactor because: EPA established MACT for dioxin/furan as the PM control devices on the melt reactor, PM is used as a surrogate for other pollutants in the final rule and has been used as a surrogate for dioxin/furan in other rules, the dioxin/furan emissions are mainly in particulate form, the dioxin/furan limit will obtain no additional reduction beyond that obtained using PM as a surrogate, and the dioxin/furan limit will add significantly to the cost of stack testing with no apparent gain.

*Response:* We set a dioxin/furan limit because it is a HAP of concern with respect to toxicity. We have adequate test data (two tests composed of three runs each) to characterize emission control performance, and dioxin/furan formation and control is not always correlated to PM formation and control. First, the formation of dioxin/furans in combustion devices with an available source of chlorine is well documented, and it is not a concern only for facilities that burn waste. The test data from this industry confirm the formation and emissions of dioxin/furans from this emissions source. Second, we do not agree that the control device for PM will adequately control the emissions of dioxin/furans. There are factors other than the PM control device which may affect the formation and control of dioxin/furan, such as the composition and concentrations of precursors, temperature, and process conditions. Dioxins are formed in acid gases leaving the combustion device, and the means of control is not necessarily the particulate control system but quenching of gases to control the temperature in the device (to assure that temperature does not fall in the range which optimizes dioxin/furan formation).

The MACT control system for dioxin/furans is the entire scrubber train—the packed tower scrubbers (for HCl control) and the venturi scrubber (for PM control)—and not just the PM control device. That is, the control of dioxin/furans includes the rapid cooling of the exhaust gas that occurs in the packed tower absorbers, which limits the dioxin/furan formation. Therefore, we believe a dioxin/furan limit is necessary to ensure that process and control device operations do not change in the future in a manner that might increase the formation and release of dioxin/furan, even if the overall PM control level remains the same.

The dioxin/furan emission limit is not based on a determination that health risks exist; it is based on technology and the floor level of control that has been achieved. Stack testing every 2.5 years is not costly or unreasonable to provide assurance that the dioxin/furan limit is being achieved. Moreover, the commenter did not provide any information as to how this stack testing will add significantly to the costs of compliance with the final NESHAP.

*Comment:* The commenter disagreed with the approach used to set the emission limit for dioxin/furan and claimed it does not provide a reasonable margin of safety to ensure continuous compliance. The commenter suggests that a limit of 50 ng TEQ/dscm is statistically valid. However, the commenter recommended that a minimum safety factor of three be applied to the average of results from the two stack tests (21.5 ng TEQ/dscm) to develop a limit of 65 ng TEQ/dscm rather than a limit of 36 ng TEQ/dscm as proposed. The commenter stated this is reasonable because of the high variability in the test results and because of the inherent inaccuracies in the dioxin/furan sampling and analysis, especially at these extremely low levels of detection.

*Response:* We chose 36 ng TEQ/dscm because it was the highest result from any of the six runs. This approach accounts for inherent variability, and an additional margin of safety is provided by determining compliance from the average of three runs. The commenter estimated the 99th percentile for single test runs. The variability of the average of three runs is more appropriate than the variability of a single test run because compliance is determined from the average of three test runs rather than for each single test run.

To illustrate the impact of using the average of three runs, we performed a Monte Carlo simulation of 5,000 runs based on a normal distribution developed from the test results for six runs. From the simulation, the 99th percentile for individual runs was 44 ng TEQ/dscm compared to a 99th percentile of 32 ng TEQ/dscm for the average of three runs. Consequently, since the emission limit is enforced based on three-run averages, the proposed limit of 36 ng TEQ/dscm is close to the 99th percentile of performance. We believe that the limit as proposed (and included in the final rule) is achievable, and the simulation indicates it accounts for variability.

The commenter mentioned process variability and uncertainty associated with sampling and analysis as reasons for a higher limit. However, the variability in the process, sampling, and analysis are inherently included in the runs we used to derive the limit and using the highest run accommodates this variability. In addition, there is no need to artificially increase the limit by multiplying the average of the test results by three because the statistical simulation shows that the proposed limit is reasonable. With testing performed every 2.5 years and a limit at about the 99th percentile, the limit would be exceeded no more than once every 250 years if the process and control device are operated as they were during the two performance tests.

While we were evaluating the data discussed by the commenter, we discovered an error in the 1998 test report. The test contractor inadvertently switched the TEF for two congeners. The net effect is that the overall average for six runs is 18 ng TEQ/dscm instead of 21.5 ng TEQ/dscm. This correction had no effect on the highest run and did not change the limit that was originally proposed.

*Comment:* The commenter stated that the World Health Organization's 1998 TEF scheme should be used to assign toxic equivalency, and this scheme should be stated in the final rule.

*Response:* Based on our dioxin reassessment report, we agree with the commenter and have incorporated the updated TEF scheme in the final rule. The effect on the test results was small, and the highest run remained at 36 ng TEQ/dscm. Consequently, the level of the final standard remains as proposed.

## IV. Summary of Environmental, Energy and Economic Impacts

Generally, we do not expect the impacts of the final rule to be very significant. Currently, the one operating primary magnesium plant has all of the required air pollution control equipment in place and operating. The only impacts will be the estimated cost of $43,000 for the additional monitoring, recordkeeping and reporting requirements required by the final rule.

## V. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that the final rule is not a "significant regulatory action" under the terms of Executive Order 12866, and is therefore not subject to OMB review.

### *B. Paperwork Reduction Act*

The information collection requirements in the final rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (ICR 2098.02). The information collection requirements are not enforceable until OMB approves them.

The information requirements in the final rule are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to NESHAP. The records and reports required by the final rule are necessary for EPA to identify major sources and new or reconstructed sources subject to the rule, ensure that MACT is being properly applied, and ensure that the emission control devices are being properly operated and maintained on a continuous basis. Based on the reported information, EPA can decide which plants, records, or processes should be inspected. These recordkeeping and reporting requirements are specifically authorized by section 112 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B.

The annual average public reporting and recordkeeping burden for this collection of information over the first 3 years of the information collection request (ICR) is estimated to total 731 labor hours per year. This includes six responses per year from one respondent with an average of 122 hours per response. The total annualized cost burden to the facility is estimated at $43,000, including labor, capital, and operation and maintenance. No additional capital cost for monitoring devices or annual costs for operation and maintenance costs are attributable to the final rule because the affected plant has already installed all continuous monitoring systems as a result of State requirements.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations in 40 CFR part 63 are listed in 40 CFR part 9. When the ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in the final rule.

### *C. Regulatory Flexibility Act*

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule. The EPA has also determined that the final rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business according to Small Business Administration (SBA) size standards for NAICS code 331419 (*i.e.*, Primary Magnesium Refining) of 1,000 or fewer employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. Based on the above definition of small entities, no small entities are subject to the final rule and its requirements.

### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule contains no Federal mandate (under the regulatory provisions of the UMRA) for State, local, or tribal governments. The EPA has determined that the final rule does not contain a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector in any 1 year. The maximum total annual cost of the final rule for any year has been estimated to be less than $48,000. Thus, the final rule is not subject to sections 202 and 205 of the UMRA. In addition, the EPA has determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's final rule is not subject to the requirements of section 203 of the UMRA.

### *E. Executive Order 13132: Federalism*

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments. Thus, Executive Order 13132 does not apply to the final rule.

### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175 (65 FR 67249, November 6, 2000), requires the EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

The final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. No tribal governments own facilities subject to the final rule. Thus, Executive Order 13175 does not apply to the final rule.

### *G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks*

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant," as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045 because it is based on technology and not on health or safety risks.

### *H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

The final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

### *I. National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law 104–113; 15 U.S.C 272 *note*), directs the EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (such as material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The final rule involves technical standards. Therefore, the EPA conducted a search to identify potentially applicable voluntary consensus standards. However, we identified no such standards as alternatives to EPA Methods 1, 2, 2F, 2G, 3, 3A, 3B, 4, 5, 5D, 23, 26, 26A, 201, and 201A and none were brought to our attention in comments. The search and review results are available in Docket OAR–2002–0043.

### *J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. The final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 64

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: August 25, 2003.

**Marianne Lamont Horinko,**

*Acting Administrator.*

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is amended as follows:

## PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

■ 2. Part 63 is amended by adding subpart TTTTT to read as follows:

## Subpart TTTTT—National Emissions Standards for Hazardous Air Pollutants for Primary Magnesium Refining

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## What This Subpart Covers

### § 63.9880 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for primary magnesium refineries. This subpart also establishes requirements to demonstrate initial and continuous compliance with all applicable emission limitations, work practice standards, and operation and maintenance requirements.

### § 63.9881 Am I subject to this subpart?

You are subject to this subpart if you own or operate a primary magnesium refinery that is (or is part of) a major source of hazardous air pollutant (HAP) emissions. Your primary magnesium refinery is a major source of HAP if it emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year.

### § 63.9882 What parts of my plant does this subpart cover?

(a) The affected sources are each new and existing primary magnesium refining facility.

(b) This subpart covers emissions from each spray dryer stack, magnesium chloride storage bins scrubber stack, melt/reactor system stack, and launder off-gas system stack at your primary magnesium refining facility. This subpart also covers fugitive dust emissions.

(c) Each primary magnesium refining facility is existing if you commenced construction or reconstruction of the affected source before January 22, 2003.

(d) Each primary magnesium refining facility is new if you commence construction or reconstruction of the affected source on or after January 22, 2003. An affected source is reconstructed if it meets the definition of reconstruction in § 63.2.

### § 63.9883 When do I have to comply with this subpart?

(a) If you have an existing source, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you no later than October 11, 2004.

(b) If you have a new affected source and its initial startup date is on or before October 11, 2003, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you by October 10, 2003.

(c) If you have a new affected source and its initial startup date is after October 10, 2003, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you upon initial startup.

(d) If your primary magnesium refinery is an area source that becomes a major source of HAP, the compliance dates in paragraphs (d)(1) and (2) of this section apply to you:

(1) Any portion of the existing primary magnesium refinery that is a new affected source or a new reconstructed source must be in compliance with this subpart upon startup.

(2) All other parts of the primary magnesium refinery must be in compliance with this subpart no later than 2 years after it becomes a major source.

(e) You must meet the notification and schedule requirements in § 63.9930. Several of these notifications must be submitted before the compliance date for your affected source.

## Emission Limitations and Work Practice Standards

### § 63.9890 What emission limitations must I meet?

(a) You must meet each emission limit in Table 1 to this subpart that applies to you.

(b) For each wet scrubber applied to meet any particulate matter, particulate matter less than 10 microns ($PM_{10}$), chlorine, hydrochloric acid, or dioxins/furans emission limit in Table 1 to this subpart, you must maintain the hourly average pressure drop and scrubber liquid flow rate at or above the minimum level established during the initial or subsequent performance test.

### § 63.9891 What work practice standards must I meet for my fugitive dust sources?

(a) You must prepare and at all times operate according to a fugitive dust emissions control plan that describes in detail the measures that will be put in place to control fugitive dust emissions from all unpaved roads and other unpaved operational areas.

(b) You must submit a copy of your fugitive dust emissions control plan for approval to the Administrator on or before the applicable compliance date for the affected source as specified in § 63.9883. The requirement to operate according to the fugitive dust emissions control plan must be incorporated by reference in the source's operating permit issued by the permitting authority under 40 CFR part 70 or 40 CFR part 71.

(c) You can use an existing fugitive dust emissions control plan provided it meets the requirements in paragraphs (c)(1) through (3) of this section.

(1) The plan satisfies the requirements of paragraph (a) of this section.

(2) The plan describes the current measures to control fugitive dust emission sources.

(3) The plan has been approved as part of a State implementation plan or title V permit.

(d) You must maintain a current copy of the fugitive dust emissions control plan on-site and available for inspection upon request. You must keep the plan for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

## Operation and Maintenance Requirements

### § 63.9900 What are my operation and maintenance requirements?

(a) As required by § 63.6(e)(1)(i), you must always operate and maintain your affected source, including air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by this subpart.

(b) You must prepare and operate at all times according to a written operation and maintenance plan for each control device subject to an operating limit in § 63.9890(b). Each plan must address preventative maintenance for each control device, including a preventative maintenance schedule that is consistent with the manufacturer's instructions for routine and long-term maintenance.

(c) You must maintain a current copy of the operation and maintenance plan required in paragraph (b) of this section on-site and available for inspection upon request. You must keep the plan for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

## General Compliance Requirements

### § 63.9910 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations, work practice standards, and operation and maintenance requirements in this subpart at all times, except during periods of startup, shutdown, and malfunction as defined in § 63.2.

(b) You must develop and implement a written startup, shutdown and malfunction plan according to the provisions in § 63.6(e)(3).

## Initial Compliance Requirements

### § 63.9911 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) As required in § 63.7(a)(2), you must conduct a performance test to demonstrate initial compliance with each emission limit in Table 1 to this subpart that applies to you as indicated in paragraphs (a)(1) through (3) of this section:

(1) Within 180 calendar days after the compliance date that is specified in § 63.9883 for your existing affected source;

(2) By April 7, 2004 for a new source that has an initial startup date before October 10, 2003; or

(3) Within 180 days after initial startup for a new source that has an initial startup date after October 10, 2003.

(b) For each operation and maintenance requirement that applies to you where initial compliance is not demonstrated using a performance test, you must demonstrate initial compliance within 30 calendar days after the compliance date that is specified for your affected source in § 63.9883.

(c) If you commenced construction or reconstruction between January 22, 2003 and October 10, 2003, you must demonstrate initial compliance with either the proposed emission limitation or the promulgated emission limitation no later than April 7, 2004 or no later than 180 calendar days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(d) If you commenced construction or reconstruction between January 22, 2003 and October 10, 2003, and you chose to comply with the proposed emission limit when demonstrating initial compliance, you must conduct a second performance test to demonstrate compliance with the promulgated emission limit by April 11, 2005, or after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

### § 63.9912 When must I conduct subsequent performance tests?

You must conduct subsequent performance tests to demonstrate continuous compliance with all applicable emission limits in Table 1 to this subpart no less frequently than twice (at mid-term and renewal) during each term of your title V operating permit.

### § 63.9913 What test methods and other procedures must I use to demonstrate initial compliance with the emission limits for particulate matter and $PM_{10}$?

(a) You must conduct each performance test that applies to your affected source according to the requirements in § 63.7(e)(1).

(b) To determine compliance with the applicable emission limits for particulate matter in Table 1 to this subpart, you must follow the test methods and procedures in paragraphs (b)(1) and (2) of this section.

(1) Determine the concentration of particulate matter according to the following test methods in appendix A to 40 CFR part 60:

(i) Method 1 to select sampling port locations and the number of traverse points. Sampling ports must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2F, or 2G to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 5 or 5D, as applicable, to determine the concentration of particulate matter.

(vi) Method 201 or 201A, as applicable, to determine the concentration of $PM_{10}$.

(2) Collect a minimum sample volume of 60 dry standard cubic feet (dscf) during each particulate matter or $PM_{10}$ test run. Three valid test runs are needed to comprise a performance test.

(c) Compute the mass emissions rate in pounds per hour (lbs/hr) for each test run using Equation 1 of this section:

$$E_{lbs/hr} = \frac{C_s \times Q_{std} \times 60}{7{,}000} \qquad \text{(Eq. 1)}$$

Where:

$E_{lbs/hr}$ = Mass emissions rate of particulate matter or $PM_{10}$ (lbs/hr);

$C_s$ = Concentration of particulate matter or $PM_{10}$ in the gas stream, grains per dry standard cubic feet (gr/dscf);

$Q_{std}$ = Volumetric flow rate of stack gas, dry standard cubic feet per minute (dscfm);

60 = Conversion factor, minutes per hour (min/hr); and

7,000 = Conversion factor, grains per pound (gr/lb).

### § 63.9914 What test methods and other procedures must I use to demonstrate initial compliance with chlorine and hydrochloric acid emission limits?

(a) You must conduct each performance test that applies to your affected source according to the requirements in § 63.7(e)(1).

(b) To determine compliance with the applicable emission limits for chlorine and hydrochloric acid in Table 1 to this subpart, you must follow the test methods and procedures specified in paragraphs (b)(1) and (2) of this section.

(1) Determine the concentration of chlorine and hydrochloric acid according to the following test methods in appendix A to 40 CFR part 60:

(i) Method 1 to select sampling port locations and the number of traverse points. Sampling ports must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2F, or 2G to determine the volumetric flow of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 26 or 26A, as applicable, to determine the concentration of hydrochloric acid and chlorine.

(2) Collect a minimum sample of 60 dscf during each test run for chlorine and hydrochloric acid. Three valid test runs are needed to comprise a performance test.

(c) Compute the mass emissions rate (lbs/hr) for each test run using Equation 1 of this section:

$$E_{lbs/hr} = \frac{C_s \times Q_{std} \times 60}{35.31 \times 454{,}000} \qquad \text{(Eq. 1)}$$

Where:

$E_{lbs/hr}$ = Mass emissions rate of chlorine or hydrochloric acid (lbs/hr);

$C_s$ = Concentration of chlorine or hydrochloric acid in the gas stream, milligrams per dry standard cubic meter (mg/dscm);

$Q_{std}$ = Volumetric flow rate of stack gas (dscfm);

60 = Conversion factor (min/hr);

35.31 = Conversion factor (dscf/dscm); and

454,000 = Conversion factor (mg/lb).

### § 63.9915 What test methods and other procedures must I use to demonstrate initial compliance with dioxin/furan emission limits?

(a) You must conduct each performance test that applies to your affected source according to the requirements in § 63.7(e)(1).

(b) To determine compliance with the applicable emission limit for dioxins/furans in Table 1 to this subpart, you must follow the test methods and procedures specified in paragraphs (b)(1) and (2) of this section.

(1) Determine the concentration of dioxin and furan according to the following test methods in appendix A to 40 CFR part 60:

(i) Method 1 to select sampling port locations and the number of traverse points. Sampling ports must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2F, or 2G to determine the volumetric flow of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 23 to determine the concentration of dioxins/furans. For each dioxin/furan congener measured in accordance with this paragraph (b)(v), multiply the congener concentration by its corresponding toxic equivalency factor specified in Table 2 of this subpart.

(2) Collect a minimum sample of 100 dscf during each test run. Three valid test runs are needed to comprise a performance test.

### § 63.9916 What test methods and other procedures must I use to establish and demonstrate initial compliance with the operating limits?

For a wet scrubber subject to operating limits for pressure drop and scrubber water flow rate in § 63.9890(b), you must establish site-specific operating limits according to the procedures in paragraphs (a) and (b) of this section.

(a) Using the continuous parameter monitoring system (CPMS) required in § 63.9920, measure and record the pressure drop and scrubber water flow rate at least every 15 minutes during each run of the particulate matter performance test.

(b) Compute and record the average pressure drop and scrubber water flow rate for each individual test run. Your operating limits are the lowest average individual pressure drop and scrubber water flow rate values in any of the three runs that meet the applicable emission limit.

### § 63.9917 How do I demonstrate initial compliance with the emission limitations and work practice standards that apply to me?

(a) For each affected source subject to an emission limit in Table 1 to this subpart, you have demonstrated initial compliance if:

(1) You have met the conditions in Table 3 to this subpart; and

(2) For each wet scrubber subject to the operating limits for pressure drop and scrubber water flow rate in § 63.9890(b), you have established appropriate site-specific operating limits and have a record of the pressure drop and scrubber water flow rate measured during the performance test in accordance with § 63.9916.

(b) You have demonstrated initial compliance with the work practice standards in § 63.9891 if you have certified in your notification of compliance status that:

(1) You have prepared a fugitive dust emissions control plan according to the requirements in § 63.9891 and submitted the plan for approval; and

(2) You will operate according to the requirements in the plan.

### § 63.9918 How do I demonstrate initial compliance with the operation and maintenance requirements that apply to me?

You must demonstrate initial compliance by certifying in your notification of compliance status that you have met the requirements in paragraphs (a) and (b) of this section.

(a) You have prepared the operation and maintenance plan according to the requirements in § 63.9910; and

(b) You will operate each control device according to the procedures in the plan.

## Continuous Compliance Requirements

### § 63.9920 What are my continuous monitoring requirements?

For each wet scrubber subject to the operating limits for pressure drop and scrubber water flow rates in § 63.9890(b), you must at all times monitor the hourly average pressure drop and liquid flow rate using a CPMS according to the requirements in § 63.9921(a).

### § 63.9921 What are the installation, operation and maintenance requirements for my monitors?

(a) For each wet scrubber subject to the operating limits in § 63.9890(b) for pressure drop and scrubber water flow rate, you must install, operate, and maintain each CPMS according to the requirements in paragraphs (a)(1) and (2) of this section.

(1) For the pressure drop CPMS, you must:

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure and that minimizes or eliminates pulsating pressure, vibration, and internal and external corrosion.

(ii) Use a gauge with a minimum measurement sensitivity of 0.5 inch of water or a transducer with a minimum measurement sensitivity of 1 percent of the pressure range.

(iii) Check the pressure tap for pluggage daily.

(iv) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(v) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range, or install a new pressure sensor.

(vi) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(2) For the scrubber water flow rate CPMS, you must:

(i) Locate the flow sensor and other necessary equipment in a position that provides a representative flow and that reduces swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(ii) Use a flow sensor with a minimum measurement sensitivity of 2 percent of the flow rate.

(iii) Conduct a flow sensor calibration check at least semiannually according to the manufacturer's instructions.

(iv) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(b) You must install, operate, and maintain each CPMS for a wet scrubber according to the requirements in paragraphs (b)(1) through (3) of this section.

(1) Each CPMS must complete a minimum of one cycle of operation for each successive 15-minute period.

(2) Each CPMS must have valid data for at least 95 percent of every averaging period.

(3) Each CPMS must determine and record the hourly average of all recorded readings.

### § 63.9922 How do I monitor and collect data to demonstrate continuous compliance?

(a) Except for monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times an affected source is operating.

(b) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels or to fulfill a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing compliance.

(c) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

### § 63.9923 How do I demonstrate continuous compliance with the emission limitations and work practice standards that apply to me?

(a) For each affected source subject to an emission limit in Table 1 to this subpart, you must demonstrate continuous compliance according to the requirements in Table 4 to this subpart.

(b) For each wet scrubber subject to the operating limits for pressure drop and scrubber water flow rate in § 63.9890(b), you must demonstrate continuous compliance according to the requirements in paragraphs (b)(1) and (2) of this section.

(1) Collecting and reducing the monitoring data according to § 63.9921(b); and

(2) Maintaining the hourly average pressure drop and scrubber water flow rate at or above the minimum level established during the initial or subsequent performance.

(c) You must demonstrate continuous compliance with the work practice standards in § 63.9891 by operating according to the requirements in your fugitive dust emissions control plan and recording information needed to document conformance with the requirements.

### § 63.9924 How do I demonstrate continuous compliance with the operation and maintenance requirements that apply to me?

For each emission point subject to an emission limit in Table 1 to this subpart, you must demonstrate continuous compliance with the operation and maintenance requirements in § 63.9900 by performing preventive maintenance for each control device according to § 63.9900(b) and recording all information needed to document conformance with these requirements.

### § 63.9925 What other requirements must I meet to demonstrate continuous compliance?

(a) *Deviations.* You must report each instance in which you did not meet each emission limitation in § 63.9890 or work practice standard in § 63.9891 that applies to you. This includes periods of startup, shutdown, and malfunction. You must also report each instance in which you did not meet each operation and maintenance requirement required in § 63.9900 that applies to you. These instances are deviations from the emission limitations, work practice standards, and operation and maintenance requirements in this subpart. These deviations must be reported according to the requirements in § 63.9931.

(b) *Startups, shutdowns, and malfunctions.* During periods of startup, shutdown, and malfunction, you must operate in accordance with your startup, shutdown, and malfunction plan.

(1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan.

(2) The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

## Notifications, Reports, and Records

### § 63.9930 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(f)(4), 63.9(b), and 63.9(h) that apply to you by the specified dates.

(b) As specified in § 63.9(b)(2), if you startup your affected source before October 10, 2003, you must submit your initial notification no later than February 9, 2004.

(c) As specified in § 63.9(b)(3), if you start your new affected source on or after October 10, 2003, you must submit your initial notification no later that 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test or other initial compliance demonstration, you must submit a notification of compliance status according to § 63.9(h)(2)(ii), and the requirements in paragraphs (e)(1) and (2) of this section:

(1) For each initial compliance demonstration that does not include a performance test, you must submit the notification of compliance status before the close of business on the 30th calendar day following completion of the initial compliance demonstration.

(2) For each initial compliance demonstration that does include a performance test, you must submit the notification of compliance status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

### § 63.9931 What reports must I submit and when?

(a) *Compliance report due dates.* Unless the Administrator has approved a different schedule, you must submit a semiannual compliance report to your permitting authority according to the requirements in paragraphs (a)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.9883 and ending on June 30 or December 31, whichever date comes after the compliance date that is specified for your source in § 63.9883.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after your compliance report is due.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations

pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (a)(1) through (4) of this section.

(b) *Compliance report contents.* Each compliance report must include the information in paragraphs (b)(1) through (3) of this section and, as applicable, paragraphs (b)(4) through (8) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there were no deviations from the continuous compliance requirements in §§ 63.9923 and 63.9924 that apply to you, a statement that there were no deviations from the emission limitations, work practice standards, or operation and maintenance requirements during the reporting period.

(6) If there were no periods during which a CPMS was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the CPMS was out-of-control during the reporting period.

(7) For each deviation from an emission limitation in § 63.9890 that occurs at an affected source where you are not using a CPMS to comply with an emission limitation in this subpart, the compliance report must contain the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(7)(i) and (ii) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The total operating time of each affected source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause, if applicable) as applicable and the corrective action taken.

(8) For each deviation from an emission limitation occurring at an affected source where you are using a CPMS to comply with the emission limitation in this subpart, you must include the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(8)(i) through (xi) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The date and time that each malfunction started and stopped.

(ii) The date and time that each continuous monitoring was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time, and duration that each continuous monitoring system was out-of-control, including the information in § 63.8(c)(8).

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(v) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(vi) A breakdown of the total duration of the deviations during the reporting period including those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(vii) A summary of the total duration of continuous monitoring system downtime during the reporting period and the total duration of continuous monitoring system downtime as a percent of the total source operating time during the reporting period.

(viii) A brief description of the process units.

(ix) A brief description of the continuous monitoring system.

(x) The date of the latest continuous monitoring system certification or audit.

(xi) A description of any changes in continuous monitoring systems, processes, or controls since the last reporting period.

(c) *Immediate startup, shutdown, and malfunction report.* If you had a startup, shutdown, or malfunction during the semiannual reporting period that was not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown, and malfunction report according to the requirements in § 63.10(d)(5)(ii).

(d) *Part 70 monitoring report.* If you have obtained a title V operating permit for an affected source pursuant to 40 CFR part 70 or 40 CFR part 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report for an affected source along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all the required information concerning deviations from any emissions limitation, work practice standards, or operation and maintenance requirement in this subpart. submission of the compliance report satisfies any obligation to report the same deviations in the semiannual monitoring report. However, submission of the compliance report does not otherwise affect any obligation you may have to report deviations from permit requirements for an affected source to your permitting authority.

### § 63.9932 What records must I keep?

(a) You must keep the records as indicated in paragraphs (a)(1) through (3) of this section:

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any initial notification or notification of compliance status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests and performance evaluations as required in § 63.10(b)(2)(viii).

(b) You must keep the records required in §§ 63.9932 and 63.9933 to show continuous compliance with each emission limitation, work practice standard, and operating and maintenance requirement that applies to you.

### § 63.9933 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record according to § 63.10(b)(1). You can keep the records off site for the remaining 3 years.

(d) You must keep your fugitive dust emissions control plan and your operation and maintenance plan on-site according to the requirements in §§ 63.9891(d) and 63.9900(c).

### Other Requirements and Information

#### § 63.9940 What parts of the General Provisions apply to me?

Table 4 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

#### § 63.9941 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the United States Environmental Protection Agency (U.S. EPA) or a delegated authority such as your State, local, or tribal agency. If the EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of the EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the non-opacity emission limitations in § 63.9890 and work practice standards in § 63.9891 under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

#### § 63.9942 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

*Chlorine plant bypass scrubber* means the wet scrubber that captures chlorine gas during a chlorine plant shut down or failure.

*Deviation* means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation (including operating limits) or operation and maintenance requirement;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

*Emission limitation* means any emission limit, opacity limit, or operating limit.

*Launder off-gas system* means a system that collects chlorine and hydrochloric acid fumes from collection points within the melt/reactor system building. The system then removes particulate matter and hydrochloric acid from the collected gases prior to discharge to the atmosphere.

*Magnesium chloride storage bins* means vessels that store dried magnesium chloride powder produced from the spray drying operation.

*Melt/reactor system* means a system that melts and chlorinates dehydrated brine to produce high purity molten magnesium chloride feed for electrolysis.

*Primary magnesium refining* means the production of magnesium metal and magnesium metal alloys from natural sources of magnesium chloride such as sea water or water from the Great Salt Lake and magnesium bearing ores.

*Responsible official* means responsible official as defined in § 63.2.

*Spray dryer* means dryers that evaporate brine to form magnesium powder by contact with high temperature gases exhausted from gas turbines.

*Wet scrubber* means a device that contacts an exhaust gas with a liquid to remove particulate matter and acid gases from the exhaust. Examples are packed-bed wet scrubbers and venturi scrubbers.

*Work practice standard* means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the Clean Air Act.

### Tables to Subpart TTTTT of Part 63

As required in § 63.9890(a), you must comply with each applicable emission limit in the following table:

TABLE 1 TO SUBPART TTTTT OF PART 63—EMISSION LIMITS

| For . . . | You must comply with each of the following . . . |
|---|---|
| 1. Each spray dryer stack | a. You must not cause to be discharged to the atmosphere any gases that contain particulate matter in excess of 100 lbs/hr; and |
| | b. You must not cause to be discharged to the atmosphere any gases that contain hydrochloric acid in excess of 200 lbs/hr. |
| 2. Each magnesium chloride storage bins scrubber stack. | a. You must not cause to be discharged to the atmosphere any gases that contain hydrochloric acid in excess of 47.5 lbs/hr and 0.35 gr/dscf; and |
| | b. You must not cause to be discharged to the atmosphere any gases that contain $PM_{10}$ in excess of 2.7 lbs/hr and 0.016 gr/dscf. |
| 3. Each melt/reactor system stack | a. You must not cause to be discharged to the atmosphere any gases that contain $PM_{10}$ in excess of 13.1 lbs/hr; and |
| | b. You must not cause to be discharged to the atmosphere any gases that contain hydrochloric acid in excess of 7.2 lbs/hr; and |
| | c. You must not cause to be discharged to the atmosphere any gases that contain chlorine in excess of 100 lbs/hr; and |
| | d. You must not cause to be discharged to the atmosphere any gases that contain 36 ng TEQ/dscm corrected to 7% oxygen. |
| 4. Each launder off-gas system stack | a. You must not cause to be discharged to the atmosphere any gases that contain particulate matter in excess of 37.5 lbs/hr; and |
| | b. You must not cause to be discharged to the atmosphere any gases that contain hydrochloric acid in excess of 46.0 lbs/hr; and |

TABLE 1 TO SUBPART TTTTT OF PART 63—EMISSION LIMITS—Continued

| For . . . | You must comply with each of the following . . . |
|---|---|
| | c. You must not cause to be discharged to the atmosphere any gases that contain chlorine in excess of 26.0 lbs/hr.* |

TABLE 2 TO SUBPART TTTTT OF PART 63—TOXIC EQUIVALENCY FACTORS

| Dioxin/furan congener | Toxic equivalency factor |
|---|---|
| 2,3,7,8-tetrachlorinated dibenzo-p-dioxin | 1 |
| 1,2,3,7,8-pentachlorinated dibenzo-p-dioxin | 1 |
| 1,2,3,4,7,8-hexachlorinated dibenzo-p-dioxin | 0.1 |
| 1,2,3,7,8,9-hexachlorinated dibenzo-p-dioxin | 0.1 |
| 1,2,3,6,7,8-hexachlorinated dibenzo-p-dioxin | 0.1 |
| 1,2,3,4,6,7,8-heptachlorinated dibenzo-p-dioxin | 0.01 |
| octachlorinated dibenzo-p-dioxin | 0.0001 |
| 2,3,7,8-tetrachlorinated dibenzofuran | 0.1 |
| 2,3,4,7,8-pentachlorinated dibenzofuran | 0.5 |
| 1,2,3,7,8-pentachlorinated dibenzofuran | 0.05 |
| 1,2,3,4,7,8-hexachlorinated dibenzofuran | 0.1 |
| 1,2,3,6,7,8-hexachlorinated dibenzofuran | 0.1 |
| 1,2,3,7,8,9-hexachlorinated dibenzofuran | 0.1 |
| 2,3,4,6,7,8-hexachlorinated dibenzofuran | 0.1 |
| 1,2,3,4,6,7,8-heptachlorinated dibenzofuran | 0.01 |
| 1,2,3,4,7,8,9-heptachlorinated dibenzofuran | 0.01 |
| octachlorinated dibenzofuran | 0.0001 |

As required in 63.9916, you must demonstrate initial compliance with the emission limits according to the following table:

TABLE 3 TO SUBPART TTTTT OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITS

| For . . . | You have demonstrated initial compliance if . . . |
|---|---|
| 1. Each spray dryer stack | a. The average mass flow of particulate matter from the control system applied to emissions from each spray dryer, measured according to the performance test procedures in § 63.9913(c), did not exceed 100 lbs/hr; and<br>b. The average mass flow of hydrochloric acid from the control system applied to emissions from each spray dryer, determined according to the performance test procedures in § 63.9914(c), did not exceed 200 lbs/hr. |
| 2. Each magnesium chloride storage bin scrubber stack. | a. The average mass flow of hydrochloric acid from the control system applied to the magnesium chloride storage bins scrubber exhaust, measured according to the performance test procedure in § 63.9914, did not exceed 47.5 lbs/hr and 0.35 gr/dscf; and<br>b. The average mass flow of $PM_{10}$ from the control system applied to the magnesium chloride storage bins scrubber exhaust, determined according to the performance test procedures in § 63.9913, did not exceed 2.7 lbs/hr and 0.016 gr/dscf. |
| 3. Each melt/reactor system stack | a. The average mass flow of $PM_{10}$ from the control system applied to the melt/reactor system exhaust, measured according to the performance test procedures in § 63.9913, did not exceed 13.1 lbs/hr; and<br>b. The average mass flow of hydrochloric acid from the control system applied to the melt/reactor system exhaust, measured according to the performance test procedures in § 63.9914, did not exceed 7.2 lbs/hr; and<br>c. The average mass flow of chlorine from the control system applied to the melt/reactor system exhaust, measured according to the performance test procedures in § 63.9914, did not exceed 100 lbs/hr.<br>d. The average concentration of dioxins/furans from the control system applied to the melt/reactor system exhaust, measured according to the performance test procedures in § 63.9915, did not exceed 36 ng TEQ/dscm corrected to 7% oxygen. |
| 4. Each launder off-gas system stack | a. The average mass flow of particulate matter from the control system applied to the launder off-gas system collection system exhaust, measured according to the performance test procedures in § 63.9913, did not exceed 37.5 lbs/hr; and<br>b. The average mass flow of hydrochloric acid from the control system applied to the launder off-gas system collection system exhaust, measured according to the performance test procedures in § 63.9914, did not exceed 46.0 lbs/hr; and<br>c. The average mass flow of chlorine from the control system applied to the launder off-gas system collection system exhaust, measured according to the performance test procedures in § 63.9914, did not exceed 26.0 lbs/hr. |

As required in § 63.9923, you must demonstrate continuous compliance with the emission limits according to the following table:

TABLE 4 TO SUBPART TTTTT OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS

| For . . . | You must demonstrate continuous compliance by . . . |
|---|---|
| 1. Each spray dryer stack | a. Maintaining emissions of $PM_{10}$ at or below 100 lbs/hr; and<br>b. Maintaining emissions of hydrochloric acid at or below 200 lbs/hr; and<br>c. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at mid-term and renewal). |
| 2. Magnesium chloride storage bins scrubber stack. | a. Maintaining emissions of hydrochloric acid at or below 47.5 lbs/hr and 0.35 gr/dscf; and<br>b. Maintaining emissions of $PM_{10}$ at or below 2.7 lbs/hr and 0.016 gr/dscf; and<br>c. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at mid-term and renewal). |
| 3. Each melt/reactor system stack | a. Maintaining emissions of $PM_{10}$ at or below 13.1 lbs/hr; and<br>b. Maintaining emissions of hydrochloric acid at or below 7.2 lbs/hr; and<br>c. Maintaining emissions of chlorine at or below 100 lbs/hr; and<br>d. Maintaining emissions of dioxins/furans at or below 36 ng TEQ/dscm corrected to 7% oxygen.<br>e. Conducting subsequent performance test at least twice during each term of your title V operating permit (at mid-term and renewal). |
| 4. Each launder off-gas system stack | a. Maintaining emissions of particulate matter at or below 37.5 lbs/hr; and<br>b. Maintaining emissions of hydrochloric acid at or below 46.0 lbs/hr; and<br>c. Maintaining emissions of chlorine at or below 26.0 lbs/hr; and<br>d. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at mid-term and renewal). |

As required in § 63.9950, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) shown in the following table:

TABLE 5 TO SUBPART TTTTT OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART TTTTT OF PART 63

| Citation | Subject | Applies to Subpart TTTTT | Explanation |
|---|---|---|---|
| 63.1 | Applicability | Yes. | |
| 63.2 | Definitions | Yes. | |
| 63.3 | Units and Abbreviations | Yes. | |
| 63.4 | Prohibited Activities | Yes. | |
| 63.5 | Construction and Reconstruction | Yes. | |
| 63.6(a)–(g) | Compliance with Standards and Maintenance Requirements. | Yes. | |
| 63.6(h) | Determining Compliance with Opacity and Visible Emission Standards. | No. | |
| 63.6(i)–(j) | Extension of Compliance and Presidential Compliance Exemption. | Yes. | |
| 63.7(a)(1)–(2) | Applicability and Performance Test Dates. | No | Subpart TTTTT specifies performance test applicability and dates. |
| 63.7(a)(3), (b)–(h) | Performance Testing Requirements | Yes. | |
| 63.8 except for (a)(4),(c)(4), and (f)(6) | Monitoring Requirements | Yes. | |
| 63.8(a)(4) | Additional Monitoring Requirements for Control Devices in § 63.11. | No | Subpart TTTTT does not require flares. |
| 63.8(c)(4) | Continuous Monitoring System Requirements. | No | Subpart TTTTT specifies requirements for operation of CMS. |
| 63.8(f)(6) | Relative Accuracy Test Alternative (RATA). | No | Subpart TTTTT does not require continuous emission monitoring systems. |
| 63.9 | Notification Requirements | Yes. | |
| 63.9(g)(5) | Data Reduction | No | Subpart TTTTT specifies data reduction requirements. |
| 63.10 except for (b)(2)(xiii) and (c)(7)–(8) | Recordkeeping and Reporting Requirements. | Yes. | |
| 63.10(b)(2)(xiii) | Continuous Monitoring System (CMS) Records for RATA Alternative. | No | Subpart TTTTT does not require continuous emission monitoring systems. |
| 63.10(c)(7)–(8) | Records of Excess Emissions and Parameter Monitoring Accedences for CMS. | No | Subpart TTTTT specifies recordkeeping requirements. |
| 63.11 | Control Device Requirements | No | Subpart TTTTT does not require flares. |
| 63.12 | State Authority and Delegations | Yes. | |

TABLE 5 TO SUBPART TTTTT OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART TTTTT OF PART 63—Continued

| Citation | Subject | Applies to Subpart TTTTT | Explanation |
|---|---|---|---|
| 63.13–63.15 | Addresses, Incorporation by Reference, Availability of Information. | Yes. | |

[FR Doc. 03–22447 Filed 10–9–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Parts 1 and 25

**[IB Docket No. 02–30; FCC 03–197]**

## Licensing Domestic Satellite Earth Stations in the Bush Communities of Alaska

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Communications Commission (FCC) has adopted a Report and Order that discontinue the Alaska Bush Earth Station Policy (Alaska Bush Policy), which precludes installing or operating more than one satellite earth station in any Alaskan Bush community for competitive carriage of interstate Message Telephone Service (MTS) communications, *i.e.*, ordinary interstate, interexchange toll telephone calls. Alaska Bush communities, as defined for purposes of the policy, are rural Alaskan communities of less than 1,000 residents that are isolated from larger cities by rugged terrain and harsh weather conditions.

**DATES:** Effective November 10, 2003.

**FOR FURTHER INFORMATION CONTACT:** JoAnn Lucanik at (202) 418–0873. Internet: *JoAnn.Lucanki@fcc.gov*, International Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report in IB Docket No. 02–30, RM No. 7246, FCC 03–197, adopted August 6, 2003. The complete text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and also may be purchased from the Commission's copy contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail, *qualexint@aol.com*.

### Summary of the Report and Order

The Federal Communications Commission has adopted a Report and Order that will discontinue the Alaska Bush Policy. This action eliminates a long-standing exception to the Commission's general policy favoring open entry for facilities-based competition in the provision of interstate MTS telecommunications services. We believe that allowing facilities-based competition of interstate MTS in Alaska Bush communities will encourage improvement in the quality of service available in those communities, promote more efficient delivery of service, and reduce incentives for overcharging for use of these facilities.

A complete history of the Alaska Bush Policy may be found in the Notice of Proposed Rulemaking in this proceeding and will not be repeated here. *See Policy for Licensing Domestic Satellite Earth Stations in the Bush Communities of Alaska*, Notice of Proposed Rulemaking, 67 FR 37750 (May 30, 2002). Briefly, the policy of licensing only one satellite earth station in each Alaska Bush community to provide conventional interexchange MTS was formulated in the Commission's *Tentative Decision* in 1982. Pursuant to the Alaska Bush Policy, Alascom, Inc. (Alascom), now a wholly owned subsidiary of AT&T Corp., alone or in partnership with United Utilities, Inc. (United), a local exchange carrier, was authorized to construct and operate the earth station facilities in the Alaska Bush communities and to provide MTS service. The Alaska Bush Policy was based on the principle that duplicative proposals for facilities in the Alaska Bush communities are mutually exclusive because one facility could provide all the services provided by either party, and there was no public interest benefit in the construction of duplicate MTS facilities.

When the Commission formally adopted the Alaska Bush Policy in 1984, no MTS competition, in any form, had been authorized in Alaska. *See Policies Governing the Ownership and Operation of Domestic Satellite Earth Stations in the Bush Communities in Alaska*, 49 FR 9727 (March 15, 1984), Final Decision. In 1990, however, the Alaska legislature opened most of the State's telecommunications markets to facilities-based competition, but not the Alaska Bush communities. *See* Act of June 7, 1990, 1990 Alaska Sess. Laws Ch. 93; *see also Regulations Governing the Market Structure for Interstate Interexchange Telecommunications Services*, 10 APUC 407 (1990). Five years later the Regulatory Commission of Alaska (RCA) granted General Communication, Inc. (GCI), an Alaskan facilities-based interstate long distance carrier, a temporary waiver, allowing it to install earth stations in 50 Alaska Bush communities and to provide intrastate MTS in competition with Alascom on an experimental basis. The following year the FCC's International Bureau (Bureau) granted GCI's request to waive the Alaska Bush Policy in the same 50 Alaska Bush communities, thus allowing GCI to use its earth stations to provide both interstate and intrastate MTS in these 50 communities. *See Petition of General Communication, Inc. for a Partial Waiver of the Bush Earth Station Policy*, Memorandum Opinion and Order, 11 FCC Rcd 2535 (Int'l Bur. 1996) (GCI Waiver). The Bureau concluded that the potential public interest benefits of providing the 50 Alaska Bush communities with increased service options, improved quality, and lower rates outweighed a rigid adherence to a policy that does not provide for technological advancements and market changes.

In 2000, the RCA found that allowing GCI to construct duplicate earth stations in the 50 Alaska Bush communities had, in fact, led to a more efficient use of available satellite resources, resulting in consumers benefiting from lower retail rates and improved service quality. In view of its finding, the RCA eliminated Alaska's restrictions on facilities-based MTS competition in the Alaskan Bush. *See Consideration of the Reform of Intrastate Interexchange Telecommunications Market Structure and Regulations in Alaska*, Docket R–98–1, Order No. 6 (RCA, Nov. 20, 2000) (not published in the **Federal Register**).

Thus, the FCC's Bush Policy remains the only significant regulatory barrier to facilities-based MTS competition throughout Alaska.

On February 15, 2002, the Commission released the *NPRM* in this proceeding, proposing to discontinue the Alaska Bush Policy. The Commission noted in the *NPRM* that the Alaska Bush Policy is based on the proposition that applications for "duplicative" Alaska Bush earth stations are mutually exclusive. It also noted that the Alaska Bush Policy was formulated prior to the advent of MTS competition, and is based on a regulatory policy designed to prevent non-dominant carriers from investing in facilities at their own expense to compete with a carrier with an established facilities monopoly. Finally, the Commission pointed to the fact that the RCA has removed the parallel intrastate entry barrier. Consequently, the Commission tentatively concluded that the time has arrived to remove the barrier against facilities-based interstate MTS in the Alaska Bush as well. The Commission also tentatively concluded that facilities-based competition in the provision of interstate MTS in Alaska Bush communities will result in public interest benefits comparable to those that were realized in the 50 Alaska Bush communities in which GCI has been allowed to provide competitive MTS service. Accordingly, the Commission invited comment on its proposal to abolish the Alaska Bush Policy.

Three parties, Alascom and AT&T, GCI, and the RCA, have filed comments in response to the *NPRM*. All three commenters support the Commission's proposal to eliminate its prohibition on the installation or operation of more than one satellite earth station in any Alaska Bush community for the competitive carriage of interstate MTS.

The RCA submits that since 1995, when both the RCA and the FCC waived applicable Alaska Bush facility restrictions to allow GCI to construct duplicate earth stations in Bush communities, consumers have benefited from lower retail rates and improved service quality. According to the RCA, these benefits are what ultimately motivated it to eliminate the State's restrictions on facilities-based intrastate MTS competition in Bush Alaska in 2000. Moreover, the RCA says that facilities-based MTS competition in Alaska Bush communities will also establish an incentive for Alascom to operate more efficiently.

GCI provides specific examples of how competition between it and Alascom has benefited the Alaska Bush communities with improved telecommunication efficiency and new service offerings. According to GCI, the first and perhaps most significant technological improvement was the implementation of its Demand Assigned Multiple Access (DAMA) satellite transmission system, which allows bandwidth to be used more efficiently. Before DAMA, all channels were assigned exclusively to a certain community and could not be used for other communities; DAMA also eliminated the need for a "double hop" configuration, where two satellite hops were needed to complete a call, resulting in signal delay and frequency echo, and rendering facsimile transmission unreliable and data transmission impossible. GCI states that the success it has achieved with DAMA has caused Alascom to upgrade many of its Alaska Bush earth station facilities to digital DAMA technology. GCI also states that greater facilities efficiency has enabled it to offer telemedicine in Alaska Bush communities, as well as reliable Internet connection for schools and libraries in nearly all of the Alaska Bush communities it serves. In addition, GCI says all customers in Alaska have benefited significantly from decreased long-distance rates since it entered the market.

Alascom and AT&T also support repeal of the Alaska Bush Policy, but contend that other deregulatory actions, which they requested in a March 10, 2000 Petition, "are indivisible aspects of the [Alaska] Bush Policy" and thus, must be acted upon simultaneously. *See* Public Notice, *Pleading Cycle Established for Comments on AT&T and Alascom Petition for Structural and Other Regulatory Relief* in DA 00–603, released March 17, 2000 [not published in the **Federal Register**]. In this Petition, Alascom and AT&T requested, among other relief, that the Commission eliminate structural separation and tariffing requirements under which Alascom has been providing certain carrier-to-carrier services in Alaska. On January 7, 2003, Alascom filed a petition for waiver from the requirement that it annually file revised cost-based rates for these carrier-to-carrier services. See also Public Notice, *Pleading Cycle Established for Comments on AT&T and Alascom Petition for Structural and Other Regulatory Relief* in DA 00–603, released March 17, 2000 (not published in the **Federal Register**). Alascom and AT&T point out in these petitions that Alascom now must disaggregate all of its service costs within Alaska by location, resulting in more than 900 separate cost points. Alascom and AT&T contend that no other carrier has ever been forced to provide a service based upon stand-alone location-specific costs. The present tariff requirements, they submit, impose unwarranted competitive regulatory burdens that are preventing Alascom from providing its customers with improved service. These petitions are under consideration in separate dockets.

The need for the Alaska Bush Policy is over. As was noted in the *NPRM*, the "Alaska Bush Policy is an isolated exception to the Commission's interstate MTS open-entry policy." *NPRM*, 67 FR 37750 (May 30, 2002). It was based on the assumption that authorizing more than one earth station in an Alaska Bush community would be duplicative and thus needlessly expensive, since a single earth station is sufficient to accommodate all the calls placed to or from the community. The GCI experience has demonstrated that the concern underlying the Alaska Bush Policy is no longer warranted. GCI has provided us with what we believe to be a preview of the public interest benefits that will be realized by allowing open-entry, facilities-based competition in the provision of interstate MTS in Alaska Bush communities. We believe that by eliminating the Alaska Bush Policy, citizens of the Alaska Bush communities will benefit from improved telecommunications services provided by both Alascom and its competitors at lower prices. For these reasons, we eliminate the Alaska Bush Policy.

Finally, we note that this proceeding was established for the limited purpose of considering the elimination of the Alaska Bush Policy. Consequently, we decline to address at this time other potential changes to our regulatory requirements for Alaska. In particular, because, as indicated previously, eliminating the Alaska Bush Policy would promote important public interests, we decline to defer this deregulatory step pending our consideration of Alascom's and AT&T's March 2000 and January 2003 petitions.

For the reasons set forth on the record in this proceeding, we abolish the Alaska Bush Policy, thus eliminating the restriction on facilities-based competition in the Alaska Bush.

## Final Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980, as amended (RFA), *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAA). Title II of the CWAAA is the Small Business Regulatory

Enforcement Fairness Act of 1996, (SBREFA) requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 605(6). In addition, the term "small business" has the same meaning as "small business concern" under the Small Business Act. [*See* 5 U.S.C. 605(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after the opportunity for public comment, establishes one or more definitions of such term that are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.] A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field or operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Small Business Act, 15 U.S.C. 632 (1996).

The Report and Order repeals a regulatory policy that prevented companies from obtaining licenses to operate earth stations in rural Alaska that would carry telephone calls between users in certain Alaskan communities and users in other states if such service was already available in those communities via facilities provided by an established carrier. Because the Report and Order does not impose any regulatory burden, we certify that it will not have a significant economic impact on a substantial number of small businesses. The Commission will send a copy of the Report and Order, including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Report and Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA and will be published in the **Federal Register**.

The Alaska Bush Earth Station Policy, formally adopted by the Commission in *Policies Governing the Ownership and Operation of Domestic Satellite Earth Stations in the Bush Communities in Alaska*, Final Decision, 49 FR 9727 (March 15, 1984) *is discontinued*.

The Commission's Consumer and Government Bureau, Reference Information Center, *shall send* a copy of this *Report and Order*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

### List of Subjects in 47 CFR Parts 1 and 25

Satellites.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03–25654 Filed 10–9–03; 8:45 am]

**BILLING CODE 6712–01–P**

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## DEPARTMENT OF DEFENSE

### 48 CFR Parts 202, 204, 211, 212, 243, and 252

### [DFARS Case 2003–D081]

## Defense Federal Acquisition Regulation Supplement; Unique Item Identification and Valuation

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add policy pertaining to item identification and valuation. The rule requires contractors to uniquely identify, through the use of item identification marking, all items to be delivered to the Government. The rule also adds requirements for contracts to provide for identification of the Government's acquisition cost of items that are built or acquired by a contractor during contract performance and subsequently delivered to the Government.

**DATES:** *Effective date:* January 1, 2004.

*Applicability date:* The requirements in this rule apply to all solicitations issued on or after January 1, 2004.

*Comment date:* Comments on the interim rule should be submitted to the address shown below on or before November 10, 2003, to be considered in the formation of the final rule.

**ADDRESSES:** Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@osd.mil*. Please cite DFARS Case 2003–D081 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Mr. Steven Cohen, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2003–D081.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf*.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steven Cohen, (703) 602–0293.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This interim rule establishes requirements for contractors to furnish unique item identifiers, or other item identification, and to provide the Government's acquisition cost of items that are to be delivered under a DoD contract.

The rule requires contracting officers to include appropriate administrative requirements in contracts so that the Government's acquisition cost of the delivered items can be captured in DoD's property accountability, inventory, and financial management information systems.

The rule requires that all items delivered to the Government be delivered under a contract line item and that the Government's acquisition cost of each item be identified under a contract line item or subline item or an informational subline item.

The rule assumes that MIL–STD–130, Identification Marking of U.S. Military Property, will be revised to be compatible with this unique identification requirement no later than the implementation date of January 1, 2004.

DoD will make changes to its processes and information systems, in accordance with the requirements of this rule, necessary to comply with the financial reporting requirements imposed by the Federal Accounting Standards Advisory Board.

DoD is particularly interested in receiving comments on the following topics:

1. The use and definition of the term "item" or some more appropriate term throughout the rule.
2. The valuation portion of the rule, particularly as it applies to cost-type contracts and the treatment of non-recurring costs.
3. The statement that the rule does not impose any new information collection requirements.

**4. The impact of the rule on small business.**

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

This rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* DoD has prepared an initial regulatory flexibility analysis, which is summarized as follows:

This interim rule adds requirements for contractors to provide unique identification for all items delivered to DoD, through the use of item identification marking. In addition, the rule adds requirements for DoD contracts to provide for identification of the Government's acquisition cost of all items built or acquired by the contractor and subsequently delivered to DoD under the contract. This rule will facilitate DoD compliance with the Chief Financial Officers Act of 1990 (Pub. L. 101–576) and the financial reporting requirements imposed by the Federal Accounting Standards Advisory Board. The objective of the rule is to improve management of DoD assets. The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternatives that will enable DoD compliance with the Chief Financial Officers Act of 1990 and the Federal Accounting Standards Advisory Board reporting requirements.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. DoD considers the implementation of unique identification—also known as UID, to be a strategic imperative, necessary to efficiently move supplies to warfighters. This interim rule adds requirements for contractors to uniquely mark items and to provide for identification of the Government's acquisition cost of items that are to be delivered to DoD. It will enhance logistics, contracting, and financial business transactions supporting U.S. and coalition troops. Through the new policy, DoD can consistently capture the value of items it buys, control these items during their use and combat counterfeiting of parts. It will further enable DoD to make appropriate entries into its property accountability, inventory, and financial management information systems toward achieving compliance with the Chief Financial Officers Act. DoD issued UID policy by memorandum dated July 29, 2003, requiring implementation by January 1, 2004. Immediate publication of this rule is essential to allow effective implementation of the policy by January 1, 2004. Comments received in response to this interim rule will be considered in the formation of the final rule.

### List of Subjects in 48 CFR Parts 202, 204, 211, 212, 243, and 252

Government procurement.

**Michele P. Peterson,**
*Executive Editor, Defense Acquisition Regulations Council.*

■ Therefore, 48 CFR Parts 202, 204, 211, 212, 243, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 202, 204, 211, 212, 243, and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR chapter 1.

## PART 202—DEFINITIONS OF WORDS AND TERMS

■ 2. Section 202.101 is amended by adding, in alphabetical order, a definition of "Unique item identifier" to read as follows:

**202.101 Definitions.**

* * * * *

*Unique item identifier* means a set of data marked on items that is globally unique, unambiguous, and robust enough to ensure data information quality throughout life and to support multi-faceted business applications and users.

## PART 204—ADMINISTRATIVE MATTERS

■ 3. Section 204.7104–1 is amended by revising paragraph (a)(3) to read as follows:

**204.7104–1 Criteria for establishing.**

* * * * *

(a) * * *

(3) Informational subline items shall be used to identify—

(i) Each accounting classification citation assigned to a single contract line item number when use of multiple citations is authorized (see 204.7103–1(a)(4)(ii)); and

(ii) The Government's acquisition cost of an item delivered under a contract when—

(A) The item requires a unique item identifier; and

(B) A separately priced contract line item or subline item is not practical.

* * * * *

■ 4. Section 204.7104–2 is amended by adding paragraphs (e)(10) and (11) to read as follows:

**204.7104–2 Numbering procedures.**

* * * * *

(e) * * *

(10) Subline items structured to capture the acquisition cost of spares that will require unique item identifiers (delivery schedule and fixed price are established for the lot of spares at the contract line item level).

| Item No. | Supplies/service | Quantity | Unit | Unit price | Amount |
|---|---|---|---|---|---|
| 0031 | Spares for Torpedo MK 45 Mod 1 | 50 | LOT | $56,860.57 | $2,843,028.50 |
| 003101 | Integrator Assy LD; Acq Cost: $16,742.25 | 50 | EA | NSP | |
| 003102 | Pulse Generator Assy LD; Acq Cost: $8,357.56. | 50 | EA | NSP | |
| 003103 | Drive Shaft Assy LD; Acq Cost: $6,365.12 | 50 | EA | NSP | |
| * | * | * | * | * | * |
| 003116 | Actual Panel Assy LD; Acq Cost: $5,730.56 | 50 | EA | NSP | |
| 003117 | Pulse Decoder; Acq Cost: <$5,000 | 50 | EA | NSP | |

(11) Subline items structured to capture the acquisition cost of spares that will require unique item identifiers under a cost-type contract.

| Item No. | Supplies/service | Quantity | Unit | Estimated cost* | Total estimated cost* |
|---|---|---|---|---|---|
| 0031 | Spares for Torpedo MK 45 Mod 1 | 50 | | | $2,843,028.50 |
| 003101 | Integrator Assy LD | 50 | EA | | |
| 003102 | Pulse Generator Assy LD | 50 | EA | | |
| 003103 | Drive Shaft Assy LD | 50 | EA | | |
| * | * | * | * | * | * |
| 003116 | Actual Panel Assy LD | 50 | EA | $5,730.56 | |
| 003117 | Pulse Decoder | 50 | EA | $357.00 | |

* Acquisition cost for each item shall be reported in accordance with 252.211–7003, Item Identification and Valuation.

## PART 211—DESCRIBING AGENCY NEEDS

■ 5. Sections 211.274 through 211.274–3 are added to read as follows:

**211.274 Item identification and valuation.**

**211.274–1 Item identification.**

(a) Contracts shall require that all items delivered to the Government—

(1) Be delivered under a contract line item; and

(2) Contain unique item identification, or a DoD recognized unique identification equivalent (if one is not already marked), if—

(i) The Government's acquisition cost of the item is $5,000 or more; or

(ii) The requiring activity determines that unique identification is necessary for the item (*e.g.*, serially managed, mission essential, or controlled inventory piece of equipment or a repairable item, a consumable item or material where permanent identification is required, or a component of a delivered item).

(b) The contract shall include a requirement for commonly accepted commercial marks if it is determined that unique item identification or a DoD recognized unique identification equivalent is not required, and unique item identification is not already marked.

**211.274–2 Government's acquisition cost of items.**

(a) Contracts shall identify the Government's acquisition cost for all items delivered. The preferred approach for identifying the Government's acquisition cost of items is separate pricing under a contract line item or subline item.

(b) When separately priced contract line items or subline items are clearly not practicable, establish separate informational subline items (see 204.7104–1(a)) for identifying the Government's acquisition cost.

(1) Informational subline items used only for identification of the Government's acquisition cost shall be clearly identified as such and shall not be used as a basis for payment.

(2) When the Government's acquisition costs for like items differ, use a separate informational subline item to identify the acquisition cost for those items.

(c) The Government's acquisition cost for items delivered under—

(1) Fixed-price contracts is the unit price identified at contract award, updated by any contract modifications.

(2) Cost-type contracts is the contractor's fully burdened actual cost for each item, plus a proportionate amount of the fee at the time the item is delivered to the Government.

(i) Items valued at $5,000 or more shall be identified in a separate contract line item or subline item.

(ii) Items valued below $5,000 may be combined under a contract line item or subline item; however, the contractor must report the Government's acquisition cost of each item.

(d) Modify the contract to establish separate contract line items or subline items prior to delivery of items that were not identified as contract deliverables at the time of contract award.

(e) The Government's acquisition cost of components delivered within end items need not be identified.

**211.274–3 Contract clause.**

Use the clause at 252.211–7003, Item Identification and Valuation, in solicitations and contracts that require delivery of one or more "items" as defined at 252.211–7003(a). Complete paragraph (b) of the clause with the contract line item number or subline item number and description of the item(s) requiring unique identification.

## PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 6. Section 212.301 is amended by adding paragraph (f)(vii) to read as follows:

**212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

* * * * *

(f) * * *

(vii) Use the clause at 252.211–7003, Item Identification, as prescribed at 211.274–3.

## PART 243—CONTRACT MODIFICATIONS

■ 7. Section 243.171 is amended as follows:

■ a. By redesignating the introductory text and paragraphs (a), (b), and (c), as paragraphs (a) and (a)(1), (2), and (3), respectively; and

■ b. By adding a new paragraph (b) to read as follows:

**243.171 Obligation or deobligation of funds.**

* * * * *

(b) When changes in the value of the contract result in changes to the Government's acquisition cost of delivered items, the contracting officer shall allocate those changes to the acquisition cost of those items.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Section 252.211–7003 is added to read as follows:

**252.211–7003 Item Identification and Valuation.**

As prescribed in 211.274–3, use the following clause:

Item Identification and Valuation (Jan 2004)

(a) *Definitions.* As used in this clause—

*Automatic identification device* means a device, such as a reader or interrogator, used to retrieve data encoded on machine-readable media.

*Commonly accepted commercial marks* means any system of marking products for identification that is in use generally throughout commercial industry or within commercial industry sectors. Some examples of commonly accepted commercial marks are: EAN.UCC Global Trade Item Number;

Automotive Industry Action Group B–4 Parts Identification and Tracking Application Standard, and B–2 Vehicle Identification Number Bar Code Label Standard; American Trucking Association Vehicle Maintenance Reporting Standards; Electronic Industries Alliance EIA 802 Product Marking Standard; and Telecommunications Manufacturers Common Language Equipment Identification Code.

*Data qualifier* means a specified character (or string of characters) that immediately precedes a data field that defines the general category or intended use of the data that follows.

*DoD recognized unique identification equivalent* means a unique identification method that is in commercial use that can be used to uniquely identify DoD items that are purchased from commercial industries that use the unique identification equivalents. Some examples are: EAN.UCC Global Individual Asset Identifier, health care capital assets labeled with the Health Industry Bar Code Standard, and the Automotive Industry Action Group B–2 Vehicle Identification Number Bar Code Label Standard.

*Enterprise* means the entity (*i.e.*, a manufacturer or vendor) responsible for assigning unique item identifiers to items.

*Enterprise identifier* means a code that is uniquely assigned to an enterprise by a registration (or controlling) authority.

*Government's acquisition cost* means—

(1) For fixed-price contracts, the unit price identified at contract award, updated by any contract modifications; and

(2) For cost-type contracts, the Contractor's fully burdened actual cost that has been accumulated, plus a proportionate amount of fee for each item at the time the item is delivered.

*Issuing agency code* means a code that designates the registration (or controlling) authority.

*Item* means a single article or unit formed by a grouping of component or constituent parts required to be delivered in accordance with the terms and conditions of this contract. Under this contract, an item is any article produced, stocked, stored, issued, or used; or any product, including systems, materiel, parts, subassemblies, sets, or accessories.

*Machine-readable* means an automatic information technology media, such as bar codes, contact memory buttons, radio frequency identification, or optical memory cards.

*Original part number* means a combination of numbers or letters assigned by the enterprise at asset creation to a class of items with the same form, fit, function, and interface.

*Registration (or controlling) authority* means an organization responsible for assigning a non-repeatable identifier to an enterprise (*i.e.*, Dun & Bradstreet's Data Universal Numbering System (DUNS) Number, Uniform Code Council (UCC)/EAN International (EAN) Company Prefix, or Defense Logistics Information System (DLIS) Commercial and Government Entity (CAGE) Number).

*Serial number within the enterprise identifier* or *unique serial number* means a combination of numbers, letters, or symbols assigned by the enterprise to an item that provides for the differentiation of that item from any other like and unlike item and is never used again within the enterprise.

*Serial number within the part number* or *serial number* means a combination of numbers or letters assigned by the enterprise to an item that provides for the differentiation of that item from any other like item within a part number assignment.

*Serialization within the enterprise identifier* means each item produced is assigned a serial number that is unique among all the tangible items produced by the enterprise and is never used again. The enterprise is responsible for ensuring unique serialization within the enterprise identifier.

*Serialization within the part number* means each item of a particular part number is assigned a unique serial number within that part number assignment. The enterprise is responsible for ensuring unique serialization within the part number within the enterprise identifier.

*Unique item identification* means marking an item with machine-readable data elements to distinguish it from all other like and unlike items.

*Unique item identifier* means a set of data marked on items that is globally unique, unambiguous, and robust enough to ensure data information quality throughout life and to support multi-faceted business applications and users.

(b) *Unique item identification.*

(1) The Contractor shall provide unique item identification marking, or a DoD recognized unique identification equivalent (if one is not already marked), for—

(i) All items delivered under this contract for which the Government's acquisition cost is $5,000 or more; and

(ii) The following items to be delivered under this contract:

| Contract Line Item | Description |
|---|---|
| | |
| | |
| | |

(2) The unique item identifier and the component data elements of the unique item identifier shall not change over the life of the item.

(3) *Data elements.*

(i) For items that are serialized within the enterprise identifier, the unique identifier shall include the data elements of issuing agency code, enterprise identifier, and a unique serial number.

(ii) For items that are serialized within the part number within the enterprise identifier, the unique identifier shall include the data elements of issuing agency code, enterprise identifier, the original part number, and the serial number.

(iii) The issuing agency code shall be derived from the data qualifier for the enterprise identifier.

(iv) The issuing agency code shall not be placed on the item.

(4) *Data syntax and semantics.* The Contractor shall—

(i) Mark the encoded data elements (except issuing agency code) on the item using any of the following three types of data qualifiers, as specified elsewhere in the contract:

(A) Data Identifiers (DIs) (Format 06).

(B) Application Identifiers (AIs) (Format 05), in accordance with ISO/IEC International Standard 15418, Information Technology—EAN/UCC Application Identifiers and ASC MH 10 Data Identifiers and ASC MH 10 Data Identifiers and Maintenance.

(C) Text Element Identifiers (TEIs), in accordance with the DoD collaborative solution "DD" format for use until the final solution is approved by ISO JTC1/SC 31. (**Note:** The DoD collaborative solution is described in Appendix D of the DoD guide to Uniquely Identifying Tangible Items, available at *http://www.acq.osd.mil/uid.*)

(ii) Use high capacity automatic identification devices in unique identification that conform to ISO/IEC International Standard 15434, Information Technology—Syntax for High Capacity Automatic Data Capture Media.

(5) *Marking items.* Unless otherwise specified in the contract, data elements for unique identification (enterprise identifier, serial number, and, for serialization within the part number only, original part number) shall be placed on items requiring marking by paragraph (b)(1) of this clause in accordance with the standard practice of MIL–STD–130K, Identification Marking of U.S. Military Property.

(c) *Commonly accepted commercial marks.* The Contractor shall provide commonly accepted commercial marking for items delivered under this contract that are not required to have unique item identification or a DoD-recognized unique identification equivalent under paragraph (b) of this clause.

(d) *Item records.* Records of all items delivered to the Government shall include, at a minimum, the following information:

(1) Description.

(2) Unique item identifier concatenated or other approved item identifier.

(3) Quantity shipped.

(4) Unit of measure.

(5) Acquisition cost.

(6) Ship-to code.

(7) Shipment date.

(8) Enterprise identifier.

(9) Serial number.

(10) Original part number.

(e) *Valuation.* The Contractor shall report the Government's acquisition cost of items delivered under this contract as follows:

(1) Except as specified in paragraph (e)(3)(ii) of this clause, the Contractor shall report the Government's acquisition cost of items under separately priced contract line item numbers, subline item numbers, or informational subline item numbers.

(2) When informational subline items are used only for identification of the Government's acquisition cost, they will be clearly identified as such and shall not be used as a basis for payment.

(3) The Contractor shall normally report the Government's acquisition cost for items under cost-type contracts to the Contracting Officer at the time of delivery, but in no event later than the close of the Contractor's fiscal period during which the delivery was made.

(i) When a unique item identifier is required, the Contractor shall report the actual cost that has been accumulated for each item identified in paragraph (b) of this clause and set forth in a contract line item or subline item.

(ii) When a commonly accepted commercial mark is required, the Contractor shall report the actual cost that has been accumulated for each item, whether or not listed in paragraph (b) of this clause. In many cases, such items will have been combined under a single contract line item or subline item.

(f) *Subcontracts.* The Contractor shall include the requirements of this clause in all subcontracts that will result in delivery of items under this contract.

(End of clause)

[FR Doc. 03–25827 Filed 10–9–03; 8:45 am]

**BILLING CODE 5001–08–P**

# Proposed Rules

Federal Register
Vol. 68, No. 197
Friday, October 10, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 923

**[Docket No. FV03–923–1 PR]**

## Sweet Cherries Grown in Designated Counties in Washington; Hearing on Proposed Amendment of Marketing Agreement and Order No. 923

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice of hearing on proposed rulemaking.

**SUMMARY:** Notice is hereby given of a public hearing to receive evidence on six proposed amendments to Marketing Agreement and Order No. 923, which regulate the handling of sweet cherries grown in designated counties in Washington. Four amendments are proposed by the Washington Cherry Marketing Committee (Committee), which is responsible for local administration of the order: Adding the authority for promotion, including paid advertising, and production research projects; adding the authority to recommend additional rates of assessment for individual varieties of cherries; adding the authority for the Committee to accept voluntary contributions for marketing research and promotion, including paid advertising, and production research projects; and adding a public member and alternate public member to the Committee. Two additional amendments are proposed by the Agricultural Marketing Service: establishing tenure limitations for Committee members; and requiring that continuance referenda be conducted on a periodic basis to ascertain grower support for the order and adding more flexibility in the termination provisions. These proposals are intended to improve the operation and functioning of the Washington sweet cherry marketing order program.

**DATES:** The hearing will begin at 9 a.m. in Yakima, Washington, on November 18, 2003, and, if necessary, will continue the next day beginning at 9 a.m.

**ADDRESSES:** The hearing will be held at the W.L. Hansen Building, 105 S. 18th Street, Yakima, Washington 98901.

**FOR FURTHER INFORMATION CONTACT:** Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 1035, Moab, Utah; telephone: (435) 259–7988, Fax: (435) 259–4945.

Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938.

**SUPPLEMENTARY INFORMATION:** This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act." This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the proposals.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The Committee proposes the following amendments as summarized below:

1. Amend the order to authorize promotional activities, including paid advertising, and production research projects.
2. Amend the order to authorize the recommendation of additional rates of assessment for individual varieties of cherries.
3. Allow the Committee to accept voluntary contributions for marketing research and promotion, including paid advertising, and production research projects.
4. Add a public member and alternate public member to the Committee.

The Committee works with USDA in administering the order. These proposals have not received the approval of the Department. The Committee believes that the proposed changes would improve the administration, operation, and functioning of the order.

In addition, USDA proposes adding two provisions that would help assure that the operation of the program conforms to current Department policy. These provisions would establish tenure requirements for Committee members and require that continuance referenda be conducted on a periodic basis to ascertain industry support for the order and adding more flexibility in the termination provisions. USDA also proposes to allow such conforming changes to the order that may be necessary as a result of the hearing.

The public hearing is held for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (ii) determining whether there is a need for the proposed amendments to the order; and (iii) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

Testimony is invited at the hearing on all the proposals and recommendations contained in this notice, as well as any appropriate modifications or alternatives.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel; and the Fruit and Vegetable Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

### List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

## PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for 7 CFR part 923 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals.

Proposals submitted by the Washington Cherry Marketing Committee:

### Proposal No. 1

Amend § 923.45 to read as follows:

### § 923.45 Production and marketing research, promotion and market development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of projects involving production research, marketing research and development, and marketing promotion, including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption or efficient production of cherries. The expense of such projects shall be paid from funds collected pursuant to §§ 923.41 and 923.43.

### Proposal No. 2

In § 923.41, redesignate paragraph (c) as paragraph (d) and add a new paragraph (c) to read as follows:

### § 923.41 Assessments.

* * * * *

(c) Based upon a recommendation of the committee or other available data, the Secretary shall fix the rate of assessment that handlers shall pay on all cherries handled during each fiscal period, and may also fix supplemental rates of assessment on individual varieties or subvarieties to secure sufficient funds to provide for projects authorized under § 923.45. At any time during the fiscal period when it is determined on the basis of a committee recommendation or other information that a different rate is necessary for all cherries or for any varieties or subvarieties, the Secretary may modify a rate of assessment and such new rate shall apply to any or all varieties or subvarieties that are shipped during the fiscal period.

* * * * *

### Proposal No. 3

Add a new § 923.43 to read as follows:

### § 923.43 Contributions.

The committee may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 923.45. Furthermore, such contributions shall be free from any encumbrances by the donor and the committee shall retain complete control of their use.

### Proposal No. 4

Revise § 923.20 to read as follows:

### § 923.20 Establishment and membership.

There is hereby established a Washington Cherry Marketing Committee consisting of seventeen members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he or she is an alternate. Ten members and their respective alternates shall be growers or officers or employees of corporate growers. Six of the members and their respective alternates shall be handlers, or officers or employees of handlers. One member and his or her respective alternate shall be a public member who is neither a grower nor a handler. The ten members of the committee who are growers or employees or officers of corporate growers are referred to in this part as "grower members" of the committee; and six members of the committee who shall be handlers, or officers or employees of handlers are referred to in this part as "handler members" of the committee. Five of the grower members and their respective alternates shall be producers of cherries in District 1, and five of the grower members and their respective alternates shall be producers of cherries in District 2. Three of the handler members and their respective alternates shall be handlers of cherries in District 1, and three of the handler members and their representative alternates shall be handlers of cherries in District 2.

Amend § 923.22 by adding a new paragraph (b)(4) to read as follows:

### § 923.22 Nomination.

* * * * *

(4) The grower and handler members of the committee shall nominate the public member and alternate public member at the first meeting following the selection of members for a new term of office.

USDA proposes the following:

### Proposal No. 5

Revise § 923.21 to read as follows:

### § 923.21 Term of office.

The term of office of each member and alternate member of the committee shall be for two years beginning April 1 and ending March 31. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified. Committee members shall not serve more than three consecutive terms. Members who have served for three consecutive terms must leave the committee for at least one year before becoming eligible to serve again.

### Proposal No. 6

In § 923.64, redesignate paragraph (d) as paragraph (e), and add a new paragraph (d) to read as follows:

### § 923.64 Termination.

* * * * *

(c) The Secretary shall terminate the provisions of this part whenever it is found that such termination is favored by a majority of producers who, during a representative period, have been engaged in the production of cherries: *Provided*, that such majority has, during such representative period, produced for market more than 50 percent of the volume of such cherries produced for market.

(d) The Secretary shall conduct a referendum six years after the effective date of this section and every sixth year thereafter, to ascertain whether continuance of this subpart is favored by producers. The Secretary may terminate the provisions of this subpart at the end of any fiscal period in which the Secretary has found that continuance of this subpart is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production of cherries in the production area.

* * * * *

**Proposal No. 7**

Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: October 6, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03–25672 Filed 10–9–03; 8:45 am]

**BILLING CODE 3410–02–M**

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 946

**[Docket No. FV03–946–1 PR]**

### Irish Potatoes Grown in Washington; Hearing on Proposed Amendment of Marketing Agreement and Order No. 946

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice of hearing on proposed rulemaking.

**SUMMARY:** Notice is hereby given of a public hearing to receive evidence on nine proposed amendments to Marketing Agreement and Order No. 946, which regulate the handling of Irish potatoes grown in Washington. Seven amendments are proposed by the State of Washington Potato Committee (Committee), which is responsible for local administration of the order. These are: adding the authority to establish container and marking regulations; requiring Committee producer members to have produced potatoes for the fresh market in at least 3 out of the last 5 years prior to nomination; incorporating language currently existing in the Rules and Regulations subpart pertaining to selection and establishment of districts; requiring Committee nominees to submit a signed acceptance letter prior to appointment by the Agricultural Marketing Service (AMS); allowing for nominations to be held at large industry meetings; adding the authority to change the size of the Committee; and adding the authority to allow for additional alternates to serve when a Committee member and that member's alternate are unable to serve. AMS proposed two additional amendments to establish tenure limitations for Committee members and require that continuance referenda be conducted on a periodic basis to ascertain grower support for the order.

**DATES:** The hearing will begin at 9 a.m. in Moses Lake, Washington, on November 20, 2003.

**ADDRESSES:** The hearing will be held at the Best Western Hallmark Inn, 3000 Marina Drive, Moses Lake, Washington, 98837, (866)–603–9330.

**FOR FURTHER INFORMATION CONTACT:** Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 1035, Moab, Utah; telephone: (435) 259–7988, Fax: (435) 259–4945.

Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938.

**SUPPLEMENTARY INFORMATION:** This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act." This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the proposals.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The Committee proposes the following amendments as summarized below.

1. Amend the order to authorize container and marking regulations. This would encompass size, capacity, weight, dimensions, pack, and marking or labeling of the container, or containers, which may be used in packaging or handling of Irish potatoes grown in Washington.
2. Amend the order to add language to require production for the fresh market in at least 3 out of 5 years preceding nomination to the committee for all producer members.
3. Make administrative changes in § 946.25 "Selection" and § 946.31 "District" to incorporate language currently in the Rules and Regulation subpart.
4. Amend the order to add language requiring Committee nominees to submit a signed letter of acceptance prior to selection by AMS.
5. Allow for nominations to be held at any industry meeting rather than requiring separate meetings in each of the districts, as currently required by the order.
6. Amend the order to authorize the Committee to recommend changes in the number of Committee members and alternates. Such a recommendation would require an analysis of certain factors within the industry and approval by the Department.
7. Allow an alternate member of the same classification (producer or handler) to serve in a member's place and stead in the event a Committee member and that member's alternate are unable to attend a Committee meeting.

The Committee works with USDA in administering the order. These proposals have not received the approval of the Department. The Committee believes that the proposed changes would improve the administration, operation, and functioning of the order.

In addition, AMS proposes adding two provisions which would help assure that operation of the program conforms to current Department policy. The first provision would establish a limit on the number of consecutive terms a person may serve as member on the Committee. The second provision would require that continuance referenda be conducted on a periodic basis to ascertain industry support for the order. AMS also proposes to allow such changes to the order as may be necessary to conform with any amendment that may result from the hearing.

The public hearing is held for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (ii) determining whether there is a need for the proposed amendments to the order; and (iii) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

Testimony is invited at the hearing on all the proposals and recommendations contained in this notice, as well as any appropriate modifications or alternatives.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel; and the Fruit and Vegetable Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

## List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

## PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR part 946 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals.

Proposals submitted by the State of Washington Potato Committee:

### Proposal No. 1

Amend § 946.52 by adding a new paragraph (a)(5) to read as follows:

**§ 946.52 Issuance of regulations.**

(a) * * *

(5) To regulate the size, capacity, weight, dimensions, pack, and marking or labeling of the container, or containers, which may be used in the packing or handling of potatoes, or both.

* * * * *

Add a new § 946.17 to read as follows:

**§ 946.17 Pack.**

*Pack* means a quantity of potatoes in any type of container and which falls within the specific weight limits or within specific grade and/or size limits, or any combination thereof, recommended by the committee and approved by the Secretary.

Add a new § 946.18 to read as follows:

**§ 946.18 Container.**

*Container* means a sack, box, bag, crate, hamper, basket, carton, package, barrel, or any other type of receptacle used in the packing, transportation, sale or other handling of potatoes.

### Proposal No. 2

Revise § 946.22 to read as follows:

**§ 946.22 Establishment and membership.**

The State of Washington Potato Committee consisting of fifteen members, of whom ten shall be producers who have produced potatoes for the fresh market for at least three out of the last five years prior to nomination and five shall be handlers, is hereby established. For each member of the committee there shall be an alternate who shall have the same qualifications as the member.

### Proposal No. 3

Amend § 946.25 by revising paragraph (c) to read as follows:

**§ 946.25 Selection.**

* * * * *

(c) The Secretary shall select committee membership so that, during each fiscal period, each district, as designated in § 946.31, will be represented as follows:

(1) District No. 1—Three producer members and one handler member;

(2) District No. 2—Two producer members and one handler member;

(3) District No. 3—Two producer members and one handler member;

(4) District No. 4—Two producer members and one handler member;

(5) District No. 5—One producer member and one handler member.

Revise § 946.31 to read as follows:

**§ 946.31 Districts.**

For the purpose of determining the basis for selecting committee members, the following districts of the production area are hereby established:

(a) District No. 1—The counties of Ferry, Stevens, Pend Oreille, Spokane, Whitman, and Lincoln, plus the East Irrigation District of the Columbia Basin Project, plus the area of Grant County not included in either the Quincy or South Irrigation Districts which lies east of township vertical line R27E, plus the area of Adams County not included in either of the South or Quincy Irrigation Districts.

(b) District No. 2—The counties of Kittitas, Douglas, Chelan, and Okanogan, plus the Quincy Irrigation District of the Columbia Basin Project, plus the area of Grant County not included in the East or South Irrigation Districts which lies west of township line R28E.

(c) District No. 3—The counties of Benton, Klickitat, and Yakima.

(d) District No. 4—The counties of Walla Walla, Columbia, Garfield, and Asotin, plus the South Irrigation District of the Columbia Basin Project, plus the area of Franklin County not included in the South District.

(e) District No. 5—All of the remaining counties in the State of Washington, not included in Districts No. 1, 2, 3, and 4 of this section.

### Proposal No. 4

Revise § 946.26 to read as follows:

**§ 946.26 Qualification and acceptance.**

Any person nominated to serve as a member or alternate member of the committee shall, prior to selection by USDA, qualify by filing a written background and acceptance statement indicating such person's willingness to serve in the position for which nominated.

### Proposal No. 5

Amend § 946.32 by revising paragraph (a) to read as follows:

**§ 946.32 Nomination.**

* * * * *

(a) A meeting of producers and handlers shall be held by the Committee not later than May 1 of each year to designate nominees for members and alternates to the Committee; or the Committee may conduct nominations by mail in a manner recommended by the Committee and approved by the Secretary; and, in arranging for such meetings, the Committee may, if it deems desirable, utilize the services and facilities of other existing organizations;

* * * * *

**Proposal No. 6**

In § 946.22, designate the current text as paragraph (a) and adding a new paragraph (b) to read as follows:

**§ 946.22 Establishment and membership.**

* * * * *

(b) The Secretary, upon recommendation of the committee, may reestablish districts, may reapportion members among districts, may change the number of members and alternates, and may change the composition by changing the ratio of members, including their alternates. In recommending any such changes, the following shall be considered:

(1) Shifts in acreage within districts and within the production area during recent years;

(2) The importance of new production in its relation to existing districts;

(3) The equitable relationship between membership and districts;

(4) Economies to result for growers in promoting efficient administration due to redistricting or reapportionment of members within districts and;

(5) Other relevant factors.

**Proposal No. 7**

In § 946.23, designate the current text as paragraph (a) and add a new paragraph (b) to read as follows:

**§ 946.23 Alternate members.**

* * * * *

(b) In the event both a member and his or her alternate are unable to attend a committee meeting, the committee members present may designate another alternate of the same classification (handler or producer) to serve in such member's place and stead.

USDA proposes the following:

**Proposal No. 8**

Amend § 946.27 by revising paragraph (a) to read as follows:

**§ 946.27 Term of office.**

(a) The term of office of each member and alternate member of the committee shall be for three years beginning July 1 and continuing until their successors are selected and have qualified: *Provided, however,* That the terms of office of the initial committee under the amended order shall be determined by the Secretary so that the terms of office of one-third of the initial members and alternates shall be for 1 year, one-third for two years, and one-third for 3 years. Committee members shall not serve more than two consecutive terms. Members who have served for two consecutive terms must leave the committee for at least one year before becoming eligible to serve again.

* * * * *

**Proposal No. 9**

In § 946.63, redesignate paragraph (d) as paragraph (e) and add a new paragraph (d) to read as follows:

**§ 946.63 Termination.**

* * * * *

(d) The Secretary shall conduct a referendum six years after the effective date of this paragraph and every sixth year thereafter to ascertain whether continuance of this part is favored by growers.

* * * * *

**Proposal No. 10**

Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: October 6, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03–25671 Filed 10–9–03; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

### 33 CFR Part 100

### [CGD05–03–132]

### RIN 1625–AA08

## Special Local Regulations for Marine Events; Spa Creek, Annapolis, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish temporary special local regulations during the "International Tug-of-War", a marine event to be held over the waters of Spa Creek between Eastport and Annapolis, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of Spa Creek during the event.

**DATES:** Comments and related material must reach the Coast Guard on or before November 10, 2003.

**ADDRESSES:** You may mail comments and related material to Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Auxiliary and Recreational Boating Safety Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** S.L. Phillips, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–03–132), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

In order to provide notice and an opportunity to comment before issuing an effective rule, we are providing a shorter than normal comment period. A 20-day comment period is sufficient to allow those who might be affected by this rulemaking to submit their comments because the regulations have a narrow, local application, and there will be local notifications in addition to the **Federal Register** publication such as press releases, marine information broadcasts, and the Local Notice to Mariners. We also expect to make the final rule effective less than 30 days after its publication in the **Federal Register**.

### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

### Background and Purpose

On November 8, 2003, the City of Annapolis will sponsor the "International Tug-of-War" across the waters of Spa Creek between Eastport and Annapolis, Maryland. The event will consist of a tug-of-war between teams on the Eastport side of Spa Creek pulling against teams on the Annapolis side of Spa Creek. The opposing teams will pull a floating rope approximately 1800 feet in length, spanning Spa Creek. A fleet of spectator vessels is anticipated. Due to the need for vessel control while the rope is spanned across Spa Creek, vessel traffic would be temporarily restricted to provide for the safety of spectators, participants and transiting vessels.

### Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of Spa Creek. The regulated area would include a 400′ buffer on either side of the rope that would span Spa Creek from shoreline to shoreline. The temporary special local regulations would be enforced from 10:30 a.m. to 2:30 p.m. on November 8, 2003, and would restrict general navigation in the regulated area during the event. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. The Coast Guard Patrol Commander may stop the event to allow vessels to transit the regulated area.

### Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this proposed regulation would prevent traffic from transiting a portion of Spa Creek during the event, the effect of this proposed regulation would not be significant due to the limited duration that the regulated area would be in effect and the extensive advance notifications that would be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the proposed regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic would be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Spa Creek during the event.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would be in effect for only a 4-hour period. Vessel traffic would be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so. Before the enforcement period, we would issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

### Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

**Indian Tribal Governments**

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Environment**

We prepared an "Environmental Assessment" in accordance with Commandant Instruction M16475.1D, and determined that this proposed rule would not significantly affect the quality of the human environment. The "Environmental Assessment" and "Finding of No Significant Impact" is available in the docket where indicated under **ADDRESSES.**

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 100 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

2. Add a temporary § 100.35T–05–132 to read as follows: *§ 100.35T–05–132, Spa Creek, Annapolis, MD.*

(a) *Regulated area.* The regulated area is established for the waters of Spa Creek from shoreline to shoreline, extending 400′ from either side of a rope spanning Spa Creek from a position at latitude 38°58′37″ N, longitude 076°29′04″ W on the Annapolis shoreline to a position at 38°58′26″ N, longitude 076°28′54″ W on the Eastport shoreline. All coordinates reference Datum NAD 1983.

(b) *Definitions:*

*Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

*Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Activities Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

*Participant* means all vessels participating in the "International Tug of War" under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Activities Baltimore.

(c) *Special local regulations:*

(1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol.

(ii) Proceed as directed by any official patrol.

(iii) Unless otherwise directed by the official patrol, operate at a minimum wake speed not to exceed six (6) knots.

(d) *Effective dates:* This section is in effect from 10:30 a.m. to 2:30 p.m. on November 8, 2003.

Dated: September 17, 2003.

**Sally Brice-O'Hara,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 03–25680 Filed 10–9–03; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[CGD07–03–141]**

**RIN 1625–AA09**

## Drawbridge Operation Regulations; Biscayne Bay, Atlantic Intracoastal Waterway, Miami River, Miami-Dade County, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to temporarily change the regulations governing the operation of the East and West Spans of the Venetian Causeway bridges across the Miami Beach Channel on the Atlantic Intracoastal Waterway, and the Brickell Avenue and Miami Avenue bridges across the Miami River, Miami-Dade County. This proposed rule would allow these bridges to remain in the closed position during the running of the Miami Tropical Marathon on February 1, 2004.

**DATES:** Comments and related material must reach the Coast Guard on or before November 10, 2003.

**ADDRESSES:** You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 SE. 1st Ave, Room 432, Miami, FL 33131, which maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in the preamble as being available in the docket, are part of [CGD07–03–141] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, FL 33131 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Barry Dragon, Seventh Coast Guard District, Bridge Branch, 909 SE. 1st Ave Miami, FL 33131, telephone number 305–415–6743.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–03–141], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

### Public Meeting

We do not now plan to hold a public meeting. However, you may submit a request for a meeting by writing to Bridge Branch, Seventh Coast Guard District, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

### Background and Purpose

The Miami Tropical Marathon Director has requested that the Coast Guard temporarily change the existing regulations governing the operation of the East and West Spans of the Venetian Causeway bridges, and the Brickell Avenue and Miami Avenue bridges to allow them to remain in the closed position during the running of the Miami Tropical Marathon on February 1, 2004. The marathon route passes over these four bridges and any bridge opening would disrupt the race. Based on the limited time the bridges would be closed, the Coast Guard believes it can accommodate the request while still providing for the reasonable needs of navigation.

The East and West Spans of the Venetian Causeway bridges are located between Miami and Miami Beach. The current regulation governing the operation of the East Span of the Venetian Causeway bridge is published in 33 CFR 117.269 and requires the bridge to open on signal; except that, from November 1 through April 30 from 7:15 a.m. to 8:45 a.m. and from 4:45 p.m. to 6:15 p.m. Monday through Friday, the draw need not be opened. However, the draw shall open at 7:45 a.m., 8:15 a.m., 5:15 p.m., and 5:45 p.m., if any vessels are waiting to pass. The draw shall open on signal on Thanksgiving Day, Christmas Day, New Year's Day, and Washington's Birthday. Moreover, the bridge must open for public vessels of the United States, tugs with tows, regularly scheduled cruise vessels, and vessels in distress.

The regulation governing the West Span of the Venetian Causeway bridge is published in 33 CFR 117.5 and requires the bridge to open on signal.

The operating schedule of the Brickell Avenue and Miami Avenue bridges is published in 33 CFR 117.305 and requires each bridge to open on signal; except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m. Monday through Friday except Federal holidays, the draws need not be opened for the passage of vessels. Public vessels of the United States and vessels in an emergency involving danger to life or property are allowed to pass at any time.

We believe that this proposed rule would not adversely affect the reasonable needs of navigation due to the limited time the bridges would be in the closed position.

### Discussion of Proposed Rule

The Coast Guard proposes to temporarily change the operating regulations of the East and West Spans of the Venetian Causeway bridges, and the Brickell Avenue and Miami Avenue bridges on February 1, 2004. This proposed rule would allow the East Span of the Venetian Causeway bridge to remain closed from 6:05 a.m. to 8:40 a.m. on February 1, 2004. The proposed rule would allow the West Span of the Venetian Causeway to remain closed from 6:15 a.m. to 9:20 a.m. on February 1, 2004. The Brickell Avenue bridge would be allowed to remain closed from 7:10 a.m. to 11:59 a.m. on February 1, 2004. The Miami Avenue bridge would be allowed to remain closed from 6:25 a.m. to 10 a.m. on February 1, 2004. Public vessels of the United States and vessels in distress shall be passed at anytime.

### Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the policies and procedures of the Department of Homeland Security is unnecessary. The short duration of time during the morning of February 4, 2004 that the bridges will remain in the closed position to facilitate the running of the marathon will have little, if any, economic impact.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because the proposed rule will only be in effect for a limited period of time and race committee officials are working with affected parties to minimize the impact of this proposed rule.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If this proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

### Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

**Indian Tribal Governments**

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a statement of Energy Effects under Executive Order 13211.

**Environment**

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42.U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulations**

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

2. From 6:15 a.m. until 9:20 a.m. on February 1, 2004, in § 117.261, suspend paragraph (nn) and add temporary paragraph(vv) to read as follows:

**§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.**

* * * * *

(vv) *West Span of the Venetian Causeway, mile 1088.6 at Miami.* The draw need not open from 6:15 a.m. until 9:20 a.m. on February 1, 2004. Public vessels of the United States and vessels in distress shall be passed at anytime.

**§ 117.269 [Suspended]**

3. From 6:05 a.m. until 8:40 a.m. on February 1, 2004, temporarily suspend § 117.269.

4. From 6:05 a.m. until 8:40 a.m. on February 1, 2004, add a new § *117.T270 to read as follows:*

**§ 117.T270 Biscayne Bay.**

The draw of the East Span of the Venetian Causeway bridge across Miami Beach Channel need not open from 6:05 a.m. to 8:40 a.m. on February 1, 2004. Public vessels of the United States and vessels in distress shall be passed at anytime.

**§ 117.305 [Suspended]**

5. From 6:25 a.m. until 11:59 a.m. on February 1, 2004, temporarily suspend § 117.305.

6. From 6:25 a.m. until 11:59 a.m. on February 1, 2004, add a new § *T117.306 to read as follows:*

**§ 117.T306 Miami River.**

(a) The draw of each bridge from the mouth to and including the NW. 27th Avenue bridge, mile 3.7 at Miami, except the Miami Avenue and Brickell Avenue bridges, shall open on signal: except that, from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m. Monday through Friday except Federal holidays, the draws need not be opened for the passage of vessels.

(b) The Miami Avenue bridge, across the Miami River, need not open from 6:25 a.m. to 10 a.m. on February 1, 2004 and the Brickell Avenue bridge, across the Miami River, need not open from 7:10 a.m. to 11:59 a.m. on February 1, 2004. Public vessels of the United States and vessels in an emergency involving danger to life or property shall be passed at any time.

Dated: September 18, 2003.

**H.E. Johnson, Jr.,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 03–25682 Filed 10–9–03; 8:45 am]

**BILLING CODE 4910–15–P**

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[PA 201–4401b; FRL–7570–5]**

## Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revised MOBILE6-Based Motor Vehicle Emission Budget for the Pennsylvania Portion of the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of revising the highway motor vehicle emissions inventories and the 2005 motor vehicle emissions budget for the ozone attainment SIP. In the Final Rules section of this **Federal Register**,

EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by November 10, 2003.

**ADDRESSES:** Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of these related documents can also be reviewed at the Pennsylvania Department of Environmental Protection, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Brian Rehn, (215) 814–2176, or by e-mail at *rehn.brian@epa.gov*.

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number PA 201–4401 in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *morris.makeba@epa.gov*, attention PA 201–4401. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov*, then select "Environmental Protection Agency" at the top of the page and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

## Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

## Considerations When Preparing Comments to EPA

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: September 29, 2003.

**James W. Newsom,**

*Acting Regional Administrator, Region III.*

[FR Doc. 03–25635 Filed 10–9–03; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 62

[NV–AM–NMI–103–NEGDECb; FRL–7572–6]

## Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerator Units; Control of Emissions From Existing Large Municipal Waste Combustors; Nevada; American Samoa; Northern Mariana Islands

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the negative declarations submitted by air pollution control agencies in Nevada, American Samoa, and Northern Mariana Islands. Each negative declaration certifies that certain combustion units, which are subject to the requirements of sections 111(d) and 129 of the Clean Air Act, do not exist within the relevant agency's air pollution control jurisdiction.

**DATES:** Comments must be received in writing by November 10, 2003.

**ADDRESSES:** Mail comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov*.

**SUPPLEMENTARY INFORMATION:** This proposal addresses Clean Air Act section 111(d)/129 negative declarations submitted by air pollution control agencies in Nevada, American Samoa, and Northern Mariana Islands certifying that certain types of combustion units do not exist within their air pollution control jurisdictions. For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. If no adverse comments are received in response to this action, no further activity will be contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: September 25, 2003.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 03–25803 Filed 10–9–03; 8:45 am]

BILLING CODE 6560–50–P

# Notices

Federal Register
Vol. 68, No. 197
Friday, October 10, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Doc. No. PY–03–004]**

### Notice of Request for Extension of and Revision to a Currently Approved Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget (OMB), for an extension for and revision to a currently approved information collection for Poultry Market News Programs.

**DATES:** Comments received by December 9, 2003 will be considered.

**ADDITIONAL INFORMATION OR COMMENTS:** Interested parties are invited to submit written comments concerning this notice. Comments must be sent to Michael E. Sheats, Chief, Poultry Market News Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0262, 1400 Independence Avenue, SW., Washington, DC 20250–0262, or fax (202–720–2403), or e-mail *Michael.Sheats@usda.gov.* Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Michael E. Sheats, Chief, Poultry Market News Branch, 202–720–6911.

**SUPPLEMENTARY INFORMATION**

### Paperwork Reduction Act

This notice contains submission requirements subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. Chapter 35). In accordance with 5 CFR Part 1320, a description of the submission requirements and an estimate of the resulting burden on applicants is included.

*Title:* Poultry Market News Reports.

*OMB Number:* 0581–0033.

*Expiration Date of Approval:* June 30, 2004.

*Type of Request:* Extension of and revision to a currently approved information collection.

*Abstract:* Under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), the Poultry Market News Branch provides up-to-the-minute nationwide coverage of prices, supply, demand, trends, movement, and other pertinent information affecting the trading of poultry and eggs, and their respective products. The market reports compiled and disseminated by Market News provide current, unbiased, factual information to all members of the Nation's agricultural industry, from farm to retailer. These market reports assist producers, processors, wholesalers, retailers, and others in making informed production, purchasing, and sales decisions and promote orderly marketing by placing buyers and sellers on a more equal negotiating basis.

Market news reporters communicate with buyers and sellers of egg and poultry commodities on a daily basis in order to accomplish the Program's mission. This communication and information gathering is accomplished through the use of telephone conversations, facsimile transmissions, and electronic mail messages. Market News uses one OMB approved form, PY–90: Monthly Dried Egg Solids Stocks Report, to collect inventory information monthly from commercial dried egg products plants throughout the U.S. Cooperating firms submit this form to Market News primarily via facsimile transmissions.

AMS is committed to implementation of the Government Paperwork Elimination Act, which provides for the use of information resources to improve the efficiency and effectiveness of governmental operations, including providing the public with the option of submitting information or transacting business electronically to the extent possible.

(1) Collection of Market Information.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.083 hours per response.

*Respondents:* Producers, processors, brokers, distributors, and retailers.

*Estimated Number of Respondents:* 1,700.

*Estimated Number of Responses:* 212,500.

*Estimated Number of Responses per Respondent:* 125.

*Estimated Total Annual Burden on Respondents:* 17,637.5 hours.

(2) Monthly Dried Egg Solids Stocks Form PY–90.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.083 hours per response.

*Respondents:* Commercial domestic dried egg products plants.

*Estimated Number of Respondents:* 10.

*Estimated Number of Responses:* 120.

*Estimated Number of Responses per Respondent:* 12.

*Estimated Total Annual Burden on Respondents:* 10 hours.

Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0033 and be sent to Michael E. Sheats, Chief, Poultry Market News Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0262, 1400 Independence Avenue, SW., Washington, DC 20250–0262, or fax (202–720–2403), or e-mail *Michael.Sheats@usda.gov.* All comments will be available for public inspection in the above office during regular business hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: October 6, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03–25673 Filed 10–9–03; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF AGRICULTURE

### Agricultural Research Service

### Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

**AGENCY:** Agricultural Research Service, USDA.

**ACTION:** Notice of availability and intent.

**SUMMARY:** Notice is hereby given that the Federally owned invention disclosed in U.S. Patent No. 5,459,044, "High affinity monoclonal antibodies to Bowman-Birk inhibitor and immunoassay methods", issued on October 17, 1995, is available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Agdia Incorporated of Elkhart, Indiana, an exclusive license to this invention.

**DATES:** Comments must be received on or before January 8, 2004.

**ADDRESSES:** Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1174, Beltsville, Maryland 20705–5131.

**FOR FURTHER INFORMATION CONTACT:** June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

**SUPPLEMENTARY INFORMATION:** The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Agdia Incorporated of Elkhart, Indiana has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

**Michael D. Ruff,**

*Assistant Administrator.*

[FR Doc. 03–25791 Filed 10–9–03; 8:45 am]

BILLING CODE 3410–03–P

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## DEPARTMENT OF AGRICULTURE

### Agricultural Research Service

### Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

**AGENCY:** Agricultural Research Service, USDA.

**ACTION:** Notice of availability and intent.

**SUMMARY:** Notice is hereby given that the invention disclosed in U.S. Patent No. 6,184,246, "Inhibition of Cytokine Production by Polymethoxylated Flavones," issued on February 6, 2001, is available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Next Pharmaceuticals, Inc. of Irvine, California, an exclusive license to the Federal Government's current patent rights and any patent rights that it subsequently may acquire in this joint invention.

**DATES:** Comments must be received on or before January 8, 2004.

**ADDRESSES:** Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1174, Beltsville, Maryland 20705–5131.

**FOR FURTHER INFORMATION CONTACT:** June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

**SUPPLEMENTARY INFORMATION:** The Federal Government's patent rights in this joint invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Next Pharmaceuticals, Inc. has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

**Michael D. Ruff,**

*Assistant Administrator.*

[FR Doc. 03–25789 Filed 10–9–03; 8:45 am]

BILLING CODE 3410–03–P

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## DEPARTMENT OF AGRICULTURE

### Agricultural Research Service

### Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

**AGENCY:** Agricultural Research Service, USDA.

**ACTION:** Notice of availability and intent.

**SUMMARY:** Notice is hereby given that the Federally owned invention disclosed in U.S. Patent Application No. 10/146,616 "Bio-Based Method for Making Mannitol", filed May 15, 2002, is available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to zuChem, Inc. of Chicago, Illinois, an exclusive license to this invention.

**DATES:** Comments must be received on or before January 8, 2004.

**ADDRESSES:** Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1174, Beltsville, Maryland 20705–5131.

**FOR FURTHER INFORMATION CONTACT:** June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

**SUPPLEMENTARY INFORMATION:** The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as zuChem, Inc. of Chicago, Illinois has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

**Michael D. Ruff,**

*Assistant Administrator.*

[FR Doc. 03–25790 Filed 10–9–03; 8:45 am]

BILLING CODE 3410–03–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Lost Cabin Mine, Medicine Bow-Routt National Forests, Carbon County, WY

**AGENCY** Forest Service, USDA.

**ACTION:** Revised Notice of Intent to prepare an Environmental Impact Statement.

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**SUMMARY:** The Forest Service will prepare an Environmental Impact Statement (EIS) to assess and disclose the environmental effects of a Plan of Operations, submitted by Broken Arrow Mining, LLC, to conduct mineral exploration at the Lost Cabin Mine. The Lost Cabin Mine is located in Sections 1 and 12 of T. 14N., R. 86 W., 6th Principle Meridian, Carbon County, Wyoming. Approval of the Plan of Operations would allow the claimants to use National Forest System Roads (NFSR) 439, 431, and 431.A while conducting mineral exploration. In addition, they would be allowed to clear deadfall from and use roughly 0.4 miles of NFSR 4172. Finally, they would be allowed to improve and use 1.6 miles of an historic mining road (Way[1] 4170H) that accesses the mine site. Improvements would include individual tree removal in isolated locations to improve maneuverability and sight distance and the installation of drainage structures to reduce erosion and sedimentation. The historic road falls within the Mowry Peak Inventoried Roadless Area (IRA) boundary. All roads and ways are currently closed to motorized vehicle use.

The EIS will comply with the requirements of the National Environmental Policy Act (42 U.S.C. sections 4321–4370a), the National Forest Management Act (16 U.S.C. 1600–1614), and the U.S. Mining Laws (30 U.S.C. 21–54), as amended.

**DATES:** An original Notice of Intent for this proposal was published in the **Federal Register** on March 20, 2002. Comments concerning the proposal and the scope of the analysis were requested to be received in writing by April 21, 2002. The Forest Service expects to file a Draft EIS with the Environmental Protection Agency (EPA) and make it available for public comment in October 2003. The agency expects to file the Final EIS in February 2004.

**ADDRESSES:** Send written comments to Mary Peterson, Medicine Bow-Routt National Forests Supervisor's Office, 2468 Jackson Street, Wyoming 82070.

**FOR FURTHER INFORMATION CONTACT:** Tom Florich, Recreation and Lands Program Manager, Medicine Bow-Routt National Forests, 2468 Jackson Street, Laramie, Wyoming, 82070 Telephone: (307) 745–2435.

*Responsible Official:* Mary H. Peterson, Medicine Bow-Routt National Forests Supervisor, 2468 Jackson Street, Laramie, Wyoming, 82070.

**SUPPLEMENTARY INFORMATION:** This is a revised Notice of Intent for the prior notice promulgated in the Federal Register, Vol. 67, No. 54, pp. 12958–12959, on March 20, 2002. The scope of the project has not changed; therefore, this revised Notice of Intent does not initiate a second scoping period for this proposal. The Notice of Intent is being revised for the following reasons:

(1) The Draft EIS has been delayed more than one year. The original expected release date was July 2002; the new expected date is October 2003 with the Final EIS to be released in February 2004; and

(2) The Responsible Official has changed. Rick D. Cables was identified as the Responsible Official in the March 20, 2002 Notice of Intent because of Inventoried Roadless Area issues associated with the project proposal. Since that time, rules and regulations affecting Inventoried Roadless Areas have changed, and the signing authority for decisions of this nature has been delegated to Forest Supervisors. Therefore, the Responsible Official for this proposal is now Mary H. Peterson, Forest Supervisor of the Medicine Bow-Routt National Forests.

### Estimated Dates for Filing

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review during October 2003. At that time, the EPA will publish a Notice of Availability (NOA) of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be for a period of not less than 45 days from the date the EPA publishes the NOA in the **Federal Register**. It is important that those interested in the management of this area comment at that time. The Final EIS is expected to be available in February 2004.

### Release of Names

Comments received in response to this Notice of Intent, including names and addresses of those who comment, will be considered part of the public record on this Proposed Action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within ten (10) days.

### The Public Obligation To Comment

The Forest Service believes it is important to give reviewers an early notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised during the Draft EIS state, but are not raised until after completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.3d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). As a result of these previous court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final EIS.

To assist the Forest Service in identifying and considering issues and concerns related to the proposed action, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft document. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives displayed in the document. Reviewers should refer to the Council on Environmental Quality Regulations at 40 CFR 1503.3 for implementing the procedural provisions of the National Environmental Policy Act for addressing these points. Please note that any comments that are submitted in relation to this Draft EIS will be considered public information.

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[1] Ways are routes not currently shown as part of the Forest Transportation System.

After the comment period on the Draft EIS ends, comments will be analyzed, considered, and responded to by the Forest Service when preparing the Final EIS. As previously mentioned, the Final EIS is scheduled to be completed in February 2004. The Responsible Official will consider the comments, responses, environmental consequences discussed in the Final EIS, and applicable laws, regulations, and policies in making decisions regarding the Plan of Operations. The responsible official will document her decision and the reasons for the decision in a Record of Decision for the Lost Cabin Mine Final EIS. This decision will be subject to appeal in accordance with 36 CFR part 2157.

Dated: October 3, 2003.

**Mary H. Peterson,**

*Forest Supervisor.*

[FR Doc. 03–25675 Filed 10–9–03; 8:45 am]

**BILLING CODE 3410–GM–M**

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## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to Procurement List.

**SUMMARY:** This action adds to the Procurement List products and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**EFFECTIVE DATE:** November 9, 2003.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Sheryl D. Kennerly, (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** On January 24 and August 8, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 3508, and 47292) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and service and impact of the additions on the current or most recent contractors, the Committee has determined that the products and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. The action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for addition to the Procurement List.

### End of Certification

Accordingly, the following products and service are added to the Procurement List:

*Products*

Product/NSN: CD Cases, Slim
7045–00–NIB–0179—Clear
7045–00–NIB–0180—Color
NPA: Wiscraft Inc.—Wisconsin Enterprises for the Blind, Milwaukee, Wisconsin
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York
Product/NSN: Full Spectrum Battle Equipment (FSBE)
Basic Shooter's Kit/8415–00–NSH–0691
Platoon Kit A/8415–00–NSH–0692
Platoon Kit B/8415–00–NSH–0768
Basic Shooter's Kit B/8415–00–NSH–0769
Platoon Kit C/8415–00–NSH–0770
Basic Shooter's Kit C/8415–00–NSH–0771
NPA: Chautauqua County Chapter, NYSARC, Jamestown, New York
Contract Activity: U.S. Army Robert Morris Acquisition Center, Natick, Massachusetts
Product/NSN: Skilcraft Toner Cartridge
7510–00–NIB–0633 (New—compatible with HP Part No. 92298A)
7510–00–NIB–0641 (New—compatible with HP Part No. C3903A)
7510–00–NIB–0642 (New—compatible with HP Part No. C3906A)
7510–00–NIB–0644 (New—compatible with HP Part No. C4092A)
NPA: Alabama Industries for the Blind, Talladega, Alabama
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York

*Service*

Service Type/Location: Janitorial/Grounds Maintenance
INS—Sector Headquarters
221 Aten Road, Imperial, California
NPA: Association for Retarded Citizens—Imperial Valley, El Centro, California
Contract Activity: Department of Homeland Security, Laguna Niguel, California
This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

**Sheryl D. Kennerly,**

*Director, Information Management.*

[FR Doc. 03–25796 Filed 10–9–03; 8:45 am]

**BILLING CODE 6353–01–P**

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## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to and deletions from Procurement List.

**SUMMARY:** The Committee is proposing to add to the procurement list products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

*Comments Must be Received on or Before:* November 9, 2003.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Sheryl D. Kennerly, (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

### Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

*Regulatory Flexibility Act Certification*

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance

requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

### *End of Certification*

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

*Products*

Product/NSN: Fluorescent Highlighter
M.R. 1776
Product/NSN: Permanent Marker
M.R. 1780
NPA: Dallas Lighthouse for the Blind, Inc., Dallas, Texas
Contract Activity: Defense Commissary Agency, Fort Lee, Virginia
Product/NSN: Polyethylene Waste Disposable Asbestos Bag
8105–LL–S04–7842
8105–LL–S04–7843
8105–LL–S05–0018
NPA: Open Door Center, Valley City, North Dakota
Contract Activity: Fleet and Industrial Supply Center, Bremerton, Washington
Product/NSN: Shovel, Forest Fire
5120–00–965–0609
NPA: Mississippi Industries for the Blind, Jackson, Mississippi
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas
Product/NSN: Tree Marking Paint, Water Resistant
8010–01–511–5057—2400–401 Type D Orange (16 oz. Aerosol)
8010–01–511–5059—2400–401 Type D Yellow (16 oz. Aerosol)
8010–01–511–5061—2400–401 Type D Green (16 oz. Aerosol)
8010–01–511–5063—2400–401 Type D Black (16 oz. Aerosol)
8010–01–511–5066—2400–401 Type D White (16 oz. Aerosol)
8010–01–511–5067—2400–401 Type D Blue (16 oz. Aerosol)
8010–01–511–5095—2400–401 Type C Orange (Quart)
8010–01–511–5097—2400–401 Type C Orange (Gallon)
8010–01–511–5098—2400–401 Type C Yellow (Quart)
8010–01–511–5100—2400–401 Type C Yellow (Gallon)
8010–01–511–5101—2400–401 Type C Green (Gallon)
8010–01–511–5102—2400–401 Type C Green (Quart)
8010–01–511–5103—2400–401 Type C Blue (Quart)
8010–01–511–5104—2400–401 Type C Blue (Gallon)
8010–01–511–5105—2400–401 Type C White (Quart)
8010–01–511–5107—2400–401 Type C White (Gallon)
8010–01–511–5108—2400–401 Type C Black (Quart)
8010–01–511–5109—2400–401 Type C Black (Gallon)
NPA: Lighthouse for the Blind, St. Louis, Missouri
Contract Activity: GSA, Hardware & Appliances Center, Kansas City, Missouri

Services

Service Type/Location: Administrative Services
Federal Protective Service, Southern Field Operation Branch Los Angeles, California
NPA: Pacific Coast Community Services, Truckee, California
Contract Activity: GSA Region 9 PMS, San Francisco, California
Service Type/Location: Custodial Services
U.S. Courthouse (Federal Building), Charlottesville, Virginia
NPA: WorkSource Enterprises, Charlottesville, Virginia
Contract Activity: GSA, Public Buildings Service, Region 3 (3PMT), Philadelphia, Pennsylvania
Service Type/Location: Custodial Services
U.S. Mint, West Point, New York
NPA: New Dynamics Corporation, Middletown, New York
Contract Activity: Department of the Treasury, Washington, DC
Service Type/Location: Grounds Maintenance
Newport Research Facilities, Newport, New York
NPA: Herkimer County Chapter, NYSARC, Herkimer, New York
Contract Activity: Air Force Research Laboratory/IFKO, Rome, New York
Service Type/Location: Janitorial/Custodial
Finger Lakes National Forest—Hector District Ranger Office Hector, New York
NPA: Schuyler County Chapter, NYSARC, Inc., Watkins Glen, New York
Contract Activity: USDA, Forest Service, Rutland, Vermont
Service Type/Location: Prepare Reports of Investigation
Prepare Final Agency Decision
Department of Transportation, Departmental Office of Civil Rights Washington, DC
NPA: Federal Dispute Resolution Center, Alexandria, Virginia
Contract Activity: Department of Transportation, Washington, DC
Service Type/Location: Switchboard Operation
Greater Los Angeles Health Care System, Los Angeles, California
At the following locations:
Los Angeles Ambulatory Care Center
Sepulveda Ambulatory Care Center
VA Medical Center, West Los Angeles
NPA: Lighthouse for the Blind of Houston, Houston, Texas
Contract Activity: VA Network Business Center, Long Beach, California
Service Type/Location: Switchboard Operation
Veterans Affairs Medical Center, Salem, Virginia
NPA: Virginia Industries for the Blind, Charlottesville, Virginia
Contract Activity: VA Medical Center, Hampton, Virginia

### Deletions

### *Regulatory Flexibility Act Certification*

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

### End of Certification

The following products are proposed for deletion from the Procurement List:

Products

Product/NSN: Computer Accessories 7045–01–483–7451
7045–01–483–7844
NPA: Wiscraft Inc.—Wisconsin Enterprises for the Blind, Milwaukee, Wisconsin
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York
Product/NSN: Dropcloth, Heavy Duty 8340–00–NIB–0010
NPA: East Texas Lighthouse for the Blind, Tyler, Texas
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas
Product/NSN: Fixture, Lighting Industrial
6210–00–688–4929
NPA: The Chicago Lighthouse for People who are Blind or Visually Impaired, Chicago, Illinois
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas
Product/NSN: Pad, Scouring 7920–01–383–7928
NPA: Beacon Lighthouse, Inc., Wichita Falls, Texas
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas
Product/NSN: Tape, Electronic Data
7045–01–438–7086
7045–01–123–0367
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania

Contract Activity: Defense Supply Center Columbus, Columbus, Ohio
Product/NSN: Towel, Paper
8540-01-494-0910
NPA: The Lighthouse f/t Blind in New Orleans, New Orleans, Louisiana
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York

**Sheryl D. Kennerly,**

*Director, Information Management.*

[FR Doc. 03-25797 Filed 10-9-03; 8:45 am]

BILLING CODE 6353-01-P

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## COMMISSION ON CIVIL RIGHTS

### Sunshine Act Notice

**AGENCY:** U.S. Commission on Civil Rights.

**DATE AND TIME:** Friday, October 17, 2003, 8:30 a.m.

**PLACE:** Double Tree Hotel, 201 Marquette Avenue, NW., Albuquerque, NM 87102.

**STATUS:**

### Agenda

I. Approval of Agenda.
II. Approval of Minutes of September 12, 2003 Meeting.
III. Announcements.
IV. Staff Director's Report.
V. State Advisory Committee Report: "Racial Harassment in Vermont Public Schools: A Progress Report".
VI. "Not in My Backyard: Executive Order 12898 and Title VI as Tools for Achieving Environmental Justice" Report.
VII. Future Agenda Items.

9:30 a.m. Briefing on Native American Health Care.

**FOR FURTHER INFORMATION CONTACT:** Les Jin, Press and Communications (202) 376-7700.

**Debra A. Carr,**

*Deputy General Counsel.*

[FR Doc. 03-25966 Filed 10-8-03; 3:15 pm]

BILLING CODE 6335-01-M

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## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Docket 53-2003]

### Foreign-Trade Zone 200—Mercer County, NJ, Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by Mercer County, New Jersey, grantee of FTZ 200, requesting authority to expand its zone to include sites in the municipalities of Ewing Township, the City of Trenton, Washington Township, East Windsor Township and Hamilton Township, within the Consolidated Port of the Delaware River and Bay Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 3, 2003.

FTZ 200 was approved on March 11, 1994 (Board Order 683, 59 F.R. 13698, 3/23/94) and consists of one site covering 70 acres on 5 parcels within the 450-acre Mercer County Airport complex on Scotch Road, West Trenton.

The applicant is now requesting authority to expand its general-purpose zone to include five new sites within five Mercer County municipalities: *Proposed Site 2* (18 acres)—Municipality of Ewing along the Lower Ferry Road Business Area at 1425/1445 Lower Ferry Road and 7 Graphics Drive; *Proposed Site 3a* (85 acres)—Marine Terminal Industrial Park, located between 1463-2785 Lambert Street, Trenton; *Proposed Site 3b* (20 acres)—Roebling Market (Park), extending along Clinton Avenue and between South Broad Street, Clark Street and Conovers Alley, Trenton; and *Proposed Site 3c* (24 acres)—Hill Industrial Park, between Pennington Avenue, Ingham Avenue, Chelton Avenue and Globe Street, Trenton; *Proposed Site 4a* (883 acres)—Northwest Business Park, between the intersection of Interstate 195 and the New Jersey Turnpike exit 7A, Municipality of Washington; *Proposed Site 4b* (243 acres)—Windsor Industrial Park, between 92-120 North Main Street and Hankins Road, Municipality of Washington; and, *Proposed Site 4c* (33 acres)—North Gold Industrial Park, along North Gold Drive, Municipality of Washington; *Proposed Site 5* (361 acres)—New Jersey Turnpike Exit 8—Route 33 Corridor, Municipality of East Windsor; and, *Proposed Site 6a* (629 acres)—East State Street Corridor, the Industrial Drive Business Area and the Fairgrounds Industrial Park Area, along Industrial Drive and between E. State Street, Sloan Avenue, Whitehead Road and Nottingham Way, Municipality of Hamilton; and *Proposed Site 6b* (562 acres)—Crossroads Corporate Center on Crossroads Drive, Edgerbrook Business Park on Black Forest Road, Kuser Road Business Development Area on Kuser Road, Hamilton Business Park between Gold Drive and Marlen Drive, the Interstate 95 Business Park on Commerce Way, Matrix Industrial Park on Cabot Drive, and the Horizon Center between Horizon Center Boulevard and Horizon Drive, Municipality of Hamilton. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building-Suite 4100W, 1099—14th Street, NW, Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB-Suite 4100W, 1401 Constitution Avenue, NW, Washington, DC 20230.

The closing period for their receipt is December 9, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 24, 2003).

A copy of the application and accompanying exhibits will be available during this time for public inspection at address Number 1 listed above, and at the U.S. Department of Commerce, International Trade Administration, Export Assistance Center, 20 West State Street, Trenton, New Jersey 08625.

Dated: October 3, 2003.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 03-25776 Filed 10-9-03; 8:45 am]

BILLING CODE 3510-DS-P

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## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Docket 52-2003]

### Foreign-Trade Zone 7—Puerto Rico; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Puerto Rico Industrial Development Company (PRIDCO), a governmental instrumentality of the Commonwealth of Puerto Rico and grantee of Foreign-Trade Zone 7, requesting authority to expand its zone to include five additional sites in Puerto Rico. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended

(19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 2, 2003.

FTZ 7 was approved on June 27, 1960 (Board Order 50, 25 FR 6311, 7/2/60) and expanded on June 28, 1968 (Board Order 76, 33 FR 10029, 7/12/68), November 16, 1972 (Board Order 91, 37 FR 24853, 11/22/72), and January 20, 1999 (Board Order 1020, 64 FR 5765, 2/5/99). The general-purpose zone currently consists of multiple sites which are part of PRIDCO's Industrial Park System.

The applicant is now requesting authority to expand the FTZ to include five additional sites which are not associated with PRIDCO's Industrial Park System. All of these sites are industrial-park or public-warehouse types of facilities that will be available for general-purpose activities to parties requiring FTZ procedures:

# 1—"Public Warehouse in Guaynabo," to include 1.54 acres located at Amelia Industrial Park, Diana Street, Lot # 27, Guaynabo;

# 2—"Distribution Warehouse Center in Cataño," to include 8.96 acres located on State Road 869 in Palmas Ward, Cataño;

# 3—"Distribution Center for the Caribbean in Cataño," to include 16.75 acres located at Kennedy Avenue Km. 3.2, Cataño;

# 4—"Distribution Center in San Juan/Río Piedras," to include 2.94 acres located at State Road # 1 Km. 26.9, Río Cañas Ward, Río Piedras; and

# 5—"Industrial Park in Toa Baja," to include 40.1 acres located at State Road # 865 Km. 4.9, Toa Baja.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin CourtBuilding—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is December 9, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 24, 2003.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, Midtown Building, 10th Floor, 420 Ponce de Leon Avenue, San Juan, PR 00918.

Dated: October 2, 2003.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 03–25775 Filed 10–9–03; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## Bureau of Industry and Security

## Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee (SITAC) will not meet on October 28, 2003, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

### Agenda

*Public Session*

1. Opening remarks and introductions.
2. SITAC Annual Report.
3. Discussion on laser proposal.
4. Discussion on export compliance training initiative.
5. Update on Wassenaar Arrangement negotiations.
6. Presentation of papers and comments by the public.

*Closed Session*

7. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BIS MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on November 29, 2001, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)9\(1) and 10(a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

For more information contact Lee Ann Carpenter on (202) 482–2583.

Dated: October 7, 2003.

**Lee Ann Carpenter,**

*Committee Liaison Officer.*

[FR Doc. 03–25737 Filed 10–9–03; 8:45 am]

BILLING CODE 3510–JT–M

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## DEPARTMENT OF COMMERCE

## International Trade Administration

## [A–570–866]

## Certain Folding Gift Boxes From the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on certain folding gift boxes from the People's Republic of China. The review covers two manufacturers/exporters and the period of review is August 6, 2001, through December 31, 2002.

We have preliminarily determined that sales have been made below normal value by one of the companies subject to this review. If these preliminary results are adopted in our final results of administrative review, we will instruct the Bureau of Customs and Border Protection to assess antidumping duties on all appropriate entries.

**EFFECTIVE DATE:** October 10, 2003.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Moats (Red Point), Yang Jin Chun (Yun Choy), or Thomas Schauer, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5047, (202) 482–5760, and (202) 482–0410, respectively.

**SUPPLEMENTARY INFORMATION:**

## Case History

On January 8, 2002, we published in the **Federal Register** the antidumping duty order on folding gift boxes from the People's Republic of China (PRC). *See Antidumping Duty Order: Certain Folding Gift Boxes from the People's Republic of China*, 67 FR 864 (Jan. 8, 2002).

On January 2, 2003, we published a notice of opportunity to request an antidumping duty administrative review on folding gift boxes from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 80 (Jan. 2, 2003). On January 30, 2003, pursuant to 19 CFR 351.213(b)(2), Red Point Paper Products Co., Ltd. (Red Point), a producer covered by the antidumping duty order, requested that the Department conduct an administrative review of the company. On January 31, 2003, pursuant to 19 CFR 351.213(b)(1), U.S. folding gift box producers Harvard Folding Box Company, Inc., and Field Container Company L.P. requested that the Department conduct an administrative review of Yun Choy Ltd. (Yun Choy), a Chinese producer and/or exporter of the subject merchandise. On February 21, 2003, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.221(c)(1)(i), we issued a notice of initiation of an antidumping duty administrative review of this order and named Red Point and Yun Choy as respondents of this review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 68 FR 9048 (Feb. 27, 2003).

On April 14, 2003, Red Point submitted its Section A response, on April 21, 2003, its Sections C and D responses, and on June 11, 2003, its supplemental responses. Yun Choy received the original questionnaire but did not respond. *See* "The PRC-Wide Rate and Use of Facts Otherwise Available" section below.

## Scope of Order

The products covered by this antidumping duty order are certain folding gift boxes. Certain folding gift boxes are a type of folding or knock-down carton manufactured from paper or paperboard. Certain folding gift boxes are produced from a variety of recycled and virgin paper or paperboard materials, including, but not limited to, clay-coated paper or paperboard and kraft (bleached or unbleached) paper or paperboard. The scope of the order excludes gift boxes manufactured from paper or paperboard of a thickness of more than 0.8 millimeters, corrugated paperboard, or paper mache. The scope of the order also excludes those gift boxes for which no side of the box, when assembled, is at least nine inches in length.

Certain folding gift boxes are typically decorated with a holiday motif using various processes, including printing, embossing, debossing, and foil stamping, but may also be plain white or printed with a single color. The subject merchandise includes certain folding gift boxes, with or without handles, whether finished or unfinished, and whether in one-piece or multi-piece configuration. One-piece gift boxes are die-cut or otherwise formed so that the top, bottom, and sides form a single, contiguous unit. Two-piece gift boxes are those with a folded bottom and a folded top as separate pieces. Certain folding gift boxes are generally packaged in shrink-wrap, cellophane, or other packaging materials, in single or multi-box packs for sale to the retail customer. The scope of the order excludes folding gift boxes that have a retailer's name, logo, trademark or similar company information printed prominently on the box's top exterior (such folding gift boxes are often known as "not-for-resale" gift boxes or "give-away" gift boxes and may be provided by department and specialty stores at no charge to their retail customers). The scope of the order also excludes folding gift boxes where both the outside of the box is a single color and the box is not packaged in shrink-wrap, cellophane, other resin-based packaging films, or paperboard.

Imports of the subject merchandise are classified under *Harmonized Tariff Schedules of the United States* (HTSUS) subheadings 4819.20.00.40 and 4819.50.40.60. These subheadings also cover products that are outside the scope of the order. Furthermore, although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

## Non-Market-Economy Country Status

The Department has treated the PRC as a non-market-economy (NME) country in all past antidumping duty administrative reviews. *See, e.g., Final Results of Antidumping Duty Administrative Review: Synthetic Indigo from the People's Republic of China*, 68 FR 53711, 53712 (Sep. 12, 2003), and *Preliminary Results and Preliminary Partial Rescission of the Antidumping Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 68 FR 53109, 53114 (Sep. 9, 2003). A designation as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act.

No party in this review has requested a revocation of the PRC's NME status. Therefore, we have preliminarily determined to continue to treat the PRC as an NME. When we review imports from an NME, section 773(c)(1) of the Act directs us to base the normal value (NV) on the NME producer's factors of production, valued in a market economy at a comparable level of economic development and that is a significant producer of comparable merchandise. The sources used to value individual factors are discussed in the "Factor Valuations" section, below.

## Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. In this case, Red Point has requested a separate company-specific rate. Red Point is a Hong King company wholly owned by non-PRC nationals. Hong Kong companies are treated as market-economy companies because it is considered as a separate customs territory within the PRC, as it was under British rule. *See Application of U.S. Antidumping and Countervailing Duty Laws to Hong Kong*, 62 FR 42965 (Aug. 11, 1997). Therefore, we determine that it is appropriate to calculate a separate rate for Red Point. Yun Choy did not submit any type of response to the Department's antidumping duty questionnaire. We preliminarily determine that Yun Choy did not establish its entitlement to a separate rate in this review and is therefore presumed to be part of the PRC NME entity and, as such, is subject to the PRC country-wide rate. *See* "The PRC-Wide Rate and Use of Facts Otherwise Available" section below.

**The PRC-Wide Rate and Use of Facts Otherwise Available**

Both respondents were given the opportunity to respond to the Department's questionnaire. As explained above, we received a questionnaire response from Red Point and we have calculated a separate rate for Red Point. The PRC-wide rate applies to all entries of subject merchandise except for entries from Red Point and Max Fortune, a producer which was excluded from the antidumping duty order.

As discussed above, Yun Choy is appropriately considered part of the PRC-wide entity. Yun Choy did not respond to the Department's questionnaire. Section 776(a)(2) of the Act provides that, if an interested party or any other person (A) withholds information that has been requested by the administering authority, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the Department shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

Because the PRC entity did not respond to the Department's questionnaire, we find that, in accordance with sections 776(a)(2)(A) and (B) of the Act, the use of total facts available is appropriate. *See, e.g., Final Results of Antidumping Duty Administrative Review for Two Manufacturers/Exporters: Certain Preserved Mushrooms from the People's Republic of China*, 65 FR 50183, 50184 (Aug. 17, 2000). For a more detailed discussion, see the following determinations: *Preliminary Results of Antidumping Duty Administrative Review for Two Manufacturers/Exporters: Certain Preserved Mushrooms from the People's Republic of China*, 65 FR 40609, 40611 (June 30, 2000); *Final Determinations of Sales at Less Than Fair Value: Persulfates from the People's Republic of China*, 62 FR 27222, 27224 (May 19, 1997); *Preliminary Results of Antidumping Duty Administrative Review: Certain Grain-Oriented Electrical Steel from Italy*, 61 FR 36551, 36552 (July 11, 1996); *Final Results of Antidumping Duty Administrative Review: Certain Grain-Oriented Electrical Steel from Italy*, 62 FR 2655 (Jan. 17, 1997). Because Yun Choy provided no information, sections 782(d) and (e) of the Act are not relevant to our analysis.

Section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated full." *See* Statement of Administrative Action (SAA) accompanying the URAA, H. Doc. No. 103–316, at 870 (1994).

Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination from the less-than-fair-value (LTFV) investigation, a previous administrative review, or any other information placed on the record. Under section 782(c) of the Act, a respondent has a responsibility not only to notify the Department if it is unable to provide requested information but also to provide a "full explanation and suggested alternative forms." On February 27, 2003, the Department transmitted its questionnaire to Yun Choy *via* Federal Express. We confirmed that Yun Choy signed for and received the questionnaire on March 3, 2003 (Hong Kong date). Yun Choy did not submit a response to our questionnaire by the due date, April 7, 2003. On April 11, 2003, the Department mailed a letter *via* Federal Express to Yun Choy asking it to inform the Department as to whether it has submitted or intended to submit a response to the questionnaire or whether it and its affiliates did not have any U.S. sales or shipments during the review period. Yun Choy received the letter on April 14, 2003 (Hong Kong date), but it did not respond to the letter by the due date, April 21, 2003. Because Yun Choy did not provide a response to the Department's questionnaire, the Department is unable to determine Yun Choy's eligibility for a separate rate. Thus, Yun Choy has not rebutted its presumption of government control and is presumed to be part of the PRC entity. Therefore, we determine that Yun Choy and, thereby, the PRC-entity failed to cooperate to the best of its ability, making the use of an adverse inference appropriate.

In accordance with the Department's practice, we have preliminarily assigned to the PRC entity (including Yun Choy) the rate of 164.75 percent as adverse facts available. *See, e.g., Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review: Brake Rotors From the People's Republic of China*, 64 FR 61581, 61584 (Nov. 12, 1999). This rate is the highest dumping margin determined in any segment of this proceeding and was established in the LTFV investigation. See *Final Determination of Sales at Less Than Fair Value: Certain Folding Gift Boxes from the People's Republic of China*, 66 FR 58115, 58118 (Nov. 20, 2001) (*Final Determination*). In selecting a rate for adverse facts available, the Department selects a rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (Feb. 23, 1998).

Section 776(c) of the Act provides that, where the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* SAA at 870. The word "corroborate" means to determine that the information used has probative value. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. We corroborated the rate of 164.75 percent in the LTFV investigation. *See Preliminary Determination of Sales at Less Than Fair Value: Certain Folding Gift Boxes From the People's Republic of China*, 66 FR 40973, 40976 (Aug. 6, 2001). We have no reason to question the reliability of this data for this review and no party has argued that it is not reliable. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in *Final Results of Antidumping Duty Administrative Reviews: Fresh Cut Flowers from Mexico*, 61 FR 6812 (Feb. 22, 1996), the

Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co.* v. *United States,* 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present here. Therefore, we consider the PRC-wide rate, which is the rate from the LTFV investigation, relevant for this review.

Furthermore, since this rate is the rate from the final determination, we established the reliability and relevance of the rate in the investigation. *See Final Determination.* As there is no information on the record of this review that demonstrates that this final rate from the final determination is not reliable for use as the adverse facts available rate for the PRC-wide rate, we determine that this rate has probative value and, therefore, is an appropriate basis for the PRC-wide rate to be applied in this review to exports of subject merchandise by Yun Choy.

## Surrogate Country

When the Department is reviewing imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production, valued in a surrogate market-economy country or countries selected in accordance with section 773(c)(4) of the Act. In accordance with that provision, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market-economy countries that are at a level of economic development comparable to the NME country and are significant producers of comparable merchandise.

The Department has determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines are countries comparable to the PRC in terms of economic development. See Memorandum from Ron Lorentzen to Laurie Parkhill: Administrative Review of the Antidumping Duty Order on Folding Gift Boxes from the People's Republic of China: Request for a List of Surrogate Countries, dated June 30, 2003. Normally, the Department will select an appropriate surrogate based on the availability and reliability of data from these countries. In this case, we have found that India is a significant producer of comparable merchandise and we have reliable data from India which we can use to value the factors of production.

We have used India as the surrogate country and, accordingly, we have calculated NV using Indian prices to value the PRC producers' factors of production, when available and appropriate. See Surrogate Country Selection Memorandum to The File from Jennifer Moats dated October 3, 2003 (Surrogate Country Memorandum). We have obtained and relied upon publicly available information wherever possible. See Factor Valuation Memorandum to The File from Jennifer Moats, dated October 3, 2003 (Factor Valuation Memorandum).

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of an administrative review, interested parties may submit publicly available information to value the factors of production within 20 days after the date of publication of these preliminary results.

## Export Price

In accordance with section 772(a) of the Act, we used export price (EP) for Red Point because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and because constructed export price was not otherwise warranted based on the facts of the record.

We calculated EP based on free-on-board prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight from the plant to the port of exportation and for domestic brokerage and handling in accordance with section 772(c)(2)(A) of the Act. All of these services were provided by Hong Kong companies and charged in Hong Kong dollars. Therefore, valuation of these charges based on surrogate values was not necessary.

## Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if (1) the merchandise is exported from an NME country and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

Factors of production include (1) hours of labor required, (2) quantities of raw materials employed, (3) amounts of energy and other utilities consumed, and (4) representative capital costs. We used factors of production reported by Red Point for materials, energy, labor, by-products, and packing. We valued all input factors not obtained from market economies using publicly available published information as discussed in the "Surrogate Country" and "Factor Valuations" sections of this notice.

In accordance with 19 CFR 351.408(c)(1), where a producer sources an input from a market economy and pays for it in market-economy currency, the Department employs the actual price paid for the input to calculate the factors-based NV. *See also Lasko Metal Products* v. *United States,* 437 F.3d 1442, 1445–1446 (Fed. Cir. 1994). Red Point reported that some of its inputs were purchased from market economies and paid for in market-economy currency. See "Factor Valuations" section below.

## Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by Red Point for the POR. To calculate NV, we multiplied the reported per-unit factor quantities by publicly available Indian surrogate values (except as noted below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. For a detailed description of all surrogate values used for Red Point, *see* the Factor Valuation Memorandum. For a detailed description of all actual values used for market-economy inputs, *see* the Red Point Preliminary Calculation Memorandum dated October 3, 2003.

Because we used Indian import values to value inputs purchased domestically by the Chinese producers, we added to Indian surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1408 (Fed. Cir. 1997).

Except as noted below, we valued raw material inputs using the average unit import values derived from the *World Trade Atlas,* published by the Global Trade Information Services, Inc. *See* the Global Trade Information Services Web site at *http://www.gtis.com/wta.htm.* (The source of the data for the *World Trade Atlas* is the Directorate General of Commercial Intelligence and Statistics (DGCI&S) of the Indian Ministry of Commerce and Industry. The DGCI&S also releases the Monthly Statistics of Foreign Trade of India.)

As explained above, Red Point purchased certain raw material inputs from market-economy suppliers and paid for them in market-economy currencies. See Red Point's April 21, 2003, section D response at pages 5–6 for a description of these inputs. The evidence provided by Red Point indicated that its market-economy purchases of these inputs were paid for by Red Point in a market-economy currency. *See* Red Point's April 21, 2003, section D response at page 6. Therefore, in accordance with 19 CFR 351.408(c)(1), the Department has determined to use the market-economy prices as reported by Red Point to value these inputs from both market-economy and NME suppliers because the market-economy inputs represented a significant quantity of the inputs in each case and they were paid for in a market-economy currency.

To value electricity, we used the all-India average for industrial electricity as reported in Annexure 4.26 of the *Annual Report (2001–02) on The Working of State Electricity Boards & Electricity Departments*, published by the Planning Commission (Power & Energy Division), Government of India, in May 2002. This information is included in Exhibit 11 of Red Point's August 25, 2003, submission.

Red Point reported the following packing inputs: cartons, shrink wrap, tape, labels, keep-fresh film, and woodfree paper. We used the *World Trade Atlas* for Red Point to value these items. *See* the Factor Valuation Memorandum.

We used Indian transport information to value delivery costs for raw materials. To calculate domestic inland freight (by truck), we used a price report from Iron & Steel Newsletter for transporting material between Mumbai and Pune, Mumbai and Vapi/Daman, and Delhi and Gurgaon which was provided in Exhibit 12 of Red Point's August 25, 2003, surrogate-value submission. We used the rates between these cities because they were within 200 kilometers of each other and comparable to the distance between Red Point's factory and Hong Kong, the port of exportation. We converted the Indian Rupee value to U.S. dollars.

Red Point identified a by-product (paperboard scrap) which it claimed was sold to customers in the PRC. The Department has offset Red Point's cost of production by the value of a reported by-product where Red Point's response indicated that it was sold. *See* the Factor Valuation Memorandum for a complete discussion of by-product credits given and the surrogate value used.

To value factory overhead expenses, selling, general and administrative expenses (SG&A), and profit, we calculated a rate based on financial statements from an Indian producer of comparable merchandise, Rollatainers Limited. For a further discussion of the surrogate values for overhead, SG&A, and profit, *see* the Factor Valuation Memorandum.

For labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate at Import Administration's home page, Expected Wages of Selected NME Countries, revised in February 2003. *See http://ia.ita.doc.gov/wages/index.html.* The source of the wage-rate data on the Import Administration's Web site is the *2001 Year Book of Labour Statistics*, International Labor Office (Geneva: 2001), Chapter 5B: Wages in Manufacturing.

## Preliminary Results of Review

As a result of our review, we preliminarily determine the following percentage weighted-average dumping margins on folding gift boxes for the period August 6, 2001, through December 31, 2002:

| Exporter/manufacturer | Margin (percent) |
|---|---|
| Red Point | 0.00 |
| PRC-wide rate (including Yun Choy) | 164.75 |

## Public Comment

Pursuant to 19 CFR 351.309(c)(ii), interested parties may submit case briefs within 30 days of the date of publication of this notice. Furthermore, as discussed in 19 CFR 351.309(d), rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed within 5 days after the time limit for filing the case brief. Parties who submit case or rebuttal briefs for this review are requested to submit with each argument (1) a statement of the issue, and (2) a brief summary of the argument (five pages maximum, including footnotes) with an electronic version included. A list of authorities used should accompany any briefs submitted to the Department. *See* 19 CFR 351.309(c)(2) and (d)(2).

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of the date of publication of this notice. Issues raised in a hearing will be limited to those raised in the respective case and rebuttal briefs. If requested, a hearing will be held at the main Commerce Department building at a time and location to be determined. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, United States Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. A request should contain (1) the party's name, address, and telephone number, (2) the number of participants, and (3) a list of the issues to be discussed. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs. The Department will issue the final results of review within 120 days of publication of these preliminary results.

## Assessment Rates

The Department shall determine, and the Bureau of Customs and Border Protection shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated, whenever possible, an exporter/importer (or customer)-specific assessment value for subject merchandise.

## Cash-Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of folding gift boxes entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash-deposit rates for the reviewed companies will be the rates established in the final results of review; (2) for previously investigated or reviewed companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters (except for Max Fortune, which was excluded from the antidumping duty order) will continue to be the "PRC-wide" rate from the LTFV investigation. *See Final Determination.*

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 3, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–25773 Filed 10–9–03; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A-570–847]**

## Persulfates from the People's Republic of China: Notice of Preliminary Results of Changed Circumstances Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** October 10, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mike Strollo or Patrick Connolly at (202) 482–0629 or (202) 482–1779, respectively, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

**SUMMARY:** On February 21, 2003, in response to a request by FMC Corporation, a U.S. producer of persulfates and an interested party in this proceeding, the Department of Commerce initiated a changed circumstances review of the antidumping duty order on persulfates from the People's Republic of China, as described below.

We preliminarily determine that Degussa-AJ (Shanghai) Initiators Co., Ltd.'s factors of production have not changed substantially since Degussa AG's investment in Shanghai Ai Jian Reagent Works. As a result, the Department will consider in any future revocation inquiry any administrative reviews in which Shanghai Ai Jian Import and Export Corporation procured its products exported to the United States from Shanghai Ai Jian Reagent Works. Interested parties are invited to comment on these preliminary results.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 7, 1997, the Department published in the **Federal Register** the antidumping duty order on persulfates from the PRC. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Persulfates From the People's Republic of China*, 62 FR 36259 (July 7, 1997). In addition, on August 27, 2002, the Department initiated an administrative review of the antidumping duty order on persulfates covering one exporter from the People's Republic of China (PRC), Shanghai Ai Jian Import and Export Corporation (Ai Jian). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 55000 (Aug. 27, 2002). As part of its request for review, Ai Jian asked the Department to revoke the antidumping duty order with respect to its exports produced by Ai Jian's supplying factory, Shanghai Ai Jian Reagent Works (AJ Works).

On January 7, 2003, FMC Corporation (FMC), a U.S. producer of persulfates, notified the Department that Degussa AG, a German company, had purchased 70 percent of AJ Works and that, as a result, the name of the factory had been changed to Degussa (Shanghai) Initiators Co., Ltd. (Degussa-AJ). FMC requested that the Department initiate a changed circumstances review to determine whether Degussa-AJ is, in fact, the successor-in-interest to AJ Works, and hence, whether it should be considered the same entity with regards to the pending revocation request.

Based on the information submitted by FMC regarding Degussa AG's investment in AJ Works, the Department determined that there was sufficient evidence of changed circumstances to warrant a review under section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(d). Consequently, the Department published a notice of initiation of this review on February 28, 2003. *See Persulfates from the People's Republic of China: Notice of Initiation of Changed Circumstances Review*, 68 FR 9636 (Feb. 28, 2003) (*Initiation Notice*). The Department denied FMC's request that the Department issue preliminary results of the changed circumstances review in conjunction with the notice of initiation because FMC did not provide sufficient evidence to support a preliminary finding. The Department invited comments from interested parties in the initiation notice and stated that it would publish in the Federal Register a notice of preliminary results of changed circumstances review, in accordance with 19 CFR 351.222(c)(3)(i), prior to the issuance of the final results.

Since the Department's notice of initiation of this review, the following events have occurred:

On March 11, 2003, the Department issued a questionnaire to Degussa-AJ requesting details of Degussa AG's investment in AJ Works and its impact on the production operations of Degussa-AJ. Ai Jian and Degussa-AJ (collectively, Ai Jian/Degussa) responded to this questionnaire on April 1, 2003.

On March 19, 2003, Ai Jian withdrew its request for revocation in the 2001–2002 administrative review.

On May 1, 2003, the petitioner submitted a letter in which it argued that Degussa-AJ is not the successor-in-interest to AJ Works. The petitioner further argued that the Department should assign the PRC-wide rate to all imports from Ai Jian, retroactive to the date of Degussa AG's purchase of AJ Works. Ai Jian/Degussa responded to these arguments on May 12, 2003.

On May 2, 2003, the Department issued a supplemental questionnaire to Ai Jian/Degussa. Ai Jian/Degussa responded to this questionnaire on May 23, 2003.

On July 31, 2003, the petitioner requested that the Department conduct an administrative review of Ai Jian covering the period July 1, 2002, through June 30, 2003.

### Scope Of Review

The products covered by this review are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively, $(NH_4)_2S_2O_8$, $K_2S_2O_8$, and $Na_2S_2O_8$. Potassium persulfates are currently classifiable under subheading 2833.40.10 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Sodium persulfates are classifiable under HTSUS subheading 2833.40.20. Ammonium and other persulfates are classifiable under HTSUS subheadings 2833.40.50 and 2833.40.60. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

### Preliminary Results

The Department conducts successor-in-interest inquiries under section 751(b) of the Act and 19 CFR 351.216 and 221(c)(3) (*i.e.*, the provisions governing changed circumstances reviews). Because these provisions do not provide explicit guidance, the Department has developed the following framework for conduct of these reviews.

Specifically, in making a normal successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan*, 67 FR 58 (Jan. 2, 2002) (*Polychloroprene Rubber from Japan*), and *Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Administrative Review*, 57 FR 20460 (May 13, 1992) (*Brass Sheet and Strip from Canada*). While no one of these factors is dispositive, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is not materially dissimilar to that of its predecessor. *See Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944 (Feb. 14, 1994).

This analytical framework is tailored for exporters of subject merchandise, because any findings made pursuant to changed circumstances reviews are intended to apply to entities assigned their own specific cash deposit rates. Because the circumstances here involve a significant investment by a market economy company in a producer located in a nonmarket economy country (NME), not an exporter assigned a separate cash deposit rate, the analysis applied here differs from determinations in other changed circumstances reviews. *See* the *Initiation Notice*, 68 at FR 9637.

The Department's general practice in cases involving NME countries is to assign rates to exporters rather than producers because the exporters are the entities that determine the price at which the subject merchandise is sold to the United States. *See Notice of Final Determination of Sales at Less Than Fair Value: Persulfates From the People's Republic of China*, 62 FR 27222, 27228 (May 19, 1997) (*Persulfates LTFV Final*). *See also Manganese Metal from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12441, 12449 (Mar. 13, 1998). *See also Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form From the People's Republic of China*, 66 FR 49345 (Sept. 27, 2001) and accompanying decision memorandum at *Comment 2*. *See also Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27295, 27303 (May 19, 1997). In the event that an exporter may qualify for revocation, however, such revocation normally is limited to merchandise of certain producers. The regulations address revocation determinations involving non-producing exporters:

> In the case of an exporter that is not the producer of subject merchandise, the Secretary normally will revoke an order in part under paragraph (b)(2) of this section only with respect to subject merchandise produced or supplied by those companies that supplied the exporter during the time period that formed the basis for the revocation.

See 19 CFR 351.222(b)(3).

Therefore, this changed circumstances review has relevance only to the extent that it will impact Ai Jian's future revocation eligibility. Pursuant to 19 CFR 351.222(b)(3), the Department will revoke an exporter (*e.g.*, Ai Jian) from an order only with respect to subject merchandise produced or supplied by the producer(s) that supplied the exporter during the time period that forms the basis for the revocation (*i.e.*, three consecutive years). Should the Department find that the factors of production have not changed substantially since Degussa AG's investment in AJ Works, the Department will consider in any future revocation inquiry any administrative reviews in which Ai Jian procured its products exported to the United States from AJ Works. On the contrary, should the Department find at the final results of this changed circumstances review that the factors of production of Degussa-AJ have changed so substantially from the merchandise produced by AJ Works that the resulting operation is materially dissimilar to that of its predecessor, Ai Jian will need to complete three new administrative reviews with Degussa-AJ, its "new" supplier, before it may qualify for revocation.

In order to evaluate whether Degussa AG's investment in AJ Works impacts the Department's previous dumping findings made with respect to Ai Jian, therefore, we have focused our analysis on any changes in Degussa-AJ's factors of production. Under the Department's NME methodology, these factors of production form the basis for normal value and, as a result, are an essential component of the margin calculated for Ai Jian. Therefore, we examined the following areas in making our determination: (1) management; (2) production facilities; and (3) supplier relationships. Because Degussa-AJ's customer base is not relevant to our analysis, it is not necessary to address this component.[1]

In its April 1 and May 23, 2003, submissions, Degussa-AJ stated that there were no changes to its production facilities, production process, or product line since Degussa AG's investment in AJ Works.

Degussa-AJ explained that AJ Works began to undertake two changes to its ammonium persulfate workshop in early 2002. Degussa-AJ has continued work on these improvements, which were ongoing as of the submission date of Degussa-AJ's last questionnaire response. Specifically, Degussa-AJ is expanding its production capacity for producing ammonium persulfate and, in addition, is working on a process improvement to decrease the yield loss of one of the factors of production, ammonium sulfate, which should reduce the consumption of this material input in the production process. With the exception of these two ongoing changes to its ammonium persulfate workshop, Degussa-AJ has only evaluated, but not initiated, any other changes to its production facilities and production process.

Additionally, Degussa-AJ has not determined when the evaluation of other improvements to its production facilities or production process will be complete, much less when actual changes might take place. Therefore, although there are two ongoing improvements to Degussa-AJ's production facilities and production process that should impact one of the factors of production (*i.e.*, self-produced ammonium sulfate), nothing in the respondent's questionnaire responses indicates that there have been any other changes, as of the date of the most recent questionnaire response, to Degussa-AJ's factors of production for persulfates as a result of Degussa AG's investment in AJ Works.

In addition to an examination of any changes to the production facility and production process, the Department examined other changes at Degussa-AJ. Although there were significant changes to Degussa-AJ's board of directors as a result of Degussa AG's investment in AJ Works, the factory management team has remained largely intact, and those employees now serve in the same or similar capacities as before Degussa AG's investment in AJ Works. Finally, there have been no changes to Degussa-AJ's suppliers or supplier relationships since Degussa AG's investment in AJ Works. For further discussion, see the October 3, 2003, memorandum to James J. Jochum, Assistant Secretary for Import Administration, from Jeffrey May, Deputy Assistant Secretary, Group I, entitled "Factors of Production Analysis With Respect to Merchandise Considered for Revocation."

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[1] We have not considered changes to Degussa-AJ's customer base in making our determination because: (1) any such changes do not have a substantive bearing on the company's factors of production; and (2) normally the Department considers neither an NME entity's home market customer base nor its home market sales transactions in making NME antidumping duty determinations. Furthermore, Degussa-AJ is merely a producer of subject merchandise and does not have its own separate antidumping duty rate. Were Degussa-AJ to sell subject merchandise to the United States, these entries would fall under the China-wide rate of 119.02 percent, not Ai Jian's rate. Changes to Degussa-AJ's customer base, therefore, would influence neither Degussa-AJ's nor Ai Jian's antidumping duty rate. For purposes of this determination, therefore, changes to Degussa-AJ's customer base do not have relevance.

Based on the information submitted by Ai Jian/Degussa, we preliminarily determine that Degussa-AJ's factors of production have not changed substantially since Degussa AG's investment in AJ Works. As a result, the Department will consider in any future revocation inquiry any administrative reviews in which Ai Jian procured its products exported to the United States from AJ Works. The current requirements for the cash deposit of estimated antidumping duties on the subject merchandise are not impacted by this determination.

### Public Comment

Interested parties may request a hearing within 14 days after the publication of this notice. Any hearing, if requested, will be held 30 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs not later than 14 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 19 days after the date of publication of this notice. Parties who submit comments or rebuttal briefs in this proceeding are requested to submit with the argument: (1) a statement of the issue, and (2) a brief summary of the argument (no longer than five pages, including footnotes). In accordance with 19 CFR 351.216(e), the Department will issue its final results of review within 270 days after the date on which the changed circumstances review was initiated (*i.e.*, no later than November 18, 2003).

This notice is published in accordance with sections 751(b)(1) and (d) and 777(i) of the Act, and with 19 CFR 351.221(c)(3).

Dated: October 3, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–25771 Filed 10–9–03; 8:45 am]

BILLING CODE 3510–DS–S

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–427–820, A–428–830, A–475–829, A–580–847, A–412–822]**

## Notice of Amended Antidumping Duty Orders: Stainless Steel Bar From France, Germany, Italy, Korea, and the United Kingdom

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of amended antidumping duty orders.

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**EFFECTIVE DATE:** October 10, 2003.

**FOR FURTHER INFORMATION CONTACT:** Andrew Smith or John Brinkmann, (202) 482–1276 or (202) 482–4126, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

### Summary

The Department of Commerce is amending its antidumping duty orders in these investigations to bring them into compliance with section 733(d) of the Tariff Act of 1930, as amended. Specifically, these antidumping duty orders are amended to state that the suspension of liquidation ordered in the preliminary determinations in these investigations shall be discontinued for subject merchandise entered on or after January 29, 2002, through March 7, 2002.

### Scope of Order

For purposes of this order, the term "stainless steel bar" includes articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The stainless steel bar subject to this investigation is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

### Background

On August 2, 2001, the Department of Commerce ("the Department") preliminarily determined that stainless steel bar from France, Germany, Italy, Korea, and the United Kingdom was being sold in the United States at less than fair value ("LTFV"), as provided in section 735(a) of the Tariff Act of 1930, as amended ("the Act"). *See* 66 FR 40201 (August 2, 2001) for France; 66 FR 40208 (August 2, 2001) for Germany; 66 FR 40214 (August 2, 2001) for Italy; 66 FR 40222 (August 2, 2001) for Korea; 66 FR 40192 (August 2, 2001) for the United Kingdom (collectively "*the SSBar Preliminary Determinations*")

Due to scheduling problems evolving from the events of September 11, 2001, the Department tolled the final determination deadlines in these investigations until January 15, 2002. On January 15, 2002, the Department determined that stainless steel bar from France, Germany, Italy, Korea, and the United Kingdom was being sold in the United States at LTFV, as provided in section 735(a) of the Act. *See* 67 FR 3143 (January 23, 2002) for France; 67 FR 3159 (January 23, 2002) for Germany; 67 FR 3155 (January 23, 2002) for Italy; 67 FR 3149 (January 23, 2002) for Korea; 67 FR 3146 (January 23, 2002) for the United Kingdom (collectively "*the SSBar Final Determinations*"). The Department subsequently amended the final determination of the antidumping duty investigation of stainless steel bar from Germany to correct ministerial errors. *See* 67 FR 10382 (March 7, 2002).

On February 28, 2002, the International Trade Commission ("ITC") notified the Department of its final determinations pursuant to Section 735(b)(1)(A)(i) of the Act that an industry in the United States is materially injured by reason of LTFV imports of subject merchandise from France, Germany, Italy, Korea, and the United Kingdom. The ITC published its final affirmative injury determination on March 8, 2002. *See* 67 FR 10756 (March 8, 2002). Accordingly, the Department issued Antidumping Duty Orders in which it directed the U.S. Bureau of Customs and Border Protection ("BCBP") to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeded the export price or constructed export price of the merchandise for all relevant entries of stainless steel bar from France, Germany, Italy, Korea, and the United Kingdom. *See* 67 FR 10385 (March 7, 2002) for France; 67 FR 10382 (March 7, 2002) for Germany; 67 FR 10384 (March 7, 2002) for Italy; 67 FR 10381 for Korea; 67 FR 10381 (March 7, 2002) for the United Kingdom (collectively "*the SS Bar AD Orders*"). The Department directed the BCBP to assess antidumping duties on all unliquidated entries of imports of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after August 2, 2001, the date on which the Department published its *SS Bar Preliminary Determinations* in the **Federal Register**.

## Amended Antidumping Duty Orders

The *SS Bar Orders* incorrectly stated that antidumping duties will be assessed on all unliquidated entries of imports of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after August 2, 2001, the date on which the Department published its notices of affirmative preliminary determinations in the **Federal Register**. Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination "may not remain in effect for more than 4 months" except where, as was the case in these investigations, "exporters representing a significant proportion of exports of the subject merchandise, extend that 4-month period to not more than 6 months." In these SS Bar investigations, January 29, 2002, is 6 months from the date of publication of the *SS Bar Preliminary Determinations*. Furthermore, section 737 of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination, March 8, 2002. Accordingly, except as otherwise noted below, the *SS Bar AD Orders* are amended to state that:

> These antidumping duties will be assessed on all unliquidated entries of stainless steel bar from France, Germany, Italy, Korea, and the United Kingdom entered, or withdrawn from warehouse, for consumption on or after August 2, 2001, the date of the publication of the *SS Bar Preliminary Determinations* in the **Federal Register**. In accordance with section 733(d) of the Act, we will instruct the BCBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of stainless steel bar from France, Germany, Italy, Korea and the United Kingdom entered, or withdrawn from warehouse, for consumption on or after January 29, 2002, through and including March 7, 2002. Suspension of liquidation will continue on or after March 8, 2002.

Any liquidation instructions issued to the BCBP will exclude entries that have been enjoined from liquidation. Therefore, instructions will not be issued covering enjoined entries of stainless steel bar from Italy and the United Kingdom, until either the conclusion of the ongoing litigation with respect to the final determination, pursuant to which these entries have been enjoined from liquidation, or the injunction in those cases are lifted or amended to allow liquidation of those entries. *See Slater Steels Corp.* v. *United States*, Consol. Court. No. 02–00189; *Corus Engineering Steels Ltd.* v. *United States*, Court No. 02–00283.

This notice constitutes the amended antidumping duty order with respect to stainless steel bar from France, Germany, Italy, Korea, and the United Kingdom, pursuant to section 736(a) of the Act. Interested parties may contact the Department's CRU for copies of an updated list of antidumping duty orders currently in effect.

This amended order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: October 3, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–25772 Filed 10–9–03; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–412–822]

## Stainless Steel Bar From the United Kingdom: Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** October 10, 2003.

**FOR FURTHER INFORMATION CONTACT:** Kate Johnson at (202) 482–4929, or Rebecca Trainor at (202) 482–4007, Office 2, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUMMARY:** The Department of Commerce is extending the time limit for the preliminary results of the first administrative review of the antidumping duty order on stainless steel bar from the United Kingdom, which covers the period August 2, 2001, through February 28, 2003.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. The Department finds that it is not practicable to complete the preliminary results in the administrative review of stainless steel bar from the United Kingdom within the 245-day time period because, as a result of the progress of the case and necessary verification scheduling, the verification of the sole respondent in this review is scheduled to be conducted in mid-November, which will not allow sufficient time to complete the preliminary results by the scheduled deadline of December 1, 2003.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time for completion of the preliminary results of this review until March 30, 2004.

Dated: October 3, 2003.

**Jeffrey May,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 03–25774 Filed 10–9–03; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 092603A]**

## Incidental Take of Marine Mammals; Taking of Marine Mammals Incidental to Operation of a Low Frequency Sound Source by the North Pacific Acoustic Laboratory

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of issuance of a letter of authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that a letter of authorization to take several species of marine mammals incidental to operation of a low frequency sound source by the North Pacific Acoustic Laboratory (NPAL) was issued on October 3, 2003, to the University of California San Diego, Scripps Institution of Oceanography (Scripps).

**DATES:** This letter of authorization is effective from October 3, 2003, through October 2, 2004.

**ADDRESSES:** The application and letter is available for review in the Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Skrupky, NMFS, (301) 713–2322, ext 163.

**SUPPLEMENTARY INFORMATION:** Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking incidental to operation of a low frequency sound source by NPAL, were published on August 17, 2001 (66 FR 43442), and remain in effect until September 17, 2006.

Issuance of the letter of authorization to Scripps is based on findings made in the preamble to the final rule that the total takings by this project would result in only small numbers (as the term is defined in 50 CFR 216.103) of marine mammals being taken. In addition, the resultant incidental harassment would have no more than a negligible impact on the affected marine mammal stocks or habitats and would not have an unmitigable adverse impact on Arctic subsistence uses of marine mammals. NMFS also finds that the applicant will meet the requirements contained in the implementing regulations and Letter of Authorization (LOA), including monitoring and reporting requirements. This LOA will be renewed annually based on a review of the activity, completion of monitoring requirements and receipt of reports required by the LOA.

Dated: October 3, 2003.

**Laurie K. Allen,**

*Acting Office Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 03–25818 Filed 10–9–03; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 100603B]**

## Gulf of Mexico Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council will convene public meetings of the Reef Fish Advisory Panel (AP)and the Standing and Special Reef Fish Scientific and Statistical Committee (SSC) from October 28 through October 29, 2003.

**DATES:** The Council's Reef Fish AP and SSC will convene jointly at 1 p.m. on Tuesday, October 28, 2003, to receive presentations. The AP and SSC will hold separate meetings to discuss the issues and make recommendations beginning at 8:30 a.m. on Wednesday, October 29, 2003, and will conclude by 5 p.m.

**ADDRESSES:** The meetings will be held at the Hilton Tampa Airport Westshore Hotel, 2225 Lois Avenue, Tampa, FL; telephone: 813–877–6688.

*Council address:* Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steven Atran, Population Dynamics Statistician, the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone 813–228–2815.

**SUPPLEMENTARY INFORMATION:** The AP and the SSC will convene to review a yellowtail snapper stock assessment and a revised Reef Fish Secretarial Amendment 1 (red grouper rebuilding plan).

A yellowtail snapper stock assessment was prepared by the Florida Marine Research Institute (FMRI) on behalf of the Florida Fish and Wildlife Conservation Commission, the Gulf of Mexico Fishery Management Council, and the South Atlantic Fishery Management Council. The assessment was conducted using a process known as Southeast Data Assessment and Review (SEDAR). Under this process, a SEDAR Data Workshop was held on March 3–7, 2003, to bring researchers, managers, fishermen and environmental organization representatives together to review the available scientific information on yellowtail snapper, goliath grouper and vermilion snapper. A SEDAR Assessment Workshop was then held on June 9–13, 2003, to again bring researchers, managers, fishermen and environmental representatives together to conduct the actual assessment. A draft stock assessment from that workshop was presented to a SEDAR Assessment Review Workshop held in Tampa July 28–31, 2003. The review workshop, in addition to convening researchers, managers, fishermen and environmental organization representatives, also included several assessment experts from outside of the Gulf region, including two provided by the University of Miami's Center for Independent Experts. Based on the results of the Assessment Review Workshop, a final version of the yellowtail snapper stock assessment was prepared, along with recommendations of the Assessment Review Workshop on the status of the stock and selection of status determination criteria (maximum fishing mortality rate, minimum stock size threshold, and optimum yield). These recommendations were presented to the Gulf Council's Socioeconomic Panel on September 10–12, 2003. The yellowtail snapper stock assessment, recommendations of the SEDAR Assessment Review Panel, and Socioeconomic Panel will be presented during the joint AP/SSC session on October 28, 2003. Afterwards, the AP and SSC will meet separately on October 29, 2003, to discuss the issues and make recommendations to the Gulf Council.

Red grouper were declared overfished by NMFS in October 2000, based on a 1999 assessment plus additional analyses conducted in 2000. A 2002 stock assessment by NMFS found that the red grouper stock was back above its minimum stock size threshold, but it had been below the threshold in 1999, confirming the need for a rebuilding plan to restore the stock to a level capable of producing maximum sustainable yield on a continuing basis. In May 2003, the Council submitted Reef Fish Secretarial Amendment 1 to NMFS that called for approximately a 10 percent reduction in harvest, to be achieved through a reduction in the commercial shallow-water grouper quota, replacing the February 15 to March 15 commercial closed season on gag, red and black grouper with a shallow-water grouper trip limit, and a recreational bag limit of no more than two red grouper (out of the 5 aggregate grouper bag limit). The rebuilding plan also proposed a reduction in the deep-water grouper quota and setting of a tilefish quota in order to discourage effort shifting to those stocks. NMFS has reviewed the plan as submitted by the Gulf Council and has made revisions to it. These revisions will be presented during the joint AP/SSC session on October 28, 2003. The AP and SSC will then meet separately on October 29, 2003, to discuss the issues and make recommendations to the Gulf Council.

Although other non-emergency issues not on the agenda may come before the AP/SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the AP/SSC will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

## Special Accommodations

Copies of the agendas of these meetings and the stock assessments can be obtained by calling the Council office at 813–228–2815 (toll-free 888–833–1844). Additional materials, including the Reef Fish Stock Assessment Panel report and the Socioeconomic Panel (SEP) report, can also be obtained from the Council office or downloaded from the Council website (*http://www.gulfcouncil.org*) but the SEP report may not be available until just prior to the meetings. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by October 17, 2003.

Dated: October 06, 2003.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–25819 Filed 10–9–03; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 100603G]**

## Gulf of Mexico Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council will convene a public meeting of the Special Coral Scientific and Statistical Committee (SSC) on October 27 and 28, 2003.

**DATES:** The Council's Coral SSC will convene at 1:30 p.m. on Monday, October 27, 2003 and conclude by 5 p.m. on Tuesday, October 28, 2003.

**ADDRESSES:** The meetings will be held at the Hilton Tampa Airport Westshore Hotel, 2225 Lois Avenue, Tampa, FL; telephone: 813–877–6688.

*Council address*: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

**FOR FURTHER INFORMATION CONTACT:** Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

**SUPPLEMENTARY INFORMATION:** The SSC will convene to discuss the current status and trends with coral reef resources in the Gulf of Mexico, and issues that concern the health of coral reefs. Some of the issues to be discussed include: diseases, oceanographic phenomena, global climate change, human interactions, and marine reserves. The Coral SSC will also consider funding priorities for future coral research projects and develop any recommendations for the Council.

Although non-emergency issues not contained in the agenda may come before the Coral SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), those issues may not be the subject of formal action during this meeting. The Coral SSC actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305 (c) of the MSFCMA, provided the public has been notified of the Council's intent to take final action to address the emergency.

Copies of the agendas of these meetings and the stock assessments can be obtained by calling the Council office at 813–228–2815 (toll-free 888–833–1844).

## Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by October 20, 2003.

Dated: October 7, 2003.

**Peter H. Fricke,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–25820 Filed 10–9–03; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D 090903B]**

## Marine Mammals; File No. 782–1702

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Issuance of permit.

**SUMMARY:** Notice is hereby given that National Marine Mammal Laboratory, National Marine Fisheries Service, NAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070, (Dr. Sue Moore, Principal Investigator), has been issued a permit to take California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*), and northern elephant seals (*Mirounga angustirostris*) in California, Washington and Oregon for purposes of scientific research. Samples may be imported/export from/to Canada for analysis under this Permit or Permit No. 782–1694.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

**FOR FURTHER INFORMATION CONTACT:** Ruth Johnson or Amy Sloan (301)713–2289.

**SUPPLEMENTARY INFORMATION:** On June 4, 2003, notice was published in the **Federal Register** (68 FR 33477) that a request for a scientific research permit to take the species identified above had been submitted by the above-named organization]. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The purposes of the authorized research to conduct aerial, ground, and vessel surveys annually for stock assessment of harbor seals, California sea lions, and northern elephant seals. Harbor seals, California sea lions, and northern elephant seals will be captured, tagged, and branded for long-term identification of individuals and information on reproductive success, survival and longevity; blood sampling for disease screening; blubber biopsy for contaminant analysis; tissue sampling for genetics and for fatty acid analysis; some seals will be instrumented with VHF radio transmitters and/or Time-Depth Recorders (TDR) or satellite tags or sonic tags to document movements, activity and foraging patterns. In addition, harbor seals will be blood and biopsy sampled for contaminant analysis and tissue sampled for genetic analysis. Harbor seals and California sea lions will be instrumented with VHF radio transmitters and/or time-depth recorders or satellite tags to document movements activity and foraging patterns.

Dated: September 16, 2003.

**Stephen L. Leathery,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 03–25821 Filed 10–9–03; 8:45 am]

BILLING CODE 3510–22–S

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## DEPARTMENT OF DEFENSE

## Department of the Air Force

### Air University Board of Visitors; Notice of Meeting

The Air University Board of Visitors will hold an open meeting on 16–19 November 2003. The first business session of each meeting will begin in the Air University Commander's Conference Room at Headquarters Air University, Maxwell Air Force Base, Alabama (5 seats available). The purpose of the meeting is to give the board an opportunity to review Air University educational programs and to present to the Commander, a report of their findings and recommendations concerning these programs.

For further information on this meeting, contact Dr. Dorothy Reed, Chief of Academic Affairs, Air University Headquarters, Maxwell Air Force Base, Alabama 36112–6335, telephone (334) 953–5159.

**Pamela D. Fitzgerald,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 03–25770 Filed 10–9–03; 8:45 am]

BILLING CODE 5001–05–P

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## DEPARTMENT OF DEFENSE

## Department of the Air Force

### HQ USAF Scientific Advisory Board

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the 2003 Science and Technology Review. The purpose of the meeting is to allow the SAB leadership to assess the quality and long-term relevance of AFRL Materials research. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

**DATES:** October 27–31, 2003.

**ADDRESSES:** Wright-Patterson Air Force Base, OH.

**FOR FURTHER INFORMATION CONTACT:** Major Dwight Pavek, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

**Pamela D. Fitzgerald,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 03–25766 Filed 10–9–03; 8:45 am]

BILLING CODE 5001–05–P

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## DEPARTMENT OF DEFENSE

## Department of the Air Force

### HQ USAF Scientific Advisory Board

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the 2003 Science and Technology Review. The purpose of the meeting is to allow the SAB leadership to assess the quality and long-term relevance on Human Effectiveness research. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

**DATES:** October 20–24, 2003.

**ADDRESSES:** Wright-Patterson Air Force Base, OH.

**FOR FURTHER INFORMATION CONTACT:** Major Dwight Pavek, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

**Pamela D. Fitzgerald,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 03–25767 Filed 10–9–03; 8:45 am]

BILLING CODE 5001–05–P

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## DEPARTMENT OF DEFENSE

## Department of the Air Force

### HQ USAF Scientific Advisory Board

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the 2003

Science and Technology Review. The purpose of the meeting is to allow the SAB and study leadership to assess the quality and long-term relevance of Information Technology research. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

**DATES:** November 17–21, 2003.

**ADDRESSES:** Rome, NY.

**FOR FURTHER INFORMATION CONTACT:** Major Dwight Pavek, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

**Pamela D. Fitzgerald,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 03–25768 Filed 10–9–03; 8:45 am]

BILLING CODE 5001–05–P

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## DEPARTMENT OF DEFENSE

### Department of the Air Force

### HQ USAF Scientific Advisory Board

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the 2003 Science and Technology Review. The purpose of the meeting is to allow the SAB leadership to assess the quality and long-term relevance of AFRL Munitions research. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

**DATES:** October 14–17, 2003.

**ADDRESSES:** 101 W. Eglin Blvd., STE 230, Eglin Air Force Base, FL.

**FOR FURTHER INFORMATION CONTACT:** Major Dwight Pavek, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington, DC 20330–1180, (703) 697–4811.

**Pamela D. Fitzgerald,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 03–25769 Filed 10–9–03; 8:45 am]

BILLING CODE 5001–05–P

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## DEPARTMENT OF DEFENSE

### Department of the Army

### Prospective Grant of Exclusive Patent License

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 35 U.S.C. 209 and 37 CFR 404.7, U.S. Army Soldier and Biological Chemical Command (SBCCOM) hereby gives notice that it is contemplating the grant of an exclusive license in the United States to practice the below referenced inventions owned by the U.S. Government to Genencor International Inc., a Delaware Corporation with principal offices at 200 Meridian Center Blvd., Rochester, New York 14612.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Biffoni, Intellectual Property Attorney, U.S. Army Soldier and Biological Chemical Command, ATTN: AMSSB–CC (Bldg E4435), Aberdeen Proving Ground, MD 21010–5424, Phone: (410) 436–1158; Fax: 410–436–2534 or e-mail: *John.Biffoni@sbccom.apgea.army.mil.*

**SUPPLEMENTARY INFORMATION:** The prospective exclusive license may be granted, unless SBCCOM receives written evidence and argument to establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7 on or before October 27, 2003. The following Patent Numbers, Titles and Issue dates are provided:

1. *Title:* "Enzymatic Detoxification of Organophosphorus Compounds".

*Description:* The present invention relates to the expression of a recombinant bacterial enzyme which is useful for detoxifying cholinesterase-inhibiting organophosphorus compounds such as pesticides and chemical nerve agents and the decontamination of substances contaminated with these compounds.

*Patent Number:* 5,928,927.

*Issue Date:* July 27, 1999.

2. *Title:* "One-step Purification Process for Organophosphorus Hydrolase Enzyme".

*Description:* The present invention relates to an improved and simplified process for purifying organophosphorus hydrolase enzyme ("OPH") from a recombinant host cell, that expresses this enzyme.

*Patent Number:* 6,469,145.

*Issue Date:* October 22, 2002.

3. *Title:* "Enzymatic Detoxification of Organophosphorus Compounds".

*Description:* The present invention relates to the expression of a recombinant bacterial enzyme which is useful for detoxifying cholinesterase-inhibiting organophosphorus compounds such as pesticides and chemical nerve agents and the decontamination of substances contaminated with these compounds.

*Patent Number:* 6,080,566.

*Issue Date:* June 27, 2000.

**Luz D. Ortiz,**

*Army Federal Register Liaison Officer.*

[FR Doc. 03–25760 Filed 10–9–03; 8:45 am]

BILLING CODE 3710–08–M

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## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Intent To Prepare a Combined Draft Environmental Impact Statement for the Following Three Aquifer Storage and Recovery Pilot Projects: Caloosahatchee River Aquifer Storage and Recovery Pilot Project Located Southwest of La Belle on the Berry Groves Property, Hendry County, Florida; Hillsboro Aquifer Storage and Recovery Pilot Project Adjacent to the Hillsboro Canal, Palm Beach Country, FL; and Lake Okeechobee Aquifer Storage and Recovery Pilot Project at Three Locations Adjacent to Lake Okeechobee, with Components in Martin, Okeechobee, and Glades County, FL

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The Jacksonville District, U.S. Army Corps of Engineers (Corps), intends to prepare a combined Draft Environmental Impact Statement (DEIS) for three Aquifer Storage and Recovery (ASR) pilot projects. Notices of intent (NOI) for each of these projects were previously published separately in the **Federal Register**: (1) The Lake Okeechobee ASR Pilot NOI was published July 19, 2002 (67 FR 47527); (2) The Hillsboro ASR Pilot NOI was published May 31, 2002 (67 FR 38077); (3) The Calosahatchee ASR Pilot NOI was published March 28, 2003 (68 FR 15157). Given their similarities and shared objective(s), it was decided to combine these projects into one DEIS. These three projects will consider the same alternatives—each testing separate technologies in order to obtain data on the feasibility and success of each alternative. These pilot studies are a cooperative effort between the Corps and the South Florida Water Management District (SFWMD), which is also a cooperating agency for this DEIS. For additional information on these projects please see the previously published NOIs for each pilot.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Conner, U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL 32232–0019, or by telephone at 904–232–1782.

**SUPPLEMENTARY INFORMATION:**

a. For information concerning authorization, project scope, preliminary alternatives, issues, scoping, coordination, agency role, and other environmental review and consultation please refer to the previously published NOIs for each project, cited above.

b. *Public Involvement:* We invite the participation of affected Federal, state and local agencies, affected Indian tribes, and other interested private organizations and parties.

c. *DEIS Preparation:* The combined DEIS for the three pilot projects is currently estimated for publication in December 2003.

Dated: October 1, 2003.

**James C. Duck,**

*Chief, Planning Division.*

[FR Doc. 03–25761 Filed 10–9–03; 8:45 am]

BILLING CODE 3710–AJ–M

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## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Intent to Prepare a Draft Environmental Impact Statement for Big Bear Lake "Aquatic Ecosystem Restoration", a Feasibility Study, Near Big Bear City, San Bernardino County, CA

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The Environmental Impact Statement will address foreseeable environmental impacts from measures being investigated to include sediment removal, flood protection, watershed management, shoreline restoration and habitat restoration at Big Bear Lake, San Bernardino County, CA, will commence. U.S. Army Corps of Engineers and Big Bear Municipal Water District will cooperate in conducting this feasibility study. U.S. Army Corps of Engineers is the lead Federal Agency for this study.

The Big Bear feasibility study will be conducted over the next several years following a planning process that will include public involvement during each of the study phases. The Study may result in a report recommending that Congress authorize a project for implementation by the Corps of Engineers, or that measures could be implemented by another agency to address the problems and needs of the study area. A range of conceptual alternatives were identified, as having a potential for Federal interest, to address the problems and needs of the study area, to include (1) Sediment removal to improve aquatic habitat and public access; (2) Beneficial uses of sediment, including island construction; (3) increased flood protection; (4) Improved watershed management practices to reduce nutrient loading of Big Bear Lake; (5) Shoreline restoration and Stanfield Marsh enhancements; (6) Protecting sensitive and endangered species.

No alternatives have been advanced as yet, so contents of the Draft Environmental Impact Statement (DEIS) remain to be determined during the public scoping process. The portion of this study area includes Big Bear Lake, and 200 feet upgradient of the shoreline, 6 major tributaries and 50 feet either side of said tributaries. Big Bear Municipal Water District has identified, within this watershed, needs associated with loss of wildlife habitat and changes in the ecosystem of the lake. Lake water levels, caused by a multi-year drought, and siltation of the lake have caused changes in the water chemistry and temperature. Those ecological concerns will guide the formulation of plans for this segment of the watershed.

**DATES:** A scoping meeting will be held October 14, 2003, from 6 p.m. to 8 p.m., at Big Bear Lake Civic Center, located at 39707 Big Bear Boulevard, Big Bear Lake, CA. The scoping period will conclude November 24, 2003. Comments, concerning this notice, should be submitted to the address listed below by November 24, 2003.

**ADDRESSES:** District Engineer, U.S. Army Corps of Engineers, Los Angeles District, ATTN: CESPL–PD–RP, P.O. Box 532711, Los Angeles, CA 90053–2325.

**FOR FURTHER INFORMATION CONTACT:** Mr. Timothy Kennedy, Environmental Coordinator, telephone (213) 452–9878, or Mrs. Deborah Lamb, Study Manager, telephone (213) 452–3798. The cooperating entity, Big Bear Municipal Water District, requests inquiries to Ms. Sheila Hamilton, General Manager, telephone (909) 866–5796, for any additional information.

**SUPPLEMENTARY INFORMATION:**

#### 1. Authorization

This study is being conducted in accordance with the study resolution adopted by the committee on Public Works, House of Representatives, adopted May 8, 1964, authorizing the study of the Santa Ana River Basin and Orange County Streams (SARBOC), CA. In addition, specific directive language was provided by Congress within the Energy and Water Development Appropriations Bill, 2002, which reads as follows: "Santa Ana River and Tributaries, Big Bear Lake, CA—The bill includes $100,000 for the Corps of Engineers to undertake a reconnaissance study of environmental restoration, water quality and related issues at Big Bear Lake, CA." Funds in the amount of $100,000 were appropriated in Fiscal Year 2002 to conduct the reconnaissance phase of the study, under the title Santa Ana River and Tributaries, Big Bear Lake, CA.

#### 2. Background

Waters of Big Bear Creek originate in adjacent mountains to the north and south of Big Bear Lake. Big Bear Lake drains to the west into Big Bear Creek, then turns southwestward and becomes part of the Santa Ana River watershed. Since before the late 16th century when the Spanish explored the southwest, the river ran continuously all the way to the Pacific Ocean. Where underlying bedrock along its course forced water to the surface, Big Bear Creek was perennial. Historically, reliable surface flows along the river could be found intermittently in Big Bear Valley, to southeastern parts of what is now metropolitan Los Angeles. Subsurface flow, within Big Bear Valley, sustained a riparian community in and around Big Bear Lake, historically a natural lake, before it was dammed in 1884. Year-round water supplied the needs of Big Bear. In 1912 a more modern, and taller, dam was constructed 100 yards down stream from the original 1884 dam. This changed the water impoundment from 25,280 acre feet to more than 73,000 acre feet.

This DEIS will evaluate: (1) Sediment removal to improve aquatic habitat and public access; (2) Beneficial uses of sediment, including island construction; (3) increased flood protection; (4) Improved watershed management practices to reduce nutrient loading of Big Bear Lake; (5) Shoreline restoration and Stanfield Marsh enhancements; (6) Protecting sensitive and endangered species.

Prehistoric and historic cultural resources may be found along this stretch of the lake basin. The study team will comply with all applicable consultation rules as set forth in National Historic Preservation Act. Federally protected species and critical habitat will be considered.

#### 3. Proposed Action

No plan of action has yet been identified.

**4. Alternatives**

a—No Action: No improvement or reinforcement of existing banks or uplands to stabilize for sedimentation.

b—Proposed Alternative Plans: None have been formulated to date.

**5. Scoping Process**

Participation of all interested Federal, State and County resource agencies, as well as Native American peoples, groups with environmental interests, and all interested individuals are encouraged. Public involvement will be most beneficial and worthwhile in identifying pertinent environmental issues, offering useful information such as published or unpublished data, direct personal experience or knowledge which inform decision making, assistance in defining the scope of plans which ought to be considered, and recommending suitable mitigation measures warranted by such plans. Those wishing to contribute information, ideas, alternatives for actions, and so forth can furnish these contributions in writing to the points of contacts indicated above, or by attending public scoping opportunities.

The scoping period will conclude 45 days after publication of this notice and simultaneous publication in newspapers circulated in the Big Bear Lake area (see DATES).

When plans have been devised, and alternatives formulated to embody those plans, potential impacts will be evaluated in the DEIS. These assessments will emphasize at least fourteen categories of resources: land use, impromptu historic landfills, hazardous wastes, physical environment, hydrology, groundwater, biological, archaeological, geological, air quality, noise, transportation, socioeconomic, and safety.

**Luz D. Ortiz,**

*Army Federal Register Liaison Officer.*

[FR Doc. 03–25759 Filed 10–9–03; 8:45 am]

BILLING CODE 3710–KF–M

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## ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6644–5]

## Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated April 04, 2003 (68 FR 16511).

**Draft EISs**

*ERP No. D–AFS–F65041–MN Rating EC2,* Chippewa and Superior National Forests Land and Resource Management Plans Revision, Implementation, Beltrami, Cass, Itasca, Cook, Lake and St. Louis Counties, MN.

*Summary:* EPA expressed environmental concerns regarding the management of watersheds, deer populations and invasive species. EPA recommended that the final EIS consider a preferred alternative that is a hybrid of those that were described in the Draft EIS.

*ERP No. D–AFS–G65088–NM Rating LO,* Bluewater Ecosystem Management Project, Proposal to Initiate Vegetation Treatments to Restore Ponderosa Pine and Pinon-Juniper Stands to a Desired Condition, Cibola National Forest, Mt. Taylor Ranger District, McKinley and Cibola Counties, NM.

*Summary:* EPA expressed a lack of objections to the selection of the preferred alternative.

*ERP No. D–AFS–K26002–CA Rating LO,* South Tahoe Public Utility District (STPUD) B-Line Phase III Wastewater Export Pipeline Replacement Project, Luther Pass Pump Station to U.S. Forest Service Luther Pass Overflow Campground Access Road, Special Use Permit, U.S. Army COE Section 404 and U.S. Fish and Wildlife Service Permits Issuance and EPA Grant, El Dorado and Alpine Counties, CA.

*Summary:* EPA expressed a lack of objections.

*ERP No. D–BLM–L65418–OR Rating EC2,* Travis Tyrrell Seed Orchard Integrated Pest Management (IPM) Program, Implementation, Eugene District, Lorne, Lane County, OR.

*Summary:* EPA expressed environmental concerns and recommends that the final EIS discuss pesticide safety issues, additional IPM methodologies, and the relevancy of a concurrent BLM Draft Supplemental EIS (Management of Port-Orford-Cedar by Southwest Oregon) which BLM is working on that may impact proposed activities for the four seeds orchards. EPA also recommends that the final EIS discuss how the Washington Toxics Coalition, *et al.* vs U.S. EPA decision may affect the range of alternatives.

*ERP No. D–BLM–L65425–OR Rating EC2,* Provolt Seed Orchard Integrated Pest Management (IPM) Program, Implementation, Grants Pass, Medford District, Jackson and Josephine Counties, OR and Charles A. Sprague Seed Orchard Integrated Pest Management Program (IMP), Implementation, Merlin, Medford District, Josephine County, OR.

*Summary:* EPA expressed environmental concerns and recommends that the Final EIS should discuss pesticide safety and additional IPM methodologies. Also, the Final EIS should discuss management actions that may be taken under the concurrent BLM Draft Supplemental EIS, Management of Port-Orford-Cedar, their potential impact on proposed activities for the four seed orchards.

*ERP No. D–BLM–L65426–OR Rating EC2,* Walter H. Horning Seed Orchard Integrated Pest Management Program (IPM), Implementation, Colton, Salem District, Clackamas County, OR.

*Summary:* EPA expressed environmental concerns and recommends that the final EIS discuss pesticide safety issues, additional IPM methodologies, and the relevancy of a concurrent BLM Draft Supplemental EIS (Management of Port-Orford-Cedar by Southwest Oregon) which BLM is working on that may impact proposed activities for the four seed orchards. EPA also recommends that the final EIS discuss how the Washington Toxics Coalition, *et. al.* vs U.S. EPA decision may affect the range of alternatives.

*ERP No. D–FRC–C05148–NY Rating LO,* St. Lawrence-FDR Hydroelectric Project, Application for New License (Relicense), (FERC No. 200–036), Located on the St. Lawrence River, Messina, NY.

*Summary:* EPA does not believe that the proposed project would result in significant adverse impacts to the environmental and cultural resources and has no objections to its implementation.

*ERP No. D–IBR–K39079–CA Rating EC2,* Programmatic EIS—Environmental Water Account Project, Water Management Strategy to Protect the At-Risk Native Delta-Dependent Fish Species and Water Supply Improvements, U.S. Fish and Wildlife Service Endangered Species Act Section 7 and US Army Corps Section 10 Permits Issuance, CA.

*Summary:* EPA expressed environmental concern that the water project operations could reduce water quality. In addition the Draft EIS does not capture current evaluations regarding potential uses of the EWA and redefinition of EWA assets in conjunction with other proposed CALFED projects, such as South Delta Improvements. EPA recommended that the Final EIS provide additional and updated information on water quality and provide scientific validation of EWA actions intended to provide fisheries protection and enhancement.

*ERP No. D-NPS-C80015-00 Rating LO,* Ellis Island and Statue of Liberty National Monument Development Concept Plan, Long-Term Rehabilitation and Reuse for Historic Buildings, Implementation, New York Harbor, NY and NJ.

*Summary:* EPA has no objections with the proposed management plan for Eills Island.

*ERP No. D-NPS-K65257-AZ Rating LO,* Coronado National Memorial General Management Plan, Implementation, Cochise County, AZ.

*Summary:* EPA expressed a lack of objections to this project.

*ERP No. D-NRC-C06014-NY Rating LO,* Generic—License Renewal for R.E. Ginna Nuclear Power Plant, Supplement 14, NUREG-1437, Implementation, Wayne County, NY.

*Summary:* EPA has no objection to NRC retaining the option of renewing the Ginna Nuclear Power Plant operating license.

*ERP No. D-NRS-G36165-OK Rating LO,* Cavalry Creek Watershed Supplemental Plan for Floodwater Retarding Structure No. 6, Washita River Basin, Washita County, OK.

*Summary:* EPA has no objection to the selection of the preferred alternative.

*ERP No. DS-AFS-K65226-00 Rating EO2,* Sierra Nevada Forest Plan Amendment, New Information on a Range of Alternatives for Amending Land and Resource Management Plans, Modoc, Lasser, Plumas, Tahoe, Eldorado, Stanislaus, Sequoia, Sierra, Inyo and Humboldt-Toiyabe National Forests, and the Lake Tahoe Basin Management Unit, several counties, CA and NV.

*Summary:* EPA expressed environmental objections based on potential adverse impacts to water quality from the preferred alternative. Such actions include increased mechanical treatments, less prescriptive grazing in wet meadows and deferred action on roads issues. The FSEIS should fully disclose impacts to water quality and aquatic life from roads; avoidance and mitigation of these impacts and road system cost associated with alternative S2. The FSEIS should fully describe the scientific basis for current management direction, address inconsistencies in the alternatives analysis, and provide an implementation plan for the multi-agency body to collaborate on management issues begun under the previous ROD.

*ERP No. DS-AFS-L65110-00 Rating EC2,* Port-Orford-Cedar Management Plan, Implementation, Coos Bay, Medford, and Roseburg Bureau of Land Management Districts and the Siskiyou National Forest, Southwest Oregon.

*Summary:* EPA expressed environmental concerns with insufficient information and analysis provided for the potential impacts of using the resistant Port Orford Cedar stock at the landscape level and for adequate maintenance of uninfested stands.

**Final EISs**

*ERP No. F-AFS-L61208-00,* Hells Canyon National Recreation Area (HCNRA), Comprehensive Management Plan, Implementation, Wallowa-Whitman National Forest, Nez Perce and Payette National Forests, Bake and Wallowa Counties, OR and Nez Perce and Adam Counties, ID.

*Summary:* No formal comment letter was sent to the preparing agency.

*ERP No. F-BLM-K65250-NV,* Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area (NCA) and Associated Wilderness and other Contiguous Lands Resource Management Plan, Implementation, Great Basin, NV.

*Summary:* EPA had no objections to this project.

*ERP No. F-FRC-G03020-LA,* Hackberry Liquified Natural Gas (LNG) Terminal and Natural Gas Pipeline Facilities, Construction and Operation, Cameron, Calcasieu, and Beauregard Parishes, La.

*Summary:* EPA had no further comments on the Final EIS. Region 6 is continuing to work with the Corps of Engineers to resolve the wetland delineation issue and will work toward resolution.

*ERP No. F-FRC-K05058-CA,* El Dorado Hydroelectric Project, Application for a New License, South Fork of the American River Basin and Truckee River Basin (FERC NO. 184-065), El Dorado National Forest, Lake Tahoe Basin Management Unit, Alpine, Amador and El Dorado Counties, CA.

*Summary:* EPA's previous concerns have been addressed, therefore, EPA has no objection to the action as proposed.

*ERP No. F-NPS-E65060-NC,* Carl Sandburg Home National Historic Site, General Management Plan, Implementation, Located in the Village of Flat Rock, Henderson County, NC.

*Summary:* EPA's review of the EIS did not identify any potential environmental impacts requiring substantive changes to the proposal.

*ERP No. F-NRC-H06005-NB Generic EIS*—Fort Calhoun Station, Unit 1, Renewal of the Operating Licenses (OLs) for an Additional 20 Years, Supplement 12 (NUREG-1437) Omaha Public Power District, Washington County, NB.

*Summary:* The FEIS adequately supplements information needs and addresses the concerns that EPA had expressed in the review of the DEIS for this project. Consequently, EPA has no objections.

Dated: October 07, 2003.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 03-25810 Filed 10-9-03; 8:45 am]

BILLING CODE 6560-50-P

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## ENVIRONMENTAL PROTECTION AGENCY

**[ER-FRL-6644-4]**

## Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7167 or *http://www.epa.gov/compliance/nepa/* Weekly receipt of Environmental Impact Statements Filed September 29, 2003 Through October 03, 2003 Pursuant to 40 CFR 1506.9.

*EIS No. 230449,* DRAFT EIS AFS, KY, Gray Mountain Coal Lease Land Use Analysis, Application for Leasing Tracts 3094Bb, 3049Be and 3049Az, Daniel Boone National Forest, Leslie County, KY, Comment Period Ends: November 24, 2003, Contact: Corey Miller (859) 745-3149.

*EIS No. 230450,* FINAL EIS, NPS, AK, Glacier Bay National Park and Preserve Vessel Quotas and Operating Requirements for Cruise Ships and Tour, Charter, and Private Vessels, Implementation, AK, Wait Period Ends: November 10, 2003, Contact: Nancy Swanton (907) 644-3696.

*EIS No. 230451,* FINAL EIS, BLM, CA, Headwaters Forest Reserve, Implementation Resource Management Plan, Long-Term Management Plan and Planning Framework, Located in the northwestern Coast Ranges near Humboldt Bay in Humboldt County, CA, Wait Period Ends: November 10, 2003, Contact: Lynda J. Roush (707) 825-2300.

*EIS No. 230452,* DRAFT EIS, FRC, CO, KS, Cheyenne Plains Pipeline Project, Natural Gas Transmission Pipeline, Construction and Operation, NPDES Permit and U.S. Army COE Section 404 Permit Issuance, several counties, CO and several counties, KS, Comment Period Ends: November 24, 2003, Contact: Magalie R. Salas (202) 502–8659.

*EIS No. 230453*, DRAFT EIS, BLM, CA, Desert Southwest Transmission Line Project, New Substation/Switching Station, Construction, Operation and Maintenance, Right-of-Way Grant and US Army COE Section 10 and 404 Permits Issuance, North Palm Springs and Blythe, CA, Comment Period Ends: November 24, 2003, Contact: John Kalish (760) 251–4849. This document is available on the Internet at: *http://WWW.CA.BLM.GOV/Palmsprings*

*EIS No. 230454*, FINAL EIS, NOA, Atlantic Surfclam and Ocean Quahog Fishery Management Plan Amendment 13, Implementation, U.S. Exclusive Economic Zone along the Atlantic Seaboard from Maine through North Carolina, Wait Period Ends: November 10, 2003, Contact: George H. Darcy (978) 281–9210.

This document is available on the Internet at: *http://WWW.MAFMC.ORG/MID-ATLANTIC/Publication*

*EIS No. 230455*, DRAFT EIS, BLM, NV, Tracy to Silver Lake Transmission Line Project, Construction, Operation and Maintenance of a 120kV Transmission Line from Tracy Power Plant to New Substations in the Spanish Spring Valley and Stead Areas, Right-of-Way Application, Washoe County, NV, Comment Period Ends: December 08, 2003, Contact: Terri Knutson (775) 885–6156.

*EIS No. 230456*, FINAL EIS, AFS, ID, Upper and Lower East Fork Cattle and Horse Allotment Management Plans, Updating the Allotment Plans to Allow Permitted Livestock Grazing, National Forest System Lands, Sawtooth and Challis National Forests, Custer County, ID, Wait Period Ends: November 10, 2003, Contact: Kamerson Sam (208) 774–3000.

This document is available on the Internet at: *http://www.fs.fed.us/r4/sawtooth*

*EIS No. 230457*, FINAL EIS, AFS, WI, McCaslin Project, Vegetation Management Activities Consistent with Direction in the Nicolet Forest Plan, Lakewood/Laona District, Chequamegon-Nicolet National Forest, Oconto and Forest Counties, WI, Wait Period Ends: November 10, 2003, Contact: John Lampereur (715) 276–6333.

*EIS No. 230458*, DRAFT SUPPLEMENT, FTA, CA, Orange County Centerline Project, Transportation Improvements, Updated Information concerning Four New Alternatives and Re-examining an Updated New No Build Alternative, City of Santa Ana through the City of Costa Mesa to the City of Irvine, Funding, Orange County, CA, Comment Period Ends: November 24, 2003, Contact: Hymie Luden (415) 744–3115.

*EIS No. 230459*, DRAFT EIS, USN, CA, Tertiary Treatment Plant and Associated Facilities Construction and Operation, Implementation, Marine Corps Base Camp Pendleton, San Diego County, CA, Comment Period Ends: November 24, 2003, Contact: Lisa Seneca (619) 532–4744.

**Amended Notices**

*EIS No. 230349*, DRAFT EIS, NOA, PR, VI, Generic Essential Fish Habitat Amendment To: Spiny Lobster, Queen Conch, Reef Fish and Coral Fishery Management Plans, Implementation, U.S. Caribbean, extending to the U.S. Exclusive Economic Zone (EEZ), Virgin Islands and Puerto Rico, Comment Period Ends: November 3, 2003, Contact: David Dale (727) 570–5317. Revision of FR Notice Published on 8/1/2003: CEQ Comment Period Ending 10/30/2003 has been Revised to 11/3/2003.

*EIS No. 230392*, DRAFT SUPPLEMENT, NOA, AK, Programmatic EIS—Alaska Groundfish Fisheries, New Information concerning the Ecosystem and a Preferred Alternative, Fishery Management Plans for the Groundfish Fishery of the Gulf of Alaska and the Groundfish of the Bering Sea and Aleutian Islands Area, North Pacific Fishery Management Council, AK, Comment Period Ends: November 06, 2003, Contact: James W. Balsiger (907) 586–7221. Revision of FR Notice Published on 9/5/2003: CEQ Comment Period Ending 10/15/2003 has been Extended to 11/6/2003.

*EIS No. 230393*, DRAFT EIS, NOA, TX, MS, FL, LA, AL, Generic Essential Fish Habitat Amendment to the Fishery Management Plans of the Gulf of Mexico (GOM) for Shrimp, Red Drum, Reef Fish, Stone Crab, Coral and Coral Reef, Spiny Lobster Fisheries of the GOM and South Atlantic Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic, Due: December 01, 2003, Contact: Roy E. Crabtree (727) 570–5301. Revision of FR Notice Published on 8/29/2003: CEQ Comment Period Ending 11/26/2003 which should have been 11/29/2003 has been Revised to 12/1/2003 and Title has been Corrected.

Dated: October 7, 2003.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 03–25811 Filed 10–9–03; 8:45 am]

BILLING CODE 6560–50–U

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–7572–4]

## Meeting of the Local Government Advisory Committee

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Local Government Advisory Committee (LGAC) will meet on October 27–29, 2003 in Portland, OR. Topics to be considered include Water Conservation/Efficiency, the recently released draft Report on the Environment (ROE), an update report on Bartow County, Georgia environmental management systems project, and an overview of the Brownfields 2003 Conference and the impact of Brownfields activities in local communities. Work group and subcommittee discussions on urbanization issues, infrastructure principles, tax credits, lease purchase arrangements and CSO and SSO issues are also expected. The Committee also expects to have general discussions with other local government officials from the area who attend the Committee's sessions.

The Committee will hear comments from the public between 11:45 a.m.–12 p.m., October 28, 2003 . Each individual or organization wishing to address the LGAC meeting will be allowed a maximum of five minutes to present their point of view. Please contact the Designated Federal Officer (DFO) at the number listed below to schedule agenda time. Time will be allotted on a first come, first served basis, and the total period for comments may be extended, if the number of requests for appearances required it.

These are open meetings and all interested persons are invited to attend. LGAC meeting minutes and summary notes will be available after the meetings and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the number listed below if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible. Seating will be on a first come, first served basis.

**DATES:** The Local Government Advisory Committee Plenary sessions will begin at 8:30 a.m. Monday, October 27, 2003 and is expected to conclude at 1:30 p.m. on October 29, 2003.

**ADDRESSES:** The meetings will be held at the Oregon Convention Center, 777 N. E. Martin Luther King, Jr. Blvd in Portland, Oregon. Plenary sessions will be held in meeting rooms D131 and D132.

Additional information can be obtained by writing the DFO at 1200 Pennsylvania Avenue, NW. (1306A), Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** The DFO for the Local Government Advisory Committee (LGAC) is Paul Guthrie (202) 564–3649.

Dated: September 30, 2003.

**Paul N. Guthrie,**

*Designated Federal Officer, Local Government Advisory Committee.*

[FR Doc. 03–25808 Filed 10–9–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7572–3; OEI–2003–0034]**

## Privacy Act of 1974; Notice of System of Records

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; amendment to Notice of Privacy Act System of Records EPA–1.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) is amending a Privacy Act system of records to reflect the agency's migration from its legacy Payroll and Personnel System (EPAYS) to PeoplePlus, a modern, commercial off the shelf system. PeoplePlus allows the agency to fully integrate its payroll and HR systems and supports the government-wide initiative led by the Office of Personnel Management (OPM) to consolidate executive branch payroll providers. This advance in technology paves the way for EPA to become a payroll customer of USDA's National Finance Center at the start of FY2005.

The PeoplePlus system consists of two separate applications. One application will perform HR functions, and the other will perform payroll, and time and labor functions. The records and routine uses of the information in the HR application remain covered by a government-wide notice published by OPM April 27, 2000 at 65 FR 24732. The EPA notice published today is a technical amendment to EPA's system of records to notify the public of the routine uses for the new payroll, time, and labor application. This notice does not affect any Privacy Act rights already accorded individuals who are the subject of agency payroll records. PeoplePlus will not change the nature of the records currently kept by EPA, and no new uses of information are proposed. This action simply gives notice that EPAYS is being replaced by PeoplePlus. The records are needed to administer EPA's pay and leave requirements, including processing, accounting and reporting requirements.

Today's notice rescinds the portions of EPA's notice published in the **Federal Register** February 22, 2002, at 67 FR 8246 that pertain to the legacy EPAYS system.

**DATES:** This notice is effective October 10, 2003.

**FOR FURTHER INFORMATION CONTACT:** Melvin Visnick, Chief, Washington Finance Center, Office of the Chief Financial Officer, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (MC 2734R), Washington, DC 20460, 202–564–4944.

Additional information about implementation of the Privacy Act at EPA is available on the Internet at *http://www.epa.gov/privacy/.*

**SUPPLEMENTARY INFORMATION:** EPA prepares and processes payroll for its employees and for employees of the Department of Transportation's Surface Transportation Board (STB). EPA's legacy Payroll and Personnel System (EPAYS) is more than 30 years old, and the Agency is replacing it with PeoplePlus, a modern, fully integrated human resources (HR), payroll, time and labor system. PeoplePlus will not be used to prepare and process payroll for STB.

Replacing EPAYS is part of an overall e-government effort led by the Office of Personnel Management (OPM) to consolidate executive branch payroll providers and to simplify and standardize civilian payroll procedures across the Federal government. The e-payroll initiative will transform the current federal civilian payroll service delivery environment and realize efficiencies government-wide. Implementation of PeoplePlus at EPA helps establish the technical infrastructure for EPA to become a payroll customer of the National Finance Center at the start of FY 2005, supporting government-wide payroll consolidation through a phased approach that incorporates modern technology.

The PeoplePlus system consists of two separate applications. One application performs HR functions, and the other performs payroll, time, and labor functions. The records and routine uses of the information in the HR application remain covered by OPM/GOVT–1, a government-wide notice published by OPM April 27, 2000 at 65 FR 24732. The EPA notice published today is a technical amendment to EPA's system of records to notify the public of the routine uses for the new payroll, time, and labor application in PeoplePlus. This notice does not affect any Privacy Act rights accorded individuals who are the subject of agency payroll records. The nature of the records kept by EPA remains the same, and no new uses of the information are proposed. This action simply gives notice that EPAYS is being replaced by the PeoplePlus payroll, time, and labor application. The records are needed to administer EPA's pay and leave requirements, including processing, accounting and reporting requirements.

Today's notice rescinds the portions of EPA's notice published in the **Federal Register** February 22, 2002, at 67 FR 8246 that pertain to the EPA–1 system of records.

### To Obtain Copies of This Document and Related Information

EPA has established an official public docket for this action under Docket ID No. OEI–2003–0034. The official public docket is the collection of materials that is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above.

More information on implementation of the Privacy Act at EPA is available at *http://www.epa.gov/privacy/.*

Dated: October 3, 2003.

**Richard D. Otis, Jr.,**

*Deputy Assistant Administrator, Office of Environmental Information.*

### EPA–1

#### SYSTEM NAME:

PeoplePlus Payroll, Time and Labor Application.

#### SYSTEM LOCATION:

National Computer Center, Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former EPA employees including Health and Human Services Public Health Service Commissioned Officers assigned to EPA and employees of the Surface Transportation Board (formerly the Interstate Commerce Commission), Department of Transportation.

#### CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

This system contains personnel, basic benefits, pay, cash awards, and leave records. This includes, but is not limited to, employee information such as: Name(s), date of birth, social security number, home and mailing addresses, grade, employing organization, salary, pay plan, number of hours worked, overtime, compensatory time, leave accrual rate, leave usage and balances, Civil Service Retirement and Federal Retirement System contributions, FICA withholdings, Federal, State, and city tax withholdings, Federal Employee Group Life Insurance withholdings, Federal Employee Health Benefits withholdings, charitable deductions, allotments to financial organizations, garnishments, savings bonds allotments, union dues withholdings, deductions for Internal Revenue Service levies, court ordered child support levies, Federal salary offset deductions, and information on the Leave Transfer Program and the Leave Bank Program.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5101 *et seq.*; 5 U.S.C. 5501 *et seq.*; 5 U.S.C. 5525 *et seq.*; 5 U.S.C. 5701 *et seq.*; 5 U.S.C. 6301 *et seq.*; 31 U.S.C. 3512; Executive Order 9397 (Nov. 22, 1943).

#### PURPOSE(S):

The records are needed to administer EPA's pay and leave requirements, including processing, accounting and reporting requirements.

#### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

A. To the Department of Treasury to issue checks, make payments, make electronic funds transfers, and issue U.S. Savings Bonds.

B. To the Department of Agriculture National Finance Center to credit Thrift Savings Plan deductions and loan payments to employee accounts.

C. To the Department of Labor in connection with a claim filed by an employee for compensation due to a job connected injury or illness.

D. To the Internal Revenue Service; Social Security Administration; and State and local tax authorities in connection with the withholding of employment taxes.

E. To State Unemployment Offices in connection with a claim filed by former employees for unemployment benefits.

F. To the officials of labor organizations as to the identity of employees contributing union dues each pay period and the amount of dues withheld from each employee.

G. To the Office of Personnel Management and to Health Benefit carriers in connection with enrollment and payroll deductions.

H. To the Office of Personnel Management in connection with employee retirement and life insurance deductions.

I. To the Combined Federal Campaign in connection with payroll deductions for charitable contributions.

J. To the Office of Management and Budget and Department of the Treasury to provide required reports on financial management responsibilities.

K. To provide information as necessary to other Federal, State, local or foreign agencies conducting computer matching programs to help eliminate fraud and abuse and to detect unauthorized overpayments made to individuals. When disclosures are made as part of computer matching programs, EPA will comply with the Computer Matching and Privacy Protection Act of 1988.

L. To the Internal Revenue Service in connection with withholdings for tax levies.

M. To the Social Security Administration and the Department of Health and Human Services to provide information on newly hired employees for child support enforcement purposes.

N. To the Department of Health and Human Services in connection with the master personnel and payroll files for their Public Health Service Officers.

#### GENERAL ROUTINE USES OF EPA SYSTEMS OF RECORDS:

A. Disclosure for Law Enforcement Purposes—Information may be disclosed to the appropriate Federal, State, local, tribal, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

B. Disclosure Incident to Requesting Information—Information may be disclosed to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and to identify the type of information requested), when necessary to obtain information relevant to an agency decision concerning retention of an employee or other personnel action (other than hiring), retention of a security clearance, the letting of a contract, or the issuance or retention of a grant, or other benefit

C. Disclosure to Requesting Agency—Disclosure may be made to a Federal, State, local, foreign, or tribal or other public authority of the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

D. Disclosure to Office of Management and Budget—Information may be disclosed to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

E. Disclosure to Congressional Offices—Information may be disclosed to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

F. Disclosure to Department of Justice—Information may be disclosed to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Agency is authorized to appear, when: (1) The Agency, or any component thereof; (2) Any employee of the Agency in his or her official capacity; (3) Any employee of the Agency in his or her individual capacity where the Department of Justice or the Agency have agreed to represent the employee; or (4) The United States, if the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Agency is deemed by the Agency to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

G. Disclosure to the National Archives—Information may be disclosed to the National Archives and Records Administration in records management inspections.

H. Disclosure to Contractors, Grantees, and Others—Information may be disclosed to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for the Agency and who have a need to have access to the information in the performance of their duties or activities for the Agency. When appropriate, recipients will be required to comply with the requirements of the Privacy Act of 1974 as provided in 5 U.S.C. 552a(m).

I. Disclosures for Administrative Claims, Complaints, and Appeals—Information from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee, but only to the extent that the information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

J. Disclosure to the Office of Personnel Management—Information from this system of records may be disclosed to the Office of Personnel Management pursuant to that agency's responsibility for evaluation and oversight of Federal personnel management.

K. Disclosure in Connection with Litigation—Information from this system of records may be disclosed in connection with litigation or settlement discussions regarding claims by or against the Agency, including public filing with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or discussions and except where court orders are otherwise required under section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

### STORAGE:

These records are maintained in hard copy formats and computer processable storage media such as computer tapes and disks. The computer storage devices are located in the National Computer Center, Research Triangle Park, North Carolina. Backup tapes will be maintained at a disaster recovery site.

### RETRIEVABILITY:

These records are retrieved by the employee identification number or name.

### SAFEGUARDS:

Computer records are maintained in a secure password protected environment. Access to computer records is limited to those who have a need to know. Permission level assignments will allow users access only to those functions for which they are authorized. Paper records are maintained in locked metal file cabinets. All records are maintained in secure, access-controlled areas or buildings.

### RETENTION AND DISPOSAL:

The retention of data in the system will in accordance with the U.S. EPA Records Schedule, as been approved by the National Archives and Records Administration. Employee records are retained on magnetic tapes for an indefinite period. Hard copy records are maintained for varying periods of time, at which time they are disposed of by shredding.

### SYSTEM MANAGER(S) AND ADDRESS:

David Bloom, Acting Director, Financial Services Division, Office of the Comptroller, Office of Chief Financial Officer, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., (MC 2734R), Washington, DC 20460, 202–564–3013.

### NOTIFICATION PROCEDURES:

Individuals who want to know whether this system of records contains information about them, who want to access to their records, or who want to contest the contents of a record, should make a written request to the System Manager. Individuals must furnish the following information for their records to be located and identified:

A. Full name.
B. Date of birth.
C. Social security number.
D. Last employing organization (include duty station location) and, for former EPA employees, approximate date(s) of employment.
E. Signature.

### RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should follow the Notification Procedures. Individuals requesting access will also be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification procedures may be required in some instances.

### CONTESTING RECORD PROCEDURE:

Individuals requesting correction or amendment of their records should follow the Notification Procedures and also identify the record or information to be changed. Complete EPA Privacy Act procedures are set out in 40 CFR part 16.

### RECORD SOURCE CATEGORIES:

Information in this system of records is provided by

A. The individual on whom the record is maintained.

B. Agency officials such as managers and supervisors.

C. Consumer reporting agencies, debt collection agencies, Department of Treasury, and other Federal agencies.

### SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 03–25807 Filed 10–9–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7571–6]**

## Notice of Proposed Administrative Cost Recovery Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with Section 122(i) of the Comprehensive

Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), notice is hereby given of a proposed administrative cost recovery settlement under Section 122(h)(1) of CERCLA concerning the Windham Alloys site in Windham, Ohio which was signed by the EPA Superfund Division Director, Region 5, on September 30, 2003. The settlement resolves EPA's claim for past costs under Section 107(a) of CERCLA against the estate of Tony D. Rubino, the Tony D. Revocable Trust, the Irene Rubino Revocable Trust and the trustee and executor of the trusts and estate, Jack Alpern (Settling Parties).

EPA has determined that the Settling parties are financially able to pay a portion of EPA's past costs if Settling Parties sell certain real property. The settlement requires the Settling Parties to use their best efforts to sell real property held in the estate and trusts and to pay to the Hazardous Substances Superfund a percentage of the proceeds from the sale of the real estate minus reasonable closing costs. The payments are due within 30 days of the transfers. If both properties sell for approximately their fair market value, the Settling Parties' payments to the Hazardous Substances Superfund will be approximately $520,000.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the Superfund Records Center, located at 77 West Jackson Boulevard, Seventh Floor, Chicago, Illinois.

**DATES:** Comments must be submitted on or before November 10, 2003.

**ADDRESSES:** The proposed settlement and additional background information relating to the settlement are available for public inspection at the Superfund Records Center, located at 77 West Jackson Boulevard, Seventh Floor, Chicago, Illinois. A copy of the proposed settlement may be obtained from the Superfund Records Center, located at 77 West Jackson Boulevard, Seventh Floor, Chicago, Illinois. Comments should reference the Windham Alloys site and EPA Docket No. V–W–03–760 and should be addressed to Randa Bishlawi, Associate Regional Counsel, 77 West Jackson Boulevard (C–14J), Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Randa Bishlawi, (312) 886–0510, Associate Regional Counsel, 77 West Jackson Boulevard (C–14J), Chicago, Illinois 60604.

Dated: September 30, 2003.

**William E. Muno,**

*Director, Superfund Divison, Region 5.*

[FR Doc. 03–25806 Filed 10–9–03; 8:45 am]

BILLING CODE 6560–50–P

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## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Approved by Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Federal Communications Commission (FCC) received approval from the Office of Management and Budget (OMB) on September 26, 2003 for the information collection requirements contained in Report and Order and Memorandum Opinion and Order on Reconsideration, *In the Matter of Remedial Steps for Failure to Comply with Digital Television Construction Schedule* ("DTV Policy Statement"), MM Docket No. 02–113, FCC 03–77, at 68 FR 43329, July 22, 2003.

**DATES:** The information collection requirements published at 68 FR 43329, July 22, 2003, were approved on September 26, 2003.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Shaun Maher, Media Bureau, (202) 418–2324.

**SUPPLEMENTARY INFORMATION:** The DTV Policy Statement published at 68 FR 43329, July 22, 2003, established procedures to be followed when the staff denies a request to extend a television station's digital television (DTV) construction deadline. The information collection(s) were approved by OMB on September 26, 2003. OMB Control No. 3060–1041. If you have any comments on these burden estimates, or how we can improve the collection(s) and reduce the burden(s) they cause you, please write to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1041, in your correspondence. We will also accept your comments regarding the Paperwork Reduction Act aspects of the collection(s) via the Internet, if you send them to *Leslie.Smith@fcc.gov* or call (202) 418–0217.

**Synopsis**

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received approval from OMB on September 26, 2003 for the information collection requirements contained in the Commission's Report and Order and Memorandum Opinion and Order on Reconsideration, *In the Matter of Remedial Steps for Failure to Comply with Digital Television Construction Schedule*, MM Docket No. 02–113, FCC 03–77, at 68 FR 43329, July 22, 2003. The OMB Control Number is 3060–1041. The annual reporting burden for the collection(s) of information, including the time for gathering and maintaining the collection of information, is estimated to be: 400 respondents, an average of 1.2 hours per response per annum, for a total annual hour burden of 460, and $304,000 in total annual costs.

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB Control Number. The OMB Control Number is 3060–1041.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, 44 U.S.C. 3507.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03–25739 Filed 10–9–03; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2633]

### Petition for Reconsideration of Action in Rulemaking Proceeding

October 3, 2003.

Petition for Reconsideration has been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by October 27, 2003. *See* section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

*Subject:* In the Matter of the Table of FM Allotments (Annville, Mount Vernon, West Liberty, and Manchester, Kentucky) (RM–10798).

*Number of Petitions Filed:* 1.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03–25741 Filed 10–9–03; 8:45 am]

**BILLING CODE 6712–01–M**

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## FEDERAL HOUSING FINANCE BOARD

**[No. 2003–N–8]**

### Federal Home Loan Bank Members Selected for Community Support Review

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Notice.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 2002–03 seventh quarter review cycle under the Finance Board's community support requirements regulation. This notice also prescribes the deadline by which Bank members selected for review must submit Community Support Statements to the Finance Board.

**DATES:** Bank members selected for the 2002–03 seventh quarter review cycle under the Finance Board's community support requirements regulation must submit completed Community Support Statements to the Finance Board on or before November 28, 2003.

**ADDRESSES:** Bank members selected for the 2002–03 seventh quarter review cycle under the Finance Board's community support requirements regulation must submit completed Community Support Statements to the Finance Board either by regular mail at the Federal Housing Finance Board, Office of Supervision, Community Investment and Affordable Housing, 1777 F Street, NW, Washington, DC 20006, or by electronic mail at *fitzgeralde@fhfb.gov.*

**FOR FURTHER INFORMATION CONTACT:** Emma J. Fitzgerald, Program Analyst, Office of Supervision, Community Investment and Affordable Housing, by telephone at 202/408–2874, by electronic mail at *fitzgeralde@fhfb.gov,* or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:**

### I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Finance Board to promulgate regulations establishing standards of community investment or service Bank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by the Finance Board must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.*, and record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to section 10(g) of the Bank Act, the Finance Board has promulgated a community support requirements regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and review criteria the Finance Board must apply in evaluating a member's community support performance. *See* 12 CFR part 944. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 944.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 944.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. 12 CFR 944.3(c).

Under the rule, the Finance Board selects approximately one-eighth of the members in each Bank district for community support review each calendar quarter. 12 CFR 944.2(a). The Finance Board will not review an institution's community support performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each Bank member selected for review must complete a Community Support Statement and submit it to the Finance Board by the November 28, 2003 deadline prescribed in this notice. 12 CFR 944.2(b)(1)(ii) and (c). On or before October 27, 2003, each Bank will notify the members in its district that have been selected for the 2002–03 seventh quarter community support review cycle that they must complete and submit to the Finance Board by the deadline a Community Support Statement. 12 CFR 944.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form, which also is available on the Finance Board's Web site: *http://www.fhfb.gov.* Upon request, the member's Bank also will provide assistance in completing the Community Support Statement.

The Finance Board has selected the following members for the 2002–03 seventh quarter community support review cycle:

**Federal Home Loan Bank of Boston—District 1**

| | | |
|---|---|---|
| Apple Valley Bank & Trust Company | Cheshire | Connecticut. |
| First New England Federal Credit Union | East Hartford | Connecticut. |
| Greenwich Bank & Trust Company | Greenwich | Connecticut. |
| Ledge Light Federal Credit Union | Groton | Connecticut. |
| Eastern Federal Bank | Norwich | Connecticut. |
| United Business and Industry Federal Credit Union | Plainville | Connecticut. |
| Putnam Savings Bank | Putnam | Connecticut. |
| Workers Federal Credit Union | Stafford Springs | Connecticut. |
| Westport National Bank | Westport | Connecticut. |
| Merrill Merchants Bank | Bangor | Maine. |
| Seaboard Federal Credit Union | Bucksport | Maine. |
| Union Trust Company | Ellsworth | Maine. |
| NorState Federal Credit Union | Madawaska | Maine. |
| Norway Savings Bank | Norway | Maine. |
| University Credit Union | Orono | Maine. |
| Infinity Federal Credit Union | Portland | Maine. |
| Maine Bank & Trust Company | Portland | Maine. |

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|---|---|---|
| Belmont Savings Bank | Belmont | Massachusetts. |
| The Lenox National Bank | Lenox | Massachusetts. |
| Butler Bank | Lowell | Massachusetts. |
| Enterprise Bank and Trust Company | Lowell | Massachusetts. |
| Northmark Bank | North Andover | Massachusetts. |
| RTN Federal Credit Union | Waltham | Massachusetts. |
| Westborough Bank | Westborough | Massachusetts. |
| Commerce Bank & Trust Company | Worcester | Massachusetts. |
| Members First CU of New Hampshire | Manchester | New Hampshire. |
| Balboa Reinsurance Company | Burlington | Vermont. |
| ChittendenTrust Company | Burlington | Vermont. |
| Vermont Federal Credit Union | Burlington | Vermont. |
| NorthCountry Federal Credit Union | South Burlington | Vermont. |
| New England Federal Credit Union | Williston | Vermont. |

**Federal Home Loan Bank of New York—District 2**

| | | |
|---|---|---|
| Affinity Federal Credit Union | Bedminster | New Jersey. |
| Somerset Hills Bank | Bernardsville | New Jersey. |
| The Community Bank of New Jersey | Freehold | New Jersey. |
| MIIX Insurance Company | Lawrenceville | New Jersey. |
| Boardwalk Bank | Linwood | New Jersey. |
| Millville Savings and Loan Association | Millville | New Jersey. |
| Crown Bank, NA | Ocean City | New Jersey. |
| Hudson City Savings Bank | Paramus | New Jersey. |
| Cenlar FSB | Trenton | New Jersey. |
| Llewellyn-Edison Savings Bank, FSB | West Orange | New Jersey. |
| Bank of Akron | Akron | New York. |
| State Employees Federal Credit Union | Albany | New York. |
| Putnam County Savings Bank | Brewster | New York. |
| First American International Bank | Brooklyn | New York. |
| HSBC Bank, USA | Buffalo | New York. |
| First State Bank—Canisteo | Canisteo | New York. |
| Flushing Savings Bank, F.S.B. | Flushing | New York. |
| Great Eastern Bank | Flushing | New York. |
| American Community Bank | Glen Cove | New York. |
| Gouverneur Savings & Loan Association | Gouverneur | New York. |
| FAA Eastern Region Federal Credit Union | Jamaica | New York. |
| Bank Leumi USA | New York | New York. |
| Hudson Valley Federal Credit Union | Poughkeepsie | New York. |
| WCTA Federal Credit Union | Sodus | New York. |
| Power Federal Credit Union | Syracuse | New York. |
| Wyoming County Bank | Warsaw | New York. |
| Community Mutual Savings Bank | White Plains | New York. |
| Kraft Foods Federal Credit Union | White Plains | New York. |
| Hudson Valley Bank | Yonkers | New York. |
| Firstbank—Puerto Rico | Santurce | Puerto Rico. |
| Bank of St. Croix, Inc. | Christiansted | Virgin Islands. |

**Federal Home Loan Bank of Pittsburgh—District 3**

| | | |
|---|---|---|
| AIG Federal Savings Bank | Wilmington | Delaware. |
| Lehman Brothers Bank, FSB | Wilmington | Delaware. |
| Wilmington Trust Company | Wilmington | Delaware. |
| First Columbia Bank & Trust Company | Bloomsburg | Pennsylvania. |
| Fidelity Savings and Loan Association of Bucks County | Bristol | Pennsylvania. |
| Citizens Savings Association | Clarks Summit | Pennsylvania. |
| CSB Bank | Curwensville | Pennsylvania. |
| County Savings Association | Essington | Pennsylvania. |
| The First National Bank in Fleetwood | Fleetwood | Pennsylvania. |
| Swineford National Bank | Hummels Wharf | Pennsylvania. |
| S & T Bank | Indiana | Pennsylvania. |
| Jonestown Bank and Trust Company | Jonestown | Pennsylvania. |
| Commercial National Bank of Pennsylvania | Latrobe | Pennsylvania. |
| Lafayette Ambassador Bank | LeHigh Valley | Pennsylvania. |
| Farmers First Bank | Lititz | Pennsylvania. |
| Members 1st Federal Credit Union | Mechanicsburg | Pennsylvania. |
| The First National Bank of Mercersburg | Mercersburg | Pennsylvania. |
| Juniata Valley Bank | Mifflintown | Pennsylvania. |
| Mid Penn Bank | Millersburg | Pennsylvania. |
| Royal Bank of Pennsylvania | Narberth | Pennsylvania. |
| Atlantic Federal Credit Union | Newtown Square | Pennsylvania. |
| The Peoples Bank of Oxford | Oxford | Pennsylvania. |
| Port Richmond Savings | Philadelphia | Pennsylvania. |
| Dwelling House Savings and Loan Association | Pittsburgh | Pennsylvania. |
| Bank Pittsburgh | Pittsburgh | Pennsylvania. |

| | | |
|---|---|---|
| Great American Federal | Pittsburgh | Pennsylvania. |
| Patriot Bank | Pottstown | Pennsylvania. |
| Union Bank and Trust Company | Pottsville | Pennsylvania. |
| The Fidelity Deposit & Discount Bank S | Cranton | Pennsylvania. |
| Citadel Federal Credit Union | Thorndale | Pennsylvania. |
| The Turbotville National Bank | Turbotville | Pennsylvania. |
| Merck, Sharp & Dohme Federal Credit Union | West Point | Pennsylvania. |
| WNB Bank | Williamsport | Pennsylvania. |
| Woodlands Bank | Williamsport | Pennsylvania. |
| The United Federal Credit Union | Morgantown | West Virginia. |
| Jefferson Security Bank | Shepherdstown | West Virginia. |
| Steel Works Community Federal Credit Union | Weirton | West Virginia. |
| **Federal Home Loan Bank of Atlanta—District 4** | | |
| Compass Bank | Birmingham | Alabama. |
| National Bank of Commerce of Birmingham | Birmingham | Alabama. |
| First National Bank of Shelby County | Columbiana | Alabama. |
| Bank of Dadeville | Dadeville | Alabama. |
| The Peoples Bank of Coffee County | Elba | Alabama. |
| The Citizens Bank | Enterprise | Alabama. |
| First Southern Bank | Florence | Alabama. |
| Citizens Bank & Savings Company | Russellville | Alabama. |
| Troy Bank & Trust Company | Troy | Alabama. |
| Security Bank | Tuscaloosa | Alabama. |
| State Bank and Trust | Winfield | Alabama. |
| IDB—IIC Federal Credit Union | Washington | D.C. |
| United States Senate | Washington | D.C. |
| Gibraltar Bank, FSB | Coral Gables | Florida. |
| Merchants and Southern Bank | Gainesville | Florida. |
| Ocala National Bank | Ocala | Florida. |
| Bankers Insurance Company | St. Petersburg | Florida. |
| Suncoast Schools Federal Credit Union | Tampa | Florida. |
| Southern Exchange Bank | Tampa | Florida. |
| Citrus Bank, N.A. | Vero Beach | Florida. |
| First Choice Credit Union West | Palm Beach | Florida. |
| CDC Federal Credit Union | Atlanta | Georgia. |
| Flag Bank | Atlanta | Georgia. |
| Bank of Camilla | Camilla | Georgia. |
| Rabun County Bank | Clayton | Georgia. |
| PlantersFirst | Cordele | Georgia. |
| Colony Bank of Dodge County | Eastman | Georgia. |
| South Georgia Bank | Glennville | Georgia. |
| The Gordon Bank | Gordon | Georgia. |
| Citizens Community Bank | Hahira | Georgia. |
| Georgia State Bank | Mableton | Georgia. |
| Pelham Banking Company | Pelham | Georgia. |
| The Bank of Perry | Perry | Georgia. |
| United Bank and Trust Company | Rockmart | Georgia. |
| The Savannah Bank, N.A | Savannah | Georgia. |
| The Park Avenue Bank | Valdosta | Georgia. |
| Oconee State Bank | Watkinsville | Georgia. |
| The Patterson Bank | Waycross | Georgia. |
| The First National Bank of Waynesboro | Waynesboro | Georgia. |
| First Mariner Bank | Baltimore | Maryland. |
| Bradford Federal Savings Bank | Baltimore | Maryland. |
| Fullerton Federal Savings Association | Baltimore | Maryland. |
| Johns Hopkins Federal | Baltimore | Maryland. |
| Kosciuszko Federal Savings Bank | Baltimore | Maryland. |
| Midstate Federal Savings & Loan Association | Baltimore | Maryland. |
| The Washington Savings Bank, F.S.B. | Bowie | Maryland. |
| The Centreville National Bank of Maryland | Centreville | Maryland. |
| The Columbia Bank | Columbia | Maryland. |
| County Banking and Trust Company | Elkton | Maryland. |
| The Bank of Glen Burnie | Glen Burnie | Maryland. |
| Cedar Point Federal Credit Union | Lexington Park | Maryland. |
| Sandy Spring Bank | Olney | Maryland. |
| BUCS Federal Bank | Owings Mills | Maryland. |
| Peninsula Bank | Salisbury | Maryland. |
| Prince George's Federal Savings Bank | Upper Marlboro | Maryland. |
| Belmont Federal Savings and Loan Association | Belmont | North Carolina. |
| Black Mountain Savings Bank, S.S.B. | Black Mountain | North Carolina. |
| Morganton Federal Savings & Loan Association | Morganton | North Carolina. |
| Coastal Federal Credit Union | Raleigh | North Carolina. |
| Security Savings Bank, SSB | Southport | North Carolina |
| Bank of North Carolina | Thomasville | North Carolina. |

| | | |
|---|---|---|
| Carolina State Bank | Clinton | South Carolina. |
| Clover Community Bank | Clover | South Carolina. |
| The Peoples National Bank | Easley | South Carolina. |
| Carolina First Bank | Greenville | South Carolina. |
| Williamsburg First National Bank | Kingstree | South Carolina. |
| Provident Community Bank | Union | South Carolina. |
| Arthur State Bank | Union | South Carolina. |
| Pinnacle State Bank | Woodruff | South Carolina. |
| Union Bank & Trust Company | Bowling Green | Virginia. |
| The First National Bank of Christiansburg | Christiansburg | Virginia. |
| The National Bank of Fredericksburg | Fredericksburg | Virginia. |
| The Bank of McKenney | McKenney | Virginia. |
| Greater Atlantic Bank | Reston | Virginia. |
| Farmers and Merchants Bank | Timberville | Virginia. |
| Southern Financial Bank | Warrenton | Virginia. |

## Federal Home Loan Bank of Cincinnati—District 5

| | | |
|---|---|---|
| Union National Bank & Trust Company | Barbourville | Kentucky. |
| Bank of Benton | Benton | Kentucky. |
| Taylor County Bank | Campbellsville | Kentucky. |
| First Federal Savings Bank | Cynthiana | Kentucky. |
| First Federal Savings Bank | Elizabethtown | Kentucky. |
| Commonwealth Community Bank | Hartford | Kentucky. |
| The Citizens Bank | Hickman | Kentucky. |
| The First State Bank | Irvington | Kentucky. |
| Whitaker Bank, NA | Lexington | Kentucky. |
| Cumberland Valley National Bank and Trust Company | London | Kentucky. |
| Inez Deposit Bank, fsb | Louisa | Kentucky. |
| River City Bank | Louisville | Kentucky. |
| Green River Bank | Morgantown | Kentucky. |
| Citizens Bank of New Liberty | New Liberty | Kentucky. |
| Citizens National Bank of Paintsville | Paintsville | Kentucky. |
| West Point Bank | Radcliff | Kentucky. |
| Sebree Deposit Bank | Sebree | Kentucky. |
| The Peoples Bank | Taylorsville | Kentucky. |
| United Bank & Trust Company | Versailles | Kentucky. |
| The Farmers & Merchants State Bank | Archbold | Ohio. |
| The Citizens Bank of Ashville | Ashville | Ohio. |
| The Caldwell Savings and Loan Company | Caldwell | Ohio. |
| CINCO Federal Credit Union | Cincinnati | Ohio. |
| Century Federal Credit Union | Cleveland | Ohio. |
| The Pioneer Savings Bank | Cleveland | Ohio. |
| Clyde-Findlay Area Credit Union | Clyde | Ohio. |
| First Federal Savings and Loan Association of Delta | Delta | Ohio. |
| Ohio. Central Savings | Dublin | Ohio. |
| The Croghan Colonial Bank | Fremont | Ohio. |
| First Service Federal Credit Union | Groveport | Ohio. |
| The Killbuck Savings Bank Company | Killbuck | Ohio. |
| The Fahey Banking Company of Marion | Marion | Ohio. |
| The Old Fort Banking Company | Old Fort | Ohio. |
| Cornerstone Bank | Springfield | Ohio. |
| The Security National Bank and Trust Company | Springfield | Ohio. |
| Peoples Savings Bank of Troy | Troy | Ohio. |
| The First National Bank of Wellston | Wellston | Ohio. |
| The Wayne Savings Community Bank | Wooster | Ohio. |
| First Federal Savings Bank | Clarksville | Tennessee. |
| The Bank/First Citizens Bank | Cleveland | Tennessee. |
| Peoples Bank | Clifton | Tennessee. |
| Bank of Dickson | Dickson | Tennessee. |
| Security Bank | Dyersburg | Tennessee. |
| Greeneville Federal Bank, fsb | Greeneville | Tennessee. |
| Citizens Bank | Hartsville | Tennessee. |
| Citizens Bank of Blount County | Maryville | Tennessee. |
| National Bank of Commerce | Memphis | Tennessee. |
| The Bank of Moscow | Moscow | Tennessee. |
| ORNL Federal Credit Union | Oak Ridge | Tennessee. |
| Merchants and Planters Bank | Toone | Tennessee. |
| AEDC Federal Credit Union | Tullahoma | Tennessee. |

## Federal Home Loan Bank Indianapolis—District 6

| | | |
|---|---|---|
| Star Financial Bank | Anderson | Indiana. |
| First Community Bank and Trust | Bargersville | Indiana. |
| Hendricks County Bank and Trust Company | Brownsburg | Indiana. |
| First Farmers Bank & Trust | Converse | Indiana. |

| | | |
|---|---|---|
| 1st National Bank of Dana | Dana | Indiana. |
| Professional Federal Credit Union | Fort Wayne | Indiana. |
| Springs Valley Bank and Trust | French Lick | Indiana. |
| The Garrett State Bank | Garrett | Indiana. |
| Griffith Savings Bank | Griffith | Indiana. |
| Eli Lilly Federal Credit Union | Indianapolis | Indiana. |
| Indiana Members Credit Union | Indianapolis | Indiana. |
| First National Bank & Trust | Kokomo | Indiana. |
| Dearborn SA, FA | Lawrenceburg | Indiana. |
| Fidelity FSB | Marion | Indiana. |
| Farmers State Bank | Mentone | Indiana. |
| The New Washington State Bank | New Washington | Indiana. |
| The North Salem State Bank | North Salem | Indiana. |
| Tri-County Bank & Trust Company | Roachdale | Indiana. |
| Central Bank | Russiaville | Indiana. |
| Mid-Southern Savings Bank, FSB | Salem | Indiana. |
| Teachers Credit Union | South Bend | Indiana. |
| Bank of Lenawee | Adrian | Michigan. |
| University Bank | Ann Arbor | Michigan. |
| Blissfield State Bank | Blissfield | Michigan. |
| Byron Center State Bank | Byron Center | Michigan. |
| CSB Bank | Capac | Michigan. |
| Independent Bank East Michigan. | Caro | Michigan. |
| Exchange State Bank | Carsonville | Michigan. |
| First National Bank of Crystal Falls | Crystal Falls | Michigan. |
| State Savings Bank | Frankfort | Michigan. |
| First National Bank of Gaylord | Gaylord | Michigan. |
| First Community Bank | Harbor Springs | Michigan. |
| Firstbank-Lakeview | Lakeview | Michigan. |
| Republic Bank | Lansing | Michigan. |
| G.W. Jones Exchange Bank | Marcellus | Michigan. |
| Team One Credit Union | Saginaw | Michigan. |
| Shelby State Bank | Shelby | Michigan. |
| ChoiceOne Bank | Sparta | Michigan. |
| Midwest Guaranty Bank | Troy | Michigan. |

**Federal Home Loan Bank of Chicago—District 7**

| | | |
|---|---|---|
| State Bank of the Lakes | Antioch | Illinois. |
| First National Bank of Ava | Ava | Illinois. |
| Town & Country Bank | Buffalo | Illinois. |
| Farmers State Bank of Hoffman | Centralia | Illinois. |
| American Union Savings & Loan | Chicago | Illinois. |
| The PrivateBank and Trust Company | Chicago | Illinois. |
| First East Side Savings Bank | Chicago | Illinois. |
| Cole Taylor Bank | Chicago | Illinois. |
| Self-reliance Ukrainian Federal Credit Union | Chicago | Illinois. |
| LaSalle Bank N.A. | Chicago | Illinois. |
| International Bank of Chicago | Chicago | Illinois. |
| Builders Bank | Chicago | Illinois. |
| First Bank of the Americas | Chicago | Illinois. |
| Park Federal Savings Bank | Chicago | Illinois. |
| First National Bank | Chicago Heights | Illinois. |
| Cissna Park State Bank | Cissna Park | Illinois. |
| GreatBank, N.A. | Evanston | Illinois. |
| Peoples National Bank | Fairfield | Illinois. |
| UnionBank/Northwest | Hanover | Illinois. |
| National Bank | Hillsboro | Illinois. |
| Community Trust Bank | Irvington | Illinois. |
| First Midwest Bank | Itasca | Illinois. |
| Midwest Bank of Western Illinois | Monmouth | Illinois. |
| BankPlus, fsb | Morton | Illinois. |
| Bank of Illinois | Normal | Illinois. |
| Hemlock Federal Bank for Savings | Oak Forest | Illinois. |
| First Community Bank, N.A. | Olney | Illinois. |
| Palos Bank and Trust Company | Palos Heights | Illinois. |
| Citizens Equity First Credit Union | Peoria | Illinois. |
| Pontiac National Bank | Pontiac | Illinois. |
| First Bankers Trust Company, N.A. | Quincy | Illinois. |
| First National Bank of Raymond | Raymond | Illinois. |
| AMCORE Bank N.A. | Rockford | Illinois. |
| The First National Bank in Toledo | Toledo | Illinois. |
| Busey Bank | Urbana | Illinois. |
| Fox Communities Credit Union | Appleton | Wisconsin. |
| Peoples State Bank | Augusta | Wisconsin. |
| First National Bank & Trust of Beloit | Beloit | Wisconsin. |

| | | |
|---|---|---|
| Citizens State Bank | Cadott | Wisconsin. |
| Denmark State Bank | Denmark | Wisconsin. |
| Security National Bank of Durand | Durand | Wisconsin. |
| Union Bank and Trust Company | Evansville | Wisconsin. |
| 1st Security Credit Union | Green Bay | Wisconsin. |
| State Bank of Howards Grove | Howards Grove | Wisconsin. |
| State Bank of La Crosse | La Crosse | Wisconsin. |
| Trane Federal Credit Union | La Crosse | Wisconsin. |
| Capitol Bank | Madison | Wisconsin. |
| The Park Bank | Madison | Wisconsin. |
| Premier Community Bank | Marion | Wisconsin. |
| Bay View Federal Savings and Loan Association | Milwaukee | Wisconsin. |
| Farmers Savings Bank | Mineral Point | Wisconsin. |
| Alliance Bank | Mondovi | Wisconsin. |
| The Necedah Bank | Necedah | Wisconsin. |
| Farmers Exchange Bank | Neshkoro | Wisconsin. |
| Hometown Bank | St. Cloud | Wisconsin. |
| Community State Bank | Union Grove | Wisconsin. |

**Federal Home Loan Bank of Des Moines—District 8**

| | | |
|---|---|---|
| Union National Bank | Anita | Iowa. |
| Quad City Bank and Trust Company | Bettendorf | Iowa. |
| Exchange State Bank | Collins | Iowa. |
| NCMIC Insurance Company | Des Moines | Iowa. |
| Security Savings Bank | Eagle Grove | Iowa. |
| Iowa State Bank and Trust Company of Fairfield Iowa | Fairfield | Iowa. |
| First Bank and Trust Company | Glidden | Iowa. |
| American National Bank | Holstein | Iowa. |
| Home State Bank | Jefferson | Iowa. |
| Security Savings Bank | Larchwood | Iowa. |
| Farmers & Merchants Savings Bank | Manchester | Iowa. |
| Tama State Bank | Marshalltown | Iowa. |
| First Citizens National Bank | Mason City | Iowa. |
| Northwoods State Bank | Mason City | Iowa. |
| Pilot Grove Savings Bank | Pilot Grove | Iowa. |
| Frontier Bank | Rock Rapids | Iowa. |
| Citizens State Bank | Sheldon | Iowa. |
| The First National Bank | Shenandoah | Iowa. |
| Morningside Bank & Trust | Sioux City | Iowa. |
| Cedar Valley State Bank | St. Ansgar | Iowa. |
| First Bank | West Des Moines | Iowa. |
| Security Bank Minnesota | Albert Lea | Minnesota. |
| First Security Bank | Byron | Minnesota. |
| Canton State Bank | Canton | Minnesota. |
| Miners National Bank of Eveleth | Eveleth | Minnesota. |
| State Bank of Young America | Norwood Young America | Minnesota. |
| Peoples State Bank | Plainview | Minnesota. |
| United Prairie Bank-Slayton | Slayton | Minnesota. |
| First Security Bank | Sleepy Eye | Minnesota. |
| Cherokee State Bank | St. Paul | Minnesota. |
| First National Bank in Wadena | Wadena | Minnesota. |
| Wadena State Bank | Wadena | Minnesota. |
| First Security State Bank | Charleston | Missouri. |
| Mississippi County Savings & Loan Association | Charleston | Missouri. |
| Peoples Bank | Cuba | Missouri. |
| Century Bank of the Ozarks | Gainesville | Missouri. |
| The Hamilton Bank | Hamilton | Missouri. |
| Farmers and Merchants Bank | Hannibal | Missouri. |
| Premier Bank | Jefferson City | Missouri. |
| B & L Bank | Lexington | Missouri. |
| Bank of Minden | Mindenmines | Missouri. |
| Bank of Cairo and Moberly | Moberly | Missouri. |
| St. Clair County State Bank | Osceola | Missouri. |
| Platte Valley Bank of Missouri | Platte City | Missouri. |
| Farmers State Bank of Northern Missouri | Savannah | Missouri. |
| Central Bank of Missouri | Sedalia | Missouri. |
| Great Southern Bank | Springfield | Missouri. |
| Mid-Missouri Bank | Springfield | Missouri. |
| Gate City Bank | Fargo | North Dakota. |
| Community First National Bank | Fargo | North Dakota. |
| State Bank of Alcester | Alcester | South Dakota. |
| First American Bank & Trust | Sioux Falls | South Dakota. |

**Federal Home Loan Bank of Dallas—District 9**

| | | |
|---|---|---|
| First National Bank of Izard County | Calico Rock | Arkansas. |

| | | |
|---|---|---|
| First Federal Bank of AR, FA | Harrison | Arkansas. |
| Simmons First Bank of Jonesboro | Jonesboro | Arkansas. |
| Simmons First Bank of Russellville | Russellville | Arkansas. |
| Community Bank of North Arkansas | Springdale | Arkansas. |
| Warren Bank & Trust Company | Warren | Arkansas. |
| Mississippi River Bank | Belle Chasse | Louisiana. |
| Citizens Savings Bank | Bogalusa | Louisiana. |
| Homeland Federal Savings Bank | Columbia | Louisiana. |
| Peoples State Bank | Many | Louisiana. |
| City Bank & Trust Company | Natchitoches | Louisiana. |
| First Bank and Trust | New Orleans | Louisiana. |
| First Federal Savings & Loan Association | Opelousas | Louisiana. |
| ANECA Federal Credit Union | Shreveport | Louisiana. |
| Bank of Anguilla | Anguilla | Mississippi. |
| Guaranty Bank & Trust Company | Belzoni | Mississippi. |
| The Carthage Bank | Carthage | Mississippi. |
| First National Bank of Clarksdale | Clarksdale | Mississippi. |
| Cleveland Community Bank SSB | Cleveland | Mississippi. |
| Bank of Forest | Forest | Mississippi. |
| Hancock Bank | Gulfport | Mississippi. |
| Merchants and Farmers Bank | Kosciusko | Mississippi. |
| Priority One Bank | Magee | Mississippi. |
| First National Bank of Picayune | Picayune | Mississippi. |
| The Peoples Bank | Ripley | Mississippi. |
| First National Bank in Alamogordo | Alamogordo | New Mexico. |
| First State Bank of Taos | Albuquerque | New Mexico. |
| New Mexico Educators Federal Credit Union | Albuquerque | New Mexico. |
| Ranchers Banks | Belen | New Mexico. |
| FirstBank | Clovis | New Mexico. |
| University Federal Credit Union | Austin | Texas. |
| Citizens National Bank at Brownwood | Brownwood | Texas. |
| Columbus State Bank | Columbus | Texas. |
| Mainbank, N.A. | Dallas | Texas. |
| Share Plus Federal Credit Union | Dallas | Texas. |
| Texas Community Bank & Trust | Dallas | Texas. |
| Graham Savings & Loan, FA | Graham | Texas. |
| Planters & Merchants State Bank | Hearne | Texas. |
| MemberSource Credit Union | Houston | Texas. |
| Jacksonville Savings Bank, SSB | Jacksonville | Texas. |
| American State Bank | Lubbock | Texas. |
| American Bank of Texas, N.A. | Marble Falls | Texas. |
| First Bank & Trust of Memphis, Texas | Memphis | Texas. |
| Lone Star Bank | Moulton | Texas. |
| The Liberty National Bank in Paris | Paris | Texas. |
| Security State Bank | Pearsall | Texas. |
| Hale County State Bank | Plainview | Texas. |
| 1st International Bank | Plano | Texas. |
| Legacy Bank of Texas | Plano | Texas. |
| Texas State Bank San | Angelo | Texas. |
| Community Bank, N.A. | San Benito | Texas. |
| Texas Savings Bank, s.s.b. | Snyder | Texas. |
| Mainland Bank | Texas City | Texas. |
| First National Bank of Van Alstyne | Van Alstyne | Texas. |
| Herring National Bank | Vernon | Texas. |
| Community Bank | Wellington | Texas. |

**Federal Home Loan Bank of Topeka—District 10**

| | | |
|---|---|---|
| Bank of Colorado | Fort Collins | Colorado. |
| Alpine Bank | Glenwood Springs | Colorado. |
| Community Banks of the Rockies | La Jara | Colorado. |
| First National Bank of Las Animas | Las Animas | Colorado. |
| FirstBank of Arapahoe County | Littleton | Colorado. |
| Mancos Valley Bank | Mancos | Colorado. |
| The Pueblo Bank and Trust Company | Pueblo | Colorado. |
| High Country Bank | Salida | Colorado. |
| Community National Bank | Chanute | Kansas. |
| Fidelity State Bank and Trust Company | Dodge City | Kansas. |
| Armed Forces Bank N.A. | Fort Leavenworth | Kansas. |
| Heartland Bank, NA | Jewell | Kansas. |
| First National Bank and Trust Company | Junction City | Kansas. |
| First State Bank of Kansas City, KS | Kansas City | Kansas. |
| Premier Bank | Lenexa | Kansas. |
| Metcalf Bank | Overland Park | Kansas. |
| TeamBank, N.A. | Paola | Kansas. |
| Community National Bank | Seneca | Kansas. |

| | | |
|---|---|---|
| Mid American Credit Union | Wichita | Kansas. |
| Five Points Bank | Grand Island | Nebraska. |
| First State Bank | Lincoln | Nebraska. |
| First National B&T Company of Minden | Minden | Nebraska. |
| FCE Credit Union | Omaha | Nebraska. |
| Plattsmouth State Bank | Plattsmouth | Nebraska. |
| The Jones National Bank & Trust Company | Seward | Nebraska. |
| First National Bank of Wahoo | Wahoo | Nebraska. |
| The First National Bank and Trust Company of Ada | Ada | Oklahoma. |
| Alva State Bank & Trust Company | Alva | Oklahoma. |
| Community National Bank | Alva | Oklahoma. |
| American National Bank | Ardmore | Oklahoma. |
| First BankCentere | Broken Arrow | Oklahoma. |
| Farmers and Merchants Bank | Crescent | Oklahoma. |
| The Eastman National Bank of Newkirk | Newkirk | Oklahoma. |
| First Bethany Bank and Trust, N.A. | Oklahoma City | Oklahoma. |
| Oklahoma Employees Credit Union | Oklahoma City | Oklahoma. |
| The First National Bank & Trust Company of Okmulgee | Okmulgee | Oklahoma. |
| First State Bank | Picher | Oklahoma. |
| F & M Bank, NA, Oklahoma City, Oklahoma | Piedmont | Oklahoma. |
| McClain Bank, NA | Purcell | Oklahoma. |
| Tinker Federal Credit Union | Tinker AFB | Oklahoma. |
| Oklahoma Central Credit Union | Tulsa | Oklahoma. |
| SpiritBank | Tulsa | Oklahoma. |
| Welch State Bank | Welch | Oklahoma. |

**Federal Home Loan Bank of San Francisco—District 11**

| | | |
|---|---|---|
| Mohave State Bank | Lake Havasua City | Arizona. |
| Mesa Bank | Mesa | Arizona. |
| Camelback Community Bank | Phoenix | Arizona. |
| Desert Schools Federal Credit Union | Phoenix | Arizona. |
| Salt River Project Credit Union | Phoenix | Arizona. |
| Valley Bank of Arizona | Phoenix | Arizona. |
| Valley First Community Bank | Scottsdale | Arizona. |
| Bank of Tucson | Tucson | Arizona. |
| Southern Arizona Community Bank | Tucson | Arizona. |
| Mt. Diablo National Bank | Danville | California. |
| Six Rivers National Bank | Eureka | California. |
| Humboldt Bank | Eureka | California. |
| First Security Bank of California, NA | Granada Hills | California. |
| Cathay Bank | Los Angeles | California. |
| General Bank | Los Angeles | California. |
| F&A Federal Credit Union | Monterey Park | California. |
| Stanford Federal Credit Union | Palo Alto | California. |
| CBC Federal Credit Union | Port Hueneme | California. |
| Gateway Bank, FSB | San Leandro | California. |
| First Bank of San Luis Obispo | San Luis Obispo | California. |
| Chinatrust Bank (U.S.A.) | Torrance | California. |
| Sun Country Bank | Victorville | California. |
| Visalia Community Bank | Visalia | California. |
| Bank of Walnut Creek | Walnut Creek | California. |
| Bank of Commerce | Henderson | Nevada. |
| Community Bank of Nevada | Las Vegas | Nevada. |
| Ensign Federal Credit Union | Las Vegas | Nevada. |
| Security State Savings Bank | Las Vegas | Nevada. |
| Northern Nevada Bank | Reno | Nevada. |

**Federal Home Loan Bank of Seattle—District 12**

| | | |
|---|---|---|
| City Bank | Honolulu | Hawaii. |
| Hawaii USA Federal Credit Union | Honolulu | Hawaii. |
| Idaho Banking Company | Boise | Idaho. |
| The Farmers National Bank of Buhl | Buhl | Idaho. |
| Lewiston State Bank | Lewiston | Idaho. |
| Citizens State Bank | Hamilton | Montana. |
| Mountain West Bank of Kalispell | Kalispell | Montana. |
| Valley Bank of Kalispell | Kalispell | Montana. |
| First National Bank of Montana, Inc. | Libby | Montana. |
| First Technology Credit Union | Beaverton | Oregon. |
| Bank of the Cascades | Bend | Oregon. |
| Siuslaw Valley Bank | Eugene | Oregon. |
| Portland Area Community Employees CU | Portland | Oregon. |
| Umpqua Bank | Roseburg | Oregon. |
| Clackamas County Bank | Sandy | Oregon. |
| First National Bank of Morgan | Morgan | Utah. |

| | | |
|---|---|---|
| Bank of Utah | Ogden | Utah. |
| Goldenwest Credit Union | Ogden | Utah. |
| Western Community Bank | Orem | Utah. |
| American Bank of Commerce | Provo | Utah. |
| Escrow Bank USA | Salt Lake City | Utah. |
| First Utah Bank | Salt Lake City | Utah. |
| Utah Central Credit Union | Salt Lake City | Utah. |
| Heritage Bank | St. George | Utah. |
| North County Bank | Arlington | Washington. |
| Industrial Credit of Whatcom County | Bellingham | Washington. |
| Cashmere Valley Bank | Cashmere | Washington. |
| Mt. Rainier National Bank | Enumclaw | Washington. |
| EverTrust Bank | Everett | Washington. |
| Northwest Plus Credit Union | Everett | Washington. |
| Verity Credit Union | Seattle | Washington. |
| Watermark Credit Union | Seattle | Washington. |
| First Heritage Bank | Snohomish | Washington. |
| Horizon Credit Union | Spokane | Washington. |
| Rainier Pacific Bank | Tacoma | Washington. |
| American National Bank of Cheyenne | Cheyenne | Wyoming. |
| Cheyenne-Laramie County Employees F.C.U. | Cheyenne | Wyoming. |
| Warren Federal Credit Union | Cheyenne | Wyoming. |
| Western Visa Federal Credit Union | Cheyenne | Wyoming. |
| State Bank of Green River | Green River | Wyoming. |
| Bank of Jackson Hole | Jackson | Wyoming. |
| Central Bank & Trust | Lander | Wyoming. |
| North Side State Bank of Rock Springs | Rock Springs | Wyoming. |
| First Federal Savings Bank | Sheridan | Wyoming. |
| Sheridan State Bank | Sheridan | Wyoming. |

## II. Public Comments

To encourage the submission of public comments on the community support performance of Bank members, on or before October 27, 2003, each Bank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 2002–03 seventh quarter review cycle. 12 CFR 944.2(b)(2)(ii). In reviewing a member for community support compliance, the Finance Board will consider any public comments it has received concerning the member. 12 CFR 944.2(d). To ensure consideration by the Finance Board, comments concerning the community support performance of members selected for the 2002–03 seventh quarter review cycle must be delivered to the Finance Board on or before the November 28, 2003 deadline for submission of Community Support Statements.

Dated: October 7, 2003.

**Arnold Intrater,**

*General Counsel.*

[FR Doc. 03–25785 Filed 10–9–03; 8:45 am]

BILLING CODE 6725–01–P

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## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 24, 2003.

**A. Federal Reserve Bank of Minneapolis** (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *Brian Dean Wolff*, Adams, Minnesota; to gain control of Adams Bancshares, Inc., Adams, Minnesota, and thereby indirectly gain control of Farmers State Bank of Adams, Adams, Minnesota.

Board of Governors of the Federal Reserve System, October 6, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–25677 Filed 10–9–03; 8:45 am]

BILLING CODE 6210–01–S

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## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 3, 2003.

**A. Federal Reserve Bank of Chicago** (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Chemical Financial Corporation*, Midland, Michigan; to acquire 30.89 percent of the voting shares of Caledonia Financial Corporation, Caledonia, Michigan, and thereby indirectly acquire State Bank of Caledonia, Caledonia, Michigan.

**B. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Tradition Bancshares, Inc.*, Houston, Texas; to acquire 100 percent of the voting shares of Katy Bank, N.A., Katy, Texas.

Board of Governors of the Federal Reserve System, October 6, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–25676 Filed 10–9–03; 8:45 am]

**BILLING CODE 6210–01–S**

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## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

**AGENCY:** Federal Trade Commission (FTC).

**ACTION:** Notice.

**SUMMARY:** The information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (PRA). The FTC is seeking public comments on its proposal to extend through January 31, 2007 the current PRA clearance for information collection requirements contained in its Mail or Telephone Order Merchandise Trade Regulation Rule. That clearance expires on January 31, 2004.

**DATES:** Comments must be filed by December 9, 2003.

**ADDRESSES:** Send comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580 or by e-mail to *pra-60-mailorderrule@ftc.gov*, as prescribed below. Submissions should include the submitter's name, address, telephone number and, if available, FAX number and e-mail address. All comments should be captioned "Mail or Telephone Order Merchandise Trade Regulation Rule: Paperwork comment."

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be addressed to Joel N. Brewer, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room NJ–2207, 601 New Jersey Ave., NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the MTOR.

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential."[1] Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as a attachment to e-mail messages directed to the following e-mail box: *pra-60-mailorderrule@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR section 4.9(b)(6)(ii).

The Mail Order Merchandise Trade Regulation Rule 16 CFR part 435 (OMB Control Number: 3084–0106) ("MOR"), was promulgated in 1975 in response to consumer complaints that many merchants were failing to ship mail order merchandise on time, failing to ship at all, or failing to provide prompt refunds for unshipped merchandise. The MOR took effect on February 2, 1976. A second rulemaking proceeding in 1993 demonstrated that the delayed shipment and refund problems of the mail order industry were also being experienced by consumers who ordered merchandise over the telephone. The Commission amended the MOR, effective on March 1, 1994, to include merchandise ordered by telephone, including by telefax or by computer through the use of a modem, and renamed the Rule "Mail or Telephone Order Merchandise" ("MTOR" or "Rule"). The Rule therefore includes orders placed through the Internet.

Generally, the MTOR requires a merchant to: (1) Have a reasonable basis for any express or implied shipment representation made in soliciting the sale; (2) ship within the time period promised and, if no time period is promised, within 30 days; (3) notify the consumer and obtain the consumer's consent to any delay in shipment; and (4) make prompt and full refunds when the consumer exercises a cancellation option or the merchant is unable to meet the Rule's other requirements.

The notice provisions in the MTOR require a merchant who is unable to ship within the promised shipment time or 30 days to notify the consumer of a revised date and his or her right to cancel the order and obtain a prompt refund. Delays beyond the revised shipment date also trigger a notification requirement to consumers. When the Rule requires the merchant to make a refund and the consumer has paid by credit card, the Rule also requires the merchant to notify the consumer either that any charge to the consumer's charge account will be reversed or that the merchant will take no action that will result in a charge.

*Burden statment:*

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[1] FTC Rule 4.2(d), 16 CFR 4.2(d). The comment must also be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

*Estimated total annual hours burden:* 3,094,000 hours (rounded up to the nearest thousand).

In its 2000 PRA notice and submission to OMB regarding the Rule, FTC staff estimated that 45,919 established companies each spend an average of 50 hours per year on compliance with the Rule, and that approximately 1,985 new industry entrants spend an average of 230 hours (an industry estimate) for compliance measures associated with start-up[2] 65 FR 77031 (December 8, 2000). Thus, the total estimated hours burden was 2,753,000 hours, rounded up to the nearest thousand [(45,919 × 50 hours) + (1,985 × 230 hours)].

No provisions in the Rule have been amended or changed since staff's prior submission to OMB. Thus, the Rule's disclosure and notification requirements remain the same. Since then, however, the number of businesses engaged in the sale of merchandise by mail or by telephone has increased. Based on the U.S. Department of Commerce 2002 Statistical Abstract,[3] approximately 53,600 establishments are now subject to the Rule. The staff attributes much of this growth to brick-and-mortar retailers expanding into electronic shopping, and the continued entry of "dot.com" merchants into the retail industry.

Conversely, based on the 2002 Statistical Abstract data, staff is reducing its estimate of new businesses per year from 1,985 to 1,800. Thus, the current total of affected entities is approximately 55,400 (established and new businesses).

Accordingly, staff estimates total industry hours to comply with the MTOR is 3,094,000 hours [(53,600 × 50 hours) + (1,800 × 230 hours)].

This is a conservative estimate. Arguably much of the estimated time burden for disclosure-related compliance would be incurred even absent the Rule. Industry trade associations and individual witnesses have consistently taken the position that compliance with the MTOR is widely regarded by direct marketers as being good business practice. The Rule's notification requirements would be followed in any event by most merchants to meet consumer expectations regarding timely shipment, notification of delay, and prompt and full refunds. Providing consumers with notice about the status of their orders fosters consumers loyalty and encourages repeat purchases, which are important to direct marketers' success. Thus, it appears that much of the time and expense associated with Rule compliance may not constitute "burden" under the PRA[4] although the above estimates account for it as such.

The mail-order industry has been subject to the basic provisions of the Rule since 1976 and the telephone-order industry since 1994. Thus, businesses have had several years (and some have had decades) to integrate compliance systems into their business procedures. Since staff's preceding PRA submission to OMB for the Rule, many businesses have upgraded the information management systems they need, in part, to comply with the Rule, and to track orders more effectively. These upgrades, however, were needed to deal with growing consumer demand for merchandise resulting, in part, from increased public acceptance of making purchases over the telephone and, more recently, the Internet.

Accordingly, most companies now maintain records and provide updated order information of the kind required by the Rule in their ordinary course of business. Nevertheless, staff continues to conservatively assume that the time devoted to compliance with the Rule by existing and new companies remains unchanged from its preceding estimate.

*Estimated labor costs:* $51,825,000, rounded to the nearest thousand.

Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. According to the 2002 Statistical Abstract, average payroll for "electronic shipping and mail order houses," "direct selling establishments," and "other direct selling establishments" rose from $14.41 per hour in 1999 to $15.19 per hour in 2000, an increase of $0.78 per hour. Assuming average payroll continued to increase $0.78 per hour per year, average payroll in 2002 would have reached $16.75 per hour. Because the bulk of the burden of complying with the MTOR is borne by clerical personnel, staff believes that the average hourly payroll figure for electronic shipping and mail order houses and direct selling establishments is an appropriate measure of a direct marketer's average labor cost to comply with the Rule. Thus, the total annual labor cost to new and established businesses in 2002 for MTOR compliance is approximately $51,825,000 (3,094,000 hours × $16.75/hr.). Relative to direct industry sales, this total is negligible.[5]

*Estimated annual non-labor cost burden:* $0 or minimal.

The applicable requirements impose minimal start-up costs, as businesses subject to the Rule generally have or obtain necessary equipment for other business purposes, *i.e.*, inventory and order management, and customer relations. For the same reason, staff anticipates printing and copying costs to be minimal, especially given that telephone order merchants have increasingly turned to electronic communications to notify consumers of delay and to provide cancellation options. Staff believes that the above requirements necessitate ongoing, regular training so that covered entities stay current and have a clear understanding of federal mandates, but that this would be a small portion of and subsumed within the ordinary training that employees receive apart from that associated with the information collected under the Rule.

**William E. Kovacic,**
*General Counsel.*

[FR Doc. 03–25792 Filed 10–9–03; 8:45 am]

BILLING CODE 6750–01–M

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## FEDERAL TRADE COMMISSION

## Granting of Request for Early Termination of the Waiting period Under Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, is added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

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[2] Most of the estimated start-up time relates to the development and installation of computer systems geared to more efficiently handle customer orders.

[3] Statistical Abstract of the United States, 122nd edition, 2002, U.S. Department of Commerce, Economics and Statistics Administration, Table 1000, "Retail Trade—Establishments, Employees and Payroll: 1999 and 2000." This is the most recent edition currently available.

[4] Under the OMB regulation implementing the PRA, burden is defined to exclude any effort that would be expended regardless of any regulatory requirements. 5 CFR 1320.3(b)(2).

[5] Projecting sales for "electronic shopping and mail-order houses," "direct selling establishments," and "other direct selling establishments" (according to the 2002 Statistical Abstract) to all merchants subject to the MTOR, staff estimates that total direct sales to consumers in 2002 to have been $124.88 billion. Thus, the labor cost for compliance by existing and new businesses in 2002 would have amounted to .042% of sales.

### TRANSACTION GRANTED EARLY TERMINATION

| ET date | Trans No. | ET req status | Party name |
|---|---|---|---|
| 25–AUG–03 | 20030875 | G | Euro-Pro Holdings LLC |
| | | G | Mark Rosenzweig |
| | | G | Euro-Pro Corporation |
| | | G | Omega Sewmac, Inc. |
| | | G | Stanro-EP Corp. |
| | 20030878 | G | Fast Retailing Co., Ltd. |
| | | G | Andrew Rosen |
| | | G | Theory California Holding Inc. |
| | | G | R&T LLC |
| | | G | Theory Retail Holding LLC |
| | | G | Theory International, LLC |
| | | G | Theory LLC |
| | 20030879 | G | Fast Retailing Co., Ltd. |
| | | G | Elie Tahari |
| | | G | Theory California Holding Inc. |
| | | G | R&T LLC |
| | | G | Theory International, LLC |
| | | G | Theory Retail Holding LLC |
| | | G | Theory LLC |
| | 20030880 | G | Contech Holdings Corporation |
| | | G | Kirtland Capital Partners III L.P. |
| | | G | PDM Bridge, LLC |
| | 20030891 | G | Jarden Corporation |
| | | G | American Manufacturing Corporation |
| | | G | Lehigh Consumer Products Corporation |
| | 20030892 | G | Alloy, Inc. |
| | | G | dELiA*s Corp. |
| | | G | dELiA*s Corp. |
| | 20030894 | G | Tellium, Inc. |
| | | G | Zhone Technologies, Inc. |
| | | G | Zhone Technologies, Inc. |
| 26–AUG–03 | 20030708 | G | KAP Global Publishers, S.A. |
| | | G | Mr. Reinhard Mohn. |
| | | G | City Data GmbH. |
| | 20030866 | G | Clay M. Biddinger. |
| | | G | Comidisco Holding Company, Inc. |
| | | G | Comidisco, Inc. |
| | 20030889 | G | Arsenal Capital Partners Qualified Purchaser Fund LP. |
| | | G | Cambrex Corporation. |
| | | G | CasChem, Inc. |
| | | G | Heico Chemicals, Inc. |
| | | G | Nepera, Inc. |
| | | G | Nepcam, Inc. |
| | | G | Zeeland Chemicals, Inc. |
| 27–AUG–03 | 20030843 | G | UniFirst Corporation. |
| | | G | Textilease Corporation. |
| | | G | Textilease Corporation. |
| 28–AUG–03 | 20030872 | G | Eastman Kodak Company. |
| | | G | PracticeWorks, Inc. |
| | | G | PracticeWorks, Inc. |
| 29–AUG–03 | 20030882 | G | Thomson, S.A. |
| | | G | Thomson, S.A. |
| | | G | Technicolor Digital Cinema, LLC. |
| | 20030893 | G | Interwoven, Inc. |
| | | G | iManage, Inc. |
| | | G | iManage, Inc. |
| | 20030899 | G | Michael Watts and Cynthia Watts. |
| | | G | Michael Watts and Cynthia Watts. |
| | | G | Sunstate Equipment Co., LLC. |
| | 20030901 | G | Vestar-AIV Holdings A L.P. |
| | | G | FL Selenia S.a.r.l. |
| | | G | FL Selenia S.p.A. |
| 03–SEP–03 | 20030796 | G | Bain Capital Fund VII, L.P. |
| | | G | Linsalata Capital Partners Fund III, L.P. |
| | | G | Alpha Shirt Holdings, Inc. |
| | 20030888 | G | Patterson Dental Company |
| | | G | AbilityOne Products Corporation |

TRANSACTION GRANTED EARLY TERMINATION—Continued

| ET date | Trans No. | ET req status | Party name |
|---|---|---|---|
| | | G | AbilityOne Products Corporation |
| 09–SEP–03 | 20030897 | G | Mr. Robert Mathys, Jr. |
| | | G | Synthes-Stratec, Inc. |
| | | G | Synthes-Stratec, Inc. |
| 03–SEP–03 | 20030900 | G | New SAC |
| 03–SEP–03 | | G | Business Objects, S.A. |
| | | G | Business Objects, S.A. |
| 03–SEP–03 | 20030902 | G | Amcor Limited |
| | | G | Rexam PLC |
| | | G | Rexam Healthcare Flexibles, Inc. |
| | 20030910 | G | Cascades, Inc. |
| | | G | Edward P. Fitts, Jr. |
| | | G | Dopaco, Inc. |
| 03–SEP–03 | 20030911 | G | Susquehanna Pfaltzgraff Co. |
| | | G | RCN Corporation |
| | | G | RCN Telecom Services, Inc. |
| | 20030912 | G | Delta Apparel, Inc. |
| | | G | M.J. Soffe Co. |
| | | G | M.J. Soffe Co. |
| | 20030914 | G | Rayovac Corporation |
| | | G | Ellen Kiam |
| | | G | Remington Products Company, LLC |
| | 20030915 | G | Leucadia National Corporation |
| | | G | WilTel Communications Group, Inc. |
| | | G | WilTel Communications Group, Inc. |
| | 20030924 | G | FMR Corp. |
| | | G | International Business Machines Corporation |
| | | G | International Business Machines Corporation |
| | 20030925 | G | Koyo Seiko Co., Ltd. |
| | | G | Northrop Grumman Corporation |
| | | G | TRW Koyo Steering Systems Company |
| | 20030929 | G | RFE Investment Partners VI, L.P. |
| | | G | MSP Holding LLC |
| | | G | McKenzie Sports Products, Inc. |
| 11–SEP–03 | 20030903 | G | Crunch Equity Holding, LLC |
| | | G | Hicks, Muse, Tate & Furst Equity Fund V, L.P. |
| | | G | Pinnacle Foods Holdings Corporation |
| | 20030926 | G | McDATA Corporation |
| | | G | Sanera Systems, Inc. |
| | | G | Sanera Systems, Inc. |
| | 20030928 | G | Nabco Ltd. |
| | | G | Teijin Limited |
| | | G | Teijin Seiki Co., Ltd. |
| 15–SEP–03 | 20030913 | G | TECO Energy, Inc. |
| | | G | TECO Energy, Inc. |
| | | G | Panda Development Corporation |
| | | G | PLC Development Holdings, LLC |
| | 20030918 | G | GTCR Fund VIII, L.P. |
| | | G | TECO Energy, Inc. |
| | | G | Hardee Power Partners, Limited |
| | 20030931 | G | Wendy's International, Inc. |
| | | G | Orlando Foods, Ltd. |
| | | G | Orlando Foods, Ltd. |
| | 20030933 | G | LandAmerica Financial Group, Inc. |
| | | G | Lereta Corp. |
| | | G | Lereta Corp. |
| | 20030934 | G | H&R Block, Inc. |
| | | G | Monte C. and Viola S. Nelson, Husband and Wife |
| | | G | Block Mountain West, Inc. |
| | 20030939 | G | DLJ Merchant Banking Partners, III L.P. |
| | | G | Kenneth R. Thomson |
| | | G | Thomson Healthcare, Inc. |
| | 20030940 | G | Fiserv, Inc. |
| | | G | Mason Wells Leveraged Buyout Fund I, Limited Partnership |
| | | G | GAC Holdings Corporation |
| | 20030943 | G | SKM Equity Fund III, L.P. |
| | | G | Pfingsten Executive Fund II, L.P. |
| | | G | Norcraft Companies, L.L.C. |
| | 20030945 | G | CAR Acquisition Company LLC |
| | | G | ANC Rental Corporation |
| | | G | ANC Rental Corporation |

TRANSACTION GRANTED EARLY TERMINATION—Continued

| ET date | Trans No. | ET req status | Party name |
|---|---|---|---|
| | 20030948 | G | His Highness General Sheikh Mohammed bin Rashid Al Maktoum |
| | | G | Mariner Health Care, Inc. |
| | | G | MHC/LCA Florida, Inc. |
| | | G | Mariner Health Care of Palm City, Inc. |
| | | G | Mariner Health Care of Pinellas Point, Inc. |
| | | G | Mariner Health of Orlando, Inc. |
| | | G | Tampa Medical Associates, Inc. |
| | | G | Mariner Health of Jacksonville, Inc. |
| | | G | Mariner Health of Florida, Inc. |
| | | G | Mariner Health at Bonifay, Inc. |
| 15–SEP–03 .......................... | 20030948 | G | Mariner Health Properties IV, Ltd. |
| | | G | Mariner Health of Palmetto, Inc. |
| | | G | Mariner Health Care of Atlantic Shores, Inc. |
| | | G | Mariner Health Care of MacClenny, Inc. |
| | | G | Mariner Health Care of Inverness, Inc. |
| | | G | Mariner Health Care of Metrowest, Inc. |
| | | G | Mariner Health Care of Tuskawilla, Inc. |
| | | G | MHC/CSI Florida, Inc. |
| | | G | Mariner Health Care of Lake Worth, Inc. |
| | | G | Mariner Health Care of Port Orange, Inc. |
| | | G | Mariner Health Care of Orange City, Inc. |
| 16–SEP–03 .......................... | 20030908 | G | Getinge AB |
| | | G | Siemens Aktiengesellschaft |
| | | G | ServoCare Systems AB |
| | | G | SBA Life Supporting Systems S.p.A. |

**FOR FURTHER INFORMATION CONTACT:** Sandra M. Peay, Contact Representative, or Renee Hallman, Legal Technician, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 03–25793 Filed 10–9–03; 8:45 am]

BILLING CODE 6750–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[60Day–04–02]

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

*Proposed Project:* Childhood Lead Poisoning Prevention Program Quarterly Report (OMB No. 0920–0282)—Renewal—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Lead poisoning is the most common and societally devastating environmental disease of young children in the United States. The adverse health effects of lead on young children can be profound. Severe lead exposure can cause coma, convulsions, and even death. Lower levels of lead, which rarely cause symptoms, can result in decreased intelligence, developmental disabilities, behavioral disturbances, and disorders of blood production. In 1992, the Centers for Disease Control and Prevention (CDC) began the National Childhood Lead Surveillance Program at the National Center for Environmental Health (NCEH). The goals of the childhood lead surveillance program are to: (1) Establish childhood lead surveillance systems at the state and national levels; (2) use surveillance data to estimate the extent of elevated blood-lead levels among children; (3) assess the follow-up of children with elevated blood-lead levels; (4) examine potential sources of lead exposure; and (5) help allocate resources for lead poisoning prevention activities.

The quarterly report is designed to collect blood lead screening and test confirmation data from CDC-funded programs. The quarterly report consists of four data tables requiring the following information: (1) The number of children screened by age and Medicaid enrollment status; (2) the number of children screened and confirmed by blood lead level; (3) the number of children screened by ethnicity; and (4) the number of children screened by race.

| Respondents | Number of respondents | Responses/ respondent | Average burden/re-spondent (in hours) | Total bur-den (in hours) |
|---|---|---|---|---|
| State and Local Grant and Cooperative Agreement Programs | 42 | 4 | 2 | 336 |
| Total | 42 | .................... | .................... | 336 |

Dated: October 6, 2003.

**Nancy E. Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.*

[FR Doc. 03–25694 Filed 10–9–03; 8:45 am]

**BILLING CODE 4163–18–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

**[60Day–04–01]**

## Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

*Proposed Project:* Survey Of Chronic Fatigue Syndrome And Chronic Unwellness in Georgia—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

Congress commissioned CDC to develop research that estimates the magnitude of chronic fatigue syndrome (CFS) in the United States with special consideration of under-served populations (children and racial/ethnic minorities); describe the clinical features of CFS; and identify risk factors and diagnostic markers. CDC is currently planning a study in Georgia to estimate the prevalence of CFS and other fatigue illnesses and to determine whether or not there are differences in occurrence of fatigue illness across metropolitan, urban, rural populations and in racial and ethnic populations.

In 2001, OMB approved the information collection, *National Telephone Survey of Chronic Fatigue Syndrome,* under OMB Number 0920–0498. In July 2001, CDC conducted a pilot survey to determine feasibility of a national study and to test procedures for this national survey of CFS. The pilot study showed that clinical evaluation to confirm classification of CFS was not practical on a national level, and the planned follow-on national survey was not conducted.

CDC has since modified the concept of the *National Survey of CFS* by limiting data collection to one southern U.S. state (Georgia). This modified research is better able to serve the objectives of the *National Survey of CFS* and additional CDC objectives. Reasons supporting this statement are listed below.

- *Logistics.* A difficulty in the *Pilot Test* was matching subjects and physicians for clinical evaluations because subjects were scattered across the continent. Focusing on a single state allows operation of regional clinics and greater opportunities for collaboration between and among CDC, Emory University, and consultants.
- *Metropolitan, urban, and rural differences. Pilot Test* results suggest no regional differences in the occurrence of CFS-like illnesses between and among the Midwest, south, west, and northeast, so concentrating on one state (Georgia) should provide more generalized information. *Pilot Test* findings suggested that further exploration of urban and rural differences might prove useful. Again, Georgia well-serves such a study with a major metropolitan center (Atlanta), urban areas (Macon and Warner Robins), and rural populations (in counties surrounding Macon) with well-defined regional differences.
- *Racial/ethnic differences.* The prevalence of CFS in other than the white population has not been definitively measured, although some studies indicate CFS prevalence in minority populations may be higher than generally thought. Georgia has well-characterized urban and rural as well as white, black, and Hispanic populations of varying socioeconomic status living in the regions to be studied. The presence of these populations is ideal for public health surveys. Taken together, the proposed Georgia survey will produce estimates of the prevalence of CFS in metropolitan, urban, and rural populations and will elucidate racial/ethnic differences in CFS in these populations.

The proposed study replicates the Sedgwick County Study and the *National Pilot Test* using similar methodology and data collection instruments. The study begins with a random-digit-dialing telephone survey to identify fatigued, unwell, and well individuals, followed by detailed telephone interviews to obtain additional data on participant health status. As a result of the telephone interviews, eligible subjects will be asked to participate in clinical evaluations. CDC will estimate the prevalence of CFS and other fatigue illnesses in metropolitan, urban, and rural Georgia and in racial and ethnic populations. CDC will compare prevalence estimates from this proposed study of the Georgia population to estimates obtained for Sedgwick County to ascertain whether or not Sedgwick County findings can be generalized to other populations. There is no cost to respondents.

| Respondents | Number of respondents | Number responses/respondent | Avg. burden/response (in hours) | Total burden (in hours) |
|---|---|---|---|---|
| Screener interview | 19,344 | 1 | 5/60 | 1,612 |
| Telephone interview | 8,000 | 1 | 30/60 | 4,000 |
| Total | 27,344 | | | 5,612 |

Dated: October 3, 2003.

**Nancy E. Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.*

[FR Doc. 03–25695 Filed 10–9–03; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare and Medicaid Services

**[Document Identifier: CMS–10091 and CMS–R–299]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection.

*Title of Information Collection:* UPIN (Unique Physician Identification Number) Participating Physicians Directory.

*Form No.:* CMS–10091(OMB# 0938–0905).

*Use:* In November of 2000, CMS launched the Participating Physicians Directory on *http://www.medicare.gov*. This particular directory was created to provide beneficiaries with the names, addresses, and specialties of Medicare participating physicians who have agreed to accept assignment on all Medicare claims and covered services. CMS is adding information from already existing sources; in addition, CMS wants to collect a new data element "Accepting New Patients Indicator" which is essential to a beneficiary's search for a physician.

*Frequency:* On occasion.

*Affected Public:* Business or other for-profit.

*Number of Respondents:* 10,980.

*Total Annual Responses:* 10,980.

*Total Annual Hours:* 915.

2. *Type of Information Collection Request:* Revision of a currently approved collection.

*Title of Information Collection:* A project to Develop an Outcome-Based Continuous Quality Improvement System and Core Outcome and Comprehensive Assessment Data Set for PACE.

*Form No.:* CMS–R–299 (OMB# 0938–0791).

*Use:* The purpose of this project is to develop an outcome-based continuous quality improvement (OBCQI) system and core comprehensive assessment data set for the PACE program by (a) developing and testing a set of data items for core outcome and comprehensive assessment (COCOA), (b) testing risk-adjustment methods so each site's outcomes can be appropriately evaluated, (c) designing an OBCQI approach to improve quality in a systematic, evolutionary manner, and (d) testing the usefulness of the data items for assessment and care planning. A three-phase field test will result in the refinement of the draft COCOA data items and protocols needed. Findings from the project are intended to guide the possible implementation of a national approach for OBCQI and core comprehensive assessment for PACE.

*Frequency:* On occasion and Semi-annually.

*Affected Public:* Individuals or Households and Not-for-profit institutions.

*Number of Respondents:* 8,320.

*Total Annual Responses:* 116,038.

*Total Annual Hours:* 16,959.98.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Melissa Musotto, Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: October 2, 2003.

**Dawn Willinghan,**

*CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.*

[FR Doc. 03–25764 Filed 10–9–03; 8:45 am]

BILLING CODE 4120–03–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare and Medicaid Services

**[Document Identifier: CMS–2649, CMS–730 and CMS–80]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection.

*Title of Information Collection:* Request for Reconsideration of Part A Medicare Claims and Supporting Regulations in 42 CFR, 405.711.

*Form No.:* CMS–2649 (OMB# 0938–0045).

*Use:* Section 1869 of the Social Security Act authorizes a hearing for any individual who is dissatisfied with the intermediary's determination or amount of benefit paid. This form is used so that a party may request a reconsideration of the initial determination.

*Frequency:* Monthly, Quarterly, Annually.

*Affected Public:* Individuals or Households and Not-for-profit institutions.

*Number of Respondents:* 60,000.

*Total Annual Responses:* 60,000.

*Total Annual Hours:* 15,000.

2. *Type of Information Collection Request:* Extension of a currently approved collection.

*Title of Information Collection:* Employee Building Pass Application and File.

*Form No.:* CMS–730 & CMS–80 (OMB# 0938–0812).

*Use:* The purpose of this system is to control United States Government Building Passes issued to all Centers for Medicare & Medicaid Services (CMS) employees and non-CMS employees who require continuous access to CMS buildings in Baltimore and other CMS and HHS Buildings.

*Frequency:* As needed.

*Affected Public:* Federal Government and Business or other for-profit.

*Number of Respondents:* 2000.

*Total Annual Responses:* 2000.

*Total Annual Hours:* 500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 2, 2003.

**Dawn Willinghan,**

*CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.*

[FR Doc. 03–25765 Filed 10–9–03; 8:45 am]

BILLING CODE 4120–03–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

**[Docket No. 2003N–0311]**

## Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Device User Fee and Modernization Act Small Business Qualification Certification (Form FDA 3602)

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments on the collection of information by November 10, 2003.

**ADDRESSES:** OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### MDUFMA Small Business Qualification Certification (Form FDA 3602)—(OMB Control Number 0910–0508)—Extension

Medical Device User Fee and Modernization Act (MDUFMA) amends the Federal Food, Drug, and Cosmetic Act to provide for user fees for certain medical device applications. The initial fees (for fiscal year (FY) 2003) are set by statute; FDA will publish a **Federal Register** notice by August 1, 2003, announcing the fees for FY 2004. To avoid harming small businesses, MDUFMA provides for reduced or waived fees for applicants who qualify as a "small business." This means there are two levels of fees, a standard fee, and a reduced or waived small business fee.

Presently, a "small business" is an applicant who reported no more than $30 million "gross receipts or sales" on its Federal income tax return for the most recent tax year; the applicant must count the "gross receipts or sales" of all of its affiliates, partners, or parent firms when calculating whether it meets the $30 million threshold. An applicant must pay the full standard fee unless it provides evidence demonstrating to FDA that it meets the "small business" criteria. The evidence required by MDUFMA is a copy of the most recent Federal income tax return of the applicant, and any affiliate, partner, or parent firm. FDA will review these materials and decide whether an applicant is a "small business" within the meaning of MDUFMA.

Form FDA 3602 will be available in a forthcoming guidance document, "MDUFMA Small Business Qualification Worksheet and Certification." This guidance will describe the criteria FDA will use to decide whether an entity qualifies as a MDUFMA small business and will help prospective applicants understand what they need to do to meet the small business criteria for FY 2004 and subsequent fiscal years. FDA will publish this guidance by August 1, 2003.

Respondents will be businesses or other for-profit organizations.

In the **Federal Register** of July 18, 2003 (68 FR 42742), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| FDA Form Number | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 3602 | 3,000 | 1 | 3,000 | 1 | 3,000 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based these estimates on conversations with industry, trade association representatives, and from internal FDA estimates. This represents FDA's estimate on the number of small businesses that will submit a premarket notification, a premarket application, a premarket report, a panel track supplement, efficacy supplement, 180-day supplement, or a real time supplement to FDA during a single fiscal year from FY 2004 through 2007.

Dated: October 6, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–25752 Filed 10–9–03; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003N–0016]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; The FDA Medical Products Reporting Program

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled "The FDA Medical Products Reporting Program" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of April 29, 2003 (FR 68 22716), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0291.

As requested by the agency, in addition to the approval of the revised forms, the existing forms are approved for continued use for the next 6 months to allow for the industry to make necessary changes to their computerized systems. The approval expires on March 31, 2005. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: October 6, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–25753 Filed 10–9–03; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003N–0456]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Prevention of Medical Gas Mixups at Health Care Facilities

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on measures taken by certain Health Care medical facilities that use medical oxygen to prevent mixups with other gases.

**DATES:** Submit written or electronic comments on the collection of information by December 9, 2003.

**ADDRESSES:** Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Medical Oxygen Manufacturers and Fillers—21 CFR Parts 210 and 211**

The Food and Drug Administration (FDA) has received four reports of medical gas mixups occurring during the past 5 years. These reports were received from hospitals and nursing homes and involved 7 deaths and 15 injuries to patients who were thought to be receiving medical grade oxygen, but who were actually receiving a different gas (e.g., nitrogen, argon) that had been mistakenly connected to the facility's oxygen supply system. In 2001, FDA published guidance making recommendations to help hospitals, nursing homes, and other health care facilities avoid the tragedies that result from medical gas mixups and alerting these facilities to the hazards. This survey is intended to assess the degree of facilities' compliance with safety measures to prevent mixups, to determine if further steps are warranted to ensure the safety of patients.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

| 21 CFR Section | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 210 and 211 | 285 | 1 | 285 | .25 | 71.25 |
| Total | 285 | 1 | 285 | .25 | 71.25 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 6, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–25754 Filed 10–9–03; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Notice of Meeting; Interagency Autism Coordinating Committee

The National Institutes of Health (NIH) hereby announces a meeting of the Interagency Autism Coordinating Committee (IACC) to be held on November 21, 2003, on the NIH campus in Bethesda, Maryland.

The Children's Health Act of 2000 (Pub. L. 106–310), Title I, section 104, mandated the establishment of an Interagency Autism Coordinating Committee (IACC) to coordinate autism research and other efforts within the Department of Health and Human Services (DHHS). In April 2001, Secretary Tommy Thompson delegated the authority to establish the IACC to the National Institutes of Health (NIH). The National Institute of Mental Health (NIMH) at the NIH has been designated the lead for this activity.

The IACC meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below in advance of the meeting.

*Name of Committee:* Interagency Autism Coordinating Committee.

*Date:* November 21, 2003.

*Time:* 10:30 a.m.–3:30 p.m.

*Agenda:* Discussion of autism activities across Federal agencies.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10 (6th floor), Bethesda, Maryland 20892.

*Contact Person:* Ann Wagner, Ph.D., Division of Services and Intervention Research, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 7142, MSC 9633, Bethesda, Maryland 20892, E-mail: *awagner@mail.nih.gov*, Phone: (301) 443–4283.

Any member of the public interested in presenting oral comments to the committee may notify the contact person listed on this notice at least 5 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Presentations may be limited to 5 minutes; both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding his/her statement to the contact person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Information about the meeting and on-line registration forms are also available on-line on the NIMH homepage at *http://www.nimh.nih.gov/autismiacc/index.cfm.*

Dated: October 3, 2003.

**Raynard Kington,**

*Deputy Director, National Institutes of Health.*

[FR Doc. 03–25778 Filed 10–9–03; 8:45 am]

BILLING CODE 4140–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel, SPORES in Leukemia—Lymphoma.

*Date:* October 29–31, 2003.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

*Contact Person:* Bratin K. Saha, Ph.D., Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Bethesda, MD 20892, (301) 402–0371, *sahab@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention

Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 3, 2003

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25663 Filed 10–9–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Cancer Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, National Cancer Institute; Subcommittee 2—Basic Sciences.

*Date:* November 3–4, 2003.

*Time:* 6 p.m. to 5 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* Holiday Inn Chevy Chase, Palladian Room, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Florence E. Farber, Ph.D., Health Scientific Administrator, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 2115, Bethesda, MD 20892, 301–496–7628, *ff6p@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 3, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25666 Filed 10–9–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Initial Review Group, Subcommittee I—Career Development.

*Date:* November 12–13, 2003.

*Time:* 8:30 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

*Contact Person:* Robert Bird, PhD., Scientific Review Administrator, Resources and Training Review Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., MSC 8328, Room 8113, Bethesda, MD 20892–8328, 301–496–7978; *birdr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 3, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25667 Filed 10–9–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Cancer Institute. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, National Cancer Institute, Subcommittee 1—Clinical Sciences and Epidemiology.

*Date:* November 3, 2003.

*Time:* 8:30 a.m. to 10 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Cancer Institute, Building 341, C Wing, 6th Floor, 9000 Rockville Pike; Conference Room 10; Bethesda, MD 20892.

*Contact Person:* Abby B. Sandler, Ph.D., Scientific Review Administrator, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 2114, Rockville, MD 20852, (301) 496–7628.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research; Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 3, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25670 Filed 10–9–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Initial Review Group, Subcommittee A—Cancer Centers.

*Date:* December 4–5, 2003.

*Time:* 7 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* David E. Maslow, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard—Room 8117, Bethesda, MD 20892–7405, (301) 496–2330.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 1, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25686 Filed 10–9–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center for Research Resources Special Emphasis Panel, Comparative Medicine.

*Date:* October 15, 2003.

*Time:* 2 p.m. to Adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Room 1068, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Eric H. Brown, PhD., Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6075 Rockledge Drive, MSC 7965, One Rockledge Centre, Room 6018, Bethesda, MD 20892–7965, 301–435–0815, *browne@ncrr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Center for Research Resources Special Emphasis Panel, Biomedical Research Technology.

*Time:* October 27, 2003.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* Mohan Viswanathan, PhD., Scientific Review Administrator, National Center for Research Resources, National Institutes of Health, Office of Review, 6705 Rockledge Drive, MSC 7965, One Rockledge Centre, Room 6018, Bethesda, MD 20892, (301) 435–0829, *viswanathanm@ncrr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: October 3, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25660 Filed 10–9–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Clinical Trials Review Committee.

*Date:* October 27, 2003.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

*Contact Person:* Valerie L. Prenger, Ph.D., MPH, Scientific Review Administrator, Review Branch, Room 7194, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892–7924, (301) 435–0288.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 3, 2003.

**LaVerne Y. Springfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25669 Filed 10–9–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Human Genome Research Institute Special Emphasis Panel, Conference Grant Review.

*Date:* October 21, 2003.

*Time:* 10 a.m. to 11 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, 31, Bethesda, MD 20814, (Telephone Conference Call).

*Contact Person:* Rudy O. Pozzatti, PhD., Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National institutes of Health, HHS)

Dated: October 3, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25665 Filed 10–9–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Human Genome Research Institute Initial Review Group, Genome Research Review Committee.

*Date:* November 17, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites Chevy Chase Pavilion, Chevy Chase, DC 20015.

*Contact Person:* Ken D. Nakamura, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 1, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25685 Filed 10–9–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDDK.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Diabetes and Digestive and Kidney Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, NIDDK.

*Date:* November 5–7, 2003.

*Open:* November 5, 2003, 6 p.m. to 6:30 p.m.

*Agenda:* Introductions and Overview.

*Place:* National Institutes of Health, Building 5, Room 127, Bethesda, MD 20892.

*Closed:* November 5, 2003, 6:30 p.m. to adjournment.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, Building 5, Room 127, Bethesda, MD 20892.

*Closed:* November 6, 2003, 8 a.m. to adjournment.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, Building 5, Room 127, Bethesda, MD 20892.

*Closed:* November 7, 2003, 8 a.m. to adjournment.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, Building 5, Room 127, Bethesda, MD 20892.

*Contact Person:* Marvin C. Gershengorn, MD, Scientific Director, Division of Intramural Research, National Institute of Diabetes, and Digestive and Kidney Diseases, National Institutes of Health, 9000 Rockville Pike, Bldg., 10, Rm. 9N222, (301) 496–4129.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 2, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25661 Filed 10–9–03; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Review of R01 Application—ZAA1 HH-02.

*Date:* October 29, 2003.

*Time:* 1 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Room 411, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Jeffrey I. Toward, Ph.D., Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 435–5337.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Review of U18 Application—ZAA1 HH-04.

*Date:* October 30, 2003.

*Time:* 1 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Room 411, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Jeffrey I. Toward, Ph.D., Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 435–5337.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: October 2, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25662 Filed 10–9–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, RADAR Applications.

*Date:* October 23, 2003.

*Time:* 12 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Martha Ann Carey, Ph.D., RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mcarey@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 3, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25664 Filed 10–9–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Innovative Grants on Immune Tolerance.

*Date:* November 3–5, 2003.

*Time:* 8 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Somerset Room, Chevy Chase, MD 20815.

*Contact Person:* Priti Mehrotra, Ph.D., Scientific Review Administrator, Division of Extramural Activities, NIAID/NIH, 6700B Rockledge Drive, Room 2100, Bethesda, MD 20892–7616, (301) 496–2550, *pm158b@nih..gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 3, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25668 Filed 10–9–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Dental & Craniofacial Research; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Dental and Craniofacial Research Council, September 18, 2003, 8:30 a.m. to September 18, 2003, 5 p.m., National

Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892, which was published in the **Federal Register** on August 27, 2003, 68FR166PG51–581.

The meeting will be held on October 2, 2003. The meeting is partially closed to the public.

Dated: October 1, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25687 Filed 10–9–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Training Grant and Career Development Review Committee.

*Date:* October 15–17, 2003.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Jurys Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

*Contact Person:* Raul A. Saavedra, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC; 6001 Executive Blvd., Ste. 3208, Bethesda, MD 20892–9529, (301) 496–9223, *saavedrr@ninds.nih.gov.*

*Name of Committee:* National Institute of Neurological Disorders and Stroke Initial Review Group Neurological Sciences and Disorders A.

*Date:* October 16–17, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Washington Terrace Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

*Contact Person:* Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–9223.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders B.

*Date:* October 16–17, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Washington Terrace Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

*Contact Person:* W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–4056.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders C.

*Date:* October 16–17, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Washington Terrace Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

*Contact Person:* Alan L. Willard, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–5390, *aw135y@nih.gov*

*Name of Committee:* National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders K.

*Date:* October 23–24, 2003.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Grand Hyatt—San Francisco, 345 Stockton Street, Union Square, San Francisco, CA 94115.

*Contact Person:* Katherine M. Woodbury, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 1, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25691 Filed 10–9–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

*Date:* October 29, 2003.

*Time:* 11 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Chicago O'Hare Airport, 17 East Monroe Street, Chicago, IL 60603.

*Contact Person:* Joann McConnell, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, Msc 9529, Bethesda, MD 20892–9529, (301) 496–5324, *mcconniej@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 1, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25692 Filed 10–9–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Recombinant DNA Advisory Committee.

*Date:* October 17, 2003.

*Time:* 8:30 a.m. to 12 p.m.

*Agenda:* Review of OBA protocol # 0307–593: A phase I open-label safety study of intrastriatal infusion of adeno-associated virus encoding human aromatic L-amino acid decarboxylase (AAV–hAADC–2) in subjects with advanced Parkinson's Disease.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814, (Telephone Conference Call).

*Contact Person:* Stephen M. Rose, PhD, Executive Secretary, Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892, (301) 496–9838, *sr8j@nih.gov*.

This meeting is being advertised less than 15 days prior to the meeting date. This meeting was rescheduled due to adverse weather conditions in the Washington metropolitan area.

Information is also available on the Institute's/Center's Home page: *http://www4.od.nih.gov/oba/*, where an agenda and any additional information for the meeting will be posted when available.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: October 1, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25688 Filed 10–9–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Cancellation of Meeting

Notice is hereby given of the cancellation of the Center for Scientific Review Special Emphasis Panel, October 14, 2003, 3 p.m. to October 14, 2003, 5 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on September 17, 2003, 68 FR 54479–54481.

The meeting is cancelled due to administrative changes.

Dated: October 1, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25689 Filed 10–9–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Hyperaccelerated Award/Mechanisms in Immunomodulation Trials.

*Date:* October 7, 2003.

*Time:* 1 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152, *edwardss@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Malaria Transmission.

*Date:* October 14, 2003.

*Time:* 3 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Marian Wachtel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892, (301) 435–1148, *wachtelm@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 SSS7 02M: Small Business: Medical Imaging Technologies: Member Conflicts.

*Date:* October 15, 2003.

*Time:* 7 p.m. to 10 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

*Contact Person:* Robert J. Nordstrom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1175.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Biobehavioral and Behavioral Processes Initial Review Group, Motor Function, Speech and Rehabilitation Study Section.

*Date:* October 17, 2003.

*Time:* 8:30 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

*Contact Person:* Weijia Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, (for overnight mail use room # and 20817 zip), Bethesda, MD 20892, (301) 435–1507, *niw@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflict.

*Date:* October 23, 2003.

*Time:* 2 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Syed Amir, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1043, *amirs@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflict.

*Date:* October 24, 2003.

*Time:* 2 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Syed Amir, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1043, *amirs2csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 SSS7 11B: Small Business: Medical Imaging Technologies: Optics II.

*Date:* October 27, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person:* Robert J. Nordstorm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1175, *nordstrr@csr.nih.gov.*

*Name of Committee:* Biobehavioral and Behavioral Processes Initial Review Group, Language and Communication Study Section.

*Date:* October 27–28, 2003.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Suites, 1000 29th Street, NW., Washington, DC 2007.

*Contact Person:* Weijia Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, (for overnight mail use room # and 20817 zip), Bethesda, MD 20892, (301) 435–1507, *niw@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 SSS7 10B: Small Business: Medical Imaging Technologies: Optics I.

*Date:* October 28, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person:* Robert J. Nordstorm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1175, *nordstrr@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 SSS-7 (50): Medical Imaging Technology.

*Date:* October 29, 2003.

*Time:* 10 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person:* Robert J. Nordstorm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1175, *nordstrr@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 SSS7 13B: Small Business: Medical Imaging Technologies.

*Date:* October 29, 2003.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person:* Robert J. Nordstorm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1175, *nordstrr@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, K Mechanism Review.

*Date:* October 30, 2003.

*Time:* 9 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

*Contact Person:* Camilla E. Day, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1037, *dayc@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: October 1, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–25690 Filed 10–9–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Notice of Listing of Members of the National Institutes of Health's Senior Executive Service Performance Review Board (PRB)

The National Institutes of Health (NIH) announces the persons who will serve on the National Institutes of Health's Senior Executive Service Performance Review Board. This action is being taken in accordance with Title 5, U.S.C., Section 4314(c)(4), which requires that members of performance review boards be appointed in a manner to ensure consistency, stability, and objectivity in performance appraisals, and requires that notice of the appointment of an individual to serve as a member be published in the **Federal Register**.

The following persons will serve on the NIH Performance Review Board, which oversees the evaluation of performance appraisals of NIH Senior Executive Service (SES) members:

Mr. Charles Leasure, Jr. (Chair)
Dr. Robert Balaban
Dr. Milton Corn
Dr. Thomas Gallagher
Dr. Michael Gottesman
Dr. Sharon Hrynkow
Dr. Raynard Kington
Dr. Richard Nakamura
Dr. Audrey Penn
Dr. Belinda Seto
Mr. Marc Smolonsky
Mr. Kennety Stith
Mr. Frederick Walker

For further information about the NIH Performance Review Board, contact the Office of Human Resources, Division of Workforce Management, Senior and Scientific Employment Branch, National Institutes of Health, Building 31/B3C08, Bethesda, Maryland 20892, telephone (301) 402–8145 (not a toll-free number).

Dated: October 3, 2003.

**Raynard S. Kington,**

*Deputy Director, NIH.*

[FR Doc. 03–25777 Filed 10–9–03; 8:45 am]

BILLING CODE 4140–09–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Submission for OMB Review; Comment Request; the Atherosclerosis Risk in Communities Study (ARIC)

**SUMMARY:** Under the provisions of section 3506(c)(2)(A) of the Paperwork

Reduction Act of 1995, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 22, 2000, pages 50999–51000, and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**PROPOSED COLLECTION:** *Title:* The Atherosclerosis Risk in Communities Study (ARIC). *Type of Information Collection Request:* Revision of a currently approved collection (OMB No. 0925–0281). *Need and Use of Information Collection:* This project involves annual follow-up by telephone of participants in the ARIC study, review of their medical records, and interviews with doctors and family to identify disease occurrence. Interviewers will contact doctors and hospitals to ascertain participants' cardiovascular events. Information gathered will be used to further describe the risk factors, occurrence rates, and consequences of cardiovascular disease in middle aged and older men and women. *Frequency of Response:* The participants will be contacted annually. *Affected Pubic:* Individuals or households; Business or other for profit; Small businesses or organizations. *Type of Respondents:* Middle aged and elderly adults; doctors and staff of hospitals and nursing homes. The annual reporting burden is as follows: Estimated Number of Respondents: 15,113; *Estimated Number of Responses per Respondent:* 1.0; *Average Burden Hours Per Response:* 0.2479; and *Estimated Total Annual Burden Hours Requested:* 3,746. The annualized cost to respondents is estimated at $41,453, assuming respondents' time at the rate of $10 per hour for family and patient respondents, and $75 per hour for physicians. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

ESTIMATE OF ANNUAL HOUR BURDEN

| Type of response | Number of respondents | Frequency of response | Average time per response | Annual hour burden |
|---|---|---|---|---|
| Participant Follow-up | 14.488 | 1.0 | 0.2500 | 3,622 |
| Physician, hospital, nursing home staff [1] | 245 | 1.0 | 0.2500 | 61 |
| Participant's next-of-kin [1] | 380 | 1.0 | 0.1667 | 63 |
| Total | 15,113 | 1.0 | 0.2479 | 3,746 |

[1] Annual burden is placed on doctors, hospitals, nursing homes, and respondent relatives/informants through requests for information which will help in the compilation of the number and nature of new fatal and nonfatal events.

*Request for Comments:* Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Direct Comments to OMB:* Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Merle Myerson, NIH, NHLBI, 6701 Rockledge Drive, MSC 7934, Bethesda, MD 20892–7934, or call non-toll-free number (301) 435–0707 or E-mail your request, including your address to: *MyersonM@nhlbi.nih.gov.*

*Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: September 28, 2003.

**Peter Savage,**

*Director, DECA, National Heart, Lung and Blood Institute, National Institutes of Health.*

[FR Doc. 03–25693 Filed 10–9–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### National Toxicology Program

The National Toxicology Program (NTP) Center for the Evaluation of Risks to Human Reproduction (CERHR) Announces the Availability of the NTP–CERHR Monograph on Methanol and Plans for Announcing Availability of Future Monographs.

### Summary

The NTP–CERHR Monograph on the Potential Human Reproductive and Developmental Effects of Methanol is now available electronically on the CERHR web site or on CD or in printed text from the CERHR (contact information below). All future notifications about the availability of NTP–CERHR monographs will be provided through announcements from the NTP list-server (an electronic notification service) and on the CERHR web site: *http://cerhr.niehs.nih.gov.*

### NTP–CERHR Monograph on Methanol

The CERHR announces the availability of the NTP–CERHR

Monograph on the Potential Human Reproductive and Developmental Effects of Methanol. This monograph is the next in the NTP–CERHR series and is posted electronically on the CERHR website: *http://cerhr/niehs/nih/gov.* It is also available on CD or in printed text (limited copies) from the CERHR by contacting Dr. Michael Shelby, Director CERHR [NIEHS, 79 T.W. Alexander Drive, Building 4401, Room 103, P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709, telephone: (919) 541–3455; facsimile: (919) 316–4511; *shelby@niehs.nih.gov.*]

The CERHR follows a formal process for the evaluation of selected chemicals that includes opportunities for public input. The NTP–CERHR monographs are the final products of those evaluations. NTP–CERHR monographs include three parts: (1) The NTP brief, which presents the NTP's interpretation of the available data and its conclusions on the potential for a chemical to cause adverse developmental and reproductive effects in humans, (2) the expert panel report, and (3) all public comments on the expert panel report. The NTP utilizes information provided in the expert panel report, the public comments, as well as information from studies published since the expert panel meeting in reaching its conclusions about any potential hazard for humans.

### Plans for Announcing Availability of Future Monographs

All future notifications about the availability of NTP–CERHR monographs will be provided through announcements from the NTP list-server (an electronic mail service) and on the CERHR web site: *http://cerhr.niehs.nih.gov.* Anyone can subscribe to the NTP list-server to receive notification about these documents and other NTP activities in several ways: (1) By registering on-line through the NTP web site at *http://ntp-server.niehs.nih.gov,* select Announcements, (2) by sending an e-mail to *ntpmail-request@list.niehs.nih.gov* with the word *subscribe* as the body of the message, or (3) by contacting the NTP Liaison and Scientific Review Office (919–541–0530 or *liaison@starbase.niehs.nih.gov*). Individuals or groups who have already subscribed to the NTP list-server do not need to subscribe again.

Monographs are now completed for six phthalates [di-butyl phthalate (DBP), butyl benzyl phthalate (BBP), di-isodecyl phthalate (DIDP), di-isononyl phthalate (DINP), di-n-hexyl phthalate (DnHP), and di-n-octyl phthalate (DnOP)] and methanol. The monographs for di-(2-ethylhexyl) phthalate (DEHP), 1-bromopropane, 2-bromopropane, ethylene glycol, and propylene glycol are in production and the NTP will make them available as soon as they are completed.

### Background Information About CERHR

The NTP established the NTP CERHR in June 1998 [**Federal Register**, December 14, 1998: Volume 63, Number 239, page 68782)]. The CERHR is a publicly accessible resource for information about adverse reproductive and/or developmental health effects associated with exposure to environmental and/or occupational agents. The CERHR carries out assessments of these agents following a formal, multi-step, open process that includes rigorous evaluations by independent scientific panels in public forums and opportunities for public input. This process was published in the **Federal Register** (July 16, 2001: Volume 66, Number 136, pages 37047–37048) and is available on the CERHR web site see About CERHR or in printed text from the CERHR.

The CERHR invites the nomination of agents for review or scientists for its expert registry. Information about CERHR and the nomination process can be obtained from its homepage (*http://cerhr.niehs.nih.gov*) or by contacting Dr. Shelby (contact information provided above). The CERHR selects chemicals for evaluation based upon several factors, including production volume, extent of human exposure, public concern, and published evidence of reproductive or developmental toxicity.

Dated: October 2, 2003.

**Samuel H. Wilson,**

*Deputy Director, National Institute Environmental Health Sciences*

[FR Doc. 03–25779 Filed 10–9–03; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4815–N–81]**

### Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Needs Assessment Survey for Farmworkers of Manatee County, FL

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice of proposed information collection.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Department is proposing a survey of the housing needs of the farmworkers and their families who reside in Manatee County, Florida.

**DATES:** Comments Due Date: October 17, 2003.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal.

Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Lauren Wittenberg, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail: *Lauren_Wittenberg@omb.eop.gov;* fax: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

**SUPPLEMENTARY INFORMATION:** This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a proposed revision to the currently approved information collection for selecting applicants for the Fair Housing Initiatives (FHIP) Program grants.

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*This Notice also lists the following information:*

*Title of Proposal:* Needs Assessment Survey for Farmworkers of Manatee County, Florida.

*Description of Information Collection:* The goal of this proposed data collection is to provide a detailed baseline of existing conditions among the farmworkers and their families who reside in Manatee County, Florida. This information is needed by Manatee County planning agencies to create a regional community development plan that effectively addresses farmworker housing and social service needs. The needs assessment will allow county officials and housing providers to:

(1) Engage in mid-to long-term planning for affordable housing and community service programs for low-income working persons and families;

(2) Conduct a housing stock assessment;

(3) Identify the major needs of the farmworker population; and improve program planning and management of available resources to increase access by farmworkers.

*OMB Control Number:* 2535—to be assigned.

*Agency Form Numbers:* None.

*Members of Affected Public:* Individuals and Households.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response:* An estimation of the total number of respondents is 400; each response is estimated to require 0.5 hours; and the total public burden is estimated to be 200 hours.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: October 3, 2003.

**Wayne Eddins,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 03–25679 Filed 10–9–03; 8:45 am]

BILLING CODE 4210–72–P

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4809–N–41]**

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**EFFECTIVE DATE:** October 10, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 2, 2003.

**John D. Garrity,**

*Director, Office of Special Needs Assistance Programs.*

[FR Doc. 03–25389 Filed 10–9–03; 8:45 am]

BILLING CODE 4210–29–M

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA–330–03–1610–00]**

### Notice of Availability of the Headwaters Forest Reserve Proposed Resource Management Plan and Final Environmental Impact Statement/Environmental Impact Report

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Availability of the Headwaters Forest Reserve Proposed Resource Management Plan (RMP) and Final Environmental Impact Statement (FEIS)/Environmental Impact Report (EIR).

**SUMMARY:** The Bureau of Land Management (BLM) and California Department of Fish and Game have jointly prepared a Proposed RMP and associated FEIS and EIR for the Headwaters Forest Reserve (Reserve) located in Humboldt County, California. The Proposed RMP and FEIS/FEIR have been prepared pursuant to the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA), the Federal Land Policy and Management Act (FLPMA), the act establishing the Reserve (H.R. 2107), and BLM policies. The Proposed RMP was developed with broad public participation beginning with scoping meetings in June 2000, release of a draft RMP with public meetings in June 2002, and ongoing dialogue with a variety of publics. Both land use planning and implementation-level planning for the Reserve are included in the Proposed RMP which addresses management on the approximately 7,500 acre Reserve.

**DATES:** BLM Planning Regulations (43 CFR 1610.5–2) state that any person who participated in the planning process, and has an interest that may be adversely affected, may protest. The protest must be filed within 30 days of the date that the Environmental Protection Agency publishes this notice in the **Federal Register**. More specific instructions and requirements for protests are contained in the **SUPPLEMENTARY INFORMATION** section of this notice.

**ADDRESSES:** Copies of the Proposed RMP may be obtained from the following Bureau of Land Management locations: BLM Arcata Field Office, 1695 Heindon Road, Arcata, CA 95521, telephone (707) 825–2300; BLM California State Office, 2800 Cottage Way, Room W–1834, Sacramento, CA 95825, telephone (916) 978–4600; or requested by e-mail at *caweb330@ca.blm.gov*. BLM will also announce the availability of the Proposed RMP through local media outlets, the current project mailing list, and on the BLM Arcata Field Office Web site (*http://www.ca.blm.gov/arcata/index.html*).

**FOR FURTHER INFORMATION CONTACT:** Headwaters Forest Reserve Management Plan Information Line, (916) 737–3010, ext. 4326; Karen Kovacs, California Department of Fish and Game, (707) 441–5789; Lynda Roush, Bureau of Land Management, (707) 825–2300.

**SUPPLEMENTARY INFORMATION:** The Headwaters Forest Reserve was acquired by the Secretary of Interior and State of California on March 1, 1999 as a culmination of a comprehensive agreement of 1996, the Headwaters Agreement, between the Department of Interior, State of California, and the Pacific Lumber Company (PALCO), for the transfer of approximately 7,500 acres of old-growth and young-growth timber stands and associated buffers in a reserve, and among other considerations, the completion and approval of a Sustained Yield Plan (SYP) and Habitat Conservation Plan (HCP) for PALCO property. Cash transfer for the purchase of the Headwaters Forest Reserve was authorized in the 1997 Interior Appropriations bill (H.R. 2107) on the

Federal side and in Assembly Bill 1986 (AB 1986), Headwaters Forest, Owl Creek, and Grizzly Creek, on the state side. The Federal legislation authorizing acquisition, (1) established a specific boundary and point of access, (2) called for joint federal-state acquisition, with management by the federal government and an easement to guarantee conservation management granted to the state, and (3) established the requirement for the development of a management plan.

The 7,500-acre tract acquired includes 3,100 acres of unharvested conifer forests dominated by redwood groves and surrounded by 4,400 acres of previously harvested forest. It is located in the northwestern coast ranges of California near Humboldt Bay in Humboldt County, part of California's north coast region. The Reserve includes the headwaters of three streams draining into Humboldt Bay; South Fork Elk River, Little South Fork Elk River, and Salmon Creek. The Reserve contains three federally listed threatened fish species: southern Oregon/northern California coasts Coho salmon, northern California steelhead, and California coastal Chinook salmon, and two federally listed threatened animals: marbled murrelet and northern spotted owl. The Reserve is designated critical habitat for the Coho, Chinook, and the Murrelet. The Reserve is identified in the PALCO HCP as a site for monitoring undisturbed baseline conditions for water quality and wildlife habitat.

BLM has considered an array of alternatives including specific land use allocations and prescriptions consistent with the legislative intent for the Reserve. Species management, forest and watershed restoration, recreation, critical resource values, and research are addressed.

The planning process includes an opportunity for administrative review through a plan protest to the BLM Director should a previous commenter on the plan believe that the decision has been issued in error. Only those persons or organizations who participated in the planning process may protest. Protests from parties having no previous involvement will be denied without further review. A protesting party may raise only those issues which were submitted for the record during the planning process. New issues raised in the protest period should be directed to the BLM, Arcata Field Manager, 1695 Heindon Road, Arcata, CA 95521 for consideration in plan implementation, as potential plan amendments, or as otherwise appropriate. The period for filing protests begins when the EPA publishes in the **Federal Register** its Notice of Receipt of the FEIS containing the proposed resource management plan. To be considered "timely" the protest must be postmarked no later than the last day of the 30-day protest period. Also, although not a requirement, it is recommended that the protest be sent by certified mail, return receipt requested. E-mail protests will not be accepted. Faxed protests will be considered as potential valid protests provided (1) that the signed faxed letter is received by the Washington Office protest coordinator by the closing date of the protest period and (2) that the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Please direct faxed protests to "BLM Protest Coordinator" at 202–452–5112. Please direct the follow-up letter to the appropriate address provided below. Protest must be filed in writing to: Director (210), Attention: Brenda Williams, P.O. Box 66538, Washington, DC 20035; or by overnight mail to: Director (210), Attention: Brenda Williams, 1620 L Street NW., Suite 1075, Washington, DC 20036. In order to be considered complete, the protest must contain, at a minimum, the following information:

1. The name, mailing address, telephone number, and interest of the person filing the protest.
2. A statement of the issue or issues being protested.
3. A statement of the part or parts of the plan being protested. To the extent possible, this should be done by reference to specific pages, paragraphs, sections, tables, maps, etc. included in the proposed RMP.
4. A copy of all documents addressing the issue or issues which were submitted during the planning process or a reference to the date the issue or issues were discussed by you for the record.
5. A concise statement explaining why the decision of the BLM California State Director is believed to be incorrect. This is a critical part of the protest. Take care to document all relevant facts. As much as possible, reference or cite the planning documents, environmental analysis documents, available planning records (*i.e.* meeting minutes or summaries, correspondence, *etc.*) A protest which merely expresses disagreement with the proposed decision, without supporting data will not provide additional basis for the Director's review of the decision.

Please note that comments, including names and street addresses of respondents, are available for public review and/or release under the Freedom of Information Act (FOIA). Individual respondents may request confidentiality. Respondents who wish to withhold name and/or street address from public review or from disclosure under FOIA, must state this prominently at the beginning of the written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

The Director will promptly render a decision on the protest. The decision will be in writing and will be sent to the protesting party by certified mail, return receipt requested. The decision of the Director shall be the final decision of the Department of the Interior.

Dated: April 21, 2003.

**Lynda J. Roush,**

*Arcata Field Manager.*

**Editorial Note:** This document was received at the Office of the Federal Register on September 29, 2003.

[FR Doc. 03–24980 Filed 10–9–03; 8:45 am]

BILLING CODE 4310–40–P

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

## [UT–910–04–1150–PH–24–1A]

## Notice of Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Department of Interior.

**ACTION:** Notice of Utah Resource Advisory Council (RAC) meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Utah Resource Advisory Council (RAC) will meet as indicated below.

**DATES:** A one-day meeting is scheduled for November 6, at the Sheraton Hotel, Seasons South Conference Room, 150 West 500 South, Salt Lake City, Utah. The meeting will begin at 8 a.m. and conclude at 5 p.m.

**FOR FURTHER INFORMATION:** Contact Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, Utah, 84111; phone (801) 539–4195.

**SUPPLEMENTARY INFORMATION:** A one-day meeting is being held to welcome the new Resource Advisory Council (RAC) members; discuss reports from the raptor, OHV, and Sustaining Working Landscapes subgroups; and a briefing on the wilderness policy. From 4:15 p.m.—4:45 p.m. the public will have an opportunity for public comments. If you are unable to attend the meeting, written comments can be sent to the Bureau of Land Management, Attn: Sherry Foot, PO Box 451155, Salt Lake City Utah, 84145–0155.

All meetings are open to the public; however, transportation, lodging and meals are the responsibility of the participating public.

Dated: October 3, 2003;

**Sally Wisely,**

*State Director.*

[FR Doc. 03–25697 Filed 10–9–03; 8:45 am]

**BILLING CODE 4310–DQ–M**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ID–080–1030–PH]**

### Notice of Public Meeting, Upper Columbia-Salmon Clearwater Resource Advisory Council Meeting; Idaho

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Upper Columbia-Salmon Clearwater (UCSC) District Resource Advisory Council (RAC) will meet as indicated below.

**DATES:** November 12 and 13, 2003. The meeting will begin at 1 a.m. on the first day and end at approximately 2 p.m. on the second day. The public comment period will be from 11–12 p.m. on November 13th. The meeting will be held at the Grant Creek Inn, 5280 Grant Creek Road, Missoula, Montana, because Missoula is centrally located for Council members traveling from the northern and south-central parts of Idaho.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Snook, RAC Coordinator, BLM UCSC District, 1808 N. Third Street, Coeur d'Alene, Idaho 83814 or telephone (208) 769–5004.

**SUPPLEMENTARY INFORMATION:** The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. The following topics will be discussed at the November 12 and 13, 2003 meeting:

- RAC orientation, BLM/RAC 2003 overview, development of Annual Work Plan, and election of officers.
- Off-highway Vehicles (subgroup report), Wild Horse Program, and other natural resource issues.
- Updates on the Idaho BLM organizational changes.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided above.

Dated: October 6, 2003.

**Fritz U. Rennebaum,**

*District Manager.*

[FR Doc. 03–25698 Filed 10–9–03; 8:45 am]

**BILLING CODE 4310–GG–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[71% to CO–956–1420–BJ–0000–241A; 7½% to CO–956–1910–BJ–4717–241A; 7½% to CO–956–7130–BJ–7382–241A; 14% to CO–956–9820–BJ–CO01–241A]**

### Colorado: Filing of Plats of Survey

October 1, 2003.

**SUMMARY:** The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 am., October 1, 2003. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The plat, amending the longitude for the corner of sections 15, 16, 21 and 22, in Township 14 South, Range 68 West, Sixth Principal Meridian, Group 750, Colorado, was accepted July 21, 2003.

The plat representing the dependent resurvey and survey of Amended Tract 147, in Township 1 South, Range 71 West, Sixth Principal Meridian, Group 1364, Colorado, was accepted July 28, 2003.

The plat representing the dependent resurvey and survey, in Township 11 North, Range 101 West, Sixth Principal Meridian, Group 1389, Colorado, was accepted August 5, 2003.

The plat representing the dependent resurvey and survey in Section 23, of Township 2 South, Range 103 West, Sixth Principal Meridian, Group 1377, Colorado, was accepted August 18, 2003.

The plat, (in 7 sheets), representing the dependent resurveys and surveys in Section 24, of Township 1 North, Range 72 West, Sixth Principal Meridian, Group 1236, Colorado, was accepted August 20, 2003.

The plat, (in 8 sheets), representing the dependent resurveys and surveys in Section 13, of Township 1 North, Range 72 West, Sixth Principal Meridian, Group 1236, Colorado, was accepted September 17, 2003.

The plat representing the dependent resurvey and survey in Township 8 South, Range 97 East, Sixth Principal Meridian, Group 1278, Colorado, was accepted September 25, 2003.

The plat representing the dependent resurvey and survey in Township 8 South, Range 98 West, Sixth Principal Meridian, Group 1278, Colorado, was accepted September 25, 2003.

The plat representing the dependent resurvey and survey in Township 9 South, Range 97 East, Sixth Principal Meridian, Group 1278, Colorado, was accepted September 25, 2003.

The plat representing the dependent resurvey and survey in Township 9 South, Range 98 West, Sixth Principal Meridian, Group 1278, Colorado, was accepted September 25, 2003.

These surveys and plats were requested by the Bureau of Land Management for administrative and management purposes.

The plat, of the entire record, representing the dependent resurvey, in Township 22 South, Range 73 West, Sixth Principal Meridian, Group 1235, Colorado, was accepted August 28, 2003.

The plat, (in 2 sheets), of the entire record, representing the dependent resurvey, in Township 23 South, Range 73 West, Sixth Principal Meridian, Group 1235, Colorado, was accepted August 28, 2003.

These surveys, and plats were requested by the Forest Supervisor, Pike and San Isabel National Forests, to identify forest boundaries for administrative and management purposes.

The plat representing the dependent resurvey and survey in Township 3 South, Range 74 West, Sixth Principal Meridian, Group 1351, Colorado, was accepted September 24, 2003.

This survey and plat was requested by the Forest Supervisor, Arapaho-

Roosevelt National Forests, to identify the forest boundaries for management purposes and to prevent a possible home improvement trespass.

The plat representing the dependent resurvey and surveys in Township 34 North, Range 14 West, North of the Ute Line, New Mexico Principal Meridian, Group 1394, Colorado, was accepted September 25, 2003.

This survey and plat was requested by the National Park Service, Superintendent, Mesa Verde National Park, to identify the National Park boundaries for management purposes.

**Darryl A. Wilson,**

*Chief Cadastral Surveyor for Colorado.*

[FR Doc. 03–25763 Filed 10–9–03; 8:45 am]

**BILLING CODE 4310–JB–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ID–957–1420–BJ]**

### Idaho: Filing of Plats of Survey

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of filing of plats of surveys.

**SUMMARY:** The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9 a.m., on the dates specified.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

**SUPPLEMENTARY INFORMATION:** These surveys were executed at the request of the Bureau of Land Management to meet certain administrative needs of the Bureau of Land Management. The lands we surveyed are:

The plat representing the dependent resurvey of a portion of the Boise Meridian (west boundary, Township 1 North, Range 1 East) and a portion of the subdivisional lines, and the subdivision of section 13, in T. 1 N., R. 1 W., Boise Meridian, Idaho, was accepted July 17, 2003.

The plat constituting the entire survey record of the dependent resurvey of a portion of the south boundary and of the subdivisional lines, in T. 5 S., R. 28 E., Boise Meridian, Idaho, was accepted July 31, 2003.

The plats representing the entire survey record of the dependent resurvey of portions of the east boundary, subdivisional lines, and Mineral Survey Nos. 2001 and 2411, in T. 2 N., R. 4 E., Boise Meridian, Idaho, was accepted August 13, 2003.

The plat representing the dependent resurvey of a portion of the south boundary, and a portion of the subdivisional lines, and the subdivision of sections, 26, 27, 32, 33, and 34, in T. 14 N., R. 28 E., Boise Meridian, Idaho, was accepted September 2, 2003.

The plat constituting the entire survey record of the dependent resurvey of a portion of the subdivisional lines, in T. 8 S., R. 29 E., Boise Meridian, Idaho, was accepted September 4, 2003.

These surveys were executed at the request of the Bureau of Land Management to meet certain administrative needs of the Bureau of Indian Affairs. The lands we surveyed are:

The plat representing the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines, and the subdivision of certain sections and the survey of lots 7 and 8 in section 4 and lots 1 and 2 in section 9, in T. 46 N., R. 5 W., Boise Meridian, Idaho, was accepted on August 15, 2003.

The plat representing the dependent resurvey of portions of the north boundary and subdivisional lines, the subdivision of section 5, the survey of the 2000–2002 meander lines of the right bank, an informative traverse of the left bank and the survey of the 2000–2002 median line of the South Fork of the Clearwater River in section 5, in T. 31 N., R. 4 E., Boise Meridian, Idaho, was accepted September 29, 2003.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 14, in T. 36 N., R. 4 W., Boise Meridian, Idaho, was accepted September 29, 2003.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the adjusted 1892 meanders and the 2002–2003 survey of the meanders of the right banks of the Clearwater and North Fork of the Clearwater Rivers, the subdivision of section 33, and the survey of lot No. 9 in section 33, in T. 37 N., R. 1 E., Boise Meridian, Idaho, was accepted September 29, 2003.

Dated: October 6, 2003.

**Harry K. Smith,**

*Chief Cadastral Surveyor for Idaho.*

[FR Doc. 03–25696 Filed 10–9–03; 8:45 am]

**BILLING CODE 4310–GG–P**

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## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Notice on Outer Continental Shelf (OCS) Oil and Gas Lease Sales

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** List of restricted joint bidders.

**SUMMARY:** Pursuant to the authority vested in the Director of the MMS by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at OCS oil and gas lease sales to be held during the bidding period November 1, 2003, through April 30, 2004. The List of Restricted Joint Bidders published April 28, 2003, in the **Federal Register** at 68 FR 81 covered the period May 1, 2003, through October 31, 2003.

Group I.
  Exxon Mobil Corporation
  ExxonMobil Exploration Company
Group II.
  Shell Oil Company
  Shell Offshore Inc.
  SWEPI LP
  Shell Frontier Oil & Gas Inc.
  Shell Consolidated Energy Resources Inc.
  Shell Land & Energy Company
  Shell Onshore Ventures Inc.
  Shell Offshore Properties and Capital II, Inc.
  Shell Rocky Mountain Production LLC
  Shell Gulf of Mexico Inc.
Group III.
  BP American Production Company
  BP Exploration & Production Inc.
  BP Exploration (Alaska) Inc.
Group IV.
  TOTAL E&P USA, Inc.
Group V.
  ChevronTexaco Corporation
  Chevron U.S.A. Inc.
  Texaco Inc.
  Texaco Exploration and Production Inc.

Dated: September 24, 2003.

**Walter D. Cruickshank,**

*Acting Director, Minerals Management Service.*

[FR Doc. 03–25738 Filed 10–9–03; 8:45 am]

**BILLING CODE 4310–MR–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Colorado River Basin Salinity Control Advisory Council

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Colorado River Basin Salinity Control Advisory Council

(Council) was established by the Colorado River Basin Salinity Control Act of 1974 (Pub. L. 93–320) (Act) to receive reports and advise federal agencies on implementing the Act. In accordance with the Federal Advisory Committee Act, the Bureau of Reclamation announces that the Council will meet as detailed below.

**DATES AND LOCATION:** The Council will conduct its annual meeting at the following time and location:

*October 28, 2003—Santa Fe, New Mexico*—The meeting will be held in the Inn at Loretto located at 211 Old Santa Fe Trail. The meeting will begin at 1 p.m., recess at 5 p.m., and reconvene briefly the following day at 12 noon.

**ADDRESSES:** The meeting of the Council is open to the public. Any member of the public may file written statements with the Council before, during, or up to 30 days after the meeting, in person or by mail. To the extent that time permits, the Council chairman may allow public presentation of oral comments at the meeting. To allow full consideration of information by Council members, written notice must be provided to Kib Jacobson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1147; telephone (801) 524–3753; faxogram (801) 524–5499; e-mail at: *kjacobson@uc.usbr.gov* at least FIVE (5) days prior to the meeting. Any written comments received prior to the meeting will be provided to Council members at the meeting.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting will be to discuss the accomplishments of federal agencies and make recommendations on future activities to control salinity. Council members will be briefed on the status of salinity control activities and receive input for drafting the Council's annual report. The Bureau of Reclamation, Bureau of Land Management, U.S. Fish and Wildlife Service, and United States Geological Survey of the Department of the Interior; the Natural Resources Conservation Service of the Department of Agriculture; and the Environmental Protection Agency will each present a progress report and a schedule of activities on salinity control in the Colorado River Basin. The Council will discuss salinity control activities and the contents of the reports.

It is the Bureau of Reclamation's practice to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that their home address be withheld from public disclosure, which will be honored to the full extent allowable by law. To have your name and/or address withheld, please state this prominently at the beginning of your comment. Submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

**FOR FURTHER INFORMATION CONTACT:** Kib Jacobson, telephone (801) 524–3753; faxogram (801) 524–5499; e-mail at: *kjacobson@uc.usbr.gov*.

Dated: August 21, 2003.

**Rick L. Gold,**

*Regional Director—Upper Colorado Region, Bureau of Reclamation.*

[FR Doc. 03–24375 Filed 10–9–03; 8:45 am]

**BILLING CODE 4310–MN–P**

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## INTERNATIONAL TRADE COMMISSION

**[USITC SE–03–031]**

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** October 16, 2003 at 11 a.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**Matters to be Considered**

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. TA–421–4 (Certain Ductile Iron Waterworks Fittings from China)—briefing and vote on critical circumstances, and, if necessary, preliminary market disruption and provisional measures. (The Commission is currently scheduled to transmit its determination on critical circumstances, and, if necessary, preliminary market disruption and provisional measures determinations to the President on or before October 20, 2003.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: October 8, 2003.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 03–25899 Filed 10–8–03; 1:09 pm]

**BILLING CODE 7020–02–P**

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## DEPARTMENT OF JUSTICE

### Office of Justice Programs

**[OJP(OJP) Docket No. 1389]**

### Amber Alert Technology Conference

**AGENCY:** Office of Justice Programs, Justice.

**ACTION:** Notice of conference.

**SUMMARY:** The Office of Justice Programs is announcing the AMBER Alert Technology Conference to showcase products that are available to support local, State, and regional AMBER Alert programs.

**DATES:** The conference will be held on December 3–4, 2003.

**ADDRESSES:** The conference will take place at the Peabody Hotel, 149 Union Avenue, Memphis, Tennessee 38103.

**FOR FURTHER INFORMATION CONTACT:** Ron Laney, Associate Administrator, Child Protection Division, Office of Juvenile Justice and Delinquency Prevention, OJP, 202–616–3637. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** An AMBER Alert Technology Conference will be held on December 3–4, 2003 at the Peabody Hotel in Memphis, Tennessee. AMBER Alert Plan representatives from throughout the country will participate in this event. The conference is designed to showcase products that are available to support local, State, and regional AMBER Alert programs. The conference is sponsored by the Department of Justice's Office of Justice Programs.

If you are interested in participating in this event, please contact Ron Laney at 202–616–3637 no later than October 17, 2003. Please provide your name, the name of your organization, and contact information (phone, fax, e-mail). An information packet will be faxed to interested individuals. Organizations participating in this conference will be responsible for their own expenses, including transportation, lodging, meals, set-up fees, media/equipment rentals, and incidentals.

Dated: October 2, 2003.

**Deborah J. Daniels,**

*Assistant Attorney General, Office of Justice Programs.*

[FR Doc. 03–25751 Filed 10–9–03; 8:45 am]

**BILLING CODE 4410–18–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

September 15, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or E-Mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316/ this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Agency:* Bureau of Labor Statistics.

*Type of Review:* Reinstatement, without change, of a previously approved collection for which approval has expired.

*Title:* CPS Displaced Worker, Job Tenure, and Occupational Mobility Supplement.

*OMB Number:* 1220–0104.

*Affected Public:* Individuals or households.

*Type of Response:* Reporting.

*Frequency:* Biennially.

*Number of Respondents:* 58,000.

*Annual Responses:* 58,000.

*Average Response Time:* 8 minutes.

*Annual Burden Hours:* 7,733.

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $0.

*Description:* The information collected will be used to determine the size and nature of the population affected by job displacements and, hence, the needs and scope of job training programs serving adult displaced workers. these data also will measure the severity of the displacement problem, and assess employment stability.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 03–25702 Filed 10–09–03; 8:45 am]

**BILLING CODE 4510–43–M**

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## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

September 25, 2003.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or E-Mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316 / this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Mine Safety and Health Administration.

*Type of Review:* Extension of a currently approved collection.

*Title:* Escape and Evacuation Plans (Pertains to Surface Coal Mines and Surface Work Areas of Underground Coal Mines).

*OMB Number:* 1219–0051.

*Affected Public:* Business or other for-profit.

*Frequency:* On occasion.

*Type of Response:* Recordkeeping.

*Number of Respondents:* 183.

*Number of Annual Responses:* 183.

*Average Response Time:* Approximately 5 hours to prepare a new escape and evacuation plan and approximately 2.5 hours to revise an existing plan.

*Total Estimated Burden Hours:* 878.

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $0.

*Description:* 30 CFR 77.1101 required coal mine operators to establish and keep current a specific escape and evacuation plan to be followed in the event of a fire. The plan is used to instruct employees in the proper method of exiting work areas.

*Agency:* Mine Safety and Health Administration.

*Type of Review:* Extension of a currently approved collection.

*Title:* Records of Preshift and Onshift Inspections of Slope and Shaft Areas (Pertains to Slope and Shaft Sinking Operations at Coal Mines).

*OMB Number:* 1219–0082.

*Affected Public:* Business or other for-profit.

*Frequency:* Each shift.

*Type of Response:* Recordkeeping.

*Number of Respondents:* 35.

*Number of Annual Responses:* 11,858.

*Average Response Time:* 1.25 hours.

*Total Estimated Burden Hours:* 14,823.

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual costs (operating/maintaining systems or purchasing services:* $0.

*Description:* 30 CFR 77.1901 requires coal mine operators to conduct examinations of slope and shaft areas for hazardous conditions, including tests for methane and oxygen deficiencies, before and during each shift and before blasting. Records of the results of the inspections are required to be kept.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 03–25703 Filed 10–9–03; 8:45 am]

**BILLING CODE 4510–43–M**

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–52,695]**

### Agere Systems, Irwindale, California; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 27, 2003, in response to a worker petition filed on behalf of workers at Agere Systems, Irwindale, California.

The petition regarding the investigation has been deemed invalid. Petitions must be signed by three workers, a duly authorized representative of such workers, the employer of such workers, or an appropriate state official.

The petition submitted in this case does not contain valid signatures of any of the above. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 10th day of September, 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–25720 Filed 10–9–03; 8:45 am]

**BILLING CODE 4510–30–P**

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–52,694]**

### Apparel Ventures, Inc., South Gate, California; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 27, 2003, in response to a petition filed by a company official on behalf of workers at Apparel Ventures, Inc., South Gate, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 9th day of September, 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–25732 Filed 10–9–03; 8:45 am]

**BILLING CODE 4510–30–P**

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–52,641]**

### Ault Incorporated, Minneapolis, MN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 21, 2003 in response to a worker petition which was filed by a company official on behalf of workers at Ault Incorporated, Minneapolis, Minnesota (TA–W–52,641).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 8th day of September 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–25733 Filed 10–9–03; 8:45 am]

**BILLING CODE 4510–30–P**

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–52,726]**

### Brad Aga Set Net Operation, Larsen Bay, Alaska; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 3, 2003, in response to a petition filed by a company official on behalf of workers of the Brad Aga Set Net Operation, Larsen Bay, Alaska.

The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by section 222 of the Trade Act of 1974. Significant number or proportion of the workers means that at least three workers in a firm with a workforce of fewer than 50 workers would have to be affected. Separations by the subject firm did not meet this threshold level; consequently the investigation has been terminated.

Signed at Washington, DC, this 10th day of September, 2003.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–25719 Filed 10–9–03; 8:45 am]

**BILLING CODE 4510–30–P**

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–52,819]**

### BSN-Jobst, Inc., Rutherford College, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 11, 2003, in response to a worker petition filed by a company official on behalf of workers at BSN-Jobst, Inc., Rutherford College, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 17th day of September, 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–25718 Filed 10–9–03; 8:45 am]

**BILLING CODE 4510–30–P**

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## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 20, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown, below, not later than October 20, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC, this 22nd day of September 2003.

**Timothy Sullivan,**

*Director, Division of Trade Adjustment Assistance.*

## APPENDIX

[Petitions instituted between 09/02/2003 and 09/05/2003]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 52,708 | Carolina Pad and paper Co. (Co.) | Charlotte, NC | 09/02/2003 | 08/25/2003 |
| 52,709 | Kana Software (Wkrs) | Menlo Park, GA | 09/02/2003 | 08/27/2003 |
| 52,710 | Conso International Corp. (Comp) | Union, SC | 09/02/2003 | 08/29/2003 |
| 52,711 | AT&T Wireless Services Inc. (State) | Livermore, CA | 09/02/2003 | 08/29/2003 |
| 52,712 | Maytag Appliances (Comp) | Amana, IA | 09/02/2003 | 08/25/2003 |
| 52,713 | Gilbert Brothers Fisheries (Comp) | Kodiak, AK | 09/02/2003 | 08/28/2003 |
| 52,714 | Fishing Vessel (F/V) Rimrock (Comp) | Kodiak, AK | 09/02/2003 | 08/28/2003 |
| 52,715 | Tingley Rubber (Union) | So. Plainfield, NJ | 09/02/2003 | 08/04/2003 |
| 52,716 | Uniprise (Wkrs) | Dayton, OH | 09/02/2003 | 08/29/2003 |
| 52,717 | PSC Metals Inc. (Comp) | Cleveland, OH | 09/02/2003 | 08/19/2003 |
| 52,718 | I.T.W. Foils (Wkrs) | East Brunswick, NJ | 09/02/2003 | 08/21/2003 |
| 52,719 | Padgett Furniture Mfg. Cop., Inc. (Comp) | Calhoun, TN | 09/02/2003 | 08/25/2003 |
| 52,720 | Ampenol T&M Antennas (Wkrs) | Vernon Hills, IL | 09/02/2003 | 08/28/2003 |
| 52,721 | Cascade Fibers Company (Wkrs) | Sanford, NC | 09/02/2003 | 08/28/2003 |
| 52,722 | Conso International Corp (Comp) | Union, SC | 09/02/2003 | 08/29/2003 |
| 52,723 | W–Phone, Inc. (state) | Highlands Ranch, CO | 09/02/2003 | 08/28/2003 |
| 52,724 | F/V Ruthie (Comp) | Petersburg, AK | 09/03/2003 | 08/20/2003 |
| 52,725 | Fishing Vessel (F/V) Bad Betty (Comp) | Homer, AK | 09/03/2003 | 08/19/2003 |
| 52,726 | Brad Aga Setnet Operation (Comp) | Larsen Bay, AK | 09/03/2003 | 08/21/2003 |
| 52,727 | Pryor Fish Camp (Comp) | Kodiak, AK | 09/03/2003 | 08/20/2003 |
| 52,728 | TRW Automotive (MN) | Rushford, MN | 09/03/2003 | 08/25/2003 |
| 52,729 | TRW Automotive Electronics (MN) | Winona, MN | 09/03/2003 | 08/25/2003 |
| 52,730 | Berwick Weaving, Inc. (Wkrs) | Berwick, PA | 09/03/2003 | 08/15/2003 |
| 52,731 | Heraeus Quartztech, Inc. (NJ) | Fairfield, NJ | 09/03/2003 | 08/29/2003 |
| 52,732 | Agere Systems (IBEW) | Reading, PA | 09/03/2003 | 08/15/2003 |
| 52,733 | Implementation Strategies, Inc. (Comp) | Brooklyn, NY | 09/03/2003 | 08/26/2003 |
| 52,734 | Bend Tec, Inc. (MN) | Duluth, MN | 09/03/2003 | 08/22/2003 |
| 52,735 | Guardian Industries Corporation (Comp) | Lewistown, PA | 09/03/2003 | 08/21/2003 |
| 52,736 | Lala Ellen Knitting (Comp) | Fort Payne, AL | 09/03/2003 | 08/21/2003 |
| 52,737 | TriQuint Optoelectronics (Comp) | Breinigsville, PA | 09/03/2003 | 08/18/2003 |
| 52,738 | Vermont Tubbs (Comp) | Brandon, VT | 09/03/2003 | 08/19/2003 |
| 52,739 | Springs Industries (Comp) | Gainesville, GA | 09/03/2003 | 08/26/2003 |
| 52,740 | HV Wood Products, Inc. (Comp) | Hughesville, PA | 09/03/2003 | 08/28/2003 |
| 52,741 | Ettco Tool Co. (IAMAW) | York, PA | 09/03/2003 | 08/21/2003 |
| 52,742 | Fishercast, Inc. (Comp) | Watertown, NY | 09/03/2003 | 08/17/2003 |
| 52,743 | Hewlett Packard (ID) | Boise, ID | 09/03/2003 | 08/27/2003 |
| 52,744 | Rockwell Automation (Comp) | Dublin, GA | 09/03/2003 | 08/26/2003 |
| 52,745 | Erie Power Technologies, Inc. (Wkrs) | Erie, PA | 09/03/2003 | 08/28/2003 |
| 52,746 | Plano Molding Company (Comp) | Plano, IL | 09/03/2003 | 08/26/2003 |
| 52,747 | Sligh Furniture Company (Comp) | Holland, MI | 09/03/2003 | 08/26/2003 |
| 52,748 | Honeywell Industry Solutions (Wkrs) | Phoenix, AZ | 09/03/2003 | 08/28/2003 |
| 52,749 | Akin Industries (Comp) | Monticello, AR | 09/03/2003 | 08/25/2003 |
| 52,750 | Penn Union Corporation (Wkrs) | Edinboro, PA | 09/03/2003 | 07/20/2003 |
| 52,751 | Cliffs Mining Services Company (Wkrs) | Ishpeming, MI | 09/03/2003 | 08/19/2003 |
| 52,752 | TRW (Comp) | Jackson, MI | 09/03/2003 | 08/27/2003 |
| 52,753 | Metal Powder Products Company (Comp) | Coldwater, MI | 09/03/2003 | 08/08/2003 |
| 52,754 | ACS Industries, Inc. (Comp) | Woonsocket, RI | 09/04/2003 | 08/20/2003 |
| 52,755 | Fishing Vessel (F/V) Kaja marie (Comp) | Camano Island, WA | 09/04/2003 | 08/31/2003 |
| 52,756 | West Point Fisheries (Comp) | Bend, Or | 09/04/2003 | 08/27/2003 |
| 52,757 | State of Alaska Commission Fisheries (Comp) | Soldotna, AK | 09/04/2003 | 08/29/2003 |
| 52,758 | Bear Garden Fisheries (Comp) | Kodiak, AK | 09/04/2003 | 08/31/2003 |
| 52,759 | F/V K2 (Comp) | Cordova, AK | 09/04/2003 | 08/25/2003 |
| 52,760 | Fishing Vessel (F/V) Freedom (Comp) | Mt. Vernon, WA | 09/04/2003 | 08/21/2003 |
| 52,761 | Fishing Vessel (F/V) Leopard (Comp) | Kenai, AK | 09/04/2003 | 09/02/2003 |
| 52,762 | TT Group, Inc. (Comp) | Aurora, MO | 09/04/2003 | 08/29/2003 |
| 52,763 | Philadelphia Chewing Gum Corporation (Comp) | Havertown, PA | 09/04/2003 | 08/22/2003 |

APPENDIX—Continued

[Petitions instituted between 09/02/2003 and 09/05/2003]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 52,764 | Bimex Industries (AFLCIO) | Wales, WI | 09/04/2003 | 09/03/2003 |
| 52,765 | Micro Motion, Inc. (Comp) | Boulder, CO | 09/04/2003 | 09/03/2003 |
| 52,766 | American Suessen Corp. (NC) | Charlotte, NC | 09/04/2003 | 08/28/2003 |
| 52,767 | Karen Manufacturing (NJ) | Elizabeth, NJ | 09/04/2003 | 08/04/2003 |
| 52,768 | Titan Plastics Group (Comp) | Portage, MI | 09/04/2003 | 08/27/2003 |
| 52,769 | American Fiber and Finishing, Inc. (Comp) | Newberry, SC | 09/05/2003 | 09/05/2003 |
| 52,770 | Tower Mills, Inc. (Comp) | Burlington, NC | 09/05/2003 | 08/27/2003 |
| 52,771 | Central-PA Distribution and Warehouse (Wkrs) | Reedsville, PA | 09/05/2003 | 09/04/2003 |
| 52,772 | Baltimore Marine Ind. (IAMAW) | Baltimore, MD | 09/05/2003 | 09/05/2003 |
| 52,773 | Lebanite Corporation (WCIW) | Lebanon, OR | 09/05/2003 | 09/03/2003 |
| 52,774 | Weyersaeuser Company (Wkrs) | N. Bend, OR | 09/05/2003 | 09/03/2003 |

[FR Doc. 03–25705 Filed 10–9–03; 8:45 am]

BILLING CODE 4510–30–M

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–37,240]

### Chevron Products Company, Roosevelt, UT; Notice of Revised Determination on Reopening

The Department of Labor reopened the petition investigation for workers of the subject firm.

The TAA petition filed with the Department on behalf of workers of Chevron Products Company, Roosevelt, Utah, was initiated on February 4, 2000. The petition investigation concluded that the subject firm did not produce an article and therefore its workers were not eligible for certification. The negative determination was issued on February 17, 2000, and published in the **Federal Register** on March 17, 2000 (65 FR 14627).

However, the Department determines on reopening that because Chevron Products Company, Roosevelt, Utah is affiliated with Chevron USA Production Company (as both are wholly owned subsidiaries of Chevron USA, Inc.) the Department finds the two firms constituted an integrated production process, the final products of which are crude oil and natural gas.

The Department, on July 6, 1999, issued a certification of eligibility for workers of Chevron USA Production Company in Utah, to apply for trade adjustment assistance (TA–W–36,295I). That certification was supported by increased company imports of crude oil in January-March 1999 compared to the same time period of 1998. Therefore, the Department certifies the Chevron Products, Roosevelt, Utah, workers as eligible for assistance under TAA.

The same worker group had been denied eligibility to apply for NAFTA–TAA under petition number NAFTA–3854. The United States Court of International Trade (USCIT) remanded for further investigation the Secretary of Labor's negative NAFTA–TAA determination in *Former Employees of Chevron Products Company* v. *U.S. Secretary of Labor* (00–08–00409). Further investigation in that remand resulted in a negative decision. The USCIT again remanded that petition denial for further investigation and ordered the Department to again consider whether the workers lost their jobs because of increased imports and whether the Chevron Products Company workers could be determined eligible for NAFTA–TAA as Secondarily Affected under the "Statement of Administrative Action."

Although we conducted an additional investigation about whether the Chevron Products workers were production workers, we believe that our decision that Chevron Products is an appropriate subdivision of Chevron USA moots both that inquiry and the inquiry into whether the workers qualify as secondary workers under the Statement of Administrative Action. Since the workers were a part of a firm which produces an article, crude oil, under Labor's existing rules, the characterization of the workers as production or service workers becomes irrelevant because that distinction only arises in cases where the workers are employed by separate firms or there are subdivisions within the firm that produce articles that are separately identifiable. Similarly, since the workers are part of the firm that produced the article, they cannot be secondary workers, who, by definition, are employed by separate firms.

#### Conclusion

After careful consideration on reopening, it is concluded that increased imports of articles like or directly competitive with crude oil produced by Chevron USA Production and its affiliate Chevron Products Company, Roosevelt, Utah, contributed importantly to the decline in sales or production and to the total or partial separation of workers of the subject firm.

In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

> "All workers of Chevron Products Company, Roosevelt, Utah, who became totally or partially separated from employment on or after January 4, 1999, through two years from the date of certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed in Washington, DC, this 25th day of September 2003.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–25726 Filed 10–9–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–52,706]

### Compaq Computer Corporation, Denver, CO; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 29, 2003 in response to a worker petition which was filed by the State TAA Coordinator on behalf of workers at Compaq Computer Corporation, Denver, Colorado.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 8th day of September, 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–25731 Filed 10–9–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–51,938]

### The Eureka Company, White Consolidated Ltd., Electrolux Professional, Inc., El Paso, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 17, 2003, applicable to workers of The Eureka Company, El Paso, Texas. The notice was published in the **Federal Register** on July 3, 2003 (68 FR 39977).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of vacuum cleaners.

New information shows that some workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for White Consolidated LTD., Electrolux Professional, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of The Eureka Company, White Consolidated LTD., Electrolux Professional, Inc., El Paso, Texas who were adversely affected by increased imports.

The amended notice applicable to TA–W–51,938 is hereby issued as follows:

> All workers of The Eureka Company, White Consolidated LTD., Electrolux Professional, Inc., El Paso, Texas, who became totally or partially separated from employment on or after May 9, 2003, through June 17, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 30th day of September 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–25711 Filed 10–9–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–52,714]

### Fishing Vessel (F/V) Rimrock, Kodiak, AK; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 2, 2003 in response to a petition filed by a company official on behalf of workers of the Fishing Vessel (F/V) Rimrock, Kodiak, Alaska.

All workers were separated from the subject firm more than one year before the date of the petition. Section 223(b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 10th day of September, 2003.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–25730 Filed 10–9–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–52,523]

### Hanes Dye & Finishing Company, Winston-Salem, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 12, 2003 in response to a worker petition which was filed by a company official on behalf of workers at Hanes Dye & Finishing Company, Winston-Salem, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 9th day of September 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–25736 Filed 10–9–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–52,235]

### Honeywell Nylon, Inc., Including Leased Workers of Base Corporation Fiber Division, Anderson, South Carolina; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 1, 2003, applicable to workers of Honeywell Nylon, Inc., Anderson, South Carolina. The notice was published in the **Federal Register** on August 18, 2003 (68 FR 49523).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of nylon fibers.

Information provided by the company shows that all employees of the Anderson, South Carolina location of the subject firm are leased employees of BASF Corporation, Fiber Division.

Information also shows that workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for BASF Corporation.

Based on these findings, the Department is amending this certification to include temporary workers of BASF Corporation, Fiber Division working at Honeywell Nylon, Inc., Anderson, North Carolina.

The intent of the Department's certification is to include all workers of Honeywell Nylon, Inc. who was adversely affected by increased imports.

The amended notice applicable to TA–W–52,235 is hereby issued as follows:

> All workers of Honeywell Nylon, Inc., including leased workers of BASF Corporation, Fiber Division, Anderson, South Carolina, who became totally or partially separated from employment on or after July 7, 2002, through August 1, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 10th day of September 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–25707 Filed 10–9–03; 8:45 am]

**BILLING CODE 4510–30–P**

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–52,733]**

### Implementation Strategies, Inc., Brooklyn, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 3, 2003 in response to a petition filed by a company official on behalf of workers of Implementation Strategies, Inc., Brooklyn, New York.

The petition regarding the investigation has been deemed invalid. In order to establish a valid worker group, there must be at least three full-time workers employed at some point during the period under investigation. Workers of the group subject to this investigation did not meet this threshold level of employment. Consequently, the investigation has been terminated.

Signed in Washington, DC this 10th day of September 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–25727 Filed 10–9–03; 8:45 am]

**BILLING CODE 4510–30–P**

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–52,822]**

### JacksonLea, Santa Fe Springs, California; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 11, 2003, in response to a petition filed by a company official on behalf of workers at JacksonLea, Santa Fe Springs, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 17th day of September, 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–25717 Filed 10–9–03; 8:45 am]

**BILLING CODE 4510–30–P**

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## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 20, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistant, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 12th day of September 2003.

**Timothy Sullivan,**

*Director, Division of Trade Adjustment Assistance.*

APPENDIX

[Petitions instituted between 08/25/2003 and 08/29/2003]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 52,670 | Joy Mining Machinery (Wkrs) | Abingdon, VA | 08/26/2003 | 08/21/2003 |
| 52,671 | Siebel Systems (CA | Emeryville, CA | 08/25/2003 | 08/19/2003 |
| 52,672 | Intel Corporation (Comp) | Hillsboro, CA | 08/25/2003 | 08/22/2003 |
| 52,673 | Belden Wire and Cable (Comp) | Richmond, IN | 08/25/2003 | 08/22/2003 |
| 52,674 | ADM Milling Company (MN) | Minneapolis, MN | 08/25/2003 | 08/22/2003 |
| 52,675 | Bills/Bonus Dollar Store (Wkrs) | Adamsville, TN | 08/25/2003 | 08/19/2003 |
| 52,676A | Defender Services (Wkrs) | Salisbury, NC | 08/25/2003 | 08/22/2003 |
| 52,676B | Defender Services (Wkrs) | Concord, NC | 08/25/2003 | 08/22/2003 |
| 52,676C | Defender Services (Wkrs) | Eden, NC | 08/25/2003 | 08/22/2003 |
| 52,676 | Defender Services (Wkrs) | Kannapolis, NC | 08/25/2003 | 08/22/2003 |
| 52,677 | Westinghouse Electric Company (Wkrs) | Monroeville, PA | 08/25/2003 | 08/23/2003 |
| 52,678 | Cooper Industries (Comp) | Montebello, CA | 08/25/2003 | 08/15/2003 |
| 52,679 | GN Netcom (Comp) | Nashua, NH | 08/25/2003 | 08/25/2003 |
| 52,680 | Vaughan Furniture Company (Comp) | Johnson City, TN | 08/26/2003 | 08/21/2003 |
| 52,681 | Reuther Mold and Mfg. (Wkrs) | Cuyahcga Falls, OH | 08/26/2003 | 08/15/2003 |
| 52,682 | Continental Teves (Comp) | Asheville, NC | 08/26/2003 | 08/18/2003 |
| 52,683 | Thomasville Furniture Industries, Inc. (Comp) | Thomasville, NC | 08/26/2003 | 08/25/2003 |
| 52,684 | PSC Metals, Inc. (Comp) | Cleveland, OH | 8/26/2003 | 8/19/2003 |
| 52,685 | Mead Westvaco (Comp) | Greenville, GA | 08/26/2003 | 08/21/2003 |
| 52,686 | Avi Corporation (Comp) | Queensbury, NY | 08/26/2003 | 08/14/2003 |

APPENDIX—Continued

[Petitions instituted between 08/25/2003 and 08/29/2003]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 52,687 | Renfro Corporation (Comp) | Pulaski, VA | 08/27/2003 | 08/15/2003 |
| 52,688 | Howes Leather Corporation (Comp) | Curwensville, PA | 08/27/2003 | 08/26/2003 |
| 52,689 | Alkahn Labels, (Comp) | Cochran, GA | 08/27/2003 | 08/15/2003 |
| 52,690 | Zawick Manufacturing (UNITE) | Hellertown, PA | 08/27/2003 | 08/19/2003 |
| 52,691 | American Bag Corp. (Comp) | Winfield, TN | 08/27/2003 | 08/26/2003 |
| 52,692 | Lego Systems, Inc. (Wkrs) | Enfield, CT | 08/27/2003 | 08/15/2003 |
| 52,693 | CTS Corporation (UAW) | Elkhart, IN | 08/27/2003 | 08/21/2003 |
| 52,694 | Apparel Ventures (Comp) | South Gate, CA | 08/27/2003 | 08/25/2003 |
| 52,695 | Agere Systems (Wkrs) | Tewindale, CA | 08/27/2003 | 08/18/2003 |
| 52,696 | Hilti (Wkrs) | Tulsa, OK | 08/28/2003 | 08/26/2003 |
| 52,697 | Pryor Fish Camp (Comp) | Kodiak, AK | 08/28/2003 | 08/20/2003 |
| 52,698 | Rohm and Haas Company (Wkrs) | Philadelphia, PA | 08/28/2003 | 08/28/2003 |
| 52,699 | Delphi Automotive Systems (IUE) | Moraine, OH | 08/28/2003 | 08/11/2003 |
| 52,700 | Circuit Science (MN) | Plymouth, MN | 08/28/2003 | 08/27/2003 |
| 52,701 | DB Systems, Inc. (WA) | Redmond, WA | 08/28/2003 | 08/27/2003 |
| 52,702 | Atlas Castings and Technology (Wkrs) | Tacoma, WA | 08/29/2003 | 08/25/2003 |
| 52,703 | McMurray Fabrics Jamesville, Inc. (Comp) | Jamesville, NC | 08/29/2003 | 08/18/2003 |
| 52,704 | Brindar (Comp) | Gresham, OR | 08/29/2003 | 08/26/2003 |
| 52,705 | Trojan Steel Co. (Wkrs) | Charleston, WV | 08/29/2003 | 08/22/2003 |
| 52,706 | Compaq Computer Corp. (CO) | Denver, CO | 08/29/2003 | 08/27/2003 |
| 52,707 | Parker Hannifin Co. (Wkrs) | Green Camp, OH | 08/29/2003 | 08/27/2003 |

[FR Doc. 03–25706 Filed 10–9–03; 8:45 am]

BILLING CODE 4510–30–M

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–52,692]

### Lego Systems, Inc., Shows & Events Department, Enfield, Connecticut; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 27, 2003, in response to a worker petition filed on behalf of workers at Lego Systems, Inc., Shows 7 Events Department, Enfield, Connecticut.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 9th day of September, 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–25721 Filed 10–9–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–51,650]

### Markwins Beauty Products, Inc., Formerly Known as AM Cosmetics, North Arlington, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 9, 2003, applicable to workers of Markwins Beauty Products, Inc., North Arlington, New Jersey. The notice was published in the **Federal Register** on June 3, 2003 (68 FR 33197).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of cosmetics. The subject firm originally named AM Cosmetics was renamed Markwins Beauty Products, Inc. in March, 2003. The State agency reports that some workers wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for AM Cosmetics, North Arlington, New Jersey.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Markwins Beauty Products, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–51,650 is hereby issued as follows:

> All workers of Markwins Beauty Products, Inc., formerly known as AM Cosmetics, North Arlington, New Jersey, who became totally or partially separated from employment on or after April 10, 2002, through May 9, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 10th day of September 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–25712 Filed 10–9–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–50,852]

### Micro Instrument Co., Escondido, CA; Notice of Revised Determination on Reconsideration

By letter postmarked June 17, 2003, a company official requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on May

12, 2003, based on the finding that imports of electronic testing equipment did not contribute importantly to worker separations at the subject plant and no shift of production to a foreign source occurred. The denial notice was published in the **Federal Register** on June 3, 2003 (68 FR 33197).

To support the request for reconsideration, the company official supplied additional major declining customers to supplement those that were survey during the initial investigation. Upon further review and contact with these customers of the subject firm, it was revealed that they increased their import purchases of semiconductor testing equipment during the relevant period. The imports accounted for a meaningful portion of the subject plant's lost sales and production.

**Conclusion**

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Micro Instrument Company, Escondido, California, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

> All workers of Micro Instrument Company, Escondido, California, who became totally or partially separated from employment on or after January 31, 2002 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 29th day of September, 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–25716 Filed 10–9–03; 8:45 am]

**BILLING CODE 4510–30–P**

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–52,619]**

### Miller Casket Co., Jermyn, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 19, 2003, in response to a worker petition filed on behalf of workers at Miller Casket Company, Jermyn, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 9th day of September, 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–25724 Filed 10–9–03; 8:45 am]

**BILLING CODE 4510–30–P**

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–52,152]**

### Multilayer Technology (Multek), Inc., A Division of Flextronics International Including Temporary Workers of 1st Choice Employment, Inc., Roseville, Minnesota; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 25, 2003, applicable to workers of Multilayer Technology (Multek), Inc., a division of Flextronics International, Roseville, Minnesota. The notice was published in the **Federal Register** on August 14, 2003 (68 FR 48646).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that temporary workers of 1st Choice Employment, Inc. were employed at Multilayer Technology (Multek), Inc. to produce printed circuit boards at the Roseville, Minnesota location of the subject firm.

Based on these findings, the Department is amending this certification to include temporary workers of 1st Choice Employment, Inc. working at Multilayer Technology (Multek), Inc., Roseville, Minnesota.

The intent of the Department's certification is to include all workers of Multilayer Technology (Multek), Inc., who were adversely affected by the shift in production to Brazil, Germany and China.

The amended notice applicable to TA–W–52,152 is hereby issued as follows:

> All workers of Multilayer Technology (Multek), Inc., a division of Flextronics International, Roseville, Minnesota, and temporary workers of 1st Choice Employment, Inc., White Bear Lake, Minnesota producing printed circuit boards at Multilayer Technology (Multek), Inc., Roseville, Minnesota, who became totally or partially separated from employment on or after June 25, 2002, through July 25, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 25th day of August 2003.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–25710 Filed 10–9–03; 8:45 am]

**BILLING CODE 4510–30–P**

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–51,189]**

### Nokia, Inc., Broadband Systems Division, Santa Rosa, CA; Notice of Negative Determination Regarding Application for Reconsideration

By application of May 27, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on April 29, 2003 and published in the **Federal Register** on May 9, 2003 (68 FR 25060).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Nokia, Inc., Broadband Systems Division, Santa Rosa, California engaged in the employment related to research and development for Digital Subscriber Multiplexers (DSLM), was denied because the workers did not produce an article within the meaning of section 222 of the Trade Act of 1974.

The petitioner alleges that workers were engaged in production. In a follow up contact, it was clarified that the petitioner wished it noted that workers at the facility did perform occasional assembly and testing of final DSLM production within the two years prior to the plant shut down, as well as production of DSLM prototypes for the parent company. He concluded that all of this production was shifted to Finland and that the production was used to service a United States customer base.

A company official was contacted in regard to these allegations. As a result of this contact, it was revealed that prototype production did constitute a portion of work performed at the subject facility and that this production did shift to Finland. However, it was stated that these prototypes were rarely shipped to the U.S., as they were used for production in Finland for internal company use. The official further indicated that assembly and testing of other production constituted a very small portion of work performed at the subject facility.

### Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 11th day of September, 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–25715 Filed 10–9–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–52,588]

### Paxar Corporation, Lenoir, North Carolina; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 18, 2003 in response to a petition filed by a company official on behalf of workers of Paxar Corporation, Lenoir, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 10th day of September 2003.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–25735 Filed 10–9–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–52,161]

### Progressive Screen Engraving, Inc., North Carolina Division, Wadesboro, North Carolina; Notice of Negative Determination Regarding Application for Reconsideration

By application of August 19, 2003, a company official requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on July 25, 2003, and published in the **Federal Register** on August 14, 2003 (68 FR 48645).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Progressive Screen Engraving, Inc., North Carolina Division, Wadesboro, North Carolina was denied because the "contributed importantly" group eligibility requirement of Section 222 of the Trade Act of 1974 was not met, and there was not a shift of production to a foreign source. The "contributed importantly" test is generally demonstrated through a survey of customers of the workers' firm. The survey revealed that none of the respondents increased their purchases of imported rotary screens.

The petitioning company official states that "we have been informed by our customers that they are able to have screens made at a much cheaper price overseas." When contacted for further customers to support this claim, the official clarified that, in fact, the rotary screens were not being imported by customers. The official elaborated that the screens were used in the production of textiles, and customers were shifting their textile production abroad. The official concluded that, because these textiles are being imported, the subject firm workers producing the rotary screens were import impacted. The petitioning official further requested a detailed explanation of what would lead to a negative decision for TAA eligibility in regard to subject firm workers under both primary and secondary impact.

In addressing the particular eligibility criteria to assess worker eligibility under primary impact, the Department is directed by current legislation to conduct an investigation to establish if the company has shifted its production to a foreign source or if imports of products like or directly competitive with those produced at the subject firm contributed importantly to subject firm layoffs. To that end, the Department obtains relevant information from the subject firm and subject firm customers. In this case, the investigation revealed that the company did not shift production and there were no increased imports of rotary screens on the part of the subject firm or its customers.

Although not applied for in the petition that instigated this investigation, workers can also apply for TAA benefits alleging "secondary impact." In order to be eligible through this channel, the subject firm must have customers that are TAA certified, and these TAA certified customers must represent a significant portion of subject firm business. In addition, the subject firm would have to produce a component part of the product that was the basis for the customers' certification (upstream supplier), or assemble or finish a product that was the basis for certification (downstream producer). In this case however, the subject firm does not act as an upstream supplier (screens do not form a component part of textiles), nor do they act as downstream producers (screen production does not constitute performing assembling or finishing of textiles). Thus, even if the subject firm did have TAA certified customers, they would not be eligible under secondary impact.

### Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 29th day of September, 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–25709 Filed 10–9–03; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–52,717]**

### PSC Metals, Inc., Cleveland, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 2, 2003, in response to a petition filed by a company official on behalf of workers at PSC Metals, Inc., Cleveland, Ohio.

This petitioning group of workers is covered by an earlier petition filed on August 26, 2003 (TA–W–52,684) that is the subject of an ongoing investigation for which a determination has not yet been issued. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 10th day of September 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–25729 Filed 10–9–03; 8:45 am]

**BILLING CODE 4510–30–P**

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–52,177]**

### Redman Knitting Inc., Ridgewood, New York; Notice of Negative Determination Regarding Application for Reconsideration

By application of September 2, 2003, a worker requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on July 29, 2003, and published in the **Federal Register** on August 14, 2003 (68 FR 48643).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Redman Knitting Inc., Ridgewood, New York was denied because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of customers of the workers' firm. The survey revealed that none of the respondents increased their purchases of imported knitted fabric.

The worker states that the production of knitted fabric made at the subject firm was used by customer(s) for production of knitted sweaters, and that customer(s) are now importing completed sweaters.

Contact with a company official confirmed that major declining customer(s) of the subject firm are importing completed sweaters. However, imports of sweaters are not "like or directly competitive" with the product produced (knitted fabric) by the subject firm. Therefore, customer imports in this case are not relevant in meeting the eligibility requirement of Section 222(3) of the Trade Act of 1974 under primary impact.

Further, major declining customer(s) of the subject firm are not certified for TAA, thus the subject firm workers are not eligible under secondary impact.

#### Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 25th day of September 2003.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–25708 Filed 10–9–03; 8:45 am]

**BILLING CODE 4510–30–P**

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–51,361]**

### Sisiutl Fisheries, Kodiak, AK; Notice of Revised Determination on Reconsideration

By letter of April 24, 2003, the company official requests administrative reconsideration of the Department's Negative Determination Regarding Eligibility for workers and former workers of Sisiutl Fisheries, Kodiak, Alaska to apply for worker adjustment assistance, under petition number TA–W–51,361. The notice was issued on April 16, 2003, and published in the **Federal Register** on May 1, 2003 (68 FR 23322).

The initial petition was denied because the investigation found that the subject firm did not meet the group eligibility requirements of a primary firm under Section 222(a) of the Trade Act of 1974, as amended. The subject firm did not import fresh or chilled salmon, nor did Sisiutl Fisheries, Kodiak, Alaska shift production abroad. Furthermore, the firm's major declining customer increased its reliance on domestic purchases of fresh or chilled salmon during the relevant time period.

The petitioner states that the workers of Sisiutl Fisheries, Kodiak, Alaska, are secondarily affected because they lost at least 20 percent of their business with a salmon processor whose workers were certified eligible to apply for trade adjustment assistance.

Reconsideration findings show that the TAA petition form indicated that workers of the subject firm were secondarily affected. The company official clarified the customer information that was provided during the investigation. This new information supports the petitioner's claim that workers of Sisiutl Fisheries, Kodiak, Alaska, lost at least 20 percent of its sales to a salmon processor whose workers were certified eligible to apply for trade adjustment assistance.

#### Conclusion

In accordance with the provisions of the Act, I make the following revised determination:

> All workers of Sisiutl Fisheries, Kodiak, Alaska, who became totally or partially separated from employment on or after March 21, 2002, through two years from the date of the certification, are eligible to apply for worker adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC this 25th day of September, 2003.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–25714 Filed 10–9–03; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–52,652]

### Snap-on Tools, Mt. Carmel, Illinois; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 21, 2003, in response to a worker petition filed by company officials on behalf of workers at Snap-on Tools, Mt. Carmel, Illinois.

The company has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 8th day of September, 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–25723 Filed 10–9–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 20, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 20, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 26th day of September 2003.

**Timothy Sullivan,**

*Director, Division of Trade Adjustment Assistance.*

APPENDIX

[Petitions instituted between 09/08/2003 and 09/12/2003]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 52,775 | Taylor Precision Products (Comp) | Fletcher, NC | 09/08/2003 | 08/15/2003 |
| 52,776 | Biddle Precision (Wkrs) | Sheridan, IN | 09/08/2003 | 09/03/2003 |
| 52,777 | Steelcase, Inc. | Grand Rapids, MI | 09/08/2003 | 08/12/2003 |
| 52,778 | Titan Tire (Wkrs) | Brownsville, TX | 09/08/2003 | 08/28/2003 |
| 52,779 | Avondale Mills, Inc. (Wkrs) | Sylacauga, AL | 09/08/2003 | 08/22/2003 |
| 52,780 | SPX Dock Products (IBT) | Milwaukee, WI | 09/09/2003 | 09/08/2003 |
| 52,781 | Wellington Synthetic Fibers (Comp) | Leesville, SC | 09/09/2003 | 09/02/2003 |
| 52,782 | Progressive Processing (Comp) | Elyria, OH | 09/09/2003 | 09/02/2003 |
| 52,783 | Crystal Creative Products (Comp) | Maysville, KY | 09/09/2003 | 08/20/2003 |
| 52,784 | JLG Omniquip, Inc. (IAM) | Port Washington, WI | 09/10/2003 | 09/05/2003 |
| 52,785 | Gould Electronics, Inc. (Comp) | McConnelsville, OH | 09/10/2003 | 08/18/2003 |
| 52,786 | Excelsior Foundry Company (GMP) | Belleville, IL | 09/10/2003 | 08/21/2003 |
| 52,787 | Western Technology Services, Int'l, Inc. (Comp) | Casper, WY | 09/10/2003 | 08/26/2003 |
| 52,788 | Springs Industries (Comp) | Lancaster, SC | 09/10/2003 | 08/28/2003 |
| 52,789 | Alkahn Labels (Comp) | Cochran, GA | 09/11/2003 | 08/28/2003 |
| 52,790 | Hanes Dye and Finishing Co. (Comp) | Winston-Salem, NC | 09/11/2003 | 09/04/2003 |
| 52,791 | Rothtec Engraving Corp. (Comp) | Spartanburg, SC | 09/11/2003 | 08/19/2003 |
| 52,792 | RST and B Quilting and Bedding Co., Inc. (Comp) | Woodruff, SC | 09/11/2003 | 09/02/2003 |
| 52,793 | Milligan and Higgins (UNITE) | Johnstown, NY | 09/11/2003 | 09/02/2003 |
| 52,794 | Practice Partner, Inc. (Wkrs) | Goldsboro, NC | 09/11/2003 | 09/03/2003 |
| 52,795 | CSC (Wkrs) | York, PA | 09/11/2003 | 08/25/2003 |
| 52,796 | Halliburton (Comp) | Prudhoe Bay, AK | 09/11/2003 | 09/02/2003 |
| 52,797 | Alcatel (Wkrs) | Allen, TX | 09/11/2003 | 08/17/2003 |
| 52,798 | ADC the Broadband Co. (Wkrs) | Eden Prairie, MN | 09/11/2003 | 08/27/2003 |
| 52,799 | Western Metal Specialty Co. (IAM) | Milwaukee, WI | 09/11/2003 | 09/05/2003 |
| 52,800 | GE Betz (Wkrs) | Grand Rapids, MI | 09/11/2003 | 08/31/2003 |
| 52,801 | Springs Industries, Inc. (Comp) | Lancaster, SC | 09/11/2003 | 08/28/2003 |
| 52,802 | S.D. Warren (Sappi) (Wkrs) | Boston, MA | 09/11/2003 | 09/05/2003 |
| 52,803 | Norwood Yarn Sales (Wkrs) | Norwood, NC | 09/11/2003 | 08/11/2003 |
| 52,804 | Garden State Tanning (Comp) | Williamsport, MD | 09/11/2003 | 08/26/2003 |
| 52,805 | Council Craftsmen, Inc. (Comp) | Denton, NC | 09/11/2003 | 09/08/2003 |
| 52,806 | BMC Software (Wkrs) | Houston, TX | 09/11/2003 | 08/15/2003 |
| 52,807 | Brubaker Tool Corp. (Comp) | Millersburg, PA | 09/11/2003 | 08/21/2003 |
| 52,808 | Maui Pineapple Co., Ltd. (ILWU) | Kahului, HI | 09/11/2003 | 08/22/2003 |
| 52,809 | Janet, Inc. t/a Alperin (UNITE) | Scranton, PA | 09/11/2003 | 08/14/2003 |
| 52,810 | Knemschield Manufacturing Co. (Wkrs) | Columbia, MO | 09/11/2003 | 09/04/2003 |
| 52,811 | RBX Industries, Inc. (Comp) | Conover, NC | 09/11/2003 | 09/11/2003 |

APPENDIX—Continued

[Petitions instituted between 09/08/2003 and 09/12/2003]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 52,812 | Metaldyne Sintered Co. (Comp) | St. Mary's, PA | 09/11/2003 | 08/20/2003 |
| 52,813 | Eastman Kodak Co. (Comp) | Rochester, NY | 09/11/2003 | 09/02/2003 |
| 52,814 | Precision Tool and Design (Comp) | Erie, PA | 09/11/2003 | 08/28/2003 |
| 52,815 | Siemens Energy and Automation (Comp) | Lebanon, OH | 09/11/2003 | 08/18/2003 |
| 52,816 | Kester (Comp) | Anaheim, CA | 09/11/2003 | 08/21/2003 |
| 52,817 | Spencer's, Inc. (Comp) | Mt. Airy, NC | 09/11/2003 | 09/02/2003 |
| 52,818 | Hewlett Packard (Wkrs) | Colorado Spgs., CO | 09/11/2003 | 09/04/2003 |
| 52,819 | BSN—Jobst (Comp) | Rutherford Col., NC | 09/11/2003 | 09/05/2003 |
| 52,820 | Telemundo Network Group (Wkrs) | Hialeah, FL | 09/11/2003 | 08/28/2003 |
| 52,821 | Intel Corp. (Wkrs) | Colorado Spgs., CO | 09/11/2003 | 09/05/2003 |
| 52,822 | JacksonLea (Comp) | Santa Fe Spring, CA | 09/11/2003 | 08/20/2003 |
| 52,823 | Channel Products, Inc. (Comp) | Chesterland, OH | 09/11/2003 | 08/25/2003 |
| 52,824 | Givaudan Flavoring Corp. (OH) | Cincinnati, OH | 09/11/2003 | 08/20/2003 |
| 52,825 | Lynn Dean Fashions, Inc. (Comp) | Biscoe, NC | 09/11/2003 | 08/19/2003 |
| 52,826 | Tomak Precision (OH) | Lebanon, OH | 09/11/2003 | 08/22/2003 |
| 52,827 | Dana Corp. (Wkrs) | Caldwell, OH | 09/11/2003 | 06/09/2003 |
| 52,828 | AK Steel (Wkrs) | Rockport, IN | 09/11/2003 | 09/02/2003 |
| 52,829 | New Redford Plastic Bag Co. (Comp) | New Bedford, MA | 09/11/2003 | 08/28/2003 |
| 52,830 | Surgical Specialties Corp. (Wkrs) | Ada, OK | 09/11/2003 | 09/04/2003 |
| 52,831 | SPX Dock Products (Comp) | Carrollton, TX | 09/11/2003 | 09/03/2003 |
| 52,832 | Apparel Ventures, Inc. (Comp) | South Gate, CA | 09/12/2003 | 09/08/2003 |
| 52,833 | Owenby Company (The) (Comp) | Blairsville, GA | 09/12/2003 | 09/02/2003 |
| 52,834 | Safety Stitch, Inc. (The) (Comp) | Harrisville, WV | 09/12/2003 | 08/22/2003 |
| 52,835 | Southeastern Adhesives Co. (Wkrs) | Lenoir, NC | 09/12/2003 | 09/02/2003 |
| 52,836 | AA Consultants, Inc. (Comp) | El Paso, TX | 09/12/2003 | 09/05/2003 |
| 52,837 | Sykes Enterprises (Wkrs) | Klamath Falls, OR | 09/12/2003 | 08/27/2003 |
| 52,838 | Vitco, LLC (Comp) | Nappanee, IN | 09/12/2003 | 09/03/2003 |
| 52,938 | GE Engine Services (Comp) | McAllen, TX | 09/12/2003 | 08/27/2003 |
| 52,840 | Merit Abrasive Products (Comp) | Brookville, OH | 09/12/2003 | 08/29/2003 |
| 52,841 | Wheeling-Pittsburgh Steel Corp. (Wkrs) | Steuberville, OH | 09/12/2003 | 08/25/2003 |
| 52,842 | Wal-Mart Distribution Center (Wkrs) | Laurens, SC | 09/12/2003 | 08/27/2003 |
| 52,843 | Lear Corporation (UAW) | Traverse City, MI | 09/12/2003 | 09/05/2003 |
| 52,844 | 4 D's Ind. (Comp) | Tellico Plains, TN | 09/12/2003 | 09/04/2003 |
| 52,845 | Ranco North America (Comp) | Brownsville, TX | 09/12/2003 | 08/26/2003 |
| 52,846 | Brookman Cast Industries (Comp) | Salem, OR | 09/12/2003 | 08/22/2003 |
| 52,847 | MedSource Technologies (Wkrs) | Newton, MA | 09/12/2003 | 08/26/2003 |
| 52,848 | Snap-Tite (Wkrs) | Erie, PA | 09/12/2003 | 08/29/2003 |
| 52,849 | Renaissance Mark (GCU) | Baltimore, MD | 09/12/2003 | 09/04/2003 |
| 52,850 | Breed Technologies (Wkrs) | El Paso, TX | 09/12/2003 | 09/28/2003 |
| 52,851 | General Mills (Wkrs) | Eden Prairie, MN | 09/12/2003 | 09/02/2003 |
| 52,852 | Aurora Metals Division, LLC (Comp) | Montgomery, IL | 09/12/2003 | 09/03/2003 |
| 52,853 | Trenton Technology, Inc. (NY) | Utica, NY | 09/12/2003 | 09/04/2003 |
| 52,854 | U.S. Axle, Inc. (Comp) | Pottstown, PA | 09/12/2003 | 09/26/2003 |
| 52,855 | ON Semiconductor (Wkrs) | E. Greenwich, RI | 09/12/2003 | 09/03/2003 |
| 52,856 | Starbase Technologies, Inc. (Comp) | Pittsfield, MA | 09/12/2003 | 09/28/2003 |

[FR Doc. 03–25704 Filed 10–9–03; 8:45 am]

BILLING CODE 4510–30–M

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## DEPARTMENT OF LABOR

## Employment and Training Administration

## Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of September 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

## Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (a)(2)(A)(I.C.) (Increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

*TA–W–52,665; Textron Fastening Systems, a wholly-owned subsidiary of Textron, Inc., PFPD Plant, Tooling Department, Rockford, IL*
*TA–W–52,489; Portola Packaging, Inc., U.S. Closure Div., Sumter, SC*
*TA–W–52,580; Irwin-Hodson Metal Manufacturing LLC, Portland, OR*
*TA–W–52,594; Squires Hardwoods, Inc., Shannon Div., Shannon, NC*
*TA–W–52,374; Ellwood City Forge, a div. of Ellwood of The Ellwood Group, Inc., Ellwood City, PA*
*TA–W–52,355; Honeywell International, Inc., Industry Solutions, Cupertino, CA*
*TA–W–52,394; Guilford Mills, Inc., Guilford East, Wallace, NC*
*TA–W–52,159; Milford Fabricating Co., Detroit, MI*
*TA–W–52,416; Jolly Gardener, Poland, ME*
*TA–W–52,576; Smith Meter, Inc., a/k/a/ FMV Technologies, Inc., Erie, PA*
*TA–W–52,758; Bear Garden Fisheries, Kodiak, AK*
*TA–W–52,761; Fishing Vessel (F/V) Leopard, Kenai, AK*

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

*TA–W–52,598 & A; Minacs, Flint, MI & Swartz Creek, MI*
*TA–W–52,622; Descartes Systems (USA) LLC, an affiliate of The Descartes Systems Group, Inc., Atlanta, GA*
*TA–W–52,666; Preceed America, Inc., Hillsboro, OR*
*TA–W–52,670; Joy Mining Machinery, Abingdon, VA*
*TA–W–52,632; UAW-Daimler Chrysler Child Development Center, National Training Center, Huntsville, AL*
*TA–W–52,383; AG Communication Systems, Phoenix, AZ*
*TA–W–52,615; Underwriters Laboratories, Inc., Camas, WA*
*TA–W–52,660; C.J. USA Transport, Wayne, MI*
*TA–W–52,651; R.R. Donnelley & Sons Co., Lancaster Financial Printing Div., Lancaster, PA*
*TA–W–52,637; MSX International Engineering Services, Inc., a wholly-owned subsidiary of MSX International, Inc., Collaborative Engineering Management Services Div., Madison Heights, MI*
*TA–W–52,444; Luzenac America, Inc., a subsidiary of Rio Tinto, PLC, Centennial, CO*
*TA–W–52,451; Saurer, Inc., a/k/a Schlafhorst, Inc., Charlotte, NC*

The investigation revealed that criterion (a)(2)(A)(I.A) (no employment decline) has not been met.

*TA–W–52,725; Fishing Vessel (F/V) Bad Betty, Homer, AK*
*TA–W–52,697; Pryor Fish Camp, Kodiak, AK*
*TA–W–52,760; Fishing Vessel (F/V) Freedom, Mt. Vernon, WA*

The investigation revealed that criteria (a)(2)(A)(I.C) (increased imports) and (a)(2)(B)(II.C) (has shifted production to a foreign country) have not been met.

*TA–W–52,396; Phoenix Technologies, Ltd, Irvine, CA*

The investigation revealed that criteria (a)(2)(A)(I.B) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (has shifted production to a county not under the free trade agreement with U.S.) have not been met.

*TA–W–52,550; Crane Valve North America, Washington, IA*
*TA–W–52,314; Presstek, Inc., Hudson, NH*
*TA–W–52,399A; Morelock Enterprises, Closures Div., including leased workers from Staffing Services, Bend, OR*

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

*TA–W–52,353; Nevamar Co., LLC, Waverly, VA*
*TA–W–52,568; Day International, Textiles Div., Greenville, SC*
*TA–W–52,676; Defender Services, Inc., Working at Pillowtex Plant #1, Kannapolis, NC, A; Defender Services, Inc., Working at Pillowtex Plant #16, Salisbury, NC, B; Defender Services, Inc., Working at Pillowtex Plant #6, Concord, NC and C; Definder Services, Inc., Working at Pillowtex Corp., Eden, NC*

## Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

*TA–W–52,530; Fluor Industrial Services, Inc., Maintenance and Industrial Services Div., Kannapolis, NC: August 11, 2002.*
*TA–W–52,463; Kannapolis Energy Partners, LLC, Kannapolis, NC: July 31, 2002.*

*TA–W–52,613; ITT Industries, Cannon Switch Products, including leased workers of Staffmark and Adecco, Loveland, CO: August 14, 2002.*
*TA–W–52,415; Todays Plastics, Bonneville, AR: July 29, 2002.*
*TA–W–52,418; Tyler Pipe Co., Utility Fittings Div., Tyler, TX: July 23, 2002.*
*TA–W–52,491; Tembec Woodsville, Inc., Woodsville, NH: August 6, 2002.*
*TA–W–52,176; Belmont Dyers Co., a div. of Meridian Dyed Yarn Group, Belmont, NC: June 4, 2002.*
*TA–W–52,467; Johnson and Johnson Would Management, a div. of Ethicon, Inc., including leased workers of Kelly Services, Sherman, TX: August 4, 2002.*
*TA–W–52,524; General Electric Appliances, a subsidiary of General Electric Co., Bloomington, IN: February 2, 2003.*
*TA–W–51,906; The Central Brass Manufacturing Co., Cleveland, OH: May 22, 2002.*
*TA–W–52,384 & A; Slater Screen Print Corp., Pawtucket, RI and Slater Dye Works, Inc., Pawtucket, RI: July 23, 2002.*
*TA–W–52,405; Matheson Tri-Gas, a wholly owned subsidiary of Nippon Sanso, Site Services Div., Employed at Sony Semiconductor, San Antonio, TX: July 24, 2002.*
*TA–W–52,417; Pennsylvania House, Inc., Lewisburg, PA: July 17, 2002.*
*TA–W–52,342; Citation, Browntown, WI: July 16, 2002.*
*TA–W–52,389; Master Carvers of Jamestown, Ltd, Jamestown, NY: July 16, 2002.*
*TA–W–52,409; Baxter Healthcare Corp., Bioscience, Rochester, MI: July 20, 2002.*
*TA–W–52,433; Design Engineering Management Co., Inc., including leased workers of Experience Works Staffing Service, Temp Associates, Inc., and CSI Employment Services, New London, IA: July 17, 2002.*
*TA–W–52,399; Morelock Enterprises, Components Div., including leased workers from Staffing Services, Bend, OR: July 24, 2002.*
*TA–W–52,626; Paper Converting Machine Co., Green Bay, WI: August 14, 2002.*
*TA–W–52,180; Stencil Aire, LLC, Laster Excel Div., Green Lake, WI: June 27, 2002.*
*TA–W–52,388; R.P. Adams Co., Inc., Buffalo, NY: May 14, 2002.*
*TA–W–52,404; Curtis Specialty Papers, Port Huron Mill, Port Huron, MI: July 24, 2002.*
*TA–W–52,414; Actco Tool and Manufacturing Co., Meadville, PA: July 17, 2002.*
*TA–W–52,466; USR Optonix, Inc., Phosphor Div., Hackettstown, NJ: January 6, 2003.*
*TA–W–51,720; Kidder, Inc., Agawam, MA: April 22, 2002.*
*TA–W–52,559; Pillowtex Corp., Bed and Bath Div., including leased workers of Corestaff Agency, Rakes Staffing, A & R Agency and Ajilon Staffing, Kannapolis, NC: August 15, 2003.*
*TA–W–52,680; Vaughan Furniture Co., Inc., Empire Plant, Johnson City, TN: August 21, 2002.*
*TA–W–52,737; Triquint Optoelectronics, Inc., Breinigsville, PA: August 18, 2002.*
*TA–W–52,476; Fieldcrest Cannon, Inc., a subsidiary of Pillowtex Corp., Bath Div. including leased workers of Corestaff Agency, Fieldale, VA: August 6, 2002.*
*TA–W–52,477; Fieldcrest Cannon, Inc., a subsidiary of Pillowtex Corp., Bed Div., Decorative Bedding, including leased workers of A & R Staffing, Eden, NC.*
*TA–W–52,478; Fieldcrest Cannon, Inc., a subsidiary of Pollowtex Corp., Bed Div., Plant 16, China Grove, NC: August 6, 2002.*
*TA–W–52,479; Fieldcrest Cannon, Inc., a subsidiary of Pillowtex Corp., Bed Div., Plant 11, including leased workers of Corestaff Agency, Rockwell, NC: August 6, 2002.*
*TA–W–52,480; Fieldcrest Cannon, Inc., a subsidiary of Pillowtex Corp., Bed Div., Plant 6, including leased workers of Corestaff Agency, Conford, NC: August 6, 2002.*
*TA–W–52,481; Fieldcrest Cannon, Inc., a subsidiary of Pillowtex Corp., Bed Div., FC Finishing, Union, SC: August 6, 2002.*
*TA–W–52,482; Fieldcrest Cannon, Inc, a subsidiary of Pillowtex Corp., Bath Div Warehouse, Mauldin, SC: August 6, 2002.*
*TA–W–52,483; Pillowtex Corp., Pillow and Pad Div., Dallas, TX: August 6, 2002.*
*TA–W–52,484; Pillowtex Corp., Pillow and Pad Div., Chicago, IL: August 6, 2002.*
*TA–W–52,485; Pillowtex Corp., Pillow and Pad Div., Hanover, PA: August 6, 2002.*
*TA–W–52,486; Pillowtex Corp., Pillow and Pad Div., Los Angeles, CA: August 6, 2002.*
*TA–W–52,487; Pillowtex Corp., Pillow and Pad Div., Tunica, MS: August 6, 2002.*
*TA–W–52,475; Fieldcrest Cannon, Inc., a subsidiary of Pillowtex Corp., Bath Div., including leased workers of Corestaff Agency, Scottsboro, AL: August 6, 2002.*
*TA–W–52,679; GN Netcom, Inc., Nashua, NH: August 25, 2002.*
*TA–W–52,535; Admanco, Inc., Ripon, WI: August 11, 2002.*
*TA–W–52,524; Viceroy Gold Corp., Castle Mountain Mine, a subsidiary of Quest Capital Corp., Ivanpah, CA: August 8, 2003.*
*TA–W–52,498; Smart Modular Technologies, (MA), Inc. a wholly owned subsidiary of Solectron Crop., Technology Solutions Business Unit Div., Wilmington, MS: August 7, 2002.*
*TA–W–52,492; Buckeye Lumberton, Inc., Lumberton, NC: August 6, 2002.*
*TA–W–52,488; McKenzie Forest Products, LLC, Myrtle Point, OR: August 6, 2002.*

The following certifications have been issued. The requirements of (a) (2) (B) (shift in production) of Section 222 have been met.

*TA–W–52,460; Alice Manufacturing Co., Inc., Arial Plant. Div., Easley, SC: August 1, 2002.*
*TA–W–52,599; Ruppe Hosiery, Inc., Kings Mountain, NC:. August 7, 2002.*
*TA–W–52,446; Graphite Design International, Inc., San Diego, CA: July 22, 2002.*
*TA–W–52,527; MOCAP, Inc., Farmington, MO: August 6, 2002.*
*TA–W–52,385; Derby Fabricating LLC, Galesburg Plant, wholly owned by Raymond Loyd, Galesburg, IL: July 23, 2002.*
*TA–W–52,453; National Metal Abrasives, Inc., Wadsworth, OH: July 30, 2002.*
*TA–W–52,529; Marshall Gas Controls, a div. of S.H. Leggitt Co., San Marcos, TX: July 31, 2002.*
*TA–W–52,551; Mueller Gas Products/Lincoln Brass Works, Waynesboro, TN: August 12, 2002.*
*TA–W–52,369; Hopper Radio of Florida, Weston, FL: July 10, 2002.*
*TA–W–52,392; Chromalox, Inc., formerly known as Wiegand Industrial, a div. of J.P. Morgan Partners, LLC,. Ogden, UT: July 23, 2002.*
*TA–W–52,429; Agilent Technologies, Asics Product Div. (APD), Fort Collins, CO: July 21, 2002.*
*TA–W–52,571; The Dean Co., Princeton, WV: July 30, 2002.*
*TA–W–52,542; Columbus Industries, Inc., Asheville, OH: August 11, 2002.*
*TA–W–52,742; Fishercast, Inc., a div. of Fisher Gauge Ltd, Watertown, NY: August 17, 2002*
*TA–W–52,763; Philadelphia Chewing Gum Corp., Havertown, PA: August 22, 2002.*
*TA–W–52,503; Carolina Mills, Inc., Plant #2, Newton, NC: August 7, 2002.*

TA–W–52,678; *Cooper Industries, Crouse-Hinds Div. formerly known as Myers Hubs, Montebello, CA: August 15, 2002.*
TA–W–52,687; *Renfro Corp., Pulaski Plant, Pulaski, VA: August 16, 2002.*
TA–W–52,739; *Springs Industries, Inc., Baby Products Div., Gainesville, GA: August 26, 2002.*
TA–W–52,634; *Monona Wire Corp., Dodge Facility, Dekalb, IL: August 20, 2002.*
TA–W–52,570; *Depuy Orthopedics, Inc., Albuquerque, NM: August 13, 2002.*
TA–W–52,558; *Edison Fashion, Inc., Bronx, NY: August 11, 2002.*
TA–W–52,544; *Alstom Power, Inc., Heat Exchange Div., Easton, PA: August 11, 2002.*
TA–W–52,608; *Fruit of The Loom Texas, Inc., Harlingen, TX: August 11, 2002.*
TA–W–52,473; *Maytag Corp., Maytag Appliance Div., Galesburg Refrigeration Products, Galesburg, IL: August 6, 2002*

The following certification has been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–52,549; *Broadway and Son Electric, Inc., Workers Employed at Pillowtex Corp., Kannapolis, NC: August 11, 2002.*

**Negative Determinations for Alternative Trade Adjustment Assistance**

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have not been met for the reasons specified.

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–52,598 & A; *Minacs, Flint, MI and Swartz Creek, MI*
TA–W–52,665; *Textron Fastening Systems, a wholly-owned subsidiary of Textron, Inc., PFPD Plant, Tooling Department, Rockford, IL*
TA–W–52,622; *Descartes Systems (USA) LLC, an affiliate of The Descartes Systems Group, Inc., Atlanta, GA*
TA–W–52,489; *Portola Packaging, Inc., U.S. Closure Div., Sumter, SC*
TA–W–52,542; *Columbus Industries, Inc., Asheville, OH*
TA–W–52,580; *Irwin-Hodson Metal Manufacturing LLC, Portland, OR*
TA–W–52,666; *Preceed America, Inc., Hillsboro, OR*
TA–W–52,670; *Joy Mining Machinery, Abingdon, VA*
TA–W–52,594; *Squires Hardwoods, Inc., Shannon Div., Shannon, NC*

**Affirmative Determinations for Alternative Trade Adjustment Assistance**

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

TA–W–52,742; *Fishercast, Inc., a div. of Fisher Gauge Ltd, Watertown, NY: August 17, 2002*
TA–W–52,763; *Philadelphia Chewing Gum Corp., Havertown, PA: August 22, 2002.*
TA–W–52,503; *Carolina Mills, Inc., Plant #2, Newton, NC: August 7, 2002.*
TA–W–52,678; *Cooper Industries, Crouse-Hinds Div. formerly known as Myers Hubs, Montebello, CA: August 15, 2002.*
TA–W–52,687; *Renfro Corp., Pulaski Plant, Pulaski, VA: August 16, 2002.*
TA–W–52,739; *Springs Industries, Inc., Baby Products Div., Gainesville, GA: August 26, 2002.*
TA–W–52,634; *Monona Wire Corp., Dodge Facility, Dekalb, IL: August 20, 2002.*
TA–W–52,570; *Depuy Orthopedics, Inc., Albuquerque, NM: August 13, 2002.*
TA–W–52,558; *Edison Fashion, Inc., Bronx, NY: August 11, 2002.*
TA–W–52,544; *Alstom Power, Inc., Heat Exchange Div., Easton, PA: August 11, 2002.*
TA–W–52,608; *Fruit of The Loom Texas, Inc., Harlingen, TX: August 11, 2002.*
TA–W–52,473; *Maytag Corp., Maytag Appliance Div., Galesburg Refrigeration Products, Galesburg, IL: August 6, 2002.*
TA–W–52,559; *Pillowtex Corp., Bed and Bath Div., including leased workers of Corestaff Agency, Rakes Staffing, A & R Agency and Ajilon Staffing, Kannapolis, NC: August 15, 2003*
TA–W–52,680; *Vaughan Furniture Co., Inc., Empire Plant, Johnson City, TN: August 21, 2002.*
TA–W–52,737; *Triquint Optoelectronics, Inc., Breinigsville, PA: August 18, 2002.*
TA–W–52,476; *Fieldcrest Cannon, Inc., a subsidiary of Pillowtex Corp., Bath Div. including leased workers of Corestaff Agency, Fieldale, VA: August 6, 2002.*
TA–W–52,477; *Fieldcrest Cannon, Inc., a subsidiary of Pillowtex Corp., Bed Div., Decorative Bedding, including leased workers of A & R Staffing, Eden, NC*
TA–W–52,478; *Fieldcrest Cannon, Inc., a subsidiary of Pollowtex Corp., Bed Div., Plant 16, China Grove, NC: August 6, 2002.*
TA–W–52,479; *Fieldcrest Cannon, Inc., a subsidiary of Pillowtex Corp., Bed Div., Plant 11, including leased workers of Corestaff Agency, Rockwell, NC: August 6, 2002.*
TA–W–52,480; *Fieldcrest Cannon, Inc., a subsidiary of Pillowtex Corp., Bed Div., Plant 6, including leased workers of Corestaff Agency, Concord, NC: August 6, 2002.*
TA–W–52,481; *Fieldcrest Cannon, Inc., a subsidiary of Pillowtex Corp., Bed Div., FC Finishing, Union, SC: August 6, 2002.*
TA–W–52,482; *Fieldcrest Cannon, Inc., a subsidiary of Pillowtex Corp., Bath Div Warehouse, Mauldin, SC: August 6, 2002.*
TA–W–52,483; *Pillowtex Corp., Pillow and Pad Div., Dallas, TX: August 6, 2002.*
TA–W–52,484; *Pillowtex Corp., Pillow and Pad Div., Chicago, IL: August 6, 2002.*
TA–W–52,485; *Pillowtex Corp., Pillow and Pad Div., Hanover, PA: August 6, 2002.*
TA–W–52,486; *Pillowtex Corp., Pillow and Pad Div., Los Angeles, CA: August 6, 2002.*
TA–W–52,487; *Pillowtex Corp., Pillow and Pad Div., Tunica, MS: August 6, 2002.*
TA–W–52,475; *Fieldcrest Cannon, Inc., a subsidiary of Pillowtex Corp., Bath Div., including leased workers of Corestaff Agency, Scottsboro, AL: August 6, 2002.*
TA–W–52,679; *GN Netcom, Inc., Nashua, NH: August 25, 2002.*
TA–W–52,535; *Admanco, Inc., Ripon, WI: August 11, 2002.*
TA–W–52,524; *Viceroy Gold Corp., Castle Mountain Mine, a subsidiary*

*of Quest Capital Corp., Ivanpah, CA: August 8, 2003.*

*TA–W–52,498; Smart Modular Technologies, (MA), Inc. a wholly owned subsidiary of Solectron Crop., Technology Solutions Business Unit Div., Wilmington, MS: August 7, 2002.*

*TA–W–52,492; Buckeye Lumberton, Inc., Lumberton, NC: August 6, 2002.*

*TA–W–52,488; McKenzie Forest Products, LLC, Myrtle Point, OR: August 6, 2002.*

I hereby certify that the aforementioned determinations were issued during the months of September. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 18, 2003.

**Timothy Sullivan,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 03–25722 Filed 10–9–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

## Employment and Training Administration

[TA–W–52,638]

## Vesuvius USA, Champaign Machine Shop, Champaign, Illinois; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 21, 2003 in response to a worker petition filed by the company on behalf of workers at Vesuvius USA, Champaign Machine Shop, Champaign, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 9th day of September, 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–25734 Filed 10–9–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

## Employment and Training Administration

[TA–W–52,723]

## W-Phone, Inc., Highlands Ranch, CO; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 2, 2003 in response to a worker petition which was filed on behalf of workers at W-Phone, Inc., Highlands Ranch, Colorado.

All workers were separated from the subject firm more than one year before the date of the petition. Section 223(b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 8th day of September 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–25728 Filed 10–9–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

## Employment and Training Administration

[TA–W–51,455A and TA–W–51,455C]

## White Rodgers, Coils Division, A Division of Emerson, Harrison, Arkansas; and White Rodgers, Air Cleaners Division, A Division of Emerson, Harrison, Arkansas; Notice of Negative Determination Regarding Application for Reconsideration

By application of June 19, 2003, a company official requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on June 4, 2003 and published in the **Federal Register** on April 24, 2003 (68 FR 36847).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at White Rodgers, Coils Division, a division of Emerson, Harrison, Arkansas (TA–W–51,455A) engaged in the production of coils, and on behalf of workers at White Rodgers, Air Cleaner Division, a division of Emerson, Harrison, Arkansas (TA–W–51,455C) were denied because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974 was not met and production was not shifted abroad.

The company official who filed the reconsideration request stated that, in regard to the Coils Division, production at the subject division was dependent on other divisions being adjacent; once production phases that preceded coil production (injection molding used to wind coils), and followed coil production (gas valves that incorporated the coils) were shifted from the subject division site, it became necessary to move the coil production to another domestic location. As a result, the official contends, the coil production was impacted by a shift of production to Mexico.

Contact with another company official confirmed what had been established in the initial investigation, which was that production at the Coils Division shifted exclusively to a domestic site. It was also revealed that, although competitive production does occur at an affiliate in Mexico, there was no evidence of a shift from the subject facility to the Mexican affiliate or any U.S. imports resulting from this or any other foreign production.

The company official who filed the reconsideration request also stated that, in regard to the Air Cleaner Division, (TA–W–51–455C) production had been shifted to Mexico in June of 2003.

Follow up contact with the company revealed that the majority of production was shifted from the Air Cleaner Division in Harrison, Arkansas to Mexico. However, the shift began outside of the relevant period of this investigation. The petitioners are thus encouraged to file a new petition on behalf of workers at the Air Cleaner Division, thereby creating a relevant period of investigation that would include changing conditions.

### Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 22nd day of September, 2003.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–25713 Filed 10–9–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–52,504]

### Wirco Castings, Inc., New Athens, Illinois; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 11, 2003, in response to a petition filed on behalf of workers at Wirco Castings, Inc., New Athens, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 9th day of September, 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–25725 Filed 10–9–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

### Employment Standards Administration; Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determination in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found or not utilizing notice and public comment procedure thereon period to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

### Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

Maine
- MEI030001 (Jun. 13, 2003)
- MEI030002 (Jun. 13, 2003)
- MEI030005 (Jun. 13, 2003)

*Volume II*

None

*Volume III*

None

*Volume IV*

None

*Volume V*

None

*Volume VI*

North Dakota
- ND030003 (Jun. 13, 2003)
- ND030004 (Jun. 13, 2003)

*Volume VII*

None

### General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http:www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 2nd day of October, 2003.

**Carl J. Poleskey,**

*Chief, Branch of Construction Wage Determinations.*

[FR Doc. 03–25378 Filed 10–9–03; 8:45 am]

**BILLING CODE 4510–27–M**

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## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

### Agency Information Collection Activities; Announcement of Office of Management and Budget (OMB) Control Numbers Under the Paperwork Reduction Act

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice, Announcement of OMB approval of information collection requirements.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) announces that the Office of Management and Budget (OMB) has extended its approval for a number of information collection requirements found in certain sections of 29 CFR parts 1910 and 1915. OSHA sought approval under the Paperwork Reduction Act of 1995 (PRA–95), and, as required by that Act, is announcing the approval numbers and expiration dates for those requirements.

**EFFECTIVE DATES:** This notice is effective October 10, 2003.

**FOR FURTHER INFORMATION CONTACT:** Todd Owen or Theda Kenney, Directorate of Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–2222.

**SUPPLEMENTARY INFORMATION:** In a series of **Federal Register** notices, the Agency announced its request to OMB to renew its current extensions of approval for various information collection (paperwork) requirements in its safety and health standards for General Industry and Shipyard Employment. In these **Federal Register** announcements, the Agency provided 60-day comment periods for the public to respond to OSHA's burden hour and cost estimates.

In accordance with PRA–95 (44 U.S.C. 3501–3520), OMB renewed its approval for these information collection requirements and assigned OMB control numbers to these requirements. The table below provides the following information for each of these OMB-approved requirements: The title of the collection; the date of the **Federal Register** notice; the **Federal Register** Reference (date, volume, and leading page); OMB;s control number; and the new expiration date.

| Title | Date of Federal Register publication, Federal Register reference, and OSHA docket number | OMB control No. | Expiration date |
|---|---|---|---|
| Presence Sensing Device Initiation (PSDI) (29 CFR 1910.217(h). | 1/22/2003, 68 FR 3038, Docket No. 1218–0143(2003) | 1218–0143 | 05/31/2004 |
| 1,3-Butadiene (29 CFR 1910.1051) | 03/11/2003, 68 FR 11592 Docket No. 1218–0170(2003). | 1218–0170 | 07/31/2006 |
| Benzene, (29 CFR 1910.1028) | 03/20/2003, 68 FR 13732 Docket No. 1218–0129(2003). | 1218–0129 | 07/31/2006 |
| Personal Protective Equipment (PPE) for Shipyard Employment (29 CFR part 1915, Subpart I). | 03/24/2003, 68 FR 14260 Docket No. 1218–0215(2003). | 1218–0215 | 07/31/2006 |
| Personal Protective Equipment (PPE) for General Industry (29 CFR part 1910, Subpart I). | 03/24/2003 68 FR 14262 Docket No. 1218–0205(2003). | 1218–0205 | 08/31/2006 |
| Reports of Injuries to Employees Operation Mechanical Power Presses (29 CFR 1910.217(g)). | 03/31/2003, 68 FR 15484 Docket No. 1218–0070(2003). | 1218–0070 | 07/31/2006 |

In accordance with 5 CFR 1320.5(b), an agency cannot conduct, sponsor, or require a response to a collection of information unless: The collection displays a valid OMB control number; and the Agency informs respondents that they are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Authority and Signature**

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC on October 7th, 2003

**John L. Henshaw,**

*Assistant Secretary of Labor.*

[FR Doc. 03–25780 Filed 10–9–03; 8:45 am]

**BILLING CODE 4510–26–M**

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (03–128)]**

### NASA Advisory Council, Biological and Physical Research Advisory Committee Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Biological and Physical Research Advisory Committee.

**DATES:** Thursday, October 23, 2003, from 10 a.m. until 6 p.m. and Friday, October 24, 2003 from 8 a.m. until 12 Noon.

**ADDRESSES:** NASA Headquarters, 300 E Street SW., Room 6H46, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Dr. Bradley Carpenter, Code UG, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0826.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capability of the meeting room. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: Full name; gender; date/place of birth; citizenship; visa/greencard information (number, type, expiration date); employer/affiliation information (name of institution, address, country, phone); title/position of attendee. Foreign nationals will be escorted at all times. To expedite admittance, attendees can provide identifying information in advance by contacting Dr. Bradley Carpenter at 202/358–0826 or via e-mail at *bcarpent@hq.nasa.gov.*

The agenda for the meeting is as follows:

—Review Recommendations
—Program Overview
—Division Reports
—International Space Station Research Status
—Strategic Plan

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

**June W. Edwards,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 03–25828 Filed 10–9–03; 8:45 am]

**BILLING CODE 7510–01–P**

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (03–129)]**

### NASA Space Science Advisory Committee, Astronomical Search for Origins and Planetary Systems Subcommittee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** The National Aeronautics and Space Administration announces a meeting of the NASA Space Science Advisory Committee (SScAC), Astronomical Search for Origins and Planetary Systems Subcommittee (OS).

**DATES:** Thursday, October 23, 2003, 8:30 a.m. to 5:30 p.m.; and Friday, October 24, 2003, 8:30 a.m. to 3 p.m.

**ADDRESSES:** Inn and Conference Center, University of Maryland, 3501 University Boulevard East, Adelphi, Maryland 20783.

**FOR FURTHER INFORMATION CONTACT:** Dr. Hashima Hasan, Code SZ, National Aeronautics and Space Administration, Washington, DC 20546, 202/395–0710, *hhasan@hq.nasa.gov.*

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Report by Astronomy and Physics Director
—NASA's response to the Bahcall Report on Hubble Space Telescope-James Webb Space Telescope Transition
—Report by Astronomical Search for Origins and Planetary Theme Scientist
—Mission Updates: James Webb Space Telescope, Terrestrial Planet Finder

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

**June W. Edwards,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 03–25829 Filed 10–9–03; 8:45 am]

**BILLING CODE 7510–01–P**

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (03–130)]**

### NASA Space Science Advisory Committee, Structure and Evolution of the Universe Subcommittee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** The National Aeronautics and Space Administration announces a meeting of the NASA Space Science Advisory Committee (SScAC), Structure and Evolution of the Universe Subcommittee (SEUS).

**DATES:** Thursday, October 23, 2003, 8:30 a.m. to 5:30 p.m.; and Friday, October 24, 2003, 8:30 a.m. to 3 p.m.

**ADDRESSES:** Inn and Conference Center, University of Maryland, 3501 University Boulevard East, Adelphi, Maryland 20783.

**FOR FURTHER INFORMATION CONTACT:** Dr. Paul Hertz, Code SZ, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0986, *paul.hertz@nasa.gov.*

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Report by Astronomy and Physics Director
—Report by SEU Theme Scientist
—Report of Astronomy and Physics Working Group
—NASA's response to the Bahcall Report on HST–JWST Transition
—Updates on LISA and Con–X

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

**June W. Edwards,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 03–25830 Filed 10–9–03; 8:45 am]

**BILLING CODE 7510–01–P**

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## NATIONAL COMMUNICATIONS SYSTEM

### Telecommunications Service Priority System Oversight Committee; Meeting

**AGENCY:** National Communications System (NCS).

**ACTION:** Notice of meeting.

A meeting of the Telecommunications Service Priority (TSP) System Oversight Committee will convene Thursday, November 13, 2002 from 9 a.m. to 12 p.m. the meeting will be held at 701 South Courthouse Road, Arlington, VA in the NCS conference room on the 2nd floor.

—TSP Program Update
—TSP Revalidation Update
—TSP Customer Satisfaction Survey

Anyone interested in attending or presenting additional information to the Committee, please contact Deborah Bea, Office of Priority Telecommunications, (703) 607–4933. Media or Press must contact Mr. Steve Barrett at (703) 607–6211.

**Peter M. Fonash,**

*Federal Register Liaison Officer, National Communications System.*

[FR Doc. 03–25762 Filed 10–9–03; 8:45 am]

**BILLING CODE 5001–06–M**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 72–26]**

## Pacific Gas and Electric Company; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding a Proposed Exemption

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an exemption, pursuant to 10 CFR 72.7, from the provisions of 10 CFR 72.72(d) to Pacific Gas and Electric Company (PG&E or applicant). The requested exemption would allow PG&E to maintain a single set of spent fuel, high-level radioactive waste, and reactor-related Greater than Class C (GTCC) waste records in accordance with the requirements of its NRC-approved Quality Assurance program, which satisfies the criteria of 10 CFR part 50, appendix B, for the Independent Spent Fuel Storage Installation (ISFSI) at the Diablo Canyon Power Plant (DCPP) in San Luis Obispo County, California.

### Environmental Assessment (EA)

*Identification of Proposed Action:* In its application for an ISFSI license, submitted on December 21, 2001, PG&E requested an exemption from the requirement in 10 CFR 72.72(d); which states in part that, "Records of spent fuel, high-level radioactive waste, and reactor-related GTCC waste containing special nuclear material meeting the requirements in paragraph (a) of this section must be kept in duplicate. The duplicate set of records must be kept at a separate location sufficiently remote from the original records that a single event would not destroy both sets of records."

The proposed action before the Commission is whether to grant this exemption pursuant to 10 CFR 72.7.

*Need for the Proposed Action:* The applicant stated that ISFSI spent-fuel, high-level radioactive waste, and reactor-related GTCC waste records will be maintained in a manner consistent with the records of the DCPP, which are stored in accordance with the NRC-approved Quality Assurance (QA) program. The approved QA program for the DCPP complies with the requirements established in 10 CFR part 50, appendix B, which incorporates by reference the specific recordkeeping requirements in 10 CFR 50.71(d)(1). PG&E did not request exemption from the records retention period requirements of 10 CFR 72.72(d). The applicant seeks to provide consistency in recordkeeping practices for the records related to the proposed DCPP ISFSI and those records currently maintained under the DCPP QA program. The exemption would also preclude the need for PG&E to construct and operate a separate, second records storage facility to store a duplicate set of spent fuel, high-level radioactive waste, and reactor-related GTCC waste records.

In its exemption request, PG&E indicated that the NRC-approved QA program for the DCPP meets the provisions of ANSI N45.2.9–1974. The requirements in ANSI N45.2.9–1974 have been endorsed by the NRC as an acceptable method of satisfying the recordkeeping requirements of 10 CFR part 50, appendix B, which states, in part, that "[c]onsistent with applicable regulatory requirements [including 10 CFR 50.71(d)(1)], the applicant shall establish requirements concerning record retention, such as duration, location, and assigned responsibility." Further requirements for the maintenance of nuclear power plant records are provided in 10 CFR 50.71(d)(1), which states, in part, that, "The licensee shall maintain adequate safeguards against tampering with and loss of records." ANSI N.45.2.9–1974 also satisfies the requirements of 10 CFR 72.72 by providing for adequate maintenance of records regarding the identity and history of the spent fuel in storage. Such records would be subject to and need to be protected from the same types of degradation mechanisms or loss as nuclear power plant Quality Assurance records.

*Environmental Impacts of the Proposed Action:* An exemption from the requirement to store a duplicate set of ISFSI records at a separate location has no impact on the environment. Storage of records does not change the methods by which spent fuel will be handled and stored at the DCPP ISFSI and does not change the amount of effluents, radiological or non-radiological, associated with the ISFSI.

*Alternative to the Proposed Action:* As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Agencies and Persons Consulted:* On August 12, 2003, Ms. Barbara Byron, Nuclear Policy Advisor for the California Energy Commission, was contacted regarding the environmental assessment for the proposed action and had no comments. The NRC staff has determined that a consultation under Section 7 of the Endangered Species Act is not required because the proposed action is administrative/procedural in nature and will not affect listed species or critical habitat. The NRC staff has also determined that the proposed action is not a type of activity having the potential to cause effects on historic properties because it is an administrative/procedural action. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

### Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting the exemption from 10 CFR 72.72(d), so that PG&E may store spent fuel records for the proposed ISFSI in a single records storage facility, in accordance with its NRC-approved Quality Assurance program (which satisfies the criteria of 10 CFR part 50, appendix B, and 10 CFR 50.71(d)(1)), will not significantly impact the quality of the human environment. Accordingly, the Commission has determined that a Finding of No Significant Impact is appropriate, and that an environmental impact statement for the proposed exemption is not necessary.

For further details with respect to this exemption request, see the PG&E ISFSI license application, and the accompanying Safety Analysis Report, dated December 21, 2001. The request for exemption was docketed under 10 CFR part 72, Docket No. 72–26. These documents are available for public inspection at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, MD, or from the publicly available records component of NRC's Agencywide Documents Access and Management System (ADAMS). These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail at *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 2nd day of October, 2003.

For the Nuclear Regulatory Commission.

**James R. Hall,**

*Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 03–25746 Filed 10–9–03; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499]

### STP Nuclear Operating Company; Notice of Withdrawal of Application for Amendment to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of STP Nuclear Operating Company (the licensee) to withdraw its February 14, 2002, and its supplement dated October 24, 2002, applications for proposed amendments to Facility Operating License Nos. NPF–76 and No. NPF–80 for the South Texas Project (STP), Units 1 and 2, located in Matagorda County, Texas.

The proposed amendments would have modified STP, Units 1 and 2, Technical Specification (TS) 3.3.2 requirements for Loss of Power Instrumentation (Functional Unit 8) and TSs 3.8.1.1, 3.8.1.2, and 3.8.1.3 for AC Sources.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 30, 2002, (67 FR 21294). However, by letter dated September 22, 2003 (NOC–AE–03001472), the licensee withdrew the proposed amendments and supersedes, in its entirety the application dated February 14, 2002, and its supplement dated October 24, 2002, for which the staff proposed no significant hazard consideration determination on April 30, 2002 (67 FR 21294). This application withdraws the proposed changes to TS 3.3.2 requirements for Loss of Power Instrumentation and the proposed changes to TS 3.8.1.1 for AC Sources. The changes proposed for TS 3.3.2 are described in the application dated September 22, 2003 (NOC–AE–03001578). The changes proposed for TSs 3.8.1.2 and 3.8.1.3 are documented in the September 22, 2003 (NOC–AE–03001472) application.

For further details with respect to this action, see the application for amendment dated February 14, 2002, and its supplement dated October 24, 2002, and the licensee's letters dated September 22, 2003, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR) located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encountered problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 30th day of September 2003.

For the Nuclear Regulatory Commission.

**John L. Minns,**

*Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 03–25743 Filed 10–9–03; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 50–483]

### Union Electric Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Union Electric Company (the licensee) to withdraw its application dated October 3, 2002, as supplemented by letter dated June 5, 2003, for proposed amendment to Facility Operating License No. NPF–30 for the Callaway Plant, Unit 1, located in Callaway County, Missouri.

The proposed amendment would have revised the definition of steam generator (SG) tube inspection in Technical Specification 5.5.9, "Steam Generator (SG) Tube Surveillance Program." The amendment would add a requirement for using the rotating pancake coil (RPC) to the H* depth in the tubesheet.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on October 18, 2002 (67 FR 64422). However, as stated in the staff's letter dated September 15, 2003, the licensee has agreed to withdraw the proposed change.

For further details with respect to this action, see the application for amendment dated October 3, 2002, as supplemented by the licensee's letter dated June 5, 2003, and the staff's letter dated September 15, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 15th day of September, 2003.

For the Nuclear Regulatory Commission.

**Jack Donohew,**

*Senior Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 03–25744 Filed 10–9–03; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

### Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued a revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in its review of applications for permits and licenses, and data needed by the NRC staff in its review of applications for permits and licenses.

Revision 1 of Regulatory Guide 1.180, "Guidelines for Evaluating Electromagnetic and Radio-Frequency Interference in Safety-Related Instrumentation and Control Systems," provides guidance to licensees and applicants on methods acceptable to the NRC staff for complying with the NRC's regulations on design, installation, and testing practices for addressing the effects of electromagnetic and radio-frequency interference and power surges on safety-related instrumentation and control systems.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555. Questions on the content of this guide may be directed to Ms. C. Antonescu, (301) 415–6792; e-mail *cea1@nrc.gov*.

Regulatory guides are available for inspection or downloading at the NRC's Web site at <*http://www.nrc.gov*> under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by e-mail to <*distribution@nrc.gov*>. Issued guides may also be purchased from the National Technical Information Service (NTIS) on a standing order basis. Details on this service may be obtained by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161; telephone 1–800–553–6847; <*http://www.ntis.gov/*>. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a)).

Dated at Rockville, MD this 30th day of September 2003.

For the Nuclear Regulatory Commission.

**Jack R. Strosnider,**

*Deputy Director, Office of Nuclear Regulatory Research.*

[FR Doc. 03–25745 Filed 10–9–03; 8:45 am]

BILLING CODE 7590–01–P

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## POSTAL SERVICE

### Board of Governors' Sunshine Act Meeting; Notification of Item Added to Meeting Agenda

**DATE OF MEETING:** October 2, 2003.

**STATUS:** Closed.

**PREVIOUS ANNOUNCEMENT:** 68 FR 55665, September 26, 2003.

**ADDITION:** Office of Inspector General Fiscal Year 2004 Budget. At its meeting on October 2, 2003, the Board of Governors of the United States Postal Service voted unanimously to add this item to the agenda of its closed session and that no earlier announcement was possible. The General Counsel of the United States Postal Service certified that in her opinion discussion of this item could be properly closed to public observation.

**FOR FURTHER INFORMATION CONTACT:** William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000.

**William T. Johnstone,**

*Secretary.*

[FR Doc. 03–25859 Filed 10–7–03; 4:31 pm]

BILLING CODE 7710–12–M

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of October 13, 2003:

A Closed Meeting will be held on Thursday, October 16, 2003, at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (5), (7), (8) and (10) and 17 CFR 200.402(a) (5), (7), (8), and (10), permit consideration of the scheduled matters at the Closed Meeting.

The subject matter of the Closed Meeting scheduled for Thursday, October 16, 2003, will be:

Regulatory matters regarding financial institutions; and Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: October 7, 2003.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 03–25860 Filed 10–7–03; 4:40 pm]

BILLING CODE 8010–01–P

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48591; File No. SR–CBOE–2003–17]**

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading of Options on Russell Indexes

October 2, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 5, 2003, the Chicago Board Options Exchange, Inc. ("CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. On September 24, 2003, the CBOE filed an amendment to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and to approve the proposed rule change, as amended, on an accelerated basis.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend certain rules to provide for the listing and trading on the Exchange of options on several different Russell Indexes. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from James Flynn, Esq., Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 23, 2003 ("Amendment No. 1"). Amendment No. 1 replaces the original filing in its entirety, and: (1) Clarifies that the CBOE will monitor each Russell Index on an annual basis and notify the Commission in the event that certain specified standards are not satisfied; (2) notes in the purpose section of the proposal that the CBOE will have complete access to the trading information of the component securities of the Russell Indexes; and (3) amends the strike prices for options on the Russell Indexes.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style, stock index options on the Russell 1000® Index, Russell 1000® Growth Index, Russell 1000® Value Index, Russell 2000® Growth Index, Russell 2000® Value Index, Russell 3000® Index, Russell 3000® Growth Index, Russell 3000® Value Index, Russell Midcap® Index, Russell Midcap® Growth Index, Russell Midcap® Value Index ("Russell Indexes" or "Indexes"). Each Russell Index is a capitalization-weighted index containing various groups of stocks drawn from the largest 3,000 companies incorporated in the U.S. and its territories. All component securities of the Russell Indexes are traded on the New York Stock Exchange, Inc. ("NYSE"), the American Stock Exchange LLC ("AMEX"), or the NASDAQ. The CBOE currently is approved to trade options on the Russell 2000® Index.[4]

*Index Design.* The Russell Indexes are designed to be a comprehensive representation of the investable U.S. equity market. These Indexes are capitalization-weighted and include only common stocks belonging to corporations domiciled in the U.S. and its territories and that are traded on the NYSE, NASDAQ or the AMEX. The component securities are weighted by their "available" market capitalization, which is calculated by multiplying the primary market price by the "available" shares; that is, total shares outstanding less corporate cross-owned shares, ESOP and LESOP-owned shares comprising 10% or more of shares outstanding, unlisted share classes and shares held by an individual, a group of individuals acting together, or a corporation not in the index that owns 10% or more of the shares outstanding. The following is a brief description of each index:

| | |
|---|---|
| Russell 3000® | Measures the performance of the 3,000 largest U.S. companies based on total market capitalization, which represents approximately 98% of the investable U.S. equity market. |
| Russell 1000® | Measures the performance of the 1,000 largest companies in the Russell 3000 Index, which represents approximately 92% of the total market capitalization of the Russell 3000 Index. |
| Russell Midcap® | Measures the performance of the 800 smallest companies in the Russell 1000 Index, which represent approximately 26% of the total market capitalization of the Russell 1000 Index. |
| Russell 1000® Growth | Measures the performance of those Russell 1000 companies with higher price-to-book ratios and higher forecasted growth values. |
| Russell 1000® Value | Measures the performance of those Russell 1000 companies with lower price-to-book ratios and lower forecasted growth values. |
| Russell 2000® Growth | Measures the performance of those Russell 2000 companies with higher price-to-book ratios and higher forecasted growth values. |
| Russell 2000® Value | Measures the performance of those Russell 2000 companies with lower price-to-book ratios and lower forecasted growth values. |
| Russell 3000® Growth | Measures the performance of those Russell 3000 Index companies with higher price-to-book ratios and higher forecasted growth values. The stocks in this index are also members of either the Russell 1000 Growth or the Russell 2000 Growth indexes. |
| Russell 3000® Value | Measures the performance of those Russell 3000 Index companies with lower price-to-book ratios and lower forecasted growth values. The stocks in this index are also members of either the Russell 1000 Value or the Russell 2000 Value indexes. |
| Russell Midcap® Growth | Measures the performance of those Russell Midcap companies with higher price-to-book ratios and higher forecasted growth values. The stocks are also members of the Russell 1000 Growth index. |
| Russell Midcap® Value | Measures the performance of those Russell Midcap companies with lower price-to-book ratios and lower forecasted growth values. The stocks are also members of the Russell 1000 Value index. |

All companies listed on the NYSE, AMEX or NASDAQ are considered for inclusion in the universe of stocks that comprise the Russell Indexes, with the following exceptions: (1) Stocks trading less than $1.00 per share on May 31; (2) non-U.S. incorporated companies; and (3) preferred and convertible preferred stock, redeemable shares, participating preferred stock, warrants and rights, trust receipts, royalty trusts, limited liability companies, bulletin board, pink sheet stocks, closed-end investment companies, limited partnerships, and foreign stocks. The Russell 3000 Index is comprised of the top 3,000 eligible stocks ranked by available market capitalization. The CBOE represents that all of these components are "reported securities" as defined in Rule 11Aa3–1 under the Act.

All of the remaining Russell Indexes are subsets of the Russell 3000 Index. The Growth and Value versions of each primary Index (Russell 1000, Russell 2000, Russell 3000 and Russell Midcap) may contain common components, but the capitalization of those components is apportioned so that the sum of the total capitalization of the Growth and Value indexes equals the total capitalization of the respective primary index.

As provided in Exhibit B to the proposed rule change, on February 28, 2003, the stocks comprising the Russell 3000 Index (and the other Russell Indexes) had an average market capitalization of $2.93 billion ranging from a high of $239 billion (General Electric Co.) to a low of $2 million (Deltagen, Inc.). The number of available shares outstanding ranged from a high of 9.95 billion (General Electric Co.) to a low of 310,000 (Seaboard Corp.), and averaged 123.4 million shares. The six-month average daily trading volume for Russell 3000 Index components was 977,000 shares per day, ranging from a high of 82.6 million shares per day (Cisco Systems, Inc.) to a low of 433 shares per day (Seaboard Corp.). Component securities that averaged less than 50,000 shares per day for the previous six months accounted for 1.3% of the index weight. Over 83% of the Russell 3000 Index components satisfied CBOE's listing criteria for equity options as set forth in CBOE Rule 5.3, representing over 99% of the index weight.

The Russell Indexes themselves range in capitalization from a high of $8.6

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[4] *See* Securities Exchange Act Release No. 31382 (October 30, 1992), 57 FR 52802 (November 5, 1992) (order approving the listing and trading of options on the Russell 2000 Index).

trillion (Russell 3000) to a low of $278 billion (Russell 2000 Growth). The number of index components range from a high of 2,933 (Russell 3000) to a low of 453 (Russell Midcap Growth). The Russell 1000 Growth Index has the highest percentage of options-eligible components with 99.8% by weight and 97.7% by number. The Russell 2000 Value index has the lowest percentage of options-eligible components with 90.7% by weight and 74.8% by number.

*Calculation.* The values of each Index are currently being calculated by Reuters on behalf of the Frank Russell Company and will be disseminated at 15-second intervals during regular CBOE trading hours to market information vendors via the Options Price Reporting Authority ("OPRA").

The CBOE notes that the methodology used to calculate the value of the Russell Indexes is similar to the methodology used to calculate the value of other well-known market-capitalization weighted indexes. The level of each Index reflects the total market value of the component stocks relative to a particular base period and is computed by dividing the total market value of the companies in each Index by its respective index divisor. The divisor is adjusted periodically to maintain consistent measurement of each Index. The following is a table of base dates and the respective Index levels as of February 28, 2003:

| Index | Base date/base index value | 2/28/03 Index value |
|---|---|---|
| Russell 3000® | 12/31/86 = 140.00 | 468.15 |
| Russell 1000® | 12/31/86 = 130.00 | 446.96 |
| Russell Midcap® | 12/31/86 = 200.00 | 464.62 |
| Russell 1000® Growth | 8/31/92 = 200.00 | 354.20 |
| Russell 1000® Value | 8/31/92 = 200.00 | 430.96 |
| Russell 2000® Growth | 3/16/00 = 500.00 | 190.56 |
| Russell 2000® Value | 3/16/00 = 500.00 | 522.72 |
| Russell 3000® Growth | 3/16/00 = 700.00 | 282.42 |
| Russell 3000® Value | 3/16/00 = 700.00 | 558.95 |
| Russell Midcap® Growth | 3/16/00 = 500.00 | 202.01 |
| Russell Midcap® Value | 3/16/00 = 500.00 | 506.05 |

*Index Option Trading.* According to the CBOE, options on these indexes shall be A.M.-settled. In addition to regular Index options, the Exchange may provide for the listing of long-term index option series ("LEAPS®") in accordance with CBOE Rule 24.9.

For options on each Index, strike prices will be set to bracket the respective index in 2.5-point increments for strikes below $200 and 5 point increments for strikes at or above $200. The minimum tick size for series trading below $3 will be 0.05 and for series trading above $3 the minimum tick will be 0.10. The trading hours for options on the Indexes will be from 8:30 a.m. to 3:15 p.m. Chicago time. Exhibit C to the proposed rule change represents the proposed contract specifications for the options on the Russell Indexes.

*Maintenance.* The Russell Indexes will be monitored and maintained by the Frank Russell Company. The Frank Russell Company will be responsible for making all necessary adjustments to the Indexes to reflect component deletions, share changes, stock splits, stock dividends (other than an ordinary cash dividend), and stock price adjustments due to restructuring, mergers, or spin-offs involving the underlying components. Some corporate actions, such as stock splits and stock dividends, require simple changes to the available shares outstanding and the stock prices of the component securities. Other corporate actions, such as share issuances, change the market value of the Indexes and would require the use of an index divisor to effect adjustments.

The CBOE represents that the Russell Indexes are re-constituted annually on June 30th, based on prices and available shares outstanding as of the preceding May 31st. New components securities to the Indexes are added only as part of the annual re-constitution and, after which, should a component security be removed from an Index for any reason, it cannot be replaced until the next re-constitution.

The CBOE represents that it will monitor each Russell Index on an annual basis, at which point the Exchange will notify the Commission if: (1) The number of securities in each index drops by ⅓rd or more; (2) 10% or more of the weight of each index is represented by component securities having a market value of less than $75 million; (3) less than 80% of the weight of each Index is represented by component securities that are eligible for options trading pursuant to CBOE Rule 5.3; (4) 10% or more of the weight of each Index is represented by component securities trading less than 20,000 shares per day; or (5) the largest component security accounts for more than 15% of the weight of each Index or the largest five components in the aggregate account for more than 50% of the weight of the Index.

*Surveillance.* The Exchange represents that CBOE's surveillance procedures are adequate to monitor the trading in options and LEAPS on the Russell Indexes. Further, the CBOE shall have complete access to the information regarding the trading activity of the underlying securities.

*Exercise and Settlement.* The proposed options on each Index will expire on the Saturday following the third Friday of the expiration month. Trading in the expiring contract month will normally cease at 3:15 p.m. (Chicago time) on the business day preceding the last day of trading in the component securities of the Index (ordinarily the Thursday before expiration Saturday, unless there is an intervening holiday). The exercise settlement value of the Index at option expiration will be calculated by Reuters on behalf of the Frank Russell Company based on the opening prices of the component securities on the last business day prior to expiration. If a component security fails to open for trading, the exercise settlement value will be determined in accordance with CBOE Rules 24.7(e) and 24.9(a)(4). When the last trading day is moved because of Exchange holidays (such as when CBOE is closed on the Friday before expiration), the last trading day for expiring options will be Wednesday and the exercise settlement value of index options at expiration will be determined at the opening of regular trading on Thursday.

*Position Limits.* The Exchange proposes to establish position limits for options on the Russell Indexes at 50,000 contracts on either side of the market, and no more than 30,000 of such contracts may be in the series in the nearest expiration month. These limits are identical to the limits applicable to options on the Russell 2000 Index as specified under CBOE Rule 24.4(a).

*Exchange Rules Applicable.* Except as modified herein, the Rules in Chapter XXIV will govern the trading of options on the aforementioned Russell Indexes on the Exchange. Additionally, CBOE affirms that it possesses the necessary systems capacity to support new series that would result from the introduction of the Russell Index options. CBOE also has been informed that OPRA has the capacity to support such new series.[5]

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act in general,[6] and furthers the objectives of section 6(b)(5) of the Act in particular,[7] in that it will permit trading in options on a broad range of indexes pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–2003–17 and should be submitted by October 31, 2003.

**IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the proposal is consistent with section 6(b)(5) of the Act.[8] Specifically, the Commission believes that the listing and trading of options on the Russell Indexes will serve to promote the public interest, as well as to help remove impediments to a free and open securities market. The Commission also believes that the trading of options on the Indexes will allow investors holding positions in some or all of the securities underlying the Indexes to hedge the risks associated with their portfolios more efficiently and effectively. Accordingly, the Commission believes that the options on the Russell Indexes will provide investors with an important trading and hedging mechanism that should reflect accurately the overall movement of stocks in the large capitalization range of U.S. equity securities.[9] By broadening the hedging and investment opportunities of investors, the Commission believes that the trading of options on the Russell Indexes will service to protect investors, promote the public interest and contribute to the maintenance of fair and orderly markets.[10]

The trading of options on the Russell Indexes, however, raises several issues related to the design and structure of the Indexes, customer protection, surveillance, and market impact. For the reasons discussed below, the Commission believes that the CBOE has adequately addressed these issues.

*A. Index Design and Structure*

The Commission finds it is appropriate and consistent with the Act to classify the Indexes as broad-based, and thus, to permit Exchange rules applicable to the trading of broad-based index options to apply to the Russell Indexes options. Specifically, the Commission believes that the Indexes are broad-based because they reflect a substantial segment of the U.S. equities market, in general, and the largest 3,000 U.S. securities, in particular. The Russell Indexes cumulatively range in market capitalization from a high of $8.6 trillion (Russell 3000) to a low of $278 billion (Russell 2000 Growth). The number of index components range from a high of 2,933 (Russell 3000) to a low of 453 (Russell Midcap Growth). As of February 28, 2003, the stocks comprising the Russell 3000 Index had an average market capitalization of $2.93 billion ranging from a high of $239 billion to a low of $2 million. All of the remaining Russell Indexes are subsets of the Russell 3000 Index. The component securities are diverse, actively traded, and represent a broad cross-section of highly capitalized securities in the U.S. equity market. CBOE has also represented that all of the component securities of the Russell Indexes are reported securities, and over 83% of the Russell 3000 Index components satisfied CBOE's listing criteria for equity options as set forth in CBOE Rule 5.3, representing over 99% of the index weight.[11] Accordingly, the Commission believes that it is appropriate for the Exchange to classify the Indexes as broad-based and apply its rules governing broad-based index options.

*B. Potential for Manipulation*

The Commission also believes that the large number of component securities, the capitalization and weighting methodology of the Indexes, and the depth of liquidity of the component securities comprising the Indexes, significantly minimize the potential for manipulation of the Indexes. First, as noted above, the Indexes represent a broad cross-section of domestic highly capitalized U.S. companies. Second, the Commission notes that the Index is a capitalization-weighted index whose value is more difficult to affect than that of a price-weighted index. Third, CBOE has represented that it will notify the Commission when: (1) The number of securities in each index drops by one-third or more; (2) 10% or more of the weight of each index is represented by component securities having a market value of less than $75 million; (3) less than 80% of the weight of each Index is represented by component securities that are eligible for options trading pursuant to CBOE Rule 5.3; (4) 10% or more of the weight of each Index is represented by component securities trading less than 20,000 shares per day; or (5) the largest component security accounts for more than 15% of the weight of each Index or the largest five components in the aggregate account for more than 50% of the weight of the Index. Fourth, the CBOE has proposed reasonable position and exercise limits for the Index options that will serve to minimize potential manipulation and other market impact concerns. Accordingly, the Commission believes that these factors minimize the potential for manipulation because it would affect significantly the Indexes values. Moreover, the surveillance procedures discussed below should detect as well as deter potential manipulation and other trading abuses.

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[5] *See* Exhibit D to this filing.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(5).

[9] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a product that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed index options will provide investors with a hedging vehicle that should reflect the overall market of stocks representing a substantial segment of the U.S. securities market.

[10] In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] The CBOE's option listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) The public float must be at least 7 million shares; (2) there must be a minimum of 2,000 stockholders; (3) trading volume must have been at least 2.4 million shares over the preceding twelve months; and (4) the market price per share must have been at least $ 7.50 for a majority of business days during the preceding three calendar months. *See* Interpretations and Policies.01 to CBOE Rule 5.3.

*C. Customer Protection*

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as the options on the Russell Indexes (including full-value and reduced value Index LEAPS), can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risk of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the index options and index LEAPS will be subject to the same regulatory regime as the other standardized options traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in the Russell Indexes options.[12]

*D. Surveillance*

The Commission generally believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation. In this regard, the NYSE, AMEX, and the NASD are all members of ISG. In addition, the CBOE will apply the same surveillance procedures as those used for existing broad-based index options trading on the CBOE. Further, CBOE has represented that it will have complete access to the information regarding the trading activity of the underlying securities.

*E. Market Impact*

The Commission believes that the listing and trading of options on the Russell Indexes on the Exchange will not adversely impact the underlying securities markets. First, as described above, the Indexes are broad-based and no one stock or industry group dominates any particular Index. Second, as noted above, the stocks contained in the Indexes generally are not inactively traded. Third, existing CBOE stock index options rules and surveillance procedures will apply to Russell Indexes options. Fourth, the Exchange has established reasonable position and exercise limits for the Russell Indexes options that will serve to minimize potential manipulation and market impact concerns. Fifth, the risk to investors of contra-party non-performance will be minimized because the Index options will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded in the U.S. Lastly, the Commission believes that settling options on the Russell Indexes based on the opening prices of component securities is reasonable and consistent with the Act because it may contribute to the orderly unwinding of Index options positions upon expiration.

The Commission finds good cause for approving the proposed rule change, and Amendment No. 1 thereto, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission believes that the trading of options on the Russell Indexes does not raise novel regulatory issues that were not addressed in previous filings regarding the listing and trading of similar instruments on the CBOE. The Commission further believes that the options on the Russell Indexes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading these index options promptly.

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–CBOE–2003–17), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–25674 Filed 10–9–03; 8:45 am]

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[12] In addition, CBOE has represented that it and OPRA have the necessary systems capacity to support these new series of options that would result from the introduction of Index options and Index LEAPS. See Exhibit D to the proposed rule change (letter from Joe Corrigan, Executive Director, OPRA, to Bill Speth, Director of Research, CBOE, dated March 24, 2003).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48592; File No. SR–NASD–2003–44]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. To Modify the Existing Pilot Program Relating to the Compliance Periods for the Nasdaq Bid Price Criteria

October 3, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 18, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq submitted amendments to the proposed rule change on March 24, 2003,[3] and September 26, 2003.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to modify an existing pilot program relating to compliance periods for the bid price criteria for Nasdaq National Market and Nasdaq SmallCap Market issuers. Nasdaq has represented that, during the pilot period, it would assess the effectiveness of these changes.

Below is the text of the proposed rule change, including the revisions to the proposed rule text made by Amendment Nos. 1 and 2. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

### 4310. Qualification Requirements for Domestic and Canadian Securities

To qualify for inclusion in Nasdaq, a security of a domestic or Canadian issuer *shall* [will] satisfy all applicable requirements contained in paragraphs (a) or (b), and (c) hereof.

(a)–(b) No change.

(c) In addition to the requirements contained in paragraph (a) or (b) above, and unless otherwise indicated, a security *shall* [will] satisfy the following criteria for inclusion in Nasdaq:

(1)–(7) No change.

(8)(A)–(C) No change.

(D) A failure to meet the continued inclusion requirement for minimum bid price on The Nasdaq SmallCap Market shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. If the issuer has not been deemed in compliance prior to the expiration of the 180 day compliance period, it shall be afforded an additional 180 day compliance period, provided, that on the 180th day *of the first compliance period,* [following notification of this deficiency,] the issuer *demonstrates that it* meets the criteria for initial inclusion set forth in Rule 4310(c)[(2)(A)] *(except for the bid price requirement set forth in Rule 4310(c)(4))* based on the issuer's most recent public[ly filed] filings and market [financial] information. *If the issuer has publicly announced information (e.g., in an earnings release) indicating that it no longer satisfies the applicable initial inclusion criteria, it shall not be eligible for the additional compliance period under this rule.*

*If on the 180th day of the second compliance period, the issuer has not been deemed in compliance during such compliance period but it satisfies the criteria for initial inclusion set forth in Rule 4310(c) (except for the bid price requirement set forth in Rule 4310(c)(4)), the issuer shall be provided with an additional compliance period up to its next annual shareholder meeting, provided: the issuer commits to seek shareholder approval for a reverse stock split to address the bid price deficiency at or before its next annual meeting, and to promptly thereafter effect the reverse stock split; and the shareholder meeting to seek such approval is scheduled to occur no later than two years from the original notification of the bid price deficiency. If the issuer fails to timely propose, or obtain approval for, or promptly execute the reverse stock split, Nasdaq shall immediately institute delisting proceedings upon such failure.* [If the issuer has not been deemed in compliance prior to the expiration of the second 180 day compliance period, it shall be afforded an additional 90 day compliance period, provided that on the last day of the second 180 day compliance period, the issuer meets any of the three criteria for initial inclusion set forth in Rule 4310(c)(2)(A) based on the issuer's most recent publicly filed financial information.] Compliance can be achieved during any compliance period by meeting the applicable standard for a minimum of 10 consecutive business days.

(E) No change.

(9)–(29) No change.

(d) No change.

### 4450. Quantitative Maintenance Criteria

After designation as a Nasdaq National Market security, a security must substantially meet the criteria set forth in paragraphs (a) or (b), and (c), (d), (e), (f), (g), (h) or (i) below to continue to be designated as a national market system security. A security maintaining its designation under paragraph (b) need not also be in compliance with the quantitative maintenance criteria in the Rule 4300 series.

(a)–(d) No change.

(e) Compliance Periods

(1) No change.

(2) A failure to meet the continued inclusion requirement for minimum bid price shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. If the issuer has not been deemed in compliance prior to the expiration of the 180 day compliance period, it *shall* [will] be afforded an additional 180 day compliance period, provided, that on the 180th day following the notification of the deficiency, the issuer demonstrates that it meets the criteria for initial inclusion set forth in [either] Rule[s] 4420[(a)(1) and (a)(5), Rule 4420(b)(1) or Rule 4420(c)(6),] (except for the bid price requirement set forth in Rule 4420(a)(4), (b)(4) or (c)(3)) based on the issuer's most recent public[ly filed financial] *filings and market* information. *If the issuer has publicly announced information (e.g., in an earnings release) indicating that it no longer satisfies the applicable initial inclusion criteria, it shall not be eligible for the additional compliance period under this rule.*

*If the issuer has not been deemed in compliance 45 calendar days before the expiration of the second 180 day compliance period, the Listing Qualifications Department shall issue a letter (the "Staff Warning Letter"), notifying the issuer of its non-compliance, the pending expiration of the compliance period, and its right to request a hearing. The issuer must request a hearing within seven calendar days of the date of the Staff Warning Letter in order to preserve its right to review pursuant to Rule 4820. If the issuer requests a hearing, the hearing shall be scheduled for a date promptly following the expiration of the compliance period. If the issuer fails to request a hearing and does not regain compliance prior to the expiration of the compliance period, it shall be delisted immediately following the compliance period with no further opportunity for a hearing.* Compliance can be achieved *during any compliance period* by meeting the applicable standard for a minimum of 10 consecutive business days during the [180 day] applicable compliance period.

Nasdaq may, in its discretion, require an issuer to maintain a bid price of at least $1.00 per share for a period in excess of ten consecutive business days, but generally no more than 20 consecutive business days, before determining that the issuer has demonstrated an ability to maintain long-term compliance. In determining whether to monitor bid price beyond ten business days, Nasdaq *shall* [will] consider the following four factors: (i) margin of compliance (the amount by which the price is above the $1.00 minimum standard); (ii) trading volume (a lack of trading volume may indicate a lack of bona fide market interest in the security at the posted bid price); (iii) the market maker montage (the number of market makers quoting at or above $1.00 and the size of their quotes); and, (iv) the trend of the stock price (is it up or down).

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[3] *See* letter from Sara Nelson Bloom, Associate General Counsel, Nasdaq, to Katherine A. England, Division of Market Regulation, Commission, dated March 21, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq made minor revisions to the original proposal.

[4] *See* letter from Edward S. Knight, Executive Vice President, Nasdaq, to Katherine A. England, Division of Market Regulation, Commission, dated September 25, 2003 ("Amendment No. 2"). In Amendment No. 2, Nasdaq revised the length of the compliance periods and added to the criteria that issuers would have to meet to avail themselves of such periods.

(3)–(4) No change.

(f)–(i) No change.

4820. Request for Hearing

(a) An issuer may, within seven calendar days of the earlier of the date of the Staff Determination *or the Staff Warning Letter referenced in Rule 4450(e)*, request either a written or oral hearing to review the Staff Determination. Requests for hearings should be filed with The Nasdaq Office of Listing Qualifications Hearings (the "Hearings Department"). A request for a hearing *shall* [will] stay the delisting action pending the issuance of a written determination by a Listing Qualifications Panel. If no hearing is requested within the seven calendar day period, *the right to request review is waived, and* the Staff Determination *shall* [will] take immediate effect. All hearings *shall* [will] be held before a Listing Qualifications Panel as described in Rule 4830. All hearings *shall* [will] be scheduled, to the extent practicable, within 45 days of the date that the request for hearing is filed, at a location determined by the Hearings Department. The Hearings Department *shall* [will] make an acknowledgment of the issuer's hearing request stating the date, time and location of the hearing, and the deadline for written submissions to the Listing Qualifications Panel. The issuer *shall* [will] be provided at least 10 calendar days notice of the hearing unless the issuer waives such notice.

(b)–(c) No change.

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## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

### 1. Purpose

Following the extraordinary market conditions surrounding the September 11th tragedy, Nasdaq implemented a moratorium on enforcement of its bid price rules.[5] In January 2002, immediately after the moratorium ended, Nasdaq implemented a pilot program to extend certain compliance periods applicable to the bid price rule.[6] The pilot program was modified and extended to December 31, 2004.[7] The current pilot program provides for a 180-day bid price compliance period for SmallCap Market issuers. Thereafter, SmallCap Market issuers are allowed an additional 180-day compliance period if they meet heightened requirements based upon certain core initial listing standards. SmallCap issuers are allowed an additional 90-day compliance period, provided that the issuer continues to meet the heightened requirements. National Market companies currently receive a single 180-day bid price compliance period.

After careful consideration, Nasdaq continues to believe that the bid price requirements are valuable measures of compliance. However, Nasdaq believes that the measurement periods for the requirements should be extended and modified to provide additional flexibility to both National Market and SmallCap Market companies that are engaged in turnaround strategies. Nasdaq proposes that these modifications also be subject to implementation under the pilot program currently in effect through December 31, 2004.

Specifically, this proposal would modify and extend the pilot as follows:

- Provide an additional 180-calendar-day compliance period for those National Market issuers able to demonstrate compliance with the National Market initial listing criteria set forth in Rule 4420 (except for the bid price requirement set forth in Rule 4420(a)(4), (b)(4) or (c)(3);
- Maintain the initial 180-calendar-day bid price compliance period for all SmallCap Market issuers, and provide a second 180-day compliance period for SmallCap Market issuers that satisfy the initial listing criteria set forth in Rule 4310(c) (except for the bid price requirement set forth in Rule 4310(c)(4)). This is more stringent than the current compliance period which conditions eligibility for the second 180-day compliance period on meeting only the financial or "core" initial listing criteria, rather than all initial listing criteria. After the two initial 180-day compliance periods, instead of the additional 90-day compliance period provided by the recent modification to the pilot program,[8] issuers would be provided with an additional compliance period up to their next annual shareholder meeting provided: the issuer commits to seek shareholder approval for a reverse stock split to address the bid price deficiency at or before its next annual meeting, and to promptly thereafter effect the reverse stock split; and the shareholder meeting to seek such approval is scheduled to occur no later than two years from the original notification of the bid price deficiency. If the issuer fails to timely propose, or obtain approval for, or promptly execute the reverse stock split, Nasdaq shall immediately institute delisting proceedings upon such failure.

Nasdaq believes that the proposal appropriately distinguishes between the National Market and the SmallCap Market by providing a relatively shorter compliance period for National Market issuers compared to that available to SmallCap Market issuers, and by expediting the National Market issuer delisting process. The proposal further provides that SmallCap Market issuers eligible for the longest compliance periods must take concrete corrective action to address the bid price deficiency or face prompt delisting. Nasdaq further believes that the proposal would benefit investors by lessening the disruption that can be associated with an issuer's move from the Nasdaq Stock Market to less liquid and regulated markets.

*Implementation.* Nasdaq proposes that this rule be effective upon Commission approval, and that issuers that are at that time in the Rule 4800 Series review process be afforded the benefit of the new rule. As such, issuers would be extended any additional compliance periods provided by this rule to which they would have been entitled had the rule been in effect upon their original notification of the bid price deficiency.[9] Accordingly, issuers would be eligible for extended compliance periods in circumstances where they meet the terms of the new rule. Those issuers that do not meet the eligibility requirements under the new rule would be afforded an opportunity to present a definitive plan to demonstrate compliance with the bid price requirement or eligibility for the new compliance periods, and panels could determine to grant exceptions in order for such issuers to effectuate such plans. In addition, such issuers would be permitted to complete any pending compliance period that was extended pursuant to the rule in effect when the compliance period began.[10] However, in no event shall a SmallCap Market issuer be afforded a period that exceeds two years from the date of the original bid price deficiency notification, absent extraordinary circumstances.[11] All time periods under the new rule would run concurrent with the prior rule, from the date of the original bid price deficiency notification.

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[5] *See* Securities Exchange Act Release No. 44857 (September 27, 2001), 66 FR 50485 (October 3, 2001) (SR–NASD–2001–61).

[6] *See* Securities Exchange Act Release No. 45387 (February 4, 2002), 67 FR 6306 (February 11, 2002) (SR–NASD–2002–13).

[7] *See* Securities Exchange Act Release No. 47482 (March 11, 2003), 68 FR 12729 (March 17, 2003) (SR–NASD–2003–34).

[8] *See id.*

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with Section 15A(b)(6) of the Act[12] in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. As previously mentioned, Nasdaq is proposing this rule change to allow issuers additional time to comply with the bid price requirements if they demonstrate compliance with heightened listing standards. Under the proposed rule change, issuers meeting heightened standards would have additional time to execute business and compliance plans, thereby, in Nasdaq's view, minimizing disruption to investors and providing greater transparency and consistency.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change, as amended, would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–44 and should be submitted by October 31, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–25795 Filed 10–9–03; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48583; File No. SR–OC–2003–07]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by OneChicago, LLC To Amend Its Policy Regarding Block Trades, Pre-Execution Discussions and Cross Trades

October 1, 2003.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on September 12, 2003 OneChicago, LLC ("OneChicago") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes described in Items I, II, and III below, which Items have been prepared by OneChicago. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. On September 11, 2003, OneChicago filed a written certification under Section 5c(c) of the Commodity Exchange Act ("CEA")[3] with the Commodity Futures Trading Commission ("CFTC").

## I. Self-Regulatory Organization's Description of the Proposed Rule Change

OneChicago is proposing to amend its policy regarding block trades, pre-execution discussions and cross trades. The text of the proposed rule change appears below. New text is in *italics*; deleted text is in [brackets].

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[9] Nasdaq has represented that, during the pendency of this rule proposal, panels have afforded issuers exceptions consistent with the proposal as filed at the time pursuant to NASD Rule 4810(b). All pending exceptions will be modified in accord with this new rule and this implementation proposal.

[10] For example, a SmallCap Market issuer that is currently in the final 90-day compliance period would be eligible to complete this 90-day compliance period, notwithstanding the fact that such period would be eliminated under the proposed rule. At the conclusion of the 90-day compliance period, the issuer would be afforded the final compliance period under the proposed rule up to its next shareholder meeting, provided it satisfied all requirements of the new rule. That is, it must satisfy all initial listing criteria, commit to seek shareholder approval at its next shareholder meeting, but in no event later than two years from the original bid price notification (nine months from the expiration of the 90-day period), and to promptly thereafter effect the reverse stock split to come into compliance with the bid price requirement.

[11] NASD Rule 4810(b) provides that Nasdaq may grant exceptions to its listing rules. As noted above, Nasdaq would be unwilling to exercise this discretion for SmallCap issuers beyond two years from the date of the original bid price deficiency notification, absent "extraordinary circumstances." Nasdaq has stated that adverse financial developments affecting the issuer would not support a finding of "extraordinary circumstances." Rather, the term "extraordinary circumstances" is intended to refer to a *force majeure* event that makes it impossible for the issuer to avail itself of the due process afforded by the Nasdaq listing rules. *See* e-mail from Sara Bloom, Nasdaq, to Michael Gaw, Commission, dated October 2, 2003.

[12] 15 U.S.C. 78o–3(b)(6).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7

[3] 7 U.S.C. 7a–2(c).

* * * * *

OneChicago Policies:

Block Trades, *Pre-Execution Discussions* and Cross Trades

Block Trades [Policy]

Pursuant to OneChicago Rule 417[(a)(i)(B)], the Exchange permits *eligible contract participants, See Rule 417(a), to execute* block trades [to be executed] away from the public auction market in privately negotiated transactions for a minimum of 500 contracts per transaction.

Each firm executing a side of a block trade must have at least one designated person pre-authorized to report block trades. Only OneChicago member firms with a clearing relationship at The Options Clearing Corporation or the Chicago Mercantile Exchange Clearing Division will be allowed to report a block trade.

The seller is obligated to call OneChicago Operations Management ("OOM") without delay after the trade is negotiated to notify the Exchange of the basic terms of the trade, including the contract, price, quantity and contra-party information. *If the transaction is a spread or combination, such as when one party is rolling a position into the next contract month,*[1] *the seller of the month closest to expiration is responsible for reporting the entire transaction.* OOM will provide the caller a Trade Identification ("Trade ID") for the block trade and report both sides of the trade to the OneChicago trade engine. The trade engine will then relay the block trade terms to the Chicago Board Options Exchange Financial Network ("CFN"), which serves as the OneChicago price distribution mechanism, and [to ]OneChicago's matched trade database. After reporting the trade to OOM, the buyer and seller must each complete and transmit the prescribed Block Trade Reporting form via facsimile or e-mail to the OOM Help Desk. Both sides must include the Trade ID given by the OOM Help Desk to the seller at the time of his call. It is the responsibility of the buying and selling firms to effect any subsequent allocations or necessary updates to non-critical matching fields utilizing their chosen post-trade processing system.

To protect market integrity during the negotiation and reporting period, any party with knowledge of the pending block trade is prohibited from entering offsetting orders in the specific or any related OneChicago product for the benefit of the account or accounts related to a party to the block trade until the block trade has been reported to and disseminated by CFN. Additionally, no party with knowledge of the pending block trade report is allowed to exercise discretion by withholding (or placing) orders for any account that would have (or would not have) been placed given knowledge of the pending block trade until the block trade has been reported to and disseminated by the CFN price distribution mechanism. Parties subject to the jurisdiction of a member or an affiliate of the Intermarket Surveillance Group ("*ISG*") are further prohibited from submitting related offsetting orders on OneChicago if they utilize block trade reporting facilities of any other ISG participant exchange until such trades have been disseminated to the marketplace via the standard public reporting mechanism for that exchange. OneChicago considers busting block trades to be a serious matter and may deny a bust request based on the factors surrounding the request, including but not limited to the market impact of the original report, the amount of variation between the block trade price and the market price at the time of the report and the length of time transpiring since the block trade was reported to the public. Fees will be levied for busting a block trade.

Any attempt to circumvent this policy or misrepresent a transaction as a block trade will be forwarded to the appropriate party for investigation.

*Pre-Execution Discussions*

*In accordance with OneChicago Rule 614, the Exchange permits Members and Access Persons to engage in pre-execution discussions pursuant to which one party may agree in advance to take the opposite side of the other party's order for a transaction to be executed on the Exchange, on the following conditions:*

*1. Customers of each such party must consent to allow pre-execution discussions with other market participants;*

*2. Any Member or Access Person who is solicited to participate in a OneChicago transaction through pre-execution discussions shall not (i) disclose to any other party the details of such discussions or (ii) enter an order or quote through the Exchange to take advantage of information conveyed during such discussions unless such Member or Access Person has agreed during the pre-execution discussions to participate in the transaction in accordance with this policy and the order or quote is entered to implement that agreement; and*

*3. Except for block trades conducted pursuant to Rule 417 and exchange of future for physical transactions conducted pursuant to Rule 416, a period of four seconds shall elapse between entering the first order or quote and entering the second order for the opposite side. The order or quote initially entered may be filled or lifted by a third party during the four-second waiting period rather than consummating the transaction with the intended party as contemplated by the pre-execution discussions.*

Cross Trades

[Pursuant to ]*In accordance with OneChicago* Rules 409 *and 610*, a Member [of the Exchange ]may cross orders, provided that the Member [exposes] *enters* one side of the trade [(buy or sell) to OneChicago's central order book for a minimum of ]*(which shall be the Customer's side in the event that the Member or its affiliate is taking the other side) into OneChicago's trading system at least* four seconds before entering *the order for* the opposite side.

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OneChicago has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

OneChicago is proposing to amend its current policy regarding block trades and cross trades and to add a new provision that explicitly permits pre-execution discussions. The substantive changes in the proposed rule change are the following: To amend the reporting requirements for block trades to require the seller of the front month of a block spread or combination transaction to report the entire transaction; to explicitly permit OneChicago members and access persons to enter into pre-execution discussions with other market participants when certain conditions are met; and to clarify that OneChicago members entering into cross trades in which the member or affiliate of the member is taking the opposite side of a customer order must expose the customer side of the trade on the OneChicago trading system for at least four seconds.

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[1] *For purposes of this policy, the total quantity of the legs of a spread or a combination must meet the 500 minimum contracts requirement.*

OneChicago's block trade policy currently requires the seller of the block trade to call OneChicago Operations Management ("OOM") to report the block transaction. Under the proposed rule change, if a block trade were a spread or a combination, the seller of the month closest to expiration would be required to report the entire transaction. For example, if the block were comprised of 250 Sep'03 Microsoft contracts and 250 Dec'03 Microsoft contracts, then the seller of the Sep'03 Microsoft contracts would report the entire block transaction to OOM, both the Sep'03 Microsoft contracts and the Dec'03 Microsoft contracts. In addition, the proposed rule change clarifies that the total quantity of the legs of a spread or combination must meet the 500 minimum contracts requirement.

Furthermore, the proposed rule change would add a new provision regarding pre-execution discussions. This provision would explicitly permit OneChicago members and access persons[4] to engage in pre-execution discussions pursuant to which one party may agree in advance to take the opposite side of the other party's order if the following conditions are met:

1. Customers of each party must consent to allow pre-execution discussions with other market participants;
2. Any OneChicago member or access person who is solicited to participate in a OneChicago transaction through pre-execution discussions shall not: (i) Disclose to any other party the details of such discussions or (ii) enter an order or quote through the Exchange to take advantage of information conveyed during such discussions, unless such member or access person has agreed during the pre-execution discussions to participate in the transaction in accordance with this policy, and the order or quote is entered to implement that agreement; and
3. Except for block trades conducted pursuant to OneChicago Rule 417 and exchange of future for physical transactions conducted pursuant to OneChicago Rule 416, a period of four seconds must elapse between entering the first order or quote and entering the second order for the opposite side. The order or quote initially entered may be filled or lifted by a third party during the four-second waiting period rather than consummating the transaction with the intended party as contemplated by the pre-execution discussion.

The proposed rule change would also amend the provision relating to cross trades to clarify that if a member is taking the other side of its customer's order, the customer side of the order must be entered into the OneChicago trading system for at least four seconds before the member may take the opposite side.

2. Statutory Basis

OneChicago believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[5] in that it is reasonably designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade. The proposed rule change is also designed to protect investors and the public interest by requiring certain conditions to be met in order for a member or access person to enter into pre-execution discussions with other market participants. The proposed cross trade amendments are also designed to protect investors and the public interest by requiring that the customer side of a cross trade be entered into OneChicago's trading system for at least four seconds before members may take the other side of the customer's order.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

OneChicago does not believe that the proposed rule change will have a negative impact on competition.

*C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Comments on OneChicago's proposed rule change have not been solicited, and none have been received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective on September 12, 2003. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[6]

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings also will be available for inspection and copying at the principal office of OneChicago. All submissions should refer to File No. SR–OC–2003–07 and should be submitted by October 31, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–25794 Filed 10–9–03; 8:45 am]

**BILLING CODE 8010–01–P**

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## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3546]**

### Commonwealth of Virginia (Amendment #3)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective October 1, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on September 18, 2003 and continuing through October 1, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is

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[4] Under OneChicago Rule 101, an access person means any person, other than a clearing member or Exchange member or related party of either, who has been given access to the OneChicago System through a OneChicago workstation by a clearing member.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(1).

[7] 17 CFR 200.30–3(a)(75).

November 17, 2003, and for economic injury the deadline is June 18, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 6, 2003.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 03–25756 Filed 10–9–03; 8:45 am]

**BILLING CODE 8025–01–P**

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## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #P017]**

### State of West Virginia (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective September 30, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on September 18, 2003 and continuing through September 30, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 24, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59008)

Dated: October 6, 2003.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 03–25757 Filed 10–9–03; 8:45 am]

**BILLING CODE 8025–01–P**

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## SMALL BUSINESS ADMINISTRATION

### Public Federal Regulatory Enforcement Fairness Hearing; Small Business Administration Region III Regulatory Fairness Board

The Small Business Administration Region III Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Hearing on Tuesday, October 28, 2003 at 1:00 p.m. at Delaware Biotech Institute (Delaware Technology Park), 15 Innovation Way, Newark, DE 19711, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by federal agencies.

Anyone wishing to attend or to make a presentation must contact Jayne E. Armstrong in writing or by fax, in order to be put on the agenda. Jayne E. Armstrong, District Director, Delaware District Office, 824 North Market Street, Suite 610, Wilmington, DE 19801, phone (302) 573–6382, fax (303) 573–6060, e-mail: *jayne.armstrong@sba.gov*.

For more information, see our Web site at *http://www.sba.gov/ombudsman*.

Dated: October 7, 2003.

**Peter Sorum,**

*National Ombudsman (Acting).*

[FR Doc. 03–25755 Filed 10–9–03; 8:45 am]

**BILLING CODE 8025–01–P**

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## DEPARTMENT OF STATE

**[Public Notice 4512]**

### Amendment of Certain Designations Pursuant to Section 1(b) of Executive Order 13224

Acting under the authority of section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13286 of July 2, 2002, and Executive Order 13284 of January 23, 2003, and in consultation with the Secretary of the Treasury, the Attorney General, and the Secretary of Homeland Security, I hereby determine that the organizations listed below use or have used as aliases the additional names indicated below. I hereby amend the designations of these organizations to add the following names as aliases:

Basque Fatherland and Liberty (designated on October 31, 2001)
a.k.a. Ekin
a.k.a. K.A.S.
a.k.a. Xaki
a.k.a. Jarrai-Haika-Segi
a.k.a. Askatasuna
Harakat ul-Mujahideen (designated on September 23, 2001)
a.k.a. Jamiat ul-Ansar
Kahane Chai (designated on October 31, 2001)
a.k.a. New Kach Movement
a.k.a. newkach.org
a.k.a. Kahane
a.k.a. Yeshivat HaRav Meir
a.k.a. the International Kahane Movement
a.k.a. Kahane.org
a.k.a. Kahane.net
a.k.a. Kahanetzadak.com
a.k.a. Kahane Tzadak
a.k.a. the Hatikva Jewish Identity Center
a.k.a. the Rabbi Meir David Kahane Memorial Fund
a.k.a. Friends of the Jewish Idea Yeshiva
a.k.a. Judean Congress
a.k.a. Jewish Legion
a.k.a. The Voice of Judea
a.k.a. No'ar Meir
a.k.a. Meir's Youth
a.k.a. American Friends of Yeshivat Rav Meir
a.k.a. American Friends of the United Yeshiva Movement
a.k.a. The Committee Against Racism and Discrimination (CARD)
Mujahedin-e Khalq (designated on October 31, 2001)
a.k.a. Muslim Iranian Student's Society
Popular Front for the Liberation of Palestine (designated on October 31, 2001)
a.k.a. Martyr Abu-Ali Mustafa Battalion
Al Qaida/Islamic Army (designated on September 23, 2001)
a.k.a. Egyptian Islamic Jihad
a.k.a. al-Jihad
a.k.a. the Jihad Group
a.k.a. Egyptian al-Jihad
a.k.a. New Jihad
Revolutionary Nuclei (designated on October 31, 2001)
a.k.a. Epanastatiki Pirines

Consistent with the determination in section 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously," I determine that no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: October 7, 2003.

**Colin L. Powell,**

*Secretary of State, Department of State.*

[FR Doc. 03–25889 Filed 10–9–03; 8:45 am]

**BILLING CODE 4710–10–P**

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## DEPARTMENT OF STATE

**[Public Notice 4511]**

### Amendment of Certain Designations Pursuant to Section 1(a)(ii)(A) of Executive Order 12947

Acting under the authority of section 1(a)(ii)(A) of Executive Order 12947 of January 23, 1995, as amended by Executive Order 13099 of August 20, 1998, and in consultation with the Secretary of the Treasury and the Attorney General, I hereby determine that the organizations listed below use or have used as aliases the additional names indicated below. I hereby amend the designations of these organizations to add the following names as aliases:

Kahane Chai (designated on January 23, 1995)
Also known as Kach
Also known as Kahane Lives

Also known as the Kfar Tapuah Fund
Also known as The Judean Voice
Also known as The Judean Legion
Also known as The Way of the Torah
Also known as The Yeshiva of the Jewish Idea
Also known as the Repression of Traitors
Also known as Dikuy Bogdim
Also known as DOV
Also known as the State of Judea
Also known as the Committee for the Safety of the Roads
Also known as the Sword of David
Also known as Judea Police
Also known as Forefront of the Idea
Also known as The Qomemiyut Movement
Also known as KOACH
Also known as New Kach Movement
Also known as newkach.org
Also known as Kahane
Also known as Yeshivat HaRav Meir
Also known as the International Kahane Movement
Also known as Kahane.org
Also known as Kahane.net
Also known as Kahanetzadak.com
Also known as Kahane Tzadak
Also known as the Hatikva Jewish Identity Center
Also known as the Rabbi Meir David Kahane Memorial Fund
Also known as Friends of the Jewish Idea Yeshiva
Also known as Judean Congress
Also known as Jewish Legion
Also known as The Voice of Judea
Also known as No'ar Meir
Also known as Meir's Youth
Also known as American Friends of Yeshivat Rav Meir
Also known as American Friends of the United Yeshiva Movement
Also known as The Committee Against Racism and Discrimination (CARD)
Popular Front for the Liberation of Palestine (designated on January 23, 1995)
Also known as the Red Eagles
Also known as the Red Eagle Group
Also known as the Red Eagle Gang
Also known as the Halhul Gang
Also known as the Halhul Squad
Also known as Palestinian Popular Resistance Forces
Also known as PPRF
Also known as Martyr Abu-Ali Mustafa Battalion
Islamic Army (designated on August 20, 1998)
Also known as al Qaeda
Also known as "the Base"
Also known as the Usama Bin Laden Network
Also known as the Usama Bin Laden Organization
Also known as Egyptian Islamic Jihad
Also known as al-Jihad
Also known as the Jihad Group
Also known as Egyptian al-Jihad
Also known as New Jihad

I determine that no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: October 7, 2003.

**Colin L. Powell,**

*Secretary of State, Department of State.*

[FR Doc. 03–25888 Filed 10–9–03; 8:45 am]

**BILLING CODE 4710–10–P**

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## DEPARTMENT OF STATE

**[Public Notice 4509]**

## Bureau of Educational and Cultural Affairs Request for Grant Proposals: Partnerships for Learning Undergraduate Studies Program

**ACTION:** Notice.

**SUMMARY:** The Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs announces an open competition for Partnerships for Learning Undergraduate Studies (PLUS) Program. Public and private non-profit organizations with at least four years of experience in conducting international exchange programs and meeting the provisions described in Internal Revenue Code section 26 USC 501(c)(3) may submit proposals to provide administrative and program support services for the PLUS Scholarship Program.

### Program Information

*Overview:* Under the Partnerships for Learning Initiative, the Bureau created the Partnerships for Learning Undergraduate Studies (PLUS) Program in order to reach a broader sector of college-age youth (generally, 17–22 years of age) from diverse backgrounds and provide them with a greater understanding of U.S. institutions, society and culture. The goal of the PLUS Program is to identify and support undergraduate level study at accredited higher education institutions in the United States for a select cadre of academically talented undergraduate students from the Middle East and North Africa who exhibit leadership potential in contributing to the economic, political and social development of the region. PLUS scholarships are offered for the final two years of undergraduate level study in the social sciences and humanities, with the provision of pre-academic training to develop participant academic readiness and English-language abilities. (The pre-academic training program is detailed under a separate Request for Grant Proposals solicitation.) The program participants should be placed in clusters. In general five to ten participants may be placed in a single institution. In negotiation with the host institution, the cooperating agency needs to develop opportunities for students to receive a U.S. degree upon successful completion of the course of work and other requirements.

The Bureau's Office of Academic Exchange Programs administers the PLUS Program and is responsible for allocation of funding, policy guidance and administrative oversight. Program participants are recruited, screened and nominated by America-Mideast Educational and Training Services (Amideast) and/or Public Affairs Sections of the U.S. Embassies or Fulbright Commissions in the region. Final selection of grantees is determined by an independent review panel in Washington, DC.

The successful applicant will have responsibility for program administration, which involves performance of services in the following broad categories: Program Planning and Management; Placement; Supervision and Support Services; Special Programs Management; Fiscal Management; and Program Projection, Reporting, Alumni Follow-on and Evaluation Services.

*Guidelines:* Program administration activities should cover the time period January 15, 2004 through August 30, 2006. The expected grantee caseload is projected to be 75–100 principal candidates for academic years 2004–2005 and 2005–2006. Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

### Budget Guidelines

The Bureau anticipates awarding one grant in the amount up to $3,650,000 to support program and administrative costs required to implement this phase of the PLUS Program. Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost-sharing and funding in support of its programs.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

*Announcement Title and Number:* All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/E/NEA–SA–04–PLUS.

**FOR FURTHER INFORMATION CONTACT:** The Office of Academic Exchanges, ECA/A/E/NEA–SA, Room 212, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone (202) 619–6863, fax (202) 205–2466, or Internet address *aarmitag@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Alice Armitage on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

### To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

### New OMB Requirement

An OMB policy directive published in the **Federal Register** on Friday, June 27, 2003, requires that all organizations applying for Federal grants or cooperative agreements must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for all Federal grants or cooperative agreements on or after October 1, 2003. The complete OMB policy directive can be referenced at *http://www.whitehouse.gov/omb/fedreg/062703_grant_identifier.pdf.* Please also visit the ECA Web site at *http://exchanges.state.gov/education/rfgps/menu.htm* for additional information on how to comply with this new directive.

### Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Friday, November 14, 2003. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and seven copies of the application should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/NEA–SA–04–PLUS, Program Management, ECA/EX/PM, SA–44, Room 534, 301 4th Street, SW., Washington, DC 20547.

Please note that proposals must be sent by U.S. mail or other recognized national delivery services that utilize a shipping identification and tracking process and whose delivery people are identifiable by commonly recognized uniforms and delivery vehicles. If applicants wish to send staff to hand-carry proposals, they must contact the ECA program officer, Alice Armitage at 202–619–6863 to set up an appointment for delivery prior to 5 p.m. November 14.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will transmit these files electronically to the Public Affairs section at the U.S. Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

### Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

### Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and Selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. The Grantee will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD — SA–44, Room 734, 301 4th Street, SW., Washington,DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

### Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with the Bureau's Grants Officer.

### Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Development and Management:* Proposals should exhibit originality, substance, precision, innovation, and relevance to the Bureau's mission.
2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.
3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.
4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration and program content.
5. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.
6. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.
7. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.
8. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.
9. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.
10. *Value to U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by the U.S. Department of State's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

### Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

### Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

### Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: October 6, 2003.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 03–25783 Filed 10–9–03; 8:45 am]

BILLING CODE 4710–05–P

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## DEPARTMENT OF STATE

**[Public Notice 4510]**

## Bureau of Educational and Cultural Affairs Request for Grant Proposals: Pre-Academic English Language Training and Academic Readiness Phase of the Partnership for Learning Undergraduate Studies PLUS Program

**ACTION:** Notice.

**SUMMARY:** The Office of English Language Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the Pre-Academic English Language Training and Academic Readiness phase of the ECA Partnership for Learning Undergraduate Studies (PLUS) Program. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to provide administrative and program support services for placing between 75 and 100 undergraduate students from the Middle East and North Africa in groups of no more than 14 students in appropriate United States Intensive English Programs (IEPs). These IEPs should be associated with U.S. colleges and universities offering a pre-academic program of intensive English language instruction, academic readiness, and acculturation to life and study in the United States. It is anticipated that most of the students will begin their pre-academic programs in January 2004 or the spring semester of the institution's academic calendar.

### Program Information

*Overview:* The Partnership for Learning Undergraduate Studies (PLUS) Program of the ECA Partnership for Learning Initiative seeks to reach a broad sector of college-age youth (17–22) from diverse backgrounds, provide them with a greater understanding of U.S. institutions, society and culture, and build leadership for the region through education.

The goal of the PLUS scholarship program is to identify and support undergraduate level study at accredited higher education institutions in the United States for a select cadre of academically talented undergraduate students from the Middle East and North Africa who exhibit leadership potential in contributing to the economic, political, and social development of the region.

PLUS scholarships are offered for the final two years of undergraduate level study leading to a bachelor's degree in the social sciences and humanities. When necessary, the program will also provide up to eight months of pre-academic training to develop English language proficiency and participant academic readiness. The two-year Partnership for Learning Undergraduate Studies (PLUS) Program has been announced under a separate Request for Grant Proposals.

Program participants will be recruited, screened and nominated by America-Mideast Educational and Training Services (AMIDEAST) in conjunction with Public Affairs Sections of the U.S. Embassies and/or Fulbright Commissions in the region. An independent review panel in Washington, DC, will determine final selection of scholarship grantees. Participants will be placed in pre-academic programs as determined necessary in the selection process.

The Bureau's Office of English Language Programs administers this first phase of the PLUS Scholarship Program, and is responsible for allocation of funding, policy guidance and administrative oversight.

The cooperating agency will have responsibility for program administration, which involves performance of services in the following broad categories: Program Planning and Management; Placement; Supervision and Support Services; Fiscal Management; and Reporting and Evaluation Services.

*Guidelines:* It is anticipated that program administration activities will cover the time period December 15, 2003, through August 30, 2004. The expected cooperating agency caseload is projected to be between 75 and 100 candidates for spring 2004 and summer 2004 pre-academic programs. The cooperating agency will be responsible for the following:

(1) Identify up to 10 U.S. institutions of higher education which have Intensive English Programs that also provide activities for acculturation to life and study in the U.S. These institutions should be geographically widespread and represent the diversity of higher education in the U.S. The cooperating agency should work with the Bureau in the final selection process of these institutions.

(2) Negotiate placement into the program for the candidates and arrange scholarships or reductions of tuition or other fees when possible to leverage U.S. government funds and increase the number of participants. Negotiate on-campus housing to include, whenever possible, English-speaking roommate(s), meal plans, types and costs. Assess the availability and nature of acculturation programs including possible home hospitality or weekend and holiday visits with American families.

(3) In conjunction with the U.S. Embassy, arrange travel for the candidates from their home countries to the location of the U.S. institution in accordance with the "Fly-America Act." ECA intends to issue the necessary DS–2019 forms and work with the U.S. embassies to secure visas for the candidates.

(4) Transfer grant funds to the respective host institutions for the students' tuition, accommodations, food, and incidentals.

(5) Enroll candidates in the Bureau's Health and Accident Insurance Program (ASPE).

(6) Monitor program and participants.

(7) Track, audit, and disburse PLUS Scholarship Program Funds.

## Budget Guidelines

The Bureau anticipates awarding one grant, in an amount up to $1,150,000 to support program and administrative costs required to implement phase one of the PLUS Program. Bureau grant guidelines require that organizations with fewer than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. As it is expected that the budget for this program will exceed $60,000, organizations that cannot demonstrate at least four years experience will not be eligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost-sharing and funding in management of programs.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Allowable costs for the program include the following:

(1) Per participant: Expenses for a spring semester and full summer sessions as deemed necessary by the selection process including:

i. tuition and fees,

ii. books and educational materials,

iii. on-campus housing with English-speaking roommate(s),

iv. access to a comprehensive meal plan,

v. maintenance allowance,

vi. extra curricular acculturation programs. It is anticipated that total expenses will range from $12,500 to $16,000 per participant, depending on the institution and the amount of cost sharing negotiated.

(2) Round Trip Air Travel from home country to site of U.S. institution.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

*Announcement Title and Number:* All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/L–04–02.

**FOR FURTHER INFORMATION CONTACT:** The Office of English Language Programs, ECA/A/L, Room 304, U.S. Department of State, SA–44, 301 4th Street, SW, Washington, DC 20547; Phone: (202) 619–5886; Fax: (202) 401–1250; E-mail: *kmjenson@pd.state.gov*; or Internet address: *http://exchanges.state.gov/education/RFGPs* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Kenneth M. Jenson for all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

## To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

## New OMB Requirement

An OMB policy directive published in the **Federal Register** on Friday, June 27, 2003, requires that all organizations applying for Federal grants or cooperating agreements must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for all Federal grants or cooperating agreements on or after October 1, 2003. The complete OMB policy directive can be referenced at *http://www.whitehouse.gov/omb/fedreg/062703_grant_identifier.pdf.*

Please also visit the ECA Web site at *http://exchanges.state.gov/education/rfgps/menu.htm* for additional information on how to comply with this new directive.

## Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Monday, November 10, 2003. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and seven copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/L–04–02, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW, Washington, DC 20547.

### Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

### Adherence to All Regulations Governing the J Visa

Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information. The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

### Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperating agreements resides with the Bureau's Grants Officer.

### Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Development and Management:* Proposals should exhibit precision and relevance to the Bureau's mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate the cooperating agency's logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

5. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

6. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

8. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

9. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

### Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through ECA's Exchanges Appropriation.

### Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

### Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: October 6, 2003.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 03–25784 Filed 10–9–03; 8:45 am]

BILLING CODE 4710–05–P

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## DEPARTMENT OF STATE

**[Public Notice 4486]**

### Bureau of Economic and Business Affairs; Advisory Committee on International Communications and Information Policy Meeting Notice

The Department of State announces that the next meeting of its Advisory Committee on International Communications and Information Policy (ACICIP) will be held on October 29, 2003 from 10 a.m. to 12 p.m. in Room 1107 of the Harry S. Truman Building of the U.S. Department of State. The Truman Building is located at 2201 C Street, NW., Washington, DC 20520.

The Committee provides a formal channel for the regular consultation and coordination on major economic, social, and legal issues and problems in international communications and information policy.

Ambassador David A. Gross, U.S. Coordinator for International Communications and Information Policy, will attend the meeting along with others from the Office of International Communications and Information Policy at the Department of State. Items on the agenda will include communications policy issues, future directions of the Committee's work, discussion regarding countries of particular interest to the ACICIP, preparations for the World Summit on the Information Society, and consultation regarding the most important emerging technologies.

Members of the public may attend the meeting up to the seating capacity of the room. While the meeting is open to the public, admittance to the Department of State building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, those interested in attending must provide name, title, affiliation, social security number, date of birth and citizenship to John Finn at *finnjw@state.gov* no later than 5 p.m. on Monday, October 27. All attendees must enter by the 23rd Street Entrance. One of the following valid ID's will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. government agency ID. For security reasons, all non-U.S. government attendees must be escorted by Department of State personnel at all times when in the building.

For further information please contact John Finn, Executive Secretary of the Committee at (202) 647–5306 or at *finnjw@state.gov.*

Dated: October 3, 2003.

**John W. Finn,**

*Executive Secretary, Advisory Committee on International Communications and Information Policy, Department of State.*

[FR Doc. 03–25781 Filed 10–9–03; 8:45 am]

BILLING CODE 4710–07–P

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## DEPARTMENT OF STATE

**[Public Notice 4485]**

### Advisory Panel to the United States Section of the North Pacific Anadromous Fish Commission; Notice of a Closed Meeting

The Advisory Panel to the United States Section of the North Pacific Anadromous Fish Commission will meet on October 26, 2003, at the Hawaii Convention Center in Honolulu, Hawaii. This session will involve discussion of the Eleventh Annual Meeting of the North Pacific Anadromous Fish Commission, to be held on October 26–31, 2003, in Honolulu, Hawaii. The discussion will begin at 8 a.m. and is closed to the public.

The members of the Advisory Panel will examine various options for the U.S. position at the Eleventh Annual Meeting. These considerations must necessarily involve review of sensitive matters, the premature disclosure of which would be likely to significantly frustrate implementation of proposed State Department action and U.S. participation at the Annual Meeting. Accordingly, the determination has been made to close the 8:00 a.m. meeting pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552(c)(9).

Requests for further information on the meeting should be directed to Dr. Dorothy Zbicz, Office of Marine Conservation (OES/OMC), Room 5806, U.S. Department of State, Washington, DC 20520–7818. Dr. Zbicz can be reached by telephone on (202) 647–3073 or by FAX (202) 736–7350.

**David A. Balton,**

*Deputy Assistant Secretary for Oceans and Fisheries, Department of State.*

[FR Doc. 03–25887 Filed 10–9–03; 8:45 am]

BILLING CODE 4710–09–P

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[Docket No. OST–2003–15623]**

### Notice of Request for Renewal of a Previously Approved Collection

**AGENCY:** Office of the Secretary (OST), DOT.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for renewal and comment. The ICR describes the nature of the information collection and its expected cost and burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on July 16, 2003 (FR Vol 68, No. 136, page 42159). No comments were received.

**DATES:** Comments on this notice must be received by November 10, 2003.

**ADDRESSES:** You may submit comments identified by DOT DMS Docket Number OST–2003–15623 by the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400

Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.

- *Hand Delivery:* Room PL–401 on Plaza Level of the Nassif Building, 400 Seventh Street, SW., Washington DC, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notes.

*Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Delores King, Air Carrier Fitness Division (X–56), Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2343.

**SUPPLEMENTARY INFORMATION:**

*Title:* Use and Change of Names of Air Carriers, Foreign Air Charters, and Commuter. Air Carriers, 14 CFR Part 215.

*OMB Control Number:* 2106–0043.

*Affected Public:* Persons seeking to use or change the name or trade name in which they hold themselves out to the public as an air carrier or foreign air carrier.

*Annual Estimated Burden:* 69 hours.

*Abstract:* In accordance with the procedures set forth in 14 CFR part 215, before a holder of certificated, foreign, or commuter air carrier authority may hold itself out to the public in any particular name or trade name, it must register that name or trade name with the Department, and notify all other certificated, foreign, and commuter air carriers that have registered the same or similar name(s) of the intended name registration.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval.

Issued in Washington, DC on October 3, 2003.

**Michael Robinson,**

*Information Technology Program Management, Department of Transportation.*

[FR Doc. 03–25655 Filed 10–9–03; 8:45 am]

**BILLING CODE 4910–62–P**

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[Docket No. OST–2003–15660]**

### Notice of Request for Renewal of a Previously Approved Collection

**AGENCY:** Office of the Secretary (OST), DOT.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for renewal and comment. The ICR describes the nature of the information collection and its expected cost and burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on July 21, 2003 (FR Vol 68, No. 139, page 43,250). No comments were received.

**DATES:** Comments on this notice must be received by November 10, 2003.

**ADDRESSES:** You may submit comments identified by DOT DMS Docket Number OST 2003–15660 by the following methods:

- *Web Site: http://dms.dot.gov.* Follow the instruction for submitting comments on the DOT electronic docket site.
- Fax 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–40, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401, on Plaza Level of the Nassif Building, 400 Seventh Street, SW., Washington DC, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notes.

*Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Luther Dietrich, Office of the Secretary, Office of Aviation Analysis, X–53, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1046.

**SUPPLEMENTARY INFORMATION:**

*Title:* Air Carrier's Claim for Subsidy and Air Carrier's Report of Departures Flown in Scheduled Service.

*OMB Control Number:* 2106–0044.

*Affected Public:* Small air carriers selected by the Department in docketed cases to provide subsidized essential air service.

*Annual Estimated Burden:* 4,176 hours.

*Abstract:* In 14 CFR part 271 of its Aviation Economic Regulations, the Department provided that subsidy to air carriers for providing essential air service will be paid to the carriers monthly, and that payments will vary according to the actual amount of service performed during the month. The reports of subsidized air carriers of essential air service performed on the Department's Forms 397, "Air Carrier's Report of Departures Flown in Scheduled Service" and 398, "Air Carrier's Claim for Subsidy," establish the fundamental basis for paying these air carriers on a timely basis. Typically, subsidized air carriers are small businesses and operate only aircraft of limited size over a limited geographical area. The collection permits subsidized air carriers to submit their monthly claims in a concise, orderly, easy-to-process form, without having to devise their own means of submitting support for these claims.

The collection involved here requests only information concerning the subsidy-eligible flights (which generally constitute only a small percentage of the carriers' total operations) of a small number of air carriers. The collection permits the Department to timely pay air carriers for providing essential air service to certain eligible communities that would not otherwise receive scheduled passenger air service.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper functioning of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC, on October 3, 2003.

**Michael Robinson,**

*Information Technology Program Management, Department of Transportation.*

[FR Doc. 03–25656 Filed 10–9–03; 8:45 am]

**BILLING CODE 4910–62–P**

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## DEPARTMENT OF TRANSPORTATION

## Office of the Secretary

### Aviation Proceedings, Agreements Filed the Week Ending September 26, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* OST–2003–16235.

*Date Filed:* September 25, 2003.

*Parties:* Members of the International Air Transport Association.

*Subject:*

Mail Vote 326,

Mail Vote 329,

PTC123 0255 dated 19 September 2003,

PTC123 0258 dated 19 September 2003 r1–r24,

Minutes: PTC123 0260 dated 26 September 2003,

Tables: PTC123 Fares 0103 dated 26 September 2003,

PTC123 Fares 0104 dated 26 September 2003,

Intended effective date: 1 April 2004.

*Docket Number:* OST–2003–16236.

*Date Filed:* September 25, 2003.

*Parties:* Members of the International Air Transport Association.

*Subject:*

Mail Votes 332 and 333,

PTC23 AFR–TC3 0212 dated 30 September 2003 r1–r40,

Intended effective date: 1 April 2004.

*Docket Number:* OST–2003–16237.

*Date Filed:* September 25, 2003.

*Parties:* Members of the International Air Transport Association.

*Subject:*

Mail Vote 334,

PTC COMP 1094 dated 26 September 2003,

General Increase Resolution 002mm (except within Europe, between USA/US Territories and Austria, Chile, Czech Republic, Finland, France (including French Guiana, French Polynesia, Guadeloupe, Martinique, New Caledonia, Reunion, Saint Pierre and Miquelon), Germany, Iceland, Italy, Korea (Rep. of), Malaysia, Netherlands, New Zealand, Panama, Scandinavia, Switzerland),

Intended effective date: 15 October 2003.

*Docket Number:* OST–2003–16244.

*Date Filed:* September 26, 2003.

*Parties:* Members of the International Air Transport Association.

*Subject:*

Mail Vote 327,

Mail Vote 328,

PTC123 0256 dated 19 September 2003,

PTC123 0257 dated 19 September 2003 r1–r14,

Minutes: PTC123 0260 dated 26 September 2003,

Tables: PTC123 Fares 0101 dated 26 September 2003,

PTC123 Fares 0102 dated 26 September 2003,

Intended effective date: 1 March 2004.

**Andrea M. Jenkins,**

*Program Manager, Docket Operations, Federal Register Liaison.*

[FR Doc. 03–25657 Filed 10–9–03; 8:45 am]

**BILLING CODE 4910–62–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### Advisory Circular 39–8, Continued Airworthiness Assessments of Powerplant and Auxiliary Power Unit Installations on Transport Category Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of issuance of advisory circular.

**SUMMARY:** This notice announces the issuance of advisory circular (AC) 39–8, Continued Airworthiness Assessments of Powerplant and Auxiliary Power Unit Installations on Transport Category Airplanes. This AC describes the Continued Airworthiness Assessment Methodologies (CAAM). The Federal Aviation Administration (FAA) Engine and Propeller Directorate (EPD) and the Transport Airplane Directorate (TAD) may use CAAM to identify unsafe conditions and determine when an "unsafe condition is likely to exist or develop in other products of the same type design" before prescribing corrective action in accordance with Title 14 of the Code of Federal Regulations (14 CFR) part 39. CAAM is used for products associated with the Powerplant or Auxiliary Power Unit (APU) Installations on Transport Category Airplanes.

**DATES:** The Director, Aircraft Certification Service, issued AC 39–8 on September 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ann Azevedo, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone: (781) 238–7117; fax: (781) 238–7199; e-mail: *ann.azevedo@faa.gov*. The subject AC is available on the Internet at the following address: *www.airweb.faa.gov/rgl*.

**SUPPLEMENTARY INFORMATION:** The FAA published a notice in the **Federal Register** on May 15, 2000 (65 FR 31051), and again on October 2, 2002 (67 FR 61947), to announce the availability of the proposed AC and invite interested parties to comment.

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704)

Issued in Washington, DC, on September 30, 2003.

**John J. Hickey,**

*Director, Aircraft Certification Service.*

[FR Doc. 03–25749 Filed 10–9–03; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Request To Release Airport Property at the Pueblo Memorial Airport, Pueblo, CO

**AGENCY:** Federal Aviation Administration (FAA), DOT

**ACTION:** Notice of request to release airport property.

**SUMMARY:** The FAA proposes to rule and invite public comment on the release of land at the Pueblo Memorial Airport under the provisions of section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

**DATES:** Comments must be received on or before October 31, 2003.

**ADDRESSES:** Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Craig Sparks, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado 80249.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John O'Neal, Director of Aviation, Pueblo Memorial Airport, 31201 Bryan Circle Pueblo, Colorado, 81001.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cynthia Nelson, Project Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado 80249.

The request to release property may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA invites public comment on the request to release property at the Pueblo Memorial Airport under the provisions of the AIR 21.

On September 19, 2003, the FAA determined that the request to release property at the Pueblo Memorial Airport submitted by the City of Pueblo met the procedural requirements of the Federal Aviation Regulations, part 155. The FAA may approve the request, in whole or in part, no later than November 21, 2003.

*The following is a brief overview of the request:* The Pueblo Memorial Airport requests the release of 34.07 acres of non-aeronautical airport property to the City of Pueblo, Colorado. The purpose of this release is to allow the City of Pueblo to sell the subject land that was conveyed to the City by the United States acting through the War Assets Administration by Quit Claim Deed dated July 20, 1948. The sale of the parcel will provide funds for airport improvements.

Any person may inspect the request by appointment at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, inspect the application, notice and other documents germane to the application in person at Pueblo Memorial Airport 31201 Bryan Circle, Pueblo, CO 81001.

Issued in Denver, Colorado on September 19, 2003.

**Craig Sparks,**

*Manager, Denver Airports District Office.*

[FR Doc. 03–25750 Filed 10–9–03; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–468 (Sub–No. 6X)]**

### Paducah & Louisville Railway, Inc.—Abandonment Exemption—in Hopkins County, KY

Paducah & Louisville Railway, Inc. (P&L), has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 4.81-mile line of railroad between milepost J–159.6, near Ilsley, and milepost J–164.41, near Dawson Springs, in Hopkins County, KY. The line traverses United States Postal Service Zip Code 42408.

P&L has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 12, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 20, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 30, 2003, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to P&L's representative: William A. Mullins, Baker & Miller, PLLC, 915 Fifteenth St. NW., Suite 1000, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

P&L has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by October 17, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), P&L shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by

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[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

P&L's filing of a notice of consummation by October 10, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: October 3, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 03–25610 Filed 10–9–03; 8:45 am]

**BILLING CODE 4915–00–P**

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–33 (Sub-No. 203X)]**

### Union Pacific Railroad Company—Abandonment Exemption—in Harris County, TX

On September 23, 2003, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon the remaining portion of the Columbia Tap Industrial Lead, extending from milepost .064 near Walker and Palmer Streets to milepost 1.54 near Trulley and Velasco Streets in Houston, Harris County, TX, a distance of .90 miles. The line traverses U.S. Postal Service Zip Code 77003 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 9, 2004.

Any offer of financial assistance under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than October 30, 2003. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 203X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Mack H. Shumate, Jr., 101 North Wacker Drive, Room 1920, Chicago, IL 60606. Replies to the UP petition are due on or before October 30, 2003.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: October 3, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 03–25611 Filed 10–9–03; 8:45 am]

**BILLING CODE 4915–00–P**

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–33 (Sub–No. 157X)]**

### Union Pacific Railroad Company—Discontinuance of Trackage Rights Exemption—in Monterey County, CA

Union Pacific Railroad Company (UP) has filed a verified notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to discontinue trackage rights over a 13.1-mile line of railroad (the Seaside Industrial Lead) owned by the Transportation Agency for Monterey County (TAMC)[1] extending from milepost 110.2 near Castroville, CA, to the end of the line at milepost 123.3, near Seaside, CA, in Monterey County, CA.[2] The line traverses United States Postal Service ZIP Codes 95012 and 93955.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1152.50(d)(1) (notice to governmental agencies), and 49 CFR 1105.12 (newspaper publication) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 11, 2003, unless stayed pending reconsideration.[3] Petitions to stay and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] must be filed by October 20, 2003. Petitions to reopen[5] must be filed by October 30, 2003, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

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[1] *See Transportation Agency for Monterey County-Acquisition Exemption-Line of Union Pacific Railroad Company*, STB Finance Docket No. 34405 (STB served and published Oct. 3, 2003).

[2] According to UP, the line has been sold to TAMC effective September 12, 2003. UP states that, in accordance with the terms of the sale, UP reserved trackage rights for freight operations over the line. UP states that it no longer has any need to maintain the reserved trackage rights for freight operations and therefore is proposing discontinuance of those rights. While the terms of the September 12 sale are not altogether clear from the filings made by the parties to that sale in either the present proceeding or in STB Finance Docket No. 34405, the fact that UP has couched its proposal as a discontinuance and not an abandonment would indicate that UP takes the position that a freight common carrier obligation was conveyed to TAMC as part of the September 12 sale.

[3] UP stated in its notice that the proposed discontinuance would be consummated on or after November 7, 2003 (which it projected to be 50 days after the notice was filed). Because UP's notice was not filed until September 22, 2003, the exemption is not due to take effect until November 11, 2003.

A copy of any petition filed with the Board should be sent to UP's representative: Mack H. Shumate, Jr., Senior General Attorney, 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on the Board's Web site at *www.stb.dot.gov.*

Decided: October 6, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 03–25786 Filed 10–9–03; 8:45 am]

BILLING CODE 4915–00–P

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[4] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

[5] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise no environmental or historic reporting requirements are required here under 49 CFR 1105.6(c), and 1105.8(b), respectively. However, UP submitted an environmental report with its notice.

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–307 (Sub-No. 4X)]**

### Wyoming and Colorado Railroad Company, Inc.—Abandonment Exemption—in Albany County, WY

Wyoming and Colorado Railroad Company, Inc. (WYCO) has filed a verified notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 1.12-mile line of railroad extending from milepost 0.19 to milepost 1.31 in the City of Laramie, Albany County, WY. The line traverses United States Postal Service Zip Code 82070.

WYCO has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 12, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 20, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 30, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to WYCO's representative: Karl Morell, Ball Janik LLP, 1455 F St., NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

WYCO has filed an environmental report which addresses the abandonment's effects, if any, on the environment or historic resources. SEA will issue an environmental assessment (EA) by October 17, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), WYCO shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by WYCO's filing of a notice of consummation by October 10, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: October 3, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 03–25609 Filed 10–9–03; 8:45 am]

BILLING CODE 4915–00–P

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[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

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## DEPARTMENT OF TRANSPORTATION

### Bureau of Transportation Statistics

### Advisory Council on Transportation Statistics; Notice of Meeting

**AGENCY:** Bureau of Transportation Statistics (BTS), DOT.

**ACTION:** Notice.

This notice announces, pursuant to Section 10(A)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 72–363; 5 U.S.C. app. 2), a meeting of the BTS Advisory Council on Transportation Statistics (ACTS). The meeting will be held on October 27, 2003, from 10:00 a.m. to 4:00 p.m. The meeting will take place at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington DC, on the 3rd Floor, in Conference Room 3200 of the Nassif Building.

The ACTS, established under Section 6007 of Pub. L. 102–240, Intermodal Surface Transportation Efficiency Act of 1991, December 18, 1991, and chartered on June 19, 1995, was created to advise the Director of BTS on transportation statistics and analyses, including whether or not the statistics and analysis disseminated by the BTS are of high quality and are based upon the best available objective information.

The following is a summary of the meeting's agenda: (1) Opening Remarks; (2) Program Update; (3) Reauthorization

Legislation; (4) Freight Data Program; (5) National Household Travel Survey; (6) Analytical Agenda; (7) General Discussion; and (8) Public Comments and Closing Remarks.

Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify Ms. Phyllis Seville, the Committee Management Officer at (202) 366–9510 prior to October 24, 2003. Individuals attending the meeting must report to the SW Lobby of the Nassif Building for admission to the building. Attendance is open to the public, but limited space is available. With the approval of the Chair, members of the public may present oral statements at the meeting. Non-committee members wishing to present oral statements or obtain information should also contact Ms. Seville.

Questions about the agenda or written comments may be submitted by U.S. Mail to: U.S. Department of Transportation, BTS, Attention: Robert A. Monniere, Room 3103, 400 Seventh St. SW., Washington DC 20590 or faxed to (202) 366–3640. BTS requests that written comments be submitted prior to the meeting.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Seville at (202) 366–9510 at least seven calendar days prior to the meeting.

Notice of this meeting is provided in accordance with the FACA and the General Service Administration regulations (41 C.F.R. Part 102–3) covering management of Federal advisory committees.

Issued in Washington, DC, on October 2, 2003.

**Rick Kowalewski,**

*Deputy Director, Bureau of Transportation Statistics.*

[FR Doc. 03–25658 Filed 10–9–03; 8:45 am]

**BILLING CODE 4910–HY–P**

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## DEPARTMENT OF THE TREASURY

### Departmental Offices; Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to 5 U.S.C. app. 2, section 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, NW., Washington, DC, on October 28, 2003, at 11 a.m. of the following debt management advisory committee: Treasury Borrowing Advisory Committee of The Bond Market Association (“Committee”).

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues, and a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. app. 2 section 10(d) and Public Law 103–202, section 202(c)(1)(B) (31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. app. 2, section 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, section 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 55sb(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. app. 2, section 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions, financing estimates and technical charts. This briefing will give the press an opportunity to ask questions about financing projections and technical charts. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Financial Markets is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Tim Bitsbergerr, Deputy Assistant Secretary, Federal Finance, at (202) 622–2245.

Dated: October 7, 2003.

**Brian C. Roseboro,**

*Assistant Secretary, Financial Markets.*

[FR Doc. 03–25831 Filed 10–9–03; 8:45 am]

**BILLING CODE 4810–25–M**

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## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, within the Department of the Treasury, is soliciting comments concerning the “Inventory-Manufacturer of Tobacco Products.”

**DATES:** Written comments should be received on or before December 9, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Sandra L. Turner, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20220, 202–927–8210.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Sandra L. Turner, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20220; telephone 202–927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Inventory-Manufacturer of Tobacco Products.

*OMB Number:* 1513–0032.

*Form Number:* TTB F 3067 (5210.9).

*Abstract:* TTB F 3067 (5210.9) is used by tobacco product manufacturers to record inventories that are required by law. This form provides a uniform format for recording inventories and establishes tax liability on tobacco products enabling TTB to determine that correct taxes have been or will be paid. The record retention requirement for this information collection is 3 years after the close of the year for which inventories and reports are filed.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 34.

*Estimated Total Annual Burden Hours:* 170.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 30, 2003.

**William H. Foster,**

*Chief, Regulations and Procedures Division.*

[FR Doc. 03–25812 Filed 10–9–03; 8:45 am]

**BILLING CODE 4810–13–P**

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## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, within the Department of the Treasury, is soliciting comments concerning the "Usual and Customary Business Records Relating to Tax-Free Alcohol."

**DATES:** Written comments should be received on or before December 9, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Sandra L. Turner, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20220; telephone 202–927–8210.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Sandra L. Turner, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20220; telephone 202–927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Usual and Customary Business Records Relating to Tax-Free Alcohol TTB REC 5150/3.

*OMB Number:* 1513–0059.

*Recordkeeping Requirement ID Number:* TTB REC 5150/3.

*Abstract:* Tax-free alcohol is used for nonbeverage purposes by educational organizations, hospitals, laboratories, etc. The use of alcohol free of tax is regulated to prevent illegal diversion to taxable beverage use. Records maintain spirits accountability and protect tax revenue and public safety. The record retention requirement for this information collection is 3 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension only.

*Type of Review:* Extension.

*Affected Public:* Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

*Estimated Number of Respondents:* 4,560.

*Estimated Total Annual Burden Hours:* One (1).

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 30, 2003.

**William H. Foster,**

*Chief, Regulations and Procedures Division.*

[FR Doc. 03–25813 Filed 10–9–03; 8:45 am]

**BILLING CODE 4810–13–P**

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## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, within the Department of the Treasury, is soliciting comments concerning the "Letterhead Applications and Notices Relating to Denatured Spirits."

**DATES:** Written comments should be received on or before December 9, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Sandra L. Turner, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20220; telephone 202–927–8210.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Sandra L. Turner, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20220; telephone 202–927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Letterhead Applications and Notices Relating to Denatured Spirits

*OMB Number:* 1513–0061.

*Recordkeeping Requirement ID Number:* TTB REC 5150/2.

*Abstract:* Denatured spirits are used for nonbeverage industrial purposes in the manufacture of personal and household products. Permits and applications control the authorized use and flow. Tax revenue and public safety is protected. The record retention requirement for this information collection is 3 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 3,111.

*Estimated Total Annual Burden Hours:* 1,556.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 30, 2003.

**William H. Foster,**

*Chief, Regulations and Procedures Division.*

[FR Doc. 03–25814 Filed 10–9–03; 8:45 am]

**BILLING CODE 4810–13–P**

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## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, within the Department of the Treasury, is soliciting comments concerning the "Tobacco Products Manufacturers—Records of Operations."

**DATES:** Written comments should be received on or before December 9, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Sandra L. Turner, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20220; telephone 202–927–8210.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Sandra L. Turner, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20220; telephone 202–927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Tobacco Products Manufacturers—Records of Operations.

*OMB Number:* 1513–0068.

*Recordkeeping Requirement ID Number:* TTB REC 5210/1.

*Abstract:* Tobacco manufacturers must maintain a system of records that provide accountability over the tobacco products received and produced. Needed to ensure tobacco transactions to be traced, and ensure that tax liabilities have been totally satisfied. The record retention for this information collection is 3 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 108.

*Estimated Total Annual Burden Hours:* 16,200.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 30, 2003.

**William H. Foster,**

*Chief, Regulations and Procedures Division.*

[FR Doc. 03–25815 Filed 10–9–03; 8:45 am]

**BILLING CODE 4810–13–P**

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## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, within the Department of the Treasury, is soliciting comments concerning the Tobacco Products Importer or Manufacturer—Records of Large Cigar Wholesale Prices.

**DATES:** Written comments should be received on or before December 9, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Sandra L. Turner, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20220; telephone 202–927–8210.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Sandra L. Turner, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20220; telephone 202–927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Tobacco Products Importer or Manufacturer—Records of Large Cigar Wholesale Prices.

*OMB Number:* 1513–0071.

*Recordkeeping Requirement ID Number:* TTB REC 5230/1.

*Abstract:* This information collection is used by tobacco products importers or manufacturers who import or make large cigars. Records are needed to verify wholesale prices of those cigars and tax is based on those prices. The collection also ensures that all tax revenues due to the government are collected. The record retention period for this information collection is 3 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 108.

*Estimated Total Annual Burden Hours:* 252.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 30, 2003.

**William H. Foster,**

*Chief, Regulations and Procedures Division.*

[FR Doc. 03–25816 Filed 10–9–03; 8:45 am]

**BILLING CODE 4810–13–P**

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

**[REG–111835–99]**

## Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, Regulations Governing Practice Before the Internal Revenue Service (§§ 31.10.6, 31.10.29 and 31.10.30.

**DATES:** Written comments should be received on or before December 9, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *carol.a.savage@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Regulations Governing Practice Before the Internal Revenue Service.

*OMB Number:* 1545–1726.

*Regulation Project Number:* REG–111835–00.

*Abstract:* These regulations affect individuals who are eligible to practice before the Internal Revenue Service. These regulations also authorize the Director of Practice to act upon applications for enrollment to practice before the Internal Revenue Service. The Director of Practice will use certain information to ensure that: (1) Enrolled agents properly complete continuing education requirements to obtain renewal; (2) practitioners properly obtain consent of taxpayers before representing conflicting interests; (3) practitioners do not use e-commerce to make misleading solicitations.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 56,000.

*Estimated Time Per Respondent:* 53 minutes.

*Estimated Total Annual Burden Hours:* 50,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 6, 2003.

**Carol Savage,**

*Management and Program Analyst.*

[FR Doc. 03–25822 Filed 10–9–03; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

**[REG–106446–98]**

## Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–106446–98 (TD 9003), Relief From Joint and Several Liability (§ 1.6015–5).

**DATES:** Written comments should be received on or before December 9, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulations should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *carol.a.savage@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Relief From Joint and Several Liability.

*OMB Number:* 1545–1719.

*Regulation Project Number:* REG–106446–98.

*Abstract:* The regulation under section 6015 provides guidance regarding relief from the joint and several liability imposed by section 6013(d)(3). The regulations provide specific guidance on the three relief provisions of section 6015 and on how taxpayers would file a claim for such relief. In addition, the regulations provide guidance regarding Tax Court review of certain types of claims for relief, as well as information regarding the rights of the nonrequesting spouse. The regulations also clarify that, under section 6013, a return is not a joint return if one of the spouses signs the return under duress.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals.

The estimate of the reporting burden in § 1.6015–5 for filing a claim for relief from joint and several liability is reflected in the burden of Form 8857.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 6, 2003.

**Carol Savage,**

*Management and Program Analyst.*

[FR Doc. 03–25823 Filed 10–9–03; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[REG–105946–00]**

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–105946–00 (TD 8995), Mid-Contract Change in Taxpayer (section 1.460–6).

**DATES:** Written comments should be received on or before December 9, 2003, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6511, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of regulations should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Mid-Contract Change in Taxpayer.

*OMB Number:* 1545–1732.

*Regulation Project Number:* REG–105946–00.

*Abstract:* The information is needed by taxpayers who assume the obligation to account for the income from long-term contracts as the result of certain nontaxable transactions.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 5,000.

*Estimated Time Per Respondent:* 2 hours.

*Estimated Total Annual Burden Hours:* 10,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 6, 2003.

**Carol Savage,**

*Management and Program Analyst.*

[FR Doc. 03–25824 Filed 10–9–03; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via teleconference.

**DATES:** The meeting will be held Tuesday, October 21, 2003, at 1:30 p.m., eastern daylight time.

**FOR FURTHER INFORMATION CONTACT:** Barbara Toy at 1–888–912–1227, or 414–297–1611.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Tuesday, October 21, 2003, from 1:30 p.m. to 3 p.m. eastern daylight time via a telephone conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, TAP Office, MS–1006–MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to 414–297–1623. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy. Ms. Toy can be reached at 1–888–912–1227 or 414–297–1611, or FAX 414–297–1623.

The agenda will include the following: monthly committee summary report, discussion of issues brought to the joint committee, office report and discussion of next meeting.

Dated: October 7, 2003.

**Tersheia Carter,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 03–25825 Filed 10–9–03; 8:45 am]

**BILLING CODE 4830–01–P**

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## TREASURY DEPARTMENT

### Bureau of the Public Debt

### Senior Executive Service; Combined Performance Review Board (PRB)

**AGENCY:** Bureau of the Public Debt, Treasury Department.

**ACTION:** Notice of members of Combined Performance Review Board (PRB).

**SUMMARY:** Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Combined PRB for the Bureau of the Public Debt, the Financial Management Service, the U.S. Mint, and the Bureau of Engraving and Printing. The Board reviews the performance appraisals of career senior executives below the level of bureau head and principal deputy in the four bureaus, except for executives below the Assistant Commissioner level in the Financial Management Service. The Board makes recommendations regarding proposed performance appraisals, ratings, bonuses and other appropriate personnel actions.

*Composition of Combined PRB:* The Board shall consist of at least three voting members. In case of an appraisal of a career appointee, more than half of the members shall consist of career appointees. The names and titles of the Combined PRB members are as follows:

**Primary Members**

Frederick A. Pyatt, Assistant Commissioner (Office of Investor Services), BPD.
Scott Johnson, Assistant Commissioner (Management), CFO, FMS.
Jerry Horton, Associate Director, CIO, U.S. Mint.
Joel C. Taub, Associate Director (Management), BEP.

**Alternate Members**

Cynthia Z. Springer, Assistant Commissioner (Office of Information Technology), BPD.
Judy Tillman, Assistant Commissioner (Financial Operations), FMS.
Gloria Eskridge, Associate Director (Sales and Marketing), U.S. Mint.
Gregory D. Carper, Associate Director, CFO, BEP.

**DATES:** Membership is effective on October 6, 2003.

**FOR FURTHER INFORMATION CONTACT:** Frederick A. Pyatt, Assistant Commissioner (Office of Investor Services), Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–7730.

This notice does not meet the Department's criteria for significant regulations.

**Frederick A. Pyatt,**

*Assistant Commissioner (Office of Investor Services), Bureau of the Public Debt.*

[FR Doc. 03–25701 Filed 10–9–03; 8:45 am]

**BILLING CODE 4810–39–P**

# Corrections

Federal Register
Vol. 68, No. 197
Friday, October 10, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Medicare & Medicaid Services

## 42 CFR Parts 409, 411, 413, 440, 483, 488, and 489

**[CMS–1469–CN]**

**RIN 0938–AL90**

## Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Correction

*Correction*

In rule document 03–24549 beginning on page 55882 in the issue of Monday, September 29, 2003, make the following correction:

On page 55890, in the third column, Table 7 is being reprinted in part to read as follows:

TABLE 7.—WAGE INDEX FOR URBAN AREAS—CONTINUED

| Urban area (constituent counties or county equivalents) | Wage index |
|---|---|
| * * * ........ | * * |
| 1150 Bremerton, WA ......................<br>Kitsap, WA | 1.0580 |
| * * * ........ | * * |

[FR Doc. C3–24549 Filed 10–9–03; 8:45 am]

BILLING CODE 1505–01–D

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

# Federal Register

Friday,
October 10, 2003

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## Part II

## Environmental Protection Agency

40 CFR Part 131
Water Quality Standards for Oregon; Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 131**

**[FRL–OW–7570–3]**

## Water Quality Standards for Oregon

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes use designations and temperature criteria for the protection of salmonids in Oregon waters, except in the Columbia River. This document also proposes an intergravel dissolved oxygen (IGDO) criterion to protect salmonid spawning wherever salmonid spawning is the designated use. In addition, this rule proposes methods to implement Oregon's existing antidegradation policy.

**DATES:** EPA will accept public comments on this proposed rule until November 10, 2003. EPA will consider comments postmarked after this date only to the extent that time permits. EPA is sponsoring three public hearings on today's proposed water quality standards for Oregon on October 22 (5 p.m. to 9 p.m.), October 23 (2 p.m. to 6 p.m.), and October 24, 2003 (10 a.m. to 1 p.m.).

**ADDRESSES:** Send your comments by mail to Valerie Badon, ORC–158, U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. Comments may also be submitted electronically, or through hand delivery/courier. Follow the detailed instructions as provided in section I.C. of the **SUPPLEMENTARY INFORMATION** section. The following public hearings will be held:

*October 22 hearing:* State of Oregon Building, 800 NE. Oregon Street, Portland, Oregon.

*October 23 hearing:* Eugene Public Library, 100 W. 10th Avenue, Eugene, Oregon.

*October 24 hearing:* Bend Community Center, 1036 NE. 5th Street, Bend, Oregon.

The administrative record for today's proposed rule is available for public inspection at EPA Region 10's Oregon Operations Office, 811 SW. 6th Avenue, 3rd Floor, Portland, Oregon 97204, between 8 a.m. and 4 p.m. Please call Tom Townsend at 503–326–3250 for appointments to review the record. A reasonable fee for copying will apply.

**FOR FURTHER INFORMATION CONTACT:** Mary Lou Soscia at U.S. EPA Region 10's Oregon Operations Office by phone at: 503–326–3250, or by e-mail at: *soscia.marylou@epa.gov.* You may also contact Cara Lalley at U.S. EPA Headquarters by phone at 202–566–0057, or by e-mail at: *lalley.cara@epa.gov.*

**SUPPLEMENTARY INFORMATION:** This supplementary information section is organized as follows:

I. General Information
  A. Potentially Affected Entities
  B. How Can I Get Copies of This Document and Other Related Information?
    1. Docket
    2. Electronic Access
  C. How and to Whom Do I Submit Comments?
    1. Electronically
    2. By Mail
    3. By Hand Delivery or Courier
  D. What Should I Consider as I Prepare My Comments for EPA?
II. Background
  A. What Are the Statutory and Regulatory Requirements Relevant to This Action?
  B. What Actions Have Oregon and EPA Taken Leading to Today's Action?
III. What Federal Water Quality Standards is EPA Proposing Today?
  A. Background
  B. Federal Use Designations for Specific Water Body Segments
    1. Background
    2. Salmonid Use Designations
    3. Specific Locations and Times for the Salmonid Uses
  C. Temperature Criteria for Salmonid Uses
    1. Background
    2. EPA's Basis for the Proposed Numeric Criteria
    3. Numeric Temperature Water Quality Criteria for EPA's Salmonid Use Designations
    4. Alternative Criteria
  D. IGDO Criterion for Salmonid Spawning
    1. Background
    2. EPA's Proposed IGDO Criterion
  E. Antidegradation Implementation Methods
    1. Background
    2. Why is EPA Proposing Antidegradation Implementation Methods for the State of Oregon?
    3. What Antidegradation Implementation Methods is EPA Proposing for the State of Oregon?
  F. Effect of this Proposed Rule on the State's Water Quality Programs
IV. Economic Analysis
  A. Identifying Affected Facilities
  B. Method for Estimating Potential Compliance Costs
  C. Results
  D. Total Statewide Costs Associated with NPDES Permitted Facilities
  E. Small Government and Business Analysis
V. Alternative Regulatory Approaches and Implementation Mechanisms
  A. Background
  B. Process for Federal Agencies Responsible for Federally Owned or Operated Dams to Request EPA Modify Water Quality Standards
  C. Variances
  D. Heat Load and Thermal Plume Provisions
  E. EPA's Basis for Allowing Flexibility Due to Unusually Warm Weather Conditions
  F. Total Maximum Daily Loads and Impaired Water Listings
VI. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Reform Act of 1995
  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
  G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
  H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
  I. National Technology Transfer and Advancement Act

## I. General Information

### *A. Potentially Affected Entities*

Citizens concerned with water quality in Oregon may be interested in this proposed rulemaking. Entities discharging pollutants to waters of the United States in Oregon could be indirectly affected by this rulemaking because water quality standards are used in determining water quality-based effluent limitations included in National Pollutant Discharge Elimination System (NPDES) permits. Categories and entities that may indirectly be affected include:

| Category | Examples of Potentially Affected Entities |
|---|---|
| Industry ............ | Industries discharging pollutants to surface waters in Oregon. |
| Municipalities ... | Publicly-owned treatment works discharging pollutants to surface waters in Oregon. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding NPDES entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility may be affected by this action, you should carefully examine today's rule. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

### *B. How Can I Get Copies of This Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action at EPA Region 10's Oregon Operations Office, 811 SW. 6th Avenue, 3rd Floor, Portland, Oregon 97204, under Docket ID No. OW–2003–0068. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing under ID No. OW–2003–0068, or *Proposed Federal Water Quality Standards for Oregon.* The Docket Facility is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. Please call Tom Townsend at 503–326–3250 for appointments to review the record. A reasonable fee will be charged for copies.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "Federal Register" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in the EPA electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's Electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available through the docket facility identified in I.B.1.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket, visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

### *C. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." While EPA is not required to consider these late comments, we will make every attempt to consider them.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet home page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID OW–2003–0068. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *OW-Docket@epa.gov,* attention Docket ID No. OW–2003–0068. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD–ROM.* You may submit comments on a disk or CD–ROM that you mail to the address identified in I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Valerie Badon, ORC–158, U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, Attention Docket ID No. OW–2003–0068.

3. *By Hand Delivery or Courier:* Deliver your comments to the address identified in I.C.2, Attention Docket ID No. OW–2003–0068. Such deliveries are only accepted between 8 a.m. and 4 p.m.

### *D. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

## II. Background

### *A. What Are the Statutory and Regulatory Requirements Relevant to This Action?*

The purpose of the Clean Water Act (CWA) is to restore and maintain the chemical, physical and biological integrity of the Nation's waters. Section 101(a)(2) of the CWA establishes as an interim goal "water quality which provides for the protection and propagation of fish, shellfish, and wildlife and * * * recreation in and on the water," wherever attainable. This national goal is commonly referred to as the "fishable/swimmable" goal of the CWA. (Hereafter, the fishable/swimmable goals are referred to as CWA section 101(a) goal uses.) Section 303(c)(2)(A) requires State and Tribal water quality standards to "protect the public health and welfare, enhance the quality of water, and serve the purposes of this Act." Further, States and authorized Tribes are required to take into consideration the waters' use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also take into consideration their use and value for navigation. 33 U.S.C. 1313(c)(2)(A). EPA's regulations at 40 CFR 131.10 describe the process States and authorized Tribes must follow and the analyses States must conduct prior to designating any uses that do not contain the CWA section 101(a) goal uses.

Section 303(c) of the CWA, 33 U.S.C. 1313(c), requires States and authorized Tribes to adopt water quality standards for waters of the United States within their applicable jurisdictions. Section 303(c) and EPA's implementing regulations at 40 CFR part 131 require State and Tribal water quality standards to include the designated use or uses to be made of the water, the criteria necessary to protect those uses, and an antidegradation policy. States and authorized Tribes may also include in their standards policies generally affecting the standards' application and implementation. See 40 CFR 131.13. These policies are subject to EPA review and approval. States and authorized Tribes are also required to review their water quality standards at least once every three years and, if appropriate, revise or adopt new standards. 33 U.S.C. 1313(c)(1). States and authorized Tribes are required to submit new or revised water quality standards to EPA for review and approval or disapproval. 33 U.S.C. 1313(c)(2)(A). If EPA approves a new or revised water quality standard submitted by a State or Tribe, it takes effect for CWA purposes. 40 CFR 131.21. If EPA disapproves a new or revised water quality standard submitted by a State or Tribe, EPA must promulgate its own water quality standard for the State or Tribe, when necessary to replace the disapproved water quality standards.

Finally, section 303(c)(4)(B) of the CWA authorizes the Administrator to determine, even in the absence of a State or Tribal submission, that a new or revised standard is needed to meet the CWA's requirements. The authority to make a determination under CWA section 303(c)(4)(B) resides exclusively with the Administrator; it has not been delegated.

Section 7 of the Endangered Species Act (ESA) requires Federal agencies, in consultation with the U.S. Fish and Wildlife Service (FWS) and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries) (collectively, "the Services"), to ensure that their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of habitat of such species which have been designated as critical. Consultation is designed to assist Federal agencies in complying with the requirements of section 7 by supplying a process within which FWS and NOAA Fisheries provide such agencies with advice and guidance on whether an action complies with the substantive requirements of the ESA. Approval of State or Tribal water quality standards and Federal promulgation of water quality standards are considered Federal actions, and hence EPA is required to comply with the requirements of ESA section 7 prior to taking final action on this proposed rule.

As a result of EPA's responsibilities and duties under section 7 of the ESA, EPA has initiated informal consultation with FWS and NOAA Fisheries on this rulemaking. As part of this process, EPA is preparing a biological assessment document that it will transmit to FWS and NOAA Fisheries and include in the record if this rule is finalized.

### *B. What Actions Have Oregon and EPA Taken Leading to Today's Action?*

On July 23, 1996, the State of Oregon submitted revisions to its water quality standards to EPA for review, and approval or disapproval, pursuant to CWA section 303(c)(2)(A). Certain of these revisions identified specific numeric temperature criteria to protect critical life stages of fish in the family *Salmonidae*, commonly known as "salmonids." The *Salmonidae* family includes the genus *Oncorhynchus*, which consists of Pacific salmon and trout. There are seven species of Pacific salmon within the genus *Oncorhynchus*, five of which are found in North America: pink (*O. gorbuscha*), chum (*O. keta*), sockeye (*O. nerka*), coho (*O. kisutch*), and chinook (*O. tshawytscha*). Pacific trout within the genus *Oncorhynchus* include the anadromous steelhead, *O. mkiss*, and coastal cutthroat, *O. clarki. clarki;* and the non-anadromous rainbow trout, *O. mkiss*. Also in the family *Salmonidae* is the genus *Salvelinus*, which includes the bull trout species, *confluentus*.

Oregon's 1996 revised temperature criteria were intended to protect salmon rearing (17.8°C/64°F), salmon spawning (12.8°C/55°F), and bull trout (10°C/50°F). This included a revised temperature criterion for salmonid rearing in the Lower Willamette River from 21°C/70°F to 20°C/68°F. Oregon also submitted an IGDO criterion of 6.0 milligrams per liter (mg/L) for the protection of salmonid spawning. In addition, Oregon adopted new or revised narrative criteria and other provisions establishing a process for adopting site-specific numeric criteria or temporary revisions to its standards.

On September 15, 1998, EPA entered into formal consultation under section 7(a)(2) of the ESA with both NOAA Fisheries and FWS with regard to the effect of its approval decision regarding the new or revised standards on listed and endangered species including chinook, coho, sockeye, chum, coastal cutthroat, steelhead, and bull trout. On July 1, 1999, FWS issued a biological opinion that EPA's approval of the State's standards revisions was not likely to jeopardize the continued existence of listed threatened and endangered species, including bull trout. On July 7, 1999, NOAA Fisheries issued a biological opinion that EPA's approval of the standards revisions was not likely to jeopardize the continued existence of listed threatened and endangered species. Included on the Services' lists of threatened and endangered species were:

- Snake River Sockeye Salmon;
- Upper Columbia River spring chinook salmon;
- Upper Columbia River steelhead;
- Snake River spring/summer, Snake River fall, Upper Willamette River, Lower Columbia River, and Southern Oregon/California Coastal chinook salmon;
- Oregon Coast and Southern Oregon/Northern California coho salmon;
- Snake River Basin, Middle and Lower Columbia, Upper Willamette, Oregon Coast, and Klamath Mountains Province steelhead trout;
- Columbia River Chum Salmon;
- Umpqua River coastal cutthroat trout;
- Southwestern Washington/Columbia River coastal cutthroat trout; and
- Columbia River Basin and Klamath River Basin Bull Trout.

As part of the consultation action, EPA and the State of Oregon also committed to perform specific conservation measures under section 7(a)(1) of the ESA. These measures were designed to address the Services' and EPA's concerns regarding Oregon's water quality standards and also to further investigate uncertainties regarding the water temperatures necessary to protect specific life stages of endangered salmonid species.

On July 22, 1999, EPA approved all but one of the revised water quality standards submitted by Oregon, including the new and revised temperature, pH, dissolved oxygen, and bacteria standards. EPA disapproved the 20°C/68°F numeric criterion for salmonid rearing in the lower Willamette River because the State did not include a justification for how 20°C/68°F would protect salmonid rearing in view of record information showing that 20°C/68°F is not protective of salmonid rearing. (Letter to Michael Llewelyn, Oregon Department of Environmental Quality, from Randall Smith, EPA, July 22, 1999; Memorandum to Randy Smith from Dru Keenan regarding Recommended Action, July 21, 1999). At that time, EPA took no action with respect to Oregon's existing water quality criteria for the Columbia River or its antidegradation implementation plan because Oregon had not submitted new or revised water quality standards for review on either matter.

One of the conservation measures in NOAA Fisheries' biological opinion required EPA to establish and lead a region-wide effort to conduct a comprehensive review of the temperature requirements of critical life stages of salmonids in the Pacific Northwest, and ultimately to issue guidance recommending temperature criteria for their protection, which could be used as a basis for further revision of Oregon's standards if warranted. The reason for this conservation measure was that during the formal consultation process, it became evident to EPA, NOAA Fisheries, and FWS, and others that there was scientific uncertainty regarding the precise effects of various temperature regimes on the life stages of threatened and endangered salmonids. This three year effort concluded in April 2003 with the issuance of the "EPA Region 10 Guidance for Pacific Northwest State and Tribal Temperature Water Quality Standards' (hereafter identified as the Temperature Guidance).

Both EPA's approval action and NOAA Fisheries' Biological Opinion of "no jeopardy" were challenged in 2001 by Northwest Environmental Advocates in the U.S. District Court for the District of Oregon. *Northwest Environmental Advocates* v. *EPA & NMFS*, 268 F.Supp.2d 1255 (D. Or., Mar. 31, 2003). The plaintiff also alleged that EPA had a non-discretionary duty to promulgate Federal water quality criteria for temperature for the lower Willamette River and the Columbia River, and to promulgate an implementation plan for Oregon's antidegradation policy.

On March 31, 2003, the U.S. District Court in Oregon ruled that EPA had violated the CWA and the ESA when it approved in 1999 certain water quality standards for the protection of salmonids that were contained in Oregon's 1996 submission. Although the court deferred to EPA's scientific judgment regarding the protectiveness of the specific numeric temperature criteria, the court found that the temperature standards that EPA approved violated EPA's regulations and EPA's duty under section 7 of the ESA because Oregon had failed to designate "where and when" these criteria would apply. The court directed EPA to rescind its approval of the criteria because the absence of "time and place" use designations failed to protect the use categories created by Oregon, in this case salmonid rearing, bull trout rearing and bull trout spawning. The court directed EPA to propose and promulgate new temperature water quality standards, or approve new State standards, to address this deficiency.

The court also directed EPA to rescind its approval of a water quality criterion for intergravel dissolved oxygen for the protection of salmonid spawning. The court found that EPA's approval of the 6.0 mg/L criterion adopted by Oregon was arbitrary and capricious based on record information showing that 6.0 mg/L would not adequately protect salmonid spawning and because Oregon had not made time and place use designations where the criterion would apply. Thus, the court ordered EPA to promulgate a new water quality criterion for this pollutant parameter or approve a new State criterion. The court also ordered EPA to promulgate an antidegradation implementation plan for Oregon waters or approve such a plan promulgated by Oregon. Finally, the court also found arbitrary and capricious NOAA Fisheries' determination that Oregon's water quality standards for temperature and IGDO would not jeopardize threatened and endangered species.

The court ruled in favor of EPA regarding the Plaintiff's challenge to EPA's failure to establish Federal water quality criteria for temperature for the Columbia River for migration and rearing. EPA also successfully defended EPA's decision to approve certain narrative water quality criteria. Finally, the court agreed that EPA had met its obligations under ESA section 7(a)(1) to implement programs to conserve threatened salmon.

On August 13, 2003, the court ordered EPA to sign proposed regulations by October 1, 2003, and either sign final regulations or approve new State regulations by March 2, 2004, for the following:

(a) Water quality criteria for temperature for the lower Willamette River;

(b) Methods for implementing the antidegradation policy adopted by Oregon, pursuant to 40 CFR 131.12;

(c) Numeric water quality criteria for temperature for the protection of salmonid rearing and bull trout rearing and spawning, accompanied by specific time and place designations for waters of the United States in Oregon; and

(d) A water quality criterion for intergravel dissolved oxygen for Oregon's waters for the protection of salmonid spawning in waters of the United States in Oregon.

EPA's usual practice when promulgating a water quality standard is to provide an opportunity for a public hearing, provide the public with 45 days notice of the hearing, and establish a public comment period that extends at least until the date of the hearing. 40 CFR 25.5(b). However, the regulations also allow for a shorter comment period and a shorter period of public notice prior to the hearing when necessary to accommodate the specific provisions of court orders. EPA is providing a 30-day comment period from the date of publication. EPA believes a 30-day comment period is reasonable in this case for several reasons. First, EPA is compelled by court order to take final action on this proposal by March 2, 2004. That schedule precludes a longer comment period. Second, a significant portion of the water quality standards being proposed today has already been the subject of considerable public input in connection with the Temperature Guidance. In the course of developing that guidance, which EPA Region 10 issued in April 2003, EPA published and considered public comment on two drafts and engaged in considerable stakeholder communication. With the exception of the use designations and antidegradation implementation procedures proposed today, all aspects of today's proposed rule were the subject of extensive public input in that context. Therefore, the public has already had several months to consider the substance of these proposed decisions.

In this document, EPA is not proposing any time and place designations for the Columbia River. Oregon had not submitted and EPA had not disapproved water quality criteria for temperature or use designations for salmonid migration and rearing for the Columbia River. Therefore, the court did not require EPA to propose and promulgate such water quality standards for the Columbia River. Accordingly, EPA is not proposing time and place designations for salmonid spawning for the Columbia River. The court did hold that EPA's approval of the State's IGDO criterion to protect salmonid spawning was arbitrary and capricious based on record information showing that 6.0 mg/L would not adequately protect salmonid spawning and because Oregon had not made time and place use designations where the criterion would apply. Thus, the court order requires EPA to propose IGDO criteria wherever salmonid spawning is the designated use in Oregon. Therefore, the proposed IGDO criterion would apply to all waters identified in section 131.39(b) for salmonid spawning. In addition, for the Columbia River, the State of Oregon has identified the times and places where salmonid spawning occurs and, therefore, the IGDO criterion would apply to those places in the Columbia River (Letter to Randall Smith, EPA, from Michael Llewelyn, ODEQ, September 5, 2003).

EPA is proposing these regulations under authority of CWA section 303(c)(4)(A), which requires EPA to promptly prepare and publish proposed Federal water quality standards when EPA disapproves new or revised water quality standards submitted by a State. On September 29, 2003, EPA disapproved the following new or revised water quality standards submitted by Oregon in 1996:

- The water quality criteria for temperature for the protection of salmonid rearing;
- The water quality criteria for temperature for the protection of bull trout spawning, rearing, and migration;
- The water quality criteria for temperature for the protection of salmonid spawning; and
- The water quality criterion for intergravel dissolved oxygen for the protection of salmonid spawning.

A copy of the disapproval decision may be found in the docket for this proposed rule.

In making its disapproval decision, EPA relied on the reasoning of the U.S. District Court for the District of Oregon when it ordered EPA to rescind its 1999 approval of certain Oregon temperature and IGDO standards. In its March 2003 order, the court stated that without accurate time and place use designations, Oregon's 1996 criteria for temperature and IGDO were inconsistent with the CWA and should not have been approved.

Accordingly, EPA has disapproved these criteria to the extent that Oregon had failed to determine when and where these criteria apply (Letter from Randall F. Smith, Director of EPA Region 10's Office of Water, to Mike Llewelyn, Director of Oregon Department of Environmental Quality, September 29, 2003). Where Oregon has made time and place use determinations under its regulations (*e.g.*, the Columbia River for salmonid spawning), EPA's 1999 approval decision remains in effect. Under those circumstances, the State's time and place use determinations apply for CWA purposes, and EPA is not proposing Federal time and place designations for those waters in this rulemaking.

In developing this proposed rule, EPA sought advice from other Federal agencies, including those that administer the ESA and those that operate dams in Oregon. Their comments improved the clarity of the proposal, resulted in EPA deciding to solicit comment in some additional areas, aided EPA in developing standards that would be protective of endangered salmon and trout, and, prompted EPA to better articulate for owners and operators of Federal dams the information needs and process associated with petitioning for changes in use designations. EPA appreciates the input of these agencies.

## III. What Federal Water Quality Standards Is EPA Proposing Today?

### *A. Background*

In this document, EPA is proposing (1) designated uses to protect migration, rearing, and spawning through fry emergence for salmonids; (2) specific water bodies where those designated uses would apply, and the times of year when the uses occur; (3) temperature criteria that protect each of those designated uses; (4) an IGDO criterion that protects salmonid spawning; and (5) an implementation plan for Oregon's existing antidegradation policy.

The basis for EPA's proposed salmonid uses and associated temperature criteria is the Temperature Guidance, contained in the record for this rule. The Temperature Guidance is intended to assist States and authorized Tribes in adopting scientifically-defensible temperature water quality standards. The Temperature Guidance recommends an approach for adopting temperature water quality standards to protect cold-water salmonids and specifically addresses the following cold-water salmonid species in the Pacific Northwest: chinook, coho, sockeye, chum, and pink salmon; steelhead and coastal cutthroat trout; and bull trout. The Temperature Guidance provides recommendations to States and authorized Tribes on how they can designate uses and establish numeric temperature criteria for waterbodies that help meet the interim goal of the CWA to, where attainable, provide for water quality that "provides for the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water." *See* CWA section 101(a)(2). In addition, temperature water quality standards are viewed by EPA and the Services as an important tool for the protection and recovery of threatened and endangered salmonid species in the Pacific Northwest. Attaining criteria and protecting existing cold temperatures for waters used by these salmonids will help maintain and improve their habitat and aid in their protection and recovery.

As mentioned above, EPA Region 10 undertook the Temperature Guidance project as a result of the commitments agreed to under the ESA Biological Opinion issued by the Services on Oregon's temperature water quality standards. EPA Region 10 also undertook this project because EPA's CWA section 304(a) national criteria recommendations for temperature found in "Quality Criteria for Water 1986," commonly known as the Gold Book, were established in 1977, and do not reflect the most current science regarding temperature in the Pacific Northwest. In general, the Gold Book temperature recommendations for salmonids and other fish consist of formulas to calculate the protective temperatures for short-term exposure and a maximum weekly average exposure based on the maximum weekly average temperature metric. Protective short-term temperature exposure is based on subtracting 2°C/4°F from the upper incipient lethal temperature. Protective weekly average temperature exposure is based on the optimal growth temperature plus one-third of the difference between the optimal growth temperature and the upper incipient lethal temperature. Using these formulas and EPA data for coho and sockeye salmon, the 1986 document calculates suggested temperature criteria for short-term exposure as 22°C/71.6°F (sockeye) and 24°C/75.2°F (coho) and a maximum weekly average exposure of 18°C/64°F for both species.

Based on extensive review of the most recent scientific studies, many of which were undertaken specifically for the Pacific Northwest, EPA and the Services believe that there are a variety of chronic (long-term) and sub-lethal effects (*i.e.*, effects other than death) that are likely to occur to Pacific Northwest salmonid species exposed to the maximum weekly average temperatures calculated using the CWA section 304(a) national recommended formulas. These chronic and sub-lethal effects include reduced juvenile growth, increased incidence of disease, reduced viability of gametes in adults prior to spawning, increased susceptibility to predation and competition, and suppressed or reversed smoltification. Healthy fish populations could possibly endure some of these chronic impacts with little appreciable loss in population size. However, EPA and the Services are concerned that these chronic and sub-lethal effects can reduce the overall health and size of vulnerable fish populations, such as the endangered or threatened salmonids of the Pacific Northwest. Based on the new scientific studies developed specifically for the Pacific Northwest and the fact that the fish populations at issue are already vulnerable for reasons unrelated to temperature, EPA believes that the general assumptions upon which the national recommendations are based are inapplicable here. In particular, EPA is concerned that vulnerable coldwater salmonids in the Pacific Northwest would not be adequately protected at water temperatures selected between the optimal growth temperatures and the higher temperatures at which there would be incipient lethality. For these reasons, EPA is basing today's proposed rule on the more recent, site-specific information and analyses contained in the 2003 Temperature Guidance, rather than on the 1986 CWA section 304(a) national temperature criteria recommendations.

### *B. Federal Use Designations for Specific Water Body Segments*

#### 1. Background

Today, EPA is proposing to designate the same salmonid uses recommended in the Temperature Guidance with a few exceptions discussed in the preceeding paragraphs. Four of the five designated salmonid uses that EPA is proposing are based on the salmonid uses that occur during the period of summer maximum temperatures, which is generally during July and August. EPA believes it is appropriate to primarily base designated salmonid uses on summer salmonid use because: (1) human activities that increase summer water temperatures are a significant concern for salmonids in the Pacific Northwest, and (2) ensuring water temperatures are protective of salmonid uses during the summer will generally result in protective water temperatures for salmonids other times of the year due to the fact that waters will naturally be cooler during other months of the year. However, for some waters, attaining the criteria to protect for a summertime salmonid use may not result in protecting salmonid spawning and fry emergence that occurs in the spring to early summer or late summer to fall. Thus, in addition to the four summer salmonid designated uses, EPA is also proposing a use designation specifically for salmon and steelhead spawning through fry emergence, which typically occurs beginning in the fall and continuing through the spring, but can also occur in early July for steelhead and late August for chinook. Designating this use and associated water quality criteria provides an added degree of protection where meeting only the summer maximum temperature may be inadequate to ensure protection of this use during the other times of the year when spawning occurs.

In this document, EPA is proposing salmonid uses and associated temperature and IGDO water quality criteria for the waters identified. Water quality criteria often protect water bodies that have multiple and competing uses. Federally-owned or operated dams in certain waters may present a particular challenge in designating uses and establishing water quality criteria. In cases such as this, water quality standards should take into consideration the authorized purposes of Federally-owned or operated dams. EPA, therefore, will take into consideration the operational parameters and authorized purposes at these facilities when developing Federal water quality standards for the State of Oregon, to the extent time and availability of data permit. If data become available prior to promulgation of the final rule demonstrating that a proposed use is not attainable on a particular water body impacted by a Federally-owned or operated dam, EPA may promulgate a revised use that reflects the highest feasibly attainable use consistent with the operation of the dam. Designated uses should be deemed "feasible" if they can be implemented by a dam in a manner that allows the dam to perform its authorized purposes. Because these standards are being developed on an expedited schedule, and it may not be possible to fully consider data on attainability of uses for all water bodies potentially impacted by Federally-owned or operated dams, EPA is also proposing a process by which Federal agencies responsible for Federally-owned or operated dams may request that EPA modify the water quality standards described in this proposed rule. *See* section V.B.

For each of the uses proposed in section III.B.2, EPA requests comment on its methodology for designating waters for those uses, and on the specific use designations for waters identified on the maps available on the Internet at *http://www.epa.gov/r10earth/federaloregonwqs.htm*, or in hard copy at U.S. EPA Region 10's Oregon Operations Office, 811 SW. 6th Avenue, 3rd Floor, Portland, Oregon 97204.

2. Salmonid Use Descriptions

*i. Bull Trout Juvenile Rearing and Spawning.* EPA is proposing a bull trout juvenile rearing and spawning use for the waters identified in the maps previously referenced. This use is intended to protect moderate to high-density summertime bull trout juvenile rearing near their natal streams in their first years of life prior to making downstream migrations, and bull trout spawning through fry emergence typically occurring from the fall through the spring in the same waters. In general, EPA is proposing this use in the upper reaches of the applicable river basins, where this use typically occurs.

*ii. Salmon and Steelhead Core Juvenile Rearing.* EPA is proposing a salmon and steelhead core (moderate- to high-density) juvenile rearing use for the waters identified in the maps previously referenced. This use is intended to protect core salmon and steelhead juvenile rearing that occurs in the summer. This use is generally found in a river basin's mid-to-upper reaches, downstream from juvenile bull trout rearing areas. Protection of these waters for salmon and steelhead juvenile rearing also provides protection for adult spring chinook salmon that "hold" (wait in a river reach) throughout the summer prior to spawning, and for migrating and foraging adult and sub-adult bull trout, which also frequently use these waters.

*iii. Salmon and Trout Juvenile Rearing and Migration.* EPA is proposing a salmon and trout juvenile rearing and migration use for the waters identified in the maps previously referenced. This use is intended to protect salmon and steelhead (trout) moderate- to low-density juvenile rearing and migration, during the period of summer maximum temperatures. During the rest of the summer and other months of the year, salmon and steelhead juvenile rearing and migration is likely to be of higher density. This use designation reflects the fact that salmon and steelhead juveniles will use waters during the summer that have higher temperatures than their optimal thermal range. Salmon and trout juvenile rearing and migration is generally found in the middle and lower part of a basin, downstream of the salmon and steelhead core rearing use. In many river basins in Oregon, this use extends all the way to a river basin's terminus (*i.e.*, confluence with the Columbia River, Snake River or Pacific Ocean). EPA is also proposing salmon and trout juvenile rearing and migration use to protect for general juvenile rearing for resident rainbow trout.

*iv. Salmon and Steelhead Migration.* EPA is proposing a salmon and steelhead migration use for the lower Willamette River (50 miles upstream from the confluence with the Columbia River), the John Day River (from the confluence with the North Fork River downstream to the confluence with the Columbia River), and the portion of the Snake River in Oregon (from the Washington-Oregon border to Hells Canyon Dam).

Salmon and steelhead migration occurs all year, but primarily in the spring and early summer or in the late summer and fall. Although fewer fish migrate during the summer maximum time period, migration is the most prevalent life stage use that occurs during that period in these waters. Some isolated salmon and steelhead juvenile rearing may occur in these waters during the period of summer maximum temperatures, but when it does, such rearing is usually found only in the confluence of colder tributaries or other areas of colder waters.

The summer maximum temperature criterion is designed to protect migration both during that time period and, more importantly, during other times of the year when the majority of migration occurs. This is because the criterion assures that the water temperatures stay cool enough in the summer that the natural seasonal cooling that occurs during other times of year results in achievement of temperatures that are protective of migration.

*v. Salmon and Steelhead Spawning Through Fry Emergence.* EPA is proposing to designate a spawning through fry emergence use for the protection of salmon and steelhead trout spawning, egg incubation, and fry emergence in the times and places indicated on the maps previously mentioned. Generally, these life stages occur: (a) From late winter through early summer for steelhead trout (mid-upper reaches); (b) from the late summer-fall through spring for spring chinook (mid-upper reaches); and (c) from the fall through spring for coho (mid-reaches), chum, and fall chinook (the latter two in lower reaches).

*vi. Other Salmonid Uses Considered.* EPA considered designating separate salmonid uses for (a) bull trout spawning and (b) steelhead smoltification. For purposes of this proposed rule, however, EPA determined that these uses can be protected by the temperature criteria associated with other salmonid uses EPA is proposing today. See Temperature Guidance p. 31. For bull trout spawning, EPA believes that its proposed "bull trout rearing and spawning" use category will be protective, and for steelhead smoltification, EPA believes that its proposed use category, "salmon and steelhead spawning through fry emergence" will be protective.

Bull trout generally spawn in the late summer and fall in the same waters where young and resident juvenile bull trout rear. EPA decided that a combined bull trout spawning and rearing use with a single numeric temperature criterion (12°C/54°F) that limits summer maximum temperatures would protect both the rearing that occurs year-round and the spawning, egg incubation, and fry emergence that generally occurs fall through spring. EPA proposes this approach for two reasons. First, data indicate that if the summer maximum temperature is 12°C/54°F, temperatures will naturally decrease to levels that are protective of bull trout spawning (9°C/48°F) when it occurs in the late summer and fall, and further decrease to protect egg incubation (2–6°C/36–43°F) when it occurs over the winter. Second, there may be some areas where bull trout spawn in the summer, but in those situations, the existing summer maximum temperatures are likely to be colder than 12°C/54°F and in those situations the existing cold water alternative criterion discussed in section III.C.vi.b. would apply and the applicable criterion would be the existing maximum temperatures.

Salmon and steelhead smoltification occurs in the spring as these fish migrate to the ocean and go through the adaptation process for saltwater. Steelhead are believed to be the most temperature-sensitive salmonids during smoltification, which is why a separate designated use and criterion of 14°C/57°F was recommended in the Temperature Guidance. EPA believes that its proposed water quality criteria for temperature and associated designated uses would effectively protect steelhead smoltification. In particular, the proposed salmon and steelhead spawning through fry emergence use designation includes a 13°C/55°F criterion that would apply from the fall through the spring until either May 15th or June 15th in nearly all the waters where steelhead smoltification occurs.

3. Specific Locations and Times for the Salmonid Uses

EPA, in coordination with the Oregon Department of Environmental Quality (ODEQ) and the Services, established an interagency team to designate where and when the salmonid uses described above apply for waters in the State of

Oregon. These proposed salmonid use designations are shown in the previously mentioned maps (available on the Internet at *http://www.epa.gov/r10earth/federaloregonwqs.htm* or in hard copy at U.S. EPA Region 10's Oregon Operations Office, 811 SW., 6th Avenue, 3rd Floor, Portland, Oregon 97204). The salmon and steelhead spawning through fry emergence use is designated only for the time period indicated in the map legends; all other identified designated uses apply throughout the year.

EPA is proposing multiple use designations for certain waters where the criterion applicable to the most sensitive use also protects a less sensitive use. Where EPA proposes to designate bull trout rearing and spawning, EPA is also proposing to designate salmon and steelhead core juvenile rearing. Where EPA is proposing salmon and steelhead core juvenile rearing, EPA is also proposing to designate salmon and trout juvenile rearing and migration. Where EPA proposes salmon and trout juvenile rearing and migration, EPA also proposes salmon and steelhead migration. EPA notes that the maps indicate only the most sensitive use that occurs during the period of maximum summer temperatures. Also, EPA notes that its approach of defining uses that occur during the period of summer maximum temperatures will also have the effect of protecting other uses. If the most sensitive use designated for a particular water body or segment no longer applies, then the less sensitive use would apply.

In proposing the designated uses for the specified water bodies the team primarily relied on a database developed by Oregon Department of Fish and Wildlife (ODFW), which is available in the record and on the Internet. (ODFW Database, *http://osu.orst.edu/dept/nrimp/information/fishdistdata.htm).* This database was the product of an ODFW multi-year effort to develop consistent and comprehensive fish distribution data for a number of salmonid species. These distribution data represent the known or probable presence of all salmonid species within the anadromous zones of Oregon. ODFW compiled fish distribution information from a variety of sources including State and Federal fishery agencies, tribal entities, watershed councils and other interested public or private groups.

The ODFW fish distribution data depict the known or probable presence for the different life stages (*i.e.*, spawning through fry emergence, rearing, and migration) of the above listed salmonid species. The ODFW fish distribution data reflect both waters with known fish life stage presence based on documented observations, as well as local field biologists' best professional judgment as to where a life stage use is likely to occur based on suitable habitat (*i.e.*, waters near areas of documented life stage presence on the same waterbody that have similar temperatures and geomorphological habitat features, such as flow volume, gradient, gravel size, pool frequency, and no known obstructions or reasons why uses would not also be present in these waters). The ODFW fish distribution data reflect areas of fish use based on information collected over the past five life cycles for a particular species, which ranges from 15 to 35 years.

In addition to spatial fish distribution data that describe where a life stage use is known or likely to occur, the ODFW database also includes information describing when a life stage use is known or likely to occur.

EPA believes the methodology ODFW used to develop its database, as summarized above, is scientifically sound and is appropriate to use for salmonid use designations. (1:24K Fish Habitat Distribution Development Project Procedures Manual, Oregon Department of Fish and Wildlife, February 26, 2002). In particular, the ODFW database is based on fish presence information spanning multiple years and includes waters where fish are likely to occur based on locations near areas with documented life stage presence and suitable habitat. This approach is appropriate because salmonid use designations based solely on areas of documented presence does not sufficiently describe the actual waters of use due to the practical limitations of monitoring every stream mile, and routine fish monitoring sometimes indicates no fish presence when fish are actually present (*i.e.*, false negatives). Further, fish distributions vary year to year for any given waterbody, so salmonid use designations should be based on fish presence studies over multiple years. EPA requests comment on its use of the ODFW database as its primary source of fish distribution data.

EPA also relied upon three other sources of information to identify the proposed salmonid designated uses: ODEQ's *Bull Trout Habitat Designation Report: Technical Work Group Recommendations* (July 2003); USFWS proposed critical habitat for bull trout spawning and juvenile rearing (67 FR 71236, November 29, 2002); and Ecotrust's Salmon Anchor Habitat Strategy for the Tillamook and Clatsop State Forests, October 2002 (*http://www.inforain.org/mapsatwork/anchorhabitats/*).

As noted above, EPA, the State of Oregon, and the Services developed an agreed-upon methodology to define where and when the different proposed salmonid uses would apply based on the ODFW database and the other information described above. The following is a summary of the approach used to identify each of the proposed salmonid designated uses.

*i. Bull Trout Juvenile Rearing and Spawning.* EPA reviewed three different information sources that identify bull trout spawning and juvenile rearing habitat in Oregon: (1) ODEQ's *Bull Trout Habitat Designation Report: Technical Work Group Recommendations*, (2) ODFW database for bull trout juvenile rearing and spawning habitat, and (3) FWS' proposed critical habitat for bull trout juvenile rearing and spawning. These three data sources are consistent in defining areas of known or probable bull trout juvenile rearing and spawning. The ODEQ report and the FWS proposal referenced previously also identify habitat areas that have the potential to support bull trout juvenile rearing and spawning and are essential to the conservation of the bull trout species. EPA believes it is appropriate to designate areas identified as potential bull trout rearing and spawning habitat because in order to protect the bull trout use in the State, there must be a critical population to (1) provide a compensatory reserve to protect against natural stresses and events (*e.g.*, drought); and (2) protect against "depensation" (a population level that is so low that it experiences decreases in recruitment and which has led to documented crashes in certain fish populations (Rieman and McIntyre, 1993)); and (3) ensure that genetic diversity is sufficient to support healthy reproduction. EPA requests comment on its proposal to designate areas of potential as well as known or probable bull trout juvenile rearing and spawning use. ODEQ's report was translated into a Geologic Information System (GIS) database by ODEQ; EPA primarily used this information supplemented by FWS's proposed critical habitat information to identify where this designated use is proposed.

EPA proposes to designate a bull trout rearing and spawning use for: (a) Waters classified in ODEQ's report as known bull trout spawning and juvenile rearing habitat (BTHD1) and potential bull trout spawning and juvenile rearing habitat necessary for long-term health and viability of bull trout populations

(BTHD3), (b) any additional waters identified by FWS as bull trout spawning and rearing proposed critical habitat, and (c) all waters upstream of the areas (as indicated on the use designation maps) identified in (a) and (b) except for a few relatively large tributaries where EPA has data showing this use does not occur, or the water body has not been identified as habitat needed to protect the designated use of bull trout. EPA requests comment on its methodology for designating waters for the bull trout juvenile rearing and spawning use and on the specific waters identified.

*ii. Salmon and Steelhead Core Juvenile Rearing.* In developing this proposal, EPA judged that the ODFW database could not be used to differentiate core (high-density) juvenile rearing from non-core (low-density) juvenile rearing. In addition, there is generally very little available information on juvenile rearing density for Oregon's river basins. Therefore, as recommended in the Temperature Guidance, EPA elected to use surrogate information to help identify areas where summertime core salmon and steelhead juvenile rearing is likely. Waters used by spring chinook to spawn in the late summer months (August through mid-September), waters used over the summer by migrating and foraging adult bull trout, and waters upstream of these areas are likely to also support and be used for core salmon and steelhead juvenile rearing for two reasons. First, ODFW's database indicates juvenile rearing occurs in these waters, and second, the temperatures needed for core rearing are similar to those that occur in waters that support adult spring chinook holding to spawn as well as those that support migrating and foraging adult bull trout. See EPA Temperature Guidance.

The Ecotrust study on anchor habitat in the North Coast Basin was one juvenile rearing density study EPA relied upon to identify waters where the salmon and steelhead core juvenile rearing designated use should be proposed. This study identified areas of core juvenile rearing habitat for coho (salmon), steelhead (trout), and chinook (salmon). Use of this information resulted in EPA proposing that three stream segments be designated for salmon and steelhead core juvenile rearing in the North Coast Basin (Necanicum River, Ecola Creek and Plympton Creek) where there is no spring chinook spawning. Most of the waters identified in this study were also waters where the ODFW database showed spring chinook spawning to occur in or upstream of these areas.

In summary, EPA is proposing to designate a salmon and steelhead core juvenile rearing use for: (a) Waters where ODFW distribution and timing information shows chinook spawning occurs on or prior to September 15; (b) waters where known or probable adult bull trout migration and foraging occurs in July or August based on the ODFW database; (c) waters where scientifically credible information (specifically the Ecotrust study) shows core salmon or steelhead rearing (such information was only available for the North Coast Basin); and (d) all waters upstream of the waters identified in (a), (b), or (c), except for a few relatively large rivers where the information in (a), (b) and (c) showed that these life stages are not occurring in the river and the designation is not necessary to ensure delivery of cold water downstream.

EPA requests additional scientifically-credible data or information regarding core juvenile rearing areas that it could use to identify those waters where this use should be designated. In particular, EPA seeks information on coho and steelhead juvenile rearing density and timing. EPA would consider such data or information in EPA's final use designations.

Other data and information that may be appropriate for commenters to review and evaluate EPA's designated uses include: (1) Waters identified by ODFW as juvenile rearing habitat where ODEQ monitoring data from any year shows that maximum water temperatures are at or below 16°C/61°F (the proposed numeric criterion for this use); (2) waters identified by ODFW as juvenile rearing habitat where ODEQ temperature modeling indicates maximum water temperatures can meet 16°C/61°F; (3) information from NOAA Fisheries describing critical sub-populations; (4) ODFW information on high density spawning areas; and (5) waters above a certain elevation that are identified by ODFW as steelhead and/or coho juvenile rearing with no chinook rearing. Use of this data could potentially increase the number of waters for which EPA promulgates the salmon and steelhead core juvenile rearing designated use.

Although EPA is soliciting additional data or information that may be helpful in designating this use, EPA believes the water bodies EPA is proposing to designate for salmon and steelhead core juvenile rearing provide sufficient spatial coverage to protect this use. As can be seen by viewing the use designation maps, EPA is proposing to designate salmon and steelhead core juvenile rearing for significant portions of each basin. EPA, after discussions with NOAA Fisheries, believes it is important for each existing salmon and steelhead population to have a portion of their rearing habitat designated for this use. EPA believes it has achieved this by designating this use for a portion of most of the sub-basins in each of Oregon's basins used by salmon and steelhead.

It is also important to recognize that waters EPA is proposing to designate as salmon and trout juvenile rearing and migration use (See section III.B.2.iii) with an associated 18°C/64°F criterion, will provide a significant amount of water with 16°C/61°F maximum temperatures that support salmon and steelhead core juvenile rearing because attaining 18°C/64°F in the lower elevation waters will require that a significant portion of the upstream waters be colder than 18°C/64°F. Thus, EPA believes that the salmon and trout juvenile rearing and migration summer maximum criterion will, in effect, protect additional upstream waters for salmon and steelhead core juvenile rearing. EPA requests comment on its methodology for identifying waters for the salmon and steelhead core juvenile rearing use and on the specific waters identified.

*iii. Salmon and Trout Juvenile Rearing and Migration.* EPA proposes to designate a salmon and trout juvenile rearing and migration use for: (a) Waters where ODFW distribution and timing information shows chinook, chum, coho or steelhead rearing occurring in July or August; (b) waters where ODFW distribution information shows rainbow trout rearing use; and (c) all waters upstream of the waters identified above. The data and information supporting these determinations is contained in the ODFW database.

*iv. Salmon and Steelhead Migration.* EPA proposes to designate a salmon and trout migration use for waters where ODFW distribution and timing information indicates there is no rearing use in July or August or information suggests a lower mainstem river is primarily a migration corridor during the period of summer maximum temperatures, and there is evidence that temperatures naturally reach or exceed 20°C/68°F. Specifically, EPA is proposing a salmon and steelhead migration use for the lower Willamette River (50 miles upstream from the confluence with the Columbia River), the John Day River (from the confluence with the North Fork River downstream to the confluence with the Columbia River), and the portion of the Snake River in Oregon (from the Washington-Oregon border to Hells Canyon Dam). The data and information supporting these determinations is contained in the ODFW database.

*v. Salmon and Steelhead Spawning Through Fry Emergence.* EPA considered identifying specific locations and all the distinct time periods where the ODFW database shows salmon or steelhead spawning, egg incubation or fry emergence to occur, but doing so even for one basin resulted in over 30 different time periods for this use designation. Because such an approach would be very complicated and difficult to implement, EPA instead reviewed all of the data and developed an approach that protects this use with fewer different time frames in a basin.

After reviewing the timing information for spawning through fry emergence for all salmon species and steelhead, EPA determined that designating this use from October 15 through May 15 where it occurs would protect this use for all waters in the State except for those waters where the salmon and steelhead core juvenile rearing is the designated use. In those waters, chinook (salmon) spawning may occur prior to October 15 and steelhead fry emergence may occur later than May 15. To account for chinook spawning in these waters prior to October 15, EPA decided to designate this use as occurring either two weeks after the start of non-peak chinook spawning or at the time of peak chinook spawning, whichever date is earliest. The rationale for designating this use two weeks after the start of chinook spawning is that the use designation is for the whole river segment where chinook spawning occurs but the early spawning generally occurs in the higher elevation part of the river segment. EPA believes it is reasonable to apply the criterion two weeks after the start of spawning upstream because the criterion applies throughout the water body, including the downstream extent of the use where spawning typically occurs later.

To account for steelhead fry emergence after May 15 in waters where salmon and steelhead core juvenile rearing is the designated use, EPA decided that designating the salmon and steelhead spawning through fry emergence use where it occurs in these waters through June 15 would be protective. Although steelhead fry emerge later than June 15 in some waters, those waters are typically the upstream (*i.e.*, high elevation) portion of where this use is designated. Thus, in order to attain the criterion for this use (*i.e.*, 13°C/55°F) on June 15 in the downstream extent of waters where this use would be designated, temperatures would need to be colder on June 15 in the upstream waters and therefore would not likely reach 13°C/55°F until later in the year.

Lastly, because the timing information is well known for salmonid spawning in the lower mainstem rivers and the temperature variation within these segments is small, EPA decided to also propose a salmon and steelhead spawning through fry emergence use where and when spawning and fry emergence occur (based on the ODFW database) in waters where salmon and steelhead migration is the designated use. Of the three rivers for which EPA is proposing the migration use, the Snake River is the only one where spawning and fry emergence also occurs. As a result, it was unnecessary for EPA to develop a generalized methodology to protect the spawning use for this waterbody.

In summary, EPA proposes to designate the times and places for salmon and steelhead spawning through fry emergence use as follows:

(1) For waters where EPA is proposing to designate salmon and trout juvenile rearing and migration (*i.e.*, the 18°C/64°F summer maximum criterion applies) and where ODFW distribution information shows salmon (chinook, coho, chum) or steelhead spawning occurs, EPA is also proposing to designate the salmon and steelhead spawning through fry emergence use from October 15 through May 15.

(2) For waters where salmon and steelhead core juvenile rearing is the proposed designated use (*i.e.*, the 16°C/61°F summer maximum criterion applies), EPA also proposes to designate the salmon and steelhead spawning through fry emergence use for the following waters and associated timeframes:

(a) For waters where ODFW distribution information shows chinook spawning and steelhead spawning occurs, beginning the earliest of (i) 2 weeks after the beginning of chinook spawning, or (ii) the start of peak chinook spawning, or (iii) October 15; and ending June 15;

(b) For waters where ODFW distribution information shows chinook spawning occurs (and no steelhead spawning occurs), beginning the earliest of (i) 2 weeks after the beginning of chinook spawning, or (ii) the start of peak chinook spawning, or (iii) October 15; and ending May 15;

(c) For waters where ODFW distribution information shows steelhead spawning occurs (and no chinook spawning occurs), from October 15 to June 15; and

(d) from October 15 to May 15 for any waters where other salmon spawning (*e.g.*, coho or chum) occurs.

(3) For waters where EPA is proposing to designate a salmon and steelhead migration use (*i.e.*, 20°C/68°F criterion applies) and where ODFW distribution information indicates salmon or steelhead spawning occurs, EPA is also proposing to designate the salmon and steelhead spawning through fry emergence use from the beginning of spawning to the end of fry emergence, as indicated on the maps at *http://www.epa.gov/r10earth/federaloregonwqs.htm.*

### C. Temperature Criteria for Salmonid Uses

### 1. Background

Each salmonid life stage has an optimal temperature range. Physiological optimum temperatures are those where physiological functions (*e.g.*, growth, swimming, heart performance) are optimized. These temperatures are generally determined in laboratory experiments. Ecological optimum temperatures are those where fish do best in the natural environment considering food availability, competition, predation, and fluctuating temperatures. All are important considerations when establishing numeric temperature criteria. Exposure to temperatures above the optimal range results in an increased severity of harmful effects, often referred to as sub-lethal or chronic effects (*e.g.*, decreased juvenile growth which results in smaller, more vulnerable fish; increased susceptibility to disease which can lead to mortality; and decreased ability to compete and avoid predation), as temperatures rise until at some point they become lethal. See Temperature Guidance, pp.18–19.

Water temperatures significantly affect the distribution, health, and survival of native salmonids in the Pacific Northwest. Since salmonids are ectothermic (cold-blooded), their survival is dependent on external water temperatures, and they will experience adverse health effects when exposed to temperatures outside their optimal range. Salmonids have evolved and thrived under the water temperature patterns that historically existed (*i.e.*, prior to significant anthropogenic impacts that altered temperature patterns) in Pacific Northwest streams and rivers. Although evidence suggests that historical water temperatures exceeded optimal conditions for salmonids at times during the summer months on some rivers, the temperature diversity in these unaltered rivers provided enough cold water during the summer to allow salmonid populations as a whole to thrive.

Pacific salmon populations have historically fluctuated dramatically due to climatic conditions, ocean conditions, and other disturbances. High water temperatures during drought conditions likely affected the historical abundance of salmon. In general, the increased exposure to stressful water temperatures and the reduction of suitable habitat caused by drought conditions reduce the abundance of salmon. Human-caused elevated water temperatures significantly increase the magnitude, duration, and extent of thermal conditions unsuitable for salmonids.

The freshwater life histories of salmonids are closely tied to water temperatures. Cooling rivers in the autumn serve as a signal for upstream migrations. Fall spawning is initiated when water temperatures decrease to suitable temperatures. Eggs generally incubate over the winter or in early spring when temperatures are coolest. Rising springtime water temperatures may serve as a cue for downstream migration. Temperature can also influence the life histories of salmonid prey and allow a competitive advantage for non-native species such as pikeminnow.

Because of the overall importance of water temperature for salmonids in the Pacific Northwest, human-caused changes to natural temperature patterns have the potential to significantly reduce the size of salmonid populations. Of particular concern are human activities that have led to the excess warming of rivers and the loss of temperature diversity.

Different salmonid species have evolved to take advantage of the Pacific Northwest's cold-water environment in different ways. Each species has a unique pattern of when and where they use the rivers, and even for a specific species this pattern of use may change from year to year. This diversity in freshwater life history is a critical evolutionary trait that has allowed salmonids to persist in a freshwater environment that naturally fluctuates and has natural disturbances.

Therefore, EPA's proposed water quality standards for temperature include protective criteria that account for the natural thermal diversity of streams and rivers. In proposing temperature criteria for salmonids uses, EPA recognizes that (1) Salmonids need specific water temperature ranges for their various life stages; (2) the natural thermal temperature regime of the rivers and streams of the Pacific Northwest were naturally thermally diverse, varying spatially and temporally; and (3) salmonids evolved specific life history strategies to find and thrive in the cold water provided by these thermally diverse river systems. EPA believes that water quality standards for temperature should take this natural thermal diversity into account in addition to setting the appropriate temperature thresholds necessary to protect the various life stages of salmonids. The water quality criteria EPA is proposing today address both of these concepts in the form of generally applicable numeric criteria corresponding to specific use designations, and two alternative criteria that, if promulgated, would apply instead of the numeric criteria on a site-specific basis. The first proposed alternative criterion addresses naturally warm conditions: when the natural thermal condition of the stream is naturally warmer than the otherwise applicable numeric temperature criterion, the natural temperature becomes the criterion. The second proposed alternative criterion concerns waters that are currently cold: if the current summer maximum stream temperature is colder than the otherwise applicable numeric criterion, the current summer maximum temperature becomes the criterion.

2. EPA's Basis for the Proposed Numeric Criteria

Water quality criteria must protect the associated designated use(s). See CWA section 303(c)(2)(A), 33 U.S.C. 1313(c)(2)(A), and 40 CFR 131.5(a)(2), 131.6(c) and 131.11(a)(1). Therefore, a criterion should apply to the whole extent of a water body or segment for which a particular use is designated, including, in the case of flowing water bodies, the lowest point downstream where the use is designated. Because streams generally warm progressively in the downstream direction, waters upstream of that point will generally need to be cooler in order to ensure that the criterion is met throughout the segment, including the furthest point downstream. Thus, a water body that meets a temperature criterion at the furthest downstream extent of the water body segment where the use is designated will, in many cases, provide water cooler than the criterion at the upstream extent of the segment. EPA took this into consideration when it formulated the proposed numeric temperature criteria contained in today's proposed rule.

EPA regulations also require that water quality standards provide for the attainment and maintenance of downstream uses. 40 CFR 131.10(b). Thus, the designated use and associated numeric criteria should apply upstream of the areas of actual use because temperatures in upstream waters significantly affect the water temperatures where the actual use occurs and upstream waters are usually colder. Of course, if a more sensitive use is designated upstream, the more protective criterion associated with that use would apply upstream. *See* 40 CFR 131.11(a).

The numeric temperature criteria EPA is proposing to protect the salmonid designated uses are the same criteria recommended in the Temperature Guidance. The Guidance included two tables summarizing the temperature considerations for each life stage of Pacific salmon and trout and bull trout that are described in detail in the technical issue papers that are the basis for the Temperature Guidance. See the record for this proposed rule to view the issue papers. These temperature considerations, summarized in Tables III–1 and III–2 at the end of this section, form the scientific basis for EPA's proposed numeric temperature criteria.

EPA requests comment on the proposed temperature criteria and methodology and scientific judgments that led to the recommendations in the Temperature Guidance and the criteria in this proposed rule. Specifically, EPA requests comment on the level of conservatism associated with proposing numeric criteria, considering the temperature ranges identified by studies that were evaluated in the Temperature Guidance. The level of conservatism should be considered along with the conservative approach of applying the criteria as the 7DADM of the second warmest year of ten years at the downstream end of the affected segment; see discussion below).

The metric EPA is proposing for all the numeric criteria is the maximum seven-day average of the daily maximum temperatures (7DADM). A 7DADM value is calculated by adding the daily maximum temperatures recorded at a site on seven consecutive days and dividing by seven. The maximum 7DADM is the highest recorded 7DADM for the year (*i.e.*, the warmest week).

The 7DADM is similar to the maximum weekly average temperature metric used previously by EPA for its national temperature criteria recommendations. However, EPA proposes to use the 7DADM metric because it describes the maximum temperatures in a stream, but is not overly influenced by the maximum temperature of a single day. Thus, it reflects an average of maximum temperatures that fish are exposed to over a week-long period. Since this metric is oriented to daily maximum temperatures, it can be used to protect against acute effects, such as lethality and migration blockage conditions.

This metric can also be used to protect against sub-lethal or chronic effects (*e.g.*, temperature effects on growth, disease, smoltification, and competition), but the resultant cumulative thermal exposure fish experience over the course of a week or more needs to be considered when selecting a 7DADM value to protect against these effects. EPA's general conclusion from studies on fluctuating temperature regimes (which is what fish generally experience in rivers) is that fluctuating temperatures increase juvenile growth rates when mean temperatures are colder than the optimal growth temperature derived from constant temperature studies, but will reduce growth when the mean temperature exceeds the optimal growth temperature. *See* "Issue Paper 5: Summary of Technical Literature Examining the Physiological Effects of Temperature on Salmonids," prepared as part of the EPA Region 10 Temperature Water Quality Criteria Guidance Development Project. EPA–910–D–01–005, May 2001, pp. 51-56. When the mean temperature is above the optimal growth temperature, the "mid-point" temperature between the mean and the maximum is the "equivalent" constant temperature. This "equivalent" constant temperature then can be directly compared to laboratory studies done at constant temperatures. For example, a river with a 7DADM value of 18°C/64°F and a 15°C/58°F weekly mean temperature will be roughly equivalent to a constant laboratory study temperature of 16.5°C/61.7°F (mid-point between 15°C/58°F and 18°C/65°F). Thus, both maximum and mean temperatures are important when determining a 7DADM value that is protective against sub-lethal/chronic temperature effects. See the Temperature Guidance, pp.19-20.

As discussed in the Temperature Guidance, many rivers and streams occupied by salmon and steelhead in the Pacific Northwest have a 3°C/5°F difference between the 7DADM and the weekly mean temperature. So, for many streams occupied by salmon and steelhead, a protective 7DADM temperature is approximately 1.5°C/2.7°F higher than a protective constant temperature derived from laboratory studies. *Id.* For bull trout streams, where the difference between the 7DADM and the weekly mean is smaller because there is less diurnal variation, a protective 7DADM temperature is approximately 0.5°C/0.9°F higher than a protective constant temperature derived from laboratory studies. *Id.*

### 3. Numeric Temperature Water Quality Criteria for EPA's Salmonid Use Designations

*i. Temperature Criteria for Waters Designated for Bull Trout Juvenile Rearing and Spawning.* EPA proposes a 12°C/54°F maximum 7DADM numeric criterion (which roughly translates to an equivalent constant temperature of 11.5°C/52.7°F) for waters designated for a bull trout juvenile rearing and spawning use to: (1) Protect juvenile bull trout from lethal temperatures (22–23°C/72–73°F constant); (2) provide conditions during the period of summer maximum temperature at the upper end of the optimal temperature range when food is limited for juvenile growth (8–12°C/46–54°F constant), thus providing optimal temperatures for other times of the year; (3) provide temperatures where juvenile bull trout are not at a competitive disadvantage with other salmonids (greater than 12°C/54°F constant); and (4) provide temperatures that are consistent with the temperatures observed in field studies identifying where juvenile bull trout have the highest probability to occur (12–13°C/54–55°F daily maximum). *See* Table III–2.

When determining the overall optimal range for bull trout juvenile rearing, EPA reviewed both laboratory and field data and considered both physiological and ecological aspects. Optimal growth under limited food rations in laboratory experiments, preference temperatures in laboratory experiments where fish select between a gradient of temperatures, and field studies on where rearing predominately occurs are three independent lines of evidence that form the basis for identifying the optimal temperature range for bull trout rearing in the natural environment. These three lines of evidence show very consistent results, with the optimal range between 8-12°C/46–54°F for bull trout juvenile rearing. See the Temperature Guidance.

EPA is proposing that this numeric criterion apply to the warmest times of the summer, the warmest years (except for the warmest year out of ten), and throughout the water body or segment, including the lowest downstream extent of that waterbody or segment designated for that use. Because of the conservative nature of how this criterion is applied to the water body, EPA believes that it is appropriate to propose this numeric criterion near the warmer end of the optimal temperature range for bull trout rearing. EPA expects that a numeric criterion near the warmer end of the optimal range that is applied during the period of summer maximum temperatures is likely to result in temperatures near the middle of the optimal range for most of the spring through fall in the segments where most of the rearing use occurs. EPA has identified three reasons for this. First, if the criterion is met during the summer maximum period, then temperatures will be colder than that value during the rest of the year. Second, because the criterion would apply throughout the water body or segment including the furthest point downstream where the use is designated, temperatures will generally be colder as you move upstream in the waterbody or segment. Finally, the criterion must be met in the warmest years (except for the warmest year in ten), so that in most years, the waters will be colder.

As mentioned previously, the scientific literature indicates that water with a temperature of 9°C/48°F is necessary for the protection of bull trout spawning. *See* Table III–2. For a more detailed explanation of why EPA believes the proposed 12°C/54°F summer maximum criterion would protect bull trout spawning, *see* section III.B.2.vi.

For four water bodies where EPA is proposing a 12°C/54°F 7DADM criterion to protect bull trout spawning, FWS believes that criterion may not be protective. In these waters, dams delay the natural seasonal cooling of waters in the fall to an extent that may prevent waters from cooling to 9°C/48°F downstream at times of the year when bull trout spawning occurs. The four locations identified by FWS are segments immediately downstream of: Laurence Lake Reservoir (Hood River Basin on the Middle Fork of the Hood River); Melhorne Reservoir and Clear Creek Reservoirs (Pine Creek Sub-Basin of Powder Basin); and Carmen Reservoir (behind Carmen dam in the Willamette Basin, on the McKenzie River above Blue River).

EPA requests comment on two approaches to address the four identified water body segments where this situation occurs. First, EPA requests comment on whether a numeric criterion of 9°C/48°F is necessary in these waters at the time of spawning (in addition to the 12°C/54°F 7DADM criterion) to protect the designated use of bull trout spawning. Such a criterion would apply immediately downstream of each reservoir, starting at the beginning of the spawning period. The proposed bull trout spawning and rearing use designation continues downstream of each reservoir for some distance, and some warming could occur as the water moves downstream from the reservoir. EPA, however, believes that applying a 9°C/48°F criterion immediately below the reservoir would be protective because of the application of the criterion there at the earliest spawning dates. Typically, bull trout spawning begins at the upper end of the range of waters in which spawning occurs, and gradually moves downstream as temperatures naturally cool due to seasonal weather changes. Thus, applying a 9°C/48°F criterion immediately below the reservoir at the start of the spawning time period would mean that temperatures downstream are likely to cool naturally later in the spawning period.

Second, EPA also requests public comment on a narrative provision that would limit temperature increases during spawning times to no more than 0.3°C/0.5°F greater than the otherwise applicable criterion immediately downstream of the reservoir relative to the water temperature upstream of the reservoir. EPA believes this prohibition of any significant warming would be protective because in each case, EPA is proposing to designate bull trout spawning and rearing upstream of the reservoir, which will make the 12°C/54°F summer maximum criterion applicable there. As discussed above, seasonal temperature cycles would be expected to cool those upstream waters to the 9°C/48°F temperature that is protective of spawning in time for the fall time periods when spawning occurs. Limiting the temperature increase from these reservoirs to this insignificant increment would therefore be expected to protect the bull trout spawning below the reservoirs.

EPA believes it is important to consider the attainability of the bull trout rearing and spawning use and accompanying criterion EPA is proposing. As such, EPA will consider data and information submitted regarding the attainability of this use and criterion on the water bodies where it is proposed, including data regarding attainability of the additional criteria it is considering for the four water bodies mentioned above.

*ii. Temperature Criteria for Waters Designated for Salmon and Steelhead Core Juvenile Rearing.* EPA proposes a 16°C/61°F maximum 7DADM numeric criterion (which roughly translates to an equivalent constant temperature of 14.5°C/58°F) for waters designated for salmon and steelhead core juvenile rearing to: (1) Protect juvenile salmon and trout from lethal temperatures (23–26°C/73–79°F constant); (2) provide conditions during the period of summer maximum temperature at the upper end of the optimal temperature range when food is limited for juvenile growth (10–16°C/50–61°F constant), thus providing optimal temperatures for other times of the year; (3) protect against temperature-induced elevated disease rates (14-17°C/57–63°F constant); and (4) provide temperatures that juvenile salmon and trout prefer, as demonstrated by studies indicating fish in high densities at these temperatures (10–17°C/50–63°F constant or less than 18°C/64°F 7DADM). *See* Table III–1.

When determining the overall optimal temperature range for salmon and steelhead juvenile rearing, EPA reviewed both laboratory and field data and considered both physiological and ecological aspects. Optimal growth under limited food rations in laboratory experiments, preference temperatures in laboratory experiments where fish select between a gradient of temperatures, and field studies on where rearing predominately occurs are three independent lines of evidence that form the basis for identifying the optimal temperature range for salmon and steelhead juvenile rearing in the natural environment. These three lines of evidence show very consistent results, with the optimal range between 10–16°C/50–61°F for salmon and steelhead juvenile rearing. See the Temperature Guidance.

EPA is proposing that this numeric criterion apply to the warmest times of the summer, the warmest years (except for the warmest year in ten), and and throughout the water body or segment, including the lowest downstream extent of the waterbody or segment designated for that use. Because of the conservative nature of how this criterion is applied, EPA believes that it is appropriate to propose numeric criteria near the warmer end of the optimal temperature range for core juvenile salmon and trout rearing. EPA expects that a numeric criterion near the warmer end of the optimal range that is applied during the period of summer maximum temperatures is likely to result in temperatures near the middle of the optimal range for most of the spring through fall in the segments where most of the rearing use occurs. EPA has identified three reasons for this. First, if the criterion is met during the summer maximum period, then temperatures will be colder than that value during most of the rest of the year. Second, because the criterion would apply throughout the waterbody or segment, including the furthest point downstream where the use is designated, temperatures will generally be colder throughout the rest of the waterbody or segment. Finally, criterion must be met in the warmest years (except for the warmest year in ten), so that in most years, the waters will be colder.

*iii. Temperature Criteria for Waters Designated for Salmon and Trout Juvenile Rearing and Migration.* EPA proposes an 18°C/64°F maximum 7DADM criterion (which roughly translates to an equivalent constant temperature of 16.5°C/62°F) for waters designated for salmon and trout juvenile rearing and migration to: (1) Protect against lethal conditions for both juveniles and adults (21–22°C/70–72°F constant); (2) prevent migration blockage conditions for migrating adults (21–22°C/70–72°F average); (3) provide optimal or near optimal juvenile growth conditions (under limited food conditions) during the summer maximum conditions and optimal conditions during the rest of the year (10–16°C/50–61°F constant); and (4) prevent adults and juveniles from high disease risk and minimize the exposure time to temperatures that can lead to elevated disease rates (14–17°C/57–63°F constant). *See* Table III–1.

Data and information in the record indicates that salmon and steelhead will use waters that are warmer than their optimal thermal range during the summer and that portions of rivers and streams in the Pacific Northwest naturally (*i.e.*, absent human impacts) were historically warmer than the optimal thermal range for salmonids during the period of summer maximum temperatures. Therefore, EPA proposes a 7DADM numeric temperature criterion that is slightly warmer than the optimal thermal range for salmon and steehead to protect this use. EPA believes this criterion would provide sufficient protection from lethal conditions and sub-lethal effects that would significantly adversely affect these uses. As a result, if this value is met during the period of summer maximum temperatures, then during other times of the summer and the rest of the year, temperatures will likely be within the optimal temperature range. An additional level of protection is provided by requiring the criterion to be met during the warmest years (except for the warmest year in ten), thus ensuring that the water will be colder in most years.

*iv. Temperature Criteria for Waters Designated for Salmon and Steelhead Migration.* As discussed in section III.B.2.iv, the salmon and steelhead migration use applies to the lower Willamette River, a portion of the John Day River, and a portion of the Snake River. To protect salmon and steelhead migration, EPA proposes a 20°C/68°F maximum 7DADM numeric criterion in conjunction with a requirement to ensure the presence of well-distributed cold water refugia. This 20°C/68°F criterion roughly translates to an equivalent constant temperature of about 19–20°C/66–68°F because the large mainstem rivers where this use is proposed have little diurnal variation. Well-distributed cold water refugia are portions of a river with cooler nighttime temperatures, or portions of a river that are cooler during the day, that allow salmon and steelhead to migrate through the river segment with minimal stress. Spatial cold water refugia are waters that are at least 2°C/4°F colder than the daily maximum temperature at the nearest location in the main river channel. Spatial cold water refugia results from cold tributaries and cooler groundwater flow entering into a warmer river. Temporal cold water refugia are waters in rivers at times of the day when water temperatures are at least 2°C/4°F colder than the daily maximum temperatures on that day in the main river channel (from diurnal temperature variation in a river), and are waters in rivers on days in the summer when maximum water temperatures are at least 2°C/4°F colder than the summer maximum temperature (from seasonal temperature variation).

EPA believes that a 20°C/68°F criterion accompanied by a narrative criterion to ensure the presence of well-distributed cold water refugia would protect migrating juveniles and adults from lethal temperatures and would prevent migration blockage conditions. However, information in the record indicates that many sublethal effects could occur without cooler nighttime temperatures or portions of the river that are cooler during the day, rendering the numeric criterion of 20°C/68°F alone unprotective of the designated use. *See* Temperature Guidance, pp. 28–30. In such a situation, even if the river meets a 20°C/68°F criterion for maximum temperatures, the duration of exposure to 20°C/68°F temperatures may cause adverse effects in the form of increased disease and decreased swimming performance in adults, and increased disease, impaired smoltification, reduced growth, and increased predation for late emigrating juveniles (*e.g.*, fall chinook in the Columbia and Snake Rivers). Therefore, in order to protect this use, it is appropriate to accompany the numeric criterion of 20°C/68°F with a narrative provision that would require protection of well-distributed cold water refugia.

EPA believes the amount of cold water refugia would be sufficient to protect this use if a typical migrating salmon or steelhead could access waters that are 18°C/64°F or colder for at least 12 hours a day. Salmon and steelhead that are exposed to 18°C/64°F for half the day and up to 20°C/68°F for the remainder of the day are likely to be at less risk than if these fish were continuously exposed to 20°C/68°F because studies show the severity of adverse effects from elevated water temperatures increases significantly as temperatures reach 20–21°C/68–70°F.

As a practical matter, this provision is likely to be implemented during establishment of a Total Maximum Daily Load (TMDL), because all the waters where EPA is proposing for this use currently do not attain 20°C/68°F, thus a TMDL is required based on the numeric criteria. When applying this narrative criterion in the context of a TMDL, the State or EPA would identify the existing cold water refugia and determine whether or not they were sufficient to protect the use. Existing cold water refugia would be identified in the TMDL and the existing temperatures of the cold water refugia would be the applicable numeric criteria for those water segments. Thus, the TMDL would be the document where the narrative cold water refugia criteria is translated into numeric terms. If the existing cold water refugia were insufficient to protect the use, then additional cold water refugia sufficient to protect the use would also be identified and expressed in numeric terms in the TMDL. Depending on how the TMDL is structured, the expression of cold water refugia in numeric terms might also occur during the development of watershed plans to implement the TMDL rather than in the TMDL itself. In addition, the watershed plans may contain measures to protect and restore the cold water refugia.

In the future, as these waters come into attainment of the 20°C/68°F numeric criterion, attainment of the specific numeric cold water refugia criteria identified in the TMDL or watershed plan will also need to be assessed to determine the attainment status of these waters.

In the NPDES permitting context, existing cold water refugia are required to be protected. Where additional cold water refugia have not yet been identified, EPA believes it is impracticable to do so in the context of an individual NPDES permit because this assessment requires an evaluation of the adequacy of the existing cold water refugia on the water body as a whole and is likely to be data intensive. EPA believes this kind of comprehensive assessment is only practicable in the context of TMDL development. Once the TMDL is completed, however, any wasteload allocations to protect either existing or new cold water refugia must be incorporated into NPDES permits during the next permit cycle.

EPA seeks comment on whether a 18°C/64°F 7DADM criterion (without well-distributed cold water refugia) would be a more appropriate criterion for protection of the salmon and steelhead migration use, since the record shows that it would be equally protective of the use and may be more straight forward to implement than the 20°C/68°F with a narrative criterion for well-distributed refugia. See EPA Temperature Guidance, pp15–25. EPA, however, believes 18°C/64°F *throughout* the waters would be extremely costly to attain as compared to the 20°C/68°F with a narrative criterion for well-distributed refugia.

*v. Temperature Criteria for Waters Designated for Salmon and Steelhead Spawning Through Fry Emergence.* EPA proposes a 13°C/55°F maximum 7DADM criterion (which roughly translates to an equivalent constant temperature of 11.5°C/53°F) for this use (during the time of year when it applies) to: (1) Protect gametes inside adults prior to spawning (less than 13°C/55°F constant), (2) provide temperatures at which spawning is most frequently observed in the field (4–14°C/39–57°F daily average), and (3) provide protective temperatures for egg incubation (4–12°C/39–54°F constant for good survival and 6–10°C/43–50°F constant for optimal range) that occurs over the winter (salmon) and spring (trout), assuming the typical annual thermal pattern. As discussed in section III.B.1, EPA believes that in many water bodies, attainment of the summer maximum criteria for all the other proposed designated uses will result in attainment of the 13°C/55°F maximum 7DADM criterion for protection of salmon and steelhead spawning through fry emergence.

### 4. Alternative Criteria

*i. EPA's Basis for the Proposed Natural Conditions Criterion.* EPA is proposing an alternative criterion for natural conditions that would apply instead of the numeric criterion, where applicable. The criterion would require that where a water body or segment's water temperature under natural conditions exceeds the numeric criterion identified above, then the natural condition would be the applicable water quality criterion. Natural temperatures are those that would exist in the absence of human activities that alter stream temperatures. EPA views numeric criteria that reflect natural conditions to be protective of salmonid designated uses because river temperatures prior to human impacts clearly supported healthy salmonid populations. EPA intends that the estimate of the temperature reflecting natural conditions be determined by the State or EPA using a scientifically-defensible method that utilizes the best available data, as indicated in the proposed rule at 40 CFR 131.39(d)(1). Typically, this determination is made in the context of a TMDL. EPA recognizes, however, that there will always be uncertainties in estimating natural conditions. Potential sources of uncertainty are numerous, including, but not limited to, data gaps, measurement errors, model errors, omissions in identification of impacts, and aggregation errors. It is important that regulatory agencies document the sources of uncertainty in any assessment for the benefit of decision-makers, stakeholders, and the public.

Where the natural temperature conditions so estimated exceeds 20°C/68°F, EPA proposes that the river must have well-distributed cold water refugia. EPA views cold water refugia to be an important aspect of the natural condition that must be specifically identified in waters where the estimated natural condition exceeds 20°C/68°F because of the significant adverse effects to salmon and steelhead exposed to temperatures exceeding 20°C/68°F. See Table 1. Well-distributed cold water refugia allows salmon and steelhead to minimize their exposure to temperatures that exceed 20°C/68°F. As discussed in section III.C.3.iv., EPA believes the amount of cold water refugia would be sufficient if salmon or steelhead could access waters that are at least 2°C/4°F colder than the estimated natural maximum temperature for the main channel for at least 12 hours a day. Refer to section III.C.3.iv. for a discussion on how cold water refugia should be addressed in the context of TMDLs, NPDES permits, and waterbody assessments.

*Overview of Methods to Estimate Natural Background Temperatures:* There are a number of different ways of estimating natural temperature conditions for the purposes of applying this proposed narrative criterion. These include: (1) Demonstrating that current temperatures reflect natural conditions, (2) using a non-degraded reference stream for comparison, (3) using historical temperature data, (4) using statistical or computer simulation models, and (5) assessing the historical distribution of salmonids. There may be other ways as well. Each approach has its strengths and weaknesses and therefore may or may not be most appropriate for a given situation. Moreover, all of these approaches have uncertainty, which should be quantitatively described where possible. EPA encourages the use of a combination of approaches to estimate natural background temperatures, where feasible. Below is an overview of the five approaches listed above.

*Demonstrating That Current Temperatures Reflect Natural Conditions:* Under this approach, the past and present human activities that could impact the river temperatures are documented and a technical demonstration is made that the human activities do not currently impact temperatures. This approach is most applicable to non-degraded watersheds (*e.g.*, State and National parks, wilderness areas, and protected State and National lands). These watersheds can be used as "reference" streams for estimating the natural background temperatures of degraded streams (see below). If there is a small human impact on temperatures, it may also be possible to estimate the human impact and subtract it from current temperatures to calculate the natural temperatures.

*Comparisons to a Reference Stream:* It is often reasonable to assume that the natural temperatures of a thermally degraded stream are similar to those of a non-degraded stream, so long as the location, landscape context, and physical structure of the stream are sufficiently similar. The challenge to this approach is finding a reference stream that is of similar location, landscape context, and physical structure. Because large rivers are unique and most in the Pacific Northwest have been significantly impacted by human activities, this approach is most applicable to smaller streams where a reference stream with current temperatures at natural conditions exists.

*Historical Temperature Data:* For some rivers, historical temperature data are available that reflect temperatures prior to human influences on the river's temperature regime, and can be used as an estimate of natural temperatures. Factors that lend uncertainty to historic temperature data are the uncertain nature of the quality of the data and whether or not humans affected temperature prior to data collection. Further, historical temperature data often do not adequately capture the spatial and/or temporal variability in stream temperature due to limited spatial or temporal sampling. Historical data may be useful, however, for verifying estimates of modeled natural temperatures.

*Temperature Models:* Two major methods have been commonly used for water quality modeling in the United States over the last 20 years: (1) Statistical models, which are based on observed relationships between variables and are often used in conjunction with measurements from a reference location, and (2) process-based models, which attempt to quantify the natural processes acting on the water body. Process-based models are often employed when no suitable reference locations can be identified.

Statistical models, also referred to as empirical models, estimate the thermal conditions of streams by using statistics to find correlations between stream temperature and those landscape characteristics that control temperature (*e.g.*, elevation, latitude, aspect, riparian cover, *etc.*). The equations in statistical models describe the observed relationships in the variables as they were measured in a specific location. If the specific location is a non-degraded reference stream, then the model can be used to estimate natural conditions in degraded streams. Statistical models have the advantage of being relatively simple, as they rely on general data and statistics to develop correlations.

The comparability between the reference water body where the statistical correlations are generated and the assessment water body strongly affects the applicability of statistical models. Uncertainties in statistical model results increase with increasing dissimilarity between the landscape characteristics of the reference and assessment water bodies. Uncertainties also increase when models do not include landscape characteristics that control important processes affecting the water temperature. For these reasons, statistical models are best suited for small headwater streams or for generalized predictions across a large landscape. Process models, also referred to as simulation models, are based on mathematical characterizations of the critical processes that affect water temperature in rivers. The equations are constructed to represent the observed or expected relationships and are generally based on physical or chemical principles that govern the fate and transport of heat in a river (*e.g.*, net heat flux from long-wave radiation, direct short wave radiation, convection, conduction, evaporation, streamside shading, streambed friction, and water's back radiation) (Bartholow, 2000).

Estimating water temperature with a process model is generally a two-step process. As a first step, the current river temperatures are estimated with system characteristics (*e.g.*, amount of shade provided by the canopy, river geometry, point source inputs, *etc.*) reflecting current conditions. Model performance can then be evaluated by comparing simulated temperatures to measured temperatures. Once the model is thus calibrated, the second step involves changing the system characteristics to represent natural conditions. Examples of these changes are removal of point source discharges from the model inputs, changing the model hydrodynamics from impounded conditions due to a dam to free-flowing conditions, and increasing the riparian shade to represent a natural forest.

Unlike statistical models, process models do not rely upon data from reference locations, so they can be used for rivers that have no suitable natural reference comparisons available. Thus, process models are well suited for estimating natural conditions for larger streams and rivers. Although powerful, process models are by no means infallible. As noted above, there are numerous potential sources of uncertainty in model estimates, and these should be well documented in decision-making.

In addition to estimating natural conditions, process-based models are useful for understanding the basic mechanisms influencing water temperature in a watershed, understanding the relative contributions from different sources at different locations, understanding cumulative downstream impacts from various thermal loads, performing "what if" scenarios for different mitigation options, and setting TMDL allocations.

*Historical Fish Distributions:* Maps of historic salmonid distributions and their time of use can provide rough estimates of natural temperatures. Areas where salmonids existed historically likely provided temperatures suitable for salmonids and, as described in the Temperature Guidance, EPA has a fairly good understanding of suitable temperatures for various life stages of salmonids.

*ii. EPA's Basis for Proposing a Criterion to Protect Waters That Are Currently Cold.* One of the important principles in protecting the designated uses proposed in this rule is the protection of existing high quality habitat. EPA, therefore, believes it is important to have strong regulatory measures to protect waters with ESA-listed salmonids that are currently colder than EPA's proposed numeric criteria. EPA is proposing a narrative criterion specific to waters in which salmonid species that are listed as threatened or endangered under the ESA are present, and where available data and information from ten years prior to the date of the publication of the final rule in the **Federal Register** reflect the temperature in the water body and demonstrate that the warmest summer maximum 7DADM temperature is colder than the applicable numeric criterion. In these cases, the summer maximum 7DADM temperature shall be the applicable water quality criterion, unless a complete data record of ten years is available, in which case the maximum 7DADM temperature for the year with the second highest maximum 7DADM shall be the applicable criterion.

Because the temperatures of many waters in the Pacific Northwest are currently higher than the summer maximum criteria proposed in this rule, the high quality, thermally-optimal waters that do exist are important for the survival of ESA-listed salmonids. Additional warming of these waters will likely cause harm by further limiting the availability of thermally optimal waters. Further, protection of these cold water segments in the upper part of a river basin plays an important role in maintaining temperatures downstream. Thus, in situations where downstream temperatures currently exceed numeric criteria, upstream temperature increases in waters currently colder than the criteria may further contribute to the non-attainment downstream, especially where there are insufficient intervening river miles to allow the river to return to equilibrium temperatures. *See* "Issue Paper 3: Spatial and Temporal Patterns of Stream Temperature," Prepared as Part of EPA Region 10 Temperature Water Quality Criteria Guidance Development Project. EPA–910–D–01–003, May 2001.; "Technical Synthesis: Scientific Issue Relating to Temperature Criteria for Salmon, Trout, and Char Native to the Pacific Northwest," A Summary Report Submitted to the Policy Workgroup of the EPA Region 10 Water Temperature Criteria Guidance Project. EPA–910–D–01–007. Finally, natural summertime temperatures in Pacific Northwest waters were spatially diverse, with areas of cold-optimal, warm-optimal, and warmer-than-optimal water. The natural conditions narrative criterion described previously deals with natural conditions reflecting warmer-than-optimal water temperature. EPA believes it is important, however, to balance the effects of these warmer waters by adopting provisions to protect waters that are at the colder end of their optimal thermal range. EPA's proposed rule is intended to do this.

Provisions to protect waters currently colder than numeric criteria can also be important to ensure the numeric criteria proposed today protect salmonid uses. As discussed previously, EPA's proposed criteria are based in part on the judgment that meeting the criteria at the lowest downstream point at which the use is designated will likely result in cooler waters upstream. These proposed cold water protection provisions provide more certainty that this will be true.

EPA requests comment on an alternative that would rely on the State's existing antidegradation policy and EPA's proposed implementation procedures to protect these high-quality waters. In general, antidegradation policies, which are part of water quality standards, prohibit a lowering of water quality in high-quality waters except when specific procedural and substantive requirements are satisfied. Using the antidegradation policy to protect high-quality waters may provide greater site-specific flexibility because it would not be necessary to promulgate a rule change to accomodate a situation where some temperature increase (but still below the applicable criterion) was unavoidable. Also, there may be practical difficulties in determining what the applicable criterion is for high-quality waters under the proposed approach if data is incomplete or implementation resources are limited.

TABLE III–1.—SUMMARY OF TEMPERATURE CONSIDERATIONS FOR SALMON AND TROUT LIFE STAGES

| Life stage | Temperature consideration | Temperature and unit | Reference |
|---|---|---|---|
| Spawning and Egg Incubation. | * Temp. Range at which Spawning is Most Frequently observed in the Field. | 4–14 °C (daily avg) | Issue Paper 1; pp 17–18.<br>Issue Paper 5; p 81. |
| | * Egg Incubation Studies. | | |
| | —Results in Good Survival | 4–12 °C (constant) | Issue Paper 5; p 16. |
| | —Optimal Range | 6–10 °C (constant). | |

TABLE III–1.—SUMMARY OF TEMPERATURE CONSIDERATIONS FOR SALMON AND TROUT LIFE STAGES—Continued

| Life stage | Temperature consideration | Temperature and unit | Reference |
|---|---|---|---|
| | • Reduced Viability of Gametes in Holding Adults. | > 13 °C (constant) | Issue Paper 5; pp 16 and 75. |
| Juvenile Rearing | • Lethal Temp. (1 Week Exposure) | 23–26 °C (constant) | Issue Paper 5; pp 12, 14 (Table 4), 17, and 83–84. |
| | • Optimal Growth. | | |
| | —unlimited food | 13–20 °C (constant) | Issue Paper 5; pp 3–6 (Table 1), and 38–56. |
| | —limited food | 10–16 °C (constant). | |
| | • Rearing Preference Temp. in Lab and Field Studies. | 10–17 °C (constant)<br><18 °C (7DADM) | Issue Paper 1; p 4 (Table 2).<br>Welsh et al. 2001. |
| | • Impairment to Smoltification | 12–15 °C (constant) | Issue Paper 5; pp 7 and 57–65. |
| | • Impairment to Steelhead Smoltification | >12 °C (constant). | Issue Paper 5; pp 7 and 57–65. |
| | • Disease Risk (lab studies) | | Issue Paper 4, pp 12–23. |
| | —High | >18–20 °C (constant). | |
| | —Elevated | 14–17 °C (constant). | |
| | —Minimized | 12–13 °C (constant). | |
| Adult Migration | • Lethal Temp. (1 Week Exposure) | 21–22 °C (constant) | Issue Paper 5; pp 17, 83–87. |
| | • Migration Blockage and Migration Delay | 21–22 °C (average) | Issue Paper 5; pp 9, 10, 72–74.<br>Issue Paper 1; pp 15–16. |
| | • Disease Risk (lab studies). | | |
| | —High | >18–20 °C (constant) | Issue Paper 4; pp 12–23. |
| | —Elevated | 14–17 °C (constant). | |
| | —Minimized | 12–13 °C (constant). | |
| | • Adult Swimming Performance. | | |
| | —Reduced | >20 °C (constant) | Issue Paper 5; pp 8, 9, 13, 65–71. |
| | —Optimal | 15–19 °C (constant). | |
| | • Overall Reduction in Migration Fitness due to Cumulative Stresses. | >17–18 °C (prolonged exposures). | Issue Paper 5; p 74. |

TABLE III–2.—SUMMARY OF TEMPERATURE CONSIDERATIONS FOR BULL TROUT LIFE STAGES

| Life stage | Temperature consideration | Temperature and unit | Reference |
|---|---|---|---|
| Spawning and Egg Incubation. | • Spawning Initiation | <9 °C (constant) | Issue Paper 5; pp 88–91. |
| | • Temp. at which Peak Spawning Occurs | <7 °C (constant) | Issue Paper 5; pp 88–91. |
| | • Optimal Temp. for Egg Incubation | 2–6 °C (constant) | Issue Paper 5; pp 18, 88–91. |
| | • Substantially Reduced Egg Survival and Size. | 6–8 °C (constant) | Issue Paper 5; pp 18, 88–91. |
| Juvenile Rearing | • Lethal Temp. (1 week exposure) | 22–23 °C (constant) | Issue Paper 5; p 18. |
| | • Optimal Growth. | | |
| | —unlimited food | 12–16 °C (constant) | Issue Paper 5; p 90. Selong et al 2001. Bull trout peer review, 2002. |
| | —limited food | 8–12 °C (constant). | |
| | • Highest Probability to occur in the field | 12–13 °C (daily maximum) | Issue Paper 5; p 90. Issue Paper 1; p 4 (Table 2). Dunham et al., 2001. Bull trout peer review, 2002. |
| | • Competition Disadvantage | >12 °C (constant) | Issue Paper 1; pp 21–23. Bull trout peer review, 2002. |

## *D. IGDO Criterion for Salmonid Spawning*

### 1. Background

The early life stages of fish are recognized as being the most sensitive and requiring relatively high DO concentrations. The oxygen demand by embryos depends on temperature and on the stage of development with the greatest DO required just prior to hatching. When water temperature is near 15°C/58°F, maximum critical levels of DO (where ambient levels meet metabolic needs) for steelhead embryos were estimated at 10.2 mg/L (Rombough, 1986). Rombough (1986) and other researchers have shown that critical oxygen concentration increases with temperature and with the stage of development of the fish. In experiments to determine critical DO levels in steelhead embryos, Rombough (1988) found that critical DO levels rose from less than 1.0 mg/L shortly after fertilization to 9.7 mg/L prior to hatching (implies an IGDO of at least 6.7 mg/L), depending on the temperature. The crucial timing of IGDO, stream temperature, and flow rate varies with each salmonid Evolutionarily Significant Unit's specific characteristics. Sowden and Power (1985) observed that survival in field studies is negligible when IGDO falls below 5 mg/L. This is consistent with other studies. Phillips and Campbell (1962) and Maret *et al.* (1993) observed no or negligible survival in field studies where IGDO fell below 8.0 mg/L.

Turnpenny and Williams (1980) also found survival significantly reduced at 8 mg/L. Other studies found reduced growth of juvenile salmon correlating with IGDO with significant reductions occuring at levels below 9 mg/L (Maret *et al.*, 1993). Growth reductions result in small-sized juveniles that can be poor competitors and face increased risks from predation, disease, and starvation (Mason, 1969; Chapman and McLeod, 1987).

### 2. EPA's Proposed IGDO Criterion

EPA is proposing a water quality criterion for IGDO for the protection of bull trout spawning and salmon and steelhead spawning through fry emergence such that in water bodies or segments in which the numeric temperature criteria for bull trout spawning and salmon and steelhead spawning through fry emergence applies according to the proposed use designation maps, the spatial median IGDO shall not be less than 8.0 mg/L.

Altitude and temperature place physical limitations on the oxygen concentration in water. Oxygen saturation level decreases with increasing altitude and naturally, increasing temperature. (Oregon Department of Environmental Quality, Dissolved Oxygen 1992–1994 Water Quality Standards Review Final Issue Paper, June 1995). Thus, the IGDO criterion for the protection of egg incubation and fry emergence may not be achievable in some locations and times. EPA recognizes the need to have an alternative criterion when high altitude or naturally occurring warm temperatures preclude meeting the 8 mg/L IGDO criterion. Therefore, EPA proposes the following modifying provision to the IGDO criterion. Where barometric pressure, altitude, and air temperature preclude attainment of the IGDO criterion, then the criterion shall be not less than 95 percent of the maximum IGDO level attainable given the barometric pressure, altitude, and air temperature.

EPA requests comment on its proposed IGDO criterion, which is based on the studies cited above, and any additional data relevant to this criterion. EPA also notes that in general, an ambient water column DO level of 11 mg/L will ensure an IGDO of 8 mg/L and requests comment on whether an IGDO criterion is necessary to protect salmonid spawning in waters that already have an 11 mg/L ambient DO criterion.

## *E. Antidegradation Implementation Methods*

### 1. Background

Section 303 (33 U.S.C. 1313) of the CWA requires States and authorized Tribes to adopt water quality standards for waters of the United States within their applicable jurisdictions. Such water quality standards must include, at a minimum: (1) Designated uses for all water bodies within their jurisdictions, (2) water quality criteria necessary to protect the most sensitive of the uses, and (3) antidegradation provisions consistent with the regulations at 40 CFR 131.12. Antidegradation is an important tool for States and authorized Tribes to use in meeting the CWA's requirement that water quality standards protect the public health or welfare, enhance the quality of water and meet the objective of the CWA to restore and maintain the chemical, physical and biological integrity of the nation's waters.

EPA's regulation at 40 CFR 131.12 requires that States and authorized Tribes adopt antidegradation policies to provide three levels of water quality protection and identify implementation methods. The first level of protection at 40 CFR 131.12(a)(1) requires the maintenance and protection of existing instream water uses and the level of water quality necessary to protect those existing uses (tier 1). Protection of existing uses is the "floor" of water quality protection afforded to all waters of the United States. Existing uses are "* * * those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards." (40 CFR 131.3(e))

The second level of protection is for high quality waters (tier 2). High quality waters are defined in 40 CFR 131.12(a)(2) as waters where the quality is better than the levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water. This high water quality is to be maintained and protected unless the State or authorized Tribe finds, after public participation and intergovernmental review, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing lower water quality, the State or authorized Tribe must assure water quality adequate to protect existing uses. Further, prior to allowing lower water quality, the State or authorized Tribe must ensure that all applicable statutory and regulatory requirements are achieved for all other new and existing point sources and all cost-effective and reasonable best management practices required by the State or authorized Tribe are achieved for nonpoint source control.

Finally, the third and highest level of antidegradation protection is for Outstanding National Resource Waters (ONRWs) (tier 3). If a State or authorized Tribe determines that the characteristics of a water body constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, and designates a water body as such, then those characteristics must be maintained and protected. *See* 40 CFR 131.12(a)(3).

In addition to requiring States and authorized Tribes to have an antidegradation policy, 40 CFR 131.12 requires States to identify methods for implementing such a policy. Such methods are not required to be contained in the State's regulation, but as they inform EPA's judgment regarding whether the State's antidegradation policy is consistent with the Federal regulations at 40 CFR 131.12, they are subject to EPA review. Where the State chooses to make such methods part of its water quality standards regulations, section 303(c)(3) of the CWA and EPA's implementing regulations require them to be submitted to EPA for review. When a State or authorized Tribe chooses to develop such methods as guidance or outside of regulation, EPA reviews the methods either in connection with the State or Tribe's submission of an amendment to its antidegradation regulations under CWA section 303(c)(3) or under its discretionary authority to review existing water quality standards under CWA section 303(c)(4).

EPA's regulations at 40 CFR 131.12 provide a great deal of discretion to States regarding the amount of specificity required in antidegradation implementation methods. The regulations do not specify minimum elements for such methods, but do require that such methods not undermine the intent of the antidegradation policy. *See* Advanced Notice of Proposed Rulemaking, 63 FR 36742, 36781 July 7, 1998.

Finally, EPA wishes to explain the applicability of antidegradation provisions to point sources and nonpoint sources. While antidegradation requirements as water quality standards apply to the waterbody, the CWA requires only that antidegradation be applied to point sources because the CWA only gives EPA authority to regulate point sources.

*Appalachian Power Company* v. *Train*, 545 F.2d 1351, 1373 (4th Cir. 1976). Thus, whether antidegradation applies to nonpoint sources is solely a question of State and Tribal law. The CWA and EPA's regulations leave to the States and authorized Tribes the decision whether to regulate such sources by requiring that they undergo antidegradation review. *American Wildlands* v. *Browner*, 260 F.3d 1192, 1198 (10th Cir. 2001). EPA's proposed antidegradation methods must also meet the requirements of the ESA.

### 2. Why Is EPA Proposing Antidegradation Implementation Methods for the State of Oregon?

EPA is proposing methods for implementing the antidegradation policy adopted by the State of Oregon in order to comply with the court's final judgment in *Northwest Environmental Advocates* v. *EPA & NMFS* (August 13, 2003). At the time of the Oregon water quality standards litigation, EPA had approved Oregon's antidegradation policy. In addition, at the time of the initial briefing in the Oregon litigation, Oregon was in the process of developing methods for implementing its antidegradation policy. See "State of Oregon: Antidegradation Policy Implementation Internal Management Directive for NPDES Permits and Section 401 Water Quality Certifications," March 2001 ("the Directive"). These methods were not contained in Oregon's water quality standards regulations and were not submitted to EPA for review and approval as a "new or revised standard" under CWA section 303(c)(3). In addition, EPA did not review the Directive as part of any discretionary action to review Oregon's existing antidegradation regulations under CWA section 303(c)(4). Because of the jurisdictional argument EPA made in the Oregon litigation and because the implementation methods had not been submitted to EPA for review, EPA did not inform the court of the existence of Oregon's implementation methods. EPA argued that EPA was not subject to a mandatory duty under CWA section 303(c)(3) because there was no new or revised water quality standard regarding antidegradation that triggered a mandatory duty for EPA review, and that there could be no Administrative Procedure Act claim unless and until a party petitioned the Agency to act under its discretionary authority, because absent such a petition, there is no agency "action" to review. Although the court agreed with EPA in holding that EPA did not have a mandatory duty to review Oregon's implementation methods, the court found that it could immediately review EPA's failure to exercise its discretionary authority to review Oregon's methods for implementing its antidegradation policy. 268 F.Supp.2d 1255, 1264 (D.Or. 2003). The court held that EPA acted arbitrarily in failing to exercise its discretion to promulgate an implementation plan for Oregon. The court, therefore, ordered EPA to promulgate an antidegradation implementation plan for Oregon. While EPA does not agree with the court's decision, EPA is complying with the court's order. 268 F.Supp.2d at 1265.

### 3. What Antidegradation Implementation Methods Is EPA Proposing for the State of Oregon?

Subsequent to the court's order, Oregon proposed to amend its water quality standards, including its antidegradation regulations, to include key elements of its antidegradation implementation methods within its regulations. Oregon Administrative Rule (OAR) 340–041–0004; August 15, 2003. EPA's proposed rule is based on Oregon's proposal. When Oregon finally adopts revisions to its water quality standards, Oregon is required to submit them to EPA for review. As part of its review of Oregon's new or revised water quality standards as contained in State regulation, EPA will also consider Oregon's implementation methods that are not in State regulation, as information that is relevant to understanding what the regulatory revisions mean in practice. The final judgment dated August 13, 2003, requires EPA by March 2, 2004, to either promulgate final regulations regarding methods for implementing Oregon's existing antidegradation policy or to approve Oregon's submission. Thus, EPA may approve Oregon's antidegradation methods even if they are not the same as this proposal, as long as they are consistent with the CWA. EPA will consider what is contained in the Directive as part of determining whether Oregon's implementation methods comport with the CWA.

*Tier 1:* EPA is proposing that, to implement Tier 1, any lowering of water quality in any water body must protect existing uses. Oregon's existing regulation currently contains provisions to protect existing uses. *See e.g.*, 340–041–0004(1) Purpose; 340–041–0004(8)(c) High quality waters; and 340–041–0004(10), which refers in turn to 3401–041–0004(12)(a)(C). Due to the court's order, EPA is proposing, consistent with Oregon's Regulations and Directive (page 12 flow chart) that in all waters, including those that are not high quality, the existing use must be protected. For example, even in a water body that is impaired, if it continues to support a limited aquatic life use or the water quality supported an aquatic life use since November 28, 1975, prior to any authorization that requires compliance with water quality standards, the level of water quality necessary to protect that "existing use" must be maintained and protected. 40 CFR 131.3(e); 131.12(a)(1).

*Tier 2:* The purpose of EPA's antidegradation regulations with regard to high quality waters, 40 CFR 131.12(a)(2), is to ensure that assimilative capacity in the waterbody is not used up without a public process to determine that lowering water quality is necessary to accommodate important social or economic development. EPA's regulation applicable to high quality waters contains terms that provide States, and Territories and authorized Tribes with significant discretion to determine what is a high quality water, what constitutes a "lowering" of water quality that would trigger a Tier 2 antidegradation review, and what constitutes a determination that the "lowering" is necessary to accommodate important social or economic development. Thus, in identifying methods for implementing antidegradation policies, EPA would like States and authorized Tribes to explain how they intend to implement these three aspects of the regulation.

Oregon's definition of high quality waters in its existing antidegradation policy tracks EPA's regulation precisely at 40 CFR 131.12(a)(2). Regarding an implementation method for this regulation, EPA proposes to follow Oregon's approach in defining a high quality water as one that has water quality that meets or is better than all water quality standards. In other words, a high quality water is one that is not a water quality-limited water. Directive at 21.

EPA recognizes that Oregon's approach reflects a waterbody-by-waterbody approach to antidegradation rather than a parameter-by-parameter approach. In EPA's ANPRM, July 7, 1998, EPA discussed the advantages and disadvantages to both approaches to designating high quality waters. 63 FR 36782, 36783. EPA also discussed these issues in the preamble to its proposed rule regarding antidegradation implementation procedures for Kentucky. 67 FR 68971, 67798–99 November 14, 2002. EPA interprets the regulation to authorize either approach. Although arguably a parameter-by-parameter approach may capture more waters as Tier 2 waters, EPA notes that Oregon includes waters that "meet" all water quality standards as Tier 2 waters, rather than using the term "exceed" in the regulation to exclude from Tier 2 review those waters that precisely meet water quality standards. Under Oregon's approach, which EPA follows here, all waters are captured within the State's water quality management system. Impaired waters are addressed through the TMDL provisions of CWA section 303(d) and those that are not impaired are not lowered absent a public process to determine that such lowering is necessary to accommodate important social or economic development. Further, Oregon's approach has the advantage of relying on pre-existing assessment decisions rather than requiring additional assessment of the waterbody to determine if it is a Tier 2 water.

Regarding what constitutes a "lowering" that triggers Tier 2 review, in today's proposed rule, EPA proposes a rule tracking Oregon's proposed amendment to its antidegradation regulations that allows for certain *de minimis* loadings not to constitute a "lowering" of water quality that triggers Tier 2 antidegradation review. EPA has long interpreted the antidegradation policy to allow a determination that certain discharges have an insignificant impact on water quality and therefore may not require an antidegradation review. See EPA's proposed rule regarding Kentucky's antidegradation implementation methods, 67 FR 68791, November 14, 2002. See also "Proposed Water Quality Guidance for the Great Lakes System," (GLI) 58 FR 20802, April 16, 1993; and "Supplementary Information Document for the Final Great Lakes Guidance," Chapter VII at 203–225, 207–210 included in the record for this rule.

Specifically, EPA proposes that pollutant concentration increases are not considered lowering of water quality if there is no overall increase in the total mass load of the pollutant on at least an annual basis. Also, a *de minimis* change in temperature that does not reduce or degrade water quality of the State is not required to undergo Tier 2 review. EPA tracks Oregon's definition of *de minimis* to mean a seven-day average maximum stream temperature increase or decrease of 0.30°C/0.54°F or less across the watershed.

Third, regarding what constitutes a finding that a lowering is necessary to accommodate important social or economic development, EPA tracks the main components of Oregon's proposed antidegradation regulations and the main principles contained in Oregon's Directive, that the discharger/applicant provide the State with enough information to allow for a financial impact analysis that assesses whether allowing important economic and social development justifies lowering water quality. EPA is aware that Oregon has included in its proposed amendments much more detail of how this assessment would be done through a reference to certain parts of its Directive; however, EPA is not proposing that those specifics be contained in EPA's proposed rule. EPA believes that including this degree of specificity in a Federal rulemaking is not required by the regulations at 40 CFR 131.12(a)(2) nor is it in the public interest because once codified, a subsequent Federal rulemaking would be necessary to allow the State to deviate from the Federal rule, and EPA does not wish to constrain a State's discretion to this degree. EPA intends to consider the specifics of the Directive, incorporated into the State regulation, when EPA acts on the State's final revised water quality standards regulations submitted to EPA.

*Tier 3:* EPA proposes to track Oregon's proposed water quality standards regulation regarding Tier 3 implementation for Outstanding Resource Waters (ORWs). (In today's proposed rule, EPA uses the term Outstanding Resource Water or ORW to be consistent with the State of Oregon's terminology in its existing regulation.) EPA's proposed rule describes the process the State would follow in designating high quality waterbodies to be classified as ORWs in order to protect the water quality parameters that affect ecological integrity of critical habitat or special water quality values that are vital to the unique character of those waterbodies.

### *F. Effect of This Proposed Rule on the State's Water Quality Programs*

EPA's approach in this rulemaking does not undermine the State's primary role in designating uses, establishing protective criteria, and ensuring the protection of high quality waters in Oregon. EPA prefers that States establish their own regulations. If the standards are adopted by the State for specific waters and approved by EPA before final promulgation of the Federal standards, EPA will not proceed with the final promulgation and the State standards will take effect for CWA purposes.

Water quality standards are implemented through such mechanisms as NPDES permits. The State has flexibility in how it implements these water quality standards. EPA has included a variance provision in today's proposed rule, 40 CFR 131.39(h), authorizing the Regional Administrator to grant variances based upon a permittee's demonstration, consistent with the Federal regulations, that the use is not attainable. Variances are particularly suitable for instances where the cause of nonattainment is discharger-specific and it appears that the designated use in question will eventually be attainable or be demonstrated to be unattainable. For example, a permitted entity may have a long-term plan (*e.g.*, 20 or 30 years) in place that will result in the eventual attainment of water quality standards; however, in the intervening years attaining water quality standards may not be possible. In this circumstance, the entity may wish to seek a water quality standards variance. See Section V.C. In addition, the State will use these water quality standards, if finalized, in identifying impaired waters and establishing TMDLs. Where the State identifies waters subject to this rulemaking as impaired, the State has discretion in scheduling the water for TMDL development. Further discussion is contained in section V.F.

## IV. Economic Analysis

These standards may serve as a basis for development of NPDES permit limits. In Oregon, the State is the NPDES permitting authority and retains considerable discretion in implementing standards. EPA prepared a preliminary analysis to evaluate potential costs to NPDES dischargers in Oregon associated with future State implementation of EPA's Federal standards.

Any NPDES-permitted facility that discharges to water bodies affected by this proposed rule could potentially incur costs to comply with the rule's provisions. The types of affected facilities may include industrial facilities and publicly owned treatment works (POTWs). EPA did not consider the potential costs for nonpoint sources, such as agricultural and forestry-related nonpoint sources because the CWA does not regulate nonpoint sources. EPA does, however, recognize that the State may decide to require controls under State law for nonpoint sources to achieve water quality standards. As a technical matter, nonpoint source discharges are difficult to model and evaluate for potential costs because they are intermittent, highly variable, and occur under different hydrologic or climatic conditions than continuous discharges from industrial and municipal facilities, which are evaluated under critical low flow or drought conditions. Thus, the evaluation of nonpoint sources and their effects on the environment is highly site-specific and data sensitive. In addition, EPA did not quantify the potential benefits of this proposed rule for Oregon.

### *A. Identifying Affected Facilities*

According to EPA's Permit Compliance System (PCS), there are 1,447 NPDES-permitted facilities in Oregon. Seventy-six of the facilities are classified as major dischargers, and 1,371 are minor or general permit dischargers. However, EPA did not include general permit facilities in its analysis because data for such facilities are extremely limited, flows are usually negligible, and EPA could not determine if any of these facilities discharge to affected stream segments because location information is not available in EPA's PCS database. Therefore, EPA's analysis includes a universe of 382 permitted facilities (76 major and 306 minor).

To identify facilities potentially affected by the proposed rule, EPA assumed that only facilities that discharge to rivers and streams with new or more stringent uses and criteria may be affected by the water quality criteria and designated uses provisions. (EPA also assumed that facilities discharging directly to the Columbia River and the Pacific Ocean are not affected by the proposed rule, except for portions of the Columbia River where spawning occurs and the proposed IGDO criterion would apply.) For IGDO, the current criterion of 6 mg/L is less stringent than the revised IGDO criterion of 8 mg/L. Therefore, all waters designated for salmonid spawning are potentially affected by the proposed rule, and facilities discharging to these waters are included in the set of potentially affected dischargers. EPA identified these facilities by overlaying PCS facilities with the waters designated for salmonid spawning using geographic information system (GIS) software.

To identify waters for which the rule provides new or more stringent uses and temperature criteria, EPA compared criteria and uses designated for salmonid spawning and rearing and bull trout protection for waters under the proposed rule with those criteria and uses that are currently designated by the State of Oregon. The State's current temperature criteria for salmonid rearing is 17.8°C/64.0°F, with no differentiation for core juvenile rearing. The proposed rule establishes a 16°C/61°F temperature criterion for core juvenile rearing (and 18°C/64°F otherwise for rearing). Therefore, EPA's rule provides a more stringent criterion for waters it designates for core juvenile rearing (16°C/61°F), and facilities discharging to these waters may be affected. EPA identified these facilities by overlaying PCS facilities with the waters designated for core juvenile rearing using GIS software.

For salmonid spawning, the current State criterion (12.8°C/55.0°F) is slightly more stringent than the proposed criterion of 13°C/55°F. However, the time period that the criterion applies may differ under EPA's proposed rule. Therefore, EPA assumed that any waters for which it is designating a salmonid spawning period that is earlier or later than currently designated by the State (*e.g.*, current designation from October 1 to May 31, versus a proposed designation from September 1 to June 30) would be affected because a more stringent criterion (*i.e.*, more stringent than the current State salmonid rearing criterion of 17.8°C/64.0°F would apply during the extended time period. Facilities discharging to these waters may be impacted. EPA identified these facilities by overlaying PCS facilities in a GIS map with the waters for which an earlier or later salmonid spawning period applies under the rule.

For antidegradation, the State already has an antidegradation policy in place. This rule would primarily affect the methods by which a review would occur in high quality waters. EPA assumed that facilities discharging to streams not listed by the State as impaired waters (*i.e.*, not on the 303(d) list) are affected. Although high-quality waters are not yet identified by the State, the unimpaired waters provide a reasonable approximation of high-quality waters (although some portion of these will be ORWs and not affected by the procedures because no lowering of water quality is allowed for ORWs). EPA identified these facilities by overlaying PCS facilities with 303(d) listed waters designated using GIS software. Table IV–1 summarizes the potentially affected facilities by provision. The dischargers are grouped by discharger type (*e.g.*, major or minor) and category (*e.g.*, POTW or industry category). Note that there are some facilities affected by more than one provision.

TABLE IV–1. ESTIMATED NUMBER OF FACILITIES POTENTIALLY AFFECTED BY EACH PROVISIONS OF THE PROPOSED RULE

| Category | Number of facilities | | |
|---|---|---|---|
| | IGDO [1] | Temperature [2] | Antidegradation [3] |
| Major POTWs | 29 | 3 | 14 |
| Major Industrial | 14 | 1 | 8 |
| Minor Dischargers | 149 | 44 | 130 |
| Total | 192 | 48 | 152 |

[1] Estimated as facilities discharging to waters designated for salmonid spawning, except for portions of the Columbia River where spawning occurs.

[2] Estimated as facilities discharging to waters designated for core juvenile rearing, or an extended (earlier, later, or both) spawning period, under the proposed rule.

[3] Estimated as facilities discharging to waters not on the State's 303(d) list.

### *B. Method for Estimating Potential Compliance Costs*

EPA identified a total of 48 facilities (4 major and 44 minor) that may be potentially affected by the proposed uses and temperature criteria. EPA evaluated all four major facilities and a sample of minor facilities from this group for potential cost impacts associated with the proposed rule. For these sample facilities, EPA assumed that any discharge that results in a downstream temperature greater than 0.14°C/0.25°F above the applicable criterion would require additional controls (current Oregon water quality standards state that a discharge may not cause an increase in the surface water temperature of greater than 0.14°C/0.25°F in waters exceeding the applicable criterion [OAR 340–041–0205 (b)(A)]).

EPA evaluated the effect of the discharge on the receiving water using monthly effluent and receiving water data. When possible, EPA calculated the average of the maximum 7-day moving averages for each month, or if daily temperature data were not available, EPA evaluated the average of the maximum monthly values. To determine the effect of the discharge on the downstream temperature, EPA calculated the temperature at the edge of the regulatory mixing zone (RMZ) assuming that the background stream temperature is the applicable criterion when the waterbody currently exceeds the criterion. For example, if the receiving water has a proposed designated use of core salmonid rearing and currently has a maximum temperature of 17°C/62.6°F in August, the effluent temperature used in the compliance analysis would be the maximum monthly effluent temperature between July and August, and the stream temperature would be 16°C/61°F. Otherwise, EPA used the maximum receiving water temperature (*i.e.*, average of maximum 7-day moving average temperatures, average of maximum monthly temperatures) in those situations where the waterbody is currently attaining the criterion. In both cases, EPA calculated the dilution ratio from the 7Q10 stream flow (minimum 7-day average flow recurring once in 10 years) and the average dry weather design flow for the facility. EPA's proposed rule specifies that only 25 percent of the 7Q10 flow be used in the dilution calculation in waters not currently attaining the applicable temperature criterion. In many cases, facilities had already calculated dilution ratios through stream modeling (*e.g.*, CORMIX) or mixing zone studies. In these cases, if less than 25 percent of the 7Q10 flow was used in the model, EPA used the facility-calculated value, otherwise, EPA calculated the dilution ratio assuming 25 percent of the stream flow is available for dilution.

EPA estimated the most cost-effective control strategy for each facility to achieve compliance. To estimate the potential costs associated with the controls, EPA used temperature management plans (TMPs) from facilities that have already developed them to determine the necessary controls on point sources to reduce effluent temperatures. Possible controls include process optimization, pollution prevention, land application, and cooling towers. EPA determined costs for these controls from readily available documentation and updated these sources to 2003 dollars.

There are no IGDO data available for any of the affected waters, primarily because methods to measure IGDO have only recently been developed. Therefore, EPA estimated compliance with current and proposed IGDO criteria based on an estimated 3.0 mg/L differential between the IGDO and dissolved oxygen (DO) in the overlying water. Studies cited (Koski, 1965; Hollender, 1981) in EPA's *Ambient Water Quality Criteria for Dissolved Oxygen* (EPA, 1986) indicate that 3.0 mg/L is a good approximation of the differential between water column DO and IGDO. Therefore, EPA believes it is reasonable to assume that a water designated for bull trout juvenile rearing and spawning or salmon and steelhead spawning though fry emergence that has a water column DO concentration of 11.0 mg/L would achieve 8.0 mg/L IGDO. Using this differential, the current Oregon IGDO criterion of 6.0 mg/L corresponds to a minimum instream DO concentration of 9.0 mg/L. EPA's proposed IGDO criterion of 8.0 mg/L corresponds to a minimum instream DO concentration of 11.0 mg/L.

Current Oregon water quality standards specify a minimum water column DO for protection of salmonid spawning is 11.0 mg/L, unless the minimum IGDO (measured as a spatial median) is 8.0 mg/L, then the minimum DO may be 9.0 mg/L. If conditions of barometric pressure, altitude, and temperature preclude attainment of 11.0 or 9.0 mg/L standards, then the minimum DO may be 95 percent of saturation.

EPA's rule only changes the IGDO criterion, and not Oregon's 11.0 mg/L (or 9.0 mg/L) instream DO criteria. Thus, if a stream is meeting the current Oregon water quality standards, based on EPA's *Ambient Water Quality Criteria for Dissolved Oxygen* (EPA, 1986), the stream would also meet the revised EPA criterion, and no costs would be incurred as a result of this part of the rule. If a stream is not meeting the current water quality standards, the costs of attaining compliance would be associated with existing Oregon water quality standards, not as a result of the proposed rule. Therefore, EPA estimated the cost of this provision to be zero.

To develop an estimate of the incremental impact of the antidegradation provision of the proposed rule, EPA first estimated the number of facilities located on newly designated high-quality waters that might request to increase discharges during their permit term. EPA assumed that all waters not on the State's 303(d) list are high quality waters. EPA estimated that 22 major facilities and 130 minor facilities may discharge to high-quality waters. NPDES permits are issued for a period of five years, after which they must be renewed. Therefore, on average, one-fifth (20 percent) or approximately 30 of the 152 existing permit holders will renew their permits each year. Based on the frequency of past Oregon antidegradation reviews and EPA's past experience in calculating costs for its antidegradation rules for other States, EPA assumed that no more than five percent of facilities that discharge to high-quality waters would likely request an increase in an effluent limit to the extent that an antidegradation review would be required when they renew their permit. Given 30 permit renewals per year, less than two facilities would require an antidegradation analysis each year.

Next, EPA estimated the costs of preparing an antidegradation analysis to justify the need to increase discharges for these facilities. Entities seeking an antidegradation review will incur costs to develop financial and economic and social impact analyses, and the State will incur costs to review the analyses and make a determination. EPA assumed that the cost incurred by facilities in complying with the rule is the cost of a preliminary engineering analysis, and the subsequent financial analysis for which EPA provides guidance and a workbook. To estimate the potential analytical costs, EPA first calculated the average capital costs to facilities it identified as requiring additional controls in economic analyses prepared for recent water quality standards actions, including establishing criteria for toxic pollutants and upgrading receiving water use classifications in the States of Alabama, Iowa, California, and Idaho (U.S. EPA, 2001a; 2001b; 1999; and 1997). EPA's estimates of capital costs for these facilities average $1 million for major POTWs, $230,000 for minor POTWs, $2.4 million for major industrial facilities, and $1 million for minor industrial facilities. Thus, preliminary engineering analysis and financial analysis costs could range between $10,000 and $72,000 for major facilities, and between $2,300 and $30,000 for minor facilities (*see* Table IV–2). EPA did not estimate costs for installing additional control measures or limiting increased discharges because EPA would have to speculate on the multiple unknown factors including the type of facility, the pollutants being discharged, the water body in question, the requested increase in discharge, the control technologies currently being implemented, the alternative control technlogies considered, and the State's decision following review of the antidegradation analyses.

TABLE IV–2. ESTIMATED COST PER FACILITY TO PREPARE ANTIDEGRADATION REVIEW

| Cost | Municipal facilities (POTWs) | | Industrial facilities | |
|---|---|---|---|---|
| | Major | Minor | Major | Minor |
| Installed Controls [1] | $1,000,000 | $230,000 | $2,400,000 | $1,000,000 |
| Low Estimate of Review Cost [2]—(1% of Installed Capital Cost) | 10,000 | 2,300 | 24,000 | 10,000 |
| High Estimate of Review Cost [2]—(3% of Installed Capital Cost) | 30,000 | 6,900 | 72,000 | 30,000 |

[1] Average capital costs to facilities that EPA identified as requiring additional pollution controls in analyses of recent water quality standards actions, including establishing criteria for toxic pollutants and upgrading receiving water use classifications, in the States of Alabama, Iowa, California, and Idaho (U.S. EPA, 2001a; 2001b; 1999; 1997).

[2] Use of 1 and 3 percent of Installed Capital Cost based on EPA's best professional judgment.

Costs for the proposed antidegradation provision will include the cost of the State review. EPA assumed that the State's review of the engineering cost analysis and financial impact analysis could require up to 24 hours, and that the notification and response to comments activities will require an average of 100 hours. Thus, based on a national average hourly compensation rate of $42.24 for State and local government workers in professional speciality and technical occupations, the average cost per review is $5,200.

*C. Results*

EPA estimated the potential costs associated with the temperature, IGDO, and antidegradation provisions of the proposed rule separately. For the temperature provision, there are 48 potentially affected facilities. EPA estimated costs for all affected major facilities individually, and estimated costs for affected minor facilities by extrapolating costs from a sample. EPA estimated that the potential total Statewide annual cost associated with proposed temperature criteria will be approximately $198,900.

EPA estimated that the potential cost associated with the proposed IGDO criterion is zero. This estimate is based on compliance with current State standards.

For the antidegradation provision, EPA estimated that the potential annual costs range from $22,500 to $50,900. This estimate is based on combined entity and State costs for two antidegradation reviews per year.

*D. Total Statewide Costs Associated with NPDES Permitted Entities*

The following table summarizes the total estimated potential Statewide costs of today's proposed rule associated with NPDES permitted entities.

TABLE IV–3. TOTAL ESTIMATED ANNUAL STATEWIDE COSTS ATTRIBUTABLE TO THE PROPOSED RULE ($2003/YR)

| Provision | Estimated annual cost [1] |
|---|---|
| Temperature Uses and Criteria | $198,900 |
| IGDO Criteria | $0 |
| Antidegradation Procedures | $22,500–50,900 |
| Total | $221,400–249,800 |

[1] Costs are annualized at 7 percent over 20 years.

EPA recognizes that the potential indirect costs to nonpoint sources associated with the State's implementation of these proposed water quality standards may be higher than the costs EPA has estimated since temperature exceedences on the affected water bodies could also result from nonpoint source activities. Major categories of sources that may be affected by the State's implementation of this proposed rule include forestry and agriculture, as well as dams. EPA has not quantified these costs.

*E. Small Government and Business Analysis*

Today's proposed rule establishes no requirements applicable to small entities, and so is not susceptible to regulatory flexibility analysis as prescribed by the Regulatory Flexibility Act. EPA has nonetheless considered the potential effects of this rule on small entities to the extent that it can, and has included that analysis in the administrative record of this rulemaking. EPA evaluated the potential economic impacts for the facilities that discharge to waters of the State of Oregon and used this information to develop the cost estimate for the proposed rule. EPA estimates that, depending on Oregon's implementation, as many as 128 small municipal entities and 85 business entities could be affected by one or more provisions of the proposed rule. Data are not available to determine if those 85 businesses potentially affected by the proposed rule would be classified as small, or what percent of revenues the estimated costs would represent. Nonetheless, EPA's analysis indicates that, depending on Oregon's implementation, only 29 small municipal entities and 13 business entities could incur costs under the temperature provision, and only 1 to 2 small municipal or business entities could incur antidegradation costs in an average year.

EPA calculated the ratio of potential compliance costs to estimated revenues for the small municipalities using the annualized facility-specific cost estimates described above, actual municipal revenues for facilities potentially affected by the temperature provision, and estimates of annual municipal revenues for facilities affected by other provisions. The estimates are based on 2002 municipal population data and a mean per capita municipal revenue estimate of $860 that EPA derived from the municipalities potentially affected by the temperature provision.

Based on its estimated costs of the proposed rule, and possible Oregon implementation, EPA observed that three small municipal entities could incur costs that equal or exceed 1 percent of revenues. For two of these entities, costs may equal or exceed 3 percent of revenues (the ratios are 4.5 percent and 8.3 percent).

**V. Alternative Regulatory Approaches and Implementation Mechanisms**

*A. Background*

Data and information may become available after the date of this rulemaking that will be material to water quality standards for Oregon. There are several mechanisms available to ensure that the water quality standards and their implementing mechanisms appropriately take into account such new information. These mechanisms are described in sections B through E below.

The State should be aware, however, that EPA considers designated use changes and site-specific criteria to be modifications to the State's water quality standards. Federal regulations at 40 CFR 122.44(d)(1) require that NPDES permits include limitations necessary to achieve water quality standards adopted under section 303 of the CWA. Therefore, a designated use change or a site-specific criterion cannot be the basis for NPDES permit limitations until the State has adopted it as part of its water quality standards, has submitted it to EPA, and EPA has approved it. See 40 CFR 131.21(c) and (d). EPA would also need to withdraw any corresponding Federal use designation or criteria. As with any other revision to the State's water quality standards, EPA will review these revisions to determine whether they are scientifically-defensible in accordance with 40 CFR 131.11(b)(1)(iii), or meet the requirements of 40 CFR 131.10(g), as applicable. EPA will also consider whether the appropriate procedural requirements have been met, such as public participation and certification by the appropriate legal authority within the State.

While 40 CFR 131.13 allows States to adopt variances for State-adopted water quality standards, States do not have authority to change Federal regulations. Thus, State procedures may not be used to modify Federally-promulgated water quality standards. Consequently, EPA has included in today's proposed rule a Federal variance provision allowing the Region 10 Administrator to grant water quality standards variances where a person submits data indicating that an EPA-designated use is not attainable for any of the reasons in 40 CFR 131.10(g). This process is discussed in greater detail in section V.C.

### *B. Process for Federal Agencies Responsible for Federally Owned or Operated Dams To Request EPA Modify Water Quality Standards*

The process EPA used to propose designations for the salmonid uses and setting the numeric criteria described above utilized the best scientifically credible data available to date on the water quality requirements of various life stages of salmonids. However, this data did not include the type of data that is generally considered in a waterbody-specific use attainability analysis. EPA recognizes that new and/or more accurate data may become available that would support changes to the standards on a particular water body, including data and information regarding the attainability of EPA's proposed use designations for specific waters. In the course of developing this proposal, EPA was approached by several Federal agencies that own or operate Federal dams with questions about the information requirements and the process for incorporating data on use attainability into the process for determining designated uses proposed by EPA in this rule. Specifically, these agencies indicated that they may submit information involving Federal dams during the public comment period for this rule or after promulgation. Also, they sought to better understand the information needs and process EPA would follow in considering a change in a designated use for water bodies in Oregon where Federal dams are operating.

During the public comment period, EPA will review and consider the information and the need for changes in the standards prior to promulgation. EPA recognizes that the existence of Federally-owned or operated dams in a watershed may alter the thermal regime of the associated stream system, and that even after all feasible and practicable measures to reduce thermal impacts are implemented, in some cases, attainment of certain water quality standards for temperature may not be feasible. Water quality standards should be feasibly attainable given the existence and operation of these Federally owned or operated dams. Feasibility should include consideration of whether there are reasonable alternative operations, structural modifications, or maintenance approaches a Federally-owned or operated dam could implement and still fulfill its authorized purpose. In order to be responsive to the questions raised about how EPA would handle such information after the close of the comment period and after promulgation, EPA is proposing in this rule EPA's preferred process for Federal agencies that own or operate dams to petition EPA to revise standards for water bodies covered by this rule.

EPA is mindful that the time constraints under which EPA must take final action on WQS by March 2, 2004, will, no doubt, limit the opportunities for Federal agencies which own or operate dams to develop and provide information to EPA and for EPA to fully consider any such information prior to the deadline for taking final action. Ideally, such information would be considered up-front in designating uses and establishing water quality criteria. In reality, precise information may not be available in advance because of lack of data on natural variability, varying weather and flow conditions and the difficulty in predicting the impacts on water quality of feasible management measures. Therefore, EPA is proposing to establish within the rule a process by which Federal agencies that own or operate dams may present information regarding the effect of the presence and operation of specific dams on the attainability of uses that EPA promulgates for specific waters, and petition EPA to amend standards if EPA, in coordination with the regulated agency, determines the uses are not attainable.

EPA is including this provision for those Federally-owned or operated dams because EPA believes it is important to ensure that designated uses properly account for the presence of dams, whose purposes include, but are not limited to, flood control, irrigation, navigation, and power generation that Congress has specifically authorized. EPA wants to ensure that the use designations that it adopts under the CWA for waters in Oregon fully consider any available information regarding the effects of dams that have been specifically authorized by Congress to be constructed and operated on those same waters. A clear process in the rule for these Congressionally-authorized dams will allow EPA to address expeditiously a request from another Federal agency regarding modification of a promulgated use designation based on the effects of the presence and operation of a particular dam.

EPA's current WQS regulations at 40 CFR 131.10(g) list six factors that may be used as a basis for removing a designated use that is not an existing use if it can be demonstrated that attaining the designated use is not feasible because of one of those six factors. One of those factors specifically relates to dams. 40 CFR 131.10(g)(4) provides that a designated use may be removed if "dams * * * preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate [the dam] in a way that would result in attainment of the use." EPA believes that it is important to establish a process in this regulation to clarify how a Federal agency that owns or operates a Federal dam may present information to EPA if the Federal agency believes that a standard promulgated as a result of this rulemaking is not attainable due to the presence and operation of a Congressionally-authorized dam and it is not feasible to operate the dam in a way that would result in attainment of the use.

It should be noted that EPA's current regulations also provide that at a minimum uses are deemed attainable if they can be achieved by the application of technology-based effluent limitations on point source dischargers required under CWA section 301(b) and 306 and cost-effective and reasonable best management practices for nonpoint source control. 40 CFR 131.10(d) and (h). Pursuant to this regulation, EPA would take into consideration the controls being implemented by other sources on a specific waterbody or segment in determining the attainability of any use.

### Federal Agency Submission to EPA

In proposed 40 CFR 131.39(g), EPA provides a process by which a Federal agency responsible for a Federally-owned or operated dam may petition EPA to revise a water quality standard.

### Federal Agency Documentation

First, proposed 40 CFR 131.39(g)(1) provides that the petition must be based on a demonstration that the operation of the dam precludes the attainment of the use, that reasonable alternatives are not feasible to restore the water to its original condition, and, that there are no feasible and practicable changes to the operation, maintenance or structure of the dam, consistent with the purposes for which it was authorized by Congress, that can be implemented that would result in attainment of the water's designated use. This language approximates the language in EPA's current regulation at 40 CFR 131.10(g)(4). As discussed below, in response to a petition, EPA will conduct a use attainability analysis (UAA) and determine whether the promulgated use is attainable. The information provided by the Federal agency with the petition will be critical to EPA's decision.

EPA expects that this demonstration would include a description of the current function and purpose of the dam (and how well the dam is performing its intended function). Further, EPA expects that this demonstration will include a discussion of potential changes in operation or maintenance of the dam and potential structural modifications, accompanied by results of trial runs where practicable, an engineering analysis, and results of modeling. EPA also expects that the demonstration would show how much improvement towards attainment of the standard could be expected from feasible and practicable alterations. This information would be relevant to EPA should it decide to revise the standard. Federal agencies that own or operate dams in Oregon must provide EPA with the following information as specified in today's proposed rule at 40 CFR 131.39(g)(2):

(1) The current purpose and function of the dam including information on how well the dam is performing in meeting the established purpose and function;

(2) Any feasible, practicable alternatives to current operation and maintenance of the dam that could improve water quality, including coordination of operations between dams;

(3) Any feasible, practicable structural modifications to the dam that could improve water quality; and

(4) Any relevant studies of the above factors.

In addition, Federal agencies that own or operate dams in Oregon are encouraged to consider and submit any results from the following analyses to expedite EPA's use attainability determination:

- With regard to the analysis of any feasible, practicable alternatives to current operation and maintenance of the dam
- Have alternative methods of operating turbines been utilized or explored to encourage better mixing where there is a horizontally- or vertically-stratified forebay?
- Have modifications to flood control rule curves been used or explored to allow additional flows in the summer months without impacting refill?
- Have modifications to upper reservoir refill probabilities been used or explored to allow additional flows in the summer months?
- Have reductions in the cross-section areas of the water columns behind the dams been utilized or explored? [Such reductions could, in turn, reduce the resident time for water particles, which reduces exposure times and surface area, which also reduces exposure history. This is related to increasing velocity, which can be done either by increasing flows, or decreasing area. Q(flow) = V(velocity) × A(area)]
- With regard to the analysis of any feasible, practicable structural modifications to the dam, have low level outlet controls been used or explored to allow selective withdrawals resulting in temperature improvements in the waterbody?

### Federal Agency Public Process

Second, proposed 40 CFR 131.39(g)(1)(iii) provides that the responsible Federal agency provide an opportunity for the affected jurisdictions and public to comment on a draft of the agency's demonstration and to submit any additional information or analyses (*e.g.*, analyses of how trading could improve water quality) before it is submitted to EPA. EPA expects that the Federal agency would take these comments into consideration in preparing a final demonstration that it will submit to EPA in support of its petition to revise one or more water quality standards. The proposed rule would also require that the Federal agency submit to EPA the Federal agency's response to the comments that the agency received during its public comment process.

### EPA's Process for Responding to Petitions

Once the complete petition is submitted to EPA, 40 CFR 131.39(g)(3) of the proposed rule would provide that EPA will conduct a UAA, determine if a change in water quality standards is appropriate, and respond to the petitioning agency within nine months. In making such a determination, EPA will carefully consider all of the information provided by the Federal agency and any comments by the affected jurisdictions and public. 40 CFR 131.39(g)(4) would provide that if EPA determines after developing a UAA that the promulgated standards should be revised, EPA will propose to amend the promulgated standards through a Federal rulemaking and take final action within 15 months. EPA may also extend either of these deadlines if a large number of petitions are received during this time. If EPA determines that the standards do not need to be revised, proposed 40 CFR 131.39(g)(5) provides that EPA will respond to the petition by providing its reasons for not proposing to revise the standards.

If EPA determines that a use revision is appropriate and the use revision may affect threatened or endangered species, EPA would need to consult with NOAA Fisheries and/or FWS under section 7 of the ESA. EPA is consulting with the Services regarding the promulgation of today's rule. EPA also consults with affected Tribes if designating a use that requires less stringent criteria.

Federal agencies that own or operate dams have also expressed concern over the status and potential legal vulnerability of dams during the period that EPA is considering a petition submitted under this provision. EPA requests comment on how it might address this concern in the rule.

### Availability of the Petition Process to Entities Besides Federally-Owned or Operated Dams

Of course, any person may petition EPA to revise a water quality standard that EPA promulgates. Any of the six factors at 40 CFR 131.10(g) may serve as the basis for removing a designated use as long as it is demonstrated that it is not feasible to attain the use. As discussed above, EPA is proposing to include specific provisions in this rule related to the condition regarding dams in 40 CFR 131.10(g)(4) to address Federally-owned or operated dams in recognition of the specific congressional authorization for the construction and operation of such dams. It was recognized that the tight deadlines under which EPA must propose and promulgate water quality standards for temperature in Oregon waters may not provide adequate time for the other Federal agencies to gather information related to the possible effects of Federally-owned or operated dams on the attainability of EPA's water quality standards or for EPA to fully evaluate any information that may be generated. Therefore, EPA is proposing to set out a process, as previously described, by which the submission of such information by another Federal agency and consideration by EPA would take place.

### *C. Variances*

Water quality standards variances are a mechanism that can temporarily modify water quality standards. Today's rule contains a Federal variance procedure for the designated uses being proposed today. However, the procedures described later in this section can also be used by the State to develop variances for State-adopted water quality standards.

EPA believes variances are particularly suitable when the cause of nonattainment is discharger-specific and it appears that the designated use in question will eventually be attained or demonstrated to be nonattainable. EPA has approved the granting of water quality standards variances to NPDES permitted entities by States in circumstances that would otherwise justify changing a use designation on the grounds of unattainability (*i.e.*, one or more of the six circumstances contained in 40 CFR 131.10(g) is met). In contrast to a change in standards that removes a use designation for a water body, a water quality standards variance applies only to the NPDES permitted discharger to whom it is granted and only to the pollutant parameter(s) upon which the finding of unattainability is based, and only for a limited period of time. The underlying standard remains in effect for all other CWA purposes.

The practical effect of such a variance is to allow an NPDES permit to be written using less stringent criteria, while encouraging ultimate attainment of the underlying standard. A water quality standards variance provides a mechanism for assuring compliance with sections 301(b)(1)(C) and 402(a)(1) of the CWA, while granting temporary relief to point source dischargers.

While 40 CFR 131.13 allows States to adopt variance procedures for State-adopted water quality standards, because States cannot amend Federal law, such State procedures may not be used to grant variances for Federally-adopted standards. EPA believes that it is appropriate to provide comparable Federal procedures here. Through today's proposed rule, the Region 10 Regional Administrator may grant water quality standards variances where a person submits data indicating that an EPA-designated use proposed at 40 CFR 131.39(b) is not attainable for any of the reasons at 40 CFR 131.10(g).

Today's proposed rule spells out the process for applying for and granting such variances. Authorizing the Regional Administrator to grant variances should expedite the processing of variance requests. That process is contained in proposed 40 CFR 131.39(h) of today's rule. EPA also proposes that the Regional Administrator provide public notice of the proposed variance and provide an opportunity for public comment. EPA understands that variance-related issues can often arise in the context of permit issuance. EPA Region 10 will seek to work closely with the State permitting authorities to ensure that variance requests will be considered in tandem with the State NPDES permitting process.

The variance procedures proposed today requires an applicant for a water quality standards variance to submit a request to the Regional Administrator (or his/her delegatee) with supporting information. Under this rule, as in the national program, the burden is on the applicant to demonstrate to EPA's satisfaction that the designated use is unattainable for one of the reasons specified in 40 CFR 131.10(g). EPA believes that because a variance results in a temporary change to the designated use, the demonstrations needed to justify a variance should be analogous to those needed to justify removing the use entirely. A variance may not be granted if the use can be attained, at a minimum, by all dischargers implementing effluent limitations required under sections 301(b) and 306 of the CWA and the nonpoint sources implementing reasonable best management practices for nonpoint source control as required by the State. In addition, a variance may not be granted if it would likely jeopardize the continued existence of any threatened or endangered species listed under section 4 of the ESA or result in the destruction or adverse modification of such species' critical habitat.

Under this rule, a variance may not exceed three years or the term of the NPDES permit, whichever is less. A variance may be renewed if the permittee again demonstrates that the use in question is still not attainable. Renewal of the variance may be denied if EPA finds that the conditions of 40 CFR 131.10(g) are not met.

### *D. Heat Load and Thermal Plume Provisions*

#### 1. Heat Load Limit

Questions often arise regarding how to interpret water quality standards when implementing the standards under the CWA. EPA believes that with respect to this proposed rule, questions may arise during NPDES permitting or TMDL establishment as to whether the water quality temperature criteria proposed here would be attained in impaired waters by authorizing effluent limitations or establishing waste load allocations or load allocations that allow an insignificant addition of heat to impaired waters. In today's proposal, EPA is including a provision that would allow for insignificant additions of heat by anthropogenic sources to water bodies or segments that exceed the applicable temperature criterion. While this provision is not a water quality standard under CWA section 303(c), this provision will assist regulatory authorities in carrying out their responsibilities under sections 303(d) and 402 of the CWA. Specifically, EPA proposes that the addition of heat from anthropogenic sources will be determined to be insignificant if all such additions cumulatively, at the point of maximum impact, cause an instream temperature increase of 0.3°C/0.5°F or less above the otherwise applicable criterion. In addition, no single point source may cause, by itself, an instream temperature increase of 0.3°C/0.5°F or more above the otherwise applicable criterion assuming complete mixing with 25 percent of the river flow.

There are several approaches that the State may take to assure that these conditions are met. For example, to calculate the impact of single sources, the State may use a simple energy balance equation to calculate a point source effluent limitation that would meet the heat load limit, assuming the upstream temperature is at the otherwise applicable criterion, and calculating an end-of-pipe effluent limit that would result in an 0.3°C/0.5°F increase above the applicable criterion after complete mixing of the effluent with 25 percent of the river flow. To calculate the impact of multiple sources, the State may conduct a modeling evaluation.

EPA believes that this provision will continue to protect the uses proposed to be designated by this rule. Allowing sources to no more than an increase of 0.3°C/0.5°F is not significant in view of the accuracy of temperature measurement instruments and the variability of monitoring field protocol techniques. ("Water Quality Monitoring Technical Guide Book," Oregon Plan for Salmon and Watersheds, July 1999, pp 6–3; "Monitoring Guidelines to Evaluate Effects of Forestry Activities on Streams in the Pacific Northwest and Alaska," EPA/910/9–91–001, May 1991. pp 73–76). Furthermore, the scientific studies assessing the effects of temperature on salmon species which form the basis for the Regional Temperature Guidance and this rulemaking, are at a level of resolution of 1°C/2°F (or more). For the previously stated reasons, allowing an increase of 0.3°C/0.5°F will protect the uses proposed in this rule.

Even though EPA believes this incremental heating of 0.3°C/0.5°F or less above the otherwise applicable criterion will have no adverse effect on the designated uses, even in impaired waters, such incremental heating would not be allowed by the water quality standards without this provision. EPA believes, however, that it is important for the water quality standards to allow such insignificant heat additions, as long as they meet the thermal plume provisions in proposed 40 CFR 131.39(e)(2), because of their insignificant adverse effect on the designated uses, and the adverse economic and/or environmental impacts of either prohibiting such discharges or requiring that they be cooled prior to discharge.

#### 2. Thermal Plume

EPA's regulation at 40 CFR 131.13 recognizes that States have the discretion to adopt regulations authorizing mixing zones around point source outfalls, which are limited zones in which otherwise applicable criteria may be exceeded, subject to conditions that assure the protection of the designated use in the waterbody as a whole. In the case of temperature, areas surrounding point source outfalls could experience "thermal plumes" in which water temperatures exceed the otherwise applicable temperature criteria. In this rule, EPA proposes conditions on such thermal plumes to protect the designated uses by preventing instantaneous lethality, thermal shock, migration blockage, or adverse impact to salmon and trout spawning areas in order to protect the designated uses proposed in this rule.

EPA is proposing that for any permitted point source discharge of heat that the discharge meet the conditions described in proposed 40 CFR 131.39(e)(2). These provisions describe conditions that must be avoided in order to protect salmonids from adverse impacts. As such, EPA is proposing that these provisions apply to all NPDES-permitted dischargers, regardless of whether the permittee is discharging to a water body that is attaining or not attaining its temperature water quality criterion. In the former case (*i.e.*, where a water body is meeting its water quality standards), these provisions would work in conjunction with the State's existing mixing zone policy contained in its regulation to govern the calculation of effluent limitations for point sources.

The proposed regulation is designed to ensure that thermal plumes from point sources do not cause instantaneous lethal temperatures; thermal shock; migration blockage; adverse impact on spawning, egg incubation, and fry emergence areas; or the loss of localized cold water refugia. Based on the scientific literature's finding that certain conditions may cause adverse impacts in salmonids, EPA believes these provisions are appropriate to protect these species from conditions that may exist due to a point source discharge. The following paragraphs summarize the scientific literature and how the findings relate to EPA's proposed regulations.

- Exposures of less than ten seconds at 32°C/89.6°F can cause instantaneous lethality. (Washington Department of Ecology, December 2002, "Evaluating Standards for Protection of Aquatic Life in Washington's Surface Water Quality Standards, Temperature Criteria, Draft Discussion Paper and Literature Summary," pp. 105–108). Therefore, EPA has proposed that the maximum temperature within the plume after two seconds of travel from the point of discharge does not exceed 32°C/90°F.
- Thermal shock, which leads to increased predation, can occur when salmon and trout exposed to near optimal temperatures (*e.g.*, 15°C/58°F) experience a sudden temperature increase to 26–30°C/79–86°F for a short period of time. (Coutant, Charles, 1973, Effect of thermal shock on vulnerability of juvenile salmonids to predation. J. Fish. Res. Board Can. 30(7):965–973.). Therefore, EPA is proposing that thermal plumes be conditioned to limit the cross-sectional area of a river that exceeds 25°C/77°F to five percent of the river.
- Adult migration blockage conditions can occur at 21°C/70°F. See Table III–1. Therefore, EPA is proposing that the cross-sectional area of a river at or above 21°C/70°F be limited to less than 25 percent or, if upstream temperature exceeds 21°C/70°F, the thermal plume be limited such that 75 percent of the cross-sectional area of the river has less than a *de minimis* (*e.g.*, 0.3°C/°0.5F) temperature increase.

Adverse impacts on salmon and trout spawning, egg incubation, and fry emergence can occur when the temperatures exceed 13°C/55°F. *See* Table III–1. Therefore, EPA is proposing that the thermal plume be limited so that temperatures exceeding 13°C/55°F do not occur in the vicinity of active spawning and egg incubation areas, or that the plume does not cause more than a *de minimis* increase in the river temperature in these areas.

Determining whether or not a preliminary effluent limitation will result in localized impacts from the thermal plume can be achieved through plume modeling. The physical characteristics of the thermal plume (*e.g.*, a three-dimensional profile of temperatures) can be estimated using a near-field dilution model and adequate input data to run the model (*e.g.*, river and effluent temperatures and flows). If the model indicates that the preliminary effluent limitation is likely to result in any of the localized adverse impacts described above, the preliminary effluent limit must be lowered to ensure that such impacts are avoided or minimized.

### *E. EPA's Basis for Allowing Flexibility Due to Unusually Warm Weather Conditions*

EPA is proposing that a waterbody shall not be determined to be a water quality-limited segment for CWA section 303(d) listing purposes if the maximum 7DADM temperature for the year with the second highest maximum 7DADM from a complete data record of 10 years is at or below the applicable criterion. EPA recognizes that historically, there were years of drought and unusually high air temperatures. When those conditions occurred, water temperatures were also elevated. Further, EPA believes it is reasonable for a State or Tribe to decide not to apply the numeric temperature criteria during unusually warm conditions for purposes of determining if a waterbody is attaining criteria (*i.e.*, for the purposes of making decisions under CWA section 303(d) or 305(b)). EPA believes such a provision is justified because unusually warm annual peaks in water temperature typically caused by drought conditions are a natural component of the environment and that these infrequent conditions should not drive attainment determinations. Salmonids may experience some adverse effects during these periods, but by definition, they would be infrequent. It is important to note, however, that NPDES-permitted facilities would continue to be subject to the same temperature effluent limits they would be subject to during normal temperature periods, because they should not be able to discharge more heat than they would otherwise be authorized to discharge simply due to a natural event.

Even when accounting for unusually warm conditions in temperature standards, attainment determinations should be based on all climatic conditions except for those unusually warm and rare conditions in order to protect the salmonid designated uses. Thus, given that river temperatures exhibit year-to-year variation in their maximum 7DADM values, the average maximum 7DADM value from a yearly series, as a statistical matter, would need to be lower than the numeric criteria in order to meet the criteria nine out of ten years. Therefore, in most years, the maximum 7DADM temperature would also need to be lower than the numeric criteria in order to meet the criteria in the warm years. EPA took this into consideration when it formulated its proposed numeric criteria.

### *F. Total Maximum Daily Loads and Impaired Water Listings*

A TMDL is a tool created by the CWA that expresses the total amount of a given pollutant that a particular water body may receive and still achieve applicable water quality standards. Section 303(d) of the CWA and its implementing regulations at 40 CFR part 130 establish the requirements for TMDLs. The TMDL process can broaden the opportunity for public participation, expedite water quality-based NPDES permitting, and lead to technically-sound and legally-defensible decisions for attaining and maintaining water quality standards. In addition, the TMDL process provides a mechanism for integrating the management of both point and nonpoint pollution sources that together may contribute to a water body's impairment. (*See Guidance for Water Quality-Based Decisions: The TMDL Process*, EPA 440–4–91–001, April 1991.)

If Oregon lists waters subject to today's proposed rule on its CWA section 303(d) list(s) because data or information indicate that water quality standards have not been achieved, EPA recognizes that this listing decision does not mean that a TMDL will immediately be developed. Rather, CWA section 303(d)(1) specifically provides States with the discretion to establish a priority ranking for TMDL development for listed waters, and then to establish TMDLs in accordance with that ranking. EPA notes that even if Oregon establishes a TMDL for a water body designated today for salmonid lifestage uses, the question of implementing the TMDL with respect to nonpoint sources and point sources not required to obtain an NPDES permit is entirely a matter of State law.

As discussed elsewhere in today's proposal, EPA strongly encourages the State of Oregon to adopt the appropriate uses for all of the waters subject to this rulemaking. Once EPA approves the State's adoption of a new use designation for a water body, and withdraws that water body from the Federal regulation, the State's use designation will be the applicable use for that water body for purposes of compiling the CWA section 303(d) list. Oregon will be required to list that water body under CWA section 303(d) if data and information show that the use is impaired or the water body exceeds the applicable water quality criteria for temperature or IGDO for the protection of the associated salmonid uses.

For waters that have salmonid use designations (either Federal or State) at the time Oregon assembles its CWA section 303(d) list(s), EPA notes that Oregon need not include a water on its list(s) if it lacks data and information to determine whether the use is being attained, or if the data and information it has is insufficient to make that determination. *See* 40 CFR 130.7(b)(5); "2004 Integrated Water Quality Monitoring and Assessment Report Guidance." While EPA expects Oregon to follow the requirements, if any, of its assessment and listing methodology, EPA also recognizes that it is possible that at the time Oregon compiles its 2004 CWA section 303(d) list, it will not have data or information for all of the waters designated by this rule for salmonid life stage uses. Therefore, it is possible that many of these waters will not appear on Oregon's next CWA section 303(d) list(s).

## VI. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to E.O. 12866 review.

### *B. Paperwork Reduction Act*

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.* It does not include any information collection, reporting or recordkeeping requirements. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 601 *et. seq.*), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, a small entity is defined as: (1) A small business according to RFA default definitions for small business (based on SBA size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would not impose any requirements on small entities.

The RFA requires analysis of the impacts of a rule on the small entities subject to the rule's requirements. *See United States Distribution Companies* v. *FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996). Today's proposed rule establishes no requirements applicable to small entities, and so is not susceptible to regulatory flexibility analysis as prescribed by the RFA. ("[N]o [regulatory flexibility] analysis is necessary when an agency determines that the rule will not have a significant economic impact on a substantial number of small entities *that are subject to the requirements of the rule,*" *United Distribution* at 1170, quoting *Mid-Tex Elec. Co-op* v. *FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985) (emphasis added by *United Distribution* court).)

Under the CWA water quality standards program, States must adopt water quality standards for their waters and must submit those water quality standards to EPA for approval; if the Agency disapproves a State standard and the State does not adopt appropriate revisions to address EPA's disapproval, EPA must promulgate standards consistent with the statutory requirements. EPA also has the authority to promulgate water quality standards in any case where the Administrator determines that a new or revised standard is necessary to meet the requirements of the Act. These State standards (or EPA-promulgated standards) are implemented through various water quality control programs including the NPDES program, which limits discharges to navigable waters except in compliance with an NPDES permit. The CWA requires that all NPDES permits include any limits on discharges that are necessary to meet applicable water quality standards.

Thus, under the CWA, EPA's promulgation of water quality standards establishes standards that the State implements through the NPDES permit process. The State has discretion in developing discharge limits as needed to meet the standards. While the State's implementation of Federally promulgated water quality standards *may* result in new or revised discharge limits being placed on small entities, the standards themselves do not apply to any discharger, including small entities.

Today's proposed rule, as explained earlier, does not itself establish any requirements that are applicable to small entities. As a result of this action, the State of Oregon will need to ensure that permits it issues include any limitations on discharges necessary to comply with the standards established in this rule. In doing so, the State will have a number of choices associated with permit writing. While Oregon's implementation of the rule may ultimately result in some new or revised permit conditions for some dischargers, including small entities, EPA's action today does not impose any of these as yet unknown requirements on small entities.

### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or Tribal governments or the private sector. The rule imposes no enforceable duty on the State or any local or Tribal government or the private sector; rather, this rule promulgates criteria and designated uses for certain waterbodies in Oregon, which constitute water quality standards for those waterbodies. The State may use these resulting water quality standards in implementing its water quality control programs. Today's proposed rule does not regulate or affect any entity and, therefore, is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. The rule imposes no enforceable requirements on any party, including small governments. Thus, this proposed rule is not subject to the requirements of section 203 of UMRA.

### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." "Policies that have Federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule will not affect the nature of the relationship between EPA and States generally, for the rule only applies to waterbodies in Oregon. Further, the rule will not substantially affect the relationship of EPA and the State of Oregon, or the distribution of power or responsibilities between EPA and the various levels of government. The proposed rule will not alter the State's authority to issue NPDES permits or the State's considerable discretion in implementing these water quality standards. Finally, this proposed rule will not preclude Oregon from adopting water quality standards that meet the requirements of the CWA. Thus, Executive Order 13132 does not apply to this proposed rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA worked closely with the State of Oregon in developing it. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between the EPA and State and local governments, EPA specifically solicits comments on this proposed rule from State and local officials.

### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes as specified in Executive Order 13175. Today's rule proposes water quality standards for waters in the State of Oregon. These standards do not establish any requirements that are directly applicable to any entity, including Tribes. In addition, this proposed rule expressly excludes waters in Indian country. Thus, Executive Order 13175 does not apply to this rule.

Although Executive Order 13175 does not apply to this rule, EPA sent letters to 12 potentially interested tribal governments and held a conference call to provide additional information, answer questions, and initiate a dialogue regarding any issues or concerns the Tribes may have regarding this proposed rule. EPA expects to continue this dialogue on its proposal to establish water quality standards in Oregon to ensure that EPA's final action takes Tribal government concerns into account. In the spirit of Executive Order 13175 and consistent with EPA policies to promote coordination and consultation with tribal governments, EPA specifically solicits additional comment on this proposed rule from Tribal officials.

### *G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because it does not concern an environmental health or safety risk that the Agency has reason to believe may have a disproportionate effect on children.

### *H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) Public Law 104–113, 12(d) (15 U.S.C. 272 *note*) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the rulemaking and invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

### List of Subjects in 40 CFR Part 131

Environmental protection, Indian lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: October 1, 2003.

**Marianne Lamont Horinko,**

*Acting Administrator.*

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 131 as follows:

## PART 131—Water Quality Standards

1. The authority citation for part 131 continues to read as follows:

**Authority:** 33 U.S.C. 1251 *et seq.*

### Subpart D—[Amended]

2. Section 131.39 is added to read as follows:

### § 131.39 Oregon.

(a) *Definitions.*

(1) *Natural condition* means water temperatures that would exist in the absence of human activities that alter water temperature.

(2) *Seven-day average of daily maximum, or 7DADM,* means the average of daily maximum temperatures over a seven-day period.

(3) *Cold water refugia* means waters, defined either spatially or temporally, that are more than 2°C/4°F colder than the daily maximum temperature at the nearest location in the main river channel.

(b) *Designated Uses for Salmonids.* The maps at *http://www.epa.gov/r10earth/federaloregonwqs.htm* identify the salmonid designated uses for: bull trout juvenile rearing and spawning, salmon and steelhead core juvenile rearing, salmon and trout juvenile rearing and migration, salmon and steelhead migration, and salmon and steelhead spawning through fry emergence in each of the indicated water bodies or segments. The salmon and steelhead spawning through fry emergence use is designated only for the time period indicated in the map legends (fall through either May 15 or June 15); all other uses apply throughout the year. [You may also view a copy of the maps at EPA Region 10's Oregon Operations Office, 811 SW. 6th Avenue, Portland, Oregon, 97204.] Where EPA designates bull trout rearing and spawning, EPA also designates salmon and steelhead core juvenile rearing. Where EPA designates salmon and steelhead core juvenile rearing, EPA also designates salmon and trout juvenile rearing and migration. Where EPA designates salmon and trout juvenile rearing and migration, EPA also designates salmon and steelhead migration.

(c) *Temperature Criteria for Salmonid Uses.* The following water quality criteria for temperature, with temperatures expressed as a 7DADM, apply in water bodies or segments designated for the following uses, except as provided in paragraph (d) of this section:

(1) Bull Trout Juvenile Rearing and Spawning: 12°C/54°F.

(2) Salmon and Steelhead Core Juvenile Rearing: 16°C/61°F.

(3) Salmon and Trout Juvenile Rearing and Migration: 18°C/64°F.

(4) Salmon and Steelhead Migration: 20°C/68°F. In addition, the river must have well-distributed cold water refugia. Well-distributed cold water refugia means cold water refugia that are sufficiently distributed so as to allow salmon and steelhead to migrate through a river segment or rear without significant adverse effects from high water temperatures.

(5) Salmon and Steelhead Spawning through Fry Emergence: 13°C/55°F.

(d) *Alternative Temperature Criteria for Salmonid Uses.* The following criteria, where applicable, apply instead of the criteria provided in paragraph (c) of this section:

(1) Natural Conditions. Where EPA identifies a water body or segment where the water temperature under natural conditions exceeds the applicable criterion set forth in paragraph (c) of this section, the natural condition so estimated shall be the applicable water quality criterion. This determination must be based on a scientifically-defensible method utilizing best available data. Where the natural temperature conditions so estimated exceed 20°C/68°F, the river must have well-distributed cold water refugia. Well-distributed cold water refugia means cold water refugia that are sufficiently distributed so as to allow salmon and steelhead to migrate through a river segment or rear without significant adverse effects from high water temperatures.

(2) Existing Cold Waters. In a water body or segment in which salmonid species that are listed as threatened or endangered under the Endangered Species Act are present, and where available data and information within the 10-year period preceeding the date of publication of the final rule in the **Federal Register** reflect the temperature in the water body and demonstrate that the warmest summer maximum 7DADM temperature is colder than the applicable numeric criterion. In these cases, the summer maximum 7DADM temperature shall be the applicable water quality criterion, unless a complete data record of 10 years is available, in which case the maximum 7DADM temperature for the year with the second highest maximum 7DADM shall be the applicable criterion.

(e) *Temperature Standards Implementation.* (1) Heat Load Limit. In water bodies that exceed the applicable temperature criteria, attainment determinations of these water quality standards for purposes of NPDES permitting and TMDL establishment shall allow for insignificant additions of heat by anthropogenic sources to water bodies or segments that exceed the applicable temperature criteria set forth in paragraphs (c) and (d) of this section, subject to the conditions in paragraph (e)(2) of this section. For the purposes of this paragraph, such additions of heat may be deemed insignificant only if all such additions cumulatively, at the point of maximum impact, cause the water temperature to exceed the applicable criterion by 0.3°C/0.5°F or less, assuming complete mixing. In addition, in water bodies that exceed the applicable temperature criterion, no single NPDES point source may cause, by itself, a temperature increase of 0.3°C/0.5°F or more above the applicable criterion assuming complete mixing with 25 percent of the river flow.

(2) Thermal Plume Impacts. In addition to otherwise applicable numeric or narrative criteria, the following conditions may not be exceeded as a result of a discharge from a NPDES point source discharge, or a combination of NPDES point sources discharges:

(i) Lethality. The maximum temperature within the thermal plume caused by a point source, or a combination of point sources, may not exceed 32°C/90°F after two seconds of plume travel from the point of discharge.

(ii) Thermal Shock. No more than five percent of the cross-sectional area of a river or creek may exceed 25°C/77°F.

(iii) Migration Blockage.

(A) If the temperature immediately upstream of a point source discharge, or a combination of point source discharges, is less than 21°C/70°F, then no more than 25 percent of the cross-sectional area of the receiving water may exceed 21°C/70°F.

(B) If the temperature immediately upstream of a point source discharge, or a combination of point source discharges, is at or above 21°C/70°F, then no more than 25 percent of the cross-sectional area of the receiving water may be more than 0.3°C/0.5°F warmer than the upstream temperature.

(iv) Spawning Impacts. In active spawning or egg incubation areas:

(A) Water temperatures may not exceed 13°C/55°F if they would not have done so in the absence of point source discharges; and

(B) Where water temperatures would have exceeded 13°C/55°F in the absence of point source discharges, water temperatures may not exceed 0.3°C/0.5°F above the temperatures they would have achieved in the absence of point source discharges.

(v) Cold Water Refugia Impacts. A thermal plume shall not increase the temperature of spatial cold water refugia by more than 0.3°C/0.5°F.

(3) Unusually Warm Weather Conditions. A water body shall not be water quality-limited for CWA section 303(d) listing purposes if the maximum 7DADM temperature for the year with the second highest maximum 7DADM

from a complete data record of 10 years is at or below the applicable criterion.

(f) *Numeric Intergravel Dissolved Oxygen (IGDO) Criterion for Salmonid Uses.* (1) In water bodies or segments where the bull trout juvenile rearing and spawning or salmon and steelhead spawning though fry emergence designated use applies in the State of Oregon, and during the applicable time periods, IGDO shall be at least 8.0 mg/L, measured as a spatial median, except as provided in paragraph (f)(2) of this section.

(2) Where barometric pressure, altitude, and air temperature preclude attainment of the intergravel dissolved oxygen criterion set forth in paragraph (f)(1) of this section, then the criterion shall be not less than 95 percent of the maximum IGDO level attainable given the barometric pressure, altitude, and air temperature.

(g) *Process for Federal Agencies Responsible for Federally-Owned or Operated Dams to Request that EPA Modify its Water Quality Standards for Oregon.* (1) A Federal agency responsible for a Federally-owned or operated dam may petition EPA to revise a water quality standard in this section. In developing and submitting the petition to EPA, the Federal agency must ensure that:

(i) The petition includes a description of the current function and purpose of the dam.

(ii) The petition is based on a demonstration that normal operation of the dam precludes attainment of the use, that reasonable alternatives are not feasible to restore the water to its original condition, and that there are no feasible and practicable changes to operation, maintenance or structure of the dam that can be implemented that would result in attainment of the water's designated use.

(iii) The Federal agency provides an opportunity for affected jurisdictions and the public to comment on a draft of the demonstration before it is submitted to EPA. The Federal agency must provide EPA with a response to the comments.

(2) In developing the demonstration under paragraph paragraph (g)(1) of this section, the Federal agency must address each of the following:

(i) The current purpose and function of the dam including information on how well the dam is performing in meeting the established purpose and function.

(ii) Any feasible, practicable alternatives to current operation and maintenance of the dam that could improve water quality, including coordination of operations between dams.

(iii) Any feasible, practicable structural modifications to the dam that could improve water quality.

(iv) Any relevant studies of the above factors.

(3) If such a petition is submitted, EPA will conduct a use attainability analysis (UAA) as defined in § 131.3(g) and determine within nine months of the Federal agency's submission whether a modification to the water quality standard is justified. EPA may extend this deadline if a large number of such petitions are submitted during the same time period.

(4) If EPA determines that the use designation should be revised, EPA will propose for public comment a rule to revise the applicable use designation and take final action within 15 months of making the determination in paragraph (g)(3) of this section.

(5) If EPA determines that the use designation should not be revised, EPA will respond to the petition, providing EPA's reasons for not proposing to revise the use designation.

(h) *Variances.* (1) The Regional Administrator, EPA Region 10, is authorized to grant variances from the water quality standards in paragraphs (b) through (d) and (f) of this section where the requirements of this paragraph (h) are met. A water quality standard variance applies only to the permittee requesting the variance, and only to the pollutant or pollutants specified in the variance; the underlying water quality standard otherwise remains in effect.

(2) A water quality standard variance shall not be granted if:

(i) Standards will be attained by all dischargers implementing effluent limitations required under sections 301(b) and 306 of the CWA and by nonpoint sources implementing cost-effective and reasonable best management practices required by the State; or

(ii) The variance would likely jeopardize the continued existence of any threatened or endangered species listed under Section 4 of the Endangered Species Act, or result in the destruction or adverse modification of such species' critical habitat.

(3) Subject to paragraph (h)(2) of this section, a water quality standards variance may be granted if the applicant demonstrates to EPA that attaining the water quality standard is not feasible because:

(i) Naturally occurring pollutant concentrations prevent the attainment of the use; or

(ii) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or

(iii) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or

(iv) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way which would result in the attainment of the use; or

(v) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like unrelated to water quality, preclude attainment of aquatic life protection uses; or

(vi) Controls more stringent than those required by sections 301(b) and 306 of the CWA would result in substantial and widespread economic and social impact.

(4) Procedures. An applicant for a water quality standards variance shall submit a request to the Regional Administrator of EPA Region 10. The application shall include all relevant information showing that the requirements for a variance have been satisfied. The burden is on the applicant to demonstrate to EPA's satisfaction that the designated use is unattainable for one of the reasons specified in paragraph (h)(3) of this section. If the Regional Administrator preliminarily determines that grounds exist for granting a variance, he shall provide public notice of the proposed variance and provide an opportunity for public comment. Any activities required as a condition of the Regional Administrator's granting of a variance shall be included as conditions of the NPDES permit for the applicant. These terms and conditions shall be incorporated into the applicant's NPDES permit through the permit reissuance process or through a modification of the permit pursuant to the applicable permit modification provisions of Oregon's NPDES program.

(5) A variance may not exceed 3 years or the term of the NPDES permit, whichever is less. A variance may be renewed if the applicant reapplies and demonstrates that the use in question is still not attainable. Renewal of the variance may be denied if the applicant

did not comply with the conditions of the original variance, or otherwise does not meet the requirements of this section.

(i) *Antidegradation Implementation Methods.* (1) What is an existing use for purposes of § 131.12(a)(1)? An existing use is a use actually attained in the waterbody on or after November 28, 1975, as defined in § 131.3(e).

(2) How is § 131.12(a)(1) implemented? Existing uses must be protected when authorizing any discharge or conducting any assessment pursuant to the Clean Water Act.

(3) What is a high quality water for purposes of § 131.12(a)(2)? High quality waters are those which have water quality that meets or is better than all applicable water quality standards, including all water quality criteria.

(4) What does not constitute a lowering of water quality for purposes of § 131.12(a)(2)? For purposes of § 131.12(a)(2), there is no lowering of water quality in connection with:

(i) a pollutant concentration increase when there is no overall increase in the total mass load of the pollutant on at least an annual basis; or

(ii) a *de minimis* change in temperature (*i.e.*, a 7DADM stream temperature increase 0.3°C/0.5°F or less across the watershed above an applicable temperature criteria.)

(5) What information must be considered before a lowering of water quality is allowed under § 131.12(1)(2)?

(i) No other reasonable alternatives exist except to lower water quality.

(ii) The action is necessary and justifiable for economic and social development benefits and outweighs the environmental costs of lowered water quality.

(iii) All water quality standards will be met and beneficial uses protected.

(6) What process must be followed in determining whether to allow a lowering of water quality?

(i) In order to demonstrate the necessity and importance of the proposed activity in a high quality water, the discharger/applicant/source must provide the State with enough information to allow for a financial impact analysis that assesses whether allowing an activity that lowers water quality has socioeconomic benefits that outweigh the environmental costs;

(ii) After the permitting authority considers whether the activity will likely cause a lowering of water quality and whether the discharger/applicant/source has demonstrated the necessary justification, the permitting authority will issue a preliminary decision/recommendation on whether to allow or deny the proposed permit or certificate; and

(iii) This decision/recommendation will be noted prior to the intergovermental coordination and public notice phases of the antidegradation review.

(7) What process should be used by the State of Oregon in identifying Outstanding Resource Waters (ORWs) for purposes of § 131.12(a)(3)?

(i) The State may designate high quality waterbodies to be classified as ORWs in order to protect the water quality parameters that affect ecological integrity of critical habitat or special water quality values that are vital to the unique character of those waterbodies.

(ii) The State of Oregon will develop a screening process and establish a list of nominated waterbodies for ORWs designation in the Biennial Water Quality Status Assessment Report (305(b) Report). The priority waterbodies for nomination include: those in State and National Parks, National Wild and Scenic Rivers, State Scenic Waterways, those in State and National Wildlife Refuges, and those in Federally designated wilderness areas.

(iii) The State will publish a list of water bodies which are proposed for designation as ORWs as appropriate at the time of each triennial water quality standards review.

(iv) When designating ORWs, the State shall establish the water quality values to be protected and provide a process for determining what activities are allowed that would not affect the outstanding resource values.

(8) What is the significance of an ORW designation?

(i) After the designation, any regulatory authority that is required to follow water quality standards in authorizing an activity shall not allow activities that may lower water quality below the level established except on a short-term basis to respond to emergencies or to otherwise protect human health and welfare.

(ii) [Reserved]

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# Federal Register

Friday,
October 10, 2003

## Part III

## Nuclear Regulatory Commission

10 CFR Chapter I

**Electronic Maintenance and Submission of Information; Final Rule**

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Chapter I**

**RIN 3150–AH33**

## Electronic Maintenance and Submission of Information

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its rules to clarify when and how licensees and other members of the public may use electronic means such as CD–ROM and e-mail to communicate with the agency. These amendments are necessary to implement the Government Paperwork Elimination Act (GPEA). At the same time that the NRC is amending its rules, it is also making available guidance on how to submit documents to the agency electronically. When this final rule becomes effective, this new guidance document, which is appended to this rule, will supersede earlier guidance on electronic submissions.

**EFFECTIVE DATE:** The final rule will become effective on January 1, 2004.

**ADDRESSES:** The final rule and any related documents are available on the NRC's interactive rulemaking Web site at *http://ruleforum.llnl.gov*. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905, *CAG@nrc.gov*.

Publicly available NRC documents related to this final rule can also be viewed on public computers in the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland, Room O–1 F21. The PDR reproduction contractor will make copies of documents for a fee.

Publicly available documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or have problems accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *PDR@nrc.gov*.

**FOR FURTHER INFORMATION CONTACT:** John A. Skoczlas, (301) 415–7186, *EIE@nrc.gov*; or Brenda J. Shelton, (301) 415–7233, *INFOCOLLECTS@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

I. Background
II. The Final Rule
III. Comments on the Guidance Document
IV. Section-by-Section Analysis
V. Voluntary Consensus Standards
VI. Environmental Impact: Categorical Exclusion
VII. Paperwork Reduction Act Statement
VIII. Regulatory Analysis
IX. Regulatory Flexibility Certification
X. Backfit Analysis
XI. Congressional Review

### I. Background

On September 6, 2002, the Nuclear Regulatory Commission (NRC) published the direct final rule, "Electronic Maintenance and Submission of Information" (RIN 3150–AF61), for comment (67 FR 57084). Along with the rule, the NRC also published its draft "Guidance for Electronic Submissions to the Commission" for comment.

This rulemaking had the simple aim of conforming the NRC's regulations to the GPEA by removing from the regulations language that states or suggests an unnecessary prohibition of electronic submission of documents to the agency. Because the NRC believed that this action would not cause controversy, the NRC initially published these amendments as a direct final rule. However, the NRC received significant adverse comments on both the direct final rule and the guidance document appended to the rule. The NRC, therefore, withdrew the direct final rule on December 4, 2002 (67 FR 72091), and treated the comments received as comments on the companion proposed rule published concurrently with the direct final rule (67 FR 57120; September 6, 2002). The comments received are addressed in this final rule and guidance.

The NRC received formal comments from 19 persons or organizations. The comments concerned both the rule and the draft guidance. However, the majority of the comments were on the guidance document. Although the NRC is not required to address the comments received on its proposed guidance, the NRC believes that it is appropriate to document the resolution of the comments on the guidance document, and to do so in this notice, because the rule and the guidance are being published simultaneously and form a cohesive package.

Title XVII of Pub. L. 105–277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, enacted October 21, 1998, contains provisions known as the Government Paperwork Elimination Act (GPEA), Sections 1701 *et seq.*, codified at 44 U.S.C. 3504, note. The GPEA requires, among other things, that by October 21, 2003, all Federal agencies provide persons with business before that agency the option of electronically maintaining, submitting, or disclosing information where "practicable." By that same October 2003 date, the agencies must also accept electronic signatures. The Act's provisions seek to take advantage of advances in modern technology to lessen the paperwork burden on those who deal with the Federal government.

Well before the passage of the GPEA, the NRC had taken major steps to increase the use of electronic communication. For example, many of the agency's regulations on recordkeeping have long permitted storage in electronic format. After the GPEA became law, the NRC moved quickly to meet the Act's requirements. In June 1999, the agency began testing a system that permitted holders of operating licenses for nuclear power reactors, and the vendors that supplied them, to make electronic submissions to the agency in a secure manner. On several occasions, the NRC held public meetings with licensees, vendors, and others to describe and demonstrate its Electronic Information Exchange (EIE) capability.

As a result of this pilot program, on January 26, 2001, the NRC issued Regulatory Issue Summary (RIS) 2001–05, "Guidance on Submitting Documents to the NRC by Electronic Information Exchange or on CD–ROM," which informs all Part 50 applicants and licensees that they have the option of submitting documents to the NRC over the Internet by the EIE process or on CD–ROM under procedures spelled out in the RIS. The RIS does not cover electronic submissions under regulations other than those in Part 50. However, on August 10, 2001, the agency issued a letter to certain fuel cycle facilities giving them the option of electronic submissions in many circumstances.[1] Nonetheless, these two documents do not cover other materials licensees or members of the general public.

### II. The Final Rule

This rulemaking expands participation in electronic submissions by affording all licensees, vendors, applicants, and members of the public the option, where practicable, of submitting documents to the NRC in an electronic format, for example on CD–ROM, by e-mail, or through a special Web-based interface such as the NRC's Electronic Information Exchange. Generally, electronic submission of documents to the NRC remains voluntary; paper documents remain an acceptable form of submission.

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[1] The NPRC has also issued guidance on managing quality assurance records in electronic media. *See* RIS 2000–18, October 23, 2000, available at the NPC's Web site.

The GPEA requires that agencies accept electronic submissions only when it is "practicable" to do so, but the statute does not define the term "practicable." At the very least, it is not "practicable" for the agency to receive electronic submissions unless they are made in a manner that enables the agency to receive, read, authenticate, distribute, process and retrieve a page at a time, and archive the submissions. The final regulations in this notice incorporate this general notion of "practicable." Although the proposed rule did not contain this language, we have added it throughout the final rule in part to make clear that the agency cannot as a practical matter accept electronic communications in every format that submitters might choose.

However, beyond this, the term acquires meaning only in concrete circumstances and moreover tends to change as those circumstances change because the underlying technology changes quickly. Under these continually changing circumstances, the NRC does not want to write certain technologies into its regulations. Therefore, the technologically driven details of how to make electronic submissions to the NRC are laid out in the guidance document that is appended to this rule. The guidance document will be updated as necessary to reflect new technology and agency experience. The guidance discusses, among other topics, the formats the NRC is prepared to accept, the use of electronic signatures, and the treatment of nonpublic information. Most of the amendments made by this rule take the limited approach of letting readers of the regulations know that the option of electronic submission is available in many cases, and that readers should consult the agency's guidance on electronic submissions.

The NRC has also used the criterion of practicability to determine to what extent sensitive information could be protected in electronic submissions, whether such submissions could serve the needs of immediate notification, and whether the agency was prepared to make all of its outgoing communications electronic. In each of these cases, as will be discussed further below, the agency has concluded that electronic submissions are not yet always "practicable" because use of electronic submission in these other situations can entail disproportionate costs in time, labor, and other resources, and sometimes can even delay doing something that needs to be done quickly. Since one aim of the GPEA is to increase the efficiency of government, when the use of electronic media for submission decreases efficiency, the use of electronic media is, at least for the time being, not "practicable."

Public comments on the proposed rule have led us to make a significant change in what we consider "practicable." The proposed rule would have continued to require multiple copies of paper submissions (though in reduced numbers), and would, moreover, have required the same number of copies of documents submitted on CD–ROM. However, in light of the comments, the NRC has decided to eliminate nearly all requirements for multiple copies, and most of the changes to the proposed rule implement that decision. We say "nearly all," because we have retained, and made more explicit, the requirement in Part 63 that the application for a license for a first-of-a-kind high-level waste repository at Yucca Mountain, Nevada, be submitted in multiple paper copies. We have not wished to introduce new options into a unique process that has come far enough to give the probable participants reasonably settled expectations about how the application will be submitted and distributed. Moreover, given the technology that is reasonably available to all the probable participants, the application is more likely to be distributed in a timely way if the current regulations are adhered to; and, given the statutory time limit on the length of the licensing proceeding, time is of the essence.[2] However, these same arguments do not apply to possible future applications under the generic high-level waste regulations in Part 60, and so the requirements for multiple copies have been removed from that part. For a related discussion of the meaning of "practicable," see the beginning of Section III of this notice.

This single copy policy represents a major change in the way the NRC does business, and, as is noted later, the agency may have to make exception to the policy when dealing with CD–ROMs that contain certain kinds of files. The GPEA requires agency compliance by October 21, 2003, where practicable. The rule and guidance are being published by that date. However, the transition to electronic communications will be gradual. The NRC has established January 1, 2004, as the effective date of the rule and guidance document. It is not practicable to implement fully the rule and guidance any sooner. The guidance document has been updated to include several new sections on organizing and segmenting files. These new sections will enhance the NRC's capability to produce paper copies. In the meantime, the delayed effective date for the rule and guidance will allow additional time for the NRC to develop its implementation plan and procedures and prepare to meet its staff's requirements for on-demand paper and CD–ROM copies. This delay will also allow both the NRC staff and submitters (particularly NRC licensees) more time to become familiar with the guidance and to modify their business processes (as appropriate) to achieve a successful transition to the electronic environment. The existing guidance documents on electronic submissions, Regulatory Issue Summary 2001–05 (which was directed toward Part 50 licensees and applicants) and the August 10, 2001, letter (which was directed toward certain fuel cycle facilities) will remain in effect during the period between the required GPEA compliance date (October 21, 2003) and the effective date of this final rule (January 1, 2004). When this final rule takes effect, the new guidance document will supersede both of the existing guidance documents on electronic submissions.

Few of the NRC's regulations on communications explicitly rule out electronic communications. Thus, it has not proven difficult to remove regulatory text that impedes electronic communications in circumstances where electronic communications would be practicable. In searching our regulations, we found only one regulation—§ 50.4(c)—that explicitly required the submission of paper. Many of our regulations require written, or written and signed, communications.

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[2] For similar reasons, we have revised § 63.22 to require that the license application, any amendments to the application, and the environmental impact statement and its supplements for the Yucca Mountain facility be submitted also on optical storage media. In fact, the Department of Energy has already submitted the final environmental impact statement for Yucca Mountain on optical storage media. Moreover, this new requirement in § 63.22 is virtually entailed by the existing requirement in 10 CFR 2.1013(a)(2) that the application be docketed in electronic form, and that the Secretary of the Commission determine that the application can be properly accessed under the Commission's rules for the electronic docket in the Yucca Mountain proceeding. Indeed, if the Secretary cannot make such a determination, the agency may reject the application as unacceptable for docketing. *See* 10 CFR 2.1012(a).

These requirements need not be changed, because electronic communications certainly are "written" and we have in place technology for electronic signatures.

We have not had to propose amendments to our regulations on maintenance of records. A great many of these regulations already explicitly permit the use of electronic means to maintain records, and those that do not explicitly permit electronic maintenance of records do not in any way imply that electronic strategies for preservation are disallowed.

Thus, our amendments to existing regulations are confined largely to regulations that imply that electronic means of communication are prohibited. The typical regulation of this sort says that communications under a certain part of our regulations must be by mail or delivery in person. By appearing to be exhaustive, the regulation may be read to imply that electronic communication is prohibited. We have amended almost all of these or similar provisions, leaving in place only those regulations that dictate telephonic or similar communications when circumstances demand, as, for example, when a licensee must notify the agency promptly of a radiological overexposure or an accidental release of radioactive material.

These rulemaking amendments and the guidance document appended to this final rule do not address the submission of documents in hearings under the NRC regulations in 10 CFR part 2 and other parts that govern hearings. In particular, the amendments and guidance do not apply to proceedings under 10 CFR part 2 Subpart J, on the issuance of licenses for high-level waste repositories. Subpart J will continue to govern those proceedings. The use of electronic submissions in litigation in Federal courts and agencies is being widely discussed, and this rulemaking is not intended to resolve issues of when and how to use electronic submissions during hearings. Separate rules or guidance addressing procedures for electronic communications in hearings will be issued in the future for public comment. For at least the near future, parties in hearings must follow the directions that presiding officers issue on how submissions are to be made.

This final rule applies only to communications to the NRC from licensees, certificate holders, applicants, vendors who are required to submit documents to the NRC, external entities (Federal, State, and local governments) and other members of the public, but the GPEA is read to apply also to communications from Federal agencies to the public. Though the NRC is working to further this aspect of the GPEA also, it is not yet practicable for the agency to send all of its communications to licensees and other members of the public by means of electronic submissions. Moreover, the agency must take into account that not all persons who are interested in its work have access to electronic communication. Nonetheless, the NRC's EIE process is designed for both receiving and sending electronic communications. Moreover, the NRC posts a large amount of information on its external Web site, including significant agency communications, and makes information publicly available via ADAMS, the NRC's electronic recordkeeping system.

## III. Comments on the Guidance Document

This analysis presents a summary of the significant comments received on the draft guidance and the resolution of those comments by the NRC. The guidance has also been revised to incorporate editorial corrections, clarifications, and updates of the information, as appropriate.

*Comment 1:* The majority of the commenters objected to the NRC's proposed requirement that a paper copy accompany all submissions on CD–ROM. The commenters disagreed with this requirement, indicating they have moved to an electronic environment based on NRC guidance contained in RIS 2001–05, which states that submissions made on CD–ROM do not require the submission of a paper copy. Several commenters stated that the NRC's paper copy requirement with submissions on CD–ROM was based on the NRC staff's unwillingness to use electronic versions, and the agency's unwillingness to purchase printing equipment that would enable it to make paper copies from the CD–ROM submissions.

*Response:* The NRC proposed that a paper copy be required with CD–ROM submittals because the NRC is required to make information accessible to both its staff and the public. On the public side, this means making the information available not only to those who have the technology to access electronic information, but also to those who do not have access to computers and the Internet. Requiring a paper copy provides the NRC with an efficient means of reproducing documents for members of the public who do not use the technology for various reasons. The paper copy is also a means of making information accessible to individuals with handicaps, as stipulated in section 508 of the Rehabilitation Act. Many of the formats currently being adopted for electronic information are images of textual information. These images do not work with the assistive technologies currently on the market. However, there are technologies available for converting text from paper to accessible formats for use by the handicapped. Thus, the NRC needs access to paper copies of many electronic submissions in order to provide information to the public.

Before establishing the requirement for submission of a paper copy with CD–ROM submittals, the NRC tested its ability to make copies from samples of CD–ROMs received from several nuclear utilities. Sample CD–ROMs were also provided to leading suppliers of printing and duplication services in the Washington, D.C., area to solicit cost estimates and to verify each supplier's ability to make paper copies from CD–ROMs submitted to the NRC. Both NRC and the local printing community have equipment that could print any file on the sample CD–ROMs. However, in some instances, the complexity of the file structures on the CD–ROMade it almost impossible to accurately reconstruct paper copies from the submissions. In those instances, the cost of creating paper copies from the CD–ROM would be prohibitive. Therefore, the NRC proposed that the individuals who create the documents (licensees, applicants, etc.) provide a single paper copy for use by the NRC for duplication purposes.

Nonetheless, after evaluating the public comments, the NRC is deleting from the guidance the requirement for a paper copy. In those instances where the NRC requires a paper copy for accessibility or other reasons, it will make every effort to produce the copy using NRC resources. The updated guidance includes several new sections on organization and segmentation of files being submitted to the NRC. The new sections will facilitate the NRC's capability to produce paper copies. However, when the agency is unable to successfully generate an accurate paper copy from the CD–ROM, the NRC may require the submitter to produce a paper copy. This will be handled on a case-by-case basis.

*Comment 2:* Commenters encouraged the NRC to develop the capability to handle many of the types of documents listed as "Exceptions to Electronic Submission" in the guidance.

*Response:* Many of the exceptions to electronic submission are not related to the capabilities of NRC systems to handle the electronic information. Some are driven by regulations and processes that are not within the NRC's control. However, the NRC will continue to work to enhance the capabilities of the Electronic Information Exchange (EIE) process in the hope of accommodating some of the current exceptions to electronic transmissions. Since the draft was issued, the EIE capabilities have been enhanced to allow the submission of proprietary, privacy, and official-use-only information. For example, in the proposed guidance, fingerprint cards were listed as an exception to transmission via EIE. Under the current guidance, fingerprints can be transmitted via EIE.

*Comment 3:* The guidance limits the versions of software formats that may be submitted. In some cases the software versions prescribed by the NRC are not the current versions. The NRC should try to keep up with the latest versions of software.

*Response:* In the Federal environment, upgrades to the latest software can take time. However, the NRC agrees to take steps to ensure the timely approval of the most current versions of software for making submissions to the agency. However, based on National Archives and Records Administration (NARA) guidance documents issued subsequent to publication of the NRC's draft guidance, NRC is restricting the software format versions that are acceptable for submissions to the agency to the current and two prior versions. The guidance has been updated to incorporate this change.

*Comment 4:* Several commenters stated that versions of software should not be dictated and that there should be no restrictions on the use of versions of software.

*Response:* The NRC is required to transfer permanent records to NARA in an approved format. NARA currently does not allow submission of documents created using proprietary software. Thus, documents must be converted to an acceptable publicly available format.

Therefore, the NRC must require submitters to provide electronic information in one of the NARA-approved formats.

NARA further restricts formats by only accepting documents converted using the current version or the two previous versions of the software. The NRC is adopting the same approach for submissions to the agency.

The NRC has decided that only documents in one of the NARA-approved PDF formats (see Section 2.1 of the guidance document) or in one of the formats listed for transfer of spreadsheets that are intended for further calculations by the NRC staff are acceptable for electronic submission to the NRC.

*Comment 5:* Some comments stated that the use of a three-digit numeric prefix in file names is too prescriptive, complicates production of documents, and is unnecessary.

*Response:* The NRC has several years of experience reviewing and attempting to capture documents submitted to the agency in electronic form. NRC has learned that, in many instances, it is almost impossible to decipher the correct order in which to capture the files to duplicate the document on the transfer medium. Each document submitted to the NRC is created differently, according to the business needs of the creating entity and the level of expertise in the use of the capture software by the individual who creates the document. In many instances the file structure, use of folders, other formatting conventions used, and the relationships between files cannot be determined. Microsoft Explorer and other file management tools further complicate the situation by reordering the file structure. Thus, the file structure of the document cannot be duplicated in the NRC's systems. As a result, the NRC is unable to capture these submissions in its electronic document/records management system. These submissions are currently managed outside of NRC's electronic document management systems as individual objects, maintained on the transfer medium provided. This creates migration and transfer issues that have to be managed on an individual basis. The use of the three-digit prefix is an effort to simplify document capture, ensure correct ordering of files, and increase the accuracy and fidelity of the information captured in the NRC's electronic systems.

For these reasons, the NRC will continue to require a three-digit prefix on all files submitted electronically.

*Comment 6:* Most comments received included remarks about the maximum file size that can be submitted electronically to the NRC. These comments all requested that the file size limit be increased.

*Response:* The NRC contracted for a study to evaluate the most logical file size limit based on receipt and capture of incoming files and issues related to access, retrieval, and transfer via the Internet. This study concluded that the optimal file size limit for use by the NRC is 50MB. Therefore, the NRC is modifying its guidance to raise the file size limit for both EIE and CD–ROM submissions to 50MB per file. The NRC had previously proposed a 20MB limit.

Additionally, the NRC has discovered that small files are problematic because large numbers of small files require significant resources to capture and profile in electronic document management systems. Therefore, the NRC encourages submitters to combine files that are parts of larger documents to create 50MB files that can be more economically and efficiently managed.

*Comment 7:* Several comments stated that the resolution standards for images provided to the NRC are too high.

*Response:* The resolution standards included in the draft guidance were based on the NRC's experience with images and requirements identified by Adobe to ensure that images can be migrated. This proposed guidance was developed by the NRC before the availability of Government-wide guidance from NARA. Since the draft guidance was published, NARA has issued standards for the transfer of scanned images and PDF documents to NARA. The NRC is adopting these standards in Section 2.5 of the guidance so that the agency can comply with the NARA transfer requirements. The NARA guidance specifies higher resolution levels than proposed originally by the NRC for some image forms. The NRC's original proposed standard was 300 dots per inch (dpi) for Bi-tonal (Black and White) and 200 dpi for Color and Grayscale. The revised standard is 300 dpi for all three.

*Comment 8:* Several comments stated that the NRC should specify a standard format for submission of documents on CD–ROM that would allow for the upload of the documents into NRC systems.

*Response:* The NRC agrees. A new section has been added to the guidance (Section 2.14) to cover requirements for segmenting large documents, and another (Section 4.3) has been revised to cover requirements for the accompanying transmittal letter to facilitate the capture of CD–ROM submissions in ADAMS and other NRC systems.

## IV. Section-by-Section Analysis

Well over 100 of our regulations are being amended by this final rule. However, we are making only a very few kinds of changes, and so an analysis of each and every amended section would be highly repetitious and, more important, would obscure the aims and forms of the amendments. Therefore, rather than describe each amended section, we will describe only the typical changes we are making and why we are making them.

Many of the kinds of changes are adequately represented by the proposed changes to sections of Part 30.

(1) The changes to § 30.6, "Communications," are examples of the most important kind of amendment in this rule. Section 30.6 and its analogues in other parts of the NRC's regulations have typically said that communications are to be mailed or delivered by hand to the agency or one of its regional offices. The amended section makes clear that the current list of options is not exhaustive, and that electronic communications are permitted where "practicable." The amendment refers readers to guidance for answers to questions about what is practicable and how electronic submissions are to be made. The NRC has developed a guidance document that provides specific information concerning electronic submissions. This guidance document appears as an appendix to this final rule. Please note that the guidance document will not be codified in the Code of Federal Regulations.

A variation on § 30.6 requires that paper submissions be on a "page-replacement" basis or that an envelope be marked a certain way. See, for example, § 72.70(c) and § 9.67. We have also amended these regulations to make clear that an electronic option is available on a full-replacement basis.

The amendment of § 30.6 illustrates a general principle we have followed throughout the amendments, namely, that the amended regulations should contain no less information than the previous regulations. We had considered saving time and reducing printed regulatory text by leaving existing communications regulations unchanged and simply adding to Chapter I of Title 10 of the Code of Federal Regulations a single new regulation on communications, applicable to communications under every part of the NRC's regulations. This regulation would have said that, with certain exceptions, the electronic option was available, notwithstanding what any other NRC communications regulation said. However, regulations on communications then would have contradicted each other, and readers of one of the other parts could have been misled by the part they were reading into thinking that communications had to be by mail or delivery in person. Thus, to avoid inconsistencies and to ensure that the new regulations contain as much information as the old ones, we have revised any section that, because it mentioned only one or two options for communications, implied that the electronic option was ruled out. Thus, we have amended § 30.6 in several places.

(2) The amendments to § 30.50(c), "Reporting requirements," and § 30.55 (c), "Tritium reports," are instances of a second major class of amendment in this final rule. The sections amended by this class typically required two or three kinds of notification to the NRC—a more or less immediate notification by phone or sometimes telefax or telegram of an incident, a pending shipment, or other time-sensitive matter; then a followup report several hours later, again by phone, telefax, or telegram; and finally, several days later, a written report to the appropriate office director. Section 30.50 requires all three kinds of reports. Generally speaking, we have not added an electronic option for the first two kinds of reports, the short-term ones, because the aims of these required reports are best served by consistently stable, rapid, and fully interactive means of communications. Electronic Information Exchange communications may not yet consistently meet these needs. E-mail delivery times, for example, can still be measured in days sometimes, and even "instant messaging" does not always permit the same facility of information exchange and discussion that the telephone permits. Thus, we have concluded that, at the present time, electronic communication of short-term reports is not yet "practicable." We will revisit these requirements as the technology advances. Nonetheless, the amendments in this final rule add the electronic option for communicating written followup reports required by §§ 30.50 and 30.55 and their analogues.

(3) The amendment to § 30.7(e)(3) is an example of a third class of amendment that is less important than the two that have already been discussed. Several regulations require that a licensee or applicant acquire a copy of an NRC form, either for posting at the licensee's facility (as in the case of § 30.7), for filling out and sending to the NRC to apply for a license, or to meet a reporting requirement. These regulations typically say that the form may be acquired by writing to a certain address or by calling a certain number. The amendments to these sections add that the forms may be acquired by visiting the NRC's Web site.

In addition, throughout the regulations we have also eliminated requirements for multiple copies of submissions. For example, § 51.66 previously required submittal of 25 copies of the environmental report and retention of an additional 125 copies for later distribution. The submittal requirement is now being reduced to a single copy, and instead of being required to retain copies, an applicant will be required to maintain the capability to generate additional copies as directed.

This final rule text also makes a number of minor changes to reflect other final rules that the NRC has issued since the proposed rule on electronic submissions was issued. The text also contains a number of administrative changes, such as changes in phone numbers and street and e-mail addresses.

## V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is not adopting any technical standard. It is simply helping to ensure, through a rulemaking, that the agency will be in timely compliance with the requirement in the Government Paperwork Elimination Act, Pub. L. 105–277, that Federal agencies allow electronic submissions of information where practicable. Thus, no showing of compliance with the NTTAA is necessary here.

## VI. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2), because this action seeks nonpolicy, procedural changes to the NRC's regulations. Moreover, because of the broad nature of this action and the number of the NRC's regulations affected, several other categorical exclusions apply to this rule, including 10 CFR 51.22(c)(1) and (3)(i)–(iii). Also, 10 CFR 51.22(c)(16) applies to the guidance being issued in connection with this rule and to the rule itself. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for these changes to the regulations. Because of its procedural nature, this action does not raise environmental justice concerns.

## VII. Paperwork Reduction Act Statement

The Office of Management and Budget (OMB) has determined that, because this final rule provides the option of collecting information by use of electronic means but does not amend the existing information collections to which the rule pertains, OMB's review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 and following) are not required.

**VIII. Regulatory Analysis**

A regulatory analysis has not been prepared for this rulemaking. The amendments below will neither impose new nor relax existing safety requirements and, thus, do not call for the sort of safety/cost analysis described in the agency's regulatory analysis guidelines in NUREG/BR–0058. Moreover, the NRC is required by the Government Paperwork Elimination Act, Pub. L. 105–277 (44 U.S.C. 3505, *note*), to allow electronic submissions where practicable, and the final rule does simply that. Thus, an analysis of costs and benefits could not alter a decision to implement the policy embodied in this rule. However, the NRC believes that the rule will afford all persons who deal with the agency greater flexibility in choosing the format of many of their communications and, thus, will allow them to choose less costly alternatives, often reducing the current costs of their communications with the NRC.

**IX. Regulatory Flexibility Certification**

In accordance with section 605(b) of the Regulatory Flexibility Act (Title 5, Chapter 6 of the U.S. Code), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. Therefore, in accordance with section 605(b), the NRC is not preparing a regulatory flexibility analysis. The rule will in fact apply to the many small entities that are among the NRC's licensees, but it will impose no new burdens on those small entities. To the contrary, as noted in the regulatory analysis section of this notice, the agency's expectation is that the rule will reduce burdens.

The NRC is providing the certification to the Chief Counsel for Advocacy of the SBA, in accordance with section 605 of the Regulatory Flexibility Act.

**X. Backfit Analysis**

The NRC has determined that a backfit analysis is not required for this final rule because these amendments do not include any provisions that would require backfits as defined in 10 CFR Chapter I. Furthermore, this rule is necessary so that the NRC can respond adequately to the mandate in the Government Paperwork Elimination Act of 1998 that Federal agencies "provide for the option of the electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper * * *" (Pub. L. 105–277, Sec. 1704). Therefore, a backfit analysis has not been prepared for this final rule.

**XI. Congressional Review**

The provisions of 5 U.S.C. 801 *et seq.*, which govern congressional review of rulemakings, do not apply to this rulemaking because it concerns agency procedure and practice and will not substantially affect the rights and obligations of nonagency parties. *See* 5 U.S.C. 804(3)(C).

**List of Subjects**

*10 CFR Part 2*

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

*10 CFR Part 4*

Administrative practice and procedure, Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Federal aid programs, Grant programs, Handicapped, Loan programs, Reporting and recordkeeping requirements, Sex discrimination.

*10 CFR Part 9*

Criminal penalties, Freedom of information, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

*10 CFR Part 11*

Hazardous materials—transportation, Investigations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

*10 CFR Part 15*

Administrative practice and procedure, Debt collection.

*10 CFR Part 19*

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

*10 CFR Part 20*

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

*10 CFR Part 21*

Nuclear power plants and reactors, Penalties, Radiation protection, Reporting and recordkeeping requirements.

*10 CFR Part 25*

Classified information, Criminal penalties, Investigations, Reporting and recordkeeping requirements, Security measures.

*10 CFR Part 30*

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

*10 CFR Part 31*

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment.

*10 CFR Part 32*

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

*10 CFR Part 33*

Byproduct material, Criminal penalties, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

*10 CFR Part 34*

Criminal penalties, Packaging and containers, Radiation protection, Radiography, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

*10 CFR Part 35*

Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

*10 CFR Part 39*

Byproduct material, Criminal penalties, Nuclear material, Oil and gas exploration—well logging, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Source material, Special nuclear material.

*10 CFR Part 40*

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

*10 CFR Part 50*

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

*10 CFR Part 51*

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

*10 CFR Part 52*

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

*10 CFR Part 55*

Criminal penalties, Manpower training programs, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

*10 CFR Part 60*

Criminal penalties, High-level waste, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Waste treatment and disposal.

*10 CFR Part 61*

Criminal penalties, Low-level waste, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

*10 CFR Part 62*

Administrative practice and procedure, Denial of access, Emergency access to low-level waste disposal, Low-level radioactive waste, Low-level radioactive waste treatment and disposal, Low-level waste policy amendments act of 1985, Nuclear materials, Reporting and recordkeeping requirements.

*10 CFR Part 63*

Criminal penalties, High-level waste, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Waste treatment and disposal.

*10 CFR Part 70*

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

*10 CFR Part 71*

Criminal penalties, Hazardous materials transportation, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

*10 CFR Part 72*

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

*10 CFR Part 73*

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

*10 CFR Part 74*

Accounting, Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Special nuclear material.

*10 CFR Part 75*

Criminal penalties, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

*10 CFR Part 76*

Certification, Criminal penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Special nuclear material, Uranium enrichment by gaseous diffusion.

*10 CFR Part 81*

Administrative practice and procedure, Inventions and patents.

*10 CFR Part 95*

Classified information, Criminal penalties, Reporting and recordkeeping requirements, Security measures.

*10 CFR Part 100*

Nuclear power plants and reactors, Reactor siting criteria.

*10 CFR Part 110*

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

*10 CFR Part 140*

Criminal penalties, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

*10 CFR Part 150*

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

*10 CFR Part 170*

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

*10 CFR Part 171*

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Nonpayment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Chapter I:

## PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

■ 1. The authority citation for part 2 is revised to read as follows:

**Authority:** Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f); Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Section 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Section 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Section 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553, Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

■ 2. In § 2.206, the second sentence of paragraph (a) is removed and three sentences are added in its place to read as follows:

### § 2.206 Requests for action under this subpart.

(a) * * * Requests must be addressed to the Secretary of the Commission and must be filed either by hand delivery to the NRC's Offices at 11555 Rockville Pike, Rockville, Maryland; by mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; or by electronic submission, for example, via facsimile, Electronic Information Exchange, e-mail, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov;* or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

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■ 3. In § 2.802, paragraph (a) and the second sentence of the introductory text of paragraph (b) are revised to read as follows:

### § 2.802 Petition for rulemaking.

(a) Any interested person may petition the Commission to issue, amend or rescind any regulation. The petition should be addressed to the Secretary, Attention: Rulemakings and Adjudications Staff, and sent either by mail addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by facsimile; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, e-mail, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov*, or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

(b) * * * A prospective petitioner also may telephone the Rules and Directives Branch on (301) 415–7163, or toll free on (800) 368–5642, or send e-mail to *NRCREP@nrc.gov*.

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## PART 4—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM THE COMMISSION

■ 4. The authority citation for part 4 is revised to read as follows:

**Authority:** Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 274, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Subpart A also issued under secs. 602–605, Pub. L. 88–352, 78 Stat. 252, 253 (42 U.S.C. 2000d–1–2000d–4); sec. 401, 88 Stat. 1254 (42 U.S.C. 5891).

Subpart B also issued under sec. 504, Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 706); sec. 119, Pub. L. 95–602, 92 Stat. 2984 (29 U.S.C. 794); sec. 122, Pub. L. 95–602, 92 Stat. 2984 (29 U.S.C. 706(6)).

Subpart C also issued under Title III of Pub. L. 94–135, 89 Stat. 728, as amended (42 U.S.C. 6101).

Subpart E also issued under 29 U.S.C. 794.

■ 5. Section 4.5 is revised to read as follows:

### § 4.5 Communications and reports.

Except as otherwise indicated, communications and reports relating to this part may be sent to the NRC by mail addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov*, or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

■ 6. In § 4.570, paragraph (c) is revised to read as follows:

### § 4.570 Compliance procedures.

* * * * *

(c) The Civil Rights Program Manager, Office of Small Business and Civil Rights, shall be responsible for coordinating implementation of this section. Complaints should be sent to the NRC using an appropriate method listed in § 4.5.

* * * * *

## PART 9—PUBLIC RECORDS

■ 7. The authority citation for part 9 is revised to read as follows:

**Authority:** Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Subpart A also issued under 5 U.S.C. 552; 31 U.S.C. 9701; Pub. L. 99–570.

Subpart B is also issued under 5 U.S.C. 552a.

Subpart C also issued under 5 U.S.C. 552b.

■ 8. Section 9.6 is added to read as follows:

### § 9.6 Communications.

Except as otherwise indicated, communications relating to this part shall be addressed to the Freedom of Information Act and Privacy Act Officer, may be sent to the NRC by mail addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission via facsimile to (301) 415–5130 or e-mail to *foia@nrc.gov*. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov*, or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

■ 9. In § 9.23, the first and second sentences of the introductory text of paragraph (b) are revised to read as follows:

### § 9.23 Request for records.

* * * * *

(b) A person may request agency records by submitting a request authorized by 5 U.S.C. 552(a)(3) to the Office of the Chief Information Officer, by an appropriate method listed in § 9.6. The request should be clearly marked "Freedom of Information Act Request." * * *

* * * * *

■ 10. In § 9.29, the second and fifth sentences of paragraph (a) are revised to read as follows:

### § 9.29 Appeal from initial determination.

(a) * * * For agency records denied by an Office Director reporting to the Executive Director for Operations, the appeal should be addressed to the Executive Director for Operations and sent using an appropriate method listed in § 9.6. * * * The appeal should be clearly marked "Appeal from Initial FOIA Decision." * * *

* * * * *

■ 11. In § 9.41, paragraph (a)(2) is revised to read as follows:

### § 9.41 Requests for waiver or reduction of fees.

(a) * * *

(2) Each request for a waiver or reduction of fees should be addressed to the Office of the Chief Information Officer, and sent using an appropriate method listed in § 9.6.

* * * * *

■ 12. In § 9.53, paragraph (a) and the first sentence of paragraph (b) are revised to read as follows:

### § 9.53 Requests; how and where presented.

(a) Requests may be made in person or in writing. Assistance regarding equests or other matters relating to the Privacy Act of 1974 may be obtained by writing to the Freedom of Information Act and Privacy Act Officer, by an appropriate method listed in § 9.6. Requests relating to records in multiple systems of records should be made to the same Officer. That Officer shall assist the requestor in identifying his request more precisely and shall be responsible for forwarding the request to the appropriate system manager.

(b) All written requests must be made to the Freedom of Information Act and Privacy Act Officer, by an appropriate method listed in § 9.6, and should be clearly marked "Privacy Act Request," "Privacy Act Disclosure Accounting Request," or "Privacy Act Correction Request," as appropriate. * * *

* * * * *

■ 13. In § 9.54, the last sentence of paragraph (b) is revised to read as follows:

### § 9.54 Verification of identity of individuals making requests.

* * * * *

(b) *Inability to provide requisite documentation of identity.* * * * Forms for such notarized statements may be obtained on request from the Freedom of Information Act and Privacy Act Officer, and sent by an appropriate method listed in § 9.6.

* * * * *

■ 14. In § 9.65, the third and fifth sentences of paragraph (b) are revised to read as follows:

### § 9.65 Access determinations; appeals.

* * * * *

(b) * * * For agency records denied by the Assistant Inspector General for Investigations, the appeal must be in writing, addressed to the Inspector General, and sent by an appropriate method listed in § 9.6. * * * The appeal should be clearly marked "Privacy Act Appeal—Denial of Access." * * *

* * * * *

■ 15. In § 9.66, the third and fourth sentences of paragraph (b) are revised to read as follows:

### § 9.66 Determinations authorizing or denying correction of records; appeals.

* * * * *

(b) * * * The appeal must be in writing, addressed to the Freedom of Information Act and Privacy Act Officer, and sent by an appropriate method listed in § 9.6, for submission to the appropriate appellate authority for a final determination. The appeal should be clearly marked "Privacy Act Correction Appeal." * * *

* * * * *

■ 16. In § 9.67, the second sentence of paragraph (a) is removed and two sentences are added in its place to read as follows:

### § 9.67 Statements of disagreement.

(a) * * * "Statements of Disagreement" must be addressed, as appropriate, to the Inspector General or the Executive Director for Operations, and sent by an appropriate method listed in § 9.6. They should also be clearly marked "Privacy Act Statement of Disagreement."

* * * * *

## PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

■ 17. The authority citation for part 11 is revised to read as follows:

**Authority:** Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 11.15(e) also issued under sec. 501, 85 Stat. 290 (31 U.S.C. 483a).

■ 18. In § 11.15, the first sentence of paragraph (a)(1) is removed and four sentences are added in its place to read as follows:

### § 11.15 Application for special nuclear material access authorization.

(a)(1) Application for special nuclear material access authorization, renewal, or change in level must be filed by the licensee on behalf of the applicant with the Director, Division of Facilities and Security, Mail Stop T7–D57, either by mail addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html,* by calling (301) 415–6030, by e-mail to *EIE@nrc.gov,* or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information. * * *

* * * * *

## PART 15—DEBT COLLECTION PROCEDURES

■ 19. The authority citation for part 15 is revised to read as follows:

**Authority:** Secs. 161, 186, 68 Stat. 948, 955, as amended (42 U.S.C. 2201, 2236); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1, Pub. L. 97–258, 96 Stat. 972 (31 U.S.C. 3713); sec. 5, Pub. L. 89–508, 80 Stat. 308, as amended (31 U.S.C. 3716); Pub. L. 97–365, 96 Stat. 1749 (31 U.S.C. 3719); Federal Claims Collection Standards, 31 CFR Chapter IX, parts 900–904; 31 U.S.C. Secs. 3701, 3716; 31 CFR Sec 285; 26 U.S.C. Sec 6402(d); 31 U.S.C. Sec. 3720A; 26 U.S.C. Sec. 6402(c); 42 U.S.C. Sec. 664; Pub. L. 104–134, as amended (31 U.S.C. 3713); 5 U.S.C. 5514; Executive Order 12146 (3 CFR 1980 Comp. pp. 409–412); Executive Order 12988 (3 CFR, 1996 Comp., pp. 157–163); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 20. Section 15.3 is revised to read as follows:

### § 15.3 Communications.

Unless otherwise specified, communications concerning the regulations in this part may be addressed to the Secretary of the Nuclear Regulatory Commission and sent either by mail to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff; by hand delivery to the NRC's offices at 11555 Rockville Pike, One White Flint North, Rockville, Maryland; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html,* by calling (301) 415–6030, by e-mail to *EIE@nrc.gov,* or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

## PART 19—NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

■ 21. The authority citation for part 19 is revised to read as follows:

**Authority:** Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282, 2297f); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 22. In § 19.11, paragraph (c)(2) is revised to read as follows:

### § 19.11 Posting of notices to workers.

* * * * *

(c) * * *

(2) Additional copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter, by calling (301) 415–5877, via e-mail to *forms@nrc.gov,* or by visiting the NRC's Web site at *http://www.nrc.gov* and selecting forms from the index found on the home page.

* * * * *

■ 23. In § 19.17, the second sentence of paragraph (a) is removed and five sentences are added in its place to read as follows:

### § 19.17 Inspections not warranted; informal review.

(a) * * * The complainant may obtain review of this determination by submitting a written statement of position to the Executive Director for Operations, either by mail to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html,* by calling (301) 415–6030, by e-mail to *EIE@nrc.gov,* or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information. The Executive Director for Operations will provide the licensee with a copy of such statement by certified mail, excluding, at the request of the complainant, the name of the complainant. * * *

* * * * *

## PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

■ 24. The authority citation for part 20 is revised to read as follows:

**Authority:** Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 25. Section 20.1007 is revised to read as follows:

### § 20.1007 Communications.

Unless otherwise specified, communications or reports concerning the regulations in this part should be addressed to the Executive Director for Operations (EDO), and sent either by mail to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html,* by calling (301) 415–6030, by e-mail to *EIE@nrc.gov,* or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

■ 26. In § 20.2203, paragraph (d) is revised to read as follows:

### § 20.2203 Reports of exposures, radiation levels, and concentrations of radioactive material exceeding the constraints or limits.

* * * * *

(d) All licensees, other than those holding an operating license for a nuclear power plant, who make reports under paragraph (a) of this section shall submit the report in writing either by mail addressed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov*, or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. A copy should be sent to the appropriate NRC Regional Office listed in appendix D to this part.

■ 27. In § 20.2206, paragraph (c) is revised to read as follows:

### § 20.2206 Reports of individual monitoring.

* * * * *

(c) The licensee shall file the report required by § 20.2206(b), covering the preceding year, on or before April 30 of each year. The licensee shall submit the report to the REIRS Project Manager by an appropriate method listed in § 20.1007 or via the REIRS Web site at *http://www.reirs.com.*

■ 28. Appendix D to part 20 is revised to read as follows:

*APPENDIX D TO PART 20—UNITED STATES NUCLEAR REGULATORY COMMISSION REGIONAL OFFICES*

| | Address | Telephone (24 hour) | E-Mail |
|---|---|---|---|
| NRC Headquarters Operations Center | USNRC, Division of Incident Response Operations, Washington, DC 20555–0001. | (301) 816–5100<br>(301) 951–0550<br>(301) 816–5151 (fax) | *H001@nrc.gov* |
| Region I: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont. | USNRC, Region I, 475 Allendale Road, King of Prussia, PA 19406–1415. | (610) 337–5000<br>(800) 432–1156<br>TDD: (301) 415-5575 | *RidsRgn1MailCenter@nrc.gov* |
| Region II: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virginia, Virgin Islands, and West Virginia. | USNRC, Region II, Sam Nunn Atlanta Federal Center, Suite 23T85, 61 Forsyth Street, SW, Atlanta, GA 30303–8931. | (404) 562–4400<br>(800) 877–8510<br>TDD: (301) 415–5575 | *RidsRgn2MailCenter@nrc.gov* |
| Region III: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin. | USNRC, Region III, 801 Warrenville Road, Lisle, IL 60532–4351. | (630) 829–9500<br>(800) 522–3025<br>TDD: (301) 415–5575 | *RidsRgn3MailCenter@nrc.gov* |
| Region IV: Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Kansas, Louisiana, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming, and the U.S. territories and possessions in the Pacific. | USNRC, Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011–4005. | (817) 860–8100<br>(800) 952–9677<br>TDD: (301) 415–5575 | *RidsRgn4MailCenter@nrc.gov* |

■ 29. In appendix G to part 20, the third undesignated paragraph under I.(c) is revised to read as follows:

*APPENDIX G TO PART 20—REQUIREMENTS FOR TRANSFERS OF LOW-LEVEL RADIOACTIVE WASTE INTENDED FOR DISPOSAL AT LICENSED LAND DISPOSAL FACILITIES AND MANIFESTS*

**I. MANIFEST**

* * * * *

(c) * * *

NRC Forms 540, 540A, 541, 541A, 542 and 542A, and the accompanying instructions, in hard copy, may be obtained by writing or calling the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–5877, or by visiting the NRC's Web site at *http://www.nrc.gov* and selecting forms from the index found on the home page.

* * * * *

## PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

■ 30. The authority citation for part 21 is revised to read as follows:

**Authority:** Sec. 161, 68 Stat. 948, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2953 (42 U.S.C. 2201, 2282, 2297f); secs. 201, as amended, 206, 88 Stat. 1242, as amended, 1246 (42 U.S.C. 5841, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 21.2 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

■ 31. Section 21.5 is revised to read as follows:

### § 21.5 Communications.

Except where otherwise specified in this part, written communications and reports concerning the regulations in this part must be addressed to the NRC's Document Control Desk, and sent either by mail to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://*

*www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov*, or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information. In the case of a licensee, a copy of the communication must also be sent to the appropriate Regional Administrator at the address specified in appendix D to part 20 of this chapter.

## PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

■ 32. The authority citation for part 25 is revised to read as follows:

**Authority:** Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); E.O. 10865, as amended, 3 CFR 1959—1963 Comp., p. 398 (50 U.S.C. 401, note); E.O. 12829, 3 CFR, 1993 Comp., p. 570; E.O. 12958, 3 CFR, 1995 Comp., p. 333; E.O. 12968, 3 CFR, 1995 Comp., p. 396.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701).

■ 33. Section 25.9 is revised to read as follows:

### § 25.9 Communications.

Except where otherwise specified, communications and reports concerning the regulations in this part should be addressed to the Director, Division of Facilities and Security, Mail Stop T7–D57, and sent either by mail to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov*, or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

## PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

■ 34. The authority citation for part 30 is revised to read as follows:

**Authority:** Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201 as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 35. In § 30.6, paragraph (a)(3) is added, and paragraphs (a)(1) and (a)(2), the introductory text of paragraph (b), and the last sentences of paragraphs (b)(2)(i), (b)(2)(ii), (b)(2)(iii), and (b)(2)(iv) are revised, to read as follows:

### § 30.6 Communications.

(a) * * *

(1) By mail addressed: ATTN: Document Control Desk, Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

(2) By hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland.

(3) Where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov*, or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

(b) The Commission has delegated to the four Regional Administrators licensing authority for selected parts of its decentralized licensing program for nuclear materials as described in paragraph (b)(1) of this section. Any communication, report, or application covered under this licensing program must be submitted to the appropriate Regional Administrator. The Administrators' jurisdictions and mailing addresses are listed in paragraph (b)(2) of this section.

* * * * *

(2) * * *

(i) * * * All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment, renewal, or termination request of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region I, Nuclear Material Section B, 475 Allendale Road, King of Prussia, Pennsylvania 19406–1415; where e-mail is appropriate it should be addressed to *RidsRgn1MailCenter@nrc.gov*.

(ii) * * * All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment, renewal, or termination request of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region II, Material Licensing/Inspection Branch, Sam Nunn Atlanta Federal Center, Suite 23T85, 61 Forsyth Street, SW, Atlanta, GA 30303–8931; where e-mail is appropriate it should be addressed to *RidsRgn2MailCenter@nrc.gov*.

(iii) * * * All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment, renewal, or termination request of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region III, Material Licensing Section, 801 Warrenville Road, Lisle, Illinois 60532–4351; where e-mail is appropriate it should be addressed to *RidsRgn3MailCenter@nrc.gov*.

(iv) * * * All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment, renewal, or termination request of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region IV, Material Radiation Protection Section, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011–4005; where e-mail is appropriate it should be addressed to *RidsRgn4MailCenter@nrc.gov*.

■ 36. In § 30.7, paragraph (e)(3) is revised to read as follows:

### § 30.7 Employee protection.

* * * * *

(e) * * *

(3) Copies of NRC Form 3 may be obtained by writing to the Regional

Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter, by calling (301) 415–5877, via e-mail to *forms@nrc.gov*, or by visiting the NRC's Web site at *http://www.nrc.gov* and selecting forms from the index found on the home page.

* * * * *

■ 37. In § 30.32, the first sentence of paragraph (a) is revised to read as follows:

### § 30.32 Application for specific licenses.

(a) A person may file an application on NRC Form 313, "Application for Material License," in accordance with the instructions in § 30.6 of this chapter. * * *

* * * * *

■ 38. In § 30.50, the third sentence of the introductory text of paragraph (c)(2) is revised to read as follows:

### § 30.50 Reporting requirements.

* * * * *

(c) * * *

(2) * * * These written reports must be sent to the NRC using an appropriate method listed in § 30.6(a); and a copy must be sent to the appropriate NRC Regional office listed in appendix D to part 20 of this chapter. * * *

* * * * *

■ 39. In § 30.55, the third sentence of paragraph (c) is revised to read as follows:

### § 30.55 Tritium reports.

* * * * *

(c) * * * Copies of such written report shall be sent to the Director of the NRC's Office of Nuclear Material Safety and Safeguards, using an appropriate method listed in § 30.6(a). * * *

* * * * *

## PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

■ 40. The authority citation for part 31 is revised to read as follows:

**Authority**: Secs. 81, 161, 183, 68 Stat. 935, 948, 954, as amended (42 U.S.C. 2111, 2201, 2233); secs. 201, as amended, 202, 88 Stat. 1242, as amended.1244 (42 U.S.C. 5841, 5842); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 41. In § 31.5, the introductory text of paragraph (c)(8)(ii), the third sentence of the introductory text of paragraph (c)(9)(i), and the second sentence of paragraph (c)(11) are revised to read as follows:

### § 31.5 Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere.

* * * * *

(c) * * *

(8) * * *

(ii) Shall, within 30 days after the transfer of a device to a specific licensee or export, furnish a report to the Director of Nuclear Material Safety and Safeguards, ATTN: Document Control Desk/GLTS, using an appropriate method listed in § 30.6(a) of this chapter. The report must contain—

* * * * *

(9) * * *

(i) * * * Within 30 days of the transfer, the transferor shall report to the Director of Nuclear Material Safety and Safeguards, ATTN: Document Control Desk/GLTS, using an appropriate method listed in § 30.6(a) of this chapter—

* * * * *

(11) * * * If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by providing the Director of the Office of Nuclear Material Safety and Safeguards, by an appropriate method listed in § 30.6(a) of this chapter, a written justification for the request.

* * * * *

■ 42. In § 31.11, paragraph (b)(1) is revised to read as follows:

### § 31.11 General license for use of byproduct material for certain in vitro clinical or laboratory testing.

* * * * *

(b) * * *

(1) Has filed NRC Form 483, "Registration Certificate—In Vitro Testing with Byproduct Material Under General License," with the Director of Nuclear Material Safety and Safeguards, by an appropriate method listed in § 30.6(a), and has received from the Commission a validated copy of NRC Form 483 with a registration number assigned; or

* * * * *

## PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

■ 43. The authority citation for part 31 is revised to read as follows:

**Authority:** Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 44. In § 32.12, paragraph (a) is revised to read as follows:

### § 32.12 Same: Records and material transfer reports.

(a) Each person licensed under § 32.11 shall maintain records of transfer of material and file a report with the Director of Nuclear Material Safety and Safeguards by an appropriate method listed in § 30.6(a) of this chapter. A copy of the report must be sent to the appropriate NRC Regional Office listed in appendix D to part 20 of this chapter.

* * * * *

■ 45. In § 32.16, paragraph (a) is revised to read as follows:

### § 32.16 Certain items containing byproduct material: Records and reports of transfer.

(a) Each person licensed under § 32.14 or § 32.17 shall maintain records of all transfers of nuclear material and file a report with the Director of Nuclear Material Safety and Safeguards by an appropriate method listed in § 30.6(a) of this chapter, with a copy to the appropriate NRC Regional Office listed in appendix D to part 20 of this chapter.

* * * * *

■ 46. In § 32.20, paragraph (b) is revised to read as follows:

### § 32.20 Same: Records and material transfer reports.

* * * * *

(b) The licensee shall file a summary report stating the total quantity of each isotope transferred under the specific license with the Director of Nuclear Material Safety and Safeguards by an appropriate method listed in § 30.6(a) of this chapter, with a copy to the appropriate NRC Regional Office listed in appendix D to part 20 of this chapter.

* * * * *

■ 47. In § 32.25, the introductory text of paragraph (c) is revised to read as follows:

### § 32.25 Conditions of licenses issued under § 32.22: Quality control, labeling, and reports of transfer.

* * * * *

(c) Maintain records and file reports with the Director of Nuclear Material Safety and Safeguards, by an appropriate method listed in § 30.6(a), with copies to the appropriate NRC Regional Office listed in appendix D to part 20 of this chapter.

* * * * *

■ 48. In § 32.52, the first sentence of the introductory text of paragraph (a) is revised to read as follows:

**§ 32.52 Same: Material transfer reports and records.**

* * * * *

(a) The person shall report to the Director of Nuclear Material Safety and Safeguards, ATTN: GLTS, by an appropriate method listed in § 30.6(a), all transfers of such devices to persons for use under the general license in § 31.5 of this chapter and all receipts of devices from persons licensed under § 31.5 of this chapter. * * *

* * * * *

■ 49. The first sentence of § 32.56 is revised to read as follows:

**§ 32.56 Same: Material transfer reports.**

Each person licensed under § 32.53 shall file an annual report with the Director of Nuclear Material Safety and Safeguards, by an appropriate method listed in § 30.6(a) of this chapter, which report must state the total quantity of tritium or promethium-147 transferred to persons generally licensed under § 31.7 of this chapter. * * *

■ 50. In § 32.210, paragraph (b) is revised to read as follows:

**§ 32.210 Registration of product information.**

* * * * *

(b) The request for review must be sent to the NRC's Office of Nuclear Material Safety and Safeguards, Materials Safety and Inspection Branch, by an appropriate method listed in § 30.6(a) of this chapter.

* * * * *

## PART 33—SPECIFIC DOMESTIC LICENSES OF BROAD SCOPE FOR BYPRODUCT MATERIAL

■ 51. The authority citation for part 33 is revised to read as follows:

**Authority:** Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 52. Section 33.12 is revised to read as follows:

**§ 33.12 Applications for specific licenses of broad scope.**

A person may file an application for specific license of broad scope on NRC Form 313, "Application for Material License," in accordance with the provisions of § 30.32 of this chapter.

## PART 34—LICENSES FOR INDUSTRIAL RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR INDUSTRIAL RADIOGRAPHIC OPERATIONS

■ 53. The authority citation for part 34 is revised to read as follows:

**Authority:** Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841). Section 34.45 also issued under sec. 206, 88 Stat. 1246 (42 U.S.C. 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 54. Section 34.11 is revised to read as follows:

**§ 34.11 Application for a specific license.**

A person may file an application for specific license for use of sealed sources in industrial radiography on NRC Form 313, "Application for Material License," in accordance with the provisions of § 30.32 of this chapter.

■ 55. In § 34.27, the third sentence of paragraph (d) is revised to read as follows:

**§ 34.27 Leak testing and replacement of sealed sources.**

* * * * *

(d) * * * A report must be filed with the Director of Nuclear Material Safety and Safeguards, by an appropriate method listed in § 30.6(a) of this chapter, the report to be filed within 5 days of any test with results that exceed the threshold in this paragraph (d), and to describe the equipment involved, the test results, and the corrective action taken. * * *

* * * * *

■ 56. In § 34.43, the second sentence of paragraph (a)(1) is revised to read as follows:

**§ 34.43 Training.**

(a) * * *

(1) * * * (An independent organization that would like to be recognized as a certifying entity shall submit its request to the Director, Office of Nuclear Material Safety and Safeguards, by an appropriate method listed in § 30.6(a) of this chapter.) or

* * * * *

■ 57. In § 34.101, the introductory text of paragraph (a) is revised to read as follows:

**§ 34.101 Notifications.**

(a) In addition to the reporting requirements specified in § 30.50 and under other sections of this chapter, such as § 21.21, each licensee shall send a written report to the NRC's Office of Nuclear Material Safety and Safeguards, Division of Industrial and Medical Nuclear Safety, by an appropriate method listed in § 30.6(a) of this chapter, within 30 days of the occurrence of any of the following incidents involving radiographic equipment:

* * * * *

## PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

■ 58. The authority citation for part 35 is revised to read as follows:

**Authority:** Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 59. In § 35.14, paragraph (c) and the introductory text of paragraph (b) are revised to read as follows:

**§ 35.14 Notifications.**

* * * * *

(b) A licensee shall notify the Commission no later than 30 days after:

* * * * *

(c) The licensee shall send the documents required in this section to the appropriate address identified in § 30.6 of this chapter.

■ 60. In § 35.3045, the introductory text of paragraph (d) is revised to read as follows:

**§ 35.3045 Report and notification of a medical event.**

* * * * *

(d) By an appropriate method listed in § 30.6(a) of this chapter, the licensee shall submit a written report to the appropriate NRC Regional Office listed in § 30.6 of this chapter within 15 days after discovery of the medical event.

* * * * *

■ 61. In § 35.3047, the introductory text of paragraph (d) is revised to read as follows:

**§ 35.3047 Report and notification of a dose to an embryo/fetus or a nursing child.**

* * * * *

(d) By an appropriate method listed in § 30.6(a) of this chapter, the licensee shall submit a written report to the appropriate NRC Regional Office listed in § 30.6 of this chapter within 15 days after discovery of a dose to the embryo/fetus or nursing child that requires a report in paragraphs (a) or (b) in this section.

* * * * *

■ 62. In § 35.3067, the second sentence is revised to read as follows:

**§ 35.3067 Report of a leaking source.**

* * * The report must be filed with the appropriate NRC Regional Office

listed in § 30.6 of this chapter, by an appropriate method listed in § 30.6(a), with a copy to the Director, Office of Nuclear Material Safety and Safeguards.

* * *

## PART 39—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR WELL LOGGING

■ 63. The authority citation for part 39 is revised to read as follows:

**Authority:** Secs. 53, 57, 62, 63, 65, 69, 81, 82, 161, 182, 183, 186, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 64. In § 39.77, paragraph (a) is revised to read as follows:

### § 39.77 Notification of incidents and lost sources; abandonment procedures for irretrievable sources.

(a) The licensee shall immediately notify the appropriate NRC Regional Office by telephone and subsequently, within 30 days, by confirmation in writing, using an appropriate method listed in § 30.6(a) of this chapter, if the licensee knows or has reason to believe that a sealed source has been ruptured. The written confirmation must designate the well or other location, describe the magnitude and extent of the escape of licensed materials, assess the consequences of the rupture, and explain efforts planned or being taken to mitigate these consequences.

* * * * *

## PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

■ 65. The authority citation for part 40 is revised to read as follows:

**Authority:** Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 66. In § 40.5, paragraph (a)(3) is added, and paragraphs (a)(1) and (a)(2), the introductory text of paragraph (b), and the last sentences of paragraphs (b)(2)(i), (b)(2)(ii), (b)(2)(iii), and (b)(2)(iv) are revised, to read as follows:

### § 40.5 Communications.

(a) * * *

(1) By mail addressed: ATTN: Document Control Desk, Director, Office of Nuclear Material Safety and Safeguards, or Director of Nuclear Security, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

(2) By hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland.

(3) Where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov*, or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

(b) The Commission has delegated to the four Regional Administrators licensing authority for selected parts of its decentralized licensing program for nuclear materials as described in paragraph (b)(1) of this section. Any communication, report, or application covered under this licensing program must be submitted to the appropriate Regional Administrator. The administrators' jurisdictions and mailing addresses are listed in paragraph (b)(2) of this section.

* * * * *

(2) * * *

(i) * * * All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406–1415; where e-mail is appropriate it should be addressed to *RidsRgn1MailCenter@nrc.gov*.

(ii) * * * All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region II Material Licensing/Inspection Branch, Sam Nunn Atlanta Federal Center, Suite 23T85, 61 Forsyth Street, Atlanta, Georgia 30303–8931; where e-mail is appropriate it should be addressed to *RidsRgn2MailCenter@nrc.gov*.

(iii) * * * All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region III, Material Licensing Section, 801 Warrenville Road, Lisle, Illinois 60532–4351; where e-mail is appropriate it should be addressed to *RidsRgn3MailCenter@nrc.gov*.

(iv) * * * All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region IV, Material Radiation Protection Section, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011–4005; where e-mail is appropriate it should be addressed to *RidsRgn4MailCenter@nrc.gov*.

■ 67. In § 40.7, paragraph (e)(3) is revised to read as follows:

### § 40.7 Employee protection.

* * * * *

(e) * * *

(3) Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter, by calling (301) 415–5877, via e-mail to *forms@nrc.gov*, or by visiting the NRC's Web site at *http://www.nrc.gov* and selecting forms from the index found on the home page.

* * * * *

■ 68. In § 40.23, paragraphs (b)(1), (b)(2)(ix), (c), and (d) are revised to read as follows:

### § 40.23 General license for carriers of transient shipments of natural uranium other than in the form of ore or ore residue.

* * * * *

(b) * * *

(1) Persons generally licensed under paragraph (a) of this section, who plan to carry a transient shipment with scheduled stops at a United States port, shall notify the Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response, using an appropriate method listed in § 40.5. The notification must be in writing and must be received at least 10 days before transport of the shipment commences at the shipping facility.

(2) * * *

(ix) For shipment between countries that are not party to the Convention on the Physical Protection of Nuclear Material (*i.e.*, not listed in appendix F to part 73 of this chapter), a certification that arrangements have been made to notify the Director, Division of Nuclear Security when the shipment is received at the destination facility.

(c) Persons generally licensed under this section making unscheduled stops at United States ports, immediately after the decision to make an unscheduled stop, shall provide to the Director, Division of Nuclear Security the information required under paragraph (b) of this section.

(d) A licensee who needs to amend a notification may do so by telephoning the Division of Nuclear Security at (301) 415–6828.

■ 69. In § 40.25, the first sentence of the introductory text of paragraph (c)(1) is revised to read as follows:

### § 40.25 General license for use of certain industrial products or devices.

* * * * *

(c) * * *

(1) Persons who receive, acquire, possess, or use depleted uranium pursuant to the general license established by paragraph (a) of this section shall file NRC Form 244, "Registration Certificate—Use of Depleted Uranium Under General License," with the Director of the NRC's Division of Industrial and Medical Nuclear Safety, by an appropriate method listed in § 40.5, with a copy to the appropriate NRC Regional Administrator.* * *

* * * * *

■ 70. In § 40.31, the first sentence of paragraph (a) is revised to read as follows:

### § 40.31 Application for specific license.

(a) A person may file an application for specific license on NRC Form 313, "Application for Material License," in accordance with the instructions in § 40.5 of this chapter. * * *

* * * * *

■ 71. In § 40.35, the first sentence of paragraph (e)(1) and the third sentence of paragraph (f) are revised to read as follows:

### § 40.35 Conditions of specific licenses issued pursuant to § 40.34.

* * * * *

(e)(1) Report to the Director of the Office of Nuclear Material Safety and Safeguards, by an appropriate method listed in § 40.5, all transfers of industrial products or devices to persons for use under the general license in § 40.25. * * *

* * * * *

(f) * * * The licensee shall furnish the change to the Director of the Office of Nuclear Material Safety and Safeguards, by an appropriate method listed in § 40.5, and to affected offsite response organizations, within six months after the change is made. * * *

■ 72. In § 40.60, the third sentence of the introductory text of paragraph (c)(2) is revised to read as follows:

### § 40.60 Reporting requirements.

* * * * *

(c)* * *

(2) * * * These written reports must be sent to the NRC's Document Control Desk by an appropriate method listed in § 40.5, with a copy to the appropriate NRC regional office listed in appendix D to part 20 of this chapter. * * *

* * * * *

■ 73. In § 40.64, the second sentence of paragraph (a), the last sentence of paragraph (b), and paragraph (c) are revised to read as follows:

### § 40.64 Reports.

(a) * * * Copies of the instructions may be obtained either by writing the U.S. Nuclear Regulatory Commission, Division of Nuclear Security, Office of Nuclear Security and Incident Response, Washington, DC 20555–0001, by e-mail to *RidsNsirDns@nrc.gov*, or by calling (301) 415–6828.* * *

(b) * * * Copies of the reporting instructions may be obtained either by writing to the U.S. Nuclear Regulatory Commission, Division of Nuclear Security, Office of Nuclear Security and Incident Response, Washington, DC 20555–0001, by e-mail to *RidsNsirDns@nrc.gov*, or by calling (301) 415–6828.

(c)(1) Except as specified in paragraph (d) of this section, each licensee who is authorized to possess uranium or thorium pursuant to a specific license shall notify the NRC Headquarters Operations Center by telephone, at the numbers listed in appendix A of part 73 of this chapter, of any incident in which an attempt has been made or is believed to have been made to commit a theft or unlawful diversion of more than 6.8 kilograms (kg) [15 pounds] of such material at any one time or more than 68 kg [150 pounds] of such material in any one calendar year.

(2) The licensee shall notify the NRC as soon as possible, but within 4 hours, of discovery of any incident in which an attempt has been made or is believed to have been made to commit a theft or unlawful diversion of such material. A copy of the written followup notification should also be made to the Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response, by an appropriate method listed in § 40.5.

(3) The initial notification shall be followed within a period of sixty (60) days by a written followup notification submitted in accordance with § 40.5. A copy of the written followup notification shall also be sent to: ATTN: Document Control Desk, Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

(4) Subsequent to the submission of the written followup notification required by this paragraph, the licensee shall promptly update the written followup notification, in accordance with this paragraph, with any substantive additional information, which becomes available to the licensee, concerning an attempted or apparent theft or unlawful diversion of source material.

* * * * *

■ 74. In § 40.65, the first sentence of paragraph (a)(1) is revised to read as follows:

### § 40.65 Effluent monitoring reporting requirements.

(a) * * *

(1) Within 60 days after January 1, 1976 and July 1, 1976, and within 60 days after January 1 and July 1 of each year thereafter, submit a report to the Director of the Office of Nuclear Material Safety and Safeguards, using an appropriate method listed in § 40.5, with a copy to the appropriate NRC Regional Office shown in appendix D to part 20 of this chapter; which report must specify the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in gaseous effluents during the previous six months of operation, and such other information as the Commission may require to estimate maximum potential annual radiation doses to the public resulting from effluent releases. * * *

* * * * *

■ 75. In § 40.66, the first sentence of paragraph (a) is revised to read as follows:

### § 40.66 Requirements for advance notice of export shipments of natural uranium.

(a) Each licensee authorized to export natural uranium, other than in the form of ore or ore residue, in amounts exceeding 500 kilograms, shall notify the Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response, by an appropriate method listed in § 40.5. * * *

* * * * *

■ 76. In § 40.67, the first sentence of paragraph (a) is revised to read as follows:

### § 40.67 Requirement for advance notice for importation of natural uranium from countries that are not party to the Convention on the Physical Protection of Nuclear Material.

(a) Each licensee authorized to import natural uranium, other than in the form of ore or ore residue, in amounts exceeding 500 kilograms, from countries not party to the Convention on the Physical Protection of Nuclear Material (*see* appendix F to part 73 of this chapter) shall notify the Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response, using an appropriate method listed in § 40.5. * * *

* * * * *

## PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 77. The authority citation for part 50 is revised to read as follows:

**Authority:** Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C 2237).

■ 78. Section 50.4 is revised to read as follows:

### § 50.4 Written communications.

(a) *General requirements.* All correspondence, reports, applications, and other written communications from the applicant or licensee to the Nuclear Regulatory Commission concerning the regulations in this part or individual license conditions must be sent either by mail addressed: ATTN: Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland, between the hours of 8:15 a.m. and 4 p.m. eastern time; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, e-mail, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail at *EIE@nrc.gov*, or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information. If the communication is on paper, the signed original must be sent. If a submission due date falls on a Saturday, Sunday, or Federal holiday, the next Federal working day becomes the official due date.

(b) *Distribution requirements.* Copies of all correspondence, reports, and other written communications concerning the regulations in this part or individual license conditions must be submitted to the persons listed below (addresses for the NRC Regional Offices are listed in appendix D to part 20 of this chapter).

(1) *Applications for amendment of permits and licenses; reports; and other communications.* All written communications (including responses to: generic letters, bulletins, information notices, regulatory information summaries, inspection reports, and miscellaneous requests for additional information) that are required of holders of operating licenses or construction permits issued pursuant to this part, must be submitted as follows, except as otherwise specified in paragraphs (b)(2) through (b)(7) of this section: to the NRC's Document Control Desk (if on paper, the signed original), with a copy to the appropriate Regional Office, and a copy to the appropriate NRC Resident Inspector, if one has been assigned to the site of the facility.

(2) *Applications for permits and licenses, and amendments to applications.* Applications for construction permits, applications for operating licenses and amendments to either type of application must be submitted as follows, except as otherwise specified in paragraphs (b)(3) through (b)(7) in this section.

(i) Applications for licenses for facilities described in § 50.21 (a) and (c) and amendments to these applications must be sent to the NRC's Document Control Desk, with a copy to the appropriate Regional Office. If the application or amendment is on paper, the submission to the Document Control Desk must be the signed original.

(ii) Applications for permits and licenses for facilities described in § 50.21(b) or § 50.22, and amendments to these applications must be sent to the NRC's Document Control Desk, with a copy to the appropriate Regional Office, and a copy to the appropriate NRC Resident Inspector, if one has been assigned to the site of the facility. If the application or amendment is on paper, the submission to the Document Control Desk must be the signed original.

(3) *Acceptance review application.* Written communications required for an application for determination of suitability for docketing under § 50.30(a)(6) must be submitted to the NRC's Document Control Desk, with a copy to the appropriate Regional Office. If the communication is on paper, the submission to the Document Control Desk must be the signed original.

(4) *Security plan and related submissions.* Written communications, as defined in paragraphs (b)(4)(i) through (iv) of this section, must be submitted to the NRC's Document Control Desk, with a copy to the appropriate Regional Office. If the communication is on paper, the submission to the Document Control Desk must be the signed original.

(i) Physical security plan under § 50.34;

(ii) Safeguards contingency plan under § 50.34;

(iii) Change to security plan, guard training and qualification plan, or safeguards contingency plan made without prior Commission approval under § 50.54(p);

(iv) Application for amendment of physical security plan, guard training and qualification plan, or safeguards contingency plan under § 50.90.

(5) *Emergency plan and related submissions.* Written communications as defined in paragraphs (b)(5)(i) through (iii) of this section must be submitted to the NRC's Document Control Desk, with a copy to the appropriate Regional Office, and a copy to the appropriate NRC Resident Inspector if one has been assigned to the site of the facility. If the communication is on paper, the submission to the Document Control Desk must be the signed original.

(i) Emergency plan under § 50.34;

(ii) Change to an emergency plan under § 50.54(q);

(iii) Emergency implementing procedures under appendix E.V of this part.

(6) *Updated FSAR.* An updated Final Safety Analysis Report (FSAR) or replacement pages, under § 50.71(e) must be submitted to the NRC's Document Control Desk, with a copy to the appropriate Regional Office, and a copy to the appropriate NRC Resident Inspector if one has been assigned to the site of the facility. Paper copy submissions may be made using replacement pages; however, if a licensee chooses to use electronic submission, all subsequent updates or submissions must be performed electronically on a total replacement basis. If the communication is on paper, the submission to the Document Control Desk must be the signed original. If the communications are submitted electronically, see Guidance for Electronic Submissions to the Commission.

(7) *Quality assurance related submissions.* (i) A change to the Safety Analysis Report quality assurance program description under § 50.54(a)(3) or § 50.55(f)(3), or a change to a licensee's NRC-accepted quality assurance topical report under § 50.54(a)(3) or § 50.55(f)(3), must be submitted to the NRC's Document Control Desk, with a copy to the appropriate Regional Office, and a copy to the appropriate NRC Resident Inspector if one has been assigned to the site of the facility. If the communication is on paper, the submission to the Document Control Desk must be the signed original.

(ii) A change to an NRC-accepted quality assurance topical report from nonlicensees (*i.e.*, architect/engineers, NSSS suppliers, fuel suppliers, constructors, etc.) must be submitted to the NRC's Document Control Desk. If the communication is on paper, the signed original must be sent.

(8) *Certification of permanent cessation of operations.* The licensee's certification of permanent cessation of operations, under § 50.82(a)(1), must state the date on which operations have ceased or will cease, and must be submitted to the NRC's Document Control Desk. This submission must be under oath or affirmation.

(9) *Certification of permanent fuel removal.* The licensee's certification of permanent fuel removal, under § 50.82(a)(1), must state the date on which the fuel was removed from the reactor vessel and the disposition of the fuel, and must be submitted to the NRC's Document Control Desk. This submission must be under oath or affirmation.

(c) *Form of communications.* All paper copies submitted to meet the requirements set forth in paragraph (b) of this section must be typewritten, printed or otherwise reproduced in permanent form on unglazed paper. Exceptions to these requirements imposed on paper submissions may be granted for the submission of micrographic, photographic, or similar forms.

(d) *Regulation governing submission.* Licensees and applicants submitting correspondence, reports, and other written communications under the regulations of this part are requested but not required to cite whenever practical, in the upper right corner of the first page of the submission, the specific regulation or other basis requiring submission.

(e) *Conflicting requirements.* The communications requirements contained in this section and §§ 50.12, 50.30, 50.36, 50.36a, 50.44, 50.49, 50.54, 50.55, 50.55a, 50.59, 50.62, 50.71, 50.73, 50.82, 50.90, and 50.91 supersede and replace all existing requirements in any license conditions or technical specifications in effect on January 5, 1987. Exceptions to these requirements must be approved by the Office of the Chief Information Officer, Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7233, e-mail *INFOCOLLECTS@nrc.gov.*

■ 79. In § 50.7, paragraph (e)(2) is revised to read as follows:

### § 50.7 Employee protection.

* * * * *

(e) * * *

(2) Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter, by calling (301) 415–5877, via e-mail to *forms@nrc.gov,* or by visiting the NRC's Web site at *http://www.nrc.gov* and selecting forms from the index found on the home page.

* * * * *

■ 80. In § 50.30, paragraph (a)(2) is revised to read as follows:

### § 50.30 Filing of application for licenses; oath or affirmation.

(a) * * *

(2) The applicant shall maintain the capability to generate additional copies of the general information and the safety analysis report, or part thereof or amendment thereto, for subsequent distribution in accordance with the written instructions of the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as appropriate.

* * * * *

■ 81. In § 50.54, the second sentence of paragraph (s)(1) is revised to read as follows:

### § 50.54 Conditions of licenses.

* * * * *

(s)(1) * * * These plans must be forwarded to the Director of Nuclear Reactor Regulation, by appropriate method listed in § 50.4, with a copy to the Administrator of the appropriate NRC regional office. * * *

* * * * *

■ 82. In § 50.55, paragraph (e)(6)(ii) is revised to read as follows:

### § 50.55 Conditions of construction permits.

* * * * *

(e) * * *

(6) * * *

(ii) Written notification submitted to the Document Control Desk, U.S. Nuclear Regulatory Commission, by an appropriate method listed in § 50.4, with a copy to the appropriate Regional Administrator at the address specified in appendix D to part 20 of this chapter and a copy to the appropriate NRC resident inspector within 30 days following receipt of information by the director or responsible corporate officer under paragraph (e)(1)(iii) of this section, on the identification of a defect or failure to comply.

* * * * *

■ 83. In § 50.74, the introductory text is revised to read as follows:

### § 50.74 Notification of change in operator or senior operator status.

Each licensee shall notify the appropriate Regional Administrator as listed in appendix D to part 20 of this chapter within 30 days of the following in regard to a licensed operator or senior operator:

* * * * *

■ 84. In appendix L to part 50, the last sentence of the introductory paragraph is revised to read as follows:

### *Appendix L to Part 50—Information Requested by the Attorney General for Antitrust Review of Facility Construction Permits and Initial Operating Licenses*

*Introduction.* * * * This document shall be submitted prior to any other part of the facility license application as provided in § 50.33a and in accordance with § 2.101 of this chapter.

* * * * *

## PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

■ 85. The authority citation for part 51 is revised to read as follows:

**Authority:** Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953, (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041; and sec. 193, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80. and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also under Nuclear Waste Policy Act of 1982, sec 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

■ 86. In § 51.40, the introductory text of paragraph (c) and paragraphs (c)(1) through (c)(4) are revised to read as follows:

### § 51.40 Consultation with NRC Staff.

* * * * *

(c) Questions concerning environmental matters should be addressed to the following NRC staff offices as appropriate:

(1) *Utilization facilities:* ATTN: Document Control Desk, Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1270, e-mail *RidsNrrOd@nrc.gov.*

(2) *Production facilities:* ATTN: Document Control Desk, Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7800, e-mail *RidsNmssOd@nrc.gov.*

(3) *Materials licenses:* ATTN: Document Control Desk, Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7800, e-mail *RidsNmssOd@nrc.gov.*

(4) *Rulemaking:* ATTN: Chief, Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (800) 368–5642, e-mail *NRCREP@nrc.gov.*

* * * * *

■ 87. In § 51.45, the first sentence of paragraph (a) is revised to read as follows:

### § 51.45 Environmental report.

(a) *General.* As required by § 51.50, 51.53, 51.54, 51.60, 51.61, 51.62 or § 51.68, as appropriate, each applicant or petitioner for rulemaking shall submit with its application or petition for rulemaking one signed original of a separate document entitled "Applicant's" or "Petitioner's Environmental Report," as appropriate. * * *

* * * * *

■ 88. In § 51.50, the first sentence is revised to read as follows:

### § 51.50 Environmental report—construction permit stage.

Each applicant for a permit to construct a production or utilization facility covered by § 51.20 shall submit with its application a separate document, entitled "Applicant's Environmental Report—Construction Permit Stage," which shall contain the information specified in § 51.45, 51.51 and 51.52. * * *

■ 89. In § 51.53, the first sentence of paragraph (b), paragraph (c)(1), and the first sentence of paragraph (d) are revised to read as follows:

### § 51.53 Postconstruction environmental reports.

* * * * *

(b) *Operating license stage.* Each applicant for a license to operate a production or utilization facility covered by § 51.20 shall submit with its application a separate document entitled "Supplement to Applicant's Environmental Report—Operating License Stage," which will update "Applicant's Environmental Report—Construction Permit Stage." * * *

(c) *Operating license renewal stage.* (1) Each applicant for renewal of a license to operate a nuclear power plant under part 54 of this chapter shall submit with its application a separate document entitled "Applicant's Environmental Report—Operating License Renewal Stage."

* * * * *

(d) *Postoperating license stage.* Each applicant for a license amendment authorizing decommissioning activities for a production or utilization facility either for unrestricted use or based on continuing use restrictions applicable to the site; and each applicant for a license amendment approving a license termination plan or decommissioning plan under § 50.82 of this chapter either for unrestricted use or based on continuing use restrictions applicable to the site; and each applicant for a license or license amendment to store spent fuel at a nuclear power reactor after expiration of the operating license for the nuclear power reactor shall submit with its application a separate document, entitled "Supplement to Applicant's Environmental Report—Post Operating License Stage," which will update "Applicant's Environmental Report—Operating License Stage," as appropriate, to reflect any new information or significant environmental change associated with the applicant's proposed decommissioning activities or with the applicant's proposed activities with respect to the planned storage of spent fuel. * * *

■ 90. Section 51.55 is revised to read as follows:

### § 51.55 Environmental report—distribution.

(a) Each applicant for a license to construct and operate a production or utilization facility covered by paragraphs (b)(1), (b)(2), (b)(3), or (b)(4) of § 51.20, each applicant for renewal of an operating license for a nuclear power plant, each applicant for a license amendment authorizing the decommissioning of a production or utilization facility covered by § 51.20, and each applicant for a license or license amendment to store spent fuel at a nuclear power plant after expiration of the operating license for the nuclear power plant shall submit a copy to the Director of the Office of Nuclear Reactor Regulation, or a copy to the Director of the Office of Nuclear Material Safety and Safeguards, as appropriate, of an environmental report or any supplement to an environmental report. These reports must be sent either by mail addressed: ATTN: Document Control Desk; U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland, between the hours of 8:15 a.m. and 4:00 p.m. eastern time; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html,* by calling (301) 415–6030, by e-mail to *EIE@nrc.gov,* or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information. If the communication is on paper, the signed original must be sent. If a submission due date falls on a Saturday, Sunday, or Federal holiday, the next Federal working day becomes the official due date. The applicant shall maintain the capability to generate additional copies of the environmental report or any supplement to the environmental report for subsequent distribution to parties and Boards in the NRC proceedings; Federal, State, and local officials; and any affected Indian tribes, in accordance with written instructions issued by the Director of the Office of Nuclear Reactor Regulation or the Director of the Office of Nuclear Material Safety and Safeguards, as appropriate.

(b) Each applicant for a license to manufacture a nuclear power reactor, or for an amendment to a license to manufacture, seeking approval of the final design of the nuclear power reactor, pursuant to appendix M to part 52 of this chapter shall submit to the Commission an environmental report or any supplement to an environmental report in the manner specified in § 50.4. The applicant shall maintain the capability to generate additional copies of the environmental report or any supplement to the environmental report for subsequent distribution to parties and Boards in the NRC proceeding; Federal, State, and local officials; and any affected Indian tribes, in accordance with written instructions issued by the Director of Nuclear Reactor Regulation.

■ 91. In § 51.60, the first sentence of paragraph (a) is revised to read as follows:

### § 51.60 Environmental report—material licenses.

(a) Each applicant for a license or other form of permission, or an amendment to or renewal of a license or other form of permission issued pursuant to parts 30, 32, 33, 34, 35, 36, 39, 40, 61, 70 and/or 72 of this chapter, and covered by paragraphs (b)(1) through (b)(5) of this section, shall submit with its application to: ATTN: Document Control Desk, Director, Nuclear Material Safety and Safeguards, a separate document, entitled "Applicant's Environmental Report" or "Supplement to Applicant's Environmental Report," as appropriate. * * *

* * * * *

■ 92. In § 51.61, the first sentence is revised to read as follows:

### § 51.61 Environmental report—independent spent fuel installation (ISFSI) or monitored retrievable storage installation (MRS) license.

Each applicant for issuance of a license for storage of spent fuel in an independent spent fuel storage installation (ISFSI) or for the storage of spent fuel and high-level radioactive waste in a monitored retrievable storage installation (MRS) pursuant to part 72 of this chapter shall submit with its application to: ATTN: Document Control Desk, Director, Office of Nuclear Material Safety and Safeguards, a separate document entitled "Applicant's Environmental Report—ISFSI License" or "Applicant's Environmental Report—MRS License," as appropriate. * * *

■ 93. In § 51.62, the first sentence of paragraph (a) is revised to read as follows:

### § 51.62 Environmental report—land disposal of radioactive waste licensed under 10 CFR part 61.

(a) Each applicant for issuance of a license for land disposal of radioactive waste pursuant to part 61 of this chapter shall submit with its application to: ATTN: Document Control Desk, Director of Nuclear Material Safety and Safeguards, a separate document, entitled "Applicant's Environmental Report—License for Land Disposal of Radioactive Waste." * * *

* * * * *

■ 94. Section 51.66 is revised to read as follows:

### § 51.66 Environmental report—distribution.

Each applicant for a license or other form of permission, or an amendment to or renewal of a license or other form of permission issued pursuant to parts 30, 32, 33, 34, 35, 36, 39, 40, 61, 70 and/or 72 of this chapter, and covered by paragraphs (b)(1) through (6) of § 51.60; or by § 51.61 or § 51.62 shall submit to the Director of Nuclear Material Safety and Safeguards an environmental report or any supplement to an environmental report in the manner specified in § 51.55(a). The applicant shall maintain the capability to generate additional copies of the environmental report or any supplement to the environmental report for subsequent distribution to Federal, State, and local officials and any affected Indian tribes in accordance with written instructions issued by the Director of Nuclear Material Safety and Safeguards.

■ 95. Section 51.68 is revised to read as follows:

### § 51.68 Environmental report—rulemaking.

Petitioners for rulemaking requesting amendments of parts 30, 31, 32, 33, 34, 35, 36, 39, 40 or part 70 of this chapter concerning the exemption from licensing and regulatory requirements of or authorizing general licenses for any equipment, device, commodity or other product containing byproduct material, source material or special nuclear material shall submit with the petition a separate document entitled "Petitioner's Environmental Report," which shall contain the information specified in § 51.45.

### § 51.69 [Removed]

■ 96. Section 51.69 is removed.

■ 97. In § 51.121, the introductory text and paragraphs (a) through (d) are revised to read as follows:

### § 51.121 Status of NEPA actions.

Individuals or organizations desiring information on the NRC's NEPA process or on the status of specific NEPA actions should address inquiries to:

(a) *Utilization facilities:* ATTN: Document Control Desk, Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1270, e-mail *RidsNrrOd@nrc.gov.*

(b) *Production facilities:* ATTN: Document Control Desk, Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7800, e-mail *RidsNmssOd@nrc.gov.*

(c) *Materials licenses:* ATTN: Document Control Desk, Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7800, e-mail *RidsNmssOd@nrc.gov.*

(d) *Rulemaking:* ATTN: Chief, Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (800) 368–5642, e-mail *NRCREP@nrc.gov.*

* * * * *

■ 98. In § 51.123, the first sentence of paragraph (a) and the first sentence of paragraph (b) are revised to read as follows:

### § 51.123 Charges for environmental documents; distribution to public; distribution to governmental agencies.

(a) *Distribution to public.* Upon written request to the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, e-mail *DISTRIBUTION@nrc.gov*, and to the extent available, single copies of draft environmental impact statements and draft findings of no significant impact will be made available to interested persons without charge. * * *

(b) *Distribution to governmental agencies.* Upon written request to the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, e-mail *DISTRIBUTION@nrc.gov*, and to the extent available, copies of draft and final environmental impact statements and draft final findings of no significant impact will be made available in the number requested to Federal, State and local agencies, Indian Tribes, and State, regional, and metropolitan clearinghouses. * * *

* * * * *

## PART 52—EARLY SITE PERMITS; STANDARD DESIGN CERTIFICATIONS; AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS

■ 99. The authority citation for part 52 is revised to read as follows:

**Authority:** Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 100. In appendix A to part 52, section III.A is revised to read as follows:

### Appendix A to Part 52—Design Certification Rule for the U.S. Advanced Boiling Water Reactor

* * * * *

### III. Scope and Contents

A. Tier 1, Tier 2, and the generic technical specifications in the U.S. ABWR Design Control Document, GE Nuclear Energy, Revision 4 dated March 1997, are approved for incorporation by reference by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the generic DCD may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Web site at *http://www.ntis.gov.* A copy is available for examination and copying at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland, telephone (301) 415–4737, e-mail *pdr@nrc.gov.* Copies are also available for examination at the NRC Library, 11545 Rockville Pike, Rockville, Maryland, telephone (301) 415–5610, e-mail *LIBRARY@nrc.gov*, and the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC, e-mail *fedreg.info@nara.gov.*

* * * * *

■ 101. In appendix B to part 52, section III.A is revised to read as follows:

### Appendix B to Part 52—Design Certification Rule for the System 80+ Design

* * * * *

### III. Scope and Contents

A. Tier 1, Tier 2, and the generic technical specifications in the System 80+ Design Control Document, ABB–CE, with revisions dated January 1997, are approved for incorporation by reference by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the generic DCD may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Web site at *http://www.ntis.gov.* A copy is available for examination and copying at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland, telephone (301) 415–4737, e-mail *pdr@nrc.gov.* Copies are also available for examination at the NRC Library, 11545 Rockville Pike, Rockville, Maryland, telephone (301) 415–5610, e-mail *LIBRARY@nrc.gov*, and the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC, e-mail *fedreg.info@nara.gov.*

* * * * *

■ 102. In appendix C to part 52, the third and fourth sentences of section III.A are revised to read as follows:

### *Appendix C to Part 52—Design Certification Rule for the AP600 Design*

* * * * *

### III. Scope and Contents

A. * * * A copy of the generic DCD is available for examination and copying at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland, telephone (301) 415–4737, e-mail *pdr@nrc.gov.* Copies are also available for examination at the NRC Library, 11545 Rockville Pike, Rockville, Maryland, telephone (301) 415–5610, e-mail *LIBRARY@nrc.gov*; and the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC, e-mail *fedreg.info@nara.gov.*

* * * * *

■ 103. In appendix O to part 52, paragraph 2 is revised to read as follows:

### Appendix O to Part 52—Standardization of Design: Staff Review of Standard Designs

* * * * *

2. The submittal for review of the standard design must be made in the same manner as provided in §§ 50.4 and 50.30 for license applications.

* * * * *

■ 104. In appendix Q to part 52, the first sentence of paragraph 2 is revised to read as follows:

### Appendix Q to Part 52—Pre-Application Early Review of Site Suitability Issues

* * * * *

2. The submittal for early review of site suitability issue(s) must be made in the same manner as provided in §§ 50.4 and 50.30 for license applications. * * *

* * * * *

## PART 55—OPERATORS' LICENSES

■ 105. The authority citation for part 55 is revised to read as follows:

**Authority:** Secs. 107, 161, 182, 68 Stat. 939, 948, 953, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2137, 2201, 2232, 2282); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Sections 55.41, 55.43, 55.45, and 55.59 also issued under sec. 306, Pub. L. 97–425, 96 Stat. 2262 (42 U.S.C. 10226). Section 55.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

■ 106. In § 55.5, paragraphs (a)(2), (b)(2), and (b)(3) are revised, and paragraph (a)(3) is added, to read as follows:

### § 55.5 Communications.

(a) * * *

(1) * * *

(2) By delivery in person to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland, or

(3) Where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov* or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

(b) * * *

(2) Any application for a license or license renewal filed under the regulations in this part involving a nuclear power reactor licensed under 10 CFR part 50 and any related inquiry, communication, information, or report must be submitted to the Regional Administrator by an appropriate method listed in paragraph (a) of this section. The Regional Administrator or the Administrator's designee will transmit to the Director of Nuclear Reactor Regulation any matter that is not within the scope of the Regional Administrator's delegated authority.

(i) If the nuclear power reactor is located in Region I, submissions must be made to the Regional Administrator of Region I. Submissions by mail or hand delivery must be addressed to the Administrator at U.S. Nuclear Regulatory Commission, 475 Allendale Road, King of Prussia, Pennsylvania 19406–1415; where e-mail is appropriate it should be addressed to *RidsRgn1MailCenter@nrc.gov*.

(ii) If the nuclear power reactor is located in Region II, submissions must be made to the Regional Administrator of Region II. Submissions by mail or hand delivery must be addressed to the Administrator at U.S. Nuclear Regulatory Commission, Sam Nunn Atlanta Federal Center, Suite 23T85, 61 Forsyth Street, SW, Atlanta, GA 30303–8931; where e-mail is appropriate it should be addressed to *RidsRgn2MailCenter@nrc.gov*.

(iii) If the nuclear power reactor is located in Region III, submissions must be made to the Regional Administrator of Region III. Submissions by mail or hand delivery must be addressed to the Administrator at U.S. Nuclear Regulatory Commission, 801 Warrenville Road, Lisle, IL 60532–4351; where e-mail is appropriate it should be addressed to *RidsRgn3MailCenter@nrc.gov*.

(iv) If the nuclear power reactor is located in Region IV, submissions must be made to the Regional Administrator of Region IV. Submissions by mail or hand delivery must be addressed to the Administrator at U.S. Nuclear Regulatory Commission, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011–4005; where e-mail is appropriate it should be addressed to *RidsRgn4MailCenter@nrc.gov*.

(3)(i) Any application for a license or license renewal filed under the regulations in this part involving a test and research reactor facility licensed under 10 CFR part 50 and any related inquiry, communication, information, or report must be submitted to the Office of Nuclear Reactor Regulation, Division of Regulatory Improvement Programs at the NRC's headquarters, by an appropriate method listed in paragraph (a) of this section.

(ii) For all test and research reactor facilities located in the NRC's Regions, submissions must be made to the Office of Nuclear Reactor Regulation, Director of the Division of Regulatory Improvement Programs at the NRC's headquarters, by an appropriate method listed in paragraph (a) of this section.

■ 107. In § 55.23, the introductory text is revised to read as follows:

### § 55.23 Certification.

To certify the medical fitness of the applicant, an authorized representative of the facility licensee shall complete and sign NRC Form 396, "Certification of Medical Examination by Facility Licensee," which can be obtained by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–5877, or by visiting the NRC's Web site at *http://www.nrc.gov* and selecting forms from the index found on the home page.

* * * * *

■ 108. In § 55.31, paragraphs (a)(1) and (a)(2) are revised to read as follows:

### § 55.31 How to apply.

(a) * * *

(1) Complete NRC Form 398, "Personal Qualification Statement—Licensee," which can be obtained by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–5877, or by visiting the NRC's Web site at *http://www.nrc.gov* and selecting forms from the index found on the home page;

(2) File an original of NRC Form 398, together with the information required in paragraphs (a)(3), (4), (5) and (6) of this section, with the appropriate Regional Administrator;

* * * * *

■ 109. In § 55.57, paragraph (a)(2) is revised to read as follows:

### § 55.57 Renewal of licenses.

(a) * * *

(2) File an original of NRC Form 398 with the appropriate Regional Administrator specified in § 55.5(b).

* * * * *

## PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

■ 110. The authority citation for part 60 is revised to read as follows:

**Authority:** Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213g, 2228, as amended (42 U.S.C. 10134, 10141), and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 111. In § 60.4, paragraph (a) is revised to read as follows:

### § 60.4 Communications and records.

(a) Except where otherwise specified, all communications and reports concerning the regulations in this part and applications filed under them should be sent by mail addressed: ATTN: Document Control Desk: Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov*, or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

* * * * *

■ 112. In § 60.9, paragraph (e)(2) is revised to read as follows:

### § 60.9 Employee protection.

* * * * *

(e) * * *

(2) Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter, by calling (301) 415–5877, via e-mail to *forms@nrc.gov*, or by visiting the NRC's Web site at *http://www.nrc.gov* and selecting forms from the index found on the home page.

* * * * *

■ 113. In § 60.22, paragraphs (a) and (b) are revised to read as follows:

### § 60.22 Filing and distribution of application.

(a) An application for a license to receive and possess source, special nuclear, or byproduct material at a geologic repository operations area at a site which has been characterized, and any amendments thereto, and an accompanying environmental impact statement and any supplements, must be signed by the Secretary of Energy or the Secretary's authorized representative and must be filed with the Director.

(b) DOE shall maintain the capability to generate additional copies for distribution in accordance with written instructions from the Director or the Director's designee.

* * * * *

■ 114. In § 60.44, the fifth sentence of paragraph (b) is revised to read as follows:

### § 60.44 Changes, tests, and experiments.

* * * * *

(b) * * * The DOE shall furnish the report to the appropriate NRC Regional Office shown in appendix D to part 20 of this chapter, by an appropriate method listed in § 60.4(a), with a copy to the Director of the NRC's Office of Nuclear Material Safety and Safeguards. * * *

* * * * *

## PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

■ 115. The authority citation for part 61 is revised to read as follows:

**Authority:** Secs. 53, 57, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246, (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851) and Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 116. Section 61.4 is revised to read as follows:

### § 61.4 Communications.

Except where otherwise specified, all communications and reports concerning the regulations in this part and applications filed under them should be sent by mail addressed: ATTN: Document Control Desk; Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by hand delivery to the NRC's Offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov*, or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

■ 117. In § 61.9, paragraph (e)(2) is revised to read as follows:

### § 61.9 Employee protection.

* * * * *

(e) * * *

(2) Copies of NRC Form 3 can be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter, by calling (301) 415–5877, via e-mail to *forms@nrc.gov*, or by visiting the NRC's Web site at *http://www.nrc.gov* and selecting forms from the index found on the home page.

* * * * *

■ 118. In § 61.20, paragraphs (a) and (b) are revised to read as follows:

### § 61.20 Filing and distribution of application.

(a) An application for a license under this part, and any amendments thereto, must be filed with the Director, must be signed by the applicant or the applicant's authorized representative under oath or affirmation, and, if the document is in paper form, must be the signed original.

(b) The applicant shall maintain the capability to generate additional copies of the application for distribution in accordance with written instructions from the Director or the Director's designee.

* * * * *

■ 119. In § 61.80, the first sentence of paragraph (i)(1) is revised to read as follows:

### § 61.80 Maintenance of records, reports, and transfers.

* * * * *

(i)(1) Each licensee authorized to dispose of waste materials received from other persons under this part shall submit annual reports to the Director of the Division of Waste Management in the NRC's Office of Nuclear Material Safety and Safeguards, by an appropriate method listed in § 60.4, with a copy to the appropriate NRC Regional Office shown in appendix D to part 20 of this chapter. * * *

* * * * *

## PART 62—CRITERIA AND PROCEDURES FOR EMERGENCY ACCESS TO NON-FEDERAL AND REGIONAL LOW-LEVEL WASTE DISPOSAL FACILITIES

■ 120. The authority citation for part 62 is revised to read as follows:

**Authority:** Secs. 81, 161, as amended, 68 Stat. 935, 948, 949, 950, 951, as amended (42 U.S.C. 2111, 2201); secs. 201, 209, as amended, 88 Stat. 1242, 1248, as amended (42 U.S.C. 5841, 5849); secs. 3, 4, 5, 6, 99 Stat. 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857 (42 U.S.C. 2021c, 2021d, 2021e, 2021f); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 121. Section 62.3 is revised to read as follows:

### § 62.3 Communications.

Except where otherwise specified, all communications and reports concerning the regulations in this part and applications filed under them should be sent by mail addressed: ATTN: Document Control Desk, Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov*, or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

■ 122. In § 62.11, the first sentence of paragraph (a) is revised to read as follows:

### § 62.11 Filing and distribution of a determination request.

(a) The person submitting a request for a Commission determination shall file a signed original of the request with the Commission at the address specified in § 62.3 of this part, with a copy also provided to the appropriate Regional Administrator at the address specified in appendix D to part 20 of this chapter.
* * *

* * * * *

## PART 63—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN A GEOLOGIC REPOSITORY AT YUCCA MOUNTAIN, NEVADA

■ 123. The authority citation for part 63 is revised to read as follows:

**Authority:** Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat.1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213g, 2238, as amended (42 U.S.C. 10134, 10141), and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 124. In § 63.2, the definition of *Publicly Available Records System (PARS) Library* is added to read as follows:

### § 63.2 Definitions.

* * * * *

*Publicly Available Records System (PARS) Library* means the electronic library generated by the NRC's Agencywide Documents Access and Management System (ADAMS) to provide access to public documents. PARS has full text documents which can be searched using specific fields and parameters. The public can search, download, print, create reports, and order documents online. The PARS Library contains publicly available documents created or received by NRC since November 1, 1999, as well as some older documents that the NRC has retrofit into the collection. PARS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm.html.*

* * * * *

■ 125. In § 63.4, paragraph (a) is revised to read as follows:

### § 63.4 Communications and records.

(a) Except as otherwise specified, in this part or in subpart J of part 2 of this chapter, all communications and reports concerning the regulations in this part and applications filed under them should be sent to the NRC as follows:

(1) By mail addressed: ATTN: Document Control Desk; Director, Office of Nuclear Material Safety and Safeguards; U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

(2) By hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; ATTN: Document Control Desk: Director, Office of Nuclear Material Safety and Safeguards; or,

(3) Where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov*, or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

* * * * *

■ 126. In § 63.9, paragraph (e)(2) is revised to read as follows:

### § 63.9 Employee protection.

(e) * * *

(2) Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter, by calling (301) 415–5877, via e-mail to *forms@nrc.gov*, or by accessing the NRC Web site at *http://www.nrc.gov* and selecting forms from the index found on the home page.

* * * * *

■ 127. In § 63.16, paragraph (f) is revised to read as follows:

### § 63.16 Review of site characterization activities.

* * * * *

(f) The NRC shall place all correspondence between DOE and NRC resulting from the requirements of this section, including the reports described in paragraph (b) of this section, in the Publicly Available Records System (PARS) Library.

* * * * *

■ 128. In § 63.22, paragraphs (a), (b), and the first sentence of paragraph (d) are revised to read as follows:

### § 63.22 Filing and distribution of application.

(a) An application for a license to receive and possess source, special nuclear, or byproduct material at a geologic repository operations area at the Yucca Mountain site that has been characterized, any amendments to the application, and an accompanying environmental impact statement and any supplements, must be signed by the Secretary of Energy or the Secretary's authorized representative and must be filed with the Director in triplicate on paper and optical storage media.

(b) DOE shall submit 30 additional copies, on paper and optical storage media, of each portion of the application and any amendments, and each environmental impact statement and any supplements. DOE shall maintain the capability to generate additional copies for distribution in accordance with written instructions from the Director or the Director's designee.

* * * * *

(d) When an application, and any amendment to it is filed, copies on paper and optical storage media must be made available in appropriate locations near the proposed geologic repository operations areas at the Yucca Mountain site for inspection by the public. * * *

* * * * *

■ 129. In § 63.44, paragraph (c)(2) is revised to read as follows:

### § 63.44 Changes, tests, and experiments.

* * * * *

(c) * * *

(2) No less frequently than every 24 months, DOE shall prepare a report containing a brief description of such changes, tests, and experiments, including a summary of the evaluation of each. These written reports must be sent to the NRC using an appropriate method listed in § 63.4; addressed: ATTN: Document Control Desk; Director, Office of Nuclear Material Safety and Safeguards; U.S. Nuclear Regulatory Commission, Washington, DC 20555–001; and DOE shall furnish the report to the appropriate NRC Regional Office shown in appendix D to part 20 of this chapter. Any report submitted under this paragraph must be made a part of the public record of the licensing proceedings.

* * * * *

■ 130. In § 63.61, paragraph (c) is revised to read as follows:

### § 63.61 Provision of information.

* * * * *

(c) The NRC shall place communications by the Director under this section in the Publicly Available Records System (PARS) Library and furnish copies to DOE.

■ 131. In § 63.63, paragraph (f) is revised to read as follows:

### § 63.63 Participation in license reviews.

* * * * *

(f) The NRC shall place all proposals submitted under this section, and responses to them, in the Publicly Available Records System (PARS) Library.

■ 132. In § 63.73, paragraph (d) is revised to read as follows:

### § 63.73 Reports of deficiencies.

* * * * *

(d) The requisite notification must be as specified in the applicable regulation. By an appropriate method listed in § 63.4 of this chapter, written reports must be submitted to NRC addressed: ATTN: Document Control Desk; Director, Office of Nuclear Material Safety and Safeguards; U.S. Nuclear Regulatory Commission, Washington, DC 20555–001; and to the NRC onsite representative. DOE shall also furnish the report to the appropriate NRC Regional Office shown in appendix D to part 20 of this chapter.

■ 133. In § 63.144, paragraph (b)(1) is revised to read as follows:

### § 63.144 Quality assurance program change.

* * * * *

(b) * * *

(1) By an appropriate method listed in § 63.4 of this chapter, the signed document must be submitted to the Nuclear Regulatory Commission, addressed: ATTN: Document Control Desk; Director, Office of Nuclear Material and Safeguards; U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and one copy to the appropriate NRC Resident Inspector, if one has been assigned to the site or facility.

* * * * *

## PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

■ 134. The authority citation for part 70 is revised to read as follows:

**Authority:** Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 193, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.81 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.82 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

■ 135. In § 70.5, paragraphs (a)(1) and (a)(2), the introductory text of paragraph (b), and the last sentences of paragraphs (b)(2)(i), (b)(2)(ii), (b)(2)(iii), and (b)(2)(iv) are revised and paragraphs (a)(3) and (a)(4) are added, to read as follows:

### § 70.5 Communications.

(a) * * *

(1) By mail addressed to: ATTN: Document Control Desk, Director, Office of Nuclear Material Safety and Safeguards or Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

(2) By hand delivery to the Director, Office of Nuclear Material Safety and Safeguards or Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response at the NRC's offices at 11555 Rockville Pike, Rockville, Maryland.

(3) Where practicable, by electronic submission, for example, via Electronic Information Exchange, and CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov*, or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

(4) Classified communications shall be transmitted to the NRC Headquarters' classified mailing address as specified in appendix A to part 73 of this chapter or delivered by hand in accordance with paragraph (a)(2) of this section.

(b) The Commission has delegated to the four Regional Administrators licensing authority for selected parts of its decentralized licensing program for nuclear materials as described in paragraph (b)(1) of this section. Any communication, report, or application covered under this licensing program must be submitted to the appropriate Regional Administrator. The Administrators' jurisdictions and mailing addresses are listed in paragraph (b)(2) of this section.

* * * * *

(2) * * *

(i) * * * All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region I, Nuclear Material Section B, 475 Allendale Road, King of Prussia, Pennsylvania 19406–1415; where e-mail is appropriate it should be addressed to *RidsRgn1MailCenter@nrc.gov*.

(ii) * * * All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region II, Material Licensing/Inspection Branch, Sam Nunn Atlanta Federal Center, Suite 23T85, 61 Forsyth Street, SW., Atlanta, GA 30303–8931; where e-mail is appropriate it should be addressed to *RidsRgn2MailCenter@nrc.gov*.

(iii) * * * All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region III, Material Licensing Section, 801 Warrenville Road, Lisle, Illinois 60532–4351; where e-mail is appropriate it should be addressed to *RidsRgn3MailCenter@nrc.gov*.

(iv) * * * All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region IV, Material Radiation Protection Section, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011–4005; where e-mail is appropriate it should be addressed to *RidsRgn4MailCenter@nrc.gov*.

■ 136. In § 70.7, paragraph (e)(3) is revised to read as follows:

### § 70.7 Employee protection.

* * * * *

(e) * * *

(3) Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter, by calling (301) 415-5877, via e-mail to *forms@nrc.gov*, or by accessing the NRC Web site at *http://www.nrc.gov* and selecting forms from the index found on the home page.

* * * * *

■ 137. In § 70.20b, paragraphs (f)(1), (f)(2)(ii), and (f)(2)(iii) are revised to read as follows:

### § 70.20b General license for carriers of transient shipments of formula quantities of strategic special nuclear material, special nuclear material of moderate strategic significance, special nuclear material of low strategic significance, and irradiated reactor fuel.

* * * * *

(f)(1) Persons generally licensed under this section, who plan to carry transient shipments with scheduled stops at United States ports, shall notify in writing the Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response, using an appropriate method listed in § 70.5(a). Classified notifications shall be sent to the NRC headquarters classified mailing address listed in appendix A to part 73 of this chapter.

(2) * * *

(ii) The NRC Headquarters Operations Center shall be notified by telephone at least 2 days before commencement of the shipment at the numbers listed in appendix A to part 73 of this chapter. Classified notifications shall be made by secure telephone.

(iii) The NRC Headquarters Operations Center shall be notified by telephone of schedule changes greater than ±6 hours at the numbers listed in appendix A to part 73 of this chapter. Classified notifications shall be made by secure telephone.

* * * * *

■ 138. In § 70.21, paragraphs (a)(1) and (a)(2) are revised to read as follows:

### § 70.21 Filing.

(a)(1) A person may apply for a license to possess and use special nuclear material in a plutonium processing or fuel fabrication plant, or for a uranium enrichment facility license, by filing the application with the Director of the NRC's Office of Nuclear Material Safety and Safeguards in accordance with the instructions in § 70.5(a). If the application is on paper or CD–ROM, only one copy need be provided. If the application is to be submitted electronically, see guidance for electronic submissions to the Commission.

(2) A person may apply for any other license issued under this part, by filing the application in accordance with the instructions in § 70.5(a). If the application is on paper, only one copy need be provided. If the application is to be submitted electronically, see guidance for electronic submissions to the Commission.

* * * * *

■ 139. In § 70.32, the second sentence of the introductory text of paragraph (c)(2), the last sentences of paragraphs (d), (e), and (g), and the third sentence of paragraph (i) are revised to read as follows:

### § 70.32 Conditions of licenses.

* * * * *

(c) * * *

(2) * * * Licensees located in all four Regions as indicated in appendix A of part 73 of this chapter shall furnish to the Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response, using an appropriate method listed in § 70.5(a), a report containing a description of each change within:

* * * * *

(d) * * * Within two months after each change, a report containing a description of the change must be furnished to the Director of the NRC's Office of Nuclear Material Safety and Safeguards, using an appropriate method listed in § 70.5(a); and a copy must be sent to the appropriate NRC Regional Office shown in appendix A to part 73 of this chapter.

(e) * * * The licensee shall maintain records of changes to the plan made without prior Commission approval, for three years from the effective date of the change, and shall, within two months after the change is made, furnish a report containing a description of each change to the Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response; the report may be sent using an appropriate method listed in § 70.5(a), and a copy of the report must be sent to the appropriate NRC Regional Office shown in appendix A to part 73 of this chapter.

* * * * *

(g) * * * The licensee shall maintain each change to the plan made without prior approval as a record during the period for which possession of a formula quantity of special nuclear material is authorized under a license and retain the superseded portion for 3 years after the effective date of the change, and shall, within 60 days after the change is made, furnish a report containing a description of each change to the Director of Nuclear Material Safety and Safeguards; the report may be sent using an appropriate method listed in § 70.5(a), and a copy of the report must be sent to the Regional Administrator of the appropriate NRC Regional Office as specified in appendix A to part 73 of this chapter.

* * * * *

(i) * * * Within six months after each change is made, the licensee shall, using an appropriate method listed in § 70.5(a), furnish the Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response, a copy of each change, with copies to the appropriate NRC Regional Office specified in appendix D to part 20 of this chapter and to affected offsite response organizations. * * *

* * * * *

■ 140. In § 70.50, the third sentence of the introductory text of paragraph (c)(2) is revised to read as follows:

### § 70.50 Reporting requirements.

* * * * *

(c) * * *

(2) * * * These written reports must be sent to the NRC's Document Control Desk, using an appropriate method listed in § 70.5(a), with a copy to the appropriate NRC regional office listed in appendix D to part 20 of this chapter. * * *

* * * * *

■ 141. Section 70.59 is revised to read as follows:

### § 70.59 Effluent monitoring reporting requirements.

Within 60 days after January 1 and July 1 of each year, and using an appropriate method listed in § 70.5(a), each licensee authorized to possess and use special nuclear material for processing and fuel fabrication, scrap recovery, conversion of uranium hexafluoride, or in a uranium enrichment facility shall submit a report addressed: ATTN: Document Control Desk, Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, with a copy to the appropriate NRC Regional Office shown in appendix D to part 20 of this chapter. The report must specify the quantity of each of the principal radionuclides released to unrestricted areas in liquid and gaseous effluents during the previous six months of operation, and such other information as the Commission may require to estimate maximum potential annual radiation doses to the public resulting from effluent releases. If quantities of radioactive materials released during the reporting periods are significantly above the licensee's design objectives previously reviewed as part of the licensing action, the report must cover this specifically. On the basis of these reports and any additional information the Commission may obtain from the licensee or others, the Commission may from time to time require the licensee to take such action as the Commission deems appropriate.

## PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

■ 142. The authority citation for part 71 is revised to read as follows:

**Authority:** Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2297f); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 71.97 also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789–790.

■ 143. In § 71.1, paragraph (a) is revised to read as follows:

### § 71.1 Communications and records.

(a) Except where otherwise specified, all communications and reports concerning the regulations in this part and applications filed under them should be sent by mail addressed: ATTN: Document Control Desk, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov*, or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

* * * * *

■ 144. In § 71.12, paragraph (c)(3) is revised to read as follows:

### § 71.12 General license: NRC-approved package.

* * * * *

(c) * * *

(3) Before the licensee's first use of the package, submits in writing to: ATTN: Document Control Desk, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, using an appropriate method listed in § 71.1(a), the licensee's name and license number and the package identification number specified in the package approval.

* * * * *

■ 145. In § 71.95, the introductory text is revised to read as follows:

### § 71.95 Reports.

Using an appropriate method listed in § 71.1(a), the licensee shall report to: ATTN: Document Control Desk, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards within 30 days—

* * * * *

■ 146. In § 71.97, the introductory text of paragraph (c)(3) is revised to read as follows:

### § 71.97 Advance notification of shipment of irradiated reactor fuel and nuclear waste.

* * * * *

(c) * * *

(3) A notification delivered by any other means than mail must reach the office of the governor or of the governor's designee at least 4 days before the beginning of the 7-day period during which departure of the shipment is estimated to occur.

* * * * *

■ 147. In § 71.101, the last sentence of paragraph (c) is revised to read as follows:

### § 71.101 Quality assurance requirements.

* * * * *

(c) * * * Using an appropriate method listed in § 71.1(a), each licensee shall file a description of its quality assurance program, including a discussion of which requirements of this subpart are applicable and how they will be satisfied, by submitting the description to: ATTN: Document Control Desk, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

* * * * *

## PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 148. The authority citation for part 72 is revised to read as follows:

**Authority:** Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended; sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended; 202, 206, 88 Stat. 1242, as amended; 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241; sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 149. Section 72.4 is revised to read as follows.

### § 72.4 Communications.

Except where otherwise specified, all communications and reports concerning the regulations in this part and applications filed under them should be sent by mail addressed: ATTN: Document Control Desk, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by hand delivery to the NRC's offices at One White Flint North, 11555 Rockville Pike, Rockville, Maryland between 7:30 a.m. and 4:15 p.m. eastern time; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time.

Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html,* by calling (301) 415–6030, by e-mail to *EIE@nrc.gov,* or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information. If the submission deadline date falls on a Saturday, or Sunday, or a Federal holiday, the next Federal working day becomes the official due date.

■ 150. In § 72.10, paragraph (e)(2) is revised to read as follows:

### § 72.10 Employee protection.

* * * * *

(e) * * *

(2) Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter, by calling (301) 415–5877, via e-mail to *forms@nrc.gov,* or by visiting the NRC's Web site at *http://www.nrc.gov* and selecting forms from the index found on the home page.

* * * * *

■ 151. In § 72.16, paragraphs (a) and (c) are revised to read as follows:

### § 72.16 Filing of application for specific license.

(a) *Place of filing.* Each application for a license, or amendment thereof, under this part should be filed with the Director of the NRC's Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards in accordance with § 72.4.

* * * * *

(c) *Copies of application on paper or CD–ROM.* If the application is on paper, it must be the signed original. The applicant shall maintain the capability to generate additional copies for distribution in accordance with instruction from the Director or the Director's designee.

* * * * *

■ 152. In § 72.44, the third sentence of paragraph (f) is revised to read as follows:

### § 72.44 License conditions.

* * * * *

(f) * * * Within six months after any change is made, the licensee shall submit, in accordance with § 72.4, a report containing a description of any changes made in the plan addressed to Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, with a copy to the appropriate NRC Regional Office shown in appendix D to part 20 of this chapter. * * *

* * * * *

■ 153. In § 72.70, paragraphs (c)(1) and (c)(2) are revised to read as follows:

### § 72.70 Safety analysis report updating.

* * * * *

(c)(1) The update of the FSAR must be filed in accordance with § 72.4. If the update is filed on paper, it should be filed on a page-replacement basis; if filed electronically, it should be filed on a full replacement basis. See Guidance for Electronic Submissions to the Commission at *http://www.nrc.gov/site-help/eie.html.*

(2) A paper update filed on a page-replacement basis must include a list that identifies the current pages of the FSAR following page replacement. If the update is filed electronically on a full replacement basis, it must include a list of changed pages.

* * * * *

■ 154. In § 72.76, the second sentence of paragraph (a) is revised to read as follows:

### § 72.76 Material status reports.

(a) * * * Copies of these instructions may be obtained either by writing the U.S. Nuclear Regulatory Commission, Division of Nuclear Security, Office of Nuclear Security and Incident Response, Washington, DC 20555–0001, by e-mail to *RidsNsirDns@nrc.gov,* or by calling (301) 415–7298. * * *

* * * * *

■ 155. In § 72.78, the second sentence of paragraph (a) is revised to read as follows:

### § 72.78 Nuclear material transfer reports.

(a) * * * Copies of these instructions may be obtained either by writing the U.S. Nuclear Regulatory Commission, Division of Nuclear Security, Office of Nuclear Security and Incident Response, Washington, DC 20555–0001, by e-mail to *RidsNsirDns@nrc.gov,* or by calling (301) 415–7298. * * *

* * * * *

■ 156. In § 72.186, the second sentence of paragraph (b) is removed and two sentences are added in its place to read as follows:

### § 72.186 Change to physical security and safeguards contingency plans.

* * * * *

(b) * * * The licensee shall maintain records of changes to any such plan made without prior approval for a period of three years from the date of the change, and shall, within two months after the change is made, submit a report addressed to Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, in accordance with § 72.4, containing a description of each change. A copy of the report must be sent to the Regional Administrator of the appropriate NRC Regional Office specified in appendix A to part 73 of this chapter.

■ 157. In § 72.248, paragraphs (c)(1) and (c)(2) are revised to read as follows:

### § 72.248 Safety analysis report updating.

* * * * *

(c)(1) The update of the FSAR must be filed in accordance with § 72.4. If the update is filed on paper, then it should be filed on a page-replacement basis; if filed electronically, it should be filed on a full replacement basis. *See* Guidance for Electronic Submissions to the Commission at *http://www.nrc.gov/site-help/eie.html.*

(2) A paper update filed on a page-replacement basis must include a list that identifies the current pages of the FSAR following page replacement. If the update is filed electronically on a full replacement basis, it must include a list of changed pages.

* * * * *

## PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

■ 158. The authority citation for part 73 is revised to read as follows:

**Authority:** Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

■ 159. Section 73.4 is revised to read as follows:

### § 73.4 Communications.

Except where otherwise specified, all communications and reports concerning the regulations in this part and applications filed under them should be sent as follows:

(a) By mail addressed to: ATTN: Document Control Desk, Director, Office of Nuclear Reactor Regulation, Director, Office of Nuclear Material Safety and Safeguards, or Director, Division of

Nuclear Security, Office of Nuclear Security and Incident Response, as appropriate, U.S Nuclear Regulatory Commission, Washington, DC 20555–0001;

(b) By hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland;

(c) Where practicable, by electronic submission, for example, Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov*, or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

(d) Classified communications shall be transmitted to the NRC Headquarters' classified mailing address as specified in appendix A to part 73 of this chapter or delivered by hand in accordance with this paragraph.

■ 160. In § 73.57, paragraphs (a)(2), and (a)(3), the first and second sentences of paragraph (d)(1), the second and fourth sentences of paragraph (d)(2), the second and third sentences of paragraph (d)(3), and paragraphs (d)(4) and (f)(5) are revised to read as follows:

### § 73.57 Requirements for criminal history checks of individuals granted unescorted access to a nuclear power facility or access to Safeguards Information by power reactor licensees.

(a) * * *

(2) Each applicant for a license to operate a nuclear power reactor under part 50 of this chapter shall submit fingerprints for those individuals who have or will have access to Safeguards Information.

(3) Prior to receiving its operating license, each applicant for a license to operate a nuclear power reactor pursuant to part 50 of this chapter may submit fingerprints for those individuals who will require unescorted access to the nuclear power facility.

* * * * *

(d) * * *

(1) For the purpose of complying with this section, licensees shall, using an appropriate method listed in § 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint record for each individual requiring unescorted access to the nuclear power facility or access to Safeguards Information, to the Director of the NRC's Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–5877, or by e-mail to *forms@nrc.gov*. Guidance on what alternative formats might be practicable is referenced in § 73.4. * * *

(2) * * * Any Form FD–258 or other fingerprint record containing omissions or evident errors will be returned to the licensee for corrections. * * * The one free resubmission must have the FBI Transaction Control Number reflected on the resubmission. * * *

(3) * * * Licensees shall submit payment with the application for the processing of fingerprints through corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. NRC" (for guidance on making electronic payments, contact the Security Branch, Division of Facilities and Security, at (301) 415–7404). The amount of the fee is the user fee for processing fingerprints submitted by the Nuclear Regulatory Commission on behalf of nuclear power plants charged by the FBI for each fingerprint card or other fingerprint record. * * *

(4) The Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for criminal history checks, to include the FBI fingerprint record.

* * * * *

(f) * * *

(5) The licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, on an individual (including data indicating no record) for 1 year after termination or denial of unescorted access to the nuclear power facility or access to Safeguards Information.

■ 161. In § 73.72, paragraphs (a)(1), (a)(4), and (a)(5) are revised to read as follows:

### § 73.72 Requirement for advance notice of shipment of formula quantities of strategic special nuclear material, special nuclear material of moderate strategic significance, or irradiated reactor fuel.

(a) * * *

(1) Notify in writing the Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response, using any appropriate method listed in § 73.4. Classified notifications shall be sent to the NRC headquarters classified mailing address listed in appendix A to this part.

* * * * *

(4) The NRC Headquarters Operations Center shall be notified by telephone at least 2 days before commencement of the shipment at the phone numbers listed in appendix A to this part. Classified notifications shall be made by secure telephone.

(5) The NRC Headquarters Operations Center shall be notified by telephone of schedule changes greater than ± 6 hours at the numbers listed in appendix A to this part. Classified notifications shall be made by secure telephone.

* * * * *

■ 162. In § 73.73, paragraphs (a)(1) and (b) are revised to read as follows:

### § 73.73 Requirement for advance notice and protection of export shipments of special nuclear material of low strategic significance.

(a) * * *

(1) Notify in writing the Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response, using any appropriate method listed in § 73.4;

* * * * *

(b) A licensee who needs to amend a written advance notification required by paragraph (a) of this section may notify the NRC Headquarters Operations Center by telephone at the numbers listed in appendix A to this part.

■ 163. In § 73.74, paragraphs (a)(1) and (b) are revised to read as follows:

### § 73.74 Requirement for advance notice and protection of import shipments of nuclear material from countries that are not party to the Convention on the Physical Protection of Nuclear Material.

(a) * * *

(1) Notify in writing the Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response, using any appropriate method listed in § 73.4;

* * * * *

(b) A licensee who needs to amend a written advance notification required by paragraph (a) of this section may notify the NRC Headquarters Operations Center by telephone at the numbers listed in appendix A to this part.

* * * * *

■ 164. Appendix A to part 73 is revised to read as follows:

## Appendix A to Part 73—U.S. Nuclear Regulatory Commission Offices and Classified Mailing Addresses

| | Address | Telephone (24 hour) | E-Mail |
|---|---|---|---|
| NRC Headquarters Operations Center | USNRC, Division of Incident Response Operations, Washington, DC 20555–0001. | (301) 816–5100, (301) 951–0550, (301) 816–5151 (fax). | *H001@nrc.gov* |
| Region I: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont | USNRC, Region I, 475 Allendale Road, King of Prussia, PA 19406–1415. | (610) 337–5000, (800) 432–1156, TDD: (301) 415–5575. | *RidsRgn1MailCenter@nrc.gov* |
| Region II: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virginia, Virgin Islands, and West Virginia | USNRC, Region II, Sam Nunn Atlanta Federal Center, Suite 23T85, 61 Forsyth Street, SW, Atlanta, GA 30303–8931. | (404) 562–4400, (800) 877–8510, TDD: (301) 415–5575. | *RidsRgn2Mail Center@nrc.gov* |
| Region III: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin | USNRC, Region III, 801 Warrenville Road, Lisle, IL 60532–4351. | (630) 829–9500, (800) 522–3025, TDD: (301) 415–5575. | *RidsRgn3MailCenter@nrc.gov* |
| Region IV: Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Kansas, Louisiana, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming, and the U.S. territories and possessions in the Pacific | USNRC, Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011–4005. | (817) 860–8100, (800) 952–9677, TDD: (301) 415–5575. | *RidsRgn4MailCenter@nrc.gov* |

CLASSIFIED MAILING ADDRESSES

| | Address |
|---|---|
| NRC Headquarters | U.S. NRC, Caller Box 2500, Rockville, MD 20852. |
| Region I | U.S. NRC, 475 Allendale Road, King of Prussia, PA 19406. |
| Region II | U.S. NRC, Region II, P.O. Box 2257, Atlanta, GA 30303 |
| Region III | U.S. NRC, Region III, 801 Warrenville Road, Lisle, IL 60532–4351. |
| Region IV | U.S. NRC, Region IV, 611 Ryan Plaza Drive, Suite 4000, Arlington, TX 76011. |

I. Classified mail shall be transmitted in accordance with § 95.39 of this chapter to the appropriate NRC classified mailing address listed in this appendix.

II. Classified documents may be hand delivered to the NRC to the appropriate NRC street address listed in this appendix. Hand delivered classified documents shall be transmitted in accordance with § 95.39 of this chapter.

## PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

■ 165. The authority citation for part 74 is revised to read as follows:

**Authority:** Secs. 53, 57, 161, 182, 183, 68 Stat. 930, 932, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2077, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 166. In § 74.6, paragraphs (a) and (b) are revised and paragraph (c) is added to read as follows:

### § 74.6 Communications.

* * * * *

(a) By mail addressed to: ATTN: Document Control Desk, Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

(b) By hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland.

(c) Where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov*, or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

■ 167. In § 74.15, the third sentence in paragraph (a) is revised to read as follows:

### § 74.15 Nuclear material transfer reports.

(a) * * * Copies of these instructions (NUREG/BR–0006 and NMMSS Report D–24 "Personal Computer Data Input for NRC Licensees") may be obtained either by writing the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555–0001, by e-mail to *RidsNmssFcss@nrc.gov*, or by calling (301) 415–7213. * * *

* * * * *

■ 168. In § 74.17, the last sentences of paragraphs (a) and (b) are revised to read as follows:

### § 74.17 Special nuclear material physical inventory summary report.

(a) * * * Using an appropriate method listed in § 74.6, the licensee shall report the inventory results by plant and total facility to the Director of the NRC's Office of Nuclear Material Safety and Safeguards.

(b) * * * Using an appropriate method listed in § 74.6, the licensee shall report the inventory results by plant and total facility to the Director of the NRC's Office of Nuclear Material Safety and Safeguards.

* * * * *

■ 169. In § 74.59, paragraph (f)(1)(iii) is revised to read as follows:

### § 74.59 Quality assurance and accounting requirements.

* * * * *

(f) * * *

(1) * * *

(iii) Investigate and report, by an appropriate method listed in § 74.6, to the Director, Office of Nuclear Material Safety and Safeguards, any difference that exceeds three times the standard deviation determined from the sequential analysis;

* * * * *

## PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

■ 170. The authority citation for part 75 is revised to read as follows:

**Authority:** Secs. 53, 63, 103, 104, 122, 161, 68 Stat. 930, 932, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 75.4 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

■ 171. In § 75.6, paragraph (c) is revised to read as follows:

### § 75.6 Maintenance of records and delivery of information, reports, and other communications.

* * * * *

(c) Except where otherwise specified, all communications and reports concerning the regulations in this part and applications filed under them should be sent by mail addressed: ATTN: Document Control Desk; Director, Office of Nuclear Reactor Regulation (or Director, Nuclear Materials Safety and Safeguards, as appropriate), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov*, or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

* * * * *

## PART 76—CERTIFICATION OF GASEOUS DIFFUSION PLANTS

■ 172. The authority citation for part 76 is revised to read as follows:

**Authority:** Sec. 161, 68 Stat. 948, as amended, secs. 1312, 1701, as amended, 106 Stat. 2932, 2951, 2952, 2953, 110 Stat. 1321–349 (42 U.S.C. 2201, 2297b–11, 2297f); secs. 201, as amended, 204, 206, 88 Stat. 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 234(a), 83 Stat. 444, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(a)); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 76.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat 2951 (42 U.S.C. 5851). Section 76.22 is also issued under sec.193(f), as amended, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(f)). Section 76.35(j) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152).

■ 173. Section 76.5 is revised to read as follows:

### § 76.5 Communications.

Except where otherwise specified, all communications and reports concerning the regulations in this part and applications filed under them should be sent as follows:

(a) By mail addressed to: ATTN: Document Control Desk, Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response, U.S Nuclear Regulatory Commission, Washington, DC 20555–0001;

(b) By hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or

(c) Where practicable, by electronic submission, for example, Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov*, or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

(d) Classified communications shall be transmitted in accordance with § 95.39 of this chapter to the NRC Headquarters' classified mailing address listed in appendix A to part 73 of this chapter or delivered by hand in accordance with § 95.39 of this chapter to the NRC Headquarters' street address listed in appendix A to part 73 of this chapter.

■ 174. In § 76.7, paragraph (e)(3) is revised to read as follows:

### § 76.7 Employee protection.

* * * * *

(e) * * *

(3) Copies of NRC Form 3 may be obtained by writing to the NRC Region III Office listed in appendix D to part 20 of this chapter, by calling (301) 415–5877, via e-mail to *forms@nrc.gov*, or by accessing the NRC Website at *http://www.nrc.gov* and selecting forms from the index found on the home page.

* * * * *

■ 175. In § 76.33, paragraph (a)(1) is revised to read as follows:

### § 76.33 Application procedures.

(a) * * *

(1) An application for a certificate of compliance must be tendered by filing the application with the Director of the NRC's Office of Nuclear Material Safety and Safeguards, with copies sent to the NRC Region III Office and appropriate resident inspector, in accordance with § 76.5. If the application is to be submitted electronically, see Guidance for Electronic Submission to the Commission at *http://www.nrc.gov/site-help/eie.html*.

* * * * *

■ 176. In § 76.120, the third sentence of the introductory text of paragraph (d)(2) is revised to read as follows:

### § 76.120 Reporting requirements.

* * * * *

(d) * * *

(2) * * * These written reports must be sent to the NRC by an appropriate method listed in § 76.5. * * *

* * * * *

## PART 81—STANDARD SPECIFICATIONS FOR THE GRANTING OF PATENT LICENSES

■ 177. The authority citation for part 81 is revised to read as follows:

**Authority:** Sec. 156, 161, 68 Stat. 947, 948, as amended (42 U.S.C. 2186, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 178. Section 81.3 is revised to read as follows:

### § 81.3 Communications.

All communications concerning the regulations in this part, including applications for licenses, should be sent to the NRC either by mail addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov*, or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

## PART 95—FACILITY SECURITY CLEARANCE AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

■ 179. The authority citation for part 95 is revised to read as follows:

**Authority:** Secs. 145, 161, 193, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); E.O. 10865, as amended, 3 CFR 1959–1963 Comp., p. 398 (50 U.S.C. 401, note); E.O. 12829, 3 CFR, 1993 Comp., p. 570; E.O. 12958, as amended, 3 CFR, 1995 Comp., p. 333; E.O. 12968, 3 CFR, 1995 Comp., p. 391.

■ 180. Section 95.9 is revised to read as follows:

### § 95.9 Communications.

Except where otherwise specified, all communications and reports concerning the regulations in this part should be submitted as follows:

(a) By mail addressed to: ATTN: Document Control Desk, Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response, U.S Nuclear Regulatory Commission, Washington, DC 20555–0001;

(b) By hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or

(c) Where practicable, by electronic submission, for example, Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov*, or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

(d) Classified communications shall be transmitted in accordance with § 95.39 of this chapter to the NRC Headquarters' classified mailing address listed in appendix A to part 73 of this chapter or delivered by hand in accordance with § 95.39 of this chapter to the NRC Headquarters' street address listed in appendix A to part 73 of this chapter.

■ 181. In § 95.19, the second sentence of the introductory text of paragraph (a) is revised to read as follows:

### § 95.19 Changes to security practices and procedures.

(a) * * * A written description of the proposed change must be furnished to the CSA and the NRC Regional Administrator of the cognizant Regional Office listed in appendix A to part 73 of this chapter, and, if the NRC is not the CSA, also to the Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response; the communications to NRC personnel should be by an appropriate method listed in § 95.9. * * *

* * * * *

■ 182. In § 95.45, the second sentence of paragraph (a) is revised to read as follows:

### § 95.45 Changes in classification.

(a) * * * Requests for downgrading or declassifying any NRC classified information should be forwarded to the NRC's Division of Nuclear Security, Nuclear Security and Incident Response, using an appropriate method listed in § 95.9. * * *

* * * * *

## PART 100—REACTOR SITE CRITERIA

■ 183. The authority citation for part 100 is revised to read as follows:

**Authority:** Secs. 103, 104, 161, 182, 68 Stat. 936, 937, 948, 953, as amended (42 U.S.C. 2133, 2134, 2201, 2232); sec. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 184. Section 100.4 is revised to read as follows:

### § 100.4 Communications.

Except where otherwise specified, all communications and reports concerning the regulations in this part and applications filed under them should be sent by mail addressed to: ATTN: Document Control Desk, Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov*, or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information. Copies should be sent to the appropriate Regional Office and Resident Inspector.

## PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

■ 185. The authority citation for part 110 is revised to read as follows:

**Authority:** Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 5, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Sections 110.1(b)(2) and 110.1(b)(3) also issued under Pub. L. 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d, 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130–110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42(a)(9) also issued under sec. 903, Pub. L. 102–496 (42 U.S.C. 2151 *et seq.*).

■ 186. Section 110.4 is revised to read as follows:

### § 110.4 Communications.

Except where otherwise specified in this part, all communications and reports concerning the regulations in this part should be addressed to the Deputy Director of the NRC's Office of International Programs, either by telephone to (301) 415–2344; by mail to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov*, or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

■ 187. In § 110.31, paragraph (a) is revised to read as follows:

### § 110.31 Application for a specific license.

(a) A person shall file an application for a specific license to export or import with the Deputy Director of the NRC's Office of International Programs, using an appropriate method listed in § 110.4.

* * * * *

■ 188. In § 110.131, paragraph (a) is revised to read as follows:

### § 110.131 Petition for rulemaking.

(a) A petition for rulemaking should be addressed to the Secretary of the Commission, for the attention of the Secretary's Rulemakings and Adjudications Staff. The petition should be sent using an appropriate method listed in § 110.4.

* * * * *

## PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

■ 189. The authority citation for part 140 is revised to read as follows:

**Authority:** Secs. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended (42 U.S.C. 2201, 2210); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 190. § 140.5 is revised to read as follows:

### § 140.5 Communications.

Except where otherwise specified, all communications and reports concerning the regulations in this part and applications filed under them should be sent by mail addressed to: ATTN: Document Control Desk, Director, Office of Nuclear Reactor Regulation (or Director, Office of Nuclear Material Safety and Safeguards, as appropriate), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov*, or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

■ 191. In § 140.6, the first sentence of paragraph (a) is revised to read as follows:

### § 140.6 Reports.

(a) In the event of bodily injury or property damage arising out of or in connection with the possession or use of the radioactive material at the location or in the course of transportation, or in the event any claim is made therefor, written notice containing particulars sufficient to identify the licensee and reasonably obtainable information with respect to the time, place, and circumstances thereof, or to the nature of the claim, shall be furnished by or for the licensee to the Director of the Office of Nuclear Reactor Regulation, or the Director of the Office of Nuclear Material Safety and Safeguards, as appropriate, using an appropriate method listed in § 140.5, but in any case as promptly as practicable. * * *

* * * * *

## PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

■ 192. The authority citation for part 150 is revised to read as follows:

**Authority**: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

■ 193. Section 150.4 is revised to read as follows:

### § 150.4 Communications.

Except where otherwise specified in this part, all communications and reports concerning the regulations in this part should be sent by mail addressed: ATTN: Document Control Desk, Director, Office of Nuclear Material Safety and Safeguards, and sent either by mail to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov*, or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

■ 194. In § 150.16, the fourth sentence of paragraph (a) and paragraph (b)(2) are revised to read as follows:

### § 150.16 Submission to Commission of nuclear material transfer reports.

(a) * * * Copies of these instructions may be obtained either by writing the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555–0001, by e-mail to *RidsNmssFcss@nrc.gov*, or by calling (301) 415–7213. * * *

(b) * * *

(2) Within 15 days, the licensee shall follow the initial report with a written report that sets forth the details of the incident. The report must be sent by an appropriate method listed in § 150.4 of this part to the Director of the NRC's Office of Nuclear Material Safety and Safeguards, with a copy to the appropriate NRC Regional Office, shown in appendix A to part 73 of this chapter.

* * * * *

■ 195. In § 150.17, the second sentence of paragraph (a), the last sentence of paragraph (b), and paragraph (c) are revised to read as follows:

### § 150.17 Submission to Commission of source material transfer reports.

(a) * * * Copies of the instructions may be obtained either by writing the U.S. Nuclear Regulatory Commission, Division of Nuclear Security, Office of Nuclear Security and Incident Response, Washington, DC 20555–0001, by e-mail to *RidsNsirDns@nrc.gov*, or by calling (301) 415–6828. * * *

(b) * * * Copies of the reporting instructions may be obtained by writing the U.S. Nuclear Regulatory Commission, Division of Nuclear Security, Office of Nuclear Security and Incident Response, Washington, DC 20555–0001, by e-mail to *RidsNsirDns@nrc.gov*, or by calling (301) 415–6828.

(c)(1) Except as specified in paragraph (d) of this section, each licensee who is authorized to possess uranium or thorium pursuant to a specific license shall notify the NRC Headquarters Operations Center by telephone, at the numbers listed in appendix A to part 73 of this chapter, of any incident in which an attempt has been made or is believed to have been made to commit a theft or unlawful diversion of more than 6.8 kilograms (kg) [15 pounds] of such material at any one time or more than 68 kg [150 pounds] of such material in any one calendar year.

(2) The licensee shall notify the NRC as soon as possible, but within 4 hours, of discovery of any incident in which an attempt has been made or is believed to have been made to commit a theft or unlawful diversion of such material.

(3) The initial notification shall be followed within a period of sixty (60) days by a written followup notification submitted in accordance with § 150.4. A copy of the written followup notification shall also be sent to the appropriate NRC Regional Office as shown in appendix A to part 73 of this chapter and to Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission.

(4) Subsequent to the submission of the written followup notification required by this paragraph, the licensee shall promptly update the written followup notification, in accordance with this paragraph, with any substantive additional information, which becomes available to the licensee, concerning an attempted or apparent theft or unlawful diversion of source material.

* * * * *

■ 196. In § 150.19, the second and third sentences of paragraph (c) are revised to read as follows:

### § 150.19 Submission to Commission of tritium reports.

* * * * *

(c) * * * The initial report must be followed within a period of fifteen days by a written report that sets forth the details of the incident and its consequences. The report must be submitted to the Director, Office of Nuclear Material Safety and Safeguards, using an appropriate method listed in § 150.4, with a copy to the appropriate NRC Regional Office as shown in appendix A to part 73 of this chapter.

* * *

* * * * *

■ 197. In § 150.20, the first sentence of the introductory text of paragraph (b)(1) and paragraph (b)(1)(iii) are revised to read as follows:

### § 150.20 Recognition of Agreement State licenses.

* * * * *

(b) * * *

(1) Shall, at least 3 days before engaging in each activity for the first time in a calendar year, file a submittal containing an NRC Form 241, "Report of Proposed Activities in Non-Agreement States," a copy of its Agreement State specific license, and the appropriate fee as prescribed in § 170.31 of this chapter with the Regional Administrator of the U.S. Nuclear Regulatory Commission Regional Office listed on the NRC Form 241 and in appendix D to part 20 of this chapter for the Region in which the Agreement State that issued the license is located. * * *

* * * * *

(iii) Within 3 days after the notification, files an NRC Form 241, a copy of the Agreement State license, and the fee payment.

* * * * *

## PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

■ 198. The authority citation for part 170 is revised to read as follows:

**Authority:** sec. 9701, Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Pub. L. 101–576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 199. Section 170.5 is revised to read as follows:

### § 170.5 Communications.

All communications concerning the regulations in this part should be addressed to the NRC's Chief Financial Officer, either by mail to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov*, or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

## PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

■ 200. The authority citation for part 171 is revised to read as follows:

**Authority:** Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by sec. 3201, Pub. L. 101–239, 103 Stat. 2132, as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, as amended by sec. 2903a, Pub. L. 102–486, 106 Stat. 3125 (42 U.S.C. 2213, 2214); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 201. Section 171.9 is revised to read as follows:

### § 171.9 Communications.

All communications concerning the regulations in this part should be addressed to the NRC's Chief Financial Officer, either by mail to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov*, or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

Dated at Rockville, Maryland, this 30th day of September, 2003.

For the Nuclear Regulatory Commission.

**Annette Vietti-Cook,**

*Secretary of the Commission.*

**Note:** This appendix will not appear in the Code of Federal Regulations.

## Appendix A—United States Nuclear Regulatory Commission (NRC) Guidance for Electronic Submissions to the Commission

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### 1.0 Introduction

#### *1.1 Background*

On October 10, 2003, the Nuclear Regulatory Commission (NRC) promulgated a final rule on electronic submission of information to the agency. This rule modified many NRC regulations to explicitly authorize electronic communications with the agency. The final rule stated that the NRC would issue specific guidance on acceptable procedures for electronic submissions. That guidance is contained in this document. This guidance document is the controlling source of information on electronic submissions to the NRC and supersedes *NRC Regulatory Issue Summary 2001–05, Guidance on Submitting Documents to the NRC by Electronic Information Exchange or on CD–ROM*, and the August 10, 2001, letter issued to certain fuel cycle facilities extending to them the option of electronic submissions in many instances. The NRC plans to update this guidance periodically to reflect changes in technology and agency experience by posting the latest version of the document on NRC's Web site at *http://www.nrc.gov.* While the Commission encourages the submission of electronic documents, submission of paper documents remains acceptable.

#### *1.2 Scope*

This guidance document governs the electronic submission of documents to the NRC. It includes the required procedures for corresponding electronically with the NRC via the Internet using Electronic Information Exchange (EIE), by CD–ROM, or by e-mail. It also includes procedures for corresponding by facsimile (fax). It does not address outgoing NRC communications.

NRC's Electronic Information Exchange (EIE) allows NRC to exchange information related to official agency business with its customers and other Federal agencies across the Internet. The EIE system uses a public key infrastructure and digital signaturing technology to authenticate documents and validate the identity of the person submitting the information. That is, the system ensures that the exchanged information is secure and that the person submitting the material is, in fact, who is indicated. It requires the use of digital signatures and certain software plug-ins. Procedures for acquiring a digital signature for communicating with the NRC via EIE can be found at Section 3.5, and procedures for acquiring the required software can be found at Section 3.6.

The NRC has enhanced its EIE system capabilities with a robust engine for facilitating the transmission process. The NRC encourages its user community to use EIE and evaluate its enhanced capabilities.

#### *1.3 Applicable Transactions*

Documents or other information submitted under oath or affirmation, or other documents where secure transfer is either required or appropriate, should be submitted over the Internet using EIE or submitted on CD–ROM. While e-mail and facsimiles are not appropriate for most submissions required by NRC regulations, they may be used for certain other correspondence and communications with the NRC, such as rulemaking petitions and comments on rulemaking proceedings, communications with States and other Federal agencies, requests for enforcement actions under 10 CFR 2.206, and Freedom of Information Act (FOIA) requests and appeals, but not for information covered under the Privacy Act.

E-mail may be addressed to either specific individuals named as contacts in **Federal Register** Notices or other agency communications, or to the office specified in the regulation or communication specific to the document(s) being submitted; to addresses the NRC Web site provides for individual program offices or specific agency functions or services; or to the Office of Public Affairs. Individual program offices may be contacted through the NRC Web site at *http://www.nrc.gov* by selecting specific contact pages from "Contact Us" on the home page. The Office of Public Affairs may be reached through the "Contact Us" on the home page or at *OPA@nrc.gov* (use upper case where indicated). The sender will not receive an e-mail confirmation of receipt of the submission except for those communications using EIE.

### 1.3.1 Exceptions to Electronic Submission

A. All communications with the NRC may be submitted electronically via the Internet using Electronic Information Exchange except for the following:

1. Classified Information (*i.e.*, National Security Information and Restricted Data), and Safeguards Information. This information may only be submitted electronically on CD–ROM.

2. "Immediate" or "prompt" notifications to the NRC that NRC regulations require be made by telephone or telefax up to one week before or after an event (*e.g.*, 10 CFR 30.50 or 30.55(c)).

3. Notice of filing of bankruptcy petition, whether voluntary or involuntary (*e.g.*, 10 CFR 30.34(h)(1)).

4. Hearing requests, and documents pertaining to hearings or associated appeals, including, but not limited to, those associated with hearings conducted under 10 CFR parts 2, 4, 10, 12, 13, 14, 16, 19, 25, 76, 81, 110, 140, and 150. Separate rules or guidance addressing procedures for electronic communications in hearings will be issued in the future for public comment. (Nothing in this guidance document precludes presiding officers from their current practice of authorizing electronic communications on a case-by-case basis.)

5. Documents served on the NRC as a participant in Federal Court proceedings or in non-NRC administrative proceedings (such as administrative proceedings before the Merit Systems Protection Board, unless electronic submission is authorized by rule or order issued by a Federal Court or Agency).

6. NRC contractor proposals or invoices submitted in response to specific contractual requirements. (Because Federal Acquisition Regulation guidance as contained in Section 30 of the Office of Federal Procurement Policy Act [41 U.S.C. 426] allows the Federal Government to use electronic commerce whenever practical, guidance for electronic submittal of proposals and invoices will be addressed in individual procurements. Further guidance for submission of these documents will be issued at a later date.)

7. Financial assurance instruments to meet decommissioning cost requirements and prescribed by regulation at 10 CFR 30.35(e) and (f); 10 CFR 40.36(d) and (e); and 10 CFR 70.25(e) and (f) (including surety bonds, letters of credit, lines of credit, and insurance).

8. Documents with special printing requirements. (*See* section 2.8). This information may only be submitted electronically on CD–ROM.

9. Segmented documents or files larger than 50 megabytes (MB). (*See* section 2.14.) This information may only be submitted electronically on CD–ROM.

B. All communications with the NRC may be submitted electronically on CD–ROM except for the following:

1. "Immediate" or "prompt" notifications to the NRC that NRC regulations require be made by telephone or telefax up to one week before or after an event (*e.g.*, 10 CFR 30.50 or 30.55(c)).

2. Notice of filing of bankruptcy petition, whether voluntary or involuntary (*e.g.*, 10 CFR 30.34(h)(1)).

3. Hearing requests, and documents pertaining to hearings or associated appeals, including, but not limited to, those associated with hearings conducted under 10 CFR parts 2, 4, 10, 12, 13, 14, 16, 19, 25, 76, 81, 110, 140, and 150. Separate rules or guidance addressing procedures for electronic communications in hearings will be issued in the future for public comment. (Nothing in this guidance document precludes presiding officers from their current practice of authorizing electronic communications on a case-by-case basis.)

4. Documents served on the NRC as a participant in Federal Court proceedings or in non-NRC administrative proceedings (such as administrative proceedings before the Merit Systems Protection Board, unless electronic submission is authorized by rule or order issued by a Federal Court or Agency).

5. NRC contractor proposals or invoices submitted in response to specific contractual requirements. (Because Federal Acquisition Regulation guidance as contained in section 30 of the Office of Federal Procurement Policy Act [41 U.S.C. 426] allows the Federal Government to use electronic commerce whenever practical, guidance for electronic submittal of proposals and invoices will be addressed in individual procurements. Further guidance for submission of these documents will be issued at a later date.)

6. Financial assurance instruments to meet decommissioning cost requirements and prescribed by regulation at 10 CFR 30.35(e) and (f); 10 CFR 40.36(d) and (e); and 10 CFR 70.25(e) and (f) (including surety bonds, letters of credit, lines of credit, and insurance).

### 1.3.2 Electronic Forms and Payments

Each form referred to in the NRC regulations can be found on the NRC Web site at *http://www.nrc.gov* in PDF format for viewing and printing by selecting "Forms" from the index found on the home page and selecting the specific form required.

Financial payments required by regulations can be submitted electronically. Copies of NRC Form 628 to establish financial authorization electronically can be found at the NRC Web site at *http://www.nrc.gov* by selecting "Forms" from the index found on the home page. Payments by credit card of civil penalties, part 171 annual fees, part 170 licensing and inspection fees, and other fees, may be done by completing the authorization form included with the invoice or civil penalty. A copy of the form may be printed from the NRC Web site at *http://www.nrc.gov* by selecting "Forms" from the index found on the home page and selecting "NRC Form 629, Authorization for Payment by Credit Card."

### 1.3.3 Submissions Requiring Oath or Affirmation

Submissions requiring oath or affirmation may be submitted electronically using EIE or on CD–ROM. (*See* sections 3.7 and 4.3.2 of this guidance document.) These include the following:

1. Documents that by statute must be submitted under oath or affirmation (*e.g.*, pursuant to section 182 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2232). Generally, oath or affirmation requirements apply to applications for a license, amendments to a license, some licensee responses to Notices of Violation (NOV), and certain letters of transmittal. NRC's regulations in 10 CFR parts 2 and 50 implement these statutory requirements; certain regulations require an oath or affirmation for submission of documents (*see, e.g.*, 10 CFR 50.54(f) and 10 CFR 50.30(b)).

2. Documents that must be sent by certified mail (*e.g.*, 10 CFR part 30, appendix A II. C. 2).

### 1.3.4 10 CFR Part 2 Submissions

Rulemaking petitions, comments filed in rulemaking proceedings (10 CFR part 2, subpart H), and requests for enforcement action under 10 CFR 2.206 may be submitted via EIE, CD–ROM, or e-mail. Other documents submitted pursuant to 10 CFR part 2, subpart B, "Procedure for Imposing Requirements By Order, or for Modification, Suspension, or Revocation of a License, or for Imposing Civil Penalties," may be submitted via EIE or CD–ROM. Submission of all other documents covered under part 2 are excluded from the scope of this guidance document. Separate rules or guidance addressing procedures for electronic communications in hearings will be issued in the future for public comment.

### 1.3.5 Freedom of Information Act and Privacy Act Requests

All Freedom of Information Act (FOIA) and Privacy Act requests and appeals may be submitted electronically by EIE, CD–ROM, facsimile, or e-mail. However, e-mail requests may not reveal personal privacy information.

## 2.0 Parameters for Electronic Files Submitted to the NRC

Unless otherwise noted, all electronic documents submitted to the NRC, including all enclosures or attachments that are documents, should meet the file format specifications delineated in this section. Note: any electronic file that can be converted to PDF format (spreadsheets, slide presentations, etc.) Is considered a document by the NRC and is subject to these specifications.

Submittals may also contain other forms of electronic information including data files, computer models, and video or audio clips that are not considered documents. These files are not required to conform to the file format specifications established for documents.

### 2.1 *File Formats*

Electronic materials should be submitted in PDF or otherwise meet the specifications delineated in this section.

The following table defines the particular PDF output file formats and their use when submitting electronic documents to the NRC:

PREFERRED PDF OUTPUT FILE FORMAT

| File format | Version | Filename extension | Recommended use |
|---|---|---|---|
| Adobe® Acrobat Portable Document Format (PDF) Formatted Text and Graphics (Formerly known as PDF Normal). Options should be set according to the settings described in Section 2.6. | Current or 2 previous | pdf | Textual documents converted from native applications only *,**. |
| Adobe® Acrobat PDF Searchable Image (Exact) [formerly known as PDF Original Image with Hidden Text]. Options should be set according to the settings described in Section 2.6. | Current or 2 previous | pdf | Textual documents converted from scanned documents. |
| Adobe® Acrobat PDF Image Only. Options should be set according to the settings described in Section 2.6. | Current or 2 previous | pdf | Preferred format for graphic-, image-, and forms-oriented documents (not for capture of text). |

* Textual documents scanned from original paper copies converted to PDF Formatted Text and Graphics result in capture of only a text file that contains OCR conversion errors. This inaccurate representation of the original document is not acceptable for capture by the NRC as an archival record. If the native format of a document is not available for creating a PDF file, the NRC recommends that Searchable Image (Exact) PDF be generated from a scanned image of the document. This will create a PDF file that contains a 100% accurate representation of the original document which will be acceptable for transfer to the National Archives.

** Adobe® PDF Formatted Text and Graphics files that contain embedded images of text will not be accepted. These files are usually a result of cutting and pasting images of text, instead of the text itself, from one document to another while creating documents using word processing applications. This practice results in a picture of the text being created that is not full text searchable. However, images of text that are intended as a graphical representation only and are not meant to convey the information contained in the text will be accepted.

**Note:** Adobe has recently established a fourth PDF output file format (PDF Searchable Image (Compact)) that uses compression techniques to reduce file sizes of images. This is not an acceptable format for submission to the NRC because it uses lossy compression techniques that do not result in a true and accurate representation of the original document.

Images originally created in a Tagged Image File Format (TIFF) that are primarily graphic-oriented in nature may be converted to PDF for submission to NRC using the PDF Image Only format as described above.

The NRC recommends that the results of spreadsheet applications be converted to one of the acceptable PDF file formats. The NRC staff may also require spreadsheet data to perform additional calculations/analyses. Spreadsheet data may be submitted using the following acceptable formats.

| File format | Version | Filename EXTENSION | Preferred Use |
|---|---|---|---|
| Microsoft® Excel | Current or 2 previous | xls | Spreadsheet calculations. |
| Corel® QuattroPro | Current or 2 previous | wb3 | Spreadsheet calculations. |
| Lotus® 1–2–3 | Current or 2 previous | wk3/wk4 | Spreadsheet calculations. |

When submitting an electronic file using one of the acceptable formats, do not change the default, three-character extension for the file (*e.g.*, a document prepared as "license_amendment.pdf" should be submitted with the ".pdf" file extension and a document prepared as a Microsoft Excel spreadsheet should be submitted with the ".xls" file extension).

### 2.2 *Naming Conventions*

Documents submitted to the NRC must:

- Conform to ISO 9660 format, including following the Joliet Extension.
- Have filenames that are limited to 49 characters (including the "." and the three-character filename extension).
- Retain the default three-character file extension associated with the format in which the document was created (Example: for files created to conform to Adobe's Portable Document Format, ".pdf"; for files created using Microsoft Excel, ".xls").
- Include a three-digit numeric prefix (*e.g.*, 001, 002, 003) in the filename that designates the correct order of the files contained in the submission, followed by the name of the file (Example: "001filename of first document.pdf").
- Filenames should be based on the logical breakpoint used for segmentation of the document (*e.g.*, chapter, section, etc.) as described in Section 2.14.

FILE NAMING EXAMPLE TABLE

| Document title | File name |
|---|---|
| **Multiple File Documents** | |
| Chapter 1, Section 1 Estimate of Long-Term Geo-chemical Behavior | 001_1.1 Estimate of Long-Term Geochem Behavior.pdf. |
| Chapter 2, Section 2 Estimate of Long-Term Geo-chemical Behavior | 002_2.2 Estimate of Long-Term Geochem Behavior.pdf. |
| Appendix A Estimate of Long-Term Geo-chemical Behavior | 003_Ap A Estimate—Long-Term Geochem Behavior.pdf. |

FILE NAMING EXAMPLE TABLE—Continued

| Document title | File name |
|---|---|
| **Single File Documents** | |
| Attachment II, CAL–EBS–NU–000017 Rev 003 Calculation, Radiolytic Specie Generation from Internal Waste Package Criticality. | 001_Att 2 CAL–EBS–NU–00017 R003.pdf. |
| List and Schedule for Model Validation Reports related to Criticality | 001_List_Sched for MVRs related to Criticality.pdf. |

*2.3 File Size Limitations*

Large-size files create challenges for both the NRC staff and the public when viewing or downloading the documents. Therefore, the NRC requests that submitters make every effort to limit the size of each file to 50MB. If a document exceeds 50MB, it should be created using logical breaks in the document (*e.g.*, file broken up into individual chapters—*see* section 2.14).

Additionally, small-size files are problematic as well. Large volumes of files require significant resources to capture and profile in electronic document management systems. Therefore, the NRC encourages submitters to combine files that are components of larger documents to create 50MB files that can be more economically and efficiently managed.

The maximum size of a document submittal to the NRC depends on the method of transmission. For example, submitters may use EIE to submit PDF files and/or accepted spreadsheet files (*see* section 3.2) that do not exceed 50MB, including all attachments. Submitters should use the CD–ROM transmission method in all other cases unless e-mail or facsimile is an appropriate option. (*See* sections 5.2 and 6.2.) The use of compression techniques (zipped files, downsized files, etc.) is not allowed for electronic files submitted to the NRC because they use lossy compression techniques that do not result in a true and accurate representation of the original document. The table below summarizes the size limitations based on the method of file transmission:

| Method of transmission | Size limitations |
|---|---|
| Electronic Information Exchange (EIE) | Less than or equal to 50MB*. |
| CD–ROM | 50MB or less per individual file on CD **, * * * |
| E-mail | Less than or equal to 10MB +. |

*Total, combined size of message and attachments comprised of PDF file(s) and accepted spreadsheet format file(s). **Note:** Oversize drawings and other files with special printing requirements (Section 2.8), regardless of the file size, should be provided on CD–ROM.

**The total CD capacity may be used but submitters are urged to limit individual files to 50MB or less.

* * *In some cases a single page document or object (*e.g.*, oversize color drawing) may exceed the 50MB file size limit. Submission of oversize files (in excess of the 50MB limit) are allowed in these instances.

*2.4 Security/Access Settings*

Submissions should not contain any security settings, password protections, or any other attributes that will preclude full NRC access to and use of the files. NRC's internal security and archival processes will maintain the integrity of the materials that are submitted.

*2.5 Resolution*

To comply with NARA Standards, PDF documents should be created using the following resolution guidelines:

- Bi-tonal (black and white) PDF resolution, not less than 300 dots per inch (dpi)
- Color PDF resolution, not less than 300 dpi
- Grayscale PDF resolution, not less than 300 dpi

Adobe® Acrobat "downsampling" (an optimization option available in Adobe Acrobat) may result in images with resolutions less than acceptable for submission to the NRC. Therefore, its use is not recommended.

*2.6 Settings for Creating PDF Formatted Text and Graphic Files*

Adobe® Acrobat 5.0 provides four default optimizations when creating PDFs. These are eBook, Press, Print, and Screen. The NRC has reviewed these optimizations and has established a custom optimization that strikes a balance between print and screen optimizations. This custom optimization provides adequate retrieval response time for viewing online while providing sufficient clarity and resolution for printing. The settings established for this custom optimization are listed below and should be used on all submittals to the NRC. The settings are specific to Adobe® Acrobat 5.0. However, when PDF creation software other than Adobe® Acrobat 5.0 is used, the PDF creation software should be configured with values equivalent to those listed below. All fonts should be embedded in the PDF file to ensure compliance with NARA guidelines.

SETTINGS

| Options | Recommendation Optimal on 5.0 |
|---|---|
| General Options: | |
| Compatibility | 5.0 |
| Optimize for Fast Web | X |
| Embed Thumbnails | |
| Auto-Rotate | |
| Binding | Left |
| Resolution (dpi) | 300 |
| Compression: | |
| Color Images | Bicubic Downsampling (NOT SELECTED) |
| For images above | 300 dpi |
| Compression | Zip |
| Quality | 8-bit |
| Grayscale | Bicubic Downsampling (NOT SELECTED) |
| For images above | 300 dpi |
| Compression | Zip |
| Quality | 8-bit |

SETTINGS—Continued

| Options | Recommendation Optimal on 5.0 |
|---|---|
| Monochrome | Bicubic Downsampling (NOT SELECTED) |
| For images above | 450 dpi |
| Compression | CCITT—Group 4 |
| Anti-Alias to Gray | Not Selected |
| Compress Text & Line Art | Selected |
| Font: | |
| Embed All Fonts [1] | X |
| Subset embedded fonts when percent of characters used is less than 100% | |
| When Embedding Fails | Warn & Continue |
| Color: | |
| Setting File | None |
| Color Management Policy | Tag Everything for Color Management |
| Intent | Default |
| Gray | None |
| RGB | SRGB IEC61966–2.1 |
| CMYK | U.S. Web Coated (SWOP)v2 |
| Preserve Overprint Settings | X |
| Preserve Under Color Removal | X |
| Transfer Function | Preserve |
| Preserve Halftone | |
| Advanced Options: | |
| Prologue.ps & Epilogue.ps | |
| Allow PS to Override Job Options | X |
| Preserve Level 2 Semantics | X |
| Save Job Ticket | X |
| Illustrator Mode | X |
| Gradients to Smooth Shades | X |
| ASCII Format | |
| Process DSC Comments | X |
| Log DSC Warnings | |
| Resize for EPS | X |
| Preserve EPS Info | X |
| OPI Comments | X |
| Preserve Doc Info from DSC | X |

[1] You must check the license(s) for any font(s) you intend to embed, to verify that embedding is allowed. In some cases, the program will warn you if a font is not licensed for embedding, but this varies by vendor. Fonts must be embedded to comply with NARA guidelines.

### *2.7 Use of Color*

The NRC discourages the use of color because it significantly increases file size. If the use of color adds no value to the understanding of the information presented, its use should be avoided. If color is required to make the document understandable, its limited use is acceptable. Examples of color documents that meet this criteria are graphs, bar-charts, and engineering drawings that depend exclusively on the differences in color to understand the information and data being presented.

### *2.8 Files With Special Printing Requirements*

Documents that contain electronic files with special printing requirements, such as requiring the use of a plotter or other special equipment to print, oversize drawings or graphics that require a paper size larger than 11 inches by 17 inches, or other enhancements such as 3D images, etc., may only be submitted electronically via CD–ROM as separate files. If special software components (*e.g.*, printer drivers) are necessary, include those components, their configuration parameters, and any hardware configuration requirements on the same CD–ROM.

### *2.9 File Linkages*

Files containing objects (*e.g.*, pictures, tables, spreadsheets, and images of text) using link protocols such as Object Linking and Embedding (OLE), Dynamic Data Exchange (DDE), or any other object linking between electronic files are not practicable for the NRC to accept because the relationships among links in multiple file submissions are lost when captured in ADAMS or other agency electronic recordkeeping systems. However, links within a single electronic PDF file are acceptable.

### *2.10 Viruses*

Files received by the NRC will be checked for viruses prior to acceptance. Any submission identified as having a virus will be rejected and returned to the submitter with an explanation of why the submittal was rejected.

### *2.11 Macros*

Macros in files such as Microsoft® Excel are sometimes detected as viruses. Therefore, the use of macros should be limited because a file identified as having a virus will be rejected and returned to the submitter with an explanation of why the submittal was rejected.

### *2.12 Copyrighted Information*

Submitting information electronically to the NRC shall be deemed to constitute authority for the NRC to place a copy of the information on its public document database and for the NRC to reproduce and distribute sufficient copies to carry out its official responsibilities. NRC use of the information specified herein does not constitute authority for others to use the information outside applicable requirements of copyright law.

### *2.13 Copies*

Licensees and vendors submitting documents via EIE do not need to send confirming hard copies of the electronic documents. In instances where the NRC requires a paper copy for accessibility or other reasons, it will make every effort to produce the copy using NRC resources. However, in those instances where the agency is unable to successfully generate an accurate paper copy from the electronic submittal, the NRC may require a paper copy from the submitter. This will be handled on a case-by-case basis.

Many NRC regulations require submission of copies of documents to multiple NRC locations (*e.g.*, Headquarters, Regional Offices, etc.). This practice continues for submissions that are made on CD–ROM. However, only a single copy of the CD–ROM is required to be submitted to each location.

Submissions made via EIE do not require submission to multiple locations.

### *2.14 Segmentation of Large Documents*

Submitters should use the CD–ROM method of transmission (Section 4.0) for documents with file sizes greater than 50MB. Divide the document into file segments of 50MB or less at logical breakpoints such as:

a. Chapters.
b. Sections.
c. Subsections.
d. Appendices.
e. Exhibits or attachments.
f. Charts, tables, or formulae.
g. For large transcripts, the end of a witness' testimony or session recess.

If the recommended file size cannot be achieved, consider moving the graphics (which are often large files) to an appendix or attachment. Any graphic or other large object that exceeds the 50MB limit and that cannot logically be divided should not be segmented.

**Note:** Oversize drawings and other files with special printing requirements (Section 2.8), regardless of the file size, should be provided on CD–ROM.

Additionally, small-size files are problematic as well. Large volumes of files require significant resources to capture and profile in electronic document management systems. Therefore, the NRC encourages submitters to combine files that are components of larger documents to create larger files that can be more economically and efficiently managed.

When CD–ROMs are submitted, use electronic folders to organize the contents at the chapter level consistent with the file name guidance outlined in Section 2.2. The numeric portion of the file name should be sequential across all folders. This means:

- Each chapter must have its own folder which should then contain all files associated with that Chapter, including sections, subsections, and graphics (either embedded within those sections/subsections or provided separately).
- The sections/subsections should be placed in logical sequential order within a folder.
- Separate folders may be created for appendices, exhibits, or attachments. Each item should have the file name reflect the folder where it resides, if practical, in conjunction with complying with the file name guidance in Section 2.2.

If multiple CD–ROMs are submitted, place the Table of Contents for the entire submission on each CD–ROM in a multi-set submission.

### *2.15 Sensitive or Non-Public Documents*

Documents containing information that is deemed sensitive unclassified, specifically Proprietary Information (*e.g.*, trade secrets, privileged, or confidential commercial or financial information), personal privacy information, or other Official Use Only information, may be submitted electronically via EIE or on CD–ROM. Documents containing Classified Information (*i.e.*, National Security Information and Restricted Data) and Safeguards Information may be submitted electronically only on CD–ROM, but not via EIE or e-mail. (*See* sections 3.9 and 4.3.1.)

## 3.0 Guidance for EIE Submissions

### *3.1 Who Can Participate*

Applicants, licensees, external entities (including Federal, State, and local governments), vendors and members of the public who submit documents to the NRC may do so via EIE. The EIE is designed to ensure that electronic documents can be transmitted via the Internet in a secure and unalterable manner. Submittals such as those that are required to be submitted under oath or affirmation may be safely transmitted via EIE. Applicants, licensees, vendors, etc., must designate individuals who will have the responsibility for originating, signing, or sending documents to the NRC in compliance with regulatory requirements.

### *3.2 What Can Be Submitted*

Documents may be submitted via EIE *except as noted in section 1.3.1.A.* and must qualify according to the following criteria:

- The file format is PDF and/or an acceptable spreadsheet format—*See* Section 2.1, and
- The entire submission is less than 50MB.

### *3.3 How To Register*

The NRC provides for overall administration of the EIE process through the designated Local Registration Authority (LRA). The LRA creates and maintains an Authorized Certificate List (ACL) consisting of authorized internal and external EIE participants. Each participant must send an ACL containing the name and e-mail addresses of individuals who will be submitting digitally signed documents to the NRC. The ACL must be sent to the NRC in a signed paper form to the following address: Local Registration Authority (T6 C30), Electronic Information Exchange, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Upon receipt of the ACL, the NRC will e-mail to each individual named a unique personal identification number (PIN) to be used in applying for a digital certificate. Once received, the digital certificate will then enable individual users to digitally sign documents and submit them in a secure manner. The PIN number will be sent approximately 3 to 5 business days after receipt of the ACL. Participants may add or delete names from the ACL by written notification to the NRC using the above address. The LRA will use the ACL to validate authorized individuals requesting digital signature certificates. The LRA may be contacted via e-mail at *EIE@nrc.gov*.

### *3.4 What Is Needed To Participate*

Participating individuals in the EIE initiative may use their existing workstations with standard desktop configuration. The recommended workstation configuration requires a Pentium 133 MHZ (or higher) with a minimum of 32 MB of RAM, 20 MB of available disk space, and access to the World Wide Web (Web) through an Internet Service Provider (ISP). The operating system should be either Windows NT/2000 or Windows 95 (or higher). In addition, each workstation must be equipped with browser software, consisting of either Netscape Navigator or Communicator (version 4.6 or higher) or Microsoft Internet Explorer (version 5.0 or higher). Other browser types, such as AOL or Mosaic, are not currently supported for use in the EIE system.

To utilize EIE, each individual must obtain a digital signature certificate (Digital ID) in order to digitally sign and submit the form used to transmit documents and to access the EIE external server to retrieve documents as needed. (*See* Section 3.5 of this guidance document.) Additionally, there is a software plug-in that must be downloaded and installed. Each process and step required to set up a computer or workstation to use EIE is described in the sections below. The processes and steps described are specific to both Netscape Navigator/Communicator 4.6 or higher and Microsoft Internet Explorer 5.0 or higher.

### *3.5 How To Obtain a Digital Signature Certificate*

To obtain a Digital ID, authorized participants must first complete and submit an enrollment form. VeriSign, Inc. acts as the NRC's Certificate Authority (CA) and provides the NRC with a Digital Certificate (ID) enrollment page on its Web site. The NRC provides VeriSign Onsite Digital Certificates (ID's) at no cost to participants. The steps for obtaining a Digital Certificate are provided on the EIE home page at *http://www.nrc.gov/site-help/eie.html*. After accessing the EIE home page, click on the "Request/Retrieve Certificate" hyperlink and follow the step-by-step prompts.

### *3.6 How To Obtain Software Plug-ins*

To utilize the EIE system, users must download and install one software plug-in. The software plug-in can be obtained from the EIE home page on the NRC Web site at *http://www.nrc.gov/site-help/eie.html*. The specific plug-in required is the Internet Form Viewer, which is a required plug-in regardless of the browser used. To successfully download and install the plug-in, simply go to the EIE home page and click on the "EIE Start Up" hyperlink and follow the step-by-step procedures provided.

### *3.7 How To Submit Documents*

Documents eligible for submission to the NRC are restricted to specific formats. No documents with special attributes (*e.g.*, documents with special printing requirements, such as requiring the use of a plotter or other special equipment to print, or other enhancements such as 3D images, etc.) will be accepted via EIE. The acceptable formats for electronic submission via EIE are listed in section 2.1 above. The submission of documents to the NRC using EIE will require the use of the NRC's EIE form. The EIE form is a document based on Extensible Mark-up Language (XML). It allows participants to sign, enclose, submit, and verify documents via the Internet. The document to be submitted or transmitted must be presented as an enclosure to the form. The form can be accessed by going to the NRC Web site at *http://www.nrc.gov/site-help/eie.html*. Once there, select either the

“Submit” or “Retrieve” hyperlink to access the form.

Once the form is displayed, users will need to fill in the fields on the form and attach the document(s) for submission to the NRC. Once the fields have been filled in and the intended documents are attached, the form must be digitally signed.

Documents submitted electronically using EIE do not need to be digitally signed by the author(s). They may be digitally signed by the person who transmits them, but the author(s) are accountable for the content of the document(s) submitted. Generally, the persons who will digitally sign documents and transmit them electronically to the NRC are the same persons who currently dispatch licensing documents through the mail to the NRC. Licensees and vendors submitting documents via EIE do not need to send confirming hard copies of the electronic documents.

NRC regulations require that some documents be filed under oath or affirmation. There are currently two acceptable methods for providing this oath using the EIE processes.

1. Documents requiring oath or affirmation may use EIE to digitally sign the affirmation on the document. Using this process, the document must conclude with a statement to this effect: “I declare under penalty of perjury that the foregoing is true and correct. Executed on [date]”.

*The electronic document must be digitally signed by the person affirming this statement.* This person may then transmit the document directly to the NRC using EIE or may forward the document to someone else for transmission to the NRC. In the latter case, the transmitter must also sign the document to authorize the electronic transmission.

Except as set forth below, multiple documents requiring individual digital signatures by different persons cannot be sent in a single EIE transmission. The current EIE process only allows two persons to digitally sign a single transmission. Therefore, the NRC recommends that the method described below in item 2 be used for submissions that require multiple oath and affirmations.

**Note:** When digitally signing a document, the submitter is actually digitally signing the transmission form, not the document. Signing the form is the equivalent of signing the document.

2. Oath or affirmation affidavits may also be created in hard copy and physically signed. The original paper copy may then be scanned to create a PDF Searchable Image (Exact) file of the original signature page. This page, with the rest of the PDF file of the entire attachment, may then be submitted via EIE.

**Note:** Although there are other methods available to electronically sign documents using wordprocessing and other software, these are not currently acceptable for use in signing documents for submission to the NRC because they do not provide the levels of authentication, certification, and non-repudiation that are present in the EIE process.

Documents transmitted to the NRC electronically using EIE will be time- and date-stamped when the last bit of the transmittal is received by the EIE server. The time and date of the transmission will become part of the record in the NRC's Agencywide Documents Access and Management System (ADAMS). The transmitter will be e-mailed a notice of receipt of the document. The notice will include the time and date the transmission was received at the NRC.

Submission of documents via EIE satisfies agency submittal requirements. The submitter need not send additional copies to NRC regions or other agency offices.

For more detailed information and step-by-step procedures on how to submit documents to the NRC using EIE, see the “EIE Submittal Procedures” on NRC's Web site at *http://www.nrc.gov/site-help/eie.html.*

### *3.8 Where To Submit Documents*

Documents submitted using EIE are automatically sent to the NRC Document Processing Center for processing into ADAMS. No additional information is necessary, except for submissions intended for a Region. Submissions intended for the Regions should have the Region(s) listed in the comment box contained on the submission form.

### *3.9 Sensitive or Non-Public Documents*

Documents containing information that is deemed sensitive unclassified, specifically Proprietary Information (*e.g.* trade secrets, privileged, or confidential commercial or financial information), personal privacy information, or other Official Use Only information, may be submitted electronically via EIE. Documents containing Classified Information (*i.e.*, National Security Information and Restricted Data) and Safeguards Information may not be submitted electronically via EIE.

Submissions made via EIE that contain non-public information must be clearly marked with the appropriate designation (*i.e.*, Proprietary Information, Privacy Act Information, or Official Use Only Information). When submitting documents via EIE that contain both publicly and non-publicly available files, all of the files should be clearly marked.

### *3.10 Additional User Assistance (References and Contact Information)*

Additional information, as well as detailed user guides can be obtained from NRC's Web site at *http://www.nrc.gov/site-help/eie.html.*

Should you have any questions, please contact the Local Registration Authority (LRA) at 301–415–6030 or by e-mail at *EIE@nrc.gov.*

## 4.0 Guidance for CD–ROM Submissions

### *4.1 Who Can Participate*

This guidance is intended for licensees, applicants, external entities (including Federal, State, and Local governments), vendors, and members of the public who submit documents to the NRC.

### *4.2 What Can Be Submitted*

Documents may be submitted via CD–ROM *except as noted in section 1.3.1.B.* above. As mentioned in Section 1, there are also documents that should only be submitted using CD–ROM, such as large documents exceeding 50MB and documents that contain special printing requirements. Documents containing Classified Information (*i.e.*, National Security Information and Restricted Data) and Safeguards Information may only be submitted electronically on CD–ROM and not via EIE or e-mail.

### *4.3 How To Submit CD–ROMs to the NRC*

Each electronic submission made on CD–ROM must be transmitted by a signed letter in paper format (see transmittal letter example below). On the first page of the transmittal letter, submitters should include the following information, if applicable:

- Organization or Individual Name/Address (Author).
- Docket Number (050–00XXX, 030,XXXXX, 110,XXXXX).
- Subject Line (a non-sensitive, brief, descriptive narrative of the subject of the submission that should include any relevant regulation upon which the submission is based).
- Any requests for withholding from public disclosure in accordance with 10 CFR 2.790.

On the last page of the transmittal letter, submitters should provide:

- The name, mailing and e-mail addresses, and phone number of a contact person who can resolve discrepancies, if any, in document submissions.
- A complete listing of the document components (electronic files and/or physical objects) that make up the submission. The components should be listed in the order in which they appear in the document. CD–ROM submissions that require multiple CD–ROMs to transmit all of the document components should indicate the total number of CD–ROMs included in the submission.

Each of the listed components should indicate the following information:

- The file name (as defined in Section 2.2, including file extension).
- The size of the file.
- Sensitivity level (*e.g.*, publicly available, proprietary, classified, *etc.*).
- A non-sensitive description of all non-document components (*e.g.*, digital image, *etc.*) in the format illustrated by the example below.

In addition, If there are any special instructions regarding the use of the CD–ROM (*e.g.*, how to open the files, access the publication, *etc.*), include them as part of the transmittal letter.

For electronic submissions via CD–ROMs that contain Classified Information (*i.e.*, National Security Information and Restricted Data), sensitive unclassified information, or non-public documents, additional requirements apply as described in sections 4.3.1 and 4.3.5.

Transmittal Letter Example

Author
United States Department of Energy
Office of the General Counsel
Hearing Division
Washington, DC 20585
September 18, 2005
[Docket WM–00011 (PRE)]

United States Nuclear Regulatory Commission
Atomic Safety and Licensing Board
Attn: Document Control Desk
11555 Rockville Pike
Rockville, MD 20852

Subject

Enclosed is DOE's Response to Interrogatories Related to Quality Control Procedures.

Request to Withhold From Public Disclosure

The file named "004 Figure 371 Plan View Main Excavation.pdf" contains business proprietary information and the USDOE requests that this file be withheld from public disclosure.

Contact

Name: Saranne Smith
Mailing Address: Hearing Division, US Department of Energy, Washington, DC 20585
E-Mail Address: *SESSmith@usdoe.gov*
Phone Number: 202–555–1111

Document Components:

A total of two (2) CD–ROMs are included in this submission. The CD–ROM labeled "DOE03–001 Evaluation Quality Control Parts 1, 2, and 3—Non-publicly Available" contains the following four (4) files:

001 Evaluation Quality Control (1 of 3).pdf 48,321,678 bytes, publicly available
002 Evaluation Quality Control (2 of 3).pdf 47,421,178 bytes, publicly available
003 Evaluation Quality Control (3 of 3).pdf 49,223,167 bytes, publicly available
004 Figure 371 Plan View Main Excavation.pdf 101,175,297 bytes, proprietary

The CD–ROM labeled "DOE03–002 Evaluation Quality Control Parts 1, 2, and 3—Publicly Available" contains the following three (3) files:

001 Evaluation Quality Control (1 of 3).pdf 48,321,678 bytes, publicly available
002 Evaluation Quality Control (2 of 3).pdf 47,421,178 bytes, publicly available
003 Evaluation Quality Control (3 of 3).pdf 49,223,167 bytes, publicly available

Non-Document Description Example

Figure 371 Plan View Main Excavation

This single page, over-sized engineering drawing is referenced in "Evaluation Quality Control" part 2 of 3. The drawing is done in 6 colors and is useful when printed using 24" by 36" paper stock or viewed on a large high resolution monitor using PDF reader software. It has been scanned at 300 dpi resolution and output in PDF 1.3 using the Image Only option. Figure 371 is one of four (4) files on the CD–ROM labeled "DOE03–001 Evaluation Quality Control Parts 1, 2, and 3—Non-publicly Available" and is located as the fourth file on the CD–ROM.

Sincerely,
J. Doe, Attorney for DOE

cc: Provide list of parties served

### 4.3.1 Sensitive or Non-Public Documents

Documents containing information that is deemed sensitive unclassified, specifically Proprietary Information (*e.g.* trade secrets, privileged, or confidential commercial or financial information), personal privacy information, or other Official Use Only information, may be submitted electronically on CD–ROM. Documents containing Classified Information (*i.e.*, National Security Information and Restricted Data) and Safeguards Information may also be submitted electronically on CD–ROM.

Submissions made on CD–ROM must be accompanied by a transmittal letter (*see* section 4.3) that contains information regarding the sensitivity level of the transmitted documents. This letter should contain a listing of each file contained in the submission, with a description and the sensitivity for each file clearly marked.

When submitting documents via CD–ROM that contain both publicly and non-publicly available files, all of the files should be included on a CD–ROM. In addition, a separate CD–ROM must be provided that contains only the publicly available files. Each CD–ROM must be clearly labeled indicating its availability. Files contained on CD–ROMs labeled as "Publicly Available" will be released to the public.

CD–ROMs containing Classified Information must be processed and produced on systems approved under the provisions of 10 CFR 95.49. Each CD–ROM must be clearly labeled as containing classified information.

The mailing package containing CD–ROMs with documents containing Proprietary, personal privacy, or Official Use Only Information must be marked and transmitted in accordance with the requirements set forth in 10 CFR 2.790(b). Packages containing Safeguards Information must comply with the requirements of 10 CFR 73.21(e), 73.21(g), and 73.21(h), as appropriate. CD–ROMs containing Classified Information (*i.e.*, National Security Information or Restricted Data) must be packaged and submitted to the NRC in accordance with the requirements contained in 10 CFR 95.37, 95.39, and 95.41.

### 4.3.2 Oath or Affirmation

NRC regulations require that some documents be filed under oath or affirmation. There are currently two acceptable methods for providing this oath if such a document is submitted on CD–ROM.

1. Documents requiring oath or affirmation submitted on CD–ROM must include the following statement on either the transmittal letter or the first page of the document contained on the CD–ROM and must contain the signature of the person swearing to the accuracy of the information submitted: "I declare under penalty of perjury that the foregoing is true and correct. Executed on [date]".

If the oath or affirmation is submitted on the transmittal letter, it must contain the original signature of the person swearing to the accuracy of the information. If submitted as part of the document contained on the CD–ROM, the page containing the signature must be provided as a scanned PDF Searchable Image (Exact) file along with the PDF version of the entire document being submitted.

2. Oath or affirmation affidavits may also be created in hard copy and physically signed. The original paper copy may either be submitted along with the transmittal letter and CD–ROM, or can be scanned to create a PDF Searchable Image (Exact) file of the original signature page which may be submitted on the CD–ROM with the rest of the PDF file of the entire attachment. NOTE: The transmittal letter should indicate that a separate affidavit is being provided as part of the submittal package.

### 4.3.3 Living Documents

Many large documents historically submitted to the NRC have been maintained as living documents and have used a page-replacement approach for update. Paper submissions can still use this approach for providing updates to living documents.

In the electronic environment, this approach is not practicable. Consequently, if a submitter chooses to make electronic submission of these documents, all subsequent updates must be submitted as total replacements. The updated version must include a list of changed pages and each changed page must include both a change indicator for the area changed (for example, a bold line vertically drawn in the margin adjacent to the portion actually changed) and a page change identification including either the date of change, change number, or both.

### 4.3.4 CD–ROM File Format

The acceptable file formats are stated in Section 2.1. However, for text-oriented documents, the preferred file formats are Portable Document Format (PDF) Formatted Text and Graphics and PDF Searchable Image (Exact). PDF Image Only is preferred for submission of graphic\image documents. PDF files should be scanned at the resolutions stated in Section 2.5 of this document.

Large documents made up of multiple files, folders, etc., often require the inclusion of a search engine on the CD–ROM to facilitate navigation, search, and retrieval of the document. The inclusion of the search engine enables the user to access the material contained on the CD–ROM without having to rely on other software in the user's resident environment. The NRC encourages the inclusion of these search engines to facilitate the use of the materials in stand-alone mode. However, only those products that do not require the end-user to purchase a license to use the products are acceptable.

### 4.3.5 Packaging/Labeling

When submitting documents that contain both publicly and non-publicly available files, all of the files should be included on a CD–ROM. In addition, a separate CD–ROM must be provided that contains only the publicly available files. Each CD–ROM must be clearly labeled indicating its availability. CD–ROMs labeled as "Publicly Available" will be released to the public (sent to the Public Document Room, where they are available for inspection and copying). The mailing package containing CD–ROMs with documents comprised of Proprietary, personal privacy, or Official Use Only Information must be marked and transmitted in accordance with the requirements set forth in 10 CFR 2.790(b). Packages containing Safeguards Information must comply with the requirements of 10 CFR 73.21(e), 73.21(g), and 73.21(h), as appropriate. CD–ROMs containing Classified Information (*i.e.*, National Security Information or Restricted Data) must be packaged and submitted to the NRC in accordance with the requirements contained in 10 CFR 95.37, 95.39, and 95.41.

Subsequent to the events of September 11, 2001, much of the incoming mail addressed to the Federal government is irradiated prior to delivery. Irradiation of CD–ROMs containing electronic information may result in damage to the media and its contents. Therefore, packages containing CD–ROM submissions should be clearly marked "CONTENTS CONTAIN CD–ROMs. DO NOT IRRADIATE."

#### 4.3.6 Copies

Many NRC regulations require submission of copies of documents to multiple NRC locations (*e.g.*, Headquarters, Regional Offices, etc.). This practice continues for submissions that are made on CD–ROM. However, only a single copy of the CD–ROM is required to be submitted to each location.

#### 4.3.7 Rejection of Submissions

It is not practicable for the NRC to accept:

- Any submission that contains a virus.
- Files submitted that are compressed.
- File formats other than those listed in Section 2.1, except submittals may also contain other forms of electronic information including data files, computer models, and video or audio clips.
- CD–ROMs that contain both publicly and non-publicly available files on a single CD, unless a second CD with only publicly available information is also provided.
- CD–ROMs containing OLE (Object Linking and Embedding), DDE (Dynamic Data Exchange), or any other object linking.
- Any inconsistencies, including omissions, between the transmittal letter and the files or physical objects received.

### *4.4 Where To Submit the CD–ROMs*

Send CD–ROMs with transmittal letter to the mailing address specified in the regulation, order, or other document governing the submission of that particular application, report or correspondence. CD–ROMs containing Classified Information (*i.e.*, National Security Information and Restricted Data) must be marked in accordance with 10 CFR 95.37 and mailed to the appropriate NRC Classified mailing address. (*See* 10 CFR part 73, appendix A for a listing of addresses.)

### *4.5 Additional User Assistance (References and Contact Information)*

Information can be found by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*. Under the heading "Related Information," find the section "CD–ROM Submittal Procedures."

For assistance or to discuss problems with making CD–ROM submissions of electronic filings, contact the Document Processing Services Section at 301–415–2488 during the NRC's normal business hours (7:30 a.m. to 4:15 p.m. eastern time) or e-mail *EIE@nrc.gov*.

## 5.0 E-Mail Submissions

### *5.1 Who Can Participate*

This guidance is intended for licensees, applicants, external entities (including Federal, State, and local governments), vendors and members of the public who submit documents to the NRC.

### *5.2 What Can Be Submitted*

Documents (except for communications with States and other Federal agencies) submitted by e-mail, including the text of the e-mail, should contain only information that could be made available to the public and may be used for:

- Rulemaking petitions and comments in rulemaking proceedings.
- Requests for enforcement action under 10 CFR 2.206, which may be sent to *2206PETITIONS@NRC.GOV*.
- All Freedom of Information Act (FOIA) and Privacy Act requests and appeals may be submitted electronically by e-mail. However, e-mail requests may not reveal personal privacy information.
- Responses to **Federal Register** Notices or other agency communications where NRC has provided a specific e-mail address.

Multiple document attachments are acceptable, but the e-mail cannot exceed the 10MB size limitation, and the e-mail must include the required information as listed in section 5.4.

In addition, the NRC provides a listing of contacts on the NRC Web site at *http://www.nrc.gov* that can be used for a variety of e-mail communications to the agency by selecting "Contact Us" from the home page. Documents can be submitted by e-mail for the purposes identified on the Web site, and should be sent to the specific e-mail address provided for each form of communication.

#### 5.3 Rejection of Submissions

File submissions that do not meet the parameters outlined in this document, especially as outlined in Section 2.0, will be rejected and will require re-submission. If the e-mail (with attachments) exceeds the 10MB size requirement or contains a virus, the sender will receive an automated "Undelivered Mail" notice stating the reason for the delivery rejection.

If the documents do not comply with other file parameters outlined in section 2.0 (*e.g.*, unknown file format, compressed files, incorrect naming convention, corrupt/unreadable file or if it contains macros identified as potential viruses), the intended recipient may notify the addressee to re-submit the document(s). Finally, the body of the e-mail message/text must include the required information as listed in section 5.4.

### *5.4 How To Send E-Mail*

Files sent via e-mail must be sent as an attachment to the e-mail message in order to retain the original formatting of the document(s). The e-mail message must include the name of a contact person who can respond to questions about the submission, along with the contact person's daytime phone number, mailing, and e-mail address. The e-mail must also identify/describe each document attached to the e-mail message. The format used to generate each of the identified file(s) must also be listed.

### *5.5 Where To Submit E-Mail*

E-mail may be addressed to either specific individuals named as contacts or to the office specified in the regulation or communication specific to the document(s) being submitted, to addresses the NRC Web site provides for individual program offices or specific agency functions or services, or to the Office of Public Affairs. Individual program offices may be contacted by using the addresses found at the NRC Web site at *http://www.nrc.gov*, and selecting "Contact Us" from the home page. The Office of Public Affairs may also be contacted through the "Contact Us" page or at *OPA@nrc.gov*. The Office of the Secretary of the Commission may be contacted at *2206PETITIONS@NRC.GOV* for 2.206 petitions (use upper case where indicated). The sender will not be e-mailed a confirmation of receipt of the submission.

## 6.0 Facsimile (Fax) Submissions

### *6.1 Who Can Participate*

This guidance is intended for licensees, applicants, external entities (including Federal, State, and local governments), vendors and members of the public who submit documents to the NRC.

### *6.2 What Can Be Submitted*

Documents (except for communications with States and other Federal agencies) submitted by fax should contain only information that could be made available to the public and may be used for:

- Rulemaking petitions and comments in rulemaking proceedings.
- Requests for enforcement action under 10 CFR 2.206.
- All Freedom of Information Act (FOIA) and Privacy Act requests and appeals may be submitted electronically by facsimile. However, requests submitted by fax may not reveal personal privacy information.
- Responses to **Federal Register** Notices or other agency communications where NRC has provided for response by fax.
- Responses to NRC licensing-related questions.
- Information from export/import license applicants and licensees.

### *6.3 How To Send Facsimiles (Faxes)*

Faxes must include the name of a contact person who can respond to questions about the submission, along with the contact person's daytime phone number and mailing or e-mail address.

### *6.4 Where To Submit Facsimiles (Faxes)*

The NRC has established centralized receipt points (see listing of fax locations provided in section 6.5) for official submissions transmitted by fax at each of the Regional Offices and at NRC Headquarters. All official transmissions should be sent to one of these official receipt points to ensure that they are captured as official records of the agency.

### *6.5 Facsimile Locations and User Assistance*

| Location | Fax No. | User Assistance and Verification |
|---|---|---|
| Headquarters (24-Hour Operation) | 301–415–7010 or 301–415–7020 | 301–415–7000. |
| Office of International Programs | 301–415–2395 | 301–415–1787. |
| Freedom of Information Act and Privacy Act Officer | 301–415–5130 | 301–415–7169. |
| Region 1 | 610–337–5324 | 610–337–5270. |
| Region 2 | 404–562–4900 | 404–562–4827. |
| Region 3 | 630–515–9915 | 630–829–9556. |
| Region 4 | 817–860–8210 | 817–860–8100. |

## 7.0 Additional Resources

### 7.1 User Assistance

To obtain general information about accessing documents filed electronically (viewing, printing, and downloading), contact the NRC Public Document Room (PDR) during business hours.

You may contact the PDR librarians by any of the following means:

*Telephone:* 1–800–397–4209 or 301–415–4737.

*TTY (hearing impaired):* 1–800–635–4512.

*Facsimile:* 301–415–3548.

*E-mail: pdr@nrc.gov.*

*U.S. Mail:* Public Document Room, (O1F13), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

*Onsite at the PDR:* One White Flint North, 11555 Rockville Pike (first floor), Rockville MD.

*Hours of PDR operation:*

Reading Room: 7:45 a.m.—4:15 p.m. eastern time, Federal workdays.

*Telephone Service:* 8:30 a.m.—4:15 p.m., eastern time, Federal workdays.

### 7.2 References

NRC, EIE Web site; *http://www.nrc.gov/site-help/eie.html.*

The Code of Federal Regulations, Title 10—Energy *http://www.nrc.gov.* Select "Code of Federal Regulations" from the Index found on the home page.

Freedom of Information Act, 5 U.S.C. 552.

Privacy Act, 5 U.S.C. 552a.

[FR Doc. 03–25246 Filed 10–9–03; 8:45 am]

**BILLING CODE 7590–01–P**

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

# Federal Register

**Friday,**
**October 10, 2003**

## Part IV

## Environmental Protection Agency

**40 CFR Part 60**
**Update of Continuous Instrumental Test Methods; Proposed Rule**

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 60**

**[OAR–2002–0071; FRL–7566–8]**

**RIN 2060–AG21**

## Update of Continuous Instrumental Test Methods

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** We, the Environmental Protection Agency, are proposing to amend five instrumental test methods that are used to measure air pollutant emissions from stationary sources. The intended effect of this rule is to harmonize, simplify, and update the test methods. The methods were originally developed for specific industry applications but have since been adapted to general testing applications. These proposed revisions would remove inconsistencies in equipment and performance specifications so each method would be similar in these respects and have expanded applicability. We are also proposing to add helpful calculation procedures, quality assurance recommendations, and provisions for sampling at low concentrations. A large number of industries are already subject to the provisions requiring the use of these methods. Some of the affected industries and their Standard Industrial Classification codes are listed under **SUPPLEMENTARY INFORMATION.**

**DATES:** *Comments:* Submit comments on or before December 9, 2003.

*Public Hearing:* If anyone contacts us requesting to speak at a public hearing by October 27, 2003, we will hold a public hearing on November 10, 2003.

**ADDRESSES:** *Comments.* Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** By U.S. Postal Service, send comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number OAR–2002–0071, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: EPA Docket Center, Attention Docket ID No. OAR–2002–0071, EPA West, Room 108, 1301 Constitution Ave., NW., Washington, DC 20460. We request that a separate copy also be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

*Public Hearing.* If a public hearing is held, it will be held at 10 a.m. in the EPA Auditorium, Research Triangle Park, North Carolina, or at an alternate site nearby.

*Docket.* Docket No. OAR–2002–0071, contains information relevant to this rule. You can read and copy it between 8:30 a.m. and 5:30 p.m., Monday through Friday, (except for Federal holidays), at the U.S. Environmental Protection Agency, EPA Docket Center, EPA West, Room 108, 1301 Constitution Ave., Washington, DC 20004; telephone (202) 566–1742. The docket office may charge a reasonable fee for copying.

**FOR FURTHER INFORMATION CONTACT:** Foston Curtis or Terry Harrison, Emission Measurement Center, Mail Code D205–02, Emissions, Monitoring, and Analysis Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541–1063 or 5233; facsimile number (919) 541–0516; electronic mail address *curtis.foston@epa.gov* or *harrison.terry@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

### *A. Affected Entities*

Entities potentially affected by this action include those listed in Table 1.

TABLE 1.—ENTITIES POTENTIALLY AFFECTED BY THIS ACTION

| Examples of regulated entities | SIC codes | NAICS codes |
|---|---|---|
| Fossil Fuel-Fired Steam Generators | 3569 | 332410 |
| Industrial, Commercial, Institutional Steam Generating Units | 3569 | 332410 |
| Municipal Waste Combustors | 3567 | 562213 |
| Hospital, Medical, Infectious Waste Incinerators | 3567 | 562211 |
| Petroleum Refineries | 2911 | 324110 |
| Stationary Gas Turbines | 3511 | 333611 |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

### *B. How Can I Get Copies of This Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OAR–2002–0071. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, (EPA/DC) EPA West, Room 108, 1301 Constitution Ave., NW., Washington, DC 20460; telephone (202) 566–1742. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket, visit EPA Dockets online or *see* 67 FR 38102, May 31, 2002.

### *C. How and To Whom Do I Submit Comments?*

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. However, late comments may be considered if time permits.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. OAR–2002–0071. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epamail.gov,* Attention Docket ID No. OAR–2002–0071. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket.

iii. *Disk or CD–ROM.* You may submit comments on a disk or CD–ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send duplicate copies of your comments to: "Update of Continuous Instrumental Test Methods," Environmental Protection Agency, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OAR–2002–0071.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, EPA West, Room 108, 1301 Constitution Ave., NW., Washington, DC 20460, Attention Docket ID No. OAR–2002–0071. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.B.1.

4. *By Facsimile.* Fax your comments to: 202–566–1741, Attention Docket ID No. OAR–2002–0071.

### *D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Only send or deliver information identified as CBI to the docket address to the attention of Docket ID No. OAR–2002–0071. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

### *E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

### Background

Methods 3A, 6C, 7E, 10, and 20 are instrumental test methods for determining diluent (oxygen and carbon dioxide), sulfur dioxide, nitrogen oxides, and carbon monoxide emissions from stationary sources. The methods were developed for boilers, electric utility plants, refinery catalytic cracking catalyst regenerators, and gas turbines covered under the New Source Performance Standards (NSPS) in 40 CFR part 60. They were later adopted into the Acid Rain regulations and State and regional programs. The test methods were not developed at the same time and do not contain consistent equipment and performance requirements. Currently, some methods require more up-to-date equipment than others and some have more stringent performance requirements than others. These dissimilarities have hampered the current trend of using the methods together in the field. We are proposing to make collective changes that would render the methods easier to use by harmonizing their requirements. This would also update obsolete requirements and add flexibility by allowing alternatives to various equipment and performance specifications. The revisions we are proposing to the data reduction procedures would increase the certainty of the generated data.

On August 27, 1997 (62 FR 45369), many of the updates of this action were proposed with a larger action that amended the stationary source testing and monitoring rules in 40 CFR parts 60, 61, and 63. In that proposal, minor revisions and updates were made and all test methods and performance specifications were revised into the new Environmental Monitoring Management Council (EMMC) format. Several commenters asserted that the preamble gave inadequate notice of the changes we were making to the instrumental methods. They argued that the proposal provided an inadequate basis and purpose statement and that it misled readers into thinking that no substantive changes were being made to the methods. Due to the large number of changes we were making in the regulations at that time, and in light of the section 307(d) requirements, the commenters requested that we address the instrumental method revisions through a separate proposal and not promulgate them with the rest of that package.

We agreed with these commenters concerns and stated our intention in the final rule [65 FR 61744] to repropose the revisions to the instrumental methods as a separate rule. In today's notice, we are proposing to revise equipment and procedures in the instrumental methods where appropriate to make their requirements consistent. We are also rewriting the methods in EMMC format. We have considered the comments we received pertinent to these methods in the August 27 proposal and are summarizing the major ones in this preamble. We will formally address all significant relevant comments from the first proposal in the final notice of these amendments.

*Outline.* The information presented in this preamble is organized as follows:

I. Why Are These Amendments Being Made to the Instrumental Methods?
II. What Changes Are Being Proposed to the Methods?
III. What Major Comments From the Previous Proposal are Pertinent to This Reproposal?
IV. What Statutory and Executive Orders Apply to This Rule?

## I. Why Are These Amendments Being Proposed?

Amendments to Methods 3A, 6C, 7E, 10, and 20 are needed to update their performance requirements to state-of-the-art levels, remove obsolete specifications, harmonize similar requirements, and simplify to enhance their utility and reduce the costs of testing.

## II. What Changes Are Being Proposed to the Methods?

We are proposing that Methods 3A, 6C, 7E, 10, and 20 in appendix A of 40 CFR 60 be revised to: (1) Make their equipment specifications and procedures as similar as possible to make them easier to use together in the field, (2) remove obsolete procedures and equipment listings, (3) add alternative performance tests, and (4) change their outline to conform with the standard EMMC format. We are proposing to base the analyzer calibration error on a percentage of the manufacturer certified gas value and the sampling system bias on a percentage of the applicable emission standard (except in Method 3A) instead of the span. For Method 3A, we are basing the tests on a percentage of the analyzer range. For the current bias test, the span may be chosen over a range of values instead of being a prescribed value. Under this allowance, the higher the span chosen for a test, the easier the performance criterion is met. We are proposing to base the bias test on a fixed value (the emission standard) to eliminate nonuniformity in stringency based on the tester's choice of a span. The calibration drift test that is currently required before and after each run would be dropped. We feel the bias test is a good enough indicator of analytical drift. We are also proposing to redefine the span as the highest concentration of the calibration curve (equivalent to the high-level calibration gas value).

The requirements of Method 10 would be modernized by upgrading many of its requirements to the current level of Methods 3A, 6C, and 7E. The analyzer calibration error test, sampling system bias test, and the calibration gases now required in Methods 3A, 6C, and 7E are being proposed for Method 10.

Methods 3A, 6C, and 10 are being proposed as abbreviated methods that reference Method 7E for much of the detail. Method 7E is being proposed as the full-length descriptive method. To remove the testing duplication between Method 20 and other methods, Method 20 would reference Methods 3A and 6C for diluent and sulfur dioxide measurements. The equations in Method 20 for concentration correction, fuel factor, and emission rate would be moved to Method 7E. Method 20 would exist as a placeholder in order to maintain references to it in State regulation and permit citations.

We are proposing the following specific changes to Methods 3A, 6C, 7E, 10 and 20:

1. Method 10 would incorporate the calibration error test and between-run sampling system bias tests.
2. The performance criteria for bias test would be based on the concentration of the emission standard rather than the span. The requirement to correct the sample concentration for sampling system bias is replaced by a calculation of the run uncertainty.
3. Initial interference tests may be analyzer type-certified by manufacturers. Thereafter, an interference test of major potential interferences would be required at least annually. An alternative interference test would be allowed for Method 6C.
4. Three calibration gases would be required for each test method (Method 10 now requires four gases). The calibration gases would have to be of EPA traceability protocol quality and be in the same concentration ranges as now prescribed in Method 6C.
5. The Method 20 calculations would be moved to Method 7E. Methods 3A and 6C would be referenced for diluent and sulfur dioxide measurements.
6. Method 7E would require an $NO_2$ to NO converter efficiency test before each test for systems that convert $NO_2$ to NO before analysis.
7. Chemiluminescence analyzers would not be the only allowed technology for Method 7E.
8. In Method 10, alternatives to the ascarite and silica gel interference traps would be allowed.
9. A table summarizing quality control measures, performance requirements, and acceptable alternatives would be added.
10. Specific requirements for sampling point selection would be added.
11. Provisions for manufacturer-certification of interference and stability would be added.
12. The methods would be reformatted in the EMMC format.

## III. What Major Comments From the Previous Proposal Are Pertinent to This Reproposal?

The public comments received from the previous proposal have been evaluated and will be addressed comprehensively in the Comments and Responses Document that supplements the final rule following from this proposal. A number of revisions have been made to the proposed methods based on these comments. In this preamble, we discuss the comments that have resulted in significant revisions. Other minor revisions have been made based on specific comments, but these will be addressed later in the Summary of Comments and Responses Document.

Several commenters expressed concern that the proposed calculation of the bias test relative to the applicable emission standard added confusion for tests conducted at facilities not subject to an emission standard. The commenters argued that this new approach would upset market-based program tests and tests where the emission standard is in units other than concentration.

We consider these concerns valid and are now proposing to allow market-based programs to continue to base the acceptance tests on the span. For cases where the emission standard is in units other than concentration, we are proposing a conversion table to help determine a concentration equivalent to the emission standard.

Commenters were both for and against eliminating the calibration drift test. Since the sampling system bias check includes a measurement of analytical drift, we believe the calibration drift test is not necessary. Additionally, the proposed requirements for manufacturer's certification of stability for low-concentration analyzers and the yearly recheck of the analyzer for interferences promotes the use of better and more stable analytical technology.

One commenter noted that there is no carbon dioxide or oxygen emission standard for any source. For this reason, the commenter felt that sampling system bias limits should not be tied to emission limits. We agree with the commenter and are proposing to base the bias test limits in Method 3A on a percentage of the analyzer range instead of a percentage of the emission standard.

One commenter suggested that EPA specify a minimum number of sampling points when there is no applicable regulation. We are adding the Method 1 sampling point specifications in this proposal and allowing the option to conduct a stratification test if fewer sampling points are believed adequate.

Several commenters preferred we replace the requirement to use the high-level gas in the bias test with the option to use either the mid- or high-level gas, depending upon which gas is closer to the stack gas concentration. This proposal has incorporated this recommendation.

One commenter suggested that developing interference data was the responsibility of the instrument supplier, not the tester. The commenter thought the current interference test was excessive, could lead to sloppy work or even falsification of interference data, and limits the range of sources where the method could be used. We have added an allowance for manufacturer certification of instruments, and we are requiring this certification where instruments will be used routinely to measure low (<15 ppm) concentrations. However, we feel that an ongoing program to ensure the instrument is properly maintained and is appropriate for the test facility is still needed. In this proposal we are adding an abbreviated check for major potential interferences, performed after the initial test and at least on a yearly basis, to show that the analyzer remains interference-free. We feel that maintaining the instrument in this way will increase data quality and promote instrument reliability.

Other commenters asked that the interference test be clarified. It was not clear whether the test must be performed with the first sampling event in a State or region, or the first sampling event of the calendar year. Was the test to be repeated if an analyzer undergoes significant maintenance? Would gas, oil, or coal boilers be considered different source types and require separate interference tests? One commenter recommended we consider modifying the requirement by stating that once an interference check is performed on a certain make or model of analyzer, additional checks on that company's same model need not be performed.

This proposal clearly states that the interference test is required for each different source category you test. This is irrespective of the regulatory jurisdiction or calendar year. The test must be repeated at each source category when a major instrument component (*e.g.*, detector) is replaced. Gas-, oil-, and coal-fired boilers would be considered the same source category if the test gas interference check is performed. This procedure challenges the analyzer with a number of potential interference gases. If the Method 6C/Method 6 comparison interference check is used for sulfur dioxide, we feel the potential interference differences among the three boiler types warrants three separate interference tests. However, we are proposing to allow the test gas interference check as an alternative to the Method 6C/Method 6 comparison interference test in Method 6C. We are proposing to allow the instrument manufacturers to type-certify analyzers to fulfill the initial interference test requirement.

Many commenters objected to the proposed bias correction equation and argued it was too complicated. We are proposing to drop the bias correction requirement in favor of calculating the level of uncertainty for a run.

## IV. Statutory and Executive Order Reviews

### *A. Executive Order 12866—Regulatory Planning and Reviews*

Under Executive Order 12866 (58 FR 51735 October 4, 1993), we must determine whether this regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review. We have determined that this regulation would result in none of the economic effects set forth in section 1 of the Order because it does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard.

### *B. Paperwork Reduction Act*

This rule does not impose any information collection burden that requires OMB review and approval under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### *C. Regulatory Flexibility Act*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Entities potentially affected by this action include those listed in Table 1 of section I.A.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We are proposing to amend five instrumental test methods that are used to measure air pollutant emissions from stationary sources. The intended effect of this rule is to harmonize, simplify, and update the test methods. The methods were originally developed for specific industry applications but have since been adapted to general testing applications. These proposed revisions would remove inconsistencies in equipment and performance specifications so each method would be similar in these respects and have expanded applicability. We are also proposing to add helpful calculation procedures, quality assurance recommendations, and provisions for sampling at low concentrations. A large number of industries are already subject to the provisions requiring the use of these methods.

We invite comments on all aspects of the proposal and its impacts on small entities.

### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local, or tribal governments or the private sector. In any event, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

### *E. Executive Order 13132—Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

### *F. Executive Order 13175—Consultation and Coordination with Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. In this proposed rule, we are simply updating five emission test methods that applicable facilities are already subject to. Thus, Executive Order 13175 does not apply to this rule.

### *G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045 applies to any rule that EPA determines (1) is "economically significant" as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045, because it is not based on health or safety risks.

### *H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

### *I. NTTAA—National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113 (15 U.S.C. 272), directs us to use voluntary consensus standards (VCSs) in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, *etc.*) that are developed or adopted by VCS bodies. The NTTAA requires us to provide Congress, through OMB, explanations when we decide not to use available and applicable VCSs. We are not proposing new test methods in this rulemaking but are revising and updating methods that have already been mandated for evaluating compliance with current emission standards. Therefore, NTTAA does not apply.

### List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, New sources, Test methods and procedures, Performance specifications, Continuous emission monitors.

Dated: September 24, 2003.

**Marianne Lamont Horinko,**

*Acting Administrator.*

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend title 40, chapter I of the Code of Federal Regulations as follows:

## PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7411, 7413, 7414, 7416, 7601, and 7602.

### Appendix A—Test Methods [Amended]

2. By revising Methods 3A, 6C, 7E, 10, and 20 to read as follows:

### Appendix A to Part 60—Test Methods

* * * * *

### Method 3A—Determination of Oxygen and Carbon Dioxide Emissions From Stationary Sources (Instrumental Analyzer Procedure)

*1.0 Scope and Application*

What Is Method 3A?

Method 3A is a procedure for measuring oxygen ($O_2$) and carbon dioxide ($CO_2$) in stationary source emissions using a continuous instrumental analyzer. Quality assurance and quality control requirements are included to assure that you, the tester, collect data of known quality. You must document your adherence to these specific requirements for equipment, supplies, sample collection and analysis, calculations, and data analysis.

This method does not completely describe all equipment, supplies, and sampling and analytical procedures you will need but refers to other methods for some of the details. Therefore, to obtain reliable results, you should also have a thorough knowledge of these additional test methods:

(1) Method 1—Sample and Velocity Traverses for Stationary Sources.

(2) Method 3—Gas Analysis for the Determination of Molecular Weight.

(3) Method 4—Determination of Moisture Content in Stack Gases.

(4) Method 7E—Determination of Nitrogen Oxides Emissions From Stationary Sources (Instrumental Analyzer Procedure).

All methods in this list appear in 40 CFR part 60, appendix A.

1.1 Analytes. *What does this method determine?*

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Oxygen ($O_2$) | 7782–44–7 | *See* Discussion in section 1.3. |
| Carbon dioxide ($CO_2$) | 124–38–9 | *See* Discussion in section 1.3. |

1.2 Applicability. *When is this method required?* Method 3A is a requirement in specific New Source Performance Standards, Clean Air Marketing Rules, and State Implementation Plans and Permits where measuring $O_2$ and $CO_2$ concentrations in emissions and performance testing continuous emission monitors at stationary sources is required. Other regulations may also identify its use.

1.3 Data Quality Objectives. *How good must my collected data be?* Refer to section 1.3 of Method 7E.

### *2.0 Summary of Method*

Using continuous or intermittent sampling, you extract a gas sample from the emissions unit under investigation. You then convey the sample to a gas analyzer and measure the concentration of $O_2$ or $CO_2$. You must adhere to the performance requirements to validate your data.

### *3.0 Definitions*

3.1 The Analyzer Calibration Error, Calibration Curve, Calibration Gas, High-Level Gas, Mid-Level Gas, Low-Level Gas, Data Recorder, Gas Analyzer, Interference Check, Measurement System, Response Time, Sampling System, and Sampling System Bias are the same as in sections 3.0 of Method 7E.

### *4.0 Interferences [Reserved]*

### *5.0 Safety*

Refer to section 5.0 of Method 7E.

### *6.0 Equipment and Supplies*

Figure 7E–1 in Method 7E is a schematic diagram of an acceptable measurement system. You must use a measurement system for $O_2$ and $CO_2$ that meets the following specifications for the essential components.

6.1 Sample Probe, Particulate Filter, Heated Sample Line, Sample Line, Moisture Removal System, Sample Pump, Flow Control/Gas Manifold, Sample Gas Manifold, and Data Recorder. You must follow the noted specifications in section 6.1 of Method 7E.

6.2 Analyzer. An instrument that continuously measures $O_2$ or $CO_2$ in the gas stream and meets the specifications in section 13.0.

### *7.0 Reagents and Standards*

7.1 Calibration Gas. *What calibration gases do I need?* Refer to section 7.1 of Method 7E for the calibration gas requirements. You have five options for the calibration gas. The tests for analyzer calibration error and sampling system bias require span, mid-, and low-level gases.

(a) $CO_2$ in nitrogen ($N_2$).
(b) $CO_2$ in air.
(c) $CO_2/SO_2$ gas mixture in $N_2$.
(d) $O_2/SO_2$ gas mixture in $N_2$.
(e) $O_2/CO_2/SO_2$ gas mixture in $N_2$.

7.2 Interference Check. *What reagents do I need for the interference check?* Use the reagents listed in Table 7E–1 of Method 7E to conduct the interference check.

### *8.0 Sample Collection, Preservation, Storage, and Transport*

Emission Test Procedure

8.1 Sampling Site and Sampling Points. You must follow section 8.1 of Method 7E.

8.2 Measurement System Performance Tests. You must follow the calibration gas verification, measurement system preparation, analyzer calibration error test, initial sampling system bias check, response time, Interference Check, and validation of runs procedures in sections 8.2 and 8.3 of Method 7E.

8.3 Sample Collection. Follow the procedures in section 8.4 of Method 7E.

8.4 Validation of Runs. Follow section 8.5 of Method 7E.

### *9.0 Quality Control*

Follow quality control procedures in section 9.0 of Method 7E.

### *10.0 Calibration and Standardization*

Follow the procedures for calibration and standardization in section 10.0 of Method 7E.

### *11.0 Analytical Procedures*

Because sample collection and analysis are performed together (*see* section 8), additional discussion of the analytical procedure is not necessary.

### *12.0 Calculations and Data Analysis*

You must follow the procedures for calculations and data analysis in section 12.0 of Method 7E.

### *13.0 Method Performance*

13.1 The Analytical Range, Sensitivity, Analyzer Calibration Error, Response Time, Interference Test, and Alternative Dynamic Spike Check specifications are the same as in section 13.0 of Method 7E.

13.2 Sampling System Bias. The pre- and post-run sampling system bias must be within ±3 percent of the manufacturer certified concentration for the mid- and span-level calibration gases and less than ±0.25 percent of upper range.

### *14.0 Pollution Prevention [Reserved]*

### *15.0 Waste Management [Reserved]*

### *16.0 Alternative Procedures*

16.1 Dynamic spiking procedure and manufacturer's stability test. These procedures are the same as in section 16 of Method 7E.

### *17.0 References*

1. "EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards" September 1997 as amended, EPA–600/R–97/121.

### *18.0 Tables, Diagrams, Flowcharts, and Validation Data*

* * * * *

## Method 6C—Determination of Sulfur Dioxide Emissions From Stationary Sources (Instrumental Analyzer Procedure)

### *1.0 Scope and Application*

What is Method 6C?

Method 6C is a procedure for measuring sulfur dioxide ($SO_2$) in stationary source emissions using a continuous instrumental analyzer. Quality assurance and quality control requirements are included to assure that you, the tester, collect data of known quality. You must document your adherence to these specific requirements for equipment, supplies, sample collection and analysis, calculations, and data analysis. This method does not completely describe all equipment, supplies, and sampling and analytical procedures you will need but refers to other methods for some of the details. Therefore, to obtain reliable results, you should also have a thorough knowledge of these additional test methods:

(a) Method 1—Sample and Velocity Traverses for Stationary Sources.
(b) Method 3A—Determination of Oxygen and Carbon Dioxide Concentrations in Emissions from Stationary Sources (Instrumental Analyzer Procedure).
(c) Method 4—Determination of Moisture Content in Stack Gases.
(d) Method 6—Determination of Sulfur Dioxide Emissions from Stationary Sources.

All methods in this list appear in 40 CFR part 60, appendix A.

1.1 Analytes. *What does this method determine?*

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| $SO_2$ | 7446–09–5 | *See* discussion in section 1.3. |

1.2 Applicability. *When is this method required?* Method 6C is required in specific New Source Performance Standards, Clean Air Marketing rules, and State Implementation Plans and permits where measuring $SO_2$ concentrations in stationary source emissions is required. Other regulations may also require its use.

1.3 Data Quality Objectives. Refer to section 1.3 of Method 7E.

### *2.0 Summary of Method*

In this method, you continuously sample the emission gas and convey the sample to an analyzer that measures the concentration of $SO_2$. Properly designed and operated analyzers based on ultraviolet, nondispersive infrared, or fluorescence detection principles have been used successfully. Analyzers based on other detection principles may be acceptable, however you must meet the performance requirements of this method regardless of type of detector principle used.

### *3.0 Definitions*

3.1 The Analyzer Calibration Error, Calibration Curve, Direct Calibration, System Calibration, Calibration Gas, Data Recorder, Gas Analyzer, Measurement System, Range, Response Time, Sampling System Bias, and Span are the same as in sections 3.0 of Method 7E.

3.2 *Interference check* means a test intended to detect analyzer responses to things other than the compound of interest, usually a gas present in the measured gas stream, that is not adequately accounted for in the calibration procedure and hence results in excessive bias.

### *4.0 Interferences [Reserved]*

### *5.0 Safety*

Refer to section 5.0 of Method 7E.

### *6.0 Equipment and Supplies*

Figure 7E–1 of Method 7E is a schematic diagram of an acceptable measurement system. You must use a measurement system for $SO_2$ that meets the following specifications for the essential components.

6.1 *What do I need for the measurement system?* Sample Probe, Particulate Filter, Heated Sample Line, Sample Lines, Moisture Removal System, Sample Pump, Flow Control/Gas Manifold, Sample Gas Manifold, and Data Recorder. You must follow the noted specifications in section 6.1 of Method 7E.

6.2 $SO_2$ Analyzer. An instrument that uses an ultraviolet, nondispersive infrared, fluorescence, or other detection principal to continuously measure $SO_2$ in the gas stream and meets the specifications in section 13.0. The dual-range analyzer provisions of section 6.1.8.1 of Method 7E apply.

6.3 *What additional equipment do I need for the interference check?* Use the apparatus described in section 6.0 of Method 6. Figure 6C–2 illustrates the interference check sampling train. In cases where the emission concentrations are less than 15 ppm, the alternative interference check detailed in section 16.1 should be used.

### *7.0 Reagents and Standards*

7.1 Calibration Gas. *What calibration gases do I need?* Refer to section 7.1 of Method 7E for the calibration gas requirements.

You have five options for your calibration gas.

(a) $SO_2$ in nitrogen ($N_2$).
(b) $SO_2$ in air.
(c) $SO_2$ and $CO_2$ in $N_2$.
(d) $SO_2$ and $O_2$ in $N_2$.
(e) $SO_2/CO_2/O_2$ gas mixture in $N_2$.

7.2 Additional Calibration Gas Requirements When Using a Fluorescence Analyzer. When you use a fluorescence-based analyzer and calibration gas (c), (d), or (e), the $O_2$ or $CO_2$ concentration in your calibration gas must be within 1 percent (absolute) of the $O_2$ ($CO_2$) concentration in the effluent sample. If you use a fluorescence-based analyzer and a calibration gas that is $SO_2$ in air, you may use the nomographs provided by the gas vendor to determine the quenching correction factor. You must know the concentrations of $O_2$ and $CO_2$ in the effluent.

7.3 Interference Check. *What additional reagents do I need for the interference check?* Use the reagents described in section 7.0 of Method 6 to conduct the interference check. For gas concentration less than 15 ppm, the test gases for the alternative interference check are listed in Table 7E–3 of Method 7E.

7.3.1 Alternative Analyzer Interference Check. As an alternative to the above, you may conduct an alternative interference check by sequentially introducing the gases listed in Figure 7E–3 of Method 7E (one at a time) both with and without $SO_2$ into the calibrated analyzer and recording the apparent concentrations after waiting at least 3 times the analyzer response time. This is then repeated with a blend containing a known $SO_2$ concentration greater than 80 percent of the analyzer's range and calculating the difference between the known value and the apparent concentration. For each potential interferent gas, identify the largest of the 2 absolute values as the potential interference. The interference for all potential interferent gases in the source category must be less than 2.5 percent of the upper range limit to be acceptable. Record the data on a form similar to Figure 6C–8.

### *8.0 Sample Collection, Preservation, Storage, and Transport*

Emission Test Procedure

8.1 Sampling Site and Sampling Points. You must follow section 8.1 of Method 7E.

8.2 Measurement System Performance Tests. You must follow the Calibration Gas Verification, Measurement System Preparation, Analyzer Calibration Error Test, Initial Sampling System Bias Check, and Measurement System Response Time procedures in section 8.2 of Method 7E.

8.3 Interference Check. You must conduct an interference check consisting of at least three runs before or during the initial field test of a particular source category (type of facility). This interference check must be repeated yearly on each individual gas analyzer. When testing under conditions of low concentrations (<15 ppm), the alternative interference check in section 16.1 must be used; it is an acceptable alternative in other applications. For the interference check, build the modified Method 6 sampling train (flow control valve, two midget impingers containing 3 percent $H_2O_2$, and dry gas meter) shown in Figure 6C–2. Connect the sampling train to the sample bypass discharge vent. Record the dry gas meter reading before you begin sampling. Simultaneously collect modified Method 6 and Method 6C samples. Open the flow control valve in the modified Method 6 train as you begin to sample with Method 6C. Adjust the Method 6 sampling rate to 1 liter per minute (±10 percent). If your modified Method 6 train does not include a pump, you risk biasing the results high if you over-pressurize the midget impingers and cause a leak. You can reduce this risk by cautiously increasing the flow rate as sampling begins. After completing a run, record the final dry gas meter reading, meter temperature, and barometric pressure. Recover and analyze the contents of the midget impingers using the procedures in Method 6. (You do not need to analyze performance audit samples with this interference check.) Determine the average valid gas concentration reported by Method 6C for the run.

8.4 Sample Collection. Follow section 8.1. Sample within 5 percent of the rate you used during the sampling system bias check

8.5 Post-Run Sampling System Bias Check and Alternative Dynamic Spike Procedure. Follow sections 8.5 and 8.6 of Method 7E.

### *9.0 Quality Control*

Follow quality control procedures in section 9.0 of Method 7E.

### *10.0 Calibration and Standardization*

Follow the procedures for calibration and standardization in section 10.0 of Method 7E.

### *11.0 Analytical Procedures*

Because sample collection and analysis are performed together (*see* section 8), additional discussion of the analytical procedure is not necessary.

### *12.0 Calculations and Data Analysis*

You must follow the procedures for calculations and data analysis in section 12.0 of Method 7E as applicable.

### *13.0 Method Performance*

13.1 The Analytical Range, Sensitivity, System Response and Minimum Sampling Times, Analyzer Calibration Error, Sampling System Bias, and Alternative Dynamic Spike Check specifications are the same as in section 13.0 of Method 7E.

13.2 Interference Test. Documentation of successful completion, within the last 12 months at the specific source category, where the difference between the analyzer and the modified Method 6 result is less than 7 percent of the modified Method 6 result for each of a minimum of 3 runs.

13.3 Alternative Interference Check. Same as in section 13.6 of Method 7E.

### *14.0 Pollution Prevention [Reserved]*

### *15.0 Waste Management [Reserved]*

### *16.0 Alternative Procedures*

16.1 Alternative Interference Check. The interference check detailed in section 8.3 of Method 7E may be used as an alternative interference check.

16.2 Dynamic Spiking Procedure, Manufacturer's Stability Test and Annual Primary Interference Recheck (as applicable). These procedures are the same as in section 16 of Method 7E.

### *17.0 References*

1. "EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards" September 1997 as amend, EPA–600/R–97/121.

### *18.0 Tables, Diagrams, Flowcharts, and Validation Data*

**BILLING CODE 6560–50–P**

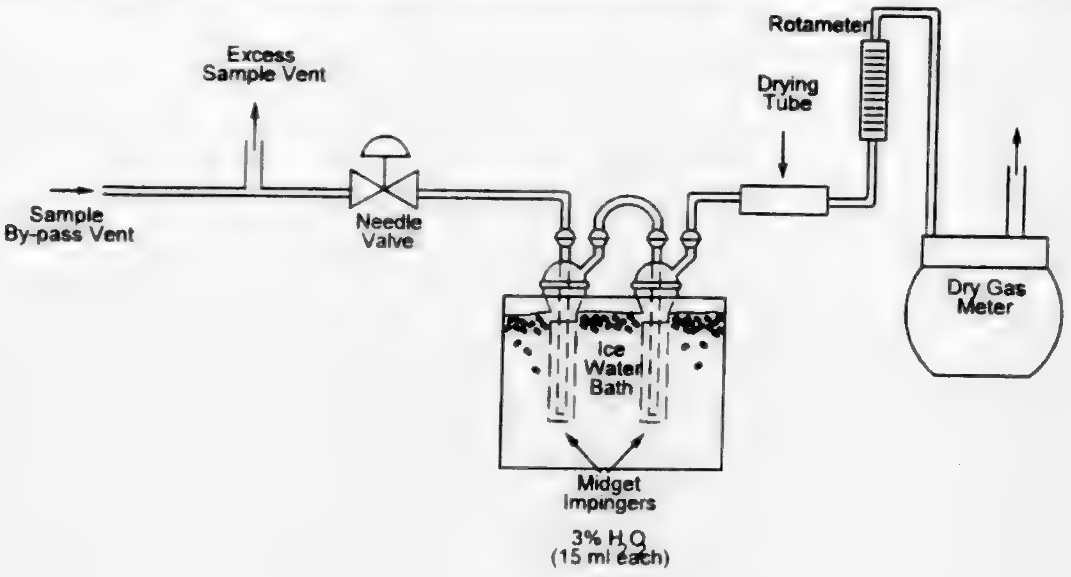

**Figure 6C-1. Interference Check Sampling Train.**

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### Method 7E—Determination of Nitrogen Oxides Emissions From Stationary Sources (Instrumental Analyzer Procedure)

*1.0 Scope and Application*

What Is Method 7E?

Method 7E is a procedure for measuring nitrogen oxides ($NO_X$) in stationary source emissions using a continuous instrumental analyzer. Quality assurance and quality control requirements are included to assure that you, the tester, collect data of known quality. You must document your adherence to these specific requirements for equipment, supplies, sample collection and analysis, calculations, and data analysis. This method does not completely describe all equipment, supplies, and sampling and analytical procedures you will need but refers to other methods for some of the details. Therefore, to obtain reliable results, you should also have a thorough knowledge of these additional test methods:

(a) Method 1—Sample and Velocity Traverses for Stationary Sources.

(b) Method 4—Determination of Moisture Content in Stack Gases.

1.1 Analytes. *What does this method determine?* (All methods in this list appear in 40 CFR part 60, appendix A.)

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Nitric oxide (NO) | 10102–43–9 | *See* discussion in section 1.3. |
| Nitrogen dioxide ($NO_2$) | 10102–44–0 | |

1.2 Applicability. *When is this method required?* Method 7E is required in specific New Source Performance Standards, Clean Air Marketing Rules, and State Implementation Plans and Permits where measuring $NO_X$ concentrations in stationary source emissions is required. Other regulations may also require its use.

1.3 Data Quality Objectives (DQO). *What quality of data is this method designed to produce?* The data quality objectives define the quality of data you need for the test. Method 7E is designed for determining compliance with Federal and State emission standards. For this purpose, data acceptability is evaluated through performance tests whose accuracy is determined relative to the applicable emission standard concentration. Therefore, the quality of data is emphasized at the compliance concentration levels. However, we do not intend the method to penalize you for calibrating to measure accurately emissions well below the emission limit. In applications where there is no emission limitation (*e.g.*, market-based programs), acceptable performance is based on the span instead of the emission standard. You are required to calculate and report an uncertainty estimate for your data. This encourages the use of better technology and techniques but does not require it when not needed by your DQO. This uncertainty provides data quality information for future secondary data users.

1.3.1 Data Quality Assessment. It is possible to meet the method QA/QC requirements and still not be certain you are making the correct data decision. This is a phenomena with all measurements since measurements are inherently an estimate of the true value no matter how precisely and accurately they are made. However, by separating the reporting of measured data and uncertainty estimates, the method provides the data users various options to assess the data quality when the tester deviates from the procedures. For example, the data user might decide to look at the upper uncertainty estimate if the question of concern is "Am I sure the average emissions are less than an emission limit?" or at the lower uncertainty estimate if the question of concern is "Am I sure the average emissions are greater than an emission limit?" Data of lesser quality may be accepted if the data user deems the testing objectives are met. For example, if the measured average emissions are less than the emission limit but a small fraction of the data exceeded the analyzer range, the data user may choose to accept this data as adequate to show compliance with the emission limit. The regulating agency is considered the data user and therefore makes the final assessment of data quality.

1.3.2 Data Quality Assessment for low emitters. *Is performance relief granted to low-emission units?* Yes, there are interim special sampling system bias performance criteria and allowances to use the alternative interference check and dynamic spike procedures. You should refer to section 13 for an explanation.

1.3.3 *How is the calibration designed when test units are covered by more than one* *emission limit?* In most cases where an emission unit is subject to more than one emission limit, the analysis should be designed for the most stringent limit. An emission unit that is shown to be in compliance with the most stringent limit when the analysis is designed in this way is also in compliance with the other applicable limits.

### 2.0 *Summary of Method*

In this method, you continuously sample the emission gas and convey the sample to an analyzer that measures the concentration of $NO_X$. You may measure NO and $NO_2$ separately or simultaneously together but, for purposes of this method, $NO_X$ is the sum of NO and $NO_2$. You must adhere to the performance requirements of this method to validate your data.

### 3.0 *Definitions*

3.1 *Analyzer calibration error* means the difference between the manufacturer certified calibration gas concentration and the concentration reported by the analyzer in direct calibration mode.

3.2 *Calibration curve* means the relationship between the analyzer's response and the concentration of the gas introduced to the analyzer over the calibration range of the analyzer.

3.2.1 *Direct Calibration* means introducing the calibration gases directly to the analyzer according to manufacturer's published calibration procedure.

3.2.2 *System Calibration* means introducing the calibration gases into the measurement system at the probe and upstream of all sample conditioning components.

3.3 *Calibration gas* means the gas mixture containing $NO_X$ at a concentration of known pedigree and produced and certified in accordance with "EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards," September 1997, as amended August 25, 1999, EPA–600/R–97/121. The tests for analyzer calibration error and sampling system bias require a span-, mid-, and low-level calibration gases.

3.4 *Converter Efficiency Gas* means a calibration gas with a known $NO_2$ concentration.

3.5 *Data recorder* means the equipment that permanently records the concentrations reported by the analyzer.

3.6 *Gas analyzer* means the equipment that senses the gas being measured and generates an output proportional to its concentration.

3.7 *Interference check* means the test intended to detect analyzer responses to things other than the compound of interest, usually a gas present in the measured gas stream, that is not adequately accounted for in the calibration procedure and hence results in excessive bias.

3.8 *Measurement system* means all the equipment used to determine the $NO_X$ concentration. The measurement system comprises six major subsystems: Acquisition, sample transport, sample conditioning, flow control/gas manifold, gas analyzer, and data recorder.

3.9 *Range* means the interval between the nominal minimum and maximum concentration that the gas analyzer manufacturer cites for the analyzer full-scale response. Gas analyzers that have single-range or multiple-range capability with either automated or manual switching are potentially acceptable. The range must be at least 5 percent greater than the concentration of the span-level gas you use to calibrate the analyzer, so that sampling system bias can be determined.

3.10 *Response time* is the time it takes the data acquisition system to read 95 percent of the stable reading from a step change in concentration when the sampling system is operating at its design flow rate.

3.11 *Sampling system bias* means the difference between the manufacturer certified calibration gas concentration and the concentration the analytical system gives for the same gas when it is introduced in system calibration mode, divided by the emission standard.

3.12 *Span* means the highest concentration of the calibration curve and is synonymous with the concentration of the highest calibration gas. In most cases, the span will be higher than the concentration of the emission standard.

### 4.0 *Interferences [Reserved]*

### 5.0 *Safety*

*What safety measures should I consider when using this method?* This method may require you to work with hazardous materials and in hazardous conditions. We encourage you to establish safety procedures before using this method. Among other precautions, you should become familiar with the safety recommendations in the gas analyzer user's manual. Occupational Safety and Health Administration (OSHA) regulations may also apply to you.

### 6.0 *Equipment and Supplies*

The performance criteria in this method will be met or exceeded most of the time if you are properly using equipment designed for this application.

6.1 *What do I need for the measurement system?* Figure 7E–1 is a diagram of an example measurement system. You may use alternative equipment and supplies provided (1) your sample flow rate is maintained within 5 percent of the design flow rate, (2) the probe, filter, and the sample line from the sample probe to the moisture removal system (if necessary) is constructed of materials which do not absorb or otherwise alter the sample gas and are heated to at least 140 °C (284 °F) or 25 °C (77 °F) above the concentration dew point of the sample, whichever is higher, to prevent condensation, and (3) the interference and sampling system bias criteria are met. An $NO_X$ measurement system that meets the following specifications is likely to meet the interference and sampling system bias requirements and are provided as guidance. The essential components of the measurement system are described below:

6.1.1 Sample Probe (Stinger). Glass, stainless steel, or equivalent, of sufficient length to traverse the sample points. The sampling probe must reach all sample points and be heated to at least 140 °C (284 °F) to prevent condensation or 25 °C (77 °F) above the concentration dew point of the sample, whichever is higher.

6.1.1.1 Particulate Filter. An in-stack or out-of-stack filter. The probe filter and all flow components located at the probe must be heated to at least 140 °C (284 °F) or 25 °C (77 °F) above the dew point of the sample, whichever is higher. The filter media must be included in the sampling system bias test and be made of materials that are nonreactive to the gas being sampled.

6.1.2 Heated Sample Line. The sample line from the probe to the moisture removal system (if necessary) and to the sample pump should be made of stainless steel, teflon, or other material that does not absorb or otherwise alter the sample gas. Heat the sample line between the probe and moisture removal system to at least 140 °C (284 °F) to prevent condensation or 25 °C (77 °F) above the dew point of the sample, whichever is higher.

6.1.3 Sample Lines. Stainless steel or Teflon tubing to transport the sample from the moisture removal system to the flow control gas manifold.

6.1.4 Moisture Removal System. A thermo-electric type condenser or similar device to remove condensate continuously from the sample gas while maintaining minimal contact between the condensate and the sample gas. The gas temperature at the outlet of the drier must be <60 °F (15 °C) as measured in the drier outlet tubing, and the drier outlet gas dew point temperature must be maintained equal to or less than 41 °F (5 °C). The moisture removal system is not necessary for analyzers that measure gas concentrations on a wet basis. For these analyzers (1) heat the sample line and all sample transport components up to the inlet of the analyzer to at least 140 °C (284 °F) or 25 °C (77 °F) above the concentration dew point of the sample, whichever is higher, to prevent condensation, and (2) determine the moisture content and correct the measured gas concentrations to a dry basis using appropriate methods, subject to the approval of the Administrator. You do not need to determine sample moisture content if your analyzer measures concentration on a wet basis when (1) a wet basis $CO_2$ analyzer operated according to Method 3A is used to obtain simultaneous measurements, and (2) the pollutant/$CO_2$ measurement system is used to determine emissions in units of the standard. The wet analyzer must pass the same sampling system bias check as the dry measurement system. The sampling system bias check must include the same water (±1 percent absolute) concentration found in the sample.

6.1.5 Sample Pump. A leak-free pump to pull the sample gas through the system at a flow rate sufficient to minimize the response time of the measurement system. The pump may be constructed of any material that is nonreactive to the gas being sampled.

6.1.6 Flow Control/Gas Manifold. An assembly of manual or solenoid valves to allow the introduction of calibration gases either directly to the gas analyzer in direct mode, or into the measurement system, at the probe, in system mode. A calibration valve assembly, three-way valve assembly, or equivalent, for blocking the sample gas flow and introducing calibration gases directly to the gas analyzers, and a valve to flow calibration gas through the entire measurement system, flooding the sampling probe when in the system mode (for bias check). Use either a flow control valve and rotameter or an equivalent valve. Use a back-pressure regulator, or equivalent, to maintain constant pressure in the sample gas manifold.

6.1.7 Sample Gas Manifold. The sample gas manifold diverts a portion of the sample to the analyzer, delivering the remainder to the by-pass discharge vent. The manifold should also be able to introduce calibration gases directly to the analyzer. The manifold must be made of material that does not react with $NO_X$ or the calibration gas and be configured to safely discharge the bypass gas.

6.1.8 $NO_X$ analyzer. An instrument that continuously measures $NO_X$ in the gas stream and meets the specifications in section 13.0. Analyzers that operate on the principle of chemiluminescence with an $NO_2$ to NO converter have been used to successfully meet the performance criteria in the past. Analyzers operating on other principles may also be used provided the performance criteria are met.

6.1.8.1 Dual Range Analyzers. Some manufacturers may certify a gas analyzer with a single large range which you may use with proper data recorders as two separate analyzers if you use the proper sets of calibration gases and meet the interference, analyzer calibration error, and sampling system bias checks. However, we caution you that the larger range affects the sensitivity in some analyzers and this may affect your ability to meet the performance requirements when operated on the lower range.

6.1.9 Data Recording. A strip chart recorder, analog computer, digital recorder, or data logger for recording measurement data. The data recording resolution (*i.e.*, readability) must be no larger than 0.5 percent of span. Alternatively, a digital or analog meter having a resolution no larger than 0.5 percent of span may be used, and the readings may be recorded manually. If this alternative is used, the readings must be from equally spaced intervals of no more than 1 minute over the duration of the sampling run.

### *7.0 Reagents and Standards*

7.1 Calibration Gas. *What calibration gases do I need?* Your calibration gas must be certified in accordance with "EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards" September 1997, as amended August 25, 1999, EPA–600/R–97/121. The calibration gas certification (or recertification) must be complete and the test must be completed before the expiration date. The goal is to bracket the sample concentrations and have at least one calibration gas below and one above the measurements. Use a minimum of the following calibration gas concentrations:

7.1.1 Span-Level Gas. The span-level gas sets the analyzer span which is the maximum concentration that is considered potentially valid for a test.

7.1.2 Mid-Level Gas. The mid-level gas must have a concentration that is 20 to 70 percent of the concentration of the span-level gas.

7.1.3 Low-Level Gas. The low-level gas must have a concentration that is less than 20 percent of the span-level gas.

7.1.4 Converter Efficiency Gas. The converter efficiency gas must have a concentration of $NO_2$ that is within 50 percent of the measured $NO_2$ concentration.

7.2 Interference Check. *What additional reagents do I need for the interference check?* Use the test gases listed in table 7E–3 to conduct the interference check.

### *8.0 Sample Collection, Preservation, Storage, and Transport*

Emission Test Procedure

Since you are allowed to choose different options to comply with some of the performance criteria, it is your responsibility to identify the specific options you followed, document your meeting the performance criteria and frequency for that option, or identify any deviations from the method.

8.1 *What sampling site and sampling points do I select?*

8.1.1 Unless otherwise specified in an applicable regulation or by the administrator, use the traverse points listed in and located according to Method 1. Alternatively, you may conduct a stratification test as described in section 8.1.3 to determine if fewer traverse points may be used. For performance testing of continuous emission monitoring systems, follow the sampling site procedures in the appropriate performance specification or applicable regulation.

8.1.2 General Sampling Point Requirements. Traverse all sampling points you choose from above, and sample at each point for an equal length of time. Record the sampling data. If you are comparing the data from individual traverse points as in the stratification test, you must delay recording data at each point for 2 times the system response time. The minimum time you must sample at each point is 2 times the system response time. You must record data at least every minute. Usually the test is designed for sampling longer than 1 minute per point to better characterize the source's temporal variability. If the test is designed such that the sampling time for each point is greater than 10 times the system response time, then you may start recording data at the first traverse point after purging the system at least 2 times the system response time. After recording for the designed period of time, you may move to the next traverse point and continue recording, omitting the requirement to delay recording for 2 times the system response at the subsequent traverse points. However, you must recondition the sampling system for at least 2 times the system response time prior to recording at the next traverse point if you remove the probe from the stack. You may satisfy the multipoint traverse requirement by sampling sequentially using a single-hole probe or a multi-hole probe designed to sample from each hole at the same (±10 percent of mean) flow rate.

8.1.3 Determination of Stratification. If the results of a stratification test show your unit to be unstratified, you may traverse at fewer points than required by Method 1. To test for stratification, use a probe of appropriate length to measure the $NO_X$ and diluent ($O_2$ or $CO_2$) concentrations at each traverse point selected according to Method 1. Calculate the individual point and mean $NO_X$ concentrations, corrected for diluent. If the range of average dilution-corrected concentrations for all points is less than or equal to ±5 percent of the mean concentration, you may collect samples from a single point that most closely matches the mean. Alternatively, if the range of the individual traverse point concentrations, corrected for dilution, is equal to or less than ±10 percent of the mean, you may take samples from 3 or more points on one diameter provided the points are located on the diameter of the stack exhibiting the highest average concentration during the stratification test. Space the points at 16.7, 50.0, and 83.3 percent of the measurement line (*i.e.*, divide the diameter into equal length segments and sample at their midpoints.)

8.2 Measurement System Performance Tests. *What initial performance criteria must my system meet before I begin collecting samples?* Before measuring emissions, perform the following procedures:

a. Calibration gas verification;

b. Measurement system preparation and analyzer calibration error test;

c. $NO_2$ to NO conversion efficiency test, if applicable;

d. Initial sampling system bias check;

e. System response time test; and

f. Interference check.

8.2.1 Calibration gas verification. *How must I verify the concentrations of my calibration gases?* Obtain a certificate from the gas manufacturer and confirm that the documentation includes all information required by the Traceability Protocol. Confirm that the manufacturer certification is complete and current.

8.2.2 Measurement system preparation. *How do I prepare my measurement system?* Assemble, prepare, and precondition the measurement system according to your standard operating procedure. Achieve the correct sampling rate. Ensure that your calibration gases are in the proper range and will result in the measured emissions being between 20 and 100 percent of the span. Perform a direct calibration of the gas analyzer (*see* section 10.1), and conduct the analyzer calibration error test.

8.2.3 Analyzer Calibration Error Test. *How do I confirm my analyzer calibration is correct?* After you have calibrated your analyzer according to the manufacturer recommended procedure, you must conduct an analyzer calibration error test before the first run and again after any failed sampling system bias tests. In this test you introduce the same low-, mid-, and span gases (that you just used to calibrate the analyzer in direct calibration mode) into the measurement system at any point upstream of the analyzer but preferably again in direct calibration mode. You must maintain the correct flow rate at the analyzer, but do not make adjustments for any other purpose. Record the analyzer's response to each calibration gas on a form similar to table 7E–1. For each calibration gas, calculate the analyzer calibration error as the difference between the measured concentration and the manufacturer certified concentration. The difference should be less than 2 percent of the manufacturer certified concentration for the low-, mid-, and span gases.

8.2.4 $NO_2$ to NO Conversion Efficiency Test. You must conduct an $NO_2$ to NO conversion efficiency test on all analyzers whose measurement principal converts $NO_2$ to NO before analyzing for $NO_X$. Introduce a known concentration of $NO_2$ to the analyzer in direct calibration mode and record the stable gas concentration displayed by the analyzer. (**Note:** Because the measurement data uncertainty calculation adjusts for converter efficiencies less than 100 percent and because the converter efficiency may change with concentration, we suggest the known concentration introduced be within a range of 50–150 percent of the average measured concentration.) Alternatively, the procedure for determining conversion efficiency using NO in 40 CFR 86.123–78 may be used. For those analyzers whose measurement principal detects $NO_2$ in the sample directly without a converter, this requirement is waived because the calibration gas requirements will assure adequate accounting for $NO_2$.

8.2.5 Initial Sampling System Bias Check. Begin by introducing the span-level calibration gas (or mid-level gas if closer to the emissions concentration) in system calibration mode. Record the gas concentration displayed by the analyzer and the time it takes to reach a stable value on a form similar to Table 7E–2. A value is considered stable when the maximum difference between 3 consecutive recordings is not more than 0.5 percent of certified value and the mean is at least 97 percent of the certified value. Then introduce the zero gas in system calibration mode and similarly record the gas concentration displayed by the analyzer and the time it takes the measurement system to decrease to a stable zero value from the higher value. Operate the measurement system at the normal sampling rate. Make only the adjustments necessary to achieve proper calibration gas flow rates at the analyzer. First, calculate the measurement system response time (*see* section 8.2.6) and then calculate the sampling system bias (*see* section 12.5). *See* sections 13.3 and 13.5 for acceptable performance criteria. If sampling system bias is excessive, take corrective action until an acceptable performance is achieved. You must repeat the analyzer calibration error test and sampling system bias check whenever a sampling system bias check is excessive. You must also repeat the sampling system bias check at the end of each run.

8.2.6 Measurement System Response Time. You must determine the measurement system response time during the initial sampling system bias check. Observe the times required to achieve 95 percent of a stable response for both the low- and high-level gases. The longer interval is the response time.

8.3 Interference Check. Conduct an interference response test of the gas analyzer prior to its initial use in the field. Recheck the analyzer if you make changes that could alter the interference response (*e.g.*, a change in the gas detector). You can introduce the interference test gases (*see* Table 7E–3) into the measurement system separately or as mixtures. This test must be performed both with and without $NO_X$ (NO and $NO_2$) which should be at a concentration of at least 80 percent of the analyzer range. Measure the total interference response of the system to these gases in ppmv. Record the responses and determine the interference using Table 7E–4. A copy of this data including the date completed and signed certification must be included. This interference test is valid for 1 calendar year unless major analytical components are replaced. If major components are replaced, the annual primary interference gas recheck described in section 16.3 must be performed before returning the analyzer to service. You must conduct the primary interference gas recheck on an annual basis.

8.4 Sample Collection. Collect samples following section 8.1. Sample within 5 percent of the rate you used during the sampling system bias check.

8.5 Post-Run Sampling System Bias Check. *How do I confirm that each sample I collect is valid?* After each run, repeat the sampling system bias check to validate the run. Do not make adjustments (other than to attain the design sampling rate) to the measurement system between the run and completion of the sampling system bias check. If you do not pass this post-run sampling system bias test, then the run does not meet this method?s quality assurance. To meet this method's quality assurance requirements, you must fix the problem, pass another analyzer calibration error test and sampling system bias test before repeating the run. Record the bias test results on a form similar to Table 7E–2.

8.6 Alternative Dynamic Spike Procedure. *If I want to use the dynamic spike procedure to validate my data, what procedure should I follow?* You may comply with the dynamic spiking procedure and requirements provided in section 16.2 during each test as an alternative to the analyzer calibration error test and the pre- and post-run sampling system bias checks.

### *9.0 Quality Control*

*What is a summary of the quality control measures I must take?*

SUMMARY TABLE OF QA/QC

| Status | Process or element | QA/QC specification | Acceptance criteria | Checking frequency | Suggested corrective action |
|---|---|---|---|---|---|
| S[1] | Identify Data User | | Regulatory Agency or other primary end user of data. | Before designing test. | |
| M[2] | Analyzer Design | Analyzer range | Sufficiently > than span-level gas to determine sampling system bias. | | Use different analyzer or reduce span value. |
| S | | Analyzer resolution or sensitivity. | <2% of range | Manufacturer design | Use different analyzer. |
| S | | Analyzer response time | < 30 Seconds. | | |
| M | | Interference gas check | <2.5% of upper range limit *See* Table 7E–3. | Valid for 1 year. | |
| M | Calibration Gases | Traceability protocol (G1, G2). | Valid certificate uncertainty <2%. | | Recertify; new standard. |
| M | | Span-level limit | Chosen so measurements are all ≤ span. | Each run | Use a different cylinder. |
| M | | Mid-level limit | 20 to 70% of span-level gas. | Each run | Use a different cylinder. |
| M | | Low-level limit | <20% of span-level gas | Each run | Use a different cylinder. |
| S | Data Recorder Design | Data resolution | <1% of span | Manufacturer design | Replace recorder. |
| S | Sample Extraction | Probe material | SS or quartz if stack >500° F. | Each run | Replace material. |
| M | Sample Extraction | Probe temperature | Heated >140° C or 25° C greater than the dew point. | Each run | Adjust temperature. |

SUMMARY TABLE OF QA/QC—Continued

| Status | Process or element | QA/QC specification | Acceptance criteria | Checking frequency | Suggested corrective action |
|---|---|---|---|---|---|
| M | Analyzer & Calibration Gas Performance. | Analyzer calibration error. | <2 percent of the manufacturer certified concentration for the mid- and span-level calibration gases (or 2 percent of span if not subject to an emission standard); for the zero gas less than ±0.25% of span. | Before initial run and after failed sampling system bias test. | Fix problem; retest. |
| M | System Performance | Sampling system bias | 5% of std for high-level and zero gas; where emission std is ≤10 ppmv, there is a temporary alternative if the absolute value of the bias is ≤0.50 ppmv. | Before/after each run | Fix problem; retest. |
| M | System Performance | System response time | Determines minimum sampling time per point. | During initial sampling system bias test. | |
| M | System Performance | $NO_2$–NO conversion efficiency. | >90% of certified value | After every test | Fix problem or replace equipment. |
| M | System Performance | Minimum sample time | 2 times the system response time plus purge time. | Each sample point. | |
| M | System Performance | Stable sample flow rate (surrogate for maintaining system response time). | < ±5% of required flow | Each run | Adjust flow. |
| M | Sample Point Selection | Follow Method 1 OR. | | | |
| A | | Stratification test | <5% of mean = 1-point<br><10% of mean = 3-point | Prior to or during first run. | Relocate or follow Method 1. |
| A | Multiple Sample Points Simultaneously. | No. of openings in probe | Single or multihole (rake). | Each run | Change the number. |
| M | Sample Line | Line material & temp (before dryer). | SS ≥140° C, or 25° C greater than the dew point until moisture removed. | Each run | Adjust temperature. |
| S | | Line material & temp(after dryer). | SS or PTFE; no heat req'd after dryer. | Each run. | |
| S | Calibration Valve | Material | SS | Each run | Replace valve. |
| S | Sample Pump | Material | Inert to sample constituents. | Verified if sampling system bias test is passed. | Replace pump. |
| S | Manifolding | Material | Inert to sample constituents. | Verified if bias test is passed. | Replace. |
| S | Moisture Removal | Equipment type (condenser or permeation dryer). | < ±5% target compound removal. | Verified if bias test is passed. | Replace equipment. |
| S | Particulate Removal | Inertness of filter | Pass sampling system bias test. | Verified if bias test is passed. | Replace filter. |
| S | | Filter temperature | Maintained >95 °C. | | |
| M | Data Recording | Frequency | ≤1 minute average | During run | Remeasure. |
| M | Data Parameters | Sample concentration range. | All 1-minute averages within analyzer range. | Each run | Note in report. |
| M | Data Quality Assessment Using Sampling System Bias Data. | Calculate upper and lower uncertainty limits for each *run* using the mean measured data, converter efficiency, and the largest and smallest sampling system bias for that run. | Additional requirement is that the apparent bias must be between ±5% of emission limit equivalent concentration or <1.5 ppmv. *See* section 12.5 for equations and conditions. | Each Run. | |

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SUMMARY TABLE OF QA/QC—Continued

| Status | Process or element | QA/QC specification | Acceptance criteria | Checking frequency | Suggested corrective action |
|---|---|---|---|---|---|
| M–A[3] .... | Alternative Data Quality Check. | Dynamic spike .............. | >5 1-min avgs. with average 100 ±5% recovery for pretest and 100 ±10% for post-test or ≤0.2 ppmv. See section 12.3 for equation. | Before and after each *test* & in place of pre- and post-*run* sampling system bias tests and interference check. | Redo after correcting problem, retest. |
| M–A ...... | Data Quality Assessment Using Dynamic spike Recovery data. | Calculate upper and lower uncertainty limits for each *test* using the mean measured data, and converter efficiency and the largest (and smallest) spike recovery. | *See* section 12.6.2 for equations and conditions. | Each *test*. | |

[1] S = Suggested.
[2] M = Mandatory.
[3] A = * * *.

### *10.0 Calibration and Standardization*

What Measurement System Calibrations Are Required?

10.1 Initial Analyzer Calibration. You may introduce the calibration gases in any sequence. Make all necessary adjustments to calibrate the gas analyzer and data recorder. If your analyzer measures NO and $NO_2$ separately, then you must use both NO and $NO_2$ calibration gases. You may use a non-linear calibration curve to convert your gas analyzer's response to the equivalent gas concentration. However, you must establish the non-linear calibration curve before conducting the analyzer calibration error test. If you use a non-linear calibration curve, you must use it for all sample and calibration measurements. You must also include a copy of the manufacturer's certification of the calibration gases which include the 13 documentation requirements in the EPA Traceability Protocol For Assay and Certification of Gaseous Calibration Standards, September 1997, as amended August 25, 1999 (*http://www.epa.gov/ttn/emc/*) as part of the test report. Then you must pass the analyzer calibration error check. In addition, unless you follow the alternative dynamic spiking option, you must pass the sampling system bias test before you start measurements.

### *11.0 Analytical Procedures*

Because sample collection and analysis are performed together (*see* section 8), additional discussion of the analytical procedure is not necessary.

### *12.0 Calculations and Data Analysis*

12.1 Nomenclature. The terms used in the equations are defined as follows:

B = Sampling system bias.
$B_{WS}$ = Moisture content of sample gas as measured with Method 4 or other approved method, percent/100.
$C_{adj}$ = Pollutant concentration corrected to 15 percent $O_2$ ppmv.
$C_d$ = Pollutant or diluent concentration adjusted to dry conditions, ppmv or percent.
$C_{dir}$ = Direct calibration concentration (ppmv) of a calibration gas, dry basis, reported by gas analyzer.
$C_h$ = Concentration (ppmv) corresponding to the emission standard (determined in section 12.1.1).
$C_s$ = System calibration concentration (ppmv) of a calibration gas, dry basis, reported by gas analyzer.
$C_v$ = Manufacturer certified concentration (ppmv) of a calibration gas, dry basis.
$C_w$ = Pollutant or diluent concentration measured under moist sample conditions, ppmv, percent, or ng/sm³ (lb/scf).
$\%CO_2$ = Measured $CO_2$ concentration measured, dry basis, percent.
$\%CO_{2w}$ = Measured $CO_2$ concentration measured on a moist sample basis, percent.
DF = Dilution factor of the spike gas; this value shall be ≧10.
E = Mass emission rate of pollutant per gross calorific value of the fuel from Method 19, ng/J (lb/$10^6$ Btu).
$Eff_{NO2}$ = $NO_2$ to NO converter efficiency.
$F_c$ = Ratio of the volume of carbon dioxide produced to the gross calorific value of the fuel from Method 19, dsm³/J (dscf/$10^6$ Btu).
$F_d$ = Ratio of the volume of dry effluent gas to the gross calorific value of the fuel from Method 19, dsm³/J (dscf/$10^6$ Btu).
$F_o$ = Fuel factor based on the ratio of oxygen volume to the ultimate $CO_2$ volume produced by the fuel at zero percent excess air, dimensionless.
GCV = Gross calorific value of the fuel consistent with the ultimate analysis, kJ/kg (Btu/lb).
K = Conversion factor.
M = Mass of $_{NO_X}$.
$\%O_2$ = Measured $O_2$ concentration dry basis, percent.
$SF_{6(dir)}$ = $SF_6$ (or tracer gas) concentration measured directly in undiluted spike gas.
$SF_{6(spk)}$ = Diluted $SF_6$ (or tracer gas) concentration measured in a spiked sample.
$Spike_{dir}$ = Concentration of $NO_X$ in the spike standard measured in direct calibration mode.
$X_{CO2}$ = $CO_2$ correction factor, percent.
0.209 = Fraction of air that is oxygen, percent/100.
5.9 = 20.9 percent $O_2$ − 15 percent $O_2$, the defined $O_2$ correction value, percent.

12.1.1 Concentration equivalent of the emission standard. *What if my emission standard is not in units of concentration?*

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| ***If the process is a combustion process using air*** | ***And the Standard is in these units:*** | ***Then to get approximate equivalent concentration at stack conditions use the following equation and your best estimate of parameters required*** |
|---|---|---|
| | ppmv @Y %O2 | $C_{equiv} = C_{std} \frac{20.9 - \%O_2}{20.9 - Y}$ |
| | mass/GCV (e.g. lb/million Btu heat input) | $C_{equiv} = \frac{E_{std}}{K^*F_d} \frac{20.9 - \%O_2}{20.9}$ |
| | mass per hour | $C_{equiv} = \frac{Emass/hr}{(GCV/hr)(K)F_d} \frac{20.9 - \%O_2}{20.9}$ |
| | mass/unit of electrical output | $C_{equiv} = Eff \frac{Emass/output}{(GCV/hr)(K)F_d} \frac{20.9 - \%O_2}{20.9}$ |

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12.2 Analyzer Calibration Error Test. Use Equation 7E–1 to calculate the analyzer calibration error for each calibration gas.

$$ACE = C_{dir} - C_v \qquad \text{Eq. 7E-1}$$

12.3 Alternative Dynamic Spike Recovery. Use Equation 7E–2 to calculate the alternative dynamic spike recovery.

$$R = \frac{M_{measured} - M_{native}}{M_{added}} \qquad \text{Eq. 7E-2}$$

12.4 Sampling System Bias Check. Use Equation 7E–3 to calculate the sampling system bias for each calibration gas.

$$B = \frac{C_s - C_v}{C_v} \qquad \text{Eq. 7E-3}$$

12.5 $NO_2$–NO Conversion Efficiency. Use Equation 7E–4 to calculate the $NO_2$ to NO converter efficiency.

$$Eff_{NO_2} = C_{dir} + C_v \qquad \text{Eq. 7E-4}$$

12.6 Uncertainty Estimate.

12.6.1 Using the largest (and smallest) bias value obtained in the pre- and/or post-run sampling system bias test, calculate and report an upper and lower uncertainty interval around each run average concentration using Equation 7E–5.

$$U = [1/(1+B)]C_m + [1 - E_{NO_2}]C_{NO_2} \qquad \text{Eq. 7E-5}$$

12.6.2 Using the largest (and smallest) recovery obtained in the pre- and post-test ADSC, calculate and report an upper and lower uncertainty interval around the test average concentration using Equation 7E–6.

$$U = \left[\frac{1}{R}\right]C_m + [1 - E_{NO_2}]C_{NO_2} \qquad \text{Eq. 7E-6}$$

12.7 Miscellaneous calculations.

12.7.1 Moisture Correction. The data you use for most of the calculations must be on a dry basis. Use Equation 7E–7 if any of your measurements need to be corrected to a dry basis.

$$C_d = \frac{C_w}{1 - B_{ws}} \qquad \text{Eq. 7E-7}$$

12.7.2 Using $CO_2$ as the diluent monitor. You must have an equivalent $CO_2$ correction factor if pollutant concentrations are to be corrected to 15 percent $O_2$ and you measure $CO_2$ concentration in lieu of O2 concentration. Perform the following procedures to calculate the $CO_2$ correction factor.

12.7.2.1 Using the values obtained from section 12.3.2 of Method 19 and Equation 7E–8, calculate the fuel-specific $F_O$ value for the fuel burned during the test.

$$F_o = 0.209 \frac{F_d}{F_c} \qquad \text{Eq. 7E-8}$$

12.7.2.2 Use Equation 7E–9 to calculate the equivalent $CO_2$ correction factor for correcting measurement data to 15 percent $O_2$.

$$X_{CO_2} = \frac{20.9 - 15}{F_o} \qquad \text{Eq. 7E-9}$$

12.7.2.3 Correct the pollutant concentrations to 15 percent $O_2$ equivalent. Using Equations 7E–10, calculate the $NO_X$ gas concentrations adjusted to 15 percent $O_2$. The correction to 15 percent O2 is very sensitive to the accuracy of the $O_2$ or $CO_2$ concentration measurement. Therefore, oxygen or $CO_2$ analyzer stability and careful calibration are necessary.

$$C_{adj} = C_d \frac{X_{CO_2}}{\%CO_2} \qquad \text{Eq. 7E-10}$$

12.7.3 Dilution Adjustment of Pollutant Concentration Using $O_2$ Concentration. Use Equation 7E–11 to calculate the concentration adjusted to 15 percent $O_2$.

$$C_{adj} = C_d \frac{20.9 - 15}{20.9 - \%O_2} \qquad \text{Eq. 7E-11}$$

12.7.4 Average Adjusted $NO_X$ Concentration. To calculate the average adjusted $NO_X$ concentration, sum the adjusted values for each sample point and divide by the number of points (k) for each run using Equation 7E–12.

$$\overline{C}_{adj} = \sum_{1}^{k} \left[ \frac{1}{k} \sum_{1}^{k} C_{adj} \right] \qquad \text{Eq. 7E-12}$$

12.7.5 $NO_X$ Emission Rate Calculations. Calculate the emission rates for $NO_X$ in units of pollutant mass per quantity of heat input using the pollutant and diluent concentrations and fuel-specific F-factors based on the fuel combustion characteristics. You must convert the measured concentrations of pollutant from parts per million by volume (ppmv) to mass per unit volume. *See* Table 7E–2 for conversion factors.

TABLE 7E–2.—CONVERSION FACTORS FOR CONCENTRATION

| From | To | Multiply by conversion factor (CV) |
|---|---|---|
| $g/sm^3$ | $ng/sm^3$ | $10^9$ |
| $mg/sm^3$ | $ng/sm^3$ | $10^6$ |
| lb/scf | $ng/sm^3$ | $1.602 \times 10^{13}$ |
| ppmv ($NO_X$) | $ng/sm^3$ | $1.912 \times 10^6$ |
| ppmv ($NO_X$) | lb/scf | $1.194 \times 10^{-7}$ |

12.7.5.1 Calculation of Emission Rate Using Oxygen Correction. The $O_2$ concentration and pollutant concentration must be on a dry basis. Use Equation 7E–13 to calculate the pollutant emission rate in units of mass $NO_X$ per unit of heat input.

$$E = C_d F_d \frac{20.9}{20.9 - \%O_2} \qquad \text{Eq. 7E-13}$$

12.7.5.2 Calculation of Emission Rate Using Carbon Dioxide Correction. The $CO_2$ concentration and the pollutant concentration may be on either a wet basis or a dry basis. Both concentrations must be on the same basis for the calculations. Use Equation 7E–14 or 7E–15 to calculate the pollutant emission rate in units of mass $NO_X$ per unit of heat input.

$$E = C_d F_c \frac{100}{\%CO_2} \qquad \text{Eq. 7E-14}$$

$$E = C_w F_c \frac{100}{\%CO_{2w}} \qquad \text{Eq. 7E-15}$$

12.7.5.3 Calculation of mass emission rate using fuel usage rate and F-Factors. Use Equation 7E–16

$$Emass = E(GCV)(Qfuel) \qquad \text{Eq. 7E-16}$$

### *13.0 Method Performance*

13.1 Analytical Range. Your span-level calibration gas sets the upper limit of your instrument's calibration. Choose the span-level calibration gas that would result in the sampled gases being on-scale and averaging 20–100 percent of the span. If at any time during a run a measured 1-minute average gas concentration exceeds the span, you must at a minimum identify and report these minutes as deviations of the method. Depending on the data quality objectives of the sampling program, this event may require additional corrective action before proceeding with the test program. *See* section 1.3.1 for discussion.

13.2 Sensitivity. *See* discussion in section 1.3.1.

13.3 System Response and Minimum Sampling Times. The system response time determines the minimum sampling time at each sampling point. There is no minimum system response time specified, however the minimum sampling time per sample point is 2 times the system response time plus purge time. For example, if you use a sampling system with a 2 minute system response time, this means that in addition to purging the system for at least 4 minutes, you must record a minimum of 4 one-minute averages at each sample point.

13.4 Analyzer Calibration Error. The difference between the direct calibration response and the manufacturer certified concentration must be less than ±2 percent of the manufacturer certified concentration for the low-, mid- and span-level calibration gases and ±0.25 percent of analyzer upper range limit for the zero gas.

13.5 Sampling System Bias. The pre- and post-run sampling system bias must be within ±5 percent of the concentration equivalent of the emission standard (or ±5 percent of span if not subject to an emission standard) for the low- and span-level (or mid-level, as applicable) calibration gases. However, for test facilities with emission standards equivalent to 10.0 ppmv or less, if the absolute value of the bias is less than or equal to 0.50 ppmv, then the requirements of the sampling system bias test are satisfied. This provision for low-standard facilities is valid only for tests completed within 3 years of the effective date of this amendment's promulgation.

13.6 Interference Check. The interference response must not be greater than 2.5 percent of the analyzer upper range limit.

13.7 NO2 to NO Conversion Efficiency Test (as applicable). The conversion efficiency must be greater than 90 percent of the certified value of the test gas.

13.8 Alternative Dynamic Spike Check (ADSC). If your analyzer has been certified through the manufacturer's stability test, you may substitute a pre- and post-test ADSC for the interference check and pre- and post-run sampling system bias checks. Recoveries of both pre-test spikes must be within 100 ±5 percent . Recoveries of both the post-test ADSC spikes must be within 100 ±10 percent. If the absolute difference between the calculated spike value (CS) and measured spike value (Cm) is equal to or less than 0.20 ppmv, then the requirements of the ADSC are met. This provision for low-standard facilities is valid only for tests completed within 3 years of the effective date of this amendment's promulgation.

### *14.0 Pollution Prevention [Reserved]*

### *15.0 Waste Management [Reserved]*

### *16.0 Alternative Procedures*

16.1 Dynamic Spiking Procedure. You may choose to validate your test data with this alternative dynamic spiking procedure. You must meet the following requirements to use this option.

16.1.1 You must certify that you followed a written procedure and have demonstrated ability, within the last calender year, to operate the spiking system following that written procedure in either a simulated or actual application. Demonstrated ability means that you have operated the spiking system at a target concentration equal to or less than the target concentration for this test and obtained a data set of 30 1-minute averages with a mass recovery of 100 ±5 percent of the mass of $NO_X$ spiked with a relative standard deviation of those 30 1-minute averages equal or less than 5 percent.

16.1.2 Spiking procedure requirements. You must follow the written procedure that you have demonstrated your ability to perform. The volume of the spike gas added must be less than 10 percent of the total volume. The dynamic spiking procedure must be done before the first run and repeated after the last run of the test program. However, the pre-test requirement is waived if you provide a valid certification that the analyzer has been shown to meet the manufacturer's stability test in section 16.2 below. Both the pre- and post-test must consist of 2 target levels. One level must add between 1 and 2 time the native mass and the other level must add between 5 and 1 times the native stack $NO_X$ mass in the sample stream. The spikes must be prepared from a gas certified by the traceability protocol (G1 or G2) to contain $NO_X$ of known concentration with an uncertainty equal to or less than 2 percent. The minimum number of datum to represent each target concentration are 5; we strongly suggest more since you must calculate and report an uncertainty range around the measured concentration based on these recoveries. If the recovery is outside 100 ±10 percent, then the reason for the bias should be determined and reported. As a condition of your using this option, you must document and confirm that during the entire test you operated within the ambient temperature and pressure and voltage ranges certified by the manufacturer. You must also list all manufacturer fault and alarm codes and identify any that were activated during the test.

16.1.3 Example spiking procedure using a tracer gas. Introduce the spike/tracer gas at a constant flow rate of 10 percent of the total sample flow. (**Note:** Use the rotameter at the end of the sampling train to estimate the required spike/tracer gas flow rate.) Use a mass flow meter (±2 percent), to monitor the spike flow rate. Record the spike flow rate every 1 minute. Wait for at least 2 times the response time T, then record at least 5 successive 1 minute averages of the spiked sample gas. The spiked concentration shall be within 5 percent of the mean of the 5 measurements. Calculate the dilution factor using the tracer gas as follows:

$$DF = \frac{SF_{6\,(direct)}}{SF_{6\,(spike)}} \qquad \text{Eq. 7E-17}$$

$$CS = \frac{Spike_{dir}}{DF} \qquad \text{Eq. 7E-18}$$

16.2 Manufacturer's Stability Test. Subject each analyzer model to a range of potential effects to demonstrate its stability following the procedures provided in 40 CFR 53.23, 53.55, and 53.56 and provide the information in a summary format. A copy of this information must be included in each test report.

16.3 Annual Primary Interference Gas Recheck. Perform an interference gas check using the 4 primary interference gases identified in the manufacturer's stability test on an annual basis, when indicated as corrective action by an alarm or fault and, whenever major component repairs are required. Record the responses. For each of the 4 primary interference gases, the 95 percent confidence interval determined in the manufacturer stability test must include the abbreviated interference gas check value prior to returning the analyzer to service.

### *17.0 References*

1. "EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards' September 1997 as amended, EPA–600/R–97/121.

### *18.0 Tables, Diagrams, Flowcharts, and Validation Data*

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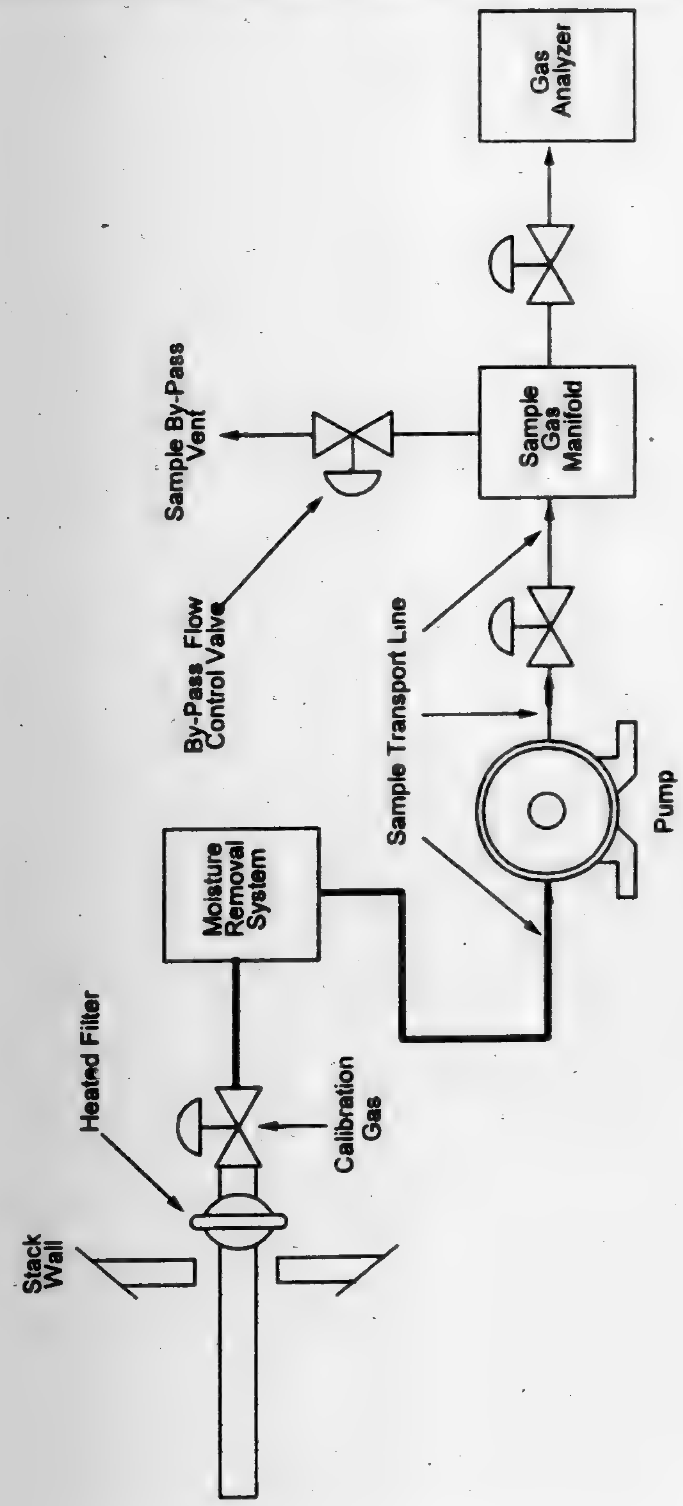
Gas Analyzer
Sample By-Pass Vent
Sample Gas Manifold
By-Pass Flow Control Valve
Sample Transport Line
Pump
Moisture Removal System
Heated Filter
Calibration Gas
Stack Wall

Figure 7E-1. Measurement System.

Figure 7E-2. Testing Flow Chart

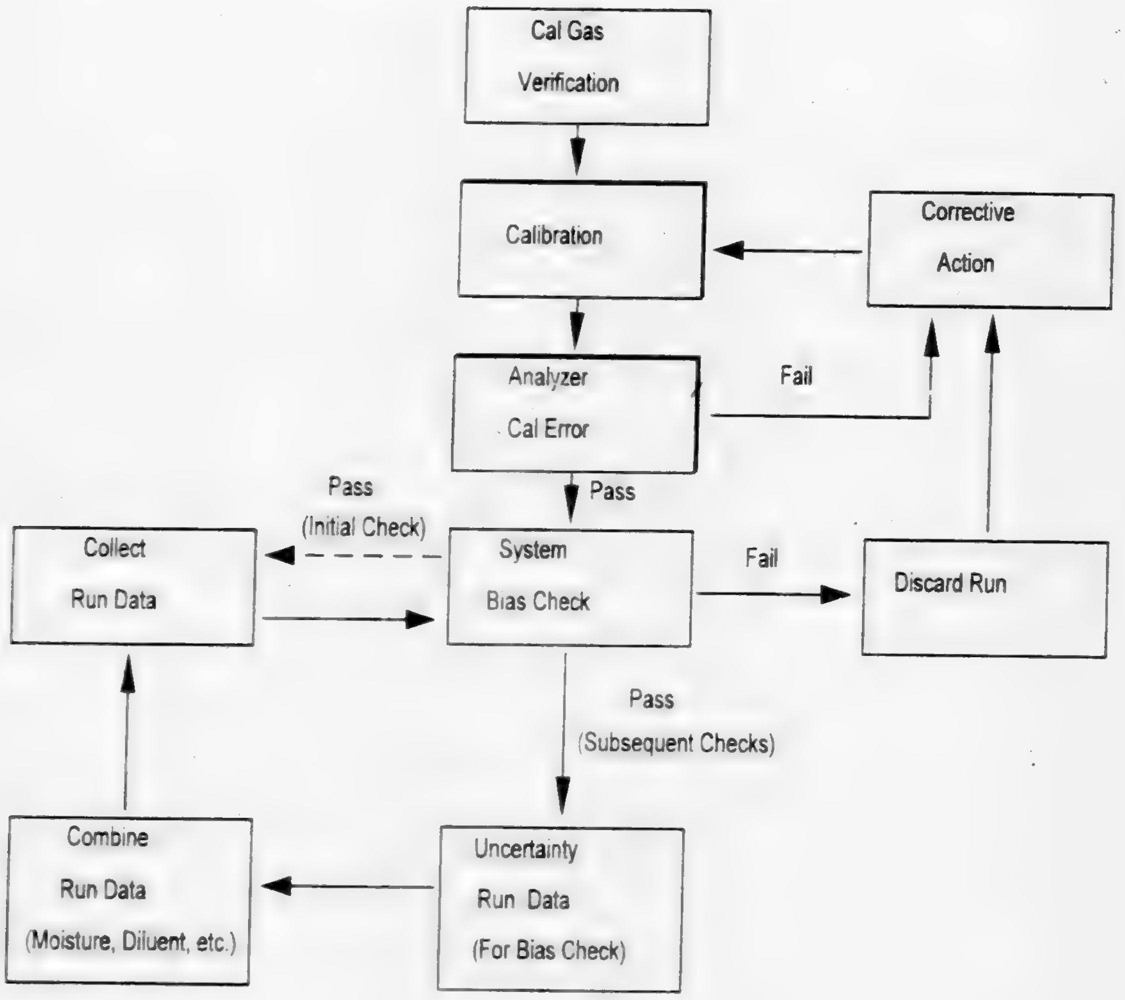
Cal Gas
Verification
Calibration
Corrective
Action
Analyzer
Cal Error
Fail
Pass
Pass
(Initial Check)
Collect
Run Data
System
Bias Check
Fail
Discard Run
Pass
(Subsequent Checks)
Combine
Run Data
(Moisture, Diluent, etc.)
Uncertainty
Run Data
(For Bias Check)

BILLING CODE 6560-50-C

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Figure 7E-2. Testing Flow Chart

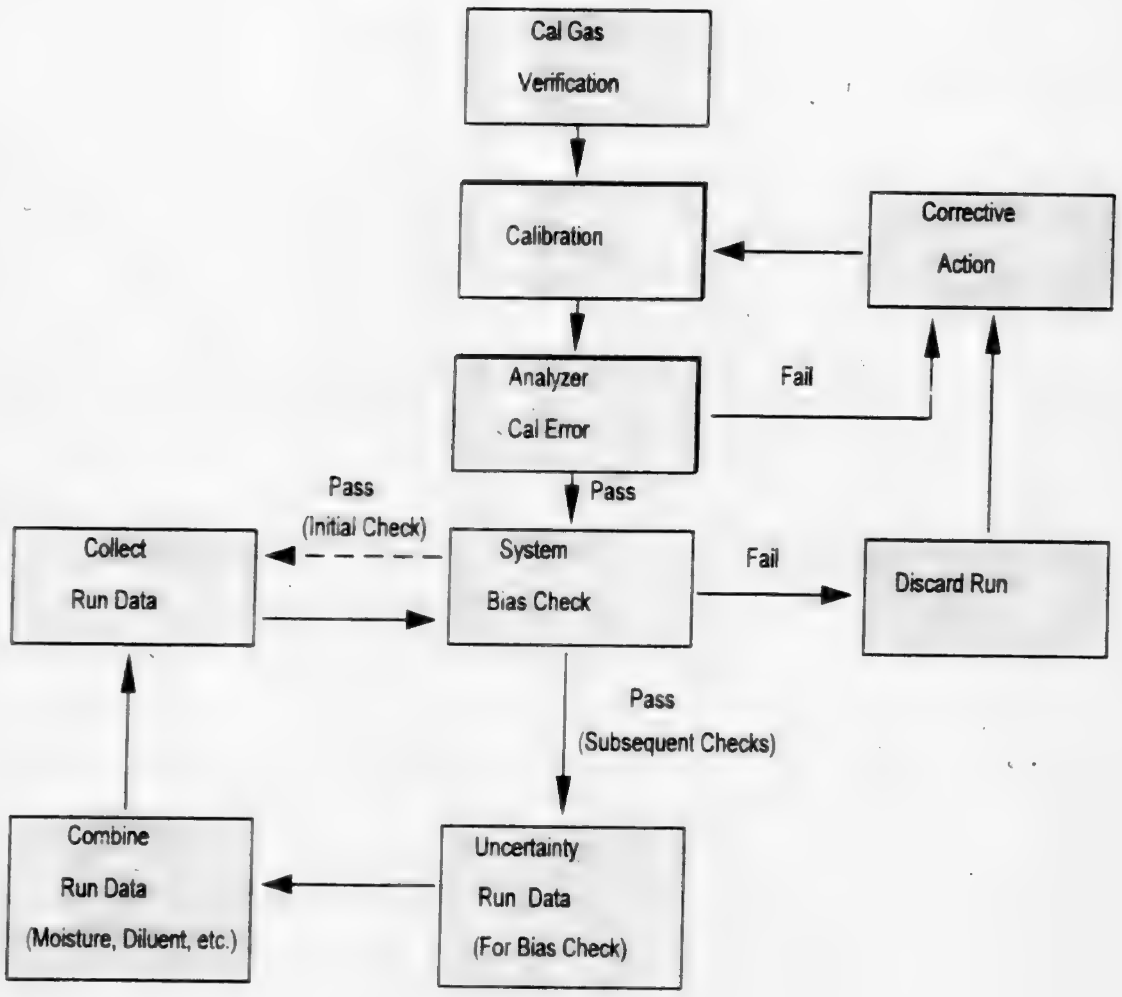
Cal Gas Verification
Calibration
Corrective Action
Analyzer Cal Error
Fail
Pass
Pass (Initial Check)
Collect Run Data
System Bias Check
Fail
Discard Run
Pass (Subsequent Checks)
Combine Run Data (Moisture, Diluent, etc.)
Uncertainty Run Data (For Bias Check)

BILLING CODE 6560-50-C

### TABLE 7E–1.—ANALYZER CALIBRATION ERROR DATA

Source identification: ______________
Test personnel: ______________
Date: ______________ Time: ______________

Analyzer calibration error data for sampling runs: ______________
Analyzer model No. __________ Serial No. __________

| | Manufacturer certified cylinder value (indicate units) | Analyzer calibration response (indicate units) | Absolute difference (indicate units) | Percent difference |
|---|---|---|---|---|
| | A | B | $\lvert A-B\rvert$ | $[\lvert A-B\rvert]*100$ |
| Low calibration gas | | | | |
| Mid-level caliberation gas | | | | |
| Span-level calibration gas | | | | |

### TABLE 7E–2.—SAMPLING SYSTEM BIAS CHECK DATA

Source identification: ______________ Run number: ______________
Test personnel: ______________ Emission std: ______________ Concentration equivalent: ______________
Date: ______________ Response time: ______________
Analyzer model No. ______________ Serial No. ______________

| | Calibration gas value (ppmv) | Initial values | | Final values | |
|---|---|---|---|---|---|
| | | System response (ppmv) | System bias (percent of emission std. equivalent) | System response (ppmv) | System bias (percent of emission std. equivalent) |
| Low-level gas | | | | | |
| Span- (or mid-) level gas | | | | | |

BILLING CODE 6560–50–P

### Table 7E-3. Interference Check

| Potential Interferent Gas | Sample Conditioning Type | | | |
|---|---|---|---|---|
| | | Hot Wet | Dried | Diluted |
| | | Interferent Target Concentration | | |
| CO2 | | 5 and 15% | 5 and 15% | Note 1 |
| H2O | | 25% | 1 % | |
| NO | | 15 ppmv | 15 ppmv | |
| NO2 | | 15 ppmv | 15 ppmv | |
| N2O | | 10 ppmv | 10 ppmv | |
| CO | | 50 ppmv | 50 ppmv | |
| NH3 | | 10 ppmv | 10 ppmv | |
| CH4 | | 50 ppmv | 50 ppmv | |
| SO2 | | 20 ppmv | 20 ppmv | |
| H2 | | 50 ppmv | 50 ppmv | |
| HCl | | 10 ppmv | 10 ppmv | |
| Total Interference | ± 2.5 % of upper range limit or<br>± 0.5 ppmv for 0-20 ppmv range, or<br>± 0.2 ppmv for 0-5 range | | | |

Notes: 1) Use the Hot Wet concentrations divided by the minimum dilution ratio specified for the system.

2) Any of the above specific gases can be eliminated or tested at a lower level if the manufacturer has provided reliable means for limiting or scrubbing that gas to a specified level.

## Table 7E-4 - Interference Response

Date of Test ____________________
Analyzer Type ____________________
Model No. ____________________
Serial No. ____________________

| Test Gas Type | Concentration (ppm) | Analyzer Output Response | Difference |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | Total Difference | |
| | | % of Range Limit | |
| | | 2.5 % of Upper Range | |

BILLING CODE 6560-50-C

### TABLE 7E–5.—MANUFACTURER STABILITY TEST

| Test description | Analyzer model test frequency | | | Acceptance criteria |
|---|---|---|---|---|
| | Annual (or 1st quarter) | Quarterly or not to exceed 50 production units | Each analyzer | |
| Thermal Stability | X | | | Temperature range when drift does not exceed 3% of analyzer range over a 2-hour run when measured with $NO_X$ present @ ≥80% of range. |
| Fault Conditions | X | | | Note 1. |
| Alarm Conditions | X | | | Note 2. |
| Interference Gas Test | X | X | | 1. $I_{(annual)}$ ≤2.5% of range.<br>2. $I_{(quarterly)} \leq I_{(annual)}$. |
| Insensitivity to Supply Voltage Variations. | X | X | | 1. Both ±10% of nominal voltage (or the manufacturer specified range) must produce no more than 2% of range drift at either 0 or with $No_X$ present >80% of range.<br>2. $Drift_{(quarterly)} \leq Drift_{(annual)}$. |
| Analyzer Calibration Error | X | X | X | For a low, medium, and span gas, the difference between manufacturer certified value and analyzer response in direct calibration mode, no more than 2% of manufacturer certified value. |
| Analyzer Response Time | X | X | X | $RT_{(individual)}$ & $RT_{(quarterly)} \leq RT_{(annual)}$. |
| Intrinsic Source Gas Analyzer Settings/Adjustments. | X | X | | 1. Identify (annually).<br>2. $Settings_{(quart)} \leq setting_{(annual)}$. |
| Primary 4 Interference Gas Test | | X | X | 1. $I_{(annual4)}$ ≤ 2.5% of range.<br>2. Each analyzer measured response must be ≤ the response obtained from the annual analyzer test for each of the 4 gases. |

*Note 1:* Identify conditions which, when they occur, are deemed by the manufacturer to result in performance which is not in compliance with this performance specification. These are to be indicated both audibly or visually and electrically. The annual test must document that these indicators correlate with the intended fault condition.

*Note 2:* Identify conditions which, when they occur, the manufacturer recommends review and/or corrective action by trained service personnel to prevent further deterioration of analyzer performance that could result in performance which is not in compliance with this performance specification. These are to be indicated both audibly or visually and electrically. The annual test must document that these alarms correlate with the intended alarm condition.

* * * * *

## Method 10—Determination of Carbon Monoxide Emissions From Stationary Sources (Instrumental Analyzer Procedure)

### *1.0 Scope and Application*

What Is Method 10?

Method 10 is a procedure for measuring carbon monoxide (CO) in stationary source emissions using a continuous instrumental analyzer. Quality assurance and quality control requirements are included to assure that you, the tester, collect data of known quality. You must document your adherence to these specific requirements for equipment, supplies, sample collection and analysis, calculations, and data analysis. This method does not completely describe all equipment, supplies, and sampling and analytical procedures you will need but refers to other methods for some of the details. Therefore, to obtain reliable results, you should also have a thorough knowledge of these additional test methods:

(a) Method 1—Sample and Velocity Traverses for Stationary Sources.

(b) Method 4—Determination of Moisture Content in Stack Gases.

(c) Method 7E—Determination of Nitrogen Oxides Emissions From Stationary Sources (Instrumental Analyzer Procedure).

All methods in this list appear in 40 CFR part 60, appendix A.

1.1 Analytes. *What does this method determine?*

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| CO | 630–08–0 | *See* discussion in section 1.3. |

1.2 Applicability. *When is this method required?* Method 10 is required in specific New Source Performance Standards and State Implementation Plans and permits where measuring CO concentrations in stationary source emissions is required. Other regulations may also require its use.

1.3 Data Quality Objectives. Refer to section 1.3 of Method 7E.

### *2.0 Summary of Method*

In this method, you continuously or intermittently sample the emission gas and convey the sample to a nondispersive infrared analyzer (NDIR) that measures the concentration of CO. You must adhere to the performance requirements of this method to validate your data.

### *3.0 Definitions*

3.1 The Analyzer Calibration Error, Calibration Curve, Direct Calibration, System Calibration, Calibration Gas, Data Recorder, Gas Analyzer, Interference Check, Measurement System, Range, Response Time, Sampling System Bias, and Span are the same as in sections 3.0 of Method 7E.

### *4.0 Interferences*

Any substance having a strong absorption of infrared energy will interfere to some extent. The following table gives examples. The table shows how the interference ratio can be higher when the measuring device has a low range (0–100 ppm). You can eliminate major interference problems by using silica gel and ascarite traps. If you use ascarite traps, correct the measured gas volume for the $CO_2$ removed in the trap. Instrument correction is also an acceptable means of compensating for interference.

| Device range (ppm) | Interference ratio |
|---|---|
| 1500–3000 | 3.5% $H_2O$ per 7 ppm CO. |
| 1500–3000 | 10% $CO_2$ per 10 ppm CO. |
| 0–100 | 3.5% $H_2O$ per 25 ppm CO. |

| Device range (ppm) | Interference ratio |
|---|---|
| 0–100 .................... | 10% $CO_2$ per 50 ppm CO. |

*5.0 Safety*

Refer to section 5.0 of Method 7E.

*6.0 Equipment and Supplies*

Figures 10–1, 10–2, and 10–3 are schematic diagrams of acceptable continuous and integrated measurement systems and the analytical system. You must use a measurement system for CO that meets the following specifications for the essential components.

6.1 *What do I need for the measurement system?* Sample Probe, Particulalte Filter, Heated Sample Line, Sample Lines, Moisture Removal System, Sample Pump, Flow Control/Gas Manifold, Sample Gas Manifold, and Data Recorder. You must follow the noted specifications in section 6.1 of Method 7E.

6.2 CO Analyzer. An instrument that uses nondispersive infrared detection principal to continuously measure CO in the gas stream and meets the specifications in section 13.0. The dual-range analyzer provisions of section 6.1.8.1 of Method 7E apply.

*7.0 Reagents and Standards*

7.1 Calibration Gas. *What calibration gases do I need?* Refer to section 7.1 of Method 7E for the calibration gas requirements.

7.2 Interference Check. *What additional reagents do I need for the interference check?* Use the test gases listed in Table 7E–5 of Method 7E to conduct the interference check. Conduct the interference check by sequentially introducing the gases listed in Table 7E–5 (one at a time) both with and without CO into the calibrated analyzer and recording the apparent concentrations after waiting at least 3 times the analyzer response time. This is then repeated with a blend containing a known CO concentration greater than 80 percent of the analyzer's range and calculating the difference between the known value and the apparent concentration. For each potential interferent gas, identify the largest of the 2 absolute values as the potential interference. The interference for all potential interferent gases in the source category must be less than 2.5 percent of the range to be acceptable. Record the data on a form similar to Figure 7E–8.

*8.0 Sample Collection, Preservation, Storage, and Transport*

Emission Test Procedure

8.1 Sampling Site and Sampling Points. You must follow section 8.1 of Method 7E.

8.2 Measurement System Performance Tests. You must follow the Calibration Gas Verification, Measurement System Preparation, Analyzer Calibration Error Test, Initial Sampling System Bias Check, Measurement System Response Time, and Interference Check procedures in sections 8.2 and 8.3 of Method 7E.

8.3 Sample Collection. Follow section 8.1. Sample within 5 percent of the rate you used during the sampling system bias check.

8.4 Post-Run Sampling System Bias Check and Alternative Dynamic Spike Procedure. Follow sections 8.5 and 8.6 of Method 7E.

*9.0 Quality Control*

Follow quality control procedures in section 9.0 of Method 7E.

*10.0 Calibration and Standardization*

Follow the procedures for calibration and standardization in section 10.0 of Method 7E.

*11.0 Analytical Procedures*

Because sample collection and analysis are performed together (*see* section 8), additional discussion of the analytical procedure is not necessary.

*12.0 Calculations and Data Analysis*

You must follow the procedures for calculations and data analysis in section 12.0 of Method 7E, as applicable.

*13.0 Method Performance*

13.1 The Analytical Range, Sensitivity, System Response and Minimum Sampling Times, Analyzer Calibration Error, Sampling System Bias, Interference Test and Alternative Dynamic Spike Check specifications are the same as in section 13.0 of Method 7E.

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 Alternative Procedures*

16.1 Alternative Interference Check.

16.2 Dynamic Spiking Procedure, Manufacturer's Stability Test and Annual Primary Interference Recheck (as applicable). These procedures are the same as in section 16 of Method 7E.

*17.0 References*

1. "EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards" September 1997 as amended, EPA–600/R–97/121.

*18.0 Tables, Diagrams, Flowcharts, and Validation Data*

TABLE 10–1.—FIELD DATA

| | | |
|---|---|---|
| Location: | | Date: |
| Test: | | Operator: |
| Clock Time | Rotameter Reading liters/min (cfm) | Comments |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

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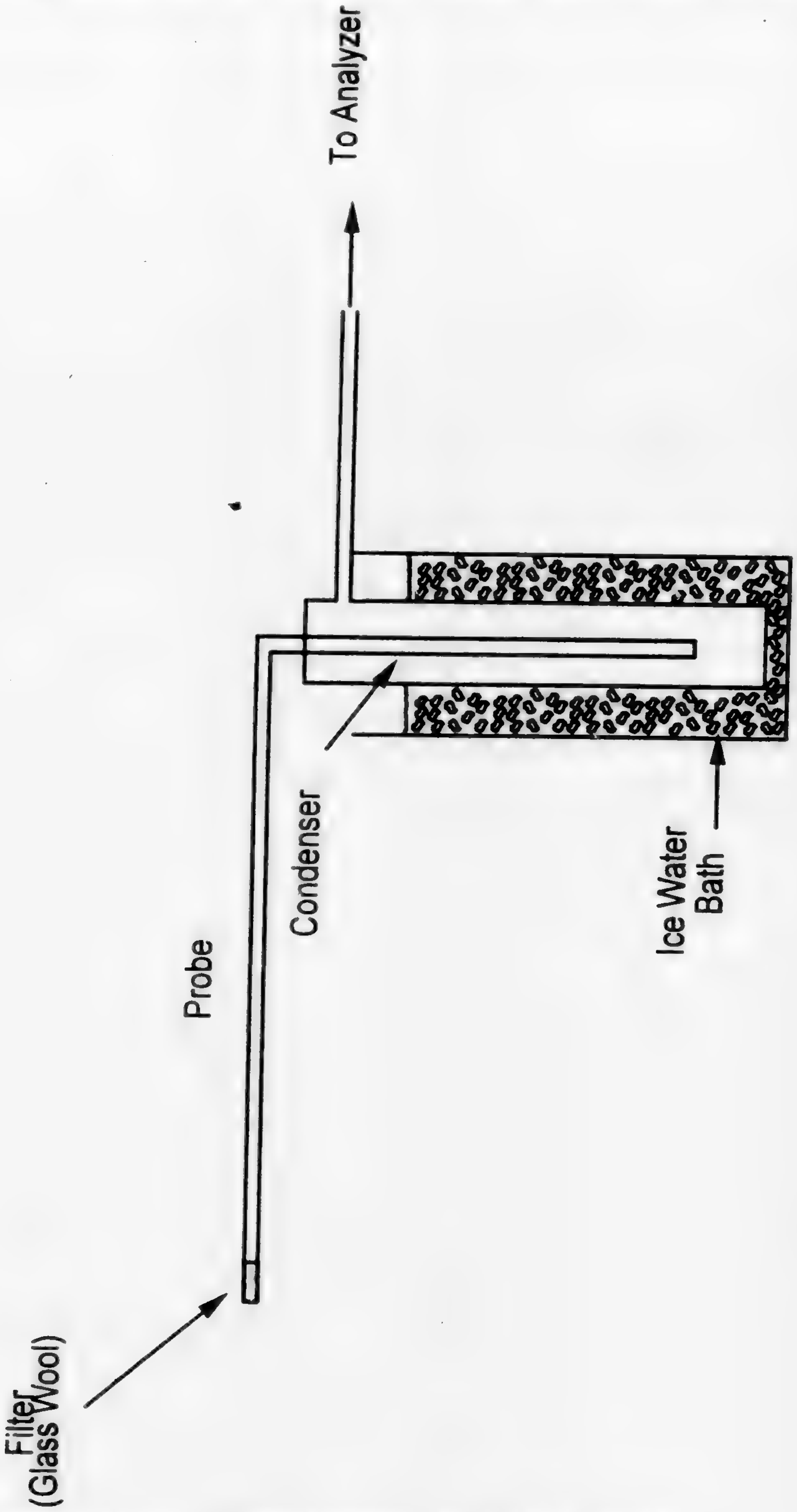
To Analyzer
Probe
Condenser
Ice Water Bath
Filter (Glass Wool)

Figure 10-1. Continuous Sampling Train.

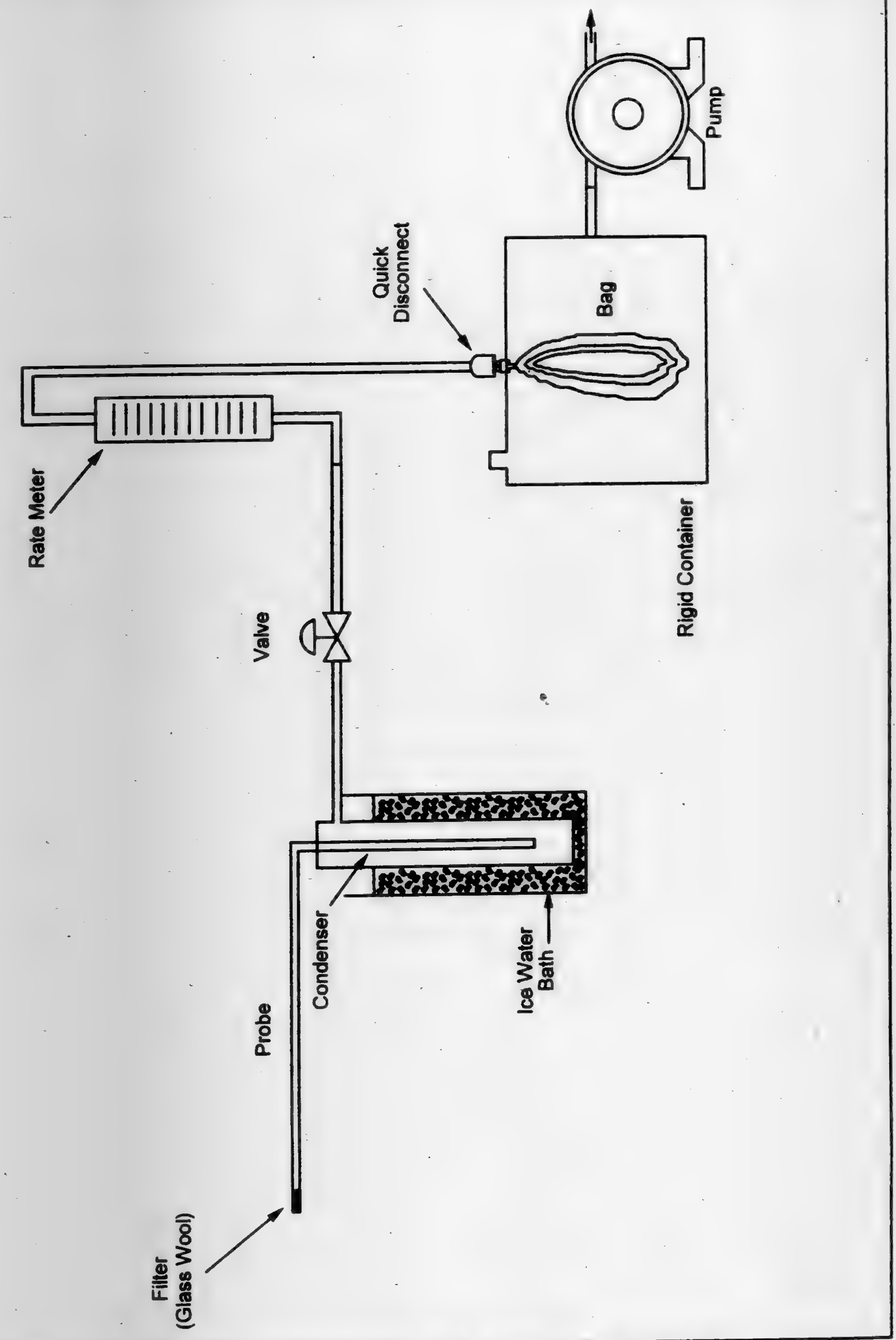
Pump
Quick Disconnect
Bag
Rate Meter
Rigid Container
Valve
Condenser
Ice Water Bath
Probe
Filter (Glass Wool)

Figure 10-2. Integrated Gas Sampling Train.

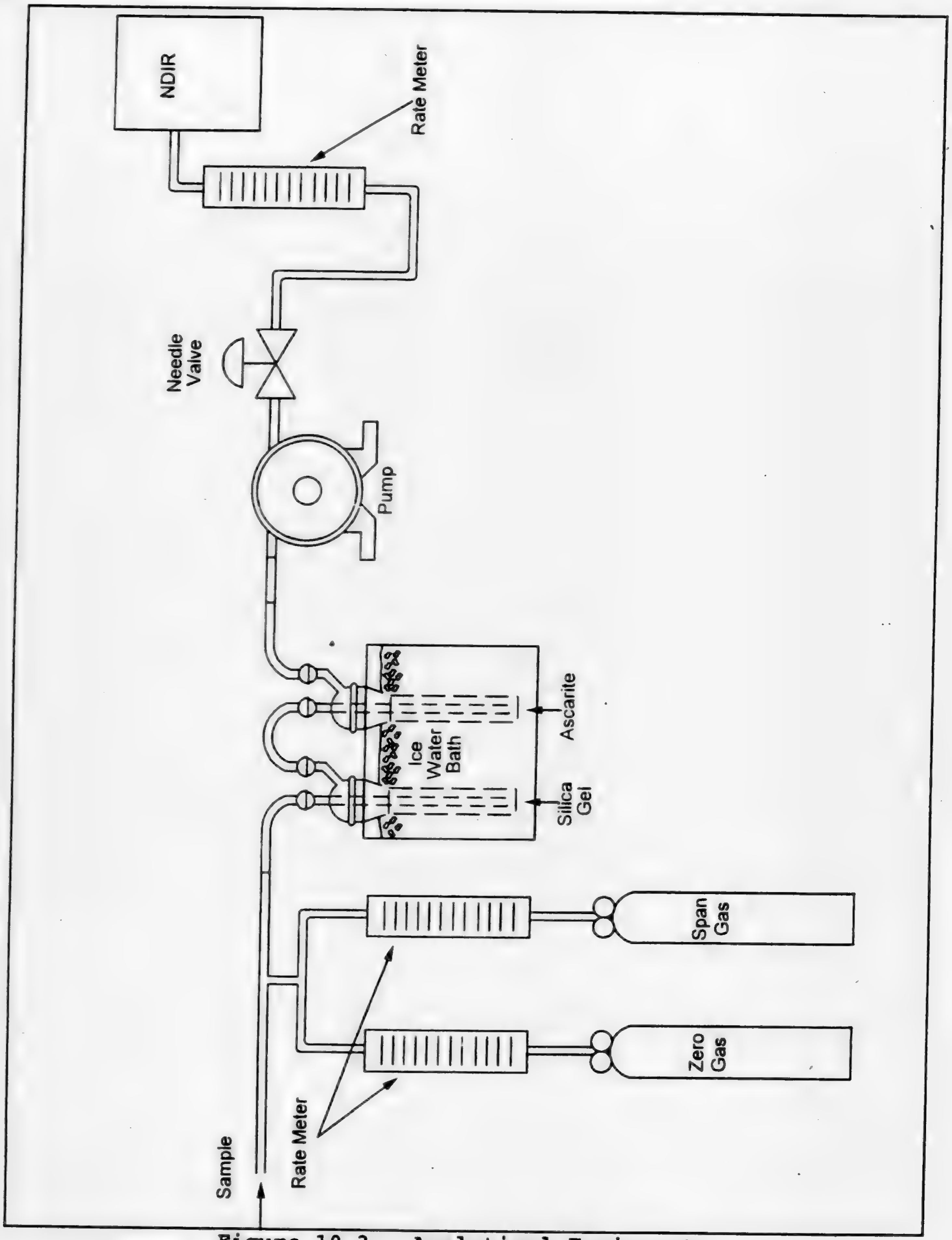
NDIR
Rate Meter
Needle Valve
Pump
Ascarite
Ice Water Bath
Silica Gel
Span Gas
Zero Gas
Sample
Rate Meter

Figure 10-3. Analytical Equipment.

BILLING CODE 6560-50-C

* * * * *

## Method 20—Determination of Nitrogen Oxides and Sulfur Dioxide Emissions From Stationary Gas Turbines

### *1.0 Scope and Application*

What Is Method 20?

Method 20 contains the details you must follow when using an instrumental analyzer to determine concentrations of nitrogen oxides, oxygen, and sulfur dioxide in the emissions from stationary gas turbines. This method refers to other methods for specific instructions for equipment and performance requirements, supplies, sample collection and analysis, calculations, and data analysis. All methods that are referenced are in appendix A of 40 CFR part 60.

1.1 Analytes. *What does this method determine?*

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Nitrogen oxides ($NO_X$) as nitrogen dioxide | | *See* section 1.3 of Method 7E. |
| Nitric oxide (NO) | 10102–43–9 | |
| Nitrogen dioxide ($NO_2$) | 10102–44–0 | |
| Diluent oxygen ($O_2$) or carbon dioxide ($CO_2$) | | *See* section 1.3 of Method 3A. |
| Sulfur dioxide ($SO_2$) | 7446–09–5 | *See* section 1.3 of Method 6C. |

1.2 Applicability. *When is this method required?* Method 6C is required in specific New Source Performance Standards, Clean Air Marketing rules, and State Implementation Plans and permits where measuring $SO_2$ concentrations in stationary source emissions is required. Other regulations may also require its use.

1.3 Data Quality Objectives. Refer to section 1.3 of Method 7E.

### *2.0 Summary of Method*

In this method, $NO_X$, $O_2$ (or $CO_2$), and $SO_2$ are measured using the following methods:

Method 1—Sample and Velocity Traverses for Stationary Sources.

(a) Method 7E—Determination of Nitrogen Oxides Emissions From Stationary Sources (Instrumental Analyzer Procedure).

(b) Method 3A—Determination of Oxygen and Carbon Dioxide Emissions From Stationary Sources (Instrumental Analyzer Procedure).

(c) Method 6C—Determination of Sulfur Dioxide Emissions From Stationary Sources (Instrumental Analyzer Procedure).

### *3.0 Definitions*

Refer to section 3.0 of Method 7E.

### *4.0 Interferences [Reserved]*

### *5.0 Safety*

Refer to section 5.0 of Method 7E.

### *6.0 Equipment and Supplies*

The measurement system design is shown in Figure 20–1. Refer to the appropriate methods listed in section 2.0 for equipment and supplies.

### *7.0 Reagents and Standards*

Refer to the appropriate methods listed in section 2.0 for reagents and standards.

### *8.0 Sample Collection, Preservation, Storage, and Transport*

Emission Test Procedure

8.1 Sampling Site and Sampling Points. You must follow section 8.1 of Method 7E.

8.2 Measurement System Performance Tests. You must follow the Calibration Gas Verification, Measurement System Preparation, Analyzer Calibration Error Test, $NO_2$ to NO Conversion Efficiency Test (as applicable), Initial Sampling System Bias Check, System Response Time.

8.3 Sample Collection. Follow section 8.4 of Method 7E.

8.4 Post-Run Sampling System Bias Check and Alternative Dynamic Spike Procedure. Follow sections 8.5 and 8.6 of Method 7E.

### *9.0 Quality Control*

Follow quality control procedures in section 9.0 of Method 7E.

### *10.0 Calibration and Standardization*

Follow the procedures for calibration and standardization in section 10.0 of Method 7E.

### *11.0 Analytical Procedures*

Because sample collection and analysis are performed together (*see* section 8), additional discussion of the analytical procedure is not necessary.

### *12.0 Calculations and Data Analysis*

You must follow the procedures for calculations and data analysis in section 12.0 of the appropriate method listed in section 2.0.

### *13.0 Method Performance*

13.1 The Analytical Range, Sensitivity, System Response and Minimum Sampling Times, Analyzer Calibration Error, Sampling System Bias, $NO_2$ to NO Conversion Efficiency Test (as applicable), Interference Check, and Alternative Dynamic Spike Check specifications are the same as in section 13.0 of Method 7E.

### *14.0 Pollution Prevention [Reserved]*

### *15.0 Waste Management [Reserved]*

### *16.0 Alternative Procedures*

Refer to section 16.0 of the appropriate method listed in section 2.0 for alternative procedures.

### *17.0 References*

Refer to section 17.0 of the appropriate method listed in section 2.0 for references.

### *18.0 Tables, Diagrams, Flowcharts, and Validation Data*

In addition to Figure 20–1, refer to section 18.0 of the appropriate method listed in section 2.0 for tables, diagrams, flowcharts, and validation data.

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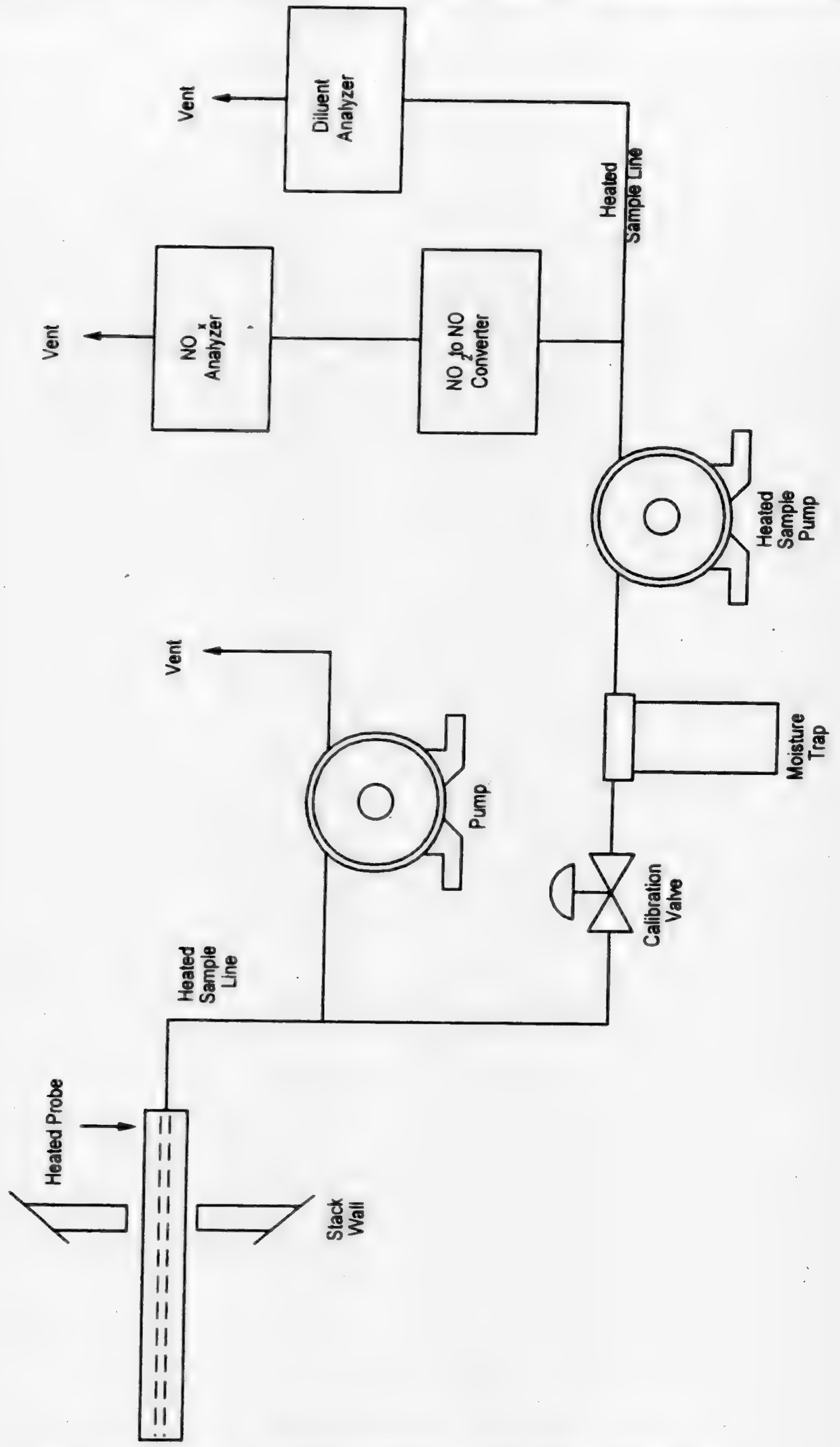
Vent
Diluent Analyzer
Heated Sample Line
Vent
NO$_x$ Analyzer
NO$_2$ to NO Converter
Heated Sample Pump
Vent
Pump
Moisture Trap
Calibration Valve
Heated Sample Line
Heated Probe
Stack Wall

Figure 20-1. Measurement System Design.

* * * * *

[FR Doc. 03–24909 Filed 10–9–03; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
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# Federal Register

Friday,
October 10, 2003

## Part V

## Department of Housing and Urban Development

**Notice of Funding Availability (NOFA) for the HUD Urban Scholars Fellowship Program; Notice**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4859–N–01]**

## Notice of Funding Availability (NOFA) for the HUD Urban Scholars Fellowship Program

**AGENCY:** Office of the Assistant Secretary for Policy Development and Research, HUD.

**ACTION:** Notice of Funding Availability (NOFA).

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**SUMMARY:** *Purpose of the Program.* To provide encouragement to new scholars to undertake research now, and throughout their careers, on topics of interest to HUD.

*Available Funds.* Approximately $550,000 from the Fiscal Year (FY) 2003 Consolidated Appropriations Resolution, Division K, has been set aside to fund grants under this NOFA.

*Eligible Applicants:* Ph.D. recipients who have an academic appointment at an institution of higher education and have received their Ph.D. degrees no earlier than January 1, 1998.

*Application Deadline.* **December 17, 2003.**

*Match.* University support in terms of course load reductions, indirect costs waived, space, *etc.* is required.

### Additional Information

### I. Application Due Date

Your completed application must be received on or before December 17, 2003, based on the following submission requirements.

*Address for Submitting Applications.* Your completed application consists of an original signed application and one copy. Submit your completed application to the following address: The Fellowship Office/HUD GR 346A, National Research Council, 500 Fifth Street, NW., Washington, DC 20001–2736. Only one application per applicant will be accepted.

*For Further Information and Technical Assistance.* You may contact the National Research Council (NRC) by telephone: (202) 334–2872; fax: (202) 334–3419 (these are not toll-free numbers); or email: *infofell@nas.edu.*

### II. Amount Allocated

Approximately $550,000 made available from the FY 2003 Consolidated Appropriations Resolution (Pub. L. 108–7; approved February 20, 2003), Division K, for the Research and Technology Program, Office of Policy Development and Research, has been set aside to fund grants under this program NOFA.

The maximum grant period is 15 months. The tenure will commence on the effective date of the grant agreement.

The maximum amount to be requested by and awarded to an applicant is $55,000. HUD reserves the right to make awards for less than the maximum amount or less than the amount requested in your application.

### III. Program Description; Eligible Applicants; Eligible Activities

(A) *Program Description.* The purposes of the HUD Urban Scholars Program are to:

(1) Fund research relevant to HUD priorities and issues in the United States and its possessions;

(2) Provide encouragement to new scholars to undertake research now, and throughout their careers, on topics of interest to HUD; and

(3) Make an impact on the academic context in which these scholars work so that this kind of research becomes highly valued. The research priorities for the HUD Urban Scholars Program are designed to inform federal problem-solving and policy-making relating to HUD's Strategic Goals.

(B) *HUD's Strategic Goals.* HUD's Strategic Goals are to:

(1) Increase Homeownership Opportunities. This strategic goal seeks to increase homeownership opportunities, particularly for minorities; make the home buying process easier and less expensive; fight practices that permit predatory lending; help HUD-assisted renters become homeowners; and keep existing homeowners from losing their homes.

(2) Promote Decent Affordable Housing. This strategic goal seeks to expand access to decent affordable rental housing; improve the physical quality and management accountability of public and assisted housing; increase housing opportunities for the elderly and persons with disabilities; and help HUD-assisted renters achieve progress toward self-sufficiency.

(3) Strengthen Communities. This strategic goal seeks to improve economic conditions in distressed communities; make communities more livable; end chronic homelessness; and mitigate housing conditions that threaten health.

(4) Ensure Equal Opportunity in Housing. HUD's Equal Opportunity in Housing strategic goal seeks to resolve discrimination complaints on a timely basis; promote public awareness of Fair Housing Laws; and improve housing accessibility for persons with disabilities.

(5) Embrace High Standards of Ethics, Management, and Accountability. Through this strategic goal HUD is seeking to rebuild HUD's human capital and further diversify its workforce; improve HUD's management, internal controls and systems, and resolve audit issues; improve accountability, service delivery, and customer service of HUD and its partners; and ensure program compliance.

(6) Promote Participation of Grass-Roots Faith-Based and Other Community-Based Organizations. Through this strategic goal, HUD seeks to reduce regulatory barriers to participation by grass-roots faith-based and other community-based organizations; conduct outreach to inform potential partners of HUD opportunities; expand technical assistance resources deployed to grass-roots faith-based and other community-based organizations; and encourage partnerships between grass-roots faith-based and other community-based organizations and HUD's traditional grantees.

HUD, through its Secretarial Policy Priorities, also encourages applicants to undertake specific activities that will assist the Department in implementing its policy priorities and which will help the Department achieve its Strategic Goals for FY 2004, when the majority of funding recipients will be reporting programmatic results and achievements. Applicants who include research work that address these policy priorities will receive higher rating scores than applicants who do not address these policy priorities. HUD's Secretarial Policy Priorities are:

(1) Providing Increased Homeownership and Rental Opportunities for Low- and Moderate-Income Persons with Disabilities, the Elderly, Minorities, and Families with Limited English Proficiency. Too often these individuals are shut out of the housing market through no fault of their own. Many of these families are anxious to have a home of their own or better or more affordable rental housing, but are not aware of programs and assistance available.

(2) Improving Our Nation's Communities. HUD wants to improve the quality of life for those living in distressed communities by bringing capital to these areas to finance business investments to grow new businesses; maintain and expand existing businesses; create a pool of funds for new small or minority-owned businesses; improve the environmental health and safety of families living in public and privately owned housing; and make communities more livable by providing public and social services and

improving infrastructure and community facilities.

(3) Encouraging Accessible Design Features. These design features are intended to promote visitability and incorporate features of universal design in new construction and rehabilitation projects. For more information on visitability visit *http://www.concretechange.org*. For more information on universal design, visit the Center for Universal Design at *http://www.design.ncsu.edu:8120/cud/* or the Resource Center on Accessible Housing and Universal Design at *http://www.abledata.com/Site_2/accessib.htm*.

(4) Providing Full and Equal Access to Grass-Roots Faith-Based and Other Community-Based Organizations in HUD Program Implementation. HUD encourages non-profit organizations, including grass-roots faith-based and other community-based organizations, to participate in the vast array of programs HUD funds. HUD also encourages states and units of local government, universities and colleges, and other organizations to partner with grass-roots organizations *e.g.* civic organizations, faith-communities, and grass-roots faith-based and other community-based organizations that have not been effectively utilized. HUD considers an organization to be a grass-roots organization if the organization is headquartered in the local community to which it provides services and has a social services budget of $300,000 or less, or has six or fewer full-time equivalent employees. Local affiliates of national organizations are not considered grass-roots. National organizations are encouraged to partner with grass-roots organizations.

(5) Colonias. HUD is seeking to improve housing conditions for families living in Colonias. Colonias means any identifiable, rural community that: is located within 150 miles of the border between the United States and Mexico; is determined to be a Colonia on the basis of objective need criteria including lack of potable water supply, lack of adequate sewerage systems, and lack of decent, safe, sanitary, and accessible housing.

(6) Participation of Minority-Serving Institutions in HUD Programs. Pursuant to Executive Orders 13256 President's Board of Advisors on Historically Black Colleges and Universities, 13230 President's Advisory Commission on Educational Excellence for Hispanic Americans, 13216 Increasing Participation of Asian Americans and Pacific Islanders in Federal Programs, and 13270 Tribal Colleges and Universities, HUD is strongly committed to broadening the participation of Minority-Serving Institutions (MSI) in its programs to advance the development of human potential, strengthen the nation's capacity to provide high-quality education, and increase opportunities for MSI to participate and benefit from federal financial assistance programs. A listing of MSI can be found on the Department of Education website at *http://www.ed.gov/offices/OCR/minorityinst.html*.

(7) Participation in Energy Star. HUD has adopted a wide-ranging energy action plan for improving energy efficiency in all programs. The purpose of HUD's Energy Star Partnership with Environmental Protection Agency (EPA) and the Department of Energy (DoE) is to promote energy efficiency of the affordable housing stock and to help protect the environment. HUD also urges the purchase and use of Energy Star products and providing Energy Star promotional materials. For more information about Energy Star visit *http://www.energystar.gov*.

(8) Ending Chronic Homelessness Within Ten Years. President Bush has set a national goal to end chronic homelessness within ten years, and this has been embraced by Secretary Martinez. A person experiencing chronic homelessness is defined as an individual with a disabling condition who has been continuously homeless for a year or more or has experienced four or more episodes of homelessness over the last three years.

(C) *Research Topics.* Examples of research topics that will further HUD's Strategic Goals and Policy Priorities related to these goals are:

(1) Increasing Homeownership.

(a) Increasing minority homeownership.

(b) Simplifying the home buying process (RESPA reform) and reducing settlement costs.

(c) Setting appropriate housing goals for the Government Sponsored Enterprises (GSE).

(d) Countering Predatory Lending.

(e) Helping low-income homeowners avoid default and foreclosure.

(f) Evaluating housing counseling.

(2) Improving Our Nation's Communities.

(a) Strengthening the economic viability of communities.

(b) Improving the environmental health and safety of families living in public and privately owned housing.

(c ) Making communities more livable.

(d) Providing increased public and social services.

(e) Improving infrastructure and community facilities.

(3) Encouraging Accessible Design Features and Promoting Decent Affordable Housing.

(a) Reducing regulatory barriers to the development of affordable housing, as well as all forms of multifamily housing.

(b) Meeting the housing-related needs of the elderly.

(c) Meeting the housing-related needs of persons with disabilities.

(d) Meeting the housing-related needs of families with limited English proficiency.

(e) Improving housing quality and affordability through technology and design.

(f) Ensuring visitability in new construction and substantial rehabilitation.

(g) Increasing use of universal design in construction and rehabilitation projects.

(4) Providing full and equal access and participation to Grass-Roots Faith-Based and other Community-Based Organizations and Strengthening the Capacity of Grass-Roots Faith-Based and Other Community-Based Organizations to conduct community, housing, and economic development programs.

(5) Meeting and Improving the Housing and Community and Economic Development Needs of Residents of High-Needs areas such as Colonias, Appalachia, the Mississippi Delta, and Tribal Areas.

(6) Increasing Participation of Minority-Serving Institutions in HUD Programs.

(7) Increasing Participation in Energy Star.

(8) Ending Chronic Homelessness in Less than Ten Years.

(a) Preventing homelessness.

(b) Developing creative strategies for expanding the availability of affordable housing.

(c) Strengthening the delivery of HUD-funded rental assistance and assistance provided through the low-income housing tax credit

(d) Promoting Self-Sufficiency among residents of public and assisted housing.

(9) Ensuring Equal Opportunity in Housing.

(a) Reducing housing discrimination.

(b) Improving housing accessibility for persons with disabilities.

(10) Embracing High Standards of Ethics, Management, and Accountability.

(a) Reducing fraud, waste, and abuse in HUD-funded programs.

(b) Improving the effectiveness of HUD programs through program evaluations.

(D) *Eligible Applicants.* You must meet the following conditions:

(1) Have an academic appointment at an institution of higher education and

be on a tenure track or term (teaching or research) appointment that will extend beyond the 15-month duration of this fellowship;

(2) Have been awarded a Ph.D. received no earlier than January 1, 1998;

(3) Proposed a research project that can be completed within the 15-month fellowship period;

(4) Received support from your institution as attested to in the letter described below in Section V(C)(2)(c); and

(5) Be a U.S. citizen or legally admitted permanent resident (green card recipient).

(E) *Eligible Activities.* Your grant must support costs related to completion of your research project. Eligible costs include, but are not limited to, your salary for two summers; graduate assistants to work on the project; up to $2,500 per course for the purchasing of your release time from teaching; computer software; survey development and administration; the purchase of data; travel expenses to collect data or to make presentations at meetings on your findings; transcription services; compensation for interviews; and no more than eight percent of the university's indirect costs.

## IV. Application Selection Process

The National Research Council (NRC) will administer the competition and selection process for this program on HUD's behalf. The NRC will conduct two types of reviews: A threshold review to determine your eligibility to apply; and a technical review to rate your application based on the rating factors in this section.

(A) *Threshold Factors for Funding Consideration.* Under the threshold review, your application can only be rated if the following standards are met:

(1) You are eligible to apply for this program, as defined in Section III (D) above, and have provided a letter from your department chair confirming your eligibility;

(2) You have obtained a mentor and have included a letter from this person confirming this fact and describing his or her role in your research; and

(3) Your institution has agreed to provide some support to you, beyond that provided by this funding, as part of this grant and has provided a letter outlining that support.

(B) *Ineligible Activities.* Your grant may not be used to pay for tuition, computer hardware, meals and relocation costs, or other costs not directly related to your research project. Fellowship funding cannot be used to substitute for university funding. HUD must approve receipt of additional external grant awards and will do so on a case-by-case basis.

(C) *Other Requirements.*

(1) *Support from your university.* Support from your university is required. Institutions will be required at a minimum, to:

(a) Designate a faculty adviser to monitor your progress on your research project;

(b) Provide office space, computer usage, etc.; and

(c) Waive indirect costs above the eight percent allowed to be covered by this fellowship.

In addition, your application will be viewed more favorably if your institution agrees to reduce your course load by at least one course per term or semester, but continues to pay your full salary.

(2) *Progress reporting.* Award recipients must submit two copies of a progress report halfway through the fellowship tenure that details the progress made to date toward completion of the research project. At the completion of the research project, applicants must furnish three copies of a final paper documenting the research findings, as well as three copies of any publication or presentation based on the research.

(3) *Mentors.* You will be required to work with a mentor on your research project. The mentor can be someone in your institution or elsewhere and should be a well-respected scholar in the area of your research topic. The mentor will be expected to provide you with advice and direction on substantive research issues. The mentor and the faculty monitor described above can be, but do not have to be, the same person.

(4) *Compliance with Fair Housing and Civil Rights Laws.* All applicants and their subrecipients must comply with all Fair Housing and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a). In addition, the applicant and any subrecipients must comply with Title IX of the Education Amendments Act of 1972 (20 U.S.C. 1681 *et seq.*).

NRC will not rate and rank your application under this NOFA if the charge, lawsuit or letter of findings has not been resolved to the satisfaction of the Department before the application deadline. if you, the applicant,

(a) Have been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination;

(b) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or

(c) Have received a letter of noncompliance findings under Title VI, Section 504 or Section 109.

HUD's decision whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings.

(5) *Delinquent Federal Debts.* Consistent with the purpose and intent of 31 U.S.C. 3720B and 28 U.S.C. 3201(e), no award of federal funds shall be made to an applicant who has an outstanding delinquent federal debt until: (a) The delinquent account is paid in full; (b) a negotiated repayment schedule is established and at least one payment is received; or (c) other arrangements satisfactory to the Department of Housing and Urban Development are made prior to the deadline submission date.

(D) *Conflicts of Interest.* All individuals involved in rating and ranking this NOFA, including experts and consultants, must avoid conflicts of interest or the appearance of conflicts. Individuals involved in the rating and ranking of applications must disclose to HUD's General Counsel or HUD's Ethics Law Division the following information, if applicable: (a) How the selection or non-selection of any applicant under this NOFA will affect the individual's financial interests, as provided in 18 U.S.C. 208; or, (b) how the application process involves a party with whom the individual has a covered relationship under 5 CFR 2635.502. The individual must disclose this information prior to participating in any matter regarding this NOFA. If you have questions regarding these provisions, or if you have questions concerning a conflict of interest, you may call the Office of General Counsel, Ethics Law Division, at 202–708–3815.

(E) *Factors for Award Used to Evaluate and Rate Applications.* The factors for rating and ranking applicants and maximum points for each factor are provided below. The maximum number of points for this program is 100.

*Rating Factor 1: Capacity to do the Research (15 points).* In reviewing this factor, NRC will determine the extent to which your training, past employment, and past written work, such as your dissertation, teaching, coursework, and previously completed research papers that were accepted for presentation or publication, lay a foundation for this proposed work.

*Rating Factor 2: Need for the Research (20 points).* In reviewing this factor, NRC will determine the extent to which your proposed project undertakes research in an area not covered by previous research or proposes to look at a previously studied research topic in a new and different way. Reviewers will look at the clarity and compelling nature of the case you make for this project in the context of the existing literature and knowledge base for that topic.

*Rating Factor 3: Approach (40 total points).* (a) *Appropriateness of your Methodology and Approach to the Research Topic (25 points).* In reviewing this factor, NRC will determine the extent to which your research design and methodology are likely to produce data and information that will successfully answer your research hypothesis. NRC will also evaluate the extent to which the methodology you propose to use is sound and generally accepted by the relevant research community. Reviewers will be looking at the extent to which you use standard methodological practices in line with research already completed or existing publications in the field related to your research questions. Applicants that focus on one of the HUD policy priorities listed above for this year will receive higher points.

(b) *Plan for Timely Completion of Your Research Project (10 points).* In reviewing this factor, NRC will determine the extent to which your research design and methodology and plan for completion of your research project can feasibly be completed within the 15-month fellowship period. Applications that propose extremely complex and time-consuming data collection efforts (*e.g.*, major longitudinal studies or a very large number of site visits within the grant period) will be determined to be less feasible for completion within the allowed time frame. For example, if you propose a methodology based on information that may not be publicly available until after the end of the grant period (*e.g.*, census information), or a data collection plan that will take longer than the time you have allowed for it, you will get a lower score than if you have presented a time line and methodology that show evidence that the research project can be completed within the grant period.

(c) *Quality of the Mentoring Plan (5 points).* In reviewing this factor, NRC will determine the appropriateness of the person chosen to be your mentor in terms of his/her previous work, (*e.g.*, research, publications, presentations, standing in the research community, and availability) and the role the mentor has agreed to play in your project. The more time the mentor commits to you, the greater the number of points you will receive.

*Rating Factor 4: Leveraging/Commitment of the University (10 points).* In reviewing this factor, NRC will determine the extent of the commitment of your university, beyond that required in Section IV (C)(1). The quality of your institution's commitment, in terms of its furthering your research project, will also be evaluated under this factor. For example, your university could propose to cover the cost of a graduate assistant to work on your research project in order to demonstrate its commitment beyond what is minimally required. The larger the commitment, translated into dollar terms, the higher the points. Full points may only be received if your institution designates a faculty adviser and agrees to reduce your course load by one course per semester or term while it continues paying your full salary.

*Rating Factor 5: Relevance of Your Research to HUD's Strategic Goals (15 points).* In reviewing this factor, NRC will determine the extent to which your proposed research project will produce policy-relevant information that is directly related to one or more of the strategic goals listed above (*i.e.*, the research could improve the effectiveness of HUD's programs and policies and the ability to achieve the stated goals). The less directly related to one of these goals your research project is, the fewer points you will receive. For example, a study of minorities' housing choice decisions would have high relevance to HUD's strategic goals; a study of transportation inequities would have medium relevance; and a study of the effects of global warming on urban development would have low relevance. In addition, this factor reflects HUD's goal to embrace high standards of ethics, management, and accountability and measures your commitment to assess your performance to achieve your proposed research agenda's outcome and/or objective. NRC will evaluate the extent to which you identify activities, outcomes, benchmarks, and performance indicators that will describe how performance will be measured. This information should be provided in a Logic Model format. This form number can be found under the "Additional Required Assurance and Certification" section of this NOFA.

(F) *Selections.* HUD will fund applications in rank order, until it has awarded all available funds. However, as noted in Section II, HUD reserves the right to make awards for less than the amount requested in your application. After all application selections have been made, HUD may require that you participate in negotiations to determine the specific terms of the fellowship and the grant budget. In cases where HUD cannot successfully complete negotiations, or you fail to provide HUD with requested information, an award will not be made. In such instances, HUD may elect to offer an award to the next highest-ranking applicant, and proceed with negotiations with that applicant.

## V. Application Submission Requirements

Your application should include an original and one copy of the items in the order listed below. All pages should be numbered. All applications must be submitted on 8½ by 11-inch paper, double-spaced on one side of the paper, and printed in a standard 12-point font. Please do not exceed the page limits described below. Submitting pages in excess of the page limit will not disqualify your application but the information will not be considered, which may result in a lower score.

(A) *Evidence of your eligibility.* A letter must be submitted from your faculty chairperson containing the following: (1) Confirmation that you received a doctoral degree no earlier than January 1998; (2) verification of your appointment to a tenure-track or teaching or research position extending beyond the 15-month duration of this fellowship; (3) verification of your U.S. citizenship or evidence of your resident alien status; and (4) the university's name, department, mailing address, telephone, facsimile number, and e-mail address.

(B) *Abstract* (one page). You must include a summary that describes your proposed research project.

(C) *Response to Rating Factors.*

(*1*) *Rating Factor 1—Capacity to do the Research*

(a) A curriculum vita that contains the following:

(*1*) Your graduate and post-graduate educational background.

(*2*) A list of your publications: books, refereed journal articles, chapters contributed to books, articles in published proceedings, and any other articles.

(*3*) A list of text and poster presentations made during the last five years.

(*4*) Grants and awards received during the last five years.

(*5*) Teaching load during the last five years.

(b) A one-page abstract of your dissertation.

(c) Two letters of reference.

(*2*) Narrative Statement (addresses Factors 2 through 5 listed below): The application narrative must not exceed 15 pages in length (excluding letters, forms, and assurances) double spaced, on one side of the paper, and printed in a standard 12-point front.

(a) *Rating Factor 2—Need for the Research*

A succinct description of your proposed research and how your proposal is non-duplicative of previously published research.

(b) *Rating Factor 3—Approach*

Identify your proposed research, methodologies, and the extent to which it will produce data and information to successfully answer your research hypotheses. Include a letter from your mentor that contains his/her address, telephone and facsimile number and email address, states his/her qualifications and availability to be your mentor, and describes his/her proposed role in your research project (excluded from narrative page limit).

(c) *Rating Factor 4—Leveraging/ Commitment of the University*

Provide evidence of your university's support and commitment to you furthering your research and a description of the type of support the institution will provide. Include a firm letter of commitment that outlines the University's total proposed level of support.

(d) *Response to Rating Factor 5—Relevance of Research*

Address the extent to which your proposed research will further and support HUD's research agenda and reflects HUD's goal to embrace high standards of ethics, management, and accountability and measures your commitment to assess your performance to achieve your proposed research outcome and/or objective. This information should be provided in a Logic Model format. Additional required Assurances and Certifications:

1. Application for Federal Assistance (HUD–424)
2. Application Assurances and Certifications (HUD–424–B)
3. Sample Budget (See Appendix A)
4. Disclosure of Lobbying Activities, (SF Form LLL)
5. Race and Ethnic Data Reporting Form (HUD–27061) (if applicable)
6. Applicant/Recipient Disclosure/ Update Report (HUD–2880)
7. Logic Model (HUD–96010)

All forms must be signed by the applicant and can be downloaded from the HUD website at *www.hud.gov*.

## VI. Corrections to Deficient Applications

After the application due date, NRC may not, consistent with HUD regulations in 24 CFR part 4, subpart B, consider any unsolicited information the applicant may want to provide. NRC may contact you to clarify an item in your application or to correct technical deficiencies. NRC may not seek clarification of items or responses that improve the substantive quality of your response to any rating factors. In order not to unreasonably exclude applications from being rated and ranked, NRC may contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. Examples of curable (correctable) technical deficiencies include failure to submit the proper certifications or failure to submit an application that contains an original signature by an authorized official. In each case, NRC will notify you in writing by describing the clarification or technical deficiency.

## VII. Environmental Requirements

This NOFA does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

## VIII. Other Matters

### *(A) Federalism, Executive Order 13132*

This notice does not have federalism implication and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of Executive Order 13132 (entitled "Federalism").

### *(B) Intergovernmental Review of Federal Program, Executive Order 12372*

This notice is excluded from the intergovernmental review process and therefore should be sent directly to NRC.

### *(C) Conducting Business in Accordance With Core Values and Ethical Standards*

Entities subject to 24 CFR parts 84 and 85 (most non-profit organizations and state, local, and tribal governments or government agencies or instrumentalities who receive federal awards of financial assistance) are required to develop and maintain a written code of conduct (see §§ 84.42 and 85.36(b)(3)). Consistent with regulations governing specific programs, your university's code of conduct must: prohibit real and apparent conflicts of interest that may arise among officers, employees, or agents; prohibit the solicitation and acceptance of gifts or gratuities by your officers, employees, and agents for their personal benefit in excess of minimal value; and outline administrative and disciplinary actions available to remedy violations of such standards. If awarded assistance under this NOFA, you will be required, prior to entering into a grant agreement with HUD, to submit a copy of your university's code of conduct and describe the methods you will use to ensure that all officers, employees, and agents of your organization are aware of your code of conduct. Failure to meet the requirement for a code of conduct will prohibit you from receiving an award document.

### *(D) Prohibition Against Lobbying Activities*

You, the applicant, are subject to the provisions of Section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991(31 U.S.C. 1352) (the Byrd Amendment), which prohibits recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the federal government in connection with a specific contract, grant, or loan. You are required to certify, using the certification found at Appendix A to 24 CFR part 87, that you will not and have not used appropriated funds for any prohibited lobbying activities. In addition, you must disclose, using Standard Form LLL "Disclosure of Lobbying Activities," any funds, other than federally appropriated funds, that will be or have been used to influence federal employees, members of Congress, and congressional staff regarding specific grants or contracts. Federally recognized Indian tribes and tribally designated housing entities (TDHEs) established by federally recognized Indian tribes as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but state-recognized Indian tribes and TDHEs established under state law must comply with this requirement.

*(E) Section 102 of the HUD Reform Act, Documentation and Public Access Requirements*

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published a notice that also provides information on the implementation of Section 102 (57 FR 1942). The documentation, public access, and disclosure requirements of Section 102 apply to assistance awarded under this NOFA as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations (24 CFR part 15).

(2) *Debriefing.* Beginning 30 days after the awards for assistance are publicly announced and for at least 120 days after awards for assistance are announced, HUD will provide a debriefing to any applicant requesting one on his or her application. All debriefing requests must be made in writing or by email by the authorized official whose signature appears on the HUD–424 or his or her successor in office, and submitted to the person or organization identified as the Contact under the section entitled "For Further Information and Technical Assistance." Information provided during a debriefing will include, at a minimum, the final score you received for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied.

(3) *Disclosures.* HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also reported on HUD Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three years. All reports, both applicant disclosures and updates, will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations (24 CFR part 5).

(4) *Publication of Recipients of HUD Funding.* HUD's regulations at 24 CFR part 4 provide that HUD will publish a notice in the **Federal Register** to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to Section 102(a) of the HUD Reform Act; and/or

(ii) Assistance provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(F) *Section 103 of the HUD Reform Act.* HUD's regulations implementing Section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, subpart B, 4.26(2)(c) *et seq.* and 4.28 apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Ethics Law Division at 202–708–3815. (This is not a toll-free number.) HUD employees who have specific program questions should contact the appropriate field office counsel or Headquarters counsel for the program to which the question pertains.

(G) *Accessible Technology.* The Rehabilitation Act Amendments of 1998 (the Act) apply to all electronic information technology (EIT) used by a recipient for transmitting, receiving, using, or storing information to carry out the responsibilities of any federal funds awarded. The Act's coverage includes, but is not limited to, computers (hardware, software, word-processing, email, and web pages), facsimile machines, copiers, and telephones. When developing, procuring, maintaining, or using EIT, funding recipients must ensure that the EIT allows employees with disabilities and members of the public with disabilities to have access to and use of information and data that is comparable to the access and use of information and data by employees and members of the public who do not have disabilities. If these standards impose a hardship on a funding recipient, a recipient may provide an alternative means to allow the individual to use the information and data. However, no recipient will be required to provide information services to a person with disabilities at any location other than the location at which the information services is generally provided.

(H) *Name Check Review.* Applicants are subject to a name check review process. Name checks are intended to reveal matters that significantly reflect on the applicant's management and financial integrity, or if any key individuals have been convicted or are presently facing criminal charges. If the name check reveals significant adverse findings that reflect on the business integrity or responsibility of the recipient and/or key individual, HUD reserves the right to: (a) Deny funding or consider suspension/termination of an award immediately for cause; (b) require removal of any key individual from association with management of and/or implementation of the award; and (c) make appropriate provisions or revisions with respect to the method of payment and/or financial reporting requirements.

(I) *False Statements.* A false statement in an application is grounds for denial or termination of an award and grounds for possible punishment as provided in 18 U.S.C. 1001.

(J) *Catalog of Federal Domestic Assistance.* The Catalog of Federal Domestic Assistance number is: 14.518.

(K) *Paperwork Reduction Act Statement.* The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB), under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2528–0175. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

## IX. Authority

The authority for this program is found in Title V of the Housing and Urban Development Act of 1970 (Public Law 91–609).

Dated: August 11, 2003.

**Darlene L. Williams,**

*General Deputy Assistant Secretary for Policy Development and Research.*

BILLING CODE 4210–62–P

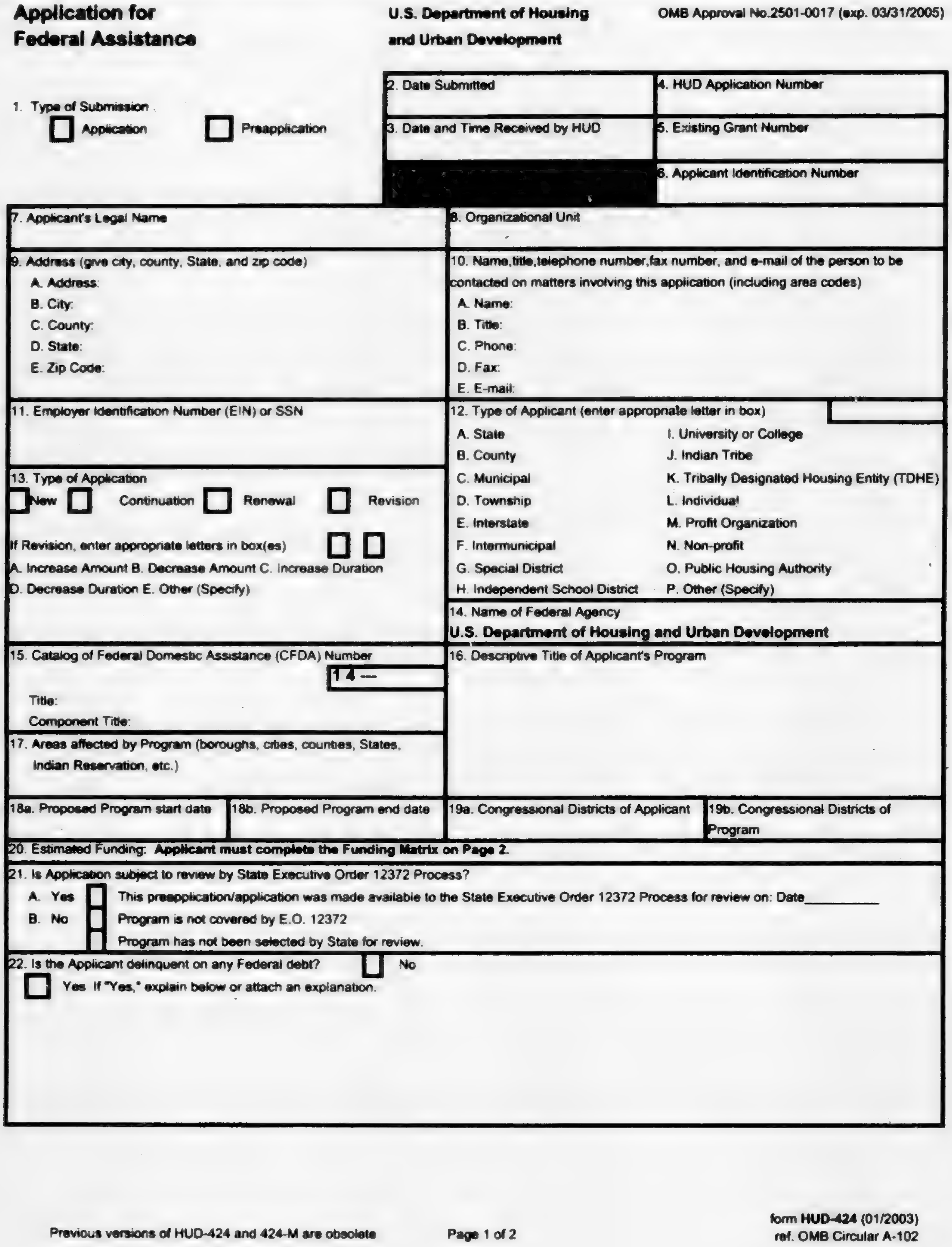

**Application for Federal Assistance**

**U.S. Department of Housing and Urban Development**

OMB Approval No.2501-0017 (exp. 03/31/2005)

1. Type of Submission ☐ Application ☐ Preapplication

2. Date Submitted

3. Date and Time Received by HUD

4. HUD Application Number

5. Existing Grant Number

6. Applicant Identification Number

7. Applicant's Legal Name

8. Organizational Unit

9. Address (give city, county, State, and zip code)
A. Address:
B. City:
C. County:
D. State:
E. Zip Code:

10. Name,title,telephone number,fax number, and e-mail of the person to be contacted on matters involving this application (including area codes)
A. Name:
B. Title:
C. Phone:
D. Fax:
E. E-mail:

11. Employer Identification Number (EIN) or SSN

12. Type of Applicant (enter appropriate letter in box) ☐

| | |
|---|---|
| A. State | I. University or College |
| B. County | J. Indian Tribe |
| C. Municipal | K. Tribally Designated Housing Entity (TDHE) |
| D. Township | L. Individual |
| E. Interstate | M. Profit Organization |
| F. Intermunicipal | N. Non-profit |
| G. Special District | O. Public Housing Authority |
| H. Independent School District | P. Other (Specify) |

13. Type of Application
☐ New ☐ Continuation ☐ Renewal ☐ Revision
If Revision, enter appropriate letters in box(es) ☐ ☐
A. Increase Amount B. Decrease Amount C. Increase Duration
D. Decrease Duration E. Other (Specify)

14. Name of Federal Agency
**U.S. Department of Housing and Urban Development**

15. Catalog of Federal Domestic Assistance (CFDA) Number 14 —
Title:
Component Title:

16. Descriptive Title of Applicant's Program

17. Areas affected by Program (boroughs, cities, counties, States, Indian Reservation, etc.)

18a. Proposed Program start date

18b. Proposed Program end date

19a. Congressional Districts of Applicant

19b. Congressional Districts of Program

20. Estimated Funding: **Applicant must complete the Funding Matrix on Page 2.**

21. Is Application subject to review by State Executive Order 12372 Process?
A. Yes ☐ This preapplication/application was made available to the State Executive Order 12372 Process for review on: Date__________
B. No ☐ Program is not covered by E.O. 12372
☐ Program has not been selected by State for review.

22. Is the Applicant delinquent on any Federal debt? ☐ No
☐ Yes If "Yes," explain below or attach an explanation.

Previous versions of HUD-424 and 424-M are obsolete

Page 1 of 2

form **HUD-424** (01/2003)
ref. OMB Circular A-102

## Funding Matrix

The applicant must provide the funding matrix shown below, listing each program for which HUD funding is being requested, and complete the certifications.

| Grant Program* | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income | Total |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | 0.00 |
| | | | | | | | | | 0.00 |
| | | | | | | | | | 0.00 |
| | | | | | | | | | 0.00 |
| | | | | | | | | | 0.00 |
| **Grand Totals** | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |

* For FHIPs, show both initiative and component

## Certifications

I certify, to the best of my knowledge and belief, that no Federal appropriated funds have been paid, or will be paid, by or on behalf of the applicant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding of this Federal grant or its extension, renewal, amendment or modification. If funds other than Federal appropriated funds have or will be paid for influencing or attempting to influence the persons listed above, I shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying. I certify that I shall require all sub awards at all tiers (including sub-grants and contracts) to similarly certify and disclose accordingly.

Federally recognized Indian Tribes and tribally designated housing entities (TDHEs) established by Federally-recognized Indian tribes as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but State-recognized Indian tribes and TDHEs established under State law are not excluded from the statute's coverage.

This application incorporates the Assurances and Certifications (HUD-424B) attached to this application or renews and incorporates for the funding you are seeking the Assurances and Certifications currently on file with HUD. To the best of my knowledge and belief, all information in this application is true and correct and constitutes material representation of fact upon which HUD may rely in awarding the agreement.

| | |
|---|---|
| 23. Signature of Authorized Official | Name (printed) |
| Title | Date (mm/dd/yyyy) |

Previous versions of HUD-424 and 424-M are obsolete.

form **HUD-424** (01/2003)
ref. OMB Circular A-102

## Instructions for the HUD-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This form must be used by applicants requesting funding from the Department of Housing and Urban Development. This application form HUD-424 incorporates the Assurances and Certifications (HUD-424-B). You may either (1) attach the Assurances and Certifications to the application or (2) renew the certifications that you previously made on behalf of your organization and submitted to HUD if the legal name of your organization has not changed and you were the authorized representative who signed the Assurances and Certifications.

### Item Number Instructions

1. Please indicate whether your application is for a formal application submission or a preliminary application (pre-application). HUD does not accept pre-applications for programs funded through the SuperNOFA.

2. Enter the date you are submitting your application to HUD.

3. This box will be completed by HUD. When received by HUD, your application will be stamped:

(a) with a date; and

(b) with the time received.

4. Leave Blank. This will be completed by the HUD program office receiving your application. When HUD accepts electronic applications for the grant program you are applying for, this number will be computer generated.

5. If your application is to renew or continue an existing grant, provide the existing grant number. If a new award, please leave blank.

6. Leave blank if you have not been provided a HUD ID number or user number. If you are a Public Housing Authority, enter your HUD issued Public Housing Authority ID number.

7. Enter the legal name of your organization applying for HUD funding.

8. Enter the name of the primary unit in your organization, if applicable, which will be responsible for the program.

9. Enter the complete address of your organization.

10. Enter the name, title, telephone number, fax number, and E-mail of the person to contact on matters related to your application.

11. Enter your organization's Employer Identification Number (EIN) as assigned by the Internal Revenue Service or if you are applying as an individual, your Social Security Number.

12. Choose from the list and enter the appropriate letter in the space provided. You must be an eligible applicant to apply for assistance. You must read the program information requirements to determine if you are a type of applicant that is eligible to apply for assistance under the program.

13. Enter the type of application you are submitting for funding consideration.

Check the appropriate box.

☐ "New" means you are applying for a new grant award.

☐ "Continuation" means you are requesting an extension of an existing award.

☐ "Renewal" means you are requesting funding for renewal of an existing grant. e.g. Supportive Housing Program (SHP) or Shelter + Care grant.

☐ "Revision" means you are submitting a revision prior to the application due date in response to HUD's request for clarification or modification to your initial submission.

14. Pre-filled.

15. Enter the Catalog of Federal Domestic Assistance (CFDA) number and title and, if applicable, component title of the program.

16. Enter a brief description of your program and key activities.

17. Identify the location(s) where your activities will take place. If this is the entire state, enter "Entire State".

18a. Enter the proposed start date.

18b. Enter the proposed end date.

19a. List the Congressional District(s) where your organization is located.

19b. List any Congressional District(s) where your program of activities or project sites will be located.

20. You must complete the funding matrix on page 2 of this form. Enter the following information:

**Grant Program**: The HUD funding program under which you are applying.

**HUD Share**: Please check the program requirements. Enter the amount of HUD funds you are requesting in your application.

**Applicant Match**: Enter the amount of funds or cash equivalent of in-kind contributions you are contributing to your project or program of activities.

**Other Federal Share**: Enter the amount of other Federal funds for your program of activities.

## Instructions for the HUD-424 (Continued)

**State Share**: Enter the amount of funds or cash equivalent of in-kind services the State is providing to your project or program of activities.
**Local/Tribal Share**: Enter the amount of funds or cash equivalent of in-kind services your local/tribal government is providing to your project or program of activities.
**Other**: Enter the amount of other sources of private, non-profit, or other funds or cash equivalent of in-kind services being provided to your project or program of activities.
**Program Income**: Enter the amount of program income you expect to generate over the life of your award.
**Total**: Please total all columns and fill in the amounts.
21. You should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 or check your application kit to determine whether the State Intergovernmental Review Process is required.
22. This question applies to your applicant organization, not the person signing as your organization's authorized representative. Categories of debt include disallowed costs that requires repayment to HUD.
23. To be signed by the authorized representative of your organization. A copy of your governing body's authorization for you to sign this application must be available in your organization's office.

## Applicant Assurances and Certifications

**U.S. Department of Housing and Urban Development**

OMB Approval No. 2501-0017
(exp. 03/31/2005)

### Instructions for the HUD-424-B Assurances and Certifications

As part of your application for HUD funding, you, as the official authorized to sign on behalf of your organization or an an individual must provide the following assurances and certifications. By signing this form, you are stating that to the best of your knowledge and belief, all assertions are true and correct.

As the duly authorized representative of the applicant, I certify that the applicant [Insert below the Name and title of the Authorized Representative, name of Organization and the date of signature]:

Name:________________________, Title:_____________________.

Organization:__________________________, Date:_______________.

1. Has the legal authority to apply for Federal assistance, has the institutional, managerial and financial capability (including funds to pay the non-Federal share of program costs) to plan, manage and complete the program as described in the application and the governing body has duly authorized the submission of the application, including these assurances and certifications, and authorized me as the official representative of the applicant to act in connection with the application and to provide any additional information as may be required.

2. Will administer the grant in compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) and implementing regulations (24 CFR Part 1), which provide that no person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance **OR** if the applicant is a Federally recognized Indian tribe or its tribally designated housing entity, is subject to the Indian Civil Rights Act (25 U.S.C. 1301-1303).

3. Will administer the grant in compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, and implementing regulations at 24 CFR Part 8, and the Age Discrimination Act of 1975 (42 U.S.C. 6101-07), as amended, and implementing regulations at 24 CFR Part 146 which together provide that no person in the United States shall, on the grounds of disability or age, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance; except if the grant program authorizes or limits participation to designated populations, then the applicant will comply with the nondiscrimination requirements within the designated population.

4. Will comply with the Fair Housing Act (42 U.S.C. 3601-19), as amended, and the implementing regulations at 24 CFR Part 100, which prohibit discrimination in housing on the basis of race, color, religion, sex, disability, familial status, or national origin; except an applicant which is an Indian tribe or its instrumentality which is excluded by statute from coverage does not make this certification and further except if the grant program authorizes or limits participation to designated populations, then the applicant will comply with the nondiscrimination requirements within the designated population.

5. Will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601) and implementing regulations at 49 CFR Part 24 and 24 CFR 42, Subpart A.

6. Will comply with the environmental requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and related Federal authorities prior to the commitment or expenditure of funds for property acquisition and physical development activities subject to implementing regulations at 24 CFR parts 50 or 58.

7. Will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the applicant's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about –

(1) The dangers of drug abuse in the workplace;

(2) The applicant's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

( c ) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required in Paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will –

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

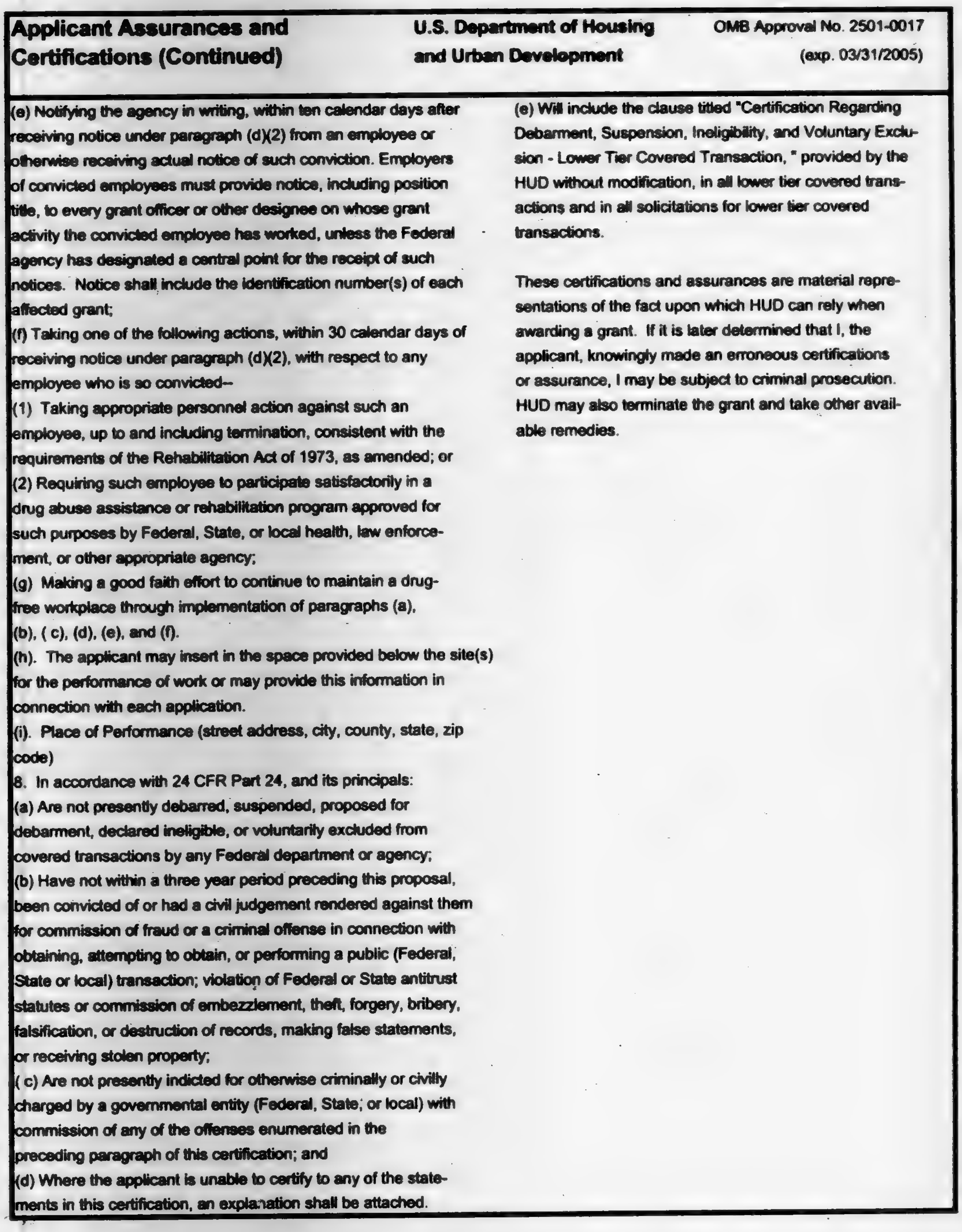

**Applicant Assurances and Certifications (Continued)**

**U.S. Department of Housing and Urban Development**

OMB Approval No. 2501-0017
(exp. 03/31/2005)

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee has worked, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), ( c), (d), (e), and (f).

(h). The applicant may insert in the space provided below the site(s) for the performance of work or may provide this information in connection with each application.

(i). Place of Performance (street address, city, county, state, zip code)

8. In accordance with 24 CFR Part 24, and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three year period preceding this proposal, been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

( c) Are not presently indicted for otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in the preceding paragraph of this certification; and

(d) Where the applicant is unable to certify to any of the statements in this certification, an explanation shall be attached.

(e) Will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transaction, " provided by the HUD without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

These certifications and assurances are material representations of the fact upon which HUD can rely when awarding a grant. If it is later determined that I, the applicant, knowingly made an erroneous certifications or assurance, I may be subject to criminal prosecution. HUD may also terminate the grant and take other available remedies.

**U.S. Department of Housing and Urban Development (HUD)**
**Urban Scholars Postdoctoral Fellowship Program –**
**Administered by the National Research Council**

## Budget Instructions

On a separate sheet of paper entitled Project Budget, place your name, project title, and project dates at the top of the page. Provide a moderately detailed (usually one page) project budget, giving individual totals for each type of proposed cost.

A sample budget is shown below. The categories of expenses shown do not necessarily apply to all applications, and some applications may have expense categories not shown. The sample is representative, not binding.

---

## Sample Budget

Name:
Project Title:
Project Dates:

| **Personnel** | **Request From Sponsor** | **In-kind Contributions** | **Totals** |
|---|---|---|---|
| Principal Investigator (name) | | | |
| 16.67% effort AY (cost-shared) | $2,500 | $7,980 | $10,480 |
| 100% effort summer (3 months) | $20,956 | $0 | $20,956 |
| Graduate student project assistant | | | |
| 10 hours/week @$20/hour | $12,600 | $0 | $12,600 |
| Total salaries | $36,056 | $7,890 | $44,036 |
| Fringe benefits @24.5% of salaries | $8,834 | $1,955 | $10,789 |
| Total Salaries and Benefits | $44,890 | $9,935 | $54,825 |
| **Other than personnel services (OTPS)** | | | |
| Software/documentation | $1,500 | $0 | $1,500 |
| Travel: 3 2-day trips @$1,500/trip | $4,500 | $0 | $4,500 |
| Total, OTPS | $6,000 | $0 | $6,000 |
| Total Direct Costs (TDC) | $50,890 | $9,935 | $60,825 |
| Indirect Costs @ 8% of TDC* | $4,071 | $27,558 | $31,629 |
| Total Project Costs | $54,961 | $37,493 | $92,454 |

***Budget Note:**

________________ (institution) negotiated indirect cost rate is 52% of Modified Total Direct Costs. The ________________ (institution) in-kind contribution represents the difference between the 52% and 8% rate allowed (for request from sponsor), plus the full 52% rate applied to in-kind total direct costs.

## DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

Approved by OMB
0348-0046

**1. Type of Federal Action:**
☐
a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

**2. Status of Federal Action:**
☐
a. bid/offer/application
b. initial award
c. post-award

**3. Report Type:**
☐
a. initial filing
b. material change
**For Material Change Only:**
year _________ quarter _________
date of last report ______________

**4. Name and Address of Reporting Entity:**
☐ **Prime** ☐ **Subawardee**
Tier ______, *if known*:

**Congressional District**, *if known*:

**5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:**

**Congressional District**, *if known*:

**6. Federal Department/Agency:**

**7. Federal Program Name/Description:**

CFDA Number, *if applicable*: _____________

**8. Federal Action Number,** *if known*:

**9. Award Amount,** *if known*:
$

**10. a. Name and Address of Lobbying Registrant**
(*if individual, last name, first name, MI*):

**b. Individuals Performing Services** (*including address if different from No. 10a*)
(*last name, first name, MI*):

**11.** Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: ____________________
Print Name: ____________________
Title: ____________________
Telephone No.: ____________________ Date: __________

**Federal Use Only:**

Authorized for Local Reproduction
Standard Form LLL (Rev. 7-97)

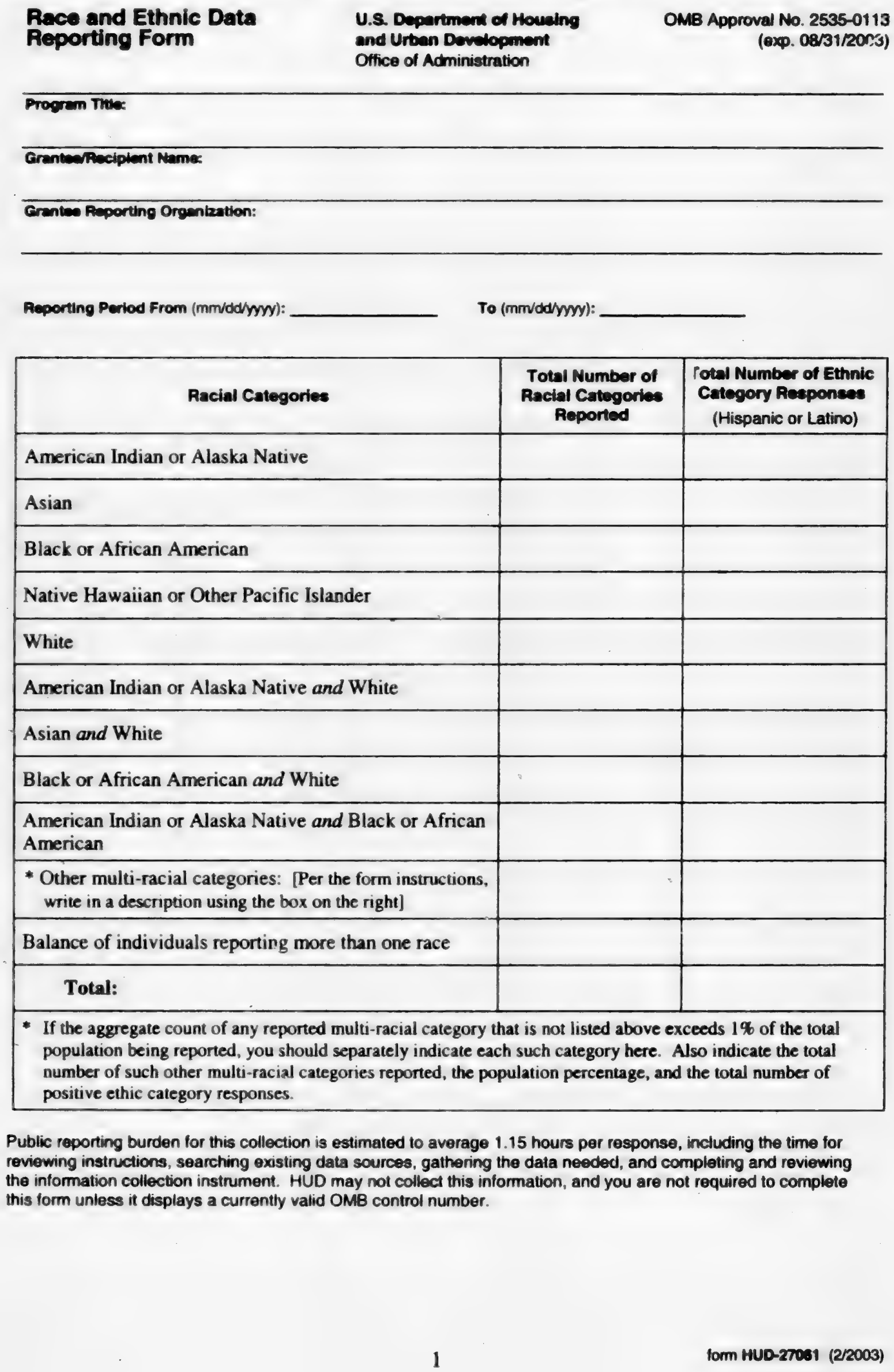

## Race and Ethnic Data Reporting Form

**U.S. Department of Housing and Urban Development**
Office of Administration

OMB Approval No. 2535-0113
(exp. 08/31/2003)

**Program Title:**

**Grantee/Recipient Name:**

**Grantee Reporting Organization:**

**Reporting Period From** (mm/dd/yyyy): ______________ **To** (mm/dd/yyyy): ______________

| Racial Categories | Total Number of Racial Categories Reported | Total Number of Ethnic Category Responses (Hispanic or Latino) |
|---|---|---|
| American Indian or Alaska Native | | |
| Asian | | |
| Black or African American | | |
| Native Hawaiian or Other Pacific Islander | | |
| White | | |
| American Indian or Alaska Native *and* White | | |
| Asian *and* White | | |
| Black or African American *and* White | | |
| American Indian or Alaska Native *and* Black or African American | | |
| * Other multi-racial categories: [Per the form instructions, write in a description using the box on the right] | | |
| Balance of individuals reporting more than one race | | |
| **Total:** | | |

* If the aggregate count of any reported multi-racial category that is not listed above exceeds 1% of the total population being reported, you should separately indicate each such category here. Also indicate the total number of such other multi-racial categories reported, the population percentage, and the total number of positive ethic category responses.

Public reporting burden for this collection is estimated to average 1.15 hours per response, including the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the information collection instrument. HUD may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number.

## Instructions for the Race and Ethnic Data Reporting form (HUD-27061)

### A. General Instructions:

This form is intended to be used by two categories of respondents: (1) applicants requesting funding from the Department of Housing and Urban Development (HUD); and (2) organizations who receive HUD Federal financial assistance that are required to report race and ethnic information.

In compliance with OMB direction to revise the standards for collection of racial data, HUD has revised its standards as depicted on this form. The revised standards are designed to acknowledge the growing diversity of the U.S. population. Using the revised standards, HUD offers organizations that are responding to HUD data requests for racial information, the option of selecting one or more of nine racial categories to identify the racial demographics of the individuals and/or the communities they serve, or are proposing to serve. HUD's collection of racial data treats ethnicity as a separate category from race and has changed the terminology for certain racial and ethnic groups from the way it has been requested in the past using two distinct ethnic categories. The revised definitions of ethnicity and race have been standardized across the Federal government and are provided below.

1. The two ethnic categories as revised by the Office of Management and Budget (OMB) are defined below.

**Hispanic or Latino.** A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. The term "Spanish origin" can be used in addition to "Hispanic" or "Latino."

**Not Hispanic or Latino.** A person not of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

2. The five racial categories as revised by the Office of Management and Budget are defined below:

**American Indian or Alaska Native.** A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.

**Asian.** A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

**Black or African American.** A person having origins in any of the black racial groups of Africa. Terms such as "Haitian" or "Negro" can be used in addition to "Black" or "African American."

**Native Hawaiian or Other Pacific Islander.** A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

**White.** A person having origins in any of the original peoples of Europe, the Middle East or North Africa.

**Note:** The information required to be reported may be collected and submitted to HUD via the use of this form or by other means, such as summary reports or via electronic reporting mechanisms. The primary goal to be achieved is the provision of the summary racial and ethic data of the population(s) proposed to be served or that is being served by your organization in a consistent manner across all HUD programs.

**B. Specific Instructions for Completing the Form:**

Organizations using this form should collect the individual responses from the community of individuals you intend to serve or those that you are serving, as applicable. After the individual collections are gathered, you should report (via this form or by the use of other means such as electronic reports that provide the summary data required by this form) the aggregate totals of the racial and ethnic data that you collect via the applicable categories as described below:

**Total Number of Racial Categories Reported:** Under this column you should indicate the total number of responses collected in the blocks next to the applicable categories.

**Total Number of Ethnic Category Responses (Hispanic or Latino):** Under this column you should indicate the total number of responses collected in the blocks next to the applicable racial categories (e.g., you would enter the total number of Asian respondents that indicated they are Hispanic or Latino). When collecting this information from beneficiaries of the Federal financial assistance all respondents should be required to indicate their ethnic category, which requires either a "yes" or "no" response.

**Other multi-racial categories:** Next to this racial category, indicate all racial categories (if any) identified by respondents that do not fit the nine racial categories above, and which have a total count that exceeds one percent of the total population being reported. You must identify each such racial category, including the actual count, the percentage of the total population (in parenthesis), and the actual count for the ethnic categories.

For example, if you obtain data that indicates that the total population being served is 200 and includes 10 Cajun Americans and 12 Creole Americans, and those numbers of Cajun and Creole Americans each equates to more than one percent of the total population being served, and 2 of the Cajun Americans indicate they belong to the Hispanic/Latino ethic category and 3 of the Creole Americans indicate they belong to the Hispanic/Latino ethnic category, you should complete the form as follows:

| **Racial Categories** | **Total Number of Racial Categories Reported** | **Total Number of Ethnic Category Responses** (Hispanic or Latino) |
|---|---|---|
| * Other multi-racial categories: [Per the form instruction, write in a description using the box on the right] | Cajun American 10 (5%)<br>Creole American 12 (6%) | 2<br>3 |

How the percentage should be applied will vary by program depending on whether the program is required to provide data on the total community, or on the beneficiaries/individuals that are being served or that are proposed to be served.

**Balance of individuals reporting more than one race**: This block is intended to capture the balance of any racial categories that are not included in the list of nine above, and are not included under **"Other multi-racial categories."** Indicate the total number of all racial categories reported that do not fit the nine racial categories above, and do not equate to one percent of the total population being reported. Be sure to also indicate the total number of all such ethnic categories.

**Total:** On the last row of the form you should indicate the aggregate totals of all the information you have gathered including the total of all racial categories and the total of all the ethic categories.

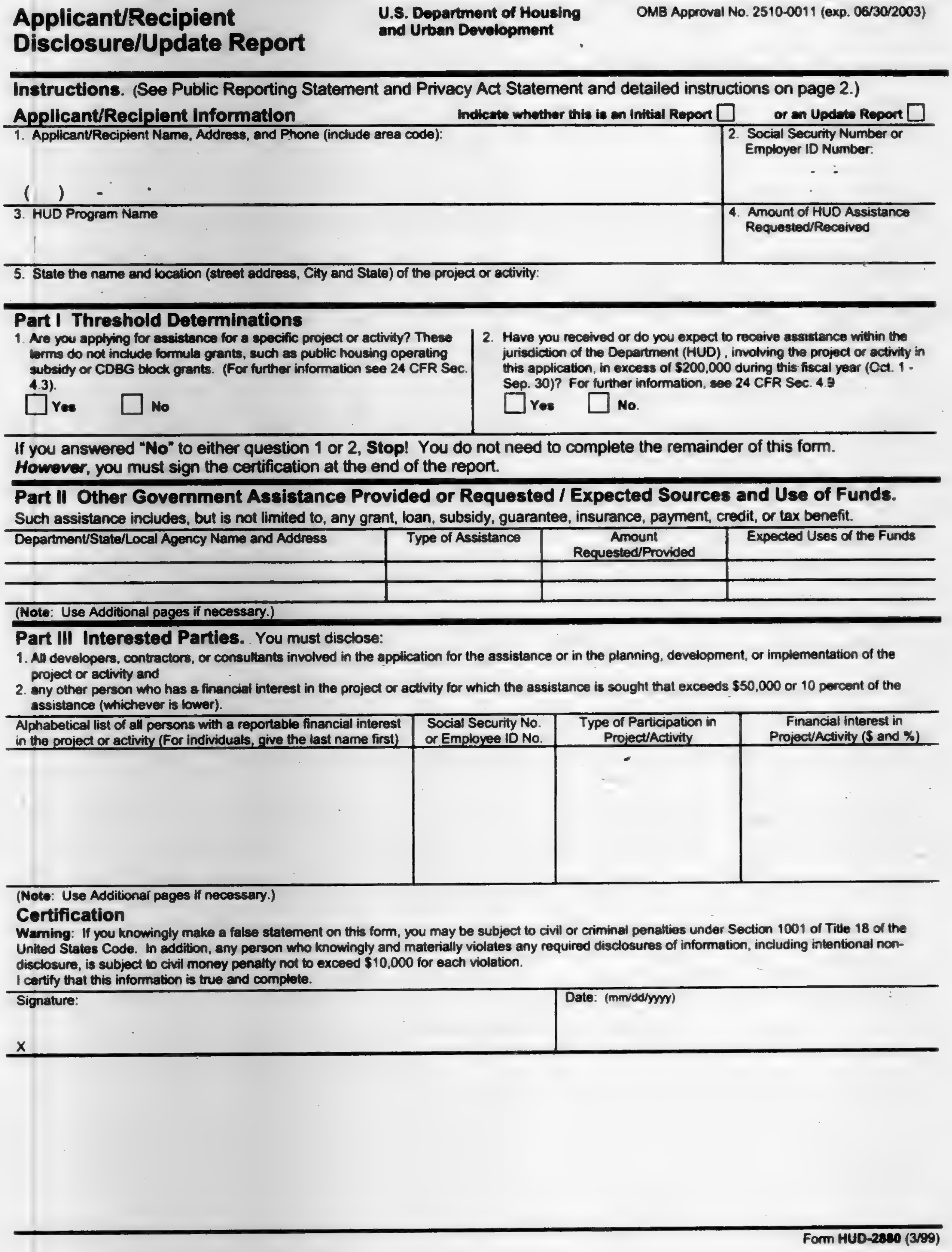

# Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development

OMB Approval No. 2510-0011 (exp. 06/30/2003)

**Instructions.** (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 2.)

**Applicant/Recipient Information** **Indicate whether this is an Initial Report** ☐ **or an Update Report** ☐

| | |
|---|---|
| 1. Applicant/Recipient Name, Address, and Phone (include area code):<br>( ) - | 2. Social Security Number or Employer ID Number:<br>- - |
| 3. HUD Program Name | 4. Amount of HUD Assistance Requested/Received |

5. State the name and location (street address, City and State) of the project or activity:

## Part I Threshold Determinations

1. Are you applying for assistance for a specific project or activity? These terms do not include formula grants, such as public housing operating subsidy or CDBG block grants. (For further information see 24 CFR Sec. 4.3).
☐ Yes ☐ No

2. Have you received or do you expect to receive assistance within the jurisdiction of the Department (HUD), involving the project or activity in this application, in excess of $200,000 during this fiscal year (Oct. 1 - Sep. 30)? For further information, see 24 CFR Sec. 4.9
☐ Yes ☐ No.

If you answered **"No"** to either question 1 or 2, **Stop**! You do not need to complete the remainder of this form. ***However***, you must sign the certification at the end of the report.

## Part II Other Government Assistance Provided or Requested / Expected Sources and Use of Funds.

Such assistance includes, but is not limited to, any grant, loan, subsidy, guarantee, insurance, payment, credit, or tax benefit.

| Department/State/Local Agency Name and Address | Type of Assistance | Amount Requested/Provided | Expected Uses of the Funds |
|---|---|---|---|
| | | | |
| | | | |

(**Note**: Use Additional pages if necessary.)

## Part III Interested Parties. You must disclose:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

| Alphabetical list of all persons with a reportable financial interest in the project or activity (For individuals, give the last name first) | Social Security No. or Employee ID No. | Type of Participation in Project/Activity | Financial Interest in Project/Activity ($ and %) |
|---|---|---|---|
| | | | |

(**Note**: Use Additional pages if necessary.)

## Certification

**Warning**: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosures of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.
I certify that this information is true and complete.

| | |
|---|---|
| Signature:<br>X | Date: (mm/dd/yyyy) |

Form **HUD-2880** (3/99)

**Public reporting burden** for this collection of information is estimated to average 2.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collection displays a valid OMB control number.

**Privacy Act Statement**. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §4.38.

**Note**: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

## Instructions

### Overview.

A. Coverage. You must complete this report if:
  (1) You are applying for assistance from HUD for a specific project or activity and you have received, or expect to receive, assistance from HUD in excess of $200,000 during the during the fiscal year;
  (2) You are updating a prior report as discussed below; or
  (3) You are submitting an application for assistance to an entity other than HUD, a State or local government if the application is required by statute or regulation to be submitted to HUD for approval or for any other purpose.

**B. Update reports (filed by "Recipients" of HUD Assistance):**
- **General**. All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

### Line-by-Line Instructions.

**Applicant/Recipient Information.**
All applicants for HUD competitive assistance, must complete the information required in blocks 1-5 of form HUD-2880:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered.
2. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.
3. Applicants enter the HUD program name under which the assistance is being requested.
4. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.
5. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

**Part I. Threshold Determinations - Applicants Only**

Part I contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

If the answer to ***either*** questions 1 or 2 is No, the applicant need not complete Parts II and III of the report, but must sign the certification at the end of the form.

**Part II. Other Government Assistance and Expected Sources and Uses of Funds.**

A. Other Government Assistance. This Part is to be completed by both applicants and recipients for assistance and recipients filing update reports. Applicants and recipients must report any other government assistance involved in the project or activity for which assistance is sought. Applicants and recipients must report any other government assistance involved in the project or activity. Other government assistance is defined in note 4 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available.
2. State the type of other government assistance (e.g., loan, grant, loan insurance).
3. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).
4. Uses of funds. Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, elevators, exterior masonry, etc.

B. Non-Government Assistance. Note that the applicant and recipient disclosure report must specify all expected sources and uses of funds - both from HUD ***and any other source*** - that have been or are to be, made available for the project or activity. Non-government sources of

funds typically include (but are not limited to) foundations and private contributors.

**Part III. Interested Parties.**

This Part is to be completed by both applicants and recipients filing update reports. Applicants must provide information on:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

   **Note:** A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses. If the person is an entity, the listing must include the full name and address of the entity as well as the CEO. Please list all names alphabetically.
2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.
3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).
4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

**Note** that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

**Notes:**

1. All citations are to 24 CFR Part 4, which was published in the Federal Register. [April 1, 1996, at 63 Fed. Reg. 14448.]
2. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Fed. Acquisition Regulation (FAR) (48 CFR Chapter 1).
3. See 24 CFR §4.9 for detailed guidance on how the threshold is calculated.
4. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
5. For the purpose of this form and 24 CFR Part 4, "person" means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

## Logic Model

## U.S. Department of Housing and Urban Development
## Office of Departmental Grants Management and Oversight

OMB Approval No. 2535-0114
(exp. 9/30/2003)

**Program Name:**____________________

**Component Name:**____________________

| Strategic Goals | Policy Priorities | Problem, Need, Situation | Service or Activity | Benchmarks | | Outcomes | | Measurement Reporting Tools | Evaluation Process |
|---|---|---|---|---|---|---|---|---|---|
| | | | | Output Goal | Output Result | Achievement Outcome Goals | End Results | | |
| 1 | | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| Policy | | Planning | | Intervention | | Impact | | Accountability | |
| | | | | Short Term | | | | a.<br>b.<br>c.<br>d.<br>e. | |
| | | | | Intermediate Term | | | | a.<br>b.<br>c.<br>d.<br>e. | |
| | | | | Long Term | | | | a.<br>b.<br>c.<br>d.<br>e. | |

***HUD's Strategic Goals***

1. Increase homeownership opportunities.
2. Promote decent affordable housing.
3. Strengthen communities.
4. Ensure equal opportunity in housing.
5. Embrace high standards of ethics, management, and accountability.
6. Promote participation of grass-roots faith-based and other community-based organizations.

***Policy Priorities***

1. Providing Increased Homeownership and Rental Opportunities for Low- and Moderate-Income Persons, Persons with Disabilities, the Elderly, Minorities, and Families with Limited English Proficiency.
2. Improving the Quality of Life in our Nation's Communities.
3. Encouraging Accessible Design Features.
4. Providing Full and Equal Access to Grass-Roots Faith-Based and Other Community-Based Organizations in HUD Program Implementation.
5. Improving Housing Conditions in Colonias.
6. Increasing Participation of Minority Serving Institutions in HUD Programs.
7. Increasing Participation in Energy Star.
8. Ending Chronic Homelessness in Ten Years.

form **HUD-96010** (04/2003)

**Logic Model Instructions**

U.S. Department of Housing
And Urban Development
Office of Departmental Grants
Management and Oversight

OMB Approval No. 2535-0114
(exp. 9/30/2003)

The public reporting burden for this collection of information for the Logic Model is estimated to average 2 hours per response for applicants, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information and preparing the application package for submission to HUD. HUD may not conduct, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions to reduce this burden, to the Reports Management Officer, Paperwork Reduction Project, in the Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, DC 20410-3600. When providing comments, please refer to OMB Approval No. 2535-0114.

The information submitted in response to the Notice of Funding Availability for the Logic Model is subject to the disclosure requirements of the Department of Housing and Urban Development Reform Act of 1989 (Public Law 101-235, approved December 15, 1989, 42 U.S.C. 3545).

Instructions:

Responses to rating factor five should be in this format. Your response should be in bullet format rather than narrative. Please read each NOFA carefully to ensure the performance measures requested for this factor are reflected on the logic model form.

Program Name: The HUD funding program under which you are applying. If you are applying for a component of a program please include the Program Name as well as the Component Name.

Component Name: The HUD funding program under which you are applying.

Column 1: ***HUD's Strategic Goals***: Indicate in this column **the number** of the goal(s) that your proposed service or activity is designed to achieve. HUD's strategic goals are:

1. Increase homeownership opportunities.
2. Promote decent affordable housing.
3. Strengthen communities.
4. Ensure equal opportunity in housing.
5. Embrace high standards of ethics, management, and accountability.
6. Promote participation of grass-roots faith-based and other community-based organizations.

***Policy Priority***: Indicate in this column **the number** of the HUD Policy Priority(ies), if any, your proposed service or activity promotes. Applicants are encouraged to undertake specific activities that will assist the Department in implementing its Policy Priorities. HUD's Policy Priorities are:

1. Providing Increased Homeownership and Rental Opportunities for Low- and Moderate-Income Persons, Persons with Disabilities, the Elderly, Minorities, and Families with Limited English Proficiency.
2. Improving the Quality of Life in our Nation's Communities.
3. Encouraging Accessible Design Features.
4. Providing Full and Equal Access to Grass-Roots Faith-Based and Other Community-Based Organizations in HUD Program Implementation.
5. Improving Housing Conditions in Colonias.
6. Increasing Participation of Minority Serving Institutions in HUD Programs.
7. Increasing Participation in Energy Star.
8. Ending Chronic Homelessness in Ten Years

Column 2: **Problem, Need, or Situation**: Provide a general statement of need that provides the rationale for the proposed service or activity.

Column 3: **Service or Activity:** Identify the activities or services that you are undertaking in your work plan, which are crucial to the success of your program. Not every activity or service yields a direct outcome.

Column 4 and Column 5: **Benchmarks:** These columns ask you to identify benchmarks that will be used in measuring the progress of your services or activities. Column 4 asks for specific interim or final products (called outputs) that you establish for your program's services or activities. Column 5 should identify the results associated with the product or output. These may be numerical measures characterizing the results of a program activity, service or intervention and are used to measure performance. These outputs should lead to targets for achievement of outcomes. Results should be represented by both the actual # and % of the goal achieved.

> Column 4: **Benchmarks/Output Goal:** Set quantifiable output goals, including timeframes. These should be products or interim products, which will allow you and HUD to monitor and assess your progress in achieving your program workplan.
>
> Column 5: **Benchmark/ Output Result:** Report actual result of your benchmarks. The actual result could be number of housing units developed or rehabilitated, jobs created, or number of persons assisted. Outputs may be short, intermediate or long-term.

Column 6 and Column 7: **Outcomes:** Column 6 and Column 7 ask you to report on your expected and actual outcomes – the ultimate impact you hope to achieve. Column 6 asks you to identify outcomes in terms of the impact on the community, people's lives, changes in economic or social status, etc. Column 7 asks for the actual result of the outcome measure listed in Column 6, which should be updated as applicable.

Column 6: **Outcomes/ Goals:** Identify the outcomes that resulted in broader impacts for individuals, families/households, and/or the community. For example, the program may seek to improve the environmental conditions in a neighborhood, increase affordable housing, increase the assets of a low-income family, or improve self-sufficiency.

Proxy Outcome(s): Often direct measurement of the intended outcome is difficult or even impossible -- to measure. In these cases, applicants/grantees should use a proxy or surrogate measure that corresponds with the desired outcome. For example, improving quality of life in a neighborhood could be measured by a proxy indicator such as increases in home prices or decreases in crime. Training programs could be measured by the participant's increased wages or reading skills. The person receiving the service must meet eligibility requirements of the program.

Column 7: **Outcomes/Actual Result:** Identify specific achievements of outcomes listed in Column 6.

Column 8: **Measurement Reporting Tools:** (a) List the tools used to track output or outcome information (e.g., survey instrument; attendance log; case report; pre-post test; waiting list; etc); (b) Identify the place where data is maintained, e.g. central database; individual case records; specialized access database, tax assessor database; local precinct; other; (c) Identify the location, e.g. on-site; subcontractor; other; (d) Indicate how often data is required to be collected, who will collect it and how often data is reported to HUD; and (e) Describe methods for retrieving data, e.g. data from case records is retrieved manually, data is maintained in an automated database. This tool will be available for HUD review and monitoring and should be used in submitting reporting information.

Column 9: **Evaluation Process:** Identify the methodology you will periodically use to assess your success in meeting your benchmark output goals and output results, outcomes associated to the achievement of the purposes of the program, as well as the impact that the work has made on the individuals assisted, the community, and the strategic goals of the Department. If you are not meeting the goals and results projected for your performance period, the evaluation process should be used as a tool to ensure that you can adjust schedules, timing, or business practices to ensure that goals are met within your performance period.

[FR Doc. 03–25678 Filed 10–9–03; 8:45 am]

**BILLING CODE 4210–62–C**

Federal Register

Friday,
October 10, 2003

Part VI

# Department of Health and Human Services

## Food and Drug Administration

21 CFR Parts 1 and 20

**Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Interim Rule**

**Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Interim Rule**

**Risk Assessment for Food Terrorism and Other Food Safety Concerns; Availability; Notice**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Parts 1 and 20**

**[Docket No. 02N–0276]**

**RIN 0910–AC40**

## Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Interim final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing an interim final regulation that requires domestic and foreign facilities that manufacture/process, pack, or hold food for human or animal consumption in the United States to register with FDA by December 12, 2003. The interim final rule implements the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act), which requires domestic and foreign facilities to register with FDA by December 12, 2003, even in the absence of a final regulation. Registration is one of several tools that will enable FDA to act quickly in responding to a threatened or actual terrorist attack on the U.S. food supply by giving FDA information about facilities that manufacture/process, pack, or hold food for consumption in the United States. In the event of an outbreak of foodborne illness, such information will help FDA and other authorities determine the source and cause of the event. In addition, the registration information will enable FDA to notify quickly the facilities that might be affected by the outbreak.

**DATES:** This interim final rule is effective December 12, 2003. Submit written or electronic comments by December 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** Leslye M. Fraser, Center for Food Safety and Applied Nutrition (HFS–4), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2378.

**ADDRESSES:** Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

**SUPPLEMENTARY INFORMATION:**

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## I. Background and Legal Authority

On February 3, 2003 (68 FR 5378), FDA and the Department of the Treasury jointly issued a proposed rule requiring certain food facilities to register with FDA. The events of September 11, 2001, had highlighted the need to enhance the security of the infrastructure of the United States, including the food supply. Congress had responded by enacting the Bioterrorism Act (Pub. L. 107–188), which was signed into law on June 12, 2002. The Bioterrorism Act includes a provision in title III (Protecting Safety and Security of Food and Drug Supply), Subtitle A—Protection of Food Supply, section 305, which requires the Secretary of Health and Human Services (the Secretary) to develop a regulation to require domestic and foreign facilities that manufacture, process, pack, or hold food for consumption in the United States to register with FDA by December 12, 2003. The provision creates section 415 and amends sections 301 and 801 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 331 and 381). The Bioterrorism Act also requires FDA to issue regulations mandating prior notice of imported food shipments (section 307), directs FDA to issue regulations regarding the maintenance of certain records (section 306), and grants FDA the authority to administratively detain food (section 303). FDA and the Department of the Treasury have jointly published proposed rules implementing section 307 (68 FR 5428, February 3, 2003), and FDA has published proposed rules implementing section 303 (68 FR 25242, May 9, 2003), and section 306 (68 FR 25188, May 9, 2003). The prior notice interim final rule appears elsewhere in this issue of the **Federal Register**.

The major components of section 305 of the Bioterrorism Act are as follows:

- The owner, operator, or agent in charge of a facility is responsible for the submission of a registration to FDA;
- Each facility must be separately registered and the registration must include the name and address of the facility, and all trade names under which the registrant conducts business from that facility. The registration for foreign facilities also must include the name of the U.S. agent for the facility;
- FDA also may require each registration to include the general food category (as identified under § 170.3 (21 CFR 170.3)) of the food manufactured, processed, packed, or held at the facility, if FDA determines through guidance that this submission is necessary. FDA issued guidance on July 17, 2003 (68 FR 42415), available at *http://www.fda.gov/oc/bioterrorism/bioact.html*, that concluded that information about food product categories is necessary for a quick, accurate, and focused response to an actual or potential bioterrorist incident or other food-related emergency;
- Foreign facilities that manufacture/process, pack, or hold food that is exported for consumption in the United States are required to register unless the food undergoes further processing or packaging at another facility outside the United States;
- Establishments excluded from the registration requirement are farms, restaurants and other retail food establishments, nonprofit food establishments, and fishing vessels (except those engaged in processing as defined in § 123.3(k) (21 CFR 123.3(k));
- FDA shall notify the registrant when it has received the registration

and assign a unique registration number to each registered facility;

- FDA may encourage electronic registration;
- Registered facilities must notify FDA in a timely manner of changes to their registration information;
- FDA is required to compile and maintain an up-to-date list of registered facilities; and
- FDA's list of facilities and registration documents are not subject to public disclosure under 5 U.S.C. 552 (the Freedom of Information Act). Information derived from this list or these documents is also not subject to such disclosure to the extent that it discloses the identity or location of a specific registered facility.

In addition to section 305 of the Bioterrorism Act, FDA is relying on section 701(a) and (b) of the FD&C Act (21 U.S.C. 371(a) and (b)) in issuing this interim final rule. Section 701(a) authorizes the agency to issue regulations for the efficient enforcement of the act, while section 701(b) of the FD&C Act authorizes FDA and the Department of Treasury jointly to prescribe regulations for the efficient enforcement of section 801 of the FD&C Act (21 U.S.C. 381).

This interim final rule implements the food facility registration requirements in section 305 of the Bioterrorism Act. Elsewhere in this issue of the **Federal Register**, FDA is issuing an interim final rule implementing section 307 (prior notice of imported food). The two interim final rules published in this issue of the **Federal Register**, as well as the regulations FDA will issue to implement section 306 (recordkeeping/records access) and section 303 (administrative detention) of the Bioterrorism Act, will help FDA act quickly in responding to a threatened or actual bioterrorist attack on the U.S. food supply or to other food-related emergencies. Registration will provide FDA with information about facilities that manufacture/process, pack, or hold food for consumption in the United States. In the event of an outbreak of foodborne illness, such information will help FDA and other authorities determine the source and cause of the event. In addition, the registration information will enable FDA to notify more quickly the facilities that might be affected by the outbreak. In developing this interim final rule, FDA has complied with its international trade obligations, including the applicable World Trade Organization (WTO) agreements and the North American Free Trade Agreement (NAFTA).

## II. Highlights of the Interim Final Rule and Summary of the Significant Changes Made to the Proposed Rule

### *A. The Highlights of This Interim Final Rule Are Described Briefly Below and Are Discussed in More Detail Later in the Preamble*

The highlights of this interim final rule are as follows:

- The owner, operator, or agent in charge of a facility engaged in manufacturing/processing, packing, or holding food for consumption in the United States by humans or animals is responsible for registering the facility with FDA;
- The owner, operator, or agent in charge of a facility that is required to register may authorize an individual to submit the facility's registration to FDA;
- Facilities covered under this rule must be registered by December 12, 2003;
- A foreign facility is exempt from registering if food from the facility undergoes further processing or packaging by another facility outside the United States. The facility is not exempt from registration if the processing or packaging activities of the subsequent facility are limited to affixing a label to a package or other de minimis activity. The facility that conducts the de minimis activity also must register;
- The following domestic and foreign facilities are also exempt from registration: Farms; restaurants and other retail food establishments; nonprofit food facilities that prepare or serve food directly to the consumer or otherwise provide food or meals for consumption by humans or animals in the United States; fishing vessels not engaged in processing as defined in § 123.3(k); and facilities regulated exclusively, throughout the entire facility, by the U.S. Department of Agriculture (USDA) under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*);
- Registrants must use Form 3537 to register. This form is available either on the Internet (see address below) or via mail or phone request. FDA will begin processing paper registrations on October 16, 2003. Registrants must use Form 3537a to cancel their registration;
- FDA strongly encourages electronic registration, which will be quicker and more convenient for both facilities and FDA than registration by mail or CD-ROM;
- To register electronically, beginning on October 16, 2003, a registrant may visit *http://www.fda.gov/furls*, which is available for registration 24 hours a day, 7 days a week. This Web site is available from wherever the Internet is accessible, including libraries, copy centers, schools, and Internet cafes, as well as through a foreign facility's U.S. agent or other authorized individual if the facility makes such arrangements;
- Regardless of the mode of submission (electronic, paper, or CD-ROM), each registration must include the name and contact information for the facility and its parent company (if applicable); all trade names the facility uses; applicable food product categories as identified in § 170.3 of this chapter; a statement certifying that the information submitted is true and accurate and that the person submitting the registration is authorized by the facility to register on its behalf; and if a foreign facility, the name of and contact information for the facility's U.S. agent. A domestic facility must provide emergency contact information;
- No registration fee is required;
- Updates to registration information or cancellation of registration must be submitted within 60 calendar days of any change to any of the required information previously submitted;
- Failure of a domestic or foreign facility to register, update, or cancel its registration in accordance with this regulation is a prohibited act under section 301(dd) of the FD&C Act;
- The disposition of food imported or offered for import from an unregistered foreign facility will be governed by the procedures set out in subpart I of this part 1 (21 CFR part 1) (Prior Notice of Imported Food); and
- Assignment of a registration number to a facility means that the facility is registered with FDA. Assignment of a registration number does not in any way convey FDA's approval or endorsement of a facility or its products.

### *B. Significant Changes Made to the Proposed Rule*

The significant changes FDA made to the proposed rule are as follows:

- The interim final rule provides that private residences of individuals and nonbottled water drinking water collection and distribution establishments and structures are not facilities and, therefore, are not required to register;
- The interim final rule clarifies that transport vehicles are not facilities if they hold food only in the usual course of business as carriers;
- The definition of farm now states that washing, trimming of outer leaves, and cooling produce are part of harvesting;

- The definition of farm now includes facilities that pack or hold food, provided that all food used in such activities is grown, raised, or consumed on that farm or another farm under the same ownership;
- The definition of food for purposes of the Bioterrorism Act excludes food contact substances as defined in section 409(h)(6) of the FD&C Act (21 U.S.C. 348(h)(6)) and pesticides as defined in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136(u);
- Packaging (when used as a verb) has been defined and means "placing food into the container that directly contacts the food and that the consumer receives;"
- The definition of "retail food establishment" has been revised to

> an establishment that sells food products directly to consumers as its primary function. A retail establishment may manufacture/process, pack, or hold food if the establishment's primary function is to sell from that establishment food that it manufactures/processes, packs, or holds directly to consumers. A retail food establishment's primary function is to sell food directly to consumers if the annual monetary value of sales of food products directly to the consumers exceeds the annual monetary value of sales of food products to all other buyers. The term 'consumers' does not include businesses. A 'retail food establishment' includes grocery stores, convenience stores, and vending machine locations.

- FDA has added a definition for "trade name" as "the name or names under which the facility conducts business, or additional names by which the facility is known. A trade name is associated with a facility, and a brand name is associated with a product;"
- FDA has determined that it will contact the foreign facility's U.S. agent when an emergency occurs, unless the registration specifies another emergency contact under § 1.233(b);
- FDA is clarifying that having a single U.S. agent for FDA registration purposes does not preclude facilities from having multiple agents (such as foreign suppliers) for other business purposes. A firm's commercial business in the United States need not be conducted through the U.S. agent designated for purposes of registration;
- FDA is allowing registrants to submit their registrations by fax or CD–ROM, which FDA will enter into its registration system, along with the mailed submissions, as soon as practicable, in the order received;
- FDA has changed the timeframe in which registrants must update their registrations from 30 days to within 60 days of any change in the required information;
- FDA has deleted the requirement to update optional information previously submitted, but encourages facilities to do so voluntarily; and
- FDA has clarified that if a facility has a new owner, the former owner must submit a cancellation within 60 calendar days of the change and the new owner must re-register the facility.
- FDA now provides that the failure of an owner, operator, or agent in charge of a facility governed by this interim final rule to register such facility, update required elements of its registration, or cancel its registration, is a prohibited act under section 301(dd) of the FD&C Act (21 U.S.C. 331(dd)).

## III. Comments on the Proposed Rule

FDA received approximately 350 submissions in response to the proposed rule, which raised almost 200 major issues. To make it easier to identify comments and FDA's responses to the comments, the word "Comment" will appear in parentheses before the description of the comment, and the word "Response" will appear in parentheses before FDA's response. FDA has also numbered each comment to make it easier to identify a particular comment. The number assigned to each comment is purely for organizational purposes and does not signify the comment's value or importance or the order in which it was submitted.

### *A. General Comments*

(Comment 1) Most commenters state that they generally support protection of the U.S. food supply under the Bioterrorism Act. Although some commenters assert that the proposed rule should be amended to reflect more accurately industry practices, other commenters believe the regulation should be strengthened to ensure that FDA has all the information required to identify foods that may pose a health or security threat. Other commenters question how the interim final rule would enhance FDA's ability to improve food safety and whether the benefits outweigh the costs.

Some commenters argue that the proposed regulation should either be reproposed or not implemented at all. These commenters claim that the proposed rule is seriously flawed, unduly burdensome, and will unnecessarily interfere with trade. Some of these commenters also argue that FDA already has complete information to allow for identification of, and quick communication with, affected facilities before a shipment is introduced into U.S. commerce.

(Response) In response to the comments regarding reproposing or not implementing the rule, these options are not available to FDA under the Bioterrorism Act, because that act requires FDA to "promulgate proposed and final regulations for the requirement of registration" by December 12, 2003. The Bioterrorism Act further states that the registration requirement takes effect on December 12, 2003, even if FDA does not have a final regulation in effect by the deadline. FDA believes that both the proposed rule and this interim final rule properly implement section 305 of the Bioterrorism Act, and thus, there is no need to repropose the regulation. Further, based on the many comments supporting the proposed regulation as well as those comments suggesting limited changes to the rule as proposed, FDA disagrees that the proposed regulation is so flawed that reproposal is required.

FDA is aware that the registration regulation may alter industry practices to some extent. In enacting the Bioterrorism Act, Congress determined that registration with FDA was necessary to respond to bioterrorism and other food-related emergencies. Registration will give FDA information it does not currently have about facilities that manufacture/process, pack, or hold food for consumption in the United States, and current contact information for all of these facilities. FDA will be able to use this information to target its contacts to both domestic and foreign facilities in the event of a bioterrorist threat or other food-related emergency. Information about food product categories will permit FDA to screen food imports more carefully because the agency will be able to match a registrant's food product category with the product code and common or usual or market name submitted as part of a prior notice (21 CFR part 1, subpart I). Registration will also give FDA information that we can use to focus and better utilize the agency's limited inspection resources.

Registering with FDA creates an information trail, which would, even if the information in the registration were falsified, provide evidence that could link the registration to the registrant. By creating this paper trail, persons in the food supply chain who might intentionally contaminate food may be deterred by the creation of additional evidence that might be used against them. Persons who might intentionally contaminate the food supply but refuse to register would be subject to criminal and civil sanctions and would risk having their product, if imported, held at the port.

To alleviate some of the burden registration may impose on industry, FDA has modified some of the elements of registration, including emergency contact information; the definitions for "farm," "facility," and "retail food establishment," and the timing for submitting updates to FDA when required elements in a registration change. These changes will be discussed in the appropriate sections later in this document.

FDA also believes that its electronic registration system will make registration an efficient and straightforward process. FDA has received positive comments from stakeholders who attended FDA's preliminary demonstrations of the electronic prototype registration system.

(Comment 2) Some commenters request that FDA include a provision in the interim final rule that permits the agency to amend the system quickly to respond to flaws in the rule discovered through practice. Some of these commenters state that this arrangement would be especially helpful for countries that are able to reach a more efficient or effective registration arrangement with FDA that reflects actual reductions in risks through such arrangements.

(Response) FDA always has the option to amend its regulations if the agency believes that improvements would serve the public interest, and interested persons may request such modification by following the procedures in 21 CFR 10.30, regarding citizen petitions. The process for any amendment to an existing FDA regulation must conform to the requirements of the Administrative Procedure Act (APA) (5 U.S.C. 551–559). Notably, section 553 of the APA provides a process for issuing a final rule in an expedited timeframe if certain conditions are met. Importantly, however, FDA can only amend the interim final registration rule consistent with the requirements in the Bioterrorism Act.

(Comment 3) FDA received several comments about the need for outreach efforts regarding the registration requirement. Some commenters encourage FDA to facilitate education regarding the new rule and to provide foreign facilities with information necessary to maintain the flow of trade to the United States. Other commenters encourage FDA to develop clear, definitive statements that outline registration requirements in a simple manner. Some commenters ask about the role of States in the outreach strategy. One commenter recommends that FDA reach out to State agencies and the relevant media to ensure that all affected industries are aware of the registration requirement. Finally, some commenters request that FDA establish consultation services staffed with both English and foreign language speakers to answer questions about the registration system and requirements and to give technical assistance to help foreign facilities meet the requirements of the regulation.

(Response) FDA conducted extensive outreach on the proposed registration rule, including having relevant FDA staff attend 6 international meetings and over 100 domestic meetings to ensure that affected parties were aware of the Bioterrorism Act registration requirement. On January 29, 2003, FDA held a public meeting (via satellite downlink) to discuss the registration and prior notice proposed rules. (See 68 FR 1568, January 13, 2003, or *http://www.accessdata.fda.gov/scripts/oc/ohrms/advdisplay.cfm*.) Nearly 1,000 participants in North and South America and the Caribbean viewed that live broadcast. The meeting was later rebroadcast to Europe, Asia, Africa, and the Pacific (areas in different time zones). FDA has also provided transcripts of the broadcast in English, French, and Spanish (the three official WTO languages) on the agency's Web site. In addition to this outreach to the affected industry, FDA has conducted outreach on the proposed rule to States.

FDA plans similar outreach directed to both domestic and international stakeholders following publication of the interim final rules implementing the registration and prior notice provisions of the Bioterrorism Act. Our outreach will include:

- Dissemination of materials to guide affected domestic and international food facilities through the new processes established to implement the registration and prior notice requirements of the Bioterrorism Act;
- A satellite downlink video broadcast and a series of videoconferences to various regions of the world;
- Materials and events for the media;
- Domestic outreach meetings to States and industry;
- International outreach to U.S. trading partners;
- Online assistance to registrants;
- Presentations by FDA officials and exhibits at professional and trade conferences and meetings to inform industry and State and local government representatives of the new regulations and their requirements; and
- Cooperative arrangements with Customs and Border Protection (CBP) and other Federal agencies to ensure that information on the final regulations and their requirements is disseminated to affected companies and individuals.

More specifics regarding each of these will be included on FDA's Web site at *http://www.fda.gov/oc/bioterrorism/bioact.html*.

FDA will notify the WTO of these regulations. In addition, shortly after publication of this interim final rule, FDA will begin disseminating at the U.S. ports of entry flyers and posters summarizing the new requirements and informing representatives of affected facilities how to register and provide prior notice to FDA.

(Comment 4) One commenter suggests that FDA should utilize State resources to cross-reference with its registration database. This commenter suggests that FDA supply States with copies of registration forms that the State inspectors can give to local facilities during routine inspections, but cautions that FDA should supply the forms so as not to deplete State funds.

(Response) FDA agrees with the commenter's suggestion that FDA should use State resources to cross-reference registrations, and will work with States to do so. FDA believes working in cooperation with our State partners will enhance our collective ability to protect the safety of the U.S. food supply, and our ability to work with facilities in the event of an actual or potential threat against a facility or food product. FDA acknowledges the suggestion that the agency should supply States with copies of the FDA registration form for distribution to potential registrants. However, because FDA is trying to encourage as many registrants as possible to register electronically, FDA intends to make paper forms available only through the methods described in this rule. FDA intends to work with States to disseminate information about the Federal registration requirements.

### *B. Foreign Trade Issues*

(Comment 5) Some commenters questioned the consistency of the proposed regulation with U.S. obligations under the NAFTA and various WTO agreements.

(Response) FDA is aware of the international trade obligations of the United States and has considered these obligations throughout the rulemaking process for this regulation. As noted below, FDA believes that these regulations are consistent with these international trade obligations.

(Comment 6) Some commenters asserted that the proposed regulation is burdensome, costly, discriminatory, and will have a negative impact on foreign trade.

(Response) In drafting the interim final rule, FDA structured the rule to be consistent with the statutory mandates of the Bioterrorism Act and, at the same time, to reduce the costs associated with compliance. As discussed in more detail later in the preamble, FDA carefully considered comments received regarding the burden imposed by the proposed rule, including its impact on international trade. The agency has made a number of changes in the interim final rule that are both consistent with FDA's statutory mandate and that will make it easier and less costly for covered facilities (foreign or domestic) to register. In addition, the interim final rule exempts certain establishments from the registration requirement that, under the rule as proposed, would have been required to register. For example:

- FDA has changed the definition of "food" for purposes of the Bioterrorism Act to exclude food contact substances as defined in section 409(h)(6) of the FD&C Act and pesticides as defined in FIFRA (7 U.S.C. 136(u)).
- FDA has broadened the definition of "farm" to include the activities of harvesting, and the rule considers washing, trimming of outer leaves, and cooling of crops on a farm to be harvesting. Also, in the interim final rule, "farm" includes facilities that pack or hold food, provided that all food used in such activities is grown, raised, or consumed on that farm or another farm under the same ownership.
- FDA is clarifying that having a single U.S. agent for FDA registration purposes does not preclude facilities from having multiple agents (such as foreign suppliers) for other business purposes.
- The interim final rule allows registrants to submit their registrations by fax or CD–ROM, which FDA will enter into its registration system, along with the mailed submissions, as soon as practicable, in the order received.
- FDA has extended the timeframe in which registrants must update their registrations from 30 to 60 days of any change in the required information.
- FDA has deleted the requirement to update optional information previously submitted.

### *C. Comments on Who Must Register Under This Subpart? (Proposed § 1.225)*

(Comment 7) Some commenters disputed the statement in the proposed rule that [i]ndividual homes are not subject to the regulation if the food that is manufactured/processed, packed, or held in the home does not enter commerce." (68 FR 5378). These commenters argue that under this limited exclusion for homes, individuals, such as Girl Scout and Boy Scout volunteer parents, individuals who prepare food in their homes for functions such as church bake sales, and individuals who temporarily store food in their homes as sales samples or small inventories of product for delivery to rural retailers would be required to register because they often hold in their homes food products destined for further movement through commerce. The commenters argue that the Bioterrorism Act does not mention individual residences in the scope of facilities that manufacture, process, pack, or hold food and asserts that Congress did not intend that the registration requirements compel ordinary citizens to register their residences, and that including residences would not give FDA any useful or actionable information. This commenter concludes that FDA should explicitly exempt individual residences under all circumstances.

(Response) FDA has concluded that private individual residences are not "facilities" for purposes of the registration provision of the Bioterrorism Act. Under the Bioterrorism Act, the term "facility" includes "any factory, warehouse, or establishment." Congress did not specify any definition for these terms. Under their common meanings, the terms can include private residences. For example, according to Webster's II New Riverside University Dictionary (1994), the most relevant definition of "establishment" is "a business firm, club, institution, or residence, including its possessions and employees." However, "[i]n determining whether Congress has specifically addressed the question at issue, the court should not confine itself to examining a particular statutory provision in isolation * * *. It is a 'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'" *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 121 (2000). Other parts of the registration provisions in section 415 of the FD&C Act indicate that Congress only intended businesses to register, and raise a question as to whether Congress intended that private individual residences, even though food is manufactured/processed, packed, or held at such residences, be considered facilities. For instance, a registrant is required to submit "the name and address of each facility at which, and all trade names under which, the registrant conducts business * * *"(21 U.S.C. 350d(a)(2)). Thus it is unclear whether Congress intended all individual private residences at which food is manufactured/processed, packed, or held to be included in the term "facility." Furthermore, the requirement that a facility submit its "name" as well as its "trade names" raises a question as to whether Congress intended "facility" to include private individual residences since it is unlikely that a home would have a name or a trade name. Where the words of the statute are ambiguous, an agency may make a reasonable interpretation of the statute. *Chevron, USA, Inc.* v. *NRDC, Inc.*, 467 U.S. 837, 842–843 (1984); *Brown & Williamson*, supra, at 132.

Consistent with the language of section 415(a)(2) discussed previously, the agency concludes that interpreting the term "facility" to exclude private individual residences is a reasonable construction for purposes of registration. This interpretation, however, does not necessarily preclude a reasonable construction of other provisions of the FD&C Act to include such residences.

Therefore, in response to these comments, we have revised the interim final rule at 1.227(b) to provide that the definition of facility does not include private residences of individuals. Accordingly, homes that store Girl Scout cookies for distribution, homes in which food is prepared for church bake sales, and homes where individuals temporarily store sales samples or small inventories of products for delivery to rural retailers are not facilities, and therefore, are not subject to registration.

(Comment 8) One commenter requests that FDA clarify whether trans-shippers, who ship products through the United States en route to other countries, are required to register. Another commenter wants FDA to clarify whether it will require registration of foreign facilities that export food to locations outside the mainland United States, such as Hawaii and the Northern Mariana Islands.

(Response) Because the registration requirement only applies to facilities that manufacture/process, pack, or hold food for consumption "in the United States," facilities that manufacture/process, pack, or hold food that is for consumption only in other countries are not required to register. Therefore, manufacturers/processors, packers, or holders of food that is trans-shipped through the United States to other countries for consumption are not required to register. Facilities that export food for consumption in locations that are part of the United States are required to register. Locations are part of the United States if they are in any State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico because section 415(b)(2) of the Bioterrorism Act (21 U.S.C. 350d(b)(2)) defines the term "domestic facility" to mean a facility in any of the States or Territories. Facilities that manufacture/process, pack, or hold food for consumption in Hawaii and the Northern Mariana Islands are thus required to register because these locations are respectively a State and a Territory of the United States.

(Comment 9) Several commenters responded to FDA's request for comments on whether it has authority to exempt domestic facilities engaged only in intrastate commerce from the registration requirement and if so, whether the agency should use that authority. The commenters agree with FDA's decision in the proposed rule to require facilities engaged in intrastate commerce to register. One commenter states that intrastate facilities should not be excluded because individuals wanting to contaminate the food supply could choose key States from which to launch an attack. This commenter also points out that foreign facilities are not exempt, even if they only import food into one State. Several commenters argue that requiring these foreign facilities to register, while exempting facilities engaged in intrastate commerce, is discrimination against foreign facilities.

(Response) In the preamble to the proposed rule, FDA tentatively concluded that the Bioterrorism Act requires all domestic facilities to register, whether or not they engage in interstate commerce. Accordingly, proposed § 1.225(b) stated that a domestic facility must register (unless otherwise exempt) "whether or not the food from the facility enters interstate commerce."

FDA sought comment on whether the agency has authority to exempt domestic facilities engaged only in intrastate commerce from the registration requirement and, if so, whether FDA should use that authority. FDA also asked for comment on the number of so-called "intrastate" facilities that would not be covered by one of the exemptions from registration. No one asserted that Congress could not require such facilities to register. Similarly, no one identified intrastate facilities that would not already be covered by one of the exemptions. As noted in the preamble to the proposed rule, FDA believes that most facilities that do not engage directly in interstate commerce would be covered by an exemption in the interim final rule (*e.g.*, residences of private individuals, farms, restaurants, retail food establishments.)

The comments received agreed with FDA's decision in proposed § 1.225 to require all nonexempt facilities to register even if food from the facility does not enter interstate commerce. They agreed with FDA's position that having a central database including all facilities that manufacture/process, pack, or hold food would help achieve the goals of the Bioterrorism Act. Moreover, the commenters gave additional reasons why excluding so-called "intrastate" facilities from the registration requirement could be detrimental or inappropriate. Importantly, no comments presented any reason for excluding facilities from the registration requirement solely on the basis of whether the food from the facility enters interstate commerce.

FDA is mindful that its interpretation of the Bioterrorism Act should not cast doubt on the constitutionality of the statute. (*See Solid Waste Agency of Northern Cook County* v. *U.S.*, 531 U.S. 159 (2001)). The agency has considered the relevant provisions of the Bioterrorism Act, the comments submitted on this issue, FDA's responsibilities in implementing the Bioterrorism Act, and the law interpreting the commerce clause of the Constitution (Article I, section 8). Based on these considerations, FDA is retaining § 1.225(b) as proposed, with the result that all facilities that manufacture/process, pack, or hold food (unless otherwise exempt) must register even if food from the facility does not enter interstate commerce.

Significantly, the plain language of new section 415 of the FD&C Act does not exclude a facility from registration because food from such facility does not enter interstate commerce. Notably, sections 301 and 304 of the FD&C Act (21 U.S.C 334) demonstrate that Congress has included a specific interstate commerce nexus in the provisions of the FD&C Act when that is its intent. Accordingly, it is reasonable to interpret the Bioterrorism Act as not limiting registration only to those facilities with a direct connection to interstate commerce. Congress's power to legislate under the commerce clause is very broad. However, such power is not without limits, *see United States* v. *Lopez*, 514 U.S. 549, 567 (1995); *U.S.* v. *Morrison*, 529 U.S. 598, 618 (2000), and these limits have been construed in light of relevant and enduring precedents.

In particular, in *Lopez, supra*, the Supreme Court acknowledged the continuing vitality of *Wickard* v. *Filburn*, 317 U.S. 111 (1942), noting that "although Filburn's own contribution to the demand for wheat may have been trivial by itself, that was not 'enough to remove him from the scope of federal regulation where, as here, his contribution, taken together with that of many others similarly situated, is far from trivial.' " (514 U.S. at 556.) This principle applies squarely to the registration provision of the Bioterrorism Act. Accordingly, given the collective impact on commerce of so-called "intrastate" facilities that manufacture/process, pack, or hold food, FDA has concluded that each such facility should be required to register regardless of whether food from that facility enters interstate commerce. Thus, FDA is retaining § 1.225(b) as proposed.

This outcome is consistent with section 709 of the FD&C Act (21 U.S.C 379a), which states that in any action to enforce the act's requirements respecting foods, drugs, devices, and cosmetics, any necessary connection with interstate commerce is presumed. Likewise, this outcome is consistent with Congress's goal in enacting the Bioterrorism Act because the potential harm from bioterrorist attacks or other food emergencies can be great, whether or not the food moves from one state to another. The usefulness of the registration database can also be significant in food emergencies where interstate shipment has not occurred. Finally, as noted, FDA received no comments identifying so-called "intrastate" facilities that would not otherwise be exempt from registration. Thus, this outcome, as a practical matter, should have little if any impact on which facilities must register. Accordingly, FDA concludes that it is appropriate to require facilities that do not fall within an exemption to register regardless of whether the food from the facility enters interstate commerce.

(Comment 10) One commenter states that the proposed rule requires all foreign and domestic facilities with operations that have an effect or impact on food to register unless subject to specific exemptions. The commenter believes that this is vague and not specific for imported shipments, especially fresh produce, and would require all parties having any contact with the produce to register. This commenter also argues that the party registering with FDA for produce shipments should be the exporter.

(Response) The commenter misunderstands the proposed rule. First, the statement that the rule would require registration by all facilities that "have an effect on food" is not accurate. As stated previously, both the

Bioterrorism Act and this interim final rule (which is consistent with the proposed rule) provide that a facility must be registered if it is engaged in manufacturing/processing, packing, or holding food for consumption in the United States. Second, both the Bioterrorism Act and the interim final rule (as did the proposal) provide that foreign facilities are exempt from registration if food from these facilities undergoes further manufacturing/processing (including packaging) by another foreign facility outside the United States. Finally, because the registration requirement is facility-based, an exporter is required to register only if it is the owner, operator, or agent in charge of a facility that manufactures/processes, packs, or holds food for consumption in the United States, and the facility is not subject to any of the listed exemptions. This is consistent with the specific language in the Bioterrorism Act.

(Comment 11) One commenter asks FDA to clarify whether registration applies to "bulk grain handling facilities which exist for the purpose of export and domestic shipments."

(Response) It is not clear from the comment what activities the bulk grain handling facility conducts. If "bulk grain handling" means storing grain in bulk, the facility is required to register with FDA if the grain will be consumed by humans or animals in the United States, because the facility is engaged in "holding" food. Similarly, if "bulk grain handling" is synonymous with the activities of a feedmill, the facility is required to register with FDA because feed mills manufacture/process, pack, and hold feed for animal consumption. The discussion under the definition of "retail food establishment" provides further clarification.

(Comment 12) One commenter has several questions related to who is required to register: Is the registration requirement limited strictly to commercial shipments? How does registration affect United States travelers who bring varying quantities of goods into the United States?

(Response) The registration requirement applies to facilities that manufacture/process, pack, or hold food for consumption in the United States. Thus the requirement is tied to: (1) Facilities, and (2) food that will be consumed in the United States. The Bioterrorism Act, therefore, does not limit the registration requirement to commercial shipments. However, travelers who bring foods into the United States on their person or in their baggage are not facilities under this rule, and thus, they are not required to register. FDA notes that travelers may nevertheless be subject to prior notice if they are carrying or otherwise are accompanied by food that is not for personal use (*i.e.*, for consumption by themselves, family, or friends, and not for sale to anyone.)

(Comment 13) A commenter asks what is the responsibility of foreign governments owning facilities that hold food? Also, what is the responsibility of a country through whom goods of concern may be trans-shipped?

(Response) The registration requirement applies to facilities that manufacture/process, pack, or hold food for consumption in the United States. Thus the requirement is tied to: (1) Facilities, and (2) food that will be consumed in the United States. There is no exemption in the Bioterrorism Act or this interim final rule for facilities that manufacture/process, pack, or hold food that happen to be government-owned. Accordingly, such government-owned facilities are required to register if they meet the other requirements of registration.

A country through which foods may be trans-shipped on their way to the United States has no responsibility regarding registration, as the registration requirement applies to facilities that manufacture/process, pack, or hold food. Under the Bioterrorism Act, the responsibility to register is on the owner, operator, or agent in charge of a facility that manufactures/processes, packs, or holds food for consumption by humans or animals in the United States.

(Comment 14) A commenter primarily engaged in exporting products from the United States asks FDA to clarify whether such an exporter is required to register if the foreign country or foreign buyer rejects food being exported from the United States, and the food is returned to the United States.

(Response) Where food exported from the United States is rejected and returned to this country, the owner, operator, or agent of any facility that manufactures/processes, packs, or holds the food is required to register if the food will be consumed in the United States. FDA is assuming in comment 14 that no foreign facility other than the exporting facility manufactures/processes, packs, or holds the food before it is returned to the United States.

(Comment 15) One commenter asks FDA to clarify whether domestic grain handling, and feed manufacturing facilities engaged solely in exporting bulk or processed agricultural commodities to other countries are exempt from the registration requirement.

(Response) A facility is only required to register with FDA if the food manufactured/processed, packed, or held in the facility is for consumption or is actually consumed in the United States by humans or animals.

(Comment 16) One commenter asks "[w]hat happens if [an] exporter cannot get [the foreign] manufacturer to register, and does not have all of the necessary information to do it himself?" The commenter asks whether the exporter "will not be permitted to send the shipment resulting in lost sales to his company."

(Response) The response to comment 17 addresses which foreign facilities are required to register with FDA. If the manufacturer/processor in the above scenario (or a packer or holder) is required to register but fails to do so, the Bioterrorism Act provides that food shall be held at the U.S. port of arrival or in a secure facility until the facility registers (21 U.S.C. 381(l)). However, the provisions of the prior notice interim final rule (which is published elsewhere in this issue of the **Federal Register**) that address product under hold provide for export of such products.

FDA has made some editorial changes in this section for the purpose of clarity.

### *D. Comments on "Who is Exempt From This Subpart?" (Proposed § 1.226)*

In the interim final rule, the title of this section has been changed to "Who does not have to register under this subpart?"

#### 1. Foreign Facilities

(Comment 17) A commenter asks which foreign facilities would be required to register in the case of raw agricultural commodities, such as cocoa beans, which may be dried, (in some cases) fermented, blended with beans from other farms, packed into bags, fumigated, weighed, graded, and stored in one or more warehouses before being exported to the United States.

(Response) The Bioterrorism Act states that a foreign facility must register if food from such a facility is exported to the United States for consumption in this country "without further processing or packaging outside the U.S." Therefore, a foreign facility is only required to register if it manufactures/processes the food without further manufacturing/processing of the food by another foreign facility prior to export to the United States. The foreign facility is required to register even if there is a subsequent facility that further manufactures/processes the food if the activities of the subsequent facility are merely of a *de minimis* nature. A foreign facility must also register if, prior to export to the United States, it packs or holds food after the last foreign manufacturer/processor of the food. Under these provisions, the last facility that manufactures/processes the cocoa beans, and every facility that subsequently engages in packing or holding the beans, as well as any facility that subsequently engages in *de minimis* manufacturing/processing (such as labeling) of the cocoa beans, is required to register.

(Comment 18) Several commenters argue that registration of foreign facilities should be limited to the last holder of the goods, since it would be difficult for many facilities further up the distribution chain to find a U.S. agent.

(Response) FDA is denying this request due to the registration requirement provided in the Bioterrorism Act for foreign facilities that manufacture/process, pack, or hold food. See the response to comment 17 for these specific requirements.

(Comment 19) A commenter requests clarification on whether registration applies to foreign port facilities such as warehouses or storage and inspection facilities belonging to private companies. Another commenter asks whether brokers, warehousers, or traders who take possession of food before it is exported to the United States need to register.

(Response) As noted, the registration requirement of the Bioterrorism Act is facility-based and has no exemption from registration for port storage and inspection facilities if these facilities are used to hold food. Therefore, foreign port storage and inspection facilities must be registered with FDA if they manufacture/process, pack, or hold food for consumption in the United States. Similarly, a broker, warehouser, or trader who takes possession of food before it is exported to the United States is required to register if the broker, warehouser, or trader is the owner, operator, or agent in charge of a facility that manufactures/processes, packs, or holds food for consumption in the United States.

(Comment 20) One commenter states that all foreign processors, holders, and manufacturers throughout the foreign distribution chain should be required to register.

(Response) FDA is denying this request due to the registration requirement provided in the Bioterrorism Act for foreign facilities that manufacture/process, pack, or hold food. See the response to comment 17 for these specific requirements.

(Comment 21) One commenter states that, in its application to foreign facilities, FDA should revise its definition of "holding" to "provid[ing] storage of food products and neither engag[ing] in the manufacturing nor processing of the food products, except for incidental services that do not involve unsealing of the primary food container."

(Response) FDA declines to change "holding" to include "incidental services that do not involve unsealing of the primary food container." This change would blur the distinction between manufacturing/processing and holding because activities that do not involve unsealing of a food container could be considered *de minimis* processing, as opposed to holding. See the response to comment 17 for specific registration requirements for foreign facilities.

(Comment 22) Some commenters involved in the production of food that either has a long shelf life or long production phase ask whether they are required to register with FDA if they do not know the eventual export destination at the time of production. For example, for vintage wine, the eventual destination of the wine (*i.e.*, whether the wine is for consumption in the United States) is generally not known at the time of production. Other commenters state that for similar reasons, registration should not be required of foreign "collection points," which receive products from a large number of suppliers, then distribute or sell them at auctions.

(Response) Under this interim final rule, an owner, operator, or agent in charge must register its facility only if the food manufactured/processed, packed, or held at the facility is for consumption in the United States. In the response to comment 17, FDA has clarified the registration requirements for foreign facilities that manufacture/process, pack, and hold food. That discussion is also relevant to this comment. Although the destination of some food produced abroad is not known at the time of its production, FDA believes that producers and distributors of these products are likely to have an idea of the eventual destination, based on prior sales and promotional activities. Because the Bioterrorism Act generally prohibits food from an unregistered foreign facility from being delivered for distribution in the United States until the facility is registered, FDA recommends that the owners, operators, or agents in charge of facilities producing these types of food register their facilities if they reasonably believe their foods may be consumed in the United States.

(Comment 23) One commenter states that, for commercial confidentiality reasons, foreign traders may not wish to reveal the identity of the packer or producer to the importer, and that the registration requirement would interfere with this confidentiality.

(Response) FDA acknowledges that for some entities, the registration requirements may result in some alterations of their past business practices. However, the Bioterrorism Act imposes certain requirements on the importation of food for consumption in the United States, including registration of foreign and domestic food facilities. It is incumbent on these facilities to make the necessary arrangements to comply with the Bioterrorism Act if they wish to continue to import food into the United States.

(Comment 24) Some commenters request that foreign facilities should be exempt if they export food solely to their own subsidiaries in the United States. These commenters state that these foreign facilities send finished or semifinished goods or raw materials to their subsidiaries in the United States for further processing. The commenters argue that, under these circumstances, the foreign parent company should not have to register; however, under the proposed rule, not only the final processor, but also all of its suppliers, would be required to register.

(Response) FDA is denying this request because the Bioterrorism Act does not authorize an exemption from registration for facilities that export solely to their subsidiaries in the United States. Moreover, it appears that the commenter misunderstands the requirements that apply to foreign facilities. Under both the proposed rule and this interim final rule, suppliers of food need not register if another foreign facility subsequently manufactures/processes the food before it is exported to the United States, unless the subsequent facility is conducting *de minimis* activities, such as labeling. In the latter situation, both facilities would have to register.

(Comment 25) Several commenters request further clarification regarding the "*de minimis*" provision. Some commenters request that FDA exempt foreign facilities engaging in *de minimis* activity. In fact, one commenter mistakenly states that the proposed rule exempts foreign facilities if a facility subsequent to them conducts *de minimis* activity.

(Response) Please see the response to comment 17 regarding the registration requirements as applied to foreign manufacturers/processors. An exemption for foreign facilities engaged in *de minimis* manufacturing/processing would be inconsistent with the Bioterrorism Act language quoted in the response to comment 17.

(Comment 26) One commenter requests that FDA provide either a definition of "*de minimis*" or more examples of what constitutes *de minimis* activity, such as blending, sieving, particle size distribution, drying crops, and repackaging.

(Response) FDA has concluded that *de minimis* manufacturing/processing does not involve direct manipulation of food. Therefore, most of the activities included in the comment (blending, sieving, particle size distribution, and drying crops) are not *de minimis* because they manipulate food. Regarding "re-packaging," it is not clear whether this activity would contact the food itself or merely involve contact with outer materials that do not contact the food. If the re-packaging involves contact with the food itself, it would not be considered *de minimis*.

2. Farms

FDA did not receive any comments on "farm" as an exemption. Please see section III.E.6 of this document for changes FDA made to the definition of "farm." FDA also addresses the comments we received on farms in section III.E.6 of this document.

3. Retail Facilities

FDA did not receive any comments on "retail facilities" as an exemption. In this interim final rule, we have changed the term "retail facility" to "retail food establishment" to be consistent with the statutory term. Please see section III.E.14 of this document for changes FDA made to the definition of "retail food establishment." FDA also addresses the comments we received on retail food establishments in III.E.14 of this document.

4. Restaurants

Please see the definitions section III.E.13 of this document for changes FDA made to the definition of "restaurant." FDA also addresses all but one of the comments we received on the "restaurant" exemption in section III.E.13 of this document.

(Comment 27) FDA did receive one comment specifically addressing the restaurant exemption. This comment states that although the proposed rule provides that restaurants are exempt from registration, it "continues to define when it is necessary for food facilities to register and provides an opportunity for the foreign facilities to designate a U.S. agent for registration. This language alone contradicts the exemption in many circumstances within the restaurant industry. The intention of Congress was to exempt restaurants * * * language must be incorporated to state that foreign facilities should not have the ability to designate a U.S. agent for registration." This commenter also urges FDA to incorporate language in the interim final rule clearly stating that foreign facilities may designate a restaurant as a U.S. agent, while emphasizing that this designation does not remove the restaurant exemption from all restaurants.

(Response) FDA is not certain it understands this comment. This commenter appears to be concerned that the restaurant exemption would conflict with the U.S. agent requirement, if a foreign facility were to choose a domestic restaurant as its U.S. agent. FDA agrees that even if a foreign facility designates a domestic restaurant as its U.S. agent, the restaurant is still exempt from registration itself. In such circumstances, the restaurant can also be authorized by the owner, operator, or agent in charge of the foreign facility to register that facility. Regarding incorporation of language specifying that restaurants can be U.S. agents in the interim final rule, FDA believes that this change is not necessary because the interim final rule states that a U.S. agent is "a person (as defined in section 201(e) of the act (21 U.S.C. 321(e)))." This definition includes a restaurant.

5. Nonprofit Food Facilities

In this interim final rule, FDA has changed the term "nonprofit food facility" to "nonprofit food establishment" to be consistent with the statutory term.

(Comment 28) One commenter asks FDA to confirm that the commenter's affiliates and their agencies are exempt as nonprofit food facilities. This commenter states that all of its food banks, food rescue organizations, and local agencies of its affiliates are required to be incorporated as nonprofit organizations that are exempt from paying income tax as defined by the U.S. Internal Revenue Code Section 501(c)(3) or "the equivalent." The commenter states that its certified affiliate food banks and food rescue organizations provide food to the public through direct distributions and through distributions to local nonprofit section 501(c)(3), or equivalent nonprofit, agencies.

(Response) The interim final rule defines a "nonprofit food establishment" as "a charitable entity that prepares or serves food directly to the consumer or otherwise provides food or meals for consumption by humans or animals in the U.S." The interim final rule includes central food banks, soup kitchens, and nonprofit food delivery services as examples of nonprofit food establishments. In response to the comment, FDA is clarifying that to be considered a nonprofit food establishment, the establishment must meet the terms of section 501(c)(3) of the U.S. Internal Revenue Code (26 U.S.C. 501(c)(3)). If the commenter's establishments meet all aspects of the definition of nonprofit food establishment in this interim final rule, they would be exempt from registration.

Please see section III.E.10 of this document for changes FDA made to the definition of "nonprofit food establishment."

6. Fishing Vessels

(Comment 29) One commenter states that the fishing vessel exemption will not achieve its intended purpose, due to the Bioterrorism Act's reference to § 123.3(k), which FDA includes in the fishing vessel exemption. The commenter argues that incorporating the reference to § 123.3(k) into the proposed rule invalidates nearly the entire exemption, because harvested fish must be removed from the harvest vessel for any further processing. The exemption, therefore, would only exempt those fishing vessels that transfer harvested fish by brailing or pumping to offshore processing vessels. The exemption would not apply to fishing vessels that enter port and offload fish dockside. As a result of these restrictions on the exemption, the commenter requests that FDA "acknowledge the irony of this exemption" and consider requesting a technical amendment to the Bioterrorism Act to broaden the exemption.

(Response) The Bioterrorism Act (21 U.S.C. 350d(b)(1)) expressly references the Seafood Hazard Analysis Critical Control Point (Seafood HACCP) regulations (§ 123.3(k)) as part of the fishing vessel exemption. Accordingly, to the extent that the exemption for fishing vessels is limited, it is limited by Congress. Importantly, however, FDA notes that "dockside unloading" is included in the definition of "processing" (§ 123.3(k)) to cover waterfront facilities that unload vessels and pack the catch for shipment to buyers, not the vessels from which the catch is unloaded. (See 60 FR 65096, 65114 to 65115, December 18, 1995.) Thus, the comment is not correct that the only vessels that would be exempt are those that transfer fish by brailing or pumping to offshore processing vessels. Generally, vessels covered by the

Seafood HACCP regulations are required to register with FDA.

FDA is using the term "fish" to describe the cargo of fishing vessels in order to be consistent with the use of the term in 21 CFR Part 123. "Fish" is defined in § 123.3(d) as "fresh or saltwater finfish, crustaceans, other forms of aquatic animal life (including, but not limited, to alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals, and all mollusks, where such animal life is intended for human consumption."

(Comment 30) A commenter asks FDA to clarify whether any facilities would be required to register in the following scenario: Company A purchases fish from a Mexican fisherman, loads it onto refrigerated trucks, and transports it to Company B, which is located in the United States.

(Response) Under the interim final rule, fishing vessels are exempt from registration unless processing is done on board the ship. For purposes of this exemption, "processing "is defined in § 123.3(k)(1) as "[h]andling, storing, preparing, heading, eviscerating, shucking, freezing, changing into different market forms, manufacturing, preserving, packing, labeling, dockside unloading, or holding." Importantly, however, according to § 123.3(k)(2), harvesting and transport vessels that engage in "[h]arvesting or transporting fish or fishery products, without otherwise engaging in processing," or "[p]ractices such as heading, eviscerating, or freezing, intended solely to prepare a fish for holding on board a harvest vessel," are exempt from registration under 21 CFR 1.126(f). Under the scenario described in the comment, the Mexican fisherman would have to register the vessel if he catches fish and processes it aboard the vessel under § 123.3(k). If the fisherman does not process the fish (other than heading, eviscerating, or freezing the fish to prepare it for holding on board his vessel), the vessel would not need to register. Whether Company A or Company B would be required to register depends upon their activities. If either company engages in manufacturing/processing, packing, or holding the fish, all facilities at which such activities occur must be registered (unless a facility qualifies for one of the exemptions from registration, *e.g.*, a restaurant). A transportation vehicle is not a facility and would not need to register if it holds the fish only in its usual course of business as a carrier (§ 1.226(f).)

### 7. Facilities Regulated Exclusively, Throughout the Entire Facility, by USDA

(Comment 31) Several commenters ask FDA to clarify which facilities are regulated exclusively by USDA, as USDA versus FDA jurisdiction is not clear to foreign facilities.

(Response) Whether a facility is regulated exclusively by USDA (and thus, is exempt from registration, 21 CFR 1.226(g)) depends upon the products manufactured/processed, packed, or held at the facility. Any facility that manufactures/processes, packs, or holds some foods subject to FDA jurisdiction does not satisfy the exclusivity part of the exemption in § 1.226(g) and thus, must register with FDA.

More specifically, under the Meat Inspection Act (MIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), USDA inspects facilities that slaughter poultry, cattle, sheep, swine, equines, or goats and facilities that process "poultry products" or "meat food products" as defined under the MIA and the PPIA (21 U.S.C. 453(f), 455, 601(j), 603). Any USDA-inspected facility that slaughters only poultry, cattle, sheep, swine, equines, or goats is solely under USDA jurisdiction and is exempt from registration. Facilities that slaughter these animals, but that also slaughter other animals, such as deer or elk, are under both USDA and FDA jurisdiction and must register. Facilities that manufacture/process only "poultry products" or "meat food products," as defined by USDA, are exempt from registration. Facilities that manufacture/process "meat food products," such as pizzas with meat topping, and other products, such as cheese pizzas, are under both FDA and USDA jurisdiction and must therefore register with FDA.

Under the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*), USDA inspects facilities that process "egg products," which are "any dried, frozen, or liquid eggs, with or without added ingredients, excepting products which contain eggs only in a relatively small proportion or historically have not been * * * considered by consumers as products of the egg food industry * * * " (21 U.S.C. 1033(ff)). A facility is regulated exclusively by USDA if it manufactures/processes only "egg products." If a facility manufactures/processes other food in addition to, or instead of, egg products, the facility is not regulated exclusively, throughout the entire facility, by USDA and it must be registered. Thus, a facility is regulated exclusively, throughout the entire facility, by USDA if it manufactures/processes, packs, or holds only "meat food products," "poultry products," or "egg products" as defined above. If a facility manufactures/processes, packs, or holds other food in addition to meat food products, poultry products, or egg products, the facility is not regulated exclusively, throughout the entire facility, by USDA and thus, would not be exempt from registration.

(Comment 32) One commenter requests FDA to expand this exemption by including all facilities that are subject to USDA jurisdiction, even if they are also subject to FDA jurisdiction. Another commenter asks why, under this exemption, FDA exempts such a considerable part of the production chain from the registration requirements, while also establishing strict requirements for other facilities.

(Response) The Bioterrorism Act requires that, unless exempt, all facilities that manufacture, process, pack, or hold food for consumption in the United States must register (21 U.S.C. 350d(a)). However, section 315 of the Bioterrorism Act states that no part of Title III should be construed to alter the jurisdiction between USDA and FDA. Under current practice, FDA may have jurisdiction over a food facility, USDA's Food Safety and Inspection Service may have jurisdiction over a food facility, or the two agencies may have joint jurisdiction over a food facility. Under section 315, the Bioterrorism Act does not change this structure. Accordingly, only those facilities that manufacture/process, pack, or hold food that is regulated exclusively by USDA is exempt from registration under section 315. In response to the comment asking why FDA exempts such a considerable part of the production chain from registration under this exemption, the authority in the Bioterrorism Act only extends to facilities manufacturing/processing, packing, or holding food under FDA's jurisdiction. Congress did not extend these requirements to facilities under USDA's exclusive jurisdiction. (USDA has other existing authority over facilities under their jurisdiction.) Moreover, even though a facility is exempt from registration with FDA this does not mean that it is exempt from all statutes and regulations that protect the safety and security of food consumed in the United States.

(Comment 33) Several commenters urge FDA to exempt from the registration requirement other facilities in addition to those exclusively regulated by USDA, such as USDA-approved, federally licensed grain storage silos and elevators, low acid canned food, aquatic products, and fruit exporting enterprises. One of these commenters states that under the Warehouse Act, USDA performs regular, unscheduled inspections of these grain storage facilities; therefore, USDA, not FDA, is the most appropriate federal agency to respond to threats affecting these facilities. The other commenter states that fruit exporters have already registered with USDA.

(Response) FDA believes that this interim final rule implements the intent of Congress as expressed in the Bioterrorism Act. The statute does not include exemptions from the registration requirement for the types of facilities listed in the comment, and the comment identifies no other basis for the exemptions proposed.

### *E. Comments on "What Definitions Apply to This Subpart?" (Proposed § 1.227)*

#### 1. The Act

There were no comments on this issue.

#### 2. Calendar Day

There were no comments on this issue.

#### 3. Facility

(Comment 34) Several commenters recommend exempting temporary storage units, public storage facilities, and bulk storage facilities from the definitions of "facility" and "holding," because many of these storage facilities are not staffed, so it would be very difficult for FDA to get in touch with these facilities in the event of a bioterrorist attack or other food-related emergency. In addition, the commenters state that many of these holding facilities only hold goods for several hours; therefore, the contents of the facility are continually changing and would require constant updates.

(Response) The interim final rule maintains the definition of facility as proposed although FDA has clarified that "facility" does not include a transporter that holds food only in the usual course of its business as a carrier, private residences of individuals, and nonbottled drinking water collection and distribution establishments and their structures. The Bioterrorism Act does not exempt facilities based on the period of time during which they hold food. In terms of contacting facilities that are not staffed, the interim final rule requires facilities to provide an emergency contact who is accessible 24 hours/day, 7 days/week. (For foreign facilities, FDA will consider the U.S. agent the emergency contact, unless the facility designates someone else, as provided in § 1.227(b)(13) and § 1.233(e).) This person does not have to be located at the facility, but does need to be accessible to FDA in case of an emergency.

(Comment 35) One commenter cites case law to argue that FDA has authority to provide for an additional *de minimis* exemption because the burdens of regulating very small facilities will yield trivial or no value. The commenters suggest that FDA change the definition of facility to exempt these storage buildings.

(Response) The Bioterrorism Act does not exempt facilities based on their size. Furthermore, many storage facilities, including temporary storage facilities, may be a target of terrorist attack. Therefore, having the registration information for these facilities can facilitate FDA's response to such an attack.

(Comment 36) Several commenters state that the proposed rule is not clear as to whether transport vehicles hauling food are "mobile facilities." These commenters argue that vehicles used to hold food such as rail cars, tanker trucks, river barges, refrigerated/freezer spaces on ships, truck terminals, marine terminals, and freight forwarders should be exempt from registration. One commenter asserted that the intent of the "holding" definition is to "capture those facilities which hold large quantities of food items for extended periods of time, pending some other action such as movement to a subsequent facility for processing," and states that products being held are "deliberately held under physical control, *i.e.*, restrained from movement." In contrast, "transportation of food items means deliberate movement of those items, under specific arrangements as defined in a bill of lading covering the movement, which would delineate the shipper, consignee, date of movement, details of the shipment, liability for freight charges, and many other elements of transportation." The commenter asserts that based on this distinction, transportation providers who are engaged in the movement of goods from a shipper to a consignee, should be exempt from registration.

(Response) FDA has clarified in § 1.227(b)(2) of the interim final rule that a "mobile facility" means a mobile manufacturer/processor, packer, or holder. In addition, the interim final rule provides that a vehicle used to transport food is exempt from registration unless it manufactures/processes, packs, or holds the food beyond the usual course of its business as a carrier. This is consistent with the legislative history of the Bioterrorism Act, which states that "facility" does not include trucks or other motor carriers, by reason of their receipt, carriage, holding, or delivery of food in the usual course of business as carriers (H.R. Conf. Rep. No. 481, 107th Cong., 2d Sess., 134 (2002)). However, stationary facilities that serve to assist transporters, such as truck or marine terminals or freight forwarders, are required to register because they hold food. If a railcar is used as a grain storage bin for a manufacturing plant, it would be akin to a silo, and as such, the railcar would be "holding" food, not transporting it. Thus, the railcar would be a facility that must be registered. As indicated in comment 36, the Bioterrorism Act does not exempt facilities based on how long they hold food.

(Comment 37) One commenter asks whether trucker-dealers, who purchase and take title to grain from producers, and hold the grain in a transportation conveyance until it can be sold to another processor, storage facility, or end user, are mobile facilities.

(Response) Based on the comment, FDA believes that trucker-dealers are mobile facilities, because they are holding grain in a transportation conveyance beyond the usual course of business as carriers.

(Comment 38) Several commenters state that requiring registration of mobile facilities that manufacture/process food is impractical for fishing vessels that process fish. These commenters state that these vessels have a home port designation but no fixed or permanent address; therefore, they would be required to continually update their registrations based on where the vessel was located in the ocean.

(Response) Registration requires a facility to provide sufficient information to enable FDA to contact the facility if FDA receives information about a bioterrorist threat or other food-related emergency, as well as for routine communications. FDA understands that a mobile facility does not have a fixed address. However, the Bioterrorism Act provides that the owner, operator, or agent in charge of a facility must register the facility; therefore, for mobile facilities such as vessels, the owner or operator of the facility usually has a fixed address and may include that fixed address on the registration.

(Comment 39) Several commenters request that FDA change the proposed definition of facility from being in "one physical location" to allow registration to be by firm, instead of by facility.

(Response) The Bioterrorism Act (21 U.S.C. 350d(a)(1)) requires that each domestic and foreign facility be registered. "Facility" is defined as "any factory, warehouse, or establishment (including a factory, warehouse, or establishment of an importer) that manufactures, processes, packs, or holds food" (21 U.S.C. 350d(b)(1)). Thus, the plain language of the Bioterrorism Act requires registration to be by individual facility, not by firm. As noted below, FDA will allow a parent company to register all of its facilities; however, each facility must be registered separately and each will receive a separate registration number.

(Comment 40) Some commenters state that FDA should provide a more flexible definition of facility, thereby allowing companies to decide how many buildings to consider a single facility. Some of these commenters question whether two structures under single ownership with different addresses that are physically next to each other, across the street from each other, or around the block from each other, are considered one or two facilities. Other commenters argue that a company may conduct business at more than one address, but may consider all of the locations as part of one operation. For example, an operation could include offsite storage buildings, water pipelines from one area to another, pump-houses, and bulk processing in one location, with finished processing or packaging at another address.

(Response) The Bioterrorism Act (21 U.S.C. 350d(a)(4)) requires that FDA compile and maintain an up-to-date list of registered facilities; this list will serve two purposes. One purpose of the registration database is to provide FDA with information that will permit FDA to respond promptly to a bioterrorist event or other food safety emergency. A second purpose is to provide the agency with a list of facilities for inspection. Because both the agency's emergency response and its inspections are facility specific, it is important for FDA to have particular information about facility location. This need will not be met if a business with multiple locations is registered as a single facility. FDA suggests that one factor for determining whether a business is one or two facilities is through real estate records, because a property line could demonstrate that several buildings are on the same lot, and therefore, are the same facility.

### 4. Domestic Facility

FDA received no comments on this definition.

### 5. Foreign Facility

FDA received no comments on this definition.

### 6. Farm

(Comment 41) Some commenters state that the proposed definition of farm is unduly narrow because it does not exempt farms that engage in activities traditionally performed on farms for nearly all commodities, including farms that cut, trim, wash, grade, mill, wax, size, cool, apply inventory control items (*e.g.*, universal product codes), treat against pests, transport from the fields, transport to storage or processing facilities, mist, treat with water/ice during storage, package, mill, grind, box/wrap for the sole purpose of transport off the farm, and transport from the farm. Some commenters also ask FDA to clarify whether placing produce into netting or bags for retail sale before placing them in cartons is considered "packing."

(Response) In response to these comments and to ensure that FDA is fulfilling Congress's intent to exempt "farms," FDA has revised the definition of farm in the interim final rule (21 CFR 1.227(c)(3)) to state that a farm is a facility in one general location that is devoted to the growing and harvesting of crops, the raising of animals (including seafood), or both, and that washing, trimming outer leaves, and cooling of food are considered part of harvesting. FDA considers several of the activities identified in the comment to be "packing or holding," including sorting, grading, wrapping, or boxing harvested food for the sole purpose of transporting this food off the farm. A farm that performs these activities will not necessarily cease to be a farm and exempt from registration because the definition of farm includes facilities that pack or hold food, provided all food used in such activities is grown, raised, or consumed on that farm or another farm under the same ownership (21 CFR 1.227(c)(3)(i)). Similarly, FDA considers several of the activities identified in the comment (waxing, milling, grinding, and treating against pests) to be manufacturing/processing. A farm that performs these activities will not necessarily cease to be a farm and exempt from registration because the definition of farm includes facilities that manufacture/process food, provided that all food used in these activities is consumed on that farm or another farm under the same ownership (21 CFR 1.227(c)(3)(ii)). Finally, a farm that transports its products does not cease to be a "farm" within the meaning of 21 CFR 1.227(c)(3) because, as noted earlier in this document, a transport vehicle is not a "facility" for purposes of this rule if it holds food only in the usual course of its business as a carrier and thus, is not required to register.

(Comment 42) Some commenters request that FDA extend the farm definition to public lands used by harvesters or collectors of wild products, including botanicals. The commenters state that these collectors do not manufacture/process or pack foods, and they hold foods similar to many farms.

(Response) FDA does not believe that this comment requires a change in the farm definition. When wild botanicals are grown and harvested on public land, FDA would consider that location to meet the definition of "farm." However, if those harvesting on public land engage in any activity that takes them outside the "farm" definition, they must register the facilities where they conduct these activities.

(Comment 43) Some commenters note that some farming operations are spread out over several locations within several miles or more of each other and all of these locations are under the same ownership and management. Accordingly, these commenters request that FDA change the farm definition to cover several different locations. Another commenter asks whether two facilities separated by fencing, a wooded area, a body of water, or a road are one or two farms. Other commenters request that FDA amend the farm definition to include the term "contiguous," which appears in the preamble to the proposed rule but not the definition itself.

(Response) FDA does not believe that these comments require a modification of the definition of farm. Each of these establishments, whether considered one farm or many farms, is exempt if it meets the definition of farm. Additionally, the interim final rule provides that establishments that pack or hold food fall within the farm definition if all food used in such activities is grown, raised, or consumed on that farm or another farm under the same ownership. The interim final rule also considers establishments that manufacture/process food as farms if all food used in such activities is consumed on that farm or another farm under the same ownership.

(Comment 44) Some commenters ask FDA to clarify whether packing and other facilities owned by more than one farm on a partnership or cooperative basis fit within the farm definition.

(Response) The farm definition extends to only those packing or holding facilities that are located on a farm or another farm under the same ownership and the facilities are exclusively used to pack or hold food grown or raised on such farm or another farm under the same ownership. A packing shed that packs food grown or raised on several farms under different ownership is not covered by the farm definition and thus, is required to register.

(Comment 45) Some commenters argue that the farm definition should address whether a farm that engages in agriculture on several different properties under separate ownership will be considered a single farm for purposes of registration.

(Response) The definition of a farm provides that a farm must be in one general physical location and under the same ownership. In the situation described by the comment, different properties under separate ownership, if they otherwise meet the definition of farm, would be exempt from registering.

(Comment 46) Some commenters argue that a farmer who owns more than one field or piece of property and is required to register with FDA should be required to register only once, identifying on the registration form the physical location of all areas under that farmer's cultivation.

(Response) Generally, a farm is exempt from registration unless it is a mixed-type facility. A mixed-type facility performs activities of a facility that is both ordinarily required to register and ordinarily exempt. An example of a farm that is a mixed-type facility is a farm that grows oranges and processes them into orange juice for sale to a distributor at the same physical location. However, if the farmer manufactures/processes the oranges into orange juice in a different physical location, the location where the oranges are grown is exempt as a farm and the facility where manufacturing/processing occurs must register. Because registration is by individual facility, the farmer must, if required to register, register each facility separately and obtain a separate registration number for each facility. The effort to register in this situation will be reduced if the farmer registers electronically, because he can register each facility in succession, "auto-filling" each section of the form that repeats the information contained in the previous registration.

(Comment 47) One commenter asks FDA to clarify that the definition of farm applies to foreign, as well as domestic, farms.

(Response) The commenter is correct; the farm definition applies to both domestic and foreign farms. Therefore, foreign farms that satisfy the farm definition are not required to register, even if they export food directly to the United States. However, if such a foreign farm harvests food and manufactures/processes it before exporting it to the United States, this would be a mixed-type facility that ordinarily must register. However, the foreign facility exemption may apply to this mixed type facility if further manufacturing/processing that is not of a *de minimis* nature occurs after the food leaves the mixed-type facility and before it is exported to the United States.

(Comment 48) One commenter states that the definition of "farm" is circular in § 1.227(c)(3)(ii). The term "farm" includes: * * * (ii) Facilities that manufacture/process food, provided that all food used in such activities is consumed on that farm or another farm under the same ownership.

(Response) In the previous excerpt from the "farm" definition, FDA's intent is to describe a certain activity (manufacturing/processing) in which a farm may engage without losing its exemption as a farm, so long as all food manufactured/processed by the farm is consumed on that farm or another farm under the same ownership.

(Comment 49) Several commenters state that FDA's definition of "farm" should be size-neutral, and apply equally to integrated livestock and poultry facilities as long as the activities at such locations are limited to "growing or raising" farm animals for human food, but do not extend to further processing of food-producing animals into meat, milk, or eggs (which occurs at food processing and packing plants and rendering facilities) for subsequent commercial sale for consumption by humans or animals.

(Response) The proposed rule's definition of "farm" had no size limitation, and neither does the interim final rule's definition. FDA agrees that integrated livestock and poultry operations are "farms," as long as these operations are devoted to raising animals for food, the growing of crops, or both, and otherwise engage in only those activities included in the farm definition. FDA considers milking cows and collecting eggs from chickens to be "harvesting" when applied to animals, because these activities are akin to harvesting crops.

(Comment 50) Several commenters ask FDA to clarify whether packing sheds, warehouses, and low temperature storage facilities located on farms are considered part of the farm.

(Response) The interim final rule clarifies the definition of "farm" and provides that an operation that includes on-farm packing and holding of food grown, raised, or consumed on the farm or on another farm under the same ownership is still a "farm" under § 1.227(c)(3). The rule also provides that an operation that includes on-farm manufacturing/processing of food, where all food is consumed on that farm or another farm under the same ownership, is still a "farm."

(Comment 51) One commenter requests that FDA clarify that greenhouse facilities devoted to growing fruits and vegetables are considered "farms" for purposes of the farm definition. The commenter states that it appears that greenhouse facilities would easily fit within the proposed definition of farm as "[facilities] in one general physical location devoted to the growing of crops * * *", however, FDA does not explicitly state in the proposed rule or preamble to the proposal that greenhouses would be considered farms.

(Response) FDA agrees with the commenter that a greenhouse devoted to the growing of crops is a "farm" under § 1.227(c)(3).

(Comment 52) One commenter, quoting the proposed definition of farm as including "facilities that manufacture/process food, if all food used in such activities is consumed on that farm or another farm under the same ownership," asks FDA to clarify whether on-farm facilities that manufacture/process food sold to a third party would be required to register with FDA.

(Response) An on-farm operation engaging in manufacturing/processing food that is subsequently sold to an off-farm third party is a facility that is required to register with FDA, unless the facility qualifies under another exemption, such as the retail food establishment exemption.

(Comment 53) One commenter asks FDA to clarify whether a farm is required to register if several companies are involved in the farming operation. For example, some farms may perform their own harvesting or employ another company to provide harvesting services.

(Response) Because registration is by facility, a farm operation is not required to register, provided all of the on-farm activities are covered in the farm definition and the farm is under the same ownership. It therefore makes no difference for purposes of registration if different companies perform different services at a facility. The determinative question is whether the facility is manufacturing/processing, packing, or holding food for consumption in the United States and is not subject to an exemption.

(Comment 54) One commenter asks FDA to clarify: (1) Whether a grower of grapes is covered under the farm definition unless the grower processes these grapes into wine and bottles or packages the wine itself; and (2) whether the grower would be required to register if the grower grows grapes, sends them to a third party who makes wine from them and bottles or packages the wine, and returns the bottled wine to the grower, who then labels the bottles.

(Response) This comment describes an example of a mixed-type facility. In the first example, the grower of the grapes who does not itself process the grapes into wine, would not be required to register its establishment because it is "farm" and is exempt from registration. If the grower's establishment manufactures/processes the grapes into wine and/or bottles or packages it, the establishment is a facility that must register. In the second example, the grower of the grapes would be exempt as a farm; however, labeling the wine after receiving it back from a third party is considered manufacturing/processing. Thus, both the grape grower's labeling facility and the third party's manufacturing/processing facility must register.

(Comment 55) One commenter asks whether cattle feed yards manufacturing feed that is fed onsite to the cattle are required to register.

(Response) The "farm" definition states that "farm" includes "facilities that manufacture/process food, if all of the food used in such activities is consumed on that farm or another farm under the same ownership." Therefore, a cattle feed yard that manufactures/processes feed that is fed only at that feed yard or another farm or feed yard under the same ownership is a "farm" that is exempt from registration. Conversely, a cattle feed yard that manufactures/processes feed that is fed to cattle at another location that is under different ownership would be required to register as a manufacturing/processing facility.

(Comment 56) One commenter quotes FDA's proposed provision for contract facilities, which states:

> [t]he definition of farm does not include facilities that contract with multiple farmers to grow crops or raise animals. These facilities may manufacture/process feed and distribute it to the contract farmers for feeding to animals being raised on the farm. FDA is proposing that the facilities that manufacture/process feed for the contract farmers would be required to register. The farms that grow the crops or raise the animals would be exempt from the registration requirement.

The commenter states:

> [d]espite FDA's clarifications on its definition of farm, it does not specify what happens if these same products are later sold outside the farm or if these products are grown, harvested, held, and sold for consumption of any kind outside the farm, thus going to a second owner and facility to serve other purposes (international commerce).

(Response) This comment is not clear regarding "what happens" if products are "later sold outside the farm" or "are grown, harvested, held, and sold for consumption of any kind outside the farm." The "farm" definition covers a facility that grows crops or raises animals for food. If an establishment sells animal feed obtained from a contract facility to a third person, that establishment would be required to register unless it was exempt as a retail food establishment. If the establishment sells the animal feed to, for example, a distributor or another business, it would not fall within the retail exemption and thus, it would be required to register.

(Comment 57) One commenter states that FDA is proposing to exempt farms from registration even if they conduct packing/holding/processing on their premises, as long as they only handle food grown on that farm or another farm under the same ownership, or if they mix feed from outside sources for exclusive use on that farm. However, the commenter asserts that most farmers that pack or process the crops that they grow may sell or pay for the discarded materials, such as sorted-out produce, hulls, etc., to be used as feed. The commenter asks:

> [i]s it FDA's intent to include all incidental by-products from processing that go to feed as feed production, therefore triggering the registration requirement? Would the by-products sold/disposed of as feed need to be listed among the items produced by a facility that is registering for other reasons?

(Response) This comment raises several questions regarding the status of farms that produce animal feed or animal feed components. The farm definition in the interim final rule includes farms packing or holding food, if all of the food used in animal feed production activities is grown or raised on that farm or consumed on that farm. Similarly, a farm that manufactures/processes animal feed is not required to register, if all of the food used in such activities is consumed on that farm or another farm under the same ownership. Thus, if a farm manufactures/processes food grown on the farm and feeds by-products of these crops to the farm's own animals, the farm does not need to register. However, if the facility sells the by-products to another entity, it must register, unless it is otherwise exempt.

Any registered facility that is producing such by-products may identify such products in section 11b of the registration form (Form 3537). Because the categories listed in section 11b of the form are not included in § 170.3, they are optional.

### 7. Food

(Comment 58) The agency received a number of comments regarding the proposed definition of "food" provided in § 1.227(c)(4). Most of these commenters asserted that the definition was too broad and, for a number of reasons, recommended that certain items covered by the proposed definition be excluded from the rule's coverage. In particular, the commenters requested that food packaging and components of food packaging, other food contact articles (such as food processing equipment and components of such equipment, glassware, dishware, cutlery, kitchen appliances), and so-called indirect additives (including those applied to food contact surfaces) be excluded from the interim final rule's definition of "food."

In support of these proposed exclusions, many commenters cited the language in section 415(a)(1) of the FD&C Act requiring registration of facilities that manufacture, process, pack, or hold "food for consumption in the United States," claiming that such language indicates that Congress intended the registration provision to apply only to facilities that manufacture, process, pack or hold "edible food," "traditionally understood as food," or articles that are "intended for consumption." In addition, one commenter cited the reference in section 415(a)(2) of the FD&C Act to the general categories of food provided in § 170.3, which does not include listings for food packaging or other food-contact materials or their components. Several commenters argued that extending registration to facilities that produce food-contact materials was not consistent with the purpose of the Bioterrorism Act and that there was no historical evidence associating foodborne illness with packaging or other food contact material. Finally, some commenters argued that an overly broad definition of "food" would have the effect of diluting the government's resources and thereby hampering the government's opportunity to achieve the protective goals of the Bioterrorism Act.

Other commenters argued that additional items or facilities should be excluded from the registration requirement; those comments are addressed in section III.D of this document.

Several commenters favor inclusion of packaging and its components. Some commenters point out that food packaging and components are "food" under section 201(f) of the FD&C Act. Some of these commenters suggest that FDA should require facilities currently manufacturing substances subject to approval under section 409 of the act to register, and FDA should clarify the definition at § 1.227(c)(4), and consider outer packaging food.

(Response) Relying on the act's definition of "food" in section 201(f), the proposed rule defined "food" as follows:

> Food has the meaning given in section 201(f) of the act. Examples of food include, but are not limited to, fruits, vegetables, fish, dairy products, eggs, raw agricultural commodities for use as food or components of food, animal feed, including pet food, food and feed ingredients and additives, *including substances that migrate into food from food packaging and other articles that contact food*, dietary supplements and dietary ingredients; infant formula, beverages, including alcoholic beverages and bottled water, live food animals, bakery goods, snack foods, candy, and canned foods (emphasis added).

Thus, food packaging and other food contact materials were expressly included as examples of "food" in the proposed definition, with the result that, under the rule as proposed, facilities that manufacture/process, pack, or hold food packaging, food-contact materials, or their components would have been required to register. (See 68 FR 5378 at 5382). The breadth of the proposed definition of "food" was based on both the statutory definition in section 201(f)(3) of the FD&C Act, which defines articles used as components of food as "food," and the case law interpreting the definition, including *Natick Paperboard* v. *Weinberger*, 525 F.2d 1103 (1st Circuit 1975) (paperboard containing PCBs intended for food use is adulterated food); *U.S.* v. *Articles of food * * * 688 Cases * * * of Pottery (Cathy Rose)*, 370 F. Supp. 371 (E.D. Mi. 1974) (ceramic pottery that leaches lead is adulterated food).

The comments on food-contact substances raise the question of what Congress intended "food" to mean in terms of registration of facilities that manufacture, process, pack, or hold "food." In construing the registration provision of the Bioterrorism Act , FDA is confronted with two questions. First, has Congress directly spoken to the precise question presented? ("*Chevron* step one"). *Chevron, U.S.A., Inc.* v. *NRDC, Inc.*, 467 U.S. 837, 842 (1984). To find no ambiguity, Congress must have clearly manifested its intention with respect to the particular issue. *Young* v. *Community Nutrition Institute*, 476 U.S. 974, 980 (1986). If Congress has spoken directly and plainly, the agency must implement Congress's unambiguously expressed intent. *Chevron*, 467 U.S. at 842–843. If, however, the Bioterrorism Act is silent or ambiguous as to the meaning of "food," FDA may define "food" in a reasonable fashion ("*Chevron* step two"). *Chevron*, 467 U.S. at 842–843; *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132 (2000).

The agency has determined that, in enacting section 415, Congress did not speak directly and precisely to the meaning of "food." As noted, the FD&C Act has a definition of "food" at section 201(f). It may be a reasonable assumption that, when the term "food" is used in the FD&C Act, section 201(f) applies. However, although there may be "a natural presumption that identical words used in different parts of the same act are intended to have the same meaning [citation omitted], * * * the presumption is not rigid * * *" *Atlantic Cleaners & Dyers, Inc.* v. *U.S.*, 286 U.S. 427, 433 (1932). *Accord: U.S.* v. *Cleveland Indians Baseball Co.*, 532 U.S. 200, 213 (2000). Thus, the same word may be given different meanings, even in the same statute, if Congress intended different interpretations or if different interpretations are reasonable (at "Chevron Step two."). *Atlantic Cleaners & Dryers, Inc., supra.*

Even before the Bioterrorism Act amendments, the term "food" was not given an identical meaning throughout the FD&C Act. For example, in construing the parenthetical "(other than food)" in section 201(g)(1)(C), the seventh circuit noted that Congress meant to exclude only "articles used by people in the ordinary way that most people use food-primarily for taste, aroma, or nutritive value" and not all substances defined as food by section 201(f) (*Nutrilab, Inc.* v. *Schweiker*, 713 F.2d 335, 338 (7th Cir. 1983)). Similarly, section 409(h)(6) of the FD&C Act defines a food-contact substance as "any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding *food* if *such use* is not intended to have any technical effect in *such food* (emphasis added)." This definition makes sense only if "food" in this context excludes materials that contact food because components of food contact materials are plainly intended to have a technical effect in such materials.[1]

Thus, in this larger statutory context, FDA has evaluated section 415 to determine whether the meaning of the word "food" is ambiguous. In conducting this *Chevron* step one analysis, all of the traditional tools of statutory interpretation are available to determine whether the language Congress used is ambiguous. *Pharmaceutical Research & Manufacturers of America* v. *Thompson*, 251 F. 3d 219, 224 (D.C. Cir. 2001). Beginning with the language of the statute, in section 415(a)(1), "food" is used to describe who must register: "The Secretary shall by regulation require that any facility engaged in manufacturing, processing, packing, or holding *food for consumption in the United States* to be registered with the Secretary (emphasis added)." The Bioterrorism Act is silent as to the meaning of "food." Furthermore, the prepositional phrase "for consumption in the United States" creates an ambiguity because it could be read to suggest that "food" within the context of the section 415 registration requirement only refers to food that is ordinarily thought of as "consumed." By modifying the term "food" by the prepositional phrase "for consumption in the United States," Congress apparently intended to limit the term "food" to something less than the broad definition in section 201(f). Although "consume" has multiple meanings, most relevant in this context is "to eat or drink up; ingest." *Webster's II New Riverside University Dictionary* (1994). Emphasizing the word "consumption" could appear to limit "food" to those items commonly eaten primarily for taste, aroma, or nutritive value. *Nutrilab* v. *Schweiker, supra* at 338.

Where, as here, the statutory language on its face does not clearly establish Congress's intent, it is appropriate to consider not only the particular statutory language at issue, but also the language and design of the statute as a whole. *Martini* v. *Federal Nat'l Mortgage Association*, 178 F. 3d 1336, 1345 (D.C. Cir. 1999), citing *K Mart Corp.* v. *Cartier, Inc.*, 486 U.S. 281 (1988). Indeed, the analysis should not be confined to the specific provision in isolation because the meaning or ambiguity of a term may be evident only when considered in a larger context. *FDA* v. *Brown & Williamson Tobacco Corp., supra* at 132 (2000).

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[1] FDA's long-standing interpretation of the FD&C Act's definition of color additive, section 201(t), is an additional example of where "food" is used more narrowly than as defined in section 201(f). A color additive is defined in section 201(t) as a substance that "when applied to a food * * * is capable * * * of imparting color thereto." The agency's food additive regulations distinguish between color additives and "colorants," the latter being used to impart color to a food-contact material (21 CFR 178.3297(a)). (See also 21 CFR 70.3 (f)). Thus, "food" as it appears in the statutory definition of color additive, necessarily excludes food-contact materials.

Consistent with this instruction, FDA has considered other parts of the registration provision in assessing whether the meaning of "food" in section 415(a)(1) ambiguous. In particular, FDA has considered section 415(b)(1). In defining "facility" for purposes of section 415, Congress expressly exempted "farms; restaurants; other retail food establishments; nonprofit food establishments in which food is prepared for or served directly to the consumer * * *" These exemptions do not make clear whether Congress intended them to cover only food that is ordinarily eaten at some point by consumers primarily for taste, aroma, or nutritive value or whether, for example, a retail food establishment could include retailers of food contact materials, such as retail cookware stores.

The legislative history of section 415 also supports the conclusion that Congress did not speak directly to the meaning of "food" in that Bioterrorism Act provision. Such history is appropriately consulted at *Chevron* step one. *Atherton* v. *FDIC*, 519 U.S. 213, 228–29 (1997). In particular, the Conference Report to H.R. 3448, which became the Bioterrorism Act, explains what Congress intended by "retail food establishments," which is used to create an exemption from registration:

> The Managers intend that, for the purposes of this section, the term "retail food establishments" includes establishments that store, prepare, package, serve, or otherwise provide articles of food directly to the retail consumer for human consumption, such as grocery stores, convenience stores, cafeterias, lunch rooms, food stands, saloons, taverns, bars, lounges, catering or vending facilities, or other similar establishments that provide food directly to a retail consumer.

H.R. Conf. Rep. No. 481, 107th Cong., 2d Sess., 133 (2002).

Similarly, the Conference Report notes that the term "non-profit food establishments" includes not-for-profit establishments in which food is prepared for, or served directly to the consumer, such as food banks, soup kitchens, homebound food delivery services, or other similar charitable organizations that provide food or meals for human consumption." (*Id.* at 133–34.) Notably, the examples provided by Congress for both types of exempt food establishments are not those that generally sell or distribute food contact materials. Accordingly, the legislative history of section 415 creates additional ambiguity as to the meaning of "food."

Finally, a review of section 307 of the Bioterrorism Act (the prior notice of food imports provision) and its legislative history confirms that the meaning of the word "food" when used in the Bioterrorism Act, including section 415, is ambiguous. The Bioterrorism Act's registration provision is one piece of several enacted by Congress to enhance the safety of the U.S. food supply. Registration works in concert with prior notice (section 307 of the Bioterrorism Act). This is reflected in section 305(c) of the Bioterrorism Act, which requires that food from an unregistered facility be held at the port when offered for import. Thus, this provision and its legislative history are of particular relevance in determining whether "food" is ambiguous in the registration provision. The legislative history of section 307 of the Bioterrorism Act supports the ambiguity of the term "food" in the Bioterrorism Act. For example, the Conference Report states that the prior notice provision is to be construed not to apply to "packaging materials if, at the time of importation, such materials will not be used for or in contact with food * * *" (See H.R. Conf. Rep. No. 481, 107th Cong., 2d Sess., 136 (2002).) This statement could be read to mean that the term "food" does not include packaging or other materials that contact food.

Having concluded that the meaning of "food" in section 415(a)(1) is ambiguous, FDA has considered how to define the term so as to achieve a "permissible construction" of the registration provision. *Chevron, USA, Inc.* v. *NRDC, Inc., supra* at 843. In conducting this *Chevron* step two analysis, the agency has considered the same information evaluated at step one of the analysis. *Bell Atlantic Telephone Co.* v. *FCC*, 131 F. 3d 1044, 1049 (D.C. Cir. 1997); *Chevron U.S.A., Inc.* v. *FERC*, 193 F. Supp. 2d 54, 68 (D.D.C. 2002). FDA has determined that it is permissible, for purposes of the registration provision, to exclude food contact materials from the definition of "food."

Excluding food-contact materials (including food packaging) is consistent with the statutory phrase, "food for consumption", section 415(a)(1), in that foods that are "consumed" are generally those intentionally eaten for their taste, aroma, or nutritive value. In addition, excluding food contact materials from "food" in this regulation is consistent with the exemptions in section 415(b)(1), as well as the legislative history of section 415, in that the establishments exempted by statute and the entities used as examples of retail and nonprofit food establishments are those that sell, distribute, or otherwise provide what is considered food in the conventional sense and, generally speaking, are not purveyors of food contact articles. Finally, restricting "food" to substances other than food-contact materials is consistent with the legislative history of the prior notice provision of the Bioterrorism Act, a provision linked to the registration provision.

As discussed in responses to comments 64 and 65, FDA has also interpreted "food" for purposes of section 415 to exclude pesticides as defined in FIFRA (7 U.S.C. 136(u)). Accordingly, for the reasons discussed in response to this comment and comments 64 and 65, FDA has determined that a reasonable interpretation of "food" for purposes of section 415 is as follows. Section 1.227(b)(4) of this interim final rule has been revised to provide:

> Food has the meaning given in section 201(f) of the act, (i) except for purposes of this subpart, it does not include: (A) food contact substances as defined in section 49(h)(6) of the act (21 U.S.C. 348 (h)(6)); or (B) pesticides as defined in 7 U.S.C 136(u). (ii) Examples of food include fruits, vegetables, fish, dairy products, eggs, raw agricultural commodities for use as food or as components of food, animal feed (including pet food), food and feed ingredients, food and feed additives, dietary supplements and dietary ingredients, infant formula, beverages (including alcoholic beverages and bottled water), live food animals, bakery goods, snack foods, candy, and canned foods.

(Comment 59) One commenter asks FDA to address the foreign facility exemption as it applies to "products that migrate into food from food packaging and other articles that contact food."

(Response) Because the interim final rule excludes food contact substances from the definition of "food," establishments that manufacture/process, pack, or hold food contact materials or components of such materials are not required to register, unless these establishments also manufacture/process, pack, or hold "food" as defined in § 1.227(b)(4).

(Comment 60) A commenter asks whether water collection and distribution facilities are required to register as food facilities if the owner or operator of such facility knows that the water is to be used as a food ingredient. The same commenter asks whether community water systems that supply water to bottled water facilities or to bottled water sources must register.

(Response) FDA has determined that nonbottled drinking water collection and distribution organizations and their structures should not be included in the definition of "facility" for purposes of registration. Under section 305(a) of the Bioterrorism Act, the term "facility" includes "any factory, warehouse, or establishment." Congress did not specify any definitions for these terms. According to Webster's II New Riverside University Dictionary (1994), the most relevant definition of "establishment" is "a business firm, club, institution, or residence, including its possessions and employees." Where, as here, the statutory language on its face does not clearly establish Congressional intent, it is appropriate also to consider other language in the section, the language and design of the statute as a whole, and the larger context to determine if the term is ambiguous. *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132 (2000); *Martini* v. *Federal Nat'l Mortgage Ass'n*, 178 F.3d 1336, 1345 (D.C. Cir. 1999), citing *K Mart Corp.* v. *Cartier, Inc.*, 486 U.S. 281 (1988).

Traditionally, the Environmental Protection Agency (EPA) has exercised a primary role in the regulation of public water systems (see 44 FR 42775, July 20, 1979). Under the Safe Drinking Water Act (42 U.S.C. 300(f) *et seq.*) (SDWA), EPA regulates public water systems, which are water systems that have at least 15 service connections or serve 25 people per day for 60 days of the year. In addition, Title IV of the Bioterrorism Act creates an extensive scheme for protecting from bioterrorism threats community water systems serving over 3,300 persons. Title IV amends the SDWA to require that such community water systems submit to EPA vulnerability assessments of their facilities and emergency response plans to deal with the possibility of a bioterrorist attack. EPA is authorized to provide funds to community water systems to address critical security enhancements and significant public health threats.

FDA believes that the language and design of the Bioterrorism Act, which in Title IV lays out strategies under EPA's authority for protecting the safety and supply of public drinking water, creates ambiguity about whether Congress intended to require drinking water facilities to register with FDA as food facilities. The traditional EPA role in regulating public water systems, as established by federal legislation and implemented by Federal agencies, also creates ambiguity about Congressional intent to include drinking water facilities within the scope of FDA's food registration scheme.

Based on EPA's primacy in regulating public water systems and on the Bioterrorism Act scheme for water systems in Title IV, FDA concludes that it is reasonable to interpret the term "facility" to exclude nonbottled drinking water collection and distribution establishments, such as community water systems. Therefore, FDA has revised § 1.227(b)(2) to exclude these nonbottled drinking water establishments from the definition of "facility."

Bottled water, on the other hand, has traditionally been regulated by FDA (see 21 U.S.C. 349, 21 CFR parts 129, 165). Moreover, Title IV of the Bioterrorism Act does not address bottled water issues, but only public drinking water systems. Therefore, FDA believes it is reasonable to include establishments that manufacture/process, pack, or hold bottled water in the definition of "facility."

FDA also has primary responsibility for drinking water that is used in the manufacturing/processing of food that is not bottled water. Thus, once drinking water enters a facility where it is used in food manufacturing/processing, the water is regulated by FDA. Because such facilities are food facilities in the first place, they already are required to register with FDA without regard to the water source.

(Comment 61) Several commenters asked whether facilities that produce water coolers, ozone equipment, carbon dioxide, water storage silos, plastic resins, or chlorine must register with FDA.

(Response) Water coolers, ozone equipment, water storage silos, and plastic resins are food-contact substances (section 409(h)(6) of the FD&C Act) and therefore, facilities that manufacture/process, pack, or hold such items are not required to register because these items are not "food" as defined in this regulation. In contrast, carbon dioxide, if used to make carbonated beverages or to aerate food, is a component of food (section 201(f)(3) of the FD&C Act) that is intended to have a technical effect in the food and therefore, is "food" as defined in this interim final rule. Similarly, chlorine, if used in bottled water, is also a component of food (section 201(f)(3) of the FD&C Act) that is intended to have a technical effect in the food and therefore, is "food" as defined in this interim final rule. Accordingly, facilities that manufacture/process, pack, or hold carbon dioxide or chlorine that will be used in food products must register. Please see the response to comment 62, which addresses multiuse substances.

(Comment 62) Commenters suggest that foreign facilities that process or refine vegetable oils not intended for direct inclusion in food or animal feed should be exempt from registration. These commenters argue that where bulk ingredients have both food and non-food uses, the standard for registration should be whether the commodity has been sufficiently refined to be directly added to food.

(Response) This interim final rule requires that any domestic facility that manufactures/processes, packs, or holds "food" must be registered unless the facility satisfies one of the exemptions in § 1.226. Foreign facilities are subject to the same registration requirement except that a manufacturer/process or is not required to be registered if a subsequent facility outside the United States performs further manufacturing/processing of more than a *de minimis* nature. For purposes of the interim final rule, "food" has the definition in section 201(f) of the FD&C Act except that "food contact substances" (section 409(h)(6)) and "pesticides" (7 U.S.C. 136(u)) are excluded from "food." Under section 201(f), "food" means "articles used for food or drink" (section 201(f)(1)) and articles "used for components of any such article" (section 201(f)(3).) The determination of whether a substance is "food" is not a question of intended use. *Nutrilab* v. *Schweiker*, 713 F.2d. 335, 337 (7th Cir. 1983); *U.S.* v. *Technical Egg Products*, 171 F.Supp. 326, 328 (N.D. Ga. 1959); *U.S.* v. *52 Drums Maple Syrup*, 110 F.2d 914, 915 (2d Cir. 1940). Courts interpreting the "food" definition in the act have held that articles at both ends of the food continuum are "food" for purposes of the FD&C Act. *United States* v. *Tuente Livestock*, 888 F. Supp. 1416 (S.D. Ohio, 1995) (live animals for food use are "food" under the FD&C Act); *U.S.* v. *Technical Egg Products, supra*, 171 F.Supp. at 328 (rotten eggs are "food.") Thus, FDA believes that a facility that manufactures/processes, packs, or holds food must be registered (unless subject to one of the exemptions in § 1.226) even if the food is not yet in the form in which it will be used for food. FDA will consider a product as one that will be used for food if the owner, operator, or agent in charge of the facility reasonably believes that the substance is reasonably expected to be directed to a food use. In the case of vegetable oil that is not yet food grade, FDA believes that a facility that manufactures/processes, packs, or holds such oil must be registered (assuming the facility does not qualify for an exemption in § 1.226) if the owner, operator, or agent in charge reasonably believes that oil manufactured/processed, packed, or held at the facility is reasonably expected to be directed to a food use.

(Comment 63) Several commenters assert that processing aids, such as defoaming agents and biocides, are used in the production of food but are not food in and of themselves and thus facilities that manufacture/process, pack, or hold such substances need not register.

(Response) FDA notes that there are a wide variety of processing aids, including processing aids used in packaging and other food contact materials and processing aids used in "traditional" foods. The commenters do not specify which type or types of processing aids they believe are not "food" such that establishments that manufacture/process, pack, or hold these substances should not be required to register.

Whether a facility that manufactures/processes, packs, or holds a processing aid must be registered depends upon whether such a substance is "food" under this rule. As noted, for purposes of the interim final rule, "food" excludes "food contact substances" (section 409(h)(6)). In addition, "food" excludes "pesticides" (7 U.S.C. 136(u)). Thus, if the processing aid is not a pesticide and is intended to have a technical effect in the food to which it is added, the substance is not exempt from the definition of "food" and the facility must be registered unless otherwise exempt under § 1.226 (*i.e.*, if it is a foreign facility, and food from such facility undergoes further manufacturing/processing (including packaging) by another facility outside the United States). In terms of processing aids, this means that, generally speaking, facilities that manufacture/process, pack, or hold processing aids used in the production of "traditional" food will be required to register. This is a reasonable result in that such processing aids are intentionally and directly added to "traditional" foods.

(Comment 64) Several commenters request an exemption for facilities dealing with agricultural chemicals (fertilizer, pesticides) since these are not food for consumption and they are already registered with EPA. Several other comments asked whether facilities that manufacture/process, pack, or hold anti-microbial pesticides used in or on food must register.

(Response) As discussed in the response to comment 58, the meaning of "food" in section 415 is ambiguous. Therefore, FDA may define "food" in a reasonable manner. FDA believes that excluding "pesticides "(7 U.S.C. 136(u)) from the definition of food is reasonable. Agricultural pesticides, including those used in or on food for human or animal use, are comprehensively regulated by the Federal Government. Under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 *et seq.*, all pesticides (both food and nonfood use) are registered with EPA. As part of the registration process, establishments in which pesticides are produced must register with EPA (40 CFR 167.3 and 167.20). As part of the importation process, prior notice of all pesticide shipments must be given to EPA (19 CFR 12.112).

Importantly, the Federal regulatory scheme for pesticides was substantially revised in 1996 by the Food Quality Protection Act (FQPA) (Public Law 104–170), and EPA's authority over pesticides was consolidated and also expanded. As a result of FQPA, pesticides and their residues are subject to substantial and comprehensive regulation by EPA. Where another Federal agency has the types of specific and comprehensive authority described above to regulate the safety of certain substances (here, pesticides), FDA believes that it is appropriate to interpret "food" in section 415 of the FD&C Act to not include such substances. Accordingly, FDA has revised the definition of "food" in § 1.227(b)(4) to exclude pesticides as defined by FIFRA (7 U.S.C. 136(u)). Therefore, FDA agrees that facilities that manufacture/process, pack, or hold "pesticides intended for use in or on food" need not register with FDA.

(Comment 65) Several comments asked whether facilities that manufacture/process, pack, or hold antimicrobial pesticides used in or on food must register.

(Response) As noted previously, for the purposes of this rule, the term "food" is defined to exclude any substance defined as a "pesticide" in FIFRA (7 U.S.C. 136(u)). Anti-microbial pesticides meet the FIFRA definition of "pesticide." Thus, facilities that manufacture/process, pack, or hold such substances are not required to register.

(Comment 66) Several commenters question how live food animals relate to the definition of food. One commenter indicates that many small animals are shipped to the United States with the intention to grow them in the United States for food and thus, such animals are not animals for food at the time they are imported. This commenter asks FDA to exempt live food animals from the definition of food.

(Response) As discussed in the response to comment 58, the meaning of "food" in section 415 is ambiguous. Therefore, FDA may define "food" in a reasonable manner. FDA believes that it is reasonable to interpret "food" in section 415 to include live animals. First, such inclusion is consistent with the language in section 415(a), "food for consumption," in that live animals are raw material for, and thus reasonably considered components of, items traditionally consumed for taste, aroma, or nutritive value. Moreover, the products of live food animals are an integral part of the food consumed in the United States, and thus, it is logical to protect the raw materials (*i.e.*, the live animals) and such animal food products by including them under the Bioterrorism Act's safeguards. Second, Congress provided several statutory exemptions from the registration requirement, including "farms," section 415(b)(2), which would reasonably include those raising animals as well as those growing fruits and vegetables. By exempting farms, Congress indicates that, absent an exemption, establishments where fruits, vegetables, and animals are produced would be "food facilities" subject to registration. Third, the inclusion of live animals in the definition of "food" is consistent with the statutory language of the Bioterrorism Act as a whole. In particular, the recordkeeping, administrative detention, and prior notice provisions of the Bioterrorism Act all include an explicit reference to animals in the statutory standard, "serious adverse health consequences or death to humans or animals." (*See, e.g.*, 21 U.S.C. 334(h)(1)(A), 350c(a), and 381(m)(2)(B)(ii).) In each of these provisions, this standard serves as a trigger for FDA action. This standard does not appear in the registration provision, because there is no need for a trigger for FDA action in registration. FDA does not believe that the fact that this standard does not appear in the registration provision evidences the intent on the part of Congress that facilities that manufacture/process, pack, or hold live animals need not register. Accordingly, the interim final rule's definition of "food" includes live food animals.[2] FDA notes, however, that a facility that exports live food animals directly to the United States may be exempt as a "farm" if it satisfies the definition in § 1.227(b)(3).

(Comment 67) Some commenters ask that research and development (R&D) facilities and facilities that manufacture/

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[2] Defining "food" to include live animals is also consistent with the case law interpreting the term "food" in the broader context of the act. (See *United State* v. *Tuente Livestock*, 888 F. Supp. 1416 (S. D. Ohio, 1995).)

process, pack, or hold food samples should not be considered "facilities" for purposes of FDA registration. The commenters note that R&D facilities typically hold food and often process it on a small scale, but this food is intended for research purposes and not for commercial sale or public consumption. The commenters explain that sample facilities distribute samples internally to employees and are not commercially distributed.

(Response) Under section 305 of the Bioterrorism Act, facilities are required to register if they manufacture/process, pack, or hold food for consumption in the United States. Therefore, R&D facilities and sample facilities that manufacture/process, pack, or hold food that is consumed in the United States, either by the facility's employees or others are required to register. However, if R&D facilities and sample facilities manufacture/process, pack, or hold food and this food is not for consumption or actually consumed in the United States, the facilities are not subject to registration.

(Comment 68) One commenter takes issue with FDA's inclusion of animal feed within the definition of food. This commenter states that in the legislative history of the Bioterrorism Act, Rep. Shimkus (R–IL) repeatedly states that the registration requirement is intended to apply to food for "human" consumption. The commenter also indicates that the Conference Report to the Bioterrorism Act states that the retail exemption applies to facilities that sell to the consumer "for human consumption," stating that FDA took comments on this issue in the proposed rule. The commenter argues that because the recordkeeping, administrative detention, and prior notice parts of the Bioterrorism Act specifically refer to requirements regarding food for animals, as well as for humans, while the registration part of the Bioterrorism Act does not, FDA should limit the food definition to food for human consumption.

(Response) As discussed in the response to comment 58, the meaning of "food" in section 415 is ambiguous. Therefore, FDA may define "food" in a reasonable manner. As noted in the response to comment 66, sections 303, 306, and 307 of the Bioterrorism Act reflect Congressional concern with the health and safety of "animals." In that response, FDA also explains why, logically, the standard in question ("serious adverse heath consequences to human or animals") need not appear in section 305 of the Bioterrorism Act . One important way in which to safeguard animals is to protect their food supply. FDA believes that it is reasonable to include food consumed by animals in the definition of "food" and thus, to require the registration of facilities that manufacture/process, pack, or hold food for consumption by animals. Accordingly, the interim final rule's definition of "food" in § 1.227(b)(4) includes food for consumption by animals.

8. Holding

FDA received many comments regarding whether facilities that hold products on a temporary basis are required to register as holders. Because these comments also questioned whether these units fit within the definition of "facility," FDA has addressed those issues in comment 44 and its response.

(Comment 69) Several commenters request that FDA clarify who is required to register and pay the costs for storage if a manufacturer/processor sends food to a warehouse for holding under the manufacturer/processor's name before export to the United States.

(Response) FDA interprets this question as applying solely to the warehouse, not the manufacturer/processor. Each facility that holds unprocessed food that will be imported into the United States in its unprocessed form for consumption in the United States must be registered with FDA, unless it is exempted by this rule. Additionally, each foreign facility that holds food destined for consumption in the United States subsequent to the last foreign manufacturer/processor must be registered with FDA, unless it is exempted by this rule. Consistent with the plain language of the Bioterrorism Act, the interim final rule places the responsibility of registering a facility on the owner, operator, or agent-in-charge of such facility. Although the interim final rule permits the owner, operator, or agent in charge to authorize an individual to register the facility, the facility's owner, operator, or agent in charge retains the legal responsibility to ensure that the facility is properly registered with FDA. In the situation raised in the comment, whether the warehouse or the manufacturer/processor pays the cost of such storage is a private matter between the manufacturer/processor and the warehouse.

On its own initiative, FDA has made an editorial change in this section for clarity.

9. Manufacturing/Processing

(Comment 70) One commenter requests FDA to clarify whether commercial ripening of fruit fits within the definition of "manufacturing/processing." The commenter states that some cargo containers are equipped with technologies that artificially ripen fruit while in transit. The commenter states that "such technological advancements should not change the interpretation of what defines a facility under the rule," and requests that FDA not consider this activity manufacturing/processing.

(Response) Because this activity involves "treating," "modifying," or "manipulating" food, it constitutes manufacturing/processing as defined by the interim final rule (21 CFR 1.227(b)(6). The fact that these manufacturing/processing activities occur in a transport vehicle does not alter the fact that these activities are manufacturing/processing. Thus, a vehicle engaging in the artificial ripening of food while in transit is required to register.

On its own initiative, FDA has made several editorial changes in this section for clarity.

10. Nonprofit Food Establishment

FDA received no comments on this issue. On its own initiative, FDA has made several changes in this section to be consistent with the legislative history for section 305 of the Bioterrorism Act (21 U.S.C. 415). FDA has also made several editorial changes in this section for clarity.

11. Packing

(Comment 71) One commenter asks FDA to differentiate between "packing" and "packaging." The commenter states that although arguably the terms could be used interchangeably, they are in fact materially different. The commenter states that this distinction is especially important because FDA considers "packaging material" food under § 1.227(c)(4).

(Response) FDA agrees with the commenter and differentiates between these terms in the interim final rule. The interim final rule defines "packaging" (when used as a verb) as "placing food into the container that directly contacts the food and that the consumer receives." (§ 1.227(b)(8)). FDA has redefined "packing" as "placing food into a container other than packaging the food" (§ 1.227(b)(9)). FDA notes that packaging material is no longer included in the definition of "food" as revised in this interim final rule.

(Comment 72) One commenter asks whether putting food into tote bins and bulk containers is considered "packing" for purposes of this rule.

(Response) Putting food into tote bins and bulk containers is "packing" as defined in the interim final rule (§ 1.227(b)(9)), because it is "placing [food] into a container other than packaging the food."

### 12. Port of Entry

(Comment 73) Several commenters ask that the definition of "port of entry" be modified so that it is consistent with the U.S. Customs definition, which is "the port at which Customs entry is made for the shipment of imported food for consumption in the United States. This port may be different than the Port of Arrival, which is defined as the first port at which the carrier transporting the merchandise arrives." A commenter states that creating a new definition of "port of entry" is contrary to Congress's intent, which it may be presumed was based on Congress's awareness of Customs' definition of the term.

One commenter states that two Federal Government agencies having two definitions for the same term is potentially troublesome, and "lays the groundwork for confusion and conflict regarding where and when proper declaration is required." Another commenter states that FDA's proposed definition of "port of entry" will create substantial hardship for an importer of the food, who is usually located in close proximity to the inland port and is better equipped to handle compliance or clearance issues locally. The commenter states that, under FDA's proposed definition of "port of entry," imports would be subject to review by two separate FDA Districts, that of the port of arrival and that of the port of entry. This would greatly increase FDA's workload. The commenter also indicates that FDA's proposed definition of "port of entry" would create substantial problems if a foreign facility fails to register, because there is no provision in the statute for FDA to issue a refusal of admission that would enable the importer to export the goods, or any provision for the goods to be designated as general order status. In this case, the importer could not file a consumption entry, after which FDA could issue a refusal of admission under 21 U.S.C. 381(a), because a consumption entry cannot be filed until the goods have arrived at the inland port.

These commenters also argue that FDA's concern that allowing food to be shipped inland before verifying registration could result in loss of government control over the food is inconsistent with the statutory objective. This objective is to prevent food imports from being released from Customs' control until FDA has had an opportunity to screen the shipment and determine if it presents a risk of bioterrorism. The commenter explains that, under Customs' regulations, all food transported in bond to an inland port of entry is subject to Customs' legal control until a consumption entry is filed and a permit for release is issued. Even if cargo is bound for consumption entry in an inland port, the cargo is still subject to detention or inspection by Customs or FDA at the port of arrival. One commenter states that a revised definition of port of entry would also assist express carriers, who are required to hold a shipment in their control until all regulatory agencies have released it.

(Response) As discussed in detail in response to comment 151, this interim final rule does not include a provision regarding consequences for failure to register on imported food. Because the definition of "port of entry" is only relevant to the consequences of failure to register when attempting to import food, we have removed the definition of "port of entry" from this interim final rule. FDA has defined the term "port of entry" in the interim final rule on prior notice of imported food published elsewhere in this **Federal Register**.

### 13. Restaurants

(Comment 74) One commenter asks FDA to specify that commissaries that are a single source of food for large populations via large chain restaurants should not be exempt from registration as restaurants.

(Response) FDA agrees with the commenter that facilities, such as commissaries or central kitchens that provide food to restaurants that subsequently serve the food to customers, are not restaurants. The proposed definition of restaurant is limited to establishments that prepare and sell food directly to consumers for immediate consumption. Although central commissaries prepare food that is eventually served to consumers, these facilities do not do so directly. Accordingly, FDA is clarifying in the interim final rule that commissaries, central kitchens, and other similar facilities that do not prepare and serve food directly to consumers are not restaurants and thus, are required to register with FDA.

(Comment 75) Several commenters agree with FDA that the restaurant definition (and therefore, the exemption) should include pet shelters, kennels, and veterinary facilities. One of these commenters requests that FDA include these facilities in the interim final rule itself, as opposed to the preamble.

(Response) The preamble to the proposed rule stated that, by analogy, pet shelters, kennels, and veterinary facilities were included in the restaurant exemption. FDA received no comments disagreeing with this approach. For clarity, the interim final rule's definition of restaurant expressly includes pet shelters, kennels, and veterinary facilities.

On its own initiative, FDA has made several editorial changes in this section for clarity.

### 14. Retail Food Establishment

The interim final rule substitutes the statutory term "retail food establishment" for the term "retail facility," which was used in the proposed rule.

(Comment 76) Some commenters state that the definition of retail facility as "a facility that sells food products directly to consumers only," should be revised to delete "only." This is based on the following arguments: 148 Cong. Rec. H2858 specifies that retail food establishments include those facilities "attendant" to retail operations; because the proposed definition of retail food establishment included commissaries, distribution facilities for grocery stores, which are also attendant facilities, should be included as well; the legislative history makes several references to retail as "sale to consumers as its primary function," warehouse clubs should be included in the definition of retail facility, based on this language at 148 Cong. Rec. H2726: "[Retail] does not include a warehouse that does not provide articles of food directly to a retail consumer as its primary function * * *."

(Response) FDA agrees in part with these comments. Accordingly, we have revised the definition of retail food establishment to eliminate the restriction that such facilities must sell only to consumers to be considered a retail food establishment. This interim final rule defines "retail food establishment" as "an establishment that sells food products directly to consumers as its primary function. A retail establishment may manufacture/process, pack, or hold food if the establishment's primary function is to sell from that establishment food that it manufactures/processes, packs, or holds directly to consumers. A retail food establishment's primary function is to sell food directly to consumers if the annual monetary value of sales of food products directly to consumers exceeds the annual monetary value of sales of food products to all other buyers. The term " 'consumers' does not include businesses. A 'retail food establishment' includes grocery stores, convenience stores, and vending machine locations." This change preserves the retail exemption both for retail food establishments (such as grocery stores) that sell or transfer some products to sources other than a consumer (*e.g.*, to other grocery stores), and for direct selling entrepreneurs, as long as their primary function is to sell directly to consumers.

FDA further agrees that under the revised definition of retail food establishment, certain warehouse clubs may be exempt from registration, if, based on dollar volume of their sales, they sell food directly to consumers as their primary function.

In addition, FDA has determined that an establishment "attendant" to a retail operation, if located separate from the retail food establishment, is not a retail food establishment for purposes of this rule. This is consistent with the Conference Report for the Bioterrorism Act, which states that the term "retail" does not include warehouses that do not sell directly to consumers as their primary function (H.R. Conf. Rep. No. 481, 107th Cong., 2d Sess., 133 (2002)).

Regarding FDA's use of the term "commissaries" in § 1.227(c)(11) of the proposed rule, FDA is clarifying that the term was intended to refer to establishments on military bases that sell food directly to consumers. As noted in the response to comment 74, FDA did not intend to include other types of commissaries, such as central kitchens for restaurants, within the restaurant exemption. To avoid confusion, the interim final rule deletes the word "commissaries" as an example of a "retail food establishment" because this term has multiple meanings. Regardless of what an establishment is called, it is exempt as a retail food establishment if—and only if—it meets the definition.

(Comment 77) Several commenters argue that "direct selling" or "multi-level selling" home-based distributors should be considered retail food establishments because their primary function is selling to consumers. However, because these salespeople also transfer products among themselves, they are not exempt under the proposed rule. The parent company's manufacturing and distribution facilities would be required to register. There are millions of direct selling entrepreneurs and registering them all would flood the registration system and not be meaningful. These salespeople are analogous to retail chain stores that sometimes need to transfer inventory between them.

(Response) As discussed in the response to comment 7, private residences of individuals are not facilities for purposes of this interim final rule and, therefore, are exempt from registration. Accordingly, these home-based distributors are not subject to registration.

(Comment 78) One commenter asks FDA to clarify when operations of a retail food establishment cease to be incidental to the activities of the retail food establishment and cause the retail food establishment to become a mixed-type facility that must register. This commenter asserts that activities such as operating a juice bar, repackaging nuts or dried fruits received in bulk into smaller packages, or unpacking and displaying produce are good examples of incidental activities in a retail food establishment.

(Response) The revised definition of "retail food establishment" clarifies that such establishments may manufacture/process, pack, or hold food so long as the establishment's primary function is to sell from that establishment food that it manufactures/processes, packs, or holds directly to consumers. As noted, a retail food establishment's primary function is to sell food directly to consumers if the annual monetary value of sales of food products directly to consumers exceeds the annual monetary value of sales of food products to all other buyers. Therefore, if the establishment's primary function is to sell food directly to consumers, repackaging nuts or dried fruit for sale directly to consumers and unpacking and displaying produce for direct sale to consumers are permissible activities. However, if an establishment's primary function is to sell food to distributors, but the establishment also conducts some minor sales directly to consumers, repackaging nuts for sale directly to these consumers does not cause the establishment to fall within the definition of "retail food establishment." Examples of manufacturing/processing that a retail food establishment might perform include making potato salad for sale at the delicatessen counter of a grocery store, filleting fish at a fish market, and cutting cheese from a large block into slices for sale directly to consumers based on the amount they request. Operating a juice bar would be exempt as a "restaurant" because it involves preparing and selling food directly to consumers for immediate consumption.

(Comment 79) Some commenters argue that retail food establishments should include retailers of animal food. They argue that the plain text of the statute does not have a limitation on the scope of the retail food establishment exemption and that because animal food is included in the proposed rule's definition of food, the exemption should also apply to both. These commenters further argue that it would not make sense to hold animal food retailers to a standard higher than that for retailers of human food and note that pet food is offered alongside food for human consumption. Finally, these commenters assert that the failure to exempt pet food retailers would be to eliminate the benefit of the exemption for retail animal food facilities.

(Response) FDA agrees with these comments and advises that the definition of "retail food establishment" includes animal food retailers. FDA believes that this is consistent both with including animal feed as "food," as well as with the language of the Bioterrorism Act. The agency has amended the definition of "retail food establishment," however, to clarify that the term "consumers" does not include businesses. As a result, an establishment that sells animal food to pet owners and other individuals as its primary function is exempt as a retail food establishment. An establishment that sells animal feed to businesses, such as farms, as its primary function must register.

(Comment 80) One commenter asks FDA to clarify whether wholesale establishments are also included in the definition of "retail food establishment."

(Response) Wholesale facilities are not covered by the definition of "retail food establishment" because they do not sell food directly to consumers as their primary function.

(Comment 81) One commenter asks FDA to clarify whether retail co-ops are required to register in light of the proposed rule's statement that "FDA is proposing to require co-op facilities that manufacture/process, pack, or hold food, and that are not subject to the farm exemption, to register with FDA." The commenter states that "retail co-ops, aside from cooperative ownership, operate no differently than any other retail establishment."

(Response) FDA agrees that a retail food establishment that is cooperatively owned is exempt from registration if it sells food directly to consumers as the co-op's primary function. The establishment's primary function must be to sell food, including that manufactured/processed at the establishment, directly to consumers.

(Comment 82) Several commenters ask whether establishments supplying food to consumers via Internet or mail-order sales are covered under the definition of "retail food establishment."

(Response) Facilities selling food directly to consumers via the Internet or mail-order are covered under the definition of "retail food establishment" if they meet the other criteria of the "retail food establishment" definition. FDA notes, however, that many of these establishments may also manufacture/process, pack, or hold food that is subsequently sold to consumers. Unless the establishment's primary function is to sell food, including the food it manufactures/processes, directly to consumers, it must register with FDA.

(Comment 83) One commenter asks FDA to clarify whether warehouses that hold food for sales in U.S.-based duty-free stores are required to register. The commenter indicates that products stored in a duty-free enterprise warehouse and sold in an airport duty-free store are purchased solely by travelers departing from the United States, and therefore, are not for consumption in the United States.

(Response) FDA's understanding of duty-free shops is that purchased goods (including food) must be taken out of the United States by the traveler before such goods may be consumed or used. Thus, the agency agrees with the commenter that warehouses holding food for sale in duty-free stores are not required to register as long as the food is not for consumption or actually consumed in the United States.

In addition to the previous comments, FDA has made several editorial changes in this section for clarity.

### 15. U.S. Agent

(Comment 84) Some commenters claim that FDA's requirements for U.S. agents, and the responsibilities and liabilities of U.S. agents, are not clear. The commenters state that because FDA's proposed requirements are so general, it is difficult for a foreign facility to know what qualifications its U.S. agent should have.

(Response) FDA has retained the criteria for U.S. agent as proposed. As stated in the proposed rule, there are only two qualifications for a U.S. agent: The agent is required to reside or maintain a place of business in the United States and to be physically present in the United States. As far as U.S. agent liability, FDA generally does not intend to hold the U.S. agent responsible for violations of the Bioterrorism Act that are committed by the foreign facility, a position consistent with that articulated in the preamble to the agency's drugs, biologics, and device registration regulations (66 FR 59142, November 27, 2001). FDA, however, would consider legal action against a U.S. agent where the agent knowingly submitted false information to FDA or the agent and the foreign facility were effectively the same entity. Liability issues between the facility and its U.S. agent must be resolved between the private parties (*i.e.*, the facility and its U.S. agent), most likely through the terms of their contractual relationship.

(Comment 85) Some commenters ask FDA to clarify whether it will notify the U.S. agent or a facility's emergency contact in the event of a bioterrorist attack or other food-related emergency that affects a foreign facility.

(Response) Because the role of the U.S. agent is to act as a communications link between the facility and FDA, FDA will communicate with the U.S. agent in both routine and emergency situations. This means that the U.S. agent needs to be accessible to FDA 24 hours a day, 7 days a week, unless the foreign facility opts to designate a different person other than the facility's U.S. agent to serve as the facility's emergency contact by providing the information specified in § 1.233(e) in the facility's registration. If a facility's registration includes an emergency contact person provided under § 1.233(e), FDA will notify this person instead of the U.S. agent during emergencies, but will continue to use the U.S. agent for routine communications with the facility.

(Comment 86) Some commenters argue that FDA's requirement that facilities have a single U.S. agent is contrary to usual business practices. The commenters state that a facility may have several U.S. agents for different business functions, such as separate product lines or different geographic areas.

(Response) FDA believes that it would be unreasonably complex to allow facilities to have several U.S. agents for purposes of FDA registration, as FDA would then have to determine with which agent to communicate for each product line or geographic distribution area. This would likely hinder communication between FDA and the facility and thereby, thwart a chief purpose of the Bioterrorism Act—facilitating a quick and effective response to a terrorist attack or other public health emergency related to the U.S. food supply. Also, section 305 of the Bioterrorism Act is written in the singular—that is, it states that a foreign facility must include the name of its "U.S. agent." Thus, allowing facilities to designate more than one U.S. agent would be inconsistent with the plain language in the Bioterrorism Act.

FDA is clarifying in § 1.227(b)(13)(iii) that having a single U.S. agent for FDA registration purposes does not preclude a facility from having multiple agents (such as foreign suppliers) for other business purposes and that FDA is not requiring that all of a firm's commercial business in the United States be conducted through the U.S. agent designated for purposes of registration.

(Comment 87) Several commenters argue that the U.S. agent requirement is onerous and potentially trade-restrictive. The commenters state that there is no requirement for a third-party go-between for domestic facilities; thus, this requirement is more restrictive on foreign facilities than on U.S. producers.

(Response) FDA believes that it has structured the U.S. agent requirement to be consistent with the statutory mandates of the Bioterrorism Act. The rule sets out only two qualifications for a U.S. agent: The agent is required to reside or maintain a place of business in the United States and to be physically present in the United States. Therefore, many foreign facilities are able to use existing contacts in the United States as their U.S. agents. Moreover, FDA has clarified in the interim final rule that the requirement of a single U.S. agent for FDA registration purposes does not preclude facilities from having multiple agents (such as foreign suppliers) for other business purposes.

(Comment 88) Some commenters argue against the U.S. agent requirement because they believe the requirement will hinder, not enhance, communication with the foreign facility.

(Response) As discussed in the preamble to the proposed rule, the purpose of the U.S. agent is to serve as a communications link between FDA and an individual facility for a number of purposes, including both emergency situations and day-to-day registration issues. These routine issues may include FDA's need for information about that facility and arranging both routine inspections and inspections or communications with the facility due to a potential bioterrorism threat or other public health emergency.

(Comment 89) Several commenters argue that FDA should allow the U.S. agent to be located outside the United States. They state that many foreign facilities do not have contacts within the United States, so it will be difficult for them to locate a U.S. agent.

(Response) Section 305 of the Bioterrorism Act (which amends the FD&C Act) states that the registration of a foreign facility "shall include with the registration the name of the United States agent for the facility." Thus, requiring a foreign facility's U.S. agent to reside or maintain a place of business in this country is consistent with the plain language of the Bioterrorism Act. This approach is also consistent with FDA's implementation of the statutory requirement for drug, biologics, and device registration (21 U.S.C. 360(i)(1)), 66 FR 59138 (November 27, 2001).) It is reasonable to impute to Congress knowledge of FDA's implementation of this provision, which specifies that the "U.S. agent" be a person in the United States, when Congress incorporated this concept and language into the Bioterrorism Act.

(Comment 90) Several commenters ask whether a foreign government official in the United States, such as a representative from the foreign country's embassy, may act as the U.S. agent for a foreign facility.

(Response) The agency has concerns that acting as a U.S. agent may conflict with the duties of foreign government representatives. Whether it is proper for a foreign government representative to act as a U.S. agent is a fact-specific inquiry, depending on the title and status of the foreign government representative and the functions that the representative assumes as a U.S. agent. FDA believes that the propriety of a foreign government official acting as the U.S. agency of a foreign facility is a determination best made in conjunction with the State Department. If the issue arises after implementation, FDA will discuss the particular situation with the State Department.

(Comment 91) A few commenters suggest that FDA allow registrants to omit U.S. agent information if FDA uses information available from a foreign government agency.

(Response) The Bioterrorism Act requires the owner, operator, or agent in charge of a facility engaged in the manufacturing, processing, packing, or holding food—both domestic and foreign—to register the facility with FDA. The Bioterrorism Act also requires registrants of foreign facilities to provide the name of their U.S. agent. Thus, FDA is not permitted to use information maintained by foreign government agencies or other domestic Federal or State agencies in lieu of having the owner, operator, or agent-in-charge of a facility submit the information to FDA.

(Comment 92) One commenter asks whether a U.S. agent must be one individual or can it be a "person" consistent with the act's definition of "person" as an "individual, partnership, corporation, or association."

(Response) FDA agrees with the commenter and has clarified in the definition of "U.S. agent" that a foreign facility's U.S. agent can be a "person" as defined by the FD&C Act. This interpretation is consistent with the drug, biologics, and device registration regulations in 21 CFR 207.3(a)(11) and (b), 607.3(i) and (j), and 807.3(h) and (r).

(Comment 93) One commenter asks how FDA intends to ensure that a person identifying itself as a U.S. agent does, in fact, meet the requirements for a U.S. agent. The commenter states that some foreign facilities may use a false U.S. agent name, address, or phone number when registering. This commenter suggests that FDA confirm a registration only through a facility's designated U.S. agent, via postal mail.

(Response) FDA believes that there are several checks that will help ensure that registrations are truthful and accurate. The facility's owner, operator, or agent in charge who submits a registration must certify that the registration information is true and accurate. In addition, FDA has revised the interim final rule so that an individual (other than the owner, operator, or agent in charge of the facility) may be authorized to submit the registration on behalf of the owner, operator, or agent. An individual (other than a facility's owner, operator, or agent in charge) who submits the registration form to the FDA must certify that he/she is authorized to submit the registration on the facility's behalf and must identify by name the individual who authorized submission of the registration. The certification statement also states that anyone who makes a materially false, fictitious, or fraudulent statement to the U.S. Government is subject to criminal penalties under 18 U.S.C. 1001. As an additional means to verify the identity of the person submitting the registration, the interim final rule requires that for the paper and CD–ROM registration options, the registration include the signature of the person submitting the registration. FDA believes that the combination of the signed certification statement and federal criminal liability will be a powerful incentive for truthful registrations. Further, because the Bioterrorism Act provides that an owner, operator, or agent in charge is responsible for registering a facility, it would be improper for FDA to confirm that registration only through a facility's U.S. agent if the U.S. agent did not originally submit the registration.

In addition to the changes noted previously, FDA has made several editorial changes to this section on its own initiative.

### 16. Other Definitions Included in the Interim Final Rule

(Comment 94) One commenter requests that FDA define "trade names" in the interim final rule. This commenter states that the term "trade names" is mentioned in both the Bioterrorism Act and the proposed rule several times, yet is not defined. The commenter requests that "trade names" be defined, "to ensure that the scope of registration reflect[s] the intent and objectives of the statute." The commenter suggests that "trade names" be defined as "the terms relating to the business activity of the facility that denote the names under which the facility conducts business or additional names by which the facility is known." The commenter also requests that FDA clarify that "trade names" "denote terminology associated with the business of the facility, and does not necessarily signify a brand name, which is terminology associated with a product." The commenter provides some examples of trade names, such as: "Facility name: Jones Foods Corporation; Trade Names: doing business as Joe Jones Fruit Processors, doing business as Jones Family Pie Company."

(Response) FDA agrees with the comment, and has added the following definition for "trade names" to the interim final rule (§ 1.227(b)(12)): "*Trade name* means the name or names under which the facility conducts business, or additional names by which the facility is known. A trade name is associated with a facility, and a brand name is associated with a product."

(Comment 95) Several commenters request that FDA clarify who is required to register if a facility has multiple individuals who may qualify as the owner, operator, or agent in charge.

(Response) The Bioterrorism Act and the interim final rule place the responsibility for registering a facility on the owner, operator, and agent in charge of the facility. If a facility has multiple owners, operators, or agents-in-charge, all are collectively responsible for registering the facility and any one of these individuals may register the facility, or as noted in the response to comment 93, authorize an individual to submit the registration for the facility. Although these persons may decide themselves how, as a practical matter, their facility will be registered, the existence of multiple owners, operators, or agents in charge does not affect the legal obligation each has under the rule to register relevant facilities.

(Comment 96) One commenter states that although FDA uses the terms "owner," "operator," or "agent in charge" throughout the proposed rule and the draft registration form, in section 1b (Update of Registration Information) and section 12 (Certification Statement) but these terms are not defined. The commenter also states that although FDA requests changes to the "owner, operator, or agent in charge" in section 1b of the registration form, FDA "does not ask for specific information for the owner, operator, or agent in charge elsewhere in the form." The commenter states that it assumes FDA interprets the owner, operator, or agent in charge of the facility "as the facility itself (and not an individual) for which specific information is requested in section 2 of the form" (facility name/address information). The commenter continues that "[o]nce the owner, operator, or agent in charge of the facility has authorized an individual to submit the registration form, that individual becomes synonymous with the 'owner, operator, or agent in charge.'" The commenter states that if these assumptions are correct, the last box under section 1b should be revised from "Owner, Operator, or Agent in Charge Change" to "Authorized Submitter [Change]."

The commenter also requests that section 12 be revised from its current statement "[t]he owner, operator, or agent in charge of the facility must submit this form. By submitting this form to FDA, the owner, operator, or agent in charge certifies that the above information is true and accurate and that the facility has authorized the submitter to register on its behalf." The commenter's suggested revised statement is as follows: "[t]he owner, operator, or agent in charge of the facility must submit this form. By submitting this form to FDA, the owner, operator, or agent in charge of the facility certifies that the above information is true and accurate and that the *submitter has been authorized* to register on its behalf" (suggested changes in italic).

(Response) These comments (and others) suggest that certain provisions of the proposed rule and proposed Form 3537 may have been ambiguous or otherwise created confusion about who should complete and submit a registration. As discussed below and elsewhere in this preamble, FDA has clarified several provisions in the interim final rule and has revised Form 3537 as well. The agency believes that these clarifications and revisions generally respond to the foregoing comments. FDA's more specific responses to these comments are set out below.

Regarding the commenter's request that FDA define "owner," "operator," or "agent in charge," FDA does not believe that it is necessary to define these terms because the terms are self-explanatory. Accordingly, the interim final rule does not include a definition for owner, for operator, or for agent in charge.

FDA acknowledges that the provision in the proposal regarding the certification statement was unclear due the language in proposed § 1.232(g) stating that "the person submitting the registration [must be] authorized by the facility to register on its behalf." This created ambiguity for three reasons. First, the use of "person" created ambiguity as to whether only an individual could submit the registration because "person," as defined in section 201(e) of the act, includes an individual, partnership, corporation, and association. However, as evidenced by the proposed certification requirement that the name of the person submitting the registration be specified, FDA intended to convey that an individual rather than a "person" must submit the registration. Second, the statement that a person submitting a registration must have been authorized by the facility is inconsistent with the certification statement in the proposed rule, which stated that "the owner, operator, or agent in charge of the facility must submit this form." Third, the former statement was confusing because a facility itself cannot authorize an individual to register.

The interim final rule resolves these inconsistencies by clarifying who may register a facility. Although the Bioterrorism Act imposes the legal obligation to register on the owner, operator, and agent in charge of a facility, FDA believes that this provision does not prevent the owner, operator, or agent in charge of a facility from authorizing an individual to fill out, sign, and submit the registration. Accordingly, the interim final rule provides that the owner, operator, or agent in charge may authorize an individual to submit the facility's registration.

In addition, for clarification and for the reasons discussed in the responses to comment 110, in the interim final rule, § 1.232(i) has been added to provide that if the individual submitting the form is an individual authorized to do so by an owner, operator, or agent in charge, the individual must also certify that the individual is authorized to submit the registration form on behalf of the owner, operator, or agent in charge and must identify by name the authorizing individual. This statement must include the individual submitter's signature (for paper and CD–ROM options) and printed name. If the individual submitter is authorized by someone other than the owner, operator, or agent in charge, the authorizing individual's name, address, and phone number must be included; the fax number and e-mail address of the authorizing individual are optional.

FDA does not agree with the commenter's assumption that if a facility authorizes an individual to submit a registration, the individual then becomes synonymous with the owner, operator, or agent in charge. Although the interim final rule permits an owner, operator, or agent in charge to authorize an individual to submit the registration on its behalf, that individual does not become the owner, operator, or agent in charge for purposes of registration or otherwise alter the legal obligation of the owner, operator, or agent in charge to register. Therefore, we have not revised section 1b as requested by the commenter.

FDA does not fully understand the import of the comment that the agency considers that owner, operator, and agent in charge to be the "facility itself." In some cases, the owner of the facility may be the same as the facility (*e.g.*, a corporation) while in other instances, the two may be different. The revised Form 3537 reflects these two possibilities in that it requests information about the facility (Section 2, facility name and address) and the owner, operator, or agent in charge (Section 12, owner, operator, or agent in charge address and telephone number.) Form 3537 also recognizes that information in section 12 may overlap with that requested in section 2.

### *F. Comments on "When Must You Register?" (Proposed § 1.230)*

(Comment 97) One commenter states that FDA's language in proposed § 1.230 ("[t]he owner, operator, or agent in charge of a facility that manufactures/processes, holds, or packs food for consumption in the United States must be registered no later than December 12, 2003") is contrary to the Bioterrorism Act, which requires registration by facility, as opposed to by owner, operator, or agent in charge. The commenter also states that language in proposed §§ 1.225 and 1.226 might be interpreted to mean that the owner, operator, or agent in charge is the entity to be registered, not the facility.

(Response) FDA intends to require that the facility be registered, not the owner, operator, or agent in charge of the facility. In response to these comments, FDA has revised the following language: In § 1.225, FDA has added the italicized language to paragraph (a): "You must register *your facility* under this subpart if you are the owner, operator, or agent-in-charge of either a domestic or foreign facility * * *". The agency also has added the italicized language to paragraph (b): *"If* *are* an owner, operator, or agent in charge of a domestic facility * * *, *you* must register *the facility* * * *.''

FDA believes no revisions are needed to § 1.226, because it is clear in this section that the exemptions apply to facilities, not the owner, operator, or agent-in-charge of the facilities.

In § 1.230, FDA has made the following change indicated by the italicized language: ''[t]he owner, operator, or agent in charge of a facility that manufactures/processes, packs, or holds food for consumption in the United States must *register the facility* no later than December 12, 2003.''

In § 1.233, in the first paragraph, FDA has made the following change indicated by the italicized language: ''FDA encourages, but does not require, you to submit the following items in your *facility's* registration.''

(Comment 98) Several commenters submitted comments regarding when to register. Some of these commenters request general information about when they will be able to register with FDA. Others acknowledge the proposed timeframe in which FDA expects to publish the final rule; these commenters question why they cannot register, either electronically or by mail, before publication of the interim final rule. Some commenters ask that FDA publish a final rule and implement its electronic registration system before October 12, 2003. Some commenters suggest that, to alleviate the burden on FDA's electronic system, FDA should either accept staggered registrations based on such identifiers as last name of the facility, or that FDA should only require registration 15 days before a facility's intended date of a food shipment to the United States. One commenter requests that FDA ensure that the final regulation and electronic system are in place by October 12, 2003.

(Response) FDA understands that many commenters may view the proposed 8-week timeframe for facilities to register as too brief. However, this timeframe is limited due in large part to the restrictions imposed by the Bioterrorism Act, which requires FDA to develop both proposed and final regulations detailing the process by which facilities must register by December 12, 2003. Within this timeframe, FDA has also had to develop an electronic system that can implement the requirements of this regulation. FDA has expedited the process for developing and completing the proposed and interim final regulations, as well as the electronic registration system. It is not possible for FDA to complete a final rule in less than 16 months from enactment of the Bioterrorism Act, or before October, 2003. Moreover, because this interim final rule articulates the final requirements for registration, which FDA must incorporate into its electronic registration system, FDA could not allow registration in advance of publication of the interim final rule, either electronically or by mail. FDA also believes the time period for registration is reasonable. Because both the proposed rule and this interim final rule have alerted facilities to the general requirements of registration, facilities have had ample time to prepare for registration pending the issuance of the interim final rule.

(Comment 99) Some commenters argue that FDA should provide a 3 to 6-month grace period after December 12, 2003, in which it will accept late registrations without penalizing the facilities that submit these late registrations. These commenters state that they are concerned that FDA will not be able to accommodate the large number of electronic registrations that must be submitted within this 8-week timeframe, and that this breakdown could cause large monetary losses to industry.

(Response) The Bioterrorism Act provides that the effective date for registration is December 12, 2003. The statute further specifies that, after this date, food imported or offered for import from unregistered facilities must be held at the port until the facility is registered (21 U.S.C. 381(l)). FDA has designed its electronic system to be robust enough to handle the large volume of registrations anticipated during this 8-week period. However, the planned capacity will not be sufficient to process all of the registrations in 1 day; thus, if all registrants wait until the last day to register (*i.e.*, December 12, 2003), the system's capacity could be exceeded. Therefore, FDA encourages facilities to register early.

(Comment 100) Some commenters indicate that the 8-week timeframe does not allow paper registrations as a real alternative to electronic registrations, because FDA states in the proposed rule that registration by mail could take several weeks to several months. This timeframe could render a facility out of compliance with the effective date for registration, because even if a facility were to mail its registration to FDA soon after October 10, FDA might not return the registration number to the facility until after December 12.

(Response) The paper processing facility will be able to electronically process over 1,800 Form 3537 submissions each business day during the regulatory peak processing period of October 16, 2003, through December 12, 2003 (41 business day period). This will result in a total of 73,800 submissions processed in a 41 business day period. All Form 3537 submissions will be processed in the order they are received and will be turned around within a 24-hour period, if the registration form is error free. Submitters should expect to receive their registration number within 5 to 7 days after processing depending on postal mailing delays if the number of submissions does not exceed the processing capacity.

If the registration submissions should exceed the daily 1,800 Form 3537 processing capacity, a backlog will develop. FDA expects that if backlogs occur, they are most likely near the end of the initial 41 business day registration period. If our estimates are correct, FDA would expect a backlog of 2 to 3 weeks. However, if the number of submissions and rejections being resubmitted exceed our estimates, the backlogs will be longer. So including the mailing time, the backlog, and processing times, the delay toward the end of the initial registration period could be 3 to 6 weeks or longer if the number of submissions exceeds our estimates.

If a submission has been rejected due to error the submitter made or failed mandatory validation, the submission will be returned to the submitter via postal mail. Depending on mailing delays, the submitter should expect to receive the rejected submission with a letter explaining the rejection within 5 to 7 days plus the time the submission spent in the processing backlog (0 to 3 weeks). After the submitter corrects their registration and resubmits it to FDA via postal mail, the corrected registration will be processed in the order received along with all other submissions and is subject to all of the delays identified previously.

For the CD–ROM option, submitters are allowed to store a fill-in PDF Form 3537 for each facility onto a CD as a separate file. FDA will process the CD–ROM submission, presumably containing multiple registrations, electronically as part of the paper process. This means the PDFs on the CD–ROM will not be printed out and then keyed in because they are already in the format that the paper process system needs. The PDF files will be fed into the paper process queue in their order of arrival as though they were a normal paper form. Each file on the CD will go through the same validation checks as if it were a normal paper submission. If the registration file on the CD–ROM is processed successfully, the registration will be returned by postal mail with a registration number. If the registration fails validation checks or contains errors, the registration will be returned with a letter explaining why registration was not successful and will need to be resubmitted in order to complete registration.

The only way for a registrant to ensure a fast response to a registration is to register the facility electronically on the Internet.

(Comment 101) One commenter states that FDA does not mention the registration requirements for facilities that form after December 12, 2003.

(Response) Section 1.230 of the interim final rule states "* * * a facility that begins to manufacture/process, pack, or hold food for consumption in the United States on or after December 12, 2003, must be registered before the facility begins such activities."

FDA has made a small editorial change to this section for clarity.

*G. Comments on "How and Where Do You Register?" (Proposed § 1.231)*

(Comment 102) Several commenters ask FDA to explain how they should register their facilities with FDA.

(Response) As stated in § 1.231, those wishing to register a facility electronically must access *http://www.fda/furls* and follow the directions on that Web site for registering. This Web site will be available starting on October 16, 2003, at 6:00 p.m. eastern daylight time. Registrants needing technical assistance with the paper or electronic registration forms can call 1–800–216–7331 or 301–575–0156, or can fax their questions to 301–210–0247 or e-mail them to *furls@fda.gov*. Starting on October 16, 2003, these phone numbers will be staffed on business days from 7 a.m. until 11 p.m. eastern standard time.

FDA had anticipated having the electronic and paper systems operational on the date of this interim final rule's publication. However, given the fluid and dynamic nature of developing the electronic system in parallel with finalizing the regulation that determines the requirements for the system and given the short deadline imposed by the statute, much of the development and testing effort of the system had to occur in the last 2 months. Accordingly, for much of these 2 months, work on the system has been taking place 7 days a week. Moreover, hurricane Isabel caused significant delays in the work for the week of Thursday, September 18. Due to these delays, FDA determined that if it postponed the launching of the system until Thursday, October 16, there would be a much higher level of assurance that those persons registering food facilities electronically would be able to do so effectively and efficiently without user frustration or confusion. FDA believes that the slight delay of the system will not affect stakeholders substantially, as potential registrants will need several days to become familiar with the rule and its requirements.

Therefore, beginning on October 16, 2003, the Web site will be available 24 hours a day, 7 days a week, from wherever the Internet is accessible, including libraries, copy centers, schools, and Internet cafes. In addition, as noted previously, the owner, operator, or agent of a foreign facility may authorize an individual to register the facility; the owner, operator, or agent in charge may chose to authorize an individual who has access to the Internet. In addition, the Bioterrorism Act requires a foreign facility to designate a U.S. agent. That agent (if an individual) could be authorized by the owner, operator, or agent in charge of a foreign facility to register that facility. If the U.S. agent does not have Internet access onsite, the U.S. agent may register the facility electronically from a local library or other public facility that offers Internet access either free of charge or for a relatively small fee. Thus, all foreign facilities will be able to receive an electronic confirmation of registration and the facility's registration number, as will domestic facilities that register electronically.

FDA strongly encourages electronic registration for the benefit of both FDA and the registrant. FDA will be able to accept electronic registrations from anywhere in the world where the Internet is available 24 hours a day, 7 days a week. Electronic registration also will enable a facility to be registered more quickly than if registering by mail, because obtaining confirmation of registration and the facility's registration number online should be instantaneous once a facility fills in all required fields on the electronic registration form.

As stated in § 1.231(b), a registrant may also register by fax or mail (for example, if none of the means of electronic access mentioned previously are reasonably available). Processing of fax or mail (including CD–ROM) registrations will also begin on October 16, 2003. In registering by mail or fax, a registrant also may fill out one or more forms on behalf of one or more facilities. A registrant registering by mail must call FDA at 1–877–FDA–3882 (1–877–332–3882) to request a copy of the form, or send FDA a written request for the form at U.S. Food and Drug Administration (HFS–681), 5600 Fishers Lane, Rockville, MD 20857. Once the registrant receives the mailed or faxed copy of the form, the form must be filled out completely and legibly, and either mailed back to FDA at the same address, or faxed back to FDA at 301–210–0247. FDA will process the registration forms in the order received. An agency employee will check to make sure all mandatory fields are filled out completely and legibly. If the form is not complete or is illegible, it will be returned to the registrant for completion, provided that the registrant's mailing address is legible and valid. If the form is complete and legible, FDA will manually enter the data on the form into the system as soon as practicable, which will depend on the number of other registration forms awaiting manual entry into the system. FDA will then mail or fax to the registrant a copy of the registration as entered, confirmation of the registration, and the facility's registration number. When responding to a registration submission, FDA will use the means by which the form was received by the agency (*i.e.*, by mail or by fax). If the copy of the registration form mailed or faxed back to the registrant contains incorrect information, the registrant must update the incorrect information under § 1.234. Registration by CD–ROM, which is also permitted by the interim final rule, is discussed in the response to comment 103.

(Comment 103) Several commenters request that FDA accept batched multiple facility registrations via CD or XML format instead of registering one facility at a time through the online system.

(Response) Due to the stringent timeframe that FDA had to develop proposed and interim final regulations and in which to finalize the electronic registration system, FDA is unable to accept multiple registrations in XML format because it would take substantial additional time and money for FDA to develop the compatibility necessary to accept registrations in this format. However, FDA will accept multiple submissions in CD–ROM format ISO 9660 (CD–R or CD–RW) Data format. These registrations must be submitted on FDA's fill-in Portable Document Format (PDF) rendition of the appropriate form (Form 3537) accompanied by one signed copy of the certification statement on the registration form. Each submission on the CD–ROM must use the same preferred mailing address in the appropriate block on Form 3537. The CD–ROM can contain as many submissions as needed up to its capacity (650–700 megabytes (MB) or about 1,300 submissions per CD–ROM). Importantly, however, each submission must have a unique file name up to 32 characters long, the first part of which may be used to identify the parent company. If FDA receives a CD–ROM that does not comply with these specifications, it will send the CD–ROM back to the registrant unprocessed.

FDA notes that CD–ROM submissions are similar to submissions by mail or fax in terms of how they are processed. FDA will process these CD–ROM submissions along with the mailed and faxed submissions, in the order received. Therefore, registrants wanting to ensure that they receive their registration numbers quickly may wish to register electronically, as described previously. The principal advantage CD–ROMs offer over paper submissions is for firms that own many facilities and do not have reasonable access to the Internet. Using a CD–ROM to submit PDF typed registrations should increase legibility and save on mailing expenses. FDA reiterates, however, that submission by CD–ROM will be slower than submitting registrations electronically.

(Comment 104) Several commenters request that FDA's electronic system provide a way in which a single registrant entering data for many facilities can stop entering data on one day and resume from where they left off on another day.

(Response) FDA's electronic system will save registration data automatically with the completion of the entry of all data for a facility. Thus, it will be possible to stop entering data upon completion of the entry for one facility, and resume entering data for a subsequent facility on another day without loss of any previously entered data that would be applicable to both facilities, such as the name and address of the owner. The information needed for a registration is identified on the electronic registration form. A registrant will know what information is required for the registration before beginning to enter registration data into the system. Once a registrant has all of the required information, the time to register each subsequent facility should decrease, depending on how much of the information can be autofilled from the account information from previous registrations. However, the FDA electronic system does not allow a registrant to save data in the middle of registering a facility. Therefore, FDA suggests that registrants completely finish registering a particular facility before ending an online session.

(Comment 105) Some commenters ask whether the electronic system will allow multiple individuals from the same company to enter registration information simultaneously.

(Response) The FDA electronic registration system is set up to allow a company to establish an enterprise (master) account and multiple subaccounts to allow several persons within a company to enter registrations simultaneously. The enterprise account can be used to enter facility registrations and it also can be used to establish and manage subaccounts. The subaccounts can only enter facility registrations, and unlike the enterprise account, they do not have access to other subaccounts. Generally, the enterprise account has access to all information entered via the subaccounts, unless, when created, the subaccount stipulates that the enterprise account is not to have access to that subaccount.

(Comment 106) Some commenters ask whether the electronic registration system will minimize the reporting burden. These commenters are concerned that the lack of detail FDA has provided regarding the Internet-based electronic registration system has made it difficult for them to evaluate the reporting burden.

(Response) FDA is working expeditiously to ensure that that there will be a minimal reporting burden associated with registration in general, and electronic registration in particular. Registering electronically will be a relatively fast process once the registrant has all of the pertinent information available. Once the facility is registered electronically, its registration number should be provided automatically and instantaneously. FDA has received very positive comments at the several public demonstrations of the prototype of FDA's electronic registration system. Throughout the next couple of months, FDA will continue to conduct outreach activities to both foreign and domestic registrants to explain how the electronic registration system works to expedite registration.

(Comment 107) Some commenters express concern about the security of the electronic system. They state that the registration number alone should not be sufficient to access a facility's registration form in an electronic environment, because registration numbers will be required for prior notice of imports, and thus, are likely to be part of the commercial documentation between parties. These commenters emphasize that FDA must have procedures in place to ensure that only authorized persons can access and change a facility's registration information.

(Response) FDA has taken comprehensive steps to ensure that our electronic registration system is secure. A risk assessment has been done and a formal security plan has been incorporated into the system that addresses both physical and electronic security. The system has undergone an independent security review and assessment as well as complete industry standard certification and accreditation. The system securely communicates with registrants using industry standard, secure socket layer with 128-bit encryption.

A facility's registration number alone is not sufficient to access a registration. To increase security, FDA has provided several layers of controls in the electronic access to registrations, thus preventing unauthorized access. First, an account ID and password must be established. Second, each registration has a unique registration number and PIN (Personal Identification Number), both of which are required to gain access to the registration and are only provided to the registrant. Only the registration number is disclosed as part of the prior notice of an imported food shipment. Thus, to prevent unauthorized access to a facility's registration, it is the responsibility of persons registering to secure their account IDs, passwords, and PINs.

(Comment 108) Some commenters request that the electronic system be available in every world language. Others ask whether shipments will be delayed if issues arise from translation discrepancies between a facility's registration in the English translation of its name and its prior notification with elements in the foreign language.

(Response) In response to the first part of the comment, FDA has determined that registration instructions will be provided in three languages: French, Spanish, and English. As noted, these are the three official languages of the WTO.

In response to the second part of the comment, FDA has determined that all registration information submitted must be in English. However, a person's name, the name of a company, the name of a street, or a trade name may be submitted in a language other than English. All information, including these items, must be submitted using the Latin (Roman) alphabet. These exceptions will ensure that inconsistencies will not arise between a facility's registration and prior notice.

Submissions must be in English (with the exceptions noted) so that FDA can understand the content of the registration, ensure that the registration information is correct, and have a database of facilities that its staff can readily access in the event of a threatened or actual food-related emergency. To assist registrants who do not speak English, FDA has given a foreign facility the option of authorizing an individual (including its U.S. agent if an individual) to register on its behalf.

(Comment 109) Some commenters question whether there will be a contingency plan if the electronic registration system is not as efficient as expected or if more facilities register than anticipated. Some of these commenters question whether the paper system will be able to handle the 8-week registration period.

(Response) The electronic system is designed to handle anticipated peak loads. The paper-based system is being designed to handle the 8-week registration period; however, depending on the number of paper registrations received, and depending on when FDA receives the registrations within this 8-week period, FDA may be unable to process all paper registrations, confirm the registration, and provide a registration number to each registrant within the 8-week period. For this reason, FDA strongly encourages all facilities to register electronically to ensure they are registered on time.

(Comment 110) Some commenters ask whether trade associations, commodity groups, or parent companies can register on behalf of facilities represented by their organizations.

(Response) As stated in the response to comment 96, we have revised § 1.232(i) and the certification statement on Form 3537 to permit an authorized individual to submit the registration. Thus, a trade association or commodity group cannot submit a registration because these entities are not individuals. However, the owner, operator, or agent in charge can authorize an individual from such a group to submit the registration. We note that the definition of U.S. agent provides that a U.S. agent may be a "person" as defined in section 201(e) of the FD&C Act. Therefore, a foreign facility could designate a trade association or commodity group as the facility's U.S. agent. However, if the U.S. trade association or commodity group agrees to serve as the U.S. agent and the facility authorizes the U.S. agent as the foreign facility's agent in charge for registration, an authorized individual from that association or group must submit the registration. In addition, the interim final rule allows a parent corporation to register on behalf of one or more of its facilities.

(Comment 111) One commenter asks whether FDA can build on the Operational and Administrative System for Import Support (OASIS) that FDA currently has to accept registrations. The commenter states that some prospective registrants already provide information regarding "shipper" and "manufacturer" to FDA via OASIS, and that building a new registration system would cause redundancy for these registrants.

(Response) Although FDA intends to use OASIS for cross-checking registration information, both the required data elements and the universe of facilities required to register are markedly different from those entered into OASIS. Moreover, OASIS does not have the capacity to accept all the registration information from all the facilities required to register with FDA. Thus, FDA has developed a new system for registration that will interface with OASIS.

(Comment 112) One commenter asks whether FDA will accept photocopied versions of the mailed registration form.

(Response) FDA will accept a photocopy of a mailed registration form or the certification statement submitted with a CD–ROM submission, as long as the signature on each individual form is an original signature. We recognize that for multiple facility registrations, photocopying data elements that are common to each facility will reduce the burden on the registrants in completing the forms. While those common data elements may appear as photocopies, the forms must include an original signature.

(Comment 113) One commenter asks how the electronic registration form will allow registrants to proceed through the registration process. For example, if each a registrant must answer each section to proceed to the next section, how will the system address optional information?

(Response) FDA has designed both its electronic and paper registrations to specify which sections are mandatory. The electronic registration system has been designed to highlight or mark a required field that a registrant has left blank so that the submitter must fill it in before proceeding further with the electronic registration process.

(Comment 114) One commenter expresses concern that a registration may get lost in "cyberspace," even though it has been correctly filled out and the facility has received a registration number.

(Response) The system saves all submitted information before issuing a registration number. A submitter would only receive a registration number upon a successful registration; if the registration failed, a facility would not receive a registration number. The Web system is a real time system with tape backups of the data entered. Additionally, the system has battery backups in the unlikely event of a power loss.

In addition to the changes noted previously, on its own initiative FDA has made several editorial changes to this section for clarity.

### *H. Comments on "What Information Is Required in the Registration?" (Proposed § 1.232)*

#### 1. General Comments

(Comment 115) Several commenters believe FDA should make the registration process as simple as possible, limiting required information to name, address, and trade names. These commenters state that the scope, exemptions, definitions, and required information in the proposed rule erode simplicity to the point that exemptions are voided, and would require registrations from a vast array of small facilities.

(Response) The Bioterrorism Act requires that a registration contain each facility's name, address, and all trade names under which the registrant does business (21 U.S.C. 350d(a)(2)). That statute provides no exemption from registration for small-size facilities. FDA believes that the information required for registration is necessary to assist FDA in notifying facilities of a threatened or actual bioterrorist attack or other food-related emergency. Together with the other regulations FDA is developing to implement the Bioterrorism Act, the information in the registration will assist FDA in determining the source and cause of such an event.

Regarding the comment that the scope, definitions, exemptions, and required information are unduly complicated, no comments FDA received in response to the proposed rule argue that the interim final rule should not include any definitions, exemptions, or specify the information to be included in a registration. FDA has made every effort to define clearly which facilities are required to register to ensure that potential registrants will know whether they are subject to the rule. FDA also has provided definitions for each exemption provided in the Bioterrorism Act. Moreover, FDA believes that the registration process itself is as uncomplicated and user-friendly as possible. A facility registering electronically should be able to complete the registration and receive its registration number expeditiously once it has gathered all the requisite information.

(Comment 116) Several commenters state that the information in the registration goes beyond the information required by the Bioterrorism Act, thereby exceeding FDA's statutory authority. One of these commenters states that "there are no references, either in the Bioterrorism Act or the legislative history, to the inclusion of individual names in the registration."

(Response) As noted in section I of this document, in issuing this interim final rule, FDA is relying on the authority in section 305 of the Bioterrorism Act, as well as section 701(a) and (b) of the FD&C Act. Including information regarding both the facility's parent company and the emergency contact will facilitate the efficient enforcement of the act by enhancing FDA's ability to deter and respond quickly to a food-related emergency. Accordingly, the provisions of this interim final rule are consistent with FDA's statutory authority provided by the Bioterrorism Act and the FD&C Act.

The only required elements of the registration that the Bioterrorism Act does not specifically mention are the facility's parent company name, address, and phone number, and emergency contact information. Regarding the emergency contact information, the information will make it possible for FDA to respond quickly to emergencies that occur during nonworking hours by contacting facilities when an emergency occurs.

FDA is also requiring the parent company information for emergency situations. If an emergency occurs with respect to a particular facility or group of facilities, FDA will need to alert the parent company, as well as the affected facilities, because the parent company has ultimate responsibility for the facility. Moreover, in terms of inspections, the relationship between a facility and its parent company is vital for FDA in tracking and investigating incidents.

With regard to that portion of the comment asserting the Bioterrorism Act does not refer to individual names, the interim final rule does not require the submission of an individual's name except for the name of the authorized individual submitting the registration and, if the submitter is authorized by another individual, the name of the authorizing individual. Of course, if the owner, operator, agent in charge, or U.S. agent is an individual, the name of that individual must be submitted. If the emergency contact for a facility is an individual, that name must be submitted as well. However, as stated in responses to comments 124 and 137, the interim final rule does not require an individual to be designated as the U.S. agent or an emergency contact.

(Comment 117) One commenter believes that, contrary to FDA's proposed use of the registration information to determine the source and cause of a bioterrorist event, the proposed requirements are geared to locating and contacting facilities that through some other means have already been associated with the event, thus facilitating further investigation.

(Response) FDA believes that registration both will help the agency contact facilities that already have been the target of an event, and will assist the agency in determining the source and cause of the event. First, registration will provide FDA with a more complete and up-to-date database of facilities to contact if the agency learns of an actual or potential threat to the food supply. The specific registration information, such as food product categories and geographic location, will enable FDA to narrow down the facilities that may be affected by a bioterrorist attack or other food-related emergency, thus saving precious time. Second, registration will assist FDA's implementation of the other regulations and guidance documents that FDA is developing to implement the Bioterrorism Act, namely prior notice, recordkeeping, records access guidance, and detention. Registration, prior notice, and recordkeeping enable FDA either to obtain information it does not currently have, or to obtain that information more quickly than FDA was able to do prior to the enactment of the Bioterrorism Act. This information gives FDA crucial tools to protect the U.S. food supply. For example, registration will enable FDA to fill in incomplete information for certain facilities derived through records about a source of a bioterrorist attack or other food related emergency, thus facilitating a traceback. In this example, registration information would also allow FDA to contact some facilities quickly during a traceback investigation.

(Comment 118) One commenter requests that FDA consider registrations submitted more than once on behalf of a particular facility as valid, since some foreign companies may register multiple times both at the facility and corporate levels.

(Response) Once a facility is registered with FDA, the electronic system will reject any additional registrations that are submitted on behalf of the same facility. To have the system do otherwise does not make sense, because each facility must only register with FDA once and will only be assigned one unique registration number. Accepting multiple registrations would also create confusion in FDA's database of registered facilities, because FDA would not know who to contact in the event of an emergency if there is different emergency contact information in the registrations for the same facility. Once a facility is registered, FDA will send a confirmation to the facility by e-mail, mail, or fax, depending on how the facility registered. Thus, personnel at the facility will be aware that the facility is registered.

(Comment 119) A commenter requests that FDA clarify whether it requires a registrant to specify container/package size in its registration. The commenter states that such a requirement would be very time-consuming and introduce prohibitive costs both financially and in terms of resources. The commenter further states that this potentially could necessitate numerous and frequent updates to registration information.

(Response) Neither the proposed rule nor the interim final rule requires registrants to specify container or package sizes in its registration.

(Comment 120) One trade association believes that FDA should provide "full translation services for non-English speakers and the disabled as required under the Americans with Disabilities Act (ADA)."

(Response) Regarding translation services for non-English speakers, this comment is not clear about whether it is requesting these services for the registration itself, or for outreach activities related to registration. FDA intends to translate all outreach-related slide presentations and downlink transcripts for the interim final rule into French and Spanish, similar to what FDA did for the outreach for the proposed rule. As noted previously, FDA will require the registration to be submitted in English. The owner, operator, or agent in charge of a foreign facility that requires translation services may wish to authorize an English-speaking individual to register on its behalf.

FDA is in full compliance with section 508 of the Rehabilitation Act and provides an "Accessibility Statement" for disabled persons on its Web site. FDA cannot identify from this comment if other "translation services" are being requested for the disabled.

### 2. Name, Full Address, Phone Number, Fax Number, and E-mail Address

(Comment 121) Several commenters object to FDA's requirement that a registration include the facility's phone number, fax number, and e-mail address. These commenters state that the e-mail address of the facility is not likely to be that of an individual person, but one for the facility as a whole and is usually staffed by a facility's most junior employee, who would not be the appropriate person for FDA to contact in the case of a bioterrorism incident or other food-related emergency. The commenters also state that FDA will have the phone number and e-mail address of the emergency contact, so it should not be necessary also to require the phone number and e-mail address of the facility as a whole. Regarding the fax number, some commenters argue that they might not have fax machines. Therefore, these commenters request that FDA make the facility fax number and e-mail optional elements of registration.

(Response) FDA agrees with the commenter that a facility's fax number should be optional and that a facility's e-mail address also should be optional unless the facility registers electronically and provides an e-mail address for confirmation. Section two of the proposed registration form states that the registrant is required to provide its fax number and e-mail address "if available." However, to clarify in the rule that this information is optional, FDA has moved these registration elements to the section in the interim final rule entitled "What optional items are included in the registration form?" (§ 1.233). FDA has decided to retain the requirement that a facility's phone number be provided because having that number will facilitate routine communications with the facility. For domestic facilities, the emergency contact information will only be used in the event of an actual or potential emergency; the facility phone number will be used for all other communications (e.g., to schedule an inspection), unless the registration provides other contact information in the "Preferred Mailing Address" section of the form. For foreign facilities, the U.S. agent's information will be used for both routine and emergency contacts, unless the facility chooses to provide a different emergency contact. FDA, however, believes it is important to have a contact phone number for a foreign facility itself, in case FDA cannot contact the U.S. agent.

(Comment 122) Several commenters state that the fields in section 2 of the proposed registration form for facility name and address correspond to addresses in the United States, such as "zip code," and do not take into account address formats used in foreign countries. For example, in many Latin American countries, addresses are not necessarily denoted by a street number and name, but may be identified by a crossing of streets or even by specific reference points that may involve other buildings or landmarks.

(Response) In the electronic registration, FDA intends to provide flexibility to enable a foreign facility to include its street address information in the format used in the foreign country. Regarding "zip codes," in the proposed registration form, FDA's electronic system is designed to request zip code information only for facilities located in the United States, and the postal code for countries that have postal codes. For identification of a country, the electronic system employs a pull-down menu that lists countries' two letter abbreviations as listed in the International Standards Organization 3166. The printed registration will also provide enough space for a registrant to enter the facility's address information in whatever format is used in its own country.

### 3. Name and Address of the Parent Company

(Comment 123) Several commenters believe that name and address of the parent company should not be required. Another commenter states that it does not object to this requirement.

(Response) The interim final rule retains the requirement that parent company information be provided in a registration if applicable. The parent company information enables FDA to ascertain the relationship between a facility and its parent company, if the facility is a subsidiary of the parent company, because not infrequently, a facility or subsidiary may have a different name than its parent company. FDA is also requiring the parent company information for emergency situations. If an emergency occurs with respect to a particular facility or group of facilities, FDA will need to alert the parent company, as well as the affected facilities, because the parent company has ultimate responsibility for the facility. Moreover, in terms of inspections, the relationship between a facility and its parent company is vital for FDA in tracking and investigating incidents.

### 4. Emergency Contact Information

(Comment 124) Several commenters believe that FDA should give facilities or their parent companies the option of identifying relevant emergency contact information (phone number, whether cell or land line, e-mail address) without necessarily identifying a specific individual. These commenters state that because the purpose of an emergency contact is for FDA to communicate in an emergency situation with the facility, there is no need for FDA to contact a specific individual. Many facilities already have emergency contact procedures in place for responding to local emergencies; FDA's emergency contact information should provide flexibility for facilities to utilize these existing procedures. Also, requiring an individual to be identified by name may mean a facility would need to provide frequent updates to its registration, because the individual responsible for responding to emergencies may change on a frequent basis. Other commenters request that FDA allow a facility to designate an alternate emergency contact, or that FDA require the emergency contact to be located at the corporate headquarters, instead of at the facility.

Other commenters believe FDA has appropriately defined the scope of information necessary to accomplish the goal of quick response and notification in the case of a bioterrorist attack on the U.S. food supply.

(Response) FDA has considered these comments and in response, has modified the interim final rule so it does not require a facility to provide an individual's name as part of the emergency contact information. However, the facility must ensure that the information it provides will enable FDA to contact a live person representing the facility 24 hours a day, 7 days a week. FDA agrees that emergency contact information should be specific to the facility's already established emergency procedures; therefore, FDA will not necessarily require contact information for a corporate headquarters. However, a facility may designate the emergency contact information for its corporate headquarters, if that is appropriate for operations at that facility.

As noted, for foreign facilities, FDA will consider the facility's U.S. agent as the emergency contact unless specified otherwise in the registration. If a foreign facility designates someone other than its U.S. agent as the emergency contact, FDA will utilize that information to contact the facility instead of the facility's U.S. agent when an emergency occurs.

### 5. Trade Names

(Comment 125) Several commenters agree that trade names should be required as part of the registration. These commenters request that FDA define "trade names" and provide examples. One commenter states that requiring trade names for food packaging is unworkable because "brand codes" and "grade names" change frequently, and would thus require continual updates.

(Response) The Bioterrorism Act specifically states that trade names should be a required part of the facility's registration, and thus, FDA agrees with the comment that trade names should be a required registration element. FDA also agrees that it should define the term, "trade names," and, as discussed previously, provides a definition of "trade names" in the interim final rule. In response to the comment stating that "brand codes" and "grade names" change frequently, FDA notes that the trade names definition does not include this information, but only information about names the facility itself uses.

### 6. Product Categories Under § 170.3

(Comment 126) Many commenters assert that registrants should not be required to supply information regarding food product categories associated with a facility. A variety of reasons are offered, including that the categories are outdated and not relevant; the categories are difficult to understand and apply; use of the categories would lead to mistakes regarding a facility's selection of appropriate categories; categories would require a facility to submit constant updates to FDA, as a facility continuously changes the food it produces in response to market demands; use of categories would impose an enormous burden and increased cost; use of categories would limit targeted communications because often one manufacturer's finished product is another's ingredient, which would confuse FDA's efforts to notify affected facilities; facilities would be subject to criminal penalties if product category information is not correct or is outdated; under the Bioterrorism Act, FDA has the discretion to require this information and FDA should not exercise that discretion; use of categories introduces huge uncertainties as to whether the appropriate facilities would be contacted in the event of an emergency, which may lead either to causing unnecessary concern or inadequate notification of affected facilities; some categories overlap each other, yet many foods fall into gaps between categories; and requiring categories would increase the time to complete a registration. One commenter states that FDA should include food product categories, because these categories would help FDA to more closely focus inspection resources.

(Response) The interim final rule maintains the requirement that food product categories be specified in a facility's registration. As required by the Bioterrorism Act, FDA considered in guidance whether such categories should be included and determined that such information will be an important aid to the agency in the event of a foodborne emergency (68 FR 42415). The interim final rule requires each facility to submit the general food product category (as identified under § 170.3) of the food manufactured/processed, packed, or held at such facility. For ease of use, FDA lists the more common categories found in FDA's product code builder at *http://www.fda.gov/search/databases.html* as the main categories on the registration form, referencing the relevant food product category in § 170.3 for each FDA product code category. To relieve some of the burden of frequent updates, FDA has added a "most/all human food product categories" option. Facilities that manufacture/process, pack, or hold food that does not fit into one of the § 170.3 categories are required to check "none of the above mandatory categories." These facilities may also choose to check one or more of the optional boxes that correspond to the category of food manufactured/processed, packed, or held at the facility, as specified in section 11(a) or 11(b) of the registration form.

FDA continues to believe that information regarding food product categories is necessary for a quick, accurate, and focused response to a bioterrorism incident or other food-related emergency. The categories will help FDA to focus its response on the appropriate facilities, saving crucial time. Some threats may be specific to a certain facility type (*e.g.*, a threat against beverage bottling facilities). Under these circumstances, being able to target communications will allow FDA to expedite and focus its response. The fact that in some instances a threat cannot be isolated to a finite set of facilities does not mean that this will be the case in all instances. Being able to focus communications as much as possible based on a particular threat through the use of food product categories will ensure that FDA is able to respond as effectively and efficiently as possible.

(Comment 127) One commenter notes that in the proposed registration form, FDA has stated that warehouses are not required to complete the section on food product categories. The commenter states that this exception for warehouses is not mentioned in the preamble or codified of the proposed regulations, and asks FDA to clarify this exception.

(Response) To ensure that facilities have fully completed the section on food product categories, FDA has changed this section to require all facilities to check at least one box. As noted, as required by the Bioterrorism Act, FDA considered in guidance whether such categories should be included and determined that such information will be an important aid to the agency in the event of a foodborne emergency (68 FR 42415). Thus, this interim final rule requires registrants to identify the food product category under § 170.3 for food manufactured/processed, packed, or held at each facility. FDA has also provided that facilities that manufacture/process, pack, or hold food in many different food product categories (such as many warehouses) do not have to check every food product category, and may instead check the "most/all human food product categories." Importantly, however, the interim final rule requires a warehouse that holds only one or a limited number of different food products to identify those categories listed in § 170.3. Because the proposed rule would not have required a facility to identify a food product category on the registration form if it was manufacturing/processing, packing, or holding food that did not fit into a category under § 170.3, FDA would not have been able to determine whether a registrant's food product categories were not covered under § 170.3, or whether the registrant forgot to complete the section of the registration form on food product categories. Therefore, the interim final rule requires facilities that manufacture/process, pack, or hold food product categories not covered under § 170.3 to check "none of the above mandatory categories." Because the revised version of the Form 3537 requires all facilities to check at least one box in the food product categories section, FDA has deleted the language in the form stating that warehouses are exempt from completing the food product categories section of the form.

### 7. U.S. Agent

FDA addresses comments related to the U.S. agent requirement in section III.E.15 of this document.

### 8. Certification Statement

(Comment 128) One commenter notes that the requirements for identifying personal information in the certification statement should relate to the individual making the certification, not the individual submitting the registration. This change would recognize that administrative personnel, not responsible parties of the company, may process the actual facility registration.

(Response) The Bioterrorism Act requires that the "owner, operator, or agent in charge of the facility shall submit a registration" to FDA. Accordingly, the certification statement on the registration form requires the owner, operator, or agent in charge of a facility to submit the registration, or to authorize an individual to submit the facility's registration. Although administrative personnel may prepare the registration, the owner, operator, or agent in charge, or an individual authorized by the owner, operator, or agent in charge to submit a facility's registration must certify that the information included in the registration is true and accurate.

(Comment 129) One commenter states that the certification statement is inadequate to ensure either the veracity of the information provided or the identity and authority of the person submitting it. The commenter states that "[t]he regulation includes no protections that would prevent intentional or unintentional abuse of the system, to the potential detriment of both national security and of legitimate businesses. Without some effective means of verifying at least the identity and authority of the person submitting the registration, the proposed system will be easily subject to misuse and mischief."

(Response) The certification statement requires a person authorized to submit a registration to certify that the registration information is true and accurate, and that owner, operator, or agent in charge of the facility has authorized the submitter to register on its behalf. The certification statement also states that anyone who makes a materially false, fictitious, or fraudulent statement to the U.S. Government is subject to criminal penalties under 18 U.S.C. 1001. As an additional means to verify the identity of the person submitting the registration, the interim final rule requires that for the paper and CD–ROM registration options, the registration include the signature of the person submitting the registration. FDA believes that the combination of the signed certification statement and Federal criminal liability will be a powerful incentive for truthful registrations. In addition, FDA has several methods by which to verify the identity of both facilities and individuals submitting registrations by any of the permissible means; however, for security reasons, FDA declines to elaborate on these methods.

In addition to the changes noted previously, on its own initiative FDA has made several editorial changes to this section for clarity.

### *I. Comments on "What Optional Items Are Included in the Registration Form?" (Proposed § 1.233)*

#### 1. General Comments

(Comment 130) One commenter states that the interim final rule should remain focused on effectively implementing the legislative requirements as is, neither expanding information requirements, nor adding optional information. The submitter states that if the information is not necessary, it should not be collected.

(Response) FDA notes that registrants are not required to submit the elements of optional information specified in the proposed rule and the interim final rule—that is the nature of "optional" information. FDA continues to believe, however, that information described as "optional" will enable FDA to communicate more effectively with facilities that may be the target of an actual or potential terrorist threat or other food-related emergency and that better communication about such emergencies will benefit both FDA and the registered facility. For example, some food products are not covered in the categories specified in § 170.3, such as certain dietary supplements, infant formula, and animal feed, but foods in these categories may nevertheless be the focus of a food-related emergency. Therefore, FDA encourages, but does not require, a registrant to submit in a facility's registration the information identified as optional in the interim final rule.

(Comment 131) Several commenters ask that FDA clarify what sections of the registration form (Form 3537) are mandatory and which are optional. One of these commenters states that FDA should mark optional fields in some form, such as an asterisk, and program the electronic downloadable file to allow the registration to proceed as long as the mandatory fields have been completed. This commenter states that, at a minimum, FDA should insert the word "**REQUIRED:**" or "**OPTIONAL:**" in boldfaced, underscored, and all capital letters following the section titles to clarify further which information is required and which is optional. The commenter also suggests that instructions be provided for filling out the form that include specific citations to those sections where the information is required and where optional. Another commenter suggested that FDA consider a second form for voluntarily-submitted information. Otherwise, the commenter believes that the Food Facility Registration Form will cause confusion as to which information is required by law, versus information that is optional because the optional sections of the form are interspersed with required information sections.

One commenter states that the space on the Registration Form is somewhat limited and proposes that the registration form be expanded to accept appendices for registrants to submit additional information.

(Response) FDA believes its proposed registration form is sufficiently clear as to which sections of the form are required and which are optional. For each section of the registration that is optional, FDA has included the word, "OPTIONAL" in bold. For the food product categories section involving food for human consumption, FDA has included the words, "Optional Selection" in bold after each category that is not required. In the instructions for completing the registration, FDA intends to specify which sections are required and which are optional. FDA notes that the agency considered having a separate form for optional information but rejected it after determining that the order of the sections in the proposed registration form was clearer and flowed more effectively when in a single form, rather than two separate forms.

FDA further advises that the agency's electronic registration system will be sufficiently flexible to permit a registrant to enter all of the information the registrant needs to enter. FDA has revised both the paper and electronic registration forms to provide ample space for including all relevant information. However, for both the printed and electronic versions of the registration, FDA is only accepting information listed on the registration form; registrants should not add information not identified as required or optional in this rule or described on the registration form. Due to the large anticipated volume of registrations, the registration system will not provide for the submission of appendices to the registration form.

(Comment 132) Some commenters suggest that FDA include additional optional sections on the registration form, including sections for type or other facility registration number (*e.g.*, the U.S. Customs Service bonded facility Facilities Information and Resources Management System (FIRMS) code, FDA establishment number, FDA-assigned Food Canning Establishment number, Seafood Hazard Analysis and Critical Control Point importer food number, FDA Affirmation of Compliance code, and the location number of the U.S. domestic party responsible for FDA-regulated goods imported by a foreign Importer of

Record), as well as an option for an "other" type of code; and the appropriate registration number for each option that is checked. The commenters state that this would minimize confusion, especially about which of a facility's multiple registration numbers apply to what types of activities.

(Response) FDA has decided not to implement this suggestion. In the Bioterrorism Act, Congress specified what information must be required in a facility's registration. After careful consideration, FDA has concluded that a few additional elements of information are needed for the efficient enforcement of the act in responding to a bioterrorist threat or other food-related emergency. Because FDA believes the additional information suggested by these comments would not significantly further FDA's efforts in responding to such incidents, we decline to include them as registration elements.

2. Type of Activity Conducted at the Facility

(Comment 133) Several commenters state that the option of including on the registration form the "category" or "type" of food warehoused, produced, or sold by a facility should be required. These commenters state that this information appears to be critical in determining who should be notified in case of a threat or actual terrorist event targeting a particular type of food. One commenter suggests that FDA use a "simpler method" to determine these categories, such as that utilized for classifying an establishment (*e.g.*, 03 for bakeries, 16 for fishery products, 29 for soft drinks, 47 for food warehouses), which should suffice as a means of categorizing establishments. One commenter states that FDA should either make establishment type data mandatory or delete this information entirely. This commenter states that FDA is unlikely to get full compliance voluntarily with the request for establishment type information, when no penalty would be imposed if this optional information were inaccurate when submitted initially or became out of date.

(Response) FDA has required only what is specified in the Bioterrorism Act and information that is necessary for the efficient enforcement of the FD&C Act. Although we believe the information in the optional items can be useful to FDA as well as to facilities in the event of an emergency, we are requiring only those items required by the Bioterrorism Act and those necessary for the efficient enforcement of the FD&C Act.

3. Type of Storage, if the Facility Is Solely a Holding Facility

(Comment 134) FDA received several comments agreeing that a facility that is "solely a warehouse" should only have to check a simplified description of the type of warehousing provided, such as "ambient storage," "refrigerated storage," or "frozen storage," rather than submit a detailed breakdown of the general food product categories stored in the facility, as required in section 11 of the draft form. These commenters state that this simplified option avoids the need to determine and track food product categories for virtually thousands of different food items that may enter or leave a warehouse.

The commenters ask, however, that FDA define what is meant by "solely a warehouse." The commenters state that most, if not all, public and contract food warehouses also provide ancillary services that include labeling, relabeling, packing, and repacking, but the warehouse typically provides these services without in any way changing, contacting, or doing anything at all to the actual food. The commenters state the warehouse never "goes inside" the primary packing, thus avoiding any potential for contamination. The commenters state that these services are incidental to the core function of storing and handling and are performed strictly under the direction and control of the customer.

(Response) As explained previously, to ensure that registrants have completed the section of the form on food product categories, FDA has decided to require that all registrants check at least one box in the mandatory food product categories section of the form (section 11a). Therefore, a facility that is solely a warehouse is required to check either one or several food product categories covered under § 170.3, "the most/all human food product categories," or "none of the above mandatory categories."

Regarding the question of what FDA means by "solely a warehouse," FDA agrees that this term was confusing. We have revised Form 3537 to eliminate that term. We are also providing that all food facilities must complete section 11 which concerns general product categories. We have revised section 10 of the form and § 1.233(i) to refer to facilities that are primarily holders.

4. Food Categories Not Included Under § 170.3

(Comment 135) One commenter argues that FDA's proposed optional food product categories should be mandatory, not optional. This commenter asserts that FDA should use a simpler method of classification of all food product categories, such as that used for food establishments.

(Response) FDA believes that it is a reasonable choice for the agency to make optional identification of food product categories that are not listed in § 170.3. There is a strong incentive for facilities that handle foods in the optional categories to provide this information, because with such information, FDA will be better able to target its communications in case of a threatened or actual bioterrorist event or other foodborne emergency. Getting prompter and more accurate information will help a facility respond more quickly and efficiently to any incident that may affect that facility. As discussed previously, for ease of use, FDA is using the more common categories found in FDA's product code builder at *http://www.fda.gov/search/databases.html* as the main categories on the registration form, referencing the relevant food product category in § 170.3.

(Comment 136) Several commenters submitted comments regarding the "most/all human food product categories" designation. Most of these commenters agree with FDA's preliminary decision to include "most/all" product categories. One commenter states that a facility that normally carries all food categories and therefore has included "most/all food product categories" in its registration should not be required to amend their registration or be subject to penalties if they have temporarily run out of products in a specific food category, but intend to restock the items. Another commenter argues that FDA should delete the "most/all" food product category. The commenter states that in the event of an emergency, a delay could result since FDA would be unnecessarily contacting facilities that do not manufacture/process, pack, or hold the precise food in question. Also, a facility could process different food products almost daily, but not be required to notify FDA of any changes.

(Response) The interim final rule retains "most/all human food product categories." This category will enable facilities that manufacture/process, pack, or hold many different types of food to check the "most/all" category instead of having to update their registrations frequently. In making this decision, FDA has balanced the greater efficiency of the agency's having specific information regarding food manufactured/processed, packed, or held at each facility against the burden on facilities to submit initially and update this information as circumstances change. While FDA agrees that in some instances this may result in FDA contacting facilities that check the "most/all human food product categories" box when they do not handle a particular food product either at all or at that particular time, on balance, these circumstances are likely to be relatively infrequent compared to those contacts with a facility that does manufacture/process, pack, or hold the food in question.

In addition to the changes noted previously, on its own initiative FDA has made several editorial changes to this section for clarity.

### *J. Comments on "How and When Do You Update Your Registration Information?" (Proposed § 1.234)*

(Comment 137) Several commenters state that the 30-day update requirement is burdensome to industry. Information such as food product categories and emergency contact information is constantly changing and thus, registrants would need to submit updates continuously. Commenters suggest varied timeframes for updates, including 14 days, 60 days, 90 days, 6 months, or every year. In addition, some commenters recommended different update requirements for different information, such as more frequent updates for emergency contact information. Another commenter suggests that FDA require re-registration annually, instead of requiring updates.

(Response) In response to these comments, FDA has decided to change the period for an owner, operator, or agent in charge of a facility to update its registration to 60 days for any change to any of the required registration elements previously submitted. This timeframe strikes a balance between the commenters' concern and FDA's requirement under the Bioterrorism Act to keep our database current. Because registration information will be used both to evaluate prior notice submissions and to notify affected facilities in the event of a food-related emergency, it is advantageous both to FDA and to registrants that the agency's database be current.

In terms of the burden of updating food categories, as noted previously, a facility has the option of specifying the "most/all human food product category" in the food product category section of the registration (if appropriate to the facility). To alleviate at least in part registrants' burden to provide continuous updates, the interim final rule provides that the emergency contact information need only include an emergency contact phone number, instead of a person's name or other individualized information.

(Comment 138) Some commenters ask for clarification regarding what types of changes to a facility's registration require updates. One commenter asks whether FDA requires an update for temporary plant closures due to weather, fumigation activities, or line changeovers. Another commenter asks whether temporary changes in the general food product categories held or processed at the facility would require an update. Another commenter states that numerous changes to production, product lines, packaging, and establishment names should not require an update.

(Response) The interim final rule requires updates for changes that reflect a modification of a facility's operations, as it relates to the required registration elements. Therefore, for facilities engaged in ongoing operations that temporarily close for the reasons identified in the comment, no update to a facility's registration information is required. However, in considering whether to update temporary changes to registration information, foreign facilities should keep in mind that registration information will be matched with prior notice information, and discrepancies in the two databases may cause FDA or CBP to examine a shipment.

(Comment 139) Several commenters ask FDA to clarify whether an update or a cancellation is warranted if a facility changes ownership or goes through a merger or acquisition. One commenter indicates that when a change in ownership occurs, the authority to make changes to a registration would also likely change. Some commenters argue that a registered facility should be able to keep its registration number through change in ownership or management. At some point in the process of ownership or management change, the former registrant should no longer be authorized to make a change, and certainly could not represent the information of the new owner.

(Response) Although the proposed rule and draft Form 3537 provided for information regarding changes in owner, operator, or agent in charge to be submitted as updates to the registration, neither the proposed rule nor the form provided for such information to be submitted in the initial registration. As noted in the response to comment 96, the interim final rule at § 1.232(c) and Form 3537 have been revised and require that the name of the owner, operator, and agent in charge to be provided as part of the initial registration.

FDA believes, however, that a change in the owner of a facility triggers a new registration, because under the Bioterrorism Act, the registration information is confidential, and the former owner should not know the registration number assigned to the new owner. Moreover, the Bioterrorism Act requires the owner, operator or agent-in-charge to register the facility. Therefore, FDA is deleting the reference to "owner," in "Owner, operator, or agent in charge change" in section 1b of the registration form. If a facility comes under new ownership, the former owner must cancel the old registration in accordance with § 1.235, and the new owner must submit a new registration for the facility in accordance with §§ 1.230 and 1.231. FDA realizes, however, that some old owners may not cancel their registrations. Therefore, in new section 1c of the form, FDA is requiring new owners to check the box "Are you a new owner of a previously registered facility?" and asking new owners to provide the previous owner's name and registration number, if known. If the new owner does not provide the old registration number, FDA will keep the old registration in its database until it independently affirms that the facility is under new ownership. If the new owner provides the old registration number, FDA will send a notification to the old owner seeking confirmation, and will cancel the old registration upon receipt of confirmation, or FDA's independent confirmation of a change in ownership, whichever occurs first. If the former owner notifies FDA within this 60-day period that it has not sold the facility, FDA will contact both owners to remedy the discrepancy.

(Comment 140) Some commenters state that FDA should require facilities that go out of business to submit a notice of cancellation of their registration as soon as possible, or no later than 14 days after the business operations cease. These commenters state that updated information on a facility's business status would help ensure that if there is a bioterrorism event, FDA is not wasting resources by attempting to contact facilities that no longer exist or are out of business. The commenters state that requiring cancellation of registration would also help ensure that an organization or group cannot threaten the American food supply by using a former business' registration as a means to import into or distribute within the United States tainted products. One commenter urges FDA to consider ways to purge obsolete registrations from its database because businesses that cease operations would not necessarily cancel their registrations.

(Response) Because a registration cancellation is essentially an update of registration information, FDA believes the time period for canceling a registration should be 60 days, the same as that for updates. Regarding purging its database of obsolete registrations, FDA will cancel a registration if it independently verifies that the registrant has gone out of business or if someone has registered a facility that does not exist. If FDA cancels a facility's registration that has gone out of business, FDA will mail a confirmation of the cancellation to the facility.

(Comment 141) One commenter believes that the amount of information FDA proposes to require in the cancellation notice is excessive. The commenter requests that FDA require only the facility's registration number, the name and contact information for the person submitting the cancellation, and the certification statement for a cancellation.

(Response) The only elements the cancellation form includes in addition to those listed in the commenter's request is the facility's PIN number, whether the facility is domestic or foreign, and the facility's name and address. FDA believes the information in the cancellation form is necessary for FDA to verify that it is canceling the correct registration, because canceling the wrong facility's registration could have unintended consequences.

(Comment 142) Several commenters request that FDA clarify the penalty for failure to update a registration within the required timeframe. The commenters indicate that absent a coercive element, the value of this tool is subject to failure.

(Response) The Bioterrorism Act requires owners, operators, and agents in charge of facilities to register with FDA and also requires FDA to keep its registration database current. Accordingly, § 1.241 states that failure to submit a timely update to required registration elements is a prohibited act, because obsolete information may hinder FDA's efforts in responding to a threatened or actual bioterrorist act or other food-related emergency. The FD&C Act provides for civil and criminal sanctions for those who commit a prohibited act.

(Comment 143) Several commenters urge FDA to not require facilities to update optional information previously submitted (such as the type of activities conducted at the facility, as well as the optional food categories or type of storage). One commenter requests that FDA state in the interim final rule that the failure to update optional information will not subject the registrant to penalties under the act or FDA's implementing regulations. The commenter states that the requirement to update previously submitted information in optional fields "could have a chilling effect on the willingness of companies to provide the optional information in the first place."

(Response) FDA has considered these comments and has revised § 1.241(a) to delete the reference to optional information. The Bioterrorism Act requires that a registrant notify the Secretary in a timely manner of changes to information submitted in a registration (21 U.S.C. 350d(a)(2)). FDA believes that it is clear that the failure to update required information is a prohibited act (21 U.S.C. 331(dd)). The agency is concerned, however, that extending the prohibited act to failure to update optional information will create a disincentive to registrants to provide the optional information contrary to the interests of the agency and registered facilities. Accordingly, FDA has revised § 1.234(a) to provide that only required information must be updated and § 1.241(a) to provide that failure to update required information is a prohibited act.

Although the interim final rule will not make the failure to update optional information a prohibited act, FDA emphasizes that updates of registration information are very important, because obsolete information may hinder FDA's efforts in responding to a bioterrorist act or other food-related emergency. Accordingly, the agency strongly encourages the owner, operator, or agent in charge of each registered facility that provides FDA with optional information in a registration to promptly update such information when it changes. In addition, FDA encourages the owners, operators, and agents in charge of registered facilities to update their registrations to delete optional information that is obsolete.

(Comment 144) One commenter asks FDA to clarify whether FDA will keep updated information on file as well as the reason for the change. The commenter states that "[i]n order to track activities of all sides, if that is what the intended purpose is, a "tracking and activity mechanism" would have to be in place. This would require, however, that the agency has trained personnel that are able to spot unreasonable irregularities and not go on a "witch hunt."

(Response) FDA intends to keep updated information on file. FDA inspectors will compare a facility's registration information with the information they obtain during the inspection of a registered facility. The failure of an owner, operator, or agent in charge to register a facility is a prohibited act, as is both the failure to update outdated required registration elements within 60 days of the change, and the failure to cancel a registration within 60 days if changes at the facility warrant cancellation.

(Comment 145) One commenter requests that FDA's electronic registration system be designed to permit a facility to use the original information screen as the starting point for updating or canceling the registration.

(Response) FDA advises that when a registrant accesses the electronic system to update the registration for a particular facility, the system is designed to provide the existing registration. Therefore, the registrant will only need to edit the sections of the registration that need to be updated.

(Comment 146) One commenter asks FDA to send an automatic e-mail reminder to registrants on a yearly basis to remind them to update their registrations.

(Response) As resources allow, FDA will to send periodic notices to registrants, reminding them to update, as necessary, information in their registration.

In addition to the changes noted previously, on its own initiative FDA has made several editorial changes to this section for the purpose of clarity. FDA has also added section § 1.235 *"How and when do you cancel your facility's registration information?"* This new section contains information that was previously in section § 1.234, "How and when do you update your registration information?" FDA has added this section for the purpose of clarity.

### *K. Comments on "What Other Registration Requirements Apply?" (Proposed § 1.240)*

(Comment 147) Many commenters state that they have already registered with other U.S. Government agencies, as well as foreign governments and States. The commenters state that requiring these facilities to be registered with FDA as well is a burden. The commenters also argue that FDA should coordinate with other agencies and governments to avoid duplication.

(Response) The interim final rule maintains the registration requirement as proposed, for several reasons. For all facilities that FDA determines are subject to section 305 of the Bioterrorism Act, we believe that the statute requires the owner, operator, or agent in charge of those facilities to submit a registration to FDA. Obtaining existing registration information from other agencies would not guarantee that FDA has the information for all facilities required by the Bioterrorism Act's registration requirement because there is wide variation in the purposes and information required by other registration or permitting systems. For example, the laws administered by the Alcohol and Tobacco Tax and Trade Bureau (TTB) do not require foreign alcohol beverage producers to obtain permits, unless they are also engaged in the business of importing alcohol beverages into the United States. In addition, the information provided by alcohol beverage permittees to TTB is not entirely identical to the information that must be provided by facilities to FDA in accordance with the provisions of this interim final rule.

Although it is theoretically possible for FDA to obtain information from other agencies, the stringent timeframes for issuing this interim final rule do not provide FDA adequate time to reconcile the different information required or to work with the other agencies to have them amend their existing requirements to capture all the information FDA needs. We would also need to work with other agencies to ensure the confidentiality of nonpublic registration information under relevant information disclosure laws (*e.g.*, §§ 20.85 and 20.88 (21 CFR 20.85 (Federal agencies), 20.88 (State agencies), and 20.89 (foreign governments))). Because the purpose of registration with FDA is to assist FDA in responding to threatened or actual bioterrorist incidents or other food-related emergencies, FDA must have the registration information readily accessible. If FDA has to coordinate with other agencies or governments to obtain from them the information necessary to respond to such an emergency, FDA may be prevented from responding to the emergency in a timely manner.

Regarding facilities that may be registered with FDA under existing regulations (*e.g.*, low acid canned food), like the registrations of other agencies, these FDA registrations also do not contain all of the information required in this interim final rule, because the purposes of the regulations differ. FDA will continue to look for ways to minimize duplicative registrations in the future, but could not do so in the timeframe provided for developing this rule. On its own initiative, FDA has made several editorial changes to this section for the purpose of clarity.

## *L. Comments on "What Happens if You Fail to Register?" (Proposed § 1.241)*

### 1. Revocation of Registration

(Comment 148) Several commenters submitted comments in response to FDA's request for comments regarding the circumstances under which a firm's registration should be cancelled and/or considered null and void. One commenter states that neither the FD&C Act nor the Bioterrorism Act authorize revocation of registration. One commenter states that because the Bioterrorism Act's Rule of Construction notes that registration is not a licensing or approval process, FDA cannot extend or withdraw approval. This commenter suggests that a registration may only be vacated through the ordinary criminal process to prove fraud if the registration is made fraudulently. Another commenter states that revocation should be reserved for extreme situations of bioterrorism, intentional contamination, and other criminal activity, and should afford a facility an opportunity for an adjudicative hearing, since revocation effectively prohibits a facility from manufacturing/processing, packing, or holding food for consumption in the United States. A foreign commenter suggests that any revocation of registration should occur only after a process that involves foreign authorities within the same locale as the foreign facility, in consultation with the U.S. Embassy. One commenter requests a clear delineation of the circumstances warranting registration suspension, suggesting that it should extend only to the parameters of the Bioterrorism Act. Another commenter suggests that revocation of registration should only be considered for facilities that have ceased trading, or no longer handle food products. A commenter suggests that FDA clarify the distinction between suspension and revocation: Revocation should only be for facilities that have gone out of business or that have submitted false information. FDA should employ the less drastic penalty of suspension for submission of inaccurate, incomplete, or untimely information. The commenter suggests that FDA notify a facility that failure to submit all of the required information within 15 days will result in suspension. Registration could be reinstated when this missing information is provided.

(Response) FDA does not agree that it should have a category of registrations that have been suspended. A facility either is registered by submitting a registration to FDA or it is not registered. Regarding registration cancellation, FDA has determined that the only circumstances under which it will cancel a registration are if the agency independently verifies that a facility has gone out of business or is under a new ownership, or if FDA establishes that the submitted registration is for a facility that does not exist. FDA has clarified this in the interim final rule by adding the following paragraph to § 1.241:

> (b) FDA will cancel a registration if the agency independently verifies that the facility is no longer in business or has changed owners and the owner, operator, or agent in charge of the facility fails to cancel the registration, or if FDA determines that the registration is for a facility that does not exist. If FDA cancels a facility's registration, FDA will mail a confirmation of the cancellation to the facility at the address provided in the facility's registration.

As mentioned previously, a facility under new ownership is required to submit a new registration.

(Comment 149) One commenter asks that FDA not recall products already distributed into commerce if it determines after confirmation of the registration that the registration contains inadvertent errors.

(Response) Neither the proposed rule nor the interim final rule provide for the recall of food distributed into commerce because FDA subsequently determines that there are inaccuracies in the registration of a facility at which the food was manufactured/processed, packed, or held.

### 2. Prohibited Act for Domestic or Foreign Facility

(Comment 150) Several commenters request clarification on the penalties that may be imposed for failure to register and who may be subject to these penalties. One commenter states that failure to register may be a simple omission rather than a terrorist act; therefore, FDA should apply criminal actions according to the consequences and characteristics of the act. Another commenter asks FDA to clarify that although failure to register is a prohibited act, importing food from an unregistered facility is not. A commenter asks FDA to clarify that failure to register, although a prohibited act, will not result in debarment. This commenter asks FDA to maintain a public list of debarred individuals and firms, and make this list available on the Internet.

(Response) FDA agrees that § 1.241 was likely confusing and has clarified this provision in the interim final rule. Specifically, the interim final rule consolidates the two provisions relating to the prohibited act of failing to register (21 U.S.C. 331(dd)) and makes clear that the causing of a prohibited act and being responsible for the commission of a prohibited act are both subject to sanction under the act (21 U.S.C. 331). Thus, under the interim final rule, the owner, operator, or agent-in-charge of any facility that manufactures/processes, packs, or holds food for consumption in the United States, who is required to register the facility with FDA but fails to do so, commits a prohibited act under section 301 of the FD&C Act. Similarly, the owner, operator, or agent in charge that fails to update mandatory information or cancel a registration within 60 days (if changes at the facility require an update) commits a prohibited act.

FDA has also clarified that the disposition of a food from an unregistered foreign facility when offered for import into the United States will be governed by subpart I of this part (Prior Notice of Imported Food). FDA is publishing elsewhere in this issue of the **Federal Register** a interim final rule implementing section 307 of the Bioterrorism Act, which requires, among other things, an importer to submit to FDA prior notice of a shipment of food that is offered for import. As discussed in response to comment 162, FDA addresses the consequences for importation of food for failure to register in the interim final rule implementing prior notice published elsewhere in this issue of the **Federal Register**.

With regard to the comment on debarments, § 1.241 merely relates the grounds for debarment specified in section 306(b)(3)(A) of the FD&C Act. The agency's implementation of the details of the debarment provisions of the Bioterrorism Act are outside the scope of this interim final rule.

### 3. Food Held at the Port

(Comment 151) Many commenters express concerns about the custody and responsibility for products placed under hold. Several commenters ask who is responsible for costs associated with food held at the port. One commenter asks FDA to clarify that any party in the commercial import process, including the shipper, could be responsible for arranging the bonded hold, and that such arrangements are not FDA's responsibility. A commenter requests that FDA be responsible for any costs incurred from mistakes made in enforcement of the rule that results in the holding of imported food. One commenter recommends that a clear chain of custody and fiduciary responsibility must be established for products placed on hold. One commenter requests that FDA and Customs issue guidance on holding food before December 12, 2003.

(Response) In proposed § 1.241, we described the consequences of failure to register when food is imported or offered for import from a foreign facility that is required to register under section 305 of the Bioterrorism Act. At the same time, we included in the proposed rule implementing the prior notice requirements of section 307 of the Bioterrorism Act, a provision requiring the registration number of certain facilities to be provided as part of the required prior notice information. In the prior notice proposal, we also discussed the consequences of failure to provide required information, including required registration information, when importing food. We believe that including consequences of failing to register for foreign facilities in two different regulations may be confusing. Therefore, we have revised § 1.241 to include simply a cross reference to subpart I (Prior Notice of Imported Food), which sets out how food imported or offered for import from facilities not registered as required will be handled. Thus, we have deleted § 1.241(e) through (h). Although we no longer have provisions regarding imported food in this interim final rule, we are addressing the comments we received.

With regard to this comment, before the enactment of the Bioterrorism Act, FDA's role was to make admissibility decisions as to whether food imported or offered for import into the United States should be refused admission under section 801(a) of the FD&C Act. Any storage and transportation costs associated with FDA's refusal process were borne by the relevant private parties according to their contractual agreements. Nothing in the Bioterrorism Act changes who bears the costs related to food that may not be admitted into the United States. Although § 1.241(f) has been removed from this interim final rule, the prior notice interim final rule states that neither FDA nor CBP are liable for transportation, storage, or other expenses. The proposed registration rule and the proposed prior notice rule provided for costs to be borne by the owner, purchaser, importer, or consignee. FDA has reconsidered and believes that it would not be appropriate to specify which parties are responsible for costs as this is a commercial rather than a regulatory matter. Accordingly, the interim final prior notice rule merely provides that FDA or CBP is not liable for the costs.

(Comment 152) Several commenters request that FDA ensure that appropriate and sufficient storage facilities (including climate controlled storage) exist before the Bioterrorism Act is enforced and that FDA release the food immediately once relevant facilities register. One commenter requests that FDA not hold food based on simple problems or errors in registration, such as misspelling. One commenter asks if the "secure location" must be a Customs bonded facility. Another commenter asks FDA to clarify the procedure it will follow to notify a foreign facility when its products have been held at the U.S. port because of failure to register. A commenter asks FDA to permit prompt registration, ideally electronic, when failure to register is discovered at the port of arrival. A commenter argues that if a shipment appears likely to be held, the exporter should have the option of taking it back or sending it to another country. This commenter argues that if FDA delays a shipment too long for administrative reasons, FDA should provide compensation. Another commenter states that the proposed regulations should be amended to specifically provide for release of compliant articles mixed with noncompliant articles. This commenter argues that FDA should not hold compliant articles while it is waiting for registration of the facilities that are associated with the noncompliant articles.

(Response) As stated previously, a facility may register either electronically (the preferred and fastest method) by mail (using paper or CD–ROM), or by fax. A facility that is registered electronically will receive its registration number almost instantaneously. FDA will process registrations received by mail or fax in the order received. It is the responsibility of the owner, operator, or agent in charge of each facility subject to the requirements of this rule to register before December 12, 2003, and before food from the facility is imported or offered for import into the United States. The Bioterrorism Act prohibits food from an unregistered foreign facility from being delivered for distribution in the United States.

As explained in more detail in the preamble to the interim final prior notice rule, the electronic systems for submission of prior notice will not provide confirmation that prior notice has been accepted by FDA for review unless the required registration information is complete and facially correct. Thus, the transmitter of the prior notice may be informed when there is a problem with the registration numbers.

In addition, with regard to whether FDA will notify the foreign facility that its food is being held for failure to register, we intend that FDA or CBP will notify the carrier of the food that the food is being placed under hold. Also, if a shipment includes both compliant and noncompliant articles of food, segregation will be allowed as provided for in the prior notice interim final rule.

If a facility is not registered and discovers this fact at the port, the owner, operator, or agent in charge must register the facility with FDA if they wish the food to be distributed in the United States. FDA strongly encourages electronic registration, as that will be the fastest method. FDA will continue to process registrations submitted via other means in the order received. To do otherwise would be unfair to the other registrants who have submitted their registrations to FDA as required by this interim final rule ahead of the facility whose food is at the port, particularly since many of those facilities also will be importing or offering for import food into the United States.

FDA agrees that appropriate storage and holding conditions must be considered. This means, for example, that if the article of food arrives in frozen condition and has been transported under frozen conditions, the facility used for holding the product must provide adequate frozen conditions.

(Comment 153) One commenter expresses concern that "the entire burden of proof lies with the facility" regarding FDA's determination to not allow food to enter the United States if "registration has [not] been completed." The commenter states that "this may in our view be problematic, especially in the case of registration by regular mail."

(Response) Registered facilities will receive their registration numbers as confirmation of registration with FDA. For a registration submitted electronically, a facility will receive its registration number immediately following completion of the registration process. For registrations submitted by mail, CD–ROM, or fax, FDA considers a facility registered once FDA enters the facility's registration data into the registration system and the system generates a registration number. This means that FDA may consider a facility registered before the facility receives its registration number and confirmation. To ensure that facilities are registered as expeditiously as possible, FDA encourages facilities to register electronically, or if registering by mail, CD–ROM, or fax, to submit the registration as soon as possible after publication of this interim final rule.

(Comment 154) One commenter asks FDA to provide a right for parties adversely affected by a refusal of admission to challenge that determination through judicial review.

(Response) As stated in the response to comment 151, the procedures for imported food are set out in the interim final rule on prior notice of imported food published elsewhere in this issue of the **Federal Register**.

(Comment 155) One commenter asks FDA to include in its protocol that FDA uses for holding food at the port of arrival due to a failure of the facility to register a "clear message to consumers that [the] product is being held because of a registration issue and not because the product poses some food safety or security risk." The commenter states that "poor communication could cause consumer alarm and erode consumer confidence."

(Response) This comment does not affect any of the provisions of this interim final rule. Therefore, FDA will consider this comment as it develops its training procedures. In this interim final rule, we have changed the title of § 1.241 to "What are the consequences of failing to register, update, or cancel your registration?"

### *M. Comments on "What Does Assignment of a Registration Number Mean?" (Proposed § 1.242)*

FDA received no comments on this issue. FDA made a minor editorial change to this section for the purpose of clarity.

### *N. Comments on "Is Food Registration Information Available to the Public?" (Proposed § 1.243)*

(Comment 156) One commenter states that FDA should not share registration information with states or other Federal agencies and, if it does, it must ensure that the other agencies and States protect the confidentiality of the information.

(Response) FDA believes that in certain circumstances, it may need to share information derived from its registration database with States or other Federal agencies consistent with FDA's laws and procedures. Any sharing with another Federal agency would be done under § 20.85 which includes confidentiality provisions. Similarly, any sharing with State officials would be under § 20.88 which also includes confidentiality provisions.

(Comment 157) Several commenters request that third parties, particularly importers, should be able to verify that a particular facility is registered.

(Response) As discussed in response to comment 158, FDA's list of registered facilities and registration documents are not subject to disclosure under the Freedom of Information Act (FOIA). In addition, any information derived from the list of facilities or registration documents that would disclose the identity or location of a specific registered person also is not subject to disclosure under FOIA. However, under the interim final rule on prior notice of imported food published elsewhere in this issue of the **Federal Register**, the prior notice must include the certain registration numbers. Therefore, the submitter of the prior notice must obtain that information from the facility.

(Comment 158) Some commenters suggest that FDA expand the protection from disclosure specified by the Bioterrorism Act to all information derived from registration documents that has not been previously disclosed to the public.

(Response) Section 305 of the Bioterrorism Act states that FDA's list of registered facilities and registration documents FDA receives under the rule are not subject to disclosure under FOIA. Furthermore, section 305 provides that any information derived from the list of facilities or registration documents that would disclose the identity or location of a specific registered person is not to be subject to disclosure under FOIA. If the information derived from registration documents is not exempt from disclosure by FOIA itself, the Bioterrorism Act, or another statute, FDA does not believe that the information is protected from public disclosure.

We realized that the proposed rule may been confusing with regard to the information that is not subject to disclosure. Therefore, we have revised the interim final rule to make it clear. Also, we have made a conforming change to 21 CFR 20.100(c) to add "Registration of food facilities, in § 1.243 of this chapter."

(Comment 159) One commenter asks FDA to require facilities to include their registration numbers on their finished food packaging, to assist in traceback efforts.

(Response) FDA declines at this time to require facilities to display their registration numbers on the food label. FDA believes that it will be able to conduct appropriate traceback efforts using the information presently required on the food label in conjunction with the database of registration information. Moreover, FDA believes it would not be feasible to require manufacturers/processors to place registration numbers on their food labels prior to the

December 12, 2003, deadline for registration.

(Comment 160) One commenter requests that FDA provide a facility's registration confirmation in the form of a certificate or card that facilities can display so inspectors can see if the facility is in compliance with the registration requirement.

(Response) FDA will send facilities a confirmation when FDA receives their complete registration. Facilities may use this confirmation to show their registration status.

## IV. Analysis of Economic Impacts

### *A. Final Regulatory Impact Analysis*

FDA has examined the economic implications of this interim final rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. FDA has determined that this interim final rule is a significant regulatory action as defined by Executive Order 12866.

This Final Regulatory Impact Analysis reflects changes made in the regulation from the proposed rule to the interim final rule, as well as changes in estimates in response to comments. It also includes responses to comments on the Preliminary Regulatory Impact Analysis (PRIA) (*see* 68 FR 5387 to 5413). Where there were no changes in the estimates provided in the PRIA, the estimates are summarized here. Interested persons are directed to the text of the PRIA for a fuller explanation of the estimates about which there were no controversy or changes. As noted in section III of this document, FDA received approximately 350 submissions in response to the proposed rule, which raised almost 200 issues. We continue with the discussion of the comments and FDA's responses to those comments using the same presentation as in section III, focusing here on the comments FDA received on the PRIA. Accordingly, the word "Comment" again will appear in parenthesis before the description of the comment, and the word "Response" will appear in parenthesis before FDA's response. As in section III, FDA has numbered each comment to make it easier to identify a particular comment. The number assigned to each comment below continues in sequence from section III and is purely for organizational purposes; it does not signify the comment's value or importance or the order in which it was submitted.

#### 1. Description of Interim Final Rule

This interim final rule requires the registration of facilities that manufacture/process, pack, or hold food intended for consumption in the United States. In the event of an actual or threatened bioterrorist attack on the U.S. food supply or other food-related emergency, this information will help FDA and other authorities determine the source and cause of the event, and communicate with potentially affected facilities.

#### 2. General Comments

(Comment 161) FDA received a number of comments that asserted that the costs or benefits of the proposed rule were incorrectly estimated.

(Response) If the comment asserted costs or benefits were incorrectly estimated without specifying which costs or benefits, there was not sufficient information for FDA to respond to that comment. However, comments that specified which costs or benefits were incorrectly estimated are addressed in later sections of this analysis.

(Comment 162) FDA received a comment that asked what a line entry is.

(Response) A line entry is a term used by FDA's automated system for imports, the OASIS reporting system (Ref. 2). A "line entry" refers to a line on an invoice that reflects a certain article specific to a manufacturer or packaging: *e.g.*, 100 cases containing 48 6-ounce cans of tuna.

#### 3. Number of Facilities Affected

In the PRIA, FDA estimated the number of affected establishments by counting facilities, not firms. A firm may be composed of many facilities under the same ownership. The changes in behavior needed to comply with this regulation may take place at the firm or facility level. However, because facilities must be registered, and for ease of analysis, FDA focused on the facility as the unit of analysis. For a count of domestic facilities, FDA used the 2000 County Business Patterns (Ref. 3), 1999 Nonemployer Statistics (Ref. 4), the FDA Field Accomplishments and Compliance Tracking System (Ref. 5), the Census of Agriculture (Ref. 6), 1997 Economic Census of Transportation and Warehousing (Ref. 7), and information from direct selling marketing trade associations (Refs. 8 and 9). The analysis relies primarily on the Nonemployer Statistics for its count of very small businesses (no paid employees) that may or may not be home-based. The Nonemployer Statistics' primary source is administrative data from Internal Revenue Service records. This may overcount the number of facilities required to register, as some of the facilities may be exempt on the basis of being an individual's private residence. Additional small facilities that are direct marketers are counted using data from direct marketing trade associations. FDA counted the number of facilities in the U.S. outlying islands of Puerto Rico, Guam, Virgin Islands, and Northern Mariana Islands using Economic Censuses available from the U.S. Census Bureau (Refs. 10, 11, 12, and 13). To count the number of foreign manufacturers/processors, FDA used FDA's OASIS database (Ref. 2). As noted, OASIS is an automated FDA system for processing and making admissibility determinations for shipments of foreign-origin FDA-regulated products seeking to enter domestic commerce. FDA also estimated that 16 percent of the foreign manufacturers/processors would stop exporting to the United States because of the cost of complying with this regulation. Also counted were foreign holders of products to be exported to the United States. FDA did not have data on the number of foreign holders and so assumed that they were equal to the number of consignees, brokers, and importers of food products in the United States. Foreign de minimis processors and packagers were not included in the OASIS count and so were estimated using U.S. data on the number of packer/repackers. Tables 3 through 7 of this document present the counts of domestic and foreign facilities.

(Comment 163) FDA received a number of comments stating that the number of affected facilities had been underestimated.

(Response) Many of these comments did not provide any specific information about the categories of facilities that were undercounted or not included or information about the correct number of facilities. Without this additional information, FDA has no basis for responding to these comments. However, FDA responds in the number of facilities section to comments that provided additional information about the category or number of undercounted facilities.

(Comment 164) A comment suggests that FDA failed to include very small facilities in its count of affected entities.

(Response) FDA disagrees with this comment. FDA included in its count more than 68,000 very small facilities from the Nonemployer Statistics published by the U.S. Census Bureau. These are all facilities that are run by a single person with no paid employees. Additionally, the majority of the facilities counted from the County Business Patterns published by the U.S. Census Bureau are considered small businesses under the Small Business Administration definition.

(Comment 165) FDA received a comment that the number of foreign holders may be much larger than the number of U.S. consignees and brokers, because a single broker may use multiple warehouses.

(Response) FDA agrees that a single broker may use multiple warehouses, but FDA also believes the converse is true, that a single warehouse may be used by multiple brokers. This comment did not provide an alternative estimate of the number of foreign holders. Therefore, FDA has not altered its estimate of the number of foreign holders.

(Comment 166) FDA received many comments that the count of facilities failed to include transportation company facilities that hold food temporarily, while the product is in transit. Comments mention specific types of facilities, such as rail yards, container yards, LTL truck terminals, FTL truck terminals, Customs bonded Container Freight Stations, air cargo handling agents, and air, ocean, and truck bulk cargo terminals. FDA also received comments that the PRIA fails to include mobile facilities, such as river barges that pick up cargo in one location and travel to an alternate location where the barge may store product in its hull for several months prior to delivering the shipment to the purchaser.

(Response) Transport vehicles are not facilities required to register with FDA, if they hold food only in the usual course of business as carriers. However, facilities that unpack and reload food cargo from road, rail, water, or air transportation or hold food cargo in a facility, or that hold food cargo not only in the usual course of business as a carrier, are required to register. FDA agrees that not all these facilities were counted in the PRIA.

To count these facilities, FDA used the 1997 Economic Census of Transportation and Warehousing (Ref. 7) from the U.S. Census Bureau. Table 1 shows a count of these facilities. This includes the 1,461 warehouses North American Industry Classification System (NAICS 49312 and 49313) counted in the PRIA. These facilities are subtracted from the count of warehouses (NAICS code 493, all warehousing and storage) when final computations of the number of facilities are made. Including the transportation holding facilities in table 1 minus the warehousing facilities already counted in the PRIA increases the total number of facilities required to register by 33,666 facilities.

Table 1.--Transportation Holding Facilities

| NAICS Code | Type of Facility | No. of Facilities |
|---|---|---|
| 4841103 | General freight trucking with storage, local, full truckload | 542 |
| 4841104 | General freight trucking with storage, local, less than truckload | 373 |
| 484121 | General freight trucking, long distance | 23,111 |
| 4881191 | Airport operation and terminal services | 1,699 |
| 4882101 | Support activities for rail transportation | 816 |
| 4883901 | Other services incidental to water transportation | 640 |
| 4842205 | Specialized trucking with storage, local | 543 |
| 4884904 | Other services incidental to road transportation | 326 |
| 488991 | Packing and crating (in Support activities for transportation | 795 |
| 488999 | Other support activities | 102 |
| 493 | All warehousing and storage | 6,180 |
| | | 35,127 |

(Comment 167) FDA received many comments that FDA underestimates the number of facilities covered by the definition of substances and components of substances that contact food. One comment states that FDA does not include the "upstream" manufacturers that make ingredients and components that go into food packaging and that any facility that manufactures/processes, packs, or holds a material that could become a component of packaging or other food contact article would be required to register. The comment further states that there is no logical conclusion to this chain. Also, some comments assert that FDA did not account for warehouses that hold articles that can migrate to food from food packaging or other articles that contact food.

Another comment states that FDA's count of the number of domestic facilities is overly inclusive if FDA's intention is to include only finished packaging and that the OASIS database used for the count of foreign facilities does not include suppliers of food contact articles.

(Response) Under the interim final rule, manufacturers/processors, packers, and holders of food contact substances as defined in section 409(h)(b) of the FD&C Act are not required to register with FDA. Therefore, it is unnecessary for FDA to respond to the comments asserting the number of these facilities was underestimated. FDA also removes the estimated count of 32,428 facilities in the PRIA from the final analysis.

(Comment 168) One comment states that FDA's count of foreign facilities from OASIS (Ref. 2) did not include manufacturers/processors of articles that contact food and substances that could migrate to food from food packaging.

(Response) FDA agrees with this comment. The count of manufacturer/processors in OASIS (Ref. 2) did include manufacturers of food and food additives, but did not include all manufacturers/processors of substances that could migrate to food from food packaging. However, these facilities are not covered under the interim final rule. Therefore, FDA has not added them to the count of foreign facilities.

(Comment 169) A number of comments states that FDA had underestimated the number of facilities by failing to include individuals that market foods and dietary supplements through direct selling. These individuals often hold food for sale to an intermediary other than the final consumer. Estimates provided by comments were that there are 10 million individuals in the United States and as many as 40,000 direct marketers with a single company. Another comment referred to hundreds of thousands of direct sellers.

(Response) Direct marketers may be required to register if they hold food for distribution to nonconsumers in the United States. However, FDA does not agree that there are 10 million direct marketers in the United States that could potentially be required to register. FDA found estimates of 10 million (Ref. 9) and 12 million (Ref. 8) direct marketers in the United States, but these estimates were of all the direct marketers of both nonfood and food products in the United States. FDA does not have a complete census of the number of marketers of food versus nonfood products. To approximate the percentage of direct marketers selling food, FDA divided the number of direct marketing companies selling food by the number selling all types of products, using data from the directory of companies on the Web site of a large direct selling trade organization (Ref. 8). Of 141 companies in the directory, 7, or 5 percent, market food/beverages. However, most of these direct marketers of food may not be required to register. Direct marketers may be exempt: (1) If their primary function is to sell directly to consumers, or (2) if the establishment is an individual's private residence. FDA assumes that most direct marketers of foods would qualify for one of these exemptions.

To estimate how many direct marketers sell to consumers as their primary function, FDA looked at the type of distributorship. If the marketer has a one or two-person distributorship, FDA assumes that their primary function is to sell to consumers. FDA assumes if a marketer has a multiperson distributorship, they are likely to distribute to other sellers as their primary function. (These are not definitions that FDA will use to determine if selling to consumers is the primary function of a facility; this is merely a method used to provide an estimate for the economic analysis.) According to a large direct selling trade organization (Ref. 8), 2.5 percent of direct salespeople are multidistributorships. These numbers suggest that approximately 12,400 (10 million × .025 × (7/141)) direct marketers of food would be required to register with FDA. This number may be an overestimate because some of these marketers may already have been counted in the CBP (Ref. 3) or Nonemployer Statistics (Ref. 4) or may distribute food from their private individual residence.

(Comment 170) FDA also received comments stating that there were thousands and thousands of wineries in Europe that may not have been included in the estimate of the number of foreign facilities.

(Response) FDA does not agree with this comment. FDA's estimate includes approximately 27,000 European alcohol producers. FDA did not have enough data to separate wineries from other types of alcohol production facilities.

(Comment 171) One comment stated that FDA had failed to count collectors of wild plants. The comment estimates that there are 100,000 individuals that harvest wild plants.

(Response) Only facilities are required to register with FDA; individuals are not required to register. Harvesters of wild plants that manufacture/process, pack, or hold product in facilities outside of an individual's private residence would be required to register the facility with FDA. FDA does not agree that there are 100,000 harvesters that meet these requirements. FDA commissioned a Dietary Supplement Enhanced Establishment Database (DS–EED) in 1999 (Ref. 14). This database gathered data from the American Business Information (now InfoUSA) electronic database, American Herbal Products Association Membership Directory and Resource Guide, Council for Responsible Nutrition Membership Directory, Harris Inc.'s U.S. Manufacturers Database, Hoovers Corporation Infoseek, National Foods Merchandiser '98–99 Retailer Purchasing Guide August 1998, National Products Expo West, Show Directory, March 1998, Official Establishment Inventory, and Thomas Food Industry Register on the Internet. The DS–EED listed 272 ingredient suppliers. The database may have underestimated the number of ingredient suppliers, but only ingredient suppliers that manufacture/process, pack, or hold product in facilities outside an individual's private residence would be required to register the facility with FDA. Some harvesters of wild plants may already be counted in Census databases, and already be included in the count of facilities. Therefore, FDA estimates that there are an additional 272 harvesters/ingredient suppliers for purposes of this analysis.

(Comment 172) Some comments claim that the number of farms that would fall under FDA's definition of a mixed-type facility is much higher than estimated in the PRIA. Under the proposed definition of manufacturing/processing, which included trimming and washing, the comment suggested that most farms wash, cool, or trim outer leaves and so would be required to register.

(Response) Farms are not required to register with FDA. In this interim final rule, FDA defines "farm" as a facility in one general physical location devoted to the growing and harvesting of crops, the raising of animals (including seafood), or both. Washing, trimming of outer leaves of, and cooling produce are considered part of harvesting.

Some facilities located on farms may also manufacture/process, pack or hold food, but not meet the definition for farm and therefore, would be considered mixed-type facilities that are required to register. The farm definition also provides that facilities that pack or hold food, provided that all food used in such activities is grown, raised, or consumed on that farm or another farm under the same ownership are exempt as farms, as are facilities that manipulate food other than washing, trimming outer leaves, or cooling, provided that all food used in such activities is consumed on that farm or another farm under the same ownership. Some facilities located on farms may manufacture/process, pack, or hold food but not meet the definition of farm and therefore, would be considered mixed-type facilities that are required to register. Activities that would be considered manufacturing/processing include cutting, peeling, trimming, washing, waxing, eviscerating, rendering, cooking, baking, freezing, pasteurizing, homogenizing, mixing, formulating, bottling, milling, grinding, extracting juice, distilling, labeling, or packaging. Farms that mix feed would be considered mixed-type facilities if they manufacture/process feed on the farm with ingredients obtained from another source, and the resulting feed is then sold or transferred for final use offsite.

In the PRIA, FDA considered farms to be mixed-type facilities if they washed, cooled, or trimmed outer leaves. FDA agrees that the PRIA count of mixed-type facilities undercounted these facilities. In the interim final rule, farms that wash, cool, or trim outer leaves are not considered mixed-type facilities, and therefore, the count of mixed-type facilities is unchanged from the count in the PRIA.

To estimate the number of facilities that would be considered mixed-type facilities, FDA used the 1997 USDA National Agricultural Statistics Service Census of Agriculture (Ref. 6), and data obtained from various county level Cooperative Extension Service (CES) offices (Ref. 15). FDA provides an estimate of the number of these mixed-type facilities in table 2. The Census of Agriculture provides the total number of farms producing specific commodities. To estimate the number of farms that are mixed-type facilities, FDA used a sample of counties with information from their respective CES offices. CES offices from Clay County, Kansas; Monterey, Sonoma, Marin, and San Diego counties in California; Jackson County, Wisconsin; Gillespie and San Saba counties in Texas; Carroll County, Maryland; and Berks County, Pennsylvania provide data on the percentage of farms producing specific commodities to be considered mixed-type facilities (Ref. 15). FDA assumes that other commodities, including vegetables (non-organic), other fruits, and wheat, plus feed mixing on poultry and other livestock farms are not mixed-type facilities based on CES interviews (Refs. 15 and 1).

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Table 2.--No. of Mixed-Type Facilities

| Mixed-Type Facilities | | | |
|---|---|---|---|
| Type | No. of Facilities | Percent Mixed-Type | No. of Mixed-Type |
| Pig farms (feed mixing) | 46,353 | 1.5% | 695 |
| Cattle (feed mixing) | 785,672 | 1% | 7,857 |
| Poultry (feed mixing) | 36,944 | 1% | 369 |
| Other animal production (feed mixing) | 110,580 | 1% | 1,106 |
| Dairy | 86,022 | 1.1% | 903 |
| Grain, rice, and beans | 462,877 | 1% | 4,629 |
| Apples | 10,872 | 1.5% | 163 |
| Oranges | 9,321 | 1.5% | 140 |
| Peaches | 14,459 | 1.5% | 217 |
| Cherries | 8,423 | 1.5% | 126 |
| Pears | 8,062 | 1.5% | 121 |
| Other fruit | 29,413 | 1.5% | 441 |
| Nuts | 14,500 | 2% | 290 |
| Berries | 6,807 | 1.5% | 102 |
| Grapes | 11,043 | 10.5% | 1,160 |
| Olives | 1,363 | 3.5% | 48 |
| Vegetables and melons | 31,030 | 0.5% | 155 |
| Organic vegetables | 6,206 | 50% | 3,103 |
| Honey | 7,688 | 50% | 3,844 |
| Syrup | 4,850 | 100% | 4,850 |
| Herbs | 1,776 | 10% | 178 |
| Total | | | 30,497 |

Tables 3 through 7 provide detailed counts of facilities as included in the preliminary regulatory impact analysis and as revised under the interim final rule. Tables 3 and 4 provide the number of facilities counted from the CBP and Nonemployer statistics, respectively, these counts were unchanged from the PRIA to the final analysis. Table 5 provides revised counts of domestic facilities from sources other than the CBP and Nonemployer statistics, including several revised counts of facility types based on comments. Table 6 provides a breakdown of the count of foreign manufacturers/processors obtained from OASIS, these estimates did not change from the PRIA to the final analysis. Table 7 provides a summary of the counts of domestic and foreign facilities.

Table 3.--Final Count of Domestic Facilities Required to Register From CBP

| | | PRIA | Revised Count |
|---|---|---|---|
| NAICS Code | Type of Industry | No. of Facilities | No. of Facilities |
| 3111 | Animal food manufacturing | 1,710 | 1,710 |
| 3112 | Grain and oilseed milling | 913 | 913 |
| 3113 | Sugar and confectionery product manufacturing | 1,689 | 1,689 |
| 3114 | Fruit and vegetable preserving and specialty food manufacturing | 1,796 | 1,796 |
| 3115 | Dairy product manufacturing | 1,769 | 1,769 |
| 3117 | Seafood product preparation and packaging | 854 | 854 |
| 3118 | Bakeries and tortilla manufacturing | 10,644 | 10,644 |
| 3119 | Other food manufacturing | 2,994 | 2,994 |
| 3121 | Beverage manufacturing | 2,748 | 2,748 |
| 4224 | Grocery and related product wholesale | 39,721 | 39,721 |
| 4225 | Farm product raw material wholesale | 9,546 | 9,546 |
| 4228 | Beer, wine, distilled alcoholic beverage wholesale | 4,630 | 4,630 |
| 49312 | Refrigerated warehousing and storage | 945 | 945 |
| 49313 | Farm product warehousing and storage | 516 | 516 |
| | | 80,475 | 80,475 |

Table 4.--Final Count of Domestic Facilities Required to Register From Nonemployer Statistics

| | Nonemployer businesses | PRIA | Revised count |
|---|---|---|---|
| NAICS Code | Type of Industry | No. of Facilities | No. of Facilities |
| 3111 | Animal food manufacturing | 642 | 642 |
| 3112 | Grain and oilseed milling | 287 | 287 |
| 3113 | Sugar and confectionery product manufacturing | 1,439 | 1,439 |
| 3114 | Fruit and vegetable preserving and specialty food manufacturing | 2,000 | 2,000 |
| 3115 | Dairy product manufacturing | 594 | 594 |
| 3117 | Seafood product preparation and packaging | 693 | 693 |
| 3118 | Bakeries and tortilla manufacturing | 6,271 | 6,271 |
| 3119 | Other food manufacturing | 4,725 | 4,725 |
| 3121 | Beverage manufacturing | 1,608 | 1,608 |
| 4224 | Grocery and related product wholesale | 32,050 | 32,050 |
| 4225 | Farm product raw material wholesale | 4,795 | 4,795 |
| 4228 | Beer, wine, distilled alcoholic beverage wholesale | 2,578 | 2,578 |
| 4931 | Warehousing and storage | 964 | 964 |
| | | 58,646 | 58,646 |
| | Food contact | 9,778 | 0 |
| | | 68,424 | 58,646 |

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TABLE 5.—REVISED COUNT OF DOMESTIC FACILITIES REQUIRED TO REGISTER OF FACILITIES FROM OTHER SOURCES

| | PRIA | Revised count |
|---|---|---|
| Mixed-type facilities | 30,497 | 30,497 |
| Food contact substances | 22,650 | 0 |
| Transportation holders | | 33,666 |
| Ingredient suppliers | | 272 |
| Direct sales marketers | | 12,400 |
| U.S. outlying islands | | 315 |
| | 53,147 | 77,150 |

TABLE 6.—COUNT OF FOREIGN MANUFACTURERS/PROCESSORS REQUIRED TO REGISTER FROM OASIS

| Type of product | No. of facilities |
|---|---|
| Foods | 110,392 |
| Food additives | 2,979 |
| Color additives | 378 |
| Infant formula | 235 |
| Vitamins | 7,986 |
| Animal feeds | 3,330 |
| Medicated animal foods | 150 |
| | 125,450 |

TABLE 7.—NO. OF AFFECTED FACILITIES

| | |
|---|---|
| Domestic facilities: | |
| CBP | 80,475 |
| Nonemployer statistics | 58,646 |

TABLE 7.—NO. OF AFFECTED FACILITIES—Continued

| | |
|---|---|
| Other sources | 77,150 |
| Total domestic | 216,271 |
| Foreign facilities: | |
| Foreign manufacturers/processors | 125,450 |
| Percent that will stop exporting | 16% |
| Adjusted number of manufacturers/processors | 105,378 |
| Foreign packers and holders | 100,027 |
| Total foreign | 205,405 |
| Total | 421,676 |

4. Costs

a. *Time estimates.*

In the PRIA, FDA anticipated that it would take four steps for a domestic facility to comply with the regulation: (1) The facility becomes aware of the regulation; (2) the facility learns what the requirements are; (3) an administrative worker fills out the form; and (4) the owner, operator, or agent in charge of the facility confirms the submission is correct. FDA also anticipated that facilities with Internet access that research and register online will have lower registration costs than facilities without Internet access. The interim final rule permits the owner, operator, agent in charge, or an individual authorized by the owner, operator, or agent in charge to submit the registration. Although the owner, operator, or agent in charge is not required to make the actual submission, the owner, operator, or agent in charge is still legally responsible for the registration. Therefore, FDA expects that in cases in which the owner, operator, or agent in charge authorizes an individual to submit the registration on its behalf, the owner, operator, or agent in charge will still take time to confirm that the information on the form is correct before it is submitted to FDA by the authorized individual.

FDA anticipated that foreign facilities would follow the same four steps to comply with the regulation as domestic facilities: (1) The facility must become aware of the regulation, (2) the facility learns the requirements, (3) an administrative worker fills out the form, and (4) the owner, operator, or agent in charge of the facility or the U.S. agent authorized by a foreign facility confirms the submission is correct. In addition, foreign facilities could have fifth and sixth steps to find and then hire a U.S. agent. To estimate the cost of registration for foreign facilities, FDA assumed that they would incur the same per facility costs as domestic facilities, plus additional costs. Similar to domestic facilities, FDA estimated that facilities that research and register electronically would incur lower costs than facilities that do not. Tables 9 through 13 of this document summarize the costs in the PRIA and the revised costs for the interim final rule. Similar to domestic facilities, the interim final rule permits the owner, operator, agent in charge of a foreign facility, or an individual authorized by the owner, operator, or agent in charge to submit the registration. While the owner, operator, or agent in charge is not required to make the actual submission, the owner, operator, or agent in charge is still legally responsible for the registration. Therefore, FDA expects that in cases in which the owner, operator, or agent in charge authorizes an individual to submit the registration on its behalf, the owner, operator, or agent in charge will still take time to confirm that the information in the form is correct before it is submitted to FDA by the authorized individual.

(Comment 173) A number of comments stated that FDA underestimated the time necessary to comply with the proposed rule. One comment provided an estimate of 40 hours to read the proposed rule, submit comments to FDA, implement any final rule internally, and verify registrations of business partners. With 40 percent of these hours managerial time and 60 percent administrative time, the approximate cost was $1,500. The commenter also estimated that additional research for any final rule would require another 4 hours. Another comment estimated that the initial registration would take 3 hours, that managerial expertise would be necessary to gather the information for the registration, and that it would take a manager more than 15 minutes to fill out the form.

Another comment stated that a manager or lead counsel would be responsible for reviewing any final rule and formulating a plan for implementation. This comment estimated that this process would take 10 hours of a manager's time at a cost of $567.40, in addition to 1 hour of an administrative assistant's time. This comment also suggested legal counsel may review the regulation for 5 hours at a total cost of $1,500. Finally, another comment stated it would take 20 hours of staff time to read, comprehend, gather the necessary data, and complete the form. All of the estimates provided in these comments were for facilities with Internet access and workers fluent in English. Several of the comments suggested that FDA increase the time estimates for facilities without Internet access and without staff fluent in English.

(Response) FDA estimated that domestic facilities with Internet access and fluent in English would need, on average, 2 hours to research the regulation and complete and certify the form; domestic facilities without Internet access would need 3 hours. A facility would require approximately 1 or 2 hours, depending on the availability of the Internet, to find the requirements and determine if the facility is required to register, 15 minutes to categorize products and enter them in the appropriate food product categories, 30 minutes to find the remaining registration information and enter it onto the form, and 15 minutes for confirming all the registration information is correct. This estimate is on a per facility, not a per firm, basis. Also, this estimate is approximate; some facilities may require more or less time. FDA anticipates and estimated in the PRIA that firms with multiple facilities will spend 2 hours per facility, if Internet is available, researching and submitting registration information. The facility, or the firm on behalf of the facility, is required to enter the registration data; however, the facility, firm, or an industry or trade group may research the regulation. Firms with many facilities or industry groups representing hundreds or thousands of facilities submitted all of the comments listed previously.

In the PRIA, a large firm composed of 1,000 facilities would spend 2,000 hours researching and registering all its facilities. Given the estimates provided by the comments, this estimate is likely an overestimate. FDA expects that firms composed of many facilities will have lower per facility registration costs than single-facility firms. Multifacility firms will learn from their experience gained while registering their first facility and will be more efficient at registering additional facilities. Also, the registration system has built-in features that will allow common information to be transferred easily from one facility to another within the same firm. FDA was not able to estimate the reduction in time to register for these multifacility firms on a per facility basis, and so retains its original estimates. However, for this reason, FDA's time estimates are likely overestimates for multifacility firms.

FDA does not anticipate that small facilities will read the **Federal Register**. Instead, they will learn of their obligation to register from trade groups, the press, or FDA outreach efforts, then go to the registration Web site and using the information provided at the Web site, including the interactive features of the registration system, complete and submit their registration. The time estimates included in the economic analysis represent an average facility time estimate across small, medium, and large facilities, and thus, for some individual facilities, the average time estimate will be too high and for some it will be too low. Therefore, FDA did not alter its estimates of the time to complete the registration process.

FDA was persuaded by the comments that managerial staff, rather than administrative staff, would do any necessary research. FDA has re-estimated the analysis using managerial time for researching and administrative time for entering the registration data. Several comments suggested that FDA underestimated the managerial wage, one giving an alternative wage rate of $75 per hour. In the PRIA, FDA used the Bureau of Labor Statistics estimate from the National Compensation Survey (Ref. 16), doubled to include overhead costs. This estimate is an average across many facilities. The higher wage estimate provided was from a very large firm with over 1,000 facilities that FDA would anticipate would have higher wages than most facilities. Therefore FDA did not change its estimate of the average managerial wage.

FDA did not receive any specific estimates of the additional time to register for facilities that lack Internet access and staff who do not speak English. Therefore, because FDA has not increased the base time for registration and has no new information to increase the additional time for foreign language translation or mail submissions, FDA has not increased its estimate of time costs for facilities without Internet access and staff who do not speak English.

(Comment 174) One comment suggested that FDA ignores the effort that will be required of large companies to identify all of the manufacturing and holding facilities covered by the registration requirement. The comment stated that one large supplier might have as many as 1,000 facilities that would have to register.

(Response) FDA included in its cost estimate one hour of research time for each facility to learn about the registration requirements, including whether it needs to be registered. This time may not be used by each facility, but by the firm that registers all its facilities. Multifacility firms are likely to require less time on a per-facility basis than FDA estimates. For a firm with 1,000 facilities, the PRIA estimated the firm would spend 1,000 hours to learn about the registration requirements, which is probably an overestimate of the time required by the firm, as a large, multifacility firm should learn from experience and become more efficient at registering additional facilities.

b. *Other costs.*

(Comment 175) Many commenters were concerned about potential port delays arising from FDA's failure to process registrations in a timely manner, facilities not being aware of the registration requirements prior to shipping food to the United States, or the receiver of the shipment not being aware that the foreign facility is not registered. Commenters mentioned costs associated with port delays including the lost value of perishable goods, storage costs, and the need for larger inventories for domestic facilities that receive imports.

(Response) FDA considered qualitatively in the PRIA potential costs associated with port delays due to foreign facilities not being aware of the registration requirement until their shipment reaches the port. This included costs such as lost value of perishables, storage costs, and transaction costs. Commenters did not provide any quantitative data about the size of these costs. Therefore, FDA has not changed its estimate of port delay costs.

(Comment 176) FDA received a number of comments that FDA underestimated the cost of the proposed rule, because it failed to include time for facilities to write and submit comments.

(Response) The function of the Regulatory Impact Analysis is to measure the costs and benefits of the requirements of the rule. Submitting comments is part of the rulemaking process, not a requirement of the rule. Therefore, FDA did not include in the PRIA costs associated with commenting on the proposed rule.

(Comment 177) FDA received comments stating that registration would require changes in business activities to prevent comingling of product or coding on product to reflect where it was manufactured/processed, packed and held.

(Response) FDA disagrees with this comment. The interim final rule requires all facilities that manufacture/process, pack, or hold food for consumption in the United States to register with FDA. However, the interim final rule does not require any additional labeling of food or restriction of comingling of product.

(Comment 178) FDA received comments that FDA failed to include the cost to facilities of confirming that trading partners are registered.

(Response) FDA did not explicitly include this cost because confirming registrations of trading partners is not a requirement of the interim final rule. However, FDA did include higher costs for foreign facilities to learn about the interim final rule and comply with the requirements, and this includes the higher transaction costs for foreign trading partners. These costs may be borne in part by domestic facilities that inform foreign facilities of the requirement to register.

5. Alternative Options

In the PRIA, FDA considered eight different regulatory options. FDA received many comments that suggested additional options. Suggestions included accepting multiple submissions on a CD–ROM, deleting the requirement to include product categories, different requirements for time allowed to update registrations, different requirements for the U.S. agent, and using other registration systems to gather information for the FDA facility database.

a. *Accept CD–ROM submissions.*

(Comment 179) A number of comments requested that FDA accept multiple registrations on a single submission, such as a specially formatted CD–ROM with the registrations for all the facilities of a single firm. Comments stated that this would lower the burden of registration, particularly for firms with many facilities, and would improve the accuracy of the registrations.

(Response) The interim final rule allows the submission of multiple registrations on a single CD–ROM. The registrant must use a specially formatted CD–ROM with a PDF version of the registration form. The registrant then enters the facilities' registration information on the CD–ROM and mails the CD–ROM to FDA. FDA will process CD–ROM submission, along with paper submissions, in the order received. CD–ROM submissions will be entered electronically into the registration system. This option will result in additional costs to FDA for processing submissions and training staff to process the submissions. FDA estimates it will take an additional 100–150 hours to develop the automated workflow process for CD–ROM submissions, integrate the process into the existing process, and include the process in the testing phases. At a labor cost of $100 per hour, the total cost for the process control would be approximately $10,000 to $15,000. Additional training costs for staff processing the CD–ROM submissions would be about $8,000 to $10,500. These costs are incorporated into the total FDA cost estimate.

FDA anticipates that this option will lower costs for some large, multifacility firms. Only firms that can lower their costs by using this option will do so. However, FDA does not quantitatively estimate the cost savings.

b. *Food product categories.*

FDA proposed to require the inclusion of food product categories in the registration information. Food product categories are necessary for FDA to communicate directly with subgroups of facilities and to help verify prior notices from facilities that are subject to both registration and the prior notice requirements. FDA estimated that including food product category information in the registration would increase the time to complete each facility's registration by 15 minutes. Including food product categories in the registration form also increases the number of updates facilities will have to submit to FDA.

(Comment 180) FDA received numerous comments stating that including the food product categories as a registration requirement would add to the costs of the rule, without providing any benefits. Some comments stated that the additional 15 minutes for facilities to include food product categories underestimated the time needed to provide this information. Also, large facilities may manufacture/process, pack, or hold thousands of products and determining the food product categories for all these products would be very difficult.

(Response) In responding to these comments, FDA breaks the comments into three categories: (1) The time to research the food product categories for the initial registration, (2) the effect of including food product categories on the frequency of updates, and (3) the benefits of including food product categories. FDA addresses the impact on updates in the section on frequency of updates, and addresses the last category of comments in the benefits section.

FDA does not agree with the comments that suggested FDA underestimated the time to include food product categories as a registration element. For facilities that handle many different types of food, such as warehouses the registration form includes a "most/all human food categories" to alleviate the burden of providing information on each specific category of food at the facility. This will allow facilities that handle a large variety of foods to fill out the food product category section of the form very quickly. Also, the electronic registration form includes extensive online help, with descriptions of the food product categories and a link to the FDA product code builder, which will interactively categorize foods. This will simplify identification of the appropriate food product category. For example, pudding is a product that some may believe may be relatively difficult to categorize. On the registration form, it may be unclear to a registrant whether pudding should be characterized as a bakery product/dough/mix/icing or a gelatin/rennet/pudding mix/pie filling. The online registration provides a link to the FDA product code builder, which has a search function. Searching on "pudding" gives three possible categories, the two categories already given and baby food, all with drop down menus. By using the drop down menus, a list of products in those categories is provided. The registrant can then find its product in the drop down menu. Moreover, most products, such as alcoholic drinks, fruits, vegetables, and eggs, can simply be characterized by reading the food product categories.

As previously mentioned, most facilities are small and do not produce a large number of products. Therefore, FDA has not altered its 15 minute estimate of the time to fill in the food product categories.

c. *Frequency of updates.*

The proposed rule would have required registered facilities to submit updates or cancellations of their registration information within 30 days of a change in information previously submitted to FDA. The interim final rule changes this requirement to 60 days. Facilities that close or transfer ownership are required to cancel their registrations. New facilities and facilities that change ownership must register. Based on data from the Small Business Administration (Ref. 17), FDA estimated that 10 percent of facilities will cancel registrations and 10 percent of facilities have to submit a new registration each year. FDA also estimated that 20 percent of facilities would have to update their registrations each year. Updates and cancellations were estimated to take 1 hour. First-time registrations in subsequent years were estimated to be as costly as first-time registrations in the first year.

(Comment 181) FDA received many comments about how often facilities will have to update their registrations. As noted, FDA estimated 20 percent of facilities would have to update their registrations each year. Comments provided a number of other estimates of how frequently updates would be required. Multiple comments estimated that 50 percent of facilities would have to update their registrations each year. Other comments did not provide an estimate of how often updates would be required, but suggested that FDA require annual updates. Others commented that facilities would have to update registration information many times a year. Another comment did not provide an alternative estimate of the frequency of updates, but disagreed with the 20 percent per year estimate provided by FDA. Various comments suggested that the most frequently changing components of the registration would be the name of the emergency contact and, if "trade name" were defined broadly, it would be the most frequently changing registration information element.

Some comments suggested including food product categories in the registration would lead to monthly registration updates. Comments stated that there is constant fluctuation in the nature of products produced at large facilities, which would require frequent updates. One comment suggested that one in four large facilities that manufacture/process food would have to submit updates each month. Comments stated that the cost of maintaining the food product categories would exceed the cost of the initial registration.

Comments most frequently suggested that FDA require updates every 6 to 12 months or annually. However, some comments suggest that to allow update periods longer than 30 days would reduce the usefulness of the database.

(Response) As stated in the definitions section of this rule, trade names mean the terms under which the facility conducts business, or additional names by which the facility is known. Trade names are terms associated with the facility, as opposed to brand names, which are terms associated with products. Therefore, comments that stated that names associated with products change frequently, which would result in the need for frequent updates, overestimate the frequency with which facilities will have to update their registrations because brand names are not included as an element of registration. FDA has also removed the requirement that an individual be identified as the emergency contact, another registration element that commenters mentioned was likely to change frequently.

FDA does not agree that the cost of updates resulting from changes in product lines will require facilities to submit monthly updates. Some types of facilities, such as warehouses or wholesalers, are likely to select the most/all human food category due to the large variety of products handled at the facility. Manufacturers/processors are the most likely facilities to have frequent changes in product lines. However, the majority of these facilities are small. The 18,259 manufacturers in the Nonemployer Statistics have only 1 employee, and due to their small size, should not have frequent changes in product lines. In the CBP data, 80 percent of the 29,149 manufacturers have fewer than 50 employees. It is unlikely facilities of this size will produce many different product lines and that these product lines will change frequently. This leaves a small number, approximately 3,700 large manufacturers, that may have more frequent changes in product lines. Also, the product categories included in the registration form include many individual products; thus, a product line change may not change the food product category. For example, a facility may change pudding flavors or the level of fat in the pudding without changing food product categories.

FDA does agree with the comments that the frequency of updates will be greater than estimated in the PRIA. FDA has re-estimated the frequency with which updates will occur for 60-day updates by using the suggested frequency of updates in the comments for the 30-day update period. For large manufacturing/processing facilities, FDA has used the estimate provided by some commenters that one in four facilities would have to submit an update each month with a 30-day update period. Large manufacturing/processing facilities would then submit two updates per year with a 60-day update period, rather than 3 times per year with a 30-day update period. For other facilities, FDA has used the estimate that 50 percent of facilities would have to update each year (or facilities would update once every 2 years) with a 30-day update. FDA assumes that the number of updates will still be once every 2 years with a 60-day requirement for updates. A weighted average of the two estimates gives 55 percent of facilities updating each year. FDA has also applied this estimate for domestic facilities to foreign facilities.

FDA has also considered an alternative option in which facilities are required to update their registration within a year of a change. FDA assumes that for facilities that are not large manufacturers/processors, updates by 50 percent of facilities per year is equivalent to one change every 2 years. Under this approach, the frequency of updates for facilities that are not large manufacturers/processors would still be 50 percent of facilities each year, but no updates would occur in the first year. Large manufacturers/processors would have to update once a year, with no updates the first year. Without incorporating zero updates in the first year, adopting this option would give a weighted average of 51 percent of facilities updating each year. To incorporate the lack of updates for the first year, we included zero updates for 1 year in 20 years of the registration system. This lowers the average for percent of facilities submitting updates each year to 48 percent. See tables 11 and 12 of this document for cost estimates for these options.

FDA also considers an option in which facilities are not required to include food product categories in their registrations. FDA estimates that it would take only 45 minutes to fill out and certify the registration form and that 50 percent of all facilities would have changes in their registration information each year.

Comments received in response to the proposed rule assumed that changes in optional elements would result in updates. In the interim final rule, FDA does not require a facility to update its registration when changes occur in optional items. FDA does not have information to adjust the estimates of frequency of update in response to changes in optional information. However, FDA does believe that the estimate of frequency of updates is an overestimate, as it is based on changes in both optional and required information.

d. *U.S. agent.*

The Bioterrorism Act and the interim final rule require that all foreign facilities required to register have a U.S. agent. The interim final rule requires the U.S. agent to be a person residing or maintaining a place of business in the United States, whom the owner, operator, or agent in charge of a foreign facility designates as its agent. FDA will recognize only one U.S. agent for purposes of registration per foreign facility. The U.S. agent acts as a communications link between FDA and the facility and FDA considers providing information to the U.S. agent the same as providing information directly to the foreign facility. A U.S. agent may submit a registration to FDA, if the owner, operator, or agent in charge of the foreign facility authorizes the U.S. agent (if an individual) to register on behalf of the owner, operator, or agent in charge of the facility.

U.S. Agent Assumptions

In the PRIA, FDA assumed, based on preliminary comments, that some foreign facilities already have a U.S. representative that can function as a U.S. agent. The U.S. representative may be a business partner, broker, U.S. lawyer, or parent company. FDA assumes that the likelihood that a foreign facility has an existing U.S. agent is related directly to the quantity of product the foreign facility exports to the United States.

FDA used data from OASIS on the average number of line entries and the average number of manufacturers by country and product code to estimate the number of line entries for foreign manufacturers (Ref. 2). A shortcoming of these data is that entries are by product code, thus, manufacturers that are exporting products in more than one product code are in the count of manufacturers for every product code in which they export. The OASIS data consequently have approximately twice as many manufacturers as actually exist. To adjust for this double-counting, FDA assumed the average foreign manufacturer exports in two product categories. To find an approximate number of line entries per manufacturer, FDA divided the total number of manufacturers into the total number of line entries for each country and applied the average number of line entries per manufacturer to all the manufacturers from that country. This method will underestimate the number of very small and very large manufacturers, because it removes the variation in number of line entries exported from countries with a large number of manufacturers exporting to the United States.

To estimate the number of foreign facilities that would have to hire a U.S. agent, FDA assumed that foreign facilities that export more than 80 line entries each year into the United States, or 10 percent of foreign manufacturers, already have a U.S. representative who can function as a U.S. agent. FDA acknowledges that this is an uncertain estimate; the true number of facilities that have an existing business representative that would be willing to serve as their U.S. agent may be much higher. FDA will test the impact of overall U.S. agent costs under different assumptions.

For foreign facilities that do not have an existing business representative willing to act as their U.S. agent for little or no extra cost to the U.S. agent or facility, FDA estimated it would take between 5 and 15 hours to hire a U.S. agent, depending on whether the facility had Internet access and its personnel were fluent in English. Additionally, FDA estimated an annual U.S. agent fee of $1,000 per year, based on estimates of agent fees provided by U.S. agents for other FDA-regulated products. This estimate of the U.S. agent fee contemplates that the U.S. agent will register the foreign facility. If the foreign facility chooses to register on its own behalf, the U.S. agent fee may be lower; however, the facility itself will have higher costs associated with registering. These costs include time to enter the registration information, translate the registration information if the facility is not fluent in English, and additional time for mailing a postal registration if the facility does not have Internet access.

FDA acknowledges that these assumptions are uncertain. Accordingly, as explained more fully in the following paragraphs, FDA provides alternative assumptions regarding U.S. agent fees, based on U.S. agents currently proffering their services as U.S. agents for the purposes of the Bioterrorism Act. In general, current prices for other U.S. agent activities (such as serving as a U.S. agent for drug or device foreign establishments) and published prices for an emerging market may not be precise predictors of the actual prices charged for this service.

FDA also assumed that the 16 percent of manufacturers that are exporting 10 or fewer line entries to the United States would stop exporting to the United States, rather than incur the expense of registering, hiring a U.S. agent, and providing prior notice under 21 CFR part 1, subpart I. FDA includes the effect of prior notice on foreign facilities ceasing trade with the United States, because both will represent an increase in the cost of importing to the United States. FDA is unable to separate the effects on foreign facilities ceasing to export to the United States and so considers them both here. These estimates are also uncertain as the value of and the return on food shipments are variable and the cost for an individual food facility to comply with the Bioterrorism Act regulations is uncertain. Some facilities may ship very few shipments to the United States each year, but may earn a very high return; these facilities will likely continue to export to the United States. Conversely, some facilities may ship many, low value, low return shipments to the United States and may stop exporting to the United States as a result of the regulations under the Bioterrorism Act. Foreign facilities may also have existing business relationships with facilities in the United States. If a domestic facility is willing to absorb the cost of registering and providing U.S. agent services to a foreign facility, the facility may continue to export to the United States. In the proposed rule, FDA requested comments on these assumptions. No comments provided quantitative estimates of the number of facilities that would stop exporting or that already have U.S. agents. These estimates are uncertain, as the value of and the return on food shipments are variable and the cost for an individual facility to comply with the Bioterrorism Act regulations is uncertain. Some facilities may ship very few shipments to the United States each year, but may earn a very high return; these facilities will likely continue to export to the United States. Conversely, some facilities may ship many, low value, low return shipments to the United States and stop exporting to the United States as a result of the regulations under the Bioterrorism Act. In the proposed rule, FDA requested comments on these assumptions. No comments provided quantitative estimates of the number of facilities that would stop exporting or that already have U.S. agents. Table 8 presents average numbers of line entries and the percent of foreign manufacturers that export that number.

If 16 percent of foreign manufacturers/processors do choose to cease exporting to the United States, the total effect on trade will be much smaller than 16 percent. The facilities projected to cease exporting to the United States represent a small fraction of total trade. The 16 percent of facilities represents approximately 20,000 facilities exporting between 1 and 10 line entries to the United States each year. If, on average, each would have exported 5 line entries, the total number of line entries affected would be approximately 100,000, which is less than 2 percent of all lines.

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Table 8.--Average number of line entries from foreign manufacturers

| Average number of line entries | Percent of total number of foreign manufacturers | Cumulative percent of manufacturers |
|---:|---:|---:|
| 1-10 | 15.81 | 15.81 |
| 11-20 | 25.43 | 41.24 |
| 21-40 | 32.27 | 73.51 |
| 41-60 | 7.30 | 80.81 |
| 61-80 | 5.88 | 86.69 |
| 81-100 | 3.64 | 90.33 |
| 101-120 | 1.78 | 92.11 |
| 121-140 | 0.72 | 92.83 |
| 141-160 | 1.59 | 94.42 |
| 161-180 | 0.48 | 94.90 |
| 181-200 | 0.83 | 95.73 |
| >200 | 4.27 | 100.00 |

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(Comment 182) FDA received many comments on requiring U.S. agents for foreign facilities required to register with FDA. Comments centered around five issues: (1) The role of the U.S. agent, (2) the cost of a U.S. agent, (3) facilities choosing to cease exporting to the United States, (4) alternatives suggested to the proposed U.S. agent requirements, and (5) the benefits of requiring a U.S. agent. The benefits of a U.S. agent are addressed in the benefits section VI.C of this document; the remaining comments are summarized and responded to in the following paragraphs.

Many comments were unclear about the role of the U.S. agent. A common misperception was that the U.S. agent must be the importer or broker the facility works with and that the facility would not be able to import through other brokers. Another common misperception was that the U.S. agent was required to have information about all the food products the facility exports to the United States.

(Response) FDA believes that many foreign entities did not correctly understand the role of the U.S. agent and how narrow are the U.S. agent's responsibilities. The U.S. agent may be an importer or broker if the facility chooses; however, the only requirement for a U.S. agent in the proposed and interim final rule is that the U.S. agent reside or maintain a place of business in the United States. In this rulemaking, FDA does not place any new restrictions on foreign facilities using import brokers, which may have been the source of some of the confusion regarding the true impact of the agent requirement. The U.S. agent is also not expected to have information about all the shipments a facility sends to the United States. The U.S. agent's responsibility is to be able to contact the facility and pass on information from FDA in both emergencies and routine operations. A U.S. agent may also register with FDA on behalf of the facility, if the facility so chooses. The U.S. agent is considered to be the facility's emergency contact, unless the facility designates an alternative contact in accordance with § 1.233(e). Therefore, FDA does not include any costs due to changes in business practices, such as using a single broker.

(Comment 183) FDA also received comments about costs of the U.S. agent. One comment states that the costs of requiring a U.S. agent were underestimated by a factor of 5 to 10. However, this comment provides no basis for this cost estimate. Many comments also state that most facilities do not already have a U.S. agent and would incur costs to procure a U.S. agent. Finally, some comments state that FDA should include the cost of a legal agreement between the foreign facility and the U.S. agent.

(Response) FDA does not require a legal agreement between the U.S. agent and the foreign facility, but the estimated total cost for foreign facilities does include the costs of finding and hiring a U.S. agent.

FDA agrees that many facilities do not already have a U.S. agent. In the PRIA, FDA estimated that more than 90 percent of foreign facilities do not currently have a U.S. agent. Again, if more than 10 percent of foreign food facilities already have a relationship to a domestic entity that could serve as an equivalent to the role of the U.S. agent as required in this interim final rule, the impact of this rulemaking would be lower. FDA tests the sensitivity of this estimate in the following paragraphs.

In the PRIA, FDA estimated that foreign facilities currently without a U.S. agent would require 5 to15 hours to find an agent and would pay an annual fee of $1,000. FDA's estimate of the U.S. agent fee was based on the fees charged by U.S. agents for other FDA regulated products with similar responsibilities to those required in the proposed rule. Therefore, given the foundation for the fees cited in the PRIA and the lack of evidence for higher fees, FDA does not increase its estimate of the U.S. agent fee.

No comments suggested that FDA overestimated the fee that would be charged by a U.S. agent. The $1,000 fee estimated in the proposed rule was an estimate of an average fee for a U.S. agent under other FDA regulations, based on fees quoted over the phone and Internet advertisements. However, since publication of the proposed rule, a number of companies have begun Internet advertising of their services as a U.S. agent for foreign food facilities that are required to register with FDA. These companies specify a range of costs, some with discounts for multiple facilities under the same ownership or fees that are a function of the number of shipments each year or additional fees for registration updates. Based on the requirements in the proposed rule, the lowest fee quoted was $399 for representation by a U.S. agent for 1 year; other U.S. agents charged initial fees between $599 and $1,400 (Ref. 18). Many of the U.S. agents intend to charge fees for additional registration-related services, such as registration updates or cancellations. Based on these new estimates of fees, FDA believes that $1,000 still represents a reasonable estimate of a U.S. agent fee. Ultimately, the fee that a foreign facility will pay to hire and retain a U.S. agent will be a function of several factors; whether the facility has Internet access, whether its employees are fluent in English, whether it has existing relationships with potential U.S. agents, and individual facility preferences.

Sensitivity Analyses

Many facilities will choose lower-priced U.S. agents; therefore, FDA presents an estimate of the cost of the rule with a U.S. agent fee of $700. In this situation, the total first year cost for foreign facilities would be $247.6 million and annual costs would be $164.5 million. In addition, the assumed number of entities that would no longer export to the United States would fall under this scenario; if U.S. agent costs are lower, it would continue to make economic sense for a larger number of foreign facilities to continue importing into the United States. FDA does not provide an estimate of the decrease in the number of facilities that will cease exporting to the United States.

FDA also considers a higher U.S. agent cost of $1,200. This represents the higher range of Internet estimates; however, fees offered by facilities over the Internet may not represent the full range of U.S. agent fees. Also, foreign facilities that do not have Internet access or are not fluent in the languages commonly used in trade may face higher fees. This gives a first year cost of $345.0 million and annual costs of $271.7 million.

As discussed previously, the assumption that 10 percent of foreign facilities have an existing relationship that is equivalent to a U.S. agent is uncertain. FDA considers as an alternative assumption that those facilities that export 40 or more line entries per year, or 26 percent of facilities, already have a business partner in the United States that serves the function of a U.S. agent and the foreign facility will only incur the costs of registering. This lowers that cost to foreign facilities to $283.9 million in the first year and $209.7 in future years.

Alternatively, FDA considers that only facilities that export more than 120 line entries per year, or 8 percent of facilities have a U.S. business partner that will fulfill role of the U.S. agent. This will increase the cost to foreign facilities to $308.8 million in the first year and $231.2 million, annually.

Given the uncertainty surrounding the percent of facilities that will stop exporting to the United States, FDA also considers two alternative options. Eight percent stop exporting and 24 percent stop exporting. If eight percent of foreign facilities that ship very small numbers of line entries to the United States each year stop exporting to the United States, then the quantified cost of the interim final rule will increase to $320.4 million per year and $239.4 million in subsequent years. However, this estimate does not account for a decrease in the nonquantified costs. Foreign facilities that stop exporting to the United States due to the Bioterrorism Act regulations will earn lower returns on their product because they will shift to a market with a lower return. Additionally, domestic facilities that receive product from these facilities will not incur costs to find new suppliers. Alternatively, if facilities that ship 20 or fewer line entries per year to the United States, or 24 percent of facilities, stop exporting, the quantified costs will decrease to $291.7 million in the first year and $218.2 million in subsequent years. However, the increase in nonquantified costs will offset these cost savings.

FDA considers the total cost for foreign facilities under the combination of lowest and highest cost alternatives. The lowest cost combination gives a total cost of $220.5 million for the first year and $144.6 million in subsequent years. The highest cost combination gives a total cost of $364.6 million in the first year and $267.4 million annually.

Distribution of Costs

FDA has chosen to use the facility as its unit of analysis for two reasons: (1) The Bioterrorism Act requires registration on a facility basis, and (2) most information available to FDA is at the facility level. For these reasons, costs are reported as average per facility costs and total costs for facilities. However, FDA expects that all of the costs will not be borne by the facilities. Economic theory shows that, in the case of new costs, a portion of the costs will be borne by the producer and a portion by the consumer. In this case, the costs may be spread among the foreign facility, importers, exporters, domestic food producers and distributors, and consumers. However the costs are distributed, the total social cost of the rule will be unchanged. Although the distribution of these costs is uncertain, the total cost of submitting a facility's registration and U.S. agent services are both costs of the requirements of this interim final rule for foreign facilities. FDA requests comments on the distribution of costs between submitting registrations and other services offered by the U.S. agent and comments on the overall cost of hiring and retaining a U.S. agent and the assumptions underlying FDA's estimates of these costs.

Table 9.--Sensitivity analysis of foreign facility costs (in millions)

| Alternative U.S. agent costs | First year costs | Annual costs |
|---|---|---|
| Baseline estimate | $306.0 | $228.8 |
| U.S. agent fee of $700 | $247.6 | $164.5 |
| U.S. agent fee of $1200 | $345.0 | $271.7 |
| 26% already have a U.S. agent | $283.9 | $209.7 |
| 10% already have a U.S. agent | $310.2 | $232.4 |
| 8% already have a U.S. agent | $308.8 | $231.2 |
| 8% stop exporting | $320.4 | $239.4 |
| 24% stop exporting | $291.7 | $218.2 |
| Lowest estimate | $220.5 | $144.6 |
| Highest estimate | $364.6 | $267.4 |

(Comment 184) Several comments predict that some foreign facilities would cease exporting to the United States due to the cost of procuring a U.S. agent. Comments mention this as a cost to both foreign facilities and domestic facilities. For foreign facilities that ship small quantities to the United States, some comments assert that the cost of a U.S. agent could exceed the profits from shipping to the United States. For these facilities, it would make economic sense to stop exporting to the United States. Other comments assert that some domestic facilities, particularly small businesses, might lose important suppliers. These comments state that the loss of foreign suppliers could have a significant negative impact on their businesses. FDA also received comments on the effect of requiring a U.S. agent on domestic small businesses.

(Response) FDA agrees that some foreign facilities may choose to stop exporting to the United States because the cost of registering and procuring a U.S. agent will exceed the benefits to the facility of exporting food to the United States. As mentioned previously, the number of foreign facilities that will choose to stop exporting to the United States is uncertain, as it will depend on the cost of registration for the individual facility and the return on the shipment in the United States versus its return in other markets. No comments provided any quantitative estimates of the number of facilities that would stop exporting to the United States. These costs were included qualitatively in the PRIA. The effect of requiring a U.S. agent on domestic small businesses will be considered in the Regulatory Flexibility Analysis.

(Comment 185) Several alternatives to the proposed requirement for a U.S. agent are suggested by commenters, including making the U.S. agent requirement optional, requiring a U.S. agent only if the facility does not have an e-mail contact, and requiring that the U.S. agent reside or maintain a place of business in North America.

(Response) FDA is constrained by the Bioterrorism Act, which requires all foreign facilities subject to this rule to have a U.S. agent. Also, FDA believes that the statute requires that the U.S. agent reside or maintain a place of business in the U.S. proper, not North America generally. Therefore, choosing not to require a U.S. agent or having the person reside or maintain a place of business outside the United States is not consistent with congressional intent. However, while not a legally available option, FDA does provide an estimate of the cost for an option in which a U.S. agent is not required.

e. *Duplicate requirements with other licensing or registering authorities.*

(Comment 186) FDA received many comments that the registration requirement duplicates other registration requirements for FDA, other U.S. government agencies, other governments, and State and local authorities. These comments suggest that FDA obtain the registration information from these other authorities rather than require an additional registration. Specific registration requirements mentioned by commenters included FDA low acid canned foods, FDA feed manufacturers, FDA seafood Hazard Analysis and Critical Control Point importers, TTB, EPA, USDA, Australia, Iceland, New Zealand, Chile, California, and FIRMS.

(Response) FDA has determined that it is most cost-effective for FDA to require registration by all affected facilities under this rule. Using data from other registration systems would be cost-effective, if FDA could collect the data from other systems at a total lower cost, to both facilities and FDA, than original collection of the data. For FDA to use another regulatory agency's registration system, FDA needs to: (1) Be able to get the data from the other agency; (2) capture all of the required information; (3) avoid duplicate registrations; (4) verify that the data are correct; (5) update the registration in a timely manner; and (6) issue a new registration number and confirmation to the registered facility.

Using other registration systems would likely increase costs for FDA to get the data from the other system. This would require interagency cooperation and compatibility of IT systems by the statutory deadline of December 12, 2003. In addition to creating the existing IT system, FDA would have to develop the ability to accept large transfers of data from other systems. Additionally, accepting data from other registration systems will require facilities to provide any data elements not included in those registration systems to FDA separately, which will also result in higher costs for FDA.

Using other registration systems would not lower the cost of registration for covered facilities. Even if another registration system is used, facilities will still incur research costs to learn about the registration requirements to determine whether they need to register or if they had already fulfilled the requirements, so research costs for facilities will be unchanged under both systems. Costs for submitting the data will be different if other registration systems are used. For the costs of accepting duplicate registrations to be lower for facilities, the alternate registration system must include all the data elements required by the FDA registration. The system that initially seemed most likely to match FDA's requirements and most frequently mentioned in comments involved the permit requirements applicable to the alcohol beverage industry under laws enforced by TTB. FDA met with TTB to determine whether it was feasible to use TTB's basic permit system. FDA and TTB determined that TTB's regulations do not apply to all facilities required to register under this interim final rule. For example, the laws administered by TTB do not require foreign alcohol beverage producers to obtain permits, unless they are also engaged in the business of importing alcohol beverages into the U.S. FDA and TTB also determined that several of the required data elements for FDA registration are not mandatory information for alcohol beverage permittees, including some of the emergency contact information required by this interim final rule. Accordingly, even facilities with TTB permits would still have to file immediately a registration update with FDA to provide missing data elements. FDA concluded that accepting registrations in alternative registration systems would not lower costs for facilities. If accepting registrations does not lower costs for FDA or for facilities, it is not a cost-effective alternative.

FDA assumes that if original data collection is not cost-effective for domestic facilities, it will be less cost-effective for foreign facilities, because foreign facilities will still have to obtain a U.S. agent and submit to FDA the information for their U.S. agent.

f. *FDA costs.*

FDA costs include creating and maintaining a database, processing paper submissions, and sending an annual mailing to registrants. Developing and maintaining a database includes automatically entering registrations into the database that arrive electronically and sending an electronic receipt and facility registration number back to the registrant. FDA estimates that four full-time equivalent employees (FTEs) will be needed to oversee the database. Additionally, paper submissions (*i.e.* those received by mail, fax, or on CD–ROM) will have to be entered manually. Costs are presented for the first 5 years of the system in table 9 of this document. Annual costs are discounted at 7 and 3 percent. No comments were received on FDA's cost estimates in the PRIA. However, cost numbers were revised based on new information obtained by FDA.

Tables 10 through 12 provide details of the components of total costs for FDA, domestic facilities, and foreign facilities. For tables 11 and 12, FDA provides the estimate of the costs from the PRIA, and from 4 options: the interim final rule, the interim final rule with longer updates, the interim final rule without product categories, and the interim final rule with no U.S. agent requirement. Details of the costs that have not changed in response to comments may be found in the proposed rule. Tables 13 and 14 summarize the total costs over the first four years and provide a present value for a 20 year horizon for a 7 percent and 3 percent discount rate, respectively. FDA acknowledges uncertainty in these estimates; please see the proposed rule for a fuller discussion of all sources of uncertainty, and the discussion and sensitivity analysis under comment 192 regarding the uncertainty of the U.S. agent estimate.

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Table 10.--FDA Costs

| FDA Costs | Year One | Year Two | Year Three | Year Four | Year Five |
|---|---|---|---|---|---|
| Development/modification/enhancement | $8,200,000 | $3,000,000 | $3,300,000 | $2,300,000 | $2,300,000 |
| Maintenance/steady state | $1,560,000 | $3,500,000 | $4,300,000 | $4,300,000 | $4,300,000 |
| Number of FTEs | 4 | 4 | 4 | 2 | 2 |
| Cost per FTE | $97,000 | $97,000 | $97,000 | $97,000 | $97,000 |
| Processing paper submissions | $2,900,000 | $1,600,000 | $1,600,000 | $1,600,000 | $1,600,000 |
| Mailing costs | $180,000 | $35,000 | $35,000 | $35,000 | $35,000 |
| New hardware | $0 | $0 | $0 | $650,000 | $0 |
| Total | $13,228,000 | $8,523,000 | $9,623,000 | $9,079,000 | $8,429,000 |
| Total discounted at 7% | $13,228,000 | $7,965,000 | $8,405,000 | $7,411,000 | $6,430,000 |
| Total discounted at 3% | $13,228,000 | $8,275,000 | $9,071,000 | $8,309,000 | $7,489,000 |

Table 11.--Computation of Costs for Domestic Facilities

| | Proposed | Interim Final | Longer Updates | No Product categories | No U.S. Agent |
|---|---|---|---|---|---|
| Number of domestic facilities | 202,046 | 216,271 | 216,271 | 216,271 | 216,271 |
| Time to research requirements with Internet (hours) | 1 | 1 | 1 | 1 | 1 |
| Time to research requirements without Internet (hours) | 2 | 2 | 2 | 2 | 2 |
| Time to complete the form (hours) | 1 | 1 | 1 | 1 | 1 |
| | | | | | |
| Percent of facilities with Internet | 71% | 71% | 71% | 71% | 71% |
| Manager wage (hourly) | $56.74 | 56.74 | 56.74 | 56.74 | 56.74 |
| Administrative wage (hourly) | $25.10 | 25.1 | 25.1 | 25.1 | 25.1 |
| First year domestic costs | $13,200,000 | $23,000,000 | $23,000,000 | $21,600,000 | $23,000,000 |
| | | | | | |
| Annual facility costs | | | | | |
| Percent of businesses going out of business | 10% | 10% | 10% | 10% | 10% |
| Percent of businesses entering | 10% | 10% | 10% | 10% | 10% |
| Percent of businesses with changes | 20% | 55% | 48% | 50% | 55% |
| Time to update or cancel registration (hours) | 1 | 1 | 1 | 1 | 1 |
| Annual facility costs | $3,300,000 | $6,900,000 | $6,400,000 | $6,400,000 | $6,900,000 |

Table 12.--Computation of Costs for Foreign Facilities

| | Proposed | Interim Final | Longer Updates | No Product Categories | No U.S. Agent |
|---|---|---|---|---|---|
| Number of foreign holders and packagers | 100,027 | 100,027 | 100,027 | 100,027 | 100,027 |
| Number of foreign facilities manufacturers/ processors | 125,450 | 125,450 | 125,450 | 125,450 | 125,450 |
| Percent of facilities stops exporting | 16% | 16% | 16% | 16% | 16% |
| Total facilities | 205,405 | 205,405 | 205,405 | 205,405 | 205,405 |
| Speaks English | 16% | 16% | 16% | 16% | 16% |
| Has Internet access | 31% | 31% | 31% | 31% | 31% |
| Has U.S. Agent | 10% | 10% | 10% | 10% | 10% |
| Hourly wage rate | $25.10 | $25.10 | $25.10 | $25.10 | $25.10 |
| Time to find agent (hours) | 5 | 5 | 5 | 5 | 0 |
| Additional time to find a U.S. agent if not fluent in English (hours) | 5 | 5 | 5 | 5 | 0 |
| Additional time to find a U.S. agent without Internet access (hours) | 5 | 5 | 5 | 5 | 0 |
| Agent fee (annual cost) | $1,000 | $1,000 | $1,000 | $1,000 | $0 |
| Time to research requirements (hours) | 1 | 1 | 1 | 1 | 1 |
| Additional time to research requirements if not fluent in English (hours) | 5 | 5 | 5 | 5 | 5 |
| Additional time to research requirements without Internet access (hours) | 5 | 5 | 5 | 5 | 5 |
| Time to complete the form (hours) | 1 | 1 | 1 | 0.75 | 1 |
| Additional time to complete if not fluent in English (hours) | 0 | 0 | 0 | 0 | 1 |
| Additional time to submit registration without Internet access (hours) | 0 | 0 | 0 | 0 | 1 |
| Total first year costs | $306,000,000 | $306,000,000 | $306,000,000 | $304,800,000 | $73,100,000 |
| | | | | | |
| Annual costs | | | | | |
| Agent fee | $1,000 | $1,000 | $1,000 | $1,000 | $0 |
| Percent of businesses going out of business | 10% | 10% | 10% | 10% | 10% |
| Percent of businesses entering | 10% | 10% | 10% | 10% | 10% |
| Percent of businesses with changes | 20% | 55% | 48% | 50% | 55% |
| Total annual costs | $227,000,000 | $228,800,000 | $228,500,000 | $228,400,000 | $10,600,000 |

Table 13.--Summary of Costs (in Millions) Discounted at 7 Percent

| | Interim Final | Longer Updates | No Product Categories | No U.S. Agent |
|---|---|---|---|---|
| Domestic first year costs | $23.0 | $23.0 | $21.6 | $23.0 |
| Foreign first year costs | $306.0 | $306.0 | $304.8 | $73.1 |
| FDA first year costs | $13.2 | $13.2 | $13.2 | $13.2 |
| Total first year costs | $342.2 | $342.2 | $339.6 | $109.3 |
| Domestic second year costs | $6.5 | $6.0 | $6.0 | $6.0 |
| Foreign second year costs | $213.8 | $213.5 | $213.5 | $10.0 |
| FDA second year costs | $8.0 | $8.0 | $8.0 | $8.0 |
| Total second year costs (7% discount) | $228.3 | $227.5 | $227.5 | $24.0 |
| Domestic third year costs | $6.0 | $5,6 | $5.6 | $6.0 |
| Foreign third year costs | $199.8 | $199,5 | $199.5 | $9.0 |
| FDA third year costs | $8.4 | $8.4 | $8.4 | $8.4 |
| Total third year costs | $214.2 | $213.5 | $213.5 | $23.4 |
| Domestic fourth year costs | $5.6 | $5.2 | $5.2 | $6.0 |
| Foreign fourth year costs | $186.8 | $186.4 | $186.4 | $9.0 |
| FDA fourth year costs | $7.9 | $7.9 | $7.9 | $7.9 |
| Total fourth year costs | $200.3 | $199.5 | $199.5 | $22.9 |
| Present value | $2,942.0 | $2,932.0 | $2,928.0 | $398.0 |

Table 14.--Summary of Costs (in Millions) Discounted at 3 Percent

| | Interim Final | Longer Updates | No Product Categories | No U.S. Agent |
|---|---|---|---|---|
| Domestic first year costs | $23.0 | $23.0 | $21.6 | $23.0 |
| Foreign first year costs | $306.0 | $306.0 | $304.8 | $73.1 |
| FDA first year costs | $13.2 | $13.2 | $13.2 | $13.2 |
| Total first year costs | $342.2 | $342.2 | $339.6 | $109.3 |
| Domestic second year costs | $6.7 | $6.0 | $6.2 | $7.0 |
| Foreign second year costs | $222.1 | $221.7 | $221.7 | $10.0 |
| FDA second year costs | $8.3 | $8.3 | $8.3 | $8.3 |
| Total second year costs (7% discount) | $237.1 | $236.0 | $236.2 | $25.3 |
| Domestic third year costs | $6.5 | $6.0 | $6.0 | $7.0 |
| Foreign third year costs | $215.7 | $215.3 | $215.3 | $10.0 |
| FDA third year costs | $9.1 | $9.1 | $9.1 | $9.1 |
| Total third year costs | $231.2 | $230.4 | $230.4 | $26.1 |
| Domestic fourth year costs | $6.3 | $5.9 | $5.9 | $6.0 |
| Foreign fourth year costs | $209.3 | $209.0 | $209.0 | $10.0 |
| FDA fourth year costs | $8.8 | $8.8 | $8.8 | $8.8 |
| Total fourth year costs | $224.4 | $223.7 | $223.7 | $24.8 |
| Present value | $3,992.0 | $3,976.0 | $3,972.0 | $512.0 |

### 6. Benefits

In the PRIA, FDA asserted that requiring registration of manufacturers/processors, packers, and holders of food would aid in deterring and limiting the effects of foodborne outbreaks in four ways. One, by requiring registration, persons who might intentionally contaminate the food supply would be deterred from entering the food production chain. Two, if FDA is aware of a specific food threat, a registration database would make FDA better able to inform the facilities potentially affected by the threat. Three, FDA would be able to deploy more efficiently its domestic compliance and regulatory resources. Four, FDA inspectors, using prior notice and registration, would be better able to identify shipments for inspection.

Registering with FDA creates a paper trail, which would, even if the information in the registration were falsified, provide evidence that could link the registration to the false registrant. Persons who might attempt to intentionally contaminate the U.S. food supply would be deterred, by the creation of additional evidence that might be used against them, from starting a business in the food supply chain. Persons who might intentionally contaminate the food supply but refuse to register would be subject to criminal and civil sanctions and, if foreign, would risk having their product held at a U.S. port. With emergency contact information and product categories, FDA can quickly call or e-mail the emergency contact at both domestic and foreign facilities that may be targeted by a specific food threat. If FDA suspects a particular product is at risk, we can quickly identify which facilities to contact. This quick communication will allow facilities to respond quickly to a threat and possibly limit the effect of a deliberate strike on the food supply, as well as public health emergencies due to accidental contamination of food. In the past, FDA field personnel (Ref. 19) have had difficulty notifying facilities of recalls and other enforcement actions due to incomplete information in existing agency records. In the past, for foreign facilities, FDA has attempted to disseminate recall information through foreign embassies. Contacting foreign facilities through their U.S. agent (or their designated emergency contact) will be more efficient and increase the probability that the facility will receive the information in a timely fashion and act on it.

A complete list of facilities in the food supply chain will also aid FDA in scheduling inspections and undertaking compliance activities. FDA currently uses an OEI that we developed by obtaining lists from State governments and adding firms to the OEI through surveillance activities, such as reviewing phone books. The OEI is incomplete and frequently out of date (Ref. 20). FDA has even less information about foreign facilities that manufacture/process, pack, or hold food for consumption in the United States. A complete list of domestic facilities with correct contact information and food product categories would aid inspectors in contacting facilities, and with product information available, would help the agency to identify facilities for inspections. Because of the turnover in the food industry and the ratio of inspectors to food facilities, FDA never has had a complete list of foreign or domestic facilities that provide food for consumption in the United States. Also, a complete list of facilities will aid FDA in understanding which facilities will be affected by a future regulation, which will increase the agency's effectiveness in targeting communication and outreach to these facilities.

In conjunction with the prior notice requirements in part 1, subpart I, this rule will make it possible for FDA to better identify imported food shipments that require inspection prior to admission. The registration will confirm the identity of the country of production, which may not be the same as the country from which the product has been shipped. This information will assist FDA in identifying specific shipments to inspect, if, for example, we have information that a particular type of food or shipments from a particular country may be adulterated. Additionally, the database of registrants and products also will aid FDA in verifying that a product is correctly identified by where and by whom it was produced. For example, if the registration information identifies a facility as producing only dairy products and FDA receives a prior notice purportedly from the facility for a shipment identified as nuts, FDA can decide whether to target that shipment for verification based on the discrepancy.

FDA has conducted its own evaluation of the vulnerability of the U.S. food supply and has also commissioned two threat assessments, one through the Batelle Memorial Institute and a second through the Institute of Food Technologists. These assessments determined the most serious risks of intentional contamination during various stages of food production and distribution. The results of these assessments are classified. We have also received intelligence information regarding threats to the food supply that are guiding our food security efforts. However, to understand possible costs of an intentional strike on the U.S. food supply, FDA presents in table 15 outbreaks resulting from accidental and deliberate contamination, involving both domestic and imported foods. These outbreaks do not represent all possible forms that a terrorist attack might take, but merely illustrate the public health costs of foodborne emergencies. It is likely that an intentional attack on the food supply that sought to disrupt the food supply and sicken many U.S. citizens would be more costly. However, the probability of an attack occurring and the exact reduction in risk resulting from registration is unknown.

Table 15.--Summary of Five Foodborne Outbreaks

| Pathogen | Location and Year | Vehicle | Confirmed or Reported Cases | Estimated Number of Cases | Total Illness Cost |
|---|---|---|---|---|---|
| Salmonella enteritidis (Ref. 20) | Minnesota, 1994 | Ice cream | 150 cases,<br>30 hospitalized | 29,100 in Minnesota<br>224,000 Nationwide | $3,187,700,000 to $5,629,800,000 |
| Shigella sonnei (Ref. 21) | Michigan, 1988 | Tofu salad | 3,175 cases | Not available | $45,200,000 to $79,800,000 |
| Outbreaks Resulting From Deliberate Contamination | | | | | |
| S. Typhimurium (Ref. 22) | Dalles, Oregon, 1984 | Salad bars | 751 cases, 45 hospitalized | Not available | $10,700,000 to $18,900,000 |
| S. dysentreriae type 2 (Ref. 23) | Texas, 1996 | Muffins and doughnuts | 12 cases, 4 hospitalized | All cases identified | $83,000 |
| Outbreaks Resulting From Imported Foods | | | | | |
| Cyclospora cayaetanensis (Ref. 24) | United States and Canada, 1996 | Raspberries (probably imported from Guatemala) | 1,465 cases identified, less than 20 hospitalized | Not available | $3,900,000 |

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a. *Food-contact substances.*

(Comment 187) Some comments stated that there would be no benefits to requiring the registration of articles that contact food and their components. Commenters noted that none of the foodborne outbreaks included in the benefits section resulted from articles that contact food. However, other comments noted the potential for articles that contact food to leach into and contaminate food and concluded that it was necessary to require the registration of articles that contact food.

(Response) FDA has revised the interim final rule to exclude facilities that manufacture/process, pack, or hold food-contact substances, as defined in section 409(h)(6) of the FD&C Act. Accordingly, FDA does not need to address these comments, because these facilities are not subject to the interim final rule.

b. *Food product categories.*

(Comment 188) Many comments claim that, for several reasons, including food product categories would have no benefits: One, facilities would be unable to categorize their products correctly; two, FDA would fail to communicate with facilities that use as ingredients potentially affected foods; and three, the food product categories do not make useful distinctions between categories. Comments claimed that these limitations would make food product code categories useless and even have a negative impact on FDA's ability to communicate with facilities by diverting resources that could be better used elsewhere.

(Response) FDA disagrees with these comments. Consultations with FDA field personnel identify food product categories as an essential part of registration. FDA field personnel state that they would use food product category information to identify facilities potentially affected by a particular emergency, such as a terrorist threat or class 1 recall and for planning inspections. For example, needing to contact only 200 facilities with information about a threat instead of 20,000 will enhance FDA's speed and the reliability of the message. FDA believes that facilities can correctly categorize their products, and FDA will provide interactive help menus as part of the electronic registration system to aid facilities in correctly identifying the appropriate food product categories for their products. Also, FDA will provide a link to the agency's product code builder, which will allow facilities to search for their particular products.

FDA staff have experience using food product categories in their current enforcement activities and have found them to make useful distinctions between foods. FDA is also aware that some products may be ingredients in other food products and will use that information in selecting which facilities to inform of a threat. While FDA recognizes that in some instances and depending on the nature of the threat, it may not be able to target only certain facilities with which to communicate (*e.g.*, a threat against a food product used as an ingredient in many finished products), this does not mean that having product category information would not help FDA focus its resources in other situations (*e.g.*, a threat specifically against soft drink beverage facilities).

(Comment 189) Some comments stated that including food product categories was necessary for the registration system to have any utility.

(Response) FDA agrees with these comments and has chosen to include product categories as a required element in the registration.

c. *U.S. agent.*

(Comment 190) Many comments state that requiring a U.S. agent would generate no benefits and might even inhibit communications between the facility and FDA. Comments offer alternatives such as not requiring the U.S. agent to reside or maintain a place of business in the United States, exempting facilities that provide an e-mail address from the U.S. agent requirement, and making the U.S. agent optional.

(Response) FDA does not agree that a U.S. agent will inhibit communications with FDA. The facility may opt to register with FDA directly and have FDA communicate directly with the facility in case of an emergency. Therefore, requiring a U.S. agent will not lower the expected benefits, as FDA still would have a contact in the United States for each facility with which the agency can communicate on routine matters (*e.g.* issuance of new regulations or guidance applicable to the facility). For some facilities that lack the ability to communicate easily with the United States, due, for example, to language barriers or lack of telephone or Internet access, the U.S. agent will be an important link for both registering the facility, if the owner, operator, or agent in charge authorizes the U.S. agent (if an individual) to register the facility, and communicating with FDA. For a facility that prefers to register and communicate with FDA itself, the U.S. agent still provides additional benefits, such as of being in the same, or nearby, time zone.

d. *Frequency of updates.*

(Comment 191) Many comments request that FDA require less frequent updates of registration information on the basis of high costs to update registration, without generating offsetting benefits.

(Response) FDA has lengthened the update period to 60 days, but has not extended it to the 6 to 12 months requested in many comments. The usefulness of the registration database depends in large part on its accuracy. Allowing longer times for updates will considerably reduce the accuracy of the database, while, as shown in the analysis of costs, will not significantly lower the costs. For most facilities, there will be little difference in costs for updates for 60 days versus annually. The largest costs will be to large manufacturers/processors, which are estimated to update twice a year, at a cost of approximately 2 hours of labor. However, allowing yearly updates would mean that more than 50 percent of the registrations in the database would contain incorrect information at any given point in time, versus less than 10 percent with 60 day updates. Although, FDA is unable to quantify the benefit of a more accurate database, the functionality of the database will be substantially better with a smaller percentage of registrations containing inaccurate information.

Additionally, when foreign food facilities attempt to import their product into the United States, their prior notice will be checked against the registration database. If there are discrepancies between the registration database and information in the prior notice, the shipment will be flagged for followup by FDA personnel, as deemed appropriate. Discrepancies confirmed by FDA border inspections may cause FDA or CBP to examine the shipment.

Table 16.--Summary of Annualized Costs and Qualitative Benefits

| | Discount Rate | Final Rule | Longer Updates | No Product Categories | No U.S. Agent |
|---|---|---|---|---|---|
| Domestic costs | 3% | $6.3 | $5.9 | $5.8 | $6.3 |
| Foreign costs | 3% | $185.5 | $185.2 | $185.1 | $11.5 |
| FDA costs | 3% | $6.5 | $6.5 | $6.5 | $6.5 |
| Total costs | | $198.3 | $197.6 | $197.4 | $24.3 |
| Domestic costs | 7% | $4.8 | $4.5 | $4.5 | $4.8 |
| Foreign costs | 7% | $136.5 | $136.3 | $136.2 | $9.3 |
| FDA costs | 7% | $4.9 | $4.9 | $4.9 | $4.9 |
| Total costs | | $146.2 | $145.7 | $145.6 | $19.0 |
| Benefits | | | lower | lower | lower |

## V. Interim Final Regulatory Flexibility Analysis

FDA has examined the economic implications of this interim final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. FDA has concluded that this interim final rule would have a significant economic impact on a substantial number of small entities. The following analysis, together with other relevant sections of this document, serves as the agency's final regulatory flexibility analysis under the Regulatory Flexibility Act.

(Comment 192) Several comments state that FDA underestimated the impact of the registration on small entities. Small domestic facilities may be adversely affected if their foreign trading partners stop exporting to the United States and small entities may incur higher costs than estimated in the

PRIA. Particularly, small facilities that operate in small niche markets may incur large expenses finding new suppliers.

(Response) FDA did not include in the Preliminary Regulatory Flexibility Analysis the cost of small entities losing foreign suppliers. FDA has estimated that 16 percent of foreign facilities may stop exporting to the United States to avoid the registration requirements. FDA estimates that the impact of registration on the number of line entries submitted for import into the United States will be less than 2 percent of all food entries. This may result in a significant impact on a substantial number of small entities. However, FDA is not able to predict how many small entities will be adversely affected or the size of the impact, and none of the comments provided a basis from which to estimate this impact.

Of the 216,271 domestic entities covered under the interim final rule, 99 percent are small according to the Small Business Administration's (SBA's) regulations. The expected burden for small entities is low, between $90 and $147. For some small facilities, however, costs may be much higher than the expected burden. As stated previously, there is a potential for large transaction costs associated with finding new trading partners. Also, some small facilities may experience unusual difficulties in registering, such as difficulty understanding the requirements, difficulty finding the registration form or website, or confusion over whether they are required to register. With such a large number of facilities affected, if a meaningful percentage of small entities experience a much larger burden, a substantial number of small entities will experience a significant economic effect. A discussion of options considered for small entities was included in the proposed rule. Additional options are also considered in the final regulatory impact analysis, which may also be considered an analysis of options for small businesses because the vast majority of affected entities are small.

## VI. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires cost-benefit and other analyses before any rulemaking if the rule would include a "Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year." The current inflation-adjusted statutory threshold is $113 million. FDA has determined that this interim final rule does not constitute a significant rule under the Unfunded Mandates Reform Act.

## VII. Small Business Regulatory Enforcement Fairness Act (SBREFA) Major Rule

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) defines a major rule for the purpose of Congressional review as having caused or being likely to cause one or more of the following: An annual effect on the economy of $100 million; a major increase in costs or prices; significant adverse effects on competition, employment, productivity, or innovation; or significant adverse effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with the SBREFA, the Office of Management and Budget (OMB) has determined that this interim final rule is a major rule for the purpose of Congressional review.

## VIII. Paperwork Reduction Act of 1995

This interim final rule contains information collection requirements that are subject to review by OMB under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown later with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

*Title:* Registration of Food Facilities.

*Description:* The Bioterrorism Act contains a provision requiring the Secretary to issue a regulation requiring that domestic and foreign facilities that manufacture/process, pack, or hold food intended for consumption in the United States register with FDA by December 12, 2003. Under the Bioterrorism Act, a foreign facility is one that manufactures/processes, packs, or holds food for consumption in the United States without further processing or packaging outside the United States. Information FDA requires on the registration form includes the name and full address of the facility; emergency contact information; all trade names the facility uses; applicable food product categories identified in § 170.3, unless "most/all" human food categories "or none of the above mandatory categories" is checked; and a certification statement that includes the name of the individual authorized to submit the registration form. Additionally, under the interim final rule, facilities would be encouraged to submit their preferred mailing address; type of activity conducted at the facility; food categories not included under § 170.3, but which are helpful to FDA for responding to an incident; type of storage, if the facility is primarily a holding facility; and approximate dates of operation if the facility's business is seasonal. Under the interim final rule, facilities would also be required to submit timely updates within 60 days of a change to any required information on their registration form, and are required to cancel their registration when the facility ceases to operate or is sold to new owners or ceases to manufacture/process, pack, or hold food for consumption in the United States.

*Description of Respondents:* Domestic facilities that manufacture/process, pack, or hold food for consumption in the United States are required to register. Foreign facilities are required to register if they manufacture/process food for consumption in the United States that is not further processed or packaged before being shipped to the United States or if they pack or hold such food. A food is not considered to have been further processed solely because labeling was added or other *de minimis* activity was performed with respect to the food.

TABLE 17.—NO. OF RESPONDENTS

| | |
|---|---|
| Domestic facilities | 216,271 |
| Foreign facilities | 205,405 |
| Total | 421,676 |

*Burden:* In the PRA analysis of the proposed rule, FDA estimated that it would take an administrative worker with Internet access 1 hour to read and understand the registration requirements; this time was doubled to 2 hours of an administrative worker's time for those facilities without Internet access. In response to comments, FDA has revised this estimate to 1 or 2 hours of a manager's time to read and understand the regulations. Foreign facilities' workers would need 1 hour to read and understand the registration requirements, if they have access to the Internet and can read and write in English. An additional 5 hours would be needed if they do not have Internet access, and an additional 5 hours would be needed if they do not read or understand English. In subsequent years, facilities that enter the industry would have to register, facilities that close would have to notify FDA of their closure, and facilities that have changes in their registration information would have to provide updates to FDA. FDA estimated that annually 10 percent of covered facilities would close, 10 percent would open (SBA Small Businesses by the Numbers), and 20 percent of registered facilities would have changes to their registration information.

Next, FDA estimates that filling out a registration form would take a total of 1 hour: 45 minutes of an administrative worker's time and 15 minutes of an owner, operator, or agent in charge's time to verify that the registration information is correct before submitting the form to FDA. Foreign facilities' workers would need 1 hour to fill out the form, if they have access to the Internet and can read and write in English. An additional 1 hour would be needed if they do not have Internet access and an additional 1 hour would be needed if they do not read or understand English. Table 18 of this document shows the burden by domestic and foreign facilities, availability of the Internet, and fluency in English. FDA has information on the percentages of foreign facilities without Internet access and without employees fluent in English, but no information on the percentages of facilities with a particular combination of these characteristics. To compute the burden hours, for ease of computation and reporting, FDA assigned to zero facilities the condition of Internet access and no employees fluent in English and used the percentages of facilities without Internet access and with no employees fluent in English to report numbers of facilities with Internet and English-speaking employees, without Internet and without English-speaking employees, and without Internet and with English-speaking employees. FDA believes that facilities will only use the CD-ROM option, if it will require the same, or fewer hours, than another option.

In the following years, new facilities will have to register with FDA. These new facilities will bear the same burden to register that facilities incurred in the first year. Based on estimates by SBA that 10 percent of all businesses are new (SBA, Small Business by the Numbers), FDA estimates that the number of new facilities each year will be equal to 10 percent of the total number of facilities. Also, a facility that goes out of business, changes ownership, or stops manufacturing/processing, packing, or holding food for consumption in the United States will have to cancel its registration. FDA estimated that 10 percent of the total number of facilities will have to cancel their registration, also based on SBA statistics. FDA estimated that it would take these facilities approximately 1 hour to locate the correct form, enter their information, and send it to FDA. Finally, facilities for which there is a change of information submitted in their registration will have to update their registration. FDA estimated that each year 20 percent of facilities will have to update the information submitted in their registration. This estimate is revised to 55 percent based on comments. It will take these facilities approximately 1 hour to locate the correct form, enter the updated information, and send it to FDA. Table 19 of this document presents an estimate of the burden hours for new facilities, and updates and cancellations for previously registered facilities in future years.

Additionally, facilities that are not registered and are required by FDA to move their food shipment to secure storage must also notify FDA of the location of the secure storage. This paperwork burden is already estimated in Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (68 FR 5428), which requires imports that fail to give adequate notice, including failure to provide a required registration number, to place their shipment in secure storage.

In response to comments, FDA added the option of submitting registrations by CD–ROM. FDA believes that registrants will only use this option if it will take them as the same as or less time than submitting their registrations by Internet or mail. Therefore, the total number of burden hours will remain the same or be decreased by the availability of the CD–ROM option.

(Comment 193) FDA received numerous comments about the usefulness of the information, number of respondents, and the hourly burden for the respondents.

(Response) FDA has responded to comments relating to the usefulness of the information collection in section IV.A.6 of this document (Benefits). Similarly, the agency has responded to comments relating to the number of respondents in section IV.A.3 of this document (number of facilities affected). Finally, the agency has responded to comments regarding the hourly burden in section IV.A.4.a of this document (time costs).

(Comment 194) FDA received numerous comments that the PRA analysis was incorrect, because it failed to include duplicative registration requirements for many facilities.

(Response) The PRA analysis counts the burden hours resulting from the provisions of the interim final rule. Burden hours for other registration provisions would be counted in the PRA analyses for those rules. Including burden hours for other registration provisions would result in double counting of the burden hours. Therefore, FDA does not agree with this comment.

(Comment 195) FDA received comments that FDA had underestimated the frequency with which facilities would need to update their registrations.

(Response) As noted, the interim final rule changes the requirement for timely update from 30 to 60 days. FDA re-estimated the frequency with which facilities would update their registrations. Instead of 20 percent, 55 percent of facilities will update their registrations each year. A full discussion of how this estimate was reached is included in the response to comment 197 (section IV.A.5.c of this document).

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Table 18.--Estimated Annual Reporting Burden--First Year[1]

| | FDA Form No. | No. of respondents | Annual Frequency per Respondent | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|---|
| 21 CFR Part 1 | | | | | | |
| 1.231(a), 1.232, 1.233[2] | FDA 3537 | 152,552 | 1 | 152,552 | 2 | 305,104 |
| 1.231(b), 1.232, 1.233[3] | FDA 3537 | 61,719 | 1 | 61,719 | 3 | 185,157 |
| 1.231(c), 1.232, 1.233[2] | FDA 3537 | 1,000 | 1 | 1,000 | 2 | 2,000 |
| 1.231(c), 1.232, 1.233[3] | FDA 3537 | 1,000 | 1 | 1,000 | 3 | 3,000 |
| 1.231(a), 1232, 1.233[4] | FDA 3537 | 31,864 | 1 | 31,864 | 2 | 63,728 |
| 1.231(b), 1.232,1.233,[5] | FDA 3537 | 29,811 | 1 | 29,811 | 7 | 208,677 |
| 1.231(b), 1.232, 1.233,[6] | FDA 3537 | 141,730 | 1 | 141,730 | 12 | 1,700,760 |
| 1.231(c), 1.232, 1.233[4] | FDA 3537 | 1,000 | 1 | 1,000 | 2 | 2,000 |
| 1.231(c), 1.232, 1.233[5] | FDA 3537 | 1,000 | 1 | 1,000 | 7 | 7,000 |
| Total hours | | | | | | 2,477,426 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] Domestic facilities with Internet access.

[3] Domestic facilities without Internet access.

[4] Foreign facilities with Internet access and fluent in English.

[5] Foreign facilities without Internet access and fluent in English.

[6] Foreign facilities without Internet access and not fluent in English.

Table 19.--Estimated Annual Reporting Burden--Subsequent Years[1]

| 21 CFR Part 1 | FDA form number | Number of respondents | Annual frequency per respondent | Total annual responses | Hours per response | Total Hours |
|---|---|---|---|---|---|---|
| New Facilities | | | | | | |
| 1.231(a), 1.232, 1.233[2] | FDA 3537 | 15,255 | 1 | 15,255 | 2 | 30,510 |
| 1.231(b), 1.232, 1.233[3] | FDA 3537 . | 6,172 | 1 | 6,172 | 3 | 18,516 |
| 1.231(c), 1.232, 1.233[2] | FDA 3537 | 100 | 1 | 100 | 2 | 200 |
| 1.231(c), 1.232, 1.233[3] | FDA 3537 | 100 | 1 | 100 | 3 | 300 |
| 1.231(a), 1.232, 1.233[4] | FDA 3537 | 3,186 | 1 | 3,186 | 2 | 6,372 |
| 1.231(b), 1.232, 1.233[5] | FDA 3537 | 2,981 | 1 | 2,981 | 7 | 20,867 |
| 1.231(b), 1.232, 1.233[6] | FDA 3537 | 14,173 | 1 | 14,173 | 12 | 170,076 |
| 1.231(c), 1.232, 1.233[4] | FDA 3537 | 100 | 1 | 100 | 2 | 200 |
| 1.231(c), 1.232, 1.233[5] | FDA 3537 | 100 | 1 | 100 | 7 | 700 |
| | | | | | | |
| Previously registered facilities | | | | | | |
| 1.234(c),[2] 1.235(c) | FDA 3537/ 3537a | 99,159 | 1 | 99,159 | 1 | 99,159 |
| 1.234(d),[3] 1.235(d) | FDA 3537/ 3537a | 40,117 | 1 | 40,117 | 1 | 40,117 |
| 1.234(e),[2] 1.235(e) | FDA 3537/ 3537a | 650 | 1 | 650 | 1 | 650 |
| 1.234(e),[3] 1.235(e) | FDA 3537/ 3537a | 650 | 1 | 650 | 1 | 650 |
| 1.234(c),[4] 1.235(c) | FDA 3537/ 3537a | 20,711 | 1 | 20,711 | 1 | 20,711 |
| 1.234(d),[5] 1.235(d) | FDA 3537/ 3537a | 19,377 | 1 | 19,377 | 1 | 19,377 |
| 1.234(d),[6] 1.235(d) | FDA 3537/ 3537a | 92,125 | 1 | 92,125 | 1 | 92,125 |
| 1.234(e),[4] 1.235 (e) | FDA 3537/ 3537a | 650 | 1 | 650 | 1 | 650 |
| 1.234(e),[5] 1.235 (e) | FDA 3537/ 3537a | 650 | 1 | 650 | 1 | 650 |
| Total | | | | | | 521,830 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Domestic facilities with Internet access.
[3] Domestic facilities without Internet access.
[4] Foreign facilities with Internet access and fluent in English.
[5] Foreign facilities without Internet access and fluent in English.
[6] Foreign facilities without Internet access and not fluent in English.

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The information collection provisions of this interim final rule have been submitted to OMB for review.

Prior to the effective date of this interim final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this interim final rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

## IX. Request for Comments

FDA is issuing this rule as an interim final rule, with an opportunity for public comment on specific issues identified below. Although the agency is seeking comment on this interim final rule, it is effective December 12, 2003. This means that the rule's requirements will be in effect and have the force and effect of law from that date until any subsequent modification by the issuance of a final rule. Accordingly, as required by section 305 of the Bioterrorism Act, all covered facilities must be registered with FDA by December 12, 2003.

As noted, elsewhere in this issue of the **Federal Register**, FDA is publishing an interim final rule concerning prior notice of imported food shipments. Given the relatedness of the prior notice and food facilities registration rules, FDA is establishing a comment period for the registration rule that coincides with the comment period on the prior notice interim final rule. Thus, the comment period for the registration interim final rule will open today for a period of 75 days. Moreover, to ensure that those commenting on this interim final rule have had the benefit of FDA's outreach and educational efforts and have had experience with the systems, timeframes, and data elements of this interim final rule, the agency intends to reopen the comment period for an additional 30 days in March 2004.

As noted elsewhere in this issue of the **Federal Register**, FDA's economic analysis is based on a number of assumptions. To improve this analysis, FDA invites public comment on the following issues:

1. The cost to foreign facilities of hiring and retaining a U.S. agent. Specifically, FDA invites comment, and the submission of data or other information, on the following:

a. The costs to a foreign facility of hiring a U.S. agent;

b. The number of foreign facilities that have hired a U.S. agent or negotiated additional duties from someone with whom they have an existing relationship in response to this interim final rule, instead of relying on an existing relationship with a person who qualifies as a U.S. agent;

c. The number of foreign facilities that have ceased exporting to the United States because they have decided not to hire/retain a U.S. agent for registration purposes.

d. The distribution of costs between submitting registrations and other services offered by the U.S. agent;

e. The assumptions underlying FDA's estimates of the costs of hiring and retaining a U.S. agent.

2. The effects on domestic small businesses, if any, if some foreign facilities cease exporting to the United States due to the U.S. agent requirement for registration. Specifically, FDA invites comment, and the submission of data or other information, on the following:

a. The number of domestic small businesses that have been adversely affected by trading partners that have ceased exporting to the United States due to the U.S. agent requirement for foreign facility registration; and

b. The costs incurred by these domestic small businesses due to the loss of these trading partners.

FDA will seriously consider all comments submitted. FDA is dedicated to updating this estimate with the best available information in order to inform decision makers who may be considering regulatory alternatives in developing a final rule.

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) written or electronic comments regarding this interim final rule by December 24, 2003. Two copies of any comments are to be submitted, except that individuals may submit one copy. Submit one electronic copy. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

As noted, this regulation is effective on December 12, 2003. The agency will address comments received and confirm or amend the interim final rule in a final rule. The agency, however, will not consider any comments that have been previously considered during this rulemaking.

## X. Analysis of Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## XI. Federalism

FDA has analyzed this interim final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the interim final rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency concludes that the interim final rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement has not been prepared.

## XII. References

The following references have been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852 and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. FDA has verified the Web site addresses in this document, but is not responsible for subsequent changes to the Web sites after this document publishes in the **Federal Register**.

1. Brown, Bradley, Memorandum to the file, July 21, 2003.
2. U.S. Census Bureau, 2000 County Business Patterns, available at *http://www.census.gov/epcd/cbp/view/cbpview.html*.
3. U.S. Census Bureau, 1999 Nonemployer Statistics, available at *http://www.census.gov/epcd/nonemployer/index.html*.
4. U.S. Food and Drug Administration, Field Accomplishments and Compliance Tracking System (FACTS), fiscal year 2002.
5. U.S. Department of Agriculture, National Agriculture Statistics Service, 1997 Census of Agriculture-United States Data, available at *http://www.nass.usda.gov/census/*.
6. U.S. Census Bureau, 1997 Economic Census of Transportation and Warehousing, available at *http://www.census.gov/svsd/www/97trans.html*.
7. Direct Selling Association, Direct Selling by the Numbers, accessed at *http://www.dsa.org/research/numbers.htm#DISTTYPE*, 7/10/2003.
8. Direct Sales World, Facts and Figures and Comment of the World of Direct Sales, accessed at *http://www.nmworld.com/pages/Countries/USA/index.html*, 7/10/2003.
9. U.S. Census Bureau, Guam: 1997 Census of the Outlying Areas, available at *http://www.census.gov/prod/ec97/oa97e-6.pdf*.
10. U.S. Census Bureau, Northern Mariana Islands: 1997 Census of the Outlying Areas, available at *http://www.census.gov/prod/ec97/oa97e-7.pdf*.
11. U.S. Census Bureau, Puerto Rico: 1997 Census of the Outlying Areas, available at *http://www.census.gov/prod/ec97/oa97e-4.pdf*.
12. U.S. Census Bureau, Virgin Islands: 1997 Census of the Outlying Areas, available at *http://www.census.gov/prod/ec97/oa97e-5.pdf*.
13. U.S. Food and Drug Administration, Operational and Administrative System for Import Support (OASIS), fiscal year 2002.

14. RTI, Survey of Manufacturing Practices in the Dietary Supplement Industry, Prepared for FDA, May 17, 2003.
15. Brown, Bradley, Memorandum to file, November 22, 2002.
16. U.S. Department of Labor, Bureau of Labor Statistics, National Compensation Survey: Occupation Wages in the United States, 2000, Summary 01–04, available at *http://www.bls.gov/ncs/ocs/sp/ncbl0354.pdf.*
17. U.S. Small Business Administration, Office of Advocacy, Small Business by the Numbers May 2002, available at *http://www.sba.gov/advo/stats/sbfaq.html.*
18. Cato, Todd, Memo to the record, May 23, 2003.
19. Gripp, Russell, Memo to the record, May 14, 2003.
20. Hennessy T. W., Hedberg C. W., Slutsker L, *et al.*, and the Investigation Team, "A National Outbreak of *Salmonella enteritidis* Infections From Ice Cream," *The New England Journal of Medicine*, May 16, 1996, pp. 1281–1286.
21. Kolavic S. A., Kimura A, Simons S. L., *et al.*, "An Outbreak of Shigella Dysenteriae Type 2 Among Laboratory Workers Due to Intentional Food Contamination," *The Journal of the American Medical Association*, 278:5:396–403.
22. Trook T. J., Tauxe R. V., Wise R.P., *et al.* "A Large Community Outbreak of Salmonellosis Caused by Intentional Contamination of Restaurant Salad Bars," *The Journal of the American Medical Association*, 278:5:389–397.
23. Lee L. A., Ostroff S. M., McGee H. B., *et al.* "An Outbreak of Shigellosis at an Outdoor Music Festival," *American Journal of Epidemiology*, 133:6:608–615.
24. Herwaldt B. L., Ackers M. L., and Cyclospora Working Group, "An Outbreak in 1996 of Cyclosporiasis Associated With Imported Raspberries," *New England Journal of Medicine*, May 29, 1997, pp. 1548–1556.

### List of Subjects

*21 CFR Part 1*

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

*21 CFR Part 20*

Confidential business information, Courts, Freedom of information, Government employees.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 1 and 20 are amended as follows:

## PART 1—GENERAL ENFORCEMENT REGULATIONS

■ 1. The authority citation for part 1 is revised to read as follows:

**Authority:** 15 U.S.C. 1453, 1454, 1455; 19 U.S.C. 1490, 1491; 21 U.S.C. 321, 331, 332, 333, 334, 335a, 343, 350c, 350d, 352, 355, 360b, 362, 371, 374, 381, 382, 393; 42 U.S.C. 216, 241, 243, 262, 264.

■ 2. Subpart H (§§ 1.225 through 1.243) is added to part 1 to read as follows (subparts F and G are reserved):

### Subparts F–G [Reserved]

### Subpart H—Registration of Food Facilities

**General Provisions**

Sec.
1.225 Who must register under this subpart?
1.226 Who does not have to register under this subpart?
1.227 What definitions apply to this subpart?

**Procedures for Registration of Food Facilities**

1.230 When must you register?
1.231 How and where do you register?
1.232 What information is required in the registration?
1.233 What optional items are included in the registration form?
1.234 How and when do you update your facility's registration information?
1.235 How and when do you cancel your facility's registration information?

**Additional Provisions**

1.240 What other registration requirements apply?
1.241 What are the consequences of failing to register, update, or cancel your registration?
1.242 What does assignment of a registration number mean?
1.243 Is food registration information available to the public?

### General Provisions

#### § 1.225 Who must register under this subpart?

(a) You must register your facility under this subpart if you are the owner, operator, or agent in charge of either a domestic or foreign facility, as defined in this subpart, and your facility is engaged in the manufacturing/processing, packing, or holding of food for consumption in the United States, unless your facility qualifies for one of the exemptions in § 1.226.

(b) If you are an owner, operator, or agent in charge of a domestic facility, you must register your facility whether or not the food from the facility enters interstate commerce.

(c) If you are the owner, operator, or agent in charge of a facility, you may authorize an individual to register your facility on your behalf.

#### § 1.226 Who does not have to register under this subpart?

This subpart does not apply to the following facilities:

(a) A foreign facility, if food from such facility undergoes further manufacturing/processing (including packaging) by another facility outside the United States. A facility is not exempt under this provision if the further manufacturing/processing (including packaging) conducted by the subsequent facility consists of adding labeling or any similar activity of a *de minimis* nature;

(b) Farms;

(c) Retail food establishments;

(d) Restaurants;

(e) Nonprofit food establishments in which food is prepared for, or served directly to, the consumer;

(f) Fishing vessels, including those that not only harvest and transport fish but also engage in practices such as heading, eviscerating, or freezing intended solely to prepare fish for holding on board a harvest vessel. However, those fishing vessels otherwise engaged in processing fish are subject to this subpart. For the purposes of this section, "processing" means handling, storing, preparing, shucking, changing into different market forms, manufacturing, preserving, packing, labeling, dockside unloading, holding, or heading, eviscerating, or freezing other than solely to prepare fish for holding on board a harvest vessel;

(g) Facilities that are regulated exclusively, throughout the entire facility, by the U.S. Department of Agriculture under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*);

#### § 1.227 What definitions apply to this subpart?

(a) *The act* means the Federal Food, Drug, and Cosmetic Act.

(b) In addition, for the purposes of this subpart:

(1) *Calendar day* means every day shown on the calendar.

(2) *Facility* means any establishment, structure, or structures under one ownership at one general physical location, or, in the case of a mobile facility, traveling to multiple locations, that manufactures/processes, packs, or holds food for consumption in the United States. Transport vehicles are not facilities if they hold food only in the usual course of business as carriers. A facility may consist of one or more contiguous structures, and a single building may house more than one distinct facility if the facilities are under separate ownership. The private residence of an individual is not a facility. Nonbottled water drinking water collection and distribution establishments and their structures are not facilities.

(i) *Domestic facility* means any facility located in any State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico that manufactures/processes, packs, or holds food for consumption in the United States.

(ii) *Foreign facility* means a facility other than a domestic facility that manufactures/processes, packs, or holds food for consumption in the United States.

(3) *Farm* means a facility in one general physical location devoted to the growing and harvesting of crops, the raising of animals (including seafood), or both. Washing, trimming of outer leaves of, and cooling produce are considered part of harvesting. The term "farm" includes:

(i) Facilities that pack or hold food, provided that all food used in such activities is grown, raised, or consumed on that farm or another farm under the same ownership; and

(ii) Facilities that manufacture/process food, provided that all food used in such activities is consumed on that farm or another farm under the same ownership.

(4) *Food* has the meaning given in section 201(f) of the act (21 U.S.C. 321(f)),

(i) Except for purposes of this subpart, it does not include:

(A) *Food* contact substances as defined in section 409(h)(6) of the act (21 U.S.C. 348(h)(6)), or

(B) Pesticides as defined in 7 U.S.C. 136(u).

(ii) Examples of food include fruits, vegetables, fish, dairy products, eggs, raw agricultural commodities for use as food or as components of food, animal feed (including pet food), food and feed ingredients, food and feed additives, dietary supplements and dietary ingredients, infant formula, beverages (including alcoholic beverages and bottled water), live food animals, bakery goods, snack foods, candy, and canned foods.

(5) *Holding* means storage of food. Holding facilities include warehouses, cold storage facilities, storage silos, grain elevators, and liquid storage tanks.

(6) *Manufacturing/processing* means making food from one or more ingredients, or synthesizing, preparing, treating, modifying or manipulating food, including food crops or ingredients. Examples of manufacturing/processing activities are cutting, peeling, trimming, washing, waxing, eviscerating, rendering, cooking, baking, freezing, cooling, pasteurizing, homogenizing, mixing, formulating, bottling, milling, grinding, extracting juice, distilling, labeling, or packaging.

(7) *Nonprofit food establishment* means a charitable entity that prepares or serves food directly to the consumer or otherwise provides food or meals for consumption by humans or animals in the United States. The term includes central food banks, soup kitchens, and nonprofit food delivery services. To be considered a nonprofit food establishment, the establishment must meet the terms of section 501(c)(3) of the U.S. Internal Revenue Code (26 U.S.C. 501(c)(3)).

(8) *Packaging* (when used as a verb) means placing food into a container that directly contacts the food and that the consumer receives.

(9) *Packing* means placing food into a container other than packaging the food.

(10) *Restaurant* means a facility that prepares and sells food directly to consumers for immediate consumption. "Restaurant" does not include facilities that provide food to interstate conveyances, central kitchens, and other similar facilities that do not prepare and serve food directly to consumers.

(i) Entities in which food is provided to humans, such as cafeterias, lunchrooms, cafes, bistros, fast food establishments, food stands, saloons, taverns, bars, lounges, catering facilities, hospital kitchens, day care kitchens, and nursing home kitchens are restaurants; and

(ii) Pet shelters, kennels, and veterinary facilities in which food is provided to animals are restaurants.

(11) *Retail food establishment* means an establishment that sells food products directly to consumers as its primary function. A retail food establishment may manufacture/process, pack, or hold food if the establishment's primary function is to sell from that establishment food, including food that it manufactures/processes, packs, or holds, directly to consumers. A retail food establishment's primary function is to sell food directly to consumers if the annual monetary value of sales of food products directly to consumers exceeds the annual monetary value of sales of food products to all other buyers. The term "consumers" does not include businesses. A "retail food establishment" includes grocery stores, convenience stores, and vending machine locations.

(12) *Trade name* means the name or names under which the facility conducts business, or additional names by which the facility is known. A trade name is associated with a facility, and a brand name is associated with a product.

(13) *U.S. agent* means a person (as defined in section 201(e) of the act (21 U.S.C. 321(e))) residing or maintaining a place of business in the United States whom a foreign facility designates as its agent for purposes of this subpart. A U.S. agent cannot be in the form of a mailbox, answering machine or service, or other place where an individual acting as the foreign facility's agent is not physically present.

(i) The U.S. agent acts as a communications link between FDA and the foreign facility for both emergency and routine communications. The U.S. agent will be the person FDA contacts when an emergency occurs, unless the registration specifies under § 1.233(e) another emergency contact.

(ii) FDA will treat representations by the U.S. agent as those of the foreign facility, and will consider information or documents provided to the U.S. agent the equivalent of providing the information or documents to the foreign facility.

(iii) Having a single U.S. agent for the purposes of this subpart does not preclude facilities from having multiple agents (such as foreign suppliers) for other business purposes. A firm's commercial business in the United States need not be conducted through the U.S. agent designated for purposes of this subpart.

(14) *You* or *registrant* means the owner, operator, or agent in charge of a facility that manufactures/processes, packs, or holds food for consumption in the United States.

## Procedures for Registration of Food Facilities

### § 1.230 When must you register?

The owner, operator, or agent in charge of a facility that manufactures/processes, packs or holds food for consumption in the United States must register the facility no later than December 12, 2003. The owner, operator, or agent in charge of a facility that begins to manufacture/process, pack, or hold food for consumption in the United States on or after December 12, 2003, must register before the facility begins such activities. An owner, operator, or agent in charge of a facility may authorize an individual to register the facility on its behalf.

### § 1.231 How and where do you register?

(a) *Electronic registration.* (1) To register electronically, you must register at *http://www.fda.gov/furls*, which is available for registration 24 hours a day, 7 days a week. This website is available from wherever the Internet is accessible, including libraries, copy centers, schools, and Internet cafes. An individual authorized by the owner, operator, or agent in charge of a facility may also register a facility electronically.

(2) FDA strongly encourages electronic registration for the benefit of both FDA and the registrant.

(3) Once you complete your electronic registration, FDA will automatically provide you with an electronic confirmation of registration and a permanent registration number.

(4) You will be considered registered once FDA electronically transmits your confirmation and registration number.

(b) *Registration by mail or fax.* If, for example, you do not have reasonable access to the Internet through any of the methods described in paragraph (a) of this section, you may register by mail or fax.

(1) You must register using Form 3537. You may obtain a copy of this form by writing to the U.S. Food and Drug Administration (HFS–681), 5600 Fishers Lane, Rockville, MD 20857 or by requesting the form by phone at 1–877–FDA–3882 (1–877–332–3882).

(2) When you receive the form, you must fill it out completely and legibly and either mail it to the address in paragraph (b)(1) of this section or fax it to 301–210–0247.

(3) If any required information on the form is incomplete or illegible when FDA receives it, FDA will return the form to you for revision, provided that your mailing address or fax number is legible and valid. When returning a registration form for revision, FDA will use the means by which the form was received by the agency (*i.e.*, by mail or fax).

(4) FDA will enter complete and legible mailed and faxed registration submissions into its registration system, along with CD–ROM submissions, as soon as practicable, in the order FDA receives them.

(5) FDA will then mail to the address or fax to the fax number on the registration form a copy of the registration as entered, confirmation of registration, and your registration number. When responding to a registration submission, FDA will use the means by which the registration was received by the agency (*i.e.*, by mail or fax).

(6) If any information you previously submitted was incorrect at the time of submission, you must immediately update your facility's registration as specified in § 1.234.

(7) Your facility is considered registered once FDA enters your facility's registration data into the registration system and the system generates a registration number.

(c) *Registration by CD–ROM for multiple submissions.* If, for example, you do not have reasonable access to the Internet through any of the methods provided under paragraph (a) of this section, you may register by CD–ROM.

(1) Registrants submitting their registrations in CD–ROM format must use ISO 9660 (CD–R or CD–RW) data format.

(2) These files must be submitted on a portable document format (PDF) rendition of the registration form (Form 3537) and be accompanied by one signed copy of the certification statement that appears on the registration form (Form 3537).

(3) Each submission on the CD–ROM must contain the same preferred mailing address in the appropriate block on Form 3537.

(4) A CD–ROM may contain registrations for as many facilities as needed up to the CD–ROM's capacity.

(5) The registration on the CD–ROM for each separate facility must have a unique file name up to 32 characters long, the first part of which may be used to identify the parent company.

(6) You must mail the CD–ROM to the U.S. Food and Drug Administration (HFS–681), 5600 Fishers Lane, Rockville, MD 20857.

(7) If FDA receives a CD–ROM that does not comply with these specifications, it will return the CD–ROM to the submitter unprocessed.

(8) FDA will enter CD–ROM submissions that comply with these specifications into its registration system, along with the complete and legible mailed and faxed submissions, as soon as practicable, in the order FDA receives them.

(9) For each facility on the CD–ROM, FDA will mail to the preferred mailing address a copy of the registration(s) as entered, confirmation of registration, and each facility's assigned registration number.

(10) If any information you previously submitted was incorrect at the time of submission, you must immediately update your facility's registration as specified in § 1.234.

(11) Your facility is considered registered once FDA enters your facility's registration data into the registration system and the system generates a registration number.

(d) *Fees.* No registration fee is required.

(e) *Language.* You must submit all registration information in the English language except an individual's name, the name of a company, the name of a street, and a trade name may be submitted in a foreign language. All information, including these items, must be submitted using the Latin (Roman) alphabet.

### § 1.232 What information is required in the registration?

Each registrant must submit the following information through one of the methods described in § 1.231:

(a) The name, full address, and phone number of the facility;

(b) The name, address, and phone number of the parent company, if the facility is a subsidiary of the parent company;

(c) For domestic and foreign facilities, the names, addresses, and phone numbers of the owner, operator, and agent in charge.

(d) For a foreign facility, the name, address, phone number, and emergency contact phone number of its U.S. agent (if there is no other emergency contact designated under § 1.233(c));

(e) For a domestic facility, an emergency contact phone number;

(f) All trade names the facility uses;

(g) Applicable food product categories as identified in § 170.3 of this chapter, unless you check either "most/all human food product categories," according to § 1.233(e), or "none of the above mandatory categories" because your facility manufactures/processes, packs, or holds a food that is not identified in § 170.3 of this chapter;

(h) The name, address, and phone number for the owner, operator, or agent in charge;

(i) A statement in which the owner, operator, or agent in charge certifies that the information submitted is true and accurate. If the individual submitting the form is not the owner, operator, or agent in charge of the facility, the registration must also include a statement in which the individual certifies that the information submitted is true and accurate, certifies that he/she is authorized to submit the registration, and identifies by name, address, and telephone number, the individual who authorized submission of the registration. Each registration must include the name of the individual registering the facility submitting the registration, and the individual's signature (for the paper and CD–ROM options).

### § 1.233 What optional items are included in the registration form?

FDA encourages, but does not require, you to submit the following items in your facility's registration. These data will enable FDA to communicate more quickly with facilities that may be the target of a terrorist threat or attack, or otherwise affected by an outbreak of foodborne illness. This information includes:

(a) Fax number and e-mail address of the facility;

(b) Preferred mailing address, if different from that of the facility;

(c) Fax number and e-mail address of the parent company, if the facility is a subsidiary of the parent company;

(d) For a domestic facility, emergency contact name, title, and e-mail address;

(e) For a foreign facility, an emergency contact name, title, phone number and e-mail address. FDA will consider the facility's U.S. agent the facility's emergency contact unless the facility chooses to designate another person to serve as an emergency contact under this section;

(f) For a foreign facility, title, fax number, and e-mail address of the U.S. agent;

(g) Type of activity conducted at the facility (e.g., manufacturing/processing or holding);

(h) Food categories not identified in § 170.3 of this chapter, which are provided in Form 3537 sections 11a (e.g., infant formula, animal byproducts and extracts) and 11b (e.g., grain products, amino acids);

(i) Type of storage, if the facility is primarily a holding facility;

(j) A food product category of "most/all human food product categories," if the facility manufactures/processes, packs, or holds foods in most or all of the categories identified in § 170.3 of this chapter;

(k) Approximate dates of operation, if the facility's business is seasonal;

(l) The fax number and e-mail address of the owner, operator, or agent in charge; and

(m) The fax number and e-mail address of the individual who authorized submission of the registration.

### § 1.234 How and when do you update your facility's registration information?

(a) *Update requirements.* The owner, operator, or agent in charge must submit an update to a facility's registration within 60 calendar days of any change to any of the information previously submitted under § 1.232 (*e.g.*, change of operator, agent in charge, or U.S. agent), except a change of the owner. The owner, operator, or agent in charge may authorize an individual to update a facility's registration.

(b) *Cancellation due to ownership changes.* If the reason for the update is that the facility has a new owner, the former owner must cancel the facility's registration as specified in § 1.235 within 60 calendar days of the change and the new owner must re-register the facility as specified in § 1.231. The former owner may authorize an individual to cancel a facility's registration.

(c) *Electronic update.* (1) To update your registration electronically, you must update at *http://www.fda.gov/furls.*

(2) Once you complete your electronic update, FDA will automatically provide you with an electronic confirmation of your update.

(3) Your registration will be considered updated once FDA transmits your update confirmation, unless notified otherwise.

(d) *Update by mail or fax.* If, for example, you do not have reasonable access to the Internet through any of the methods described in § 1.231(a)), you may update your facility's registration by mail or by fax:

(1) You must update your registration using Form 3537. You may obtain a copy of this form by writing to the U.S. Food and Drug Administration (HFS–681), 5600 Fishers Lane, Rockville, MD 20857 or by requesting the form by phone at 1–877–FDA–3882 (1–877–332–3882).

(2) When you receive the form, you must legibly fill out the sections of the form reflecting your updated information and either mail it to the address in paragraph (d)(1) of this section or fax it to 301–210–0247.

(3) If the information on the form is incomplete or illegible when FDA receives it, FDA will return the form to you for revision, provided that your mailing address or fax number is legible and valid. When returning a registration form for revision, FDA will use the means by which the registration was received by the agency (*i.e.*, by mail or fax).

(4) FDA will enter complete and legible updates into its registration system, along with CD–ROM submissions, as soon as practicable, in the order FDA receives them.

(5) FDA will then mail to the address or fax to the fax number on the registration form a copy of the update as entered and confirmation of the update. When responding to an update submission, FDA will use the means by which the form was received by the agency (*i.e.*, by mail or fax).

(6) If any update information you previously submitted was incorrect at the time of submission, you must immediately resubmit your update.

(7) Your registration will be considered updated once FDA enters your facility's update data into the registration system and the system generates an update confirmation.

(e) *Update by CD–ROM for multiple submissions.* If, for example, you do not have reasonable access to the Internet through any of the methods provided under § 1.231(a), you may update your facilities' registrations by CD–ROM.

(1) Registrants submitting their updates in CD–ROM format must use ISO 9660 (CD–R or CD–RW) data format.

(2) Update files must be submitted on a PDF rendition of FDA's registration form (Form 3537) and be accompanied by one signed copy of the certification statement on the registration form (Form 3537).

(3) Each submission on the CD–ROM must contain the same preferred mailing address in the appropriate block on Form 3537.

(4) The CD–ROM may contain updates for as many facilities as needed up to the CD–ROM's capacity.

(5) The update for each facility on the CD–ROM must have a unique file name up to 32 characters long, the first part of which may be used to identify the parent company.

(6) You must mail the CD–ROM to U.S. Food and Drug Administration (HFS–681), 5600 Fishers Lane, Rockville, MD 20857.

(7) If FDA receives an update CD–ROM that does not comply with these specifications, it will return the CD–ROM to the registrant unprocessed.

(8) FDA will enter CD–ROM update submissions into its registration system, along with the complete and legible mailed and faxed update submissions, as soon as practicable, in the order FDA receives them.

(9) For each facility on the CD–ROM, FDA will mail to the preferred mailing address a copy of the update(s) as entered and confirmation of the update.

(10) If any update information you previously submitted was incorrect at the time of submission, you must immediately resubmit your update.

(11) Your registration will be considered updated once FDA enters your facility's update data into the registration system and the system generates an update confirmation.

### § 1.235 How and when do you cancel your facility's registration information?

(a) *Notification of registration cancellation.* A facility canceling its registration must do so within 60 calendar days of the reason for cancellation (*e.g.*, facility ceases operations, ceases providing food for consumption in the United States, or the facility is sold to a new owner).

(b) *Cancellation requirements.* The cancellation of a facility's registration must include the following information:

(1) The facility's registration number;

(2) Whether the facility is domestic or foreign;

(3) The facility name and address;

(4) The name, address, and e-mail address (if available) of the individual submitting the cancellation; and

(5) A statement certifying that the information submitted is true and accurate, and that the person submitting the cancellation is authorized by the facility to cancel its registration.

(c) *Electronic cancellation.* (1) To cancel your registration electronically, you must cancel at *http://www.fda.gov/furls.*

(2) Once you complete your electronic cancellation, FDA will automatically provide you with an electronic confirmation of your cancellation.

(3) Your registration will be considered cancelled once FDA transmits your cancellation confirmation.

(d) *Cancellation by mail or fax.* If, for example, you do not have reasonable access to the Internet through any of the methods described in § 1.231(a), you may cancel your facility's registration by mail or fax.

(1) You must cancel your registration using Form 3537a. You may obtain a copy of this form by writing to the U.S. Food and Drug Administration (HFS–681), 5600 Fishers Lane, Rockville, MD 20857, or by requesting the form by phone at 1–877–FDA–3882 (1–877–332–3882).

(2) When you receive the form, you must completely and legibly fill out the form and either mail it to the address in paragraph (d)(1) of this section or fax it to 301–210–0247.

(3) If the information on the form is incomplete or illegible when FDA receives it, FDA will return the form to you for revision, provided that your mailing address or fax number is legible and valid. When returning a cancellation form for revision, FDA will use the means by which the cancellation was received by the agency (*i.e.*, by mail or fax).

(4) FDA will enter complete and legible mailed and faxed cancellations into its registration system, along with CD–ROM cancellations, as soon as practicable, in the order FDA receives them.

(5) FDA will then mail to the address or fax to the fax number on the cancellation form a copy of the cancellation as entered and confirmation of the cancellation. When responding to a cancellation, FDA will use the means by which the form was received by the agency (*i.e.*, by mail or fax).

(6) If any information you previously submitted was incorrect at the time of submission, you must immediately resubmit your cancellation.

(7) Your registration will be considered cancelled once FDA enters your facility's cancellation data into the registration system and the system generates a confirmation.

(e) *Cancellation by CD–ROM for multiple submissions.* If, for example, you do not have reasonable access to the Internet through any of the methods described in § 1.231(a), you may cancel your facilities' registrations using a CD–ROM.

(1) Registrants submitting their cancellations in CD–ROM format must use ISO 9660 (CD–R or CD–RW) data format.

(2) Cancellation files must be submitted on a PDF rendition of the cancellation form (Form 3537a) and be accompanied by one signed copy of the certification statement on the cancellation form.

(3) Each submission on the CD–ROM must contain the same preferred mailing address in the appropriate block on Form 3537.

(4) The CD–ROM may contain cancellations for as many facilities as needed up to the CD–ROM's capacity.

(5) The cancellation for each facility on the CD–ROM must have a unique file name up to 32 characters long, the first part of which may be used to identify the parent company.

(6) You must mail the CD–ROM to U.S. Food and Drug Administration (HFS–681), 5600 Fishers Lane, Rockville, MD 20857.

(7) If FDA receives a CD–ROM that does not comply with these specifications, it will return the CD–ROM to the registrant unprocessed.

(8) FDA will enter CD–ROM submissions that meet the specifications into its registration system, along with complete and legible mailed and faxed submissions, as soon as practicable, in the order FDA receives them.

(9) For each facility on the CD–ROM, FDA will mail to the preferred mailing address a copy of the cancellation(s) as entered and confirmation of the cancellation.

(10) If any information you previously submitted was incorrect at the time of submission, you must immediately resubmit your cancellation.

(11) Your registration will be considered cancelled once FDA enters your facility's cancellation data into the registration system and the system generates a confirmation.

## Additional Provisions

### § 1.240 What other registration requirements apply?

In addition to the requirements of this subpart, you must comply with the registration regulations found in part 108 of this chapter, related to emergency permit control, and any other Federal, State, or local registration requirements that apply to your facility.

### § 1.241 What are the consequences of failing to register, update, or cancel your registration?

(a) Section 301 of the act (21 U.S.C. 331) prohibits the doing of certain acts or causing such acts to be done. Under section 302 of the act (21 U.S.C. 332), the United States can bring a civil action in Federal court to enjoin a person who commits a prohibited act. Under section 303 of the act (21 U.S.C. 333), the United States can bring a criminal action in Federal court to prosecute a person who is responsible for the commission of a prohibited act. Under section 306 of the act (21 U.S.C. 335a), FDA can seek debarment of any person who has been convicted of a felony relating to importation of food into the United States. Failure of an owner, operator, or agent in charge of a domestic or foreign facility to register its facility, to update required elements of it's facility's registration, or to cancel its registration in accordance with the requirements of this subpart is a prohibited act under section 301(dd) of the act.

(b) FDA will cancel a registration if the agency independently verifies that the facility is no longer in business or has changed owners, and the owner, operator, or agent in charge of the facility fails to cancel the registration, or if FDA determines that the registration is for a facility that does not exist. If FDA cancels a facility's registration, FDA will mail a confirmation of the cancellation to the facility at the address provided in the facility's registration.

(c) If an article of food is imported or offered for import into the United States and a foreign facility that manufactured/processed, packed, or held that article of food has not registered in accordance with this subpart, the disposition of the article of food shall be governed by the procedures set out in subpart I of this part.

### § 1.242 What does assignment of a registration number mean?

Assignment of a registration number to a facility means that the facility is registered with FDA. Assignment of a registration number does not in any way convey FDA's approval or endorsement of a facility or its products.

### § 1.243 Is food registration information available to the public?

(a) The list of registered facilities and registration documents submitted under this subpart are not subject to disclosure under 5 U.S.C. 552 (the Freedom of Information Act). In addition, any information derived from such list or registration documents that would disclose the identity or location of a specific registered person, is not subject to disclosure under 5 U.S.C. 552 (the Freedom of Information Act).

(b) Paragraph (a) of this section does not apply to any information obtained by other means or that has previously been disclosed to the public as defined in § 20.81 of this chapter.

## PART 20—PUBLIC INFORMATION

### Subpart F—Availability of Specific Categories of Records

■ 3. The authority citation for part 20 continues to read as follows:

**Authority:** 5 U.S.C 552; 18 U.S.C. 1905; 19 U.S.C. 2531–2582; 21 U.S.C. 321–393, 1401–1403; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1.

■ 4. Section 20.100 is amended by adding paragraph (c)(42) to read as follows:

### § 20.100 Applicability; cross-reference to other regulations.

* * * * *

(c) * * *

(42) Registration of food facilities, in § 1.243 of this chapter.

Dated: October 2, 2003.

**Tommy G. Thompson,**

*Secretary of Health and Human Services.*

Dated: October 8, 2003.

**Tom Ridge,**

*Secretary of Homeland Security.*

BILLING CODE 4160-01-P

**Note:** The following appendix will not appear in the Code of Federal Regulations.

*Form Approval: OMB No. 0910-xxxx*
*Expiration Date:*
*See OMB Statement at end of form*

| |
|---|
| FDA USE ONLY |

**DHHS/FDA - FOOD FACILITY REGISTRATION FORM**

**USE BLUE OR BLACK INK ONLY**

**Date:** ____________________ **(MM/DD/YYYY)**

| | |
|---|---|
| **Section 1 - TYPE OF REGISTRATION** | |
| **1a.** ○ **DOMESTIC REGISTRATION** | ○ **FOREIGN REGISTRATION** |
| **1b.** ○ **INITIAL REGISTRATION** | ○ **UPDATE OF REGISTRATION INFORMATION** |
| **If update, provide the following:**<br>Facility Registration Number: ____________________ **PIN** ____________________ | |
| **Check all that apply and further identify changes in the applicable sections.** | ○ United States Agent Change – Foreign facilities only |
| ○ Facility Name Change | ○ Seasonal Facility Dates of Operation Change |
| ○ Facility Address Change (see instructions) | ○ Type of Activity Change |
| ○ Preferred Mailing Address Change | ○ Type of Storage Change |
| ○ Parent Company Change | ○ Human Food Product Category Change |
| ○ Emergency Contact Change | ○ Animal Food Product Category Change |
| ○ Trade Name Change | ○ Operator or Agent in Charge Change |
| **1c. ARE YOU THE NEW OWNER OF A PREVIOUSLY REGISTERED FACILITY?** Yes ○ No ○<br>If "yes", provide the following information, if known. | |
| Previous owner's name: | Previous owner's registration number: |

| | |
|---|---|
| **Section 2 - FACILITY NAME / ADDRESS INFORMATION** | |
| FACILITY NAME: | |
| FACILITY STREET ADDRESS, Line 1: | |
| FACILITY STREET ADDRESS, Line 2: | |
| CITY: | STATE: |
| ZIP CODE (POSTAL CODE): | PROVINCE/TERRITORY: |
| COUNTRY: | PHONE NUMBER (Include Area/Country Code): |
| FAX NUMBER (OPTIONAL; Include Area/ Country Code): | E-MAIL ADDRESS (OPTIONAL): |

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## DHHS/FDA - FOOD FACILITY REGISTRATION FORM

| | |
|---|---|
| **Section 3 - PREFERRED MAILING ADDRESS INFORMATION complete this section only if different from Section 2, Facility Name/Address Information (OPTIONAL)** | |
| NAME: | |
| ADDRESS, Line 1: | |
| ADDRESS, Line 2: | |
| CITY: | STATE: |
| ZIP CODE (POSTAL CODE): | PROVINCE/TERRITORY: |
| COUNTRY: | PHONE NUMBER (Include Area/ Country Code): |
| FAX NUMBER (Include Area/ Country Code): | E-MAIL ADDRESS: |

| | |
|---|---|
| **Section 4 - PARENT COMPANY NAME / ADDRESS INFORMATION (IF APPLICABLE AND IF DIFFERENT FROM SECTIONS 2 AND 3). IF INFORMATION IS THE SAME AS ANOTHER SECTION, CHECK WHICH SECTION: SECTION 2 ○ or SECTION 3 ○** | |
| NAME OF PARENT COMPANY: | |
| STREET ADDRESS OF PARENT COMPANY, Line 1: | |
| STREET ADDRESS OF PARENT COMPANY, Line 2: | |
| CITY: | STATE: |
| ZIP CODE (POSTAL CODE): | PROVINCE/TERRITORY: |
| COUNTRY: | PHONE NUMBER (Include Area/ Country Code): |
| FAX NUMBER (OPTIONAL; Include Area/Country Code): | E-MAIL ADDRESS (OPTIONAL): |

| | |
|---|---|
| **Section 5 - FACILITY EMERGENCY CONTACT INFORMATION**<br>(OPTIONAL FOR FOREIGN FACILITIES; FDA WILL USE YOUR U.S. AGENT AS YOUR EMERGENCY CONTACT UNLESS YOU CHOOSE TO DESIGNATE A DIFFERENT CONTACT HERE.) | |
| INDIVIDUAL'S NAME (OPTIONAL): | |
| TITLE (OPTIONAL): | EMERGENCY CONTACT PHONE (Include area/ country code): |
| E-MAIL ADDRESS (OPTIONAL): | |

**Form 3537 (1/03)**

*Form Approval: OMB No. 0910-xxxx*
*Expiration Date:*
*See OMB Statement at end of form*

## DHHS/FDA - FOOD FACILITY REGISTRATION FORM

| | |
|---|---|
| **Section 3 - PREFERRED MAILING ADDRESS INFORMATION complete this section only if different from Section 2, Facility Name/Address Information (OPTIONAL)** | |
| NAME: | |
| ADDRESS, Line 1: | |
| ADDRESS, Line 2: | |
| CITY: | STATE: |
| ZIP CODE (POSTAL CODE): | PROVINCE/TERRITORY: |
| COUNTRY: | PHONE NUMBER (Include Area/ Country Code): |
| FAX NUMBER (Include Area/ Country Code): | E-MAIL ADDRESS: |

| | |
|---|---|
| **Section 4 - PARENT COMPANY NAME / ADDRESS INFORMATION (IF APPLICABLE AND IF DIFFERENT FROM SECTIONS 2 AND 3). IF INFORMATION IS THE SAME AS ANOTHER SECTION, CHECK WHICH SECTION: SECTION 2 ○ or SECTION 3 ○** | |
| NAME OF PARENT COMPANY: | |
| STREET ADDRESS OF PARENT COMPANY, Line 1: | |
| STREET ADDRESS OF PARENT COMPANY, Line 2: | |
| CITY: | STATE: |
| ZIP CODE (POSTAL CODE): | PROVINCE/TERRITORY: |
| COUNTRY: | PHONE NUMBER (Include Area/ Country Code): |
| FAX NUMBER (OPTIONAL; Include Area/Country Code): | E-MAIL ADDRESS (OPTIONAL): |

| | |
|---|---|
| **Section 5 - FACILITY EMERGENCY CONTACT INFORMATION**<br>(**OPTIONAL** FOR FOREIGN FACILITIES; FDA WILL USE YOUR U.S. AGENT AS YOUR EMERGENCY CONTACT UNLESS YOU CHOOSE TO DESIGNATE A DIFFERENT CONTACT HERE.) | |
| INDIVIDUAL'S NAME (OPTIONAL): | |
| TITLE (OPTIONAL): | EMERGENCY CONTACT PHONE (Include area/ country code): |
| E-MAIL ADDRESS (OPTIONAL): | |

**Form 3537 (1/03)**

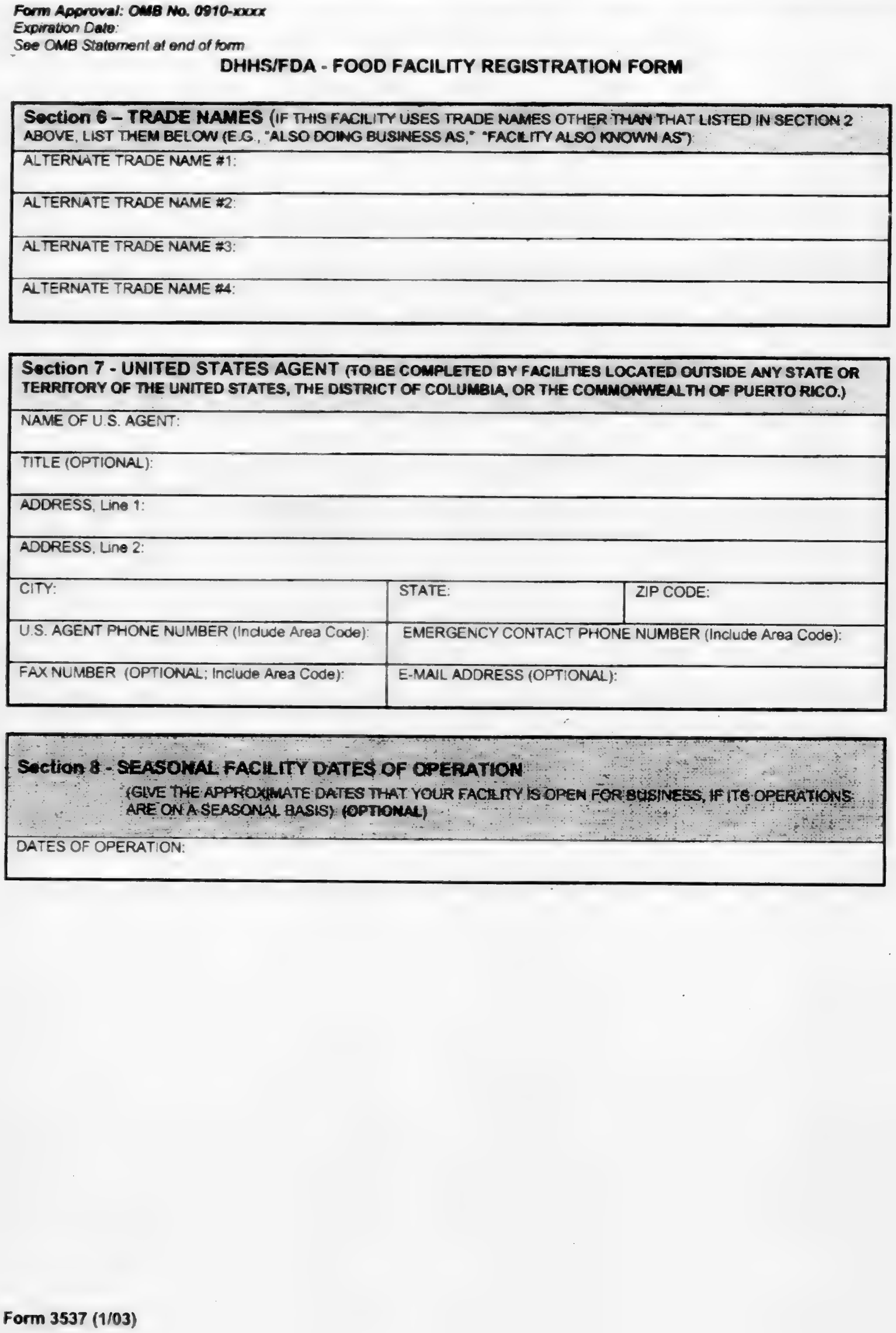

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**DHHS/FDA - FOOD FACILITY REGISTRATION FORM**

**Section 6 – TRADE NAMES** (IF THIS FACILITY USES TRADE NAMES OTHER THAN THAT LISTED IN SECTION 2 ABOVE, LIST THEM BELOW (E.G., "ALSO DOING BUSINESS AS," "FACILITY ALSO KNOWN AS"):

ALTERNATE TRADE NAME #1:

ALTERNATE TRADE NAME #2:

ALTERNATE TRADE NAME #3:

ALTERNATE TRADE NAME #4:

**Section 7 - UNITED STATES AGENT** (TO BE COMPLETED BY FACILITIES LOCATED OUTSIDE ANY STATE OR TERRITORY OF THE UNITED STATES, THE DISTRICT OF COLUMBIA, OR THE COMMONWEALTH OF PUERTO RICO.)

NAME OF U.S. AGENT:

TITLE (OPTIONAL):

ADDRESS, Line 1:

ADDRESS, Line 2:

| | | |
|---|---|---|
| CITY: | STATE: | ZIP CODE: |
| U.S. AGENT PHONE NUMBER (Include Area Code): | EMERGENCY CONTACT PHONE NUMBER (Include Area Code): | |
| FAX NUMBER (OPTIONAL; Include Area Code): | E-MAIL ADDRESS (OPTIONAL): | |

**Section 8 - SEASONAL FACILITY DATES OF OPERATION**
(GIVE THE APPROXIMATE DATES THAT YOUR FACILITY IS OPEN FOR BUSINESS, IF ITS OPERATIONS ARE ON A SEASONAL BASIS) **(OPTIONAL)**

DATES OF OPERATION:

**Form 3537 (1/03)**

58968 Federal Register / Vol. 68, No. 197 / Friday, October 10, 2003 / Rules and Regulations

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## DHHS/FDA - FOOD FACILITY REGISTRATION FORM

**Section 9 - TYPE OF ACTIVITY CONDUCTED AT THE FACILITY**
(CHECK ALL TYPES OF OPERATIONS THAT ARE PERFORMED AT THIS FACILITY REGARDING THE MANUFACTURING/PROCESSING, PACKING OR HOLDING OF FOOD) (OPTIONAL)

○ Warehouse / Holding Facility (e.g., storage facilities, including storage tanks, grain elevators)

○ Acidified / Low Acid Food Processor
○ Interstate Conveyance Caterer/Catering Point
○ Molluscan Shellfish Establishment
○ Commissary
○ Contract Sterilizer

○ Labeler / Relabeler
○ Manufacturer / Processor
○ Repacker / Packer
○ Salvage Operator (Reconditioner)
○ Animal food manufacturer / processor / holder

**Section 10 - TYPE OF STORAGE (FOR FACILITIES THAT ARE PRIMARILY HOLDERS)** (OPTIONAL)

○ Ambient (neither frozen nor refrigerated) Storage
○ Refrigerated Storage
○ Frozen Storage

**Section 11a - GENERAL PRODUCT CATEGORIES - FOOD FOR HUMAN CONSUMPTION**
To be completed by all food facilities. Please see instructions for further examples.
IF NONE OF THE MANDATORY CATEGORIES BELOW APPLY, SELECT BOX 37.

○ 1. ALCOHOLIC BEVERAGES
[21 CFR 170.3 (n) (2)]

○ 2. BABY (INFANT AND JUNIOR) FOOD PRODUCTS
Including Infant Formula
(Optional Selection)

○ 3. BAKERY PRODUCTS, DOUGH MIXES, OR ICINGS
[21 CFR 170.3 (n) (1), (9)]

○ 4. BEVERAGE BASES
[21 CFR 170.3 (n) (3), (16), (35)]

○ 5. CANDY WITHOUT CHOCOLATE, CANDY SPECIALITIES & CHEWING GUM
[21 CFR 170.3 (n ) (6), (9), (25), (38)]

○ 6. CEREAL PREPARATIONS, BREAKFAST FOODS, QUICK COOKING/INSTANT CEREALS
[21 CFR 170.3 (n) (4)]

○ 7. CHEESE AND CHEESE PRODUCTS
[21 CFR 170.3 (n) (5)]

○ 8. CHOCOLATE AND COCOA PRODUCTS
[21 CFR 170.3 (n) (3), (9), (38), (43)]

○ 9. COFFEE AND TEA
[21 CFR 170.3 (n) (3), (7)]

○ 10. COLOR ADDITIVES FOR FOODS
[21 CFR 170.3 (o) (4)]

○ 11. DIETARY CONVENTIONAL FOODS OR MEAL REPLACEMENTS (includes Medical Foods)
[21 CFR 170.3 (n ) (31)]

Form 3537 (1/03)

Federal Register/Vol. 68, No. 197/Friday, October 10, 2003/Rules and Regulations 58969

***Form Approval: OMB No. 0910-xxxx***
*Expiration Date*
*See OMB Statement at end of form*

**DHHS/FDA - FOOD FACILITY REGISTRATION FORM**

| |
|---|
| **Section 6 – TRADE NAMES** (IF THIS FACILITY USES TRADE NAMES OTHER THAN THAT LISTED IN SECTION 2 ABOVE, LIST THEM BELOW (E.G., "ALSO DOING BUSINESS AS," "FACILITY ALSO KNOWN AS") |
| ALTERNATE TRADE NAME #1: |
| ALTERNATE TRADE NAME #2: |
| ALTERNATE TRADE NAME #3: |
| ALTERNATE TRADE NAME #4: |

| | | |
|---|---|---|
| **Section 7 - UNITED STATES AGENT** (**TO BE COMPLETED BY FACILITIES LOCATED OUTSIDE ANY STATE OR TERRITORY OF THE UNITED STATES, THE DISTRICT OF COLUMBIA, OR THE COMMONWEALTH OF PUERTO RICO.**) | | |
| NAME OF U.S. AGENT: | | |
| TITLE (OPTIONAL) | | |
| ADDRESS, Line 1: | | |
| ADDRESS, Line 2: | | |
| CITY: | STATE: | ZIP CODE: |
| U.S. AGENT PHONE NUMBER (Include Area Code) | EMERGENCY CONTACT PHONE NUMBER (Include Area Code): | |
| FAX NUMBER (OPTIONAL: Include Area Code): | E-MAIL ADDRESS (OPTIONAL): | |

| |
|---|
| **Section 8 - SEASONAL FACILITY DATES OF OPERATION**<br>(GIVE THE APPROXIMATE DATES THAT YOUR FACILITY IS OPEN FOR BUSINESS, IF ITS OPERATIONS ARE ON A SEASONAL BASIS) **(OPTIONAL)** |
| DATES OF OPERATION: |

**Form 3537 (1/03)**

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*See OMB Statement at end of form*

## DHHS/FDA - FOOD FACILITY REGISTRATION FORM

### Section 9 - TYPE OF ACTIVITY CONDUCTED AT THE FACILITY

(CHECK **ALL** TYPES OF OPERATIONS THAT ARE PERFORMED AT THIS FACILITY REGARDING THE MANUFACTURING/PROCESSING, PACKING OR HOLDING OF FOOD) **(OPTIONAL)**

○ Warehouse / Holding Facility (e.g., storage facilities, including storage tanks, grain elevators)

| | |
|---|---|
| ○ Acidified / Low Acid Food Processor | ○ Labeler / Relabeler |
| ○ Interstate Conveyance Caterer/Catering Point | ○ Manufacturer / Processor |
| ○ Molluscan Shellfish Establishment | ○ Repacker / Packer |
| ○ Commissary | ○ Salvage Operator (Reconditioner) |
| ○ Contract Sterilizer | ○ Animal food manufacturer / processor / holder |

### Section 10 – TYPE OF STORAGE (FOR FACILITIES THAT ARE PRIMARILY HOLDERS) (OPTIONAL)

| | | |
|---|---|---|
| ○ Ambient (neither frozen nor refrigerated) Storage | ○ Refrigerated Storage | ○ Frozen Storage |

### Section 11a - GENERAL PRODUCT CATEGORIES - FOOD FOR HUMAN CONSUMPTION

**To be completed by all food facilities.** Please see instructions for further examples.
**IF NONE OF THE MANDATORY CATEGORIES BELOW APPLY, SELECT BOX 37.**

○ 1. ALCOHOLIC BEVERAGES
[21 CFR 170.3 (n) (2)]

○ 2. BABY (INFANT AND JUNIOR) FOOD PRODUCTS
Including Infant Formula
(Optional Selection)

○ 3. BAKERY PRODUCTS, DOUGH MIXES, OR ICINGS
[21 CFR 170.3 (n) (1), (9)]

○ 4. BEVERAGE BASES
[21 CFR 170.3 (n) (3), (16), (35)]

○ 5. CANDY WITHOUT CHOCOLATE, CANDY SPECIALITIES & CHEWING GUM
[21 CFR 170.3 (n ) (6), (9), (25), (38)]

○ 6. CEREAL PREPARATIONS, BREAKFAST FOODS, QUICK COOKING/INSTANT CEREALS
[21 CFR 170.3 (n) (4)]

○ 7. CHEESE AND CHEESE PRODUCTS
[21 CFR 170.3 (n) (5)]

○ 8. CHOCOLATE AND COCOA PRODUCTS
[21 CFR 170.3 (n) (3), (9), (38), (43)]

○ 9. COFFEE AND TEA
[21 CFR 170.3 (n) (3), (7)]

○ 10. COLOR ADDITIVES FOR FOODS
[21 CFR 170.3 (o) (4)]

○ 11. DIETARY CONVENTIONAL FOODS OR MEAL REPLACEMENTS (includes Medical Foods)
[21 CFR 170.3 (n ) (31)]

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## DHHS/FDA - FOOD FACILITY REGISTRATION FORM

### Section 11a - GENERAL PRODUCT CATEGORIES - FOOD FOR HUMAN CONSUMPTION (CONTINUED)

**To be completed by all food facilities. Please see instructions for further examples.**
**IF NONE OF THE MANDATORY CATEGORIES BELOW APPLY, SELECT BOX 37.**

12. DIETARY SUPPLEMENTS
- ○ Proteins, Amino Acids, Fats and Lipid Substances [21 CFR 170.3 (o) (20)]
- ○ Vitamins and Minerals [21 CFR 170.3 (o) (20)]
- ○ Animal By-Products and Extracts (Optional Selection)
- ○ Herbals and Botanicals (Optional Selection)

○ 13. DRESSINGS AND CONDIMENTS [21 CFR 170.3 (n) (8), (12)]

○ 14. FISHERY/SEAFOOD PRODUCTS [21 CFR 170.3 (n) (13), (15), (39), (40)]

○ 15. FOOD ADDITIVES, GENERALLY RECOGNIZED AS SAFE (GRAS) INGREDIENTS, OR OTHER INGREDIENTS USED FOR PROCESSING [21 CFR 170.3 (n) (42), 21 CFR 170.3 (o) (1) (2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18) (19), (22), (23), (24), (25), (26), (27), (28), (29) (30), (31), (32)

○ 16. FOOD SWEETENERS (NUTRITIVE) [21 CFR 170.3 (n) (9), (41), 21 CFR 170.3 (o) (21)]

○ 17. FRUITS AND FRUIT PRODUCTS [21 CFR 170.3 (n) (16), (27), (28), (35), (43)]

○ 18. GELATIN, RENNET, PUDDING MIXES, OR PIE FILLINGS [21 CFR 170.3 (n) (22)]

○ 19. ICE CREAM AND RELATED PRODUCTS [21 CFR 170.3 (n) (20), (21)]

○ 20. IMITATION MILK PRODUCTS [21 CFR 170.3 (n) (10)]

○ 21. MACARONI OR NOODLE PRODUCTS [21 CFR 170.3 (n) (23)]

○ 22. MEAT, MEAT PRODUCTS AND POULTRY (FDA REGULATED) [21 CFR 170.3 (n) (17), (18), (29), (34) (39), (40)]

○ 23. MILK, BUTTER, OR DRIED MILK PRODUCTS [21 CFR 170.3 (n) (12), (30), (31)]

○ 24. MULTIPLE FOOD DINNERS, GRAVIES, SAUCES AND SPECIALTIES [21 CFR 170.3 (n) (11), (14), (17), (18), (23), (24), (29), (34), (40)]

○ 25. NUT AND EDIBLE SEED PRODUCTS [21 CFR 170.3 (n) (26), (32)]

○ 26. PREPARED SALAD PRODUCTS [21 CFR 170.3 (n) (11), (17), (18), (22), (29), (34), (35)]

○ 27. SHELL EGG AND EGG PRODUCTS [21 CFR 170.3 (n) (11), (14)]

○ 28. SNACK FOOD ITEMS (FLOUR, MEAL OR VEGETABLE BASE) [21 CFR 170.3 (n) (37)]

○ 29. SPICES, FLAVORS, AND SALTS [21 CFR 170.3 (n) (26)]

○ 30. SOUPS [21 CFR 170.3 (n) (39), (40)]

○ 31. SOFT DRINKS AND WATERS [21 CFR 170.3 (n) (3), (35)]

○ 32. VEGETABLES AND VEGETABLE PRODUCTS [21 CFR 170.3 (n) (19), (36)]

○ 33. VEGETABLE OILS (INCLUDES OLIVE OIL) [21 CFR 170.3 (n) (12)]

○ 34. VEGETABLE PROTEIN PRODUCTS (SIMULATED MEATS) [21 CFR 170.3 (n) (33)]

○ 35. WHOLE GRAINS, MILLER GRAIN PRODUCTS (FLOURS), OR STARCH [21 CFR 170.3 (n) (1), (23)]

○ 36. MOST/ALL HUMAN FOOD PRODUCT CATEGORIES (Optional Selection)

○ 37. NONE OF THE ABOVE MANDATORY CATEGORIES

**Form 3537 (1/03)**

58970 **Federal Register** / Vol. 68, No. 197 / Friday, October 10, 2003 / Rules and Regulations

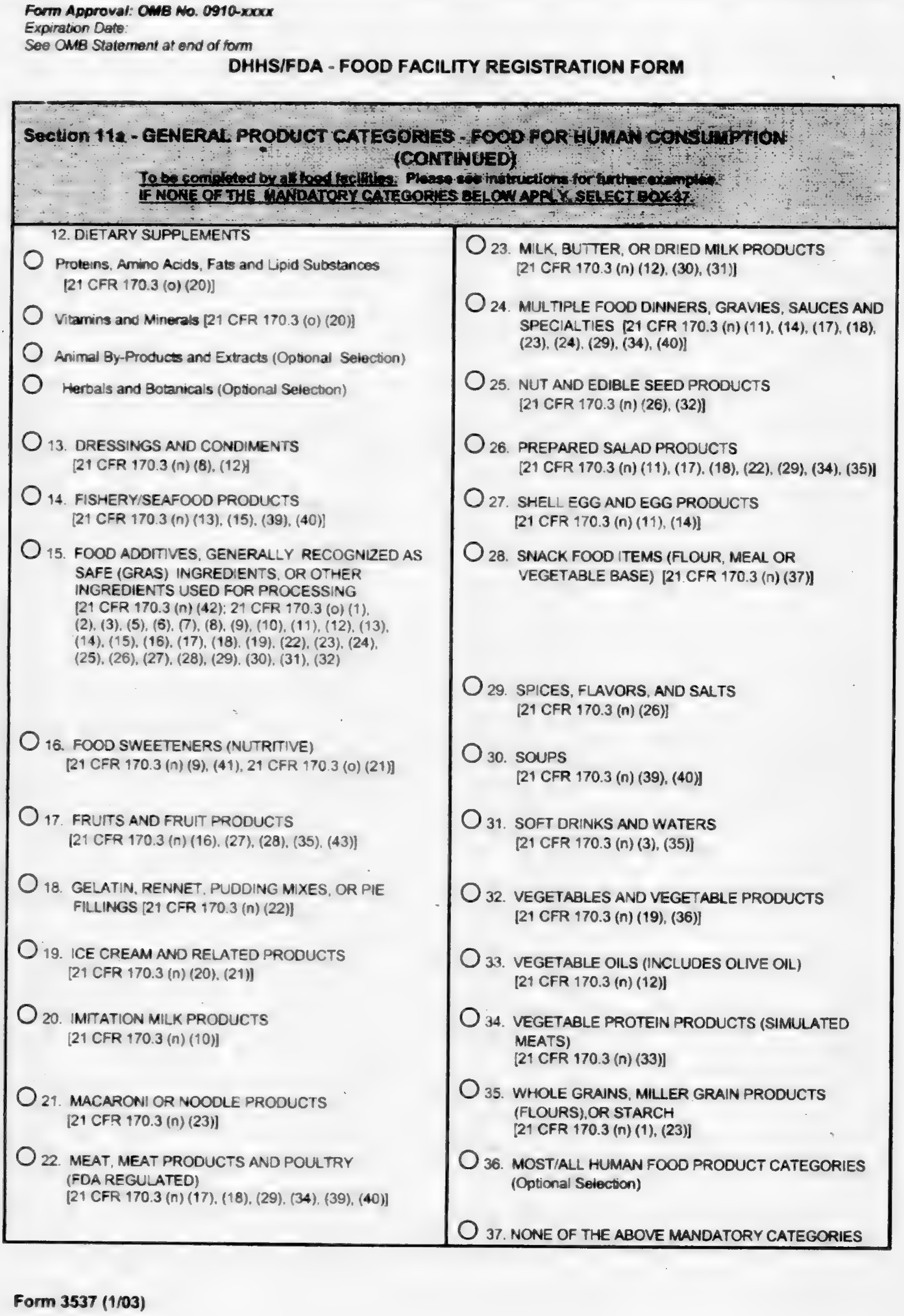

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## DHHS/FDA - FOOD FACILITY REGISTRATION FORM

### Section 11a - GENERAL PRODUCT CATEGORIES - FOOD FOR HUMAN CONSUMPTION (CONTINUED)

**To be completed by all food facilities. Please see instructions for further examples.**
**IF NONE OF THE MANDATORY CATEGORIES BELOW APPLY, SELECT BOX 37.**

12. DIETARY SUPPLEMENTS
○ Proteins, Amino Acids, Fats and Lipid Substances [21 CFR 170.3 (o) (20)]
○ Vitamins and Minerals [21 CFR 170.3 (o) (20)]
○ Animal By-Products and Extracts (Optional Selection)
○ Herbals and Botanicals (Optional Selection)

○ 13. DRESSINGS AND CONDIMENTS [21 CFR 170.3 (n) (8), (12)]

○ 14. FISHERY/SEAFOOD PRODUCTS [21 CFR 170.3 (n) (13), (15), (39), (40)]

○ 15. FOOD ADDITIVES, GENERALLY RECOGNIZED AS SAFE (GRAS) INGREDIENTS, OR OTHER INGREDIENTS USED FOR PROCESSING [21 CFR 170.3 (n) (42); 21 CFR 170.3 (o) (1), (2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (22), (23), (24), (25), (26), (27), (28), (29), (30), (31), (32)

○ 16. FOOD SWEETENERS (NUTRITIVE) [21 CFR 170.3 (n) (9), (41), 21 CFR 170.3 (o) (21)]

○ 17. FRUITS AND FRUIT PRODUCTS [21 CFR 170.3 (n) (16), (27), (28), (35), (43)]

○ 18. GELATIN, RENNET, PUDDING MIXES, OR PIE FILLINGS [21 CFR 170.3 (n) (22)]

○ 19. ICE CREAM AND RELATED PRODUCTS [21 CFR 170.3 (n) (20), (21)]

○ 20. IMITATION MILK PRODUCTS [21 CFR 170.3 (n) (10)]

○ 21. MACARONI OR NOODLE PRODUCTS [21 CFR 170.3 (n) (23)]

○ 22. MEAT, MEAT PRODUCTS AND POULTRY (FDA REGULATED) [21 CFR 170.3 (n) (17), (18), (29), (34), (39), (40)]

○ 23. MILK, BUTTER, OR DRIED MILK PRODUCTS [21 CFR 170.3 (n) (12), (30), (31)]

○ 24. MULTIPLE FOOD DINNERS, GRAVIES, SAUCES AND SPECIALTIES [21 CFR 170.3 (n) (11), (14), (17), (18), (23), (24), (29), (34), (40)]

○ 25. NUT AND EDIBLE SEED PRODUCTS [21 CFR 170.3 (n) (26), (32)]

○ 26. PREPARED SALAD PRODUCTS [21 CFR 170.3 (n) (11), (17), (18), (22), (29), (34), (35)]

○ 27. SHELL EGG AND EGG PRODUCTS [21 CFR 170.3 (n) (11), (14)]

○ 28. SNACK FOOD ITEMS (FLOUR, MEAL OR VEGETABLE BASE) [21 CFR 170.3 (n) (37)]

○ 29. SPICES, FLAVORS, AND SALTS [21 CFR 170.3 (n) (26)]

○ 30. SOUPS [21 CFR 170.3 (n) (39), (40)]

○ 31. SOFT DRINKS AND WATERS [21 CFR 170.3 (n) (3), (35)]

○ 32. VEGETABLES AND VEGETABLE PRODUCTS [21 CFR 170.3 (n) (19), (36)]

○ 33. VEGETABLE OILS (INCLUDES OLIVE OIL) [21 CFR 170.3 (n) (12)]

○ 34. VEGETABLE PROTEIN PRODUCTS (SIMULATED MEATS) [21 CFR 170.3 (n) (33)]

○ 35. WHOLE GRAINS, MILLER GRAIN PRODUCTS (FLOURS),OR STARCH [21 CFR 170.3 (n) (1), (23)]

○ 36. MOST/ALL HUMAN FOOD PRODUCT CATEGORIES (Optional Selection)

○ 37. NONE OF THE ABOVE MANDATORY CATEGORIES

**Form 3537 (1/03)**

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## DHHS/FDA - FOOD FACILITY REGISTRATION FORM

### Section 11b - GENERAL PRODUCT CATEGORIES – FOOD FOR ANIMAL CONSUMPTION (OPTIONAL)

○ 1. GRAIN PRODUCTS (E.G., BARLEY, GRAIN SORGHUMS, MAIZE, OAT, RICE, RYE AND WHEAT)
○ 2. OILSEED PRODUCTS (E.G., COTTONSEED, SOYBEANS, OTHER OIL SEEDS)
○ 3. ALFALFA AND LESPEDEZA PRODUCTS
○ 4. AMINO ACIDS
○ 5. ANIMAL-DERIVED PRODUCTS
○ 6. BREWER PRODUCTS
○ 7. CHEMICAL PRESERVATIVES
○ 8. CITRUS PRODUCTS
○ 9. DISTILLERY PRODUCTS
○ 10. ENZYMES
○ 11. FATS AND OILS
○ 12. FERMENTATION PRODUCTS
○ 13. MARINE PRODUCTS
○ 14. MILK PRODUCTS
○ 15. MINERALS
○ 16. MISCELLANEOUS AND SPECIAL PURPOSE PRODUCTS
○ 17. MOLASSES
○ 18. NON-PROTEIN NITROGEN PRODUCTS
○ 19. PEANUT PRODUCTS
○ 20. RECYCLED ANIMAL WASTE PRODUCTS
○ 21. SCREENINGS
○ 22. VITAMINS
○ 23. YEAST PRODUCTS
○ 24. MIXED FEED (POULTRY, LIVESTOCK, AND EQUINE)
○ 25. PET FOOD
○ 26. MOST/ALL ANIMAL FOOD PRODUCT CATEGORIES

### Section 12 – OWNER, OPERATOR, OR AGENT IN CHARGE INFORMATION

NAME OF ENTITY OR INDIVIDUAL WHO IS THE OWNER, OPERATOR, OR AGENT IN CHARGE

PROVIDE THE FOLLOWING INFORMATION, IF DIFFERENT FROM ALL OTHER SECTIONS ON THE FORM. IF INFORMATION IS THE SAME AS ANOTHER SECTION OF THE FORM, CHECK WHICH SECTION:

SECTION 2 ○ SECTION 3 ○ SECTION 4 ○ SECTION 7 ○

STREET ADDRESS, Line 1:

STREET ADDRESS, Line 2:

| | |
|---|---|
| CITY: | STATE: |
| ZIP CODE (POSTAL CODE): | PROVINCE/TERRITORY: |
| COUNTRY: | PHONE NUMBER (Include Area/Country Code): |
| FAX NUMBER (OPTIONAL; Include Area/ Country Code): | E-MAIL ADDRESS (OPTIONAL): |

Form 3537 (1/03)

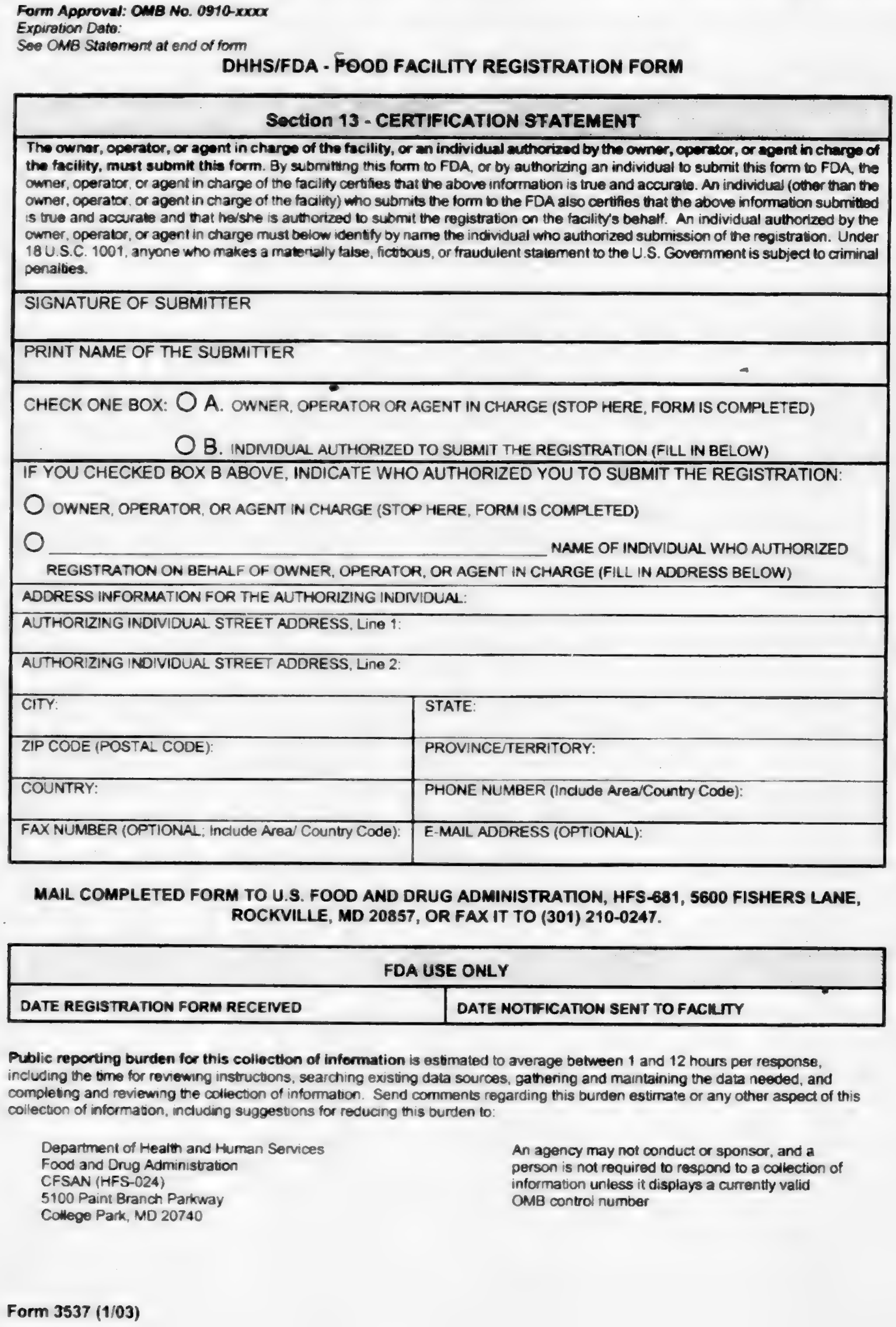

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*See OMB Statement at end of form*

## DHHS/FDA - FOOD FACILITY REGISTRATION FORM

### Section 13 - CERTIFICATION STATEMENT

**The owner, operator, or agent in charge of the facility, or an individual authorized by the owner, operator, or agent in charge of the facility, must submit this form.** By submitting this form to FDA, or by authorizing an individual to submit this form to FDA, the owner, operator, or agent in charge of the facility certifies that the above information is true and accurate. An individual (other than the owner, operator, or agent in charge of the facility) who submits the form to the FDA also certifies that the above information submitted is true and accurate and that he/she is authorized to submit the registration on the facility's behalf. An individual authorized by the owner, operator, or agent in charge must below identify by name the individual who authorized submission of the registration. Under 18 U.S.C. 1001, anyone who makes a materially false, fictitious, or fraudulent statement to the U.S. Government is subject to criminal penalties.

SIGNATURE OF SUBMITTER

PRINT NAME OF THE SUBMITTER

CHECK ONE BOX: ○ A. OWNER, OPERATOR OR AGENT IN CHARGE (STOP HERE, FORM IS COMPLETED)

○ B. INDIVIDUAL AUTHORIZED TO SUBMIT THE REGISTRATION (FILL IN BELOW)

IF YOU CHECKED BOX B ABOVE, INDICATE WHO AUTHORIZED YOU TO SUBMIT THE REGISTRATION:

○ OWNER, OPERATOR, OR AGENT IN CHARGE (STOP HERE, FORM IS COMPLETED)

○ ______________________________ NAME OF INDIVIDUAL WHO AUTHORIZED REGISTRATION ON BEHALF OF OWNER, OPERATOR, OR AGENT IN CHARGE (FILL IN ADDRESS BELOW)

ADDRESS INFORMATION FOR THE AUTHORIZING INDIVIDUAL:

AUTHORIZING INDIVIDUAL STREET ADDRESS, Line 1:

AUTHORIZING INDIVIDUAL STREET ADDRESS, Line 2:

| | |
|---|---|
| CITY: | STATE: |
| ZIP CODE (POSTAL CODE): | PROVINCE/TERRITORY: |
| COUNTRY: | PHONE NUMBER (Include Area/Country Code): |
| FAX NUMBER (OPTIONAL; Include Area/ Country Code): | E-MAIL ADDRESS (OPTIONAL): |

**MAIL COMPLETED FORM TO U.S. FOOD AND DRUG ADMINISTRATION, HFS-681, 5600 FISHERS LANE, ROCKVILLE, MD 20857, OR FAX IT TO (301) 210-0247.**

| FDA USE ONLY | |
|---|---|
| **DATE REGISTRATION FORM RECEIVED** | **DATE NOTIFICATION SENT TO FACILITY** |

**Public reporting burden for this collection of information** is estimated to average between 1 and 12 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

Department of Health and Human Services
Food and Drug Administration
CFSAN (HFS-024)
5100 Paint Branch Parkway
College Park, MD 20740

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number

Form 3537 (1/03)

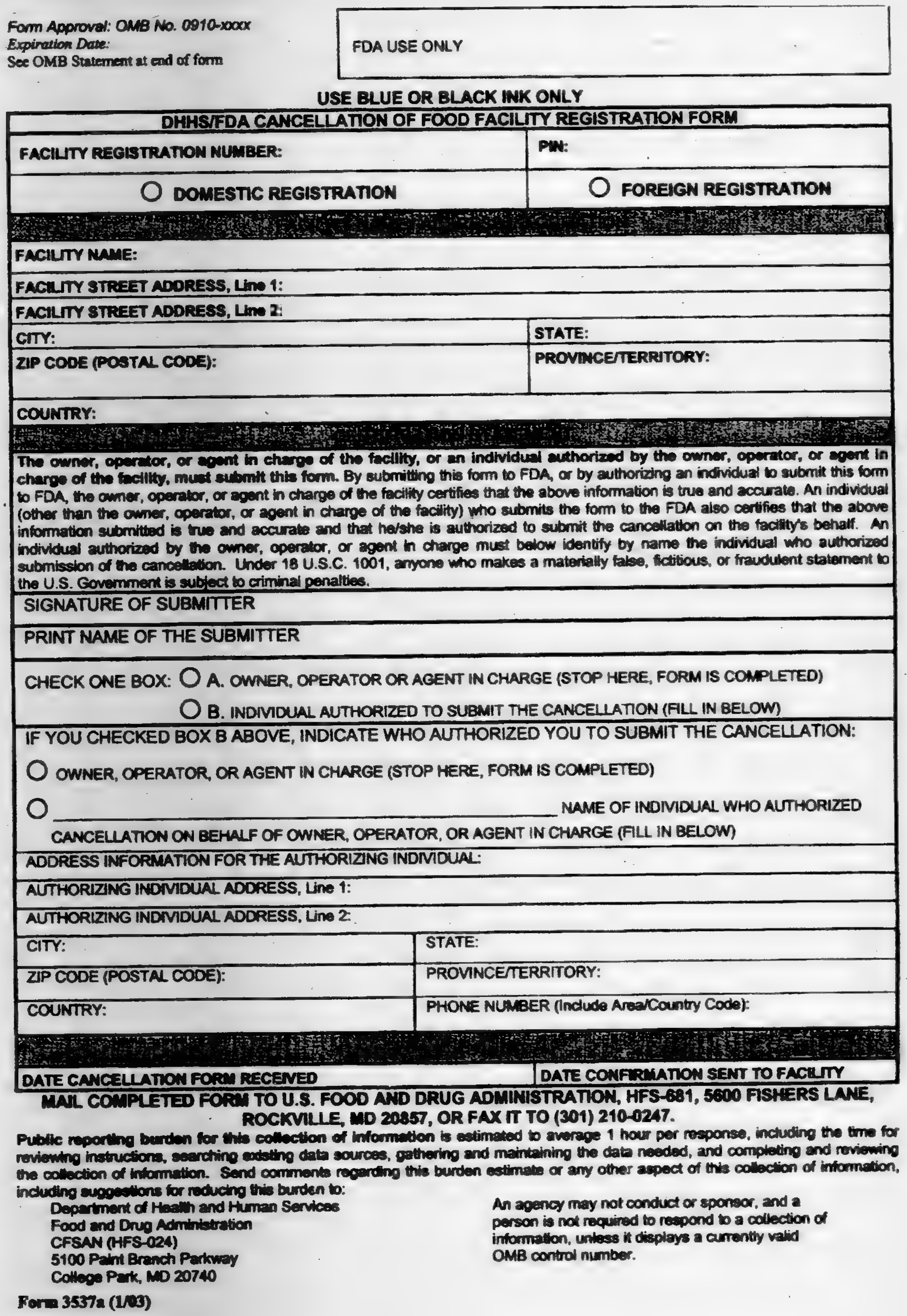

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*Expiration Date:*
See OMB Statement at end of form

FDA USE ONLY

**USE BLUE OR BLACK INK ONLY**

**DHHS/FDA CANCELLATION OF FOOD FACILITY REGISTRATION FORM**

**FACILITY REGISTRATION NUMBER:** **PIN:**

○ **DOMESTIC REGISTRATION** ○ **FOREIGN REGISTRATION**

**FACILITY NAME:**

**FACILITY STREET ADDRESS, Line 1:**

**FACILITY STREET ADDRESS, Line 2:**

**CITY:** **STATE:**

**ZIP CODE (POSTAL CODE):** **PROVINCE/TERRITORY:**

**COUNTRY:**

**The owner, operator, or agent in charge of the facility, or an individual authorized by the owner, operator, or agent in charge of the facility, must submit this form.** By submitting this form to FDA, or by authorizing an individual to submit this form to FDA, the owner, operator, or agent in charge of the facility certifies that the above information is true and accurate. An individual (other than the owner, operator, or agent in charge of the facility) who submits the form to the FDA also certifies that the above information submitted is true and accurate and that he/she is authorized to submit the cancellation on the facility's behalf. An individual authorized by the owner, operator, or agent in charge must below identify by name the individual who authorized submission of the cancellation. Under 18 U.S.C. 1001, anyone who makes a materially false, fictitious, or fraudulent statement to the U.S. Government is subject to criminal penalties.

SIGNATURE OF SUBMITTER

PRINT NAME OF THE SUBMITTER

CHECK ONE BOX: ○ A. OWNER, OPERATOR OR AGENT IN CHARGE (STOP HERE, FORM IS COMPLETED)
○ B. INDIVIDUAL AUTHORIZED TO SUBMIT THE CANCELLATION (FILL IN BELOW)

IF YOU CHECKED BOX B ABOVE, INDICATE WHO AUTHORIZED YOU TO SUBMIT THE CANCELLATION:

○ OWNER, OPERATOR, OR AGENT IN CHARGE (STOP HERE, FORM IS COMPLETED)

○ ________________________________ NAME OF INDIVIDUAL WHO AUTHORIZED CANCELLATION ON BEHALF OF OWNER, OPERATOR, OR AGENT IN CHARGE (FILL IN BELOW)

ADDRESS INFORMATION FOR THE AUTHORIZING INDIVIDUAL:

AUTHORIZING INDIVIDUAL ADDRESS, Line 1:

AUTHORIZING INDIVIDUAL ADDRESS, Line 2:

CITY: STATE:

ZIP CODE (POSTAL CODE): PROVINCE/TERRITORY:

COUNTRY: PHONE NUMBER (Include Area/Country Code):

**DATE CANCELLATION FORM RECEIVED** **DATE CONFIRMATION SENT TO FACILITY**

**MAIL COMPLETED FORM TO U.S. FOOD AND DRUG ADMINISTRATION, HFS-681, 5600 FISHERS LANE, ROCKVILLE, MD 20857, OR FAX IT TO (301) 210-0247.**

**Public reporting burden for this collection of information** is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

Department of Health and Human Services
Food and Drug Administration
CFSAN (HFS-024)
5100 Paint Branch Parkway
College Park, MD 20740

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number.

**Form 3537a (1/03)**

[FR Doc. 03–25849 Filed 10–9–03; 8:45 am]

**BILLING CODE 4160–01–C**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 1

**[Docket No. 02N–0278]**

**RIN 0910–AC41**

## Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing an interim final regulation that requires the submission to FDA of prior notice of food, including animal feed, that is imported or offered for import into the United States. The interim final rule implements the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act), which requires prior notification of imported food to begin on December 12, 2003, even in the absence of a final regulation. The interim final rule requires that the prior notice be submitted to FDA electronically via either the Bureau of Customs and Border Protection (CBP) Automated Broker Interface (ABI) of the Automated Commercial System (ACS) or the FDA Prior Notice System Interface (FDA PN System Interface). The information must be submitted and confirmed electronically as facially complete by FDA for review no more than 5 days and no less than 8 hours (for food arriving by water), 4 hours (for food arriving by air or land/rail), and 2 hours (for food arriving by land/road) before the food arrives at the port of arrival. Food imported or offered for import without adequate prior notice is subject to refusal and, if refused, must be held.

**DATES:** This interim final rule is effective December 12, 2003. Submit written or electronic comments by December 24, 2003.

**ADDRESSES:** Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

**FOR FURTHER INFORMATION CONTACT:** Deborah Ralston, Office of Regulatory Affairs, Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6230.

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## I. Background

In the **Federal Register** of February 3, 2003 (68 FR 5428), the Department of Health and Human Services (FDA) and the Department of Treasury (U.S. Customs Service) issued a joint notice of proposed rulemaking requiring submission to FDA of prior notice of human and animal food that is imported or offered for import into the United States. The events of September 11, 2001, had highlighted the need to ensure that FDA had additional tools to help prevent a food-related bioterrorism event or other public health emergency. Congress responded by passing the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) (Pub. L. 107–188), which was signed into law on June 12, 2002. The Bioterrorism Act includes a provision in Title III (Protecting Safety and Security of Food and Drug Supply), Subtitle A'Protection of Food Supply, section 307, which changes when FDA will receive certain information about imported foods by requiring the Secretary of Health and Human Services (the Secretary), after consultation with the Secretary of the Treasury, to issue an implementing regulation by December 12, 2003, to require prior notification to FDA of food that is imported or offered for import into the United States. Under the Homeland Security Act of 2002 (Pub. L. 107–296), the Secretary of the Treasury has delegated all relevant Customs revenue authorities to the Secretary of Homeland Security who has, in turn, delegated them to the Commissioner of the Bureau of Customs and Border Protection (CBP or Customs). Thus, we are issuing this interim final rule jointly with the Secretary of Homeland Security.

Section 307 of the Bioterrorism Act amends the Federal Food, Drug, and Cosmetic Act (the FD&C Act) by adding section 801(m) (21 U.S.C. 381(m)) and amending section 301 (21 U.S.C. 331). (In the regulation itself, which is codified in Title 21 of the Code of Federal Regulations, the Federal Food, Drug, and Cosmetic Act is referred to as "the act." Thus, when the regulation is quoted in this preamble the term "the act" will be used to refer to the Federal Food, Drug, and Cosmetic Act. However, in this preamble we refer to the Federal Food, Drug, and Cosmetic Act as "the FD&C Act" in the preamble to distinguish it from the Bioterrorism Act.)

The Bioterrorism Act also requires FDA to issue regulations requiring certain food establishments to register with FDA (section 305), directs FDA to issue regulations regarding maintenance of certain records (section 306), and grants FDA the authority to administratively detain food (section 303). FDA has published proposed rules implementing section 305 of the Bioterrorism Act (68 FR 5378, February 3, 2003), section 303 of the Bioterrorism Act (68 FR 25242, May 9, 2003), and section 306 of the Bioterrorism Act (68 FR 25188, May 9, 2003). The interim final rule implementing the food facility registration requirements is published elsewhere in this issue of the **Federal Register**.

### *A. Current Process—Admissibility Determinations Under Section 801(a) of the FD&C Act*

Section 801(a) of the FD&C Act sets out current standards and procedures for FDA review of imports under its jurisdiction. Section 801(a) provides for examination of imports and also authorizes FDA to refuse admission of imports that appear, from examination or otherwise, to be, *inter alia*, adulterated or misbranded. When an FDA-regulated product is imported, generally customs brokers submit entry information to CBP on behalf of the importers of record. CBP then provides entry information to FDA to enable admissibility decisions to be made. Under CBP authorities, entry of the merchandise can be made up to 15 days after arrival.

CBP regulations provide for different kinds of entries. Commonly, merchandise is the subject of an entry for consumption or warehouse (*i.e.*, unrestricted, general use) under a basic importation and entry bond at the port of arrival. A warehouse entry is a CBP entry procedure as described in 19 CFR part 144. It allows imported product (with some restrictions) to be entered without payment of duty, provided it is kept in a bonded warehouse and not distributed. CBP authorities also allow for an Immediate Transportation or IT entry of merchandise for transportation under a custodial bond from the port of arrival to another port where the consumption or warehouse entry will be made or the product will be admitted into a foreign trade zone (FTZ) located outside of the port area. In addition, if the merchandise is going to an FTZ in the port area, FTZ admission documents are presented to CBP. Finally, a transportation and exportation (or T&E) entry may be filed if the merchandise is to be transshipped from the port of arrival through the United States to another port for export.

FDA currently receives electronic information about entries from CBP through CBP's ABI of the ACS. FDA receives this information through its Operational and Administrative System for Import Support (OASIS). The entry types currently transmitted through the ABI/ACS interface with OASIS include consumption entries and warehouse entries but not IT entries, T&E entries, or admissions into FTZs. The customs broker or self-filer electronically submits entry information to ABI/ACS, including: The identification of the product by the Harmonized Tariff Schedule (HTS) code; the entry type; the entry number (including both the ACS line number and the FDA line number); the arrival date; the port; the port of unlading; the carrier code; the vessel name and voyage, flight or trip number; importer and ultimate consignee; the quantity; value; country of origin; bill of lading or airway bill number; the manufacturer; the importer of record; and the ultimate consignee. The HTS codes are flagged to indicate which products will require FDA review; all FDA-regulated products are covered, not just foods. The additional information that is currently transmitted through the ABI/ACS interface to FDA includes: The FDA manufacturer; the FDA shipper, the FDA Country of Production (country of origin); the complete FDA product code; a description of the food in common business terms; the quantity for each FDA line, and, as "Affirmations of Compliance," information specific to certain products, such as the Food Canning Establishment (FCE) Number.[1] CBP regulations do not mandate electronic transmission of entry information; therefore, some entries are filed in paper. If a "paper" entry is filed, it is customary for CBP to require that copies of entry documentation by submitted to FDA. The entry documents contain the same information as the electronic filing, typically the information required on CBP's Entry/Immediate Delivery (CF3461), and a copy of the foreign invoice. The paper entries may be presented at the time of arrival or after.

After information is transmitted from ABI/ACS, OASIS performs additional validations on the data. If no corrections from the customs broker or self-filer are needed, it screens the entry information against FDA admissibility criteria. If the FDA electronic review determines that further evaluation of the information or article of food is not necessary, the system transmits a message back through the FDA/CBP interface that the article of food "may proceed without FDA examination." If further evaluation is necessary, FDA staff will review the entry information and may request additional information necessary to make an admissibility determination or may examine or sample the product. Section 801(b) of the FD&C Act provides for the release of FDA regulated products to the importer or owner, under bond, before the FDA admissibility decision is made. Accordingly, FDA examination may take place at a location to which the product has been moved. Because there are no restrictions on movement, the product may be at the border, within the confines of a port, at a public storage facility in the vicinity of the importer, or at the ultimate consignee's warehouse. Finally, if the FDA electronic review indicates that the product appears "by examination or otherwise" to be subject to refusal of admission under section 801(a) of the FD&C Act (*e.g.*, appears to be adulterated or misbranded), the FDA reviewer will evaluate the entry information based on FDA guidance, take appropriate action, and notify the importer as well as the customs broker.

Under current laws and regulations, FDA may receive the information about some food imports some days after the food has arrived in the United States.

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[1] Affirmations of Compliance are data elements that a customs broker or self-filer currently uses when transmitting certain information to FDA through ABI/ACS to OASIS. Each provides a mechanism to indicate (or affirm) compliance with a specific FDA regulatory requirement.

has been moved from the port of arrival, and has been delivered to the ultimate consignee. While FDA may ultimately receive electronic entry notification of IT entries when the consumption entry is later filed, FDA does not receive electronic notification with information about food entered for transshipment for export or when the food is admitted to an FTZ.

The admissibility standard in section 801(a) of the FD&C Act largely focuses on whether the article of food appears to have been safely produced, contains no contaminants or illegal additives or residues, and is properly labeled. Section 801(a) provides that an article of food is subject to refusal of admission if it "appears, from physical examination or otherwise': (1) To have been manufactured, processed, or packed under insanitary conditions; (2) to be forbidden or restricted in sale in the country in which it was produced or from which it was exported; or (3) to be adulterated or misbranded. The food adulteration and misbranding provisions (sections 402 and 403 of the FD&C Act) set out most of the FD&C Act's safety and labeling standards for foods.

### *B. Process After December 12, 2003—Prior Notice Determination Followed by Admissibility Determination*

Section 801(m) provides that an article of food is subject to refusal of admission if adequate prior notice has not been provided to FDA. Thus, the refusal standard in section 801(m) focuses in the first instance on whether the requisite information has been provided in a timely fashion, while the refusal standard in section 801(a) focuses on whether the article was safely produced, contains no contaminants or illegal additives or residues, and is properly labeled.

By adding the prior notice requirement to the FD&C Act, Congress, in the Bioterrorism Act, changed when information about FDA-regulated food imports must be provided to FDA and what happens if the information is not provided. The prior notice provisions require that notice must be provided on imported food shipments to FDA before arrival. If adequate notice is not provided, section 801(m) of the FD&C Act provides that the food is subject to refusal, and that refused food must be held until adequate notice is given and may not be delivered to the importer, owner, or consignee. The stated purpose of requiring notice of imported food shipments before arrival in the United States is to enable FDA to conduct inspections of imported food at U.S. ports (see section 801(m)(1) of the FD&C Act). Thus, FDA intends to use prior notice information to make decisions about which inspections to conduct at the time of arrival. Currently, we intend to focus on conducting these inspections when our information suggests the potential for a significant risk to public health.

As explained in greater detail in the following paragraphs, FDA and CBP are coordinating FDA's new prior notice requirements with CBP's and FDA's existing entry requirements to the greatest extent possible. Thus, the interim final rule allows prior notice to be submitted electronically to FDA through either ABI/ACS or the FDA Prior Notice (PN) System Interface. The HTS codes will be flagged within ABI/ACS to indicate which HTS codes contain foods subject to prior notice requirements. In addition, the ABI/ACS interface will provide a new transaction for transmission of prior notice information on IT and T&E entries, and FTZ admissions, *e.g.*, the types of entries of which FDA was not aware or did not know about until many days after arrival in the United States. This will allow for FDA electronic screening and FDA staff evaluation of the information so that FDA can assess, before the food arrives, whether to inspect and to be prepared to conduct that inspection upon arrival.

FDA expects approximately 90 percent of prior notice submissions for all importations of foods to be transmitted by a customs broker or self-filer through the ABI/ACS interface to FDA. FDA estimates that only 10 percent (or less) of the total importations cannot be accommodated by the ABI/ACS interface and, therefore, will be submitted via the FDA PN System Interface.

In addition to requiring submission of the information currently sent to FDA for admissibility determinations, information identifying the grower (if known), the country from which the article is shipped, and anticipated arrival information is also required for prior notice. If all of the prior notice information is transmitted through the ABI/ACS interface, no additional transmission of information for admissibility determinations under section 801(a) of the FD&C Act will be necessary. If prior notice is submitted through the FDA PN System Interface, additional transmission through ABI/ACS may be necessary for CBP purposes and FDA's admissibility evaluation.

Regardless of the mode of transmission, the prior notice information will undergo both a validation process and screening in OASIS for food safety and security criteria. After the validation step is complete, the prior notice will be confirmed by FDA for review and a reply message sent to the transmitter indicating the prior notice has been received and confirmed for FDA review. The form of this reply messaging depends upon the mode of initial transmission: ABI/ACS or FDA PN System Interface. The clock starts for determining if prior notice was timely when this prior notice confirmation message is sent by FDA.

If the FDA system does not indicate that further evaluation of or action on the notice or article of food is necessary for prior notice purposes, the system will transmit a message back through the OASIS to ABI/ACS interface for CBP that the article of food "may be conditionally released under section 801(b) of the act." However, if additional evaluation of the prior notice information is necessary, FDA headquarters staff, operating 24 hours a day, 7 days a week, will review and assess the information and may initiate an examination or other action by FDA or CBP of the article of food at the port of arrival or elsewhere, or in the case of rail shipments, within the confines of the closest appropriate examination site.

In addition, the OASIS system review will determine if further staff evaluation of the article of food is necessary for admissibility determinations under section 801(a) of the FD&C Act (*e.g.*, subject to the guidance in an import alert). If so, FDA staff in the appropriate district office will take action, which, in addition to the review and evaluation of the submitted information or other documentation, could include an examination of the article of food for admissibility purposes. This admissibility examination may take place at the border but may also take place at an examination site, a public warehouse, or other appropriate locations. If FDA determines that refusal under section 801(a) of the FD&C Act is appropriate, it will follow appropriate procedures.

## II. Overview of the Interim Final Rule and Significant Changes Made to the Proposed Rule

The highlights of this interim final rule are described briefly in the following paragraphs and are discussed in more detail later in the preamble.

### *A. "What Definitions Apply to This Subpart?" (Section 1.276 Proposed as § 1.277)*

- The term "the act" was not changed.
- The term "calendar day" was not changed.

- The term "country from which the article originates" was added and defined as "FDA Country of Production."
- The term "country from which the article of food was shipped" was revised to "country from which the article is shipped."
- The term "FDA Country of Production" replaces the term "originating country." For an article of food that is in its natural state, the FDA Country of Production is the country where the article of food was grown, including harvested or collected and readied for shipment to the United States. If an article of food is wild fish that was caught or harvested outside the waters of the United States by a vessel that is not registered in the United States, the FDA Country of Production is the country in which the vessel is registered. If an article of food that is in its natural state was grown, including harvested or collected and readied for shipment, in a Territory, the FDA Country of Production is the United States. For an article of food that is no longer in its natural state, the FDA Country of Production is the country where the article was made; except that, if an article of food is made from wild fish aboard a vessel, the FDA Country of Production is the country in which the vessel is registered. If an article of food that is no longer in its natural state was made in a Territory, the FDA Country of Production is the United States.
- The term "food" has been redefined. The new definition excludes "food contact substances" as defined in section 409(h)(6) of the FD&C Act (21 U.S.C. 348(h)(6)) and "pesticides" as defined in 7 U.S.C. 136(u).
- The term "grower" has been added to the interim final rule. It means a person who engages in growing and harvesting or collecting crops (including botanicals), raising animals (including fish, which includes seafood), or both.
- The term "international mail" has been added to the interim final rule. The term "international mail" means foreign national mail services, but not express carriers, express consignment operators, or other private delivery services.
- The term "no longer in its natural state" has been added to the interim final rule. The term means that an article of food has been made from one or more ingredients or synthesized, prepared, treated, modified, or manipulated. Examples of activities that render food no longer in its natural state are cutting, peeling, trimming, washing, waxing, eviscerating, rendering, cooking, baking, freezing, cooling, pasteurizing, homogenizing, mixing, formulating, bottling, milling, grinding, extracting juice, distilling, labeling, or packaging. However, crops that have been cleaned (*e.g.*, dusted, washed), trimmed, or cooled attendant to harvest or collection or treated against pests, waxed, or polished are still in their natural state for purposes of the prior notice interim final rule. Likewise, whole fish headed, eviscerated, or frozen attendant to harvest are still in their natural state for purposes of the prior notice interim final rule.
- The term "port of entry" has been defined, as having the meaning given in 19 CFR 101.1.
- The term "port of arrival" has been added to the interim final rule. The interim final rule defines "port of arrival" to mean "the water, air, or land port at which the article of food is imported or offered for import into the United States, *i.e.*, the port where the article of food first arrives in the United States."
- The term "registration number" has been added to the interim final rule. Registration number refers to the registration number assigned by FDA under section 415 of the FD&C Act, 21 U.S.C. 350d, and 21 CFR part 1, subpart H.
- The term "shipper" has been added to the interim final rule. The interim final rule defines "shipper" as "the owner or exporter of the article of food who consigns and ships the article from a foreign country or the person who sends an article of food by international mail to the United States."
- The term "United States" has been added to the interim final rule. It defines "United States" as the Customs territory of the United States, *i.e.*, "the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico."
- The term "you" has been revised to reflect the removal of limitations on who is authorized to submit prior notice.

### *B. "What is the Scope of This Subpart?" (Section 1.277 Proposed as § 1.276)*

This provision has been revised. Section 1.277(a) clarifies that the interim final rule applies to all food for humans and other animals that is imported or offered for import into the United States. This covers food for use, storage, or distribution in the United States, and includes food for gifts, trade and quality assurance/quality control samples, food for transshipment through the United States to another country, food for future export, and food for use in a U.S. FTZ. Section 1.277(b) sets out the exclusions from prior notice. It excludes food for an individual's personal use when it is carried by or otherwise accompanies the individual when arriving in the United States (*i.e.*, for consumption by themselves, family and friends, not for sale or other distribution); food that was made by an individual in his/her personal residence and sent by that individual as a personal gift (*i.e.*, for nonbusiness reasons) to an individual in the United States; food that is imported then exported without leaving the port of arrival until export; and meat food products, poultry products, and egg products that, at the time of importation, are subject to the exclusive jurisdiction of the U.S. Department of Agriculture (USDA) under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*).

### *C. "Who Is Authorized to Submit Prior Notice?" (Section 1.278 Proposed as § 1.285)*

This provision has been revised. The interim final rule has been revised to remove the restriction that the submitter be the U.S. importer or purchaser. The interim final rule provides that any person with knowledge of the required information may submit prior notice or have it transmitted on their behalf.

### *D. "When Must Prior Notice Be Submitted to FDA?" (Section 1.279 Proposed as § 1.286)*

This provision has been revised. FDA had proposed that all information required in the prior notice be submitted to FDA no later than 12 noon of the calendar day before the day the article of food arrived at the border crossing in the port of entry. Under the interim final rule, prior notice must be submitted to FDA and confirmed for FDA review no less than 2 hours before arrival by land via road, no less than 4 hours before arrival by air and land via rail, and no less than 8 hours before arrival by water. If the article of food is arriving by international mail, the prior notice must be submitted before the food has been sent to the United States and the parcel must be accompanied by confirmation of FDA receipt of prior notice. With the exception of prior notice for international mail, prior notice may not be submitted more than 5 calendar days before the anticipated date of arrival at the anticipated port of entry. When an article of food that is carried by or otherwise accompanies an individual is subject to prior notice, the prior notice must be submitted within the timeframe established for the mode of transportation, and the food must be accompanied by a copy of the FDA confirmation including the PN Confirmation Number. Because we reduced the timeframes for submitting prior notice in the interim final rule to the minimum amount of time that we need to meet our statutory responsibility to receive, review, and respond to prior notice submissions, the interim final rule does not provide for amendments or updates to the prior notice. However, as discussed in more detail in section D, FDA and CBP will be actively exploring ways to reduce prior notice timeframes, while fulfilling the Bioterrorism Act mandates.

### *E. How Must You Submit Prior Notice? (Section 1.280 Proposed as § 1.287)*

FDA proposed that prior notice, amendments, and updates be submitted electronically to FDA through the FDA PN System. The interim final rule provides that prior notice must be submitted electronically, in English (except an individual's name, the name of a company, or the name of a street), through either CBP's ABI/ACS or the FDA PN System Interface. All information must be submitted using the Latin (Roman) alphabet. The interim final rule eliminates submission of duplicative information to FDA by those who can file import entry information through ABI/ACS. FDA and CBP are upgrading and interfacing their respective electronic systems so that information required for prior notice can be submitted through ABI/ACS. Information required by the interim final rule also can be submitted through the FDA PN System Interface. The interim final rule also provides that if a customs broker's of self-filer's system is not working or if ABI/ACS is not working, prior notice must be submitted through the FDA PN System Interface. If the FDA PN System Interface or OASIS is not operating, prior notice information must be submitted by e-mail, or by fax to the FDA, but not in person.

### *F. What Information Must Be in a Prior Notice? (Section 1.281 Proposed as § 1.288)*

The interim final rule requires the following information to be submitted in the prior notice:

- Submitter (name of individual, individual's telephone, fax, e-mail, name/address of submitting firm);
- Transmitter, if different than submitter (name of individual, individual's telephone, fax, e-mail, name/address of transmitting firm);
- Entry type;
- CBP entry identifier, such as the CBP entry number or in-bond number;
- The identity of the article of food as follows: The complete FDA product code; the common or usual name or market name; the estimated quantity described from largest container to the smallest package size; and the lot or code numbers or other identifier of the food if required by the FD&C Act or FDA regulations;
- Manufacturer, for food no longer in its natural state (name, address, registration number, except that the requirement to provide registration number does not apply to an article of food that is imported for transshipment or other export;
- Grower, if known, for an article of food that is in its natural state (name and growing location);
- Consolidator may voluntarily be provided by the submitter, at the submitter's option, if the grower is not known (name and address);
- FDA Country of Production;
- Shipper (name, address, registration number; except that the requirement to provide registration number does not apply to an article of food that is imported for transshipment or other export;
- The country from which the article is shipped;
- Anticipated arrival information (port of arrival and crossing location within that port, date, and time) or, if the food is imported by international mail, the anticipated date of mailing;
- The name and address of the importer, owner, and ultimate consignee, unless the shipment is imported or offered for import for transshipment through the United States under a T&E entry, or, if the food is imported by international mail, the U.S. recipient (name and address);
- Mode of transportation;
- Carrier (SCAC/Standard Carrier Abbreviated Code or IATA/International Air Transportation Association code or, if codes are not applicable, the name and country of the carrier) (except for food imported by international mail);
- Planned shipment information as applicable (except for food imported by international mail), including 6-digit HTS code; and
- If the article of food is under hold for failure to submit prior notice or submit an adequate prior notice, the location where it is being held, the date the article has arrived or will arrive at the location, and the name of a contact individual at the location.

FDA eliminated from the interim final rule telephone and fax numbers and e-mail addresses for most firms, entry line numbers, trade or brand name, and consumption entry information (port of entry/anticipated date of entry for Customs purposes). FDA revised information requirements regarding the quantity, lot/code identifier, manufacturer, grower, and carrier in the interim final rule. FDA added mode of transportation and planned shipment information to the interim final rule. In the interim final rule, registration numbers are required only for manufacturer and shipper, if the shipper is a facility that is required to be registered under section 415 of the FD&C Act (21 U.S.C. 350d) and 21 CFR part 1, subpart H, for that article of food. For clarity, the interim final rule segregates the information required for food arriving by international mail (§ 1.281(b)) and also segregates the information required for food refused under section 801(m) of the FD&C Act (§ 1.281(c)).

Table 1A, which appears later in this preamble, describes the information required in prior notice.

### *G. "What Must You Do If Information Changes After You Have Received Confirmation of a Prior Notice From FDA?" (Section 1.282 Proposed as §§ 1.289 to 1.294)*

This provision has been revised in the interim final rule. The proposed rule allowed one product identity amendment for certain product identity information that was not known at the time of submission and for arrival updates. Product identity amendments could be submitted up to 2 hours before arrival at the border. Arrival updates were required if the port of entry changed or if the time of arrival was expected to be more than 3 hours later or 1 hour earlier than the anticipated time of arrival.

The interim final rule does not provide for product identity amendments or arrival updates. Because we reduced the timeframes for submitting prior notice in the interim final rule to the least amount of time that we need to meet our statutory responsibility to receive, review, and respond to prior notice submissions, the interim final rule does not provide for amendments or updates. The interim final rule requires that if required information (except estimated quantity, anticipated arrival information including the anticipated date of mailing, and planned shipment information) changes after FDA has confirmed prior notice for review, the prior notice should be cancelled and a prior notice with the correct information must be submitted.

### *H. "What Happens to Food That Is Imported or Offered for Import Without Adequate Prior Notice?" (Section 1.283 Proposed as § 1.278)*

FDA revised the proposed rule to provide for more specificity, to clarify the status of refused food, and to provide a mechanism for FDA review after refusal. In the interim final rule, FDA identifies the consequences and procedures for the following situations:

1. Inadequate Prior Notice (No, Inaccurate, or Untimely Prior Notice)

Unless immediately exported with CBP concurrence, an article of food that is refused for inadequate prior notice shall be held in accordance with § 1.283.

2. Status and Movement of Refused Food

- A refused food is considered general order merchandise under section 490(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1490(a)).
- The refused food must be moved under an appropriate custodial bond. FDA must be notified of the location where the food has been or will be moved within 24 hours of refusal. If the food is held, it must be taken directly to the designated location within 48 hours, shall not be entered, and shall not be delivered to any importer, owner, or ultimate consignee.

3. Segregation of Refused Foods

If a refused food is part of a shipment that contains other articles, the refused food may be segregated from the rest of the shipment within the port of arrival or at the hold location if different.

4. Costs

Neither FDA nor CBP are liable for transportation, storage, or other expenses resulting from refusal.

5. Export After Refusal

A refused food may be exported with CBP concurrence and supervision (unless CBP or FDA has administratively detained or seized the article under other authority).

6. No Post-Refusal Submission or Request for Review

If no prior notice submission or request for FDA review is submitted in a timely fashion after a food is refused, the food will be dealt with as set forth in CBP regulations relating to general order merchandise. It may only be sold for export or destroyed as agreed to by CBP and FDA.

7. Food Carried by or Otherwise Accompanying an Individual

For food that is not for personal use, if the article of food is refused because prior notice is inadequate or the individual cannot provide FDA or CBP with a copy of the PN confirmation, the article may be held at the port or exported. If the individual cannot make arrangements for holding or export, the food may be destroyed.

8. Post-Refusal Prior Notice Submissions

If an article of food is refused for no or inaccurate prior notice, the prior notice must be submitted or corrected and resubmitted to FDA and confirmed by FDA for review.

9. FDA Review After Refusal

After refusal, only the submitter, importer, owner, or ultimate consignee may submit a written request asking FDA to review whether the article is subject to the requirements of this subpart under § 1.276(b)(5) and § 1.277, or whether the prior notice submission is accurate. The interim final rule also sets out procedures and timeframes for the review process.

10. International Mail

In the case of food arriving by international mail, if prior notice is inadequate or if the PN Confirmation Number is not affixed, the article will be held by CBP for 72 hours for FDA inspection and disposition. If refused and there is a return address, the parcel may be returned to sender. If there is no return address or the food in the shipment appears to present a hazard, FDA may dispose of or destroy the parcel at its expense. If FDA does not respond within 72 hours of the CBP hold, CBP may return the parcel back to the sender or, if there is no return address, destroy the parcel, at FDA expense.

11. Prohibitions on Delivery and Transfer

A refused article of food may not be delivered outside of the port where the article is held and may not be delivered to the importer, owner, or ultimate consignee or transferred by any person from the port or secure facility until FDA has examined the prior notice, determined the adequacy of the prior notice, and notified CBP and the transmitter that the article is no longer refused. After this notification by FDA to CBP and transmitter, entry may be made in accordance with law and regulation.

12. Relationship to Other Admissibility Provisions

A determination that an article of food is no longer subject to refusal under section 801(m)(1) of the FD&C Act is different than, and may come before, determinations of admissibility under other provisions of the FD&C Act or other U.S. laws. A determination that an article of food is no longer subject to refusal under section 801(m)(1) of the FD&C Act does not mean that it will be granted admission under other provisions of the FD&C Act or other U.S. laws.

### *I. What Are the Other Consequences of Failing to Submit Adequate Prior Notice or Otherwise Failing to Comply With This Subpart? (Section 1.284 Proposed as § 1.278)*

The interim final rule provides that failure of a person who imports or offers to import an article of food to submit prior notice is a prohibited act under section 301(ee) of the FD&C Act (21 U.S.C. 331(ee)) and sets out the civil, criminal, and debarment actions that the United States may bring against persons who are responsible for the commission of a prohibited act.

### *J. What Happens to Food That Is Imported or Offered for Import From Unregistered Facilities That Are Required to Register Under 21 CFR Part 1, Subpart H? (Section 1.285)*

The interim final rule also sets out the consequences concerning what happens at the border to food from facilities that are not registered as required under section 415 of the FD&C Act and 21 CFR part 1, subpart H. These are similar to provisions in the interim final rule for dealing with food that is refused for inadequate prior notice.

Table 1A of this document shows the information required by sections 1.281(a), (b), and (c). For clarity, the table also identifies under what circumstances certain information is not required, *e.g.*, registration numbers when the article of food is imported or offered for import for transshipment, storage and export, or further manipulation and export.

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Table 1A.--Prior Notice Information Required by Category

| Information | Transshipment, Storage and Export, Manipulation and Export | Carried by or Accompanies an Individual | Food Not in Natural State | Food in Natural State | Mail | After Section 801(m) Refusal |
|---|---|---|---|---|---|---|
| §1.281 paragraph(s) | (a) and (c) | (a) and (c) | (a), (b), and (c) | (a), (b), and (c) | (b) | (c) |
| Submitter | Y | Y | Y | Y | Y | Y |
| Transmitter | Y | Y | Y | Y | Y | Y |
| Entry Type | Y | Y | Y | Y | Y | Y |
| Entry Identifier | Y | Y | Y | Y | Y | Y |
| FDA Product Code | Y | Y | Y | Y | Y | Y |
| Common, usual, or market name | Y | Y | Y | Y | Y | Y |
| Estimated Quantity | Y | Y | Y | Y | Y | Y[2] |
| Lot/Code # | Y | Y | Y | N | Y | Y |
| Manufacturer | Y | Y | Y | N | Y/N | Y |
| Manufacturer Registration #[1] | N | Y | Y/N | N | Y/N | Y |
| Grower, if known | Y | Y | N | Y | Y | Y |
| Cty of Production | Y | Y | Y | Y | Y | Y |
| Shipper | Y | Y | Y | Y | Y | Y |
| Shipper Registration #[1] | N | Y | Y | Y | Y | Y |
| Country Shipped | Y | Y | Y | Y | Y | Y |
| Port of Arrival | Y | Y | Y | Y | N | Y[2] |
| Date of Arrival | Y | Y | Y | Y | N | N |
| Time of Arrival | Y | Y | Y | Y | N | N |
| Date of Shipment | N | N | N | N | Y | N |
| Importer | N | Y | Y | Y | N | Y |
| Owner | N | Y | Y | Y | N | Y |
| Ultimate Consignee | N | Y | Y | Y | N | Y |
| U.S. Recipient | N | N | N | N | Y | Y |
| Mode of Transport | Y | N | Y | Y | N | Y |
| Carrier | Y | Y | Y | Y | N | Y |
| Airbill or Bill(s) of Lading | Y | N | Y | Y | N | Y[2] |
| Vessel/Voyage | Y | Y | Y | Y | N | Y[2] |
| Flight # | Y | Y | Y | Y | N | Y[2] |
| Trip # | Y | Y | Y | Y | N | Y[2] |
| Container # | Y | N | Y | Y | N | Y[2] |
| Car # | Y | N | Y | Y | N | Y[2] |
| License Plate # | Y | Y | Y | Y | N | Y[2] |
| HTS code | Y | Y | Y | Y | N | Y |
| Hold Location | N | N | N | N | N | Y |

[1] Registration numbers are required only if the firm is required to register for a facility associated with the article of food under section 415 of the FD&C Act, 21 U.S.C. 350d and 21 CFR part 1, subpart H; if registration number is provided, city and country can be provided instead of the full address.

[2] After arrival, therefore, no longer anticipated or planned.

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## III. Comments on the Proposed Rule

FDA received approximately 470 timely responses containing one or more comments in response to the proposed rule. To make it easier to identify comments and responses to the comments, the word "Comments" will appear before the description of the comment, and the word "Response" will appear before our response. A summary follows which includes a description of the appropriate section in the interim final rule.

### *A. General Comments and Outreach*

(Comments) Some comments suggest revision of section 307 of the Bioterrorism Act. Other comments recommend that FDA repropose the rule or not implement the rule.

(Response) Changes to the statute are beyond the scope of this rulemaking. Postponing implementation of or not implementing the rule is not viable under section 307(c) of the Bioterrorism Act, which not only directs the FDA to "promulgate proposed and final regulations for the requirement of providing notice in accordance with section 801(m)" by December 12, 2003, but also provides that an 8 hour prior notice requirement takes effect on this date even if FDA has not promulgated regulations that are in effect by this deadline. However, we are publishing this rule as an interim final rule and are, accordingly, soliciting comment on its provisions.

(Comments) Most comments generally support the protections of the food supply provided under the Bioterrorism Act. Although comments recommend that the final rule be amended to reflect more accurately industry practices, other comments suggest the regulation should be strengthened to ensure that FDA has all of the information required to identify foods that may pose a health or security threat. Some comments argue that FDA already has access to information currently submitted to CBP to allow for identification and quick interdiction of foods that may pose a health or security threat. Other comments question how the final rule would enhance FDA's ability to improve food safety and whether the benefits outweigh the costs.

(Response) Through section 307 of the Bioterrorism Act, Congress amended the FD&C Act to require the submission to FDA of a notice providing information regarding food before its importation into the United States. Congress also required FDA to issue implementing regulations to be effective not later than December 12, 2003. Thus, a postponement of the rule is not an option. Although FDA is aware that the prior notice regulation will affect industry, Congress determined the need for prior notice by passing the Bioterrorism Act. Prior notice of imported food will give FDA better information about the food earlier, enabling FDA to review and respond to the information before the arrival of the food at the border. Prior notice also will give FDA information with which it will be able to better focus its inspection resources. Section V of this preamble, Analysis of Economic Impacts, discusses the benefits of this interim final rule in detail. To address many of the concerns raised by the comments, FDA has made significant modifications in the interim final rule. However, we are publishing this rule as an interim final rule and are, accordingly, soliciting comment on its provisions.

(Comments) Some comments ask that FDA provide clear guidance and training to industry and agency field personnel about the procedures for implementing the regulation.

(Response) FDA conducted extensive outreach on the proposed prior notice rule, including having relevant FDA staff attend 6 international meetings and over 100 domestic meetings to ensure that affected parties were aware of the Bioterrorism Act prior notice requirements. On January 29, 2003, FDA held a public meeting (via satellite downlink) to discuss both the registration and prior notice proposed rules (*see* 68 FR 1568, January 13, 2003) or *http://www.accessdata.fda.gov/scripts/oc/ohrms/advdisplay.cfm*. Nearly 1,000 participants in North and South America and the Caribbean viewed that live broadcast. The meeting was later re-broadcast to Europe, Asia, Africa, and the Pacific. FDA has also posted transcripts of the broadcast in English, French, and Spanish on the agency's Web site.

FDA plans similar outreach efforts directed to both domestic and international stakeholders after publication of the interim final rule implementing the registration and prior notice provisions of the Bioterrorism Act. Outreach will include many methods of communication:

- Dissemination of materials to guide affected domestic and international food facilities through the new processes established to implement the registration and prior notice requirements;
- Domestic outreach meetings to State regulators and industry;
- A satellite downlink video broadcast and a series of videoconferences to various regions of the world;
- Materials and events for the media;
- International outreach to food trading partners;
- Presentations by FDA officials and exhibits at professional and trade conferences and meetings to inform industry and state and local government representatives of the new requirements; and
- Cooperative arrangements with CBP and other Federal agencies to ensure that information on the interim final regulations and their requirements is disseminated to affected companies and individuals.

More specifics regarding each of these will be included in FDA's Web site at *http://www.fda.gov*. In addition, FDA also plans training in new or revised procedures for its field personnel, as well as CBP field personnel. FDA will also provide guidance on enforcement to its staff containing the agency's policies on injunctions, prosecution, and debarment related to failure to provide timely and accurate prior notice, as well as the agency's policies regarding refusals under section 801(m)(1) of the FD&C Act and holds under section 801(l). As described in greater detail later, FDA intends to include a transition period in this guidance, during which it will emphasize education to achieve compliance. Guidance documents are available to the public, and FDA will shortly publish a notice of availability in the **Federal Register**.

FDA will notify the World Trade Organization (WTO) of this interim final rule. Shortly after publication of this interim final rule, FDA will begin disseminating at U.S. ports flyers and posters summarizing the new requirements and informing representatives of affected entities how to provide prior notice to FDA. Online assistance and a help desk will be available when the interim final rule becomes effective.

### *B. Foreign Trade Issues*

(Comments) Some comments questioned the consistency of the proposed regulation with U.S. obligations under various WTO agreements, NAFTA, and other international agreements.

(Response) FDA is aware of the international trade obligations of the United States and has considered these obligations throughout the rulemaking process for this regulation and the interim final regulation is consistent with these international obligations.

(Comments) Some comments asserted that the proposed regulation is burdensome, confusing, costly, disproportionate, discriminatory, and will have a negative impact on foreign trade.

(Response) In drafting the proposed rule, FDA considered how best to structure the proposed rule consistent with the statutory mandates of the Bioterrorism Act and, at the same time, to reduce the costs associated with compliance. As discussed in more detail in the following paragraphs, FDA has carefully considered comments received regarding the burden imposed by the proposed rule, including its effects on international trade. Furthermore, based on the comments received on the proposed requirements, FDA has made a number of significant changes that minimize the impact of prior notice requirements on the food industry. These changes include removing restrictions on who can submit prior notice; allowing submission to be made either through ABI/ACS (the existing mechanism for filing entry information with CBP) or the FDA PN System Interface (the FDA PN Web system described in the proposed rule); reducing the timeframes for submission of prior notice and tying them to mode of transport; and streamlining the information requirements.

### *C. "What Definitions Apply to This Subpart?" (Section 1.276 Proposed as § 1.277)*

#### 1. The Act (§ 1.276(a))

The proposed rule defined "the act" as the Federal Food, Drug, and Cosmetic Act. The proposed rule also applies the definitions of terms in section 201 of the act (21 U.S.C. 321) to such terms as used in the proposed rule.

(Comments) FDA did not receive comments on the definition of "the act."

(Response) We did not change the definition in the interim final rule. We have clarified that the definitions in the FD&C Act do not apply if a term is defined differently in the interim final rule.

(Interim final rule) Section 1.276(a) of the interim final rule defines "the act" as the Federal Food, Drug, and Cosmetic Act. Section 1.276(b) provides the definitions in the FD&C Act apply unless a term is defined differently in the interim final rule.

#### 2. Calendar Day (§ 1.276(b)(1))

The proposed rule defined "calendar day" as "every day shown on the calendar."

(Comments) FDA did not receive comments on the definition of "calendar day."

(Response) We did not change the definition in the interim final rule.

(Interim final rule) "Calendar day" is defined in § 1.276(b)(1) of the interim final rule as "every day shown on the calendar."

#### 3. Country From Which the Article Originates (§ 1.276(b)(2))

Section 801(m)(1) of the FD&C Act requires that "the country from which the article originates" be identified in a prior notice. The proposed rule used the term "originating country" and defined it as "the country from which the article of food originates."

(Comments) Comments were received on the proposed definition of "originating country." These comments are addressed under "FDA Country of Production," which is the term that FDA has chosen in the interim final rule to replace "originating country."

(Response) The term "the country from which the article originates" has been added to the interim final rule to refer back to the statutory language.

(Interim final rule) "Country from which the article originates" is defined as "FDA Country of Production."

#### 4. Country From Which the Article Is Shipped (§ 1.276(b)(3))

The proposed rule defined "country from which the article of food was shipped" as "the country in which the article of food was loaded onto the conveyance that brings it to the United States." A conveyance is the means of transportation, *e.g.*, ship, truck, car, van, plane, railcar, *etc.*, not the shipping container that can be moved from a ship to a truck to a train. FDA requested comment on whether the phrase "country from which the article of food was shipped" should include the countries of intermediate destination.

(Comments) Several comments support identifying countries of intermediate destination, noting that it would be desirable to have this information to support product tracing. One states that even if a food product were merely shipped through another country without further manufacturing/processing, the potential for tampering would still exist. This comment is concerned that, without information on every intermediate country, FDA would lack the ability to trace food for potential contamination back through the distribution chain. Another comment supports providing the countries of intermediate destination. It states that, except in the case of sealed containers, the manufacturer cannot control manipulation that occurs in countries of intermediate destination.

Several comments state that the information required in a prior notice should not include countries of intermediate destination. Other comments note that: An imported article may pass through a number of ports or stops in a variety of countries and never be unloaded; a U.S. importer in most cases has no control of which ports or stops a carrier may make; and exporters cannot guarantee which ports the ship will enter or pass through on its way to a U.S. port. Another comment states the information would not be necessary for sealed containers because alteration or absence of a seal alerts the owner to tampering, but it may be necessary for bulk or unpackaged products. Most of the comments that object conclude that submission of additional countries of intermediate destination would be unreasonable and burdensome and would not improve the safety and security of the food supply.

(Response) Section 801(m)(l) of the FD&C Act uses the singular "country" when it directs submission of the identity of the country from which the article is shipped, not the plural "countries." Thus, FDA has concluded that the text of the statute dictates that the definition be singular. The interim final rule thus retains the proposed definition of the term "country from which the article was shipped."

(Comments) One comment states that the proposed definition of "country from which the article of food was shipped" is clear and suggests that it be maintained. Several commenters suggest that "country from which the article of food was shipped" should be defined as the country from which the goods were "exported" to the United States as that phrase is used in the CBP regulations defining "country of export."

Other comments suggest that FDA's definition failed to take into account the following considerations: That ocean and air carriers routinely use "feeder" vessels/aircraft to move cargo from the country of origin to a "gateway" for transfer to a larger vessel or aircraft that will transport the cargo to its final destination; and that ocean vessels frequently discharge containers destined for the United States in Canada where they are transferred to a motor carrier for transport to the United States. The comments conclude that the proposal, if implemented, would confuse importers and require them to attempt to obtain the cargo routing from master carriers. They suggest that FDA require instead the reporting of the last country in which a product was stored if that is different from the country in which it was produced (the country of production).

(Response) Section 801(m)(1) of the FD&C Act requires that prior notice submissions identify "the country from which the article is shipped." "Country of export" is not a term formally defined in CBP's regulations.

We acknowledge that food may pass through more than one country before it reaches the United States. However, we do not believe that this practice changes the definition dictated by the statutory language. Several examples may be helpful. In one scenario, a shipper in country A arranges for a food manufactured in country B to be transported to the United States via country C. The food arrives in country C on an ocean vessel and is transferred to a truck that brings it to the U.S. port of arrival. In this first scenario, the country from which the article is shipped is country C.

In a second scenario, a shipper in country A arranges for a food manufactured in country B to be transported to the United States by a ship that is loaded in country B but stops in country C and then continues to the United States where the food is discharged. In this second scenario, the country from which the article is shipped is country B. In a third scenario, if the food was transferred to a different vessel in country C, the country from which the article is shipped is country C.

(Interim final rule) Section 1.276(b)(3) of the interim final rule defines “country from which the article is shipped” as “the country in which the article of food is loaded onto the conveyance that brings it to the United States.” We changed the term from “country from which the article was shipped” to “country from which the article is shipped” to accurately reflect the language of the statute.

### 5. FDA Country of Production and Originating Country (§ 1.276(b)(4))

The proposed rule defined “originating country” as “the country from which the article of food originates,” which means the country where the article of food was grown and harvested, or if processed, where the article of food was produced.

(Comments) Many comments regarding the definition of “originating country” suggest that FDA use the “country of origin” definition used by CBP, or the standard rules of origin used by CBP, USDA, and associations such as the WTO.

(Response) Section 801(m)(1) of the FD&C Act requires prior notice submissions to FDA identify “the country from which the article originates.”

We have not changed the definition of “originating country” to align it with “country of origin” as that term is defined by CBP. CBP defines “country of origin” at 19 CFR 134.1(b) as follows:

> the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within the meaning of this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine country of origin.

In rulings, CBP has further defined “country of origin” and substantial transformation to identify the country of growth of the main ingredient in a processed food rather than the country of production of “the *article [of food]*” (emphasis added) in the form it is being imported into the United States. For example, a CBP ruling identified the country of origin as the United States where beans were rehydrated and canned in the Dominican Republic, but grown and dried in the United States (Ref. 1). For purposes of the prior notice provisions of the FD&C Act, the “article of food” is canned beans, not dried beans. From a food safety standpoint, FDA is most interested in knowing where the article of food was processed and canned. We believe that it best serves the language and the purposes of section 801(m)(1) of the FD&C Act to define the term to focus on the country of production of the specific article of food that is being shipped to the United States. To avoid confusion between FDA’s prior notice requirements and CBP requirements, the interim final rule uses the term “FDA Country of Production” instead of the term “originating country” or “country from which the article originates.” “FDA Country of Production” is already familiar to customs brokers and self-filers using ABI/ACS interface with OASIS.

(Comments) One comment suggests that “EU” (European Union) be acceptable for use as an originating country.

(Response) FDA disagrees. Section 801(m) of the FD&C Act requires identification of “the *country* from which the article originates” (emphasis added). Accordingly, for purposes of this provision, each sovereign country must be identified when declared as part of the prior notice submission.

(Comments) Several comments suggest that the definition of “country of origin” for fish be the country in which the vessel is flagged or in which the fish was last processed. Another comment asks FDA to use the definition of “country of origin” being used by USDA’s Agricultural Marketing Service for fish and seafood.

(Response) We generally agree. The proposed rule relied in part on USDA’s proposed definition as set out in USDA guidance published in the **Federal Register** on October 11, 2002, and is based on the Farm Security and Rural Investment Act of 2002 (commonly known as the 2002 Farm Bill), as amended. As set out in § 1.276(b)(4) of the interim final rule, if an article of food is wild fish that is still in its natural state and was caught or harvested outside the waters of the United States by a vessel that is not registered in the United States, the FDA Country of Production is the country in which the vessel is registered. If the article of food is made from wild fish aboard a vessel, the FDA Country of Production is the country in which the vessel is registered.

(Comments) Several comments express concern that the proposed definition, “[o]riginating country means the country from which the article of food originates,” does not take into consideration the producer, processor, vessel or common carrier feeder and consolidation practices in which components of the shipment may be composites or commingled from more than one country. One comment asks that FDA describe when the country of canning would be the originating country, and when it would not. One comment suggests that decaffeinating or blending coffee be considered processing and that decaffeinated or blended coffee be considered as processed food for the purposes of prior notice.

(Response) Some of these comments appeared to confuse the proposed definition of “country from which the article of food was shipped” with the proposed definition of “originating country,” another reason why we decided to use the term “FDA Country of Production.” As explained above in the discussion of “the country from which the article is shipped,” the two countries will sometimes be different. When determining which country is the FDA Country of Production, the focus should be on the production of the specific article of food. For example, if the article of food is raw, whole, unpeeled carrots, the FDA Country of Production is the country where the carrots were grown and harvested. If the article of food is raw peeled and chopped carrots or canned carrots, the FDA Country of Production is the country where the carrots were peeled and chopped or canned. As a general matter, for canned foods, the FDA Country of Production should be the country where food was canned. Similarly, we consider decaffeinated coffee to be no longer in its natural state and the FDA Country of Production would be the country in which the coffee was decaffeinated.

(Interim final rule) Section 1.276(b)(4) of the interim final rule defines the “FDA Country of Production” for an article of food that is in its natural state, as country where the article of food was grown, including harvested or collected and readied for shipment to the United States. If an article of food is wild fish, including seafood, that was caught or harvested outside the waters of the United States by a vessel that is not registered in the United States, the FDA Country of Production is the country in which the vessel is registered. For an article of food that is no longer in its natural state, the FDA country of production is defined as the country where the article was made; except that, if an article of food is made from wild fish, including seafood, aboard a vessel, the FDA Country of Production is the country in which the vessel is registered. If an article of food that is no longer in its natural state was made in a Territory, the FDA Country of Production is the United States.

### 6. Food (§ 1.276(b)(5))

The proposed rule defined "food" as having the meaning given in section 201(f) of the FD&C Act. The proposed rule provided examples of food including:

> fruits, vegetables, fish, dairy products, eggs, raw agricultural commodities for use as food or components of food, animal feed, including pet food, food and feed ingredients and additives, including substances that migrate into food from food packaging and other articles that contact food, dietary supplements and dietary ingredients; infant formula, beverages, including alcoholic beverages and bottled water, live food animals (such as hogs and elk), bakery goods, snack foods, candy, and canned foods.

#### a. *Food packaging and other food contact substances.*

(Comments) We received several comments on the subject of food contact substances, including packaging. The comments ask that FDA clarify the definition of "food" because the proposed rule included as examples of food not only those items traditionally understood as food, but also items that come into contact with and may migrate into food during processing or packaging. In particular, the comments ask that food packaging and components of food packaging, other food contact articles (such as food processing equipment and components of such equipment, glassware, dishware, cutlery, kitchen appliances), and so-called indirect additives (including those applied to food contact surfaces) be excluded from the final rule's definition of "food."

In support, the comments contend the legislative history of the prior notice provisions establish that Congress did not intend to apply prior notice requirements to these substances even though they can be food within the meaning of section 201(f) of the FD&C Act. In addition, some point to language in section 415 of the FD&C Act (21 U.S.C. 350d) relating to registration and language in section 414(b) of the FD&C Act relating to recordkeeping (21 U.S.C. 350c). Finally, some comments argued that an overly broad definition of "food" would dilute the government's resources, thereby hampering the government's opportunity to achieve the protective goals of the Bioterrorism Act.

(Response) We expressly included food packaging and other food contact materials in the proposed definition, with the result that prior notice would have been required for food packaging and other food contact materials and their components (see 68 FR 5428 at 5430). The breadth of the proposed definition of "food" was based on both the statutory definition in section 201(f)(3) of the FD&C Act, which defines articles used as components of food as "food," as well as the case law interpreting the definition, including *Natick Paperboard* v. *Weinberger*, 525 F.2d 1103 (1st Cir. 1975) (paperboard containing PCBs intended for food use is adulterated food; *U.S.* v. *Articles of food * * * 688 Cases * * * of Pottery (Cathy Rose)*, 370 F. Supp. 371 (E.D. Mi. 1974) (ceramic pottery that leaches lead is adulterated food).

The comments on food contact substances raise the question of what Congress intended "food" to mean for purposes of prior notice. In construing the prior notice provision of the Bioterrorism Act, FDA is confronted with two questions. First, has Congress directly spoken to the precise question presented? ("*Chevron* step one") *Chevron, U.S.A., Inc.* v. *NRDC, Inc.*, 467 U.S. 837, 842 (1984). To find no ambiguity, Congress must have clearly manifested its intention with respect to the particular issue (*Young* v. *Community Nutrition Institute*, 476 U.S. 974, 980 (1986)). If Congress has spoken directly and plainly, the agency must implement Congress's unambiguously expressed intent (*Chevron*, 467 U.S. at 842–843). If, however, the Bioterrorism Act is silent or ambiguous as to the meaning of "food," FDA may define "food" in a reasonable fashion ("*Chevron* step two"); *Chevron*, 467 U.S. at 842–843; *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132 (2000)).

The agency has determined that, in enacting section 801(m) of the FD&C Act, Congress did not speak directly and precisely to the meaning of "food." As noted, the FD&C Act has a definition of "food" at section 201(f). It may be a reasonable assumption that, when the term "food" is used in the FD&C Act, section 201(f) applies. However, although there may be "a natural presumption that identical words used in different parts of the same act are intended to have the same meaning [citation omitted], * * * the presumption is not rigid * * *." (*Atlantic Cleaners & Dyers, Inc.* v. *U.S.*, 286 U.S. 427, 433 (1932); (*accord: U.S.* v. *Cleveland Indians Baseball Co.*, 532 U.S. 200, 213 (2000)). Thus, the same word may be given different meanings, even in the same statute, if Congress intended different interpretations or if such different interpretations are reasonable (at step 2) (*Atlantic Cleaners & Dryers, Inc., supra*).

Even before the Bioterrorism Act amendments, the term "food" was not defined identically throughout the FD&C Act. For example, in construing the parenthetical "(other than food)" in section 201(g)(1)(C) of the FD&C Act, the Seventh Circuit Court noted that Congress meant to exclude only "articles used by people in the ordinary way that most people use food—primarily for taste, aroma, or nutritive value" and not all substances defined as food by section 201(f) (*Nutrilab, Inc.* v. *Schweiker*, 713 F.2d 335, 338 (7th Cir. 1983)). Similarly, section 409(h)(6) of the FD&C Act defines a "food contact substance" as "any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding *food* if such use is not intended to have any technical effect in *such food*" (emphasis added). This definition makes sense only if "food" in this context excludes materials that contact food because components of food contact materials are plainly intended to have a technical effect in such materials.[2]

Thus, in this larger statutory context, FDA has evaluated section 801(m) of the FD&C Act to determine whether the meaning of the word "food" is ambiguous. In conducting this *Chevron* step one analysis, all of the traditional tools of statutory interpretation are available to determine whether the language Congress used is ambiguous (*Pharmaceutical Research & Manufacturers of America* v. *Thompson*, 251 F. 3d 219, 224 (D.C. Cir. 2001)). Beginning with the language of the statute, in section 801(m) of the FD&C Act, "food" is used to describe which subset of FDA-regulated articles are subject to prior notice:

> In the case of an article of *food* that is being imported or offered for import into the United States, the Secretary, after consultation with the Secretary of the Treasury, shall by regulation require, for the purpose of enabling such article to be inspected at ports of entry into the United States, the submission to the Secretary of a notice * * * (emphasis added).

The Bioterrorism Act is silent as to the meaning of "food." Congress did not specify whether it intended the definition in section 201(f) of the FD&C Act to apply, one of the other possibilities noted above, or another meaning. Where, as here, the statutory language on its face does not clearly establish Congress's intent, it is appropriate to consider not only the particular statutory language at issue, but also the language and design of the statute as a whole (*Martini* v. *Federal Nat'l Mortgage Association*, 178 F. 3d 1336, 1345 (D.C. Cir. 1999), *citing K Mart Corp.* v. *Cartier, Inc.*, 486 U.S. 281 (1988)). Indeed, the analysis should not be confined to the specific provision in isolation, because the meaning or ambiguity of a term may be evident only when considered in a larger context (*FDA* v. *Brown & Williamson Tobacco Corp., supra* at 132 (2000)).

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[2] FDA's long-standing interpretation of the FD&C Act's definition of color additive, section 201(t), is an additional example of where "food" is used more narrowly than as defined in section 201(f). A color additive is defined in section 201(t) of the FD&C Act as a substance that "when applied to a food * * * is capable * * * of imparting color thereto * * *." The agency's food additive regulations distinguish between color additives and "colorants," the latter being used to impart color to a food-contact material (21 CFR 178.3297(a); see also 21 CFR 70.3(f)). Thus, "food" as it appears in the statutory definition of color additive, necessarily excludes food contact materials.

Consistent with this instruction, FDA has considered other parts of the Bioterrorism Act in assessing whether the meaning of "food" in section 801(m) of the FD&C Act ambiguous. In particular, FDA has considered the language of section 415 of the FD&C Act. The Bioterrorism Act's registration provision is one piece of several enacted by Congress to enhance the safety of the U.S. food supply. Registration is designed to work in concert with prior notice. This is reflected in the Bioterrorism Act's amendment of section 801 of the FD&C Act to provide that food from an unregistered foreign facility be held at the port when imported or offered for import (section 801(l) of the FD&C Act). The information provided by registration will allow FDA to cross-check prior notice submissions against registration data to confirm the identity of manufacturers and others who are required to register. Furthermore, the information provided by prior notice submissions can serve as a cross-check as to whether firms are registered as required and have been providing the necessary updates.

As explained in the preamble to the interim final registration rule published elsewhere in this issue of the **Federal Register**, FDA has concluded that the meaning of the term "food" in section 415 of the FD&C Act is ambiguous. First, the use, in section 415(a)(1) of the FD&C Act, of the phrase "for consumption" after the word "food" creates an ambiguity because it could be read to suggest that "food" within the context of the section 415 registration requirement only refers to food that is ordinarily thought of as "consumed." By modifying the term "food," Congress apparently intended to limit the term "food" to something less than the broad definition in section 201(f) of the FD&C Act. In addition, in section 415(b)(1) of the FD&C Act, when defining "facility" for purposes of section 415, Congress expressly exempted "farms; restaurants; other retail food establishments; nonprofit food establishments in which food is prepared for or served directly to the consumer * * *." These exemptions do not make clear whether Congress intended them to cover only food that is ordinarily eaten at some point by consumers primarily for taste, aroma, or nutritive value or whether, for example, a retail food establishment could include retailers of food contact materials, such as retail cookware stores.

The legislative history of section 415 of the FD&C Act also supports the conclusion that Congress did not speak directly to the meaning of "food" in that Bioterrorism Act provision. Such history is appropriately consulted at *Chevron* step one (*Atherton* v. *FDIC*, 519 U.S. 213, 228–29 (1997)). In particular, the Conf. Rept. to H.R. 3448, which became the Bioterrorism Act, explains what Congress intended by "retail food establishments," which is used to create an exemption from registration.

> The Managers intend that, for the purposes of this section, the term 'retail food establishments' includes establishments that store, prepare, package, serve, or otherwise provide articles of food directly to the retail consumer for human consumption, such as grocery stores, convenience stores, cafeterias, lunch rooms, food stands, saloons, taverns, bars, lounges, catering or vending facilities, or other similar establishments that provide food directly to a retail consumer.

(H. Conf. Rept. No. 481, 107th Cong., 2d Sess., 133 (2002)). Similarly, the Conf. Rept. notes that the term "non-profit food establishments" includes not-for-profit establishments in which food is prepared for, or served directly to the consumer, such as food banks, soup kitchens, homebound food delivery services, or other similar charitable organizations that provide food or meals for human consumption" (*Id.* at 133–34). Notably, the examples provided by Congress for both types of exempt food establishments are not those that generally sell or distribute food contact materials. Accordingly, the legislative history of section 415 of the FD&C Act creates additional ambiguity as to the meaning of "food."

This ambiguity in the word "food" is further underscored by the legislative history of section 801(m) of the FD&C Act. For example, the Conf. Rept. states that the prior notice provision is to be construed not to apply to "packaging materials if, at the time of importation, such materials will not be used for or in contact with food * * *" (see H. Conf. Rept. No. 481, 107th Cong., 2d Sess., 136 (2002)). This statement implies that Congress was not relying on the definition of food in section 201(f) of the FD&C Act. For example, the statement could be read to mean that the term "food" does not include packaging or other materials that contact food.

Having concluded that the meaning of "food" in section 801(m) of the FD&C Act is ambiguous, FDA has considered how to define the term to achieve a "permissible construction" of the prior notice provision (*Chevron, USA, Inc.* v. *NRDC, Inc., supra* at 843). In conducting this *Chevron* step two analysis, the agency has considered the same information evaluated at step one of the analysis (*Bell Atlantic Telephone Co.* v. *FCC*, 131 F. 3d 1044, 1049 (D.C. Cir. 1997); *Chevron U.S.A., Inc.* v. *FERC*, 193 F. Supp. 2d 54, 68 (D.D.C. 2002)). FDA has determined that it is permissible, for purposes of the prior notice provision, to exclude food contact materials from the definition of "food."

Restricting "food" to substances other than food contact materials is consistent with the legislative history of the prior notice provision relating to food packaging and other food contact substances. In addition, it is consistent with the "food for consumption" language in section 415(a)(1) (FD&C Act) of the registration provision. That is, foods that are "consumed" are generally those eaten for their taste, aroma, or nutritive value. In addition, excluding food contact materials from "food" in this regulation is consistent with the exemptions in section 415(b)(1) of the FD&C Act, as well as the legislative history of section 415.

As discussed in the following paragraphs in responses to other comments, FDA has also interpreted "food" for purposes of section 801(m) of the FD&C Act to exclude pesticides as that term is defined under 7 U.S.C. 136(u). Accordingly, FDA has determined that a reasonable interpretation of "food" for purposes of section 801(m) of the FD&C Act is as follows and has revised § 1.276(b)(5) of this interim final rule to provide:

> Food has the meaning given in section 201(f) of the act, except for purposes of this subpart, it does not include food contact substances as defined in section 409(h)(6) of the act (21 U.S.C. 348(h)(6)); or pesticides as defined in 7 U.S.C. 136(u). Examples of food include fruits, vegetables, fish (including seafood), dairy products, eggs, raw agricultural commodities for use as food or as components of food, animal feed (including pet food), food and feed ingredients, food and feed additives, dietary supplements and dietary ingredients, infant formula, beverages (including alcoholic beverages and bottled water), live food animals, bakery goods, snack foods, candy, and canned foods.

Importantly, FDA still considers food packaging and other food contact substances to be "food" within the meaning of section 201(f) of the FD&C Act when they, or their components, migrate into other food. Therefore, these items are still "food" for purposes of the other provisions of section 801 of the FD&C Act (with the exception of section 801(l), which shares the same definition of food as section 801(m)). Accordingly, although not subject to the section 801(m) of the FD&C Act requirement of prior notice, food packaging materials and other food contact substances will remain, as they have been, subject to determinations of admissibility under section 801(a) of the FD&C Act.

b. *Food processing aids.* (Comments) One comment argues that food processing aids and "indirect food additives" should not be considered food for purposes of section 801(m) of the FD&C Act. According to the commenter, these substances resemble food contact substances, which Congress, as evidenced by the prior notice legislative history of food contact substances, did not expect FDA to subject to prior notice.

(Response) Whether a food processing aid or "indirect additive" is subject to prior notice depends upon whether such a substance is "food" under this rule. As noted, for purposes of the interim final rule, "food" excludes "food contact substances" as defined at section 409(h)(6) of the FD&C Act. Among other things, unlike food processing aids and "indirect additives," "food contact substances" are not "intended to have any technical effect in food," section 4091(h)(6) of the FD&C Act. In addition, "food" excludes pesticides as defined at 7 U.S.C. 136(u). Thus, if the substance is not a pesticide and is intended to have a technical effect in the food being processed, the substance is not exempt from the definition of "food" under § 1.276(b)(5) in the interim final rule. This is a reasonable result in that such processing aids are intentionally and directly added to "traditional" foods.

c. *Antimicrobial pesticides.* (Comments) One comment expresses concern about including antimicrobial pesticides within the scope of this regulation. The comment states that pesticides are imported pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), not the FD&C Act, and are subject to Environmental Protection Agency (EPA) approval before they are admitted to the United States. The comment asks that FDA clarify that this regulation is not applicable to antimicrobial pesticides with FDA and/or EPA approved food contact uses. The comment states that including antimicrobial pesticides within the scope of this regulation would impose unnecessary burdens on antimicrobial pesticide registrants, without enhancing the protection of the food supply.

(Response) As discussed previously, the meaning of "food" in section 801(m) of the FD&C Act is ambiguous. Therefore, FDA may define "food" in a reasonable manner. FDA believes that excluding pesticides from the definition of food is reasonable. Pesticides, including those used in or on food for human or animal use, are comprehensively regulated by the Federal Government. Under FIFRA, 7 U.S.C. 136 *et seq.*, all pesticides (both food and nonfood use) are registered with EPA. As part of the registration process, establishments in which pesticides are produced must register with EPA (40 CFR 167.3 and 167.20). As part of the importation process, prior notice of pesticide shipments must be provided to EPA (19 CFR 12.112).

Importantly, the Federal regulatory scheme for pesticides was substantially revised in 1996 by the Food Quality Protection Act (FQPA) (Pub. L. 104–170), and EPA's authority over pesticides was consolidated and expanded. As a result of FQPA, pesticides and their residues are subject to substantial and comprehensive regulation by EPA. Where another Federal agency has the types of specific and comprehensive authority described previously to regulate the safety of a substance, FDA believes that it is appropriate to interpret "food" in section 801(m) of the FD&C Act as not including that substance. Accordingly, FDA has revised the definition of "food" in § 1.276(b)(5) to exclude pesticides as defined by FIFRA.

d. *Chemicals* (Comments) One comment seeks clarification as to whether chemicals are considered "food." The comment expects that chemicals intended for human consumption will likely be included in the requirements for prior notice.

(Response) We are not sure exactly what substances or products the comment refers to; "chemicals" is a very broad term. Unless excluded because they are food contact substances or pesticides, chemicals that are "used for food or drink" or are "used for components of any such articles" are "food" under section 201(f) of the FD&C Act and the definition in the interim final rule (§ 1.276(b)(5)). If the substance is used in some applications that make the substance "food" and some that do not, the principles applicable to further processing and multi-use substances, set out in the following paragraphs, apply.

e. *Live animals.* (Comments) Two comments address inclusion of live animals. One comment urges FDA to exempt live food animals from this regulation, as it will have far-reaching impacts on all Canadian farmers who export live food animals to the United States. The other comment asks for clarification as to how prior notice applies to live food animals imported for further processing, such as finishing.

(Response) As discussed previously, the meaning of "food" in section 801(m) of the FD&C Act is ambiguous. Therefore, FDA may define "food" in a reasonable manner. FDA believes that it is reasonable to interpret "food" in section 801(m) of the FD&C Act to include live animals. Such inclusion is consistent with the explicit reference to animals in the statutory standard, "serious adverse health consequences or death to humans or animals" in section 801(m)(2)(B)(ii) of the FD&C Act—the provision that relates to FDA review of prior notices submitted for food refused for lack of adequate prior notice. In addition, it is consistent with the legislative history of section 801(m) of the FD&C Act that refers only to the exclusion of food contact substances. Moreover, the products of live food animals are an integral part of the food consumed in the United States, and thus, it is logical to protect the raw materials (*i.e.*, the live animals) by including them under the Bioterrorism Act's safeguards. Finally, the inclusion of live animals in the definition of "food" is consistent with the reasonable interpretation of the registration provision, section 415 of the FD&C Act. Accordingly, the interim final rule's definition of "food" includes live food animals. Defining "food" to include live animals is also consistent with the case law interpreting the term "food" in the broader context of the FD&C Act. See *United States* v. *Tuente Livestock*, 888 F. Supp. 1416 (S.D. Ohio, 1995).

f. *Articles for further processing or capable of multiple uses.* (Comments) Some comments ask that FDA clarify that the definition of "food" does not include substances that are not edible, but may be further processed to be rendered edible, for example, crude vegetable oils, crude petroleum, and minerals such as phosphates which may be refined and processed into food ingredients such as glycerin and phosphoric acid. The comments state that where bulk commodities have potential food and nonfood uses, there should be an exemption from import notification where these commodities have not been sufficiently refined to be directly used as food ingredients without further processing or refining.

Another comment notes that gelatin is used for food, pharmaceutical, and technical applications and seeks assistance with establishing a labeling protocol to distinguish between edible gelatin, pharmaceutical gelatin, and technical gelatin. Some comments state FDA should require prior notice only for food intended for consumption and ask FDA to specify the articles that would be considered "food." The comments also state that some imports have both food and nonfood uses and that prior notice should only be required for imports that will be used as a food. In addition, one comment strongly urges FDA to remove indirect food contact colors (*i.e.*, material used to color food contact material) from the requirements of prior notice. The comment indicates that food contact colors are often prepared in bulk and then shipped to companies that can use these pigments in both food and nonfood applications. The process of manufacturing color pigments could be many steps removed from the process of actually using these products in food packaging. Therefore, the decision to use the product in food may not be made until after the pigment has entered commerce.

(Response) For purposes of the interim final rule, "food" has the definition in section 201(f) of the FD&C Act except that "food contact substances" as defined at section 409(h)(6) of the FD&C Act and "pesticides" as defined at 7 U.S.C. 136(u) are excluded from "food." Under section 201(f) of the FD&C Act, "food" means "articles used for food or drink" (section 201(f)(1)) and articles "used for components of any such article" (section 201(f)(3)). The determination of whether a substance is "food" is not a question of intended use (*Nutrilab* v. *Schweiker*, 713 F.2d. 335, 337 (7th Cir. 1983); *U.S.* v. *52 Drums Maple Syrup*, 110 F.2d 914, 915 (2d Cir. 1940); *U.S.* v. *Technical Egg Products*, 171 F.Supp. 326, 328 (N.D. Ga. 1959)). Courts interpreting the "food" definition in the FD&C Act have held that articles at both ends of the food continuum are "food" for purposes of the FD&C Act (*U.S.* v. *O.F. Bayer & Co.*, 188 F.2d 555 (2d. Cir. 1951); *U.S.* v. *Tuente Livestock*, 888 F. Supp. 1416 (S.D. Ohio, 1995) (live animals for food use are "food" under the FD&C Act); *U.S.* v. *Technical Egg Products, supra*, 171 F.Supp. at 328 (rotten eggs are "food")). Thus, FDA believes that an item may be food even if the food is not yet in the form in which it will be used for food. FDA will consider a product as one that will be used for food if any of the persons involved in importing or offering the product for import (*e.g.*, submitter, transmitter, manufacturer, grower, shipper, importer, owner, or ultimate consignee) reasonably believes that the substance is reasonably expected to be directed to a food use.

If the substance can be used in some applications that make the substance "food" and some that do not, the same principles apply. With respect to gelatin and other substances that may exist in multiple grades, including food grade, FDA will consider an article one that will be used for food if any of the persons involved in importing or offering the product for import (*e.g.*, submitter, transmitter, manufacturer, grower, shipper, importer, owner, or ultimate consignee) reasonably believes that the substance is reasonably expected to be directed to a food use.

Finally, as set forth previously, the interim final rule excludes food contact substances from the definition of "food." Thus, when substances to color food contact substances or their components are imported, they are not subject to prior notice. However, colors used in such substances are still subject to regulation as food under section 201(f) of the FD&C Act for purposes of other provisions of the FD&C Act.

(Interim final rule) In the interim final rule (§ 1.276(b)(5)), "food" has the meaning given in section 201(f) of the FD&C Act, except for purposes of this rule, it does not include "food contact substances" as defined in section 409(h)(6) of the act (21 U.S.C. 348(h)(6)) or "pesticides" as defined in 7 U.S.C. 136(u). Examples of food include fruits, vegetables, fish (including seafood), dairy products, eggs, raw agricultural commodities for use as food or as components of food, animal feed (including pet food), food and feed ingredients, food and feed additives, dietary supplements and dietary ingredients, infant formula, beverages (including alcoholic beverages and bottled water), live food animals, bakery goods, snack foods, candy, and canned foods.

### 7. Grower (§ 1.276(b)(6))

Although the statute and proposed rule used the term grower, the proposed rule did not define the term. However, FDA solicited comments on whether the term "grower" includes a harvester or collector of wild products, *e.g.*, some fish and botanicals.

(Comments) A comment states that although harvesters or collectors of wild botanicals do not grow botanicals and should be differentiated from growers for certain purposes, these can be included in the term "grower" consistent with the congressional intent in § 307 of the Bioterrorism Act to identify the direct source of the agricultural raw commodity.

(Response and interim final rule) FDA agrees. Accordingly, we have defined "grower" to mean a person who engages in growing and harvesting or collecting crops (including botanicals), raising animals (including fish, which includes seafood), or both.

### 8. International Mail (§ 1.276(b)(6))

Although the proposed rule applied to food imported or offered for import by mail, see, *e.g.*, 68 FR 5436, the proposed rule did not define "international mail."

(Comments) There were no comments received concerning any definition of "international mail."

(Response and interim final rule) The interim final rule imposes slightly different requirements relating to prior notice for food arriving by international mail. Thus, FDA determined that a definition of "international mail" would be helpful. The interim final rule defines "international mail" to mean "foreign national mail services." It also expressly excludes express carriers, express consignment operators, or other private delivery services from this definition.

### 9. No Longer In Its Natural State (§ 1.276(b)(8))

Section 801(m)(1) of the FD&C Act requires that the identity of the manufacturer be submitted as part of a prior notice. However, the proposed rule did not define "manufacturer" or address what constituted the product of a manufacturer versus the product of a grower.

(Comments) Comments raised questions concerning when a manufacturer must be identified for an article of food.

(Response) These comments are discussed under the heading "What Information Must be in a Prior Notice." However, as a result of the comments, we determined that a definition of when food would be "no longer in its natural state" would be helpful to clarify when the identity of a manufacturer versus the identity of a grower must be provided in a prior notice.

(Interim final rule) The interim final rule (§ 1.276(b)(8)), defines the term "no longer in its natural state" to mean that an article of food has been made from one or more ingredients or synthesized, prepared, treated, modified, or manipulated. Examples of activities that render food no longer in its natural state are cutting, peeling, trimming, washing, waxing, eviscerating, rendering, cooking, baking, freezing, cooling, pasteurizing, homogenizing, mixing, formulating, bottling, milling, grinding, extracting juice, distilling, labeling, or packaging. However, crops that have been cleaned (*e.g.*, dusted, washed), trimmed, or cooled attendant to harvest or collection or treated against pests, waxed, or polished are still in their natural state for purposes of the prior notice interim final rule. Likewise, whole fish headed, eviscerated, or frozen attendant to harvest are still in their natural state for purposes of the prior notice interim final rule.

### 10. Port of Arrival (§ 1.276(b)(9)) and Port of Entry (§ 1.276(b)(10))

The proposed rule defined "port of entry" as "the water, air, or land port at which the article of food is imported or offered for import into the United States, *i.e.*, the port where food first arrives in the United States."

(Comments) Many comments suggest harmonizing with, or adopting, the CBP definition for "port of entry." In the opinion of two comments, the CBP definition is consistent with congressional intent and the FDA departure from the CBP definition is unsupported. Many of these comments state the two definitions would cause confusion in the import community and could delay proper prior notice. Other comments suggest changing the FDA definition of "port of entry" to the "port of arrival." Another comment suggests defining "port of entry" as the entering point of a country where the merchandise is checked by official authorities. Two comments state that defining "port of entry" as the port of arrival would change business practices by essentially stopping the use of CBP "in-transit" (*i.e.*, IT) entries under bond to inland ports.

(Response) Section 801(m)(2)(A) of the FD&C Act states that FDA's implementing regulations must require that the notice "be provided by a specified period of time in advance of importation of the article involved * * *." The stated purpose of section 801(m)(1) is "enabling [articles of food] to be inspected at ports of entry into the United States * * *." Moreover, the overall purpose of the Bioterrorism Act is "[t]o improve the ability of the United States to prevent, prepare for, and respond to bioterrorism and other public health emergencies." (Pub. L. 107–188.) The ability to examine or, if necessary, hold a suspect article of food when it first arrives at a port of entry in the United States, rather than later at the port where CBP will process the entry, will most effectively serve this overall purpose. Thus, to ensure that there is clarity that prior notice must be provided in advance of arrival, we are defining the term "port of arrival" as the water, air, or land port at which the article of food is imported or offered for import into the United States, *i.e.*, the port where the article of food first arrives in the United States.

In addition, we are adopting the CBP definition of "port of entry" to allow flexibility when designating where refused merchandise will be held. The CBP "Port of entry" definition states:

The terms "port" and "port of entry" refer to any place designated by Executive order of the President, by order of the Secretary of the Treasury, or by Act of Congress, at which a Customs officer is authorized to accept entries of merchandise to collect duties, and to enforce the various provisions of the Customs and navigation laws. The terms "port" and "port of entry" incorporate the geographical area under the jurisdiction of a port director. (The Customs ports in the Virgin Islands, although under the jurisdiction of the Secretary of the Treasury, have their own Customs laws (48 U.S.C. 1406(i)). These ports, therefore, are outside the Customs territory of the United States and the ports thereof are not "port of entry" within the meaning of these regulations) (19 CFR 101.1).

This flexibility will ensure that food that has been refused may move to the port of destination where, for example the consumption or warehouse entry will be filed, unless directed by CBP or FDA. Generally, we do not intend to hold shipments at the border unless our assessment of the situation leads us to believe it is warranted, *e.g.*, the food may present a serious risk to public health or that the prior notice violation is egregious. We intend to implement prior notice, both in terms of determining what warrants a refusal in the first place, and in terms of determining which shipments may move to the port of destination, in a risk-based way.

(Comments) Other comments state rail transportation would be especially affected because inbound trains often are not required to stop at the U.S. border but proceed to inland terminals.

(Response) As explained later, rail shipments that have been refused admission per section 801(m)(1) of the FD&C Act are considered to have the status of general order merchandise. In many cases, it will be operationally difficult to stop an entire train because an article of food on it has been refused admission because of inadequate prior notice. Under CBP regulation, general order merchandise may be stored by the carrier or as the CBP port director may direct (see 19 CFR 123.10(f)). Moreover, in situations involving shipments by rail, FDA and CBP have the discretion to allow the movement of the cargo from the border crossing to the nearest point where it can be safely and securely held. We intend, whenever possible, to examine articles of food arriving by rail at the appropriate examination site closest to the border. However, if the shipment might pose an immediate danger to public health and safety, an article of food arriving by train may be held at the border pending resolution of the situation.

(Interim final rule) The interim final rule, § 1.276(b)(9) defines "port of arrival" as "the water, air, or land port at which the article of food is imported or offered for import into the United States, *i.e.*, the port where the article of food first arrives in the United States," (§ 1.276(b)(9)). This port may be different from the port where consumption or warehouse entry or FTZ admission documentation is presented to CBP. The interim final rule (§ 1.285(b)(10)) also defines port of entry as follows:

### 11. Registration Number (§ 1.276(b)(11))

Although the term appears in several places in the proposed rule, the term "registration number" was not defined.

(Comments) No comments addressed the definition or meaning of "registration number."

(Response) To clarify that the term refers to registration of food facilities, the interim final rule defines "registration number" as the registration number assigned by FDA under section 415 of the FD&C Act and 21 CFR part 1, subpart H, § 1.276(b)(11). Specific comments addressing when a registration number is required and other aspects of providing registration numbers as information submitted in prior notice are addressed later in this preamble—see "What Information Must be in a Prior Notice?'.

### 12. Shipper (§ 1.276(b)(12))

Section 801(m)(1) of the FD&C Act requires that the "shipper of the article" be provided in a prior notice submission. The proposed rule included the shipper as required information in a prior notice, but did not define the term "shipper."

(Comments) FDA received no comments concerning the meaning of this term.

(Response) In the proposed rule, we described the "shipper" as "the person who arranges for a shipment to get to its first destination in the United States * * *. The shipper is usually a foreign firm that is located or maintains an address in the country from which the article was shipped." (68 FR 5437). However, in drafting the interim final rule, we have realized that this description was not written in a way that was useful in identifying the shipper in the case of food imported by international mail. Accordingly, we have revised the description of the "shipper" and included it in the definitions to make it easier to find.

The definition is based on the description of "shipper" used by CBP in their proposed rule, "Required Advance Electronic Presentation of Cargo Information," published in the **Federal Register** on July 23, 2003 (68 FR 43574 at 43577), which is similar to, but clearer than, the description we used in the preamble to the proposed prior notice rule.

(Interim final rule) The interim final rule (§ 1.276(b)(12)), defines "shipper" as "the owner or exporter of the article of food who consigns and ships the article from a foreign country or the person who sends an article of food by international mail to the United States."

13. United States (§ 1.267(b)(13))

Although the term appears in several places in section 801(m) of the FD&C Act itself, the proposed rule did not contain a definition of "United States."

(Comments) A comment seeks clarification whether the prior notice regulation applies to food imported into Guam, the U.S. Virgin Islands, the Northern Mariana Islands, and other U.S. Territories.

(Response) This comment raises the question of what the term "United States" means for purposes of section 801(m) of the FD&C Act. In construing the prior notice provision of the Bioterrorism Act, FDA is confronted with two questions. First, has Congress directly spoken to the precise question presented? ("*Chevron* step one") (*Chevron, U.S.A., Inc.* v. *NRDC, Inc.*, 467 U.S. 837, 842 (1984)). To find no ambiguity, Congress must have clearly manifested its intention with respect to the particular issue (*Young* v. *Community Nutrition Institute*, 476 U.S. 974, 980 (1986)). If Congress has spoken directly and plainly, the agency must implement Congress's unambiguously expressed intent (*Chevron*, 467 U.S. at 842–843). If, however, the Bioterrorism Act is silent or ambiguous as to the meaning of "United States," FDA may define "United States" in a reasonable fashion ("*Chevron* step two"); (*Chevron*, 467 U.S. at 842–843; *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132 (2000)). The agency has determined that, in enacting section 801(m) of the FD&C Act, Congress did not speak directly and precisely to the meaning of "United States."

The FD&C Act does apply to Guam, the U.S. Virgin Islands, the Northern Mariana Islands, and other U.S. Territories. Section 201(a)(1) of the FD&C Act (21 U.S.C. 321 (a)(1)) defines the term "State" to mean any State or Territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. The term "Territory" is defined to mean any Territory or possession of the United States, including the District of Columbia, and excluding the Commonwealth of Puerto Rico and the Canal Zone, section 201(a)(2) of the FD&C Act (21 U.S.C. 321(a)(2)). However, the terms "State" and "Territory" are not used in section 801(m) of the FD&C Act.[3] Instead, section 801(m) of the FD&C Act deals with "articles imported or offered for import into the United States," (section 801(m)(1)).

The term "United States" is not defined in the FD&C Act's general definitions in section 201. Nor is it defined in section 801(m) of the FD&C Act. It is defined for purposes of section 702(a) of the FD&C Act (21 U.S.C. 372(a)), which provides:

> In the case of a food packed in the Commonwealth of Puerto Rico or a Territory [FDA] shall attempt to make inspection of such food at the first point of entry within the United States * * *. For the purposes of this subsection, the term 'United States' means the States and the District of Columbia.

This definition in section 702(b) seems to imply that, in other places in the FD&C Act, the term "United States" would include all Territories. However, in section 801(m) of the FD&C Act, the term "United States" appears as part of the phrase "for purposes of enabling inspection of such [food] articles at *the ports of entry* into the United States" (emphasis added). As defined by CBP, "port of entry" means ports within the part of the United States that has been denominated as the "Customs territory of the United States." (19 CFR 101.1 and 101.3). Notably, though, the Territories are not considered part of the Customs territory of the United States. CBP defines "Customs territory of the United States" to "include[] only the States, the District of Columbia, and Puerto Rico." (19 CFR 101.1).

Because of this reference to "the ports of entry into the United States," FDA has concluded that the term "United States" is best interpreted in section 801(m) of the FD&C Act to be the Customs territory of the United States and include only the 50 States, the District of Columbia, and Puerto Rico, but not the U.S. Territories and possessions. Defining the "United States" to be the Customs territory of the United States will maximize FDA's ability to coordinate prior notice with the CBP entry process, as CBP entry is made for articles from the Territories when they arrive in the Customs territory of the United States. Thus, section 801(m) of the FD&C Act does not apply to articles of food imported or offered for import into Guam, the U.S. Virgin Islands, the Northern Mariana Islands, and other U.S. Territories; section 801(m) does apply, however, when articles of food are imported or offered for import from the Territories into the United States as defined by § 1.276(b)(11) of the interim final rule.

(Interim final rule) The interim final rule (§ 1.276(b)(13)), defines "United States" to mean the Customs territory of the United States, *i.e.*, the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico, but not any other part of the United States.

14. You (§ 1.276(b)(14))

The proposed rule defined "you," based on who was authorized to submit prior notice, as "the purchaser or importer of an article of food who resides or maintains a place of business in the United States, or an agent who resides or maintains a place of business in the United States acting on the behalf of the U.S. purchaser or importer or the arriving carrier * * *" or, if known, the in-bond carrier.

(Comments) No comments were received concerning the definition of "you." However, comments were received about who may submit prior notice.

(Response) Discussion of those comments and our responses are found in the section "Who is Authorized to Submit Prior Notice?" FDA decided, based on revisions to who may submit prior notice, to revise the definition of "you." The interim final rule clarifies that "you" means the persons (*i.e.*, individuals and firms) submitting or transmitting the prior notice. The submitter is responsible for the prior notice. The persons who send the prior notice are transmitters. If the submitter sends the prior notice, he or she is both the submitter and transmitter. FDA notes that all messages sent via the FDA PN System Interface will be sent to the transmitter. If prior notice is submitted via ABI/ACS, all messaging goes to the customs broker or self-filer via ABI/ACS.

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[3] The terms "State" and "Territory" are key to the FD&C Act's definition of "interstate commerce," which is, in turn, key to many of the FD&C Act's general inspection and enforcement provisions, see, *e.g.*, sections 301, 304, and 704 (21 U.S.C. 331, 334, and 374). However, while articles that "are imported or offered for import into the United States," section 801(m)(1) of the FD&C Act, are in "interstate commerce," see, *e.g.*, *U.S.* v. *2,998 Cases * * * First Phoenix Group, Ltd, 64 F.3d 984 (5th Cir. 1995), the term* "interstate commerce" does not appear in section 801(m).

(Interim final rule) The interim final rule (§ 1.276(b)(14)), defines "you" as the person submitting the prior notice (the "submitter") or the person transmitting prior notice information on behalf of the submitter (the "transmitter").

### 13. Summary of the Interim Final Rule

The interim final rule defines the following terms:

- The act;
- Calendar day;
- Country from which the article originates;
- Country from which the article is shipped;
- FDA Country of Production;
- Food;
- Grower;
- International mail;
- No Longer in Its Natural State;
- Port of arrival;
- Port of entry;
- Registration Number;
- Shipper;
- United States; and
- You.

## *D. "What Is the Scope of This Subpart?" (Section 1.277 Proposed as § 1.276)*

FDA proposed that the prior notice requirements apply to food for humans and other animals that is imported or offered for import into the United States. The proposed rule specified that this included food that is imported or offered for import into U.S. FTZs, for consumption, storage, immediate export from the port of entry, transshipment through the United States to another country, or import for export. The proposed rule said that prior notice did not apply to food carried by an individual in that individual's personal baggage for that individual's personal use, meat food products, poultry products, and egg products that are subject to the exclusive jurisdiction of USDA.

(Comments) Some comments state that the prior notice requirements should not apply to food that is brought across the U.S. border but not for consumption in the United States. In particular, the comments focus on food exported from the port of arrival, food imported for transshipment and export from another port, and food imported for further processing and export. The comments argue that Congress did not envision that the prior notice requirements would cause importers to give notice of food not for consumption within the United States and that notice of such food would not give FDA any useful or actionable information. One comment states that the Bioterrorism Act repeatedly refers to "offered for import into the United States" and concludes, based on this phrase, that prior notice should apply only to food for consumption by the citizens of the United States. One comment points to statutory language that stipulates "for human and animal consumption." Based on this language, the comment argues that FDA would exceed its statutory authority by requiring prior notice for shipments not intended for consumption within the United States. Another comment states that prior notice should not apply to food of U.S. origin, especially if it was simply transshipped through another country then "re-imported" into the United States.

(Response) These comments on scope raise the question of what Congress intended the phrase "imported or offered for import into the United States" to mean for purposes of section 801(m) of the FD&C Act. In construing the prior notice provision of the Bioterrorism Act, FDA is confronted with two questions. First, has Congress directly spoken to the precise question presented? ("*Chevron* step one"). (*Chevron, U.S.A., Inc.* v. *NRDC, Inc.*, 467 U.S. 837, 842 (1984)). To find no ambiguity, Congress must have clearly manifested its intention with respect to the particular issue (*Young* v. *Community Nutrition Institute*, 476 U.S. 974, 980 (1986)). If Congress has spoken directly and plainly, the agency must implement Congress's unambiguously expressed intent (*Chevron*, 467 U.S. at 842–843). If, however, the Bioterrorism Act is silent or ambiguous as to the meaning of "imported or offered for import into the United States," FDA may interpret the phrase in a reasonable fashion ("*Chevron* step two"); (*Chevron*, 467 U.S. at 842–843; *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132 (2000)).

The agency has determined that, in enacting section 801(m) of the FD&C Act, Congress did not speak directly and precisely to the meaning of "imported or offered for import into the United States." For the reasons in the following paragraphs, FDA has determined that, for purposes of section 801(m) of the FD&C Act, the phrase "imported or offered for import into the United States" can reasonably be interpreted to apply to articles that are brought into the United States for consumption in the United States, for transshipment through the United States and export to another country, for further processing in the United States and export, and articles of U.S. origin that are "re-imported" back into the United States. We have also determined that the phrase "imported or offered for import into the United States" can reasonably be interpreted to exclude articles that are brought to the United States for the purpose of being exported without ever leaving the port of arrival until export.

Neither the Bioterrorism Act nor the FD&C Act defines this phrase. Moreover, courts that have considered the meaning of "import" or similar terms in other statutes have not always arrived at the same conclusions: Sometimes "import" means simply to bring in, but other times "import" means to bring in with the intent to unlade or enter (*Procter & Gamble Manufacturing Co.* v. *U.S.*, 19 C.C.P.A. 415, 422 (C.C.P.A. 1932) (to import "may mean to bring goods within the jurisdictional limits of the country * * *; or it may mean the time when it is withdrawn from the warehouse and enters the commerce of the country"); *compare, e.g., Canton R. Co.* v. *Rogan*, 340 U.S. 511, 514–15 (1951) ("to import means to bring into the country"); *Brown* v. *Maryland*, 25 U.S. 419, 426, 437–38 (1827) ("What, then, are 'imports'? The lexicon informs us, they are 'things imported.' If we appeal to usage for the meaning of the word, we shall receive the same answer. They are the articles themselves which are brought into the country.") *with United States* v. *Watches, Watch Parts, Calculators & Misc. Parts*, 692 F. Supp. 1317, 1321 (S.D. Fla. 1988); *United States* v. *Commodities Export Co.*, 14 C.I.T. 166, 169–70 (Ct. Int'l Trade 1990) ("once goods are within the jurisdictional limits of the United States with the intent to discharge, they are imports under this definition"); *United States* v. *Boshell*, 14 U.S. Cust. App. 273, 275–77 (Ct. Cust. App. 1922) ("The common ordinary meaning of the word 'import' is to bring in. Imported merchandise is merchandise that has been brought within the limits of a port of entry from a foreign country with intention to unlade, and the word 'importation' as used in tariff statutes, unless otherwise limited, means merchandise to which that condition or status has attached")).

In considering what is a reasonable interpretation, we considered the language and purpose of section 801(m) of the FD&C Act, as well as the other provisions of the Bioterrorism Act and section 801 of the FD&C Act. Section 801(m)(1) of the FD&C Act states, "In the case of an article of food that is being imported or offered for import into the United States, the Secretary * * * shall by regulation require * * * the submission to the Secretary of a notice * * *." FDA notes that Congress did not explicitly limit this provision to articles of food that are intended for consumption in the United States. However, such limiting language does appear in section 415 of the FD&C Act, which requires certain food facilities to register with the agency. This shows that when Congress crafted the Bioterrorism Act, it knew how to impose the limitation sought by the comments. But neither section 801(m) of the FD&C Act nor its legislative history contains language suggesting this limitation.

The purpose of the Bioterrorism Act is "to improve the ability of the United States to prevent, prepare for, and respond to bioterrorism and other public health emergencies." The prior notice provision furthers this goal by enhancing the agency's ability to inspect imported food upon arrival in the United States. Excluding from prior notice food that is brought into the United States for transshipment or further processing, rather than consumption, would run counter to the purpose of the Bioterrorism Act. Articles entered at the port or arrival under T&E entries with the stated intent to transship and export may be diverted for consumption in the United States and thus remain here rather than leave from another port. Some of this diversion is legitimate; under CBP regulations, importers may change their minds and file a superseding consumption entry. In addition, unscrupulous importers may file a T&E entry instead of a consumption entry to avoid paying duties on foods for consumption in the United States. Unscrupulous importers may also file a T&E entry instead of a consumption entry to try to avoid FDA review of their merchandise: generally, FDA does not receive any notice of these kinds of entries from CBP because these entries are not filed through ABI/ACS.

If we were to interpret "imported or offered for import" to exclude those entries, we could be creating a significant potential gap in section 801(m) of the FD&C Act's coverage. An importer could simply bring in an article of food under a T&E entry without giving prior notice and then, as allowed by CBP regulations, file a consumption or other entry. Thus, this exclusion would create a loophole that could be exploited by those who want to avoid giving prior notice, even for articles of food that are for consumption in the United States. Given the stated purposes of the Bioterrorism Act and of section 801(m) of the FD&C Act, FDA has concluded that it is reasonable to interpret "imported or offered for import into the United States" to include articles of food entered for transshipment and exportation.

Section 801(a) of the FD&C Act sets out the basic admissibility procedure and standards for foods, drugs, devices, and cosmetics, "which are being imported or offered for import into the United States." As with section 801(m) of the FD&C Act, nothing in section 801(a) limits its requirements just to articles that are intended for consumption in the United States. Indeed, section 801(d)(3) of the FD&C Act exempts from section 801(a)'s admissibility standards certain drugs, devices, food additives, color additives, and dietary supplements if these items are intended at the time of "importation" for further processing or incorporation into a product that will be exported. This exemption is only necessary if the phrase "imported or offered for import" in section 801(a) includes the bringing into the country of some types of goods that are for processing but not consumption in the United States. Thus, in the context of section 801(a) of the FD&C Act, "imported or offered for import into the United States" applies to more than food intended for consumption in the United States. Finally, section 801(d)(1) of the FD&C Act, which limits the circumstances under which U.S.-made drugs can be imported back into the United States, makes it clear that the phrase "imported or offered for import" in section 801(a) applies to items made in the United States, exported, and then "re-imported."

In light of the text of section 801(m) of the FD&C Act, its purpose, and these other provisions in section 801, we believe it is reasonable that this interim final rule applies to food that is brought into the United States for "consumption" (immediate or otherwise) in the United States, for transshipment through the United States and export, or for further processing in the United States and export (often referred to as "import for export"), and to food that is "re-imported." In addition, FDA has concluded in this interim final rule that there are compelling policy reasons for adopting this reasonable definition of "imported," "offered for import," and "importation."

However, when it comes to articles that are imported then exported directly from their port of arrival, we have concluded that it is reasonable to interpret the term "imported or offered for import" to exclude them from the prior notice requirements.

Food that is brought to a U.S. port but is then directly exported from that port of arrival is entered under a CBP IE entry and subject to the limitations of an IE bond. In essence, this food may not leave the port of arrival until export. These imports are thus subject to almost identical restrictions as food that is refused under section 801(m)(1) of the FD&C Act—foods that are imported under an IE entry may not leave the port of arrival unless exported. Given that controls already exist to ensure that these articles are not released from the port of arrival, FDA believes that it is reasonable to interpret 801(m) as excluding these imports from section 801(m) of the FD&C Act's prior notice requirements.

(Comments) One comment asks that other products covered by USDA programs (such as products included in "CFR(Q37)") be exempt from prior notice in the same manner as foods under the exclusive jurisdiction of USDA.

(Response) The comment did not provide more detail concerning what program is referred to by "CFR(Q37)." As set out in section 801(m)(b)(3)(B) of the FD&C Act, the interim final rule provides that meat food products, poultry products, and egg products that are subject to the exclusive jurisdiction of the USDA under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*) are not subject to FDA's prior notice requirements. With regard to other USDA programs, section 315 of the Bioterrorism Act states that no part of Title III should be construed to alter the jurisdiction between USDA and FDA. Notably, under current practice, FDA may have jurisdiction over an imported food under the FD&C Act and USDA may have jurisdiction over an imported food under one or more statutes that it administers, or the two agencies may have joint jurisdiction over an imported food. Under its section 315, the Bioterrorism Act does not change this structure. Accordingly, only imported food that is regulated exclusively by USDA is exempt from prior notice.

In addition, we believe that the statute requires prior notice to be submitted to FDA. As described elsewhere in greater detail, we are working with CBP to modify our existing ABI/ACS and OASIS systems to permit additional data sharing to satisfy prior notice. Although it is theoretically possible for FDA to obtain information from agencies other than CBP, the stringent timeframes for issuing this interim final rule do not provide FDA adequate time to reconcile the different information required or to work with the other agencies to have them amend their existing requirements to capture all the information FDA needs. Merely obtaining existing information about the food from other agencies would not guarantee that FDA has the information required by section 801(m) of the FD&C Act's prior notice requirements because there is wide variation in the purposes and information required by other government programs. We would also need to work with other agencies to ensure the confidentiality of nonpublic prior notice information under relevant information disclosure laws, *e.g.*, 21 CFR 20.85 (Federal), 20.88 (State), and 20.89 (foreign). Because a purpose of providing prior notice to FDA is to assist FDA in responding to bioterrorism incidents or other food-related emergencies, FDA must have the required information readily accessible. If FDA has to coordinate with other agencies or governments to obtain from them the information necessary to respond to such an emergency, FDA may be prevented from responding to the emergency in a timely manner.

FDA notes that it is dedicated to increasing information-sharing capabilities with other agencies even after this interim rule is in effect, and we will continue to work with other government agencies to further streamline the prior notice process, consistent with our statutory obligations.

(Comments) Several comments suggest that exclusion for baggage in the proposed rule should be broadened in the final rule to include all food in baggage, even food that is not for the traveler's personal use. For example, one comment reasons that samples carried in the baggage of company representatives (or sent unaccompanied) generally do not enter commercial trade.

(Response) FDA disagrees. Except as already provided for, section 801(m) of the FD&C Act does not authorize an exclusion from prior notice for all food imported or offered for import into the United States in baggage. In the preamble to the proposed rule, we explained that the information that section 801(m)(1) of the FD&C Act requires in a prior notice, in conjunction with the purpose of the provision, demonstrates that Congress did not intend prior notice to apply to food that travelers bring into the United States in their personal baggage for personal use (*i.e.*, consumption by themselves, family or friends, not for sale or other distribution). We reasoned that when travelers bring food back from their travels in their personal baggage for their own use, we do not believe that Congress intended for us to characterize such travelers as "shippers" for purposes of section 801(m) of the FD&C Act.

When food is not being carried by or otherwise accompanying an individual for his or her personal use, there is a "shipper"—the person or entity on whose behalf the traveler is bringing in the food. Thus, by its terms, section 801(m) of the FD&C Act requires that food carried by or otherwise accompanying an individual arriving in the United States that is not for personal use be subject to prior notice. In addition, were we to adopt such an exemption, it would create a potentially significant loophole, which could defeat the purpose of prior notice. For example, travelers coming from Latin America sometimes carry local soft cheeses for sale in the United States (Ref. 16). In fact, these travelers often are not staying in the United States for any period of time, but are merely transporting cheese to sell in the United States in their luggage or baggage. These cheeses have been tested by FDA and found positive for listeria, salmonella, and other pathogens associated with raw milk and insanitary conditions. Consumption of such contaminated cheese has been associated with illnesses and deaths. Another example is travelers arriving by automobile who carry cases of shellfish from unapproved foreign growing locations. These shellfish may be contaminated with a variety of illness-causing pathogens including vibrio cholerae or Norwalk virus. These shellfish are often not destined for personal consumption but for sale directly to the public or for consumption by the public at restaurants. Finally, trade samples are imported or offered for import to generate sales, which is a commercial, not personal, use. Thus, there is a "shipper" when these samples are brought to the United States.

FDA notes that it is changing the proposed rule by removing the term "baggage" and referring instead to food carried by or otherwise accompanying an individual. This change clarifies that the exclusion applies to food that might not be regarded as "baggage" but, nonetheless, accompanies the traveler. For example, food in the trunk of a car is not in baggage, but it accompanies the driver and any passengers.

(Comments) Comments ask that any food imported for personal use which arrives in the country by common carrier (*e.g.*, express carrier, truck, plane) should be treated the same as food imported for personal use and carried with a traveler.

(Response) FDA disagrees. Section 801(m) of the FD&C Act does not authorize a broad exclusion from prior notice for all food imported or offered for import for personal use. In the preamble to the proposed rule, we explained that the information that section 801(m)(1) of the FD&C Act requires in a prior notice, in conjunction with the purpose of the provision, demonstrates that Congress did not intend prior notice to apply to food that travelers bring into the United States in their personal baggage for personal use (*i.e.*, consumption by themselves, family or friends, not for sale or other distribution). We reasoned that when travelers bring food back from their travels in their personal baggage for their own use, we do not believe that Congress intended to characterize such travelers as "shippers" for purposes of section 801(m) of the FD&C Act. However, when food is shipped by an individual or business in another country to a consumer in the United States for his or her personal use (or otherwise), there is a "shipper" as that term is used in section 801(m)(1) of the FD&C Act and defined in § 1.276(b)(10). Accordingly, there is no basis in section 801(m) of the FD&C Act for concluding that Congress did not intend prior notice to apply to articles sent (as opposed to carried) to the United States for the recipients' personal use.

(Comments) One comment asked that FDA address the issue of noncommercial family food shipments and to add these to the list of exemptions from prior notice. Another comment stated that a food shipment consisting of one noncommercial shipper sending food to another noncommercial recipient (*e.g.*, a friend abroad shipping cookies to a friend in the United States) should be outside the scope of the prior notice requirement.

(Response) FDA agrees in part and we have added a provision that excludes personal gifts of homemade food from prior notice. Although we believe that this food is imported into the United States, the information that § 801(m)(1) of the FD&C Act requires in a prior notice, in conjunction with the purpose of the provision, demonstrates that Congress did not intend prior notice to apply to homemade food sent as a personal gift by the maker to a recipient in the United States. In particular, under § 801(m)(1) of the FD&C Act, a prior notice must contain the identity of the manufacturer of the food. When an individual makes a food in their home as a gift for a relative or friend, we do not believe that Congress intended for us to characterize such cooks as "manufacturers" for purposes of § 801(m) of the FD&C Act.

(Comments) Several comments suggest that the final rule should not apply to foods that arrive by international mail or express carriers.

(Response) FDA disagrees. Except for the exclusions already described for food for personal use that is carried by or otherwise accompanying a traveler and homemade gifts, section 801(m) of the FD&C Act applies to food regardless of the method of importation. Thus, foods that arrive by international mail and by express carriers (*e.g.*, Federal Express, United Parcel Service, *etc.*) are subject to section 801(m)'s prior notice requirements. Indeed, FDA notes that foods, drugs, devices, and cosmetics that arrive by mail or express carriers are currently subject to admissibility determinations under section 801(a) of the FD&C Act, which also uses the phrase "imported or offered for import." Finally, were we to adopt such an exemption, it would create a potentially significant loophole, which could defeat the purpose of prior notice. Those who did not want to or could not comply with prior notice requirements would be able to bring articles of food in by mail or express carrier. While this might not be practical for all kinds of foods, many foods are regularly imported by mail or express carrier, *e.g.*, dietary supplements and specialty foods ordered by U.S. consumers from foreign firms. For example, one commenter states its company provides, through Internet sales, special dietary foods and fresh baked foods that are shipped via express carriers directly to consumers at the rate of around 1,000 home deliveries per week.

(Comments) Several comments suggest that the final rule should not apply to various kinds of samples, including trade and market research samples (*i.e.*, samples sent or carried in for the purpose of selling products or conducting market research), trade show samples, samples for testing for nutritional, safety, quality control, or quality assurance reasons, and samples for basic research. These comments reason that samples used for marketing are not intended for retail consumption and generally do not enter commercial trade and, thus, are not intended for use as food. In the case of samples for testing, comments reason that these samples are for the individual's specific and limited personal use and not for further distribution to others and should be exempted as samples are under federal poultry and meat inspection regulations.

(Response) FDA agrees in part. If the samples are items that are in such early stages of research and development that they cannot yet be considered food under § 1.276(b)(5) of the interim final rule, they would not be subject to prior notice requirements. An example of such an item is a substance being tested for possible preservative qualities before being tested in any food. However, samples of food, including those for test marketing, are clearly subject to prior notice as they are "articles of food imported or offered for import" as stated in section 801(m) of the FD&C act. For example, in the summer of 2003, FDA received a report from a poison control center in country T concerning the acute poisoning of 9 men (one died) from ingestion of an herbal fermented wine. Symptoms occurred within minutes. Reports indicated that this product may have been exported to the United States in small quantities for test marketing in restaurants. This underscores the importance of FDA receiving prior notice of all food imported or offered for import.

(Comments) One comment suggests that food for research and development purposes sent directly to facilities that are registered under section 415 of the FD&C Act should be exempt.

(Response) If the item is indeed food under this subpart and it is not otherwise excluded under § 1.277(b), prior notice is required. There is no basis in the statute for an exemption based on the fact that an article of food is being sent to registered facilities.

(Comments) Comments ask that articles of food that are of *de minimis* value (*i.e.*, less than $200) be exempt from prior notice. The comments argue that such small shipments for personal use could hardly qualify as a risk to the domestic food supply. They also point out that enforcing prior notice on such articles would be difficult and burdensome to FDA. In addition, they state that prior notice for these items would be a burden on consumers as they usually do not have an agent in the United States to represent them.

(Response) FDA notes that it has removed the restrictions on who can submit prior notice. Thus, foreign sellers or shippers can file prior notices for these kinds of shipments under the interim final rule. Low-value food items are clearly subject to the terms of section 801(m) of the FD&C Act as they are "articles of food imported or offered for import" as stated in section 801(m). Moreover, we do not agree that low value shipments are always imported for personal use or would present only *de minimis* risks, such that an exemption can be justified under the *de minimis* doctrine. First, a low value is not necessarily a good indication that the article is for personal use. Many food items (*e.g.*, produce) can have a low invoice value at importation, especially if the shipment is not large. Moreover, in our experience, many specialty, gourmet, ethnic, and exotic foods are often imported for commercial purposes in very small amounts. Thus, a shipment of bottled cooking oil or a beverage contaminated with toxic chemicals may be represented as low-value or low-volume but could have a wide, and very negative, public health impact. In addition, we note that misdeclaration of value of articles of food at entry can be a problem. Finally, any burden such an exemption might relieve would likely be offset by the burden of administering it.

(Comments) Comments ask for an exemption for food imported into the United States for sale in duty free stores.

(Response) FDA disagrees. Unless the food is imported and exported without leaving the port of arrival until export, as set out in § 1.277(b)(2), there is no basis in section 801(m) of the FD&C Act for such an exemption.

(Comments) Some comments recommend that prior notice be waived for foods in situations that they characterize as "low risk." These situations were identified in the comments as any one of the following:

- Exported from U.S.-owned foreign companies;
- Transferred between commonly owned facilities (intra-company transfers);
- Subject to high quality control standards and/or produced in highly-regulated businesses;
- Shipped under seal or in bond;
- Entered as high-volume, repetitive shipments;
- Processed through CBP's Border Release Advanced Selectivity Screening (BRASS); and
- Associated with a program of assessment of low risk, such as the Customs-Trade Partnership Against Terrorism (C–TPAT); Free and Secure Trade program (FAST); or food safety and security programs of foreign government regulatory authorities.

(Response) FDA disagrees. As explained previously, section 801(m) of the FD&C Act applies to all food imported or offered for import into the United States except as outlined in § 1.277(b). Nothing in section 801(m) of the FD&C Act authorizes an exemption for articles of food that are "low risk" or covered by programs of other agencies, such as CBP or foreign government regulatory authorities.

Summary of the Interim Final Rule

Section 1.277(a) provides that the interim final rule applies to food for humans and other animals that is imported or offered for import into the United States. This covers food for use, storage, or distribution in the United States, including food for gifts, trade and quality assurance/quality control samples, food for transshipment through the United States to another country, food for future export, and food for use in a U.S. FTZ. Section 1.277(b) sets out the exclusions from prior notice. It excludes food carried by or otherwise accompanying an individual arriving in the United States for that individual's personal use (*i.e.*, consumption by the individual or his or her family or friends, not for sale or other distribution); food that was made by an individual in his or her personal residence and sent by that individual as a personal gift (*i.e.*, for nonbusiness reasons); food that is imported then exported without leaving the port of arrival until export; and meat food products, poultry products, and egg products subject to the exclusive jurisdiction of USDA under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*).

### *E. "Who Is Authorized To Submit Prior Notice?" (Section 1.278 Proposed as § 1.285)*

The proposed rule (§ 1.285) provided that a purchaser or importer of an article of food who resides or maintains a place of business in the United States or an agent thereof was authorized to submit prior notice. FDA noted that a broker/filer would be authorized to be a submitter if it was the U.S. agent of the U.S. importer or U.S. purchaser.

FDA further proposed that if the article of food is imported for in-bond movement through the United States for export, the prior notice must be submitted by the arriving carrier or, if known, the carrier making the in-bond entry.

(Comments) Many comments object to the limitation that only a person who resides or maintains a place of business in the United States can submit the prior notice. Some comments state that foreign-based companies that sell food directly to U.S. individuals for their own use, including companies that sell via the Internet, cannot expect their individual customers to submit prior notice. In addition, comments point out that, under some circumstances, the U.S. importer or purchaser or carrier would not have all the information required by prior notice, but that other entities, *e.g.*, the foreign manufacturer/processor, shipper, or exporter, would have the required information. Many comments state that entities other than U.S. firms or carriers should be allowed to submit prior notice.

(Response) FDA agrees and has removed this restriction on who can submit prior notice. Accordingly, § 1.278 of the interim final rule provides that any person with knowledge of the required information may submit prior notice to FDA. Thus, any person may now take responsibility for submitting prior notice for a particular article of food, as long as that person can provide all the required information. This person is referred to as the submitter in the interim final rule. The interim final rule also states that the submitter may use another person to transmit the required information to FDA. For ease of reference, the person who transmits the prior notice is referred to as the transmitter in the interim final rule. If the submitter submits and transmits the prior notice, he or she is both the submitter and the transmitter. FDA notes that all reply messages sent by the FDA PN System Interface will be sent to the transmitter. If prior notice is submitted via ABI/ACS, all reply messaging goes to the customs broker or self-filer. FDA has also revised the definition of "you" accordingly.

(Comments) Comments from customs brokers noted that, although they are responsible for timely submission of all documentation required for import entry, they are not responsible for verifying the accuracy of information provided to them from their customer. Comments ask FDA to clarify in the final rule that the customs broker is merely an agent for the filing of information obtained from the importer and is not responsible for either the adequacy or accuracy of the data submitted. Comments assert that the responsibility of the customs broker is to accurately submit the information provided by his or her client in correct form and in a timely manner.

(Response) The submitter of prior notice information, regardless of the method of or person transmitting the information, is responsible for the accuracy of that information. If the transmitter is not the submitter, we expect the transmitter, whether he or she is a licensed customs broker or other kind of agent, to exercise diligence and care to transmit the information provided by the submitter accurately.

(Interim final rule) Proposed § 1.285 has been changed in the interim final rule to § 1.278, "Who is authorized to submit prior notice?" The interim final rule states that any person with knowledge of the required information may submit prior notice. This person is the submitter. The submitter may also use another person to transmit the required information on his or her behalf. The person who transmits the information to FDA is the transmitter. The submitter and the transmitter may be the same person. The interim final rule also defines "you" to mean the submitter or transmitter (§ 1.276(b)(12)).

### *F. "When Must Prior Notice Be Submitted to FDA?" (Section 1.279 Proposed as § 1.286)*

FDA proposed that the prior notice must be submitted to FDA no later than 12 noon of the calendar day before the day the article of food will arrive at the border crossing in the port of entry. As described in the proposal, this was based on FDA's assessment of what time was needed to meet its statutory mandate of receiving, reviewing, and responding to prior notice.

(Comments) Generally, the comments recommend that FDA adopt a shorter, rolling prior notice submission timeframe to reduce the burden of the prior notice requirement on the smooth flow of commerce. Many comments recommend a specific timeframe for submission of prior notice. These recommendations ranged from submission of an annual report for repetitive shipments, to submission of the notice at the time of distribution of the food after it arrives in the United States.

Many comments recommend that the prior notice submission timeframe be linked to a mode of transportation or type of port of entry, and others recommend that it be linked to the type of food. Many comments recommend a specific timeframe and associated that timeframe with either a mode of transportation/type of port or with a type of food or both. Comments recommend that prior notice be submitted 8 hours before arrival; some associate the 8 hours timeframe with a water mode of arrival only, while others associate the 8 hours timeframe with nonperishable foods. Many comments recommend that prior notice be submitted 4 hours before arrival; some associating the 4 hours timeframe with land and air modes of arrival only and some associating the 4 hours timeframe with perishable foods (produce and seafood) and live animals only.

(Response) FDA agrees that the time for submission of prior notice should be a rolling timeframe. FDA has determined that the time can be shortened to reduce the effect on the smooth flow of trade while still providing FDA with sufficient time to receive, review, and respond to the information. FDA also agrees that timeframes should be different for different modes of transport. As such, FDA has revised the rule to require that the timing of submission will be no more than 5 days (except in the case of international mail) and that the prior notice submission be confirmed by FDA for review no less than 2 hours before arriving at the port of arrival by land via road, no less than 4 hours before arriving at the port of arrival by air and land via rail, and no less than 8 hours before arriving at the port of arrival by water.

When food carried by or otherwise accompanying an individual is subject to this rule, the timeframe associated with the manner of the individual's arrival applies. If the individual and article of food are arriving by land via road, the prior notice must be submitted and confirmed at least 2 hours before arrival. If the individual and article of food are arriving by air or by land via rail, the prior notice must be submitted and confirmed at least 4 hours before arrival. If the individual and article of food are arriving by water, the prior notice must be submitted and confirmed at least 8 hours before arrival.

Two major agreements between CBP and FDA allow FDA to reduce significantly the time necessary to receive, review, and respond to prior notice information. First, FDA and CBP have agreed to commission or use CBP staff to perform examinations for FDA when FDA is not present at the port of arrival. Since CBP staff generally will be available where FDA is not, this means that FDA no longer needs lead-time to travel significant distances to conduct inspections. In addition, CBP agreed to modify ABI/ACS to receive, transmit, and communicate prior notice information electronically between CBP and FDA for most entries of imported foods by the statutory deadline in the Bioterrorism Act of December 12, 2003. CBP's assistance with prior notice means that FDA needs far less time to respond to prior notices.

In considering how to modify the timeframes, FDA concluded that setting them by mode of transportation would be the best approach. Mode of transportation is clear and easy to apply and administer, so there is likely to be little confusion about what timeframes apply. If we were to set timeframes based on type of food, *e.g.*, perishable versus nonperishable, we would have to develop and implement a system for determining which articles of food were which. In addition, different articles of food in the same conveyance would be subject to different prior notice timeframes, which would subject all items in the conveyance to the longest timeframe and add an additional layer of complexity that could cause confusion and delays at the border. Moreover, many comments recommended mode of transportation, which suggests that many stakeholders, including industry, believe such a system is workable.

In determining the actual timeframes for submission of prior notice for each mode of transportation, FDA considered the need to provide sufficient time for the agency to review and respond to the information submitted, as well as the current ability of the food industry to provide the information required within the stated timeframe given the differences in lead time before arrival among different modes of transportation. We determined that information for shipments whose transport time is measured in days or weeks (*e.g.*, ocean shipments) is available further in advance of arrival than shipments whose transport time is measured in hours (*e.g.*, land and air shipments.) Staggered prior notice submission timeframes will allow FDA reviewers to direct additional resources to shipments with short transport times and to defer review of shipments with longer transport times. Based on these considerations, FDA established the prior notice timeframes in the interim final rule to associate with the mode of transportation.

FDA is committed to exploring ways to increase integration and reduce the prior notice timeframes further. Accordingly, FDA and CBP will continue working together to determine what is needed to achieve this goal. No later than March 12, 2004, the Commissioners of FDA and CBP will publish a plan, which will include an implementation schedule, to achieve the goal of a uniform, integrated system and to coordinate timeframes for import prior notice information while fulfilling the Bioterrorism Act mandates for air and truck modes of transportation with timeframes finalized by CBP when they finalize the rule entitled "Required Advance Electronic Presentation of Cargo Information," published in the **Federal Register** on July 23, 2003 (68 FR 43574).

For imported food arriving via international mail, the interim final rule requires that prior notice be submitted before the food has been sent. This timeframe allows the FDA PN Confirmation Number to accompany the package, which is necessary to establish that prior notice has been submitted and to match the prior notice submission to the package upon arrival.

(Comments) Some comments recommend that the prior notice submission timeframe be waived for foods exported from U.S.-owned foreign companies. Other comments recommend that a different timeframe be established for foods associated with a program of assessment of low risk, such as the C–TPAT.

(Response) The interim final rule does not provide for a waiver of the timeframe for foods imported by U.S.-owned firms. Nor does the rule provide for a different timeframe for foods or firms covered by programs of other agencies, such as C–TPAT. The interim final rule provides for greatly reduced timeframes for foods based on mode of transportation. These timeframes are what FDA has determined are the minimum timeframes necessary to allow it to satisfy the statutory mandate that the timeframes give the agency the time it needs to "receive, review, and respond" to prior notices. However, FDA is also interested in exploring flexible alternatives for submission of prior notice for foods or firms covered by programs of other agencies, such as C–TPAT, or imported by other agencies.

(Interim final rule) Section 1.279(a) in the interim final rule has been revised to require submission of the prior notice to FDA and the submission must be confirmed by FDA for review no less than 2 hours before arriving at the port of arrival by land via road, no less than 4 hours before arriving at the port of arrival by air and land via rail, and no less than 8 hours before arriving at the port of arrival by water. Under § 1.279(b), prior notice may not be submitted more than 5 calendar days before arrival, except in the case of food imported or offered for import by international mail.

Under § 1.279(c), if the article of food is arriving by international mail, the prior notice must be submitted before the food is sent to the United States.

Section 1.279(d) provides that the time of submission is fixed and the prior notice time will start for purposes of determining if prior notice is timely when the prior notice submission is confirmed by FDA for review. FDA will confirm a prior notice once all required information has been submitted and confirmed as facially complete. For example, if the information submitted were to include a registration number, name, city, and country for the manufacture of an article of food, and the system review were to reveal that the registration number does not exist or does not match the name, city, and country of the facility, the FDA PN

System Interface will not provide a confirmation for that prior notice. The transmitter will have an opportunity to correct the rejected information. When the information is corrected, transmitted, and determined to be facially valid, the system will then notify the transmitter and provide the PN Confirmation Number. As set out in § 1.279(d), FDA will notify the transmitter that the prior notice has been confirmed for review with a confirmation that contains a PN Confirmation Number. The prior notice will be considered submitted and the prior notice time will start when FDA has confirmed the prior notice for review.

Under § 1.279(e), the PN Confirmation Number must accompany any article of food arriving by international mail. Under § 1.279(f), a copy of the confirmation (with the PN Confirmation Number) must accompany any article of food carried by or otherwise accompanying an individual (unless excluded under § 1.277(b)(1)), and be provided to CBP or FDA upon arrival.

Additionally, under § 1.279(g) the PN Confirmation Number must accompany any article of food for which the prior notice was submitted through the FDA PN System Interface when arriving in the United States and must be provided to CBP and FDA upon arrival.

### *G. "How Must You Submit Prior Notice?" (§ 1.280 Proposed as § 1.287)*

FDA proposed that prior notice and any amendments and updates must be submitted electronically to FDA through a new Web interface. The proposed rule also required submission of hard-copy prior notice, in person or by e-mail or fax, if the FDA system was not operating. Before issuing the proposed rule, FDA consulted with CBP, which was then the U.S. Customs Service of the Department of the Treasury, about the proposed rule and the feasibility of modifying ABI/ACS to accommodate the new prior notice requirement. During these consultations, CBP advised that ABI/ACS could not be modified to accommodate the data requirements of the prior notice regulation by the December 12, 2003, statutory deadline.

(Comments) Many comments focus on the proposed method of submission of prior notice. These comments fall into four broad categories. The first category, which includes the largest number of comments, suggests that FDA work more closely with other agencies, and in some cases other countries, to eliminate redundancies or conflicts in the method of submission. The majority of these comments urge the FDA to work more closely with CBP. A second group of comments addresses the viability of the proposed Web-based system for submission of prior notice. The third category includes suggestions about the prior notice form that was included in the proposed rule. The final category of comments asserts that existing systems and procedures provide adequate defense against a bioterrorism threat and that the proposed regulation is unnecessary.

#### 1a. Work With Other Agencies To Eliminate Redundancies

(Comments) Most comments recommend that FDA and CBP work together to reduce the adverse impact of submission of information in both prior notice and CBP entries. Most of these comments suggest that the existing ACS–OASIS interface between CBP and FDA be used to accept prior notice information. Other comments suggest that much of the information required for prior notice was available in CBP's Automated Manifest System (AMS). Although many comments suggest that the existing systems contained sufficient information to meet the statutory requirements, others recognize that modifications were needed to meet the Bioterrorism Act's requirements.

(Response) FDA and CBP agree with many of the comments made about inter-agency cooperation as well as with the recommendation that we provide a single point of data entry for CBP and FDA for as many kinds of entries as possible. FDA and CBP are committed to the joint implementation of an automated approach to prior notice that will meet the following objectives: (1) Reduce submission of redundant data to the extent possible; (2) build on current operational procedures; and (3) implement the law with minimal disruption to current entry practices.

The interim final rule requires prior notice to be submitted electronically to FDA through CBP's ABI/ACS or the FDA PN System Interface. Prior notice may be submitted through ABI/ACS for all food imports subject to this interim final rule except food imported by international mail or other transactions that cannot be submitted through ABI/ACS and food that has been refused under section 801(m) of the FD&C Act. The proposed rule was based on an initial review by both FDA and CBP of the feasibility of implementing new operational procedures and enhancing existing systems. After further review of the potential technical, legal, and operational impacts, FDA and CBP have determined that the prior notice information required for most types of CBP entries of foods can be submitted through the existing ABI/ACS and provided to FDA. The existing ABI/ACS–OASIS interface allows for communication both between FDA and the customs broker or self-filer (necessary for the submission of prior notice to FDA as required by section 801(m)(1) of the FD&C Act), and between FDA and CBP (necessary for followup at the border). However, although much of the information required for prior notice currently existed in some automated form in ABI/ACS, not all the necessary data were available in the right sequence or at the right time to meet prior notice requirements. Thus, FDA and CBP have been working closely together and enhancing, ABI, ACS, and OASIS to craft operational procedures and systems that meet the requirements of the Bioterrorism Act with minimal impact on existing processes.

Since prior notice is required for some of imported food for which electronic transmission of information to CBP is not available via ABI/ACS and since submission of information through ABI/ACS is not mandatory, an alternative means to submit prior notice will still be needed. Although a CBP entry is not normally submitted in ABI/ACS for T&E entries and IT entries and FTZ admissions, a new transaction format, similar to the existing ABI transactions, will be available for submitting prior notice for these imports through ABI/ACS. The FDA PN System Interface will also be available for international mail, food refused under section 801(m) of the FD&C Act, and those who choose not to submit prior notice through ABI/ACS.

#### 1b. CBP AMS

(Comments) Several comments note that some of the information FDA required for prior notice was already being submitted to AMS and suggested that FDA could retrieve data from AMS rather than ask for a separate submission for prior notice.

(Response) AMS is a module of ACS through which carriers, port authorities, or service bureaus transmit electronically the cargo declaration portion of the inward foreign manifest to CBP. The information submitted to AMS is not sufficient to satisfy section 801(m)(1) of the FD&C Act's requirements. For example, the identities of the manufacturer, grower, FDA product code, and quantity of each article are not submitted to AMS. FDA and CBP have consulted about interfacing with AMS for manifest data and determined that the general cargo data in AMS were simply not suitable to accommodate the detailed information requirements of section 801(m) of the FD&C Act. In addition, no interface currently exists between AMS and the existing interface with OASIS through the ABI/ACS entry processes, which means FDA does not have any access to AMS data. However, section 801(m) of the FD&C Act requires that prior notice be submitted to FDA. Given the implementation date of December 12, 2003, CBP and FDA concluded that it was not practical to attempt to modify AMS to accommodate the new prior notice requirements when we could enhance the existing ABI/ACS–OASIS interface.

2a. Viability of a Web-Based System

(Comments) A common concern expressed by commenters is the viability of the FDA PN System Interface for the volume of data traffic and the time-sensitive nature of prior notice information. Multiple comments address system availability, the time needed to enter and process the data, and the need for confirmation.

(Response) FDA agrees that implementation of a new FDA PN System Interface as the primary means of data submission for 25,000 plus transactions a day would be challenging, particularly considering the effect on the food industry if the system were not responsive. That concern has been substantially addressed as a result of the commitment by CBP and FDA to work together to enhance the existing ABI/ACS–OASIS interface to accommodate the prior notice requirements. The decision includes the development of a new ABI/ACS "transaction type" that will accommodate prior notices for IT entries, T&E entries, and food shipped directly to an FTZ. This new feature further reduces the number and type of transactions that must be submitted through the FDA PN System Interface.

FDA anticipates that less than 10 percent of the total submissions will be submitted through the FDA PN System Interface. The FDA PN System Interface will be available 24 hours a day, 7 days a week. FDA has taken steps to ensure that the FDA PN System Interface can provide adequate response times to support data entry and return of confirmation by reply messaging.

2b. Contingency System

(Comments) FDA received several comments on the need for a contingency plan or backup plan in case of FDA Web system failure. The severity of the consequences if FDA were to fail to receive a prior notice, and the common experience with Web system failures, was of great concern to many of the system's potential users. Many suggestions were made for contingency plans, *e.g.*, information on what FDA plans to do if the automated system is unavailable.

(Response) FDA agrees that plans for contingencies are needed, even with the reduced volume of traffic on the FDA PN System Interface and the existence of two modes of submission. FDA does not plan to exempt any specific categories of food articles from prior notice if systems are not performing; FDA and CBP are working together to develop contingency plans for when the system(s) are not working. The interim final rule, § 1.279(b) through (d), sets out how we will handle prior notice in four "down-time" situations: The customs broker's or self-filer's access to ABI/ACS is not working; the ABI/ACS interface is not working; the FDA PN System Interface is not working; and OASIS is not working. In all these situations, an alternative form of prior notice information is required. If access to ABI/ACS is not available, prior notice must be submitted via the FDA PN System Interface. If FDA determines that FDA PN System Interface is not working, prior notice must be submitted manually by those who do not use ABI/ACS. If FDA determines that OASIS is not working, all prior notices must be submitted manually. FDA will issue notification through notices on the FDA Web site at *http://www.fda.gov*, at *http://www.access.fda.gov*, and through messages in ABI/ACS. Once FDA issues this notification, prior notice information must be submitted to FDA by e-mail or by fax.

Manual submissions must be submitted by e-mail or fax. Because all review is being done in a centralized location, we will not accept manual submissions in person. The FDA Web site at *http://www.fda.gov* will have a list of the information required for prior notice submission and the fax number(s) and e-mail address(es) where prior notice can be sent. The list of the information required can be printed. It can also be downloaded to the submitter's or transmitter's word processing system and used as a basis for submitting prior notice information to FDA. Because the FDA PN System Interface at *http://www.access.fda.gov* and FDA's Web site at *http://www.fda.gov* are located on independent platforms, this information will be available even when the FDA PN System Interface is not working. This fax number and the e-mail address will not be activated to accept prior notice information unless FDA determines that the FDA PN System Interface or OASIS is not working. Additional information about the down-time, *i.e.*, confirmation that the FDA PN System Interface or OASIS is down and estimated down-time will be posted at *http://www.fda.gov*—see "prior notice" and will be available from the help desk.

2c. Alternate Methods

(Comments) Several comments suggest more than one path for submission of prior notice information. Some comments ask that FDA allow for manual submission, either as a backup, or as an alternate path. Others suggest that some types of "safe" products be allowed to bypass prior notice if the system were not performing. Still others suggest that the potential for catastrophic system failure requires FDA to implement 2 interfaces for prior notice data, often implying that ACS was an appropriate alternative system.

(Response) FDA does not agree that a process for manual transmission is needed, except on a contingency basis. FDA believes that, in 2003, persons engaged in international commerce have, or can get, access to the Internet. If the Internet is not accessible by the submitter, he or she can use a customs broker to submit prior notice through ABI/ACS or another person to transmit prior notice through the FDA PN System Interface. As the primary mode of submission, manual transmission would not give adequate time for FDA personnel to receive, review, and respond, unless the timeframes for prior notice in the interim final rule were greatly extended. Thus, manual transmission will be used only as a contingency alternative. FDA also notes that the data quality of manual systems is usually less than satisfactory, because no automated data validation takes place during data entry. The U.S. Government has a strong commitment to reducing paper-based processes and moving toward e-commerce for all business transactions. Accordingly, under the interim final rule, paper-based submissions will not be allowed, except as set forth in § 1.280(c) and (d), by e-mail and fax. However, FDA and CBP do not expect system failures to be a common occurrence.

2d. Security of System

(Comments) Several comments question the security of the system and suggested that the system must have extraordinarily stringent security protocols in place to protect sensitive commercial information and prevent potential terrorists from obtaining information capable of providing cover.

(Response) FDA agrees the information must be secure. Any fraudulent or inadvertent changes in data could affect FDA response and thus affect the health and welfare of consumers in the United States. FDA has determined that the data security and data integrity requirements of the prior notice data are on par with entry data currently submitted through ABI/ACS to OASIS. Prior notice data submitted through ABI/ACS will have the same security and access controls as entry data currently received through ABI/ACS. Adequate and effective security controls will be placed on the FDA PN System Interface through user account management and authentication processes, and password controls, to ensure data security and integrity.

A number of statutes, regulations, and policies address protection of sensitive information from unauthorized disclosure. Some that are relevant to prior notice include the Clinger-Cohen Act of 1996, the Computer Security Act of 1987, the Trade Secrets Act; 21 CFR 20.61 (Trade Secrets and Commercial or Financial Information Which Is Privileged or Confidential), OMB Circular A–130 (Management of Federal Information Resources), and FDA Staff Manual Guide 3250.15 (Information Technology Security, Data Security—Data Confidentiality). For example, Appendix III to OMB Circular No. A–130 establishes a minimum set of controls to be included in an agency's information security program and requires security controls to be commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of information.

### 3a. Prior Notice Form

(Comments) Several comments suggest changes to the proposed form. Most of these recommend changes in the order of items in the form.

(Response) The draft form that was provided as an attachment to the proposed rule was intended only to provide a graphic summary of the information to be collected by the FDA PN System Interface (68 FR 5334). The form was an illustration, intended to help potential users to visualize the data requirements and to better analyze their relationship and impact. FDA did not intend the draft form to be a sample of the screens that will be available to the user on the proposed FDA PN System Interface. Nor was it intended to be a draft paper form, since paper-based submission will not be acceptable, except as a contingency if the system is not operating.

The actual screens of the FDA PN System Interface are based on standard Web design principles, with primary attention to support of anticipated data entry. The screens will incorporate extensive use of "pull-down" lists to assist users in entering their data. For example, transmitters will use a predefined pull-down list of International Standards Organization (ISO) codes for countries to enter the country from which the article is shipped. Screen design places critical data entry items at the beginning of the submission process and uses those items to drive later processes. Data entry processing will also include robust and user-friendly data validation to ensure that transmitters enter data correctly and do not fail prior notice because of inadvertent errors in their data entry screens. Additional description of the FDA PN System Interface is included in the discussion of the interim final rule at the end of this section.

### 3b. Form Processing

(Comments) Several comments make suggestions about the way the form should be processed, requesting self-populating fields, the ability to change information without redoing the whole form, confirmation after submission, and other features that would make submission easier.

(Response) As noted previously, FDA did not intend the draft form in the proposed regulation to suggest processing sequences. Submitters or transmitters using the ABI/ACS interface to submit prior notice data to the FDA will be able to make full use of the capabilities of their particular ABI software's automation features. The FDA PN System Interface will permit initial partial data entry and will allow the user to save the information entered until all data are available for submission. The FDA PN System Interface is designed to accept "header" information that will permit repeated information to be automatically entered. This "header" would contain information consistent across several articles of food within the same submission, *e.g.*, date and time of arrival for several articles of food in one shipment. This will reduce the amount of data entry and potentially reduce typing and transcription errors. FDA has developed the FDA PN System Interface to allow submitters to automatically repeat information already entered in the submission where appropriate (*e.g.*, all information is the same except for the identity of the article or the manufacturer).

The order of information required in prior notice is displayed to best support user input. For example, the first information required is the identification of the submitter and transmitter, if applicable. The next information is the common information that may apply to all articles of food for which prior notice is being submitted at the same time, such as the manufacturer, shipper, carrier, etc. For example, when a manufacturer is identified for the first article of food, the submitter will be able to indicate, using a check box, that the manufacturer is the same for all articles of food in the shipment.

### 3c. Clarification of Fields

(Comments) A few comments ask for clarification on the meaning of specific fields.

(Response) Elsewhere in this rule FDA sets out the information that must be submitted in a prior notice (see § 1.281). In addition, online help will be available, which will include descriptive information on data fields, and their relationship to other required information and references to the requirements. FDA will also provide a help desk with staff who will answer questions that are not specifically answered by the online help. Information on how to contact the help desk will be available on both the FDA PN System Interface at *http://www.access.fda.gov* and the FDA Web site at *http://www.fda.gov*—see "prior notice."

### 4. Existing System Adequate

(Comments) Several comments suggest that the regulations proposed were unnecessary and that FDA already had the data required, so prior notice would not provide any additional security. These comments conclude that the proposed regulation is therefore functionally redundant.

(Response) Congress mandated prior notice when it enacted the Bioterrorism Act. FDA disagrees with the assertion that prior notice will not provide any additional security because similar information about food is already available. Current systems do not provide all of the information required by the Bioterrorism Act. Nor do they ensure that FDA is provided with the required information before arrival, as required by Congress when it passed the Bioterrorism Act.

### 5–11. Description of the Prior Notice Submission Systems

Prior notice submission and electronic review will be accomplished through several new or enhanced components of FDA's and CBP's existing electronic systems.

a. *ABI/ACS interface*. The existing ABI/ACS interface, which sends data from customs brokers or self-filers through ACS to OASIS, will be enhanced to support the prior notice requirement. For customs brokers or self-filers providing prior notice as part of their CBP entry through the ABI/ACS interface, the process for submission and response will be similar to the current process for submitting entry information about FDA-regulated products. A customs broker or self-filer will enter and transmit the information currently required in a CBP entry, along with any additional information required in prior notice, using the software that currently supports submission of data through the ABI interface. (Changes will be required to the existing software to support the additional information required in the prior notice.) As it does currently, ACS will validate the submission to ensure that data required by CBP and FDA is entered. The existing validation will be enhanced to include validation of some prior notice information. If errors or deficiencies are found, the transmission will be rejected and the customs broker or self-filer can resubmit after correcting the errors or deficiencies.

Once ACS determines a submission is valid, the prior notice information and other data will be transmitted to OASIS. OASIS will perform additional data checks and validations. Validation is the process by which the data are checked for completeness and self-consistency by the system. It is a rapid process that does not include screening the data for potential public health concerns. That screening occurs after data validation. If the submission is determined to be facially valid, FDA will transmit a message through ACS to the customs broker or self-filer. The message will provide the Prior Notice Confirmation Number (PN Confirmation Number), which verifies that the prior notice has been confirmed by FDA for review.

If errors are found, OASIS will reject the submission and generate a message(s) identifying where the error occurs. No PN confirmation number will be issued. After the customs broker or self-filer is notified of the errors, the customs broker or self-filer can correct the errors and resubmit the entire entry using the same entry number through the existing CP transaction process (which is the existing transaction for brokers or self-filers to resubmit FDA-specific data through ACS). This process only allows FDA-specific data to be corrected for resubmission, and not CBP-specific data.

A new ABI/ACS-OASIS interface, modeled after the existing process, will be available to submit prior notice for an article of food entering the United States as an IT or T&E entry, or an FTZ admission. This new transaction will not require all of the information currently submitted to CBP at the time a consumption entry is filed, but will require complete prior notice information. Processing of these prior notices will be similar to that described for consumption entries. However, prior notice will be submitted by a new transaction type that will require only the information needed for prior notice and to support messages to CBP regarding the adequacy of the prior notice.

If CBP entry is later filed, the PN Confirmation Number for the article must be entered as an affirmation of compliance for OASIS purposes as evidence that prior notice for the product was submitted and confirmed before arrival. Depending on the capabilities of a customs broker's or self-filer's software, a copy of the ABI Cargo Release Summary will also show that the prior notice has been received, though not necessarily confirmed, by FDA.

The following list identifies the types of entries, with accompanying CBP description, for which prior notice may be submitted through ABI/ACS at the submitter's option:

"Consumption entries"—products entered for use or consumption in the United States;

"Warehouse entries"—products subject to duty but for which payment of duties is deferred. Merchandise entered into a warehouse may be stored, repacked, cleaned, manufactured, smelted, refined, or sold for export. Food must remain in the warehouse until withdrawn for consumption in the United States (and any applicable duty paid);

"IT entries"—in-bond transportation entries for merchandise that arrives at a Customs port of entry but is transported without appraisement to another Customs port of entry where it may be entered for consumption or warehouse, admitted into a FTZ or may be the subject of another transportation entry;

"T&E" entries"—in-bond transportation entries for merchandise which arrives at a Customs port of entry and is to be transported without appraisement through the Customs territory and then exported; and

"FTZ admissions"—are for merchandise to be used in manufacturing or exhibition or to be manipulated in a FTZ. Merchandise admitted into the zone is not subject to the payment of duties. Merchandise may be withdrawn from the zone for consumption, warehousing, or exportation. There are various categories of merchandise in a zone.

b. *FDA PN System Interface.* The new FDA PN System Interface will be available for international mail and other transactions that are not accepted by ABI/ACS, food refused under section 801(m) of the FD&C Act, and those who choose not to submit prior notice through ABI/ACS. The FDA PN System Interface is available at *http://www.access.fda.gov.* FDA expects that less than 10 percent of transactions will be routinely submitted through the FDA PN System Interface. We estimated the number of informal entries that are not currently captured by ABI/ACS and international mail submissions based on discussions with CBP.

The FDA PN System Interface will allow the user to view and print a prior notice confirmation, including a PN Confirmation Number, the time the prior notice was confirmed, and a record of the information received and validated by FDA.

To submit prior notice information electronically by the FDA PN System Interface, the transmitter must establish a prior notice account. FDA's Unified Registration and Listing System (FURLS) at *http://www.access.fda.gov* will manage the issuance of user accounts for both food facility registrations and prior notice submissions. FURLS will be available 24 hours a day, 7 days a week, and will provide end-users access to the systems. After successfully logging in using the account password, FURLS will pass the user account credentials to the FDA PN System Interface. If the transmitter has not established a prior notice account, the transmitter will be directed to establish a prior notice account the first time he or she accesses the FDA PN System Interface. Subaccounts can also be created, at the discretion of the primary account, to allow more than one person associated with a prior notice to access the prior notice information.

A submitter or transmitter who elects to use the FDA PN System Interface will enter information online, using a series of screens designed to lead the submitter through the prior notice submission process. Data will be subject to the same validation criteria used in the ABI/ACS–OASIS interface, but the validation will be performed on-line, in real time. When the prior notice submission has been validated, the transmitter will receive a message showing that the prior notice has been received by FDA for review and accepted as facially complete. This message will include a unique PN Confirmation Number as well as the date and time of the submission and confirmation. The message will confirm that the prior notice is facially complete and has been received by the FDA for review. Capability will also be provided to get a hard copy printout of the prior notice submission and a confirmation for verification upon arrival of the article of food, if needed.

If the prior notice was submitted through the FDA PN System Interface, this confirmation number must accompany the article of food when it arrives at the port of arrival. For food arriving by international mail, the PN Confirmation Number received from the FDA PN System Interface must be entered on the "Customs Declaration—CN22 and CN23" supplied when the article is mailed. When food subject to this subpart is carried by or otherwise accompanies an individual, the individual must have the PN Confirmation Number, as well. The number will provide CBP and FDA personnel at the border with the means to connect to the results of the FDA review of the prior notice information.

Receipt of a PN Confirmation Number is evidence only that a prior notice has been received for FDA review. Should the FDA review process determine that an article of food should be inspected, personnel at the border will examine the food.

Prior Notice covering a refused food (no prior notice or inaccurate prior notice) must be submitted through the FDA PN System Interface. In addition to prior notice information, the FDA PN System Interface will be used to inform FDA of the port or secure storage location where refused food is or will be held.

### 12. FDA Review

The FDA prior notice review process will operate 7 days a week, 24 hours a day to review prior notice submissions transmitted through both ABI/ACS and the FDA PN System Interface. This process begins with an automated screening process. If additional evaluation of the prior notice information is necessary, FDA headquarters staff, operating 24 hours a day, 7 days a week, will review the information and may initiate an examination by FDA or CBP of the article of food at the port of arrival, or in the case of rail shipments, within the confines of the closest appropriate examination site. The review process is and manual review by FDA staff. It will be designed to identify food products that may pose serious risks to public health so that appropriate action can be taken upon arrival in the United States. The review process is not impacted by the method of electronic submission. The results of this process will be transmitted to CBP.

The existing OASIS screening and FDA staff review and examination processes will determine admissibility under section 801(a) of the FD&C Act. Thus, food that has not been refused after review and/or examination of the prior notice information may be subject to further inspection and sampling at an inland destination for determination of admissibility under section 801(a) of the FD&C Act.

### 13. Summary of the Interim Final Rule

The interim final rule requires that prior notice be submitted electronically to FDA. All prior notice information must be submitted in the English language except an individual's name, the name of a company, and the name of a street may be submitted in a foreign language. All information, including these items, must be submitted using the Latin (Roman) alphabet. The prior notice may be submitted through ABI/ACS or the FDA PN System Interface at *http://www.access.fda.gov*. Prior notice must be submitted via the FDA PN System Interface for articles of food imported or offered for import by international mail or other transaction types that cannot be made through ABI/ACS and articles food that have been refused under section 801(m)(1) of the FD&C Act.

The interim final rule, in § 1.279(b) through (d), also sets out how we will handle prior notice in four "down-time" situations: The customs broker's or self-filer's access to ABI/ACS is not working; the ABI/ACS interface is not working; the FDA PN System Interface is not working; and OASIS is not working. In all these situations, an alternative form of prior notice information is required. If access to ABI/ACS is not available or if the ABI/ACS interface is not working, prior notice must be submitted via the FDA PN System Interface. If FDA determines that FDA PN System Interface is not working, prior notice may be submitted manually by those who do not use ABI/ACS. If FDA determines that OASIS is not working, all prior notices must be submitted manually. FDA will issue notification through notices on the FDA Web site at *http://www.fda.gov*, at *http://www.access.fda.gov* and through messages in ABI/ACS. Once FDA issues this notification, prior notice information must be submitted to FDA by e-mail or by fax. Hand delivery of hard copy to FDA is not allowed. The location for receipt of submission by e-mail or fax is listed at *http://www.fda.gov—see* "prior notice."

## *H. "What Information Must Be in a Prior Notice?" (§ 1.281 Proposed as § 1.288)*

Proposed § 1.288 listed the information that was to be included in each prior notice. Part of the information was taken directly from section 801(m)(1) of the FD&C Act. The remainder of the list consisted of information that FDA and CBP have determined is necessary to ensure that we can enforce section 801(m) of the FD&C Act's prior notice requirements as intended by Congress. This additional information is thus authorized under section 701(b) of the FD&C Act (21 U.S.C. 371(b)). In the proposed rule, we explained why each of these items was necessary for the efficient enforcement of section 801(m) of the FD&C Act.

(Comments) Generally, comments assert that the proposed rule required too many data elements. Some comments state that the required information is more than that necessary to facilitate inspection; is burdensome on industry; and is more information than that authorized by the Bioterrorism Act, particularly with regard to product identity, port of entry, and identification of parties involved in prior notice. One comment argues that the prior notice was intended by Congress only to aid FDA in its efforts to ensure the security of the food supply, not to enhance compliance of imported food with all applicable FD&C Act requirements.

(Response) FDA agrees with many of these comments. Accordingly, the interim final rule will not require submission of the following information:

- Telephone and fax numbers and e-mail addresses for most firms;
- Registration numbers, except for the manufacturer and shipper, if otherwise required by section 801(l) of the FD&C Act;
- Entry line numbers;
- Brand or trade name;
- CBP port of entry;
- Anticipated date of entry for CBP purposes; and
- The identities of multiple carriers.

FDA has also revised the following information requirements to make them less burdensome:

- Quantity;
- Lot/code identifier;
- Manufacturer; and
- Grower.

Finally, FDA has added the following information requirements due to the changes in timeframe, the need to coordinate with CBP, and in response to comments:

- The mode of transportation; and
- Planned shipping information, including the 6-digit HTS code.

FDA does not agree that section 801(m) of the FD&C Act is limited to "food security." The purpose of the Bioterrorism Act is "[t]o improve the ability of the United States to prevent, prepare for, and respond to bioterrorism *and other public health emergencies.*" (Pub. L. 107–188 (emphasis added)). Title III of the Bioterrorism Act is titled, "Protecting the *Safety* and Security of the Food and Drug Supply." (Pub. L. 107–188 (emphasis added)). Indeed, when reviewing prior notices that have been submitted after a food has already been refused for lack of adequate prior notice, Congress explicitly directs FDA to determine if it has in its possession any "credible evidence or information indicating that such article present a threat of serious adverse health consequences or death to humans or animal," (section 801(m)(2)(B)(ii) of the FD&C Act). This standard is a health-based standard and is not limited to intentional acts of contamination.

For clarity, the interim final rule also has segregated the information requirements for food imported or offered for import by international mail as new § 1.281(b) and the information requirements for food refused under section 801(m) of the FD&C Act as new § 1.281(c).

1. Registration Numbers

(Comments) Comments note that the submitter may not know the necessary registration numbers and recommend that FDA confirm the registration numbers within its system. A comment reasons that, because FDA will have access to the contact information in its facility registration database, FDA should only require the registration number rather than the name, address, telephone number, fax number, and e-mail address to reduce the burden on submitters. Another comment states that it would be impossible to provide the FDA registration numbers of all operators that have handled the imported food and questions FDA's need for the registration numbers because the "one up, one down" recordkeeping provision added to the FD&C Act by section 306 of the Bioterrorism Act is sufficient to help FDA take appropriate steps. Other comments express concern about the confidentiality of registration numbers, *i.e.*, they may be denied access to the registration number or be unable to verify it. Other comments state that an importer who imports returned U.S. goods has no direct relationship with the U.S. manufacturer and therefore assert that these importers cannot obtain the registration number.

(Response) Registration of facilities that manufacture/process, pack, or hold food for consumption in the United States is required by new section 415 of the FD&C Act, which was added by section 305 of the Bioterrorism Act. FDA does not believe that the statute gives FDA authority to waive the registration requirement for facilities that manufacture/process, pack or hold food for consumption in the United States. The one instance when not providing a registration number may be appropriate is when the manufacturer is out of business or registration no longer is appropriate because the manufacturer has ceased making food products under FDA's jurisdiction.

If such a food is refused because of inadequate prior notice for failure to provide a registration number, or if the food is held under § 1.285(b), you may request an FDA review under § 1.285(j). As part of your request, you should provide FDA information to show that the facility associated with the food is out of business or inactive.

Registration is designed to work in concert with prior notice at the border, as reflected in new section 801(l) of the FD&C Act, which provides that food from facilities that must register may not be admitted into distribution for consumption in the United States unless the relevant facilities have been registered. To enforce section 801(l) of the FD&C Act as intended by Congress, FDA has determined that it must review registration status of manufacturers and shippers as part of prior notice. The information provided by registration will allow FDA to check prior notice submissions against registration data to confirm the identity. Moreover, the information provided by prior notice submissions can serve as a crosscheck as to whether these firms are registered as required and have provided the necessary updates. FDA thus believes that prior notice and registration will work in tandem to provide FDA with information about the article of food and a facility involved in its production and distribution that will inform and improve our risk-based border inspection decisions, as well as our later admissibility determinations.

FDA does not agree that it should confirm registration without requiring that the number be submitted. Each registered facility will be assigned a unique registration number by FDA. Thus, the registration number will help identify the manufacturer. Without a registration number, it may be difficult to determine exactly which registered facility to associate with the article: Different firms may have the same or similar names and more than one firm may operate from a particular location. In addition, requiring the registration number as part of manufacturer identity makes it clear to foreign exporters and U.S. importers from the outset when registration is required for imported food.

FDA does not agree that the registration number, when one is required, is sufficient by itself to "identify" a person in a prior notice submission. The additional information is needed to verify that the registration number is accurate. For example, without additional information, there is a significant possibility of typographical errors, leading to misidentification of facilities, which could lead to foods being stopped at the border for inadequate prior notice and registration. FDA is requiring identifying information in addition to the registration number (if one is required) to reduce the number of clerical or typographical errors in registration information that could result in refusals. The FDA PN System Interface will require the firm name and at least the city and country as "confirmatory information," in addition to the registration number to allow for validation. (If registration is not required for the facilities associated with a particular article of food, a registration number may still be provided, along with the name of the facility and the city and country. If a registration number is not required and the submitter chooses not to provide the number voluntarily, the name and full address of the facility must be provided to ensure that FDA can fully identify the correct party.)

Finally, the systems will not automatically fill in the registration number on any documents or electronic screens that are provided to, or appear, to the submitter or transmitter.

To minimize the burden, the interim final rule only requires registration numbers for shippers (if the shipper is a facility required to register for that article of food) and the manufacturer. The interim final rule also states when a registration number is not required in a prior notice for these persons. Under section 415 of the FD&C Act, registration is only required for food for consumption in the United States. Thus, the interim final rule does not require that a prior notice include registration numbers of facilities associated with articles of food that are imported or offered for import for transshipment, storage and export, or further manipulation and export. The interim final rule does not require a registration number for the manufacturer if the article of food is sent by an individual as a personal gift (*i.e.*, for non-business reasons) to an individual in the United States.

2. Fax & E-mail Addresses

(Comments) Some comments state that the fax number and e-mail address should be optional.

(Response) FDA agrees, in part, and has eliminated the requirement for telephone and fax numbers and e-mail addresses in many instances. In the interim final rule, the telephone and fax numbers and e-mail addresses (if they exist) are only required for submitters and transmitters so that FDA can communicate with them, if necessary. The prior notice submission must declare if these persons do not have a telephone number, fax number, or e-mail address.

3. Submitter and Transmitter (§ 1.281(a)(1) and (a)(2) Proposed as § 1.288(a))

The proposed rule required the identity of the submitter and the associated submitting firm.

(Comments) Comments addressing the submitter focused primarily on who is authorized to submit prior notice and on the need for registration numbers and fax and e-mail information.

(Response) Comments regarding who may submit, as well as comments regarding registration numbers and telephone, fax, and e-mail information already have been addressed.

As explained in the proposal, the identification of the submitter is needed so that FDA knows who is responsible for the information in the prior notice and can communicate with them when necessary. The information is also necessary to follow up when audits, inspections, or enforcement are necessary.

The FDA PN System Interface will allow the information transmitted for identification of the submitter to be automatically repeated in the same submission if the submitting firm is also any other firm identified in the prior notice, such as the transmitter, importer, owner, ultimate consignee, etc. This ability to automatically repeat information may also be available for transmitters submitting prior notice through ABI/ACS, depending on the features of the ABI software package used by the transmitter.

(Interim final rule) Section 1.281(a)(1) requires submission of the name of the individual submitting the prior notice, *i.e.*, the submitter, and his or her business address, and telephone number, fax number, and e-mail address (if they exist), as well as the name and address of the submitting firm associated with the submitting individual, if it exists.

4. Transmitter (§ 1.281(a)(2))

The proposed rule allowed an agent to provide prior notice.

(Comments) Comments on the use of agents to provide prior notice are discussed under § 1.278.

(Response) Responses to comments on the use of agents are discussed under § 1.278.

(Interim final rule) If the prior notice is transmitted by a person other than the submitter, § 1.281(a)(2) requires the name of the individual transmitting the prior notice, *i.e.*, the transmitter, on behalf of the submitter and his or her business address, telephone number, fax number, and e-mail address, if they exist. The submission must also include the name of the firm associated with the individual transmitting the prior notice information, if it exists. The identification of the transmitter is needed so that FDA may confirm the prior notice, communicate regarding the prior notice after FDA review, and followup when audits, inspections, or enforcement are necessary.

5. CBP Entry Type (§ 1.281(a)(3) Proposed as § 1.288(b))

The proposed rule required the submission of the Customs entry type associated with the article of food being imported or offered for import (proposed § 1.288(b)).

(Comments) Comments state that the CBP entry type is not always available by noon of the day before arrival. They also note that entry type may change depending on quota status, *e.g.*, where a consumption entry was planned but then was changed to a warehouse entry because an entry quota on the product was temporarily filled or closed.

(Response) FDA and CBP believe that the significant shortening of the prior notice timeframe resolves many of the concerns about the availability of the CBP entry type. As discussed in the proposed rule, FDA needs this information for screening to identify the appropriate articles for inspection. It is also needed for communication with FDA and CBP staff at the border. Also, entry type determines which entry identifiers should be used (entry number, in-bond number) to identify the shipment. In addition, the CBP entry type tells us if the article of food is for consumption in the United States or is for export or other uses that, in turn, allows FDA to determine that certain information is not required (*e.g.*, registration numbers).

(Interim final rule) Section 1.281(a)(3) of the interim final rule requires submission of the entry type. Some examples of entry types are listed as follows: Consumption entries, warehouse entries, and temporary importation bond entries. Each of these types has a designated CBP code. For prior notice submissions made through ABI/ACS, the entry type will consist of the CBP entry code specific for that type of entry, *e.g.*, "01" for a consumption entry, "21" for a warehouse entry, "23" for a temporary importation bond entry, *etc.* These codes are ones customs brokers and self-filers currently provide to CBP at entry. For prior notice submissions made through the FDA PN System Interface, applicable entry types or other admission categories will be provided for selection in a drop-down menu, *e.g.*, consumption, IT, T&E, mail, FTZ, *etc.* Explanations of the different entry types or other admission categories will be available to help the transmitter choose the right one.

6. ACS Entry Line Number or Other Customs Identification Number (§ 1.281(a)(4) Proposed as § 1.288(c))

The proposed rule required the identification of the CBP entry number, the CBP ACS line number and the FDA line number. FDA explained that this information is necessary for screening and identification of the appropriate articles for inspection, as well as for matching the prior notice to the corresponding CBP entry to assess the adequacy of the prior notice when shipments arrive and are presented for review.

(Comments) Comments state that the CBP entry number is available only from a customs broker or self-filer, but not every import has a broker. Other comments state that the entry number is not assigned until the customs broker or self-filer transmits entry information through the ABI to ACS. Thus, the entry number is not available by noon of the day before arrival. Other comments state that entry and line numbers are not available earlier than 4 hours before arrival at land ports. Some comments suggest that FDA make this information voluntary.

(Response) FDA agrees in part and has removed the requirement for submission of line numbers. The interim final rule only requires submission of a CBP entry identifier. FDA believes that the entry identifier is necessary for proper identification of the information in a prior notice with the appropriate articles for inspection. FDA also believes that submission of the entry identifier is critical for matching the prior notice to the corresponding CBP entry, which is necessary to assess the adequacy of the prior notice when shipments arrive and are presented for review. For in-bond entries and FTZ admissions, and for prior notices submitted through the FDA PN System Interface, an entry identifier is critical for matching the prior notice to the corresponding CBP entry if a consumption entry is submitted so FDA and CBP can ensure that prior notice requirements were satisfied. For transmitters submitting prior notice with CBP entry information through the ABI/ACS interface, the CBP entry number assigned by CBP is also the entry identifier. For customs brokers or self-filers submitting prior notice for a food entering the United States as an IT entry, a T&E entry, or FTZ admission, the CPB in-bond number or FTZ admission number assigned by CBP is also the entry identifier.

If prior notice is being submitted through the FDA PN System Interface, the entry identifier will depend on the entry type and the reason for Web submission. If available to the transmitter (*e.g.*, the prior notice is for a CBP entry but the ABI/ACS interface is not available), the CBP entry number must be used. Where appropriate, the in-bond number must be used as the entry identifier. If one of the entry identifiers described above does not exist, the transmitter can request a system-generated entry identifier. The FDA PN System Interface will provide online help to assist the user in determining what information to use as the entry identifier for a specific transaction.

This requirement to provide an entry identifier does not apply to articles of food imported or offered for import by international mail, nor those carried by or accompanying an individual, unless entry is otherwise required by CBP and an associated CBP entry identifier has thus been assigned. In these cases, the FDA PN System Interface will apply a system-generated entry identifier.

FDA agrees with the comments that line numbers are not necessary. Thus, the interim final rule does not require submission of a line number. For transmitters using the FDA PN System Interface, the system will assign each article of food a unique number for processing and, after validation, a PN Confirmation Number will be returned for each article of food. For ABI/ACS submissions, when they are confirmed, the CBP and FDA line numbers will be assigned as they are under current procedures, and the customs broker or self-filer will receive a confirmation number for each line through the OASIS/ACS messaging process.

### 7. Product Identity (§ 1.281(a)(5) Proposed as § 1.288(e)(1))

Section 801(m)(1) of the Bioterrorism Act states that a prior notice must contain the identity of the article of food being imported or offered for import. To ensure that each prior notice adequately and completely identifies the food being imported or offered for import, § 1.288(e)(1) of the proposed rule required the submission of the following information: FDA product code; common, usual, or market name; brand name; quantity; and lot, code, or other identifying number.

a. *General comments on product identity.* (Comments) Some comments ask that FDA obtain product identity information from existing Customs information. Other comments believe that the information on product identity should be limited to a general description of the product.

(Response) Under section 801(m) of the FD&C Act, FDA must have the information before arrival. Thus, although product identity is provided to CBP when entry is filed, currently that does not generally occur sufficiently before arrival for FDA to review and respond as envisioned by the Bioterrorism Act. Under the interim final rule, with the modifications to ABI/ACS, required product identity information can be provided through ABI/ACS. The transmission to CBP will be enhanced to include the additional product identity information required by prior notice, and will be used satisfy both FDA's prior notice requirements as well as current entry requirements.

FDA does not agree that product identity should be limited to a general description. For prior notice to accomplish its intended purpose and help FDA protect American consumers, a precise description of the product is necessary. For example, FDA needs to know that there are 100 cartons containing 24/12 ounce (oz) bottles of apple juice and 200 cartons containing 48/8 oz bottles of apple juice to make its decision whether to inspect, sample, or hold a shipment. Information about potential contamination may apply only to 8 oz bottles of apple juice. Therefore, it would be a drain on FDA resources, as well as cause delays at the border, to examine and sample all juice or all apple juice imports when only one kind of juice in one kind and size of packaging is affected. Currently, this information is provided to FDA when entry information is submitted via the ABI/ACS interface by a customs broker or self-filer. For those entries submitted via a paper mode, the invoice is included in the submission, as it was before OASIS and ABI/ACS. The precise description of a food product is commonly included on a commercial invoice, *e.g.* 200 cartons of 24/6 oz cans of albacore tuna.

(Comments) One comment asks for clarification as to how an "article" of food is defined.

(Response) The description of an "article" of food is not the same as the definition of "food" in § 1.276(b)(5). An "article" refers to a single food that is associated with the same complete FDA Product Code, the same package size, and the same manufacturer or grower. These requirements are found in the information required in the interim final rule in § 1.281(a)(5), (a)(6), or (a)(7) and again in § 1.281(b) and (c).

(Comments) Some comments assert that the proposed rule increases the paperwork burden by requiring separate notices for every article from a different manufacturer or grower. Comments recommend that one way to reduce this burden would be to allow a single prior notice to cover a shipment of multiple articles of food or allow one notice per shipment.

(Response) FDA disagrees. An article of food is a unique item related to a specific manufacturer or grower and a specific process or size. All of these pieces of information are critical for a risk-based assessment of the food. FDA currently receives most of this information from customs brokers or self-filers via ABI/ACS. The ABI/ACS system also provides the capability to submit information for multiple food items as lines in a single entry, when entry level information is consistent for a number of articles in a shipment. For example, shipment level information, such as estimated time of arrival, can be captured once for all articles within a shipment. The ability to minimize data entry by copying specific information from one article, or line, to another depends upon the sophistication of the software being used to create the submission to CBP. The FDA PN System Interface is designed to allow for simplified submission of similar articles of food by allowing the submitter to easily repeat common information (*e.g.*, FDA product code, manufacturer, etc.) while entering different quantities (*e.g.*, amount and package size). Both systems will thus significantly reduce the amount of repetitive entry of information while preserving the identity of each article of food.

b. *Complete FDA product code (§ 1.281(a)(5)(i) Proposed as § 1.288(e)(1)(i)).* FDA proposed to require the submission of the complete FDA product code as an element of the identity of the product (§ 1.288(e)(1)(i)).

The FDA product code is a unique numeric code currently used by FDA and customs brokers and self-filers to describe food products, as well as other products regulated by FDA.

(Comments) The majority of comments emphasize the need to use the existing and familiar HTS coding structure for product reporting instead of the FDA product code. Some comments ask FDA to update product codes with current food items, such as botanicals, additives, food contact substances, etc. Some comments state that the importer might not know the exact product they will be receiving until the product is shipped and, therefore, may not know the FDA product code by noon of the day before arrival. One comment recommends clarification of what the FDA product codes are and where they can be found. In addition, another comment was not able to access the FDA product database and urges FDA to correct this situation. Finally, one comment suggests that FDA eliminate this data element.

(Response) The FDA product code is an existing 7-character code that describes a product for FDA purposes by industry type and class, packaging, process, and specific distinctive character. For example, canned tuna is covered by FDA Product Code, 16AEE45. "16A" describes the product as vertebrate fish, the first "E" describes the metal package, the second "E" describes a commercially sterile process, and "45" describes the fish as tuna.

Although the HTS codes are currently utilized by CBP and FDA to identify generally which imports are subject to an FDA admissibility review, these codes are often not sufficient to specifically identify a product for FDA decisionmaking. For example, in many cases, the tariff code does not describe how the product was processed (*e.g.*, commercially sterile or shelf-stable) or how the product is packaged. For example, milk and cream are included in the same codes. These codes differentiate milk and cream for fat content, but do not indicate the process (pasteurization and refrigerated or commercially sterile) or packaging (cardboard carton, plastic bottle, or shelf-stable package). Thus, several products that FDA considers different from each other (because these differences affect the potential safety of the food) may be combined under one tariff number HTS code.

Both the HTS code and the FDA product code are currently required on FDA-regulated products and are submitted through the ABI/ACS interface. Therefore, the FDA product code is familiar to most of those who will be transmitting prior notice. The FDA product code is currently available via the Internet at *http://www.accessdata.fda.gov/scripts/ora/pcb/pcb.htm* as a "buildable" code.

FDA is requiring submission of this data element for prior notice as an integral part of the identity of the article. Risk-based screening criteria can be very specific. Therefore, the specificity provided by the FDA product code is necessary. In addition, the timing requirements for submitting prior notice have been decreased significantly. Therefore, the issue of adequately identifying the product code at the time of submission has been reduced to the extent possible, given the mandate from Congress to require prior notice.

The FDA PN System Interface has a menu-driven FDA product code builder that enables the submitter to appropriately describe the product. The FDA PN System Interface is also designed to allow a submitter who already knows the product code to enter it directly.

FDA routinely and continually updates the FDA product codes and product code builder electronic files to include more specific food items, such as additives, exotic produce, and some botanicals. FDA intends to issue guidance before the effective date of this rule that will provide the flagged HTS codes and FDA product codes identifying foods for which prior notice is required. This guidance will be posted at *http://www.fda.gov*, see "prior notice."

(Interim final rule) Section 1.281(a)(5)(i) requires the complete FDA product identity code for the article of food covered by a prior notice. The interim final rule allows for submission of product identity information through ABI/ACS. Customs brokers or self-filers, using ABI/ACS, currently may use the FDA product code builder, which is available to the public on the FDA Web site, to identify the appropriate product code. Those submitting prior notice through the FDA PN System Interface will be able to access a FDA product code builder specific to those food covered by the prior notice requirement.

c. *Common, usual or market name (§ 1.281(a)(5)(ii) Proposed as § 1.288(e)(1)(ii)).* FDA proposed to require the submission of the common or usual or market name of the article of food as an element of the identity of the product (§ 1.288(e)(1)(ii)). The customs broker or self-filer currently submits the common or usual or market name to ABI/ACS when entry is made, and it subsequently is transmitted to OASIS for each entry line, *e.g.*, article of food.

(Comments) One comment is concerned that the appropriate name of fresh produce or fishery products may not be known at the time of shipment.

(Response) This information is necessary to confirm the accuracy of the product code and we have thus retained the requirement to submit it in the interim final rule. The timing requirements for submitting prior notice have been decreased significantly. Therefore, the issue of adequately identifying fresh produce and "catch of the day" at the time of submission has been reduced to the extent possible, given the mandate from Congress to require prior notice.

(Interim final rule) Section 1.281(a)(5)(ii) requires that the submitter supply the common or usual or market name in a prior notice. (See 21 CFR 102.5 for additional information about common or usual names.)

d. *Trade or brand name (Proposed § 1.288(e)(1)(iii)).* FDA proposed to require the submission of the trade or brand name of the article of food, if it is different than the common or usual or market name, as an element of the identity of the product (§ 1.288(e)(1)(iii)).

(Comments) Comments ask for clarification as to why this information is required when the statute does not require it and the information will likely be confusing if provided. Commenters also recommend eliminating this data element. Comments state that some imported products do not have a trade or brand name (*e.g.*, agricultural products, fish, and seafood). In addition, comments note that a single product could have multiple brand names. Several comments note that the importer usually does not know a product's brand or trade name. Comments also recommend that FDA clarify in the final rule that it will not reject an article of food for failure to include trade or brand name when such information does not exist.

(Response) FDA agrees with the comments. FDA has also determined that this information is not critical for risk-based screening, given the other information in a prior notice.

(Interim final rule) FDA has eliminated the requirement to identify the trade or brand name in the interim final rule.

e. *Quantity (§ 1.281(a)(5)(iii) Proposed as § 1.288(e)(1)(iv)).* FDA proposed to require the submission of the quantity of food described from smallest package size to largest container as an element of the identity of the product (§ 1.288(e)(1)(iv)). The number of container units and units of measure are to be submitted in decreasing size of packing unit (starting with the largest). The customs broker or self-filer currently submits the quantity of each line entry to ABI/ACS when entry is made, and quantity subsequently is transmitted by CBP to OASIS. FDA requested comments on whether changes in quantity will occur after the deadline for prior notice and, if so, how commonly changes occur and how significant the changes usually are.

(Comments) There were many comments pertaining to quantity. Some commenters object to the requirement, stating that it can be difficult to identify quantity. For example, comments suggest that it can be difficult to identify quantity for processed goods, as quantity may change. Also, the exact quantity is difficult to identify for fresh produce and fresh fishery products due to the fast-paced shipping of perishables and day-to-day harvesting differences. Comments state that it is also difficult to ascertain the exact unit (*e.g.*, weight, volume) for bulk items. Comments also state that quantity information such as package size is not relevant to identify the presence of intentional contamination or a food safety hazard. Some comments object to the level of specificity, stating that the required quantity data is unduly detailed for inspection purposes, seldom needed for risk assessments, and not necessary to meet the statutory requirements. Other comments recommend that FDA allow a 2-hour amendment/update for needed flexibility and accurate reporting or adopt a percentage over/under discrepancy tolerance or approximated total units (*e.g.*, weight, volume). Comments confirm that changes in quantity occur after the proposed deadline for prior notice and that these changes commonly represent significant variations in quantity.

(Response) FDA continues to believe that quantity is a necessary component of product identity. The significant decrease in the filing deadlines addresses concerns raised by many comments. In addition, in further response to the comments on changes in quantity, FDA has revised the requirement to "estimated quantity." This means that the submitter must tell FDA, at the time of submission of Prior Notice, the estimated amount of the article of food that they anticipate will be shipped. This change provides importers with leeway to adjust shipments, while still ensuring FDA has useful information about overall quantity.

FDA believes that package size is necessary and part of product identity. The base unit of measure is a critical characteristic of product identity and is thus necessary for effective review of the prior notice information. Base unit is critical to processing safety requirements and is particularly important when evaluating the safety of low-acid canned foods. Both base unit and total quantity (which includes knowing the smallest "package size") are necessary for response (examination) and communication with FDA and CBP staff at the border. As noted in FDA's "Food Security Preventive Measures Guidance for Importers" (Ref. 17), they are also critical for food security examinations to determine if the amount ordered is the amount received. For example, if more was received than was ordered, the guidance recommends an investigation to determine the cause of the discrepancy as additional and unwanted articles may have been added to intentionally contaminate the shipment. If less product is received than ordered or than shipped, some of the product may have been intentionally diverted. Both base unit and total quantity are currently data elements that can be submitted via ABI/ACS to OASIS. The tutorial in the FDA product code builder will be revised to recommend the appropriate association of base unit with product code, *e.g.*, FDA Product Code 16AEE45, canned tuna would recommend the base unit as **oz cans.

(Interim final rule) Section 1.281(a)(5)(iii) requires that the prior notice state the estimated quantity of food that will be shipped from largest container to smallest package size. Some examples of quantity descriptions are: 100 cartons of 48/6 oz cans each of tuna; 100 pallets of 2/100 pound (lb) totes each of frozen tuna loins for a total of 20,000 lb; 100 pallets of 2/100 lb cartons each of dehydrated pig ears for a total of 20,000 lb; 100 cartons of 20 lb of fresh watermelons each carton for a total of 2,000 lb, and 2,000 lb of wheat in bulk. A prior notice will not be inadequate if the estimated quantity changes between the confirmation of prior notice and the time of arrival. The interim final rule does not require that a prior notice be cancelled and resubmitted if the estimated quantity changes after confirmation.

f. *Lot or code numbers or other identifier (Proposed § 1.288(e)(1)(v)).* FDA proposed to require the submission of the lot or code numbers or other identifiers that are specific to the article of food, if applicable, as an element of the identity of the product (proposed § 1.288(e)(1)(v)). Currently, when entry information is presented to FDA through ABI/ACS, lot or code numbers may be transmitted as "affirmations of compliance" and there may be more than one identifier represented in an entry line.

(Comments) Comments state that the addition of lot, code, or other identifier information is burdensome and not valuable for inspection purposes. In addition, often the lot numbers are simply unknown. Comments ask that FDA clarify, if this data element is retained, what "lot or code number or other identifier" means and how it should be entered, such as by bar code, letters, or random number. Comments also ask that FDA consider that there is no lot or code number for bulk or commingled products. Many comments suggest that FDA consider making this data element voluntary or removing it completely.

(Response) FDA agrees in part. The lot or code numbers are the identification numbers or code of a production lot, which can more specifically identify a product for screening and examination purposes and for communication within FDA and with CBP and the grower or manufacturer, etc. For example, recalls involving serious health risks are often associated with a specific production lot, such as counterfeit infant formula or underprocessed canned food. FDA screening targets examinations based on information of public health emergencies or recalls in foreign countries. FDA regulations already require lot/code identifiers for some foods. Currently, low acid canned foods, acidified foods, and infant formula are required to bear lot codes or other identifiers (see 21 CFR 113.60(c) (low-acid canned foods); 21 CFR 114.80(b) (acidified foods); and 21 CFR 106.90 (infant formula low-acid canned foods)). The interim final rule requires lot/code or other identifiers only for these kinds of articles of foods. Many other foods may have lot or code identifiers that are not required by FDA regulation; submission of these identifiers is optional under the interim final rule.

(Comments) Some comments object to the limitation in the proposed rule that each lot number of a food would need its own prior notice and asserted that FDA should permit multiple lot numbers to be identified in one prior notice.

(Response) FDA agrees. Multiple lot numbers may be identified for an article of food. The systems are set up to permit such submissions.

(Interim final rule) Section 1.281(a)(5)(iv) provides that lot or code numbers or other identifiers are required in a prior notice for articles of food that are required to bear such numbers by the FD&C Act or by FDA regulations. Submission of the required lot/code identifier will be accommodated by ABI/ACS as an affirmation of compliance or through the FDA PN System Interface. ACS currently allows for submission of more than one affirmation of compliance per article of food. The FDA PN System Interface will accept more than one lot identifier per article of food.

### 8. Manufacturer (§ 1.281(a)(6) Proposed as § 1.288(f))

As provided for in section 801(m)(1) of the FD&C Act, FDA proposed to require the submission of the identity of the manufacturer of each article of food. The customs broker or self-filer currently submits the identity of the manufacturer to ABI/ACS when entry is made, and it subsequently is transmitted to OASIS.

(Comments) Some comments state that some foods are not processed or manufactured food, *e.g.*, certain wild-caught or agricultural products; therefore, a manufacturer cannot be identified.

(Response) FDA agrees. Identification of a manufacturer only is required for a food that is no longer in its natural state. The FDA PN System Interface will recognize (by FDA product code) these foods. The manufacturer field must be completed for these foods (identified by FDA product code); if it is not completed, the initial validation will reject the submission through ABI/ACS or the FDA PN System Interface. Guidance regarding FDA product codes that require prior notice, which FDA intends to issue before implementation of this rule, will identify which product codes should be associated with a manufacturer.

FDA also recognizes that if an article of food is sent by an individual as a personal gift (*i.e.*, for nonbusiness reasons) to an individual, what will be available to the sender will be the name and address of the firm that appears on the label. Thus, this information may be supplied and a registration number need not be provided.

(Interim final rule) Section 1.281(a)(6) of the interim final rule requires that the identity of the manufacturer of an article of food that is no longer in its natural state be submitted as part of prior notice. However, if the article of food is sent by an individual as a personal gift (*i.e.*, for non-business reasons) to an individual in the United States, the name and address of the firm that appears on the label under 21 CFR 101.5 may be submitted.

### 9. Grower, If Known (§ 1.281(a)(7) Proposed as § 1.288(g))

As required by section 307 of the Bioterrorism Act, FDA proposed to require the submission of the identity of all growers of each article, if known, and the growing location if different from the grower's business address (proposed § 1.288(g)). If the submission is amended, the proposed rule required that the identity of all growers must be provided if known at the time of the amendment (§ 1.290(d)).

FDA solicited comments on whether the FD&C Act gives FDA any flexibility to exempt or otherwise treat differently so-called processed foods produced with products from more than one grower. FDA also solicited comments on whether the term "grower" includes a harvester or collector of wild products, *e.g.*, some fish and botanicals.

(Comments) A comment states that the agency does not need to identify flexibility to exempt processed foods produced with products from one or more grower, but rather should recognize that there is not a grower of a processed food.

(Response) FDA agrees. Once an article of food, for prior notice purposes, is no longer in its natural state, it has a manufacturer, but not a grower.

(Comments) A commenter states that it is an extremely rare occurrence for any single imported lot of a wild botanical raw material to have been collected by a single collector. Rather, the comment believes that the most common practice of consolidating a single lot of wild-harvested botanical raw material involve the product of many dozen or even hundreds of individual collectors.

(Response) FDA agrees and considers a harvester or collector to be the grower for the purposes of this provision as the definition of grower reflects § 1.276(b)(6)). The interim final rule also allows for the identification of a consolidator, when the submitter does not know the identities of all harvesters or collectors at the time of submission of the prior notice.

(Comments) Comments assert that if the grower is known, then workload for submission of prior notice will increase immensely. The comments recommend submitting a one-time listing of all growers that supply the importing firm with product and the responsible party could update the list as needed or keep a complete grower list with each firm and supply it to FDA when needed.

(Response) The proposed regulation restated the statutory requirement. FDA does not agree that a list would satisfy the statutory requirement, as it would not tell FDA which grower was associated with the particular article of food as envisioned by the statute.

(Comments) Comments state that it is very difficult to identify a grower for commingled products (fresh produce, fishery products, and grain) and such identification is not a typical industry practice. Comments also ask FDA to define "bulk," and specifically how to address this issue with bulk grain.

(Response) There is only one grower per article of food that is not in its natural state. Thus, tomatoes from two different growers are different articles of food offered for purposes of prior notice. However, FDA has decided that if the identity of all growers is not known for an amount of raw agricultural product consolidated from more than one grower, including grain or aquacultured fishery products, the consolidator firm may be identified in the grower identity data field. FDA emphasizes that the submitter may opt to provide the name and address of the firm that has consolidated the articles of food from different growers or different growing locations only when the submitter does not know the identity of any of the growers of the consolidated food. If the submitter knows the identity of any grower for consolidated foods, a separate prior notice must be submitted for each article of food represented by a known grower.

For example, if consolidator X commingles tomatoes from 5 growers into one lot of 90 cartons and the submitter does not know the identities of any of those 5 growers, then the submitter may opt to provide the identity of consolidator X. If consolidator X commingles tomatoes from 3 growers (growers A, B, and C) into one lot of 90 cartons and, although the submitter knows the identities of the growers, none of the tomatoes can be associated with the grower (no grower specific identifier accompanies each carton), then the submitter may opt to provide the identity of consolidator X.

If consolidator X commingles 30 cartons of tomatoes from grower A with 30 cartons of tomatoes from grower B and 30 cartons of tomatoes from grower C and the submitter knows the grower associated with each of those 30 carton lots, then each of those 30 carton lots represents an article of food and a separate prior notice must be submitted for each. However, if consolidator X commingles 30 cartons of tomatoes from grower A with 60 cartons of tomatoes commingled from other growers and the submitter knows the identity of grower A, then that 30 carton lot can be identified by grower and represents an article of food. Two prior notices are required: The first prior notice would cover 30 cartons of tomatoes and must identify grower A; the second prior notice would cover the remaining 60 cartons, and the submitter may opt to identify consolidator X.

When bulk grains are commingled, they lose their association with each grower and the identity of grain would then be associated with the facility that commingled, *i.e.*, consolidated, the grain in a silo or truck or rail car before shipment. The submitter may opt to provide the identity of this consolidator in the prior notice.

(Comments) Comments suggest that FDA define "if known" and provide guidance as to the extent of effort that should be applied to find grower information and what will satisfy "if known."

(Response) Section 801(m)(1) of the FD&C Act requires that grower information be submitted (or provided to the transmitter for submission) if it is known. Thus, this information is not optional: If it is known by the submitter, it must be submitted. For purposes of this rule, FDA considers the information to be known if the submitter is aware of or learns the grower name and growing location due to business relationships. FDA is not requiring the submitter to seek out information of which the submitter is not aware. However, if the identity of the grower is in the possession of the submitter (*e.g.*, on documents), we believe the submitter is aware of the identity of the grower.

(Comments) Comments state that if knowing the grower is such crucial information, then it should be made mandatory.

(Response) Because the statute provides the identification of the grower "if known," FDA does not have the authority under section 801(m) of the FD&C Act to require the identification of the grower in cases where that identity is not known to the submitter.

(Interim final rule) Section 1.281(a)(7) requires that a prior notice identify the grower, if known to the submitter for an article of food that is in its natural state. If a food comes from more than one grower, a prior notice must provide for an article of food associated with each grower, if their identity of that grower is known. As stated previously under discussion of product identity, an "article" refers to a single food that is associated with the same complete FDA Product Code, the same package size, and the same manufacturer or grower. FDA has determined that identification of the grower and the growing location address is a more appropriate identifier than the address of the grower. Therefore, FDA has revised the interim final rule to require the grower name and growing location. We have eliminated the grower's address. The interim final rule also allows that if the submitter does not know the identity of the grower or, if the article of food has been consolidated, the identity of any of the growers, the submitter may provide the name and address of the firm that has consolidated the articles of food from different growers or different growing locations.

As stated previously under discussion of "manufacturer," the FDA system will recognize (by FDA product code) which products should be associated with a grower and will recognize (by FDA product code) which products should be associated with a manufacturer. Thus, if the manufacturer field is completed for a food that is in its natural state (as identified by FDA product code), the system will not accept the transmission. Guidance, which FDA intends to issue before implementation of this rule, regarding FDA product codes that require prior notice will identify which product codes should be associated with a grower. Submission of prior notice via the FDA PN System Interface will allow for association of "header information" with an article of food so that the transmitter would only have to identify list each grower and growing location. Each would be identified with a separate PN Confirmation Number associated with an entry identified. (See description under discussion of lot/code identifier in the previous paragraph in section III.H.7.f of this document.) A similar capability may be possible for submission through the ABI/ACS interface, but that is dependent upon the ABI software used by the broker or self-filer.

### 10. FDA Country of Production (§ 1.281(a)(8) Proposed as § 1.288(h)—Originating Country)

As provided for in section 801(m)(1) of the FD&C Act, FDA proposed to require the submission of the identity of the originating country of the article of food (proposed § 1.288(h)). This term was defined in proposed § 1.277(c)(2) as the country where the article of food was grown and harvested or if manufactured/processed, where the article of food was produced. It is proposed, that if the article of food is wild fish or seafood and it is harvested in the waters of the United States or by a U.S. flagged vessel or processed aboard a U.S. flagged vessel, the FDA Country of Production is the United States.

(Comments) Comments ask that FDA clarify which country should be identified when the major component of the final processed food may have come from a number of countries. Comments point to blended or decaffeinated coffee or apple juice produced from fresh apples and apple concentrates from more than one country as examples of such foods. Comments also ask that FDA clarify the definition of "originating country" to mean the country in which the product was last processed.

(Response) For a food that is no longer in its natural state, the FDA Country of Production is the country where the article of food was made. Therefore, for a food such as decaffeinated coffee or apple juice, the FDA Country of Production is the country in which the facility that made the food is located. For example, if the decaffeinated coffee is produced in Country C by decaffeinating a blend of coffees from Country A and Country B, the FDA Country of Production is Country C.

(Interim final rule) The interim final rule in § 1.281(a)(8), requires that a prior notice contain the FDA Country of Production of the article of food being imported or offered for import into the United States. As set out in its definition at § 1.276(b)(4), the FDA Country of Production is, for an article of food is in its natural state, the country where the article of food was grown, including harvested or collected and readied for shipment to the United States. If, however, an article of food is wild fish, including seafood, that was caught or harvested outside the waters of the United States or by a that is not registered in the United States, the FDA Country of Production is the country in which the vessel is registered. For a food that is no longer in its natural state, the FDA Country of Production is the country where the article of food was made. However, if an article of food is wild fish including seafood, that was made aboard a vessel, the FDA Country of Production is the country in which the vessel is registered. The interim final rule also provides that the FDA Country of Production of food grown and harvested or collected or made in a U.S. Territory is the United States.

### 11. Shipper (§ 1.281(a)(9) Proposed as § 1.288(i))

As provided for in section 801(m)(1) of the FD&C Act, FDA proposed to require the submission of the identity of the shipper of the article of food (proposed § 1.288(i)). The shipper is typically not the carrier.

(Comments) A comment states that this information could be obtained from Customs' AMS.

(Response) Although CBP's AMS contains information concerning the shipper, that information is located in the AMS module of ACS and is not currently available to FDA, as required under section 801(m) of the FD&C Act, which provides that the information must be submitted to FDA. CBP and FDA have concluded that it is not practical, at this time, to attempt to modify AMS and the ACS–OASIS interface to provide this information to FDA.

(Interim final rule) § 1.281(a)(9) requires that the shipper be included in a prior notice. The interim final rule defines shipper (§ 1.277(b)(12)) as the owner or exporter who consigns and ships the article of food from a foreign country or the person who sends an article of food in international mail to the United States.

### 12. Country From Which the Article Is Shipped (§ 1.281(a)(10) Proposed as § 1.288(j))

As provided in section 801(m)(1) of the FD&C Act, FDA proposed to require the submission of the identity of the country from which the article of food was shipped (proposed § 1.288(j)). This term is defined in proposed § 1.277(c)(3) as the country in which the article of food was loaded onto the conveyance that brings it to the United States.

(Comments) Several comments state that this provision would require submission of information that FDA could obtain from Customs' AMS.

(Response) Although AMS contains information concerning the country from which the article of food is shipped, that information is located in the AMS module of ACS and is not currently available to FDA, as required under section 801(m) of the FD&C Act which provides that the information must be submitted to FDA. CBP and FDA have concluded that it is not practical, at this time, to attempt to modify AMS and the ACS/OASIS interface to provide this information to FDA.

(Interim final rule) Section 1.281(a)(10) requires that the country from which the article is shipped be included a prior notice. The interim final rule defines the country from which the article is shipped (§ 1.277(b)(3)) as the country in which the article of food is loaded onto the conveyance that brings it to the United States.

### 13. Anticipated Arrival Information (§ 1.281(a)(11) Proposed as § 1.288(k))—Anticipated Port of Entry, Anticipated Date of Arrival, Anticipated Time of Arrival)

FDA proposed to require the submission of the anticipated port of entry (defined as port of arrival), the anticipated date and anticipated time when the article of food will arrive at the port of entry in the United States (proposed § 1.288(k)) to coordinate resources for inspections, examinations, or sampling. FDA also proposed to require the prior notice to be updated if any of the anticipated arrival information changes after the submission of the prior notice (proposed § 1.288(k)(2)). Updates were deemed necessary so FDA could change its plan for coordinating resources when anticipated arrival information changes.

a. *General comments.* (Comments) Comments state that the proposed rule is more restrictive than the Bioterrorism Act. Others suggest that importers would have to work 24 hours a day, 7 days a week and that the proposed rule would eliminate their current methods of doing business. Several commenters ask FDA to recognize commercial realities of weather and traffic problems that result in port and arrival time changes and to provide more flexibility on the information requirements or elimination of the requirements altogether. Comments state that a lack of flexibility would amount to a limitation of the port that is prohibited by the Bioterrorism Act and could impede trade. Other comments state flexible arrival requirements are what Congress envisioned and ask that FDA not refuse food at the border based on inadequacy of anticipated arrival information, changes in border crossing, and other problems beyond the control of the importer.

(Response) The interim final rule requires that the prior notice identify the anticipated port of arrival. This information is necessary to ensure FDA can plan for inspections and communicate with CBP. FDA believes that the reduction of the timeframe for providing prior notice will reduce the number of changes that occur to the arrival information after submission. However, FDA also recognizes the realities of weather and traffic changes and has written the interim final rule to accommodate these variances.

As section 801(m)(1) of the FD&C Act prohibits any limitation on ports, a prior notice will not be inadequate if the anticipated port of arrival, the anticipated date of arrival, or the anticipated time of arrival changes between the time of confirmation of prior notice and the time of arrival. This is reflected in § 1.282(a) of the interim final rule that specifies what changes in information require resubmission of a prior notice. However, if FDA has determined that the article of food must be examined upon arrival and the anticipated arrival information has changed since timely submission of the prior notice, the article may be held by CBP at the port of arrival until the examination can be performed.

b. *Anticipated port of arrival.* (Comments) Comments state it was unclear whether the prior notice was to specify a particular bridge crossing or the port itself.

(Response) The anticipated arrival information must specify the anticipated port of arrival and, if there is more than one crossing location within that port, the anticipated crossing. For the most part, this applies to ports along the northern and southern borders of the United States where there are several crossings over many miles, but all are included in the same port. For example, a food arriving at the port of Buffalo-Niagara Falls may cross at the Peace Bridge or the Lewiston Bridge. For the purpose of this rule, to facilitate inspection, the identification of the bridge is required. However, the prior notice will not be inadequate if the anticipated crossing changes between the time of confirmation of prior notice and the time of arrival.

(Comments) Several comments ask that FDA allow importers to choose alternate border crossings or ports because of possible traffic delays and adverse weather conditions for air and land modes of arrival, or changing flight destinations for air modes of arrival. Comments state importers and even shippers and carriers do not know which border crossing will be used until the food arrives. Some comments note that portions of food may be discharged at different ports of arrival at the discretion of the carrier due to cargo space and weight limitations.

(Response) As noted previously, FDA agrees that arrival locations and times may change due to business practices, inclement weather, and traffic conditions. The interim final rule requires the submission of anticipated arrival information. This means that what must be submitted are the port, crossing location, date, and time that are known to the submitter at the time that prior notice is submitted to FDA. The interim final rule does not require that prior notice be cancelled and resubmitted if this information changes after FDA has confirmed the prior notice for review. A prior notice will not be inadequate if the anticipated port of arrival (including crossing location), the anticipated date of arrival, or the anticipated time of arrival changes between the confirmation of prior notice and the time of arrival.

c. *Anticipated date/time of arrival.* (Comments) Several comments ask for clarification on the definition of time of arrival. For arrival by water, comments suggest defining arrival as the time the vessel reaches the entrance to the seaport where the importer will be taking delivery, the time the vessel reaches the port, or the time the vessel is unloaded. For arrival by land and air, comments suggest defining arrival as the time the vehicle reaches the border crossing, the time the vehicle reaches traffic backed up at the border crossing, or the time CBP begins processing the vehicle.

(Response) The interim final rule requires submission of anticipated time and date of arrival to provide FDA with information needed for planning resources for examinations of food at the border. From FDA's standpoint, "time of arrival" relates to when the food will first become available for examination at the border. For vessels, this would be when the vessel docks in the port. For planes, this would be when the plane lands. For land vehicles, such as trucks, buses, and trains, this would be when they cross at the border.

(Comments) Some comments ask for clarification regarding which time zone to use. Comments are concerned that, due to time zones, food may appear to arrive in the United States before it leaves the country from which it is shipped. Some comments suggest FDA use the time zone of the port of arrival.

(Response) The anticipated time and date of arrival relates to the time zone of the anticipated port of arrival. The time of prior notice submission, anticipated arrival, and actual arrival are all based on local time at the port of actual arrival.

(Comments) Several comments state that it was impossible for importers to know the exact time of arrival until the food arrives because of possible traffic delays and adverse weather conditions for air and land modes of arrival, or changing flight destinations for air modes of arrival. Other comments state that shippers and even carriers do not know when the truck will arrive. However, some comments note that exporters would be likely to know what flight the shipment was on.

(Response) The interim final rule requires the anticipated time and date of arrival. This is the time and date the submitter anticipates that the food will arrive at the port of arrival at the time the prior notice is submitted and confirmed for FDA review.

(Comments) Comments also suggest that FDA obtain the arrival information from AMS.

(Response) Although AMS contains some of this information, the information is located in the AMS module of ACS and is not available to FDA, as required under section 801(m) of the FD&C Act, which provides that the information must be submitted to FDA. CBP and FDA have concluded that it is not practical, at this time, to attempt to modify AMS and the ACS-OASIS interface to provide this information to FDA.

(Comments) Several comments state that the 4-hour window for updates of arrival time is too small and would cause delay in the arrival of food and create extra work in the form of amendments. Thus, the comments conclude the 4-hour window is unreasonable and should be removed. Comments note that even the best-intentioned carrier could fail to make the appointment because of waits of at least 5 hours at the borders. Others state additional delays occur on the Mexican border because the loads must change carriers. Some comments state that it was nearly impossible to predict an arrival time for a vessel within a 4-hour window because ships may arrive in port several days ahead or behind schedule and may sit in a harbor for hours or days before being granted permission to dock. Thus, these comments conclude the window for updates is not realistic for sea transportation. Others state the window for updates is impractical for rail transportation. Importers of live animals comment that the window for updates would be impossible to meet. Several comments suggest that FDA seek alternatives. One comment suggests a 6-hour window for updates. Another suggests importers be permitted to provide prior notice to FDA 2 hours before the carrier reaches the border. One comment suggests that prior notices identifying certain FDA-selected border crossings not be held to the arrival time and not be required to update the prior notice at the time of arrival.

(Response) The interim final rule requires submission of anticipated arrival information to provide FDA with information necessary for planning examinations and communicating with CBP for enforcement and examination purposes. FDA believes that the requirement for submitting anticipated arrival information serves these purposes. FDA has decided to delete the requirements for updating anticipated arrival information because of the reduction of the time requirements for submission. FDA recognizes that some of the anticipated information may change after submission due to unforeseen circumstances, such as business practices of carriers, weather conditions, and traffic conditions.

(Interim final rule) The interim final rule (§ 1.281(a)(11)) requires the submission of the anticipated port of arrival, including crossing location, if applicable, and the anticipated date and anticipated time when the article of food will arrive at that port. The interim final rule does not require that this information be updated if it changes after prior notice had been confirmed by FDA for review. The interim final rule does not require that a prior notice be cancelled and resubmitted if any of the anticipated arrival information changes after confirmation.

### 14. Port Where Entry Will Be Made for Customs Purposes (Proposed § 1.288(l))

FDA proposed to require the submission of the identification of the port where entry will be made for Customs purposes (§ 1.288(l)). Often, this port is different from the port where the article of food arrived in the United States. FDA proposed that this information is necessary to facilitate communication with CBP and FDA field offices concerning the adequacy of the prior notice and to enable FDA to coordinate resources for inspections, examinations, or sampling.

(Comments) A comment questions the usefulness of the information and asks that FDA delete the requirement because the Customs and FDA ports of entry can be different ports. Another comment states that providing the information would cost additional resources and time for investigation.

(Response) FDA agrees. Due to interfacing with ABI/ACS and development of various means of communication with CBP, this information is no longer necessary in the prior notice submission. Accordingly, FDA has eliminated this information requirement in the interim final rule.

(Interim final rule) The interim final rule does not require submission of the port where entry will be made for Customs purposes.

### 15. Anticipated Date of Customs Entry (Proposed § 1.288(m))

FDA proposed to require the submission of the anticipated date of entry for U.S. Customs purposes (proposed § 1.288(m)). FDA proposed that this information is critical to enable it to allocate resources for inspecting imported food shipments and efficient communication with and between CBP and FDA field offices.

(Comments) Several comments ask that FDA eliminate this requirement. Comments note that the Customs date of entry is not required by the Bioterrorism Act. Comments state that since the

Customs entry might be a considerable distance from the actual port of arrival, the date of Customs entry is difficult to predict. Another comment questions the usefulness of the Customs date of entry in determining whether to inspect the products at the port of arrival. A few comments ask for clarification of the Customs entry process.

(Response) FDA agrees. FDA has eliminated the Customs date of entry in the interim final rule. Due to interfacing with ABI/ACS and development of various means of communication with CBP, this information is no longer necessary in the prior notice submission.

(Interim final rule) The interim final rule does not require submission of the anticipated date of Customs entry.

### 16. Importer, Owner, Ultimate Consignee (§ 1.281(a)(12), (a)(13), and (a)(14) Proposed as § 1.288(n), (o), and (p))

Under section 801(m)(2)(B)(i) of the FD&C Act, an article of food that is imported or offered for import with inadequate notice may not be delivered to the importer, owner, or consignee. Thus, FDA proposed to require their identities so that FDA can take steps to ensure that food refused admission under section 801(m) of the FD&C Act is not delivered to them illegally. FDA proposed that only one importer, owner, and consignee could be identified for each prior notice.

(Comments) Some comments argue that section 307 of the Bioterrorism Act does not require the prior notice to identify the importer, owner, or consignee of the article of food that is the subject of the notice. They recommend that this requirement in the proposed rule be eliminated as beyond the scope of the statute and unnecessary for the purposes of section 307 of the Bioterrorism Act. One comment argues that FDA should not require submission of information about the consignee. However, another comment states that the level of detail required is generally consistent with the information submitted by customs brokers acting as agents for importers of record.

(Response) As requested by some of the comments, FDA considered deleting this information or making identity of importer, owner, and ultimate consignee optional. However, section 801(m) of the FD&C Act explicitly prohibits delivery of an article refused under section 801(m) to the importer, owner, or consignee. Section 801(l) of the FD&C Act likewise prohibits delivery of an article of food that has been imported from an unregistered foreign facility that is required to be registered under section 415 of the FD&C Act and 21 CFR part 1, subpart H. If we do not know the identity of these persons, we cannot determine if an article of food that has been refused or placed under hold has been illegally diverted and delivered. Accordingly, we have determined that this information is critical to ensure that we can efficiently enforce the prohibitions in section 801(m) and (l). In requiring this information, FDA is relying on both sections 801(m) and (l) and 701(b) of the FD&C Act.

Moreover, information identifying the importer of record and consignee is currently provided as part of the existing entry process (under OMB control number 0910–0046). Under the interim final rule, the CPB and FDA entry submission may be used to satisfy prior notice. We estimate that 80 percent of prior notices will be submitted through the CPB ABI/ACS entry process. We are concerned that deleting this information or making it optional for prior notice purposes could create considerable confusion about whether the information was still required for entry and admissibility purposes. For FDA, these pieces of information are necessary for administering section 801(a) of the FD&C Act and its implementing regulations, which require that FDA provide notice of sampling and notice of intent to refuse admission to the owner or consignee. Indeed, the identities of consignees and importers of record have long been provided to FDA. Prior to the availability of OASIS, FDA was provided with this information about imported foods on the FDA Form 701 (Ref. 18). In addition to the name and address of the importer of record and the consignee, FDA Form 701 included information such as: Entry number and date, bill of lading number, port of lading, country of origin, port of unloading, port of entry, value, container number, vessel name, arrival date, location of lot, date available, contact phone number, broker identification, manufacturer/shipper, quantity, packaging description, and a description of the food including the Food Canning Establishment number. Since the availability of OASIS, all information that has been submitted through the ABI/ACS interface has also included name and address of the importer of record and the ultimate consignee. Those who do not provide entry information electronically through ABI/ACS submit a "paper" entry to CBP and also provide FDA paper notification that includes information on importer and consignee. Some still use the FDA Form 701.

(Comments) One comment asserts that the identity of the consignee is proprietary, implying that it is protected from disclosure to FDA.

(Response) Where consignee information is proprietary, it is likely to be "confidential commercial information" and protected from public disclosure. However, the fact that it is considered "proprietary" is not a bar to requiring it in prior notice and entry submissions.

(Comments) Other comments ask that FDA decrease the burden of providing this information by using the registration number, which FDA could use to obtain the other identity information elements from its databases

(Response) FDA agrees in part. Although the interim final rule does not require the registration numbers of the importer, owner, or ultimate consignee, the FDA PN System Interface allows for submission of the name of the firm and limited address information (city and country) when a registration number is provided.

(Comments) Other comments seek to decrease the burden by asking FDA to require information regarding the entity submitting the prior notice, which could be the importer, owner, or consignee, but not regarding all three. Another comment concedes that FDA should require the identification of the owner, but that the owner is often the importer or the consignee.

(Response) FDA agrees. The FDA PN System Interface provides the transmitter with the ability to easily repeat information, *e.g.*, the submitter is the same as the importer or the owner is the same as the ultimate consignee. This feature may also be available for submission through ABI/ACS, depending on the specific ABI software used by the customs broker or self-filer. The identity of the owner is only needed if it is not the same as the importer or the ultimate consignee.

(Comments) Several comments state that FDA should be able to communicate its admissibility decisions and decisions about prior notice adequacy with the importer.

(Response) As set out in the interim final rule, in the first instance, the carrier will be notified regarding refusals under section 801(m) of the FD&C Act. Information identifying the importer will allow FDA to follow up with the importer and develop procedures for notifying them as well.

(Comments) A comment asks that FDA define "importer" consistently with CBP. Another comment expresses confusion as to the meaning of the term "owner," asking whether the requirement for the owner's identity in the prior notice refers to the owner of the article of food at the time it arrives at the port of arrival.

(Response) FDA believes that the persons affected by this interim final rule will know, in most situations, what entities are referred to by the terms "importer" and "owner" since these terms are commonly used in importation, including the CBP entry process. If experience with this interim final rule indicates confusion regarding these terms, then FDA will issue guidance on them.

Regarding the term, "importer," FDA agrees with the comment. The agency believes this term should be interpreted the same as "importer of record" as that term is used by CBP in regard to the entry of merchandise.

Regarding the term, "owner," FDA agrees that this is the owner of the article of food at the time of arrival. However, if a prior notice is given after the article is refused under section 801(m)(1) of the FD&C Act, then the owner is the owner or the article of food at the time the prior notice is submitted.

(Comments) Comments ask FDA to limit the information required to identify the importer, owner, and consignee to the registration number, which FDA could use to obtain the other identity information elements from its databases. In this way, comments seek to decrease the burden of prior notice submission by avoiding manual entry of addresses. Other comments seek to decrease the burden by asking FDA to require information regarding the entity submitting the prior notice, which could be the importer, owner, or consignee, but not regarding all three.

(Response) The interim final rule does not require the registration number of the importer, owner, or ultimate consignee. However, if a registration number is provided, city and country may be provided instead of the full address.

(Comments) A comment states that the identification of the importer, owner, and consignee could be obtained from AMS.

(Response) Although AMS may contain information concerning the consignee, that information is located in the AMS module of ACS and is not available to FDA, as required under section 801(m) of the FD&C Act, which provides that the information must be submitted to FDA. CBP and FDA have concluded that it is not practical, at this time, to attempt to modify AMS and the ACS/OASIS interface to provide this information to FDA.

(Interim final rule) Section 1.281(a)(12), (a)(13), and (a)(14) of the interim final rule require submission of information that identifies the importer, owner, and ultimate consignee. However, the identification of the importer, owner, and ultimate consignee are not required if the article of food is imported or offered for import for transshipment through the United States under a T&E bond.

17. Mode of Transportation (§ 1.281(a)(15))

In the proposed rule, the timeframe for prior notice was the same for all imports, regardless of mode of transportation. Thus, FDA did not propose submission of the identification of the mode of transportation.

(Comments) No comments were received on identification of the mode of transportation. However, as discussed earlier, many comments recommend that FDA should set the timeframes for prior notice by mode of transport. FDA agrees and has revised the timeframes accordingly.

(Response) In the interim final rule, the timeframes are tied to mode of transportation. Thus, mode of transportation is necessary to calculate when prior notice is timely. In addition, FDA has determined that, for submitting prior notice, identification of the mode of transportation is necessary for identification of the article of food at the time of arrival for the purposes of planning examinations and communicating with CBP for enforcement and examination. This information currently is provided to FDA by customs brokers or self-filers through ACS.

(Interim final rule) Section 1.281(a)(15) requires submission of information concerning the mode of transportation, except for those prior notice submissions covering articles of food arriving by international mail. For submissions through ABI/ACS, this information will take the form of the current ABI requirements for declaration of mode of transportation. For submissions through the FDA PN System Interface, selection of the mode of transportation will be accommodated by a drop-down menu.

18. Carrier (§ 1.281(a)(16) Proposed as § 1.288(q))

FDA proposed to require the identity of each carrier or transporter firm that transports the article of food from the country from which the article was shipped into the United States, including the submission of the SCAC. Identification of the carrier is necessary to enable FDA and U.S. Customs to identify the appropriate article of food for inspection or holding when the food arrives in the United States. FDA notes that a carrier typically is a different firm than the shipper. The broker or self-filer currently submits carrier information to ABI/ACS when entry is made, and it later is transmitted to OASIS.

(Comments) Comments agree that this information is helpful and necessary for locating cargo. Comments note that carrier information is currently submitted to CBP via ABI/ACS to OASIS. Other comments state that accurate carrier information cannot be provided by 12 noon the day before arrival.

(Response) FDA believes that identification of the carrier is necessary for the purpose of response to prior notice, both for examination purposes and communication with CBP. The shortened timeframes resolve the concern that the carrier may not be known by noon the day before arrival, to the extent possible, given the mandate from Congress to require prior notice.

(Comments) Comments ask that FDA eliminate the requirement to identify multiple carriers, suggesting that the only pertinent carrier is the one arriving at the U.S. port.

(Response) FDA agrees and has eliminated the requirement to identify each and every carrier that transported the article of food from the country of production to the United States, *i.e.*, multiple carriers. The interim final rule requires submission of the identity of the carrier that is or will be carrying the article of the food from the country from which the article is shipped to the United States.

(Interim final rule) Section 1.281(a)(16) requires submission of the carrier's SCAC or IATA code. If these codes are not applicable, the carrier's name and country must be submitted.

19. Planned Shipment Information (§ 1.281(a)(17))

The proposed rule did not require submission of planned shipment information beyond identification of the carrier.

(Comments) Some comments suggest that, in addition to carrier information, FDA should require vessel name, voyage/flight numbers, and bill of lading information.

(Response) FDA agrees. FDA has determined that additional planned shipment information is necessary for identification of the article of food for examination and communication with CPB. The requirement is to provide planned shipment information as it exists when the prior notice is submitted. FDA recognizes that some of this information may change after the prior notice has been submitted and has addressed this in § 1.287(a), which specifies when changes require resubmission to FDA. Most of this information is currently submitted to FDA by customs brokers or self-filers through ABI/ACS. The planned shipment information is necessary to ensure the effective enforcement of section 801(m) of the FD&C Act. FDA and CBP have determined that the planned shipment information includes submission of HTS code information. The HTS code is particularly critical for communication between FDA and CBP for shipments that are entered for transportation in-bond without appraisement under 19 U.S.C. 1552 or 1553, and identification of the HTS will assist CBP in the efficient processing of prior notice through ACS. CBP uses the HTS number in ACS to ensure that the required FDA information accompanies the entry or entry summary transmitted through ABI/ACS to OASIS. For prior notices submitted through the FDA PN System Interface, the HTS numbers are needed to ensure that the data collected from the Customs entry when it is transmitted through ABI/ACS can be matched to prior notice.

(Interim final rule) Section 1.281(a)(17) requires submission of the following planned shipment information, as applicable, based on the mode of transportation:

- Airway bill number(s) or bill of lading number(s) (not applicable to food carried by or otherwise accompanying an individual);
- For food arriving by ocean vessel, vessel name and voyage number;
- For food arriving by air carrier, flight number;
- For food arriving by truck, bus, or rail, trip number;
- For food arriving as containerized cargo by water, air, or land, container number(s);
- For food arriving by rail, car number (not applicable to food carried by or otherwise accompanying an individual);
- For food arriving by privately owned vehicle, the license plate number and state or province; and
- The 6-digit HTS code that is applicable to the article of food.

The interim final rule does not require that prior notice be cancelled and resubmitted if this information changes after FDA has confirmed the prior notice for review. A prior notice will not be inadequate if any of the planned shipment information changes between the confirmation of prior notice and the time of arrival.

20. International Mail (§ 1.281(b))

FDA did not propose separate information requirements for prior notice for food imported or offered for import by international mail.

(Comments) No comments were received on information requirements for food imported or offered for import by international mail.

(Response) For clarity and ease of reference, the interim final rule segregates the information required in prior notice submissions for food arriving by international mail. In addition, FDA has clarified the information required in three instances. FDA has replaced anticipated arrival information with planned date of mailing. FDA has determined that identification of the recipient of an article of food arriving by mail is necessary instead of the importer, owner, or consignee. Thus, the interim final rule requires the identification of the recipient by name and address for food arriving by international mail. Finally, we also have not included information identifying the mode of transportation, carrier, planned shipment information, and hold information, as this information is not relevant to mail imports.

(Interim final rule) See table 1A in section II.J of this document for the information requirements for food imported or offered for import by international mail.

21. Refused Food (§ 1.281(c))

FDA did not propose separate information requirements for prior notice for food refused because of inadequate prior notice. However, proposed § 1.288(d) required identification of the location where the food is being held after the food had been refused for inadequate prior notice. This information is necessary to ensure FDA can locate the food for inspection and to ensure compliance with the hold requirement.

(Comments) No comments were received on separate information requirements for food refused because of inadequate prior notice. However, comments ask for clarification that the hold location information is only necessary if the prior notice was absent or inadequate, *e.g.*, the article of food has been refused under section 801(m) of the FD&C Act.

(Response) FDA agrees. For clarity and ease of reference, the interim final rule segregates the information required in prior notice submissions for food refused because of inadequate prior notice. Submission of the hold location information is not necessary for prior notice submissions covering an article of food arriving by international mail.

(Interim final rule) See table 1A in section II.J of this document for the information requirements for food refused under section 801(m) of the FD&C Act.

(Summary of the interim final rule) Table 1A in section II.J of this document shows a summary of all information required by § 1.281(a), (b), and (c). For clarity, the table also identifies under what circumstances certain information is not required, *e.g.*, registration numbers.

### *I. "What Must You Do If Information Changes After You Have Received Confirmation of a Prior Notice From FDA?" (Section 1.282 Proposed as §§ 1.289 through 1.294)*

1. "What Changes Are Allowed to a Prior Notice After It Has Been Submitted to FDA?" (Proposed § 1.289)

FDA proposed to allow changes to certain information in the prior notice after a prior notice was submitted. FDA proposed to allow amendments to the product identity information when complete product identity did not exist by the deadline for the submission of a prior notice and updates to arrival information. The proposed rule also required that, if the identity of the grower was not known at the time of initial submission of the prior notice, but was known at the time of submission of amended or updated information, the identity of all known growers must be submitted. The proposed rule required that, in the event that other information in the prior notice changed, no amendment or update was permitted, and the prior notice must be cancelled and resubmitted.

(Comments) Comments ask FDA to be more flexible in allowing changes to prior notices. Some comments state that the time periods for prior notice and amendments and updates are not workable and should be made flexible. Comments note that requiring notice by noon of the day before the anticipated importation would cause an increased amount of amendments and updates.

Some comments note that the high degree of detail required in the prior notice will increase the need for amendments and that the likelihood of amendments will be more than FDA estimated. Some comments state that if the timeframe for submitting prior notice was changed, *i.e.*, shortened to 4 hours for land and air and 8 hours for water, then amendments and updates would not be necessary.

(Response) FDA agrees with the comments that state that if the deadline for submission of prior notice were reduced, amendments and updates would not be necessary. FDA has chosen timeframes that provide it with very little leeway in the time it has to "receive, review and respond" to the prior notice submissions. Thus, we concluded that we could no longer permit changes to prior notice without restarting the clock. In addition, the use of ABI/ACS precludes amendments and updates: changes to ABO/ACS submissions that have been electronically transmitted to FDA's OASIS and confirmed by FDA for review are not feasible because CBP also needs finality so it can complete its own screening of the entry. Therefore, the interim final rule does not allow for changes to a prior notice after the transmitter has been notified that FDA has confirmed the prior notice for review.

(Comments) One comment asks that FDA clearly define the circumstances under which updates and amendments to submissions of prior notice must be made. One comment asks FDA to clarify that a change in the anticipated arrival information is not the same as a product identity amendment and, therefore, is not subject to the same mandates as the procedure for changes in the product identity.

(Response) Because the interim final rule does not provide for amendments and updates, there is no need to address these comments asking for clarification.

(Comments) Some comments suggest that FDA allow amendments to all information in the prior notice. Some comments state that it is likely that companies filing numerous prior notices will inadvertently make clerical errors, such as telephone or fax numbers, Customs ACS entry line numbers, or Customs entry type. Others ask for clarification of any penalties associated with cancellation of a prior notice and resubmission of a correct notice.

(Response) FDA believes that the reduction of the deadline for submission of prior notice and the revisions to the information required have eliminated much of the need for amendments. FDA notes that transmitters should try to avoid clerical errors that could result in unnecessary rejections or refusals. To assist, FDA has designed the FDA PN System Interface to review presentation of some information before confirmation. The FDA PN System Interface will reject certain information if it is in the wrong format or does not match FDA's databases and the transmitter will be given an opportunity to make corrections during the submission process, before notice of confirmation from FDA that the prior notice has been submitted for review. The interim final rule provides for no penalty if a prior notice is cancelled. If prior notice has been submitted and confirmed and the food is no longer imported or offered for import, the prior notice should be cancelled. However, if the article of food is still imported or offered for import into the United States, submission of a corrected and timely prior notice is necessary.

(Interim final rule) Section 1.282 of the interim final rule requires that if the information except estimated quantity, anticipated arrival information, and planned shipment information changes after the transmitter receives notice that FDA has confirmed the prior notice for review, the prior notice should be canceled. If the article of food is still intended for import or will be offered for import, the prior notice must be resubmitted in accordance with this subpart. If you submitted the prior notice via the FDA PN System Interface, you should cancel the prior notice via the FDA PN System Interface. If you submitted the prior notice via ACS, you should cancel the prior notice by requesting that CBP delete the line or entry. The "clock" restarts after the confirmation of the submission containing the corrected information.

### 2. "Under What Circumstances Must You Submit a Product Identity Amendment to Your Prior Notice After You Have Submitted It to FDA?" (Proposed § 1.290)

FDA proposed that product identity information required by proposed § 1.288(e)(1) may be amended if all of the information about the identity of the food did not exist by 12 noon of the calendar day before the day of arrival. The proposed rule also provided that the common or usual or trade name, brand name, lot or code or identification numbers, and quantity may be amended. FDA also clarified that a prior notice may not be amended to change completely the identity of the article, *e.g.*, a prior notice identifying the food as lettuce may not be amended to identify the food as pears. The proposed rule provided that prior notice may be amended only once.

(Comments) Some comments suggest that FDA allow unlimited amendments to any information requirement at any time. Several comments express concern about the limitation of only one amendment. They explain if the process has to start over again because the information changes after submitting one amendment, there would be an additional 2-day delay before the product is allowed to cross the border. Some comments indicate that more than one amendment might be needed to provide accurate information. Some comments indicate specific additional information for which amendments should be allowed, such as the carrier and consignee.

(Response) FDA has chosen timeframes that provide it with very little leeway in the time it has to "receive, review, and respond" to prior notice submissions. Thus, we concluded that we could no longer permit changes to prior notice without restarting the clock. However, the significant shortening in timeframes should address many of the concerns. In addition, the submission systems will allow for correction of errors revealed by the systems' initial validation. The interim final rule has thus eliminated the requirement for amendments.

(Comments) One comment asks FDA to create an exemption from quantity amendments for bulk shipments for which the actual quantity is within 10 percent of the proposed actual quantity.

(Response) The interim final rule requires submission of the estimated quantity. This revision nullifies the need for amendment to the quantity description by allowing the submitter to estimate the amount of food that is expected to arrive. The interim final rule provides for no penalty if the quantity of an article of food imported or offered for import differs from the quantity estimated in a prior notice.

a. *Intention to amend.* The proposed rule required that the submitter must indicate his or her intention to amend the product identity information at the time the prior notice is submitted.

(Comments) One comment contends that, if certain elements are amendable, FDA should not need additional advance notice of that fact. Other comments ask FDA to eliminate the requirement for the submitter to anticipate the need for an amendment. Other comments ask for clarification on whether the intent to amend or update must be evident on the initial prior notice or if a product identity amendment or arrival update can be made anytime within the minimum 2-hour requirement.

(Response) The interim final rule eliminates the requirement for amendments and updates. Thus, comments on the proposed limitation are moot.

b. *Topping off.* FDA recognized that the limitation on amendments might affect the practice of "topping off a container" by filling unused space in the shipping container or truck bed with last-minute shipments of other food products not covered by prior notice. FDA solicited comments on how common "topping off" is and the quantities of food involved.

(Comments) Comments state that it is common practice to fill extra space in a shipment with additional product after an order has been filled. A comment suggests that there should be an allowance for last minute changes in a load. A comment suggests that more flexibility is needed to avoid the extraordinary cost of importing a partial shipment. A comment states that a prohibition on the practice of topping off would make some shipments, particularly of smaller items, less cost competitive and may reduce the overall availability of some products. Another states that late offers to add additional quantities or even additional products to a shipment at a discount make for more efficient commerce for importers and can provide economy and value to American consumers. Another comment suggests that FDA reconsider and adopt in the final rule circumstances under which shippers could amend notices to include foods from the same manufacturer or grower. The comment further states that this would allow the full utilization of transport space even when that space is filled with additional items not explicitly declared in the original prior notice.

(Response) The requirements of the statute are to provide FDA with notification of each article of food in advance of importation, not advance notice of some of the articles of food and post-arrival notification of others. The complete identity of each article of food is necessary for FDA to receive, review, and respond to the notice. FDA has significantly reduced the time required for submission of the prior notice before arrival. FDA has also revised the way information on quantity may be presented. The interim final rule requires the estimated quantity of the article of food. FDA believes that both of these revisions will allow for timely submission of accurate information and should limit, as much as is permissible under the statute, the effect of prior notice on the practice of "topping-off."

3. "What Is the Deadline for Product Identity Amendments Under Proposed § 1.290?" (Proposed as § 1.291)

FDA proposed a 2-hour minimum deadline for product identity amendments submitted under proposed § 1.291. FDA noted that product identity amendments are most likely to be needed for articles imported by land or air rather than water arrivals.

(Comments) Some comments are supportive of a deadline for amendments of up to two hours before arrival, but only if that gave FDA sufficient time to receive, review, and respond to the information. Some comments state that allowing amendments to be submitted up to 2 hours before arrival would not be problematic, while others contend that limiting amendments to two hours before arrival was too restrictive and would result in higher costs and compromised product integrity. Comments suggest changing the deadline to allow amendments up to 1 hour before arrival; until just before or at the time of arrival; after arrival (with a 3 hour limit, 24 hour limit, or no limit at all); or at any time before or after arrival. Several comments note that some information, such as the Customs entry number or quantity, cannot be verified by the proposed submitter until the shipment arrives. Several comments state that the carriers should be permitted to amend product identity information. A few commenters point out that the proposed 2-hour period for amendments before arrival is particularly problematic for multiple commodity exports. Comments indicate that the need for amendments might be identified at the time of loading, which may be less that one-half hour before arrival at the border.

(Response) FDA has chosen timeframes that provide it with very little leeway in the time it has to "receive, review and respond" to the prior notice submissions. Thus, we concluded that we could no longer permit changes to prior notice without restarting the clock. In addition, as noted earlier, ACS cannot accommodate changes in submissions that have been confirmed by FDA for review. Therefore, the interim final rule does not provide for amendments.

4. "How Do You Submit a Product Identity Amendment or an Arrival Update to a Prior Notice?" (Proposed § 1.292)

The proposed rule required that a product identity amendment or an arrival update to a prior notice may be submitted only in the same manner as an initial prior notice; that is, electronically to FDA through the FDA PN System Interface.

(Comments) A comment asks that the agency examine means by which communication to the agency of any unexpected change in this information can be provided by the entity that is actually knowledgeable about a change in the date of arrival, for example, by the ocean or air carrier. Several comments suggest that the carrier that is the party with the most accurate information on arrival time and can therefore provide the most efficient communication to FDA. Other comments raise concerns about providing unlimited discretion to carriers to make substantive changes to submissions, but note that the need for carriers to make "updates" is essential. One comment indicates that alternative mechanisms for the carrier to submit updates, such as touch-tone telephones, should be explored.

(Response) Although requirements for amendments to product identity information and arrival updates have been deleted from the interim final rule, FDA recognized that several entities might have critical information concerning required prior notice information. Therefore, the interim final rule does not limit who can submit prior notice information. The interim final rule continues to require electronic submission of prior notice to FDA.

5. "What Are the Consequences if You Do Not Submit a Product Identity Amendment to Your Prior Notice?" (Proposed § 1.293)

FDA proposed that if a U.S. importer or U.S. purchaser, or their U.S. agent, informed FDA in a prior notice that the submission would be amended, but subsequently did not amend it appropriately and within the applicable timeframe, then the prior notice would be inadequate for the purposes of proposed § 1.278(a). FDA clarified that the consequences of inadequate prior notice are the same as the consequences for failing to provide prior notice, *e.g.*, the food is subject to refusal if admission. FDA explained that the indication that a prior notice would be amended tells us that the prior notice is incomplete. FDA noted that without complete product identity, the agency could not adequately determine whether to inspect or take other action when the food arrives in the United States.

(Comments) Some comments object to the proposed provision that, if the submitter of a prior notice indicates that an amendment to the product identity will be submitted, but subsequently fails to do so, the original prior notice will be deemed inadequate and the product would not be allowed to enter. Some point out that FDA should not penalize a submitter for anticipating an amendment and then not amending the prior notice.

(Response) For the reasons set forth previously, FDA has eliminated the requirement to provide product identity amendments.

### 6. "What Must You Do if the Anticipated Arrival Information (Required Under Proposed § 1.288(k)(1)) Submitted in Your Prior Notice Changes?" (Proposed as § 1.294)

FDA proposed to require the submitter to update anticipated arrival information submitted in a prior notice, if the anticipated information changes after the submission. FDA proposed that if the time of arrival is expected to be more than 1 hour earlier or more than 3 hours later than the anticipated time of arrival, the time of arrival must be updated. FDA proposed that updates to the arrival information must be submitted 2 hours before arrival (proposed § 1.294).

a. *General.* (Comments) Many comments indicate that the window of time for arrival updates is too small. Several comments suggest changing the requirements for submitting updates for arrival information. Suggested changes included expanding the window for arrival to 2 hours and 6 hours before the anticipated arrival time and 6, 7, 8, and 18 hours after the anticipated arrival time. A few comments state that notification of the day of arrival, not the time, should be sufficient. Some comments state that updates to arrival information should be allowed upon arrival at the border. One comment objects to allowing only one update to arrival information. The comment complains that this is very restrictive and that submitters must be allowed to keep updating the "prior notice of arrival" without worrying about the form being rejected.

Some comments point out that the owner, importer, and U.S. agent often do not know the actual port of entry for a ship or airplane, the time of entry, or changes in this information. For example, an air shipment of seafood may be switched to a different plane, which arrives at the U.S. port outside the anticipated arrival window. This may occur during nonbusiness hours, before notification of the change can be provided.

One comment suggests that exporters who choose to report to specific border crossings identified by FDA, should not be required to provide updates due to lateness in the time of arrival at the border.

One comment states that ambiguity on when updates can be submitted might lead to confusion and inconsistent application of these provisions. The comment expresses concern that some ports may take the position that the update must be provided within the 4-hour window so FDA will be informed that the shipment will not be arriving when originally anticipated. Yet other ports may take the position that the update requirements are satisfied as long as the update is received at least 2 hours before arrival, regardless of how many hours or days it arrives after the originally identified arrival time.

Some question how notifications that need to be amended and subsequent amendments for numerous entries could assist FDA in scheduling of inspections.

Some point out that carriers should continue to be able to change ports of arrival, as necessary, to find a more expeditious route, based on weather and/or traffic conditions. One comment states that exporters/importers should be able to declare up to three possible ports of entry that all fall under the jurisdiction of a single FDA regional office for administrative and inspection purposes.

One comment suggests that a requirement to update the port of entry could be viewed as limiting the port of entry, which is prohibited by the statute.

One comment points out that the proposed rule is silent on changes to border crossings, unlike changes in arrival time and suggested that FDA clarify whether it needs to be notified of a change to the anticipated border crossing or if any border crossing is acceptable.

b. *Water.* (Comments) One comment asks for a wider margin of variability for the arrival of ocean-going vessels. Some comments state that for ocean-going shipments, an update should not be required if the actual arrival at the port of entry is not more than 24 hours before or after the anticipated time of arrival specified in the prior notice. One comment notes that because of the logistics and unpredictability of ocean transport, it is not possible to accurately predict arrival time of a carrier within the 4-hour window provided. One comment notes that such tight time frames would increase the cost of the prior notice process because the submitter will be forced to continuously check on the status of the shipment to ensure that the arrival time is correct all the way up to 2 hours before delivery. For ocean imports, vessel arrival times may vary widely depending upon weather conditions, scheduling, and loading changes. Vessels can be held or delayed at various ports en route and importers are unlikely to be informed of these changes. Some comments state that it is unrealistic for a sea vessel to have to individually update hundreds or thousands of notices when the vessel is delayed. Comments ask that FDA allow a single update from a carrier to automatically update each prior notice associated with food products on that vessel.

c. *Air.* (Comments) One comment states that the 2 hours for updates is not practical for air shipments because air carriers often do not inform importers of changes in arrival time until the cargo is close to its destination. One comment notes that because of current air and travel security procedures, arrivals are rarely at their scheduled times.

d. *Land/road.* (Comments) A few comments indicate that with respect to trucks, there will be circumstances where a driver cannot contact a dispatcher to submit an arrival update, *e.g.*, 2 a.m. The comments note that a large amount of border truck traffic flows in the early morning/mid-to-late evening to avoid rush-hour traffic in major centers. However, shippers do not have a mechanism for submitting updates at these times when there are unforeseen delays that prevent arrival outside of the anticipated window. Comments state that FDA should provide flexibility in the rule for these and similar circumstances where, for legitimate reasons, it is not possible to provide an update.

Some comments express concern about current delays for trucks at ports of entry, which may vary from a few minutes to 12 hours. The comments note that, because it is necessary to submit updates when a truck is outside the proposed time range for arrival, many trucks might be forced to sit idly on the side of the road waiting for their proper window when FDA will allow entry. Comments express concern that if a shipment were to miss the original arrival time, they would be forced to file an update and wait 2 hours to rejoin the line.

e. *Land/rail.* (Comments) For rail cargo, arrival times may vary depending on scheduling and loading changes. Often, multiple rail cars on one entry can be located at multiple locations across the rail yard. Actual crossing times for those cars can vary widely depending on that location and the ability of the rail to load and cross them. In these cases, linking prior notice into the manifest could also allow the carrier to provide electronic updates.

(Response) FDA agrees that there may be factors such as business practices, weather, and traffic congestion that may impact the accurate representation of the port, date, and time of arrival. Although the interim final rule will continue to require submission of the anticipated place, date, and time of arrival that is known to the submitter, the interim final rule does not require an update to that information, and prior notice will not be deemed inadequate if the information changes after FDA has confirmed the prior notice for review.

In sum, FDA has removed from the interim final rule all proposed sections related to product identity amendments and arrival updates (proposed §§ 1.289 through 1.294) because of the following situations:

- The timeframes are shortened substantially;
- The timeframes provide us with very little leeway in the time we have to "receive, review and respond" to the prior notice submissions. Thus, we can no longer permit changes to prior notice without restarting the clock. FDA believes that the information required by the interim final rule for prior notice should be sufficiently fixed to be submitted within these new, shorter timeframes;
- FDA has revised the required information in the interim final rule, including the requirement to provide the estimated quantity;
- If the estimated quantity, the anticipated arrival information, or the planned shipment information change, the interim final rule does not require that the prior notice be resubmitted; and
- Under the interim final rule, prior notice can be submitted through ABI/ACS. The proposed provisions for amendments and updates to a submission through ABI/ACS are not feasible after the submissions have been electronically transmitted to OASIS and confirmed by FDA for review.

(Summary of the interim final rule) FDA has removed from the interim final rule all proposed sections related to product identity amendments and arrival updates (proposed §§ 1.289 through 1.294).

### *J. "What Happens to Food That Is Imported or Offered for Import Without Adequate Prior Notice?" (Section 1.283) and "What are the Other Consequences of Failing to Submit Adequate Prior Notice or Otherwise Failing to Comply With This Subpart?" (§ 1.284 Proposed as § 1.278)*

#### 1. Inadequate Prior Notice (No Prior Notice, Inaccurate Prior Notice, or Untimely Prior Notice) (§ 1.283(a) Proposed as § 1.278(a))

FDA proposed in § 1.278(a) that if an article of food is imported or offered for import with no prior notice or inadequate prior notice, the food shall be refused admission, as set out in under section 801(m)(1) of the FD&C Act. Proposed examples of inadequacy were untimely, inaccurate, or incomplete prior notice.

(Comments) Comments ask for clarification on what would cause a prior notice to be incomplete or inadequate. Some comments express concern that clerical errors or failure to provide minor information or optional information could result in a refusal. Some comments suggest that inadequate prior notice should be confined to material omissions or major errors that would seriously impede the agency's ability to review and appropriately respond to the notice. Comments ask whether they would be notified about such deficiencies and given a chance to correct them. Some comments object to not receiving feedback, before reaching the port, when the prior notice is inadequate.

(Response) A prior notice is not complete if the required information, as set forth in § 1.281, has not been provided. However, FDA agrees that feedback during the transmission process to reduce mistakes and omissions that could result in unnecessary holdups or refusals is a good idea. As explained earlier, both systems will review and validate required information to minimize the likelihood that clerical or typographical errors will result in an incomplete or inaccurate prior notice. The systems will tell transmitters which required information is still lacking or is recognized by the initial validation as facially incorrect, to allow transmitters to make corrections quickly. Moreover, the systems will not provide a confirmation until required information is complete and facially valid. Thus, if the initial incorrect information is not corrected and submitted, the transmitter will not receive a prior notice confirmation. FDA believes that this initial review/validation process will help ensure that transmitters will not make inadvertent errors that could result in a refusal. We advise, however, that this initial review/validation process will not be capable of identifying all possible errors. Thus, submitters and transmitters should understand that confirmation does not mean that FDA has determined that the prior notice is accurate in all respects.

If FDA determines that the prior notice is inaccurate after the systems provide a confirmation, the article of food is subject to refusal under § 1.283(a)(1)(ii). FDA has the option of issuing the refusal notice to the transmitter under § 1.283(a)(1)(ii) before arrival, assuming that FDA determines that the prior notice is inaccurate before arrival and before the time period for the prior notice has expired. If this happens, the transmitter must resubmit an accurate prior notice in accordance with § 1.282. This will remove the refusal, although it will "restart the clock" in terms of when prior notice must be submitted to FDA. Until we have had some experience with prior notice review, we do not know how often we will be able to determine prior notice inaccuracy before food arrives. However, in certain situations, inaccuracy of prior notice cannot be determined until the article of food is examined upon arrival.

(Comments) Comments suggest the regulation provide a waiver or other mechanism to release foods that are safe, although the electronic paperwork is not complete. Comments also suggest that the regulation provide that, unless FDA has credible evidence or information that an article of food presents a threat of serious adverse health consequences or death to humans or animals, that FDA would not refuse the article if the prior notice is incomplete or inadequate.

(Response) FDA does not agree that the regulation should provide a waiver for refusal when some, but not all required, information has been submitted. Given that the purpose of prior notice is to provide FDA with better information sooner about food imports, including such a waiver in the rule would seem to be antithetical to the provision. The reference to the credible evidence standard in section 801(m) of the FD&C Act, which appears in the part of section 801(m) that deals with FDA review of prior notice after refusal, does not suggest otherwise. Section 801(m)(2)(B)(ii) of the FD&C Act states that, when FDA reviews a prior notice that has been submitted for a refused article of food, FDA "shall determine whether there is in the possession of [FDA] any credible evidence or information indicating that such article presents a threat of serious adverse heath consequences or death to humans or animals." FDA does not agree that this provision means that FDA should not refuse food with an inadequate prior notice under section 801(m)(1) of the FD&C Act when FDA has no such credible evidence or information. If that is what Congress intended, it would not have provided for refusal of an article of food without adequate prior notice, as it did in section 801(m)(1) of the FD&C Act.

(Comments) Comments note that the proposed rule did not set out procedures for notifications regarding refusals and holds. Comments ask who would be notified of refusal and when. Comments state that FDA should notify importers, purchasers, or manufacturers that an article is being held. One comment notes that carriers would have no way of determining if prior notice had been satisfied until they arrived at the border, but that they would be responsible. A comment also states that FDA should engage the manufacturer or processor when the situation involves a bioterrorism threat or event.

(Response) FDA and CBP have determined that the most appropriate notification point is the carrier. When an article of food arrives at the border without adequate prior notice (*i.e.*, none, inaccurate, or untimely), the carrier is the clearest immediate point of contact that FDA and CBP staff at the border have. Thus, FDA or CBP intend to notify the carrier that the article of food is refused due to inadequate prior notice when the food is presented for CBP processing. It will be up to the carrier to communicate the prior notice refusal to other persons or firms. Neither FDA nor CBP currently has sufficient capability at the border to communicate these refusals to other persons and still process arrivals and examinations in a reasonable amount of time. We recognize that this will affect carriers. We will be exploring ways to provide notice to the transmitter and others, as well. FDA notes that if carriers want to ensure, for any food they are transporting, that prior notice has been submitted to FDA and confirmed for review, they can ask that a copy of the PN confirmation be provided to them. Indeed, under § 1.279(g), for prior notices transmitted through the FDA PN System Interface, the carrier must present the PN confirmation number to CBP or FDA upon arrival.

We do not agree that FDA should provide routine advance notice that it intends to refuse, examine, or hold food or has asked CBP to do so. Although FDA and CBP are structuring implementation to ensure that changes in ports and arrival times will not mean that food which should be refused, held, or examined at the port of arrival slips past us, we believe that routine advance notice could make it easier for the unscrupulous to evade FDA requirements and import unsafe food. Finally, whether we contact importers or manufacturers when there is a bioterrorism threat or other food-related emergency will depend on the particular circumstances.

(Comments) Some comments state that inconsistency in time and changes in the port of arrival should not result in refusal of the article. One comment asks whether a shipment that arrives one-half hour late will be treated the same as one that arrives 12 hours late.

(Response) As explained elsewhere, changes in the anticipated arrival information or planned shipment information will not be a basis for a refusal under section 801(m)(1) of the FD&C Act if FDA wants to examine the shipment; however, these changes may mean waiting while FDA is notified by CBP and arranges to examine the shipment. This is more likely to be the case with changes in ports and in arrivals that are much later than the anticipated time.

When it comes to changes in arrival time, what matters is whether the prior notice time was submitted sufficiently in advance of arrival, in accordance with the timeframes set out in § 1.279(a) of the interim final rule. These timeframes are what FDA has determined are necessary, as a general matter, to ensure that FDA has enough time to receive, review, and respond to each prior notice appropriately. However, § 1.283(a)(1)(iii) of the interim final rule does provide that if an article of food arrives early, before the prior notice time has elapsed, its arrival will not be considered untimely if FDA has already reviewed the prior notice, determined its response to the prior notice, and advised CBP of that response. FDA believes there is no need to make the food wait if the agency has been able to accomplish its prior notice review sooner than anticipated.

(Comments) One comment asks for clarification on whether the article would be refused if the classification of goods under the HTS code has been changed by Customs officials after the shipment arrives.

(Response) If the FDA Product Code is accurate, then the article will not be refused if the HTS code provided is later changed by CBP during its review of the entry for CBP purposes.

(Comments) One comment asks whether there would be a penalty for canceling and resubmitting a prior notice when the changes that need to be made to the prior notice cannot be made by an amendment or an update.

(Response) FDA has removed the provisions relating to amendments and updates. If required information (with the exception of estimated quantity, anticipated arrival information, and planned shipment information) changes, *e.g.*, the manufacturer is different than the one originally submitted or the complete FDA product code is not accurate, you should cancel the prior notice and must resubmit prior notice (if you still plan to import or offer for import the article of food into the United States). The timeframes set out in § 1.279(a) of the interim final rule will start to run again from the time the new prior notice is confirmed for review by FDA.

a. *Status and movement of refused foods (§ 1.283(a)(2)).* FDA proposed in § 1.278(b) that if an article of food is imported or offered for import is refused under section 801(m)(1) of the FD&C Act, the food shall be held at the port unless directed to a secure facility under proposed § 1.278(c). Proposed § 1.278(d) provided that the person submitting prior notice was responsible for arranging for movement of refused food. Proposed § 1.278(e)(2) stated that refused food could not be delivered under bond to the importer, owner, or consignee. In the preamble to the proposed rule (68 FR 5432), we explained that the provisions in title 19 of the U.S. Code relating to imports for which entry cannot be made would apply.

i. *General order status (§ 1.283(a)(2)(i)).* (Comments) One comment asks for confirmation that the provisions in title 19 of the U.S. Code that apply to unentered merchandise would apply to articles of food that have been refused under section 801(m)(1) of the FD&C Act.

(Response) FDA and CBP generally agree with this comment. However, we have concluded that the interim final rule should specify that these provisions will apply immediately upon refusal under section 801(m)(1) of the FD&C Act because entry of an article of food refused under section 801(m)(1) cannot be made for want of proper documents or other cause, as described in section 490(a)(1)(C) of the Tariff Act of 1930, as amended (19 U.S.C. 1490(a)(1)(C)). Accordingly, § 1.283(a)(2)(i) of the interim final rule specifies that an article of food that has been refused under section 801(m)(1) of the FD&C Act shall be considered general order. Thus, an article of food refused under section 801(m)(1) meets the criteria of general order and must be handled in accordance with sections 490 and 491 of the Tariff Act (19 U.S.C. 1490 and 1491) and CBP's implementing regulations at 19 CFR part 127 except as otherwise specified in 21 CFR part 1, subpart I.

ii. *Locations for holding refused food (§ 1.283(a)(2)(ii)).*

(Comment) One comment suggests using the existing system where shipments may be held in place at the port for 14 days after which they must be moved to general order.

(Response) After merchandise has arrived in the United States, the Customs regulations prescribe a 15-calendar day period during which entry must be made. If entry is not made during this time, the merchandise then must be sent to general order inasmuch as entry has not been completed (see 19 CFR 4.37, 122.50, or 123.10). However, as described previously, this 15-calendar day period is not applicable to articles refused under section 801(m)(1) of the FD&C Act. Articles that are refused for inadequate prior notice cannot be entered under any form of Customs entry. Those articles may only be entered after adequate prior notice has been given.

(Comments) Several comments express concern about the impact of refusal and holding at the port or secure storage on the quality, value, and marketability of perishable fresh and frozen foods.

(Response) FDA expects that the changes in the interim final rule, in particular the shortened timeframes, will mean fewer refusals. In addition, since FDA will make every effort to review prior notices for refused articles within these same timeframes, those responsible for submitting prior notice have the ability to have the refusal removed in a matter of a few hours. This, too, significantly reduces the impact of the interim final rule on perishables. Finally, FDA also intends to provide guidance to its staff on implementing and enforcing the prior notice requirements, both during the initial transition period and after that period ends.

FDA agrees that appropriate storage and holding conditions must be considered for perishable and frozen foods refused for inadequate prior notice. This means that if the article of food arrives in frozen condition and has been transported under frozen conditions, the facility used for holding the product must provide adequate frozen conditions.

(Comments) Some comments express concern that there are insufficient facilities at the U.S./Mexico ports to handle the potential refusals during the produce season. One commenter disagrees with FDA's statement in the preamble to the proposed rule that "U.S. Customs has identified a well-established network of storage facilities that are secure." The comment pointed out that there is no infrastructure of secure facilities at all ports. A comment noted that there are few facilities at remote East and West ports along the U.S./Canadian border that have temperature controlled environments and are available around the clock. Another comment noted that there generally is a lack of bonded cold storage facilities at borders and at airports. One comment asks for information on the infrastructure of storage facilities that would provide sanitation and temperature controls, as well as security controls, including security against theft and accidents. Some comments ask that FDA publish a list of the secure facilities and the costs that FDA authorizes for the refused food.

(Response) FDA expects that the changes in the interim final rule, in particular the shortened timeframes, will mean fewer refusals and thus less need for storage for refused articles of food. Nevertheless, FDA and CBP agree that the different ranges of storage available at different ports need to be addressed. However, this issue needs to be addressed in light of the determination, reflected in § 1.283(a)(2)(i), that food refused under section 801(m)(1) of the FD&C Act has "general order" status. Under customs laws and regulations, general order merchandise must generally be held in a general order warehouse (19 CFR 127.1). Customs regulations also empower the port director, if merchandise requires specialized storage facilities that are unavailable in a bonded facility, to direct the storage of the merchandise by the carrier or by any other appropriate means (see 19 CFR 4.37(f), 122.50(f), or 123.10(f)). Additionally, fruit and other perishables may be held by the port director in a bonded cold-storage warehouse for a reasonable period, if it is probable that entry will be made at an early date (19 CFR 127.28(c)).

FDA and CBP believe that general order storage qualifies as secure facilities for purposes of the Bioterrorism Act, as it is subject to the requirements set out at 19 CFR part 19. In particular, 19 CFR 19.9 contains controls that will ensure that refused food will be adequately controlled while in storage and will not be released from general order storage without CBP authorization.

(Comments) Several comments ask for clarification on secure facilities. Comments ask whether a general-purpose warehouse in a FTZ or a secure facility operated by the importer of record would be considered a secure facility under the rule. Another comment suggests that a clear chain of custody and fiduciary responsibility is required when products are impounded. The comment recommends that appropriate and sufficient impound storage facilities must be available before enforcement begins.

(Response) As set out previously, food refused under section 801(m)(1) of the FD&C Act must be held in accordance with CBP's regulations on general order merchandise.

(Comments) One comment suggests that if there is a failure to submit adequate prior notice, the goods should be allowed to move to the port of destination.

(Response) The prior notice is required to be submitted to and confirmed by FDA before the article of food arrives at the port of arrival. Food refused because of inadequate prior notice must be held within the port of entry for the article unless directed by CBP or FDA. Thus, refused food may be permitted to move to the port of destination.

iii. *Movement of refused food (§ 1.283(a)(2)(iii)).* (Comments) One comment objects to making the carrier responsible by regulation for movement of refused food. One comment suggested that FDA should be responsible for movement of refused foods.

(Response) As set out in the preamble to the proposed rule (68 FR 5431 to 5432), we do not believe that section 801(m) of the FD&C Act mandates that the government take physical control of refused food. Rather, it limits the locations where refused food can be held and to whom it can be delivered. Accordingly, FDA proposed that the carrier or the person who submitted the prior notice arrange for the movement of the refused food. FDA has decided to remove this limitation in the interim final rule. Since we have removed limitations on who can submit, submitters may now be foreign firms that may have difficulty arranging to move food from overseas. We have concluded that we should not impose any limitations on who may arrange for the movement of refused foods. The interim final rule, § 1.283(a)(2)(iii), does maintain the requirement that movement of refused food occur under the appropriate CBP custodial bond. The interim final rule further provides that refused food must be taken directly to the designated facility, shall not be entered, and shall not be delivered to any importer, owner, or ultimate consignee. Failure to observe these conditions will be a violation of the bond and may result in the imposition of liquidated damages.

b. *Segregation of refused foods (§ 1.283(a)(3)).* (Comments) Some comments state that FDA should release to the owner or importer all of the other food or nonfood items in the shipment that are not affected by the inadequate prior notice, in mixed or consolidated shipments, if one or more food items has been refused because of inadequate prior notice. One comment points out that shipments might contain sealed containers of different foods from different sources. One comment asks for clarification on how refused products will be segregated from products that may continue when the products are on a truck or in a rail car. The comment points out that this is a concern for less-than-truckload (LTL) carriers and small package carriers, who may have thousands of overnight or expedited shipments on one trailer. The comments express concern that importers and carriers of nonfood items and of compliant food items would be unfairly penalized because of a noncompliant entry. A comment states that Customs' regulations authorize different portions of merchandise imported in a single shipment and consigned to a single consignee to be cleared under separate consumption entries (19 CFR 141.52). The Customs regulation in 19 CFR 141.52 also authorizes separate entries for any portions of a shipment that will be covered by different types of entry, such as a bonded warehouse entry.

(Response) FDA agrees. In the preamble to the proposed rule, FDA recognized that food refused under section 801(m)(1) of the FD&C Act may be located in the same container or truck with nonfood items or food that is not refused under section 801(m). However, when mixed or consolidated imported freight contains refused articles of food that must be held, those articles that have been refused must be dealt with in a manner that is consistent with the limitations in section 801(m) of the FD&C Act. Therefore, FDA has added § 1.283(a)(3) to the interim final rule to state that if the article of food that is refused is part of a shipment that contains articles that have not been refused under section 801(m)(1) of the FD&C Act, the refused article(s) may be segregated from the rest of the shipment. This segregation must take place within the port of arrival or where the article is held, if different and may be supervised by FDA or CBP.

c. *Costs (§ 1.283(a)(4)).* (Comments) Several comments ask who would be responsible for storage and transportation costs. One comment notes that the private parties to the importing transaction should be liable for storage and transportation costs when food was refused. One comment stated that the person submitting prior notice should be responsible for these costs. Another comment asks FDA to include a provision in the interim final rule that allows carriers to recover removal, storage, or dispositions costs from the owner, purchaser, or consignee.

(Response) Inasmuch as articles for which adequate prior notice has not been received are considered general order merchandise, the expenses of transportation and storage will be the responsibility of those parties who are responsible under the general order statutes and regulations. FDA has thus decided it is not necessary to include a provision in the interim final rule that specifies which private parties should be responsible for costs associated with refusal. However, we have added § 1.283(a)(4) to the interim final rule to clarify that the U.S. Government is not responsible for these costs.

(Comments) Some comments ask that the regulation establish a damage claim system for losses that occur when perishable foods are detained for administrative reasons. Some comments suggest that FDA should provide compensation for losses, including transportation and storage fees, if the agency mistakenly holds imported product because of an oversight in the government's processing of a prior notice.

(Response) FDA disagrees. The interim final rule provides in § 1.283(a)(4) that neither FDA nor CBP will be responsible for transportation, storage, or other expenses resulting from refusal. FDA notes that it has never assumed responsibility for expenses associated with refusal under the FD&C Act. Any claim against the government arising under these activities shall be governed by the Federal Tort Claims Act.

3. *Post-refusal submissions and resubmissions (§ 1.283(c)).* (Comment) Comments ask FDA to clarify how inadequate notice could be corrected and what steps must be taken to have the product released. One comment suggests that the regulation should state that a shipment with inadequate prior notice would be held only until the prior notice is corrected and that the correction should be required within 24 hours. One comment suggests that food should be held for 24 hours and then deemed released if FDA has not notified the person submitting the notice that the food will be examined.

(Response) FDA agrees that the rule should specify procedures for submitting or resubmitting a prior notice after refusal. These are set out in § 1.283(c)(i) and (c)(ii) in the interim final rule. FDA does not believe it is necessary to impose any limit on how long a person has to submit or correct a prior notice for refused foods since an article of food refused under section 801(m)(1) of the FD&C Act is considered general order merchandise. If no adequate prior notice is received within the timeframes set out in 19 CFR part 127, title in the refused food will vest in the United States and the refused food will be eligible for general order sale or other disposition. Also note that fruit, perishables, or merchandise liable to depreciation, may be characterized as "special merchandise" per 19 CFR 127.28. Alternate disposition, consistent with the general order statutes, is then provided for.

The rules governing general order merchandise should be familiar to those in the business of importing food, as they are rules of long standing that are applied by CBP when no entry is made for food. FDA believes that it is up to the persons involved in importing the food into the United States to determine how quickly prior notice should be submitted or resubmitted for food refused under section 801(m)(1) of the FD&C Act.

FDA does not agree that the refusal should be deemed removed if the transmitter does not hear from FDA within 24 hours that FDA will be examining the product. Section 801(m)(2)(B)(i) of the FD&C Act states that refused food may not be released until prior notice has been submitted, reviewed by FDA, and determined by FDA to be adequate.

(Comments) Many comments state that the regulation should set limits on the time FDA has to determine the adequacy of a prior notice submitted after a food has been refused in order to ensure quick release of refused food. One comment explains that such language would be consistent with congressional intent as stated in the Conference Report:

> if an article of food were offered for import without providing the required prior notice, the article of food would be held at the port of entry until the Secretary has determined that notice is complete, but it would not be held longer than the unelapsed period of prior notice unless there is other basis for doing so.

(Conf. Rept. at H2858.)

(Response) FDA agrees in part. The rule provides in § 1.283(c)(iii) that once the prior notice or corrections to a prior notice have been submitted and confirmed by FDA for review, FDA will make every effort to review and respond to the prior notice submission within the timeframes set out in § 1.279(a).

d. *Export after refusal (§ 1.283(a)(5)).* Although export under the general order provisions of the title 19 of the U.S. Code was discussed in the preamble to the proposed rule (68 FR 5432), the proposed rule did not address exportation of food refused under section 801(m) of the FD&C Act.

(Comment) One comment asks whether export would be required for food refused under section 801(m)(1) of the FD&C Act.

(Response) Export is not required for an article of food refused under section 801(m)(1) of the FD&C Act; it is, however, an option for an article of food refused under § 1.283(a) and as permitted under CBP's general order provisions unless FDA or CBP were to seize or administratively detain the food under other authority. We have added § 1.283(a)(5) to the interim final rule to make this clear. If an article of food that has been refused admission under section 801(m)(1) of the FD&C Act is exported, the prior notice should be cancelled within 5 calendar days of exportation. FDA and CBP note that any time an article of food leaves the country after arriving at the port of arrival, it is considered an export for CBP purposes, and the applicable line or entry is deleted and, if prior notice was transmitted with the entry via ACS, the prior notice will be cancelled as well. This is true regardless of whether the intent is to re-import the article, even if the re-import occurs after a brief period of time.

To import that article of food, the prior notice must be re-submitted, and a new entry must be made, and the new prior notice will have the effect of "restarting the clock" in terms of when the prior notice has been submitted to FDA. If prior notice had been transmitted via the FDA Prior Notice System Interface, the prior notice is not automatically canceled when the article of food is exported. The only way to cancel a prior notice that was transmitted via the FDA Prior Notice System Interface is to use that system to explicitly cancel the prior notice.

e. *Abandoned merchandise (§ 1.283(a)(6)).* (Comment) One comment states that the regulation should address what happens if refused food is not claimed by the owner, purchaser, or consignee.

(Response) The interim final rule, in § 1.283(a)(6), provides that if no prior notice or correction is received in a timely fashion or export has not occurred, the food shall be dealt with as set forth in CBP regulations relating to be general order merchandise, except that it may only be sold for export or destroyed as agreed to by CBP and FDA.

### 5. International Mail (§ 1.283(e))

Although the proposed rule applied to food imported or offered for import by mail, *see, e.g.*, 68 FR 5436, there were no proposed provisions specific to refusal of food arriving by international mail.

(Comments) No comments submitted comments specific to refusal of food arriving by international mail were submitted.

(Response) FDA believes that separate refusal procedures are necessary for food arriving by mail given differences between mail and cargo. FDA believes that these procedures are authorized under section 701(b) of the FD&C Act because they are necessary to ensure that the refusal provisions of section 801(m)(1) of the FD&C Act can be efficiently and effectively applied to food that arrives by mail. The interim final rule thus provides in § 1.283(e) that in the case of food arriving by international mail with inadequate prior notice, the parcel will be held by CBP for 72 hours for FDA inspection and disposition. If the parcel is refused and there is a return address, the article may be returned to sender stamped "No Prior Notice—FDA Refused." If there is no return address or FDA determines that the articles of food in the shipment appear to present a hazard, FDA may dispose of or destroy the parcel at its expense. If FDA does not respond within 72 hours of the CBP hold, CBP will return the parcel to the sender or, if there is no return address, destroy the parcel, at FDA expense.

### 2. Food Carried by or Otherwise Accompanying an Individual (§ 1.283(b))

Although the proposed rule applied to food imported or offered for import in baggage that was not brought in by a traveler for personal use, there were no proposed provisions specific to refusal of food in baggage in the proposed rule.

(Comments) No comments submitted comments specific to refusal of food carried by or otherwise accompanying an individual.

(Response) FDA believes that separate refusal procedures are necessary for food carried by or otherwise accompanying an individual given differences between these kinds of imports and cargo. FDA believes that these separate procedures are authorized under section 701(b) of the FD&C Act because they are necessary to ensure that the refusal provisions of section 801(m)(1) of the FD&C Act can be efficiently and effectively applied to food carried by or otherwise arriving with an individual.

(Interim final rule) Section 1.279(f) provides that the individual who carries or is accompanied by food must have a copy of the confirmation of prior notice when arriving in the United States. Section 1.283(b) provides that if there is inadequate prior notice or the individual cannot provide FDA or CBP with a copy of the PN confirmation, the article of food is subject to refusal. If before leaving the port, the individual cannot arrange to have the refused food held at the port or exported, the article of food may be destroyed.

### 4. FDA Review After Refusal, § 1.283(d)

(Comments) Several commenters suggest there should be an efficient appeal mechanism in the event that the submitter, importer, owner, or consignee believes that food products have been inappropriately refused and held.

(Response) Although such a process is not required by § 801(m) of the FD&C Act, FDA agrees that having a review process designed to address prior notice issues is warranted. Section 1.283(d) of the interim final rule sets out parameters under which a request may be submitted to obtain FDA review of whether the article is subject to the requirements of this subpart under § 1.276(b)(5) (*i.e.*, meets the interim final rule's definition of food) or § 1.277 (*i.e.*, is within the scope of the interim final rule) or whether the contents of a prior notice submission were accurate. The interim final regulation provides that a request must be submitted within 5 days of refusal and that FDA will respond within 5 days. FDA notes that if the product is perishable, the sooner the request is submitted, the sooner FDA will respond. FDA chose these timeframes because they are consistent with the timeframes for perishables contemplated under the new administrative detention provisions at § 304(h) of the FD&C Act, 21 U.S.C. 334(h). After review, if FDA determines that the article is not subject to prior notice or that the prior notice submission is accurate, it will notify the requester, the transmitter, and CBP that the food is no longer subject to refusal under section 801(m)(1) of the FD&C Act.

### 5. Prohibition on Delivery Outside of the Port, § 1.283(f)

(Comments) One commenter suggests following existing procedures and allowing refused foods to be held at the importer's place of business, quarantined and considered to be undeliverable, but held for sampling and release. Another commenter asks for clarification on whether product could be shipped to the importer, purchaser, or consignee's facility, if prior notice is inadequate.

(Response) The statute explicitly states that an article of food that is refused under the provisions of section 801(m)(1) must be held and shall not be delivered to the importer, owner, or consignee. See § 801(m)(2)(B)(i). Thus, the provisions of the Bioterrorism Act specifically override certain existing procedures that apply when food is subject to refusal under § 801(a) of the FD&C Act. In accordance with the new procedures specified in the Bioterrorism Act, § 1.283(de) of the interim final ruie provides that, notwithstanding § 801(b) of the FD&C Act, 21 U.S.C. 381(b), an article of food refused under § 801(m)(1) may not be delivered to the importer, owner, or ultimate consignee or transferred by any person from the port or secure facility until prior notice is submitted to FDA in accordance with this subpart, FDA has examined the prior notice, FDA has determined that the prior notice is adequate, and FDA has notified CBP and the transmitter that the article of food no longer is subject to refusal of admission under § 801(m)(1) of the FD&C Act. After this notification, entry may be made in accordance with law and regulation.

### 6. Relationship to Admissibility (§ 1.283(g))

The proposed rule (§ 1.278(f)) differentiated between a refusal of admission under section 801(m)(1) of the FD&C Act (prior notice) and refusal of admission under section 801(a) of the FD&C Act or other U.S. laws. The proposed rule clarified that a determination that an article of food is no longer subject to refusal of admission under section 801(m)(1) of the FD&C Act does not mean that it will be admitted to the United States under other provisions of the law that apply to admissibility determinations.

(Comments) One comment asks for clarification on whether a shipment will have to remain at the port and be subject to inspection until after FDA receives and reviews the entry documentation through OASIS. The comment points out that in most cases, OASIS review occurs after the goods have at least been conditionally released. Other comments state FDA should conduct its review under section 801(a) of the FD&C Act at the same time it is doing its prior notice review. Another comment asks what would happen if a prior notice was determined to be inadequate as part of FDA's review under section 801(a) of the FD&C Act.

(Response) Section 1.283(g) provides that FDA's determination that an article of food is no longer refused under section 801(m)(1) of the FD&C Act is different than, and may come before, determinations of admissibility under other provisions of the FD&C Act or other U.S. laws. As a general matter, FDA intends to use prior notice information to determine what products should be inspected upon arrival; we do not intend to make admissibility decisions under section 801(a) of the FD&C Act until entry has been made. The refusal under section 801(m)(1) of the FD&C Act will be removed after prior notice has been received, reviewed, and responded to by FDA, and there will be no further requirement to hold at the port for purposes of section 801(m). As a general matter, at that point, the procedures under section 801(a) and (b) of the FD&C Act would apply. If FDA discovers that prior notice was inadequate after an article leaves the port of arrival but before it makes a decision to "may proceed" or release an article of food under section 801(a) of the FD&C Act, FDA may refuse the article under section 801(m)(1) and ask CBP to issue a notice of redelivery.

### Interim Final Rule (§ 1.283)

FDA revised the proposed rule to provide for more specificity, clarify the status of refused food, and provide a mechanism for FDA review after refusal. In the interim final rule, FDA identifies the consequences and procedures for the following situations:

a. *Inadequate Prior Notice (No, inaccurate, or untimely prior notice) (§ 1.283(a)(1)).* The article is subject to refusal under section 801(m) and, if refused, unless immediately exported with CBP concurrence, must be held.

b. *Status and movement of refused food (§ 1.283(a)(2)).* A refused article of food shall not be delivered to the importer, owner, or ultimate consignee until FDA has examined the prior notice, determined the adequacy of the prior notice and notified the transmitter and CBP that the article of food covered by the prior notice is no longer refused. A refused food is considered general order merchandise under section 490 of the Tariff Act of 1939, as amended. The refused food must be moved under appropriate custodial bond. FDA must be notified of the location where the food has been or will be moved within 24 hours of refusal. The food must be taken directly to the designated location, shall not be entered, and shall not be delivered to any importer, owner, or ultimate consignee.

c. *Segregation (§ 1.283(a)(3)).* If a refused food is part of a shipment that contains other articles, the refused food may be segregated from the rest of the shipment within the port of arrival or where it is held, if different. FDA or CBP may supervise the segregation.

d. *Costs (§ 1.283(a)(4)).* Neither FDA nor CBP will be liable for transportation, storage, or other expenses resulting from refusal.

e. *Post-refusal submissions and resubmissions (§ 1.283(c)).* If an article of food is refused for no or inaccurate prior notice, the prior notice must be submitted to and confirmed by FDA for review.

f. *Export after refusal (§ 1.283(a)(5).* A refused food may be exported with CBP concurrence and supervision. If a refused food is exported, the prior notice should be cancelled within 5 days of exportation.

g. *No post refusal submission or request for review (§ 1.283(a)(6).* If no prior notice, correction, or request for FDA review is submitted in a timely fashion after an article of food is refused, the food will be dealt with as set forth in CBP regulations relating to general order merchandise. It may only be sold for export or destroyed as agreed to by CBP and FDA.

h. *International mail (§ 1.283(e)).* In the case of food arriving by international mail, if prior notice is inadequate, the article will be held by CBP for 72 hours for FDA inspection and disposition. If the article of food is refused and there is a return address, the parcel may be returned to sender. If there is no return address or the article of food in the parcel appears to present a hazard, FDA may dispose of or destroy it at FDA's expense. If FDA does not respond within 72 hours of the CBP hold, CBP will return the parcel back to the sender or, if there is no return address, may destroy the parcel at FDA's expense.

i. *Food carried by or otherwise accompanying an individual (§ 1.283(b)).* The individual must have a copy of the confirmation when entering the United States. If there is inadequate prior notice, the article will be refused entry and may be held at the port or exported. If arrangements for holding or export cannot be made, the food may be destroyed.

j. *FDA review after refusal (§ 1.283(d)).* After refusal, the submitter, importer, owner, or ultimate consignee may submit a written request asking FDA to review whether the article is subject to the requirements of this subpart under §§ 1.276(b)(5) and 1.277, or whether the prior notice submission is accurate. The interim final rule also sets out procedures and timeframes for this review process.

k. *Prohibition on delivery outside of the port (§ 1.283(f)).* A refused article of food may not be delivered to the importer, owner, or ultimate consignee until FDA has examined the prior notice, determined the adequacy of the prior notice and notified the transmitter and CBP that the article of food covered by the prior notice is no longer refused. When food that has been refused under section 801(m)(1) of the FD&C Act is held at the port or secure facility, it may not be transferred by any person from the port or secure facility until prior notice is submitted to FDA in accordance with this subpart, FDA has examined the prior notice, FDA has determined that the prior notice is adequate, and FDA has notified CBP and the transmitter that the article of is food no longer refused.

l. *Relationship to admissibility (§ 1.283(g)).* A determination that an article of food is no longer subject to refusal under section 801(m)(1) of the FD&C Act is different than, and may come before, determinations of admissibility under other provisions of the FD&C Act or other U.S. laws. A determination that an article of food is no longer subject to refusal under section 801(m)(1) of the FD&C Act does not mean that it will be granted admission under other provisions of the FD&C Act or other U.S. laws.

### 6. What Are the Other Consequences of Failing To Submit Adequate Prior Notice or Otherwise Failing To Comply With This Subpart? (§ 1.284)

In accordance with section 301(ee) of the FD&C Act, the proposed rule (§ 1.278(g)) provided that it is a prohibited act to import or offer for import an article of food without complying with the requirements of section 801(m) of the FD&C Act, or otherwise to violate any requirement under section 801(m). In addition, the proposed rule provided that the United States can bring a civil action in Federal court to enjoin persons who commit prohibited acts and bring a criminal action in Federal court to prosecute persons who commit prohibited acts. In addition, under 21 U.S.C. 335a, FDA can seek debarment of any person who has been convicted of a felony relating to importation of food into the United States.

(Comments) Some comments ask that FDA provide a transition period for implementing the regulation, during which a submitter would not be prosecuted for providing inadequate or incomplete prior notice.

(Response) The requirements of the statute do not allow for this kind of a transition period. FDA will, however, provide guidance on enforcement to its staff containing the agency's policies on injunctions, prosecution, and debarment related to failure to provide timely and accurate prior notice, as well as the agency's policies regarding refusals under section 801(m)(1) of the FD&C Act and holds under section 801(l). FDA intends to include a transition period in this guidance, during which it will emphasize education to achieve compliance. While FDA will nonetheless be authorized to take various types of enforcement action for violations of the prior notice requirements, this planned transition period will allow FDA to focus its resources on the most appropriate circumstances. While this transition period is important, FDA also intends to provide guidance to its staff on enforcing the prior notice requirements after a transition period. These guidance documents will be made available to the public, and FDA will publish a notice of availability in the **Federal Register**.

This enforcement discretion with regard to refusals of foods under 801(m) and 801(l) will not impact FDA's ability to take other actions that may be necessary, such as conducting inspections for food safety and security concerns, determining whether an article of food is subject to refusal under section 801(a) of the FD&C Act at the port of entry, or taking any other action under the FD&C Act. FDA may consider the failure to provide prior notice as a factor in determining whether to examine the product at destination. In addition, it will not impact upon CBP's ability to assess penalties under 19 U.S.C. 1595a(b) or to take enforcement action under any other authority.

(Interim final rule) Section 1.284 of the interim final rule establishes a separate provision to cover the other consequences of failing to submit adequate prior notice or otherwise comply with 21 CFR part 1, subpart I. The interim final rule provides that the failure of a person who imports or offers for import an article of food to submit prior notice is a prohibited act under section 301(ee) of the FD&C Act (21 U.S.C. 331(ee)). The interim final rule also sets out the civil, criminal, and debarment actions that the United States may bring against persons who commit a prohibited act.

### *K. "What Happens to Food That Is Imported or Offered for Import From Unregistered Facilities That Are Required To Register Under 21 CFR Part 1, Subpart H?" (§ 1.285)*

As set out in the preamble to the interim final rule on registration of food facilities under section 415 of the FD&C Act, FDA has decided to include in the prior notice interim final rule the provisions that address what happens when imports from unregistered foreign food facilities arrive at the port. FDA decided this course was most appropriate because, in the first instance, we will be using the prior notice review process to ensure that foreign food facilities are registered. Moreover, FDA believes that the procedures for dealing with food from unregistered foreign facilities should be, as they were in the proposed registration rule, identical in most respects to the prior notice procedures, and thus it makes sense to consolidate them in one regulation.

(Comments) Comments on the registration proposed rule are described in the preamble to the interim final registration rule, published elsewhere in this issue of the **Federal Register**.

(Response) Responses to comments on the registration proposed rule are described in the preamble to the interim final registration rule, published elsewhere in this issue of the **Federal Register**.

### 7. Interim Final Rule (§ 1.285)

FDA revised the proposed rule to provide for more specificity, to clarify the status of food under hold, and to provide a mechanism for FDA review after a hold is imposed.

a. *Failure to register (§ 1.285(a) and (b)).* If an article of food from a foreign manufacturer that is not registered as required under section 415 of the FD&C Act (21 U.S.C. 350d) and 21 CFR part 1, subpart H, is imported or offered for import into the United States, the food is subject to refusal of admission under section 801(m)(1) of the FD&C Act and 21 CFR 1.283(a) for failure to provide adequate prior notice. The failure to provide the correct registration number of any foreign manufacturer if registration is required under section 415 of the FD&C Act and 21 CFR part 1, subpart H, renders the identity of that facility incomplete.

If an article of food from a foreign facility that is not registered as required under section 415 of the FD&C Act and 21 CFR part 1, subpart H, is imported or offered for import, it is subject to a hold within the port of entry for the article unless directed by CBP or FDA under section 801(l) of the FD&C Act unless exported.

b. *Status and movement of held food.* An article of food under hold is considered general order merchandise under section 490(a) of the Tariff Act of 1930, as amended. The food must be moved under appropriate custodial bond. FDA must be notified of the location where the food has been or will be moved within 24 hours of the hold. It must be taken directly to the designated facility, shall not be entered, and shall not be delivered to any importer, owner, or ultimate consignee.

c. *Segregation (§ 1.285(d)).* If a food placed on hold is part of a shipment that contains other articles, the food may be segregated from the rest of the shipment within the port of arrival or where the article is held, if different.

d. *Costs (§ 1.285(e)).* Neither FDA nor CBP will be liable for transportation, storage, or other expenses resulting from a hold.

e. *FDA review after hold (§ 1.285(j)).* After an article of food has been placed on hold, prior notice submitter, the importer, owner, or ultimate consignee may submit a written request asking FDA to review whether the foreign facility is subject to the requirements of section 415 of the FD&C Act. The interim final rule also sets out procedures and timeframes for this review process.

f. *Export after refusal (§ 1.285(f)).* A food under hold may be exported with CBP concurrence and supervision.

g. *No registration or request for review (§ 1.285(g)).* If no registration number is obtained from FDA or no request for FDA review is submitted in a timely fashion after a food is placed under hold, the food will be dealt with as set forth in CBP regulations relating to general order merchandise. It may only be sold for export or destroyed as agreed to by CBP and FDA.

h. *International mail (§ 1.285(k)).* In the case of food arriving by international mail, if required registration is lacking, the article will be held by CBP for 72 hours for FDA inspection and disposition. If the food is held and there is a return address, the parcel may be returned to sender. If there is no return address or the article of food in the parcel appears to present a hazard, the FDA may dispose of or destroy it, at FDA's expense. If FDA does not respond within 72 hours of the CBP hold, CBP may return the parcel to the sender or, if there is no return address, destroy the parcel at FDA's expense.

i. *Food carried by or otherwise accompanying an individual (§ 1.285(h)).* If placed on hold, the individual may arrange to have the food held at the port or exported. If such arrangements cannot be made, the food may be destroyed.

j. *Post-refusal and post-hold submissions (§ 1.285(i)).* To resolve a refusal if an article of food has been refused under § 1.285(a), the facility must be registered and a registration number obtained from FDA. The prior notice must then be submitted in accordance with § 1.283(c).

To resolve the hold if an article of food is held under § 1.285(b) the foreign facility must be registered and a registration number obtained from FDA. FDA must be notified of the applicable registration number in writing by mail, express courier, fax, or e-mail. The notification must provide the name and contact information for the person providing the registration information. The location for delivering this notification will be listed at *http://www.fda.gov*—see Food Facility Registration. If FDA determines that the food should no longer be held, it will notify the person providing the information and CBP the food is no longer subject to hold under section 801(l).

k. *Prohibition on delivery outside of the port (§ 1.285(l)).* An article of food under hold may not be delivered to the importer, owner, or ultimate consignee or transferred by any person from the port or the secure facility until registration is complete and FDA has notified CBP that the article of food is no longer under hold.

l. *Relationship to other admissibility provisions (§ 1.285(m)).* A determination that an article of food is no longer subject to hold under section 801(l) of the FD&C Act is different than, and may come before, determinations of admissibility under other provisions of the FD&C Act or other U.S. laws. A determination that an article of food is no longer subject to hold under section 801(l) does not mean that it will be granted admission under other provisions of the FD&C Act or other U.S. laws.

## IV. Issuance of an Interim Final Rule and Effective Date; Comments

We are issuing this rule as an interim final rule, with an opportunity for public comment. Although we are seeking comment on this interim final rule, it will be in effect on December 12, 2003. Thus, its requirements will be in effect and have the force and effect of law from that date until they are modified by the issuance of a final rule. FDA will, however, provide guidance on enforcement to its staff containing the agency's policies on injunctions, prosecution, and debarment related to failure to provide timely and accurate prior notice, as well as the agency's policies regarding refusals under section 801(m)(1) of the FD&C Act and holds under section 801(l). FDA intends to include a transition period in this guidance, during which it will emphasize education to achieve compliance. While FDA will nonetheless be authorized to take various types of enforcement action for violations of the prior notice requirements, this planned transition period will allow FDA to focus its resources on the most appropriate circumstances.

The comment period on this interim final rule will open today for a period of 75 days. Moreover, to ensure that those that comment on this interim final rule have had the benefit of our outreach and educational efforts and have had experience with the systems, timeframes, and data elements, FDA intends to reopen the comment period for an additional 30 days in March 2004. In addition, this date will coincide with the issuance of the plan by FDA and CBP relating to timeframes.

FDA invites public comment on this interim final rule. The agency will consider modifications to this interim final rule based on comments made during the comment period. Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) written or electronic comments regarding this interim final rule by [75 days after December 12, 2003.]. Two copies of any comments are to be submitted, except that individuals may submit one copy. Submit one electronic copy. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

As noted, this regulation is effective on December 12, 2003. FDA will address comments received and confirm or amend the interim final rule in a final rule. The agency, however, will not consider any comments that have been previously considered during this rulemaking.

## V. Analysis of Economic Impacts

### *A. Final Regulatory Impact Analysis*

FDA has examined the economic implications of this interim final rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. FDA has determined that this interim final rule is a significant regulatory action as defined by Executive Order 12866.

Comments on the economic analysis of the proposed prior notice rule covered several major issues, including: The costs estimated to learn the rule, the costs to coordinate prior notice information, the costs of filing through a broker, and the costs of delayed arrival (including truck time costs and the costs for lost value of products). We address all comments relevant to the economic analysis in detail as each issue appears in the analysis.

1. Need for Regulation

Section 307 of the Bioterrorism Act of 2002 requires prior notice of all food imported or offered for import into the United States. If FDA fails to issue a final regulation by December 12, 2003, section 307 of the Bioterrorism Act provides for a default minimum period of advance notice that is not fewer than 8 hours and not more than 5 days before an article of food is imported or offered for import into the United States. This regulation is needed to implement the statutory provisions.

2. Interim Final Rule Coverage

Unless excluded, this interim final rule applies to all FDA-regulated food for human and animal consumption that is imported or offered for import into the United States. This includes food that is imported for export, food transshipped through the United States to another country, and food for use in an FTZ. This interim final rule does not apply to food that is imported then exported from the port of arrival without leaving the port; meat, poultry, or egg products that are under the exclusive jurisdiction of USDA; food carried by or otherwise accompanying an individual when entering the United States for personal use. For the purpose of this rule, the definition of food does not include food contact substances (including food packaging), pesticide chemicals, or pesticide chemical residues.

As required by the Bioterrorism Act, the notification must provide the identity of the article, manufacturer, shipper, and grower (if known), the FDA Country of Production, the country from which the article is shipped, and the anticipated port of arrival. In addition, the notification must provide the identity of the person who submits and transmits the prior notice, the importer, the owner, the consignee, the carrier, the CBP entry identifier, anticipated time and date of arrival, anticipated shipment information, and, if the food has been refused admission and required to be held, the location where it is held.

For food shipments arriving in the United States through international mail, notification of the import must be sent before the article is mailed. Only the prior notice information that is relevant to that type of shipment must be submitted for articles of food arriving by international mail. Notification of mail entries will be received only through the FDA PN System Interface. For food carried by or otherwise accompanying an individual when entering the United States that is not for personal use, such as food for sale that is brought into the United States in baggage, prior notice must be submitted through the FDA PN System Interface.

a. *Number of establishments affected.* Using 2001 fiscal year information from OASIS (industry codes 02 through 52, 54, and 70 through 72), FDA has estimated that there are 77,427 importers and consignees who receive imported food shipments. Commenters were concerned that this importer number represented only importers of edible food products, and not such items as food packaging. These commenters concluded that FDA's estimate was too low. OASIS does include all importers of food, for both humans and animals, and food-related items and therefore does not underestimate the number of food importers. Also, because food contact substances, including food packaging, are excluded from interim final rule coverage, our estimate of importers should sufficiently account for food importers that might not have been formally captured by the OASIS data.

Comments also indicated that they wanted an expansion of the persons allowed to submit prior notice. The proposed rule had restricted the submission of prior notice to U.S. importers or U.S. purchasers (or their brokers). For the interim final rule, FDA has authorized the submission of prior notice by any person.

Using information from the OASIS system, FDA has determined that there are approximately 100,000 foreign manufacturers/processors of an article of food. We assume here that foreign manufacturer/processor costs associated with this interim final rule will be spread across the supply chain; we therefore do not directly address the distribution of costs. We think it probable, however, that most of the ongoing costs of this interim final rule will be borne by consumers in the form of higher retail food prices.

i. *New and closing importer establishments.* In addition to the U.S. importers currently operating, in future years some new import businesses will open and some existing import businesses will close. According to the Small Business Administration, in 2001 about 10 percent of all businesses were new and 10 percent of all businesses closed. These new importers will have to become familiar with the FDA prior notice system, and some may need to obtain computer equipment and Internet access to comply with prior notice requirements.

ii. *Baseline.* FDA considers the baseline for this analysis the state of the world before the Bioterrorism Act, and we assume this baseline has zero costs and benefits.

b. *Current state of the world.* The majority of the information that will be required by section 307 of the Bioterrorism Act now is supplied at the time of entry by a customs broker or self-filer, and usually is submitted electronically. Although importers already must notify CBP of entries, the Bioterrorism Act requires notification to FDA before the food shipment reaches the U.S. port of arrival. This requirement will change the current practice of notifying CBP and then subsequently FDA upon arrival (and as long as 15 days past arrival based on the time the consumption entry may be filed with CBP).

OASIS showed that approximately 2.9 million food entry lines were imported via sea and air transportation in fiscal year 2002. Information on food-importing practices indicates that importers bringing food products into the United States by vessel notify CBP and FDA before their arrival. Importers using vessels as their mode of transport for products can notify CBP well in advance of the actual shipping date, but CBP will not certify the entry until 5 days before the vessel is expected to dock at a U.S. port. FDA is notified of the shipment then, through CBP, as early as 5 days before the vessel's arrival at a U.S. port.

Importers bringing food products in by airplane can notify CBP of their intent to import food into the United States no more than 24 hours before the scheduled flight departure time, but cannot certify their cargo manifests with CBP until the airplane has taken off from the airport of the exporting country ("wheels-up"). FDA is notified after "wheels up", once the import entry has been filed and certified by CBP. CBP has informed FDA that they receive flight information for 87.6 percent of the flights at the time of "wheels up."

OASIS showed that around 2.3 million entry lines of food were imported into the United States via ground transportation in fiscal year 2002. The usual practice today for food brought in by truck or train (products coming directly from Canada or Mexico) is not to notify CBP until arrival. (Filers can certify their entry data up to 24 hours before arrival, but CBP does not give a "screening response" to the entry until actual arrival.) Even though these importers likely have the orders and invoices for these products in advance, they do not currently notify CBP until the arrival of the food or thereafter.

The constraints prior notice places on those wishing to import food into the United States depend on: When the order for the product is placed, the minimum prior notice submission time, and the manufacturing/processing or other location where the product to be imported is held before importing into the United States. A longer prior notice submission time would change more business practices for food operations nearer to the U.S. border than for those farther away from the United States. For example, an 8-hour prior notice minimum timeframe will not significantly affect most food shipments imported from China, because they are likely to come by sea or by air and the length of the journey by either mode of transportation is longer than 8 hours. If the food to be imported is instead located in Mexico or Canada, and the prior notice submission timeframe is 8 hours, there is a greater likelihood that the food is located less than 8 hours driving time from the U.S. border, and transporting some shipments to the U.S. buyer of the product within a specified time would be much more difficult. Whereas there is no expectation that a product ordered from China will arrive in the United States in 8 hours, in the case of some products from Mexico or Canada, normal business practices do include the expectation of a quick or rushed delivery to a U.S. destination; this expectation may not be met for some prescribed minimum prior notice submission timeframes.

Given the standard importing business practices described in the previous paragraphs, and given the restraints that prior notice places on food importers using land transportation (and in some cases air transportation), we classify options for this analysis by minimum prior notice time based on costs for those shipments of imported food that arrive in the United States by ground and, in longer minimum submission time options, by air transportation as well. Therefore, while we include food shipments imported by vessel in the learning, coordinating, and submitting costs of each option considered, we do not calculate a lost product value or waiting time for products arriving by vessel because they are not constrained by the minimum prior notice timeframes considered in any of the options. Highly perishable food products are generally not imported to the United States by sea.

### 3. Regulatory Options Considered

Comments on the estimates used in the analysis of the proposed rule indicated that FDA should reexamine the following factors: (1) The time it takes to learn about the prior notice rule; (2) the time it takes to coordinate information for prior notice submission; (3) the number of entries expected yearly; (4) the lost value for perishable products; (5) the cost of carrier waiting time; and (6) the costs to current BRASS users. These comments have led FDA to assess additional options, and revise the estimated costs for other options.

We analyzed 12 options for a prior notice regulation. Each option covers all food subject to the interim final rule that is imported to the United States; the mode of transportation for the food is specifically addressed in options where minimum prior notice time constrains importation:

*Option 1.* Current state of the world, pre-Bioterrorism Act (baseline).

*Option 2.* Prior notice time of 1 hour (constrained by shipments arriving by land modes of transport); electronic submission of information. This option would require the persons responsible for all food imported or offered for import into the United States to notify FDA of their intent to import articles of food through an importer, customs broker, purchaser, or other agent. This option applies to all imported foods subject to the interim final rule. Submission of prior notice information must be electronic. Any change in prior notice information requires resubmission of corrected or new information.

*Option 3.* Require all components of option 2, but lengthen the minimum prior notice time to 2 hours (constrained by shipments arriving by land transportation modes).

*Option 4.* Require all components of option 2, but lengthen the minimum prior notice time to 4 hours (constrained by shipments arriving by air and land modes of transport); electronic submission of information.

*Option 5.* Require all components of option 2, including a 1-hour minimum prior notice time for vehicles, but lengthen the minimum prior notice time to 4 hours for articles of food arriving by train and by air, and 8 hours for articles of food arriving by vessel; electronic submission of information.

*Option 6.* Require all components of option 2, but lengthen the minimum prior notice time to 2 hours for articles of food arriving by vehicle, 4 hours for articles of food arriving by train and by air, and 8 hours for articles of food arriving by vessel; electronic submission of information (interim final rule).

*Option 7.* Require all components of option 4, but allow some prior notice information to be revised 1 hour before arrival at a U.S. port.

*Option 8.* Require all components of option 2, but lengthen the minimum prior notice time to 8 hours (statutory self-executing provision).

*Option 9.* Require all components of option 7, but allow some prior notice information to be revised 1 hour before arrival at a U.S. port.

*Option 10.* Require all components of option 2, but lengthen the prior notice time to 12 noon of the calendar day before crossing the U.S. border.

*Option 11.* Require all components of option 9, but allow some prior notice information to be revised 1 hour before arrival at a U.S. port.

*Option 12.* Require all components of option 9, but allow some prior notice information to be revised 2 hours before arrival at a U.S. port (proposed rule).

a. *Option 1: Current state of the world, pre-Bioterrorism Act.* Having no prior notice requirements is option 1 in our analysis. The Bioterrorism Act requires that FDA issue prior notice regulations or default times take effect, so this option is not legally viable. The OMB cost-benefit analysis guidelines recommend discussing statutory requirements that affect the selection of regulatory approaches. These guidelines also recommend analyzing the opportunity cost of legal constraints that prevent the selection of the regulatory action that best satisfies the philosophy and principles of Executive Order 12866. This option will serve as the baseline against which other options will be measured for assessing costs and benefits.

b. *Option 2: Minimum prior notice timeframe of 1 hour; electronic submission of information; any change in information requires resubmission*—i. *Costs*—(1) *Learning costs.* The party responsible for submitting prior notice to FDA will incur administrative and notification costs to comply with this regulation. The responsible party likely will become aware of the prior notice requirement through normal business activities: reading the trade press, reading industry news, FDA outreach, trade outreach, or conversations with other business operators who also must comply with prior notice. Once the submitter of the information becomes aware of the regulation, he or she will need to learn the requirements of the regulation, which will require finding a copy of the prior notice requirements and reading and understanding them.

In response to comments received, FDA has re-estimated the costs of learning about the prior notice regulation. Comments said that the FDA underestimated the learning costs in the proposed rule, because of the large change in business practices. According to the comments, the importer, depending upon its size, will have at least two trained filers for CBP and FDA-related entries. Commenters also stated that it is quite likely that an entire brokerage staff, including supervisors, will need to understand the FDA prior notice system.

Some comments suggested that the estimated 1 and 2 hour learning time for the rule would in fact be an all day training event. Comments recalled having a daylong seminar to learn about OASIS when it was introduced. In response to the information these comments submitted, in this final analysis, FDA assumes that one manager and two subordinates from each importing business will attend an 8-hour training session on the prior notice regulation.

FDA used wage rates from the Bureau of Labor Statistics National Compensation Survey (Ref. 3), doubled to include overhead costs, to estimate the cost of the time to learn the prior notice requirement. For an administrative worker, the cost per hour is $25.10; for a manager, $56.74. FDA assumes that two administrative workers and one manager will be trained for 8 hours each on the prior notice requirements. As shown in table 1B of this document, total costs of this learning activity are about $66 million for the first year.

Given the 10 percent turnover in business reported by the Small Business Administration, FDA expects 10 percent of the total search costs to be incurred in each subsequent year after prior notice is in effect as new firms enter the industry. This cost is also shown in table 1B of this document.

TABLE 1B.—COST TO LEARN ABOUT THE PRIOR NOTICE REQUIREMENTS

| | Manager cost | Administrative worker cost (two workers) |
|---|---|---|
| Number of firms | 77,427 | 77,427 |
| Wage rate per hour for manager and administrator Worker (including overhead) | $56.74 | $25.10 |
| 1-day learning seminar | *8 | *8 |
| First year one time learning costs | $35,145,664 | $31,094,684 |
| Total first year learning costs | | $66,240,000 |
| Annual learning costs for new entrants | | $6,624,000 |

*Hours.

(2) *Computer acquisition costs.* Both the Produce Marketing Association (PMA) and the National Food Processors Association (NFPA) submitted comments to FDA before FDA published the proposed rule that indicated that about 96 percent of the food industry has readily available Internet access. The American Feed Industry Association, which represents animal food manufacturers, also agreed with NFPA's estimate that 96 percent of the food industry has electronic transmitting capacity.

Since all prior notices must be submitted electronically, we estimate that there are 3,097 responsible parties without Internet access (4 percent of the 77,427 importers). These persons will have to purchase a computer and gain Internet access to transmit the information via a prior notice screen. This one-time computer cost and a recurring Internet access cost for these facilities are shown in table 2 of this document.

Again, given a 10 percent turnover rate for businesses in the import industry, we expect there to be new businesses in the future that may need to purchase electronic transmitting capabilities. With the passage of time, persons will likely purchase this computer equipment in the ordinary course of business, not solely to comply with prior notice. We include an estimate of this cost for new entrants to ensure that we do not underestimate the costs of electronic transmitting capacity.

A few comments indicated that they did not agree with the estimated cost for Internet access; they stated that the cost would be higher. Since FDA will be receiving most prior notices through ABI/ACS, which is an electronic submission system, and since the FDA PN System Interface will be used for mail and other non-ABI/ACS transmissions and is Web-based, FDA does not agree that Internet access rates should be estimated at a higher rate.

TABLE 2.—FACILITIES AND RESPONSIBLE PARTIES WITHOUT INITIAL INTERNET ACCESS

| | |
|---|---|
| Number of facilities | 3,097 |
| Computer equipment cost per facility | $2,000 |
| Annual cost of Internet access ($20 per month × 12) | $240 |
| Search costs for equipment and access ($25.10 × 8 hours) | $201 |
| Total First Year One Time Cost of Electronic Transmitting Capacity | $7,559,777 |
| Annual one time cost of electronic transmitting capacity for firms entering industry in subsequent years | $755,978 |

(3) *Annual costs to submit prior notice entry lines.* FDA used OASIS information to determine that about 5.2 million entry lines of food were imported into the United States in fiscal year 2002, including formal mail and express carrier (*e.g.*, Federal Express) entries. An "entry line" is an FDA term used by OASIS, which refers to a line on an invoice that reflects a certain article specific to manufacturer/processor or packaging: *e.g.*, 100 cases containing 48, 6-oz cans of tuna.

Comments on the proposed rule were concerned that the FDA fiscal year 2001 OASIS entry line estimate (4.7 million lines) was too low. Some comments said that not all the food categories that will need to submit prior notice were included in the count; other comments said that the prior notice requirement would, because of the information required, increase the number of lines per entry by a significant amount.

According to FDA OASIS codes, all formal entries for human and animal food were included in the OASIS line count. This count included all food contact substances, including the bulk chemicals and polymers used to produce food-packaging material. The OASIS line count also included the codes for beer and wine, but not distilled spirits (*e.g.*, bourbon, whiskey, gin, etc.).

The OASIS entry line totals do not include informal entries for mail or express carrier shipments, or for food brought into the United States as personal baggage, not for personal use, but intended for sale or other distribution use. Persons bringing food into the United States by these means, however, are required to submit prior notice to the FDA. Therefore, even though food contact substances, including food packaging, pesticide chemicals, and pesticide chemical residues are no longer subject to the interim final rule, we do not reduce the estimate of imported food entry lines in order to capture informal food lines and other imported food items that are not currently included in the OASIS line estimates. Rather than adjust the total line estimate downward to account for the exclusion of food packaging, pesticide chemicals, and pesticide chemical residues we adjust the estimate of lines upwards to capture food lines not in OASIS. The upward adjustment should be regarded as net of food contact substances and food packaging.

For the prior notice interim final rule, then, FDA has re-estimated the number of entry lines expected to be filed yearly for prior notice. The FDA PN System Interface and ABI/ACS are estimated to handle up to 25,000 prior notice submissions on a usual business day, for a projected yearly total of 6.5 million submissions. (FDA's prior notice system will operate 24 hours a day, 7 days a week; however, since most shipments enter the United States during a normal business work week, Monday through Friday, we estimate the projected prior notice line total as 25,000 daily submissions × 260 days = 6.5 million lines per year.) This updated total includes estimates for informal and other entries not currently captured by OASIS.

According to OASIS data, the average import entry contains 2.6 lines, which means that there are typically more than two different articles of food per import entry: *e.g.*, 100 cases of canned tuna and 50 cases of canned peaches in the same shipment. A prior notice must be filed for each of the lines in an entry.

FDA estimates that it will take, on average, 1 hour to submit an import entry of 2.6 lines. This time is an average; some entries will take longer than 1 hour to complete and other entries will take less than 1 hour to complete.

This 1-hour estimate includes 45 minutes of an administrative worker's time to gather information to initially complete the prior notice, and then 15 minutes of a manager's time to verify that the information is correct. Assuming that there is an average of 2.6 lines per entry, and each line requires a prior notice, then each line actually takes about 23 minutes to complete.

Comments on the prior notice proposed rule agreed with the FDA estimation for time to fill out the notice. Comments also agreed that once prior notice submitters were familiar with the information required, an hour was a reasonable time estimate. Some comments, however, suggested that the time to make amendments and updates to the prior notice had not been included or was not sufficient in the proposed rule. FDA believes the 1 hour estimate is appropriate for the following reasons: (1) The interim final rule does not contain update or amendment provisions as the reduced time for submitting a prior notice negated the need for them; (2) CBP Form 3461, (the entry document upon which information is provided to CBP) carries an estimated burden of 15.5 minutes and FDA Importer Entry Notice (as required by section 801 of the FD&C Act) carries an estimated burden of 8.5 minutes (Paperwork Reduction Act estimates); and (3) many comments agree with the hour estimate for submitting prior notice (23 minutes per line).

Comments were also concerned that FDA had not included costs to have a licensed customs broker file prior notice submissions in the costs estimated for the proposed rule. FDA specifically made no assumptions in its analysis of the proposed rule about who would file the prior notice. Our estimate covered anyone who was authorized to file a prior notice based on the anticipated number of entry lines. The analysis implicitly assumed that if an importer, owner, or consignee hired a customs broker to submit their prior notices, the broker would do so at the marginal cost. In the competitive market for broker services, this assumption is reasonable.

However, FDA prior notice may now be submitted through ABI/ACS for most importations, so the burden of prior notice submission will most likely be on the customs brokers that normally file with CBP. Some comments said that the current customs broker cost to file an entry with CBP is $110, with the additional filing of prior notice increasing these costs by up to 70 percent. Other comments also indicated that the additional costs to file prior notice would be between $50 or $100 or more for an entry.

Based on comments and FDA's own research on the broker costs, FDA agrees that the average costs to submit prior notice will be higher than the $33 per entry estimated in the proposed rule. For this interim final rule, FDA used information provided by commenters to estimate $75 as the cost to file prior notice. FDA believes that using a midrange estimate is appropriate for this cost since filing prior notice through ABI/ACS should efficiently combine transactions costs for brokers submitting information to both CBP and FDA.

Using the OASIS data indicating that the average imported entry contains 2.6 lines, we can then divide the expected yearly 6.5 million total lines by 2.6, which results in 2.5 million expected import entries. Table 3 of this document shows that the annual cost of prior notice submissions based on 2.5 million entries will be about $187.5 million.

TABLE 3.—COST TO FILL OUT PRIOR NOTICE SCREENS BY IMPORT ENTRY

[Must Be Electronic]

| | |
|---|---:|
| Broker cost per entry to submit prior notice | $75 |
| OASIS entry total based on 6.5 million lines | 2,500,000 |
| Total Annual Costs (of all prior notice screens based on 2.6 lines per entry, including updates and amendments to the information) | $187,500,000 |

(4) *Information coordination costs.* As previously stated, FDA received numerous comments on the time it takes to file a prior notice for each line, with some comments agreeing that an entry will take an hour to complete once firms learn how to submit the information. However, comments were concerned that the preparation cost to coordinate the information needed for each prior notice had not been calculated.

In particular, comments said that firms will need to teach their suppliers, manufacturers/processors, customers, drivers, warehouses, growers, carriers, and shippers about the prior notice requirements regardless of whether each of the parties has filing responsibilities. FDA agrees. This new collection will necessitate some additional coordination of information among the parties involved in importing the article of food into the United States.

FDA assumes it takes about 2 business days (16 hours) for an administrative employee of the prior notice-submitting firm to coordinate with others to set up the new business practices required to receive the information needed for prior notice. We assume this set-up time will be sufficient to coordinate information for existing importing accounts. Table 4 of this document reports the costs of this information gathering and coordinating activity.

Because we expect some importing firms to enter and leave the industry every year, so do we expect importing firms to experience a turnover rate for their import accounts. FDA assumes that the turnover rate on these types of accounts is similar to the entry and exit rate of firms. We therefore assume that 10 percent of the firms' accounts each year are new accounts for which prior notice coordination of information is needed. This cost is also presented in table 4 of this document.

TABLE 4.—INFORMATION GATHERING AND COORDINATION FOR PRIOR NOTICE

| | |
|---|---|
| Number of firms submitting notices | 77,427 |
| Administrative worker wage rate (doubled to include overhead) | $25.10 |
| Time to coordinate existing accounts | 16 hours |
| First year cost of coordination of information on current accounts | $31,094,683 |
| Annual cost of coordination of information on new accounts | $3,109,468 |

ii. *FDA costs. Information Technology.* We assume that FDA's information technology (IT) costs for this option and each option hereafter are the costs of interfacing with ABI/ACS to receive prior notice through OASIS for most FDA-regulated food subject to this interim final rule. FDA is developing an FDA PN System Interface to receive prior notice information for import entries that cannot be accommodated through ABI/ACS, mainly mail and baggage entries, and prior notices for food refused under section 801(m) of the FD&C Act.

FDA has allocated $12.5 million for the development of the FDA prior notice system for fiscal year 2003. This total is broken down into $7,400,000 for infrastructure design, procurement, setup, operations, and maintenance of computer system hardware and system and database software and licensing, plus $5,100,000 for contractor services for the design, development, testing, and implementation of the FDA PN System Interface and the extensive enhancements required by OASIS to support prior notice. These costs are summarized in table 5 of this document. Also included in table 5 are the costs CBP has incurred to accommodate prior notice. CBP costs include modifying ABI/ACS, training, and outreach.

In the next few years, CBP plans to have its new system, ACE (Automated Commercial Environment), operational. The ACE system will replace the current ABI/ACS as well as combine other CBP entry functions and transactions. Prior Notice submission will be compatible with ACE. It is quite likely that importers will benefit from the enhanced functions of the new ACE system.

TABLE 5.—FDA PRIOR NOTICE SYSTEM COSTS

| | |
|---|---|
| Infrastructure design and implementation | $7,400,000 |
| Contractor services | $5,100,000 |
| FDA system interface costs | $12,500,000 |
| CBP ABI/ACS system modification costs | $500,000 |
| Total prior notice system costs | $13,000,000 |

*Human Resources.* The implementation of prior notice does not specifically call for the hiring of additional FDA border or inspectional staff. However, even before the passage of the Bioterrorism Act, FDA hired 300 additional consumer safety officers to help with the inspection of articles of food. And with the implementation of the prior notice interim final rule, it is quite likely that FDA will need to concentrate even more of its human resources on enforcement activities. Currently, FDA is working on a memorandum of understanding with CBP that would allow FDA to commission CBP's help as needed for inspections and enforcement activities related to the prior notice rule.

*Destruction of Foods.* FDA will be responsible for the destruction of articles of food that come into the United States via international mail and whose prior notices are considered inadequate or refused. FDA does not have an estimate of these destruction costs. We expect these destruction costs to be minimal, however, based on the fact that these will be personal food shipments and that there were relatively few formal mail entries (38,000) for articles of food in the OASIS data for fiscal year 2002.

iii. *Current operating practices affected*—(1) *Food importers currently using BRASS.* In response to comments, FDA and CBP have agreed to allow prior notice information to be filed through ABI/ACS for most articles of food. By allowing prior notice to be submitted through ABI/ACS, FDA has eliminated the duplicative information collection that would have resulted from the proposed stand-alone FDA Web-based system. While combining agency efforts has eliminated duplicative submission of information for many food importers, the combined system will increase submission requirements for those food importers who use BRASS.

BRASS is a CBP program that allows expedited arrival processing for high-volume, repetitive shipments that have been judged by CBP to be low risk. BRASS processing is not compatible with the electronic submission of prior notice information because entry information for BRASS shipments is not filed until entry summary, long after the food has crossed the border. Therefore, those food importers who currently use BRASS and its expedited arrival process will no longer be able to do so once prior notice submission is required.

Currently, importers who qualify to use BRASS show paperwork at the border. These importers then only have to submit an entry summary after arrival (up to 10 business days later). In contrast, non-BRASS importers must submit an entry and a later entry summary. Since prior notice is required before arrival, importers of FDA-regulated products will no longer be able to submit information to CBP using BRASS; they must submit both the entry information (which includes prior notice requirements) and then a later entry summary to CBP.

Data from CBP show that about 630,000 entry lines were submitted through BRASS for FDA-regulated products, including foods, in fiscal year 2002. We use this information to estimate the increased submission costs for these importers once they are no longer able to use BRASS to expedite entry of their products. Increased submission costs come in the form of having to make two submissions through CBP instead of the one summary entry after arrival in the United States. We calculated the cost of the one additional transmission of information, now required due to the prior notice information that is needed before arrival, in table 3 of this document. By using these same costs per import entry ($75), we can account for the extra costs for BRASS users. Table 6 shows that the extra submission of information by importers no longer able to use BRASS will be about $18 million per year.

Being able to use BRASS not only allows the condensing of the submission of required import information, but also allows the importer's carrier or transporter to spend less time crossing the border. BRASS users must stop at the border only long enough for a CBP official to "wand" the barcode information pertaining to their shipments and assign a CBP entry number to the shipment. Once food importers are no longer able to use BRASS, however, they must not only submit more information on the shipment than was previously required at arrival, but they also will no longer be able to cross the border as quickly. Because former BRASS entries will no longer be able to get through the border checkpoints as easily as they used to, we include here the cost of an extra half-hour of truck time per BRASS entry.

Using one comment's estimate of the cost of truck time, $250 per hour, we can calculate the yearly additional cost of wait time at the border for food importers who were former BRASS users. Table 6 of this document shows the cost of the additional truck time for BRASS users to be about $30 million annually.

TABLE 6.—ADDITIONAL COSTS FOR BRASS USERS

| | |
|---|---|
| Additional Submission Costs: | |
| Total cost per import entry | $75 |
| FY 2002 BRASS line total for FDA-regulated products | 630,000 |
| BRASS yearly entry total (2.6 lines per entry) | 242,308 |
| Additional annual costs of submissions for BRASS users | $18,173,100 |
| Additional border wait time: | |
| Cost per half hour | $125 |
| BRASS yearly entry total (2.6 lines per entry) | 242,308 |
| Additional annual border wait costs for former BRASS users | $30,288,500 |
| Total annual additional food importing costs for BRASS users | $48,462,000 |

(2) *Loss of value for highly perishable products.* A 1-hour minimum prior notice requirement would be less likely to change current food importing practices than would a longer minimum time requirement for prior notice submission. Pre-proposal comments received from Canadian and Mexican perishable seafood processors and produce growers indicated they would prefer the minimum prior notice time to be set at 4 hours or less. The seafood processors and produce growers asked for the shorter minimum prior notice time because the source of these food products often is close to the U.S. border, and the products are perishable.

For example, Canadian fruit and vegetable producers said that such products as "leafy vegetables, green onions, cabbage, cauliflower, new potatoes, sweet cherries, and berries are harvested within hours of arrival at the U.S. border and cannot withstand delays, especially during the extreme heat of summer and early fall when the products are in season." As another example, a produce company from Mexico commented that growers typically harvest produce in the morning, pack and cool the fruit in the afternoon, and then start the drive to the U.S. border during evening hours. Some, but not all, of the border ports are open in the evenings during the height of the Mexican produce season. If notice to FDA is required by 12 noon the calendar day before arrival at the border, as FDA proposed, it is unlikely that these produce products could be harvested in the morning in Mexico and then enter the United States by the same evening, because not all the information would be prepared in time to meet the submission deadline in the proposed rule, which was 12 noon the day before arrival in the United States.

Canadian seafood industry comments said that 90 percent of all fresh seafood sales are same day orders that are processed, sold, and shipped in the same day. They also commented that if buyers were required to submit seafood orders early (by 12 noon on the calendar day before arrival) because of prior notice requirements, they would tend to order short, rather than risk being left with a decomposing inventory. Comments also said that many perishable seafood contracts with shippers call for a variety of species to be delivered depending on what could be harvested that day; thus, species and the specific amount of fish in an import entry will be uncertain for longer prior notice timeframes.

From these comments, it is clear that at least in some industries, when the order for the shipment is received, when the prior notice is submitted, when the shipment is loaded, and the loaded shipment's location relative to a U.S. border all play roles in determining how the requirement for prior notice will affect current business operating practices.

FDA expects that there will be some imported shipments by vehicle for which the order was received just before the shipping time, some shipments for which the composition of the product has changed since the time when the prior notice was submitted, and some shipments for which other changes to the information on the prior notice must be made. Importers whose shipments fall into this "changed" category must resubmit the prior notice or risk that their products will be refused admission into the United States and held if the notice is deemed inadequate.

FDA does not have information on the number of shipments that, under this option, would need to submit or resubmit prior notice information due to a late order or a change in the information provided on the original notice. We know that changes will occur for some percentage of all prior notices; comments did not indicate the percentage of notices that would have to be resubmitted.

Depending on the U.S. entry point, however, comments FDA received before publishing the proposal indicated that between 40 and 100 percent of shipments from Canada and Mexico are loaded less than 4 hours before arrival. Therefore FDA believes that it is this subset of importers, importing perishable products not far from the U.S. border, that will be most concerned with the prior notice submission timeframe. Based on this information, FDA bases its prior notice resubmission percentage rates and prior notice arrival time on the 4 hours required under option 4.

Option 4 is to have prior notice be required 4 hours before arrival, with the resubmission rate at 20 percent; one-half the comments' lower bound estimate of 40 percent. By using option 4 as the base option, we can then estimate resubmission rates for prior notice arrival times that are less than 4 hours. We assume, then, that for each hour reduction in required prior notice arrival time, the resubmission rate for importers of perishable produce and seafood (based on their location to the border and order placement) is cut in half. Thus, for a 3 hour prior notice timeframe, we assume the resubmission rate for notices will be 10 percent, for a 2 hour prior notice timeframe the resubmission rate for notices will be 5 percent, and for a 1 hour prior notice timeframe (this option) the resubmission rate for notices is 2.5 percent.

(3) *Loss of value for perishables.* The following paragraphs and tables outline how FDA calculated a loss in product value to account for the time that perishable produce and seafood from Canada and Mexico might have to wait to cross the border due to prior notice resubmission. This wait occurs if prior notice needs to be submitted or canceled and resubmitted due to shipment changes when the shipment is closer to the border than the 1 hour required; the transporter of the shipment must wait for the minimum prior notice time to elapse before crossing the border or risk being denied entry.

Comments from Canadian and Mexican perishable seafood and produce producers indicated that the mode of transport that causes the most concern for delays are shipments arriving in the United States by truck. Some comments, however, indicated that some perishable products might arrive via air transportation, and that air flights from Latin America and even potentially some countries in Europe could take less than 8 hours and in some cases less than 4 hours.

FDA has examined flight times to the countries suggested by comments. FDA does not believe that articles of food arriving in the United States on flights from South America or from Europe will be delayed by the prior notice requirement. However, FDA does believe that perishable products being flown in from Central America might experience some delay, and therefore lost product value, as a result of prior notice. We will begin to include the products from these countries in option 4, minimum prior notice time of 4 hours.

Information on perishable produce and seafood from Canada and Mexico used in this analysis represents yearly shipments of each product regardless of mode of transport. We assume most of these shipments arrive in the United States by truck or other ground transportation, given the proximity of Mexican and Canadian processors to the border, but it is possible that some shipments by air and sea are included in this count. These yearly all-inclusive totals should therefore be sufficient to account for any delay in time that importers of food shipments from Canada and Mexico may experience.

Table 7 of this document shows the volume of fresh, perishable produce imported into the United States from Mexico for the calendar year 2001 (Ref. 4). Produce was included in the count if it was considered 'highly or very highly perishable' (Ref. 5) and if the produce was not regulated under section 8e of the Agricultural Marketing Agreement Act of 1937 (AMAA). Products currently regulated by the AMAA (including, tomatoes, avocadoes, oranges, dates, hazelnuts, grapefruit, table grapes, kiwi fruit, limes, most olives, onions, Irish potatoes, plums, prunes, raisins, and walnuts), are required to notify USDA at least 1 day before arrival to make arrangements for inspection and certification of the product they are importing. These products therefore are not included in the count because they already have business practices in place that would accommodate the prior notice requirements provided in this option.

Several comments wanted products under the AMAA and products that are somewhat less perishable to be included in the perishability loss of value calculation. FDA has decided not to include these products in the lost value calculation; products under the AMAA already have operating practices in place to ensure they provide notice before arrival and those products that are less than highly perishable, such as potatoes, are not going to lose value because of the prior notice times presented in these options. FDA will expand its analysis to include the cost of additional truck time for longer submission times for all products being imported into the United States. FDA agrees with the comments that stated that the cost of truck time from a delay at the border is a real cost regardless of a product's perishability.

Multiplying the volume of Mexican produce that was imported into the United States in 2001 by the current U.S. border prices per pound (Ref. 6) for these products gives an estimate of wholesale revenue. Then we convert the wholesale revenue to retail revenue using the retail price mark-up on produce in the United States. We will increase the wholesale revenue by 100 percent in these estimates to represent a reasonable retail price mark-up rate across produce commodities in the United States (Ref. 7). Some comments did not agree with FDA's calculation of the spread between wholesale and retail prices for perishable products. We reexamine our choice of the 100 percent mark-up rate in a sensitivity analysis presented later in the costs section.

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Table 7.--Highly Perishable Produce Imported From Mexico

| Perishable Produce From Mexico | Total Volume for 2001 (100,000 lb units) | Current Wholesale Price ($ per lb) (Sept. 2002) | Total Revenues Wholesale ($) |
|---|---|---|---|
| Cucumbers | 6,491 | 0.29 | 188,239,000 |
| Peppers (all varieties) | 6,088 | 0.53 | 322,664,000 |
| Squash | 4,158 | 0.71 | 295,218,000 |
| Mangoes | 3,461 | 0.57 | 197,277,000 |
| Papaya | 1,587 | 0.45 | 71,415,000 |
| Broccoli | 1,138 | 0.65 | 73,970,000 |
| Eggplant | 887 | 0.40 | 35,480,000 |
| Asparagus | 856 | 1.29 | 110,424,000 |
| Sweet corn | 828 | 0.26 | 21,528,000 |
| Strawberries | 676 | 0.96 | 64,896,000 |
| Beans | 559 | 0.58 | 32,422,000 |
| Radishes | 516 | 0.31 | 15,996,000 |
| Fruits-other | 426 | 2.04 | 86,904,000 |
| Vegetables-other | 365 | 2.80 | 102,200,000 |
| Greens | 298 | 0.48 | 14,304,000 |
| Spinach | 197 | 1.375 | 27,087,500 |
| Green peas | 129 | 2.20 | 28,380,000 |
| Okra | 112 | 0.80 | 8,960,000 |
| Berries-(miscellaneous) | 78 | 1.67 | 13,026,000 |
| Raspberries | 32 | 4.40 | 14,080,000 |
| Artichokes | 23 | 1.50 | 3,450,000 |
| Mushrooms | 7 | 1.60 | 1,120,000 |
| Endive | 4 | 0.37 | 148,000 |
| Escarole | 2 | 0.37 | 74,000 |
| Wholesale Value | | | $1,729,262,500 |
| Retail Value | | | $3,458,525,000 |

We repeat the exercise outlined above in table 7 of this document for Canada, as shown in table 8 of this document. For these calculations we assume that Canadian produce growers use business practices that are similar to those used by Mexican growers; FDA did not receive any comments to the contrary. As with the Mexican produce, only Canadian produce that is highly or very highly perishable and did not fall under the purview of the AMAA is included in table 8 of this document.

Table 8.–Highly Perishable Produce Imported From Canada

| Perishable Produce From Canada | Total Volume for 2001 (100,000 lb units) | Current Wholesale Price ($ per lb) (Sept. 2002) | Total Revenues Wholesale ($) |
|---|---|---|---|
| Peppers | 753 | 0.30 | 22,590,000 |
| Cucumbers | 627 | 0.145 | 9,091,500 |
| Blueberries | 401 | 1.42 | 56,942,000 |
| Mushrooms | 373 | 1.55 | 57,815,000 |
| Lettuce-other | 243 | 0.50 | 12,150,000 |
| Raspberries | 89 | 2.78 | 24,742,000 |
| Broccoli | 88 | 0.72 | 6,336,000 |
| Cherries | 37 | 1.30 | 4,810,000 |
| Sweet corn | 36 | 0.22 | 792,000 |
| Squash | 27 | 0.17 | 459,000 |
| Spinach | 24 | 1.30 | 3,120,000 |
| Radishes | 11 | 0.50 | 550,000 |
| Endive | 9 | 0.17 | 153,000 |
| Beans | 7 | 0.50 | 350,000 |
| Strawberries | 5 | 0.575 | 287,500 |
| Pears | 4 | 0.39 | 156,000 |
| Green peas | 3 | 1.60 | 480,000 |
| Greens | 2 | 0.30 | 60,000 |
| Eggplant | 1 | 0.29 | 29,000 |
| Wholesale Value | | | $200,913,000 |
| Retail Value | | | $401,826,000 |

Assuming that perishable produce has an average life span of 7 days, we estimate the value of the time lost (1 hour) for 2.5 percent of the imports waiting to cross the border as a less than 1 percent loss in the product's value (1 hour out of 168 hours). Applying this 0.6 percent loss in value to 2.5 percent of the total retail revenue of imported Mexican fresh produce results in approximately a $519,000 loss in produce value. We calculate that same 0.6 percent loss in product value for 2.5 percent of the Canadian imported perishable produce. This loss in product value due to the 1-hour wait time totals approximately $60,000.

We used information from the annual imported seafood statistics published by the National Marine Fisheries Service (Ref. 8) to estimate the weight and wholesale value in dollars of all perishable seafood products imported from Mexico and Canada. As we did for perishable produce, we mark-up the wholesale price of the perishable seafood by 100 percent (Ref. 9) to represent the retail value of the products. Table 9 of this document shows the value of perishable seafood imports from Mexico; table 10 of this document shows the value of perishable seafood imports from Canada.

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Table 9.--Perishable Seafood Imported From Mexico

| 2001 Perishable Mexican Seafood Products | Pounds | Dollars |
|---|---|---|
| Atka mackerel, fresh | 1,995 | 2,200 |
| Bass, fresh | 1,362 | 2,218 |
| Clam live, fresh | 245,498 | 274,942 |
| Crab live, fresh | 405,621 | 489,856 |
| Crabmeat, fresh | 287,531 | 1,540,130 |
| Flatfish flounder, fresh | 1,518 | 2,199 |
| Flatfish fillet, fresh | 1,705 | 3,100 |
| Flatfish, fresh | 678,768 | 781,883 |
| Ground fish cod, fresh | 4,000 | 2,400 |
| Grouper, fresh | 4,056,054 | 7,399,434 |
| Lobster, live | 8,584 | 50,474 |
| Rock lobster live, fresh | 794,224 | 5,859,260 |
| Mackerel, fresh | 147,334 | 127,873 |
| Marine fish fillet, fresh | 2,120,250 | 7,395,902 |
| Marine fish, fresh | 5,448,771 | 6,681,485 |
| Marine fish scaled, fresh | 162,105 | 125,346 |
| Mollusks live, fresh | 2,147 | 15,272 |
| Octopus live, fresh | 31,680 | 24,214 |
| Oysters live, fresh | 39,930 | 25,040 |
| Salmon Atlantic fillet farmed, fresh | 405 | 2,552 |
| Sardine, sardinella, brisling, sprat, fresh | 71,163 | 7,591 |
| Scallops live, fresh | 472,384 | 1,418,302 |
| Sea urchin live, fresh | 10,501 | 67,331 |
| Sea urchin roe, fresh | 464,946 | 4,641,659 |
| Shark, fresh | 1,500,877 | 711,349 |
| Shrimp, shell-on, fresh | 452,714 | 861,897 |
| Snapper, fresh | 5,835,775 | 9,254,300 |
| Squid live, fresh | 88,042 | 39,952 |
| Swordfish, fresh | 1,615,546 | 3,759,096 |
| Trout, fresh | 82,958 | 131,353 |
| Rainbow trout farmed, fresh | 80,384 | 161,526 |
| Bigeye tuna, fresh | 9,819 | 12,200 |
| Bluefin tuna, fresh | 82,471 | 332,250 |
| Tuna, fresh | 78,747 | 155,069 |
| Yellowfin tuna, fresh | 2,012,848 | 3,771,488 |
| Whitefish fillet, fresh | 3,590 | 7,560 |
| Total Wholesale Value | 27,302,246 | 56,138,703 |
| Total Retail Value |  | $112,277,406 |

Table 10.--Perishable Seafood Imported From Canada

| 2001 Perishable Canadian Seafood Products | Pounds | Dollars |
|---|---|---|
| Bass, fresh | 727,830 | 740,152 |
| Caviar | 20,189 | 272,770 |
| Clam geoduck live, fresh | 155,927 | 1,097,902 |
| Clam live, fresh | 9,144,304 | 22,064,683 |
| Crab live, fresh | 9,479,765 | 24,066,021 |
| Crabmeat, fresh | 27,601 | 80,431 |
| Crustaceans live, fresh | 148,925 | 574,989 |
| Fish liver and roe, fresh | 51,154 | 229,569 |
| Flatfish flounder fillet, fresh | 750,468 | 1,238,031 |
| Flatfish flounder, fresh | 6,264,346 | 4,367,780 |
| Flatfish halibut Atlantic, fresh | 1,948,791 | 7,542,598 |
| Flatfish halibut Pacific, fresh | 12,553,266 | 39,850,556 |
| Flatfish fillet, fresh | 853,224 | 3,536,120 |
| Flatfish, fresh | 1,693,516 | 796,383 |
| Flatfish sole fillet, fresh | 1,099,430 | 2,968,610 |
| Flatfish sole, fresh | 1,062,030 | 1,096,079 |
| Flatfish turbot Greenland fillet, fresh | 700,456 | 2,069,006 |
| Flatfish turbot Greenland, fresh | 862,211 | 3,146,300 |
| Freshwater fish fillet, fresh | 2,824,811 | 4,970,127 |
| Freshwater fish, fresh | 549,956 | 1,008,302 |
| Groundfish cod Atlantic fillet, fresh | 1,646,363 | 4,489,788 |
| Groundfish cod Atlantic, fresh | 4,904,368 | 5,199,471 |
| Groundfish cod fillet, fresh | 107,994 | 288,644 |
| Groundfish cod, fresh | 239,987 | 249,991 |
| Groundfish cusk, fresh | 8,281 | 22,060 |
| Groundfish cusk, pollock fillet, fresh | 218,854 | 362,293 |
| Groundfish haddock fillet, fresh | 708,261 | 2,109,607 |
| Groundfish haddock, fresh | 17,391,202 | 19,469,582 |
| Groundfish hake fillet, fresh | 160,972 | 93,941 |
| Groundfish hake, fresh | 14,070,217 | 9,182,974 |
| Groundfish ocean perch fillet, fresh | 5,415,106 | 10,029,520 |
| Groundfish ocean perch, fresh | 898,964 | 518,431 |
| Groundfish pollock Atlantic, fresh | 2,362,637 | 1,595,615 |
| Groundfish pollock, fresh | 161,121 | 130,308 |
| Herring, fresh | 4,009,469 | 671,338 |
| Lingcod, fresh | 612,093 | 812,597 |
| Lobster, fresh | 7,707 | 60,030 |
| Lobster, live | 49,200,925 | 244,567,173 |
| Rock lobster live, fresh | 196,858 | 1,133,246 |
| Mackerel, fresh | 943,155 | 595,937 |

Table 10.--Perishable Seafood Imported From Canada

| 2001 Perishable Canadian Seafood Products | Pounds | Dollars |
|---|---|---|
| Marine fish fillet, fresh | 10,272,946 | 24,235,390 |
| Marine fish, fresh | 9,084,029 | 6,610,870 |
| Mollusks live, fresh | 809,461 | 907,048 |
| Monkfish, fresh | 89,861 | 154,267 |
| Mussels live, fresh farmed | 18,545,254 | 13,693,263 |
| Mussels live, fresh wild | 98,842 | 104,273 |
| Oysters live, fresh farmed | 2,918,098 | 4,378,548 |
| Oysters live, fresh wild | 579,011 | 1,236,868 |
| Perch fillet, fresh | 529,366 | 2,079,677 |
| Perch, fresh | 337,273 | 727,284 |
| Pickerel fillet, fresh | 850,256 | 3,715,248 |
| Pickerel, fresh | 1,682,743 | 3,500,552 |
| Pike, fresh | 214,390 | 395,706 |
| Pike perch, yellow pike, fresh | 125,114 | 197,396 |
| Sablefish, fresh | 21,648 | 48,845 |
| Salmon Atlantic fillet, fresh farmed | 28,972,418 | 97,270,694 |
| Salmon Atlantic fillet, fresh wild | 404,012 | 1,281,582 |
| Atlantic Salmon, fresh farmed | 107,101,696 | 248,809,617 |
| Atlantic Salmon, fresh wild | 68,732 | 84,035 |
| Chinook Salmon, fresh farmed | 5,752,197 | 10,614,163 |
| Chinook Salmon, fresh wild | 225,509 | 530,368 |
| Salmon chum, fresh | 1,651,221 | 1,133,029 |
| Salmon coho, fresh farmed | 1,382,572 | 1,963,499 |
| Salmon coho, fresh wild | 183,427 | 270,138 |
| Salmon fillet, fresh | 1,640,485 | 4,361,707 |
| Salmon, fresh | 2,820,957 | 5,430,272 |
| Pink Salmon, fresh | 79,981 | 60,403 |
| Sockeye salmon, fresh | 265,505 | 457,427 |
| Salmonidae, fresh | 57,787 | 149,760 |
| Scallops live, fresh | 6,955,476 | 31,688,064 |
| Sea urchin live, fresh | 5,053,710 | 4,367,434 |
| Sea urchin roe, fresh | 11,414 | 94,706 |
| Dogfish shark, fresh | 3,300,398 | 1,003,294 |
| Shark, fresh | 223,788 | 206,838 |
| Shrimp peeled, fresh | 5,401 | 27,934 |
| Shrimp shell-on, fresh | 479,483 | 1,478,634 |
| Smelts, fresh | 509,586 | 606,463 |
| Snail live, fresh | 46,174 | 121,239 |
| Snapper, fresh | 37,316 | 94,366 |
| Swordfish, fresh | 1,809,654 | 6,488,992 |

Table 10.--Perishable Seafood Imported From Canada

| 2001 Perishable Canadian Seafood Products | Pounds | Dollars |
|---|---|---|
| Trout, fresh | 1,574,672 | 2,891,806 |
| Rainbow trout, fresh farmed | 361,121 | 608,347 |
| Albacore tuna, fresh | 25,859 | 70,076 |
| Bigeye tuna, fresh | 426,547 | 1,448,778 |
| Bluefin tuna, fresh | 288,361 | 2,464,619 |
| Tuna, fresh | 13,429 | 50,299 |
| Yellowfin tuna, fresh | 205,812 | 666,809 |
| Whitefish fillet, fresh | 988,816 | 1,864,542 |
| Whitefish, fresh | 8,224,484 | 11,262,979 |
| Yellow perch fillet, fresh | 1,174,798 | 6,401,844 |
| Total Wholesale Value | 382,663,829 | 931,608,947 |
| Total Retail Value | | $1,863,217,894 |

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We used the same logic for seafood as we did for produce to account for the possibility of having to resubmit prior notice: A change in the type of seafood in the shipment made after the original notice was submitted, less than 1 hour before scheduled arrival, would lead to a reduction in value. We use the reduction in the value of perishable imported seafood to account for the cost of a wait at the border while prior notice is resubmitted. Then, assuming that perishable seafood will keep for 2 days in a consumer's refrigerator (Ref. 10), we find that a 1-hour wait caused by the prior notice requirement for 2.5 percent of the products would result in a 2.1 percent loss in that seafood's value (1 hour out of 48 hours). The lost time would result in a $59,000 loss in value of Mexican perishable seafood imports and a $978,000 loss in value of Canadian perishable seafood imports.

Table 11 of this document shows the loss in value caused by the resubmitted prior notice information for the 2.5 percent of imported Mexican and Canadian fresh seafood and produce affected.

Table 11.--Loss in Value Caused by Resubmitted Prior Notice Under Option 2

| | |
|---|---|
| Perishable Produce | |
| 2001 Imported Mexican Produce Total Retail Value | $3,458,525,000 |
| 0.6% Reduction in value for 2.5% of Mexican produce | $519,000 |
| 2001 Imported Canadian Produce Total Retail Value | $401,826,000 |
| 0.6% Reduction in value for 2.5% of Canadian produce | $60,000 |
| Total Lost Value for Produce | $579,000 |
| Perishable Seafood | |
| 2001 Imported Mexican Seafood Total Retail Value | $112,277,406 |
| 2.1% Reduction in value for 2.5% of Mexican seafood | $59,000 |
| 2001 Imported Canadian Seafood Total Retail Value | $1,863,217,894 |
| 2.1% Reduction in value for 2.5% of Canadian seafood | $978,000 |
| Total Lost Value for Seafood | $1,037,000 |

Table 12 of this document presents a summary of the costs associated with option 2. Also presented in table 12 of this document are the present values of the costs associated with this option, calculated using the OMB-recommended discount rates of 3 and 7 percent.

The first 6 rows of the summary table are the same for options 2 through 9. The options differ only in the time set for prior notice and revisions; the differences in cost across options arise from differences in the lost value of produce and seafood, and in some options, the cost of truck time.

TABLE 12.—SUMMARY OF COSTS FOR OPTION 2 (1 HOUR PRIOR NOTICE SUBMISSION TIME)

| | Dollars (thousands) |
|---|---|
| Learning costs | $66,240 |

TABLE 12.—SUMMARY OF COSTS FOR OPTION 2 (1 HOUR PRIOR NOTICE SUBMISSION TIME)—Continued

| | Dollars (thousands) |
|---|---|
| Coordination costs | $31,095 |
| Computer acquisition costs | $7,600 |
| FDA prior notice system costs | $13,000 |
| Annual costs to fill out prior notice screens | $187,500 |
| Additional costs for BRASS users | $48,462 |
| Lost value for Mexican produce | $519 |
| Lost value for Canadian produce | $60 |
| Lost value for Mexican seafood | $59 |
| Lost value for Canadian seafood | $978 |
| Total first year costs for Option 2 | $355,513 |
| Annual costs after first year | $249,372 |
| Present value of costs at 7% for 20 years | $2,741,043 |
| Present value of costs at 3% for 20 years | $3,813,068 |

c. *Option 3: Minimum prior notice time of 2 hours before arrival; electronic submission of information; any change in information requires resubmission.* Option 3 requires that prior notice be submitted 2 hours before arrival. If the prior notice time for submission is 2 hours instead of 1 hour, the probability of having to adjust and resubmit prior notice information will be greater. Now, instead of 2.5 percent of the importers of perishable products from Canada and Mexico having to cancel and resubmit their notices, we will assume that the 2-hour submission timetable means that 5 percent will have to resubmit their notices. FDA expects most orders to be placed well in advance of the 2-hour timeframe. Carriers of these products may not be able to cross the border for 2 hours instead of 1 hour, which affects 1.2 percent of the produce life span (2 hours out of 168 hours) and 4.2 percent of the seafood life span (2 hours out of 48 hours).

Table 13 of this document shows the loss in value caused by the resubmitted prior notice information for the 5 percent of imported Mexican and Canadian fresh seafood and produce affected.

TABLE 13.—LOSS IN VALUE CAUSED BY RESUBMITTED PRIOR NOTICE UNDER OPTION 3

| | |
|---|---|
| Perishable Produce | |
| 2001 Imported Mexican produce total retail value | $3,458,525,000 |
| 1.2% Reduction in value for 5% of Mexican produce | $2,075,115 |
| 2001 Imported Canadian produce total retail value | $401,826,000 |
| 1.2% Reduction in value for 5% of Canadian produce | $241,096 |
| Total Lost Value for Produce | $2,316,000 |
| Perishable Seafood | |
| 2001 Imported Mexican seafood total retail value | $112,277,406 |
| 4.2% Reduction in value for 5% of Mexican seafood | $235,783 |
| 2001 Imported Canadian seafood total retail value | $1,863,217,894 |
| 4.2% Reduction in value for 5% of Canadian seafood | $3,912,758 |
| Total Lost Value for Seafood | $4,149,000 |

We do not include the costs of truck time with this option, as the prior notice timeframe is relatively short and encompassed within the time many trucks currently spend at the borders.

Table 14 of this document presents a summary of the costs associated with option 3. Also presented in table 14 of this document are the present values of the costs associated with this option using the OMB-recommended discount rates of 3 and 7 percent.

TABLE 14.—SUMMARY OF COSTS FOR OPTION 3 (2 HOUR PRIOR NOTICE SUBMISSION TIME)

| | Dollars (thousands) |
|---|---|
| Learning costs | $66,240 |
| Coordination costs | $31,095 |
| Computer acquisition costs | $7.600 |
| FDA prior notice system costs | $13,000 |
| Annual costs to fill out prior notice screens | $187,500 |
| Additional costs for BRASS users | $48,462 |
| Lost value for Mexican produce | $2,075 |
| Lost value for Canadian produce | $241 |
| Lost value for Mexican seafood | $236 |
| Lost value for Canadian seafood | $3,913 |
| Total first year costs for Option 3 | $360,362 |
| Annual costs after first year | $254,221 |
| Present value of costs at 7% for 20 years | $2,792,413 |

TABLE 14.—SUMMARY OF COSTS FOR OPTION 3 (2 HOUR PRIOR NOTICE SUBMISSION TIME)—Continued

| | Dollars (thousands) |
|---|---|
| Present value of costs at 3% for 20 years | $3,885,209 |

d. *Option 4: Minimum prior notice timeframe of 4 hours before arrival; electronic submission of information; any change in information requires resubmission.* Option 4 requires that prior notice be submitted 4 hours before arrival instead of 2 hours before arrival.

How much the business practices of importers, produce growers, and seafood processors will be affected by prior notice requirements again will depend on how early the orders are received compared with how early prior notice must be submitted. If the order for the product is placed more than 4 hours before the shipment is scheduled to arrive at the border, then there should be no delay in the importation of the product.

What is more likely to cause a wait before crossing the border is if the information on the prior notice changes after the prior notice has been submitted (*i.e.*, quantity shipped is greater than the quantity specified on the prior notice); this situation will be exacerbated if the exporting facility is located within 4 hours of the U.S. border. For example, if the prior notice is submitted for swordfish before the transport is loaded, and the fish to be loaded turns out to be shark instead of swordfish, the prior notice information submitted will not match the actual shipment. This is one way that information on a prior notice submission might change after the prior notice has already been submitted to FDA, thus requiring a cancellation of the prior notice and a resubmission of the corrected information.

Having to resubmit a prior notice to FDA may not cause any delay of the shipment if the original submission was placed early enough. However, it is likely that the necessary corrected prior notice information will be resubmitted not long before the article of food starts heading for the border. Therefore it is likely that some shipments may have to wait several hours before entering the United States.

If the prior notice time for submission is 4 hours before arrival instead of 2 hours, the probability of having to adjust and resubmit prior notice information will be greater. Now, instead of 5 percent of the importers of perishable products from Canada and Mexico having to resubmit their notices, we will assume that the 4-hour submission timetable means that 20 percent will have to resubmit their notices. Since pre-proposal comments asserted that 40 to 100 percent of trucks are loaded less than 4 hours before driving to the border, we will assume one-half of their lower-bound estimate as the percentage of articles of food that will have to have their prior notices resubmitted.

For this option, and other options where the minimum prior notice time for food arriving by airplane is 4 hours or longer, we include the lost value for highly and very highly perishable produce and seafood imported from Central American countries (including some Caribbean countries and Colombia), not subject to the AMAA. Perishable produce from Belize, Costa Rica, the Dominican Republic, Guatemala, Haiti, Jamaica, Honduras, Nicaragua, Panama, and Colombia can all be flown to Miami, FL in 2 to 4 hours, depending on the starting location. Perishable fish products from the Bahamas, Barbados, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Nicaragua, Panama, and Colombia also can be flown to Miami, FL in 2 to 4 hours. Table 15 of this document shows the retail value of perishable produce imported from Central America to the United States for 2001. Table 16 of this document shows the retail value of perishable seafood imported from Central America for 2001.

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Table 15.--Perishable Produce From Central America

| Perishable Produce From Central America | Total Volume for 2001 (100,000 lb units) | Current Wholesale Price ($ per lb) (Sept. 2002) | Total Revenues Wholesale ($ thousands) |
|---|---|---|---|
| Asparagus | 37 | 1.29 | 4,773 |
| Beans | 11 | 0.58 | 638 |
| Broccoli | 1 | 0.65 | 65 |
| Cherries | 2 | 1.3 | 260 |
| Cucumbers | 363 | 0.29 | 10,527 |
| Eggplant | 61 | 0.4 | 2,440 |
| Endive | 13 | 0.37 | 481 |
| Green peas | 227 | 2.2 | 49,940 |
| Mangoes | 439 | 0.57 | 25,023 |
| Berries (miscellaneous) | 14 | 1.67 | 2,338 |
| Okra | 2 | 0.8 | 160 |
| Papaya | 107 | 0.45 | 4,815 |
| Peppers | 39 | 0.53 | 2,067 |
| Squash | 73 | 0.71 | 5,183 |
| Total 2001 wholesale value | | | $108,710 |
| Retail Value | | | $217,420 |

Table 16.--Perishable Seafood From Central America

| 2001 Perishable Seafood Products Flown From Central America | Pounds | Dollars |
|---|---|---|
| Atka mackerel, fresh | 14,128 | 22,148 |
| Conch live, fresh | 2,474,956 | 5,884,962 |
| Crab live, fresh | 248,580 | 1,125,507 |
| Eels, fresh | 207 | 7,520 |
| Fish liver and roe, fresh | 78,606 | 112,066 |
| Flatfish flounder, fresh | 6,622 | 7,840 |
| Freshwater fish, fresh | 211,853 | 354,798 |
| Groundfish cod, fresh | 1,808 | 2,381 |
| Grouper, fresh | 1,077,703 | 2,092,349 |
| Lingcod, fresh | 5,020 | 8,804 |
| Lobster (Homarus spp), fresh | 104,689 | 1,007,256 |
| Rock lobster, live | 55,042 | 414,237 |
| Mackerel, fresh | 178,312 | 250,169 |
| Marine fish fillet, fresh | 5,840,824 | 12,442,031 |
| Marine fish, fresh | 21,284,450 | 32,628,025 |
| Marine fish scaled, fresh | 98,085 | 196,186 |
| Molluscs live, fresh | 7,372 | 14,739 |
| Oysters live, fresh | 4,629 | 10,380 |
| Perch fillet, fresh | 6,461 | 13,104 |
| Salmon Atlantic fillet, fresh farmed | 8,969 | 16,002 |
| Salmon fillet, fresh | 3,766 | 10,524 |
| Shark, fresh | 35,823 | 45,543 |
| Shrimp peeled, fresh | 58,384 | 177,434 |
| Snapper, fresh | 8,502,525 | 14,314,692 |
| Squid live, fresh | 5,914 | 2,575 |
| Swordfish, fresh | 2,272,257 | 6,626,692 |
| Swordfish steaks, fresh | 1,577 | 5,945 |
| Tilapia fillet, fresh | 11,053,830 | 28,080,704 |
| Toothfish patagonian, fresh | 5,636 | 15,574 |
| Trout, fresh | 67,795 | 130,844 |
| Trout rainbow, fresh farmed | 468,200 | 1,025,162 |
| Tuna albacore, fresh | 55,561 | 113,930 |
| Tuna bigeye, fresh | 2,924,770 | 8,348,825 |
| Tuna bluefin, fresh | 1,580 | 2,148 |
| Tuna, fresh | 1,070,384 | 2,735,066 |
| Tuna yellowfin, fresh | 2,542,404 | 7,652,086 |
| Wholesale Value | | $125,898,248 |
| Retail Value | | $251,796,496 |

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Importers of perishable products from Canada, Mexico, and Central America may not be able to cross the border for 4 hours, which is 2.4 percent of the produce life span (4 hours out of 168 hours) and 8.3 percent of the seafood life span (4 hours out of 48 hours).

Table 17 of this document shows the loss in value caused by the cancelled and resubmitted prior notice information for the 20 percent of imported Mexican, Canadian, and Central American perishable seafood and produce affected.

TABLE 17.—LOSS IN VALUE CAUSED BY RESUBMITTED PRIOR NOTICE UNDER OPTION 4

| | |
|---|---|
| **Perishable Produce** | |
| 2001 Imported Mexican produce total retail value | $3,458,525,000 |
| 2.4% Reduction in value for 20% of Mexican produce | $16,600,920 |
| 2001 Imported Canadian produce total retail value | $401,826,000 |
| 2.4% Reduction in value for 20% of Canadian produce | $1,928,765 |
| 2001 Imported Central American produce total retail value | $217,420,000 |
| 2.4% Reduction in value for 20% of Central American produce | $1,043,616 |
| Total Lost Value for Produce | $19,574,000 |
| **Perishable Seafood** | |
| 2001 Imported Mexican seafood total retail value | $112,277,406 |
| 8.3% Reduction in value for 20% of Mexican seafood | $1,863,805 |
| 2001 Imported Canadian seafood total retail value | $1,863,217,894 |
| 8.3% Reduction in value for 20% of Canadian seafood | $30,929,417 |
| 2001 Imported Central American produce total retail value | $251,796,496 |
| 8.3% Reduction in value for 20% of Central American seafood | $4,179,822 |
| Total Lost Value for Seafood | $36,973,000 |

For this 4-hour prior notice submission timeframe and for all subsequent options with longer timeframes for submission, we also begin to include some holding time costs paid to carriers of products to be imported. We add in this cost in response to the comments that indicated that at least 40 percent of food products being imported from Canada and Mexico are coming from locations located 4 hours or less from a U.S. border. For products located less than 4 hours from the U.S. border, it is quite possible that the carrier will have to be paid for additional waiting time over what had been established under the current business practices. Comments indicated that additional truck time was a real possibility for all food products being imported and not just perishable products. We therefore include a percentage of all products requiring prior notice in the cost estimate in table 18 of this document.

We do not have information on the number of import entries that may use additional truck time because of prior notice submission times. Therefore, we will assume that 20 percent of the 2.3 million lines that entered the United States by ground transportation in fiscal year 2002 (based on OASIS data) will pay for an additional 1 hour of truck time per entry. We use 20 percent as the percentage of trucks delayed to be consistent with our resubmission rate of 20 percent when the prior notice submission timeframe is 4 hours before arrival.

TABLE 18.—COST OF ADDITIONAL CARRIER TME FOR OPTION 4

| | |
|---|---|
| 2002 OASIS import entry lines by ground transportation (truck or train) | 2,300,000 |
| Average number of lines per entry | 2.6 |
| Total number of ground entries | 884,615 |
| 20% of ground entries | 176,923 |
| Cost for 1 hour of carrier time ($250 per hour) | $250 |
| Total cost of truck time | $44,231,000 |

Table 19 of this document presents a summary of the costs associated with option 4. Also presented in table 19 of this document are the present values of the costs associated with this option using the OMB-recommended discount rates of 3 and 7 percent.

TABLE 19.—SUMMARY OF COSTS FOR OPTION 4 (4 HOUR MINIMUM PRIOR NOTICE SUBMISSION TIME)

| | Dollars (thousands) |
|---|---|
| Learning costs | $66,240 |
| Coordination costs | $31,095 |
| Computer acquisition costs | $7,600 |
| FDA prior notice system cost | $13,000 |
| Annual costs to fill out prior notice screens | $187,500 |
| Additional Costs for BRASS users | $48,462 |
| Lost value for Mexican produce | $16,601 |
| Lost value for Canadian produce | $1,929 |
| Lost value for Central American produce | $1,044 |
| Lost value for Mexican seafood | $1,864 |
| Lost value for Canadian seafood | $30,929 |
| Lost value for Central American seafood | $4,180 |
| Cost for truck time | $44,231 |
| Total first year costs for Option 4 | $454,675 |
| Annual costs after first year | $348,534 |
| Present value of costs at 7% for 20 years | $3,791,567 |
| Present value of costs at 3% for 20 years | $5,288,348 |

e. *Option 5: Minimum prior notice time frame of 1 hour before arrival for vehicles, 4 hours before arrival for rail and air, and 8 hours before arrival for vessels; electronic submission of information; any change in information requires resubmission.* Option 5 requires that prior notice be submitted 1 hour before arrival for articles of food being imported by vehicle and 4 hours before arrival for articles of food being imported by rail or air modes of transportation. This option is a combination of the minimum prior notice times used in options 2, 4, and 8. By varying minimum prior notice times by conveyance type, option 5 provides flexibility for the importers where it is most needed.

Importers whose articles of food are transported by vehicle from Canada and Mexico are most constrained by facility proximity to the United States, so a 1-hour minimum prior notice time for these shipments is the least constraining possible while still allowing FDA the time needed to review the import information. Comments on shipments of food arriving in the United States by vehicle indicated that (specifically Mexican) food facilities are often close to the U.S. border, and thus requested that FDA require a minimum prior notice time of 2 hours rather than the proposed 12 noon the calendar day prior to arrival. A minimum prior notice time for vehicle traffic of 1 hour will be even less constraining on importers than the 2 hours requested by the majority of comments.

Importers whose shipments of food are flown in from the Caribbean, Central America, and Colombia, or importers whose food shipments are brought into the United States by train will be less constrained by minimum prior notice time than food shipments arriving by vehicle, but more constrained than food shipments arriving in the United States by vessel. Therefore, for this option, importers bringing food into the United States by airplane or by train are required to give prior notice a minimum 4 hours before arrival. This timeframe is sufficient for even shorter flights from Caribbean countries and Central American countries to the United States. For example, though the actual flying time of a direct flight from the Bahamas to Miami is only 2 hours, the airplane must be loaded, taxied to the runway, cleared for take-off, and on arrival landed, taxied from the runway, and unloaded. A 4-hour minimum prior notice time will therefore seldom be constraining. A 4-hour minimum prior notice time for flights could be constraining for rush orders of food from Canada and Mexico. However, OASIS fiscal year 2002 data shows that only about 10,000 food entry lines were flown in from Canada and only about 20,000 lines flown in from Mexico. This is a very small portion, less than 1 percent, of total shipments from Canada and Mexico.

Option 5 requires that prior notice be submitted 8 hours before arrival for articles of food being imported by vessel. We do not specifically address food importation by vessel in this option because this mode of transport will not be constrained by an 8 hour minimum prior notice timeframe. The costs of this option for vessels will be the same as in the previous option.

(i) *One-hour minimum prior notice time for food arriving by vehicle.* Importers of perishable products from Canada and Mexico, whose articles of food arrive in the United States by vehicle, will have to submit prior notice 1 hour before arrival. This short, minimum submission time should eliminate the probability of having to resubmit prior notice for all but 2.5 percent of those perishable products imported from Canada and Mexico.

OASIS data indicates that approximately 44 percent of all imported food shipments used land transportation to arrive in the United States for fiscal year 2002. These shipments must come from Canada and Mexico (or in some cases transshipped), as these are the countries that have land borders with the United States. OASIS data shows that only about 2 percent of imported food shipments arrived in the United States by rail in 2002, and less than 1 percent of shipments arrived from Canada and Mexico by air. Thus, at least 97 percent of all imported food shipments arriving from Canada and Mexico used vehicles as the mode of transport.

Using this 97 percent estimate, we calculate the proportion of the total retail value of highly perishable produce and seafood from Canada and Mexico that arrives in the United States by vehicle. We then use this new retail value, 97 percent of the total value, to calculate the lost product value (1 hour out of 168 hours for produce, 1 hour out of 48 hours for seafood) for the 2.5 percent of highly perishable produce and seafood from Canada and Mexico for which importers would have to resubmit the prior notice when the minimum submission time is 1 hour. Table 20 of this document shows the loss in value caused by the cancelled and resubmitted prior notice information for the 2.5 percent of imported Mexican and Canadian perishable seafood and produce affected.

We also do not include the cost of truck time with this option, because the minimum prior notice time for articles of food arriving by vehicle is only 1 hour. Given current border wait times and manufacturing/processing facility distance from the U.S. border, it is unlikely that articles of food will have to wait to enter the United States because of prior notice requirements.

TABLE 20.—LOSS IN VALUE CAUSED BY RESUBMITTED PRIOR NOTICE UNDER OPTION 5 FOR SHIPMENTS ARRIVING BY VEHICLE (1-HOUR MINIMUM NOTICE REQUIREMENT)

| | Dollars |
|---|---|
| Perishable Produce: | |
| 2001 Imported Mexican produce total retail value | $3,458,525,000 |
| 97% of Total retail value for Mexican produce | $3,354,769,000 |
| 0.6% Reduction in value for 2.5% of Mexican produce | $503,215 |
| 2001 Imported Canadian produce total retail value | $401,826,000 |
| 97% of Total retail value for Canadian produce | $389,771,000 |
| 0.6% Reduction in value for 2.5% of Canadian produce | $58,466 |
| Total lost value for produce | $562,000 |
| Perishable Seafood | |
| 2001 Imported Mexican seafood total retail value | $112,277,000 |
| 97% of Total retail value for Mexican seafood | $108,909,000 |
| 2.1% Reduction in value for 2.5% of Mexican seafood | $57,177 |
| 2001 Imported Canadian seafood total retail value | $1,863,218,000 |

TABLE 20.—LOSS IN VALUE CAUSED BY RESUBMITTED PRIOR NOTICE UNDER OPTION 5 FOR SHIPMENTS ARRIVING BY VEHICLE (1-HOUR MINIMUM NOTICE REQUIREMENT)—Continued

| | Dollars |
|---|---|
| 97% of Total retail value for Canadian seafood | $1,807,321,000 |
| 2.1% Reduction in value for 2.5% of Canadian seafood | $948,844 |
| Total lost value for seafood | $1,006,000 |

(ii) *Four-hour minimum prior notice time for food arriving by rail and air.* The 4-hour minimum submission time for prior notice applies to articles of food imported by rail and air modes of transportation. A 4-hour minimum prior notice time for these modes of transportation could be constraining for products arriving from the countries bordering the United States.

Since we are assuming that 97 percent of food imported from Canada and Mexico arrives by vehicle, we are left with 3 percent that is imported by rail or air. We adjust the total retail value of highly perishable produce and seafood from Canada and Mexico to account for this 3 percent. Table 21 of this document shows the lost value for the 20 percent of perishable products arriving by rail and air from Canada and Mexico that may have to resubmit prior notice when the minimum prior notice time is 4 hours.

For Central American countries, it is probable that most, if not all, of their perishable products are imported to the United States by air. Therefore, for the highly perishable produce and seafood coming from the Central American region, we assume that 97 percent of the perishable produce and seafood from Central America is shipped to the United States by air. We adjust the total retail value of the perishable products from Central America to reflect that 97 percent of the total value that arrives in the United States by air. Table 21 of this document shows the loss of value for those 20 percent of air shipments from Central America for which prior notice was resubmitted under option 5.

Table 21.--Loss in Value Caused by Resubmitted Prior Notice Under Option 5 for Shipments Arriving by Air and Rail (4-hour minimum notice requirement)

| Perishable Produce | Dollars |
|---|---|
| 2001 Imported Mexican produce total retail value | $3,458,525,000 |
| 3% of Total retail value for Mexican produce | $103,756,000 |
| 2.4% Reduction in value for 20% of Mexican produce | $498,000 |
| 2001 Imported Canadian produce total retail value | $401,826,000 |
| 3% of Total retail value for Canadian produce | $12,055,000 |
| 2.4% Reduction in value for 20% of Canadian produce | $58,000 |
| 2001 Imported Central American produce total retail value | $217,420,000 |
| 97% of Total retail value for Central American produce | $210,897,000 |
| 2.4% Reduction in value for 20% of Central American produce | $1,012,000 |
| Total lost value for produce | $1,568,000 |
| Perishable Seafood | |
| 2001 Imported Mexican seafood total retail value | $112,277,000 |
| 3% of Total retail value for Mexican seafood | $3,368,000 |
| 8.3% Reduction in value for 20% of Mexican seafood | $56,000 |
| 2001 Imported Canadian seafood total retail value | $1,863,218,000 |
| 3% of Total retail value for Canadian seafood | $55,897,000 |
| 8.3% Reduction in value for 20% of Canadian seafood | $928,000 |
| 2001 Imported Central American seafood total retail value | $251,796,000 |
| 97% of Total retail value for Central American seafood | $244,242,000 |
| 8.3% Reduction in value for 20% of Central American seafood | $4,054,000 |
| Total lost value for seafood | $5,038,000 |

Table 22 of this document presents a summary of the costs associated with option 5, including the costs of the option at the OMB-recommended discount rates of 3 and 7 percent.

Table 22.–Summary of Costs for Option 5

| | Dollars ($ thousands) |
|---|---|
| Learning costs | $66,240 |
| Coordination costs | $31,095 |
| Computer acquisition costs | $7,600 |
| FDA prior notice system cost | $13,000 |
| Annual costs to fill out prior notice screens | $187,500 |
| Additional costs for BRASS users | $48,462 |
| Lost value for produce | $2,130 |
| Lost value for seafood | $6,044 |
| Cost for truck time | $0 |
| Total first year costs for option 5 | $362,071 |
| Annual costs after first year | $255,929 |
| Present value of costs at 7% for 20 years | $2,810,515 |
| Present value of costs at 3% for 20 years | $3,910,630 |

e. *Option 6: Minimum prior notice timeframe of 2 hours before arrival for vehicles, 4 hours before arrival for rail and air, and 8 hours before arrival for vessels; electronic submission of information; any change in information requires resubmission (interim final rule).* Option 6 requires that prior notice be submitted 2 hours before arrival for articles of food being imported by vehicle and 4 hours before arrival for articles of food being imported by rail or air modes of transportation.

Option 6 requires that prior notice be submitted 8 hours before arrival for articles of food being imported by vessel. We do not specifically address food import by vessel in this option because this mode of transport will not be constrained by an 8-hour minimum prior notice timeframe. The costs of this option for vessels will be the same as in the previous options.

i. *Two-hour minimum prior notice time for food arriving by vehicle.* Importers of perishable products from Canada and Mexico, whose articles of food arrive in the United States by vehicle, will have to submit prior notice 2 hours before arrival. This short, minimum submission time frame should eliminate the probability of having to resubmit prior notice for all but 5 percent of those perishable products imported from Canada and Mexico.

OASIS data indicates that approximately 44 percent of all imported food shipments used land transportation to arrive in the United States for fiscal year 2002. These shipments must come from Canada and Mexico (or in some cases transshipped), as these are the countries that have land borders with the United States. OASIS data shows that only about 2 percent of imported food shipments arrived in the United States by rail in 2002, and less than 1 percent of shipments arrived from Canada and Mexico by air. Thus, at least 97 percent of all imported food shipments arriving from Canada and Mexico used vehicles as the mode of transport.

Using this 97 percent estimate, we calculate the proportion of the total retail value of highly perishable produce and seafood from Canada and Mexico that arrives in the United States by vehicle. This new retail value, 97 percent of the total value, is then used to calculate the lost product value for the 5 percent of highly perishable produce and seafood from Canada and Mexico for which importers would have to resubmit the prior notice when the minimum submission time is 2 hours. Table 23 of this document shows the loss in value caused by the cancelled and resubmitted prior notice information for the 5 percent of imported Mexican and Canadian perishable seafood and produce affected.

We do not include the lost value for perishable seafood and produce imported from Central America in table 23 of this document since perishable products from Central America are most likely flown into the United States. We also do not include the cost of truck time with this option since the minimum prior notice time for articles of food arriving by vehicle is only 2 hours. Given current border wait times and manufacturing/processing facility distance from the U.S. border, it is unlikely that trucks will have to wait to enter the United States because of prior notice requirements. We expect that some delays will occur, but that they will be relatively rare and will impose little additional cost compared with a 1-hour minimum prior notice time. We therefore do not include any additional truck time costs for this option.

Table 23.--Loss in Value Caused by Resubmitted Prior Notice Under Option 6 for Shipments Arriving by Vehicle (2 hour minimum notice requirement)

| Perishable Produce | Dollars |
|---|---|
| 2001 Imported Mexican produce total retail value | $3,458,525,000 |
| 97% of Total retail value for Mexican produce | $3,354,769,000 |
| 1.2% Reduction in value for 5% of Mexican produce | $2,013,000 |
| 2001 Imported Canadian produce total retail value | $401,826,000 |
| 97% of Total retail value for Canadian produce | $389,771,000 |
| 1.2% Reduction in value for 5% of Canadian produce | $234,000 |
| Total Lost Value for Produce | $2,247,000 |
| Perishable Seafood | |
| 2001 Imported Mexican seafood total retail value | $112,277,000 |
| 97% of Total retail value for Mexican seafood | $108,909,000 |
| 4.2% Reduction in value for 5% of Mexican seafood | $229,000 |
| 2001 Imported Canadian seafood total retail value | $1,863,218,000 |
| 97% of total retail value for Canadian seafood | $1,807,321,000 |
| 4.2% Reduction in value for 5% of Canadian seafood | $3,795,000 |
| Total Lost Value for Seafood | $4,024,000 |

ii. *Four-hour minimum prior notice time for food arriving by rail and air.* The 4-hour minimum submission time for prior notice applies to articles of food imported by rail and air modes of transportation. A 4-hour minimum prior notice timeframe for these modes of transportation could be constraining for products arriving from the countries bordering the United States.

Since we are assuming that 97 percent of food imported from Canada and Mexico arrives by vehicle, we are left with 3 percent that is imported by rail or air. We adjust the total retail value of highly perishable produce and seafood from Canada and Mexico to account for this 3 percent. Table 24 of this document shows the lost value for the 20 percent of perishable products arriving by rail and air from Canada and Mexico that may have to resubmit prior notice when the minimum prior notice timeframe is 4 hours.

For Central American countries, it is probable that most, if not all, of their perishable products are imported to the United States by air. Therefore, for the highly perishable produce and seafood coming from the Central American region, we assume that 97 percent of the perishable produce and seafood from Central America is shipped to the United States by air. We adjust the total retail value of the perishable products from Central America to reflect that 97 percent of the total value that arrives in the United States by air. Table 24 of this document shows the loss of value for those 20 percent of air shipments from Central America for which prior notice was resubmitted under option 6.

Table 24.--Loss in Value Caused by Resubmitted Prior Notice Under Option 6 for Shipments Arriving by Air and Rail (4 hour minimum notice requirement)

| Perishable Produce | Dollars |
|---|---|
| 2001 Imported Mexican produce total retail value | $3,458,525,000 |
| 3% of Total retail value for Mexican produce | $103,756,000 |
| 2.4% Reduction in value for 20% of Mexican produce | $498,000 |
| 2001 Imported Canadian produce total retail value | $401,826,000 |
| 3% of Total retail value for Canadian produce | $12,055,000 |
| 2.4% Reduction in value for 20% of Canadian produce | $58,000 |
| 2001 Imported Central American produce total retail value | $217,420,000 |
| 97% of Total retail value for Central American produce | $210,897,000 |
| 2.4% Reduction in value for 20% of Central American produce | $1,012,000 |
| Total Lost Value for Produce | $1,568,000 |
| Perishable Seafood | |
| 2001 Imported Mexican seafood total retail value | $112,277,000 |
| 3% of Total retail value for Mexican seafood | $3,368,000 |
| 8.3% Reduction in value for 20% of Mexican seafood | $56,000 |
| 2001 Imported Canadian seafood total retail value | $1,863.218,000 |
| 3% of Total retail value for Canadian seafood | $55,897;000 |
| 8.3% Reduction in value for 20% of Canadian seafood | $928,000 |
| 2001 Imported Central American seafood total retail value | $251,796,000 |
| 97% of Total retail value for Central American seafood | $244,242,000 |
| 8.3% Reduction in value for 20% of Central American seafood | $4,054,000 |
| Total Lost Value for Seafood | $5,038,000 |

Table 25 of this document presents a summary of the costs associated with option 6, including the costs of the option at the OMB-recommended discount rates of 3 and 7 percent.

Table 25.--Summary of Costs for Option 6--Interim Final Rule

| | Dollars (thousands) |
|---|---|
| Learning costs | $66,240 |
| Coordination costs | $31,095 |
| Computer acquisition costs | $7,600 |
| FDA prior notice system cost | $13,000 |
| Annual costs to fill out prior notice screens | $187,500 |
| Additional costs for BRASS users | $48,462 |
| Lost value for produce | $3,815 |
| Lost value for seafood | $9,062 |
| Cost for truck time | $0 |
| Total first year costs for Option 6 | $366,744 |
| Annual costs after first year | $260,633 |
| Present value of costs at 7% for 20 years | $2,860,342 |
| Present value of costs at 3% for 20 years | $3,980,603 |

f. *Option 7: Prior notice required 4 hours before arrival; electronic submission of information; allow changes to the prior notice submission up to 1 hour before arrival.* We now take the estimates in option 4 and adjust them to account for the effects of allowing changes to the prior notice submission without requiring resubmission. Although the original submission time of 4 hours before arrival is relatively short, allowing changes to the original submission, in the form of electronic amendments and updates, would improve the flow of import traffic by reducing the notice resubmission rate. The smaller resubmission rate would reduce the loss of value for perishable foods that might otherwise have to wait extra time before crossing the U.S. border.

Prior notice requires that certain information about each imported food product be relayed to FDA before arrival. A more flexible entry screen that allows for updates and amendments to some notice information would reduce the likelihood that the original notice would have to be resubmitted by importers, thus lessening the time burden, and therefore the costs of prior notice. Even a 1 hour amendment and updates to prior notice would provide some flexibility for importers in industries where certain information, such as the type of the product being imported and the quantity of the article to be imported, may change or is not known until just before shipping.

It is also important to note here that we assume that the 1 hour time FDA has estimated that it takes to fill out each prior notice is sufficient for this option, even with the opportunity of amending prior notice information. This time is sufficient because amending or updating a particular item in the prior notice submission should only take a few seconds to a few minutes in time.

If prior notice can be amended and updated, fewer resubmissions would occur. For this option, then, with amendment and updates, we will assume that the number of prior notice resubmissions necessitated by changes in information on the notice would be reduced from 20 percent (as in option 4) to 2.5 percent. FDA believes that the resubmission rate for a 4-hour prior notice time with 1-hour amendment will result in about the same resubmission rate as option 2 (a straight, 1 hour before arrival, prior notice timeframe). FDA believes these two timeframes will cause about the same resubmission rate, because both arrival timeframes are relatively short and both are within the timeframe of 4 hours that was suggested by Canadian and Mexican perishable products importers.

Compared with option 4 (4 hours prior notice with no amendments or updates), option 7 would save 4 hours wait time per prior notice submission that can be amended or updated. Prior notice submissions that cannot be amended or updated, however, would lead to waits of 4 hours. Those 2.5 percent of shipments for which prior notice cannot be amended or updated would wait an extra 4 hours before being able to cross the border. This wait translates into 2.4 percent of the perishable produce life span (4 hours out of 168 hours) and 8.3 percent of the perishable seafood life span (4 hours out of 48 hours). Table 26 of this document shows the costs of submitting prior notice for a 4-hour minimum time before arrival, with a 1-hour timeframe before arrival for submitting amendment and updates, for Canadian, Mexican, and Central American perishable produce and seafood.

Table 26.--Loss in Value Caused by Resubmitted Prior Notice Under Option 7

| Perishable Produce | Dollars |
|---|---|
| 2001 Imported Mexican produce total retail value | $3,458,525,000 |
| 2.4% Reduction in value for 2.5% of Mexican produce | $2,075,115 |
| 2001 Imported Canadian produce total retail value | $401,826,000 |
| 2.4% Reduction in value for 2.5% of Canadian produce | $241,096 |
| 2001 Imported Central American produce total retail value | $217,420,000 |
| 2.4% Reduction in value for 2.5% of Central American produce | $130,452 |
| Total Lost Value for Produce | $2,446,000 |
| Perishable Seafood | |
| 2001 Imported Mexican seafood total retail value | $112,277,406 |
| 8.3% Reduction in value for 2.5% of Mexican seafood | $232,976 |
| 2001 Imported Canadian seafood total retail value | $1,863,217,894 |
| 8.3% Reduction in value for 2.5% of Canadian seafood | $3,866,177 |
| 2001 Imported Central American seafood total retail value | $251,796,496 |
| 8.3% Reduction in value for 2.5% of Central American seafood | $522,478 |
| Total Lost Value for Seafood | $4,621,000 |

Table 27 of this document compares the reduction in the costs of this interim final rule if amendments and updates to prior notice are allowed (option 7), as opposed to the no-amendment 4-hour option 4.

Table 27.--Comparison of Option 4 With Option 7--Lost Value for Perishables

| Perishable Mexican Produce Value Loss | |
|---|---|
| Option 4--4 hour minimum notice | $16,601,000 |
| Option 7--4 hour notice with changes | $2,075,000 |
| Savings with amendment and update | $14,526,000 |
| **Perishable Canadian Produce Value Loss** | |
| Option 4--4 hour minimum notice | $1,929,000 |
| Option 7--4 hour notice with changes | $241,000 |
| Savings with amendment and update | $1,688,000 |
| **Perishable Central American Produce Value Loss** | |
| Option 4--4 hour minimum notice | $1,044,000 |
| Option 7--4 hour notice with changes | $130,000 |
| Savings with amendment and update | $914,000 |
| **Perishable Mexican Seafood Value Loss** | |
| Option 4--4 hour minimum notice | $1,864,000 |
| Option 7--4 hour notice with changes | $233,000 |
| Savings with amendment and update | $1,631,000 |
| **Perishable Canadian Seafood Value Loss** | |
| Option 4--4 hour minimum notice | $30,929,000 |
| Option 7--4 hour notice with changes | $3,866,000 |
| Savings with amendment and update | $27,063,000 |
| **Perishable Central American Seafood Value Loss** | |
| Option 4--4 hour minimum notice | $4,180,000 |
| Option 7--4 hour notice with changes | $522,000 |
| Savings with amendment and update | $3,658,000 |

Although submitters can amend prior notice information with this option, we assume that those 2.5 percent of prior notice submissions that cannot use the amendment, but instead have to wait an additional 4 hours to cross the border, would incur at least some truck costs as a result of this wait time. Therefore, we will assume that 2.5 percent of the 2.3 million lines that entered the United States by ground transportation in fiscal year 2002 (based on OASIS data) would pay for an additional 4 hours of truck time per line. We use 2.5 percent as the percentage of trucks delayed to be consistent with our resubmission rate of 2.5 percent when the prior notice submission timeframe is 4 hours before arrival with a 1-hour amendment option. Table 28 of this document shows the costs of truck time associated with those prior notices that cannot be amended.

TABLE 28.—COST OF ADDITIONAL CARRIER TIME FOR OPTION 7

| | |
|---|---|
| 2002 OASIS import entry lines by ground transportation (truck or train) | 2,300,000 |
| Average number of lines per entry | 2.6 |
| Total number of ground entries | 884,615 |
| 2.5% of ground entries | 22,115 |
| Cost for 4 hours of carrier time ($250 per hour) | $1,000 |
| Total cost of truck time | $22,115,000 |

Table 29 of this document presents a summary of the costs associated with option 7. Also presented in table 29 of this document are the present values of the costs associated with this option using the OMB-recommended discount rates of 3 and 7 percent.

Table 29.--Summary of Costs for Option 7 (4 hour minimum submission time, 1 hour amendment)

| | Dollars (thousands) |
|---|---:|
| Learning costs | $66,420 |
| Coordination costs | $31,095 |
| Computer acquisition costs | $7,600 |
| FDA prior notice system cost | $13,000 |
| Annual costs to fill out prior notice screens | $187,500 |
| Additional costs for BRASS users | $48,462 |
| Lost value for Mexican produce | $2,075 |
| Lost value for Canadian produce | $241 |
| Lost value for Central American produce | $130 |
| Lost value for Mexican seafood | $233 |
| Lost value for Canadian seafood | $3,866 |
| Lost value for Central American seafood | $522 |
| Cost for truck time | $22,115 |
| Total first year costs for Option 7 | $383,079 |
| Annual costs after first year | $276,938 |
| Present value of costs at 7% for 20 years | $3,033,077 |
| Present value of costs at 3% for 20 years | $4,223,181 |

g. *Option 8: Minimum prior notice timeframe of 8 hours before arrival; electronic submission of information; any change in information requires resubmission (statutory default option).* Option 8 is to issue an interim final rule that incorporates the default minimum timeframe for prior notices as provided in the Bioterrorism Act. Pre-proposal information and comments on the proposed rule indicated that Canadian and Mexican produce growers and seafood processors are concerned that the longer the minimum time required for the prior notice, the less fresh their products will be when they reach U.S. customers. Less-than-optimal fresh (*i.e.*, lower quality) products would result in a lower price paid for the imported produce or seafood shipments, or possibly even the loss of a customer's business to a domestic producer.

For importers of perishable products such as seafood and produce, the 8-hour minimum time for prior notice is expected to change business practices. How much importer, produce grower, and seafood processor business practices will be affected by prior notice requirements will depend on how early the orders are received compared with how early prior notice must be submitted. Also, as the prior notice submission time increases, the location of the exporter in relation to the U.S. border becomes a more important factor in determining whether changes in business practices are needed.

If the prior notice time for submission is 8 hours instead of 4 hours, the probability of having to resubmit prior notice information will be greater. Now, instead of 20 percent of the importers of perishable products from Canada, Mexico, and Central America having to resubmit their notices, we will assume that the 8-hour submission timetable means that 30 percent will have to resubmit their notices.

As explained in option 2, we based the resubmission rate percentages for perishable products coming from Canada and Mexico on comments FDA received indicating that 40 to 100 percent of the products from these two countries are shipped from locations no more than 4 hours from the border. For shorter prior notice timeframes, starting with the 4-hour option and moving downward in minimum prior notice time, we halved the resubmission rate because every hour decrease in required prior notice submission time will eliminate a significant number of prior notice resubmissions for those facilities close to the border. For options with longer timeframes, however, instead of doubling the resubmission rate, we begin to add an additional 10 percent resubmission rate for each additional 4 hours of required prior notice minimum submission time. We do this because, aside from perishable products and rush orders, most foods are ordered in advance of shipping and the quantities of such foods are easily identifiable; these are orders that will not change and thus will not require resubmission of prior notice.

Carriers of products requiring prior notice may not be able to cross the border for 8 hours or longer, instead of 4 hours. This time for prior notice represents 4.8 percent of the produce life span (8 hours out of 168 hours) and 16.7 percent of the seafood life span (8 hours out of 48 hours). Table 30 of this document shows the loss in value caused by the resubmitted prior notice information for the 30 percent of imported Mexican, Canadian, and Central American perishable seafood and produce affected.

Table 30.--Loss in Value Caused by Resubmitted Prior Notice Under Option 8

| Perishable Produce | Dollars |
|---|---|
| 2001 Imported Mexican produce total retail value | $3,458,525,000 |
| 4.8% Reduction in value for 30% of Mexican produce | $49,802,760 |
| 2001 Imported Canadian produce total retail value | $401,826,000 |
| 4.8% Reduction in value for 30% of Canadian produce | $5,786,294 |
| 2001 Imported Central American produce total retail value | $217,420,000 |
| 4.8% Reduction in value for 30% of Central American produce | $3,130,848 |
| Total Lost Value of Produce | $58,720,000 |
| Perishable Seafood | |
| 2001 Imported Mexican seafood total retail value | $112,277,406 |
| 16.7% Reduction in value for 30% of Mexican seafood | $5,625,098 |
| 2001 Imported Canadian seafood total retail value | $1,863,217,894 |
| 16.7% Reduction in value for 30% of Canadian seafood | $93,347,216 |
| 2001 Imported Central American seafood total retail value | $251,796,496 |
| 16.7% Reduction in value for 30% of Central American seafood | $12,615,004 |
| Total Lost Value for Seafood | $111,587,000 |

For this 8-hour prior notice submission timeframe, we include holding time costs paid to carriers of products to be imported. We add in this cost in response to comments indicating that for longer submission timeframes and for products located less than 8 hours from the U.S. border, it is quite possible that the carrier would have to be paid for additional waiting time over what had been established under the current business practices.

We do not have information on the number of import entries that may use additional truck time because of prior notice submission timeframes. We will assume that 30 percent of the 2.3 million lines that entered the United States by ground transportation in fiscal year 2002 (based on OASIS data) would pay for an additional 2 hours of truck time per entry. We use 30 percent as the percentage of trucks delayed to be consistent with our resubmission rate of 30 percent when the prior notice submission timeframe is 8 hours before arrival. These costs are summarized in table 31 of this document.

Table 31.--Cost of Additional Carrier Time for Option 8

| | |
|---|---|
| 2001 OASIS import entry lines by ground transportation (truck or train) | 2,300,000 |
| Average number of lines per entry | 2.6 |
| Total number of ground entries | 884,615 |
| 30% of ground entries | 265,385 |
| Cost for 2 hours of carrier time ($250 per hour) | $500 |
| Total cost of truck time | $132,692,500 |

Table 32 of this document presents a summary of the costs associated with option 8. Also presented in table 32 of this document are the present values of the costs associated with this option using the OMB-recommended discount rates of 3 and 7 percent.

Table 32.–Summary of Costs for Option 8
(8-hour minimum prior notice submission time)

| | Dollars (thousands) |
|---|---|
| Learning costs | $66,420 |
| Coordination costs | $31,095 |
| Computer acquisition costs | $7,600 |
| FDA prior notice system cost | $13,000 |
| Annual costs to fill out prior notice screens | $187,500 |
| Additional costs for BRASS users | $48,462 |
| Lost value for Mexican produce | $49,803 |
| Lost value for Canadian produce | $5,786 |
| Lost value for Central American produce | $3,131 |
| Lost value for Mexican seafood | $5,625 |
| Lost value for Canadian seafood | $93,347 |
| Lost value for Central American seafood | $12,615 |
| Cost for truck time | $132,693 |
| Total first year costs for Option 8 | $656,897 |
| Annual costs after first year | $550,756 |
| Present value of costs at 7% for 20 years | $5,933,909 |
| Present value of costs at 3% for 20 years | $8,296,901 |

h. *Option 9: Prior notice required 8 hours before arrival; electronic submission of information; allow changes to the prior notice submission up to 1 hour before arrival.* We now take the estimates in option 8 and adjust them to account for the effects of allowing changes to the prior notice submission. With an original submission time of 8 hours before arrival, it is likely that allowing changes to the original submission, in the form of electronic amendments and updates, would improve the flow of import traffic—especially since comments indicated that between 40 and 100 percent of products coming from Canada and Mexico are within 4 hours of a U.S. border. Regardless of when the order is placed, if the exporting facility of the product is located less than 8 hours from a U.S. border, allowing amendments and updates to prior notice would reduce the notice resubmission rate, and also reduce the loss of value for perishable foods that might otherwise have to wait extra time before crossing the U.S. border.

Again, we note with this option, we assume that the FDA 1-hour time estimate for filling out each prior notice is sufficient, even with the option of amending prior notice information. This time is sufficient because amending or updating a particular item in the prior notice submission should only take a few seconds to a few minutes in time.

For this option, with amendment and updates, we will assume that the number of prior notice resubmissions necessitated by changes in information on the notice will be reduced from 30 to 5 percent. Although the amendment will eliminate the need for notice resubmission for many entries, the uncertainty associated with some shipment information increases as the prior notice minimum submission timeframe increases. Thus, for an 8-hour original submission time frame, it is unlikely that the allowance of an amendment will reduce the prior notice resubmission rate to 2.5 percent as presented in option 7. Instead, we assume that an 8-hour prior notice submission timeframe with a 1-hour amendment will reduce the prior notice resubmission rate to 5 percent.

Option 9 saves 8 hours of wait time per entry for prior notices that can be amended or updated. The 5 percent of imports for which the prior notice cannot be amended, however, will end up waiting at the border or at the manufacturing/processing facility an additional 8 hours before arriving in the United States, which is 4.8 percent of the perishable produce life span (8 hours out of 168 hours) and 16.7 percent of the perishable seafood life span (8 hours out of 48 hours). Table 33 of this document shows the costs of submitting prior notice for an 8-hour minimum time, with a 1-hour amendment and updates, for Canadian, Mexican, and Central American perishable produce and seafood.

Table 33.–Loss in Value Caused by Resubmitted Prior Notice Under Option 8

| Perishable Produce | Dollars |
|---|---|
| 2001 Imported Mexican Produce total retail value | $3,458,525,000 |
| 4.8% Reduction in value for 5% of Mexican produce | $8,300,460 |
| 2001 Imported Canadian produce total retail value | $401,826,000 |
| 4.8% Reduction in value for 5% of Canadian produce | $964,382 |
| 2001 Imported Central American produce total retail value | $217,420,000 |
| 4.8% Reduction in value for 5% of Central American produce | $521,808 |
| Lost Value for Produce | $9,786,000 |
| Perishable Seafood | |
| 2001 Imported Mexican seafood total retail value | $112,277,406 |
| 16.7% Reduction in value for 5% of Mexican seafood | $937,516 |
| 2001 Imported Canadian seafood total retail value | $1,863,217,894 |
| 16.7% Reduction in value for 5% of Canadian seafood | $15,557,869 |
| 2001 Imported Central American seafood total retail value | $251,796,496 |
| 16.7% Reduction in value for 5% of Central American seafood | $2,102,501 |
| Total Lost Value for Seafood | $18,599,000 |

Table 34 of this document compares the reduction in the costs of this interim final rule if an amendment and update to prior notice is allowed (option 9) as opposed to the no-amendment option 8.

Table 34.--Comparison of Option 8 With Option 9--Lost Value for Perishables

| | |
|---|---|
| Perishable Mexican Produce Value Loss | |
| Option 8--8 hour minimum notice | $41,502,000 |
| Option 9--8 hour notice with changes | $8,300,000 |
| Savings with amendment and update | $33,202,000 |
| Perishable Canadian Produce Value Loss | |
| Option 8--8 hour minimum notice | $4,822,000 |
| Option 9--8 hour notice with changes | $964,000 |
| Savings with amendment and update | $3,858,000 |
| Perishable Central American Produce Value Loss | |
| Option 8--8 hour minimum notice | $3,131,000 |
| Option 9--8 hour notice with changes | $522,000 |
| Savings with amendment and update | $2,609,000 |
| Perishable Mexican Seafood Value Loss | |
| Option 8--8 hour minimum notice | $4,688,000 |
| Option 9--8 hour notice with changes | $938,000 |
| Savings with amendment and update | $3,750,000 |
| Perishable Canadian Seafood Value Loss | |
| Option 8--8 hour minimum notice | $77,789,000 |
| Option 9--8 hour notice with changes | $15,558,000 |
| Savings with amendment and update | $62,231,000 |
| Perishable Central American Seafood Value Loss | |
| Option 8--8 hour minimum notice | $12,615,000 |
| Option 9--8 hour notice with changes | $2,103,000 |
| Savings with amendment and update | $10,512,000 |

Although submitters can amend prior notice information with this option, we assume that those 5 percent of entries that cannot use the amendment, but instead have to wait an additional 8 hours before arriving in the United States would incur at least some truck costs as a result of this wait time. We will therefore assume that 5 percent of the 2.3 million lines that entered the United States by ground transportation in fiscal year 2002 (based on OASIS data) would pay for an additional 8 hours of truck time per prior notice submission. We use 5 percent as the percentage of trucks delayed to be consistent with our resubmission rate of 5 percent when the prior notice submission timeframe is 8 hours before arrival with a 1-hour amendment option. Table 35 shows the costs of truck time associated with those prior notices that cannot be amended.

Table 35.--Cost of Additional Carrier Time for Option 9

| | |
|---|---|
| 2002 OASIS import entry lines by ground transportation (truck or train) | 2,300,000 |
| Average number of lines per entry | 2.6 |
| Total number of ground entries | 884,615 |
| 5% of ground entries | 44,231 |
| Cost for 8 hours of carrier time ($250 per hour) | $2,000 |
| Total cost of truck time | $88,462,000 |

Table 36 of this document presents a summary of the costs associated with option 9. Also presented in table 36 of this document are the present values of the costs associated with this option using the OMB-recommended discount rates of 3 and 7 percent.

---

Table 36.--Summary of Costs for Option 9
(8-hour prior notice minimum submission time, 1-hour amendment)

| | Dollars (thousands) |
|---|---:|
| Learning costs | $66,420 |
| Coordination costs | $31,095 |
| Computer acquisition costs | $7,600 |
| FDA prior notice system cost | $13,000 |
| Annual costs to fill out prior notice screens | $187,500 |
| Additional costs for BRASS users | $48,462 |
| Lost value for Mexican produce | $8,300 |
| Lost value for Canadian produce | $964 |
| Lost value for Central American produce | $522 |
| Lost value for Mexican seafood | $938 |
| Lost value for Canadian seafood | $15,558 |
| Lost value for Central American seafood | $2,103 |
| Cost for truck time | $88,462 |
| Total first year costs for Option 9 | $470,744 |
| Annual costs after first year | $364,603 |
| Present value of costs at 7% for 20 years | $3,961,802 |
| Present value of costs at 3% for 20 years | $5,527,415 |

i. *Option 10: Prior notice received by 12 noon of the calendar day before arrival; electronic submission of information; any change in information requires resubmission.* This option requires that prior notice be submitted no later than 12 noon of the calendar day before the expected day of arrival. Under this option, prior notice submitters will have to let FDA know of the incoming food shipment at least 12 hours before the shipment reaches the U.S. port of arrival. This option would likely cause a change in importer business practices and the business practices of their clients in much the same way as option 8, but the potential loss of product value is higher because the minimum prior notice time has increased.

Again, how business practices would be affected by prior notice requirements depends on how early the invoice orders are received, when the truck is loaded, and when prior notice is submitted.

As before, we assume that as the minimum notice time increases, the likelihood of a resubmission also increases. Instead of 30 percent of the importers of perishable products from Canada and Mexico having to cancel their original prior notices and resubmit, we will assume that the 12-hour submission timetable means that 40 percent will have to cancel and resubmit their notices.

We increase the percentage of resubmission this time by 10 percent because as the prior notice time frame increases relative to the time of arrival, it becomes more likely that the prior notice information will change after the notice is submitted to FDA, thus requiring resubmission of the notice. The transporters of products with resubmitted prior notices may then have to wait as long as 12 hours, which affects 7.1 percent of the produce life span (12 hours out of 168 hours) and 25 percent of the seafood life span (12 hours out of 48 hours).

Table 37 of this document shows the loss in value caused by the resubmitted prior notice information for the 40 percent of imported Mexican, Canadian, and Central American perishable seafood and produce that might be affected.

Table 37.--Loss in Value Caused by Resubmitted Prior Notice Under Option 10

| Perishable Produce | Dollars |
|---|---|
| 2001 Imported Mexican produce total retail value | $3,458,525,000 |
| 7.1% Reduction in value for 40% of Mexican produce | $98,222,110 |
| 2001 Imported Canadian produce total retail value | $401,826,000 |
| 7.1% Reduction in value for 40% of Canadian produce | $11,411,858 |
| 2001 Imported Central American produce total retail value | $217,420,000 |
| 7.1% Reduction in value for 40% of Central American produce | $6,174,728 |
| Total Lost Value for Produce | $115,809,000 |
| Perishable Seafood | |
| 2001 Imported Mexican seafood total retail value | $112,277,406 |
| 25% Reduction in value for 40% of Mexican seafood | $11,227,741 |
| 2001 Imported Canadian Seafood total retail value | $1,863,217,894 |
| 25% Reduction in value for 40% of Canadian seafood | $186,321,789 |
| 2001 Imported Central American seafood total retail value | $251,796,496 |
| 25% Reduction in value for 40% of Central American seafood | $25,179,650 |
| Total Lost Value for Seafood | $222,730,000 |

For option 10, we also include the costs of additional carrier time that may be necessary due to the longer minimum prior notice submission timeframe. For option 8 we had included the cost of an additional 2 hours of truck time for 30 percent of ground-based import entry lines; for this option we will include the cost of an additional 4 hours of truck time for 40 percent of ground-based import entry lines. We expect the percentage of imported shipments that need extra truck time, and the truck time itself, to increase as the prior notice submission timeframe increases. These costs are summarized in table 38 of this document.

Table 38.--Cost of Additional Carrier Time for Option 10

| | |
|---|---|
| 2001 OASIS import entry lines by ground transportation (truck or train) | 2,300,000 |
| Average number of lines per entry | 2.6 |
| Total number of ground entries | 884,615 |
| 40% of ground entries | 353,846 |
| Cost for 4 hours of carrier time ($250 per hour) | $1,000 |
| Total cost of truck time | $353,846,000 |

Table 39 of this document presents a summary of the costs associated with option 10. Also presented in table 39 of this document are the present values of the costs associated with this option using the OMB-recommended discount rates of 3 and 7 percent.

Table 39.--Summary of Costs for Option 10
(12 noon the calendar day before arrival minimum submission time)

| | Dollars (thousands) |
|---|---|
| Learning costs | $66,420 |
| Coordination costs | $31,095 |
| Computer acquisition costs | $7,600 |
| FDA prior notice system cost | $13,000 |
| Annual costs to fill out prior notice screens | $187,500 |
| Additional costs for BRASS users | $48,462 |
| Lost value for Mexican produce | $98,222 |
| Lost value for Canadian produce | $11,412 |
| Lost value for Central American produce | $6,175 |
| Lost value for Mexican seafood | $11,228 |
| Lost value for Canadian seafood | $186,322 |
| Lost value for Central American seafood | $25,180 |
| Cost for truck time | $353,846 |
| Total first year costs for Option 10 | $1,046,282 |
| Annual costs after first year | $940,141 |
| Present value of costs at 7% for 20 years | $10,059,060 |
| Present value of costs at 3% for 20 years | $14,089,967 |

j. *Option 11: Prior notice received by 12 noon of the calendar day before arrival; electronic submission of information; allow changes to the prior notice submission up to 1 hour before arrival.* We now take the estimates in option 10 and adjust them to account for the effects of allowing changes to the prior notice submission. Since prior notice must be submitted by 12 noon on the calendar day before arrival, it is reasonable to expect that not all the information required on a prior notice would be final.

The prior notice requires the addresses of the submitter, importer, owner, and consignee, as well as the carrier, manufacturer, and grower if known. Required information also includes the identity of the article of food, its FDA Country of Production, the country from which the food is shipped, its CBP entry identifier, the date, time, and anticipated port of arrival, and planned shipment information.

Increasing the number of required fields that can be changed in the prior notice before arrival reduces the likelihood that the information would have to be completely resubmitted by importers. This change would lessen the time burden, and therefore, the cost of having to submit prior notice. Allowing a 1-hour amendment and updates to prior notice would provide some flexibility for importers in industries where some of the required information, such as the specific type of food (*i.e.*, codfish instead of fish) of the product being imported, may change or is not known until just before shipping. Again we note that we assume that 1-hour time FDA estimates that it takes to fill out each prior notice is sufficient, even with the option of amending prior notice information. This time is sufficient because amending or updating a particular item in the prior notice submission should only take a few seconds to a few minutes.

For this option with amendment and updates, we assume that the number of prior notice resubmissions necessitated by changes in information on the notice would be reduced from 40 percent (as in option 10) to 10 percent. The notice resubmission rate for this option is expected to be higher than previous options with amendments because the original submission must be given by 12 noon on the calendar day before arrival. The lengthening of the minimum prior notice time period from 8 hours with amendment (option 9) to 12 noon the calendar day before arrival with amendment (this option) suggests that there would be significantly more prior notices initially submitted for which all required information has not been completely determined. Less-than-final information on original prior notice submissions increases the likelihood that the notice will require revision, either in the form of an amendment or in the form of a total resubmission of the original prior notice.

Option 11 saves 12 hours wait time per entry line that can be amended or updated for the prior notice over the time used in option 9. Those shipments, whose prior notice must be completely resubmitted, would wait an additional 12 hours at the manufacturing/processing facility or at the U.S. border; 7.1 percent of the perishable produce life span (12 hours out of 168 hours) and 25 percent of the perishable seafood life span (12 hours out of 48 hours). Table 40 of this document shows the costs of submitting prior notice for a 12-hour minimum time, with a 1-hour timeframe for amendment and updates before arrival, for Canadian, Central American, and Mexican perishable produce and seafood.

Table 40.--Loss in Value Caused by Resubmitted Prior Notice Under Option 11

| Perishable Produce | Dollars |
|---|---|
| 2001 Imported Mexican produce total retail value | $3,458,525,000 |
| 7.1% Reduction in value for 10% of Mexican produce | $24,555,528 |
| 2001 Imported Canadian produce total retail value | $401,826,000 |
| 7.1% Reduction in value for 10% of Canadian produce | $2,852,965 |
| 2001 Imported Central American produce total retail value | $217,420,000 |
| 7.1% Reduction in value for 10% of Central American produce | $1,543,682 |
| Total Lost Value for Produce | $28,953,000 |
| Perishable Seafood | |
| 2001 Imported Mexican seafood total retail value | $112,277,406 |
| 25% Reduction in value for 10% of Mexican seafood | $2,806,935 |
| 2001 Imported Canadian seafood total retail value | $1,863,217,894 |
| 25% Reduction in value for 10% of Canadian seafood | $46,580,447 |
| 2001 Imported Central American seafood total retail value | $251,796,496 |
| 25% Reduction in value for 10% of Central American seafood | $6,294,912 |
| Total Lost Value for Seafood | $55,682,000 |

Table 41 of this document compares the reduction in the costs of this rule if an amendment and update to prior notice is allowed (option 11) as opposed to the no-amendment option 10.

Table 41.--Comparison of Lost Value for Perishables Between Option 10 With Option 11

| | |
|---|---|
| Perishable Mexican Produce Value Loss | |
| Option 10--12 hour minimum notice | $98,222,000 |
| Option 11--12 hour notice with changes | $24,556,000 |
| Savings with amendment and update | $73,666,000 |
| Perishable Canadian Produce Value Loss | |
| Option 10--12 hour minimum notice | $11,412,000 |
| Option 11--12 hour notice with changes | $2,853,000 |
| Savings with amendment and update | $8,559,000 |
| Perishable Central American Produce Value Loss | |
| Option 10--12 hour minimum notice | $6,175,000 |
| Option 11--12 hour notice with changes | $1,544,000 |
| Savings with amendment and update | $4,631,000 |
| Perishable Mexican Seafood Value Loss | |
| Option 10--12 hour minimum notice | $11,228,000 |
| Option 11--12 hour notice with changes | $2,807,000 |
| Savings with amendment and update | $8,421,000 |
| Perishable Canadian Seafood Value Loss | |
| Option 10--12 hour minimum notice | $186,322,000 |
| Option 11--12 hour notice with changes | $46,580,000 |
| Savings with amendment and update | $139,742,000 |
| Perishable Central American Seafood Value Loss | |
| Option 10--12 hour minimum notice | $25,180,000 |
| Option 11--12 hour notice with changes | $6,295,000 |
| Savings with amendment and update | $18,885,000 |

Although submitters can amend prior notice information with this option, we assume that those 10 percent of entry lines that cannot be amended, but instead have to wait an additional 12 hours to arrive in the United States would incur at least some truck costs corresponding to this wait time. Therefore we will assume that 10 percent of the 2.3 million lines that entered the United States by ground transportation in fiscal year 2002 (based on OASIS data) would pay for an additional 12 hours of truck time per line. We use 10 percent as the percentage of trucks delayed to be consistent with our resubmission rate of 10 percent when the prior notice submission timeframe is noon the calendar day before arrival with a 1-hour amendment option. Table 42 of this document shows the costs of truck time associated with those prior notices that cannot be amended.

TABLE 42.—COST OF ADDITIONAL CARRIER TIME FOR OPTION 11

| | |
|---|---|
| 2002 OASIS import entry lines by ground transportation (truck or train) | 2,300,000 |
| Average number of lines per entry | 2.6 |
| Total number of ground entries | 884,615 |
| 10% of ground entries | 88,462 |
| Cost for 12 hours of carrier time ($250 per hour) | $3,000 |
| Total cost of truck time | $265,386,000 |

Table 43 of this document presents a summary of the costs associated with option 11. Also presented in table 43 of this document are the present values of the costs associated with this option using the OMB-recommended discount rates of 3 and 7 percent.

Table 43.--Summary of Costs for Option 11 (12 noon the calendar day before arrival minimum submission time with amendment option 1 hour before arrival)

| | Dollars (thousands) |
|---|---|
| Learning costs | $66,420 |
| Coordination costs | $31,095 |
| Computer acquisition costs | $7,600 |
| FDA prior notice system cost | $13,000 |
| Annual costs to fill out prior notice screens | $187,500 |
| Additional costs for BRASS users | $48,462 |
| Lost value for Mexican produce | $24,556 |
| Lost value for Canadian produce | $2,853 |
| Lost value for Central American produce | $1,544 |
| Lost value for Mexican seafood | $2,807 |
| Lost value for Canadian seafood | $46,580 |
| Lost value for Central American seafood | $6,295 |
| Cost of truck time | $265,386 |
| Total first year costs for Option 11 | $703,918 |
| Annual costs after first year | $597,777 |
| Present value of costs at 7% for 20 years | $6,432,050 |
| Present value of costs at 3% for 20 years | $8,996,455 |

k. *Option 12: Prior notice received by 12 noon of the calendar day before arrival; electronic submission of information; allow changes to the prior notice submission up to 2 hours before arrival (proposed rule).* Option 12 is the option that was originally proposed by FDA. This option requires prior notice submission by noon on the calendar day before arrival, with updates and amendments that can be submitted up to 2 hours before scheduled arrival at a U.S. port. We re-present the option here for comparison, as the costs attributable to each option have changed significantly since the proposed rule stage.

For this option with amendment and updates, we assume that the number of prior notice resubmissions necessitated by changes in information on the notice would be reduced from 40 percent (as in option 10) to 15 percent. The notice resubmission rate for this option is expected to be higher than previous options with amendments because the original submission must be given by 12 noon on the calendar day prior to arrival and the minimum amendment timeframe before arrival is now 2 hours instead of 1 hour.

Option 12 saves 12 hours wait time per entry line that can be amended or updated for the prior notice over the time used in option 10. Those shipments whose prior notice must be completely resubmitted however, would wait an additional 12 hours at the manufacturing/processing facility or at the U.S. border; 7.1 percent of the perishable produce life span (12 hours out of 168 hours) and 25 percent of the perishable seafood life span (12 hours out of 48 hours). Table 44 of this document shows the costs of submitting prior notice for a 12-hour minimum time, with a 2-hour timeframe for amendment and updates before arrival, for Canadian, Central American, and Mexican perishable produce and seafood.

Table 44.--Loss in Value Caused by Resubmitted Prior Notice Under Option 12

| Perishable Produce | Dollars |
|---|---|
| 2001 Imported Mexican produce total retail value | $3,458,525,000 |
| 7.1% Reduction in value for 15% of Mexican produce | $36,833,000 |
| 2001 Imported Canadian produce total retail value | $401,826,000 |
| 7.1% Reduction in value for 15% of Canadian produce | $4,279,000 |
| 2001 Imported Central American produce total retail value | $217,420,000 |
| 7.1% Reduction in value for 15% of Central American produce | $2,316,000 |
| Total Lost Value for Produce | $43,428,000 |
| Perishable Seafood | |
| 2001 Imported Mexican seafood total retail value | $112,277,000 |
| 25% Reduction in value for 15% of Mexican seafood | $4,210,000 |
| 2001 Imported Canadian seafood total retail value | $1,863,218,000 |
| 25% Reduction in value for 15% of Canadian seafood | $69,871,000 |
| 2001 Imported Central American seafood total retail value | $251,796,000 |
| 25% Reduction in value for 15% of Central American seafood | $9,442,000 |
| Total Lost Value for Seafood | $83,523,000 |

Although submitters can amend prior notice information with this option, we assume that those 15 percent of entry lines that cannot be amended, but instead have to wait an additional 12 hours to arrive in the United States would incur at least some truck costs corresponding to this wait time. Therefore we will assume that 15 percent of the 2.3 million lines that entered the U.S. by ground transportation in fiscal year 2002 (based on OASIS data) would pay for an additional 12 hours of truck time per line. We use 15 percent as the percentage of trucks delayed to be consistent with our resubmission rate of 15 percent when the prior notice submission timeframe is noon the calendar day before arrival with a 2-hour amendment option. Table 45 of this document shows the costs of truck time associated with those prior notices that cannot be amended.

Table 45 --Cost of Additional Carrier Time for Option 12

| | |
|---|---|
| 2002 OASIS import entry lines by ground transportation (truck or train) | 2,300,000 |
| Average number of lines per entry | 2.6 |
| Total number of ground entries | 884,615 |
| 15% of ground entries | 132,692 |
| Cost for 12 hours of carrier time ($250 per hour) | $3000 |
| Total cost of truck time | $398,076,000 |

Table 46 of this document presents a summary of the costs associated with option 12. Also presented in table 46 of this document are the present values of the costs associated with this option using the OMB-recommended discount rates of 3 and 7 percent.

Table 46.--Summary of Costs for Option 12 (12 noon the calendar day before arrival minimum submission time with amendment option 2 hours before arrival)

| | Dollars (thousands) |
|---|---|
| Learning costs | $66,420 |
| Coordination costs | $31,095 |
| Computer acquisition costs | $7,600 |
| FDA prior notice system cost | $13,000 |
| Annual costs to fill out prior notice screens | $187,500 |
| Additional costs for BRASS users | $48,462 |
| Lost value for Mexican produce | $36,833 |
| Lost value for Canadian produce | $4,279 |
| Lost value for Central American produce | $2,316 |
| Lost value for Mexican seafood | $4,210 |
| Lost value for Canadian seafood | $69,871 |
| Lost value for Central American seafood | $9,442 |
| Cost of truck time | $398,076 |
| Total first year costs for Option 12 | $878,924 |
| Annual costs after first year | $772,783 |
| Present value of costs at 7% for 20 years | $8,286,066 |
| Present value of costs at 3% for 20 years | $11,600,102 |

### 4. Summary of Options

Table 47 of this document gives a summary of the costs associated with the prior notice rule for each option presented. The costs associated with the prior notice requirements are included for each option for all modes of transportation. These costs include the following items: Learning the rule, coordinating the required information, acquiring computer equipment, and annual submission costs for all imported food shipments. The cost of lost value for perishable products is included in each option calculation depending on mode of transportation and minimum prior notice submission time. Lost truck time is included for options with longer timeframes.

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Table 47.—Summary of Costs Associated With Each Option

| Costs | Description of Option | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Option 1 | Option 2 | Option 3 | Option 4 | Option 5 | Option 6 | Option 7 | Option 8 | Option 9 | Option 10 | Option 11 | Option 12 |
| | No regulation | Prior notice 1 hour before arrival | Prior notice 2 hours before arrival | Prior notice 4 hours before arrival | Prior notice 1 hour before arrival for vehicles, 4 hours for trains and planes | Prior notice 2 hours before arrival for vehicles, 4 hours for trains and planes (interim final rule) | Prior notice 4 hours before arrival with 1 hour amendment | Prior notice 8 hours before arrival | Prior notice 8 hours before arrival with 1 hour amendment | Prior notice 12 noon the calendar day before arrival | Prior notice 12 noon the calendar day before arrival with 1 hour amendment | Prior notice 12 noon the calendar day before arrival with 2 hour amendment (proposed rule) |
| | Dollars (thousands) | | | | | | | | | | | |
| Learning costs | 0 | 66,420 | 66,420 | 66,420 | 66,420 | 66,420 | 66,420 | 66,420 | 66,420 | 66,420 | 66,420 | 66,420 |
| Coordination costs | 0 | 31,095 | 31,095 | 31,095 | 31,095 | 31,095 | 31,095 | 31,095 | 31,095 | 31,095 | 31,095 | 31,095 |
| Computer acquisition costs | 0 | 7,600 | 7,600 | 7,600 | 7,600 | 7,600 | 7,600 | 7,600 | 7,600 | 7,600 | 7,600 | 7,600 |
| FDA prior notice system cost | 0 | 13,000 | 13,000 | 13,000 | 13,000 | 13,000 | 13,000 | 13,000 | 13,000 | 13,000 | 13,000 | 13,000 |
| Annual costs to fill out prior notice screens | 0 | 187,500 | 187,500 | 187,500 | 187,500 | 187,500 | 187,500 | 187,500 | 187,500 | 187,500 | 187,500 | 187,500 |
| Additional costs for BRASS users | 0 | 48,462 | 48,462 | 48,462 | 48,462 | 48,462 | 48,462 | 48,462 | 48,462 | 48,462 | 48,462 | 48,462 |
| Lost value for perishable foods | 0 | 1,616 | 6,465 | 56,547 | 8,174 | 12,877 | 6,415 | 154,561 | 25,760 | 307,184 | 76,796 | 126,951 |
| Cost for truck time | 0 | 0 | 0 | 44,231 | 0 | 0 | 22,115 | 132,693 | 88,462 | 338,462 | 265,386 | 398,076 |
| First year cost of each option | 0 | 355,513 | 360,362 | 454,675 | 362,071 | 366,774 | 383,079 | 656,897 | 470,744 | 1,046,282 | 703,918 | 878,924 |
| Annual cost of each option | 0 | 249,372 | 254,221 | 348,534 | 255,929 | 260,633 | 276,938 | 550,756 | 364,603 | 940,141 | 597,777 | 772,783 |
| Present value total cost of each option at 7% for 20 years | 0 | 2,741,043 | 2,792,413 | 3,791,567 | 2,810,515 | 2,860,342 | 3,033,077 | 5,933,909 | 3,961,802 | 10,059,060 | 6,432,050 | 8,286,066 |
| Present value total cost of each option at 3% for 20 years | 0 | 3,813,068 | 3,885,209 | 5,288,348 | 3,910,630 | 3,980,603 | 4,223,181 | 8,296,901 | 5,527,415 | 14,089,967 | 8,996,455 | 11,600,102 |

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*Sensitivity analysis.* We estimate that the costs of the interim final rule (option 6) will be about $367 million in the first year and $261 million in later years. At a 7 percent discount rate, the present value of the costs of the interim final rule, discounted 20 years into the future, would be about $3 billion; for a discount rate of 3 percent, the present value costs would be $4 billion. These estimates rely on several important assumptions:

- In option 6, for perishable products from Canada, Mexico, and Central America: 5 percent of prior notices will need to be resubmitted if the notice must be submitted 2 hours before arrival for vehicles; 20 percent of prior notices will need to be resubmitted if the notice must be submitted 4 hours before arrival for air and rail.
- The minimum entry time for food shipments imported over land and by air is a constraining factor for those importers who use these modes of transportation. The additional costs for shipments made over land and by air are greater for a specified minimum prior notice time, the closer the facility is to the U.S. border. Shipments arriving by sea are not likely to be affected by a specified minimum prior notice time.
- The retail value of imported fresh seafood and produce is 100 percent higher than its wholesale value.
- The number of entry lines requiring prior notice will not increase over time.
- Prior notice must be submitted for informal food entries, *i.e.*, international mail.
- BRASS is not compatible with submitting prior notice.

We now present a sensitivity analysis, which shows how our estimates of costs for the interim final rule change if we use different assumptions. We substitute the following assumptions for those used previously:

- In option 6 for perishable products from Canada, Mexico, and Central America: 10 percent of prior notices will need to be resubmitted when the prior notice time is 2 hours before arrival for vehicles; 40 percent of prior notices will need to be resubmitted if the prior notice must be submitted 4 hours before arrival for shipments arriving by rail and air.
- The retail value of imported fresh seafood and produce is 200 percent higher than its wholesale value.
- The number of entry lines requiring prior notice will increase 3 percent per year.
- Prior notice does not need to be submitted for informal food entries, *i.e.*, international mail.
- BRASS is compatible with submitting prior notice.

Tables 48 and 49 of this document show the results of the sensitivity analysis. The tables show that the estimated cost of the interim final rule is most sensitive to the assumed fraction of prior notices that will need to be changed. The present value of the interim final rule is most sensitive to the rate of discount.

Table 48.--Sensitivity Analysis for Assumptions Made for Option 6 (interim final rule)

| Test | First Year Cost Under Base Assumption | First Year Cost Under Test Assumption | Change in First Year Cost (or value) | Percent Change in Cost |
|---|---|---|---|---|
| | ($ millions) | | | |
| 10 and 40% prior notices changed | $367 | $380 | $13 | 4 |
| Retail value is 200% of wholesale value | $367 | $380 | $13 | 4 |
| Prior notice entries increase 3% | $367 | $372 | $5 | 1 |
| Informal entries do not submit prior notice | $367 | $329 | -$38 | -10 |
| BRASS is compatible with submitting prior notice | $367 | $318 | -$49 | -13 |

Table 49.--Present Values for Sensitivity Analysis for Assumptions Made for Option 6 (interim final rule)

| Test | Present Value of Total Cost ($ billions) | Present Value Under Test Assumption ($ billions) | Change in Present Value ($ billions) | Percent Change in Present Value |
|---|---|---|---|---|
| 40% prior notices changed (7% present value) | $2.9 | $4.3 | $0.1 | 3 |
| 40% prior notices changed (3% present value) | $4 | $4.2 | $0.2 | 5 |
| Retail value is 200% of wholesale value (7% present value) | $2.9 | $3 | $0.1 | 3 |
| Retail value is 200% of wholesale value (3% present value) | $4 | $4.2 | $0.2 | 5 |
| Prior notice entries increase 3% (7% present value) | $2.9 | $2.9 | $0 | 0 |
| Prior notice entries increase 3% (3% present value) | $4 | $4.1 | $0.1 | 3 |
| Informal entries no prior notice (7% present value) | $2.9 | $2.5 | -$0.4 | -14 |
| Informal entries no prior notice (3% present value) | $4 | $3.4 | -$0.4 | -10 |
| BRASS compatible with prior notice (7% present value) | $2.9 | $2.3 | -$0.6 | -21 |
| BRASS compatible with prior notice (3% present value) | $4 | $3.3 | -$0.7 | -18 |

5. Benefits

The FDA prior notice system will provide FDA with enhanced knowledge of what articles of food are being imported or offered for import into the United States including the anticipated port of arrival, the country of production, and the specific product identity. Requiring prior notice of imported food shipments and defining the required data information will therefore improve FDA's ability to detect accidental and deliberate contamination of food and to deter deliberate contamination.

Currently, FDA does not receive much advance notice about food products entering the United States from foreign sources, or the location of the food's anticipated port of arrival. With the information required by this interim final rule, FDA will know in advance what articles of food are being imported or offered for import, before they arrive at the port. In the event of a credible threat for a specific product or a specific manufacturer/processor, for example, FDA will be able to mobilize and assist in the detention and removal of products that may be a serious health threat to human or animals.

FDA plans to review prior notices in a central location, on a 24/7 basis. These persons will decide on a case-by-case basis whether the article of food needs to be held. Because prior notice will be linked through ABI/ACS system in most instances, if FDA wishes to stop and hold a shipment for examination, inspection, sampling, or other purpose and does not have personnel at the needed location, pursuant to a Memorandum of Understanding between FDA and CBP, CBP will act on FDA's behalf until FDA personnel can reach the location. The prior notice system linked through ABI/ACS will allow FDA to send messages to the screens of individual CBP staff, ensuring that time sensitive information is received and acted upon by the appropriate persons. Having notice of an article of food imported or offered for import into the United States before it reaches a U.S. port will allow FDA personnel to be ready to respond to shipments that appear to pose a significant and immediate serious risk to public health.

Historical evidence suggests that a terrorist or other intentional strike on the food supply is a low-probability, but potentially high-cost event. FDA has conducted its own assessment of the vulnerability of the U.S. food supply and additionally has commissioned two threat assessments, one through the Battelle Memorial Institute and a second through the Institute of Food Technologists. These assessments determined the most serious risks of intentional contamination during various stages of food production and distribution. The results of these assessments are classified. We have also received intelligence information regarding threats to the food supply that are guiding our food security efforts. Nonetheless, FDA lacks data to estimate the likelihood of a strike occurring. Without knowing the likelihood of a strike occurring, we cannot quantitatively measure the reduction in probability of an event occurring.

We can, however, show the potential risk associated with contaminated imported foods. Many past outbreaks have been traced to imported foods (Refs. 12 and 13); table 50 of this document gives some examples. An intentional attack on the food supply that sought to disrupt the food supply and sicken many U.S. citizens could be much larger than the examples given in table 50.

The potential hazard associated with a single shipment of imported food is large. For example, a single line entry from OASIS for a truckload of imported cantaloupe (gross weight 1,000 lb) represents 510 lb (231,332 grams) (g) of edible food, or 1,652 (140 g) servings. If an entire line or shipment is contaminated, then that number of servings represents the potential exposure to the hazard. The FDA prior notice system alone will not prevent such exposures, but by increasing the amount of information available and giving FDA notice in advance of arrival, an essential component of the barrier against accidental or deliberate contamination of food is formed. FDA is better able to integrate intelligence, vulnerability, and entry data to plan import surveillance activities as a result.

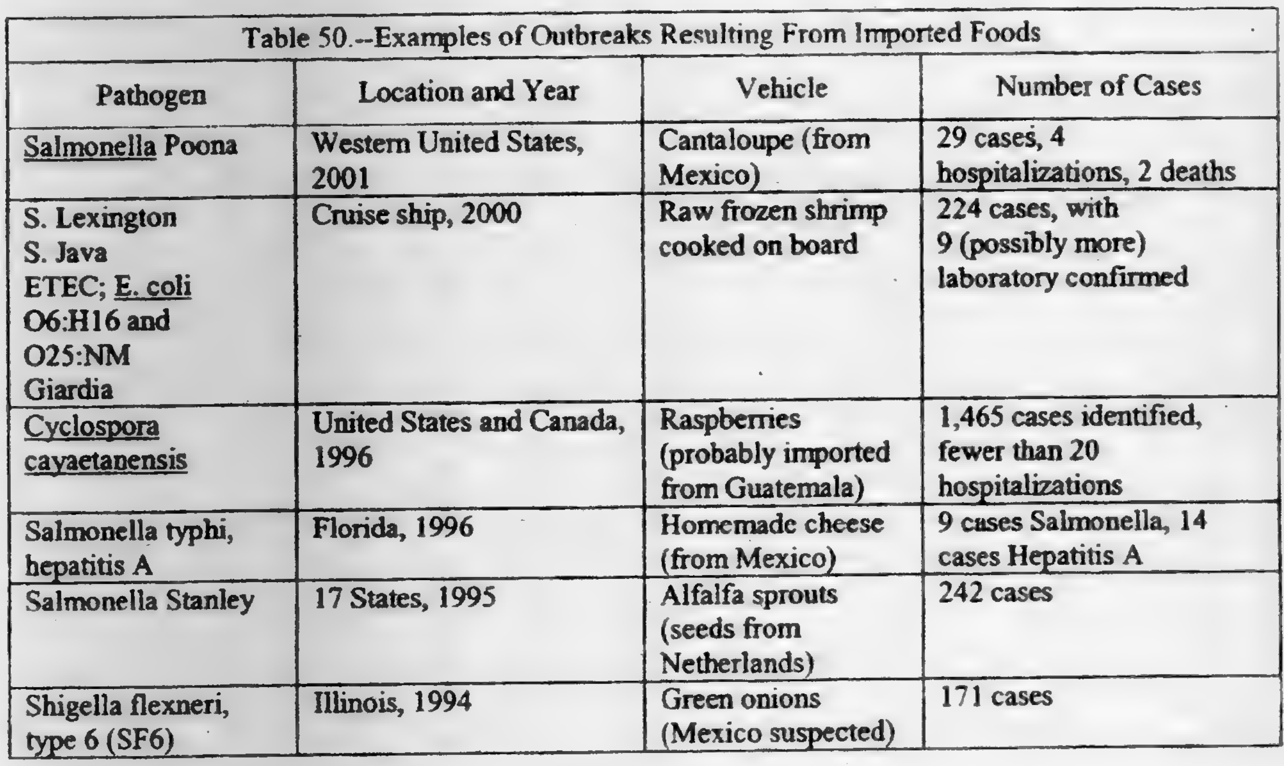

Table 50.--Examples of Outbreaks Resulting From Imported Foods

| Pathogen | Location and Year | Vehicle | Number of Cases |
|---|---|---|---|
| Salmonella Poona | Western United States, 2001 | Cantaloupe (from Mexico) | 29 cases, 4 hospitalizations, 2 deaths |
| S. Lexington<br>S. Java<br>ETEC; E. coli O6:H16 and O25:NM<br>Giardia | Cruise ship, 2000 | Raw frozen shrimp cooked on board | 224 cases, with 9 (possibly more) laboratory confirmed |
| Cyclospora cayaetanensis | United States and Canada, 1996 | Raspberries (probably imported from Guatemala) | 1,465 cases identified, fewer than 20 hospitalizations |
| Salmonella typhi, hepatitis A | Florida, 1996 | Homemade cheese (from Mexico) | 9 cases Salmonella, 14 cases Hepatitis A |
| Salmonella Stanley | 17 States, 1995 | Alfalfa sprouts (seeds from Netherlands) | 242 cases |
| Shigella flexneri, type 6 (SF6) | Illinois, 1994 | Green onions (Mexico suspected) | 171 cases |

We can examine the high costs of a potential terrorist event by comparing costs of responding to a terrorist event with and without the advantage of having the FDA prior notice system. For example, if U.S. officials or FDA receives intelligence concerning the possibility of an intentional contamination of an incoming food shipment, in absence of prior notice, even with information on the type of food product, officials would be unlikely to know when and where the food was expected to cross U.S. borders. In this case, it is likely that officials would slow down the movement of food shipments through the border ports or possibly even close down some ports of entry to prevent the contaminated articles from entering the United States.

Information on the west coast port lock-out during Fall 2002, indicated that the closing of 29 major west coast ports cost the U.S. economy $1 billion a day (Refs. 14 and 15). Given that there are 361 ports of entry for the entire United States, if U.S. officials had to close all ports to prevent contaminated food from entering the country, the U.S. economy could lose upwards of $12.5 billion each day the ports remain closed. This cost exceeds the first year costs ($367 million), the annual costs ($261 million), and the present value of costs ($3 billion at the 7 percent discount rate and $4 billion at the 3 percent discount rate) for the chosen option of this rule. Thus, having the FDA prior notice system does not eliminate, but may significantly reduce the costs of a terrorist attack on the food supply as compared to not having the system.

TABLE 51.—COST BENEFIT SUMMARY TABLE

| | Annualized costs over 20 years at 7% discount rate ($ millions) | Annualized costs over 20 years at 3% discount rate ($ millions) |
|---|---|---|
| Option 5—2 hour prior notice for vehicle, 4 hour for rail and air, 8 hour vessels (interim final rule) ......... | $272 | $269 |
| Benefits—FDA will know in advance what articles of food are being imported or offered for import, before they arrive at the port. In the event of a credible threat, FDA will be able to mobilize and assist in the detention and removal of specific products that may pose a serious health threat to human or animals. | | |

### *B. Small Entity Analysis (or Final Regulatory Flexibility Analysis)*

FDA has examined the economic implications of this interim final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities consistent with statutory objectives. FDA finds that this interim final rule will have a significant economic impact on a substantial number of small entities.

#### 1. Number of Establishments Affected

FDA finds that this interim final rule would affect 77,427 U.S. importers. Most of these importers have fewer than 500 employees, thus making them small businesses as defined by the Small Business Administration. Because most of the importers affected are small, all options considered in the Benefit-Cost Analysis in section IV.A of this document are regulatory relief options.

A few comments stated that FDA's analysis of the impact of prior notice on small businesses was inadequate. The comments also wished to see a breakdown of costs of the rule per small business by industry sector. Unfortunately, FDA does not have detailed information on which businesses subject to this interim final rule are small, nor did comments provide such information. Therefore, FDA cannot perform a detailed analysis of the costs per small business by industry sector. With limited data, FDA can estimate an average cost per importer for some of the prior notice cost categories, estimate some costs of the rule per retail establishment, and provide an average estimate of cost per establishment if the costs of the rule were evenly distributed across the supply chain.

2. Costs per Entity

This interim final rule requires FDA be notified of incoming products electronically before the food arrives at a U.S. port. The annual cost of doing so is about $2,400 per submitter (based on $187.5 million in notification costs/ 77,427 U.S. importers). This calculation is presented in table 52 of this document. Also presented in table 52 is the cost per importer to learn about the prior notice interim final rule and to coordinate the information that needs to be submitted; the costs per importer of these two activities are about $850 and $400, respectively.

As discussed and shown in tables 1B and 2 of this document, about 3,100 U.S. importers are estimated to not have electronic transmitting capacity and will have to obtain computer equipment (at a cost of about $2,000 per importer) and Internet access (at a cost of about $240 annually) in order to comply with this interim final rule. FDA could not provide flexibility for those importers who do not have electronic transmitting capacity, because paper notices could not be submitted in the prior notice timeframe and would therefore actually be more burdensome to importers, and because FDA would not be able to receive, review, and respond to paper prior notices that are submitted on a routine basis.

This interim final rule will cause some loss of product value if the prior notice requirement causes perishable products to have to wait any length of time before arriving at a U.S. port. The costs of lost product value vary with the required notice time. FDA does not have information on the subset of importers who will be affected by these costs; therefore, we cannot calculate a cost per importer for these potential losses. We do discuss the various costs associated with this possibility in the options outlined previously.

Table 52 of this document shows the average costs per importer to learn the rule, coordinate information, and submit prior notice. Table 52 also shows the average costs to the importer to absorb the costs of not being able to use BRASS and to absorb costs of lost value of perishable products. Table 52 also shows these average costs per retail establishment and per establishment across the supply chain. Numbers for establishments come from the County Business Patterns, U.S. Census, and Non-Employer statistics. A complete discussion of these establishment numbers can be found in the FDA Registration of Food Facilities interim final rule (Ref. 20).

Table 52.--Costs per Importer and per Establishment

| Activity | Total Costs | Cost per importer (n= 77,427) |
|---|---|---|
| Learning costs | $66,240,000 | $856 |
| Coordination costs | $31,095,000 | $402 |
| Annual costs to fill out prior notice screens | $187,500,000 | $2,422 |
| Costs for BRASS users | $48,462,000 | $626 |
| Lost value for perishables | $12,877,000 | $166 |
| Total estimated average costs per importer | | $4,472 |
| Total estimated average costs per retail establishment (n= 238,697) | | $1,450 |
| Total estimated average costs per establishment in the distribution chain (n= 454,968) | | $761 |

3. Additional Flexibility Considered

Because of the requirements of the Bioterrorism Act, FDA is precluded from selecting some of the options that typically would be considered to lessen the economic effect of the interim final rule on small entities, including granting an exemption to small entities. FDA concludes that it would be inconsistent with section 307 of the Bioterrorism Act to allow small entities a later effective date, since the Bioterrorism Act establishes an effective date for prior notice that applies to FDA-regulated food imported or offered for import into the United States, whether or not FDA has issued a final rule by this deadline. Thus, FDA concludes that Congress intended for prior notice to apply to FDA-regulated food by the effective date established in the Bioterrorism Act.

### *C. Unfunded Mandates*

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires cost-benefit and other analyses before any rulemaking if the rule would include a "Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year." The current inflation-adjusted statutory threshold is $113 million. FDA has determined that this interim final rule is significant under the Unfunded Mandates Reform Act. FDA has carried out the cost-benefit analysis in preceding sections (*see* table 47 of this document for the total costs). The other requirements under the Unfunded Mandates Act of 1995 include assessing the rule's effects on the following factors:

- Future costs;
- Particular regions, communities, or industrial sectors;
- National productivity;
- Economic growth;
- Full employment;
- Job creation; and
- Exports.

The issues listed in the bullets are covered in detail in the cost benefit analysis of the preceding sections, with the exception of the trade effects of this interim final rule, which we will discuss here.

Although most of the information required for prior notice is already supplied to CBP when importing food products, this new notice requirement may cause a reduction of imports of certain food products into the United States. For example, food manufacturers, processors, or growers may choose to stop exporting food products to the United States if the additional costs of complying with the prior notice increase the price of the imported product (or perhaps decrease the quality of the product) to the point where they cannot compete with a domestically-grown or produced product. This may be the case for food products that are grown or produced in the United States with an elastic enough supply to meet consumer demand without large increases in price. For example, if Florida-grown and California-grown oranges meet the demand for the fruit in this country at or close to current prices, then it is unlikely that the United States will import many oranges from other countries, if the price of the imported product rises (or the product quality is lowered) because of the prior notice requirement.

On the other hand, for example, there are products for which substitutes, and more specifically, U.S. grown or produced substitutes, are not available. In these cases, and in cases where U.S. demand for the product greatly exceeds domestic supply, importers will pass along to the consumer any increase in price for the product brought about by the prior notice requirement (as long as the quality and other attributes of the product remain intact). For example, exotic fruits such as coconuts, mangoes, and papayas are not grown in significant quantities in the United States; if the demands for those fruits are relatively inelastic, there will not be a significant decrease in quantity demanded in the United States when the importers raise the price of the fruit to cover the costs of submitting prior notice.

### *D. SBREFA Major Rule*

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) defines a major rule for the purpose of congressional review as having caused or being likely to cause one or more of the following: An annual effect on the economy of $100 million or more; a major increase in costs or prices; significant adverse effects on competition, employment, productivity, or innovation; or significant adverse effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with SBREFA, OMB has determined that this interim final rule is a major rule for the purpose of congressional review.

## VI. Paperwork Reduction Act of 1995

This interim final rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of these provisions is given below with an estimate of the annual reporting burden. The estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information, *i.e.*, each prior notice.

*Title:* Prior Notice of Imported Food.

### *A. Description*

Section 801(m) of the FD&C Act (21 U.S.C. 381(m)) requires prior notice to the Secretary of Health and Human Services (the Secretary) of an article of food that is being imported or offered for import into the United States. Section 801(m)(1) of the FD&C Act states that the Secretary shall require submission of notice providing the identity of each of the following: The article of food; the manufacturer; the shipper; the grower, if known at the time of notification; the originating country; the shipping country; and the anticipated port of arrival. Section 801(m)(2)(A) of the FD&C Act states that the Secretary shall by regulation prescribe the time of submission of the notification in advance of importation or the offering of the food for import, which period shall be no less than the minimum amount of time necessary for the Secretary to receive, review, and appropriately respond to such notification, but may not exceed 5 days. FDA's prior notification of imported food shipments interim final rule implements these statutory provisions.

#### 1. Comments on the Burden of Information Collection

Some comments on the proposed burden of information collection stated that the information collection would not be necessary if ABI/ACS could be used to submit the required information. Other comments stated that the information collection was unproductive and unduly burdensome for the benefits it would provide. Still other comments stated that FDA had underestimated the hours associated with the reporting burden.

FDA's agreement with CBP to allow most prior notices to be submitted through ABI/ACS will greatly reduce the burden of this new collection of information.

A few comments were concerned that FDA had underestimated the proposed burden because they did not understand that FDA had calculated the submitting burden based on import entries, not entry lines. For each import entry, the prior notice or notices are expected to take about an hour to file. The prior notice or notices for each import entry would cover approximately 2.6 lines, with each line representing a different article of food to be imported. For this interim final rule burden of information analysis, FDA has clarified how the estimates were calculated to allay the comments' concerns.

#### 2. Information Collection Burden Estimate

FDA estimates the burden for this information collection as follows:

Table 53.--Estimated Annual Reporting Burden

| 21 CFR Section | No. Of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Capital Costs | Operating and Maintenance Costs | Total Hours |
|---|---|---|---|---|---|---|---|
| 1.279-1.285[1] | 77,427 | 1 | 77,427 | 40 | $6,194,000 | $743,000 | 3,097,080 |
| 1.279-1.285[1] | 7,743 | 1 | 7,743 | 40 | $620,000 | $74,400 | 309,715 |
| 1.280-1.281[2] | 77,427 | 84 | 6,500,000 | 0.384 | $0 | $0 | 2,500,000 |
| 1.282[2] | 77,427 | 3.36 | 260,000 | 0.5 | $0 | $0 | 130,000 |
| 1.283(a)(2)(iv), 1.285(c)(4)[2] | 77,427 | 0.168 | 13,000 | 0.25 | $0 | $0 | 3,250 |
| 1.283(a)(5)(ii)[2] | 77,427 | 1.26 | 97,500 | 1 | $0 | $0 | 97,500 |
| 1.283(a)(7)[2] | 77,427 | 0.105 | 8,125 | 0.25 | $0 | $0 | 2,031 |
| 1.283(a)(6)(i)-(a)(6)(iv), 1.285(f)(1)-(f)(4)[2] | 77,427 | 0.168 | 13,000 | 8 | $0 | $0 | 104,000 |
| Total one time burden hours | | | | | | | 3,406,795 |
| Total recurring burden hours | | | | | | | 2,836,781 |

[1] One time burden.

[2] Recurring burden.

*B. Hour Burden Estimate*

1. Number of Establishments Affected

Using 2001 fiscal year information from OASIS (industry codes 02 through 52, 54, and 70 through 72), FDA has determined that there are approximately 77,427 importers and consignees who receive shipments of food imported or offered for import into the United States. FDA does not have specific information on who will submit prior notice since there are no restrictions on who can submit prior notice. Therefore, FDA estimates prior notice submission information based on the 77,427 importers of food in OASIS.

2. New and Closing Importers

In addition to the U.S. importers currently in existence, in future years new import businesses will open and some existing import businesses will close. These new submitters would have to become familiar with the FDA prior notice system and possibly obtain computer equipment and Internet access to comply with prior notice requirements.

According to the Small Business Administration Office of Advocacy, in 2001, about 10 percent of all businesses were new and 10 percent of businesses closed. Using the 10 percent opening and closing business statistic, and given that there are currently 77,427 U.S. importers, FDA assumes that on a yearly basis 7,743 importers will leave the market and 7,743 importers will enter the market.

3. Hour Burden Estimate Researching the Prior Notice Requirement

a. *Learning the interim final rule.* To become familiar with the requirements for this interim final rule, FDA estimates that one manager and two subordinates from each importing business will attend an 8-hour training session on the prior notice regulation. This one-time research burden for the existing importers is about 1,858,248 hours (3 people per firm × 8 hours × 77,427 importers). This portion of the estimate is for 21 CFR part 1, subpart I, 1.279 through 1.285 and is shown in row 1 of table 53 of this document.

In the years that follow the startup year for prior notice, it is reasonable to expect a certain percentage of importing firms to enter and leave the market. In addition to the first year burden to research prior notice, it is expected that 185,832 hours will be spent annually researching the prior notice requirement by the anticipated 7,743 new importers entering the market annually that must learn about prior notice (3 people per firm × 8 hours × 7,743 new importers). This portion of the estimate is for 21 CFR part 1, subpart I, 1.279 through 1.285 and is shown in row 2 of table 53 of this document.

b. *Coordinating the information.* FDA assumes it will take about 2 business days (16 hours) for an administrative employee of the prior notice-submitting firm to coordinate with others to establish new business practices required to receive the information needed for prior notice. We assume this set-up time is sufficient to coordinate information for existing importing accounts. The total hours needed to gather information for existing accounts is 1,238,832 (77,427 importing firms × 16 hours per firm). This portion of the estimate is for 21 CFR part 1, subpart I, 1.279 through 1.285 and is shown in row 1 of table 53 of this document. Thus, the total burden listed in row 1 is 1,858,248 hours + 1,238,832 hours = 3,097,080 one-time burden hours to learn the rule and coordinate information.

In addition to the first year coordination burden, we expect importing businesses to see a 10 percent turnover in their accounts. Thus, in future years, importing firms will spend 123,883 hours to gather information on their new accounts. This portion of the estimate is for 21 CFR part 1, subpart I, 1.276 through 1.285 and is shown in row 2 of table 53 of this document. Thus, the total burden listed in row 2 is 185,832 hours + 123,883 hours = 309,715 one-time burden hours for new firms to learn the rule and coordinate information.

4. Submitting Prior Notice

To estimate the repetitive effort of submitting a prior notice, FDA assumes the activity takes 1 hour each time an import entry is submitted. An import entry, on average, constitutes 2.6 different articles of food; a prior notice must be submitted for each article of food. Therefore we estimate that submitting prior notice for each article of food will take 23 minutes to complete (23 minutes per line = 60 minutes/2.6 lines per entry). On an annual basis, submitting prior notice will take about 2.5 million hours (23 minutes (or 0.384 hours) per prior notice × 6.5 million notices). This estimate is for 21 CFR part 1, subpart I, 1.280 through 1.281 and is shown in row 3 of table 53 of this document.

FDA does not have information on how many prior notices will come from each of the 77,427 importers. However, we assume that 6.5 million prior notices will be submitted annually based on fiscal year 2002 OASIS information and estimates of prior notice capacity. We divide 6.5 million lines by the 77,427 importers to get an average annual response frequency per importer of 84 notices.

5. Changes to a Confirmed Prior Notice

The annual total number of changes made by importers to confirmed prior notices will vary depending on the minimum prior notice submission time required. For example, more confirmed prior notices will likely have to be changed if the minimum prior notice submission time is noon the calendar day before arrival as opposed to a minimum submission time of 2 hours before arrival. FDA's interim final rule requires a minimum prior notice submission time for each of the following situations: 2 hours before arrival for articles of food imported by vehicle, 4 hours before arrival for articles of food imported by rail and air, and 8 hours before arrival for articles of food imported by vessel.

By combining the percentages by mode of transport and taking into account the location of the exporting country, we assume that about 4 percent of all prior notices (260,000 notices) will have to be resubmitted after confirmation is received from FDA. We assume that changes in the prior notices will be minor adjustments; therefore, both the cancellation of the original notice and the resubmission of the new notice are estimated to take about 30 minutes. This estimate is for 21 CFR part 1, subpart I, 1.282 and is shown in row 4 of table 53 of this document.

6. Refused Admission

Although FDA at this time does not have enough information to estimate a percent of refusals under the new prior notice program, for the purposes of this analysis FDA estimates the reporting burden assuming a 2 percent refused admission rate.

An imported food product is subject to refusal under section 801(m)(1) of the FD&C Act if it arrives at the port of arrival with untimely, inaccurate, or no prior notice. FDA estimates that about 130,000 of the annual prior notices will be subject to refusal (2 percent of 6.5 million prior notices).

If an article of food is refused under section 801(m)(1) of the FD&C Act, the food must be held until the prior notice has been correctly submitted or until the product is exported. FDA must be notified of the location where the food has been or will be moved within 24 hours of refusal.

In many cases, the location notice will be given as part of a correction and resubmission, as described in the next section. FDA estimates that 13,000 out of the 130,000 annual refusals will give the location notice separately and that it will take about 15 minutes per prior notice to notify FDA of the shipment's location. This will result in about 3,250 hours (13,000 notices × 0.25 hours). This estimate is for 21 CFR part 1, subpart I, 1.283(a)(2)(iv) and 1.285(c)(4) and is shown in row 5 of table 53 of this document.

7. Correction and Resubmission of Prior Notice

FDA estimates that 97,500 out of the 130,000 annual refusals will be because of inaccurate prior notice requiring resubmission, or because no prior notice was submitted. FDA estimates that it will take an hour to cancel, correct, and resubmit, or submit (in the case of no notice) each of these 97,500 notices. This estimate is for 21 CFR part 1, subpart I, 1.283(a)(5)(ii) and is shown in row 6 of table 53 of this document.

8. Exportation of Products Refused Admission

Some importers of articles of food that have been refused admission into the United States will decide to export their product rather than try to submit or resubmit prior notice. FDA estimates that this will occur for only about 25 percent of the 130,000 articles refused admission for inaccurate, untimely, or no prior notice. If an article of food is refused admission under section 801(m)(1) of the FD&C Act and exported, FDA requests, but does not require, that prior notice be cancelled. FDA estimates that for these 32,500 articles of food, prior notice will be cancelled 25 percent of the time and that this cancellation will take 15 minutes per article. This estimate is for 21 CFR part 1, subpart I, 1.283(a)(7) and is shown in row 7 of table 53 of this document.

9. FDA Review Request

If an article of food to be imported is refused under section 801(m)(1) of the FD&C Act or placed under hold under section 801(1), a request may be submitted asking for an FDA review. FDA estimates that of the 130,000 articles of food that are refused admission under section 801(m)(1) of the FD&C Act or placed under hold under section 801(1) of the FD&C Act yearly, 10 percent will request an FDA review (13,000 reviews). FDA estimates that it will take the requestor about 8 hours to prepare the factual and legal information necessary to request a review. Thus, importers will spend about 104,000 hours on review requests annually. This estimate is for 21 CFR part 1, subpart I, 1.283(a)(6)(i) through (a)(6)(iv) and 1.285(f)(1) through (f)(4) and is shown in row 8 of table 53 of this document.

*C. Capital Cost and Operating and Maintenance Cost Burden*

Since all prior notices must be submitted electronically, we assume that the 3,097 responsible parties without Internet access (4 percent of the 77,427 importers) will have to purchase the appropriate computer equipment and gain Internet access to transmit the information. Assuming computer equipment costs each firm $2,000 and yearly Internet access costs each firm $240 ($20 per month for 12 months), this results in a one-time computer cost for these facilities of $6,194,000 and a recurring Internet access cost of $743,000. This estimate is for 21 CFR part 1, subpart I, 1.279 through 1.285 and is included in row 1 of table 53 of this document.

For the 7,743 new firms that enter the import market each year, we expect 310 of them to need to purchase computer equipment and obtain Internet access. On an annual basis we expect new importers to spend $620,000 on computers and $74,400 on Internet access to be able to submit their prior notice information. This estimate is for 21 CFR part 1, subpart I, 1.279 through 1.285 and is included in row 2 of table 53 of this document.

The information collection provisions of this interim final rule have been submitted to OMB for review.

Prior to the effective date of this interim final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this interim final rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

## VII. Analysis of Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## VIII. Federalism

FDA has analyzed this interim final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

## IX. References

The following references have been placed on display in the Division of Dockets Management (*see* **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. FDA has verified the Web site addresses, but is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.

1. Ruling NY G89921 (June 12, 2001), U.S. Bureau of Customs and Border Protection, *http://rulings.customs.gov*.

2. Bureau of Economic Analysis, *http://www.bea.doc.gov*.

3. U.S. Department of Labor, Bureau of Labor Statistics, "National Compensation Survey: Occupation Wages in the United States, 2000, Summary 01–04," available at *http://www.bls.gov/ncs/ocs/sp/ncbl0354.pdf*.

4. USDA Agricultural Marketing Service, March 2002, "Fresh Fruits and Vegetable Shipments," *http://www.ams.usda.gov*.

5. Kasmire, Dr. Robert F., Vegetable Marketing Specialist, *http://www.thepacker.com/rbcs/handbookarticles/properis.htm*, accessed on 9.16.02.

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17. Guidance for Industry, Importers and Filers, Food Security Preventive Measures Guidance, FDA Publication, March 2003.

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19. FDA Registration of Food Facilities interim final rule, published elsewhere in the issue of the **Federal Register**.

## List of Subjects in 21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 1 is amended as follows:

## PART 1—GENERAL ENFORCEMENT REGULATIONS

■ 1. The authority citation for 21 CFR part 1 continues to read as follows:

**Authority:** 15 U.S.C. 1453, 1454, 1455; 19 U.S.C. 1490, 1491; 21 U.S.C. 321, 331, 332, 333, 334, 335a, 343, 350c, 350d, 352, 355, 360b, 362, 371, 374, 381, 382, 393; 42 U.S.C. 216, 241, 243, 262, 264.

■ 2. Subpart I, consisting of §§ 1.276 through 1.285, is added to part 1 to read as follows:

### Subpart I—Prior Notice of Imported Food

#### General Provisions

Sec.
1.276 What definitions apply to this subpart?
1.277 What is the scope of this subpart?

#### Requirements to Submit Prior Notice of Imported Food

1.278 Who is authorized to submit prior notice?
1.279 When must prior notice be submitted to FDA?
1.280 How must you submit prior notice?
1.281 What information must be in a prior notice?
1.282 What must you do if information changes after you have received confirmation of a prior notice from FDA?

#### Consequences

1.283 What happens to food that is imported or offered for import without adequate prior notice?
1.284 What are the other consequences of failing to submit adequate prior notice or otherwise failing to comply with this subpart?
1.285 What happens to food that is imported or offered for import from unregistered facilities that are required to register under 21 CFR part 1, subpart H?

### General Provisions

#### § 1.276 What definitions apply to this subpart?

(a) *The act* means the Federal Food, Drug, and Cosmetic Act.

(b) The definitions of terms in section 201 of the act (21 U.S.C. 321) apply when the terms are used in this subpart, unless defined below.

(1) *Calendar day* means every day shown on the calendar.

(2) *Country from which the article originates* means FDA Country of Production.

(3) *Country from which the article is shipped* means the country in which the article of food is loaded onto the conveyance that brings it to the United States or, in the case of food sent by international mail, the country in which the article will be mail.

(4) *FDA Country of Production* means:

(i) For an article of food that is in its natural state, the country where the article of food was grown, including harvested or collected and readied for shipment to the United States. If an article of food is wild fish, including seafood that was caught or harvested outside the waters of the United States by a vessel that is not registered in the United States, the FDA Country of Production is the country in which the vessel is registered. If an article of food that is in its natural state was grown, including harvested or collected and readied for shipment, in a Territory, the FDA Country of Production is the United States.

(ii) For an article of food that is no longer in its natural state, the country where the article was made; except that, if an article of food is made from wild fish, including seafood, aboard a vessel, the FDA Country of Production is the country in which the vessel is registered. If an article of food that is no longer in its natural state was made in a Territory, the FDA Country of Production is the United States.

(5) *Food* has the meaning given in section 201(f) of the act,

(i) Except for purposes of this subpart, it does not include:

(A) Food contact substances as defined in section 409(h)(6) of the act (21 U.S.C. 348(h)(6)); or

(B) Pesticides as defined in 7 U.S.C. 136(u).

(ii) Examples of food include fruits, vegetables, fish, including seafood, dairy products, eggs, raw agricultural commodities for use as food or as components of food, animal feed (including pet food), food and feed ingredients, food and feed additives, dietary supplements and dietary ingredients, infant formula, beverages (including alcoholic beverages and bottled water), live food animals, bakery goods, snack foods, candy, and canned foods.

(6) *Grower* means a person who engages in growing and harvesting or collecting crops (including botanicals), raising animals (including fish, which includes seafood), or both.

(7) *International mail* means foreign national mail services. International mail does not include express carriers, express consignment operators, or other private delivery services.

(8) *No longer in its natural state* means that an article of food has been made from one or more ingredients or synthesized, prepared, treated, modified, or manipulated. Examples of activities that render food no longer in its natural state are cutting, peeling, trimming, washing, waxing, eviscerating, rendering, cooking, baking, freezing, cooling, pasteurizing, homogenizing, mixing, formulating, bottling, milling, grinding, extracting juice, distilling, labeling, or packaging. Crops that have been cleaned (*e.g.*, dusted, washed), trimmed, or cooled attendant to harvest or collection or treated against pests, waxed, or polished are still in their natural state for purposes of this subpart. Whole fish headed, eviscerated, or frozen attendant to harvest are still in their natural state for purposes of this subpart.

(9) *Port of arrival* means the water, air, or land port at which the article of food is imported or offered for import into the United States, *i.e.*, the port where the article of food first arrives in the United States. This port may be different than the port where consumption or warehouse entry or foreign trade zone admission documentation is presented to the United States Bureau of Customs and Border Protection (CBP).

(10) *Port of entry*, in sections 801(m) and 801(l) of the act, means the port of entry as defined in 19 CFR 101.1.

(11) *Registration number* refers to the registration number assigned by FDA under section 415 of the act (21 U.S.C. 350d) and 21 CFR part 1, subpart H.

(12) *Shipper* means the owner or exporter of the article of food who consigns and ships the article from a foreign country or the person who sends an article of food by international mail to the United States.

(13) *United States* means the Customs territory of the United States (*i.e.*, the 50 states, the District of Columbia, and the Commonwealth of Puerto Rico), but not the Territories.

(14) *You* means the person submitting the prior notice, *i.e.*, the submitter, or the person transmitting prior notice information on behalf of the submitter, *i.e.*, the transmitter.

### § 1.277 What is the scope of this subpart?

(a) This subpart applies to all food for humans and other animals that is imported or offered for import into the United States for use, storage, or distribution in the United States, including food for gifts and trade and quality assurance/quality control samples, food for transshipment through the United States to another country, food for future export, and food for use in a U.S. Foreign Trade Zone.

(b) Notwithstanding paragraph (a), this subpart does not apply to:

(1) Food for an individual's personal use when it is carried by or otherwise accompanies the individual when arriving in the United States;

(2) Food that was made by an individual in his/her personal residence and sent by that individual as a personal gift (*i.e.*, for non-business reasons) to an individual in the United States;

(3) Food that is imported then exported without leaving the port of arrival until export;

(4) Meat food products that at the time of importation are subject to the exclusive jurisdiction of the U.S. Department of Agriculture (USDA) under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*);

(5) Poultry products that at the time of importation are subject to the exclusive jurisdiction of USDA under the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*); and

(6) Egg products that at the time of importation are subject to the exclusive jurisdiction of USDA under the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*).

## Requirements To Submit Prior Notice of Imported Food

### § 1.278 Who is authorized to submit prior notice?

A prior notice for an article of food may be submitted by any person with knowledge of the required information. This person is the submitter. The submitter also may use another person to transmit the required information on his/her behalf. The person who transmits the information is the transmitter. The submitter and transmitter may be the same person.

### § 1.279 When must prior notice be submitted to FDA?

(a) Except as provided in paragraph (c) of this section, you must submit the prior notice to FDA and the prior notice submission must be confirmed by FDA for review as follows:

(1) If the article of food is arriving by land by road, no less than 2 hours before arriving at the port of arrival;

(2) If the article of food is arriving by land by rail, no less than 4 hours before arriving at the port of arrival;

(3) If the article of food is arriving by air, no less than 4 hours before arriving at the port of arrival; or

(4) If the article of food is arriving by water, no less than 8 hours before arriving at the port of arrival.

(b) Except in the case of an article of food imported or offered for import by international mail, you may not submit prior notice more than 5 calendar days before the anticipated date of arrival of the food at the anticipated port of arrival.

(c) Notwithstanding paragraphs (a) and (b) of this section, if the article of food is arriving by international mail, you must submit the prior notice before the article of food is sent to the United States.

(d) FDA will notify you that your prior notice has been confirmed for review with a reply message that contains a Prior Notice (PN) Confirmation Number. Your prior notice will be considered submitted and the prior notice time will start when FDA has confirmed your prior notice for review.

(e) The PN Confirmation Number must accompany any article of food arriving by international mail. The PN Confirmation Number must appear on the Customs Declaration that accompanies the package.

(f) A copy of the confirmation including the PN Confirmation Number, must accompany any article of food that is subject to this subpart when it is carried by or otherwise accompanies an individual when arriving in the United States. The copy of the confirmation must be provided to CBP or FDA upon arrival.

(g) The PN Confirmation Number must accompany any article of food for which the prior notice was submitted through the FDA Prior Notice System Interface (FDA PN System Interface) when the article arrives in the United States and must be provided to CBP or FDA upon arrival.

**§ 1.280 How must you submit prior notice?**

(a) You must submit the prior notice electronically to FDA. You must submit all prior notice information in the English language, except that an individual's name, the name of a company, and the name of a street may be submitted in a foreign language. All information, including these items, must be submitted using the Latin (Roman) alphabet. Unless paragraph (d) of this section applies, you must submit prior notice through:

(1) The CBP Automated Broker Interface of the Automated Commercial System (ABI/ACS); or

(2) The FDA PN System Interface at *http://www.access.fda.gov*. You must submit prior notice through the FDA PN System Interface for articles of food imported or offered for import by international mail, other transaction types that cannot be made through ABI/ACS, and articles of food that have been refused under section 801(m)(1) of the act and this subpart.

(b) If a custom broker's or self-filer's system is not working or if the ABI/ACS interface is not working, prior notice must be submitted through the FDA PN System Interface.

(c) If FDA determines that FDA PN System Interface is not working, FDA will issue notification at *http://www.access.fda.gov* and FDA Web site at *http://www.fda.gov* —see Prior Notice. Once FDA issues this notification, if you intended to use the FDA PN System Interface to submit a prior notice, you must submit prior notice information by e-mail or by fax to FDA. The location for receipt of submission by e-mail or fax is listed at *http://www.fda.gov*—see Prior Notice—PN System Interface.

(d) If FDA determines that the Operational and Administration System for Import Support (OASIS) is not working, FDA will issue notification at *http://www.access.fda.gov*, on the FDA Web site at *http://www.fda.gov*, and through messages in ABI/ACS. Once FDA issues this notification, all prior notices must be submitted to FDA by e-mail or by fax. The location for receipt of submission by e-mail or fax is listed at *http://www.fda.gov*—see Prior Notice.

(e) Prior notice information will only be accepted at the listed e-mail or fax locations if FDA determines that the FDA PN System Interface or OASIS is not working.

**§ 1.281 What information must be in a prior notice?**

(a) *General.* For each article of food that is imported or offered for import into the United States, except by international mail, you must submit the information for the article that is required in this paragraph.

(1) The name of the individual submitting the prior notice and his/her business address, and phone number, fax number, and e-mail address, and the name and address of the submitting firm, if applicable. If a registration number is provided, city and country may be provided instead of the full address;

(2) If different from the submitter, the name of the individual and firm, if applicable, transmitting the prior notice on behalf of the submitter and his/her business address, and phone number, fax number, and e-mail address. If a registration number is provided, city and country may be provided instead of the full address;

(3) The entry type;

(4) The CBP entry identifier (*e.g.*, CBP entry number or in-bond number), if available;

(5) The identity of the article of food being imported or offered for import, as follows:

(i) The complete FDA product code;

(ii) The common or usual name or market name;

(iii) The estimated quantity of food that will be shipped, described from largest container to smallest package size; and

(iv) The lot or code numbers or other identifier of the food if required by the act or FDA regulations, *e.g.*, low acid canned foods, by 21 CFR 113.60(c); acidified foods, by 21 CFR 114.80(b); and infant formula, by 21 CFR 106.90;

(6) For an article of food that is no longer in its natural state, the name and address of the manufacturer and the registration number assigned to the facility that is associated with the article of food. A registration number is not required for a facility associated with an article of food if the article is imported or offered for import for transshipment, storage, and export, or further manipulation and export. If the article of food is sent by an individual as a personal gift (*i.e.*, for nonbusiness reasons) to an individual in the United States, you may provide the name and address of the firm that appears on the label under 21 CFR 101.5 instead of the name, address, and registration number of the manufacturer. If a registration number is provided, city and country may be provided instead of the full address;

(7) For an article of food that is in its natural state, the name and growing location address of the grower, if known. If the submitter does not know the identity of the grower or, if the article has been consolidated, the identity of any of the growers, you may provide the name and address of the firm that has consolidated the articles of food from different growers or different growing locations;

(8) The FDA Country of Production;

(9) The name and address of the shipper and, if the shipper is required to register under 21 CFR part 1, subpart H, the registration number assigned to the shipper's facility that is associated with the article of food. A registration number is not required for a facility associated with an article of food if the article is imported or offered for import for transshipment, storage, and export, or further manipulation and export. If a registration number is provided, city and country may be provided instead of the full address;

(10) The country from which the article is shipped;

(11) Anticipated arrival information about the article of food being imported or offered for import, as follows:

(i) The anticipated port of arrival and, if the anticipated port of arrival has more than one border crossing, the specific anticipated border crossing where the food will be brought into the United States;

(ii) The anticipated date on which the article of food will arrive at the anticipated port of arrival; and

(iii) The anticipated time of that arrival;

(12) The name and address of the importer. If a registration number is provided, city and country may be provided instead of the full address. The identity of the owner is not required for an article of food that is imported or offered for import for transshipment through the United States under a Transportation and Exportation entry;

(13) The name and address of the owner if different from the importer or ultimate consignee. If a registration

number is provided, city and country may be provided instead of the full address. The identity of the importer is not required for an article of food that is imported or offered for import for transshipment through the United States under a Transportation and Exportation entry;

(14) The name and address of the ultimate consignee. If a registration number is provided, city and country may be provided instead of the full address. The identity of the ultimate consignee is not required for an article of food that is imported or offered for import for transshipment through the United States under a Transportation and Exportation entry;

(15) The mode of transportation;

(16) The Standard Carrier Abbreviation Code (SCAC) or International Air Transportation Association (IATA) code of the carrier which is, or will be, carrying the article of food from the country from which the article is shipped to the United States, or if codes are not applicable, then the name and country of the carrier;

(17) Planned shipment information, as applicable:

(i) The Airway Bill number(s) or Bill of Lading number(s). This information is not required for an article of food when carried by or otherwise accompanying an individual when entering the United States;

(ii) For food arriving by ocean vessel, the vessel name and voyage number;

(iii) For food arriving by air carrier, the flight number;

(iv) For food arriving by truck, bus, or rail, the trip number;

(v) For food arriving as containerized cargo by water, air, or land, the container number(s). This information is not required for an article of food when carried by or otherwise accompanying an individual when entering the United States;

(vi) For food arriving by rail, the car number. This information is not required for an article of food when carried by or otherwise accompanying an individual;

(vii) For food arriving by privately owned vehicle, the license plate number and State or province; and

(viii) The 6-digit Harmonized Tariff Schedule (HTS) code.

(b) Articles arriving by international mail. For each article of food that is imported or offered for import into the United States by international mail, you must submit the information for the article that is required in this paragraph.

(1) The name of the individual submitting the prior notice and his/her business address, and phone number, fax number, and e-mail address, and the name and address of the submitting firm, if applicable. If a registration number is provided, city and country may be provided instead of the full address;

(2) If different from the submitter, the name of the individual and firm, if applicable, transmitting the prior notice on behalf of the submitter and his/her business address and phone number, fax number, and e-mail address. If a registration number is provided, city and country may be provided instead of the full address;

(3) The entry type (which will be a mail entry);

(4) The identity of the article of food being imported or offered for import, as follows:

(i) The complete FDA product code;

(ii) The common or usual name or market name;

(iii) The estimated quantity of food that will be shipped, described from largest container to smallest package size; and

(iv) The lot or code numbers or other identifier of the food if required by the act or FDA regulations, *e.g.*, low acid canned foods, by 21 CFR 113.60(c); acidified foods, by 21 CFR 114.80(b); and infant formula, 21 CFR 106.90;

(5) For an article of food that is no longer in its natural state, the name and address of the manufacturer and the registration number assigned to the facility that is associated with the article of food. A registration number is not required for a facility associated with an article of food if the article is imported or offered for import for transshipment, storage and export, or further manipulation and export. If the article of food is sent by an individual as a personal gift (*i.e.*, for non-business reasons) to an individual in the United States, you may provide the name and address of the firm that appears on the label under 21 CFR 101.5 instead of the name, address, and registration number of the manufacturer. If a registration number is provided, city and country may be provided instead of the full address;

(6) For an article of food that is in its natural state, the name and growing location address of the grower, if known. If the submitter does not know the identity of the grower or, if the article has been consolidated, the identity of any of the growers, you may provide the name and address of the firm that has consolidated the articles of food from different growers or different growing locations;

(7) The FDA Country of Production;

(8) The name and address of the shipper and, if the shipper is required to register under 21 CFR part 1, subpart H, the registration number assigned to the shipper's facility that is associated with the article of food. A registration number is not required for a facility associated with an article of food if the article is imported or offered for import for transshipment, storage and export, or further manipulation and export. If a registration number is provided, city and country may be provided instead of the full address;

(9) The country from which the article is shipped (*i.e.*, mailed);

(10) The anticipated date of mailing; and

(11) The name and address of the U.S. recipient.

(c) *Refused articles.* If the article of food has been refused under section 801(m)(1) of the act and this subpart, you must submit the information for the article that is required in this paragraph. However, if the refusal is based on § 1.283(a)(1)(iii) (Untimely Prior Notice), you do not have to re-submit any information previously submitted unless it has changed or the article has been exported and the original prior notice was submitted through ABI/ACS. If the refusal is based on § 1.283(a)(ii), you should cancel the previous submission per § 1.282(b) and (c).

(1) The name of the individual submitting the prior notice and his/her business address, and phone number, fax number, and e-mail address, and the name and address of the submitting firm, if applicable. If a registration number is provided, city and country may be provided instead of the full address;

(2) If different from the submitter, the name of the individual and firm, if applicable, transmitting the prior notice on behalf of the submitter and his/her business address, and phone number, fax number, and e-mail address. If the registration number is provided, city and country may be provided instead of the full address;

(3) The entry type;

(4) The CBP entry identifier (*e.g.*, CBP entry number or in-bond number), if available;

(5) The identity of the article of food being imported or offered for import, as follows:

(i) The complete FDA product code;

(ii) The common or usual name or market name;

(iii) The quantity of food that was shipped, described from largest container to smallest package size; and

(iv) The lot or code numbers or other identifier of the food if required by the act or FDA regulations, *e.g.*, low acid canned foods, by 21 CFR 113.60(c); acidified foods, by 21 CFR 114.80(b); and infant formula, by 21 CFR 106.90;

(6) For an article of food that is no longer in its natural state, the name and address of the manufacturer and the registration number assigned to the facility that is associated with the article of food. A registration number is not required for a facility associated with an article of food if the article is imported or offered for import for transshipment, storage and export, or further manipulation and export. If the article of food is sent by an individual as a personal gift (*i.e.*, for non-business reasons) to an individual in the United States, you may provide the name and address of the firm that appears on the label under 21 CFR 101.5 instead of the name, address, and registration number of the manufacturer. If a registration number is provided, city and country may be provided instead of the full address;

(7) For an article of food that is in its natural state, the name and growing location address of the grower, if known. If the submitter does not know the identity of the grower or, if the article has been consolidated, any of the growers, you may provide the name and address of the firm that has consolidated the articles of food from different growers or different growing locations;

(8) The FDA Country of Production;

(9) The name and address of the shipper and, if the shipper is required to register under 21 CFR part 1, subpart H, the registration number assigned to the shipper's facility that is associated with the article of food. A registration number is not required for a facility associated with an article of food if the article is imported or offered for import for transshipment, storage and export, or further manipulation and export. If a registration number is provided, city and country may be provided instead of the full address;

(10) The country from which the article is shipped;

(11) The port of arrival;

(12) The name and address of the importer. If a registration number is provided, city and country may be provided instead of the full address. The identity of the importer is not required for an article of food that is imported or offered for import for transshipment through the United States under a Transportation and Exportation entry;

(13) The name and address of the owner, if different from the owner or ultimate consignee. If a registration number is provided, city and country may be provided instead of the full address. The identity of the owner is not required for an article of food that is imported or offered for import for transshipment through the United States under a Transportation and Exportation entry;

(14) The name and address of the ultimate consignee. If a registration number is provided, city and country may be provided instead of the full address. The identity of the ultimate consignee is not required for an article of food that is imported or offered for import for transshipment through the United States under a Transportation and Exportation entry;

(15) The mode of transportation;

(16) The Standard Carrier Abbreviation Code (SCAC) or International Air Transportation Association (IATA) code of the carrier which carried the article of food from the country from which the article is shipped to the United States, or if codes are not applicable, then the name and country of the carrier;

(17) Shipment information, as applicable:

(i) The Airway Bill number(s) or Bill of Lading number(s); however, this information is not required for an article of food when carried by or otherwise accompanying an individual when entering the United States;

(ii) For food that arrived by ocean vessel, the vessel name and voyage number;

(iii) For food that arrived by air carrier, the flight number;

(iv) For food that arrived by truck, bus, or rail, the trip number;

(v) For food that arrived as containerized cargo by water, air, or land, the container number(s); however, this information is not required for an article of food when carried by or otherwise accompanying an individual when entering the United States;

(vi) For food that arrived by rail, the car number; however, this information is not required for an article of food when carried by or otherwise accompanying an individual;

(vii) For food that arrived by privately owned vehicle, the license plate number and State or province;

(viii) The 6-digit HTS code; and

(18) The location and address where the article of refused food will be or is being held, the date the article has arrived or will arrive at that location, and identification of a contact at that location.

### § 1.282 What must you do if information changes after you have received confirmation of a prior notice from FDA?

(a)(1) If any of the information required in § 1.281(a) except the information required in:

(i) § 1.281(a)(5)(iii) (quantity),

(ii) § 1.281(a)(11) (anticipated arrival information), or

(iii) § 1.281(a)(17) (planned shipment information) changes after you receive notice that FDA has confirmed your prior notice submission for review, you must resubmit prior notice in accordance with this subpart unless the article of food will not be offered for import or imported into the United States.

(2) If any of the information required in § 1.281(b), except the information required in § 1.281(b)(10) (the anticipated date of mailing), changes after you receive notice that FDA has confirmed your prior notice submission for review, you must resubmit prior notice in accordance with this subpart, unless the article of food will not be offered for import or imported into the United States.

(b) If you submitted the prior notice via the FDA PN System Interface, you should cancel the prior notice via the FDA PN System Interface.

(c) If you submitted the prior notice via ABI/ACS, you should cancel the prior notice via ACS by requesting that CBP delete the entry.

## Consequences

### § 1.283 What happens to food that is imported or offered for import without adequate prior notice?

(a) For each article of food that is imported or offered for import into the United States, except for food arriving by international mail or food carried by or otherwise accompanying an individual, the consequences are:

(1) *Inadequate prior notice*—(i) *No prior notice.* If an article of food arrives at the port of arrival and no prior notice has been submitted and confirmed by FDA for review, the food is subject to refusal of admission under section 801(m)(1) of the act (21 U.S.C. 381(m)(1)). If an article of food is refused for lack of prior notice, unless CBP concurrence is obtained for export and the article is immediately exported from the port of arrival under CBP supervision, it must be held within the port of entry for the article unless directed by CBP or FDA.

(ii) *Inaccurate prior notice.* If prior notice has been submitted and confirmed by FDA for review, but upon review of the notice or examination of the article of food, the notice is determined to be inaccurate, the food is subject to refusal of admission under section 801(m)(1) of the act (21 U.S.C. 381(m)(1)). If the article of food is refused due to inaccurate prior notice, unless CBP concurrence is obtained for export and the article is immediately exported from the port of arrival under CBP supervision, it must be held within the port entry for the article unless directed by CBP or FDA.

(iii) *Untimely prior notice.* If prior notice has been submitted and confirmed by FDA for review, but the full time that applies under § 1.279 of this subpart for prior notice has not elapsed when the article of food arrives, the food is subject to refusal of admission under section 801(m)(1) of the act (21 U.S.C. 381(m)(1)), unless FDA has already reviewed the prior notice, determined its response to the prior notice, and advised CBP of that response. If the article of food is refused due to untimely prior notice, unless CBP concurrence is obtained for export and the article is immediately exported from the port of arrival under CBP supervision, it must be held within the port of entry for the article unless directed by CBP or FDA.

(2) *Status and movement of refused food.* (i) An article of food that has been refused under section 801(m)(1) of the act and paragraph (a) of this section shall be considered general order merchandise as described in section 490 of the Tariff Act of 1930, as amended, 19 U.S.C. 1490.

(ii) Refused food must be moved under appropriate custodial bond. FDA must be notified of the location where the food has been or will be moved, within 24 hours of refusal. The refused food shall not be entered and shall not be delivered to any importer, owner, or ultimate consignee. The food must be taken directly to the designated location.

(3) *Segregation of refused foods.* If an article of food that is refused is part of a shipment that contains articles of food that have not been placed underhold, the refused article of food may be segregated from the rest of the shipment. This segregation must take place within the port, of arrival or where the article is held, if different. FDA or CBP may supervise segregation. If FDA or CBP determines that supervision is necessary, segregation must not take place without supervision.

(4) *Costs.* Neither FDA nor CBP are liable for transportation, storage, or other expenses resulting from refusal.

(5) *Export after refusal.* An article of food that has been refused under § 1.283(a) may be exported with CBP concurrence and under CBP supervision unless it is seized or administratively detained by FDA or CBP under other authority. If an article of food that has been refused admission under § 1.283(a) is exported, the prior notice should be cancelled within 5 business days of exportation.

(6) *No post-refusal submission or request for review.* If an article of food is refused under section 801(m)(1) and no prior notice is submitted or resubmitted, no request for FDA review is submitted in a timely fashion, or export has not occurred in accordance with paragraph (a)(7) of this section, the article of food shall be dealt with as set forth in CBP regulations relating to general order merchandise (19 CFR part 127), except that the article may only be sold for export or destroyed as agreed to by CBP and FDA.

(b) *Food carried by or otherwise accompanying an individual.* If food carried by or otherwise accompanying an individual arriving in the United States is not for personal use and does not have adequate prior notice or the individual cannot provide FDA or CBP with a copy of the PN confirmation, the food is subject to refusal of admission under section 801(m)(1) of the act. If before leaving the port, the individual arrange to have the food held at the port or exported, the article of food shall be destroyed.

(c) Post-Refusal Prior Notice Submissions.

(1) If an article of food is refused under § 1.283(a)(1)(i) (no prior notice) and the food is not exported, prior notice must be submitted in accordance with §§ 1.280 and 1.281(c) of this subpart.

(2) If an article of food is refused under § 1.283(a)(1)(ii) (inaccurate prior notice) and the food is not exported, you should cancel the prior notice in accordance with § 1.282 and must resubmit prior notice in accordance with §§ 1.280 and 1.281(c).

(3) Once the prior notice has been submitted or resubmitted and confirmed by FDA for review, FDA will endeavor to review and respond to the prior notice submission within the timeframes set out in § 1.279.

(d) FDA Review After Refusal.

(1) If an article of food has been refused admission under section 801(m)(1) of the act, a request may be submitted asking FDA to review whether the article is subject to the requirements of this subpart under § 1.276(b)(4) or § 1.277, or whether the information submitted in a prior notice is accurate. A request for review may not be used to submit prior notice or to resubmit an inaccurate prior notice.

(2) A request may be submitted only by the submitter, importer, owner, or ultimate consignee. A request must identify which one the requester is.

(3) A request must be submitted in writing to FDA and delivered by mail, express courier, fax, or e-mail. The location for receipt of a request is listed at *http://www.fda.gov*—see Prior Notice. A request must include all factual and legal information necessary for FDA to conduct its review. Only one request for review may be submitted for each refused article.

(4) The request must be submitted within 5 calendar days of the refusal. FDA will review and respond within 5 calendar days of receiving the request.

(5) If FDA determines that the article is not subject to the requirements of this subpart under § 1.276(b)(5) or § 1.277 or that the prior notice submission is accurate, it will notify the requester, the transmitter, and CBP that the food is no longer subject to refusal under section 801(m)(1) of the act.

(e) International Mail. If an article of food arrives by international mail with inadequate prior notice or the PN confirmation number is not affixed as required, the parcel will be held by CBP for 72 hours for FDA inspection and disposition. If FDA refuses the article under section 801(m) of the act and there is a return address, the parcel may be returned to sender stamped "No Prior Notice—FDA Refused." If the article is refused and there is no return address or FDA determines that the article of food in the parcel appears to present a hazard, FDA may dispose of or destroy the parcel at its expense. If FDA does not respond within 72 hours of the CBP hold, CBP may return the parcel to the sender or, if there is no return address, destroy the parcel, at FDA expense.

(f) *Prohibitions on delivery and transfer.*

(1) Notwithstanding section 801(b) of the act, an article of food refused under section 801(m)(1) of the act may not be delivered to the importer, owner, or ultimate consignee until prior notice is submitted to FDA in accordance with this subpart, FDA has examined the prior notice, FDA has determined that the prior notice is adequate, and FDA has notified CBP and the transmitter that the article of food is no longer refused admission under section 801(m)(1).

(2) During the time an article of food that has been refused under section 801(m)(1) of the act is held, the article may not be transferred by any person from the port or the secure facility until prior notice is submitted to FDA in accordance with this subpart, FDA has examined the prior notice, FDA has determined that the prior notice is adequate, and FDA has notified CBP and the transmitter that the article of food no longer is refused admission under section 801(m)(1). After this notification by FDA to CBP and transmitter, entry may be made in accordance with law and regulation.

(g) *Relationship to other admissibility decisions.* A determination that an article of food is no longer refused under section 801(m)(1) of the act is different than, and may come before, determinations of admissibility under other provisions of the act or other U.S. laws. A determination that an article of food is no longer refused under section 801(m)(1) does not mean that it will be granted admission under other provisions of the act or other U.S. laws.

### § 1.284 What are the other consequences of failing to submit adequate prior notice or otherwise failing to comply with this subpart?

(a) The importing or offering for import into the United States of an article of food in violation of the requirements of section 801(m), including the requirements of this subpart, is a prohibited act under section 301(ee) of the act (21 U.S.C. 331(ee)).

(b) Section 301 of the act (21 U.S.C. 331) prohibits the doing of certain acts or causing such acts to be done.

(1) Under section 302 of the act (21 U.S.C. 332), the United States can bring a civil action in federal court to enjoin persons who commit a prohibited act.

(2) Under section 303 of the act (21 U.S.C. 333), the United States can bring a criminal action in Federal court to prosecute persons who are responsible for the commission of a prohibited act.

(c) Under section 306 of the act (21 U.S.C. 335a), FDA can seek debarment of any person who has been convicted of a felony relating to importation of food into the United States or any person who has engaged in a pattern of importing or offering adulterated food that presents a threat of serious adverse health consequences or death to humans or animals.

### § 1.285 What happens to food that is imported or offered for import from unregistered facilities that are required to register under 21 CFR part 1, subpart H?

(a) If an article of food from a foreign manufacturer that is not registered as required under section 415 of the act (21 U.S.C. 350d) and subpart H is imported or offered for import into the United States, the food is subject to refusal of admission under section 801(m)(1) of the act and § 1.283 for failure to provide adequate prior notice. The failure to provide the correct registration number of the foreign manufacturer, if registration is required under section 415 of the act and 21 CFR part 1, subpart H, renders the identity of that facility incomplete for purposes of prior notice.

(b) Unless CBP concurrence is obtained for export and the article is immediately exported from the port of arrival, if an article of food is imported or offered for import from a foreign facility that is not registered as required under section 415 of the act and is placed under hold, it must be held within the port of entry for the article unless directed by CBP or FDA.

(c) *Status and movement of held food.* (1) An article of food that has been placed under hold under section 801(l) of the act shall be considered general order merchandise as described in section 490 of the Tariff Act of 1930, as amended (19 U.S.C. 1490).

(2) Food under hold under section 801(l) must be moved under appropriate custodial bond. FDA must be notified of the location where the food has been or will be moved, within 24 hours of the hold. The food subject to hold shall not be entered and shall not be delivered to any importer, owner, or ultimate consignee. The food must be taken directly to the designated facility.

(d) *Segregation of refused foods.* If an article of food that has been placed under hold under section 801(l) is part of a shipment that contains articles that have not been placed under hold of the act, the food under hold may be segregated from the rest of the shipment. This segregation must take place within the port of arrival where the article is held, if different. FDA or CBP may supervise segregation. If FDA or CBP determine that supervision is necessary, segregation must not take place without supervision.

(e) *Costs.* Neither FDA nor CBP will be liable for transportation, storage, or other expenses resulting from any hold.

(f) *Export after refusal.* An article of food that has been placed under hold under section 801(l) of the act may be exported with CBP concurrence and under CBP supervision unless it is seized or administratively detained by FDA or CBP under other authority.

(g) *No Registration or Request for Review.* If an article of food is placed under hold under section 801(l) of the act and no registration or request for FDA review is submitted in a timely fashion or export has not occurred in accordance with subsection (g), the food shall be dealt with as set forth in CBP regulations relating to general order merchandise, except that the article may only be sold for export or destroyed as agreed to by CBP and FDA.

(h) *Food carried by or otherwise accompanying an individual.* If an article of food carried by or otherwise accompanying an individual arriving in the United States is placed under hold under section 801(l) of the act because it is from a foreign facility that is not registered as required under section 415 of the act, 21 U.S.C. 350d, and subpart H, the individual may arrange to have the food held at the port or exported. If such arrangements cannot be made, the article of food may be destroyed.

(i) *Post-refusal and post-hold submissions.* (1) Post-refusal. To resolve the refusal if an article of food is refused under § 1.283(a) because the facility is not registered, the facility must be registered and a registration number has been obtained, you should cancel the prior notice and must resubmit the prior notice in accordance with § 1.283(c).

(2) Post-hold. To resolve a hold, if an article of food is held under § 1.285(b) because it is from a foreign facility that is not registered, the facility must be registered and a registration number must be obtained.

(i) FDA must be notified of the applicable registration number in writing. The notification must provide the name and contact information for the person submitting the information. The notification may be delivered to FDA by mail, express courier, fax, or e-mail. The location for receipt of a notification of registration number associated with an article of food under hold is listed at *http://www.fda.gov*—see Food Facility Registration. The notification should include the applicable CBP identifier.

(ii) If FDA determines that the article is no longer subject to hold, it will notify the person who provided the registration information and CBP that the food is no longer subject to hold under section 801(l) of the act.

(j) *FDA review after hold.* (1) If an article of food has been placed under hold under section 801(l), a request may be submitted asking FDA to review whether the facility associated with the article is subject to the requirements of section 415 of the act. A request for review may not be submitted to obtain a registration number.

(2) A request may be submitted only by the prior notice submitter, importer, owner, or ultimate consignee of the article. A request must identify which one the requestor is.

(3) A request must be submitted in writing to FDA and delivered by mail, express courier, fax or e-mail. The location for receipt of a request is listed at *http://www.fda.gov*—see Prior Notice. A request must include all factual and legal information necessary for FDA to conduct its review. Only one request for review may be submitted for each article under hold.

(4) The request must be submitted within 5 calendar days of the hold. FDA will review and respond within 5 calendar days of receiving the request.

(5) If FDA determines that the article is not from a facility subject to the requirements of section 415, it will

notify the requestor and CBP that the food is no longer subject to hold under section 801(l) of the act.

(k) *International mail.* If an article of food is that arrives by international mail is from a foreign facility that is not registered as required under section 415 of the act (21 U.S.C. 350d) and subpart H, the parcel will be held by CBP for 72 hours for FDA inspection and disposition. If the article is held under section 801(1) of the act and there is a return address, the parcel may be returned to sender stamped "No Registration—No Admission Permitted." If the article is under hold and there is no return address or FDA determines that the article of food is in the parcel appears to present a hazard, FDA may dispose of or destroy the parcel at its expense. If FDA does not respond within 72 hours of the CBP hold, CBP may return the parcel to the sender stamped "No Registration—No Admission Permitted" or, if there is no return address, destroy the parcel, at FDA expense.

(l) *Prohibitions on delivery and transfer.* (1) Notwithstanding section 801(b) of the act (21 U.S.C. 381(b)), an article of food that has been refused under section 801(m)(1) of the act may not be delivered to the importer, owner, or ultimate consignee until prior notice is submitted to FDA in accordance with this subpart, FDA has examined the prior notice, FDA has determined that the prior notice is adequate, and FDA has notified CBP and the transmitter that the article of food is no longer refused admission under section 801(m)(1) of the act.

(2) During the time an article of food that has been refused under section 801(m)(1) of the act is held, the article may not be transferred by any person from the port or the secure facility location until prior notice is submitted to FDA in accordance with this subpart, FDA has examined the prior notice, FDA has determined that the prior notice is adequate, and FDA has notified CBP and the transmitter that the article of food is no longer refused admission under section 801(m)(1) of the act. After this notification by FDA to CBP and transmitter, entry may be made in accordance with law and regulation.

(m) *Relationship to other admissibility provisions.* A determination that an article of food is no longer subject to hold under section 801(l) of the act is different than, and may come before, determinations of admissibility under other provisions of the act or other U.S. laws. A determination that an article of food is no longer under hold under section 801(l) does not mean that it will be granted admission under other provisions of the act or other U.S. laws.

Dated: October 2, 2003.

**Tommy G. Thompson,**

*Secretary of Health and Human Services.*

Dated: October 8, 2003.

**Tom Ridge,**

*Secretary of Homeland Security.*

[FR Doc. 03–25877 Filed 10–9–03; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003N–0467]**

### Risk Assessment for Food Terrorism and Other Food Safety Concerns; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a risk assessment for food terrorism and other food safety concerns. FDA is making this document available to promote transparency by communicating publicly the risk to public health of acts of food terrorism, as well as incidents of unintentional contamination of food that result in significant foodborne illness. The development of this risk assessment is one of a number of steps the agency is taking to improve its ability to prevent, prepare for, and respond to an incident of food sabotage.

**ADDRESSES:** Submit written requests for single copies of the risk assessment to the Office of Regulations and Policy (HFS–24), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send one self-addressed adhesive label to assist that office in processing your request, or include a fax number to which the document may be sent. Alternatively, you may request a copy of the document by calling 301–436–1589, or you may fax your request to 301–436–2637. *See* the **SUPPLEMENTARY INFORMATION** section for electronic access to the risk assessment.

**FOR FURTHER INFORMATION CONTACT:** Leslye Fraser, Associate Director for Regulations, Center for Food Safety and Applied Nutrition (HFS–4), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2378.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The events of September 11, 2001, and the subsequent anthrax incidents gave rise to concerns about unconventional terrorist attacks, including the threat of attacks on the U.S. food supply. In the aftermath of those incidents, FDA took steps to improve its ability to prevent, prepare for, and respond to incidents of food sabotage.

As part of this effort, the agency prepared various assessments of the risk of food terrorism. Most of these risk assessments were deemed to be classified. The goal of this document is to communicate publicly the risk to public health of acts of food terrorism, as well as incidents of unintentional contamination of food that result in significant foodborne illness.

## II. Risk Assessment for Food Terrorism and Other Food Safety Concerns

The risk assessment presents scientific evidence and various risk scenarios, to the extent that such information is unclassified, on both deliberate and accidental contamination of that portion of the food supply regulated by FDA. Unlike traditional risk assessments, which focus on one hazard, this assessment addresses the broad range of hazards that may be introduced into food intentionally or unintentionally. In addition, the very nature of "bioterrorism" and the fact that it is a relatively new and evolving threat present challenges in quantitatively evaluating the associated risks. Thus, FDA has prepared a qualitative assessment that follows the generally accepted framework for risk assessments endorsed by the Codex Alimentarius Commission. This framework involves the following steps:

(1) *Hazard identification.* A review of available information on the range of possible biological and chemical agents that might be used by terrorists to deliberately contaminate food or that might be introduced inadvertently into food.

(2) *Hazard characterization.* The assessment of the potential for an act of food terrorism or other food safety emergency to cause illnesses and deaths, economic effects, and social and political implications.

(3) *Exposure assessment.* An evaluation of the likelihood that an act of food terrorism or inadvertent food contamination that results in significant foodborne illness will occur.

(4) *Risk characterization.* The integration of information on potential hazards with the exposure assessment.

The risk assessment also discusses the quality of information available for, and the uncertainties associated with, the assessment.

FDA has determined that this risk assessment, which discusses prior incidents of food contamination and available unclassified information on prior acts of food sabotage, is appropriate to the circumstances.

## III. Electronic Access

The risk assessment is available electronically at *http://www.cfsan.fda.gov.*

Dated: October 7, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–25850 Filed 10–9–03; 8:45 am]

**BILLING CODE 4160–01–P**

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**H.R. 659/P.L. 108–91**
Hospital Mortgage Insurance Act of 2003 (Oct. 3, 2003; 117 Stat. 1158)

**H.R. 978/P.L. 108–92**
To amend chapter 84 of title 5, United States Code, to provide that certain Federal annuity computations are adjusted by 1 percentage point relating to periods of receiving disability payments, and for other purposes. (Oct. 3, 2003; 117 Stat. 1160)

**S. 111/P.L. 108–93**

To direct the Secretary of the Interior to conduct a special resource study to determine the national significance of the Miami Circle site in the State of Florida as well as the suitability and feasibility of its inclusion in the National Park System as part of Biscayne National Park, and for other purposes. (Oct. 3, 2003; 117 Stat. 1161)

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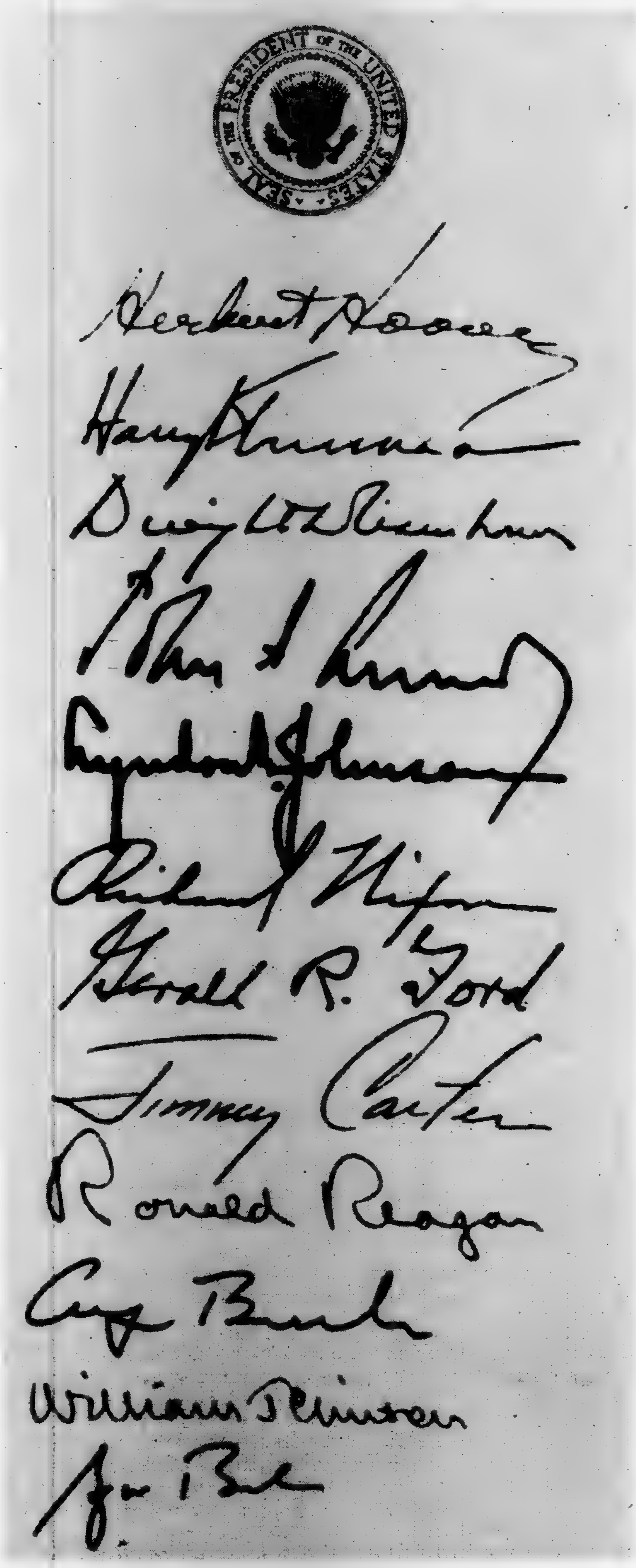
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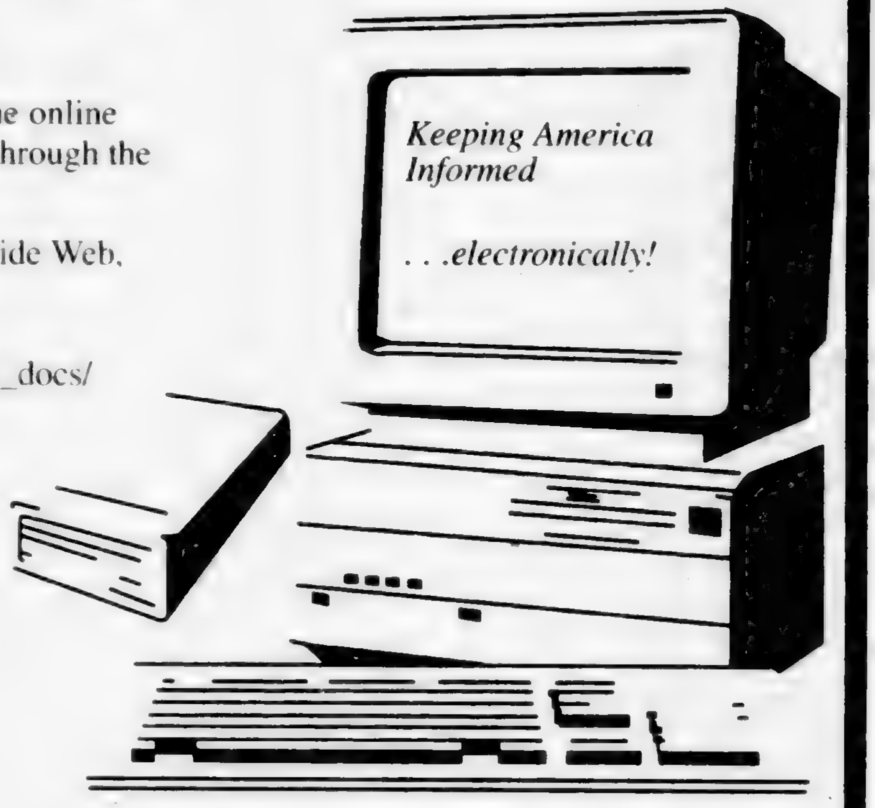

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# Presidential Documents

**Title 3—**

**The President**

**Proclamation 7717 of October 8, 2003**

## National Domestic Violence Awareness Month, 2003

**By the President of the United States of America**

**A Proclamation**

Across our country, domestic violence traumatizes victims, endangers children, harms families, and threatens communities. According to the most recent report from the Department of Justice, there were almost 700,000 incidents of domestic violence in 2001. Approximately one-third of women who are murdered each year are killed by their current or former husband or partner. Children who are subjected to domestic violence too often grow up to inflict violence on others, creating a cycle of violence that must be stopped. During National Domestic Violence Awareness Month, we renew our Nation's commitment to prevent and punish the perpetrators of this despicable crime and bring hope and healing to those affected by it.

In some communities across our country, law enforcement, medical, and legal services for domestic violence victims are fragmented, requiring victims to travel to several different places to receive the help and treatment they need. Comprehensive service centers for domestic violence victims and their dependents enable health and justice professionals to better serve those in need. My Administration supports efforts to provide a wide variety of victim services in one location, including medical care, counseling and social services, law enforcement and legal resources, faith-based services, employment assistance, and housing assistance.

Local nonprofit and faith-based programs and their volunteers also offer critical assistance and support to victims in need—help that may not otherwise be available. In August of this year, the dedicated advocates at the Federally supported National Domestic Violence Hotline answered their one millionth call for help. Volunteers who want to help victims in the local community can find more information at the USA Freedom Corps Volunteer Network (located at www.usafreedomcorps.gov).

My Administration is fighting domestic violence and strengthening services for victims and their dependents by supporting local and private efforts and securing historic levels of funding for the Violence Against Women programs at the Department of Justice. In fiscal year 2002, we spent $390 million to prevent domestic violence and help victims, which represented an approximately $100 million increase in funding. Since then, we have continued to provide a similar level of funding, and cities and towns across America are using this money to strengthen their responses to the victims of domestic violence, sexual assault, and stalking. The Federal commitment to domestic violence has made it possible for women to seek relief from abuse and reclaim their dignity and their lives. Moreover, Federal prosecutions in cases involving violence against women increased by 35 percent in 2002.

Today is the first day of issue for the U.S. Postal Service Stop Family Violence postage stamp, which will raise money to support the national fight against domestic violence. On behalf of families and communities across America, I call on all citizens to help raise public awareness about how to prevent, recognize, and stop domestic violence. I applaud the commitment of all those who are helping to improve the lives of domestic violence survivors and their families. Working together, we can continue to find better solutions to this national problem.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 2003 as National Domestic Violence Awareness Month. I urge all Americans to help victims of domestic violence and to work together to address this tragic problem.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of October, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.

[FR Doc. 03-26007
Filed 10-10-03; 8:45 am]
Billing code 3195-01-P

# Rules and Regulations

**Federal Register**
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

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## OFFICE OF PERSONNEL MANAGEMENT

## 5 CFR Part 870

**RIN 3206–AJ46**

## Federal Employees' Group Life Insurance Program: Removal of Premiums and Age Bands From Regulations

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing a final rule to remove the premiums and age bands from the Federal Employees' Group Life Insurance (FEGLI) regulations. This allows OPM to make necessary premium changes on a more timely basis.

**EFFECTIVE DATE:** November 13, 2003.

**FOR FURTHER INFORMATION CONTACT:** Karen Leibach, (202) 606–0004.

**SUPPLEMENTARY INFORMATION:** On April 9, 2003, OPM published a proposed rule in the **Federal Register** (68 FR 17315) to remove the premiums and age bands from the FEGLI regulations. OPM will announce future premium changes in a **Federal Register** notice and will maintain the rates on the FEGLI Web site (*www.opm.gov/insure/life*). This will simplify the process for making premium changes when necessary and allow for changes to be made in a more timely manner.

We received no comments on the proposed regulatory change.

### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only affects life insurance benefits of Federal employees and retirees.

### Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

### List of Subjects in 5 CFR Part 870

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement.

Office of Personnel Management.
**Kay Coles James,**
*Director.*

■ Accordingly, OPM is amending 5 CFR part 870 as follows:

## PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

■ 1. The authority citation for part 870 is revised to read as follows:

**Authority:** 5 U.S.C. 8716; subpart J also issued under sec. 599C, Pub. L. 101–513, 104 Stat. 2064, as amended; § 870.302(a)(3)(ii) also issued under sec. 153, Pub. L. 104–134, 110 Stat. 1321; § 870.302(a)(3) also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251 and sec. 7(e), Pub. L. 105–274, 112 Stat. 2419.

## Subpart D—Cost of Insurance

■ 2. In § 870.401, revise paragraphs (a), (b)(1), and (d) to read as follows:

### § 870.401 Withholdings and contributions for Basic insurance.

(a)(1) The cost of Basic insurance is shared between the insured individual and the Government. The employee pays two-thirds of the cost, and the Government pays one-third.

(2) When OPM makes any adjustment to the Basic life insurance premium, it will issue a public notice in the **Federal Register.**

(b)(1) During each pay period in which an insured employee is in pay status for any part of the period, the employee's share of the premium must be withheld from the employee's biweekly pay. The amount withheld from the pay of an employee who is paid on other than a biweekly basis must be computed and adjusted to the nearest one-tenth of one cent.

* * * * *

(d)(1) For an annuitant or compensationer who elects to continue Basic insurance and chooses the maximum reduction of 75 percent after age 65 under § 870.702(a)(2), the annuitant's share of the premium is withheld monthly and the compensationer's share is withheld every 4 weeks. These withholdings stop the month after the month in which the annuitant or compensationer reaches age 65. There are no withholdings from individuals who retired or began receiving compensation before January 1, 1990, and who elected the 75 percent reduction. For the purpose of this paragraph, an individual who separates from service after meeting the requirements for an immediate annuity under 5 U.S.C. 8412(g) is considered to retire on the day before the annuity begins.

(2) An annuitant or compensationer who elects to continue Basic insurance and chooses either the reduction election of 50 percent or the election of no reduction after age 65 under § 870.702(a)(3) or (4) pays an additional premium for the 50 percent or no reduction election. This additional premium is withheld for each $1,000 of the BIA. At age 65, the Basic premium will stop, but the annuitant or compensationer must continue to pay the additional premium for either the 50 percent or the no reduction election.

* * * * *

■ 3. Revise § 870.402 to read as follows:

### § 870.402 Withholdings for Optional insurance.

(a)(1) The insured individual pays the full cost of all Optional insurance. There is no Government contribution toward the cost of any Optional insurance.

(2) Optional insurance premiums are based on 5-year age bands beginning at age 35. The last age band for Option A is age 60+. The last age band for Options B and C is 80+. For the purpose of this subpart, effective April 24, 1999, an individual is considered to reach the next age band the 1st day of the pay period following the pay period in which his/her birthday occurs.

(3) When OPM makes any adjustment to the Optional life insurance premiums, it will issue a public notice in the **Federal Register.**

(b) During each pay period in any part of which an insured employee is in pay status, the employing agency must withhold the full cost of Optional insurance from his/her pay.

(c)(1) Subject to the provisions for reemployed annuitants in § 870.707, the full cost of Optional insurance must be withheld from the annuity of an annuitant the compensation of a compensationer.

(2) The withholdings for Option A stop the month after the month in which an annuitant or compensationer reaches age 65.

(3) For an annuitant or compensationer who elects Full Reduction for any Option B or Option C multiples under § 870.705, the withholdings for those multiples stop the month after the month in which he/she reaches age 65.

(4) For an annuitant or compensationer who elects No Reduction for any Option B or Option C multiples, the withholdings for those multiples continue, as long as he/she remains insured.

(d)(1) For Option A and Option C, the amount withheld from pay, annuity, or compensation paid on other than a biweekly basis must be computed and adjusted to the nearest cent.

(2) For Option B, the amount withheld from pay, annuity, or compensation paid on other than a biweekly basis must be computed and adjusted to the nearest one-tenth of 1 cent.

(e) If an employee's annual pay is paid during a period shorter than 52 work weeks, the employing office must determine the amount to withhold. To do this, it converts the biweekly cost to an annual cost and prorates it over the number of installments of pay regularly paid during the year.

(f) When an agency withholds less than or none of the proper amount of Optional life insurance deductions from an individual's pay, annuity, or compensation, the agency must submit an amount equal to the uncollected deductions required under 5 U.S.C. 8714a, 8714b, and 8714c to OPM for deposit in the Employees' Life Insurance Fund.

■ 4. In § 870.404, revise paragraph (d) to read as follows:

**§ 870.404 Withholdings and contributions provisions that apply to both Basic and Optional insurance.**

* * * * *

(d) The deposit described in §§ 870.401(f) and 870.402(f) must be made no later than 60 calendar days after the date the employing office determines the amount of the underdeduction that has occurred, regardless of whether or when the underdeduction is recovered by the agency. The agency must determine whether to waive collection of the overpayment of pay, in accordance with 5 U.S.C. 5584, as implemented by 4 CFR chapter I, subchapter G. However, if the agency involved is excluded from the provisions of 5 U.S.C. 5584, it may use any applicable authority to waive the collection.

* * * * *

■ 5. In § 870.801, revise paragraph (e) to read as follows:

**§ 870.801 Order of precedence and payment of benefits.**

* * * * *

(e) Upon the death of an insured family member, Option C benefits are paid to the employee, annuitant, or compensationer responsible for withholdings under § 870.402(a), except as provided in paragraph (f) of this section.

* * * * *

[FR Doc. 03–25945 Filed 10–10–03; 8:45 am]

BILLING CODE 6325–50–U

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## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

## 7 CFR Part 301

**[Docket No. 02–125–1]**

## Emerald Ash Borer; Quarantine and Regulations

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are quarantining 13 counties in Michigan because of the emerald ash borer and restricting the interstate movement of regulated articles from these quarantined areas. This action is necessary on an emergency basis to prevent the artificial spread of this plant pest from infested areas in the State of Michigan to noninfested areas of the United States.

**DATES:** This interim rule was effective October 8, 2003. We will consider all comments that we receive on or before December 15, 2003.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–125–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–125–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–125–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah McPartlan, Operations Officer, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–4387.

**SUPPLEMENTARY INFORMATION:**

### Background

The emerald ash borer (EAB) (*Agrilus planipennis*) is a destructive wood-boring insect that attacks ash trees (*Fraxinus* spp., including green ash, white ash, black ash, and several horticultural varieties of ash). The insect, which is indigenous to Asia and known to occur in China, Korea, Japan, Mongolia, the Russian Far East, Taiwan, and Canada, eventually kills healthy ash trees after it bores beneath their bark and disrupts their vascular tissues.

EAB has been found in ash trees in several Michigan counties. Within those counties, EAB has infested thousands of square miles, and we estimate that over 30 million ash trees are currently at risk in affected counties. EAB has already caused an estimated $11.6 million in landscape industry and wood lot losses, and approximately $2 million in lost nursery stock sales. Inestimable, though, is the loss of aesthetic, recreational, and habitat-providing values that ash trees provide. Should EAB spread from infested areas in Michigan into forests of the north-central United States, where nursery, landscaping, and timber industries and forest-based recreation and tourism industries are vital components of the economy, the pest's impact would be tremendous. Further, in the affected counties and the areas that surround those counties, ash is a major component of the urban forest because of its natural resistance to other tree pests and its hardiness in urban environments.

Officials of the U.S. Department of Agriculture (USDA) and officials of State, county, and city agencies in Michigan have been conducting an intensive survey and eradication program in the infested areas. The State of Michigan has quarantined 13 counties in the southeastern portion of the State and is restricting the intrastate movement of certain articles from the quarantined areas to prevent the artificial spread of EAB within Michigan. However, Federal regulations are necessary to restrict the interstate movement of certain articles from the quarantined areas to prevent the artificial spread of EAB to other States.

Therefore, we are amending the "Domestic Quarantine Notices" in 7 CFR part 301 by adding a new subpart, "Emerald Ash Borer" (§§ 301.53–1 through 301.53–9, referred to below as the regulations). These regulations quarantine the 13 counties designated in Michigan's State quarantine and restrict the interstate movement of regulated articles from the quarantined areas.

*Definitions*

In § 301.53–1, we define the following terms: Administrator, Animal and Plant Health Inspection Service (APHIS), certificate, compliance agreement, emerald ash borer, infestation, inspector, interstate, limited permit, moved (movement, move), person, quarantined area, regulated article, and State. With one exception, these terms are widely used in our other domestic quarantines in part 301, and the definitions we provide in § 301.53–1 are consistent with those provided elsewhere in part 301. We have defined the term *emerald ash borer* as the insect known as emerald ash borer (*Agrilus planipennis*) in any stage of development.

*Regulated Articles*

Certain articles present a significant risk of spreading EAB if the articles are moved from quarantined areas without restriction. We call these articles "regulated articles." Regulated articles may not be moved interstate from quarantined areas except in accordance with the conditions specified in §§ 301.53–4 through 301.53–9 of the regulations. In § 301.53–2, paragraph (a) designates the following as regulated articles: (1) The emerald ash borer; (2) firewood (all hardwood species); and (3) nursery stock, green lumber, and other material living, dead, cut, or fallen, including logs, stumps, roots, branches, and composted and uncomposted chips of the genus *Fraxinus*. We are designating all hardwood species of firewood as regulated articles because as hardwood is dried and cut into firewood, it is difficult to identify the species of the tree from which the firewood was derived.

Paragraph (b) of § 301.53–2 provides that any other article, product, or means of conveyance not listed in paragraph (a) of that section may be designated as a regulated article if an inspector determines that it presents a risk of spreading EAB and notifies the person in possession of the article, product, or means of conveyance that it is subject to the restrictions of the regulations. This provision will allow an inspector who discovers evidence of EAB in an article, product, or means of conveyance to take immediate action after informing the person in possession of it that it is being regulated.

*Quarantined Areas*

In § 301.53–3, paragraph (a) provides that the Administrator will quarantine each State or portion of a State in which EAB has been found by an inspector, in which the Administrator has reason to believe that EAB is present, or which the Administrator deems necessary to regulate because of its inseparability for quarantine enforcement purposes from localities where EAB has been found. Less than an entire State will be designated as a quarantined area only under certain conditions. Such a designation may be made if the Administrator determines that: (1) The State has adopted and is enforcing restrictions on the intrastate movement of regulated articles listed in § 301.53–2 that are equivalent to the interstate movement restrictions imposed by the regulations in §§ 301.53–1 through 301.53–9; and (2) the designation of less than an entire State as a quarantined area will be adequate to prevent the artificial spread of the EAB.

Paragraph (b) of § 301.53–3 provides that the Administrator or an inspector may temporarily designate any nonquarantined area as a quarantined area in accordance with the criteria in § 301.53–3(a). The Administrator will give written notice of this temporary designation to the owner or person in possession of the nonquarantined area, or, in the case of publicly owned land, the person responsible for the management of the nonquarantined area. This is necessary to prevent the spread of EAB before restrictions can be published in the **Federal Register** concerning the interstate movement of regulated articles from the designated area. As soon as practicable, this area will be added to the list of quarantined areas or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

In accordance with these criteria, we are quarantining 13 counties in Michigan because of the EAB and restricting the interstate movement of regulated articles from the quarantined areas. Specifically, in § 301.53–3(c) we list Genesee, Ingham, Jackson, Lapeer, Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Shiawassee, Washtenaw, and Wayne Counties, MI, as quarantined areas.

*Interstate Movement of Regulated Articles From Quarantined Areas*

In § 301.53–4, paragraph (a) provides that regulated articles may be moved interstate from a quarantined area into or through an area that is not quarantined if they are accompanied by a certificate or limited permit issued and attached as prescribed by §§ 301.53–5 and 301.53–8.

Paragraph (b) of § 301.53–4 provides that a regulated article may be moved interstate without a certificate or limited permit if the regulated article is moved by the USDA for experimental or scientific purposes or if the regulated article originates outside the quarantined area. Articles originating outside the quarantined area that are moved interstate through a quarantined area must be moved under the following conditions: (1) The points of origin and destination are indicated on a waybill accompanying the regulated article; (2) the regulated article, if moved through the quarantined area during the period of May 1 through August 31 or when the ambient air temperature is 40 °F or higher, is moved in an enclosed vehicle or is completely covered to prevent access by the EAB; (3) the regulated article is moved directly through the quarantined area without stopping (except for refueling or for traffic conditions, such as traffic lights or stop signs), or has been stored, packed, or handled at locations approved by an inspector; and (4) the article has not been combined or commingled with other articles so as to lose its individual identity.

*Certificates and Limited Permits*

Under Federal domestic plant quarantine programs, there is a difference between the use of certificates and the use of limited permits. Prior to movement, certificates are issued for regulated articles upon a finding by an inspector that, because of certain conditions (*e.g.*, the article is free of a pest), the movement presents low risk of disseminating pests. With a certificate, the article may be moved interstate without further restrictions. Limited permits are issued for regulated articles when an inspector has determined that, because of possible pest or disease risk, such articles may be safely moved interstate only subject to further restrictions, such as movement to specified areas and movement for specified purposes. Section 301.53–5 sets out the conditions for issuing certificates and limited permits for movement from areas quarantined for EAB and for canceling certificates and limited permits.

Paragraph (a) of 301.53–5 provides that an inspector or a person operating under a compliance agreement (discussed below) will issue a certificate for the interstate movement of a regulated article if he or she determines that the regulated article:

- Is apparently free of EAB, based on inspection, or the article has been grown, produced, manufactured, stored, or handled in a manner that, in the judgment of the inspector, prevents the regulated article from presenting a risk of spreading EAB;
- Is to be moved in compliance with any additional emergency conditions the Administrator may impose under the Plant Protection Act to prevent the artificial spread of EAB; and
- Is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

Paragraph (b) of 301.53–5 provides for the issuance of a limited permit (rather than a certificate) by an inspector or person operating under a compliance agreement for movement of a regulated article if he or she determines that the regulated article:

- Is to be moved interstate to a specified destination for specific processing, handling, or utilization (the destination and other conditions to be listed in the limited permit and/or compliance agreement), and the interstate movement will not result in the artificial spread of EAB because EAB will be destroyed by the specific processing, handling, or utilization;
- Is to be moved interstate in compliance with any additional emergency conditions the Administrator may impose under the Plant Protection Act to prevent the artificial spread of EAB; and
- Is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

Paragraph (c) of 301.53–5 provides that an inspector will issue blank certificates and limited permits to a person operating under a compliance agreement or authorize reproduction of the certificates or limited permits on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates or limited permits may then be completed and used, as needed, for the interstate movement of regulated articles that have met all of the requirements of § 301.53–5(a) or § 301.53–5(b), respectively.

Paragraph (d) of 301.53–5 provides that a certificate or limited permit may be canceled by an inspector, orally or in writing, whenever the inspector determines that the holder of the certificate or limited permit has not complied with the regulations. If the cancellation is oral, the cancellation will become effective upon notification by the inspector. The cancellation and the reasons for the cancellation will then be confirmed in writing as soon as circumstances allow after oral notification of the cancellation. Any person whose certificate or limited permit has been canceled may appeal the decision, in writing, within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve a conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

### *Compliance Agreements*

Section 301.53–6 provides for the use and cancellation of compliance agreements. Under § 301.53–6(a), compliance agreements may be entered into by any person engaged in the growing, handling, or interstate movement of regulated articles if such persons review with an inspector each stipulation of the compliance agreement. Any person who enters into a compliance agreement with APHIS must agree to comply with the regulations.

Paragraph (b) of 301.53–6 explains that a compliance agreement may be canceled by an inspector, orally or in writing, whenever the inspector determines that the person who entered into the compliance agreement has not complied with the regulations. If the cancellation is oral, the cancellation will become effective upon oral notification by the inspector. The cancellation and the reasons for the cancellation will then be confirmed in writing as soon as circumstances allow after oral notification of the cancellation. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve a conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

### *Assembly and Inspection of Regulated Articles*

Paragraph (a) of § 301.53–7 provides that any person who requires certification or other services from an inspector must request the services at least 48 hours before they are needed. Paragraph (b) of § 301.53–7 provides that regulated articles must be assembled at the place and in the manner an inspector designates as necessary to comply with the regulations.

### *Attachment and Disposition of Certificates and Limited Permits*

In § 301.53–8, paragraph (a) requires that regulated articles intended for interstate movement be plainly marked with the name and address of the consignor and the name and address of the consignee and that, during the interstate movement, the certificate or limited permit issued for the interstate movement of regulated articles be attached to either: (1) The regulated article, (2) the container carrying the regulated article, or (3) the accompanying waybill. However, the certificate or limited permit may be attached to the consignee's copy of the waybill only if the certificate or limited permit and the waybill contain a sufficient description of the regulated article to identify the regulated article. This provision is necessary for enforcement purposes.

Paragraph (b) of 301.89–9 requires the carrier of the article to furnish the certificate or limited permit to the consignee at the shipment's destination.

### *Costs and Charges*

Section 301.53–9 provides that the services of an inspector are provided without cost during normal business hours to persons requiring those services to comply with the regulations. The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

**Emergency Action**

This rulemaking is necessary on an emergency basis to prevent the spread of EAB into noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

**Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are quarantining 13 counties in Michigan because of the EAB and restricting the interstate movement of regulated articles from these quarantined areas. This action is necessary on an emergency basis to prevent the artificial spread of this plant pest from infested areas in the State of Michigan to noninfested areas of the United States.

As stated previously, EAB is a highly destructive, wood-boring insect pest that attacks several species of ash (*Fraxinus* spp.). White ash (*Fraxinus americana* L.), black ash (*Fraxinus nigra* Marsh.), and green ash (*Fraxinus pennsylvanica* Marshall.) varieties are known to be susceptible in the United States; however, there are indications that other varieties of ash may also be at risk. Therefore, we are placing restrictions on certain articles of the genus *Fraxinus*.

If the EAB spreads from infested areas in Michigan to the surrounding forests of the northeastern United States, where nursery, landscaping, and timber industries and forest-based recreation and tourism industries play a vital economic role, its impact would be severe. Within 50 miles of Detroit, there are 2,280 square kilometers of forest land, and within 100 miles of the city, there are 7,836 square kilometers of forest. The pest has the potential to destroy entire stands of ash, and any incursion of the pest can result in substantial losses to forest ecosystems, urban trees, and the timber industry. Adults bore D-shaped holes up to a diameter of 1 centimeter into sapwood, and these holes create pathways for pathogens and insect vectors.

Domestically, black, green, and white ash serve as an important component in the forests of the northeast. Further, the wood is used for a variety of applications that require a strong, hard wood with less rigidity than maple. White ash is one of the primary commercial hardwoods used for the production of tool handles, baseball bats, furniture, antique vehicle parts, containers, railroad cars and ties, canoe paddles, snowshoes, boats, doors, and cabinets. Green ash is a valued species for solid wood products, pulp and paper requiring hardwood fibers, crating, boxing, handle stock, and rough lumber. Black ash, while not as strong as other varieties, is regularly used for interior furnishings, furniture, and cabinets. Damage left by the EAB reduces the quality and market value of wood products, and dying and dead trees are useless for manufacturers.

Beyond manufacturing, ash trees play an important role in the urban landscape. Ash is known for its natural resistance to many other trees pests and its hardiness in cities. Many of the ash trees that now serve as ornamental, street, shade, and landscape beautification trees were planted to replace elm trees destroyed because of Dutch elm disease. Ash trees are vital sources of food and shelter for wildlife and livestock, and they have been planted in the rehabilitation of damaged natural areas. Because of the EAB, these natural and aesthetic values are at risk in affected regions.

Earlier this year, Michigan's State EAB quarantine designated only six counties as quarantined areas. Recently, Michigan expanded its quarantine to include seven more counties. County-specific figures included in this analysis apply only to the six counties (Livingston, Macomb, Monroe, Oakland, Washtenaw, and Wayne) originally quarantined by the State; information for the seven counties (Genesee, Ingham, Jackson, Lapeer, Lenawee, St. Clair, and Shiawassee) recently added to the quarantine is not yet available.

Damage to ash trees in the lots owned by the landscape industry and woodlots in southeast Michigan over the past 5 years is estimated at $11.6 million. In Michigan and Canada, we estimate that between 250,000 and 2 million trees are already affected by the pest. In the six counties originally quarantined by the State of Michigan, 26.1 million trees are at risk, and the replacement value of those trees is estimated to be $11.7 billion; this figure, of course, excludes their aesthetic, oxygen-producing, and habitat-providing values. Already, because of EAB infestation and subsequent damage and the effects of the quarantine placed by the State of Michigan, producers have lost approximately $2 million in nursery stock sales. While ash species other than black, green, and white ash have not been attacked in North America, we believe the remaining 13 species may also be susceptible, and in 2002 the Canadian Food Inspection Agency confirmed that theory in the results of a EAB pest risk assessment. In Japan, EAB has also affected trees in the genus *Ulmus* (elms), *Juglans* (walnuts and butternuts), and *Pterocarya* (wingnuts).

The pattern and significant numbers of trees harmed or destroyed because of the pest suggest that EAB has been established in Michigan for at least 5 years, though it was definitively identified only in July 2002. We are not aware of the capability for EAB's natural spread in North America, and information on EAB biology in Asia is scarce. Studies on the pest in both North America and Asia are underway. Current research suggests that EAB typically completes one generation per year in northeastern China and that females lay 68 to 90 eggs in their lifetime. Usually, trees die 2 to 4 years after an EAB attack. We know that adult beetles are capable of dispersing by flight in 8 to 12 meter bursts, and we are aware of EAB "bursting" distances of several kilometers in search of new ash host material.

Since EAB appears to survive well in North American climatic conditions, it is probable that EAB could continue to disperse among various contiguous corridors of host material in natural and urban environments. In northeastern China, EAB has successfully built severely damaging populations and traveled great distances in search of new hosts. Especially troubling in North America is the apparent lack of natural predators and other biological factors that would contribute to EAB mortality. A relative of EAB, the bronze birch borer (Agrilus axius), is capable of a natural spread of 10 to 20 miles per year, and this might be a possible estimate of EAB's spreading capability.

The spread of EAB can be accelerated through human-assisted movement and trade of nursery stock, lumber, and logs. Solid wood packing materials (SWPM), especially if those materials include bark, pose a special concern. From 1985 to 2000, APHIS personnel reported 38 interceptions of species of the genus *Agrilus* in shipments of SWPM at ports of entry in 11 different States, and those shipments originated in at least 11 countries. Since EAB larvae can overwinter in the sapwood they burrow into, it is uncertain whether debarking of lumber is an effective way to destroy the pest.

### Specific Risks to Urban Forests

Urban areas of the United States cover approximately 3.5 percent of the total land area of the country, contain more than 75 percent of the population, and support an estimated 3.8 billion trees valued at $2.4 trillion. Michigan's total urban tree population is estimated at 110,858,000 trees, and ash is a vital component of this urban forest. Trees in urban Michigan, like trees in any city, sequester gaseous air pollutants and particulate matter, help people conserve energy through the shade they provide, assist in the dispersal of storm water, provide protective shelter belts for urban fauna, and contribute aesthetic pleasure to the lives of city-dwellers and tourists.

Field data from eight cities suggests that ash trees comprise up to 14 percent of the total leaf area of those cities. Based on these data, the ash tree resources at risk in just those eight cities would amount to $565 million; see table 1 below. The survey, the only available data regarding urban ash at risk, concentrates on ash in the eastern United States; however ash is more widely planted in urban regions of the midwest. These estimates are based on the assumption that all living ash in the cities may be destroyed by EAB and did not incorporate estimates of the EAB's biological or artificial spread rates, since those are not known.

TABLE 1.—PRELIMINARY ESTIMATES OF TREE RESOURCES AT RISK FOR INFESTATION BY AGRILUS PLANIPENNIS IN EIGHT U.S. CITIES (ORDERED BY ASH LEAF AREA) BASED ON THE TOTAL OF ALL LIVING PREFERRED HOST SPECIES (ASH TREES)

| City | Leaf area (%) | Number of ash trees | Value lost | Value per tree |
|---|---|---|---|---|
| Chicago, IL | 14.4 | 603,000 | $230,949,000 | $383 |
| Baltimore, MD | 8.5 | 292,700 | 227,568,000 | 777 |
| Philadelphia, PA | 4.7 | 117,000 | 68,408,000 | 584 |
| Boston, MA | 0.9 | 29,200 | 13,341,000 | 457 |
| Syracuse, NY | 0.9 | 6,900 | 6,400,000 | 929 |
| New York, NY | 0.3 | 27,600 | 9,770,000 | 354 |
| Atlanta, GA | 0.3 | 38,900 | 7,119,000 | 183 |
| Oakland, CA | 0.2 | 7,500 | 1,514,000 | 202 |
| Total value loss for all cities | | | 565,069,000 | |

Further, assuming that the EAB is capable of spreading through all urban areas of the lower 48 States and destroying all urban ash trees, the United States could suffer a national undiscounted loss of $20 to $60 billion. Since firm data are not available regarding the pest's biological or artificial spread patterns in North America, all losses are based on limited data that assume a 100 percent destruction rate. More field data from urban areas across the United States are needed to provide more accurate estimates of the resources at risk from EAB.

### Specific Risks to Timber

Within Michigan, there are 693 million EAB-susceptible trees grown on timberland, with an undiscounted compensatory value estimated at $18.92 billion. In the 6 counties first quarantined by the State of Michigan, there are more than 31 million ash trees at risk. We are investigating possible monetary losses to forestry interests based on stumpage[1] value. These losses are likely to be less than monetary losses based on compensatory value, since stumpage values are usually applied to older trees that are greater than 5 inches in diameter, and compensatory values are applied for trees greater than 1 inch in diameter.

Should the EAB spread or be artificially introduced to areas outside of Michigan, monetary losses could grow significantly. Ash trees for timber products are predominantly concentrated in the East, and available data on production volumes for ash were available only for this region. Table 2 shows the net volumes of ash trees grown for sawtimber in the Eastern region of the United States in 1996, the most recent year for which data is available. A net volume of 113,916 million board feet of ash sawtimber is grown in the Eastern region, comprising 7.5 percent of the volume of all hardwoods. The average stumpage price for sawtimber sold from national forests in 2000 was $220.30 per 1,000 board feet for all eastern hardwoods.

TABLE 2.—NET VOLUME OF SAWTIMBER ON TIMBER LAND IN THE EASTERN UNITED STATES, BY REGIONS AND SPECIES

[In million board feet]

| Species | Total East | Total North | Northeast | North central | Total South | Southeast | South central |
|---|---|---|---|---|---|---|---|
| Ash | 113,916 | 35,575 | 11,740 | 23,835 | 78,341 | 34,848 | 43,493 |
| Total hardwoods | 1,516,086 | 519,699 | 229,504 | 290,195 | 996,387 | 424,233 | 572,154 |
| Ash as % of all hardwoods | 7.5 | 6.8 | 5.1 | 8.2 | 7.9 | 8.2 | 7.6 |
| All species | 2,055,509 | 665,938 | 321,067 | 344,871 | 1,389,571 | 599,100 | 790,471 |

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[1] Stumpage value refers to the commercial value of trees standing in the forest. Stumpage prices may be offered in reference to board foot volume ($/m.b.f.), weight ($/ton), or truck loads ($/load). (From: *http://extension.usu.edu/forestry/Management/Timber_Valueterms2Know.htm*)

TABLE 2.—NET VOLUME OF SAWTIMBER ON TIMBER LAND IN THE EASTERN UNITED STATES, BY REGIONS AND SPECIES—Continued

[In million board feet]

| Species | Total East | Total North | Northeast | North central | Total South | Southeast | South central |
|---|---|---|---|---|---|---|---|
| Ash as % of all species | 5.5 | 5.3 | 3.7 | 6.9 | 5.6 | 5.8 | 5.5 |

Using the estimates provided in table 2, the value of ash timber grown in the eastern United States is $25.1 billion (see table 3 below). Based on the establishment of the EAB in Michigan and its range in Asia, it should be able to survive in most of the eastern United States. In Michigan, an estimated 7.7 billion board feet of ash timber is harvested annually. Using the stumpage figures listed previously, Michigan alone could see a loss of $1.7 billion in timber trees.

TABLE 3.—VALUE OF POTENTIAL LOSSES IN ASH TIMBER TREES IN THE EASTERN UNITED STATES BECAUSE OF INFESTATION BY THE EMERALD ASH BORER FOR DIFFERENT REGIONS, BASED ON STUMPAGE PRICES

| Region | Volume of timber trees (million board feet) | Value of losses (million dollars)[1] |
|---|---|---|
| Michigan | 7,700 | $1.697 |
| Northeastern region | 11,740 | 2,558 |
| Northern region | 35,575 | 7,842 |
| Total Eastern region | 113,916 | 25,111 |

[1] Assumes average stumpage price of $22.43 per 1,000 board feet (Agricultural Statistics, 2002).

### Other Effects

We must also consider the value of ash trees as important environmental and recreational resources. The recreational use of national forest lands amounted to 341.2 million visitor days[2] in 1996, the most recent year for which data were available. In Michigan, 4.87 million visitor days were spent in the national forests in 1997. While not specifically attributable to the presence of ash trees, these statistics illustrate the importance of forest-based recreation in the United States. Ash trees are important components of U.S. forests; in addition to their aesthetic value, they provide food and shelter for wildlife.

Citizens may also be affected by the presence of EAB in their own yards and neighborhoods. Removing dead or infested trees is costly and inconvenient, and replacement trees may have to grow for years before they offer the same amount of shade and ornamental value. Further, the quarantine restricts people from freely moving firewood and ash products through Michigan.

### Effects on Nursery Stock

An estimated $2 million in annual nursery stock sales have already been lost in the six Michigan counties first quarantined by the State. The Michigan Nursery and Landscape Association reports that nursery, plant production, and landscaping industries employ 347,000 Michigan citizens and contribute $3.7 billion to the State's economy. Michigan's nursery producers generate about $711 million in annual sales and distribute their products to 35 U.S. States, Mexico, and Canada; these producers are the second largest agricultural group in Michigan and the fifth largest nursery industry in the United States. Losses, of course, could be larger if the EAB were allowed to spread to other areas of the country. Several European agrilids are known nursery pests, and we now know that EAB is capable of infesting small-diameter nursery stock.

### Economic Effects on Small Entities

The Regulatory Flexibility Act requires that agencies specifically consider the economic effects of their rules on small entities. The Small Business Administration (SBA) has established size criteria based on the North American Industry Classification (NAICS) for determining which economic entities meet the definition of a small firm. The small entity size standard for nursery and tree production (NAICS code 111421) is $750,000 or less in annual receipts, and $5 million or less in annual receipts for forest nurseries and gathering of forest products (NAICS code 113210). The SBA classifies logging operations (NAICS code 113310), sawmills (NAICS code 321113), and wood product manufacturers generally (NAICS subsector 321) as small entities if fewer than 500 people are employed.

More than 4,000 businesses considered small entities by the SBA are affected within the 6 counties first quarantined for EAB. These entities must meet certain requirements before moving regulated articles from the quarantined areas. Regulated entities may incur additional costs to dispose of articles such as wood debris from tree pruning and removal. Nurseries are currently prohibited from moving ash trees under the State quarantine. However, of the nurseries within those 6 counties, only 10 to 20 operations having a substantial amount of ash nursery stock in the ground are expected to be significantly affected. These entities represent only 0.2 to 0.5 percent of the number of nurseries in the six counties first quarantined.

### Conclusions

Damage caused to EAB-affected ash trees in the landscape and woodlots in southeast Michigan over the past 5 years is estimated at $11.6 million. In addition, $2 million of nursery stock was restricted from sale due to the infestation. The monetary values at risk are $11.7 billion in replacement costs in 6 counties first quarantined for EAB alone. The undiscounted value of the national urban tree population that are ash trees amounts to $20 to $60 billion. The undiscounted compensatory value of the 693 million ash trees grown on timberland in Michigan is $18.92 billion, and the corresponding nationwide estimate amounts to 7,553 million trees, valued at $282.26 billion. There are approximately 31 million ash trees in the 6 counties first quarantined by the State.

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[2] A visitor day aggregates 12 visitor hours, which may entail 1 person visiting for 12 hours, 12 persons visiting for 1 hour, or any equivalent combination of individual or group use, either continuous or intermittent.

When conservatively valued in terms of stumpage prices, the value of sawtimber at risk in the eastern United States alone amounts to $25 billion. Over 4,000 businesses that are considered small by SBA standards are affected in the 6 counties first quarantined because of EAB in Michigan. However, very few nursery operations having a substantial amount of ash nursery stock in the ground are expected to be significantly affected. Overall, this rule will help safeguard U.S. ash trees from the EAB by restricting the interstate movement of the nursery stock, logs, and lumber that can serve as its vectors. Although, at this time, we are not able to evaluate the specific effects of this regulation on the seven counties most recently added to Michigan's EAB quarantine, we expect that those counties contain entities similar to those we have considered in this analysis. Therefore, we believe any economic effects on small entities will be small and are outweighed by the benefits associated with preventing a larger U.S. EAB infestation.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

## Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

## Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

## Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0233 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. 02–125–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 02–125, and send your comments within 60 days of publication of this rule.

This interim rule establishes regulations quarantining 13 counties in Michigan because of the emerald ash borer and restricting the interstate movement of regulated articles from these quarantined areas. This action is necessary on an emergency basis to prevent the artificial spread of this plant pest from infested areas in the State of Michigan to noninfested areas of the United States. The paperwork associated with the Emerald ash borer program will include the completion of compliance agreements, certificates, and limited permits. There will also be requests for inspections. We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 0.48 hours per response.

*Respondents:* Growers, packers, shippers, and exporters of regulated articles and State plant health protection authorities and other cooperators.

*Estimated annual number of respondents:* 225.

*Estimated annual number of responses per respondent:* 1.6666.

*Estimated annual number of responses:* 375.

*Estimated total annual burden on respondents:* 180 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

## Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this interim rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

## List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

## PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 *note*).

■ 2. Part 301 is amended by adding a new "Subpart—Emerald Ash Borer," §§ 301.53–1 through 301.53–9, to read as follows:

### Subpart—Emerald Ash Borer

Sec.
301.53–1 Definitions.
301.53–2 Regulated articles.
301.53–3 Quarantined areas.

301.53–4 Conditions governing the interstate movement of regulated articles from quarantined areas.
301.53–5 Issuance and cancellation of certificates and limited permits.
301.53–6 Compliance agreements and cancellation.
301.53–7 Assembly and inspection of regulated articles.
301.53–8 Attachment and disposition of certificates and limited permits.
301.53–9 Costs and charges.

## Subpart—Emerald Ash Borer

### § 301.53–1 Definitions.

*Administrator.* The Administrator, Animal and Plant Health Inspection Service, or any individual authorized to act for the Administrator.

*Animal and Plant Health Inspection Service (APHIS).* The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

*Certificate.* A document that is issued for a regulated article by an inspector or by a person operating under a compliance agreement and that represents that such article is eligible for interstate movement in accordance with § 301.53–5(a).

*Compliance agreement.* A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles that are moved interstate, in which the person agrees to comply with the provisions of this subpart and any conditions imposed under this subpart.

*Emerald ash borer.* The insect known as emerald ash borer (Agrilus planipennis [Coleoptera: Buprestidae]) in any stage of development.

*Infestation.* The presence of the emerald ash borer or the existence of circumstances that make it reasonable to believe that the ash borer is present.

*Inspector.* Any employee of the Animal and Plant Health Inspection Service, or other individual authorized by the Administrator to enforce the provisions of this subpart.

*Interstate.* From any State into or through any other State.

*Limited permit.* A document in which an inspector or a person operating under a compliance agreement affirms that the regulated article not eligible for a certificate is eligible for interstate movement only to a specified destination and in accordance with conditions specified on the permit.

*Moved (movement, move).* Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

*Person.* Any association, company, corporation, firm, individual, joint stock company, partnership, society, or any other legal entity.

*Quarantined area.* Any State, or any portion of a State, listed in § 301.53–3(c) or otherwise designated as a quarantined area in accordance with § 301.53–3(b).

*Regulated article.* Any article listed in § 301.53–2(a) or otherwise designated as a regulated article in accordance with § 301.53–2(b).

*State.* The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

### § 301.53–2 Regulated articles.

The following are regulated articles:

(a) The emerald ash borer; firewood of all hardwood species; nursery stock, green lumber, and other material living, dead, cut, or fallen, including logs, stumps, roots, branches, and composted and uncomposted chips of the genus *Fraxinus.*

(b) Any other article, product, or means of conveyance not listed in paragraph (a) of this section may be designated as a regulated article if an inspector determines that it presents a risk of spreading emerald ash borer and notifies the person in possession of the article, product, or means of conveyance that it is subject to the restrictions of the regulations.

### § 301.53–3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section each State or each portion of a State in which the emerald ash borer has been found by an inspector, in which the Administrator has reason to believe that the emerald ash borer is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities where emerald ash borer has been found. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than an entire State as a quarantined area will be adequate to prevent the artificial interstate spread of the emerald ash borer.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area as a quarantined area in accordance with the criteria specified in paragraph (a) of this section. The Administrator will give written notice of this designation to the owner or person in possession of the nonquarantined area, or, in the case of publicly owned land, to the person responsible for the management of the nonquarantined area. Thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this subpart. As soon as practicable, this area either will be added to the list of designated quarantined areas in paragraph (c) of this section, or the Administrator will terminate the designation. The owner or person in possession of, or, in the case of publicly owned land, the person responsible for the management of, an area for which the designation is terminated will be given written notice of the termination as soon as practicable.

(c) The following areas are designated as quarantined areas:

Michigan

*Genesee County.* The entire county.
*Ingham County.* The entire county.
*Jackson County.* The entire county.
*Lapeer County.* The entire county.
*Lenawee County.* The entire county.
*Livingston County.* The entire county.
*Macomb County.* The entire county.
*Monroe County.* The entire county.
*Oakland County.* The entire county.
*Shiawassee County.* The entire county.
*St. Clair County.* The entire county.
*Washtenaw County.* The entire county.
*Wayne County.* The entire county.

### § 301.53–4 Conditions governing the interstate movement of regulated articles from quarantined areas.

Regulated articles may be moved interstate from a quarantined area only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.53–5 and 301.53–8;

(b) Without a certificate or limited permit if:

(1) The regulated article is moved by the United States Department of Agriculture for experimental or scientific purposes; or

(2) The regulated article originates outside the quarantined area and is moved interstate through the quarantined area under the following conditions:

(i) The points of origin and destination are indicated on a waybill accompanying the regulated article; and

(ii) The regulated article, if moved through the quarantined area during the period of May 1 through August 31 or when the ambient air temperature is 40 °F or higher, is moved in an enclosed vehicle or is completely covered to prevent access by the EAB; and

(iii) The regulated article is moved directly through the quarantined area without stopping (except for refueling or for traffic conditions, such as traffic lights or stop signs), or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation by emerald ash borer; and

(iv) The article has not been combined or commingled with other articles so as to lose its individual identity.

### § 301.53–5 Issuance and cancellation of certificates and limited permits.

(a) An inspector[1] or person operating under a compliance agreement will issue a certificate for the interstate movement of a regulated article if he or she determines that the regulated article:

(1)(i) Is apparently free of EAB, based on inspection; or the article or

(ii) Has been grown, produced, manufactured, stored, or handled in a manner that, in the judgment of the inspector, prevents the regulated article from presenting a risk of spreading EAB; and

(2) Is to be moved in compliance with any additional emergency conditions that the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714)[2] in order to prevent the artificial spread of emerald ash borer; and

(3) Is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated articles.

(b) An inspector or a person operating under a compliance agreement will issue a limited permit for the interstate movement of a regulated article not eligible for a certificate if he or she determines that the regulated article:

(1) Is to be moved interstate to a specified destination for specific processing, handling, or utilization (the destination and other conditions to be listed on the limited permit), and this interstate movement will not result in the spread of emerald ash borer because emerald ash borer will be destroyed by the specific processing, handling, or utilization; and

(2) Is to be moved in compliance with any additional emergency conditions that the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) in order to prevent the spread of emerald ash borer; and

(3) Is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) An inspector shall issue blank certificates and limited permits to a person operating under a compliance agreement in accordance with § 301.53–6 or authorize reproduction of the certificates or limited permits on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates and limited permits may then be completed and used, as needed, for the interstate movement of regulated articles that have met all of the requirements of paragraph (a) or (b), respectively, of this section.

(d) Any certificate or limited permit may be canceled orally or in writing by an inspector whenever the inspector determines that the holder of the certificate or limited permit has not complied with this subpart or any conditions imposed under this subpart. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances permit. Any person whose certificate or limited permit has been canceled may appeal the decision in writing to the Administrator within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve a conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

(Approved by the Office of Management and Budget under control number 0579–0233)

### § 301.53–6 Compliance agreements and cancellation.

(a) Persons engaged in growing, handling, or moving regulated articles interstate may enter into a compliance agreement[3] if such persons review with an inspector each provision of the compliance agreement. Any person who enters into a compliance agreement with APHIS must agree to comply with the provisions of this subpart and any conditions imposed under this subpart.

(b) Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector determines that the person who has entered into the compliance agreement has not complied with this subpart or any conditions imposed under this subpart. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances permit. Any person whose compliance agreement has been canceled may appeal the decision in writing to the Administrator within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve a conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

(Approved by the Office of Management and Budget under control number 0579–0233)

### § 301.53–7 Assembly and inspection of regulated articles.

(a) Persons requiring certification or other services must request the services from an inspector[4] at least 48 hours before the services are needed.

(b) The regulated articles must be assembled at the place and in the manner that the inspector designates as necessary to comply with this subpart.

(Approved by the Office of Management and Budget under control number 0579–0233)

### § 301.53–8 Attachment and disposition of certificates and limited permits.

(a) A regulated article must be plainly marked with the name and address of the consignor and the name and address of the consignee and must have the certificate or limited permit issued for the interstate movement of a regulated article securely attached at all times during interstate movement to:

(1) The regulated article;

(2) The container carrying the regulated article; or

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[1] Inspectors are assigned to local offices of APHIS, which are listed in the local telephone directories. Information concerning such local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737–1236.

[2] An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 423 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

[3] Compliance agreements may be initiated by contacting a local office of APHIS. The addresses and telephone numbers of local offices are listed in local telephone directories and may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, MD 20737–1236.

[4] See footnote 1 to § 301.53–5.

(3) The consignee's copy of the accompanying waybill: *Provided*, that the description of the regulated article on the certificate or limited permit, and on the waybill, are sufficient to identify the regulated article; and

(b) The carrier must furnish the certificate or limited permit authorizing interstate movement of a regulated article to the consignee at the destination of the shipment.

(Approved by the Office of Management and Budget under control number 0579–0233)

**§ 301.53–9 Costs and charges.**

The services of the inspector during normal business hours will be furnished without cost to persons requiring the services. The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

Done in Washington, DC, this 8th day of October, 2003.

**Peter Fernandez,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 03–25881 Filed 10–10–03; 8:45 am]

**BILLING CODE 3410–34–P**

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## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

### 7 CFR Part 301

**[Docket No. 03–032–3]**

### Sapote Fruit Fly

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rules as final rule.

**SUMMARY:** We are adopting as a final rule, without change, two interim rules regarding sapote fruit fly. The first interim rule established regulations restricting the movement of regulated articles from a newly established quarantined area in Hidalgo County, TX. The second interim rule removed the quarantine on that portion of Hidalgo County, TX, and thus removed the restrictions on the interstate movement of regulated articles from that area. The first interim rule was necessary to prevent the spread of sapote fruit fly to noninfested areas of the United States, and the second interim rule was necessary to reflect our determination that the sapote fruit fly had been eradicated from Hidalgo County, TX.

**EFFECTIVE DATE:** The first interim rule became effective on May 2, 2003, and the second interim rule became effective on July 15, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen A. Knight, Senior Staff Officer, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

**SUPPLEMENTARY INFORMATION:**

**Background**

In an interim rule effective May 2, 2003, and published in the **Federal Register** on May 8, 2003 (68 FR 24605–24613, Docket No. 03–032–1), we amended the Domestic Quarantine Notices in 7 CFR part 301 by adding a new "Subpart—Sapote Fruit Fly" (§§ 301.99 through 301.99–10, referred to below as the regulations). The regulations designated a portion of Hidalgo County, TX, as a quarantined area because of an infestation of sapote fruit fly and restricted the interstate movement of regulated articles from the quarantined area.

In a second interim rule effective July 15, 2003, and published in the **Federal Register** on July 22, 2003 (68 FR 43285–43286, Docket No. 03–032–2), we amended the regulations by removing the quarantine on a portion of Hidalgo County, TX, and removing restrictions on the interstate movement of regulated articles from that area based on our determination that the sapote fruit fly had been eradicated from that area. Upon the effective date of our July 2003 interim rule, there were no longer any areas in the continental United States quarantined for the sapote fruit fly.

Comments on each interim rule were required to be received on or before 60 days after the date of its publication in the **Federal Register**. We did not receive any comments on either of the interim rules. Therefore, for the reasons given in the interim rules, we are adopting the interim rules as a final rule.

This action also affirms the information contained in the interim rules concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

### PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule establishing "Subpart—Sapote Fruit Fly" (7 CFR 301.99 through 301.99–10) that was published at 68 FR 24605–24613 on May 8, 2003, as amended by the interim rule published at 68 FR 43285–43286 on July 22, 2003.

**Authority:** 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 8th day of October, 2003.

**Peter Fernandez,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 03–25882 Filed 10–10–03; 8:45 am]

**BILLING CODE 3410–34–P**

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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 102

**RIN 3245–AE94**

### Disclosure of Information Regulations

**AGENCY:** Small Business Administration (SBA).

**ACTION:** Final rule.

**SUMMARY:** SBA is adopting its proposed regulations implementing the Electronic Freedom of Information Act Amendments of 1996 (EFOIA) and updating SBA's FOIA regulations to conform to current law and procedure. SBA's amended regulations will make more information available electronically, give SBA more time to respond to certain requests, and increase processing fees to more accurately reflect the full cost of search and document review.

**DATES:** This rule is effective on November 13, 2003.

**FOR FURTHER INFORMATION CONTACT:** Kitty Higgins, Paralegal Specialist, Freedom of Information/Privacy Acts (FOI/PA) Office, at 202–401–8203 or *foia@sba.gov*.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) upon request to the contact person listed in the preceding paragraph.

**SUPPLEMENTARY INFORMATION:** On September 11, 2002, SBA issued a proposed rule to amend its Disclosure of Information regulations (13 CFR part 102, Subpart A) based on the Electronic Freedom of Information Act Amendments of 1996 (EFOIA), 5 U.S.C. 552(a)(2), 67 FR 57539. EFOIA includes provisions authorizing or requiring agencies to promulgate regulations implementing certain EFOIA statutory requirements, including the aggregation of FOIA requests, and the expedited processing of FOIA requests. In addition, EFOIA changes the time limit for responding to a FOIA request from ten to twenty working days, and includes provisions regarding the availability of documents in electronic form, the treatment of electronic records, and the establishment of "electronic reading rooms." This final rule will revise SBA's FOIA regulations to comply with EFOIA and to reflect current SBA FOIA procedures and practices. It also increases the amount SBA can charge for search and review time to $30 per hour.

The Freedom of Information/Privacy Acts (FOI/PA) Office received one comment, which was not substantive. The commenter suggested that the regulations "should convey the sense of openness associated with the FOIA." The commenter also suggested that the regulations "should require SBA's FOIA Office to post in its electronic reading room* * *those documents which have been released 5 or more times and are likely to be requested again* * *." SBA's regulations are in compliance with both the EFOIA and Department of Justice guidelines. In addition, there is a "Frequently Requested Records" section in the electronic reading room.

### Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

The Office of Management and Budget has determined that this rule is not a "significant regulatory action" under Executive Order 12866, Regulatory Planning and Review. These amendments are not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the U.S. economy. Instead, these changes will make SBA's FOIA program more streamlined and easier for the public to understand and use.

SBA has determined that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Thus, fees assessed by SBA are nominal.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule would not impose new reporting or record keeping requirements.

For purposes of Executive Order 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order.

### List of Subjects in 13 CFR Part 102

Freedom of information, Privacy.

■ For the reasons set forth in the preamble, amend part 102 of title 13 of the Code of Federal Regulations as follows:

## PART 102—RECORD DISCLOSURE AND PRIVACY

■ 1. The authority citation for part 102 continues to read as follows:

**Authority:** 5 U.S.C. 552 and 552a; 31 U.S.C. 1 *et seq.* and 67 *et seq.*; 44 U.S.C. 3501 *et seq.*; E. O. 12600, 3 CFR, 1987 Comp., p. 235.

■ 2. Revise Subpart A of part 102 to read as follows:

### Subpart A—Disclosure of Information

Sec.
102.1 General provisions.
102.2 Public reading rooms.
102.3 Requirements pertaining to the submission of requests.
102.4 Timing of responses to requests.
102.5 Responses to requests.
102.6 Fees.
102.7 Business information.
102.8 Appeals.
102.9 Public Index.

### Subpart A—Disclosure of Information

### § 102.1 General provisions.

This subpart describes the procedures that the U.S. Small Business Administration (SBA) follows for responding to requests made under the Freedom of Information Act (FOIA) (5 U.S.C. 552).

### § 102.2 Public reading rooms.

(a) SBA maintains a public reading room in the Headquarters Reference Library at 409 3rd St., SW., Suite 5000, Washington, DC 20416 where you may read and copy the following:

(1) Final SBA opinions and orders issued by the Office of Hearings and Appeals in adjudicating a case,

(2) Official non-privileged policy statements, opinions, or interpretations,

(3) Standard operating procedures affecting members of the public,

(4) Records SBA has released in response to previous FOIA requests which, because of their subject matter, SBA determines are likely to be requested again, and

(5) An index of the records referred to under paragraph (a)(4) of this section.

(b) The records described in paragraph (a) of this section are available in the SBA Online Reading Room at *http://www.sba.gov/library/*.

(c) Reading room records created on or after November 1, 1996 are available electronically.

### § 102.3 Requirements pertaining to the submission of requests.

(a) You may make a request for SBA records by writing directly to the program or field office that maintains the records, or to the Freedom of Information/Privacy Acts (FOI/PA) Office by mail to 409 3rd St., SW., Washington, DC 20416 or fax to 202–205–7059 or e-mail to *foia@sba.gov*. The office receiving your request will forward it to the correct office. The correct office will consider your request to be complete only when you:

(1) Describe the records sought in enough detail for an Agency employee to locate the records with a reasonable amount of effort;

(2) Agree to pay applicable fees pursuant to § 102.6, unless you seek a waiver of fees; and

(3) Make an advance payment if either the correct office estimates the fees will exceed $250 or you owe for past FOIA fees. If you owe past due FOIA fees, you must pay the estimated amount, plus any past due charges and interest.

(b) If you make a request on behalf of another person for information pertaining to that person, your request must include an authorization signed by the latter, allowing SBA to release such information to you.

(c) To make a Privacy Act request for records about yourself, you must follow the procedures detailed in § 102.34(b) of Subpart B.

### § 102.4 Timing of responses to requests.

(a) *In general.* Subject to paragraphs (b) and (c) of this section, once the correct office receives your complete request, that office must respond within 20 working days unless that office notifies you in writing that the time is extended by an additional 10 working days for one or more of the following reasons:

(1) The need to search for and collect the requested records from field facilities or other establishments separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(b) *Additional time.* Where an extension of more than ten working days will be necessary due to exceptional circumstances, the correct office will give the requester an opportunity to modify the request so it may be processed within the usual time limits in paragraph (a) of this section, or to arrange an alternative time period for processing the request or a modified request.

(c) *Expedited processing.* (1) SBA will give expedited processing to requests and appeals upon written request, if one of the following conditions is met:

(i) You demonstrate someone's life or physical safety will be in imminent danger if SBA does not expedite its response to your request; or

(ii) You are a news media representative (as defined in § 102.6(b)(8)) who demonstrates an urgent need to inform the public about an actual or alleged Federal government activity.

(2) You must provide a written statement, certified to be true and correct to the best of your knowledge and belief, explaining in detail one of these circumstances of "compelling need" and submit it to the correct office. Within 10 working days of its receipt of such a statement, or sooner, if SBA concludes that circumstances warrant, that office will notify you of its decision whether or not to grant expedited processing. If expedited processing is granted, the request shall be given priority and processed as soon as practicable. If an expedited processing request is denied, an appeal may be submitted which will be acted on expeditiously.

(d) *Multiple requests.* Where an office believes that multiple requests submitted by a requester, or by a group of collaborating requesters, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, they will be aggregated for processing.

### § 102.5 Responses to requests.

Within the time limits described in § 102.4, SBA will respond to your request in writing. SBA's response will do one or more of the following:

(a) Advise you that SBA is releasing the requested documents;

(b) Explain why SBA has decided not to give you all or some of the records requested, citing specific FOIA exemptions where applicable and noting the number of pages withheld (except where noting the number of pages withheld would harm an interest protected by an exemption), and explain how to appeal that decision;

(c) Provide a cost estimate or bill you for the actual fee, less any advance payment you have made. SBA will not provide any records until payment in full is received; and/or

(d) Advise you that SBA will refer your request for records generated by another Federal agency to that agency for proper processing.

### § 102.6 Fees.

(a) *In general.* SBA will charge fees for processing requests as outlined in this section. Fees must be paid by check or money order made payable to SBA.

(b) *Definitions and applicable fees.* For purposes of this section:

(1) *Direct costs* means those expenses that SBA actually incurs in searching for and duplicating (and, in the case of commercial use requesters, reviewing) documents in response to an FOIA request. Direct costs include the salary of the employee performing the work and the cost of operating duplication machinery.

(2) *Search* means the process of looking for and retrieving records responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. SBA may charge search fees even if they fail to locate records or if records located are determined to be exempt from disclosure. Search fees are $30 per hour.

(3) *Duplication* means the making of a copy of a record. Copies can take the form of paper, microfilm, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others. SBA will charge $.10 per page for photocopy duplication and the actual cost for other methods. SBA will honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format by the office responding to the request.

(4) *Review* refers to the examination of documents responsive to a request in order to determine whether any portion of it is exempt from disclosure. It includes processing any record for disclosure, *e.g.*, all necessary redaction and preparation for disclosure. It also includes time spent considering any formal objection to disclosure made by a business submitter under § 102.7, but does not include time spent resolving general legal or policy issues regarding the application of exemptions. Review costs are recoverable even if a record is ultimately not disclosed. Only commercial use requesters are assessed review costs. Review costs are $30 per hour.

(5) *A commercial use request* refers to a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade or profit interests, which can include furthering those interests through litigation. When it appears the requester will put the requested records to a commercial use, either because of the nature of the request itself or where SBA has reasonable cause to doubt a requester's stated use, SBA will seek additional clarification. SBA will charge commercial use requesters the full direct costs of searching for, reviewing for release, and duplicating the records sought.

(6) *Educational institution* means a state-certified preschool, elementary or secondary school; an accredited college or university; an accredited institution of professional education; or any accredited or state-certified institution of vocational education that operates a program of scholarly research. An educational institution requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research. SBA will provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages.

(7) *Noncommercial scientific institution* means an institution that is not operated on a commercial basis, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. A noncommercial scientific institution requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research. SBA will charge noncommercial scientific institution requesters for the cost of reproduction alone after the first 100 pages.

(8) *A representative of the news media* is a requester actively gathering information for one or more news media who:

(i) Is employed by a news medium or

(ii) Has a reasonable expectation of selling the information obtained to one or more news media. A news medium is an entity organized and operated to distribute information to the general public. A news medium may provide information by subscription and may target its dissemination to a narrow section of the general public so long as any member of the general public may purchase information from it. A request for records supporting the news dissemination function of the requester shall not be considered to be for commercial use. A news media requester must show that the request is authorized by and is made under the auspices of a qualifying news medium and that the records are not sought for a commercial use but are sought to further the dissemination of information to the general public. SBA will provide documents to representatives of the news media for the cost of reproduction alone, excluding charges for the first 100 pages.

(9) *A member of the general public* is a requester who does not fit into any of the categories in paragraphs (b)(1) through (8) of this section. SBA will charge requesters in this category search time after the first two hours and duplication after the first 100 pages.

(c) *Other charges.* SBA will recover the full costs of providing special services, such as certifying that records are true copies or sending copies by other than ordinary mail, to the extent that SBA elects to provide them.

(d) *Charging interest.* SBA will charge interest on any unpaid bill starting on the 31st day following the date of billing. Interest charges will accrue at the maximum rate allowed under 31 U.S.C. 3717. If still unpaid by the 91st day after the billing date, SBA may notify consumer credit reporting agencies of the delinquency and/or take other appropriate action in accordance with law.

(e) *Fee waivers or reductions.* SBA will furnish responsive records without charge or at a reduced charge when a requester can show that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(1) You must submit a request for a fee waiver or reduction to the initial processing office.

(2) On the basis of the information that you provide, the initial processing office will determine whether you meet the fee waiver requirements outlined in this section.

### § 102.7 Business information.

(a) *In general.* Business information provided to SBA from a submitter will only be disclosed in accordance with this section.

(b) *Definitions.* For purposes of this section:

(1) *Business information* is commercial or financial information obtained by SBA from a submitter that may arguably be protected from disclosure under Exemption 4 of the FOIA.

(2) *Submitter* is any person or entity who provides business information, directly or indirectly to SBA.

(c) *Designation of business information.* Submitters of business information will use reasonable, good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of their submissions that they consider to be protected from disclosure under Exemption 4 of the FOIA. Designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *Notice to submitters.* SBA will provide a submitter with written notice of a FOIA request or administrative appeal that seeks its business information whenever SBA intends to release that information. The notice will either describe the business information or include copies of the records in the form SBA proposes to release them. SBA will also advise the requester that the submitter is being given the opportunity to object to any proposed disclosure. When notification of a voluminous number of submitters is required, SBA may post or publish such a notice in a place reasonably likely to accomplish notice.

(e) *Opportunity to object to disclosure.* SBA will give the submitter ten working days from the date of the written notice to submit a detailed written statement specifying all grounds upon which disclosure is opposed. A reasonable extension of time may be granted by the correct office upon good cause shown by the submitter. The submitter's statement must demonstrate why it believes information is a trade secret or commercial or financial information that is privileged or confidential. If a submitter fails to timely respond to the notice, such failure will be deemed a waiver by the submitter of any objection to the disclosure of the information. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(f) *Notice of intent to disclose.* SBA will consider a submitter's objections and specific grounds for nondisclosure in accordance with paragraph (e) of this section in deciding whether to disclose business information. If SBA decides to disclose business information despite the objection of a submitter, SBA will give the submitter written notice, advising the submitter what will be disclosed, and that such disclosure will occur within 10 working days from the date of the notice.

### § 102.8 Appeals.

(a) If you are dissatisfied with SBA's response to your request, you may appeal an adverse determination denying your request, in any respect, to the Chief, FOI/PA Office, 409 Third St., SW., Washington, DC 20416.

(b) The Chief must receive your signed, written appeal within 60 calendar days of the date of the SBA determination from which you are appealing.

(c) You should include as much information as possible, *i.e.*, identifying the records not disclosed, the reason(s) a fee should be waived, or the reason(s) a request should be expedited. You must identify the deciding official and his/her office location.

(d) The Chief will decide your appeal unless the Chief originally made the determination you are appealing. In that case, the Assistant Administrator for Hearings and Appeals will decide your appeal.

(e) If SBA upholds the initial adverse determination, SBA will tell you why the decision has been upheld and tell you how to obtain judicial review of the decision.

### § 102.9 Public Index.

(a) The Public Index is a document that provides identifying information about official documents that SBA has issued.

(b) SBA has administratively determined, as permitted by FOIA, that periodic publication and distribution of the Public Index is unnecessary and impracticable.

(c) The Public Index is an appendix to SBA Standard Operating Procedure 40 03. You can obtain the latest edition of SOP 40 03 from SBA's Online Reading Room at *http://www.sba.gov/library* or by requesting it from any SBA office.

Dated: October 1, 2003.

**Hector V. Barreto,**

*Administrator.*

[FR Doc. 03–25878 Filed 10–10–03; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 23

**[Docket No. CE197; Special Conditions No. 23–138–SC]**

## Special Conditions: AMSAFE, Incorporated, Zenair Model CH2000, Inflatable Three-Point Self-Adjusting Restraint Safety Belt With an Integrated Inflatable Airbag Device

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued for the installation of an AMSAFE, Inc. Inflatable Three-Point Self-Adjusting Restraint Safety Belt with an Integrated Inflatable Airbag Device on the Zenair model CH2000. This airplane, as modified by AMSAFE, Inc. will have novel and unusual design features associated with the lap belt portion of the safety belt, which contains an integrated airbag device. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**EFFECTIVE DATE:** October 2, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mr. Pat Mullen, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Kansas City, Missouri, 816–329–4128, fax 816–329–4090.

**SUPPLEMENTARY INFORMATION:**

### Background

On March 8, 2003, AMSAFE, Inc. Inflatable Restraints Division, 5456 East McDowell Road, Mesa, AZ, 85215, applied for a supplemental type certificate to install an inflatable lapbelt restraint with a standard upper torso restraint (or shoulder harness) in the Zenair model CH2000. The model CH2000 is a single-engine, two-place airplane with a stall speed in the landing configuration that is below 45 knots.

The inflatable restraint system is a three-point restraint system consisting of a shoulder harness and an inflatable airbag lap belt, and will be installed on both the pilot and co-pilot seats. In the event of an emergency landing, the airbag will inflate and provide a protective cushion between the occupant's head and the airplane's yoke and instrument panel. This will reduce the potential for head and torso injury. The inflatable restraint behaves in a manner that is similar to an automotive airbag, but in this case, the airbags are integrated into the lapbelt. The shoulder harness is conventional and does not inflate. While airbags and inflatable restraints are standard in the automotive industry, the use of an inflatable three-point restraint is novel for general aviation operations.

The FAA has determined that this project will be accomplished on the basis of providing the same current level of safety of the model CH2000 occupant restraint design. The FAA has considered the installation of airbags as having two primary safety concerns:

- That they perform properly under foreseeable operating conditions; and
- That they do not perform in a manner or at such times as to impede the pilot's ability to maintain control of the airplane or constitute a hazard to the airplane or occupants.

The latter point has the potential to be the more rigorous of the requirements. An unexpected deployment while conducting the takeoff and landing phases of flight may result in an unsafe condition. The unexpected deployment may either startle the pilot, or generate a force sufficient to cause a sudden movement of the control yoke. Either action could result in a loss of control of the airplane, the consequences of which are magnified due to the low operating altitudes during these phases of flight. The FAA has considered this when establishing the special conditions.

The inflatable airbag is integrated into the lap belt and relies on sensors to electronically activate the inflator for deployment. These sensors could be susceptible to inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of an inadvertent deployment must be considered in establishing the reliability of the system. AMSAFE, Inc. must show that the effects of an inadvertent deployment in flight are not a hazard to the airplane or that an inadvertent deployment is extremely improbable. In addition, any general aviation aircraft can generate a large amount of cumulative wear and tear on a restraint system. It is likely that the potential for inadvertent deployment increases as a result of this cumulative damage. Therefore, the impact of wear and tear on inadvertent deployment must be considered. Ultimately, because of the effects of this cumulative damage, a life limit must be established for the appropriate system components in the restraint system design.

There are additional factors to be considered to minimize the chances of inadvertent deployment. General aviation airplanes are exposed to a unique operating environment, since the same airplane may be used by both experienced and student pilots. The effect of this environment on inadvertent deployment of the restraint must be understood. Therefore, qualification testing of the firing hardware/software must consider the following:

- The airplane vibration levels appropriate for a general aviation airplane; and
- The inertial loads that result from typical flight or ground maneuvers, including gusts and hard landings.

Any tendency for the firing mechanism to activate as a result of these loads or acceleration levels is unacceptable.

Other influences on inadvertent deployment include high intensity electromagnetic fields (HIRF) and lightning. Since the sensors that trigger deployment are electronic, they must be protected from the effects of these threats. To comply with HIRF and lightning requirements, the AMSAFE, Inc. inflatable restraint system is considered a critical system, since its inadvertent deployment could have a hazardous effect on the airplane.

Given the level of safety of the current Zenair model CH2000 lap belt and shoulder harness restraint, the inflatable restraint must show that it will offer an equivalent level of protection in the event of an emergency landing. In the event of an inadvertent deployment, the restraint must still be at least as strong as a Technical Standard Order certificated belt and shoulder harness. There is no requirement for the inflatable portion of the restraint to offer protection during multiple impacts, where more than one impact would require protection.

The inflatable seatbelt system must deploy and provide protection for each occupant under a crash condition where it is necessary to prevent serious head injury. However, the Zenair CH2000 seats are not certificated to the requirements specified in § 23.562 and it is not known if they would remain intact following exposure to the crash pulse identified in § 23.562. Therefore, the test crash pulse used to satisfy this requirement may have a peak longitudinal deceleration lower than that required by § 23.562. However, the test pulse must have an onset rate (deceleration divided by time) equal to or greater than the onset rate of the pulse described in § 23.562. This will demonstrate that the crash sensor will trigger when exposed to a rapidly applied deceleration, like an actual crash event.

It is possible a wide range of occupants will use the inflatable restraint. Thus, the protection offered by this restraint should be effective for occupants that range from the fifth percentile female to the ninety-fifth percentile male. Energy absorption must be performed in a consistent manner for this occupant range.

In support of this operational capability, there must be a means to verify the integrity of this system before each flight. As an option, AMSAFE, Inc. can establish inspection intervals where they have demonstrated the system to be reliable between these intervals.

It is possible that an inflatable restraint will be "armed" even though no occupant is using the seat. While there will be means to verify the integrity of the system before flight, it's also prudent to require that unoccupied seats with active restraints not constitute a hazard to any occupant. This will protect any individual performing maintenance items inside the cockpit while the aircraft is on the ground and includes protection against inadvertent deployment.

In addition, the use and operation of this restraint must be transparent to the user. Therefore, the design must prevent the inflatable seatbelt from being incorrectly buckled and/or installed such that the airbag would not properly deploy. As an alternative, AMSAFE, Inc. may show that such deployment is not hazardous to the occupant, and will still provide the required protection.

The cockpit of the model CH2000 is a confined area, and the FAA is concerned that noxious gasses may accumulate in the event the inflatable restraint deploys. When deployment does occur, either by design or inadvertently, there must not be a release of hazardous quantities of gas or particulate matter into the cockpit area.

Fire is a concern for any airplane, regardless of the size or class of the airplane. An inflatable restraint should not increase the risk already associated with fire. Therefore, the inflatable restraint should be protected from the effects of fire, so that an additional hazard is not created by, for example, a rupture of the inflator.

Finally, the inflatable restraint is likely to have a large volume displacement, where the inflated bag could impede the egress of an occupant. Since the bag deflates to absorb energy, it is likely that the inflatable restraint would be deflated at the time an occupant would attempt egress. However, it is appropriate to specify a time interval after which the inflatable restraint may not impede rapid egress. Ten seconds has been chosen as reasonable time. This time limit will offer a level of protection throughout the impact event.

## Type Certification Basis

Under the provisions of § 21.101, AMSAFE, Inc. must show that the Zenair model CH2000, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. TA5CH or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. TA5CH are as follows:

FAR 21.29 and FAR 23 effective February 1, 1965, as amended by 23–1 through 23–42.

JAR–VLA effective April 26, 1990, through Amendment VLA/92/1 effective January 1, 1992, used as a safety equivalence to FAR 23, as provided by AC 23–11.

FAR 36 dated December 1, 1969, as amended by current amendment as of date of type certification.

For the model listed above, the certification basis also includes all exemptions, if any; equivalent level of safety findings, if any; and the special conditions adopted by this rulemaking action.

The Administrator has determined that the applicable airworthiness regulations (*i.e.*, part 23 as amended) do not contain adequate or appropriate safety standards for the AMSAFE, Inc. inflatable restraint as installed on Zenair model CH2000 because of a novel or unusual design feature. Therefore, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to that model under the provisions of § 21.101.

## Novel or Unusual Design Features

The Zenair model CH2000 will incorporate the following novel or unusual design feature:

The AMSAFE, Inc. Inflatable Three-Point Self-Adjusting Restraint safety belt with an integrated inflatable airbag device. The purpose of the inflatable airbag seatbelt is to reduce the potential for injury in the event of an accident. In a severe impact, an airbag will deploy from the lapbelt portion of the restraint, in a manner similar to an automotive airbag. The airbag will deploy between the head of the occupant and the airplane's yoke and instrument panel. This will, therefore, provide some protection to the head of the occupant. The restraint will rely on sensors to electronically activate the inflator for deployment.

Title 14 of the Code of Federal Regulations, parts 21 and 23, states performance criteria for seats and restraints in an objective manner. However, none of these criteria are adequate to address the specific issues raised concerning inflatable restraints. Therefore, the FAA has determined that, in addition to the requirements of part 21 and part 23, special conditions are needed to address the installation of this inflatable restraint.

Accordingly, these special conditions are adopted for the Zenair model CH2000 equipped with the AMSAFE, Inc. Three-Point Self-Adjusting Restraint safety belt with an integrated inflatable airbag device. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil aviation authorities.

## Discussion of Comments

Notice of proposed special conditions No. 23–03–01–SC for the Zenair model CH2000 equipped with the AMSAFE, Inc. Three-Point Self-Adjusting Restraint safety belt with an integrated airbag device was published on July 17, 2003 (68 FR 42315). One comment was received, regarding the requirement that the lapbelt must deploy and provide protection under the crash conditions specified in § 23.562 (proposed Special Condition No. 1).

The commenter is in general agreement with the special conditions proposed for this particular program. In addition, the commenter is in agreement that a dynamic test is necessary to demonstrate the deployment timing and positioning of the inflatable lapbelt. However, the commenter states that proposed SC No. 1, as written, requires the inflatable restraint to operate only when subjected to the crash pulse identified in § 23.562. In addition, since the seats installed in the Zenair CH2000 do not meet the requirements of § 23.562, an inflatable restraint that operates only after being exposed to this pulse may offer little benefit.

The commenter suggests that reference to § 23.562 be retained, but allow for the following:

- The test pulse may have a reduction in the peak longitudinal deceleration but the onset rate (deceleration divided by time) must be equal to or greater than the pulse specified in § 23.562.
- The peak longitudinal deceleration must be greater than the deployment threshold of the crash sensor.
- The peak longitudinal deceleration must be equal to or greater than the forward static design load factors required by the original certification basis of the airplane.

The FAA concurs. The seats installed in the Zenair CH2000 may not satisfy the requirements of § 23.562, so it is not appropriate to install an inflatable restraint that will deploy only when subjected to the crash pulse specified in § 23.562. The FAA agrees that the test pulse used to satisfy the dynamic test requirements must be less severe than that specified in § 23.562. In addition, we agree with the commenter that the onset rate of the test pulse should be equal to or greater than the onset rate of the pulse required by § 23.562. This will show that the crash sensor will trigger when exposed to a high deceleration that builds up in rapid time, like a real crash event.

The FAA will incorporate the commenter's input into Special Condition No. 1.

## Applicability

As discussed above, these special conditions are applicable to the Zenair model CH2000 equipped with the AMSAFE, Inc. Three-Point Self-Adjusting Restraint safety belt with an integrated inflatable airbag device. Should AMSAFE, Inc. apply at a later date for a supplemental type certificate to modify any other model on Type Certificate number TA5CH to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

## Conclusion

This action affects only certain novel or unusual design features on the Zenair model CH2000. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

## List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

## Citation

■ The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

## The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the typ certification basis for the Zenair model CH2000, as modified by AMSAFE, Inc.

### *Three-Point Self-Adjusting Restraint Safety Belt With an Integrated Airbag Device*

1. It must be shown that the inflatable lapbelt will deploy and provide protection under crash conditions where it is necessary to prevent serious head injuries. Compliance will be demonstrated using the dynamic test condition specified in § 23.562, which may be modified as follows:

a. The peak longitudinal deceleration may be reduced, however the onset rate of the deceleration must be equal to or greater then the crash pulse identified in § 23.562.

b. The peak longitudinal deceleration must be above the deployment threshold of the crash sensor, and equal to or greater than the forward static design longitudinal load factor required by the original certification basis of the airplane.

The means of protection must take into consideration a range of stature from a 5th percentile female to a 95th percentile male. The inflatable lapbelt must provide a consistent approach to energy absorption throughout that range.

2. The inflatable lapbelt must provide adequate protection for each occupant. In addition, unoccupied seats that have active seat belts must not constitute a hazard to any occupant.

3. The design must prevent the inflatable safety belt from being incorrectly buckled and/or incorrectly installed such that the airbag would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant and will provide the required protection.

4. It must be shown that the inflatable lapbelt system is not susceptible to inadvertent deployment as a result of wear and tear or inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings) that are likely to be experienced in service.

5. It must be shown (or be extremely improbable) that an inadvertent deployment of the restraint system during the most critical part of the flight does not impede the pilot's ability to maintain control of the airplane or cause an unsafe condition (or hazard to the airplane). In addition, a deployed inflatable restraint must be at least as strong as a Technical Standard Order certificated belt and shoulder harness.

6. It must be shown that deployment of the restraint system is not hazardous to the occupant or result in injuries that could impede rapid egress. This assessment should include occupants whose belt is loosely fastened.

7. It must be shown that an inadvertent deployment that could cause injury to a standing or sitting person is improbable.

8. It must be shown that the inflatable safety belt will not impede rapid egress of the occupants 10 seconds after its deployment.

9. For the purposes of complying with HIRF and lightning requirements, the inflatable safety belt system is considered a critical system since its deployment could have a hazardous effect on the airplane.

10. It must be shown that the inflatable safety belt will not release hazardous quantities of gas or particulate matter into the cabin.

11. The inflatable safety belt installation must be protected from the effects of fire such that no hazard to occupants will result.

12. There must be a means to verify the integrity of the inflatable safety belt activation system prior to each flight or it must be demonstrated to reliably operate between inspection intervals.

13. A life limit must be established for appropriate system components.

14. Qualification testing of the internal firing mechanism must be performed at vibration levels appropriate for a general aviation airplane.

Issued in Kansas City, Missouri, on October 2, 2003.

**Dorenda D. Baker,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–25950 Filed 10–10–03; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 25

**[Docket No. NM259; Special Condition No. 25–249–SC]**

## Special Conditions: Bombardier Aerospace Model BD–100–1A10; Side-Facing Single Occupancy Seats

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued for the Bombardier Aerospace Model BD–100–1A10 airplane. This airplane as modified by Learjet Inc. (Subsidiary of Bombardier Aerospace) will have novel or unusual design features associated with side-facing single-occupant seats. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**EFFECTIVE DATE:** October 6, 2003.

**FOR FURTHER INFORMATION CONTACT:** Michael Thompson, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–1157; facsimile (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Background

On April 11, 2003, Learjet Inc. (subsidiary of Bombardier Aerospace) applied for a supplemental type certificate for installation of single-occupant side-facing seats on Bombardier BD–100–1A10 airplanes. Bombardier Aerospace requested that special conditions be issued for these seats and that the special conditions be listed on the type certificate data sheet of the BD–100–1A10 airplane. The Model BD–100–1A10 is a twin engine, turbofan powered, transport category airplane which is currently the subject of a type certification program.

Section 25.785(a) at Amendment 25–64 requires that each seat "at each station designated as occupiable during takeoff and landing must be designed so that persons occupying these seats will not suffer serious injury in an emergency landing as a result of the inertia forces specified in §§ 25.561 and 25.562." Additionally, § 25.562 requires dynamic testing of all seats that are occupied during takeoff and landing. However, side-facing seats are considered a novel design for transport category airplanes that include Amendment 25–64 in the certification basis and were not considered when those airworthiness standards were promulgated. Hence, the existing regulations do not provide adequate or appropriate safety standards for occupants of side-facing seats. In order to provide a level of safety that is equivalent to that afforded occupants of forward and aft facing seats, additional airworthiness standards in the form of special conditions are necessary.

These special conditions are applicable only to single-occupant side-facing seats. They are not sufficient or intended to be used for the certification of multiple-occupant side-facing divans or sofas.

### Type Certification Basis

Under the provisions of § 21.101, Learjet Inc. (subsidiary of Bombardier Aerospace) must show that the Model BD–100–1A10 airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in T00005NY or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in T00005NY are as follows:

14 CFR part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–98; 14 CFR part 34, effective September 10, 1990.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Bombardier Aerospace Model BD–100–1A10 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Bombardier Aerospace Model BD–100–1A10 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model.

### Novel or Unusual Design Features

Bombardier Aerospace will install single-occupant side-facing seats on BD–100–1A10 airplanes. Section 25.785(b) requires that each seat "at each station designated as occupiable during takeoff and landing must be designed so that persons occupying these seats will not suffer serious injury in an emergency landing as a result of the inertia forces specified in §§ 25.561 and 25.562." Additionally, § 25.562 requires dynamic testing of all seats that are occupied during takeoff and landing. However, side-facing seats are considered a novel design for transport category airplanes that include Amendment 25–64 in the certification basis, and were not considered when those airworthiness standards were promulgated. Hence, the existing regulations do not provide adequate or appropriate safety standards for occupants of side-facing seats. In order to provide a level of safety that is equivalent to that afforded occupants of forward and aft facing seats, additional airworthiness standards, in the form of special conditions, are necessary.

### Discussion

The following special conditions are considered to provide occupants of single-occupancy side-facing seats a level of safety that is equivalent to that afforded occupants of forward and aft facing seats. These special conditions supplement 14 CFR part 25 and, more specifically, they supplement §§ 25.785 and 25.562.

### Comments

Notice of proposed special conditions No. 25–03–06–SC for the Bombardier Aerospace Model BD–100–1A10 airplane was published in the **Federal Register** on August 26, 2003 (68 FR 51203). No comments were received, and these special conditions are adopted as proposed.

### Applicability

As discussed above, these special conditions are applicable to the Bombardier Aerospace Model BD–100–1A10 airplane. Should Bombardier Aerospace apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

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Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Bombardier Aerospace Model BD–100–1A10 airplane is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

### Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

### List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

### The Special Conditions

■ Accordingly, the Federal Aviation Administration (FAA) issues the following special conditions as part of the type certification basis for Bombardier Aerospace Model BD–100–1A10 airplanes. In addition to the airworthiness standards of §§ 25.562 and 25.785, the minimum acceptable standards for dynamic certification of Model BD–100–1A10 single-occupant side-facing seats are proposed as follows:

### Injury Criteria

(a) *Existing Criteria:* All injury protection criteria of § 25.562(c)(1) through (c)(6) apply to the occupant of a side-facing seat. Head Injury Criterion (HIC) assessments are required only for head contact with the seat and/or adjacent structures.

(b) *Body-to-Wall/Furnishing Contact:* The seat must be installed aft of a structure, such as an interior wall or furnishing, that will support the pelvis, upper arm, chest, and head of an occupant seated next to the structure. A conservative representation of the structure and its stiffness must be included in the tests. It is recommended, but not required, that the contact surface of this structure be covered with at least two inches of energy absorbing protective padding (foam or equivalent), such as Ensolite.

(c) *Thoracic Trauma:* The Thoracic Trauma Index (TTI) injury criterion must be substantiated by dynamic test or by rational analysis, based on a previous test or tests of a similar seat installation. Testing must be conducted with a Side Impact Dummy (SID), as defined by 49 CFR part 572, subpart F, or its equivalent. TTI must be less than 85, as defined in 49 CFR part 572, subpart F. TTI data must be processed as defined in Federal Motor Vehicle Safety Standard (FMVSS) Part 571.214, section S6.13.5.

(d) *Pelvis:* Pelvic lateral acceleration must be shown by dynamic test or by rational analysis based on previous test(s) of a similar seat installation to not exceed 130g. Pelvic acceleration data must be processed as defined in FMVSS Part 571.214, section S6.13.5.

(e) *Shoulder Strap Loads:* Where upper torso straps (shoulder straps) are used for occupants, tension loads in individual straps must not exceed 1,750 pounds. If dual straps are used for restraining the upper torso, the total strap tension loads must not exceed 2,000 pounds.

### Test Requirements

The above performance measures must not be exceeded during the following dynamic tests:

(a) Conduct a longitudinal test per § 25.562(b)(2) with a SID, undeformed floor, no yaw, and with all lateral structural supports (armrests/walls).

Pass/fail injury assessments: TTI and pelvic acceleration.

(b) Conduct a longitudinal test per § 25.562(b)(2) with the Hybrid II ATD, deformed floor, 10 degrees yaw, and with all lateral structural supports (armrests/walls).

Pass/fail injury assessments: HIC, upper torso restraint load, restraint system retention and pelvic acceleration.

(c) Conduct a downward vertical test per § 25.562(b)(1) with a modified Hybrid II ATD with existing pass/fail criteria.

Issued in Renton, Washington, on October 6, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–25951 Filed 10–10–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 25

**[Docket No. NM249; Special Conditions No. 25–250–SC]**

## Special Conditions: Embraer Model ERJ–170 Series Airplanes; Electronic Flight Controls (Command Signal Integrity)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued for the Embraer Model ERJ–170 series airplanes. These airplanes will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features are associated with electronic flight control systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for this and other novel or unusual design features of Embraer Model 170 series airplanes.

**EFFECTIVE DATES:** October 6, 2003.

**FOR FURTHER INFORMATION CONTACT:** Tom Groves, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1503; facsimile (425) 227–1149; e-mail *tom.groves@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

On May 20, 1999, Embraer applied for a type certificate for its new Model ERJ–170 airplane. Two basic versions of the Model ERJ–170 are included in the application. The ERJ–170–100 airplane is a 69–78 passenger, twin-engine regional jet with a maximum takeoff weight of 81,240 pounds. The ERJ–170–200 is a derivative with a lengthened fuselage. Passenger capacity for the ERJ–170–200 is increased to 86, and maximum takeoff weight is increased to 85,960 pounds.

### Type Certification Basis

Under the provisions of 14 CFR 21.17, Embraer must show that the Model ERJ–

170 series airplanes meet the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–98.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for Embraer Model ERJ–170 series airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, Embraer Model ERJ–170 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 93–574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.17(a)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of § 21.101.

### Novel or Unusual Design Features

The ERJ–170 airplane will use fly-by-wire (FBW) technology as a means of sending command and control signals to the control surface actuators of the rudder, rudder trim, elevator, spoilers, horizontal stabilizer, and auto speedbrake. The ailerons will be controlled by a traditional cable linkage to the hydraulic actuators.

The ERJ–170 FBW flight control systems provide two modes of operation, direct and normal. Direct mode provides an analog link between pilot commands and control surfaces. In direct mode, flight control transducers send signals to Actuator Control Electronics units (ACE). The ACE sends analog command and control signals to the Power Control Units (PCU), which move the control surface actuators of the rudder, rudder trim, elevator, spoilers, horizontal stabilizer, and auto speedbrake.

In normal mode, the rudder, elevator and spoiler command-to-surface gain schedules are tailored to particular flight conditions to provide improved control characteristics. These gains are calculated digitally in the Flight Control Module (FCM) and supplement the direct mode commands provided by the ACEs.

In the ERJ–170 FBW design being presented, command and control of the airplane's aerodynamic control surfaces will be achieved by electronic interfaces. These interfaces involve not only direct commands to the PCU but all the necessary feedback sensor signals. A successful demonstration of signal integrity must include all the elements which contribute to the command and control signals to the control surface closed loop system (CSCL). The CSCL may include the following:

(1) The computing components and wiring;

(2) The input components, such as column position sensors;

(3) Feedback components, such as control surface position, inertial reference, and air data sensors; and

(4) Actuation components and their structural mounting components.

A system evaluation that includes all the inputs to and elements of the CSCL in an integrated environment (including signals that could disturb the system) is necessary to ensure appropriate system robustness throughout the flight envelope.

For the purpose of this proposed special condition, the control surface closed loop system does not include pilot input to the flight control system. Pilot in the loop control inputs and the associated handling requirements are adequately covered by existing regulations, including regulations in subpart B as well as §§ 25.671 and 25.672.

The signal paths within the control surface closed loop system can be susceptible to interference from electromagnetic and electrostatic sources within the integrated systems environment of the aircraft as well as external causes, such as HIRF and lightning (not considered in this special condition), which could modify the command and control signals.

The effects of interference sources within the system may include, but are not restricted to, the following:

- Loss of data bits,
- Unwanted transients in the power supply source,
- Disruption of normal computer operations,
- Misbehavior of signals by parallel computers (*e.g.*, redundancy management),
- Adverse effects caused by transport lag, and
- Any other cause that may alter the command and control signals.

For those reasons, special design measures and laboratory tests intended to validate these designs will be required to demonstrate the integrity of the FBW Flight Controls System to a level of safety equivalent to that which is achieved with traditional hydromechanical designs.

The regulations which primarily address hydromechanical flight control systems, (*i.e.*, 14 CFR 25.671 and 25.672) do not specifically require that command and control signals remain unaltered from internal or external interference. Traditional designs feature steel cables and pushrods as means to move surface actuators which are hydraulically powered. These designs are not likely to be affected by spurious electromagnetic and computer induced signals, as are the FBW designs.

Similar special conditions have been issued previously for other airplanes that utilize FBW flight control systems, such as the Airbus A320 series, Airbus A330/340 series, and most recently, the Boeing 777 series.

The special conditions applied to the Boeing 777 series include a requirement for changes in mode of flight critical control systems. This requirement was intended to ensure a minimum level of availability for normal mode flight control. For the Boeing 777 series, the FAA did not consider § 25.1309(b) adequate for that purpose.

In the ERJ–170 FBW flight control system, normal mode consists of a simple analog control signal augmented by limited authority digitally computed signals. Direct mode consists of only the analog signal. The FAA believes that the existing 14 CFR 25.1309(b) provides a suitable requirement for assessing the effect and frequency of FBW flight control system mode changes or lost functionality for the ERJ–170 series, and thus the specific requirement included with the Boeing 777 series special conditions was not included in these proposed special conditions.

In addition to the specific difference noted above, a number of smaller changes were made to the Boeing 777 series special condition to create these proposed special conditions. These additional changes were made to improve readability and to define with greater precision the intended scope of some of the paragraphs through use of consistent and defined terminology.

### Discussion of Comments

Notice of proposed special conditions No. 25–03–05–SC for the Embraer Model ERJ–170 series airplane was published in the **Federal Register** on June 16, 2003 (68 FR 35612). No comments were received, and these special conditions are adopted as proposed.

### Applicability

As discussed above, these special conditions are applicable to the Embraer Model ERJ–170 series airplanes. Should Embraer apply later for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Embraer Model ERJ–170 series airplane is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

### Conclusion

This action affects only certain novel or unusual design features on the Embraer Model ERJ–170 series airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

### List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

### The Special Conditions

■ Accordingly, the Federal Aviation Administration (FAA) issues the following special conditions as part of the type certification basis for Embraer Model ERJ–170 series airplanes.

*Electronic Flight Controls (Command Signal Integrity)*

In addition to compliance with §§ 25.671 and 25.672, the following requirements must be met:

(a) It must be shown that either the FBW flight control system signals cannot be altered unintentionally or that altered signal characteristics would meet the following criteria:

(1) Stable gain and phase margins are maintained for all control surface closed loop systems. Pilot control inputs (pilot in the loop) are excluded from this requirement.

(2) Sufficient pitch, roll, and yaw control power is available to provide control for continued safe flight and landing, considering all the FBW flight control system signal malfunctions that are not extremely improbable.

(3) The effect of spurious signals on the systems which are included in the control surface loop must not result in unacceptable transients or degradation of the airplane's performance. Specifically, signals that would cause a significant uncommanded motion of a control surface actuator must be readily detected and deactivated, or the surface motion must be arrested by other means in a satisfactory manner. Small amplitude residual system oscillations may be acceptable.

(b) It must be demonstrated that the output from the control surface closed loop system does not result in uncommanded, sustained oscillations of flight control surfaces. The effects of minor instabilities may be acceptable, provided that they are thoroughly investigated, documented, and understood.

Issued in Renton, Washington, on October 6, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–25949 Filed 10–10–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–67–AD; Amendment 39–13334; AD 2003–20–16]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 747SP, 747SR, 747–100, 747–200, and 747–300 Series Airplanes; Equipped With Pratt & Whitney Model JT9D–3, –7, and –7Q Series Engines and Model JT9D–7R4G2 Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747SP, 747SR, 747–100, 747–200, and 747–300 series airplanes, that currently requires repetitive operational tests of the reversible gearbox pneumatic drive unit (PDU) or the reversing air motor PDU to ensure that the unit can restrain the thrust reverser sleeve, and correction of any discrepancy found. This amendment requires installation of a terminating modification, repetitive functional tests of that installation to detect discrepancies, and repair if necessary. This amendment also removes airplanes from the applicability and adds certain new requirements. The actions specified by this AD are intended to ensure the integrity of the fail-safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight. This action is intended to address the identified unsafe condition.

**DATES:** Effective November 18, 2003.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of November 18, 2003.

The incorporation by reference of a certain publication, as listed in the regulations, was approved previously by the Director of the Federal Register as of September 5, 1995 (60 FR 39631, August 3, 1995).

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Dan Kinney, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6499; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95–16–02, amendment 39–9321 (60 FR 39631, August 3, 1995), which is applicable to certain Boeing Model 747SP, 747SR, 747–100, –200, and –300 series airplanes, was published as a supplemental Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on May 1, 2003 (68 FR 23235). The action proposed to continue to require repetitive operational tests of the reversible gearbox pneumatic drive unit (PDU) or the reversing air motor PDU to ensure that the unit can restrain the thrust reverser sleeve, and correction of any discrepancy found. The action also proposed the installation of a terminating modification, repetitive functional tests of that installation to detect discrepancies, and repair if necessary. Additionally, the action also proposed to remove airplanes from the applicability and to add certain new requirements.

### Clarification of Applicability

The FAA has revised the applicability paragraph of this AD by specifying the applicable engine models for the Pratt & Whitney Model JT9D–7 series engines (*i.e.*, –7, –7A, –7F, and –7J). We also point out that the Model JT9D–7Q series engines is a separate engine series and is not included in the Model JT9D–7 series engines. To clarify that point, we have added a new Note 1 to advise and clarify that this AD does not apply to Pratt & Whitney Model JT9D–70A engines, as those engines are not part of the Model JT9D–7 series engines. Subsequent notes in this AD have been renumbered accordingly.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

### Request for Clarification of the "New Relevant Service Information" Paragraph

One commenter states that the description of the new relevant service information fails to note that changing from three-step aisle stand clutch packs to two-step, as described in Boeing Service Bulletin (SB) 747–78–2152, Revision 4, may not be necessary. The commenter explains that Revisions 5 and 6 of that SB provide for continued use of the three-step clutch in some instances. Therefore, the commenter requests that clarification to allow such continued use of the three-step clutch be specified in the final rule.

The FAA acknowledges that the description in the "New Relevant Service Information" paragraph did not specify continued use of the three-step clutch and agrees that clarification is needed. We point out that the intent of the requirements in paragraph (c)(3) of the final rule is that the system pass all required tests. Although the two-step configuration is typically necessary for the microswitch pack conversion, we acknowledge that provision for use of the three-step clutch is provided for in Revisions 5 and 6 of Boeing SB 747–78–2152. Since paragraph (c)(3) of the final rule specifies compliance with either Revision 5 or 6 (including the provision for use of the three-step clutch), it is unnecessary to revise the final rule for that reason.

### Request To Revise Specified Revision of the Airplane Maintenance Manual (AMM)

One commenter advises that there is a later revision of the Boeing 747 AMM than that revision specified as the source of service information for the repetitive test instructions in paragraph (d) of the supplemental NPRM.

The FAA acknowledges that a later revision of the AMM has been issued and infers that the commenter is requesting that we revise the supplemental NPRM to specify the newer revision of the AMM. Revising the AD is unnecessary because, as long as the referenced section is unchanged in later versions of the AMM, those later versions may be used to comply with this AD. On the other hand, since the AMM is not a document that is approved by the FAA, it is possible that a specific revision level may be revised in such a way as to affect the accomplishment of the AD. Therefore, when a specific revision level is referenced in an AD, that specific revision has been "approved" for the purposes of the AD. Under the provisions of paragraph (g)(1) of the final rule, we may approve requests for using a later revision of the AMM that changes the referenced section if data are submitted to substantiate that such use would provide an acceptable level of safety. No change is necessary to this AD in that regard.

### Request To Extend Compliance Time for Dispatch Limitations

One commenter notes that some airplanes could be modified before the effective date of the AD and could then revert to operating with unmodified thrust reversers installed, which would be contrary to the requirements of paragraph (c)(3) of the supplemental NPRM. Therefore, the commenter requests that, instead of the compliance time specified in paragraph (e) of the supplemental NPRM of "within 10 days after deactivation of the thrust reverser," the compliance time read, "within 90 days after the effective date of the AD." The commenter explains that such an extension of the compliance time would prevent possible non-compliance with the AD. Further, the commenter states that there is no more risk of the unmodified reverser deploying on a modified airplane than on an unmodified airplane.

The FAA does not agree that the compliance time for paragraph (e) of this AD should be revised. If an airplane has one or more unmodified thrust reverser(s) installed prior to the effective date of the AD, it has not yet complied with the requirements of paragraph (c)(3) of the AD. The compliance time for the modification required by paragraph (c)(3) of the AD is within 48 months after the effective date of the AD. The qualifying provisions of paragraph (e) of the AD specifically apply to airplanes "after incorporation of the modification required by paragraph (c)(3) of the AD." We consider the 48-month compliance time for the modification required by paragraph (c)(3) of the AD, plus the 10-day dispatch limitation of the Master Minimum Equipment List, to be adequate time to complete the requirements of paragraph (e) of the AD. It is unnecessary to revise the AD for that reason.

### Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

### Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). However, for clarity and consistency in this final rule, we have retained the language of the supplemental NPRM regarding that material.

### Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

### Cost Impact

There are approximately 455 airplanes of the affected design in the worldwide fleet. The FAA estimates that 218 airplanes of U.S. registry will be affected by this AD.

The operational tests that are currently required by AD 95–16–02, and retained in this AD, take approximately 16 work hours (4 per engine) per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $1,040 per airplane, per test cycle.

It will take approximately 544 work hours per airplane, to accomplish the wiring modifications, at an average labor rate of $65 per work hour. Required parts will cost approximately $21,600 per airplane. Based on these figures, the cost impact of the wiring modifications required by this AD on U.S. operators is estimated to be $12,417,280, or $56,960 per airplane.

It will take approximately 104 work hours (26 per engine) per airplane to accomplish the removal of the thrust reverser sequencing mechanism and installation of a solenoid-operated shutoff valve, at an average labor rate of $65 per work hour. The cost of required parts is minimal. Based on these figures, the cost impact of the removal and installation required by this AD on U.S. operators is estimated to be $1,473,680, or $6,760 per airplane.

It will take approximately 568 work hours per airplane to accomplish the sync lock hardware installation, at an average labor rate of $65 per work hour. Required parts will cost approximately $166,000 per airplane. Based on these figures, the cost impact of the installation required by this AD on U.S. operators is estimated to be $44,236,560, or $202,920 per airplane.

It will take approximately 8 work hours (2 per engine) per airplane to accomplish the functional test, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the functional test required by this AD on U.S. operators is estimated to be $113,360, or $520 per airplane, per test cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

## Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–9321 (60 FR 39631, August 3, 1995), and by adding a new airworthiness directive (AD), amendment 39–13334, to read as follows:

**2003–20–16 Boeing:** Amendment 39–13334. Docket 99–NM–67–AD. Supersedes AD 95–16–02, amendment 39–9321.

*Applicability:* Model 747SP, 747SR, 747–100, 747–200, and 747–300 series airplanes; equipped with Pratt & Whitney Model JT9D–3, –7 (*i.e.*, –7, –7A, –7F, and –7J), and –7Q series engines and Model JT9D–7R4G2 engines; certificated in any category.

**Note 1:** This AD does not apply to Boeing Model 747–200 series airplanes that are equipped with Pratt & Whitney JT9D–70A engines, as that engine is not part of the Model JT9D–7 series engines.

**Note 2:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To ensure the integrity of the fail-safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight, accomplish the following:

### Restatement of Requirements of AD 95–16–02

*Operational Test*

(a) Within 90 days after September 5, 1995 (the effective date of AD 95–16–02, amendment 39–9321), perform an operational test of the reversible gearbox pneumatic drive unit (PDU) or the reversing air motor PDU to ensure that the unit can restrain the thrust reverser sleeve, in accordance with Boeing Alert Service Bulletin 747–78A2131, dated September 15, 1994. Repeat the test thereafter at intervals not to exceed 2,000 flight hours until accomplishment of paragraph (c) of this AD.

**Note 3:** Paragraph (a) of this AD merely restates the requirements of paragraph (a) of AD 95–16–02. The intent of including this paragraph is to ensure that the currently required repetitive tests continue to be done until the terminating modifications specified in paragraph (c) of this AD are installed.

*Corrective Action*

(b) If any of the tests required by paragraph (a) of this AD cannot be successfully performed, or if any discrepancy is found during those tests, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) Prior to further flight, correct any discrepancy found, in accordance with Boeing Alert Service Bulletin 747–78A2131, dated September 15, 1994. Or

(2) The airplane may be operated in accordance with the provisions and limitations specified in an operator's FAA-approved Minimum Equipment List (MEL), provided that no more than one thrust reverser on the airplane is inoperative.

### New Requirements of This AD

*Modifications*

(c) Within 48 months after the effective date of this AD, accomplish the requirements of paragraphs (c)(1), (c)(2), and (c)(3) of this AD. Accomplishment of the actions required by this paragraph constitutes terminating action for the repetitive tests required by paragraph (a) of this AD.

(1) Install provisional wiring for the additional locking system on the thrust reversers, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–78–2134, Revision 3, dated March 19, 1998.

(2) Remove the thrust reverser sequencing mechanism and install a solenoid-operated shutoff valve in accordance with Boeing Service Bulletin 747–78–2052, Revision 5, dated February 22, 1996.

(3) Install an additional locking system on each thrust reverser in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–78–2152, Revision 5, dated June 14, 2001; or Revision 6, dated October 24, 2002.

*Repetitive Tests*

(d) Within 3,000 flight hours after accomplishment of paragraph (c) of this AD: Perform a functional test to detect discrepancies of the additional locking system on each thrust reverser in accordance with the procedures described in the Boeing 747 Airplane Maintenance Manual (AMM), Section 78–34–11, dated October 25, 1997. Prior to further flight, correct any discrepancy detected and repeat the functional test of that repair in accordance with the procedures described in the AMM. Repeat the functional tests thereafter at intervals not to exceed 3,000 flight hours.

*Dispatch Limitations*

(e) If, after incorporation of the modification required by paragraph (c)(3) of this AD on any airplane, it becomes necessary to install a thrust reverser assembly that does not have the additional locking system installed, dispatch of the airplane is allowed in accordance with the provisions and limitations specified in the operator's FAA-approved Master Minimum Equipment List, provided that the thrust reverser assembly that does not have the additional locking system installed is deactivated in accordance with Item 78–1, Section 2, of Boeing Document D6–33391, "Boeing 747–100/–200/–300/SP Dispatch Deviations Procedures Guide," Revision 25, dated July 26, 2002. No more than one thrust reverser on any airplane may be deactivated under the provisions of this paragraph. Within 10 days after deactivation of the thrust reverser, install a thrust reverser assembly that has the additional locking system installed and reactivate the thrust reverser.

(f) If, prior to incorporation of the modification required by paragraph (c)(3) of this AD on any airplane, it becomes necessary to install a thrust reverser assembly that has the additional locking system installed, dispatch of the airplane is allowed in accordance with the provisions and limitations specified in the operator's FAA-approved Master Minimum Equipment List, provided that the thrust reverser assembly that has the additional locking system installed is deactivated in accordance with Item 78–1, Section 2, of Boeing Document D6–33391, "Boeing 747–100/–200/–300/SP Dispatch Deviations Procedures Guide," Revision 25, dated July 26, 2002. No more than one thrust reverser on any airplane may be deactivated under the provisions of this paragraph. Within 10 days after deactivation of the thrust reverser, install a thrust reverser assembly that does not have the additional locking system installed and reactivate the thrust reverser.

*Alternative Methods of Compliance*

(g)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with paragraphs (a) and (b) of AD 95–16–02, amendment 39–9321, are approved as alternative methods of compliance with the corresponding paragraphs in this AD.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

*Special Flight Permits*

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

*Incorporation by Reference*

(i) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–78–2134, Revision 3, dated March 19, 1998; Boeing Service Bulletin 747–78–2052, Revision 5, dated February 22, 1996; Boeing Service Bulletin 747–78–2152, Revision 5, dated June 14, 2001; Boeing Service Bulletin 747–78–2152, Revision 6, dated October 24, 2002; and Boeing Alert Service Bulletin 747–78A2131, dated September 15, 1994; as applicable.

(1) This incorporation by reference of Boeing Service Bulletin 747–78–2134, Revision 3, dated March 19, 1998; Boeing Service Bulletin 747–78–2052, Revision 5, dated February 22, 1996; Boeing Service Bulletin 747–78–2152, Revision 5, dated June 14, 2001; and Boeing Service Bulletin 747–78–2152, Revision 6, dated October 24, 2002; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 747–78A2131, dated September 15, 1994, was approved previously by the Director of the Federal Register as of September 5, 1995 (60 FR 39631, August 3, 1995).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Effective Date**

(j) This amendment becomes effective on November 18, 2003.

Issued in Renton, Washington, on October 3, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–25700 Filed 10–10–03; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NE–21–AD; Amendment 39–13337; AD 2003–05–10R1]**

**RIN 2120–AA64**

## Airworthiness Directives; General Electric Company CF34–3A1, –3B, and –3B1 Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment revises an existing airworthiness directive (AD), that applies to General Electric Company (GE) CF34–3A1, –3B, and –3B1 turbofan engines with scavenge screens part numbers (P/Ns) 4047T95P01 and 5054T86G02 installed in the B-sump oil scavenge system. That AD currently requires initial and repetitive visual inspections and cleaning of the B-sump scavenge screens until a screenless fitting is installed. This amendment requires the same initial and repetitive visual inspections and cleaning of the B-sump scavenge screens until a screenless fitting is installed. This amendment also corrects a typographical error, and introduces a less restrictive terminating action schedule. This amendment is prompted by the need to correct a typographical error and by the need to introduce a less restrictive terminating action schedule. We are issuing this AD to prevent B-sump scavenge screen blockage due to coking which could result in ignition of B-sump oil in the secondary air system, fan drive shaft separation, and uncontained engine failure.

**DATES:** Effective November 18, 2003. The incorporation by reference of certain publications, listed in the regulations, was approved previously by the Director of the Federal Register as of April 2, 2003 (68 FR 12806; March 18, 2003).

**ADDRESSES:** The service information referenced in this AD may be obtained from GE Aircraft Engines, 1000 Western

Avenue, Lynn, MA 01910; Attention: CF34 Product Support Engineering, Mail Zone: 34017; telephone (781) 594–6323; fax (781) 594–0600. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Barbara Caufield, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7146; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by revising AD 2003–05–10, Amendment 39–13086 (68 FR 12806, March 18, 2003), which applies to GE CF34–3A1, –3B, and –3B1 turbofan engines with scavenge screens P/Ns 4047T95P01 and 5054T86G02 installed in the B-sump oil scavenge system was published in the **Federal Register** on July 8, 2003 (68 FR 40573). That action proposed to require the same initial and repetitive visual inspections and cleaning of the B-sump scavenge screens until a screenless fitting is installed as in AD 2003–05–10. That action also proposed to correct a typographical error, and introduces a less restrictive terminating action schedule in accordance with GE Alert Service Bulletin (ASB) CF34–AL S/B 79–A0014, Revision 3, dated January 31, 2003; ASB CF34–BJ S/B 79–A0015, Revision 3, dated January 31, 2003; GE ASB CF34–AL S/B 79–A0016 and ASB CF34–BJ S/B 79–A0017, both dated June 17, 2002.

## Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

## Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

■ 2. Section 39.13 is amended by removing Amendment 39–13086 (68 FR 12806, March 18, 2003) and by adding a new airworthiness directive, Amendment 39–13337, to read as follows:

**2003–05–10R1 General Electric Company:** Amendment 39–13337. Docket No. 2001–NE–21–AD. Revises AD 2003–05–10, Amendment 39–13086.

### Applicability

This airworthiness directive (AD) applies to General Electric Company (GE) CF34–3A1, –3B, and –3B1 turbofan engines with scavenge screens part numbers (P/Ns) 4047T95P01 and 5054T86G02 installed in the B-sump oil scavenge system. These engines are installed on, but not limited to, Bombardier Inc. (Canadair) Model CL–600–2A12, CL–600–2B16, and CL–600–2B19 airplanes.

**Note 1:** This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

### Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent B-sump scavenge screen blockage due to coking, which could result in ignition of B-sump oil in the secondary air system, fan drive shaft separation, and uncontained engine failure, do the following:

### Initial Inspection and Cleaning of B-Sump Screens

(a) Perform an initial visual inspection and cleaning of scavenge screens, P/Ns 4047T95P01 and 5054T86G02, installed in the B-sump oil scavenge system, in accordance with Paragraphs 3A through 3B of the Accomplishment Instructions of GE Aircraft Engines (GE) Alert Service Bulletin (ASB) CF34–AL S/B 79–A0014, Revision 3, dated January 31, 2003; or ASB CF34–BJ S/B 79–A0015, Revision 3, dated January 31, 2003; and the following table:

INITIAL INSPECTION AND CLEANING SCHEDULE

| Engine hours time-since-new (TSN) or time-since-last-shop-visit (TSLSV) | Inspect and clean |
|---|---|
| (1) Fewer than 4,000 hours TSN or fewer than 4,000 hours TSLSV if it can be confirmed that both the B-sump scavenge screens were cleaned and the B-sump and combustor frame (strut tubes) were removed from the engine and cleaned at that prior shop visit. | Before 4,000 hours TSN or TSLSV. |
| (2) Fewer than 1,000 hours TSLSV if it can NOT be confirmed that both the B-sump scavenge screens were cleaned and the B-sump and combustor frame (strut tubes) were removed from the engine and cleaned at that prior shop visit. | Before 1,000 hours TSLSV. |

INITIAL INSPECTION AND CLEANING SCHEDULE—Continued

| Engine hours time-since-new (TSN) or time-since-last-shop-visit (TSLSV) | Inspect and clean |
|---|---|
| (3) 4,000 hours or greater TSN or 4,000 hours or greater TSLSV if it can be confirmed that both the B-sump scavenge screens were cleaned and the B-sump and combustor frame (strut tubes) were removed from the engine and cleaned at that prior shop visit, or 1,000 hours or greater TSLSV if it can NOT be confirmed that both the B-sump and combustor frame (strut tubes) were removed from the engine and cleaned at that prior shop visit. | Within 500 hours time-in-service (TIS) after the effective date of this AD. |

### Repetitive Inspections and Cleaning

(b) Perform repetitive visual inspections and cleaning of scavenge screens, P/Ns 4047T95P01 and 5054T86G02, installed in the B-sump oil scavenge system, in accordance with Paragraphs 3A through 3B of the Accomplishment Instructions of GE ASB CF34–AL S/B 79–A0014, Revision 3, dated January 31, 2003; and ASB CF34–BJ S/B 79–A0015, Revision 3, dated January 31, 2003; and the following:

(1) At intervals not to exceed 200 hours time-since-last-inspection (TSLI), if no coke is found in screens during initial or any prior inspections, or

(2) At intervals not to exceed 100 hours TSLI, if coke is found in screens during initial or any prior inspections.

### Terminating Actions

(c) Install new screenless fittings or fittings that have been reworked to remove the screens, in the B-sump oil scavenge system, in accordance with GE ASB CF34–AL S/B 79–A0016, dated June 17, 2002; or ASB CF34–BJ S/B 79–A0017, dated June 17, 2002, and the following schedule:

(1) For engines with more than 4,000 hours TSN, within 500 hours TIS after the effective date of this AD, or within 1,000 hours TSLSV, whichever occurs first.

(2) For engines with less than or equal to 4,000 hours TSN, prior to 4,500 hours TSN.

This constitutes terminating action to the inspections required in paragraph (b) of this AD.

### Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

### Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

### Documents That Have Been Incorporated by Reference

(f) The actions must be done in accordance with the following General Electric Company Alert Service Bulletins (ASB):

| Document No. | Pages | Revision | Date |
|---|---|---|---|
| ASB CF34–AL S/B 79–A0014<br>Total Pages: 10 | All | 3 | January 31, 2003. |
| ASB CF34–BJ S/B 79–A0015<br>Total Pages: 9 | All | 3 | January 31, 2003. |
| ASB CF34–AL S/B 79–A0016<br>Total Pages: 12 | All | Original | June 17, 2002. |
| ASB CF34–BJ S/B 79–A0017<br>Total Pages: 11 | All | Original | June 17, 2002. |

This incorporation by reference of General Electric Alert Service Bulletin (ASB) CF34–AL S/B 79–A0014, Revision 3, dated January 31, 2003; ASB CF34–BJ S/B 79–A0015, Revision 3, dated January 31, 2003; GE ASB CF34–AL S/B 79–A0016 and ASB CF34–BJ S/B 79–A0017, both dated June 17, 2002, was approved by the Director of the Federal Register on April 2, 2003, (68 FR 12086; March 18, 2003) in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from GE Aircraft Engines, 1000 Western Avenue, Lynn, MA 01910; Attention: CF34 Product Support Engineering, Mail Zone: 34017; telephone (781) 594–6323; fax (781) 594–0600. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

### Effective Date

(g) This amendment becomes effective on November 18, 2003.

Issued in Burlington, Massachusetts, on October 6, 2003.

**Francis A. Favara,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 03–25864 Filed 10–10–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–CE–58–AD; Amendment 39–13335; AD 2003–21–01]**

**RIN 2120–AA64**

## Airworthiness Directives; Univair Aircraft Corporation Models Alon A–2 and A2–A; ERCO 415–C, 415–CD, 415–D, 415–E, and 415–G; Forney F–1 and F–1A; and Mooney M10 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA supersedes Airworthiness Directive (AD) 94–18–04

R1, which currently applies to all Univair Aircraft Corporation (Univair) Models Alon A–2 and A2–A; ERCO 415–C, 415–CD, 415–D, 415–E, and 415–G; Forney F–1 and F–1A; and Mooney M10 airplanes. AD 94–18–04 R1 requires installing inspection openings in the outer wing panels, inspecting (one-time) the wing outer panel structural components for corrosion, and repairing any corroded wing outer panel structural component. Several reports of corrosion in the outer wing panels of the affected airplanes prompted that AD. This AD is the result of additional reports of corrosion on airplanes in compliance with AD 94–18–04 R1. This AD makes the inspection required in AD 94–18–04 R1 repetitive. We are issuing this AD to prevent wing damage caused by a corroded wing outer panel structural component, which, if not detected and corrected, could progress to the point of structural failure.

**DATES:** This AD becomes effective on December 1, 2003.

The Director of the Federal Register previously approved the incorporation by reference of Univair Aircraft Corporation Service Bulletin No. 29, Revision B, dated January 2, 1995, as of March 24, 1995 (60 FR 13626, March 14, 1995).

The Director of the Federal Register approved the incorporation by reference of Univair Aircraft Corporation Mandatory Service Bulletin No. 29, Revision C, dated July 8, 1999, as of December 1, 2003.

**ADDRESSES:** You may get the service information identified in this AD from Univair Aircraft Corporation, 2500 Himalaya Road, Aurora, Colorado 80011, telephone: (303) 375–8882; facsimile: (303) 375–8888.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–58–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Roger Caldwell, Aerospace Engineer, FAA, Denver Aircraft Certification Office, 26805 East 68th Avenue, Room 214, Denver, Colorado 80249–6361; telephone: (303) 342–1086; facsimile: (303) 342–1088.

**SUPPLEMENTARY INFORMATION:**

### Discussion

Has FAA taken any action to this point? Maintenance inspection procedures did not allow for thorough inspection of the wing structure on Univair Models Alon A–2 and A2–A; ERCO 415–C, 415–CD, 415–D, 415–E, and 415–G; Forney F–1 and F–1A; and Mooney M10 airplanes. This caused us to issue AD 94–18–04, Amendment 39–9017 (59 FR 43727, August 25, 1994) to require installing inspection openings in the outer wing panels, inspecting (one-time) the wing outer panel structure for corrosion, and repairing any corrosion found.

After AD 94–18–04 was issued, Univair revised Service Bulletin No. 29 to the Revision B level. Univair Service Bulletin No. 29, Revision B, dated January 2, 1995, changed the dimension of one of the openings to position it symmetrically between two ribs; and clarified the dimensioning system utilized in placement of the inspection openings. Univair SB No. 29, Revision B, also presented further discussion of the service difficulties encountered on the referenced subject and clarified the intent of the preliminary inspection procedure that may be accomplished prior to the installation of the inspection openings.

This caused us to issue AD 94–18–04 R1, Amendment 39–9173 (60 FR 62321, March 14, 1995).

*What has happened since AD 94–18–04 R1 to initiate this action?* The FAA has received additional reports of corrosion damage in the wing outer panel structural components continuing to go undetected. Univair has revised Service Bulletin No. 29 to the Revision C level, dated July 8, 1999. This revision changes the one-time inspection of the wing outer panel structural components for corrosion to a repetitive inspection.

*What is the potential impact if FAA took no action?* This condition, if not detected and corrected, could cause damage to the wing outer panel structural component. Such damage could result in structural failure.

*Has FAA taken any action to this point?* We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Univair Models Alon A–2 and A2–A; ERCO 415–C, 415–CD, 415–D, 415–E, and 415–G; Forney F–1 and F–1A, and Mooney M10. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on May 30, 2003 (68 FR 32437). The NPRM proposed to supersede AD 94–18–04 R1 with a new AD that would retain the actions required in AD 94–18–04 R1 and make the one-time inspection of the wing outer panel structural components for corrosion a repetitive inspection.

### Comments

*Was the public invited to comment?* We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.

### Conclusion

*What is FAA's final determination on this issue?* We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

### Changes to 14 CFR Part 39—Effect on the AD

*How does the revision to 14 CFR part 39 affect this AD?* On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

### Costs of Compliance

*How many airplanes does this AD impact?* We estimate that this AD affects 2,600 airplanes in the U.S. registry.

*What is the cost impact of this AD on owners/operators of the affected airplanes?* We estimate the following costs to accomplish the installation of the inspection openings:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 6 workhours × $60 per hour = $360 | $67 | $427 |

We estimate the following costs to accomplish the inspection:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 2 workhours × $60 per hour = $120 | Not applicable | $120 | $120 × 2,600 = $312,000 |

The FAA has no method of determining the number of repetitive inspections each owner/operator will incur over the life of each of the affected airplanes so the cost impact is based on the initial inspection.

The FAA has no method of determining the number of repairs or replacements each owner/operator will incur over the life of each of the affected airplanes based on the results of the inspections. We have no way of determining the number of airplanes that may need such repair. The extent of damage may vary on each airplane.

## Compliance Time of This AD

*What is the compliance time of this AD?* The compliance time of this AD is "within the next 12 calendar months after the effective date of this AD."

*Why is the compliance time presented in calendar time instead of hours time-in-service (TIS)?* The unsafe condition specified by this AD is caused by corrosion. Corrosion can occur regardless of whether the airplane is in operation or is in storage. Therefore, to assure that the unsafe condition specified in this AD does not go undetected for a long period of time, the compliance is presented in calendar time instead of hours TIS.

## Regulatory Findings

*Will this AD impact various entities?* We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

*Will this AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2002–CE–58–AD" in your request.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

■ 2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 94–18–04 R1, Amendment 39–9173 (60 FR 62321, March 14, 1995), and by adding a new AD to read as follows:

**2003–21–01 Univair Aircraft Corporation:** Amendment 39–13335; Docket No. 2002–CE–58–AD; Supersedes AD 94–18–04 R1, Amendment 39–9173.

### When Does This AD Become Effective?

(a) This AD becomes effective on December 1, 2003.

### What Other ADs Are Affected by This Action?

(b) This AD supersedes AD 94–18–04 R1, Amendment 39–9173.

### What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are certificated in any category:

| Models | Serial Nos. |
|---|---|
| Alon A–2 and A2–A | All. |
| ERCO 415–C, 415–CD, 415–D, 415–E, and 415–G. | All. |
| Forney F–1 and F–1A | All. |
| Mooney M10 | All. |

### What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of additional reports of corrosion on airplanes in compliance with AD 94–18–04 R1. The actions specified in this AD are intended to prevent wing damage caused by a corroded wing outer panel structural component, which, if not detected and corrected, could progress to the point of structural failure.

### What Must I Do To Address This Problem?

(e) To address this problem, you must accomplish the following:

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Install inspection openings in the outer wing panels and inspect the wing outer panel internal structural components for corrosion and unrepaired corrosion damage. | Within the next 12 calendar months after March 24, 1995 (the effective date of AD 94–18–04 R1), unless already accomplished. | In accordance with Univair Service Bulletin No. 29, Revision B, dated January 2, 1995, or Univair Service Bulletin No. 29, Revision C, dated July 8, 1999, and Advisory Circular 43–4A, Corrosion Control for Aircraft. |
| (2) If corrosion or corrosion damage is found during the inspection required in paragraph (e)(1) of this AD, repair or replace components of the wing outer panel structure. | Repair or replace prior to further flight after the inspection required in paragraph (e)(1) of this AD. | In accordance with Univair Service Bulletin No. 29, Revision B, dated January 2, 1995, or Univair Service Bulletin No. 29, Revision C, dated July 8, 1999, the applicable maintenance manual, and Advisory Circular 43–4A, Corrosion Control for Aircraft. |

| Actions | Compliance | Procedures |
|---|---|---|
| (3) Repetitively inspect the wing outer panel internal structural components for corrosion and unrepaired corrosion damage. | Initially inspect within the next 6 calendar months after December 1, 2003 (the effective date of this AD), unless the wing outer panel internal structure has been inspected for corrosion within the previous 6 calendar months immediately prior to December 1, 2003 (the effective date of this AD).<br>Repetitively inspect thereafter at intervals not to exceed 12 calendar months after the last inspection. | In accordance with Univair Service Bulletin No. 29, Revision C, dated July 8, 1999, and Advisory Circular 43–4A, Corrosion Control for Aircraft. |
| (4) At any time corrosion or corrosion damage is found, repair or replace components of the wing outer panel structure. | Repair or replace prior to further flight after the inspection in which the corrosion or corrosion damage is found. Continue with the repetitive inspection requirements of this AD. | In accordance with Univair Service Bulletin No. 29, Revision B, dated January 2, 1995, or Univair Service Bulletin No. 29, Revision C, dated July 8, 1999, and Advisory Circular 43–4A, Corrosion Control for Aircraft. |

**Note:** The compliance times specified in Univair Aircraft Corporation Service Bulletin No. 29, Revision B, dated January 2, 1995, or Univair Service Bulletin No. 29, Revision C, dated July 8, 1999, are different from those required by this AD. The compliance times in this AD take precedence over those in the service bulletin.

### What About Alternative Methods of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13.

(1) Send your request to the Manager, Denver Aircraft Certification Office (ACO). For information on any already approved alternative methods of compliance, contact Roger Caldwell, Aerospace Engineer, FAA, Denver Aircraft Certification Office, 26805 East 68th Avenue, Room 214, Denver, Colorado 80249–6361; telephone: (303) 342–1086; facsimile: (303) 342–1088.

(2) Alternative methods of compliance approved for the inspection required in AD 94–18–04 R1, which is superseded by this AD, are approved as alternative methods of compliance with this AD.

### Is There Material Incorporated by Reference?

(g) You must do the actions required by this AD per Univair Aircraft Corporation Service Bulletin No. 29, Revision B, dated January 2, 1995, and Univair Service Bulletin No. 29, Revision C, dated July 8, 1999.

(1) The Director of the Federal Register approved the incorporation by reference of Univair Aircraft Corporation Mandatory Service Bulletin No. 29, Revision C, dated July 8, 1999, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Univair Aircraft Corporation, 2500 Himalaya Road, Aurora, Colorado 80011, telephone: (303) 375–8882; facsimile: (303) 375–8888.

(2) The Director of the Federal Register previously approved the incorporation by reference of Univair Aircraft Corporation Service Bulletin No. 29, Revision B, dated January 2, 1995, as of March 24, 1995 (60 FR 13626, March 14, 1995).

(3) You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Issued in Kansas City, Missouri, on October 6, 2003.

**James E. Jackson,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–25699 Filed 10–10–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–SW–17–AD; Amendment 39–13330; AD 2003–20–12]**

**RIN 2120–AA64**

## Airworthiness Directives; Eurocopter France Model AS 350B3, SA–365N, N1, AS–365N2, AS 365N3, and EC 155B Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (Eurocopter) model helicopters that requires modifying the SIREN cargo hook and inspecting the cargo hook locking catch (locking catch) for corrosion. This amendment is prompted by the discovery of internal corrosion on a Siren locking catch that may weaken the locking catch. The actions specified by this AD are intended to detect internal corrosion of the locking catch, which can cause the locking catch to return to an incomplete locking position, undetectable by the operator, and result in an unexpected cargo load release.

**DATES:** Effective November 18, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 18, 2003.

**ADDRESSES:** The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Carroll Wright, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5120, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:** A proposal to amend 14 CFR part 39 to include an AD for Eurocopter Model AS 350B3, SA–365N, N1, AS–365N2, AS 365N3, and EC 155B helicopters was published in the **Federal Register** on April 22, 2003 (68 FR 19757). That action proposed to require modifying the SIREN cargo hook and inspecting the cargo hook locking catch for corrosion.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model AS 350 B3, AS–365N, N1, AS 365N2, AS 365N3, and EC 155 B helicopters fitted with Siren cargo hooks, part number (P/N) AS–21–5–7. The DGAC advises that corrosion was discovered on a locking catch, which might lead to untimely load release.

Eurocopter has issued Alert Telexes No. 05.00.39, for Model AS 350B3 helicopters; No. 05.00.41, for Model AS 365N, N1, AS 365N2, and AS 365N3 helicopters; and No. 05A002, for Model EC 155B helicopters; all dated December

20, 2001, which specify an initial corrosion check, and verification of Amendment B to prevent any risk of untimely load release due to locking catch corrosion combined with in-flight vibrations. Amendment B requires marking a permanent reference line across the rotating bolt and stationary cover plate for the cargo hook, affixing a placard to the cover plate, and marking the letter "B" on the amendment identification plate of the release unit and on the equipment log card. The DGAC classified these alert telexes as mandatory and issued AD No. 2002–044(A), dated January 23, 2002, to ensure the continued airworthiness of these helicopters in France.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed, except changing the FAA office name and revising the cites in proposed paragraph (b) to clarify that an owner/operator (pilot) may perform all the actions required by paragraph (a). The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The action in paragraph (a) of this AD, for cargo hook, P/N AS–21–5–7, with Amendment B incorporated, may be performed by an owner/operator (pilot), and must be entered into the helicopter records showing compliance with that paragraph in accordance with 14 CFR sections 43.11 and 91.417(a)(2)(v). This AD allows a pilot to perform these actions because they involve only manipulating the manual cargo release and checking the reference line for continuity, and can be performed equally well by a pilot or a mechanic. For cargo hook, P/N AS–21–5–7, without Amendment B incorporated, a mechanic must incorporate Amendment B in accordance with the applicable alert telex.

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

The FAA estimates that of the 60 helicopters of U.S. registry, 6 helicopters have the Siren cargo hook installed and will be affected by this AD. The FAA also estimates that it will take approximately 3 work hours per helicopter to incorporate Amendment B and .25 work hour to conduct and record the pilot check with 60 pilot checks performed per year, and that the average labor rate is $60 per work hour. Required parts to incorporate Amendment B will cost $4 for each label. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $6,504.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**2003–20–12 Eurocopter France:** Amendment 39–13330. Docket No. 2002–SW–17–AD.

*Applicability:* Model AS 350B3, SA–365N, N1, AS–365N2, AS 365N3, and EC 155B helicopters, with an optional Siren load release unit cargo hook, part number (P/N) AS–21–5–7, installed, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect internal corrosion of the Siren cargo hook locking catch (locking catch), which can cause the locking catch to return to an incomplete locking position, undetectable by the operator, and result in an unexpected cargo load release, accomplish the following:

(a) For cargo hook, P/N AS–21–5–7, with Amendment B incorporated, before the first use of the cargo hook on each day that the cargo hook is used, check for corrosion on the locking catch as follows. Amendment B has been incorporated if the letter "B" is marked on the amendment identification plate of the release unit of the cargo hook and placard "G" is installed on the release unit cover plate "D" and reference line "B" is marked over the nut and cover plate as depicted in Figure 1 of this AD. The identification plate "A" is located on cover plate "D", on the opposite side of the electrical connector. See Figure 1:

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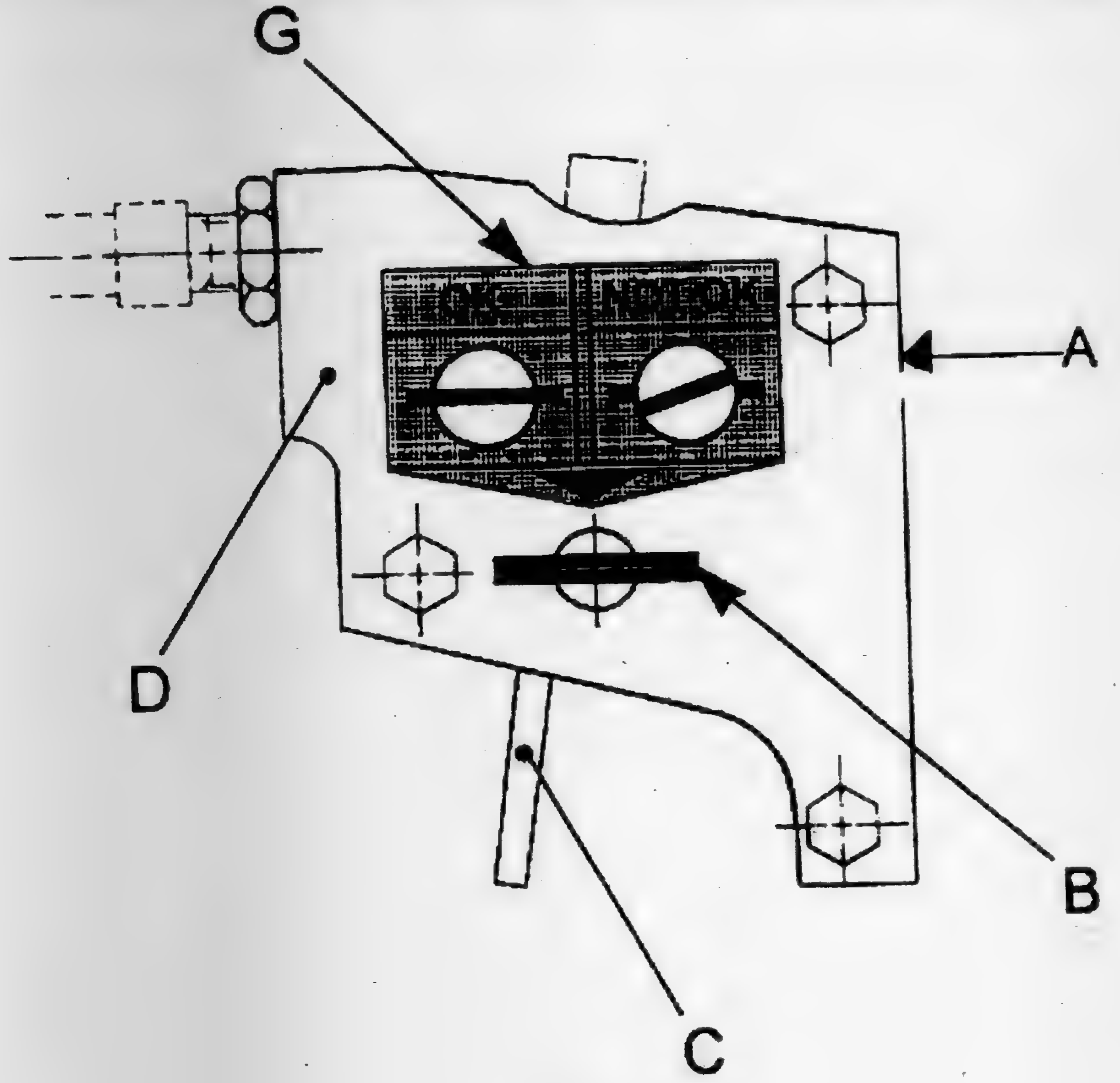

Figure 1

BILLING CODE 4910–13–C

(1) With the cargo hook installed, cycle the red manual release control lever several times over its travel range.

(2) Return the red manual release control lever to the initial position.

(3) Determine whether the section of reference line (B) marked on the bolt (A) and the section of reference line (B) marked on the cover plate (D) form a straight line.

(i) If the reference line is straight, the cargo hook is considered airworthy.

(ii) If the reference line is not straight, the cargo hook is unairworthy and may not be used.

(b) The requirements of paragraph (a) may be performed by an owner/operator (pilot) holding at least a private pilot certificate, and must be entered into the aircraft records showing compliance with that paragraph of this AD in accordance with 14 CFR sections 43.11 and 91.417(a)(2)(v).

(c) For cargo hook, P/N AS–21–5–7, without Amendment B, before the next sling load flight, incorporate Amendment B to the cargo hook in accordance with the Accomplishment Instructions, paragraphs 2.A.2.a) and 2.A.2.b), of Eurocopter Alert Telex No. 05.00.39, for Model AS 350B3 helicopters; No. 05.00.41, for Model SA–365N, N1, AS–365N2, and AS 365N3 helicopters; and No. 05A002, for Model EC 155B helicopters; all dated December 20, 2001, as applicable.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Safety Management Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Safety Management Group.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Safety Management Group.

(e) Special flight permits will not be issued allowing use of the cargo hook until the requirements of this AD are accomplished.

(f) The actions shall be done in accordance with Eurocopter Alert Telex No. 05.00.39, for Model AS 350B3 helicopters; No. 05.00.41, for Model SA–365N, N1, (AS–365N, N1) AS–365N2, and AS 365N3 helicopters; and No. 05A002, for Model EC 155B helicopters; all dated December 20, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 18, 2003.

**Note 3:** The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 2002–044(A), dated January 23, 2002.

Issued in Fort Worth, Texas, on September 29, 2003.

**David A. Downey,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 03–25593 Filed 10–10–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2003–15722; Airspace Docket No. 03–ACE–64]**

### Modification of Class E Airspace; Lee's Summit, MO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This document confirms the effective date of the direct final rule which revises Class E airspace at Lee's Summit, MO.

**EFFECTIVE DATE:** 0901 UTC, December 25, 2003.

**FOR FURTHER INFORMATION CONTACT:** Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on August 18, 2003 (68 FR 49345). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 25, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on October 1, 2003.

**Herman J. Lyons,**

*Manager, Air Traffic Division, Central Region.*

[FR Doc. 03–25955 Filed 10–10–03; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2003–15721; Airspace Docket No. 03–ACE–63]**

### Modification of Class E Airspace; Sullivan, MO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This document confirms the effective date of the direct final rule which revises Class E airspace at Sullivan, MO.

**EFFECTIVE DATE:** 0901 UTC, December 25, 2003.

**FOR FURTHER INFORMATION CONTACT:** Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on August 18, 2003 (68 FR 49348) and subsequently published a correction to the direct final rule in the **Federal Register** on September 4, 2003 (68 FR 52487). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. this direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 25, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Dated: October 1, 2003.

**Herman J. Lyons, Jr.**

*Manager, Air Traffic Division, Central Region.*

[FR Doc. 03–25954 Filed 10–10–03; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2003–15719; Airspace Docket No. 03–ACE–61]**

### Modification of Class E Airspace; Seward, NE

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This document confirms the effective date of the direct final rule which revises Class E airspace at Seward, NE.

**DATES:** 0901 UTC, December 25, 2003.

**FOR FURTHER INFORMATION CONTACT:** Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on August 12, 2003 (68 FR 47844). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 25, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on September 26, 2003.

**Herman J. Lyons,**

*Manager, Air Traffic Division, Central Region.*

[FR Doc. 03–25953 Filed 10–10–03; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2003–15720; Airspace Docket No. 03–ACE–62]**

### Modification of Class E Airspace; Maryville, MO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This document confirms the effective date of the direct final rule which revises Class E airspace at Maryville, MO.

**EFFECTIVE DATE:** 0901 UTC, December 25, 2003.

**FOR FURTHER INFORMATION CONTACT:** Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on August 19, 2003 (68 FR 49690). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 25, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on October 1, 2003.

**Herman J. Lyons, Jr.,**

*Manager, Air Traffic Division, Central Region.*

[FR Doc. 03–25957 Filed 10–10–03; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2003–15460; Airspace Docket No. 03–ACE–58]**

## Modification of Class E Airspace; Aurora, MO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; correction.

**SUMMARY:** This action corrects a direct final rule; request for comments that was published in the **Federal Register** on Tuesday, July 29, 2003, (68 FR 44454) [FR Doc. 03–19165]. It corrects an error in the spelling of the name of the airport at Aurora, MO.

**DATES:** This direct final rule is effective on 0901 UTC, October 30, 2003.

**FOR FURTHER INFORMATION CONTACT:** Brenda Mumper, Air Traffic Division Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

**SUPPLEMENTARY INFORMATION:**

### History

**Federal Register** Document 03–19165, published on Tuesday, July 29, 2003, (68 FR 44454) modified Class E airspace at Aurora, MO. The modification was to replace "Aurora Memorial Municipal Airport" in the legal descriptions of Aurora, MO Class E airspace area with "Jerry Summers Sr. Aurora Municipal Airport" and to bring the legal description into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. A correction to this direct final rule; request for comments and the direct final rule; confirmation of effective date were subsequently published in the **Federal Register** on Monday, August 18, 2003, (68 FR 49350) [FR Doc. 03–21078] and Friday, September 12, 2003, (68 FR 53676) [FR Doc. 03–23300] respectively. On Friday, September 23, 2003, the National Flight Data Digest revised the name of the Aurora, MO airport from "Jerry Summers Sr. Aurora Municipal Airport" to "Jerry Sumners Sr. Aurora Municipal Airport."

Accordingly, pursuant to the authority delegated to me, the Aurora, MO Class E airspace, as published in the **Federal Register** on Tuesday, July 29, 2003, (68 FR 44454), [FR Doc. 03–19165] is corrected as follows:

### § 71.1 [Corrected]

On page 44455, Column 3, paragraph headed "ACE MO E Aurora, MO," first, sixth and ninth lines, change "Summers" to read "Sumners."

Issued in Kansas City, MO, on October 1, 2003.

**Herman J. Lyons,**

*Manager, Air Traffic Division, Central Region.*

[FR Doc. 03–25956 Filed 10–10–03; 8:45 am]

BILLING CODE 4910–13–M

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## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 4

**RIN 3038–AB97**

## Additional Registration and Other Regulatory Relief for Commodity Pool Operators and Commodity Trading Advisors; Past Performance Issues; Correction.

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rules; correction.

**SUMMARY:** The Commodity Futures Trading Commission (Commission) published in the **Federal Register** of August 8, 2003, a document providing additional relief for certain persons excluded from the commodity pool operator (CPO) definition, providing exemptions from registration as a CPO or commodity trading adviser (CTA), and facilitating communications by CPOs and CTAs (Final Rules). This document contains corrections to the Final Rules.

**DATES:** Effective October 14, 2003.

**FOR FURTHER INFORMATION CONTACT:** Barbara S. Gold, Associate Director, or Christopher W. Cummings, Special Counsel, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, telephone numbers: (202) 418–5450 or (202) 418–5445, respectively; facsimile number: (202) 418–5528; and electronic mail: *bgold@cftc.gov* or *ccummings@cftc.gov*, respectively.

**SUPPLEMENTARY INFORMATION:** The Commission published in the Final Rules in the **Federal Register** of August 8, 2003 (68 FR 47221), The Final Rules affect CPOs and CTAs and persons excluded or exempted from registering as such. As published, however, the Final Rules contain errors that may be misleading and need clarification. By this release, the Commission is making typographical and technical corrections, none of which directly affect the rights and obligations of persons under the Commission's regulations.

In Rule FR Doc. 03–20094 published on August 8, 2003, make the following corrections:

### § 4.13 [Corrected]

1. On page 47231, in the second column, in § 4.13 introductory text, in the fourteenth line, delete "and", and in the twentieth line, before the period, insert the following text: "; and paragraph (f) of this section specifies the effect of this section on § 4.5 of this chapter".

**§ 4.14 [Corrected]**

2. On page 47233, in the third column, in § 4.14(a)(8)(i)(D), in the eighth line, after the semicolon, insert "and".

**§ 4.31 [Corrected]**

3. On page 47235, in the third column, in § 4.31(a), in the tenth line, delete "direct" and insert "guide".

Issued in Washington, DC., on October 7, 2003 by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 03–25944 Filed 10–10–03; 8:45 am]

BILLING CODE 6351–01–M

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

### 26 CFR Part 1

### [TD 9083]

### RIN 1545–AH49

## Golden Parachute Payments; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to final regulations.

**SUMMARY:** This document contains corrections to final regulations that were published in the **Federal Register** on Monday, August 4, 2003 (68 FR 45745), relating to golden parachute payments under section 280G of the Internal Revenue Code.

**EFFECTIVE DATE:** This correction is effective August 4, 2003.

**FOR FURTHER INFORMATION CONTACT:** Erinn Madden (202) 622–6030 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

The final regulations that are the subject of these corrections are under sections 280G of the Internal Revenue Code.

### Need for Correction

As published, the final regulations (TD 9083) contain errors that may prove to be misleading and are in need of clarification.

### Correction of Publication

Accordingly, the publication of the final regulations (TD 9083), which are the subject of FR Doc. 03–19274, is corrected as follows:

1. On page 45745, column 3, in the preamble, in the caption **DATES** is corrected to read as follows:

**DATES:** *Effective Date:* August 4, 2003.

*Applicability Date:* These regulations apply to any payment that is contingent on a change in ownership or control if the change in ownership or control occurs on or after January 1, 2004. However, taxpayers may rely on these regulations after August 4, 2003, for the treatment of any parachute payment.

2. On page 45750, column 1, in the preamble under the paragraph heading "*Effective Date and Reliance*", paragraph 1, line 5, the language "on or after January 1, 2004," is corrected to read "on or after January 1, 2004. However, taxpayers may rely on these regulations after August 4, 2003, for the treatment of any parachute payment.".

3. On page 45750, columns 1 and 2, in the preamble under the paragraph heading "*Effective Date and Reliance*", the last line in the column 1 and first line in column 2, the language "2002 proposed regulations until effective date of the final regulations." is corrected to read "2002 proposed regulations until January 1, 2004.".

**§ 1.280G–1 [Corrected]**

4. On page 45755, column 2, § 1.280G–1, paragraph (a), A–11, line 3, the language "to receive cash, or a transfer of property" is corrected to read "to receive cash (including the value of accelerated vesting under Q/A–24(c), or a transfer of property.".

5. On page 45772, column 2, § 1.280G–1, A–48, line 5, the language "on or after January 1, 2004." is corrected to read "on or after January 1, 2004. Taxpayers may rely on these regulations after August 4, 2003, for the treatment of any parachute payment.".

**Cynthia E. Grigsby,**

*Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 03–24913 Filed 10–10–03; 8:45 am]

BILLING CODE 4830–01–M

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

### 33 CFR Part 117

### [CGD01–02–026]

### RIN 1625–AA09

## Drawbridge Operation Regulations: Charles River, Dorchester Bay, and Saugus River, MA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard has changed the drawbridge operation regulations that govern the operation of three bridges, the Craigie Bridge, mile 1.0, across the Charles River, the William T. Morrisey Boulevard Bridge, mile 0.0, across Dorchester Bay, and the General Edwards SR1A Bridge, mile 1.7, across the Saugus River, all in Massachusetts. This final rule requires an eight-hour advance notice for openings during the time periods at night when these bridges have historically received few requests to open. This action is expected to meet the reasonable needs of navigation while relieving the bridge owner from the burden of crewing these bridges at periods when they seldom open for navigation.

**DATES:** This rule is effective November 13, 2003.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–01–026) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On June 26, 2003, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Charles River, Dorchester Bay, and Saugus River, Massachusetts, in the **Federal Register** (68 FR 37990). We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

### Background and Purpose

The owner of the bridges, the Metropolitan District Commission (MDC), requested a change to the operating regulations for three of their bridges, the Craigie Bridge, the William T. Morrisey Boulevard Bridge, and the General Edwards SR1A Bridge. The requested change to the drawbridge operation regulations required an eight-hour advance notice during various time periods when these bridges have historically received few requests to open.

The Coast Guard reviewed the drawbridge opening logs submitted by the bridge owner, and determined that the bridges had few requests to open during the time periods the bridge owner has requested the eight-hour advance notice requirement. This rule change will apply to the following bridges and during the following times:

*Craigie Bridge*

The MDC Craigie Bridge, mile 1.0, across the Charles River has a vertical clearance of 5 feet at mean high water and 15 feet at mean low water in the closed position. The existing operating regulations are listed at 33 CFR 117.591(e). This final rule allows the bridge owner to require an eight-hour advance notice for openings midnight to 8 a.m., during April, May, October, and November.

*William T. Morrisey Boulevard Bridge*

The William T. Morrisey Boulevard Bridge, at mile 0.0, across Dorchester Bay has a vertical clearance of 12 feet at mean high water and 22 feet at mean low water in the closed position. The existing operating regulations are listed at 33 CFR 117.597. This final rule allows the bridge owner to require an eight-hour advance notice for bridge openings from midnight to 8 a.m., during April, May, and October.

*General Edwards SR1A Bridge*

The General Edwards SR1A Bridge, at mile 1.7, across the Saugus River has a vertical clearance of 27 feet at mean high water and 36 feet at mean low water in the closed position. The existing operating regulations are listed at 33 CFR 117.618(b). This final rule allows the bridge owner to require an eight-hour advance notice for bridge openings from midnight to 8 a.m., April through November.

The Coast Guard believes this final rule is reasonable because all three bridges historically have received very few requests, if any, to open during the time periods for which they will now require an eight-hour advance notice prior to opening.

### Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking and as a result, no changes have been made to this final rule.

### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3), of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This conclusion is based on records showing that the bridges normally receive few requests to open during the times the advance notice will be required.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

This conclusion is based on records showing that the bridges normally receive few requests to open during the times the advance notice will be required.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the

Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Environment**

We have analyzed this final rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. It has been determined that this final rule does not significantly impact the environment.

**List of Subjects in 33 CFR Part 117**

Bridges

**Regulations**

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Section 117.591 is amended by adding a new paragraph (e)(3) to read as follows:

**§ 117.591 Charles River and its tributaries.**

* * * * *

(e) * * *

(3) From midnight to 8 a.m., April, May, October, and November, the draw shall open on signal after at least an eight-hour advance notice is given.

* * * * *

■ 3. Section 117.597 is revised to read as follows:

**§ 117.597 Dorchester Bay.**

The draw of the of the William T. Morrisey Boulevard Bridge, mile 0.0, at Boston, shall operate as follows:

(a) From 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m., Monday through Friday, except holidays, the draw need not open for the passage of vessel traffic.

(b) The draw shall open on signal from April 16 through May 31, from 8 a.m. through midnight, except as provided in paragraph (a) of this section. From midnight through 8 a.m. at least an eight-hour advance notice is required for bridge openings.

(c) The draw shall open on signal at all times from June 1 through September 30, except as provided in paragraph (a) of this section.

(d) The draw shall open on signal from October 1 through October 14, 8 a.m. through midnight, except as provided in paragraph (a) of this section. From midnight through 8 a.m. at least an eight-hour advance notice is required for bridge openings.

(e) The draw shall open on signal from October 15 through April 15, after at least a 24 hours notice is given, except as provided in paragraph (a) of this section.

■ 4. Section 117.618 is amended by revising paragraph (b) to read as follows:

**§ 117.618 Saugus River.**

* * * * *

(b) The draw of the General Edwards SR1A Bridge, mile 1.7, between Revere and Lynn, shall open on signal; except that, from April 1 through November 30, from midnight through 8 a.m. at least an eight-hour advance notice is required for bridge openings, and at all times from December 1 through March 31, at least an eight-hour advance notice is required for bridge openings.

* * * * *

Dated: September 30, 2003.

**John L. Grenier,**

*Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.*

[FR Doc. 03–25891 Filed 10–10–03; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

### 33 CFR Part 147

[CGD08–03–017]

RIN 1625–AA72

## Safety Zone; Outer Continental Shelf Facility in the Gulf of Mexico in Mississippi Canyon 243

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone around a petroleum and gas production facility in Mississippi Canyon 243 of the Outer Continental Shelf in the Gulf of Mexico while the facility is being constructed and after the construction is completed. The construction site and facility need to be protected from vessels operating outside the normal shipping channels and fairways, and placing a safety zone around the construction site and facility will significantly reduce the threat of allisions, oil spills and releases of natural gas. The regulation prohibits all vessels from entering or remaining in the specified area around the construction site and facility except for the following: an attending vessel; a vessel under 100 feet in length overall not engaged in towing; or a vessel authorized by the Eighth Coast Guard District Commander.

**DATES:** This final rule is effective on November 13, 2003.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD08–03–017] and are available for inspection or copying at Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA, 70130, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (LT) Kevin Lynn, Project Manager for Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130, telephone (504) 589–6271.

**SUPPLEMENTARY INFORMATION:**

**Regulatory History**

On July 7, 2003, we published a notice of proposed rulemaking (NPRM) entitled "Safety Zone; Outer Continental Shelf Facility in the Gulf of Mexico in Mississippi Canyon 243" in the **Federal Register** (68 FR 40229). We received one comment on the proposed rule. No public hearing was requested and none was held.

**Background and Purpose**

The Coast Guard is establishing a safety zone around a petroleum and gas production facility in the Gulf of Mexico: Matterhorn Tension Leg Platform A (Matterhorn TLP), Mississippi Canyon 243 (MC 243), located at position 28°44′32″ N, 88°39′32″ W. The safety zone is in effect while the facility is being constructed and after the construction is completed.

This safety zone is in the deepwater area of the Gulf of Mexico. For the purposes of this regulation it is considered to be in waters of 304.8 meters (1,000 feet) or greater depth extending to the limits of the Exclusive Economic Zone (EEZ) contiguous to the territorial sea of the United States and extending to a distance up to 200 nautical miles from the baseline from which the breadth of the sea is measured. Navigation in the area of the safety zone consists of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and the occasional recreational vessel. The deepwater area also includes an extensive system of fairways. The fairways include the Gulf of Mexico South Pass Fairway, and the South Pass to Mississippi River-Gulf Outlet Channel Safety Fairway. Significant amounts of vessel traffic occur in or near the various fairways in the deepwater area.

TotalFinaElf E&P USA, Inc., hereafter referred to as TotalFinaElf requested that the Coast Guard establish a safety zone in the Gulf of Mexico around the Matterhorn TLP construction site and for the zone to remain in effect after construction is completed.

The request for the safety zone was made due to the high level of shipping activity around the site of the facility and the safety concerns for construction personnel, the personnel on board the facility after it is completed and the environment. TotalFinaElf indicated that the location, production level, and personnel levels on board the facility make it highly likely that any allision with the facility during and after construction would result in a catastrophic event. The Matterhorn TLP will be a high production petroleum and gas drilling facility, capable of producing approximately 30,000 barrels of oil per day and 50 million cubic feet of gas per day, and manned with a crew of approximately 60 people.

The Coast Guard reviewed TotalFinaElf's concerns and agreed that the risk of allision to the facility and the potential for loss of life and damage to the environment resulting from such an accident during and following the construction of Matterhorn TLP warrants the establishment of this safety zone. This regulation significantly reduces the threat of allisions, oil spills and natural gas releases, and increases the safety of life, property, and the environment in the Gulf of Mexico. This regulation is issued pursuant to 14 U.S.C. 85 and 43 U.S.C. 1333 as set out in the authority citation for 33 CFR part 147.

## Discussion of Comments and Changes

We received one comment on the proposed rule. The comment addressed several issues, the first being that oil facilities should be built with safeguards to prevent oil pollution and the Coast Guard should insist on total safety for oil drilling at this location. This regulation significantly reduces the threat of allisions, oil spills and natural gas releases, and increases the safety of life, property, and the environment in the Gulf of Mexico by creating a no entry zone around the facility applicable to certain vessels (*see* **SUMMARY**). The second issue posed by the comment recommends the Coast Guard deem certain poor weather days as being unsuitable for vessel transits. This issue is not relevant to the rule and will not be discussed. The final issue raised in the comment recommends that the Coast Guard designate "off limit" areas to include the location at which the Matterhorn TLP is to be constructed and all other places where vessels can experience trouble due to rough weather. This issue is not relevant to the rule and will not be discussed. In consideration of this comment, the Coast Guard has made no substantial changes to the provisions of this rule.

## Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The impacts on routine navigation are expected to be minimal because the safety zone will not overlap any of the safety fairways within the Gulf of Mexico.

## Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Since the construction site for the Matterhorn TLP is located far offshore, few privately owned fishing vessels and recreational boats/yachts operate in the area and alternate routes are available for those vessels. Use of an alternate route may cause a vessel to incur a delay of 4 to 10 minutes in arriving at their destinations depending on how fast the vessel is traveling. Therefore, the Coast Guard expects the impact of this regulation on small entities to be minimal.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and to what degree this rule would economically affect it.

## Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so they can better evaluate its effects on them and participate in the rulemaking.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

## Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

## Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

## Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in NEPA. Paragraph (34)(g) is applicable because this rule is establishing a safety zone that will be effective for a period greater than one week. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" (CED) are available in the docket where indicated under **ADDRESSES.**

### List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 147 as follows:

## PART 147—SAFETY ZONES

■ 1. The authority citation for part 147 continues to read as follows:

**Authority:** 14 U.S.C. 85; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 147.829 to read as follows:

### § 147.829 Matterhorn Tension Leg Platform safety zone.

(a) *Description.* The Matterhorn Tension Leg Platform A (Matterhorn TLP), Mississippi Canyon 243 (MC 243), located at position 28°44′32″ N, 88°39′32″ W. The area within 500 meters (1640.4 feet) from each point on the structure's outer edge is a safety zone. These coordinates are based upon [NAD 83].

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following:

(1) An attending vessel;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District.

Dated: September 22, 2003.

**R.F. Duncan,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 03–25890 Filed 10–10–03; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[COTP San Francisco Bay 03–023]**

**RIN 1625–AA00**

## Security Zone; Suisun Bay, Concord, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone in the navigable waters of the United States adjacent to the Military Ocean Terminal Concord (MOTCO), California (formerly United States Naval Weapons Center Concord, California). In light of recent terrorist actions against the United States, the security zone is necessary to ensure the safe onloading and offloading of military equipment and to ensure the safety of the nearby public from potential subversive acts. The security zone will prohibit all persons and vessels from entering, transiting through or anchoring within a portion of the Suisun Bay surrounding the MOTCO unless authorized by the Captain of the Port (COTP) or his designated representative.

**DATES:** This rule is effective from 7 a.m. PDT on October 1, 2003 to 11:59 p.m. PST on October 31, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [COTP San Francisco Bay 03–023] and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Doug Ebbers, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Additionally, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** as the schedule and other logistical details were not known until a date fewer than 30 days prior to the start date of the military operation.

Publishing a NPRM and delaying its effective date would be contrary to the public interest since the safety and security of the people, ports, waterways, and properties of the Port Chicago and Suisun Bay areas would be jeopardized without the protection afforded by this security zone. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to ensure the protection of all cargo vessels, their crews, the public and national security.

## Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and the conflict in Iraq have made it prudent for U.S. ports to be on a higher state of alert because Al-Qaeda and other organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

The threat of maritime attacks is real as evidenced by the October 2002 attack of a tank vessel off the coast of Yemen and the continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered as evidenced by the September, 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. *See also* Continuation of the National Emergency With Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, or Support Terrorism, (67 FR 59447, September 20, 2002). Additionally, a Maritime Advisory was issued to: Operators of U.S. Flag and Effective U.S. controlled Vessels and other Maritime Interests, detailing the current threat of attack, MARAD 02–07 (October 10, 2002).

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns, United States Army officials have requested that the Captain of the Port, San Francisco Bay, California, establish a temporary security zone in the navigable waters of the United States surrounding the Military Ocean Terminal Concord (MOTCO), California, to safeguard vessels, cargo and crew engaged in military operations. This temporary security zone is necessary to safeguard the MOTCO terminal and the surrounding property from sabotage or other subversive acts, accidents or criminal acts. This zone is also necessary to protect military operations from compromise and interference and to specifically protect the people, ports, waterways, and properties of the Port Chicago and Suisun Bay areas.

## Discussion of Rule

In this temporary rule, the Coast Guard is establishing a fixed security zone around Military Ocean Terminal Concord (MOTCO), California, encompassing the navigable waters, extending from the surface to the sea floor, bounded by the following coordinates: latitude 38°03′07″ N and longitude 122°03′00″ W; thence to latitude 38°03′15″ N and longitude 122°03′04″ W; thence to latitude 38°03′30″ N and longitude 122°02′35″ W; thence to latitude 38°03′50″ N and longitude 122°01′15″ W; thence to latitude 38°03′43″ N and longitude 122°00′28″ W; thence to latitude 38°03′41″ N and longitude 122°00′03″ W; thence to latitude 38°03′18″ N and longitude 121°59′31″ W, and along the shoreline back to the beginning point.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, will also face imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years, and a civil penalty of not more than $25,000 for each day of a continuing violation.

The Captain of the Port will enforce this zone and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation. This regulation is established under the authority of 33 U.S.C. 1226 in addition to the authority contained in 50 U.S.C. 191 and 33 U.S.C. 1231.

## Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Although this regulation restricts access to portions of navigable waters, the effect of this regulation will not be significant because the zone will encompass only a small portion of the waterway for a short duration. Vessels and persons may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port or his designated representative.

The size of the zone is the minimum necessary to provide adequate protection for MOTCO, vessels engaged in operations at MOTCO, their crews, other vessels operating in the vicinity, and the public. The entities most likely to be affected are commercial vessels transiting to or from Suisun Bay via the Port Chicago Reach section of the channel.

## Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to anchor or transit to or from Suisun Bay via the Port Chicago Reach section of the channel. Although the security zone will occupy a section of the navigable channel (Port Chicago Reach) adjacent to the Marine Ocean Terminal Concord (MOTCO), vessels may receive authorization to transit through the zone by the Captain of the Port or his designated representative on a case-by-case basis. Additionally, vessels engaged in recreational activities, sightseeing and commercial fishing will have ample space outside of the security zone to engage in these activities. Small entities and the maritime public will be advised of this security zone via public notice to mariners.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a security zone.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where located under **ADDRESSES.**

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–095 to read as follows:

### § 165.T11–095 Security Zone; Navigable Waters of the United States Surrounding Military Ocean Terminal Concord (MOTCO), Concord, California.

(a) *Location*. The security zone, which will be marked by lighted buoys, will encompass the navigable waters, extending from the surface to the sea floor, surrounding the Military Ocean Terminal Concord, Concord, California, bounded by the following coordinates: latitude 38° 03′ 07″N and longitude 122° 03′ 00″ W; thence to latitude 38° 03′15″ N and longitude 122° 03′04″ W; thence to latitude 38° 03′30″ N and longitude

122° 02′35″ W; thence to latitude 38° 03′50″ N and longitude 122° 01′15″ W; thence to latitude 38° 03′43″ N and longitude 122° 00′28″ W; thence to latitude 38° 03′41″ N and longitude 122° 00′03″ W; thence to latitude 38° 03′18″ N and longitude 121° 59′31″ W, and along the shoreline back to the beginning point.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entering, transiting through or anchoring in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Patrol Commander on scene on VHF–FM channel 13 or 16 or the Captain of the Port at telephone number 415–399–3547 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by local law enforcement and the MOTCO police as necessary.

(e) *Effective Dates.* This section becomes effective at 7 a.m. PDT on October 1, 2003, and terminates at 11:59 p.m. PST on October 31, 2003.

Dated: September 25, 2003.

**Gerald M. Swanson,**

*Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.*

[FR Doc. 03–25893 Filed 10–10–03; 8:45 am]

BILLING CODE 4910–15–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[CA 253–0405a; FRL–7567–2]**

## Revisions to the California State Implementation Plan, El Dorado County Air Pollution Control District and Santa Barbara County Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the El Dorado County Air Pollution Control District (EDCAPCD) and Santa Barbara County Air Pollution Control District (SBCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern nitrogen oxide ($NO_X$) emissions from biomass boilers and from large water heaters and small boilers. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on December 15, 2003 without further notice, unless EPA receives adverse comments by November 13, 2003. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**ADDRESSES:** Mail or e-mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; *steckel.andrew@epa.gov.*

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

El Dorado County Air Pollution Control District, 2850 Fairlane Court, Building C, Placerville, CA 95667.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B–23, Goleta, CA 93117.

**FOR FURTHER INFORMATION CONTACT:** Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us" and "our" refer to EPA.

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### I. The State's Submittal

### *A. What Rules Did the State Submit?*

Table 1 lists the rules we are approving with the date that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

| Local agency | Rule number | Rule title | Adopted or amended | Submitted |
|---|---|---|---|---|
| EDCAPCD | 232 | Biomass Boilers | Amended 09/25/01 | 11/09/01 |
| SBCAPCD | 360 | Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers. | Adopted 10/17/02 | 01/21/03 |

On January 15, 2002 and February 7, 2003, respectively, these submittals were found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

### *B. Are There Other Versions of These Rules?*

EPA proposed a limited approval and limited disapproval on May 5, 1999 (64 FR 24117) of Rule 232, Biomass Boilers (adopted on October 18, 1994, submitted on October 20, 1994). The proposed action was not finalized, but the deficiency cited concerning the lack of a compliance schedule is addressed in this current direct final action. The EDCAPCD also amended the October 18, 1994 version on January 23, 2001 and CARB submitted it to us on May 23, 2001. No action was taken on this submittal. While we can act on only the most recent submittal, we reviewed the information in this previous submittal.

### *C. What Are the Purposes of the Submitted Rule and Rule Revisions?*

$NO_X$ helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control $NO_X$ emissions.

The purpose of the revisions to EDCAPCD Rule 232 is to remedy a deficiency in the October 18, 1994 version of the rule.

The purpose of submitted SBCAPCD Rule 360 is to regulate $NO_X$ emissions from large water heaters and small boilers.

## II. EPA's Evaluation and Action

### *A. How Is EPA Evaluating the Rules?*

Generally, SIP rules must be enforceable (*see* section 110(a) of the CAA), must require Reasonably Available Control Technology (RACT) for major sources of $NO_X$ in ozone nonattainment areas (*see* section 182(f)) and must not relax existing requirements (*see* sections 110(l) and 193). The EDCAPCD regulates a severe ozone nonattainment area. *See* 40 CFR part 81. Rule 232 must fulfill the requirements of RACT. The SBCAPCD regulates an ozone maintenance attainment area. Rule 360 must fulfill the requirements of RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations*, EPA (May 25, 1988) (the Bluebook).
- *State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990* (the "$NO_X$ Supplement to the General Preamble"), U.S. EPA, 57 FR 55620 (November 25, 1992).
- *Cost-Effective Nitrogen Oxides ($NO_X$) Reasonably Available Control Technology (RACT)*, U.S. EPA Office of Air Quality Planning and Standards (March 16, 1994).
- *Guidance Document for Correcting Common VOC & Other Rule Deficiencies*, U.S. EPA Region IX (August 21, 2001) (the Little Bluebook).
- *Determination of Reasonably Available Control Technology (RACT) and Best Available Retrofit Control Technology (BARCT) for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters*, California Air Resources Board (CARB) (July 18, 1991).
- *Alternative Control Techniques Document—$NO_X$ Emissions from Utility Boilers*, EPA–453/R–94–023 (March 1994).

### *B. Do the Rules Meet the Evaluation Criteria?*

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. We also believe that Rule 232 corrects the previously identified deficiency regarding the lack of a compliance schedule in the rule. The TSDs have more information on our evaluation.

### *C. Public Comment and Final Action*

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by November 13, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on December 15, 2003. This will incorporate these rules into the federally-enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small

Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 15, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: September 3, 2003.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(296)(i)(A)(*2*) and (312)(i)(B) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(296) * * *

(i) * * *

(A) * * *

(*2*) Rule 232, adopted on October 18, 1994 and amended on September 25, 2001.

* * * * *

(312) * * *

(i) * * *

(B) Santa Barbara County Air Pollution Control District.

(*1*) Rule 360, adopted on October 17, 2002.

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[FR Doc. 03–25800 Filed 10–10–03; 8:45 am]

BILLING CODE 6560–50–U

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[KY 135—200337(a); FRL–7572–9]**

## Approval and Promulgation of Implementation Plans for Kentucky: Source-Specific Revision for Marathon Ashland Petroleum Marine Repair Terminal

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving a source-specific revision to the State Implementation Plan (SIP) of the Commonwealth of Kentucky. This revision requires the Marathon Ashland Petroleum Marine Repair Terminal (MAPMRT) to implement volatile organic compound (VOC) reasonably available control technology (RACT) for its barge cleaning operation as part of a contingency measure implemented for the Huntington-Ashland 1-Hour Ozone Maintenance Area.

**DATES:** This direct final rule is effective December 15, 2003 without further notice, unless EPA receives adverse comment by November 13, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Comments may be submitted by mail to: Michele Notarianni, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in **SUPPLEMENTARY INFORMATION** (sections VI. B.1. through 3.).

**FOR FURTHER INFORMATION CONTACT:** Michele Notarianni, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Phone: (404) 562–9031. E-mail: *notarianni.michele@epa.gov.*

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V. What is EPA's Final Action?
VI. General Information
VII. Statutory and Executive Order Reviews

### I. What Is Today's Action?

EPA is approving a source-specific SIP revision to the Kentucky SIP, submitted by the Commonwealth of Kentucky on October 7, 2001, which requires MAPMRT to implement vapor collection and control equipment with an overall efficiency of at least 90 percent for its barge cleaning operation. This revision satisfies a requirement for Kentucky to implement a contingency measure for the Huntington-Ashland 1-Hour Ozone Maintenance Area and meets EPA's VOC RACT requirements for major VOC sources. The Huntington-Ashland 1-Hour Ozone Maintenance Area consists of: Boyd County and a portion of Greenup County, Kentucky; and Cabell County and Wayne County, West Virginia. MAPMRT is located in Boyd County, Kentucky, within the maintenance area. MAPMRT is a major VOC point source because the source's barge cleaning operation has the potential to emit more than 100 tons per year of VOC.

### II. Why Must Kentucky Adopt an Ozone Contingency Measure for the Huntington-Ashland Maintenance Area?

During calendar year 1998, a Huntington, West Virginia ozone monitor recorded five exceedances of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) during a period when the 1-hour NAAQS was revoked by EPA. The 1-hour ozone maintenance plan for the Kentucky portion of the Huntington-Ashland maintenance area requires Kentucky to adopt one or more contingency measures within six months of a monitored violation. This six-month time period is not applicable in this case, since the initial violation occurred in 1998, during a time period in which EPA had revoked the 1-hour ozone

NAAQS. Upon reinstatement of the 1-hour NAAQS, effective October 18, 2000, EPA required violating maintenance areas to expeditiously provide plans to implement their maintenance plans to address any violations. Kentucky is fulfilling the latter requirement. A June 28, 2001, letter from the Commonwealth officially notified EPA of its implementation of an ozone contingency measure in the Kentucky portion of the Huntington-Ashland maintenance area. Currently, the area is attaining the 1-hour ozone NAAQS.

## III. What Contingency Measure Was Adopted for the Area?

Kentucky utilized the contingency measure listed in the area's maintenance plan to implement "a program to make existing controls on stationary sources more effective, or require additional emission reductions." Because VOC emissions from MAPMRT's barge cleaning operations were significant, MAPMRT was selected as a source where additional emission reductions may be realized. Based on year 2000 emissions data, the barge cleaning operations represent an estimated 87 percent of the source's total VOC emissions. The title V permit for MAPMRT requires the overall efficiency for capture and control of VOC emissions from barge cleaning operations to be at least 90 percent to satisfy Kentucky rule 401 KAR 50:012, "General application". This rule requires RACT for major VOC sources in Kentucky counties designated ozone nonattainment with the exception of marginal areas. Although the Kentucky portion of the Huntington-Ashland area is classified attainment for the 1-hour ozone NAAQS, Kentucky elected as a contingency measure to require VOC RACT for MAPMRT's barge cleaning operations. Since no EPA Control Technique Guideline (CTG) exists for this source category, Kentucky must submit the controls as a source-specific non-CTG RACT SIP revision to ensure that these controls meet RACT and are adequately enforceable.

## IV. What VOC Control System Is MAPMRT Using?

Earlier than required, MAPMRT installed and is operating a vapor collection and control system for its barge cleaning operations with an overall efficiency of 90 percent. The control system will reduce the source's emissons by an estimated 0.76 tons per day and reduce VOC point source emissions for the area by an estimated 2.78 percent. MAPMRT's Barge Cleaning VOC Control Plan, required as part of its title V permit, describes its Barge Degassing Vapor Control System. This control system is consistent with those controls used at similar operations in the country (*i.e.*, Louisiana and Texas). The system uses thermal oxidation to combust vapors from the barge. The combustion products are used to produce hot water (or steam) and inert gas, which are used for input back into the system for greater combustion efficiency and into the barge for enhanced safety. EPA and Kentucky believe the system satisfies EPA's RACT requirement for major VOC sources.

## V. What Is EPA's Final Action?

The EPA is approving this source-specific revision to the Kentucky SIP requiring VOC RACT for MAPMRT because it is consistent with the requirements of the Clean Air Act and EPA policy.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective December 15, 2003 without further notice unless the Agency receives adverse comments by November 13, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 15, 2003 and no further action will be taken on the proposed rule.

## VI. General Information

### *A. How Can I Get Copies of This Document and Other Related Information?*

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under KY–135–200337. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30, excluding Federal holidays.

2. Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency. Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403. (502/573–3382).

3. *Electronic Access.* You may access this **Federal Register** document electronically through the Regulation.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

### *B. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking KY–135–200337" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *notarianni.michele@epa.gov.* Please include the text "Public comment on proposed rulemaking KY–135–200337" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulation.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then select Environmental Protection Agency at the top of the page and use the go button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD–ROM.* You may submit comments on a disk or CD–ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Michele Notarianni, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Please include the text "Public comment on proposed rulemaking KY–135–200337." in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Michele Notarianni, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30, excluding Federal holidays.

### *C. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

### *D. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

## VII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the

Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 15, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 1, 2003.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

■ Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

## PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart S—Kentucky

■ 2. Section 52.920(d) is amended by adding a new entry at the end of the table to read as follows:

### § 52.920 Identification of plan.

* * * * *

(d) * * *

EPA—APPROVED KENTUCKY SOURCE-SPECIFIC REQUIREMENTS

| Name of source | Permit No. | State effective date | EPA approval date | **Federal Register** Notice |
|---|---|---|---|---|
| * * | * | * | * | * * |
| Marathon Ashland Petroleum Marine Repair Terminal. | N/A | 12/22/99 | 10/14/03 | [Insert FR page citation]. |

* * * * *

[FR Doc. 03–25798 Filed 10–10–03; 8:45 am]

BILLING CODE 6560–50–P

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## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

### 44 CFR Parts 59 and 61

### RIN 1660–AA14

## National Flood Insurance Program (NFIP); Inspection of Insured Structures by Communities

**AGENCY:** Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security (DHS).

**ACTION:** Adoption of interim final rule as final.

**SUMMARY:** This final rule adopts the interim final rule, published in the **Federal Register** on March 8, 2002, to amend the NFIP regulations to clarify that areas of Monroe County, Florida that incorporate on or after January 1, 1999, and become eligible for the sale of flood insurance must participate in the inspection procedure as a condition of joining the NFIP. An inspection procedure was established to help the communities of Monroe County and the Village of Islamorada verify that structures comply with the community's floodplain management ordinance and to ensure that property owners pay

flood insurance premiums to the NFIP commensurate with their flood risk.

**DATES:** 44 CFR 59.30(a) became effective on March 8, 2002. The amendments to Appendices (A)(4), (A)(5), and (A)(6) of 44 CFR part 61 became effective on June 6, 2002.

**FOR FURTHER INFORMATION CONTACT:** Don Beaton, FEMA, Mitigation Division, 500 C Street, SW., Washington, DC 20472, (facsimile) 202–646–4327, or e-mail *donald.beaton@dhs.gov;* or Lois Forster, FEMA, Mitigation Division, (facsimile) 202–646–2577, or e-mail *lois.forster@dhs.gov.*

**SUPPLEMENTARY INFORMATION:** The interim final rule published on March 8, 2002, at 67 FR 10631 amended 44 CFR 59.30 and Appendices (A)(4), (A)(5), and (A)(6) of 44 CFR part 61 to clarify that areas of Monroe County, Florida that incorporate on or after January 1, 1999, and become eligible for the sale of flood insurance must participate in the inspection procedure as a condition of participating in the NFIP. An inspection procedure was established to help the communities of Monroe County and the Village of Islamorada verify that structures comply with the community's floodplain management ordinance and to ensure that property owners pay flood insurance premiums to the NFIP commensurate with their flood risk.

The closing date for the submission of comments was June 6, 2002.

### Comments on the Interim Final Rule

By the close of the comment period, FEMA received no comments on the interim final rule.

### Adoption as Final Rule

Accordingly, the interim final rule to amend the NFIP regulations to clarify that areas of Monroe County, Florida that incorporate on or after January 1, 1999 and become eligible for the sale of flood insurance must participate in the inspection procedures as a condition of joining the NFIP which was published at 67 FR 10631 on March 8, 2002, is adopted as a final rule without change.

### National Environmental Policy Act

FEMA conducted an environmental review on the inspection procedure. You may obtain a copy of the Record of Environmental Review documenting the findings through FEMA's Web site at *www.FEMA.gov,* or by writing to FEMA at 500 C Street, SW., Washington, DC 20472, Attention: Lois Forster.

### Executive Order 12898, Environmental Justice

FEMA reviewed the inspection procedure under Executive Order 12898 and determined that the inspection procedure would not have a disproportionate adverse impact on low-income populations and minority populations. FEMA also determined that this action would have some adverse effects on low-income populations because some illegal enclosures are used as full-living units and the residents would have to find replacement housing. The effect would be caused by the residents' illegal activity, not by this regulatory action. FEMA determined, further, that there would be greater adverse health and safety impact on the affected low-income populations if they stayed in these illegally built ground level enclosures. The enclosures are located in flood hazard areas below the Base Flood Elevation where there is a significant risk of flooding.

### Executive Order 12866, Regulatory Planning and Review

FEMA has reviewed the inspection procedure under the provisions of Executive Order 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, Oct. 4, 1993, a significant regulatory action is subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in th[e] Executive [O]rder.

FEMA found that the final rule is neither a significant regulatory action nor an economically significant rule under the Executive Order. OMB has not reviewed this rule under the principles of Executive Order 12866.

### Executive Order 13132, Federalism

Executive Order 13132, Federalism, seeks to ensure that Executive agencies consider principles of federalism when developing new policies, and requires them to consult with State and local officials when their actions may have federalism implications.

FEMA reviewed this final rule for federalism implications under Executive Order 13132 and determined that this final rule does not have federalism implications as defined in Executive Order 13132.

In addition to Monroe County, the Village of Islamorada, and the State of Florida, FEMA has consulted with the City of Marathon and will continue to consult and coordinate with the City of Marathon and any other area in Monroe County that incorporates and becomes eligible for the sale of flood insurance after January 1, 1999, that will participate in the inspection procedure.

### Paperwork Reduction Act

FEMA submitted the information collection requirements to OMB for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Under Control Number 3067–0275, OMB approved the information collection requirements. Now that FEMA is part of DHS, the Control Number is 1660–0045.

### Executive Order 12778, Civil Justice Reform

This final rule meets the applicable standards of subsections 2(a) and 2(b)(2) of Executive Order 12778.

The interim final rule published on March 8, 2002 at 67 FR 10631 is adopted as final without change.

Dated: October 7, 2003.

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–25906 Filed 10–10–03; 8:45 am]

BILLING CODE 6718–05–P

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1 and 25

### [IB Docket Nos. 02–34 and 02–54, FCC 03–102]

### Satellite Licensing Procedures

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** The Federal Communications Commission published in the **Federal Register** of August 27, 2003 (68 FR 51499), a document revising the procedures for issuing satellite licenses. Inadvertently, the effective date for §§ 25.137(d)(4), 25.164(c) through (e), and 25.165 was stated as September 11,

2003. This document stays these rules until October 27, 2003.

**DATES:** Effective October 14, 2003. Sections 25.137(d)(4), 25.164(c) through (e), and 25.165, published at 68 FR 51499 are stayed until October 27, 2003.

**FOR FURTHER INFORMATION CONTACT:** Steven Spaeth, Attorney Advisor, Satellite Division, International Bureau, telephone (202) 418–1539 or via the Internet at *steven.spaeth@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** The Commission published a document in the **Federal Register** of August 27, 2003 (68 FR 51499), adopting §§ 25.137(d)(4), 25.164(c) through (e), and 25.165, and adopting an effective date of September 11, 2003 for these provisions. This document stays these provisions until October 27, 2003.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03–25740 Filed 10–10–03; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR PART 25

**[IB Docket 02–19; FCC 03–137]**

## Establishment of Policies and Service Rules for the Non-Geostationary Satellite Orbit, Fixed Satellite Service in the Ka-Band

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission has adopted licensing and service rules for entities to provide Non-Geostationary Satellite Orbit, Fixed Satellite Service in the KaBand frequencies, specifically the 18.8–19.3 GHz and 28.35–29.1GHz frequency bands. Upon launch, these new systems will provide a variety of data, video and telephony services in Ka-Band frequencies to U.S. consumers, for communications in the United States and around the world.

**DATES:** Effective October 14, 2003.

**FOR FURTHER INFORMATION CONTACT:** J. Mark Young, Attorney Advisor, Satellite Division, International Bureau, telephone (202) 418–0762 or via the Internet at *myoung@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order* in IB Docket No. 02–19, FCC 03–137, adopted June 18, 2003 and released July 9, 2003. The complete text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898 or via e-mail *qualexint@aol.com*. It is also available on the Commission's Web site at *http://www.fcc.gov*.

### Summary of the Report and Order

1. The Federal Communications Commission has adopted sharing and service rules for the non-geostationary satellite orbit, fixed satellite service (NGSO FSS) in the Ka-Band frequencies. These systems will provide a variety of data, video and telephone services to U.S. consumers, for communications in the United States and around the world.

2. The Commission adopted an innovative sharing technique that can accommodate all pending applications for this service in the available frequency bands. The Commission calls this technique avoidance of in-line interference events. Under this technique, each applicant, once licensed, will be authorized to operate its system in the entire available service spectrum, so long as it avoids causing harmful interference to other NGSO FSS systems.

3. The Commission anticipates that there will be predictable instances when the space station of one NGSO FSS system and the earth station of another system are arrange in a perfect line of communication, an occurrence called an in-line interference event. The sharing technique allows and encourages the two system operators to exchange space station orbit data in order to predict and avoid these events by any mitigation means preferred. In the event the systems cannot agree on a preferred avoidance method, the Commission requires that the split the available NGSO FSS service spectrum in the Ka-Band equally between the systems involved in the event, for the duration of the event. The *Report and Order* allows the first launched NGSO FSS system to choose its preferred equal portion of the spectrum to which its space station will resort when an in-line interference event arises.

4. The *Report and Order* adopts a technical definition of an in-line interference event so that systems can coordinate their orbits in advance. The Commission adopted an Earth-surface based (topocentric) angular separation standard, with a 10-degree-avoidance angle between satellites of different networks.

5. The *Report and Order* determines the priority status of the one existing licensee from the first processing round of the Ka-Band NGSO FSS, Teledesic LLC, when it coordinates with operators licensed in this second processing round for the service.

6. The *Report and Order* adopted service rules for the NGSO FSS service, including an implementation milestones schedule. Licensees will be required to file an annual report describing the status of satellite construction and launch dates. The *Report and Order* also requires that applicants disclose orbital debris mitigation plans before licensing.

### Final Regulatory Flexibility Certification

8. The Regulatory Flexibility Act of 1980, as amended (RFA),[1] requires that a regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[2] The RFA generally defines "small entity" as having the same meaning as the terms "small business," "smallorganization," and "small governmental jurisdiction."[3] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[4] A small business concern is one which: (a) is independently owned and operated; (b) is not dominant in its field of operation; and (c) satisfies any additional criteria established by the Small Business Administration (SBA).[5]

9. The objective of the *Report and Order* and of this proceeding is to assign the NGSO FSS spectrum to satellite systems operators who can implement their proposals in a manner that serves the public interest. The final rules in the *Report and Order* will reduce regulatory burdens and, with minimal disruption

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[1] See 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA. Pub. L. 104–121, 110 Stat. 857 (1996)).

[2] 5 U.S.C. 605(b).

[3] *Id.* at 601(6).

[4] *Id.* at 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[5] Small Business Act, 15 U.S.C. 632

to existing FCC permittees and licensees, result in the continued development of NGSO FSS and other satellite services to the public.

10. Neither the Commission nor the U.S. Small Business Administration has developed a small business size standard specifically for NGSO FSS licensees. The appropriate size standard is therefore the SBA standard for Satellite Telecommunications, which provides that such entities are small if they have $12.5 million or less in annual revenues.[6]

11. The rules adopted in the *Report and Order* apply only to entities providing NGSO FSS. Small businesses will not have the financial ability to become NGSO FSS system operators because of the high implementation costs, including construction of satellite space stations and rocket launch, associated with satellite systems and services.[7] Since the spectrum and orbital resources available for assignment are not open to new entrants, we estimate that only the four applicants whose applications are pending will be authorized by the Commission to provide these services. None of the seven applicants is a small business because each has revenues in excess of $12.5 million annually or has parent companies or investors that have revenues in excess of $12.5 million annually.[8]

12. Therefore, we certify that the rules adopted in this *Report and Order* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of this *Report and Order*, including this Final Regulatory Flexibility, in a report to Congress pursuant to the Congressional Review Act.[9] In addition, the *Report and Order* and this final certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.[10]

### Ordering Clauses

13. Pursuant to Sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 157(a), 303(c), 303(f), 303(g), and 303(r), this *Report and Order* is hereby ADOPTED.

14. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the *Report and Order*, including the Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A); and shall also send a copy of this *Report and Order*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 605(b). A copy of this *Report and Order*, including the Final Regulatory Flexibility Certification, will be published in the **Federal Register**. *See* 5 U.S.C. 605(b).

### List of Subjects 47 CFR Part 25

Satellites.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

### Rule Changes

■ For the reasons set forth in the preamble, part 25 of title 47 of the Code of Federal Regulations is amended as follows:

## PART 25—SATELLITE COMMUNICATIONS

■ 1. The authority citation for part 25 continues to read as follows:

**Authority:** 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

■ 2. Section 25.145 is amended by removing paragraph (f) and redesignating paragraphs (g) and (h) as (f) and (g) and by adding paragraphs (c)(3), (f)(1)(iv), (h) and (i) to read as follows:

### § 25.145 Licensing conditions for the Fixed-Satellite Service in the 20/30 GHz bands.

* * * * *

(c) * * *

(3) A description of the design and operational strategies that it will use, if any, to mitigate orbital debris. Each applicant must submit a casualty risk assessment if planned post-mission disposal involves atmospheric re-entry of the spacecraft.

* * * * *

(f) *Reporting requirements.*

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(iv) All operators of NGSO FSS systems in the 18.8–19.3 GHz and 28.6–29.1 GHz bands shall, within 10 days after a required implementation milestone as specified in the system authorization certify to the Commission by affidavit that the milestone has been met or notify the Commission by letter that it has not been met. At its discretion, the Commission may require the submission of additional information (supported by affidavit of a person or person with knowledge thereof) to demonstrate that the milestone has been met. Failure to file a timely certification of milestones, or filing disclosure of non-compliance, will result in automatic cancellation of the authorization with no further action required on the Commission's part.

* * * * *

(h) *Replacement of Space Stations within the System License Term.* Licensees of NGSO FSS systems in the 18.8–19.3 GHz and 28.6–29.1 GHz frequency bands authorized through a blanket license pursuant to paragraph (b) of this section need not file separate applications to launch and operate technically identical replacement satellites within the term of the system authorization. However, the licensee shall certify to the Commission, at least thirty days prior to launch of such replacement(s) that:

(1) The licensee intends to launch a space station into the previously-authorized orbit that is technically identical to those authorized in its system authorization and

(2) Launch of this space station will not cause the license to exceed the total number of operating space stations authorized by the Commission.

(i) *In-Orbit Spares.* Licensees need not file separate applications to operate technically identical in-orbit spares authorized as part of the blanket license pursuant to paragraph (b) of this section. However, the licensee shall certify to the Commission, within 10 days of bringing the in-orbit spare into operation, that operation of this space station did not cause the licensee to exceed the total number of operating space stations authorized by the Commission.

■ 3. Section 25.261 is added to read as follows:

### § 25.261 Procedures for avoidance of in-line interference events for Non Geostationary Satellite Orbit (NGSO) Satellite Network Operations in the Fixed Satellite Service (FSS) Bands.

(a) *Applicable NGSO FSS Bands.* The coordination procedures in this section apply to non-Federal-Government NGSO FSS satellite networks operating in the following assigned frequency bands: The 28.6–29.1 GHz or 18.8–19.3 GHz frequency bands.

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[6] 13 CFR 121.201, North American Industry Classification System ("NAICS") code 517410.

[7] See e.g., Final Analysis Communication Services, Inc., 13 FCC Rcd 6618, 6644 (1998) (non-geostationary satellite applicant estimated that "cost of construction, launch and first-year operating costs for two satellites was approximately $6.22 million").

[8] 13 CFR 121.201, North American Industry Classification System ("NAICS") code 517410.

[9] See 5 U.S.C. 801(a)(1)(A).

[10] See 5 U.S.C. 605(b).

(b) *Definition of "In-line interference events."* For purposes of this section, an "in-line interference event" is defined as the interference associated with an occurrence of any physical alignment of space stations of two or more satellite networks with an operating Earth station of one of these networks in such a way that the angular separation between operational links of the two networks is less than 10° as measured at the Earth station.

(c) *Default procedure.* If no agreed coordination exists between two or more satellite networks, then the bands will be divided among the affected satellite networks involved in an in-line interference event in accordance with the following procedure:

(1) Each of n (number of) satellite networks involved in a particular in-line interference event shall select 1/n of the assigned spectrum available in each frequency band for its home base spectrum. The selection order for each satellite network shall be determined by and be in accordance with the date that the first space station in each satellite network is launched and operating;

(2) The affected space station(s) of the respective satellite networks shall only operate in the selected (1/n) spectrum associated with its satellite network, its home base spectrum, for the duration of the in-line interference event;

(3) All affected space station(s) may resume operations throughout the assigned frequency bands once the angular separation between the affected space stations in the in-line interference event is again greater than 10°.

(d) *Coordination procedure.* Any coordination procedure agreed among the affected operating satellite networks, which allows operations of the satellite networks when each network's respective space stations are within the 10 degree avoidance angle associated with an in-line interference event, shall supersede the default procedure of paragraph (c) of this section. Coordination may be effected using information relating to the space stations and the parameters of one or more typical earth stations. All parties are required to coordinate in good faith.

[FR Doc. 03–25599 Filed 10–10–03; 8:45 am]

**BILLING CODE 6712–01–M**

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 64

**[CG Docket No. 02–278, FCC 03–230]**

## Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission temporarily stays the limitations imposed in § 64.1200(f)(3) on the duration of an "established business relationship" as applied to the sending of unsolicited facsimile advertisements. As a result, the 18-month limitation on the duration of the established business relationship based on purchases and transactions and the three-month limitation on applications and inquires will not apply to the transmission of facsimile advertisements pending either a decision on this issue on reconsideration or January 1, 2005, whichever is sooner, when the extension of the established business relationship to unsolicited facsimile advertisements is due to expire.

**DATES:** Effective October 14, 2003. The Federal Communications Commission will publish a document in the **Federal Register** when the stay is lifted to remove the note to § 64.1200(f)(3) added by this document.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Erica McMahon or Richard Smith of the Consumer & Governmental Affairs Bureau at (202) 418–2512.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Order*, adopted September 26, 2003, and released October 3, 2003. Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also ma5y be purchased from the Commission's duplicating contractor Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0531 (voice), (202) 418–7365 (TTY).

### Synopsis

In this *Order*, the Commission now temporarily stays, for an interim period, the limitations imposed in § 64.1200 (f)(3) on the duration of an "established business relationship" as it applies to the sending of unsolicited facsimile advertisements. During this interim period, the established business relationship, as applied to unsolicited facsimile advertisements, will not expire after 18 months of the recipient's last purchase or transaction or three months after the last application or inquiry. Given that the Commission's adoption of the modified established business relationship definition in the *Report and Order*, FCC 03–153, published at 68 FR 44144 (July 25, 2003), and *Announcement* of effective date published at 68 FR 56764 (October 1, 2003), was limited to its application to telephone solicitations, the Commission believes that good cause exists to stay application of the time limitations imposed on the established business relationship in the context of facsimile advertisements until the Commission conducts a review on reconsideration. The Commission emphasizes that nothing in this *Order* impacts the conclusion in the *Order on Reconsideration*, FCC 03–208; published at 68 FR 50978, August 25, 2003, that an established business relationship constitutes sufficient permission to send a facsimile advertisement until January 1, 2005.

The Commission notes, however, that in the absence of any Commission action on this issue prior to January 1, 2005, the Commission's determination that an established business relationship will no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements will go into effect as required by the *Order on Reconsideration*.

The actions contained herein have not changed our Final Regulatory Flexibility Analysis (FRFA), which is set forth in the *Report and Order*. Thus, no supplemental FRFA is necessary. In addition, the action contained herein imposes no new or modified reporting and/or recordkeeping requirements or burdens on the public.

### Ordering Clauses

Pursuant to sections 1–4, 227, and 303(r) of the Communications Act Of 1934, as amended, 47 U.S.C. 151–154, 227, and 303 (r); and section 1.429 of the Commission's Rules, 47 CFR 1.429, this *Order* in CG Docket No. 02–278 *is adopted* as set forth herein.

This *Order* is effective upon publication in the **Federal Register**. In light of the fact that this *Order* imposes no new obligations, the Commission find good cause, pursuant to 5 U.S.C. 553(d), to make this *Order* effective on less than thirty days' notice.

**List of Subjects in 47 CFR Part 64**

Telephone.

■ For the reasons set forth, amend part 64 of title 47 of the Code of Federal Regulations as follows:

## PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. Section 64.1200 is amended by adding the following note to paragraph (f)(3):

**§ 64.1200 Delivery restrictions.**

* * * * *

(f) * * *

**Note to paragraph (f)(3):** Paragraph 64.1200(f)(3) is stayed as of October 14, 2003, as it applies to the time limitations on facsimile advertisements. The Federal Communications Commission will publish a document in the **Federal Register** when the stay is lifted.

* * * * *

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03–25842 Filed 10–10–03; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 74 and 78

**[ET Docket No. 95–18; DA 03–2838]**

### 2 GHz Suspension

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; suspension order.

**SUMMARY:** This document suspends for 60 days, until November 4, 2003, the expiration date for the initial two-year mandatory negotiation period for Phase 1 of the 2 GHz band relocation plan between Mobile-Satellite Service (MSS) and Broadcast Auxiliary Service (BAS). The mandatory negotiation period will continue to remain in effect for the duration of this suspension or until otherwise modified by Commission action. The Commission retains the option to shorten or lengthen this suspension as circumstances warrant.

**DATES:** Effective September 6, 2003.

**FOR FURTHER INFORMATION CONTACT:** Gary Thayer, Office of Engineering and Technology, (202) 418–2290.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Order*, ET Docket No. 95–18, DA 03–2838, adopted September 4, 2003, and released September 5, 2003. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

**Summary of the Order**

1. The Order effectively immediately suspends, for 60 days, until November 4, 2003, the expiration date for the initial two-year mandatory negotiation period for Phase 1 of the 2 GHz band relocation plan between Mobile-Satellite Service (MSS) and Broadcast Auxiliary Service (BAS). This mandatory negotiation period was originally adopted in the *Second Report and Order and Second Memorandum Opinion and Order (Second Report and Order)*, 65 FR 48174, August 7, 2000, in this proceeding, and later extended until September 6, 2003, in a subsequent *Order (Suspension Order)*, 67 FR 53755, August 19, 2002. The mandatory negotiation period will continue to remain in effect for the duration of this suspension or until otherwise modified by Commission action. We retain the option to shorten or lengthen this suspension as circumstances warrant.

2. This action only relates to 35 megahertz of spectrum, currently used by BAS licensees, in the 1990–2025 MHz band. In 1997, the Commission reallocated this spectrum, paired with 35 megahertz in the 2165–2200 MHz band used by Fixed Service (FS) licensees, for MSS, effective January 1, 2000. In the *Second Report and Order*, it adopted relocation procedures for incumbent licensees in these bands. The relocation plan was modeled after the Commission's earlier *Emerging Technologies* policies in ET Docket No. 92–9, and requires MSS entrants to provide comparable facilities to BAS and FS incumbents that are relocated prior to specified sunset dates. The BAS relocation plan calls for a two-phase relocation, each phase beginning with a two-year mandatory negotiation period. In the event that an agreement for relocation is not reached by the end of a particular negotiation period, the MSS licensee(s) have the option of relocating BAS incumbents involuntarily. The initial, two-year mandatory negotiation period for Phase 1 commenced upon **Federal Register** publication of the *Second Report and Order* on September 6, 2000, and was due to expire on September 6, 2002. The *Suspension Order* extended this date by one year, to September 6, 2003.

3. Recently, the Commission adopted decisions that will permit alternative uses and new allocations in portions of the 2 GHz band that had been allocated for MSS. In a *Third Report and Order, Third Notice of Proposed Rulemaking, and Second Memorandum Opinion and Order*, 68 FR 11987, March 13, 2003, in ET Docket No. 00–258, it reallocated a portion of this spectrum in order to provide for new Fixed and Mobile services, including Advanced Wireless Services (AWS). In a *Report and Order and Notice of Proposed Rulemaking* in IB Docket No. 01–185, it permitted MSS licensees to provide ancillary terrestrial component (ATC) operations in the 2 GHz MSS band. The Commission has not yet adopted any modifications to the existing BAS and FS relocation rules as may be necessary in light of these decisions.

4. In the *Suspension Order*, the Commission noted the outstanding issues in the *MSS Flexibility Notice* and *AWS Notice* proceedings relating to use of the 2 GHz MSS band and concluded that it did not appear that it would be able to act on the respective issues prior to the Phase 1 BAS mandatory negotiation deadline of September 6, 2002. It concluded that it was in the public interest to continue the negotiating period until we were able to address these relocation issues. It also found that it was prudent and in the public interest to suspend the expiration of the initial negotiation period for one year under those circumstances, rather than prejudice consideration of the relocation issues presented in the pending proceedings. The Commission further stated that it retained the option to shorten or lengthen this suspension as circumstances warranted.

5. In February of this year, the Commission decided to reallocate portions of the 2 GHz MSS band (in ET Docket No. 00–258) and modify the nature of permissible MSS use of the band (in IB Docket No. 01–185). However, it has not yet addressed the modifications to the BAS and FS relocation plan that may be necessary

because of these decisions and several outstanding Petitions for Reconsideration and Clarification. Accordingly, the considerations that led the Commission to adopt the *Suspension Order* continue to apply with respect to the scheduled September 6, 2003, expiration date for the initial Phase 1 mandatory BAS negotiation period. Specifically, we find that it is in the public interest to continue the negotiating period until we address outstanding relocation issues in the band. Also, by suspending the expiration of the initial negotiation period, we will not prejudice consideration of the relocation issues still pending. For these reasons, we suspend, effective immediately upon release of this order, expiration of the initial Phase 1, two-year mandatory BAS negotiation period for 60 days, until November 4, 2003.

6. As in the *Suspension Order*, we retain the option to shorten or lengthen this suspension as circumstances warrant. We also emphasize that the action taken herein is interim in nature and does not prejudice further action in other proceedings. For the duration of this suspension, all other aspects of the initial mandatory BAS negotiation period will continue in force and, as a consequence, BAS incumbents will not be subject to involuntary relocation by MSS licensees. For the duration of the suspension, we likewise require MSS and BAS licensees to comply with all negotiation requirements and procedures adopted in the *Second Report and Order* that are applicable to the initial BAS mandatory negotiation period.

## Ordering Clauses

7. Authority for issuance of this Order is contained in sections 4(i), 5(c), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(c), 303(f), and 303(r), and Section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d). This action is taken under delegated authority, pursuant to sections 0.31(m) and 0.241(a) of the Commission's Rules, 47 CFR 0.31(m) and 0.241(a).

8. Pursuant to sections 4(i), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), and 303(r), Section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), and sections 0.31(m) and 0.241(a) of the Commission's Rules, 47 CFR 0.31(m) and 0.241(a), the expiration date of September 6, 2002, for the initial two-year mandatory BAS negotiation period for Phase 1 set forth in the *Second Report and Order* in ET Docket No. 95–18 is hereby suspended, effective immediately upon release of this order, for 60 days until November 4, 2003.

## List of Subjects in 47 CFR Parts 74 and 78

Communications equipment, Radio.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

## Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 74 and 78 to read as follows:

■ 1. The authority citation for part 74 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 307, and 554.

■ 2. Section 74.690 is amended by revising the note following paragraph (e) to read as follows:

### § 74.690 Transition of the 1990–2025 MHz band from the Broadcast Auxiliary Service to emerging technologies.

* * * * *

(e) * * *

**Note to paragraph (e):** FCC suspends for 60 days, until November 4, 2003, the expiration date for the initial two-year mandatory negotiation period in paragraph (e)(1) and the beginning of the involuntary relocation period in paragraph (e)(4).

■ 3. The authority citation for part 78 continues to read as follows:

**Authority:** Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

■ 4. Section 78.40 is amended by revising the note following paragraph (f) to read as follows:

### § 78.40 Transition of the 1990–2025 MHz band from the Cable Television Relay Service to emerging technologies.

* * * * *

(f) * * *

**Note to paragraph (f):** FCC suspends for 60 days, until November 4, 2003, the expiration date for the initial two-year mandatory negotiation period in paragraph (e)(1) and the beginning of the involuntary relocation period in paragraph (f)(4).

[FR Doc. 03–25870 Filed 10–10–03; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## 49 CFR Part 544

**[Docket No.: NHTSA–2003–14372]**

**RIN 2127–AJ01**

## Insurer Reporting Requirements; List of Insurers Required To File Reports

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This final rule updates Appendices A, B, and C of 49 CFR part 544, insurer reporting requirements. The appendices list those passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences. An insurer included in any of these appendices must file three copies of its report for the 2000 calendar year before October 25, 2003.

**DATES:** This final rule becomes effective on October 14, 2003. Insurers listed in the appendices are required to submit reports on or before October 25, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carlita Ballard, Office of Planning and Consumer Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Ballard's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

**SUPPLEMENTARY INFORMATION:**

## Background

Pursuant to 49 U.S.C. 33112, *Insurer reports and information,* NHTSA requires certain passenger motor vehicle insurers to file an annual report with the agency. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the insurer to reduce or deter theft. Under the agency's regulation, 49 CFR part 544, the following insurers are subject to the reporting requirements: (1) Those issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States; (2) those issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one state; and (3) rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity.

Pursuant to its statutory exemption authority, the agency exempted certain passenger motor vehicle insurers from the reporting requirements.

### *A. Small Insurers of Passenger Motor Vehicles*

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a state-by-state basis. The term "small insurer" is defined, in section 33112(f)(1)(A) and (B), as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under state law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a "small insurer," but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular state, the insurer must report about its operations in that state.

In the final rule establishing the insurer reports requirement (52 FR 59; January 2, 1987), 49 CFR part 544, NHTSA exercised its exemption authority by listing each insurer subject to the reporting requirements in Appendix A. Because the number of insurers subject to the reporting requirements is smaller than the number of insurers that fall under the 1% exemption, the agency chooses to publish the shorter list of insurers subject to the reporting requirements of 49 U.S.C. 33112. In Appendix B, NHTSA lists those insurers required to report for particular states because each insurer had a 10 percent or greater market share of motor vehicle premiums in those states. In the January 1987 final rule, the agency stated that it would update Appendices A and B annually. NHTSA updates the appendices based on data voluntarily provided by insurance companies to A.M. Best,[1] which A.M. Best publishes in its *State/Line Report* each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

### *B. Self-Insured Rental and Leasing Companies*

In addition, upon making certain determinations, NHTSA grants exemptions to self-insurers, *i.e.*, any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) used for rental or lease whose vehicles are not covered by theft insurance policies issued by insurers of passenger motor vehicles (see 49 U.S.C. 33112(b)(1)). Under 49 U.S.C. 33112(e)(1) and (2), NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and

(2) The insurer's report will not significantly contribute to carrying out the purposes of Chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles, because it believed that the largest companies' reports sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded that smaller rental and leasing companies' reports do not significantly contribute to carrying out NHTSA's statutory obligations and that exempting such companies will relieve an unnecessary burden on them. As a result of the June 1990 final rule, the agency added Appendix C, consisting of an annually updated list of the self-insurers subject to part 544. Following the same approach as in Appendix A, Appendix C contains only the self-insurers subject to reporting, instead of the self-insurers that are exempted. NHTSA updates Appendix C based primarily on information from *Automotive Fleet Magazine and Business Travel News.*[2]

### *C. When a Listed Insurer Must File a Report*

Under part 544, as long as an insurer is listed, it must file reports on or before October 25 of each year. Thus, any insurer listed in Appendices A, B or C must file a report by October 25, 2003, and by each succeeding October 25, absent an amendment removing the insurer's name from the appendices.

## **Notice of Proposed Rulemaking**

### *1. Insurers of Passenger Motor Vehicles*

On March 21, 2003, NHTSA published a notice of proposed rulemaking (NPRM) to update the list of insurers in Appendices A, B, and C required to file reports (68 FR 13887). Appendix A lists insurers that must report because each had 1 percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a final rule published on July 16, 2002 (67 FR 46608). Based on the 2000 calendar year data market shares from A.M. Best, we proposed to remove Farmers Insurance Group and St. Paul Companies from Appendix A and to add Zurich/Farmers Group to Appendix A.

Each of the 19 insurers listed in Appendix A is required to file a report by October 25, 2003, setting forth the information required by part 544, for each State in which it did business in the 2000 calendar year. As long as these 19 insurers remain listed, they are required to submit a report by each subsequent October 25, for the calendar year ending slightly less than 3 years before.

Appendix B lists insurers required to report for particular States for calendar year 2000, because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. Based on the 2000 calendar year data for market shares from A.M. Best, we proposed no changes to Appendix B.

The eight insurers listed in Appendix B are required to report on their calendar year 2000 activities in every State where they had a 10 percent or greater market share. These reports must be filed by October 25, 2003, and set forth the information required by part 544. As long as these eight insurers remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

### *2. Rental and Leasing Companies*

Appendix C lists rental and leasing companies required to file reports. Based on information in *Automotive Fleet Magazine and Business Travel News* for 2000, NHTSA proposed to remove Ford Rent-A-Car System from Appendix C and to add Thrifty Rental Car System Inc., and Ryder TRS to Appendix C. Each of the 18 companies (including franchisees and licensees) listed in Appendix C would be required to file reports for calendar year 2000 no later than October 25, 2003, and set forth the information required by part 544. As long as those 18 companies remain listed, they would be required to submit reports before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

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[1] A.M. Best Company is a well recognized source of insurance company ratings and information. 49 U.S.C. 33112(i) authorizes NHTSA to consult with public and private organizations as necessary.

[2] Automotive Fleet Magazine and Business Travel News are publications that provide information on the size of fleets and market share of rental and leasing companies.

## Public Comments on Final Determination

*Insurers of Passenger Motor Vehicles*

In the NPRM, the list of passenger motor vehicle insurers who are required to file theft loss reports contained the "Zurich/Farmers Group," a newly listed insurance company. In response to the NPRM, we received two comments regarding the "Zurich/Farmers Group" listing. The first comment was submitted by Farmers Group, Inc. (Farmers), and the second comment was submitted by Zurich North America (Zurich).

Farmers argued that the listing should contain only "Farmers Insurance Group" instead of "Zurich/Farmers Group." Farmers also stated that the "Zurich/Farmers Group" designation does not reflect the legal or economic reality of the relationship between the two separate insurance companies. Specifically, Farmers note that it is "comprised of reciprocal insurance exchanges (which are owned by their policyholders), or the wholly owned subsidiaries of those exchanges." The only part of Farmers owned by Zurich is the management company for the exchanges, Farmer's Group, Inc. Besides owning this management company, Zurich also engages in providing passenger automobile insurance separately, and in competition with Farmers. According to Farmers, therefore, "Zurich/Farmers Group" is not an insurance company and does not own any of the subsidiary companies that write auto insurance.

Zurich similarly argued that the listing in question should contain "Farmers Insurance Group" instead of "Zurich/Farmers Group." Specifically, Zurich described the structure of Farmers and reiterated that Zurich does not control the reciprocal insurance exchanges. Instead, Zurich owns only Farmers Group, Inc., which provides management services to all reciprocal exchanges. Zurich provides its own insurance services for passenger cars under the name of "Zurich North America." Neither the reciprocal insurance exchanges, nor Farmers Group, Inc. are a part of Zurich North America. Further, Zurich has less than 1% market share for passenger car insurance, and therefore, should qualify for small insurer exception. Currently, Zurich estimates it's market share to be at 0.63%.

After reviewing both comments, the agency concluded that Farmers and Zurich are not a single insurance company, and should not be listed together as "Zurich/Farmers Group." The agency agrees with both commenters' basic descriptions of their corporate structure. The agency also notes that while Zurich owns Farmers Group Inc. (which manages reciprocal exchanges), it also engages in providing their own insurance services through a separate entity that is separately licensed to provide insurance. In arriving at our decision, the agency consulted with an A.M. Best Co. insurance analyst familiar with Farmers and Zurich corporate structure, Stephan Holtzberger.[3] Mr. Holtzberger indicated support for our new position. Therefore, Appendix A will list "Farmers Insurance Group" instead of "Zurich Group/Farmers." Zurich North America Insurance will not be listed in Appendix A because it falls short of the requisite 1% market share.

As a result of the new information received in response to the NPRM, this final rule revises the changes initially proposed to Appendix A. The agency received no comments in response to the NPRM for Appendices B and C. Accordingly, this final will reissue Appendix B without change and adopt the proposed changes to Appendix C.

## Submission of Theft Loss Report

Passenger motor vehicle insurers listed in the appendices can forward their theft loss reports to the agency in several ways:

a. *Mail:* Carlita Ballard, Office of Planning and Consumer Standards, NHTSA, NVS–131, 400 Seventh Street, SW., Washington, DC 20590;

b. *E-mail: cballard@nhtsa.dot.gov;* or

c. *Fax:* (202) 493–2290.

Theft loss reports may also be submitted to the docket electronically by:

d. Logging onto the Dockets Management System Web site at *http://dms.dot.gov.* Click on "ES Submit" or "Help" to obtain instructions for filing the document electronically.

## Regulatory Impacts

### *1. Costs and Other Impacts*

This notice has not been reviewed under Executive Order 12866, Regulatory Planning and Review. NHTSA has considered the impact of this proposed rule and has determined that the action is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. This rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are required to file reports.

NHTSA does not believe that this rule, reflecting current data, affects the impacts described in the final regulatory evaluation prepared for the final rule establishing part 544 (52 FR 59; January 2, 1987). Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the Bureau of Labor Statistics Consumer Price Index for 2003 (*see http://www.bls.gov/cpi*), the cost estimates in the 1987 final regulatory evaluation were adjusted for inflation. The agency estimates that the cost of compliance is $86,100 for any insurer added to Appendix A, $34,440 for any insurer added to Appendix B, and $9,936 for any insurer added to Appendix C. In this final rule, for Appendix A, the agency will remove one company and add none; for Appendix B, the agency proposed no change; and for Appendix C, the agency removed one company and added two companies. The agency estimates that the net effect of this final rule would be a decrease of $76,164 to insurers as a group.

Interested persons may examine the 1987 final regulatory evaluation. Copies of that evaluation were placed in Docket No. T86–01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Docket Section, Room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling (202) 366–4949.

### *2. Paperwork Reduction Act*

The information collection requirements in this final rule were submitted and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information is assigned OMB Control Number 2127–0547 ("Insurer Reporting Requirements") and approved for use through August 31, 2003, and the agency will seek to extend the approval afterwards.

### *3. Regulatory Flexibility Act*

The agency also considered the effects of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies proposed for Appendices A, B, or C is construed to be a small entity within the definition of the RFA. "Small insurer" is defined, in part under 49 U.S.C. 33112, as any insurer whose premiums for all forms of motor vehicle insurance account for less than one percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice would exempt all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency proposes to exempt all "self insured rental and leasing companies" that have fleets of fewer than 50,000 vehicles. Any self-insured rental and leasing company too large to meet that criterion is not a small entity.

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[3] Docket No. NHTSA–14372–4.

*4. Federalism*

This action has been analyzed according to the principles and criteria contained in Executive Order 13132, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

*5. Environmental Impacts*

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this final rule and determined that it would not have a significant impact on the quality of the human environment.

*6. Civil Justice Reform*

This final rule does not have any retroactive effect, and it does not preempt any State law. 49 U.S.C. 33117 provides that judicial review of this rule may be obtained pursuant to 49 U.S.C. 32909, and section 32909 does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

*7. Regulation Identifier Number (RIN)*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading, at the beginning, of this document to find this action in the Unified Agenda.

*8. Plain Language*

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the proposal clearly stated?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the proposal easier to understand?

If you have any responses to these questions, you can forward them to me several ways:

a. *Mail:* Carlita Ballard, Office of Planning and Consumer Standards, NVS–131, NHTSA, 400 Seventh Street, SW., Washington, DC 20590;

b. *E-mail: cballard@nhtsa.dot.gov*; or

c. *Fax:* (202) 493–2290.

**List of Subjects in 49 CFR Part 544**

Crime insurance, insurance, insurance companies, motor vehicles, reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR Part 544 is amended as follows:

## PART 544—[AMENDED]

■ 1. The authority citation for part 544 continues to read as follows:

**Authority:** 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

■ 2. Paragraph (a) of § 544.5 is revised to read as follows:

**§ 544.5 General requirements for reports.**

(a) Each insurer to which this part applies shall submit a report annually before October 25, beginning on October 25, 1986. This report shall contain the information required by § 544.6 of this part for the calendar year 3 years previous to the year in which the report is filed (*e.g.*, the report due by October 25, 2003 will contain the required information for the 2000 calendar year).

* * * * *

■ 3. Appendix A to part 544 is revised to read as follows:

### Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Allstate Insurance Group
American Family Insurance Group
American International Group
California State Auto Association
CGU Group
CNA Insurance Companies
Erie Insurance Group
Berkshire Hathaway/GEICO Corporation Group
Great American P & C Group
Hartford Insurance Group
Liberty Mutual Insurance Companies
Metropolitan Life Auto & Home Group
Nationwide Group
Progressive Group
SAFECO Insurance Companies
State Farm Group
Travelers/Citigroup Company
USAA Group
Farmers Insurance Group

■ 4. Appendix B to part 544 will continue to read as follows:

### Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Arbella Mutual Insurance (Massachusetts)
Auto Club of Michigan Group (Michigan)
Commerce Group, Inc. (Massachusetts)
Kentucky Farm Bureau Group (Kentucky)
New Jersey Manufacturers Group (New Jersey)
Southern Farm Bureau Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

■ 5. Appendix C to part 544 is revised to read as follows:

### Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
ARI (Automotive Resources International)
Associates Leasing Inc.
Avis, Rent-A-Car, Inc.
Budget Rent-A-Car Corporation
Consolidated Service Corporation
Dollar Rent-A-Car Systems, Inc.
Donlen Corporation
Enterprise Rent-A-Car
GE Capital Fleet Services
Hertz Rent-A-Car Division (subsidiary of the Hertz Corporation)
Lease Plan USA, Inc.
National Car Rental System, Inc.
PHH Vehicle Management Services
Ryder TRS [1]
Thrifty Rental Car System Inc.[1]
U-Haul International, Inc. (Subsidiary of AMERCO)
Wheels Inc.

[1] Indicates a newly listed company, which must file a report beginning with the report due October 25, 2003.

Issued on: October 6, 2003.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 03–25659 Filed 10–10–03; 8:45 am]

BILLING CODE 4910–59–P

# Proposed Rules

**Federal Register**
Vol. 68, No. 198
Tuesday, October 14, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**14 CFR Part 39**

**[Docket No. 2002–NM–252–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F.28 Mark 0070 and 0100 series airplanes. This proposal would require a one-time general visual inspection of the left and right sides of the pedestal side cover adjacent to the rudder pedal on the cockpit floor for proper installation of the attachment bracket, and corrective actions if necessary. This action is necessary to prevent restricted movement of the rudder pedal due to a loose pedestal side cover causing interference, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by November 13, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–252–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–252–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Tom Rodriguez; Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–252–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–252–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on certain Fokker Model F.28 Mark 0070 and 0100 series airplanes. The CAA–NL advises that an operator reported that a pilot's foot became stuck between the pedestal side cover and the rudder pedal during alignment of the airplane with the runway during approach. The pilot was able to free his foot and land the airplane safely. Investigation revealed at least one similar incident occurred previously. A review of the aircraft maintenance manual revealed that it does not include instructions for installing the pedestal side cover in the attachment bracket; therefore, there may be airplanes in-service with loose pedestal side covers. This condition, if not corrected, could result in restricted movement of the rudder pedal due to a loose pedestal side cover causing interference, which could result in reduced controllability of the airplane.

### Explanation of Relevant Service Information

Fokker Services B.V. has issued Fokker Service Bulletin SBF100–25–092, dated February 4, 2002, which describes procedures for a one-time visual inspection of the left and right sides of the pedestal side cover adjacent to the rudder pedal on the cockpit floor for proper installation in the attachment brackets, and corrective actions if necessary. The corrective actions include the following:

- If an attachment bracket is present on both the left and right sides of the pedestal cover, the service bulletin provides procedures for checking each bracket to make sure the side cover is installed correctly into each bracket, and if it is not installed correctly, reinstall the side cover into the bracket.
- If any attachment bracket is missing, the service bulletin provides procedures for modifying the pedestal side cover attachment as specified in Part 2 of the Accomplishment Instructions of the service bulletin. The modification includes manufacturing and installing attachment angles (brackets), modifying the pedestal side cover, installing an angle assembly, and modifying the pedestal installation cover assembly, as applicable.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA–NL classified this service bulletin as mandatory and issued Dutch airworthiness directive 2002–111, dated July 31, 2002, to ensure the continued airworthiness of these airplanes in the Netherlands.

### FAA's Conclusions

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA–NL has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA–NL, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

### Cost Impact

The FAA estimates that 76 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspections, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,940, or $65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Fokker Services B.V.:** Docket 2002–NM–252–AD.

*Applicability:* Model F.28 Mark 0070 and 0100 series airplanes, having serial numbers 11244 through 11585 inclusive; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent restricted movement of the rudder pedal due to a loose pedestal side cover causing interference, which could result in reduced controllability of the airplane, accomplish the following:

### Inspection and Corrective Actions

(a) Within 12 months after the effective date of this AD, do a one-time general visual inspection of the left and right sides of the pedestal side cover adjacent to the rudder pedal on the cockpit floor for proper installation of the attachment brackets, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–25–092, dated February 4, 2002.

**Note 1:** For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If both brackets are present and the pedestal side cover is properly installed, no further action is required by this AD.

(2) If one or both brackets are missing, or the pedestal side cover is improperly installed, before further flight, accomplish all of the applicable corrective actions in accordance with Part 2 of the Accomplishment Instructions of the service bulletin.

### Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

**Note 2:** The subject of this AD is addressed in Dutch airworthiness directive 2002–111, dated July 31, 2002.

Issued in Renton, Washington, on October 7, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–25866 Filed 10–10–03; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2002–NM–277–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Raytheon Model Hawker 800XP Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Raytheon Model Hawker 800XP airplanes. This proposal would require replacement of certain existing pitot probes with new probes. This action is necessary to prevent loss or fluctuation of indicated airspeed, which could result in seriously misleading information being provided to the flightcrew. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by November 28, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–277–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–277–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

**FOR FURTHER INFORMATION CONTACT:** Chris B. Morgan, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4154; fax (316) 946–4407.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–277–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–277–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The FAA has received several reports of in-flight loss of airspeed indication on Raytheon Model Hawker 800XP airplanes. One report indicated that the operator reported two occurrences of the following indications while flying the airplane at 41,000 feet in the vicinity of clouds: (1) Mach trim warning, (2) autopilot disconnect, and (3) airspeed indication (lost airspeed indication was on both sides the first time, and was lost on one side with an inaccurate reading on the other side the second time).

The cause of the loss of airspeed indication has been attributed to the freezing over of pitot probes in icing conditions above the 29,000-foot parameter defined in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). The heater inside the pitot probes is not powerful enough to prevent the accumulation of ice on the probes during conditions of high moisture content and lower temperatures. As ice forms on the pitot probes, it blocks the airflow into the instruments. This condition, if not corrected, could result in loss or fluctuation of indicated airspeed, which could result in seriously misleading information being provided to the flightcrew.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Service Bulletin SB 34–3412, dated March 2001, which describes procedures for replacement of certain existing pitot probes with new probes having increased heating capability. The replacement includes installing a new ammeter, two new shunts, and improved electrical wiring. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

### Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

### Differences Between the Service Bulletin and This Proposed AD

The service bulletin recommends accomplishing the replacement "no later than the next 24 month inspection"; however, this proposed AD would require that the replacement be done at the next 24-month inspection, but no later than 6 months after the effective date of the AD. In developing an appropriate compliance time for this proposed AD, we have considered the degree of urgency associated with the subject unsafe condition, in addition to the fact that maintenance schedules vary among operators, depending on the average utilization of the affected fleet and the time necessary to perform the actions. In light of these factors, we find that this compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

Although the Accomplishment Instructions of the service bulletin describe procedures for reporting accomplishment of the service bulletin to Raytheon Aircraft Company, this proposed AD would not require that action.

### Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

### Labor Rate Increase

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

### Cost Impact

There are approximately 224 airplanes of the affected design in the worldwide fleet. The FAA estimates that 155 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 50 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost approximately $11,425 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,274,625, or $14,675 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Raytheon Aircraft Company:** Docket 2002–NM–277–AD.

*Applicability:* Model Hawker 800XP airplanes having serial number 258266 and serial numbers 258277 through 258500 inclusive; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent loss or fluctuation of indicated airspeed, which could result in seriously misleading information being provided to the flightcrew, accomplish the following:

### Replacement

(a) At the next scheduled 24-month inspection, but no later than 6 months after the effective date of this AD: Replace the existing Rosemount Aerospace 853JF pitot probes with new Rosemount Aerospace 853JF1 pitot probes (includes installing a new ammeter, two new shunts, and improved electrical writing), by doing all the actions in paragraph 3.A. of the Accomplishment Instructions of Raytheon Service Bulletin SB 34–3412, dated March 2001. Do the actions per the service bulletin.

### Parts Installation

(b) As of the effective date of this AD, no person shall install a Rosemount Aerospace 853JF pitot probe, or an ammeter having P/N 2132–01–0017, on any airplane.

### Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Wichita Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on October 7, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–25867 Filed 10–10–03; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 2001–NM–275–AD]

RIN 2120–AA64

## Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–90–30

airplanes, that currently requires repetitive fluorescent penetrant and magnetic particle inspections to detect fatigue cracking of the main landing gear (MLG) piston, and repair if necessary. This action would expand the applicability of the existing AD to require the currently required inspections, and corrective actions if necessary, on additional airplanes and MLG piston part numbers, and would require repetitive inspections for evidence of cracking in the paint topcoat of the MLG pistons. This action also would require replacement of certain MLG shock strut piston assemblies with new or serviceable improved assemblies, which would terminate the requirements of this AD. These actions are necessary to prevent fatigue cracking of MLG pistons, which could result in failure of the pistons, and consequent damage to the airplane structure and injury to flightcrew, passengers, or ground personnel. These actions are intended to address the identified unsafe condition.

**DATES:** Comments must be received by November 28, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–275–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–275–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

**FOR FURTHER INFORMATION CONTACT:** Carl Fountain, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5222; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–275–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–275–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

On February 8, 2000, the FAA issued AD 2000–03–08, amendment 39–11567 (65 FR 7719, February 16, 2000), applicable to certain McDonnell Douglas Model MD–90–30 airplanes, to require repetitive fluorescent penetrant and magnetic particle inspections to detect fatigue cracking of the main landing gear (MLG) piston, and repair if necessary. That action was prompted by reports that, during towing of in-service airplanes, MLG failures occurred due to fatigue cracks. The requirements of that AD are intended to detect and correct fatigue cracking of MLG pistons, which could result in failure of the pistons, and consequent damage to the airplane structure and injury to flightcrew, passengers, or ground personnel.

In the preamble to AD 2000–03–08, we specified that the actions required by that AD were considered "interim action" and that the manufacturer was developing a modification to address the unsafe condition. We indicated that we might consider further rulemaking action once the modification was developed, approved, and available. The manufacturer now has developed such a modification, and we have determined that further rulemaking action is indeed necessary. This proposed AD follows from that determination.

### Actions Since Issuance of Previous Rule

Since the issuance of AD 2000–03–08, we have issued AD 2002–10–03, amendment 39–12749 (67 FR 34823), which applies to certain McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), MD–88, and MD–90–30 airplanes. For Model MD–90–30 airplanes, that AD requires replacement of certain MLG shock strut piston assemblies with new or serviceable improved assemblies, according to Boeing Service Bulletin MD90–32–031, Revision 01, dated April 25, 2001. Accomplishment of that replacement will terminate the requirements of this AD, as noted in paragraph (b) of AD 2002–10–03. Therefore, we have included in paragraph (j) of this proposed AD the requirements of paragraph (a) of AD 2002–10–03 that apply to the Model MD–90–30 airplanes subject to this proposed AD. The compliance time for the replacement specified in this proposed AD ("Before the accumulation of 30,000 total landings on the MLG shock strut piston assemblies, or within 5,000 landings after June 20, 2002 (the effective date of AD 2002–10–03, amendment 39–12749), whichever occurs later") is the same as the compliance time in paragraph (a) of AD 2002–10–03. Once this proposed AD becomes effective, we may consider further rulemaking to revise or rescind AD 2002–10–03 to remove the duplicate requirement.

### Explanation of Relevant Service Information

We have reviewed and approved Boeing Service Bulletin MD90–32–012, Revision 03, dated June 29, 2001. (AD 2000–03–08 refers to Boeing Service Bulletin MD90–32–012, Revision 01, dated June 2, 1998, as the acceptable source of service information for the actions required by that AD. Also, the applicability statement of AD 2000–03–08 states that the AD applies to Model MD–90–30 airplanes as listed in Boeing Service Bulletin MD90–32–012, Revision 01). Revision 03 of the service bulletin is also effective for additional airplanes and MLG piston part numbers that were not included in Revision 01 of the service bulletin. Revision 03 describes procedures for initial fluorescent penetrant and magnetic particle inspections to detect cracking of the MLG torque link lugs; follow-on repetitive visual, fluorescent penetrant, and magnetic particle inspections for cracking of the MLG torque link lugs; and repetitive visual inspections for evidence of cracking in the paint topcoat, and, if any evidence of cracking in the paint topcoat is found, a follow-on NDT inspection of the MLG piston to determine if any cracking is present. Revision 03 of the service bulletin specifies to contact Boeing for repair instructions if any crack is found.

As explained previously in the preamble of the notice of proposed rulemaking (NPRM) for AD 2002–10–03, the FAA has reviewed and approved Boeing Service Bulletin MD90–32–031, Revision 01. That service bulletin describes procedures for replacement of the MLG shock strut piston assemblies, left and right-hand side, with new or serviceable, improved assemblies, which would eliminate the need for the repetitive inspections described above.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2000–03–08 to continue to require repetitive fluorescent penetrant and magnetic particle inspections to detect fatigue cracking of the MLG piston, and repair if necessary. The proposed AD would expand the applicability of the existing AD to include additional airplanes and MLG piston part numbers. These actions would be required to be accomplished per Boeing Service Bulletin MD90–32–012, Revision 03, which was described previously, except as discussed below under the heading "Differences Between Proposed AD and Service Bulletin." The proposed AD also would require replacement of certain MLG shock strut piston assemblies with new or serviceable improved assemblies, which would terminate the existing requirements of this proposed AD. This action would be required to be accomplished per Boeing Service Bulletin MD90–32–031, Revision 01.

Operators may note that, consistent with the provisions of Boeing Service Bulletin MD90–32–012, Revision 03, if any evidence of cracking in the paint topcoat of the MLG piston is found, the proposed AD would allow deferral, for the earlier of 7 days or 50 landings, of the follow-on NDT inspection to detect any cracking of the MLG piston. We have determined that, for this proposed AD, such a deferral would not adversely affect the continued operating safety of an affected airplane. Accomplishment of the NDT inspection for cracking of the MLG piston, and any necessary repair, within 7 days or 50 landings after evidence of cracking in the topcoat paint is found, would adequately ensure that any cracking of the MLG piston would be detected before it represents a hazard to the airplane.

### Differences Between Proposed AD and Service Bulletin

Although Boeing Service Bulletin MD90–32–012, Revision 03, describes procedures for fluorescent penetrant and magnetic particle inspections, that service bulletin does not emphasize the sequence of these inspections. We find that, in each inspection cycle, it is necessary for the fluorescent penetrant inspection to precede the magnetic particle inspection. This sequencing is important because we are aware of cases in which accomplishment of a magnetic particle inspection before a fluorescent penetrant inspection interfered with the results of the fluorescent penetrant inspection. Therefore, paragraph (e) has been included in this proposed AD to clarify that, for inspections performed after the effective date of this AD, accomplishment of the fluorescent penetrant inspection must precede accomplishment of the magnetic particle inspection.

Operators should note that, although Boeing Service Bulletin MD90–32–012, Revision 03, specifies that the manufacturer may be contacted for disposition of repair conditions, this proposed AD would require repairs to be accomplished per a method approved by the FAA.

### Cost Impact

There are approximately 114 Model MD–90–30 airplanes of the affected design in the worldwide fleet.

In AD 2000–03–08, we estimated that the actions in that AD applied to 15 airplanes of U.S. registry. The actions that are currently required by AD 2000–03–08 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $1,950, or $130 per airplane, per inspection cycle.

The FAA estimates that 21 airplanes of U.S. registry would be affected by this new proposed AD.

The new inspections that are proposed in this AD action would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $2,730, or $130 per airplane.

As explained previously, the replacement of MLG pistons that is included in this proposed AD is already required by AD 2002–10–03. Therefore, this proposed AD would add no new costs associated with that action. We restate the cost impact estimate in its entirety in this proposed AD for the convenience of affected operators:

The replacement that is included in this AD action and currently required by AD 2002–10–03 takes approximately 28 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts cost approximately $263,438 per airplane. Based on these figures, the cost impact of this requirement on U.S. operators of airplanes subject to this proposed AD is estimated to be $5,570,418, or $265,258 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. As a result, the costs attributable to the proposed AD may be less than stated above.

## Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11567 (65 FR 7719, February 16, 2000), and by adding a new airworthiness directive (AD), to read as follows:

**McDonnell Douglas:** Docket 2001–NM–275–AD. Supersedes AD 2000–03–08, Amendment 39–11567.

*Applicability:* Model MD–90–30 airplanes listed in Boeing Service Bulletin MD90–32–012, Revision 03, dated June 29, 2001; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent fatigue cracking of main landing gear (MLG) pistons, which could result in failure of the pistons, and consequent damage to the airplane structure and injury to flightcrew, passengers, or ground personnel, accomplish the following:

### Restatement of Requirements of AD 2000–03–08

*Inspection of MLG Piston Part Number 5935347–509*

(a) For airplanes listed in McDonnell Douglas Service Bulletin MD90–32–012, Revision 01, dated June 2, 1998: For MLG pistons, part number (P/N) 5935347–509, perform fluorescent penetrant and magnetic particle inspections to detect fatigue cracking of the MLG pistons, in accordance with McDonnell Douglas Service Bulletin MD90–32–012, dated May 19, 1997, or Revision 01, dated June 2, 1998; or Boeing Service Bulletin MD90–32–012, Revision 03, dated June 29, 2001; at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD. Repeat the inspections thereafter at intervals not to exceed 2,500 landings.

(1) Prior to the accumulation of 4,000 total landings; or

(2) Within 2,500 landings or 12 months after March 22, 2000 (the effective date of AD 2000–03–08, amendment 39–11567), whichever is first.

*Inspection of MLG Piston Part Numbers 5935347–511 and –513*

(b) For airplanes listed in McDonnell Douglas Service Bulletin MD90–32–012, Revision 01, dated June 2, 1998: For MLG pistons, P/Ns 5935347–511 and –513, within 5,000 landings after March 22, 2000, perform fluorescent penetrant and magnetic particle inspections to detect fatigue cracking of the MLG pistons, in accordance with McDonnell Douglas Service Bulletin MD90–32–012, dated May 19, 1997, or Revision 01, dated June 2, 1998; or Boeing Service Bulletin MD90–32–012, Revision 03, dated June 29, 2001. Repeat the inspections thereafter at intervals not to exceed 5,000 landings.

*Repair*

(c) If any crack is found during any inspection required by paragraphs (a), (b), or (f) of this AD: Repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Los Angeles ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

### New Requirements of This AD

*No Requirement To Submit Information*

(d) Although Boeing Service Bulletin MD90–32–012, Revision 03, dated June 29, 2001, specifies to submit information to the manufacturer, this AD does not include such a requirement.

*Clarification of Inspection Sequence*

(e) For inspections accomplished after the effective date of this AD: Where this AD requires fluorescent penetrant and magnetic particle inspections, accomplishment of the fluorescent penetrant inspection must precede accomplishment of the magnetic particle inspection.

*Inspection of MLG Piston P/Ns 5935347–1 through –509, –511, and –513; and SR09320081–3 through –13*

(f) For any MLG piston having P/N 5935347–1 through –509, –511, or –513; or P/Ns SR09320081–3 through –13: Perform fluorescent penetrant and magnetic particle inspections to detect fatigue cracking of the MLG pistons, in accordance with Boeing Service Bulletin MD90–32–012, Revision 03, dated June 29, 2001. Do the initial inspections at the later of the times specified in paragraphs (f)(1) and (f)(2) of this AD, except as provided by paragraph (g) of this AD. Repeat the inspections thereafter at intervals not to exceed 5,000 landings.

(1) Prior to the accumulation of 4,000 total landings; or

(2) Within 2,500 landings or 12 months after the effective date of this AD, whichever is first.

*MLG Pistons Inspected Per Paragraph (a) or (b) of This AD*

(g) MLG pistons having P/N 5935347–509, -511, or -513 that have been inspected as required by paragraph (a) or (b) of this AD, as applicable, are not required to be reinspected per paragraph (f) of this AD.

*Repetitive Inspections for Evidence of Cracking and Follow-on Actions*

(h) During the first brake change after the effective date of this AD, perform a general visual inspection to find evidence of cracking in the paint topcoat of the MLG piston, per the Accomplishment Instructions of Boeing Service Bulletin MD90–32–012, Revision 03, dated June 29, 2001. Repeat this inspection during every brake change.

(1) If any evidence of cracking in the paint topcoat, as described in the service bulletin, is found: Within 7 days or 50 landings after the evidence is found, whichever is first, perform a non-destructive test (NDT) inspection of the MLG piston to determine if there is any cracking.

(2) If any crack is found during the NDT inspection required by paragraph (h)(1) of this AD, before further flight, repair per a method approved by the Manager, Los Angeles ACO. For a repair method to be approved by the Manager, Los Angeles ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

**Note 1:** For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

*Inspections Accomplished Per Previous Issue of Service Bulletin*

(i) Inspections accomplished before the effective date of this AD per McDonnell Douglas Service Bulletin MD90–32–012, Revision 02, dated June 29, 1999, are considered acceptable for compliance with the corresponding action specified in this AD.

*Replacement of MLG Shock Strut Piston Assemblies*

(j) Before the accumulation of 30,000 total landings on the MLG shock strut piston assemblies, or within 5,000 landings after June 20, 2002 (the effective date of AD 2002–10–03, amendment 39–12749), whichever occurs later: Replace the MLG shock strut piston assemblies, left- and right-hand sides, with new or serviceable improved assemblies, per the Accomplishment Instructions of Boeing Service Bulletin MD90–32–031, Revision 01, dated April 25, 2001. If the MLG shock strut piston is not serialized or the number of landings on the piston cannot be conclusively determined, consider the total number of landings on the piston assembly to be equal to the total number of landings accumulated by the airplane with the highest total number of landings in the operator's fleet.

**Note 2:** Paragraph (a) of AD 2002–10–03, amendment 39–12749, requires the same actions as paragraph (j) of this AD.

*Compliance With Requirements of Other ADs*

(k) Accomplishment of the replacement required by paragraph (j) of this AD constitutes terminating action for the requirements of this AD and AD 2002–10–03, amendment 39–12749, for the Model MD–90–30 airplanes listed in Boeing Service Bulletin MD90–32–012, Revision 03, dated June 29, 2001.

*Alternative Methods of Compliance*

(l)(1) In accordance with 14 CFR 39.19, the Manager, Los Angeles ACO, is authorized to approve alternative methods of compliance for this AD.

(2) Alternative methods of compliance, approved previously per AD 2000–03–08, amendment 39–11567, are approved as alternative methods of compliance with paragraphs (a), (b), and (c) of this AD.

Issued in Renton, Washington, on October 7, 2003.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–25868 Filed 10–10–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[CGD01–03–096]**

**RIN 1625–AA09**

## Drawbridge Operation Regulations; Rahway River, NJ

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the drawbridge operating regulations governing the operation of the Conrail Bridge, mile 2.0, across the Rahway River at Linden, New Jersey. This proposed rule would allow the bridge to be operated from a remote location. The bridge would remain in the open position at all times except for the passage of rail traffic. This rule is expected to relieve the bridge owner of the burden of crewing the bridge at all times while still providing for the reasonable needs of navigation.

**DATES:** Comments must reach the Coast Guard on or before December 15, 2003.

**ADDRESSES:** You may mail comments and related material to Commander (obr), First Coast Guard District Bridge Branch, One South Street, Battery Park Building, New York, New York, 10004, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Joe Arca, Project Officer, First Coast Guard District, (212) 668–7069.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–03–096), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

### Background and Purpose

The Conrail Bridge has a vertical clearance of 6 feet at mean high water and 11 feet at mean low water in the closed position.

The existing drawbridge operation regulations listed at 33 CFR 117.743, require the bridge to open on signal from April 1 through November 30, from 6 a.m. to 10 p.m. At all other times, the bridge opens on signal if at least a four-hour notice is given.

The Conrail Bridge across the Rahway River is navigated predominantly by small recreational vessels April through November.

The owner of the bridge, Consolidated Rail Corporation (Conrail), requested a change to the drawbridge operation regulations that would allow the bridge owner to operate the bridge from a remote location. The bridge would be operated from the remote location by a bridge/train dispatcher located at the Conrail Dispatch Office at Mount Laurel, New Jersey. The on scene bridge tender would be eliminated by this rulemaking.

It is expected that this proposed rule, if adopted, would relieve the bridge owner of the burden of crewing the bridge at all times while still meeting the reasonable needs of navigation.

### Discussion of Proposal

This proposed rule would relieve the bridge owner from the burden of crewing the bridge at all times by allowing the bridge to be operated from a remote location while still meeting the reasonable needs of navigation.

Under this proposed rule the bridge would remain in the full open position at all times and be closed only for the passage of rail traffic. The procedure for closing the Conrail Bridge to vessel traffic to allow the passage of rail traffic across the waterway would be as follows:

All rail traffic approaching the bridge would be stopped at a safe point before crossing the bridge; a train crewmember would detrain and relocate to a good vantage point to observe the waterway both up and down stream. Any vessel traffic observed approaching the bridge would be allowed to pass through the bridge before closing; once it is determined that no vessel traffic is approaching or under the bridge, the train crewmember would then communicate by radio or telephone with the remotely located bridge/train dispatcher at the Conrail Dispatch Office, at Mount Laurel, New Jersey, requesting the bridge to be closed.

Before closing the bridge a public address system would announce that the bridge is closing, a marine traffic light system located at the bridge facing both upstream and downstream would change from flashing green to flashing red, and a horn would sound two times, pause 10 seconds, then repeat two horn blasts until the bridge is seated and locked down.

During the downward bridge span closing the bridge/train dispatcher would continually monitor the infrared sensor system to ensure that no vessel traffic is approaching or passing under the bridge. After the rail traffic has cleared the bridge, the horn would sound five times to signal that the bridge is about to open.

Based upon all the above information, the Coast Guard believes that this proposed rule is reasonable. It is expected that this rule will relieve the bridge owner from the burden of crewing the bridge at all times while still meeting the reasonable needs of navigation.

**Regulatory Evaluation**

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under the regulatory policies and procedures of DHS, is unnecessary.

This conclusion is based on the fact that the bridge would be open for vessel traffic at all times, except for the passage of rail traffic.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under section 5 U.S.C. 605(b), that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the bridge would be open for vessel traffic at all times, except for the passage of rail traffic.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

**Collection of Information**

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that may disproportionately affect children.

**Indian Tribal Governments**

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Environment**

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section

2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environment documentation because it has been determined that the promulgation of operating regulations for drawbridges are categorically excluded.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulations**

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.743 is revised to read as follows:

### § 117.743 Rahway River.

The draw of the Conrail Bridge, mile 2.0, across the Rahway River, at Linden, New Jersey, shall operate as follows:

(a) The draw shall remain in the full open position at all times, and shall only be closed for the passage of rail traffic or the performance of maintenance authorized in accordance with subpart A of this part.

(b) The draw shall be remotely operated by a bridge/train dispatcher located at the Conrail Dispatch Office at Mount Laurel, New Jersey.

(c) A marine traffic light system shall be maintained at the bridge and display flashing green lights to indicate that vessels may pass through the bridge, and flashing red lights any time the bridge is not in the full open position.

(d) An infrared sensor system shall be maintained at the bridge to determine that no conflict with vessel traffic exists while the bridge is closing.

(e) Before the bridge may be closed from the remote location, an on-site train crewmember shall observe the waterway for any vessel traffic. All approaching vessels shall be allowed to pass before the bridge may close. The on-site train crewmember shall then communicate with the bridge/train dispatcher at the Conrail Dispatch Office, at Mount Laurel, either by radio or telephone, to request that the bridge be closed.

(f) While the bridge is moving from the full open to full closed position, the bridge/train dispatcher shall maintain constant surveillance of the navigational channel at the bridge using the infrared sensor system.

(g) If the infrared sensors detect a vessel or other obstruction approaching or under the bridge before the draw is fully lowered and locked, the closing sequence is stopped, automatically, and the draw is raised to its fully open position until the channel is clear.

(h) During the downward bridge closing movement, the marine traffic light system located at the bridge will change from flashing green to flashing red, the public address system will announce that the bridge will be closing, and the horn will sound two times, pause 10 seconds, then repeat two horn blasts until the bridge is seated and fully locked down.

(i) When all rail traffic has cleared the bridge, the bridge/train dispatcher will sound the horn five times to signal that the draw is about to open.

(j) In the event of a failure, or obstruction to the infrared sensor system, the bridge shall immediately be returned to the full open position until the problem is corrected.

(k) In the event of a loss of communication between the on-site personnel and the bridge/train dispatcher, the bridge shall immediately be returned to the full open position until the problem is corrected.

(l) Should the draw become inoperable from the remote site while the bridge is in the closed position, a bridge tender, maintenance personnel, or engineer shall be deployed to be on site within one hour from the time the draw becomes inoperable until the bridge can be returned to the full open position.

(m) Trains shall be controlled so that any delay in opening of the draw shall not exceed ten minutes after a train has crossed the bridge; except as provided in 33 CFR 117.31(b). However, if a train moving toward the bridge has crossed the home signal for the bridge, the train may continue across the bridge and must clear the bridge interlocks before stopping.

Dated: September 29, 2003.

**John L. Grenier,**

*Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.*

[FR Doc. 03–25892 Filed 10–10–03; 8:45 am]

BILLING CODE 4910–15–P

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[CA 253–0405b; FRL–7567–7]**

## Revisions to the California State Implementation Plan, El Dorado County Air Pollution Control District and Santa Barbara County Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the El Dorado County Air Pollution Control District (EDCAPCD) and Santa Barbara County Air Pollution Control District (SBCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern nitrogen oxide ($NO_X$) emissions from biomass boilers and from large water heaters and small boilers. We are proposing to approve a local rule under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments on this proposal must arrive by November 13, 2003.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; *steckel.andrew@epa.gov.*

You can inspect a copy of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revisions and TSDs at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

El Dorado County Air Pollution Control District, 2850 Fairlane Court, Building C, Placerville, CA 95667.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B–23, Goleta, CA 93117.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

**FOR FURTHER INFORMATION CONTACT:** Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

**SUPPLEMENTARY INFORMATION:** This proposal addresses the approval of local EDCAPCD Rule 232 and SBCAPCD Rule 360. In the Rules section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: September 3, 2003.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

[FR Doc. 03–25801 Filed 10–10–03; 8:45 am]

**BILLING CODE 6560–50–U**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[KY 135—200337(b); FRL–7573–1]**

## Approval and Promulgation of Implementation Plans for Kentucky: Source-Specific Revision for Marathon Ashland Petroleum Marine Repair Terminal

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve a source-specific revision to the State Implementation Plan (SIP) of the Commonwealth of Kentucky. This revision requires the Marathon Ashland Petroleum Marine Repair Terminal (MAPMRT) to implement volatile organic compound (VOC) reasonably available control technology (RACT) for its barge cleaning operation as part of a contingency measure implemented for the Huntington-Ashland 1-Hour Ozone Maintenance Area. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** Written comments must be received on or before November 13, 2003.

**ADDRESSES:** Comments may be submitted by mail to: Michele Notarianni, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in the direct final rule, **SUPPLEMENTARY INFORMATION** (sections VI.B.1. through 3.), which is published in the Rules Section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Michele Notarianni, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Phone: (404) 562–9031. E-mail: *notarianni.michele@epa.gov*.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the Rules Section of this **Federal Register.**

Dated: October 1, 2003.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 03–25799 Filed 10–10–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### 44 CFR Parts 61 and 62

**RIN 1660–AA28**

## National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers

**AGENCY:** Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Proposed rule.

**SUMMARY:** FEMA is proposing to amend the Federal Insurance Administration, Financial Assistance/Subsidy Arrangement ("Arrangement") and related regulations regarding issues of Federal jurisdiction and Federal law for lawsuits involving Write-Your-Own (WYO) Companies and the rules for reimbursing WYO Companies for the cost of litigation, including issues of agent negligence and the relationship of the agent to the WYO Company. Additionally, FEMA is amending procedures for companies seeking to become and ceasing to be WYO Companies.

On September 5, 2003, FEMA published an interim final rule that amends FEMA's Arrangement. The purpose of that rule was to extend the current Arrangement for 3 months to allow FEMA to make the changes proposed in this rulemaking.

**DATES:** FEMA invites comments on this proposed rule, which should be received on or before November 13, 2003.

**ADDRESSES:** Please send your comments to the Rules Docket Clerk, Office of the General Counsel, FEMA, 500 C Street, SW., Room 840, Washington, DC 20472, (facsimile) 202–646–4536, or (email) *rules@fema.gov*.

**FOR FURTHER INFORMATION CONTACT:** Charles Plaxico, FEMA, 500 C Street, SW., Washington, DC 20472, (phone) 202–646–3422, (facsimile) 202–646–4327, or (email) *Charles.Plaxico@dhs.gov*.

**SUPPLEMENTARY INFORMATION:** Under the Arrangement, approximately 100 private sector property insurers issue flood insurance policies and adjust flood insurance claims under their own names, based on an arrangement with the Federal Insurance Administration (FIA) (44 CFR Part 62, Appendix A). The WYO insurers receive an expense allowance and remit the remaining premium to the Federal Government. The Federal Government pays WYO insurers for flood losses and pays loss adjustment expenses based on a fee schedule. Litigation costs, including court costs, attorney fees, judgments, and settlements, are paid by FIA based on submitted documentation. The Arrangement provides that under certain circumstances reimbursement for litigation costs will not be made. FEMA proposes several changes to the Arrangement and related regulations.

FEMA proposes to clarify 44 CFR 61.5 by creating a new Section f from the current text of Section e. FEMA proposes to add 44 CFR 61.5(f) to provide that agents utilized by a WYO

Company, like agents utilized by FEMA, act for the insured and are not agents of the WYO Company.

FEMA proposes to amend 44 CFR 62.22(a) to clarify that its provisions for Federal jurisdiction include WYO Companies.

FEMA proposes to amend 44 CFR 62.23(g) to recognize WYO Companies as fiscal agents of the Federal Government. This is based on section 1340(a)(1) of the National Flood Insurance Act of 1968, as amended. FEMA believes this change will clarify matters of jurisdiction and choice of law for WYO Companies. However, WYO Companies are not recognized as general agents of the Federal Government. The proposed amendment also provides that the Federal Government is not a proper party defendant in any lawsuit arising out of a WYO policy.

The remaining proposed amendments apply to Appendix A to Part 62—Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/Subsidy Arrangement.

In Article I, FEMA proposes to amend the fifth paragraph to refer to the Federal Treasury, to clarify that WYO Companies are responsible for Federal funds. A companion proposed amendment to Article III, Section D.1, also refers to Federal funds. FEMA proposes to add two new paragraph clauses to Article I to emphasize the Federal nature of the WYO Companies' activities under the Arrangement, and support the application of Federal law in Federal Court to lawsuits arising under the Arrangement.

FEMA proposes to delete the tenth paragraph as currently drafted in Article I to clarify that policyholders and applicants are not direct beneficiaries of the Arrangement.

FEMA proposes to amend Article II, Section G to clarify the WYO Company's duty to comply with written standards, procedures, and guidance issued by FEMA or FIA.

FEMA proposes to amend Article III, Section B to delete the word "their" before the phrase "insurance agents" to be consistent with the proposed amendment to 44 CFR 61.5(e), as discussed above, that provides that the WYO agent is not the agent of the WYO Company.

FEMA proposes to amend Article III, Section D.2 to provide that failure to meet these requirements may result in no reimbursement, which is similar to a statement in the deleted Article III, Section D.3. The reference to Article IX in Article III, Section D.2 would be deleted in light of FEMA's proposed amendment of Article IX to restrict it to matters not in litigation. FEMA proposes to delete Article III, Section D.3 because its litigation documentation and notification requirements have been established by FEMA outside the Arrangement.

FEMA proposes to amend Article III, Section D.4 (now renumbered as Article III, Section D.3), concerning reimbursement for WYO Company litigation costs, to delete the reference to insurer negligence and the cross-reference to Article IX. The issue of insurer negligence for matters in litigation will be dealt with in the context of the other standards in the new Article III, Section D.3. Article IX would now only apply to insurer negligence that has not resulted in litigation. The existing "significantly outside the scope" standard will be left in the new Article III, Section D.3. A provision will be added relating to a pattern of errors found in operation reviews, audits, or a review after litigation has been filed.

Agent negligence would continue to be grounds for non-reimbursement of litigation costs. FEMA would continue to evaluate whether a WYO Company would be reimbursed for costs, fees, and settlement payments (when appropriate) when agent negligence is alleged against that WYO Company for which they could be held financially responsible. Where FEMA determines that there is no agent negligence, the WYO Company would be reimbursed for the litigation costs of defending itself against the possibility that it could be held financially responsible for agent negligence; where FEMA determines that there is agent negligence, the WYO Company may still be reimbursed for litigation costs for the defense of policy provisions and for its own negligence. FEMA has not changed the general rule that litigation costs are not reimbursable if they relate to actions that are significantly outside the scope of the Arrangement.

FEMA proposes to expressly recognize that a part of litigation could be "significantly outside the scope" of the Arrangement while part is within the scope. In such a case, reimbursement would be based on the appropriate division of responsibility, if possible. Reimbursement for legal expenses ("costs to defend such litigation") will now be explicitly treated the same way as reimbursement for awards or judgments. A WYO Company can now petition the Federal Insurance Administrator, ("Administrator") instead of the Standards Committee, for reconsideration of a decision not to reimburse for litigation. The Administrator could then seek the advice of the Standards Committee. There will no longer be a deadline for a decision.

FEMA proposes to amend Article III, Section E to clarify that WYO Companies must follow the refund rules established by FIA since flood insurance premiums are funds of the Federal Government.

FEMA proposes to amend Article V to clarify the procedures for a company to become, or to cease to be, a WYO Company. Companies will also be required to inform FEMA of their intent to continue in or leave the program within 30 days of the offer.

In Article V, Section C, the time during which the WYO Company can be required to continue performance while it exits the program by running off or transferring its business will be extended from 1 year to 18 months. Notice and billing cycles make the one-year limit impractical. The proposed amendment will also require a WYO Company to tell FEMA if it plans to leave the program during the Arrangement year.

FEMA proposes to amend Article V, Section C.1.a to set out the requirements when the business is to be transferred to FIA. The proposed amendment also would establish in Article V, Section C.2 the requirement for FIA approval of transfer of the business to another WYO Company.

FEMA proposes to amend Article V, Section D to formalize the possibility of non-renewal of the Arrangement by FIA for material failure of the WYO Company to comply with the Arrangement or to take corrective action required by the FIA, and to offer the alternative of permitting the transfer by sale, subject to FIA approval, as in Article V, Section C.2.

FEMA proposes to re-designate Article V, Section F (cancellation of the Arrangement resulting from an order or directive issued by a Department of Insurance) to Section E so that it immediately follows Section D (cancellation of the Arrangement by FIA) because these two sections are parallel in purpose and construction and should be placed together. This results in existing Section E being re-designated as Section F. The new Section E allows the possibility of the sale of the book of business, subject to FIA approval, similar to the proposed revision to Section D.

FEMA proposes to amend Article VII, Section C to make its provisions regarding settlement of accounts when the WYO Company's participation ends applicable to situations where the WYO Company is unable to or not permitted to participate, as well as where the WYO Company elects not to participate. In addition, the final settlement will now be made subject to audit.

FEMA proposes to amend Article IX to address only matters not in litigation. Its provisions regarding reimbursement of the WYO Company are consistent with the new Article III, Section D.3, which addresses matters in litigation. To be consistent with Article III, Section D.3, FEMA amends the existing Article IX language, "error or omission," to "negligence." It provides that there will be no reimbursement for claims against the WYO Company grounded in actions "significantly outside the scope."

FEMA proposes to amend Article XVI to reflect the proposed changes to 44 CFR 62.23(g), as discussed above.

On September 5, 2003, FEMA published an interim final rule, 68 FR 52700, that amends the Arrangement. The purpose of that rule was to extend the current Arrangement for three months to allow FEMA to make the changes proposed in this rulemaking.

### National Environmental Policy Act

This proposed rule falls within the exclusion category 44 CFR part 10.8(d)(2)(ii), which addresses the preparation, revision, and adoption of regulations, directives, manuals, and other guidance documents related to actions that qualify for categorical exclusions. Because no other extraordinary circumstances have been identified, this proposed rule will not require the preparation of either an environmental assessment or an environmental impact statement as defined by the National Environmental Policy Act.

### Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this proposed rule under the provisions of Executive Order 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, Oct. 4, 1993, a significant regulatory action is subject to review by the Office of Management and Budget ("OMB") and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in th[e] Executive [O]rder.

For the reasons that follow, FEMA has concluded that this proposed rule is neither a significant regulatory action nor an economically significant rule under the Executive Order. This proposed rule amends the Arrangement and related regulations to clarify issues of Federal jurisdiction and Federal law for disputes involving WYO Companies and the rules for reimbursing WYO Companies for the cost of litigation. It will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, the insurance sector, competition, or other sectors of the economy. It will create no serious inconsistency or otherwise interfere with an action taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Finally, it does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has not reviewed this rule under the principles of Executive Order 12866.

### Paperwork Reduction Act

This proposed rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Regulatory Flexibility Act

Under the Regulatory Flexibility Act, agencies must consider the impact of their rulemakings on "small entities" (small businesses, small organizations and local governments). When 5 U.S.C. 553 requires an agency to publish a notice of proposed rulemaking, the Act requires a regulatory flexibility analysis for both the proposed rule and the final rule if the rulemaking could "have a significant economic impact on a substantial number of small entities." The Act also provides that if a regulatory flexibility analysis is not required, the agency must certify in the rulemaking document that the rulemaking will not "have a significant economic impact on a substantial number of small entities."

A regulatory flexibility analysis is not required for this proposed rule because it would not have a significant economic impact on a substantial number of small entities.

### Executive Order 13132, Federalism

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria to which agencies must adhere in formulating and implementing policies that have federalism implications; that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and must consult with State and local officials before implementing any such action to the extent practicable.

FEMA has reviewed this proposed rule under Executive Order 13132 and concludes that the proposed rule has no federalism implications as defined by the Executive Order. FEMA has determined that the rule does not significantly affect the rights, roles, and responsibilities of States, involves no preemption of State law and does not limit State policymaking discretion.

### Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of § 2(b)(2) of Executive Order 12778.

### List of Subjects in 44 CFR Parts 61 and 62

Claims, Flood insurance.

Accordingly, we propose to amend 44 CFR parts 61 and 62 as follows:

## PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for part 61 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Amend § 61.5 by revising paragraph (e) and add a new paragraph (f) to read as follows:

**§ 61.5 Special terms and conditions.**

* * * * *

(e) The standard flood insurance policy is authorized only under the terms and conditions established by Federal statute, the program's regulations, the Administrator's interpretations, and the express terms of the policy itself. Any representations regarding the extent and scope of coverage which are not consistent with the National Flood Insurance Act of 1968, as amended, or the Program's regulations are void.

(f) Any duly licensed property or casualty agent selling and servicing NFIP policies acts for the insured, and does not act as agent for the Federal Government, the Federal Emergency Management Agency, the Federal Insurance Administration, the servicing agent, or the Write-Your-Own Company.

## PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

3. The authority citation for part 62 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

4. Amend § 62.22 by revising paragraph (a) to read as follows:

### § 62.22 Judicial review.

(a) Upon the disallowance by the Federal Insurance Administration, a participating Write-Your-Own Company, or the servicing agent of any claim on grounds other than failure to file a proof of loss, or upon the refusal of the claimant to accept the amount allowed upon any claim after appraisal pursuant to policy provisions, the claimant within one year after the date of mailing by the Federal Insurance Administration, the participating Write-Your-Own Company, or the servicing agent of the notice of disallowance or partial disallowance of the claim may, pursuant to 42 U.S.C. 4072, institute an action on such claim against the insurer only in the U.S. District Court for the district in which the insured property or the major portion thereof shall have been situated, without regard to the amount in controversy.

* * * * *

5. Amend § 62.23 by revising paragraph (g) to read as follows:

### § 62.23 WYO Companies authorized.

* * * * *

(g) A WYO Company shall act as a fiscal agent of the Federal Government, but not as its general agent. WYO Companies are solely responsible for their obligations to their insured under any flood insurance policies issued under agreements entered into with the Administrator, such that the Federal Government is not a proper party defendant in any lawsuit arising out of such policies.

* * * * *

6. In Appendix A to part 62, revise the *Effective Date* to read as follows:

### Appendix A to Part 62—Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/Subsidy Arrangement

* * * * *

Effective Date: January 1, 2004.

* * * * *

7. In Appendix A to part 62, revise Article I to read as follows:

### Appendix A to Part 62–Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/Subsidy Arrangement

* * * * *

Article I—Findings, Purpose, and Authority

Whereas, the Congress in its "Finding and Declaration of Purpose" in the National Flood Insurance Act of 1968, as amended, ("the Act" or "Act") recognized the benefit of having the National Flood Insurance Program (the "Program" or "NFIP") "carried out to the maximum extent practicable by the private insurance industry"; and

Whereas the Federal Insurance Administration (FIA) recognizes this Arrangement as coming under the provisions of section 1345 of the Act (42 U.S.C. 4081); and

Whereas, the goal of the FIA is to develop a program with the insurance industry where, over time, some risk-bearing role for the industry will evolve as intended by the Congress (section 1304 of the Act (42 U.S.C. 4011)); and

Whereas, the insurer (hereinafter the "Company") under this Arrangement shall charge rates established by the FIA; and

Whereas, FIA has promulgated regulations and guidance implementing the Act and the Write-Your-Own Program whereby participating private insurance companies act in a fiduciary capacity utilizing Federal funds to sell and administer the Standard Flood Insurance Policies, and has extensively regulated the participating companies' activities when selling or administering the Standard Flood Insurance Policies; and

Whereas, any litigation resulting from, related to, or arising from the Company's compliance with the written standards, procedures, and guidance issued by FEMA or FIA arises under the Act, regulations, or FIA guidance, and legal issues thereunder raise a Federal question; and

Whereas, through this Arrangement, the Federal Treasury will subsidize all flood policy claim payments by the Company; and

Whereas, this Arrangement has been developed to enable any interested qualified insurer to write flood insurance under its own name; and

Whereas, one of the primary objectives of the Program is to provide coverage to the maximum number of structures at risk and because the insurance industry has marketing access through its existing facilities not directly available to the FIA, it has been concluded that coverage will be extended to those who would not otherwise be insured under the Program; and

Whereas, flood insurance policies issued subject to this Arrangement shall be only that insurance written by the Company in its own name under prescribed policy conditions and pursuant to this Arrangement and the Act; and

Whereas, over time, the Program is designed to increase industry participation, and accordingly, reduce or eliminate Government as the principal vehicle for delivering flood insurance to the public.

Now, therefore, the parties hereto mutually undertake the following:

8. In Appendix A to part 62, revise Article II, section G to read as follows:

Article II—Undertaking of the Company

* * * * *

G. Compliance with Agency Standard and Guidelines.

1. The Company shall comply with written standards, procedures, and guidance issued by FEMA or FIA relating to the NFIP and applicable to the Company.

2. The Company shall market flood insurance policies in a manner consistent with marketing guidelines established by FIA.

9. In Appendix A to part 62 amend Article III to revise the second paragraph of section B; revise section D; and add a sentence to the end of section E to read as follows:

Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds

* * * * *

B. * * *

* * * * *

The Company may retain fifteen percent (15%) of the Company's written premium on the policies covered by this Arrangement as the commission allowance to meet commissions or salaries of insurance agents, brokers, or other entities producing qualified flood insurance applications and other related expenses.

* * * * *

D. Loss Payments.

1. Loss payments under policies of flood insurance shall be made by the Company from Federal funds retained in the bank account(s) established under Article II, section E and, if such funds are depleted, from Federal funds derived by drawing against the Letter of Credit established pursuant to Article IV.

2. Loss payments include payments as a result of litigation that arises under the scope of this Arrangement, and the Authorities set forth herein. All such loss payments and related expenses must meet the documentation requirements of the Financial Control Plan and of this Arrangement, and the Company must comply with the litigation documentation and notification requirements established by FEMA. Failure to meet these requirements may result in the Administrator's decision not to provide reimbursement.

3. Limitation on Litigation Costs.

a. Following receipt of notice of such litigation, the FEMA Office of the General Counsel ("OGC") shall review the information submitted. If the FEMA OGC finds that the litigation is grounded in actions by the Company that are significantly outside the scope of this Arrangement, and/or involves issues of agent negligence, then the FEMA OGC shall make a recommendation to the Administrator regarding whether all or part of the litigation is significantly outside the scope of the Arrangement.

b. If the Administrator makes a determination that an Operation Review or audit conducted pursuant to the WYO Financial Control Plan, 44 CFR part 62, appendix B, or an audit conducted by the Department of Homeland Security Office of Inspector General, or a review of the Company's business after a lawsuit has been filed against the Company reveals that the Company has a pattern of errors, and an error of that type has resulted in litigation, that litigation will be considered significantly outside the scope of the Arrangement.

c. In the event the Administrator agrees with the determination of the FEMA OGC under Article III, section D.3.a, or makes the determination regarding a pattern of errors under Article III, section D.3.b, the Company will be notified in writing within thirty (30) days of the Administrator's decision that any award or judgment for damages and any costs to defend such litigation will not be recognized under Article III as a reimbursable loss cost, expense or expense reimbursement.

d. In the event a question arises whether only part of a litigation is reimbursable, the FEMA OGC shall make a recommendation to the Administrator about the appropriate division of responsibility, if possible.

e. In the event that the Company wishes to petition for reconsideration of the determination that it will not be reimbursed for any part of the award or judgment or any part of the costs expended to defend such litigation made under Article III, section D.3.a–d, it may do so by mailing, within thirty (30) days of the notice that reimbursement will not be made, a written petition to the Administrator, who may request the advice of the WYO Standards Committee established under the WYO Financial Control Plan. The WYO Standards Committee will consider the request at its next regularly scheduled meeting or at a special meeting called for that purpose by the Chairman and issue a written recommendation to the Administrator. The Administrator's final determination, after advisement from the Standards Committee (if sought), will be made in writing to the Company.

E. * * * As fiscal agent, the Company shall not refund any premium to applicants or policyholders in any manner other than as specified in the NFIP's "Flood Insurance Manual" since flood insurance premiums are funds of the Federal Government.

10. In Appendix A to part 62, revise Article V to read as follows:

Article V—Commencement and Termination

A. The initial period of this Arrangement is from January 1, 2004 through September 30, 2004. Thereafter the Arrangement will be effective on an annual basis for the period October 1 through September 30. The FIA shall provide financial assistance only for policy applications and endorsements accepted by the Company during this period pursuant to the Program's effective date, underwriting and eligibility rules.

B. Each year, the FIA shall publish in the **Federal Register** and make available to the Company the terms for subscription or re-subscription to this Financial Assistance/Subsidy Arrangement. The Company shall notify the FIA of its intent to re-subscribe or not re-subscribe within thirty days of publication.

C. In order to assure uninterrupted service to policyholders, the Company shall promptly notify the FIA in the event the Company elects not to participate in the Program during the Arrangement year. If so notified, or if the FIA chooses not to renew the Company's participation, the FIA, at its option, may require the continued performance of all or selected elements of this Arrangement for the period required for orderly transfer or cessation of business and settlement of accounts, not to exceed 18 months, and may either require Article V.C.1 or allow Article V.C.2:

1. The delivery to the FIA of:

a. A plan for the orderly transfer to the FIA of any continuing responsibilities in administering the policies issued by the Company under the Program including provisions for coordination assistance; and

b. All data received, produced, and maintained through the life of the Company's participation in the Program, including certain data, as determined by FIA, in a standard format and medium; and

c. All claims and policy files, including those pertaining to receipts and disbursements that have occurred during the life of each policy. In the event of a transfer of the services provided, the Company shall provide the FIA with a report showing, on a policy basis, any amounts due from or payable to insureds, agents, brokers, and others as of the transition date; and

d. All funds in its possession with respect to any policies transferred to FIA for administration and the unearned expenses retained by the Company.

2. Submission of plans for the renewal of the business by another WYO Company or Companies or the submission of detailed plans for another WYO Company to assume responsibility for the Company's NFIP policies. Such plans shall assure uninterrupted service to policyholders and shall be accompanied by a formal request for FIA approval of such transfers.

D. Financial assistance under this Arrangement may be canceled by the FIA in its entirety upon thirty (30) days written notice to the Company by certified mail stating one of the following reasons for such cancellation: (i) Fraud or misrepresentation by the Company subsequent to the inception of the Arrangement; or (ii) Nonpayment to the FIA of any amount due the FIA; or (iii) Material failure to comply with the requirements of this Arrangement or with the written standards, procedures, or guidance issued by FEMA or FIA relating to the NFIP and applicable to the Company. Under these specific conditions, the FIA may require the transfer of administrative responsibilities and the transfer of data and records as provided in Article V, section C.1.a through d. If transfer is required, the unearned expenses retained by the Company shall be remitted to the FIA. In such event, the Government will assume all obligations and liabilities owed to policyholders under such policies, arising before and after the date of transfer. The FIA, at its option, may alternatively consider proposals and plans for the assumption of responsibilities by another WYO Company as provided in Article V, section C.2.

E. In the event that the Company is unable or otherwise fails to carry out its obligations under this Arrangement by reason of any order or directive duly issued by the Department of Insurance of any jurisdiction to which the Company is subject, the Company agrees to transfer, and the Government will accept, any and all WYO policies issued by the Company and in force as of the date of such inability or failure to perform. In such event the Government will assume all obligations and liabilities within the scope of the Arrangement owed to policyholders arising before and after the date of transfer, and the Company will immediately transfer to the Government all needed records and data and all funds in its possession with respect to all such policies transferred and the unearned expenses retained by the Company. The FIA, at its option, may alternatively consider proposals for the assumption of responsibilities by another WYO Company as provided by Article V, section C.2.

F. In the event the Act is amended, or repealed, or expires, or if the FIA is otherwise without authority to continue the Program, financial assistance under this Arrangement may be canceled for any new or renewal business, but the Arrangement shall continue for policies in force that shall be allowed to run their term under the Arrangement.

11. In Appendix A, part 62, revise Article VII section C. to read as follows:

Article VII—Cash Management and Accounting

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C. In the event the Company elects not to participate in the Program in this or any subsequent fiscal year, or is otherwise unable or not permitted to participate, the Company and FIA shall make a provisional settlement of all amounts due or owing within three months of the expiration or termination of this Arrangement. This settlement shall include net premiums collected, funds drawn on the Letter of Credit, and reserves for outstanding claims. The Company and FIA agree to make a final settlement, subject to audit, of accounts for all obligations arising from this Arrangement within 18 months of its expiration or termination, except for contingent liabilities that shall be listed by the Company. At the time of final settlement, the balance, if any, due the FIA or the Company shall be remitted by the other immediately and the operating year under this Arrangement shall be closed.

12. In Appendix A to part 62, revise the first paragraph of Article IX to read as follows:

Article IX—Errors and Omissions

In the event of negligence by the Company that has not resulted in litigation but has resulted in a claim against the Company, FEMA will not consider reimbursement of the Company for costs incurred due to that negligence unless the Company takes all reasonable actions to rectify the negligence and to mitigate any such costs as soon as possible after discovery of the negligence. Further, (i) if the claim against the Company is grounded in actions significantly outside the scope of this Arrangement, (ii) if there is negligence by the agent, or (iii) if there is an error that is the type of error for which there has been a determination by the Administrator of a pattern of errors as described in Article III, section D.3.b, FEMA will not reimburse any costs incurred due to that negligence or error. The Company will be notified in writing within thirty (30) days of a decision not to reimburse. In the event the Company wishes to petition for reconsideration of the decision not to reimburse, the procedure in Article III, section D.3.e shall apply.

* * * * *

13. In Appendix A to part 62, revise Article XVI to read as follows:

Article XVI—Relationship Between the Parties (Federal Government and Company) and the Insured

Inasmuch as the Federal Government is a guarantor hereunder, the primary relationship between the Company and the Federal Government is one of a fiduciary nature, *i.e.*, to assure that any taxpayer funds are accounted for and appropriately expended. The Company is a fiscal agent of the Federal Government, but is not a general agent of the Federal Government. The Company is solely responsible for its obligations to its insured under any policy issued pursuant hereto, such that the Federal Government is not a proper party to any lawsuit arising out of such policies.

Dated: October 7, 2003.

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–25905 Filed 10–10–03; 8:45 am]

BILLING CODE 6718–03–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 622

**[Docket No. 030917233–3233–01; I.D. 082703A]**

**RIN 0648–AP50**

## Fisheries of the Gulf of Mexico; Coastal Migratory Pelagic Resources; Stock Status Determination Criteria

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** In accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP), NMFS proposes to incorporate into the FMP biomass-based stock status determination criteria consistent with the requirements of the Magnuson-Stevens Fisheries Conservation and Management Act (Magnuson-Stevens Act). Criteria to be incorporated include maximum sustainable yield (MSY), optimum yield (OY), minimum stock size threshold (MSST) and maximum fishing mortality threshold (MFMT) for king and Spanish mackerel and cobia stocks under the jurisdiction of the Gulf of Mexico Fishery Management Council (Council).

**DATES:** Written comments must be received on or before November 13, 2003.

**ADDRESSES:** Written comments on the proposed rule should be mailed to Dr. Steve Branstetter, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727–522–5583. Comments will not be accepted if submitted via e-mail or Internet.

Requests for copies of the regulatory amendment, which includes an

Environmental Assessment, a Regulatory Flexibility Act Analysis (RFAA), and a Regulatory Impact Review (RIR), should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway North, Suite 1000, Tampa, FL 33619–2266, telephone: 813–228–2815, fax: 813–225–7015, e-mail: *gulfcouncil@noaa.gov*.

**FOR FURTHER INFORMATION CONTACT:** Dr. Steve Branstetter, telephone: 727–570–5796, fax: 727–570–5583, e-mail: *Steve.Branstetter@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The fisheries for coastal migratory pelagic (CMP) resources are regulated under the FMP. The FMP was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils and was approved by NMFS and implemented by regulations at 50 CFR part 622.

In accordance with the FMP's framework procedure, the Council has submitted to the Regional Administrator, Southeast Region, NMFS, a regulatory amendment containing recommendations for changes in designations of stock status criteria for Gulf migratory groups of king and Spanish mackerel and for a Gulf migratory group of cobia (to be designated via subsequent plan amendment). The most recent scientific evidence indicates that the cobia stock is comprised of separate migratory groups in the Gulf of Mexico and Atlantic. However, the FMP identifies only a single cobia stock. The establishment of separate migratory groups of cobia will require that the FMP be amended. Therefore, implementation of the stock status criteria for a Gulf migratory group of cobia would be deferred pending the development of an amendment to the FMP.

Section 303 of the Magnuson-Stevens Act requires that the regional fishery management councils: (1) assess the condition of managed stocks, (2) specify within their fishery management plans objective and measurable criteria for identifying when the stocks are overfished and when overfishing is occurring (referred to by NMFS as stock status determination criteria), and (3) amend their fishery management plans to include measures to rebuild overfished stocks and maintain them at healthy levels capable of producing MSY. NMFS' national standard guidelines (NSGs) direct the councils to meet these statutory requirements by incorporating into each FMP estimates of certain biomass-based parameters for each stock, including a designation of the stock biomass that will produce MSY (BMSY).

On November 17, 1999, NMFS notified the Council that it had partially approved the Council's Generic Sustainable Fisheries Act Amendment. In that notification, NMFS approved the designation and definition of an MFMT for CMP fish stocks managed under the jurisdiction of the Council, but disapproved the proposed designations of MSY, OY, and MSST because they were not biomass-based, as recommended by the NSGs. Since that time, NMFS has worked cooperatively with the Council to develop acceptable stock status criteria for the Gulf migratory groups of those CMP stocks.

Accordingly, this proposed rule would establish biomass-based reference points, as identified in the table below, for MSY, OY, and MSST, and would amend the existing designations of MFMT for Gulf migratory group king mackerel, Gulf migratory group Spanish mackerel, and a (to be designated) Gulf migratory group of cobia.

| | Gulf group king mackerel | Gulf group Spanish mackerel | Gulf group cobia[1] |
|---|---|---|---|
| MSY[2] | yield at $F_{30\%SPR}$ (currently 10.7 million lb or 4.85 million kg). | yield @ $F_{30\%SPR}$(currently 8.7 million lb or 3.95 million kg). | yield @ $F_{msy}$(currently 1.49 million lb or 0.676 million kg) |
| OY | yield at $F_{OY}$ = 0.85*$F_{MSY}$ (currently 10.2 million lb or 4.63 million kg). | yield at $F_{OY}$ = 0.75 *$F_{MSY}$ (currently 8.3 million lb or 3.76 million kg). | yield @ $F_{OY}$ =0.75*$F_{MSY}$ (currently 1.45 million lb or 0.658 million kg) |
| MFMT | $F_{30\%SPR} = F_{MSY}$ | $F_{30\%SPR} = F_{MSY}$ | $F_{MSY}$ |
| MSST[3] | (1–M)*$B_{MSY}$ or 80% of $B_{MSY}$ | (1–M)*$B_{MSY}$ or 70% of $B_{MSY}$ | (1–M)*$B_{MSY}$ or 70% of $B_{MSY}$ |
| overfished | 50% probability $F_{current} > F_{MSY}$ | 50% probability $F_{current} > F_{MSY}$ | 50% probability $F_{current} > F_{MSY}$ |
| overfishing | 50% probability $B_{current}$ < MSST | 50% probability $B_{current}$ < MSST | 50% probability $B_{current}$ < MSST |

[1] Implementation deferred pending formal designation of a Gulf migratory group of cobia through an amendment to the FMP.

[2] F = fishing mortality rate; SPR refers to spawning potential ratio

[3] M, or natural mortality, is estimated at 0.20 for king mackerel, and 0.30 for both Spanish mackerel and cobia. $B_{current}$ represents the current estimates of stock biomass; $B_{MSY}$ represents the estimated stock biomass required to produce MSY

NMFS invites public comment on these proposed parameters. Comments received by November 13, 2003 will be considered by NMFS in its decision to approve or disapprove the action identified in this proposed rule. Comments received after that date will not be considered by NMFS in this decision. NMFS decision will be based on determinations regarding the consistency of the proposed provisions with the FMP, the Magnuson-Stevens Act, and other applicable law, as well as the consideration of comments received during the comment period on this proposed rule. Approved population parameters would be considered legitimate measures of the FMP, but would not appear in codified text.

## Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The basis for this determination is summarized as follows.

The Magnuson-Stevens Act provides the statutory basis for the proposed rule. The proposed rule would establish benchmarks and status criteria for Gulf migratory groups of king and Spanish mackerel, and a pending designation of a Gulf migratory group of cobia. The establishment of these stock status criteria would allow more accurate assessments regarding the health of these fish stocks, prevent overfishing, and provide optimum benefits to the fisheries and the public. No projected reporting, record keeping or other compliance requirements are proposed. No duplicative, overlapping or conflicting Federal rules have been identified.

In the Gulf area, 1,440 commercial vessels have permits to fish for king mackerel. These vessel owners have a median net (taxable) income of $3,670. These vessels operate in multiple fisheries and are not, therefore, totally dependent upon sales of coastal migratory pelagic species. There are 113 for-hire vessels that only have a permit for coastal migratory pelagic species, and 1,403 for-hire vessels that possess both reef fish and coastal migratory pelagic permits. Most of the for-hire craft are traditional charter boats, and fishing for coastal migratory pelagic species comprises only a portion of their total effort and revenues. The median gross fishing revenue was approximately $20,000, with a median value for net income of $4,000. Thus, all the commercial and for-hire harvesting units are classified as small entities. Since the proposed rule would apply to all entities participating in the coastal migratory pelagic fishery and all entities are classified as small entities, the proposed rule would apply to a substantial number of small entities.

The criteria used to determine significant impact include disproportionality and profitability. As described earlier, all the affected entities are classified as small entities so the issue of disproportionate impacts does not arise. Further, since there are no implementing regulations associated with the proposed rule, there would be no direct effects on current fishery participation, effort, harvests, or other use of the resource. All current entities can continue to participate in the fishery in the manner in which they currently operate. Therefore, all current harvests, costs, and profits would remain unchanged. Any adverse effects on small entities that participate in the fishery would only occur in the future, should stock conditions change, requiring a need to adjust fishery regulations to achieve the benchmarks established by this proposed rule. The likelihood of this occurring in either the near or distant future is unknown and cannot be determined. Further, the resultant impact of these future regulations cannot be predicted since the magnitude of required change is unknown, as is the method that would be selected to achieve the required change. These impacts, however, would be determined should such change be required.

In summary, while the proposed rule would apply to a substantial number of small entities, these entities would not be affected in a significant way since status quo fishing practices are allowed to continue. The proposed rule would establish targets/goals that current and future management actions would attempt to achieve/attain. However, at this time, no changes in existing harvest restrictions are proposed. Future changes to harvesting restrictions would be evaluated for their impacts when they are proposed. Therefore, the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities and, thus, an initial regulatory flexibility analysis was not required.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: October 8, 2003.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 03–25924 Filed 10–10–03; 8:45 am]

BILLING CODE 3510–22–S

# Notices

Federal Register
Vol. 68, No. 198
Tuesday, October 14, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

October 8, 2003

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Foreign Agricultural Service**

*Title:* Pub. L. 480, Title I Financing and Record Keeping.

*OMB Control Number:* 0551–0005.

*Summary of Collection:* The Foreign Agricultural Service (FAS) is responsible for administering Public Law 480, Title I agreements, as amended. This regulation provides for the financing of sales of U.S. agricultural commodities to recipients of foreign countries or private entities. In accordance with the law, an agreement providing for long-term credit financing is first negotiated with the recipient through diplomatic channels. After an agreement has been signed, the recipient applies to FAS for authorization to purchase each commodity provided in the agreement. At least 75 percent of the gross tonnage of commodities purchased under Title I must be shipped on privately owned U.S. flag commercial vessels to the extent such vessels are available at fair and reasonable rates. If ocean transportation is required to a country where there is no U.S. flag vessel coverage, a foreign vessel will be used at its prevailing rate. The recipient must send the pertinent terms of all proposed ocean freight contracts, regardless of whether any portion of the ocean freight is financed by CCC, to FAS for review and approval before the vessel is contracted.

*Need and Use of the Information:* FAS will collect information to insure that (1) suppliers keep accurate records on Title I transactions; (2) suppliers permit access to authorized USDA representatives (such as auditors and investigators); and, (3) suppliers retain records for three years after final payment. FAS will review and evaluate the information to ensure that there are no potential conflicts of interests and ensure that the sales price is within the prevailing range of export market prices. Without the information, FAS could not ensure program compliance.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 25.

*Frequency of Responses:* Recordkeeping; Reporting; On occasion.

*Total Burden Hours:* 47.

**Farm Service Agency**

*Title:* Agricultural Foreign Investment Disclosure Act Report.

*OMB Control Number:* 0560–0097.

*Summary of Collection:* The Agricultural Foreign Investment Disclosure Act (AFIDA) requires foreign investors to report to the U.S. Department of Agriculture (USDA) in a timely manner all held, acquired, or transferred U.S. agricultural land. The Secretary of Agriculture has delegated authority for the collection of this information to the Farm Service Agency (FSA). Foreign investors may obtain form FSA–153, AFIDA Report, from their local FSA county office or from the FSA Internet site. Investors are required to file report within 90 days of the acquisition, transfer, or change in the use of their land.

*Need and Use of the Information:* The information collected from the AFIDA Reports is used to monitor the effect of foreign investment upon family farms and rural communities and in the preparation of a voluntary report to Congress and the President. Congress reviews the report and decides if regulatory action is necessary to limit the amount of foreign investment in U.S. agricultural land. If this information was not collected, USDA could not effectively monitor foreign investment and the impact of such holdings upon family farms and rural communities.

*Description of Respondents:* Business or other for-profit; Individuals or households; Farms.

*Number of Respondents:* 4,375.

*Frequency of Responses:* Reporting: on occasion.

*Total Burden Hours:* 904.

**Farm Service Agency**

*Title:* Farm storage Facility Loan Program.

*OMB Control Number:* 0560–0204.

*Summary of Collection:* 7 CFR 1436 authorizes the Farm Service Agency (FSA) to administer the Commodity Credit Corporation (CCC) Farm Storage Facility Loan Program (FSFLP). The regulations provide terms and conditions in which CCC may provide low-cost financing for producers to build or upgrade on-farm storage and handling facilities. Producers requesting loans must provide information regarding the need for farm storage capacity and the storage facility they propose to construct. The information is needed to determine if the farmer has a need for the proposed capacity and the proposed structure.

*Need and Use of the Information:* FSA will collect information from producers to establish eligibility for the program and to determine that the structure proposed is not in conflict with local land use laws. The information is needed by CCC to make loans to farmers who have a bona fide storage need and to make loans that will be repaid on time. If the information is not collected, the producer may not receive the full benefits of the program.

*Description of Respondents:* Farms; Individuals or households; Business or other for-profit; State, Local or Tribal Government.

*Number of Respondents:* 2,000.

*Frequency of Responses:* Reporting: Other (once).

*Total Burden Hours:* 3,985.

**Animal and Plant Health Inspection Service**

*Title:* Specimen Submission.

*OMB Control Number:* 0579–0090.

*Summary of Collection:* Under the authority of Title 21, U.S.C., the Secretary of Agriculture is permitted to prevent, control and eliminate domestic diseases such as tuberculosis, as well as to take actions to prevent and to manage exotic diseases such as hog cholera, African swine fever, and other foreign diseases. The National Veterinary Services Laboratories cannot accomplish disease prevention without the existence of an effective disease surveillance program, which includes disease testing. Information is collected on each animal specimen submitted for analysis by the Animal and Plant Health Inspection Service (APHIS) using form VS 10–4, "Specimen Submission".

*Need and Use of the Information:* The form VS 10–4 used by State or Federal veterinarians documents the collections and submissions of specimens for laboratory analysis. In addition, the form identifies the individual animal from which the specimen is taken as well as the animal's herd or flock; the type of specimen submitted, and the purpose of submitting the specimen. Without the information contained on this form, personnel at the National Veterinary Services laboratories would have no way of identifying or processing the specimens sent to them for analysis.

*Description of Respondents:* State, Local or Tribal Government; Farms.

*Number of Respondents:* 12,000.

*Frequency of Responses:* Reporting: on occasion.

*Total Burden Hours:* 9,000.

**Animal and Plant Health Inspection Service**

*Title:* TB in Cattle and Bison, State Designations: California.

*OMB Control Number:* 0579–0220.

*Summary of Collection:* Under the authority of Title 21, U.S.C., the Secretary of Agriculture is permitted to prevent, control and eliminate domestic diseases such as tuberculosis, as well as to take actions to prevent and to manage exotic diseases such as foot-and-mouth, rinderpest, and other foreign diseases. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the ability of U.S. producers to compete in the global market of animal and animal product trade. An interim rule was published to remove California from the list of accredited free States and add it to the list of modified accredited advanced States. This action is to help prevent the spread of tuberculosis from California to other areas of the United States. Cattle moving interstate from California will need to be officially identified via premises of origin identification (ear tags).

*Needs and Use of the Information:* Certain herd owners in California moving their cattle interstate will need to affix ear tags to these animals prior to movement. The ear tags will identify the animal to its herd of origin, and will be useful to the Animal and Plant Health Inspection Service in the event that a trace-back investigation must be conducted. Without the information, it would be impossible to effectively monitor the interstate movement of cattle from California or to conduct a successful trace-back investigation if any animal is diagnosed with tuberculosis following interstate movement.

*Description of Respondents:* Farms; Individuals or households.

*Number Respondents:* 600.

*Frequency of Responses:* Reporting: On Occasion.

*Total Burden Hours:* 960.

**Animal and Plant Health Inspection Service**

*Title:* TB in Cattle and Bison, State Designations: New Mexico.

*OMB Control Number:* 0579–0229.

*Summary of Collection:* Bovine tuberculosis is a contagious, infectious, and communicable disease caused by Mycobacterium bovis. It affects cattle, bison, deer, elk, goats, and other species, including humans. Bovine tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts, causes weight loss and general debilitation, and can be fatal. Recently, two tuberculosis-infected herds were detected in New Mexico; an interim rule was published to remove New Mexico from the list of accredited-free State to the list of modified accredited advanced states. The Animal and Plant Health Inspection Service (APHIS) took this action to help prevent the spread of bovine tuberculosis from New Mexico to other areas of the United States. Authority for engaging in disease containment activities associated with tuberculosis is contained in Part 77 of Title 9, CFR.

*Need and Use of the Information:* Certain herd owners in New Mexico moving their cattle interstate will need to affix ear tags to these animals prior to movement. The ear tags will identify the animal to its herd of origin and will be useful to APHIS in the event that a trace-back investigation must be conducted. Without the information, it would be impossible to effectively monitor the interstate movement of cattle or bison from New Mexico or to conduct a successful trace-back investigation if any animal is diagnosed with tuberculosis following interstate movement.

*Description of Respondents:* Farms; Individuals or households; Federal Government.

*Number of Respondents:* 375

*Frequency of Responses:* Reporting: On occasion

*Total Burden Hours:* 600.

**Food Safety and Inspection Service**

*Title:* Pathogen Reduction and Hazard Analysis and Critical Control Point (HACCP) Requirements.

*OMB Control Number:* 0583–0103.

*Summary of Collection:* The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 mandate that the Food Safety and Inspection Service (FSIS) protect the public by ensuring the meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged. FSIS has begun to build the principle of prevention into its inspection program and requires regulated establishments to prepare operating plans and continuously report performance against the plans.

*Need and Use of the Information:* Information will be collected from establishments as proof that standard operating plans have been developed. Additionally, information must be reported and pertinent records maintained on the occurrence and numbers of pathogenic microorganisms on meat and poultry products. FSIS will use this information during the inspection process to determine whether an establishment should change its operating procedures so that the public's health is protected.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 8,114.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion; Other (daily).

*Total Burden Hours:* 7,463,679.

**Food and Nutrition Service**

*Title:* Worksheet for Food Stamp Program Quality Control Reviews.

*OMB Control Number:* 0584–0074.

*Summary of Collection:* State agencies are required to perform Quality Control Reviews for the Food Stamp Program in conjunction with section 16 of the Food Stamp Act of 1977. The food stamp worksheet (FNS–380) provides a systematic means of aiding the State agency's quality control reviewer in analyzing household case record; planning and carrying out the field investigations; and gathering, comparing, analyzing and evaluating the review data. Relevant information from the case record, and documentation about individual cases is recorded on the FNS–380.

*Need and Use of the Information:* The Food and Nutrition Service (FNS) will use the information from the FNS–380 to record identifying information about the household and to also document and evaluate each step of the field investigation process to determine eligibility and payment amounts under FNS' approved State agency practices.

*Description of Respondents:* State, Local, or Tribal Government; Federal Government; individuals or households.

*Number of Respondents:* 53.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion; Annually.

*Total Burden Hours:* 519,679.

**Forest Service**

*Title:* Youth Conservation Corps Application & Medical History Forms.

*OMB Control Number:* 0596–0084.

*Summary of Collection:* Under Pub. L. 93–408, the Youth Conservation Corps Act (YCC), the Forest Service provides seasonal employment for eligible youth 15 to 18 years old. As part of this effort, the Forest Service collects information from applicants to evaluate their eligibility for employment with the agency through the program. Each eligible youth, who wish to apply and be considered for employment in the YCC program must submit an application form (FS 1800–18). This is a seasonal program requiring new submission by applicants each year. Selected participants must complete the medical history form and their parent or guardian must sign. This is necessary to certify the youth's physical fitness to serve in the YCC program.

*Need and Use of the Information:* All candidates interested in participating in the YCC program must complete an application. Those applicants, selected at random, complete the form FS 1800–3, Youth Conservation Corps Medical History, which provides information needed to determine certification of suitability, any special medical or medication needs, and a file record to protect both the Federal Government and individuals. If not used, the government's liability risk is high, special needs of one individual may not be known, or the screening of an applicant's physical suitability would be greatly inhibited.

*Description of Respondents:* Individuals or households.

*Number of Respondents:* 18,000.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 6,000.

**Forest Service**

*Title:* Agreement to Initiate (ATI) and Exchange Agreement (EA)

*OMB Control Number:* 0596–0105.

*Summary of Collection:* Land exchanges are an important tool to consolidate landownership for purposes of more efficient management; to secure important Forest Plan objectives of resource management, enhancement, development, and protection; and to fulfill other public needs such as acquiring lands important for such resources as fisheries habitat, wild and scenic rivers, wildlife habitat, and wilderness. A land exchange is where the United States has identified either federal land or federal interest in land available for exchange and a non-Federal party has identified either private land or private interest in land they are interested in exchanging. The primary authorities used to perform land exchanges involving National Forest Systems lands include the General Exchange Act, the Weeks Act, the Federal Land Policy and Management Act and the Federal Land Exchange Facilitation Act.

*Need and use of the Information:* The Forest Service (FS) will collect information by phone, in face-to-face meetings, or by mail. FS will also collect information such as the identification of the non-Federal land exchange parties; the description of the lands and interests to be exchanged, such as roads; the identification of all reserve and outstanding interests, such as roads, minerals, and easements; and all other terms and conditions necessary to complete exchange. To not collect the information would mean the land exchange was dropped.

*Description of Respondents:* Business or other for-profit; Individuals or households; State, Local or Tribal Government.

*Number of Respondents:* 100.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 200.

**National Agricultural Statistics Service**

*Title:* Honey Survey.

*OMB Control Number:* 0535–0153.

*Summary of Collection:* The National Agricultural Statistics Service (NASS) primary function is to prepare and issue State and national estimates of crop and livestock production. General authority for these data collection activities is granted under U.S. Code Title 7, section 2204 Domestic honeybees are critical to the pollination of U.S. crops, especially fruits and vegetables. Africanized bees, parasites, diseases, and pesticides threaten the survival of bees. Programs are provided by federal, State and local governments to assist in the survival of bees and to encourage beekeepers to maintain bee colonies

*Need and Use of the Information:* NASS will collect information on the number of colonies, honey production, stocks, and prices. The survey will provide data needed by the Department and other government agencies to administer programs and to set trade quotas and tariffs. Without the information, the agricultural industry would not be aware of changes at the State and national level.

*Description of Respondents:* Farms.

*Number of Respondents:* 7,041.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 1,096.

**Rural Business Service**

*Title:* Intermediary Re-lending Program.

*OMB Control Number:* 0570–0021.

*Summary or Collection:* The objective of the Intermediary Relending Program (IRP) is to improve community facilities and employment opportunities and increase economic activities in rural areas by financing business facilities and community development. This purpose is achieved through loans made by the Rural Business-Cooperative Service (RBS) to intermediaries that establish programs for the purpose of providing loans to ultimate recipients for business facilities and community development. The Food Security Act of 1985 provides USDA with the authority to make loans to nonprofit entities who will in turn provide financial assistance to rural businesses to improve business, industry and employment opportunities as well as provide a diversification of the economy in rural areas.

*Need and Use of the Information:* The information requested is necessary for RBS to process applications in a responsible manner, make prudent credit and program decisions, and effectively monitor the intermediaries' activities to protect the Government's financial interest and ensure that funds obtained from the Government are used appropriately. Various forms are used to identify the intermediary, describe the intermediary's experience and expertise, describe how the intermediary will operate its revolving loan fund, provide for debt instruments, loan agreements, security, and other material necessary for prudent credit decisions and reasonable program monitoring.

*Description of Respondents:* Not-for-profit institutions; Individuals or households; Business or other for-profit.

*Number of Respondents:* 160.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 16,930.

**Rural Business-Cooperative Service**

*Title:* University Value-Added Research Grant.

*OMB Control Number:* 0570–0046.

*Summary of Collection:* The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) authorizes the Secretary of the Department of Agriculture to use $300,000 to support research at a university concerning the effects of projects for value-added agricultural commodities or products on agricultural producers and the commodity markets. The Rural Business-Cooperative Service (RBS) will administer this grant. RBS will collect information from applicants who must be an accredited university. The university may contract with other parties to contribute expertise or proprietary data that would not otherwise be available to the research effort.

*Need and Use of the Information:* RBS will use the information to confirm that an applicant meets the eligibility requirements and that the research proposals are consistent with the purposes set forth in the statute. The information is also used to make a competitive evaluation and rank the proposals in order to determine the grant award. Information considered by the reviewers in ranking the proposals are (1) the nature of the proposed research, (2) qualifications of the researchers, (3) work plan and research budget and (4) measures to evaluate the effectiveness of value-added projects.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 15.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion; Quarterly; Semi-annually.

*Total Burden Hours:* 479.

**Rural Utilities Service**

*Title:* 7 CFR Part 1721, Extensions of Payments of Principal and Interest.

*OMB Control Number:* 0572–0123.

*Summary of Collection:* Rural Utilities Service (RUS) is revising procedures and conditions under which borrowers may request extensions of the payment of principal and interest. RUS electric program provides loans and loan guarantees to borrowers at interest rates and on terms that are more favorable than those generally available from the private sector. As a result of obtaining federal financing, RUS borrowers receive economic benefits that exceed any direct economic costs associated with complying with (RUS) regulations and requirements. The authority, as amended, for these extensions is contained in Section 12 of the Rural Electrification Act of 1936, and section 236 of the "Disaster Relief Act of 1970."

*Need and Use of the Information:* The collection of information occurs only when the borrower requests an extension of principal and interest. Eligible purchases include financial hardship energy resource conservation loans, renewable energy project, and contributions-in-aid of construction. The collections are made to provide needed benefits to borrowers while also maintaining the integrity of RUS loans and their repayment of taxpayer's monies.

*Description of Respondents:* Not for-profit institutions.

*Number of Respondents:* 94.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 816.

**Rural Utilities Service**

*Title:* 7 CFR Part 1738, Rural Broadband Access.

*OMB Control Number:* 0572–0130.

*Summary of Collection:* The Rural Utilities Service (RUS) amended its regulation in order to establish the Rural Broadband Access Loan and Loan Guarantee Program. Title VI, Rural Broadband Access, amended The Rural Electrification Act of 1936 (RE Act), to provide loans and loan guarantees to fund the cost of construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural communities in State and territories of the United States. The regulation prescribes the types of loans available, facilities financed and eligible applicants, as well as minimum credit support requirements considered for a loan. In addition, Title VI of the RE Act requires that Rural Utilities Service (RUS) make or guarantee a loan only if there is reasonable assurance that the loan, together with all outstanding loans and obligations of the borrower, will be repaid in full within the time agreed.

*Need and Use of the Information:* RUS will collect information to determine whether an applicant's eligibility to borrow from RUS under the terms of the RE Act and that the applicant complies with statutory, regulatory and administrative eligibility requirements for loan assistance. RUS will use the information to determine that the Government's security for loans made are reasonable adequate and that the loans will be repaid within the time agreed.

*Description of Respondents:* Business or other for-profit; Not-for-profit institutions.

*Number of Respondents:* 300.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 28,475.

**Farm Service Agency**

*Title:* Noninsured Crop Disaster Assistance Program.

*OMB Control Number:* 0560–0175.

*Summary of Collection:* The collection of crop planting and production data is necessary for the Commodity Credit Corporation (CCC) to calculate the producer's approved yield on the basis of actual production history. Information collection relative to the occurrence of crop damage or loss production and application for Noninsured Crop Disaster Assistance Program (NAP) is necessary for CCC to accept and consider a request for assistance under NAP and to facilitate eligibility determinations. NAP provides eligible producers of eligible crops with protection to the catastrophic risk protection plan of crop insurance. It helps reduce production risks faced by producers of crops for which Federal crop insurance is not available. It also reduces financial losses that occur when natural disasters cause a catastrophic loss of production or prevented planting of an eligible crop. The Farm Service Agency (FSA) will collect information using several forms.

*Need and Use of the Information:* FSA will collect the producer's name, address identification number, farm and tract, acreage, ownership, location, crop history, planted acreage, production, yield, share, etc. The information will be used to identify eligible NAP participants, acreage and location, crop and commodities. If information is not collected, FSA will not be able to identify and determine eligible participants and crops being planted or produced, or provide assistance to agricultural producers who as a result of natural disaster have suffered catastrophic losses of agricultural crops or commodities.

*Description of Respondents:* Individuals or household; Business or other for-profit; Not-for-profit institutions; Farms; State, local or tribal government.

*Number of Respondents:* 291,500.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion; Weekly; Monthly; Other (bi-weekly and bi-monthly); Third party disclosure.

*Total Burden Hours:* 2,143,562.

**Agricultural Research Service**

*Title:* Peer Review Related Forms for the Office of Scientific Quality Review.

*OMB Control Number:* 0518–0028.

*Summary of Collection:* The Office of Scientific Quality Review (OSQR) is an organizational unit of the Agricultural Research Service (ARS) reporting to the Associate Administrator with primary responsibility for planning and facilitating high quality scientific and technical peer review of all agency prospective research project plans. The Research Title of the 1998 Farm Bill, Pub. L. 105–185 section 103(d), set forth new requirements for peer reviews of ARS research projects. ARS must obtain panel peer reviews of each research project at least once every five years.

*Need and Use of the Information:* ARS will collect the following information: Confidentiality agreement, panelist information, peer review of an ARS research project, critique of ARS research project, panelist expense report, and panelist invoice. The information is used to manage the travel and stipend payments to panel reviewers and provide well-organized feedback to ARS's researchers about their projects. If information were not collected, ARS would not meet the administrative or legislative requirements of the Peer Review Process as mandated by Public Law 105–185.

*Description of Respondents:* Not-for-profit institutions; Business or other for-profit; Individuals or households; Farms; Federal Government; State, local or tribal government.

*Number of Respondents:* 135.

*Frequency of Responses:* Reporting: Quarterly; Weekly; Annually.

*Total Burden Hours:* 3,407.

**Rural Housing Service**

*Title:* 7 CFR 1956–C, Debt Settlement—Community and Business Programs.

*OMB Control Number:* 0575–0124.

*Summary of Collection:* Rural Housing Service (RHS) is a credit agencies for agricultural and rural development for the United States Department of Agriculture and offers supervised credit to develop improve and operate family farms, modest housing, essential community facilities, and business and industry across rural America. 7 CFR 1956–C, Debt Settlement—Community and Business Programs provides policies and procedures as well as a mechanism for debt settlement in connection with Community Facilities loans and grants, Water and Waste Disposal loans, direct Business and Industry loans, Indian Tribal Land Acquisition loans and Irrigation and Drainage. The debt settlement program provides the delinquent client with an equitable tool for the compromise, adjustment, cancellation, or charge-off of a debt owed to the Agency.

*Need and Use of the Information:* The field offices will collect information from applicants, borrowers consultants, lenders, and attorneys to determine eligibility, financial capacity and derive an equitable resolution. This information collected is similar to that required by a commercial lender in similar circumstances. Failure to collect the information could result in improper servicing of these loans.

*Description of Respondents:* Not for profit institutions; Individuals, Households; Business or other for-profit; State, Local or Tribal Government.

*Number of Respondents:* 15.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 813.

**Rural Business—Cooperative Service**

*Title:* CFG 1942–G, "Rural business Enterprise Grants and Television Demonstration Grants".

*OMB Control Number:* 0570–0022.

*Summary of Collection:* Section 310B of the Consolidated Farm and Rural Development Act authorizes Rural Business Enterprise Grants to facilitate the development of small and emerging private businesses, industry and related employment for improving the economy in rural communities. Television Demonstration Grants (TDG) are available to statewide, private nonprofit, public television systems to provide information on agriculture and other issues of importance to farmers and other rural residents. This regulation, 7 CFR Part 1942–G, Rural Business-Cooperative Service (RBS) that covers the administration of this program including eligibility requirements and evaluation criteria to make funding selection decisions.

*Need and Use of the Information:* RBS will use this information to determine (1) eligibility; (2) the specific purposes for which grant funds will be utilized; (3) time frames or dates by which actions surrounding the use of funds will be accomplished; (4) who will be carrying out the purposes for which the grant is made; (5) project priority; (6) applicants experience in administering a rural economic development program; (7) employment improvement; and (8) mitigation of economic distress of a community through the creation or salvation of jobs or emergency situations. If the information were not collected, RBS would not be able to determine the eligibility of applicant(s) for the authorized purposes. Collecting this information infrequently would have an advertise effect on the Agency's ability to administer the grant program.

*Description of Respondents:* Individuals or households; Farms; Business or other for profit; Federal Government.

*Number of Respondents:* 720.

*Frequency of Responses:* Record-keeping; Reporting: Monthly; On Occasion; Quarterly.

*Total Burden Hours:* 22,395.

**Animal and Plant Health Inspection Service**

*Title:* Tuberculosis Testing for Imported Cattle.

*OMB Control Number:* 0579–0224.

*Summary of Collection:* Under the authority of Title 21, U.S.C., the Secretary of Agriculture is permitted to prevent, control and eliminate domestic diseases such as tuberculosis, as well as to take actions to prevent and to manage exotic diseases such as foot-and-mouth, rinderpest, and other foreign diseases. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the ability of U.S. producers to compete in the global market of animal and animal product trade. The Animal and Plant Health Inspection Service (APHIS) published an interim rule that added additional requirements concerning the importation of certain cattle into the United States. APHIS will collect information using form VS 17–129, "Application for Import or In Transit Permit."

*Need and Use of the Information:* APHIS will collect information from the permit application regarding the type, number, and identification of the animals to be exported to the United States, as well as information concerning the origin, intended date and location of arrival, routes of travel, and destination of the animals. APHIS will also collect information that certified that the herd in which the cattle was born and raised has tested TB-negative to a whole herd test. Failure to collect this information would make it impossible for APHIS to effectively evaluate the TB risks associated with cattle importation from Mexico, thereby increasing the likelihood that healthy cattle and bison throughout the United states will be exposed to tuberculosis.

*Description of Respondents:* Business or other for-profit; Farms.

*Number of Respondents:* 100.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 15,000.

## Food Safety and Inspection Service

*Title:* Registration Requirements.

*OMB Control Number:* 0583–NEW.

*Summary of Collection:* This information collection requests new burden hours for regulatory reporting requirements associated with the registration of meat brokers, poultry products brokers, renders, animal food manufactures, wholesalers, warehousemen, and persons that engage in the business of buying, selling, transporting in commerce, or importing, any dead, dying, disabled, or diseased livestock or poultry, or parts of the carcasses of livestock or poultry that have died otherwise than by slaughter. The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) FSIS will collect information using FSIS Form 5020–1, "Registration of Meat and Poultry Handlers".

*Need and Use of the Information:* FSIS will collect information using FSIS 5020–1, ensuring that all meat and poultry establishments produce safe, wholesome, and unadulterated product, and properly labeled and packaged. If the information were not collected, it would reduce the effectiveness of the meat and poultry inspection program.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 9,125.

*Frequency of Responses:* Recordkeeping; Reporting: Other (Once).

*Total Burden Hours:* 1,521.

**Sondra Blakey,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 03–25880 Filed 10–10–03; 8:45 am]

BILLING CODE 3410–01–M

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## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

**[Docket No. 03–093–1]**

## Notice of Request for Extension of Approval of an Information Collection

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Extension of approval of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations for the commercial transportation of equines to slaughtering facilities.

**DATES:** We will consider all comments that we receive on or before December 15, 2003.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–093–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–093–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–093–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

**FOR FURTHER INFORMATION CONTACT:** For information regarding regulations for the commercial transportation of equines to slaughtering facilities, contact Dr. Tim Cordes, Senior Staff Veterinarian, National Center for Animal Health Programs, Certification and Control Team, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737–1231; (301) 734–3279. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

**SUPPLEMENTARY INFORMATION:**

*Title:* Commercial Transport of Equines to Slaughter.

*OMB Number:* 0579–0160.

*Type of Request:* Extension of approval of an information collection.

*Abstract:* Under the Federal Agriculture Improvement and Reform Act of 1996 ("the Farm Bill"), Congress gave responsibility to the Secretary of Agriculture to regulate the commercial transportation within the United States of equines for slaughter. Sections 901–905 of the Farm Bill (7 U.S.C. 1901 note) authorized the Secretary to issue guidelines for the regulation of commercial transportation of equines for slaughter by persons regularly engaged in that activity within the United States. To fulfill this responsibility, the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture established regulations in title 9, part 98, of the Code of Federal Regulations.

The minimum standards cover, among other things, the food, water, and rest provided to such equines. The regulations require the owner/shipper of the equines to take certain actions in loading and transporting the equines and to certify that the commercial transportation meets certain requirements. Our regulations prohibit the commercial transportation to slaughter facilities of equines considered to be unfit for travel and the use of electric prods on such animals in commercial transportation to slaughter. The use of double-deck trailers for commercial transportation of equines to slaughtering facilities may not be used after December 7, 2006.

These regulations require the use of two information collection activities: (1) The preparation of an owner-shipper certificate for each equine transported to slaughter and (2) the collection of business information from any individual or other entity found to be transporting horses to a slaughtering facility.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

*Estimate of burden:* The public reporting burden for this collection of information is estimated to average 0.052471 hours per response.

*Respondents:* Owners and shippers of slaughter horses and owners/operators of slaughtering facilities.

*Estimated annual number of respondents:* 200.

*Estimated annual number of responses per respondent:* 401.

*Estimated annual number of responses:* 80,100.

*Estimated total annual burden on respondents:* 4,203 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 8th day of October, 2003.

**Peter Fernandez,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 03–25883 Filed 10–10–03; 8:45 am]

**BILLING CODE 3410–34–P**

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Oregon Coast Provincial Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Oregon Coast Province Advisory Committee will meet in Newport, OR, October 23, 2003. The theme of the meeting is Introduction/Overview/Business Planning. The agenda includes: Payments to Counties Update, Monitoring Trip Update, Coho Recovery Plan, PAC Subcommittee Presentation, BLM/Forest Service Settlement Agreement, Public Comment and Round Robin.

**DATES:** The meeting will be held October 23, 2003, beginning at 9 a.m.

**ADDRESSES:** The meeting will be held at the La Quinta Inn and Suites, 45 SE 32nd Street, Newport, OR.

**FOR FURTHER INFORMATION CONTACT:** Joni Quarnstrom, Public Affairs Specialist, Siuslaw National Forest, 541–750–7075, or write to Siuslaw National Forest Supervisor, P.O. Box 1148, Corvallis, OR 97339.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Council Discussion is limited to Forest Service/BLM staff and Council Members. Lunch will be on your own. A public input session will be at 2:30 p.m. for fifteen minutes. The meeting is expected to adjourn around 3:30 p.m.

Dated: October 7, 2003.

**Carl Frounfelker,**

*Wildlife Biologist.*

[FR Doc. 03–25863 Filed 10–10–03; 8:45 am]

**BILLING CODE 3410–11–M**

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Procedures Involving Hydropower Licensing on National Forest System Lands

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of issuance of agency directive.

**SUMMARY:** The Forest Service is issuing an amendment to Forest Service Manual (FSM) chapter 2770 to guide its employees regarding certain procedures for hydropower licensing on National Forest System lands. The amendment addresses internal agency procedures and provides for increased efficiency in processing hydropower applications for licensing. The amendment also clarifies the roles of the Forest Service and the Federal Energy Regulatory Commission (FERC) in licensing hydropower projects affecting National Forest System lands and resources. The procedures established in the amendment streamline the application process, but they do not limit or preclude the opportunity for interested parties and the general public to be involved during the analysis for project-specific licensing by FERC.

**DATES:** This amendment is effective October 14, 2003.

**ADDRESSES:** This amendment (Amendment No. 2700–2003–2) is available electronically from the Forest Service via the World Wide Web/Internet at *http://www.fs.fed.us/im/directives.* Single paper copies of the amendment are also available by contacting Robert Cunningham, Lands Staff (Mail Stop 1124), Forest Service, 1400 Independence Avenue, SW., Washington, DC 20250–1124, telephone: (202) 205–2494.

**FOR FURTHER INFORMATION CONTACT:** Robert Cunningham, Lands Staff (202) 205–2494.

Dated: October 7, 2003.

**Dale N. Bosworth,**

*Chief.*

[FR Doc. 03–25923 Filed 10–10–03; 8:45 am]

**BILLING CODE 3410–11–P**

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## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Finding of No Significant Impact for Upper Salt Creek 10–A Rehabilitation, Lancaster County, NE

#### Introduction

The Upper Salt Creek 10–A Rehabilitation is a federally assisted action authorized for planning under Pub. L. 83–566, the Watershed Protection and Flood Prevention Act as amended by Section 313 of Pub. L. 106–472 The Small Watershed Rehabilitation Amendments of 2000. An environmental assessment was undertaken in conjunction with the development of the watershed plan. This assessment was conducted in consultation with local, State, and Federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, Nebraska 68508–3866.

#### Recommended Action

Proposed is the rehabilitation of one floodwater retarding structure, Upper Salt Creek 10–A on an unnamed tributary of Hickman Branch. The Upper Salt Creek 10–A structure controls the drainage of 2,052 acres.

### Effect of Recommended Action

Rehabilitation of the structure will meet state dam safety requirements and prolong the life of the structure and pool for 100 years. The permanent pool will not change in size but the temporary flood pool will increase from 86 acres to 117 acres. Ten acres will be converted from cropland to a grassed auxiliary spillway.

Sediment delivery to downstream areas will continue to be held back. Recreation will still be available on and around the pool and structure.

Significant cultural resources identified during implementation will be avoided or otherwise preserved in place to the fullest practical extent. If significant cultural resources cannot be avoided or preserved, pertinent information will be recovered before construction. If there is a significant cultural resource discovery during construction, appropriate notice will be made by NRCS to the State Historic Preservation Officer and the National Park Service. Consultation and coordination have been and will continue to be used to ensure the provisions of Section 106 Pub. L. 89–665 have been met and to include provisions of Pub. L. 89–523, as amended by Pub. L. 93–291. NRCS will take action as prescribed in NRCS GM 420, Part 401, to protect or recover any significant cultural resources discovered during construction.

No threatened or endangered species in the watershed will be adversely affected by the project.

No significant adverse environmental impacts will result from installations except for temporary draining of the pool and minor inconveniences to local residents during construction.

### Alternatives

Four alternatives were analyzed in this plan.

No Action alternative, the structure is breached by the sponsor in approximately four years. The structure will continue to be out of compliance with state dam safety regulations until it is breached. Flood protection provided by the structure would end and increased flooding and associated problems would increase. Recreational opportunities provided by the structure, pool and surrounding area which are owned by the state Game and Parks would be virtually eliminated.

Decommissioning alternative, the structure would be removed and would therefore not be out of compliance with the state dam safety regulations. Flood protection provided by the structure would end and increased flooding and associated problems would increase. Recreational opportunities provided by the structure, pool and surrounding area which are owned by the state Game and Parks would be virtually eliminated.

Home Relocation alternative, the structure would be rehabilitated to current Low Hazard Criteria and the downstream homes in the breach area would be removed. The structure would then be in compliance with state dam safety regulations and flood protection and recreational opportunities would continue to be provided by the structure, pool and surrounding area.

Rehabilitation to High Hazard Criteria alternative, the structure would be rehabilitated to current High Hazard Criteria and would be brought into compliance with state dam safety regulations for high hazard structures. Flood protection and recreational opportunities would continue to be provided by the structure, pool and surrounding area.

### Consultation-Public Participation

The Lower Platte South Natural Resources District submitted an application for assistance January 2001. The request was a result of local concern and interest in addressing dam safety and flood protection.

A scoping meeting was held June 6, 2002 involving interdisciplinary efforts. Nebraska Game and Parks Commission, Lancaster County Roads, Lower Platte South Natural Resources District, Nebraska Department of Natural Resources, Resource Conservation and Development, University of Nebraska Extension Service, and local residents were in attendance.

The environmental assessment was transmitted to all participating and interested agencies, groups, and individuals for review and comment in July 2003. Public meetings were held throughout the planning process to keep all interested parties informed of the study progress and to obtain public input to the plan and environmental evaluation.

Agency consultation and public participation to date have shown no unresolved conflicts with the implementation of the selected plan.

### Conclusion

The Environmental Assessment summarized above indicates that this Federal action will not cause significant local, regional or national impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the Upper Salt Creek 10–A Rehabilitation is not required.

Dated:

**Stephen K. Chick,**

*State Conservationist.*

[FR Doc. 03–25857 Filed 10–10–03; 8:45 am]

BILLING CODE 3410–16–P

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## DEPARTMENT OF AGRICULTURE

## Natural Resources Conservation Service

## Public Meeting With All Interested Parties To Comment on the Activities of the Resource Conservation and Development Program.

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) will hold a meeting to solicit comments on the activities of the Resource Conservation and Development Program (RC&D). Section 2504 of the Farm Security and Rural Investment Act of 2002 (P.L. 107–171) requires that the Secretary of Agriculture, in consultation with the National Association of Resource Conservation and Development Councils (NAR&DC), evaluate the RC&D Program to determine whether it is effectively meeting the needs of, and purposes identified by, States, units of Government, Indian Tribes, non-profit organizations, and councils participating in, or served by the program. The Secretary of Agriculture, acting through NRCS, will conduct this evaluation, and submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the evaluation, together with any recommendations of the Secretary for continuing, terminating, or modifying the program, by June 30, 2005.

As part of this evaluation, NRCS is conducting public meetings with all interested parties to solicit comments on the activities of the program. Comments will be solicited on, and should be limited to, the following topics: (1) RC&D Program effectiveness in meeting the needs of the States, units of Government, Indian Tribes, non-profit organizations and RC&D councils served by the program; (2) RC&D Program effectiveness in developing community leadership conservation; (3) RC&D Program elements that best serve regional conservation and development needs; and (4) RC&D Program elements that can be strengthened to better serve

regional conservation and development needs. The first of six planned meetings is scheduled for October 25, 2003, in Plymouth, Massachusetts. Subsequent meeting dates and locations will be announced at a later date.

**EFFECTIVE DATES:** The meeting will be held October 25, 2003, from 10:15 a.m. to 12:15 p.m. It will be held at The John Carver Inn, 25 Summer Street, Plymouth, Massachusetts 02360–3438. Written comments may also be submitted, no later than November 15, 2003 to: Terry D'Addio, National RC&D Program Manager, Natural Resources Conservation Service, 14th & Independence Ave., SW., Room 6013, South Building, Washington, DC, 20250.

**FOR FURTHER INFORMATION, CONTACT:** Terry D'Addio, Natural Resources Conservation Service, (202) 720–0557; fax: (202) 690–0639; e-mail: *terry.d'addio@usda.gov.*

Signed in Washington, DC, on October 1, 2003.

**Bruce I. Knight,**

*Chief, Natural Resources Conservation Service.*

[FR Doc. 03–25858 Filed 10–10–03; 8:45 am]

**BILLING CODE 3410–16–P**

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## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1304]**

### Expansion of Foreign-Trade Zone 31 Granite City, IL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Tri-City Regional Port District, grantee of Foreign-Trade Zone 31, submitted an application to the Board for authority to expand FTZ 31 to include three sites at the Gateway Commerce Center in Madison County (Site 5—2,254 acres), River's Edge Industrial Park in Granite City (Site 6—458 acres), and MidAmerica Airport in St. Clair County (Site 7—3,851 acres), Illinois, and to formally delete Site 2 from the zone project, within/adjacent to the St. Louis, Missouri, Customs port of entry (FTZ Docket 16–2003; filed 3/14/03);

Whereas, notice inviting public comment was given in the **Federal Register** (68 FR 14191, 3/24/03) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 31 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit for the overall zone project.

Signed at Washington, DC, this 3rd day of October, 2003.

**James J. Jochum,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 03–25909 Filed 10–10–03; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–201–822]**

### Stainless Steel Sheet and Strip in Coils From Mexico; Antidumping Duty Administrative Review; Extension of Time Limit

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of extension of time limit.

**SUMMARY:** The Department of Commerce (the Department) is extending the time limit for the final results of the 2001–2002 administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico. This review covers one manufacturer/exporter of the subject merchandise to the United States, ThyssenKrupp Mexinox S.A. de C.V., and the period July 1, 2001 through June 30, 2002.

**EFFECTIVE DATE:** October 14, 2003.

**FOR FURTHER INFORMATION CONTACT:** Deborah Scott at (202) 482–2657 or Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:** On August 7, 2003, we published the preliminary results of the administrative review of stainless steel sheet and strip in coils from Mexico for the period July 1, 2001 through June 30, 2002. *See Stainless Steel Sheet and Strip in Coils from Mexico; Preliminary Results of Antidumping Duty Administrative Review,* 68 FR 47043 (August 7, 2003). Pursuant to the time limits for administrative reviews set forth in section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), currently the final results of this administrative review are due on December 5, 2003. It is not practicable to complete this review within the normal statutory time limit due to a number of significant case issues, such as level of trade, the calculation of general and administrative expenses and interest expenses for cost of production and constructed value, and the inclusion of certain affiliated sales in the margin calculation. Making a determination with respect to these issues requires considerable scrutiny of respondent's questionnaire and supplemental questionnaire responses. Thus, it is not practicable to complete this review within the normal statutory time limit. Therefore, the Department is extending the time limit for completion of the final results until February 3, 2004 in accordance with section 751(a)(3)(A) of the Tariff Act.

Dated: October 7, 2003.

**Richard O. Weible,**

*Acting Deputy Assistant Secretary for Import Administration, Group III.*

[FR Doc. 03–25910 Filed 10–10–03; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 100603H]**

### Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Pacific Fishery Management Council's (Council) Ad Hoc Groundfish Trawl Individual Quota Committee (TIQC) will hold a working meeting which is open to the public.

**DATES:** The TIQC working meeting will begin Tuesday, October 28, 2003 at 8:30 a.m. and may go into the evening until business for the day is completed. The meeting will reconvene from 8 a.m. and continue until business for the day is complete on Wednesday, October 29, 2003.

**ADDRESSES:** The meetings will be held at: Embassy Suites Hotel, 7900 NE 82nd Avenue, Portland, OR 97220; (503)460–3000.

*Council address:* Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jim Seger, Staff Officer (Economist), telephone: (503) 820–2280.

**SUPPLEMENTARY INFORMATION:** The purpose of the TIQC working meeting is to begin development of alternatives for an individual quota program to cover limited entry trawl landings in the West Coast groundfish fishery. Committee charge, decision rules, and the purpose, need and objectives for an individual quota program will also be addressed.

Although nonemergency issues not contained in this announcement may come before the TICQ for discussion, during this meeting those issues may not be the subject of a TICQ recommendation for a final Council action that results in Council recommendation to NOAA fisheries. Recommendations for such final action by the Council will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the GMT's intent to take final action to address the emergency.

### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: October 7, 2003.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–25928 Filed 10–10–03; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 100703B]

### Endangered Species; File No. 1448

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

**ACTION:** Receipt of application

**SUMMARY:** Notice is hereby given that the Northeast Fisheries Science Center, National Marine Fisheries Service, 166 Water Street, Woods Hole, MA 02543–1097, has applied in due form for a permit to take loggerhead (*Caretta caretta*), leatherback (*Dermochelys coriacea*), Kemp's ridley (Lepidochelys kempii), green (*Chelonia mydas*), and hawksbill (*Eretmochelys imbricata*) sea turtles for purposes of scientific research.

**DATES:** Written or telefaxed comments must be received on or before November 13, 2003.

**ADDRESSES:** The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978) 281–9200; fax (978) 281–9371.

**FOR FURTHER INFORMATION CONTACT:** Patrick Opay, (301) 713–1401 or Sarah Wilkin, (301) 713–2289.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant proposes to conduct biological sampling of sea turtles incidentally taken in commercial fisheries in state waters and the Exclusive Economic Zone in the northwest Atlantic Ocean. The primary objectives of the proposed research are to determine the size and composition of populations of sea turtles found in the commercial fishing areas and to establish individual identities of turtles which will permit subsequent determination of growth rates, possible stock origins and movement patterns. The research will contribute to the understanding of the pelagic ecology of these species, permit more complete models of their population dynamics, and allow more reliable assessments of commercial fishery impacts.

The researchers will sample turtles which have already been taken in legally operating commercial fisheries operating from the Gulf of Maine through North Carolina. The applicant proposes to photograph, measure, scan for PIT tags, biopsy sample, flipper tag and transport 300 loggerhead, 85 leatherback, 10 Kemp's ridley, 10 green, and 10 hawksbill sea turtles annually. The applicant is requesting a 5 year permit. No mortalities are expected as a result of this research.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Dated: October 8, 2003.

**Jill Lewandowski,**

*Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 03–25925 Filed 10–10–03; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D.093003A]

### Marine Mammals; File No. 699–1720

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Issuance of permit.

**SUMMARY:** Notice is hereby given that Dr. Kathryn Ono, Department of Biological Sciences, University of New England, 11 Hills Beach Road, Biddeford, Maine, 04005 has been issued a permit to take (*Phoca vitulina concolor*), gray seals (*Halichoerus grypus*), harp seals (*Phoca groenlandica*) and hooded seals (*Cystophora cristata*) for purposes of scientific research.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978) 281–9200; fax (978) 281–9371.

**FOR FURTHER INFORMATION CONTACT:** Sarah Wilkin or Jennifer Jefferies, (301) 713–2289.

**SUPPLEMENTARY INFORMATION:** On July 29, 2003, notice was published in the **Federal Register** (68 FR 44526) that a request for a scientific research permit to take "the species identified above" had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The purpose of the research is to assess the health of the Northeast Atlantic harbor seal population residing along the coast of Maine. The permit authorizes the applicant to take up to 200 harbor seals annually by capture, and physically restrain and sample 20 young of the year pups. Morphometric measurements, samples of blood, feces, and skin biopsies will be taken, and flipper tags attached. Annually, up to 10 pups will have satellite tags attached to allow movement tracking and behavioral analysis. Accidental mortality of 2 harbor seals annually is authorized. Accidental capture and immediate release of 5 gray seals, 3 harp seals, and 3 hooded seals annually is also authorized. Additionally, Level B Harassment (disturbance of animals on haul-outs) is authorized for 400 harbor seals, 5 grey seals, 3 harp seals and 3 hooded seals annually. The research will study movement and migration patterns for young of the year pups. The movements, disease load, survival and behavior of wild-caught pups will be compared with rehabilitated pups from the same population and cohort to determine baseline "normal" behavior. The Permit will expire September 30, 2008.

Dated: October 2, 2003.

**Stephen L. Leathery,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 03–25927 Filed 10–10–03; 8:45 am]

**BILLING CODE 3510–22–S**

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## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**TIME AND DATE:** 2 p.m., Tuesday, October 21, 2003.

**PLACE:** 1155 21st. St., NW., Washington, DC, Room 1012.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Enforcement matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 03–25971 Filed 10–8–03; 4:10 am]

**BILLING CODE 6351–01–M**

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## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Proposed Information Collection; Comment Request

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice.

**SUMMARY:** The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed Learn and Serve America Progress Report for all 2003 grantees. Copies of the information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section by December 15, 2003.

**ADDRESSES:** Send comments to the Corporation for National and Community Service, Attention Mr. Mark Abbott, Associate Director for Grants Management, Learn and Serve America, 1201 New York Avenue, NW., Washington, DC 20525.

**FOR FURTHER INFORMATION CONTACT:** Mark W. Abbott at (202) 606–5000, ext 120 or by e-mail at *mabbott@cns.gov*.

**SUPPLEMENTARY INFORMATION:**

The Corporation is seeking comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and,
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

**Background**

Currently, Learn and Serve America collects progress reports twice per grant cycle. The progress reports are used to evaluate grantees progress towards meeting performance measures and to help evaluate grantees' Continuation Applications for second and third year funding requests. This year all grantees will be strongly encouraged to file progress reports on eGrants, the Corporation's web-based grant management system.

**Current Action**

The Corporation is seeking public comment for approval of the twice yearly program Progress Report.

*Type of Review:* New information collection.

*AGENCY:* Corporation for National and Community Service.

*Title:* Learn and Serve America Progress Report.

*OMB Number:* None.

*Agency Number:* None.

*Affected Public:* Current LSA Grantees.

*Total Respondents:* 134.

*Frequency:* Twice per year.

*Average Time Per Response:* 2 hours.

*Estimated Total Burden Hours:* 536 hours.

*Total Burden Cost (capital/startup):* None.

*Total Burden Cost (operating/maintenance):* None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 7, 2003.

**Amy B. Cohen,**

*Director, Learn and Serve America.*

[FR Doc. 03–25947 Filed 10–10–03; 8:45 am]

**BILLING CODE 6050–$$–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### President's Information Technology Advisory Committee (PITAC)

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice of meeting.

**SUMMARY:** This PITAC meeting will focus on the US government investment in information technology and networking and some specific applications including medicine and security. A final agenda will be posted on the PITAC Web site (*http://www.itrd.gov/pitac/index.html*) approximately two weeks before the meeting.

**DATES:** Friday, November 12, 2003, 11:30 a.m. to 2:30 p.m.

**ADDRESSES:** Noesis-Inc., 4100 North Fairfax Drive, Suite 800, Arlington, VA.

**SUPPLEMENTARY INFORMATION:** Members of the public are invited to attend and participate by: (1) Submitting written statements to the organizers and; (2) giving a brief (three minutes or less) oral statement during the 30 minute public comment period on the meeting agenda. The meeting will be held on-line via the Internet using Webex. Participants may attend the meeting in person at the designated site. Ten remote on-line places have also been designated for public participants who wish to join the meeting via the Internet. Individuals wishing to participate on-line must call the National Coordination Office for Information Technology Research and Development to register and be invited to the meeting.

**FOR FURTHER INFORMATION CONTACT:** The ITRD office at 703–292–4873 or by e-mail at *pitac@itrd.gov.*

Dated: October 6, 2003.

**Patricia Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 03–25848 Filed 10–10–03; 8:45 am]

**BILLING CODE 5001–06–M**

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## DEPARTMENT OF DEFENSE

### Inspector General; Privacy Act of 1974; System of Records

**AGENCY:** Inspector General, DoD.

**ACTION:** Notice to add a system of records.

**SUMMARY:** The Office of the Inspector General, DoD is proposing to add a system of records to its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. In addition, the OIG DoD is deleting a system of records.

**DATES:** This proposed action is effective without further notice on November 13, 2003 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to Office of the Inspector General, Department of Defense, 400 Army Navy Drive, Room 223, Arlington, VA 22202–4704.

**FOR FURTHER INFORMATION CONTACT:** Mr. Darryl R. Aaron at (703) 604–9785.

**SUPPLEMENTARY INFORMATION:** The Inspector General, DoD, systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on September 23, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: September 30, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

### Deletion
### CIG–10

#### SYSTEM NAME:

Validation of Credentials of DoD Contractors' Employees (February 22, 1993, 58 FR 10213).

Reason: This system of records is being deleted because the OIG no longer maintains credentials on a "DoD contractor" employee.

### CIG–22

#### SYSTEM NAME:

OIG DoD Badge and Credentials.

#### SYSTEM LOCATION:

Office of Security, Office of the Chief of Staff, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

Office of the Deputy Inspector General for Investigations, Defense Criminal Investigative Service, Office of the Inspector General, Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

Policy and Programs, Office of the Deputy Inspector General for Inspections and Policy, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are granted/issued a OIG DoD badge and/or credential, to include all accredited OIG DoD Special Agents.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing personal information consisting of an individual's name, Social Security Number, letters of authorization to issue badge and/or credential, badge and credential receipts, badge listing, badge and/or credential inspection reports, and badge and/or credential number assigned to OIG DoD employee and/or Special Agent.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, (Pub.L. 95–452), as amended (5 U.S.C. Appendix); 18 U.S.C. 499, Military naval or official passes; 18 U.S.C. 506, Seals of the department or agencies; 18 U.S.C. 701, Official badges, identification cards, other insignia; 10 U.S.C. 133, Secretary of Defense; DoD Directive 5106.1, Inspector General of the Department of Defense; OIG DoD DCIS Special Agents Manual; OIG Instruction 1000.1, Employee Identification Program; and E.O. 9397 (SSN).

#### PURPOSE(S):

To issue and control the badge and/or credential assigned to an OIG DoD employee and/or Special Agent. Used only by OIG DoD to identify specifically to which individual each badge and/or credential is assigned, to provide for orderly update of badge and/or credentials and to ensure turn in of badge and/or credentials whenever accreditation is terminated.

#### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" set forth at the beginning of the OIG's compilation of systems of records notices also apply to this system.

### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

### STORAGE:

Paper records in file folder and on electronic storage media.

### RETRIEVABILITY:

Retrieved by individual's name.

### SAFEGUARDS:

Paper and electronic records are stored in locked filing cabinets and stored in a limited access area. Building is lock and guarded during non-duty hours. Only those individuals with a need-to-know access the records. Access to computer records are password protected.

### RETENTION AND DISPOSAL:

Paper records and computer disks are to be retained until completion of the overall validation process and data analysis, and then destroyed. When badge and credentials are turned in, records are destroyed 3 months after turn in.

### SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Security, Office of the Chief of Staff, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

### NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address a written request to the Chief, Freedom of Information Act/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written request should contain the individual's full name, current address, telephone number, and the request must be signed.

### RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system of records should address a written request to the Chief, Freedom of Information Act/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written request should contain the individual's full name, current address, telephone number, and the request must be signed.

### CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

### RECORD SOURCE CATEGORIES:

Information is obtained from individual, personnel records and issued badge and credentials.

### EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–25851 Filed 10–10–03; 8:45 am]

**BILLING CODE 5001–08–P**

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## DEPARTMENT OF DEFENSE

## United States Marine Corps; Privacy Act of 1974; System of Records

**AGENCY:** United States Marine Corps, DoD.

**ACTION:** Notice to add a records system.

**SUMMARY:** The U.S. Marine Corps is adding a system of records notice from its inventory of records systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

**DATES:** The addition will be effective on (insert date thirty days after date published in the **Federal Register**) unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to Headquarters, U.S. Marine Corps, FOIA/PA Section (CMC-ARSE), 2 Navy Annex, Room 1005, Washington, DC 20380–1775.

**FOR FURTHER INFORMATION CONTACT:** Ms. Tracy D. Ross at (703) 614–4008.

**SUPPLEMENTARY INFORMATION:** The U.S. Marine Corps' records system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on October 1, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: October 6, 2003.

**Patricia Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

### M01754–4

### SYSTEM NAME:

Marine For Life Program.

### SYSTEM LOCATION:

Primary Location: Marine For Life Program, Headquarters, U.S. Marine Corps, Manpower and Reserve Affairs Department, Reserve Affairs Division, 3280 Russell Road, Quantico, VA 22134–5103.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Honorably discharged Marines seeking assistance transitioning to civilian life.

### CATEGORIES OF RECORDS IN THE SYSTEM:

Name, rank/grade, Social Security Number, date of birth, home of record, current address/contact information, duty status, component code, sex, security investigation date/type, separation document code, education, enlistment contract details (EAS, ECC, EOS), training information to include military occupational specialties, and related data.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., Chapter 58, Benefits and services for members being separated or recently separated; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).

### PURPOSE(S):

To provide transition assistance and sponsorship for Marines who honorably leave active service and return to civilian life. Information will also be used to monitor the type and quality of services provided to transitioning Marines.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Marine Corps' compilation of systems of records notices apply to this system.

### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

### STORAGE:

Automated records are stored on computer hard drives and computer disks.

### RETRIEVABILITY:

Information is retrieved by the transitioning Marine's name and/or Social Security Number.

### SAFEGUARDS:

Computer facilities are located in restricted areas accessible only by authorized persons who are properly screened, cleared, and trained. Database records are password protected. Access is restricted to the transitioning Marine (record subject) and to authorized Agency personnel who have established an official need-to-know. Based on user profiles, there are different levels of access. No one, other than Marine For Life personnel, has access to any information not "unlocked" by the record subject. All users can see "unlocked" information. Full access to information maintained in the database is available only to authorized Agency personnel with established official need-to-know.

### RETENTION AND DISPOSAL:

Records are maintained while the transitioning Marine is in service and for a period of 11 months after separation.

### SYSTEM MANAGER(S) AND ADDRESS:

Branch Head, Marine For Life Program, Headquarters, U.S. Marine Corps, Manpower and Reserve Affairs Department, Reserve Affairs Division, 3280 Russell Road, Quantico, VA 22134–5103.

### NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should either log onto the web database at *http://www.marineforlife.com* or address written inquiries to Branch Head, Marine For Life Program, Headquarters, U.S. Marine Corps, Manpower and Reserve Affairs Department, Reserve Affairs Division, 3280 Russell Road, Quantico, VA 22134–5103.

Written requests must be signed and contain the transitioning Marine's full name and Social Security Number.

### RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should either log onto the web database at *http://www.marineforlife.com* or address written inquiries to Branch Head, Marine For Life Program, Headquarters, U.S. Marine Corps, Manpower and Reserve Affairs Department, Reserve Affairs Division, 3280 Russell Road, Quantico, VA 22134–5103.

Written requests must be signed and contain the transitioning Marine's full name and Social Security Number.

### CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

### RECORD SOURCE CATEGORIES:

Transitioning Marines and the Marine Corps Total Force System database.

### EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–25854 Filed 10–10–03; 8:45 am]

BILLING CODE 5001–06–P

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## DEPARTMENT OF DEFENSE

## Department of the Air Force

## Privacy Act of 1974; System of Records

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice to add a record system.

**SUMMARY:** The Department of the Air Force proposes to add a system of records notice to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The actions will be effective on November 13, 2003 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Air Force FOIA/Privacy Manager, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Anne P. Rollins at (703) 601–4043.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 522a(r) of the Privacy Act of 1974, as amended, was submitted on September 23, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: September 30, 2003.

**Patricia Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

### F065 AF A

### SYSTEM NAME:

Time and Attendance Feeder Records.

### SYSTEM LOCATION:

Organizational elements of the Department of the Air Force, and headquarters of Combatant Commands for which Air Force is executive agent. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel assigned to the Air Force and Combatant Commands under the auspices of the Department of the Air Force.

### CATEGORIES OF RECORDS IN THE SYSTEM:

Time and attendance data and labor distribution data that includes name, Social Security Number, work location, job order number, task orders, leave accrual data, occupational series, grade, pay period identification, time card certification information, special pay categories, work schedule, etc.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force and E.O. 9397 (SSN).

### PURPOSE(S):

To track time and attendance and labor distribution data for management and manpower decision support and for financial purposes.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

### STORAGE:

Maintained in file folders, in computers and on computer output products.

**RETRIEVABILITY:**

Retrieved by name, Employee Identification Number or Social Security Number.

**SAFEGUARDS:**

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software

**RETENTION AND DISPOSAL:**

Destroy reports generated at preparing activities when no longer needed. Destroy Individual Attendance and Overtime records after GAO audit or when 6 years old, whichever is sooner.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commanding officers at Air Force organizations, offices, or functions to which the individual is assigned. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the commanding officer of their organization. Official mailing addresses are published as an appendix to the Air Force's compilation of records notices.

Inquiries should contain the individual's full name, home address, Social Security Number or Employee Identification Number, organization, pay period, and must be signed.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of their organization. Official mailing addresses are published as an appendix to the Air Force's compilation of records notices.

Inquiries should contain the individual's full name, home address, Social Security Number or Employee Identification Number, organization, pay period, and must be signed.

**CONTESTING RECORD PROCEDURES:**

The Air Force's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Individual; time sheets; and work schedules.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 03–25852 Filed 10–10–03; 8:45 am]

**BILLING CODE 5001–08–P**

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## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice to amend systems of records.

**SUMMARY:** The Department of the Air Force is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

In addition, a portion of the Preamble to the Air Force Compilation of systems of records notices is being amended as identified below.

**DATES:** This proposed action will be effective without further notice on November 13, 2003 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Anne Rollins at (703) 601–4043.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: October 6, 2003.

**Patricia Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

* * * * *

**United States Air Force**

**How Systems of Records Are Arranged**

In the Air Force, records are grouped by subject series. Each series has records about a specific activity or function to which a subject title and number is given. Systems of records are grouped in the same way. For example, a system of records on personnel security clearances may be found in "Security—31," and one about Judge Advocate Personnel Records in "Law—51". These numbers are part of the system identification, which precede the notices. They look like this: F031 AF SF A or F051 AFJA C. The letter "F" means Air Force. The first three digits (031 and 051) show that the records pertain to Security and Law respectively. The letters that follow indicate to whom the system applies and/or the Office of Primary Responsibility (OPR). For example, in system F031 AF SF A, AF indicates that this is an Air Force-wide system, with SF denoting Security Forces as the OPR. The last alpha designation is for internal management control. In the records system F051 AFJA C, (without a space between the AF and JA) indicates this is a Judge Advocate General System and applies to the office of The Judge Advocate General only.

A "DoD" in the identifier means that the Air Force system is a DoD-wide system of records and applies to all DoD Components.

**Using the Index Guide**

The systems of records maintained by the Air Force are contained within the subject series that are listed below.

This list identifies each series in the order in which it appears in this issuance. Use the list to identify subject areas of interest. Having done so, use the series number (for example 031 for Security) to locate the systems of records grouping in which you are interested.

**System Identification Series—Subject Series**

Flying Operations—011
Operations—010
Maintenance—021
Supply—023
Transportation—024
Security—031
Civil Engineering—032
Communications and Information—033
Services—034
Public Affairs—035
Personnel—036
Manpower and Organization—038
Medical—044
Law—051
Chaplain—052
Scientific/Research Development—061

Financial Management—065
Special Investigations—071
Command Policy—090
Safety—091

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## F031 AF SP E

### SYSTEM NAME:

Security Forces Management Information System (SFMIS) (August 29, 2003, 68 FR 51998).

### CHANGES:

System identifier:

Delete entry and replace with 'F031 AF SF B'.

* * * * *

### RETENTION AND DISPOSAL:

Delete entry and replace with 'Destroy offenses reportable under Brady, Lautenberg, or involving sex offender registration 99 years after entry into the SFMIS database; Class A offenses and military offenses of confinement of more than 1 year or death is adjudged by court-martial 5 years from entry into database or term of confinement whichever is later; Class B offenses 3 years after entry into database or term of confinement, whichever is later; military offenses other than those disposed of by Article 15/Administrative Sanction 3 years after entry into database; offenses disposed of by Article 15/Adminstrative Sanction 6 months after entry into database; and records on acquittals, set aside actions and unfounded allegations immediately after action is completed.'

* * * * *

## F031 AF SF B

### SYSTEM NAME:

Security Forces Management Information System (SFMIS).

### SYSTEM LOCATION:

DISA MegaCenter, Building 857, 401 E. Drive, Maxwell Air Force Base-Gunter Annex, AL 36114–3001; security forces units at all levels can access the system.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in incidents and accidents occurring on Air Force (AF) installations, or reportable incidents occurring off base, including all active duty military personnel, reserve and guard; DoD civilians and other civilians; and retirees, who may be victims, witnesses, complainants, offenders, suspects, drivers; individuals who have had tickets issued on base, or had their license suspended or revoked; those persons barred from the installation; and persons possessing a licensed firearm.

### CATEGORIES OF RECORDS IN THE SYSTEM:

Data on individuals (victims, witnesses, complainants, offenders, suspects, and drivers) involved in incidents may include, but is not limited to, name; Social Security Number; date of birth; place of birth; home address and phone; alias; race; ethnicity; sex; marital status; identifying marks (tattoos, scars, etc.); height; weight; eye and hair color; date, location, nature and details of the incident/offense to include whether alcohol, drugs and/or weapons were involved; driver's license information; tickets issued; vehicle information; suspension/revocation or barment records; whether bias against any particular group was involved; if offense involved sexual harassment; actions taken by military commanders (*e.g.*, administrative and/or non-judicial measures, to include sanctions imposed); referral actions; court-martial results and punishments imposed; confinement information, to include location of correctional facility, gang/cult affiliation if applicable; and release/parole/clemency eligibility dates.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; DoD Directive 7730.47, Defense Incident Based Reporting System (DIBRS); Air Force Instruction 31–203, Security Forces Management Information System; 18 U.S.C. 922 note, Brady Handgun Violence Prevention Act; 28 U.S.C. 534 note, Uniform Federal Crime Reporting Act; 42 U.S.C. 10601 *et seq.*, Victims Rights and Restitution Act of 1990; and E.O. 9397 (SSN).

### PURPOSE(S):

Serves as a repository of criminal and specified other non-criminal incidents used to satisfy statutory and regulatory reporting requirements, specifically to provide crime statistics required by the Department of Justice (DoJ) under the Uniform Federal Crime Reporting Act; to provide personal information required by the DoJ under the Brady Handgun Violence Prevention Act; and statistical information required by DoD under the Victim's Rights and Restitution Act; and to enhance AF's capability to analyze trends and to respond to executive, legislative, and oversight requests for statistical crime data relating to criminal and other high-interest incidents.

Security Forces commanders will use criminal/statistical data for local law enforcement purposes. The system generates reports for use by the Air Force Security Forces at all levels of command, provides security forces commanders the ability to view criminal statistics and apply whatever actions are necessary for enforcement.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Justice for criminal reporting purposes and as required by the Brady Handgun Violence Prevention Act.

To courts and state, local, and foreign law enforcement agencies for valid judicial proceedings.

To victims and witnesses to comply with the Victim and Witness Assistance Program, the Sexual Assault Prevention and Response Program, and the Victims' Rights and Restitution Act of 1990.

The DoD "Blanket Routine Uses" published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

### STORAGE:

Maintained on computers and computer output products; some paper reports are generated.

### RETRIEVABILITY:

Records are retrieved by name or Social Security Number.

### SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties, and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in computer storage devices which are protected by computer system software.

### RETENTION AND DISPOSAL:

Destroy offenses reportable under Brady, Lautenberg, or involving sex offender registration 99 years after entry into the SFMIS database; Class A offenses and military offenses of confinement of more than 1 year or death is adjudged by court-martial 5 years from entry into database or term of confinement whichever is later; Class B offenses 3 years after entry into database or term of confinement, whichever is later; military offenses other than those disposed of by Article

15/Administrative Sanction 3 years after entry into database; offenses disposed of by Article 15/Adminstrative Sanction 6 months after entry into database; and records on acquittals, set aside actions and unfounded allegations immediately after action is completed.

**SYSTEM MANAGER(S) AND ADDRESS:**

Reports and Analysis Program Manager, Police Services Branch, Headquarters Air Force Security Forces Center (HQ AFSFC/SFOP), 1517 Billy Mitchell Boulevard, Lackland Air Force Base, TX 78236–0119.

**NOTIFICATION PROCEDURE:**

Individuals seeking to access records about themselves contained in the system should address written requests to their servicing Security Forces Administrative Reports Section (SFAR) or visit the system manager at HQ Air Force Security Forces Center, Police Services Branch (HQ AFSFC/SFOP), 1517 Billy Mitchell Boulevard, Lackland Air Force Base, TX 78236–0119.

Individuals must identify themselves by full name, rank, home address, Social Security Number and present a military ID, valid driver's license, or some other form of identification when appearing in person.

**RECORD ACCESS PROCEDURES:**

Individuals seeking to access records about themselves contained in the system should address written requests to their servicing Security Forces Administrative Reports Section (SFAR) or visit the system manager at HQ Air Force Security Forces Center, Police Services Branch (HQ AFSFC/SFOP), 1517 Billy Mitchell Boulevard, Lackland Air Force Base, TX 78236–0119.

Individuals must identify themselves by full name, rank, home address, and Social Security Number.

**CONTESTING RECORDS PROCEDURES:**

The Air Force rules for accessing records, for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Information obtained from individuals; DoD and civilian law enforcement authorities, security flight personnel, desk sergeants, operations personnel, staff judge advocates, courts-martial, correctional institutions and facilities, and administrative reports branch personnel.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency, which performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

[FR Doc. 03–25853 Filed 10–10–03; 8:45 am]

**BILLING CODE 5001–08–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7573–7]**

## Request for Applications for Essential Use Exemptions to the Production and Import Phaseout of Ozone Depleting Substances Under the Montreal Protocol for the Years 2005 and 2006

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Through this action, the Environmental Protection Agency (EPA) is requesting applications for essential use allowances for calendar years 2005 and 2006. Essential use allowances provide exemptions to the production and import phaseout of ozone-depleting substances and must be authorized by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. The U.S. Government will use the applications received in response to this notice as the basis for its nomination of essential use allowances at the Sixteenth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (the Protocol), to be held in 2004.

**DATES:** Applications for essential use exemptions must be submitted to EPA no later than November 13, 2003 in order for the U.S. Government to complete its review and to submit nominations to the United Nations Environment Programme and the Protocol Parties in a timely manner.

**ADDRESSES:** Send two copies of application materials to: Scott Monroe, Global Programs Division (6205J), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. (For applications sent via courier service, use the following direct mailing address: 1310 L Street, NW, Washington, DC 20005.) *Confidentiality:* Application materials that are confidential should be submitted under separate cover and be clearly identified as "trade secret," "proprietary," or "company confidential." Information covered by a claim of business confidentiality will be disclosed only to authorized government personnel. Please note that data will be presented in aggregate form by the United States as part of the nomination to the Parties. If no claim of confidentiality accompanies the information when it is received by EPA, the information may be made available to the public by EPA without further notice to the company (40 CFR 2.203).

**FOR FURTHER INFORMATION CONTACT:** Scott Monroe at the above address, or by telephone at (202) 343–9712, by fax at (202) 343–2337, or by e-mail at *monroe.scott@epa.gov*. General information may be obtained from EPA's stratospheric protection Web site at *http://www.epa.gov/ozone*.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. Background on the Essential Use Nomination Process
II. Information Required for Essential Use Applications for Production or Importation of Class I Substances in 2005 and 2006

### I. Background—The Essential Use Nomination Process

As described in previous **Federal Register** (FR) documents,[1] the Parties to the Protocol agreed during the Fourth Meeting in Copenhagen on November 23–25, 1992, to accelerate the phaseout schedules for Class I ozone-depleting substances. Specifically, the Parties agreed that non-Article 5 Parties (that is, developed countries) would phase out the production and consumption of halons by January 1, 1994, and the production and consumption of other class I substances (under 40 CFR part 82, subpart A), except methyl bromide, by January 1, 1996. The Parties also reached decisions and adopted resolutions on a variety of other matters, including the criteria to be used for allowing "essential use" exemptions from the phaseout of production and importation of controlled substances. Decision IV/25 of the Fourth Meeting of the Parties details the specific criteria and review process for granting essential use exemptions.

Decision IV/25 states that "* * * a use of a controlled substance should qualify as "essential" only if: (i) it is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and (ii) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health." In addition, the Parties agreed "that production and consumption, if any, of a controlled substance, for essential uses should be permitted only if: (i) all economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and (ii) the controlled substance is not available in sufficient quantity and quality from the existing stocks of banked or recycled controlled substances * * *." Decision XII/2 taken at the thirteenth meeting of the Parties states that any CFC metered dose inhaler (MDI) product approved after December 31, 2000, is nonessential unless the product meets the criteria in Decision IV/25 paragraph 1(a).

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[1] 58 FR 29410, May 20, 1993; 59 FR 52544, October 18, 1994; 60 FR 54349, October 23, 1995; 61 FR 51110, 0 30, 1996, 62 FR 51655, October 2, 1997; 63 FR 42629, August 10, 1998; 64 FR 50083, September 15, 1999; 65 FR 65377, November 1, 2000; and 200166 FR 56102, November 6, 2001.

The first step in obtaining essential use allowances is for the user to consider whether the use of the controlled substance meets the criteria of Decision IV/25. If the essential use request is for an MDI product, that product must also meet the criteria of Decision XII/2. The user should then send a completed application in order to notify EPA of the candidate use and provide information for U.S. government agencies and the Protocol Parties to evaluate that use according to the criteria under the Protocol.

Upon receipt of the essential use exemption application, EPA reviews the information provided and works with other interested Federal agencies to determine whether it meets the essential use criteria and warrants being nominated by the United States for an exemption. In the case of multiple exemption requests for a single use such as for MDIs, EPA aggregates exemption requests received from individual entities into a single U.S. request. An important part of the EPA review of requests for CFCs for MDIs is to determine that the aggregate request for a particular future year adequately reflects the total market need for CFC MDIs and expected availability of CFC substitutes by that point in time. If the sum of individual requests does not account for such factors, the U.S. government may adjust the aggregate request to better reflect true market needs.

Nominations submitted by the United States and other Parties are forwarded from the United Nations Ozone Secretariat to the Montreal Protocol's Technical and Economic Assessment Panel (TEAP) and its Technical Options Committees (TOCs), which review the submissions and make recommendations to the Protocol Parties for essential use exemptions. Those recommendations are then considered by the Parties at their annual meeting for final decision. If the Parties declare a specified use of a controlled substance as essential, and issue the necessary exemption from the production and consumption phaseout, EPA may propose regulatory changes to reflect the decisions by the Parties, but only to the extent such action is consistent with the Clean Air Act (CAA or Act). Applicants should be aware that essential use exemptions granted to the United States under the Protocol in recent years have been limited to chlorofluorocarbons (CFCs) for metered dose inhalers (MDIs) to treat asthma and chronic obstructive pulmonary disease, and methyl chloroform for use in manufacturing solid rocket motors.

The timing of this process is such that in any given year the Parties review nominations for essential use exemptions from the production and consumption phaseout intended for the following year and subsequent years. This means that, if nominated, applications submitted in response to today's notice for an exemption in 2005 and 2006 will be considered by the Parties in 2004 for final action.

The quantities of controlled ODSs that are requested in response to this notice, if approved by the Parties to the Montreal Protocol in 2004, will then be allocated as essential use allowances (EUAs) to the specific U.S. companies through notice and comment rulemaking. EUAs for the year 2005 will be allocated to U.S. companies at the end of 2004, and EUAs for the year 2006 will be made at the end of 2005.

## II. Information Required for Essential Use Applications for Production or Importation of Class I Substances in 2005 and 2006

Through this action, EPA requests applications for essential use exemptions for all class I substances, except methyl bromide, for calendar years 2005 and 2006. This notice is the last opportunity to submit new or revised applications for 2005. This notice is also the first opportunity to submit requests for 2006. Companies will have an opportunity to submit new, supplemental, or amended applications for 2006 next year. All requests for exemptions submitted to EPA must present information as prescribed in the current version of the TEAP "Handbook on Essential Use Nominations" (or "handbook"), which was published in June 2001. The handbook is available electronically on the Web at *http://www.teap.org*, or at *http://www.epa.gov/ozone*.

In brief, the TEAP Handbook states that applicants must present information on:

- Role of use in society;
- Alternatives to use;
- Steps to minimize use;
- Steps to minimize emissions;
- Recycling and stockpiling;
- Quantity of controlled substances requested; and
- Approval date and indications (for MDIs).

First, in order to obtain complete information from essential use applicants for CFC MDIs, EPA requires that parties (such as the International Pharmaceutical Aerosol Consortium) who request CFCs for multiple pharmaceutical companies make clear the amount of CFCs requested for each member company. Second, all essential use applications for CFCs must provide a breakdown of the quantity of CFCs necessary for each MDI product to be produced. This detailed breakdown of EUAs will allow EPA and the Food and Drug Administration to make informed decisions on the amount of CFC to be nominated by the U.S. Government for the years 2005 and 2006. Third, all new drug application (NDA) holders for CFC MDI products produced in the United States must submit a complete application for essential use allowances either on their own or in conjunction with their contract filler. In the case where a contract filler produces a portion of an NDA holder's CFC MDIs, the contract filler and the NDA holder must determine the total amount of CFCs necessary to produce the NDA holder's entire product line of CFC MDIs. The NDA holder must provide an estimate of how the CFCs would be split between the contract filler and the NDA holder in the allocation year. This estimate will be used only as a basis for determining the nomination amount, and may be adjusted prior to allocation of EUAs. Since the U.S. Government cannot forward incomplete or inadequate nominations to the Ozone Secretariat, it is important for applicants to provide all information requested in the Handbook, including the information specified in the supplemental research and development form (page 45).

The accounting framework matrix in the handbook entitled "Table IV: Reporting Accounting Framework for Essential Uses Other Than Laboratory and Analytical" requests data for the year 2003 on the amount of ODS exempted for an essential use, the amount acquired by production, the amount acquired by import, the amount on hand at the start of the year, the amount available for use in 2003, the amount used for the essential use, the quantity contained in exported products, the amount destroyed, and the amount on hand at the end of 2003. Because all data necessary for applicants to complete Table IV will not be available until after January 1, 2004, companies should not include this chart with their EUA applications in response to this action. EPA plans to send a letter to each essential use applicant requesting the information in Table IV in the first 2 weeks of January 2004. Companies will have only fourteen days in which to respond to this letter, because EPA must compile companies' responses to complete the U.S. CFC Accounting Framework for submission to the Parties to the Montreal Protocol by the end of January.

EPA anticipates that the Parties' review of MDI essential use requests will focus extensively on the United States' progress in developing alternatives to CFC MDIs, including education programs to inform patients and health care providers of the CFC phaseout and the transition to alternatives. Accordingly, applicants are strongly advised to present detailed information on these points, including the scope and cost of such efforts and the medical and patient organizations involved in the work. Applicants should submit their exemption requests to EPA as noted in the **ADDRESSES** section at the beginning of today's document.

Dated: October 6, 2003.

**Jeffrey R. Holmstead,**

*Assistant Administrator, Office of Air and Radiation.*

[FR Doc. 03–25914 Filed 10–10–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7573–5]**

## Gulf of Mexico Program Citizens Advisory Committee Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of meeting.

**SUMMARY:** Under the Federal Advisory Committee Act (Pub. L. 92–463), EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Citizens Advisory Committee (CAC).

**DATES:** The meeting will be held on Tuesday, November 4, 2003, 12 p.m. to 5 p.m., and on Wednesday, November 5, 2003, from 8:30 a.m. to 3 p.m.

**ADDRESSES:** The meeting will be held at the Holiday Inn on the Beach, 5002 Seawall Boulevard, Galveston, Texas 77551. (409–740–3581).

**FOR FURTHER INFORMATION CONTACT:** Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Mail Code EPA/GMPO, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

**SUPPLEMENTARY INFORMATION:** Agenda items include: GMP's Role in Implementation of the Hypoxia Action Plan, GMP Outreach and Education, Citizen's Role in Gulf Guardian Awards Process, CAC Strategic Planning FY 2004–2005.

The meeting is open to the public.

Dated: October 6, 2003.

**Gloria D. Car,**

*Designated Federal Officer.*

[FR Doc. 03–25937 Filed 10–10–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7574–3]**

## Meeting on Papers Addressing Scientific Issues in the Risk Assessment of Metals

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of meeting.

**SUMMARY:** Today the U.S. Environmental Protection Agency (EPA) announces an October 28, 2003, public meeting on five draft scientific white papers on metals risk assessment. Development of the papers was led by Eastern Research Group Inc., a contractor to EPA. The notice of availability of these papers for review and comment was published in an earlier **Federal Register** Notice (68 FR 55051, September 22, 2003). Consistent with EPA's commitment to provide opportunities for external input, the Agency now announces a public meeting to gather further feedback on the draft papers. In order to assist in compiling comments on the issue papers, the Agency asks that commenters address questions posed in the September 22, 2003, **Federal Register** Notice. These questions are reprinted below under **SUPPLEMENTARY INFORMATION**. ERG, the EPA contractor who lead the development of the issue papers, is organizing and convening the meeting.

**DATES:** The public meeting will be held Tuesday, October 28, 2003, from 9:30 a.m. to 5 p.m. Eastern Standard Time. Participants wishing to attend are asked to register with ERG by October 21, 2003.

**ADDRESSES:** The public meeting will be held at the Hotel Washington, 515 15th Street at Pennsylvania Avenue, NW., Washington, DC 20004. You may register online at *https://www.ergweb.com/projects/metalreg/index.html*. You may also register by calling ERG at (781) 674–7374. Space is limited and reservations will be accepted on a first-come, first-served basis. Please let ERG know if you plan to make comments at the meeting.

EPA has established an official public docket for comments under Docket Identification Number OAR–2003–0192. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. Comments may be submitted and reviewed on-line at *http://www.epa.gov/edocket* as detailed in the earlier **Federal Register** Notice (68 FR 55051, September 22, 2003) entitled "Papers Addressing Scientific Issues in the Risk Assessment of Metals".

**FOR FURTHER INFORMATION CONTACT:** For meeting information, registration, and logistics, contact ERG, 110 Hartwell Avenue, Lexington, Massachusetts 02421; telephone: (781) 674–7374; facsimile: (781) 674–2906.

For technical information on the white papers, contact Dr. William P. Wood, Executive Director, Risk Assessment Forum, National Center for Environmental Assessment, Office of Research and Development; telephone: (202) 564–3361; facsimile: (202) 565–0062; or email: *risk.forum@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

*Presentations:* Members of the public who are interested in making a short presentation on scientific issues at the meeting are requested to indicate this interest at the time of registration. EPA would appreciate provision of a short summary of the presentation, which should be no more than one page. Please provide this summary in written and electronic format upon arrival at the meeting. Presentations should be no more than 20 minutes in duration, subject to the number of presentations registered. Because EPA is seeking a variety of opinions, the facilitator will ensure that there is a balance of time allotted. Presenters please note that ERG may record the meeting proceedings to support their developing a meeting summary report. Resources ERG uses in the development of the report will remain the property of ERG. EPA will make the summary report available on-line through the Risk Assessment Forum's Web site, *http://cfpub.epa.gov/ncea/raf/*.

*Comments:* Comments presented during the meeting should be submitted to Edocket. In addition, please submit one unbound original set of comments with pages numbered consecutively at the meeting. For attachments, provide an index and number pages consecutively with the comments. Because all comments received will be placed in Edocket, commentors should not submit personal information (such as medical data or home address), Confidential Business Information, or information protected by copyright.

**SUPPLEMENTARY INFORMATION:** During their September 2002 review of the Agency's draft action plan for the development of a metals framework, the EPA Science Advisory Board emphasized the importance of engaging the outside community so as to contribute to the knowledge base the Agency would draw from in developing guidance on the risk assessment of metals. As part of the effort to engage stakeholders and the scientific community and to build on existing experience, the Agency commissioned ERG to organize external experts to lead the development of scientific papers on issues and state-of-the-art approaches to metals risk assessment. (Some individual EPA experts contributed specific discussions on topic(s) for which he or she has scientific expertise or knowledge of current Agency practice.)

On September 22, 2003, EPA published a **Federal Register** Notice announcing the availability of, and opportunity to comment on, five draft scientific white papers titled: (1) Issue Paper on the Environmental Chemistry of Metals, (2) Issue Paper on Metal Exposure Assessment, (3) Issue Paper on the Ecological Effects of Metals, (4) Issue Paper on the Human Health Effects of Metals, and (5) Issue Paper on the Bioavailability and Bioaccumulation of Metals. The draft issue papers are available primarily via the Internet on the Risk Assessment Forum's web page at *http://cfpub.epa.gov/ncea/raf/recordisplay.cfm?deid=59052.* Comments will be received on the draft papers until November 7, 2003.

The public meeting will provide further opportunity for the Agency to receive stakeholder input. EPA is particularly interested in the public's perspectives on the following:

1. For the purpose of deriving general principles that can be applied in the assessment of metals, do the issue papers provide an appropriate level of detail?

2. Are there additional chemical, biological and physical processes that should be considered for metals assessment? If so, please describe and provide references.

3. Are you aware of any models, approaches or methods not considered in the reports that, if implemented, would substantially reduce uncertainty in the Agency's metal assessments? If so, which ones are ready for application now (or in the next few years), and which types of assessments would benefit most from their application (*e.g.*, hazard ranking/characterization, national, or site-specific assessments)?

4. What other suggestions do you have to improve the utility of these papers as the Agency develops a metals assessment framework?

The purpose of this meeting is for EPA to receive additional scientific comment from the public on the issue papers. Therefore, although EPA staff will be present, EPA will not evaluate or respond to comments at the meeting. Likewise, EPA is not soliciting comments on past Agency actions.

The views expressed in the draft papers are those of the authors and do not necessarily reflect the views or policies of the EPA. For this reason, disposition of scientific comments received on these papers will be made at the author's or author team's discretion. The material contained in the papers may be used in total, or in part, as source material for the Agency's framework for metals risk assessment and EPA's evaluation of this material will therefore include consideration of the Assessment Factors recently published by EPA for use in evaluating the quality of scientific and technical information.

Dated: October 7, 2003.

**Peter W. Preuss,**

*Director, National Center for Environmental Assessment.*

[FR Doc. 03–25935 Filed 10–10–03; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2003–0342; FRL–7331–4]**

## Pesticide Program Dialogue Committee and PPDC Registration Review Work Group; Notice of Public Meetings

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA's Pesticide Program Dialogue Committee (PPDC) will hold a public meeting on October 29 and 30, 2003. An agenda is being developed and will be posted on EPA's website. Agenda topics will include a report from the PPDC's Registration Review Work Group: endangered species; non-governmental stewardship activities; pesticide budget/fees and output efficiencies; certification and training; and follow-up to issues discussed at the April 2003 PPDC meeting. In addition, the PPDC Registration Review Work Group will hold two separate public meetings on the following dates: October 17 and October 28, 2003. Agendas for the PPDC Registration Review Work Group meetings will also be posted on EPA's website.

**DATES:** The PPDC meeting will be held on Wednesday, October 29, 2003, from 9 a.m. to 5:30 p.m., and Thursday, October 30, 2003, from 9 a.m. to 1 p.m.

The PPDC Registration Review Work Group will hold a public meeting on Friday, October 17, 2003, from 8:30 a.m. to 5 p.m., and on Tuesday, October 28, 2003, from 9 a.m. to 5 p.m.

**ADDRESSES:** The PPDC meeting will be held at the National Rural Electric Cooperative Association (NRECA) Conference Center, 4301 Wilson Boulevard, Arlington, VA. The telephone number to the NRECA Conference Center is (703) 907–5500. The NRECA Conference Center is located adjacent to the Ballston Metro Station and about a 15 minute taxi ride from Ronald Reagan Washington National Airport.

The PPDC Registration Review Work Group meeting on October 17, 2003, will be held at EPA's Offices at 1921 Jefferson Davis Highway, Crystal Mall #2, Room 1110 (the Fishbowl), Arlington, VA. The PPDC Registration Review Work Group meeting on October 28, 2003, will be held at the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA. The telephone number to the Hyatt Regency Crystal City is (703) 413–6873.

**FOR FURTHER INFORMATION CONTACT:** Margie Fehrenbach, Office of Pesticide Programs, Mail code 7501C, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: 703–308–4775; fax number: 703–308–4776; e-mail address: *Fehrenbach.Margie@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

This action is directed to the public in general; however, persons may be interested who work in agricultural settings or persons who are concerned about implementation of the Federal

Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA) of 1996. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**. Potentially affected entities may include but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer and farmworker groups; pesticide users and growers; pest consultants; State, local and Tribal governments; academia; public health organizations; food processors; and the public. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0342. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An agenda for the PPDC meeting is being developed and will be posted on EPA's website at *www.epa.gov/pesticides/ppdc*. Agendas for the PPDC Registration Review Work Group meetings will also be posted on EPA's website at *www.epa.gov/pesticides/ppdc*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

## II. Background

The Office of Pesticide Programs is entrusted with the responsibility of ensuring the safety of the American food supply, the protection and education of those who apply or are exposed to pesticides occupationally or through use of products from unreasonable risk, and general protection of the environment and special ecosystems from potential risks posed by pesticides.

PPDC was established under the Federal Advisory Committee Act (FACA), Public Law 92–463 in September 1995, for a 2–year term and renewed every 2 years since that time. EPA is seeking to renew the current PPDC Charter, which expires in November 2003, for another 2–year term. PPDC provides advice and recommendations to the Office of Pesticide Programs on a broad range of pesticide regulatory, policy and program implementation issues that are associated with evaluating and reducing risks from use of pesticides. The following sectors are represented on the PPDC: Pesticide industry and trade associations; environmental/public interest and consumer groups; farm worker organizations; pesticide user, grower, and commodity groups; Federal and State/local/Tribal governments; the general public; academia; and public health organizations.

Copies of the PPDC Charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request.

## List of Subjects

Environmental protection, Agricultural workers, Agriculture, Chemicals, Foods, Pesticides, Pests, Public health, Risk assessment, Tolerance reassessment.

Dated: October 9, 2003.

**James Jones,**

*Director, Office of Pesticide Programs.*

[FR Doc. 03–25984 Filed 10–9–03; 10:10 am]

**BILLING CODE 6560–50–S**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7574–2]**

## Integrated Risk Information System (IRIS); Administrative Changes

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Notice; administrative changes in the Integrated Risk Information System hotline and records center.

**SUMMARY:** IRIS is an EPA data base that contains EPA scientific consensus positions on human health effects that may result from chronic exposure to chemical substances in the environment. In this action, EPA is announcing an upcoming change to the location and phone number of EPA's contractor-operated IRIS hotline and publically-accessible records center.

**DATES:** On or about October 17, 2003.

**ADDRESSES:** The new address of the IRIS Hotline and records center will be IRIS Hotline, (Mail Code 28221T) EPA-West Building, 1301 Constitution Avenue, NW, Washington DC 20005.

**FOR FURTHER INFORMATION CONTACT:** For information on this administrative change, contact Rick Johnson, IRIS staff, National Center for Environmental Assessment (mail code 8601D), Office of Research and Development, U.S. Environmental Protection Agency, Washington, DC 20460, or call (202) 564–3291, or send electronic mail inquiries to *johnson.rickc@epa.gov*. For information on the IRIS program, contact Amy Mills, Program Director, National Center for Environmental Assessment (mail code 8601D), Office of Research and Development, U.S. Environmental Protection Agency, Washington, DC 20460, or call (202) 564–3204, or send electronic mail inquiries to *mills.amy@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## Background

IRIS is an EPA data base containing Agency consensus scientific positions on potential adverse human health effects that may result from chronic (or lifetime) exposure to chemical substances found in the environment. IRIS currently provides information on health effects associated with more than 500 chemical substances. EPA has provided outreach to facilitate the use and understanding of the data base. These efforts include a telephone hotline which provides answers to public inquiries about access to IRIS, the content of specific IRIS health assessments, and risk assessment methodologies. EPA also operates a reading room where the public may, by appointment, view background files supporting IRIS assessments. Further, EPA provides IRIS on the Internet for public access at *http://www.epa.gov/iris*.

**Today's Action**

EPA is moving the hotline function and reading room to the Agency's combined docket facility, the EPA Docket Center. The hotline will be accessed via a new phone number and fax number. The hotline email address will remain as *Hotline.IRIS@epamail.epa.gov*. The reading room address, hotline phone and fax changes will be shown on the IRIS Web site no later than October 15, 2003.

Dated: October 7, 2003.

**Peter W. Preuss,**

*Director, National Center for Environmental Assessment.*

[FR Doc. 03–25936 Filed 10–10–03; 8:45 am]

BILLING CODE 6560–50–M

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## FARM CREDIT ADMINISTRATION

### Farm Credit Administration Board; Amendment to Sunshine Act Meeting

**AGENCY:** Farm Credit Administration.

**SUMMARY:** Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on October 7, 2003 (68 FR 57894) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for October 9, 2003. This notice is to amend the agenda by removing the item from the closed session of that meeting.

**FOR FURTHER INFORMATION CONTACT:** Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

**ADDRESSES:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**SUPPLEMENTARY INFORMATION:** Parts of this meeting of the Board were open to the public (limited space available), and parts of this meeting were closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The agenda for October 9, 2003, is amended by removing the following item from the closed session as follows:

**Closed Session***

*Reports*

- East Carolina Farm Credit, ACA Class A Cumulative Preferred Stock

Dated: October 9, 2003.

**Jeanette C. Brinkley,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 03–26089 Filed 10–9–03; 3:29 pm]

BILLING CODE 6705–01–P

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:30 p.m. on Tuesday, October 7, 2003, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate, enforcement, resolution, and supervisory activities.

In calling the meeting, the Board determined, on motion of Director James E. Gilleran (Director, Office of Thrift Supervision), seconded by Vice Chairman John M. Reich, concurred in by Mr. E. Wayne Rushton, acting in the place and stead of Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 Seventeenth Street, NW., Washington, DC.

Dated: October 8, 2003.

Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. 03–26025 Filed 10–9–03; 11:33 am]

BILLING CODE 6714–01–M

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## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 7, 2003.

**A. Federal Reserve Bank of Chicago** (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Wintrust Financial Corporation*, Lake Forest, Illinois; to acquire 100 percent of the voting shares of Beverly Bank & Trust Company, National Association, Chicago, Illinois (in organization).

Board of Governors of the Federal Reserve System, October 8, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–25900 Filed 10–10–03; 8:45 am]

BILLING CODE 6210–01–S

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*Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(4), (8) and (9).

## FEDERAL RESERVE SYSTEM

**[Docket No. OP–1164]**

### Federal Reserve Bank Currency Recirculation Policy

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Request for comment; notice.

**SUMMARY:** The Board is requesting comment on proposed changes to its cash services policy to reduce depository institutions' overuse of Federal Reserve Bank cash processing services, which will affect approximately 100 institutions with large cash businesses. The Board proposes revising its policy by adding two elements: (1) A custodial inventory program that provides an incentive to depository institutions to hold currency in their vaults to meet customers' demand, and (2) a fee to depository institutions that deposit currency to and order currency from Reserve Banks within the same week instead of recirculating currency deposited with them among their customers. The Board has authorized Reserve Banks to conduct a proof-of-concept program during 2004 to provide information about the proposed custodial inventory program.

**EFFECTIVE DATE:** Comments must be received by January 15, 2004.

**ADDRESSES:** Comments should refer to Docket No. OP–1164 and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202/452–3819 or 202/452–3102. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

Comments on the collections of information under the Paperwork Reduction Act should be sent to the Secretary, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100—to be obtained), Washington, DC, 20503.

**FOR FURTHER INFORMATION CONTACT:** Eugenie E. Foster, Project Leader (202/736–5603), or Michael Lambert, Manager (202/452–3376), Cash Section, Division of Reserve Bank Operations and Payment Systems; for the hearing impaired only: Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544).

**SUPPLEMENTARY INFORMATION:**

### 1. Background

The Federal Reserve Banks (Reserve Banks) supply genuine (new and fit) currency and coin to depository institutions throughout the nation to meet the public's cash demand. Historically, Reserve Banks have removed unfit notes from circulation and served as intermediaries among depository institutions, accepting deposits from those with a surplus of fit notes and providing currency to those with a shortfall.[1] Depository institutions, in turn, have acted as intermediaries among their customers, recirculating currency from merchant customers, for example, to meet the cash demands of households and other customers.

These traditional patterns have been changing as depository institutions have used fewer fit notes deposited by customers to fill other customers' orders. Today, depository institutions often order currency directly from Reserve Banks to fill their customers' orders and deposit notes received from their customers directly with Reserve Banks. A number of depository institutions, for example, have reorganized their businesses to distribute currency to ATMs separately from currency distributed to large retail customers or to the institution's branches. Each of these depository institutions' business lines withdraws currency from Reserve Banks without first exhausting currency that its other business lines may accumulate from customer deposits within the same geographic area.

Further, actions taken by many depository institutions to reduce their required reserves may have permitted them to reduce their holdings of vault cash.[2] Depository institutions with vault cash in excess of that needed to satisfy reserve requirements have an incentive to economize on holdings of currency in their vaults, particularly by increasing the size and frequency of their deposits of currency to and orders of currency from Reserve Banks.[3]

Reserve Banks' order and deposit activity during 2002 indicates that deposits of nearly 6.7 billion $5 through $20 notes were followed or preceded by orders of the same denomination by the same institution in the same business week.[4] This pattern suggests that some depository institutions are relying on Reserve Banks to recirculate a substantial amount of currency within the depository institutions' own organizations and that this currency makes up a significant portion of their cash deposits to Reserve Banks. Further, this activity is primarily concentrated in 100 depository institutions with large cash businesses. Underpinning depository institutions' decisions to use—and overuse—Reserve Bank cash processing services is the fact that Reserve Banks offer basic currency processing services without charge.

### 2. Current Policy

Reserve Banks' Operating Circular 2, Cash Services, states:

> If you deposit fit currency with us, you may not order currency of the same denomination within five business days prior to or following the deposit of that denomination. This practice, known as "cross-shipping," is not permitted at the depositing office level. When practicable, cross-shipping should be minimized or eliminated at the depositing institution level.[5]

This policy has proven ineffective in reducing or preventing cross-shipping for several reasons. The direction to depository institutions to minimize cross-shipping at the institution level (instead of the branch or business-unit level) "when practicable" does not provide sufficient guidance to depository institutions or Reserve Banks with respect to the circumstances under which cross-shipping should not occur. More fundamentally, the only tool Reserve Banks currently have to enforce the policy is to deny currency services to depository institutions that do not comply with the operating circular requirement. Denial of service would be highly disruptive to the businesses of both the depository institutions and their customers. In addition, Reserve Banks have not had systematic tools for monitoring the quality of specific currency deposits, making the process of identifying cross-shipping cumbersome and costly.

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[1] Fit notes are of acceptable quality for circulation, whereas unfit notes are unacceptable. For example, unfit notes are often soiled, torn, or defaced. New notes are previously uncirculated notes that Reserve Banks issue.

[2] Depository institutions can satisfy their reserve requirements with vault cash, or with reserve balances held at a Reserve Bank either directly or through a pass-through correspondent. Since the mid-1990s, however, many depository institutions have sharply reduced their reserve requirements by sweeping balances held by retail customers in deposit accounts that are reservable into deposit accounts that are not reservable. For some institutions, the reduction in required reserves left them with more vault cash than necessary to meet requirements.

[3] Vault cash holdings do not earn interest. If an institution deposits currency with a Reserve Bank, it receives credit to its account at the Federal Reserve. The depository institution can then earn a positive return on those funds by lending them to another institution, such as in the federal funds market.

[4] This amounts to 35 percent of notes deposited in these denominations, or 20 percent of total deposits in 2002.

[5] Federal Reserve Operating Circular 2, January 2, 1998, section 3.3. *http://www.frbservices.org/Cash/index.cfm.*

### 3. Proposed Recirculation Policy

The Board believes that to minimize the societal cost of providing currency to the public, depository institutions should resume their traditional role of supplying fit currency from their customers' deposits to meet other customers' needs before turning to Reserve Banks to obtain currency. To provide incentives for depository institutions to adopt the least costly means of recirculating currency to their customers, the Board proposes to implement a policy that has two inter-related components: a custodial inventory program and a fee that would be assessed on deposits of cross-shipped currency.

#### *Custodial Inventory Program*

One reason that depository institutions engage in cross-shipping is to avoid incurring opportunity costs of holding currency, which earns no interest income. To mitigate these costs associated with holding currency long enough to facilitate its recirculation, the Board proposes to allow the depository institutions to transfer into custodial inventories $5, $10, and $20 notes that they might otherwise cross-ship. A custodial inventory is currency owned by a Reserve Bank but located within a depository institution's secured facility and segregated from the depository institution's currency. To be eligible to hold a custodial inventory under the proposed program, a depository institution must be capable of, and commit to, recirculating substantial amounts of currency in the $5 through $20 denominations in order to justify the administrative costs and the risks to Reserve Banks of allowing depository institutions to hold Reserve Bank currency in their vaults. Under the custodial inventory program, depository institutions could move to Reserve Banks' accounts currency that is temporarily surplus but that the institutions expect to pay to customers within the same business week. The Board understands that custodial inventories may facilitate smoother use of depository institutions' processing equipment by allowing them to store peak-day deposits of unprocessed currency for handling later in the week. Custodial inventories also may allow depository institutions to avoid the costs of preparing and transporting their temporarily surplus currency to and from Reserve Bank cash offices. For years, central banks in some other G–10 countries have used custodial inventory programs to increase recirculation by depository institutions.

While the Board intends for the custodial inventory program to provide an incentive to depository institutions to avoid cross-shipping, institutions should continue to maintain on their own books sufficient currency inventories to meet normal currency operations and contingency needs. Depository institutions could transfer to a custodial inventory no more than 25 percent of the value of their total holdings in the $5 through $20 denominations. In addition, any institution that uses a custodial inventory to circumvent the intent of the recirculation policy, for example, by alternating the weeks in which it orders and deposits currency to a Reserve Bank, would lose its eligibility to participate in the program.

#### *Custodial Inventory Proof-of-Concept Program*

Before undertaking a permanent custodial inventory program, the Board has authorized Reserve Banks to implement during 2004 a one-year proof-of-concept program. The purpose of the proof-of-concept program is to allow Reserve Banks to evaluate how custodial inventories influence depository institutions' patterns of depositing and withdrawing currency, while allowing depository institutions to assess the costs and benefits of participating in the program. Reserve Banks also need to evaluate more fully the costs as well as the operational risks and risk management procedures for the custodial inventory program before undertaking a permanent program. Reserve Banks would select approximately 15 proof-of-concept sites from depository institution applications. Throughout the proof-of-concept program, Reserve Banks would monitor the order and deposit activity of participating institutions to determine whether they have recirculated more currency within their organizations than they did before the establishment of the custodial inventory.

Reserve Banks will select proof-of-concept sites from a cross-section of depository institutions that are high volume users of Reserve Bank cash services. At a minimum, proof-of-concept program participants must demonstrate that they will recirculate at least 200 bundles of currency per week in a Reserve Bank zone or sub-zone.[6] An institution that currently cross-ships at least 200 bundles of currency per week in a zone or sub-zone would meet the recirculation threshold for a custodial inventory proof-of-concept. Alternatively, an institution could meet the threshold for a proof-of-concept site by providing deposit and payment records demonstrating that it recirculates at least 200 bundles of currency weekly among its customers. After reviewing the results of the proof-of-concept program, Reserve Banks will determine the minimum bundles of currency a depository institution must recirculate weekly to qualify for a custodial inventory. Thereafter, Reserve Banks would review annually the minimum bundles required to support a custodial inventory.

The Board will review and use the results of the proof-of concept program to develop an inventory cap formula for determining the amounts of currency that depository institutions may transfer to Reserve Bank books. Each proof-of-concept custodial inventory will be subject to an inventory cap of either (1) 25 percent of average closing balances of currency during the previous week at that location (including both depository institution and Reserve Bank balances) in the $5 through $20 denominations, or (2) 25 percent of average daily closing balances of currency for the four previous same days of the week in the $5 through $20 denominations at that location.[7] Reserve Banks will test both formulas to enable the Board to determine the inventory cap percentage that allows the proper balance between providing an incentive to depository institutions to recirculate and limiting the transfer of inventory to Reserve Bank accounts. The Reserve Banks will also evaluate whether one inventory cap better promotes efficiency and administrative convenience for the depository institutions and Reserve Banks.

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[6] A bundle of currency is a standard package of 1,000 notes. A zone is the area to which a Reserve Bank office provides currency services. Under this proposed policy, Reserve Banks may establish sub-zones for large metropolitan areas at a significant distance from the nearest Reserve Bank office. Deposits and orders by institutions with branches and vaults in a sub-zone would be assessed cross-shipping fees separately from the institutions' activities in the rest of the zone.

[7] For example, under alternative 1, a depository institution that had daily balances averaging $100 million during the previous week would be subject to an inventory cap of $25 million. Under alternative 2, Monday's cap would be based on the average of the previous four Mondays, Tuesday's cap would be based on the average of the previous four Tuesdays, and so forth.

Reserve Banks will select proof-of-concept program participants to include depository institutions that:

(1) Deposit more than they order, order more than they deposit, and deposit and order in roughly balanced amounts;

(2) Are located a range of distances from the nearest Reserve Bank office;

(3) Serve differently sized markets; and

(4) Use a range of currency processing equipment and engage in a variety of currency handling practices, including, for example, outsourced or consortium arrangements.

The Board will begin to evaluate the results of the proof-of-concept program after six months of operation and will measure the success of the program to the extent that:

(1) Proof-of-concept participants significantly reduce cross-shipping or recirculate significant amounts of currency within the Reserve Bank zone or sub-zone in which the proof-of-concept site is located; and

(2) Deposits received from proof-of-concept participants contain a higher proportion of unfit notes than the average for all deposits in the same denominations in the Reserve Bank zone or sub-zone in which the proof-of-concept site is located.

Based on the public comments and the results of the proof-of-concept program, the Board will determine whether to implement a permanent custodial inventory program. If a program is implemented, proof-of-concept participants will have the opportunity to continue operating custodial inventories consistent with the final requirements.

Proof-of concept applications and the custodial inventory contract will be accessible through the Federal Reserve System Financial Services Web site, *http://www.frbservices.org*, beginning on January 29, 2004. Reserve Banks expect to accept applications between January 29, 2004, and March 15, 2004, for proof-of-concept sites located in the areas currently served by the following Federal Reserve offices: Boston; Charlotte; Chicago; Cleveland; Denver; Detroit; East Rutherford; Houston; Kansas City; Los Angeles; Miami; Minneapolis; Nashville; Oklahoma City; Philadelphia; San Francisco; Seattle; and St. Louis.

### *Recirculation Fee*

Because the Board expects that custodial inventories alone will not substantially reduce cross-shipping, it proposes to establish a recirculation fee to provide further incentive for depository institutions to recirculate currency. Based on current levels of Reserve Bank costs, the fee would be $5 to $6 per bundle of cross-shipped currency. Depository institutions would pay the fee when they deposit fit currency and order the same denomination within the same business week in a Reserve Bank zone or sub-zone. The fee would not be assessed on deposits of unfit or surplus fit currency, where surplus is defined as currency that is not needed by the depository institution within the business week of its deposit. The fee also would not be assessed on deposits of $50 and $100 notes because these notes are a relatively minor component of cross-shipped currency and, more importantly, because of the risk that depository institutions might recirculate high-denomination counterfeit notes. The Reserve Banks estimate that the recirculation fee would affect approximately 100 of the Reserve Banks' largest cash customers.

The Board proposes initially to exclude one-dollar notes from the recirculation policy. Because of the relatively low incidence of counterfeiting and the low value of one-dollar notes, depository institutions handle them differently from higher denominations in various ways that minimize costs. The incremental costs to depository institutions of sorting and recirculating fit one-dollar notes instead of ordering them from Reserve Banks would likely be greater than the costs for higher denomination notes. Reserve Banks are working with the banking industry with the goal of achieving net savings comparable to those that Reserve Banks could realize by including one-dollar notes in the recirculation policy. If this collaborative effort fails to yield comparable savings to those achieved by Reserve Banks through implementation of this policy within two years of the effective date of the permanent custodial inventory program, the Board proposes to apply the recirculation policy to one-dollar notes.

The Board proposes to set the recirculation fee to recover Reserve Banks' costs that vary with the quantity of currency that they process. The recirculation fee would not be subject to the pricing requirements of the Monetary Control Act (MCA). The MCA applies to currency and coin services such as transportation and coin wrapping, but not to services "of a governmental nature, such as the disbursement and receipt of new or fit coin and currency."[8] The Board determined, in the development of its pricing principles, that "currency and coin processing (paying, receiving, and verifying both coin and currency, and issuing, processing, canceling, and destroying currency) are governmental functions and would not be considered priced services subject to MCA."[9] The proposed recirculation fee is not for priced cash services subject to MCA; rather, it is a recovery of costs intended to encourage private-sector behavioral changes that would lower the overall societal costs of cash processing and distribution by curtailing overuse of a free governmental service.

### *De minimis Exemption*

The Board proposes to exempt *de minimis* levels of cross-shipped currency from the recirculation fee. Depository institutions would not pay a recirculation fee for the first 1,000 bundles of currency cross-shipped in a zone or sub-zone each quarter for three reasons.[10] First, the exemption would compensate for minor differences between currency fitness determinations made by depository institutions and Reserve Banks in processing these notes.[11] Second, the exemption would limit the effect of the policy on institutions whose small scale of currency operations may not justify investments in sorting equipment. Third, the exemption would allow depository institutions experiencing unanticipated swings in customer demand to order or deposit currency without incurring a fee. The proposed exemption would not have a material effect on Reserve Bank processing volumes, but would reduce or eliminate the cost of the policy for a large number of depository institutions.

A Reserve Bank would apply the *de minimis* exemption to currency that a depository institution cross-ships in a zone or sub-zone during each quarter. Depository institutions could not transfer a *de minimis* exemption from one zone or sub-zone to another. All or part of an exemption that a depository institution did not use during a quarter would expire at the end of that quarter. Reserve Banks would apply the exemption against depository institutions' total volumes of cross-shipped currency, not against each individual denomination.

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[8] 126 Cong. Rec. S3168 (March 27, 1980) (statement of Senator Proxmire).

[9] 45 FR 56893, September 4, 1980.

[10] Reserve Banks will review the level of the *de minimis* exemption annually. The 1,000-bundle exemption excludes one-dollar notes.

[11] Because Reserve Banks would assess the recirculation fee for all fit notes deposited above the *de minimis* exemption, depository institutions would have an incentive to ensure that their fitness determinations are comparable to those of Reserve Banks.

### *Cost Analysis of the Recirculation Policy*

During 2002, Reserve Banks processed 34.2 billion notes, with total costs of approximately $342 million. This number includes 19.4 billion $5 through $20 notes, 6.7 billion of which depository institutions cross-shipped. Curtailing current cross-shipping and its expected future growth would reduce Reserve Banks' expenses by enabling them to scale down currency processing operations and delay future capital investments in equipment and facilities. The Board estimates that by implementing the proposed recirculation policy, Reserve Banks could avoid currency processing costs of up to $35 million per year based on 2002 expense data.[12]

### *Custodial Inventory Program*

Reserve Banks would incur approximately $400,000 per year in operating costs to administer the proposed custodial inventory program, including auditing the custodial inventories, managing the overall program, and amortizing an investment to develop software to monitor Reserve Bank currency in custodial inventories. The Reserve Banks estimate that during the first year of the program their costs would total approximately $600,000 because of one-time charges for training and site evaluations.

The Board believes that depository institutions also may incur some additional costs in operating a custodial inventory. For example, depository institutions may have to modify their facilities to segregate Reserve Bank currency or to enhance their physical security, perhaps by installing surveillance equipment. They may also have to enhance physical- and procedural-access controls and engage in additional sorting and other handling of the notes held in a custodial inventory.

### Recirculation Fee

Most of the depository institutions with the largest cash operations have reported that, whether or not the Board adopts this recirculation policy, by 2006 they will use medium- or high-speed sorting equipment to process much of the currency deposited to Reserve Banks. Most of these depository institutions would need only inexpensive modifications to their processing equipment to recover fit currency for recirculation. The Board estimates that the total annual incremental expense would be approximately $2 million for all institutions using automated equipment to identify notes that are fit to recirculate.[13]

With the recirculation fee at $5 to $6 per bundle of cross-shipped currency, the Board projects that depository institutions would incur up to $18 million in fees annually where it is not economical for them to install currency fitness sorting equipment.[14] Instead of paying a recirculation fee to cross-ship this currency, however, the Board would expect depository institutions to explore lower-cost alternatives, such as having tellers manually sort currency at the point of receipt, paying currency to customers without fitness sorting when a range in the quality of notes is acceptable to customers, or obtaining currency processing services from other local institutions or armored carriers able to offer pricing that reflects economies of scale.[15] The Board would expect, therefore, that altogether depository institutions would incur total costs of approximately $20 million annually for recirculating most of the $5 through $20 denomination notes they currently cross-ship.

### Conclusion

The Board projects that the societal benefits of implementing the recirculation fee would outweigh the societal costs by up to $15 million per year.[16] For the most part, the benefits would accrue from avoided operating expenses at Reserve Banks. Greater recirculation by depository institutions would reduce the growth of Reserve Bank currency receipts and processing, and delay expansion of publicly owned and operated currency-processing infrastructure. Depository institutions may incur increased costs if they elect to participate in the custodial inventory program, take actions to avoid paying fees, or choose to pay fees. Any costs incurred by depository institutions are estimated to be significantly smaller than the costs that Reserve Banks will avoid if the institutions reduce or cease cross-shipping currency.

### *Phased Implementation*

The Board proposes to implement the recirculation policy in phases. If the Board approves implementation of the custodial inventory program following the proof-of-concept program, the first phase will expand the program to all eligible participants. In the second phase, which will begin approximately one year after the effective date of the permanent custodial inventory program, Reserve Banks will begin assessing the cross-shipping fee.[17] In the third phase, which will begin two years after the effective date of the permanent custodial inventory program, the Board would extend the recirculation policy to one-dollar notes if the Reserve Banks' net savings from collaborating with depository institutions is not comparable to those resulting from the implementation of this policy for $5 through $20 notes.

## **5. Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (PRA)[18], the Board reviewed the proposed rule under the authority delegated to it by the Office of Management and Budget (OMB). The proposed rule contains requirements that are subject to the PRA and required to obtain a benefit. The respondents/recordkeepers are for-profit financial institutions. The Board may not conduct or sponsor, nor is an organization required to respond to, this information collection unless it displays a currently valid OMB control number. The Board will obtain an OMB control number.

In 2003, the Board authorized Reserve Banks to implement a one-year proof-of-concept program starting in 2004. The proof-of-concept program would allow Reserve Banks to evaluate how custodial inventories influence depository institutions' patterns of depositing and withdrawing currency, while allowing depository institutions to assess the value of participating in the program. To initiate the proof-of-concept program, Reserve Banks would select 15 depository institution sites from applications submitted via the Internet. The Board estimates that it would take a depository institution, on average, 12 hours (ranging from 8 and 16 hours) to complete and submit an application. The application would request information such as: A description of the vault and vault security; contact person information; prior year's loss history for the proposed vault; volume, amount, and daily averages of vault holdings; personal computer availability and Internet access; and certification of insurance coverage. After being accepted into the proof-of-concept program, depository institutions would be required to use an Internet-based inventory tracking system that would take each institution approximately 15 minutes per day (excluding weekends and holidays) to track cash inventory.

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[12] This estimate includes costs that vary with the volume of currency processed, including labor, materials, and equipment. The amount by which Reserve Banks are able to reduce costs would depend on the actual decline in volumes because of this proposed policy. This decline would depend on the extent to which: (1) Depository institutions elect to pay the fee instead of recirculating; (2) depository institutions take full advantage of the *de minimis* exemption; and (3) depository institutions alter their handling of denominations not covered by the proposed policy.

[13] The Board assumes that depository institutions that use or acquire medium- or high-speed sorting equipment would use it to process all but one-dollar notes for quality. This estimate also assumes that under the proposed policy those depository institutions would process most of the $5 through $20 notes that they deposited with Reserve Banks during 2002.

[14] This is the total estimated recirculation fee that depository institutions would incur if they cross-shipped 50 percent of $5 through $20 notes.

[15] Depository institutions indicate that their customers are willing to accept a wider range in the quality of $5 notes than for the higher denominations.

[16] The incremental costs to Reserve Banks to implement the recirculation fee will be minimal—primarily costs associated with amortizing a $600 thousand software development investment that will allow Reserve Banks to track cross-shipping systematically.

[17] If the Board decides not to implement the custodial inventory program, it will implement the recirculation fee one year after termination of the proof-of-concept program.

[18] 44 U.S.C. 3506; 5 CFR 1320 Appendix A.1.

The Board would begin to evaluate the results of the proof-of-concept program after six months of operation. Based on the public comments and the results of the proof-of-concept, the Board would determine whether to implement a permanent custodial inventory program.

If the Board implements a permanent program, the 15 proof-of-concept participants would have the opportunity to continue operating custodial inventories, and Reserve Banks would select up to 135 additional sites. These new participants would be required to submit an application and, if accepted into the program, use the Internet-based inventory system.

The Board will review and, if needed, revise the following burden estimates after the first six months of the proof-of-concept program:

(1) *Number of proof-of-concept program sites:* 15.

(2) *Number of custodial inventory sites:* 150.

(3) *Response time:* 12 hours per application submitted; 15 minutes per day for inventory tracking; estimated total annual burden: 11,175 hours.

The Board requests comment on how many depository institutions will complete and submit the application to partake in the proof-of-concept program or the custodial inventory program, including:

(1) Whether the proposed collection of information is necessary for the proper performance of the Board and Reserve Banks' functions; including whether the information has practical utility;

(2) The accuracy of the Board's estimate of the burden of the proposed information collection, including the cost of compliance;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

## 6. Comments

The Board requests comments on all aspects of the proposed recirculation policy as described below, on the benefits and drawbacks of implementing it, and, in particular, on the following questions:

(1) How effective will the proposed custodial inventory program and the recirculation fee be in reducing or eliminating cross-shipping? What are the major benefits and drawbacks of custodial inventories and the recirculation fee?

(2) Are there effective alternate approaches that the Board should consider to increase depository institutions' recirculation of currency?

(3) Are there factors not described in this notice that would affect a depository institution's decision to pay a recirculation fee or undertake greater recirculation of currency within its organization? What are the benefits and drawbacks of allowing a *de minimis* exemption of 1,000 bundles of currency per depository institution per quarter for a zone or sub-zone? Is there an alternative approach to administering the *de minimis* exemption that would address identified drawbacks and still achieve the intended objectives of reducing the burden of complying on depository institutions with small currency operations while ensuring that most cross-shipping activity is governed by the policy?

(4) Under what circumstances would it be reasonable and practical for depository institutions to adopt lower-cost alternatives to the recirculation fee, such as having tellers manually sort currency at the point of receipt, paying currency to customers without fitness sorting when a range in the quality of notes is acceptable to customers, or obtaining currency processing services from other local institutions or armored carriers able to offer prices that reflect economies of scale?

(5) Are there alternative approaches that could be used to improve the efficiency of handling one-dollar notes other than applying the cross-shipping fee? What savings would an institution expect to realize from these alternative approaches?

(6) What costs would a depository institution anticipate incurring for operating a custodial inventory? How should Reserve Banks calculate the cap on the amount of currency that a depository institution may deposit in a custodial inventory? How many bundles of currency should Reserve Banks require a depository institution to recirculate per week to qualify for a custodial inventory?

(7) What would be the effects of the program, if any, on depository institutions' customers, on armored carriers, or on other parties?

## 7. Proposed Federal Reserve Cash Recirculation Policy

The Board proposes the following policy to promote depository institution recirculation of currency.

### *Policy*

Reserve Banks' role in the distribution of currency is to make available to depository institutions a supply of genuine (new and fit) currency sufficient to meet the public's cash demand. Reserve Banks remove unfit notes from circulation and act as intermediaries between depository institutions, accepting notes from those that have a surplus and providing currency to those with a shortfall. Depository institutions act as intermediaries to recirculate fit currency among their customers. Cross-shipping occurs when an institution deposits fit currency and orders currency of the same denomination, above the *de minimis* exemption, within the same week, in a Reserve Bank zone or sub-zone.

### *Custodial Inventory Program*

The Board proposes to establish a custodial inventory program to promote currency recirculation by reducing depository institutions' opportunity costs for holding currency. Participants in the custodial inventory program would hold, in their vaults, currency on the books of the Reserve Banks that they otherwise might have shipped to, and then ordered from, Reserve Banks during a business week. This program would include the following elements.

(1) Only depository institutions are eligible to participate in the custodial inventory program; however, depository institutions that outsource their currency vault(s) to a third party would also be eligible.

(2) A depository institution must be able to recirculate among its customers a substantial volume of eligible denominations of currency in the zone

or sub-zone of a proposed custodial inventory site. If the Board approves implementation of a permanent custodial inventory program, Reserve Banks will determine the minimum bundles of currency that depository institutions must be able to recirculate on a weekly basis to qualify for the custodial inventory program. Thereafter, Reserve Banks will review annually the minimum bundles required for depository institution participation in the custodial inventory program.

(3) Depository institutions may deposit into custodial inventories notes that they sort by denomination, count, and package in bundles. Depository institutions may deposit notes of any denomination that is subject to the recirculation fee.

(4) Depository institutions may deposit currency into or withdraw currency from custodial inventories at any time during the local Reserve Bank's business day.

(5) Depository institutions may maintain currency in custodial inventories on the Reserve Bank's books during fitness sorting or re-packaging.

(6) After reviewing the results of the proof-of-concept program, the Board will establish the inventory cap for currency that depository institutions may deposit into custodial inventories.

(7) Depository institutions that operate custodial inventories may continue to order currency from and deposit currency to Reserve Banks, which will monitor the activity for cross-shipping.

(8) Reserve Banks will require depository institutions to account for custodial inventory transactions via a Reserve Bank-provided, Internet-based accounting and inventory tracking system, to allow both Reserve Banks and the depository institutions to monitor the Reserve Bank-owned currency.

(9) Depository institutions that operate custodial inventories must agree to requirements that mitigate the risks that Reserve Banks incur by allowing the institutions to hold their currency. These measures include the following:

(a) A depository institution that operates a custodial inventory must indemnify the Reserve Bank against theft or loss of Reserve Bank currency. As provided in Reserve Banks' Operating Circular 1, *Account Relationships*, any such obligation is secured by all of the institution's assets in the possession of, or maintained with, any Reserve Bank, including its Federal Reserve account.

(b) Potential custodial inventory sites must comply with Reserve Bank physical security guidelines for vaults, access control, and camera coverage.

(c) Depository institutions proposing potential custodial inventory sites must agree to operate their facilities in accordance with Reserve Bank guidelines for access and control.

(d) Depository institutions that operate custodial inventories must segregate Reserve Bank currency from other currency.

(e) Depository institutions that operate custodial inventories must allow full access to Reserve Banks, the Board, the General Accounting Office, and their agents for unannounced audits of Reserve Bank currency.

(f) To qualify for a custodial inventory, a depository institution must be financially sound, as determined by its administrative Reserve Bank.

(10) Any depository institution that uses a custodial inventory to circumvent the intent of the recirculation policy will lose its eligibility to participate in the program.

### *Recirculation Fee*

(1) *Fee.* Reserve Banks will charge depository institutions a recirculation fee to recover currency processing costs for every 1,000 fit notes that a depository institution cross-ships, above a *de minimis* exemption. A Reserve Bank will assess a recirculation fee if a depository institution deposits fit currency and orders the same denomination within the same business week, within a Reserve Bank zone or sub-zone. This policy does not apply to $50 and $100 notes.[19] Based on current costs, Reserve Banks project that the recirculation fee will be in the $5 to $6 range for every 1,000 notes of currency that a depository institution cross-ships. Reserve Banks will announce the amount in the quarter before implementing the fee.

(2) *Recirculation fee components.* The recirculation fee will be based on those Reserve Bank costs that vary with the quantity of currency processed. Such costs include personnel, materials, and equipment. The fee will not include overhead costs such as facilities, legal, business development, audit, and protection services that Reserve Banks incur to meet their central bank cash services responsibilities.

(3) *Recirculation fee de minimis exemption.* Reserve Banks will allocate recirculation *de minimis* exemptions to depository institutions for each zone or sub-zone where they do business. Reserve Banks will apply the exemptions to depository institutions' total cross-shipped volume; exemptions will not be denomination specific. *De minimis* exemptions may not be transferred from one zone or sub-zone to another. Unused *de minimis* exemptions will expire at the end of each quarter. Initially, the *de minimis* exemption would be 1,000 bundles per quarter. Reserve Banks will review the level of the *de minimis* exemption annually.

(4) *One-dollar notes.* Initially, Reserve Banks will not assess a recirculation fee for one-dollar notes. Reserve Banks will work with the banking industry to achieve, within two years of the effective date of the permanent custodial inventory program, Reserve Bank net savings comparable to those that could be realized by including one-dollar notes in the policy. Reserve Banks will review one-dollar recirculation annually for the duration of the collaborative program. If this collaborative effort fails to yield savings comparable to those achieved by Reserve Banks through implementing this policy to the $5 through $20 denominations, the Board will include one-dollar notes under the recirculation policy.

(5) *Reserve Bank zones and monitoring.* Reserve Banks will monitor currency orders and deposits for all endpoints of depository institutions in each Reserve Bank office service area ("zone") for recirculation. Reserve Bank zones with large metropolitan areas located at a significant distance from a Reserve Bank office may be divided into smaller service areas ("sub-zones"). Reserve Banks will monitor together endpoints located in and near a sub-zone under the recirculation policy. Reserve Banks will monitor endpoints in other parts of a zone as a group separate from the endpoints in the sub-zone. Customers may choose the zone or sub-zone in which to include border endpoints. The criteria for establishing sub-zones balance the size of a metropolitan area against its distance from the Reserve Bank office. The table below outlines proposed sub-zone criteria, as well as the cities that would currently qualify. Reserve Banks will review sub-zone criteria annually.

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[19] Initially, Reserve Banks will also not assess a recirculation fee for one-dollar notes.

TABLE 1.—RESERVE BANK SUB-ZONES

| | Distance from reserve bank office | Metropolitan statistical area (MSA) | Population[20] |
|---|---|---|---|
| MSAs > 1000 miles from RB with population > 250,000. | 2,387 | Honolulu, HI | 876,156 |
| | 1,448 | Anchorage, AK | 260,283 |
| MSAs > 250 miles & with population > 500,000 | 275 | Las Vegas, NV | 1,563,282 |
| | 270 | Albuquerque, NM | 712,738 |
| | 270 | Sarasota—Bradenton, Orlando, Tampa, FL | 4,630,517 |
| | 278 | McAllen—Edinburg—Mission, TX | 569,463 |
| | 260 | Charleston, SC | 549,033 |
| MSAs > 125 miles & with population > 1,000,000 | 125 | San Diego, CA | 2,813,833 |
| | 168 | Raleigh—Durham—Chapel Hill, NC | 1,187,941 |
| | 156 | Grand Rapids, MI | 1,088,514 |
| MSAs > 100 miles & with population >1,500,000 | 114 | Indianapolis, IN | 1,607,486 |
| | 111 | Columbus, OH | 1,540,157 |

[20] Census Bureau Ranking Tables for Metropolitan Areas: Population in 2000, and Population Change from 1990 to 2000, number PHC–T–3. *http://www.census.gov/population/www/cen2000/tablist.html.*

(6) *Weekly monitoring.* Reserve Banks will monitor depository institutions' order and deposit activity weekly for cross-shipping (Monday through Friday). If a depository institution circumvents the recirculation policy, for example, by alternating the weeks in which it orders and deposits currency, Reserve Banks will apply the recirculation fee to fit notes in such deposits.

(7) *Monthly reports.* Beginning February 2004, each Reserve Bank will make available to any depository institution, upon request, a monthly report showing that institution's order and deposit activity, and an estimate of recirculation fees in each Reserve Bank zone and sub-zone where it does business in that district.

(8) *Zone quarterly average fitness rate.* To calculate an institution's recirculation fee for a zone or sub-zone, Reserve Banks will determine the number of fit notes deposited as a percentage of total notes deposited during each quarter. Reserve Banks will then apply this quarterly average fitness rate by zone or sub-zone to an institution's deposits during the following quarter to determine how much currency it cross-shipped.[21]

(9) *Fitness criteria.* By December 31, 2003, Reserve Banks will provide fitness sorting guidelines and equipment calibration standards.

By order of the Board of Governors of the Federal Reserve System, October 7, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–25901 Filed 10–10–03; 8:45 am]

BILLING CODE 6210–01–P

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## FEDERAL TRADE COMMISSION

**[File No. 002 3000]**

## America Online, Inc., et al.; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before October 23, 2003.

**ADDRESSES:** Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov,* as prescribed in the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Michael Ostheimer or Heather Hippsley, FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2699 or 326–3285.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC home page (for September 23, 2003), on the World Wide Web, at *http://www.ftc.gov/os/2003/09/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following e-mail box: *consentagreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

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[21] For example, if an institution's deposits in a zone or sub-zone included 80 percent fit currency during the period January through March, the Reserve Bank would apply an 80 percent zone or sub-zone quarterly average fitness rate to deposits from that depository institution during the April through June period. The Reserve Bank would apply the depository institution's zone or sub-zone quarterly average fitness rate for second-quarter deposits of each denomination in determining the recirculation fee for its third-quarter deposits, and so forth.

## Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from America Online, Inc. ("AOL") and its wholly owned subsidiary, CompuServe Interactive Services, Inc. ("CompuServe").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns the respondents' Internet access services. According to the FTC complaint, most subscribers to AOL's Internet service who wanted to cancel their service called AOL's customer service department. The responsibilities of AOL's customer service representatives included trying to retain subscribers who requested cancellation of their Internet service. The complaint alleges that AOL failed to implement appropriate measures to ensure that all customers' requests for cancellation were properly executed and that as a result, in numerous instances, subscribers who requested cancellation were not cancelled and continued to be charged monthly service fees. According to the complaint, this constituted an unfair business practice.

The complaint further alleges that AOL and CompuServe developed the "CompuServe $400 Rebate program" whereby consumers received a $400 cash rebate toward the purchase of an eligible computer, if they contracted for three years of CompuServe Internet service. In connection with the rebate program, respondents promised to provide rebate checks within 8–10 weeks, and in some cases, 45 days. According to the complaint, after receiving rebate requests in conformance with the offer, respondents extended the time period in which they would deliver the rebates without consumers agreeing to this extension of time and failed to deliver the rebates to consumers within the promised time period. According to the complaint, this constituted an unfair business practice.

The proposed consent order contains provisions designed to prevent AOL and CompuServe from engaging in similar acts and practices in the future. Specifically, Parts I and II address the cancellation of any Internet or online service, or any other product or service sold by means of a continuity program. Part I of the proposed order requires respondents to establish and maintain appropriate measures for ensuring that consumers' requests for cancellation of any such service or continuity program are promptly processed and that billing will cease prior to the next billing cycle.

Part II.A. of the proposed order prohibits respondents from continuing to charge any subscriber who has requested cancellation of any covered service or continuity program, even if the subscriber is recorded as having agreed to continue to be a subscriber, unless respondents first obtain the subscriber's express informed consent. For the subscriber's consent to be deemed "informed," the respondents must clearly and conspicuously disclose, before the subscriber consents, certain specified information, including a description of the pricing plan to which the subscriber is agreeing.

Part II.B. requires that respondents send a confirmation notice to any subscriber who has requested cancellation of any Internet or online service and who is recorded as having agreed to continue to be a subscriber. The notices are to be sent by first class mail in envelopes with "IMPORTANT: Confirmation of continued service" printed on the front. The notices confirm that consumers have agreed to continue their service, inform them of the terms of their continued service, and give them the opportunity to send back a cancellation request form, if they do not wish to continue their service. Part II.C. requires that respondents cancel the service of any subscriber who returns the cancellation request form.

Part II.D. provides that respondents refund fees to certain subscribers who return the cancellation request form. Subscribers are to be given refunds if they return the form within thirty days of the mailing of the confirmation notice and do not use the service for any significant period of time after they were recorded as having agreed to continue as subscribers.

Part II.E. requires that respondents send a confirmation notice to any subscriber who has requested cancellation of any continuity program other than Internet or online service and who is recorded as having agreed to continue to be a subscriber. If the subscriber has an active Internet or online service account with respondents, the notice can be sent by e-mail. Otherwise, it is to be sent by first class mail. Part II.F. requires that respondents provide a method through which subscribers who are notified pursuant to Part II.E. are able to cancel via telephone or U.S. mail.

Part III addresses the delayed rebates allegation and applies to respondents' offering of a rebate in connection with Internet or online service. Part III.A. prohibits the respondents from making any representation about the time in which any such rebate will be mailed, or otherwise provided to purchasers, unless they have a reasonable basis for the representation at the time it is made. Part III.B. prohibits respondents from failing to provide any such rebate within the time specified or, if no time is specified, within thirty days.

Parts IV through VII of the proposed order are reporting and compliance provisions. Part VIII is a provision "sunsetting" the order after twenty years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 03–25902 Filed 10–10–03; 8:45 am]

BILLING CODE 6750–01–P

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## FEDERAL TRADE COMMISSION

**[File No. 031 0064]**

## Koninklijke DSM N.V., et al.; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before October 23, 2003.

**ADDRESSES:** Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed in the Supplementary Information section.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Perry, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326–2331.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 23, 2003), on the World Wide Web, at "*http://www.ftc.gov/os/2003/09/index.htm.*" A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW, Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

## Analysis of Agreement Containing Consent Orders To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from DSM N.V. ("DSM") and Roche Holding AG (and its ultimate parent entity) ("Roche") which is designed to remedy the anticompetitive effects of the acquisition of Roche's Vitamins and Fine Chemicals division ("RV&FC") by DSM. Under the terms of the Consent Agreement, the companies would be required to divest DSM's phytase business to BASF AG ("BASF"). The divestiture will take place no later than ten business days from the date on which DSM closes its proposed acquisition of RV&FC.

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make final the Decision and Order ("Order").

Pursuant to a Share and Asset Purchase Agreement dated February 10, 2003, and amendments thereto, DSM proposes to acquire certain voting securities and assets from Roche Holding AG that together constitute Roche's Vitamins and Fine Chemicals division in a transaction valued at approximately $1.9 billion. The Commission's Complaint alleges that the proposed acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the worldwide market for the research, development, manufacture, and sale of the feed enzyme phytase. The proposed Consent Agreement will remedy the alleged violations by replacing the competition in the phytase market that would otherwise have been eliminated by the proposed acquisition.

Phytase is an enzyme added to poultry and swine feed to promote the digestibility of phosphorous and other nutrients that are vital to efficient livestock production. Without the addition of phytase, monogastric (*i.e.* single-stomach) animals like pigs and chickens lack the ability to digest much of the phosphorous contained in animal feed. The phosphorous that is unavailable for digestion simply passes through the livestock undigested and is ultimately excreted in the manure. By "unlocking" this phosphorous for digestion, phytase has the dual benefit of ensuring that the animals receive the benefit of these vital nutrients, while at the same time reducing the environmental impact caused by runoff from livestock production. Given its unique advantages, as well as the significant cost savings associated with using phytase, it is highly unlikely that phytase customers would switch to any other method of supplementing phosphorous in animal feed, even if the prices of phytase were to increase significantly.

The worldwide market for phytase is highly concentrated. DSM, together with its alliance partner, BASF, pioneered the phytase market in 1996, and today remains the largest supplier of phytase in the world, with 2002 sales of approximately $80 million. Roche, with its alliance partner Novozymes, is the only significant competitor to the DSM/BASF alliance, with 2002 phytase sales of approximately $59 million. Together, these two competing alliances dominate the phytase market, controlling over 90% of the $150 million worldwide market for phytase.

The proposed acquisition would have a significant adverse effect on competition in the worldwide market for phytase. Prior to this acquisition, the DSM/BASF and Novozymes/Roche alliances competed vigorously for sales in the growing phytase market, resulting in substantial price discounting for phytase customers. Each alliance also invested significant resources in research and development efforts designed to improve its own products, in order to keep pace with similar investments being made by the other alliance. The proposed acquisition would link these two, previously independent, alliances, enabling them to coordinate their actions and eliminate the head-to-head competition between the only two significant competitors in the worldwide phytase market. In doing so, the proposed acquisition would allow DSM to exercise market power, thereby increasing the likelihood that phytase customers would be forced to pay higher prices and that innovation and product quality in this market would suffer.

Entry into the phytase market is difficult, time consuming, and ultimately unlikely to deter or counteract the competitive effects likely to result from the acquisition. Any company attempting to enter the phytase market faces serious obstacles in developing a phytase enzyme that does not infringe the various patents held by the market incumbents. This development process alone generally takes three to ten years, even for an experienced enzyme producer. In addition, the FDA approval process in the United States can take at least one to two years, and regulatory approval in Europe generally takes even longer. There are significant economies of scale associated with phytase production, and because sales in the United States and Europe each account for a significant portion of the total phytase market, it is difficult, or impossible, for a potential entrant to achieve viable scale until approvals are obtained in those two jurisdictions. Finally, the process of convincing customers to switch to a new, untested, phytase enzyme is a difficult and lengthy one, often requiring customer validation testing that can take up to two additional years.

The proposed Consent Agreement effectively remedies the acquisition's anticompetitive effects in the worldwide market for phytase by requiring DSM to divest its phytase business to BASF no later than ten business days after DSM closes its proposed acquisition of RV&FC. This business consists of, among other things, phytase related intellectual property, phytase scientific and regulatory material, phytase manufacturing technology, books and records, and other assets used in the research, development, manufacturing, marketing and sale of phytase. BASF is well-positioned to take over these assets and become an independent competitor in the phytase market. As DSM's phytase alliance partner, BASF already has primary responsibility for marketing and selling the phytase enzyme produced by DSM, and customers already associate this product with BASF, not DSM. Further, BASF already has intimate knowledge of DSM's research, development, and manufacturing efforts related to phytase, and is well-positioned to take over these responsibilities. Finally, BASF poses no separate competitive concern as an acquirer of the phytase assets. For these reasons, the Commission is satisfied that BASF is a well-qualified purchaser of the divested assets.

The proposed Consent Agreement contains several provisions designed to ensure that the divestiture is successful. In order to reduce or eliminate any delay in pending research projects, the Consent Agreement requires that DSM provide technical assistance with ongoing research projects at BASF's request for a period of six months while these projects are being transferred to BASF. The Consent Agreement further requires DSM to contract manufacture phytase, at BASF's request, for up to two years. This provision is designed to eliminate any delay or interruption in BASF's ability to serve customers in the phytase market. In addition, the Consent Agreement requires DSM to provide BASF with the opportunity to enter into employment contracts with certain key employees, and requires DSM to provide certain employees with financial incentives to accept employment with BASF. For a period of one year, the Consent Agreement also prohibits DSM from hiring any BASF employee with responsibilities related to phytase. Finally, the Consent Agreement establishes firewalls designed to prevent information relating to the DSM/BASF phytase business from flowing to the Novozymes/Roche alliance.

To preserve the full economic viability, marketability, and independence of the phytase assets pending divestiture, the Consent Agreement includes an Order to Hold Separate and Maintain Assets. This Order contains a number of provisions designed to ensure that the viability and competitiveness of the divested assets are not diminished prior to divestiture. Pursuant to this Order, the Commission has appointed KPMG, LLP as Interim Monitor to oversee the asset transfer and to ensure that DSM is expeditiously complying with its obligations under the Consent Agreement. The KPMG team is headed by John Ellison, who has over 30 years of experience in auditing and investigative work, and has acted as Monitor in several other divestitures for the European Commission. Mr. Ellison is supported by knowledgeable personnel, including a leading technical expert in the field of enzymes.

In order to ensure that the Commission remains informed about the status of the pending divestiture, and about efforts being made to accomplish the divestiture, the Consent Agreement requires DSM to submit a status report to the Commission within thirty days after the Order becomes final, and every thirty days thereafter until DSM has fully complied with the Commission's Order.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 03–25903 Filed 10–10–03; 8:45 am]

**BILLING CODE 6750–01–P**

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## FEDERAL TRADE COMMISSION

**[File No. 021 0242]**

### Surgical Specialists of Yakima, P.L.L.C., et al.; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before October 24, 2003.

**ADDRESSES:** Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov,* as prescribed in the Supplementary Information section.

**FOR FURTHER INFORMATION CONTACT:** Joseph Lipinsky, FTC, Northwest Regional Office, 915 Second Avenue, Suite 2896, Seattle, WA 98174, (206) 220–4473.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 24, 2003), on the World Wide Web, at *http://www.ftc.gov/os/2003/09/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft

Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

## Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with Surgical Specialists of Yakima, P.L.L.C. (SSY), and two general surgery groups—Cascade Surgical Partners, Inc., P.S. (CSP) and Yakima Surgical Associates, Inc., P.S. (YSA)—that are members of SSY. The agreement settles charges that these parties violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by orchestrating and implementing agreements among members of SSY to fix prices and other terms on which they would deal with health plans, agreements enforced by SSY's members' refusal to deal with such purchasers except on collectively-determined terms. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by any Respondent that said Respondent violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

### *The Complaint*

The allegations of the complaint are summarized below.

SSY was organized in 1996 by several independent medical practices. Those medical practices, which became "members" of SSY, were and are separate and independent in all material respects, are not subject to the control of SSY, have not unified their economic interests and incentives through SSY, and are not significantly integrated (either clinically or financially). SSY's activities on behalf of its members constitute the combined action of those members, and not unilateral action by SSY. SSY presently has 24 physician members that practice in five specialties, ENT, OB/GYN, Ophthalmology, Plastic Surgery, and General Surgery. SSY represents 90 percent of all physicians practicing general surgery in and around Yakima, Washington, which is located in south-central Washington.

According to the complaint, SSY members refuse to negotiate or contract with health plans on an individual basis. Instead, all negotiations are conducted by SSY, and SSY's members accept only those contracts deemed acceptable by SSY. In accordance with this model, Respondents have orchestrated collective agreements on fees and other terms of dealing with health plans, have carried out collective negotiations with several health plans, and have refused and threatened to refuse to deal with health plans who resisted Respondents' desired terms.

The complaint alleges that Respondents have succeeded in forcing health plans to raise fees paid to SSY members and thereby raised the cost of medical care in the Yakima area. As a result of the challenged actions of Respondents, SSY members receive the highest fees for surgical services in Washington. By orchestrating agreements among SSY members to deal only on collectively-determined price and other terms, Respondents have violated section 5 of the FTC Act.

### *The Proposed Consent Order*

The proposed order is designed to remedy the illegal conduct charged in the complaint and prevent its recurrence. It is similar to many previous consent orders that the Commission has issued to settle charges that physician groups engaged in unlawful agreements to raise fees they receive from health plans, but with one additional provision. In addition to the core prohibitions, the proposed order in this matter requires that SSY revoke the membership of either CSP or YSA. Such structural relief is not routinely imposed but is necessary in this case to reduce SSY's market power in general surgery.

The proposed order's specific provisions are as follows:

Paragraph II.A prohibits the Respondents from entering into or facilitating any agreement between or among any physicians: (1) To negotiate with payors on any physician's behalf; (2) to deal, to refuse to deal, or to threaten to refuse to deal with payors; (3) regarding the terms of dealing with any payor; or (4) not to deal individually with any payor, or to deal with any payor only through an arrangement involving the Respondent SSY.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits the Respondents from facilitating exchanges of information between physicians concerning whether, or on what terms, to deal with a payor. Paragraph II.C bars attempts to engage in any action prohibited by Paragraph II.A or II.B; and Paragraph II.D proscribes inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

As in other orders addressing providers' collective bargaining with health care purchasers, certain kinds of agreements are excluded from the general bar on joint negotiations. Respondents would not be precluded from engaging in conduct that is reasonably necessary to form or participate in legitimate joint contracting arrangements among competing physicians, whether a "qualified risk-sharing joint arrangement" or a "qualified clinically-integrated joint arrangement."

As defined in the proposed order, a "qualified risk-sharing joint arrangement" possesses two key characteristics. First, all physician participants must share substantial financial risk through the arrangement, such that the arrangement creates incentives for the physician participants jointly to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

A "qualified clinically-integrated joint arrangement" on the other hand, need not involve any sharing of financial risk. Instead, as defined in the proposed order, physician participants must participate in active and ongoing programs to evaluate and modify their clinical practice patterns in order to control costs and ensure the quality of services provided, and the arrangement must create a high degree of interdependence and cooperation among physicians. As with qualified risk sharing arrangements, any agreement concerning price or other terms of dealing must be reasonably necessary to achieve the efficiency goals of the joint arrangement.

Paragraph IV, which applies only to SSY, solves the market power issue by requiring SSY to revoke the membership of either CSP or YSA. It also requires

SSY to distribute the complaint and order to all physicians who have participated in SSY, and to payors that negotiated or indicated an interest in negotiating contracts with SSY, and requires SSY to terminate, at any payor's request and without penalty, its current contracts with respect to providing physician services. Finally, SSY is prohibited from readmitting any physician from the revoked entity for five years and from readmitting the revoked entity for 10 years.

Paragraph V, which applies only to CSP and YSA, requires them to distribute the complaint and order to all physicians who have participated in their activities and to any physicians who become involved with either CSP or YSA in the future.

Paragraphs III, VI, and VII of the proposed order impose various obligations on Respondents to report or provide access to information to the Commission to facilitate monitoring Respondents' compliance with the order.

The proposed order will expire in 20 years.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 03–25904 Filed 10–10–03; 8:45 am]

BILLING CODE 6750–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

### Guide to Community Preventive Services (GCPS) Task Force Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

*Name:* Task Force on Community Preventive Services.

*Times and Dates:* 8:30 a.m.–6 p.m., October 22, 2003. 8:30 a.m.–3:15 p.m., October 23, 2003.

*Place:* The Turner Conference Center, 1615 Clifton Road, NE., Atlanta, Georgia 30329, telephone (404) 712–6000.

*Status:* Open to the public, limited only by the space available.

*Purpose:* The mission of the Task Force is to develop and publish a Guide to Community Preventive Services, which is based on the best available scientific evidence and current expertise regarding essential public health services and what works in the delivery of those services.

*Matters To Be Discussed:* Agenda items include: Briefings on administrative information; strategic planning; evaluations; economic reviews of collaborative care interventions; school-based programs for tobacco use prevention; designated driver programs & school-based education for motor vehicle occupant injury prevention; community programs for obesity prevention & control; approaches to reviews on HIV prevention and folate supplementation; and promoting cancer screening.

Agenda items are subject to change as priorities dictate.

*Contact Person or Additional Information:* Peter Briss, M.D., M.P.H., Acting Chief, Community Guide Branch, Division of Prevention Research and Analytic Methods, Epidemiology Program Office, CDC, 4770 Buford Highway, M/S K–73, Atlanta, Georgia, telephone 770/488–8189.

Persons interested in reserving a space for this meeting should call 770/488–8189 by close of business on October 17, 2003.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 8, 2003.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 03–25981 Filed 10–10–03; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Administration for Children and Families

### Proposed Information Collection Activity; Comment Request Proposed Projects:

- *Title:* State Self-Assessment Review and Report.

*OMB No.* 0970–0223.

*Description:* The information to be collected from states includes statistics on specific criteria. This information is to be provided in the form of a report submitted annually to the Secretary of the U.S. Department of Health and Human Services. It is required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 as a substitute for process audits and will be used to determine if states are complying with specified child support requirements.

*Respondents;* State Child Support Enforcement Agencies or the Department/Agency/Bureau responsible for Child Support Enforcement in each state.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Report | 54 | 1 | 3,866 | 208,764 |
| Estimated Total Annual Burden Hours: | | | | 208,764 |

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 6, 2003.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 03–25885 Filed 10–10–03; 8:45 am]

BILLING CODE 4184–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Administration for Children and Families

## Submission for OMB Review; Comment Request

*Title:* Evaluation of the Early Head Start Fatherhood Demonstration.

*OMB No.:* 0970–0239.

*Description:* The Administration on Children, Youth and Families (ACYF), in partnership with the Office of Child Support Enforcement (OCSE), funded 21 Early Head Start grantees in 2001 to develop and implement creative practices to increase the involvement of fathers in their Early Head Start program and in the lives of their children. ACYF subsequently commissioned a study to identify promising practices emerging through the first two years of the demonstration. The study involved site visits to participating programs, a survey of demonstration staff, and collection of father participation data from the demonstration programs. ACYF recently commissioned a follow-up study to investigate programs' efforts to sustain meaningful fatherhood initiatives after the demonstration grant funding ends. This submission requests approval to conduct site visits to a subset of approximately 9 programs as well as a second survey of staff and collection of father participation data from all 21 demonstration programs.

*Respondents:* To reduce the burden on demonstration staff, the survey will be configured in four versions. The Director Version will be completed by the Early Head Start program directors. The Father coordinator Version will be completed by the staff member responsible for father activities. The Family Specialist Version will be completed by the staff member who works most closely with the Early Head Start families in the home. The Teacher Version will be completed by the staff member working with families of children participating in the Early Head Start child care programs. Program staff will also be asked to submit data on participating fathers. For each child enrolled in the Early Head Start program, the site will be asked to complete a short "Father/Father Figure Information Form." To avoid duplication of individual-level data, the programs are requested to provide extracts of information on the children and fathers in the program from their current management information systems whenever possible. The staff survey and father data instruments will be the same as those used in the Phase I study under the current OMB clearance no. 0970–0239. Site visit protocols used in the Phase I evaluation will also modified and shortened to address only those issues that are relevant to the research questions proposed in Phase II, focusing primarily on changes in program practices and new strategies for sustaining fatherhood initiatives.

*Respondents:* Early Head Start directors, fatherhood program coordinators, family specialists, teachers, and fathers and mothers of Early Head Start children.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Site Visit Interviews and Focus Groups | 243 | 1 | 1.0 | 243.0 |
| Director Version of Survey | 19 | 1 | .5 | 9.5 |
| Father Coordinator Version of Survey | 19 | 1 | .5 | 9.5 |
| Family Specialist Version of Survey | 19 | 1 | .4 | 7.6 |
| Teacher Version of Survey | 17 | 1 | .4 | 6.8 |
| Father/Father Figure Information Forms | 21 | [1] 81 | .16 | 272.1 |
| Estimated Total Annual Burden Hours | | | | 548.5 |

[1] Average number per site.

**SUPPLEMENTARY INFORMATION:** copies of the proposed collection may be obtained by writing to the Administration for children and Families, Office of Administration, Office of Information Services, 370 L'Enfant promenade, SW., Washington, DC 20447, ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *rsargis@acf.hhs.gov.*

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail addresses: *lauren-wittenberg@omb.eop.gov.*

Dated: October 6, 2003.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 03–25886 Filed 10–10–03; 8:45 am]

**BILLING CODE 4184–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003D–0229]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for Industry on Continuous Marketing Applications: Pilot 2—Scientific Feedback and Interactions During Development of Fast Track Products Under the Prescription Drug User Fee Act

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Guidance for Industry on Continuous Marketing Applications: Pilot 2—Scientific Feedback and Interactions During Development of Fast Track Products Under PDUFA" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of September 9, 2003 (68 FR 53174) , the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0518. The approval expires on March 31, 2004. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: October 6, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–25845 Filed 10–10–03; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003N–0314]**

### Agency Information Collection Activities; Submission for the Office of Management and Budget Review; Comment Request; Food Labeling; Notification Procedures for Statements on Dietary Supplements

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by November 13, 2003.

**ADDRESSES:** OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Food Labeling; Notification Procedures for Statements on Dietary Supplements—21 CFR Part 101.93 (OMB Control Number 0910–0331)—Extension**

Section 403(r)(6) of the Federal Food, Drugs, and Cosmetics Act (the act) (21 U.S.C. 343(r)(6)) requires that the agency be notified by manufacturers, packers, and distributors of dietary supplements that they are marketing a dietary supplement product that bears on its label or in its labeling a statement provided for in section 403(r)(6) of the act. Section 403(r)(6) of the act requires that the agency be notified, with a submission about such statements, no later than 30 days after the first marketing of the dietary supplement. Information that is required in the submission includes the following: (1) The name and address of the manufacturer, packer, or distributor of the dietary supplement product; (2) the text of the statement that is being made; (3) the name of the dietary ingredient or supplement that is the subject of the statement; (4) the name of the dietary supplement (including the brand name); and (5) the signature of a responsible individual who can certify the accuracy of the information presented, who must certify that the information contained in the notice is complete and accurate, and that the notifying firm has substantiation that the statement is truthful and not misleading.

The agency established § 101.93 (21 CFR 101.93) as the procedural regulation for this program. Section 101.93 provides details of the procedures associated with the submission and identifies the information that must be included in order to meet the requirements of section 403 of the act.

*Description of Respondents*: Businesses or other forprofit organizations.

In the **Federal Register** of July 23, 2003 (68 FR 43533), FDA published a 60-day notice requesting public comment on the information collection provisions. One firm submitted a comment stating that it believed that the burden of making the required submission could be slightly reduced by enabling the electronic submission of the required information, perhaps submitted through the Agency's Web site. The comment also suggested that FDA consider amending its information requirements to provide that an electronic submission include a notifier-assigned reference number.

The Center for Food Safety and Applied Nutrition (CFSAN) is working with other FDA units toward developing the necessary technology infrastructure, namely a public key infrastructure (PKI)-capable system, to enable it to accept these submissions electronically in the future. The requirement for a PKI-capable system for these notifications derives, in part, from the certification requirement in § 101.93(a)(3) and the significant legal consequences attendant to it. CFSAN lacks a PKI-capable system, but is working with other FDA units toward putting it in place. In the meantime, the agency believes that other forms of electronic submission that the agency might be able to accept present unacceptable risks that provide a basis to not accept these submissions electronically until an acceptable infrastructure is in place.

With respect to the comment's request that FDA provide for the notifier to include a reference number in its submission, as we develop and implement an electronic submission system, we intend to consider what changes, if any, in the information required to be submitted is needed to ensure that the notification requirements and process meet the agency's needs and those of the regulated industry.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR Section | Numeber of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 101.93 | 2,500 | 1 | 2,500 | .75 | 1,875 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The agency believes that there will be minimal burden on the industry to generate information to meet the requirements of section 403 of the act in submitting information regarding section 403(r)(6) of the act statements on labels or in labeling of dietary supplements. The agency is requesting only information that is immediately available to the manufacturer, packer, or distributor of the dietary supplement that bears such a statement on its label or in its labeling. This estimate is based on the average number of notification submissions received by the agency in the preceding 12 months.

Dated: October 6, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–25846 Filed 10–10–03; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Advisory Committee for Reproductive Health Drugs; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Advisory Committee for Reproductive Health Drugs.

*General Function of the Committee:* To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on December 15, 2003, from 8 a.m. to 5 p.m.

*Location:* The Hilton, Grand Ballroom, 620 Perry Pkwy., Gaithersburg, MD.

*Contact Person:* Jayne E. Peterson, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12537. Please call the Information Line for up-to-date information on this meeting. When available, background materials for this meeting will be posted 1 business day prior to the meeting on the FDA Web site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm.* (Click on the year 2003 and scroll down to Advisory Committee for Reproductive Health Drugs.)

*Agenda:* The committee will discuss the public health issues, including the safety and potential clinical benefit, associated with combining folic acid and an oral contraceptive into a single combination product.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 31, 2003. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 31, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. Submissions received by October 31, 2003, will be distributed to the committee. All submissions will be made available to the public at the meeting location on the day of the committee meeting.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Jayne Peterson at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 7, 2003.

**Peter J. Pitts,**

*Associate Commissioner for External Relations.*

[FR Doc. 03–25844 Filed 10–10–03; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003N–0429]**

### Prescription Drug User Fee Act III Five-Year Plan; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of an internal planning document entitled the "PDUFA III Five-Year Plan" (the plan). The plan to achieve PDUFA (Prescription Drug User Fee Act) III goals for the drug review process takes into account changes in the law under PDUFA III and projects revenue and spending in fiscal year (FY) 2003 through FY 2007.

**DATES:** Submit written or electronic comments on the plan at any time. These comments will be considered as the agency makes annual adjustments to the plan each fiscal year.

**ADDRESSES:** Submit written requests for single copies of this plan to the Office of Management and Systems, Attn: Frank Claunts (see **FOR FURTHER INFORMATION CONTACT**). Send a self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the plan to the Division of Dockets Management (HFA 305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the plan.

**FOR FURTHER INFORMATION CONTACT:** Frank Claunts, Office of Management and Systems (HF–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4427.

**SUPPLEMENTARY INFORMATION:**

### I. Background

FDA is announcing the availability of an internal planning document entitled "PDUFA III Five-Year Plan." PDUFA was amended and extended through the year 2007 by the Prescription Drug User Fee Amendments of 2002 (PDUFA III). PDUFA III authorizes appropriations and fees that will provide FDA with resources to sustain the drug review staff developed through FY 2002 and to achieve the even more stringent new goals through FY 2007.

The plan begins with a statement of purpose, provides background information on PDUFA along with a summary of the new goals, and the plan documents the 10 major assumptions on which it is based. The plan summarizes individual plans of agency components with major PDUFA responsibilities and also provides a consolidated agency summary. The plan to achieve PDUFA III goals for the drug review process is based on projected revenue and spending projections through FY 2007. Appendix A of the plan is entitled the "PDUFA III Information Technology Five-Year Plan."

We (FDA) are making this plan available to interested individuals. We welcome comments, and we will consider all comments in the future as annual adjustments are made to the plan.

### II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The plan and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

### III. Electronic Access

Copies of this document are available on the Internet at *http://www.fda.gov/oc/pdufa3/2003plan/default.htm*.

Dated: October 7, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–25965 Filed 10–8–03; 4:06 pm]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

### Proposed Project: National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners: Regulations and Forms (OMB No. 0915–0126)—Revision

The National Practitioner Data Bank (NPDB) was established through Title IV of Pub. L. 99–660, the Health Care Quality Improvement Act of 1986, as amended. Final regulations governing the NPDB are codified at 45 CFR part 60. Responsibility for NPDB implementation and operation resides in the Bureau of Health Professions, Health Resources and Services Administration, U.S. Department of Health and Human Services (DHHS). The NPDB began operation on September 1, 1990.

The intent of Title IV of Pub. L. 99–660 is to improve the quality of health care by encouraging hospitals, State licensing boards, professional societies, and other entities providing health care services, to identify and discipline those who engage in unprofessional behavior; and to restrict the ability of incompetent physicians, dentists, and other health care practitioners to move from State to State without disclosure of the practitioner's previous damaging or incompetent performance.

The NPDB acts primarily as a flagging system; its principal purpose is to facilitate comprehensive review of practitioners' professional credentials and background. Information on medical malpractice payments, adverse licensure actions, adverse clinical privileging actions, adverse professional society actions, and Medicare/Medicaid exclusions is collected from, and disseminated to, eligible entities. It is intended that NPDB information should be considered with other relevant information in evaluating a practitioner's credentials.

This request is for a revision of reporting and querying forms previously approved on April 30, 2002. The reporting forms and the request for information forms (query forms) must be accessed, completed, and submitted to the NPDB electronically through the NPDB Web site at *http://www.npdb-hipdb.com*. All reporting and querying is performed through this secure Web site. Due to overlap in requirements for the Healthcare Integrity and Protection Data Bank (HIPDB), some of the NPDB's burden has been subsumed under the HIPDB.

Estimates of burden are as follows:

| Regulation citation | No. of respondents | Frequency of responses | Hours per response | Total burden hours |
|---|---|---|---|---|
| 60.6(a) Errors & Omissions | 303 | 5 | 15 min. | [1]385 |
| 60.6(b) Revisions to Actions | 115 | 1.1 | 30 min. | 64 |
| 60.7(b) Medical Malpractice Payment Report | 485 | 39 | 45 min. | 14,236 |
| 60.8(b) Adverse Action Reports—State Boards | [2]0 | 0 | 0 | 0 |
| 60.9(a)3 Adverse Action Clinical Privileges & Professional Society | 686 | 1.5 | 45 min. | 785 |
| Requests for Hearings by Entities | 1 | 1 | 480 min. | 8 |
| 60.10(a)(1) Queries by Hospital-Practitioner Applications | 6,000 | 37.3 | 5 min. | 18,615 |
| 60.10(a)(2) Queries by Hospitals-Two Yr. Cycle | 6,000 | 149 | 5 min. | 74,461 |
| 60.11(a)(1) Disclosure to Hospitals | [3]0 | 0 | 0 | 0 |
| 60.11(a)(2) Disclosure to Practitioners (Self Query) | [4]0 | 0 | 0 | 0 |
| 60.11(a)(3) Disclosure to Licensure Boards | 80 | 225 | 5 min. | 1,499 |
| 60.11(a)(4) Queries by Non-Hospital Health Care Entities | 4,938 | 437 | 5 min. | 179,673 |
| 60.11(a)(5) Queries by Plaintiffs' Attorneys | 5 | 5 | 30 min. | 3.0 |
| 60.11(a)(6) Queries by Non-Hospital Health Care Entities-Peer Review | [5]0 | 0 | 0 | 0 |
| 60.11(a)(7) Requests by Researchers for Aggregated Data | 100 | 1 | 30 min. | 50 |
| 60.14(b) Practitioner Places a Report in Disputed Status | 666 | 1 | 5 min. | 55 |
| 60.14(b) Practitioner Statement | 2,563 | 1 | 45 min. | 1,922 |
| 60.14(b) Practitioner Requests for Secretarial Review | 117 | 1 | 480 min. | 936 |
| 60.3 Entity Registration-Initial | 500 | 1 | 60 min. | 500 |
| 60.3 Entity Registration-Update | 643 | 1 | 5 min. | 54 |
| 60.11(a) Authorized Agent Designation-Initial | 500 | 1 | 15 min. | 125 |
| 60.11(a) Authorized Agent-Update | 86 | 1 | 5 min. | 7 |
| 60.12(c) Account Discrepancy Report | 300 | 1 | 15 min. | 75 |
| 60.12(c) Electronic Funds Transfer Authorization | 363 | 1 | 15 min. | 91 |
| 60.3 Entity Reactivation | 100 | 1 | 60 min. | 100 |
| Total | | | | 293,644 |

[1] Estimates in this column that fall below or above a full hour are rounded to the nearest hour.
[2] Included in estimate for reporting adverse licensure actions to the HIPDB in 45 CFR part 61.
[3] Included in estimates for 60.10(a)(1).
[4] Included in estimate for self queries to the HIPDB in 45 CFR part 61.
[5] Included in estimate for hospital queries under 60.11(a)(4).

Send comments to Susan Queen, Ph.D., HRSA Reports Clearance Officer, Room 16C–17, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20852, (301) 443–1129. Written comments should be received within 60 days of this notice.

Dated: October 3, 2003.

**Jane M. Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 03–25843 Filed 10–10–03; 8:45 am]

BILLING CODE 4165–15–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

**[USCG 2003–16251]**

## Collection of Information under Review by Office of Management and Budget (OMB): OMB Control Number 1625–0086

**AGENCY:** Coast Guard, DHS.

**ACTION:** Request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of one Information Collection Request (ICR). The ICR concerns Great Lakes Pilotage. Before submitting the ICR to OMB, the Coast Guard is inviting comments on it.

**DATES:** Comments must reach the Coast Guard on or before December 15, 2003.

**ADDRESSES:** To make sure that your comments and related material do not enter the docket [USCG 2003-16251] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

(3) By fax to the Facility at (202) 493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

(5) Electronically through Federal eRule Portal: *http://www.regulations.gov*.

The Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (G–CIM–2), U.S.

Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

**FOR FURTHER INFORMATION CONTACT:** Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; or Andrea M. Jenkins, Program Manager, U.S. Department of Transportation, (202) 366–0271, for questions on the docket.

**SUPPLEMENTARY INFORMATION:**

### Public Participation and Request for Comments

We encourage you to participate in this request for comment by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov*, and they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. Please see DOT's paragraph on the "Privacy Act" below.

*Submitting comments:* If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2003–16251], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. They may lead us to change the estimated "information" burden.

*Viewing comments and documents:* To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 [65 FR 19477], or you may visit *http://dms.dot.gov*.

### Request for Comments

The Coast Guard encourages interested persons to submit comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2003–16251], and give the reasons for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

### Information Collection Request

*Title:* Great Lakes Pilotage.

*OMB Control Number:* 1625–0086.

*Summary:* The Great Lakes Pilotage Act of 1960 authorizes the Director to prescribe a uniform system of accounts and to perform audits and inspections of associations of pilots on the Great Lakes. The specific information sought from respondents is that discussed in 33 CFR Parts 404–407.

*Need:* The Director of the Office of Great Lakes Pilotage uses the information collected by the Office to carry out financial oversight of the associations and to set rates for pilotage.

*Respondents:* Associations of pilots on the Great Lakes.

*Frequency:* Monthly.

*Burden:* The estimated burden is 18 hours a year.

Dated: September 30, 2003.

**Clifford I. Pearson,**

*Director of Information and Technology.*

[FR Doc. 03–25898 Filed 10–10–03; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4817–N–17]**

## Notice of Proposed Information Collection for Public Comment—HOPE VI Grant Program

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* December 15, 2003.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 4249, Washington, DC 20410–5000.

**FOR FURTHER INFORMATION CONTACT:** Mildred M. Hamman, (202) 708–0614, extension 4128. (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

The HOPE VI forms are used by the Department to collect information from Public Housing Agencies (PHAs) as part of the HOPE VI grant the application process.

There are several forms used by the Department, each of which serve a different information collection purpose. The title, purpose, and estimated time it will take applicants to complete each form is described in the section below.

This Notice also lists the following information:

*Title of Proposal:* Information Collection for the HOPE VI Grant Program .

*OMB Control Number:* 2577–0208.

*Description of the need for the information and proposed use:* In order for the Department to ensure that applicants meet particular eligibility criteria and possess the capacity to operate federally-funded activities, the Department relies on information provided by applicants through forms. The Department also tracks grant progress and reviews financial characteristics of planned grant expenditures. It relies on information provided by grantees through forms.

Some of the below listed forms are used by the Department in the rating and ranking process. This process is conducted to evaluate applications from PHAs. The forms capture additional information from applicants that cannot be easily conveyed by other segments of the HOPE VI application. For example, questions that require narrative responses would not easily convey budget information.

Budget and financial forms and an interest-based reporting system are used by the Department in administering the grants.

Agency form numbers, if applicable:

- Form HUD–52860–A, "HOPE VI Application Data Form" is part of the HOPE VI Revitalization NOFA and collects numerical information about the applicant's proposed HOPE VI Revitalization Plan. Estimated reporting time: 80 hours.
- Form HUD 52825–A, "HOPE VI Budget" collects information concerning a HOPE VI Revitalization grantee's request for HUD approval of the grant budget and spending authorization. Estimated reporting time: 3 hours.
- Form HUD–53001–A, "Actual HOPE VI Cost Certificate" collects information at closeout about the propriety of expenditures throughout the HOPE VI grant period. Estimated reporting time: 2 hours.
- Form HUD-NEW NUMBER, "Revitalization Application Checklist/ Table of Contents" provides a checklist to assist applicants ensure that they have submitted all required forms and documentation. Estimated reporting time: Fifteen minutes.
- Form HUD–NEW NUMBER, "TDC/ Grant Limitations Worksheet" collects information on whether the amount of requested public housing funds is within HUD allowances.
- Form HUD–NEW NUMBER, "Physical Development Resources" collects information about the amount of leverage development funds in a HOPE VI Revitalization Plan. Estimated reporting time: 4 hours.
- Form HUD–NEW NUMBER, "Community and Supportive Services Resources" collects information about the amount of leverage Community and Supportive Services funds in a HOPE VI Revitalization Plan. Estimated reporting time: 4 hours.
- Form HUD–NEW NUMBER, "Anticipatory Resources" collects information about the amount of expenditures made in anticipation of the applicant receiving a HOPE VI Revitalization grant. Estimated reporting time: 2 hours.
- Form HUD–NEW NUMBER, "Collateral Investment Resources" collects information about the amount of planned expenditures by other entities that will have an impact on the HOPE VI Revitalization Plan area. Estimated reporting time: 2 hours.
- Form HUD–NEW NUMBER, "Resident Training and Public Meeting Certification" collects information about resident meeting pertaining to the HOPE VI Revitalization Plan. Estimated reporting time: 30 minutes.
- Form HUD–NEW NUMBER, "Project Readiness" collects information about activities necessary before HOPE VI development begins. Estimated reporting time: 30 minutes.
- Form HUD–52774, "HOPE VI Relocation Plan Guide" is a format to assist PHAs in reporting information to HUD concerning HOPE VI related relocation. Estimated reporting time: 20 hours.
- Form HUD–NEW NUMBER, "HOPE VI Community and Supportive Services Workplan" is a format to assist PHAs in reporting information to HUD concerning their HOPE VI Community and Supportive Services program. Estimated reporting time: 20 hours.
- Form HUD–NEW NUMBER, "HOPE VI Neighborhood Networks Fact Sheet" asks PHA applicants to specify organization type, total number of public and assisted housing residents they will be serving and the types of services they will be providing. Estimated reporting time: 5 hours.
- Form HUD–NEW NUMBER, "HOPE VI Demolition Application Checklist" provides a checklist to assist applicants ensure that they have submitted all required forms and documentation. Estimated reporting time: Fifteen minutes.
- Form HUD–NEW NUMBER, "HOPE VI Neighborhood Networks Application Checklist" provides a checklist to assist applicants ensure that they have submitted all required forms and documentation. Estimated reporting time: Fifteen minutes.

*Members of affected public:* Public Housing Authorities.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* For HOPE VI Revitalization NOFA, 80 respondents, annually, 180 hours; 14,400 annual burden hours.

The HOPE VI Revitalization NOFA includes the following forms:

- Form HUD–52860–A, "HOPE VI Application Data Form" 80 respondents, annually, 80 hours; 1,600 annual burden hours.
- Form HUD–52825–A, "HOPE VI Budget" 80 respondents, annually, 3 hours; 240 annual burden hours.
- Form HUD–53001–A, "Actual HOPE VI Cost Certificate" respondents, annually, 2 hours; 160 annual burden hours.
- Form HUD–NEW NUMBER, "Revitalization Application Checklist/ Table of Contents" 80 respondents, annually, fifteen minutes, 20 annual burden hours.
- Form HUD–NEW NUMBER, "TDC/ Grant Limitations Worksheet" 80 respondents, annually, 1 hour; 80 annual burden hours.
- Form HUD–NEW NUMBER, "Physical Development Resources" 80 respondents, annually, 4 hours; 360 annual burden hours.
- Form HUD–NEW NUMBER, "Community and Supportive Services Resources" 80 respondents, annually, 4 hours; 360 annual burden hours.
- Form HUD–NEW NUMBER, "Anticipatory Resources" 80 respondents, annually, 2 hours; 160 annual burden hours.
- Form HUD–NEW NUMBER, "Collateral Investment Resources" 80 respondents, annually, 2 hours; 160 annual burden hours.
- Form HUD–NEW NUMBER, "Resident Training and Public Meeting Certification" 80 respondents, annually, thirty minutes; 40 annual burden hours.
- Form HUD–NEW NUMBER, "Project Readiness" 80 respondents, annually, thirty minutes; 40 annual burden hours.

For HOPE VI Demolition NOFA, 140 respondents, annually, 10 hours; 1,400 annual burden hours.

The HOPE VI Demolition NOFA includes the following form:

- Form HUD–NEW NUMBER, "HOPE VI Demolition Application Checklist" 140 respondents, annually, fifteen minutes; 35 annual burden hours.

For HOPE VI Neighborhood Networks NOFA, 30 respondents, annually, 20 hours; 600 annual burden hours.

The HOPE VI Neighborhood Networks NOFA NOFA includes the following forms:

- Form HUD–NEW NUMBER, "HOPE VI Neighborhood Networks Fact Sheet" 30 respondents, annually, 5 hours; 150 annual burden hours.

- Form HUD–NEW NUMBER, "HOPE VI Neighborhood Networks Application Checklist" 30 respondents, annually, fifteen minutes; 7.5 annual burden hours.

For form HUD–52774, "HOPE VI Relocation Plan Guide" 200 respondents, once per five year grant, 1,000 annual burden hours.

For form HUD–NEW NUMBER, "Hope VI Community and Supportive Services Workplan" 200 respondents, once per five year grant, 1,000 annual burden hours.

For form HUD 52825–A, "HOPE VI Budget" as used for grant administration, 200 respondents, semi-annually, 3 hours; 1,200 annual burden hours.

For HOPE VI Quarterly Progress Report, a non-form, internet-based information collection system, 200 respondents, four times a year, 4,000 annual burden hours.

*Status of the proposed information collection:* Revision of a currently approved collection.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

**Michael Liu,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 03–25855 Filed 10–10–03; 8:45 am]

**BILLING CODE 4210–33–M**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ES–960–1430–BJ] ES–051990, Group 26, Illinois**

### Notice of Filing of Plat of Survey; Illinois

The Bureau of Land Management (BLM) will officially file the plat of the survey of the Locks and Dam No. 27 easement acquisition boundary as described in the U.S. Army Corps of Engineers tract descriptions E–1 and B–165 in Township 4 North, Range 9 West, Third Principal Meridian, Illinois, accepted on September 5, 2003, in the Eastern States Office, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

The survey was requested by the U.S. Army Corps of Engineers.

All inquiries or protests concerning the technical aspects of the survey must be submitted in writing to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to the date of the official filing.

We will place a copy of the plat we described in the open files. Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: September 5, 2003.

**Stephen D. Douglas,**

*Chief Cadastral Surveyor.*

[FR Doc. 03–25861 Filed 10–10–03; 8:45 am]

**BILLING CODE 4310–GJ–P**

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## DEPARTMENT OF JUSTICE

### Justice Management Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day Notice of Information Collection Under Review; Certification of Identity.

The Department of Justice, Justice Management Division, has submitted the following information collection request to the Office of Management and Budget for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until December 15, 2003.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Patricia D. Harris, FOIA/PA Coordinator, Mail Management Services, Facilities and Administrative Services Staff, Justice Management Division, United States Department of Justice, 10th and Pennsylvania Ave., NW, Washington, DC 20530, or via facsimile (301) 436–1036.

Overview of this Collection:

(1) *The type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Certification of Identity.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form:* DOJ–361. Facilities and Administrative Services Staff, Justice Management Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals. The information collection will be used by the Department to identify individuals requesting certain records under the Privacy Act. Without this form an individual cannot obtain the information requested.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 55,478 respondents at ½ hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 27,739 annual burden hours.

**FOR FURTHER INFORMATION CONTACT:** Brenda E. Dyer, Department Deputy Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: October 3, 2003.

**Brenda E. Dyer,**

*Department Deputy Clearance Officer, United States Department of Justice.*

[FR Doc. 03–25963 Filed 10–10–03; 8:45 am]

**BILLING CODE 4410–CW–P**

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## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms, and Explosives

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-Day Notice of Information Collection Under Review: Advanced Explosives Destruction Techniques (AEDT) Training Course Follow-up Evaluation Form.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 110, page 34419 on June 9, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until November 13, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Advanced Explosives Destruction Techniques (AEDT) Training Course Follow-up Evaluation Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Other: none. Abstract: The information collected on the survey will provide ATF with data on how the training participants have transferred the knowledge and skills learned to their jobs. The Kirkpatrick 4–Level Model is used to evaluate ATF training programs.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 354 respondents, who will complete the survey within approximately 12 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are 71 estimated total burden hours associated with this collection.

**FOR FURTHER INFORMATION CONTACT:** Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW, Washington, DC 20530.

Dated: October 7, 2003.

**Brenda E. Dyer,**

*Deputy Clearance Officer, United States Department of Justice.*

[FR Doc. 03–25961 Filed 10–10–03; 8:45 am]

BILLING CODE 4410–FB–P

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## DEPARTMENT OF JUSTICE

## Bureau of Alcohol, Tobacco, Firearms and Explosives

## Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day Notice of Information Collection Under Review: Commerce in Firearms and Ammunition—Annual Inventory of Firearms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until December 15, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Larry White, Firearms Programs Division, Room 7400, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Commerce in Firearms and Ammunition—Annual Inventory of Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. The regulations require Federal Firearms Licensees to conduct an annual inventory of their firearms and clarify who is responsible for reporting firearms that are lost or stolen in transit. The collection of

information is contained in 27 CFR 178.39a and 178.130.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 100,293 respondents will keep firearms records that will take approximately 1 minute to record.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are 15,483 estimated annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: October 8, 2003.

**Brenda E. Dyer,**

*Deputy Clearance Officer, Department of Justice.*

[FR Doc. 03–25962 Filed 10–10–03; 8:45 am]

**BILLING CODE 4410–FY–P**

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## DEPARTMENT OF JUSTICE

## Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993 Biotechnology Research and Development Corporation ("BRDC")

Notice is hereby given that, on September 23, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Biotechnology Research and Development Corporation ("BRDC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, PIC International PLC, San Francisco, CA has changed its name to Sygen International PLC; and American Home Products Corporation, Parsippany, NJ has changed its name to Wyeth. Also, Schering-Plough Animal Health Corporation, Madison, NJ; Baxcare Health Corporation, Round Lake, Il; Maxygen, Inc., Santa Clara, CA; and Alexion Pharmaceuticals, Inc., New Haven, CT are no longer parties to BRDC.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and BRDC intends to file additional written notification disclosing all changes in membership.

On April 13, 1988, BRDC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 12, 1988 (53 FR 16919).

The last notification was filed with the Department on August 1, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on September 25, 2001 (66 FR 49042).

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 03–25874 Filed 10–10–03; 8:45 am]

**BILLING CODE 4140–11–M**

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## DEPARTMENT OF JUSTICE

## Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Hot Metal Gas Forming Joint Venture ("HMGF")

Notice is hereby given that, on September 15, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Hot Metal Gas Forming Joint Venture ("HMGF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Center for Automotive Research, Ann Arbor, MI has been added as a party to this venture. Also, Altarum Institute, Ann Arbor, MI has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Hot Metal Gas Forming Joint Venture ("HMGF") intends to file additional written notification disclosing all changes in membership.

On December 21, 1998, Hot Metal Gas Forming Joint Venture ("HMGF") filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 18, 1999 (64 FR 8124).

The last notification was filed with the Department on July 19, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 13, 2002 (67 FR 52744).

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 03–25875 Filed 10–10–03; 8:45 am]

**BILLING CODE 4420–11–M**

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## DEPARTMENT OF JUSTICE

## Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interchangeable Virtual Instruments Foundation, Inc.

Notice is hereby given that, on September 22, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), Interchangeable Virtual Instruments Foundation, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Systems & Electronics, Inc., St. Louis, MO has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Interchangeable Virtual Instruments Foundation, Inc. intends to file additional written notification disclosing all changes in membership.

On May 29, 2001, Interchangeable Virtual Instruments Foundation, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 30, 2001 (66 FR 39336).

The last notification was filed with the Department on June 30, 2003. A notice was published in the **Federal Register** pursuant to Section 6(b) of the act on July 23, 2003 (68 FR 43552).

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 03–25872 Filed 10–10–03; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on September 22, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Exacq Technologies, Inc., Indianapolis, IN; Santec Corporation, Aichi, JAPAN; and Spectrum GmbH, Siek, GERMANY have been added as parties to this venture. Also, Ines GmbH, Bad Breisig, GERMANY; and Analogic Data Conversion Products, Wakefield, MA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notification disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on June 30, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 23, 2003 (68 FR 43552).

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 03–25873 Filed 10–10–03; 8:45 am]

**BILLING CODE 4410–11–M**

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## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute: Diesel Aftertreatment Sensitivity to Lubricants (DASL) and Non-Thermal Catalyst Deactivation (N–TCD)

Notice is hereby given that, on September 12, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute: Diesel Aftertreatment Sensitivity to Lubricants (DASL) and Non-Thermal Catalyst Deactivation (N–TCD) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its project status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the period of performance has been extended to March 18, 2004.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Southwest Research Institute: Diesel Aftertreatment Sensitivity to Lubricants (DASL) and Non-Thermal Catalyst Deactivation (N–TCD) intends to file additional written notification disclosing all changes in membership.

On July 2, 2002, Southwest Research Institute: Diesel Aftertreatment Sensitivity to Lubricants (DASL) and Non-Thermal Catalyst Deactivation (N–TCD) filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 9, 2002 (67 FR 51869).

**Dorothy B. Fountain,**

*Director of Operations, Antitrust Division.*

[FR Doc. 03–25871 Filed 10–10–03; 8:45 am]

**BILLING CODE 4410–11–M**

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## DEPARTMENT OF JUSTICE

### Office of Justice Programs

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day Emergency Notice of Information Collection Under Review: Subgrant Award Report (STOP Violence Against Women Formula Grant Program) and Subgrant Award Report Instructions.

The Department of Justice, Office of Justice Programs, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by October 17, 2003. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulation Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Comments are encouraged and will be accepted for 60 days until December 15, 2003.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Cathy Poston, Attorney/Advisor, Office on Violence Against Women, Office of Justice Programs, Department of Justice, 810 7th Street, NW, Washington DC 20531, or facsimile (202) 305–2589.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Reinstatement with change of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Subgrant Award Report (STOP Violence Against women Formula Grant Program) and Subgrant Award Report Instructions.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: none. Office on Violence Against Women, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: the affected public includes the 56 STOP state and administrators (from 50 states, the District of Columbia and five territories and commonwealths (Guan, Puerto Rico, American Samoa, Virgin Islands, Northern Marina Islands)) and their subgrantees. The STOP Violence Against Women Formula Grant was authorized through the Violence Against Women Act of 1994 (VAWA) and reauthorized and amended by the Violence Against Women Act of 2000 (VAWA 2000). Its purpose is to promote a coordinated, multi-disciplinary approach to improving the criminal justice system's response to violence against women. The STOP Formula Grant Program envisions a partnership among law enforcement, prosecution, courts, and victim advocacy organizations to enhance victim safety and hold offenders accountable for their crimes of violence against women. The Department of Justice's Office on Violence Against Women administers the STOP Formula Grant Program funds which must be distributed by STOP state administrators according to a statutory formula (as amended by VAWA 2000).

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that it will take the 56 respondents (STOP administrators) approximately one hour to complete an annual progress report. It is estimated that it will take approximately one hour for roughly 2500 subgrantees to complete the relevant portion of the annual progress report. The Annual Progress Report for the STOP Formula Grant Program is divided into sections that pertain to the different types of activities that grantees may engage in and the different types of grantees that receive funds, *i.e.* law enforcement agencies, prosecutors' offices, courts, victim services agencies, etc.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total annual public burden associated with this application is 2,556 hours.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: October 3, 2003.

**Brenda E. Dyer,**

*Department Deputy Clearance Officer, Department of Justice.*

[FR Doc. 03–25964 Filed 10–10–03; 8:45 am]

**BILLING CODE 4410–18–P**

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## DEPARTMENT OF LABOR

## Employee Benefits Security Administration

### Prohibited Transaction Exemption 2003–30; [Exemption Application No. D–11101] et al.; Grant of Individual Exemptions; Fifth Third Bank

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Grant of Individual Exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

### Fifth Third Bank, Located in Grand Rapids, Michigan

[Prohibited Transaction Exemption 2003–30; Exemption Application No. D–11101]

*Exemption*

Section I—Exemption for Receipt of Fees

Effective on or after April 2, 2001, the restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply, to: the receipt of fees by Fifth Third Bank, a Michigan banking corporation, and its affiliates (Fifth Third), from the Kent Funds prior to October 26, 2001 or from the Fifth Third Funds on or after October 26, 2001 (the Funds), open-end investment companies registered under the Investment Company Act of 1940 (the 1940 Act), for acting as an investment adviser for the Funds, as well as for acting as administrator, custodian, accountant, transfer agent, and provider of other services to the Funds (including brokerage services in the future) which are not advisory services (collectively referred to as "Secondary Services" as defined in Section III(h) below), in connection with the purchase and sale of shares of the Funds by certain employee benefit plans and individual retirement accounts (the Plans) for which Fifth Third serves as fiduciary with investment discretion; provided that the conditions set forth in Section II are met.

Section II—Conditions

(a) No sales commissions, redemption fees, or other fees are paid by the Plans in connection with the purchase or sale of shares of the Funds.

(b) The price paid or received by a Plan for shares in the Funds is the net asset value per share, as defined in Section III(e), at the time of the transaction, and is the same price that would have been paid or received for the shares by any other investor at that time.

(c) Fifth Third, including any officer or director of Fifth Third, does not purchase or sell shares of the Funds from or to any Plan.

(d) Each Plan receives a credit, through a cash rebate that will be accrued daily and, if the Plan so elects, will be automatically invested in shares of the money market funds selected by the Plan, of such Plan's proportionate share of all fees charged to the Funds by Fifth Third for investment advisory services, including any investment advisory fee paid to third-party subadvisors, not later than two business days (or, prior to the date this final exemption is published in the **Federal Register**, one business day) after receipt of such fees by Fifth Third. The crediting of all investment advisory fees to the Plans by Fifth Third is audited by an independent accounting firm on at least an annual basis to verify the proper crediting of the fees to each Plan.

(e) The combined total of all fees received by Fifth Third for the provision of services to a Plan, and in connection with the provision of services to the Funds in which the Plan may invest, is not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of ERISA.

(f) Fifth Third does not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions.

(g) The Plans are not employee benefit plans sponsored or maintained by Fifth Third.

(h) A second fiduciary acting for the Plan, who is independent of and unrelated to Fifth Third (the Second Fiduciary), receives, in advance of any initial investment by the Plan in a Fund, full and detailed written disclosure of information concerning the Fund, including, but not limited to:

(1) A current prospectus for each Fund in which a Plan is considering investing;

(2) A statement describing the fees for investment advisory or similar services and any Secondary Services and all other fees to be charged to or paid by the Plan and by the Fund, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why Fifth Third may consider such investment to be appropriate for the Plan;

(4) A statement describing whether there are any limitations applicable to Fifth Third with respect to which assets of the Plan may be invested in the Fund, and, if so, the nature of such limitations; and

(5) Upon the request of the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption once such documents are published in the **Federal Register**.

(i) After consideration of the information described in paragraph (h) above, the Second Fiduciary authorizes in writing the investment of assets of the Plan in each particular Fund, the fees to be paid by such Fund to Fifth Third (including fees for investment advisory services), and the cash rebate to the Plan of fees received by Fifth Third from the Fund for investment advisory services.

(j) All authorizations made by a Second Fiduciary regarding investments in a Fund and the fees paid to Fifth Third (including fees for investment advisory services) are subject to an annual reauthorization wherein any such prior authorization referred to in paragraph (i) above shall be terminable at will by the Plan, without penalty to the Plan, upon receipt by Fifth Third of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (i) above (the "Termination Form") with instructions on the use of the form must be provided to the Second Fiduciary at least annually. However, if the Termination Form has been provided to the Second Fiduciary pursuant to paragraph (k) or paragraph (l) below, then the Termination Form need not be provided again for an annual reauthorization pursuant to this paragraph unless at least six months have elapsed since the form was provided in connection with the additional service or fee increase. The instructions for the Termination Form must include the following information:

(1) The authorization is terminable at will by the Plan, without penalty to the Plan, upon receipt by Fifth Third's investment services group of written notice from the Second Fiduciary; and

(2) Failure to return the Termination Form will result in continued authorization of Fifth Third to engage in the transactions described above on behalf of the Plan.

(k) The Second Fiduciary of each Plan invested in a particular Fund receives full written disclosure, in a statement separate from the Fund prospectus, of any proposed increases in the rates of fees charged by Fifth Third to the Fund for Secondary Services at least 30 days prior to the implementation of such increase in fees. The disclosure will be accompanied by a copy of the Termination Form, with instructions as described in paragraph (j) above. The Second Fiduciary will also receive full written disclosure, prior to the effective date, in a Fund prospectus or otherwise, of any increases in the rates of fees charged by Fifth Third to the Fund for investment advisory services even though such fees will be rebated as required by paragraph (d) above.

(l) In the event that Fifth Third provides an additional Secondary Service to a Fund for which a fee is charged or there is an increase in the amount of fees paid by the Fund to Fifth Third for any Secondary Services resulting from a decrease in the number of services performed by Fifth Third for such fees in connection with a previously authorized Secondary Service, Fifth Third will, at least 30 days in advance of the implementation of such additional service or effective fee increase, provide written notice to the Second Fiduciary explaining the nature and the amount of such services or of the effective increase in fees of the affected Fund. Such notice shall be accompanied by the Termination Form.

(m) On an annual basis, Fifth Third provides the Second Fiduciary of a Plan investing in the Fund with:

(1) A copy of the current prospectus for the Fund and, upon such Second Fiduciary's request, a copy of the Statement of Additional Information for such Fund which contains a description of all fees paid by the Fund to Fifth Third (including fees for investment advisory services);

(2) A copy of the annual financial disclosure report of the Fund in which such Plan is invested, which includes information about the Fund portfolios as well as audit findings of an independent auditor, within 60 days of the preparation of the report;

(3) Oral or written responses to inquiries of the Second Fiduciary as they arise; and

(4) With respect to each of the Funds in which a Plan invests, in the event such Fund places brokerage transactions with Fifth Third, a statement specifying:

(i) The total (expressed in dollars) of brokerage commissions of each Fund's investment portfolio that are paid to Fifth Third by such Fund;

(ii) The total (expressed in dollars) of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to brokerage firms unrelated to Fifth Third;

(iii) The average brokerage commissions per share (expressed as cents per share) paid to Fifth Third by each investment portfolio of a Fund; and

(iv) The average brokerage commissions per share (expressed as cents per share) paid by each investment portfolio of a Fund to brokerage firms unrelated to Fifth Third.

(o) All dealings between the Plans and the Fund are on a basis no less favorable to the Plans than dealings with other shareholders of the Fund.

(p) Fifth Third maintains for a period of six years the records necessary to enable the persons described in paragraph (q) below to determine whether the conditions of this exemption have been met, except that: (i) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Fifth Third, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest other than Fifth Third shall be subject to the civil penalty that may be assessed under section 502(i) of ERISA or to the taxes imposed by section 4975 (a) and (b) of the Code if the records are not maintained or not available for examination as required by paragraph (q) below.

(q)(1) Except as provided in paragraph (p) above and notwithstanding any provisions of section 504 (a)(2) and (b) of ERISA, the records referred to in paragraph (p) above are unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service;

(ii) Any fiduciary of a Plan who has authority to acquire or dispose of shares of the Funds owned by the Plans, or any duly authorized employee or representative of such fiduciary; and

(iii) Any participant or beneficiary of a Plan or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraph (1) (ii) and (iii) above shall be authorized to examine trade secrets of Fifth Third, commercial or financial information which is privileged or confidential, or records that are unrelated to the Plan(s) that the fiduciary serves or under which the participant or beneficiary is entitled to receive benefits.

(r) Within sixty (60) days of [insert the date of publication in the **Federal Register** of the notice granting this exemption], Fifth Third will file Form 5330 with the Internal Revenue Service and pay the excise taxes applicable under section 4975(a) of the Code in connection with the error in processing rebates of investment advisory fees during the period beginning October 26, 2001 and ending on March 1, 2003.

Section III—Definitions

For purposes of this exemption:

(a) "*Fifth Third*" means Fifth Third Bank, a Michigan banking corporation, and any affiliate thereof (as affiliate is defined below in paragraph (b) of this section).

(b) An affiliate of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) "*Control*" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) "*Fund*" or "*Funds*" means the Kent Funds prior to October 26, 2001, the Fifth Third Funds on and after October 26, 2001, and each separate investment portfolio thereof, or any other diversified open-end investment company registered under the 1940 Act for which Fifth Third serves as investment advisor and may also serve (or may in the future serve) as administrator, custodian, accountant, or transfer agent, or provide some other Secondary Service (as defined in paragraph (h) below) which has been approved by the Funds.

(e) "*Net asset value*" means the amount for purposes of pricing all purchases and sales, calculated by dividing the value of all securities, determined by a method as set forth in a Fund's prospectus and statement of additional information, and other assets belonging to the Fund or portfolio of the Fund, less the liabilities charged to each such portfolio or Fund, by the number of outstanding shares.

(f) "*Relative*" means a relative as that term is defined in section 3(15) of ERISA (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) "*Second Fiduciary*" means a fiduciary of a Plan who is independent of and unrelated to Fifth Third. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to Fifth Third if:

(1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with Fifth Third;

(2) Such fiduciary, or any officer, director, partner, employee, or relative of the fiduciary is an officer, director, partner, or employee of Fifth Third (or is a relative of such persons); or

(3) Such fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

If an officer, director, partner, or employee of Fifth Third (or relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of the Plan's investment advisor, (ii) the approval of such purchase or sale between the Plan and a Fund, and (iii) the approval of any change in fees charged to or paid by the Plan in connection with any of the transactions described in Section II above, then subparagraph (2) above shall not apply.

(h) "*Secondary Service*" means a service other than an investment management, investment advisory, or similar service that is (or will in the future be) provided by Fifth Third to a Fund, including (but not limited to) brokerage services, custodian services, transfer and dividend disbursing agent services, administrator or sub-administrator services, accounting services, and shareholder servicing agent services.

(i) "*Termination Form*" means the form supplied to the Second Fiduciary that expressly provides an election to the Second Fiduciary to terminate on behalf of a Plan the authorization described in paragraph (i) of Section II above. Such Termination Form may be used at will by the Second Fiduciary to terminate an authorization without penalty to the Plan and to notify Fifth Third in writing to effect a termination by selling the shares of the Fund held by the Plan requesting such termination within one business day following receipt by Fifth Third of the form; provided that if, due to circumstances beyond the control of Fifth Third, the sale cannot be executed within one business day, Fifth Third shall have one additional business day to complete such sale.

**EFFECTIVE DATE:** This exemption is effective generally as of April 2, 2001. Effective on or after October 14, 2003, Fifth Third shall credit a Plan the cash rebate of such Plan's share of fees charged to the Funds by Fifth Third for investment advisory services not later than two business days after receipt of such fees by Fifth Third as provided in Section II(d) of the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 24, 2003 at 68 FR 37539 (the Proposed Exemption).

### Written Comment

The Department received one written comment and no requests for a public hearing. In a letter dated August 5, 2003, Fifth Third (the Applicant) requested a clarification with regard to the "Summary of Facts and Representations" (the Summary) in the Proposed Exemption. Although the term "Fifth Third" as defined in the proposed exemption itself includes Fifth Third Bank, a Michigan banking corporation, and its affiliates, the Applicant believed that the definition of the same term in item 1 of the Summary did not include the Fifth Third Bank affiliates. The Department notes that the term "Fifth Third" does include Fifth Third Bank, a Michigan banking corporation, and its affiliates in both the proposed exemption and the Summary of the Proposed Exemption.

After giving full consideration to the entire record, including the written comment noted above, the Department has decided to grant the exemption.

For information regarding the comment and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11101) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Ms. Wendy McColough of the Department, telephone (202) 693–8561. This is not a toll-free number.

### RBC Dain Rauscher, Inc. (RBC–DR) Located in Minneapolis, Minnesota

[Prohibited Transaction Exemption 2003–31; Exemption Application No. D–11189]

*Exemption*

I. Transactions

A. Effective for transactions occurring on or after April 18, 2003, the restrictions of section 406(a) and 407(a) of the Employee Retirement Income Security Act of 1974, as amended (the Act), and the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1986, as amended (the Code), by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the following transactions involving Issuers and Securities evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and an employee benefit plan when the Sponsor, Servicer, Trustee or Insurer of an Issuer, the Underwriter of the Securities representing an interest in the Issuer, or an Obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for the acquisition or holding of a Security on behalf of an Excluded Plan, by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[1]

B. Effective for transactions occurring on or after April 18, 2003, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the Securities is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the Issuer, or (b) an affiliate or a person described in (a); if

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of Securities in connection with the initial issuance of the Securities, at least 50 percent of each class of Securities in which plans have invested is acquired by persons independent of the members of the Restricted Group, and at least 50 percent of the aggregate interest in the Issuer is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of Securities does not exceed 25 percent of all of the Securities of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the Securities, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in Securities representing an interest in a Issuer containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in an Issuer if it is merely a Subservicer of that Issuer;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities, provided that conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.B. (1) or (2).

C. Effective for transactions occurring on or after April 18, 2003, the restrictions of sections 406(a), 406(b) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975 (c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of an Issuer, including the use of any Eligible Swap transaction; or the defeasance of a mortgage obligation held as an asset of the Issuer through the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction, provided:

(1) Such transactions are carried out in accordance with the terms of a binding Pooling and Servicing Agreement;

(2) The Pooling and Servicing Agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they

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[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

purchase Securities issued by the Issuer;[3] and

(3) The defeasance of a mortgage obligation and the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction meet the terms and conditions for such defeasance and substitution as are described in the prospectus or private placement memorandum for such Securities, which terms and conditions have been approved by a Rating Agency and does not result in the Securities receiving a lower credit rating from the Rating Agency than the current rating of the Securities.

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by the Servicer of the Issuer from a person other than the Trustee or Sponsor, unless such fee constitutes a "Qualified Administrative Fee."

D. Effective for transactions occurring on or after April 18, 2003, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of Securities.

## Section II—General Conditions

A. The relief provided under section I is available only if the following conditions are met:

(1) The acquisition of Securities by a plan is on terms (including the Security price) that are at least as favorable to the plan as such terms would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the Securities are not subordinated to the rights and interests evidenced by other Securities of the same Issuer, unless the Securities are issued in a Designated Transaction;

(3) The Securities acquired by the plan have received a rating from Rating Agency at the time of such acquisition that is in one of the three (or in the case of Designated Transactions, four) highest generic rating categories.

(4) The Trustee is not an Affiliate of any member of the Restricted Group, other than an Underwriter. For purposes of this requirement:

(a) the Trustee shall not be considered to be an Affiliate of a Servicer solely because the Trustee has succeeded to the rights and responsibilities of the Servicer pursuant to the terms of a Pooling and Servicing Agreement providing for such succession upon the occurrence of one or more events of default by the Servicer; and

(b) subsection II.A.(4) will be deemed satisfied notwithstanding a Servicer becoming an Affiliate of the Trustee as a result of a merger or acquisition involving the Trustee, such Servicer and/or their Affiliates which occurs after the initial issuance of the Securities provided that:

(i) Such Servicer ceases to be an Affiliate of the Trustee no later than six months after the date such Servicer became an Affiliate of the Trustee; and

(ii) Such Servicer did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from the closing date of such merger or acquisition transaction through the date the Servicer ceased to be an Affiliate of the Trustee;

(5) The sum of all payments made to and retained by the Underwriters in connection with the distribution or placement of Securities represents not more than Reasonable Compensation for underwriting or placing the Securities; the sum of all payments made to and retained by the Sponsor pursuant to the assignment of obligations (or interests therein) to the Issuer represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the Servicer represents not more than Reasonable Compensation for the Servicer's services under the Pooling and Servicing Agreement and reimbursement of the Servicer's reasonable expenses in connection therewith;

(6) The plan investing in such Securities is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission (SEC) under the Securities Act of 1933; and

(7) In the event that the obligations used to fund an Issuer have not all been transferred to the Issuer on the Closing Date, additional obligations as specified in subsection III.B.(1) may be transferred to the Issuer during the Pre-Funding Period in exchange for amounts credited to the Pre-Funding Account, provided that:

(a) The Pre-Funding Limit is not exceeded;

(b) All such additional obligations meet the same terms and conditions for eligibility as the original obligations used to create the Issuer (as described in the prospectus or private placement memorandum and/or Pooling and Servicing Agreement for such Securities), which terms and conditions have been approved by a Rating Agency. Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority vote of the outstanding securityholders or by a Rating Agency;

(c) The transfer of such additional obligations to the Issuer during the Pre-Funding Period does not result in the Securities receiving a lower credit rating from a Rating Agency, upon termination of the Pre-Funding Period than the rating that was obtained at the time of the initial issuance of the Securities by the Issuer;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the Issuer at the end of the Pre-Funding Period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the Issuer on the Closing Date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the Pre-Funding Period are substantially similar to those which were acquired as of the Closing Date, the characteristics of the additional obligations will either be monitored by a credit support provider or other insurance provider which is independent of the Sponsor or an independent accountant retained by the Sponsor will provide the Sponsor with a letter (with copies provided to the Rating Agency, the Underwriter and the Trustee) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or Pooling and Servicing Agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred on the Closing Date;

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[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the Securities were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

(f) The Pre-Funding Period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The Trustee of the Trust (or any agent with which the Trustee contracts to provide Trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act. The Trustee, as the legal owner of the obligations in the Trust or the holder of a security interest in the obligations held by the Issuer, will enforce all the rights created in favor of securityholders of such Issuer, including employee benefit plans subject to the Act;

(8) In order to insure that the assets of the Issuer may not be reached by creditors of the Sponsor in the event of bankruptcy or other insolvency of the Sponsor:

(a) The legal documents establishing the Issuer will contain:

(i) Restrictions on the Issuer's ability to borrow money or issue debt other than in connection with the securitization;

(ii) Restrictions on the Issuer merging with another entity, reorganizing, liquidating or selling assets (other than in connection with the securitization);

(iii) Restrictions limiting the authorized activities of the Issuer to activities relating to the securitization;

(iv) If the Issuer is not a Trust, provisions for the election of at least one independent director/partner/member whose affirmative consent is required before a voluntary bankruptcy petition can be filed by the Issuer; and

(v) If the Issuer is not a Trust, requirements that each independent director/partner/member must be an individual that does not have a significant interest in, or other relationships with, the Sponsor or any of its Affiliates;

(b) The Pooling and Servicing Agreement and/or other agreements establishing the contractual relationships between the parties to the securitization transaction will contain covenants prohibiting all parties thereto from filing an involuntary bankruptcy petition against the Issuer or initiating any other form of insolvency proceeding until after the Securities have been paid; and

(c) Prior to the issuance by the Issuer of any Securities, a legal opinion is received which states that either:

(i) A "true sale" of the assets being transferred to the Issuer by the Sponsor has occurred and that such transfer is not being made pursuant to a financing of the assets by the Sponsor; or

(ii) In the event of insolvency or receivership of the Sponsor, the assets transferred to the Issuer will not be part of the estate of the Sponsor;

(9) If a particular class of Securities held by any plan involves a Ratings Dependent or Non-Ratings Dependent Swap entered into by the Issuer, then each particular swap transaction relating to such Securities:

(a) Shall be an Eligible Swap;

(b) Shall be with an Eligible Swap Counterparty;

(c) In the case of a Ratings Dependent Swap, shall provide that if the credit rating of the counterparty is withdrawn or reduced by any Rating Agency below a level specified by the Rating Agency, the Servicer (as agent for the Trustee) shall, within the period specified under the Pooling and Servicing Agreement:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular class of Securities will not be withdrawn or reduced.

In the event that the Servicer fails to meet its obligations under this subsection II.A.(9)(c), plan securityholders will be notified in the immediately following Trustee's periodic report which is provided to securityholders, and sixty days after the receipt of such report, the exemptive relief provided under section I.C. will prospectively cease to be applicable to any class of Securities held by a plan which involves such Ratings Dependent Swap; provided that in no event will such plan securityholders be notified any later than the end of the second month that begins after the date on which such failure occurs.

(d) In the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the counterparty is withdrawn or reduced below the lowest level specified in section III.GG., the Servicer (as agent for the Trustee) shall within a specified period after such rating withdrawal or reduction:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to post collateral with the Trustee in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms; and

(e) Shall not require the Issuer to make any termination payments to the counterparty (other than a currently scheduled payment under the swap agreement) except from Excess Spread or other amounts that would otherwise be payable to the Servicer or the Sponsor;

(10) Any class of Securities, to which one or more swap agreements entered into by the Issuer applies, may be acquired or held in reliance upon this Underwriter Exemption only by Qualified Plan Investors; and

(11) Prior to the issuance of any debt securities, a legal opinion is received which states that the debt holders have a perfected security interest in the Issuer's assets.

B. Neither any Underwriter, Sponsor, Trustee, Servicer, Insurer, nor any Obligor, unless it or any of its Affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire Securities, shall be denied the relief provided under Part I, if the provision in subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such Securities, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of Securities, the Trustee obtains a representation of each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's Securities) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in section II.A.(6).

## Section III—Definitions

For purposes of this exemption:

A. "Security" means:

(1) A pass-through certificate or trust certificate that represents a beneficial ownership interest in the assets of an Issuer which is a Trust and which entitles the holder to pass-through payments of principal, interest, and/or

other payments made with respect to the assets of such Trust; or

(2) A Security which is denominated as a debt instrument that is issued by and is an obligation of an Issuer; with respect to which the Underwriter is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

B. "Issuer" means an investment pool, the corpus or assets of which are held in trust (including a grantor or owner Trust) or whose assets are held by a partnership, special purpose corporation or limited liability company (which Issuer may be a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Code); and the corpus or assets of which consist solely of:

(1) (a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, Qualified Equipment Notes Secured by Leases); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and/or commercial real property (including obligations secured by leasehold interests on residential or commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or Qualified Motor Vehicle Leases; and/or

(e) Guaranteed governmental mortgage pool certificates, as defined in 29 CFR 2510.3–101(1)(2)[4] and/or

(f) Fractional undivided interests in any of the obligations described in clauses (a)-(e) of this subsection B.(1);[5]

Notwithstanding the foregoing, residential and home equity loan receivables issued in Designated Transactions may be less than fully secured, provided that (i) The rights and interests evidenced by the Securities issued in such Designated Transactions are not subordinated to the rights and interests evidenced by Securities of the same Issuer; (ii) such Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the two highest generic rating categories; and (iii) any obligation included in the corpus or assets of the Issuer must be secured by collateral whose fair market value on the Closing Date of the Designated Transaction is at least equal to 80% of the sum of: (I) the outstanding principal balance due under the obligation which is held by the Issuer and (II) the outstanding principal balance(s) of any other obligation(s) of higher priority (whether or not held by the Issuer) which are secured by the same collateral.

(2) Property which had secured any of the obligations described in subsection III.B.(1);

(3) (a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to securityholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to securityholders pursuant to any Eligible Swap Agreement meeting the conditions of subsection I.A.(9) or pursuant to any Eligible Yield Supplement Agreement, and/or

(c) Cash transferred to the Issuer on the Closing Date and permitted investments made therewith which:

(i) Are credited to a Pre-Funding Account established to purchase additional obligations with respect to which the conditions set forth in clauses (a)–(g) of subsection II.A.(7) are met; and/or

(ii) are credited to a Capitalized Interest Account; and

(iii) are held by the Issuer for a period ending no later than the first distribution date to securityholders occurring after the end of the Pre-Funding Period.

For purposes of this clause (c) of subsection III.B.(3), the term *"permitted investments"* means investments which are either (i) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States, or (ii) have been rated (or the Obligor has been rated) in one of the three highest generic rating categories by a Rating Agency; are described in the Pooling and Servicing Agreement; and are permitted by the Rating Agency.

(4) Rights of the Trustee under the Pooling and Servicing Agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, Eligible Yield Supplement Agreements, Eligible Swap Agreements meeting the conditions of subsection II.A.(9) or other credit support arrangements with respect to any obligations described in section III.B.(1).

Notwithstanding the foregoing, the term "Issuer" does not include any investment pool unless: (i) The assets of the type described in paragraphs (a)–(f) of subsection III.B.(1) which are contained in the investment pool have been included in other investment pools, (ii) Securities evidencing interests in such other investment pools have been rated in one of the three (or in the case of Designated Transactions, four) highest generic rating categories by a Rating Agency for at least one year prior to the plan's acquisition of Securities pursuant to this exemption, and (iii) Securities evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of Securities pursuant to this exemption.

C. "*Underwriter*" means:

(1) RBC–DR;

(2) any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such investment banking firm; and

(3) any member of an underwriting syndicate or selling group of which such firm or person described in subsections III.C.(1) or (2) above is a manager or co-manager with respect to the Securities.

D. "*Sponsor*" means the entity that organizes an Issuer by depositing obligations therein in exchange for Securities.

E. "*Master Servicer*" means the entity that is a party to the Pooling and Servicing Agreement relating to assets of the Issuer and is fully responsible for servicing, directly or through Subservicers, the assets of the Issuer.

F. "*Subservicer*" means an entity which, under the supervision of and on behalf of the Master Servicer, services loans contained in the Issuer, but is not a party to the Pooling and Servicing Agreement.

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[4] In Advisory Opinion 99–05A (Feb. 22, 1999), the Department expressed its view that mortgage pool certificates guaranteed and issued by the Federal Agricultural Mortgage Corporation ("Farmer Mac") meet the definition of a guaranteed governmental mortgage pool certificate as defined in 29 CFR 2510.3–101(i)(2).

[5] It is the Department's view that the definition of "Issuer" contained in section III.B. includes a two-tier structure under which Securities issued by the first Issuer, which contains a pool of receivables described above, are transferred to a second Issuer which issues Securities that are sold to plans. However, the Department is of the further view that, since the exemption generally provides relief for the direct or indirect acquisition or disposition of Securities that are not subordinated, no relief would be available if the Securities held by the second Issuer were subordinated to the rights and interests evidenced by other Securities issued by the first Issuer, unless such Securities were issued in a Designated Transaction.

G. "*Servicer*" means any entity which services loans contained in the Issuer, including the Master Servicer and any Subservicer.

H. "*Trust*" means an Issuer which is a trust (including an owner trust, grantor trust or a REMIC or FASIT which is organized as a Trust.

I. "*Trustee*" means the trustee of any Trust which issues Securities and also includes an Indenture Trustee. "Indenture Trustee" means the Trustee appointed under the indenture pursuant to which the subject Securities are issued, the rights of holders of the Securities are set forth and a security interest in the Trust assets in favor of the holders of the Securities is created. The Trustee or the Indenture Trustee is also a party to or beneficiary of all the documents and instruments transferred to the Trust, and as such, has both the authority to, and the responsibility for, enforcing all the rights created thereby in favor of holders of the Securities, including those rights arising in the event of default by the servicer.

J. "*Insurer*" means the insurer or guarantor of, or provider of other credit support for, an Issuer. Notwithstanding the foregoing, a person is not an Insurer solely because it holds securities representing an interest in an Issuer which are of a class subordinated to Securities representing an interest in the same Issuer.

K. "*Obligor*" means any person, other than the Insurer, that is obligated to make payments with respect to any obligation or receivable included in the Issuer. Where an Issuer contains Qualified Motor Vehicle Leases or Qualified Equipment Notes secured by Leases, "Obligor" shall also include any owner of property subject to any Lease included in the Issuer, or subject to any Lease securing an obligation included in the Issuer.

L. "*Excluded Plan*" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

M. "*Restricted Group*" with respect to a class of Securities means:

(1) Each Underwriter;

(2) Each Insurer;

(3) The Sponsor;

(4) The Trustee;

(5) Each Servicer;

(6) Any Obligor with respect to obligations or receivables included in the Issuer constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the Issuer, determined on the date of the initial issuance of Securities by the Issuer;

(7) Each counterparty in an Eligible Swap Agreement; or

(8) Any Affiliate of a person described in (1)–(7) above.

N. "*Affiliate*" of another person includes:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

O. "*Control*" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

P. A person will be "independent" of another person only if:

(1) Such person is not an Affiliate of that other person; and

(2) The other person, or an Affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to assets of such person.

Q. "*Sale*" includes the entrance into a Forward Delivery Commitment, provided:

(1) The terms of the Forward Delivery Commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the Forward Delivery Commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

R. "*Forward Delivery Commitment*" means a contact for the purchase or sale of one or more Securities to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the Securities) and optional contracts (which give one party the right but not the obligation to deliver Securities to, or demand delivery of Securities from, the other party).

S. "*Reasonable Compensation*" has the same meaning as that term is defined in 29 CFR 2550.408c–2.

T. "*Qualified Administrative Fee*" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the Obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The Servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the Pooling and Servicing Agreement; and

(4) The amount paid to investors in the Issuer will not be reduced by the amount of any such fee waived by the Servicer.

U. "*Qualified Equipment Note Secured by a Lease*" means an equipment note:

(1) which is secured by equipment which is leased;

(2) which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) with respect to which the Issuer's security interest in the equipment is at least as protective of the rights of the Issuer as would be the case if the equipment note were secured only by the equipment and not the lease.

V. "*Qualified Motor Vehicle Lease*" means a lease of a motor vehicle where:

(1) the Issuer owns or holds a security interest in the lease;

(2) the Issuer owns or holds a security interest in the leased motor vehicle; and

(3) the Issuer's security interest in the leased motor vehicle is at least as protective of the Issuer's rights as the Issuer would receive under a motor vehicle installment loan contract.

W. "*Pooling and Servicing Agreement*" means the agreement or agreements among a Sponsor, a Servicer and the Trustee establishing a Trust. "Pooling and Servicing Agreement" also includes the indenture entered into by the Issuer and the Indenture Trustee.

X. "*Rating Agency*" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., Moody's Investors Service, Inc., Fitch, Inc. or any successors thereto.

Y. "*Capitalized Interest Account*" means an Issuer account (i) which is established to compensate securityholders for shortfalls, if any, between investment earnings on the Pre-Funding Account and the pass-through rate payable under the Securities; and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

Z. "*Closing Date*" means the date the Issuer is formed, the Securities are first issued and the Issuer's assets (other than those additional obligations which are to be funded from the Pre-Funding Account pursuant to subsection III.A.(7)) are transferred to the Issuer.

AA. "*Pre-Funding Account*" means an Issuer account (i) which is established to purchase additional obligations, which obligations meet the conditions set forth in clauses (a)–(g) of subsection II.A.(7); and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

BB. "*Pre-Funding Limit*" means a percentage or ratio of the amount allocated to the Pre-Funding Account, as compared to the total principal amount of the Securities being offered which is less than or equal to 25 percent.

CC. "*Pre-Funding Period*" means the period commencing on the Closing Date and ending no later than the earliest to occur of (i) the date the amount on deposit in the Pre-Funding Account is less than the minimum dollar amount specified in the Pooling and Servicing Agreement; (ii) the date on which an event of default occurs under the Pooling and Servicing Agreement; or (iii) the date which is the later of three months or 90 days after the Closing Date.

DD. "*Designated Transaction*" means a securitization transaction in which the assets of the Issuer consist of secured consumer receivables, secured credit instruments or secured obligations that bear interest or are purchased at a discount and are: (i) Motor vehicle, home equity and/or manufactured housing consumer receivables; and/or (ii) motor vehicle credit instruments in transactions by or between business entities; and/or (iii) single-family residential, multi-family residential, home equity, manufactured housing and/or commercial mortgage obligations that are secured by single-family residential, multi-family residential, commercial real property or leasehold interests therein. For purposes of this section III.CC., the collateral securing motor vehicle consumer receivables or motor vehicle credit instruments may include motor vehicles and/or Qualified Motor Vehicle Leases.

EE. "*Ratings Dependent Swap*" means an interest rate swap, or (if purchased by or on behalf of the Issuer) an interest rate cap contract, that is part of the structure of a class of Securities where the rating assigned by the Rating Agency to any class of Securities held by any plan is dependent on the terms and conditions of the swap and the rating of the counterparty, and if such Security rating is not dependent on the existence of the swap and rating of the counterparty, such swap or cap shall be referred to as a "Non-Ratings Dependent Swap". With respect to a Non-Ratings Dependent Swap, each Rating Agency rating the Securities must confirm, as of the date of issuance of the Securities by the Issuer, that entering into an Eligible Swap with such counterparty will not affect the rating of the Securities.

FF. "*Eligible Swap*" means a Ratings Dependent or Non-Ratings Dependent Swap:

(1) Which is denominated in U.S. dollars;

(2) Pursuant to which the Issuer pays or receives, on or immediately prior to the respective payment or distribution date for the class of Securities to which the swap relates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (*e.g.*, the London Interbank Offered Rate (LIBOR) or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the Issuer receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the counterparty, with all simultaneous payments being netted;

(3) Which has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which the swap relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3);

(4) Which is not leveraged (*i.e.*, payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in subsection III.EE.(2), and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) Which has a final termination date that is either the earlier of the date on which the Issuer terminates or the related class of securities is fully repaid; and

(6) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in subsections III.EE.(1) through (4) without the consent of the Trustee.

GG. "*Eligible Swap Counterparty*" means a bank or other financial institution which has a rating, at the date of issuance of the Securities by the Issuer, which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the Securities; provided that, if a swap Counterparty is relying on its short-term rating to establish eligibility under the Underwriter Exemption, such swap Counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the class of Securities with which the swap is associated has a final maturity date of more than one year from the date of issuance of the Securities, and such swap is a Ratings Dependent Swap, the swap Counterparty is required by the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap Counterparty.

HH. "*Qualified Plan Investor*" means a plan investor or group of plan investors on whose behalf the decision to purchase Securities is made by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the Issuer and the effect such swap would have upon the credit ratings of the Securities. For purposes of the Underwriter Exemption, such a fiduciary is either:

(1) A "qualified professional asset manager" (QPAM),[6] as defined under Part V(a) of PTE 84–14, 49 FR 9494, 9506 (March 13, 1984);

(2) An "in-house asset manager" (INHAM),[7] as defined under Part IV(a) of PTE 96–23, 61 FR 15975, 15982 (April 10, 1996); or

(3) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such Securities.

II. "*Excess Spread*" means, as of any day funds are distributed from the Issuer, the amount by which the interest allocated to Securities exceeds the amount necessary to pay interest to securityholders, servicing fees and expenses.

JJ. "*Eligible Yield Supplement Agreement*" means any yield supplement agreement, similar yield maintenance arrangement or, if purchased by or on behalf of the Issuer, an interest rate cap contract to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1). Such an agreement or arrangement may involve a notional principal contract provided that:

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[6] PTE 84–14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a QPAM, provided certain conditions are met. QPAMs (*e.g.*, banks, insurance companies, registered investment advisers with total client assets under management in excess of $50 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under ERISA.

[7] PTE 96–23 permits various transactions involving employee benefit plans whose assets are managed by an INHAM, an entity which is generally a subsidiary of an employer sponsoring the plan which is a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of $50 million.

(1) It is denominated in U.S. dollars;

(2) The Issuer receives on, or immediately prior to the respective payment date for the Securities covered by such agreement or arrangement, a fixed rate of interest or a floating rate of interest based on a publicly available index (*e.g.*, LIBOR or COFI), with the Issuer receiving such payments on at least a quarterly basis;

(3) It is not "leveraged" as described in subsection III.EE.(4);

(4) It does not incorporate any provision which would cause a unilateral alteration in any provision described in subsections III.II.(1)–(3) without the consent of the Trustee;

(5) It is entered into by the Issuer with an Eligible Swap Counterparty; and

(6) It has a notional amount that does not exceed either:

(i) The principal balance of the class of Securities to which such agreement or arrangement relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3).

The Department notes that this exemption is included within the meaning of the term "Underwriter Exemption" as it is defined in section V(h) of Prohibited Transaction Exemption 95–60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts at (*see* 60 FR 35932).

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 15, 2003 at 68 FR 49304.

**EFFECTIVE DATE:** This exemption is effective for all transactions described herein which occurred on or after April 18, 2003.

**FOR FURTHER INFORMATION CONTACT:** Gary Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 8th day of October, 2003.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.*

[FR Doc. 03–25911 Filed 10–10–03; 8:45 am]

**BILLING CODE 4510–29–P**

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

### Lodgian, Inc. 401(k) Plan and Trust Agreement (the Plan) Exemption Application No. D–11180

**AGENCY:** Employee Benefits Security Administration, Department of Labor (the Department).

**ACTION:** Notice of technical correction.

On September 29, 2003, the Department published in the **Federal Register** (68 FR 56013) a notice of a proposed exemption (the Notice) which would apply, effective December 3, 2002, to (1) the past acquisition and holding by the Plan of certain warrants (the Warrant(s)) issued by the employer, Lodgian, Inc. (Lodgian), a party in interest with respect to the Plan, which would permit the purchase of new common stock (New Lodgian Stock); (2) the cancellation payment (the Cancellation Payment) by Lodgian to the Plan in exchange for the Warrants (i) at the election of active participants (ii) at the election of the terminated vested participants whose vested interests exceed $5,000, or (iii) in accordance with the procedures for the automatic cash out of the value of Warrants held in the accounts of terminated vested participants whose vested interests are $5,000 or less, for an amount that represents the highest value of the Warrants determined by an independent, qualified, appraiser between December 31, 2002 and the date of the individual election; (3) the sale of the Warrants from Plan participants to Lodgian to cash out active and terminated vested participants; and (4) the potential exercise of the Warrants into the New Lodgian Stock.

On page 56015 of the Notice, the first sentence of Representation 8 states the following: Lodgian's obligation to purchase the Warrants is effective at a time when the New Lodgian Stock price is greater than the Warrant exercise price; the Department notes that this sentence is inaccurate and should be deleted, and hereby amends the proposal to incorporate such change.

On page 56016 of the Notice, paragraph (j) of Representation 9 states the following:

(j) Lodgian is required to purchase the Warrants upon request by a Plan participant provided that on the day of the request the price of the New Lodgian Stock is greater than the exercise price of the Warrants;

The Department notes that paragraph (j) of Representation 9 should be corrected to read as follows:

(j) Lodgian is required to purchase the Warrants upon request by a Plan participant provided that on the day of the request the price of the New Lodgian Stock is less than the exercise price of the Warrants; The Department hereby amends the proposal to incorporate such change.

**FOR FURTHER INFORMATION CONTACT:** Mr. Khalif Ford of the Department at (202) 693–8540. (This is not a toll-free number.)

Signed at Washington, DC this 8th day of October, 2003.

**Ivan L. Strasfeld,**

*Director of Exemption, Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 03–25912 Filed 10–10–03; 8:45 am]

**BILLING CODE 4520–29–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### Federal Advisory Council on Occupational Safety and Health: Notice of Meeting

Notice is hereby given of the date and location of the next meeting of the Federal Advisory Council on Occupational Safety and Health (FACOSH), established under Section 1–5 of Executive Order 12196 on February 6, 1980, published in the **Federal Register**, February 27, 1980 (45 FR 1279).

FACOSH will meet on October 29, 2003 starting at 1:30 p.m., in Room N–3437 A/B/C of the Department of Labor Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210. The meeting will adjourn at approximately 4:30 p.m., and will be open to the public. All persons wishing to attend this meeting must exhibit photo identification to security personnel upon entering the building.

Agenda items will include:

1. Call to Order
2. Old Business
    - Update on Federal Recordkeeping proposed change
    - SHARE '04 Initiative
    - Report on 58th Annual Federal Safety and Health Awards Ceremony and Training
    - Young Workers Initiative
3. New Business
    - Emergency Preparedness for Employees with Disabilities
4. Adjournment

Written data, views, or comments may be submitted, preferably with 20 copies, to the Office of Federal Agency Programs at the address provided below. All such submissions received by October 22, 2003 will be provided to the Federal Advisory Council members and will be included in the meeting record. Anyone wishing to make an oral presentation should notify the Office of Federal Agency Programs by the close of business on October 24, 2003. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Persons who request the opportunity to address the Federal Advisory Council may be allowed to speak, as time permits, at the discretion of the Chairperson. Individuals with disabilities who need special accommodations and wish to attend the meeting should contact Thomas Marple at the address indicated below.

For additional information, please contact Thomas K. Marple, Director, Director Office of Federal Agency Programs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3622, 200 Constitution Avenue, NW., Washington, DC 20210, telephone number (202) 693–2122. An official record of the meeting will be available for public inspection at the Office of Federal Agency Programs.

Signed at Washington, DC, this 7th day of October 2003.

**John L. Henshaw,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 03–25907 Filed 10–10–03; 8:45 am]

**BILLING CODE 4510–26–P**

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket Nos. NRTL4–93]**

### Underwriters Laboratories Inc., Applications for Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** This notice announces the application of Underwriters Laboratories Inc. for expansion of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of these applications.

**DATES:** You may submit comments in response to this notice, or any request for extension of the time to comment, by (1) regular mail, (2) express or overnight delivery service, (3) hand delivery, (4) messenger service, or (5) FAX transmission (facsimile). Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Comments (or any request for extension of the time to comment) must be submitted by the following dates:

*Regular mail and express delivery service:* Your comments must be postmarked by October 29, 2003.

*Hand delivery and messenger service:* Your comments must be received in the OSHA Docket Office by October 29, 2003. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m.

*Facsimile and electronic transmission:* Your comments must be sent by October 29, 2003.

**ADDRESSES:** *Regular mail, express delivery, hand-delivery, and messenger service:* You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket NRTL4–93, Room N–2625, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

*Facsimile:* If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this notice, Docket NRTL4–93, in your comments.

*Internet access to comments and submissions:* OSHA will place comments and submissions in response to this notice on the OSHA Web page *http://www.osha.gov*. Accordingly, OSHA cautions you about submitting information of a personal nature (*e.g.*, social security number, date of birth). There may be a lag time between when comments and submissions are received and when they are placed on the Web page. Please contact the OSHA Docket Office at (202) 693–2350 for information about materials not available through the OSHA Web page and for assistance in using the Web page to locate docket submissions. Comments and submissions will also be available for inspection and copying at the OSHA Docket Office at the address above.

*Extension of Comment Period:* Submit requests for extensions concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210. Or fax to (202) 693–1644.

**FOR FURTHER INFORMATION CONTACT:** Roy Resnick, Office of Technical Programs and Coordination Activities, NRTL Program, Room N3653 at the address shown immediately above for the program, or phone (202) 693–2110.

**SUPPLEMENTARY INFORMATION:**

#### Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that Underwriters Laboratories Inc. (UL) has applied for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL). UL's expansion request covers the use of additional test standards. OSHA's current scope of recognition for UL may be found in the following informational Web page: *http://www.osha-slc.gov/dts/otpca/nrtl/ul.html*.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products "properly certified" by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. We maintain an informational Web page for each NRTL, which details its scope of recognition. These pages can be accessed from our Web site at *http://www.osha-slc.gov/dts/otpca/nrtl/index.html*.

The most recent notice published by OSHA for UL's recognition covered an expansion of recognition, which became effective on March 25, 2003 (68 FR 14432).

The current addresses of the UL facilities (sites) recognized by OSHA are:

Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.
Underwriters Laboratories Inc., 1285 Walt Whitman Road, Melville, Long Island, New York 11747.
Underwriters Laboratories Inc., 1655 Scott Boulevard, Santa Clara, California 95050.
Underwriters Laboratories Inc., 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, North Carolina 27709.
Underwriters Laboratories Inc., 2600 N.W. Lake Road, Camas, Washington, 98607.
UL International Limited, Veristrong Industrial Centre, Block B, 14th Floor, 34 Au Pui Wan Street, Fo Tan Sha Tin, New Territories, Hong Kong.
UL International Services, Ltd., Taiwan Branch, 4th Floor, 260 Da-Yeh Road, Pei Tou District Taipei City, Taiwan.
UL International Demko A/S, Lyskaer 8, P.O. Box 514, DK–2730, Herlev, Denmark.
Underwriters Laboratory International (U.K.) Ltd., Wonersh House, The Guildway, Old Portsmouth Road Guildford, Surrey GU3 1LR, United Kingdom.
Underwriters Laboratory International Italia S.r.l., Via Archimede 42, 1–20041 Agrate Brianza, Milan, Italy Testing facility: Z.I. Predda Niedda st. 18, I–07100, Sassari, Italy.
Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada MIR 3A9.
UL Japan Co., Ltd., Shimbashi Ekimae Bldg.—1 Gohkan, 4th floor, Room 402, 2–20–15 Shimbashi Minato Ku, Tokyo 105–0004, Japan.
UL Korea, Ltd., #805, Manhattan Building 36–2, Yeoui-dong, Yeoungdeungpo-gu, Seoul 150–010, Korea.
UL International Germany GmbH, Frankfurter Strasse 229, D–63263 Neu-Isenburg, Germany.
UL International (Netherlands) B.V., Landjuweel 52, NL–3905 PH Veenendaal, Netherlands.

## General Background on the Application.

UL has submitted an application, dated November 18, 2002 (*see* Exhibit 30), to expand its recognition to include 41 additional test standards. The NRTL Program staff has determined that ten of these standards cannot be included in the expansion because they are not "appropriate test standards" within the meaning of 29 CFR 1910.7(c), while an additional twelve of the standards requested are already included in UL's scope. The staff makes similar determinations in processing expansion requests from any NRTL. Therefore, OSHA would approve 19 test standards for the expansion, which are listed below. Through no fault of UL, the application has been delayed in processing. UL seeks recognition for testing and certification of products for demonstration of conformance to the following test standards:

UL 441 Standard for Gas Vents.
UL 508A Industrial Control Panels.
UL 515 Electrical Resistance Heat Tracing for Commercial and Industrial Applications.
UL 568 Nonmetallic Cable Tray Systems.
UL 943B Appliance Leakage-Current Interrupters.
UL 1004A Fire Pump Motors.
UL 1285 Pipe and Couplings, Polyvinyl Chloride (PVC) for Underground Fire Service.
UL 1713 Pressure Pipe and Coupling, Glass Fiber-Reinforced, for Underground Fire Service.
UL 2129 Standard for Safety for Halocarbon Clean Agent Fire Extinguishers.
UL 2305 Exhibition Display Units, Fabrication and Installation.
UL 2351 Spray Nozzles for Fire-Protection Service.
UL 2388 Flexible Lighting Products.
UL 3111–2–31 Hand-Held Probe Assemblies for Electrical Measurement and Test.
UL 60335–2–8 Household and Similar Electrical Appliances, Part 2: Particular Requirements for Electric Shavers, Hair Clippers, and Similar Appliances.
UL 61010A–2–010 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment for the Heating of Materials.
UL 61010A–2–041 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Autoclaves Using Steam for the Treatment of Medical Materials for Laboratory Processes.
UL 61010A–2–042 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Autoclaves and Sterilizers Using Toxic Gas for the Treatment of Medical Materials, and for Laboratory Processes.
UL 61010A–2–051 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment Mixing and Stirring.
UL 61010A–2–061 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Atomic Spectrometers with Thermal Atomization and Ionization.

The designations and titles of the above test standards were current at the time of the preparation of this notice.

OSHA's recognition of UL, or any NRTL, for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, an NRTL's scope of recognition excludes any product(s) that fall within the scope of a test standard, but for which OSHA standards do not require NRTL testing and certification.

Many of the test standards listed above are approved as American

National Standards by the American National Standards Institute (ANSI). However, for convenience in compiling the list, we show the designation of the standards developing organization (*e.g.*, UL 441) for the standard, as opposed to the ANSI designation (*e.g.*, ANSI/UL 441). Under our procedures, an NRTL recognized for an ANSI-approved test standard may use either the latest proprietary or ANSI version of that standard, regardless of which version appears in the list of test standards found on OSHA's informational Web page for the NRTL. Contact "NSSN" (*http://www.nssn.org*), an organization partially sponsored by ANSI, to find out whether a standard is currently ANSI-approved.

**Preliminary Finding on the Application**

UL has submitted an acceptable request for expansion of its recognition as an NRTL. In connection with this request, OSHA did not believe it necessary to perform an on-site review of UL's NRTL testing facilities. However, following a review of the application file and other pertinent documents, the NRTL Program staff has concluded that OSHA should grant to UL the expansion of recognition as an NRTL to use the additional test standards listed above (*see* Exhibit 31). The staff, therefore, recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon the recommendation of the staff, the Agency has made a preliminary finding that Underwriters Laboratories Inc. can meet the requirements, as prescribed by 29 CFR 1910.7, for the expansion of recognition. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether UL has met the requirements of 29 CFR 1910.7 for expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comment should consist of pertinent written documents and exhibits. To consider a comment, OSHA must receive it at the address provided above (*see* **ADDRESSES**), no later than the last date for comments (*see* **DATES** above). Should you need more time to comment, OSHA must receive your written request for extension at the address provided above no later than the last date for comments. You must include your reason(s) for any request for extension. OSHA will limit any extension to 30 days, unless the requester justifies a longer period. We may deny a request for extension if it is frivolous or otherwise unwarranted. You may obtain or review copies of UL's request, the recommendation on the expansion, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. You should refer to Docket No. NRTL4–93, the permanent record of public information on UL's recognition.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant UL's expansion request. The Agency will make the final decision on granting the expansion and, in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR Section 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, DC this 7th day of October, 2003.

**John L. Henshaw,**

*Assistant Secretary.*

[FR Doc. 03–25908 Filed 10–10–03; 8:45 am]

**BILLING CODE 4510–26–P**

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (03–131)]**

### NASA Advisory Council, Biological and Physical Research Advisory Committee Meeting, Life Sciences Advisory Subcommittee Meeting.

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of meeting.

**SUMMARY:** The NASA Biological and Physical Research Advisory Committee announces a meeting of the Life Sciences Advisory Subcommittee Meeting (LSAS).

**DATES:** Wednesday, October 22, 2003, from 8:30 a.m. until 5 p.m.

**ADDRESSES:** NASA Headquarters, 300 E Street, SW., MIC–6A, Room 6H46, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Dr. David Tomko, Code UB, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0220.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the meeting room. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); employer/affiliation information (name of institution, address, country, phone); title/position of attendee. Foreign nationals will be escorted at all times. To expedite admittance, attendees can provide identifying information in advance by contacting Dr. David Tomko at (202) 358–0220 or via e-mail at *dtomko@hq.nasa.gov*.

The agenda for the meeting is as follows:

—Welcome Remarks from Chair
—Action Status from Last Meeting
—Bioastronautics Research Division Update
—Status Report on International Space Station Non-Governmental Organization
—Report on Station and Shuttle Utilization Reinvention Team
—Discussion of LSAS Responsibilities
—Working Lunch—Science Talk "Understanding Group Behavior of Space Explorers"
—Remarks from the Office of Biological and Physical Research Associate Administrator
—Findings and Recommendations

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

**June W. Edwards,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 03–25913 Filed 10–10–03; 8:45 am]

**BILLING CODE 7510–01–P**

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## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Mathematical and Physical Sciences Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Mathematical and Physical Sciences (#66).

*Date/Time:* November 5, 2003 12–6 PM, November 6, 2003 8–6 PM, November 7, 2003 8 AM–3 PM.

*Place:* 4201 Wilson Boulevard, Arlington, VA 22230, Room 375.

*Type of Meeting:* Open.

*Contact Person:* Dr. Morris L. Aizenman, Senior Science Associate, Directorate for Mathematical and Physical Sciences, Room 1005, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–8807.

*Purpose of Meeting:* To provide advice and recommendations concerning NSF science and education activities within the Directorate for Mathematical and Physical Sciences.

*Agenda:* November 5: Briefing to new MPSAC members. November 6–7: Briefing on current status of Directorate; Meeting with members of the Education and Human Resources Directorate Advisory Committee; Meeting of MPSAC with Divisions within MPS Directorate; Review of the Committee of Visitors Report on the Office of Multidisciplinary Activities; Long-Range Planning.

*Summary Minutes:* May be obtained from the contact person listed above.

Dated: October 7, 2003.

**Susanne E. Bolton,**

*Committee Management Officer.*

[FR Doc. 03–25833 Filed 10–10–03; 8:45 am]

**BILLING CODE 7555–01–M**

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## NATIONAL SCIENCE FOUNDATION

### NSF–NASA Astronomy & Astrophysics Advisory Committee (13883); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following:

**NAME:** NSF–NASA—Astronomy & Astrophysics Advisory Committee.

**DATE AND TIME:** November 3, 2003, 11 a.m.–3 p.m.

**PLACE:** National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230, by telecom.

**TYPE OF MEETING:** Open.

**CONTACT PERSON:** Dr. G. Wayne Van Citters, Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–4908.

**PURPOSE OF MEETING:** To provide advice and recommendations to the National Science Foundation (NSF) and the National Aeronautics and Space Administration (NASA) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the two agencies. .

**AGENDA:** To hear presentations of current programming by representatives from NSF and NASA; to discuss current and potential areas of cooperation between the two agencies; to formulate recommendations for continued and new areas of cooperation and mechanisms for achieving them.

Dated: October 7, 2003.

**Susanne E. Bolton,**

*Committee Management Officer.*

[FR Doc. 03–25834 Filed 10–10–03; 8:45 am]

**BILLING CODE 7555–01–M**

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## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Social, Behavioral and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

**NAME:** Advisory Committee for Social, Behavioral, and Economic Sciences (#1171).

**DATE AND TIME:** November 6, 2003 8:30AM–5 p.m., November 7, 2003 8:30AM–12:30 p.m.

**PLACE:** Holiday Inn Arlington, Ballston and Clarendon Rooms, 4610 North Fairfax Drive, Arlington, VA 22203.

**TYPE OF MEETING:** Open.

**CONTACT PERSON:** Dr. Sally Kane, Senior Advisor, ACSBE, Directorate for Social, Behavioral, and Economic Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 905, Arlington, VA 22230, 703–292–8741.

**SUMMARY MINUTES:** May be obtained from contact person listed above.

**PURPOSE OF MEETING:** To provide advice and recommendations to the National Science Foundation on major goals and policies pertaining to Social, Behavioral and Economic Sciences Directorate programs and activities.

**AGENDA:** Discussion on issues, role and future direction of the Directorate for Social, Behavioral, and Economic Sciences.

Dated: October 7, 2003.

**Susanne E. Bolton,**

*Committee Management Officer.*

[FR Doc. 03–25835 Filed 10–10–03; 8:45 am]

**BILLING CODE 7555–01–M**

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## NUCLEAR REGULATORY COMMISSION

### Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

#### I. Background

Pursuant to Pub. L. 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Pub. L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, September 19, 2003, through October 2, 2003. The last biweekly notice was published on September 30, 2003 (68 FR 56340).

#### Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By November 13, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

*Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina*

*Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina*

*Date of amendment request:* July 14, 2003.

*Description of amendment request:* The proposed change involves the extension from 1 hour to 24 hours of the completion time (CT) for Condition B of Technical Specification (TS) 3.5.1, which defines requirements for accumulators. Accumulators are part of the emergency core cooling system and consist of tanks partially filled with borated water and pressurized with nitrogen gas. The contents of the tank are discharged to the reactor coolant system if, as during a loss-of-coolant accident, the coolant pressure decreases to below the accumulator pressure. Condition B of TS 3.5.1 specifies a CT to restore an accumulator to operable status when it has been declared inoperable for a reason other than the boron concentration of the water in the accumulator not being within the required range. This change was proposed by the Westinghouse Owners Group participants in the Technical Specification Task Force (TSTF) and is designated TSTF–370. TSTF–370 is supported by NRC-approved topical report WCAP–15049–A, "Risk-Informed Evaluation of an Extension to Accumulator Completion Times," submitted on May 18, 1999. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on July 15, 2002 (67 FR 46542), on possible amendments concerning TSTF–370, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on March 12, 2003 (68 FR 11880). The licensee affirmed the applicability of the following NSHC determination in its application dated July 14, 2003.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The basis for the accumulator limiting condition for operation (LCO), as discussed in Bases Section 3.5.1, is to ensure that a sufficient volume of borated water will be immediately forced into the core through each of the cold legs in the event the RCS pressure falls below the pressure of the accumulators, thereby providing the initial cooling mechanism during large RCS pipe ruptures. As described in Section 9.2 of WCAP–15049–A, the proposed change will allow plant operation with an inoperable accumulator for up to 24 hours, instead of 1 hour, before the plant would be required to begin shutting down. The impact of the increase in the accumulator CT on core damage frequency for all the cases evaluated in WCAP–15049–A is within the acceptance limit of 1.0E–06/yr for a total plant core damage frequency (CDF) less than 1.0E–03/yr. The incremental conditional core damage probabilities calculated in WCAP–15049–A for the accumulator CT increase meet the criterion of 5E–07 in Regulatory Guides (RG) 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," and 1.177, "An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications," for all cases except those that are based on design basis success criteria. As indicated in WCAP–15049–A, design basis accumulator success criteria are not considered necessary to mitigate large break loss-of-coolant accident (LOCA) events, and were only included in the WCAP–15049–A evaluation as a worst case data point. In addition, WCAP–15049–A states that the NRC has indicated that an incremental conditional core damage frequency (ICCDP) greater than 5E–07 does not necessarily mean the change is unacceptable.

The proposed technical specification change does not involve any hardware changes nor does it affect the probability of any event initiators. There will be no change to normal plant operating parameters, engineered safety feature (ESF) actuation setpoints, accident mitigation capabilities, accident analysis assumptions or inputs.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. As described in Section 9.1 of the WCAP–15049–A evaluation, the plant design will not be changed with this proposed technical specification CT increase. All safety systems still function in the same manner and there is no additional reliance on additional systems or procedures. The proposed accumulator CT increase has a very small impact on core damage frequency. The WCAP–15049–A evaluation demonstrates that the small increase in risk due to increasing the CT for an inoperable accumulator is within the acceptance criteria provided in RGs 1.174 and 1.177. No new accidents or transients can be introduced with the requested change and the likelihood of an accident or transient is not impacted.

The malfunction of safety related equipment, assumed to be operable in the accident analyses, would not be caused as a result of the proposed technical specification change. No new failure mode has been created and no new equipment performance burdens are imposed.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change does not involve a significant reduction in a margin of safety. There will be no change to the departure from nucleate boiling ratio (DNBR) correlation limit, the design DNBR limits, or the safety analysis DNBR limits.

The basis for the accumulator LCO, as discussed in Bases Section 3.5.1, is to ensure that a sufficient volume of borated water will be immediately forced into the core through each of the cold legs in the event the RCS pressure falls below the pressure of the accumulators, thereby providing the initial cooling mechanism during large RCS pipe ruptures. As described in Section 9.2 of WCAP–15049–A, the proposed change will allow plant operation with an inoperable accumulator for up to 24 hours, instead of 1 hour, before the plant would be required to begin shutting down. The impact of this on plant risk was evaluated and found to be very small. That is, increasing the time the accumulators will be unavailable to respond to a large LOCA event, assuming accumulators are needed to mitigate the design basis event, has a very small impact on plant risk. Since the frequency of a design basis large LOCA (a large LOCA with loss of offsite power) would be significantly lower than the large LOCA frequency of the WCAP–15049–A evaluation, the impact of increasing the accumulator CT from 1 hour to 24 hours on plant risk due to a design basis large LOCA would be significantly less than the plant risk increase presented in the WCAP–15049–A evaluation.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Ms. Lisa F. Vaughn , Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

*NRC Section Chief:* John A. Nakoski.

*Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina*

*Date of amendment request:* October 16, 2001; as supplemented by letters dated May 20, September 12, and November 21, 2002; and January 27, and September 22, 2003.

*Description of amendment request:* The proposed amendments would revise the Technical Specifications (TS) to incorporate changes resulting from the use of an alternate source term (AST) and the implementation of several plant modifications. Publication of the Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing for the October 16, 2001, submittal appeared in the **Federal Register** on January 22, 2002, (67 FR 2922). The September 22, 2003, submittal contained a revised No Significant Hazards Consideration Determination. The September 22, 2003, submittal includes (1) Implementing the AST for accident analysis as described in Regulatory Guide 1.183; (2) relaxing the TS for the penetration room ventilation system (PRVS) and the spent fuel pool ventilation system (SFPVS) because these systems are no longer credited for control room and offsite doses; (3) revising the control room ventilation system (CRVS) to allow for a one-time completion extension to support implementation of the control room intake/booster fan modification; (4) lowering the reactor building leakage rate from 0.25 weight percent per day to 0.20 weight percent per day; (5) revising the ventilation filter testing program radioactive methyl iodide removal acceptance criterion for PRVS, SFPVS, and CRVS booster fan trains; and (6) adoption of TS Task Force (TSTF)–51.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed amendment will not involve a significant increase in the probability of consequences of an accident previously evaluated.

The AST [alternate source term] and those plant systems affected by implementing the proposed changes to the TS [technical specifications] are not assumed to initiate design basis accidents. The AST does not affect the design or operations of the facility. Rather, the AST is used to evaluate the consequences of a postulated accident. The implementation of the AST has been evaluated in the revisions to the analysis of the design basis accident for ONS [Oconee Nuclear Station]. Based on the results of these analyses, it has been demonstrated that, with the requested changes, the dose consequences of these events meet the acceptance criteria of 10 CFR 50.67 and RG [Regulatory Guide] 1.183. Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The AST and those plant systems affected by implementing the proposed changes to the TS are not assumed to initiate design basis accidents. The systems affected by the changes are used to mitigate the consequences of an accident that has already occurred. The proposed TS changes and modifications do not significantly affect the mitigative function of these systems. Consequently, these systems do not alter the nature of events postulated in the Safety Analysis Report nor do they introduce any unique precursor mechanisms. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed amendment will not involve a significant reduction in the margin of safety.

The implementation of the AST, proposed changes to the TS and implementation of the proposed modifications have been evaluated in the revisions to the analysis of the consequences of the design basis accidents for the ONS. Based on the results of these analyses, it has been demonstrated that with the requested changes the dose consequences of these events meet the acceptance criteria of 10 CFR 50.67 and following the provisions of RG 1.183. Thus, the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

*NRC Section Chief:* John A. Nakoski.

*Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station (DNPS), Units 2 and 3, Grundy County, Illinois*

*Date of amendment request:* July 29, 2003.

*Description of amendment request:* The proposed amendments would allow the licensee to modify technical specifications (TS) to be consistent with Technical Specification Task Force (TSTF) Traveler TSTF–360, Revision 1, "DC Electrical Rewrite," and to implement new actions for inoperable battery chargers, modify certain actions and surveillance requirements, relocate certain surveillance requirements to a licensee controlled program, and create an administrative program for battery monitoring and maintenance to be referenced in the TS.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes restructure the Technical Specifications (TS) for the direct current (DC) electrical power system. The proposed changes add actions to specifically address battery charger inoperability. This change will rely upon the capability of providing the battery charger function by an alternate means (*e.g.,* a 125 volts direct current (VDC) portable battery charger or a 250 VDC portable battery charger) to justify the proposed Completion Times. The DC electrical power system, including associated battery chargers, is not an initiator to any accident sequence analyzed in the Updated Final Safety Analysis Report (UFSAR). Operation in accordance with the proposed TS ensures that the DC electrical power system is capable of performing its function as described in the UFSAR. Therefore, the mitigative functions supported by the DC electrical power system will continue to provide the protection assumed by the analysis.

The relocation of preventive maintenance surveillance, and certain operating limits and actions, to a newly-created licensee controlled Battery Monitoring and Maintenance Program will not challenge the ability of the DC electrical power system to perform its design function. Appropriate monitoring and maintenance, consistent with industry standards, will continue to be performed. In addition, the DC electrical power system is within the scope of 10 CFR 50.65, "Requirements for monitoring the effectiveness of maintenance at nuclear power plants," which will ensure the control of maintenance activities associated with the DC electrical power system. The integrity of fission product barriers, plant configuration, and operating procedures as described in the UFSAR will not be affected by the proposed changes. Therefore, the consequences of previously analyzed accidents will not increase by implementing these changes.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes involve restructuring the TS for the DC electrical power system. This change will rely upon the capability of providing the battery charger function by an alternate means (*e.g.*, a swing charger or a portable battery charger) to justify the proposed Completion Times when a normal battery charger is inoperable. The DC electrical power system, including associated battery chargers, is not an initiator to any accident sequence analyzed in the UFSAR. Rather, the DC electrical power system is used to supply equipment used to mitigate an accident.

The 125 VDC portable battery charger will be utilized as a common spare to feed the Division I or Division 2 125 VDC bus of Unit 2 or Unit 3. For the 250 VDC system, a full capacity swing charger is available for use between the units, and can be aligned to any one of the 250 VDC batteries. In addition, the 250 VDC portable battery charger can be utilized as a common spare to feed the 250 VDC safety related batteries of Unit 2 or Unit 3. This portable charger is identical to the existing chargers and is non-safety related. The output of the portable charger will be capable of being connected to any one of the Class IE DC buses for Division I or Division 2 of Unit 2 or Unit 3. Allowing the use of a portable spare and swing battery chargers will increase the reliability of the DC electrical power system. The mitigative functions supported by the DC electrical power system will continue to provide the protection assumed by the safety analyses described in the UFSAR. Therefore, there are no new types of failures that could be created by a failure of the portable battery charger. As such, no new or different kind of accident or transient is expected by these changes.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The proposed changes will not adversely affect operation of plant equipment. These changes will not result in a change to the setpoints at which protective actions are initiated. Sufficient DC capacity to support operation of mitigation equipment is ensured. The changes associated with the new Battery Maintenance and Monitoring Program will ensure that the station batteries are maintained in a highly reliable manner. The use of a portable battery charger will increase the reliability of the DC system during periods of normal battery charger inoperability. The equipment fed by the DC electrical sources will continue to provide adequate power to safety related loads in accordance with analysis assumptions. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

*Attorney for licensee:* Senior Counsel, Nuclear; Exelon Generation Company LLC; 4300 Winfield Road; Warrenville, IL 60555.

*NRC Section Chief:* Anthony J. Mendiola.

*Exelon Generation Company, LLC, and PSEG Nuclear LLC, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania*

*Date of application for amendments:* July 14, 2003.

*Description of amendment request:* The proposed change is requested to support application of an alternative source term methodology, with the exception that Technical Information Document 14844, "Calculation of Distance Factors for Power and Test Reactor Sites," will continue to be used as the radiation dose basis for equipment qualification.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The implementation of alternative source term (AST) assumptions has been evaluated in revisions to the analyses of the following limiting design basis accidents (DBAs) at Peach Bottom Atomic Power Station (PBAPS):

- Loss-of-Coolant Accident,
- Main Steam Line Break Accident,
- Fuel Handling Accident, and
- Control Rod Drop Accident.

Based upon the results of these analyses, it has been demonstrated that, with the requested changes, the dose consequences of these limiting events are within the regulatory guidance provided by the NRC for use with the AST. This guidance is presented in 10 CFR 50.67 and associated Regulatory Guide 1.183, and Standard Review Plan Section 15.0.1. The Alternative Source Term is an input to calculations used to evaluate the consequences of an accident, and does not by itself affect the plant response, or the actual pathway of the radiation released from the fuel. It does however, better represent the physical characteristics of the release, so that appropriate mitigation techniques may be applied. Therefore, the consequences of an accident previously evaluated are not significantly increased.

The equipment affected by the proposed changes is mitigative in nature, and relied upon after an accident has been initiated. Application of the Alternative Source Term (AST) does not involve any physical changes to the plant design. While the operation of various systems do change as a result of these proposed changes, these systems are not accident initiators. Application of the AST is not an initiator of a design basis accident. The proposed changes to the Technical Specifications (TS), while they revise certain performance requirements, do not involve any physical modifications to the plant. As a result, the proposed changes do not affect any of the parameters or conditions that could contribute to the initiation of any accidents. As such, removal of operability requirements during the specified conditions will not significantly increase the probability of occurrence for an accident previously analyzed. Since design basis accident initiators are not being altered by adoption of the Alternative Source Term analyses, the probability of an accident previously evaluated is not affected.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not involve a physical alteration of the plant (no new or different type of equipment will be installed and there are no physical modifications to existing equipment associated with the proposed changes). Similarly, it does not physically change any structures, systems or components involved in the mitigation of any accidents, thus, no new initiators or precursors of a new or different kind of accident are created. New equipment or personnel failure modes that might initiate a new type of accident are not created as a result of the proposed amendment.

As such the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Safety margins and analytical conservatisms have been evaluated and have been found acceptable. The analyzed events have been carefully selected and margin has been retained to ensure that the analyses adequately bound postulated event scenarios. The dose consequences due to design basis accidents comply with the requirements of 10 CFR 50.67 and the guidance of Regulatory Guide 1.183.

The proposed amendment is associated with the implementation of a new licensing basis for PBAPS Design Basis Accidents (DBAs). Approval of the change from the original source term to a new source term taken from Regulatory Guide 1.183 is being requested. The results of the accident analyses, revised in support of the proposed license amendment, are subject to revised acceptance criteria. The analyses have been performed using conservative methodologies, as specified in Regulatory Guide 1.183. Safety margins have been evaluated and analytical conservatism has been utilized to ensure that the analyses adequately bound the postulated limiting event scenario. The dose consequences of these DBAs remain within the acceptance criteria presented in 10 CFR 50.67, "Accident Source Term", and Regulatory Guide 1.183.

The proposed changes continue to ensure that the doses at the exclusion area boundary (EAB) and low population zone boundary (LPZ), as well as the Control Room, are within corresponding regulatory limits.

Therefore, operation of PBAPS in accordance with the proposed changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for Licensee:* Mr. Edward Cullen, Vice President and General Counsel, Exelon Generation Company, LLC, 2301 Market Street, S23–1, Philadelphia, PA 19101.

*NRC Section Chief:* James W. Clifford.

*Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana*

*Date of amendment request:* September 12, 2003.

*Description of amendment request:* The proposed amendment is for relaxation of the heater acceptance criteria contained in Surveillance Requirement (SR) 4.6.6.1d.5, SR 4.7.6.1d.3, and SR 4.7.7d.4 for the shield building ventilation, control room ventilation, and controlled ventilation area systems, respectively. These SRs are performed to verify that heat dissipated by the heaters is within a given band. The requested change is to increase the upper limit of the acceptance criteria from rated capacity plus 5 percent (%) to rated capacity plus 10%. No change is proposed for the lower limit of the band of rated capacity minus 10%.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The relaxation of the SR acceptance criteria to increase the operating band does not alter the way plant equipment is designed or operated. The ESF [engineered safety feature] filtration unit heating coils will continue to reduce the humidity of the incoming air to 70% relative humidity or below. In addition, the air temperature will continue to be controlled such that additional iodine will not be released into the environment. Thus, the charcoal adsorber will continue to meet its design basis and its efficiency will not be adversely affected. The effect of the higher heat dissipation has also been evaluated and the ignition temperature of the charcoal adsorbers is not approached with flow through the systems. In addition, the impact of the new acceptance criterion was determined not to impact the loading or fuel consumption of the emergency diesel generators.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The relaxation of the SR acceptance criteria to increase the operating band does not alter the way plant equipment is designed, operated, or tested. No possibility for a new or different accident or failure mode is introduced by modifying the SR acceptance criteria. The proposed change does not affect the functional capability of safety-related equipment.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The ESF filtration unit heating coils will continue to reduce the humidity of the incoming air to 70% relative humidity or below. Thus, the efficiency of the charcoal adsorber will not be adversely affected. In addition, the impact of the new acceptance criterion was determined not to impact the loading or fuel consumption of the emergency diesel generators. Therefore, the systems have the same capabilities to mitigate accidents as they had prior to the SR acceptance criteria change.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* N. S. Reynolds, Esquire, Winston & Strawn 1400 L Street, NW., Washington, DC 20005–3502.

*NRC Section Chief:* Robert A. Gramm.

*Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan*

*Date of amendment requests:* August 27, 2003.

*Brief description of amendments:* The proposed change allows entry into a mode or other specified condition in the applicability of a technical specification (TS), while in a condition statement and the associated required actions of the TS, provided the licensee performs a risk assessment and manages risk consistent with the program in place for complying with the requirements of 10 CFR 50.65(a)(4). Limiting Condition for Operation (LCO) 3.0.4 exceptions in individual TS would be eliminated, and Surveillance Requirement (SR) 3.0.4 revised to reflect the LCO 3.0.4 allowance.

This change was proposed by the industry's Technical Specification Task Force (TSTF) and is designated TSTF–359. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 2, 2002 (67 FR 50475), on possible amendments concerning TSTF–359, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 4, 2003 (68 FR 16579). The licensee affirmed the applicability of the following NSHC determination in its application dated August 27, 2003.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. Being in a TS condition and the associated required actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The TS allow operation of the plant without the full complement of equipment through the conditions for not meeting the TS LCO. The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS condition on the margin of safety is not considered significant. The proposed change does not alter the required actions or completion times of the TS. The proposed change allows TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

*NRC Section Chief:* L. Raghavan.

*Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska*

*Date of amendment request:* August 25, 2003.

*Description of amendment request:* The proposed license amendment request would revise Technical Specification (TS) 3.5.1 to incorporate TS Task Force 318 for one Low Pressure Coolant Injection (LPCI) pump inoperable in each of the two Emergency Core Cooling Systems (ECCS) divisions.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not affect the LPCI subsystem design or function. The change to TS 3.5.1 Condition A with one LPCI pump inoperable in both subsystems is more reliable than the current configuration allowed by Condition A. The current TS actions require entry into shutdown LCO [Limiting Condition for Operation] 3.0.3 for this condition. In addition, for an event that does not impact LPCI availability the change provides for more injection flow than the current TS 3.5.1 Condition A LPCI pump configuration. Review of Updated Safety Analysis Report Section XIV–6.0 "Analysis of Design Basis Accidents" confirms that the LPCI mode of the Residual Heat Removal system is not assumed to be the initiator of any previously analyzed event.

Based on the above, NPPD concludes that the proposed TS change to TS 3.5.1 Condition A does not significantly increase the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical change to the plant, add any new equipment or require any existing equipment to be operated in a manner different from the present system design.

Based on the above, NPPD concludes that the proposed TS change to TS 3.5.1 Condition A does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in the margin of safety?

The proposed TS change will not reduce the margin of safety. The proposed configuration of one LPCI pump in each LPCI subsystem represents a more reliable configuration. The current TS actions require entry into shutdown LCO 3.0.3 for this condition. In addition, for an event that does not impact LPCI availability the change provides for more injection flow than the current [LCO] requirement which only allows two LPCI pumps in one ECCS subsystem to be inoperable for seven days.

Based on the above, NPPD concludes that the proposed TS change to TS 3.5.1 Condition A does not involve a significant reduction in the margin of safety.

From the above discussions, NPPD concludes that the proposed amendment involves no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

*NRC Section Chief:* Robert A. Gramm.

*Nuclear Management Company, LLC, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan*

*Date of amendment request:* September 18, 2003.

*Description of amendment request:* The proposed amendment would revise the limiting condition for operation (LCO) and the associated surveillance requirements of Technical Specification 3.4.1, "[Primary Coolant System] PCS Pressure, Temperature, and Flow Departure from Nucleate Boiling (DNB) Limits," to reflect relocation of the DNB limits from the TSs to the Core Operating Limits Report (COLR). These DNB limits are for pressurizer pressure, PCS cold leg temperature, and PCS total flow rate. The proposed amendment would also revise paragraph a of TS 5.6.5, "Core Operating Limits Report (COLR)," to reflect the addition of "DNB Limits" to the COLR. In addition, LCO 3.4.1 would be added to items 16 and 17 in TS 5.6.5b, which lists the documents approved by the NRC for the analytical methods for which the licensee is to use the latest revisions to determine the core operating limits.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed amendment relocates the primary coolant system (PCS) departure from nucleate boiling (DNB) limits to the core operating limits report (COLR) and does not involve any change to the PCS DNB limits themselves. The proposed amendment does not involve operation of any required structures, systems, or components (SSCs) in a manner or configuration different from those previously recognized or evaluated. The Nuclear Regulatory Commission (NRC) has approved all the analytical methods described in Technical Specification (TS) section 5.6.5, "Core Operating Limits Report (COLR)." Relocation of the PCS DNB limits to the COLR will maintain existing operating fuel cycle analysis requirements. Any future revisions to the safety analyses that require prior NRC approval are identified per the 10 CFR 50.59 review process.

Therefore, the probability of an accident previously evaluated will not be increased by the proposed change.

The consequences of an accident previously evaluated will not be increased since the reactor is still protected from violating the PCS DNB parameters used in the safety analysis for Palisades Nuclear Plant.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment to relocate the PCS DNB limits to the COLR would not change or add a system function. The proposed amendment does not involve operation of any required SSCs in a manner or configuration different from those previously recognized or evaluated. No new failure mechanisms will be introduced by the proposed change.

Therefore, this proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment to relocate the PCS DNB limits to the COLR will continue to assure that the acceptance criteria established in the safety analysis will be met. The safety analyses of normal operating conditions and anticipated operational occurrences assume initial conditions within the normal steady state envelope. The limits placed on DNB related parameters ensure that these parameters, when appropriate measurement uncertainties are applied, will not be less conservative than those assumed in the safety analyses and thereby provide assurance that the minimum departure from nucleate boiling ratio (DNBR) will meet the required criteria for each of the analyzed transients. The proposed amendment does not change the existing PCS DNB limits. Any future revisions to the safety analyses that require prior NRC approval are identified per the 10 CFR 50.59 review process.

Therefore, the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Arunas T. Udrys, Esquire, Consumers Energy Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

*NRC Section Chief:* L. Raghavan.

*Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California*

*Date of amendment requests:* September 15, 2003.

*Description of amendment requests:* In Technical Specification (TS) 2.0, "Safety Limits (SLs)," Reactor Core SL 2.1.1.2, the proposed change would replace the peak linear heat rate SL with a peak fuel centerline temperature SL. This change is requested so SL 2.1.1.2 adequately conforms to 10 CFR 50.36(c)(1)(ii)(A), which requires that Limiting Safety System Settings prevent a Safety Limit from being exceeded.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not require any physical change to any plant systems, structures, or components nor does it require any change in systems or plant operations. The proposed change does not require any change in safety analysis methods or results. The change to establish the PFCT [Peak Fuel Centerline Temperature] as the SL is consistent with the Standard Review Plan (SRP) and the SONGS Units 2 and 3 licensing basis for ensuring that the fuel design limits are met. Operations and analysis will continue to be in compliance with NRC regulations.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The SONGS Units 2 and 3 Updated Final Safety Analysis Report (UFSAR) Chapter 15 accident analysis for Anticipated Operational Occurrences (AOOs) where the peak linear heat rate may exceed the existing Safety Limit of 21 KW/ft is the Control Element Assembly (CEA) Withdrawal at subcritical and low power startup conditions.

The accident analyses indicate that the peak linear heat rate may exceed the Limiting Safety System Setpoint of 21 KW/ft during Control Element Assembly Withdrawal Events at Subcritical and Hot Zero Power conditions. The analyses for these AOOs indicate that the PFCT is not approached or exceeded. The existing analyses remain unchanged and do not affect any accident initiators that would create a new accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not require any change in accident analysis methods or results. Therefore, by changing the SL from PLHR [Peak Linear Heat Rate] to Peak Fuel Centerline Temperature, the margin as established in the current license basis remains unchanged.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Attorney for licensee:* Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

*NRC Section Chief:* Stephen Dembek.

*South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station (VCSNS), Unit No. 1, Fairfield County, South Carolina*

*Date of amendment request:* July 29, 2003.

*Description of amendment request:* The proposed change will revise Surveillance Requirement 4.0.5 to reflect the deletion of Subsections IWP and IWV from Section XI of the 2000 Addenda of American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code. This change will also result in revising the Technical Specification (TS) Bases for 4.0.5, 3/4.4.2 and 3/4.4.6 to reflect the applicability of the Code for Operation and Maintenance of Nuclear Power Plants (OM Code) to inservice testing activities. TS 4.0.5 is also being revised as recommended by NUREG–1492, "Guidelines for Inservice Testing at Nuclear Power Plants," April 1995.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change to TS 4.0.5 reflects NRC approval of the ASME Code [2000 Adenda], in 10CFR50.55a, for the conduct of Inservice Testing (IST). The current TS references use of ASME Section XI for this testing, which will no longer be applicable for the third IST interval. The adoption of an NRC approved test code, as required by 10CFR50.55a(f)(4)(ii) will not increase the probability of an accident previously evaluated. Testing is performed to ensure the operational readiness of pumps and valves to perform their safety functions.

The probability or consequences of accidents previously evaluated in the VCSNS FSAR [Final Safety Analysis Report] are unaffected by this proposed change because there is no change to any equipment response or accident mitigation scenario. There are no additional challenges to fission product barrier integrity. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change involves the adoption of an NRC approved Inservice Testing Code for the conduct of Operating License mandated testing. The adoption of the new Code is required to satisfy 10CFR50.55a(f)(4)(ii). The new Code enhances plant safety by requiring the bi-directional testing of check valves and comprehensive pump testing. These changes were incorporated to better monitor pumps and check valves for degradation. The adoption of the new Code does not create the possibility of a new or different kind of accident or malfunction.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. The proposed change does not challenge the performance or integrity of any safety-related system. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does this change involve a significant reduction in margin of safety?

The margin of safety associated with the acceptance criteria of any accident is unchanged. The proposed change will have no affect on the availability, operability, or performance of the safety-related systems and components. A change to the surveillance requirement is proposed, but the ASME OM Code is an NRC approved standard incorporating inservice testing enhancements not contained in ASME Section XI.

Pursuant to 10 CFR 50.91, the preceding analyses provide a determination that the proposed Technical Specifications change poses no significant hazard as delineated by 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Thomas G. Eppink, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

*NRC Section Chief:* John A. Nakoski.

*Southern Nuclear Operating Company, Inc, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama*

*Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia*

*Date of amendment request:* September 2, 2003.

*Description of amendment request:* The proposed change involves the extension from 1 hour to 24 hours of the completion time (CT) for Condition B of Technical Specification (TS) 3.5.1, which defines requirements for accumulators. Accumulators are part of the emergency core cooling system and consist of tanks partially filled with borated water and pressurized with nitrogen gas. The contents of the tank are discharged to the reactor coolant system if, as during a loss-of-coolant accident, the coolant pressure decreases to below the accumulator pressure. Condition B of TS 3.5.1 specifies a CT to restore an accumulator to operable status when it has been declared inoperable for a reason other than the boron concentration of the water in the accumulator not being within the required range. This change was proposed by the Westinghouse Owners Group participants in the Technical Specification Task Force (TSTF) and is designated TSTF–370. TSTF–370 is supported by NRC-approved topical report WCAP–15049–A, "Risk-Informed Evaluation of an Extension to Accumulator Completion Times," submitted on May 18, 1999. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on July 15, 2002 (67 FR 46542), on possible amendments concerning TSTF–370, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on March 12, 2003 (68 FR 11880). The licensee affirmed the applicability of the following NSHC determination in its application dated September 2, 2003.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The basis for the accumulator limiting condition for operation (LCO), as discussed in Bases Section 3.5.1, is to ensure that a sufficient volume of borated water will be immediately forced into the core through each of the cold legs in the event the RCS pressure falls below the pressure of the accumulators, thereby providing the initial cooling mechanism during large RCS pipe ruptures. As described in Section 9.2 of WCAP–15049–A, the proposed change will allow plant operation with an inoperable accumulator for up to 24 hours, instead of 1 hour, before the plant would be required to begin shutting down. The impact of the increase in the accumulator CT on core damage frequency for all the cases evaluated in WCAP–15049–A is within the acceptance limit of 1.0E–06/yr for a total plant core damage frequency (CDF) less than 1.0E–03/yr. The incremental conditional core damage probabilities calculated in WCAP–15049–A for the accumulator CT increase meet the criterion of 5E–07 in Regulatory Guides (RG) 1.174, "An Approach for using Probabilistic Risk Assessment in Risk-Informed Decisions On Plant-Specific Changes to the Licensing Basis," and 1.177, "An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications," for all cases except those that are based on design basis success criteria. As indicated in WCAP–15049–A, design basis accumulator success criteria are not considered necessary to mitigate large break loss-of-coolant accident (LOCA) events, and were only included in the WCAP–15049–A evaluation as a worst case data point. In addition, WCAP–15049–A states that the NRC has indicated that an incremental conditional core damage frequency (ICCDP) greater than 5E–07 does not necessarily mean the change is unacceptable.

The proposed technical specification change does not involve any hardware changes nor does it affect the probability of any event initiators. There will be no change to normal plant operating parameters, engineered safety feature (ESF) actuation setpoints, accident mitigation capabilities, accident analysis assumptions or inputs.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. As described in Section 9.1 of the WCAP–15049–A evaluation, the plant design will not be changed with this proposed technical specification CT increase. All safety systems still function in the same manner and there is no additional reliance on additional systems or procedures. The proposed accumulator CT increase has a very small impact on core damage frequency. The WCAP–15049–A evaluation demonstrates that the small increase in risk due to increasing the CT for an inoperable accumulator is within the acceptance criteria provided in RGs 1.174 and 1.177. No new accidents or transients can be introduced with the requested change and the likelihood of an accident or transient is not impacted.

The malfunction of safety related equipment, assumed to be operable in the accident analyses, would not be caused as a result of the proposed technical specification change. No new failure mode has been created and no new equipment performance burdens are imposed.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change does not involve a significant reduction in a margin of safety. There will be no change to the departure from nucleate boiling ratio (DNBR) correlation limit, the design DNBR limits, or the safety analysis DNBR limits.

The basis for the accumulator LCO, as discussed in Bases Section 3.5.1, is to ensure that a sufficient volume of borated water will be immediately forced into the core through each of the cold legs in the event the RCS pressure falls below the pressure of the accumulators, thereby providing the initial cooling mechanism during large RCS pipe ruptures. As described in Section 9.2 of WCAP–15049–A, the proposed change will allow plant operation with an inoperable accumulator for up to 24 hours, instead of 1 hour, before the plant would be required to begin shutting down. The impact of this on plant risk was evaluated and found to be very small. That is, increasing the time the accumulators will be unavailable to respond to a large LOCA event, assuming accumulators are needed to mitigate the design basis event, has a very small impact on plant risk. Since the frequency of a design basis large LOCA (a large LOCA with loss of offsite power) would be significantly lower than the large LOCA frequency of the WCAP–15049–A evaluation, the impact of increasing the accumulator CT from 1 hour to 24 hours on plant risk due to a design basis large LOCA would be significantly less than the plant risk increase presented in the WCAP–15049–A evaluation.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorneys for licensee:* M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201; Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

*NRC Section Chief:* John A. Nakoski.

*STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas*

*Date of amendment request:* May 22, 2003.

*Description of amendment request:* The proposed amendment revises Technical Specification 3.3.2 governing radiation monitoring instrumentation to relax restrictions on containment purge valve operation.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The radiation monitors affected by the proposed amendment are not potential accident initiators. Adequate measures are available to compensate for instrumentation that is out of service. The proposed amendment does not affect how the affected instrumentation normally functions or its role in the response of an operator to an accident or transient. The core damage frequency in the STP [South Texas Project] PRA [probabilistic risk assessment] is not impacted by the proposed changes. Therefore, STPNOC [South Texas Project Nuclear Operating Company] concludes that there is no significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The instrumentation affected by the proposed amendment is not credited for the prevention of any accident not evaluated in the safety analysis. The proposed amendment involves no changes in the way the plant is operated or controlled. It involves no change in the design configuration of the plant. No new operating environments are created. Therefore, STPNOC concludes the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change has no significant effect on functions that are supported by the affected instrumentation. There will be no significant effect on the availability and reliability of the affected instrumentation. Adequate measures are available to compensate for instrumentation that is out of service. Therefore, STPNOC concludes the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

*Attorney for licensee:* A.H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

*NRC Section Chief:* Robert A. Gramm.

*Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama*

*Date of amendment request:* August 7, 2003.

*Brief description of amendments:* The proposed change allows entry into a mode or other specified condition in the applicability of a technical specification (TS), while in a condition statement and the associated required actions of the TS, provided the licensee performs a risk assessment and manages risk consistent with the program in place for complying with the requirements of 10 CFR 50.65(a)(4). Limiting Condition for Operation (LCO) 3.0.4 exceptions in individual TS would be eliminated, and Surveillance Requirement (SR) 3.0.4 revised to reflect the LCO 3.0.4 allowance.

This change was proposed by the industry's Technical Specification Task Force (TSTF) and is designated TSTF–359. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 2, 2002 (67 FR 50475), on possible amendments concerning TSTF–359, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 4, 2003 (68 FR 16579). The licensee affirmed the applicability of the following NSHC determination in its application dated August 7, 2003.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

### Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. Being in a TS condition and the associated required actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

### Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

### Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The TS allow operation of the plant without the full complement of equipment through the conditions for not meeting the TS LCO. The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS condition on the margin of safety is not considered significant. The proposed change does not alter the required actions or completion times of the TS. The proposed change allows TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

*NRC Section Chief:* Allen G. Howe.

*TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas*

*Date of amendment request:* July 18, 2003.

*Brief description of amendments:* The proposed change allows entry into a mode or other specified condition in the applicability of a technical specification (TS), while in a condition statement and the associated required actions of the TS, provided the licensee performs a risk assessment and manages risk consistent with the program in place for complying with the requirements of 10 CFR 50.65(a)(4). Limiting Condition for Operation (LCO) 3.0.4 exceptions in individual TS would be eliminated, and Surveillance Requirement 3.0.4 revised to reflect the LCO 3.0.4 allowance.

This change was proposed by the industry's Technical Specification Task Force (TSTF) and is designated TSTF–359. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 2, 2002 (67 FR 50475), on possible amendments concerning TSTF–359, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 4, 2003 (68 FR 16579). The licensee affirmed the applicability of the following NSHC determination in its application dated July 18, 2003.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

### Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. Being in a TS condition and the associated required actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

### Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

### Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The TS allow operation of the plant without the full complement of equipment through the conditions for not meeting the TS Limiting Conditions for Operation (LCO). The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS condition on the margin of safety is not considered significant. The proposed change does not alter the required actions or completion times of the

TS. The proposed change allows TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

*NRC Section Chief:* Robert A. Gramm.

## Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

*Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois*

*Date of amendment request:* August 29, 2003.

*Brief description of amendment request:* The proposed amendment would revise the Updated Final Safety Analysis Report to use the reactor building crane for heavy loads up to a total of 117 tons for removal and reinstallation activities for the reactor shield blocks prior to and during the Units 2 outage D2R18.

*Date of publication of individual notice in* ***Federal Register:*** September 10, 2003.

*Expiration date of Individual notice:* October 10, 2003.

## Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

*AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois*

*Date of application for amendment:* April 2, 2001, as supplemented by letters dated January 15, and August 23, 2002, March 28, and August 19, 2003.

*Brief description of amendment:* The amendment identifies the conditions under which the inclined fuel transfer system blind flange may be removed when primary containment integrity is required (*i.e.*, during Modes 1, 2, and 3) and restricts this configuration to no more than 40 days per operating cycle. These changes are reflected by (1) adding Note 5 for the Actions of Technical Specification (TS) 3.6.1.3, "Primary Containment Isolation Valves (PCIVs)," (2) deleting Note 3 of TS Surveillance Requirement 3.6.1.3.3, (3) adding a conditional note to TS 3.6.1.1, "Primary Containment—Operating," and (4) associated TS Bases changes.

*Date of issuance:* September 17, 2003.

*Effective date:* As of the date of issuance and shall be implemented within 30 days.

*Amendment No.:* 158.

*Facility Operating License No. NPF–62:* The amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** May 13, 2003 (68 FR 25650). The supplemental letter of August 19, 2003, contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** Notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 17, 2003.

*No significant hazards consideration comments received:* No.

*AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois*

*Date of application for amendment:* July 31, 2002, and supplemented by letters dated March 7 and August 28, 2003.

*Brief description of amendment:* The amendment revises Appendix A, Technical Specifications (TSs), of the Operating License by adding a Surveillance Requirement (SR) to TS 3.2.2, "Minimum Critical Power Ratio (MCPR)," that requires determination of the MCPR limits following completion of control rod scram time testing. The new SR provides for the required evaluation necessary to apply faster scram times to provide for improved MCPR operating limits.

*Date of issuance:* September 29, 2003.

*Effective date:* As of the date of issuance and shall be implemented within 30 days.

*Amendment No.:* 159.

*Facility Operating License No. NPF–62:* The amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** September 17, 2002 (67 FR 58637). The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** Notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 29, 2003.

*No significant hazards consideration comments received:* No.

*AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania*

*Date of application for amendment:* January 14, 2003.

*Brief description of amendment:* The amendment revised technical specification sections 3.8.9, 3.15.2, 4.12.2, and associated Bases to delete the requirements for the reactor building purge air treatment system.

*Date of issuance:* September 23, 2003.

*Effective date:* As of the date of issuance and shall be implemented within 30 days.

*Amendment No.:* 245.

*Facility Operating License No. DPR–50:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** (68 FR 10278) March 4, 2003. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 2003.

*No significant hazards consideration comments received:* No.

*AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania*

*Date of application for amendment:* September 20, 2002.

*Brief description of amendment:* The amendment revises the Technical Specification (TS) definition of containment integrity to ensure that all power-operated valves, relief valves, and check valves are included and clarifies the handling of operability and reportability issues related to Type III containment isolation valves. The amendment also includes minor administrative and editorial changes to improve the consistency and clarity of the TSs.

*Date of issuance:* September 30, 2003.

*Effective date:* As of the date of issuance and shall be implemented within 60 days.

*Amendment No.:* 246.

*Facility Operating License No. DPR–50:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** November 12, 2002 (67 FR 68729). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 2003.

*No significant hazards consideration comments received:* No.

*Arizona Public Service Company, et al., Docket No. STN 50–529, Palo Verde Nuclear Generating Station, Unit No. 2, Maricopa County, Arizona*

*Date of application for amendment:* December 21, 2001, as supplemented by letters dated March 13, August 27, August 29, September 4, September 6, October 11, November 21, December 10, December 23, 2002, and March 11, June 10, July 25, and August 22, 2003.

*Brief description of amendment:* The amendment changes the Unit 2 Technical Specifications and operating license to support (1) replacement of the steam generators and (2) the subsequent operation at an increased maximum power level of 3990 MWt, which is a 2.94 percent increase from the current 3876 MWt.

*Date of issuance:* September 29, 2003.

*Effective date:* This license amendment is effective as of the date of issuance, and shall be implemented prior to entry into Mode 4 during the restart from the Fall 2003 refueling outage.

*Amendment No.:* Unit 2–149.

*Facility Operating License No. NPF–51:* The amendment revised the Technical Specifications and Operating License.

*Date of initial notice in* ***Federal Register:*** February 19, 2002 (67 FR 7412). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 29, 2003.

*No significant hazards consideration comments received:* No.

*Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut*

*Date of application for amendment:* August 14, 2002, as supplemented on March 11, May 16, and May 23, 2003.

*Brief description of amendment:* The amendment revises the Technical Specifications (TSs) related to reactivity control systems, power distribution limits, and special test exceptions.

*Date of issuance:* September 25, 2003.

*Effective date:* As of the date of issuance and shall be implemented within 90 days from the date of issuance.

*Amendment No.:* 280.

*Facility Operating License No. DPR–65:* This amendment revised the TSs.

*Date of initial notice in* ***Federal Register:*** September 17, 2002 (67 FR 58640). The supplements dated March 11, May 16, and May 23, 2003, provided additional information which clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 2003.

*No significant hazards consideration comments received:* No.

*Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut*

*Date of application for amendment:* August 7, 2002, as supplemented on October 23, 2002.

*Brief description of amendment:* The amendment revises Technical Specification (TS) 6.9.1.8, "Core Operating Limits Report," to update the list of documents that describe the analytical methods used to determine the core operating limits.

*Date of issuance:* September 25, 2003.

*Effective date:* As of the date of issuance and shall be implemented prior to Mode 4 operation of Cycle 16.

*Amendment No.:* 281.

*Facility Operating License No. DPR–65:* This amendment revised the TSs.

*Date of initial notice in* ***Federal Register:*** September 17, 2002 (67 FR 58639). The supplement dated October 23, 2002, provided additional information which clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 25, 2003.

*No significant hazards consideration comments received:* No.

*Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut*

*Date of application for amendment:* May 7, 2002, as supplemented on January 16, May 27, July 1, and August 21, 2003.

*Brief description of amendment:* The amendment revises Technical Specifications (TSs) 2.2, "Limiting Safety System Settings" and 3/4.3, "Instrumentation" to more accurately reflect the existing plant design for the Reactor Protection System, the Engineered Safety Features Actuation System, and the Radiation Monitoring System instrumentation and to provide consistency within the associated TS Tables.

*Date of issuance:* September 25, 2003.

*Effective date:* As of the date of issuance and shall be implemented within 90 days from the date of issuance.

*Amendment No.:* 282.

*Facility Operating License No. DPR–65:* This amendment revises the TSs.

*Date of initial notice in* ***Federal Register:*** June 25, 2002 (67 FR 42819). The supplements dated January 16, May 27, July 1, and August 21, 2003, provided additional information which clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 25, 2003.

*No significant hazards consideration comments received:* No.

*Dominion Nuclear Connecticut, Inc., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut*

*Date of application for amendment:* August 14, 2002, as supplemented December 19, 2002.

*Brief description of amendment:* The amendment revised the Technical Specifications (TSs) related to Containment Systems. Specifically, the revisions: (1) Added clarification to TS 1.7, "Definitions—Containment Integrity;" (2) added clarifying information, as well as revised a portion of Surveillance Requirement 4.6.1.1 associated with the affected section of TS 3.6.1.1, "Containment Integrity;" (3) revised TS 3.6.3, "Containment Isolation Valves," that made editorial changes, added clarifying information, and added an Action item that increased the allowed outage time from 4 hours to 72 hours for Containment Isolation Valves in closed systems; and (4) made other changes that were clarifying and/or administrative in nature. In addition, the TS Bases were revised to address these changes, as appropriate.

*Date of issuance:* September 29, 2003.

*Effective date:* As of the date of issuance, and shall be implemented within 90 days from the date of issuance.

*Amendment No.:* 216.

*Facility Operating License No. NPF–49:* This amendment revised the TSs.

*Date of initial notice in* ***Federal Register:*** October 1, 2002 (67 FR 61678). The December 19, 2002, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the amendment beyond the scope of the initial notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 29, 2003.

*No significant hazards consideration comments received:* No.

*Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina*

*Date of application for amendments:* December 20, 2001, as supplemented by letters dated March 4, 2002, September 12, 2002, November 20, 2002, and August 28, 2003.

*Brief description of amendments:* The amendments revised the Technical Specifications (TS) 3.3.2, Engineered Safety Features Actuation System Instrumentation.

*Date of issuance:* September 10, 2003.

*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance.

*Amendment Nos.:* 208 and 202.

*Facility Operating License Nos. NPF–35 and NPF–52:* Amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** March 19, 2002 (67 FR 12601). The supplements dated March 4, 2002, September 12, 2002, November 20, 2002, and August 28, 2003, provided clarifying information that did not change the scope of the December 20, 2001, application or the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 10, 2003.

*No significant hazards consideration comments received:* No.

*Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina*

*Date of application for amendments:* January 31, 2003, as supplemented by letters dated June 12, and September 2, 2003.

*Brief description of amendments:* The amendments revise the Technical Specifications to incorporate revised means of determining the mass of ice in the ice condenser containment.

*Date of issuance:* September 29, 2003.

*Effective date:* As of the date of issuance and shall be implemented within 60 days from the date of issuance.

*Amendment Nos.:* 209 and 203.

*Facility Operating License Nos. NPF–35 and NPF–52:* Amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** April 15, 2003, (68 FR 18274). The supplements dated June 12, and September 2, 2003, provided clarifying information that did not change the scope of the January 31, 2003, application nor the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 29, 2003.

*No significant hazards consideration comments received:* No.

*Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina*

*Date of application for amendments:* January 31, 2003, as supplemented by letters dated June 12, and September 2, 2003.

*Brief description of amendments:* The amendments revise the Technical Specifications to incorporate revised means of determining the mass of ice in the ice condenser containment.

*Date of issuance:* September 29, 2003.

*Effective date:* As of the date of issuance and shall be implemented within 60 days from the date of issuance.

*Amendment Nos.:* 217 and 199.

*Facility Operating License Nos. NPF–9 and NPF–17:* Amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** April 15, 2003, (68 FR 18274). The supplements dated June 12, and September 2, 2003, provided clarifying information that did not change the scope of the January 31, 2003, application nor the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 29, 2003.

*No significant hazards consideration comments received:* No.

*Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina*

*Date of application of amendments:* March 20, 2003, supplemented by letters dated July 22, and August 5, 2003.

*Brief description of amendments* The amendments revised the Technical Specifications and the licensing basis in the Updated Safety Analysis Report to support installation of a passive low-pressure injection cross connect inside containment.

*Date of Issuance:* September 29, 2003.

*Effective date:* As of the date of issuance and shall be implemented within 90 days from the date of issuance.

*Amendment Nos.:* 335, 335, and 336.

*Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55:* Amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** April 15, 2003 (68 FR 22745). The supplement dated July 22 and August 5, 2003, provided clarifying information that did not change the scope of the March 20, 2003, application nor the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 29, 2003.

*No significant hazards consideration comments received:* No.

*Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts*

*Date of application for amendment:* August 16, 2002, as supplemented June 6, 2003.

*Brief description of amendment:* The amendment adds a new Technical Specification (TS) requirement to the Pilgrim Nuclear Power Station (Pilgrim) TSs consistent with Technical Specification Task Force (TSTF)–358. TSTF–358 addresses modifications to requirements for missed surveillances consistent with NUREG 1433, Revision 2, "Standard Technical Specification, General Electric Plants, BWR/4" (STS) surveillance requirement 3.0.3. The amendment to the Pilgrim TSs is added as TS 4.0.3.

The U.S. Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation (SE) and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the model NSHC determination in its application dated August 16, 2002, as supplemented on June 6, 2003.

In addition, the following statement was added to the TS definition of Limiting Condition for Operation (LCO): "Failure to meet a Surveillance, whether such failure is experienced during the performance of the Surveillance or between performances of the Surveillance, shall be failure to meet the LCO." The amendment also made administrative changes to add new TS Sections 3.0, "Limiting Condition for Operation (LCO) Applicability," and 4.0, "Surveillance Requirement (SR) Applicability," into the Pilgrim TSs. New TSs 3.0, 4.0.1, and 4.0.2 are identified as "Not Used." These changes rectify the differences in the format and terminology of the current Pilgrim TSs compared to the STS. The associated Bases are also implemented.

*Date of issuance:* September 30, 2003.

*Effective date:* As of the date of issuance, and shall be implemented within 60 days.

*Amendment No.:* 203.

*Facility Operating License No. DPR–35:* The amendment revised the TSs.

*Date of initial notice in* ***Federal Register:*** July 22, 2003 (68 FR 43390). The Commission's related evaluation of the amendment is contained in a SE dated September 30, 2003.

*No significant hazards consideration comments received:* No.

*Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana*

*Date of amendment request:* March 11, 2003.

*Brief description of amendment:* The amendment revises and relocates Surveillance Requirement (SR) 4.0.5 and SR 4.4.9 to the administrative section of the Technical Specifications (TS) under sections 6.5.8 and 6.5.7, respectively. The amendment also relocates TS 3.4.9, "Reactor Coolant System Structural Integrity" and its Bases to the Technical Requirements Manual. Additionally, the amendment extends the Waterford 3 flywheel volumetric examination interval to ten years.

*Date of issuance:* September 22, 2003.

*Effective date:* As of the date of issuance and shall be implemented 60 days from the date of issuance.

*Amendment No.:* 189.

*Facility Operating License No. NPF–38:* The amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** May 27, 2003 (68 FR 28851). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 22, 2003.

*No significant hazards consideration comments received:* No.

*Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois*

*Date of application for amendments:* April 19, 2002, and as supplemented September 9, 2002, January 3, and July 13, 2003.

*Brief description of amendments:* The amendments would revise the surveillance frequency of the containment spray system nozzles from 10 years to "Following maintenance that could result in nozzle blockage, *OR* Following fluid flow through the nozzles."

*Date of issuance:* September 22, 2003.

*Effective date:* As of the date of issuance and shall be implemented within 30 days.

*Amendment Nos.:* 134 and 134.

*Facility Operating License Nos. NPF–37 and NPF–66:* The amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** June 11, 2002 (68 FR 40023). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 22, 2003.

*No significant hazards consideration comments received:* No.

*Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois*

*Date of application for amendments:* October 28, 2002.

*Brief description of amendments:* The amendments authorize changes to the Updated Final Safety Analysis Report to describe the use of cast iron materials in the containment cooling service water and diesel generator cooling water systems.

*Date of issuance:* September 17, 2003.

*Effective date:* As of the date of issuance and shall be implemented within 30 days.

*Amendment Nos.:* 201 and 193.

*Facility Operating License Nos. DPR–19 and DPR–25:* The amendments revise the Updated Final Safety Analysis Report.

*Date of initial notice in* ***Federal Register:*** December 10, 2002 (67 FR 75875). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 17, 2003.

*No significant hazards consideration comments received:* No.

*FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio*

*Date of application for amendment:* December 4, 2001.

*Brief description of amendment:* The amendment revises the Davis-Besse Nuclear Power Station Operating License, Appendix A, Technical Specifications (TS) Section 6.9, "Administrative Controls—Reporting Requirements," to eliminate the requirement to submit startup test reports to the NRC.

*Date of issuance:* September 25, 2003.

*Effective date:* As of the date of issuance and shall be implemented within 90 days.

*Amendment No.:* 258.

*Facility Operating License No. NPF-3:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** July 22, 2003 (68 FR 43391). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 25, 2003.

*No significant hazards consideration comments received:* No.

*Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida*

*Date of application for amendments:* July 18, 2002.

*Brief description of amendments:* These amendments revise the Technical Specifications regarding the time period that inoperable channels of the engineered safety feature actuation system can be in the bypassed or tripped condition.

*Date of Issuance:* September 30, 2003.

*Effective Date:* As of the date of issuance and shall be implemented within 60 days of issuance.

*Amendment Nos.:* 188 and 132.

*Facility Operating License Nos. DPR–67 and NPF–16:* Amendments revise the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** August 20, 2002 (67 FR 53987). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 30, 2003.

*No significant hazards consideration comments received:* No.

*FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire*

*Date of amendment request:* October 11, 2002, as supplemented by letters dated April 21, and July 29, 2003.

*Description of amendment request:* The amendment revises the Technical Specifications (TS) to eliminate the Power Range Neutron Flux High Negative Rate Reactor Trip function from TS 3/4.3.1, "Reactor Trip System Instrumentation," TS 2.2.1, "Reactor Trip System Instrumentation Setpoints," and their associated Bases. The amendment also revises TS 3/4.10.3, "Physics Tests," TS 3/4.10.4, "Reactor Coolant Loops," and TS Table 4.3–1, "Reactor Trip System Instrumentation Surveillance Requirements," that are associated with certain testing activities required during STARTUP operations. The revision also rewords the time interval for the Analog Channel Operational Test (ACOT) in surveillance requirement (SR) 4.10.3.2. In correlation with the revision to extend the ACOT interval in SR 4.10.3.2, Table 4.3–1 Note 1 is revised. This revision also extends the ACOT interval for those Functional Units that reference TS Table 4.3–1 Note 1. The revision to TS 3/4.10.4 will delete TS 3/4.10.4 in its entirety. Additionally, as a result of deleting TS 3/4.10.4, the footnote which references TS 3/4.10.4 in TS 3/4.4.1.1 is deleted as well.

*Date of issuance:* October 1, 2003.

*Effective date:* As of its date of issuance, and shall be implemented within 90 days.

*Amendment No.:* 91.

*Facility Operating License No. NPF–86:* Amendment revises the TSs.

*Date of initial notice in* ***Federal Register:*** November 26, 2002 (67 FR 70767). The April 21, 2003 and July 16, 2003, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the amendment beyond the scope of the initial notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 1, 2003.

*No significant hazards consideration comments received:* No.

*Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin*

*Date of application for amendment:* September 30, 2002, as supplemented July 24 and September 25, 2003.

*Brief description of amendment:* The amendment authorizes changes to the Updated Safety Analysis Report (USAR) to allow the use of an upgraded computer code for design-basis accident containment integrity analyses called Generation of Thermal-Hydraulic Information for Containment (GOTHIC) version 7.0p2 (GOTHIC 7) with noted conditions.

*Date of issuance:* September 29, 2003.

*Effective date:* As of the date of issuance and shall be implemented within 30 days.

*Amendment No.:* 169.

*Facility Operating License No. DPR–43:* The amendment authorizes changes to the Updated Safety Analysis Report.

*Date of initial notice in* ***Federal Register:*** October 29, 2002 (67 FR 66011). The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 29, 2003.

*No significant hazards consideration comments received:* No.

*Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin*

*Date of application for amendment:* April 30, 2003.

*Brief description of amendment:* The amendment revises Kewaunee Nuclear Power Plant, Technical Specification Section 6.3, "Plant Staff Qualifications." The amendment updates requirements that have been outdated based on licensed operator training programs being accredited by the National Academy for Nuclear Training and promulgation of the revised 10 CFR 55, "Operators' Licenses."

*Date of issuance:* October 2, 2003.

*Effective date:* As of the date of issuance and shall be implemented within 45 days.

*Amendment No.:* 170.

*Facility Operating License No. DPR–43:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** June 10, 2003 (68 FR 34670). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 2003.

*No significant hazards consideration comments received:* No.

*Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota*

*Date of application for amendments:* March 11, 2003, as supplemented July 16, 2003.

*Brief description of amendments:* The amendments revise Technical Specification (TS) 3.1.4, "Rod Group Alignment Limits," and TS 3.1.7, "Rod Position Indication," to add a 1-hour soak time to both TSs to allow the control rod drive mechanisms additional time following substantial rod motion to reach thermal equilibrium.

*Date of issuance:* October 1, 2003.

*Effective date:* As of the date of issuance and shall be implemented within 30 days.

*Amendment Nos.:* 160 and 151.

*Facility Operating License Nos. DPR–42 and DPR–60:* Amendments revised the TSs.

*Date of initial notice in* ***Federal Register:*** April 15, 2003 (68 FR 18280). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 1, 2003.

*No significant hazards consideration comments received:* No.

*Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California*

*Date of application for amendments:* April 15, 2002, as supplemented by letters dated September 27, 2002, February 28, 2003, April 25, 2003, June 24, 2003, and September 12, 2003.

*Brief description of amendments:* The amendments authorize changes to the Final Safety Analysis Report (FSAR) Update, together with other analyses, design, and procedure changes, to implement the Diablo Canyon Power Plant NUREG–0612, "Control of Heavy Loads at Nuclear Power Plants" program that is required to implement a dry cask Independent Spent Fuel Storage Installation (ISFSI).

*Date of issuance:* September 26, 2003.

*Effective date:* September 26, 2003, and shall be implemented following the implementation of the ISFSI. The implementation of the amendments include the incorporation into the FSAR Update the changes discussed above, as described in the licensee's application dated April 15, 2002; its supplements dated September 27, 2002, February 28, 2003, April 25, 2003, June 24, 2003, and September 12, 2003; and evaluated in the staff's safety evaluation attached to the amendment.

*Amendment Nos.:* 162 and 163.

*Facility Operating License Nos. DPR–80 and DPR–82:* The amendments authorized revision of the FSAR Update.

*Date of initial notice in* ***Federal Register:*** June 11, 2002 (67 FR 40025) The supplemental letters dated September 27, 2002, February 28, 2003, April 25, 2003, June 24, 2003, and September 12, 2003, provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 26, 2003.

*No significant hazards consideration comments received:* No.

*PSEG Nuclear, LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey*

*Date of application for amendments:* April 10, 2003.

*Brief description of amendments:* The amendments revise Salem Nuclear Generating Station, Unit Nos. 1 and 2 (Salem), Technical Specifications (TSs) Table 3.3–1, "Reactor Trip System Instrumentation," by modifying the "Condition and Setpoint" description of permissive interlock "P–7." The phrase "Turbine impulse chamber pressure," contained in the "Condition and Setpoint" description for permissive P–7, is replaced with the phrase "Turbine steam line inlet pressure" in order to support planned modifications to Salem's high pressure turbines.

*Date of issuance:* October 1, 2003.

*Effective date:* As of the date of issuance, and shall be implemented within 30 days.

*Amendment Nos.:* 259 and 240.

*Facility Operating License Nos. DPR–70 and DPR–75:* The amendments revised the TSs.

*Date of initial notice in* ***Federal Register:*** June 10, 2003 (68 FR 34672). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 1, 2003.

*No significant hazards consideration comments received:* No.

*South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina*

*Date of application for amendment:* September 24, 2002, supplemented by letters dated April 8 and May 21, 2003.

*Brief description of amendment:* This amendment revises the Action Statement and surveillance requirements for the emergency diesel generators (EDGs). The proposed changes would revise TS Section 3.8.1.1, Action b.2 and Action c.2, and TS Section 4.8.1.1, "AC Sources" and associated Bases Section related to the EDG.

*Date of issuance:* September 26, 2003.

*Effective date:* As of the date of issuance and shall be implemented within 60 days from the date of issuance.

*Amendment No.:* 164.

*Facility Operating License No. NPF–12:* Amendment revises the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** November 12, 2002 (67 FR 68742). The April 8 and May 21, 2003, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the application. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 26, 2003.

*No significant hazards consideration comments received:* No.

*Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia*

*Date of application for amendments:* December 19, 2002, as supplemented by letters dated April 7, May 21, May 30, June 4, September 4, and September 12, 2003.

*Brief description of amendments:* The amendments revise the licensed power level for Hatch, Units 1 and 2 by 1.5 percent from 2763 megawatts thermal (MWt) to 2804 MWt. The change is based on the installation of the Advanced Measurement Analysis Group, Inc. (AMAG)/Westinghouse Crossflow ultrasonic flow measurement instrumentation, resulting in improved feedwater flow measurement accuracy. The amendment changes the Renewed Facility Operating License (RFOL) and the Technical Specifications (TSs) to reflect the increased licensed power level.

*Date of issuance:* September 23, 2003.

*Effective date:* As of the date of issuance and shall be implemented within 90 days from the date of issuance.

*Amendment Nos.:* 238 and 180.

*Renewed Facility Operating License Nos. DPR–57 and NPF–5:* Amendments revise the RFOL and the TSs.

*Date of initial notice in* ***Federal Register:*** February 18, 2003 (68 FR 7821). The supplements dated April 7, May 21, May 30, June 4, September 4, and September 12, 2003, provided clarifying information that did not change the scope of the December 19, 2002, application nor the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 23, 2003.

*No significant hazards consideration comments received:* No.

*Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee*

*Date of application for amendment:* February 14, 2003, as supplemented by letters dated June 5 and August 21, 2003.

*Brief description of amendment:* The amendment consists of changes to Technical Specification (TS) 5.9.5, "Core Operating Limits Report (COLR)." The revised TS modifies TS 5.9.5 to add three additional methodologies in support of the Westinghouse 17×17

Robust Fuel Assembly (RFA)–2 fuel design with Intermediate Flow Mixers.

*Date of issuance:* September 30, 2003.

*Effective date:* As of the date of issuance and shall be implemented no later than MODE 6 entry following the next refueling outage in the fall of 2003.

*Amendment No.:* 46.

*Facility Operating License No. NPF–90:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** April 1, 2003 (68 FR 15765). The supplemental letters provided clarifying information that did not expand the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 2003.

*No significant hazards consideration comments received:* No.

*TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas*

*Date of amendment request:* March 6, 2003, as supplemented by letters dated July 25, August 29, and September 16, 2003.

*Brief description of amendments:* The amendments revise the Final Safety Analysis Report (FSAR) and Technical Specification (TS) Bases reflecting approval of elimination of response time testing for selected Reactor Trip System and Engineered Safety Features Actuation System protection channel equipment.

*Date of issuance:* September 25, 2003.

*Effective date:* As of the date of issuance. The TS Bases shall be implemented within 60 days from the date of issuance and the FSAR shall be implemented in the next periodic update to the FSAR in accordance with 10 CFR 50.71(e).

*Amendment Nos.:* 107 and 107.

*Facility Operating License Nos. NPF–87 and NPF–89:* The amendments revised the FSAR and TS Bases.

*Date of initial notice in* ***Federal Register:*** April 15, 2003 (68 FR 18288). The July 25, August 29, and September 16, 2003, supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register** on April 15, 2003 (68 FR 18288). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 25, 2003.

*No significant hazards consideration comments received:* No.

Dated at Rockville, Maryland, this 3rd day of October.

For the Nuclear Regulatory Commission.

**Ledyard B. Marsh,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 03–25742 Filed 10–10–03; 8:45 am]

**BILLING CODE 7590–01–P**

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## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3553]

### State of Texas

Cameron County and the contiguous counties of Hidalgo and Willacy in the State of Texas constitute a disaster area due to excessive rain and flooding that occurred on September 18 and continuing through September 22, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 8, 2003 and for economic injury until the close of business on July 7, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 14925 Kingsport Rd., Fort Worth, TX 76155–2243.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners with credit available elsewhere | 5.125 |
| Homeowners without credit available elsewhere | 2.562 |
| Businesses with credit available elsewhere | 6.199 |
| Businesses and non-profit organizations without credit available elsewhere | 3.100 |
| Others (including non-profit organizations) with credit available elsewhere | 5.500 |
| For Economic Injury: | |
| Businesses and small agricultural cooperatives without credit available elsewhere | 3.100 |

The number assigned to this disaster for physical damage is 355306 and for economic injury the number is 9X2500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 7, 2003.

**Hector V. Barreto,**

*Administrator.*

[FR Doc. 03–25942 Filed 10–10–03; 8:45 am]

**BILLING CODE 8025–01–P**

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## SMALL BUSINESS ADMINISTRATION

### Declaration of Military Reservist Economic Injury Disaster Loan #R204

As a result of Public Law 106–50, the Veterans Entrepreneurship and Small Business Development Act of 1999, this notice establishes the application filing period for the Military Reservist Economic Injury Disaster Loan program. Effective October 1, 2003, small businesses employing military reservists may apply for economic injury disaster loans if those employees are called up to active duty during a period of military conflict existing on or after March 24, 1999 and those employees are essential to the success of the small business daily operations. The filing period for small businesses to apply for economic injury loan assistance under the Military Reservist Economic Injury Disaster Loan Program begins on the date the essential employee is ordered to active duty and ends on the date 90 days after the essential employee is discharged or released from active duty.

The purpose of the Military Reservist economic injury disaster loan program (MREIDL) is to provide funds to eligible small businesses to meet its ordinary and necessary operating expenses that it could have met, but is unable to meet, because an essential employee was called-up to active duty in their role as a military reservist. These loans are intended only to provide the amount of working capital needed by a small business to pay its necessary obligations as they mature until operations return to normal after the essential employee is released from active military duty.

Applications for loans for military reservist economic injury loans may be obtained and filed at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, 1–800–359–2227.

The interest rate for eligible small businesses is 3.1 percent. The number assigned for economic injury is R20400.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: October 7, 2003.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 03–25939 Filed 10–10–03; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

### Declaration of Military Reservist Economic Injury Disaster Loan #R304

As a result of Public Law 106–50, the Veterans Entrepreneurship and Small Business Development Act of 1999, this notice establishes the application filing period for the Military Reservist Economic Injury Disaster Loan program. Effective October 1, 2003, small businesses employing military reservists may apply for economic injury disaster loans if those employees are called up to active duty during a period of military conflict existing on or after March 24, 1999 and those employees are essential to the success of the small business daily operations. The filing period for small businesses to apply for economic injury loan assistance under the Military Reservist Economic Injury Disaster Loan Program begins on the date the essential employee is ordered to active duty and ends on the date 90 days after the essential employee is discharged or released from active duty.

The purpose of the Military Reservist economic injury disaster loan program (MREIDL) is to provide funds to eligible small businesses to meet its ordinary and necessary operating expenses that it could have met, but is unable to meet, because an essential employee was called-up to active duty in their role as a military reservist. These loans are intended only to provide the amount of working capital needed by a small business to pay its necessary obligations as they mature until operations return to normal after the essential employee is released from active military duty.

Applications for loans for military reservist economic injury loans may be obtained and filed at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 14925 Kingsport Rd., Ft. Worth, TX 75155–2243, 1–800–366–6303.

The interest rate for eligible small businesses is 3.1 percent. The number assigned for economic injury is R30400.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: October 7, 2003.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 03–25940 Filed 10–10–03; 8:45 am]

BILLING CODE 8025–01–P

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## SMALL BUSINESS ADMINISTRATION

### Declaration of Military Reservist Economic Injury Disaster Loan #R404

As a result of Public Law 106–50, the Veterans Entrepreneurship and Small Business Development Act of 1999, this notice establishes the application filing period for the Military Reservist Economic Injury Disaster Loan program. Effective October 1, 2003, small businesses employing military reservists may apply for economic injury disaster loans if those employees are called up to active duty during a period of military conflict existing on or after March 24, 1999 and those employees are essential to the success of the small business daily operations. The filing period for small businesses to apply for economic injury loan assistance under the Military Reservist Economic Injury Disaster Loan Program begins on the date the essential employee is ordered to active duty and ends on the date 90 days after the essential employee is discharged or released from active duty.

The purpose of the Military Reservist economic injury disaster loan program (MREIDL) is to provide funds to eligible small businesses to meet its ordinary and necessary operating expenses that it could have met, but is unable to meet, because an essential employee was called-up to active duty in their role as a military reservist. These loans are intended only to provide the amount of working capital needed by a small business to pay its necessary obligations as they mature until operations return to normal after the essential employee is released from active military duty.

Applications for loans for military reservist economic injury loans may be obtained and filed at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795, 1–800–488–5323.

The interest rate for eligible small businesses is 3.1 percent. The number assigned for economic injury is R40400.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: October 7, 2003.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 03–25941 Filed 10–10–03; 8:45 am]

BILLING CODE 8025–01–P

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## SMALL BUSINESS ADMINISTRATION

### Declaration of Military Reservist Economic Injury Disaster Loan #R104

As a result of Pub. L. 106–50, the Veterans Entrepreneurship and Small Business Development Act of 1999, this notice establishes the application filing period for the Military Reservist Economic Injury Disaster Loan program. Effective October 1, 2003, small businesses employing military reservists may apply for economic injury disaster loans if those employees are called up to active duty during a period of military conflict existing on or after March 24, 1999 and those employees are essential to the success of the small business daily operations. The filing period for small businesses to apply for economic injury loan assistance under the Military Reservist Economic Injury Disaster Loan Program begins on the date the essential employee is ordered to active duty and ends on the date 90 days after the essential employee is discharged or released from active duty.

The purpose of the Military Reservist economic injury disaster loan program (MREIDL) is to provide funds to eligible small businesses to meet its ordinary and necessary operating expenses that it could have met, but is unable to meet, because an essential employee was called-up to active duty in their role as a military reservist. These loans are intended only to provide the amount of working capital needed by a small business to pay its necessary obligations as they mature until operations return to normal after the essential employee is released from active military duty.

Applications for loans for military reservist economic injury loans may be obtained and filed at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd FL, Niagara Falls, NY 14303, 1–800–659–2955.

The interest rate for eligible small businesses is 3.1 percent. The number assigned for economic injury is R10400.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: October 7, 2003.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 03–25943 Filed 10–10–03; 8:45 am]

BILLING CODE 8025–01–P

## SOCIAL SECURITY ADMINISTRATION

### Statement of Organization, Functions and Delegations of Authority

This statement amends Part T of the Statement of the Organization, Functions and Delegations of Authority that covers the Social Security Administration (SSA). This notice retitles the Special Counsel Staff (SCS) (TAH–2) in the Office of Hearings and Appeals (TAH), Office of Disability and Income Security Programs (TA). The changes are as follows: Chapter TA, Office of Disability and Income Security Programs, SubChapter TAH, Office of Hearings and Appeals

*Section TAH.10 The Office of Hearings and Appeals—(Organization)*

The Office of Hearings and Appeals, under the leadership of the Associate Commissioner for Hearings and Appeals, includes:

C. The Immediate Office of the Associate Commissioner for Hearings and Appeals (TAH) which includes:

Retitle 2: The Special Counsel Staff (TAH–2) to The Office of Special Programs and Services (OSPS) (TAH–2).

*Section TAH.20 The Office of Hearings and Appeals—(Functions)*

C. The Immediate Office of the Associate Commissioner for Hearings and Appeals (TAH) provides the Associate Commissioner and the Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

Retitle 2: The Special Counsel Staff (SCS) (TAH–2) to The Office of Special Programs and Services (OSPS) (TAH–2).

Delete: the acronym “SCS”.

Add: the acronym “OSPS” in place of “SCS”.

Dated: October 2, 2003.

**Reginald F. Wells,**

*Deputy Commissioner for Human Resources.*

[FR Doc. 03–25876 Filed 10–10–03; 8:45 am]

BILLING CODE 4191–02–P

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Application of Republic Airline, Inc. d/b/a Republic Airlines for Issuance of New Certificate Authority

**AGENCY:** Department of Transportation.

**ACTION:** Notice of Order to Show Cause (Order 2003–10–6), Docket OST–2003–14579.

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Republic Airline, Inc. d/b/a Republic Airlines fit, willing, and able, and (2) awarding it certificate to engage in interstate scheduled air transportation of persons, property, and mail, using small aircraft, subject to limitations and conditions.

**DATES:** Persons wishing to file objections should do so no later than October 20, 2003.

**ADDRESSES:** Objections and answers to objections should be filed in Docket OST–2003–14579 and addressed to Department of Transportation Dockets (M–30, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janet A. Davis, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: October 6, 2003.

**Michael W. Reynolds,**

*Acting Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 03–25897 Filed 10–10–03; 8:45 am]

BILLING CODE 4910–62–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Advisory Circular (AC) 23–20, Acceptance Guidance on Material Procurement and Process Specifications for Polymer Matrix Composite Systems

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of issuance of advisory circular.

**SUMMARY:** This notice announces the issuance of Advisory Circular (AC) 23–20, Acceptance Guidance on Material Procurement and Process Specifications for Polymer Matrix Composite Systems. The AC provides an acceptable means, but not the only means, to show compliance with 14 CFR part 23 as applicable to the material and process specifications, or other documents, used to ensure sufficient control of composite prepreg materials in normal, utility, acrobatic and commuter airplanes.

**DATES:** Advisory Circular 23–20 was issued by the Manager of the Small Airplane Directorate on September 19, 2003.

*How to Obtain Copies:* A paper copy of AC 23–20 may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse, SVC–121.23, Ardmore East Business Center, 3341Q 75th Avenue, Landover, MD 20785, telephone 301–322–5377, or by faxing your request to the warehouse at 301–386–5394. The AC will also be available on the Internet at *http://www.airweb.faa.gov/AC.*

Issued in Kansas City, Missouri, on October 3, 2003.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–25948 Filed 10–10–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Civil Supersonic Aircraft Technical Workshop

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of workshop.

**SUMMARY:** The FAA is issuing this notice to advise the public of a technical workshop on civil supersonic aircraft. This workshop will allow subject matter experts to discuss recent research data and findings which might impact future rulemaking on supersonic flight over land.

**DATES:** The workshop will be on November 13, 2003, from 8:30 a.m. to 5 p.m.

**ADDRESSES:**

*Workshop location:* The workshop will be at Centra, 4121 Wilson Boulevard, Suite 800, Arlington, Virginia (one block from the Ballston metro shop).

*Registration:* Attendance is open to the interested public but space availability is limited. If you wish to attend the workshop, please register by faxing your name, address, phone number, e-mail, fax number, and organization to the contact person found in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Laurette Fisher, Office of Environment and Energy (AEE–100), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; facsimile (202) 267–5594, telephone (202) 267–3561.

**SUPPLEMENTARY INFORMATION:** The Federal Aviation Administration (FAA) called for technical information on the latest research and development directed at mitigating the environmental impacts from supersonic aircraft by notice in the **Federal Register** (68 FR 28181, May 23, 2003). The comment period ended September 30, 2003. Also in the May 23 notice the FAA stated that it was planning to conduct a technical workshop in the next six months and the FAA will publish a notice announcing the date and place of the workshop. The May 23 notice is available at *http://www.aee.faa.gov/noise/SST.htm*.

This notice announces the date and place of the Civil Supersonic Aircraft Workshop. The purpose of the workshop is to allow subject matter experts to discuss recent research data and findings on mitigating the environmental impacts from supersonic aircraft. The workshop is scheduled to be on: Thursday, November 13, 2003, Centra, 4121 Wilson Boulevard, Suite 800, Arlington, Virginia.

You may submit a written statement at the workshop and it will be placed in Docket No. FAA–2003–15230. You may review the public docket containing comments to the May 23 notice and the workshop in person at the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office is on the plaza level at the NASSIF Building at the U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. Information presented in a workshop setting is not considered proprietary.

Look for any updates on this workshop at *http://www.aee.faa.gov/noise/SST.htm*.

Issued in Washington, DC, on October 6, 2003.

**Carl Burleson,**

*Director of Environment and Energy.*

[FR Doc. 03–25952 Filed 10–10–03; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

**[Policy Statement No. ANM–03–115–28]**

### Use of Surrogate Parts When Evaluating Seatbacks and Seatback Mounted Accessories for Compliance With §§ 25.562(c)(5) and 25.785(b) and (d)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of final policy.

**SUMMARY:** The Federal Aviation Administration (FAA) announces the availability of the final policy on the use of surrogate parts when evaluating seatbacks and seatback mount accessories for compliance with 14 CFR 25.562(c)(5) and 25.785(b) and (d).

**DATES:** This final policy was issued by the Transport Airplane Directorate on October 2, 2003.

**FOR FURTHER INFORMATION CONTACT:** Michael T. Thompson, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airframe and Cabin Safety Branch, ANM–115, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–1157; fax (425) 227–1149; e-mail: *michael.t.thompson@faa.gov*.

**SUPPLEMENTARY INFORMATION:**

### Discussion of Comments

A notice of proposed policy was published in the **Federal Register** on July 8, 2003 (68 FR 40732). Four (4) commenters responded to the request for comments.

### Background

The policy streamlines the seat certification process by providing Federal Aviation Administration certification policy on using surrogate test articles in lieu of actual production seatback mounted accessories (*e.g.*, video monitor, telephone) or part similar in construction to these production parts, during blunt trauma tests in accordance with §§ 25.562(c)(5) and 25.785(b) and (d).

The final policy as well as the disposition of public comments received is available on the Internet at the following address: *http://www.airweb.faa.gov/rgl*. If you do not have accesss to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Renton, Washington, on October 2, 2003.

**K.C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–25958 Filed 10–10–03; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### Proposed Technical Standard Order (TSO)–C167, Personnel Carrying Device Systems (PCDS), Also Known as Human Harnesses

**AGENCY:** Federal Aviation Administration (DOT).

**ACTION:** Notice of Availability and requests for public comment.

**SUMMARY:** This notice announces the availability of and requests comments on proposed Technical Standard Order (TSO)–C167, Personnel Carrying Device Systems (PCDS), also known as Human Harnesses. This proposed TSO tells PCDS manufacturers what minimum performance standards (MPS) their systems must first meet to obtain approval and identification with the applicable TSO marking.

**DATES:** Comments must identify the TSO and arrive by January 31, 2004.

**ADDRESSES:** Send all comments on the proposed TSO to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Technical Programs and Continued Airworthiness Branch, AIR–120, Room 815, 800 Independence Avenue, SW, Washington, DC 20591. ATTN: Mr. Dave Rich, AIR–120. Or, deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW, Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dave Rich, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Technical Programs and Continued Airworthiness Branch, AIR–120, Room 815, 800 Independence Avenue, SW, Washington, DC 20591. Telephone (202) 267–7141, fax (202) 267–5340, e-mail *dave.rich@faa.gov*.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

You may comment on the proposed TSO listed in this notice by sending written data, views, or arguments to the above listed address. You may also examine comments received on the proposed TSO, before and after the comment closing date, in Room 815, FAA Headquarters, 800 Independence Avenue, SW, Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director of the Aircraft Certification Service will consider all communications received by the closing date before issuing the final TSO.

### Background

This TSO gives the MPS for personnel carrying device systems. The MPS are based on National Fire Protection Association (NFPA) 1983, Standard on Fire Service Life Safety Rope and System Components, 2001 edition, and Society of Automotive Engineers (SAE) Aerospace Standard (AS) 8043, Revision A, Restraint Systems for Civil Aircraft, issued March 2000. We modified NFPA 1983 and SAE AS 8043, and show those modifications in Appendix 1 of the proposed TSO. This TSO's standards apply to equipment intended to allow personnel to be transported external from a helicopter (human external cargo (HEC) operations).

### How To Get Copies

You may get a copy of the proposed TSO via the Internet at *http://www.faa.gov/certification/aircraft/TSOA.htm*, or by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on October 2, 2003.

**David W. Hempe,**

*Manager, Aircraft Engineering Division, Aircraft Certification Service.*

[FR Doc. 03–25436 Filed 10–10–03; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

### New Jersey Transit Rail Operations

[Docket Number FRA–1999–6356]

The New Jersey Transit Rail Operations (NJTR) requests an extension of time for a previously granted temporary waiver of compliance with the *Passenger Equipment Safety Standards*, 49 CFR part 238.235, for seventy (70) Comet I, low level door passenger coaches. The previously granted waiver requiring that each power operated door that is partitioned from the passenger compartment shall be equipped with a manual override adjacent to that door will expire on December 31, 2003. NJTR expected to retire the 70 cars after receiving 265 new Comet V cars and 160 re-manufactured Comet II cars. NJTR indicates that there have been numerous delays in the delivery of the replacement equipment and requests that the waiver extension be granted until a sufficient number of these cars are delivered to maintain their service.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–1999–6356) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room Pl-401, Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC. on October 7, 2003.

**Grady C. Cothen,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 03–25896 Filed 10–10–03; 8:45 am]

BILLING CODE 4910–06–P

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## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

[Docket No.: 2002–13234]

### Denial of Petition for Rulemaking; Code of Federal Regulations

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** This document denies the petition submitted by Bluewater Network, requesting that NHTSA initiate rulemaking to amend testing and calculation procedures and/or correction factors used to determine the fuel economy information relayed to consumers and policy makers, because NHTSA has no statutory authority to take the requested actions. It also denies the request that NHTSA use such amended calculations as the basis for data presented in the agency's annual report on the corporate average fuel economy (CAFE) program.

**FOR FURTHER INFORMATION CONTACT:** Ms. Henrietta L. Spinner, Office of Planning and Consumer Standards, NHTSA, 400 Seventh Street SW., Washington, DC 20590 at (202) 366–4802, facsimile (202) 493–2290.

**SUPPLEMENTARY INFORMATION:** In a letter dated June 11, 2002, the Bluewater Network (Bluewater) petitioned the Environmental Protection Agency (EPA) and the Department of Transportation (DOT) to initiate rulemaking to revise the test procedures, calculation methods, and correction factors employed in the calculations used to determine the fuel economy information relayed to consumers and policy makers so that these values more accurately reflect the actual, real-world fuel economy that vehicles achieve on the road. DOT's authority under the CAFE program has been delegated to NHTSA. The petitioner also requested that NHTSA use more accurate fuel economy information in its annual report to Congress titled *Automotive Fuel Economy Program Annual Update.*

The Energy Policy Conservation Act passed by Congress in 1975 added Title V, "Improving Automotive Efficiency," to the Motor Vehicle Information and Cost Savings Act and established the CAFE program, under which CAFE standards are set for passenger cars and light trucks. CAFE is the sales weighted average fuel economy, expressed in miles per gallon (mpg), of a manufacturer's fleet of passenger cars or light trucks with a gross vehicle weight rating (GVWR) of 8,500 lbs. or less, manufactured for sale in the United States, for any given model year.

Both EPA and NHTSA have executive responsibilities for CAFE. The EPA administers the testing program, which generates the fuel economy data and determines the procedures for calculating the fuel economy values for CAFE. It also compiles the production data from manufacturers' reports and furnishes CAFE results to both NHTSA and Department of Energy (DOE).

For CAFE, the test data are adjusted upward to account for the incentives authorized for dual fuel and dedicated alternative fuel vehicles. For passenger cars only, it is also adjusted upward to account for test procedure changes since the CAFE program was established.

The EPA and DOE annually publish the *Fuel Economy Guide*, listing the fuel efficiencies (in miles per gallon) of new passenger vehicles. The *Fuel Economy Guide* is published and distributed by DOE, based on EPA data. This document lists the city and highway fuel economy estimates that are included on the fuel economy label on new vehicles. Manufacturers are required to place a window sticker containing the city and highway fuel economy (mpg) values on all new cars and light trucks (less than 8,500 GVWR), when they are offered for sale or lease.

NHTSA is responsible for establishing and amending the CAFE standards, promulgating regulations concerning CAFE procedures, definitions, and reports, considering petitions for exemption from standards for low volume manufacturers and establishing unique standards for them; enforcing fuel economy standards and regulations, responding to petitions concerning domestic production by foreign manufacturers and all other aspects of CAFE, including the classification of vehicle lines as either cars or trucks; collecting, recording, and cataloging manufacturers' Pre- and Mid-model year reports, considering carryback credit plans, and providing program incentives such as credits for alternative fueled vehicle lines.

Three different sets of fuel economy values exist: EPA's unadjusted dynamometer values, EPA's adjusted on-road values as reported to consumers, and manufacturer fleet fuel economy values as reported to NHTSA. Unfortunately, confusion also exists, especially regarding the origins of each set and how they are employed. The EPA's unadjusted dynamometer values are calculated from the emissions generated during the testing using a carbon balance equation. EPA knows the amount of carbon in the fuel, so by measuring the carbon compounds expelled in the exhaust they can calculate the fuel economy.

However, calculations using the carbon balance equation, in a controlled laboratory setting, overstate the fuel economy most people will achieve in real-world driving. To account for this, EPA conducted an extensive study in the early 1980s. In 1985, EPA adopted correction factors derived from the study to adjust downward the fuel economy values derived from the carbon balance equation, when the fuel economy would be reported to the public. The city test value measured, using the carbon balance equation, is reduced 10 percent with these correction factors, while the highway test value is reduced 22 percent. This downward adjustment of the fuel economy calculated from the carbon balance equation accounts for the differences between real-world driving and controlled laboratory conditions, and is used to provide more accurate information to prospective vehicle buyers. EPA has long reported its downward adjusted values as the fuel economy values listed in the Department of Energy's Fuel Economy Guide and on new vehicle labels. Thus, all of the fuel economy values that the Federal government uses for consumer information are EPA's downward-adjusted fuel economy levels.

As previously noted, manufacturer fleet fuel economy values are calculated by EPA, using the carbon balance equation and adjusted upward, if necessary, to reflect incentives mandated by law. Reported by EPA to NHTSA, these values are not intended to be used by the public for consumer information, as the government's best estimate of the fuel economy the public will actually achieve. Instead, the manufacturer fleet fuel economy values are used to determine compliance with the applicable average fuel economy standards. Manufacturer performance is reported in NHTSA's *Automotive Fuel Economy Program Annual Update*. Until recently, there was a statutory requirement for NHTSA to submit this annual report to Congress. However, effective May 15, 2000, the reporting requirement was eliminated pursuant to the Federal Reports Elimination and Sunset Act of 1995. Nonetheless, the agency still voluntarily produces the report. The primary purpose of the report is to provide information regarding the status of vehicle manufacturers' compliance with the CAFE standards. Again, this update is not intended as consumer information.

Bluewater petitioned EPA and NHTSA to initiate rulemaking to revise the test procedures, calculation methods, and correction factors employed in the calculations used to determine the fuel economy information relayed to consumers and policy makers so that these values more accurately reflect the actual, real-world fuel economy that vehicles achieve on the road.

**Petitioner's Rationale**

The petitioner stated that, since the CAFE program's inception in the mid-1970s, motorists have complained that their actual in-use fuel economy was significantly lower than the fuel economy figures reported by EPA. Although 17 years have passed since EPA promulgated correction factors to adjust the city and highway fuel economy values, Bluewater asserts that drivers today continue to complain that they are not achieving the fuel economy displayed on the window sticker when they purchased their vehicle or published in the *Fuel Economy Guide*.

Bluewater cited several recent studies that indicate EPA's real-world fuel economy adjustments should be revised, including a report by Mintz and others,[1] the Energy Information Administration's (EIA) *Annual Energy Outlook 2000* publication,[2] Fred Westbrook and Phil Patterson's 1989 study,[3] and the National Research Council's report.[4]

Bluewater stated that a 1993 study conducted by Mintz, *et al.* analyzed the shortfall experience of all household vehicles on the road in 1985, finding that the fuel economy shortfall was greater than the 15 percent correction factor EPA extrapolated to adjust the combined fuel economy values (55 percent city/45 percent highway): 18.7 percent for cars and 20.1 percent for light trucks.

The petitioner also stated that EIA's *Annual Energy Outlook 2000* indicated that, in 2001, the difference between the EPA's combined fuel economy rating and actual on-road fuel economy was 14.5 percent for cars and 19.3 percent for light trucks. EIA also projected that the on-road fuel economy shortfall will increase to 16.2 percent for cars and 20.9 percent for light trucks by 2020.

Westbrook and Patterson's 1989 study projected that the difference between the EPA's combined fuel economy rating and actual on-road fuel economy would rise above 29.7 percent by 2010.

The National Research Council's recent report stated that most drivers experience lower fuel economy than suggested by EPA's results. Furthermore, it noted that a review of the validity of the test cycles for today's patterns would be appropriate.

Bluewater believes that EPA should revise its on-road fuel economy adjustment factor and NHTSA should use the revised fuel economy values in its reports because that data would relay to consumers and to Congress a more accurate reflection of today's driving conditions and the in-use fuel economy.

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[1] Mintz, Marianne, Anant D. Vyas, and Lester A. Conley, "Differences Between EPA-Test and In-Use Fuel Economy: Are the Correction Factors Correct?" Transportation Research Record 1416 (1993), 124–130; EPA. Passenger Car Fuel Economy: EPA and Road.

[2] EIA. Assumptions to the Annual Energy Outlook 2000 with Projections to 2020: Transportation Demand Module. DOE/EIA–0554. January 2000.

[3] Westbrook, Fred and Patterson, Phil. "Changing Driving Patterns and Their Effect on Fuel Economy." Presented at the 1989 SAE Government/Industry Meeting, Washington, DC. May 1989.

[4] National Research Council. Effectiveness and Impact of Corporate Average Fuel Economy (CAFE) Standards. July 2001.

**Agency's Analysis**

Under 49 U.S.C. 32904 and 32908, EPA is statutorily responsible for conducting fuel economy testing and calculating vehicle fuel economy, determining manufacturers' CAFE performances, and developing fuel economy data to be provided to consumers. Therefore, NHTSA simply does not have the statutory authority to grant the relief sought by the Bluewater petition. EPA is currently reviewing the petition and will address these issues separately.

After analyzing Bluewater's petition, the agency has concluded that it should not change the information it presents in its annual report on the CAFE program. NHTSA is statutorily required to base its CAFE calculations on the data supplied by EPA, resulting from these test procedures. Given that a primary purpose of the annual report is to provide information on the status of manufacturers' compliance with the CAFE standards, we believe that presenting the CAFE values as they are calculated for compliance purposes is the appropriate manner in which to present fuel economy data in the annual report. The report is not intended for consumer information purposes, and the agency is no longer required to submit the report to Congress. Finally, we note the agency's most recent update of the report includes a discussion that thoroughly explains the differences between EPA fuel economy values, on-road values, and the CAFE compliance values.

In light of the above considerations, the agency has reviewed the petition and concluded that it should not be granted. Accordingly, we deny Bluewater's petition. We note that this denial does not affect EPA's response to the petition.

Issued on: October 8, 2003.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 03–25959 Filed 10–10–03; 8:45 am]

BILLING CODE 4910–59–P

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA 2003–16114; Notice 1]**

### Michelin North America, Inc., Receipt of Application for Decision of Inconsequential Noncompliance

Michelin North America, Inc. (MNA) has determined that approximately 31,266 Michelin Pilot Sport/Alpin tires have been imported into the United States with sidewall markings that did not meet the labeling requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 109 *"New Pneumatic Tires."*

Pursuant to 49 U.S.C. 30118(d) and 30120(h), MNA has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." A copy of the petition may be found in this docket.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

The affected tires whose sidewalls labeling includes a maximum psi inflation pressure marking which rounds from the metric value to the nearest whole number (in this case down), rather than rounding up to the next higher whole number as specified by FMVSS No. 109 S4.3.4 (a). The tires in question meet or exceed all other requirements of FMVSS 109. The regulations applicable to 340 kPa tires require that the psi units be rounded "to the next higher whole number" even when the nearest whole number, and most accurate rounding, would require rounding down than up. The correct maximum inflation pressure required by FMVSS No. 109 for these tires is: "340 kPa (50 psi)." The noncompliant tires were incorrectly marked: "340 kPa (49 psi)." The actual conversion of 340 kPa to psi units yields 49.35 psi before rounding to whole numbers (340 kPa divided by a conversion factor of 6.895 equals 49.35 psi).

MNA states that this noncompliance will have no impact on either the performance of the tire on a motor vehicle, or on motor vehicle safety itself. MNA argues that the National Highway Traffic Safety Administration (NHTSA) has recently studied the impact of tire labeling information on safety in the context of its rulemaking efforts under the Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act. This analysis found that sidewall maximum inflation pressure labeling is poorly understood by the general public, and indicated that those consumers that are aware of sidewall maximum inflation pressure labeling commonly misuse this information. A number of commenters on both the Advanced Notice of Proposed Rulemaking and the Notice of Proposed Rulemaking for Tire labeling recommended that the maximum inflation pressure labeling be removed from the sidewall because of its limited safety value and its propensity to confuse consumers. NHTSA ultimately decided to retain maximum inflation pressure labeling requirements as an aid in preventing over-inflation. The mislabeling issue in this case will in no way contribute to the risk of over-inflation because the value actually marked is lower than the value required by the regulations.

Also, MNA believes that, this mislabeling is clearly inconsequential with respect to safety for all of the following stated reasons: (1) The noncompliance is one solely of rounding to the nearest whole number and labeling; (2) The actual labeling is one psi less than that required by the regulation; (3) Rounding 49.35 psi to 49 psi, the nearest whole number, is more accurate in this case than rounding to the next higher whole number (50) as required by the regulations; (4) All performance requirements of FMVSS No. 109 are met or exceeded; (5) These tires are marked with the correct metric maximum inflation pressure (as allowed by FMVSS No. 109 and as shown on pages 1–32 of the 2003 Tire and Rim Association yearbook); (6) Use of the sidewall label as a source of information for the maximum inflation pressure will not increase the risk of over-inflation of the tire because the actual value is lower than both the actual maximum inflation pressure (by 0.35 psi) and lower than the 50 psi value required for these tires by the regulations; (7) Incorrect use of the sidewall label maximum inflation pressure as a source of information for the recommended inflation pressure will not result in an overloading of the tires or reduce the load capacity of the tires because the 49 psi conversion still remains 8 psi greater than that required to carry the maximum load for these tires. In fact, 340 kPa (50psi) is the higher of two alternative choices for the maximum inflation pressure provided for this tire's load rating per The Tire and Rim Association yearbook. Consequently, MNA believes that the foregoing noncompliance will have an inconsequential impact on motor vehicle safety.

Interested persons are invited to submit written views, arguments, and data on the application described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods: Mail: Docket Management Facility; U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. Fax: 1–202–493–2251, or submit to Federal Rulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov*. Click on "Help" to obtain instructions for filing the document electronically.

The application and supporting materials and all comments received before the close of business on the closing date indicated below will be considered. All comments received after the closing date will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: *November 13, 2003*.

**Authority:** (49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: October 7, 2003.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 03–25960 Filed 10–10–03; 8:45 am]

**BILLING CODE 4910–59–P**

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## DEPARTMENT OF TRANSPORTATION

## Research and Special Programs Administration

**[Docket No. RSPA–03–16273]**

## Pipeline Safety: Stress Corrosion Cracking (SCC) Workshop

**AGENCY:** Office of Pipeline Safety, Research and Special Programs Administration, DOT.

**ACTION:** Notice; Workshop on Stress Corrosion Cracking (SCC).

**SUMMARY:** The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) and the National Association of Pipeline Safety Representatives (NAPSR) are cosponsoring a workshop on stress corrosion cracking (SCC) with the pipeline industry trade associations (American Petroleum Institute, Association of Oil Pipelines, Interstate Natural Gas Association of America, American Gas Association, and NACE International). The workshop will provide a forum for the discussion of SCC phenomena in both gas and hazardous liquid pipelines.

**DATES:** Tuesday, December 2, 2003, from 8 a.m. to 5 p.m.

**ADDRESSES:** The public may attend the meeting at the Westin Oaks Hotel, 5011 Westheimer Blvd., Houston, TX 77056 (telephone: 713–960–8100; fax: 713–960–6553). Operators of natural gas transmission and hazardous liquid pipelines are urged to attend. To facilitate meeting planning, advance registration for these meetings is strongly encouraged and can be accomplished online at the following Web site: *http://primis/rspa.dot.gov/meetings*.

Members of the public are welcome to attend the workshop. An opportunity will be provided for the public to ask questions or make short statements on the topics under discussion. You may submit written comments by mail or deliver to the Dockets Facility, U.S. Department of Transportation (DOT), Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. It is open from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays. You also may submit written comments to the docket electronically. To do so, log onto the following Internet Web address: *http://dms.dot.gov*. Click on "Help & Information" for instructions on how to file a document electronically. All written comments should identify the docket and notice numbers which appear in the heading of this notice. Anyone who would like confirmation of mailed comments must include a self-addressed stamped postcard.

Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the April 11, 2000, issue of the **Federal Register** (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

*Information on Services for Individuals with Disabilities:* For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Juan Carlos Martinez (telephone: 202–366–1933; E-mail: *juan.martinez@rspa.dot.gov*).

**FOR FURTHER INFORMATION CONTACT:** Janice Morgan (telephone: 404–562–3552; E-mail *janice.morgan@rspa.dot.gov*) regarding the subject matter of this notice. You can read comments and other material in the docket on the Internet at: *http://dms.dot.gov*.

**SUPPLEMENTARY INFORMATION:** The first recorded SCC failure of a pipeline in the United States was in 1965. SCC continues to be a threat to the integrity of both gas transmission and hazardous liquid pipelines under certain conditions. Recent incidents throughout North America and elsewhere, including Australia, Russia, Saudi Arabia, and South America, have highlighted the threats to pipelines from SCC failures. Although SCC failures on hazardous liquid pipelines have been very rare compared with other threats to hazardous liquid pipelines and compared with SCC occurrences on natural gas pipelines, three SCC-caused failures of hazardous liquid pipelines have occurred in 2003.

RSPA/OPS recently issued an Advisory Bulletin to remind owners and operators of gas transmission and hazardous liquid pipelines to consider SCC as a risk factor when developing and implementing Integrity Management Plans. All owners and operators of pipeline systems, whether or not their pipeline systems are subject to the Integrity Management Plan rules, should determine whether their pipeline system is susceptible to SCC and assess the impact of SCC on pipeline integrity. Based on this evaluation an operator should prioritize application of internal inspection, hydrostatic testing, or other forms of integrity verification.

The workshop on December 2, 2003, will address the following topics:

1. Stress Corrosion Cracking—description, science, and history.
2. Practical application of SCC principles—how to assess SCC in operating pipelines within the context of integrity management.
3. Response to the occurrence of SCC—guidelines for response and remediation; addressing public concerns.

4. Research and development—knowledge gaps and next steps.

This is a technical workshop aimed at sharing information on SCC in pipelines among operators and technical experts, providing regulators with information they can use in pipeline inspection and oversight, and reviewing priorities for research to address the problems posed by SCC in operating gas and hazardous liquid pipelines.

RSPA/OPS will soon publish a final rule to require gas transmission pipelines to develop Integrity Management Plans for high consequence areas that incorporates requirements for addressing SCC threats by referencing Appendix A3 of standard ASME B31.8S. Although criteria and mitigation plans for near-neutral pH (6–8) SCC is not addressed in this standard, NACE International (NACE) is currently developing a standard on Direct Assessment of Stress Corrosion Cracking. Also, NACE will soon issue a technical committee report, *External Stress Corrosion Cracking of Underground Pipelines,* to provide information on SCC for hazardous liquid pipelines.

RSPA/OPS is cosponsoring this workshop with NAPSR and major pipeline industry trade groups, including the American Petroleum Institute (API) Association of Oil Pipelines (AOPL), Interstate Natural Gas Association of America (INGAA), American Gas Association (AGA), and a professional association, NACE International.

**Authority:** 49 U.S.C. 60102, 60109, 60117.

Issued in Washington, DC on October 7, 2003.

**Jeffrey D. Wiese,**

*Manager, Program Development, Office of Pipeline Safety.*

[FR Doc. 03–25894 Filed 10–10–03; 8:45 am]

**BILLING CODE 4910–60–P**

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## DEPARTMENT OF TRANSPORTATION

## Research and Special Programs Administration

**[Docket No. RSPA–03–14793 (Notice No. 03–11)]**

## Hazardous Materials: Regulations for the Safe Transport of Radioactive Material (TS–R–1); Public Meeting

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** RSPA will conduct a public meeting pertaining to the proposed changes to the International Atomic Energy Agency's (IAEA) Regulations for the Safe Transport of Radioactive Materials, TS–R–1, scheduled for revision in the year 2005. Interested persons are invited to attend.

**DATES:** *Public meeting.* The public meeting will be held on November 5, 2003 from 9:30 a.m. to 11 a.m.

**ADDRESSES:** *Public meeting.* The meeting will be held at Department of Transportation Headquarters, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590–0001, in room 8236–8240.

*Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to the Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.

**FOR FURTHER INFORMATION CONTACT:** Mr. Rick Boyle, Office of Hazardous Material Technology, U.S. Department of Transportation, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590–0001; (202) 366–2993; *rick.boyle@rspa.dot.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The purpose of this meeting is to discuss the U.S. Department of Transportation comments forwarded to the International Atomic Energy Agency (IAEA) on the proposed changes to the IAEA Regulations for the Safe Transport of Radioactive Materials, TS–R–1. These comments will be presented as the U.S. positions at the IAEA regulatory review meeting scheduled for November 10–14, 2003, in Bonn, Germany. The public is invited to attend without prior notification. Due to heightened security measures at DOT Headquarters, participants are encouraged to arrive early to allow time to undergo the security checks necessary to obtain access to the building.

The regulatory changes proposed by IAEA are available on the Internet at *http://hazmat.dot.gov/files/IAEA_TS–R–1_rev_prop.pdf.* A consolidated draft of the endorsed proposed TS–R–1 revision may be downloaded at *http://hazmat.dot.gov/files/IAEA_TS–R–1_rev_draft.pdf.* A summary of the U.S. DOT positions forwarded to the IAEA may be downloaded at *http://hazmat.dot.gov/files/IAEA_TS–R–1_dot_position.pdf.*

Issued in Washington, DC on October 7, 2003.

**Robert A. McGuire,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 03–25895 Filed 10–10–03; 8:45 am]

**BILLING CODE 4910–60–P**

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## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

**[STB Docket No. AB–290 (Sub–No. 239X)]**

## The Alabama Great Southern Railroad Company—Abandonment Exemption—in New Orleans, LA

The Alabama Great Southern Railroad Company (AGS)[1] has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 1.28 miles of railroad between milepost 1.22–NT and milepost 2.50–NT, in New Orleans, LA. The line traverses United States Postal Service Zip Code 70112.

AGS has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 13, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal

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[1] AGS is a wholly owned subsidiary of Norfolk Southern Railway Company.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of

Continued

expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 24, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 3, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to AGS's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

AGS has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by October 17, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), AGS shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by AGS's filing of a notice of consummation by October 14, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: October 3, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 03–25787 Filed 10–10–03; 8:45 am]

BILLING CODE 4915–00–P

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## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

October 3, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before November 13, 2003 to be assured of consideration.

**Departmental Offices/Office of International Affairs/International Portfolio Investment Data Systems**

*OMB Number:* 1505–0001.

*Form Number:* Treasury International Capital Form S.

*Type of Review:* Extension.

*Title:* Purchase and Sale of Long-Term Securities by Foreigners.

*Description:* Form S is required by law and is designed to collect timely information on international portfolio capital movements, including foreigners' purchases and sales of long-term securities in transactions with U.S. persons. The information will be used in the computation of the U.S. balance of payments accounts and international investment position, as well as in the formulation of U.S. international financial and monetary policies.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 250.

*Estimated Burden Hours Per Respondent:* 5 hours, 36 minutes.

*Frequency of Response:* Monthly.

*Estimated Total Reporting Burden:* 16,800 hours.

*Clearance Officer:* Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

*OMB Reviewer:* Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Treasury PRA Clearance Officer.*

[FR Doc. 03–25856 Filed 10–10–03; 8:45 am]

BILLING CODE 4811–16–P

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8869

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8869, Qualified Subchapter S Subsidiary Election.

**DATES:** Written comments should be received on or before December 15, 2003, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Qualified Subchapter S Subsidiary Election.

*OMB Number:* 1545–1700.

*Form Number:* 8869.

*Abstract:* Effective for tax years beginning after December 31, 1996, Internal Revenue Code section 1361(b)(3) allows an S corporation to own a corporate subsidiary, but only if it is wholly owned. To do so, the parent S corporation must elect to treat the wholly owned subsidiary as a qualified subchapter S subsidiary (QSub). Form 8869 is used to make this election.

*Current Actions:* There are no changes being made to the form at this time.

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Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

*Affection Public:* Businesses or other for-profit organizations.

*Estimated Number of Respondents:* 5,000.

*Estimated Time Per Respondent:* 8 hr., 9 minutes.

*Estimated Total Annual Burden Hours:* 40,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 6, 2003.

**Carol Savage,**

*Management and Program Analyst.*

[FR Doc. 03–25915 Filed 10–10–03; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## Proposed Collection; Comment Request for Revenue Procedure 2000–41

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2000–41, Change in Minimum Funding Method.

**DATES:** Written comments should be received on or before December 15, 2003, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the revenue procedure should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Change in Minimum Funding Method.

*OMB Number:* 1545–1704.

*Revenue Procedure Number:* Revenue Procedure 2000–41.

*Abstract:* Revenue Procedure 2000–41 provides a mechanism whereby a plan sponsor or plan administrator may obtain a determination from the Internal Revenue Service that its proposed change in the method of funding its pension plan(s) meets the standards of section 412 of the Internal Revenue Code.

*Current Actions:* There are no changes being made to the revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, not-for-profit institutions, and state, local or tribal governments.

*Estimated Number of Respondents:* 300.

*Estimated Time Per Respondent:* 18 hours.

*Estimated Total Annual Burden Hours:* 5,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 7, 2003.

**Carol Savage,**

*Management and Program Analyst.*

[FR Doc. 03–25916 Filed 10–10–03; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

**[REG–106030–98]**

## Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–106030–98, Source of Income from Certain Space and Ocean Activities; Also, Source of Communications Income (§§ 1.863–8(g) and 1.863–9(g).

**DATES:** Written comments should be received on or before December 15, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the internet at *CAROL.A.SAVAGE@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Source of Income from Certain Space and Ocean Activities; Also, Source of Communications Income.

*OMB Number:* 154–1718.

*Regulation Project Number:* REG–106030–98.

*Abstract:* The information requested in proposed sections 1.863–8(g) and 1.863–9(g) is necessary for the Service to audit taxpayers' returns to ensure that taxpayers are applying the regulation properly.

*Current Actions:* There is no change to these existing regulations.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents/Recordkeepers:* 250.

*Estimated Average Time per Respondent/Recordkeeper:* 5 hours.

*Estimated Total Annual Reporting/Recordkeeping Hours:* 1,250.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 7, 2003.

**Carol Savage,**

*Management and Program Analyst.*

[FR Doc. 03–25917 Filed 10–10–03; 8:45 am]

BILLING CODE 4830–01–M

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

[INTL–656–871]

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–656–87 (TD 8701), Treatment of Shareholders of Certain Passive Foreign Investment Companies (§§ 1.1291–9 and 1.1291–10).

**DATES:** Written comments should be received on or before December 15, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Larnice Mack at (202) 622–3179, or *Larnice.Mack@irs.gov*, or Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Treatment of Shareholders of Certain Passive Foreign Investment Companies.

*OMB Number:* 1545–1507.

*Regulation Project Number:* INTL–656–87.

*Abstract:* The reporting requirements affect United States persons that are direct and indirect shareholders of passive foreign investment companies (PFICSs). The requirements enable the Internal Revenue Service to identify PFICs, United States shareholders, and transactions subject to PFIC taxation and verify income inclusions, excess distributions, and deferred tax amounts.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals, business or other for-profit organizations, and not-for-profit institutions.

*Estimated Number of Respondents:* 131,250.

*Estimated Time Per Respondent:* 46 minutes.

*Estimated Total Annual Burden Hours:* 100,000.

The following paragraph applies to all of the collections of 1information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 7, 2003.

**Carol Savage,**

*Management and Program Analyst.*

[FR Doc. 03–25918 Filed 10–10–03; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

**[REG–248900–96]**

## Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–248900–96 (TD 8712), Definition of Private Activity Bonds (§§ 1.141–1, 1.141–12, 1.142–2, and 1.148–6).

**DATES:** Written comments should be received on or before December 15, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Larnice Mack at (202) 622–3179, or *Larnice.Mack@irs.gov*, or Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Definition of Private Activity Bonds.

*OMB Number:* 1545–1451.

*Regulation Project Number:* REG–248900–96.

*Abstract:* Internal Revenue Code section 103 provides generally that interest on certain State or local bonds is excluded from gross income. However, under Code sections 103(b)(1) and 141, interest on private activity bonds (other than qualified bonds) is not excluded. This regulation provides rules, for purposes of Code section 141, to determine how bond proceeds are measured and used and how debt service for those bonds is paid or secured.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* State, local or tribal governments.

*Estimated Number of Respondents:* 10,100.

*Estimated Time Per Respondent:* 2 hours, 59 minutes.

*Estimated Total Annual Burden Hours:* 30,100.

The following paragraph applies to all of the collections of 1information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 6, 2003.

**Carol Savage,**

*Management and Program Analyst.*

[FR Doc. 03–25919 Filed 10–10–03; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## Proposed Collection; Comment Request for Revenue Procedure 97–48

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–48, Automatic Relief for Late S Corporation Elections.

**DATES:** Written comments should be received on or before December 15, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of revenue procedure should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *Carol.a.savage@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Automatic Relief for Late S Corporation Elections.

*OMB Number:* 1545–1562.

*Revenue Procedure Number:* Revenue Procedure 97–48.

*Abstract:* The Small Business Job Protection Act of 1996 provides the IRS with the authority to grant relief for late S corporation elections. This revenue procedure provides that, in certain situations, taxpayers whose S corporation election was filed late can obtain relief by filing Form 2553 and attaching a statement explaining that the requirements of the revenue procedure have been met.

*Current Actions:* There are no changes being made to the revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 100.

*Estimated Time Per Respondent:* 1 hour.

*Estimated Total Annual Burden Hours:* 100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 8, 2003.

**Carol Savage,**

*Management and Program Analyst.*

[FR Doc. 03–25920 Filed 10–10–03; 8:45 am]

BILLING CODE 4830–01–U

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## Proposed Collection; Comment Request for Revenue Procedure 2000–42

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2000–42, Section 1503(d) Closing Agreement Requests.

**DATES:** Written comments should be received on or before December 15, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the revenue procedure should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Section 1503(d) Closing Agreement Requests.

*OMB Number:* 1545–1706.

*Revenue Procedure Number:* Revenue Procedure 2000–42.

*Abstract:* Revenue Procedure 2000–42 informs taxpayers of the information they must submit to request a closing agreement under regulation section 1.1503–2(g)(2)(iv)(B)(2)(i) to prevent the recapture of dual consolidated losses upon the occurrence of certain triggering events.

*Current Actions:* There are no changes being made to the revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 20.

*Estimated Time Per Respondent:* 100 hours.

*Estimated Total Annual Burden Hours:* 2,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 8, 2003.

**Carol Savage,**

*Management and Program Analyst.*

[FR Doc. 03–25921 Filed 10–10–03; 8:45 am]

BILLING CODE 4830–01–U

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## Advisory Group to the Commissioner of Internal Revenue; Meeting

**AGENCY:** Internal Revenue Service (IRS), Treasury

**ACTION:** Notice.

**SUMMARY:** The Information Reporting Program Advisory Committee (IRPAC) will hold a public meeting on Thursday, October 23, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jacqueline Tilghman, National Public Liaison, CL:NPL:P, Room 7569 IR, 1111 Constitution Avenue, NW., Washington, DC 20224. Telephone: 202–622–6440 (not a toll-free number). E-mail address: **public_liaison@irs.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), a public meeting of the IRPAC will be held on Thursday, October 23, 2003, from 9 a.m. to 4 p.m. in Room 2140, main Internal Revenue Service building, 1111 Constitution Avenue, NW., Washington, DC 20224. Issues to be discussed include: Tax Reporting Changes for Coverdell Educational Savings Account (ESA) Distributions, Electronic Filing of Forms 990; Form 1099-CAP Reporting, Power of

Attorney—Incapacitated Spouse, Form 1042–S—Additional Code for Canadians with U.S. Addresses, Schedule K–1 Enhancements, Continuing Professional Education (CPE) Credit, and Expansion of TIN Matching System to Permit Employers to Verify Employee Social Security Numbers. Reports from the four IRPAC sub-groups, Tax Exempt & Government Entities (TE/GE), Large and Mid-Size Business (LMSB), Small Business/Self-Employed (SB/SE), and Wage & Investment (W&I), will also be presented and discussed. Last minute agenda changes may preclude advance notice. The meeting room accommodates approximately 50 people, IRPAC members and Internal Revenue Service officials inclusive. Due to limited seating and security requirements, please call Jacqueline Tilghman to confirm your attendance. Ms. Tilghman can be reached at 202–622–6440. Attendees are encouraged to arrive at least 30 minutes before the meeting begins to allow sufficient time for purposes of security clearance. Please use the main entrance at 1111 Constitution Avenue to enter the building. Should you wish the IRPAC to consider a written statement, please call (202) 622–6440, or write to: Internal Revenue Service, Office of National Public Liaison, CL:NPL:P, 1111 Constitution Avenue, NW., Room 7569 IR, Washington, DC 20224 or e-mail: **public_liaison@irs.gov.*

Dated: October 7, 2003.

**Robin G. Marusin,**

*Designated Federal Official, Branch Chief, Liaison/Tax Forum Branch.*

[FR Doc. 03–25922 Filed 10–10–03; 8:45 am]

BILLING CODE 4830–01–U

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia and the District of Columbia)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, November 4, 2003, from 3 p.m. to 4:30 p.m. EST.

**FOR FURTHER INFORMATION CONTACT:** Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Tuesday, November 4, 2003 from 3 p.m. EST to 4:30 p.m. EST via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977. The agenda will include the following: Various IRS issues.

Dated: October 7, 2003.

**Tersheia Carter,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 03–25826 Filed 10–10–03; 8:45 am]

BILLING CODE 4830–01–M

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## DEPARTMENT OF THE TREASURY

## Bureau of the Public Debt

## Proposed Collection: Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Customer Awareness Survey.

**DATES:** Written comments should be received on or before December 12, 2003, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Customer Awareness Survey.

*Abstract:* The survey will focus on customer awareness of electronic savings bonds.

*Current Actions:* None.

*Type of Review:* New.

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 5,000.

*Estimated Total Annual Burden Hours:* 1,250.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 7, 2003.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 03–25862 Filed 10–10–03; 8:45 am]

BILLING CODE 4810–39–P

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## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0335]**

## Proposed Information Collection Activity: Proposed Collection; Comment Request

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the

Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine a veteran's dental treatment needs, and the fees associated for these services.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before December 15, 2003.

**ADDRESSES:** Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail ann.bickoff@mail.va.gov. Please refer to "OMB Control No. 2900–0335" in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Ann Bickoff at (202) 273–8310.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Dental Record Authorization and Invoice for Outpatient Services, VA Form 10–2570d.

*OMB Control Number:* 2900–0335.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* VA Form 10–2570b, Examination Procedure Instructions for Participating Fee Dentist, and VA Form 10–2570c, Treatment Procedure Instructions for the Participating Fee Dentist, have been combined with VA Form 10–2570d, Dental Record Authorization and Invoice for Outpatient Services. VA Form 10–2570d is essential to the proper administration of VA outpatient fee dental program. The associated instructions make it possible to communicate with clarity the required procedures, peculiarities, and precautions associated with VA authorizations for contracting with private dentists for the provision of dental treatment for eligible veteran beneficiaries. Since most of the veterans who are authorized fee dental care are geographically inaccessible to VA dental clinics, it is necessary to request information as to the veteran's oral condition, treatment needs and the usual customary fees for these services from the private fee dentist whom the veteran has selected. The form lists the dental treatment needs of the veteran patient, the cost to VA to provide such services, and serves as an invoice for payment.

*Affected Public:* Business and other for profit.

*Estimated Total Annual Burden:* 4,153 hours.

*Estimated Average Burden Per Respondent:* 20 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 12,460.

Dated: October 2, 2003.

By direction of the Secretary.

**Jacqueline Parks,**

*IT Specialist, Records Management Service.*

[FR Doc. 03–25836 Filed 10–10–03; 8:45 am]

**BILLING CODE 8320–01–P**

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## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0358]**

## Proposed Information Collection Activity: Proposed Collection; Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to evaluate veterans' and other eligible person's suitability to change their program of education objectives.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before December 15, 2003.

**ADDRESSES:** Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 e-mail: *irmnkess@vba.va.gov.* Please refer to "OMB Control No. 2900–0358" in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Supplemental Information for Change of Program or Reenrollment After Unsatisfactory Attendance, Conduct or Progress, VA Form 22–8873.

*OMB Control Number:* 2900–0358.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Veterans and other eligible persons may change their program of education under conditions prescribed by Title 38 U.S.C., Section 3691. A claimant can normally make one change of program without VA approval. If that claimant makes any additional change of program, VA approval is required. Before VA may approve benefits for a second or subsequent change of program, VA must first determine that the new program is suitable to the claimant's aptitudes, interests, and abilities, or that the cause of any unsatisfactory progress or conduct has been resolved before entering into a different program. VA Form 22–8873 is used to gather the necessary information only if the suitability of the proposed training program cannot be established from information already available in the claimant's VA education records.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 9,150 hours.

*Estimated Average Burden Per Respondent:* 30 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 18,300.

Dated: October 2, 2003.

By direction of the Secretary.

**Jacqueline Parks,**

*IT Specialist, Records Management Service.*

[FR Doc. 03–25837 Filed 10–10–03; 8:45 am]

**BILLING CODE 8320–01–P**

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## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0379]**

### Proposed Information Collection Activity: Proposed Collection; Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to verify the actual number of hours worked by a work-study claimant.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before December 15, 2003.

**ADDRESSES:** Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0379" in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Time Record (Work-Study Program), VA Form 22–8690.

*OMB Control Number:* 2900–0379.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA Form 22–8690 is used to report the number of hours completed and to ensure that the amount of benefits payable to a claimant who is pursuing work-study is correct. When a claimant elects to receive an advance payment, VA will make the advance payment for 50 hours, but will withhold benefits (to recoup the advance payment) until the claimant completes his or her 50 hours of service. VA will not pay any additional amount in advance payment cases until the claimant completes a total of 100 hours of service (50 hours for the advance payment and 50 hours for an additional payment). If the claimant elects not to receive an advance payment, benefits are payable when the claimant completes 50 hours of service.

*Affected Public:* State, Local or Tribal Governments, Individuals or households, Business or other for-profit, Not-for-profit institutions, and Federal Government.

*Estimated Annual Burden:* 10,750 hours.

*Estimated Average Burden Per Respondent:* 5 minutes.

*Frequency of Response:* On occasion.

*Estimated Annual Responses:* 129,000.

*Estimated Number of Respondents:* 32,250.

Dated: October 1, 2003.

By direction of the Secretary.

**Jacqueline Parks,**

*IT Specialist, Records Management Service.*

[FR Doc. 03–25838 Filed 10–10–03; 8:45 am]

**BILLING CODE 8320–01–P**

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## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0523]**

### Proposed Information Collection Activity: Proposed Collection; Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information to determine the veteran-borrower's ability to qualify for guaranteed loan.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before December 15, 2003.

**ADDRESSES:** Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or *mailto:irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0523" in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Loan Analysis, VA Form 26–6393.

*OMB Control Number:* 2900–0523.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA Form 26–6393 is used to determine a veteran-borrower qualification for a VA-guaranteed loan. Lenders complete and submit the form to provide evidence that the lender's decision to submit a prior approval loan application or close a loan on the automatic basis is based upon appropriate application of VA credit standards.

*Affected Public:* Business or other for profit.

*Estimated Annual Burden:* 100,000 hours.

*Estimated Average Burden Per Respondent:* 30 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 200,000.

Dated: October 2, 2003.

By direction of the Secretary.

**Jacqueline Parks,**

*IT Specialist, Records Management Service.*

[FR Doc. 03–25839 Filed 10–10–03; 8:45 am]

**BILLING CODE 8320–01–P**

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## DEPARTMENT OF VETERANS AFFAIRS

### Vocational Rehabilitation & Employment Task Force; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the VA Vocational Rehabilitation & Employment (VR&E) Task Force will be held on Wednesday, October 22, 2003, in Room 530 at the VA Central Office, 810 Vermont Avenue, NW, Washington, DC 20420. The meeting will be open to the public.

The purpose of the Task Force is to conduct an independent review of the VR&E program within the Veterans Benefits Administration (VBA). The Task Force will provide recommendations to the Secretary of Veterans Affairs on improving the Department's ability to provide comprehensive services and assistance to veterans with service-connected disabilities and employment handicaps in becoming employable, and obtaining and maintaining suitable employment. The Task Force will also assess independent living services provided by VBA.

The October 22, 2003, meeting will convene at 8 a.m. and adjourn after the Task Force has completed discussion on potential recommendations designed to improve VA's ability to deliver employment and vocational rehabilitation services. That discussion is expected to focus on issues that fall generally within the Task Force's areas of emphasis—internal management, systems integration, employment, and independent living services.

No time will be allocated for receiving oral presentations from the public. Members of the public may submit written comments for review by the Committee to: Mr. John O'Hara, Designated Federal Officer, Vocational Rehabilitation & Employment Task Force, c/o Office of Policy, Planning, and Preparedness (008B), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Mr. O'Hara's email is *john.o'hara@mail.va.gov* and his fax number is (202) 273–5991.

Dated: October 3, 2003.

By Direction of the Secretary.

**Phil Riggin,**

*Committee Management Officer.*

[FR Doc. 03–25840 Filed 10–10ndash;03; 8:45 am]

**BILLING CODE 8320–01–M**

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## DEPARTMENT OF VETERANS AFFAIRS

### Performance Review Board Members

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** Under the provisions of 5 U.S.C. 4314(c)(4) agencies are required to publish a notice in the **Federal Register** of the appointment of Performance Review Board (PRB) members. This notice revises the list of members of the Department of Veterans Affairs (VA) Performance Review Boards, which was published in the **Federal Register** (Vol. 67, No. 185), on September 24, 2002.

**EFFECTIVE DATE:** October 14, 2003.

**FOR FURTHER INFORMATION CONTACT;** Charlotte Moment, Office of Human Resources Management (052B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8165.

**VA Performance Review Board (PRB)**

William H. Campbell, Acting Assistant Secretary for Human Resources and Administration (Chairperson)
Nora E. Egan, Chief of Staff
William D. Stinger, Deputy Under Secretary for Benefits, Veterans Benefits Administration
Jonathan B. Perlin, Deputy Under Secretary for Health, Veterans Health Administration
John H. Thompson, Deputy General Counsel
D. Mark Catlett, Principal Deputy Assistant Secretary for Management
Lucretia M. McClenney, Special Assistant
Michael G. Sullivan, Deputy Inspector General
Edward F. Meagher, Deputy Assistant Secretary for Information Technology Management
Eligah D. Clark, Chairman, Board of Veteran's Appeals
Ventris C. Gibson, Deputy Assistant Secretary for Human Resources Management (Alternate)
Michael Walcoff, Associate Deputy Under Secretary for Operations, Veterans Benefits Administration (Alternate)
Laura J. Miller, Assistant Deputy Under Secretary for Health for Operations and Management (Alternate)

**Veterans Benefits Administration PRB**

William D. Stinger, Deputy Under Secretary for Benefits, (Chairperson)
Robert J. Epley, Associate Deputy Under Secretary for Policy & Program Management
James Bohmbach, Chief Financial Officer
Michael Walcoff, Associate Deputy Under Secretary for Field Operations
Geraldine V. Breakfield, Associate Deputy Under Secretary for Management
Diana M. Rubens, Director, Western Area Office
Ronald R. Aument, Deputy Chief of Staff, Office of the Secretary

**Veterans Health Administration PRB**

Jonathan B. Perlin, M.D., Ph.D., M.S.H.A., Deputy Under Secretary for Health (Chairperson)

Laura J. Miller, Assistant Deputy Under Secretary for Health for Operations and Management (Vice-Chairperson)
Robert A. Perreault, Director, Business Office
Peter L. Almenoff, M.D., Acting Network Director, VISN 15
Alfonso R. Batres, Ph.D., Chief Readjustment Counseling Officer
Linda W. Belton, Network Director, VISN 11
Lawrence A. Biro, Network Director, VISN 4
Leslie M. Burger, M.D., Network Director, VISN 20
Jeanette A. Chirico-Post, M.D., Network Director, VISN 1
Kenneth J. Clark, Network Director, VISN 22
Thomas J. Craig, M.D., Acting Chief Quality and Performance Officer
Patricia A. Crosetti, Acting Clinical Logistics Officer
Joan E. Cummings, M.D., Network Director, VISN 12
John Dandridge, Jr., Network Director, VISN 9
Jim W. Delgado, Acting Chief Communications Officer
James B. Donahoe, Director, Veterans Canteen Service
James J. Farsetta, Network Director, VISN 3
William F. Feeley, Network Director, VISN 2
Elwood J. Headley, M.D., Network Director, VISN 8
Daniel F. Hoffmann, Network Director, VISN 6
Thomas V. Holohan, M.D., Chief Patient Care Services Officer
Thomas J. Hogan, Director, Management Support Office (Ex Officio)
Joy W. Hunter, Chief Learning Officer/ Dean, VA Learning University
Joseph A. Klein, Acting Chief Policy and Planning Officer
Robert M. Kolodner, M.D., Acting Chief Information Officer
Robert E. Lynch, M.D., Network Director, VISN 16
Charles K. Maffet, M.D., Acting Network Director, VISN 19
Susan H. Mather, M.D., Chief Public Health and Environmental Hazards Officer
Patricia A. McKlem, Network Director, VISN 18
Frances M. Murphy, M.D., M.P.H., Deputy Under Secretary for Health Policy Coordination
James J. Nocks, M.D., Network Director, VISN 5
Jimmy A. Norris, Chief Financial Officer
Clyde L. Parkis, Network Director, VISN 10
Robert A. Petzel, M.D., Interim Network Director, VISN 23
Stephanie H. Pincus, M.D., M.B.A., Chief Academic Affiliations Officer
Cathy Rick, R.N., M.S.N., Chief Nursing Officer
Thomas J. Stranova, Network Director, VISN 17
Linda F. Watson, Network Director, VISN 7
Nevin Weaver, VHA Chief of Staff
Robert L. Wiebe, M.D., Network Director, VISN 21
Nelda P. Wray, M.D., M.P.H., Chief Research and Development Officer
Charles V. Yarbrough, Chief Facilities Management Officer
Dennis M. Duffy, Principal Deputy Assistant Secretary for Policy, Planning and Preparedness

### Office of Inspector General PRB

David A. Brinkman, Director, Audit Follow-up Director, Department of Defense (Chairperson)
Nancy Hendricks, Assistant Inspector General for Audit, Federal Emergency Management Agency
George Grob, Deputy Inspector General for Evaluation and Inspections, Department of Health and Human Services

Dated: October 2, 2003.

**Anthony J. Principi,**
*Secretary of Veterans Affairs.*

[FR Doc. 03–25841 Filed 10–10–03; 8:45 am]

BILLING CODE 8320–01–M

# Corrections

**Federal Register**
Vol. 68, No. 198
Tuesday, October 14, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 03–078–1]**

### Notice of Request for Extension of Approval of an Information Collection

*Correction*

In notice document 03–25253 beginning on page 57653 in the issue of Monday, October 6, 2003, the subject heading is corrected to read as set forth above.

[FR Doc. C3–25253 Filed 10–10–03; 8:45 am]

**BILLING CODE 1505–01–D**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-48533; File No. SR–PCX–2003–44]**

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Posting Period for Membership Applications

September 24, 2003.

*Correction*

In notice document 03–24753 beginning on page 56367 in the issue of September 30, 2003, in the third column, the docket number is corrected to read as set forth above.

[FR Doc. C3–24753 Filed 10–10–03; 8:45 am]

**BILLING CODE 1505–01–D**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2003–14905; Airspace Docket No. 03–AGL–04]**

### Modification of Class E Airspace; Cheboygan, MI

*Correction*

In rule document 03–24607 appearing on page 55817 in the issue of Monday, September 29, 2003, make the following correction:

**§ 71.1 [Corrected]**

On page 55817, in the second column, in § 71.1, in the fifth line from the bottom, “84°31′109″” should read, “84°31′09″”.

[FR Doc. C3–24607 Filed 10–10–03; 8:45 am]

**BILLING CODE 1505–01–D**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Policy Statement No. ANM–03–115–31]**

### Conducting Component Level Tests to Demonstrate Compliance

*Correction*

In notice document 03–23301 beginning on page 54042 in the issue of Monday, September 15, 2003, in the third column, the docket number is corrected to read as set forth above.

[FR Doc. C3–23301 Filed 10–10–03; 8:45 am]

**BILLING CODE 1505–01–D**

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

# Federal Register

Tuesday,
October 14, 2003

## Part II

## Department of Transportation

### National Highway Traffic Safety Administration

49 CFR Part 575
Consumer Information; New Car Assessment Program; Rollover Resistance; Final Rule

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 575**

**[Docket No. NHTSA–2001–9663; Notice 3]**

**RIN 2127–AI81**

## Consumer Information; New Car Assessment Program; Rollover Resistance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Final policy statement.

**SUMMARY:** The Transportation Recall Enhancement, Accountability, and Documentation Act of 2000 requires NHTSA to develop a dynamic test on rollovers by motor vehicles for the purposes of a consumer information program, to carry out a program of conducting such tests, and, as these tests are being developed, to conduct a rulemaking to determine how best to disseminate test results to the public. This document modifies NHTSA's rollover resistance ratings in its New Car Assessment Program (NCAP) to include dynamic rollover tests after considering comments to our previous document. The changes described in this document will improve consumer information provided by NHTSA, but will not place regulatory requirements on vehicle manufacturers.

**DATES:** NCAP rollover resistance ratings in the 2004 model year will be determined using the system established by this document.

*Petitions:* Petitions for reconsideration must be received by November 28, 2003.

**FOR FURTHER INFORMATION CONTACT:** For technical questions you may contact Patrick Boyd, NVS–123, Office of Rulemaking, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 and Dr. Riley Garrott, NVS–312, NHTSA Vehicle Research and Test Center, P.O. Box 37, East Liberty, OH 43319. Mr. Boyd can be reached by phone at (202) 366–6346 or by facsimile at (202) 493–2739. Dr. Garrott can be reached by phone at (937) 666–4511 or by facsimile at (937) 666–3590.

**SUPPLEMENTARY INFORMATION:**

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II. Safety Problem
III. Background
  A. Existing NCAP Program and the TREAD Act
  B. National Academy of Sciences Study
IV. Notice of Proposed Rulemaking
V. Results of Dynamic Maneuver Tests of 25 Vehicles
  A. J-Turn Maneuver
  B. Fishhook Maneuver
  C. Loading Conditions
  D. Test Results
VI. Rollover Risk Model
VII. Comments to the Previous Notice
  A. Combined or Separate Rollover Resistance Ratings
  B. Crash Avoidance Technologies
  C. The J-Turn and Fishhook Maneuvers
  D. Tire Wear
  E. Pavement Temperature
  F. Surface Friction
  G. Steering Reversal
  H. Fifteen-Passenger Vans
  I. Tip-up Criterion
  J. Testing of Passenger Cars vs. Light Trucks
  K. Testing with Electronic Stability Control Systems
VIII. Final Form for Rollover Resistance Ratings "Alternative I
  A. Combined Ratings
  B. Dynamic Testing
  C. Demonstration Program
IX. Cost Benefit Statement
X. Rulemaking Analyses and Notices
  A. Executive Order 12866
  B. Regulatory Flexibility Act
  C. National Environmental Policy Act
  D. Executive Order 13132 (Federalism)
  E. Unfunded Mandates Act
  F. Civil Justice Reform
  G. Paperwork Reduction Act
  H. Plain Language
Appendix I. Fishhook Test Protocol
Appendix II. Development of Logistic Regression Risk Model

### I. Executive Summary

While the total number of highway fatalities has remained relatively stable over the past decade, the number of rollover deaths has risen substantially. According to NHTSA's National Center for Statistics and Analysis, from 1991 to 2001 the number of passenger vehicle occupants killed in all motor vehicle crashes increased 4 percent, while fatalities in rollover crashes increased 10 percent. In the same decade, passenger car occupant fatalities in rollovers declined 15 percent while rollover fatalities in light trucks increased 43 percent. In 2001, 10,138 people died in rollover crashes, a figure that represents 32 percent of occupant fatalities for the year.

In response to that trend, NHTSA has been evaluating rollover testing since 1993. In 2001, NHTSA began publishing rollover rating information for consumers, supplementing New Car Assessment Program (NCAP) frontal crashworthiness ratings that began in 1979 and side impact ratings that began in 1997.

When Congress approved the "Transportation Recall, Enhancement, Accountability and Documentation (TREAD) Act of November 2000", Section 12 directed the Secretary of Transportation to "develop a dynamic test on rollovers by motor vehicles for a consumer information program; and carry out a program conducting such tests. As the Secretary develops a [rollover] test, the Secretary shall conduct a rulemaking to determine how best to disseminate test results to the public."

On July 3, 2001, NHTSA published a Request for Comments notice (66 FR 35179) discussing a variety of dynamic rollover tests that we had chosen to evaluate in our research program and what we believed were their potential advantages and disadvantages.

We published a Notice of Proposed Rulemaking on October 7, 2002 (67 FR 62528) that proposed alternative ways of using the dynamic maneuver test results in consumer information on the rollover resistance of new vehicles.

Beginning with rollover ratings for the 2004 model year, NHTSA will combine a vehicle's Static Stability Factor (SSF) measurement with its performance in the so-called "Fishhook" maneuver. The so-called "J-Turn" dynamic test maneuver discussed in previous notices will be not be used by NHTSA for rating rollover resistance. Our analysis has found that the J-Turn maneuver test does not add any meaningful information to what is obtained from the fishhook maneuver test alone (see Appendix II.B). The predicted rollover rate will be translated into a five-star rating system that is the same as the one now in use: One star is for a rollover rate greater than 40 percent; two stars, between 30 and 39 percent; three stars, between 20 and 29 percent; four stars, between 10 and 19 percent; and five stars for 10 percent or less.

This decision maximizes the vehicle information used to make the rollover rate prediction and will allow us to ensure that rollover NCAP information corresponds even more closely to real-world rollovers. We have also decided to present our rollover information as a single combined rollover rating that most commenters agreed would be more understandable to consumers.

This document also includes a test procedure (Appendix I) for conducting vehicle maneuver tests, and discusses testing regimes that have been incorporated to minimize variability in test data.

### II. Safety Problem

Rollover crashes are complex events that reflect the interaction of driver, road, vehicle, and environmental factors. We can describe the relationship between these factors and the risk of rollover using information from the agency's crash data programs. We limit our discussion here to light vehicles, which consist of (1) passenger cars and (2) multipurpose passenger vehicles and trucks under 4,536 kilograms (10,000 pounds) gross vehicle weight rating.[1]

According to the 2001 Fatality Analysis Reporting System (FARS), 10,138 people were killed as occupants in light vehicle rollover crashes, which represent 32 percent of the occupants killed that year in crashes. Of those, 8,407 were killed in single-vehicle rollover crashes. Seventy-eight percent of the people who died in single-vehicle rollover crashes were not using a seat belt, and 64 percent were partially or completely ejected from the vehicle (including 53 percent who were completely ejected). FARS shows that 54 percent of light vehicle occupant fatalities in single-vehicle crashes involved a rollover event.

Using data from the 1997–2001 National Automotive Sampling System (NASS) Crashworthiness Data System (CDS), we estimate that 281,000 light vehicles were towed from a police-reported rollover crash each year (on average), and that 30,000 occupants of these vehicles were seriously injured or killed (defined as any fatality or an injury with an Abbreviated Injury Scale (AIS) rating of at least AIS 3).[2] Of these 281,000 light vehicle rollover crashes, 225,000 were single-vehicle crashes. (The NCAP rollover resistance ratings estimate the risk of rollover if a vehicle is involved in a single-vehicle crash.) Sixty-one percent of those people who suffered a serious injury in single-vehicle towaway rollover crashes were not using a seat belt, and 49 percent were partially or completely ejected (including 40 percent who were completely ejected). Estimates from NASS CDS indicate that 80 percent of towaway rollovers were single-vehicle crashes, and that 83 percent (168,000) of the single-vehicle rollover crashes occurred after the vehicle left the roadway. An audit of 1992–96 NASS CDS data showed that about 95 percent of rollovers in single-vehicle crashes were tripped by mechanisms such as curbs, soft soil, pot holes, guard rails, and wheel rims digging into the pavement, rather than by tire/road interface friction as in the case of untripped rollover events.

According to the 1997–2001 NASS General Estimates System (GES) data, 62,000 occupants annually received injuries rated as *K* or *A* on the police KABCO injury scale in rollover crashes. (The police KABCO scale calls *A* injuries "incapacitating," but their actual severity depends on local reporting practice. An "incapacitating" injury may mean that the injury was visible to the reporting officer or that the officer called for medical assistance. A *K* injury is fatal.) The data indicate that 215,000 single-vehicle rollover crashes resulted in 49,000 *K* or *A* injuries. Fifty percent of those with *K* or *A* injury in single-vehicle rollover crashes were not using a seat belt, and 24 percent were partially or completely ejected from the vehicle (including 21 percent who were completely ejected). Estimates from NASS GES indicate that 13 percent of light vehicles in police-reported single-vehicle crashes rolled over. The estimated risk of rollover differs by light vehicle type: 10 percent of cars and 10 percent of vans in police-reported single-vehicle crashes rolled over, compared to 18 percent of pickup trucks and 27 percent of SUVs. The percentages of all police-reported crashes for each vehicle type that resulted in rollover were 1.7 percent for cars, 2.0 percent for vans, 3.8 percent for pickup trucks and 5.5 percent for SUVs as estimated by NASS GES.

## III. Background

### *A. Existing NCAP Program and the TREAD Act*

NHTSA's NCAP program has been publishing comparative consumer information on frontal crashworthiness of new vehicles since 1979, on side crashworthiness since 1997, and on rollover resistance since January 2001 (66 FR 3388). This notice does not establish a new consumer information program on rollover resistance ratings. Rather, it refines our existing rollover resistance rating program in accordance with the requirements of the TREAD Act and the recommendations of the National Academy of Sciences.

The present NCAP rollover resistance ratings are based on the Static Stability Factor (SSF) of a vehicle, which is the ratio of one half its track width to its center of gravity (c.g.) height (*see http://www.nhtsa.dot.gov/hot/rollover/* for ratings and explanatory information). After an evaluation of some driving maneuver tests in 1997 and 1998, we chose to use SSF instead of any driving maneuvers to characterize rollover resistance. As we explained in our notices establishing rollover NCAP, we chose SSF as the basis of our ratings because it represents the first order factors that determine vehicle rollover resistance in the vast majority of rollovers which are tripped by impacts with curbs, soft soil, pot holes, guard rails, etc. or by wheel rims digging into the pavement. In contrast, untripped rollovers are those in which tire/road interface friction is the only external force acting on a vehicle that rolls over. Driving maneuver tests directly represent on-road untripped rollover crashes, but such crashes represent less than five percent of rollover crashes.[3]

At the time, we believed it was necessary to choose between SSF and driving maneuver tests as the basis for rollover resistance ratings. SSF was chosen because it had a number of advantages: it is highly correlated with actual crash statistics; it can be measured accurately and inexpensively and explained to consumers; and changes in vehicle design to improve SSF are unlikely to degrade other safety attributes. We also considered the fact that an improvement in SSF represents an increase in rollover resistance in both tripped and untripped circumstances while maneuver test performance can be improved by reduced tire traction and certain implementations of electronic stability control that we believe are unlikely to improve resistance to tripped rollovers.

Congress funded NHTSA's rollover NCAP program, but directed the agency to enhance the program. Section 12 of the "Transportation Recall, Enhancement, Accountability and Documentation (TREAD) Act of November 2000" directs the Secretary to "develop a dynamic test on rollovers by motor vehicles for a consumer information program; and carry out a program conducting such tests. As the Secretary develops a [rollover] test, the Secretary shall conduct a rulemaking to determine how best to disseminate test results to the public." The rulemaking was to be carried out by November 1, 2002.

On July 3, 2001, NHTSA published a Request for Comments notice (66 FR 35179) regarding our research plans to assess a number of possible dynamic rollover tests. The notice discussed the possible advantages and disadvantages of various approaches that had been suggested by manufacturers, consumer groups, and NHTSA's prior research. The driving maneuver tests to be evaluated fit into two broad categories: closed-loop maneuvers in which all test vehicles attempt to follow the same path; and open-loop maneuvers in which all test vehicles are given equivalent steering inputs. The principal theme of the comments was a sharp division of opinion about whether the dynamic rollover test should be a closed loop maneuver test like the ISO 3388 double lane change that emphasizes the handling properties of vehicles or whether it should be an open loop maneuver like a J-Turn or Fishhook that are limit maneuvers in which vulnerable vehicles would actually tip up. Ford recommended a different type of closed loop lane change maneuver in which a path-following robot or a mathematical correction method would be used to evaluate all vehicles on the same set of paths at the same lateral acceleration. It used a measurement of partial wheel unloading without tip-up at 0.7g lateral acceleration as a performance criterion in contrast to the other closed loop maneuver tests that used maximum speed through the maneuver as the performance criterion. Another unique comment was a recommendation from Suzuki to use a sled test developed by Exponent Inc. to simulate tripped rollovers.

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[1] For brevity, we use the term "light trucks" in this document to refer to vans, minivans, sport utility vehicles (SUVs), and pickup trucks under 4,536 kilograms (10,000 pounds) gross vehicle weight rating. NHTSA has also used the term "LTVs" to refer to the same vehicles.

[2] A broken hip with splintering of the bone is an example of an AIS 3 injury.

[3] NHTSA Reseach Note, "Passenger Vehicles in Untripped Rollovers," September 1999.

The subsequent test program (using four SUVs in various load conditions and with and without electronic stability control enabled on two of the SUVs) showed that open-loop maneuver tests using an automated steering controller could be performed with better repeatability of results than the other maneuver tests. The J-Turn maneuver and the Fishhook maneuver (with steering reversal at maximum vehicle roll angle) were found to be the most objective tests of the susceptibility of vehicles to maneuver-induced on-road rollover. Except for the Ford test, the closed loop tests were found not to measure rollover resistance. Instead, the tests of maximum speed through a double lane change responded to vehicle agility. None of the test vehicles tipped up during runs in which they maintained the prescribed path even when loaded with roof ballast to experimentally reduce their rollover resistance. The speed scores of the test vehicles in the closed loop maneuvers were found to be unrelated to their resistance to tip-up in the open-loop maneuvers that actually caused tip-up. The test vehicle that was clearly the poorest performer in the maneuvers that caused tip-ups achieved the best score (highest speed) in the ISO 3388 and CU short course double lane change, and one vehicle improved its score in the ISO 3388 test when roof ballast was added to reduce its rollover resistance.

Due to the non-limit test conditions and the averaging necessary for stable wheel force measurements, the wheel unloading measured in the Ford test appeared to be more quasi-static (as in driving in a circle at a steady speed or placing the vehicle on a centrifuge) than dynamic. Sled tests were not evaluated because we believed that SSF already provided a good indicator of resistance to tripped rollover.

### *B. National Academy of Sciences Study*

During the time NHTSA was evaluating dynamic maneuver tests in response to the TREAD Act, the National Academy of Sciences (NAS) was conducting a study of the four SSF-based rollover resistance ratings and was directed to make recommendations regarding driving maneuver tests. We expected the NAS recommendations to have a strong influence on TREAD-mandated changes to NCAP rollover resistance ratings.

When NHTSA proposed the present SSF rollover resistance ratings in June 2000 (65 FR 34998), vehicle manufacturers generally opposed it because they believed that SSF as a measure of rollover resistance is too simple since it does not include the effects of suspension deflections, tire traction and electronic stability control (ESC). In addition, the vehicle manufacturers argued that the influence of vehicle factors on rollover risk is too slight to warrant consumer information ratings for rollover resistance. In the conference report of the FY2001 DOT Appropriations Act, Congress permitted NHTSA to move forward with its rollover rating program, but directed the agency to fund a National Academy of Sciences (NAS) study on vehicle rollover ratings. The study topics were "whether the static stability factor is a scientifically valid measurement that presents practical, useful information to the public including a comparison of the static stability factor test versus a test with rollover metrics based on dynamic driving conditions that may induce rollover events." The National Academy's report was completed and made available at the end of February 2002.

The NAS study found that SSF is a scientifically valid measure of rollover resistance for which the underlying physics and real-world crash data are consistent with the conclusion that an increase in SSF reduces the likelihood of rollover. It also found that dynamic tests should complement static measures, such as SSF, rather than replace them in consumer information on rollover resistance. The dynamic tests the NAS recommended would be driving maneuvers used to assess "transient vehicle behavior leading to rollover."

The NAS study also made recommendations concerning the statistical analysis of rollover risk and the representation of ratings. It recommended that we use logistic regression rather than linear regression for analysis of the relationship between rollover risk and SSF, and it recommended that we consider a higher-resolution representation of the relationship between rollover risk and SSF than is provided by the current five-star rating system.

We published a Notice of Proposed Rulemaking on October 7, 2002 (67 FR 62528) that proposed alternative ways of using the dynamic maneuver test results in consumer information on the rollover resistance of new vehicles. We chose the J-Turn and Fishhook maneuver (with roll rate feedback) as the dynamic maneuver tests because they were the type of limit maneuver tests that could directly lead to rollover as recommended by the NAS. We also proposed to use a logistic regression analysis to determine the relationship between vehicle properties and rollover risk, as recommended by the NAS. The resulting rollover resistance ratings were proposed to be part of NHTSA's New Car Assessment Program (NCAP). Also, we proposed two methods for presenting rollover resistance ratings for consumer information.

## IV. Notice of Proposed Rulemaking

The TREAD Act calls for a rulemaking to determine how best to disseminate rollover test results to the public, and our Notice of Proposed Rulemaking (NPRM) of October 7, 2002 (67 FR 62528) proposed two alternatives for using the dynamic test results in consumer information on the rollover resistance of new vehicles. In this case the term "rulemaking" refers more to the process than to the product. This document does not amend the Code of Federal Regulations, but establishes NHTSA's policy on consumer information regarding the rollover resistance program. As mentioned above, this program places no requirements on vehicle manufacturers, only some on NHTSA.

While the TREAD Act calls for a rulemaking to determine how best to disseminate the rollover test results, the development of the dynamic rollover test is simply the responsibility of the Secretary. Based on NHTSA's recent research to evaluate rollover test maneuvers, the National Academy of Sciences' study of rollover ratings, comments to the July 3, 2000 notice, extensive consultations with experts from the vehicle industry, consumer groups and academia, and NHTSA's previous research in 1997–8, the agency chose the J-Turn and the Fishhook maneuvers as dynamic rollover tests. They are the limit maneuver tests that NHTSA found to have the highest levels of objectivity, repeatability and discriminatory capability. The document announced that vehicles would be tested in two load conditions using the J-Turn at up to 60 mph and the Fishhook maneuver at up to 50 mph. Both maneuvers would be conducted with an automated steering controller, and the reverse steer of the Fishhook maneuver would be timed to coincide with the maximum roll angle to create an objective "worst case" for all vehicles regardless of differences in resonant roll frequency. Figures 1 and 2 illustrate the open-loop steering wheel motions characterizing these maneuvers. The light load condition would be the weight of the test driver and instruments, approximating a vehicle with a driver and one front seat passenger. The notice announced that the heavy load condition would add additional 175 lb manikins in all rear seat positions.

The National Academy of Sciences recommended that dynamic maneuver tests be used to supplement rather than replace Static Stability Factor in consumer information on rollover resistance. NHTSA proposed two alternatives for consumer information ratings on vehicle rollover resistance that included both dynamic maneuver test results and Static Stability Factor. The first alternative was to include the dynamic test results as vehicle variables along with SSF in a statistical model of rollover risk that would combine their predictive power. This is conceptually similar to the present ratings in which a statistical model is used to distinguish between the effects of vehicle variables and demographic and road use variables recorded for state crash data on a large number of single-vehicle crashes. The National Academy of Sciences recommended using a logistic regression model for this purpose. Such a model would be used to predict the rollover rate in single-vehicle crashes for a vehicle considering both its dynamic maneuver test performance and its Static Stability Factor for an average driver population (as a common basis of comparison).

Under the first alternative, the "star rating" of a vehicle would be based on its rollover rate in single-vehicle crashes predicted by a statistical model. The format would be the same as for the present rollover ratings (for example, one star for a predicted rollover rate in single-vehicle crashes greater than 40 percent and five stars for a predicted rollover rate less than 10 percent). The present rollover ratings are based on a linear regression model using state crash reports of 241,000 single-vehicle crashes of 100 make/model vehicles. We proposed to replace the current rollover risk model with one that uses the performance of the vehicle in dynamic maneuver tests as well as its SSF to predict rollover risk. The performance of a vehicle in dynamic maneuver tests would be simply whether it tipped up or not in each of the four maneuver/load combinations.

In order to compute this logistic model for rollover risk, it is necessary to have the dynamic maneuver test results as well as SSF for a number of vehicles with rollover rates established by state crash reports of single-vehicle crashes. We had the SSF measurements and established rollover rates for the 100 make/model vehicles upon which we based the static rating system but not their dynamic maneuver test results. Thus, we asked for comment on the suitability of a rating method that combines static and dynamic vehicle properties in a single rating and on the validity of logistic regression analysis for the risk model that combines the properties in a way that is predictive of real-world crash experience.

The NPRM notice announced that we were going to perform the dynamic maneuver tests on about 25 of the 100 make/model vehicles for which we had SSF measurements and substantial state crash data. Time and budget constraints would not permit testing all 100 vehicles. With these dynamic maneuver test results and our existing crash and SSF information we would be able to compute the new risk model using a standard statistical package of computer programs (SAS) for logistic regression analysis. This final document presents the dynamic maneuver test results for 24 of the 100 vehicles, chosen to span the SSF range and to represent high production vehicles of each type (passenger car, van, pickup truck and sport utility vehicle (SUV)). An additional SUV with a lower SSF than found among the 100 vehicles was also included. The resulting risk model is presented in this document.

The second alternative we proposed was to have separate ratings for Static Stability Factor and for dynamic maneuver test performance. Dynamic maneuver tests directly represent on-road untripped rollovers. Under this alternative, the dynamic maneuver test performance would be used to rate resistance to untripped rollovers in a qualitative scale. Barring unforeseen results of the dynamic maneuver tests of the 25 vehicle group, the obvious qualitative scale would be: A for no tip-ups, B for tip-up in one maneuver, C for tip-ups in two maneuvers, D for tip-ups in three maneuvers and E for tip-ups in all four maneuvers/load combinations.

A statistical risk model is not possible for untripped rollover crashes, because they appear to be relatively rare events and they cannot be reliably identified in state crash reports. For this alternative, the current Static Stability Factor based system would be used to rate resistance to tripped rollovers (since we believe most of the rollovers reported in the state crash reports are tripped). Again we asked for comments on the usefulness and validity of the concept in the NPRM notice, but we could not offer examples of actual vehicle ratings because the tests had not yet been conducted.

## V. Results of Dynamic Maneuver Tests of 25 Vehicles

This section presents an overview of the test maneuvers and the results for 25 vehicles that were used to develop the logistic regression risk model. A more extensive account of the test program is contained in the Phase VI and VII Report that has been placed in Docket NHTSA–2001–9663. A detailed description of how we will perform the maneuver tests for NCAP ratings is contained in Appendix I.

The NHTSA J-Turn and Fishhook (with roll rate feedback) maneuver tests were performed for 25 vehicles representing four vehicle types including passenger cars, vans, pickup trucks and SUVs. We chose mainly high production vehicles that spanned a wide range of SSF values, using vehicles NHTSA already owned where possible. Except for four 2001 model year vehicles NHTSA purchased new, the vehicle suspensions were rebuilt with new springs and shock absorbers, and other parts as required for all the other vehicles included in the test program.

### *A. J-Turn Maneuver*

The NHTSA J-Turn maneuver represents an avoidance maneuver in which a vehicle is steered away from an obstacle using a single input. The maneuver is similar to the J-Turn used during NHTSA's 1997–98 rollover research program and is a common maneuver in test programs conducted by vehicle manufacturers and others. Often the J-Turn is conducted with a fixed steering input (handwheel angle) for all test vehicles. In its 1997–98 testing, NHTSA used a fixed handwheel angle of 330 degrees. In the testing that preceded the NPRM notice, we developed an objective method of specifying equivalent handwheel angles for J-Turn tests of various vehicles, taking into account their differences in steering ratio, wheelbase and linear range understeer properties. (*See* NHTSA's Phase IV report docketed with the NPRM notice as item 38 in Docket No. NHTSA 2001–9663). Under this method, one first measures the handwheel angle that would produce a steady-state lateral acceleration of 0.3 g at 50 mph on a level paved surface for a particular vehicle. In brief, the 0.3 g value was chosen because the steering angle variability associated with this lateral acceleration is quite low and there is no possibility that stability control intervention could confound the test results. Since the magnitude of the handwheel position at 0.3 g is small, it must be multiplied by a scalar to have a high maneuver severity. In the case of the J-Turn, the handwheel angle at 0.3 g was multiplied by eight. When this scalar is multiplied by the average handwheel angle at 0.3 g (observed during NHTSA's 1997–98 rollover research program), the result is approximately 330 degrees. Figure 1 illustrates the J-Turn maneuver in terms of the automated steering inputs commanded by the programmable steering machine. The rate of the handwheel turning is 1000 degrees per second.

To begin the maneuver, the vehicle was driven in a straight line at a speed slightly greater than the desired entrance speed. The driver released the throttle, coasted to the target speed, and then triggered the commanded handwheel input. The nominal maneuver entrance speeds used in the J-Turn maneuver ranged from 35 to 60 mph, increased in 5 mph increments until a termination condition was achieved. Termination conditions were simultaneous two inch or greater lift of a vehicle's inside tires (two-wheel lift) or completion of a test performed at the maximum maneuver entrance speed without two-wheel lift. If two-wheel lift was observed, a downward iteration of vehicle speed was used in 1 mph increments until such lift was no longer detected. Once the lowest speed for which two-wheel lift could be detected was isolated, two additional tests were performed at that speed to monitor two-wheel lift repeatability.

*B. Fishhook Maneuver*

The second maneuver test, the fishhook maneuver, uses steering inputs that approximate the steering a driver acting in panic might use in an effort to regain lane position after dropping two wheels off the roadway onto the shoulder. In the NPRM notice, we described it as a road edge recovery maneuver. As pointed out by some commenters, it is performed on a smooth pavement rather than at a road edge drop-off, but its rapid steering input followed by an over-correction is representative of a general loss of control situation. The original version of this test was developed by Toyota, and variations of it were suggested by Nissan and Honda. NHTSA has experimented with several versions since 1997, and the present test includes roll rate feedback in order to time the countersteer to coincide with the maximum roll angle of each vehicle in response to the first steer.

Figure 2 describes the Fishhook maneuver in terms of the automated steering inputs commanded by the programmable steering machine and illustrates the roll rate feedback. The initial steering magnitude and countersteer magnitudes are symmetric, and are calculated by multiplying the handwheel angle that would produce a steady state lateral acceleration of 0.3 g at 50 mph on level pavement by 6.5. The average steering input is equivalent to the 270 degree handwheel angle used in earlier forms of the maneuver but, as in the case of the J-Turn, the procedure above is an objective way of compensating for differences in steering gear ratio, wheelbase and understeer properties between vehicles. The fishhook maneuver dwell times (the time between completion of the initial steering ramp and the initiation of the countersteer) are defined by the roll motion of the vehicle being evaluated, and can vary on a test-to-test basis. This is made possible by having the steering machine monitor roll rate (roll velocity). If an initial steer is to the left, the steering reversal following completion of the first handwheel ramp occurs when the roll rate of the vehicle first equals or goes below 1.5 degrees per second. If an initial steer is to the right, the steering reversal following completion of the first handwheel ramp occurs when the roll rate of the vehicle first equals or exceeds -1.5 degrees per second. The handwheel rates of the initial steer and countersteer ramps are 720 degrees per second.

To begin the maneuver, the vehicle was driven in a straight line at a speed slightly greater than the desired entrance speed. The driver released the throttle, coasted to the target speed, and then triggered the commanded handwheel input described in Figure 2. The nominal maneuver entrance speeds used in the fishhook maneuver ranged from 35 to 50 mph, increased in 5 mph increments until a termination condition was achieved. Termination conditions included simultaneous two inch or greater lift of a vehicle's inside tires (two-wheel lift) or completion of a test performed at the maximum maneuver entrance speed without two-wheel lift. If two-wheel lift was observed, a downward iteration of vehicle speed was used in 1 mph increments until such lift was no longer detected. Once the lowest speed for which two-wheel lift could be detected was isolated, two additional tests were performed at that speed to check two-wheel lift repeatability.

*C. Loading Conditions*

The vehicles were tested in each maneuver in two load conditions in order to create four levels of stringency in the suite of maneuver tests. The light load was the test driver plus instrumentation in the front passenger seat, which represented two occupants. A heavier load was used to create a higher level of stringency for each test. In our NPRM, we announced that the heavy load would include 175 lb anthropomorphic forms (water dummies) in all rear seat positions. During the test of the 25 vehicles, it became obvious that heavy load tests were being run at very unequal load conditions especially between vans and other vehicles (two water dummies in some vehicles but six water dummies in others). While very heavy passenger loads can certainly reduce rollover resistance and potentially cause special problems, crashes at those loads are too few to greatly influence the overall rollover rate of vehicles. Over 94% of van rollovers in our 293,000 crash database occurred with five or fewer occupants, and over 99% of rollovers of other vehicles occurred with five or fewer occupants. The average passenger loads of vehicles in our crash database was less than two: 1.81 for vans; 1.54 for SUVs; 1.48 for cars; and 1.35 for pickup trucks. In order to use the maneuver tests to predict real-world rollover rates, it seemed inappropriate to test the vehicles under widely differing loads that did not correspond to the real-world crash statistics. Therefore, the tests used to develop a statistical model of rollover risk were changed to a uniform heavy load condition of three water dummies (representing a 5-occupant loading) for all vehicles capable of carrying at least five occupants. Some vehicles were loaded with only two water dummies because they were designed for four occupants. For pickup trucks, water dummies were loaded in the bed at approximately the same height as a passenger in the front seat.

To avoid disruption, the tests were completed under the original loading plan. Then we conducted tests at a 5-occupant heavy load only for those vehicles in which loading differences might influence tip-up. If the vehicle had completed the maneuver without tip-up with more than three water dummies in the rear it was not necessary to retest at a lighter load. Likewise, if the vehicle tipped up in the light load (no water dummies) condition, it was not necessary to retest with three water dummies in the rear. We have never observed a vehicle for which a greater passenger load improved performance in a tip-up test.

### *D. Test Results*

The test results in Table 1 reflect the performance either measured or imputed as described for a heavy-load condition representing 5 occupants except for the Ford Explorer 2DR, the Chevrolet Tracker and Metro that were designed for only four occupants, and the Honda CRV, Honda Civic and Chevrolet Cavalier that could not be loaded to the 5 occupant level without exceeding a gross axle weight rating because of the additional weight of the outriggers.

Note that Table 1 includes some results collected during tests performed with alternative steering angles. Although the steering angles used during these tests were still based on the handwheel angle that would produce a steady-state lateral acceleration of 0.3 g at 50 mph on a level paved surface, the scalars used to calculate the steering angles were smaller. These tests were performed because, for some vehicles, the methods used to calculate the steering inputs used in the J-Turn and/or Fishhook maneuvers can produce "excessive" steering—steering angles so great that maneuver severity is actually reduced (*i.e.*, the lateral force capability of the tires is exceeded). As an example, consider the Ford Ranger 4WD and Aerostar. These vehicles required a reduction of the J-Turn steering scalar from 8.0 to 7.0 (Ranger 4WD) or 6.0 (Aerostar) before J-Turn steering was able to produce two-wheel lift.

TABLE 1.—DYNAMIC MANEUVER TEST RESULTS (THE CHECK MARK INDICATES TIP-UP OBSERVED)

| Veh. group number | Model range/make/model | Nominal static stability factor | Fishhook light (FL) (2 occ.) | Fishhook heavy (FH) (5 occ.) | J-turn light (JL) (2 occ.) | J-turn heavy (JH) (5 occ.) |
|---|---|---|---|---|---|---|
| | '92–'00 Mitsubishi Montero 4WD | 0.95 | ✓ | ✓ | | ✓ |
| 47 | '95–'03 Chevrolet Blazer 2WD | 1.02 | ✓ | ✓ | | ✓ |
| 43 | '95–'01 Ford Explorer 2dr 2WD | 1.06 | | | | |
| 44 | '95–'01 Ford Explorer 4dr 4WD | 1.06 | | ✓ | | |
| 66 | '96–'00 Toyota 4Runner 4WD | 1.06 | | ✓ | | |
| 89 | '93–'97 Ford Ranger p/u 4WD | 1.07 | ✓ | ✓ | ✓ | ✓ |
| 58 | '88–'97 Jeep Cherokee 4WD | 1.08 | | | | |
| 59 | '95–'02 Acura SLX/Isuzu Trooper 4WD | 1.09 | ✓ | ✓ | ✓ | ✓ |
| 70 | '88–'98 Ford Aerostar 2WD | 1.10 | ✓ | ✓ | ✓ | ✓ |
| 74 | '88–'02 Chevrolet Astro 2WD | 1.12 | | ✓ | | |
| 53 | '89–'98 Chevrolet/Geo Tracker 4WD | 1.13 | | ✓ | | |
| 91 | '88–'98 Chevrolet K1500 p/u 4WD | 1.14 | | | | |
| 88 | '93–'97 Ford Ranger p/u 2WD | 1.17 | | ✓ | | ✓ |
| 85 | '97–'02 Ford F–150 p/u 2WD | 1.18 | | | | |
| 54 | '97–'01 Honda CR–V 4WD | 1.19 | ✓ | ✓ | | ✓ |
| 83 | '88–'96 Ford F–150 p/u 2WD | 1.19 | | | | |
| 67 | '88–'95 Dodge Caravan/Plymouth Voyager 2WD | 1.21 | | | | |
| 90 | '88–'98 Chevrolet C1500 p/u 2WD | 1.22 | | | | |
| 68 | '96–'00 Dodge Caravan/Plymouth Voyager 2WD | 1.23 | | | | |
| 73 | '95–'98 Ford Windstar 2WD | 1.24 | | | | |
| 22 | '95–'01 Chevrolet/Geo Metro | 1.29 | | | | |
| 19 | '88–'94 Chevrolet Cavalier | 1.32 | | | | |
| 18 | '91–'96 Chevrolet Caprice | 1.40 | | | | |
| 7 | '88–'95 Ford Taurus | 1.45 | | | | |
| 26 | '92–'95 Honda Civic | 1.48 | | | | |
| Total Tip-ups | | | 6 | 11 | 3 | 7 |

During some Fishhook tests, excessive steering caused some vehicles to reach their maximum roll angle response to the initial steering input before it had been fully completed (this is essentially equivalent to a "negative" $T_1$ in Figure 2). Since dwell time duration can have a significant effect on how the Fishhook maneuver's ability to produce two-wheel lift, we believe that excessive steering may stifle the most severe timing of the counter steer for some vehicles. In an attempt to better insure high maneuver severity, a number of vehicles that did not produce two-wheel lift with steering inputs calculated with the 6.5 multiplier were also tested with lesser steering angles by reducing the multiplier to 5.5. This change reduced the likelihood of excessive steering, and increased the dwell times observed during the respective maneuvers. In the case of the Ford Ranger 4x2, Fishhook maneuvers with steering inputs based on the reduced multiplier were able to produce two-wheel lift. Such lift was not observed when the original steering was used (*i.e.*, when a multiplier of 6.5 was used). We have modified the Fishhook test procedure to include tests at the steering angle determined by the 5.5 multiplier for vehicles that do not tip up using the original steering angle determination.

Each test vehicle in Table 1 represented a generation of vehicles whose model year range is given. Twenty-four of the vehicles were taken from 100 vehicle groups whose 1994–98 crash statistics in six states were the basis of the present SSF based rollover resistance ratings. The vehicle group numbers used to identify these vehicles in the prior notices (65 FR 34998 and 66 FR 3388) are given for convenience. The nominal SSFs used to describe the vehicle groups in the prior statistical studies are given. While there were some variations between the SSFs of the individual test vehicles and the nominal vehicle group SSF values, the nominal SSFs were retained for the present statistical analyses because they represent vehicles produced over a wide range of years in many cases and provide a simple comparison between the risk model presented in this document and that discussed in the previous notices.

The check marks under the various test maneuver names indicate which vehicles tipped up during the tests. Eleven of the twenty-five vehicles tipped up in the Fishhook maneuver conducted in the heavy condition. The heavy condition represented a five-occupant load for all vehicles except the six mentioned above that were limited to a four-occupant load by the vehicle seating positions and GVWR. All eleven were among the sixteen test vehicles with SSFs less than 1.20. None of the vehicles with higher SSFs tipped up in any test maneuver. The fishhook test under the heavy load clearly had the greatest potential to cause tip-up. The groups of vehicles that tipped up in other tests were subsets of the larger group of eleven that tipped up in the fishhook heavy test. There were seven vehicles in the group that tipped up in the J-Turn heavy test, six of which also tipped up in the Fishhook light test. The J-Turn light test had the least potential to tip up vehicles. Only three vehicles tipped up, all of which had tipped up in every other test.

## VI. Rollover Risk Model

In its study of our rating system for rollover resistance (Transportation Research Board Special Report 265), the National Academy of Sciences (NAS) recommended that we use logistic regression rather than linear regression for analysis of the relationship between rollover risk and SSF. Logistic regression has the advantage that it operates on every crash data point directly rather than requiring that the crash data be aggregated by vehicle and state into a smaller number of data points. For example, we now have state data reports of about 293,000 single-vehicle crashes of the hundred vehicle make/models (together with their corporate cousins) whose single-vehicle crashes we have been tracking in six states. The logistic regression analysis of this data would have a sample size of 293,000, producing a narrow confidence interval on the repeatability of the relationship between SSF and rollover rate. In contrast, the linear regression analysis operates on the rollover rate of the hundred vehicle make/models in each of the six states. It produces a maximum sample size of only 600 (100 vehicles times six states) minus the number of samples for which fewer than 25 crashes were available for determining the rollover rate (a data quality control practice). Confidence limits computed for a data sample size of 600 will be much greater than those based on a sample size of 293,000. On average, each sample in the linear regression analysis was computed from over 400 crash report samples. However, ordinary techniques to compute the confidence intervals of linear regression results do not take into account the actual sample size represented by aggregated data. The statistical model created to combine SSF and dynamic test information in the prediction of rollover risk was computed by means of logistic regression as recommended by the NAS. Logistic regression is well suited to the correlation with crash data of vehicle properties that include both continuous variables like SSF and binary variables like tip-up or no tip-up in maneuver tests.

We had previously considered logistic regression during the development of the SSF based rating system (66 FR 3388, January 12, 2001, p.3393), but found that it consistently under-predicted the actual rollover rate at the low end of the SSF range where the rollover rates are high. The NAS study acknowledged this situation and gave the example of another analysis technique (non-parametric) that made higher rollover rate predictions at the low end of the SSF scale. In the NPRM, we discussed our plan to first examine ways to improve the fit of the logistic regression model to the actual rollover rates in the simpler model with SSF as the only vehicle attribute before expanding the logistic regression model to predict rollover rates using maneuver test results and SSF as vehicle attributes. In this way, the addition of maneuver test results is more likely to have an effect that reflects the additional information they represent on rollover causation.

Appendix II discusses the details of seeking a mathematical transformation of SSF to improve the accuracy of logistic regression models. We found that logistic regression on the transformation "Log(SSF–0.9)" rather than on SSF directly computed a risk model whose predictions of rollovers per single-vehicle crash more closely matched the relationship between vehicle SSF and actual rollover rates observed in state crash data. We sought to optimize the accuracy of the predictions in the SSF range between 1.0 and 1.25 that includes the vehicles with the highest rollover rates, even at the expense of accuracy in predicting the low rollover rates at high end of the SSF scale. The risk model that resulted from this exercise is equivalent to the SSF-based rating system used for 2001–2003 NCAP rollover resistance ratings except that it was computed using logistic regression rather than linear regression as the statistical technique. Figure 3 compares the logistic regression model and linear regression model formerly used for NCAP ratings. The linear regression model is not in the form of a straight line because it also operated on a transformation of SSF (Log(SSF) in this case). The logistic regression model is the more accurate at lower half of the SSF range, and the linear regression model is the more accurate at the upper half of the SSF range. The two curves are quite similar.

A good logistic regression risk model using SSF only was the starting point for models using dynamic variables together with SSF. The dynamic maneuver test results (tip-up or no tip-up in each maneuver/load combination in Table 1) were used as four binary dynamic variables in the logistic regression analysis. The dynamic variables were entered in addition to SSF to describe the vehicle. The same driver and road variables from state crash reports discussed above were used. The state crash report data for twenty four of the vehicles used in the logistic regression analysis with dynamic maneuver test variables was a subset of the database of 293,000 single-vehicle crashes described above. One extra vehicle was added for the maneuver tests that was not among the 100 vehicle groups we had studied previously, but state crash report data from the same years and states was obtained for it. However, the database with SSF and dynamic maneuver test was much smaller than the 293,000 sample size available for the logistic regression model with SSF only. Its sample size was 96,000 single-vehicle crashes of 25 vehicles including 20,000 rollovers. Appendix II contains a more detailed discussion.

First, we tried each dynamic variable separately in conjunction with SSF. The models using variables for performance in the Fishhook heavy and J-Turn heavy maneuvers predicted a greater rollover risk for those vehicles that tipped up in the maneuver test. However, the models using variables for performance in the Fishhook light and J-Turn light maneuvers predicted a greater rollover risk for vehicles that did *not* tip up.

We do not believe vehicles that tip up in the least severe maneuvers are actually safer than those that do not tip up. A more rational interpretation is that the numbers of vehicle tipping up in these maneuvers were too few to establish a definitive correlation. Only three vehicles tipped up in the J-Turn light maneuver, and six vehicles tipped up in the Fishhook light maneuver. Only one more vehicle tipped up in the J-Turn heavy maneuver than in the Fishhook light, and the prediction of the model with J-Turn heavy was consistent with expectations that tip-up in the test predicts greater rollover risk. However, the extra vehicle in the J-Turn heavy tip-up group was the Ford Ranger 2 WD with a very large sample size of over 8,000 single-vehicle crashes (nearly 10 percent of the entire data base).

Next we computed a logistic regression model combining SSF with the dynamic variables for both maneuvers, Fishhook heavy and J-Turn heavy, that were observed to have a directionally correct result when entered into the model individually. The variable for J-Turn heavy was rejected by the logistic regression program as not statistically significant in the presence of the Fishhook heavy variable. In other words, the predictions based on tip-up in the Fishhook heavy maneuver do not change whether or not the vehicle also tips up in the J-Turn heavy maneuver.

Figure 4 shows the final model that uses Fishhook heavy as the only necessary dynamic variable. This model has a risk prediction for vehicles that tip up in the dynamic maneuver tests based on the greatest number of vehicles possible in our 25 vehicle data base. All 11 vehicles that tipped up in any maneuver are represented on the tip-up curve, and the 14 vehicles without tip-up are represented on the other curve. The risk curve in Figure 4 representing vehicles that tipped up in the Fishhook heavy maneuver is very similar to the logistic regression model based on SSF only in Figure 3 (that was based on the rollover rates of 100 vehicles). This result is logical because the SSF only model was optimized for best fit in the 1.00 to 1.25 SSF range that included all vehicles tipping up in dynamic maneuver tests. Also, the fact that the risk curve of the logistic regression model in Figure 3 that was based on the SSF of 100 vehicles closely matches the risk curve in Figure 4 that was based on 11 vehicles that tipped up in the dynamic tests suggests that the curve in Figure 4 is robust. However, the small difference in Figure 4 between the risk curve for vehicles that tip up in the dynamic test and the risk curve for those that do not tip up suggests that the predictive power of tip-up in the dynamic test may not be great.

Our testing and logistic regression analysis was sufficient to assign a greater rollover risk to vehicles that tipped up in the most severe maneuver than to those that did not tip up at all. However, the extra risk was small, and we were not able to distinguish a rollover risk difference between vehicles that tipped up in the less severe Fishhook maneuver with a two occupant load from those that tipped up only with a five occupant load. In general, vehicles that tip up in the Fishhook maneuver with a two occupant load also tip up at a slower entry speed in the Fishhook maneuver with a five occupant load than those that do not. Therefore, our data does not allow us to distinguish rollover risk differences between vehicles on the basis of maneuver entry speed for tip-up. The objective of using different load conditions and different maneuvers instead of different speeds in a single maneuver to provide a range of test severity was to reduce the sensitivity of the result to extraneous factors such as tire wear.

It is noteworthy that the final rollover risk model required results from only the fishhook maneuver. This is an advantage from the standpoint of minimizing the practical problems of the effects of tire wear during a test series and of deviations from uniformity of surface friction at a test facility. The fishhook maneuver produces less wear on the test tires and requires only about 2 or 3 lane widths of uniform test surface versus 10 or more lane widths for the J-Turn maneuver. The commenters also considered it more representative of a real driving situation than the J-Turn.

## VII. Comments to the NPRM Notice and Agency Response

We received 39 comments to the NPRM notice from vehicle manufacturers, equipment suppliers, test labs, public interest groups, the National Transportation Safety Board, the Insurance Institute for Highway Safety, attorneys, and members of the public. Mainly, the comments addressed whether the static and dynamic measurements should be used for separate ratings of rollover resistance or for a combined rating based on a risk model. The nature of the dynamic maneuver tests, testing of 15-passenger vans, and several practical testing issues such as the extraneous effects of tire wear, surface condition and ambient temperature were also addressed. The notice also introduced the related subject of handling ratings that was not part of the TREAD Act requirements. We received a number of valuable comments on handling tests, and we are still soliciting information. However, the subject of this notice is confined to the TREAD Act requirements for dynamic rollover ratings.

### *A. Combined or Separate Rollover Resistance Ratings*

The main question posed in the NPRM notice was whether the rollover resistance ratings should reflect the combined statistical power of SSF and dynamic tests for predicting rollover risk or whether ratings of rollover risk using SSF alone should continue, supplemented with a qualitative comparison of dynamic test performance. The document gave alternative A as a risk model determined by logistic regression analysis of state crash reports of single-vehicle crashes for about 25 vehicles with known SSF and dynamic test results. That process led to the risk model described in Section VI, however the mathematical calculation of the model could not be performed until the completion of a lengthy dynamic test program. Alternative B in the notice was a continuation of rollover risk prediction using SSF-only plus qualitative separate dynamic scores of A, B, C, D, or E signifying the number of maneuvers in which the vehicle tripped up without a risk interpretation.

Commenters representing TRW Automotive, National Automobile Dealers Association (NADA), General Motors (GM), Alliance of Automobile Manufacturers (Alliance), Association of International Automobile Manufacturers (AIAM), Insurance Institute for Highway Safety (IIHS), Bosch, Consumers Union, Advocates for Highway and Auto Safety (Advocates), Toyota, Continental-Teves and Public Citizen remarked directly on the question of combined versus separate use of SSF and dynamic maneuver tests in rollover resistance ratings. Except for Continental-Teves and Bosch, the commenters were in favor of ratings that combined the SSF and dynamic maneuver tests in a single rating. Consumers Union specifically supported the logit risk model operating on a moderate risk scenario (in which rollover rates vary in the approximate range of 0.075 to 0.55 across the range of vehicles) as a way of combining the SSF and dynamic maneuver tests. It commented that using the risk model it described was consistent with the recommendations of the NAS study. We believe the risk model we have developed is consistent with recommendation of NAS and Consumers Union. It is the logit model with the risk scenario (of demographic and road condition variables) that represents the average crash conditions of 293,000 actual single-vehicle crashes.

It produces predicted rollover rates in the range of 0.09 to 0.50 for vehicles ranging from tip-up to no tip-up in maneuvers and from 1.0 to 1.55 in SSF.

The other commenters in favor of combined ratings were primarily concerned that separate ratings would be too confusing to serve as consumer information. They believed a combined rating was the only viable option, but they did not comment specifically on the means used by NHTSA to develop the combined risk model. IIHS and the Alliance (along with Carr Engineering) suggested that another comment period following the notice containing the actual model (as opposed to the example given in the NPRM notice) would be necessary. GM suggested that the risk model be developed through a collaborative effort along the lines of the Motor Vehicle Safety Research Advisory Committee, and the Alliance suggested a working-level dialog between NHTSA and the auto industry to develop the risk model. TRW supported a single rating that would be computed on the basis of the SSF only model with a predetermined number of stars added or subtracted for dynamic maneuver performance (determined without a statistical relationship to risk). Advocates expressed wariness that the combined rating could be misleading to consumers unless it corresponded to real-world rollover rates. Public Citizen preferred the combined rating developed from a risk model. It was concerned that consumers would focus more attention on the dynamic maneuvers in separate ratings although the tests represent an event (on-road untripped rollover) that occurs in less than 5 percent of actual rollover crashes.

Continental-Teves and Bosch prefer separate ratings for SSF and dynamic maneuver tests. Continental-Teves stated that "the relative effects of SSF and dynamic performance are not well understood, and may not be the same for every vehicle or every driver." Bosch stated that "static and dynamic ratings should be separate, as they are both equally important with regards to indicating stability and safety of the vehicle." Bosch further explained that " a combined rating may not adequately show the influence of such systems [Electronic Stability Control and Rollover Mitigation] which in turn would not encourage manufacturers to add systems to vehicles that increase overall vehicle safety in potential rollover as well as many other situations."

### *B. Crash Avoidance Technologies*

Some of the stated expectations of the commenters about rollover resistance ratings are unrealistic. The rollover resistance ratings predict the likelihood of a single-vehicle crash becoming a rollover. They do not predict the likelihood of the vehicle becoming involved in a single-vehicle crash. Similarly, the frontal and side NCAP crashworthiness ratings do not predict the likelihood of the vehicle striking an object head-on or being struck from the side. The Alliance comment anticipates the dilemma. While conceding that SSF is strongly correlated with a tripped rollover once the vehicle is already off-road, it states that "the likelihood of being involved in a single-vehicle crash in the first place "particularly one involving off-road excursion "is influenced much more by demographic and environmental influences than is the scenario examined for SSF purposes." The scenario used in the combined risk model is the same scenario used in the SSF model, namely the average demographic and environmental variables reported by the states for the entire 293,000 single-vehicle crash data base we have collected. We think this is the best scenario to characterize single-vehicle crashes.

The Alliance is concerned that our model "may fail to account for potentially beneficial technologies for avoiding single-vehicle and rollover crashes, such as electronic stability control and variable ride high suspension systems." Its concern is unnecessary for variable ride-height suspension systems, which will be tested in the highway rather than off-road height for both SSF and dynamic maneuver tests, and the technology will certainly improve the rating of vehicles so equipped.

However, the Alliance is right that the model does not predict the risk of a single-vehicle crash. NHTSA has been very clear in public notices, consumer information and web site presentations that neither the SSF risk model nor the proposed combined SSF and dynamic maneuver risk model predict the risk of having a single-vehicle crash. From the standpoint of rollover resistance, single-vehicle crashes are a measure of exposure. The prediction is of the risk of a rollover resulting from the exposure of the vehicle to a single-vehicle crash. The risk of rollover in the event of a single-vehicle crash is strongly influenced by vehicle properties, but the vehicle properties of modern vehicles have far less influence in comparison to demographic and environmental factors regarding the risk of a single-vehicle crash in the first place. However, electronic yaw stability control may provide a real-world reduction in single-vehicle crashes.

We have been optimistic about the potential of electronic yaw stability control to reduce single-vehicle crashes. NHTSA's consumer information identifies its availability as standard or optional equipment on individual vehicles and explains how it operates to help a driver maintain control in extreme circumstances. One of the reasons we are exploring the possibility of NCAP handling ratings is to describe the effect of yaw stability control on handling predictability. However, the technology has not been in widespread use long enough to produce much crash evidence for the evaluation of its real-world effectiveness in preventing single-vehicle crashes. Our previous attempts at evaluating its effectiveness were thwarted by insufficient data.

Part of the motivation for the NAS study of NHTSA's SSF-based rollover resistance ratings was the Alliance's concern that yaw stability control was not being considered. In its public oral presentation to the NAS study committee in May 2001, NHTSA said it did not expect yaw stability control to have a large effect on the risk of rollover given a single-vehicle crash. In its view, the large majority of rollovers were the result of various types of tripping, and SSF represented the most important vehicle attributes in those circumstances. NHTSA believes that the greatest potential effect of yaw stability control was in reducing single-vehicle crashes in the first place. Therefore, we suggested to the committee that rather than trying to predict rollovers per single-vehicle crash with dynamic maneuver tests, we should keep SSF for that purpose and adjust the comparative risk for vehicles with yaw stability control by the effect of yaw stability control to reduce exposure to single-vehicle crashes. However, establishing the effectiveness of yaw stability control would require data not available for at least two or three more years. Neither the NAS committee nor the Alliance, which was active in providing the committee information, expressed interest in this suggestion. But the present comments indicate that finding a way to include the crash avoidance potential of yaw stability control is a principal concern of the Alliance and several suppliers of these systems.

IIHS's comment also shows an expectation of more than what is possible for a rollover resistance rating. It discusses a comparison of the 1997 Jeep Grand Cherokee and 1997 Toyota 4Runner made in one its reports. In that report, the Toyota had four times the number of fatal rollovers per 100,000 registered vehicles as the Jeep, but they had very similar SSFs. They also had very similar rollover rates in terms of rollovers per single-vehicle crash that were consistent with their SSFs. IIHS expects a good dynamic rating to show a large difference between the Grand Cherokee and the 4Runner. That will not be possible because differences in dynamic maneuver test performance predict only small differences in rollover rate, and, in fact, there is not a large difference in rollover rate between these vehicles in terms of rollovers per single-vehicle crash in our six state crash data base. The difference is in the definition of rollover rate. A rollover rate in terms of fatal rollovers per 100,000 vehicles depends on the rate of single-vehicle crashes per 100,000 vehicles and on the occurrence of a fatality in the rollover as well as on the rate of rollover per single-vehicle crash. The first two of these factors depend primarily on demographic and environmental influences and can mask actual differences or similarities between vehicles as in this case. Neither vehicle had yaw stability control, which would have created a plausible vehicle-related difference in single-vehicle crash rate. The difference in fatality rate could involve crashworthiness features, or particularly in the case of rollover, it could merely reflect the seat belt wearing habits of a risk taking demographic that also experienced a higher rate of single-vehicle crashes. The rate of rollovers per single-vehicle crash is much less sensitive to demographic influences than is the rate of fatal rollovers per 100,000 vehicles.

Carr Engineering and Suzuki commented that the agency was not following the recommendations of the NAS study by performing J–Turn and Fishhook maneuver tests. They believe that the NAS recommended handling tests to assess loss of control potential rather than limit maneuvers to assess the resistance of the vehicle to actual on-road tip-up. We agree that the language of the NAS study report is somewhat ambiguous. That is why we included in our NPRM notice the clarification the NAS study panel gave us during the presentation of the report to NHTSA in response to our direct questions about J–Turn and Fishhook tests versus handling tests. The NAS study committee clarified that it envisioned dynamic maneuver tests as limit maneuvers where loss of control and actual on-road vehicle tip-up can be expected for vulnerable vehicles. The NAS study panel stated it was not in a position to recommend a specific test because that would require study of discriminatory capability, repeatability and other properties, but J–Turns and Fishhooks were of the type of tests it had in mind. Two outside experts in vehicle dynamics and testing reviewed our test plan before the Phase VI test of the 25 vehicles. One had been a member of the NAS study committee. Once again, we were assured that our tests were consistent with the NAS recommendations.

We believe that both our test selection and our analysis method of developing a rollover risk model to combine SSF and dynamic test results are entirely consistent with the recommendations of the NAS study and therefore appropriate to satisfy the requirements of the TREAD Act. We agree that it is important to inform consumers of the effectiveness of yaw stability control in reducing single-vehicle crashes, and we will determine its effectiveness from crash report data as sufficient data becomes available.

*C. The J–Turn and Fishhook Maneuvers*

There were a number of comments regarding the J–Turn and Fishhook test protocols from the Alliance, GM, Toyota, Honda, Nissan, Renfroe Engineering, Carr Engineering, Mechanical Systems Analysis Inc, and Automotive Testing Inc. In addition, Ford made a detailed presentation elaborating on some of the subjects introduced in the Alliance comment. The Ford presentation material was placed in Docket NHTSA–2001–9663.

A number of the commenters objected to the J–Turn maneuver because they thought it was not representative of real driving, involved too fast a steering movement, or was redundant. Since its results were not used in the risk model, we agree that it is redundant. As a result, we are no longer planning to use it in the NCAP testing program.

Except for Suzuki, Carr Engineering and Ford, those who commented on the maneuver tests supported the Fishhook maneuver. Carr Engineering and Advocates objected to calling the Fishhook maneuver a road edge recovery test as we had done in the NPRM notice. While the Fishhook maneuver includes steering commands like a crash involving road edge recovery, it is performed on a smooth uniform surface instead of one with vertical drop-offs and friction coefficients differences that exist at road edges. To accommodate these concerns, we will refer to the maneuver as the Fishhook.

*D. Tire Wear*

The effect of tire wear on test results and the tire changing protocol was addressed by several commenters. Tire shoulder wear during limit maneuver tests is much more severe than in ordinary driving and has the effect of increasing the lateral acceleration capability of the vehicle. After a number of tests, the tire wear causes the vehicle to tip up more easily, and there is concern that a vehicle with test-worn tires does not represent a typical street driven vehicle. In the 25 vehicle tests, new tires were used for each maneuver (FH, FL, JH, JL) which limited the tires to no more than 6 runs in each direction (4 for Fishhooks) before detecting tip-up if it occurred.

Ford gave an example using a Ford Ranger 4WD that was apparently known to tip up at 53 mph with worn tires in a J–Turn test. The vehicle was equipped with new tires and tested repeatedly at 53 mph. It did not tip up during the first three runs, but during the fourth run a large increase in lateral acceleration and sideslip angle occurred and the vehicle tipped up. It continued this behavior for two subsequent runs, and the tires exhibited a large amount of shoulder wear after only six runs. We have noticed similar tire wear effects, but not in so few runs. The J–Turn tests are of much longer duration than Fishhook tests and produce more wear per run. Also tests run at lower speeds approaching tip-up speed produce less wear than tests performed at a higher speed just below the tip-up speed. Ford's example of a worst case in which the tire wear of just three runs changed vehicle behavior from no tip to tip-up is an effective illustration of the tire wear problem.

We believe this problem is much less acute for Fishhook tests. We performed a similar experiment using a 2001 Ford Explorer 4 door 4WD that we knew would tip up at 40 mph on worn tires in a Fishhook maneuver. We performed 18 test runs without tip-up and then experienced a 20 degree tip-up against the outriggers on the nineteenth run. We performed three more runs and experienced two more tip-ups. Renfroe Engineering also commented about tire wear effects citing an UMTRI study in which lateral tire forces remained steady for about 10 runs and then increased to a maximum force at about 20 runs.

Ford suggested a tire change protocol to limit tire wear. We intend to test a number of vehicles in the summer of 2003. During these tests we will use the tire change protocol of Appendix I because we believe this appropriately limits the effect of tire wear. However, we intend to confirm tip-ups using new (broken in but not worn) tires when appropriate to make sure that the vehicle scores have not been affected by tire wear. We will consider the results of this exercise in deciding whether any changes in the tire change protocol are necessary.

*E. Pavement Temperature*

The Alliance and Toyota commented on the potential effect of pavement temperature on Fishhook maneuver results. Toyota has observed increases in pavement friction as an apparent consequence of increases in pavement temperature. It also supplied a computer simulation of Fishhook tests that showed a large decrease in the speed at tip-up with increases in surface friction. Taken together, Toyota's information predicts a decrease in tip-up speed in a Fishhook maneuver of over 15 mph for a 70 degree F increase in pavement temperature. While the risk model for ratings does not depend on tip-up speed, the temperature effects predicted by Toyota would prevent most of the vehicles that tipped up in a summer test from having tip-up in a winter test. NHTSA ran a number of tests to evaluate the temperature sensitivity of J–Turn and Fishhook tests (NHTSA Technical Report "Testing to Determine the Effects of Ambient Temperature on Dynamic Rollover Testing", docketed with this notice). We tested the 2001 Toyota 4Runner 4WD (with and without yaw stability control enabled) and the 2001 Chevrolet Blazer 2WD on the same test track during cold, moderate and hot ambient temperature. The difference between cold and hot ambient temperature was about 60 degrees F. We do not have pavement temperatures, but there is no reason to believe that the range of pavement temperature is less than the range of ambient temperature. The whole test procedure including the determination of handwheel angles based on the 0.3g steady state curve was repeated at each temperature. The results are given in Table 2. Every test that failed to cause tip-up in cold weather also failed to cause tip-up in hot weather, and the two tests that caused tip-up in hot weather also caused tip-up in cold weather. Thus, the temperature effect predicted by the commenters did not occur. The tip-up speeds for the Blazer in the right and left Fishhooks repeated to within 1 mph despite differences in ambient temperature of 60 degrees F, seasonal differences in pavement surface, and the use of three different sets of tires. The only temperature effect observed was that the Blazer tipped up in the J–Turn in cold weather but did not in the moderate and hot weather tests. This is the opposite of the temperature effect predicted by the commenters and occurred during a maneuver we no longer intend to use. We do not think it is necessary to set tight surface temperature limits on the test protocol as suggested by the commenters.

TABLE 2.—RESULTS FROM NHTSA J-TURN AND FISHHOOK TESTS AT VARIOUS AMBIENT TEMPERATURE CONDITIONS.

| Test vehicle and configuration | Test maneuver | Test condition | Ambient temperature (°F) | Commanded handwheel angle (degrees) | Initial Steer Left: Wheel lift, front/rear (inches) Front | Initial Steer Left: Wheel lift, front/rear (inches) Rear | Initial Steer Left: Maneuver entrance speed (mph) | Initial Steer Right: Wheel Lift, front rear (inches) Front | Initial Steer Right: Wheel Lift, front rear (inches) Rear | Initial Steer Right: Maneuver entrance speed (mph) |
|---|---|---|---|---|---|---|---|---|---|---|
| Toyota 4Runner, VSC disabled | NHTSA J-Turn[1] | Cold | 30 | 345 | 0 | 0 | 62.1 | 0 | 0 | 61.7 |
| | | Moderate | 79 | 354 | 0 | 0 | 60.4 | 0 | 0 | 60.0 |
| | | Hot | 87 | 358 | 0 | 0 | 61.8 | 0 | 0 | 60.3 |
| | Fishhook[2] | Cold | 32 | 280 | 1 | 0 | 51.1 | 0 | 1 | 51.7 |
| | | Moderate | 74–73 | 287 | 0 | 0 | 48.0 | 0 | 0 | 48.5 |
| | | Hot | 89 | 290 | 1 | 0 | 51.4 | 0 | 0 | 50.8 |
| Toyota 4Runner, VSC enabled | NHTSA J-Turn[1] | Cold | 28 | 345 | 0 | 0 | 61.8 | 0 | 0 | 62.4 |
| | | Moderate | 75 | 354 | 0 | 0 | 59.4 | 0 | 0 | 58.2 |
| | | Hot | 90 | 358 | 0 | 0 | 61.9 | 0 | 0 | 61.6 |
| | Fishhook[2] | Cold | 31 | 280 | 0 | 0 | 51.3 | 0 | 0 | 51.7 |
| | | Moderate | 72 | 287 | 0 | 0 | 48.8 | 0 | 0 | 50.1 |
| | | Hot | 90 | 290 | 0 | 0 | 50.7 | 0 | 0 | 51.3 |
| Chevrolet Blazer | NHTSA J-Turn[1,3] | Cold | 29 | 381 | 5–8 | 5–8 | 58.0 | 5–8 | 5–8 | 54.8 |
| | | Moderate | 83 | 401 | 0 | 0 | 60.9 | 0 | 0 | 62.2 |
| | | Hot | 86 | 392 | 0 | 0 | 60.3 | 0 | 0 | 59.4 |
| | Fishhook[2,3] | Cold | 30 | 309 | 5–8 | 5–8 | 40.2 | 2–3 | 2–3 | 39.1 |
| | | Moderate | 74 | 326 | 3–4 | 3–4 | 40.3 | 4–5 | 4–5 | 40.1 |
| | | Hot | 90 | 319 | 2–3 | 2–3 | 39.4 | 2–3 | 2–3 | 38.8 |

[1] NHTSA J-Turn maximum nominal entrance speed was 60 mph.
[2] Fishhook maximum nominal entrance speed was 50 mph.
[3] Two-wheel lift ≥2 inches was observed during tests highlighted in bold.

*F. Surface Friction*

A practical problem for the repeatability of any limit maneuver test is the possibility that the surface friction properties of the test track will change. Ford commented that computer simulations of several of its SUVs showed that a change in surface coefficient of 0.05 would change the tip-up speed in a fishhook test by as much as 12 mph in one example (6 mph and 4 mph respectively for two other example vehicles). It also commented that a seasonal variation in surface coefficient of 0.05 could be typical of test tracks, and that its own test track exhibited a long-term trend of an increase in coefficient of 0.02 per year (which would change the tip-up speed of the first example vehicle by 8 mph in Ford's simulation). Ford's simulations are even more pessimistic than Toyota's regarding the possibility of repeatable Fishhook tip-up speeds given normal variations in surface properties and temperatures. However, we have not observed these large variations in tip-up speed in actual tests. The very close repeatability of tip-up speed for the Blazer in Table 2 extended over likely seasonal changes in the pavement as well as changes in ambient temperature.

Additionally, NHTSA performed a study using the same 4Runner and Blazer mentioned above for J-Turn and Fishhook tests at Daimler Chrysler's Arizona Proving Grounds (APG) and General Motors Desert Proving Grounds (DPG) as well as TRC of Ohio, where our maneuver test development has been conducted (NHTSA Technical Report "Testing to Determine the Effects of Surface Variability on Dynamic Rollover Testing", docketed with this notice). Table 3 shows the peak and slide braking coefficients (multiplied by 100) measured at these facilities.

TABLE 3.—FRICTION NUMBERS FOR ALL TEST FACILITIES

| Test facility | Peak braking coefficient | | Skid number | |
|---|---|---|---|---|
| | Dry | Wet | Dry | Wet |
| TRC | 94–96 | 69–83 | 81–84 | 47–54 |
| DPG | 86–93 | 74–77 | 83–85 | 60–64 |
| APG | 90–93 | 75–80 | 81–84 | 56–59 |

Table 4 shows the results of the maneuver tests. As in Table 2, the vehicles were loaded with the equivalent of a 2-occupant load, like the light load condition of the 25 vehicle test. The 4Runner did not tip up at TRC and it did not tip up at the other facilities. The Blazer did not tip up in the J–Turn at TRC, but it did at the other facilities. We do not think that this is a result of the surface coefficient of friction (due to the similarities of the ranges) but rather due to the greater degree of vertical irregularities and pavement cracks at DPG and APG than at TRC. Tip-up is often triggered by vertical oscillations of the vehicle suspension during high cornering forces in maneuver tests. DPG had the most vertical surface irregularities that caused the Blazer to tip up most easily. The Blazer tipped up in the Fishhook at TRC, and it also tipped up in the Fishhook at the other facilities. Again, the tip-up speeds were lower at APG and DPG, which would be expected due to the greater surface irregularities.

TABLE 4.—RESULTS FROM NHTSA J-TURN AND FISHHOOK TESTS

| Test vehicle and configuration | Test maneuver | Test facility | Commanded handwheel angle, deg | Initial steer left | | Initial steer right | |
|---|---|---|---|---|---|---|---|
| | | | | Moderate or major lift<br>Yes/No | Maneuver entrance speed, mph | Moderate or major lift<br>Yes/No | Maneuver entrance speed, mph |
| Toyota 4Runner, VSC enabled | NHTSA J-Turn [1] | TRC | 354 | No | 58.21 | No | 59.29 |
| | | DPG | 402 | No | 61.56 | No | 61.21 |
| | | APG | 362 | No | 61.68 | No | 62.11 |
| | Fishhook [2] | TRC | 287 | No | 48.75 | No | 50.13 |
| | | DPG | 327 | No | 53.05 | No | 50.94 |
| | | APG | 294 | No | 52.63 | No | 51.44 |
| Toyota 4Runner, VSC disabled | NHTSA J-Turn [1] | TRC | 354 | No | 60.4 | No | 60.00 |
| | | DPG | 402 | No | 60.97 | No | 61.63 |
| | | APG | 362 | No | 62.38 | No | 62.27 |
| | Fishhook [2] | TRC | 287 | No | 49.84 | No | 49.79 |
| | | DPG | 327 | No | 52.20 | No | 51.93 |
| | | APG | 294 | No | 51.04 | No | 51.14 |
| Chevrolet Blazer | NHTSA J-Turn [1] | TRC | 401 | No | 60.90 | No | 62.27 |
| | | DPG | 382 | Yes | 49.80 | Yes | 44.90 |
| | | APG | 395 | Yes | 57.36 | Yes | 58.68 |
| | Fishhook [2] | TRC | 326 | Yes | 40.32 | Yes | 40.09 |
| | | DPG | 311 | Yes | 37.80 | Yes | 38.01 |
| | | APG | 321 | Yes | 35.52 | Yes | 38.54 |

[1] NHTSA J-Turn maximum nominal entrance speed is 60 mph.

[2] Fishhook maximum nominal entrance speed is 50 mph.

We recognize the potential difficulties caused by changes in surface friction coefficient, and we have tried to minimize them. We have observed the Fishhook maneuver to be less sensitive to surface conditions than the J-Turn, and we have used changes in vehicle load condition rather than changes in tip-up speed to signify degrees of test severity in a way least likely to be influenced by surface coefficient. None of the changes of pavement and temperature in our test experience has caused a change in the Fishhook result (tip-up or no tip-up) for a vehicle. We believe the comments based on computer simulation overstate the sensitivity observed in our actual tests.

## *G. Steering Reversal*

Honda commented that using a roll rate measurement within 1.5 degrees/sec of a zero crossing as shown in Figure 2 to trigger the reverse steering in a fishhook maneuver occasionally leads to an unusually long dwell time ($T_1$) for certain vehicles at certain load conditions. It suggested setting a default value for dwell time to force a reverse steering action if the absolute value of the vehicle roll rate stayed too long at a value that was very low but not low enough to trigger reversal. It explained that tests in which excessive dwell times occurred would be less severe and possibly not cause a tip-up that would have occurred with a shorter dwell.

Automotive Testing Inc. commented at length on the same phenomenon. It observed that the low but steady roll rate above 1.5 degrees/sec that can delay the triggering of steering reversal is a result of tire deflections continuing the roll motion of the whole vehicle after the point of maximum roll of the suspension system. It believes that a default trigger negates the design of the maneuver to let the vehicle motions select the steering response, but describes some ways of using filtering of the roll rate signal to cause the steering to trigger earlier in these cases. But it acknowledges that letting the vehicle react to the actual roll motion of the whole vehicle rather than to a roll signal distorted by signal processing may be preferable.

At this point we are preserving the consistent application of the fishhook steering algorithm. We do not believe that commenters have presented us a substantive reason to depart from this application. If the vehicle tips up despite a long dwell time, there is no change in test result. If the vehicle does not tip, it will be retested with a reduced steering angle according to the current procedure, which may change the roll frequency harmonics and dwell time. We will observe the steering reversal dwell times during the first group of tests and, if necessary, reconsider the commenter's observations on this issue.

### *H. Fifteen-Passenger Vans*

The National Transportation Safety Board, Public Citizen and others commented on the rollover issues surrounding fifteen-passenger vans. NHTSA agrees that it is important to investigate the commenters' concerns about the rollover susceptibility of fifteen-passenger vans. To do this, we will conduct an evaluation of fifteen-passenger vans' rollover susceptibility at different loading conditions and evaluate available electronic stability control systems on these vehicles.

### *I. Tip-up Criterion*

Mechanical Systems Analysis, Inc. and several other commenters suggested that the tip-up criterion of 2 inches simultaneous wheel lift is too conservative. It recommended a criterion of 20 degrees body roll instead because suspension bouncing on test surface irregularities could influence performance under our criterion. Other similar recommendations were given for body roll angles between 15 and 20 degrees. The 2 inch wheel lift criterion is met at about 11 degrees of body roll on average.

NHTSA's tests were performed on a very smooth test area at TRC of Ohio. The tip-up criterion maximized driver safety and minimized tire wear by allowing us to increase speed in 5 mph increments with a reasonable expectation of avoiding sudden violent tip-ups that could "pole-vault" the vehicle on its outriggers. However, we observed tip-ups at lower than expected speeds during tests at other facilities (DPG and APG as described above) that were probably influenced by surface irregularity as described by the commenter. We believe that our tip-up criterion is appropriate for an excellent facility like TRC, but we agree that the criterion should be revisited if NCAP tests were to take place at a facility with a more irregular surface.

### *J. Testing of Passenger Cars v. Light Trucks*

Consumers Union and IIHS recommended that we not test passenger cars in order to devote all the available time and resources for maneuver tests to light trucks. We agree that it is very unlikely that passenger cars will tip up in the maneuver test. We have tested passenger cars at the low end of the SSF range for passenger cars without observing any tip-ups. It seems reasonable to rate passenger cars using the "no tip-up" curve of the risk model along with SSF measurements. However, we prefer to track whether this continues to be true. Hence, we will continue to test a few passenger cars each year at the low end of the SSF range to reinforce the "no tip-up" assumption. Therefore, two passenger cars are listed in Table 5.

### *K. Testing With Stability Control Systems*

Toyota suggested that NHTSA should selectively choose vehicles with optional equipment that assists the driver in controlling the vehicle such as electronic yaw stability control, while in a previous comment Honda suggested the opposite policy. Honda believed that even a vehicle with standard stability control should be tested with it turned off if the vehicle has an "off" switch. It has been NHTSA's policy for rollover resistance ratings that we test vehicles most representative of those sold. Also, we are interested in the potential safety benefits of electronic yaw stability control and have alerted consumers to its purpose and availability on individual models in our present consumer information. Therefore, when it is standard equipment or optional equipment found on the majority of vehicles of a particular model, we will test with stability control turned on and report that the test vehicle was so equipped. Also, if the market penetration of a stability control option is too low for NHTSA to choose it for inclusion on our test vehicle, we will consider optional NCAP tests at the manufacturer's expense.

## VIII. Final Form for Rollover Resistance Ratings—Alternative I

### *A. Combined Ratings*

NHTSA will use the statistical model shown in Figure 4 to combine the vehicle's SSF measurement and its performance in the Fishhook maneuver with 5-occupant loading as a prediction of its rollover rate per single-vehicle crash. The predicted rollover rate will be translated into a star rating in the same way used in the present rollover resistance ratings: one star for a rollover rate greater than 40 percent; two stars, greater than 30 percent; three stars, greater than 20 percent; four stars, greater than 10 percent; five stars, less than or equal to 10 percent.

The decision to combine the static (SSF) and the dynamic (maneuver test) vehicle measurements in a single rollover resistance rating is consistent with the view of most commenters that separate ratings would be confusing to consumers. It is also the best way of achieving NHTSA's goal of presenting risk-based ratings because it maximizes the vehicle information used to make the prediction of the rate of rollovers per single-vehicle crash. Those who favored separate static and dynamic ratings expressed concern that the influence of electronic stability control would be small in the combined rating. It is true that electronic stability control will not have a great influence on rollover resistance ratings because the dynamic test result has less predictive power than the static measurement on rollover rate and the effect of electronic (yaw) stability control on the dynamic test is also modest. We believe that the potential benefit of electronic stability control lies in helping drivers to stay on the road and away from tripping devices rather than providing much increase in rollover resistance, especially regarding tripped rollovers. Rather than reduce the rate of rollovers in single-vehicle crashes, electronic stability control may reduce the number of single-vehicle crashes in the first place. However, its effectiveness in reducing single-vehicle crashes remains to be demonstrated by crash statistics.

For the present time, we will retain the use of five stars to express rollover resistance ratings. Focus groups consistently find that presentation understandable. However, the NAS and a number of commenters were in favor of presentations that are able to show smaller differences between vehicles, contrast the range of ratings between types of vehicles and show the relative position of a vehicle's rating among other vehicles of the same type. NHTSA is performing additional consumer research to determine the best approach to providing consumers with more detailed information to supplement the star ratings. Several presentation methods are being tested, and we will consider those test results and propose appropriate changes to how we present rollover information to consumers.

### *B. Dynamic Testing*

The Fishhook maneuver test will be conducted according to the procedure in Appendix I, and we will discontinue the J-Turn maneuver test. This decision is a consequence of the logistic regression analysis of the crash data, SSF and results of the J-Turn and Fishhook tests at two load conditions for 25 vehicles. From a statistical point of view, the J-Turn test results were redundant in the presence of the Fishhook test results. The J-Turn test also seems to be more sensitive to irregularities in pavement surface and friction and changes in ambient temperature than the Fishhook test. It also causes more concern about tire wear effects than the Fishhook, and it was criticized by some commenters as less representative of "real-world" driving situations.

We have decided to change the heavy load condition from an anthropomorphic dummy (water dummy) in every rear seating position (along with the test driver and instruments of approximately a passenger weight in the front) to a standard load representing five occupants in all vehicles capable of at least that loading. During the test of the 25 vehicles, it became obvious that heavy load tests were being run at very unequal conditions especially between vans and other vehicles (two water dummies in some vehicles but six water dummies in others). While very heavy passenger loads can certainly reduce rollover resistance and potentially cause special problems, crashes at those loads are too few to greatly influence the overall rollover rate of vehicles. Over 94% of van rollovers in our 293,000 crash database occurred with five or fewer occupants, and over 99% of rollovers of other vehicles occurred with five or fewer occupants. The average passenger load of vehicles in our crash database was less than two: 1.81 for vans; 1.54 for SUVs; 1.48 for cars; and 1.35 for pickup trucks. In order to use the maneuver tests to predict real-world rollover rates rather than investigate possible poor performance at high occupancy levels, it is not useful to test the vehicles under widely differing loadings while there is much less loading variation represented in the crash statistics. Consequently, the maneuver test data used in the logistic regression analysis involving the 25 dynamic test vehicles in the heavy load condition represented performance with a 5-occupant loading (obtained using three water dummies in the rear seating positions) for all vehicles capable of carrying at least that load.

The use of dynamic maneuver tests creates the need for a policy regarding tire de-beading. The tests are conducted using the tire pressure recommended by the vehicle manufacturer and labeled on the vehicle. We have experienced a number of instances in which the tire bead became unseated from the rim, resulting in total air loss and rim contact with the paved surface. This causes damage to the test facility and the possibility of a rollover of the test vehicle. For at least a year, we have been using inner tubes in all tires placed on rollover test vehicles. This action reduces the instances of total de-beading, but does not eliminate them entirely. In some instances, a tire with a tube that is not pinched during the process can experience a partial de-bead in which the rim makes contact with the pavement surface and then the tire becomes remounted on the rim by the pressure of the tube. It has been NHTSA's experience on the test track that if a maneuver results in rim contact without destroying the tube, the next run at a higher speed will destroy the tube and cause a complete de-beading of the tire and hard contact of the rim with risk to the driver, test surface and vehicle.

In the case of rim contact without total de-beading, it is a near certainty that total de-beading would have occurred without the tube, and total de-beading despite the tube is highly likely at the next speed increment. Thus, we consider rim contact to indicate de-beading, and it will be NHTSA's policy to terminate the test if rim contact with the pavement is observed even if the tube prevents total de-beading.

The vehicle did not actually tip up in the maneuver if the test is terminated as a result of rim contact indicating tire de-beading. However, debeading is a bad outcome for the test because tire de-beading is associated with on-road tripped rollovers that actually outnumber on-road untripped rollovers. Therefore, it would be improper to ignore tire debeading and predict the vehicle's rollover rate as if it had completed the test without tip-up or de-beading. The only alternative in the case of rim contact is to simply not compute a rollover resistance rating of the vehicle because the test was not completed. It will be reported that the dynamic test could not be completed because of tire debeading, but the SSF measurement will be retained in the detailed consumer information.

### *C. Demonstration Program*

In April 2003, NHTSA's VRTC began the Demonstration Test program at TRC of Ohio using the test protocol of Appendix I for Fishhook maneuver tests of 18 new vehicles. Table 5 lists the vehicles in this group. We will verify tip-ups using new tires as explained in our answer to Ford's comments in Section VII. Unless we discover serious procedural problems, these vehicles will be given 2004 NCAP rollover resistance ratings according to the system established in this final notice.

TABLE 5.—VEHICLES INCLUDED IN DEMONSTRATION TEST

| | Make | Model | Bodystyle |
|---|---|---|---|
| 1 | Chevrolet | Silverado 4x2 | PU ext. cab. |
| 2 | Chevrolet | Silverado 4x4 | PU ext. cab. |
| 3 | Chevrolet | Trailblazer 4x2 | 4-dr Utility. |
| 4 | Chevrolet | Trailblazer 4x4 | 4-dr Utility. |
| 5 | Ford | Explorer 4x2 | 4-dr Utility. |
| 6 | Ford | Explorer 4x4 | 4-dr Utility. |
| 7 | Ford | Explorer SportTrac 4x2 | 4-dr Utility. |
| 8 | Ford | Explorer SportTrac 4x4 | 4-dr Utility. |

TABLE 5.—VEHICLES INCLUDED IN DEMONSTRATION TEST—Continued

| | Make | Model | Bodystyle |
|---|---|---|---|
| 9 | Ford | Focus | 4-dr wagon. |
| 10 | Jeep | Liberty 4x2 | 4-dr Utility. |
| 11 | Jeep | Liberty 4x4 | 4-dr Utility. |
| 12 | Subaru Outback (4x4) | 4-dr wagon.. | |
| 13 | Toyota | Echo | 4-dr sedan. |
| 14 | Toyota | 4Runner 4x2 | 4-dr Utility. |
| 15 | Toyota | 4Runner 4x4 | 4-dr Utility. |
| 16 | Toyota | Tacoma 4x2 | PU ExCab. |
| 17 | Toyota | Tacoma 4x4 | PU ExCab. |
| 18 | Volvo | XC90 (4x4) | 4-dr Utility. |

## X. Assessment of Costs and Benefits

Since this is a consumer information program, no Regulatory Evaluation was developed for this notice. Adding the dynamic maneuver tests to the Rollover NCAP will not require vehicle manufacturers to take any action. The costs are Federal Government costs for developing the test protocol and rating system, conducting the tests, and disseminating the information. The benefits are information to consumers. Consumers want additional information. It is impossible for us to quantify the effect on consumer behavior or on manufacturer behavior.

## XI. Rulemaking Analyses and Notices

### A. Executive Order 12866

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

NHTSA has considered the impact of this action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This action has been determined to be economically not significant. However, because it is a subject of Congressional interest, this rulemaking document was reviewed by the Office of Management and Budget under Executive Order 12866, "Regulatory Planning and Review."

### B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. § 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small business, small organizations and small governmental jurisdictions. I hereby certify that the amendment will not have a significant economic impact on a substantial number of small entities. The proposed action does not impose regulatory requirements on any manufacturer or other party.

### C. National Environmental Policy Act

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

### D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federal implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The action will not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

### E. Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for the year 2002 results in $113 million (110.66/98.11 = 1.13). The assessment may be included in conjunction with other assessments, as it is here.

The action does not impose regulatory requirements on any manufacturer or other party.

### F. Civil Justice Reform

This action will not have any retroactive effect. Under 49 U.S.C. 21403, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 21461 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

### G. Paperwork Reduction Act

This document does not contain "collections of information," as that term is defined in 5 CFR Part 1320 Controlling Paperwork Burdens on the Public.

### H. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. This action will not result in regulatory language.

Issued on: October 2, 2003.

**Jeffrey W. Runge,**
*Administrator.*

BILLING CODE 4910-59-P

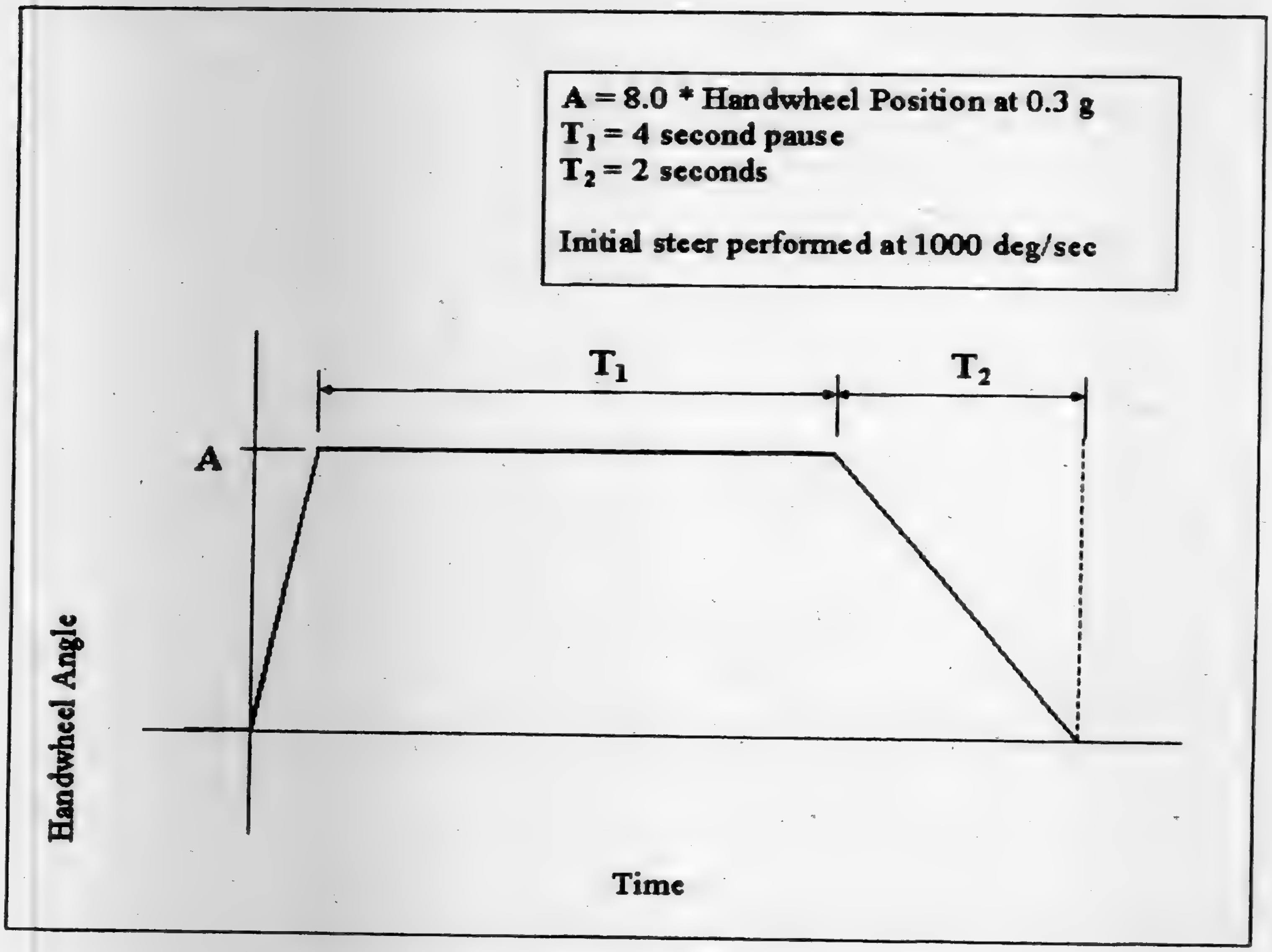
A = 8.0 * Handwheel Position at 0.3 g
T1 = 4 second pause
T2 = 2 seconds
Initial steer performed at 1000 deg/sec
T1
T2
A
Handwheel Angle
Time

**Figure 1.** NHTSA J-Turn maneuver description.

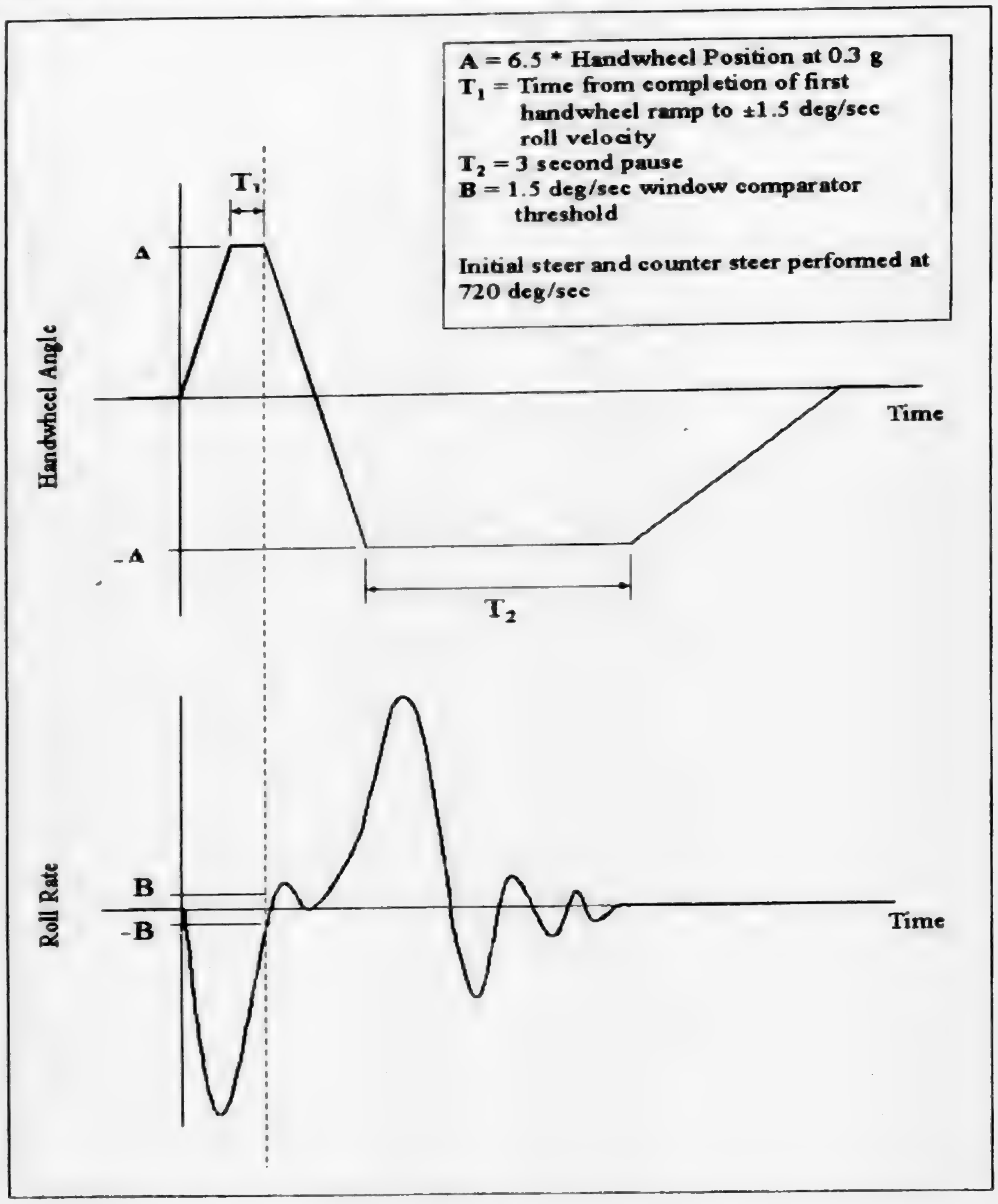
A = 6.5 * Handwheel Position at 0.3 g
$T_1$ = Time from completion of first handwheel ramp to ±1.5 deg/sec roll velocity
$T_2$ = 3 second pause
B = 1.5 deg/sec window comparator threshold
Initial steer and counter steer performed at 720 deg/sec
$T_1$
A
-A
Handwheel Angle
Time
$T_2$
B
-B
Roll Rate
Time

**Figure 2.** NHTSA Fishhook (with roll rate feedback) maneuver description.

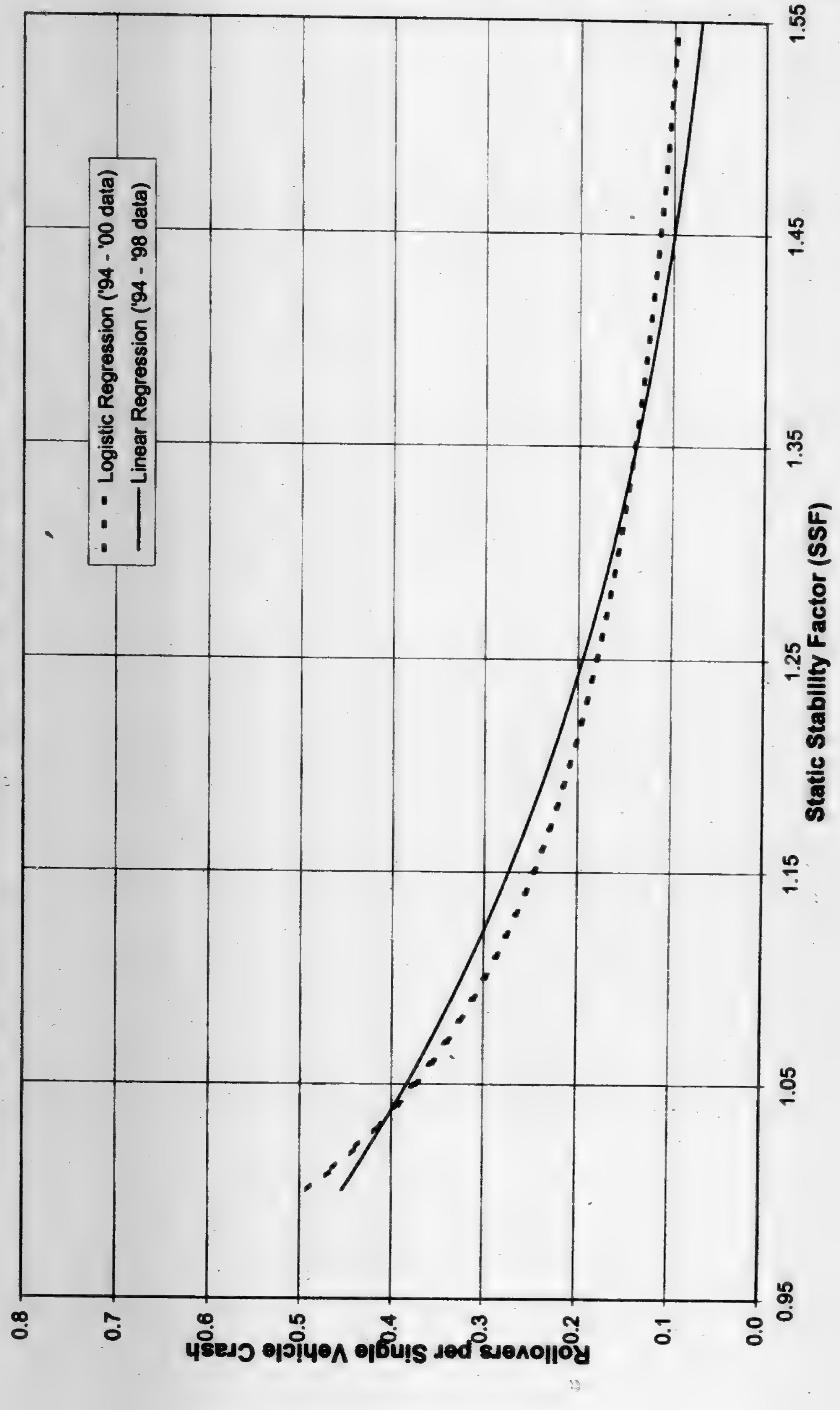

Figure 3: Logistic regression risk model using SSF only and Linear regression risk model for 2001-2203 NCAP Rollover Resistance

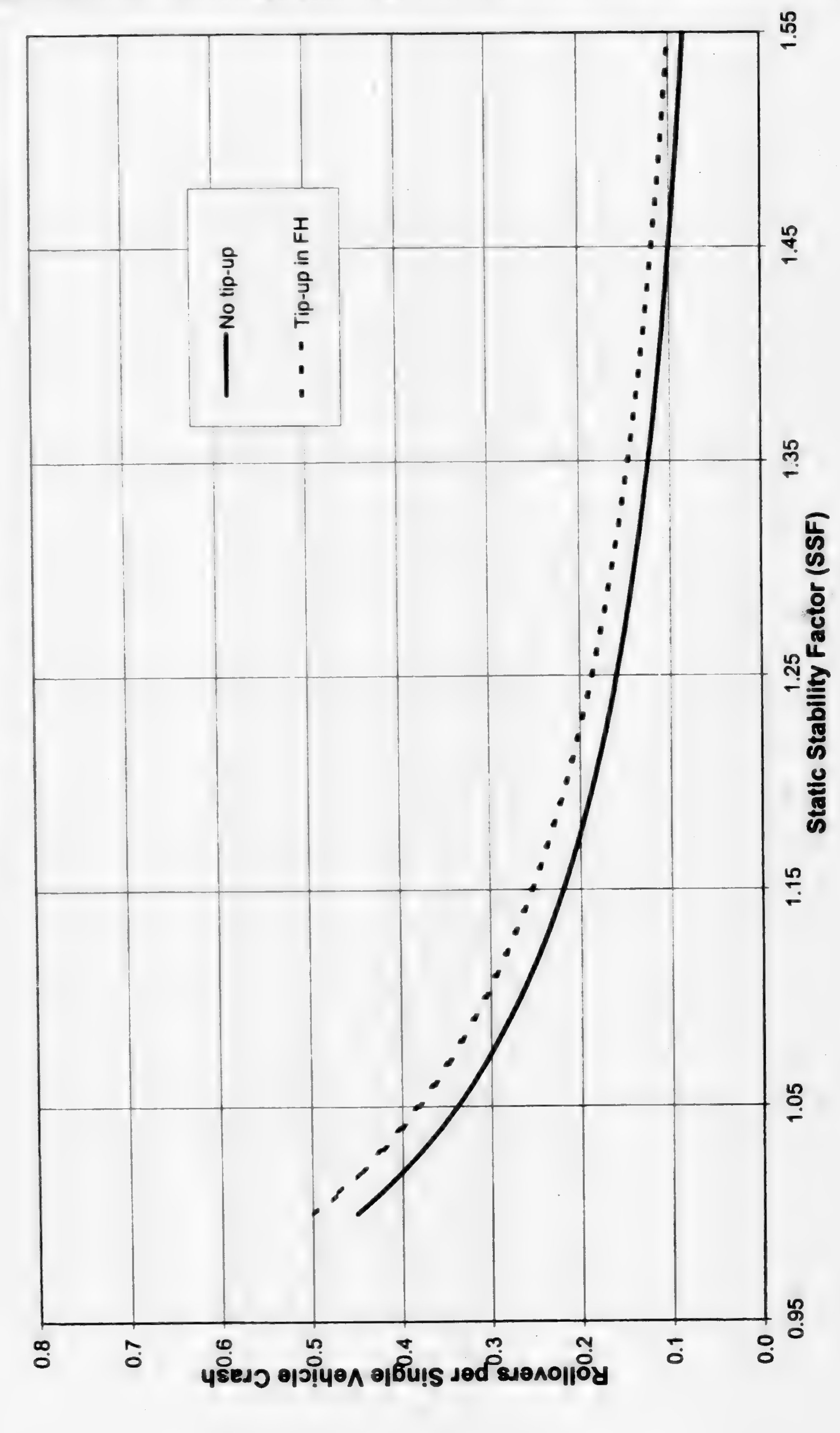

**Figure 4: Final dynamic model using Fishhook maneuver with heavy load (FH) as the only necessary dynamic variable**

## Appendix I. Fishhook Maneuver Test Procedure

### 1.0 Introduction

*1.1 General*

This document describes the test procedure used by the National Highway Traffic Safety Administration's (NHTSA) New Car Assessment Program (NCAP) to evaluate light vehicle dynamic rollover propensity. The procedure is comprised of one characterization maneuver and one rollover resistance maneuver.

*1.2 Rollover Resistance Requirements of the TREAD Act*

Section 12 of the "Transportation Recall, Enhancement, Accountability and Documentation (TREAD) Act of November 2000" reflects the desire of Congress to supplement SSF [Static Stability Factor] with a dynamic stability test using vehicle maneuvers. Congress directed NHTSA to "develop a dynamic test on rollovers by motor vehicles for a consumer information program; and carry out a program conducting such tests." NHTSA's NCAP Light Vehicle Dynamic Rollover Propensity Test Procedure described in this document was developed as part of NHTSA's effort to fulfill the requirements of the TREAD Act.

*1.3 Recent NHTSA Light Vehicle Dynamic Rollover Propensity Research*

During the spring through fall of 2001 NHTSA performed an extensive assessment of many test track maneuvers potentially capable of quantifying on-road, untripped rollover propensity. In brief, five vehicle characterization and nine dynamic rollover propensity maneuvers were studied. Each maneuver was either discarded or retained for subsequent program phases. The 2001 research project is documented in [1].

During the spring through fall of 2002 NHTSA performed a comprehensive evaluation of rollover resistance for a broad spectrum of twenty-six light vehicles. The test vehicles were evaluated with one Characterization maneuver and two Rollover Resistance maneuvers. Up to two load configurations per vehicle were used. The 2002 research project is documented in [2].

### 2.0 Test Equipment

*2.1 Vehicle Load Configurations*

NHTSA's dynamic rollover propensity test procedure uses one of two loading configurations: Nominal or Multi-Passenger. A description of each configuration is provided below.

Both vehicle load configurations include instrumentation, a steering machine, and outriggers.

Test vehicle bumper assemblies are removed for outrigger installation. The reduction in vehicle weight due to the removal of the bumpers is offset by the additional weight of the outriggers and their mounting system. The outrigger system typically outweighs the bumper assemblies.

2.1.1 Nominal Load Configuration

The Nominal Load Configuration consists of the driver, instrumentation, steering machine, outriggers, and full tank of fuel. Weight and location specifications for the data acquisition system and steering machine are presented in Table I.1 and Figure I.1.

TABLE I.1.—EQUIPMENT LOCATION AND WEIGHT

| Equipment | Location | Weight, typical (lbs) |
|---|---|---|
| Data Acquisition System | Front passenger seat | 56 |
| Steering Machine | Handwheel | 31 |
| Steering Machine Electronics Box | Passenger row foot well behind the front passenger seat. If vehicle does not have a rear passenger row foot well, the Electronics Box should be placed in the front passenger seat foot well. | 39 |

Non-pickup truck vehicles with only front designated seating positions use the Nominal Load Configuration.

2.1.2 Multi-Passenger Configuration

The Multi-Passenger Configuration includes all elements of the Nominal Load Configuration plus ballast in the form of water dummies. Water dummies are installed as follows:

For vehicles with three or more designated rear seating positions, three 175 lb water dummies are used. The water dummies shall be positioned on the rear seats (second seating row) closest to driver and front passenger seats (first seating row). If there are only two seating positions in the second seating row, the third water dummy shall be placed in the center of the third seating row, provided it is a designated seating position. Refer to Figure I.2.

For vehicles with two designated rear seating positions, two 175 lb water dummies shall be positioned in the rear seats. Refer to Figure I.3.

For pickups with only front designated seating positions, three 175 lb water dummies will be used. The water dummies shall be positioned behind the cab in a manner that emulates a second seating row. If it is not possible to fit three water dummies directly behind the cab, the third water dummy shall be placed in the center of a simulated third seating row. Refer to Figure I.4.

For pickups with two seating rows, three 175 lb water dummies will be used. If the second seating row includes three designated seating positions, each water dummy shall be placed in these positions. If the second seating row includes two designated seating positions, two 175 lb water dummies shall be positioned in the second seating row of the cab, and the third water dummy shall be positioned behind the cab in a manner that emulates the center seating position of a third seating row. Refer to Figure I.5.

For all vehicles, if the Multi-Passenger Configuration results in the vehicle exceeding its Gross Vehicle Weight Rating (GVWR) and/or rear Gross Axle Weight Rating (GAWR), the weight of each dummy will be equally reduced until the GVWR and/or rear GAWR are no longer exceeded. The weight of the water dummies shall not be reduced if only the front GAWR is exceeded and the front axle weight does not exceed the front GAWR by more that 50 pounds, *i.e.*, if the Multi-Passenger Configuration results in the vehicle exceeding its front GAWR, and its GVWR and/or rear GAWR, the weight of each dummy will be equally reduced until the GVWR and rear GAWR are no longer exceeded and the front GAWR is not exceeded by more that 50 pounds.

For non-pickup truck vehicles with only front designated seating positions, the Multi-Passenger Configuration is omitted from the test matrix.

*2.2 Safety Outriggers*

Safety outriggers are installed on all test vehicles during all test maneuvers. NHTSA uses outriggers machined from 6Al–4V titanium. NHTSA's "short" outriggers are used for vehicles with baseline weights under 3,500 pounds in a baseline condition (as delivered); "standard" outriggers are used for vehicles with baseline weights from 3,500 and 7,000 pounds; and "long" outriggers are used for vehicles with baseline weights from 7,001 to 10,000 pounds. Information on NHTSA's titanium outrigger system is documented in [3].

*2.3 Tires*

All tires must be new, and of the same make, model, size, and DOT specification of those installed on vehicles when purchased new. Tire inflation pressures are to be in accordance with the recommendations indicated on each vehicle's identification placard.

2.3.1 Tire Mounting Technique

When mounting tires to the rims used for testing, no tire mounting lubricant should be used. Lubricant is not used due to uncertainty surrounding the occurrences of tire debeading observed during NHTSA's rollover research. To eliminate the possibility of tire lubricant contributing to this phenomenon, it should not be used. Because no lubricant is used, care must be taken to confirm that the tire is fully seated on the wheel rim at the completion of the mounting procedure.

### 2.3.2 Frequency of Tire Changes

To minimize the effects of tire wear on vehicle response and rollover propensity, rollover research requires frequent tire changes. For each loading condition, the following guidelines must be followed:

- One set of tires is to be used for each Slowly Increasing Steer test series. Each series is comprised of left and right steer tests.
- Up to two tire sets are to be used for the Fishhook maneuver test series. The actual number of tire sets used is dependent on the response of each vehicle. The tire change protocol is presented in the Fishhook maneuver test procedure (Section 3.2). **Note:** A tire change between the completion of the Slowly Increasing Steer maneuver and initiation of Fishhook testing is not required provided the abbreviated Slowly Increasing Steer procedure described in Section 3.1.2 is used. If the abbreviated procedure is not used (*i.e.*, the maneuver is performed such that maximum lateral acceleration is achieved), a tire change between the completion of the Slowly Increasing Steer maneuver and initiation of Fishhook testing is required, as tire wear associated with these tests may potentially confound Fishhook test outcome.

### 2.3.3 Use of Inner Tubes

Fishhook maneuvers have been shown to produce debeading of the outside front and rear tires. The occurrence of debeads can result in significant damage to the test surface. NHTSA research has concluded the easiest, most cost effective way to minimize debeading is the use of inner tubes designed for radial tires. Inner tubes must be installed prior to any Fishhook test "one inner tube for each of the vehicle's tires. Inner tubes should be appropriately sized for the test vehicle's tires.

Installation of inner tubes is not required prior to Slowly Increasing Steer tests, regardless of vehicle or load condition.

### *2.4 Data Collection*

All data is to be sampled at 200 Hz. NHTSA's signal conditioning consists of amplification, anti-alias filtering, and digitizing. Amplifier gains are selected to maximize the signal-to-noise ratio of the digitized data. Filtering is performed with two-pole low-pass Butterworth filters with nominal cutoff frequencies selected to prevent aliasing. The nominal cutoff frequency is 15 Hz (calculated breakpoint frequencies are 18 and 19 Hz for the first and second poles respectively).

Data collection is initiated manually by the test driver immediately before the start of the maneuver or automatically by "Handwheel Command Flag" signal from the steering machine (refer to Section 3.2.4.2.2, Handwheel Command Flag).

### *2.5 Instrumentation*

Each test vehicle is to be equipped with sensors, a data acquisition system, and a programmable steering machine. Equipment location and weight specifications are presented in Table I.1 and Figure I.1.

### 2.5.1 Sensors and Sensor Locations

Table I.2 lists the sensors required by NHTSA's dynamic rollover propensity test procedure. A brief description of these sensors is provided in this section.

TABLE I.2.—RECOMMENDED SENSOR SPECIFICATIONS

| Type | Output | Range | Resolution | Accuracy |
|---|---|---|---|---|
| Multi-Axis Inertial Sensing System | Longitudinal, Lateral, and Vertical Acceleration. | Accelerometers: ±2 g | Accelerometers: ≤10 ug. | Accelerometers: ≤0.05% of full range. |
| | Roll, Yaw, and Pitch Rate. | Angular Rate Sensors: ±100 deg/s. | Angular Rate Sensors: ≤0.004 deg/s. | Angular Rate Sensors: 0.05% of full range. |
| Angle Encoder | Handwheel Angle | ±800 deg | 0.25 deg | ±0.25 deg. |
| Ultrasonic Distance Measuring System | Left and Right Side Vehicle Height. | 5–24 inches | 0.01 inches | ±0.25% of maximum distance. |
| Load Cell | Brake Pedal Force | 0–300 lbf | N/A | N/A. |
| Radar Speed Sensor | Vehicle Speed | 0.1–125 mph | 0.009 mph | ±0.25% of full scale. |
| Infrared Distance Measuring System | Wheel Lift | 13.75–33.5 inches | 0.10 in., short range<br>0.3 in., long range | ±1% of full scale |
| Data Flag (Handwheel Command Flag) | Pauses in commanded steering inputs. | 0—10 V | N/A | Flag should respond within 10 ms. |
| Data Flag (Roll Rate Flag) | Indication of ± 1.5 deg/s roll rate. | 0–10 V | N/A | Flag should respond within 10 ms. |

#### 2.5.1.1 Handwheel Angle

Handwheel position is measured via an angle encoder integral with the programmable steering machines.

#### 2.5.1.2 Vehicle Speed

Vehicle speed is measured with a non-contact speed sensor placed at the center rear of each vehicle.

NHTSA has had good experiences with the use of Doppler radar based sensors. Sensor outputs are to be transmitted not only to the data acquisition system, but also to a dashboard display unit. This allows the driver to accurately monitor vehicle speed.

#### 2.5.1.3 Chassis Dynamics

A multi-axis inertial sensing system is used to measure linear accelerations and roll, pitch, and yaw angular rates. The position of the multi-axis inertial sensing system must be accurately measured relative to the C.G. of the vehicle in the Nominal Load and Multi-Passenger Configurations. These data are required to translate the motion of the vehicle at the measured location to that which occurred at the actual C.G to remove roll, pitch, and yaw effects. NHTSA uses an independent laboratory to measure the C.G. of its test vehicles.

The following equations are used to correct the accelerometer data in post-processing. They were derived from equations of general relative acceleration for a translating reference frame and use the SAE Convention for Vehicle Dynamics Coordinate Systems. The coordinate transformations are:

$$x''_{corrected} = x''_{accel} - \left(\Theta'^2 + \Psi'^2\right) x_{disp} + \left(\Theta'\Phi' - \Psi''\right) y_{disp} + \left(\Psi'\Phi' + \Theta''\right) z_{disp}$$

$$y''_{corrected} = y''_{accel} + \left(\Theta'\Phi' + \Psi''\right) x_{disp} - \left(\Phi'^2 + \Psi'^2\right) y_{disp} + \left(\Psi'\Theta' - \Phi''\right) z_{disp}$$

$$z''_{corrected} = z''_{accel} + \left(\Psi'\Phi' - \Theta''\right) x_{disp} + \left(\Psi'\Theta' + \Phi''\right) y_{disp} - \left(\Phi'^2 + \Theta'^2\right) z_{disp}$$

where,

$x''_{corrected}$, $y''_{corrected}$, and $z''_{corrected}$ = longitudinal, lateral, and vertical accelerations, respectively, at the vehicle's center of gravity

$x''_{accel}$, $y''_{accel}$, and $z''_{accel}$ = longitudinal, lateral, and vertical accelerations, respectively, at the accelerometer location

$x''_{disp}$, $y''_{disp}$, and $z''_{disp}$ = longitudinal, lateral, and vertical displacements, respectively, of the center of gravity with respect to the accelerometer location

$\varphi'$ and $\varphi''$=roll rate and roll acceleration, respectively

$\Theta'$ and $\Theta''$ = pitch rate and pitch acceleration, respectively

$\Psi'$ and $\Psi''$ = yaw rate and yaw acceleration, respectively

NHTSA does not use inertially stabilized accelerometers for this test procedure. Therefore, lateral acceleration must be corrected for vehicle roll angle during data post-processing. This is discussed in Section 4.12.

#### 2.5.1.4 Roll Angle

An ultrasonic distance measurement system is used to collect left and right side vertical displacements for the purpose of calculating vehicle roll angle. One ultrasonic ranging module is mounted on each side of a vehicle, and is positioned at the longitudinal center of gravity. With these data, roll angle is calculated during post-processing using trigonometry.

#### 2.5.1.5 Wheel Lift

Wheel lift is measured individually with two height sensors attached to spindles installed at the wheel. Using trigonometry, the output of the two sensors can be used to resolve the camber angle of the wheel, and remove its influence from the uncorrected height sensor output. Information on NHTSA's wheel lift measurement system is documented in [4].

#### 2.5.1.6 Brake Application

Brake pedal force is measured with a load cell transducer attached to the face of the brake pedal. While brake pedal force is not explicitly required by this test procedure, it is important to monitor the driver's braking activity during testing. No test included in this procedure requires brake application. If the driver applies force to the brake pedal before completion of a test, that test is not valid, and should not be considered in further analyses.

### 2.5.2 Additional Mnemonics

#### 2.5.2.1 Handwheel Command Flag

Refer to Section 3.2.4.2.2, Handwheel Command Flag.

#### 2.5.2.2 Roll Rate Flag

Refer to Section 3.2.4.2.3, Roll Rate Flag.

### *2.6 Steering Machine*

A programmable steering machine is used to generate handwheel steering inputs for all test maneuvers. The machine must provide at least 35 $lb_f$-ft of torque at a handwheel rate of 720 deg/sec, be able to move each vehicle's steering system through its full range, and accept angular rate sensor feedback input for roll rate-induced steering reversals (refer to section 3.2.4). It is recommended that the steering machine be capable of initiating steering programs at a preset road speed, and have the convenience of changing the steering program during test sessions.

## 3.0 Test Maneuvers

### *3.1 Slowly Increasing Steer*

The Slowly Increasing Steer maneuver is used to characterize the lateral dynamics of each vehicle, and is based on the "Constant Speed, Variable Steer" test defined in SAE J266 [5]. The maneuver is used to determine the steering that produces a lateral acceleration of 0.3 g. This handwheel angle is used to define the magnitude of steering to be used for the NHTSA Fishhook maneuver.

#### 3.1.1 Maneuver Description (Option #1)

To begin this maneuver, the vehicle is driven in a straight line at 50 mph. The driver must attempt to maintain this speed during and briefly after the steering is input using smooth throttle modulation. At time zero, handwheel position is linearly increased from zero to 270 degrees at a rate of 13.5 degrees per second. Handwheel position is held constant at 270 degrees for two seconds, after which the maneuver is concluded. The handwheel is then returned to zero as a convenience to the driver. The maneuver is performed three times to the left and three times to the right for each load configuration. Figure I.6 presents a description of the handwheel angles to be used during Slowly Increasing Steer, Option #1 tests.

#### 3.1.2 Maneuver Description (Option #2, Preferred)

Historically, NHTSA has used Slowly Increasing Steer tests to measure linear range *and* maximum quasi steady state lateral acceleration. While maximum lateral acceleration data is interesting, it is not a required metric when determining a vehicle's NCAP rollover resistance rating. For this reason, NHTSA recommends use of an "abbreviated" Slowly Increasing Steer maneuver. The handwheel angles used in this abbreviated procedure only steer the vehicle enough to assess its linear range lateral acceleration performance.

To determine the most appropriate Slowly Increasing Steer handwheel angle for a given vehicle, a preliminary left steer test is performed. The test speed during this test was held constant at 50 mph via throttle modulation, and the steering input ranged from 0 to 30 degrees, applied at 13.5 degrees per second. The magnitude of this input was selected because it was believed to be capable of producing a steady state lateral acceleration within the linear range for any light vehicle. Using the ratio of steady state handwheel position and lateral acceleration established by this test, the maximum steering input for the abbreviated Slowly Increasing Steer test was derived using the below equation:

Equation 3.1 $$\frac{30\ \text{degrees}}{a_{y,\ 30\ \text{degrees}}} = \frac{\partial_{SIS}}{0.55\ g}$$

where,

$a_{y,30\ degrees}$ was the *raw* lateral acceleration produced with a constant handwheel angle of 30 degrees during a test performed at 50 mph

$d_{SIS}$ was the steering input that, if the relationship of handwheel angle and lateral acceleration was linear, would produce a lateral acceleration of 0.55 g during a test performed at 50 mph

**Note:** $a_{y,30\ degrees}$ is "raw" data, not corrected for the effects of roll, pitch, and yaw. NHTSA acknowledges the relationship of handwheel angle and corrected lateral acceleration data is often not linear at 0.55 g. However, previously collected data indicates the magnitude of raw 0.55 g acceleration data is typically reduced by approximately 9.6 percent to 0.497 g, when corrected for roll, pitch, and yaw, just outside of the linear range for most vehicles. Removing the effect of accelerometer offset (error due to the accelerometer not being positioned at the vehicle's actual center of gravity) typically reduces the magnitude of these data by an additional 0.07 percent. The importance of Equation 3.1 is that it simply provides experimenters with a direct, "in-the-field" way of determining an appropriate steering input for which to proceed with further tests for a given vehicle.

Figure I.7 presents a description of the handwheel angles to be used during the abbreviated Slowly Increasing Steer, Option #2 tests.

#### 3.1.3 Measured Parameters

Analyses of Slowly Increasing Steer tests output overall average handwheel position at a specified lateral acceleration

When lateral acceleration data collected during Slowly Increasing Steer tests is plotted with respect to time, a first order polynomial best-fit line accurately describes the data from 0.1 to 0.375 g. NHTSA defines this as the linear range of the lateral acceleration response. A simple linear regression is used to determine the best-fit line, as shown in Figures I.8 and I.9.

Using the slope of the best-fit line, the average of handwheel position at 0.3 g is calculated using data from each of the six Slowly Increasing Steer tests performed for each vehicle. This average handwheel position is used to calculate NHTSA Fishhook maneuver steering inputs, as described in Section 3.2.

### *3.2 NHTSA Fishhook Maneuver*

#### 3.2.1 Maneuver Overview

To begin the maneuver, the vehicle is driven in a straight line at a speed slightly greater than the desired entrance speed. The driver releases the throttle, and when at the target speed, initiates the handwheel commands described in Figure I.10 using a programmable steering machine. Following completion of the countersteer, handwheel position is maintained for three seconds. As a convenience to the test driver, the handwheel is then returned to zero.

Each Fishhook maneuver test series contains two sequences (with exceptions noted in the following sections): Tests performed with left-right steering (first sequence), and tests performed with right-left steering (second sequence). The sequence of left-right tests always precedes those performed with right-left steering.

### 3.2.2 Default Procedure

Fishhook maneuver handwheel angles are calculated with lateral acceleration and handwheel angle data ($\delta$) collected during a series of six Slowly Increasing Steer tests (a total of three left-steer and three right-steer tests are performed). For each Slowly Increasing Steer test, a linear regression line is fitted to the lateral acceleration data from 0.1 to 0.375 g. Using the slopes of these regression lines, the handwheel angles at 0.3 g are determined for each individual test ($\delta_{0.3\ g}$). The six handwheel angles are then averaged to produce an overall value ($\delta_{0.3\ g,\ overall}$).

$$\delta_{0.3\ g,\ overall} = \left( \left| \delta_{0.3\ g,\ left\ (1)} \right| + \left| \delta_{0.3\ g,\ left\ (2)} \right| + \left| \delta_{0.3\ g,\ left\ (3)} \right| + \delta_{0.3\ g,\ right\ (1)} + \delta_{0.3\ g,\ right\ (2)} + \delta_{0.3\ g,\ right\ (3)} \right) / 6$$

The Fishhook maneuver steering angles are calculated by multiplying $\delta_{0.3\ g,\ overall}$ by a steering scalar (SS). The default steering scalar is 6.5.

$\delta_{Fishhook\ (Default)} = 6.5 \times \delta_{0.3\ g,\ overall}$

#### 3.2.2.1 Maneuver Entrance Speed

For the sake of driver safety, and as a final step in the tire scrub-in procedure, each Default Procedure sequence begins with a Maneuver Entrance Speed (MES) equal to 35 mph. The MES is measured at the initiation of the first steering ramp, and is increased until a termination condition is satisfied. The order of MES for a sequence is, in mph: 35, 40, 45, 47.5, 50. For each test run, the actual MES must be within 1 mph of the target MES.

**Note:** NHTSA's experience with the Fishhook maneuver indicates that an incremental increase in MES of 5 mph, up to 45 mph, minimizes tire wear without compromising test driver safety. However, when a MES greater than 45 mph is used, the severity of the responses produced with some vehicles can increase substantially from that observed at lesser entrance speeds. This is especially true if a vehicle has a propensity to oscillate in roll, and/or is able to produce two-wheel lift slightly less than NHTSA's threshold criterion of two inches. In some of these cases, the driver and/or experimenter may not be comfortable with a final 5 mph upwards increment in MES, and might, for the sake of driver safety, deviate from a test procedure that requires it. Generally speaking, such a deviation typically involves the experimenter's use of a more gradual 2.5 mph increase in MES.

To promote driver safety while also eliminating inconsistencies in the way NHTSA's Fishhook maneuvers are performed, the test procedure requires a MES increment equal to 2.5 mph be used above 45 mph if a test performed at 45 mph does not produce two-wheel lift, regardless of the vehicle being evaluated.

#### 3.2.2.2 Outrigger Contact

If either safety outrigger contacts the pavement without two-wheel lift during a Fishhook maneuver test run, the affected outrigger is raised 0.75 inches and the test is repeated at the same MES. If both safety outriggers contact the pavement without two-wheel lift, both outriggers are raised 0.75 inches and the test is repeated at the same MES.

#### 3.2.2.3 Termination and Conclusion Conditions

A test *sequence* is terminated if the MES capable of producing two-wheel lift is observed and the MES is 45 mph or lower. If two-wheel lift is observed during a left-right sequence at 45 mph or lower, the [entire] *series* is terminated. If no two-wheel lift is observed during a left-right sequence, right-left tests are performed. If two-wheel lift is observed during a right-left sequence performed with a MES of 45 mph or lower, the test series is terminated.

If the MES capable of producing two-wheel lift during a left-right or right-left sequence is 47.5 mph or higher, a new set of tires is installed on the vehicle and the procedure described in Section 3.2.3.1 is implemented.

A test *series* is terminated if rim-to-pavement contact or tire debeading is observed during any test performed with either test sequence.

A test series is deemed complete if both test sequences within a given series have been performed at the maximum maneuver entrance speed without two-wheel lift, rim-to-pavement contact, tire debeading, or outrigger-to-pavement contact. If the Default Procedure is completed without encountering a termination condition, Supplemental Procedure Part 2, described in Section 3.2.3.2, is implemented.

The flowchart presented in Figure I.11 describes the sequence of events for the Default Test Series.

### 3.2.3 Supplemental Procedures

**Note:** If the results of the Default Test Series require the implementation of the Supplemental Procedure Part 1, neither Supplemental Procedure Part 2 nor Part 3 is used.

**Note:** Depending on the response of test vehicles to elements of the Fishhook maneuver protocol, Supplemental Procedure, Parts 1, 2, and 3 may require a change in the steering scalar. The steering machine used by NHTSA has the capability for making such changes in vehicles during test sessions via selection of a pre-programmed steering schedule and the adjustment of overall steering angles.

#### 3.2.3.1 Supplemental Procedure Part 1

Following the tire scrub-in procedure outlined in Section 4.6, tests are performed with handwheel angles equal to $\delta_{Fishhook\ (Default)}$, as explained in Section 3.2.2. The steering combination (*i.e.*, either left-right or right-left) that produced two-wheel lift in the Default Test Series is used. The first test is to be performed at a MES of 35 mph. This test is performed to ensure any mold sheen remaining from the tire break-in procedure has been removed from the tires. The second test is to be performed at the MES at which two-wheel lift had been previously observed (*i.e.*, with the previous tire set). If two-wheel lift is produced during the test performed with handwheel angles equal to $\delta_{Fishhook\ (Default)}$, the tip-up will be reported in the vehicle's NCAP Rollover Resistance Rating and the test series is deemed complete. If two-wheel lift is not produced and the MES is 47.5 mph, the MES is increased to 50 mph. If two-wheel lift is produced during the test performed with MES equal to 50 mph, the tip-up will be reported in the vehicle's NCAP Rollover Resistance Rating and the test series is deemed complete.

If two-wheel lift is *not* produced at 50 mph with handwheel angles equal to $\delta_{Fishhook\ (Default)}$, tests are performed with steering angles calculated by multiplying $\delta_{0.3\ g,\ overall}$ by a steering scalar of 5.5.

$\delta_{Fishhook\ (Supplemental)} = 5.5 \times \delta_{0.3\ g,\ overall}$

After the application of the reduced scalar, a test is to be performed, using the same steering combination (*i.e.*, either left-right or right-left), at the MES at which two-wheel lift had been observed in the Default Test Series. If two-wheel lift is produced during the test performed with handwheel angles equal to $\delta_{Fishhook\ (Supplemental)}$, the tip-up will be reported in the vehicle's NCAP Rollover Resistance Rating and the test series is deemed complete. If two-wheel lift is not produced and the MES is 47.5 mph, the MES is increased to 50 mph. If two-wheel lift is produced during the test performed with MES equal to 50 mph, the tip-up will be reported in the vehicle's NCAP Rollover Resistance Rating and the test series is deemed complete. If two-wheel lift is *not* produced at 50 mph, the test series is deemed complete and no tip-up will be reported in the vehicle's NCAP Rollover Resistance Rating.

A test series is terminated if rim-to-pavement contact or tire debeading is observed during any Supplemental Procedure Part 1 test. The flowchart presented in Figure I.12 describes the sequence of events for the Supplemental Procedure Part 1.

#### 3.2.3.2 Supplemental Procedure Part 2

If two-wheel lift is not produced during tests performed with the Default Procedure, the steering scalar is reduced from 6.5 to 5.5. Using the same tires used for tests performed with the Default Test Series, tests are performed with steering angles calculated by multiplying $\delta_{0.3\ g,\ overall}$ by a steering scalar of 5.5.

$\delta_{Fishhook\ (Supplemental)} = 5.5 \times \delta_{0.3\ g,\ overall}$

For the sake of driver safety, the first test of the left-right sequence with the reduced steering scalar applied is to be performed at a MES of 45 mph. If this test does not produce two-wheel lift, the MES is increased to 47.5 mph. If the test with MES equal to 47.5 mph does not produce two-wheel lift, the MES is increased to 50 mph (the maximum MES used for Fishhook maneuver testing). If no two-wheel lift is observed during the left-right sequence, the right-left test sequence is initiated using the same process as the left-right sequence. If any test in the Supplemental Procedure Part 2 test series produces two-wheel lift, a new set of tires is installed on the vehicle, and the procedure described Section 3.2.3.3 is implemented.

A test series is terminated if rim-to-pavement contact or tire debeading is observed during any test performed with either test sequence. A test series is deemed complete if both test sequences within the series have been performed at the maximum maneuver entrance speed without two-wheel lift. The flowchart presented in Figure I.13 describes the sequence of events for the Supplemental Procedure Part 2.

3.2.3.3 Supplemental Procedure Part 3

Following the tire scrub-in procedure outlined in Section 4.6, two tests are performed with handwheel angles equal to $\delta_{\text{Fishhook (Supplemental)}}$. The steering combination that produced two-wheel lift during Supplemental Procedure Part 2 testing is used (*i.e.*, either left-right or right-left). The first test is to be performed at a MES of 35 mph. This test is performed to ensure any mold sheen remaining from the tire break-in procedure has been removed from the tires. The second test is to be performed at the MES that had produced two-wheel lift during Supplemental Procedure Part 2 testing (*i.e.*, with the previous tire set). If two-wheel lift is produced during the test performed with handwheel angles equal to $\delta_{\text{Fishhook (Supplemental)}}$, the tip-up will be reported in the vehicle's NCAP Rollover Resistance Rating and the test series is deemed complete. If two-wheel lift is *not* produced and the MES is 45 mph, the MES is increased to 47.5 mph. If two-wheel lift is not produced and the MES is 47.5 mph, the MES is increased to 50 mph. If two-wheel lift is produced during any test performed during Supplemental Procedure Part 3, the tip-up will be reported in the vehicle's NCAP Rollover Resistance Rating and the test series is deemed complete. If two-wheel lift is *not* produced during Supplemental Procedure Part 3, the test series is deemed complete and no tip-up will be reported in the vehicle's NCAP Rollover Resistance Rating.

A test series is terminated if rim-to-pavement contact or tire debeading is observed during any Supplemental Procedure Part 3 test. The flowchart presented in Figure I.14 describes the sequence of events for the Supplemental Procedure Part 3.

3.2.4 Handwheel Inputs

3.2.4.1 Steering Rate

The handwheel rates of the initial steer and countersteer steering ramps are always to be performed with nominal steering rates of 720 degrees per second, regardless of what steering scalar is used.

3.2.4.2 Dwell Time

The Fishhook maneuver is designed to maximize the roll motion of the test vehicle. When left-right steering is used, this is accomplished by:

1. Steering the vehicle with an input equal to $\delta_{\text{Fishhook (Default)}}$ or $\delta_{\text{Fishhook (Supplemental)}}$
2. Waiting until the vehicle achieves maximum roll angle.
3. Reversing the direction of steer
4. Steering the vehicle with an input equal to $-\delta_{\text{Fishhook (Default)}}$ or $-\delta_{\text{Fishhook (Supplemental)}}$

When right-left steering is used, the sign conventions indicated in Steps 1 and 4 above are switched from positive to negative (*i.e.*, for Step 1) or from negative to positive (*i.e.*, for Step 4).

Dwell time is defined as the time from the completion of the initial steering ramp to the initiation of the steering reversal. A roll rate "Window Comparator" is used to determine when the vehicle has achieved maximum roll angle. Since the programmable steering machine used by NHTSA has a mechanical overshoot after completion of the initial steer, dwell time is not measured directly with handwheel angle data. Rather, two signals output from the steering machine are used: "Handwheel Start" and "Roll Flag".

3.2.4.2.1 Steering Machine Window Comparator

As indicated in Figure I.10, Fishhook maneuver steering reversals are commanded after the completion of the initial steering ramp and when the roll rate of the vehicle is very close to zero (because it is the derivative of roll angle, when roll rate is equal to zero at this point, roll angle is at its maximum). To minimize the likelihood of erroneous reversals, the reversals occur when the roll rate signal transmitted from a sensor positioned near the test vehicle's center of gravity enters the window comparator. The window comparator is defined as ±1.5 degrees per second, regardless of what steering scalar was used.

Examples: If an initial steer to the left is input, the reversal is initiated when the roll velocity of the vehicle is equal to 1.5 degrees per second. If an initial steer to the right is input, the reversal is initiated when the roll velocity of the vehicle is equal to −1.5 degrees per second.

3.2.4.2.2 Handwheel Command Flag

The programmable steering machine used by NHTSA outputs a "Handwheel Command Flag" signal based on the machine's internal clock. The output of the Handwheel Command Flag signal ranges from 0 to 10 volts, and is binary. The signal is high (10 volts) when the steering machine is in the process of executing a commanded input, or low (0 volts) when the machine is not in use or a pause is commanded during the execution of a commanded input, as shown in Figure I.10. When the pause ends, and execution of the commanded steering inputs are resumed, the Handwheel Command Flag signal is once again set high. In a Fishhook maneuver, the duration of the pause is the dwell time.

3.2.4.2.3 Roll Rate Flag

The "Roll Rate Flag" signal output by the programmable steering machine used by NHTSA is monitored. Like that of the Handwheel Command Flag channel, the Roll Rate Flag output ranges from 0 to 10 volts, and is binary. The signal is high (10 volts) when the roll rate of the test vehicle is within the window comparator, or low (0 volts) when roll rate is outside the window comparator, as shown in Figure I.10.

Fishhook maneuver steering reversals are to be initiated by the steering machine within 10 milliseconds of the roll rate entering the window comparator. Initiation of the steering reversal is defined as the instant the steering machine sets the Roll Rate Flag signal high.

**Note:** After completion of the initial steer, the instants that the steering machine sets the Roll Rate Flag and Handwheel Command Flag signals high should coincide.

3.2.4.3 Excessive Steering

In some cases, the magnitude of $\delta_{\text{Fishhook (Default)}}$ used during the Default Procedure may be so great that the vehicle reaches maximum roll angle before completion of the initial steer. This is defined as excessive steering; *i.e.*, the vehicle cannot respond to the entire commanded steering input.

Excessive steering is also said to occur if the dwell time of a Fishhook test performed with the Default Procedure results in a dwell time less than 80 milliseconds. The mechanical overshoot of the steering machine that occurs after completion of the initial steer can prohibit the machine from accurately executing dwell times less than approximately 80 milliseconds. In such cases, the effect of the overshoot is that the actual dwell time is equal to zero (an immediate steering reversal).

NHTSA's experience with the Fishhook maneuver has demonstrated the effect of excessive steering on dynamic rollover resistance is vehicle-dependent. While it may not allow the roll motion of some test vehicles to be maximized, excessive steering has been shown to contribute to an increased tip-up propensity in others. For this reason, a test sequence for which excessive steering is observed should *not* be terminated. Testing should proceed as outlined in Section 3.2.2, Default Procedure. If two-wheel lift is not observed during either Default Procedure test sequence, the Supplemental Procedure beginning at Part 2, described in Section 3.2.3.2, is performed.

**4.0 Items Pertaining to Test Conduct**

*4.1 Definition of Two-Wheel Lift*

Two-wheel lift is defined as the occurrence of at least two inches of simultaneous lift of the inside wheels from the test surface. NHTSA does not consider two-wheel lift less than two inches when calculating a vehicle's NCAP rollover resistance rating. Two-wheel lift great enough to require outriggers to suppress further roll motion is to be reported simply as "two-wheel lift" as long as at least two inches of simultaneous two-wheel lift occurs before outrigger contact with the ground is made.

*4.2 Vehicle Test Configurations*

4.2.1 Load Configurations

All vehicles are to be evaluated with one of the two load configurations previously defined in Section 2.1.

### 4.2.2 Fuel Tank Loading

Prior to beginning a Slowly Increasing Steer or Fishhook maneuver test series, the fuel tank of the vehicle is to be completely filled at the beginning of testing and may not be less than 75% of capacity during any part of the testing. This criterion is in agreement with that defined in FMVSS 135.

### 4.2.3 Stability Control System

If equipped, vehicles are tested with stability control systems active. Stability control is not to be deactivated for any Slowly Increasing Steer or Fishhook maneuver.

### *4.3 Road Test Surface*

Tests are conducted on a dry, uniform, solid-paved surface. Surfaces with irregularities, such as dips and large cracks, are unsuitable, as they may confound test results.

### 4.3.1 Pavement Friction

All maneuvers are to be performed on a dry, high-mu road test surface.

Unless otherwise specified, the road test surface produces a peak friction coefficient (PFC) of approximately 0.9 when measured using an American Society for Testing and Materials (ASTM) E1136 standard reference test tire, in accordance with ASTM Method E 1337–90, at a speed of 64.4 km/h (40 mph), without water delivery. This criterion is in agreement with that defined in FMVSS 135.

### 4.3.2 Slope

The test surface has a consistent slope between level and 2%. All tests are to be initiated in the direction of positive slope (uphill).

### *4.4 Ambient Conditions*

### 4.4.1 Ambient Temperature

The ambient temperature shall be between 0° C (32° F) and 40° C (104° F). This criterion is in agreement with that defined in FMVSS 135.

### 4.4.2 Wind Speed

The maximum wind speed shall be no greater than 10 m/s (22 mph).

### *4.5 Calibration Data*

It is strongly recommended that calibration data be collected prior to tests of each configuration to assist in resolving uncertain test data. NHTSA typically records the following data at the beginning of each test day for each test vehicle configuration.

- The distance measured by the speed sensor along a straight line between the end points of a surveyed linear roadway standard of 1000 feet or more (observed and recorded manually from the speed sensor display).
- Five to fifteen seconds of data from all instrument channels as the configured and prepared test vehicle is driven in a straight line on a level, uniform, solid-paved road surface at 60 mph.

### *4.6 Tire Break-In Procedure*

Prior to each test series, the tires must be "scrubbed in" to wear away mold sheen and be brought up to operating temperature. Test vehicles are to be driven around a circle 100 feet in diameter at a speed that produces a lateral acceleration of approximately 0.5 to 0.6 g. Using this circle, three clockwise laps are to be followed by three counterclockwise laps. Once the six laps of the circle are complete, the driver is to input, sinusoidal steering at a frequency of 1 Hz and a handwheel amplitude ($\delta_{ss}$) corresponding to 0.5–0.6 g for 10 cycles while maintaining a vehicle speed of 35 mph. A total of four passes using sinusoidal steering are to be used. The handwheel magnitude of the final cycle of the final pass is to be twice that of $\delta_{ss}$. These four sinusoid passes typically require an area similar in size to that required by the Fishhook maneuver. The steering machine should be programmed to execute the sinusoids. There should be only a minimal delay between the completion of the tire break-in and the start of a test series to allow for the collection of a static data file, steering machine and data acquisition system adjustment, and final driver briefing.

### *4.7 Static Datums*

At the completion of the tire break-in procedure and before the start of a test series, fifteen seconds of data are collected from all instrument channels with the test vehicle at rest, the engine running, the transmission in "Park" (automatic transmission) or in neutral with the parking brake applied (manual transmission), and the front of the test vehicle facing in the direction of positive gradient (uphill) on the test surface. The static data files are used in post processing to establish datums for each instrument channel.

### *4.8 Vehicle Gear Selection*

All tests are performed with automatic transmissions in "Drive" or with manual transmissions in the highest gear capable of sustaining the desired test speed (Slowly Increasing Steer) or Maneuver Entrance Speed (Fishhook), with one exception:

Slowly Increasing Steer tests may be performed with automatic transmissions in lower gears if 50 mph cannot be maintained in "Drive" and the gear selection does not result in engine overspeeding. In some cases, 50 mph cannot be maintained through to the end of the steering schedule regardless of the gear selection due to low engine power or chassis responses that result in the loss of traction or spin out. It has been NHTSA's experience, however, that maximum lateral acceleration is generally achieved well before the maneuver's maximum handwheel angle is attained.

Manual transmission clutches are to remain engaged during all maneuvers.

### *4.9 Outrigger Adjustment*

The initial clearance between the road surface and the bottom of the NHTSA outrigger skid pads is approximately 14 inches for the "standard" outriggers and approximately 12 inches for the "short" outriggers with the test vehicle at rest on a level surface. Note that the Multi-Passenger Configuration may compress the suspension more than the Nominal Load Configuration (reducing outrigger clearance). As such, outrigger height adjustment may be required when transitioning from one load configuration to the next.

Outrigger height adjustment may be required during a test series. If an outrigger skid pad contacts the road surface during a test run wherein there is no two-wheel lift, the outrigger at the affected end of the vehicle is raised 0.75 inches and the test run is repeated at the same maneuver entrance speed. If both outriggers make contact with the test surface during a test run wherein there is no two-wheel lift, both outriggers are raised 0.75 inches and the test run is repeated at the same maneuver entrance speed.

### *4.10 Videotape Documentation*

It is recommended that all test runs be documented on videotape. NHTSA videotapes Slowly Increasing Steer tests from a viewpoint several hundred feet outside the circular path of the test vehicle. Fishhook maneuver tests are videotaped from a viewpoint that facilitates observation of the inboard side of the vehicle so as to best record instances of two-wheel lift. For both maneuvers, it is recommended the zoom of the camera be adjusted during each test such that the vehicle fills the view frame to the greatest extent possible.

### *4.11 Summary of Tests To Be Performed for Each Vehicle*

For each test vehicle, testing will be performed according to the following plan:

1. Installation of new tires
2. Tire break-in
3. Slowly Increasing Steer Maneuver test series in the Nominal Load or Multi-Passenger Configuration
4. Tire change
5. Tire break-in
6. NHTSA Fishhook maneuver test series in the Nominal Load or Multi-Passenger Configuration with additional tire changes and break-ins as indicated in the maneuver protocol

### *4.12 Summary of Metrics Measured For Each Vehicle*

1. Overall handwheel position at 0.3 g in the Nominal Load Configuration
2. Two-Wheel Lift in NHTSA Fishhook maneuver in Nominal Load or Multi-Passenger Configuration (Yes/No)
3. Rim-to-Pavement Contact or Tire Debeading in Nominal Load or Multi-Passenger Configuration (Yes/No)

### *4.13 Post Processing*

Data are filtered in post processing with a 6-Hz 12-pole, 2-pass, phaseless digital Butterworth filter. All accelerations are corrected for CG displacement (see Section 2.5.1.3). Laser height measurements are filtered with a one-pass 200 ms running average technique.

Post processing also includes roll effects correction for lateral acceleration as follows.

$a_{yc} = a_{ym}\cos\Theta - a_{zm}\sin\Theta$

where,

$a_{yc}$ is the corrected lateral acceleration (*i.e.*, the vehicle's lateral acceleration in a plane horizontal to the test surface)

$a_{ym}$ is the measured lateral acceleration in the vehicle reference frame

$a_{zm}$ is the measured vertical acceleration in the vehicle reference frame

Θ is the vehicle s roll angle

**Note:** The z-axis sign convention is positive in the downward direction for both the vehicle and test surface reference frames.

### 5.0 References

1. Forkenbrock, G.J., Garrott, W.R., Heitz, Mark, O'Harra, Brian C., "A Comprehensive Experimental Examination of Test Maneuvers That May Induce On-Road, Untripped Light Vehicle Rollover—Phase IV of NHTSA's Light Vehicle Rollover Research Program," NHTSA Technical Report, DOT HS 809 513, October 2002.

2. Forkenbrock, G.J., O'Harra, Brian C., Elsasser, Devin, "An Experimental Examination of 26 Light Vehicles Using Test Maneuvers That May Induce On-Road, Untripped Light Vehicle Rollover—Phase VI of NHTSA's Light Vehicle Rollover Research Program," NHTSA Technical Report, DOT HS 809 547, 2003.

3. NHTSA, "NHTSA's Experience With Outriggers Used For Testing Light Vehicle—A Brief Summary," Docket No. NHTSA–2001–9663, January 2003.

4. NHTSA, "NHTSA's Set-Up Procedures for Wheel Lift Sensors—A Brief Overview," Docket No. NHTSA–2001–9663, April 2003.

5. SAE J266, Surface Vehicle Recommended Practice, "Steady-State Directional Control Test Procedures For Passenger Cars and Light Trucks," 1996.

BILLING CODE 4910–59–P

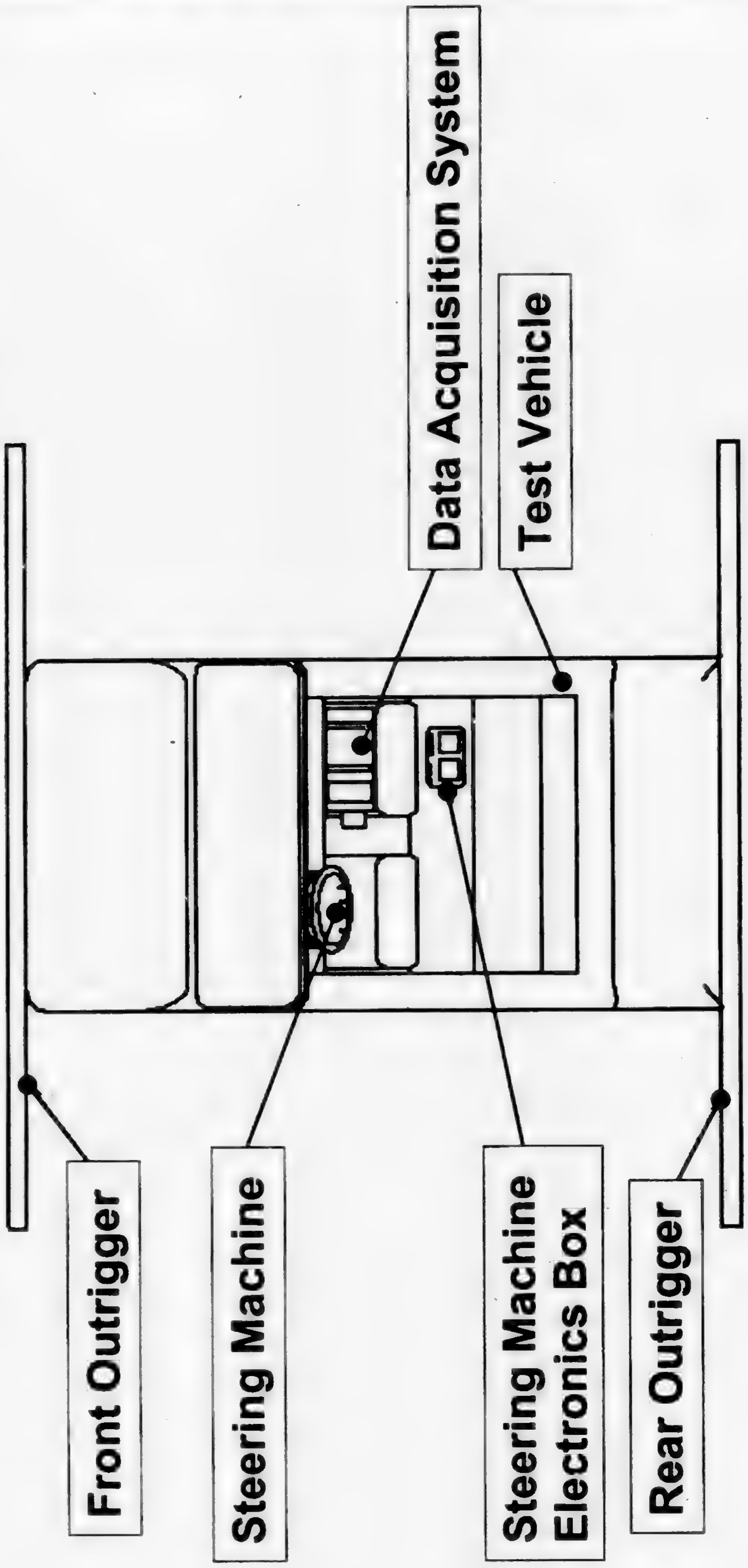
Front Outrigger
Steering Machine
Steering Machine Electronics Box
Rear Outrigger
Data Acquisition System
Test Vehicle

**Figure I.1.** Equipment location.

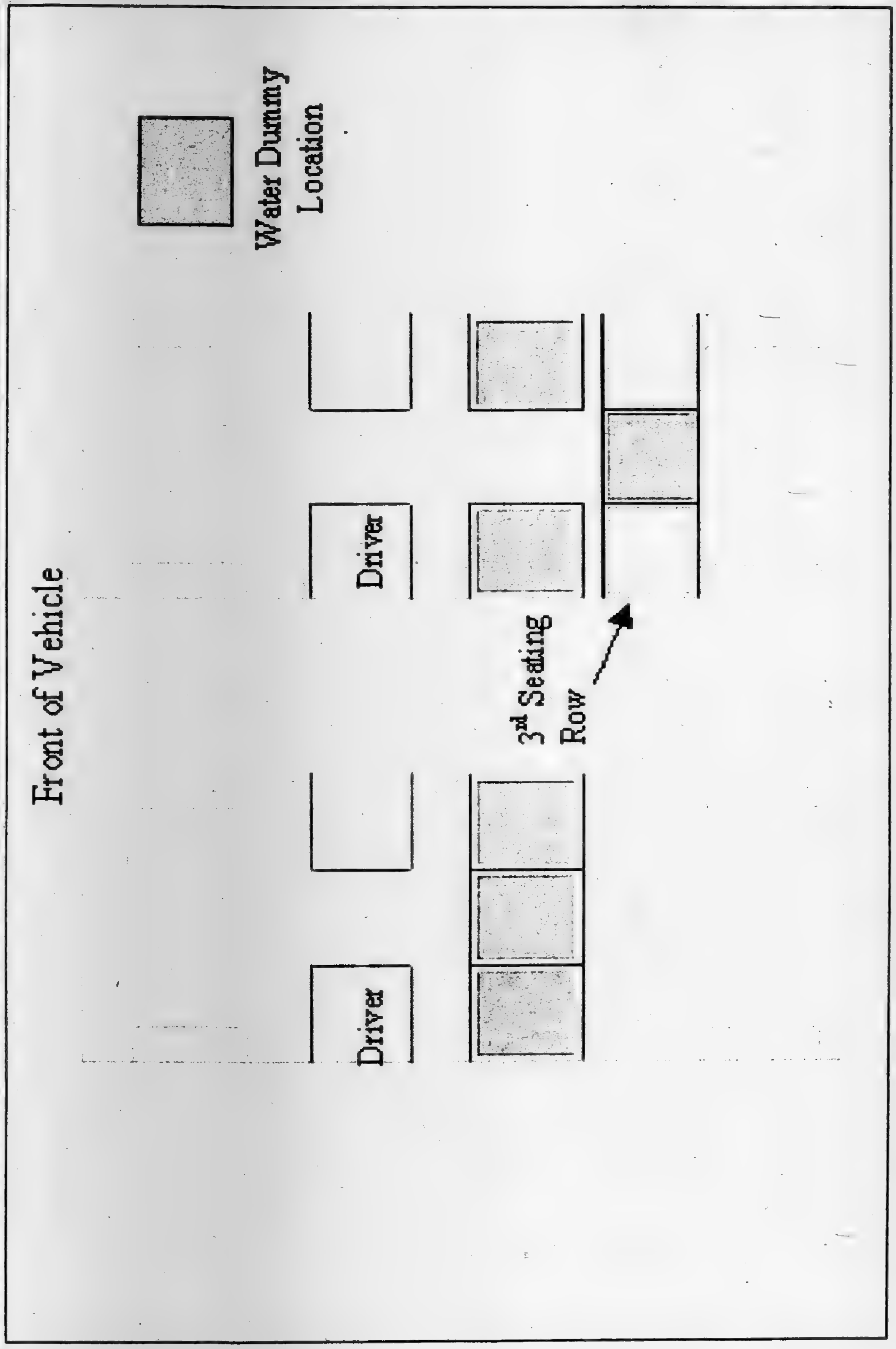
Front of Vehicle
Water Dummy Location
Driver
Driver
3rd Seating Row

**Figure I.2.** Water dummy placement for vehicles with three or more designated rear seating positions, excluding pick-up trucks. **Note:** A water dummy is placed in the third seating row only when the second seating row is limited to two designated seating positions.

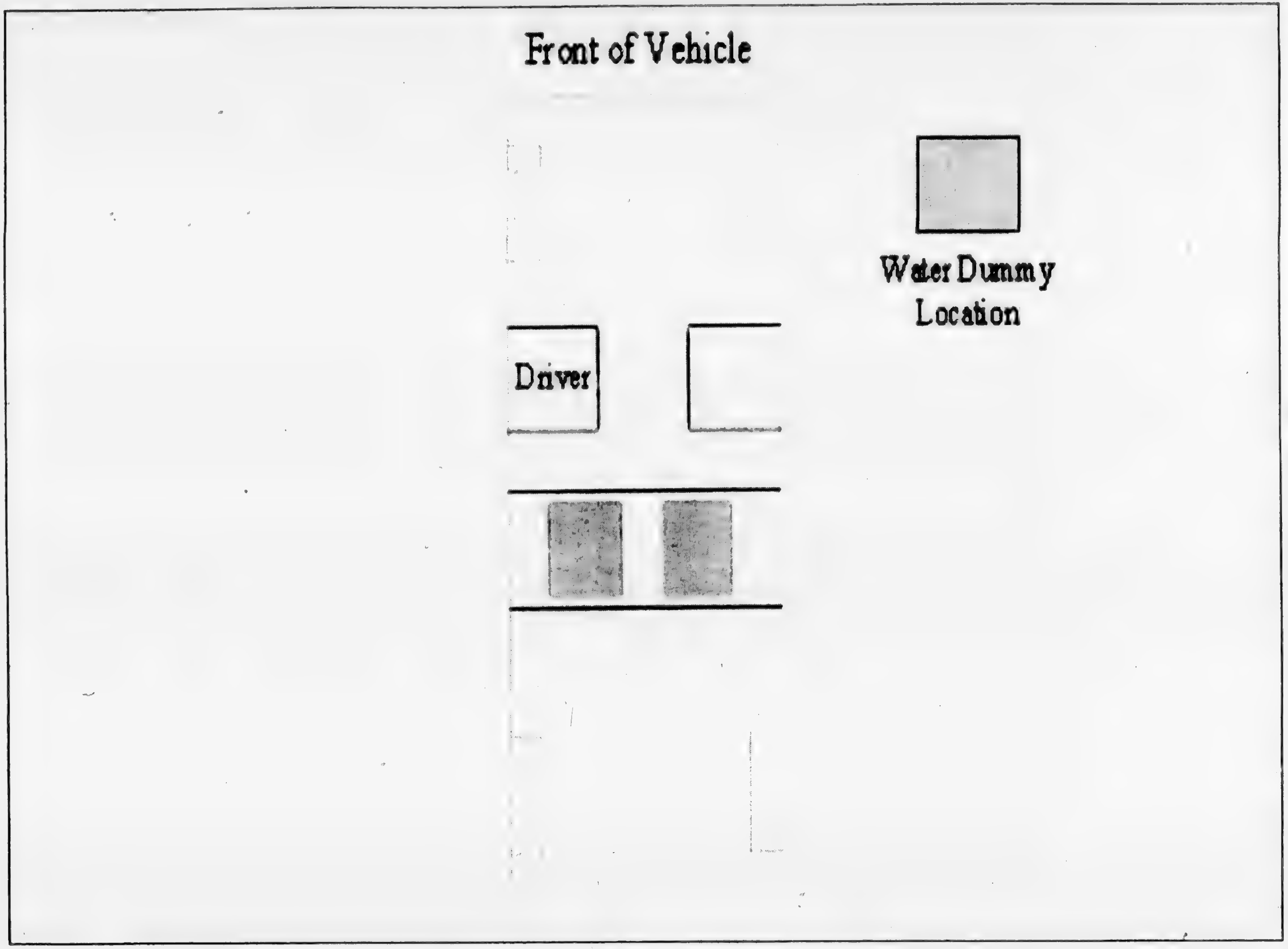
Front of Vehicle
Driver
Water Dummy Location

**Figure I.3.** Water dummy placement for vehicles with two designated rear seating positions, excluding pick-up trucks.

**Figure I.3.** Water dummy placement for vehicles with two designated rear seating positions, excluding pick-up trucks.

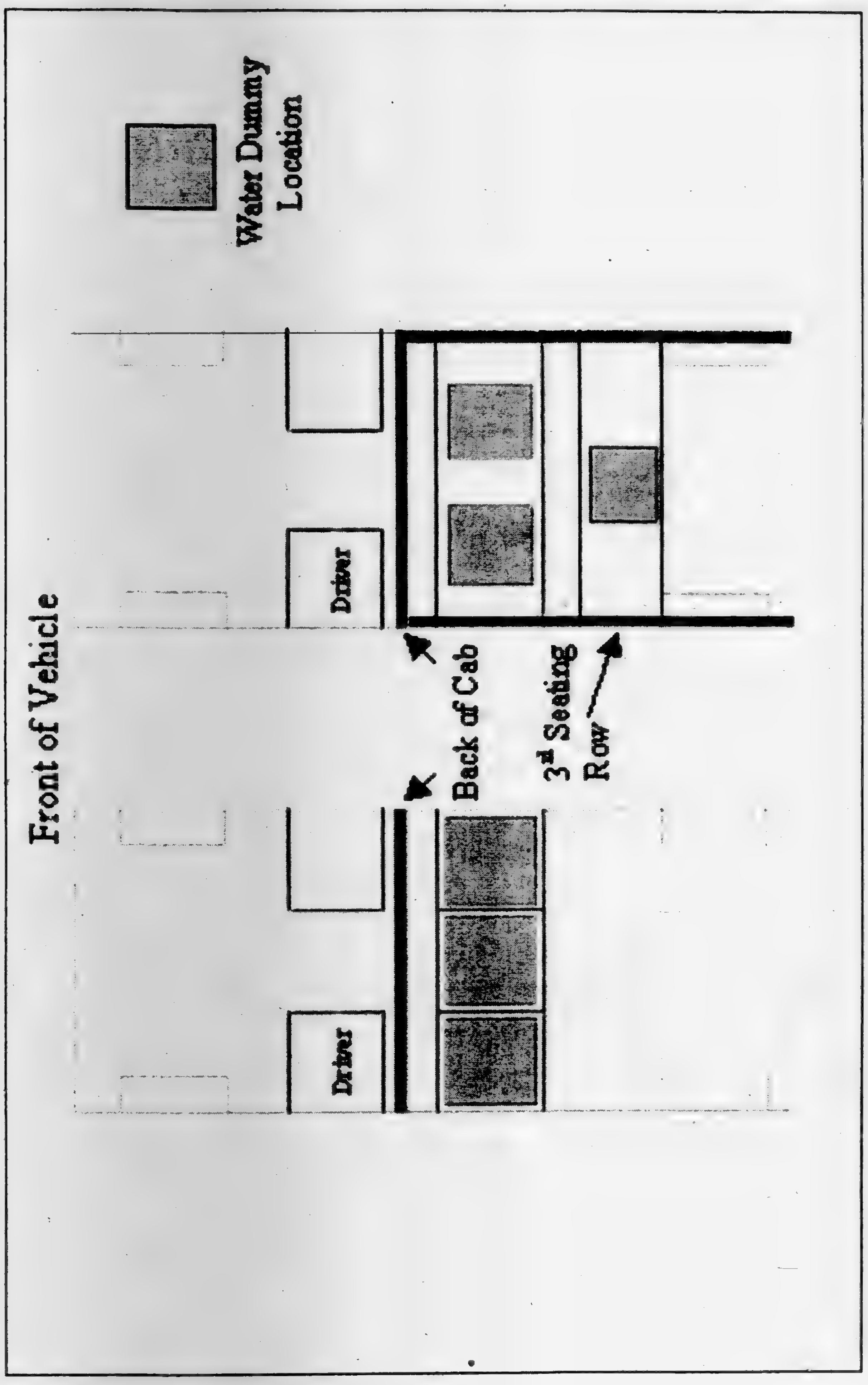
Water Dummy Location
Front of Vehicle
Driver
Driver
Back of Cab
3rd Seating Row

**Figure I.4.** Water dummy placement for pick-up trucks with no designated rear seating positions. **Note:** A water dummy is placed in a simulated third seating row only when the inside width of the cargo bed prevents the placement of three dummies side by side in the simulated second row.

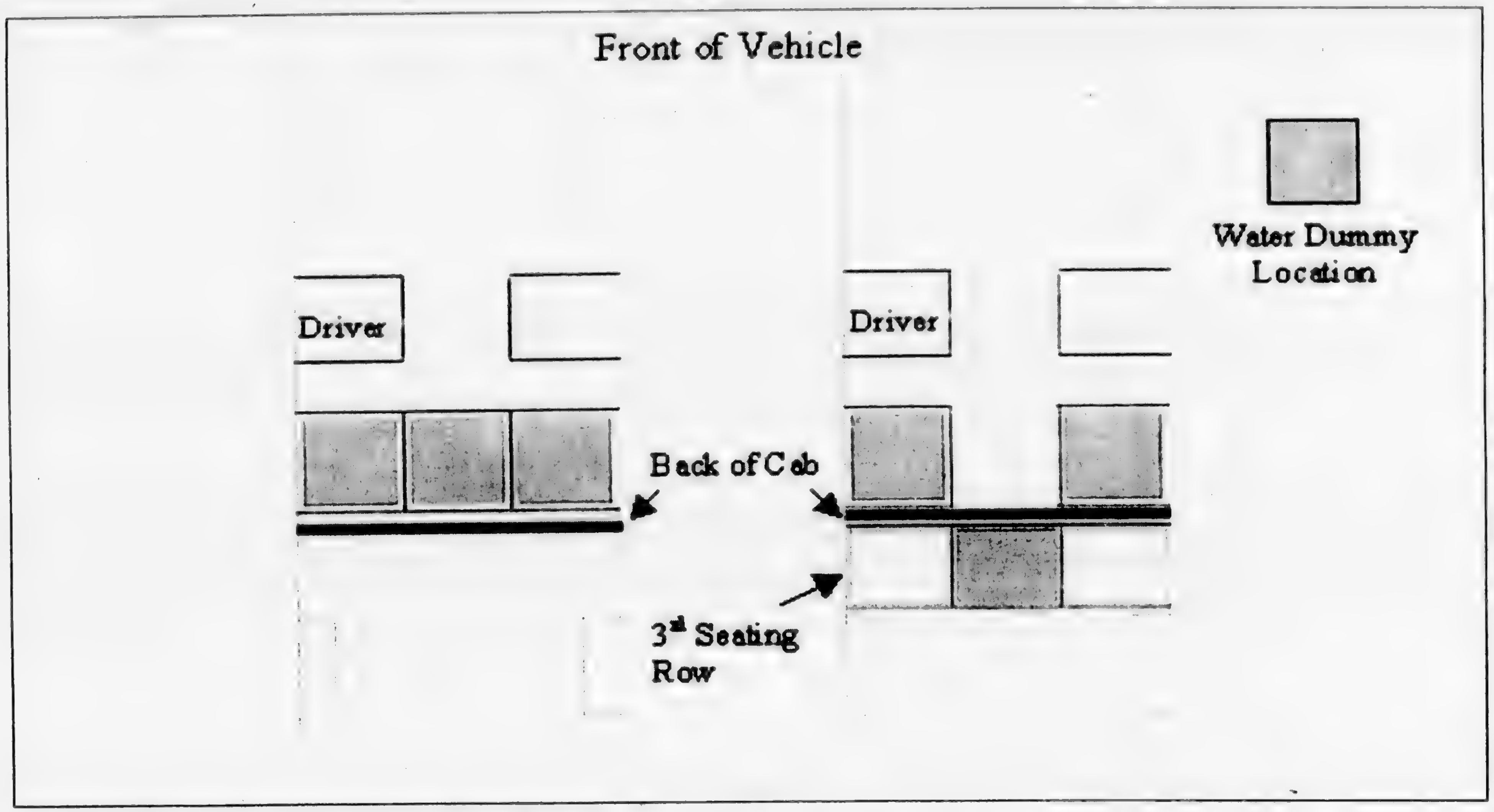
Front of Vehicle
Water Dummy Location
Driver
Driver
Back of Cab
3rd Seating Row

**Figure I.5.** Water Dummy Placement – pick-up trucks with two or more designated rear seating positions. **Note:** A water dummy is placed in a simulated third seating row only when the second seating row is limited to two designated seating positions

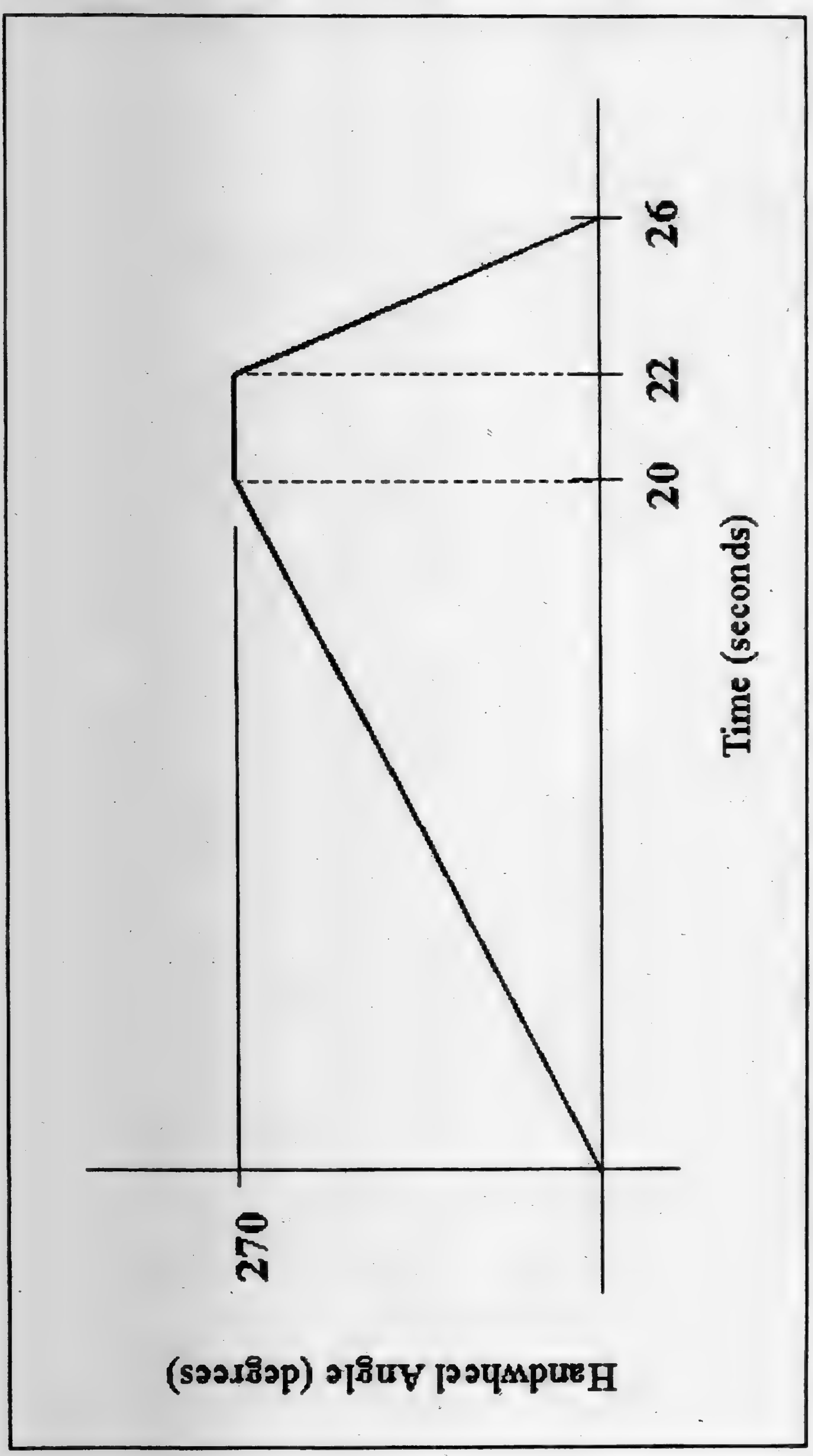

**Figure I.6.** Slowly Increasing Steer maneuver description (Option #1).

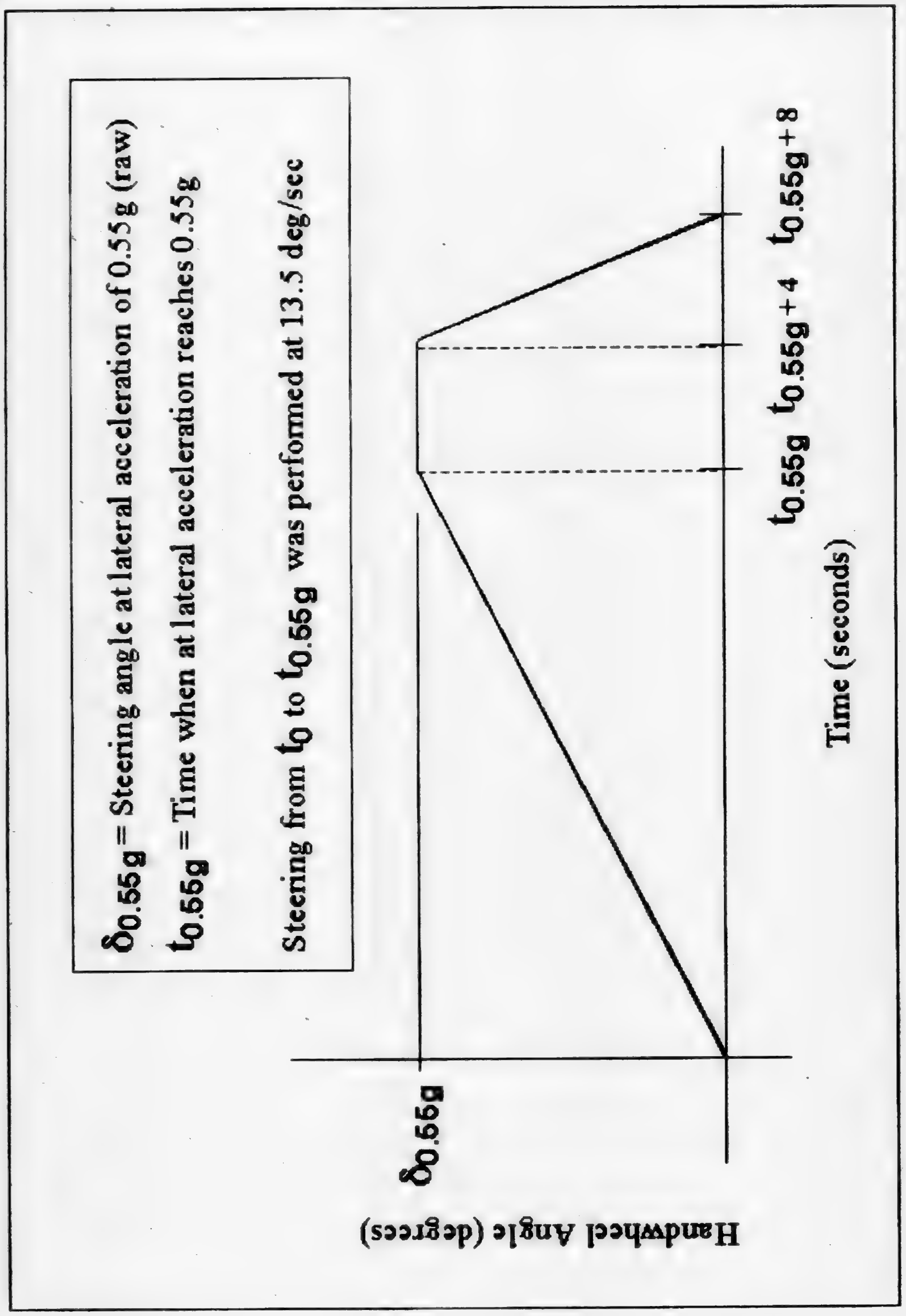

**Figure I.7.** Slowly Increasing Steer maneuver description (Option #2).

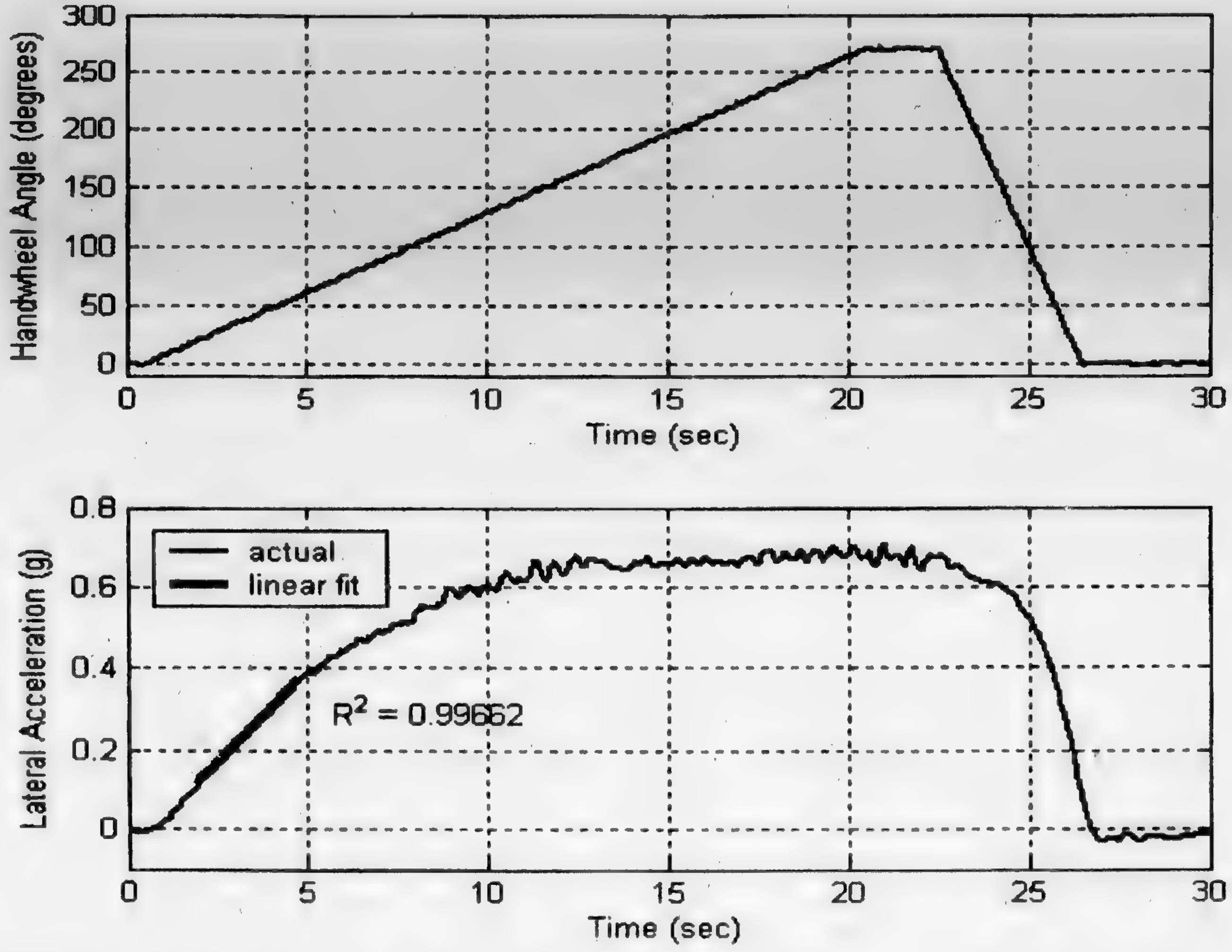

**Figure I.8.** Sample handwheel angle and lateral acceleration data (Option #1). The linear range used to define the lateral acceleration regression line is highlighted.

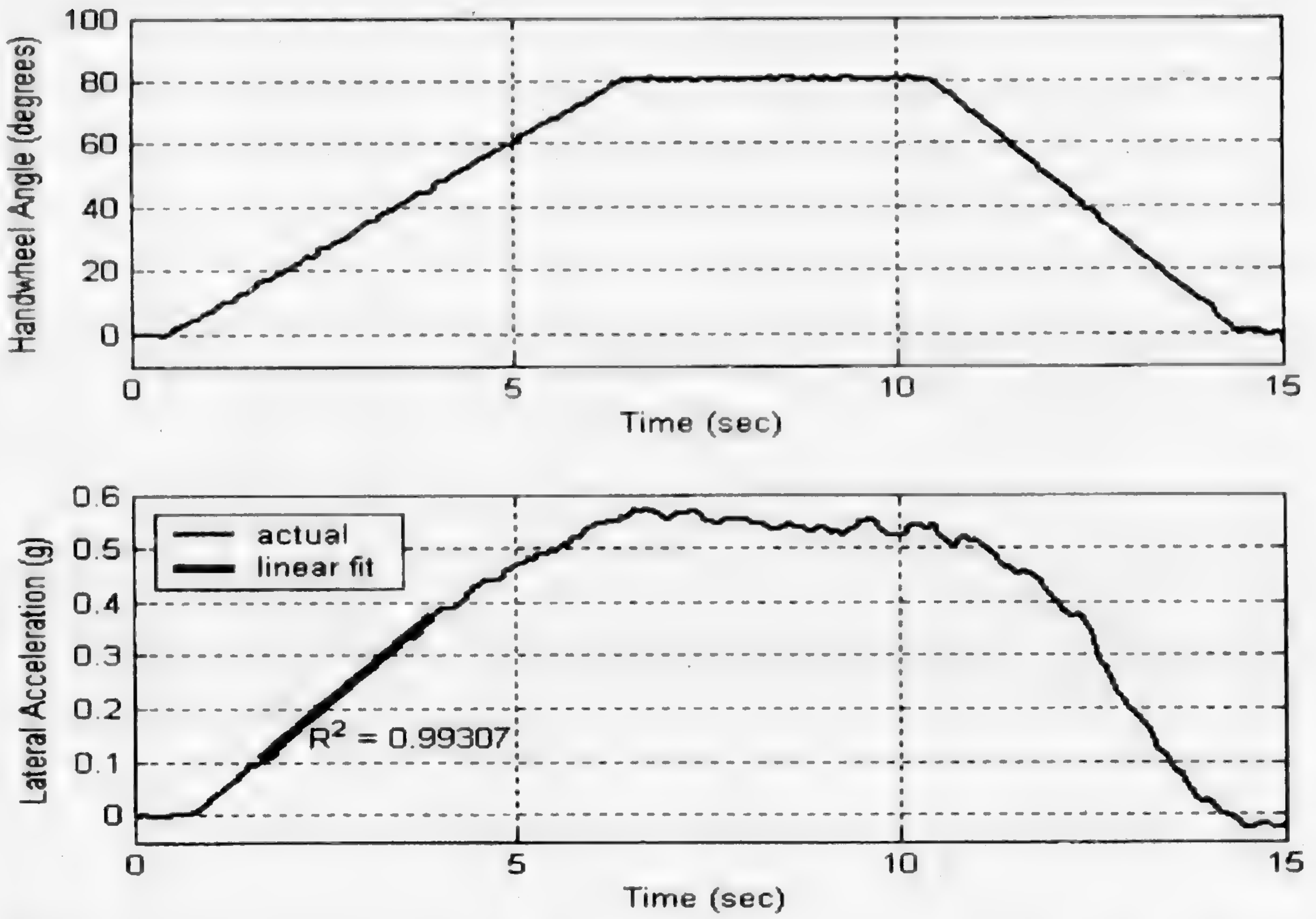

**Figure I.9.** Sample handwheel angle and lateral acceleration data (Option #2). The linear range used to define the lateral acceleration regression line is highlighted.

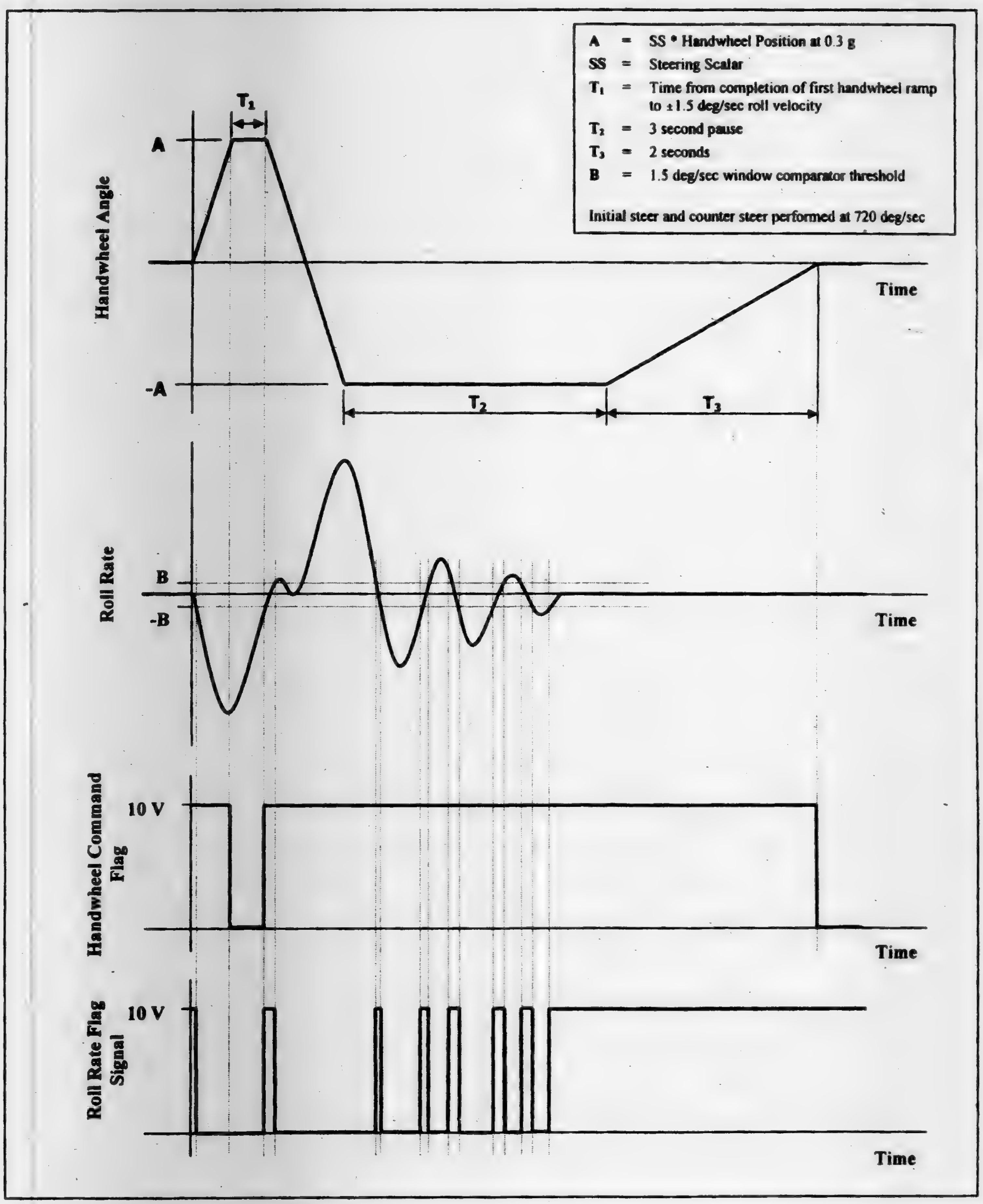
A = SS * Handwheel Position at 0.3 g
SS = Steering Scalar
T₁ = Time from completion of first handwheel ramp to ±1.5 deg/sec roll velocity
T₂ = 3 second pause
T₃ = 2 seconds
B = 1.5 deg/sec window comparator threshold
Initial steer and counter steer performed at 720 deg/sec
T₁
A
-A
Handwheel Angle
Time
T₂
T₃
Roll Rate
B
-B
Time
Handwheel Command Flag
10 V
Time
Roll Rate Flag Signal
10 V
Time

**Figure I.10.** NHTSA Fishhook maneuver description.

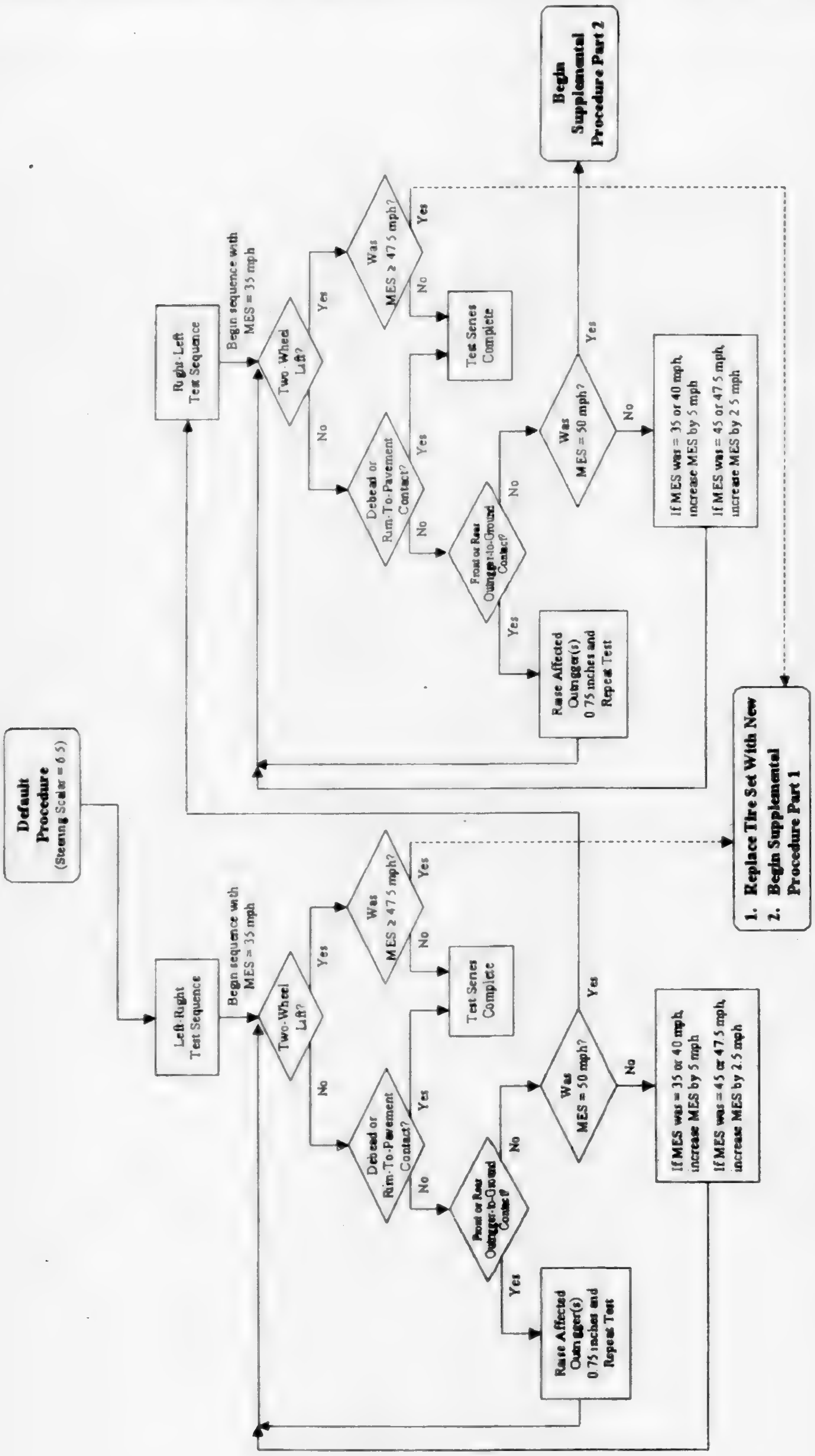
Default Procedure (Steering Scalar = 6.5)
Left-Right Test Sequence
Begin sequence with MES = 35 mph
Two-Wheel Lift?
Yes
No
Was MES ≥ 47.5 mph?
Yes
No
Test Series Complete
Debead or Rim-To-Pavement Contact?
Yes
No
Front or Rear Outrigger-to-Ground Contact?
Yes
No
Raise Affected Outrigger(s) 0.75 inches and Repeat Test
Was MES = 50 mph?
Yes
No
If MES was = 35 or 40 mph, increase MES by 5 mph
If MES was = 45 or 47.5 mph, increase MES by 2.5 mph
1. Replace Tire Set With New
2. Begin Supplemental Procedure Part 1
Right-Left Test Sequence
Begin sequence with MES = 35 mph
Two-Wheel Lift?
Yes
No
Was MES ≥ 47.5 mph?
Yes
No
Test Series Complete
Debead or Rim-To-Pavement Contact?
Yes
No
Front or Rear Outrigger-to-Ground Contact?
Yes
No
Raise Affected Outrigger(s) 0.75 inches and Repeat Test
Was MES = 50 mph?
Yes
No
If MES was = 35 or 40 mph, increase MES by 5 mph
If MES was = 45 or 47.5 mph, increase MES by 2.5 mph
Begin Supplemental Procedure Part 2

Figure L11. Default Test Procedure.

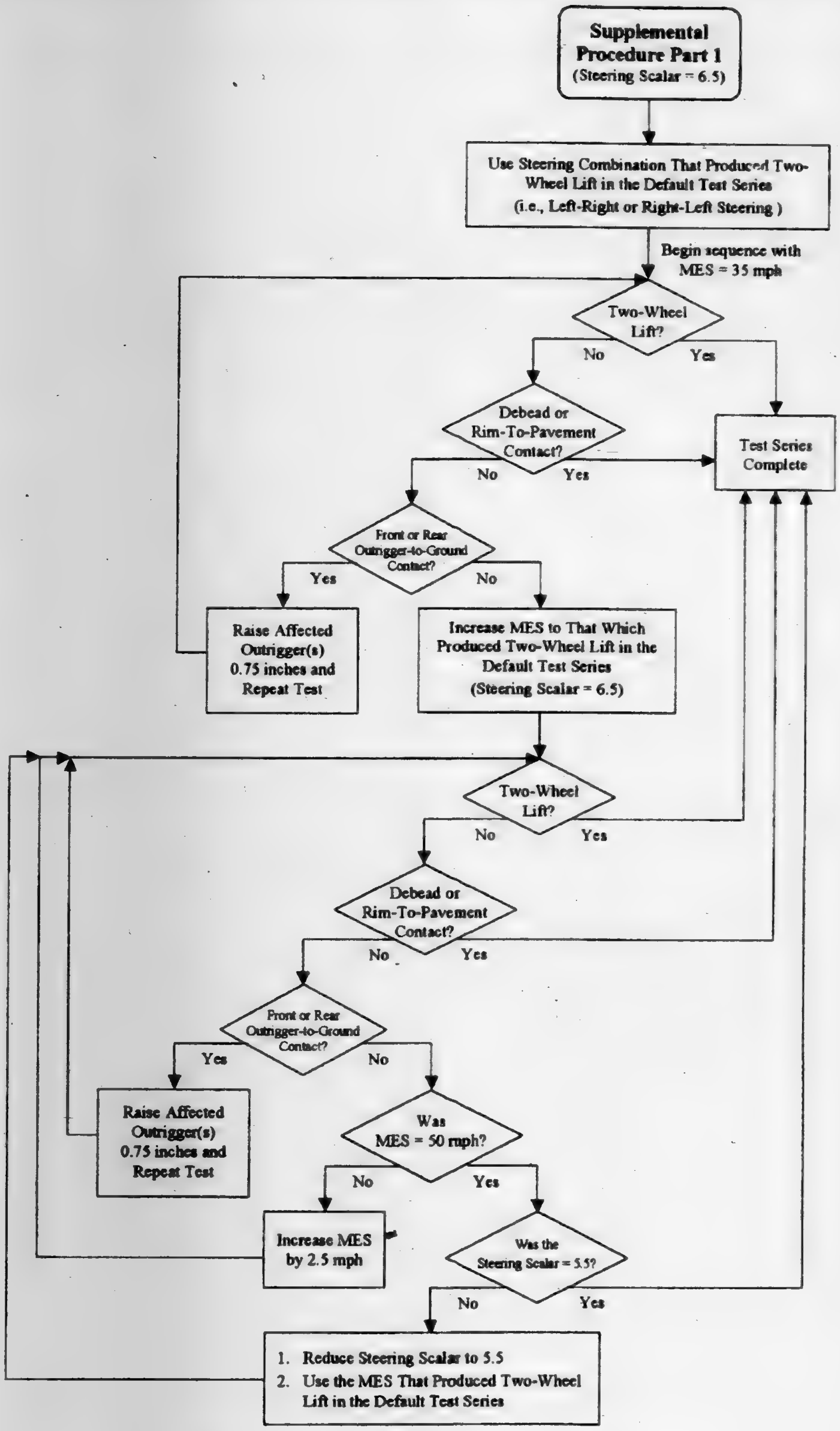
Supplemental Procedure Part 1 (Steering Scalar = 6.5)
Use Steering Combination That Produced Two-Wheel Lift in the Default Test Series (i.e., Left-Right or Right-Left Steering )
Begin sequence with MES = 35 mph
Two-Wheel Lift?
No
Yes
Debead or Rim-To-Pavement Contact?
No
Yes
Test Series Complete
Front or Rear Outrigger-to-Ground Contact?
Yes
No
Raise Affected Outrigger(s) 0.75 inches and Repeat Test
Increase MES to That Which Produced Two-Wheel Lift in the Default Test Series (Steering Scalar = 6.5)
Two-Wheel Lift?
No
Yes
Debead or Rim-To-Pavement Contact?
No
Yes
Front or Rear Outrigger-to-Ground Contact?
Yes
No
Raise Affected Outrigger(s) 0.75 inches and Repeat Test
Was MES = 50 mph?
No
Yes
Increase MES by 2.5 mph
Was the Steering Scalar = 5.5?
No
Yes
1. Reduce Steering Scalar to 5.5
2. Use the MES That Produced Two-Wheel Lift in the Default Test Series

**Figure I.12.** Supplemental Procedure Part 1.

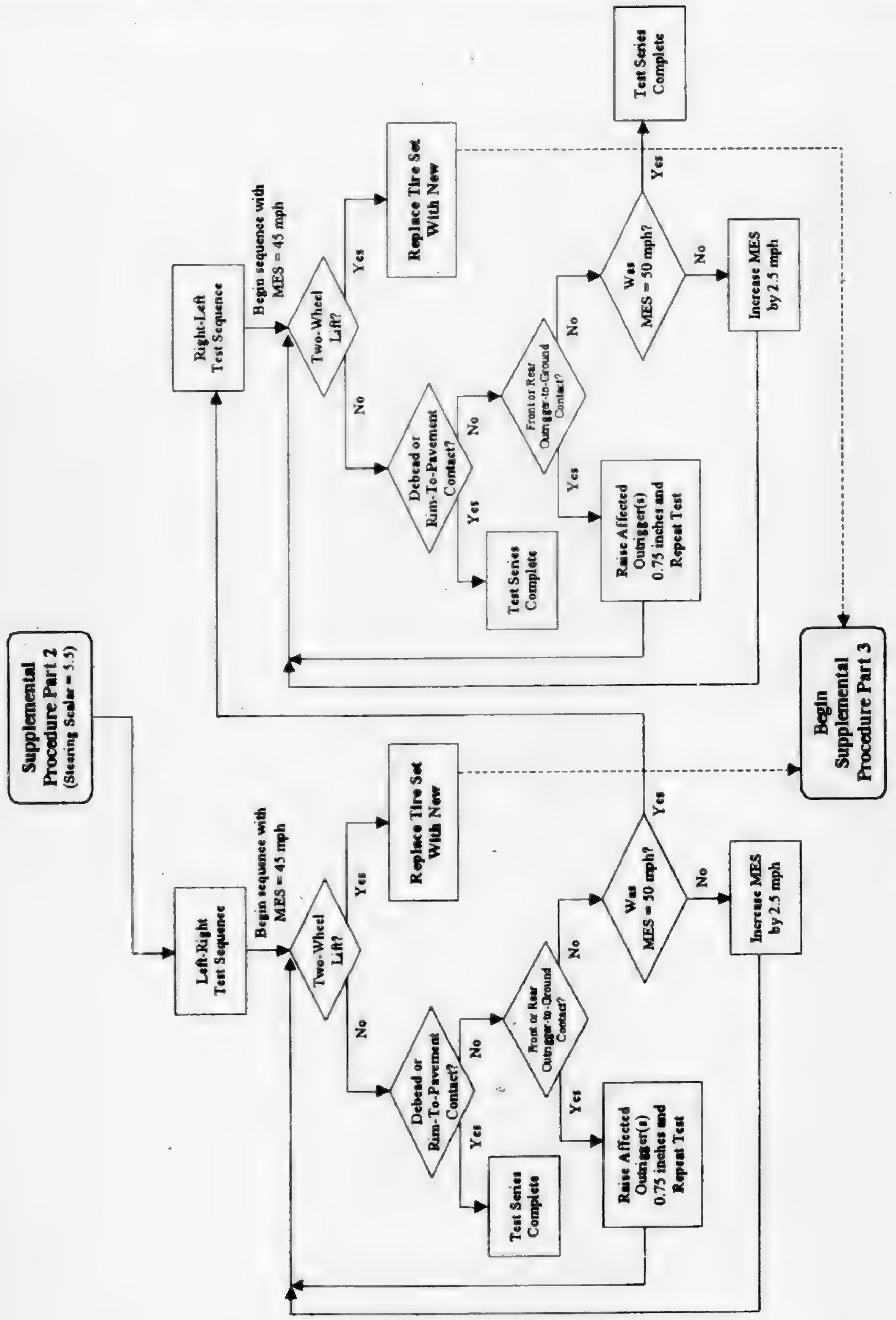
Supplemental Procedure Part 2 (Steering Scalar = 5.5)
Left-Right Test Sequence
Begin sequence with MES = 45 mph
Two-Wheel Lift?
Yes
Replace Tire Set With New
No
Debead or Rim-To-Pavement Contact?
Yes
Test Series Complete
No
Front or Rear Outrigger-to-Ground Contact?
Yes
Raise Affected Outrigger(s) 0.75 inches and Repeat Test
No
Was MES = 50 mph?
Yes
No
Increase MES by 2.5 mph
Right-Left Test Sequence
Begin sequence with MES = 45 mph
Two-Wheel Lift?
Yes
Replace Tire Set With New
No
Debead or Rim-To-Pavement Contact?
Yes
Test Series Complete
No
Front or Rear Outrigger-to-Ground Contact?
Yes
Raise Affected Outrigger(s) 0.75 inches and Repeat Test
No
Was MES = 50 mph?
Yes
Test Series Complete
No
Increase MES by 2.5 mph
Begin Supplemental Procedure Part 3

**Figure I.13.** Supplemental Procedure Part 2.

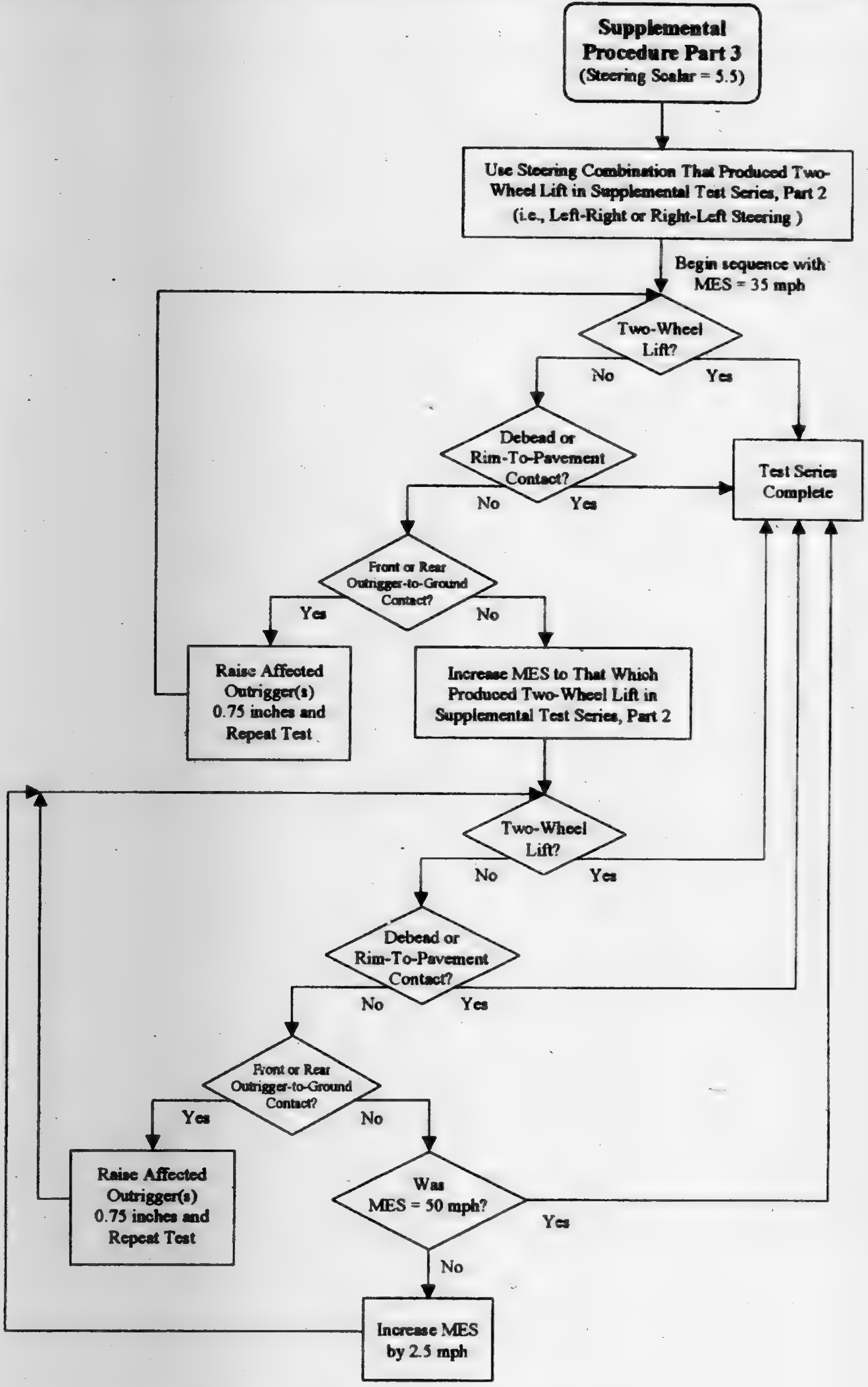
Supplemental Procedure Part 3
(Steering Scalar = 5.5)
Use Steering Combination That Produced Two-Wheel Lift in Supplemental Test Series, Part 2 (i.e., Left-Right or Right-Left Steering )
Begin sequence with MES = 35 mph
Two-Wheel Lift?
No
Yes
Debead or Rim-To-Pavement Contact?
No
Yes
Test Series Complete
Front or Rear Outrigger-to-Ground Contact?
Yes
No
Raise Affected Outrigger(s) 0.75 inches and Repeat Test
Increase MES to That Which Produced Two-Wheel Lift in Supplemental Test Series, Part 2
Two-Wheel Lift?
No
Yes
Debead or Rim-To-Pavement Contact?
No
Yes
Front or Rear Outrigger-to-Ground Contact?
Yes
No
Raise Affected Outrigger(s) 0.75 inches and Repeat Test
Was MES = 50 mph?
Yes
No
Increase MES by 2.5 mph

**Figure I.14.** Supplemental Procedure Part 3.

## Appendix II. Development of a Rollover Risk Model

In its study of our rating system for rollover resistance (Transportation Research Board Special Report 265), the National Academy of Sciences (NAS) recommended that we use logistic regression rather than linear regression for analysis of the relationship between rollover risk and SSF. We had considered a logistic regression model during the development of the rollover resistance rating system used by NCAP for 2001 to 2003 vehicles, but we observed that it predicted rollover rates that were systematically lower than actual rollover rates for vehicles with low SSF. Our first step was to explore the use of transformations of SSF to create a logistic regression model that better matched actual rollover rates while following the recommendation of the NAS.

A satisfactory logistic regression model using SSF only was the starting point for developing a risk model that used both a vehicle's SSF and its performance in dynamic maneuver tests to predict its rollover rate. We used four binary variables to describe whether or not the vehicle tipped up in two dynamic maneuver tests each performed at two different occupant load conditions. The final model required the results of only the Fishhook maneuver test with the heavy five occupant load and the SSF of a vehicle. The predicted rollover rate determines the rollover resistance rating of the vehicle.

### A. Improving the Fit of the Logistic Regression Model With SSF Only

We had considered logistic regression during the development of the SSF based rating system (66 FR 3393, January 12, 2001), but found that it consistently under-predicted the actual rollover rate at the low end of the SSF range where the rollover rates are high. The NAS study acknowledged this situation and gave the example of another analysis technique (non-parametric) that made higher rollover rate predictions at the low end of the SSF scale. In the NPRM, we discussed our plan to first examine ways to improve the fit of the logistic regression model to the actual rollover rates in the simpler model with SSF as the only vehicle attribute before expanding the logistic regression model to predict rollover rates using maneuver test results and SSF as vehicle attributes. In this way, the addition of maneuver test results is more likely to have an effect that reflects the additional information they represent on rollover causation.

A consultant to the Bureau of Transportation Statistics who lectured on logistic regression suggested that we use a transformation of SSF, like Log(SSF), rather than SSF alone to change the shape of the trend line generated by the logistic regression in our range of interest of SSF. This technique is similar to what we used to improve the fit of the linear regression model in the SSF rating system (Figure II.1). Linear regression creates a "best fit" straight line to predict the relationship between the independent variable, SSF in this case, and the dependent variable, rollover rate per single vehicle crash in this case. However, the observations of rollover rate for groups of vehicles with a known SSF did not appear to lie on a straight line. The relationship appeared to be exponential with a reduction in rollover rate with increase in SSF much greater at low SSFs than at high SSFs. We used the transformation Log(SSF) to replace SSF alone in the linear regression model so that it would compute a "best fit" exponential curve instead of a best fit straight line in order better fit the prediction line to the observations. We referred to Figure II.1 in notices 65 FR 34998 and 66 FR 3388 as a linear regression model because of the analysis technique, but the NAS study refers to it as the exponential model because of its curve shape.

Figure II.2 plots the actual rollover rates as a function of SSF observed for 293,000 single vehicle crashes involving 100 vehicle groups in six states from 1994 to 2001 (not all state's data available in every year). The point designated "actual rate" at each value of SSF gives the proportion of single vehicle crashes for vehicles of that SSF that resulted in rollover. For example, the leftmost point shows that for all single vehicle crashes observed for vehicles with an SSF of 1.00, slightly less than 50% resulted in rollover. There are fewer than 100 data points because the data at each SSF often include the crashes of several vehicles with the same SSF.

Figure II.2 also plots the rollover rates predicted for the same 293,000 crashes by a logistic regression model operating on SSF without transformation as the only vehicle variable. The model was developed from a database that contained the driver characteristic and road condition variables in the state crash reports of 293,000 crashes in six states. Data from Maryland, Florida, North Carolina, Missouri, Utah and Pennsylvania were used because these were the only states with electronic records available to NHTSA in which we could identify the make/model of the vehicle and could be sure whether or not a rollover occurred. The driver variables were gender, age [young (less than 25), old (70 or older), neither], and evidence of alcohol or drug use. The road condition variables were weather, speed limit, curve, hill, darkness, wet or icy surface, and potholes or other bad surface conditions. The SAS logistic regression program used these driver and road variables, the vehicle SSF, the State and the outcome (rollover or not) for each of 293,000 single vehicle crashes to compute the risk model. Figure II.2 shows the exercise of inputting the driver, road, state and vehicle SSF circumstances for each individual crash of the 293,000 back into the risk model to test how well the model can predict the actual rollover outcomes.

In similar fashion as the "actual rate" points on Figure II.2, the "predicted rate" points at each value of SSF give the proportion of single vehicle crashes for vehicles of that SSF that resulted in rollover. The number and circumstances (as well as can be described from state crash report variables) of crashes represented by the actual and predicted rate points are identical. However, in one case the rollover outcomes are the actual outcomes reported in the state data. But in the other case, the rollover outcomes are the predictions of the risk model given the driver and road variables and vehicle SSF for each actual the crash. The predicted rate points do not lie on a continuous curve when plotted against SSF because the distribution of driver and road variables are different for the single vehicle crashes experienced by each group of vehicles represented by its SSF value.

Figure II.2 shows that the risk model obtained using the untransformed SSF computes predictions that match the actual rollover rates well at SSFs higher than 1.3, but its predictions are consistently low at the low end of the SSF range. The predictions also tend to be too high in the 1.15 to 1.25 SSF range. For this reason we described the form of the curve inherent to the logistic regression computation as being too flat or lacking sufficient curvature to represent rollover risk in our past notices.

Figure II.2 also lists an objective measure of the goodness of fit of the predictions to aid in the comparisons of models with and without using transformations of SSF. It is the $R^2$ value for linear regression between the predicted and actual rollover rates. Figure II.3 is a plot of predicted versus actual rollover rates taken from Figure II.2. It shows how the $R^2$ value was obtained. A linear regression of the form "$y = mx$" computes the best fit line that passes through the origin. The $R^2$ value that describes the goodness of fit of the points to the line "$y = 0.9673x$" is 0.752. A perfect set of predictions would cause an $R^2$ value of 1.0 on the line "$y = 1.0x$".

Figures II.4, II.5, and II.6 show the predictions of a series of risk models obtained in the same way as that shown in Figure II.2 except that transformations of SSF were used as the vehicle variable instead of just SSF. The first transformation, shown in Figure II.4, was Log(SSF). This is the transformation currently used in the linear regression rollover risk model. It makes a very small improvement both to the under-predictions at the low end of the SSF range and the over-predictions in the 1.15 to 1.25 SSF range. The $R^2$ goodness of fit indicator increased to 0.7975.

Next we tried the transformation Log (SSF-margin). Figure II.5 shows the predictions of a logistic regression model with a margin of 0.85. The subtraction of a margin from SSF makes a large improvement in the fit of the predicted rollover rates to the actual rollover rates in the SSF range of 1.0 to 1.25. The $R^2$ goodness of fit indicator increased to 0.8811 about the line "$y = 1.0011x$" for the whole SSF range of data base (1.0 to 1.53). This transformation caused a small sacrifice in the fit of the model at the high end of the SSF range. However, a good fit in the 1.0 to 1.25 SSF range is more important to a rating system because most of the consumer requests for rollover information involve vehicles in this range.

Figure II.6 shows the fit of the model with a margin of 0.9. The $R^2$ goodness of fit indicator increased slightly to 0.8948 about the line "$y = 1.0091x$", but the sacrifice of fit at the high SSF end also increased. Figure II.7 is a plot of predicted versus actual rollover rates taken from Figure II.6. The use of the transformation Log(SSF–0.90) instead of SSF alone in the logistic regression gave us a risk model with the benefits of logistic regression recommended by the NAS and a goodness of fit with the actual rollover rate data at least equivalent to that of the linear regression model we have been using.

Figure II.8 shows the best logistic regression model (margin = 0.90) and the linear regression model we have been using. In this presentation, the driver and road variables of the crashes for each SSF were the same so that the differences in predicted rollover rates along each line were a purely a function of SSF differences, and the risk curve is continuous. The common scenario of driver and road variables represented the average conditions for the entire 293,000 single vehicle crashes (only 20% of which resulted in rollover). The linear regression model represents the same scenario.

The line in Figure II.8 representing the linear regression model is described by the equation:

$$\text{Roll Rate} = 13.28e^{(-3.376\times \text{SSF})}$$

The line in Figure II.8 representing the logistic regression model is described by the following equation:

$$\text{Roll Rate} = \frac{1}{1+e^{(2.7546+1.1814\times \ln(\text{SSF}-0.90))}}$$

**B. Adding Dynamic Maneuver Test Results to the Logistic Regression Model**

The dynamic maneuver test results (tip-up or no tip-up in each maneuver/load combination in Table 1 of the main body of the notice) were used as four binary variables in the logistic regression analysis. They were entered in addition to SSF to describe the vehicle. The same driver and road variables from state crash reports discussed above were used. The state crash report data for twenty-four of the vehicles used in the logistic regression analysis with dynamic maneuver test variables was a subset of the database of 293,000 single vehicle crashes described above. One extra vehicle was added for the maneuver tests that was not among the 100 vehicle groups we had studied previously, but state crash report data from the same years and states was obtained for it. However, the database with SSF and dynamic maneuver tests was much smaller than the 293,000 sample size available for the logistic regression model with SSF only. Its sample size was 96,000 single vehicle crashes of 25 vehicles including 20,000 rollovers.

The risk models combining SSF and dynamic maneuver test results (“dynamic results” for short) are computed in the same way as the logistic regression curve in Figure II.7. The logistic regression analysis of the database of 96,000 state reports of single vehicle crashes along with the dynamic results and SSF of each crashed vehicle provides a mathematical relationship between all of the vehicle, driver and road variables and a prediction of whether rollover will occur in a single vehicle crash described by any combination of the variables. Next, for the number of sets of driver and road variables that define the average crash scenario of the 293,000 single vehicle crash database, predictions of rollover or no rollover in the crash are made at each combination of SSF and dynamic results. The proportion of crashes that are predicted to result in rollover is plotted at each SSF and dynamic result. Continuous curves predicting rollover rate versus SSF for each combination of dynamic results is the form of the model. Since all of the predictions were made with the same driver and road scenario, the changes in rollover rate along each SSF curve or between dynamic results are functions of vehicle attributes.

Figure II.9 illustrates the form of the model with dynamic results. It shows the predicted rollover rate as a function of SSF and whether or not the vehicle tipped-up in the Fishhook maneuver with 5 occupant loading (fishhook heavy or FH). It predicts a rollover rate that is strongly dependant on SSF but higher for vehicles that tip-up in this severe maneuver than for vehicles that do not tip up in the test.

The intent of using dynamic results from four tests was to provide tests with a range of severity to best discriminate between vehicles on the basis of dynamic performance. The Fishhook heavy maneuver was the most severe, and the J-turn light was the least severe. The expectation was that tip-up in the least severe maneuver would predict a greater rollover risk than tip-up in the most severe maneuver.

Figures II.10, II.11 and II.12 show logistic regression models using each of the other maneuvers as a single variable for dynamic results. In Figure II.10, vehicles that tip-up in J-turn heavy are predicted to have a slightly greater rollover risk than those that do not tip. However, in the Fishhook light and J-turn light maneuvers, the logistic regression models of Figures II.11 and II.12 predicted a greater rollover risk for vehicles that did not tip-up.

We do not believe vehicles that tip up in the least severe maneuvers are actually safer than those that do not tip up. A more rational interpretation is that the numbers of vehicle tipping up in these maneuvers were too few to establish a definitive correlation. Only three vehicles tipped up in the J-turn light maneuver, and six vehicles tipped up in the Fishhook light maneuver. Only one more vehicle tipped up in the J-turn heavy maneuver than in the Fishhook light, and the prediction of the model with J-turn heavy was consistent with expectations that tip-up in the test predicts greater rollover risk. However, the extra vehicle in the J-turn heavy tip-up group was the Ford Ranger 2 WD with a very large sample size of over 8,000 single vehicle crashes (nearly 10 percent of the entire data base).

Next we computed a logistic regression using both dynamic results variables, Fishhook heavy and J-turn heavy, that were observed to have a directionally correct result when entered into the model individually. The result was that the variable, J-turn heavy, was rejected by the logistic regression program as not statistically significant in the presence of the Fishhook heavy variable. In other words, the predictions based on tip-up in the Fishhook heavy maneuver do not change whether or not the vehicle also tips up in the J-turn heavy maneuver.

Figure II.13 shows the final model that uses only Fishhook heavy of the dynamic results variables. The printout of the SAS logistic regression procedure that establishes the coefficients of the model has been docketed separately. This model has a risk prediction for vehicles that tip up in the dynamic maneuver tests based on the greatest number of vehicles possible in our 25 vehicle data base. All 11 vehicles that tipped up in any maneuver are represented on the tip-up curve, and the 14 vehicles without tip-up are represented on the other curve. The logistic regression model based on SSF only for 100 vehicles is included for reference. It is very similar to the risk model with dynamic result variables for vehicles that tip up in the Fishhook heavy maneuver. This result is not surprising because the SSF only model was optimized for best fit in the 1.00 to 1.25 SSF range that included all vehicles tipping up in dynamic maneuver tests. The SSF only model was based on a vehicle sample that included 10 of the 11 vehicles that tipped up in the dynamic tests, but the sample included 90 additional vehicles. The fact that the prediction based on the SSF of 100 vehicles closely matches the prediction based on 11 vehicles that tipped up in the dynamic tests suggests that the small sample has produced a robust prediction although the predictive power of tip-up in the dynamic test may not be great.

In Figure II.13, the equation of the line representing the SSF only model (from the 100 vehicle database) is:

$$\text{Roll Rate} = \frac{1}{1+e^{(2.7546+1.1814\times \ln(\text{SSF}-0.90))}}$$

The equations for the final model representing a combination of SSF with dynamic scores for each of the dynamic results (tip-up and no tip-up) are:

$$\text{Roll Rate} = \frac{1}{1+e^{(2.6968+1.1686\times \ln(\text{SSF}-0.90))}} \quad \text{for tip-up in FH}$$

$$\text{Roll Rate} = \frac{1}{1+e^{(2.8891+1.1686\times \ln(\text{SSF}-0.90))}} \quad \text{for no tip-up}$$

**Figure II.1: Linear regression model for 2001-2003 SSF Rollover Resistance Rating (RO/SVC estimated from six states adjusted to national average road use and for difference in state reporting)**

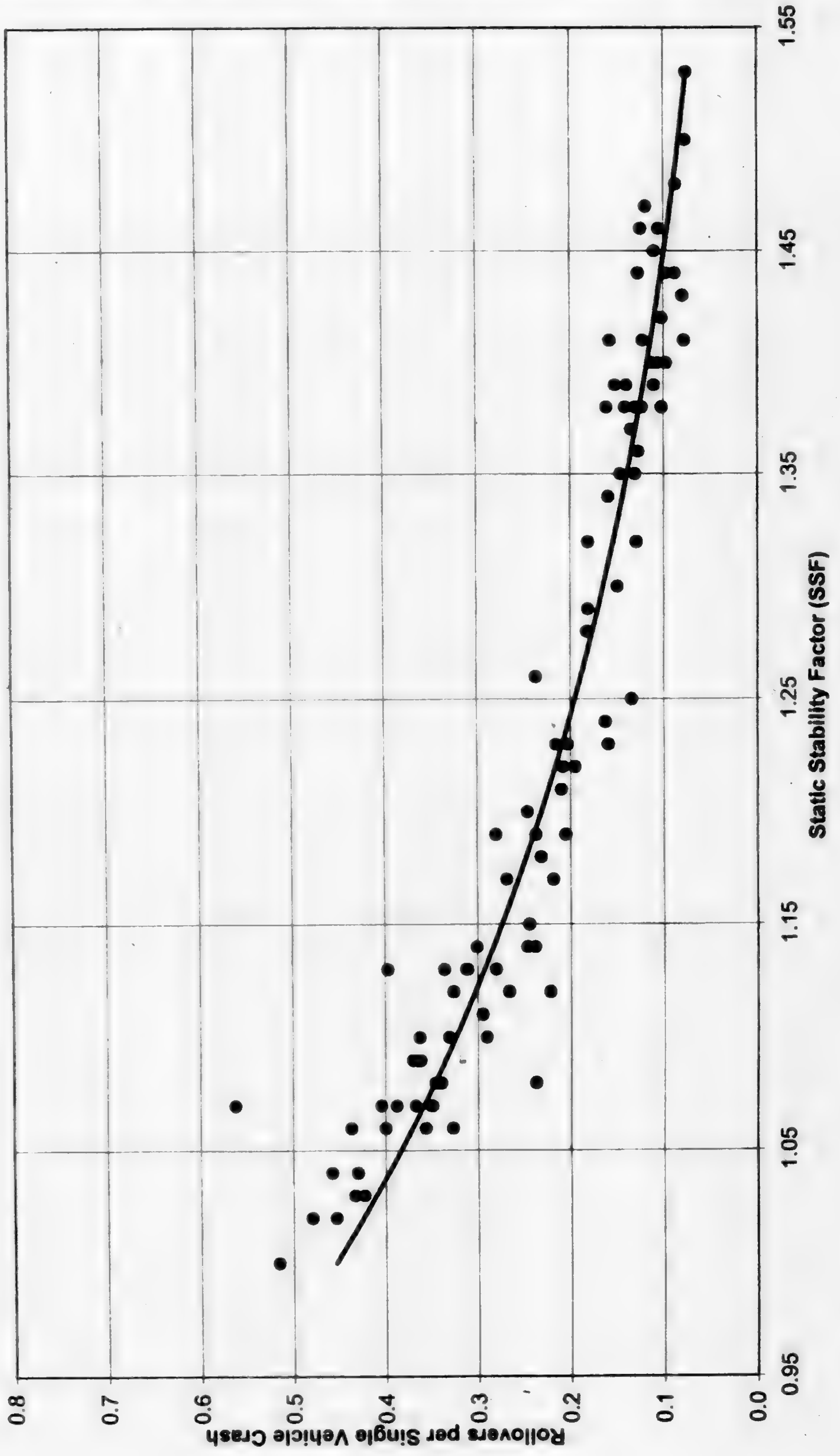

Figure II.2: Logistic regression model operating on SSF (w/o transformation)
100 vehicle database - SSF only

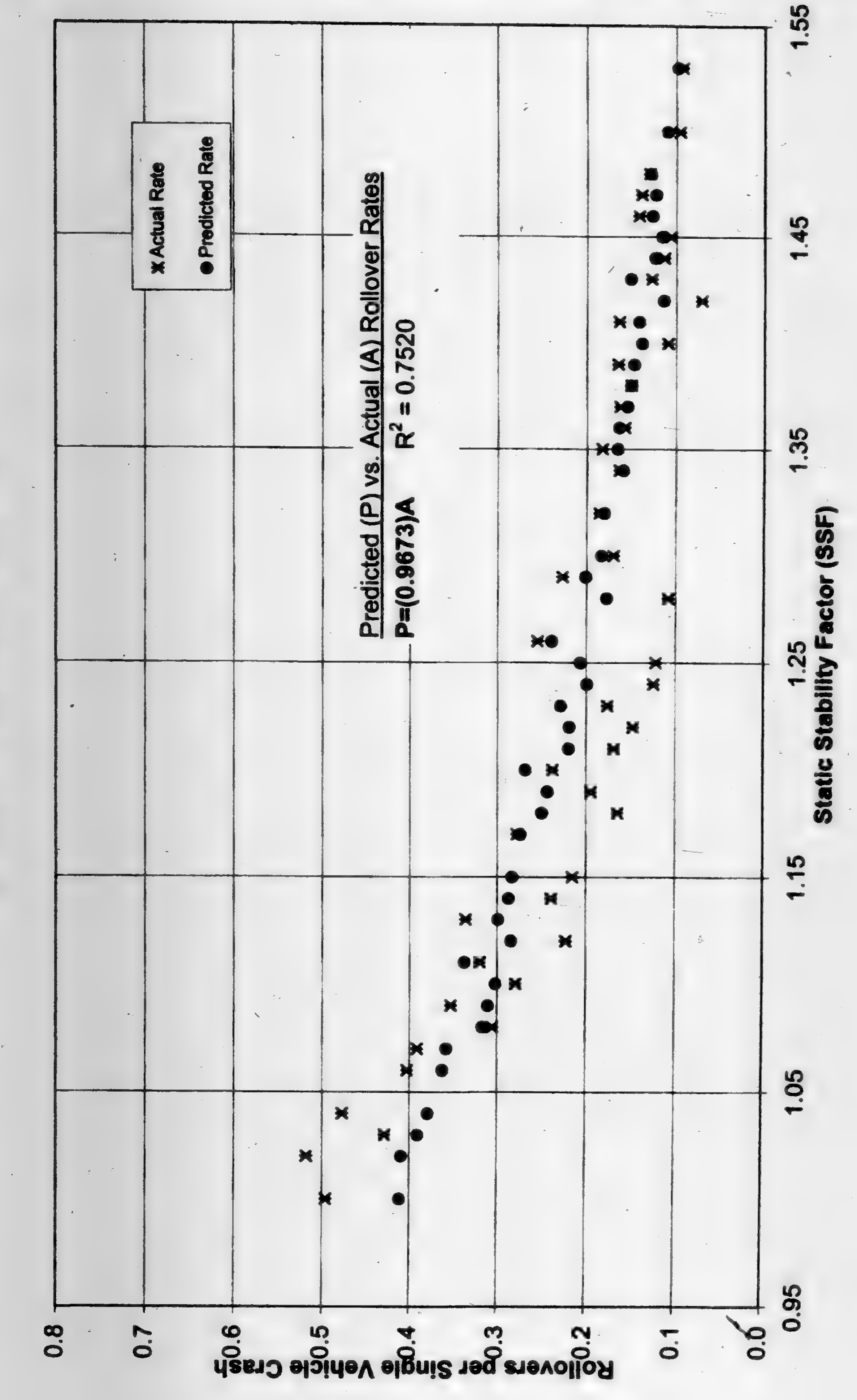

Figure II.3: Actual rollover rate vs. Predited rollover rate
(using model of Fig. II.2)
100 vehicle database - SSF only

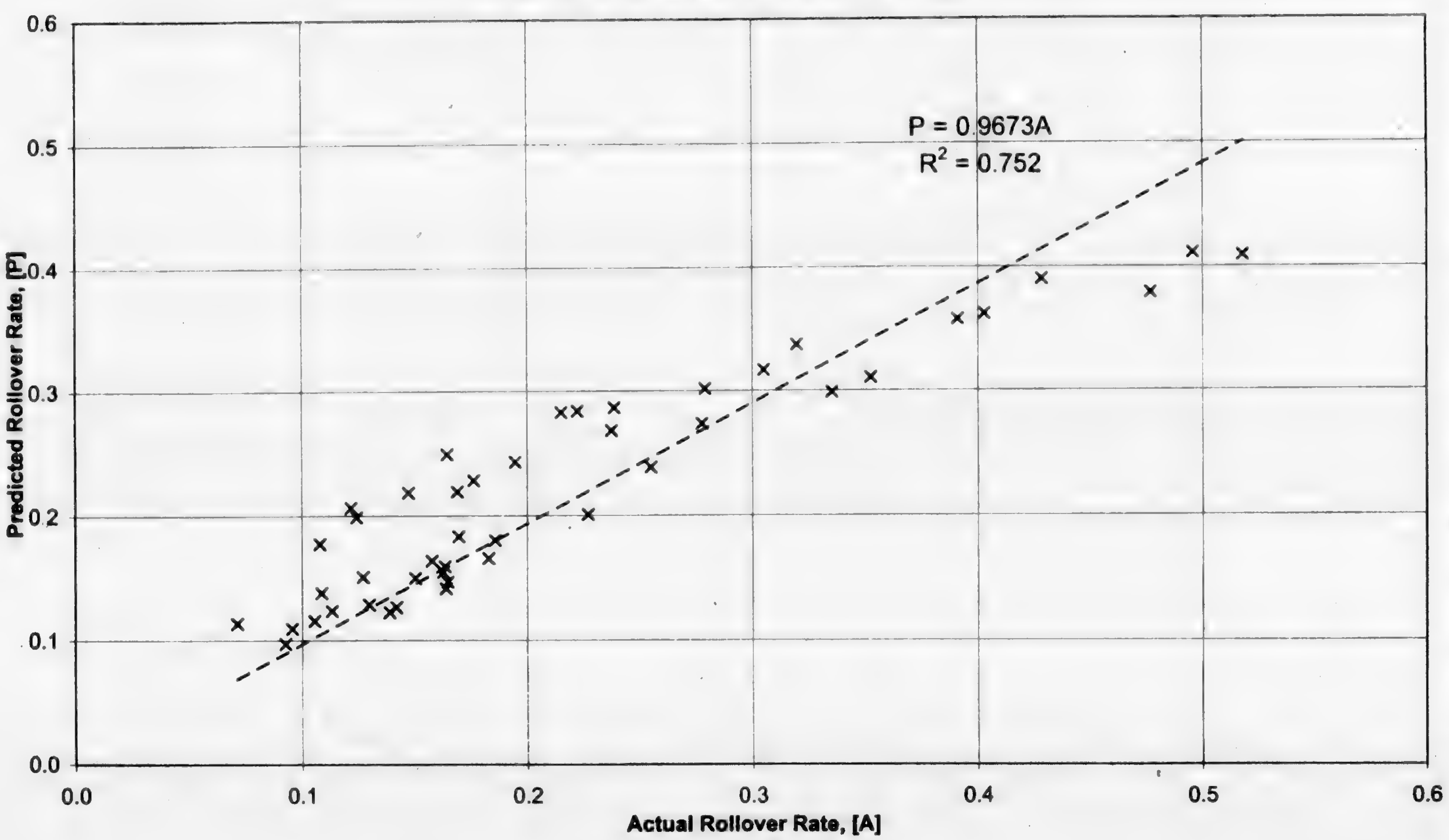

Figure II.4: Logistic regression model operating on the LOG (SSF)
100 vehicle database - SSF only

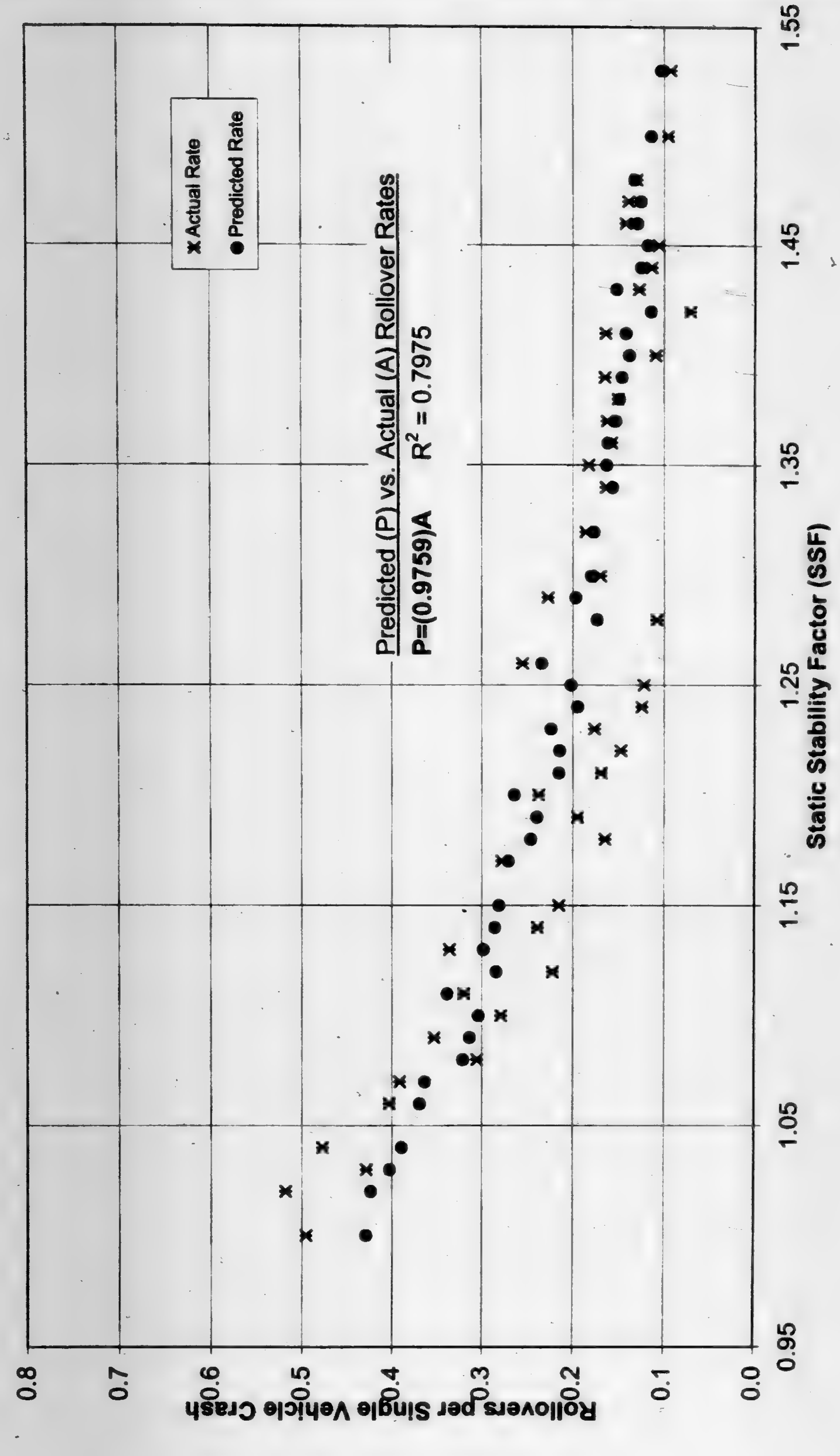

**Figure II.5: Logistic regression model operating on the LOG(SSF-0.85)**
**100 vehicle database - SSF only**

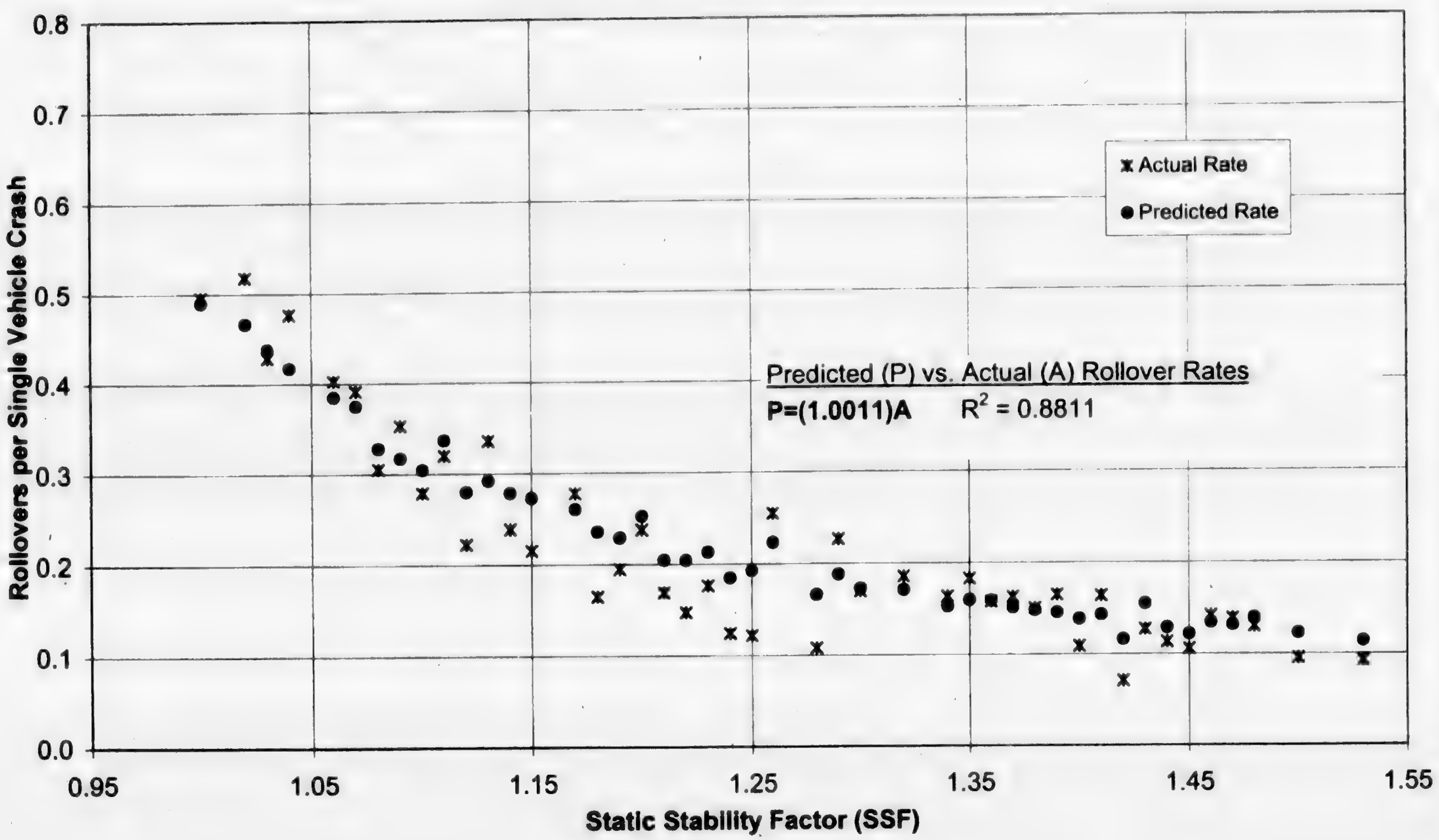

Figure II.6: Logistic regression model operating on the LOG(SSF-0.90)
100 Vehicle database - SSF only

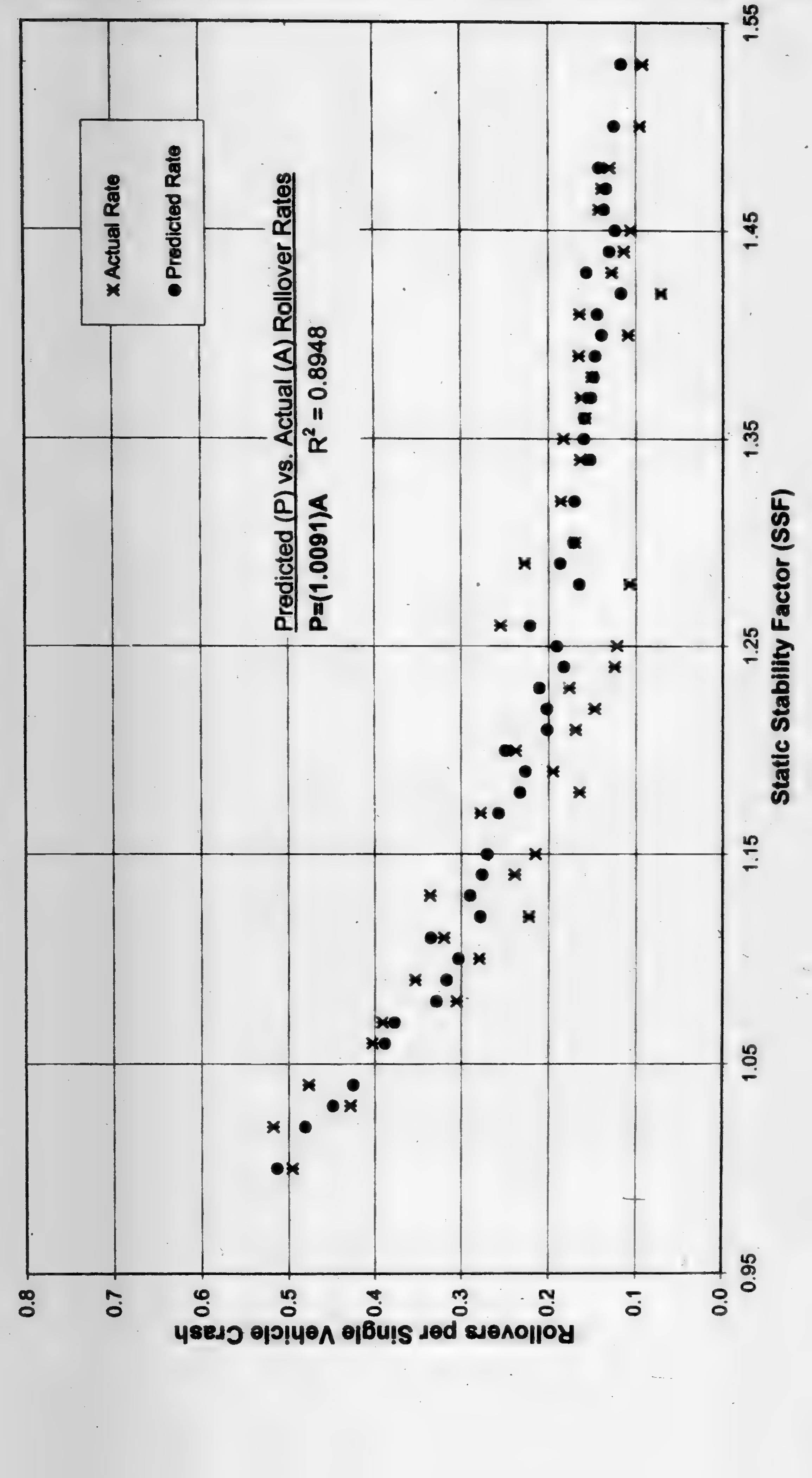

Figure II.7: Actual rollover rate vs. Predicted rollover rate
(using model of Fig. II.6)
100 vehicle database - SSF only

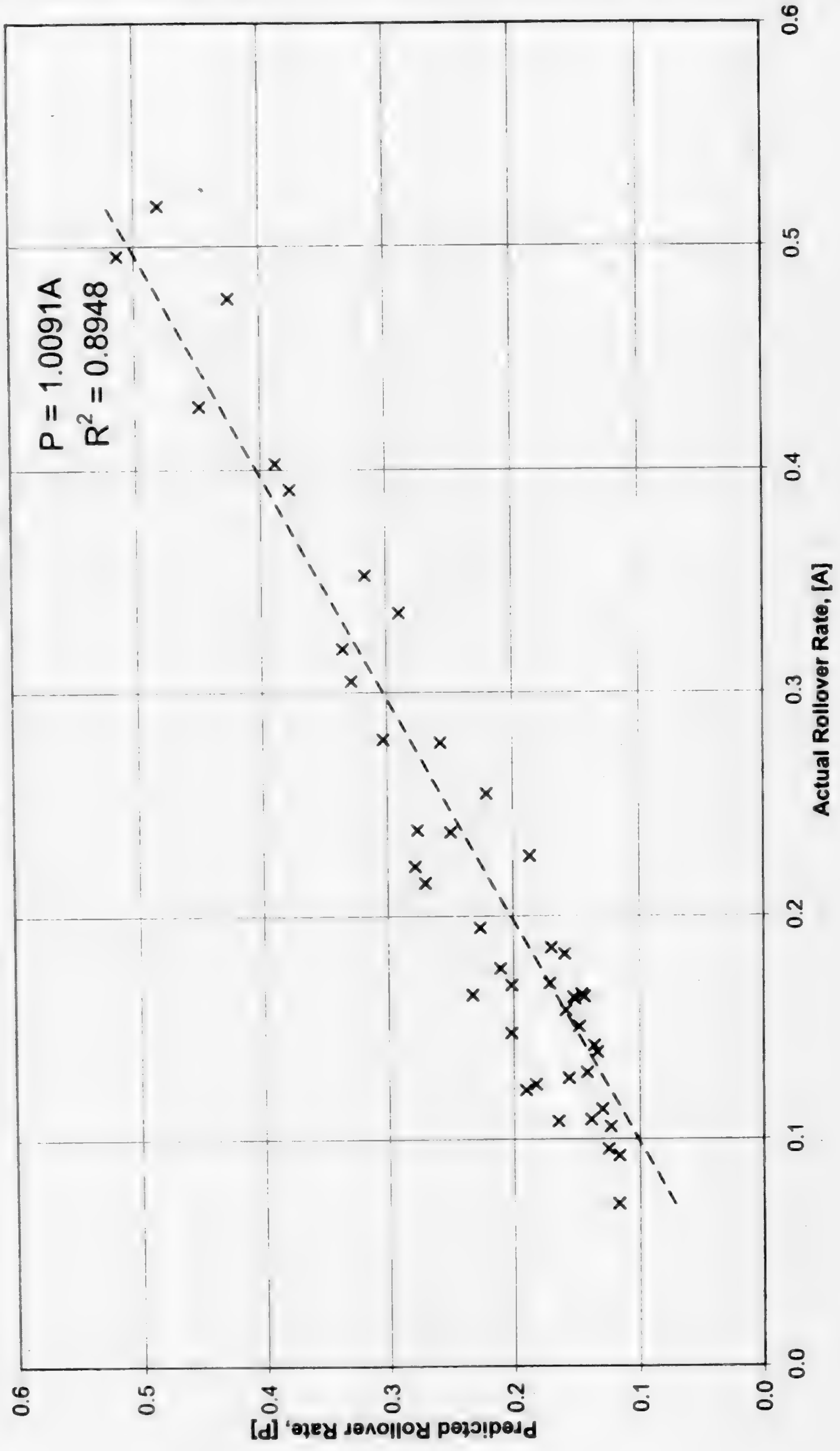

Figure II.8: Logistic regression risk model using SSF only and Linear regression risk model for 2001-2003 NCAP Rollover Resistance

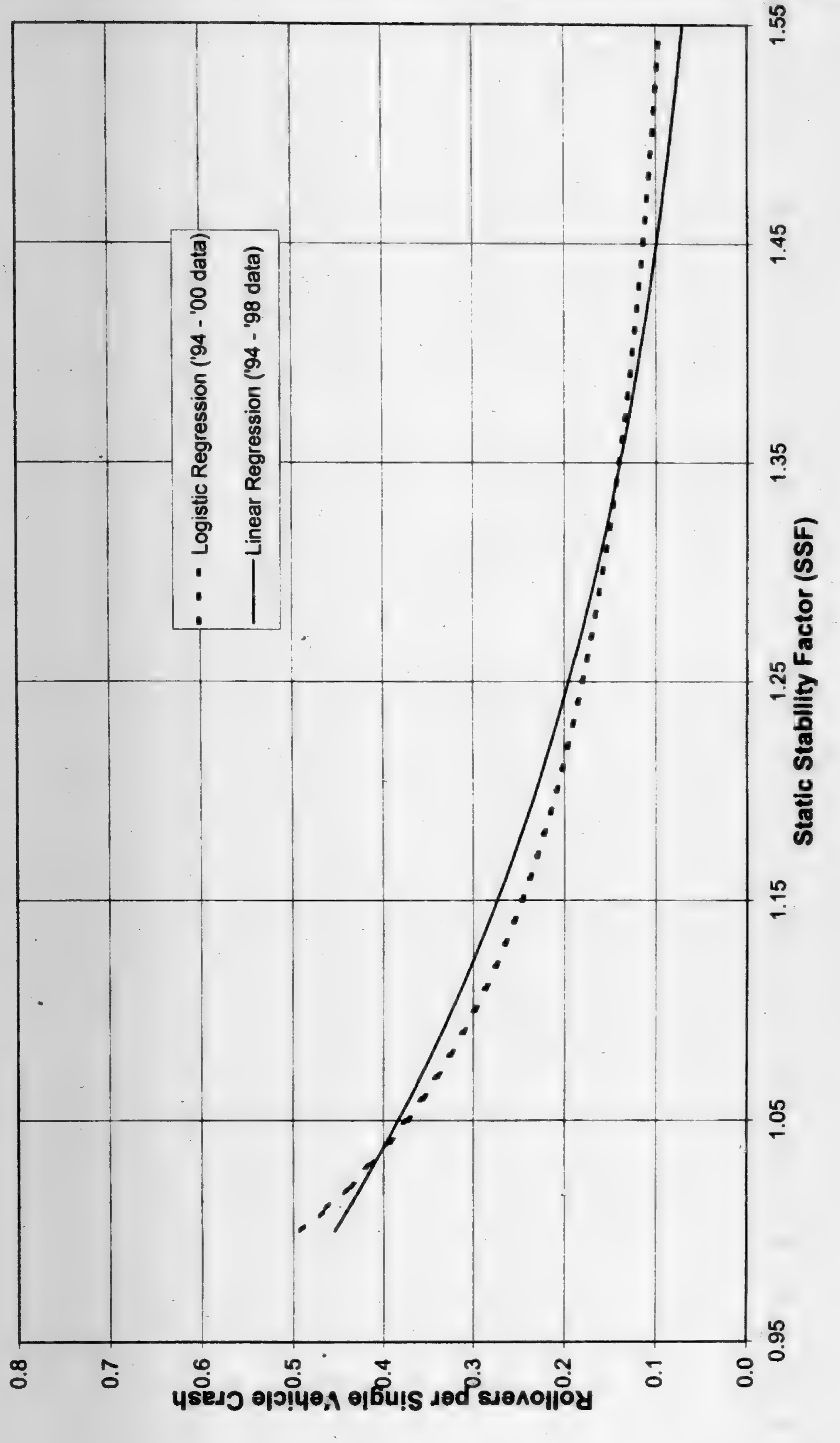

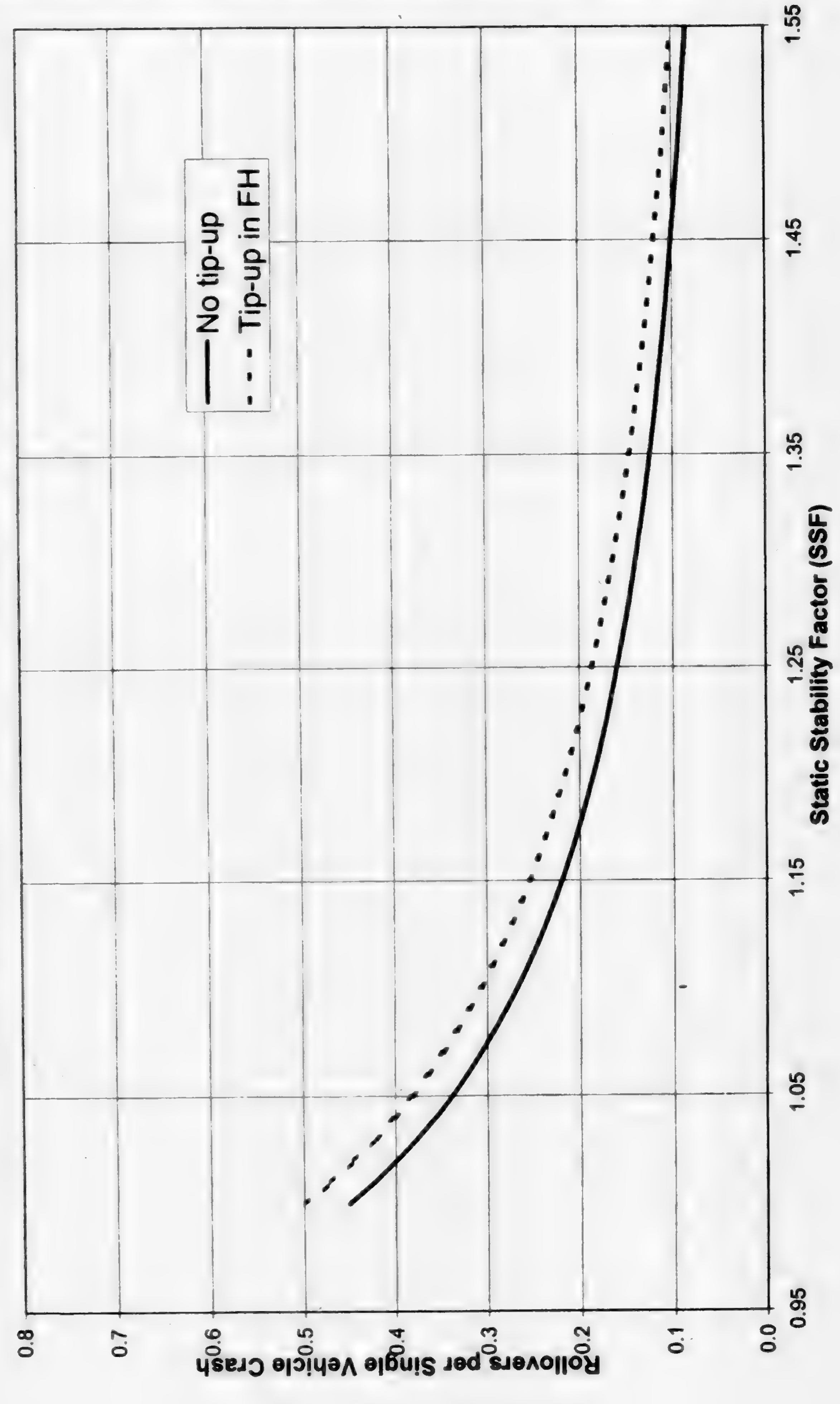

Figure II.9: Model with single dynamic variable - Fishhook, Heavy

Figure II. 10: Model with single dynamic variable - J-Turn, Heavy

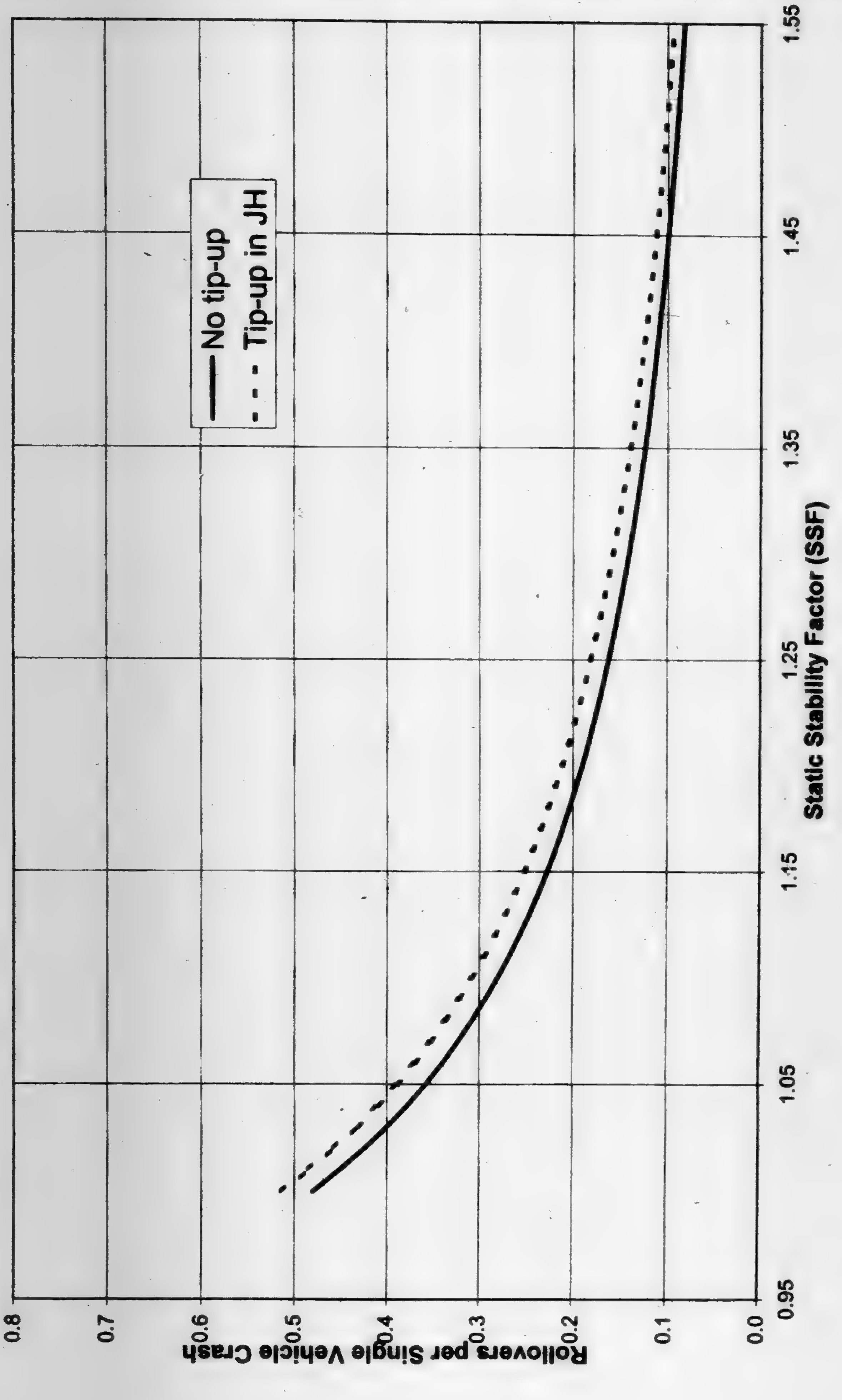

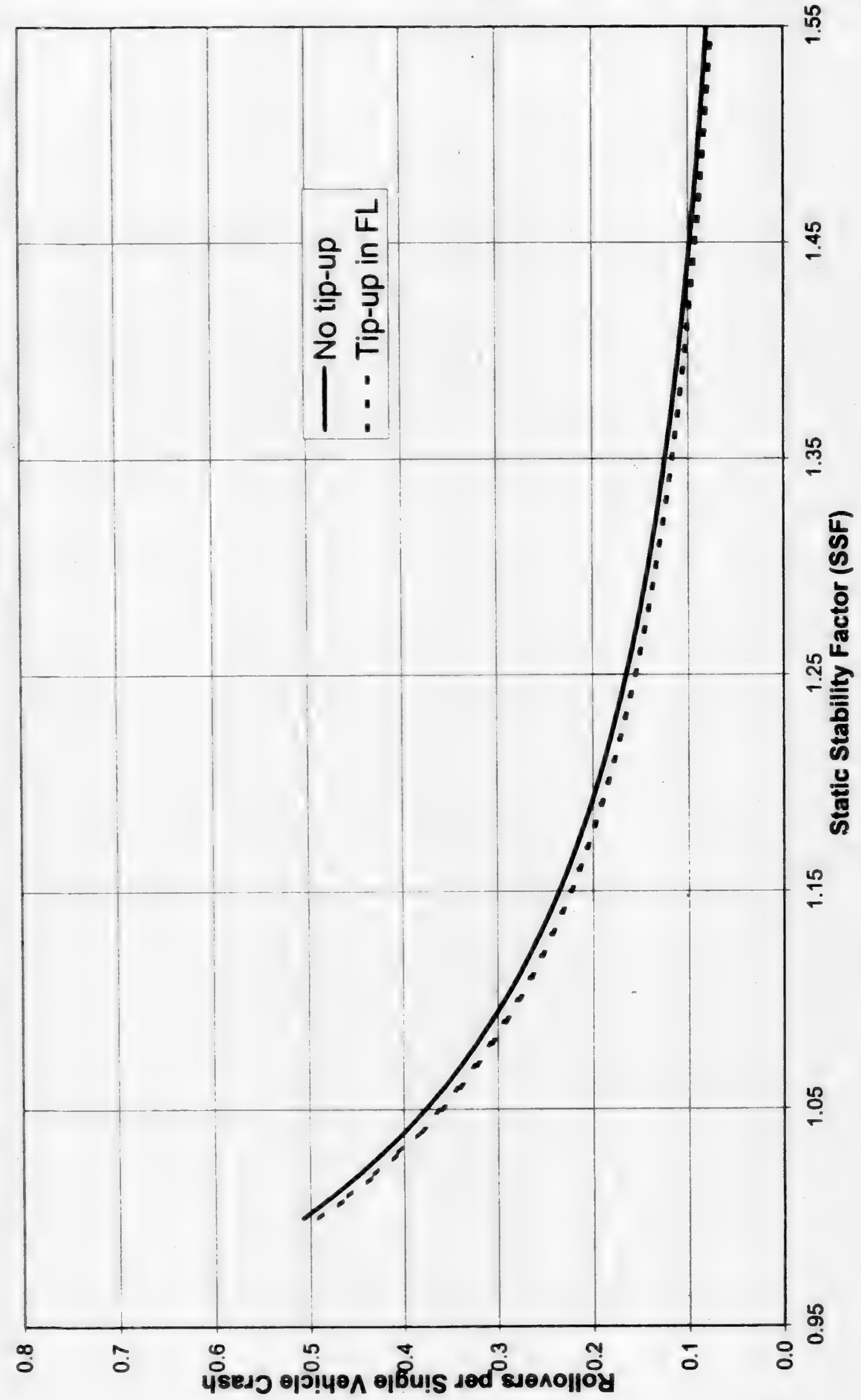

Figure II. 11: Model with single dynamic variable - Fishhook, Light

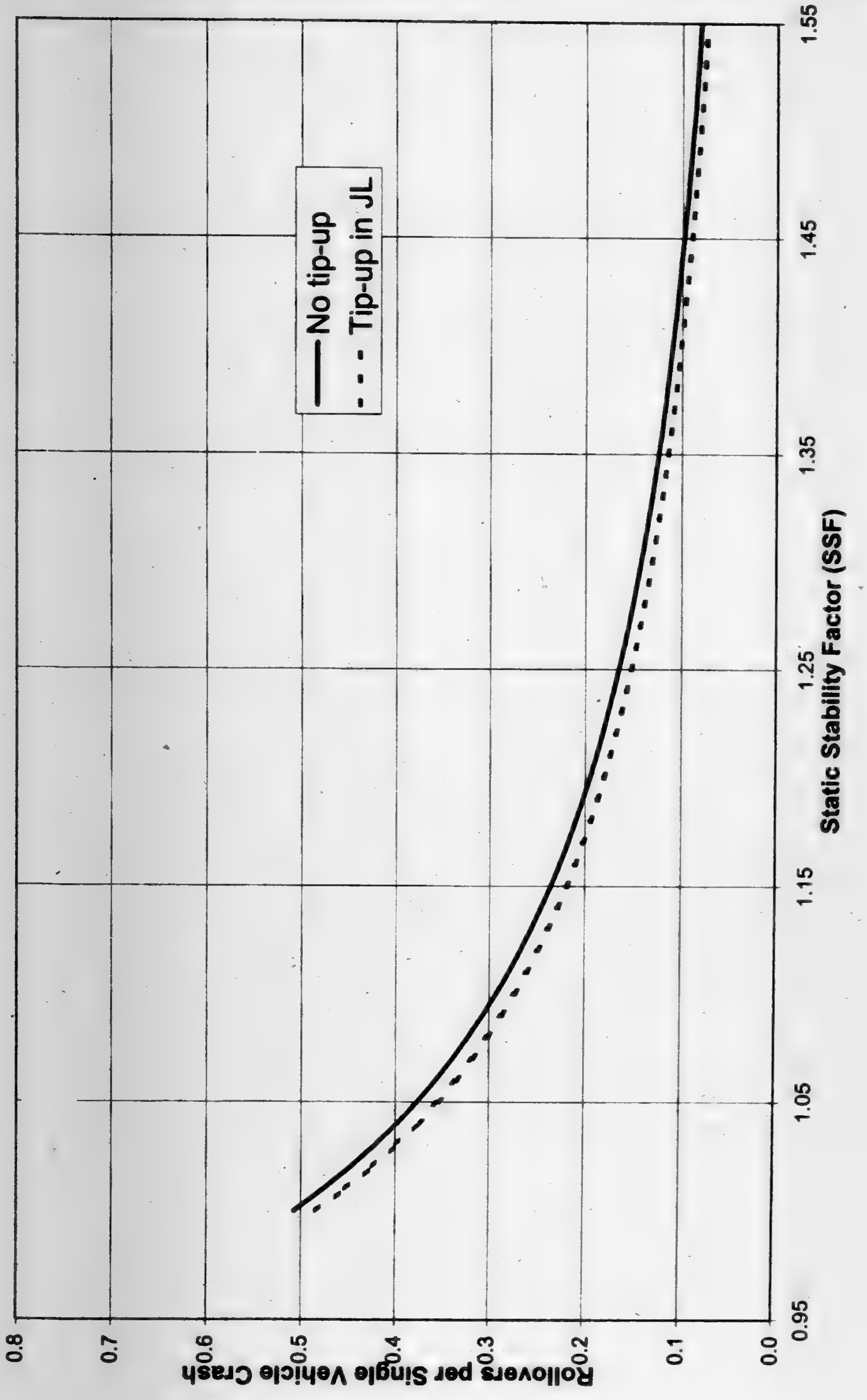

Figure II. 12: Model with single dynamic variable - J-Turn, Light

**Figure II. 13: Comparison of Combined Model to SSF-only Model**

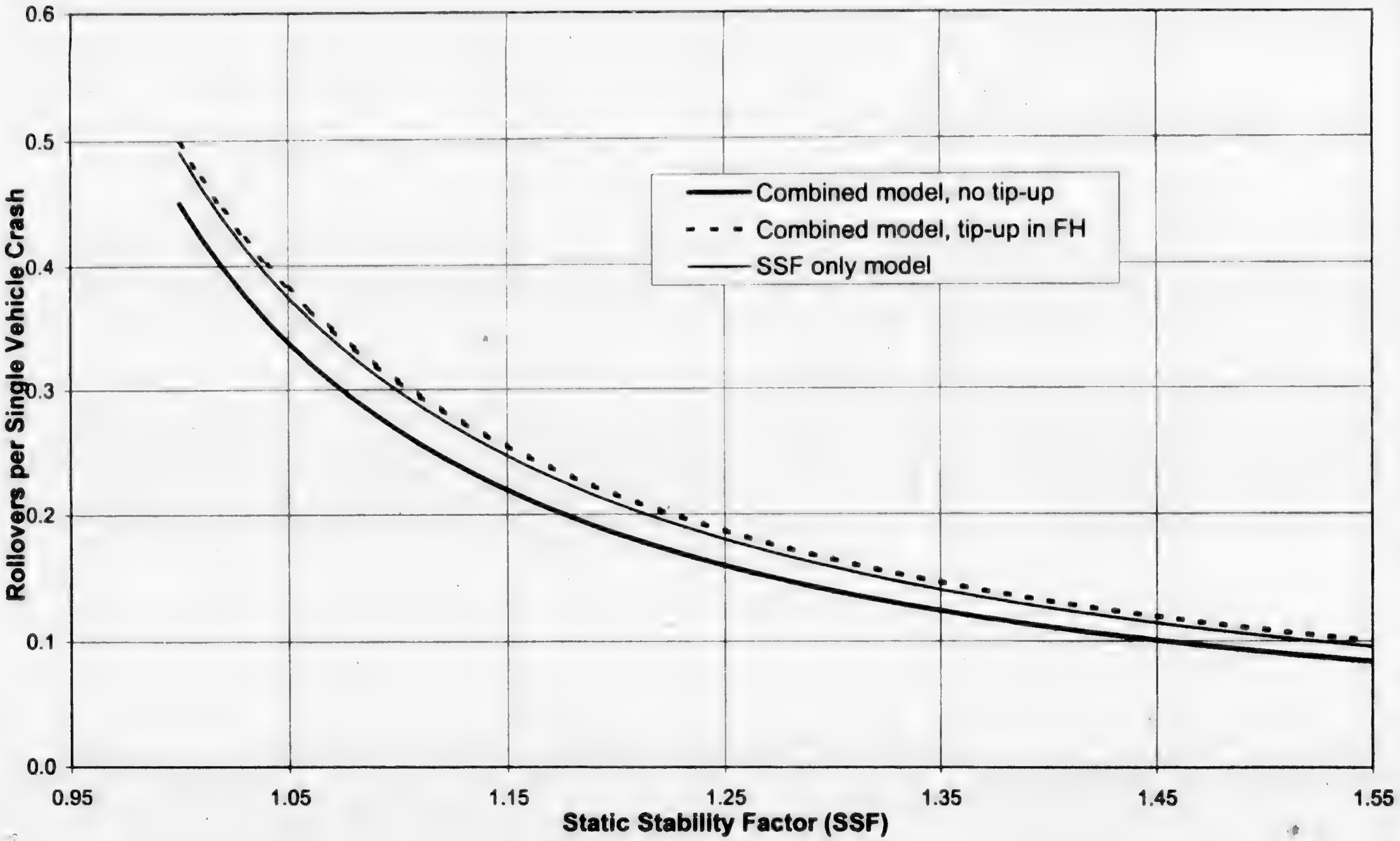

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Vol. 68, No. 198

Tuesday, October 14, 2003

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**BLIND OR SEVERELY DISABLED, COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE**

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## LIST OF PUBLIC LAWS

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**H.R. 659/P.L. 108–91**

Hospital Mortgage Insurance Act of 2003 (Oct. 3, 2003; 117 Stat. 1158)

**H.R. 978/P.L. 108–92**

To amend chapter 84 of title 5, United States Code, to provide that certain Federal annuity computations are adjusted by 1 percentage point relating to periods of receiving disability payments, and for other purposes. (Oct. 3, 2003; 117 Stat. 1160)

**S. 111/P.L. 108–93**

To direct the Secretary of the Interior to conduct a special resource study to determine the national significance of the Miami Circle site in the State of Florida as well as the suitability and feasibility of its inclusion in the National Park System as part of Biscayne National Park, and for other purposes. (Oct. 3, 2003; 117 Stat. 1161)

**S. 233/P.L. 108–94**

Coltsville Study Act of 2003 (Oct. 3, 2003; 117 Stat. 1163)

**S. 278/P.L. 108–95**

Mount Naomi Wilderness Boundary Adjustment Act (Oct. 3, 2003; 117 Stat. 1165)

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

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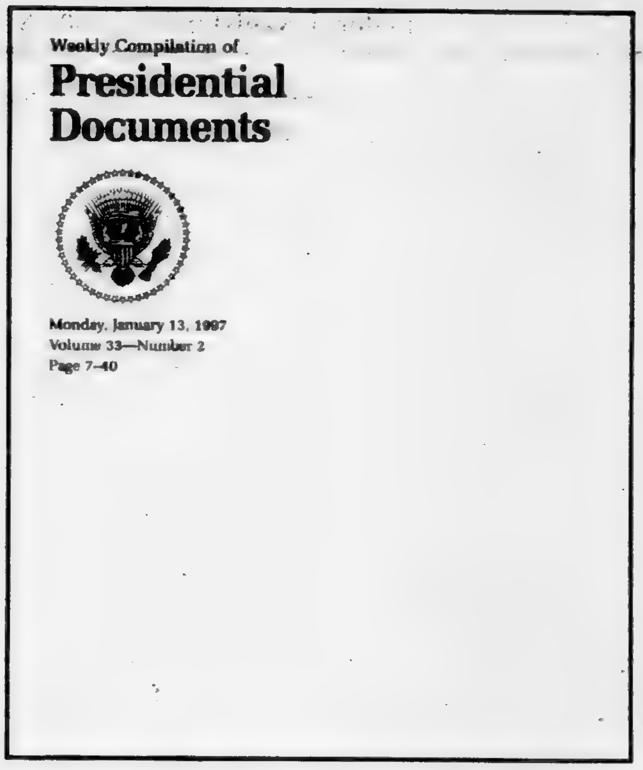
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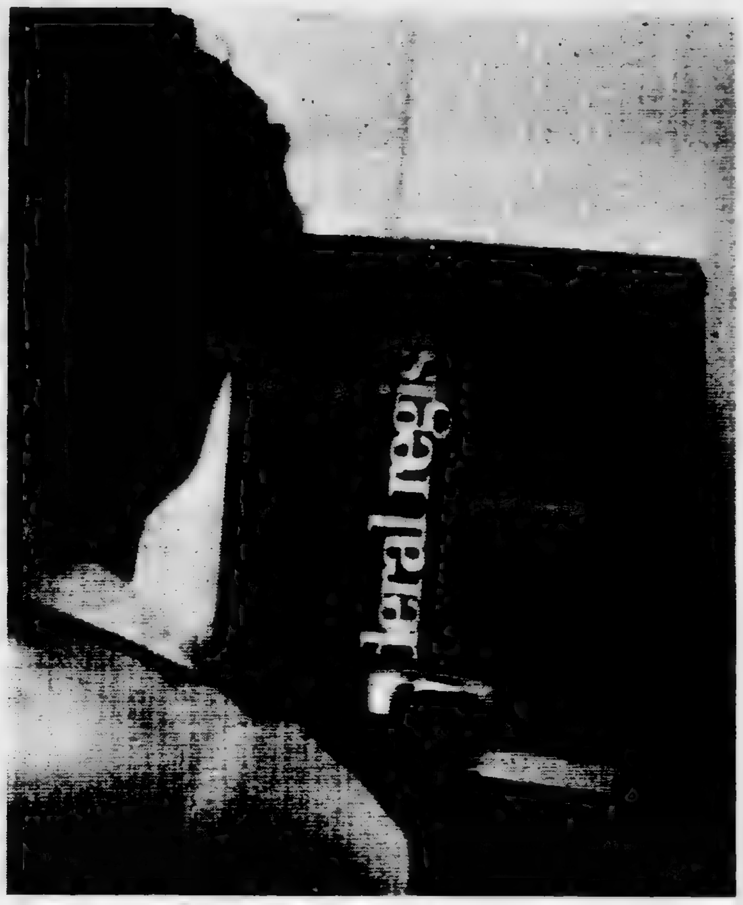

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# Presidential Documents

**Title 3—**

**The President**

## Proclamation 7718 of October 9, 2003

## Leif Erikson Day, 2003

**By the President of the United States of America**

**A Proclamation**

Traveling across the Atlantic as the first Nordic to lead an expedition to North America, Leif Erikson showed great courage in the face of danger. His actions marked the beginning of a longstanding exchange of people, ideas, and innovations between North America and the Nordic nations of Denmark, Finland, Iceland, Norway, and Sweden. As the United States celebrates Leif Erikson Day, we honor his historic voyage and give thanks for the many contributions of Nordic Americans to our Nation, and of our Nordic allies.

Since Leif Erikson's voyage, millions of immigrants from the Nordic countries have come to America. As teachers, lawyers, judges, doctors, authors, athletes, artists, scientists, and business people, and in many other occupations, Nordic Americans have contributed to America's cultural, political, and economic strength. America has also benefited from the diplomatic relationships we have long enjoyed with the Nordic nations.

To honor Leif Erikson, Nordic-American heritage, and America's continued relationship with Nordic countries, the Congress, by joint resolution (Public Law 88–566) approved on September 2, 1964, has authorized and requested the President to proclaim October 9 of each year as "Leif Erikson Day."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 9, 2003, as Leif Erikson Day. I call upon all Americans to observe this day with appropriate ceremonies, activities, and programs to honor our rich Nordic-American heritage.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of October, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.

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# Rules and Regulations

**Federal Register**
Vol. 68, No. 199
Wednesday, October 15, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 301

**[Docket No. 02–115–2]**

## Imported Fire Ant; Approved Treatments

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the imported fire ant regulations by adding the insecticide methoprene (Extinguish®) to the list of chemicals that are authorized for the treatment of regulated articles. This product is registered by the U.S. Environmental Protection Agency for use against the imported fire ant and has been found efficacious based on testing by the Gulfport Plant Methods Center. This rule makes methoprene available for the treatment of containerized plants and field-grown woody ornamentals in the quarantined areas.

**EFFECTIVE DATE:** November 14, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles L. Brown, Imported Fire Ant Program Manager, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–8247.

**SUPPLEMENTARY INFORMATION:**

### Background

The imported fire ant, *Solenopsis invicta* Buren and *Solenopsis richteri* Forel, is an aggressive, stinging insect that, in large numbers, can seriously injure or even kill livestock, pets, and humans. The imported fire ant feeds on crops and builds large, hard mounds that damage farm and field machinery. Imported fire ants are notorious hitchhikers and are readily transported long distances when articles such as soil and nursery stock are shipped outside the infested area.

The Animal and Plant Health Inspection Service (APHIS) works to prevent further imported fire ant spread by enforcing a Federal quarantine and cooperating with imported fire ant-infested States to mitigate the risks associated with the movement of regulated articles such as nursery stock and used soil-moving equipment. Also, APHIS evaluates the efficacy of regulatory treatments for preventing the artificial spread of imported fire ant and revises its regulations and procedures as necessary. APHIS works with States, industry, and other Federal agencies to develop and test promising new insecticides and biological control agents.

The regulations in "Subpart—Imported Fire Ant" (7 CFR 301.81 through 301.81–10, referred to below as the regulations) quarantine infested States or infested areas within States and impose restrictions on the interstate movement of certain regulated articles from those quarantined States or areas for the purpose of preventing the artificial spread of the imported fire ant.

Sections 301.81–4 and 301.81–5 of the regulations provide, among other things, that regulated articles requiring treatment prior to interstate movement must be treated in accordance with the methods and procedures prescribed in the appendix to the subpart, which sets forth the treatment provisions of the "Imported Fire Ant Program Manual."

On March 21, 2003, we published in the **Federal Register** (68 FR 13859–13861, Docket No. 02–115–1) a proposal to amend the regulations by adding the insecticide methoprene (Extinguish®) to the list of chemicals that are authorized for the treatment of regulated articles and make methoprene available for the treatment of containerized plants and field-grown woody ornamentals in the quarantined areas.

We solicited comments concerning our proposal for 60 days ending May 20, 2003. We received two comments by that date. The comments were from State departments of agriculture. Both commenters were in favor of adding methoprene (Extinguish®) to the list of chemicals that are authorized for the treatment of regulated articles.

Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

### Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This final rule amends the appendix to the imported fire ant regulations to allow the use of the insecticide methoprene (Extinguish®) against the imported fire ant. Methoprene is registered by the U.S. Environmental Protection Agency for use against the imported fire ant in containerized plants and field-grown woody ornamentals and has been found to be efficacious against imported fire ant based on testing by the Gulfport Plant Methods Center in Mississippi.

Determining the cost to treat for imported fire ant in nursery operations is complicated because of the large number of insecticide products, varying soil conditions, and various types of nursery crops. For example, in two surveys conducted by Hall and Holloway (1994 and 1995) of 37 nursery crop growers in Texas, which represented more than half of all nursery crops produced in that State, chemical cost per treatment per acre for imported fire ant control averaged $12.10, with treatment costs representing up to 4 percent of their production cost. Almost half (47 percent) of those growers reported treating for imported fire ant and most of them reported using more than one pesticide in their operations (range=1 to 3; average=1.5), making the average cost per acre for insecticides to control imported fire ant $18.15 (*i.e.*, 1.5 × $12.10).

Methoprene (Extinguish®) is the latest insecticide to be added to the regulations for the treatment of imported fire ant. The currently approved treatments—Fipronil (Chipco®), Pyriproxyfen (Distance®), Fenoxycarb (AWARD®), Hydramethylnon (AMDRO®), and Bifenthrin (Talstar®)—cost approximately the same in the bulk market, $5 to $12 per pound, with each pound treating 17 colonies (*i.e.*, mounds) of imported fire ant. However, any insecticide's retail price depends on the price charged by its local distributor and may vary from State to State.

Although the insecticides generally do not differ greatly in price, at least some consumers can be expected to benefit from inclusion of methoprene as an alternative treatment.

### Impact on Small Entities

Businesses such as nurseries that work with regulated articles are the entities most likely to be affected by this rule. This final rule will result in a wider selection of treatment options for imported fire ant. The economic effect on affected entities will either be positive, since a wider selection of insecticides will provide greater choice, or neutral, if they choose not to use methoprene.

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small businesses. Based on data from the 1997 Census of Agriculture, there were 14,762 nurseries and greenhouses in the 13 States that have been affected by imported fire ant plus Puerto Rico, of which 82 to 99 percent were small entities, according to the Small Business Administration criterion of annual sales of $750,000 or less.

We expect that the economic effect of this final rule on these businesses will either be positive (a wider selection of insecticides will provide greater choice) or neutral (if they choose not to use methoprene). The majority (82 to 99 percent) of firms that may potentially be affected by this final rule are small entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

### Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

## PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

### Appendix to Subpart—Imported Fire Ant [Amended]

■ 2. In part 301, Subpart—Imported Fire Ant (§§ 301.81 through 301.81–10), the appendix to the subpart is amended as follows:

■ a. In paragraph III.B., under the heading INSECTICIDES, by adding, in alphabetical order, an entry for "Methoprene (Extinguish®)".

■ b. In paragraph III.C.4., under the heading *Control*, by removing the word "or" immediately following the word "(AWARD®)," and by adding the words ", or methoprene (Extinguish®)" immediately following the word "(Distance®)".

■ c. In paragraph III.C.5., in the paragraph titled *Material*, by removing the word "or" immediately following the word "(AMDRO®)," and by adding the words ", or methoprene (Extinguish®)" immediately following the word "(Distance®)".

■ d. In paragraph III.C.5., in the paragraph titled *Dosage*, by removing the word "or" immediately following the word "(AMDRO®)," and by adding the words ", or methoprene (Extinguish®)" immediately following the word "(Distance®)".

■ e. In paragraph III.C.5., in the paragraph titled *Method*, in the first and third sentences, by removing the word "or" immediately following the word "(AMDRO®)," and by adding the words ", or methoprene (Extinguish®)" immediately following the word "(Distance®)".

■ f. In paragraph III.C.5., by amending the paragraph titled *Special Information* as follows:

■ i. In the first and third sentences, by removing the word "or" immediately following the word "(AMDRO®)" and by adding the words ", or methoprene (Extinguish®)" immediately following the word "(Distance®)".

■ ii. In the second sentence, by removing the word "or" immediately following the word "(AWARD®)" and by adding the words ", pyriproxyfen (Distance®), or methoprene (Extinguish®)" immediately following the word "(AMDRO®)".

Done in Washington, DC, this 9th day of October, 2003.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 03–26043 Filed 10–14–03; 8:45 am]

BILLING CODE 3410–34–P

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## FEDERAL HOUSING FINANCE BOARD

### 12 CFR Parts 910 and 913

[No. 2003–25]

RIN 3069–AB07

## Amendments to the Privacy Act and Freedom of Information Act; Implementation

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is adopting as a final rule the interim final rule that revised its Privacy Act regulation to reflect an agency reorganization and to make it more "user-friendly" by using plain language and where appropriate, a question-and-answer format. The rule also amended the fee schedule in the Freedom of Information Act (FOIA) regulation, which the Finance Board uses to determine the amount of the fee it charges to duplicate records under both the FOIA and the Privacy Act, to take into account increased salary and operating costs.

**EFFECTIVE DATE:** The final rule will become effective on November 14, 2003.

**FOR FURTHER INFORMATION CONTACT:** Janice A. Kaye, Senior Attorney-Advisor, Office of General Counsel, by electronic mail at *kayej@fhfb.gov*, by telephone at 202/408–2505, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In July 2003, the Finance Board published an interim final rule with request for comments that revised its

Privacy Act and FOIA regulations. *See* 68 FR 39810 (July 3, 2003). The revised Privacy Act regulation (12 CFR part 913) is written in a "user-friendly" format using plain language and, where appropriate, a question-and-answer format. It reflects a reassignment of responsibility and authority for the agency's Privacy Act program to the Office of General Counsel. The rule also amended the fee schedule in the FOIA regulation (12 CFR 910.9), which the Finance Board uses to determine the amount of the fee it charges to duplicate records under both the FOIA and the Privacy Act, to take into account increased salary and operating costs. The 60-day public comment period for the interim final rule closed on September 2, 2003. *See* 68 FR at 39811.

### II. Analysis of Public Comments and the Final Rule

The Finance Board received no comments in response to the interim final rule. Thus, for the reasons set forth in detail in the interim final rulemaking, the Finance Board is adopting the interim final rule as a final rule with one technical change to redesignate § 913.7(c)(1)(vii) as § 913.7(c)(1)(vi).

### III. Regulatory Flexibility Act

The Finance Board adopted the amendments to parts 910 and 913 in the form of an interim final rule and not as a proposed rule. Therefore, the provisions of the Regulatory Flexibility Act do not apply. *See* 5 U.S.C. 601(2), 603(a).

### IV. Paperwork Reduction Act

The final rule does not contain any collections of information under the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

### List of Subjects

*12 CFR Part 910*

Administrative practice and procedure, Archives and records, Confidential business information, Federal home loan banks, Freedom of information.

*12 CFR Part 913*

Administrative practice and procedure, Archives and records, Freedom of information, Privacy.

■ For the reasons stated in the preamble, the Finance Board hereby adopts the interim final rule revising 12 CFR parts 910 and 913 that was published at 68 FR 39810 on July 3, 2003, as a final rule with the following change:

## PART 913—PRIVACY ACT REGULATION

■ 1. The authority citation for part 913 continues to read as follows:

**Authority:** 5 U.S.C. 552a.

■ 2. Redesignate § 913.7(c)(1)(vii) as § 913.7(c)(1)(vi).

Dated: October 9, 2003.

By the Board of Directors of the Federal Housing Finance Board.

**John T. Korsmo,**

*Chairman.*

[FR Doc. 03-26076 Filed 10-14-03; 8:45 am]

**BILLING CODE 6725-01-P**

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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 121

**RIN 3245-AF03**

## Small Business Size Standards; Facilities Support Services (Including Base Maintenance)

**AGENCY:** U.S. Small Business Administration (SBA).

**ACTION:** Final rule.

**SUMMARY:** The U.S. Small Business Administration (SBA) is adopting an increase to the size standard for the Facilities Support Services industry (North American Industry Classification System (NAICS) code 561210) from $6 million in average annual receipts to $30 million and increases the size standard for the sub-category of Base Maintenance from $23 million to $30 million. These increased standards better define the size of businesses in this industry that the SBA believes should be eligible for Federal small business assistance programs. This final rule also changes the title of "Base Housing Maintenance" under NAICS code 238990 to "Building and Property Specialty Trade Services" to better identify the type of activities that fall under this category.

**DATES:** This rule is effective November 14, 2003.

**FOR FURTHER INFORMATION CONTACT:** Diane Heal, Program Analyst, Office of Size Standards, Office of Government Contracting and Business Development, (202) 205-6618 or *sizestandards@sba.gov*.

**SUPPLEMENTARY INFORMATION:** On February 3, 2003, the SBA published a proposed rule in the **Federal Register** (68 FR 5234) to increase the size standard for the Facilities Support Services industry (NAICS code 561210) from $6 million in average annual receipts to $30 million and the size standard for the sub-category of Base Maintenance from $23 million to $30 million. The SBA proposed this increase after reviewing requests from firms in the Facilities Support Services industry to review the $6 million size standard for this industry and the $23 million size standard for Base Maintenance, a sub-category of the industry. These size standards are based on annual receipts of the business, as described in 13 CFR 121.104. These firms argued that a size standard increase is warranted to reflect the size of Federal contracts issued in this industry. These contracts include a broad spectrum of services involving administrative support, custodial services, facilities repair and maintenance, and technical services, which often are $10 million per year or more in value. A small business can lose its small business status with only one or two contracts. Costs on these types of contracts have increased greater than the general inflation rate, especially due to changes in the mandated labor rates under the Service Contract Act and increased health insurance costs. The requestors believed that to help develop small businesses to be competitive with large businesses in this industry, the size standard should be increased to the $25 million to $30 million range.

Based on these concerns, the SBA conducted a review of this industry's size standards. In addition to reviewing patterns of Federal procurement in this industry, it collected and evaluated data on the industry's structure. This review involved comparisons of average firm size, the size distribution of firms, measures of start-up costs, and the degree of concentration of economic activity among very large firms in the industry. Based on its review of each of these evaluation factors, and the nature and patterns of Federal contracting for Facility Support Services, the SBA concluded that the activities comprising this industry and the characteristics of firms in the industry no longer support the need for separate size standards for Base Maintenance and for all other facilities support activities. The SBA also found that the data supported an increase in the size standards for all activities comprising Facility Support Services to $30 million in average annual receipts. (For more information on the reasons for the proposed size standard increase to $30 million, see the February 3, 2003, proposed rule, 68 FR 5234).

The SBA received 16 comments on the proposed size standard. After giving careful consideration to the comments, the SBA has decided to adopt its proposed size standard of $30 million.

## Discussion of Comments on the Proposed Rule

The SBA received 16 timely comments on the proposed size standard from various business concerns. Nine commenters supported the proposed size standard and seven commenters opposed the change. The SBA also received a recommendation from its Office of Hearings and Appeals (OHA) to clarify the footnote. Below is a summary of the major issues raised by the comments received on the proposed rule and the SBA's position on those issues.

## Comments Supporting a Higher Size Standard

Four commenters remarked that increased costs, such as start up costs, wages, workers compensation, health insurance, fuels, and materials, have increased their revenues to the point where after two or three contracts their firms exceed the current size standard. One commenter pointed out that salary, wages, and taxes are the major costs and will normally comprise more than 50% of the contract expense. Two commenters acknowledged that the U.S. Department of Labor's increase in Service Contract Act wage determinations has had a direct impact on the costs of Facility Support Services contracts.

The SBA agrees that increased costs have caused small business to exceed the current size standard with only two or three contracts. Facility Support Services contracts are larger requirements that include varied tasks from Base Maintenance to engineering and technical support. Because of the nature of these requirements, more than two-thirds of total industry revenues go to large firms at or exceeding the current size standard. As presented in the preamble of the proposed rule, industry data on the distribution of revenues by firm size and other industry characteristics show that firms in the Facilities Support Services do have high costs and are much larger in size than firms in most other service industries.

All nine supportive commenters pointed out that the increase in the size standard would increase competition and participation in Federal contracts. Two commenters stated that firms growing beyond the $6 million size standard are not ready to compete with large firms. One commenter stated that the increased size standard would allow firms a longer period for growth and maturity. One commenter stated that the increase will secure a future for small businesses in this industry, as the current size standard limits a firm's ability to serve the Federal Government.

The SBA agrees that an increase to the size standard will make small businesses more competitive in this industry. As stated in the preamble to the proposed rule, the share of Federal contracts awarded to small businesses supports an increase to the current size standard. During 1999 to 2001, small businesses accounted for 30.5% of total industry receipts but these firms received only 12% of the dollar value of Federal contracts. This is a disproportionate share of Federal contract dollars relative to industry receipts. Contract requirements make it difficult for smaller firms to perform on Federal Facilities Support Services contracts. For example, contracting data show that two-thirds of small business awards in this industry are made through programs reserved for small businesses rather than through full and open competition. The SBA believes that the increase in size standard will allow firms in this industry to grow to a more competitive size.

Two commenters supported the SBA's proposal to give Facilities Support Services and Base Maintenance the same size standard. One of these commenters acknowledged that "the same companies are likely to compete for contracts with either designation."

The SBA agrees with these comments. As stated in the preamble to the proposed rule, the SBA believes that the activities comprising this industry and the characteristics of firms in the industry no longer require separate size standards for Base Maintenance and for all other facilities support activities. The NAICS 2002 industry description of Facilities Support Services is very similar to the SBA's description of Base Maintenance (see footnotes 12 and 13 of the current 13 CFR 121.201). The SBA believes that the firms performing Base Maintenance services also perform, or have the capability to perform, most other facilities support activities. Given the close similarity of the descriptions of Facilities Support Services and Base Maintenance, the SBA believes that a single size standard is appropriate for all activities within the Facilities Support Services industry.

The SBA received a recommendation from OHA to clarify the title of "Base Housing Maintenance," an exception to NAICS 238990, "All Other Specialty Trade Contractors," as it is often confused with "Base Maintenance," an activity under Facilities Support Services. OHA suggested that the "Base Housing Maintenance" title should be revised to more accurately reflect the description of that category in Footnote 13.

The SBA agrees with this recommendation and has revised the title for the exception to NAICS code 238990 from "Base Housing Maintenance" to "Building and Property Specialty Trade Services." This revision is appropriate in this rule making process as it does not change the meaning of the exception or the size standard for NAICS code 238990. The new title better identifies the activities that fall under this category.

## Comments Opposing a Size Standard Increase

The SBA received four comments which stated that entry costs for this industry are low and that Facility Support Services contracts are performed in Government-provided facilities using Government-provided equipment. Five comments asserted that the increase is detrimental to emerging small businesses and that it will hinder small business growth. Four comments stated that the current size standard encourages large businesses to mentor "emerging small businesses."

The SBA does not concur with these comments, and believes that these comments do not accurately characterize the Facility Support Services industry. The SBA does recognize that a higher size standard could have an impact on the smallest businesses in this industry. However, the smallest firms are usually limited to contracts for one type of industry or to work as subcontractors. The nature of the industry and the data presented in the preamble of the proposed rule show that the Facility Support Services industry is comprised predominately of larger firms. The industry characteristics show that start-up costs are high, and that Federal contracts for Facility Support Services contain varied tasks, including engineering and other technical support tasks, administrative functions, specialty trade tasks, and high-end equipment maintenance. Often, after two or three contracts, firms in this industry find that they have outgrown the current size standard. In addition, the SBA believes this increase will expand small business subcontracting opportunities and mentoring with large businesses. All requirements over $500,000 for Facility Support Services awarded to large businesses include incentives and goals for subcontracting with small businesses. The fact that an industry's size standard is $6 million or $30 million will not have a detrimental bearing on a large business's plans to subcontract to or mentor a small business. The higher size standard would likely encourage more subcontracting with all small businesses since they would be able to remain as small subcontractors for a longer period of time and offer more capabilities to the large business contractor.

The comments received supporting the SBA's actions agree that the increase is reasonable. They endorsed the SBA's findings that firms are quickly outgrowing the current size standard, that costs are high, and that the increase will augment the number of small business set-aside awards, thereby increasing competition in this industry. This increase will add to a small business's maturity and encourage small business growth.

### Recommended Alternative Size Standards

One commenter only supported an increase of 50%. However, the commenter did not provide any data to justify this alternative, nor did the commenter indicate whether the 50% increase was appropriate for both the $6 million and $23 million size standards. The SBA can only assume that the commenter meant 50% of the $6 million size standard, which equates to $9 million, and 50% of the $23 million which would put the size standard above $30 million.

One commenter recommended a $12 million size standard. This commenter stated that $12 million will enable small businesses additional opportunities within the Facilities Support Services industry without forcing emerging small businesses to compete against larger firms.

The SBA disagrees with both of these alternatives. Neither an increase to $9 million or $12 million would be representative of the overall characteristics of firms in the industry, nor would either alternative provide competition and growth for small businesses. In addition, Federal contract award data show that firms under the current $23 million size standard have only been able to obtain a relatively small share of Facilities Support Services contracts.

### Non-Related Comments

One commenter pointed out that the increase in bundled contracts has caused Federal agencies to contract with larger firms. This commenter called for a 12 month moratorium on any changes so that the effect of combining contracts and its impact on small businesses can be further analyzed.

One commenter alleged that all mid-sized businesses are 8(a) firms and alleges that 8(a) certification is being abused. Another commenter stated that the 8(a) program (13 CFR 124) and the HUBZone program (13 CFR 126) usually serve the same companies and that the success rate of companies after graduating from the 8(a) program will be hampered by this increase.

The issues regarding the SBA's 8(a) and HUBZone programs concern program policy, and the issues concerning contract bundling relate to the structuring of individual procurements and therefore are separate from the SBA's determination of the appropriate small business size standard for a particular industry. For more information about the SBA's efforts to address the impact of contract bundling on small businesses, see the recently proposed rule on this issue (68 FR 5134, dated January 31, 2003).

One commenter stated that the definition of a small business is causing problems with emerging businesses, as it relates to the current set of NAICS codes for the Information Technology industry, which are "$6 million and $21 million." This commenter emphasized that emerging small businesses cannot compete with firms that produce $21 million in revenues. This commenter recommended that there be a category to identify mid-sized businesses.

This comment does not relate specifically to the SBA's proposal to increase the size standard for Facilities Support Services. The commenter refers to the size standard of $6 million and $21 million for the Information Technology industry. With respect to that industry, the SBA published a proposed rule that would create a separate size standard for Information Technology Value Added Resellers (67 FR 48479, July 24, 2002). Additionally, the size standards are intended to define only small businesses, not a separate category of mid-size firms.

### Compliance With Executive Orders 12866, 12988, and 13132; the Regulatory Flexibility Act (5 U.S.C. 601–612); and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

The Office of Management and Budget (OMB) has determined that this rule is a significant regulatory action for purposes of Executive Order 12866 because size standards determine which businesses are eligible for Federal small business programs. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800. For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, the SBA has determined that this rule would not impose new reporting or recordkeeping requirements. For purposes of Executive Order 13132, the SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12988, the SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order. Our Regulatory Impact Analysis follows.

### Regulatory Impact Analysis

*1. Is There a Need for This Regulatory Action?*

The SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist the intended beneficiaries of these programs, the SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The supplementary information to the final rule explains the approach the SBA follows when analyzing a size standard for a particular industry. Based on that analysis, the SBA believes that a change in the Facilities Support Services size standard is needed to better reflect small businesses in this industry.

*2. What Are the Potential Benefits and Costs of This Regulatory Action?*

The most significant benefit to businesses obtaining small business status as a result of this rule will be eligibility for Federal small business assistance programs. Under this rule, 177 additional firms may obtain small business status and become eligible for these programs. Of these 177, 19 are between the current $23 million Base Maintenance size standards and the $30 million proposed size standard. These programs include the SBA's financial assistance programs, economic injury disaster loans (EIDL), and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), as well as those awarded through full and open competition after application of the HUBZone or SDB price evaluation adjustment. Through the assistance of these programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses.

Other Federal agencies also use the SBA's size standards for their programs for a variety of regulatory and program purposes. The SBA does not have information on each of these uses sufficient to evaluate the impact of the size standard change. If an agency believes that a different size standard is appropriate for its programs, it must contact the SBA. If an agency is seeking to change size standards in a general rulemaking context, then the agency should contact the SBA's Office of Size Standards (13 CFR 121.901–904). If the agency is seeking to change size standards for the purposes of a Regulatory Flexibility Act (RFA) analysis then the SBA's Office of Advocacy should be contacted pursuant to section 601(3) of the RFA. Section 601(3) of the RFA requires the agency to consult with the Office of Advocacy and provide an opportunity for public comment when using a different size standard for the RFA analysis.

The benefits of a size standard increase to a more appropriate level would affect three groups: (1) Businesses that benefit by gaining small business status from the proposed size standard and use small business assistance programs; (2) growing small businesses that may exceed the current size standard in the near future and who will retain small business status under the proposed size standard; and (3) Federal agencies that award contracts under procurement programs that require small business status.

Newly defined small businesses would benefit from the SBA's 7(a) Guaranteed Loan Program. The SBA estimates that approximately $2.5 million to $5.5 million in new Federal loan guarantees could be made to these newly defined small businesses. Because of the $2 million maximum size of the SBA 7(a) loan guarantees, most loans are made to small businesses well below the size standard. Thus increasing the size standard will likely result in a smaller increase in guaranteed loans to small businesses than the estimated range. These additional loan guarantees, because of their limited magnitude, will have virtually no impact on the overall availability of loans for the SBA's loan programs, which have averaged about 40,000 loans totaling about $10 billion per year in recent years.

The newly defined small businesses would also benefit from the SBA's economic injury disaster loan program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected.

The SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $65 million to $95 million under the small business set-aside program, the 8(a), SDB, and HUBZone programs, or unrestricted contracts. This estimate is based on an analysis of small business participation in Federal contracting and the industry market share of businesses between the current and proposed size standards. During fiscal years 1999–2001, small businesses obtained 11.8% of Facilities Support Services contract dollars out of approximately $12 billion in total Federal Facilities Support Services contracts. About two-thirds of small business awards were made as small business set-aside or 8(a) contracts. Most Facilities Support Services contracts are for Base Maintenance services, which has a $23 million size standard. Businesses between $23 million and $30 million account for 3.6% of industry sales.

Federal agencies may benefit from the higher size standards if the newly defined and expanding small businesses compete for more set-aside procurements. The larger base of small businesses would likely increase competition and would lower the prices on set-aside procurements. A large base of small businesses may create an incentive for Federal agencies to set aside more procurements creating greater opportunities for all small businesses. Small business opportunities will be enhanced in open procurements as they gain experience in Federal contracting through the set-aside and other small business procurement preference programs. Large businesses with small business subcontracting goals may also benefit from a larger pool of small businesses by enabling them to better achieve their subcontracting goals and obtain lower subcontract prices. No estimate of cost savings from these contracting decisions can be made since data are not available to directly measure price or competitive trends on Federal contracts.

To the extent that 177 additional firms become active in Government programs, this may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement programs, additional firms seeking access to the SBA guaranteed lending programs, and additional firms eligible for enrollment in the SBA's PRO-Net data base program. Among businesses in this group seeking the SBA's assistance, there will be some additional costs associated with compliance and verification associated with certification of small business status and protests of small business status. These costs are likely to generate minimal incremental costs since mechanisms are currently in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts. With greater number of businesses defined as small, Federal agencies may choose to set-aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside contracting is likely to result in competition among fewer bidders. Also, higher costs may result if additional full and open contracts are awarded to HUBZone and SDB businesses as a result of a price evaluation preference. The additional costs associated with fewer bidders, however, are likely to be minor since, as a matter of policy, procurements may be set aside for small businesses or reserved for the 8(a) or HUBZone Programs only if awards are expected to be made at fair and reasonable prices.

The proposed size standard may have distributional effects among large and small businesses. Although the actual outcome of the gains and losses among small and large businesses cannot be estimated with certainty, several trends are likely to emerge. First, there will likely be a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal procurements for small businesses. Also, some Federal contracts may be awarded to HUBZone or SDB concerns instead of large businesses since those two categories of small businesses may be eligible for a price evaluation adjustment for contracts competed on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contacts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal government will limit the potential transfer of contracts away from large and currently defined small businesses. The potential distributional impacts of these transfers may not be estimated with any degree of precision because the data on the size of business receiving a Federal contract are limited to identifying small or other-than-small businesses, without regard to the exact size of the business.

The revision to current size standards for Facilities Support Services is consistent with the SBA's statutory mandate to assist small businesses. This regulatory action promotes the Administrator's objectives. One of the SBA's goals in support of the Administrator's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards when appropriate ensures that intended beneficiaries have access to small business programs designed to assist them. Size standards do not interfere with state, local, and tribal governments in the exercise of their government functions. In a few cases, state and local governments have voluntarily adopted the SBA's size standards for their programs to eliminate the need to establish an administrative mechanism for developing their own size standards.

## Final Regulatory Flexibility Analysis

Under the RFA, this rule may have a significant impact on a substantial number of small entities. This rule may impact small entities in two ways. The SBA estimates that an additional 177 businesses may obtain small business status as a result of this rule. Also small businesses may obtain an additional $65 to $95 million in Federal contracts.

The size standard may also affect small businesses participating in programs of other agencies that use the SBA size standards. As a practical matter, the SBA cannot fully estimate the impact of a size standard change on each and every Federal program that uses its size standards. In cases where an SBA's size standard is not appropriate, the Small Business Act and the SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (13 CFR 121.902). For purposes of a regulatory flexibility analysis, agencies must consult with the SBA's Office of Advocacy when developing different size standards for their programs.

Immediately below, the SBA sets forth a final regulatory flexibility analysis (FRFA), addressing the need for and objective of the rule; description and estimate of the number of small entities to which the rule will apply; the projected reporting, recordkeeping, and other compliance requirements of the rule; the relevant Federal rules which may duplicate, overlap or conflict with the final rule; and alternatives to the final rule considered by the SBA that minimize the impact on small businesses.

### *(1) What Is the Need for and Objective of the Rule?*

The revision to the size standards for Facilities Support Services more appropriately defines the size of businesses in these industries that the SBA believes should be eligible for Federal small business assistance programs. A review of the latest available industry data supports a change to the size standard.

### *(2) What Significant Issues Were Raised by the Public Comments in Response to the Initial Regulatory Flexibility Act (IRFA)?*

The SBA received no comments in response to the IRFA of this rule.

### *(3) What Is the SBA's Description and Estimate of the Number of Small Entities to Which the Rule Will Apply?*

Within the Facilities Support Services industry, 896 out of 1,219 businesses are currently small. With the adoption of this rule, the SBA estimates that 177 additional businesses out of 1,219 firms will be considered small. Of these 177, 19 are between the current $23 million Base Maintenance size standards and the new $30 million size standard. These businesses will be eligible to seek available SBA assistance provided that they meet other program requirements. As a result of this rule, businesses becoming eligible for SBA assistance cumulatively will generate approximately $25.8 billion out of a total of $75.8 billion in receipts, or 34.1% of industry receipts. The small business coverage in the Facilities Support Services industry will increase by 3.6% of total receipts.

### *(4) Will This Rule Impose Any Additional Reporting or Recordkeeping Requirements on Small Businesses?*

A new size standard does not impose any additional reporting, recordkeeping or other compliance requirements on small entities for the SBA programs. A change in a size standard would not create additional costs on a business to determine whether or not it qualifies as a small business. A business needs to only examine existing information to determine its size, such as Federal tax returns, payroll records, and accounting records. Size standards determine "voluntary" access to the SBA and other Federal programs that assist small businesses, but do not impose a regulatory burden as they neither regulate nor control business behavior. In addition, this rule does not impose any new information collecting requirements from the SBA which requires approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

### *(5) What Are the Steps the SBA Has Taken To Minimize the Significant Economic Impact on Small Business?*

Most of the economic impact on small businesses will be positive. The most significant benefits to businesses that will obtain small business status as a result of this final rule are (1) eligibility for the Federal Government's procurement preference programs for small businesses, 8(a) firms, SDBs, and businesses located in HUBZones; and (2) eligibility for the SBA's financial assistance programs such as 7(a) business loans, 504 business loans, and EIDL assistance. The SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $65 million to $95 million per year under the small business set-aside programs, the 8(a) program, the HUBZone program, or unrestricted contracts. This represents less than 1% of the $12 billion in total Federal expenditures for Facility Support Services. The SBA estimates that approximately $2.5 million to $5.5 million in new Federal loan guarantees could be made to these newly defined small businesses. Because of the $2 million maximum size of the SBA 7(a) loan guarantees, most loans are made to small businesses well below the size standard.

### *(6) Alternatives*

#### (a) What Alternatives Will Allow the Agency To Accomplish Its Regulatory Objectives While Minimizing the Impact on Small Entities?

As stated in the Small Business Act, 15 U.S.C. 632, and 13 CFR part 121, the SBA establishes size standards based on industry characteristics and for non-manufacturing concerns on the basis of gross receipts of a business concern over a period of 3 years. The SBA's research showed that Facility Support Services contracts include a broad spectrum of services involving administrative support, custodial services, janitorial, facilities repair and maintenance, and technical services. The size standards for many of these industries, such as security guard services, janitorial services, and technical support for navigational waterways and military weapons systems, are well in excess of $6 million. Contract costs often are $10 million per year or more in value. A small business can lose its small business status with only one or two contracts. Costs on these types of contracts have increased greater than the general inflation rate, especially due to changes in the mandated labor rates under the Service Contract Act and increased health insurance costs.

The SBA's review of these issues and data on the Facilities Support Services industry, as described in the February 3, 2003, proposed rule, support increasing the size standard to $30 million.

(b) What Alternatives Did the SBA Reject?

One commenter opposed to any increase except an increase of 50%, but no data was provided to justify this alternative. The commenter did not state 50% of which current size standard, $6 million or $23 million. The SBA can only assume that the commenter meant 50% of the $6 million size standard, which equates to $9 million. A 50% increase to the $23 million would put the size standard above $30 million.

One commenter recommended a $12 million size standard. This commenter stated that $12 million will enable small businesses additional opportunities within the Facilities Support Services industry without forcing emerging small businesses to compete against larger firms.

The SBA rejects both of these alternatives. Neither an increase to $9 million or $12 million would be representative of this industry, nor would either alternative provide competition and growth for small businesses. The industry data provided in the preamble to the proposed rule show that all of the characteristics measured firms in the Facilities Support Services industry were much larger than firms in most nonmanufacturing industries. This finding supports a size standard at the highest receipts levels. In addition, Federal contract award data show that firms under the current $23 million size standard have only been able to obtain a relatively small share of Facilities Support Services contracts.

### List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs-business, Loan programs-business, Small businesses.

■ For the reasons stated in the preamble, amend part 121 of title 13 Code of Federal Regulations as follows:

## PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation of part 121 continues to read as follows:

**Authority:** 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c) and 662(5) and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

■ 2. Amend § 121.201 as follows:

■ a. In the table "Small Business Size Standards by NAICS Industry," under the heading NAICS Subsector 238, "Specialty Trade Contractors," revise the entry for 238990; and under the heading NAICS Subsector 561, "Administrative and Support Services," revise the entry for 561210, to read as follows; and,

■ b. Revise footnotes 12 and 13 to read as follows:

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

| NAICS codes | NAICS U.S. industry title | Size standards in millions of dollars | Size standards in number of employees |
|---|---|---|---|
| | **Subsector 238—Specialty Trade Contractors** | | |
| * | * * | * | * |
| 238990 | All Other Specialty Trade Contractors | $12.0 | |
| | Except, Building and Property Specialty Trade Services [13] | [13] 12.0 | |
| * | * * | * | * |
| | **Subsector 561—Administrative and Support Services** | | |
| * | * * | * | * |
| 561210 | Facilities Support Services [12] | [12] 30.0 | |

[12] *NAICS code 561210—Facilities Support Services:*

(a) If one or more activities of Facilities Support Services as defined in paragraph (b) (below in this footnote) can be identified with a specific industry and that industry accounts for 50% or more of the value of an entire procurement, then the proper classification of the procurement is that of the specific industry, not Facilities Support Services.

(b) "Facilities Support Services" requires the performance of three or more separate activities in the areas of services or specialty trade contractors industries. If services are performed, these service activities must each be in a separate NAICS industry. If the procurement requires the use of specialty trade contractors (plumbing, painting, plastering, carpentry, etc.), all such specialty trade contractors activities are considered a single activity and classified as "Building and Property Specialty Trade Services." Since "Building and Property Specialty Trade Services" is only one activity, two additional activities of separate NAICS industries are required for a procurement to be classified as "Facilities Support Services."

[13] *NAICS code 238990—Building and Property Specialty Trade Services:* If a procurement requires the use of multiple specialty trade contractors (*i.e.*, plumbing, painting, plastering, carpentry, *etc.*), and no specialty trade accounts for 50% or more of the value of the procurement, all such specialty trade contractors activities are considered a single activity and classified as Building and Property Specialty Trade Services.

Dated: August 20, 2003.

**Hector V. Barreto,**

*Administrator.*

[FR Doc. 03–26036 Filed 10–14–03; 8:45 am]

**BILLING CODE 8025–01–P**

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## PENSION BENEFIT GUARANTY CORPORATION

## 29 CFR Parts 4022 and 4044

## Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in November 2003. Interest assumptions are also published on the PBGC's Web site *(http://www.pbgc.gov)*.

**EFFECTIVE DATE:** November 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

**SUPPLEMENTARY INFORMATION:** The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) a set for the valuation of benefits for allocation purposes under section 4044 (found in appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in appendix C to part 4022).

Accordingly, this amendment (1) adds to appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during November 2003, (2) adds to appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during November 2003, and (3) adds to appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during November 2003.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in appendix B to part 4044) will be 4.60 percent for the first 20 years following the valuation date and 5.25 percent thereafter. These interest assumptions represent a decrease (from those in effect for October 2003) of 0.30 percent for the first 20 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in appendix B to part 4022) will be 3.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent a decrease (from those in effect for October 2003) of 0.25 percent for the period during which a benefit is in pay status and are otherwise unchanged.

For private-sector payments, the interest assumptions (set forth in appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during November 2003, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. *See* 5 U.S.C. 601(2).

### List of Subjects

*29 CFR Part 4022*

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

*29 CFR Part 4044*

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

## PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

**Authority:** 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 121, as set forth below, is added to the table. (The introductory text of the table is omitted.)

### Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

| Rate set | For plans with a valuation date | | Immediate annuity rate (percent) | Deferred annuities (percent) | | | | |
|---|---|---|---|---|---|---|---|---|
| | On or after | Before | | $i_1$ | $i_2$ | $i_3$ | $n_1$ | $n_2$ |
| * | * | * | * | * | * | * | | |
| 121 | 11–1–03 | 12–1–03 | 3.25 | 4.00 | 4.00 | 4.00 | 7 | 8 |

■ 3. In appendix C to part 4022, Rate Set 121, as set forth below, is added to the table. (The introductory text of the table is omitted.)

**Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments**

* * * * *

| Rate set | For plans with a valuation date |  | Immediate annuity rate (percent) | Deferred annuities (percent) |  |  |  |  |
|---|---|---|---|---|---|---|---|---|
|  | On or after | Before |  | $i_1$ | $i_2$ | $i_3$ | $n_1$ | $n_2$ |
| * | * | * | * | * | * | * | * | * |
| 121 | 11–1–03 | 12–1–03 | 3.25 | 4.00 | 4.00 | 4.00 | 7 | 8 |

## PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

**Authority:** 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

**Appendix B to Part 4044—Interest Rates Used to Value Benefits**

* * * * *

| For valuation dates occurring in the month— | The values of $i_t$ are: |  |  |  |  |  |
|---|---|---|---|---|---|---|
|  | $i_t$ | for $t=$ | $i_t$ | for $t=$ | $i_t$ | for $t=$ |
| * | * | * | * | * | * | * |
| November 2003 | .0460 | 1–20 | .0525 | 20 | N/A | N/A |

Issued in Washington, DC, on this 7th day of October 2003.

**Joseph H. Grant,**

*Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.*

[FR Doc. 03–26026 Filed 10–14–03; 8:45 am]

BILLING CODE 7708–01–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

[CGD08–03–026]

RIN 1625–AA09

## Drawbridge Operation Regulation; Illinois Waterway, IL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Commander, Eighth Coast Guard District is temporarily changing the regulation governing the McDonough Street Bridge, mile 287.3; Jefferson Street Bridge, mile 287.9; Cass Street Bridge, mile 288.1; Jackson Street Bridge, mile 288.4; and the Ruby Street Bridge, mile 288.7, across the Illinois Waterway at Joliet, Illinois. The drawbridges, with the exception of the Jefferson Street Bridge, will be allowed to remain closed to navigation from 7:30 a.m. to 9 a.m. and 4 p.m. to 5:30 p.m., Monday through Saturday. The Jefferson Street Bridge will remain in the open to navigation position while unscheduled structural steel repairs are made. This temporary rule is issued to facilitate vehicle traffic management and structural steel repairs to the Jefferson Street Bridge.

**DATES:** This temporary rule is effective from 7:30 a.m., July 18, 2003 until 7:30 a.m., November 1, 2003.

**ADDRESSES:** Documents referred to in this rule are available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (314) 539–3900, extension 2378. The Bridge Branch maintains the public docket for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger K. Wiebusch, Bridge Administrator, (314) 539–3900, extension 2378.

**SUPPLEMENTARY INFORMATION:**

### Good Cause for Not Publishing an NPRM

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Structural steel deficiencies developed after a barge allided with the Jefferson Street Bridge, requiring the bridge to be closed to vehicular traffic and remain open to navigation. Until such time as the Jefferson Street Bridge is repaired, vehicular traffic in the City of Joliet, Illinois must be diverted to other bridges in the area, resulting in greater congestion and an increased likelihood of vehicular accidents and injuries. Since the repairs will take approximately four months to complete, it is important that the other bridges in the area immediately modify their hours to allow rush hour traffic to flow efficiently, reducing the likelihood of accident or injury.

### Good Cause for Making Rule Effective in Less Than 30 Days

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Structural steel deficiencies developed after a barge allided with the Jefferson Street Bridge, requiring the bridge to be closed to vehicular traffic and remain open to navigation. Until such time as the Jefferson Street Bridge is repaired, vehicular traffic in the City of Joliet, Illinois must be diverted to other bridges in the area, resulting in greater congestion and an increased likelihood of vehicular accidents and injuries. Since the repairs will take approximately four months to complete, it is important that the other bridges in the area immediately modify their hours to allow rush hour traffic to flow efficiently, reducing the likelihood of accident or injury.

**Background and Purpose**

Due to structural steel damage sustained from a barge allision to the Jefferson Street Bridge, mile 287.9, Illinois Waterway, the bridge must remain in the open to navigation (closed to motor vehicle traffic) position at all times. As a result, the Illinois Department of Transportation requested a temporary change to the current regulations for the remaining four bascule leaf drawbridges within the city of Joliet that carry vehicular traffic across the Illinois Waterway. Increasing the hours that the four remaining bridges are closed to navigation and available for vehicle use only during peak traffic periods will reduce traffic jams in the City of Joliet while having minimal impact on vessel traffic on the Illinois Waterway. Repairs to the Jefferson Street Bridge are expected to be complete by November 1, 2003.

The current regulations permit the bridges to remain closed to navigation during the commuter hours of 7:30 a.m. to 8:30 a.m. and 4:15 p.m. to 5:15 p.m., Monday through Saturday. By increasing the time the remaining bridges may remain closed to navigation by thirty minutes in the morning and afternoon, traffic buildup in the city will be greatly alleviated. This regulation will result in these bridges, with the exception of the Jefferson Street Bridge being closed to navigation from 7:30 a.m. to 9 a.m. and from 4 p.m. to 5:30 p.m., Monday through Saturday. The Jefferson Street Bridge will be in the open to navigation position for structural steel repairs. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This temporary drawbridge operation regulation has been coordinated with commercial waterway operators. No objections to the proposed temporary rule were raised.

**Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The Coast Guard expects that this temporary final rule will have minimal economic impact on the City of Joliet, Illinois and users of the affected waterways. This temporary final rule has been written in such a manner as to allow for the prompt and necessary repair of the Jefferson Street Bridge while facilitating vessel and vehicular traffic in the area.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The temporary rule will have a negligible impact on vessel traffic. The primary users of the Illinois Waterway in Joliet, IL are commercial towboat operators. On average, eight vessels per day transit the affected bridges. Of these, one or two may have to adjust their speed and schedules to arrive at the affected bridges prior to, or after, the times the bridges are closed to navigation.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Any individual that qualifies or believes he or she qualifies as a small entity and requires assistance with the provisions of this rule, may contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 539–3900, extension 2378.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

This rule contains no new collection-of-information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Indian Tribal Governments**

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Environment**

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph 32(e), of the Instruction, from further environmental documentation.

A final "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulations**

■ For the reasons set out in the preamble, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations, as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Public Law 102–587, 106 Stat. 5039.

■ 2. From 7:30 a.m. on July 18, 2003, through 7:30 a.m. on November 1, 2003, paragraph (c) of § 117.393, is suspended and a new paragraph (e) is added to read as follows:

**§117.393 Illinois waterway.**

* * * * *

(e) The draws of the McDonough Street Bridge, mile 287.3; Cass Street Bridge, mile 288.1; Jackson Street Bridge, mile 288.4; Ruby Street Bridge, mile 288.7; all of Joliet, shall open on signal, except that they need not open from 7:30 a.m. to 9 a.m. and from 4 p.m. to 5:30 p.m. Monday through Saturday. The Jefferson Street Bridge shall remain in the open to navigation position from 7:30 a.m., July 18, 2003, through 7:30 a.m. on November 1, 2003.

Dated: July 10, 2003.

**Robert F. Duncan,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District*

[FR Doc. 03–26032 Filed 10–14–03; 8:45 am]

**BILLING CODE 4910–15–P**

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[PA208–4216a; FRL–7569–1]**

## Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and $NO_X$ RACT Determinations for Three Individual Sources

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for three major sources of volatile organic compounds (VOC) and nitrogen oxides ($NO_X$) located in Pennsylvania. EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

**DATES:** This rule is effective on December 15, 2003 without further notice, unless EPA receives adverse written comment by November 14, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in Part IV of the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Pursuant to sections 182(b)(2) and 182(f) of the CAA, the Commonwealth of Pennsylvania (the Commonwealth or Pennsylvania) is required to establish and implement RACT for all major VOC and $NO_X$ sources. The major source size is determined by its location, the classification of that area, and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT, as specified in sections 182(b)(2) and 182(f) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

### II. Summary of SIP Revision

On July 2, 2003, the Pennsylvania Department of Environmental Protection (PADEP) submitted formal revisions to its SIP to establish and impose case-by-case RACT for several major sources of VOC and $NO_X$. This rulemaking pertains to three of those sources. The other sources are subject to separate rulemaking actions. The RACT determinations and requirements in this SIP revision are included in plan approvals (PA) and operating permits (OP) issued by PADEP.

The following identifies the individual PA or OP that EPA is approving for each source.

*A. Andritz, Inc.*

Andritz, Inc. is a facility with foundry operations located in Lycoming County, Pennsylvania and is considered a major VOC emitting facility. In this instance, RACT has been established and imposed by PADEP in a plan approval. On July 2, 2003, PADEP submitted plan approval No. 41–00010C to EPA as a SIP revision. This plan approval incorporates RACT determinations as required by the provisions of Title I of the CAA and sections 129.91 through 129.95 of Chapter 129 of Article III of the rules and regulations of PADEP for the refiner plate molding line, the green sand molding line, the no-bake floor molding line and a core making operation, propane generators and several other minor sources. In any 12 consecutive month period, the total combined VOC emissions from the refiner plate molding shall not exceed 57.99 tons and the line shall not be operated more than 7,000 hours. The total amount of steel processed by the refiner plate molding line shall not exceed 11,000 tons in any 12 consecutive month period. The total combined VOC emissions from the green sand molding line, the no-bake floor molding line and the core making operation, plus the combined VOC emissions from the propane-fired generators and minor sources identified below, shall not exceed a total of 69.86 tons in any 12 consecutive month period. The total combined amount of steel processed by the green sand molding line and the no-bake floor molding line shall not exceed 8,000 tons and these lines shall not be operated more that 7,000 hours in any 12 consecutive month period. In addition, the total combined VOC from the core making operation shall not exceed 2.70 tons in any 12 consecutive month period.

The facility shall maintain accurate and comprehensive records of the following: (1) The amount of steel processed each month by the refiner plate molding line, the green sand molding line, and the no-bake floor molding line; (2) the number of hours of operation each month of the refiner plate molding line, the green sand molding line, and the no-bake floor molding line; and (3) the amount of binders/resins used in the core making operation each month. These records shall be used by the facility to calculate the monthly emission of VOCs from the refiner plate molding line, the green sand molding line, the no-bake floor molding line and the core making operation. All records generated, including the VOC emissions calculations, shall be retained on site for at least five years from the date of generation and shall be provided to PADEP upon request. The monthly emissions report shall include all background information and calculations used in the derivation of these emissions.

### *B. Brodart Company*

Brodart Company is a wood furniture finishing operation facility located in Clinton County, Pennsylvania and is considered a major VOC emitting facility. In this instance, RACT has been established and imposed by PADEP in a plan approval. On July 2, 2003, PADEP submitted plan approval No. 18–0007A to EPA as a SIP revision. This plan approval also incorporates RACT determinations as required by the provisions of Title I of the CAA and sections 129.91 through 129.95 of Chapter 129 of Article III of the Rules and Regulations of PADEP for the following: (1) A 2.6 million BTU per hour (MMBTU/hr) De Burg natural gas-fired oven; (2) a 2.5 MMBTU/hr North American natural gas-fired oven; (3) a 2.5 MMBTU/hr Weil McLain natural gas/#2 oil-fired boiler; (4) a 15 kW Kohler natural gas-fired emergency generator that shall not be operated more than 500 hours in any 12 consecutive month period; (5) gluing operations and several miscellaneous sources.

The total combined VOC emissions from these sources shall not exceed 2.70 tons in any 12 consecutive month period. The 15 KW natural gas energy generator shall not be operated more than 500 hours in any 12 consecutive month period. In addition, the plan approval contains reference to specific low VOC content glues and adhesives that shall used in the gluing operation. The facility shall maintain accurate and comprehensive records of the number of hours the emergency generator was operated during each month. All records generated shall be retained on site for a period of at least five years from the date of generation and shall be provided to PADEP upon request. In addition, all records generated for each calendar quarter, including air contaminant emission calculations, shall be submitted to PADEP by no later than the 30th day following the respective calendar quarter (reports due on January 30, April 30, July 30 and October 30). This report shall include all background information and calculations used in the derivation of the reported values.

### *C. Erie Sewer Authority*

The Erie Sewer Authority is a waste water treatment plant (WWTP) located in Erie County, Pennsylvania and is considered a $NO_X$ emitting facility. The Erie WWTP is a secondary activated sludge treatment plant. In this instance, RACT has been established and imposed by PADEP in an operating permit. On July 2, 2003, PADEP submitted operating permit No. OP–25–179 to EPA as a SIP revision. The sources in this facility are seven space heaters, four emergency generators, and two sewage sludge incinerators.

RACT for the seven (7) heaters, with individual rated gross heat inputs less than 20 MMBTU/hr, shall be installation, maintenance, and operation in accordance with the manufacturer's specifications. These sources shall also be operated and maintained in accordance with good air pollution control practices.

RACT for the four (4) emergency generators, operating less than 500 hours in a consecutive 12-month period, shall be installation, maintenance, and operation in accordance with the manufacturer's specifications. These sources shall also be operated and maintained in accordance with good air pollution control practices.

RACT for the two (2) sewage sludge incinerators shall be the continued management of the units to ensure proper combustion. This includes operation and maintenance of the sources and associated control devices in accordance with the manufacturer's specifications and consistent with good operating and maintenance practices. The $NO_X$ emissions from each of the sewage sludge incinerators shall not exceed 10.0 pound per ton of sewage sludge (on a dry basis). The facility shall test each of the incinerators at least once every five years. The stack tests shall be performed at maximum rated capacity following the procedures in 25 Pa Code chapter 139.

The facility shall maintain records in accordance with the recordkeeping requirements of 25 Pa Code section 129.95 that will include at a minimum: (a) Records that indicate that each of the four emergency generators did not operate more than 500 hours in a consecutive 12-month period; (b) records that indicate that each of the four emergency generators are maintained and operated in accordance with the manufacturer's specifications; and (c) records that indicate that each of the seven space heaters are maintained and operated in accordance with manufacturer's specifications.

## III. EPA's Evaluation of the SIP Revisions

EPA is approving these SIP submittals because the Commonwealth established and imposed requirements in accordance with the criteria set forth in SIP-approved regulations for imposing RACT or for limiting a source's potential to emit. The Commonwealth has also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with these requirements.

## IV. Final Action

EPA is approving revisions to the Commonwealth of Pennsylvania's SIP which establish and require RACT for the three major sources of VOC and $NO_X$ listed in this document. EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This direct final rule will be effective on December 15, 2003, without further notice unless we receive adverse comment by November 14, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number *PA208–4216* in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*i. E-mail.* Comments may be sent by electronic mail (e-mail) to *morris.makeba@epa.gov*, attention: *PA208–4216*. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

*ii. Regulations.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov*, then select "Environmental Protection Agency" at the top of the page and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

*iii. Disk or CD–ROM.* You may submit comments on a disk or CD–ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

### *Submittal of CBI Comments*

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

### *Considerations When Preparing Comments to EPA*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

## IV. Statutory and Executive Order Reviews

### *A. General Requirements*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### *B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for three named sources.

### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 15, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, approving Pennsylvania's VOC and $NO_X$ RACT determinations for three individual sources, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 29, 2003.

**James W. Newsom,**

*Acting Regional Administrator, Region III.*

■ 40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart NN—Pennsylvania

■ 2. Section 52.2020 is amended by adding paragraph (c)(214) to read as follows:

**§ 52.2020 Identification of plan.**

* * * * *

(c) * * *

(214) Revisions to the Pennsylvania Regulations pertaining to VOC and $NO_X$ RACT for major sources submitted on July 2, 2003 by the Pennsylvania Department of Environmental Protection.

(i) Incorporation by reference.

(A) Letter of July 2, 2003 from the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or $NO_X$ RACT determinations in the form of plan approvals or operating permits.

(B) Plan Approval (PA); Operating Permit (OP):

(*1*) Andritz, Inc., Lycoming County, 41–00010C, effective April 30, 2003.

(*2*) Brodart Company, Clinton County, 18–0007A, effective April 8, 2003.

(*3*) Erie Sewer Authority, Erie County, OP–25–179, effective June 5, 2003.

(ii) Additional Material.—Remainder of the State submittals pertaining to the revisions listed in paragraph (c)(214)(i) of this section.

[FR Doc. 03–25929 Filed 10–14–03; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[PA208–4214a; FRL–7570–9]**

## Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and $NO_X$ RACT Determinations for Six Individual Sources

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for six major sources of volatile organic compounds (VOC) and nitrogen oxides ($NO_X$) located in Pennsylvania. EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on December 15, 2003 without further notice, unless EPA receives adverse written comment by November 14, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in Part III of the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Ellen Wentworth at (215) 814–2034, or by e-mail at *wentworth.ellen@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Pursuant to sections 182(b)(2) and 182(f) of the CAA, the Commonwealth of Pennsylvania (the Commonwealth or Pennsylvania) is required to establish and implement RACT for all major VOC and $NO_X$ sources. The major source size is determined by its location, the classification of that area, and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT, as specified in sections 812(b)(2) and 182(f) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

## II. Summary of the SIP Revision

On July 2, 2003, PADEP submitted formal revisions to its SIP to establish and impose case-by-case RACT for several major sources of VOC and $NO_X$. This rulemaking pertains to six of those sources. The other sources are subject to separate rulemaking actions. The RACT determinations and requirements in this SIP revision are included in operating permits (OP) issued by PADEP.

The following table identifies the individual operating permits that EPA is approving for each source located in Pennsylvania.

VOC AND $NO_X$ RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

| Source | County | OP number | Source type | Major source pollutant |
|---|---|---|---|---|
| GPU Generation Corporation—Homer City Station. | Indiana | 32–000–055 | Boilers; Low $NO_X$ Burners | $NO_X$/VOC |
| GPU Generation Corporation—Seward Station | Indiana | 32–000–040 | Steam-Fired Boilers, Diesels, Space Heaters | $NO_X$/VOC |
| Ebensburg Power Company | Cambria | 11–000–318 | CFB Boiler; Gas-Fired Boiler, Diesel Generators. | $NO_X$/VOC |
| Sithe Pennsylvania Holdings, L.L.C.—Warren Station. | Warren | OP–62–012B | Boilers; Combustion Turbines; Diesel Generators. | $NO_X$/VOC |
| Pennsylvania Power & Light Company—Sunbury SES. | Snyder | OP–55–0001A | Boilers; Combustion Turbines; Diesel Generators. | $NO_X$/VOC |
| Lakeview Landfill | Erie | OP–25–920 | Enclosed Flare | VOC |

### *A. GPU Generation Corporation-Homer City Station*

GPU Generation Corporation's Homer City Power Station is located in Center Township, Indiana County, Pennsylvania. GPU Generation's Homer City Power Station is a major $NO_X$ and VOC emitting facility. In this instance, RACT has been established and imposed by the PADEP in an OP. On July 2, 2003, PADEP submitted permit No. 32–000–055 to EPA as a SIP revision. This operating permit incorporates RACT determinations for $NO_X$ and VOCs for the following sources at the Homer City facility: Three (3) Main Boilers, Units 1, 2, and 3; two (2) auxiliary boilers, Units A and B; and several miscellaneous sources, consisting of two (2) small diesels, one (1) diesel fire pump, and twenty-five (25) space heaters.

$NO_X$ RACT for the three main boilers, Units, 1, 2, and Unit 3 shall consist of an emission limit of .5 lb/MMBtu based on a 30-day rolling average. Annual $NO_X$ emission limits shall be 13,076 tons per year (tpy) for Unit 1, 12,825 tpy for Unit 2, and 13,753 tpy for Unit 3. All annual limits must be met on a rolling monthly basis over every consecutive 12-month period. Compliance with these $NO_X$ emission limits shall be established based on emission data obtained from continuous emissions monitoring (CEM) approved by PADEP. The CEM system shall be installed, approved, maintained, and operated in accordance with 25 PA Code Chapters 123 and 139. VOC RACT for Units 1, 2, and 3 shall be the operation and maintenance of the sources according to the manufacturer's specifications, and good air pollution control practices. $NO_X$ and VOC RACT for auxiliary Units A and B shall be the operation and maintenance of the sources according to the manufacturer's specifications, and good air pollution control practices. These units shall use only No. 2 fuel oil, and shall be limited to an annual capacity factor of 10 percent. RACT for the two emergency diesels and the diesel fire pump shall be the installation, maintenance, and operation of the sources in accordance with the manufacturer's specifications under the presumptive RACT emission limitations found in 25 PA Code, Chapter 129, section 129.93(c)(5). These units shall be operated less than 500 hours in a consecutive 12-month period. GPU's Homer City facility shall maintain an open log to verify compliance for the auxiliary Units A and B, emergency diesels, and fire pump. This log shall include: hours of operation, fuel characteristics (specifications) and the amount and type of fuel (fuel consumption). The space heaters are combustion sources with individual rated gross heat inputs of less than 20 MMBtu per hour qualifying them for the presumptive RACT emission limitation found in 25 PA Code, Chapter 129.93(c)(1). RACT for these sources shall be the installation, maintenance and operation of these sources in accordance with the manufacturer's specifications.

GPU Generation Corporation's Homer City Station is also subject to the requirements of 25 PA Code, Chapter 129, sections 129.91–129.95.

### *B. GPU Generation Corporation-Seward Station*

GPU Generation Corporation's Seward Power Station is located in East Wheatfield Township, Indiana County, Pennsylvania. GPU Generation Corporation's Seward Power Station is a major $NO_X$ and VOC emitting facility. In this instance, RACT has been established and imposed by the PADEP in an OP. On July 2, 2003, the PADEP submitted permit No. 32–000–040 to EPA as a SIP revision. This operating permit incorporates RACT determinations for $NO_X$ and VOCs for the following sources: Three (3) coal-fired boilers, Boilers 12, 14, and 15; two (2) emergency diesels; and thirteen (13) space heaters.

$NO_X$ RACT for Boiler 12 shall be the implementation of bias firing operating procedures, with an annual $NO_X$ emissions limit of 808.11 tpy. All annual limits must be met on a rolling monthly basis over every consecutive 12-month period. $NO_X$ emissions from Boiler 12 shall not exceed 0.82 lb/MMBtu based on a 30-day rolling average. $NO_X$ RACT for Boiler 14 shall be the emissions limit of 0.50 lb/MMBtu based on a 30-day rolling average. $NO_X$ emissions from Boiler 15 shall not exceed 0.51 lb/MMBtu based on a 30-day rolling average. VOC RACT for the three boilers shall be the operation and maintenance in accordance with the manufacturer's recommendations.

RACT for the two emergency power diesel engines shall be the operation and maintenance of the sources according to the manufacturer's specifications in accordance with the presumptive RACT emission limitations found in 25 PA Code, Chapter 129, section 129.93(c)(5). These emergency diesels shall each be limited to operating less than 500 hours in any consecutive 12-month period. The space and portable heaters are combustion sources with individual rated gross heat inputs of less than 20 MMBtu per hour of operation, qualifying them for presumptive RACT under 25 PA Code, Chapter 129, section 129.93(c)(1). The total amount and type of fuel burned in the two emergency diesels and 13 space heaters shall be recorded and used as the basis for annual reporting of the emissions to verify compliance with the limits noted above. GPU's Seward Station shall maintain an operating log for the emergency diesels to verify compliance with the restriction on hours of operation and the presumptive RACT limitations. All sources and air cleaning devices shall be operated and maintained in accordance with good air pollution control practices.

In accordance with 25 PA Code, Chapter 129, section 129.95, GPU's Seward Station is required to keep sufficient records to demonstrate compliance with the limitations, restrictions, and requirements of this RACT permit. These records shall provide sufficient data and calculations to clearly demonstrate compliance consistent with all averaging times and periods. These records shall be maintained for at least two years and be made available to the Department upon request.

### *C. Ebensburg Power Company*

Ebensburg Power Company is a cogeneration facility located in Cambria Township, Cambria County, Pennsylvania. The Ebensburg Power Company is a major $NO_X$ and VOC emitting facility. In this instance, RACT has been established and imposed by the PADEP in an OP. On July 2, 2003, the PADEP submitted permit No. 11–000–318 to EPA as a SIP revision. This operating permit incorporates RACT determinations for $NO_X$ and VOC for the following sources: One (1) circulating fluidized bed boiler (CFB); one (1) auxiliary boiler; two (2) diesel generators; and one (1) diesel driven fire pump.

$NO_X$ RACT for the CFB boiler shall consist of an emission limit of .18 lbs/MMBtu based on a 30-day rolling basis, and a limit of 555.83 tpy. All annual limits must be met on a rolling monthly basis over every consecutive 12-month period. VOC emissions from the CFB boiler shall not exceed 15 lbs/hr. The Ebensburg Power Company shall operate and maintain a continuous emission monitoring system for as-fired coal analysis for the CFB boiler in accordance with the requirements of 25 PA Code Chapter 139. A $NO_X$ analysis shall be determined on a daily basis and used to calculate the CFB boiler's $NO_X$ control efficiency. Emissions of $NO_X$ from the auxiliary boiler shall not exceed 8.04 tpy. All annual limits must be met on a rolling monthly basis over every 12-month period.

$NO_X$ RACT for the 1592 BHP diesel generator shall consist of an operarional limit of no more than 800 hours in any consecutive 12-month period. The presumptive $NO_X$ RACT requirements outlined in 25 PA Code, Chapter 129.93(c)(5) apply to the 600 BHP diesel generator, and the 244 BHP Diesel Fire Pump. The presumptive RACT emission limitations for these sources are the maintenance, and operation of these sources in accordance with the manufacturer's specifications. These sources are limited to operating no more than 500 hours in a consecutive 12-month period. All sources and air cleaning devices shall be operated and maintained in accordance with good air pollution control and engineering practices and also with the manufacturer's specifications.

In accordance with 25 PA Code, Chapter 129, section 129.95, the owner/operator of the Ebensburg Power Company shall keep sufficient records to demonstrate compliance with the limitations, restrictions, and requirements of this RACT permit. These records shall provide sufficient data and calculations to clearly demonstrate compliance consistent with all averaging times and periods. These records shall be retained for at least two years and be made available to the Department upon request.

### *D. Sithe Pennsylvania Holdings, LLC-Warren Generating Station*

Sithe Pennsylvania Holdings, LLC owns and operates the Warren Generating Station in Warren County, Pennsylvania. Sithe Pennsylvania Holdings, LLC's Warren Generation Station is a major $NO_X$ and VOC emitting facility. In this instance, RACT has been established and imposed by the PADEP in an OP. On July 2, 2003, the PADEP submitted OP–62–012B to EPA as a SIP revision. This operating permit incorporates RACT determinations for $NO_X$ and VOCs for the following sources at the Warren Station facility: Four (4) boilers, Boilers 1, 2, 3, and 4; one (1) gas/oil-fired combustion turbine unit; and one (1) oil-fired emergency diesel generator.

$NO_X$ RACT for each boiler (boiler 1, 2, 3, and 4) will be bias firing with an annual capacity factor not to exceed 65.1 percent. Based upon a nominal heat input of 286.5 MMBtu/hr, each boiler shall be limited to an annual heat input of 1.634 million MMBtu/year on a 12-month rolling basis. Each boiler shall be operated and maintained in accordance with the manufacturer's specifications and good air pollution control practices. Combined emissions from Boilers 1, 2, 3, and 4 shall not exceed 2025.9 tpy. All annual limits must be met on a rolling monthly basis over every consecutive 12-month period. $NO_X$ emissions from Boilers 1, 2, 3, and 4 combined, shall not exceed 0.62 lbMMBtu based on a 30-day rolling average. A CEMS shall be operated and maintained to monitor $NO_X$ emissions from the four boilers. All four boilers shall exhaust into a common stack containing a single CEMS. The CEMS shall comply with 25 PA Code, Chapter 139, and the requirements of the Continuous Source Monitoring Manual.

$NO_X$ RACT for the combustion turbine shall be the operation and maintenance in accordance with the manufacturer's specifications with an annual limit on $NO_X$ emissions of 400 tons on a 12-month rolling basis. When burning natural gas in the combustion turbine, the emissions rate shall not exceed 0.499 lb/MMBtu. The heat input shall not exceed $2.005 \times 10^{12}$ BTU/yr or $1.944 \times 10^{9}$ CF/yr., and the annual capacity factor shall not exceed 18.3 percent on a heat input basis. When burning No. 2 oil in the combustion turbine, the emissions rate shall not exceed 0.9 lb/MMBtu. The heat input shall not exceed $1.091 \times 10^{12}$ BTU/yr or 7,905,000 gal/yr., and the annual capacity factor shall not exceed 9.98 percent on a heat input basis. For each gallon of No. 2 fuel oil used, the natural gas limit in the above statement shall decrease by 246 cubic feet. The turbine shall also be operated and maintained in accordance with the manufacturer's specifications and good air pollution control practices. Compliance with the short-term $NO_X$ emission limit for the combustion turbine shall be established based on the average of three (3) one-hour stack tests. Prior to testing, the procedure shall be approved by the Department, with at least two weeks notice given of the date and time of the test. By September 30, 2002, stack tests shall have been performed in accordance with the provisions of 25 PA Code, Chapter 139 to show compliance with the short-term $NO_X$ emission limit. Within 60 days after the test, two copies of the completed test report, including all operating conditions, shall be submitted to the Department for approval.

Within 30 days after the end of each calendar quarter, quarterly reports shall be submitted to the Department to show compliance with the RACT requirements for Boilers 1, 2, 3, and 4 and the combustion turbine.

$NO_X$ RACT for the emergency diesel generator shall be the installation, maintenance and operation of the source in accordance with the manufacturer's specifications and good air pollution control practices, in accordance with the presumptive RACT emission limitations as specified under 25 PA Code, Chapter 129, section 129.93(c)(5). The generator shall not exceed an operating schedule of 500 hours in a consecutive 12-month period. Within 30 days of the end of the calendar year, the owner or operator shall submit annual operating reports to show compliance with the RACT requirements for the emergency diesel generator.

VOC RACT for all sources shall be the operation and maintenance in accordance with the manufacturer's specifications and good air pollution control practices. Fugitive evaporative sources of VOCs shall comply with the requirements of 25 PA Code, sections 129.51, 129.54–129.72, 129.81, and 129.82, as applicable.

### *E. Pennsylvania Power & Light Company-Sunbury SES*

Pennsylvania Power & Light Company's (PP&L) Sunbury Steam Electric Station (SES) is located in the Borough of Shamokin, Snyder County, Pennsylvania. PP&L's Sunbury Power Station is a major $NO_X$ and VOC emitting facility. In this instance, RACT has been established and imposed by the PADEP in an OP. On July 2, 2003, PADEP submitted OP–55–0001A to EPA as a SIP revision. This operating permit incorporates RACT determinations for $NO_X$ and VOC for the following sources at the Sunbury facility: Four (4) arch fired boilers 1A, 1B, 2A, and 2B; two (2) front wall-fired steam generators, Boilers 3 and 4; two (2) combustion turbine generators; and two (2) diesel generators.

Pursuant to the RACT provisions of 25 PA Code, Chapter 129, sections 129.91–95, Units 1A, 1B, 2A, and 2B shall be operated and maintained in accordance with the manufacturer's specifications and good air pollution control practice. The $NO_X$ emissions from Units 1A, 1B, 2A, and 2B shall not exceed the following limits: $NO_X$ emissions from Stack #1 (Boilers 1A and 1B) shall not exceed 1.10 lb/MMBtu, based on a 30-day rolling average; $NO_X$ emissions from Stack #2 (Boilers 2A and 2B) shall not exceed 1.16 lb/MMBtu, based on a 30-day rolling average; $NO_X$ emissions from Unit #3 shall not exceed .50 lb/MMBtu based on a 30-day rolling average and $NO_X$ emissions from Unit #4 shall not exceed .50 lb/MMBtu based on a 30-day rolling average. VOC RACT for Units 1A, 1B, 2A, 2B, 3, and 4 shall be in accordance with the manufacturers' specifications and good air pollution control practices.

$NO_X$ and VOC RACT for the two combustion turbines shall be the operation and maintenance in accordance with the manufacturer's specifications and good air pollution control practices. Additionally, the capacity factor of each of these turbines shall be less than 50 percent for any consecutive 12-month period.

$NO_X$ and VOC RACT for the two diesel generators at the facility shall be the operation and maintenance in accordance with the manufacturer's specifications and good air pollution control practices. These generators shall be operated less than 500 hours in a consecutive 12-month period. PP&L's Sunbury Station shall maintain records in accordance with the recordkeeping requirements of 25 PA Code, Chapter 129, section 129.95, and shall include, at a minimum, the following: (a) Data which clearly demonstrates the capacity factor of the combustion turbines (which shall include, but not necessarily be limited to, the number of hours each turbine operates in each month), (b) the number of hours per month that each diesel generator is operated, and (c) all $NO_X$ emissions data generated for Units 1A, 1B, 2A, 2B, 3, and 4, using continuous $NO_X$ emission monitoring systems as specified in 25 PA Code, Chapter 139. These records shall be retained for at least 2 years and shall be made available to the Department upon request except for the $NO_X$ emission data generated by the continuous $NO_X$ emission monitoring systems which shall be submitted in accordance with the applicable requirements specified in 25 PA Code, Chapter 139, "Sampling and Testing", and the Department's "Continuous Source Monitoring Manual."

PP&L's Sunbury Station shall operate and maintain continuous $NO_X$ emissions monitoring systems on Units 1A, 1B, 2A, 2B, 3, and 4, in accordance with all applicable requirements of 25 PA Code, Chapter 139, "Sampling and Testing," and the Department's "Continuous Source Monitoring Manual."

### *F. Lakeview Landfill*

Lakeview Landfill is located in Summit Township, Erie County, Pennsylvania. The Lakeview Landfill is a major VOC emitting facility. In this instance, RACT has been established and imposed by the PADEP in an OP. On July 2, 2003, PADEP submitted OP–25–920 to EPA as a SIP revision. This operating permit incorporates RACT determinations for VOCs for the following source at the Sunbury facility: One (1) enclosed flare.

RACT for the enclosed flare at the Lakeview Landfill facility shall be the installation, maintenance, and operation in accordance with the manufacturer's specifications and with good air pollution control practices. The enclosed flare shall also comply with the destruction/removal efficiency (DRE) of at least 98 percent (by weight) for non-methane organic compounds (NMOC). An inspection and cleaning of the enclosed flare shall be conducted annually. This inspection shall include the fuel nozzles or the flame pattern or characteristics. Adjustments in the combustion process shall be conducted if necessary to minimize the formation of $NO_X$. A log shall be kept to record the annual inspection, cleaning (if necessary) and adjustments performed. This log shall contain at a minimum: the date of the maintenance procedure, the name of the technician(s) performing the service, and the operating rate after the procedure has been completed.

Lakeview Landfill shall comply with the recordkeeping requirements of 25 PA Code, section 129.95. Records of fuel quantity and consumption shall be maintained by the facility and forwarded to the Department upon request.

## III. Final Action

EPA is approving these RACT SIP submittals because the Commonwealth established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved regulations for imposing RACT or for limiting a source's potential to emit. The Commonwealth has also imposed recordkeeping, monitoring, and testing requirements on these sources sufficient to determine compliance with these requirements.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on December 15, 2003 without further notice unless EPA receives adverse comment by November 14, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number PA208–4214 in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *morris.makeba@epa.gov* attention: PA208–4214. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov*, then select "Environmental Protection Agency" at the top of the page and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

### Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

### Considerations When Preparing Comments to EPA

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

## IV. Statutory and Executive Order Reviews

### *A. General Requirements*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### *B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for six named sources.

### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 15, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Pennsylvania's source-specific RACT requirements to control VOC and $NO_X$ from six individual sources may be not challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 29, 2003.

**James W. Newsom,**

*Acting Regional Administrator, Region III.*

■ 40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart NN—Pennsylvania**

■ 2. Section 52.2020 is amended by adding paragraph (c)(212) to read as follows:

**§ 52.2020 Identification of plan.**

* * * * *

(c) * * *

(212) Revisions to the Pennsylvania Regulations pertaining to VOC and $NO_X$ RACT for major sources submitted on July 2, 2003 by the Pennsylvania Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of July 2, 2003 by the Pennsylvania Department of Environmental Protection transmitting source-specific $NO_X$ and VOC RACT determinations.

(B) The following operating permits (OP):

(*1*) GPU Generation Corp., Homer City Station, Indiana County, 32–000–055, effective October 29, 1998.

(*2*) GPU Generation Corp., Seward Station, Indiana County, 32–000–040, effective April 30, 1998.

(*3*) Ebensburg Power Company, Ebensburg Cogeneration Plant, Cambria County, 11–000–318, effective March 28, 2001.

(*4*) Sithe Pennsylvania Holdings LLC, Warren Station, Warren County, OP–62–012B, effective January 20, 2000.

(*5*) Pennsylvania Power & Light Company, Sunbury SES, Snyder County, OP–55–0001A, effective July 7, 1997.

(*6*) Lakeview Landfill, Erie County, OP–25–920, effective May 29, 1997.

(ii) Additional Material.—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(212)(i) of this section.

[FR Doc. 03–25931 Filed 10–14–03; 8:45 am]

**BILLING CODE 6560–52–P**

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[SIP No. UT–001–0048, UT–001–0049, FRL–7573–8]**

## Approval and Promulgation of Air Quality Implementation Plans; State of Utah; State Implementation Plan Corrections

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; technical correction.

**SUMMARY:** When EPA approved Utah State Implementation Plan (SIP) revisions regarding the numbering and format of the SIP on June 25, 2003, we inadvertently submitted incorrect material for incorporation by reference and incorrectly referenced a SIP section. EPA is correcting these errors with this document.

**EFFECTIVE DATE:** This final rule is effective November 14, 2003.

**FOR FURTHER INFORMATION CONTACT:** Laurel Dygowski, EPA, Region 8, (303) 312–6144.

**SUPPLEMENTARY INFORMATION:** Throughout this document, wherever "we" or "our" is used it means the EPA.

Section 553 of the Administrative Procedures Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting incorrect text in a previous rulemaking. Thus notice and public procedures are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

### I. Correction

*Correction to Federal Register Document Published on June 25, 2003 (68 FR 37744)*

On June 25, 2003, we published a final rule approving Utah SIP revisions pertaining to the numbering and format of the SIP (68 FR 37744). When we published this rule, we incorporated by reference changes to Section IX.D.2.h. In the incorporation by reference material for Section IX.D.2.h, we inadvertently incorporated by reference changes to Section IX.D.2.h(2) that should not have been incorporated by reference. The incorporation by reference material submitted with the June 25, 2003 final rule had changes to Section IX.D.2.h(2) that are part of a February 22, 1999 SIP submittal that we have not approved. Therefore, we are correcting this error by resubmitting the incorporation by reference material for 40 CFR 52.2320(c)(56)(i)(C) to the Air and Radiation Docket and Information Center and the Office of the Federal Register. In addition, we are correcting the regulatory text in 40 CFR 52.2320(c)(56)(i)(C) to change the reference to Section IX, Part "IX.D.2.h" to read "IX.D.2.h (except IX.D.2.h(2))".

### II. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental

Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rules are discussed in the June 25, 2003 rule approving the revisions to the numbering and formatting of the Utah SIP.

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of November 14, 2003. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. These corrections to the identification of plan for Utah is not a "major rule" as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 1, 2003.

**Robert E. Roberts,**

*Regional Administrator, Region 8.*

■ 40 CFR part 52 is amended to read as follows:

## PART 52—[CORRECTED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart TT—Utah

■ 2. Section 52.2320 is amended in paragraph (c)(56)(i)(C) by revising "IX.D.2.h" to read "IX.D.2.h (except IX.D.2.h(2))".

[FR Doc. 03–25933 Filed 10–14–03; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

**[Docket ID No. OAR–2002–0046; FRL–7566–2]**

**RIN 2060–AJ53**

## Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; amendments.

**SUMMARY:** On April 8, 1987, the EPA promulgated the Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984. On March 27, 2000, the EPA issued a memorandum which stated that process tanks are "storage vessels" under the definition in the Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984. On May 26, 2000, the American Forest and Paper Association (AF&PA) filed a petition for judicial review of the March 27, 2000 memorandum. In this action, we are promulgating final rule amendments which were proposed pursuant to a settlement agreement with the American Forest and Paper Association (AF&PA) regarding their petition for judicial review of the March 27, 2000 memorandum. The final rule amendments will exempt certain storage vessels by capacity and vapor pressure, exempt process tanks, and add the process tank definition. The EPA is also amending the performance standards to exempt storage vessels that are subject to the National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production.

**EFFECTIVE DATE:** October 15, 2003.

**ADDRESSES:** Docket No. OAR–2002–0046 is located at the EPA Docket Center, EPA West, U.S. EPA (6102T), Room B102, 1301 Constitution Avenue, NW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Morris, Organic Chemicals Group, Emission Standards Division (Mail Code C504–04), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5416, electronic mail address morris.mark@epa.gov.

**SUPPLEMENTARY INFORMATION:** *Docket.* The EPA has established an official public docket for this action under Docket ID No. OAR–2002–0046. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

*Electronic Docket Access.* You may access the final rule amendments electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility in the above paragraph entitled "Docket." Once in the system, select "search," then key in the appropriate docket identification number.

*Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of the final rule amendments will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final rule amendments will be posted on the

TTN's policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.*

*Regulated Entities.* The regulated category and entities affected by this action include:

| Category | NAICS code | Examples of regulated entities |
|---|---|---|
| Industrial | 325 | Chemical manufacturing facilities. |
| | 324 | Petroleum and coal products manufacturing facilities. |
| | 424710 | Petroleum bulk stations and terminals. |

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the regulation affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in § 60.110b of the performance standards, as well as in today's final rule amendments to the applicability sections. If you have questions regarding the applicability of these amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*Judicial Review.* Under Clean Air Act (CAA) section 307(b), judicial review of the final amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by December 15, 2003. Only those objections to the final amendments which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements established by the final amendments may not be challenged separately in any civil or criminal proceeding we bring to enforce such requirements.

*Outline.* The information presented in this preamble is organized as follows:

I. What Is the Background for this Action?
II. What Standards Are We Amending and how Does this Action Relate to the Overall Scope of the Subpart Kb Rule?
III. What Were the Comments Received on the Proposed Amendments?
IV. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Reform Act
  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
  G. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks
  H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
  I. National Technology Transfer Advancement Act
  J. Congressional Review Act

## I. What Is the Background for This Action?

The EPA proposed the 40 CFR part 60, subpart Kb, rules on July 23, 1984 (49 FR 29698) and promulgated them on April 8, 1987 (52 FR 11420). The performance standards implement section 111 of the CAA and are based on the Administrator's determination that volatile organic liquid (VOL) storage vessels cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.

On March 27, 2000, the EPA issued a memorandum which stated that process tanks are "storage vessels" under the definition in the Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.

On May 26, 2000, the AF&PA filed a petition for judicial review of the March 27, 2000 memorandum. The petitioner felt that the EPA had inappropriately expanded the scope of "storage vessels" with the interpretation in the 2000 memorandum. On August 23, 2001 (66 FR 44342), AF&PA and the EPA signed a settlement agreement that EPA would propose to amend subpart Kb to exclude from its applicability storage vessels that have a capacity less than 75 cubic meters ($m^3$) or that contain a liquid with a maximum true vapor pressure below 3.5 kilopascals (kPa), and take final action on that proposal within a reasonable time.

On February 24, 2003 (68 FR 8574), we proposed amendments to subpart Kb pursuant to the agreement with AF&PA, as well as concerns raised by parties other than the petitioner. One party commented that in addition to the proposed amendments required by the settlement agreement, the EPA should exempt process tanks from subpart Kb. Another party commented that the regulatory overlap between subpart Kb and the National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production (40 CFR part 63, subpart GGGG) should be addressed. Today's final rule amendments address the issues raised by AF&PA and other parties.

## II. What Standards Are We Amending and How Does This Action Relate to the Overall Scope of the Subpart Kb Rule?

We are amending various provisions in 40 CFR part 60, subpart Kb, Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984. For further details, please refer to the February 24, 2003 proposed rule amendments (68 FR 8574). In doing so, we are indicating by necessary implication that subpart Kb applies to all industries where volatile organic liquid (as defined in § 60.111b(k)) is stored, and thus applies to other industries in addition to the petroleum and synthetic organic chemical manufacturing industries.

*Exemption of Certain Storage Vessels by Capacity and Vapor Pressure.* Today's action amends the final rule by eliminating recordkeeping requirements for storage vessels with a capacity less than 75 $m^3$, for storage vessels with a capacity between 75 and 151 $m^3$ storing liquid with vapor pressure less than 15 kPa, and for storage vessels with a capacity equal to or greater than 151 $m^3$ storing liquid with vapor pressure less than 3.5 kPa. Put another way, the EPA is exempting from subpart Kb those storage vessels presently subject to recordkeeping requirements only.

*Exemption of Process Tanks.* The EPA is amending the final rule to exempt process tanks from subpart Kb. The EPA considered whether it was justified to amend subpart Kb to include process tanks within its scope, which would apply to new sources, that is, only to those process tanks for which construction, reconstruction, or modification commenced after the date of proposal of the action (see CAA sections 111(a)(2) and (b)(1)(B)).

*Exemption of Storage Vessels Subject to the Vegetable Oil National Emission Standards for Hazardous Air Pollutants (NESHAP).* The EPA contends that the overall emissions to the environment will not increase by exempting storage vessels from subpart Kb that are subject to the Vegetable Oil Production NESHAP, and that such exemption essentially amounts to avoiding duplicative regulation. The EPA is, therefore, exempting from subpart Kb all storage vessels that are subject to the Vegetable Oil Production NESHAP.

## III. What Were the Comments Received on the Proposed Amendments?

### *Summary of Public Comments and Responses*

This section of the preamble is a summary of the major public comments received in response to the proposed rule amendments, and changes resulting from the comments. A full report of all comments received and responses to the comments are in the "Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984—Public Comments and Responses." The document may be found in Docket ID No. OAR–2002–0046.

*Comment:* Two commenters recommended revising the definition of "process tank" to clarify that a vessel used within a process before material is transferred to a by-product storage vessel is considered to be a process tank. The commenters also recommended that the definition be revised to include tanks used to collect and recirculate solvents. One commenter suggested the EPA clarify that flare knockout vessels and vessels used for surge control for wastewater and/or sludge are process tanks. Another commenter requested the EPA clarify that pipeline emergency breakout tanks are process tanks, and another commenter requested the EPA clarify that vessels used for fermentation, distillation, mixing and blending, condensing, filtering, and extraction are process tanks.

*Response:* The EPA agrees that a vessel used within a process before material is transferred to a by-product storage vessel is considered to be a process tank. The definition of "process tank" in the final rule amendments reflects this view. The EPA considers vessels that receive and accumulate solvent or raw material from recovery processes to be storage vessels, not process tanks. Such vessels serve the same function as virgin solvent and raw material storage vessels, and some are located in tank farms with other storage vessels. The definition in the final rule amendments clarifies that "process tank" does not include such vessels. However, the definition also clarifies that vessels used within solvent and raw material recovery processes (that are not used for the ultimate storage of recovered liquids) are process tanks. The EPA agrees that flare knockout vessels and vessels used for surge control for wastewater and/or sludge are process tanks. The EPA also agrees that vessels used as described by one commenter (fermentation, distillation, etc.) are process tanks, and that the proposed definition of "process tank" would be interpreted to include such vessels. Finally, the EPA agrees that vessels used for pipeline surge control (not storage) are considered to be process tanks.

*Comment:* Several commenters recommended raising the proposed vapor pressure applicability criteria to the levels at which control is required. One of the commenters stated that the EPA's rationale for the proposed levels would also support raising the criteria to the levels at which control is required.

*Response:* The EPA disagrees that the rationale for the proposed applicability criteria also supports raising the levels to those at which control is required. The proposed applicability criteria would exempt tanks storing liquids with a vapor pressure significantly lower than the vapor pressure criteria for control. Regarding the vapor pressure at which recordkeeping of the stored liquid is required, the preamble to the 1987 final subpart Kb (49 FR 29711) states, "These vapor pressures should be high enough so that records would not be kept on liquids that could not, under reasonable circumstances, reach the maximum true vapor pressure cutoffs, but low enough so that records would be kept on most liquids that could reach the maximum true vapor pressure cutoffs." This remains the EPA's position, and the EPA has, therefore, retained revised the applicability criteria as proposed.

*Comment:* One commenter urged the EPA to state that it will not seek to enforce subpart Kb for process tanks that have been constructed, reconstructed or modified after July 23, 1984 and before the date of the proposed amendments to subpart Kb.

*Response:* The EPA stated in the preamble to the proposed rule amendments that the 1998 interpretation of subpart Kb was definitive (in the sense that it was intended to set out the EPA's view and was written by an entity within the EPA with authority to do so) and, as such, can only be changed after notice-and-comment rulemaking. The EPA also stated that it would not be worthwhile to now propose to include process tanks under subpart Kb, and that the Agency was thus proposing to amend subpart Kb to exempt process tanks to codify the 1998 position. Therefore, the EPA will not be taking any enforcement action regarding the tanks described by the commenter.

*Comment:* One commenter urged the EPA to clarify its "enforcement posture" with respect to storage tanks in facilities other than the chemical and petroleum industries. The commenter stated several reasons for subpart Kb not applying outside the chemical and petroleum industries. The commenter stated that storage tanks outside the chemical and petroleum industries were not considered when determining the economic impacts of the proposed standards. The commenter also stated that the information collection request (ICR) for the standards was limited to the chemical and petroleum industries.

*Response:* The EPA stated in the preamble to the proposed rule why the text of the rule indicates that the rule's scope is not limited to the chemical and petroleum industries. The EPA also described the process by which a source category on the CAA section 111 priority list for regulation was revised (concurrently with the promulgation of subpart Kb) to include all volatile organic liquid storage. The priority list had previously included storage vessel source categories only for the petroleum industry and the synthetic chemical manufacturing industry, confirming what is already clear from the proposed rule's text—it applies to industries other than chemical and petroleum.

The commenter is correct that the economic analysis for subpart Kb did not include storage vessels in industries other than the chemical and petroleum industries. However, in the background information document for the proposed subpart Kb (EPA–450/3–81–003a), the amount of storage in industries outside the chemical and petroleum industries was estimated to be small enough (relative to storage in those industries) to be disregarded in the analysis.

The commenter is also correct that the supporting statement for the ICR for subpart Kb lists only the chemical and petroleum industries as respondents. Again, the EPA estimated that these industries contain the overwhelming majority of volatile organic liquid storage vessels. The list of respondents in the ICR supporting statement does not determine the applicability of subpart Kb; 40 CFR 60.110b determines applicability. Subpart Kb has such broad applicability that an exhaustive list of respondents would be difficult to develop. The Office of Management and

Budget approved the current ICR for subpart Kb under terms which state that the EPA must submit a revised ICR, pursuant to the Paperwork Reduction Act and 5 CFR part 1320. The EPA intends to develop this expanded list during the next ICR renewal for subpart Kb.

In conclusion, the EPA interprets subpart Kb to apply to volatile organic liquid storage vessels, regardless of industry.

## IV. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that the final rule amendments are not a "significant regulatory action" under the terms of Executive Order 12866 and are, therefore, not subject to OMB review.

### *B. Paperwork Reduction Act*

This action does not impose any new information collection burden. This action exempts certain sources from 40 CFR part 60, subpart Kb. Therefore, it is likely that this action could only reduce the information collection burden. The OMB has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0074 (EPA ICR No. 1132.06).

Copies of the ICR document(s) may be obtained from Susan Auby, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. EPA (2822T); 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by email at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*. Include the ICR or OMB number in any correspondence.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to, a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule amendments on small entities, a small entity is defined as: (1) A small business in the North American Industrial Classification System (NAICS) code 324 or 325 that has up to 500 employees; (2) a small business in NAICS code 424710 that has up to 100 employees; (3) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (4) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The EPA has determined that none of the small entities will experience a significant impact because the final rule amendments impose no additional regulatory requirements on owners or operators of affected sources. In fact, the final rule amendments should decrease the impacts on small businesses because they exempt some sources from regulation.

### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the final rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The final rule amendments exempt certain sources from regulation. Thus, today's final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA.

### *E. Executive Order 13132: Federalism*

Executive Order 13132 (64 FR 43255, August 10, 1999) requires the EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The final rule amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The final rule amendments exempt certain sources from regulation. The final rule amendments impose no additional burden on sources, and the emissions reductions lost because of the exemptions are not significant. Thus, Executive Order 13132 does not apply to the final rule amendments.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between the EPA and State and local governments, the EPA specifically solicited comment on the proposed rule amendments from State and local officials.

### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175 (65 FR 67249, November 9, 2000) requires the EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The final rule amendments do not have tribal implications, as specified in Executive Order 13175. The final rule amendments exempt certain sources from regulation. The final rule amendments impose no additional burden on sources, and the emissions reductions lost because of the exemptions are not significant. Thus, Executive Order 13175 does not apply to the final rule amendments.

The EPA specifically solicited additional comment on the proposed rule amendments from tribal officials.

### *G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. Today's final rule amendments are not subject to Executive Order 13045 because they are based on technology performance, not health or safety risks. Furthermore, the final rule amendments have been determined not to be "economically significant" as defined under Executive Order 12866.

### *H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

The final rule amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The final rule amendments do not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

### *J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. § 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule will be effective on October 15, 2003.

### List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 24, 2003.

**Marianne Lamont Horinko,**

*Acting Administrator.*

■ For the reasons set out in the preamble, part 60 of title 40, chapter I of the Code of Federal Regulations is amended as follows:

## PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7601.

## Subpart Kb—Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984

■ 2. Section 60.110b is amended by:

■ a. Revising paragraphs (a) and (b);

■ b. Removing and reserving paragraph (c); and

■ c. Adding paragraph (d)(8).

The revisions and addition read as follows:

### § 60.110b Applicability and designation of affected facility.

(a) Except as provided in paragraph (b) of this section, the affected facility to which this subpart applies is each storage vessel with a capacity greater than or equal to 75 cubic meters ($m^3$) that is used to store volatile organic liquids (VOL) for which construction, reconstruction, or modification is commenced after July 23, 1984.

(b) This subpart does not apply to storage vessels with a capacity greater than or equal to 151 $m^3$ storing a liquid with a maximum true vapor pressure less than 3.5 kilopascals (kPa) or with a capacity greater than or equal to 75 $m^3$ but less than 151 $m^3$ storing a liquid with a maximum true vapor pressure less than 15.0 kPa.

(c) [Reserved]

(d) * * *

(8) Vessels subject to subpart GGGG of 40 CFR part 63.

* * * * *

- 3. Section 60.111b is amended by:
- a. Removing the paragraph designations and placing the definitions in alphabetical order;
- b. Revising the definition of "Storage vessel;"
- c. Revising the definition of "Maximum true vapor pressure;"
- d. Revising the definition of "Volatile organic liquid (VOL);" and
- e. Adding, in alphabetical order, a definition of "Process tank."

The revisions and addition read as follows:

### § 60.111b Definitions.

* * * * *

*Maximum true vapor pressure* means the equilibrium partial pressure exerted by the volatile organic compounds (as defined in 40 CFR 51.100) in the stored VOL at the temperature equal to the highest calendar-month average of the VOL storage temperature for VOL's stored above or below the ambient temperature or at the local maximum monthly average temperature as reported by the National Weather Service for VOL's stored at the ambient temperature, as determined:

* * *

*Process tank* means a tank that is used within a process (including a solvent or raw material recovery process) to collect material discharged from a feedstock storage vessel or equipment within the process before the material is transferred to other equipment within the process, to a product or by-product storage vessel, or to a vessel used to store recovered solvent or raw material. In many process tanks, unit operations such as reactions and blending are conducted. Other process tanks, such as surge control vessels and bottoms receivers, however, may not involve unit operations.

* * * * *

*Storage vessel* means each tank, reservoir, or container used for the storage of volatile organic liquids but does not include:

(1) Frames, housing, auxiliary supports, or other components that are not directly involved in the containment of liquids or vapors;

(2) Subsurface caverns or porous rock reservoirs; or

(3) Process tanks.

*Volatile organic liquid (VOL)* means any organic liquid which can emit volatile organic compounds (as defined in 40 CFR 51.100) into the atmosphere.

* * * * *

### § 60.116b [Amended]

- 4. Section 60.116b is amended by removing the last sentence of paragraph (b).

[FR Doc. 03–24774 Filed 10–14–03; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 258

### [RCRA–2002–0034; FRL–7573–6]

### RIN 2050–AE91

## Municipal Solid Waste Landfill Location Restrictions for Airport Safety

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Technical amendment.

**SUMMARY:** EPA is amending the location restriction section in the Criteria for Municipal Solid Waste Landfills (MSWLFs) under the Resource Conservation and Recovery Act (RCRA), in order to add a note providing information about landfill siting requirements enacted in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Ford Act). Today's amendment does not change existing criteria under RCRA with respect to siting MSWLF units.

**EFFECTIVE DATE:** This technical amendment is effective on October 15, 2003.

**ADDRESSES:** Copies of the documents relevant to this action (Docket No. RCRA–2002–0034) are available for public inspection during normal business hours from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays, at the RCRA Information Center (RIC), located at EPA West, Room B–102, 1301 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA Hotline at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703–412–9810 or TDD 703–412–3323 (hearing impaired).

For information on specific aspects of this rule, contact Mary T. Moorcones, Municipal and Industrial Solid Waste Division of the Office of Solid Waste (mail code 5306W), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 540–338–1348; e-mail: *moorcones.mary@epamail.epa.gov.* Some information about this rule can be accessed via the Internet at: *<http://www.epa.gov/epaoswer/non-hw/muncpl/landfill/airport.htm>.*

**SUPPLEMENTARY INFORMATION:**

### General Information

### *A. How Can I Get Copies of This Document and Other Related Information?*

1. Docket. EPA has established an official public docket for this action under Docket ID No. RCRA–2002–0034. The official public docket consists of the documents specifically referenced in this action, any public comments received and other information related to this action. The official public docket is the collection of materials that is available for public viewing at the RCRA Information Center (RIC), located at EPA West, Room B–102 1301 Constitution Avenue, NW, Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 202–566–0270 or TDD 703–412–3323 (hearing impaired). To review the docket materials in person, we recommend that the public make an appointment by calling 202–566–0270.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the "Federal Register" listings at *<http://www.epa.gov/fedrgstr/>.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *<http://www.epa.gov/edocket/>* to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above in Unit I.A. Once in the system, select "search," then key in the appropriate docket identification number.

*B. Acronyms*

The full names for the acronyms used in this document are:

| Acronym | Definition |
|---|---|
| AC | Federal Aviation Administration Advisory Circular 150/5200–34, together with its Appendix 1, dated August 26, 2000. |
| CFR | The United States Code of Federal Regulations. |
| EPA | The United States Environmental Protection Agency. |
| FAA | The United States Federal Aviation Administration. |
| Ford Act | Wendell H. Ford Aviation Investment and Reform Act for the 21st Century. |
| MSWLF | Municipal Solid Waste Landfill. |
| RCRA | The Resource Conservation and Recovery Act. |
| U.S. | United States. |
| U.S.C. | United States Code. |

## I. Purpose of Today's Action

EPA is adding a note at the end of 40 CFR 258.10, the location restriction requirements in the criteria for municipal solid waste landfills (MSWLFs), to inform the public about landfill siting requirements enacted in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Pub. L. 106–181 (Ford Act), enacted on April 5, 2000. The Ford Act is an aviation statute administered by the Federal Aviation Administration (FAA). However, section 503 of the Ford Act includes a provision limiting the "construction or establishment" of new municipal solid waste landfills (MSWLFs) after April 5, 2000, within six miles of certain smaller public airports. Therefore, as a convenience for owners/operators of MSWLFs and for those wishing to construct or establish new MSWLFs, EPA is providing a reference to the Ford Act following the location requirements that apply to MSWLFs under RCRA.

On July 11, 2002, EPA published a direct final rule (67 FR 45915) and a parallel proposed rule (67 FR 45948) to incorporate the Ford Act restrictions into EPA's criteria for MSWLFs under RCRA. Had the rule gone into effect, it would have added a new paragraph (e) to § 258.10 to incorporate the Ford Act landfill siting restrictions. However, EPA received several adverse comments on the direct final rule, therefore the Agency withdrew the rule on October 8, 2002 (67 FR 62647).

One commenter challenged EPA's authority to issue the rule under RCRA, as well as the adequacy of the record to support incorporation of the Ford Act requirements in the RCRA criteria. A second commenter also questioned the validity of data cited by EPA with respect to the hazards from bird strikes.

After reviewing the comments, EPA has decided not to finalize the rule as proposed. Instead of adding a new subsection (e) to 40 CFR 258.10, EPA is incorporating information about the Ford Act in a note following the criteria in 40 CFR 258.10. As a result, the specific limitations of the Ford Act are not being incorporated into the criteria for MSWLFs under RCRA and are not enforceable as part of EPA's MSWLF criteria. The note is for advisory purposes only.

Because section 503 of the Ford Act is directly applicable to any "person" constructing or establishing a MSWLF, it does not by its terms require implementation through regulation. The Ford Act does not amend Subtitle D of the Resource Conservation and Recovery Act (RCRA), which EPA administers. Therefore, in light of the comments received, EPA has reconsidered promulgating a regulation under RCRA that incorporates the Ford Act requirements. In addition, to the extent that section 503 the Ford Act is to be interpreted, the Federal Aviation Administration, not EPA, is the administering agency under the statute. The FAA has issued guidance interpreting section 503. See FAA AC No.150/5200–34. For further information, the public should contact the FAA.

## II. Airport Safety Location Restrictions

*A. The Ford Act*

The Ford Act has been in effect since April 5, 2000. Section 503(b) amends 49 U.S.C. 44718(d), and states:

(1) No person shall construct or establish a municipal solid waste landfill (as defined in § 258.2 of title 40, Code of Federal Regulations, as in effect on the date of enactment of this subsection) that receives putrescible waste (as defined in § 257.3–8 of such title) with 6 miles of a public airport that has received grants under chapter 471 and is primarily served by general aviation aircraft and regularly scheduled flights of aircraft designed for 60 passengers or less unless the State aviation agency of the State in which the airport is located requests that the Administrator of the Federal Aviation Administration exempt the landfill from the application of this subsection and the Administrator determines that such exemption would have no adverse impact on aviation safety.

(2) Limitation on Applicability—Paragraph 1 shall not apply in the State of Alaska and shall not apply to the construction, establishment, expansion , or modification of, or to any other activity undertaken with respect to, a municipal solid waste landfill if the construction or establishment of the landfill was commenced on or before the date of enactment of this subsection.

Section 503(c) of the Ford Act establishes civil penalties for violations of the limitations on siting landfills set forth above in section 503(b).

As previously stated, these landfill siting restrictions are directly applicable to any person constructing or establishing a new landfill as those terms are defined in the statute and interpreted by the FAA, the agency charged with administering the Ford Act. Therefore, it is not necessary for EPA to incorporate these provisions into the MSWLF criteria. Today's amendment to include a reference to section 503 of the Ford Act in a note to 40 CFR 258.10, which is the section of the criteria that sets forth the location restrictions for airport safety under RCRA, Subtitle D, is solely for the convenience of the public.

## B. Criteria for Landfill Siting Under RCRA

Nothing in this notice amends the requirements of 40 CFR 258.10, which sets forth location restrictions for MSWLFs to address airport safety. Section 258.10(a) and (c) contain requirements for new MSWLFs, existing MSWLFs and lateral expansions of landfills that are located within 10,000 feet of any airport runway used by turbojet aircraft or within 5,000 feet of any airport runway used only by piston-type aircraft. Owners or operators of such landfills are required to (1) demonstrate that the MSWLFs are designed and operated so as not to "pose a bird hazard to aircraft; (2) place a copy of the demonstration in the MSWLF operating record, and (3) notify the State Director that it has been placed in the operating file. "State Director" is defined as the chief administrative office of the lead state agency responsible for implementing the state permit program for 40 CFR part 258 regulated facilities."

Section 258(b) applies to new MSWLFs and lateral expansions proposed to be constructed within a five-mile radius of the end of any airport runway used by a turbojet or piston-type aircraft. For such proposed new MSWLFs and lateral expansions, the owner or operator must notify the affected airport and the FAA.

Section 258.10(d) defines "airport" to mean a "public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities." This subsection also defines "bird hazard."

**List of Subjects in 40 CFR Part 258**

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: October 2, 2003.

**Thomas Dunne,**

*Associate Assistant Administrator, Office of Solid Waste and Emergency Response.*

■ For the reasons discussed in the preamble, title 40 chapter 1 of the Code of Federal Regulations, is amended as follows:

## PART 258—[AMENDED]

■ 1. The authority citation for part 258 continues to read as follows:

**Authority:** 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c) and 6949a(c);

■ 2. Section 258.10 is amended by adding a note to the end of the section to read as follows:

### § 258.10 Airport safety.

* * * * *

**Note to §258.10:** A prohibition on locating a new MSWLF near certain airports was enacted in Section 503 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Ford Act), Pub. L. 106–181 (49 U.S.C. 44718 note). Section 503 prohibits the "construction or establishment" of new MSWLFs after April 5, 2000 within six miles of certain smaller public airports. The Federal Aviation Administration (FAA) administers the Ford Act and has issued guidance in FAA Advisory Circular 150/5200–34, dated August 26, 2000. For further information, please contact the FAA.

[FR Doc. 03–25934 Filed 10–14–03; 8:45 am]

BILLING CODE 6560–50–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 5

[FCC 03–207]

## Experimental Radio Licenses and Authorizations

**AGENCY:** Federal Communications Commission

**ACTION:** Final rule.

**SUMMARY:** This document amends the Commission's rules which apply to experimental radio licensing. The primary revision requires that all applications for licenses for Experimental Radio stations be filed electronically. We are codifying the existing requirement that any objections to Experimental Radio license applications must comply with the provisions of the Commission's rules governing informal objections.

**DATES:** Effective November 14, 2003.

**FOR FURTHER INFORMATION CONTACT:** Jim Burtle, Office of Engineering and Technology, (202) 418–2445, or Doug Young, Office of Engineering and Technology, (202) 418–2440.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Order* adopted August 15, 2003, and released August 20, 2003, that finalizes those regulations. The full text of this Commission decision is available on the Commission's Internet site at *http://www.fcc.gov.* It is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

**Summary of the Order**

1. The Order, 63 FR 64199, November 19, 1998, revised the rules in the Experimental Radio Service to promote technical innovation and new services by encouraging experiments; ensure that experimental licenses do not result in abuse of our processes; eliminate unnecessary and burdensome experimental regulations; and protect public safety frequencies.

2. *Electronic Filing.* Since November 18, 1998, the application forms applicable to licenses for Experimental Radio stations could be submitted to the Commission electronically. These forms are:

a. FCC Form 405, Application for Renewal of Experimental License or STA.

b. FCC Form 442, Application for New or Modified Experimental Radio Station Authorization.

c. FCC Form 702, Application for Consent to Assignment of Radio Station Construction Authorization or License (For Stations in Services Other Than Broadcast).

d. FCC Form 703, Application for Consent to Transfer Control of Corporation Holding Station License.

e. Special Temporary Authority (STA), Application for STA.

f. Add Attachments, Form for Submitting Additional Exhibits to an Existing Experimental Licensing Application.

g. Submit Correspondence, Form for Replying to Correspondence Sent by the OET ELS Branch Pertaining to a Pending Application.

h. Amend/Complete Application, Form for Amending or Completing a Page on a Previously-Filed Experimental Radio Licensing Application

2. These forms have been accessible at the official web site of the Commission's Office of Engineering and Technology, *https://gullfoss2.fcc.gov/prod/oet/cf/els/index.cfm.* Of the 769 total Experimental Radio license application filings in calendar year 2002, 88% were filed electronically. In the Quarter ending March 31, 2003, 215 filings were submitted, and 93% of these were made electronically. By requiring that applications for Experimental Radio licenses henceforth be filed electronically, we are taking another step toward the Commission's compliance with Section 1704 of the Government Paperwork Elimination Act. We do, however, recognize that the mandatory electronic filing requirement could impose unusual burdens on some filers and that, therefore, it may be appropriate for us to consider granting limited waivers of this requirement. Such waivers, however, will not be routinely granted and the filing party must plead with particularity the facts and circumstances warranting relief.

3. Mandatory electronic filing of applications for Experimental Radio licenses will commence on January 1, 2004. This change is reflected in the amendments to part 5 of the Commission's Rules, 47 CFR 5.1–5.125. Because this change from voluntary to mandatory electronic filing is merely procedural in nature and does not substantively change the information

required to be filed with the Commission, the notice and comment requirements of the Administrative Procedure Act are inapplicable. Paper versions of these forms will not be accepted for filing after December 31, 2003, unless accompanied by an appropriate request for waiver of the electronic filing requirement.

4. *Informal Objections.* Applications for Experimental Radio licenses are not subject to the public notice requirements of section 309(b) of the Communications Act, of 1934, as amended, and, therefore, the proper procedure for opposing such applications is to file an informal objection. However, there is no provision in part 5 of the rules that expressly address this point. To codify this requirement, we are adding § 5.95, which will provide for the filing of informal objections that comply with the requirements set forth in §§ 1.41–1.52 of the rules. We continue to prefer the use of informal procedures in the context of part 5, which "contemplate[s] that experimental licensees will cooperate in good faith with [regular] service licensees to prevent harmful interference to the affected services, to investigate any complaints of interference, and to take appropriate measures to mitigate interference" and require that "in the event of unmitigable harmful interference, experimental operations must cease immediately." Because this amendment merely clarifies an existing procedure and makes no substantive changes to the Commission's rules, it also is exempt from the notice and comment requirements of the Administrative Procedure Act.

5. Pursuant to sections 4, 302, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, and 303, this Order IS ADOPTED.

**List of Subjects in 47 CFR Part 5**

Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Rule Changes**

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 5 as follows:

## PART 5—EXPERIMENTAL RADIO SERVICE (OTHER THAN BROADCAST)

■ 1. The authority citation for part 5 continues to read as follows:

**Authority:** Secs. 4, 302, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 302, 303. Interpret or apply sec. 301, 48 Stat. 1081, as amended; 47 U.S.C. 301.

■ 1a. Section 5.55 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 5.55 Filing of applications.**

(a) To assure that necessary information is supplied in a consistent manner by all persons, standard forms are prescribed for use in connection with the majority of applications and reports submitted for Commission consideration. Standard numbered forms applicable to the Experimental Radio Service are discussed in § 5.59 and may be accessed electronically at the Office of Engineering and Technology Web site *https://gullfoss2.fcc.gov/prod/oet/cf/els/index.cfm.* If no standard form is applicable, the informal application procedure outlined in § 5.59(f) should be followed.

(b) Any application for radio station authorization shall be submitted electronically through the Office of Engineering and Technology Web site *https://gullfoss2.fcc.gov/prod/oet/cf/els/index.cfm* effective January 1, 2004. Any correspondence relating thereto that cannot be submitted electronically shall instead be submitted to the Commission's Office of Engineering and Technology, Washington, DC 20554. (Applications requiring fees as set forth in part 1, subpart G of this chapter must be filed in accordance with § 0.401(b) of this chapter.)

* * * * *

■ 2. Section 5.61 is amended by revising the introductory text of paragraph (c) to read as follows:

**§ 5.61 Procedure for obtaining a special temporary authorization.**

* * * * *

(c) An application for special temporary authorization shall be filed electronically through the Office of Engineering and Technology Web site *https://gullfoss2.fcc.gov/prod/oet/cf/els/index.cfm* effective January 1, 2004 and shall contain the following information:

* * * * *

■ 3. Section 5.95 is added to read as follows:

**§ 5.95 Informal objections.**

A person or entity desiring to object to or to oppose an Experimental Radio application for a station license or authorization may file an informal objection against that application. The informal objection and any responsive pleadings shall comply with the requirements set forth in §§ 1.41 through 1.52 of this chapter.

[FR Doc. 03–25967 Filed 10–14–03; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 76

**[CS Docket No. 95–184; FCC 03–9]**

**RIN 3060–AG02**

## Telecommunications Services Inside Wiring

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** The Federal Communications Commission received Office of Management and Budget (OMB) approval on April 23, 2003, for the revised public information collection, Inside Wiring, OMB Control Number 3060–0692. The Commission announces the effective date for revisions made in the rule concerning cable home run wiring published at 68 FR 13850 (March 21, 2003).

**DATES:** The amendments to 47 CFR 76.620, 76.802 and 76.804 published at 68 FR 13850, March 21, 2003 are effective, May 20, 2003.

**SUPPLEMENTARY INFORMATION:** The Federal Communications Commission released the First Order on Reconsideration and Second Report and Order; ("*Order*" and "*2nd R&O*") CS 95–184, MM 92–260, FCC 03–9 on January 29, 2003. The document revises rules the Commission adopted related to cable home run wiring and resolves issues raised by the Commission regarding exclusive and perpetual contracts. The Commission gave notice in the **Federal Register** (68 FR 13850, March 21, 2003) that the revisions to its rules made pursuant to the *Order* and *2nd R&O* would become effective on May 20, 2003, except for §§ 76.620, 76.802 and 76.804. These sections contained information collection requirements that had not been approved by OMB. The Commission's notice stated that it would publish a document in the **Federal Register** announcing the effective date for the modifications to these sections. The Commission hereby gives notice that it received OMB approval, OMB Control No. 3060–0692, for the revised information collection in the *Order* and *2nd R&O* on April 23, 2003. The Commission therefore gives notice that the effective date for revisions to

§§ 76.620, 76.802 and 76.804 made in the *Order* and *2nd R&O* is May 20, 2003.

Pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13, an agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. For questions regarding the effective date for revisions to the above-named sections contact Cheryl Kornegay, Media Bureau, Policy and Rules Division at (202) 418–7200 or via the Internet at *cheryl.kornegay@fcc.gov.* Questions concerning this revised information collection should be directed to Leslie F. Smith, Federal Communications Commission, (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03–25968 Filed 10–14–03; 8:45 am]

BILLING CODE 6712–01–P

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

### RIN 1018–AH59

### Endangered and Threatened Wildlife and Plants; Reclassification of *Lesquerella filiformis* (Missouri Bladderpod) From Endangered to Threatened

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are reclassifying *Lesquerella filiformis* (Missouri bladderpod) from endangered to threatened under the Endangered Species Act of 1973, as amended (Act), because the endangered designation no longer correctly reflects the current status of this plant. This reclassification is based on the plant's significant progress toward recovery. Since the time of listing, the number of known populations of the plant has substantially increased and the threats to some of the larger populations have decreased because of land acquisition, landowner contact programs, and beneficial management initiatives. Federal protection and recovery provisions provided by the Act for threatened plants are hereby extended to the Missouri bladderpod.

**DATES:** This final rule is effective on November 14, 2003.

**ADDRESSES:** The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Columbia Field Office, U.S. Fish and Wildlife Service, 608 E. Cherry Street, Room 200, Columbia, MO 65201–7712.

**FOR FURTHER INFORMATION CONTACT:** Paul McKenzie, Ph.D., Columbia Field Office (*see* **ADDRESSES** section) (telephone: 573/876–1911, ext. 107; e-mail: *paul_mckenzie@fws.gov;* facsimile: 573/876–1914). Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800/877–8337 for TTY assistance.

**SUPPLEMENTARY INFORMATION:**

## Background

*Lesquerella filiformis* (Missouri bladderpod) is an annual plant with erect, hairy stems approximately 20 centimeters (cm) (8 inches (in)) in height that branch from the plant's base. Basal leaves are hairy on both surfaces, 1.0–2.25 cm (0.4–0.9 in) long, 0.3–1.0 cm (0.1–0.4 in) wide, broadly rounded, and tapering to a narrow petiole. Stem leaves are densely hairy with stellate hairs on both surfaces, 1.0–3.2 cm (0.4–1.3 in) long and 1.6–16 millimeters (mm) (0.06–0.6 in) wide, and have a silvery appearance. Bright yellow flowers with four petals occur at the top of the stems in late April or early May (Morgan 1980). Missouri bladderpod is restricted to shallow soils of limestone glades in southwestern Missouri (Hickey 1988; Thomas 1996) and northwestern Arkansas and, occasionally, dolomite glades in north-central Arkansas (John Logan, Missouri Department of Natural Resources (MDNR), pers. comm. 2000).

*Lesquerella filiformis* Rollins, a member of the mustard family (Brassicaceae), was first collected in 1887 in southwestern Missouri. Payson (1921), however, misapplied the name *Lesquerella angustifolia* (Nutt.) S. Wats. to these early collections. Rollins (1956) formally described *Lesquerella filiformis* as a distinct species, and its taxonomic validity was further supported in a subsequent monograph on the genus *Lesquerella* in North America by Rollins and Shaw (1973).

Historically, Missouri bladderpod was believed to be a State endemic plant known solely from a few sites in two counties in southwestern Missouri (Morgan 1980; U.S. Fish and Wildlife Service 1988). In 1980, a total of 550 individual plants were estimated at 4 sites, and at the time of listing as endangered in 1987, an estimated 5,000 plants were determined to occur at 9 sites (Morgan 1980; 52 FR 679, January 8, 1987). At the time of the completion of the Missouri Bladderpod Recovery Plan in 1988, the species was known from 11 sites in Christian, Dade, and Greene Counties, MO (U.S. Fish and Wildlife Service 1988). During that same year, the Service funded a 4-county survey for the species in Missouri, and an additional 45 sites were located (Hickey 1988). A followup survey in 1989 yielded an additional 13 sites (Thurman and Hickey 1989). Further botanical explorations led to the discovery of 16 additional sites, including locations in an additional county in Missouri (Lawrence County) and one site each in Izard and Washington Counties, AR (Theo Witsell, Arkansas Natural Heritage Commission, *in litt.* 2002). In the spring of 1997, Missouri Department of Conservation (MDC) botanist Bill Summers (while working on the Flora of Missouri project) discovered the species at a limestone/dolomite quarry in Izard County, northcentral Arkansas (Theo Witsell, *in litt.* 2002). Subsequent investigations following this find led to documentation of an additional site in Washington County, northwestern Arkansas, discovered in 1992 (Theo Witsell, *in litt.* 2002). In the spring of 1998, surveys were expanded in Arkansas, and, although no new sites were discovered in the State, a more extensive population of Missouri bladderpod was found at the Izard County site than had been originally discovered in 1997 (John Logan, Arkansas Natural Heritage Commission, pers. comm. 1998). The population at the Washington County site had not been observed since 1992 until it was rediscovered on May 1, 2002, when approximately 500 flowering and fruiting plants were discovered on a small glade opening at the original 1992 site (Theo Witsell, *in litt.* 2002). Currently, Missouri bladderpod is known to occur at a total of 61 sites in 4 counties in Missouri and 2 sites in 2 counties in Arkansas.

Population levels of Missouri bladderpod fluctuate widely as is typical of winter annuals, depending on edaphic (soil) and climatic conditions, and factors such as seed crop from the preceding season, seed survival in the seed bank, recruitment from the seed bank, and the survival of growing plants (Thomas 1998). Annual monitoring data have been collected for a minimum of 11 consecutive years at two Missouri sites, and irregular monitoring has occurred at numerous other sites. Thomas (1998) and Boetsch (*in litt.* 2002) reported changes in population status of *Lesquerella filiformis* between 1988 and 2003 on National Park Service (NPS) property at Bloody Hill Glade, Wilson's Creek National Battlefield, and observed that the population varied from 0 to 303,446 plants, with an average annual population of 58,862 plants (Table 1). The MDC monitored 21 permanent plots within 1 population at the Rocky Barrens Conservation Area between 1992 and 2003 and noted that the number of individual plants varied from 2 to 3,584 (Tim Smith, MDC, *in litt.* 2003, Table 1). Monitoring of a population at Cave Springs Outcrop Glade in Dade County in 1980, 1984, 1988, 1990, and 1993 yielded 500, 545, 50, 0, and 0 plants, respectively (MDC 2002a). To date, the maximum population estimate at the Izard County, AR site has been "tens of thousands of plants," in 1997, while in 1999 only a few plants were found at the same site (Theo Witsell, *in litt.* 2002). Irregular monitoring (a minimum of 4 years of data between 1993 and 1999) at seven Nature Conservancy registry sites yielded similar fluctuations in population numbers as described elsewhere, with estimates ranging from 0 to 47 plants at the smallest population and 3 to 3,448 plants at the largest (Susanne Greenlee, TNC, *in litt.* 1999; MDC 2002a).

TABLE 1. ANNUAL POPULATION ESTIMATES OF MISSOURI BLADDERPOD ON BLOODY HILL GLADE (WILSON'S CREEK NATIONAL BATTLEFIELD) AND IN 21 PLOTS AT ROCKY BARRENS CONSERVATION AREA, GREENE COUNTY, MO, 1988–2003 (FROM THOMAS 1998; TIM SMITH, *in litt.* 2003; JOHN BOETSCH, *in litt.* 2002; MIKE DEBACKER, *in litt.* 2003).

| Year | Estimated Population Size (number of plants) | |
|---|---|---|
| | Bloody Hill Glade | Rocky Barrens Conservation Area (21 plots) |
| 1988 | 58,351 | |
| 1989 | 31,911 | |
| 1990 | 10,154 | |
| 1991 | 303,446 | |
| 1992 | 24,611 | 110 |
| 1993 | 0 | 1,211 |
| 1994 | 0 | 200 |
| 1995 | 18,514 | 2,295 |
| 1996 | 88,166 | 224 |
| 1997 | 33,873 | 3,584 |
| 1998 | 30,475 | 1,283 |
| 1999 | 66,650 | 320 |
| 2000 | 72,623 | 143 |
| 2001 | 145,604 | 2 |
| 2002 | 2,401 | 713 |
| 2003 | 50,701 | 2,438 |
| Average | 58,593 | [1] 1,0441 |

[1] Average within 21 permanent plots—total population size at this site is much larger.

An examination of the status of most extant sites following the procedures established by Hickey (1988) was conducted in the spring of 2000. Hickey visited 52 extant sites between April and May and noted that: (1) Populations of the species were found in the same terrace or rock shelf as they were in 1988–1990, and (2) some sites exhibited lower numbers than in 1988–1990, apparently attributable to the drought conditions, an increase in cedar density or encroachment of other woody vegetation, or competition from exotic species of brome grasses (*Bromus spp.*). Population density at some locations increased apparently because of tree removal and maintained grazing (Hickey 2000). Continued long-term monitoring of some larger sites in Missouri and the site in Izard County, AR, is also planned.

In years when germination, overwinter survival, seedling establishment, and plant growth are ideal, *Lesquerella filiformis* populations can be so large as to make rangewide population estimates extremely difficult. Despite the difficulty, estimates made by Hickey (1988) at 55 sites in Missouri yielded approximately 400,000 plants. Had rangewide estimates been taken in 1991 when 303,446 plants were estimated at Bloody Hill Glade, Wilson's Creek National Battlefield (Table 1, Thomas 1998), the population that year likely would have exceeded 500,000 plants. However, given the extreme annual fluctuations in population size, only long-term monitoring efforts patterned similarly to the protocol developed for the Wilson's Creek National Battlefield (Kelrick 2001a, 2001b) can accurately reflect the true population status and trend of this species and effectively evaluate the efficacy of management regimes on bladderpod habitat (Thomas 1998).

The current 63 extant sites have the following Nature Conservancy Natural Community rankings: (1) 11 (10 in Missouri and 1 in Arkansas) are graded A (*i.e.*, are relatively stable and undisturbed natural communities with a high diversity of conservative species); (2) 18 (all in Missouri) are graded B (*i.e.*, late successional or lightly disturbed communities, or recently lightly disturbed or moderately disturbed in the past but now recovered, and the biological diversity has not been greatly reduced); (3) 1 in Arkansas is graded AB (*i.e.*, intermediate between A and B); (4) 17 in Missouri are graded C (*i.e.*, midsuccessional, moderately to heavily disturbed communities, or moderate recent disturbance or heavy past disturbance with decreased recent disturbance); and (5) 16 in Missouri are graded D (*i.e.*, early successional or severely disturbed communities where the structure and composition of the community has been severely altered with few characteristic native species present) (MDC 2002a; Theo Witsell, *in litt.* 2002).

Threats identified by the Service at the time of listing (52 FR 679, January 8, 1987) were: (1) Vulnerability of small populations to overcollecting and human disturbance, (2) lack of research on proper management techniques necessary to maintain and promote populations of the species, (3) potential impacts of annual maintenance activities to populations located on highway rights-of-way, (4) seed destruction by insects and fungal infections, and (5) inadequate protection or management on public and private property necessary for the species' continued existence. Subsequently, the Service (1988) documented the presence of exotic plant species, such as *Bromus tectorum* (a cheat grass), in bladderpod habitat as a significant threat, and this was further supported by observations by Hickey (1988, 2000) and Thomas (1996, 1998). Additionally, Hickey (1988, 2000) and Thomas (1996) identified development, especially land-use changes resulting from urban expansion, as a major threat to the species, and Hickey (1988) noted an increase in grazing pressure at some of the sites discovered during a four-county survey.

Although no specific reclassification (endangered to threatened) criteria were provided in the Recovery Plan, the following recovery (delisting) criteria were given: 30 self-sustaining populations, 15 of which are in secure ownership, must be at least one-half acre in size each and show self-sustaining populations for at least 7 years (U.S. Fish and Wildlife Service 1988). We indicated that these recovery goals could be accomplished through the following actions: (1) An inventory of suitable habitat for new populations, (2) the protection and management of existing populations, (3) the continued monitoring of populations and initiation of research on the species, (4) the development and initiation of management programs on protected sites, (5) the establishment of new populations on public land, and (6) the development of public awareness and support to further the conservation of the species.

Although some information gaps concerning the life history requirements of *Lesquerella filiformis* remain, research conducted since the species was listed in 1987 has significantly improved our understanding of the ecological needs of this species. Dr. Michael Kelrick (Truman State University, MO) has conducted and supervised graduate student work on demographics; seed bank ecology; matrix population dynamics used in the development of a population model and protocol for long-term monitoring; analyses of the effectiveness of various management prescriptions utilized to restore and enhance bladderpod habitat; reproductive success; fecundity; and factors influencing germination, seedling establishment and vegetative growth, metapopulation dynamics, and genetic diversity within and between populations (*e.g.*, Harms 1992; Graham 1994). Lisa Potter Thomas of the NPS at Wilson's Creek National Battlefield has also conducted extensive research on the species involving life history ecology (*e.g.*, factors influencing survivorship, plant vigor, and reproduction); the potential impacts of human foot trampling on the species; techniques useful in controlling exotic plants in bladderpod habitat; an examination of microhabitat parameters; and demographic studies that centered on germination, density of flowering stems, survivorship, and fecundity (Thomas and Jackson 1990; Thomas and Willson 1992; Thomas 1996, 1998).

Other recommended research and recovery activities include: (1) Investigating the pollination ecology of the species; (2) revising the Recovery Plan objective established in 1988 to reflect the current knowledge of the species; (3) securing funding to provide necessary information essential to complete recovery and to facilitate the removal of the species from the list of federally protected species; (4) evaluating the efficacy of different management techniques; and (5) assuring that threats such as urban development and competition from exotic plants, both of which result from rapid population growth and urbanization, do not increase (The Nature Conservancy 2002; Hickey 1988; U.S. Fish and Wildlife Service 1988; Thomas and Jackson 1990; Thomas 1996).

### Previous Federal Actions

Section 12 of the Act directed the Secretary of the Smithsonian Institution to prepare a report, within 1 year after passage of the Act, on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director of the Service published a notice in the **Federal Register** (40 FR 27823) of his acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3) of the Act, as amended), and of his intention thereby to review the status of the plant taxa named within. *Lesquerella filiformis* was named in the Smithsonian report as endangered and was included in the Service's 1975 notice of review. A subsequent notice of review published in the December 15, 1980, **Federal Register** (45 FR 82480) included *L. filiformis* as a Category 1 species, indicating that we believed there was sufficient biological information to support a proposal to list the species as endangered or threatened.

The Endangered Species Act Amendments of 1982 required that all petitions, including the report of the Smithsonian Institution, still pending as of October 13, 1982, be treated as received on that date. Section 4(b)(3) of the Act, as amended, requires that, within 12 months of the receipt of such a petition, a finding be made as to whether the requested action is warranted, not warranted, or warranted but precluded by other higher priority activities involving additions to or removals from the Federal Lists of Endangered and Threatened Wildlife and Plants. Therefore, on October 13, 1983; October 12, 1984; and again on October 11, 1985, the Service made the finding that listing of *Lesquerella filiformis* was warranted but precluded by other pending listing activities. The proposed rule to list *L. filiformis* as endangered was published on April 7, 1986 (51 FR 11874), and the final rule was published on January 8, 1987 (52 FR 679). The Recovery Plan was approved on April 7, 1988 (U.S. Fish and Wildlife Service 1988).

In letters dated January 26 and February 17, 1998, the Service received a petition from the MDC to reclassify *Lesquerella filiformis* from endangered to threatened. On March 18, 1998, we responded and indicated that, based on our Listing Priority Guidance issued on October 23, 1997, we could not address the petition until we completed other higher priority listing actions. The Act requires us to make certain findings on petitions to add species to the List of Endangered and Threatened Plants, remove species from the List, or change their designation on the List. A proposed rule to reclassify the Missouri bladderpod from endangered to threatened was published on June 10, 2003 (68 FR 34569), constituted both our 90-day finding that the petitioned action may be warranted and our 12-month finding that the action is warranted, and opened a 60-day public comment period that ended on August 11, 2003.

### Summary of Comments and Recommendations

In the June 10, 2003, proposed rule (68 FR 34569), we requested all interested parties to submit comments or information concerning the proposed reclassification of the Missouri bladderpod from endangered to threatened. We published legal notices in the *Arkansas Democrat-Gazette*, Lowell, Arkansas, the *Kansas City Star*, Kansas City, Missouri, and *The News-Leader*, Springfield, Missouri, on June 15, 2003, announcing the proposal and inviting public comment. In addition, we contacted interested parties (including elected officials, Federal and State agencies, local governments, scientific organizations, and interest groups) through a press release and related fact sheets, faxes, mailed announcements, telephone calls, and e-mails. The public comment period closed on August 11, 2003. We received four responses during the public comment period (one from a State agency and three from peer reviewers).

### State Comments

We received comments from the MDC that did not provide specific comments on the proposed rule, but rather expressed support for the reclassification of the Missouri bladderpod from endangered to threatened based on the decline of threats, efforts taken to protect and conserve the species, and the discovery of new populations.

**Peer Review**

In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we sought the expert opinions of three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed reclassification of *Lesquerella filiformis*. All of the three peer reviewers submitted comments that support the reclassification. We considered and incorporated, as appropriate, into this final rule all biological and commercial information obtained through the open comment period. Key issues raised in the comments are presented below.

*Issue 1:* Two reviewers commented that long-term monitoring is needed to assess population stability and viability across the range of the species.

*Our response:* As discussed above, we agree that long-term monitoring is essential to evaluate the rangewide status of the species. Although regular monitoring of Missouri bladderpod populations occurs on public lands, similar evaluations are needed on private land to assess the status of the species throughout its range. As recovery efforts for this species continue, we will continue to expand and refine the monitoring program, likely with a prioritized subset of populations.

*Issue 2:* Two reviewers expressed concern that the invasion of exotic brome grasses (*Bromus spp.*) and other non-native species threaten the long-term viability of Missouri bladderpod and suggested that research on this issue be conducted.

*Our response:* We acknowledge that the invasion of exotic species is a potential threat to *Lesquerella filiformis* and that additional research is needed to assess the extent of this threat. As discussed under the Factor A, *The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range* section below, although non-native species are now common on many areas where *Lesquerella filiformis* occurs, there is no solid evidence that these exotic grasses have eliminated populations of *Lesquerella filiformis*, especially in areas that are regularly managed by techniques such as prescribed fire. We do agree that the control of exotics should be further evaluated using different control methods and that sites should be monitored to assess the spread of non-native species onto glade habitat. Such research and monitoring will continue as outlined in the Recovery Plan for the species (U.S. Fish and Wildlife Service 1988).

*Issue 3:* One reviewer was concerned that lack of management contributed to the degraded condition of many glades where the species is found, particularly on non-public lands.

*Our response:* As discussed under the Factor A, *The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range* section below, we believe that Missouri bladderpod responds favorably to various management activities (see Table 2). Missouri bladderpod responds positively to low to moderate disturbance, and has thus adapted to glades that may not be classified as high-quality habitats. Prescribed fire has been an effective tool in controlling the invasion of exotics and the encroachment onto glade habitat by native, woody vegetation. We do, believe, however, that the response of Missouri bladderpod to different management techniques should be further evaluated on both public and private land, and will continue this effort in implementing the recovery plan for this species.

*Issue 4:* One reviewer expressed concern that an effective management tool, prescribed burns, are often difficult to implement at the Nathan Boone State Historic Site in Green County, MO.

*Our Response:* Although prescribed burns may be difficult to implement at that particular Missouri bladderpod site, this is not an issue at the sites with other significant populations. As recovery efforts for the species continue, we will explore other management methods that may work better at Nathan Boone State Historic Site.

**Summary of Factors Affecting the Species**

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for determining whether to add, reclassify, or remove a species from the List of Endangered and Threatened Plants using five factors described in section 4(a)(1). These factors and their application to *Lesquerella filiformis* Rollins (Missouri bladderpod) are as follows:

*A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

At the time of listing, *Lesquerella filiformis* was known to occur at only nine locations in Dade, Greene, and Christian Counties, MO. As described in the BACKGROUND section, surveys and research since that time have documented 63 extant sites. Currently, this species is known to occur at a total of 61 sites in 4 counties in Missouri and 2 sites in 2 counties in Arkansas. Of these, 30 have a TNC Nature Community Rank of A, B, or AB.

Taking into consideration annual fluctuations in population, the estimated total number of plants known in Missouri has increased from approximately 550 plants in 1980 (Morgan 1980) to a potential maximum of 400,000–500,000 plants when climatic and edaphic conditions are ideal for germination, overwinter survival, seedling establishment, growth, and seed production. Additionally, a maximum of "tens of thousands" of plants have been reported at the Izard County, AR, site (Theo Witsell, *in litt.* 2002). Given that the two sites in Arkansas are separated by approximately 150 miles and are about 85–100 miles from the nearest location in southwestern Missouri, the possibility exists that additional populations of *Lesquerella filiformis* are yet to be discovered in southern Missouri and northern Arkansas, especially because the Izard County, AR, site is partially dolomitic, a geological feature previously not targeted for surveys in Missouri.

In addition, the threat of habitat loss has been reduced by the acquisition and management of occupied sites by public land management agencies and TNC (Table 2). The MDC and TNC successfully protected one of the largest known sites, Rocky Barrens in Greene County, MO, by purchasing a total of 281 acres of occupied habitat during the period of 1988 to 1993. Another five sites in Missouri are under public ownership or a long-term conservation agreement, including approximately 29 acres at the Wilson's Creek National Battlefield in Christian and Greene Counties; 3 acres at the Nathan Boone State Historic Site in Greene County; and approximately 40 acres at the Bois D'Arc Conservation Area in Greene County, an MDC property. Additionally, TNC has secured a 100-year lease to manage 47 acres of bladderpod habitat at South Greenfield Glade in Dade County, MO (Beth Churchwell, TNC, pers. comm. 2000).

TABLE 2.—BENEFICIAL ACTIVITIES TO ENHANCE MISSOURI BLADDERPOD SITES UNDER PUBLIC OWNERSHIP OR A LONG-TERM EASEMENT AGREEMENT

| Site | Managing agency | Acreage | Management activities | Other conservation activities |
|---|---|---|---|---|
| Wilson's Creek National Battlefield. | National Park Service | 4 sites, 29 acres. | Control of woody vegetation, exotic grasses, and sericea lespedeza using a variety of methods, including prescribed burning, mechanical removal, and reducing foot traffic impacts. | Ongoing monitoring and demographics; life history and micro-habitat studies; public outreach and education. |
| Rocky Barrens Conservation Area. | Missouri Department of Conservation. | 191 acres | Control of woody vegetation and exotic grasses using prescribed burning and mechanical removal. | Ongoing monitoring; public outreach and education; support of various research projects. |
| Rocky Barrens | The Nature Conservancy | 90 acres | Control of woody vegetation and exotic grasses using prescribed burning and mechanical removal. | Ongoing monitoring; public outreach and education; support of various research projects. |
| Bois D'Arc Conservation Area | Missouri Department of Conservation. | 40 acres | Control of woody vegetation and exotic grasses using prescribed burning and mechanical removal. | Ongoing monitoring; public outreach and education. |
| Nathan Boone State Historic Site. | Missouri Department of Natural Resources. | 3 acres | Control of woody vegetation and exotic grasses using prescribed burning; fencing to eliminate cattle from occupied habitat. | Ongoing monitoring; planned development of interpretative program. |
| South Greenfield | The Nature Conservancy | 47 acres | Control of woody vegetation and exotic grasses using prescribed burning and mechanical removal. | Ongoing monitoring and floristic inventories of associated species. |

The MDNR, MDC, TNC, and Wilson's Creek National Battlefield have undertaken various management activities to further the conservation of the species (Table 2). Management techniques that have been effective in enhancing bladderpod habitat include prescribed burning, chainsawing, and bulldozing to control the encroachment of woody vegetation such as red cedar (*Juniperus virginiana*) and exotic plants such as annual brome grasses (*Bromus* spp.) and sericea lespedeza (*Lespedeza cuneata*), rerouting hiking trails to reduce potential impact from foot traffic, and installing fencing to exclude cattle from occupied habitat (Table 2).

In particular, prescribed burning is a highly beneficial technique to improve bladderpod habitat. In 1988, an estimated 1,500 plants were counted at Rocky Barrens Conservation Area (Hickey 1988), and 2,000 plants were determined to occur on the same site in 1992 (MDC 2002a). In August 1993, MDC conducted a controlled burn on the area (Figg and Priddy 1994), and over 50,000 plants were estimated in May 1994 (MDC 2002a). The species responded similarly at the same site in the spring of 1997 and 1998, following controlled burns in August 1996 (Figg and Davit 1997) and 1997. MDC botanist Tim Smith estimated that the population at the site in May 1998 contained "tens of thousands" of plants (MDC 2002a).

Additional protection and management of bladderpod habitat has occurred through TNC's Registry Program. From 1986 to 1996, nine sites in Christian, Dade, and Greene Counties were added to the organization's Registry Program. Under this program, private landowners have an agreement with TNC to protect Missouri bladderpod sites to the best of their ability and to notify TNC regarding any new threats to the species or its habitat or if the landowner plans to sell the property. Additionally, TNC personnel assist private landowners by providing management suggestions, including the development of site-specific plans, and by notifying them of various landowner incentive programs that promote Best Management Practices. Best Management Practices developed by MDC (2000) include surveys for bladderpod and bladderpod habitat, controlling the encroachment of eastern red cedars and exotic species onto glade habitat through mechanical cutting and prescribed fire, avoiding the use of nonspecific herbicides between October and July in occupied bladderpod habitat, and avoiding heavy grazing or grazing during flowering and fruiting periods (March–July) (Susanne Greenlee, TNC, pers. comm. 1998).

In 1998, the Service provided funding to TNC to enhance 90 acres of degraded bladderpod habitat on Rocky Barrens Conservation Area in Greene County. Missouri bladderpod habitat was improved by prescribed fire and cutting of invasive eastern red cedar trees. Although a thorough estimate of Missouri bladderpod plants has not yet been possible on the managed area since these restoration efforts were conducted in 1998, flowering plants were observed at the location in 1999 (Doug Ladd, TNC, pers. comm. 2000).

Potential impacts to populations of *Lesquerella filiformis* on rights-of-way maintained by the Missouri Department of Transportation (MODOT) was another threat identified at the time of listing (52 FR 679, January 8, 1987) and also when the Recovery Plan was completed for the species (U.S. Fish and Wildlife Service 1988). Education programs within the MODOT have significantly reduced the potential impact of mowing or chemical treatment of highway rights-of-way. Maintenance supervisors who work within the range of Missouri bladderpod in Missouri have been alerted to the location of extant populations and have been trained in the identification and habitat needs of the species. Consequently, most maintenance activities that may impact the species are avoided. In situations where potential impacts are unavoidable, MODOT, as a designated representative for the Federal Highway Administration, initiates consultation with the Service and further discusses such activities with the MDC to minimize these impacts (Gene Gardner, MODOT, pers. comm. 2000).

The expansion of the exotic brome grasses *Bromus tectorum* L. and *B. sterilis* L. has been identified by some as a potential threat to the Missouri bladderpod (The Nature Conservancy 2002; Hickey 1988; U.S. Fish and Wildlife Service 1988; Thomas and Jackson 1990; Thomas 1996; Hickey 2000). Thomas and Jackson (1990), however, indicated that exotic species of *Bromus* spp. can be controlled with a combination of management techniques. While such management is undoubtedly labor-intensive, and continued monitoring of this threat is warranted, there is no solid evidence to date that these exotic grasses have eliminated populations of *Lesquerella filiformis*, especially in areas that are regularly managed by techniques such as prescribed fire. Nonetheless, further research on the potential adverse impacts of brome grasses to Missouri bladderpod is clearly warranted.

The glade and other rocky habitats where *Lesquerella filiformis* is found were probably maintained historically by fires. The cessation or significant reduction in the number of fires occurring on glades in the last few centuries has enabled woody vegetation, such as red cedar, to encroach onto bladderpod habitat. The encroachment of such woody vegetation onto glades occupied by *Lesquerella filiformis* has been frequently listed as a threat to this species' continued existence (Hickey 1988; Thomas and Jackson 1990; Thomas 1996; The Nature Conservancy 2002). Recent research by MDC and TNC at the Rocky Barrens Conservation Area and Preserve in Greene County, MO, has provided strong evidence that this species responds well on glades that have been cleared of woody vegetation by the combination of cedar tree removal and the use of controlled fires (Figg and Davit 1997). Prescribed burns have been conducted on six sites under public ownership with positive results (Table 2). This management tool may be used at additional bladderpod sites.

Grazing and haying are potential threats to Missouri bladderpod populations under private ownership (U.S. Fish and Wildlife Service 1988). Overgrazing may impact small populations of the plant, but minor grazing actually enhances these populations (MDC 1997). Presently, there are no known incidents where haying has been a threat to existing Missouri bladderpod populations.

The poor, rocky, thin soils over bedrock make bladderpod habitat nonconducive to increases in agricultural development within the species' range in Missouri. Hickey (2000) reported that one population was destroyed by construction of a putting green on a golf course and another was destroyed as a result of residential construction. Thus, as discussed by Hickey (1988, 2000) and Thomas (1996), the species' habitat is threatened most by urban/suburban expansion and development.

The Service, TNC, and all public land management agencies with extant sites on lands under their jurisdiction have been actively involved in various aspects of public outreach and education associated with Missouri bladderpod. These include developing landowner contact programs, producing educational brochures, and holding identification and ecology workshops on the species. In 1995, MDC published a new brochure for the Rocky Barrens Conservation Area that highlighted Missouri bladderpod. In the same year, MDC conducted an identification workshop for employees of the Natural Resources Conservation Service (NRCS) and the Williams Pipeline Company in Springfield, MO. This workshop was extremely productive as it led to the discovery of a previously unknown site of Missouri bladderpods along a powerline right-of-way in Greene County. In February 1997, MDC published an Endangered Species Guide Sheet for the Missouri bladderpod and distributed it to private individuals and public agency employees through MDC, TNC, NRCS, and the University of Missouri Extension Service. The brochure provided information on identification, life history requirements, habitat, distribution, causes of historic decline, current threats to the species, and management guidelines that would contribute to bladderpod recovery.

Public outreach materials developed for the Missouri bladderpod include a Best Management Practice Guide Sheet distributed by MDC (2000) that outlines suggested management practices for projects that could potentially impact the species identified by MDC during environmental reviews. A public information endangered species card was published by the Conservation Commission of the State of Missouri (1999). The species was also highlighted in two separate issues of MDC's *Missouri Conservationist* (June 1995 and February 1999) involving endangered species.

In 1992, MDC and the Service cooperated in a landowner contact program involving 25 private landowners with extant populations of *Lesquerella filiformis* in an approximately 5-square-mile area in Greene County, MO. The purpose of the program was to educate the landowners on the habitat needs of Missouri bladderpod and to suggest compatible land management techniques that would benefit the species. Over 80 percent of the people contacted responded favorably to the protection and management of the bladderpod and its habitat (Amy Salveter, U.S. Fish and Wildlife Service, pers. comm. 2000).

Although great progress has been made toward the recovery of *Lesquerella filiformis*, the species is still threatened by urban/suburban expansion and development and encroachment of invasive woody plants and exotic pasture grasses. The recent discoveries in northwestern Arkansas indicate that additional surveys in southern Missouri and northern Arkansas are warranted. Additionally, population estimates at all extant sites in Missouri in one year have not been undertaken since observations made by Hickey (1988). Extended demographic analyses conducted by Thomas (1996), Kelrick (2001a, 2001b), and Smith (*in litt.* 2002) strongly suggest that a well-established long-term monitoring program is necessary to accurately detect population trends.

### *B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

At the time of listing, overcollecting by botanists and flower garden enthusiasts was considered a threat to the species' continued existence (52 FR 679, January 8, 1987). Although Steyermark (1963) indicated that the Missouri bladderpod is a desirable addition to rock gardens, and the Service postulated that the species may be vulnerable to overcollection at the time of listing (52 FR 679, January 8, 1987), there is no evidence to date that such activities have taken place. Additionally, given the large number of currently known extant sites (61 in Missouri and 2 in Arkansas), adverse impacts from overcollecting by wildflower enthusiasts or botanical collectors is extremely unlikely, even during years when the number of flowering individuals is low. Overutilization is no longer believed to pose a threat to this species.

### *C. Disease or Predation*

Morgan (1983) studied one population of *Lesquerella filiformis* at Wilson's Creek National Battlefield in Greene

County, MO, and determined that insect predation and fungal infection damaged seed set. Although there may be a concern for such impacts during low population levels, it is likely that Missouri bladderpod has adapted to such natural influences and the species is probably well buffered against these natural occurrences at more robust population levels. To date, there is no evidence that these agents are exotic to the species' habitat, or that naturally occurring incidents of disease or predation have contributed to a recent decline in any of the known extant populations.

### *D. The Inadequacy of Existing Regulatory Mechanisms*

The MDC recently adopted the conservation status ranking system developed by NatureServe, TNC, and the Natural Heritage Network for global (G ranks) and State (S ranks) rankings for all State and federally listed species in Missouri (Missouri Natural Heritage Program 2003). *Lesquerella filiformis* is officially listed in Missouri as rare and uncommon, with a ranking of S3 (rare and uncommon in the State; 21 to 100 occurrences), and G2 (imperiled globally because of extreme rarity or because of some factor(s) making it especially vulnerable to extinction; typically 5 or fewer occurrences or very few remaining individuals or acres). This species is also listed in the Wildlife Code of Missouri (MDC 2002b). Species listed in the Wildlife Code of Missouri under 3CSR10–4.111 are protected by State Endangered Species Law 252.240. Missouri regulations prohibit the exportation, transportation, or sale of plants on the State or Federal lists. A small percentage of Missouri's populations of Missouri bladderpod occur on lands either administered by MDC, MDNR, NPS, or TNC. These agencies prohibit the removal of this plant from their properties without a collector's permit.

Currently, *Lesquerella filiformis* is State-listed in Arkansas as S1 (critically imperiled in the State because of extreme rarity or because of some factor(s) making it especially vulnerable to extirpation from the State; typically five or fewer occurrences or very few remaining individuals; Theo Witsell, *in litt.* 2002) but receives no additional protection other than those specified under the Act (John Logan, pers. comm. 1998).

### *E. Other Natural or Manmade Factors Affecting Its Continued Existence*

Various human disturbances were considered as threats to the species at the time *Lesquerella filiformis* was listed in 1987 (52 FR 679, January 8, 1987). Thomas and Willson (1992) examined the potential impact of trampling on a population at Wilson's Creek National Battlefield and noted that the species' survival decreased by 42 percent when subjected to the highest level of trampling intensity. Although populations of *L. filiformis* on public areas that receive high levels of trampling are few in number, precautions will need to be taken in the future to protect Missouri bladderpod habitat at such locations. Other studies and observations, however, suggest that this species actually benefits from low to moderate levels of human-induced disturbance that reduce woody encroachment and stimulate seed bank germination through soil disturbance (MDC 1997; Jerry Conley, MDC, *in litt.* 1998). Excessive disturbance from trampling, overgrazing by livestock, and significant alterations of glade habitat through the use of ground-moving equipment could become increased threats to the species in the future and should be closely monitored.

## Summary of Status

Under the Act, an endangered species is defined as one that is in danger of extinction throughout all or a significant portion of its range. A threatened species is defined as one that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Given that (1) *Lesquerella filiformis* now occurs at 61 sites in Missouri and 2 sites in Arkansas (an increase of 54 sites since listing); (2) 6 sites in Missouri are under public ownership or under a long-term conservation agreement and are managed to benefit the species; (3) 9 additional sites in Missouri receive some degree of protection as part of TNC's Registry Program; (4) the species responds well to the proper management of its habitat, especially cedar tree removal and controlled burning; (5) minor levels of disturbance may actually benefit rather than hinder the species; and (6) significant knowledge has been gained regarding the life history requirements and population dynamics of the species, we no longer believe that this species meets the definition of an endangered species.

Although there has been a considerable increase in the number of known populations, an expansion of the known range of the species, and a sizeable increase in the number of known individual plants, the Missouri bladderpod has not recovered to the point that it can be removed (delisted) from the Federal List of Endangered and Threatened Plants (50 CFR 17.12). These numerical increases are encouraging, and they provide evidence suggesting the species has exceeded the first delisting criterion, which requires 30 self-sustaining populations. However, the delisting criteria also require that 15 of the populations must be in secure ownership, be at least one-half acre in size, and show self-sustaining populations for at least 7 years. At this time, fewer than 10 populations can be considered to be in secure ownership, and only 3 of these populations have been monitored for at least 7 years. Although acreage of these secured populations is large, because of the year-to-year population fluctuations demonstrated by this species, at this time we can document that only one of these three populations is viable and self-sustaining for at least 7 years. Therefore, we believe delisting this species would be premature.

Consequently, on the basis of our review of the best available scientific and commercial data, we are reclassifying the Missouri bladderpod from endangered to threatened under the Act.

## Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, tribal, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery plans be developed for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened plants. With respect to *Lesquerella filiformis*, certain prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71 for threatened plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked "Of Cultivated Origin." Certain exceptions to the prohibitions apply to our agents and State conservation agencies. We are not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by application of section 9 to this listing.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits also are available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purpose of the Act. We anticipate that few trade permits would ever be sought or issued for *Lesquerella filiformis* because the plant is not in cultivation or common in the wild.

This rule changes the status of *Lesquerella filiformis* at 50 CFR 17.12 from endangered to threatened. This rule is not an irreversible action on the part of the Service. Reclassifying *Lesquerella filiformis* to endangered may be considered if changes occur in management, habitat, or other factors that negatively alter the species' status or increase threats to its survival.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Columbia Field Office (*see* the **ADDRESSES** section). Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and issuance of permits under the Act may be addressed to the U.S. Fish and Wildlife Service, BHW Federal Building, 1 Federal Drive, Fort Snelling, MN 55111 (phone 612/713–5350, facsimile 612/713–5292).

## Required Determinations

### *Paperwork Reduction Act*

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) require that Federal agencies obtain approval from OMB before collecting information from the public. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid control number. This regulation does not contain any new collections of information other than those permit application forms already approved and assigned OMB clearance number 1018–0094. For additional information concerning permits and associated requirements for threatened species, *see* 50 CFR 17.72.

### *Executive Order 13211*

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires Federal agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

### *National Environmental Policy Act*

We have analyzed this rulemaking in accordance with the criteria of the National Environmental Policy Act and 318 DM 2.2(g) and 6.3(D). We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

### *References Cited*

A complete list of all references cited herein, as well as others, is available upon request from the Service's Columbia, MO, Field Office (*see* **ADDRESSES** section).

### *Author*

The primary author of this proposed rule is Paul M. McKenzie, Ph.D. (*see* **ADDRESSES** section).

## List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

## Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of Chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Section 17.12(h) is amended by revising the entry for "*Lesquerella filiformis*" under FLOWERING PLANTS to read as follows:

### § 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

| Species | | Historic range | Family | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | | |
| FLOWERING PLANTS | | | | | | | |
| * | * | * | * | * | | * | * |
| *Lesquerella filiformis.* | Missouri bladderpod. | U.S.A. (AR, MO) .. | Brassicaceae ........ | T | 253, 739 | NA | NA |
| * | * | * | * | * | | * | * |

Dated: September 29, 2003.

**Steve Williams,**

*Director, Fish and Wildlife Service.*

[FR Doc. 03–25884 Filed 10–14–03; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 021212306–2306–01; I.D. 100703E]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Modification of a closure.

**SUMMARY:** NMFS is reopening directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA) for 24 hours. This action is necessary to fully use the total allowable catch (TAC) of pollock specified for Statistical Area 630.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), October 9, 2003, through 1200 hrs, A.l.t., October 10, 2003.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the directed fishery for pollock in Statistical Area 630 of the GOA under § 679.20(d)(1)(iii) on October 2, 2003 (68 FR 57381, October 3, 2003).

NMFS has determined that, approximately 1,900 mt of pollock remain in the directed fishing allowance. Therefore, in accordance with §§ 679.25(a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the pollock TAC specified for Statistical Area 630, NMFS is terminating the previous closure and is reopening directed fishing for pollock in Statistical Area 630 of the GOA effective 1200 hrs, Alaska local time (A.l.t.), October 9, 2003, through 1200 hrs, A.l.t., October 10, 2003. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 24 hours. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA effective 1200 hrs, A.l.t., October 10, 2003.

### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. Notice and comment are impracticable because the data were recently obtained. Moreover, delaying this action is contrary to the public interest as it would delay the opening of the fishery, not allow the full utilization of the pollock TAC in Statistical Area 630, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: October 8, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–26072 Filed 10–9–03; 2:59 pm]

**BILLING CODE 3510–22–S**

# Proposed Rules

**Federal Register**
Vol. 68, No. 199
Wednesday, October 15, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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## NUCLEAR REGULATORY COMMISSION

## 10 CFR Part 40

**[Docket No. PRM–40–29]**

## Terrence O. Hee, Ion Technology; Receipt of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemakings; notice of receipt.

**SUMMARY:** The Commission seeks public comment on a petition for rulemaking filed August 7, 2003, by Terrence O. Hee, Ion Technology (the petitioner), docketed PRM–40–29. The petition requests amendment of the NRC's regulations regarding unimportant quantities of source material to exempt end users of a catalytic device containing thorium from the NRC's licensing requirements. The petitioner asserts that this device, in conjunction with a patented new methodology, could substantially reduce air pollution chemicals from mobile and stationary combustion processes.

**DATES:** Submit comments by December 29, 2003. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the following number (PRM–40–29) in the subject line of your comments. Comments on petitions submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking website to Carol Gallagher (301) 415–5905; email *cag@nrc.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this petition may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 or e-mail: *MTL@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

### The Petitioner

The petitioner, Terrence O. Hee, (Ion Technology), has U.S. distribution rights to a catalytic device containing thorium. The petitioner states that the device is part of a "new technology for the reduction of air pollution chemicals" produced by mobile and industrial combustion processes, and gives two reasons for submitting this petition: (1) To contribute to the cleaning up of the air, and (2) a monetary interest.

### Background

The petitioner states that 10 CFR 40.13 (c), Unimportant quantities of source material, currently would not exempt each end user of a catalytic device containing thorium from having to obtain an NRC license to possess such a device. The petitioner asserts that there are potentially millions of users for this device, and that obtaining "an individual license for each application would prove to be burdensome for the state agencies issuing the individual licenses and to those wishing to use the devices."

### Proposed Action

The current regulations at 10 CFR 40.13(c) exempt from licensing requirements certain uses of thorium (*e.g.*, in incandescent gas mantles, vacuum tubes, welding rods, electric lamps, personnel neutron dosimeters). Also exempted is source material contained in products such as glazed ceramic tableware, piezoelectric ceramic, and glassware. The petitioner proposes to add an exemption to this section of the Commission's regulations for catalytic devices containing thorium, and suggests the following language:

> Any patented catalyst used in the treatment of fuel, gas or air streams for combustion processes, or other processes provided that the thorium content does not exceed 6 percent by weight. The weight percentage to be calculated for either a homogeneous mixture or as a coating on a substrate base, with the base and the coating being considered the same as a homogeneous mixture, and the finished product is constructed in a manner that will prevent the exposure of the public to any radiation during the normal application and use of this technology.

### Rationale

The Petitioner offers the following rationale in support of its petition:

(1) The "environmental and quality of life benefits" derived from the application of this technology are "currently enjoyed by the citizens of Japan." The petitioner goes on to state that this technology is proposed for license in China as a way to reduce air pollution;

(2) Implementation of these devices can reduce the cost of air emissions

pollution control to U.S. industry over the cost of current methods, thus enhancing the ability of industry to meet strict air emission standards;

(3) Workers involved with the devices will be protected from the low levels of radiation exposure by a metal housing encasing the thorium-bearing material;

(4) The devices are manufactured in Japan, so no U.S. workers will have direct contact with the thorium-bearing material; and

(5) The long-term effect on the environment would be "reduced emissions of air pollutants from mobile and stationary combustion sources", and the petitioner states that the device "could also lead to a reduction in the volume of hydrocarbon fuels used."

In addition, the petitioner explains that the public is protected by housings shielding the radiation-emitting material, and that the housings are designed not to be "readily disassembled by the curious." The petitioner states the product will have warning labels which instruct users in the proper disposal method, which is only by return of the product to the distributor; the petitioner anticipates that these labels would prevent long-term negative effects on the environment. The petitioner notes that disposal instructions would also be in the "Material Safety Data Sheet" delivered with each device.

The Petitioner projects the product to have a 30-year life cycle, and expects no short-term negative effects on the environment from disposal of the devices. The petitioner believes that the product is a safe and cost-effective method for contributing to the reduction of air pollution chemicals in the air in the United States and claims that it poses no adverse risk to the public or to workers involved in installing or removing the devices.

### Relevant Technical Information

The petitioner states that Honda Motor Company is currently installing the technology as a factory-installed device on their diesel-powered vehicles, and claims use of this technology in Japan has demonstrated a reduction of air pollution chemicals and a reduction in fuel consumption. The petitioner submits test data showing reductions of soot emissions after installation of the device on diesel bus engines on the Okayama Bus Line company and a Caterpillar/Mitsubishi diesel-powered shovel. The petitioner also submits data showing reductions in nitrogen oxides, carbon monoxide, and hydrocarbons for a 1989 gasoline-fueled Mercedes Benz, and similar data for a 1998 Mitsubishi van. The petitioner also presents "fuel usage reduction examples" comparing various makes and models of vehicles before and after installation of the catalytic device. The petitioner's data claims fuel savings ranging from 53.96 percent for a Mitsubishi Minicar to 8.19 percent for a Mitsubishi truck.

### Conclusion

The petitioner believes that the proposed change to the Commission's regulations to allow the use of catalytic devices containing thorium in the United States is appropriate because it will benefit citizens by increasing the efficiency of combustion processes, reducing the use of hydrocarbon fuels, and lowering air pollutant emissions. The petitioner concludes that this technology poses no hazard to users or the public.

Dated at Rockville, Maryland, this 7th day of October, 2003.

For the Nuclear Regulatory Commission.

**Andrew L. Bates,**

*Acting Secretary of the Commission.*

[FR Doc. 03–25986 Filed 10–14–03; 8:45 am]

**BILLING CODE 7590–01–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–NM–49–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes. This proposal would require repetitive inspections of the left- and right-side main landing gear (MLG) side-stay cuff lugs and down-lock spring attachments for evidence of cracked or fractured side-stay cuff lugs or down-lock spring attachments, and repair if necessary. This action would also provide for optional terminating action for the repetitive inspections. This action is necessary to prevent failure of the MLG side-stay cuff lugs or down-lock spring attachments, which could result in improper down-lock of the MLG during a freefall extension, and possible collapse of the MLG. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by November 14, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–49–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–49–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industries, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.

- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–49–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–49–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that it has received reports of failure of the MLG side-stay cuff lugs on certain Model A320 series airplanes. Investigation has revealed that the failures were due to stress-corrosion cracks attributed to moisture ingress. In one case the failed cuff lugs resulted in the disconnection of the side-stay down-lock springs from the lock-stay links. Failure of the side-stay cuff lugs or down-lock spring attachments could result in improper down-lock of the MLG during a freefall extension, and possible collapse of the MLG.

The MLG down-lock mechanism on Airbus Model A319 and A321 series airplanes is similar to that on the affected Model A320 series airplanes. Therefore, those airplanes may be subject to the unsafe condition revealed on the Model A320 series airplanes.

### Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–32A1224, dated January 18, 2001, which describes procedures for repetitive detailed inspections of the MLG lock-springs and side-stay center joint links for evidence of cracked or fractured lugs; and repair if necessary. The inspections are to be repeated until accomplishment of Airbus Service Bulletin A320–32–1223, dated March 5, 2001.

Airbus Service Bulletin A320–32–1223 describes procedures for installation of MLG side-stay cuffs and links manufactured from new, improved material that has a higher stress-corrosion resistance than the current material. Accomplishment of this service bulletin eliminates the need for the repetitive inspections specified in Airbus Service Bulletin A320–32A1224.

Accomplishment of the actions specified in Airbus Service Bulletin A320–32A1224 is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2002–075(B), dated January 23, 2002, to ensure the continued airworthiness of these airplanes in France. The French airworthiness directive specifies that accomplishment of the actions specified in Airbus Service Bulletin A320–32–1223 cancels the requirement of that AD.

### FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in Airbus Service Bulletin A320–32A1224, described previously, and provides for an optional terminating action for the repetitive inspections.

### Cost Impact

The FAA estimates that 367 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed repetitive inspections, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD is estimated to be $130 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Airbus:** Docket 2002–NM–49–AD.

*Applicability:* Model A319, A320, and A321 series airplanes; certificated in any category; except those airplanes on which Airbus Modification 30648 has been installed.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the MLG side-stay cuff lugs or down-lock spring attachments, which could result in improper down-lock of the MLG during a freefall extension, and possible collapse of the MLG, accomplish the following:

#### Inspection

(a) Do a detailed inspection of the left- and right-side main landing gear (MLG) side-stay cuff lugs and down-lock spring attachments to detect failures (cracked or fractured lugs), in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32A1224, dated January 18, 2001, at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Within 60 months from the first entry into service of the MLG, or before the accumulation of 9,000 total flight hours on the MLG, whichever occurs first.

(2) Within 500 flight hours on the MLG after the effective date of this AD.

**Note 1:** For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) If during any inspection required by paragraph (a) of this AD no crack or fracture is detected: Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 500 flight cycles until the actions specified in paragraph (e) of this AD are accomplished.

(c) If during any inspection required by paragraph (a) of this AD any crack or fracture is detected: Before further flight, replace any discrepant part with a new part of the same type in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32A1224, dated January 18, 2001. Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 500 flight cycles until the actions specified in paragraph (e) of this AD are accomplished.

#### Credit for Actions Done per the Maintenance Planning Document

(d) Compliance with task number 321119.01.1, "Visual Check of Main Landing Gear Downlocking Springs," of the Airbus A319/A320/A321 Maintenance Planning Document, Revision 25, dated October 2001, is considered acceptable for compliance with the inspection requirements of paragraph (a) of this AD. Operators should note that this task requires repetitive inspections at 8-day intervals, instead of intervals not to exceed 500 flight cycles.

#### Optional Terminating Action

(e) Replacement of the MLG side-stay lugs and links on the left and right sides of the airplane with lugs and links made of new, improved material, in accordance with Airbus Service Bulletin A320–32–1223, dated March 5, 2001, terminates the repetitive inspections required by paragraphs (b) and (c) of this AD.

#### Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

**Note 2:** The subject of this AD is addressed in French airworthiness directive 2002–075(B), dated January 23, 2002.

Issued in Renton, Washington, on October 7, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–25978 Filed 10–14–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 2001–NM–362–AD]

RIN 2120–AA64

## Airworthiness Directives; McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas airplanes as listed above. This proposal would require modification of the installation wiring for the electric motor operated auxiliary hydraulic pumps in the right wheel well area of the main landing gear, and repetitive inspections of the number 1 and 2 electric motors of the auxiliary hydraulic pumps for electrical resistance, continuity, mechanical rotation, and associated airplane wiring resistance/voltage; and corrective actions if necessary. This action is necessary to prevent failure of the electric motors of the hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by December 1, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–362–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–362–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

**FOR FURTHER INFORMATION CONTACT:** Ken Sujishi, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5353; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule.

The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–362–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–362–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The FAA has received several reports of failure of the auxiliary hydraulic pump systems on Model DC–10 airplanes. Some failures resulted in burnt electrical wiring leading to the electric motor of the auxiliary hydraulic pump, within the right wheel well area of the main landing gear (MLG). Damage also was found on the adjacent structure, control cables, hydraulic pipes, and hoses. These failures occurred during ground operations, or when powered in-flight by the air-driven generator. The failures were due to an electrical short within the electric motor which resulted in arcing damage. These failures consisted of a seized or difficult-to-turn rotor on the pump assembly, burnt and shorted motor feeder cables, and/or uncontained internal electric arcing failures within the electric motor. Investigation revealed that these conditions occurred on airplanes that had been in service several years and/or had the auxiliary hydraulic pump previously overhauled. These discrepancies can be caused by hydraulic fluid contamination to the electric motor portion of the pump assembly which causes failed rotor bearing, and/or degradation of the stator's encapsulate material. Such discrepancies, if not corrected, could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure.

**Explanation of Relevant Service Information**

We have reviewed and approved Boeing Alert Service Bulletin DC10–29A144, Revision 2, dated August 1, 2003 (for Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes), which describes procedures for modification of the electrical wiring of the auxiliary hydraulic pump installation in the right wheel well area of the MLG. The modification includes, but is not limited to, removing existing clamps, ground wires (if required), and sleeving from the wire assemblies; inspecting for cracks and chafing, installing new support brackets, clips, and bracket assemblies, as applicable; installing sleeving; re-routing the wire assemblies using new clamps and attachments, installing an additional routing clip on the lower bracket of the fuel motor control valve, if applicable, and doing a voltage check and a functional test.

Service Bulletin DC10–29A144 recommends prior or concurrent accomplishment of Boeing Alert Service Bulletin DC10–29A142, Revision 02, dated April 17, 2003, which describes procedures for repetitive inspections (checks) of the number 1 and 2 electric motors of the auxiliary hydraulic pumps for electrical resistance, continuity, mechanical rotation, and associated airplane wiring resistance/voltage, and corrective actions if necessary. The corrective actions include replacing the auxiliary hydraulic pump with a serviceable pump, and repairing the wiring.

We also have reviewed and approved Boeing Alert Service Bulletin MD11–29A059, Revision 2, dated August 1, 2003 (for Model MD–11 and MD–11F airplanes), which describes procedures for modification of the wiring of the electric motors of the auxiliary hydraulic pump in the right wheel well area of the MLG. The modification includes, but is not limited to, removing and retaining wire assembly clamps, if applicable; retaining the existing ground wire assemblies; retaining or replacing all other wire assemblies for both connectors; installing spiral wrap and sleeving; wrapping upper ends of individual wires with tape; installing new support bracket assemblies, if applicable; re-routing and attaching wire assemblies using new clamps and attachments, if applicable; and doing a voltage check and a functional test.

Service Bulletin MD11–29A059 recommends prior or concurrent accomplishment of Boeing Alert Service Bulletin MD11–29A057, Revision 02, dated April 17, 2003, which describes procedures for repetitive inspections (checks) of the number 1 and 2 electric motors of the auxiliary hydraulic pumps for electrical resistance, continuity, mechanical rotation, associated airplane wiring resistance/voltage, and corrective actions if necessary. The corrective actions include replacing the auxiliary hydraulic pump with a serviceable pump and repairing the wiring.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

**Related Rulemaking**

On July 2, 2001, we issued AD 2001–14–08, amendment 39–12319 (66 FR 36441, July 12, 2001), for certain McDonnell Douglas Model DC–10 series airplanes, Model MD–10 series airplanes, and Model MD–11 series airplanes. That AD requires repetitive inspections of the number 1 and 2 electric motors of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated wiring resistance/voltage; and corrective actions if necessary. The actions specified by that AD are intended to prevent various failures of electric motors of the auxiliary hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure. That AD is being superseded by a separate action to reduce the repetitive inspection intervals currently required.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except that the proposed AD does not require completing the Evaluation Forms.

## Cost Impact

There are approximately 409 Model DC–10 airplanes of the affected design in the worldwide fleet. The FAA estimates that 322 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 9 work hours per airplane to do the modification specified in Service Bulletin DC10–29A144, at an average labor rate of $65 per work hour. Required parts would cost would be between $4,886 and $7,920 per airplane. Based on these figures, the cost impact of the proposed modification is estimated to be between $5,471 and $8,505 per airplane.

It would take approximately 1 work hour per airplane to do the inspection specified in Service Bulletin DC10–29A142, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspection is estimated to be $65 per airplane, per inspection cycle.

There are approximately 195 Model MD–11 airplanes of the affected design in the worldwide fleet. The FAA estimates that 74 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 13 work hours per airplane to do the modification specified in Service Bulletin MD11–29A059, at an average labor rate of $65 per work hour. Required parts would cost between $5,183 and $9,182 per airplane. Based on these figures, the cost impact of the proposed modification is estimated to be between $6,028 and $10,027 per airplane.

It would take approximately 1 work hour per airplane to do the inspection specified in Service Bulletin MD11–29A057, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspection is estimated to be $65 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

## Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**McDonnell Douglas:** Docket 2001–NM–362–AD.

Applicability: Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the electric motors of the hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure, accomplish the following:

### Modification/Prior or Concurrent Actions

(a) For airplanes listed in Boeing Alert Service Bulletin DC10–29A144, Revision 2, dated August 1, 2003: Within 18 months after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Modify the installation wiring of the electric motor operated auxiliary hydraulic pumps in the right wheel well area of the main landing gear (MLG) (including removing existing clamps, ground wires, if required, and sleeving from the wire assemblies; inspecting for cracks and chafing, installing new support bracket, clips, and bracket assemblies, as applicable; installing sleeving; re-routing and attaching wire assemblies using new clamps and attachments; installing an additional routing clip on lower bracket of fuel motor control valve, if applicable; and doing a voltage check and a functional test), per the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–29A144, Revision 2, dated August 1, 2003.

(2) Prior to or concurrent with accomplishment of paragraph (a)(1) of this AD: Do the actions specified in Boeing Alert Service Bulletin DC10–29A142, Revision 02, dated April 17, 2003 (including inspecting the number 1 and 2 electric motors of the auxiliary hydraulic pumps for electrical resistance, continuity, mechanical rotation, and associated airplane wiring resistance/voltage; and replacing the auxiliary hydraulic pump with a serviceable pump and repairing the wiring if necessary), per the Accomplishment Instructions of the service bulletin. Repeat the actions after that at intervals not to exceed 2,500 flight hours.

(b) For airplanes listed in Boeing Alert Service Bulletin MD11–29A059, Revision 2, dated August 1, 2003: Within 18 months after the effective date of this AD, do the actions specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) Modify the installation wiring of the electric motor auxiliary hydraulic pumps in the wheel well area of the right MLG (including removing and retaining wire assembly clamps, if applicable; retaining the existing ground wire assemblies; retaining or replacing all other wire assemblies for both connectors; installing spiral wrap and sleeving; wrapping upper ends of individual wires with tape; installing new support bracket assemblies, if applicable; re-routing and attaching wire assemblies using new clamps and attachments, if applicable; and doing a voltage check and a functional test), per the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–29A059, Revision 2, dated August 1, 2003.

(2) Prior to or concurrent with accomplishment of paragraph (b)(1) of this AD: Do the actions specified in Boeing Alert Service Bulletin MD11–29A057, Revision 02, dated April 17, 2003 (including inspecting the number 1 and 2 electric motors of the auxiliary hydraulic pumps for electrical resistance, continuity, mechanical rotation, and associated airplane wiring resistance/voltage; and replacing the auxiliary hydraulic pump with a serviceable pump and repairing the wiring if necessary), per the Accomplishment Instructions of the service

bulletin. Repeat the actions after that at intervals not to exceed 2,500 flight hours.

**Alternative Methods of Compliance**

(c) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Issued in Renton, Washington, on October 7, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–25979 Filed 10–14–03; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 914

**[IN–153–FOR, State Program Amendment No. 02–034R]**

## Indiana Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Indiana proposes revisions to and additions of rules concerning protection of ground water quality. Indiana intends to revise its program to provide additional safeguards for ground water.

This document gives the times and locations that the Indiana program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m., e.s.t., November 14, 2003. If requested, we will hold a public hearing on the amendment on November 10, 2003. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on October 30, 2003.

**ADDRESSES:** You should mail or hand deliver written comments and requests to speak at the hearing to Andrew R. Gilmore, Director, Indianapolis Field Office, at the address listed below.

You may review copies of the Indiana program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Indianapolis Field Office.

Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204, Telephone: (317) 226-6700, Internet address: *IFOMAIL@osmre.gov*.

Indiana Department of Natural Resources, Bureau of Mine Reclamation, 402 West Washington Street, Room W–295, Indianapolis, Indiana 46204, Telephone: (317) 232–1291.

**FOR FURTHER INFORMATION CONTACT:** Andrew R. Gilmore, Director, Indianapolis Field Office. Telephone: (317) 226–6700. Internet address: *IFOMAIL@osmre.gov*.

**SUPPLEMENTARY INFORMATION:**

I. Background on the Indiana Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

## I. Background on the Indiana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Indiana program effective July 29, 1982. You can find background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Indiana program in the July 26, 1982, **Federal Register** (47 FR 32071). You can also find later actions concerning the Indiana program and program amendments at 30 CFR 914.10, 914.15, 914.16, and 914.17.

## II. Description of the Proposed Amendment

By letter dated September 3, 2003 (Administrative Record No. IND–1719), Indiana sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Indiana sent the amendment at its own initiative. Below is a summary of the changes proposed by Indiana. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

### *A. Definitions*

1. At 312 IAC 25–1–45.5, Indiana is adding the following definition for "Drinking water well."

> "Drinking water well," for the purposes of 312 IAC 25–6–12.5 and 312 IAC 25–6–76.5, means a bored, drilled, or driven shaft or a dug hole that meets each of the following:
>
> (1) Supplies ground water for human consumption.
>
> (2) Has a depth greater than its largest surface dimension.
>
> (3) Is not permanently abandoned under 312 IAC 13–10–2.

2. At 312 IAC 25–1–60.5, Indiana is adding the following definition for "Ground water management zone."

> "Ground water management zone" means a three (3) dimensional region of ground water around a potential or existing contaminant source where a contaminant is or was managed to prevent or mitigate deterioration of ground water quality such that the criteria established in 312 IAC 25–6–12.5(a) or 312 IAC 25–6–76.5(a) are met at and beyond the boundary of the region.

3. At 312 IAC 25–1–109.5, Indiana is adding the following definition for "Property boundary."

> "Property boundary," for the purposes of 312 IAC 25–6–12.5 and 312 IAC 25–6–76.5, means the edge of a contiguous parcel of land owned by or leased to the permittee. Contiguous land shall include land separated by a public right-of-way, if that land would otherwise be contiguous.

### *B. Surface Mining Permit Applications*

1. At 312 IAC 25–4–43, Indiana is adding subdivision (4). This new subdivision requires the maps and plans of the proposed permit and adjacent areas to include all monitoring locations used to demonstrate compliance with 312 IAC 25–6–12.5.

2. At 312 IAC 25–4–47(b), protection of hydrologic balance, Indiana is adding subdivision (9). This new subdivision requires the reclamation plan to contain a description, with appropriate maps and cross section drawings, of a plan to demonstrate compliance with 312 IAC 25–6–12.5.

### *C. Underground Mining Permit Applications*

1. At 312 IAC 25–4–85(b), protection of hydrologic balance, Indiana is adding subdivision (8). This new subdivision requires the reclamation plan to contain a description, with appropriate maps and cross section drawings, of a plan to demonstrate compliance with 312 IAC 25–6–76.5.

2. At 312 IAC 25–4–93, Indiana is adding subdivision (4). This new subdivision requires the maps and plans of the proposed permit and adjacent areas to include all monitoring locations used to demonstrate compliance with 312 IAC 25–6–76.5.

C. Indiana is adding a new rule at 312 IAC 25–6–12.5 to read as follows:

312 IAC 25–6–12.5 Hydrologic balance; application of ground water quality standards at surface coal mining and reclamation operations permitted under IC 14–34 on which coal extraction, including augering, coal processing, coal processing waste disposal, or spoil deposition, occurs after the effective date of this section, or on which disposal activity subject to IC 13–19–3–3 has occurred and the area is not fully released from the performance bond required by IC 14–34–6.

(a) Ground water is classified under 327 IAC 2–11 to determine appropriate criteria that shall be applied to ground water.

(b) Surface coal mining and reclamation operations must be planned and conducted to prevent violations of ground water quality standards under 327 IAC 2–11.

(c) Surface coal mining and reclamation operations must be planned and conducted to prevent impacts to the ground water in a drinking water well or a nondrinking water supply well, including an industrial, commercial, or agricultural supply well, that result in a contaminant concentration that, based on best scientific information, renders the well unusable for its current use. If a drinking water well or a nondrinking water supply well is affected by contamination, diminution, or interruption proximately resulting from surface mining activities, 312 IAC 25–4–33 and 312 IAC 25–6–25 govern water replacement.

(d) The ground water management zone described in 327 IAC 2–11–9 must be established as follows:

(1) At each drinking water well that is within three hundred (300) feet from the edge of any of the following:

(A) A coal extraction area.

(B) A coal mine processing waste disposal site if not within a coal extraction area.

(C) An area where coal is extracted by auger mining methods.

(D) A location at which coal is crushed, washed, screened, stored, and loaded at or near the mine site unless the location is within the coal extraction area.

(E) A spoil deposition area.

(2) Within three hundred (300) feet from the edge of an area or site described in subdivision (1) where there is no drinking water well that is within three hundred (300) feet from the edge of an area or site described in subdivision (1). If the property boundary or permit boundary is located within three hundred (300) feet from the edge of an area or site described in subdivision (1), the director shall require that a monitoring well be placed at a location approved by the director between the property boundary or permit boundary and the edge of an area or site described in subdivision (1). If a standard listed in 327 IAC 2–11 is exceeded at a monitoring well described in subdivision (2) that the director determines was caused by an activity under subdivision (1), the permittee must submit to the director a plan describing, in detail, the steps to be taken to prevent material damage to the hydrologic balance beyond the permit boundary and a timetable for implementation. This plan must be submitted within thirty (30) days of the discovery of an exceedance and include information relative to access, additional monitoring, and any measures to be taken to minimize changes to the prevailing hydrologic balance and to prevent material damage to the hydrologic balance beyond the permit boundary.

(3) If a drinking water well is located within three hundred (300) feet of an area or site described in subdivision (1) and it is determined that there is a substantial likelihood of impact, the director may require that a monitoring well be placed at a location approved by the director between the drinking water well and the edge of an area or site described in subdivision (1). If a standard listed in 327 IAC 2–11 is exceeded at a monitoring well described in subdivision (3) that the director determines was caused by an activity under subdivision (1), the permittee shall submit to the director a plan describing, in detail, the steps to be taken and a timetable for taking the action that takes into account site-specific conditions to provide protection for the drinking water well. This plan must be submitted within thirty (30) days of the discovery of an exceedance and include information relative to access, additional monitoring, and any measures to be taken to minimize changes to the prevailing hydrologic balance and to prevent material damage to the hydrologic balance beyond the permit boundary.

(e) The criteria established in subsection (a) must be met at and beyond the boundary of the ground water management zone.

D. Indiana is adding a new rule at 312 IAC 25–6–76.5 to read as follows:

312 IAC 25–6–76.5 Underground mining; hydrologic balance; application of ground water quality standards at underground coal mining and reclamation operations permitted under IC 14–34 on which coal extraction, coal processing, coal processing waste disposal, or underground development waste and spoil deposition occurs after the effective date of this section, or on which disposal activity subject to IC 13–19–3–3 has occurred and the area is not fully released from the performance bond required by IC 14–34–6.

(a) Ground water is classified under 327 IAC 2–11 to determine appropriate criteria that shall be applied to ground water.

(b) Underground coal mining and reclamation operations must be planned and conducted to prevent violations of ground water quality standards under 327 IAC 2–11.

(c) Underground coal mining and reclamation operations must be planned and conducted to prevent impacts to the ground water in a drinking water well or a nondrinking water supply well, including an industrial, commercial, or agricultural supply well, that result in a contaminant concentration that, based on best scientific information, renders the well unusable for its current use. If a drinking water well or a nondrinking water supply well is affected by contamination, diminution, or interruption proximately resulting from surface mining activities, 312 IAC 25–4–74 and 312 IAC 25–6–88 govern water replacement.

(d) The ground water management zone described in 327 IAC 2–11–9 must be established as follows:

(1) At each drinking water well that is within three hundred (300) feet from the edge of any of the following:

(A) A coal mine processing waste disposal site.

(B) A location at which coal is crushed, washed, screened, stored, and loaded at or near the mine site.

(C) An underground development waste and spoil deposition area.

(2) Within three hundred (300) feet from the edge of an area or site described in subdivision (1) where there is no drinking water well that is within three hundred (300) feet from the edge of an area or site described in subdivision (1). If the property boundary or permit boundary is located within three hundred (300) feet from the edge of an area or site described in subdivision (1), the director shall require that a monitoring well be placed at a location approved by the director between the property boundary or permit boundary and the edge of an area or site described in subdivision (1). If a standard listed in 327 IAC 2–11 is exceeded at a monitoring well described in subdivision (2) that the director determines was caused by an activity under subdivision (1), the permittee must submit to the director a plan describing, in detail, the steps to be taken to prevent material damage to the hydrologic balance beyond the permit boundary and a timetable for implementation. This plan must be submitted within thirty (30) days of the discovery of an exceedance and include information relative to access, additional monitoring, and any measures to be taken to minimize changes to the prevailing hydrologic balance and to prevent material damage to the hydrologic balance beyond the permit boundary.

(3) If a drinking water well is located within three hundred (300) feet of an area or site described in subdivision (1) and it is determined that there is a substantial likelihood of impact, the director may require that a monitoring well be placed at a location approved by the director between the drinking water well and the edge of an area or site described in subdivision (1). If a standard listed in 327 IAC 2–11 is exceeded at a monitoring well described in subdivision (3) that the director determines was caused by an activity under subdivision (1), the permittee shall submit to the director a plan describing, in detail, the steps to be taken

and a timetable for taking the action that takes into account site-specific conditions to provide protection for the drinking water well. This plan must be submitted within thirty (30) days of the discovery of an exceedance and include information relative to access, additional monitoring, and any measures to be taken to minimize changes to the prevailing hydrologic balance and to prevent material damage to the hydrologic balance beyond the permit boundary.

(e) The criteria established in subsection (a) must be met at and beyond the boundary of the ground water management zone.

## III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

### *Written Comments*

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Indianapolis Field Office may not be logged in.

### *Electronic Comments*

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: IN–153–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Indianapolis Field Office at (317) 226–6700.

### *Availability of Comments*

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

### *Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on October 30, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

### *Public Meeting*

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

## IV. Procedural Determinations

### *Executive Order 12630—Takings*

The revisions made at the initiative of the State that do not have Federal counterparts have been reviewed and a determination made that they do not have takings implications. This determination is based on the fact that the provisions have no substantive effect on the regulated industry.

### *Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

### *Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Indiana program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Indiana program has no effect on Federally-recognized Indian tribes.

### *Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

### *National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

### *Regulatory Flexibility Act*

The Department of the Interior certifies that the provisions in this rule that are not based upon counterpart Federal regulations will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based upon the fact that the provisions are not expected to have a substantive effect on the regulated industry.

### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State provisions are not expected to have a substantive effect on the regulated industry.

### *Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State provisions are not expected to have a substantive effect on the regulated industry.

### List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 26, 2003.

**Charles E. Sandberg,**

*Acting Regional Director, Mid-Continent Regional Coordinating Center.*

[FR Doc. 03–26081 Filed 10–14–03; 8:45 am]

BILLING CODE 4310–05–P

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[PA208–4216b; FRL–7569–2]**

## Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and $NO_X$ RACT Determinations for Three Individual Sources

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania to establish and require reasonably available technology (RACT) for three major sources of volatile organic compounds (VOC) and nitrogen oxides ($NO_X$) located in Pennsylvania. The three major sources are Andritz, Inc. in Lycoming County, Brodart Company in Clinton County, and Erie Sewer Authority in Erie County. In the Final Rules section of this **Federal Register**, EPA is approving the Pennsylvania's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by November 14, 2003.

**ADDRESSES:** Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto at (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, Pennsylvania's Approval of VOC and $NO_X$ RACT Determinations for Three Individual Sources, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number PA208–4216 in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact

information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *morris.makeba@epa.gov*, attention: PA208–4216. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov*, then select "Environmental Protection Agency" at the top of the page and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

### Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

### Considerations When Preparing Comments to EPA

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: September 29, 2003.

**James W. Newsom,**

*Acting Regional Administrator, Region III.*

[FR Doc. 03–25930 Filed 10–14–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[PA208–4214b; FRL–7570–8]**

## Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and $NO_X$ RACT Determinations for Six Individual Sources

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania to establish and require reasonably available control technology (RACT) related requirements to limit volatile organic compounds (VOCs) and nitrogen oxides ($NO_X$) from six individual sources. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by November 14, 2003.

**ADDRESSES:** Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, and the Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Ellen Wentworth at (215) 814–2034, or by e-mail at *wentworth.ellen@epa.gov*.

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, Pennsylvania's Approval of VOC and $NO_X$ RACT Determinations for Six Individual Sources, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number PA208–4214 in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *morris.makeba@epa.gov*, attention: PA208–4214. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov*, then select "Environmental Protection Agency" at the top of the page and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

### Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

### Considerations when Preparing Comments to EPA

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: September 29, 2003.

**James W. Newsom,**

*Acting Regional Administrator, Region III.*

[FR Doc. 03–25932 Filed 10–14–03; 8:45 am]

BILLING CODE 6560–50–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 660

[I.D. 101003E]

## Fisheries off the West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Intent to Prepare an Environmental Impact Statement for Fishing Conducted Under the Pacific Coast Groundfish Fishery Management Plan

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of intent to prepare an environmental impact statement (EIS); announcement of public scoping period; request for written comments.

**SUMMARY:** NMFS, in cooperation with the Pacific Fishery Management Council (Council), announces its intention to prepare an EIS in accordance with the National Environmental Policy Act (NEPA) to assess the impacts of the 2005–2006 Pacific Coast groundfish fishery specifications and management measures on the human environment.

**DATES:** A public scoping meeting for the 2005–2006 Pacific Coast groundfish fishery specifications and management measures EIS is scheduled for Sunday, November 2, 2003, from 1 p.m. to 3 p.m. in conjunction with the Council's November 3–7, 2003, meeting (see **SUPPLEMENTARY INFORMATION**). Written comments will be accepted at the Council office through November 14, 2003. After this date, a scoping responsiveness summary document summarizing the public's issues and alternatives to be evaluated in the EIS, will be drafted and made available on the Council's website (*www.pcouncil.org*) or by request from the address below.

**ADDRESSES:** Written comments on suggested alternatives and potential impacts should be sent to Dr. Donald McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384. Comments may also be sent via facsimile (fax) to 503–820–2299 or via e-mail (*pfmc.comments@noaa.gov* and write "2005–2006 groundfish specifications EIS" in subject line).

**FOR FURTHER INFORMATION CONTACT:** Mr. John DeVore, Groundfish Fishery Management Coordinator; phone: 503–820–2280 and e-mail: *John.DeVore@noaa.gov* or Matthew Harrington, NMFS Northwest Region NEPA Coordinator; phone: 206–526–4742 and email: *Matthew.Harrington@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background and Need For Agency Action

There are more than 80 species managed under the Pacific Coast Groundfish Fishery Management Plan (Groundfish FMP), nine of which have been declared overfished. The groundfish stocks support an array of commercial, recreational, and Indian tribal fishing interests in state and Federal waters off the coasts of Washington, Oregon, and California. In addition, groundfish are also harvested incidentally in nongroundfish fisheries, most notably, the trawl fisheries for pink shrimp, spot/ridgeback prawns, California halibut, and sea cucumber.

The proposed action is needed to establish commercial and recreational harvests levels in 2005–2006 that will ensure groundfish stocks are maintained at, or restored to, sizes and structures that will produce the highest net benefit to the nation, while balancing environmental and social values.

### The Proposed Action

The proposed action is to implement management measures consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that constrain total fishing mortality during 2005–2006 within limits that maintain fish stocks at, or rebuild them to, a level capable of producing maximum sustained yield , or to a stock size less than this if such stock size results in long-term net benefit to the nation.

These fishing mortality limits are harvest specifications that include acceptable biological catches (ABCs) and optimum yields (OYs) for groundfish species or species groups in need of particular protection; OYs may be represented by harvest guidelines or quotas for species that need individual management. Separate sets of ABCs and OYs will be specified for 2005 and 2006 as part of the multi-year management cycle for groundfish. The allocation of commercial OYs between the open access and limited entry segments of the fishery is also part of the proposed action.

Beginning with the 2005–2006 fishing years, the FMP, as amended by Amendment 17, requires that the groundfish specifications be evaluated and revised as necessary every two years, with separate ABCs and OYs established for each of the two years in the biennial period. Management measures designed to achieve the OYs will be established for each year and, as in the past, may vary from period to period within any one year. These specifications and management measures will be published in the **Federal Register** and made effective by January 1 of the first fishing year in the biennium. The Magnuson-Stevens Act and the groundfish FMP also require that NMFS implement actions to prevent overfishing and to rebuild overfished stocks. These specifications include fish caught in state ocean waters (zero to three nautical miles [nm] offshore) as well as fish caught in the U.S. exclusive economic zone (3 to 200 nm offshore).

### Alternatives

NEPA requires that agencies evaluate reasonable alternatives to the proposed action in an EIS. The purpose and need for agency action determines the range of reasonable alternatives. A preliminary set of alternatives will be developed during the November 3–7, 2003, Council meeting. Alternatives will be structured around a range of ABCs/OYs for assessed groundfish species. This range of ABCs/OYs is based on stock assessments, including new assessments for cabezon and lingcod completed since 2004 harvest specifications were finalized at the Council's September 2003 meeting. (Seven additional assessments, and rebuilding analyses for overfished species based on these assessments, were completed in 2003 and used to establish 2004 harvest specifications. Since the most recent approved assessment is used to identify ABCs and OYs for an assessed stock, these recent assessments will also contribute to the 2005–2006 specifications process).

For some species, ABC/OY ranges that would be used to develop alternatives may be based on consultations by the Council with state and Federal agencies, Indian tribes, and the affected public on the allocation of harvest opportunity between sectors. Allocation decisions can affect OYs because different sectors may catch fish of different ages, allowing different sustainable harvest levels.

For each set of ABCs/OYs used in a given alternative, a set of management measures will be identified that will constrain total harvest mortality (across all fisheries intercepting groundfish). Restrictive management measures intended to rebuild overfished species have been adopted and implemented over the past several years for most commercial and recreational fishing sectors. Management measures intended to control the rate at which different groundfish species or species groups are taken in the fisheries include trip limits, bag limits, size limits, time/area closures, and gear restrictions. Large area closures, called Groundfish Conservation Areas (GCAs), intended to reduce bycatch of overfished species, were first implemented in late 2002. These closed areas will continue to be a key feature of alternatives considered in the EIS to manage groundfish fisheries in 2005–2006. A second important type of measure used to manage groundfish is the cumulative landing limit. These restrict the total weight of fish by species or species group that any one vessel may land during the limit period, which is normally two months. Different cumulative landing limits are established for areas north and south of 40°10′ N. lat. (near Cape Mendocino, CA) and for limited entry trawl, limited entry fixed gear, and open access fishery participants.

### *Preliminary Identification of Environmental Issues*

A principal objective of the scoping and public input process is to identify potentially significant impacts to the human environment that should be analyzed in depth in the EIS. The EIS evaluates a range of feasible alternatives (described above) to determine their likely impacts on the human environment and identify significant impacts. Council and NMFS staff conducted initial screening to identify the potentially significant impacts of the range of alternatives that will be developed. Issues considered in the EIS for 2004 harvest specifications, currently in preparation, are likely to be relevant to the EIS for 2005–2006 harvest specifications. (These include the effects of fishing on essential fish habitat, protected species listed under the Endangered Species Act and Marine Mammal Protection Act, the sustainability of overfished and non-overfished groundfish stocks, and socioeconomic impacts to individuals and communities involved in the use of groundfish resources). The transition from annually specifying harvest levels and management measures to this 2-year management cycle may also raise issues that will be considered in the EIS.

## Public Scoping Process

A public scoping meeting is scheduled for Sunday, November 2, 2003 from 1 p.m. to 3 p.m. This scoping session will coincide with the Council meeting and will occur at the same location, the Hilton San Diego/Del Mar, 15575 Jimmy Durante Blvd., Del Mar, California 92014–1901 (858–792–5200). The primary purpose of the scoping meeting is to focus the analysis on the real issues and concerns of the public (see 40 CFR 1500.5(d) and 40 CFR 1501.7). Public comment also may be made during the November Council meeting (November 3–7), under the agendum when the Council will consider the proposed action. The agenda for this meeting will be available from the Council website or by request from Council offices in advance of the meeting (see **ADDRESSES**). The agenda will also identify the room in which the Sunday scoping meeting will occur. Written comments on the scope of issues and alternatives may be submitted as described under **ADDRESSES**.

NMFS invites comments and suggestions on the scope of the analysis to be included in the draft environmental impact statement (DEIS). The scope includes the range of alternatives to be considered and potentially significant impacts to the human environment that should be evaluated in the DEIS. In addition, NMFS is notifying the public that, in conjunction with the Council, it is beginning a full environmental analysis and decision-making process for this proposal, so interested or affected people may know how they can participate in the environmental analysis and contribute to the final decision.

A DEIS will be prepared for comment later on in the process. The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or merits of the alternatives discussed. It is also helpful if comments refer to specific pages or chapters of the DEIS. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the DEIS. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of NEPA CFR 1503.3 in addressing these points). Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

## Special Accommodations

These meetings are accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carolyn Porter 503–820–2280 (voice) or 503–820–2299 (fax), at least 5 days prior to the scheduled meeting date.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: October 8, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–26075 Filed 10–14–03; 8:45 am]

BILLING CODE 3510–22–S

# Notices

**Federal Register**
Vol. 68, No. 199
Wednesday, October 15, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 03–092–1]**

### Notice of Request for Extension of Approval of an Information Collection

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Extension of approval of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations for the interstate movement of swine within a production system.

**DATES:** We will consider all comments that we receive on or before December 15, 2003.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–092–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–092–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–092–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

**FOR FURTHER INFORMATION CONTACT:** For information regarding regulations for the interstate movement of swine within a production system, contact Dr. Adam Grow, National Surveillance Coordinator, National Center for Animal Health Programs, Veterinary Services, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737–1231; (301) 734–3752. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

**SUPPLEMENTARY INFORMATION:**

*Title:* Interstate Movement of Swine Within a Production System.

*OMB Number:* 0579–0161.

*Type of Request:* Extension of approval of an information collection.

*Abstract:* Under the Animal Health Protection Act (7 U.S.C. 8301–8317), the Secretary of Agriculture is authorized to regulate the interstate and foreign commerce of animals and other articles; and to cooperate with foreign countries, States or other jurisdictions, or persons to prevent the introduction into or dissemination within the United States of any pest or disease of livestock and to prevent or eliminate burdens on foreign and interstate commerce.

Within the U.S. Department of Agriculture, the Animal and Plant Health Inspection Service (APHIS) has been delegated authority to carry out these activities.

APHIS regulations in title 9 of the Code of Federal Regulations, chapter I, subchapter C, govern the interstate movement of animals and other articles to prevent the spread of pests and diseases of livestock within the United States.

The regulations in part 71 of subchapter C contain requirements for moving swine interstate within a swine production system. A production system consists of separate farms that each specialize in a different phase of swine production—sow herds, nursery herds, and finishing herds. These separate farms, all members of the same production system, may be located in more than one State. Our regulations facilitate the interstate movement of swine within a single production system while continuing to provide protection against the interstate spread of swine diseases. Moving swine interstate within a swine production system involves the use of two information collection activities in the form of a swine production health plan and an interstate swine movement report.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

*Estimate of burden:* The public reporting burden for this collection of information is estimated to average 0.081967 hours per response.

*Respondents:* Swine producers operating within swine production systems.

*Estimated annual number of respondents:* 1,200.

*Estimated annual number of responses per respondent:* 10.1.

*Estimated annual number of responses:* 12,200.

*Estimated total annual burden on respondents:* 1,000 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 9th day of October 2003.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 03–26044 Filed 10–14–03; 8:45 am]

**BILLING CODE 3410–34–P**

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## DEPARTMENT OF AGRICULTURE

## Forest Service

### Information Collection; Guidelines for Eligibility and Required Documentation for the Golden Access Passport

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Forest Service, Department of Agriculture; the Bureau of Land Management, Bureau of Reclamation, National Park Service, and the Fish and Wildlife Service, Department of the Interior; and the U.S. Army Corps of Engineers, Department of Defense are seeking comments from all interested individuals and organizations on the new information collection, "Guidelines for Eligibility and Required Documentation for the Golden Access Passport."

**DATES:** Comments on this notice must be received by December 15, 2003 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** Comments concerning this notice should be addressed to Recreation, Heritage, and Wilderness Resources Staff, Attn: Accessibility Program Manager, Mail Stop 1125, Forest Service, USDA, 1400 Independence Avenue, SW., Washington, DC 20090–1125.

Comments also may be submitted via facsimile to (202) 205–1145 or by e-mail to *gap@fs.fed.us.* The public is requested not to send duplicate written comments via regular mail.

The public may inspect comments received in the Office of the Director, Recreation, Heritage, and Wilderness Resources Staff, 4th Floor-Central, Sidney R. Yates Federal Building, Forest Service, USDA, 201 14th Street, SW., Washington DC, between the hours of 8:30 a.m. to 4 p.m. on business days. Visitors are encouraged to call ahead to (202) 205–1706 to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Janet Zeller, Accessibility Program Manager, Recreation, Heritage and Wilderness Resources Staff, at (202) 205–9597. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

**SUPPLEMENTARY INFORMATION:**

*Title:* Guidelines for Eligibility and Required Documentation for the Golden Access Passport.

*OMB Number:* 0596–New.

*Expiration Date of Approval:* N/A.

*Type of Request:* New.

*Abstract:* The Golden Access Passport was created in 1980 by an amendment to the Land and Water Conservation Fund Act (LWCFA) of 1965. A Golden Access Passport is a free, lifetime permit that is issued without charge by the National Park Service, Bureau of Land Management, Bureau of Reclamation, and Fish and Wildlife Service, Department of the Interior; the Forest Service, Department of Agriculture; and the U.S. Army Corps of Engineers, Department of Defense to citizens or persons who are domiciled (permanent residents) in the United States, regardless of age, and who have a medical determination and documentation of blindness or permanent disability. Golden Access Passports may be obtained in person and upon proof of blindness or medically determined permanent disability in accordance with the criteria established in the LWCFA of 1965, as amended.

The Passport is not transferable and must be signed by the holder. This Passport entitles the holder and any persons accompanying the holder, such as a care assistant or the holder's spouse and children, in a single private, noncommercial vehicle, to general admission to a Federal area where an entrance fee is charged. This Passport also entitles the holder only to a 50 percent discount on use fees that are charged per vehicle, per person, or per single-family unit at outdoor recreation sites managed by the Forest Service or concessionaires.

In order to clarify and simplify the process for persons with disabilities to obtain the Golden Access Passport, all of the agencies that issue this free, lifetime Passport cooperated in the development of the Guidelines for Eligibility and Required Documentation for the Golden Access Passport. These Guidelines will be used by each agency when assisting customers seeking to obtain the Passport.

*Estimate of Burden:* 5 minutes.

*Type of Respondents:* Individuals with permanent disabilities, who are applying for the free, lifetime Golden Access Passport.

*Estimated Number of Respondents:* 59,810.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 11,962 hours.

#### Comment Is Invited

Comment is invited on: (1) Whether the proposed collection of information is necessary for the stated purpose and the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

#### Use of Comments

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Dated: October 7, 2003.

**Gloria Manning,**

*Associate Deputy Chief, National Forest System.*

[FR Doc. 03–26073 Filed 10–14–03; 8:45 am]

**BILLING CODE 3410–11–P**

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## DEPARTMENT OF AGRICULTURE

## Forest Service

### Newspapers Used for Publication of Legal Notice, Comment and Appeal of Decisions for Pacific Northwest Region; Oregon and Washington

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice updates the listing of newspapers that will be used by all Ranger Districts, Forests, and the Regional Office of the Pacific Northwest Region to publish legal notices of decision subject to appeal under 36 CFR

parts 215 and 217 and to publish notices for public comment subject to the provisions of 36 CFR part 215. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for public comment or decisions; thereby allowing the public to receive information of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

**DATES:** Publication of legal notices in the listed newspapers will begin with proposals for public comment or decisions subject to appeal that are made on or after October 15, 2003. The list of newspapers will remain in effect until another notice is published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Jill A. Dufour, Regional Environmental Coordinator, Pacific Northwest Region, 333 SW First Avenue, (P.O. Box 3623), Portland, Oregon 97208, phone: 503–808–2276.

**SUPPLEMENTARY INFORMATION:** Responsible Officials in the Pacific Northwest Region will give legal notice of decisions that may be subject to appeal under 36 CFR parts 215 and 217 in the following newspapers which are listed by Forest Service administrative units. Where more than one newspaper is listed for any unit, the first newspaper listed is the principle newspapers.

The principle newspaper shall be used to constitute legal evidence that the agency has given timely and constructive notice for comment and for decisions that may be subject to administrative appeal. The timeframe for appeal shall be based on the date of publication of a notice of decision in the principle newspaper.

## Pacific Northwest Regional Office

Regional Forester decisions on Oregon National Forests:
The Oregonian, Portland, Oregon
Regional Forester decisions on Washington National Forests:
The Seattle Post-Intelligencer, Seattle, Washington
Columbia River Gorge National Scenic Area Manager decisions:
The Oregonian, Portland, Oregon

## Oregon National Forests

### *Deschutes National Forest*

Forest Supervisor decisions
Bend/Fort Rock District Ranger decisions
Crescent District Ranger decisions
Redmond Air Center Manager decisions
The Bulletin, Bend, Oregon
Sister District Ranger decisions—Sisters Nugget, Sisters, Oregon

### *Fremont-Winema National Forests*

Forest Supervisor decisions
Bly District Ranger decisions
Lakeview District Ranger decisions
Paisley District Ranger decisions
Silver Lake District Ranger decisions
Chemult District Ranger decisions
Chiloquin District Ranger decisions
Klamath District Ranger decisions
Herald and News, Klamath Falls, Oregon

### *Malheur National Forest*

Forest Supervisor decisions
Blue Mountain District Ranger decisions
Emigrant Creek District Ranger decisions
Prairie City District Ranger decisions
Blue Mountain Eagle, John Day, Oregon

### *Mt. Hood National Forest*

Forest Supervisor decisions
Clackamas River District Ranger decisions
Zigzag District Ranger decisions
Hood River District Ranger decisions
Barlow District Ranger decisions
The Oregonian, Portland, Oregon

### *Ochoco National Forest*

Forest Supervisor decisions—The Bulletin, Bend, Oregon
Newspapers which may provide additional notice of Forest Supervisor decisions:
Central Oregonian, Prineville, Oregon
Madras Pioneer, Madras, Oregon
Blue Mountain Eagle, John Day, Oregon
The Times-Journal, Condon, Oregon
Crooked River National Grassland Area Manager decisions—The Bulletin, Bend, Oregon
Newspaper which may provide additional notice of Area Manager decisions:
Madras Pioneer, Madras, Oregon
Lookout Mountain District Ranger decisions—The Bulletin, Bend, Oregon
Newspaper which may provide additional notice of District Ranger decisions:
Central Oregonian, Prineville, Oregon
Paulina District Ranger decisions—The Bulletin, Bend, Oregon
Newspapers which may provide additional notice of District Ranger decisions:
Blue Mountain Eagle, John Day, Oregon
The Times-Journal, Condon, Oregon

### *Rogue River-Siskiyou National Forests*

Forest Supervisor (Rogue River) decisions—Mail Tribune, Medford, Oregon
Forest Supervisor (Siskiyou) decisions—Grants Pass Courier, Grants Pass
Applegate District Ranger decisions
Ashland District Ranger decisions
Butte Falls District Ranger decisions
J. Herbert Stone Nursery Managers decisions
Prospect District Ranger decisions
Mail Tribune, Medford, Oregon
Chetco-Gold Beach District Ranger decisions—Curry Coastal Pilot, Brookings, Oregon
Galice-Illinois Valley District Ranger decisions—Grants Pass Courier, Grants Pass, Oregon
Powers District Ranger decisions—The World, Coos Bay, Oregon
Newspaper which may provide additional notice of District Ranger decisions:
Curry County Reporter, Gold Beach, Oregon

### *Siuslaw National Forest*

Forest Supervisor decisions—Corvallis Gazette-Times, Corvallis, Oregon
Hebo District Ranger decisions—Headlight Herald, Tillamook, Oregon
Mapelton District Ranger decisions
Oregon Dunes National Recreation Area Manager decisions
Waldport District Ranger decisions
Register-Guard, Eugene, Oregon

### *Umatilla National Forest*

Forest Supervisor decisions
North Fork John Day District Ranger decisions
Heppner District Ranger decisions
Pomeroy District Ranger decisions
Walla Walla District Ranger decisions
East Oregonian, Pendleton, Oregon

### *Umpqua National Forest*

Forest Supervisor decisions
Cottage Grove District Ranger decisions
Diamond Lake District Ranger decisions
North Umpqua District Ranger decisions
Tiller District Ranger decisions
Dorena Tree Improvement Center Manager decisions
The News Review, Roseburg, Oregon

### *Wallowa-Whitman National Forest*

Forest Supervisor decisions
Baker Office—Whitman Unit decisions
Pine Office—Whitman Unit decisions
Unity Office—Whitman Unit decisions
Baker City Herald, Baker City, Oregon
Hells Canyon National Recreation Area ranger decisions:
Occurring in Oregon—
Wallowa County Chieftain, Enterprise, Oregon
Occurring in Idaho—
Lewiston Morning Tribune, Lewiston, Idaho
La Grande District Ranger decisions—The Observer, La Grande, Oregon
Eagle Cap District Ranger decisions
Wallowa Valley District Ranger decisions

Wallowa County Chieftain, Enterprise, Oregon

*Willamette National Forest*

Forest Supervisor decisions
Middle Fork District Ranger decisions
McKenzie River District Ranger decisions
Sweet Home District Ranger decisions
Register-Guard, Eugene, Oregon
Detroit District Ranger decisions—Salem Statesman Journal, Salem, Oregon

**Washington National Forests**

*Colville National Forest*

Forest Supervisor decisions
Three Rivers District Ranger decisions
Statesman-Examiner, Colville, Washington
Republic District Ranger decisions—Republic News Miner, Republic, Washington
Sullivan Lake District Ranger decisions
Newport District Ranger decisions
Newport Miner, Newport, Washington

*Gifford Pinchot National Forest*

Forest Supervisor decisions
Mount Adams District Ranger decisions
Mount St. Helens National Volcanic Monument Manager decisions
The Columbian, Vancouver, Washington
Cowlitz Valley District Ranger decisions—The Chronicle, Chehalis, Washington

*Mt. Baker-Snoqualmie National Forest*

Forest Supervisor decisions—Seattle Post Intelligencer, Seattle, Washington
Mt. Baker District Ranger decisions—Skagit Valley Herald, Mt. Vernon, Washington
Snoqualmie District Ranger decisions (north half of district)—Valley Record, North Bend, Washington
Snoqualmie District Ranger decisions (south half of district)—Enumclaw Courier Herald, Enumclaw, Washington
Darrington District Ranger decisions
Skykomish District Ranger decisions
Everett Herald, Everett, Washington

*Okanogan and Wenactchee National Forests*

Forest Supervisor decisions—The Wenatchee World, Wenatchee, Washington
Newspaper which may provide additional notice of Forest Supervisor decisions:
The Yakima Herald-Republic, Yakima, Washington
Methow Valley District Ranger decisions—Methow Valley News, Twisp, Washington
Tonasket District Ranger decisions—Wenatchee World, Wenatchee, Washington
Newspaper which may provide additional notice of District Ranger decisions:
Okanogan Valley Gazette-Tribune, Oroville, Washington
Cle Elum District Ranger decisions—Ellensburg Daily Record, Ellensburg, Washington
Newspaper which may provide additional notice of District Ranger decisions:
The Yakima Herald-Republic, Yakima, Washington
Chelan District Ranger decisions
Entiat District Ranger decisions
Lake Wenatchee and Leavenworth District Ranger decisions
The Wenatchee World, Wenatchee, Washington
Naches District Ranger decisions
The Wenatchee World, Wenatchee, Washington
Newspaper which may provide additional notice of District Ranger decisions;
The Yakima Herald-Republic, Yakima, Washington

*Olympic National Forest*

Forest Supervisor decisions:
The Olympian, Olympia, Washington
Newspapers which may provide additional notice of Forest Supervisor decisions:
Mason County Journal, Shelton, Washington
Peninsula Daily News, Port Angeles, Washington
The Daily World, Aberdeen, Washington
The Forks Forum, Forks, Washington
Hood Canal District Ranger decisions—Peninsula Daily News, Port Angeles, Washington
Newspaper which may provide additional notice of District Ranger decisions:
Mason County Journal, Shelton, Washington
Pacific District Ranger decisions (south portion of district):
The Daily World, Aberdeen, Washington
Newspapers which may provide additional notice of District Ranger decisions:
Peninsula Daily News, Port Angeles, Washington
The Forks Forum, Forks, Washington
Pacific District Ranger decisions (north portion of district)—Peninsula Daily News, Port Angeles, Washington
Newspapers which may provide additional notice of District Ranger decisions:
The Forks Forum, Forks, Washington
The Daily World, Aberdeen, Washington

Dated: October 3, 2003.

**Jim Golden,**
*Deputy Regional Forester.*

[FR Doc. 03–25977 Filed 10–14–03; 8:45 am]

BILLING CODE 3410–11–M

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## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**AGENCY:** U.S. Census Bureau.

*Title:* 2004 Panel of the Survey of Income and Program Participation (SIPP), Core Instrument and Wave I Topical Modules.

*Form Number(s):* SIPP 24105(L) Director's Letter; SIPP/CAPI Automated Instrument; SIPP 21003 Reminder Card.

*Agency Approval Number:* None.

*Type of Request:* New collection.

*Burden:* 98,685 hours.

*Number of Respondents:* 97,650.

*Avg Hours Per Response:* 30 minutes.

*Needs and Uses:* The U.S. Census Bureau plans to conduct the 2004 Panel of the Survey of Income and Program Participation (SIPP). This clearance request is to accommodate the core instrument for the life of the 2004 Panel, the topical modules for the Wave 1 interviews, and the reinterview instrument, which will be used during the life of the 2004 Panel. The reinterview instrument will be used for quality control analysis of data collected by the SIPP field representatives.

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years, with each panel having durations of 3 to 4 years. The 2004 Panel is scheduled for four years and will include twelve waves which will begin February 1, 2004. All household members 15 years old or over are interviewed a total of twelve times (twelve waves), at 4-month intervals, making the SIPP a longitudinal survey.

The survey is molded around a central "core" of labor force and income questions that remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as "topical modules." The topical modules for the 2004 Panel Wave 1 are

Recipiency History and Employment History. These topical modules were previously conducted in the SIPP 2001 Panel Wave 1 instrument. The 2004 Panel Wave 1 interviews will be conducted beginning February 1, 2004 and concluding on May 31, 2004.

Data provided by the SIPP are being used by economic policymakers, the Congress, state and local governments, and Federal agencies that administer social welfare or transfer payment programs, such as the Department of Health and Human Services and the Department of Agriculture. The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single and unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983, permitting levels of economic well-being and changes in these levels to be measured over time. Monetary incentives to encourage non-respondents to participate is planned for all waves of the 2004 SIPP Panel.

*Affected Public:* Individuals or households.

*Frequency:* Every 4 months.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13 U.S.C., Section 182.

*OMB Desk Officer:* Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: October 8, 2003.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 03–26018 Filed 10–14–03; 8:45 am]

BILLING CODE 3510–07–P

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## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**AGENCY:** Census Bureau.

*Title:* Current Population Survey, Annual Social and Economic Supplement—2004.

*Form Number(s):* CPS–580, CPS–580(L)SP, CPS–676, CPS–676(SP).

*Agency Approval Number:* 0607–0354.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 32,500 hours.

*Number of Respondents:* 78,000.

*Avg Hours Per Response:* 25 minutes.

*Needs and Uses:* The purpose of this request for review is to obtain clearance for the Annual Social and Economic Supplement (ASEC), formerly known as the Annual Demographic Survey (ADS), which we will conduct in conjunction with the February, March, and April 2004 Current Population Survey (CPS). Congressional passage of the State Children's Health Insurance Program, or Title XXI, led to a mandate from Congress, in 1999, that the sample size for the CPS, and specifically the Annual Social and Economic Supplement (ASEC), be increased to a level whereby more reliable estimates can be derived for the number of individuals participating in this program at the state level. By administrating the ASEC in February, March, and April, rather than only in March as in the past, we have been able to achieve this goal. The Census Bureau, the Bureau of Labor Statistics (BLS), and the Department of Health and Human Services (HHS) sponsor this supplement.

The ASEC can be divided into five logical series of questions as follows: Work Experience; Personal Income and Noncash Benefits; Household Noncash Benefits; Welfare Reform Items; and Migration.

ASEC data are used by social planners, economists, Government officials, and market researchers to gauge the social and economic well-being of the Nation as a whole, and selected population groups of interest.

*Affected Public:* Individuals or households.

*Frequency:* Annually.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13 U.S.C., Section 182 and Title 29 U.S.C., Sections 1–9.

*OMB Desk Officer:* Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or email (*susan_schechter@omb.eop.gov*).

Dated: October 8, 2003.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 03–26016 Filed 10–14–03; 8:45 am]

BILLING CODE 3510–07–P

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## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**AGENCY:** U.S. Census Bureau.

*Title:* 2004 Census Test.

*Form Number(s):* DB–1: questionnaire; DB–5, DB–6A, DB–6B, DB–6C, DB–8: envelopes; DB–31(P): privacy notice; DB–16(L), DB–16(L)(UL), DB–17(L): cover letters; DB–5(L): advance letter; DB–9: reminder post card; DB–1(F): respondent flashcard booklet.

*Agency Approval Number:* None.

*Type of Request:* New collection.

*Burden:* 33,530 hours.

*Number of Respondents:* 200,000.

*Avg Hours Per Response:* 10 minutes.

*Needs and Uses:* The U.S. Census Bureau requests authorization from the Office of Management and Budget to conduct the 2004 Census Test. The goal of the 2004 Census Test is to obtain information needed to inform decisions about adopting, refining, or rejecting potential new methods, content, and wording for the 2010 Census. The 2004 Census Test will evaluate the effectiveness of:

*Mobile Computing Devices for Field Work*—Methods for implementing an MCD system during the Nonresponse Followup (NRFU) operation. We are developing an MCD system that incorporates Spanish and English language capabilities, that can receive workload information and transmit census data, and that includes maps. We plan to assess the impact of the system on field infrastructure and data processing.

*Coverage Improvement*—New methods for improving coverage, including procedures to address overall coverage of the Nation's population and housing and procedures to address duplication issues. The 2004 Census Test Questionnaire will include two new questions (numbers 2 and 10) designed to ensure that each individual is counted once and only once and in the right place, revised residence rule instructions to help respondents understand who to include on census forms, and space to add information for four characteristics for persons seven through twelve (age, sex, date of birth, and relationship).

*Changes to Questionnaire Content*—Collect data on respondent reaction to the revised race and Hispanic Origin questions, including the removal of the "Some Other Race" ("SOR") option and the inclusion of examples for both questions. In addition, we are planning to record and behavior-code some of the NRFU interviews in order to gain additional insight into respondent reaction to the race and Hispanic Origin questions.

*Methods to Identify Special Places/Group Quarters*—As part of its research and development work for the 2010 census, the 2004 Census Test also will test improved definitions and methods for distinguishing between group quarters and housing units during census operations, in order to update the MAF in a comprehensive, integrated manner. The Group Quarters Validation (GQV) operation is covered by a separate OMB submission.

The 2004 Census Test, which is part of an extended test cycle leading up to the next decennial census, will be conducted in two sites—Northwest Queens Borough, NY, and three rural counties in Southwest Georgia (Colquitt, Tift, and Thomas). The test will use two modes for data collection (paper and MCD). Approximately 175,000 housing units in the test sites will receive a census questionnaire by mail (mailout/mailback universe, *i.e.* housing units that have city-style addresses such as 806 Main Street). Additionally, enumerators will deliver a questionnaire to approximately 25,000 housing units that have non city-style addresses such as Rt. 7, Box 433 (update/leave universe). All respondents (those living in both the mailout/mailback and update/leave areas) will be asked to complete the forms and mail them back using the postage-paid envelopes provided.

Prior to the beginning of NRFU, a second questionnaire will be sent to each housing unit in the mailout/mailback universe in both sites that has not already returned the initial questionnaire. During the NRFU portion of the test, enumerators equipped with MCDs will visit and/or call non-respondents and attempt to collect the information.

The 2004 Census Test will include an array of data collection, data capture, and data processing operations along with the associated support activities necessary for obtaining the data required for evaluation. Although we will conduct a quality assurance operation during NRFU, we will not conduct the re-interview portion of the Race and Hispanic Origin Retinterview due to its operational complexity and resource requirements. We will conduct a short re-interview for quality-control purposes with approximately 5,800 households in the NRFU universe to verify that a NRFU enumerator visited the address and collected the appropriate address and household information.

Enumerator Taping Assistants (ETAs) also will tape and behavior-code an area sample of NRFU interviews (Northwest Queens Site, only) as enumerators are conducting the interviews. Data collected as a result of these interviews will be used in conjunction with missing data rates, NRFU response distributions, and the 2003 National Census Test results to evaluate respondent reactions to the new race and Hispanic Origin questions.

*Affected Public:* Individuals or households.

*Frequency:* One-time.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Title 13 U.S.C., Sections 141 and 193.

*OMB Desk Officer:* Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202) 395–7245 or e-mail (*susan_schechter@omb.eop.gov*).

Dated: October 8, 2003.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 03–26017 Filed 10–14–03; 8:45 am]

BILLING CODE 3510–07–P

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-588-810]

### Mechanical Transfer Presses from Japan: Extension of Time Limit for Preliminary Results of Antidumping Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce

**SUMMARY:** The Department of Commerce is extending the time limit for the preliminary results of the administrative review of mechanical transfer presses (MTPs) from Japan until no later than February 28, 2004. The period of review is February 1, 2002 through January 31, 2003. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

**EFFECTIVE DATE:** October 15, 2003.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline Arrowsmith, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–5255.

**SUPPLEMENTARY INFORMATION:**

#### Background

On February 16, 1990, the Department issued an antidumping duty order on mechanical transfer presses from Japan. *See Antidumping Duty Order: Mechanical Transfer Presses from Japan*, 55 FR 5642 (February 16, 1990). The term "mechanical transfer presses" refers to automatic metal-forming machine tools with multiple die stations in which the work piece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be imported assembled or unassembled. *See Mechanical Transfer Presses from Japan: Final Results of Antidumping Administrative Review* 68 FR 39515.

On February 24, 2003, the Department of Commerce (the Department) received a timely request for administrative review of the antidumping duty order on MTPs from Japan from respondent Hitatchi Zosen Corporation (HZC), and its subsidiary Hitatchi Zosen Fukui Corporation d/b/a H&F Corporation (H&F). On February 27, 2003, the Department received a timely request from the petitioner, IHI-Verson Press Technology, LLC, for an administrative review of HZC and H&F. On February 28, 2003, HZC and H&F submitted a request that the Department revoke the order with respect to HZC and H&F based on the absence of dumping in three consecutive reviews. On March 25, 2003, the Department published a notice of initiation of this administrative review, covering the period of February 1, 2002 through January 31, 2003 (*see* 68 FR 14394), for HZC and its subsidiary H&F. The preliminary results for HZC/H&F are currently due no later than October 31, 2003.

### Extension of Time Limits for Preliminary Results

As a result of the fact that mechanical transfer presses are unique to each customer because they are designed to detailed specifications, there are complex issues with respect to normal value. In addition, HZC/H&F has requested revocation with respect to the order. Given these facts, it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act. The Department is therefore extending the time period for issuing the preliminary results of this review by 120 days, from October 31, 2003, until no later than February 28, 2004, in accordance with section 751(a)(3)(A) of the Act. The final results continue to be due 120 days after the publication of the preliminary results. This notice is published pursuant to sections 751(a)(3)(A) and 777(I)(1) of the Act.

Dated: October 7, 2003.

**Richard O. Weible,**

*Acting Deputy Assistant Secretary for Import Administration, Group III.*

[FR Doc. 03–26079 Filed 10–14–03; 8:45 am]

**BILLING CODE 3510–DS–S**

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A-580-839]**

## Certain Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Results of 2001–2002 Administrative Review.

**SUMMARY:** On June 9, 2003, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain polyester staple fiber from Korea. The period of review is May 1, 2001, through April 30, 2002. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and an examination of our calculations, we have made certain changes for the final results. The final weighted-average dumping margins for the two manufacturer/exporters are listed below in the "Final Results of the Review" section of this notice.

**EFFECTIVE DATE:** October 15, 2003.

**FOR FURTHER INFORMATION CONTACT:** Andrew McAllister or Judith Rudman, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1174, or (202) 482–0192, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

Since the publication of the preliminary results in this review (*see Certain Polyester Staple Fiber from Korea; Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review*, 68 FR 34378 (June 9, 2003) ("*Preliminary Results*")), the following events have occurred:

The Department reported its findings from Huvis Corporation's ("Huvis") cost verification on July 2, 2003. *See* Memorandum from Robert Greger and Mark Todd to Neal Halper, Director, *Office of Accounting, "Verification Report on the Cost of Production and Constructed Value Data Submitted by Huvis Corporation,"* dated July 2, 2003 ("*Huvis Cost Verification Report*"), which is on file in the Department's Central Records Unit ("CRU") in room B-099 of the main Department building.

We invited parties to comment on the preliminary results of the review. On July 22, 2003, E.I. DuPont de Nemours, Inc., Arteva Specialties S.a.r.l., d/b/a KoSa, Wellman, Inc., and Intercontinental Polymers, Inc. (collectively "the petitioners"), and the respondents East Young Co., Ltd. ("East Young")/Stein Fibers, Ltd. ("Stein Fibers") and Huvis filed case briefs. On July 28, 2003, the above-mentioned parties, with the exception of East Young/Stein Fibers, filed rebuttal briefs.

### Scope of the Order

For the purposes of this order, the product covered is certain polyester staple fiber ("PSF"). PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to this order may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable under the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheading 5503.20.00.20 is specifically excluded from this order. Also specifically excluded from this order are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low-melt PSF is excluded from this order. Low-melt PSF is defined as a bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to this order is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under order is dispositive.

### Period of Review

The period of review ("POR") is May 1, 2001, through April 30, 2002.

### Verification

As stated in the *Preliminary Results* and provided in section 782(i) of the Tariff Act of 1930, as amended ("the Act"), we verified information provided by East Young and Huvis using standard verification procedures, including on-site inspection of the manufacturers' facilities, examination of relevant sales, cost and financial records, and selection of original documentation containing relevant information.

### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the "Issues and Decision Memorandum" from Jeffrey May, Deputy Assistant Secretary, Import Administration to James J. Jochum, Assistant Secretary, Import Administration, dated October 6, 2003 ("*Decision Memorandum*"), which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Department's CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/frnhome.htm*. The paper copy and electronic version of the Decision Memorandum are identical in content.

### Fair Value Comparisons

To determine whether sales of PSF from Korea to the United States were made at less than normal value, we compared export price ("EP") to normal value ("NV"). Our calculations followed the methodologies described in the *Preliminary Results*, except as noted below and in the final results calculation memoranda cited below, which are on file in the CRU.

### Export Price

We used EP as defined in section 772(a) of the Act. We calculated EP based on the same methodologies described in the *Preliminary Results*.

### Normal Value

We used the same methodology as that described in the *Preliminary Results* to determine the cost of production (≥COP"), whether comparison market sales were at prices below the COP, and the NV.

### Changes from the Preliminary Results

For East Young, in our calculation of NV based on constructed value, we have adjusted the general and administrative expense ratio. *See* Memorandum from Team to File, "*Final Results Calculation Memorandum for East Young Co., Ltd.*," dated October 6, 2003 ("*East Young Final Calcs*"); see also Decision Memorandum, at Comment 10.

With respect to Huvis, we have adjusted its cost of manufacturing to account for purchases of certain materials from affiliated parties at non-arm's length prices. Also, we have used the revised selling, general and administrative expense ratio submitted by Huvis during the cost verification for its affiliated supplier. We have further adjusted the submitted ratio for the final results. *See* Memorandum from Robert Greger to Neal Halper, "*Cost of Production and Constructed Value Calculation Adjustments for the Final Results*," dated October 6, 2003.

### Final Results of the Review

We determine that the following percentage margins exist for the period May 1, 2001, through April 30, 2002:

| Exporter/manufacturer | Weighted-average margin percentage |
|---|---|
| East Young Co., Ltd. | 4.07 |
| Huvis Corporation | 0.21 *(de minimis)* |

### Assessment Rates

The Department shall determine, and the United States Bureau of Customs and Border Protection ("BCBP") shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated exporter/importer (or customer)-specific assessment rates for merchandise subject to this review. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was greater than *de minimis*, we calculated a per-unit assessment rate by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).

The Department will issue appropriate assessment instructions directly to the BCBP within 15 days of publication of these final results of review.

### Cash Deposit Rates

The following antidumping duty deposits will be required on all shipments of PSF from Korea entered, or withdrawn from warehouse, for consumption, effective on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be the rates listed above (except no cash deposit will be required if a company's weighted-average margin is *de minimis, i.e.*, less than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 11.35 percent, the "all others" rate established in *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from the Republic of Korea, and Antidumping Duty Orders: Certain Polyester Staple Fiber from the Republic of Korea and Taiwan*, 65 FR 33807 (May 25, 2000).

These cash deposit requirements shall remain in effect until publication of the final results of the next administrative review.

### Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

### Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and this notice in accordance with sections section 751(a)(1) and 777(i)(1) of the Act.

Dated: October 6, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

## Appendix I

### List of Comments in the Issues and Decision Memorandum

*Comment 1:* Exclusion of Certain Home Market Sales Made By Huvis
*Comment 2:* Huvis' Fiber Composition Characteristic
*Comment 3:* Huvis' Duty Drawback
*Comment 4:* Huvis' Brokerage Expenses
*Comment 5:* Huvis' Major Inputs
*Comment 6:* Huvis' Affiliated Supplier's SG&A
*Comment 7:* Huvis' Parent Company G&A
*Comment 8:* Huvis' Per-Unit G&A Calculation
*Comment 9:* East Young's Comparison Market
*Comment 10:* East Young's G&A Ratio

[FR Doc. 03–26078 Filed 10–14–03; 8:45 am]

BILLING CODE 3510–DS–S

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–489–807]

## Certain Steel Concrete Reinforcing Bars From Turkey; Notice of Extension of Time Limits for Preliminary Results in Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** October 15, 2003.

**SUMMARY:** The Department of Commerce is extending the time limits for completion of the preliminary results of the administrative review of the antidumping duty order on certain steel concrete reinforcing bars from Turkey. The period of review is April 1, 2002, through March 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Irina Itkin or Elizabeth Eastwood at (202) 482–0656 or (202) 482–3874, respectively, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

### Background

On May 21, 2003, the Department published a notice of initiation of administrative review of the antidumping duty order on certain steel concrete reinforcing bars from Turkey (68 FR 27781). The period of review is April 1, 2002, through March 31, 2003, and the preliminary results are currently due no later than December 31, 2003. The review covers twenty-three producers/exporters of the subject merchandise to the United States.

### Extension of Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department shall make a preliminary determination in an administrative review of an antidumping order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend the 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. We determine that it is not practicable to complete this administrative review within the time limits mandated by section 751(a)(3)(A) of the Act, because this review involves a number of complicated issues for certain of the respondents, including the reporting of downstream sales for affiliated resellers and high inflation in Turkey during the period of review. Analysis of these issues requires additional time. Moreover, because one respondent, ICDAS Celik Enerji Tersane ve Ulasim Sanayi, A.S., has requested revocation in this review, we must verify its submitted data pursuant to 782(i)(2) of the Act. However, we will be unable to complete this verification before the date of the preliminary results as currently scheduled. Therefore, we have extended the deadline for completing the preliminary results until April 29, 2004.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A)) and 19 CFR 351.213(h)(2).

Dated: October 8, 2003.

**Jeffrey A. May,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 03–26080 Filed 10–14–03; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 100603C]

## Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas (ICCAT); Fall Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** In preparation for the 2003 ICCAT meeting, the Advisory Committee to the U.S. Section to ICCAT will hold its annual fall meeting in October 2003.

**DATES:** The open session will be held on October 26, 2003, from 1 p.m. to 3:15 p.m. Closed sessions will be held on October 26, 2003, from 3:30 p.m. to 5:30 p.m., October 27, 2003, from 9 a.m. to 5:30 p.m., and October 28, 2003, from 9 a.m. to noon. Written comments should be received no later than October 17, 2003.

**ADDRESSES:** The meeting will be held at the Hilton Hotel, 8727 Colesville Road, Silver Spring, MD 20910. Written comments should be sent to Erika Carlsen at NOAA Fisheries/SF4, Room 13114, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Erika Carlsen, 301–713–2276.

**SUPPLEMENTARY INFORMATION:** The Advisory Committee to the U.S. Section to ICCAT will meet in an open session to consider information on stock status of highly migratory species and 2003 management recommendations of ICCAT's Standing Committee on Research and Statistics (SCRS). The only opportunity for public comment will be during the October 26, 2003, open session. Written comments are encouraged and, if mailed, should be received by October 17, 2003 (see **ADDRESSES**). Written comment can also be submitted during the open sessions of the Advisory Committee meeting.

The Advisory Committee will go into executive session on October 26, 2003, after the adjournment of the open session, on October 27, 2003, and on the morning of October 28, 2003, to discuss sensitive information relating to upcoming international negotiations. These sessions are not open to the public.

Please be reminded that NMFS expects members of the public to conduct themselves appropriately for the duration of the meeting. At the beginning of the public comment session, an explanation of the ground rules will be provided (e.g., alcohol in the meeting room is prohibited, speakers will be called to give their comments in the order in which they registered to speak, each speaker will have an equal amount of time to speak, and speakers should not interrupt one another). The session will be structured so that all attending members of the public are able to comment, if they so choose, regardless of the degree of controversy of the subject(s). Those not respecting the ground rules will be asked to leave the meeting.

### Special Accommodations

The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Erika Carlsen at (301) 713–2276 at least 5 days prior to the meeting date.

Dated: October 7, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–25926 Filed 10–14–03; 8:45 am]

BILLING CODE 3510–22–S

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

October 7, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

**EFFECTIVE DATE:** October 15, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, carryforward and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 65339, published on October 24, 2002.

**Philip J. Martello,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 7, 2003.

Commissioner,
*Bureau of Customs and Border Protection, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 18, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on October 15, 2003., you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| 237 | 369,879 dozen. |
| 331pt. [2] | 13,807 dozen pairs. |
| 334 | 300,113 dozen. |
| 335 | 474,197 dozen. |
| 336/636 | 809,795 dozen. |
| 340/640 | 5,613,089 dozen. |
| 341 | 4,479,616 dozen. |
| 352/652 | 18,594,156 dozen. |
| 363 | 50,878,276 numbers. |
| 369-S [3] | 3,250,002 kilograms. |
| 634 | 934,988 dozen. |
| 635 | 615,565 dozen. |
| 638/639 | 3,083,489 dozen. |
| 641 | 933,405 dozen. |
| 645/646 | 741,053 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[3] Category 369-S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 03–26008 Filed 10–14–03; 8:45 am]

BILLING CODE 3510–DR–S

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

October 7, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

**EFFECTIVE DATE:** October 15, 2003.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff

Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2002). Also see 67 FR 63891, published on October 16, 2002.

**Philip J. Martello,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 7, 2003.

Commissioner,

*Bureau of Customs and Border Protection, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 9, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on October 15, 2003, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Twelve-month limit [1] |
|---|---|
| Group I | |
| 200, 218, 219, 226, 237, 239pt. [2], 300/301, 313–315, 317/326, 331pt. [3], 333–336, 338/339, 340–342, 345, 347/348, 351, 352, 359–C [4], 359–V [5], 360–363, 410, 433–436, 438, 440, 442–444, 445/446, 447, 448, 611, 613–615, 617, 631pt. [6], 633–636, 638/639, 640–643, 644, 645/646, 647, 648, 651, 652, 659–C [7], 659–H [8], 659–S [9], 666pt. [10], 845 and 846, as a group. | 1,204,718,529 square meters equivalent. |
| Sublevels in Group I | |
| 200 | 912,622 kilograms. |
| 218 | 13,153,263 square meters. |
| 219 | 2,937,047 square meters. |
| 237 | 2,499,211 dozen. |
| 300/301 | 2,645,278 kilograms. |
| 313 | 49,434,737 square meters. |
| 314 | 60,061,788 square meters. |
| 315 | 147,506,238 square meters. |
| 317/326 | 26,677,828 square meters of which not more than 4,967,491 square meters shall be in Category 326. |
| 331pt. | 2,413,908 dozen pairs. |
| 334 | 376,725 dozen. |
| 335 | 419,528 dozen. |
| 336 | 209,616 dozen. |
| 338/339 | 2,525,562 dozen of which not more than 1,928,584 dozen shall be in Categories 338–S/339–S [11]. |
| 340 | 862,279 dozen of which not more than 443,337 dozen shall be in Category 340–Z [12]. |
| 341 | 755,711 dozen of which not more than 448,173 dozen shall be in Category 341–Y [13]. |
| 342 | 301,966 dozen. |
| 345 | 140,639 dozen. |
| 347/348 | 2,486,743 dozen. |
| 351 | 691,381 dozen. |
| 352 | 1,804,580 dozen. |
| 359–C | 756,244 kilograms. |
| 359–V | 1,053,705 kilograms. |
| 360 | 9,427,398 numbers of which not more than 6,614,122 numbers shall be in Category 360–P [14]. |
| 361 | 5,120,368 numbers. |
| 362 | 8,389,237 numbers. |
| 363 | 24,484,202 numbers. |
| 433 | 23,041 dozen. |
| 434 | 14,732 dozen. |
| 435 | 27,058 dozen. |
| 438 | 29,172 dozen. |
| 442 | 44,115 dozen. |
| 443 | 139,975 numbers. |
| 444 | 233,906 numbers. |
| 445/446 | 303,850 dozen. |
| 447 | 77,785 dozen. |
| 448 | 24,617 dozen. |
| 613 | 9,283,957 square meters. |
| 614 | 14,576,497 square meters. |
| 615 | 30,371,800 square meters. |
| 617 | 21,220,471 square meters. |
| 631pt. | 355,861 dozen pairs. |
| 633 | 68,480 dozen. |
| 634 | 745,017 dozen. |
| 635 | 785,865 dozen. |
| 636 | 621,232 dozen. |

| Category | Twelve-month limit[1] |
|---|---|
| 638/639 | 2,697,940 dozen. |
| 640 | 1,491,483 dozen. |
| 641 | 1,411,350 dozen. |
| 642 | 406,008 dozen. |
| 643 | 598,379 numbers. |
| 644 | 3,865,857 numbers. |
| 645/646 | 899,294 dozen. |
| 647 | 1,775,707 dozen. |
| 648 | 1,243,793 dozen. |
| 651 | 919,888 dozen of which not more than 158,194 dozen shall be in Category 651–B[15]. |
| 652 | 3,457,520 dozen. |
| 659–C | 489,289 kilograms. |
| 659–H | 3,430,764 kilograms. |
| 659–S | 755,743 kilograms. |
| 666pt. | 559,373 kilograms. |
| 845 | 2,556,613 dozen. |
| Group II | |
| 332, 359–O[16], 459pt.[17] and 659–O[18], as a group | 44,241,352 square meters equivalent. |
| Group III | |
| 201, 220, 224–V[19], 224–O[20], 225, 227, 369–O[21], 400, 414, 469pt.[22], 603, 604–O[23], 618–620 and 624–629, as a group. | 52,741,020 square meters equivalent. |
| Sublevels in Group III | |
| 224–V | 4,418,950 square meters. |

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[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[3] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[4] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[5] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[6] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[7] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[8] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[9] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[10] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

[11] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[12] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[13] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[14] Category 360–P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

[15] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[16] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070 (Category 359–V); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545 (Category 359pt.).

[17] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[18] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[19] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[20] Category 224–O: all HTS numbers except 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020 (Category 224–V).

[21] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.0020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[22] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[23] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–26009 Filed 10–14–03; 8:45 am]

**BILLING CODE 3510–DR–S**

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

October 7, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

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**EFFECTIVE DATE:** October 15, 2003.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 68566, published on November 12, 2002.

**Philip J. Martello,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 7, 2003.

Commissioner,

*Bureau of Customs and Border Protection, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 1, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on October 15, 2003, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Group II | |
| 237, 239pt. [2], 331pt. [3] 332–348, 351, 352, 359(1) [4], 359(2) [5], 359pt. [6], 433–438, 440–448, 459pt. [7], 631pt. [8] 633–648, 651, 652, 659(1) [9], 659(2) [10], 659pt. [11], and 443/444/643/644(1), as a group. | 933,163,998 square meters equivalent. |
| Sublevel in Group II | |
| 647 | 664,257 dozen. |
| 648 | 1,295,025 dozen of which not more than 1,280,235 dozen shall be in Category 648–W [12] |
| Group III–only 852 | 2,038,048 square meters equivalent. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[3] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[4] Category 359(1): only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[5] Category 359(2): only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[6] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060, 6505.90.2545 and HTS numbers in 359(1) and 359(2).

[7] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505, 6406.99.1560.

[8] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[9] Category 659(1): only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[10] Category 659(2): only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[11] Category 659pt.: all HTS numbers except 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510, 6406.99.1540 and HTS numbers in 659(1) and 659(2).

[12] Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 03–26010 Filed 10–14–03; 8:45 am]

**BILLING CODE 3510–DR–S**

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Korea

October 7, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

**EFFECTIVE DATE:** October 16, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, carryover, carryforward and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 63629, published on October 15, 2002.

**Philip J. Martello,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 7, 2003.

Commissioner,
*Bureau of Customs and Border Protection,*
*Washington, DC 20229*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 8, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on October 16, 2003, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit[1] |
|---|---|
| Group I | |
| 200–220, 224–V[2], 224–O[3], 225–227, 300–326, 360–363, 369pt.,[4], 400–414, 469pt.,[5], 603, 604, 611–620, 625-629, 666pt.[6], as a group | 268,944,094 square meters equivalent. |
| Sublevels within Group I | |
| 200 | 640,029 kilograms. |
| 201 | 3,429,125 kilograms. |
| 611 | 5,098,397 square meters. |
| 619/620 | 111,586,677 square meters. |
| 624 | 10,966,215 square meters. |
| 625/626/627/628/629 | 21,170,481 square meters. |
| Group II | |
| 237, 239pt.[7], 331pt.[8], 332–348, 351, 352, 359pt., 433–438, 440–448, 459–W[9], 459pt.[10], 631pt.[11], 633–648, 651, 652, 659–H[12], 659–S[13] and 659pt.[14], as a group | 583,849,978 square meters equivalent. |
| Sublevels within Group II | |
| 333/334/335 | 368,724 dozen of which not more than 188,460 dozen shall be in Category 335. |
| 336 | 70,780 dozen. |
| 338/339 | 1,638,771 dozen. |
| 340 | 931,065 dozen of which not more than 483,439 dozen shall be in Category 340–D[15]. |
| 341 | 253,172 dozen. |
| 342/642 | 299,108 dozen. |
| 345 | 160,678 dozen. |
| 347/348 | 718,630 dozen. |
| 351/651 | 314,220 dozen. |
| 352 | 244,517 dozen. |
| 433 | 15,519 dozen. |
| 434 | 7,959 dozen. |
| 435 | 41,586 dozen. |
| 436 | 17,605 dozen. |
| 438 | 69,286 dozen. |
| 442 | 59,492 dozen. |
| 444 | 63,639 numbers. |
| 445/446 | 58,220 dozen. |
| 447 | 99,328 dozen. |
| 448 | 41,853 dozen. |
| 459–W | 113,213 kilograms. |
| 631pt. | 83,909 dozen pairs. |
| 633/634/635 | 1,447,348 dozen of which not more than 164,125 dozen shall be in Category 633 and not more than 611,645 dozen shall be in Category 635. |
| 636 | 341,220 dozen. |
| 638/639 | 5,635,027 dozen. |
| 640–D[16] | 3,049,675 dozen. |
| 640–O[17] | 2,910,937 dozen. |
| 641 | 1,151,914 dozen of which not more than 44,676 dozen shall be in Category 641–Y[18]. |
| 643 | 876,267 numbers. |
| 644 | 1,342,946 numbers. |
| 645/646 | 4,169,617 dozen. |
| 647/648 | 1,426,540 dozen. |
| 659–H | 1,615,571 kilograms. |
| 659–S | 246,152 kilograms. |
| Levels not in a group | |
| 846 | 470,126 dozen. |

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[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[3] Category 224–O: all remaining HTS numbers in Category 224.

[4] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505.

[5] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[6] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

[7] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[8] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[9] Category 459–W: only HTS number 6505.90.4090.

[10] Category 459pt.: all HTS numbers except 6505.90.4090 (Category 459–W); 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505, 6406.99.1560.

[11] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[12] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[13] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[14] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[15] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030.

[16] Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[17] 640–O: only HTS numbers 6203.23.0080, 6203.29.2050, 6205.30.1000, 6205.30.2050, 6205.30.2060, 6205.30.2070, 6205.30.2080 and 6211.33.0040.

[18] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 03–26011 Filed 10–14–03; 8:45 am]

**BILLING CODE 3510–DR–S**

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# COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

## Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Macau

October 7, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

**EFFECTIVE DATE:** October 15, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover, swing, carryforward, and the recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 68571, published on December 12, 2002.

**Philip J. Martello,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 7, 2003.

Commissioner,

*Bureau of Customs and Border Protection, Washington, DC 20229*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 1, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on October 15, 2003, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Levels in Group I | |
| 225 | 7,483,177 square meters. |
| 317 | 4,981,603 square meters. |
| 333/334/335 | 557,463 dozen of which not more than 269,850 dozen shall be in Categories 333/335. |
| 336 | 119,535 dozen. |
| 338 | 700,336 dozen. |
| 339 | 2,854,953 dozen. |
| 340 | 703,565 dozen. |
| 341 | 427,978 dozen. |
| 342 | 191,467 dozen. |
| 345 | 119,863 dozen. |
| 347/348 | 1,600,390 dozen. |
| 351 | 149,772 dozen. |
| 359–C/659–C [2] | 821,164 kilograms. |
| 359–V [3] | 273,724 kilograms. |
| 625/626/627/628/629 | 7,010,464 square meters. |
| 633/634/635 | 1,222,729 dozen. |
| 638/639 | 3,619,089 dozen. |
| 640 | 270,724 dozen. |
| 641 | 325,294 dozen. |
| 642 | 265,356 dozen. |
| 645/646 | 634,606 dozen. |
| 647/648 | 1,212,384 dozen. |
| 659–S [4] | 273,724 kilograms. |
| Group II | |
| 400–414, 433–438, 440–448, 459pt. [5] and 469pt. [6], as a group | 1,897,902 square meters equivalent. |
| Sublevel in Group II | |
| 445/446 | 103,719 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[4] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, and 6211.12.1020.

[5] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[6] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 03–26012 Filed 10–14–03; 8:45 am]

**BILLING CODE 3510–DR–S**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

October 7, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

**EFFECTIVE DATE:** October 15, 2003.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 68577, published on November 12, 2002.

**Philip J. Martello,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 7, 2003.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 1, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on October 15, 2003, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Twelve-month limit[1] |
|---|---|
| Group I | |
| 200–220, 224, 225/317/326, 226, 227, 300/301, 313–315, 360–363, 369–S[2], 369–O[3], 400–414, 469pt[4], 603, 604, 611, 613/614/615/617, 618, 619/620, 624, 625/626/627/628/629 and 666pt[5], as a group. | 234,582,296 square meters equivalent. |
| Sublevels in Group I | |
| 619/620 | 17,349,995 square meters. |
| 625/626/627/628/629 | 22,576,442 square meters. |
| Sublevels in Group II | |
| 338/339 | 1,088,234 dozen. |
| 347/348 | 1,535,616 dozen of which not more than 1,309,866 dozen shall be in Categories 347–W/348–W[6]. |
| 638/639 | 6,599,363 dozen. |
| Within Group II Subgroup | |
| 333/334/335 | 362,029 dozen of which not more than 196,102 dozen shall be in Category 335. |
| 447/448 | 23,310 dozen. |
| 651 | 607,261 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505. 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302,51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[4] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[5] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

[6] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–26013 Filed 10–14–03; 8:45 am]

**BILLING CODE 3510–DR–S**

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the Socialist Republic of Vietnam

October 7, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection.

**EFFECTIVE DATE:** October 15, 2003.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 68 FR 26575, published on May 16, 2003.

**Philip J. Martello,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 7, 2003.

Commissioner,
*Bureau of Customs and Border Protection, Washington, DC 20229*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 12, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Vietnam and exported during the twelve-month period which began on May 1, 2003 and extends through December 31, 2003.

Effective on October 15, 2003, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Vietnam:

| Category | Restraint limit [1] |
|---|---|
| 359-S/659-S [2] | 368,356 kilograms. |
| 447 | 38,827 dozen. |

[1] The limits have not been adjusted to account for any imports exported after April 30, 2003.

[2] Category 359-S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 03–26014 Filed 10–14–03; 8:45 am]

**BILLING CODE 3510–DR–S**

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

## Designations under the Textile and Apparel Commercial Availability Provision of the African Growth and Opportunity Act (AGOA)

October 8, 2003.

**AGENCY:** The Committee for the Implementation of Textile Agreements (The Committee).

**ACTION:** Determination

**SUMMARY:** The Committee has determined that certain fabrics, enumerated below, for use in men's and boys' shirts, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA. The Committee hereby designates such apparel articles that are both cut and sewn or otherwise assembled in an eligible country from these fabrics as eligible for quota-free and duty-free treatment under the textile and apparel commercial availability provisions of the AGOA, and eligible under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 9819.11.24 to enter free of quotas and duties, provided all other fabrics are U.S. formed from yarns wholly formed in the U.S.

**EFFECTIVE DATE:** October 15, 2003.

**FOR FURTHER INFORMATION CONTACT:** Janet E. Heinzen, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 112(b)(5)(B) of the AGOA and Presidential Proclamation 7350 of October 2, 2000; Executive Order No. 13191 of January 17, 2001.

### BACKGROUND:

The commercial availability provision of the AGOA provides for duty-free and quota-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries from fabric or yarn that is not formed in the United States if it has been determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and certain procedural requirements have been met. In Presidential Proclamation 7350, the President proclaimed that this treatment would apply to such apparel articles from fabrics or yarns designated by the appropriate U.S. government authority in the Federal Register. In Executive Order 13191, the President authorized the Committee to determine whether particular yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA.

On June 2, 2003, the Committee received a request alleging that certain fabrics, listed below, for use in men's and boys' shirts, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA. It requested that apparel articles from such fabrics be eligible for preferential treatment under the AGOA. On June 6, 2003, the Committee requested public comment on the petition (68 FR 33922). On June 23, 2003, the Committee and the U.S. Trade Representative (USTR) sought the advice of the Industry Sector Advisory Committee for Wholesaling and Retailing and the Industry Sector Advisory Committee for Textiles and Apparel. On June 23, 2003, the Committee and USTR offered to hold consultations with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (collectively, the Congressional Committees). On July 14, 2003, the U.S. International Trade Commission provided advice on the petition. Based on the information and advice received and its understanding of the industry, the Committee determined that the fabrics set forth in the request cannot be supplied by the domestic industry in commercial quantities in a timely manner. On July 30, 2003, the Committee and USTR submitted a report to the Congressional Committees that set forth the action proposed, the reasons for such action, and advice obtained. A period of 60 calendar days since this report was submitted has expired, as required by the AGOA.

The Committee hereby designates as eligible for preferential treatment under subheading 9819.11.24 of the HTSUS, men's and boys' shirts, that are both cut and sewn or otherwise assembled in one or more eligible beneficiary sub-Saharan African countries, from the fabrics set forth below, not formed in the United States, provided that all other fabrics are wholly formed in the United States from yarns wholly formed in the United States, that are imported directly into the customs territory of the United States from an eligible beneficiary sub-Saharan African country.

An "eligible beneficiary sub-Saharan African country" means a country which the President has designated as a beneficiary sub-Saharan African country under section 506A of the Trade Act of 1974 (19 U.S.C. 2466a) and which has been the subject of a finding, published in the Federal Register, that the country has satisfied the requirements of section 113 of the AGOA (19 U.S.C. 3722) and resulting in the enumeration of such country in U.S. note 1 to subchapter XIX of chapter 98 of the HTSUS.

**Fabrics named in the request:**

(a) Fabrics of subheadings 5208.21, 5208.22, 5208.29, 5208.31, 5208.32, 5208.39, 5208.41, 5208.42, 5208.49, 5208.51, 5208.52 or 5208.59, of average yarn number exceeding 135 metric;

(b) Fabrics of subheadings 5513.11 or 5513.21, not of square construction, containing more than 70 warp ends and filling picks per square centimeter, of average yarn number exceeding 135 metric;

(c) Fabrics of subheadings 5210.21 or 5210.31, not of square construction, containing more than 70 warp ends and filling picks per square centimeter, of average yarn number exceeding 135 metric;

(d)Fabrics of subheadings 5208.22 or 5208.32, not of square construction, containing more than 75 warp ends and fillings picks per square centimeter, of average yarn number exceeding 135 metric;

(e) Fabrics of subheadings 5407.81, 5407.82 or 5407.83, weighing less than 170 grams per square meter, having a dobby weave created by a dobby attachment, of average yarn number exceeding 135 metric;

(f) Fabrics of subheadings 5208.42 or 5208.49, not of square construction, containing more than 85 warp ends and filling picks per square centimeter, of average yarn number exceeding 85 metric, or exceeding 135 metric if the fabric is of oxford construction (a modified basket weave with a large filling yarn having no twist woven under and over two single, twisted warp yarns);

(g) Fabrics of subheading 5208.51, of square construction, containing more than 75 warp ends and filling picks per square centimeter, made with single yarns, of average yarn number 95 or greater metric;

(h) Fabrics of subheading 5208.41, of square construction, with a gingham pattern, containing more than 85 warp ends and filling picks per square centimeter, made with single yarns, of average yarn number 135 or greater metric, and characterized by a check effect produced by the variation in color of the yarns in the warp and filling;

(i) Fabrics of subheading 5208.41, with the warp colored with vegetable dyes, and the filling yarns white or colored with vegetable dyes, of average yarn number greater than 65 metric.

**Philip J. Martello,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc.03–26015 Filed 10–14–03; 8:45 am]

BILLING CODE 3510–DR–S

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## CONSUMER PRODUCT SAFETY COMMISSION

### Chairman's Public Field Hearing Concerning All Terrain Vehicles

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of public field hearing.

**SUMMARY:** The Chairman of the Consumer Product Safety Commission ("CPSC or Commission") will conduct a public field hearing in Albuquerque, New Mexico on November 6, 2003 to obtain information and views from the public concerning all terrain vehicles ("ATVs").

The Chairman requests members of the public to participate in this hearing. The Chairman is particularly interested in participation from users of ATVs (both recreational and occupational); persons who have been involved in accidents or have been injured while riding ATVs; state and local government officials or organizations involved with ATVs; medical professionals and emergency service providers; and manufacturers, distributors and dealers of ATVs.

**DATES:** The hearing will be held on November 6, 2003, beginning at 9 a.m. Requests to make oral presentations, and 10 copies of the text of the presentation, must be received by the Office of the Secretary no later than November 3, 2003. Persons making presentations at the meeting should provide an additional 10 copies for dissemination on the date of the meeting. The Chairman reserves the right to limit the number of persons who make presentations and the duration of their presentations. To prevent similar presentations, groups will be directed to designate a spokesperson.

**ADDRESSES:** The meeting will be held at Smith Brasher Hall, 717 University Blvd., S.W. (On the corner of University Blvd. and Coal Avenue), Albuquerque, New Mexico. Requests to make oral presentations, and texts of oral presentations should be captioned "ATV Hearing" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Requests and texts of oral presentations may also be submitted by facsimile to (301) 504–0127 or by e-mail to *cpsc-os@cpsc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For information about the schedule for submission of requests to make oral presentations and submission of texts of oral presentations, contact Rockelle Hammond, office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–6833; fax (301) 504–0127; or e-mail *rhammond@cpsc.gov.*

**SUPPLEMENTARY INFORMATION:**

### A. Background

This meeting will be the third in a series of field hearings on ATVs. During the summer the Chairman conducted hearings in Alaska, and the Commission held a hearing in Morgantown, West Virginia. The question of ATV safety has been an issue of interest to the Commission since the 1980's when the Commission filed a lawsuit under section 12 of the Consumer Product Safety Act ("CPSA") to declare ATVs an imminently hazardous consumer product. 15 U.S.C. 2061(b)(1). The lawsuit was settled in 1988 by Consent Decrees between the Commission and ATV distributors that were effective for 10 years. The Commission continues to gather information about ATV-related injuries and deaths.

From 1997 to 2001 the estimated number of ATV-related injuries treated in hospital emergency rooms rose from 54,700 to 111,700 (a 104% increase). Deaths have also been increasing, and the Commission staff has estimated that there were 547 deaths associated with the use of ATVs in 2000. From 1997 to 2001 the estimated number of ATV drivers rose from 12 million to 16.3 million (a 36% increase), the estimated total number of driving hours rose from 1575 million to 2364 million (a 50% increase), and the estimated number of ATVs rose from 4 million to 5.6 million (a 40% increase). None of the increases in these measures of exposure to the risk of operating ATVs accounts for the increases in the number of injuries during the same time period.

The Commission has been petitioned by the Consumer Federation of America and other groups (Petition CP–02–4/HP–02–1) requesting that the Commission ban adult-size four wheel ATVs that are sold for the use of children under 16 years of age. The Commission requested written comments on the petition (67 FR 64353 and 67 FR 78776). This hearing will provide an additional opportunity for the public to express their views about this petition.

### B. The Public Hearing

The purpose of the public hearing is to provide a forum for oral presentations concerning ATVs. Specifically, the Chairman requests comments from interested stakeholders and citizens on the following areas of interest:

1. Information about local and state ATV use restrictions, regulations and licensing activities and their impact upon ATV safety.

2. Current ATV use patterns (recreational, industrial, agricultural, or other uses), injuries and safety issues related to those specific uses.

3. Information from ATV owners and users regarding ATV use, safety issues, accidents and injuries, minimum riding and purchasing age requirements, and future government action.

4. Current local, state and industry safety efforts and training programs.

5. Information from ATV manufacturers and dealers regarding the availability and use of safety training for ATV purchasers, and ATV consumer purchasing patterns (age, model type and size, experienced vs. inexperienced riders, etc.).

6. Whether factors such as the rider's age, ATV engine size, and/or the large used ATV sales market (or any other factors) have influenced the increase in injuries and deaths observed by the Commission staff during its recent ATV risk analysis study.

7. Whether there should be a performance standard for ATVs and what requirements related to safety should be included.

Participation in the hearing is open. See the **DATES** section of this notice for information on making requests to give oral presentations at the hearing.

Dated: October 8, 2003.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 03–26057 Filed 10–14–03; 8:45 am]

**BILLING CODE 6355–01–P**

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0011]**

## Federal Acquisition Regulation; Submission for OMB Review; Preaward Survey Forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408)

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0011).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Preaward Survey forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408). A request for public comments was published in the **Federal Register** at 68 FR 41321 on July 11, 2003. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before November 14, 2003.

**ADDRESSES:** Submit comments, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Craig Goral, Acquisition Policy Division, GSA (202) 501–3856.

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

To protect the Government's interest and to ensure timely delivery of items of the requisite quality, contracting officers, prior to award, must make an affirmative determination that the prospective contractor is responsible, *i.e.*, capable of performing the contract. Before making such a determination, the contracting officer must have in his possession or must obtain information sufficient to satisfy himself that the prospective contractor (i) has adequate financial resources, or the ability to obtain such resources, (ii) is able to comply with required delivery schedule, (iii) has a satisfactory record of performance, (iv) has a satisfactory record of integrity, and (v) is otherwise qualified and eligible to receive an award under appropriate laws and regulations. If such information is not in the contracting officer's possession, it is obtained through a preaward survey conducted by the contract administration office responsible for the plant and/or the geographic area in which the plant is located. The necessary data is collected by contract administration personnel from available data or through plant visits, phone calls, and correspondence and entered on Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408 in detail commensurate with the dollar value and complexity of the procurement. The information is used by Federal contracting officers to determine whether a prospective contractor is responsible.

### B. Annual Reporting Burden

*Respondents: 5,478.*

*Responses Per Respondent: 1.*

*Total Responses: 5,478.*

*Hours Per Response: 20.8.*

*Total Burden Hours: 113,942.*

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0011, Preaward Survey Forms, in all correspondence.

Dated: October 8, 2003.

**Ralph J. Destefano,**

*Acting Director, Acquisition Policy Division.*

[FR Doc. 03–26019 Filed 10–14–03; 8:45 am]

**BILLING CODE 6820–EP–P**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0136]**

### Federal Acquisition Regulation; Submission for OMB Review; Commercial Item Acquisitions

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for comments regarding an extension to an existing OMB clearance (9000–0136).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning the clauses and provisions required for use in commercial item acquisitions. A request for public comments was published in the **Federal Register** at 68 FR 52186 on September 2, 2003. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology and ways to enhance the quality, utility, and clarity of the information to be collected. This information will be collected electronically when the online representations and certifications application (ORCA) is activated.

**DATES:** Submit comments on or before November 14, 2003.

**FOR FURTHER INFORMATION CONTACT:** Jerry Zaffos, Acquisition Policy Division, GSA (202) 208–6091.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat, 1800 F Street, NW., Room 4035, Washington, DC 20405.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The Federal Acquisition Streamlining Act of 1994 included Title VIII, entitled Commercial Items. The title made numerous additions and revisions to both the civilian agency and Armed Service acquisition statutes to encourage and facilitate the acquisition of commercial items and services by Federal Government agencies.

To implement these changes, DoD, NASA, and GSA amended the Federal Acquisition Regulation (FAR) to include several streamlined and simplified clauses and provisions to be used in place of existing clauses and provisions. They were designed to simplify solicitations and contracts for commercial items.

Information is used by Federal agencies to facilitate the acquisition of commercial items and services.

**B. Annual Reporting Burden**

*Respondents: 37,500.*

*Responses Per Respondent: 34.*

*Total Responses: 1,275,000.*

*Hours Per Response: .312.*

*Total Burden Hours: 397,800.*

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0136 regarding Commercial Item Acquisitions in all correspondence.

Dated: October 8, 2003.

**Ralph J. Destefano,**

*Acting Director, Acquisition Policy Division.*

[FR Doc. 03–26020 Filed 10–14–03; 8:45 am]

BILLING CODE 6820–EP–P

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0133]**

### Federal Acquisition Regulations; Submission for OMB Review; Defense Production Act Amendments

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0133)

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Defense Production Act Amendments. A request for public comments was published in the **Federal Register** at 68 FR 52754 on September 5, 2003. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before November 14, 2003.

**ADDRESSES:** Submit comments, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Gerald Zaffos, Acquisition Policy Division, GSA (202) 208–6091.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

Title III of the Defense Production Act (DPA) of 1950 authorizes various forms of Government assistance to encourage expansion of production capacity and supply of industrial resources essential to national defense. The DPA Amendments of 1992 provide for the testing, qualification, and use of industrial resources manufactured or developed with assistance provided under Title III of the DPA.

FAR 34.1 and 52.234–1 require contractors, upon the direction of the contracting officer, to test Title III industrial resources for qualification, and provide the test results to the Defense Production Act Office. The FAR coverage also expresses Government policy to pay for such testing and provides definitions, procedures, and a contract clause to implement the policy. This information is used by the Defense Production Act Office, Title III Program, to determine whether the Title III industrial resource has been provided an impartial opportunity to qualify.

## B. Annual Reporting Burden

*Respondents: 6.*
*Responses Per Respondent: 3.*
*Total Annual Responses: 18.*
*Hours Per Response: 100.*
*Total Burden Hours: 1,800.*

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0133, in all correspondence.

Dated: October 8, 2003.

**Ralph J. Destefano,**

*Acting Director, Acquisition Policy Division.*

[FR Doc. 03–26021 Filed 10–14–03; 8:45 am]

**BILLING CODE 6820–EP–P**

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0047]**

## Federal Acquisition Regulation; Submission for OMB Review; Place of Performance

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0047).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning place of performance. A request for public comments was published at 68 FR 41322 on July 11, 2003. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected. When the On-Line Representation and Certifications Application (ORCA) becomes available, contractors will be able to complete the provision electronically; however, because the data being collected could change for a specific solicitation, contractor's will still be required to submit place of performance information on an exception basis; that is, whenever the place of performance for a specific solicitation is different from the place of performance shown in ORCA.

**DATES:** Submit comments on or before November 14, 2003.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405

**FOR FURTHER INFORMATION CONTACT:** Gerald Zaffos, Acquisition Policy Division, GSA (202) 208–6091.

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

The information relative to the place of performance and owner of plant or facility, if other than the prospective contractor, is a basic requirement when contracting for supplies or services (including construction). This information is instrumental in determining bidder responsibility, responsiveness, and price reasonableness. A prospective contractor must affirmatively demonstrate its responsibility. Hence, the Government must be apprised of this information prior to award. The contracting officer must know the place of performance and the owner of the plant or facility to (1) determine bidder responsibility; (2) determine price reasonableness; (3) conduct plant or source inspections; and (4) determine whether the prospective contractor is a manufacturer or a regular dealer. The information is used to determine the firm's eligibility for awards and to assure proper preparation of the contract.

### B. Annual Reporting Burden

*Respondents: 79,397.*
*Responses Per Respondent: 14.*
*Total Responses: 1,111,558.*
*Hours Per Response: .07.*
*Total Burden Hours: 77,810.*

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0047, Place of Performance, in all correspondence.

Dated: October 8, 2003.

**Ralph J. Destefano,**

*Acting Director, Acquisition Policy Division.*

[FR Doc. 03–26022 Filed 10–14–03; 8:45 am]

**BILLING CODE 6820–EP–P**

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0048]**

## Federal Acquisition Regulation; Submission for OMB Review; Authorized Negotiators

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0048).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning authorized negotiators. A request for public comments was published in the **Federal Register** at 68 FR 52574 on September 4, 2003. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before November 14, 2003.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Streets, NW., Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Julia Wise, Acquisition Policy Division, GSA (202) 208–1168.

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

Firms offering supplies or services to the Government under negotiated solicitations must provide the names, titles, and telephone numbers of authorized negotiators to assure that discussions are held with authorized individuals. The information collected is referred to before contract negotiations and it becomes part of the official contract file.

### B. Annual Reporting Burden

*Respondents: 65,660.*
*Responses Per Respondent: 8.*
*Total Responses: 525,280.*
*Hours Per Response: .017.*
*Total Burden Hours: 8,930.*

*Obtainting Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0048, Authorized Negotiators, in all correspondence.

Dated: October 8, 2003.

**Ralph J. Destefano,**

*Acting Director, Acquisition Policy Division.*

[FR Doc. 03–26023 Filed 10–14–03; 8:45 am]

**BILLING CODE 6820–EP–P**

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## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before November 14, 2003.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 8, 2003.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

### Office of Postsecondary Education

*Type of Review:* New.

*Title:* Credit Enhancement for Charter School Facilities Program Performance Report.

*Frequency:* Semi-Annually; annually; material events.

*Affected Public:* Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 16.
Burden Hours: 151.

*Abstract:* ED will use the information through this report to monitor and evaluate competitive grants. These grants are made to private, non-profits; governmental entities; and consortia of these organizations. These organizations will use the funds to leverage private capital to help charter schools construct, acquire, and renovate school facilities.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2327. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–26055 Filed 10–14–03; 8:45 am]

**BILLING CODE 4000–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. RP00–331–004, RP01–23–006 and RP03–176–002]**

### Algonquin Gas Transmission Company; Notice of Compliance Filing

October 7, 2003.

Take notice that on August 12, 2003, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the revised tariff sheets listed in Appendices A and B of the filing.

Algonquin states that the purpose of this filing is to comply with the Commission's July 23, 2003 "Order on Rehearing and Compliance Filings" issued in Algonquin's Order No. 637 proceeding in the captioned dockets.

Algonquin states that copies of its filing have been mailed to all affected customers and interested state commissions, as well as to all parties on the official service lists.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the (e-Filing) link.

*Protest Date:* October 14, 2003.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. 03–26060 Filed 10–14–03; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–301–087]**

### ANR Pipeline Company; Notice of Negotiated Rate Filing

October 7, 2003.

Take notice that on September 30, 2003, ANR Pipeline Company (ANR), tendered for filing and approval a new service agreement between ANR and George B. Franklin & Son, Inc. and a gathering agreement. ANR requests that the Commission accept and approve the subject negotiated rate agreements to be effective October 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with ¶ 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Comment Date:* October 14, 2003.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. 03–26071 Filed 10–15–03; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP95–408–053]**

### Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 3, 2003.

Take notice that on September 30, 2003, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised the following revised tariff sheets Second Revised Volume No. 1, the following revised tariff sheets bearing a proposed effective date of November 1, 2003:

Sixty-fifth Revised Sheet No. 25
Sixty-fifth Revised Sheet No. 26
Sixty-fifth Revised Sheet No. 27
Twenty-ninth Revised Sheet No. 30A

Columbia states that this filing is being submitted pursuant to Stipulation I, Article I, Section E, True-up Mechanism, of the Settlement (Settlement) in Docket No. RP95–408, *et al.* Pursuant to the true-up mechanism, Columbia is required to true-up its collections from the Settlement Component for twelve-month periods commencing November 1, 1996. In accordance with the Settlement, the true-up component of the Settlement Component is to be removed effective November 1 of each year. The instant filing is being made to remove such true-up component from the currently effective Settlement Component effective November 1, 2003.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing"link.

*Comment Date:* October 14, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00035 Filed 10–14–03; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. P–2586–000]**

### Conecuh River Project; Notice of Meeting To Discuss Compliance With Section 106 of the National Preservation Act

October 7, 2003.

a. *Date and Time of Meeting:* October 21, 2003, 10 a.m.

b. *Place:* Alabama Historical Commission, 468 South Perry Street, Montgomery, AL.

c. *Contacts: AHC:* Amanda L. McBride (SHPO) at 334–343–3184.

FERC: Pennie Lewis-Partee at (202) 502–6018; e-mail *pennie.lewispartee@ferc.gov.*

d. *Purpose of the Meeting:* Representatives of the FERC, the AHC, and the licensee for the Conecuh River Project (Project No. 2586) will meet to discuss compliance with Section 106, National Historic Preservation Act, and the opportunities for executing a Programmatic Agreement for the proposed relicensing of the Conecuh Project.

e. *Proposed Agenda:*

Introduction and Recognition of Participants

Explanation of the Project

Delineation of the Area of Potential Effects

Identification of Historic Properties

Assessment of Effects

Taking Unavoidable Effects into Account

Follow-up Actions

f. All local, state, and federal agencies, Indian Tribes, and interested parties, are hereby invited to attend this meeting as participants.

g. This meeting is posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. 03–26059 Filed 10–14–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–19–000]**

### El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 7, 2003.

Take notice that on October 2, 2003, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to become effective November 5, 2003:

Seventh Revised Sheet No. 214
Original Sheet No. 214A
Seventh Revised Sheet No. 215

El Paso states that these tariff sheets, being filed as a result of the technical conference held September 24, 2003 at Docket No. RP00–336–014, are designed to provide additional scheduling flexibility for El Paso's shippers, and are filed to propose a tiered scheduling priority for firm service under Rate Schedule FT–1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with ¶ 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" (FERRIS). Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Comment Date:* October 14, 2003.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. 03–26068 Filed 10–14–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP98–18–008]**

### Iroquois Gas Transmission System, L.P.; Notice of Negotiated Rates

October 7, 2003.

Take notice that on October 1, 2003, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 8, to become effective November 1, 2003.

Iroquois states that the purpose of this filing is to submit gas transportation contract No. R–1365–03 with Amerada Hess Corporation (Amerada) dated June 17, 2003 because this agreement does not conform to the form of service agreement for firm reserved service contained in Iroquois' tariff. Iroquois states that it is adding this Amerada agreement to a new list of non-conforming service agreements as identified on Sheet No. 1 and Sheet No. 8 in its tariff.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with ¶ 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Comment Date:* October 14, 2003.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. 03–26070 Filed 10–14–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–13–000]**

### Maritimes & Northeast Pipeline, L.L.C.; Notice of Tariff Filing

October 7, 2003.

Take notice that on October 1, 2003, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets reflecting an effective date of November 1, 2003: Second Revised Sheet No. 4; First Revised Sheet No. 5.

Maritimes states that it is filing these tariff sheets to amend its Preliminary Statement and System Map to provide an updated description of the Maritimes' system once its Phase III mainline extension facilities are placed into service.

Maritimes states that copies of its filing have been mailed to all affected customers of Maritimes and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Comment Date:* October 14, 2003.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. 03–26063 Filed 10–14–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP04–14–000]

### Maritimes & Northeast Pipeline L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

October 7, 2003.

Take notice that on October 1, 2003, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fifth Revised Sheet No. 11, to become effective on November 1, 2003.

Maritimes states that it is making this Fuel Retainage Quantity (FRQ) filing, pursuant to section 20 of the General Terms and Conditions (GT&C) of its FERC Gas Tariff. Maritimes is proposing an increase of 0.30% to the four seasonal periods, the projected Fuel Retainage Percentage for each of the four periods will be 1.20%.

Maritimes also states that it is submitting the calculation of the (FRQ) Deferred Account amount, pursuant to section 20 of the GT&C, which provides that Maritimes will calculate surcharges or refunds designed to amortize the net monetary value of the balance in the FRQ Deferred Account at the end of the previous accumulation period. Maritimes states that for the period August 1, 2002, through July 31, 2003, the FRQ Deferred Account resulted in a net debit balance of approximately $1,607,858.38, inclusive of carrying charges, that will be surcharged to Maritimes' customers.

Maritimes states that copies of this filing were mailed to all affected customers of Maritimes and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Comment Date:* October 14, 2003.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. 03–26064 Filed 10–14–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP04–15–000]

### PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 7, 2003.

Take notice that on October 1, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Second Revised Sheet No. 11, with an effective date of November 1, 2003.

GTN states that this sheet is being filed to update the list of shippers to which GTN's Competitive Equalization Surcharge applies.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with ¶ 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Comment Date:* October 14, 2003.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. 03–26065 Filed 10–14–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–16–000]**

### PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Change in FERC Gas Tariff

October 7, 2003.

Take notice that on October 1, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Fourth Revised Sheet No. 4, with an effective date of November 1, 2003.

GTN states that it is revising this tariff sheet to modify the rate for service under Rate Schedule FTS–1(E–2)(WWP) in accordance with the negotiated rate formula for that service as specified in GTN's tariff.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary." Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Comment Date:* October 14, 2003.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. 03–26066 Filed 10–14–03; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP01–416–002]**

### Sierra Production Company; Notice of Application

October 7, 2003.

Take notice that on September 29, 2003, Sierra Production Company, (Sierra), filed an application seeking to amend its Presidential Permit issued by the Commission on December 28, 2001, in Docket No. CP01–416–000, and amended in Docket No. CP01–416–001 on December 3, 2002, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "eLibrary (formerly FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

In Sierra's December 3 Presidential Permit, the Commission authorized it to increase its importation service from 5,000 Mcf to 12,000 Mcf per day of natural gas from Southern Alberta, Canada to Montana. Sierra states that subsequent to Commission issuance of its Presidential Permit, additional volumes over and above the amended amount have been proffered by four producers in the immediate area of Sierra's well in Alberta, Canada. Further, Sierra has increased the pipeline size immediately past the permitted facilities to 6-inch pipe which allows Sierra to transport a current capacity of 24,000 Mcf per day which can be accommodated through the permitted facilities. Accordingly, Sierra requests that the Commission amend the Presidential Permit to increase the imported natural gas volume from 12,000 Mcf per day to 24,000 Mcf per day.

Any questions regarding the application should be directed to Sam Baldridge, Petroleum Landman, Business Development, Sierra Production Company, 707 Iowa Avenue, Whitefish, Montana 59937, at (406) 862–0753.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and instructions on the Commission's Web site under the "e-Filing" link.

*Comment Date:* October 28, 2003.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. 03–26058 Filed 10–14–03; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### [Docket No. RP03–401–002]

### Southern LNG Inc.; Notice of Compliance Filing

October 7, 2003.

Take notice that on October 1, 2003, Southern LNG (Southern LNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet in compliance with the Commission's order on September 16, 2003: 2nd Substitute 2nd Revised Sheet No. 99.

On March 12, 2003, the Commission issued Order No. 587–R in Docket No. RM96–1–024, which revised the Commission's regulations to incorporate changed standards of the North American Energy Standards Board. Southern LNG filed sheets on July 14, 2003 to comply with Order No. 587–R, and the September 16, 2003 order conditionally accepted the sheets. Southern LNG states that the proposed sheet complies with the condition to the September 16, 2003 order. The sheet has an effective date of July 1, 2003.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

*Protest Date:* October 14, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–26061 Filed 10–14–03; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### [Docket No. RP04–20–000]

### Terasen Sumas Inc.; Notice of Rate Filing

October 7, 2003.

Take notice that on October 2, 2003, Terasen Sumas Inc. tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, Eleventh Revised Sheet No. 4, with a proposed effective date of October 1, 2003.

Terasen Sumas Inc. states that the tariff sheet reflects the new ACA unit surcharge rate of $0.0021 Dth. As the new ACA rate is a decrease, Terasen Sumas Inc. has sought a waiver to allow the collection of the new rate effective October 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with ¶ 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Comment Date:* October 14, 2003.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. 03–26069 Filed 10–14–03; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### [Docket No. RP03–435–002]

### Texas Gas Transmission, LLC; Notice of Compliance Filing

October 7, 2003.

Take notice that on October 3, 2003, Texas Gas Transmission, LLC (Texas Gas), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets as indicated on Appendix A to the filing, to be effective July 1, 2003.

Texas Gas states that this is an administrative filing. Texas Gas also states that the purpose of the filing is to submit tariff sheets already accepted by the Commission for incorporation into Texas Gas FERC Gas Tariff, Second Revised Volume No. 1.

Texas Gas states that copies of the tariff sheets are being mailed to all parties on the official service list in this docket, to Texas Gas' official service list, to Texas Gas' jurisdictional customers, and to interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

*Protest Date:* October 15, 2003.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. 03–26062 Filed 10–14–03; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP04–17–000]**

## Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

October 7, 2003.

Take notice that on October 1, 2003 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 Nineteenth Revised Sheet No. 29, with an effective date of November 1, 2003.

Transco states that the filing is submitted pursuant to Section 38 of the General Terms and Conditions of Transco's FERC Gas Tariff which provides that Transco will file a redetermination of its fuel retention percentage applicable to Rate Schedules LG–A, LNG and LG–S to be effective each November 1. Transco further states the derivation of the revised fuel retention percentage included therein is based on Transco's actual gas required for operations (GRO) for the period September 2000 through August 2003 plus the balance accumulated in the Deferred GRO Account at August 31, 2003. Trasnco indicates that Appendix A to the filing, contains work papers supporting the derivation of the revised fuel retention percentages.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Comment Date:* October 14, 2003.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. 03–26067 Filed 10–14–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER03–1375–000]**

## Waymart Wind Farm L.P.; Notice of Filing

September 26, 2003.

Take notice that on September 23, 2003, Waymart Wind Farm L.P. tendered for filing an application for authorization to sell energy and capacity at market-based rates pursuant to section 205 of the Federal Power Act.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

*Comment Date:* October 14, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00036 Filed 10–14–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EC03–139–000, et al.]**

## Enron Power Marketing, Inc., et al.; Electric Rate and Corporate Filings

October 2, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

### 1. Enron Power Marketing, Inc. and Peaker LLC

[Docket No. EC03–139–000]

Take notice that on September 26, 2003, Enron Power Marketing, Inc. (EPMI) and Peaker LLC (Peaker) (collectively Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act seeking authorization for the disposition of jurisdictional assets relating to the transfer from EPMI to Peaker of its interests in two long-term electric capacity purchase and sale contracts between, respectively: (1) EPMI and Spokane Energy, LLC; and (2) EPMI and Avista Corp. The Applicants requested that the Commission grant the authorizations to allow the Transfer to take place by November 15, 2003. Applicants have request confidential treatment of Exhibits G and I of the application.

*Comment Date:* October 17, 2003.

### 2. High Desert Power Project, LLC

[Docket No. EG03–109–000]

On September 26, 2003 High Desert Power Project, LLC (High Desert) filed with the Federal Energy Regulatory Commission an application for redetermination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

*Comment Date:* October 23, 2003.

### 3. High Desert Power Trust

[Docket No. EG03–110–000]

On September 26, 2003 High Desert Power Trust (Trust), filed with the Federal Energy Regulatory Commission an application for redetermination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

*Comment Date:* October 23, 2003.

**4. Tractebel Energy Marketing, Inc.; Trigen-Syracuse Energy Corporation**

[Docket Nos. ER94–142–027 and ER00–2603–001]

Take notice that on September 29, 2003, Tractebel Energy Marketing, Inc. and Trigen-Syracuse Energy Corporation submitted their triennial market power analyses pursuant to Commission Orders in Docket No. ER94–142–000 dated January 7, 1994 and Docket No. ER00–2603–000 dated June 22, 2003.

*Comment Date:* October 20, 2003.

**5. The Cincinnati Gas & Electric Company; Covert Generating Company, LLC**

[Docket Nos. ER96–2504–006 and ER01–520–005]

Take notice that on September 15, 2003, The Cincinnati Gas & Electric Company (CG&E) and Covert Generating Company, LLC (Covert), submitted a filing of a non-material change in the characteristics that the Commission relied upon in granting CG&E and Covert market-based rate authorization under section 205 of the Federal Power Act.

*Comment Date:* October 14, 2003.

**6. NewCorp Resources Electric Cooperative, Inc.**

[Docket No. ER03–1116–001]

Take notice that on September 29, 2003, NewCorp Resources Electric Cooperative, Inc. (NewCorp) pursuant to section 205 of the Federal Power Act and Part 35 of the Commission's regulations, submitted a compliance filing pursuant to the Commission's Letter order issued August 29, 2003 in Docket No. ER03–116–000.

*Comment Date:* October 20, 2003.

**7. Palama, LLC**

[Docket No. ER03–1316–000]

Take notice that on September 9, 2003, Palama, LLC (Palama) petitioned the Commission for acceptance of Palama FERC Rate Schedule No.1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. Palama states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer.

*Comment Date:* October 14, 2003.

**8. ECONnergy PA, Inc.**

[Docket No. ER03–1336–000]

Take notice that on September 15, 2003, ECONnergy PA, Inc. submitted for filing a Notice of Cancellation of their Market-Based Rate Authority. ECONnergy PA, Inc. requests that the cancellation be made effective immediately.

*Comment Date:* October 16, 2003.

**9. Troy Energy, LLC**

[Docket No. ER03–1396–000]

Take notice that on September 29, 2003, Troy Energy, LLC (Troy) tendered for filing a rate schedule pursuant to which Troy will provide Reactive Power and Voltage Control from Generation Sources Service to American Transmission Systems, Inc. Troy requests an effective date of October 1, 2003.

Troy states that a copy of the filing was served upon the American Transmission Systems, Inc.

*Comment Date:* October 20, 2003.

**10. Midwest Independent Transmission System Operator, Inc.**

[Docket No. ER03–1397–000]

Take notice that on September 29, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and § 35.12 of the Commission's regulations, submitted for filing an Interconnection and Operating Agreement among Coggon Municipal Light Plant Board, Midwest ISO, and Interstate Power and Light Company, a wholly-owned subsidiary of Alliant Energy.

Midwest ISO states that a copy of this filing was served on Coggon Municipal Light Plant Board and Interstate Power and Light Company.

*Comment Date:* October 20, 2003.

**11. South Carolina Electric & Gas Company**

[Docket No. ER03–1398–000]

Take notice that on September 29, 2003, South Carolina Electric & Gas Company (SCE&G) filed with the Federal Energy Regulatory Commission several documents constituting the agreement between SCE&G and Columbia Energy LLC (Columbia Energy) regarding the interconnection of the Columbia Energy facilities located at Columbia, SC, with the SCE&G transmission system, including an executed Operating Agreement for Interconnected Generation Between Columbia Energy, LLC (Columbia Energy) and SCE&G and an executed Construction & Maintenance Agreement for Interconnection Facilities Between Columbia Energy and SCE&G. SCE&G has requested an effective date of November 15, 2003.

*Comment Date:* October 20, 2003.

**12. MidAmerican Energy Company**

[Docket No. ER03–1399–000]

Take notice that on September 29, 2003, MidAmerican Energy Company (MidAmerican), filed with the Commission an amended Interconnection Agreement.

MidAmerican requests an effective date of January 10, 2003 for the agreement and seeks a waiver of the Commission's 60-day notice requirement. MidAmerican states it has served a copy of the filing on the Iowa Utilities Board, the Illinois Commerce Commission, the South Dakota Public Utilities Commission and Interstate Power and Light Company.

*Comment Date:* October 20, 2003.

**13. Duke Energy Corporation**

[Docket No. ER03–1400–000]

Take notice that on September 29, 2003, Duke Energy Corporation, on behalf of Duke Electric Transmission, (collectively, Duke) tendered for filing a revised Service Agreement for Network Integration Transmission Service (NITSA) between Duke and New Horizon Electric Membership Cooperative, Inc. Duke seeks an effective date for the revised NITSA of September 1, 2003.

*Comment Date:* October 20, 2003.

**14. Sempra Energy Trading Corp.**

[Docket No. ER03–1413–000]

Take notice that on September 26, 2003, Sempra Energy Trading Corp (SET) filed a notice of change in status, election to file triennial updates, and a revised rate schedule.

*Comment Date:* October 17, 2003.

**15. Midwest Independent Transmission System Operator, Inc.**

[Docket No. ES03–62–000]

Take notice that on September 30, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to make no more than $105 million of short-term borrowings under a line of credit agreement.

The Midwest ISO also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

*Comment Date:* October 16, 2003.

**16. Archer-Daniels-Midland Company**

[Docket No. QF89–234–001]

Take notice that on September 17, 2003, Archer-Daniels-Midland Company (Archer-Daniels) filed with the Commission an application for recertification of a facility as a qualifying cogeneration facility pursuant to section 292.207(b) of the Commission's regulations. No determination has been made that the submittal constitute a complete filing.

Archer-Daniels states that the facility has a nameplate rating of approximately 260 MW and is located in Cedar Rapids, Iowa. Archer-Daniels also states the facility is interconnected with IES Utilities, Inc (IES). Archer-Daniels further states it may sell electric energy to IES or other third-parties. IES provides backup power and maintenance power and that IES may provide supplementary power and interruptible power to the facility.

*Comment Date:* October 17, 2003.

**Standard Paragraph**

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00042 Filed 10–14–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. AC04–1–000, et al.]**

## PJM Interconnection L.L.C., et al.; Electric Rate and Corporate Filings

October 7, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

### 1. PJM Interconnection, L.L.C.

[Docket No. AC04–1–000]

Take notice that on October 1, 2003, PJM Interconnection, L.L.C. (PJM) tendered for filing with the Federal Energy Regulatory Commission (Commission) a letter addressed to John M. Delaware, Chief Accountant of the Commission, requesting authorization to defer depreciation of certain capital costs, required to integrate additional transmission owners into its markets and systems, until January 1, 2005. PJM then proposes to amortize the deferred amounts, plus finance charges, over 36 months, beginning on January 1, 2005. Action on this accounting request will affect the determination of amounts to be billed under PJM's formula tariff.

*Comment Date:* October 21, 2003.

### 2. Georgia Natural Gas Company

[Docket No. ER03–1403–000]

Take notice that on September 30, 2003, Georgia Natural Gas Company (f/k/a Atlanta Gas Light Services, Inc.) (f/k/a The Energy Spring, Inc.) pursuant to Section 35.15 of the Commission's regulations, 18 CFR 35.15, submitted a Notice of Cancellation to terminate its Electric Rate Schedule FERC No. 1. Georgia Natural Gas Company requests an effective date of October 31, 2003.

*Comment Date:* October 21, 2003.

### 3. PPM Colorado Wind Ventures, Inc.

[Docket No. EG04–2–000]

Take notice that on October 1, 2003, PPM Colorado Wind Ventures, Inc. (PPM Colorado) tendered for filing an Application for Determination of Exempt Wholesale Generator Status (Application) pursuant to Section 32 of the Public Utility Holding Company Act of 1935.

PPM Colorado states that a copy of the Application has been sent to the Public Utilities Commission of Colorado, the California Public Utilities Commission, the Oregon Public Utility Commission, the Washington Utilities and Transportation Commission, the Utah Public Service Commission, the Idaho Public Utilities Commission, and the Wyoming Public Service Commission, as "affected state commissions" under 18 CFR 365.2(b)(3), and the Securities and Exchange Commission.

*Comment Date:* October 28, 2003.

### 4. Southeastern Power Administration

[Docket No. EF03–3011–000]

Take notice that on September 30, 2003, the Deputy Secretary of Energy confirmed and approved on an interim basis, effective on October 1, 2003, Rate Schedules SOCO–1–B, SOCO–2–B, SOCO–3–B, SOCO–4–B, ALA–1–K, MISS–1–K, Duke–1–B, Duke–2–B, Duke–3–B, Duke–4–B, Santee–1–B, Santee–2–B, Santee–3–B, Santee–4–B, SCE&G–1–B, SCE&G–2–B, SCE&G–3–B, SCE&G–4–B, Regulation-1, Replacement-1, Pump-1–A, and Pump-2 for power from Southeastern Power Administration's (Southeastern) Georgia-Alabama-South Carolina System. The rate schedules have been submitted to the Federal Energy Regulatory Commission for confirmation and approval on a final basis, effective October 1, 2003, and ending September 30, 2007.

The Deputy Secretary of Energy states that the Commission, by order issued July 15, 2003, in Docket No. EF02–3011–000, confirmed and approved Rate Schedules SOCO–1–A, SOCO–2–A, SOCO–3–A, SOCO–4–A, ALA–1–J MISS–1–J, Duke-1–A, Duke-2–A, Duke-3–A, Duke-4–A, Santee-1–A, Santee-2–A, Santee-3–A, Santee-4–A, SCE&G–1–A, SCE&G–2–A, SCE&G–3–A, SCE&G–4–A, and Pump-1–A, Pump-2, and Regulation-1 and Replacement-1. Southeastern proposes in the instant filing to replace these rate schedules.

*Comment Date:* October 28, 2003.

### 5. Southeastern Power Administration

[Docket No. EF03–3021–000]

Take notice that on September 30, 2003, the Deputy Secretary of the Department of Energy confirmed and approved on an interim basis, effective on October 1, 2003, Rate Schedules CBR–1–E, CSI–1–E, CEK–1–E, CM–1–E, CC–1–F, CK–1–E, CTV–1–E, and SJ–1–B for power from Southeastern Power Administration's (Southeastern) Cumberland System of Projects. The rate schedules have been submitted to the Federal Energy Regulatory Commission for confirmation and approval on a final basis effective October 1, 2003 and ending September 30, 2008.

The Deputy Secretary states that the Commission, by order issued March 17, 2000, in Docket No. EF99–3021–000, confirmed and approved Rate Schedules CBR–1–D, CSI–1–D, CK–1–D, CC–1–E, CM–1–D, CEK–1–D, CTV–1–D, and SJ–1–A. Southeastern proposes in the instant filing to replace these rate schedules.

*Comment Date:* October 28, 2003.

**Standard Paragraph**

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–26035 Filed 10–14–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER95–1528–007, et al.]**

## Wisconsin Public Service Corporation, et al.; Electric Rate and Corporate Filings

October 1, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

### 1. Wisconsin Public Service Corporation; WPS Energy Services, Inc.; WPS Power Development, Inc. (and its subsidiaries)

[Docket No. ER95–1528–007 and ER96–1088–032]

Take notice that on September 26, 2003 Wisconsin Public Service Corporation, WPS Energy Services, Inc., and WPS Power Development, Inc. (PDI) submitted a notice of change in status to reflect the September 19, 2003 acquisition by PDI Stoneman, Inc., a PDI subsidiary, of a 33⅓% ownership interest in Mid-American Power LLC (Mid American), owner of a 54 MW plant in the Dairyland Power Cooperative control area. This change in status does not affect the market analysis under consideration in the above-captioned proceeding.

WPS states that copies were served on the Public Service Commission of Wisconsin and the participants in the above-captioned dockets.

*Comment Date:* October 17, 2003.

### 2. Northern Indiana Public Service Company

[Docket No. ER96–399–005]

Take notice that on September 26, 2003, Northern Indiana Public Service Company filed a refund report in compliance with the order issued by the Commission on December 30, 2002, 101 FERC ¶ 61,394.

Northern Indiana Public Service Company states that copies of this filing have been sent all parties on the Commission's official service list.

*Comment Date:* October 17, 2003.

### 3. Allegheny Power

[Docket No. ER03–309–006]

Take notice that on September 29, 2003, Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company, doing business as Allegheny Power (Allegheny Power), tendered for filing with the Federal Energy Regulatory Commission an amendment to their August 28, 2003 compliance filing in PJM Interconnection, L.L.C., *et al.*, 104 FERC ¶ 61,154. Allegheny Power requests that the Commission accept the amendment to the Interconnection and Operating Agreement to become effective December 20, 2002.

*Comment Date:* October 20, 2003.

### 4. Westar Energy, Inc.

[Docket No. ER03–939–002]

Take notice that on September 29, 2003, Westar Energy, Inc. (Westar) submitted for filing a revised Electric Interconnection Contract modified to conform Service Schedule D to the unbundling requirements of Order No. 888 and reflect the actual effective date, based on the closing of the transaction between Westar and Midwest Energy, Inc., in Docket No. EC03–23–000. This filing is in compliance with the Commission's August 29, 2003 Order in Docket No. ER03–939–000.

Westar states that a copy of this filing was served upon the Kansas Corporation Commission and Aquila.

*Comment Date:* October 20, 2003.

### 5. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–1018–001]

Take notice that on September 29, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing proposed revisions to Schedule 10—ISO Cost Recovery Adder of its Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No.1, in compliance with the Commission August 29, 2003 Order Accepting, In Part, and Rejecting, In Part, Proposed Tariff Revisions, 104 FERC ¶ 61,231. Midwest ISO has requested the original effective date of September 1, 2003.

Midwest ISO has also requested waiver of the service requirements set forth in 18 CFR 385.2010. The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. In addition, Midwest ISO states the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. Midwest ISO states that they will provide hard copies to any interested parties upon request.

*Comment Date:* October 20, 2003.

### 6. Portland General Electric Company

[Docket No. ERO3–1027–001]

Take notice that on September 26, 2003, Portland General Electric Company (PGE) filed a refund report as Ordered by the Commission in Docket No. ER03–1027–000.

PGE states that copies of the filing were served upon the Oregon Public Utility Commission.

*Comment Date:* October 17, 2003.

### 7. Western Systems Power Pool

[Docket No. ER03–1149–001]

Take notice that on September 16, 2003, Western Systems, Power Pool

(WSPP) submitted a revised cover-page of the WSPP Agreement and a revised table of contents. WPSS states that they inadvertently omitted these changes from the filing WSPP Agreement by Commission Order dated September 11, 2003.

*Comment Date:* October 10, 2003.

### 8. Westar Energy, Inc.

[Docket No. ER03–1183–002]

Take notice that on September 26, 2003, Westar Energy, Inc. (Westar) submitted for filing corrections to certain revised sheets of Second Revised Rate Schedule FERC No. 264, Electric Transmission and Service Contract between Westar Energy, Inc. and Kansas Electric Power Cooperative, Inc. (KEPCo). Westar states that these corrections include suggestions of FERC Staff to make certain definitions more clear. Specifically, Westar notes that definition 1.19 on First Revised Sheet No. 7 has been changed to more clearly define the Westar Zone. Westar further states other changes have been made to Fourth Revised Sheet No. 40 to more clearly define points of interconnection.

Westar state that copies of this filing was served upon the Kansas Corporation Commission and KEPCo.

*Comment Date:* October 17, 2003.

### 9. EnerConnect, Inc.

[Docket No. ER03–1343–000]

Take notice that on September 15, 2003, EnerConnect, Inc. submitted for filing a Notice of Cancellation of its Market-Base Rate Authority (MBRA) in Docket No. ER96–1424–000. EnerConnect, Inc. states that it has never used the MBRA in any transactions or conducted business that would required an MBRA. EnerConnect Inc is requesting an effective date of September 9, 2003.

*Comment Date:* October 10, 2003.

### 10. Tampa Electric Company

[Docket No. ER03–1392–000]

Take notice that on September 26, 2003, Tampa Electric Company (Tampa Electric) tendered for filing notices of cancellation of the service agreements under its open access transmission tariff with the following customers: Dynegy Power Marketing, Inc.; Reliant Energy Services, Inc.; and SCANA Energy Marketing, Inc. Tampa Electric proposes that the cancellations be made effective on October 1, 2003.

Tampa Electric states that copies of the filing have been served on the affected customers and the Florida Public Service Commission.

*Comment Date:* October 17, 2003.

### 11. Aquila, Inc.

[Docket No. ER03–1393–000]

Take notice that on September 26, 2003, Aquila, Inc. (Aquila), filed with the Commission, pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d, and part 35 of the Commission's regulations, a Temporary Interconnection Agreement between Aquila, Inc. d/b/a Aquila Networks—WPK and the Glen Elder City Government dated as of September 2, 2003. Aquila states that the Interconnection Agreement is filed as Service Agreement No. 106 to Aquila's FERC Electric Tariff, Third Revised Volume No. 26. Aquila requests that the Agreement be made effective September 2, 2003.

*Comment Date:* October 17, 2003.

### 12. Hartford Steam Company

[Docket ER03–1394–000]

Take notice that on September 26, 2003, Hartford Steam Company (Hartford Steam) submitted for filing pursuant to Schedule 205 of the Federal Power Act and part 35 of the Commission's regulations, the Energy Purchase Agreement EPA, by and between Hartford Steam and The Connecticut Light and Power Company (CL&P). Under the terms of the EPA, Hartford Steam will sell to CL&P for resale excess energy produced by its 7.5 MW cogeneration facility. Hartford Steam requests a waiver of the Commission's notice requirements to permit the EPA to become effective as of September 1, 2000.

*Comment Date:* October 17, 2003.

### 13. New England Power Company

[Docket No. ER03–1395–000]

Take notice that on September 26, 2003, New England Power Company (NEP) submitted for filing: (i) Second Revised Service Agreement No. 6 between NEP and its affiliate, Granite State Electric Company (Granite State), under NEP's FERC Electric Tariff, Original Volume No. 1; and (ii) Second Revised Service Agreement No. 109 between NEP and its affiliate, Massachusetts Electric Company (MECO), under NEP's FERC Electric Tariff, Second Revised Volume No. 9.

NEP states that copies of this filing have been served on Granite State, MECO and regulators in the states of Massachusetts and New Hampshire.

*Comment Date:* October 17, 2003.

### Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

**Magalie R. Salas,**
*Secretary.*

[FR Doc. E3–00041 Filed 10–14–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket Nos. RM02–1–000 and RM02–1–001]

## Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell: Standardization of Generator Interconnection Agreements and Procedures; Order Denying Stay and Granting Extension

Issued October 7, 2003.

1. On July 24, 2003, the Commission issued Order No. 2003, Standardization of Generator Interconnection Agreements and Procedures.[1] The final rule will become effective on October 20, 2003. Several parties have requested that the Commission stay the effective date of this rule pending rehearing and judicial review, while other parties have requested that the Commission extend the effective date of the rule or extend the date on which compliance filings

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[1] Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 FR 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003) ("Final Rule").

are due. This order denies the requests for stay of Order No. 2003, but grants the requests to extend the effective date of the rule and the date on which compliance filings are due.

## I. Background

2. On August 25, 2003, the Commission received requests for stay of all or part of Order No. 2003 from the Alabama Public Service Commission (Alabama PSC); Mississippi Public Service Commission (Mississippi PSC); Southern Company Services, Inc. (Southern); and the National Rural Electric Cooperative Association in a joint filing with the American Public Power Association (NRECA–APPA).[2]

3. On September 26, 2003, the Commission granted the requests of the Midwest Independent Transmission System Operator, Inc., the New York Independent System Operator, Inc., PJM Interconnection, L.L.C., the New England Power Pool Participants Committee and ISO New England, Inc., the New England Transmission Owners (NETO), the California Independent System Operator Corporation and its Jurisdictional Participating Transmission Owners and the New York Transmission Owners (NYTO) (Collectively, "Independent Movants") to extend the date on which compliance filings were due for independent transmission-owning entities until January 20, 2004.

4. Between September 22, 2003 and October 2, 2003, the Commission received requests from various non-independent transmission owners, including Arizona Public Service Company (APS), Cleco Energy, LLC, Entergy Services (Entergy), NETO, NYTO, Progress Energy, and Southern Company Services (Southern) (collectively "Non-Independent Movants") requesting that non-independent transmission owners also be granted an extension of time to comply with Order No. 2003 until January 20, 2004.

## II. Request for Stay

### *A. Arguments Raised*

5. Southern argues that the Commission should stay the final rule provisions on two issues: Network Resource Interconnection Service (NR Service) and refunds of Network Upgrade costs. Southern asks that the stay remain in effect until the Commission grants rehearing and removes the two provisions, or, alternatively, if the Commission denies rehearing, until Southern is able to seek judicial review of the two provisions.

6. Southern first argues that NR Service threatens system reliability because it ignores the need to perform additional studies if the Generating Facility is ever designated a network resource, and removes the incentive to site new generation in close proximity to loads. Southern then argues that NR Service would harm transmission providers and their customer by eliminating the pricing signals that ensure that network resources are economical resource options. Also, the "contradictory and inherently vague" NR Service provisions would be difficult and costly to implement and revise once the Commission provides the necessary clarification. Furthermore, requiring transmission providers to adopt the "inherently vague and inconsistent" NR Service provisions is a violation of due process.[3] Finally, the threat of irreparable harm is imminent because of the impending effective date of the Final Rule and the fact that Southern has "at least two" Interconnection Customers that could claim they would be entitled to take NR Service.

7. Second, Southern argues that a stay should be granted with respect to (1) the five-year deadline for refund to the Interconnection Customer of the cost of Network Upgrades, and (2) the requirement that an Interconnection Customer receive such refunds when transmission service is taken at locations on the Transmission Provider's system other than from the generating facility itself. Without a stay, other transmission customers will be subject to the costs of Network Upgrades that provide them no benefit. Southern argues that even if it is successful on appeal, because many generator owners are undercapitalized special-purpose entities and have had severe financial problems of late, it is possible that these Interconnection Customers would not be able to pay such amounts if ordered to do so.

8. Alabama PSC and Mississippi PSC raise arguments similar to those presented by Southern and request that the Commission stay the effective date of Order No. 2003 in its entirety until the Commission acts on their requests for rehearing. And, if the Commission fails to grant their requests for rehearing, the Commission should stay the interconnection rule until these matters are addressed by a court. They argue that retail customers in their states will face irreparable harm because these customers risk losing their low-cost power, along with "the resulting negative impacts to their quality of life and comparative economic advantages for purposes of attracting new industries." Even if they prevail on judicial review, "it is unlikely that monetary damages could be awarded at that time to rectify this harm" because the Commission lacks the authority to make such awards and recovery from merchant power entities may not be possible.

9. NRECA–APPA request a stay of the effective date of Order No. 2003 "because the issues raised in this request are so important to NRECA–APPA, as well as consumers, state regulators, and many market participants."

### *B. Discussion*

10. To assure definiteness and finality in Commission proceedings, the Commission typically does not stay its orders.[4] The Commission may stay its action when "justice so requires."[5] In addressing motions for stay, the Commission considers: (1) Whether the moving party will suffer irreparable injury without a stay; (2) whether issuing the stay will substantially harm other parties; and (3) whether a stay is in the public interest.[6] The key element in the inquiry is irreparable injury to the moving party.[7] If a party is unable to demonstrate that it will suffer irreparable harm absent a stay, we need not examine the other factors.[8] The standard for showing irreparable harm is strict, as the DC Circuit has explained:

> First, the injury must be both certain and great; it must be actual and not theoretical. Injunctive relief 'will not be granted against something merely feared as liable to occur at some indefinite time.' It is also well settled that economic loss does not, in and of itself, constitute irreparable harm. . . . Implicit in each of these principles is the further requirement that the movant substantiate the claim that irreparable injury is 'likely' to occur. Bare allegations of what is likely to occur are of no value since the court must

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[2] Some movants requested a stay as part of their requests for rehearing or clarification (Alabama PSC, Mississippi PSC, and NRECA–APPA). All requests for rehearing and clarification will be addressed in a subsequent order.

[3] *Citing Satellite Broadcasting Company, Inc.* v. *FCC*, 824 F.2d 1, 3 (DC Cir. 1987) ("Traditional concepts of due process incorporated into administrative law preclude an agency from penalizing a private party for violating a rule without first providing adequate notice of the substance of the rule."); *Jolly* v. *Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996) (noting that the "alleged violation of a constitution right * * * triggers a finding of irreparable harm").

[4] *Midland*, 56 FERC at 61,630. *See also* Sea Robin Pipeline Co., 92 FERC ¶ 61,217 (2000).

[5] 5 U.S.C. 705 (2000).

[6] *See e.g.*, CMS Midland, Inc., 56 FERC ¶ 61,177 at 61,631 (1991) (*Midland*), *aff'd sub nom.* Michigan Municipal Cooperative Group v. FERC, 990 F.2d 1377 (D.C. Cir. 1993).

[7] *Midland*, 56 FERC at 61,631.

[8] *Id.*

> decide whether the harm will in fact occur. The movant must provide proof that the harm has occurred in the past and is likely to occur again, or proof indicating that the harm is certain to occur in the near future.[9]

Because none of the movants have met the irreparable harm criterion, we do not discuss the remaining two factors for evaluating a stay request.

11. Regarding the claim that the final rule threatens system reliability, the movants have not shown that their concerns about the effects on reliability are more than speculation. Bare allegations regarding the effect on reliability without a substantive showing that such harm is likely or certain to occur are insufficient. The Commission believes that this rule, in fact, will protect reliability.[10]

12. Likewise, the claims regarding the economic effects of the final rule, including Southern's arguments regarding the refund obligations, do not demonstrate irreparable harm. First, the movants have not made the necessary showing that the expected economic effects are more than mere speculation. By failing to show that "harm has occurred in the past and is likely to occur again" or providing "proof indicating that the harm is certain to occur in the near future," [11] the movants have not substantiated their claims that the final rule will result in economic harm. Moreover, even if the movants could show that these costs are more certain than speculative, they have not shown that the costs are more than economic losses. In order for an economic loss to be irreparable harm, it must be unrecoverable and must threaten economic viability.[12] Since the parties have not made this showing, we cannot conclude that the alleged economic losses constitute irreparable harm.

13. As for the claim that the final rule is vague and ambiguous in certain respects and violates due process, that is a matter for rehearing or clarification.

### III. Requests for Extension of Compliance and Effective Date

#### *A. Arguments Raised*

14. The Non-Independent Movants request that the Commission allow non-independent entities until January 20, 2004 to make their compliance filings. The Non-Independent Movants argue that transmission providers need the additional time to assimilate the provisions of Order No. 2003 into their OATTs and to ensure proper implementation of Order No. 2003's provisions. Additionally, several suggest that granting an extension of the filing date until after the Commission rules on the various pending requests for rehearing would make it unnecessary for them to have to make more than one compliance filing if the Commission grants rehearing.

15. Additionally, NYTO and NETO request that transmission providers belonging to RTOs and ISOs (as distinct from the RTOs or ISOs themselves) be granted an extension until January 20, 2004 to allow them to work with their respective ISOs or RTOs to develop joint compliance filings. APS also requests that the extension of time be granted to jurisdictional entities in the Western Interconnection who jointly own facilities with non-jurisdictional entities, and, like ISOs and RTOs, employ a collaborative stakeholder process to develop their OATTs.

16. Southern and Entergy add that they need additional time to safely implement the Network Resource Interconnection Service portions of Order No. 2003. Finally, Southern also requests that the Commission delay the effective date of the rule by 90 days.

#### *B. Discussion*

17. In response to the concerns of the Non-Independent Movants (including APS, NETO, and NYTO), the Commission grants the requests for extension of the compliance deadline until January 20, 2004. The Commission intends to act on the pending rehearing requests prior to that date.

18. In order to avoid confusion, the Commission will also grant the requests to extend the effective date of the rule until January 20, 2004.

The Commission orders

(A) All requests for stay are hereby denied, as discussed in the body of this order.

(B) Requests for extension of the compliance deadline and effective date until January 20, 2004 are granted.

(C) The Secretary is hereby directed to publish this order in the Federal Register.

By the Commission.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. 03–25970 Filed 10–14–03; 8:45 am]

BILLING CODE 6717–01–P

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[9] *Wisconsin Gas Co.* v. *FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (*Wisconsin Gas*) (citations omitted).

[10] *See e.g.*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 7 (noting that preserving reliability is one of the goals of Order No. 2003).

[11] *Wisconsin Gas*, 758 F.2d at 674.

[12] *See id.*

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. CP03–302–000, CP03–303–000, CP03–304–000, PF03–1–000, and CP03–301–000]**

### Cheyenne Plains Gas Pipeline Company and Colorado Interstate Gas Company; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Cheyenne Plains Pipeline Project

October 3, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft environmental impact statement (DEIS) on the natural gas pipeline facilities proposed by Cheyenne Plains Gas Pipeline Company (CPG) and Colorado Interstate Gas Company (CIG) in the above-referenced dockets. The proposed project, referred to as the Cheyenne Plains Pipeline Project, is located in various counties in Colorado and Kansas.

The DEIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that if the project is constructed as modified and with the appropriate mitigation measures as recommended, it would have limited adverse environmental impact.

The U.S. Department of Agriculture, Forest Service (FS) is participating as a cooperating agency in the preparation of this DEIS as they (the FS) will be issuing their own Record of Decision on whether or not to issue a special use authorization for the portion of the pipeline that crosses the Pawnee National Grassland (PNG). The Forest Service's Record of Decision is appealable under 36 CFR Part 215, Notice, Comment and Appeal Procedures for National Forest System Projects and Activities. In agreement with 36 CFR 215.13, only individuals and organizations who submit substantive written or oral comments during the 45-day comment period for the DEIS for the proposed Cheyenne Plains Pipeline Project (and specifically addresses the portion on the PNG) may appeal the Regional Forester's decision as documented in the Record of Decision.

The U.S. Fish and Wildlife Service (FWS) is also a cooperating agency in the preparation of the DEIS because the project has the potential to affect endangered species, migratory birds, wildlife, and habitat.

The DEIS addresses the potential environmental effects of the construction and operation of the following facilities:

- A total of 379.8 miles of 30-inch-diameter mainline, with 189.0 miles in Colorado (Weld, Morgan, Washington, Yuma, and Kit Carson Counties) and 190.8 miles in Kansas (Sherman, Wallace, Logan, Scott, Lane, Finney, Hodgeman, Ford, and Kiowa Counties);
- 0.2 mile of 20-inch-diameter lateral[1] (Sand Dune Lateral) in Kiowa County, Kansas;
- 4.2 miles of 30-inch-diameter lateral (South Rattlesnake Creek Lateral) in Kiowa County, Kansas;
- 3.0 miles of 8-inch-diameter lateral (Cossell Lake Lateral) in Kiowa County, Kansas;
- one 2,443-horsepower (hp) jumper compressor installed within CIG's existing compressor station located at the Cheyenne Hub in Weld County, Colorado;
- three 10,310-hp turbine compressors installed in a new CPG compressor station located at the Cheyenne Hub;
- a new gas treatment plant at the Cheyenne Hub consisting of separate amine and glycol processing trains;
- nine new interconnects[2] with existing pipeline systems. These interconnects would include metering facilities and would consist of two receipt points, one each with CIG and Wyoming Interstate Company at the Cheyenne Hub in Weld County, Colorado, and seven delivery points, one with Kinder Morgan Interstate Pipeline Company in Scott County, Kansas, one with Natural Gas Pipeline Company of America in Ford County, Kansas, and one each with Southern Star Central Gas Pipeline, LLC, ANR Pipeline Company, Northern Natural Gas Company, Panhandle Eastern Pipe Line Company, and Kansas Gas Service Company in Kiowa County, Kansas;
- 32 mainline valves (MLVs), consisting of 1 at the Cheyenne Hub, 4 at interconnects in Kiowa County, Kansas, and 27 located independently along the mainline and laterals; and
- two pig[3] launchers, two pig receivers, and five pig launcher and receivers, each collocated with new MLV sites.

## Comment Procedures and Public Meetings

Any person wishing to comment on the DEIS may do so. Please carefully follow these instructions so that your comments are properly recorded:

- Send an original and two copies of your comments to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of your comments for the attention of Gas Branch 1, DG2E;
- Reference Docket No. CP03–302–000 on the original and both copies; and
- Mail your comments so that they will be received in Washington, DC on or before November 24, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. Therefore, the Commission encourages electronic filing of comments. *See* Title 18 Code of Federal Regulations (CFR) Section 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the "eFiling" link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create an account by clicking on "Sign-up" under "New User." You will be asked to select the type of filing you are making. This filing is considered a "Comment on Filing."

In addition to or in lieu of sending written comments, the FERC invites you to attend the public meetings the staff will conduct in the project area to receive comments on the draft EIS. All meetings will begin at 7 p.m., and are scheduled as follows:

| Date | Location |
|---|---|
| Tuesday, November 18, 2003 | Quality Inn, 14378 US Highway 34, Fort Morgan, Colorado, (970) 867–8208. |
| Wednesday, November 19, 2003 | Old Town Museum, 420 S. 14th Street, Burlington, Colorado, (719) 346–7382. |
| Thursday, November 20, 2003 | Scott City Fairgrounds, Fair Ground Road, Scott City, Kansas, (620) 872–2626. |

Interested groups and individuals are encouraged to attend and present oral comments on the DEIS. Transcripts of the meetings will be prepared.

After comments are reviewed, any significant new issues are investigated, and modifications are made to the DEIS, a final EIS will be published and distributed by the staff. The final EIS will contain the staff's responses to timely comments received on the DEIS.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (Title 18 CFR 385.214).

Anyone may intervene in this proceeding based on this draft EIS. You must file your request to intervene as specified above.[4] You do not need intervenor status to have your comments considered.

The DEIS has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

A limited number of copies of the DEIS are available from the Public Reference Room identified above. In addition, copies of the DEIS have been mailed to Federal, state, and local agencies; elected officials; Native American tribes; newspapers; public libraries; intervenors to the FERC's proceeding; individuals who provided scoping comments; and individuals who requested the DEIS.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208 FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*). Using the "eLibrary" (formerly FERRIS) link, select "General Search" from the eLibrary menu, enter the selected date range and "Docket Number" (*i.e.*, CP03–302–000), and follow the instructions. You may also search using the phrase "Cheyenne Plains" in the "Text Search" field. For assistance with access to eLibrary, the helpline can be reached at 1–866–208–

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[1] A lateral is typically a smaller diameter pipeline that takes gas from the main system to deliver it to a customer, local distribution system, or another interstate transmission system.

[2] An interconnect is a connection to another pipeline system that is used to deliver or receive gas. Metering and regulating facilities would typically be included at each interconnect.

[3] A pig is an internal tool that can be used to clean and dry a pipeline and/or to inspect it for damage or corrosion.

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*.

In addition, the Commission now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm*.

Information concerning the involvement of the FS is available from John Oppenlander at (970) 346–5005. Information concerning the involvement of the FWS is available from Dan Mulhern at (785) 539–3474 (ext. 109).

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00040 Filed 10–14–03; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2574–032 Maine]**

### Merimil Limited Partnership; Notice of Availability of Draft Environmental Assessment

October 3, 2003.

In accordance with the National Environmental Policy Act of 1969 (NEPA) and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Lockwood Hydroelectric Project, located on the Kennebec River in Kennebec County, Maine, and prepared a draft environmental assessment (DEA). The DEA contains staff's analysis of the environmental effects of the proposal and concludes that licensing the project, with additional staff recommended measures, would not constitute a major federal action significantly affecting the human environment.

A copy of the DEA is available for review at the Commission in the Public Reference Room, or it may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Please file any comments (an original and 8 copies) within 45 days from the date of this letter. The comments should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix the Project No. 2574–032 to all comments. Comments may be filed electronically via the Internet in lieu of paper (*see* 18 CFR 385.2001(a)(1)(iii), and the instructions on the Commission(s Web site at *www.ferc.gov* under the "e-filing" link). The Commission strongly encourages electronic filings.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00038 Filed 10–14–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2000–036]**

### Power Authority of the State of New York ; Notice of Comment Deadline

October 3, 2003.

On September 30, 2003, pursuant Rule 602 (18 CFR 385.603) the Power Authority of the State of New York (PASNY) filed an offer of settlement on behalf of itself, the Allegheny Electric Cooperative, Inc., Public Power Association of New Jersey, Rhode Island Public Utilities Commission, and the Vermont Department of Public Service, in the relicense proceeding for PASNY's St. Lawrence Hydroelectric Project No. 2000.

The offer of settlement was not joined in by intervenor Massachusetts Municipal Wholesale Electric Company.

Comments on the offer of settlement may be filed not later than 10 days after the filing of the offer, and reply comments may be filed not later than 15 days after the filing of the offer.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00037 Filed 10–14–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. PL03–6–000]**

### Natural Gas Markets Conference; Supplemental Notice of Public Conference and Agenda

October 3, 2003.

1. As announced in the Notice of Conference issued September 23, 2003, the Federal Energy Regulatory Commission (FERC) will convene a public conference on October 14, 2003. To provide sufficient time for the agenda, the meeting time has been changed, and will now start at 9 a.m. in the Commission Meeting Room. This year's conference on natural gas markets will focus on the findings and recommendations contained in the National Petroleum Council's (NPC) report: *Balancing Natural Gas Policy—Fueling the Demands of a Growing Economy.*[1] All interested persons are invited to attend. No registration is required for attendance. All visitors must check-in at the First Street entrance and have picture identification readily available to ensure quick admittance.

2. The conference will consist of two sessions. The first session will feature three panel presentations by the NPC study team. Panel 1 will address gas supply. Panel 2 will address gas demand. Panel 3 will address infrastructure issues. A question and answer period will follow the presentations, with an opportunity for audience participation.

3. The second session will feature an open forum to discuss any issues the Commission should consider in shaping its future regulatory policies concerning the natural gas industry. The open forum will consist of oral presentations by interested parties, limited to five minutes, followed by responsive discussion.

4. To assist in organizing the conference, parties wishing to participate in discussions regarding the NPC presentations or to speak at the open forum are requested to submit an expression of interest by October 10, 2003, via e-mail to Robert Flanders at *robert.flanders@ferc.gov*. Parties should identify the speaker and indicate

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[1] The NPC Report's summary of findings and recommendations was released by the NPC on September 25, 2003, and is available on the NPC Web site at *www.npc.org*. The entire integrated report is scheduled to be released by the NPC on or about the day of the conference on the NPC Web site. Printed copies of the integrated report will not be distributed at the conference.

whether they wish to participate in the NPC-related presentations or raise other issues at the open forum. Parties may also sign up to speak at the open forum on the day of the conference, subject to time constraints.

5. The purpose of this conference is to discuss generic issues and not contested cases pending before the Commission. If any comments raise specific issues concerning pending contested cases, those comments will be subject to the Commission's Off-the-Record Communications rules located in subpart V of part 385 of the Commission's regulations, including the public notice requirements and sanctions listed in sections 385.2201(h) and (i).

6. The conference will be transcribed. Those interested in acquiring the transcript should contact Ace Reporters at 202–347–3700 or 800–336–6646. Transcripts will be placed in the public record ten days after the Commission receives the transcripts. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live or over the Internet, via C–Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on "FERC."

7. For additional information, please contact Robert Flanders at 202–502–8442 or at *robert.flanders@ferc.gov*.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00039 Filed 10–14–03; 8:45 am]

**BILLING CODE 6717–01–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2003–0298; FRL–7325–5]**

## Plant-Incorporated Protectants; CBI Substantiation and Adverse Effects Reporting; Renewal of Pesticide Information Collection Activities and Request for Comments

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): Plant-Incorporated Protectants; CBI Substantiation and Adverse Effects Reporting (EPA ICR No. 1693.03, OMB Control No. 2070–0142). This is a request to renew an existing ICR that is currently approved and due to expire July 31, 2004. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

**DATES:** Written comments, identified by the docket ID number OPP–2003–0298, must be received on or before December 15, 2003.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Nancy Vogel, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: *vogel.nancy@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a person or company involved with agricultural biotechnology that may develop and market plant incorporated protectants. Potentially affected entities may include, but are not limited to:

- Pesticide manufacturers (NAICS 325320), e.g., Establishments primarily engaged in the formulation and preparation of agricultural and household pest control chemicals.
- Seed companies (NAICS 111), e.g., Establishments primarily engaged in growing crops, plants, vines, or trees and their seeds.
- Colleges, universities, and professional schools (NAICS 611310), e.g., Establishments of higher learning which are engaged in development and marketing of plant-incorporated protectants.
- Establishments involved in research and development in the life sciences (NAICS 54171), e.g., Establishments primarily engaged in conducting research in the physical, engineering, or life sciences, such as agriculture and biotechnology.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed above could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 3 and sections 25(a) and (b) and the Federal Food, Drug, and Cosmetic Act (FFDCA) sections 346a and 371. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### II. How Can I Get Copies of this Document and Other Related Information?

*A. Docket*

EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0298. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

*B. Electronic Access*

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit II.A. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

## III. How Can I Respond to this Action?

### *A. How and To Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit III.B. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0298. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0298. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit III.A. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0298.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0298. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit II.A.

### *B. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *C. What Should I Consider when I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

### *D. What Information is EPA Particularly Interested in?*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

### IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

*Title:* Plant-Incorporated Protectants; CBI Substantiation and Adverse Effects Reporting.

*ICR numbers:* EPA ICR No. 1693.03, OMB Control No. 2070–0142.

*ICR status:* This ICR is a renewal of an existing ICR that is currently approved by OMB and is due to expire July 31, 2004.

*Abstract:* This information collection program provides the EPA with information necessary to support two new requirements on manufacturers of some plant-incorporated protectants: The provision that requires registrants that make CBI claims to substantiate such claims when they are made, and the provision that requires manufacturers of plant-incorporated protectants exempted from requirements of registration under the final rule to report adverse effects to the Agency. Current CBI regulations at 40 CFR part 2 require that claimants substantiate their CBI claims for their own records when the claim is made and subsequently provide the substantiation to EPA only if requested. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

### V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this ICR is estimated to be 1,370 hours. The following is a summary of the estimates taken from the ICR:

*Respondents/affected entities:* Persons or companies involved with agricultural biotechnology that may develop and market plant incorporated protectants.

*Estimated total number of potential respondents:* 14.

*Frequency of response:* On occasion.

*Estimated total/average number of responses for each respondent:* 1.

*Estimated total annual burden hours:* 1,370.

*Estimated total annual burden costs:* $121,438.

### VI. Are There Changes in the Estimates from the Last Approval?

Total respondent costs associated with this program rose from $119,992 to $121,438. Total Agency costs rose from $9,047 to $11,074. Changes to total costs associated with this program are due to the increase in labor rates, reflecting the most current estimates.

### VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

### List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: October 3, 2003.

**Susan B. Hazen,**

*Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*

[FR Doc. 03–25938 Filed 10–14–03; 8:45 am]

BILLING CODE 6560–50–S

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–7574–5]

## Agency Information Collection Activities OMB Responses

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

**FOR FURTHER INFORMATION CONTACT:** Susan Auby (202) 566–1672, or e-mail at *auby.susan@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

**SUPPLEMENTARY INFORMATION:**

### OMB Responses to Agency Clearance Requests

*OMB Approvals*

EPA ICR No. 1189.12; Identification Listing and Rulemaking Petitions (Proposed rule for Wastewater Treatment Exemptions); was approved 08/06/2003; in 40 CFR 261.3(a)(2)(iv)(A)–(G); OMB Number 2050–0053; expires 11/30/2004.

EPA ICR No. 0113.08; NESHAP for Mercury; was approved 08/06/2003; in 40 CFR part 61, subpart E; OMB Number 2060–0097; expires 08/31/2006.

EPA ICR No. 2104.01; Brownfields Program—Revitalization Grantee Reporting; was approved 08/14/2003; in 40 CFR parts 30 and 31; OMB Number 2050–0192; expires 08/31/2006.

EPA ICR No. 0597.08; Tolerance petitions for Pesticides on Food/Feed Crops and New Inert Ingredients; was approved 08/14/2003, in 40 CFR 152.50, and 40 CFR parts 160, 163, 177 and 180; OMB Number 2070–0024; expires 08/31/2006.

EPA ICR No. 2107.01; Survey to Determine the Effectiveness of No Discharge Zones (NDZs) for Vessel Sewage and Marine Sanitation Devices; was approved 08/15/2003; in 40 CFR part 140, and 40 CFR parts 140.3, 140.3(a)(1), 140.4, 140.4(a)(b)(c); OMB Number 2040–0254; expires 07/31/2004.

EPA ICR No. 1949.02; National Environmental Performance Track Program; was approved 08/26/2003; OMB Number 2010–0032; expires 08/31/2006.

EPA ICR No. 0795.11; Notification of Chemical Exports—TSCA Section 12(b); was approved 08/25/2003; in 40 CFR part 707, subpart D; OMB Number 2070–0030; expires 08/31/2006.

EPA ICR No. 2092.01; Tribal Operator Certification Program; was approved 07/31/2003; OMB Number 2040–0252; expires 07/31/2006.

EPA ICR No. 2057.01; Eliciting Risk Tradeoffs for Valuing Fatal Cancer Risks; was approved 02/28/2003; OMB No. 2090–0020; expires 02/28/2006.

Dated: September 29, 2003.

**Sara Hisel McCoy,**

*Acting Director, Collection Strategies Division.*

[FR Doc. 03–26049 Filed 10–14–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[RCRA–2003–0010; FRL–7574–6]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Land Disposal Restrictions No-Migration Variances, EPA ICR Number 1353.07, OMB Control Number 2050–0062

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for an existing approved collection. This ICR is scheduled to expire on September 30, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before November 14, 2003.

**ADDRESSES:** Submit your comments, referencing docket ID number RCRA–2003–0010, to (1) EPA online using EDOCKET (our preferred method), by email to *rcra-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, OSWER Docket (5305T), 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David Eberly, Office of Solid Waste, (5303W), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8645; fax number: (703) 308–8638; e-mail address: *eberly.david@epa.gov*.

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 19, 2003, (68 FR 27057), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. RCRA–2003–0010, which is available for public viewing at the OSWER Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0740. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

*Title:* Land Disposal Restrictions No-Migration Variances.

*Abstract:* To receive a variance from the hazardous waste land disposal prohibitions, owner/operators of hazardous waste storage or disposal facilities may petition the Environmental Protection Agency to allow land disposal of a specific restricted waste at a specific site. The EPA Regional Offices will review the petitions and determine if they successfully demonstrate "no migration." The applicant must demonstrate that hazardous wastes can be managed safely in a particular land disposal unit, so that "no migration" of any hazardous constituents occurs from the unit for as long as the waste remains hazardous. If EPA grants the variance, the waste is no longer prohibited from land disposal in that particular unit. If the owner/operator fails to make this demonstration, or chooses not to petition for the variance, best demonstrated available technology (BDAT) requirements of 40 CFR 268.40 must be met before the hazardous wastes are placed in a land disposal unit.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 9,506 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Business or other for profit, Federal Government, and State, Local or Tribal Government.

*Estimated Number of Respondents:* 1.

*Frequency of Response:* On occasion.

*Estimated Total Annual Hour Burden:* 3,168 hours.

*Estimated Total Annual Cost:* $188,805 includes $0 annualized capital or O&M costs.

*Changes in the Estimates:* There is a change of 31 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: September 29, 2003.

**Sara Hisel McCoy,**

*Acting Director, Collection Strategies Division.*

[FR Doc. 03–26050 Filed 10–14–03; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[OAR–2003–0081; FRL–7574–7]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Emission Reporting Requirements for Ozone SIP Revision Relating to Statewide Budgets for $NO_X$ Emissions To Reduce the Regional Transport of Ozone, EPA ICR Number 1857.03, OMB Control Number 2060–0445

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on October 31, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before November 14, 2003.

**ADDRESSES:** Submit your comments, referencing docket ID number OAR–2003–0081, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** William L. Johnson, Air Quality Strategies and Standards Division, Ozone Policy Strategies Group, Mail Code C539–02, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5245; fax number: (919) 541–0824; e-mail address: *Johnson.WilliamL@epa.gov*.

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 11, 2003 (68 FR 41335), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA has received one comment and has addressed the comment received.

EPA has established a public docket for this ICR under Docket ID No. OAR–2003–0081, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May

31, 2002), or go to *http://www.epa.gov/edocket.*

*Title:* Emission Reporting Requirements for Ozone SIP Revisions Relating to Statewide Budgets for $NO_X$ Emissions to Reduce the Regional Transport of Ozone.

*Abstract:* States which are subject to the $NO_X$ SIP call are required to collect data on $NO_X$ emissions and submit this data to EPA. Data from large $NO_X$ sources which States are requiring to be controlled to meet the State $NO_X$ budget must be reported annually for the ozone season. States must report $NO_X$ emissions from all sources triennially. In order to report this data, States must require large sources of $NO_X$ emissions to monitor emissions and report emissions to the State or to EPA. Resources must be expended by sources to install and calibrate emission monitors and to collect and report emissions data. This data is necessary to allow EPA to assess the ability of States to meet their $NO_X$ budgets allocated under the $NO_X$ SIP call. The data submission is not voluntary. It is required under 40 CFR 51.122. All emissions data received by EPA will be treated as public information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 142 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* 21 States plus the District of Columbia, industries with large boilers, electrical generating units or power plants, cement kilns.

*Estimated Number of Respondents:* 2,467.

*Frequency of Response:* quarterly, annually, triennially.

*Estimated Total Annual Hour Burden:* 492,192.

*Estimated Total Annual Cost:* $53,856,580 which includes $16,136,170 annualized capital, $12,606,505 O&M costs and $25,113,907 labor costs.

*Changes in the Estimates:* There is a increase of 207,446 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is a result of the fact that during the first three years of the information collection (*i.e.*, 2000 through 2002,) only a part of the sources covered by the $NO_X$ SIP call were required or expected to install controls and begin collecting and reporting emissions data. During the period 2003 through 2005 most sources covered by the $NO_X$ SIP call are expected to be in compliance with the regulations and thus subject to monitoring emissions and reporting. This change is due to the phasing in of program requirements over a period of time.

Dated: September 30, 2003.

**Doreen Sterling,**

*Acting Director, Collection Strategies Division.*

[FR Doc. 03–26051 Filed 10–14–03; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7574–4]**

### National Dialogue on EPA's Draft Report on the Environment, 2003

**AGENCY:** U.S. Environmental Protection Agency (EPA).

**ACTION:** Notice of public meeting.

**SUMMARY:** The Office of Environmental Information, the Office of Research and Development and EPA's Regional Offices are conducting national dialogue sessions with a broad spectrum of stakeholders to solicit feedback on the Draft Report on the Environment issued June 23, 2003. EPA will conduct five sessions and will invite representatives from Federal, State, and local governments, tribes, academia, non-governmental organizations, and business and industry. Interested members of the general public may attend the meetings and will have an opportunity to provide comment at an appointed time during the session. Because space is limited, those planning to attend must RSVP to the individual listed in the **FOR FURTHER INFORMATION CONTACT** no later than one week before the meeting. The information contact will also provide the specific meeting locations in the cities listed below as well as directions.

**DATES:** The dates for the dialogue sessions are:

1. November 6, 2003 9 a.m. to 4:30 PM, Chicago, IL
2. November 13, 2003, 9 a.m. to 4:30 PM, Atlanta, GA
3. November 18, 2003, 9 a.m. to 4:30 PM, San Francisco, CA
4. November 20, 2003, 9 a.m. to 4:30 PM, Seattle, WA
5. December 12, 2003, 9 a.m. to 4:30 PM, Dallas, TX

**FOR FURTHER INFORMATION CONTACT:** Dawn Banks-Waller, Office of Environmental Information, Office of Information Analysis and Access, Environmental Analysis Division, (2842T), U.S. EPA, 1200 Pennsylvania Ave NW., Washington, DC 20460. Telephone (202) 566–0625, fax (202) 566–1066 or e-mail *banks-waller.dawn@epa.gov.*

**SUPPLEMENTARY INFORMATION:** On June 23, 2003, EPA released the Draft Report on the Environment (RoE) and its accompanying Technical Document. The report presents EPA's first-ever national picture of the U.S. environment. The report describes what EPA knows—and doesn't know—about the current state of the environment at the national level, and how the environment is changing. The report highlights the progress our nation has made in protecting its air, water, and land resources and describes the measures that can be used to track the status of the environment and human health.

EPA has issued the report as a draft to stimulate dialogue and invite input into developing and improving environmental indicators in the future. The national dialogue sessions are a first step in soliciting feedback on the report and will focus on:

- Assessing the quality, structure, relevance, appropriateness of, and needed improvements to the report,
- Identifying additional or new questions/indicators, changes in indicators, gaps, indicator improvements, etc., and
- Assessing the use of the report for planning and decision-making.

Feedback obtained from these sessions will be used to shape the next and future editions of the report.

To view, download, or order hardcopies of the RoE and the Technical Document or to provide comments on the documents, please visit the EPA

Environmental Indicators Initiative Web site at *http://www.epa.gov/indicators/roe/*.

Dated: October 3, 2003.

**Elaine G. Stanley,**

*Director, Office of Information Analysis and Access.*

[FR Doc. 03–26052 Filed 10–14–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPPT–2002–0001; FRL–7330–9]**

## National Pollution Prevention and Toxics Advisory Committee; Notice of Public Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 (Public Law 92–463), EPA gives notice of a 2–day meeting of the National Pollution Prevention and Toxics Advisory Committee (NPPTAC). The purpose of the NPPTAC is to provide advice and recommendations to EPA regarding the overall policy and operations of the programs of the Office of Pollution Prevention and Toxics (OPPT).

**DATES:** The meeting will be held on November 4, 2003, from 1:30 p.m. to 5:30 p.m., and November 5, 2003, from 8:30 a.m. to 4 p.m.

Registration to attend the meeting, identified as NPPTAC November 2003 meeting, must be received on or before October 29, 2003. Registration will be also accepted at the meeting.

Requests to provide oral comments at the meeting, identified as NPPTAC November 2003 meeting, must be received in writing on or before October 27, 2003.

Written comments, identified as NPPTAC November 2003 meeting, may be submitted at any time. Written comments received on or before October 27, 2003 will be forwarded to the NPPTAC members prior to or at the meeting.

**ADDRESSES:** The meeting will be held at Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

For address information concerning registration, the submission of written comments, and requests to present oral comments, refer to Unit I. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

*For technical information contact*: Mary Hanley, Designated Federal Officer, Office of Pollution Prevention and Toxics (7401M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–9891; e-mail address: *npptac.oppt@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general, and may be of particular interest to those persons who have an interest in or may be required to manage pollution prevention and toxic chemical programs, individuals, or groups concerned with environmental justice, children's health, or animal welfare, as they relate to OPPT's programs under the Toxic Substances Control Act (TSCA) and the Pollution Prevention Act (PPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in the activities of the NPPTAC. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

*To submit written comments to the docket*: Identify the submission as OPPT–2002–0001 docket, NPPTAC November 2003 meeting.

*Electronically*: At *http://www.epa.gov/edocket/*, search for OPPT–2002–0001, and follow the directions to submit comments.

*By mail*: Environmental Protection Agency, EPA Docket Center (EPA/DC), OPPT–2002–0001, 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

*To register to attend the meeting*: Preregistration for the November 2003 NPPTAC meeting and requests for special accommodations may be made by visiting the NPPTAC web site at: *http://www.epa.gov/oppt/npptac/meetings.htm*. Registration will also be available at the meeting. Special accommodations may also be requested by calling (202) 564–9891 and leaving your name and telephone number.

*To request an opportunity to provide oral comments*: You must register first in order to request an opportunity to provide oral comments at the meeting. To register visit the NPPTAC web site at: *http://www.epa.gov/oppt/npptac/meetings.htm*. If you have problems downloading the registration form, e-mail us at *npptac.oppt@epa.gov* or leave a message at (202) 564–9891. Please indicate your name and telephone number.

### *B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPPT–2002–0001. The official public docket consists of the documents specifically related to the NPPTAC, any public comments received, and other information related to the NPPTAC. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at EPA's Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. EPA's Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. EPA's Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

### II. Background

The proposed agenda for the NPPTAC meeting includes items related to the chemical management and pollution prevention programs at OPPT, for example: Existing Chemicals Program, including the High Production Volume Challenge Program, New Chemicals

Program, Pollution Prevention, Risk Assessment, Risk Management, Risk Communication, and coordination with States, Tribes, and other stakeholders. The meeting is open to the public.

### III. How Can I Request to Participate in this Meeting?

You may register to attend the meeting by filling out the registration form according to the instructions listed under Unit I.A. Please note that registration will assist in planning adequate seating; however, members of the public can register the day of the meeting, therefore all seating will be available on a first come, first serve basis.

Please make sure to indicate in your registration if you require special accommodations. In order to provide special accommodations, the request should be received by October 22, 2003.

Requests to provide oral comments at the meeting must be submitted in writing on or before October 27, 2003, with a registration form. Please note that time for oral comments may be 3 to 5 minutes per speaker, depending on the number of requests received.

You may submit written comments to the docket listed under Unit I.B. Written comments can be submitted at any time. If written comments are submitted on or before October 27, 2003, they will be provided to the NPPTAC members prior to or at the meeting. If you provide written comments at the meeting, 35 copies will be needed.

Do not submit any information that is considered CBI.

### List of Subjects

Environmental protection, NPPTAC, Pollution prevention, Toxics, Toxic chemicals, Chemical health and safety.

Dated: October 8, 2003.

**Margaret Schneider,**

*Acting Director, Office of Pollution, Prevention, and Toxics.*

[FR Doc. 03–26053 Filed 10–14–03; 8:45 am]

BILLING CODE 6560–50–S

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## ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0331; FRL–7329–6]

## Pesticide Products; Registration Applications

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of an application to register a pesticide product containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATES:** Written comments, identified by the docket ID number OPP–2003–0331, must be received on or before November 14, 2003.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Leonard Cole, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: *cole.leonard@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0331. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

*C. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0331. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0331. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0331.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0331. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

*D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. Registration Applications

EPA received an application as follows to register a pesticide product containing a new active ingredient not included in any previously registered product pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

*Product Containing an Active Ingredient Not Included in Any Previously Registered Product*

*File Symbol*: 67979–G. *Applicant*: Syngenta Seeds, 3054 Cornwallis Road, Research Triangle Park, NC 27709–2257. *Product name*: VIP3A Insect Control Protein. *Type of product*: Plant-incorporated protectant. *Active ingredient*: *Bacillus thuringiensis* VIP3A insect control protein as expressed in Event COT102 cotton plants. *Proposed classification/Use*: None. For a seed increase registration.

**List of Subjects**

Environmental protection, Pesticides and pest.

Dated: September 30, 2003.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Division, Office of Pesticide Programs.*

[FR Doc. 03–25809 Filed 10–14–03; 8:45 am]

**BILLING CODE 6560–50–S**

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## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 7, 2003.

**A. Federal Reserve Bank of Kansas City** (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Bancorp III*, Stillwell, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank of Kansas City, Kansas City, Missouri.

Board of Governors of the Federal Reserve System, October 9, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–26085 Filed 10–14–03; 8:45 am]

**BILLING CODE 6210–01–S**

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## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 24, 2003.

**A. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Western Bancshares, Inc.*, Van Horn, Texas, and Western Financial of Texas, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of First National Bank, Lubbock, Texas.

Board of Governors of the Federal Reserve System, October 9, 2003.

**Margaret M. Shanks,**

*Assistant Secretary of the Board.*

[FR Doc. 03–26105 Filed 10–14–03; 8:45 am]

**BILLING CODE 6210–01–S**

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## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting Notice

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System

**TIME AND DATE:** 11:30 a.m., Monday, October 20, 2003.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**FOR FURTHER INFORMATION CONTACT:** Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 10, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–26219 Filed 10–10–03; 2:38 pm]

**BILLING CODE 6210–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

**[Document Identifier: OS–0937–0200/OS–0990–0220]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*#1 Type of Information Collection Request:* Extension of Currently Approved Collection;

*Title of Information Collection:* HHS Payment Management forms;

*Form/OMB No.:* OS–0937–0200;

*Use:* The PSC–270 is used to request advance or reimbursement payments to grantees. It serves in place of the SF–270. The PSC–272 is used to monitor cash advances made to grantees and the collect disbursement data. It serves in place of the SF–272.

*Frequency:* On occasion and quarterly;

*Affected Public:* State, local, or tribal governments, business or other for profit, non for profit institutions;

*Annual Number of Respondents:* 18,490;

*Total Annual Responses:* 73,560;

*Average Burden Per Response:* 15 minutes to 3 hours;

*Total Annual Hours:* 220,980.

*#2 Type of Information Collection Request:* Extension of a currently approved collection;

*Title of Information Collection:* Voluntary Industry Partner Surveys to Implement E.O. 12862;

*Form/OMB No.:* OS–0990–0220;

*Use:* DHHS will survey its partners and stakeholders to learn how they feel about departmental services. The information will be used to identify ways to improve the efficiency, quality, timeliness, and cost effective ways to provide services to the public.

*Frequency:* On occasion;

*Affected Public:* Business or other for profit, not for profit institutions, State, local, or tribal government;

*Annual Number of Respondents:* 4,680;

*Total Annual Responses:* 4680;

*Average Burden Per Response:* 15 hours;

*Total Annual Hours:* 902.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *John.Burke@hhs.gov,* or call the Reports Clearance Office on (202) 690–8356. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the OS Paperwork Clearance Officer designated at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: John Burke (0937–0200/0990–0220), Room 531–H, 200 Independence Avenue, SW., Washington DC 20201.

Dated: October 6, 2003

**John P. Burke, III,**

*Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.*

[FR Doc. 03–26056 Filed 10–14–03; 8:45 am]

**BILLING CODE 4168–17–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Agency for Healthcare Research and Quality, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the proposed information collection project: "Medical Expenditure Panel Survey—Medical Provider Component (MEPS–MPC) for 2003" In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(e)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

**DATES:** Comments on this notice must be received by December 15, 2003.

**ADDRESSES:** Written comments should be submitted to: Cynthia D. McMichael, Reports Clearance Officer, AHRQ, 540 Gaither Road, Room #5022, Rockville, MD 20850.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

**FOR FURTHER INFORMATION CONTACT:** Cynthia D. McMichael, AHRQ, Reports Clearance Officer, (301) 427–1651.

**SUPPLEMENTARY INFORMATION:**

### Proposed Project

"Medical Expenditure Panel Survey—Medical Provider Components (MEPS–MPC) for 2003".

The MEPS–MPC is a survey of hospitals, physicians and other medical providers. The purpose of this survey is to supplement and verify the information provided by respondent households participating in the household component of the MEPS (MEPS–HC) about their use of medical services in the United States.

With the permission of members of the households surveyed in the MEPSC–HC, AHRQ contractor will contact the medical providers of the HC survey respondents to determine the actual dates of service, the diagnoses, the services provided, the amount that was charged, the amount that was paid and the source of payment. Thus, the MPC is derived from or is based upon the core survey, (MEPS–HC) and will improve the quality of the core survey data.

The Medical Expenditure Panel Survey Household Component (MEPS–HC) conducted in 2003, will provide annual estimates, based upon a national representative sample, of health care use, expenditures, sources of payment and insurance coverage, for the U.S. civilian non-institutionalized population for 2003. Data from medical providers linked to household respondents in the MEPS Household component for calendar year 2003, will be collected beginning 2004 and continuing into the year 2005. MEPS is co-sponsored by the Agency for Healthcare Research and Quality (AHRQ) and the National Center for Health Statistics (NCHS).

### Data Confidentiality Provisions

MEPS data confidentiality is protected under the AHRQ and NCHS Confidentiality statues, section 308(d) and section 924(c) of the Public Health Service Act (42 U.S.C. 242m(d) and 42 U.S.C. 299c–3(c), respectively).

### Methods of Collection

The Medical Provider Survey will be conducted predominantly by telephone, but may include self-administered mail surveys, if requested by the respondent. The MPC for Calendar year 2003 estimated annual hour burden is as follows:

| Type of provider | Number of respondents | Average No. of patients/provider | Number of patient/provider pairs | Average No. of events/patient | Average burden/event (minutes) | Total hours of burden |
|---|---|---|---|---|---|---|
| MPC 2003: | | | | | | |
| Hospital Office-based | 5,095 | 2.2 | 11,210 | 3.2 | 5 | 2,977 |
| Doctor | 16,031 | 1.3 | 20,840 | 3.5 | 5 | 6,054 |
| Separately Billing doctor | 15,879 | 1.4 | 22,230 | 1.3 | 5 | 2,399 |
| Home Health | 505 | 1.1 | 555 | 5.8 | 5 | 267 |
| Pharmacy | 7,481 | 2.6 | 19,450 | 10.3 | 3 | 10,017 |
| Total | 44,991 | | 74,285 | | | 21,714 |

### Request for Comments

In accordance with the above cited legislation, comments on the AHRQ information collection are requested with regard to any of the following:

(a) Whether the proposed collection of information is necessary for the proper performance of functions of AHRQ, including whether the information will have practical utility; (b) the accuracy of the AHRQ's estimate of burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: October 9, 2003.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. 03–26093 Filed 10–14–03; 8:45 am]

BILLING CODE 4160–90–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Substance Abuse and Mental Health Services Administration

## Suspension of a Laboratory Which No Longer Meets Minimum Standards to Engage in Urine Drug Testing for Federal Agencies

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services routinely publishes a list of laboratories in the **Federal Register** that are currently certified to meet standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29925) dated June 9, 1994. This notice informs the public that effective October 6, 2003 the following laboratory's certification is suspended:

Doctors Laboratory, Inc., 2906 Julia Drive, P.O. Box 2658, Valdosta, Georgia 31602.

**FOR FURTHER INFORMATION CONTACT:** Donna M. Bush, Ph.D., Division of Workplace Programs, CSAP, 5600 Fishers Lane, Rockwall II, Suite 815, Rockville, Maryland 20857, 301–443–6014 (voice), 301–443–3031 (fax).

**Anna Marsh,**

*Acting Executive Officer, SAMHSA.*

[FR Doc. 03–25982 Filed 10–14–03; 8:45 am]

BILLING CODE 4160–20–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

[USCG–2003–16224]

## Commercial Fishing Industry Vessel Safety Advisory Committee

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of meeting.

**SUMMARY:** The Commercial Fishing Industry Vessel Safety Advisory Committee (CFIVSAC) will meet to discuss various issues relating to commercial vessel safety in the fishing industry. The meetings are open to the public.

**DATES:** CFIVSAC will meet on November 12 and 13, 2003, from 8 a.m. to 5 p.m. The meetings may close early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before October 22, 2003. Written material for distribution at the meeting should reach the Coast Guard on or before November 5, 2003. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before November 1, 2003. Send written material with 25 copies and requests to make oral presentations to Ensign Ken Rocknold, Commandant (G–MOC–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://www.dms.dot.gov.*

**ADDRESSES:** CFIVSAC will meet at the Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington DC 20008. The World Wide Web site can be found at: *http://www.omnihotels.com.*

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Ken Vazquez, Assistant to the CFIVSAC Executive Director, telephone (202) 267–0478, fax (202) 267–0506. You can also visit the CFIVSAC World Wide Web site at: *http://www.uscg.mil/hq/g-m/cfvs/cfivac.htm* for up to date meeting information and a listing of the past meeting minutes.

**SUPPLEMENTARY INFORMATION:** The Commercial Fishing Industry Vessel Safety Advisory Committee (CFIVSAC) will meet to discuss various issues relating to commercial vessel safety in the fishing industry. The meetings are open to the public.

Notice of the meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

### Agenda of Meeting

The agenda includes the following:

(1) Approval of last meeting's minutes.

(2) Report from the Coast Guard on the status of legislative change proposals and regulatory projects with respect to mandatory exams, training requirements, stability requirements, and immersion suit requirements.

(3) Updated status report from the Coast Guard on casualty data and statistics.

(4) Presentation on Maritime Transportation Security Act of 2002 and Automatic Identification System as related to fishing vessels.

(5) Discussions and working group sessions by the subcommittees on risk based examinations, boundary line and training.

### Procedural

The meetings are open to the public. Please note the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than October 22, 2003. Written material for distribution at the meeting should reach the Coast Guard no later than November 5, 2003. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 25 copies to the Executive Director no later than November 1, 2003.

### Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Executive Director as soon as possible but no later than November 5, 2003.

Dated: October 7, 2003.

**Joseph J. Angelo,**

*Director of Standards, Marine Safety, Security & Environmental Protection.*

[FR Doc. 03–26031 Filed 10–14–03; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1494–DR]**

### Delaware; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Delaware (FEMA–1494–DR), dated September 20, 2003, and related determinations.

**EFFECTIVE DATE:** September 29, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective September 29, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–26000 Filed 10–14–03; 8:45 am]

**BILLING CODE 6718–02–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1494–DR]**

### Delaware; Amendment No. 3 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Delaware (FEMA–1494–DR), dated September 20, 2003, and related determinations.

**EFFECTIVE DATE:** October 6, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Delaware is hereby amended to include Categories C through G under the Public Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 20, 2003:

Kent, New Castle, and Sussex Counties for Categories C through G under the Public Assistance program (already designated for Individual Assistance, including direct Federal assistance and debris removal (Category A) and emergency protective measures (Category B), including direct Federal assistance under the Public Assistance program.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–26001 Filed 10–14–03; 8:45 am]

**BILLING CODE 6718–02–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1493–DR]**

### District of Columbia; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the District of Columbia (FEMA–1493–DR), dated September 20, 2003, and related determinations.

**EFFECTIVE DATE:** September 29, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective September 29, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–25991 Filed 10–14–03; 8:45 am]

**BILLING CODE 6718–02–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1492–DR]**

### Maryland; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Maryland (FEMA–1492–DR), dated September 19, 2003, and related determinations.

**EFFECTIVE DATE:** September 29, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective September 29, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–25989 Filed 10–14–03; 8:45 am]

**BILLING CODE 6718–02–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1492–DR]**

### Maryland; Amendment No. 3 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Maryland (FEMA–1492–DR), dated September 19, 2003, and related determinations.

**EFFECTIVE DATE:** October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Maryland is hereby amended to include Categories C through G under the Public Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 19, 2003:

The independent City of Baltimore and the counties of Allegany, Anne Arundel, Baltimore, Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Frederick, Garrett, Harford, Howard, Kent, Montgomery, Prince George's, Queen Anne's, St. Mary's, Somerset, Talbot, Washington, Wicomico, and Worcester for Categories C through G under the Public Assistance Program (already designated for debris removal (Category A) and emergency protective measures (Category B), including direct Federal assistance, and Individual Assistance, including direct Federal assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–25990 Filed 10–14–03; 8:45 am]

**BILLING CODE 6718–02–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1490–DR]**

### North Carolina; Amendment No. 3 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–1490–DR), dated September 18, 2003, and related determinations.

**EFFECTIVE DATE:** October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of North Carolina is hereby amended to include Categories C through G under the Public Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 18, 2003:

Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Edgecombe, Gates, Halifax, Hertford, Hyde, Jones, Martin, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Tyrrell and Washington Counties for Categories C through G under the Public Assistance program (already designated for Individual Assistance, including direct Federal assistance and debris removal (Category A) and emergency protective measures (Category B), including direct Federal assistance under the Public Assistance Program.)

Franklin, Granville, Greene, Lenoir, Nash, Person, Vance, Warren, Wayne, and Wilson Counties for Individual and Public Assistance. Direct Federal assistance is authorized.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–25995 Filed 10–14–03; 8:45 am]

**BILLING CODE 6718–02–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[FEMA–3187–EM]

### Ohio; Amendment No. 1 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the State of Ohio (FEMA–3187–EM), dated September 23, 2003, and related determinations.

**EFFECTIVE DATE:** October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of an emergency declaration for the State of Ohio is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of September 23, 2003:

Ashland, Ashtabula, Erie, Geauga, Huron, Knox, Lake, Lorain, Lucas, Portage, Summit, and Trumbull Counties for emergency protective measures (Category B) under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response Department of Homeland Security.*

[FR Doc. 03–26006 Filed 10–14–03; 8:45 am]

**BILLING CODE 6718–02–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[FEMA–1497–DR]

### Pennsylvania; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Pennsylvania (FEMA–1497–DR), dated September 26, 2003, and related determinations.

**EFFECTIVE DATE:** September 26, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 26, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

> I have determined that the damage in certain areas of the Commonwealth of Pennsylvania, resulting from Tropical Storms Henri and Isabel, and related severe storms and flooding on September 15–23, 2003, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the Commonwealth of Pennsylvania.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.
>
> Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Thomas Davies, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Pennsylvania to have been affected adversely by this declared major disaster:

Chester County for Individual Assistance.

All counties within the Commonwealth of Pennsylvania are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–26005 Filed 10–14–03; 8:45 am]

**BILLING CODE 6718–02–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1491–DR]**

### Virginia; Amendment No. 7 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

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**SUMMARY:** This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–1491–DR), dated September 18, 2003, and related determinations.

**EFFECTIVE DATE:** October 2, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the Commonwealth of Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 18, 2003:

The Independent Cities of Bedford, Chesapeake, Colonial Heights, Danville, Franklin, Hampton, Newport News, Petersburg, Portsmouth, Richmond, and Waynesboro, and the counties of Amelia, Appomattox, Charlotte, Culpeper, Cumberland, Greene, Halifax, Hanover, King George, Lunenburg, Madison, Mecklenburg, Nelson, Nottoway, Orange, Pittsylvania, Powhatan, Prince Edward, Spotsylvania, and Warren for Categories C through G under the Public Assistance program (already designated for Individual Assistance, including direct Federal assistance and debris removal (Category A) and emergency protective measures (Category B), including direct Federal assistance under the Public Assistance program.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–25992 Filed 10–14–03; 8:45 am]

**BILLING CODE 6718–02–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1491–DR]**

### Virginia; Amendment No. 6 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

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**SUMMARY:** This notice amends the notice of a major disaster for the Commonwealth of Virginia (FEMA–1491–DR), dated September 18, 2003, and related determinations.

**EFFECTIVE DATE:** October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective October 1, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–25993 Filed 10–14–03; 8:45 am]

**BILLING CODE 6718–02–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1491–DR]**

### Virginia; Amendment No. 5 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

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**SUMMARY:** This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–1491–DR), dated September 18, 2003, and related determinations.

**EFFECTIVE DATE:** October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the Commonwealth of Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 18, 2003:

The Independent Cities of Emporia, Fairfax, Poquoson, and Suffolk, and the counties of Accomack, Augusta, Brunswick, Caroline, Chesterfield, Dinwiddie, Essex, Goochland, Greensville, Henrico, Isle of Wight, James City, King and Queen, King William, Louisa, New Kent, Northampton, Page, Rockbridge, Southampton, Stafford, Surry, Sussex, and York for Categories C through G under the Public Assistance program (already designated for Individual Assistance, including direct Federal assistance and debris removal (Category A) and emergency protective measures (Category B), including direct Federal assistance under the Public Assistance Program.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs; 83.544, Public Assistance

Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–25994 Filed 10–14–03; 8:45 am]

**BILLING CODE 6718–02–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

**[FEMA–1496–DR]**

### West Virginia; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1496–DR), dated September 23, 2003, and related determinations.

**EFFECTIVE DATE:** September 29, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the Hazard Mitigation Grant Program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 23, 2003:

All counties in the State of West Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–26002 Filed 10–14–03; 8:45 am]

**BILLING CODE 6718–02–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

**[FEMA–1496–DR]**

### West Virginia; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of West Virginia (FEMA–1496–DR), dated September 23, 2003, and related determinations.

**EFFECTIVE DATE:** September 30, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective September 30, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–26003 Filed 10–14–03; 8:45 am]

**BILLING CODE 6712–02–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

**[FEMA–1496–DR]**

### West Virginia; Amendment No. 3 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1496–DR), dated September 23, 2003, and related determinations.

**EFFECTIVE DATE:** October 6, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of West Virginia is hereby amended to include Categories C through G under the Public Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 23, 2003:

Grant, Hampshire, Hardy, Morgan, Pendleton, and Tucker Counties for Categories C through G under the Public Assistance program (already designated for debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–26004 Filed 10–14–03; 8:45 am]

**BILLING CODE 6718–02–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### Notice of Adjustment of Countywide Per Capita Impact Indicator

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security

**ACTION:** Notice.

**SUMMARY:** FEMA gives notice that the countywide per capita impact indicator under the Public Assistance program for disasters declared on or after October 1, 2003 will be increased.

**EFFECTIVE DATE:** October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** James Walke, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3834.

**SUPPLEMENTARY INFORMATION:** Response and Recovery Directorate Policy No. 9122.1 provides that FEMA will adjust the countywide per capita impact indicator under the Public Assistance program to reflect annual changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

FEMA gives notice of an increase in the countywide per capita impact indicator to $2.77 for all disasters declared on or after October 1, 2003.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 2.2 percent for the 12-month period ended in August 2003. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 18, 2003.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–25997 Filed 10–14–03; 8:45 am]

BILLING CODE 6718–02–P

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### Notice of Maximum Amount of Assistance Under the Individuals and Households Program, Notice of Maximum Amount of Repair Assistance, and Notice of Maximum Amount of Replacement Assistance

**AGENCY:** Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security

**ACTION:** Notice.

**SUMMARY:** FEMA gives notice of the maximum amounts for assistance under the Individuals and Households Program for emergencies and major disasters declared on or after October 1, 2003.

**EFFECTIVE DATE:** October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Berl Jones, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–4235.

**SUPPLEMENTARY INFORMATION:** Section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the "Act"), 42 U.S.C. 5174, prescribes that FEMA must annually announce the maximum amounts for assistance provided under the Individuals and Households (IHP) Program. FEMA gives notice that the maximum amount of IHP financial assistance provided to an individual or household under section 408 of the Act with respect to any single emergency or major disaster is $25,600. The maximum amount of Repair Assistance is $5,100, and the maximum amount of Replacement Assistance is $10,200. The increases in award amounts as stated above are for any single emergency or major disaster declared on or after October 1, 2003.

FEMA bases the adjustments on an increase in the Consumer Price Index for All Urban Consumers of 2.2 percent for the 12-month period ended in August 2003. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 18, 2003.

(Catalog of Federal Domestic Assistance No. 83.558, Individual and Household—Housing; 83.559, Individual and Household—Disaster Housing Operations; 83.560, Individual and Household—Other Needs.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–25996 Filed 10–14–03; 8:45 am]

BILLING CODE 6718–02–P

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### Notice of Adjustment of Statewide Per Capita Impact Indicator

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security

**ACTION:** Notice.

**SUMMARY:** FEMA gives notice that the statewide per capita impact indicator under the Public Assistance program for disasters declared on or after October 1, 2003 will be increased.

**EFFECTIVE DATE:** October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** James Walke, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, and (202) 646–3834.

**SUPPLEMENTARY INFORMATION:** 44 CFR 206.48 provides that FEMA will adjust the statewide per capita impact indicator under the Public Assistance program to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

FEMA gives notice that the statewide per capita impact indicator will be increased to $1.11 for all disasters declared on or after October 1, 2003.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 2.2 percent for the 12-month period ended in August 2003. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 18, 2003.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–25998 Filed 10–14–03; 8:45 am]

BILLING CODE 6718–02–P

## DEPARTMENT OF HOMELAND SECURITY

### Notice of Adjustment of Disaster Grant Amounts

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** FEMA gives notice of an increase of the maximum amount for Small Project Grants to State and local governments and private nonprofit facilities for disasters declared on or after October 1, 2003.

**EFFECTIVE DATE:** October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** James Walke, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3834.

**SUPPLEMENTARY INFORMATION:** The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act) prescribes that FEMA must annually adjust the maximum grant amount made under section 422, Small Project Grants, Simplified Procedure, relating to the Public Assistance program, to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

FEMA gives notice of an increase of the maximum amount of any Small Project Grant made to the State, local government, or to the owner or operator of an eligible private nonprofit facility, under Sec. 422 of the Stafford Act, to $54,100 for all disasters declared on or after October 1, 2003.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 2.2 percent for the 12-month period ended in August 2003. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 18, 2003.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–25999 Filed 10–14–03; 8:45 am]

**BILLING CODE 6718–02–P**

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Draft Recovery Plan for *Sidalcea oregana* var. *calva* (Wenatchee Mountains Checker-mallow)

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability for review and comment.

**SUMMARY:** The U.S. Fish and Wildlife Service ("we") announces the availability of the Draft Recovery Plan for *Sidalcea oregana* var. *calva* (Wenatchee Mountains Checker-mallow) for public review. This endangered plant is found only in Chelan County, Washington. This draft recovery plan describes the status of the species, recovery objectives and criteria, and specific actions needed to reclassify *Sidalcea oregana* var. *calva* from endangered to threatened, and to ultimately delist it. We solicit review and comment from local, State, and Federal agencies, and the public on this draft recovery plan.

**DATE:** Comments on the draft recovery plan must be received on or before December 15, 2003, to receive our consideration.

**ADDRESSES:** Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, Central Washington Field Office, 215 Melody Lane, Suite 119, Wenatchee, Washington 98801 (telephone: 509–665–3508). Requests for copies of the draft recovery plan and written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. An electronic copy of this recovery plan is also available at *http://endangered.fws.gov/recovery/index.html#plans.*

**FOR FURTHER INFORMATION CONTACT:** Tim McCracken, Fish and Wildlife Biologist, at the above address.

**SUPPLEMENTARY INFORMATION:**

#### Background

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program and the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Act requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice, and an opportunity for public review and comment, be provided during recovery plan development. We will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments may result in changes to the plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individual responses to comments will not be provided.

This draft recovery plan was developed by Service biologists coordinating with botanists, plant ecologists, and planners from the Natural Heritage Program and Natural Area Program, Washington Department of Natural Resources; and the U.S. Forest Service. We also consulted with various experts from universities, agency representatives, and non-governmental organizations in the development of this plan.

*Sidalcea oregana* var. *calva* was listed as an endangered species on December 22, 1999 (64 FR 71680). This rare, attractive member of the mallow family (Malvaceae) is endemic to Chelan County, Washington, where it is found in wetlands and moist meadows of the Wenatchee Mountains. Just five populations are known, and four of these five number from only eight to a few hundred individuals. Populations occur on a mixture of private, State, and Federal lands. Critical habitat was designated for this species on September 6, 2001 (66 FR 46536).

The primary threats to *Sidalcea oregana* var. *calva* include habitat fragmentation, degradation, or loss due to conversion of native wetlands to orchards and other agricultural uses; rural residential development and associated impacts; altered hydrology; competition from native and nonnative plants; recreational impacts; woody plant encroachment; and activities associated with fire suppression. To a lesser extent the species is threatened by livestock grazing, road construction, and timber harvesting and associated impacts including changes in surface runoff. The species is highly vulnerable to extirpation from demographic factors or random, naturally occurring events due to the very small size of most of the remaining populations.

The interim objective of this draft recovery plan is to stabilize the existing populations and accomplish increases in population sizes and geographic distribution across the historical range of the species sufficient to consider downlisting of *Sidalcea oregana* var. *calva* to threatened status. The primary objective of the plan is to recover the species to the point that it can be delisted.

Actions proposed to achieve the recovery of *Sidalcea oregana* var. *calva* include maintaining the current geographical distribution of the species through effective management and coordination with private landowners and other agencies; identifying potential habitat and developing a sound protocol for reintroducing the species within its historically occupied range; conducting research and monitoring essential to the conservation of the species; collecting seed representing the genetic diversity of the species across its range and storing it in a secure facility; surveying to identify potential additional populations; and developing outreach materials to provide information about the species, its habitat, and management recommendations to local landowners.

## Public Comments Solicited

We solicit written comments on the draft recovery plan described. All comments received by the date specified above will be considered in developing a final recovery plan.

**Authority:** The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 11, 2003.

**Don Weathers,**

*Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.*

[FR Doc. 03–25983 Filed 10–14–03; 8:45 am]

BILLING CODE 4310–55–P

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# DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[AK–310–2810–DG]

## Notice of Intent To Amend Land Use Plans and Prepare an Associated Environmental Assessment

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent to amend land use plans in Alaska and prepare an Associated Environmental Assessment.

**SUMMARY:** This document provides notice that the Bureau of Land Management (BLM) intends to address wildland fire and fuels management in its land use plans, through a statewide plan amendment and Environmental Assessment (EA). This amendment will provide a consistent approach for incorporating current wildland fire and fuels management policy into land use plans in order to comply with the National Fire Plan and 2001 Federal Fire Policy. It will also provide interim guidance for wildland fire and fuels management on BLM-managed lands for which completion of new land use plans is scheduled or on-going. The amendment will include an analysis of fire and fuels management actions on a landscape scale and their impacts on the human environment. An EA level analysis is anticipated to be sufficient to address the complexity of known issues.

The amendment will provide wildland fire and fuels management direction to all public lands managed by the Anchorage, Glennallen and Northern Field Offices. The following land use plans will be addressed during this amendment process and amended as appropriate: the Southwest Management Framework Plan (MFP), Southcentral MFP, Fortymile MFP, Northwest MFP, Central Yukon Resource Management Plan (RMP), White Mountains National Recreation Area RMP, Utility Corridor RMP, Fort Wainwright RMP, Fort Greely RMP, and the Steese National Conservation Area RMP. Fire management direction will also be developed for the National Petroleum Reserve-Alaska in conjunction with this planning effort.

Several concurrent land use planning efforts will be occurring at each Field Office. These include the Ring of Fire RMP (Anchorage Field Office, draft due 2004, final 2005), the Kobuck-Seward RMP (Northern Field Office, scheduled to begin 2004), and the East Alaska RMP (Glennallen Field Office, draft due 2004, final 2005). The fire decisions reached through the fire planning effort outlined in this **Federal Register** notice will be incorporated into these and other future land use planning efforts as they are completed.

The Federal Land Policy and Management Act (FLPMA) planning process (43 CFR 1600) will be used for all lands, except for the Alaska Petroleum Reserve-Alaska lands, which are not governed by the FLPMA planning process. The BLM will work closely with interested parties to identify the management decisions that are best suited to the needs of the public. This process will take into account local, regional and national needs and concerns. This includes public and firefighter safety. This notice initiates the public scoping process to identify specific issues and develop planning criteria. The scoping process will include an evaluation of the needs and interests of the public.

**DATES:** The scoping comment period will commence with the publication of this notice and end 60 days after publication. Comments regarding issues and planning criteria should be received on or before the end of the scoping period. Specific dates and locations for public participation will be published in local papers and broadcast on local community calendars at a later date.

**ADDRESSES:** Comments regarding the Wildland Fire and Fuels Management Land Use Plan Amendment for Alaska should be sent to: Planning and Environmental Coordinator, Bureau of Land Management, Alaska Fire Service, P.O. Box 35005, Ft. Wainwright, AK 99703.

**FOR FURTHER INFORMATION CONTACT:** Mary Lynch, Planning and Environmental Coordinator, Bureau of Land Management, Alaska Fire Service, P.O. Box 35005, Ft. Wainwright, AK 99703, (907) 356–5863.

**SUPPLEMENTARY INFORMATION:** Comments, including names and street addresses of respondents, will be available for public review at the above address during regular business hours 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the EA. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety. Documents pertinent to this proposal may be examined at the Alaska Fire Service at the address listed above.

Fire suppression in Alaska has been addressed on an interagency, multi-jurisdictional, landscape scale in the Alaska Interagency Wildland Fire Management Plan 1998 (AIWFMP). Four appropriate management responses defined as Management Options

(Critical, Full, Limited, and Modified) are identified in the plan. The four management options offer land managers a choice of the full range of suppression alternatives. Aggressive initial attack to surveillance to be implemented by the suppression organizations are options that have been included. BLM-managed lands in Alaska have designated management options. However, wildland fire management encompasses more than suppression actions. A spectrum of fire and fuels management activities to achieve ecosystem sustainability, accomplish resource-related objectives and protect communities or public safety are available. Current Federal fire policy states that land use plans will define and identify overall wildland fire and fuel management direction to meet land use and resource management objectives.

The proposed plan amendment and planning process would improve wildland fire management on BLM-managed lands in Alaska and more adequately integrate fire management direction with resource objectives by: (1) Reviewing management option designations and documenting related resource objectives and criteria to evaluate changing those designations (2) establishing broad objectives for wildland fire and fuels management, (3) identifying general guidelines for fuel treatments, and (4) identifying general restrictions for fire management practices. Anticipated issues for the plan amendments include: protection of human life, protection of property, protection of natural and cultural resources, integration of fire and resource management, and wildlife habitat. The interdisciplinary planning team will be comprised of resource specialists with the expertise necessary to address these issues.

The planning process will allow the public, Native organizations, State and Federal agencies, local elected officials, and BLM subject matter specialists to participate in scoping and alternative development and analysis. Public scoping to identify specific issues to be addressed in the plan will be an early opportunity for the public to provide input. Subsequent opportunities for public involvement will occur at specific stages in the planning process. Agency representatives and interested persons are invited to contact Alaska Fire Service officials at any time during the EA process.

Dated: August 19, 2003.

**Henri Bisson,**

*Alaska State Director.*

[FR Doc. 03–25286 Filed 10–14–03; 8:45 am]

**BILLING CODE 4310–JA–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WO–260–09–1060–00–24 1A]**

### Wild Horse and Burro Advisory Board; Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Announcement of meeting.

**SUMMARY:** The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

**DATES:** The Advisory Board will meet Monday, November 3, 2003, from 8 a.m., to 5 p.m., local time, and on Tuesday, November 4, 2003, from 8 a.m., to 3 p.m., local time.

**ADDRESSES:** The Advisory Board will meet at the Capital Hilton, 1001 16th St. NW., Washington, DC 20036, (202) 393–1000.

Written comments pertaining to the Advisory Board meeting should be sent to: Bureau of Land Management, National Wild Horse and Burro Program, NV–960, Attention: Ramona DeLorme, 1340 Financial Boulevard, Reno, Nevada, 89520. Submit written comments pertaining to the Advisory Board meeting no later than close of business October 29, 2003. *See* **SUPPLEMENTARY INFORMATION** section for electronic access and filing address.

**FOR FURTHER INFORMATION CONTACT:** Janet Neal, Wild Horse and Burro Public Outreach Specialist, (775) 861–6583. Individuals who use a telecommunications device for the deaf (TDD) may reach *Ms. Neal* at any time by calling the Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

#### I. Public Meeting

Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief, Forest Service, on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the meeting is:

*Monday, November 3, 2003 (8 a.m.–5 p.m.)*

8 a.m.: Call to Order & Introductions:
8:15 a.m.: Old Business:
  FY 03 Program Update
  FY 04 Gather Strategy
  Herd Areas at AML
9:30 a.m.: Break
9:45 a.m.: Old Business (continued):
12:30 p.m.: Lunch
1:30 p.m.: Old Business (continued):
  Fertility Control Research
2:30 p.m.: Break
2:45 p.m.: New Business
  Action Sub-Committee Report on Adoption Program
4 p.m.: Public Comments
4:45 p.m.: Recap/Summary
5–6 p.m. Adjourn: Roundtable Discussion

*Tuesday, November 4, 2003 (8 a.m.–3 p.m.)*

8 a.m.: New Business (continued):
  Further Board Discussion on Sub-Committee Report
9:45 a.m.—10 a.m.: Break
  New Business (continued):
12 p.m.: Lunch
1 p.m.: Board Recommendations
2:30 p.m.: Next Meeting/Date/Site
3 p.m.: Adjourn

The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal advisory committee management regulations [41 CFR 101–6.1015(b),] require BLM to publish in the **Federal Register** notice of a meeting 15 days prior to the meeting date.

#### II. Public Comment Procedures

Members of the public may make oral statements to the Advisory Board on November 3, 2003, at the appropriate point in the agenda. This opportunity is anticipated to occur at 4 p.m., local time. Persons wishing to make statements should register with the BLM by noon November 3, 2003, at the meeting location. Depending on the number of speakers, the Advisory Board may limit the length of presentations. At previous meetings, presentations have been limited to three minutes in length. Speakers should address the specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section or bring a written copy to the meeting.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies, or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, speakers should submit two copies of their written comments where feasible. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, the BLM will make them available in their entirety, including your name and address. However, if you do not want the BLM to release your name and address in response to a FOIA request, you must state this prominently at the beginning of your comment. The BLM will honor your request to the extent allowed by law. The BLM will release all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, in their entirety, including names and addresses.

### *Electronic Access and Filing Address*

Speakers may transmit comments electronically via the Internet to: *Janet_Neal@blm.gov.* Please include the identifier "WH&B" in the subject of your message and your name and address in the body of your message.

Dated: October 8, 2003.

**James G. Kenne,**

*Acting Deputy Assistant Director, Renewable Resources and Planning.*

[FR Doc. 03–25969 Filed 10–14–03; 8:45 am]

**BILLING CODE 4310–84–P**

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## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## Outer Continental Shelf (OCS) Eastern Gulf of Mexico (GOM) Oil and Gas Lease Sale 189

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Final Notice of Sale (FNOS) 189.

**SUMMARY:** On December 10, 2003, MMS will open and publicly announce bids received for blocks offered in Eastern GOM Oil and Gas Lease Sale 189, pursuant to the OCS Lands Act (43 U.S.C. 1331–1356, as amended) and the regulations issued thereunder (30 CFR part 256).

The Final Notice of Sale 189 Package (FNOS 189 Package) contains information essential to bidders, and bidders are charged with the knowledge of the documents contained in the Package.

**DATES:** Public bid reading will begin at 9 a.m., Wednesday, December 10, 2003, in the Grand Ballroom of the Royal Sonesta Hotel, 300 Bourbon Street, New Orleans, Louisiana. All times referred to in this document are local New Orleans times, unless otherwise specified.

**ADDRESSES:** Bidders can obtain a FNOS 189 Package containing this Notice of Sale and several supporting and essential documents referenced herein from the MMS Gulf of Mexico Region Public Information Unit, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, (504) 736–2519 or (800) 200–GULF.

*Filing of Bids:* Bidders must submit sealed bids to the Regional Director (RD), MMS Gulf of Mexico Reg[illegible] 1201 Elmwood Park Boulevard, Nev[illegible]ans, Louisiana 70123–2394, bet[illegible] m. and 4 p.m. on normal wor[illegible], and from 8 a.m. to the Bid Su[illegible] Deadline of 10 a.m. on Tuesday, December 9, 2003. If bids are mailed, please address the envelope containing all of the sealed bids as follows:

*Attention:* Mr. John L. Rodi, MMS Gulf of Mexico Region, Contains Sealed Bids for Sale 189.

If the RD receives bids later than the time and date specified above, he will return those bids unopened to bidders. Bidders may not modify or withdraw their bids unless the RD receives a written modification or written withdrawal request prior to 10 a.m. on Tuesday, December 9, 2003. Should an unexpected event such as flooding or travel restrictions be significantly disruptive to bid submission, the MMS Gulf of Mexico Region may extend the Bid Submission Deadline. Bidders may call (504) 736–0557 for information about the possible extension of the Bid Submission Deadline due to such an event.

*Areas Offered for Leasing:* The MMS is offering for leasing all of the unleased whole blocks located within the portion of the Eastern GOM Planning Area that is west of 87 degrees 30 minutes West Longitude and which range from 100 to 196 miles south of Alabama, and from about 70 to 148 miles offshore Louisiana. Please see the map included in the final NOS 189 Package: "Lease Terms, Economic Conditions, and Stipulations, Sale 189, Final." All of these blocks are shown on the following Official Protraction Diagrams (which may be purchased from the MMS Gulf of Mexico Region Public Information Unit):

### Outer Continental Shelf Official Protraction Diagrams (These diagrams sell for $2.00 each)

NG16–02 Lloyd Ridge (revised November 1, 2000)

**Please Note:** ACD–NH16–11 De Soto Canyon (revised November 1, 2000)

*Please Note:* A CD–ROM (in ARC/INFO and Acrobat (.pdf) format) containing all of the GOM Leasing Maps and Official Protraction Diagrams, except for those not yet converted to digital format, is available from the MMS Gulf of Mexico Region Public Information Unit for a price of $15.00. For additional information, please call Mr. Charles Hill (504) 736–2795.

All blocks are shown on these Leasing Maps and Official Protraction Diagrams. The available Federal acreage of all blocks in this sale is shown in the document "List of Blocks Available for Leasing in Sale 189" included in the FNOS 189 Package.

*Areas Not Available for Leasing:* The following whole blocks located within the sale area are currently leased and are therefore not available for bid in this sale:

*De Soto Canyon* Blocks 133–137, 177, 179–182, 223–226, 267–270, 309, 311, 314, 354, 401, 402, 443, 445–447, 485, 488–491, 529, 530, 534, 535, 573, 574, 576, 577, 617–624, 664–666, 668, 709, 710, 793, 794, 796, 798, 837, 838, 840, 842, 843, 883, 887, 927, 929, 932, 970, 971, 975, 976

*Lloyd Ridge* Blocks 1, 2, 5–7, 45–52, 91, 94–96, 133–137, 139, 140, 177, 183, 221, 265, 267, 268, 309, 315, 316, 354, 355, 359, 360, 399–402, 443–446

*Statutes and Regulations:* Each lease issued in this sale is subject to the OCS Lands Act of August 7, 1953, 67 Stat. 462; 43 U.S.C. 1331 et seq., as amended (92 Stat. 629), hereinafter called "the Act"; all regulations issued pursuant to the Act and in existence upon the Effective Date of the lease; all regulations issued pursuant to the statute in the future which provide for the prevention of waste and conservation of the natural resources of the OCS and the protection of correlative rights therein; and all other applicable statutes and regulations.

*Lease Terms and Conditions:* Initial period, minimum bonus bid amount, rental rates, royalty rates, minimum royalty, and royalty suspension areas are shown on the map "Lease Terms, Economic Conditions, and Stipulations, Sale 189, Final" for leases resulting from this sale:

*Initial Period:* 10 years;

*Minimum Bonus Bid Amount:* $37.50 per acre or fraction thereof;

*Rental Rates:* $7.50 per acre or fraction thereof, to be paid on or before the first day of each lease year until a discovery in paying quantities of oil or gas, then at the expiration of each lease year until the start of royalty-bearing production;

*Royalty Rates:* 12½ percent royalty rate, except during periods of royalty suspension, to be paid monthly on the last day of the month next following the month during which the production is obtained;

*Minimum Royalty:* After the start of royalty-bearing production: $7.50 per acre or fraction thereof per year, to be paid at the expiration of each lease year with credit applied for actual royalty paid during the lease year. If actual royalty paid exceeds the minimum royalty requirement, then no minimum royalty payment is due;

*Royalty Suspension Area:* Royalty suspension of 12 million barrels of oil equivalent, subject to both oil and gas price thresholds, will apply to all leases in this sale. Please see the map "Lease Terms, Economic Conditions, and Stipulations, Sale 189, Final" for specific details regarding royalty suspension eligibility, applicable price thresholds, and implementation.

*Stipulations:* Four lease stipulations, (1) Military Areas; (2) Evacuation; (3) Coordination; and (4) Protected Species, apply to all blocks in this sale. See the map, "Lease Terms, Economic Conditions, and Stipulations, Sale 189, Final" in the FNOS 189 Package. The texts of the proposed stipulations are contained in the document "Lease Stipulations for Oil and Gas Lease Sale 189, Final" included in the FNOS 189 Package.

*Information to Lessees:* The FNOS 189 Package contains an "Information To Lessees" document which provides detailed information on certain specific issues pertaining to this oil and gas lease sale.

*Method of Bidding:* For each block bid upon, a bidder must submit a separate signed bid in a sealed envelope labeled "Sealed Bid for Oil and Gas Lease Sale 189, not to be opened until 9 a.m., Wednesday, December 10, 2003." The total amount of the bid must be in a whole dollar amount; any cent amount above the whole dollar will be ignored by the MMS. Details of the information required on the bid(s) and the bid envelope(s) are specified in the document "Bid Form and Envelope" contained in the FNOS 189 Package.

The MMS published a list of restricted joint bidders, which applies to this sale, in the **Federal Register** on October 10, 2003. Bidders must execute all documents in conformance with signatory authorizations on file in the MMS Gulf of Mexico Region Adjudication Unit. Partnerships also must submit or have on file a list of signatories authorized to bind the partnership. Bidders submitting joint bids must include on the bid form the proportionate interest of each participating bidder, stated as a percentage, using a maximum of five decimal places, *e.g.*, 33.33333 percent. The MMS may require bidders to submit other documents in accordance with 30 CFR 256.46. The MMS warns bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders. Bidders are advised that the MMS considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including payment of the one-fifth bonus bid amount on all high bids. A statement to this effect must be included on each bid (see the document "Bid Form and Envelope" contained in the FNOS 189 Package).

*Rounding:* The following procedure must be used to calculate the minimum bonus bid, annual rental, and minimum royalty: Round up to the next whole dollar amount if the calculation results in a decimal figure (see next paragraph).

**Please Note:** The minimum bonus bid calculation, including all rounding, is shown in the document "List of Blocks Available for Leasing in Sale 189" included in the FNOS 189 Package.

*Bonus Bid Deposit:* Each bidder submitting an apparent high bid must submit a bonus bid deposit to the MMS equal to one-fifth of the bonus bid amount for each such bid. Under the authority granted by 30 CFR 256.46(b), the MMS *requires* bidders to use electronic funds transfer procedures for payment of one-fifth bonus bid deposits for Sale 189, following the detailed instructions contained in the document "Instructions for Making EFT Bonus Payments" included in the FNOS 189 Package. All payments must be electronically deposited into an interest-bearing account in the U.S. Treasury (account specified in the EFT instructions) by 1:00 p.m. Eastern Time the day following bid reading. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States. If a lease is awarded, however, MMS requests that only one transaction be used for payment of the four-fifths bonus bid amount and the first year's rental.

**Please Note:** Certain bid submitters (*i.e.*, those that are NOT currently an OCS mineral lease record title holder or designated operator OR those that have ever defaulted on a one-fifth bonus bid payment (EFT or otherwise)) are required to guarantee (secure) their one-fifth bonus bid payment *prior* to the submission of bids. For those who must secure the EFT one-fifth bonus bid payment, one of the following options may be used: (1) Provide a third-party guarantee; (2) Amend Development Bond Coverage; (3) Provide a Letter of Credit; or (4) Provide a lump sum payment in advance via EFT. The EFT instructions specify the requirements for each option.

*Withdrawal of Blocks:* The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

*Acceptance, Rejection, or Return of Bids:* The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless the bidder has complied with all requirements of this Notice, including the documents contained in the associated FNOS 189 Package and applicable regulations; the bid is the highest valid bid; and the amount of the bid has been determined to be adequate by the authorized officer. The Attorney General may also review the results of the lease sale prior to the acceptance of bids and issuance of leases. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance. To ensure that the Government receives a fair return for the conveyance of lease rights for this sale, high bids will be evaluated in accordance with MMS bid adequacy procedures. A copy of the current procedures, "Modifications to the Bid Adequacy Procedures" (64 FR 37560 of July 12, 1999), can be obtained from the

MMS Gulf of Mexico Region Public Information Unit via the Internet.

*Successful Bidders:* As required by the MMS, each company that has been awarded a lease must execute all copies of the lease (Form MMS–2005 (March 1986) as amended), pay by EFT the balance of the bonus bid amount and the first year's rental for each lease issued in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, Subpart I, as amended. Each bidder in a successful high bid must have on file in the MMS Gulf of Mexico Region Adjudication Unit a currently valid certification (Debarment Certification Form) certifying that the bidder is not excluded from participation in primary covered transactions under Federal nonprocurement programs and activities. A certification previously provided to that office remains currently valid until new or revised information applicable to that certification becomes available. In the event of new or revised applicable information, the MMS will require a subsequent certification before lease issuance can occur. Persons submitting such certifications should review the requirements of 43 CFR part 12, subpart D. A copy of the Debarment Certification Form is contained in the FNOS 189 Package.

*Affirmative Action:* The MMS *requests* that, prior to bidding, Equal Opportunity Affirmative Action Representation Form MMS 2032 (June 1985) and Equal Opportunity Compliance Report Certification Form MMS 2033 (June 1985) be on file in the Gulf of Mexico Region Adjudication Unit. This certification is required by 41 CFR 60 and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967. In any event, prior to the execution of any lease contract, both forms are *required* to be on file in the MMS Gulf of Mexico Region Adjudication Unit.

*Geophysical Data and Information Statement:* Pursuant to 30 CFR 251.12, the MMS has a right to access geophysical data and information collected under a permit in the OCS. Each bidder submitting a bid on a block in Sale 189, or participating as a joint bidder in such a bid, must submit a Geophysical Data and Information Statement identifying any processed or reprocessed pre- and post-stack depth migrated geophysical data and information in its possession or control and used in the evaluation of that block. The existence, extent (*i.e.*, number of line miles for 2D or number of blocks for 3D) and type of such data and information must be clearly identified. The statement must include the name and phone number of a contact person, and an alternate, knowledgeable about the depth data sets (that were processed or reprocessed to correct for depth) used in evaluating the block. In the event such data and information includes data sets from different timeframes, you should identify only the most recent data set used for block evaluations.

The statement must also identify each block upon which a bidder participated in a bid but for which it does not possess or control such depth data and information.

Each bidder must submit a separate Geophysical Data and Information Statement in a sealed envelope. The envelope should be labeled "Geophysical Data and Information Statement for Oil and Gas Lease Sale 189" and the bidder's name and qualification number must be clearly identified on the outside of the envelope. This statement must be submitted to the MMS at the Gulf of Mexico Regional Office, Attention: Resource Evaluation (1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394) by 10 a.m. on Tuesday, December 9, 2003. The statement may be submitted in conjunction with the bids or separately. Do not include this statement in the same envelope containing a bid. These statements will not be opened until after the public bid reading at Lease Sale 189 and will be kept confidential. An Example of Preferred Format for the Geophysical Data and Information Statement is included in the FNOS 189 Package.

Please refer to NTL No. 2003–G05 for more detail concerning submission of the Geophysical Data and Information Statement, making the data available to the MMS following the lease sale, preferred format, reimbursement for costs, and confidentiality.

Dated: October 7, 2003.

**R.M. "Johnnie" Burton,**

*Director, Minerals Management Service.*

[FR Doc. 03–26077 Filed 10–14–03; 8:45 am]

BILLING CODE 4310–MR–P

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## MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

### Sunshine Act Meeting Notice

**TIME AND DATE:** 9 a.m. to 2 p.m., Friday, November 14, 2003.

**PLACE:** The offices of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, 130 South Scott Avenue, Tucson, AZ 85701.

**STATUS:** This meeting will be open to the public, unless it is necessary for the Board to consider items in executive session.

**MATTERS TO BE CONSIDERED:** (1) A report on the U.S. Institute for Environmental Conflict Resolution; (2) A report from the Udall Center for Studies in Public Policy; (3) A report on the Native Nations Institute; (4) Program Reports; and (5) A Report from the Management Committee.

**PORTIONS OPEN TO THE PUBLIC:** All sessions with the exception of the session listed below.

**PORTIONS CLOSED TO THE PUBLIC:** Executive session.

**FOR FURTHER INFORMATION CONTACT:** Christopher L. Helms, Executive Director, 130 South Scott Avenue, Tucson, AZ 85701, (520) 670–5529.

Dated: October 9, 2003.

**Christopher L. Helms,**

*Executive Director, Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, and Federal Register Liaison Officer.*

[FR Doc. 03–26114 Filed 10–10–03; 10:03 am]

BILLING CODE 6820–FN–M

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346; License No. NPF–3]

### Firstenergy Nuclear Operating Company, Davis-Besse Nuclear Power Station, Unit 1; Receipt of Request for Action Under 10 CFR 2.206

Notice is hereby given that by petition dated August 25, 2003, submitted by Greenpeace on behalf of the Nuclear Information & Resource Service and the Union of Concerned Scientists (collectively, the Petitioners), the U.S. Nuclear Regulatory Commission (NRC) has been requested to take enforcement actions against FirstEnergy Nuclear Operating Company (FirstEnergy), the licensee for Davis-Besse Nuclear Power Station in Oak Harbor, Ohio, and the NRC has also been requested to suspend the Davis-Besse license and prohibit plant restart until certain conditions have been met.

As bases for requesting the NRC to take enforcement actions against the licensee, the Petitioners state that FirstEnergy has failed to complete commitments related to the NRC's 50.54(f) design basis letter (issued on October 9, 1996), and refer to numerous design basis violations dating back to plant licensing. The petitioners request that the NRC suspend the Davis-Besse license and prohibit plant restart until all design basis deficiencies identified in response to the NRC's 50.54(f) design basis letter are adequately addressed, the plant probabilistic risk assessment (PRA) is updated to reflect design flaws, and no systems are in a "degraded but operable" condition.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the NRC's Office of Nuclear Reactor Regulation (NRR). As provided by Section 2.206, appropriate action will be taken on this petition within a reasonable time.

A copy of the petition is available in the Agencywide Documents Access and Management System (ADAMS) for inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the ADAMS Public Library component on the NRC's Web site, *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room), using Accession No. ML032400435. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 7th day of October, 2003.

For the Nuclear Regulatory Commission.

**J.E. Dyer,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 03–25988 Filed 10–14–03; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 40–8905]**

## Finding of No Significant Impact and Notice of Availability of the Environmental Assessment Addressing a License Amendment Request To Approve Rio Algom LLC's Plan To Demolish Its Mill at Its Ambrosia Lake Uranium Mill Tailings Impoundment Located in Mckinley County, NM

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability of an environmental assessment and Finding of No Significant Impact.

**FOR FURTHER INFORMATION CONTACT:** Jill Caverly, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington, DC 20555–0001, telephone (301) 415–6699 and e-mail *jsc1@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an amendment to Rio Algom Mining LLC's (Rio Algom) Source Materials License SUA–1473. The proposed action would allow Rio Algom to begin demolition of the uranium mill buildings at the Ambrosia Lake uranium facility. The proposed action is in accordance with the licensee's plan dated December 10, 2002, as revised by additional information sent, at the staff's request, on March 27, 2003 and September 17, 2003.

Pursuant to the requirements of 10 CFR part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions, the NRC has prepared an environmental assessment (EA) to evaluate the environmental impacts associated with this request. Based on this evaluation, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate for the proposed licensing action.

### II. EA Summary

The EA was prepared to evaluate the environmental impacts associated with Rio Algom's plan to demolish the mill at its Ambrosia Lake uranium facility. The objectives of the Mill Demolition Plan are to: (1) Perform mill demolition activities in a manner that protects employee health and safety and the environment; (2) release equipment or packages from the restricted area for unrestricted release and do so in accordance with NRC decommissing criteria and approved Mill Demolition Plan; (3) transfer equipment to another NRC-licensed facility in accordance with applicable Federal laws and regulations; (4) perform work following established operating procedures; and (5) dispose of byproduct material in accordance with the source material license.

The Demolition Plan addresses the removal of surface structures in preparation for subsequent implementation of the surface reclamation soil cleanup release phase of the overall site decommissioning process. The Demolition Plan does not address the soil cleanup criteria that would be used as part of license termination and transfer to the site long-term custodian.

Prior to the start of mill demolition, the mill facilities and equipment in the immediate area would be washed down to minimize potential residual contamination. Any salvageable materials would be surveyed and if required, decontaminated until established release levels are obtained. Salvageable materials would be placed in a designated salvage area. Mill dismantling and washing would occur in accordance with NRC approved demolition plan. Contaminated equipment would be dismantled/broken up and buried in the approved disposal areas. Uncontaminated underground foundation, utilities and pipelines that are more than 2 feet below final grade would be buried in place. These foundations and pipes may be left in place if they are characterized and released in a manner consistent with 10 CFR part 40, appendix A, criterion 6(6). Areas where Rio Algom expects to leave foundations intact include the lower portions of the thickeners, any basement type area, and any foundations that extend 2 feet below existing grade. Underground cavities that are below grade, such as the crushing circuit from the primary crusher to the transfer house, would remain in place and would be backfilled. The final grade (contour) is projected to approximate the existing surface elevation in the mill area.

Disposal of all demolition waste that is classified as 11e.(2) byproduct material, as defined by the Atomic Energy Act of 1954 (AEA), as amended, would be performed in accordance with approved disposal practices as authorized by License Conditions 30, 32, 36, and 41 with the following modification. Disposal areas would be restored in accordance with License Condition 41(I), which requires Rio Algom to submit a final reclamation plan upon the end of milling operations. Rio Algom anticipates that reclamation efforts in areas where mill demolition debris would be disposed would involve either the placement of an engineered cover to control radon emissions or alternate release criteria would be requested.

Surplus chemicals/materials would be removed for sale or disposal prior to demolition of the area where these materials may be present. All gear boxes, transformers, motors, etc., would be drained prior to demolition with the drained material disposed of in accordance with applicable regulations.

A demolition schedule would be developed between site management and the selected demolition contractor and would take into consideration safety, radiation protection, personnel availability, salvage potential, contamination control, and weather constraints. At a minimum, any regulated asbestos containing materials would be abated from a structure prior to commencing structure demolition.

## III. Finding of No Significant Impact

Pursuant to 10 CFR part 51, the NRC has prepared the EA, summarized above. The staff has determined that no ground water impacts are expected from building dismantlement and deconstruction. There will be no deep excavations that could potentially impact ground water. Waste management activities will be implemented for gaseous effluents, liquid and solid wastes. Air particulate (dust) created by the mill demolition will be reduced by pre-washing all facility components. Liquid wastes used during the demolition will be isolated by creating a decontamination area for equipment washing. This area will either be enclosed with a sump or water containment system or will be a building slab from a previously dismantled building. All wash water will be collected and disposed of within lined evaporations cells. Solid waste generated during demolition will be separated into contaminated and uncontaminated. Uncontaminated wastes will be disposed of within a landfill owned by Rio Algom under regulation of the State of New Mexico.

Contaminated waste will be disposed of in the mill tailings disposal area in accordance with NRC regulations. Management of material contaminated with asbestos will be performed by specialized contractors experienced in decontamination and handling of asbestos. Additionally, the staff has determined that no historic or cultural resources and ecological resources would be impacted. The U.S. Fish and Wildlife Service has concurred that no threatened or endangered habitat has been impacted.

The proposed NRC approval of the action when combined with known effects on resource areas at the site, including further site remediation, is not anticipated to result in any cumulative impacts at the sites. Therefore, the NRC staff has concluded that there will be no significant environmental impacts on the quality of the human environment and, accordingly, the staff has determined that preparation of an Environmental Impact Statement is not warranted.

## IV. Further Information

The EA for this proposed action, as well as the licensee's request, as supplemented and revised, are available electronically for public inspection in the NRC's Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*. The ADAMS Accession Numbers for the licensee's request, as supplemented and revised, are: ML030940616 and ML030940279. The ADAMS Accession Number for the EA summarized above is ML032720534. Most of the documents referenced in the EA are also available through ADAMS. Documents can also be examined and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

Dated at Rockville, Maryland, this 6th day of October, 2003.

For the Nuclear Regulatory Commission,

**Robert Nelson,**

*Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 03–25987 Filed 10–14–03; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meeting Notice

**AGENCY HOLDING THE MEETING:** Nuclear Regulatory Commission.

**DATES:** Weeks of October 13, 20, 27, November 3, 10, 17, 2003.

**PLACE:** Commissioners' Conference Room 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

*Matters to be Considered:*

**Week of October 13, 2003**

*Wednesday, October 15, 2003*

1:30 p.m.—Briefing on License Renewal Program, Power Uprate Activities, and High Priority Activities (Public Meeting) (Contact: Jimi Yerokun, 301–415–2293).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

**Week of October 20, 2003—Tentative**

*Thursday, October 23, 2003*

10 a.m.—Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360).

This meeting will be webcast live at the Web address— *http://www.nrc.gov.*

**Week of October 27, 2003—Tentative**

*Wednesday, October 29, 2003*

9:30 a.m.—discussion of Security Issues (Closed—Ex. 1).

**Week of November 3, 2003—Tentative**

There are no meetings scheduled for the Week of November 3, 2003.

**Week of November 10, 2003—Tentative**

There are no meetings scheduled for the Week of November 10, 2003.

**Week of November 17, 2003—Tentative**

*Thursday, November 20, 2003*

12:45 p.m.—Briefing on Threat Environment Assessment (Closed—Ex. 1).

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

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**SUPPLEMENTARY INFORMATION:** "Briefing on Strategic Workforce Planning and Human Capital Initiatives (Closed—Ex. 2)," originally scheduled for October 7, 2003, was not held.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically. please send an electronic message to *dkw@nrc.gov.*

Dated: October 9, 2003.

**D.L. Gamberoni,**

*Technical Coordinator, Office of the Secretary.*

[FR Doc. 03–26134 Filed 10–10–03; 11:18 am]

BILLING CODE 7590–01–M

## PENSION BENEFIT GUARANTY CORPORATION

### Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of interest rates and assumptions.

**SUMMARY:** This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (http://www.pbgc.gov).

**DATES:** The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in October 2003. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in November 2003. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the fourth quarter (October through December) of 2003.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

**SUPPLEMENTARY INFORMATION:**

#### Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the "required interest rate") in determining a single-employer plan's variable-rate premium. The required interest rate is the "applicable percentage" (currently 100 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). (Although the Treasury Department has ceased issuing 30-year securities, the Internal Revenue Service announces a surrogate yield figure each month—based on the 30-year Treasury bond maturing in February 2031—which the PBGC uses to determine the required interest rate.)

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in October 2003 is 5.14 percent.

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between November 2002 and October 2003.

| For premium payment years beginning in | The required interest rate is |
|---|---|
| November 2002 | 4.93 |
| December 2002 | 4.96 |
| January 2003 | 4.92 |
| February 2003 | 4.94 |
| March 2003 | 4.81 |
| April 2003 | 4.80 |
| May 2003 | 4.90 |
| June 2003 | 4.53 |
| July 2003 | 4.37 |
| August 2003 | 4.93 |
| September 2003 | 5.31 |
| October 2003 | 5.14 |

#### Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-Employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the fourth quarter (October through December) of 2003, as announced by the IRS, is 4 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

| From— | Through— | Interest rate (percent) |
|---|---|---|
| 7/1/96 | 3/31/98 | 9 |
| 4/1/98 | 12/31/98 | 8 |
| 1/1/99 | 3/31/99 | 7 |
| 4/1/99 | 3/31/00 | 8 |
| 4/1/00 | 3/31/01 | 9 |
| 4/1/01 | 6/30/01 | 8 |
| 7/1/01 | 12/31/01 | 7 |
| 1/1/02 | 12/31/02 | 6 |
| 1/1/03 | 9/30/03 | 5 |
| 10/1/03 | 12/31/03 | 4 |

#### Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates"). The rate for the fourth quarter (October through December) of 2003 (*i.e.*, the rate reported for September 15, 2003) is 4.00 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

| From | Through | Interest rate (percent) |
|---|---|---|
| 7/1/97 | 12/31/98 | 8.50 |
| 1/1/99 | 9/30/99 | 7.75 |
| 10/1/99 | 12/31/99 | 8.25 |
| 1/1/00 | 3/31/00 | 8.50 |
| 4/1/00 | 6/30/00 | 8.75 |
| 7/1/00 | 3/31/01 | 9.50 |
| 4/1/01 | 6/30/01 | 8.50 |
| 7/1/01 | 9/30/01 | 7.00 |
| 10/1/01 | 12/31/01 | 6.50 |
| 1/1/02 | 12/31/02 | 4.75 |
| 1/1/03 | 9/30/03 | 4.25 |
| 10/1/03 | 12/31/03 | 4.00 |

#### Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part

4044). The interest assumptions applicable to valuation dates in November 2003 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 7th day of October 2003.

**Joseph H. Grant,**

*Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.*

[FR Doc. 03–26027 Filed 10–14–03; 8:45 am]

**BILLING CODE 7708–01–P**

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## OFFICE OF PERSONNEL MANAGEMENT

### Privacy Act of 1974; Computer Matching Programs, Office of Personnel Management/Department of Labor, Office of Workers' Compensation Programs

**AGENCY:** Office of Personnel Management (OPM).

**ACTION:** Publication of notice of computer matching to comply with Public Law 100–503, the Computer Matching and Privacy Act of 1988.

**SUMMARY:** OPM is publishing notice of its computer matching program with the Department of Labor, Office of Workers' Compensation Programs (OWCP) to meet the reporting and publication requirements of Public Law 100–503. The purpose of this match is to identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA) or the Federal Employees' Retirement System Act (FERSA) and the Federal Employees' Compensation Act (FECA). The match will identify individuals receiving prohibited benefits simultaneously under CSRA or FERSA and the FECA. All three laws prohibit the receipt of certain simultaneous payments covering the same period of time.

The match will involve the OPM system of records published as OPM CENTRAL–1, Civil Service Retirement and Insurance Records at 64 FR 54930 October 8, 1999, as amended May 3, 2000, (65 FR 25775) and the Department of Labor system of records published as DOL/GOVT–1, entitled "Office of Workers' Compensation Programs, Federal Employees' Compensation Act File" at 67 FR 16817, on April 8, 2002.

**DATES:** The matching program will begin in October 2003, or 40 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended an additional 12 months thereafter. The data exchange will begin at a date mutually agreed upon between OPM and OWCP after October 2003, unless comments on the match are received that result in cancellation of the program. Subsequent matches will take place semi-annually on a recurring basis until one of the parties advises the other in writing of its intention to reevaluate, modify and/or terminate the agreement.

**ADDRESSES:** Send comments to Maurice O. Duckett, Assistant Director for RIS Support Services Program, Office of Personnel Management, Room 4H28, 1900 E. Street NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** James Sparrow, (202) 606–1803.

**SUPPLEMENTARY INFORMATION:** The computer matching program between OPM and OWCP will involve comparison of beneficiaries under the FECA and the CSRA or the FERSA. The match will identify beneficiaries receiving payment of compensation for wage loss or death under the FECA and those receiving retirement or death benefits under the CSRA or FERS covering the same period of time.

The concurrent receipt of benefits under the FECA based on wage loss and under the CSRA or FERSA for retirement, or under the FECA, CSRA, or FERSA based on the death of a Federal employee, is prohibited. OPM has the responsibility to monitor retirement annuity and survivor benefits paid under the retirement laws to ensure that its beneficiaries are not receiving benefits under the FECA which are prohibited during receipt of benefits under the CSRA or FERSA. Similarly, it is OWCP's responsibility to ensure that Federal employees or dependents of deceased Federal employees receiving benefits under the FECA are not also receiving benefits under CSRA or FERSA which are prohibited.

By comparing the information received through this computer matching program on a regular basis, the agencies will be able to make a timely and more accurate adjustment in their benefit payments. The match will prevent overpayments, fraud and abuse, thus assuring that benefit payments are proper under the appropriate Acts.

Additional information regarding the matching program, including the authority for the program, a description of the matches, the personnel records to be matched, security safeguards, and plans for the disposal of records following completion of the match are provided in the text below.

Office of Personnel Management

**Kay Coles James,**

*Director.*

### Matching of Records Between Office of Workers' Compensation Programs and the Office of Personnel Management

A. *Authority.* The Civil Service Retirement Act (CSRA), 5 U.S.C. 8331, *et seq;* the Federal Employees' Retirement System Act (FERSA), 5 U.S.C. 8401, *et seq;* and the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101, *et seq.*

B. *Description of Computer Matching Program.* OPM pays annuities or survivor benefits to individuals who also may receive benefits under the FECA. OPM's responsibility as the administrator of CSRA and the FERSA is to assure that such benefit payments are proper and to prevent fraud and abuse. The computer matching program is an efficient method of determining whether these individuals are receiving benefits simultaneously from both OPM and OWCP which is prohibited by law.

OWCP will provide OPM with extracts of its payment files containing data (names, social security numbers, payee relationship codes, addresses, zip codes, and payment data) needed to identify the individual and determine if he or she is receiving benefits from both organizations at the same time. OPM will match OWCP's extract of its payment files against its payment records for the same dates to determine if benefits were being paid for the same day by both agencies. OPM will provide OWCP with a list of valid matches. Both organizations will detect, identify, and follow-up on payment of prohibited dual benefits. An individual identified as receiving prohibited dual benefits will be offered an opportunity to contest the findings and proposed actions and the opportunity to elect the benefits he or she wishes to receive. This due process will be provided to the individual before any payment adjustments are made.

C. *Personnel Records to be Matched.* The respective OPM and OWCP system of records cited above, which contain payment data on beneficiaries, will be matched.

D. *Privacy Safeguards and Security.* The personal privacy of the individuals whose names are included in the tapes is protected by strict adherence to the provisions of the Privacy Act of 1974 and OMB's Guidance Interpreting the Provisions of Pub. L. 100–503, the

Computer Matching and Privacy Act of 1988 (54 FR 25818). Security safeguards include limiting access only to the files agreed to and only to agency personnel having a "need to know." All automated records will be password protected and the data listing will be locked in file areas after normal duty hours. Records matched or created by the match will be stored in an area that is physically safe from access by unauthorized persons during normal work hours and after work, or when not in use.

E. *Disposal of Records*. The files will remain the property of the respective source agencies and all records including those not containing matches will be returned to the source agency for destruction. "Hits," those records relating to matched individuals, will be disposed of in accordance with the Privacy Act and the Federal Record Schedules after serving their purpose. The data obtained from confirmed hits will be entered in the claims file, subject to release only in accordance with the provisions of the Privacy Act.

[FR Doc. 03–25946 Filed 10–14–03; 8:45 am]

**BILLING CODE 6325–50–P**

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## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

*Extension:*
Rule 17f–2(a) SEC File No. 270–34 OMB Control No. 3235–0034.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17f–2(a) Fingerprinting Requirements for Securities Professionals. Rule 17f–2(a) requires that securities professionals be fingerprinted. This requirement serves to identify security risk personnel, to allow an employer to make fully informed employment decisions, and to deter possible wrongdoers from seeking employment in the securities industry. Partners, directors, officers, and employees of exchanges, brokers, dealers, transfer agents, and clearing agencies are included.

It is estimated that approximately 10,000 respondents will submit fingerprint cards. It is also estimated that each respondent will submit 55 fingerprint cards. The staff estimates that the average number of hours necessary to comply with the Rule 17f–2(a) is one-half hour. The total burden is 275,000 hours for respondents, based upon past submissions. The average cost per hour is approximately $50. Therefore, the total cost of compliance for respondents is $13,750,000.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: October 6, 2003.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–25972 Filed 10–14–03; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the Boston Stock Exchange, Inc. (Able Laboratories, Inc., Common Stock, $.01 par value) File No. 1–11352

October 8, 2003.

Able Laboratories, Inc., a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value ("Security"), from listing and registration on the Boston Stock Exchange, Inc. ("BSE" or "Exchange").

On September 19, 2003, the Board of Directors ("Board") of the Issuer approved a resolution to withdraw the Security from listing on the Exchange. The Board states that it made the decision to withdraw the Security from listing and registration on the BSE because the Security has been listed to trade on the Nasdaq National Market since February 27, 2003.

The Issuer stated in its application that it has met the requirements of the BSE rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the BSE and from registration under Section 12(b) of the Act [3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before October 30, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the BSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 03–25974 Filed 10–14–03; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–26203; File No. 812–12981]**

### MLIG Variable Insurance Trust and Roszel Advisors, LLC; Notice of Application

October 8, 2003.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of application for an order pursuant to Section 6(c) of the

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[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

Investment Company Act of 1940, as amended, (the "Act") granting relief from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

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**APPLICANTS:** MLIG Variable Insurance Trust (the "Trust") and Roszel Advisors, LLC ("Roszel Advisors").

**SUMMARY OF APPLICATION:** Applicants seek exemptions to permit life insurance company separate accounts supporting variable life insurance contracts (and their insurance company depositors) to invest in shares of the Trust or a "future trust" when the following other types of investors also hold shares of the Trust or a future trust: (1) A variable life insurance ("VLI") account of a life insurance company that is not an affiliated person of the insurance company depositor of any other VLI account, (2) the Trust's or future trust's investment adviser (representing seed money investments in the Trust or future trust), (3) a life insurance company separate account supporting variable annuity contracts (a "VA account"), or (4) a qualified pension or retirement plan. A "future trust" is any investment company (or investment portfolio or series thereof), other than the Trust, shares of which are to be sold to VLI accounts and to which applicants or their affiliates may in the future serve as investment advisers, investment sub-advisers, investment managers, administrators, principal underwriters or sponsors.

**FILING DATE:** The application was filed on May 29, 2003 and was amended and restated on September 26, 2003.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the Commission and serving applicants with a copy of the request, in person or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 3, 2003, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Applicants, c/o Edward W. Diffin, Jr., Esq., Vice President and Senior Counsel, Merrill Lynch Insurance Group, Inc., 1300 Merrill Lynch Drive, Pennington, New Jersey 08534. Copy to David S. Goldstein, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue NW., Washington, DC 20004–2415.

**FOR FURTHER INFORMATION CONTACT:** H. Yuna Peng, Attorney, at (202) 942–0676, or Lorna J. MacLeod, Branch Chief, at (202) 942–6070, Office of Insurance Products, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission, 450 5th Street NW., Washington, DC 20549 (tel. (202) 942–8090).

## Applicants Representations

1. The Trust is a business trust organized under the laws of Delaware on February 14, 2002. It is registered under the Act as an open-end management investment company and is a series investment company as defined by Rule 18f-2 under the Act. It is currently comprised of twenty-four investment portfolios. It issues a separate series of shares of beneficial interest in connection with each investment portfolio (each, a "Portfolio"). It may offer each series of its shares to VLI accounts and VA accounts of various life insurance companies ("participating insurance companies") and to pension and retirement plans qualified under Section 401(a) of the Internal Revenue Code of 1986, as amended (the "Code") ("plans").

2. Each VLI account and VA account will be established as a segregated asset account by a participating insurance company pursuant to the insurance law of the insurance company's state of domicile. As such, the assets of each will be the property of the participating insurance company and that portion of the assets of such an account equal to the reserves and other contract liabilities with respect to the account will not be chargeable with liabilities arising out of any other business that the insurance company may conduct. The income, gains and losses, realized or unrealized from such an account's assets will be credited to or charged against the account without regard to other income, gains or losses of the insurance company. If a VLI account or VA account is registered as an investment company, it will be a "separate account" as defined by Rule 0–1(e) (or any successor rule) under the Act and will be registered as a unit investment trust. For purposes of the Act, the life insurance company that establishes such a registered VLI account or VA account is the depositor and sponsor of the account as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts.

3. The plans will be pension or retirement plans intended to qualify under Sections 401(a) and 501(a) of the Code. Many of the plans will include a cash or deferred arrangement (permitting salary reduction contributions) intended to qualify under Section 401(k) of the Code. The plans will also be subject to, and will be designed to comply with, the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA") applicable to either defined benefit or to defined contribution profit-sharing plans.

4. Roszel Advisors is a Delaware limited liability company organized on April 5, 2002. Roszel Advisors is registered as an investment adviser under the Investment Advisers Act of 1940. Roszel Advisors is a wholly-owned subsidiary of Merrill Lynch Insurance Group, Inc., and is an "affiliated person" of the Trust as defined in Section 2(a)(3) of the Act. Roszel Advisors serves as the investment adviser to the Trust and each of the Portfolios. Roszel Advisors, under the direction of the Trust's board of trustees, is responsible for the overall business management of the Trust and for retaining investment subadvisers ("Subadvisers") to manage the assets of each Portfolio. Pursuant to an order under Section 6(c) of the Act granting exemption from Section 15(a) of the Act and Rule 18f–2 under the Act, Roszel Advisors uses a "manager of managers" approach to selecting and supervising Subadvisers to manage the assets of the Portfolios.

5. The Trust proposes to offer and sell its shares to VLI accounts and VA accounts of various participating insurance companies to serve as an investment medium to support variable life insurance contracts ("VLI contracts") and variable annuity contracts ("VA contracts") (together, "variable contracts") issued through such accounts. As described more fully below, the Trust will only sell its shares to registered VLI accounts and registered VA accounts if each participating insurance company sponsoring such a VLI account or VA account enters into a participation agreement with the Trust. The participation agreements will define the relationship between the Trust and each

participating insurance company and will memorialize, among other matters, the fact that, except where the agreement specifically provides otherwise, the participating insurance company will remain responsible for establishing and maintaining any VLI account or VA account covered by the agreement and for complying with all applicable requirements of state and federal law pertaining to such accounts and to the sale and distribution of variable contracts issued through such accounts.

6. The use of a common management investment company (or investment portfolio thereof) as an investment medium for both VLI accounts and VA accounts of the same insurance company, or of two or more insurance companies that are affiliated persons of each other, is referred to herein as "mixed funding." The use of a common management investment company (or investment portfolio thereof) as an investment medium for VLI accounts and/or VA accounts of two or more insurance companies that are not affiliated persons of each other, is referred to herein as "shared funding."

7. The Trust may sell its shares directly to the plans. Federal tax law permits investment companies such as the Trust to increase their net assets by selling shares to qualified pension and retirement plans such as the plans. Section 817(h) of the Code imposes certain diversification standards on the assets underlying variable contracts, such as those in each Portfolio of the Trust. The Code provides that variable contracts will not be treated as annuity contracts or life insurance contracts, as the case may be, for any period (or any subsequent period) for which the underlying assets are not, in accordance with regulations issued by the Treasury Department, adequately diversified. On March 2, 1989, the Treasury Department issued regulations (Treas. Reg. 1.817–5) which established specific diversification requirements for investment portfolios underlying variable contracts. The regulations generally provide that, in order to meet these diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, the regulations also contain an exception to this requirement that permits trustees of a qualified pension or retirement plan to hold shares of an investment company, the shares of which are also held by insurance company segregated asset accounts, without adversely affecting the status of the investment company as an adequately diversified underlying investment for variable contracts issued through such segregated asset accounts (Treas. Reg. 1.817–5(f)(3)(iii)).

8. As a result of this exception to the general diversification requirement, qualified pension and retirement plans, such as the plans, may hold Trust shares and select a Portfolio or an investment portfolio of any future trust as an investment option without endangering the tax status of variable contracts as life insurance or annuities, respectively. Trust shares sold to the plans would be held by the trustees of the plans as required by Section 403(a) of ERISA. The trustees or other fiduciaries of the plans may vote Trust shares held by their plans in their own discretion or, if the applicable plan so provides, vote such shares in accordance with instructions from participants in such plans. The use of a common management investment company (or investment portfolio thereof) as an investment medium for VLI accounts, VA accounts and plans, is referred to herein as "extended mixed funding."

### Applicants' Legal Analysis

9. Rule 6e–2(b)(15) under the Act provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the Act to VLI accounts supporting scheduled premium VLI contracts and to their life insurance company depositors. The exemptions granted by the Rule are available, however, only where the Trust offers its shares exclusively to VLI accounts of the same participating insurance company and/or of participating insurance companies that are affiliated persons of the same participating insurance company and then, only where scheduled premium VLI contracts are issued through such VLI accounts. Therefore, VLI accounts, their depositors and their principal underwriters may not rely on the exemptions provided by Rule 6e–2(b)(15) if shares of the Trust are held by a VLI account through which flexible premium VLI contracts are issued, a VLI account of an unaffiliated participating insurance company, an unaffiliated investment adviser, any VA account or a plan. In other words, Rule 6e–2(b)(15) does not permit a scheduled premium VLI account to invest in shares of a management investment company that serves as a vehicle for mixed funding, extended mixed funding or shared funding.

10. Rule 6e–3(T)(b)(15) under the Act provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the Act to VLI accounts supporting flexible premium variable life insurance contracts and their life insurance company depositors. The exemptions granted by the Rule are available, however, only where the Trust offers its shares exclusively to VLI accounts (through which either scheduled premium or flexible premium contracts are issued) of the same participating insurance company and/or of participating insurance companies that are affiliated persons of the same participating insurance company, VA accounts of the same participating insurance company or of affiliated participating insurance companies, or the general account of the same participating insurance company or of affiliated participating insurance companies. Therefore, VLI accounts, their depositors and their principal underwriters may not rely on the exemptions provided by Rule 6e–3(T)(b)(15) if shares of the Trust are held by a VLI account of an unaffiliated participating insurance company, a VA account of an unaffiliated participating insurance company, the general account of an unaffiliated participating insurance company, an unaffiliated investment adviser or a plan. In other words, Rule 6e–3(T)(b)(15) permits VLI accounts supporting flexible premium VLI contracts to invest in shares of a management investment company that serves as a vehicle for mixed funding but does not permit such a VLI account to invest in shares of a management investment company that serves as a vehicle for extended mixed funding or shared funding.

11. In general, Section 9(a) of the Act disqualifies any person convicted of certain offenses, and any company affiliated with that person, from acting or serving in various capacities with respect to a registered investment company. More specifically, paragraph (3) of Section 9(a) provides that it is unlawful for any company to serve as investment adviser or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1), or (2).

12. Subject to the limitations described above, Rule 6e–2(b)(15)(i) and (ii) and Rule 6e–3(T)(b)(15)(i) and (ii) provide exemptions from Section 9(a) to VLI accounts and their affiliates under certain circumstances and subject to certain conditions that would limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the Trust. The relief provided by Rule 6e–2(b)(15)(i) and Rule 6e–3(T)(b)(15)(i) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of a

participating insurance company, or any of the insurance company's affiliates, as long as that person does not participate directly in the management or administration of the Trust. The relief provided by Rule 6e–2(b)(15)(ii) and Rule 6e–3(T)(b)(15)(ii) permits a participating insurance company to serve as the Trust's investment adviser or principal underwriter, provided that none of its personnel who are ineligible pursuant to Section 9(a) of the Act are participating in the management or administration of the Trust.

13. The partial relief provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15) limits, in effect, the amount of monitoring of personnel that a participating insurance company and its affiliates would otherwise have to conduct to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. These Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the Act to apply the provisions of Section 9(a) to the many hundreds of individuals in a large insurance company complex, most of whom typically have no involvement in matters pertaining to investment companies affiliated with such an organization. These Rules also recognize that, in connection with the Trust, there exists no necessity to apply Section 9(a) to individuals in various participating insurance companies who would have no relationship to the Trust other than that their employer utilizes the Trust to support variable contracts. No regulatory purpose would be served in extending the Section 9(a) monitoring requirements because of mixed funding, extended mixed funding or shared funding. Participating insurance companies and plans are not expected to play any significant role in the management of the Trust. Those individuals at Roszel Advisors who would participate in the management of the Trust will do so regardless of which VLI accounts, VA accounts and plans invest in the Trust. The increased expense of extending the Section 9(a) monitoring requirements to participating insurance companies or plans could reduce the net return realized by investors in VLI accounts, VA accounts or plans and would not provide any material benefit to such investors.

14. Rule 6e–2(b)(15)(iii) and Rule 6e–3(T)(b)(15)(iii) provide partial exemptions from Sections 13(a), 15(a) and 15(b) of the Act to the extent that those Sections have been deemed by the Commission to require "pass-through" voting with respect to management investment company shares held by an insurance company separate account, in order to permit the insurance company to disregard the voting instructions of its VLI contract owners ("VLI owners") in certain limited circumstances. Because the Commission has deemed Sections 13(a), 15(a) and 15(b) to require a participating insurance company to vote all shares of the Trust held by a VLI account in accordance with instructions from VLI owners, the partial exemption from these sections provided by subparagraph (b)(15)(iii)(A)(1) of the Rules 6e–2 and 6e–3(T) would permit a participating insurance company to disregard the voting instructions of such VLI owners when required to do so by any insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rules 6e–2 and 6e–3(T)), if following such instructions would cause the insurance company to: (1) make (or refrain from making) certain investments that would result in changes in the subclassification or investment objectives of the Trust, or (2) approve or disapprove any contract between the Trust and Roszel Advisors (or another investment adviser or subadviser).

15. Subparagraph (b)(15)(iii)(B) of Rule 6e–2 and subparagraph (b)(15)(iii)(A)(2) of Rule 6e–3(T) would permit a participating insurance company to disregard the voting instructions of such VLI owners if the owners initiate any change in the Trust's investment policies, principal underwriter, or investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B) and (b)(7)(ii)(C) of Rules 6e–2 and 6e–3(T)).

16. Because the Commission has deemed Sections 13(a), 15(a) and 15(b) to require any participating insurance company to vote all shares of the Trust held by the insurer's VLI accounts in accordance with instructions from owners of variable life insurance contracts issued through such account, the partial exemption from these sections provided by subparagraph (b)(15)(iii) of Rule 6e–2 and subparagraph (b)(15)(iii)(A)(1) of the Rule 6e–3(T) is one that almost all VLI accounts and their participating insurance companies may need to rely on.

17. Both Rule 6e–2 and Rule 6e–3(T) generally recognize that a variable life insurance contract is primarily a life insurance contract containing many important elements unique to life insurance contracts and subject to extensive state insurance regulation. Applicants assert that in adopting subparagraph (b)(15)(iii) of these Rules, the Commission implicitly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters.

18. If the Trust serves as an investment vehicle for mixed funding, extended mixed funding or shared funding, the exemptions otherwise provided by Rule 6e–2(b)(15) would not be available to VLI accounts and their participating insurance company depositors and principal underwriters. Likewise, if the Trust serves as an investment vehicle for extended mixed funding or shared funding, the exemptions otherwise provided by Rule 6e–3(T)(b)(15) would not be available to VLI accounts and their participating insurance companies and principal underwriters.

19. Applicants maintain that VLI owners and VA owners, as investors in the Trust, would have substantially identical interests. Likewise, owners of scheduled premium VLI contracts and flexible premium VLI contracts would, as investors in the Trust, have virtually identical interests.

20. Each Portfolio is, or will be, managed to attempt to achieve the investment objective or objectives of such Portfolio, and not to favor or disfavor any particular participating insurance company or type of variable contract. Applicants assert that there is no reason to believe that the different features of various types of variable contracts, including any "minimum death benefit" guarantee under certain VLI contracts, will lead to different investment policies for different types of variable contracts. To the extent that the degree of risk may differ between VLI contracts and VA contracts, the different insurance charges imposed, in effect, adjust any such differences and equalize the insurers' exposure to risk in either case.

21. Furthermore, no single investment strategy is appropriate to one particular type of variable contract but not another. Each pool of VLI owners and VA owners is composed of individuals of diverse financial status, age, and insurance and investment goals. A Portfolio supporting one type of variable contract must accommodate these diverse factors in order to attract and retain owners of other types of variable contracts. Permitting mixed funding will facilitate the success of each Portfolio and will broaden the base of VLI owners and VA owners and encourage the Trust to add additional Portfolios.

22. Applicants maintain that qualified retirement plan investors in the Trust would have substantially the same interests as do VLI owners and VA owners. Like VLI and VA owners, qualified retirement plan investors are long-term investors. Therefore, most can be expected not to withdraw their assets from the plans.

23. In addition, neither VLI and VA owners on the one hand, nor plan investors on the other, would be taxed on the investment return of their respective investments in the Trust. Therefore, they would share a strong interest in the Trust operating in a manner that preserves this tax status. For example, material conflicts between these two groups of investors regarding capital transactions would be unlikely to occur. In this regard, ERISA imposes general diversification requirements on qualified pension or retirement plan investments that are wholly consistent with those required of each Portfolio under Section 817(h) of the Code.

24. VLI accounts, VA accounts and the plans are governed in similar ways. Plan committees (and other plan fiduciaries) have a fiduciary duty to participants that is similar to the obligations that a participating insurance company has to look after the interests of its VLI owners and VA owners. In this respect, applicants note that participating insurance companies and their VLI accounts would not require any exemptions from the Act other than those necessary for mixed funding and shared funding if participants in certain qualified pension and retirement plans invest indirectly in the Trust when their plan purchases a variable annuity contract offered by participating insurance company in the qualified plan market. The various plans may or may not offer an annuity option.

25. In light of the fact that plan investors would have beneficial interests in the Trust very similar to those of VLI owners and VA owners, applicants assert that, provided that they (and VLI accounts and participating insurance companies) comply with the conditions explained below, the addition of the plans as shareholders of the Trust and the addition of participants as persons having beneficial interests in the Trust should not increase the risk of material irreconcilable conflicts among and between investors. Applicants further assert that even if a material irreconcilable conflict involving the plans, or participants arose, the trustees (or other fiduciaries) of the plans, unlike participating insurance companies, can, if their fiduciary duty to the participants requires it, redeem the shares of the Trust held by the plans and make alternative investments without obtaining prior regulatory approval. Similarly, most, if not all, of the plans, unlike the VLI accounts or the VA accounts, may hold cash or other liquid assets pending their reinvestment in a suitable alternative investment.

26. Applicants maintain that VLI owners and VA owners would benefit from the expected increase in net assets of the Portfolios occasioned by participant investments. Not only should such additional investments not increase the likelihood of material irreconcilable conflicts of interests between or among different types of investors, but such additional investments should reduce some of the costs of investing for variable contract owners. In particular, additional investments would promote economies of scale, permit increased safety through greater portfolio diversification, provide each Portfolio's investment adviser with greater flexibility due to a larger portfolio and make the addition of future new Portfolios more feasible.

27. When the Commission last revised Rule 6e–3(T) in 1987, the Treasury Department had not issued the current regulations (Treas. Reg. 1.817–5) which make it possible for the Trust to sell shares to qualified pension or retirement plans without adversely affecting the tax status of VLI contracts and VA contracts. Applicants submit that, although proposed regulations had been published, the Commission did not envision this possibility when it last examined paragraph (b)(15) of the Rule and might well have broadened the exclusivity provision of that paragraph at that time to include plans such as the plans had this possibility been apparent. In this regard, the Commission has recently issued a number of orders under Section 6(c) granting the same exemptions requested herein to other applicants in very similar circumstances.

28. In light of the fact that the proposed plan investments in the Trust should not increase the likelihood of material irreconcilable conflicts and would otherwise benefit VA owners and VLI owners and in light of the recent supporting precedent, applicants believe that the Commission should grant the requested exemptions.

29. Applicants do not believe that plan investments in the Trust would increase the potential for material irreconcilable conflicts of interest between or among different types of investors. Section 403(a) of ERISA provides that the trustee(s) of a plan must have exclusive authority and discretion to manage and control the plan with two exceptions: (1) when the plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which event the trustee(s) are subject to proper directions made in accordance with the terms of the plan and not contrary to ERISA, and (2) when the authority to manage, acquire or dispose of assets of the plan is delegated to one or more investment advisers pursuant to Section 402(c)(3) of ERISA. Absent one of these exceptions, the trustee(s) of the plans would have the exclusive authority and responsibility for exercising voting rights attributable to their plan's investment securities. Where a named fiduciary appoints an investment adviser, the adviser has the authority and responsibility to exercise such voting rights unless the authority and responsibility is reserved to the trustee(s) or a non-trustee fiduciary.

30. Applicants generally expect many of the plans to have their trustees or other fiduciaries exercise voting rights attributable to investment securities held by the plans in their discretion. Some of the plans, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from participants.

31. Where plans do provide participants with the right to give voting instructions, applicants see no reason to believe that participants in the plans generally or those in a particular plan, either as a single group or in combination with participants in other plans, would vote in a manner that would disadvantage VLI owners or VA owners. The purchase of Trust shares by the plans that provide voting rights does not present any complications not otherwise occasioned by mixed funding or by shared funding.

32. Section 817(h) of the Code is the codification of certain aspects of a series of published and unpublished rulings issued by the Internal Revenue Service directed at the control of investments supporting most VLI contracts and VA contracts. In light of Treasury Regulation 1.817–5(f)(3)(iii) which specifically permits "qualified pension or retirement plans" and separate accounts to share the same underlying management investment company, applicants have concluded that neither the Code, nor other Treasury Regulations or revenue rulings thereunder, would create any inherent conflicts of interest between or among plan investors, VLI owners and VA owners.

33. Although there are differences in the manner in which distributions from

the plans and distributions from VLI and VA contracts are taxed, applicants maintain that these differences will have no impact on the Trust. VLI accounts, VA accounts, participating insurance companies and the plans each will redeem Trust shares in the same manner and using the same procedures. Each will purchase and redeem such shares at net asset value in conformity with Rule 22c–1 under the Act.

34. Applicants do not see any greater potential for material irreconcilable conflicts arising between the interests of plan investors and other Trust investors from possible future changes in the federal tax laws than that which already exists with regard to such conflicts arising between VLI owners and VA owners.

35. Applicants assert that the holding of Trust shares by separate accounts of unaffiliated insurance companies would not entail greater potential for material irreconcilable conflicts arising between or among the interests of VLI owners and VA owners than would mixed funding. Likewise, the holding of Trust shares by separate accounts of unaffiliated insurance companies would not entail greater potential for material irreconcilable conflicts arising between or among the interests of VLI owners, VA owners and plan investors than would extended mixed funding where only separate accounts of affiliated participating insurance companies held such shares.

36. A particular state insurance regulator could require action of an insurer domiciled or licensed in its jurisdiction that conflicts with or is inconsistent with the regulatory requirements of or actions required by the regulator of another state where that insurer is domiciled or licensed. The fact that different insurance companies are domiciled in different states does not enlarge or create significantly different issues in connection with conflicting state regulatory requirements. Affiliation among or between such insurance companies does not diminish the potential for such issues to arise nor, in light of the source of such issues, does it dramatically increase the likelihood of their being resolved.

37. Concern also has existed that material irreconcilable conflicts between or among the interests of VLI owners and/or VA owners of unaffiliated insurance companies were more likely to arise in the event that such companies exercised their limited right to disregard VLI owner voting instructions than would be the case between or among affiliated companies. Applicants assert, however, that the right of an insurance company to disregard VLI owner voting instructions does not raise any issues different from those raised by the authority of different state insurance regulators over separate accounts. Similarly, affiliation between or among insurance companies does not diminish or eliminate the potential for divergent judgments by such companies as to the advisability or legality of a change in investment policies, principal underwriter or investment adviser of a mutual fund in which their separate account invests. Applicants believe that the potential for disagreement between or among insurance companies is limited by requirements in Rule 6e–2 and Rule 6e–3(T) that a company's disregard of voting instructions be reasonable and based on specific good faith determinations. Moreover, in the event that a decision by a participating life insurance company to disregard VLI owners' voting instructions represents a minority position or would preclude a majority vote at a Trust shareholders meeting, the company could be required by the Trust's board of trustees to withdraw from the Trust.

38. Various factors have discouraged a number of life insurance companies from offering variable contracts. These factors include the cost of organizing and operating a funding medium (such as the Trust), the lack of expertise with respect to investment management (principally with respect to equity investments and derivative instruments) and the lack of name recognition by the public of many such insurers as investment professionals with whom an investor can feel comfortable entrusting their investment dollars. For example, a number of smaller life insurance companies do not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own. Use of the Portfolios as a mixed funding and shared funding vehicle for variable contracts would reduce or eliminate such concerns for small life insurance companies.

39. Permitting the Trust to serve as a mixed funding and shared funding vehicle also should provide several benefits to variable contract owners by eliminating a significant portion of the costs or establishing and administering separate mutual funds. Participating insurance companies would benefit not only from the investment and administrative expertise of Roszel Advisors, but also from the cost efficiencies and investment flexibility afforded by a large pool of assets. Permitting the Trust to serve as a mixed and shared funding vehicle also should make a greater amount of assets available for investment by each Portfolio than would otherwise be the case and, thereby, promote economies of scale, increase the safety of a Portfolio by increasing diversification of investments, and/or make the addition of new Portfolios more feasible. Therefore, making the Trust available to serve as a vehicle for mixed funding and shared funding could encourage more life insurance companies to offer variable contracts and thereby increase competition in the variable contracts market. Such competition, in turn, can be expected to result in more contract variation and in lower fees and charges. Applicants also assert that permitting the Trust to serve as a vehicle for extended mixed funding will result in increased assets for the Portfolios. This also will benefit owners of variable contracts by promoting economies of scale, increasing the safety of Portfolios by increasing diversification of investments, and/or make the addition of new Portfolios more feasible.

40. Applicants submit that regardless of the types of investors in the Trust, they each will be contractually and otherwise obligated to manage each Portfolio solely and exclusively in accordance with its investment objective(s), policies and restrictions as well as any additional guidelines established by trustees of the Trust. Roszel Advisors manages (and the investment adviser of any future trust would manage) each Portfolio, without regard to the identity of the investors in such accounts. Thus, each Portfolio is managed in the same manner as any other open-end management investment company.

41. Applicants see no legal impediment to permitting the Trust to serve as a vehicle for mixed funding, extended mixed funding and shared funding. The Commission has issued numerous orders permitting mixed funding, extended mixed funding and shared funding. Therefore, granting the exemptions requested herein is in the public interest and will not compromise the regulatory purposes of Sections 9(a), 13(a), 15(a) or 15(b) of the Act or of Rules 6e–2 and 6e–3(T) thereunder.

42. Section 6(c) of the Act authorizes the Commission to exempt any person, security, or transaction or any class of persons, securities, or transactions from any provision or provisions of the Act and/or any rule under it if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an order of the Commission that would exempt VLI

accounts and their participating insurance companies and principal underwriters as a class from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rule 6e–2 or Rule 6e–3(T)(b)(15) thereunder. The exemption of these classes of parties is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act because all of the potential members of the class could obtain the foregoing exemptions for themselves on the same basis as the applicants, but only at a cost to each of them that is not justified by any public policy purpose. As discussed below, the requested exemptions would only extend to VLI accounts whose participating insurance companies enter into participation agreements with the Trust; which agreements would subject such VLI accounts to the conditions discussed below. The Commission staff also would have the opportunity to review compliance with these conditions by participating insurance companies when it reviews the 1933 Act registration statements filed by each VLI account and VA account before the account could issue any variable contracts. The Commission has previously granted exemptions to classes of similarly situated parties in various contexts and from a wide variety of circumstances, including class exemptions in the context of mixed funding, extended mixed funding and shared funding.

*Applicants' Conditions*

With regard to the conditions recited below, references to the Trust include any future trust; references to a Portfolio include any investment portfolio of a future trust; and references to Roszel Advisors include any current or future Subadviser and any investment adviser to a future trust or investment portfolio of a future trust. Applicants consent to the following conditions if the exemptions requested herein are granted:

1. A majority of the Trustees (the "Board") of the Trust and each Portfolio will consist of persons who are not "interested persons" thereof, as defined by Section 2(a)(19) of the Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification or bona fide resignation of any trustee, then the operation of this condition shall be suspended: (a) for a period of 90 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor the Portfolios for the existence of any material irreconcilable conflict between and among the interests of VLI owners and VA owners and of plan participants and plans investing in the Portfolios and determine what action, if any, should be taken in response to any such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Portfolios are being managed; (e) a difference in voting instructions given by VLI owners, VA owners and plan investors; (f) a decision by a participating insurance company to disregard the voting instructions of VLI owners or VA owners; or (g) if applicable, a decision by a plan to disregard the voting instructions of plan participants.

3. Roszel Advisors (or any "investment adviser" of a Portfolio), any participating insurance company, and any plan that executes a participation agreement upon becoming an owner of 10% or more of the issued and outstanding shares of a Portfolio (such plans referred to hereafter as "participating plans") will be required to report any potential or existing conflicts to the Board. Roszel Advisors (or any other investment adviser of a Portfolio), participating insurance companies and participating plans will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by a participating insurance company to inform the Board whenever it has determined to disregard VLI owner or VA owner voting instructions, and, if pass-through voting is applicable, an obligation by a participating plan to inform the Board whenever it has determined to disregard plan participant voting instructions. The responsibility to report such conflicts and information, and to assist the Board will be contractual obligations of all participating insurance companies and participating plans investing in the Portfolios under their agreements governing participation in the Portfolios, and such agreements, shall provide that these responsibilities will be carried out with a view only to the interests of the VLI owners and VA owners, and if applicable, plan participants.

4. If a majority of the Board, or a majority of its disinterested trustees, determine that a material irreconcilable conflict exists, the relevant participating insurance companies and participating plans, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees), will be required to take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. Such steps could include: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Portfolio and reinvesting such assets in a different investment medium, which may include another Portfolio of the Trust; (b) in the case of participating insurance companies, submitting the questions of whether such segregation should be implemented to a vote of all affected owners of all registered VA contracts or VLI contracts, and, as appropriate, segregating the assets of any appropriate group (*i.e.*, VA owners or VLI owners of one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected variable contract owners, the option of making such a change; and (c) establishing a new registered management investment company. If a material irreconcilable conflict arises because of a decision by a participating insurance company to disregard VLI owners' or VA owners' voting instructions and that decision represents a minority position or would preclude a majority vote, the participating insurance company may be required, at the election of the Portfolio, to withdraw its separate account's investment in such Portfolio, with no charge or penalty imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a participating plan's decision to disregard plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the participating plan may be required, at the election of the Portfolio, to withdraw its investment in such Portfolio, with no charge or penalty imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility of taking

remedial action in the event of a Board determination of a material irreconcilable conflict and bearing the cost of such remedial action, will be a contractual obligation of all participating insurance companies and participating plans under their agreements governing participation in the Portfolios, and these responsibilities will be carried out with a view only to the interests of VLI owners, VA owners and plan participants, as applicable.

For purposes of this Condition 4, a majority of the disinterested trustees of the Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will a Portfolio, or Roszel Advisors be required to establish a new funding medium for any VLI contracts or VA contracts. No participating insurance company will be required by this Condition 4 to establish a new funding medium for any VLI contracts or VA contracts if a majority of VLI owners or VA owners materially and adversely affected by the irreconcilable material conflict vote to decline such offer. No participating plan shall be required by this Condition 4 to establish a new funding medium for such plan if: (a) a majority of plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to governing plan documents and applicable law, the participating plan makes such decision without a plan participant vote.

5. Roszel Advisors, all participating insurance companies with respect to a Portfolio and participating plans with respect to a Portfolio will be promptly informed in writing of any determination by the Board of such Portfolio that a material irreconcilable conflict exists and its implications.

6. Participating insurance companies will be required to provide pass-through voting privileges to all owners of registered VLI contracts and registered VA contracts so long as the Commission interprets the Act to require pass-through voting privileges for such VLI owners or VA owners. Accordingly, the participating insurance companies will vote shares of a Portfolio held in their separate accounts in a manner consistent with voting instructions timely received from VLI owners or VA owners. Participating insurance companies shall be responsible for assuring that each of their separate accounts calculates voting privileges in a manner consistent with all other participating insurance companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the fund will be a contractual obligation of all participating insurance companies under the agreements governing participation in the Portfolio. Each participating insurance company will be required to vote shares for which it has not received voting instructions as well as shares attributable to it, in the same proportion as it votes shares for which it has received instructions. Each participating plan will vote as required by applicable law governing plan documents.

7. Roszel Advisors, and any person under common control with Roszel Advisors, will vote shares held by them for their own benefit (*i.e.*, shares representing seed money) in the same proportions as the shares collectively voted by the various participating insurance companies.

8. All reports of potential or existing conflicts received by the Board and all Board action with regard to determining the existence of a conflict, notifying Roszel Advisors, participating insurance companies and participating plans of a conflict and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records will be made available to the Commission upon request.

9. Each Portfolio will notify all participating insurance companies and participating plans that disclosure in separate account prospectuses or plan prospectuses or other plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. Each Portfolio will disclose in its prospectus that: (a) Shares of the Portfolio may be offered to insurance company separate accounts of both annuity and life insurance variable contracts, and to plans; (b) due to differences of tax treatment and other considerations, the interests of various variable contract owners participating in the Portfolios and the interests of plans investing in the Portfolios may conflict; and (c) the Board will monitor such Portfolios for any material conflicts of interest and determine what action, if any, should be taken.

10. Each Portfolio will comply with all provisions of the Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the respective Portfolio), and, in particular, each Portfolio will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the Act not to require such meetings) or comply with Section 16(c) of the Act (although the Portfolios are not within the trusts described in Section 16(c) of the Act), as well as with Section 16(a), and, if applicable, Section 16(b) of the Act. Further, each Portfolio will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

11. If and to the extent Rules 6e–2 and 6e–3(T) are amended (or Rule 6e–3 under the Act is adopted) to provide exemptive relief from any provision of the Act or the rules promulgated thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Portfolios shall and the participating insurance companies, as appropriate, shall be required to take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, or Rule 6e–3, as adopted, to the extent applicable.

12. No less than annually, Roszel Advisors, the participating insurance companies and participating plans shall submit to the Board such reports, materials or data as the Board may reasonably request so that the Board may fully carry out obligations imposed upon them by the conditions contained in the application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of Roszel Advisors, participating insurance companies and participating plans to provide these reports, materials and data to the Board, shall be a contractual obligation of Roszel Advisors, all participating insurance companies and participating plans under their agreements governing participation in the Portfolios.

13. If a plan or plan participant shareholder should become an owner of 10% or more of the issued and outstanding shares of a Portfolio, such plan will execute a participation agreement with such Portfolio, including the conditions set forth herein to the extent applicable. A plan or plan participant shareholder will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of the Portfolio.

### *Conclusion*

For the reasons summarized above, applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–25973 Filed 10–14–03; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–26204; File No. 812–12722]**

## The Lincoln National Life Insurance Company, et al.; Notice of Application

October 8, 2003.

**AGENCY:** Securities and Exchange Commission (the "Commission").

**ACTION:** Notice of application for an order pursuant to Section 11(a) of the Investment Company Act of 1940 (the "Act") approving the terms of an exchange offer to issued and outstanding variable annuity contracts.

**APPLICANTS:** The Lincoln National Life Insurance Company ("Lincoln Life") and Lincoln National Variable Annuity Account C ("Account C").

**FILING DATE:** The application was filed on December 13, 2001, and amended and restated on September 22, 2003.

**SUMMARY OF APPLICATION:** Applicants request an order approving the terms of a proposed offer of exchange of MultiFund® 5 (with contract value death benefit), an existing variable annuity contract issued by Lincoln Life and made available through Variable Annuity Account C ("New Contract"), for MultiFund® 2, 3, and 4 (with contract value death benefit), outstanding annuity contracts issued by Lincoln Life and made available through Variable Annuity Account C ("Old Contracts").

**HEARING OR NOTIFICATION OF HEARING:** An order granting the amended and restated application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on November 3, 2003, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Mary Jo Ardington, Esq., Counsel, The Lincoln National Life Insurance Company, 1300 S. Clinton Street, P.O. Box 1110, Fort Wayne, Indiana 46801–1110. Copy to Judith A. Hasenauer, Esq., Blazzard, Grodd & Hasenauer, P.C., Federal Tower, Suite 500, 1600 S. Federal Highway, Pompano Beach, Florida 33062.

**FOR FURTHER INFORMATION CONTACT:** Ellen J. Sazzman, Senior Counsel, or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

### Applicants' Representations

1. Lincoln Life is a stock life insurance company that was founded in 1905 under Indiana law, and is a wholly-owned subsidiary of Lincoln National Corporation ("LNC"), which is also organized under Indiana law. LNC's primary businesses are insurance and financial services. Lincoln Life is Account C's depositor within the meaning of the Act.

2. Lincoln Life is the principal underwriter of the contracts issued by Lincoln Life through Account C. Lincoln Life is registered as a broker-dealer under the Securities Exchange Act of 1934.

3. Account C was established on June 3, 1981, as an insurance company separate account under Indiana law. Account C is a segregated investment account and, as such, its assets may not be charged with liabilities resulting from any other business that Lincoln Life may conduct. Income, gains, and losses, whether realized or not, from assets allocated to Account C are, in accordance with applicable annuity contracts, credited to or charged against Account C, and without regard to any other income, gains, or losses of Lincoln Life. Account C satisfies the definition of a separate account under the federal securities law. Account C is registered on Form N–4 under the Act as a unit investment trust (File No. 811–3214).

4. Account C funds the MultiFund® Series of Variable Annuity Contracts including the MultiFund® 2, 3, 4, and 5 Contracts ("MultiFund® Contracts"). Certain MultiFund® Contracts have been offered and sold for a number of years.

5. There are four MultiFund® Contracts which are the subject of this Application: MultiFund® 2, MultiFund® 3, MultiFund® 4 and MultiFund® 5, all with the contract value death benefit. The MultiFund® 2, 3, and 4 Contracts issued through Account C have been registered under the Securities Act of 1933 pursuant to a registration statement on Form N–4 (File No. 33–25990). The MultiFund® 5 Contract issued through Account C has been registered under the Securities Act of 1933 pursuant to a registration statement on Form N–4 (File No. 333–68842).

6. The MultiFund® Contracts are flexible premium deferred annuity contracts under which contract owners may make one or more purchase payments over a period of time (called the "accumulation period"). During the accumulation period, based upon the contract owner's instructions, such purchase payments are allocated to the selected subaccounts of Account C and/or Lincoln Life's general account. To the extent that an owner selects one or more subaccounts, his or her investment in the contract will vary with the investment performance of the selected subaccounts. To the extent that an owner selects the general account, Lincoln Life guarantees that the amount allocated to the general account will be credited with a minimum interest rate and Lincoln Life may credit additional interest that it may declare from time to time.

7. A contract owner can elect to receive annuity payments under his or her contract. Under a contract, annuity payments are based upon the life of an annuitant and in some cases the lives of two (or joint) annuitants. Annuity options are available on a variable basis (*i.e.*, funded by Account C) and/or on a fixed basis (*i.e.*, funded through Lincoln Life's general account). The contracts incorporate other features, some of which are described more fully below under the discussion of the specific contract.

8. The minimum purchase payment for MultiFund® 2, 3, and 4 Contracts is $3000 for nonqualified contracts and $1000 for qualified contracts. The MultiFund® 2, 3 and 4 Contracts impose a surrender charge of up to 7% of any amount by which purchase payments withdrawn in any year exceed 15% of purchase payments. (However, this 15% withdrawal exception does not apply to a surrender of a contract.) The surrender charge associated with each

purchase payment declines 1% each year until it is 0% beginning after the seventh year after the payment was made.

9. The MultiFund® 2, 3 and 4 Contracts also impose the following charges: (a) A daily mortality and expense risk charge for contracts with the contract value death benefit at an annual rate of 1.002% of the daily net asset value of Account C; (b) an annual contract maintenance charge of $25 (for MultiFund® 2 only); (c) a charge corresponding to any applicable state premium tax or other tax levied by any governmental entity; and (d) fees and charges paid out of the assets of the underlying funds.

10. The minimum purchase payment for the MultiFund® 5 Contract is $25,000. This minimum payment restriction will be waived for participants in the exchange offer. The MultiFund® 5 Contract also imposes a surrender charge of up to 7% of any amount by which purchase payments withdrawn in any year exceed 15% of purchase payments. (However, this 15% withdrawal exception does not apply to a surrender of a contract.) The surrender charge associated with each purchase payment declines 1% each year until it is 0% beginning after the seventh year after the payment was made.

11. MultiFund® 5 has four contract options with various death benefits. Only the contract value death benefit option is part of the exchange offer. In addition to the surrender charge, the MultiFund® 5 Contract option that is part of the exchange offer imposes the following charges: (a) A daily mortality and expense risk and administrative charge at an annual rate of 1.00% of the daily net asset value of Account C; (b) a charge corresponding to any applicable state premium tax or other tax levied by any governmental entity; and (c) fees and charges paid out of the assets of the underlying funds.

12. Under both the MultiFund® 2, 3, and 4 Contracts and the MultiFund® 5 Contract, if the contract value death benefit option is in effect, the death benefit is equal to the current value of the contract as of the day Lincoln Life approves the claim for payment. However under the MultiFund® 5 Contract, the death benefit would be payable on the death of the owner, joint owner, or, in certain circumstances, the annuitant, and not just on the death of the annuitant as under the MultiFund® 2, 3, and 4 Contracts.

13. Under the MultiFund® 2, 3, and 4 Contracts, Lincoln Life limits transfers to no more than six per contract year although Lincoln Life reserves the right to waive this restriction and current practice is to allow up to 12 transfers per contract year. Transfers between subaccounts are restricted to once every 30 days, although Lincoln Life may waive this requirement. The minimum amount which may be transferred is $500 (or the entire subaccount amount if less than $500). The MultiFund® 5 Contract has the same transfer provisions as the MultiFund® 2, 3, and 4 Contracts except that the MultiFund® 5 Contract contractually allows up to twelve transfers per year during the accumulation phase, and these transfers are not limited to once every thirty days.

14. The MultiFund® 5 Contract has a lower guaranteed minimum interest rate payable on the fixed account than the MultiFund® 2, 3, and 4 Contracts. The MultiFund® 2 and 3 Contracts provide that for contract years 6–10, the guaranteed minimum interest rate is 4% and for years 10 and later, the guaranteed minimum interest rate is 3.5%. The MultiFund® 4 Contract provides for a guaranteed minimum interest rate of 3% in all years. After June 2, 2003, the MultiFund® 5 Contract provides for a guaranteed minimum interest rate of 1.5% for the contract life in some states and 3% for the contract life in the remaining states.

15. Lincoln Life now proposes to make an exchange offer to MultiFund® 2, 3, and 4 contract owners with the contract value death benefit option whose contracts have a contract value of at least $5000 and who have remaining surrender charges equal to 2% or less of their current contract value. Under the exchange offer, eligible contract owners can elect to exchange their existing MultiFund® 2, 3, or 4 Contracts for a MultiFund® 5 Contract. An immediate bonus credit of 2% of the contract value will be credited to the contract owner's contract on the issue date of the MultiFund® 5 Contract.

16. Contract owners who elect the 2% Bonus Exchange Offer will be issued a new MultiFund® 5 Contract with the Contract Value Death Benefit. The current contract value will be withdrawn from the old contract and re-deposited into a MultiFund® 5 Contract based on the then current allocation of contract value. Contract owners will hold the same share class in MultiFund® 5 as in their original contract. Four of the existing underlying funds for MultiFund® 2, 3, and 4 Contracts are not available under the MultiFund® 5 Contract. However, ten new fund choices are available under the MultiFund® 5 Contract that are not available under the MultiFund® 2, 3, and 4 Contracts. If a contract owner has allocated payments to one of the four subaccounts not available under the MultiFund® 5 Contract, the contract owner will be required to establish a new allocation among subaccounts available under the MultiFund 5® Contract. All contract owners who have accepted the exchange offer will be given the opportunity to change their allocations at the time of the exchange to any of the subaccounts available under the MultiFund® 5 Contract. These changes in allocations do not count as transfers.

17. The entire contract value of the new MultiFund® 5 Contract (excluding the 2% bonus credit) will be subject to surrender charges under the New Contract as of the date the contract becomes effective. For purposes of calculating surrender charges, the contract value of the Old Contract (excluding the bonus credit) will be treated as a purchase payment. Any remaining surrender charges on the contract owner's MultiFund® 2, 3, or 4 Contract existing prior to the time of the election of the exchange will be waived. All other charges of the new MultiFund® 5 Contract will also apply.

18. As of the effective date of the exchange offer, contract owners who have accepted the exchange offer will pay the MultiFund® 5 Contract charges. After the exchange, the contract owner will be governed by the terms of the New Contract, effective on the date the exchange offer is processed.

19. The exchange offer is only available to nonqualified, IRA and Roth IRA annuity contracts, with at least $5000 in contract value, in which the named contract owner, joint owner, and annuitant are under age 76, and the remaining surrender charge, as a percent of the current contract value, is 2% or less. The exchange offer will not be made to contract owners who are not eligible to participate.

20. Contract owners may cancel the new MultiFund® 5 Contract for any reason within ten days (in some states longer) of the date of receipt of the new contract in accordance with the terms of the Right to Examine provision of the contract. No surrender charges will be assessed upon exercise of the Right to Examine provision or upon cancellation. Upon cancellation, Lincoln Life will return the contract value to the applicable MultiFund® 2, 3, or 4 Contract. Any surrender charges previously waived on the MultiFund® 2, 3, or 4 Contract will be reinstated as of the date the MultiFund® 2, 3, or 4 Contract was surrendered. Lincoln Life will revoke any bonus credits credited to the contract value. However, Lincoln Life will assume the risk of investment loss on the bonus credits. In other words, the contract owner will be put

back into the same position as if he or she had never elected the 2% Bonus Exchange Offer (except for market gain or loss on contract value). There will be no recapture of the bonus credit upon withdrawal or surrender except under the Right to Examine provision. The election of the 2% Bonus Exchange Offer will have no adverse tax consequences to the contract owner.

21. Applicants represent that the exchange offer is designed to encourage existing contract owners to remain with Lincoln Life rather than surrender their contracts in exchange for a competitor's product offering similar benefits.

22. Applicants propose to make the exchange offer by providing eligible contract owners with an Offering Document mailed directly from Lincoln Life. Eligible contract owners will also receive a MultiFund 5 prospectus. The MultiFund® 5 prospectus will be supplemented to provide disclosure specifically related to the 2% Bonus Exchange Offer. Eligible MultiFund® 2, 3, and 4 contract owners who express an interest in learning the details of the offer can contact either Lincoln Life or their registered representative for further information.

23. Registered representatives who are responsible for a contract owner accepting the exchange offer will be paid a commission. The commission is less than what the registered representative would receive on the sale of a new MultiFund® 5 Contract.

24. The Offering Document will advise eligible contract owners that the offer is designed for those contract owners who intend to continue to hold their contracts as long-term investments. The Offering Document will state that the offer is not intended for all contract owners, and that it is especially not appropriate for any contract owner who anticipates surrendering an amount of his or her contract value in excess of the annual free withdrawal amount (15% of purchase payments) within the surrender charge period. In this regard, the Offering Document will encourage contract owners to carefully evaluate their personal financial situation when deciding whether to accept or reject the offer. In addition, the Offering Document will explain how a contract owner who elects to participate in the offer may avoid the applicable surrender charge if no more than the annual free withdrawal amount (15% of purchase payments) is surrendered, and any subsequent purchase payments are maintained until expiration of the applicable surrender charge period. In this regard, the Offering Document will state in clear plain English that if the new contract is surrendered during the initial surrender charge period: (a) The benefits of the 2% Bonus Exchange Offer may be more than offset by the surrender charge; and (b) a contract owner may be worse off than if he or she had rejected the offer.

25. To accept the exchange offer, an eligible contract owner must complete the Lincoln Life internal exchange forms, which will contain the pertinent information so that the exchange will comply with the requirements of Section 1035 of the Internal Revenue Code ("Section 1035"). No adverse tax consequences will be incurred by those contract owners who accept the exchange offer. The exchanges will constitute tax-free exchanges pursuant to Section 1035.

## Applicants' Legal Analysis

1. Section 11(a) of the Act makes it unlawful for any registered open-end company or any principal underwriter for such company, to make or cause to be made an offer to the holder of a security of such company, or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with Commission rules adopted under Section 11.

2. Section 11(c) of the Act, in pertinent part, requires that any offer of exchange of the securities of a registered unit investment trust for the securities of any other investment company be approved by the Commission (by order or by rule) or satisfy applicable rules adopted under Section 11, regardless of the basis of the exchange.

3. Account C is registered under the Act as a unit investment trust. Thus, the exchange offer constitutes an offer of exchange of two securities, each of which is offered by a registered unit investment trust.

4. According to the Commission, Congress enacted Section 11 of the Act to prevent "switching," the practice of inducing security holders of one investment company to exchange their securities for those of a different investment company solely for the purpose of exacting additional selling charges.

5. Section 11(c) of the Act requires Commission approval (by order or by rule) of any exchange, regardless of its basis, involving securities issued by a unit investment trust because investors in unit investment trusts were found by Congress to be particularly vulnerable to switching transactions. Applicants believe that the potential for harm to investors perceived in switching by Congress was its use to extract additional sales charges from those investors.

6. Applicants represent that, as opposed to providing a means of extracting additional sales charges as contemplated by the prohibitions of Section 11, the proposed exchange offer provides enduring benefits to the contract owners. To the extent that a contract owner ultimately did not benefit from accepting the offer, it would be as a result of his or her own subsequent decision to surrender the exchanged contract in circumstances that would have been the subject of very explicit disclosure.

7. Rule 11a–2, by its express terms, provides for Commission approval of certain types of offers of exchange of one variable annuity contract for another. Other than the relative net asset value requirement, the only other part of Rule 11a–2 that would not be satisfied by the proposed exchange offer is the requirement that payments under the existing MultiFund® 2, 3, and 4 Contracts be treated as if they had been made under the exchanged contracts on the dates actually made. This provision of Rule 11a–2 is often referred to as a "tacking" requirement because it has the effecting of "tacking together" the surrender charge expiration periods of the exchanged and acquired contracts.

8. Applicants believe that tacking should be viewed as a useful way to avoid the need to scrutinize the terms of an offer of exchange to make sure that there is no abuse. Tacking is not a requirement of Section 11. Rather, it is a creation of a rule designed to approve the terms of an offer of exchange "sight unseen." Tacking focuses on the closest thing to multiple deduction of sales loads that is possible in a surrender charge contract—multiple exposure to sales loads upon surrender or redemption. If tacking and other safeguards of Rule 11a–2 are present, there is no need for the Commission or its staff to evaluate the terms of the offer. The absence of tacking in this fully scrutinized Section 11 application will have no import in offers made pursuant to the rule on a "sight unseen" basis.

9. No tacking is required when Lincoln Life's competitors offer their variable annuity contracts to owners of the MultiFund® 2, 3, and 4 Contracts or indeed when Lincoln makes such an offer to competitors' contract owners. In those exchanges, unlike the offer proposed here, the exchanging contract owner actually must pay any remaining surrender charge on the exchanged

contract at the time of the exchange. The broker/dealers that will be making recommendations to their customers regarding these offers are required to satisfy the suitability requirements. Therefore, while tacking is not present, the investor protection afforded by the suitability requirements imposed upon the broker/dealer and the additional disclosure will be.

10. By this Application, Applicants are seeking a "level playing field" to permit Lincoln to compete with offers of competitors to its longstanding contract owners. Absent the requested relief, there can be no such offers, as imposition of the Rule 11a–2 tacking requirement would make it unfeasible for the offers to be made.

11. Applicants assert that approval of the terms of the exchange offer is warranted, among other reasons, because it will promote competition in the variable annuity marketplace. Such approval will foster competition by allowing Lincoln Life to make an offer to its own contract owners that would provide an attractive additional option for contract owners' consideration.

## Applicants' Conditions

If the requested order is granted, Applicants consent to the following conditions, which are intended to support the understanding that the 2% Bonus Exchange Offer is being made to contract owners who expect to persist:

1. The Offering document will contain concise, plain English statements that:

(a) the 2% Bonus Exchange Offer is suitable only for contract owners who expect to hold their contracts as long term investments; and

(b) if the new contract is surrendered during the initial surrender charge period:

i. the 2% bonus may be more than offset by the surrender charge; and

ii. the contract owner may be worse off than if he or she had rejected the exchange offer.

2. The Offering Document will disclose in concise, plain English each aspect of the New Contract that will be less favorable than the Old Contract, including the fact that the MultiFund® 5 Contract has a lower, guaranteed minimum interest rate for investments in the fixed account than the MultiFund® 2, 3, and 4 Contracts.

3. Lincoln Life will send the Offering Document directly to eligible contract owners. A contract owner choosing the exchange offer will then complete and sign an internal exchange form, which will prominently restate in concise, plain English the statements required in Condition No. 1, and will return it to Lincoln Life. If the internal exchange form is more than two pages long, the statements referred to in Condition No. 1 will be restated in a separate document, and Lincoln Life will obtain the contract owner's acknowledgement of receipt of that document.

4. Lincoln Life will maintain the following separately identifiable records in an easily accessible place, for the time periods specified below in this Condition No. 4 for review by the Commission upon request:

(a) Records showing the level of acceptances of the exchange offer and how these acceptances relate to the total number of contract owners eligible to participate in the offers (quarterly as a percentage of the number eligible);

(b) Copies of any form of Offering Document and any other written materials or scripts for presentations by representatives regarding the exchange offer that Lincoln Life either prepares or approves, including the dates that such Offering Document and materials were used;

(c) Records containing information about each exchange transaction that occurs, including the name of the contract owner, Old and New Contract numbers; the amount of surrender charge waived on surrender of the Old Contract; bonus paid; the name and CRD number of the registered representative soliciting the exchange, firm affiliation, branch office address, telephone number, and the name of the registered representative's broker-dealer; commission paid; the internal exchange form (and separate acknowledgement, if any) showing the name, date of birth, address, and telephone number of the contract owner and the date the internal exchange form (or separate acknowledgement) was signed; amount of contract value exchanged; and persistency information relating to the New Contract, including the date of any subsequent surrender and the amount of surrender charge paid on the surrender; and

(d) Logs showing a record of any contract owner complaint about the exchange; state insurance department inquiries about the exchange; or litigation, arbitration or other proceeding regarding any exchange. The logs will include the date of the complaint or commencement of the proceeding, name and address of the person making the complaint or commencing the proceeding, nature of the complaint or proceeding, and the persons named or involved in the complaint or proceeding.

Applicants will retain records specified in (a) and (d) for a period of six years after the date the records are created, records specified in (b) for a period of six years after the date of last use, and records specified in (c) for a period of two years after the date that the initial surrender charge period of the New Contract ends.

## Conclusion

For all the reasons discussed above, Applicants submit that (1) the 2% Bonus Exchange Offer offers substantial benefits to contract owners, will be advantageous for the great majority of owners to whom it will be offered, and does not contravene any policy or purpose of Section 11, and (2) approval of Applicants' offer of the exchange offer as described, and subject to the conditions set forth in this Application, is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Therefore, Applicants respectfully submit that the Commission should grant the approval sought by this Application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–26040 Filed 10–14–03; 8:45 am]

BILLING CODE 8010–01–P

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48596; File No. SR–BSE–2003–08]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. Relating to the Exchange's Instant Liquidity Access Service for Certain Limit Orders

October 7, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 14, 2003, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On September 8, 2003, the Exchange submitted an amendment to the filing.[3]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from John Boese, Vice President, Legal and Compliance, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation,

Continued

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add provisions to its rules governing a new service that will provide for the instant execution of certain limit orders of a specified size. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Chapter I

Definitions

Sec. 3.

*Instant Liquidity Access ("ILA") Order*

An ILA order is a round-lot limit order of no less than 100, nor more than 1000, shares priced at the Exchange's published offer (in the case of a buy) or at the Exchange's published bid (in the case of an order to sell), which a member or member-organization has entered for immediate execution in accordance with, and to the extent provided by, Chapter XXXIII, Section 8 (Instant Liquidity Access) of these Rules.

* * * * *

Chapter XXXIII

Beacon

Sec. 8. [Year 2000 testing] *Instant Liquidity Access* (a) Each member and member organization shall participate in testing of computer systems designed to prepare for Year 2000, in a manner and frequency prescribed by the Exchange, and shall provide to the Exchange reports related to such testing as requested by the Exchange.

(b) The Exchange may exempt a member or member organization from this requirement if that member cannot be accommodated in the testing schedule by the organization conducting the test, if the member does not employ computers in its business, or for other good reasons.

(c) Every member of the Exchange that clears securities transactions on behalf of other broker-dealers must take reasonable measures to ensure that each broker-dealer for which it clears securities transactions conducts testing with such member.

Adopted.

December 31, 1998.]

*This section applies to the facilitation of orders through Instant Liquidity Access, a mechanism offered by the Exchange. All other provisions of the Constitution and Rules of the Exchange are applicable unless superseded by this section.*

*(a) Only straight limit orders without tick restrictions are eligible for entry as instant execution or Instant Liquidity Access ("ILA") orders. ILA orders to buy shall be priced at the price of the published BSE offer. ILA orders to sell shall be priced at the price of the BSE bid. An ILA order shall receive an immediate, instant execution against orders reflected in the Exchange's published quotation and shall be immediately reported as BSE transactions, unless:*

*(i) the BSE's published quotation is not firm (in accordance with Rule 11Ac1–1 of the Act, as set forth in these Rules in Chapter III, "Dealings on the Exchange", Section 7, "Dissemination of Quotations");*

*(ii) the primary market's published quotation is spread away from the BSE quotation in an amount, as determined by the Market Performance Committee of the Exchange, which would warrant curtailing the availability of instant executions in a particular security (currently $0.25). Such an amount can be altered by the Market Performance Committee, as market conditions warrant, from time to time;*

*(iii) with respect to a single-sided ILA order, a better price exists in another ITS participating market center;*

*(iv) with respect to a single-sided ILA order, the BSE's published bid or offer is 100 shares;*

*(v) trading in the subject security has been halted;*

*(vi) the primary market has executed a block size trade at a price inferior to the BSE bid or offer.*

*ILA orders that cannot be immediately executed shall be cancelled.*

*(b) Availability of ILA feature. ILA orders in a particular stock shall be eligible to receive an instant execution if entered after the Exchange has disseminated a published bid or offer in that stock until 4:00 p.m. or any other closing time of the exchange's floor market.*

*(c) Orders may not be broken into smaller amounts. An ILA order for any account in which the same person is directly or indirectly interested may only be entered at intervals of no less that 30 seconds between the entry of each such order in the book.*

*(d) Interaction with ITS orders. If an inbound ITS commitment has been processed and apportioned according to the rules set forth in Chapter XXXI, Intermarket Trading Sysem, herein, based on orders in the BSE book, an ILA execution cannot take place against the same order.*

*(e) Partial executions. An ILA order which is for a size greater than that displayed on the BSE book will receive an instant execution up to the displayed size of the BSE quotation. Any excess will automatically be cancelled.*

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to add new sections to its rules concerning new trading system functionality to provide for the instant execution of limit orders of 1000 shares or less against trading interest in the Exchange's published quotation. This new functionality, Instant Liquidity Access ("ILA"), will accommodate Exchange customers seeking immediate execution or cancel, similar to services offered by other exchanges and Electronic Communications Networks ("ECNs"), such as the New York Stock Exchange's Direct+ service.[4]

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Commission, dated September 5, 2003 ("Amendment No. 1"). In Amendment No. 1, the BSE: (1) Clarified that the proposal is substantially similar to the New York Stock Exchange, Inc. ("NYSE") rule related to the NYSE's Direct+ execution functionality; (2) corrected typographical errors in the purpose section; (3) clarified how trades will be reported to the Consolidated Tape Association; (4) noted that the proposed rule will be replacing an obsolete BSE rule related to year 2000 testing; and (5) and inserted a cross reference to other BSE rules that clarify instances in which BSE published quotes might not be "firm."

[4] As noted above, the BSE's proposal is substantially similar to the existing NYSE Direct+ automatic execution functionality. It does, however, differ in the following four respects. First, inbound ILA orders to sell must be priced "at" (while the NYSE rule requires orders to be priced "at or above") the BSE published bid price and inbound orders to buy must be priced "at" (while the NYSE rule requires orders to be priced "at or below") the

It would not be mandatory that all limit orders of 1000 shares or less be entered as ILA orders; rather, the member organization entering the order can choose to enter an ILA order when such member organization believes that the speed and certainty of an execution at the Exchange's published bid or offer price is in its customer's best interest. In such a case, the member organization would enter an ILA order priced at the Exchange's published offer price (in the case of an ILA order to buy), or an ILA order priced at the Exchange's published bid price (in the case of an ILA order to sell). The ILA order would then receive an instant execution without being exposed to the auction market, provided the bid or offer is still available. If the ILA feature is not available for any reason, the ILA order will be cancelled. Moreover, any member organization that believes in any particular case that the customer's interests would be best served by affording the customer's order the opportunity for price improvement may enter a limit or market order into BEACON for representation in the auction market, rather than an ILA order.

ILA orders will be reported to the Consolidated Tape Association with a unique identifier, a ".e", to denote that they were instantly executed. The Exchange's published bid or offer would be automatically decremented to the extent of the size of the ILA order to reflect the ILA execution. The contra side of the ILA order would be the trading interest reflected in the Exchange's bid or offer, with such interest participating in the execution according to the Exchange's auction market principles of priority and parity. Additionally, if an inbound ITS commitment has been processed and apportioned according to the rules set forth in Chapter XXXI, Intermarket Trading System, based on orders on the BSE book, an ILA execution cannot take place against that same order. Finally, any ILA order, which is for a size greater than that displayed in the BSE book will receive an instant execution up to the displayed size of the BSE quotation. Any excess will automatically be cancelled.

The Exchange's proposal would implement a new set of rules, set forth in Section 8 of Chapter XXXIII, BEACON[5], and an addition to Chapter 1, Definitions, Section 3, Orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act[6] and Section 6(b)(5) of the Act,[7] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between brokers or dealers.

The Exchange also believes that the proposed rule change is designed to support the principles of section 11A(a)(1) of the Act[8] in that it seeks to assure economically efficient execution of securities transactions, makes it practicable for brokers to execute investor's orders in the best market and provide an opportunity for investors' orders to be executed without the participation of a dealer.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–2003–08 and should be submitted by November 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–25975 Filed 10–14–03; 8:45 am]

BILLING CODE 8010–01–P

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48595; File No. SR–PCX–2003–56]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Pacific Exchange, Inc. Relating to an Amendment to the PCX Plus Electronic Book Execution Feature and Implementation Date

October 6, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

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BSE published ask price. Second, the NYSE rule includes an exclusion, relating to an automatic execution trade being more than 5 cents away from the previous trade in that security executed on the NYSE. Third, the NYSE rule requires the display of any unexecuted portion of a Direct+ order or any Direct+ orders that cannot be immediately filled as limit orders regular way. The BSE proposal requires that such orders be canceled if not immediately filled. Finally, the BSE proposal includes an exclusion for such instances when the national best bid or offer spread is $0.25 or more. Teleconference between John Boese, Vice President, Legal and Compliance, BSE, and Christopher B. Stone, Special Counsel, Division of Market Regulation, Commission (September 30, 2003).

[5] The existing language in this Section will be deleted, as it applied to Y2K systems testing requirements, and replaced with provisions detailing the instant proposal.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 U.S.C. 78k–l(a)(1).

[9] 17 CFR 200.30–3(a)(12).

(“Act”)[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 3, 2003, the Pacific Exchange, Inc. (“PCX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to amend PCX Rule 6.76(b)(4)(B)(ii), governing Electronic Book Executions (“EBEs”), in order to restrict a Floor Broker from effecting transactions (via the System Alert Message, “SAMs”) for its own account or the account of associated persons. The Exchange is also proposing to amend PCX Rule 6.90(b) in order to modify the implementation date of PCX Plus. The text of the proposed rule change is set forth below. Additions are in italics; deletions are in brackets.

* * * * *

**Rules of the Board of Governors of the Pacific Exchange, Inc.**

*Rule 6 Options Trading*

PCX Plus Priority and Order Allocation Procedures

Rule 6.76(a)—No change.
(b)(1)–(3)—No change.
(4)(A)—No change.
(B)(i)—No change.
(ii)—the balance of the Consolidated Book at that price will be displayed for three seconds (via a System Alert Message—SAM) to all “Crowd Participants” (as defined in Rule 6.1(b)(38)).

*(a) A Floor Broker holding an order for an account in which such broker has an interest, the account of an associated person, or an account with respect to which the Floor Broker or an associated person thereof exercises investment discretion, shall not be eligible for participation in Electronic Book Executions.*

(iii)–(v)—No change.
(5)—No change.
(c)–(d)—No change.
*Commentary:*
01—No change.

*.02 For purposes of Rule 6.76(b)(4)(B)(ii), during the initial rollout of PCX Plus, the Floor Broker Hand Held terminals will not have the functionality to support Floor Broker interaction with EBEs via SAMs. Such functionality will become available to Floor Brokers on or before June 30, 2004. The PCX will file a proposed rule change with the Commission when the Floor Broker Hand Held terminals have such functionality.*

* * * * *

Rule 6.90(a)—No Change.

(b) System Phase-In and Applicability of the Rules. The PCX estimates that the rules applicable to PCX Plus will be implemented gradually on an issue-by-issue basis beginning *October 6, 2003* [December 15, 2003], and will become completely operative and applicable to all options issues by June 30, 2004. At that time, the rules relating to PCX Plus will supersede existing rules that are inapplicable to the new trading environment.

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is proposing to amend PCX Rule 6.76(b)(4)(B)(ii), governing EBEs, in order to restrict Floor Broker from effecting transactions (via SAMS) for its own account or the account of associated persons, or an account with respect to which a Floor Broker exercises investment discretion.

PCX Rule 6.76(b)(4) Governs Market Makers' interaction with orders in the Consolidated Book. Under this rule, when a Market Maker initiates a trade with the Consolidated Book, that Market Maker receives an allocation of the order while the balances of the order in the Book is allocated on a size pro rata basis to all “Crowd[3] who respond to the SAM within three seconds. Initially, the Floor Broker Hand Held terminals will not have the functionality to support Floor Broker interaction with EBEs via SAMS.[4] This rule change is designed to ensure Broker compliance with Section 11(a) of Act[5] for the anticipated implementation of such functionality.

In adopting this provision Floor Brokers, the Exchange recognizes that allowing Floor Brokers to represent certain broker dealer orders could raise issues under the Act. By prohibiting Floor Broker representation of proprietary or affiliated orders, the PCX believes that this rule will go beyond the requirements of Section 11(a) of the Act.

The Exchange also proposes to amend PCX Rule 6.90(b), which governs PCX Plus' implementation date. The Exchange wishes to amend the phase-in implementation date to “October 6, 2003” from the originally anticipated implementation date of “December 15, 2003.” As stated in the rule, the Exchange expects that PCX Plus will become completely operative and applicable to all options issues by June 30, 2004.

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition and to protect investors and the public interest.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* PCX Rule 6.1(b)(38). Crowd Participants include Market Makers appointed to an option issue and any Floor Brokers actively representing orders at the best bid or offer on the Exchange for a particular options series.

[4] The PCX will file a proposed rule change with the Commission when the Floor Broker Hand Held terminals have such functionality.

[5] 15 U.S.C. 78k(a). Section 11(a) prohibits a member of a national securities exchange from effecting transactions on the exchange for its own account, the account of associated person, or an account in which it or an associated person exercises investment discretion. However, Section 11(a) also includes a number of exceptions to its general prohibition on proprietary trading. Most notably, Section 11(a)(1)(G) allows an exception when a member follows the conditions set forth in Rule 11a1–1(T) (*e.g.*, yield priority, parity, and precedence in execution of such orders).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing, or such shorter time as designated by the Commission, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b-4(f)(6)[9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission accelerate the operative date and waive the five day pre-filing requirement so that the proposed rule change may take effect immediately upon filing. The Commission believes that it is consistent with the protection of investors and the public interest to accelerate the operative date of the proposed rule change and to waive the five day pre-filing requirement. Acceleration of the operative date and waiving the pre-filing requirement will permit the Exchange to comply with the provisions of Section 11(a) of the Act and implement PCX Plus on October 6, 2003, without undue delay. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[10]

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–56 and should be submitted by November 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–25976 Filed 10–14–03; 8:45 am]

BILLING CODE 8010–01–M

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[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19–4(f)(6)

[10] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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# SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48597; File No. SR–PCX–2003–57]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Exchange's Schedule of Fees and Charges for Exchange Services

October 7, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 29, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to change its marketing fee for certain options and to adopt new marketing fees for recently listed options. The text of the proposed rule change is available at the PCX and at the Commission.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### 1. Purpose

The Exchange is proposing to make changes to its Schedule of Fees and Charges with respect to the following fees effective for the October 2003 trading month: (i) PCX Membership Fees relating to Options Orientation; (ii) PCX Options and Equities Regulatory Fees relating to termination of Registration Fees; (iii) PCX Options Ticket Data Entry Fee; (iv) Broker Dealer Surcharge Fee, and (v) PCX Options Floor, Market Maker and Remote Market Maker Fees.

#### Orientation and Testing Fees

Orientation and testing fees are comprised of different components including orientation and examination administration, background investigations and fingerprinting. Currently, the Exchange's Schedule of Fees and Charges—General Membership Fees—includes a $1,000 Options Orientation Fee. In connection with the launch of PCX Plus,[3] the Exchange has reconfigured a development and delivery process for the Exchange's Orientation and Testing program. The Exchange plans to execute a transition plan to facilitate an orderly transfer of the responsibilities relating to the orientation and testing from a third-party provider to the PCX and the NASD. Pursuant to the revised structure, the Exchange will develop orientation and testing content, and the NASD will administer the examination process. This arrangement will result in the elimination of certain third-party related charges. Therefore, as a result of reduced third-party costs incurred by the Exchange, the Exchange proposes to allow separate charges for background investigations ($125) and fingerprinting ($35), as applicants may only require these independent services from the Exchange.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (order approving PCX 2002–36).

PCX General Membership Fees—Registration Fee (Termination)

The Exchange proposes to amend its Schedule of Fees and Charges to adopt a Registered Representative Termination Fee of $30.00. The Exchange represents that the revenue generated by this fee will help to offset the cost of increased regulatory efforts by the Exchange. The Exchange further represents that this fee is comparable to the fee imposed by the Chicago Board Options Exchange, Inc. and the American Stock Exchange, LLC.[4]

PCX Options Ticket Data Entry Fee

The Exchange currently charges Ticket Data Entry Fees of $0.25 per firm trade and $0.50 per Market Maker trade. The Exchange charges the fee for every manual ticket transaction that an Exchange Staff member enters into the PCX's Pacific Options Exchange Trading System for the Market Maker. The Exchange proposes to eliminate this fee because, due to electronic order entry, the Exchange believes this fee for manual handling is inconsequential and no longer necessary.

Broker Dealer Surcharge

Currently, the Exchange assesses a $0.20 per contract side Broker Dealer Auto-Ex surcharge on orders that a Broker Dealer or Market Maker enters and which the Exchange executes on the Exchange's Member Firm Interaction system (without floor broker representation). The Exchange proposes to modify its Schedule of Fees and Charges and apply the same $0.20 per contract rate to comparable PCX Plus transactions. That is, under the PCX Plus, Broker Dealer and Market Maker orders that are routed electronically and executed without a floor broker will also be subject to the $0.20 per contract surcharge.

PCX Options Floor, Market Maker and Remote Market Maker Fees

In connection with PCX Plus, the Exchange has created a new category of member known as Remote Market Makers ("RMMs").[5] The Exchange currently charges a $130 per month Options Floor Access Fee for all registered floor members and personnel. The PCX proposes to modify its rate schedule to add an RMM Access Fee in the amount of $130 per month to be assessed on those RMMs who do not pay a floor access fee. The Exchange believes that it is appropriate to assess the same fee on those members who choose to access PCX markets electronically rather than through a physical presence on the floor.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[6] in general, and Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Written comments on the proposed rule change were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder,[9] because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to file number SR–PCX–2003–57 and should be submitted by November 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–26041 Filed 10–14–03; 8:45 am]

**BILLING CODE 8010–01–U**

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# DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## Aging Transport Systems Rulemaking Advisory Committee Meeting

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces a public meeting of the FAA's Aging Transport Systems Rulemaking Advisory Committee (ATSRAC).

**DATES:** The ATSRAC will meet October 22 and 23, 2003, from 8:30 a.m. to 5 p.m.

**ADDRESSES:** FAA–AANC NDI, Validation Center, 3260 University Blvd., SE., Albuquerque, New Mexico, 87106.

**FOR FURTHER INFORMATION CONTACT:** Shirley Stroman, Office of Rulemaking,

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[4] *See* Securities Exchange Act Release Nos. 46266 (July 25, 2002), 67 FR 49969 (August 1, 2002) (SR–CBOE–2002–37) and 44286 (May 9, 2001), 66 FR 27187 (May 16, 2001) (SR-Amex-2001–22). Both Exchanges have a $30 registered representative termination fee.

[5] See Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (SR-PCX 2002–36).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

ARM–208, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470; fax (202) 267–5075; or e-mail *shirley.stroman@faa.gov.*

**SUPPLEMENTARY INFORMATION:** This notice announces a meeting of the Aging Transport Systems Rulemaking Advisory Committee. The FAA will hold the meeting at the location listed under the **ADDRESSES** heading of this notice. The purpose of the meeting is to discuss the status of the three new tasks the FAA assigned to the ATSRAC (68 FR 31741, May 28, 2003). These tasks include:

- Providing recommendations about aging airplane wiring issues such as alternatives to rulemaking, providing technical and economic data, and helping to disposition comments to rulemakings;
- Helping to develop strategies for technology transfer of aviation-related research and development products to the aviation community in a manner that optimizes their transfer and optimizes the benefits resulting from their transfer; and
- Setting up criteria for upgrading and developing enhanced wiring inspection procedures for use by manufacturers of small transport airplanes.

The meeting is open to the public; however, attendance will be limited by the size of the meeting room. The FAA will make the following services available if you request them by October 17, 2003:

- Teleconferencing;
- Sign and oral interpretation; and
- A listening device.

Individuals using the teleconferencing service and calling from outside the Washington, DC, metropolitan area will be responsible for paying long-distance charges. To arrange for any of these services, contact the person listed under the **FOR FURTHER INFORMATION CONTACT** heading of this notice.

The public may present written statements to the Committee by providing 20 copies to the Committee's Executive Director or by bringing the copies to the meeting. Public statements will be considered if time allows.

Issued in Washington, DC, on October 8, 2003.

**Tony F. Fazio,**

*Director, Office of Rulemaking.*

[FR Doc. 03–26030 Filed 10–10–03; 10:03 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

**[FTA Docket No. FTA–2003–16299]**

### Notice of Request for the Extension of Currently Approved Information Collection

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collection:

Pre-Award and Post-Delivery Review Requirements.

**DATES:** Comments must be submitted before December 15, 2003.

**ADDRESSES:** All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

**FOR FURTHER INFORMATION CONTACT:** *Pre-Award and Post-Delivery Review Requirements*—Pat Simpich, Office of Program Management (202) 366–1645.

**SUPPLEMENTARY INFORMATION:** Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

*Title:* Pre-Award and Post-Delivery Review Requirements (*OMB Number: 2132–0544*)

*Background:* Under the Federal Transit Laws, at 49 U.S.C. 5323(l), grantees must certify that pre-award and post-delivery reviews will be conducted when using FTA funds to purchase revenue service vehicles. FTA regulation 49 CFR part 663 implements this law by specifying the actual certificates that must be submitted by each bidder to assure compliance with the Buy America, contract specification, and vehicle safety requirements for rolling stock. The information collected on the certification forms is necessary for FTA grantees to meet the requirements of 49 U.S.C. 5323(l).

*Respondents:* State and local government, business or other for-profit institutions, non-profit institutions, and small business organizations.

*Estimated Annual Burden on Respondents:* 4.32 hours for each of the 700 respondents.

*Estimated Total Annual Burden:* 3,024 hours.

*Frequency:* Annual.

Issued: September 17, 2003.

**Rita L. Wells,**

*Associate Administrator for Administration.*

[FR Doc. 03–26028 Filed 10–14–03; 8:45 am]

**BILLING CODE 4910–57–M**

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Environmental Impact Statement for the Long Island Rail Road Huntington/Port Jefferson Branch Yard

**AGENCY:** Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Federal Transit Administration (FTA) and the Metropolitan Transportation Authority (MTA) Long Island Rail Road (LIRR) intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) analyzing alternatives to meet LIRR's need to store electric train cars on the railroad's Huntington/Port Jefferson Branch in Suffolk County, New York. As required by the Record of Decision issued by the FTA on May 21, 2001, for the MTA LIRR East Side Access Project, the EIS will be tiered from the Final EIS issued for the East Side Access Project in March 2001. As stated in the Final EIS for the East Side Access project, under a tiered NEPA EIS approach, the lead agency focuses on the issues that are ripe for decision in the first-tier document and prepares further environmental analyses as elements of the subsequent actions become adequately defined.

FTA and MTA/LIRR are notifying interested parties of the intent to

prepare an EIS and inviting public participation in the study to identify a suitable site or sites to meet LIRR's existing and long-term storage needs on the Huntington/Port Jefferson Branch, east of Huntington between Huntington and Smithtown Stations. The new storage yard(s) will permit the LIRR to increase the number of electric train cars in operation on the Huntington/Port Jefferson Branch. Increased train cars will allow the LIRR to provide additional service to accommodate projected ridership growth, and provide new service to Grand Central Terminal as part of the LIRR's East Side Access Project, as well as to increase the number of electric train car spares to insure more reliable services.

**DATES:** The public is invited to make comments on the scope of the proposed project. Written comments should be sent to the LIRR by December 31, 2003. See **ADDRESSES** below. Scoping Meetings are scheduled as follows:

**November 5, 2003**

5 p.m.–9 p.m. (5–7 p.m. Information Open House; 7–9 p.m. Public Hearing), Kings Park High School, Route 25A, Kings Park, New York

**November 6, 2003**

5 p.m.–9 p.m. (5–7 p.m. Information Open House; 7–9 p.m. Public Hearing), Smithtown High School, 100 Central Road, Smithtown, New York

**November 12, 2003**

5 p.m.–9 p.m. (5–7 p.m. Information Open House; 7–9 p.m. Public Hearing), East Northport Middle School, South Auditorium, Fifth Avenue east of Larkfield Road, East Northport, New York

**November 13, 2003**

5 p.m.—9 p.m. (5–7 p.m. Information Open House; 7–9 p.m. Public Hearing), Huntington Intermediate School, 155 Lowndes Avenue, Huntington, New York

People with special needs should contact Peter Palamaro, Editorial Officer, at the LIRR at (718) 558–3809 or at the address below in advance of the meeting. The buildings are accessible to people with disabilities. A sign language interpreter will be available for the hearing impaired.

Scoping material will be available at the meeting(s) and may also be obtained in advance by contacting Peter Palamaro at the LIRR at (718) 558–3809 or at the MTA Web site at *www.mta.info* (click "MTA Home" then "Planning Studies" and "Port Jefferson Yard EIS").

**ADDRESSES:** Written comments on the project scope should be sent to Peter Palamaro, Editorial Officer, LIRR, Public Affairs Department, Jamaica Station, Mail Code 0536, Jamaica, NY 11435. The scoping meetings will be held at the addresses listed above.

**FOR FURTHER INFORMATION CONTACT:** If you wish to be placed on the project mailing list to receive further information as the study develops, contact Peter Palamaro at the address and phone number above.

For further information you may also contact: Irwin Kessman, Director, Office of Planning and Project Development, Federal Transit Administration, Region II. One Bowling Green, Room 429, New York, NY 10004–1415; Telephone 212–668–2170.

**SUPPLEMENTARY INFORMATION:**

## I. Scoping

The FTA and LIRR invite all interested individuals and organizations, and federal, state, and local agencies to provide comments on the scope of study. During the scoping process, comments should focus on identifying specific social, economic, or environmental issues to be evaluated and suggesting alternatives, which may be less costly or may have lesser environmental impacts, while achieving the transportation objectives of increasing the LIRR's storage capacity on the Huntington/Port Jefferson Branch. Comments should focus on the issues and alternatives for analysis. Scoping materials will be available at the meetings or in advance by contacting Peter Palamaro at LIRR, as indicated above.

Following the scoping process, LIRR will conduct public outreach activities, including meetings with local agencies, organizations, and distribution of study fact sheets. Every effort will be made to ensure that the widest possible range of participants has the opportunity to attend outreach meetings. Meetings will be announced through mailings, notices, advertisements, press releases and at the MTA Web site at www.mta.info (click "MTA Home" then "Planning Studies" and "Port Jefferson Yard EIS").

## II. Description of Study Area and Transportation Needs

The study area consists of the corridor along the LIRR's Huntington/Port Jefferson Branch between Huntington Station and Smithtown Station. The purpose of the study is to develop and evaluate a strategy or strategies to meet the LIRR's need for new storage capacity for electric train cars on the Huntington/Port Jefferson Branch, east of Huntington.

The LIRR has immediate as well as long-term storage needs for its electric train fleet. This immediate need to store electric train equipment and to deal with storage capacity constraints is most evident in Huntington on the Huntington/Port Jefferson Branch. Due to the lack of car storage capacity to originate service, LIRR currently operates several a.m. peak trains to Huntington from its West Side Yard facility, and this will become increasingly impractical as service increases to Penn Station during the morning peak period. Presently, electric train storage on the Huntington/Port Jefferson Branch relies on a siding, east of Huntington Station, with a three-train capacity that is already inadequate for current train storage.

Within the next 10 years, there will be an additional need for storage capacity on LIRR's Huntington/Port Jefferson Branch as a result of planned electric car fleet expansion and associated service improvements. The LIRR, in its efforts to meet increased passenger demands, projected ridership growth and reduce standees, as well as increase availability of spare cars during service or maintenance, plans to increase its electric fleet by up to 40 percent over the same 10 years. This will ensure that the demand for service can be met in the long term. With respect to future weekday a.m. peak hour ridership, the Huntington/Port Jefferson Branch is projected to have an increase of over 16,000 daily AM peak riders over the next 20-years. This growth accounts for 35-percent of systemwide growth over this time period.

In addition, LIRR's future East Side Access Project, with LIRR service to Grand Central Terminal to be implemented by 2012, will also increase electric train service on the Huntington/Port Jefferson Branch. Because the existing LIRR system does not have adequate storage capacity for the new electric cars, the planned service improvements on the Huntington/Port Jefferson Branch cannot be made unless additional space is obtained for storage of electric train cars on this branch.

## III. Alternatives

All reasonable alternatives will be evaluated in the EIS, including a No Build Alternative, which will provide the basis for comparison of the build alternatives. The LIRR will identify alternative sites at which new electric rail car storage could be accommodated and analyze environmental and community impacts, operational factors, cost, and ability to meet the LIRR's long-term electric rail car storage needs for each alternative. It should be noted that third rail power will have to be extended to service any new yard east of Huntington as this area is located outside the existing electrified territory. New electric substations will also be required to accommodate the extension of third-rail power to the new yard. Minor track and grade crossing improvements in the newly electrified area may also be warranted. These project elements will also be analyzed.

### IV. Probable Effects

The FTA and LIRR will evaluate the environmental, social, and economic impacts of each alternative, including air quality; noise and vibration; traffic, parking and pedestrians; energy and potential for conservation; safety and security; water quality; wetlands; flooding; navigable waterways and coastal zones; ecologically sensitive areas; endangered species; hazardous materials; land acquisition and displacements; land use, zoning, and economic development; consistency with local plans; historic properties; parkland; aesthetics; community disruption; environmental justice; construction impacts; and cumulative impacts. Measures to mitigate significant adverse impacts will be identified and alternatives for mitigation will be analyzed

### V. FTA Procedures

Upon completion of the scoping process, the Draft EIS will be made available for public and agency review and comment for 45 days. Public hearing(s) on the Draft EIS will be held within the study area. On the basis of the Draft EIS as well as comments received from the public participation process, a Final EIS will be prepared.

Issued on: October 8, 2003.

**Letitia Thompson,**

*FTA Regional Administrator.*

[FR Doc. 03–26029 Filed 10–14–03; 8:45 am]

**BILLING CODE 4910–57–P**

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[DOCKET NO. MARAD 2003 16301]**

### Information Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

**DATES:** Comments should be submitted on or before December 15, 2003.

**FOR FURTHER INFORMATION CONTACT:** Celia Luck, Maritime Administration, MAR–810, 400 Seventh St., SW., Washington, DC 20590. Telephone: (202) 366–3581, FAX: (202) 366–6988; or E-MAIL: *celia.luck@marad.dot.gov*. Copies of this collection also can be obtained from that office.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Intermodal Access to U.S. Ports, and Intermodal Access to U.S. Marine Terminals Surveys.

*Type of Request:* Extension of currently approved information collection.

*OMB Control Number:* 2133–0533.

*Form Numbers:* MA–1024 and MA–1024A.

*Expiration Date of Approval:* Three years from date of approval by the Office of Management and Budget.

*Summary of Collection of Information:* The Intermodal Access to U.S. Ports, and Intermodal Access to U.S. Marine Terminals Surveys will provide MARAD with key road, rail, and waterside access data and highlight the issues that affect the flow of cargo through U.S. ports and terminals.

*Need and Use of the Information:* These annual surveys will provide an overall indicator for cargo flow, and capacity trends and requirements. The survey instruments will allow MARAD to assess the magnitude and nature of impediments to efficient intermodal connections to ports and marine terminals and will provide information on correcting any deficiencies.

*Description of Respondents:* U.S. Ports and Terminals (including the top U.S. deepwater ports, the top container ports and the strategic ports).

*Annual Responses:* 162.

*Annual Burden:* 81 hours.

*Comments:* Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dms.dot.gov/submit*. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*.

By Order of the Maritime Administrator,

Dated: October 9, 2003.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 03–26054 Filed 10–14–03; 8:45 am]

**BILLING CODE 4910–81–P**

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–842X]**

### Almono LP—Abandonment Exemption—in Allegheny County, PA

On September 25, 2003, Almono LP (Almono) filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon its entire line of railroad extending between the plant of shipper MetalTech on the north side of the Monongahela River and an interchange point with CSX Transportation, Inc. (CSXT) north of CSXT's Glenwood Yard in Hazelwood, Allegheny County, PA, a distance of approximately 2 miles.[1] Almono states that the line does not have milepost designations. The line traverses U.S. Postal Service Zip Codes 15207 and 15213 and includes no stations.

In addition to an exemption from 49 U.S.C. 10903, petitioner seeks exemption from 49 U.S.C. 10904 [offer of financial assistance (OFA) procedures] and 49 U.S.C. 10905 [public use conditions].[2] In support, Almono contends that the exemption from these provisions is necessary to allow the two shippers on the line to operate it as a private spur following abandonment without incurring the regulatory overhead costs associated with common carrier operations. Also, Almono will be able to proceed with plans to redevelop the adjoining property and the right-of-way. These requests will be addressed in the final decision.

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[1] Almono acquired the line from Monongahela Connecting Railroad Company (Mon Con) in *Almono LP—Acquisition and Operation Exemption—Line of Monongahela Connecting Railroad Company*, STB Finance Docket No. 34250 (STB served Oct. 2, 2002). In that proceeding, Almono stated that Mon Con is a wholly owned subsidiary of LTV Steel Corporation (LTV), which is in bankruptcy and is liquidating its assets, and that it acquired Mon Con's assets as well as adjoining LTV property with court approval. Also, Almono informed the Board that it intended to seek abandonment of the acquired line shortly after consummation of the transaction. In the decision in that proceeding, Almono was told that it must submit evidence showing that the interest of the involved shipper, MetalTech, will be protected.

[2] Almono also seeks a waiver or exemption from various prefiling requirements, particularly detailed revenue and cost data [49 CFR 1152.22(d)] and detailed information on possible diversions to motor carriage [49 CFR 1105.7(e)(4)]. However, detailed revenue and cost data are not specifically required when petitioning for an abandonment exemption; such information is required to be filed only in abandonment applications. Almono has included the information pertaining to possible diversion to motor carriage in its environmental report. Accordingly, Almono does not appear to require the waiver sought.

The line does not contain federally granted rights-of-way. Any documentation in Almono's possession will be made available promptly to those requesting it.

In this proceeding, Almono is proposing to abandon a line that constitutes its entire rail system. Almono seeks to extinguish its common carrier obligation and, following abandonment of the line, to operate it as a private carrier. When issuing abandonment authority for a railroad line that constitutes the carrier's entire system, the Board does not impose labor protection, except in specifically enumerated circumstances. *See Northampton and Bath R. Co.—Abandonment*, 354 I.C.C. 784, 785–86 (1978) (*Northampton*). Therefore, if the Board grants the petition for exemption, in the absence of a showing that one or more of the exceptions articulated in *Northampton* are present, no labor protective conditions will be imposed.

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 13, 2004.

Any OFA under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption, unless the Board grants the requested exemption from the OFA process. Each OFA must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Unless the Board grants the requested exemption from the public use provisions, any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than November 4, 2003. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–842X and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423–0001; and (2) Robert D. Rosenberg, 1224 Seventeenth Street, NW, Washington, DC 20036. Replies to the Almono petition are due on or before November 4, 2003.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at *http://www.stb.dot.gov.*

Decided: October 8, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 03–26037 Filed 10–14–03; 8:45 am]

**BILLING CODE 4915–00–P**

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## DEPARTMENT OF THE TREASURY

## Office of the Secretary

## List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Bahrain
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: October 3, 2003.

**Barbara Angus,**

*International Tax Counsel (Tax Policy).*

[FR Doc. 03–26046 Filed 10–14–03; 8:45 am]

**BILLING CODE 4810–25–M**

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## Open Meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee will be conducted (via teleconference).

**DATES:** The meeting will be held Thursday, November 13, 2003, at 3 p.m., Central daylight time.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 4 Taxpayer Advocacy Panel will be held Thursday, November 13, 2003, at 3 p.m., Central daylight time via a telephone conference call. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: October 9, 2003.

**Tersheia Carter,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 03–26082 Filed 10–14–03; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Monday, November 10, 2003, at 3 p.m., Central daylight time.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 5 Taxpayer Advocacy Panel will be held Monday, November 10, 2003, from 3 to 4 p.m. Central daylight time via a telephone conference call. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for more information.

The agenda will include the following: Various IRS issues.

Dated: October 8, 2003.

**Tersheia Carter,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 03–26083 Filed 10–14–03; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, West Virginia, and Wisconsin)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, November 19, 2003, at 8 a.m., Central daylight time.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 4 Taxpayer Advocacy Panel will be held Wednesday, November 19, 2003, at 8 a.m., Central daylight time via a telephone conference call. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: October 8, 2003.

**Tersheia Carter,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 03–26084 Filed 10–14–03; 8:45 am]

BILLING CODE 4830–01–P

# Corrections

**Federal Register**

Vol. 68, No. 199

Wednesday, October 15, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 905

**[Docket No. FV03–905–2 IFR]**

## Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida and Imported Grapefruit; Removing All Seeded Grapefruit Regulations, Relaxation of Grade Requirements for Valencia and Other Late Type Oranges, and Removing Quality and Size Regulations on Imported Seeded Grapefruit

*Correction*

In rule document 03–22948 beginning on page 53021 in the issue of Tuesday, September 9, 2003, make the following correction:

**§905.306 [Corrected]**

On page 53024, in §905.306(a), the table should read as follows:

TABLE I

| Variety<br>(1) | Regulation period<br>(2) | Minimum grade<br>(3) | Minimum diameter (inches)<br>(4) |
|---|---|---|---|
| * * | * * | * * | * |
| Valencia and other late type | August 1 June 14<br>June 15 July 31 | U.S. No. 1<br>U.S. No. 2, External<br>U.S. No. 1, Internal | $2^{8}/_{16}$<br>$2^{8}/_{16}$ |
| * * | * * | * * | * |

[FR Doc. C3–22948 Filed 10–14–03; 8:45 am]

BILLING CODE 1505–01–D

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Part 39

**[FAR Case 2003–008]**

**RIN 9000–AJ74**

### Federal Acquisition Regulation; Share-in-Savings Contracting

*Correction*

In proposed rule document 03–24855 beginning on page 56613 in the issue of Wednesday, October 1, 2003 make the following corrections:

**39.301 [Corrected]**

1. On page 56615, in the first column, in section 39.301, in the seventh line, “(i)” should read “(1)”.

2. On the same page, in the same column, in the same section, in the 11th line, “(ii)” should read “(2)”.

**39.304 [Corrected]**

3. On the same page, in the second column, after section 39.304(a), in the first line, “(5)” should read “(b) ”.

[FR Doc. C3–24855 Filed 10–14–03; 8:45 am]

BILLING CODE 1505–01–D

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## RAILROAD RETIREMENT BOARD

### Computer Matching and Privacy Protection Act of 1998; Notice of RRB Records Used in Computer Matching

*Correction*

In notice document 03–24312 beginning on page 55665 in the issue of Friday, September 26, 2003 make the following corrections:

1. On page 55666, in the second column, in the first paragraph, in the fifth line, “OMB” should read “OPM”.

2. On the same page, in the same column, in the same paragraph, in the 11th line from the bottom, “OMB” should read “OPM”.

[FR Doc. C3–24312 Filed 10–14–03; 8:45 am]

BILLING CODE 1505–01–D

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

# Federal Register

Wednesday,
October 15, 2003

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## Part II

# Department of Housing and Urban Development

## Funding Availability for HOME Investment Partnerships Program (HOME)—Competitive Reallocation of Funds to Provide Permanent Housing for the Chronically Homeless; Notice

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4860–N–01]**

## Funding Availability for HOME Investment Partnerships Program (HOME)—Competitive Reallocation of Funds to Provide Permanent Housing for the Chronically Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice of Funding Availability (NOFA).

**SUMMARY:** This NOFA announces the availability of approximately $6.5 million for the competitive reallocation of deobligated Community Housing Development Organization (CHDO) set-aside funds.

### Program Overview

*Purpose of the Program.* To expand the supply of standard, affordable, permanent housing for chronically homeless persons through the competitive reallocation of deobligated CHDO set-aside funds.

*Available Funds.* Approximately $6.5 million.

*Eligible Applicants.* You must currently be a participating jurisdiction (PJ) in the regular HOME Program and have received an annual HOME formula allocation each year since FY 2000. The projects funded through this NOFA must be carried out by eligible, currently certified CHDOs in your jurisdiction. Awarded funds are subject to the requirements of this NOFA and all other HOME requirements found at 24 CFR part 92. Where there is a conflict between the HOME regulations and this NOFA, the more stringent or limiting requirements shall prevail.

*Application Deadline.* November 25, 2003.

*Match.* 25 percent of the awarded funds invested in projects.

**SUPPLEMENTARY INFORMATION:** If you are interested in applying for funding under this competitive reallocation of HOME funds, please review the contents of this NOFA carefully.

### I. Application Due Date, Standard Forms, Further Information, and Technical Assistance

*Application Due Date.* Applications for HOME competitive grants are due on or before November 25, 2003.

*Application Submission Procedures. New Security Procedures.* HUD has implemented new security procedures that apply to application submission. Please read the following instructions carefully and completely. HUD will not accept hand-delivered applications. Applications may be mailed using the United States Postal Service (USPS) or may be shipped via the following delivery services: United Parcel Service (UPS), FedEx, DHL, or Falcon Carrier. No other delivery services are permitted into HUD Headquarters without an escort. You are, therefore, urged to use one of the four carriers listed above.

*Mailed Applications.* Your application will be considered timely filed if your application is postmarked on or before 12 midnight on the application due date and received in HUD Headquarters on or within fifteen (15) days of the application due date. Applicants must obtain and save a receipt for the mailing showing the date when the application was submitted to the United States Postal Service (USPS). This receipt from USPS showing the date and time of the mailing will be your documentary evidence that your application was timely filed.

*Applications Sent by Overnight/Express Mail Delivery.* If your application is sent by overnight delivery or express mail, your application will be timely filed if it is received before or on the application due date, or when you submit documentary evidence that your application was placed in transit with the overnight delivery/express service no later than the application due date. Due to new security measures, you are urged to use one of four carrier services that do business with HUD Headquarters regularly. These services are UPS, DHL, FedEx and Falcon Carrier. Timely delivery of your application to HUD by a carrier other than those listed cannot be guaranteed. Delivery by these carriers must be made during HUD's Headquarters business hours, between 8:30 AM and 5:30 PM Eastern time, Monday through Friday. If these companies do not service your area, you should submit your application via the United States Postal Service.

*Address for Submitting Applications.* Submit one original and two copies of the application to Department of Housing and Urban Development, Office of Community Planning and Development, Processing and Control Unit, 451 Seventh Street, SW., Room 7251, Washington, DC 20410, ATTN: HOME Program—Permanent Housing for the Chronically Homeless (HOME).

*For Application Forms.* Only current participating jurisdictions in the HOME Program that have received an annual HOME formula allocation each year since FY 2000 are eligible to apply. There is no separate application kit. This notice contains all the information necessary for submission of your application. Copies of the standard forms are located at Appendix 2 of this NOFA, or you may request copies by calling the contact person in the Office of Affordable Housing Programs identified in the following paragraph. When requesting standard forms, you should refer to the HOME Program Competition and provide your name and address (including zip code) and telephone number (including area code). See Section VI for application submission requirements.

*Further Information and Technical Assistance.* You may contact Cliff Taffet, Deputy Director, Office of Affordable Housing Programs, Department of Housing and Urban Development, Room 7168, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone (202) 708–3226, ext. 4589 (this is not a toll-free number). This number can be accessed via TTY by calling the toll-free Federal Information Relay Service Operator at 1–800–877–8339.

*Paperwork Reduction Act Statement.* The information collection requirements in this NOFA have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2506–0175. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

### II. Amount Allocated

The amount available for this program is approximately $6.5 million. Section 217(c) of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (42 U.S.C. 12704 *et seq.*) requires that funds that become available as a result of the deobligation by HUD of CHDO set-aside funds previously allocated to HOME Program participating jurisdictions must be reallocated by competition. Approximately $6.5 million has been recaptured since the program began in 1992. Any additional recaptured CHDO set-aside funds that become available within 12 months of the announcement of awards may be used to fund applications submitted in response to this NOFA.

### III. Program Description; Eligible Applicants; Eligible Projects; Ineligible Activities

(A) *Program Description.* The purpose of the regular HOME program is to expand the supply of standard, affordable housing for low- and very low-income families by providing annual formula grants to states, units of general local government and consortia of units of general local governments that are participating jurisdictions (PJs). Each PJ must spend at least 15 percent of its grants on housing that is owned, developed or sponsored by nonprofit CHDOs. PJs use their HOME grants to fund housing programs that meet local needs and priorities and have a great deal of flexibility in designing their local HOME programs within the guidelines established by the HOME program statute and regulations. PJs may use HOME funds to help renters, new homebuyers or existing homeowners through rehabilitation of substandard housing, acquisition of standard housing (including downpayment assistance), or new construction of housing or tenant-based rental assistance. HOME works well with other HUD programs such as Community Development Block Grant (CDBG), Empowerment Zones/Enterprise Communities (EZ/EC) and HOPE VI to complement comprehensive neighborhood revitalization and economic revitalization strategies.

In July 2001, Secretary Martinez declared a national goal to end chronic homelessness within a decade. As part of HUD's overall effort to reduce or eliminate chronic or episodic homelessness, grants awarded to PJs under this competition must be used to provide permanent housing to persons meeting the definition of chronically homeless. A chronically homeless person is defined as an unaccompanied homeless individual with a disabling condition who has either been continuously homeless for a year or more OR has had at least four episodes of homelessness in the past three years. For the purposes of this NOFA, the term "homeless" means a person sleeping in a place not meant for human habitation (*e.g.*, living on the streets or in an emergency shelter). The term "disabling condition" is defined as a diagnosable substance use disorder, serious mental illness, developmental disability or chronic physical illness or disability, including the co-occurrence of two or more of these conditions. A disabling condition limits an individual's ability to work or perform one or more activities of daily living.

(B) *Eligible Applicants.* For the purposes of this competition, eligible applicants are existing participating jurisdictions in the regular HOME Program that have received an annual HOME formula allocation each year since FY 2000. The projects funded through this NOFA must be carried out by nonprofit organizations that have been currently determined by the PJ to meet the definition of CHDO. CHDOs selected by a PJ to carry out these projects are expected to establish partnerships with other community-based organizations, including grass-roots faith-based organizations, with experience in serving the chronically homeless, in order to ensure that appropriate supportive services are available to tenants on an ongoing basis. Information on such organizations active in your area may be obtained through local Continuum of Care networks. A list of contact persons for established continua of care that have submitted applications to HUD for homeless assistance funding under the McKinney-Vento Act (42 U.S.C. 11301 *et seq.*) can be found in Appendix 3.

(C) *Eligible Projects.* The only eligible projects under this NOFA are CHDO set-aside rental projects permitted under the regular HOME formula program, except that rental housing units produced using these funds must be permanent housing units with occupancy during the HOME affordability period limited to persons having met the definition of chronically homeless at the time they are selected as tenants. An eligible set-aside project is one where a CHDO owns, develops or sponsors the housing produced. Funds awarded in this competition are subject to all regular HOME Program regulations (24 CFR part 92), including the 24-month commitment deadline and five-year expenditure deadline. As permitted in the regular HOME Program, up to five percent of the total of a participating jurisdiction's regular HOME formula allocation plus funds awarded in this competition may be used to pay for CHDO operating costs necessary in carrying out projects funded through this NOFA (see 24 CFR 92.208). In order to ensure the ongoing viability of projects funded under this NOFA, long-term operating support may be needed from other sources such as the Shelter Plus Care Program through which rental assistance may be obtained. You should identify these potential sources of support and make provision now for obtaining them as part of your planning for the use of funds awarded under this NOFA, should you be selected. Existing continuum of care networks will be of assistance as well in this effort.

(D) *Ineligible Activities:* See 24 CFR 92.214 of the regular HOME Program regulations. Except for the development and support of the acquisition, rehabilitation or new construction of rental housing, activities that are otherwise eligible in the regular HOME Program (*i.e.*, homeownership and tenant-based rental assistance) are ineligible uses of funds under this competition.

## IV. Threshold and Program Requirements

(A) *Threshhold Requirements:*

(1) *Ineligible Applicants.* HUD will not consider an application from an ineligible applicant.

(2) *Compliance with Fair Housing and Civil Rights Laws.*

(a) All applicants and their subrecipients must comply with all Fair Housing and Civil Rights laws, statutes, regulations, and Executive Orders as enumerated in 24 CFR 5.105(a), as applicable.

(b) If you, the applicant:

(i) Have been charged with a systemic violation of the Fair Housing Act alleging ongoing discrimination;

(ii) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an on-going pattern or practice of discrimination; or,

(iii) Have received a letter of non-compliance findings, identifying on-going or systemic noncompliance, under Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, or Section 109 of the Housing and Community Development Act; and

If the charge, lawsuit, or letter of findings has not been resolved to HUD's satisfaction before the application deadline, you may not apply for assistance under this NOFA. HUD will not rate and rank your application. HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of on-going discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings. Examples of actions that may be taken prior to the application deadline to resolve the charge, lawsuit, or letter of findings, include, but are not limited to:

(i) a voluntary compliance agreement signed by all parties in response to the letter of findings;

(ii) a HUD-approved conciliation agreement signed by all parties;

(iii) a consent order or consent decree; or

(iv) a judicial ruling or a HUD Administrative Law Judge's decision that exonerates the respondent of any allegations of discrimination.

(3) *Conducting Business In Accordance with Core Values and Ethical Standards.*

Entities subject to 24 CFR parts 84 and 85 (most non-profit organizations and state, local and tribal governments or government agencies or instrumentalities that receive federal awards of financial assistance) are required to develop and maintain a written code of conduct (see 24 CFR 84.42 and 85.36(b)(3)). Consistent with regulations governing specific programs, your code of conduct must: prohibit real and apparent conflicts of interest that may arise among officers, employees, or agents; prohibit the solicitation and acceptance of gifts or gratuities by your officers, employees, and agents for their personal benefit in excess of minimal value; and outline administrative and disciplinary actions available to remedy violations of such standards. If awarded assistance under this NOFA, you will be required, prior to entering into an agreement with HUD, to submit a copy of your code of conduct and describe the methods you will use to ensure that all officers, employees, and agents of your organization are aware of your code of conduct. Failure to meet the requirement for a code of conduct will prohibit you from receiving an award of funds from HUD.

(4) *Delinquent Federal Debts.* Consistent with the purpose and intent of 31 U.S.C. 3720B and 28 U.S.C. 3201(e), no award of federal funds shall be made to an applicant who has an outstanding delinquent federal debt until: (a) The delinquent account is paid in full; (b) a negotiated repayment schedule is established and at least one payment is received; or (c) other arrangements satisfactory to the Department of Housing and Urban Development are made prior to the deadline submission date.

(5) *Executive Order 13202, Preservation of Open Competition and Government Neutrality Toward Government Contractors' Labor Relations on Federal and Federally Funded Construction Contracts.* Compliance with HUD regulations at 24 CFR 5.108 implementing Executive Order 13202 is a condition of receipt of assistance under this NOFA. Subrecipients are considered recipients of financial assistance for purposes of § 5.108.

(6) *Procurement of Recovered Materials.* State agencies and agencies of a political subdivision of a state that are using assistance under this NOFA for procurement, and any person contracting with such an agency with respect to work performed under an assisted contract, must comply with the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. In accordance with Section 6002, these agencies and persons must procure items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the quantity acquired in the preceding fiscal year exceeded $10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(B) *Program Requirements:* In addition to meeting the requirements of this NOFA, you are subject to the regular HOME program regulations found at 24 CFR part 92, including the reporting of results in the Integrated Disbursement and Information System (IDIS). Where there is a conflict between the HOME regulations and this NOFA, the more stringent or limiting requirements shall prevail.

## V. Application Selection Process

(A) *Rating.* HUD will review all applications in accordance with the requirements of this NOFA and will use the threshold criterion described below and the three selection criteria and sub-factors referenced at 24 CFR 92.453 and found at section 217(c) of NAHA. As explained below in section V.(E), two of the three selection criteria are related to the applicant's past performance in the regular HOME Program. To facilitate the competition, HUD has already determined the scores for all potential applicants for these two selection criteria, including sub-factors, based on information reported to HUD by participating jurisdictions. A summary of these scores can be found in Appendix 1 to this NOFA. The score received for the remaining selection criterion will be added to the applicant's scores for the past performance criteria in order to obtain the applicant's total score in the competition.

(B) *Ranking and Selection Procedures.* Applications that receive a total rating of 75 points or more will be eligible for selection, and HUD will place these applications and make selections in rank order.

HUD will not fund any portion of an application that is ineligible for funding under program requirements, or which does not meet the requirements of this NOFA. If funds remain after all selections have been made, these funds may be combined with deobligations of CHDO set-aside funds over the 12-month period following announcement of selections under this NOFA, and awarded to the highest-ranking unfunded, eligible application(s) in this competition.

(C) *Applicant Debriefing.* Beginning not less than 30 days after the public announcement of awards, and not longer than 120 days, HUD will, upon receiving a written request from an applicant, provide a debriefing to the requesting applicant. Materials provided during a briefing will be the applicant's final score and final evaluator comments for the third selection criterion, and the calculations for assigning scores for the two pre-scored criteria. Applicants requesting to be debriefed must send a written request to Cliff Taffet, Deputy Director, Office of Affordable Housing Programs, Department of Housing and Urban Development, Room 7168, 451 Seventh Street, SW., Washington, DC 20410–7000.

(D) *Requirements.* The following requirements apply specifically to this HOME Program competition:

(1) You, the applicant, must be eligible to apply under HOME (see Section III(B) of this NOFA).

(2) The projects undertaken with funds awarded through this NOFA must be permanent housing projects that are owned, developed or sponsored by eligible, currently certified CHDOs, and qualify as CHDO set-aside projects under the regular HOME regulations.

(3) During the affordability period applicable to the projects developed with funds provided through this NOFA, persons residing in assisted units must meet the definition of "chronically homeless" at the time they are selected as tenants.

(E) *Factors for Award Used to Evaluate Applications.* HUD will review and rate all eligible HOME competitive applications using the Threshold Criterion, Selection Criteria and the Application Submission Requirements described below. The maximum number of points for this competition is 100. No RC/EZ/EC bonus points are given.

*Threshold Criterion:* Narrative on chronic homelessness in your jurisdiction.

*No applicant will be awarded funding without providing this narrative as part of the application! However, your response to this item will NOT be scored and will NOT count toward the 10-page limitation on responses to Selection Criterion 3 described below.* Please provide a description of the extent of chronic homelessness in your jurisdiction and the main points of your strategy to end chronic homelessness by 2012, including any cooperation with other participating jurisdictions in your state to develop, coordinate and implement such a plan. Much if not all of this information may be found in the FY 2003 homeless assistance application from local Continua of Care networks and/or as part of the housing strategy described in your Consolidated Plan. If the boundaries of your participating jurisdiction do not coincide with those of the local Continuum of Care or if there is no active Continuum of Care network in your jurisdiction, please explain this as part of your narrative.

*Selection Criterion 1: Commitment (up to 25 points—pre-scored)*

The applicant's demonstrated commitment to expand the supply of affordable rental housing, as indicated by the additional number of units of affordable housing made available through production or rehabilitation within the previous two years, making adjustment for regional variations in construction and rehabilitation costs and giving special consideration to the number of additional units made available under HOME through production or rehabilitation in relation to the amounts made available under HOME.

In scoring this criterion, HUD used Integrated Disbursement and Information System (IDIS) reports consisting of information provided by the PJs on the number of HOME-assisted rental units completed over the past two years (from July 1, 2001 through June 30, 2003), adjusting for variations in construction costs and the size of HOME allocations. The PJs were then rank-ordered from highest to lowest by the adjusted number of rental units produced or rehabilitated. PJs with no HOME-assisted rental units produced or rehabilitated received zero points. The remaining PJs were divided into 25 equal groups, adjusted for ties, with the group having the most such units receiving 25 points, the next group receiving 24 points and so on. (*See* Appendix 1 for the score assigned to your PJ for this criterion.)

*Submission Requirements for Selection Criterion 1:*

No submission required.

*Selection Criterion 2: Actions (up to 50 points—pre-scored)*

This criterion consists of four parts and rates the applicant's actions that:

*Part A: (up to 15 points—pre-scored):* Direct funds made available under HOME to benefit very low-income families, with a range of incomes, in numbers that exceed the income-targeting requirements of HOME, with extra consideration given for activities that expand the supply of affordable housing for very-low-income families whose incomes do not exceed 30 percent of the median income for the area (*i.e.*, extremely low-income), as determined by HUD.

In scoring this part, HUD used Integrated Disbursement and Information System (IDIS) reports consisting of information provided by the PJs on the percentage of their completed units over the period of their participation in the HOME Program occupied by very low- and extremely low-income households, with double weighting given the extremely low-income segment. The PJs were then rank-ordered from highest to lowest by the weighted percentage of units occupied by the very low- and extremely low-income households. PJs with fewer than 20 units indicated as being occupied by these households or with less than 70 percent of completed rental units occupied received zero points. The remaining PJs were divided into 15 equal groups, adjusted for ties, with the group having the highest adjusted percentage receiving 15 points, the next group receiving 14 points and so on. (*See* Appendix 1 for the score assigned to your PJ for this part of criterion 2.)

*Submission Requirements for Selection Criterion 2, part A:*

No submission required.

*Part B: (up to 10 points—pre-scored):* Provide matching resources in excess of funds required under the HOME requirements.

In scoring this part, HUD used HUD field office reports on the status of PJs in meeting their regular HOME Program match requirement for the past two completed reporting periods. Those PJs having met or exceeded their match liability over this period received 10 points. Those PJs not having met their match liability in one or more of the past two completed reporting periods received zero points. (*See* Appendix 1 for the score assigned to your PJ for this part of criterion 2.)

*Submission Requirements for Selection Criterion 2, part B:*

No submission required.

*Part C: (up to 15 points—pre-scored):* Stimulate a high degree of participation in development by the private sector, including non-profit organizations.

In scoring this part, HUD used Integrated Disbursement and Information System (IDIS) reports consisting of information provided by the PJs to determine that at least one of the multi-family (5-units or more) rental projects completed within the past two years within the participating jurisdiction was funded through the eligible use of the CHDO set-aside. The focus was on CHDO rental projects in this part since funds awarded in this competition must be used by CHDOs for eligible CHDO set-aside projects. Those PJs having met this standard received 15 points. Those PJs not having met this standard received zero points. (*See* Appendix 1 for the score assigned to your PJ for this part of criterion 2.)

*Submission Requirements for Selection Criterion 2, part C:*

No submission required.

*Part D: (up to 10 points—pre-scored):* Stimulate a high degree of investment in development by the private sector, including non-profit organizations.

In scoring this part, HUD used Integrated Disbursement and Information System (IDIS) reports consisting of information provided by the PJs to determine the extent to which, in percentages, each PJ was leveraging private funds with HOME dollars invested in completed projects. The PJs were then rank-ordered from highest to lowest by the leveraging percentage. PJs with no leveraging indicated in IDIS, or less than $50,000 in HOME funds invested overall in completed projects, received zero points. The remaining PJs were divided into 10 equal groups, adjusted for ties, with the group having the highest percentage receiving 10 points, the next group receiving 9 points and so on. (*See* Appendix 1 for the score assigned to your PJ for this part of criterion 2.)

*Submission Requirements for Selection Criterion 2, part D:*

No submission required.

*Selection Criterion 3: Policies (up to 25 points)*

This criterion examines the degree to which your PJ is pursuing policies that:

(A) Make existing housing more affordable;

(B) Remove or ameliorate any negative effects that public policies identified by you in your Consolidated Plan may have on the cost of housing or the incentives to develop, maintain, or improve affordable housing in the jurisdiction;

(C) Preserve the affordability of privately owned housing that is vulnerable to conversion, demolition, disinvestment, or abandonment;

(D) Increase the supply of housing that is affordable to very low-income and low-income persons, particularly in areas that are accessible to expanding job opportunities; and

(E) Remedy the effects of discrimination and improve housing opportunities for disadvantaged minorities.

*Submission Requirements for Selection Criterion 3:*

(1) Identify for each of the five goals listed above the policy or policies currently being implemented by your PJ to achieve the goal.

(2) Indicate for each policy whether it has been formally adopted (*e.g.*, city council or legislative action; city, county or state executive action; included as part of a state or local planning document, etc.).

(3) Describe the effects of the policy or policies thus far in achieving the goal being specific as to performance measures used.

(4) There is an absolute maximum limit of 10 pages (letter-sized, single-sided) for your submission in response to selection criterion 3. No information contained on page 11 or higher will be reviewed by HUD or considered in the scoring of your application.

(F) *Final Ranking and Conditional Awards.* The score received by each PJ for the three selection criteria will be totaled and the PJs will be rank ordered from highest to lowest score received. Five hundred thousand dollars will be awarded to the PJ receiving the highest score. Moving down the ranking, $500,000 will be awarded to the next highest scoring PJ and so on until the balance of funds remaining is less than $500,000. Should two or more PJs have tie scores for the final award, the PJ receiving the highest score for selection criterion number 1 will be awarded the funds. Additional tie-breaks will be applied in the following order until a final award can be made: selection criterion 2A, selection criterion 2B, selection criterion 2C, selection criterion 2D, selection criterion 3. The awards are conditional pending execution of a special grant agreement between HUD and the PJ applicant. These awards may be combined with other federal funds, including regular HOME Program funds, state, local or private funding to develop the required permanent rental housing for the homeless that is subject to all regular HOME Program regulations.

## VI. Application Requirements and Checklist for Application Submission

Your application consists of the items listed in this Section VI. The standard forms, certifications, and assurances that are applicable to this funding (collectively referred to as the "standard forms") can be found in Appendix 2. The following checklist helps to ensure that all of the required items have been submitted in order to receive consideration for funding:

—HUD 424, Application for Federal Assistance and Funding Matrix (signed by the authorized representative of the organization eligible to receive funds, and incorporating Assurance and Certifications currently on file with HUD); and

*Narrative Statements Addressing*

—Threshold Criterion—Description of the extent of and the strategy to address chronic homelessness in your jurisdiction;

—Selection Criterion 3—Policies; and

*Forms*

—HUD–2880, Applicant/Recipient Disclosure/Update Report

—HUD–2993, Acknowledgment of Application Receipt

These forms are available on the following Web site: *http://www.hud.gov/offices/adm/grants/nofa/stdforms.cfm.*

## VII. Corrections to Deficient Applications

After the application due date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information you, the applicant, may want to provide. HUD may contact you to clarify an item in your application or to correct technical deficiencies. HUD may not seek clarification of items or responses that improve the substantive quality of your response to any rating factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. Examples of curable (correctable) technical deficiencies include failure to submit the proper certifications or failure to submit an application that contains an original signature by an authorized official. In each case, HUD will notify you in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by USPS, return receipt requested. Clarifications or corrections of technical deficiencies in accordance with the information provided by HUD must be submitted within 14 calendar days of the date of receipt of the HUD notification. (If the due date falls on a Saturday, Sunday, or federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday, or federal holiday.) If the deficiency is not corrected within this time period, HUD will reject the application as incomplete and it will not be considered for funding.

## VIII. Environmental Requirements

This NOFA provides funding under, and does not alter the environmental requirements of, 24 CFR part 92. Accordingly, under 24 CFR 50.19(c)(5), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321). Activities under this NOFA are subject to the environmental review provisions set out at 24 CFR 92.352.

All HOME assistance is subject to the National Environmental Policy Act of 1969 and related federal environmental authorities. HOME grant applicants are cautioned that no federal or non-federal funds or assistance which limits reasonable choices or could produce an adverse environmental impact may be committed to a project until all required environmental reviews and notifications have been completed by a unit of general local government or State and until HUD approves a recipient's request for release of funds under the environmental provisions contained in 24 CFR part 58.

## IX. Authority

The funding made available under this NOFA is authorized by section 217(c) of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (42 U.S.C. 12704 *et seq.*).

Dated: October 6, 2003.

**Roy A. Bernardi,**

*Assistant Secretary for Community Planning and Development.*

BILLING CODE 4210–29–P

## Appendix 1
## HOME Competition Summary Scoring Report

| | | Selection Criteria | | | | | | |
|---|---|---|---|---|---|---|---|---|
| **Grantee** | **St** | **# 1** | **# 2A** | **# 2B*** | **# 2C** | **# 2D** | **# 3** | **Score** |
| ALASKA | AK | 11 | 10 | 10 | 15 | 2 | 0 | 48 |
| ANCHORAGE | AK | 0 | 9 | 10 | 0 | 0 | 0 | 19 |
| ALABAMA | AL | 19 | 12 | 10 | 15 | 2 | 0 | 58 |
| BIRMINGHAM | AL | 0 | 10 | 10 | 0 | 5 | 0 | 25 |
| HUNTSVILLE | AL | 0 | 0 | 10 | 0 | 5 | 0 | 15 |
| JEFFERSON CO | AL | 0 | 8 | 10 | 0 | 5 | 0 | 23 |
| MOBILE | AL | 0 | 15 | 10 | 0 | 5 | 0 | 30 |
| MONTGOMERY | AL | 14 | 0 | 10 | 15 | 7 | 0 | 46 |
| TUSCALOOSA | AL | 0 | 2 | 10 | 0 | 9 | 0 | 21 |
| ARKANSAS | AR | 8 | 7 | 10 | 15 | 7 | 0 | 47 |
| FORT SMITH | AR | 0 | 6 | 10 | 0 | 1 | 0 | 17 |
| LITTLE ROCK | AR | 20 | 6 | 10 | 15 | 3 | 0 | 54 |
| NORTH LITTLE ROCK | AR | 0 | 12 | 10 | 0 | 0 | 0 | 22 |
| PINE BLUFF | AR | 5 | 0 | 10 | 0 | 9 | 0 | 24 |
| ARIZONA | AZ | 17 | 0 | 10 | 15 | 5 | 0 | 47 |
| MARICOPA CO CON | AZ | 16 | 10 | 10 | 15 | 6 | 0 | 57 |
| PHOENIX | AZ | 0 | 8 | 10 | 0 | 4 | 0 | 22 |
| TUCSON CON | AZ | 18 | 7 | 10 | 15 | 6 | 0 | 56 |
| ALAMEDA CO CON | CA | 15 | 14 | 10 | 15 | 6 | 0 | 60 |
| ALHAMBRA | CA | 0 | 6 | 10 | 0 | 4 | 0 | 20 |
| ANAHEIM | CA | 0 | 4 | 10 | 0 | 7 | 0 | 21 |
| BAKERSFIELD | CA | 23 | 3 | 10 | 15 | 5 | 0 | 56 |
| BALDWIN PARK | CA | 0 | 1 | 10 | 0 | 9 | 0 | 20 |
| BELLFLOWER | CA | 0 | 0 | 10 | 0 | 10 | 0 | 20 |
| BERKELEY | CA | 7 | 15 | 10 | 0 | 6 | 0 | 38 |
| BURBANK | CA | 9 | 11 | 10 | 0 | 3 | 0 | 33 |
| CALIFORNIA | CA | 8 | 4 | 10 | 15 | 6 | 0 | 43 |
| CHICO | CA | 0 | 2 | 10 | 0 | 9 | 0 | 21 |
| CHULA VISTA | CA | 19 | 14 | 10 | 15 | 5 | 0 | 63 |
| COMPTON | CA | 0 | 15 | 10 | 0 | 10 | 0 | 35 |
| CONTRA COSTA CO CON | CA | 21 | 15 | 10 | 15 | 5 | 0 | 66 |
| COSTA MESA | CA | 0 | 15 | 10 | 0 | 2 | 0 | 27 |
| DAVIS | CA | 0 | 0 | 10 | 0 | 0 | 0 | 10 |
| DOWNEY | CA | 0 | 3 | 10 | 0 | 6 | 0 | 19 |
| EL CAJON | CA | 0 | 5 | 10 | 0 | 5 | 0 | 20 |
| EL MONTE | CA | 0 | 7 | 10 | 0 | 7 | 0 | 24 |
| ESCONDIDO | CA | 14 | 1 | 10 | 15 | 10 | 0 | 50 |
| FONTANA | CA | 0 | 11 | 10 | 0 | 0 | 0 | 21 |
| FRESNO | CA | 6 | 1 | 10 | 0 | 10 | 0 | 27 |
| FRESNO CO | CA | 0 | 2 | 10 | 0 | 4 | 0 | 16 |
| FULLERTON | CA | 0 | 9 | 10 | 0 | 8 | 0 | 27 |
| GARDEN GROVE | CA | 0 | 14 | 10 | 0 | 1 | 0 | 25 |
| GLENDALE | CA | 4 | 15 | 10 | 15 | 3 | 0 | 47 |
| HAWTHORNE | CA | 0 | 11 | 10 | 0 | 5 | 0 | 26 |
| HUNTINGTON BEACH | CA | 0 | 14 | 10 | 0 | 2 | 0 | 26 |
| HUNTINGTON PARK | CA | 4 | 0 | 10 | 0 | 5 | 0 | 19 |
| INGLEWOOD | CA | 0 | 1 | 10 | 0 | 8 | 0 | 19 |
| KERN CO | CA | 17 | 10 | 10 | 15 | 2 | 0 | 54 |
| LONG BEACH | CA | 21 | 15 | 10 | 15 | 0 | 0 | 61 |

*_Score for this factor may be reduced based on updates obtained from field offices

## Appendix 1
## HOME Competition Summary Scoring Report

| | | Selection Criteria | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Grantee | St | # 1 | # 2A | # 2B* | # 2C | # 2D | # 3 | Score |
| LOS ANGELES | CA | 16 | 0 | 10 | 15 | 2 | 0 | 43 |
| LOS ANGELES CO | CA | 11 | 2 | 10 | 15 | 8 | 0 | 46 |
| LYNWOOD | CA | 0 | 10 | 10 | 0 | 10 | 0 | 30 |
| MARIN CO | CA | 0 | 15 | 10 | 0 | 9 | 0 | 34 |
| MERCED | CA | 1 | 1 | 10 | 0 | 10 | 0 | 22 |
| MODESTO | CA | 10 | 13 | 10 | 15 | 7 | 0 | 55 |
| MONTEBELLO | CA | 9 | 1 | 10 | 0 | 0 | 0 | 20 |
| MONTEREY PARK | CA | 25 | 0 | 10 | 15 | 0 | 0 | 50 |
| MORENO VALLEY | CA | 0 | 13 | 10 | 0 | 0 | 0 | 23 |
| MOUNTAIN VIEW | CA | 8 | 15 | 10 | 0 | 7 | 0 | 40 |
| NATIONAL CITY | CA | 0 | 1 | 10 | 0 | 8 | 0 | 19 |
| NORWALK | CA | 0 | 6 | 10 | 0 | 0 | 0 | 16 |
| OAKLAND | CA | 4 | 4 | 10 | 0 | 9 | 0 | 27 |
| OCEANSIDE | CA | 4 | 4 | 10 | 0 | 0 | 0 | 18 |
| ONTARIO | CA | 8 | 6 | 10 | 0 | 1 | 0 | 25 |
| ORANGE | CA | 0 | 9 | 10 | 0 | 8 | 0 | 27 |
| ORANGE CO | CA | 17 | 0 | 10 | 15 | 4 | 0 | 46 |
| OXNARD | CA | 0 | 8 | 10 | 0 | 8 | 0 | 26 |
| PARAMOUNT CITY | CA | 0 | 13 | 10 | 0 | 2 | 0 | 25 |
| PASADENA | CA | 22 | 5 | 10 | 15 | 1 | 0 | 53 |
| POMONA | CA | 0 | 6 | 10 | 0 | 0 | 0 | 16 |
| REDWOOD CITY | CA | 24 | 7 | 10 | 15 | 0 | 0 | 56 |
| RICHMOND | CA | 23 | 14 | 10 | 15 | 1 | 0 | 63 |
| RIVERSIDE | CA | 21 | 0 | 10 | 15 | 1 | 0 | 47 |
| RIVERSIDE CO | CA | 3 | 6 | 10 | 15 | 9 | 0 | 43 |
| ROSEMEAD | CA | 0 | 0 | 10 | 0 | 0 | 0 | 10 |
| SACRAMENTO | CA | 5 | 4 | 10 | 0 | 10 | 0 | 29 |
| SACRAMENTO CO | CA | 13 | 4 | 10 | 15 | 10 | 0 | 52 |
| SALINAS | CA | 3 | 3 | 10 | 0 | 4 | 0 | 20 |
| SAN BERNARDINO | CA | 0 | 2 | 10 | 0 | 2 | 0 | 14 |
| SAN BERNARDINO CO CON | CA | 0 | 0 | 10 | 0 | 8 | 0 | 18 |
| SAN DIEGO | CA | 17 | 9 | 10 | 15 | 7 | 0 | 58 |
| SAN DIEGO CO CON | CA | 13 | 10 | 10 | 15 | 7 | 0 | 55 |
| SAN FRANCISCO | CA | 25 | 15 | 10 | 15 | 2 | 0 | 67 |
| SAN JOAQUIN CO | CA | 0 | 2 | 10 | 0 | 7 | 0 | 19 |
| SAN JOSE | CA | 0 | 11 | 10 | 0 | 5 | 0 | 26 |
| SAN LUIS OBISPO CO | CA | 0 | 4 | 10 | 0 | 8 | 0 | 22 |
| SAN MATEO | CA | 0 | 15 | 10 | 0 | 1 | 0 | 26 |
| SAN MATEO CO CON | CA | 22 | 13 | 10 | 15 | 5 | 0 | 65 |
| SANTA ANA | CA | 22 | 14 | 10 | 15 | 3 | 0 | 64 |
| SANTA BARBARA | CA | 17 | 13 | 10 | 15 | 4 | 0 | 59 |
| SANTA BARBARA CO CON | CA | 0 | 4 | 10 | 0 | 8 | 0 | 22 |
| SANTA CLARA | CA | 15 | 15 | 10 | 0 | 7 | 0 | 47 |
| SANTA CLARA CO | CA | 0 | 0 | 10 | 0 | 7 | 0 | 17 |
| SANTA CRUZ | CA | 0 | 15 | 10 | 0 | 4 | 0 | 29 |
| SANTA MONICA | CA | 13 | 14 | 10 | 15 | 3 | 0 | 55 |
| SANTA ROSA | CA | 5 | 7 | 10 | 0 | 6 | 0 | 28 |
| SONOMA CO | CA | 8 | 14 | 10 | 0 | 8 | 0 | 40 |
| SOUTH GATE | CA | 0 | 8 | 10 | 0 | 5 | 0 | 23 |

***_Score for this factor may be reduced based on updates obtained from field offices**

## Appendix 1
## HOME Competition Summary Scoring Report

| | | | Selection Criteria | | | | | |
|---|---|---|---|---|---|---|---|---|
| **Grantee** | **St** | **# 1** | **# 2A** | **# 2B*** | **# 2C** | **# 2D** | **# 3** | **Score** |
| STOCKTON | CA | 23 | 2 | 10 | 15 | 3 | 0 | 53 |
| SUNNYVALE | CA | 0 | 15 | 10 | 0 | 3 | 0 | 28 |
| TURLOCK CO CON | CA | 0 | 0 | 10 | 0 | 0 | 0 | 10 |
| VALLEJO | CA | 0 | 0 | 10 | 0 | 1 | 0 | 11 |
| VENTURA CO CON | CA | 14 | 11 | 10 | 0 | 3 | 0 | 38 |
| VISALIA | CA | 0 | 1 | 10 | 0 | 8 | 0 | 19 |
| WESTMINSTER | CA | 12 | 11 | 10 | 0 | 7 | 0 | 40 |
| WHITTIER | CA | 0 | 0 | 10 | 0 | 0 | 0 | 10 |
| ADAMS CO | CO | 0 | 2 | 10 | 0 | 9 | 0 | 21 |
| ARAPAHOE CO | CO | 7 | 1 | 10 | 15 | 10 | 0 | 43 |
| AURORA | CO | 0 | 1 | 10 | 0 | 0 | 0 | 11 |
| BOULDER | CO | 18 | 12 | 10 | 0 | 10 | 0 | 50 |
| COLORADO | CO | 17 | 9 | 10 | 15 | 9 | 0 | 60 |
| COLORADO SPRINGS | CO | 25 | 12 | 10 | 15 | 5 | 0 | 67 |
| DENVER | CO | 16 | 15 | 10 | 15 | 7 | 0 | 63 |
| FORT COLLINS | CO | 25 | 4 | 10 | 15 | 10 | 0 | 64 |
| GREELEY | CO | 13 | 14 | 10 | 15 | 6 | 0 | 58 |
| JEFFERSON CO | CO | 7 | 4 | 10 | 15 | 10 | 0 | 46 |
| LAKEWOOD | CO | 19 | 13 | 10 | 0 | 9 | 0 | 51 |
| PUEBLO CON | CO | 7 | 3 | 10 | 0 | 10 | 0 | 30 |
| BRIDGEPORT | CT | 0 | 15 | 10 | 0 | 2 | 0 | 27 |
| CONNECTICUT | CT | 11 | 11 | 10 | 15 | 5 | 0 | 52 |
| HARTFORD | CT | 18 | 10 | 10 | 0 | 1 | 0 | 39 |
| NEW BRITAIN | CT | 0 | 3 | 10 | 0 | 9 | 0 | 22 |
| NEW HAVEN | CT | 13 | 0 | 10 | 0 | 8 | 0 | 31 |
| STAMFORD | CT | 13 | 12 | 10 | 0 | 9 | 0 | 44 |
| WATERBURY | CT | 24 | 13 | 10 | 0 | 1 | 0 | 48 |
| DISTRICT OF COLUMBIA | DC | 0 | 0 | 10 | 0 | 6 | 0 | 16 |
| DELAWARE | DE | 14 | 12 | 10 | 15 | 3 | 0 | 54 |
| NEW CASTLE CO | DE | 0 | 9 | 10 | 0 | 0 | 0 | 19 |
| WILMINGTON | DE | 0 | 7 | 10 | 0 | 9 | 0 | 26 |
| BREVARD CO CON | FL | 12 | 5 | 10 | 15 | 5 | 0 | 47 |
| BROWARD CO | FL | 0 | 6 | 10 | 0 | 10 | 0 | 26 |
| CLEARWATER | FL | 0 | 0 | 10 | 0 | 10 | 0 | 20 |
| DADE CO | FL | 0 | 4 | 10 | 0 | 5 | 0 | 19 |
| DAYTONA BEACH | FL | 3 | 5 | 10 | 0 | 9 | 0 | 27 |
| ESCAMBIA CO CON | FL | 9 | 14 | 10 | 15 | 2 | 0 | 50 |
| FLORIDA | FL | 12 | 6 | 10 | 15 | 7 | 0 | 50 |
| FORT LAUDERDALE | FL | 7 | 3 | 10 | 15 | 9 | 0 | 44 |
| GAINESVILLE | FL | 11 | 0 | 10 | 0 | 8 | 0 | 29 |
| HIALEAH | FL | 10 | 8 | 10 | 15 | 5 | 0 | 48 |
| HILLSBOROUGH CO | FL | 14 | 6 | 10 | 0 | 10 | 0 | 40 |
| HOLLYWOOD | FL | 0 | 2 | 10 | 0 | 8 | 0 | 20 |
| JACKSONVILLE | FL | 11 | 3 | 10 | 0 | 9 | 0 | 33 |
| LAKELAND | FL | 0 | 3 | 10 | 0 | 8 | 0 | 21 |
| LEE CO | FL | 0 | 1 | 10 | 0 | 3 | 0 | 14 |
| MIAMI | FL | 20 | 11 | 10 | 15 | 6 | 0 | 62 |
| MIAMI BEACH | FL | 9 | 9 | 10 | 15 | 3 | 0 | 46 |
| ORANGE CO | FL | 22 | 0 | 10 | 15 | 6 | 0 | 53 |

***_Score for this factor may be reduced based on updates obtained from field offices**

## Appendix 1
## HOME Competition Summary Scoring Report

| | | Selection Criteria | | | | | | |
|---|---|---|---|---|---|---|---|---|
| **Grantee** | **St** | **# 1** | **# 2A** | **# 2B*** | **# 2C** | **# 2D** | **# 3** | **Score** |
| ORLANDO | FL | 24 | 10 | 10 | 15 | 7 | 0 | 66 |
| PALM BEACH CO CON | FL | 3 | 4 | 10 | 0 | 10 | 0 | 27 |
| PASCO CO | FL | 5 | 9 | 10 | 15 | 1 | 0 | 40 |
| PINELLAS CO CON | FL | 5 | 3 | 10 | 0 | 7 | 0 | 25 |
| POLK CO | FL | 0 | 10 | 10 | 0 | 4 | 0 | 24 |
| POMPANO BEACH | FL | 0 | 3 | 10 | 0 | 0 | 0 | 13 |
| SARASOTA CON | FL | 0 | 2 | 10 | 0 | 9 | 0 | 21 |
| ST. PETERSBURG | FL | 25 | 13 | 10 | 0 | 6 | 0 | 54 |
| TALLAHASSEE | FL | 0 | 0 | 10 | 0 | 2 | 0 | 12 |
| TAMPA | FL | 0 | 2 | 10 | 0 | 5 | 0 | 17 |
| VOLUSIA CO CON | FL | 11 | 8 | 10 | 15 | 4 | 0 | 48 |
| WEST PALM BEACH | FL | 0 | 7 | 10 | 0 | 7 | 0 | 24 |
| ALBANY | GA | 15 | 10 | 10 | 0 | 2 | 0 | 37 |
| ATHENS | GA | 0 | 12 | 10 | 0 | 0 | 0 | 22 |
| ATLANTA | GA | 24 | 13 | 10 | 15 | 3 | 0 | 65 |
| AUGUSTA | GA | 0 | 14 | 10 | 0 | 1 | 0 | 25 |
| CLAYTON CO | GA | 0 | 0 | 10 | 0 | 0 | 0 | 10 |
| COBB CO CON | GA | 0 | 8 | 10 | 0 | 10 | 0 | 28 |
| COLUMBUS | GA | 13 | 8 | 10 | 0 | 9 | 0 | 40 |
| DEKALB CO | GA | 9 | 8 | 10 | 0 | 5 | 0 | 32 |
| FULTON CO CON | GA | 0 | 0 | 10 | 0 | 0 | 0 | 10 |
| GEORGIA | GA | 16 | 5 | 10 | 15 | 5 | 0 | 51 |
| GWINNETT CO | GA | 3 | 1 | 10 | 0 | 9 | 0 | 23 |
| MACON | GA | 0 | 1 | 10 | 0 | 6 | 0 | 17 |
| SAVANNAH | GA | 0 | 0 | 10 | 0 | 4 | 0 | 14 |
| HAWAII | HI | 3 | 11 | 10 | 15 | 2 | 0 | 41 |
| HONOLULU | HI | 3 | 14 | 10 | 0 | 4 | 0 | 31 |
| CEDAR RAPIDS | IA | 25 | 11 | 10 | 15 | 6 | 0 | 67 |
| DAVENPORT | IA | 20 | 10 | 10 | 15 | 4 | 0 | 59 |
| DES MOINES | IA | 12 | 14 | 10 | 0 | 4 | 0 | 40 |
| IOWA | IA | 21 | 13 | 10 | 15 | 5 | 0 | 64 |
| IOWA CITY | IA | 20 | 15 | 10 | 0 | 7 | 0 | 52 |
| SIOUX CITY CON | IA | 20 | 13 | 10 | 15 | 9 | 0 | 67 |
| WATERLOO CON | IA | 0 | 12 | 10 | 0 | 2 | 0 | 24 |
| BOISE | ID | 4 | 9 | 10 | 0 | 7 | 0 | 30 |
| IDAHO | ID | 10 | 5 | 10 | 15 | 6 | 0 | 46 |
| CHICAGO | IL | 0 | 14 | 10 | 0 | 3 | 0 | 27 |
| COOK CO CON | IL | 20 | 14 | 10 | 15 | 5 | 0 | 64 |
| DECATUR | IL | 25 | 12 | 10 | 15 | 3 | 0 | 65 |
| DUPAGE CO CON | IL | 22 | 10 | 10 | 0 | 3 | 0 | 45 |
| EAST ST. LOUIS | IL | 0 | 11 | 10 | 0 | 6 | 0 | 27 |
| EVANSTON | IL | 0 | 0 | 10 | 0 | 3 | 0 | 13 |
| ILLINOIS | IL | 15 | 12 | 10 | 15 | 3 | 0 | 55 |
| JOLIET | IL | 14 | 13 | 10 | 0 | 7 | 0 | 44 |
| LAKE CO CON | IL | 24 | 5 | 10 | 15 | 10 | 0 | 64 |
| MADISON CO | IL | 10 | 3 | 10 | 0 | 9 | 0 | 32 |
| MCHENRY CO | IL | 2 | 0 | 10 | 0 | 2 | 0 | 14 |
| PEORIA | IL | 0 | 5 | 10 | 0 | 1 | 0 | 16 |
| ROCKFORD | IL | 4 | 8 | 10 | 15 | 5 | 0 | 42 |

***_Score for this factor may be reduced based on updates obtained from field offices**

## Appendix 1
## HOME Competition Summary Scoring Report

| | | | Selection Criteria | | | | | |
|---|---|---|---|---|---|---|---|---|
| Grantee | St | # 1 | # 2A | # 2B* | # 2C | # 2D | # 3 | Score |
| SPRINGFIELD | IL | 0 | 14 | 10 | 0 | 1 | 0 | 25 |
| ST. CLAIR CO CON | IL | 0 | 12 | 10 | 0 | 8 | 0 | 30 |
| URBANA CON | IL | 18 | 0 | 10 | 0 | 7 | 0 | 35 |
| WILL CO | IL | 24 | 7 | 10 | 15 | 10 | 0 | 66 |
| ANDERSON | IN | 22 | 0 | 10 | 15 | 8 | 0 | 55 |
| BLOOMINGTON | IN | 19 | 9 | 10 | 0 | 6 | 0 | 44 |
| EAST CHICAGO | IN | 8 | 12 | 10 | 15 | 2 | 0 | 47 |
| EVANSVILLE | IN | 7 | 3 | 10 | 0 | 9 | 0 | 29 |
| FORT WAYNE | IN | 14 | 6 | 10 | 0 | 3 | 0 | 33 |
| GARY | IN | 23 | 6 | 10 | 15 | 7 | 0 | 61 |
| HAMMOND | IN | 0 | 2 | 10 | 0 | 1 | 0 | 13 |
| INDIANA | IN | 15 | 4 | 10 | 15 | 5 | 0 | 49 |
| INDIANAPOLIS | IN | 24 | 0 | 10 | 15 | 3 | 0 | 52 |
| LAFAYETTE CON | IN | 4 | 13 | 10 | 0 | 8 | 0 | 35 |
| LAKE CO | IN | 0 | 0 | 10 | 0 | 1 | 0 | 11 |
| MUNCIE | IN | 8 | 13 | 10 | 0 | 7 | 0 | 38 |
| SOUTH BEND CON | IN | 19 | 8 | 10 | 15 | 2 | 0 | 54 |
| TERRE HAUTE | IN | 21 | 15 | 10 | 0 | 4 | 0 | 50 |
| JOHNSON CO CON | KS | 19 | 7 | 10 | 15 | 0 | 0 | 51 |
| KANSAS | KS | 6 | 5 | 10 | 15 | 7 | 0 | 43 |
| KANSAS CITY | KS | 0 | 4 | 10 | 0 | 9 | 0 | 23 |
| LAWRENCE | KS | 0 | 1 | 10 | 0 | 7 | 0 | 18 |
| TOPEKA | KS | 12 | 10 | 10 | 0 | 5 | 0 | 37 |
| WICHITA | KS | 8 | 8 | 10 | 0 | 7 | 0 | 33 |
| COVINGTON | KY | 0 | 4 | 10 | 0 | 7 | 0 | 21 |
| KENTUCKY | KY | 9 | 9 | 10 | 15 | 5 | 0 | 48 |
| LEXINGTON-FAYETTE | KY | 16 | 11 | 10 | 0 | 8 | 0 | 45 |
| LOUISVILLE | KY | 19 | 10 | 10 | 0 | 5 | 0 | 44 |
| OWENSBORO | KY | 0 | 3 | 10 | 0 | 7 | 0 | 20 |
| ALEXANDRIA | LA | 0 | 11 | 10 | 0 | 1 | 0 | 22 |
| BATON ROUGE | LA | 0 | 6 | 10 | 0 | 7 | 0 | 23 |
| HOUMA CO | LA | 2 | 5 | 10 | 0 | 4 | 0 | 21 |
| JEFFERSON PAR CON | LA | 0 | 2 | 10 | 0 | 10 | 0 | 22 |
| LAFAYETTE | LA | 0 | 14 | 10 | 0 | 2 | 0 | 26 |
| LAKE CHARLES | LA | 0 | 15 | 10 | 0 | 1 | 0 | 26 |
| LOUISIANA | LA | 19 | 5 | 10 | 15 | 3 | 0 | 52 |
| MONROE | LA | 0 | 3 | 10 | 0 | 0 | 0 | 13 |
| NEW ORLEANS | LA | 1 | 0 | 10 | 0 | 6 | 0 | 17 |
| SHREVEPORT | LA | 25 | 3 | 10 | 15 | 3 | 0 | 56 |
| BARNSTABLE CO CON | MA | 23 | 5 | 10 | 15 | 10 | 0 | 63 |
| BOSTON | MA | 13 | 11 | 10 | 15 | 8 | 0 | 57 |
| BROCKTON | MA | 11 | 2 | 10 | 0 | 3 | 0 | 26 |
| CAMBRIDGE | MA | 21 | 8 | 10 | 15 | 8 | 0 | 62 |
| FALL RIVER | MA | 19 | 13 | 10 | 0 | 4 | 0 | 46 |
| FITCHBURG CON | MA | 11 | 9 | 10 | 0 | 2 | 0 | 32 |
| HOLYOKE CON | MA | 19 | 7 | 10 | 0 | 8 | 0 | 44 |
| LAWRENCE | MA | 12 | 3 | 10 | 0 | 10 | 0 | 35 |
| LOWELL | MA | 14 | 3 | 10 | 0 | 9 | 0 | 36 |
| LYNN | MA | 8 | 5 | 10 | 0 | 8 | 0 | 31 |

*_Score for this factor may be reduced based on updates obtained from field offices

## Appendix 1
## HOME Competition Summary Scoring Report

| | | | Selection Criteria | | | | | |
|---|---|---|---|---|---|---|---|---|
| **Grantee** | **St** | **# 1** | **# 2A** | **# 2B*** | **# 2C** | **# 2D** | **# 3** | **Score** |
| MALDEN CON | MA | 16 | 8 | 10 | 15 | 9 | 0 | 58 |
| MASSACHUSETTS | MA | 17 | 11 | 10 | 15 | 8 | 0 | 61 |
| NEW BEDFORD | MA | 24 | 12 | 10 | 15 | 5 | 0 | 66 |
| NEWTON CON | MA | 11 | 9 | 10 | 0 | 8 | 0 | 38 |
| PEABODY CON | MA | 20 | 6 | 10 | 15 | 10 | 0 | 61 |
| QUINCY CON | MA | 12 | 5 | 10 | 0 | 9 | 0 | 36 |
| SOMERVILLE | MA | 25 | 13 | 10 | 0 | 4 | 0 | 52 |
| SPRINGFIELD | MA | 21 | 5 | 10 | 15 | 10 | 0 | 61 |
| WORCESTER | MA | 9 | 6 | 10 | 15 | 8 | 0 | 48 |
| ANNE ARUNDEL CO | MD | 22 | 6 | 10 | 0 | 10 | 0 | 48 |
| BALTIMORE | MD | 13 | 14 | 10 | 15 | 2 | 0 | 54 |
| BALTIMORE CO | MD | 12 | 0 | 10 | 15 | 10 | 0 | 47 |
| HARFORD CO | MD | 0 | 9 | 10 | 0 | 0 | 0 | 19 |
| MARYLAND | MD | 6 | 14 | 10 | 15 | 3 | 0 | 48 |
| MONTGOMERY CO | MD | 0 | 12 | 10 | 0 | 3 | 0 | 25 |
| PRINCE GEORGE'S CO | MD | 0 | 0 | 10 | 0 | 0 | 0 | 10 |
| MAINE | ME | 7 | 6 | 10 | 15 | 6 | 0 | 44 |
| PORTLAND | ME | 23 | 10 | 10 | 0 | 5 | 0 | 48 |
| ANN ARBOR | MI | 7 | 15 | 10 | 0 | 4 | 0 | 36 |
| BATTLE CREEK | MI | 0 | 7 | 10 | 0 | 7 | 0 | 24 |
| BAY CITY | MI | 0 | 12 | 10 | 0 | 1 | 0 | 23 |
| DETROIT | MI | 8 | 12 | 10 | 15 | 3 | 0 | 48 |
| FLINT | MI | 4 | 5 | 10 | 0 | 10 | 0 | 29 |
| GENESEE CO | MI | 10 | 8 | 10 | 0 | 3 | 0 | 31 |
| GRAND RAPIDS | MI | 1 | 5 | 10 | 0 | 9 | 0 | 25 |
| JACKSON | MI | 0 | 6 | 10 | 0 | 6 | 0 | 22 |
| KALAMAZOO | MI | 1 | 14 | 10 | 0 | 2 | 0 | 27 |
| LANSING | MI | 19 | 10 | 10 | 15 | 4 | 0 | 58 |
| MACOMB CO | MI | 0 | 10 | 10 | 0 | 1 | 0 | 21 |
| MICHIGAN | MI | 15 | 10 | 10 | 15 | 3 | 0 | 53 |
| MUSKEGON | MI | 24 | 12 | 10 | 15 | 0 | 0 | 61 |
| OAKLAND CO | MI | 0 | 13 | 10 | 0 | 1 | 0 | 24 |
| PONTIAC | MI | 4 | 11 | 10 | 0 | 3 | 0 | 28 |
| PORT HURON | MI | 0 | 0 | 10 | 0 | 0 | 0 | 10 |
| SAGINAW | MI | 4 | 10 | 10 | 0 | 0 | 0 | 24 |
| WARREN | MI | 5 | 4 | 10 | 0 | 1 | 0 | 20 |
| WAYNE CO | MI | 1 | 6 | 10 | 0 | 10 | 0 | 27 |
| WESTLAND | MI | 18 | 7 | 10 | 0 | 9 | 0 | 44 |
| DAKOTA CO CON | MN | 15 | 8 | 10 | 15 | 9 | 0 | 57 |
| DULUTH | MN | 10 | 12 | 10 | 15 | 4 | 0 | 51 |
| HENNEPIN CO CON | MN | 18 | 14 | 10 | 15 | 6 | 0 | 63 |
| MINNEAPOLIS | MN | 21 | 14 | 10 | 15 | 5 | 0 | 65 |
| MINNESOTA | MN | 23 | 14 | 10 | 15 | 3 | 0 | 65 |
| ST. LOUIS CO CON | MN | 5 | 6 | 10 | 0 | 7 | 0 | 28 |
| ST. PAUL | MN | 22 | 12 | 10 | 0 | 4 | 0 | 48 |
| COLUMBIA | MO | 9 | 6 | 10 | 15 | 2 | 0 | 42 |
| INDEPENDENCE | MO | 0 | 2 | 10 | 0 | 10 | 0 | 22 |
| KANSAS CITY | MO | 6 | 1 | 10 | 0 | 4 | 0 | 21 |
| MISSOURI | MO | 22 | 7 | 10 | 15 | 4 | 0 | 58 |

***_Score for this factor may be reduced based on updates obtained from field offices**

## Appendix 1
## HOME Competition Summary Scoring Report

| | | Selection Criteria | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Grantee | St | # 1 | # 2A | # 2B* | # 2C | # 2D | # 3 | Score |
| SPRINGFIELD | MO | 18 | 11 | 10 | 0 | 1 | 0 | 40 |
| ST. JOSEPH | MO | 21 | 9 | 10 | 15 | 5 | 0 | 60 |
| ST. LOUIS | MO | 11 | 5 | 10 | 15 | 8 | 0 | 49 |
| ST. LOUIS CO | MO | 17 | 7 | 10 | 15 | 9 | 0 | 58 |
| HATTIESBURG | MS | 0 | 4 | 10 | 0 | 0 | 0 | 14 |
| JACKSON | MS | 0 | 3 | 10 | 0 | 6 | 0 | 19 |
| MISSISSIPPI | MS | 3 | 12 | 10 | 15 | 2 | 0 | 42 |
| BILLINGS | MT | 22 | 0 | 10 | 15 | 10 | 0 | 57 |
| GREAT FALLS | MT | 0 | 1 | 10 | 0 | 2 | 0 | 13 |
| MONTANA STATE | MT | 19 | 9 | 10 | 15 | 6 | 0 | 59 |
| ASHEVILLE CON | NC | 15 | 14 | 10 | 15 | 4 | 0 | 58 |
| CHARLOTTE | NC | 0 | 0 | 10 | 0 | 2 | 0 | 12 |
| CONCORD CON | NC | 0 | 15 | 10 | 0 | 0 | 0 | 25 |
| CUMBERLAND CO | NC | 24 | 0 | 10 | 0 | 0 | 0 | 34 |
| DURHAM CON | NC | 6 | 14 | 10 | 0 | 1 | 0 | 31 |
| FAYETTEVILLE | NC | 16 | 13 | 10 | 0 | 1 | 0 | 40 |
| GASTONIA CON | NC | 0 | 3 | 10 | 0 | 8 | 0 | 21 |
| GOLDSBORO | NC | 0 | 2 | 10 | 0 | 8 | 0 | 20 |
| GREENSBORO CON | NC | 23 | 4 | 10 | 15 | 9 | 0 | 61 |
| GREENVILLE CON | NC | 0 | 6 | 10 | 0 | 7 | 0 | 23 |
| LENOIR CON | NC | 0 | 1 | 10 | 0 | 10 | 0 | 21 |
| NORTH CAROLINA | NC | 18 | 13 | 10 | 15 | 4 | 0 | 60 |
| ORANGE CO CON | NC | 0 | 0 | 10 | 0 | 0 | 0 | 10 |
| RALEIGH | NC | 12 | 14 | 10 | 15 | 2 | 0 | 53 |
| ROCKY MOUNT CON | NC | 0 | 0 | 10 | 0 | 0 | 0 | 10 |
| SURRY CO CON | NC | 0 | 15 | 10 | 0 | 2 | 0 | 27 |
| WAKE CO | NC | 25 | 8 | 10 | 15 | 7 | 0 | 65 |
| WILMINGTON | NC | 14 | 14 | 10 | 0 | 1 | 0 | 39 |
| WINSTON-SALEM CON | NC | 24 | 13 | 10 | 15 | 6 | 0 | 68 |
| NORTH DAKOTA | ND | 10 | 5 | 10 | 15 | 7 | 0 | 47 |
| LINCOLN | NE | 7 | 4 | 10 | 15 | 8 | 0 | 44 |
| NEBRASKA | NE | 3 | 8 | 10 | 0 | 7 | 0 | 28 |
| OMAHA CON | NE | 10 | 9 | 10 | 15 | 8 | 0 | 52 |
| MANCHESTER | NH | 23 | 12 | 10 | 15 | 6 | 0 | 66 |
| NEW HAMPSHIRE | NH | 8 | 10 | 10 | 15 | 4 | 0 | 47 |
| ATLANTIC CITY | NJ | 13 | 3 | 10 | 15 | 0 | 0 | 41 |
| ATLANTIC CO CON | NJ | 5 | 7 | 10 | 0 | 1 | 0 | 23 |
| BERGEN CO | NJ | 19 | 11 | 10 | 15 | 7 | 0 | 62 |
| BURLINGTON CO | NJ | 24 | 7 | 10 | 15 | 7 | 0 | 63 |
| CAMDEN | NJ | 0 | 9 | 10 | 0 | 8 | 0 | 27 |
| CAMDEN CO CON | NJ | 5 | 13 | 10 | 15 | 6 | 0 | 49 |
| EAST ORANGE | NJ | 6 | 9 | 10 | 0 | 7 | 0 | 32 |
| ELIZABETH | NJ | 22 | 13 | 10 | 15 | 6 | 0 | 66 |
| ESSEX CO | NJ | 14 | 15 | 10 | 15 | 3 | 0 | 57 |
| GLOUCESTER CO | NJ | 1 | 0 | 10 | 0 | 2 | 0 | 13 |
| HUDSON CO CON | NJ | 16 | 6 | 10 | 15 | 3 | 0 | 50 |
| IRVINGTON TOWNSHIP | NJ | 0 | 9 | 10 | 0 | 9 | 0 | 28 |
| JERSEY CITY | NJ | 22 | 10 | 10 | 15 | 5 | 0 | 62 |
| MERCER CO CON | NJ | 0 | 6 | 10 | 0 | 0 | 0 | 16 |

*_Score for this factor may be reduced based on updates obtained from field offices

## Appendix 1
## HOME Competition Summary Scoring Report

| | | | Selection Criteria | | | | | |
|---|---|---|---|---|---|---|---|---|
| **Grantee** | **St** | **# 1** | **# 2A** | **# 2B*** | **# 2C** | **# 2D** | **# 3** | **Score** |
| MIDDLESEX CO CON | NJ | 16 | 15 | 10 | 0 | 6 | 0 | 47 |
| MONMOUTH CO | NJ | 0 | 2 | 10 | 0 | 10 | 0 | 22 |
| MORRIS CO CON | NJ | 3 | 12 | 10 | 0 | 9 | 0 | 34 |
| NEW BRUNSWICK | NJ | 0 | 10 | 10 | 0 | 1 | 0 | 21 |
| NEW JERSEY | NJ | 6 | 11 | 10 | 0 | 2 | 0 | 29 |
| NEWARK | NJ | 3 | 7 | 10 | 0 | 5 | 0 | 25 |
| OCEAN CO CON | NJ | 14 | 7 | 10 | 0 | 8 | 0 | 39 |
| PASSAIC | NJ | 2 | 0 | 10 | 0 | 2 | 0 | 14 |
| PATERSON | NJ | 12 | 3 | 10 | 0 | 8 | 0 | 33 |
| PERTH AMBOY | NJ | 0 | 15 | 10 | 0 | 6 | 0 | 31 |
| SOMERSET CO | NJ | 13 | 15 | 10 | 0 | 6 | 0 | 44 |
| TRENTON | NJ | 0 | 6 | 10 | 0 | 6 | 0 | 22 |
| UNION CO CON | NJ | 0 | 0 | 10 | 0 | 8 | 0 | 18 |
| VINELAND CON | NJ | 0 | 4 | 10 | 0 | 4 | 0 | 18 |
| ALBUQUERQUE | NM | 0 | 13 | 10 | 0 | 3 | 0 | 26 |
| LAS CRUCES | NM | 0 | 2 | 10 | 0 | 6 | 0 | 18 |
| NEW MEXICO | NM | 4 | 6 | 10 | 15 | 7 | 0 | 42 |
| CLARK CO CON | NV | 2 | 4 | 10 | 0 | 9 | 0 | 25 |
| LYON CO CON | NV | 18 | 2 | 10 | 0 | 3 | 0 | 33 |
| NEVADA | NV | 22 | 12 | 10 | 15 | 9 | 0 | 68 |
| RENO CON | NV | 6 | 8 | 10 | 0 | 10 | 0 | 34 |
| ALBANY | NY | 21 | 7 | 10 | 0 | 7 | 0 | 45 |
| AMHERST CON | NY | 0 | 2 | 10 | 0 | 6 | 0 | 18 |
| BABYLON TOWNSHIP | NY | 2 | 4 | 10 | 0 | 5 | 0 | 21 |
| BINGHAMTON | NY | 5 | 0 | 10 | 0 | 1 | 0 | 16 |
| BUFFALO | NY | 0 | 0 | 10 | 0 | 3 | 0 | 13 |
| DUTCHESS CO CON | NY | 0 | 4 | 10 | 0 | 8 | 0 | 22 |
| ELMIRA | NY | 10 | 0 | 10 | 15 | 8 | 0 | 43 |
| ERIE CO CON | NY | 21 | 3 | 10 | 15 | 8 | 0 | 57 |
| ISLIP TOWNSHIP | NY | 0 | 0 | 10 | 0 | 1 | 0 | 11 |
| JAMESTOWN | NY | 0 | 8 | 10 | 0 | 2 | 0 | 20 |
| JEFFERSON CO CON | NY | 0 | 0 | 10 | 0 | 3 | 0 | 13 |
| MONROE CO CON | NY | 25 | 9 | 10 | 15 | 5 | 0 | 64 |
| MOUNT VERNON | NY | 0 | 0 | 10 | 0 | 9 | 0 | 19 |
| NASSAU CO | NY | 0 | 10 | 10 | 0 | 4 | 0 | 24 |
| NEW ROCHELLE | NY | 0 | 0 | 10 | 0 | 0 | 0 | 10 |
| NEW YORK | NY | 9 | 8 | 10 | 15 | 4 | 0 | 46 |
| NEW YORK CITY | NY | 8 | 15 | 10 | 15 | 1 | 0 | 49 |
| NIAGARA FALLS | NY | 11 | 3 | 10 | 0 | 4 | 0 | 28 |
| ONONDAGA CO CON | NY | 16 | 9 | 10 | 15 | 4 | 0 | 54 |
| ORANGE CO CON | NY | 20 | 12 | 10 | 0 | 9 | 0 | 51 |
| ROCHESTER | NY | 20 | 2 | 10 | 15 | 4 | 0 | 51 |
| ROCKLAND CO | NY | 0 | 5 | 10 | 0 | 10 | 0 | 25 |
| SCHENECTADY CON | NY | 1 | 7 | 10 | 0 | 6 | 0 | 24 |
| SUFFOLK CO | NY | 8 | 2 | 10 | 0 | 10 | 0 | 30 |
| SYRACUSE | NY | 22 | 9 | 10 | 0 | 6 | 0 | 47 |
| UTICA | NY | 18 | 0 | 10 | 15 | 1 | 0 | 44 |
| WESTCHESTER CO | NY | 0 | 4 | 10 | 0 | 4 | 0 | 18 |
| YONKERS | NY | 23 | 0 | 10 | 15 | 7 | 0 | 55 |

***_Score for this factor may be reduced based on updates obtained from field offices**

## Appendix 1
## HOME Competition Summary Scoring Report

| | | | | Selection Criteria | | | | |
|---|---|---|---|---|---|---|---|---|
| Grantee | St | # 1 | # 2A | # 2B* | # 2C | # 2D | # 3 | Score |
| AKRON | OH | 0 | 4 | 10 | 0 | 4 | 0 | 18 |
| BUTLER CO CON | OH | 0 | 15 | 10 | 0 | 0 | 0 | 25 |
| CANTON | OH | 0 | 0 | 10 | 0 | 3 | 0 | 13 |
| CINCINNATI | OH | 24 | 14 | 10 | 15 | 6 | 0 | 69 |
| CLEVELAND | OH | 8 | 9 | 10 | 0 | 6 | 0 | 33 |
| COLUMBUS | OH | 25 | 11 | 10 | 15 | 9 | 0 | 70 |
| CUYAHOGA CO CON | OH | 17 | 9 | 10 | 0 | 9 | 0 | 45 |
| DAYTON | OH | 21 | 6 | 10 | 15 | 9 | 0 | 61 |
| EAST CLEVELAND | OH | 0 | 7 | 10 | 0 | 1 | 0 | 18 |
| FRANKLIN CO | OH | 0 | 13 | 10 | 0 | 10 | 0 | 33 |
| HAMILTON | OH | 2 | 12 | 10 | 0 | 4 | 0 | 28 |
| HAMILTON CO | OH | 2 | 14 | 10 | 0 | 3 | 0 | 29 |
| LAKE CO | OH | 24 | 5 | 10 | 0 | 3 | 0 | 42 |
| LIMA | OH | 0 | 0 | 10 | 0 | 6 | 0 | 16 |
| LORAIN | OH | 12 | 12 | 10 | 15 | 2 | 0 | 51 |
| MANSFIELD | OH | 15 | 3 | 10 | 0 | 1 | 0 | 29 |
| MONTGOMERY CO-KETTERING CON | OH | 24 | 12 | 10 | 0 | 5 | 0 | 51 |
| OHIO | OH | 0 | 0 | 10 | 0 | 6 | 0 | 16 |
| SPRINGFIELD | OH | 1 | 11 | 10 | 0 | 4 | 0 | 26 |
| STARK CO CON | OH | 21 | 12 | 10 | 15 | 5 | 0 | 63 |
| SUMMIT CO CON | OH | 10 | 9 | 10 | 15 | 2 | 0 | 46 |
| TOLEDO | OH | 0 | 13 | 10 | 0 | 3 | 0 | 26 |
| WARREN CON | OH | 16 | 9 | 10 | 0 | 4 | 0 | 39 |
| YOUNGSTOWN | OH | 10 | 8 | 10 | 0 | 3 | 0 | 31 |
| LAWTON | OK | 0 | 10 | 10 | 0 | 4 | 0 | 24 |
| NORMAN | OK | 2 | 3 | 10 | 0 | 3 | 0 | 18 |
| OKLAHOMA | OK | 9 | 0 | 10 | 15 | 2 | 0 | 36 |
| OKLAHOMA CITY | OK | 0 | 5 | 10 | 0 | 2 | 0 | 17 |
| TULSA | OK | 0 | 7 | 10 | 0 | 8 | 0 | 25 |
| TULSA CO CON | OK | 0 | 5 | 10 | 0 | 10 | 0 | 25 |
| CLACKAMAS CO | OR | 15 | 8 | 10 | 15 | 6 | 0 | 54 |
| EUGENE CON | OR | 10 | 3 | 10 | 15 | 9 | 0 | 47 |
| OREGON | OR | 7 | 13 | 10 | 15 | 5 | 0 | 50 |
| PORTLAND CON | OR | 14 | 14 | 10 | 15 | 6 | 0 | 59 |
| SALEM CON | OR | 18 | 7 | 10 | 15 | 3 | 0 | 53 |
| WASHINGTON CO CON | OR | 17 | 10 | 10 | 15 | 8 | 0 | 60 |
| ALLEGHENY CO CON | PA | 0 | 9 | 10 | 0 | 2 | 0 | 21 |
| ALLENTOWN | PA | 0 | 7 | 10 | 0 | 2 | 0 | 19 |
| ALTOONA | PA | 21 | 15 | 10 | 0 | 4 | 0 | 50 |
| BEAVER CO | PA | 19 | 9 | 10 | 15 | 4 | 0 | 57 |
| BERKS CO | PA | 23 | 12 | 10 | 15 | 6 | 0 | 66 |
| BETHLEHEM | PA | 12 | 12 | 10 | 0 | 1 | 0 | 35 |
| BUCKS CO CON | PA | 0 | 13 | 10 | 0 | 3 | 0 | 26 |
| CHESTER | PA | 7 | 1 | 10 | 0 | 10 | 0 | 28 |
| CHESTER CO | PA | 9 | 5 | 10 | 15 | 9 | 0 | 48 |
| DELAWARE CO CON | PA | 23 | 5 | 10 | 15 | 9 | 0 | 62 |
| ERIE | PA | 18 | 10 | 10 | 0 | 6 | 0 | 44 |
| HARRISBURG | PA | 0 | 10 | 10 | 0 | 3 | 0 | 23 |
| JOHNSTOWN | PA | 0 | 4 | 10 | 0 | 2 | 0 | 16 |

***_Score for this factor may be reduced based on updates obtained from field offices**

## Appendix 1

## HOME Competition Summary Scoring Report

| | | | | Selection Criteria | | | | |
|---|---|---|---|---|---|---|---|---|
| Grantee | St | # 1 | # 2A | # 2B* | # 2C | # 2D | # 3 | Score |
| LANCASTER | PA | 0 | 8 | 10 | 0 | 8 | 0 | 26 |
| LANCASTER CO | PA | 21 | 6 | 10 | 0 | 9 | 0 | 46 |
| LUZERNE CO CON | PA | 5 | 8 | 10 | 0 | 2 | 0 | 25 |
| MONTGOMERY CO CON | PA | 20 | 13 | 10 | 0 | 7 | 0 | 50 |
| PENNSYLVANIA | PA | 10 | 8 | 10 | 15 | 2 | 0 | 45 |
| PHILADELPHIA | PA | 18 | 13 | 10 | 15 | 3 | 0 | 59 |
| PITTSBURGH | PA | 0 | 0 | 10 | 0 | 2 | 0 | 12 |
| READING | PA | 0 | 0 | 10 | 0 | 3 | 0 | 13 |
| SCRANTON | PA | 12 | 2 | 10 | 0 | 9 | 0 | 33 |
| STATE COLLEGE | PA | 0 | 9 | 10 | 0 | 5 | 0 | 24 |
| WASHINGTON CO | PA | 25 | 7 | 10 | 15 | 0 | 0 | 57 |
| WESTMORELAND CO CON | PA | 7 | 10 | 10 | 15 | 1 | 0 | 43 |
| WILKES-BARRE | PA | 0 | 0 | 10 | 0 | 0 | 0 | 10 |
| WILLIAMSPORT | PA | 15 | 4 | 10 | 15 | 6 | 0 | 50 |
| YORK | PA | 0 | 3 | 10 | 0 | 10 | 0 | 23 |
| YORK CO CON | PA | 25 | 7 | 10 | 0 | 5 | 0 | 47 |
| AGUADILLA | PR | 0 | 0 | 10 | 0 | 0 | 0 | 10 |
| ARECIBO | PR | 0 | 1 | 10 | 0 | 8 | 0 | 19 |
| BAYAMON | PR | 0 | 1 | 10 | 0 | 8 | 0 | 19 |
| CAGUAS | PR | 17 | 3 | 10 | 15 | 8 | 0 | 53 |
| CAROLINA | PR | 0 | 0 | 10 | 0 | 0 | 0 | 10 |
| GUAYNABO | PR | 0 | 0 | 10 | 0 | 0 | 0 | 10 |
| MAYAGUEZ | PR | 0 | 11 | 10 | 0 | 5 | 0 | 26 |
| PONCE | PR | 0 | 6 | 10 | 0 | 2 | 0 | 18 |
| PUERTO RICO | PR | 0 | 0 | 10 | 0 | 1 | 0 | 11 |
| SAN JUAN | PR | 0 | 5 | 10 | 0 | 5 | 0 | 20 |
| TOA BAJA | PR | 0 | 0 | 10 | 0 | 0 | 0 | 10 |
| PAWTUCKET | RI | 0 | 1 | 10 | 0 | 10 | 0 | 21 |
| PROVIDENCE | RI | 12 | 5 | 10 | 15 | 4 | 0 | 46 |
| RHODE ISLAND | RI | 17 | 13 | 10 | 15 | 5 | 0 | 60 |
| WOONSOCKET | RI | 0 | 6 | 10 | 0 | 7 | 0 | 23 |
| CHARLESTON | SC | 0 | 11 | 10 | 0 | 2 | 0 | 23 |
| CHARLESTON CO | SC | 0 | 8 | 10 | 0 | 0 | 0 | 18 |
| COLUMBIA | SC | 0 | 15 | 10 | 0 | 4 | 0 | 29 |
| GREENVILLE | SC | 7 | 0 | 10 | 15 | 1 | 0 | 33 |
| GREENVILLE CO | SC | 0 | 10 | 10 | 0 | 1 | 0 | 21 |
| SANTEE-LYNCHES HO CON | SC | 0 | 13 | 10 | 0 | 0 | 0 | 23 |
| SOUTH CAROLINA | SC | 15 | 12 | 10 | 15 | 4 | 0 | 56 |
| SPARTANBURG | SC | 0 | 7 | 10 | 0 | 1 | 0 | 18 |
| SIOUX FALLS | SD | 13 | 11 | 10 | 0 | 10 | 0 | 44 |
| SOUTH DAKOTA | SD | 15 | 5 | 10 | 15 | 7 | 0 | 52 |
| CHATTANOOGA | TN | 4 | 0 | 10 | 0 | 1 | 0 | 15 |
| CLARKSVILLE | TN | 6 | 2 | 10 | 0 | 0 | 0 | 18 |
| JACKSON | TN | 2 | 7 | 10 | 0 | 1 | 0 | 20 |
| KNOX CO | TN | 3 | 10 | 10 | 0 | 2 | 0 | 25 |
| KNOXVILLE | TN | 14 | 11 | 10 | 15 | 2 | 0 | 52 |
| MEMPHIS | TN | 9 | 12 | 10 | 0 | 3 | 0 | 34 |
| NASHVILLE-DAVIDSON | TN | 9 | 0 | 10 | 0 | 4 | 0 | 23 |
| SHELBY CO | TN | 0 | 11 | 10 | 0 | 1 | 0 | 22 |

***_Score for this factor may be reduced based on updates obtained from field offices**

## Appendix 1
## HOME Competition Summary Scoring Report

| | | | Selection Criteria | | | | | |
|---|---|---|---|---|---|---|---|---|
| **Grantee** | **St** | **# 1** | **# 2A** | **# 2B*** | **# 2C** | **# 2D** | **# 3** | **Score** |
| TENNESSEE | TN | 4 | 12 | 10 | 15 | 2 | 0 | 43 |
| ABILENE | TX | 0 | 12 | 10 | 0 | 2 | 0 | 24 |
| AMARILLO | TX | 8 | 2 | 10 | 0 | 10 | 0 | 30 |
| ARLINGTON | TX | 0 | 1 | 10 | 0 | 10 | 0 | 21 |
| AUSTIN | TX | 7 | 2 | 10 | 15 | 8 | 0 | 42 |
| BEAUMONT | TX | 2 | 6 | 10 | 0 | 0 | 0 | 18 |
| BEXAR CO | TX | 7 | 11 | 10 | 0 | 7 | 0 | 35 |
| BRAZORIA CO | TX | 0 | 1 | 10 | 0 | 0 | 0 | 11 |
| BROWNSVILLE | TX | 0 | 1 | 10 | 0 | 4 | 0 | 15 |
| BRYAN | TX | 0 | 2 | 10 | 0 | 9 | 0 | 21 |
| COLLEGE STATION | TX | 0 | 2 | 10 | 0 | 0 | 0 | 12 |
| CORPUS CHRISTI | TX | 20 | 1 | 10 | 15 | 7 | 0 | 53 |
| DALLAS | TX | 20 | 6 | 10 | 15 | 10 | 0 | 61 |
| DALLAS CO | TX | 0 | 4 | 10 | 0 | 1 | 0 | 15 |
| DENTON | TX | 0 | 3 | 10 | 0 | 8 | 0 | 21 |
| EL PASO | TX | 6 | 8 | 10 | 15 | 3 | 0 | 42 |
| FORT BEND CO | TX | 0 | 5 | 10 | 0 | 5 | 0 | 20 |
| FORT WORTH | TX | 5 | 7 | 10 | 0 | 9 | 0 | 31 |
| GALVESTON | TX | 0 | 11 | 10 | 0 | 0 | 0 | 21 |
| GARLAND | TX | 20 | 8 | 10 | 0 | 2 | 0 | 40 |
| GRAND PRAIRIE | TX | 0 | 15 | 10 | 0 | 1 | 0 | 26 |
| HARLINGEN | TX | 2 | 1 | 10 | 0 | 5 | 0 | 18 |
| HARRIS CO | TX | 20 | 11 | 10 | 15 | 8 | 0 | 64 |
| HIDALGO CO | TX | 0 | 0 | 10 | 0 | 7 | 0 | 17 |
| HOUSTON | TX | 23 | 3 | 10 | 15 | 4 | 0 | 55 |
| IRVING | TX | 0 | 1 | 10 | 0 | 10 | 0 | 21 |
| KILLEEN | TX | 11 | 4 | 10 | 15 | 10 | 0 | 50 |
| LAREDO | TX | 10 | 0 | 10 | 15 | 6 | 0 | 41 |
| LONGVIEW | TX | 0 | 10 | 10 | 0 | 0 | 0 | 20 |
| LUBBOCK | TX | 0 | 9 | 10 | 0 | 0 | 0 | 19 |
| MCALLEN | TX | 0 | 1 | 10 | 0 | 5 | 0 | 16 |
| ODESSA | TX | 0 | 6 | 10 | 0 | 0 | 0 | 16 |
| PASADENA | TX | 0 | 2 | 10 | 0 | 5 | 0 | 17 |
| PORT ARTHUR | TX | 0 | 5 | 10 | 0 | 0 | 0 | 15 |
| SAN ANGELO | TX | 0 | 0 | 10 | 0 | 4 | 0 | 14 |
| SAN ANTONIO | TX | 0 | 6 | 10 | 0 | 6 | 0 | 22 |
| TARRANT CO | TX | 0 | 0 | 10 | 0 | 8 | 0 | 18 |
| TEXAS | TX | 5 | 7 | 10 | 15 | 7 | 0 | 44 |
| TYLER | TX | 0 | 0 | 10 | 0 | 0 | 0 | 10 |
| WACO | TX | 0 | 7 | 10 | 0 | 6 | 0 | 23 |
| WICHITA FALLS | TX | 2 | 0 | 10 | 0 | 7 | 0 | 19 |
| OGDEN | UT | 0 | 2 | 10 | 0 | 10 | 0 | 22 |
| PROVO CON | UT | 0 | 0 | 10 | 0 | 10 | 0 | 20 |
| SALT LAKE CITY | UT | 3 | 8 | 10 | 0 | 6 | 0 | 27 |
| SALT LAKE CO CON | UT | 12 | 7 | 10 | 0 | 10 | 0 | 39 |
| UTAH | UT | 9 | 11 | 10 | 0 | 4 | 0 | 34 |
| ALEXANDRIA | VA | 0 | 4 | 10 | 0 | 1 | 0 | 15 |
| ARLINGTON CO | VA | 25 | 14 | 10 | 15 | 9 | 0 | 73 |
| CHARLOTTESVILLE CON | VA | 15 | 8 | 10 | 15 | 8 | 0 | 56 |

***_Score for this factor may be reduced based on updates obtained from field offices**

## Appendix 1
## HOME Competition Summary Scoring Report

| | | Selection Criteria | | | | | | |
|---|---|---|---|---|---|---|---|---|
| **Grantee** | **St** | **# 1** | **# 2A** | **# 2B*** | **# 2C** | **# 2D** | **# 3** | **Score** |
| CHESAPEAKE | VA | 0 | 5 | 10 | 0 | 1 | 0 | 16 |
| CHESTERFIELD CO | VA | 0 | 2 | 10 | 0 | 5 | 0 | 17 |
| DANVILLE | VA | 0 | 10 | 10 | 0 | 0 | 0 | 20 |
| FAIRFAX CO | VA | 3 | 13 | 10 | 0 | 1 | 0 | 27 |
| HAMPTON | VA | 23 | 8 | 10 | 15 | 3 | 0 | 59 |
| HENRICO CO | VA | 0 | 8 | 10 | 0 | 8 | 0 | 26 |
| LYNCHBURG | VA | 5 | 9 | 10 | 0 | 1 | 0 | 25 |
| NEWPORT NEWS | VA | 2 | 10 | 10 | 0 | 3 | 0 | 25 |
| NORFOLK | VA | 6 | 4 | 10 | 0 | 6 | 0 | 26 |
| PORTSMOUTH | VA | 0 | 0 | 10 | 0 | 2 | 0 | 12 |
| PRINCE WILLIAM CO | VA | 4 | 4 | 10 | 0 | 10 | 0 | 28 |
| RICHMOND | VA | 6 | 5 | 10 | 0 | 9 | 0 | 30 |
| ROANOKE | VA | 1 | 7 | 10 | 0 | 3 | 0 | 21 |
| SUFFOLK CON | VA | 0 | 2 | 10 | 0 | 0 | 0 | 12 |
| VIRGINIA | VA | 3 | 11 | 10 | 15 | 3 | 0 | 42 |
| VIRGINIA BEACH | VA | 9 | 3 | 10 | 0 | 8 | 0 | 30 |
| VERMONT | VT | 11 | 14 | 10 | 0 | 4 | 0 | 39 |
| BELLINGHAM | WA | 23 | 15 | 10 | 0 | 6 | 0 | 54 |
| CLARK CO CON | WA | 16 | 10 | 10 | 15 | 6 | 0 | 57 |
| KING CO CON | WA | 14 | 13 | 10 | 15 | 3 | 0 | 55 |
| KITSAP CO CON | WA | 18 | 9 | 10 | 0 | 9 | 0 | 46 |
| LONGVIEW CON | WA | 16 | 1 | 10 | 0 | 1 | 0 | 28 |
| PIERCE CO | WA | 16 | 9 | 10 | 0 | 1 | 0 | 36 |
| RICHLAND CON | WA | 0 | 3 | 10 | 0 | 1 | 0 | 14 |
| SEATTLE | WA | 4 | 14 | 10 | 0 | 4 | 0 | 32 |
| SNOHOMISH CO CON | WA | 12 | 13 | 10 | 15 | 6 | 0 | 56 |
| SPOKANE | WA | 14 | 15 | 10 | 15 | 7 | 0 | 61 |
| SPOKANE CO | WA | 22 | 11 | 10 | 15 | 7 | 0 | 65 |
| TACOMA CON | WA | 18 | 11 | 10 | 15 | 7 | 0 | 61 |
| WASHINGTON | WA | 9 | 15 | 10 | 15 | 4 | 0 | 53 |
| YAKIMA | WA | 5 | 3 | 10 | 0 | 9 | 0 | 27 |
| EAU CLAIRE | WI | 15 | 5 | 10 | 0 | 9 | 0 | 39 |
| GREEN BAY | WI | 15 | 11 | 10 | 15 | 3 | 0 | 54 |
| KENOSHA | WI | 13 | 4 | 10 | 0 | 8 | 0 | 35 |
| LA CROSSE | WI | 11 | 2 | 10 | 0 | 9 | 0 | 32 |
| MADISON | WI | 19 | 7 | 10 | 15 | 6 | 0 | 57 |
| MILWAUKEE | WI | 20 | 0 | 10 | 0 | 3 | 0 | 33 |
| MILWAUKEE CO CON | WI | 2 | 0 | 10 | 0 | 8 | 0 | 20 |
| RACINE | WI | 3 | 3 | 10 | 0 | 4 | 0 | 20 |
| WAUKESHA CO CON | WI | 0 | 1 | 10 | 0 | 10 | 0 | 21 |
| WISCONSIN | WI | 10 | 8 | 10 | 15 | 7 | 0 | 50 |
| CHARLESTON CON | WV | 0 | 2 | 10 | 0 | 1 | 0 | 13 |
| HUNTINGTON CON | WV | 0 | 4 | 10 | 0 | 5 | 0 | 19 |
| PARKERSBURG CON | WV | 0 | 5 | 10 | 0 | 3 | 0 | 18 |
| WEST VIRGINIA | WV | 6 | 0 | 10 | 15 | 1 | 0 | 32 |
| WHEELING CON | WV | 0 | 1 | 10 | 0 | 10 | 0 | 21 |
| WYOMING | WY | 8 | 14 | 10 | 0 | 2 | 0 | 34 |

*_Score for this factor may be reduced based on updates obtained from field offices

## Appendix 2

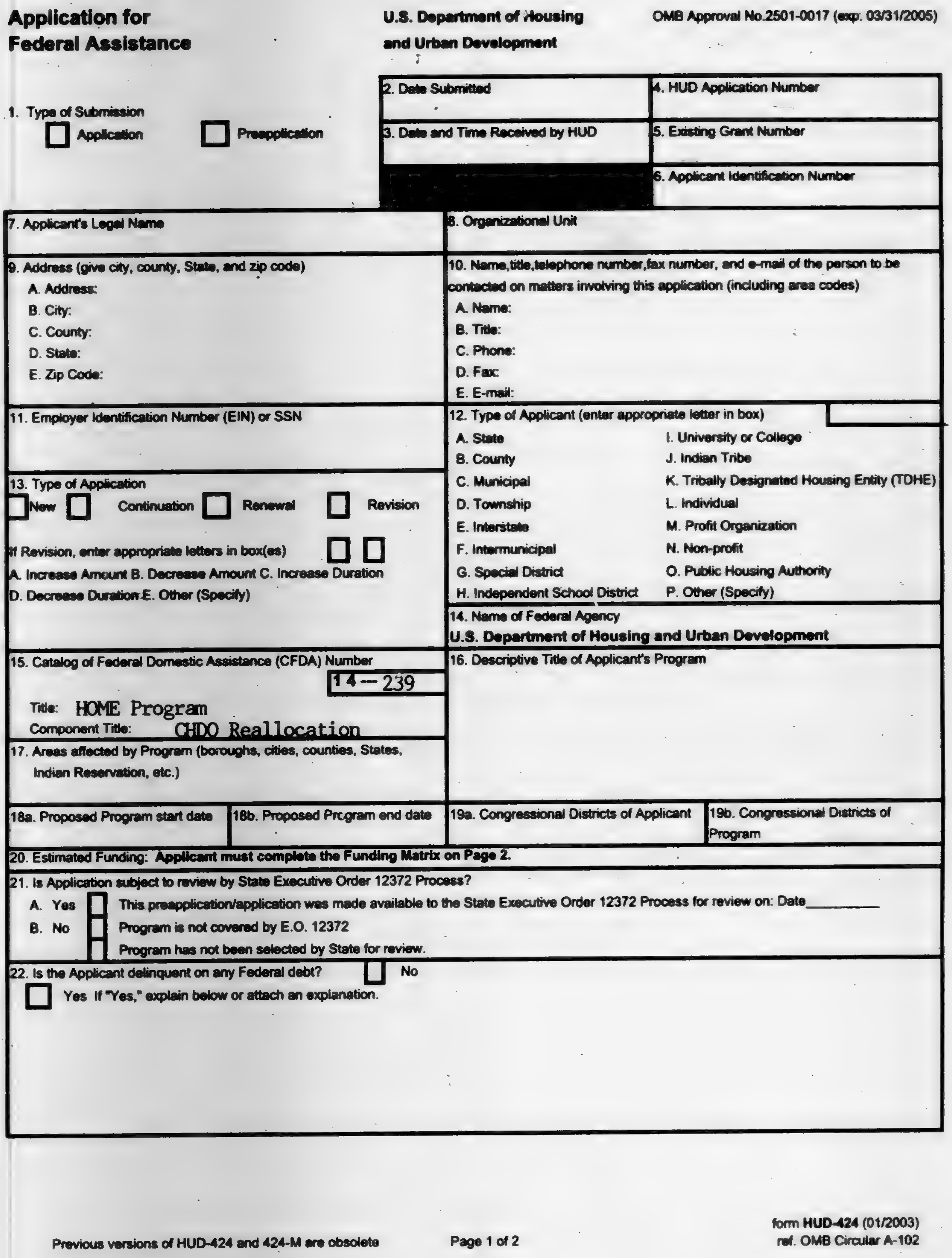

**Application for Federal Assistance**

**U.S. Department of Housing and Urban Development**

OMB Approval No.2501-0017 (exp: 03/31/2005)

1. Type of Submission ☐ Application ☐ Preapplication

2. Date Submitted

3. Date and Time Received by HUD

4. HUD Application Number

5. Existing Grant Number

6. Applicant Identification Number

7. Applicant's Legal Name

8. Organizational Unit

9. Address (give city, county, State, and zip code)
   - A. Address:
   - B. City:
   - C. County:
   - D. State:
   - E. Zip Code:

10. Name,title,telephone number,fax number, and e-mail of the person to be contacted on matters involving this application (including area codes)
   - A. Name:
   - B. Title:
   - C. Phone:
   - D. Fax:
   - E. E-mail:

11. Employer Identification Number (EIN) or SSN

12. Type of Applicant (enter appropriate letter in box) ☐

| | |
|---|---|
| A. State | I. University or College |
| B. County | J. Indian Tribe |
| C. Municipal | K. Tribally Designated Housing Entity (TDHE) |
| D. Township | L. Individual |
| E. Interstate | M. Profit Organization |
| F. Intermunicipal | N. Non-profit |
| G. Special District | O. Public Housing Authority |
| H. Independent School District | P. Other (Specify) |

13. Type of Application ☐ New ☐ Continuation ☐ Renewal ☐ Revision

If Revision, enter appropriate letters in box(es) ☐ ☐

A. Increase Amount B. Decrease Amount C. Increase Duration

D. Decrease Duration E. Other (Specify)

14. Name of Federal Agency

**U.S. Department of Housing and Urban Development**

15. Catalog of Federal Domestic Assistance (CFDA) Number 14—239

Title: HOME Program

Component Title: CHDO Reallocation

16. Descriptive Title of Applicant's Program

17. Areas affected by Program (boroughs, cities, counties, States, Indian Reservation, etc.)

18a. Proposed Program start date

18b. Proposed Program end date

19a. Congressional Districts of Applicant

19b. Congressional Districts of Program

20. Estimated Funding: **Applicant must complete the Funding Matrix on Page 2.**

21. Is Application subject to review by State Executive Order 12372 Process?

A. Yes ☐ This preapplication/application was made available to the State Executive Order 12372 Process for review on: Date_________

B. No ☐ Program is not covered by E.O. 12372

☐ Program has not been selected by State for review.

22. Is the Applicant delinquent on any Federal debt? ☐ No

☐ Yes If "Yes," explain below or attach an explanation.

Previous versions of HUD-424 and 424-M are obsolete

Page 1 of 2

form **HUD-424** (01/2003)
ref. OMB Circular A-102

## Funding Matrix

The applicant must provide the funding matrix shown below, listing each program for which HUD funding is being requested, and complete the certifications.

| Grant Program* | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income | Total |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | 0.00 |
| | | | | | | | | | 0.00 |
| | | | | | | | | | 0.00 |
| | | | | | | | | | 0.00 |
| | | | | | | | | | 0.00 |
| **Grand Totals** | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |

* For FHIPs, show both initiative and component

## Certifications

I certify, to the best of my knowledge and belief, that no Federal appropriated funds have been paid, or will be paid, by or on behalf of the applicant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding of this Federal grant or its extension, renewal, amendment or modification. If funds other than Federal appropriated funds have or will be paid for influencing or attempting to influence the persons listed above, I shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying. I certify that I shall require all sub awards at all tiers (including sub-grants and contracts) to similarly certify and disclose accordingly.

Federally recognized Indian Tribes and tribally designated housing entities (TDHEs) established by Federally-recognized Indian tribes as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but State-recognized Indian tribes and TDHEs established under State law are not excluded from the statute's coverage.

This application incorporates the Assurances and Certifications (HUD-424B) attached to this application or renews and incorporates for the funding you are seeking the Assurances and Certifications currently on file with HUD. To the best of my knowledge and belief, all information in this application is true and correct and constitutes material representation of fact upon which HUD may rely in awarding the agreement.

| | |
|---|---|
| 23. Signature of Authorized Official | Name (printed) |
| Title | Date (mm/dd/yyyy) |

Previous versions of HUD-424 and 424-M are obsolete.

form **HUD-424** (01/2003)
ref. OMB Circular A-102

## Instructions for the HUD-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This form must be used by applicants requesting funding from the Department of Housing and Urban Development. This application form HUD-424 incorporates the Assurances and Certifications (HUD-424-B). You may either (1) attach the Assurances and Certifications to the application or (2) renew the certifications that you previously made on behalf of your organization and submitted to HUD if the legal name of your organization has not changed and you were the authorized representative who signed the Assurances and Certifications.

### Item Number Instructions

1. Please indicate whether your application is for a formal application submission or a preliminary application (pre-application). HUD does not accept pre-applications for programs funded through the SuperNOFA.

2. Enter the date you are submitting your application to HUD.

3. This box will be completed by HUD. When received by HUD, your application will be stamped:

(a) with a date; and

(b) with the time received.

4. Leave Blank. This will be completed by the HUD program office receiving your application. When HUD accepts electronic applications for the grant program you are applying for, this number will be computer generated.

5. If your application is to renew or continue an existing grant, provide the existing grant number. If a new award, please leave blank.

6. Leave blank if you have not been provided a HUD ID number or user number. If you are a Public Housing Authority, enter your HUD issued Public Housing Authority ID number.

7. Enter the legal name of your organization applying for HUD funding.

8. Enter the name of the primary unit in your organization, if applicable, which will be responsible for the program.

9. Enter the complete address of your organization.

10. Enter the name, title, telephone number, fax number, and E-mail of the person to contact on matters related to your application.

11. Enter your organization's Employer Identification Number (EIN) as assigned by the Internal Revenue Service or if you are applying as an individual, your Social Security Number.

12. Choose from the list and enter the appropriate letter in the space provided. You must be an eligible applicant to apply for assistance. You must read the program information requirements to determine if you are a type of applicant that is eligible to apply for assistance under the program.

13. Enter the type of application you are submitting for funding consideration.

Check the appropriate box.

[redacted] "New" means you are applying for a new grant award.

[redacted] "Continuation" means you are requesting an extension of an existing award.

[redacted] "Renewal" means you are requesting funding for renewal of an existing grant. e.g. Supportive Housing Program (SHP) or Shelter + Care grant.

[redacted] "Revision" means you are submitting a revision prior to the application due date in response to HUD's request for clarification or modification to your initial submission.

14. Pre-filled.

15. Enter the Catalog of Federal Domestic Assistance (CFDA) number and title and, if applicable, component title of the program.

16. Enter a brief description of your program and key activities.

17. Identify the location(s) where your activities will take place. If this is the entire state, enter "Entire State".

18a. Enter the proposed start date.

18b. Enter the proposed end date.

19a. List the Congressional District(s) where your organization is located.

19b. List any Congressional District(s) where your program of activities or project sites will be located.

20. You must complete the funding matrix on page 2 of this form. Enter the following information:

**Grant Program:** The HUD funding program under which you are applying.

**HUD Share:** Please check the program requirements. Enter the amount of HUD funds you are requesting in your application.

**Applicant Match:** Enter the amount of funds or cash equivalent of in-kind contributions you are contributing to your project or program of activities.

**Other Federal Share:** Enter the amount of other Federal funds for your program of activities.

## Instructions for the HUD-424 (Continued)

**State Share**: Enter the amount of funds or cash equivalent of in-kind services the State is providing to your project or program of activities.
**Local/Tribal Share**: Enter the amount of funds or cash equivalent of in-kind services your local/tribal government is providing to your project or program of activities.
**Other**: Enter the amount of other sources of private, non-profit, or other funds or cash equivalent of in-kind services being provided to your project or program of activities.
**Program Income**: Enter the amount of program income you expect to generate over the life of your award.
**Total**: Please total all columns and fill in the amounts.
21. You should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 or check your application kit to determine whether the State Intergovernmental Review Process is required.
22. This question applies to your applicant organization, not the person signing as your organization's authorized representative. Categories of debt include disallowed costs that requires repayment to HUD.
23. To be signed by the authorized representative of your organization. A copy of your governing body's authorization for you to sign this application must be available in your organization's office.

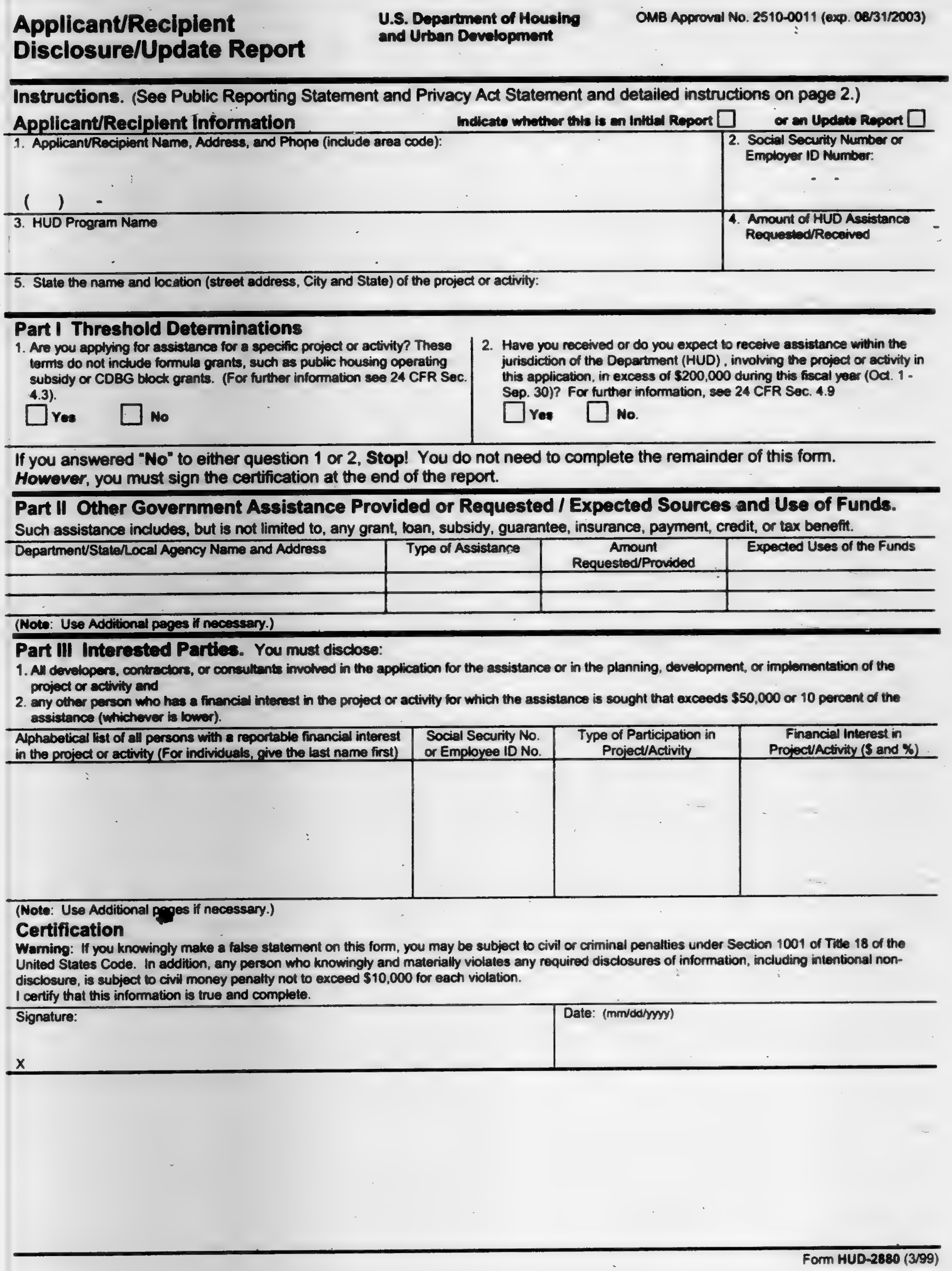

# Applicant/Recipient Disclosure/Update Report

**U.S. Department of Housing and Urban Development**

OMB Approval No. 2510-0011 (exp. 08/31/2003)

**Instructions.** (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 2.)

## Applicant/Recipient Information

**Indicate whether this is an Initial Report** ☐ **or an Update Report** ☐

1. Applicant/Recipient Name, Address, and Phone (include area code):

( ) -

2. Social Security Number or Employer ID Number:

- -

3. HUD Program Name

4. Amount of HUD Assistance Requested/Received

5. State the name and location (street address, City and State) of the project or activity:

## Part I Threshold Determinations

1. Are you applying for assistance for a specific project or activity? These terms do not include formula grants, such as public housing operating subsidy or CDBG block grants. (For further information see 24 CFR Sec. 4.3).

☐ **Yes** ☐ **No**

2. Have you received or do you expect to receive assistance within the jurisdiction of the Department (HUD), involving the project or activity in this application, in excess of $200,000 during this fiscal year (Oct. 1 - Sep. 30)? For further information, see 24 CFR Sec. 4.9

☐ **Yes** ☐ **No.**

If you answered "**No**" to either question 1 or 2, **Stop**! You do not need to complete the remainder of this form. ***However***, you must sign the certification at the end of the report.

## Part II Other Government Assistance Provided or Requested / Expected Sources and Use of Funds.

Such assistance includes, but is not limited to, any grant, loan, subsidy, guarantee, insurance, payment, credit, or tax benefit.

| Department/State/Local Agency Name and Address | Type of Assistance | Amount Requested/Provided | Expected Uses of the Funds |
|---|---|---|---|
| | | | |
| | | | |

(**Note**: Use Additional pages if necessary.)

## Part III Interested Parties. You must disclose:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

| Alphabetical list of all persons with a reportable financial interest in the project or activity (For individuals, give the last name first) | Social Security No. or Employee ID No. | Type of Participation in Project/Activity | Financial Interest in Project/Activity ($ and %) |
|---|---|---|---|
| | | | |

(**Note**: Use Additional pages if necessary.)

## Certification

**Warning**: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosures of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.

I certify that this information is true and complete.

| | |
|---|---|
| Signature:<br>X | Date: (mm/dd/yyyy) |

Form **HUD-2880** (3/99)

**Public reporting burden** for this collection of information is estimated to average 2.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collection displays a valid OMB control number.

**Privacy Act Statement**. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §4.38.

**Note**: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

---

## Instructions

### Overview.

A. Coverage. You must complete this report if:
  (1) You are applying for assistance from HUD for a specific project or activity **and** you have received, or expect to receive, assistance from HUD in excess of $200,000 during the during the fiscal year;
  (2) You are updating a prior report as discussed below; or
  (3) You are submitting an application for assistance to an entity other than HUD, a State or local government if the application is required by statute or regulation to be submitted to HUD for approval or for any other purpose.

B. **Update reports (filed by "Recipients" of HUD Assistance): General**. All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

### Line-by-Line Instructions.

**Applicant/Recipient Information.**
All applicants for HUD competitive assistance, must complete the information required in blocks 1-5 of form HUD-2880:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered.
2. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.
3. Applicants enter the HUD program name under which the assistance is being requested.
4. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.
5. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

**Part I. Threshold Determinations - Applicants Only**

Part I contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

If the answer to ***either*** questions 1 or 2 is No, the applicant need not complete Parts II and III of the report, but must sign the certification at the end of the form.

**Part II. Other Government Assistance and Expected Sources and Uses of Funds.**

A. Other Government Assistance. This Part is to be completed by both applicants and recipients for assistance and recipients filing update reports. Applicants and recipients must report any other government assistance involved in the project or activity for which assistance is sought. Applicants and recipients must report any other government assistance involved in the project or activity. Other government assistance is defined in note 4 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available.
2. State the type of other government assistance (e.g., loan, grant, loan insurance).
3. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).
4. Uses of funds. Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, elevators, exterior masonry, etc.

B. Non-Government Assistance. Note that the applicant and recipient disclosure report must specify all expected sources and uses of funds - both from HUD ***and any other source*** - that have been or are to be, made available for the project or activity. Non-government sources of

funds typically include (but are not limited to) foundations and private contributors.

**Part III. Interested Parties.**

This Part is to be completed by both applicants and recipients filing update reports. Applicants must provide information on:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

   **Note:** A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses. If the person is an entity, the listing must include the full name and address of the entity as well as the CEO. Please list all names alphabetically.
2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.
3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).
4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

**Note** that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

**Notes:**

1. All citations are to 24 CFR Part 4, which was published in the Federal Register. [April 1, 1996, at 63 Fed. Reg. 14448.]
2. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Fed. Acquisition Regulation (FAR) (48 CFR Chapter 1).
3. See 24 CFR §4.9 for detailed guidance on how the threshold is calculated.
4. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
5. For the purpose of this form and 24 CFR Part 4, "person" means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

# Acknowledgment of Application Receipt

**U.S. Department of Housing and Urban Development**

Type or clearly print the Applicant's name and full address in the space below.

(fold line)

Type or clearly print the following information:

Name of the Federal Program to which the applicant is applying: ____________________

**To Be Completed by HUD**

☐ HUD received your application by the deadline and will consider it for funding. In accordance with Section 103 of the Department of Housing and Urban Development Reform Act of 1989, no information will be released by HUD regarding the relative standing of any applicant until funding announcements are made. However, you may be contacted by HUD after initial screening to permit you to correct certain application deficiencies.

☐ HUD did not receive your application by the deadline; therefore, your application will not receive further consideration. Your application is:

- ☐ Enclosed
- ☐ Being sent under separate cover

Processor's Name ____________________

Date of Receipt ____________

form **HUD-2993** (2/99)

## Appendix 3

## Continua of Care for the Homeless - Contact List

### Alabama

Ms. Erica O. Marinelli
Metropolitan Birmingham
Metropolitan Birmingham Services
for the Homeless
2230 4th Avenue North
Birmingham, AL 35203
(205) 254-8833

Mr. Dan A. Williams
Mobile
Homeless Coalition of the Gulf Coast,
Inc.
P.O. Box 444
Mobile, AL 36601-0444
(251) 434-6426

Ms. Arneda Heath
Northwest Alabama
Safeplace, Inc.
P. O. Box 1456
Florence, AL 35631
(256) 767-3076

Mr. Paul Bakke
North Alabama Huntsville
The PathFinder
(256) 534-7644

Mr. W Dunham
Montgomery
1415 East South Boulevard
Montgomery, AL 36116
(334) 286-5980

Ms. Evelyn Young
Tuscaloosa
AICP; Acting Director
Community Planning & Development
Dept.
P. O. Box 2089
Tuscaloosa, AL 35403
(205) 349-0160

### Alaska

Ms. Judith S. Pinkston
Anchorage CoC
Community Development Division
P.O. Box 196650
Anchorage, AK 99519-6650
(907) 343-4226

Ms. Kris Ducan
State of Alaska
Alaska Housing Finance Corporation
P.O. Box 101020
Anchorage, AK 99510
(907) 330-8276

### Arizona

Mr. Paul Harris
Rural Arizona CoC
Governor's Office of Housing
Development
3800 North Central Avenue, Ste 1200
Phoenix, AZ 85012
(602) 280-1365

Mrs. Lucinda Abril
City of Tucson and Pima County
Consortium
310 N. Commerce Park Loop
Tucson, AZ 85745
(520) 791-4123

Mrs. Charlene Moran Flaherty
Maricopa CoC
Homeless Planner II
Maricopa Assn. of Governments
302 North 1st Avenue, Suite 300
Phoenix, AZ 85003
(602) 254-6300

**Arkansas**

Ms. Deborah Biddle
Central Arkansas CoC
CATCH Board President
Community Health Centers of
Arkansas
420 West 4th Street, Suite A
North Little Rock, AR 72214
(501) 374-8225

Ms. Ramona Taylor
Crittenden County/West Memphis CoC
Chair
Crittenden Memorial Hospital
200 Tyler
West Memphis, AR 72301
(870) 735-5527

Mr. Jason Miller
Arkansas River Valley
(Conway/Faulkner County) CoC
Counseling Associates , Inc.
P.O. Box 298
Perryville, AR 72301
(501) 889-5185

Mr. David Hamilton
Mississippi County CoC
Mississippi County Public Facilities
Board
810 West Keiser
Osceola, AR 72370
(870) 563-2660

Ms. William C. Huddleston
Delta Hills CoC
North Arkansas Human Services
System, Inc.
P.O.Box 2578
Batesville, AR 72503
(870) 793-8900

Mr. Donald R. Sampson
Southeast Arkansas
City of Pine Bluff
200 East 8th Street Room 103
Pine Bluff, AR 71601
(870) 543-1820

Ms. Gayle Vickers
Northeast Arkansas (Clay
County/Jonesboro) CoC
Executive Director NEACC
City of Jonesboro
515 West Washington
Jonesboro, AR 72403
(870) 933-4635

**California**

Ms. Margaret M. Gregg
Santa Clara County
CSJ, Santa Clara County
Homeless Concerns
Coordinator-County Administrator's
Office
70 West Hedding Street, 11th Floor
San Jose, CA 95110
(408) 299-5117

Ms. Maggie Donahue
City and County of San Francisco
Department of Human Services
Division of Housing and Homeless
Programs
P.O. Box 7988
San Francisco, CA 94120-7988
(415) 588-1981

Mr. Riley Wilkerson
Alameda County-wide CoC Partnership
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Alameda County Housing and
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## Part III

# General Services Administration

48 CFR Parts 511 and 552
General Services Administration Acquisition Regulation; Defense Priorities and Allocations System; Proposed Rule

## GENERAL SERVICES ADMINISTRATION

### 48 CFR Parts 511 and 552

**[GSAR Case No. 2003–G502]**

**RIN 3090–AH88**

## General Services Administration Acquisition Regulation; Defense Priorities and Allocations System

**AGENCY:** Office of Acquisition Policy, General Services Administration (GSA).

**ACTION:** Proposed rule.

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**SUMMARY:** The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to implement the Defense Priorities and Allocations System (DPAS) within the GSA Federal Supply Service (FSS).

**DATES:** Interested parties should submit comments to the Regulatory Secretariat at the address shown below on or before November 14, 2003, to be considered in the formulation of a final rule.

**ADDRESSES:** Submit written comments to—

General Services Administration, Regulatory Secretariat (MVA), 1800 F Street, NW., Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to *GSARcase.2003–G502@gsa.gov.*

Please submit comments only and cite 2003–G502 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** The Regulatory Secretariat at (202) 501–4225, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208–6091. Please cite GSAR case 2003–G502.

**SUPPLEMENTARY INFORMATION:**

### A. Background

FAR Subpart 11.6 implements the Defense Priorities and Allocations System (DPAS), a Department of Commerce (DoC) regulation in support of the national defense (see 15 CFR part 700). The DoC delegates authority to Delegate Agencies to place priority ratings on contracts and orders that support authorized programs. GSA is a Delegate Agency.

FAR 11.603(f) instructs agencies to provide contracting officers with specific guidance on the issuance of rated orders. The GSA Federal Supply Service issues single award and multiple award Federal Supply Schedule contracts. These contracts are not rated orders as defined by DPAS. However, from time to time, an order placed against one of these schedule contracts may be a rated order. This rule would provide GSA contracting officers with the required specific guidance by adding a new subpart to the GSAR. The rule also requires the use of a clause that explains to schedule contractors their obligations under DPAS.

### B. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### C. Regulatory Flexibility Act

GSA does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule primarily provides instructions for GSA contracting officers on including a contract clause in Federal Supply Schedules, and information on placing DPAS rated orders. Contractors are already required to give priority to DPAS rated orders under Title I of the Defense Production Act of 1950, as amended (50 U.S.C. app 2061, *et seq.*) An Initial Regulatory Flexibility Analysis has, therefore, not been performed. GSA will consider comments from small entities concerning the affected GSAR subparts 511 and 552 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite GSAR case 2003–502, in correspondence.

### D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed change to the GSAR does not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Parts 511 and 552

Government procurement.

Dated: October 7, 2003.

**David A. Drabkin,**

*Deputy Associate Administrator, Office of Acquisition Policy.*

Therefore, GSA proposes to amend 48 CFR parts 511 and 552 as set forth below:

1. The authority citation for 48 CFR parts 511 and 552 continues to read as follows:

**Authority:** 40 U.S.C. 121(c).

## PART 511—DESCRIBING AGENCY NEEDS

2. Subpart 511.X is added to read as follows:

## Subpart 511.X—PRIORITIES AND ALLOCATIONS

Sec.

| | |
|---|---|
| 511.X00 | Scope of subpart. |
| 511.X01 | Definitions. |
| 511.X02 | General. |
| 511.X03 | Procedures. |
| 511.X04 | Solicitation provision and contract clause. |

### 511.X00 Scope of subpart.

FAR Subpart 11.6 implements the Defense Priorities and Allocations System (DPAS), a Department of Commerce (DoC) regulation (15 CFR part 700) to assure timely delivery of industrial resources (products, materials, and services) in support of approved national defense, energy, and civil emergency preparedness (Homeland Security) programs. Pursuant to DPAS Delegation 3, DoC delegated GSA the authority to use the DPAS in support of the GSA Federal supply system. This subpart implements the DPAS within GSA.

### 511.X01 Definitions.

As used in this subpart—

*Approved Program* means a program determined as necessary or appropriate for priorities and allocations support to promote the national defense. See Schedule 1 of 15 CFR part 700 for a list of Delegate Agencies, approved programs, and program identification symbols at *http://www.bxa.doc.gov/DefenseIndustrial BasePrograms/OSIES/DPAS/Default.htm.*

*Authorized person* means a Delegate Agency, or other entity either permitted under 15 CFR part 700, or explicitly authorized by Department of Commerce to issue DPAS rated orders.

*Delegate Agency* means an agency of the U.S. Government authorized by delegation from Department of Commerce to place priority ratings on contracts or orders needed to support approved programs.

*Defense Priorities and Allocations System (DPAS)* means the regulation published at 15 CFR part 700 that requires preferential treatment for certain contracts and orders placed by a Delegate Agency in support of an approved program.

*Rated Order* means a delivery or task order placed by a Delegate Agency under the provisions of the Defense Priorities and Allocations System in support of an approved program and which requires preferential treatment as necessary to meet delivery requirements. This includes orders placed by the contractor to subcontractors or suppliers for required products, materials, and services resulting from such orders.

### 511.X02 General.

(a) The purpose of the Defense Priorities and Allocations System is to assure the timely availability of industrial resources to meet current national defense, energy, and civil emergency preparedness program requirements and to provide an operating system to support rapid industrial response in a national emergency. The primary statutory authority for the DPAS is Title I of the Defense Production Act of 1950, as amended, with additional authority from the Selective Service Act of 1948, and the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Executive Orders 12919 and 12742 delegate this authority to the Department of Commerce to administer the DPAS. DoC is further authorized to redelegate to heads of other departments and agencies (Delegate Agencies) authority under the DPAS for the priority rating of contracts and orders in support of approved programs. Within DoC, the Office of Strategic Industries and Economic Security (SIES) is assigned the implementation, administration, and compliance responsibilities for the system.

(b) The DPAS is published in the Code of Federal Regulations at 15 CFR part 700. This regulation provides an overview, a detailed explanation of operations and procedures, and other implementing guidance, including information on special priorities assistance and compliance.

(c) Orders placed under DPAS are "rated orders." Rated orders must receive preferential treatment only as necessary to meet delivery requirements. Rated orders are identified by a rating symbol of either "DX" or "DO" followed by a program identification symbol. All "DO" rated orders have equal priority with each other and take preference over unrated orders. All "DX" rated orders take preference over "DO" rated orders and unrated orders. A program identification symbol indicates which approved program is supported by the rated order.

(d) Only authorized persons may place an order containing a DPAS priority rating.

(e) Within GSA, the Federal Supply Service (FSS) has been delegated the authority to issue rated orders to meet approved national defense, energy, and civil emergency preparedness program requirements of the supply distribution program. The Commissioner, FSS, shall issue additional guidance, as may be necessary, to ensure effective implementation of its delegated DPAS authority, such as the exclusions listed in paragraph F.(2) of the 1998 Doc Delegation.

(f) Executive Order 12919 defines the jurisdictional limitations as set forth in 15 CFR 700.18(b).

### 511.X03 Procedures.

(a) A DPAS rating may be placed against an entire contract at time of award or an individual order issued under an existing, otherwise unrated, contract.

(b) When a DPAS rating is placed against an entire contract, the contracting officer must include the clause and provision prescribed at FAR 11.604, as well as the elements listed in paragraphs (c)(1) through (c)(3) of this section (see 15 CFR part 700.12.)

(c) When a DPAS rating is placed against an individual order issued under an existing, otherwise unrated, contract, the order must include the following elements (see 15 CFR part 700.12):

(1) The appropriate priority rating symbol (*i.e.*, either "DO" or "DX") along with the program identification symbol. As required by the 1998 DoC Delegation to GSA, when GSA contracting officers place DO rated orders, they will use program identification symbol K1. When placing a DX rated order for other agencies, GSA contracting officers will use the requesting agency program identification symbol. When a Delegate Agency places its own orders, it uses its own program identification symbol. (See Schedule 1 of 15 CFR part 700 for a listing of Delegate Agencies, approved programs, and program identification symbols).

(2) A required delivery date. The words "as soon as possible" or "immediately" do not constitute a required delivery date. A specific date or a specified number of days ARO (after receipt of order) is acceptable.

(3) The written signature on a manually placed order, or the digital signature or name on an electronically placed order of an individual authorized to place rated orders.

(4)(i) A statement that reads substantially as follows:

(ii) "This is a rated order certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR part 700)."

(d) Multiple and Single Award Schedule contracts are not rated at time of award. Individual DPAS rated orders must include the elements listed in paragraphs (c)(1) through (c)(4), of this section.

### 511.X04 Solicitation provision and contract clause.

The contracting officer must insert in full text the clause at 552.211–15, Defense Priorities and Allocations System Requirements, in Single and Multiple Award Schedule solicitations and resultant contracts except where the contract is wholly for products, materials, or services excluded from DPAS applicability (see 15 CFR part 700.18).

## PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Add section 552.211–XX to read as follows:

### 552.211–XX Defense Priorities and Allocations System Requirements.

As prescribed at 511.X04, insert the following clause:

Defense Priorities and Allocations System Requirements (Date)

(a) *Definitions. Approved Program* means a program determined to be necessary or appropriate for priorities and allocations support to promote the national defense (see Schedule 1 of 15 CFR part 700 for a list of Delegate Agencies, approved programs, and program identification symbols.)

*Delegate Agency* means an agency of the U.S. Government authorized by delegation from the Department of Commerce (DoC) to place priority ratings on contracts or orders needed to support approved programs.

*Defense Priorities and Allocations System (DPAS)* means the regulation published at 15 CFR part 700 that requires preferential treatment for certain contracts and orders placed by a Delegate Agency in support of an approved program.

*Rated order* means, for the purpose of this contract, a delivery or task order placed by a Delegate Agency under the provisions of the DPAS in support of an approved program and which requires preferential treatment as necessary to meet delivery requirements. This includes orders placed by the Contractor to subcontractors or suppliers for required products, materials, and services resulting from such orders.

(b) *Rated order requirement.* From time to time, the Contractor may receive a rated order under this contract from a Delegate Agency. The Contractor must give preferential treatment to rated orders as required by the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700). The existence of previously accepted unrated or lower rated orders is not sufficient reason to reject a rated order. Rated orders take preference over all unrated orders as necessary to meet required delivery dates. There are two levels of ratings designated by the symbol of either "DO" or "DX." All "DO" rated orders have equal priority with each other and take preference over unrated orders. All "DX" rated orders take preference over "DO" rated orders and unrated orders. The rating designation is followed by a program identification symbol. Program identification symbols indicate which approved program is supported by the rated order (see Schedule 1 of 15 CFR part 700 for a list of Delegate Agencies, approved programs, and program identification symbols).

(c) *Additional information.* Additional information may be obtained at the DoC DPAS web site *www.bxa.doc.gov/DefenseIndustrialBasePrograms/OSIES/DPAS/Def ault.htm* or by contacting the designated Administrative Contracting Officer.

(End of clause)

[FR Doc. 03–26024 Filed 10–14–03; 8:45 am]

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**AGRICULTURE DEPARTMENT**

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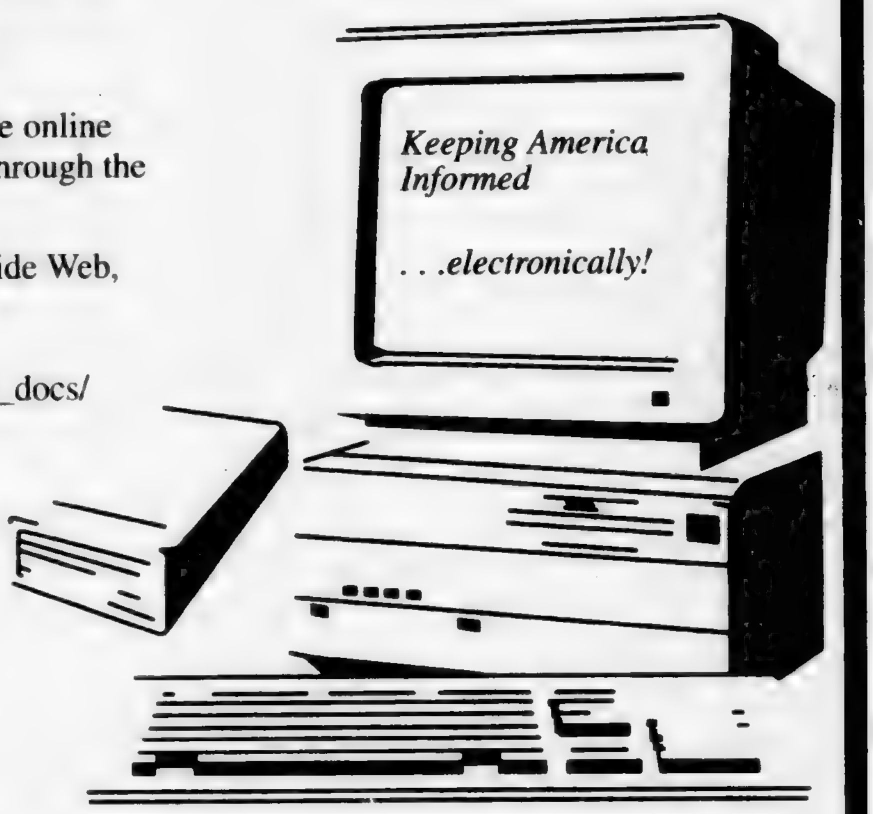

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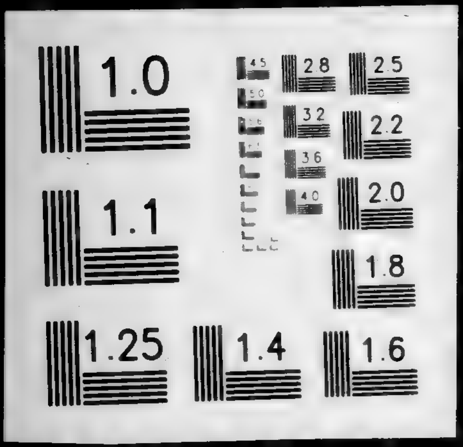
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# Presidential Documents

**Title 3—**

**The President**

**Proclamation 7719 of October 10, 2003**

## National School Lunch Week, 2003

**By the President of the United States of America**

**A Proclamation**

Over the last 57 years, the National School Lunch Program has provided more than 187 billion meals to young people across our country. During National School Lunch Week, we recognize the importance that good nutrition plays in the health of our children and in the development of good eating habits and healthy lifestyles.

By helping our children make healthy choices not only about food but also about their overall well-being, we can reduce the rates of childhood obesity and diabetes and help prevent heart disease, stroke, and other diseases later in life. Nutritious meals can also improve students' concentration and help them succeed in school.

As part of the National School Lunch Program, the Department of Agriculture's Team Nutrition advises school food service professionals on how to prepare healthy meals for children. Team Nutrition also provides nutrition programs for children, families, and communities to illustrate the link between diet and health. Today, more than 99,000 schools and childcare centers are educating young people about good eating habits. They are also helping to feed our Nation's needy children through the National School Lunch Program. For many students, low-cost or free school meals are sometimes the only nutritious food they eat. Over the years, the dedication of school officials, food service professionals, parents, and community leaders has helped to expand the National School Lunch Program to include breakfast, after-school snacks, milk breaks, and summer food programs.

In recognition of the contributions of the National School Lunch Program to the health, education, and well-being of America's children, the Congress, by joint resolution of October 9, 1962 (Public Law 87–780), as amended, has designated the week beginning on the second Sunday in October of each year as "National School Lunch Week" and has requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 12 through October 18, 2003, as National School Lunch Week. I call upon all Americans to join the dedicated individuals who administer the National School Lunch Program at the State and local levels in appropriate activities to promote programs that support the health and well-being of our Nation's children.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of October, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.

[FR Doc. 03–26329
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# Presidential Documents

**Proclamation 7720 of October 10, 2003**

## Columbus Day, 2003

**By the President of the United States of America**

**A Proclamation**

When Christopher Columbus set out from Spain in August 1492, he launched an era of discovery and exploration that continues today. On Columbus Day, we honor this Italian explorer's courage and vision, and recognize his four journeys to the "New World."

One of the first known celebrations of Christopher Columbus' achievements was in 1792 when a ceremony in New York City celebrated the 300th anniversary of his landing in the Bahamas. Italian Americans began regularly honoring Columbus in the 1860s. In 1892, President Benjamin Harrison issued a Presidential proclamation on the 400th anniversary of Columbus' first voyage, describing Columbus as "the pioneer of progress and enlightenment." The United States now celebrates a national holiday in honor of Columbus.

Columbus' willingness to sacrifice the comfort of his home to pursue the unknown has inspired generations of daring explorers. Through the years, Americans have followed in the spirit of Columbus through exploration of land, sea, and space, and are fulfilling Columbus' great legacy. Since the days of Columbus, millions of Italian immigrants have crossed the ocean and come to the United States. These Italian Americans and their descendants have made America stronger and better.

In commemoration of Columbus' journey, the Congress, by joint resolution of April 30, 1934, and modified in 1968 (36 U.S.C. 107), as amended, has requested that the President proclaim the second Monday of October of each year as "Columbus Day."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 13, 2003, as Columbus Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities. I also direct that the flag of the United States be displayed on all public buildings on the appointed day in honor of Christopher Columbus.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of October, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.

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# Presidential Documents

**Proclamation 7721 of October 10, 2003**

## General Pulaski Memorial Day, 2003

**By the President of the United States of America**

**A Proclamation**

Brigadier General Casimir Pulaski sacrificed his life on October 11, 1779, for America's independence and the universal cause of freedom. His bravery in supporting the American Revolutionary War is an inspiration to individuals around the world who pursue peace and freedom for all.

Growing up near Warsaw, Casimir Pulaski knew firsthand the horror of tyranny and oppression. In 1768, he joined his father and fellow compatriots in rising against injustice and fighting for Polish independence. As a commander in the rebellion, the young Pole demonstrated a devotion to freedom and great courage. When the rebellion was quelled, Pulaski was exiled to France, where he continued to pursue freedom with the same spirit and determination that he had shown in Poland.

While in Paris, he met with the American envoy to France, Benjamin Franklin, who discussed with him America's struggle for independence. Pulaski then volunteered his services to General George Washington. In his first letter to General Washington after arriving in America in the summer of 1777, General Pulaski pledged that he "came here, where freedom is being defended, to serve it, and to live and die for it." Impressed with General Pulaski's abilities and battle experience, General Washington commissioned him as a Brigadier General of the American cavalry. In May 1779, General Pulaski's new cavalry division successfully defended the city of Charleston, South Carolina. Several months later, in the siege of Savannah, General Pulaski was mortally wounded while trying to raise morale and rally his troops who were under heavy enemy fire.

General Pulaski's bravery and sacrifice helped lead America to victory, and today, the Polish motto—"for your freedom and ours"—echoes the great spirit of this Polish and American hero. This day, we commemorate General Pulaski's service to our Nation and draw strength from his example. We also honor the sacrifices of the many men and women of Poland and other allied nations who persevere with us in the fight for freedom.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 11, 2003, as General Pulaski Memorial Day. I encourage all Americans to commemorate this occasion with appropriate programs and activities paying tribute to Casimir Pulaski and honoring all those who defend the freedom of our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of October, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.

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# Rules and Regulations

**Federal Register**

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Parts 272 and 275

RIN 0584–AD31

## Food Stamp Program: Non-Discretionary Quality Control Provisions of Title IV of Public Law 107–171

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Interim rule.

**SUMMARY:** On May 13, 2002, the President signed the Farm Security and Rural Investment Act of 2002 (the 2002 Act). Title IV of the 2002 Act (the Food Stamp Reauthorization Act of 2002) contains provisions concerning the Food Stamp Program. This rule amends the Food Stamp Program regulations to implement certain provisions concerning the Quality Control system in sections 4118 and 4119 of the Food Stamp Reauthorization Act of 2002. This interim rule revises the current regulations to reflect the new liability procedures and the new deadlines for completing the Quality Control review process and announcement of error rates. As a result of the change in the statute, a new two-year liability system will be instituted which will result in fewer State agencies being subject to liabilities for excessive payment error rates. There will be new time frames for State agencies to complete the quality control case review process and for the Department to issue error rates.

**DATES:** This interim rule is effective December 15, 2003. Comments on this rulemaking must be received on or before January 14, 2004 to be assured of consideration.

**ADDRESSES:** Comments should be submitted to Daniel Wilusz, Quality Control Branch, Program Accountability Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Comments may also be faxed to the attention of Daniel Wilusz at (703) 305–0928 or e-mailed to *Daniel.wilusz@fns.usda.gov*. All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. through 5 p.m.). You may also download an electronic version of this rule at *http://www.fns.usda.gov/fsp/rules/Regulations/default.htm*.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding this rulemaking should be addressed to Margaret Werts Batko at the above address or by telephone at (703) 305–2516.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

This rule has been determined to be Significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

### Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

### Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Eric M. Bost, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

### Public Law 104–4

Unfunded Mandate Reform Act of 1995 (UMRA). Title II of UMRA establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service (FNS) generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

### Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. FNS has considered this rule's impact on State and local agencies and has determined that it does not have Federalism implications under E.O. 13132. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under section 6(b) of the Executive Order, a Federalism summary impact statement is not required.

### Civil Rights Impact Analysis

FNS has reviewed this interim rule in accordance with the Department Regulation 4300–4, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that this rule has no impact on any of the protected classes. These changes affect the quality control review system and not individual recipients' eligibility for or participation in the Food Stamp Program. FNS has no discretion in implementing these changes. The changes are required to be implemented by law. All data available to FNS indicate that protected individuals have the same opportunity to participate in the Food Stamp Program as non-protected individuals. FNS specifically prohibits the State and local government agencies that administer the Program from engaging in actions that discriminate based on race, color, national origin, gender, age, disability, marital or family status. Regulations at 7 CFR 272.6 specifically state that "State agencies shall not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings, or the conduct of any other program service for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs. Discrimination in any aspect of program administration is prohibited by these regulations, the Food Stamp Act of 1977 (the Act), the Age Discrimination Act of 1975 (Pub. L. 94–135), the Rehabilitation Act of 1973 (Pub. L. 93–112, section 504), and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal law. Title VI complaints shall be processed in accord with 7 CFR Part 15."

## Paperwork Reduction Act

This interim rule does not contain changes to the reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Reporting and recordkeeping requirements for quality control are approved under OMB numbers 0584–0074, 0584–0299, 0584–0303, and 0584–0034. There are no changes being made in this rulemaking that will alter the reporting and recordkeeping requirements related to quality control approved under these burdens. The legislative change concerning corrective action planning does not affect the burden in 0584–0010 for reporting and recordkeeping because the change only affects which States would be required to submit corrective action plans and because the number of states required to submit corrective action plans will not change under the new requirement. The burden approved under OMB number 0584–0010 was allowed to expire. The Food and Nutrition Service has initiated action to reinstate the burden under 0584–0010.

## Government Paperwork Elimination Act

In compliance with the Government Paperwork Elimination Act, FNS is committed to providing electronic submission as an alternative for information collections associated with this rule. However, we are not able to make the entire process electronic at this time.

Part of the process allows electronic submission. The Quality Control review schedule (approved under OMB #0584–0299) serves as both the data summary entry form that the reviewer completes during each review, and subsequently, as the data input document for direct data entry into the Kansas City Computer Center (KCCC). While the data is manually collected on a paper form from information extracted from a case file, it is electronically submitted to the KCCC for tabulation and analysis. Some States have begun to use computerized versions of the worksheet (OMB number 0584–0074), which provides information collected on the review schedule. In addition, the FNS contractor for the data collection system has developed, at FNS request, a computerized version of the worksheet. States are being given the option to continue to use their own systems, the new computerized version provided by FNS or the paper version. When FNS computerized versions of the worksheet are used, the information is linked to and creates the review schedule.

Under OMB number 0584–0034, the burden for collecting and reporting information related to the review of negative cases and the status of sample selection and completion is approved. The FNS–245 serves as both the data summary entry form that the reviewer completes during each negative case review, and subsequently as the data input document for direct data entry into the KCCC. Therefore, while data is manually collected, it is electronically submitted to the KCCC for tabulation and analysis. The FNS–248 (Status of Sample Selection and Completion) collects information on the status of State reviews. The FNS–248 contains information not produced by the automated system, therefore this report is still necessary. However, we are considering ways that this data could be collected electronically.

The burden under OMB number 0584–0303 encompasses the sampling plan, arbitration, and good cause. At this time, these areas are not substantively electronic submittals. To the extent possible, States may submit documents or portions of documents electronically.

States have the option to maintain in paper or electronic format information compiled for the Performance Reporting System, including Management Evaluation, Data Analysis and Corrective Action information. The State maintains the information on site to be available for FNS review (OMB number 0584–0010).

## Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of the final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or Part 283 (for rules related to QC liabilities); (3) for retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8 and part 279.

## Regulatory Impact Analysis

*Need for Action:* This rule amends the Food Stamp Program regulations to implement certain provisions concerning the Quality Control system in sections 4118 and 4119 of the Food Stamp Reauthorization Act of 2002. These provisions revise the liability procedures and establish new deadlines for completing the Quality Control review process and announcement of payment error rates. The rule has no Federal Program cost impacts, however, fewer States will be identified as having any potential liability, and any such liabilities will be significantly lower than under the existing system.

*Justification of alternatives.* The Department has no discretion regarding the legislative mandate to revise the liability and enhanced funding provisions of the QC system. Nor does it have discretion regarding the provision that revises time frames for completing the review and arbitration process and announcing individual State agency payment error rates at the end of each annual review period. The Department does have discretion in resolving the liabilities established under the new system. The Secretary may: Waive all or a portion of the liability; require the State agency to reinvest up to 50 percent of the liability in activities to improve program administration, which new investment money shall not be matched by Federal funds; designate up to 50 percent of the liability as at-risk for repayment if a liability is established based on the State agency's payment error rate for the subsequent fiscal year; or assert any combination of these options. Once the Secretary issues the original resolution proposal, only the amounts designated as waived or reinvestment are subject to negotiation between the State agency and the Department.

*Effects on Food Stamp Recipients.* This action is not anticipated to have any impact on benefit levels or food stamp program participation, as it does not change the program's eligibility requirements or benefit calculation.

*Effects on Federal Program Costs.* Since this action is not anticipated to have any impact on benefit levels or food stamp participation, we do not anticipate any impact on food stamp benefit costs. There is also no anticipated financial impact in administration costs from the changes in how liabilities are calculated, assessed, or collected.

*Effects on Administering State Agencies:* This rule affects State agencies by revising the QC sanction system. Under this rule, fewer States will be identified as having any potential liability, and any such liabilities will be significantly lower than under the existing sanction system. State agencies will also have additional time to complete the quality control review process.

*Effect on Retailers.* This action is not anticipated to have any impact on food stamp retailers.

## Justification for Interim Rulemaking

This action is being finalized without prior notice or public comment under authority of 5 U.S.C. 553(b)(3)(A) and (B). The provisions contained in this rule are mandated by sections 4118 and 4119 of the Food Stamp Reauthorization Act of 2002. The Department has no discretion in implementing the specific provisions contained in this rule. These provisions are effective for the Fiscal Year 2003 review period beginning October 1, 2002. The provisions included in this rule are mandated by legislation, and the Department has no discretion in the methodology establishing the national performance measure, or in determining when State agencies develop corrective action plans resulting from payment error rates. Thus, the Department has determined in accordance with 5 U.S.C. 553(b) that a notice of proposed rulemaking and an opportunity for prior public comments is unnecessary. Discretionary regulatory changes that result from sections 4118 and 4119 will be addressed subsequently in one or more proposed rulemakings.

## Background

On May 13, 2002, the President signed Public Law 107–171, the Farm Security and Rural Investment Act of 2002. Title IV of Public Law 107–171, the Food Stamp Reauthorization Act of 2002, significantly revised the liability and enhanced funding provisions of the Quality Control (QC) system. In this interim rule, we are addressing the provisions in section 4118 of the Food Stamp Reauthorization Act of 2002 concerning establishment, adjustment, and collection of potential liabilities and the requirement to develop a corrective action plan when a State's payment error rate exceeds six percent. In this interim rule, we are also addressing the provision in Section 4119 that revises time frames for completing the review and arbitration process and announcing individual State agency error rates at the end of each annual review period. All remaining provisions not addressed in this rule will be addressed in one or more subsequent proposed rulemakings.

### *Establishing Liabilities for Excessive Payment Error Rates*

Section 4118 of the Food Stamp Reauthorization Act of 2002 amended Section 16(c) of the Food Stamp Act of 1977, as amended, significantly revising the system for determining liabilities for payment error rates. Under the Food Stamp Act, as amended, prior to enactment of the Food Stamp Reauthorization Act of 2002, liability was determined each fiscal year. As defined in 7 CFR 275.23(e) of the program regulations, the payment error tolerance level was the national performance measure for the fiscal year. The national performance measure is defined as the sum of the products of each State agency's payment error rate times that State agency's proportion of the total value of national allotments issued for the fiscal year using the most recent issuance data available at the time the State agency is notified of its payment error rate. A State agency that exceeded this tolerance level was subject to a liability claim equivalent to the total value of the allotments issued in the fiscal year by the State agency, multiplied by a factor that is the lesser of: (1) The ratio of the amount by which the payment error rate of the State agency for the fiscal year exceeds the national performance measure for the fiscal year, to the national performance measure for the fiscal year, or (2) one. This figure was then multiplied by the amount by which the payment error rate of the State agency for the fiscal year exceeded the national performance measure for the fiscal year.

Section 4118 of the Food Stamp Reauthorization Act of 2002 establishes a new multi-year liability system. The national performance measure continues to be defined as the sum of the products of each State agency's payment error rate times that State agency's proportion of the total value of national allotments issued for the fiscal year using the most recent issuance data available at the time the State agency is notified of its payment error rate. However, the method for determining any potential liability has changed. Under this system, Fiscal Year 2003 serves as the initial base year. For Fiscal Year 2004 and subsequent years, liability for payment shall be established whenever there is a 95 percent statistical probability that, for the second or subsequent consecutive fiscal year, a State agency's payment error rate exceeds 105 percent of the national performance measure. For example, if there were a 95 percent statistical probability that a State agency's payment error rate for Fiscal Year 2003 exceeded 105 percent of the Fiscal Year 2003 national performance measure, and again in Fiscal Year 2004, if there was a 95 percent statistical probability that the State's payment error rate exceeded 105 percent of the Fiscal Year 2004 national performance measure, a liability for Fiscal Year 2004 would be established. The amount of the liability shall be equal to the product of: The value of all allotments issued by the State agency in the (second or subsequent consecutive) fiscal year; multiplied by the difference between the State agency's payment error rate and 6 percent; multiplied by 10 percent.

In order to implement this change, we are revising 7 CFR 275.23(e). First, we are deleting subsections (e)(2), (e)(3), and (e)(4) because they address liability determinations for prior fiscal years that have already been resolved. Second, we are redesignating paragraph (e)(5) as paragraph (e)(2) and amending that subsection by deleting the words "and beyond" and replacing them with the words "through Fiscal Year 2002." Finally, a new paragraph (e)(3) is being added that established the liability system for Fiscal Year 2004 and beyond. A conforming amendment is also being made redesignating paragraphs (e)(6), (e)(7), (e)(8), (e)(9), (e)(10), and (e)(11) as (e)(4), (e)(5), (e)(6), (e)(7), (e)(8), and (e)(9).

### *Resolving Liabilities*

Prior to the passage of the Food Stamp Reauthorization Act of 2002, potential liabilities were established each year. The Secretary had unlimited authority to propose a resolution, including: waiving any or all of the amount; requiring that any or all of the amount be repaid to the Federal government; entering into an agreement to allow some or all of the liability amount to be reinvested in error reduction activities; or combining these options. Once issuing a proposed settlement plan to a State agency, the Secretary could negotiate with the State agency to revise any and all aspects of the proposed liability resolution.

Section 4118 establishes new requirements for resolving State agency liabilities for payment errors. Under the Food Stamp Act, as amended by the Food Stamp Reauthorization Act of 2002, the Secretary has the authority to waive or reduce any liability. The Secretary may require a State agency to reinvest up to 50 percent of the established liability in activities designed to reduce the payment error rate. The Secretary may also designate up to 50 percent of the liability as being "at-risk." A State agency would be required to pay to USDA any money designated as "at-risk" if a liability for payment errors is established for the State agency the following fiscal year. The Secretary may combine these three options. In accordance with the Food Stamp Reauthorization Act of 2002, the Department and any State agency found liable for an excessive payment error rate must settle any waiver amount or reinvestment amount before the end of the fiscal year in which the liability is determined. The amount designated as being at-risk in the proposed settlement plan sent to the State agency is not subject to negotiation, in accordance with the provision in the Food Stamp Reauthorization Act of 2002 which provides that the Department shall make its liability resolution determinations and enter into a settlement with the State agency *only with respect to any waiver amount or new investment amount* (emphasis added). When the Department notifies the State agency of its payment error rate and its potential liability, that letter will also designate the amount to be waived, and what amount is designated as at risk and/or subject to reinvestment. Because the Department is authorized to enter into a settlement with a State agency concerning the amount to be waived or reinvested, the Department may opt to enter into negotiations with the State agency to waive any or all of the amount designated for reinvestment. Current regulations specify the requirements for reinvestment. Any reinvestment plan established for the amount designated for reinvestment either in the initial letter or as a result of negotiations much meet the requirements in 7 CFR 275.23(e)(11). However, the law does not allow the Department to negotiate any amount designated as at-risk, once that amount has been designated. Therefore, the Department will not negotiate with the State agency on the amount designated as at-risk once the notification letter has been sent to the State agency. The amount designated as at-risk cannot be reconsidered for waiving or reinvestment in the following year if a liability for payment errors is established for the State agency in the following fiscal year. A new paragraph (e)(10) is being added to § 275.23 establishing the Secretary's authority to resolve the liabilities under these three options.

### *Appeals*

In accordance with the Food Stamp Act, as amended, State agencies may appeal the amount of the liability established as described above. However, State agencies may not appeal the Secretary's decision as to how such liability will be resolved; *i.e.*, waived, at-risk, or reinvestment. Nor is the amount of the national performance measure subject to either administrative or judicial appeal, in accordance with section 4118 of the Food Stamp Reauthorization Act of 2002. The time frames and procedures for appealing were not changed by the Food Stamp Reauthorization Act of 2002 and the procedures in 7 CFR part 283 of the regulations remain in place.

The Secretary is required to initiate collection for any amount owed by the State agency before the end of the fiscal year in which the liability is determined. However, the requirement to resolve all liabilities before the end of the fiscal year shall be suspended if an administrative appeal relating to the liability is pending. The provision suspending collection pending an administrative appeal existed in the Food Stamp Act prior to the passage of the Food Stamp Reauthorization Act of 2002 and was not changed by that Act. Current regulations address this suspension, and accordingly, no changes are being made to the regulations.

Section 4118 provides that if a State agency appeals its liability determination, if the State agency began required reinvestment activities prior to an appeal determination, and if the liability amount is reduced to $0 through the appeal, the Secretary shall pay to the State agency an amount equal to 50 percent of the new investment amount that was included in the liability amount subject to the appeal. If the Secretary wholly prevails on a State agency's appeal, section 4118 provides that the Secretary will require the State agency to invest all or a portion of the amount designated for reinvestment during the appeal to be reinvested or to be repaid to the Federal government. Section 4118 further specifies that if neither party wholly prevails that the remaining liability will be treated pursuant to regulations issued by the Secretary. In this rule, we are incorporating into new § 275.23(e)(10) the provisions in section 4118 concerning either the Secretary or the State wholly prevailing. We will address in a proposed rule how any remaining liability will be handled if neither party wholly prevails on appeal.

### *Time Frames for Announcing the National Performance Measure and for Completing Quality Control Reviews and Resolving State/Federal Differences*

Section 4119 of the Food Stamp Reauthorization Act of 2002 establishes new dates for resolution of the case review and arbitration process and for issuance of the national average payment error rate, the individual State final error rates, and the amounts of any payments claimed or liability amounts established. Under the Food Stamp Act prior to the Food Stamp Reauthorization Act of 2002, all case reviews and arbitration had to be completed not later than 180 days after the end of the fiscal year. FNS was required to announce the national average payment error rate, the individual State final error rates, and the amounts of any liabilities within 30 days following completion of the case reviews and arbitration. Under section 4119, all case reviews and arbitration are required to be completed by May 31 following the end of the fiscal year. The national average payment error rate, the individual State final error rates, and the amounts of any payments claimed or liability amounts established are required to be announced by June 30 following the end of the fiscal year. In accordance with section 4118, this rule also requires that FNS provide a copy of each State agency's notice of payment claimed or liability amount due to the

State's chief executive officer and legislature. In this interim rulemaking, we are revising redesignated paragraph (e)(7) in § 275.23 to establish these new dates. Redesignated paragraph (e)(7) also requires FNS to provide the State chief executive officer and the legislature with a copy of the State's notice of payment claimed or liability amount. At this time we are not revising the time frames for processing individual cases or conducting individual arbitration cases. Implementing guidance was issued on January 22, 2003, providing interim direction to State agencies on completing cases reviews under these new time frames for Fiscal Year 2003. A proposed rule will be issued that addresses these issues.

*Corrective Action Planning*

Current regulations provide that corrective action planning shall be done by a State agency when it fails to reach the yearly target (§ 275.16(b)(1)), when the State agency is not entitled to enhanced funding (§ 275.16(b)(2)), or when the State agency's negative case error rate exceeds one percent (§ 275.16(b)(3)). Section 4118 of the Food Stamp Reauthorization Act of 2002 requires State agencies to do corrective action planning whenever its payment error rate is six percent or greater. Accordingly, we are revising § 275.16(b)(1) to require corrective action planning whenever a State agency's error rate equals or exceeds six percent. This change will have little real impact on State agencies because current regulations require corrective action planning whenever a State agency is not eligible for enhanced funding. One of the criteria for enhanced funding is that the payment error rate is below 5.90 percent. Therefore, all State agencies with error rates above 5.90 percent are already required to develop corrective action plans.

In addition several technical changes throughout 7 CFR part 275 have been made to correct references to paragraphs changed in this rulemaking and to fix typographical errors.

**Implementation**

This rule is effective December 15, 2003. Section 4118 of the Food Stamp Reauthorization Act of 2002 was effective October 1, 2002, and section 4119 was effective upon enactment, May 13, 2002. This rule reflects these statutory provisions which impact the establishment of payment error rates, the national performance measure, and sanctions and liabilities for Fiscal Year 2003 and beyond.

**List of Subjects**

*7 CFR Part 272*

Alaska, Civil rights, Claims, Food stamps, Grant programs, Social programs, Reporting and recordkeeping requirements, Unemployment compensation, Wages

*7 CFR Part 275*

Administrative practice and procedure, Food stamps, Reporting and recordkeeping requirements.

■ Accordingly, 7 CFR parts 272 and 275 are amended as follows:

■ 1. The authority citation for parts 272 and 275 continue to read as follows:

**Authority:** 7 U.S.C. 2011–2036.

## PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

■ 2. In § 272.1, add paragraph (g)(169) to read as follows:

### § 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(169) *Amendment No. 395.* The provisions of Amendment 395 are effective December 15, 2003.

## PART 275—PERFORMANCE REPORTING SYSTEM

### § 275.3 [Amended]

■ 3. In § 275.3, the last sentence of paragraph (c) is amended by removing the reference "§ 275.23(e)(8)" and adding in its place the reference "§ 275.23(e)(6)".

### § 275.11 [Amended]

■ 4. In § 275.11, the third sentence of paragraph § 275.11(g) is amended by removing the reference "§ 275.25(e)(8)" and adding in its place the reference "§ 275.23(e)(6)".

■ 5. In § 275.16, paragraph (b)(1) is revised to read as follows:

### § 275.16 Corrective action planning.

* * * * *

(b) * * *

(1) Result from a payment error rate of 6 percent or greater (actions to correct errors in individual cases, however, shall not be submitted as part of the State agency's corrective action plan);

* * * * *

■ 6. In § 275.23:

■ a. Paragraph (d)(1)(iii) is amended by removing the reference "(e)(8)(iii)" and adding in its place the reference "(e)(6)(iii)".

■ b. Paragraph (e)(1) is amended by removing the reference "(e)(8)" and adding in its place the reference "(e)(6)".

■ c. Paragraphs (e)(2), (e)(3), and (e)(4) are removed.

■ d. Paragraph (e)(5) is redesignated as paragraph (e)(2) and is further amended by removing the words "and beyond" in the paragraph heading and adding in their place the words "through Fiscal Year 2002".

■ e. Newly redesignated paragraph (e)(2)(i) is amended by removing the words "and subsequent years" and adding in their place the words "through Fiscal Year 2002"; and further amended by removing the word "rates" in the second sentence and adding in its place the word "rate".

■ f. A new paragraph (e)(3) is added.

■ g. Paragraphs (e)(6), (e)(7), (e)(8), (e)(9), (e)(10), and (e)(11) are redesignated as paragraphs (e)(4), (e)(5), (e)(6), (e)(7), (e)(8) and (e)(9), respectively.

■ h. Newly redesignated paragraph (e)(5)(i)(B)(*3*) is amended by removing the reference "(e)(7)(i)(A)" and adding in its place the reference "(e)(5)(i)(A)".

■ i. Newly redesignated paragraph (e)(5)(i)(C)(*3*)(*iii*) is amended by removing the reference "(e)(5)(i)" wherever it appears and adding in its place the reference "(e)(2)(i)".

■ j. Newly redesignated paragraph (e)(5)(i)(E) is amended by removing the reference "(e)(7)(i)(A) through (e)(7)(i)(D)" and adding in its place the reference "(e)(5)(i)(A) through (e)(5)(i)(D)".

■ k. Newly redesignated paragraph (e)(5)(i)(E)(*2*) is amended by removing the reference "(e)(7)(i)(E)" and adding in its place the reference "(e)(5)(i)(E)".

■ l. Newly redesignated paragraph (e)(5)(ii) is amended by removing the reference "(e)(7)(i)(A) through (e)(7)(i)(E)" and adding in its place the reference "(e)(5)(i)(A) through (e)(5)(i)(E)".

■ m. Newly redesignated paragraph (e)(5)(iii) is amended by removing the reference "(e)(7)" and adding in its place the reference "(e)(5)".

■ n. Newly redesignated paragraph (e)(6)(i)(D) is amended by removing the reference "(e)(8)(iii)" and adding in its place the reference "(e)(6)(iii)".

■ o. Newly redesignated paragraphs (e)(6)(iii)(A) and (e)(6)(iii)(B) are amended by removing the reference "(e)(8)(i)(C)" wherever it appears and adding in its place the reference "(e)(6)(i)(C)".

■ p. Newly redesignated paragraph (e)(7) is amended by removing the first and second sentences and adding in their place four new sentences.

■ q. Newly redesignated paragraph (e)(8) is amended by removing the reference "§ 275.23(e)(5)" and adding in its place the reference "paragraphs (e)(2) and (e)(3) of this section".

■ r. Newly redesignated paragraph (e)(9) is amended by removing the words "and subsequent" in the first sentence and adding in their place the words "through Fiscal Year 2002".

■ s. Newly redesignated paragraph (e)(9)(iii) is amended by removing the reference "(e)(11)(vi)" and adding in its place the reference "(e)(9)(vi)".

■ t. A new paragraph (e)(10) is added.

The additions read as follows:

**§ 275.23 Determination of State agency program performance.**

* * * * *

(e) * * *

(3) *Establishment of payment error rates and liability.* For Fiscal Year 2003 and subsequent years, FNS shall announce a national performance measure not later than June 30 after the end of the fiscal year. The national performance measure is the sum of the products of each State agency's error rate times that State agency's proportion of the total value of national allotments issued for the fiscal year using the most recent issuance data available at the time the State agency is notified of its payment error rate. Once announced, the national performance measure for a given fiscal year will not be subject to change. The national performance measure announced under this paragraph (e)(3) is not subject to administrative or judicial review. Liability for payment shall be established for Fiscal Year 2004 and beyond whenever there is a 95 percent statistical probability that, for the second or subsequent consecutive fiscal year, a State agency's payment error rate exceeds 105 percent of the national performance measure. The amount of the liability shall be equal to the product of:

(i) The value of all allotments issued by the State agency in the (second or subsequent consecutive) fiscal year; multiplied by

(ii) the difference between the State agency's payment error rate and 6 percent; multiplied by

(iii) 10 percent.

* * * * *

(7) * * * The case review process and the arbitration of all difference cases shall be completed by May 31 following the end of the fiscal year. FNS shall determine and announce the national average payment error rate for the fiscal year by June 30 following the end of the fiscal year. At the same time FNS shall notify all State agencies of their individual payment error rates and payment error rate liabilities, if any. FNS shall provide a copy of each State agency's notice to its respective chief executive officer and legislature. * * *

* * * * *

(10) *Resolution of liabilities for FY 2003 and beyond.* FNS may: waive all or a portion of the liability; require the State agency to reinvest up to 50 percent of the liability in activities to improve program administration, which new investment money shall not be matched by Federal funds; designate up to 50 percent of the liability as "at-risk" for repayment if a liability is established based on the State agency's payment error rate for the subsequent fiscal year; or assert any combination of these options. Once FNS establishes its proposed liability resolution plan, the amount assigned as at-risk is not subject to settlement negotiation between FNS and the State agency and may not be reduced unless an appeal decision revises the total dollar liability. FNS and the State shall settle any waiver amount or reinvestment amount before the end of the fiscal year in which the liability amount is determined unless an administrative appeal relating to the claim is pending. If a State agency appeals its liability determination, if the State agency began required reinvestment activities prior to an appeal determination, and if the liability amount is reduced to $0 through the appeal, FNS shall pay to the State agency an amount equal to 50 percent of the new investment amount that was included in the liability amount subject to the appeal. If FNS wholly prevails on a State agency's appeal, FNS will require the State agency to invest all or a portion of the amount designated for reinvestment during the appeal to be reinvested or to be repaid to the Federal government.

Dated: October 3, 2003.

**Eric M. Bost,**

*Under Secretary, Food, Nutrition, and Consumer Services.*

[FR Doc. 03–26176 Filed 10–15–03; 8:45 am]

**BILLING CODE 3410–30–P**

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## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 945

**[Docket No. FV03–945–1 FR]**

## Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the Idaho-Eastern Oregon Potato Committee (Committee) for the 2003–04 and subsequent fiscal periods from $0.0026 to $0.0045 per hundredweight of potatoes handled. The Committee locally administers the marketing order which regulates the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and appropriate to administer the program. The fiscal period began August 1 and ends July 31. The increased assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** October 17, 2003.

**FOR FURTHER INFORMATION CONTACT:** Barry Broadbent, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, Oregon 97204–2807; Telephone: (503) 326–2724, Fax: (503) 326–7440 or E-mail: *Barry.Broadbent@usda.gov*; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 98 and Marketing Order No. 945, both as amended (7 CFR part 945), regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act".

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Idaho-Eastern Oregon potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes beginning on August 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2003–04 and subsequent fiscal periods from $0.0026 to $0.0045 per hundredweight of potatoes handled.

Section 945.40 of the order provides authority for the Committee, with the approval of the Secretary, to incur reasonable expenses for its maintenance and functioning. Section 945.41 requires the Committee to formulate an annual budget estimating its income and expenditures for the upcoming fiscal year and to present such budget to the Secretary for approval. Section 945.42(a) authorizes the Committee to assess handlers for their pro rata share of such expenses and § 945.42(b) provides that the rate of assessment be set by the Secretary based on the recommendation of the Committee. The members of the Committee are producers and handlers of potatoes grown in Idaho and Eastern Oregon. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are therefore in a position to formulate an appropriate budget and assessment rate. The assessment rate was discussed in a public meeting before the Committee members voted to recommend an increase. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–97 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 16, 2003, and unanimously recommended 2003–04 expenditures of $149,417 and an assessment rate of $0.0026 per hundredweight of potatoes handled, the same rate currently in effect. The Committee estimated the 2003–04 potato shipments at 36,500,000 hundredweight, which would generate $94,900 in assessment revenue. At that meeting, the Committee discussed increasing the assessment rate to respond to rising Committee expenses, declining assessment revenue, and shrinking operating reserves. After discussion, the Committee postponed any action until later in the fiscal period, believing that assessment revenue and operating reserves were sufficient to maintain Committee operations through the fiscal period.

The Committee conducted a telephone vote on July 18, 2003, and unanimously recommended a revised budget of $145,317 (down from $149,417) and to raise the assessment rate to $0.0045 per hundredweight of potatoes handled (up from $0.0026). In comparison, last fiscal period's budgeted expenditures were $137,094. The recommended assessment rate is $0.0019 higher than the rate currently in effect. The increase is necessary to offset an increase in salaries and operating expenses, declining potato shipments, and the depletion of operating reserves.

This major expenditures recommended by the Committee for the 2003–04 fiscal period include $95,067 for salaries and benefits, $16,500 for transportation, $13,500 for travel, $6,800 for rent and utilities, and $4,800 for office expenses. Budgeted expenses for these items in 2002–2003 were $92,144, $9,000, $14,000, $6,300, and $6,500, respectively. The transportation budget item covers the purchase of a new Committee vehicle and all of the operating and maintenance costs associated with it. The manager uses a Committee vehicle for handler compliance visits throughout the season, and other authorized Committee activities. Travel covers the cost of travel, lodging, and meals for the Committee manager and members when attending Committee meetings and conventions involving Committee authorized business.

The Committee estimates potato shipments for the 2003–04 fiscal period at 36,500,000 hundredweight, which should provide $164,250 in assessment income at the issued assessment rate. This income should be adequate to cover budgeted expenses. The Committee estimated monetary reserves to be approximately $33,000 at the beginning of the 2003–04 fiscal period. The reserves could potentially increase to $51,933 by the fiscal period end. The order permits an operating reserve in an amount not to exceed approximately one fiscal period's budgeted expenses (§ 945.44). Funds held in reserve will be kept within the maximum permitted by the order.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2003–04 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

## Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 900 producers of potatoes in the production area and approximately 54 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on a three-year average fresh potato production of 35,448,000 hundredweight as calculated from Committee records, a three-year average of producer prices of $6.10 per hundredweight reported by the National Agricultural Statistics Service, and 900 Idaho-Eastern Oregon potato producers, the average annual producer revenue is approximately $240,259. It can be concluded, therefore, that most of these producers may be classified as small entities.

In addition, based on Committee records and 2002–03 f.o.b. shipping point prices ranging from $5.00 to $35.00 per hundredweight reported by USDA's Market News Service, many Idaho-Eastern Oregon potato handlers may ship over $5,000,000 worth of potatoes. In view of the foregoing, few of the handlers may be classified as small entities as defined by the SBA.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2003–04 and subsequent fiscal periods from $0.0026 to $0.0045 per hundredweight of potatoes handled. The Committee unanimously recommended 2003–04 expenditures of $145,317 and an assessment rate of $0.0045 per hundredweight. The proposed assessment rate is $0.0019 per hundredweight higher than the 2002–03 rate. The quantity of assessable potatoes for the 2003–04 fiscal period is estimated to be 36,500,000 hundredweight. Income derived from handler assessments (approximately $164,250) should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2003–04 fiscal period include $95,067 for salaries and benefits, $16,500 for transportation, $13,500 for travel, $6,800 for rent and utilities, and $4,800 for office expenses. Budgeted expenses for these items in 2002–2003 were $92,144, $9,000, $14,000, $6,300, and $6,500, respectively.

The assessment rate increase is necessary to offset increases in salaries and operating expenses, declining potato shipments, and the depletion of operating reserves. The Committee estimated the reserve to be $33,000 at the 2002–03 fiscal period end. At the current rate of $0.0026 per hundredweight, and the estimated potato production of 36,500,000 hundredweight for the 2003–04 fiscal period, the projected income for the 2003–04 fiscal period would be $94,900. This amount, along with the projected reserve of $33,000, is approximately $19,417 less than required to fund the proposed 2003–04 budget and $9,194 less than the 2002–03 budgeted amount. Thus, the Committee believes that the projected assessment income at the current assessment rate and funds held in reserve would not be sufficient to fund the Committee's operations without increasing the assessment rate.

At the recommended rate of $0.0045 per hundredweight (assessment income of $164,250) and expenditures of $145,317, the Committee may increase its reserve by up to $18,933. The projected reserve would be approximately $51,933 on July 31, 2004, which the Committee determined to be both appropriate and acceptable.

The Committee considered alternate levels of assessment but determined that increasing the assessment rate to $0.0045 per hundredweight will allow the Committee to adequately fund operations and replenish the reserve to an acceptable level. The Committee decided that any assessment rate between $0.0026 per hundredweight and $0.0045 per hundredweight would not be sufficient to accomplish the Committee's goals. Prior to arriving at the budget and assessment rate recommendations, the Committee considered information from various sources, including the Committee's Finance and Executive Committees.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2003–04 fiscal period could range between $4.50 and $6.00 per hundredweight of potatoes. Therefore, the estimated assessment revenue as a percentage of total producer revenue could range between 0.1 and 0.075 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Idaho-Eastern Oregon potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 16, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Idaho-Eastern Oregon potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on August 28, 2003 (68 FR 51713). Copies of the proposed rule were also mailed or sent via facsimile to all potato handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 15-day comment period ending September 12, 2003, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2003–2004 fiscal period began on August 1, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Idaho-Eastern Oregon potatoes handled during such fiscal period. Further, handlers are aware of this rule which was unanimously recommended by the Committee. Also, a 15-day comment period was provided for in the proposed rule, and no comments were received.

### List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 945 is amended as follows:

## PART 945—POTATOS GROWN IN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

■ 1. The authority citation for 7 CFR part 945 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 945.249 is revised to read as follows:

**§ 945.249 Assessment rate.**

On and after August 1, 2003, an assessment rate of $0.0045 per hundredweight is established for Idaho-Eastern Oregon potatoes.

Dated: October 9, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03–26177 Filed 10–15–03; 8:45 am]

**BILLING CODE 3410–02–P**

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 94

**[Docket No. 00–080–3]**

## Change in Disease Status of East Anglia With Regard to Classical Swine Fever

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations governing the importation of certain animals, meat, and other animal products by restoring East Anglia, a region of England that includes the counties of Essex, Norfolk, and Suffolk, to the list of regions considered free of classical swine fever. This final rule follows an interim rule that removed East Anglia from that list due to the detection of classical swine fever in that region. Based on the results of an evaluation of the current classical swine fever situation in East Anglia, we have determined that East Anglia can be restored to the list of regions considered to be free of classical swine fever. This rule relieves certain classical swine fever-related prohibitions and restrictions on the importation of swine and swine products into the United States from East Anglia.

**EFFECTIVE DATE:** October 16, 2003.

**FOR FURTHER INFORMATION CONTACT:** Dr. Charisse Cleare, Senior Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

**SUPPLEMENTARY INFORMATION:**

### Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various animal diseases, including rinderpest, foot-and-mouth disease, African swine fever, classical swine fever (CSF), and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.9 of the regulations restricts the importation into the United States of pork and pork products from regions where CSF is known to exist. Section 94.10 of the regulations prohibits, with certain exceptions, the importation of swine that originate in or are shipped from or transit any region in which CSF is known to exist. The regulations in §§ 94.9(a) and 94.10(a) provide that CSF exists in all regions of the world except for certain regions listed in those sections.

In an interim rule effective August 4, 2000, and published in the **Federal Register** on September 20, 2000 (65 FR 56774–56775, Docket No. 00–080–1), we amended the regulations by removing East Anglia (a region of England that includes Essex, Norfolk, and Suffolk counties) from the lists of regions considered to be free of CSF (which, at the time, we referred to as hog cholera). That action was necessary because CSF had been confirmed in East Anglia. The effect of the interim rule was to restrict the importation of pork and pork products and to prohibit the importation of swine into the United States from East Anglia.

Although we removed East Anglia from the list of regions considered to be free of CSF, we recognized that Great Britain's Ministry of Agriculture, Fisheries and Food (now part of the Department for Environment, Food, and Rural Affairs) immediately responded to the detection of CSF by initiating measures to eradicate the disease. In addition, disease spread was contained within East Anglia. Therefore, we limited the effect of our interim rule to East Anglia. We also stated that we intended to reassess the situation in the region at a future date in the context of Office International des Epizooties (OIE) standards, and that as part of that reassessment process, we would consider all comments received regarding the interim rule.

Additionally, we stated in the interim rule that the future reassessment would enable us to determine whether it was necessary to continue to prohibit the importation of swine and to restrict the importation of pork and pork products from East Anglia, or whether we could restore East Anglia to the list of regions in which CSF is not known to exist.

We solicited comments concerning the interim rule for 60 days ending November 20, 2000. We received one comment by that date, from a national pork industry association. This comment is addressed below.

On March 13, 2003, we published a notice in the **Federal Register** (68 FR 11998–11999, Docket No. 00–080–2) in which we advised the public of the availability of an evaluation that we had prepared concerning the CSF status of East Anglia. The evaluation, entitled "APHIS Evaluation of the Classical Swine Fever Status of East Anglia (counties of Norfolk, Suffolk, and Essex) November 2002," assessed the CSF status of East Anglia and the related disease risks associated with importing animals and animal products into the United States from East Anglia.

We solicited comments concerning the evaluation for 60 days ending May 12, 2003, and received one comment by that date. The comment, which was submitted by a national pork industry association, was a resubmission of the comment sent by that organization in response to the September 2000 interim rule. The comment is discussed below.

### De Facto Regionalization

*Comment:* The Animal and Plant Health Inspection Service (APHIS) should have followed its regulations in 9 CFR part 92 in the initial rulemaking to remove East Anglia from the list of regions recognized as free of CSF. In that rulemaking, APHIS established East Anglia, England, as a region affected with CSF, and continued to recognize the rest of Great Britain as free of that disease. There are several specific procedures set forth in part 92 that APHIS should be following. These are: (1) That APHIS will make information submitted in support of a request for regionalization available to the public prior to rulemaking; (2) that APHIS will publish a proposed rule for public comment; and (3) that during the comment period, the public will have access to the information upon which APHIS based its risk analysis, as well as to the methodology used to conduct the analysis.

*Response:* The regulations in 9 CFR part 92, "Importation of Animals and Animal Products; Procedures for Requesting Recognition of Regions," were published in October 1997 in conjunction with APHIS' policy on regionalization (see Docket No. 94–106–8, 62 FR 56027–56033, October 28, 1997). The regulations set out the process by which a foreign government may apply to have all or part of a country recognized as a region or for approval to export animals or animal products to the United States under conditions based on the risk associated with animals or animal products from that region. Our intention was for these regulations to tell veterinary officials of foreign governments that have different risk levels within the country or extending across national boundaries and that wish to begin exporting animals or animal products to the United States how to request an initial evaluation of animal disease status or conditions for import of commodities. We did not intend for these regulations to apply in circumstances where an outbreak of a disease in a region previously recognized as disease-free, or an increased incidence of disease in a foreign region makes it necessary for the United States to take interim measures to protect its livestock from the foreign animal disease. In these cases, APHIS must take immediate action to prohibit or restrict imports from the region that now presents a disease concern, and the scope of that action may be limited to the portion of the region that presents the disease risk. Such action may include publishing an interim rule to provide an appropriate basis for enforcing prohibitions or restrictions that may initially be announced administratively. In these circumstances, APHIS has a responsibility to take whatever measures appear necessary to prevent the introduction of disease. We believe that publishing a proposed rule for comment would be contrary to the public interest because doing so would delay our taking protective actions. We also believe that making the information upon which we base our decisions for establishing a region via an interim rule available to the public for comment prior to publishing the interim rule would also be contrary to the public interest for the same reason. In the case of East Anglia, we felt that risk considerations justified our regionalization approach. However, we understand the commenter's concerns, and we have taken actions to address them. One of the actions we took in this case was the preparation of a risk assessment on the disease status of East Anglia, which we made available to the public for comment prior to this final rule.

We took action at a regional level in the case of East Anglia because we believed that the disease situation warranted it. We already had extensive information about the region, including information on the authority, organization, and infrastructure of the veterinary services organization of the region; the extent to which movement of animals and animal products is controlled from regions of higher risk, and the level of biosecurity for such movements; livestock demographics and marketing practices in the region; the type and extent of disease surveillance conducted in the region; diagnostic laboratory capabilities in the region; and the region's policies and infrastructure for animal disease control, *i.e.*, the region's emergency response capacity. This information provided the basis for our previous recognition of the region as free of the disease. Our obligations under international trade agreements compel us to take no more restrictive actions than necessary to prevent the introduction of disease. Unless we determine that this information is no longer reliable, it should provide a rational basis for believing that the region can effectively control an outbreak within a smaller region.

### Unjustified Emergency Action

*Comment:* While the CSF outbreak in East Anglia presented an emergency situation justifying the issuance of an interim rule in order to protect against the introduction of CSF into the United States, the specific action APHIS took was not justified. The emergency situation only justified an interim rule removing all of Great Britain from the list of CSF-free regions, and any action with respect to regionalizing East Anglia should have been handled according to the procedures in § 92.2.

*Response:* As explained previously, we believe that it was appropriate to limit the scope of our action to the specific region of East Anglia, given the specific disease situation and the extensive information we already possessed about East Anglia and Great Britain as a whole. Given these factors, we are confident that we had sufficient justification for taking action with respect to East Anglia on an emergency basis to protect against the introduction of CSF into the United States. We believe that any action to remove all of Great Britain from the list of CSF-free regions would have been unnecessary and unjustified.

### Veterinary Equivalency Agreement

*Comment:* The Veterinary Equivalency Agreement (VEA) signed by the United States and the European Union (EU), which includes provisions concerning the recognition of regionalization decisions taken by the parties with respect to certain diseases, does not supercede or change U.S. statutory or regulatory law regarding regionalization. Thus, APHIS should have followed its procedures in part 92 in regionalizing East Anglia for CSF.

*Response:* The action that we took regarding East Anglia was not related to the VEA. As noted elsewhere in this document, we believe our action was consistent with our regulations and statutory authority, neither of which was affected by the VEA.

### Inconsistency With Other Regionalization Requests

*Comment:* APHIS has received requests from the EU to recognize certain regions in the EU as free of specified animal diseases, but has not yet made any decisions or changes to the regulations based on these requests. How was APHIS able to reach a decision about the disease-free status of Great Britain with the exception of East Anglia while the other regionalization requests it had received from the EU have been under consideration since June 1999?

*Response:* The request that we received from the EU related to a much larger region that was not already recognized as free of CSF. In addition, that request related to establishing a single region composed of multiple countries, some of which continue to experience outbreaks of CSF. Immediate action at a regional level was not necessary in the case of the EU as it was for East Anglia. The amount of time necessary to reach a decision in these two situations is not comparable because the two situations are not comparable.

One factor that influenced the comparative speed of the evaluation of Great Britain in comparison with the evaluation of other EU regions was that Great Britain was already recognized individually as disease-free. In comparison, other EU regions under consideration were not previously recognized as disease-free, and several of these regions continue to experience periodic outbreaks of CSF. In addition, our long-standing trade relationship with Great Britain provided us with the information necessary to reach a decision about the disease status of the entire country. This particular outbreak was a temporary emergency situation that was ultimately limited to 16 sites in a particular region of the country and was contained and eradicated quickly.

### Future Procedures

*Comment:* Veterinary infrastructure and animal health authorities of the United Kingdom are highly professional and extremely conscientious, and

APHIS confidence in them is well-founded. APHIS was also correct in its decision to take action in order to protect against the introduction of CSF into the United States. However, it is possible that APHIS might take similar action in the future (*i.e.*, prohibit or restrict the movement of animals and animal products from particular regions within a disease-free country rather than from the entire country) with countries whose veterinary infrastructures are not as adequate as that of the United Kingdom. Thus, APHIS should clarify the regionalization procedures it intends to follow in the future. Further, in the interim rule, APHIS stated that it intended to reassess the disease situation in East Anglia in accordance with the standards of the OIE to determine whether it is necessary to continue to prohibit or restrict the importation of animals and animal products from that region. This statement suggests that APHIS intends at some future time to declare these regions free of the specified disease without following the process set forth in § 92.2. Finally, does APHIS' stated intent to reassess the situation in accordance with the standards of the OIE mean that APHIS plans to wait until East Anglia had completed the 6-month disease-free waiting period prescribed by the OIE before it considered the region disease-free?

*Response:* We wish to note that we have developed a uniform set of procedures to be followed when a region that we recognize as free of disease experiences an outbreak of that disease. These procedures, which are described in a proposed rule published in the **Federal Register** on June 24, 2003 (68 FR 37426–37429, Docket No. 02–001–1), include steps we would take to prevent the introduction of disease from that region or from a portion of that region and steps we would take to further assess the region's animal health status. These procedures include the release of a risk assessment for public comment prior to final rulemaking.

We will continue to implement our thorough and rigorous risk assessment process and will continue to require information about the authority, organization, and infrastructure of the veterinary services organization of each region; the extent to which movements of animals and animal products are controlled from regions of higher risk, and the level of biosecurity for such movements; livestock demographics and marketing practices in each region; diagnostic laboratory capabilities in each region; and each region's policies and infrastructure for animal disease control, *i.e.*, the region's emergency response capacity.

We will continue to take immediate action to protect U.S. livestock by prohibiting or restricting imports of animals and animal products from regions that experience outbreaks of specified animal diseases.

We will continue to reassess the disease status of each region in the context of the standards of the OIE and additional relevant information, and will continue to consider all public comments we receive regarding any action that we take. Although we do take international standards such as those of the OIE into consideration, we conduct independent risk assessments using our own stringent criteria. We do not base our decisions about the disease-free status of regions or countries on the decisions of the OIE.

The commenter is correct that our stated intent to reassess situations such as the one in East Anglia in accordance with the standards of the OIE means that we intend to declare regions free of specified diseases without following the process set forth in § 92.2. Rather, we will follow the process described in the previous paragraphs. As stated previously, part 92 was not specifically intended to apply to the type of situation dealt with in the interim rule that removed East Anglia from the list of CSF-free regions. An interim rule of that type is intended to be just that, an "interim" or "temporary" measure which provides the immediate protection necessary for animal health purposes. Interim rules of this type give APHIS an opportunity to evaluate the effectiveness of emergency response measures taken in the subject region to deal with the outbreak and to determine whether the outbreak is indeed a temporary situation or indicates a fundamental change in the region's disease status. If a region takes immediate and effective steps to control and eradicate the disease, as East Anglia did, we believe it is appropriate for the region to be returned to its previous disease-free status.

Therefore, for the reasons given in this document, and based on our evaluation, we are amending §§ 94.9 and 94.10 in this final rule to add East Anglia to the list of regions considered free of CSF.

### *Effective Date*

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is warranted to relieve certain CSF-related prohibitions and restrictions on the importation of swine and other products of swine into the United States from East Anglia that are no longer necessary. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

### *Executive Order 12866 and Regulatory Flexibility Act*

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We are amending the regulations governing the importation of certain animals, meat, and other animal products by restoring East Anglia, a region of England that includes the counties of Essex, Norfolk, and Suffolk, to the list of regions considered free of CSF. This final rule follows an interim rule that removed East Anglia from that list due to the detection of CSF in that region. Based on the results of an evaluation of the current CSF situation in East Anglia, we have determined that East Anglia can be restored to the list of regions considered to be free of CSF. This rule relieves certain CSF-related prohibitions and restrictions on the importation of swine and other products of swine into the United States from East Anglia.

The economic effects of this rule on U.S. entities will depend upon the number of swine and the quantity of pork products that will be exported to the United States from East Anglia, and the significance of these exports with respect to overall U.S. swine and pork product imports. Swine and pork producers and pork product wholesalers are the entities we expect will be affected by this rule.

We do not have specific information on the level of swine or pork products imported from East Anglia before that region was removed from the list of regions considered free of CSF in August 2000. However, an indication of the level of imports from East Anglia that may result once the region is again considered CSF-free can be acquired by comparing imports of swine and pork products from the United Kingdom prior to and during the period of East Anglia's restriction. Average annual imports from the United Kingdom including East Anglia for the 3-year period 1997–1999 are compared to average annual imports from the United

Kingdom excluding East Anglia for the 2-year period 2001–2002.[1]

Live swine have been prohibited entry into the United States from East Anglia since August 2000. During 1997–1999, the number of swine imported from the United Kingdom averaged 249 per year, and represented about 0.01 percent of average U.S. imports of 3.8 million swine per year. The average annual value of swine imported from the United Kingdom was about $123,000, or about 0.05 percent of the average annual value of all swine imports ($265 million). The average price of swine imported from the United Kingdom during the period 1997–1999 was much higher than the average price of all swine imports ($567 per animal compared to $72 per animal), reflecting their value as breeding stock rather than slaughter stock.[2]

During 2001–2002, there were no swine imports from the United Kingdom. If all swine imported from the United Kingdom during 1997–1999 came, in fact, from East Anglia, then a similar number, if not more, can be expected to be imported once East Anglia is again considered CSF-free. Total annual imports from all sources in 2001–2002 increased to over 5.5 million swine. While the effect of renewed swine imports from East Anglia will be small in terms of its percentage share of swine imported by the United States, the high average price during 1997–1999 suggests that future imports may again help serve breeding demands of U.S. swine operations.

A similar comparison of pork product imports from the United Kingdom over the two time periods can be used in considering the impact of renewed importation of these commodities from East Anglia. During 1997–1999, the quantity of pork products imported from the United Kingdom averaged about 3.5 million kilograms per year, and represented about 1.55 percent of average U.S. imports of 225 million kilograms per year. Their average annual value was about $13 million, or about 2.76 percent of the average annual value of all product imports of $476 million.

During 2001–2002, there was a significant decline in the quantity of pork products imported from the United Kingdom, to about 509,400 kilograms per year, while total U.S. pork imports increased to 346 million kilograms per year. The United Kingdom's share of total imports fell to 0.15 percent, one-tenth of its share during 1997–1999. The average annual value was about $1.8 million, or about 0.24 percent of the average annual value of all pork product imports of $745 million (again, one-tenth of the United Kingdom's share during 1997–1999). The dramatic increase in annual pork product imports by the United States from the period 1997–1999 to the period 2001–2002—from 225 million kilograms to 346 million kilograms—contributed to the large percentage decline in imports from the United Kingdom.

If the decline in pork product imports from the United Kingdom was caused by the restrictions placed upon imports from East Anglia, then removal of those restrictions can be expected to result in a percentage share of U.S. imports for the United Kingdom similar to that acquired during 1997–1999, about 1.6 percent of total pork product imports by quantity and 2.8 percent by value. Based on the average annual level of total pork product imports during 2001–2002, these percentages represent about 5.4 million kilograms, valued at about $21 million.

Imports of swine and pork products from the United Kingdom are likely to expand once East Anglia is again considered CSF-free. The expansion could be noteworthy for the United Kingdom if exports to the United States return to the levels seen during 1997–1999: Breeding swine exports in the hundreds of animals per year where currently there are none, and an increase in pork product exports by a factor of 10. The economic effects will not be significant for U.S. entities. As a percentage of overall U.S. imports, the United Kingdom's supply of swine and pork products during 1997–1999 was small. Similar export levels can be expected to result from this rule.

Swine and pork producers and pork product wholesalers are the U.S. entities that may be affected by this rule. The Small Business Administration (SBA) has established size standards for determining which entities can be considered small, using the North American Industrial Classification System (NAICS). The SBA defines small hog and pig farms (NAICS 112210, "Hog and pig farming") as those earning not more than $750,000 in annual receipts. National Agricultural Statistics Service data on hog farm inventories include farm size categories, among others, with minimums of 2,000 and 5,000 head. Only those swine operations with inventories well in excess of 3,000 animals would likely earn more than $750,000 in annual sales.[3] Over 95 percent of U.S. swine operations hold inventories of fewer than 2,000 head. Thus, most swine and pork producers can be considered small entities based on SBA standards.

In the same way, pork product wholesalers are also primarily small entities. The SBA defines pork product wholesalers (NAICS 424420, "Packaged frozen food merchant wholesalers," and NAICS 424470, "Meat and meat product merchant wholesalers") as small if they employ 100 or fewer employees. Information on the size distribution of meat wholesalers is not available, but the 1997 Economic Census indicates that the average number of employees per establishment that year was 14.[4]

Although the industries that may be affected by this final rule are largely composed of small entities, the economic effects of the rule will not be significant. While imports of swine and pork products from the United Kingdom are expected to increase as a result of this rule, their market shares of overall U.S. imports are expected to remain small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

### *Executive Order 12988*

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

### *Paperwork Reduction Act*

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

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[1] All import statistics are from the World Trade Atlas, based on U.S. Census Bureau data.

[2] U.S. Census Bureau statistics indicate that 93 purebred breeding swine were imported from the United Kingdom in 1999, but that none were imported in 1997 or 1998. However, the average price paid for swine imported from the United Kingdom during the period 1997–1999 clearly suggests that animals classified as non-purebred breeding swine were imported for breeding purposes.

[3] Assuming about a 6-month production cycle, one inventory unit would roughly represent two annual sale units. An average price of $102 per head (230 pounds selling weight, at $44.30 per cwt, the average of hog prices in 2001), implies a gross revenue of $204 per head of inventory, yielding $750,000/$204 per head=3,676 head.

[4] As reported in the 1997 Economic Census of the U.S. Census Bureau, there were 3,557 meat and meat product wholesale establishments that had a total of 50,256 paid employees.

■ Accordingly, we are amending 9 CFR part 94 as follows:

## PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 1. The authority citation for part 94 continues to read as follows:

**Authority:** 7 U.S.C. 450, 7701–7772, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

### § 94.9 [Amended]

■ 2. In § 94.9, paragraph (a) is amended by removing the words ",except for East Anglia (Essex, Norfolk, and Suffolk counties)".

### § 94.10 [Amended]

■ 3. In § 94.10, paragraph (a) is amended by removing the words ",except for East Anglia (Essex Norfolk, and Suffolk counties)".

Done in Washington, DC, this 9th day of October 2003.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 03–26042 Filed 10–15–03; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 2003–NE–11–AD; Amendment 39–13338; AD 2003–21–03]

RIN 2120–AA64

## Airworthiness Directives; Pratt & Whitney Canada Models PW118, PW120, PW120A, and PW121 Turboprop Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for Pratt & Whitney Canada (PWC) models PW118, PW120, PW120A, and PW121 turboprop engines. This AD requires replacing the low pressure rotor speed (NL) sensor port sealing tube and reworking or replacing the external air tube connecting the P2.5/P3 switching valve to the rear inlet case. This AD is prompted by a report of an internal oil fire in the engine intercompressor case (ICC). A fire in the ICC could cause the existing tubes to disengage due to melted brazing on the tubes. Once these tubes disengage, the ICC fire then develops into an external fire within the engine nacelle cavity. We are issuing this AD to prevent fire in the engine nacelle cavity, in-flight engine shutdown, and airplane damage.

**DATES:** This AD becomes effective November 20, 2003. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of November 20, 2003.

**ADDRESSES:** You can get the service information identified in this AD from Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorin, Longueuil, Quebec J4G 1A1.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** The FAA proposed to amend 14 CFR part 39 with a proposed airworthiness directive (AD). The proposed AD applies to PWC models PW118, PW120, PW120A, and PW121 turboprop engines. We published the proposed AD in the **Federal Register** on June 6, 2003 (68 FR 33885). That action proposed to require replacing the low pressure rotor speed (NL) sensor port sealing tube and reworking or replacing the external air tube connecting the P2.5/P3 switching valve to the rear inlet case.

### Corrections to Accomplishment Paragraph References in the Compliance

Since the issuance of the notice of proposed rulemaking (NPRM), we found that the Accomplishment paragraphs referenced in compliance paragraphs (g), (h), (h)(1), and (h)(2) of the proposed rule are incorrect because of a change in service bulletin revisions. This AD corrects those Accomplishment paragraph references.

### Comments

We provided the public with the opportunity to participate in the development of this AD. We have considered the comments received.

### Request Credit for Compliance With Earlier Versions of Service Bulletin

Two commenters state that there is no reference in the NPRM to the original service bulletin (SB) or any earlier revisions. The commenters have received confirmation from the manufacturer that the original SB and earlier revisions are technically equivalent to PWC SB No. 20914, Revision 4, dated December 14, 2001. Therefore, they are requesting that compliance with the original SB or any earlier revisions be permitted as full compliance with the intent of the AD and that no further action be required.

The FAA agrees. The AD is revised to add new compliance paragraph (f). The regulatory section of this AD is renumbered from (e), (f), (g), (h), (i), and (j) to (e), (f), (g), (h), (i), (j), and (k).

### Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

### Changes to 14 CFR Part 39—Effect on the AD

On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. That regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. The material previously was included in each individual AD. Since the material is included in 14 CFR part 39, we will not include it in future AD actions.

### Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866;

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2003–NE–11–AD" in your request.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**2003–21–03 Pratt & Whitney Canada:** Amendment 39–13338. Docket No. 2003–NE–11–AD.

### Effective Date

(a) This AD becomes effective November 20, 2003.

### Affected ADs

(b) None.

### Applicability

(c) This AD applies to Pratt & Whitney Canada (PWC) models PW118, PW120, PW120A, and PW121 turboprop engines. These engines are installed on, but not limited to, Empresa Brasileira de Aeronautica (EMBRAER) EMB–120RT, 120ER, and 120FC, Bombardier Inc. (formerly Dehavilland of Canada) DHC–8–100 series, and Aerospatiale ATR 42–200, –300, and –320 airplanes.

### Unsafe Condition

(d) This AD is prompted by a report of an internal oil fire in the engine intercompressor case (ICC). A fire in the ICC could cause the existing tubes to disengage due to melted brazing on the tubes. Once these tubes disengage, the ICC fire then develops into an external fire within the engine nacelle cavity. We are issuing this AD to prevent fire in the engine nacelle cavity, in-flight engine shutdown, and airplane damage.

### Compliance

(e) Compliance with this AD is required at the next engine shop visit, or within 90 days after the effective date of this AD, whichever occurs first, unless already done.

### Credit for Previous Replacements and Rework

(f) Replacements and rework performed before the effective date of this AD, using PWC Service Bulletin (SB) No. 20914, Revision 4, dated December 14, 2001, the original issue, or Revision 1, 2, or 3, satisfy the requirements of paragraphs (g) through (h) of this AD.

### Low Pressure Rotor Speed (NL) Sensor Port Sealing Tube

(g) Replace the low pressure rotor speed (NL) sensor port sealing tube with an improved durability tube, in accordance with paragraphs 3.A.(1) and 3.A.(2), Accomplishment Instructions of PWC SB No. 20914, Revision 4, dated December 14, 2001.

### Switching Valve-to-Rear Inlet Case Sealing Air Tube Assembly

(h) Remove the switching valve-to-rear inlet case sealing air tube assembly, in accordance with paragraph 3.B.(1), Accomplishment Instructions of PWC SB No. 20914, Revision 4, dated December 14, 2001, and do the following:

(1) Either install an improved durability switching valve-to-rear inlet case sealing air tube assembly, in accordance with paragraph 3.B.(9), Accomplishment Instructions of PWC SB No. 20914, Revision 4, dated December 14, 2001; or

(2) Rework the switching valve-to-rear inlet case sealing air tube assembly and install tube assembly, in accordance with paragraphs 3.B.(2), 3.B.(4), and 3.B.(9), Accomplishment Instructions of PWC SB No. 20914, Revision 4, dated December 14, 2001.

### Alternative Methods of Compliance

(i) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

### Material Incorporated by Reference

(j) You must use Pratt & Whitney Canada Service Bulletin No. 20914, Revision 4, dated December 14, 2001 to perform the actions required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorin, Longueuil, Quebec J4G 1A1. You can review copies at FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

### Related Information

(k) Transport Canada airworthiness directive No. CF–2002–10, dated January 28, 2002, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on October 6, 2003.

**Francis A. Favara,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 03–25865 Filed 10–15–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NM–184–AD; Amendment 39–13336; AD 2003–21–02]**

**RIN 2120–AA64**

# Airworthiness Directives; McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 Airplanes; Model DC–8–50 Series Airplanes; Model DC–8F–54 and DC–8F–55 Airplanes; Model DC–8–60 Series Airplanes; Model DC–8–70 Series Airplanes; and Model DC–8–70F Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas transport category airplanes, that requires an inspection to determine the material composition of the lower inboard auxiliary spar cap of the left and right wings. For certain airplanes, this AD also requires repetitive detailed and dye penetrant inspections for cracking of the spar cap, and corrective actions if necessary. This action is necessary to detect and correct stress corrosion cracking of the auxiliary spar cap, which could cause excessive loads to the structure attaching the support fitting of the main landing gear (MLG) to the wing, and result in loss of the MLG. This action is intended to address the identified unsafe condition.

**DATES:** Effective November 20, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 20, 2003.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation

Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Jon Mowery, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5322; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas airplanes was published in the **Federal Register** on April 16, 2003 (68 FR 18567). That action proposed to require an inspection to determine the material composition of the auxiliary spar cap of the lower inboard of the left and right wings. For certain airplanes, that action also proposed to require repetitive detailed and dye penetrant inspections for cracking of the spar cap, and corrective actions if necessary.

### Changes to the Notice of Proposed Rulemaking (NPRM)

The FAA has reviewed the descriptive phrase, "auxiliary spar cap of the lower inboard of the left and right wings," as specified in the NPRM, and has determined that the phrase, "the lower inboard auxiliary spar cap of the left and right wing," is more consistent with the wording of McDonnell Douglas DC–8 Service Bulletin 57–85, Revision 1, dated July 5, 1991 (the service bulletin specified in the NPRM). Therefore, we have revised that phrase where it appears in this final rule.

We also have revised paragraph (b) of this final rule to more accurately reflect the intent of the referenced service bulletin by specifying that the detailed inspection and a dye penetrant inspection for cracking be performed on both the lower inboard auxiliary spar caps.

Additionally, we have revised paragraph (b) of the final rule, added new paragraphs (c) and (d) of the final rule, and renumbered subsequent paragraphs accordingly to clarify the follow-on actions required for any cracking that is found.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

### Request To Clarify Compliance Time

One commenter requests that the FAA clarify the compliance time in paragraph (b) of the Notice of Proposed Rulemaking (NPRM). The commenter suggests that adding the words, "whichever occurs later" would clarify the intention of "Within 2 years or 2,000 flight cycles."

The FAA agrees that clarification is needed. We inadvertently omitted the qualifying phrase after the words, "Within 2 years or 2,000 flight cycles." However, our intention was not to permit the operator to choose whichever compliance time occurred later. We have determined that a compliance time of within 2 years or 2,000 flight cycles, whichever occurs first, is sufficient and adequate time to perform the detailed inspection and dye penetrant inspections required by paragraph (b) of the AD. We point out that the inspections required by paragraph (b) of the AD are required within 2 years or 2,000 flight cycles, whichever occurs first, after accomplishing the inspection required by paragraph (a) of the AD. Paragraph (a) of the AD has a compliance time of within 24 months or 2,000 flight cycles after the effective date of the AD, whichever occurs later. Considering the ample lead time to plan for these inspections, we have determined that a compliance time of 2 years or 2,000 flight cycles, whichever occurs first, after accomplishing the compliance time of paragraph (a) of the AD, is reasonable and provides an adequate level of safety of the affected fleet. We have revised paragraph (b) of the AD to clarify that the qualifying phrase for the compliance time is, "Within 2 years or 2,000 flight cycles, whichever occurs first, after accomplishing the compliance time of paragraph (a)." However, under the provisions of paragraph (e) of the AD, we may approve requests for adjustments to the compliance time if data are submitted to substantiate that such adjustments would provide an acceptable level of safety.

### Request To Extend the Repetitive Inspections Intervals

The same commenter also requests that the repetitive inspection interval specified in paragraph (b)(2) of the NPRM be increased from 1,600 flight cycles to 1,800 flight cycles. The commenter explains that such an extension of the repetitive inspection interval would coincide with the "C" check interval for its fleet. In addition, the commenter points out that the FAA has an obligation to consider many factors, such as other AD requirements and compliance times, when developing an appropriate compliance time. The commenter considers that the proposed repetitive inspection interval also would require scheduling special times to accomplish the inspections—at considerable additional expense.

We do not concur that the repetitive inspection interval should be extended. In developing an appropriate inspection interval for this AD, we considered the manufacturer's recommendation, the degree of urgency associated with the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspections. In light of all of these factors, we find that a repetitive inspection interval of 1,600 flight cycles represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. No change is necessary to the final rule in this regard. However, under the provisions of paragraph (e) of the AD, we may approve requests for adjustments to the repetitive inspection interval if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

### Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

### Changes to 14 CFR part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

### Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

### Cost Impact

There are approximately 264 airplanes of the affected design in the worldwide fleet. The FAA estimates that 244 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $31,720, or $130 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

**2003–21–02 McDonnell Douglas:** Amendment 39–13336. Docket 2001–NM–184–AD.

*Applicability:* Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; Model DC–8–51, DC–8–52, DC–8–53, and DC–8–55 airplanes; Model DC–8F–54 and DC–8F–55 airplanes; Model DC–8–61, DC–8–62, and DC–8–63 airplanes; Model DC–8–61F, DC–8–62F, and DC–8–63F airplanes; Model DC–8–71, DC–8–72, and DC–8–73 airplanes; as listed in McDonnell Douglas DC–8 Service Bulletin 57–85, Revision 1, dated July 5, 1991; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct cracking of the lower inboard auxiliary spar cap, which could cause excessive loads to the structure attaching the support fitting of the main landing gear (MLG) to the wing, and result in loss of the MLG; accomplish the following:

#### Inspection To Determine the Material of the Auxiliary Spar Cap

(a) Within 24 months or 2,000 flight cycles after the effective date of this AD, whichever occurs later, inspect to determine the material composition of the lower inboard auxiliary spar cap (part numbers 5615058–1 through –506 inclusive) of the left and right wings, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA; or by performing an eddy current test of the auxiliary spar cap per the Non-Destructive Testing Standard Practice Manual MDC–93K0393 (NDTSPM) 06–10–01.006. If the material of the spar cap is 7075–T73 aluminum, no further action is required by this paragraph.

#### Inspections for Cracking and Follow-on Corrective Actions

(b) If the material of the lower inboard auxiliary spar cap found during the inspection required by paragraph (a) of this AD is 7075–T6 aluminum: Within 2 years or 2,000 flight cycles, whichever occurs first, after accomplishing the inspection required by paragraph (a) of this AD, perform a detailed inspection and a dye penetrant inspection for cracking of both of the lower inboard auxiliary spar caps; per McDonnell Douglas DC–8 Service Bulletin 57–85, Revision 1, dated July 5, 1991. If no cracking is detected, repeat the inspection at intervals not to exceed 6,400 flight hours, until both auxiliary spar caps are replaced with spar caps made with 7075–T73 aluminum, in accordance with the service bulletin.

**Note 2:** For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

#### Follow-on Corrective Actions for Certain Cracking

(c) For any cracking detected that is described in Conditions II through IV of the Accomplishment Instructions of McDonnell Douglas DC–8 Service Bulletin 57–85, Revision 1, dated July 5, 1991: Before further flight, accomplish the applicable corrective actions (rework, repair, apply corrosion inhibiting compound, or replace fittings) per the service bulletin. For Conditions II through IV, repeat the inspection for cracking at intervals specified in paragraph 1.D of the service bulletin not to exceed 1,600 flight cycles. Replacement of both spar caps with 7075–T73 aluminum is terminating action for the requirements of this AD.

#### Follow-on Corrective Actions for Certain Other Cracking

(d) If any cracking is detected that is described in Condition V or VI of the Accomplishment Instructions of McDonnell Douglas DC–8 Service Bulletin 57–85, Revision 1, dated July 5, 1991: Before further flight, replace the auxiliary spar cap with a cap composed of 7075–T73 aluminum, in accordance with the service bulletin, or repair by a method approved by the Manager, Los Angeles ACO. For a repair method to be approved by the Manager, Los Angeles ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

#### Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

### Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

### Incorporation by Reference

(g) Unless otherwise specified in this AD, the actions shall be done in accordance with McDonnell Douglas DC–8 Service Bulletin 57–85, Revision 1, dated July 5, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

### Effective Date

(h) This amendment becomes effective on November 20, 2003.

Issued in Renton, Washington, on October 7, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–25869 Filed 10–15–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

### 33 CFR Part 117

[CGD05–02–108]

RIN 1625–AA09

## Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albemarle and Chesapeake Canal, Chesapeake, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the regulations that govern the operation of the Jordan (S337) bridge, the Gilmerton (US 13/460) bridge, and the Dominion Boulevard (US 17) bridge that all span the Southern Branch of the Elizabeth River, and the Centerville Turnpike (SR170) bridge across the Albemarle and Chesapeake Canal. The changes are necessary in order to relieve increased vehicular traffic congestion during weekday rush hours and to reduce traffic delays while still providing for the reasonable needs of navigation. The change will extend the morning and evening rush hour closure periods between one hour and one-half hour for the Jordan, Gilmerton and Dominion bridges and add rush hour schedule openings for the Centerville Turnpike bridge.

**DATES:** This rule is effective November 17, 2003.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD05–02–108) and are available for inspection or copying at the Commander (oan-b), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23703–5004, between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** Linda Bonenberger, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6227.

**SUPPLEMENTARY INFORMATION:**

### Regulatory History

On February 12, 2003, we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albemarle and Chesapeake Canal, Chesapeake, VA" in the **Federal Register** (68 FR 7087). We received 84 written comments and two petitions on the proposed rule. No public hearing was requested nor held.

### Background and Purpose

The Virginia Cut of the Atlantic Intracoastal Waterway (AICW) extends approximately 28 statute miles from the Southern Branch of the Elizabeth River to the North Landing River. General regulations governing the operation of bridges are set out in 33 CFR 117.1 through 117.49. Specific drawbridge regulations, which supplement the general regulations for certain AICW bridges, are set out in 33 CFR 117.997.

The City of Chesapeake (the City), through a Resolution submitted by the Chesapeake City Council, requested changes to the existing regulations for the Jordan, Gilmerton, Dominion Boulevard and Centerville Turnpike bridges crossing the AICW, in order to balance the needs of mariners and motorists transiting in and around Chesapeake. Bridge openings at peak traffic hours during the weekdays cause considerable backups. The City is seeking to reduce the amount of vehicular traffic congestion during the weekday morning and evening rush hours. The City requested an additional change for the Dominion Boulevard bridge, from opening on signal to opening on the hour and half hour between peak traffic hours.

Recreational, public, and commercial vessels use the AICW. During the spring and fall months, the flow of recreational vessels is constant due to vessel owners that are referred to as "snowbirds". Owners of these recreational vessels are either transiting north to south towards a warmer climate in the fall or south to north towards a cooler climate in the spring and this can result in excessive bridge openings during the rush hour due to their numbers.

On February 12, 2003, a NPRM was published in the **Federal Register** (68 FR 7087) proposing changes to the Jordan, Gilmerton, and Dominion Boulevard bridges that all span the Southern Branch of the Elizabeth River and the Centerville Turnpike bridges across the Albemarle and Chesapeake Canal. As a result of this proposal, 84 comments and two petitions were received on the proposed changes. Based on all the information received, we have made no changes from the proposed schedules for the Jordan, Gilmerton and Centerville Turnpike Bridges. However, we have made changes to the final rule for the Dominion Boulevard Bridge.

### Discussion of Comments and Changes

#### *Jordan Bridge*

The Coast Guard received 12 comments on the NPRM for the Jordan Bridge. Seven of the comments requested a change in the start of the morning rush hour closure period by a half-hour from 6:30 a.m. to 6 a.m. The Coast Guard reviewed the City's weekday road traffic counts that were conducted in 1996 and again in 2001. The rush hour traffic count for these years revealed that vehicular traffic starts around 6:30 a.m. during the weekday. The remaining five comments requested mid-point bridge openings for vessels at 7:30 a.m., during the morning closure period from 6:30 a.m. to 8:30 a.m., and 4:30 p.m., during the evening closure period from 3:30 p.m. to 5:30 p.m. Based on the increased frequency of weekday vehicular traffic, as discussed in the NPRM, providing a mid-point bridge opening would undo the intent for reducing traffic congestion. The Coast Guard considered the comments, but has not changed the final rule.

### *Gilmerton Bridge*

The Coast Guard received 10 comments on the NPRM for the Gilmerton Bridge. Two comments requested that vessel openings be provided only on the hour or half-hour between the morning and evening rush hours. The remaining eight comments requested an extension of the evening closure period. The Coast Guard reviewed the draw logs and believes the proposal is designed to balance the competing needs of vehicular and vessel traffic. The Coast Guard considered the comments, but has not changed the final rule.

### *Dominion Boulevard Bridge*

The Coast Guard received 48 comments and two petitions on the NPRM for the Dominion Boulevard Bridge. Thirty-four comments requested changing the proposed opening schedule on the hour and half-hour between 8:30 a.m. and 5 p.m., Monday through Friday, except Federal holidays, to open every hour on the half-hour during this period.

The Great Bridge (S168) Bridge across the Albermarle and Chesapeake Canal at mile 12.0 located just south of the Dominion Boulevard Bridge provides drawbridge openings on the hour between 6 a.m. to 7 p.m., seven days a week, year round. The Great Bridge Locks, (the Locks) owned and operated by the U. S. Army Corps of Engineers, (the Army Corps) is located between the Dominion Boulevard and the Great Bridge (S168) Bridges. The Locks opens for vessels traveling south on demand between 7 a.m. to 6 p.m., seven days a week. In practice, the Locks close their gates near the quarter of the hour at which time the water level is raised. However, according to the Army Corps if a boater reaches the gates after they have been closed, the Army Corps will open the gates to allow the boater inside in order to avoid missing the hourly opening of the Great Bridge (S168) Bridge. After attaining the required water level, the gates are opened so boaters can continue their transit with the hourly opening schedule of the Great Bridge (S168) Bridge.

A study conducted on March 3, 1999, determined an average transiting time of mariners at each location along the AICW between the Dominion Boulevard and the Great Bridge (S168) Bridges. A 41-foot Coast Guard (CG) Search and Rescue vessel assisted in the study. The Coast Guard vessel traveling at an average speed of 10 knots, determined to be the average speed of most AICW boaters, started at the Dominion Boulevard Bridge at approximately 10:13 a.m. Proceeding south of the Dominion Boulevard Bridge, the CG vessel arrived at the Locks at approximately 10:30 a.m. The Locks released the CG vessel at approximately 10:50 a.m. At 10:54 a.m., the CG vessel arrived in time for the scheduled hour opening of the Great Bridge (S168) Bridge. The CG vessel transiting time between the Dominion Boulevard and Great Bridge (S168) Bridges totaled 41 minutes. This total transit time included the 20 minutes the CG vessel waited for the Locks to open.

Based on the transit times, we have determined changing the regulations that govern the operation of the Dominion Boulevard Bridge to open every hour on the half-hour to coincide with the Great Bridge (S168) Bridge and the Locks will enable transient craft to reduce delays in navigating the AICW while also helping to ease vehicular traffic congestion. The bridge will open on signal for commercial vessels that provide a 2-hour advance notice and will open on demand at all times for commercial vessels carrying liquefied flammable gas or other hazardous materials. The final rule was changed to reflect these modifications.

The remaining 14 comments requested no vessel openings of the Dominion Boulevard Bridge during the morning and evening closure periods. The Coast Guard considered these comments, but has not changed the final rule.

Two petitions offered by local marinas requested a change to the proposed schedule between 8:30 a.m. and 5 p.m. Monday through Friday, except Federal holidays, from year-round to Memorial Day through Labor Day. The local marina owners also suggested that due to the high volume of "snowbirds" transiting the AICW, openings should be provided on signal before Memorial Day and after Labor Day for the safety of navigation.

The remaining comments indicate that road congestion starts at 4 p.m. versus 5 p.m. The final rule will maintain the current evening closure period from 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays.

The Coast Guard considered these changes to be more efficient and safer to navigation and the final rule was changed to reflect these modifications.

## Centerville Turnpike Bridge

The Coast Guard received 17 comments on the NPRM for the Centerville Turnpike bridge. The comments varied to change the half-hour opening proposal for recreational vessels between 8:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays to provide one and two hour openings. Based on the draw logs and traffic counts provided by the City, an additional restriction is unfair to the boating public and would be potentially hazardous to boaters. The Coast Guard considered the comments, but has not changed the final rule.

## Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We reached this conclusion based on the fact that this rule will have only a minimal impact on maritime traffic transiting the bridges. Mariners can plan their transits in accordance with the scheduled bridge openings, to further minimize delay.

## Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less that 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will not have a significant economic impact on a substantial number of small entities because the rule adds minimal restrictions to the movement of navigation, and mariners can plan their transits in accordance with the schedule bridge openings to minimize delay.

## Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1966 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. In our notice of proposed rulemaking, we provided a point of contact to small entities who could answer questions concerning proposed provisions or options for compliance.

### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1 paragraph (32)(e) of the Instruction, from further environmental documentation.

### List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. In § 117.997 paragraphs (b)(1), (b)(2) introductory text, (b)(2)(i), (d)(1), (d)(2) introductory text, (d)(2)(i), (f) and (i) are revised to read as follows:

**§ 117.997 Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to Albemarle and Chesapeake Canal.**

* * * * *

(b) * * *

(1) Shall open on signal at any time for commercial vessels carrying liquefied flammable gas or other hazardous materials.

(2) From 6:30 a.m. to 8:30 a.m. and from 3:30 p.m. to 5:30 p.m., Monday through Friday, except Federal holidays:

(i) Need not open for the passage of recreational or commercial vessels that do not qualify under paragraph (b)(2)(ii) of this section.

* * * * *

(d) * * *

(1) Shall open on signal at any time for commercial vessels carrying liquefied flammable gas or other hazardous materials.

(2) From 6:30 a.m. to 8:30 a.m. and from 3:30 p.m. to 5:30 p.m., Monday through Friday, except Federal holidays:

(i) Need not open for the passage of recreational or commercial vessels that do not qualify under paragraph (d)(2)(ii) of this section.

* * * * *

(f) The draw of the Dominion Boulevard (US 17) bridge, mile 8.8 in Chesapeake:

(1) Shall open on signal at any time for commercial vessels carrying liquefied flammable gas or other hazardous materials.

(2) From 6:30 a.m. to 8:30 a.m. and from 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays:

(i) Need not open for the passage of recreational or commercial vessels that do not qualify under paragraph (f)(2)(ii) of this section.

(ii) Need not open for commercial cargo vessels, including tugs, and tugs with tows, unless 2 hours advance notice has been given to the Dominion Boulevard bridge at (757) 547–0521.

(3) From Memorial Day to Labor Day, from 8:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays, the draw need be opened only every hour on the half-hour.

(4) If any vessel is approaching the bridge and cannot reach the draw exactly on the half hour, the drawtender may delay the opening up to ten minutes past the half hour for the passage of the approaching vessel and any other vessels that are waiting to pass.

(5) Shall open on signal at all other times.

* * * * *

(i) The draw of the Centerville Turnpike (SR170) bridge across the Albemarle and Chesapeake Canal, mile 15.2, at Chesapeake:

(1) Shall open on signal at any time for commercial vessels carrying liquefied flammable gas or other hazardous materials.

(2) From 6:30 a.m. to 8:30 a.m. and from 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays:

(i) Need not open for the passage of recreational or commercial vessels that do not qualify under paragraph (i)(2)(ii) of this section.

(ii) Need not open for commercial cargo vessels, including tugs, and tugs with tows, unless 2 hours advance notice has been given to the Centerville Turnpike bridge at (757) 547–3632.

(3) From 8:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays, the draw need only be opened on the hour and half hour.

(4) If any vessel is approaching the bridge and cannot reach the draw exactly on the hour or half hour, the drawtender may delay the opening ten minutes past the hour or half hour for the passage of the approaching vessel and any other vessels that are waiting to pass.

(5) Shall open on signal at all other times.

Dated: October 3, 2003.

**Sally Brice-O'Hara,**

*Rear Admiral, U. S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 03–26131 Filed 10–15–03; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[CGD05–03–153]**

**RIN 1625–AA00**

## Safety/Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety/security zone at the Cove Point Liquefied Natural Gas (LNG) Terminal under 33 CFR 165.502. This is in response to the re-opening of the terminal by Dominion Power in July 2003. This safety and security zone is necessary to help ensure public safety and security. The zone will prohibit vessels and persons from entering a well-defined area of 500 yards in all directions around the Cove Point LNG Terminal.

**DATES:** This rule is effective from September 26, 2003, through January 5, 2004.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CG05–03–153] and are available for inspection or copying at Commander, U.S. Coast Guard Activities, 2401 Hawkins Point Road, Building 70, Port Safety, Security and Waterways Management Branch, Baltimore, Maryland, 21226–1791 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Dulani Woods, at Coast Guard Activities Baltimore, Port Safety, Security and Waterways Management Branch, at telephone number (410) 576–2513.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On March 20, 2003, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** entitled "Safety and Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, Maryland" (68 FR 13647). In it we proposed a permanent safety and security zone. We received six letters commenting on the proposed rule. And in response to a request for a public meeting, we announced a June 5, 2003 public meeting and reopened the comment period to June 12, 2003. (68 FR 26247, May 15, 2003).

On August 1, 2003, we published a temporary final rule (TFR) entitled "Safety and Security Zone; Cove Point Natural Gas Terminal, Chesapeake Bay, Maryland, to provide temporary protection while the rulemaking for the permanent rule was underway (68 FR 45165). That TFR expired September 26, 2003.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard is currently reviewing the additional comments received during the re-opened comment period and public meeting and requires more time to develop the final rule based on these additional comments. The Coast Guard believes it is in the best interest of public safety to establish this temporary safety and security zone while it continues to consider comments that may affect the final rule.

### Background and Purpose

In preparation for the re-opening of the LNG terminal at Cove Point, MD, the Coast Guard is evaluating the current safety zone established in 33 CFR 165.502. This safety zone was established during the initial operation of the terminal in 1979 and includes both the terminal and associated vessels. To better manage the safety and security of the LNG terminal, this rule incorporates necessary security provisions and changes the size of the zone. This rule establishes a 500 yard combined safety zone and security zone in all directions around the LNG terminal at Cove Point.

Based on the September 11, 2001 terrorist attacks on the World Trade Center buildings in New York, NY and the Pentagon building in Arlington, VA, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Cove Point LNG Terminal. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Espionage Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) ("Magnuson Act"), section 104 of the Maritime Transportation Security Act of November 25, 2002, and by implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

### Discussion of This Rule

This temporary final rule is identical to the previous TFR published in the **Federal Register** (68 FR 45165) on August 1, 2003. The Coast Guard was unable to publish an extension to that rule, but the practical effect of this new TFR is the same—to continue to provide a temporary safety and security zone in this area.

The Coast Guard is establishing a temporary safety and security zone on specified waters of the Chesapeake Bay near the Cove Point Liquefied Natural Gas Terminal to reduce the potential threat that may be posed by vessels or persons that approach the terminal. The zone will extend 500 yards in all directions from the terminal. The effect will be to prohibit vessels or persons entry into the safety and security zone, unless specifically authorized by the Captain of the Port, Baltimore, Maryland. Federal, state and local agencies may assist the Coast Guard in the enforcement of this rule.

### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of

Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). This regulation is of limited size, and vessels may transit around the zone.

There may be some adverse effects on the local maritime community that has been using the area as a fishing ground. Since the terminal has not been in operation, the Coast Guard has not enforced the current zone under 33 CFR 165.502. Commercial vessel operators have been using the area on a regular basis for commercial fishing, passenger tours, and fishing parties. Enforcement of the proposed zone or the current zone will prohibit these commercial vessel operators from using this area.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Chesapeake Bay near the Cove Point LNG Terminal.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that will limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rule establishes a security zone. A final "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES**.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226,1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191,195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064, Department of Homeland Security Delegation No. 0170.1.

■ 2. From September 26, 2003, through January 5, 2004, add § 165.T05–153 to read as follows:

### § 165.T05–153 Safety and Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, Maryland.

(a) *Location*. The following area is a safety and security zone: All waters of the Chesapeake Bay, from surface to bottom, encompassed by lines connecting the following points, beginning at 38°24′27″ N, 076°23′42″ W, thence to 38°24′44″ N, 076°23′11″ W, thence to 38°22′55″ N, 076°22′27″ W, thence to 38°23′37″ N, 076°22′58″ W, thence to beginning at 38°24′27″ N, 076°23′42″ W. These coordinates are based upon North American Datum (NAD) 1983. This area is 500 yards in all directions from the Cove Point LNG terminal structure.

(b) *Regulations*. (1) In accordance with the general regulations in §§ 165.23 and 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Baltimore, Maryland or his designated representative. Designated representatives include any Coast Guard commissioned, warrant, or petty officer.

(2) Persons desiring to transit the area of the zone may contact the Captain of the Port at telephone number (410) 576–2693 or via VHF Marine Band Radio channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

(c) *Enforcement*. The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, local, and private agencies.

Dated: September 26, 2003.

**Curtis A. Springer,**

*Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.*

[FR Doc. 03–26128 Filed 10–15–03; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF VETERAN AFFAIRS

## 38 CFR Part 3

## RIN 2900–AL55

# Disease Associated With Exposure to Certain Herbicide Agents: Chronic Lymphocytic Leukemia

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning presumptive service connection for certain diseases for which there is no record during service. This amendment is necessary to implement the decision of the Secretary of Veterans Affairs that there is a positive association between exposure to herbicides used in the Republic of Vietnam during the Vietnam era and the subsequent development of chronic lymphocytic leukemia (CLL). The effect of this amendment is to establish presumptive service connection for that condition based on herbicide exposure.

**DATES:** *Effective Date:* October 16, 2003.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Konieczny, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–6779.

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** on March 26, 2003 (68 FR 14567–14570), VA proposed to amend its adjudication regulations to provide for a presumption of service connection for CLL based on herbicide exposure. VA provided a 60-day comment period which ended on May 27, 2003. We received a written comment from Vietnam Veterans of America (VVA) and a joint written comment from two individuals.

### Comments Supporting the Proposed Rule

The joint comment from two individuals expressed support for the proposed rule.

### Outreach Mechanisms

One commenter urged that the final rule specifically state that VA will develop and implement outreach mechanisms by which attempts will be made to contact all in-country Vietnam veterans who are eligible for this benefit.

VA has already initiated a number of outreach activities. In January 2003, VA issued a news release concerning the Secretary's decision regarding CLL. This news release has also been distributed at health fairs, health care conferences, and on the National Mall in conjunction with Public Service Recognition Week. An article conveying this information can currently be found on VA's Web site. The lead article of the July issue of the Agent Orange Review, which will be sent to hundreds of thousands of Vietnam veterans, is about the Secretary's decision regarding CLL. Further, outreach efforts are procedural in nature, and are outside the scope of this rulemaking; therefore, no change is made based on this comment.

### Establish a Retroactive Effective Date

The same commenter urged that the final rule state that compensation for CLL will be retroactive for those eligible in-country Vietnam veterans who had previously applied for benefits based on CLL and were denied. We will make no change based on this comment because VA does not have authority to award such retroactive benefits. As explained below, existing statutes make clear that VA may not award retroactive benefits based on this final rule for any period before the date this final rule is published in the **Federal Register**. Those statutes prohibit VA from granting benefits retroactive to the date of a previously denied claim. No statute or judicial decision authorizes VA to ignore those statutory requirements for purposes of this final rule.

Title 38 U.S.C. 1116(c)(2) clearly and unambiguously requires that regulations promulgated as a result of a decision of the Secretary of Veterans Affairs that a positive association exists between exposure to herbicides and a specified condition or disease "shall be effective on the date of issuance." The effective date established by this rule is in accordance with 38 U.S.C. 1116(c)(2). Under 38 U.S.C. 5110(g), when benefits are awarded based on a new regulation, the effective date of the award may not be earlier than the effective date of the regulation. In view of 38 U.S.C. 1116(c)(2) and 5110(g), VA does not have authority to provide in this rule for assignment of an effective date earlier than the date on which this rule is issued.

We note that a series of orders from the United States District Court for the Northern District of California in the class-action litigation in *Nehmer* v. *U.S. Veterans' Administration* requires VA to pay retroactive benefits for certain diseases associated with herbicide exposure, in certain circumstances, in a manner that would otherwise be prohibited by 38 U.S.C. 1116(c)(2) and 5110(g). We conclude, however, that those orders do not apply to benefits based on a disease for which the Secretary of Veterans Affairs establishes a presumption of service connection after September 30, 2002.

The *Nehmer* court orders rely upon a May 1991 Final Stipulation and Order between the parties to that litigation. The 1991 stipulation and order required VA to accord retroactive effect to presumptions of service connection established by VA pursuant to the Agent Orange Act of 1991, Public Law 102–4. The Agent Orange Act of 1991, Public Law 102–4, established a sunset date of September 30, 2002, for the Secretary to establish such presumptions. Accordingly, the *Nehmer* stipulation and order applies only to awards based on presumptions established within the time frame specified in the Agent Orange Act of 1991, Public Law 102–4.

The Agent Orange Act of 1991, Public Law 102–4, added section 1116 to title 38, United States Code. Section 1116(b) authorized the Secretary of Veterans Affairs to issue regulatory presumptions of service connection for diseases associated with herbicide exposure. Section 1116(e), as added by the Act, stated that section 1116(b) would cease to be effective 10 years after the first day of the fiscal year in which the NAS transmitted its first report to VA. The first NAS report was transmitted in June 1993, during the fiscal year that began on October 1, 1992. Accordingly, under the Act, VA's authority to issue regulatory presumptions as specified in section 1116(b) would have expired on September 30, 2002.

In December 2001, Congress enacted the Veterans Education and Benefits Expansion Act of 2001 (Benefits Expansion Act), Public Law 107–103, section 201(d) of which extended VA's authority under section 1116(b) through September 30, 2015. Pursuant to this statute, VA may issue new regulations between October 1, 2002, and September 30, 2015, establishing additional presumptions of service connection for diseases that are found to be associated with herbicide exposure based on evidence contained in future NAS reports. Because presumptions established pursuant to the authority of the Benefits Expansion Act, Public Law 107–103 are beyond the scope of the *Nehmer* stipulation and order, the effective-date provisions of the stipulation and order would not apply to benefit awards based on those presumptions.

The United States District Court for the Northern District of California and the United States Court of Appeals for the Ninth Circuit stated that the *Nehmer* stipulation and order applies only to awards based on presumptions issued within the time period established by the Agent Orange Act of 1991, Public Law 102–4. The district court noted that the retroactive payment provisions of the stipulation and order are "expressly tied" to the Agent Orange Act of 1991, Public Law 102–4, and that "the Stip. & Order is not therefore boundless." *Nehmer* v. *United States Department of Veterans Affairs*, No. CV–86–6160 TEH (N.D. Cal. Dec. 12, 2000). The Ninth Circuit stated that "the district court was careful to prescribe temporal limits on the effect of the consent decree, with which we agree." *Nehmer* v. *Veterans' Administration*, 284 F.3d 1158, 1162 n.3 (9th Cir. 2002).

In its December 12, 2000, order, the district court held that the 1991 stipulation and order must be interpreted in accordance with general principles of contract law. It is well established that, unless the parties provide otherwise, a contract is presumed to incorporate the law that existed at the time the contract was made. See *Norfolk & Western Ry. Co.* v. *American Train Dispatchers' Ass'n*, 499 U.S. 117, 129–30 (1991). The terms of a contract "do not change with the enactment of subsequent legislation, absent a specific contractual provision providing for such a change." *Winstar Corp.* v. *United States*, 64 F.3d 1531, 1547 (Fed. Cir. 1995), *aff'd*, 518 U.S. 839 (1996). A subsequent change in the law cannot retrospectively alter the terms of the agreement. See *Florida East Coast Ry. Co.* v. *CSX Transportation, Inc.*, 42 F.3d 1125, 1129–30 (7th Cir. 1994). Accordingly, the enactment of the Benefits Expansion Act of 2001 cannot expand the Government's authority under the May 1991 stipulation and order.

VA is required to give effect to the clear statutory requirements in 38 U.S.C. 1116(c)(2) and 5110(g), in the absence of authority to the contrary. To the extent the *Nehmer* court orders require action seemingly at odds with those statutes, we believe they are most reasonably viewed as creating a non-statutory exception to the requirements of 38 U.S.C. 1116(c)(2) and 5110(g). We believe it would be inappropriate, however, to disregard the clear requirements of section 1116(c)(2) and 5110(g) in cases that are not within the scope of the *Nehmer* court orders. The United States Court of Appeals for the Federal Circuit and the United States Court of Appeals for Veterans Claims have held that 38 U.S.C. 5110(g) governs the effective date of awards made pursuant to regulatory presumptions of service connection for diseases associated with herbicide exposure, at least in cases that are not clearly within the scope of the *Nehmer* court orders. See *Williams* v. *Principi*, 15 Vet. App. 189 (2001) (en banc); *aff'd*, 310 F.3d 1374 (Fed. Cir. 2002). Accordingly, the district court orders in the *Nehmer* case do not permit VA to ignore the clear requirements of 38 U.S.C. 1116(c)(2) and 5110(g) as they apply to this final rule or to grant retroactive benefits in a manner prohibited by those statutes. We therefore make no change based on this comment.

**Eligibility of Widows**

The commenter urged that the final rule state that widows of in-country Vietnam veterans who died as a result of CLL are eligible for dependency and indemnity compensation (DIC). This rule is not intended to define the criteria governing eligibility for DIC or any other benefit. Several existing statutes and regulations already provide that veterans and their survivors are entitled to benefits for disability or death due to a service-connected disease or injury. This rule would establish a presumption that CLL is service connected in veterans who were exposed to certain herbicide agents used in Vietnam and who subsequently developed that disease. That presumption will assist claimants in establishing entitlement to specific benefits under the statutes and regulations authorizing such benefits, and will apply whether the claimant is a veteran seeking compensation or a survivor seeking service-connected death benefits. We therefore make no change based on this comment, because the suggested change is beyond the scope of this rule and is unnecessary.

**Extend Eligibility to Those Who Served on Naval Vessels**

The commenter urged that we extend eligibility to service connection for CLL to all Vietnam veterans who served within the geographical boundaries of the Republic of Vietnam and those who served on naval vessels within the territorial waters of the Republic of Vietnam. As revised by this final rule, 38 CFR 3.309(e) will expressly provide that CLL will be presumed service connected in any veteran who was exposed to certain herbicide agents during service. Veterans who served in the Republic of Vietnam between January 9, 1962, and May 7, 1975, are presumed to have been exposed to such herbicide agents. Veterans who served only in other locations or at other times, including those who served on naval vessels in the territorial waters of Vietnam but never set foot within the Republic of Vietnam, would need to establish that they were exposed to herbicide agents during service.

Title 38 U.S.C. 1116 requires that a veteran have served "in the Republic of Vietnam" to be eligible for the presumption of exposure to herbicides. 38 CFR 3.307(a)(6)(iii) provides that "Service in the Republic of Vietnam" includes service in offshore waters or other locations only if the conditions of service involved duty or visitation within the Republic of Vietnam. In interpreting similar language in 38 U.S.C. 101(29)(A), VA's General Counsel has concluded that service in a deep-water vessel in waters offshore the Republic of Vietnam does not constitute service "in the Republic of Vietnam." (*See* VAOPGCPREC 27–97.) VA's regulatory definition of "Service in the Republic of Vietnam" predates the enactment of section 1116(a)(3) (see former 38 CFR 3.311a(a)(1)(1990)), and we find no basis to conclude that Congress intended to broaden that definition. The commenter cited no authority for concluding that individuals who served in the waters offshore of the Republic of Vietnam were subject to the same risk of herbicide exposure as those who served within the geographic boundaries of the Republic of Vietnam, or for concluding that offshore service is within the meaning of the statutory phrase "Service in the Republic of Vietnam." We therefore make no change based on this comment.

### CLL and Non-Hodgkin's Lymphoma

The commenter stated that because of the common etiology and shared symptoms between CLL and non-Hodgkin's lymphoma (NHL), all in-country Vietnam veterans who are eligible for compensation because of NHL should also be eligible for CLL diagnoses, treatment plans, and compensation.

We disagree. While CLL and NHL may share certain traits and symptomatology, they are, nonetheless, distinct diagnostic entities, both of which VA presumes to result from herbicide exposure. We believe the responsibilities of diagnosing disease and establishing treatment plans must rest with health care professionals. Further, it would be improper and contrary to current statutes to provide for automatic compensation for a disease that the claimant may not even have. Whether a veteran has one of these conditions, or which one, must be established by competent medical evidence. Therefore, no changes have been made based on this comment.

Based on the rationale set forth in the proposed rule document and this document, we are adopting the provisions of the proposed rule as a final rule without change.

### Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

### Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

### Executive Order 12866

This final rule has been reviewed by the Office of Management and Budget under Executive Order 12866.

### Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of 603 and 604.

### Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

### List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: August 27, 2003.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

■ For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

## PART 3—ADJUDICATION

### Subpart A "Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

**Authority:** 38 U.S.C. 501(a), unless otherwise noted.

■ 2. In § 3.309, paragraph (e), the listing of diseases is amended by adding "Chronic lymphocytic leukemia" between "Hodgkin's disease" and "Multiple myeloma" to read as follows:

**§ 3.309 Disease subject to presumptive service connection.**

* * * * *

(e) * * *

Chronic lymphocytic leukemia

* * * * *

[FR Doc. 03–26252 Filed 10–15–03; 8:45 am]

**BILLING CODE 8320–01–P**

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 271

**[FRL–7575–1]**

## West Virginia: Final Authorization of State Hazardous Waste Management Program Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Immediate final rule.

**SUMMARY:** West Virginia has applied to EPA for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for final authorization and is authorizing West Virginia's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize West Virginia's changes to its hazardous waste program will take effect. If we receive comments that oppose this action, or portions thereof, we will publish a document in the **Federal Register** withdrawing the relevant portions of this rule, before they take effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize changes to West Virginia's program that were the subject of adverse comment.

**DATES:** This final authorization will become effective on December 15, 2003, unless EPA receives adverse written comments by November 17, 2003. If EPA receives any such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization, or portions thereof, will not take effect as scheduled.

**ADDRESSES:** Send written comments to Lillie Ellerbe, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–5454. Comments may also be submitted electronically to *ellerbe.lillie@epa.gov* or by facsimile at (215) 814–3163. Comments in electronic format should identify this specific notice. You may inspect and copy West Virginia's application from 8 a.m. to 4:30 p.m., at the following addresses: West Virginia Department of Environmental Protection

(WVDEP), Division of Water and Waste Management, 1356 Hansford Street, Charleston, WV 25301–1401, Phone number: (304) 558–2505, attn: Carroll Cather, and EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–5254.

**FOR FURTHER INFORMATION CONTACT:** Lillie Ellerbe, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–5454.

**SUPPLEMENTARY INFORMATION:**

### A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes to become more stringent or broader in scope, States must change their programs and apply to EPA to authorize the changes. Authorization of changes to State programs may be necessary when Federal or State Statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must revise their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

### B. What Decisions Has EPA Made in This Rule?

EPA concludes that West Virginia's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant West Virginia final authorization to operate its hazardous waste program with the changes described in its application for program revisions, subject to the procedures described in Section E, below. West Virginia has responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those HSWA requirements and prohibitions for which West Virginia has not been authorized, including issuing HSWA permits, until the State is granted authorization to do so.

### C. What Is the Effect of Today's Authorization Decision?

This decision serves to authorize revisions to West Virginia's authorized hazardous waste program. This action does not impose additional requirements on the regulated community because the regulations for which West Virginia is being authorized by today's action are already effective and are not changed by today's action. West Virginia has enforcement responsibilities under its State hazardous waste program for violations of its program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Perform inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions regardless of whether West Virginia has taken its own actions.

### D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize West Virginia's program changes. If EPA receives comments which oppose this authorization, or portions thereof, that document will serve as a proposal to authorize the changes to West Virginia's program that were the subject of adverse comment.

### E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, or portions thereof, we will withdraw this rule, or portions thereof, as appropriate, by publishing a document in the **Federal Register** before the rule would become effective. EPA will base any further decision on the authorization of West Virginia's program changes on the proposal mentioned in the previous section. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose the authorization of a particular change to the State's hazardous waste program, we will withdraw that part of this rule, but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

### F. What Has West Virginia Previously Been Authorized for?

Initially, West Virginia received final authorization to implement its hazardous waste management program effective May 29, 1986 (51 FR 17739). EPA granted authorization for changes to West Virginia's regulatory program on May 10, 2000, effective July 10, 2000 (65 FR 29973).

### G. What Changes Are We Authorizing With Today's Action?

On June 4, 2003, West Virginia submitted a program revision application, seeking authorization of additional changes to its program in accordance with 40 CFR 271.21. West Virginia's revision application includes various regulations which are equivalent to, and no less stringent than, changes to the Federal hazardous waste program, as published in the **Federal Register** through March 8, 2000. We now make an immediate final decision, subject to receipt of written comments that oppose this action, the West Virginia's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Therefore, EPA grants West Virginia final authorization for the following program changes:

West Virginia seeks authority to administer the Federal requirements that are listed in Table 1. This Table lists the State analogs that are being recognized as so less stringent than the appropriate Federal requirements. Unless otherwise stated, the State's statutory references are to the West Virginia Code (W. Va. Code), 1994 Cumulative Supplement, Chapter 22–Environmental Resources, Article 1 (Division of Environmental Protection), Article 5 (Air Pollution Control), and Article 18 (Hazardous Waste Management Act). The regulatory references are to the following Legislative Rules: Title 33, Series 20, Code of State Regulations (33CSR20), "Hazardous Waste Management Rule", effective July 1, 2001; 45CSR25, "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities," effective July 1, 2001; and 47CSR13 Underground Injection Control" effective June 1, 2002.

In particular, West Virginia is seeking authority for the Federal Corrective Action Program under HSWA as addressed in Revision Checklists 17L, 44A, B, C, and 121; Federal delisting requirements at 40 CFR 260.22, Revision Checklist 17B; post closure permit requirement and closure process regulations (alternative to post-closure rule), Revision Checklist 174; the radioactive mixed waste requirements, and Project XL rulemaking for Osi Specialities, Inc., Sisterville, WV (aka Crompton Corporation).

| Description of Federal Requirement (Revision Checklists[1]) | Analogous West Virginia Authority |
|---|---|
| **Early Checklists** | |
| Consolidated Delisting Checklist, Hazardous Waste Management System: General 40 CFR 260.20 and 260.22 as of June 30, 1999 (Incluides Revision Checklist 17B). | West Virgina Code (W. Va. Code) 1994 Cumulative Supplement §§22–18–6(a)(12), 22–1–3(c), 22–18–5(a), 22–18–6(a) and 22–18–23, Hazardous Waste Management Regulations (HWMR) §§33–20–1.6, 33–20–2.1 and 33–20–2.4. |
| Corrective Action, 50 FR 28702–28755, 7/15/85, Revision Checklist 17L. | W. Va. Code §§22–18–9(a) and 22–1–3(c), 22–18–9(b)(1)–(2), 22–18–6(a)(4)(C), (F), (G), 22–18–7(e), 22–8–9(b)(2) HWMR §§33–20–1.6, 33–20–7.2, 33–20–11.1 and 33–20–11.23. |
| **Non-HSWA IV/HSWA Cluster II[2]** | |
| Permit Application Requirements Regarding Corrective Action, 52 FR 45788–45799, 12/1/87, Revision Checklist 44A. | W. Va. Code §§22–1–3(c), 22–18–8(a), 22–18–9(a) and 22–18–23, HWMR §§33–20–1.6, 33–20–11.1. |
| Corrective Action Beyond the Facility Boundary, 52 FR 45788–45799, 12/1/87, Revision Checklist 44B. | W. Va. Code §§22–18–9(b) and 22–1–3(c), HWMR §§33–20–1.6, 33–20–7.2. |
| Corrective Action for Injection Wells, 52 FR 45788–45799, 12/1/87, Revision Checklist 44C. | W. Va. Code §§22–18–9(a), 22–18–8(a) and 22–18–9(a), 22–18–23, 47 CSR 13, §Interim Status for Class I RCRA Injection wells (47 CSR 13 §7.3 (a–h), 47 CSR 13, §Class I RCRA Injection wells prohibited without a permit (47 CSR 13 §13.3), HWMR §§33–20–1.6 and 33–20–11.23. |
| **RCRA Cluster III** | |
| Corrective Action Management Units and Temporary Units, 52 FR 8658–8685, 2/16/93, Revision Checklist 121. | W. Va. Code §§22–18–9, 22–1–3(c), 22–18–5(a) 22–18–6(a) and 22–18–23, HWMR §§33–20–1.6, 33–20–2.1, 33–20–7.2, 33–20–8.1, 33–20–10.1, and 33–20–11.1. |
| **RCRA Cluster VIII** | |
| Land Disposal Restrictions Phase III—Emergency Extension of the K088 National Capacity Variance, Amendment, 62 FR 37694–37699, 7/14/97, Revision Checklist 160. | W. Va. Code §§22–18–5(a), 22–18–6(a), (a)(12)(A), (B), (D), 22–18–23 and 22–1–3(c), HWMR §§33–20–1.6 and 33–20–10.1. |
| Emergency Revision of the Carbamate Land Disposal Restrictions, 62 FR 45568, 8/28/97, Revision Checklist 161. | W. Va. Code §§22–18–5(a), 22–18–6(a), (a)(12)(A), (B), (D), 22–18–23 and 22–1–3(c), HWMR §§33–20–1.6 and 33–20–10.1. |
| Kraft Mill Stream Stripper Condensate Exclusion, 63 FR 18504–18751, 4/15/98, Revision Checklist 164. | W. Va. Code §§22–18–6(a), (a)(2)&(12), 22–1–3(c), 22–18–5(a), and 22–18–23, HWMR §§33–20–1.6, and 33–20–3.1, 45 CSR 25 §45–25–1.5a (Table 25–A, Item 20). |
| Recycled Used Oil Management Standards; Technical Correction and Clarification 63 FR 24963–24969, 5/5/98 as amended 7/14/98, at 63 FR 37780–37782, Revision Checklist 166. | W. Va. Code §§22–18–6(a)(14), 22–18–6(a)(15) and 22–1–3(c), HWMR §§33–20–1.6, 33–20–3.1 and 33–20–14.1. |
| Petroleum Refining Process Wastes, 63 FR 42110–42189, 8/6/98, Revision Checklist 169. | W. Va. Code §§22–18–5(a), 22–18–6(a), (a)(12)(A), (B), (D), 22–1–3(c), 22–18–23, HWMR §§33–20–1.6, 33–20–3.1, 33–20–10.1, 33–20–3.1a through 3.1.a.3, 33–20–9, 45 CSR 25, §45–25–1.5.a (Table 25–A, Item 20). |
| **RCRA Cluster IX** | |
| Land Disposal Restrictions Phase IV—Zinc Micronutrient Fertilizers, Amendment 63 FR 46332–46334, 8/31/98, Revision Checklist 170. | W. Va. Code §§22–18–5(a), 22–18–6(a), (a)(12)(A), (B), (D), 22–18–23 and 22–1–3(c), HWMR §§33–20–1.6 and 33–20–10.1. |
| Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes from Carbamate Production, 63 FR 47410–47418, 9/4/98, Revision Checklist 171. | W. Va. Code §§22–18–5(a), 22–18–6(a), (a)(12)(A), (B), (D), 22–18–23, and 22–1–3(c), HWMR §§33–20–1.6 and 33–20–10.1. |
| Land Disposal Restrictions Phase IV—Extension of Compliance Date for Characteristic Slags, 63 FR 48124–48127, 9/9/98, Revision Checklist 172. | W. Va. Code §§22–18–5(a), 22–18–6(a), (a)(12)(A), (B), (D), 22–18–23, and 22–1–3(c), HWMR §§33–20–1.6 and 33–20–10.1. |
| Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088); Final Rule, 63 FR 51254–51267, 9/24/98, Revision Checklist 173. | W. Va. Code §§22–18–5(a), 22–18–6(a), (a)(12)(A), (B) & (D), 22–18–23 and 22–1–3(c), HWMR §§33–20–1.6, 33–20–10.1. |
| Post-Closure Permit Requirements and Closure Process, 63 FR 56710–56735, 10/22/98, Revision Checklist 174. | W. Va. Code §§22–18–6(a) & (a)(5), 22–1–3(c), 22–18–5(a), 22–18–23, 22–18–14(f), 22–18–15 and 22–18–17(c), HWMR §§33–20–1.6, 33–20–7.2, 33–20–8.1, 33–20–11.1. |
| HWIR-Media, 63 FR 65874–65947, 11/30/98, Revision Checklist 175 ... | W. Va. Code §§22–18–6(a), (a)(2), (a)(5)&(12), 22–1–3(c), 22–18–5(a), 22–18–23, 22–18–9, 22–18–20 HWMR §§33–20–1.6, 33–20–2.1 33–20–3.1, 33–20–7.2, 33–20–8.1, 33–20–10–1, 33–20–11.1, 45 CSR 25, §45–25–1.5.a (Table 25–A, Item 20). |
| Universal Waste Rule—Technical Amendments, 63 FR 71225–71230, 12/24/98, Revision Checklist 176. | W. Va. Code §§22–1–3(c), 22–18–5(a), 22–18–6(a), 22–18–23 HWMR §§33–20–1.6, 33–20–13.1, 33–20–9. |

| Description of Federal Requirement (Revision Checklists[1]) | Analogous West Virginia Authority |
|---|---|
| Organic Air Emission Standards: Clarification and Technical Amendments, 64 FR 3382, 1/21/99, Revision Checklist 177. | W. Va. Code §§22–1–3(c), 22–5.1, 22–18–6(a), 22–18–6(a)(13)(A)&(B), 22–18–23, HWMR §§33–20–1.6, 33–20–3.1. 33–20–5.1, 33–20–7.2, 33–20–7.8, 33–20–8.1, 33–20–8.6, 33–20–11.1, 45 CSR 25, §§45–25–1.1.a, 45–25–1.1.b, 45–25–1.5a (Table 25–A, Items 6, 7, 8, 9, 10, 11 and 21). |
| Petroleum Refining Process Wastes—Leachate Exemption, 64 FR 6806, 2/11/99, Revision Checklist 178. | W. Va. Code §§22–18–6(a), (a)(2)&(12) 22–1–3(c), 22–18–5(a), 22–18–23, HWMR §§33–20–1.6, 33–20–3.1, 45 CSR 25, §45–25–1.5.a (Table 25–A, Item 20). |
| Land Disposal Restrictions Phase IV—Technical Corrections and Clarifications to Treatment Standards, 64 FR 25408–25417, 5/11/99, Revision Checklist 179. | W. Va. Code §§22–18–6(a), (a)(2)&(12)(A), (B), (D), 22–1–3(c), 22–18–5(a), 22–18–23, HWMR §§33–20–1.6, 33–20–3.1, 33–20–5.1, 33–20–10.1, 45 CSR 25, 45–25–1.5.a (Table 25–A, Item 20). |
| Test Procedures for the Analysis of Oil and Grease and Non-Polar Material, 64 FR 26315–26327, 5/14/99. Revision Checklist 180. | W. Va. Code §§22–1–3(c), 22–18–5(a), 22–18–6(a), 22–18–23, HWMR §§33–20–1.6, 33–20–2.1. |
| **RCRA Cluster X** | |
| Hazardous Air Pollutant Standards for Combustors, 64 FR 52828–53077, 9/30/99, as amended 11/19/99, at 64 FR 63209–63213, Revision Checklist 182. | W. Va. Code §§22–18–6(a), (a)(2) (5), (12), (13), 22–1–3(c), 22–18–5(a), 22–18–23, HWMR §§33–20–1.6, 33–20–3.1, 33–20–1.10, 45 CSR 25, §45–25–1.5a (Table 25–A, Item 20) and 1.5.c. |
| Accumulation Time for Waste Water Treatment Sludges, 65 FR 12378–12398, 3/8/00, Revision Checklist 184. | W. Va. Code §§22–18–6(a)&(a)(3), 22–1–3(c), 22–18–5(a), 22–18–23, HWMR §33–20–5.5. |
| **Radioactive Mixed Waste** | |
| Hazardous Components of Radioactive Mixed Wastes, 51 FR 24504, 7/3/86. | W. Va. Code §§22–18–3(16) 22–18–6(a)(2), HWMR §§33–20–1.6, and 33–20–3.1. |
| **Project XL** | |
| Project XL Site-Specific Rulemaking for Osi Specialities, Inc., Sisterville, WV, 63 FR 49384, as amended 9/15/98 and 63 FR 53844, 10/7/98. | W. Va. Code §§22–1–3(c), 22–5–1, 22–18–6(a), (a)(12), and (a)(13)(A)&(B), 45 CSR 25, §45–25–1.5.a (Table 25–A, Item 10). |

[1] A Revision Checklist is a document that addresses the specific changes made to the Federal regulations by one or more related final rules published in the **Federal Register**. EPA develops these checklists as tools to assist States in developing their authorization applications and in documenting specific State analogs to the Federal Regulations. For more information see EPA's RCRA State Authorization Web page at *http://www.epa.gov/epaoswer/hazwaste/state*.

[2] A RCRA "Cluster" is a set of Revision Checklists for Federal rules, typically promulgated between July 1 and June 30 of the following year.

### H. Where Are the Revised West Virginia Rules Different From the Federal Rules?

The West Virginia hazardous waste program contains certain provisions which are beyond the scope of the Federal program. These broader in scope provisions are not part of the program being authorized by today's action. EPA cannot enforce requirements which are broader in scope, although compliance with such provisions is required by West Virginia law. Examples of broader in scope provisions of West Virginia's program include, but are not limited to, the following:

1. At HWMR § 33–20–2.4.c, West Virginia provides for the acceptance of an EPA determination granting a petition to exclude hazardous waste, provided that certain conditions are met. If such conditions are not met, and West Virginia does not accept EPA's delisting of the hazardous waste, the waste would still be considered a hazardous waste under West Virginia's regulations, even though such waste would not be considered a hazardous waste by EPA. In this respect, West Virginia's program would be beyond the scope of the Federal program.

2. At HWMR § 33–20–2.4.b West Virginia regulations require a petitioner for a delisting to pay an initial non-refundable application fee of $1000 and allow the Director to recover all reasonable costs attributable to the review and investigation of such petition in excess of the initial fee. Since the Federal program does not require application fees to be submitted with a delisting petition, the collection of such fees is beyond the scope of the Federal program.

### I. Who Handles Permits After This Authorization Takes Effect?

After authorization, West Virginia will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which it issued prior to the effective date of this authorization. Until such time as formal transfer of EPA permit responsibility to West Virginia occurs and EPA terminates its permit, EPA and West Virginia agree to coordinate the administration of permits in order to maintain consistency. EPA will not issue any additional new permits or new portions of permits for the provisions listed in Section G after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which West Virginia is not yet authorized.

### J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in West Virginia?

West Virginia is not seeking authorization to protect the program on Indian lands, since there are no Federally-recognized Indian Lands in West Virginia.

### K. What Is Codification and Is EPA Codifying West Virginia's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by referencing the authorized State rules in 40 CFR part 272. EPA reserves the amendment of 40 CFR part 272, subpart

XX, for this authorization of West Virginia's program changes until a later date.

### L. Statutory and Executive Order Reviews

This rule only authorizes hazardous waste requirements pursuant to RCRA 3006 and imposes no requirements other than those imposed by State law (*see* **SUPPLEMENTARY INFORMATION**: Section A. Why are Revisions to State Programs Necessary?). Therefore, this rule complies with applicable executive orders and statutory provisions as follows:

1. *Executive Order 12866: Regulatory Planning Review*—The Office of Management and Budget has exempted this rule from its review under Executive Order (EO) 12866. 2. *Paperwork Reduction Act*—This rules does not impose an information collection burden under the Paperwork Reduction Act. 3. *Regulatory Flexibility Act*—After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities. 4. *Unfunded Mandates Reform Act*—Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act. 5. *Executive Order 13132: Federalism*—EO 12132 does not apply to this rule because it will not have federalism implications (*i.e.*, substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government). 6. *Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*—EO 13175 does not apply to this rule because it will not have tribal implications (*i.e.*, substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes). 7. *Executive Order 13045: Protection of Children from Environmental Health & Safety Risks*—This rule is not subject to EO 13045 because it is not economically significant and it is not based on health or safety risks. 8. *Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*—This rule is not subject to EO 13211 because it is not a significant regulatory action as defined in EO 12866. 9. *National Technology Transfer Advancement Act*—EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets the requirements of RCRA. Thus, section 12(d) of the National Technology Transfer and Advance Act does not apply to this rule. 10. *Congressional Review Act*—EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 et seq.) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective on December 15, 2003.

### List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority**: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 7, 2003.

**Donald S. Welsh,**

*Regional Administrator, EPA Region III.*

[FR Doc. 03–26047 Filed 10–15–03; 8:45 am]

BILLING CODE 6560–50–M

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 635

**[Docket No. 030613152-3235-02; I.D. 051903B]**

**RIN 0648–AQ38**

## Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Quota Specification, General Category Effort Controls, and Permit Revisions; Correction

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; correction

**SUMMARY:** NMFS published a final rule in the Federal Register on October 2, 2003, concerning the final initial 2003 fishing year specifications for the Atlantic bluefin tuna (BFT) fishery to set BFT quotas for each of the established fishing categories, to set General category effort controls, to allocate 25 metric tons (mt) of BFT to account for incidental catch of BFT by pelagic longline vessels "in the vicinity of the management boundary area," to define the management boundary area and applicable restrictions, and to revise permit requirements to allow General category vessels to participate in registered recreational Highly Migratory Species (HMS) fishing tournaments and to allow permit applicants a 10-calendar day period to make permit category changes to correct potential errors. The document contained an error in the **DATES** section.

**FOR FURTHER INFORMATION CONTACT:** Brad McHale at (978) 281–9260.

**SUPPLEMENTARY INFORMATION:**

### Correction

In the **Federal Register** of October 2, 2003, in FR Vol. 68, No. 191, page 56783, in the third column, correct the **DATES** caption to read:

DATES: This rule is effective November 3, 2003. The final initial quota specifications and General category effort controls are effective November 3, 2003, through May 31, 2004.

Dated: October 10, 2003.

**Rebecca J. Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 03–26201 Filed 10–15–03; 8:45 am]

BILLING CODE 3510–22–S

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 021212306–2306–01; I.D. 101003A]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Central Regulatory Area of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Modification of a closure.

**SUMMARY:** NMFS is reopening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the Gulf of Alaska (GOA) for 48 hours. This action is necessary to fully use the total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), October 12, 2003, through 1200 hrs, A.l.t., October 14, 2003.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the directed fishery for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA at 2400 hrs, October 1, 2003 (68 FR 57636, October 6, 2003).

NMFS has determined that, approximately 560 mt of Pacific cod remain in the directed fishing allowance. Therefore, in accordance with §§ 679.25(a)(1)(i) and (a)(2)(iii)(D), and to fully utilize the Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area, NMFS is terminating the previous closure and is reopening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 48 hours. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA effective 1200 hrs, A.l.t., October 14, 2003.

## Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent the Agency from responding to the most recent fisheries data in a timely fashion and delay the opening of the fishery for Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area, thus reducing the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: October 10, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–26193 Filed 10–10–03; 3:10 pm]

**BILLING CODE 3510–22–S**

# Proposed Rules

**Federal Register**
Vol. 68, No. 200
Thursday, October 16, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 301

**[Docket No. 00–035–2]**

**RIN 0579–AB19**

### Plum Pox Compensation

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the plum pox compensation regulations to provide additional compensation to affected growers, under certain conditions. We are proposing to provide additional compensation to growers who have already been paid under the existing regulations, which provide for payments based on a 3-year fallow period, but who are prohibited from replanting regulated articles for a total of more than 3 years due to additional detections of plum pox in areas already under quarantine. Such growers would be paid compensation for up to 2 additional years. We are also proposing to provide additional compensation to growers who are direct marketers of their fruit, and to provide compensation for growers who have had trees that were less than 1 year old destroyed. We are proposing these actions in response to issues that have surfaced during our 2 years of experience in managing the plum pox quarantine and paying compensation to affected growers. These proposed changes are necessary to provide adequate compensation to persons affected by the plum pox quarantine and eradication efforts associated with the quarantine.

**DATES:** We will consider all comments that we receive on or before December 15, 2003.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 00–035–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–035–2. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 00–035–2" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Poe, Operations Officer, Program Support Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

**SUPPLEMENTARY INFORMATION:**

## Background

Plum pox is an extremely serious viral disease of plants that can affect many *Prunus* (stone fruit) species, including plum, peach, apricot, almond, nectarine, and sweet and tart cherry. A number of wild and ornamental *Prunus* species may also be susceptible to this disease. Infection eventually results in severely reduced fruit production, and the fruit that is produced is often misshapen and blemished. In Europe, plum pox has been present for a number of years and is considered to be the most serious disease affecting susceptible *Prunus* varieties. Plum pox virus is transmitted locally by a variety of aphid species, as well as by budding and grafting with infected plant material, and spreads over longer distances through movement of infected budwood, nursery stock, and other plant parts.

There are no known effective methods for treating trees or other plant material infected with plum pox, nor are there any known effective prophylactic treatments to prevent the disease from occurring in trees exposed to the disease due to their proximity to infected trees or other plant material. Without effective treatments, the only option for preventing the spread of the disease is the destruction of infected and exposed trees and other plant material.

On March 2, 2000, as a result of the detection of plum pox in Adams County, PA, the Secretary of Agriculture published in the **Federal Register** (65 FR 11280–11281, Docket No. 00–001–1) a declaration of extraordinary emergency regarding plum pox that was effective on January 20, 2000. The declaration of extraordinary emergency was followed by an interim rule published in the **Federal Register** on June 2, 2000 (65 FR 35261–35265, Docket No. 00–034–1), that established regulations quarantining a portion of Adams County, PA, due to the detection of plum pox in that region[1] and restricting the interstate movement of certain articles from the quarantined area that present a risk of transmitting plum pox (*e.g.*, trees, seedlings, root stock, budwood, branches, twigs, and leaves of susceptible *Prunus* spp.). That interim rule, which established a new "Subpart-Plum Pox" (7 CFR 301.74 through 301.74–4), was promulgated on an emergency basis to prevent the spread of plum pox to noninfested areas of the United States.

On September 14, 2000, we published in the **Federal Register** (65 FR 55431–55436, Docket No. 00–035–1) another interim rule that established regulations to provide for the payment of compensation to owners of commercial stone fruit orchards and fruit tree nurseries who had stone fruit trees or nursery stock destroyed in order to control plum pox. Those compensation provisions, which were added to "Subpart-Plum Pox" as a new § 301.74–5, were necessary to reduce the economic effect of the plum pox quarantine on affected commercial growers and nursery owners, thus ensuring the continued cooperation of growers and nursery owners with the survey and eradication activities being conducted by the U.S. Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service (APHIS) and the Pennsylvania Department of Agriculture (PDA).

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[1] The particular strain of plum pox found in the quarantined area in Adams County, PA—the "D" strain—is not known to be transmitted by seed or fruit, and is not known to infect cherry.

**Existing Compensation Regulations**

Under the regulations in § 301.74–5 (referred to below as the regulations), owners of commercial stone fruit orchards and owners of fruit tree nurseries are eligible to receive compensation for losses associated with the destruction of trees in order to control plum pox and the prohibition on the movement or sale of nursery stock, respectively, if the losses result from an action performed pursuant to an emergency action notification (EAN) issued by APHIS.

The regulations provide, among other things, that owners of commercial stone fruit orchards will be compensated on a per-acre basis at a rate based on the age of the trees destroyed and a 3-year prohibition on the replanting of host trees. The compensation to be paid by USDA is based on the loss in value of the destroyed orchard. The loss in value is calculated as the difference between the net present value (NPV) of the original (destroyed) orchard over a 25-year life cycle minus the NPV of the replanted orchard for its entire productive life of 25 years. To calculate the NPV of an orchard (both original and replanted orchards), we used discounted cash flow analysis, which takes into account the quantity, variability, and duration of the forecasted income stream over a specified income projection period. Each year's net income is discounted back to a present worth figure at the appropriate, market-derived discount rate. The valuation model can be expressed in the following equation form, where Y = net income, r = discount rate, and n = number of years in the discount period:

$$NPV = \frac{Y_1}{(1+r)^1} + \frac{Y_2}{(1+r)^2} + \frac{Y_3}{(1+r)^3} + \ldots + \frac{Y_n}{(1+r)^n}$$

To calculate NPV using the above equation, we had to determine net income, discount rate, and the number of years in the discount period. Each of these inputs is discussed below.

The rate of compensation to be paid by USDA is set at up to 85 percent of the difference in value between the destroyed and replacement orchards as described above. The State of Pennsylvania has indicated that State funds will be used to make up the remaining difference in value. In no case will total USDA plus State compensation exceed 100 percent of the difference in value.

*Net income.* To determine per-acre net income, we multiplied the yield (number of bushels) per acre by the price per bushel, then subtracted production costs. The estimation of net income is based on the 1995–1998 average Pennsylvania peach production, price, and yield data from the Pennsylvania Agricultural Statistics Service.

| Year | Peach price ($/bushel) | Yield (bushel/acre) | Income ($ per acre) |
|---|---|---|---|
| 1995 | 13.65 | 275.9 | 3,766 |
| 1996 | 16.50 | 254.5 | 4,199 |
| 1997 | 16.85 | 254.5 | 4,288 |
| 1998 | 15.85 | 236.4 | 3,747 |
| 1995–98 average | 15.71 | 255.3 | 4,010 |

The calculation of the variable costs of production is based on the following estimates:

| Type of cost | Year incurred | Costs |
|---|---|---|
| Land preparation | Year 0 | $395 per acre. |
| Planting | Year 1 | $1,303 per acre. |
| Orchard maintenance during preproductive year | Year 2 | $222 per acre. |
| Orchard maintenance during productive years | Years 3–25 | $899/year per acre. |
| Harvest cost | Years 4–25 | $1.75 per bushel. |

*Discount rate.* The discount rate used in the present value calculation is 12.5 percent, which is the risk-adjusted rate estimated to be appropriate in this situation.

*Number of years in discount period.* The NPV was calculated using a life cycle approach. The revenues and costs were calculated over a period equal to the expected productive life of a replanted orchard, which, as noted previously, is 25 years.

Using the information and methodology set forth in the preceding paragraphs, we arrived at the per-acre compensation rates set forth in § 301.74–5(b)(1) of the current regulations. The amounts of compensation for destroyed trees range from $3,713 per acre for a 25-year-old block of trees to $15,000 per acre for a 7-year-old block of trees. Finally, because compensation programs are intended, in part, to encourage the prompt execution of measures deemed necessary to control or eradicate plant pests, § 301.74–5(b)(1) of the regulations provides that compensation payments will be reduced by 10 percent, plus any tree removal costs incurred by the State or USDA, if the trees subject to an EAN were not destroyed by the date specified on that order.

The existing regulations also: (1) Provide that owners of fruit tree nurseries will be compensated for up to

85 percent of the net revenues lost from their first and second year crops as the result of the issuance of an EAN, and (2) stipulate procedures for applying for compensation and require that premises on which trees have been destroyed because of plum pox pursuant to an EAN issued by APHIS may not be replanted with susceptible *Prunus* species (*Prunus* species identified as regulated articles) for 3 years.

### *Proposed Changes to the Compensation Regulations*

### Extension of Prohibition of Replanting

In December 2001, a science panel[2] concluded that the prohibition on replanting host material at locations where orchards had been destroyed due to the presence of plum pox should be extended due to recent detections of plum pox-positive trees during the second year. As a result of these detections, replanting cannot occur at affected sites for an additional 3 years. Since the existing regulations in § 301.74–5(d) do not make it clear that replanting should be banned in a regulated area until 3 years after the most recent detection of plum pox in that area, we are proposing to amend the regulations to clarify that fact.

As explained earlier in this document, the calculations on which the currently authorized rates of compensation are based were designed to account for a 3-year period during which growers could not replant *Prunus* species in quarantined areas. Given the detections of additional plum pox-positive trees, we believe it is necessary to provide additional compensation to growers since they will not be able to plant host species for additional years. The amount of additional compensation has been determined to be $828 per acre for a fourth fallow year and $736 per acre for a fifth fallow year. These amounts are based on extending the same formula we used to calculate the original 3-year compensation rate to apply to fourth and fifth fallow years.

We are proposing to provide additional payments in those amounts to growers who have already received compensation payments, and to provide those same amounts to growers who are due compensation in the future.

**Note:** APHIS does not intend to propose additional compensation in the future if additional plum pox positive trees are found and the ban on replanting must be extended further. The maximum amount of compensation per acre that a grower could receive under any circumstances would be the total payment due for 5 fallow years according to the age of the trees.

The revised compensation rates are shown in proposed § 301.74–5(b)(1)(ii) in the rule portion of this document.

### New Provisions for Direct Market Growers

The current compensation regulations contain no provisions for "direct market growers." Direct market growers are growers who produce fruit and sell the fruit themselves for premium prices at farmers markets. Typically, the acreage involved in production for these purposes is small, and all of the fruit produced is for sale directly to consumers as tree-ripened fruit. None of the fruit produced on acreage devoted to direct market production is sold for processing or to packing houses, nor is it marketed wholesale.

Direct market growers usually produce a wide variety of fruit (both species and varieties) to enable them to satisfy the needs of their customers through an extended marketing season. In the event these growers are not able to use their own fruit (*e.g.*, as a result of their orchards being destroyed due to the presence of plum pox) they are normally precluded from obtaining fruit from other sources. The conditions under which these growers are eligible to sell their products at farmers markets usually require that sellers be the producers of the fruits and vegetables they are selling.

We have reviewed information on production costs and revenues for direct market growers, and believe it is necessary to increase the rates of payment to these growers in order to fairly compensate them. The formulas used to calculate the original amount of compensation due to such growers would remain the same, and the discount rates would not be changed. The difference in payments for direct marketers versus other growers would be due primarily to the high value of sales by direct marketers, despite the fact that they bear additional costs that other growers do not. The net income for direct marketers are based on the income and cost figures presented in tables 1 and 2:

TABLE 1.—CALCULATION OF INCOME PER ACRE FOR DIRECT MARKETERS

| Year | Price ($ per pound) | Peach price ($ per bushel) | Yield (bushel per acre) | Income ($ per acre) |
|---|---|---|---|---|
| 1998 | $1.69 | 81.13 | 273.1 | $22,156 |
| 1999 | 1.66 | 79.92 | 321.3 | 25,678 |
| 2000 | 1.65 | 79.03 | 378.0 | 29,873 |
| 3-year average | 1.67 | 80.02 | 324.1 | 25,902 |

TABLE 2.—VARIABLE COSTS OF PRODUCTION FOR DIRECT MARKETERS

| Type of cost | Year incurred | Costs |
|---|---|---|
| Land preparation | Year 0 | $395 per acre. |
| Planting | Year 1 | 1,303 per acre. |
| Maintenance (pre-productive years) | Year 2 | 222 per acre. |
| Maintenance (productive years) | Years 3–25 | 1,376 per year, per acre. |
| Harvest | Years 4–25 | 1.75 per bushel, per year. |
| Marketing costs | Years 4–25 | 21,304 per year. |

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[2] The science panel was composed of representatives of APHIS, PDA, USDA's Agricultural Research Service, and university scientists.

As with per-acre net income for all other growers, to determine per-acre net income for direct marketers, we multiplied the yield (number of bushels) per acre by the price per bushel, then subtracted production costs. The estimation of net income is based on data provided by a direct marketer for the 1998, 1999, and 2000 production seasons.

Given the difference in net income between other growers and direct marketers, we are proposing to compensate direct marketers at the rates shown in proposed § 301.74–5(b)(1)(i) in the rule portion of this document. Like the rates for other growers discussed earlier in this document, the rates for direct marketers would also include provisions to pay compensation for fourth and fifth fallow years if necessary.

We propose to pay growers direct market rates of compensation only if the orchard owner grows fruit exclusively for sale in farmers markets or similar outlets as described in the proposed regulations. We would not pay compensation at direct marketer rates to growers who sell any portion of their harvest to wholesale markets, nor would we pay direct marketer compensation rates to growers who sell most of their fruit wholesale and who sell some of their fruit at roadside fruit stands or similar venues.

### Additional Compensation for Destruction of Trees Less Than 1 Year Old

The current regulations do not contain provisions for compensation for the destruction of trees less than 1 year old (known as "0 year trees"). However, we have concluded that growers who have such trees destroyed because of plum pox deserve to be compensated for the loss of those trees and the revenue that might be expected from them. This is based on our determination that growers incur costs in ground preparation, the cost of nursery stock, and the expense of planting and maintaining these trees.

After examining the economic information obtained from the Pennsylvania State University and the Pennsylvania State Adams County Cooperative Extension Service, we have concluded that a fair rate of compensation for these trees is $2,403 per acre for all growers, including direct marketers. This amount represents the 85 percent Federal share, and is the same for all growers because all growers, including direct marketers, incur similar costs for 0 year trees. Growers of 0 year trees would also be compensated for fourth and fifth fallow years, where applicable, at rates of $828 per acre for a fourth fallow year and $736 per acre for a fifth fallow year.

Compensation will be paid using funds transferred to APHIS by the Commodity Credit Corporation of USDA. For any acres that are added to the plum pox quarantine program after September 30, 2004, the Federal share of compensation to be paid may change.

### Benefits of Compensation

The benefit of providing compensation is the increased likelihood that growers with infected orchards will participate in the plum pox eradication program. The use of compensation complements and supports the regulatory goal of preventing disease spread. More so than in other pest eradication programs, the specific characteristics of plum pox necessitate the use of compensation to obtain growers' cooperation in the control of the immediate disease outbreak and the ensuing national survey.

Because the manner in which PPV spreads is not predictable, the eradication strategy necessarily calls for the destruction of trees that are asymptomatic. Growers, on their own, would not have the incentive to cut down trees that appear uninfected as would be necessary in an eradication program.

Without government intervention, growers would opt to keep producing as long as trees remain symptom-free. The eradication strategy calling for the swift destruction of both diseased and exposed trees causes economic losses in addition to that resulting from the disease. For these reasons, the payment of compensation would reflect the incremental burdens of complying with regulatory requirements insofar as market forces would not otherwise impose similar costs.

### Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this proposed rule. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**, or may be viewed on the Internet at *http://www.aphis.usda.gov/ppd/rad/plumpox.pdf*.

*Summary of Economic Analysis*

We are proposing to amend the plum pox compensation regulations to provide additional compensation to affected growers, under certain conditions. We are proposing to provide additional compensation to growers who have already been paid under the existing regulations, which provide for payments based on a 3-year fallow period, but who are prohibited from replanting regulated articles for a total of more than 3 years due to additional detections of plum pox in areas already under quarantine. Such growers would be paid compensation for up to 2 additional years. We are also proposing to provide additional compensation to growers who are direct marketers of their fruit, and to provide compensation for growers who have had trees that were less than 1 year old destroyed. We are proposing these actions in response to issues that have surfaced during our 2 years of experience in managing the plum pox quarantine and paying compensation to affected growers. These proposed changes are necessary to provide adequate compensation to persons affected by the plum pox quarantine and eradication efforts associated with the quarantine.

This proposed rule would amend the regulations to provide additional compensation in the event a quarantine period is extended according to an EAN issued by APHIS. The fallow period may be increased by 1 or 2 years depending on the proximity of the land to recent finds of the plum pox virus. By delaying the time at which growers can replant, the longer fallow period increases the loss to growers. We are proposing to increase the amount of compensation to account for the longer fallow period.

Plum pox has been detected in some areas near orchards that were removed in the initial year of the eradication program. This has led to a need for additional fallow years for those acres. A fallow period of 3 years from the last find is needed to conclude that plum pox has been eradicated. The maximum amount of compensation to be paid would be for 5 fallow years. For orchards removed in 2002, we anticipate that only a 3-year fallow period will be needed if no further plum pox is discovered.

Compensation payments are based on calculating the difference between the amount a grower could earn from the original orchard minus the amount that the grower could earn from a replanted orchard after a fallow period. A longer fallow period results in higher compensation payments because of the additional time it takes until growers have productive trees.

The payment to commercial growers for 2 additional fallow years would be $828 per acre for the fourth year and $736 per acre for the fifth year ($1,564 total per acre). The total number of acres that would currently be eligible for additional payments because of the added fallow years is 1,400. The estimated cost if all acres are eligible for 2 additional years is $2,189,600.

Total additional payments for direct marketers range from $264,472 to $348,452 depending on the number of fallow years a direct marketer would be required to wait before replanting. Table 7, page 15 summarizes the range of payments. Payments to direct marketers for the first three fallow years would increase by $10,172 per acre from the base amount that growers receive. Direct marketers were eligible to receive the same payments as other growers so the $10,172 represents the additional payment. Because they are among the last trees that have been removed, a three year fallow period should be sufficient to demonstrate that plum pox has been eradicated. However, in the event that additional fallow years are necessary due new detections of plum pox, direct marketers would be compensated for up to 5 (total) fallow years. They would receive $1,710 per acre for a fourth year and $1,520 per acre for a fifth year. There are approximately 26 acres of trees used for direct marketing that have been removed as part of the plum pox eradication program; total payments to direct marketers would increase by $264,472, assuming the fallow period does not need to be extended. A four year fallow period for direct marketers would result in payments of $11,882 per acre ($10,172 + $1,710). Total payments for 26 acres would be $308,932. A five year fallow period for direct marketers would result in payments of $13,402 per acre ($10,172+$1,710+$1,520). Total payments for 26 acres would be $348,452.

This proposed rule also addresses the issue of trees less than one year old. Some growers have received destruction orders for trees that had been planted the same year. These trees did not go through one harvest season and are sometimes referred to as zero year trees. The original compensation program made no provision for these trees. However, growers that have had trees less than one year old destroyed have incurred costs. Based on input from cooperative extension agents and Pennsylvania State University, we have concluded that a fair rate of compensation for these trees is $2,403 per acre for a three year fallow period. There are at least 43 acres of zero year trees that have been removed as part of the plum pox eradication program; total payments to growers of zero year trees would increase by $103,329.

As stated earlier in this document, these proposed changes are necessary to provide adequate compensation to persons affected by the plum pox quarantine and eradication efforts associated with the quarantine. Persons affected by the quarantine would, in all cases, benefit from adoption of this proposed rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

## Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

## Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

## Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 00–035–2. Please send a copy of your comments to: (1) Docket No. 00–035–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 0.6667 hours per response.

*Respondents:* Owners of stone fruit orchards and fruit tree nurseries in Pennsylvania.

*Estimated annual number of respondents:* 3.

*Estimated annual number of responses per respondent:* 1.

*Estimated annual number of responses:* 3.

*Estimated total annual burden on respondents:* 2 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

## Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 7 CFR part 301 as follows:

## PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue to read as follows:

**Authority:** 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. In § 301.74–5, paragraphs (a)(1), (b)(1), (c)(1), (c)(2) and (d) would be revised and a new paragraph (c)(3) would be added to read as follows:

### § 301.74–5 Compensation.

(a) * * *

(1) *Owners of commercial stone fruit orchards.* Owners of commercial stone fruit orchards are eligible to receive compensation for losses associated with the destruction of trees in order to control plum pox pursuant to an emergency action notification issued by the Animal and Plant Health Inspection Service (APHIS).

(i) *Direct marketers.* Orchard owners eligible for compensation under this paragraph who market all fruit they produce under the conditions described in this paragraph may receive compensation at the rates specified in paragraph (b)(1)(i) of this section. In order to be eligible to receive compensation at the rates specified in paragraph (b)(1)(i) of this section, orchard owners must have marketed fruit produced in orchards subsequently destroyed because of plum pox under the following conditions:

(A) The fruit must have been sold exclusively at farmers markets or similar outlets that require orchard owners to sell only fruit that they produce;

(B) The fruit must not have been marketed wholesale or at reduced prices in bulk to supermarkets or other retail outlets;

(C) The fruit must have been marketed directly to consumers; and

(D) Orchard owners must have records documenting that they have met the requirements of this section, and must submit those records to APHIS as part of their application submitted in accordance with paragraph (c) of this section.

(ii) *All other orchard owners.* Orchard owners eligible for compensation under this paragraph who do not meet the requirements of paragraph (a)(1)(i) of this section are eligible for compensation only in accordance with paragraph (b)(1)(ii) of this section.

* * * * *

(b) * * *

(1) *Owners of commercial stone fruit orchards.*—(i) *Direct marketers.* Owners of commercial stone fruit orchards who APHIS has determined meet the eligibility requirements of paragraph (a)(1)(i) of this section will be compensated according to the following table on a per-acre basis at a rate based on the age of the trees destroyed. If the trees were not destroyed by the date specified on the emergency action notification, the compensation payment will be reduced by 10 percent and by any tree removal costs incurred by the State or the U.S. Department of Agriculture (USDA). The maximum USDA compensation rate is 85 percent of the loss in value, adjusted for any State-provided compensation to ensure total compensation from all sources does not exceed 100 percent of the loss in value.

| Age of trees (years) | Maximum compensation rate ($/acre, equal to 85% of loss in value) based on 3-year fallow period | Maximum additional compensation ($/acre, equal to 85% of loss in value) for 4th fallow year | Maximum additional compensation ($/acre, equal to 85% of loss in value) for 5th fallow year |
|---|---|---|---|
| Less than 1 | $2,403 | $828 | $736 |
| 1 | 9,584 | 1,710 | 1,520 |
| 2 | 13,761 | 1,710 | 1,520 |
| 3 | 17,585 | 1,710 | 1,520 |
| 4 | 21,888 | 1,710 | 1,520 |
| 5 | 25,150 | 1,710 | 1,520 |
| 6 | 25,747 | 1,710 | 1,520 |
| 7 | 25,859 | 1,710 | 1,520 |
| 8 | 25,426 | 1,710 | 1,520 |
| 9 | 24,938 | 1,710 | 1,520 |
| 10 | 24,390 | 1,710 | 1,520 |
| 11 | 23,774 | 1,710 | 1,520 |
| 12 | 23,080 | 1,710 | 1,520 |
| 13 | 22,300 | 1,710 | 1,520 |
| 14 | 21,422 | 1,710 | 1,520 |
| 15 | 20,434 | 1,710 | 1,520 |
| 16 | 19,323 | 1,710 | 1,520 |
| 17 | 18,185 | 1,710 | 1,520 |
| 18 | 17,017 | 1,710 | 1,520 |
| 19 | 15,814 | 1,710 | 1,520 |
| 20 | 14,572 | 1,710 | 1,520 |
| 21 | 13,287 | 1,710 | 1,520 |
| 22 | 12,066 | 1,710 | 1,520 |
| 23 | 10,915 | 1,710 | 1,520 |
| 24 | 9,620 | 1,710 | 1,520 |
| 25 | 8,163 | 1,710 | 1,520 |

(ii) *All other orchard owners.* Owners of commercial stone fruit orchards who meet the eligibility requirements of paragraph (a)(1)(ii) of this section will be compensated according to the following table on a per-acre basis at a rate based on the age of the trees destroyed. If the trees were not destroyed by the date specified on the emergency action notification, the compensation payment will be reduced by 10 percent and by any tree removal costs incurred by the State or the U.S. Department of Agriculture (USDA). The maximum USDA compensation rate is 85 percent of the loss in value, adjusted for any State-provided compensation to ensure total compensation from all sources does not exceed 100 percent of the loss in value.

| Age of trees (years) | Maximum compensation rate ($/acre, equal to 85% of loss in value) based on 3-year fallow period | Maximum additional compensation ($/acre, equal to 85% of loss in value) for 4th fallow year | Maximum additional compensation ($/acre, equal to 85% of loss in value) for 5th fallow year |
|---|---|---|---|
| Less than 1 | $2,403 | $828 | $736 |
| 1 | 4,805 | 828 | 736 |
| 2 | 7,394 | 828 | 736 |
| 3 | 9,429 | 828 | 736 |
| 4 | 12,268 | 828 | 736 |
| 5 | 14,505 | 828 | 736 |
| 6 | 14,918 | 828 | 736 |
| 7 | 15,000 | 828 | 736 |
| 8 | 14,709 | 828 | 736 |
| 9 | 14,383 | 828 | 736 |
| 10 | 14,015 | 828 | 736 |
| 11 | 13,601 | 828 | 736 |
| 12 | 13,136 | 828 | 736 |
| 13 | 12,613 | 828 | 736 |
| 14 | 12,024 | 828 | 736 |
| 15 | 11,361 | 828 | 736 |
| 16 | 10,616 | 828 | 736 |
| 17 | 9,854 | 828 | 736 |
| 18 | 9,073 | 828 | 736 |
| 19 | 8,272 | 828 | 736 |
| 20 | 7,446 | 828 | 736 |
| 21 | 6,594 | 828 | 736 |
| 22 | 5,789 | 828 | 736 |
| 23 | 5,035 | 828 | 736 |
| 24 | 4,341 | 828 | 736 |
| 25 | 3,713 | 828 | 736 |

* * * * *

(c) * * *

(1) *Claims by owners of stone fruit orchards who are direct marketers.* The completed application must be accompanied by:

(i) A copy of the emergency action notification ordering the destruction of the trees and its accompanying inventory that describes the acreage and ages of trees removed;

(ii) Documentation verifying that the destruction of trees has been completed and the date of that destruction; and

(iii) Records documenting that the grower meets the eligibility requirements of paragraph (a)(1)(i) of this section.

(2) *Claims by owners of commercial stone fruit orchards who are not direct marketers.* The completed application must be accompanied by a copy of the emergency action notification ordering the destruction of the trees, its accompanying inventory that describes the acreage and ages of trees removed, and documentation verifying that the destruction of trees has been completed and the date of that destruction.

(3) *Claims by owners of fruit tree nurseries.* The completed application must be accompanied by a copy of the order prohibiting the sale or movement of the nursery stock, its accompanying inventory that describes the total number of trees and the age and variety, and documentation describing the final disposition of the nursery stock.

(d) *Replanting.* Trees of susceptible *Prunus* species (*i.e., Prunus* species identified as regulated articles) may not be replanted on premises within a contiguous quarantined area until 3 years from the date the last trees within that area were destroyed because of plum pox pursuant to an emergency action notification issued by APHIS.

* * * * *

Done in Washington, DC, this 10th day of October 2003.

**Bill Hawks,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 03–26174 Filed 10–15–03; 8:45 am]

**BILLING CODE 3410–34–P**

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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135**

**[Docket No. AO–14–A72, *et al.*; DA–03–08]**

## Milk in the Northeast and Other Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders; Correction

| 7 CFR Part | Marketing Area | AO Nos. |
|---|---|---|
| 1001 | Northeast | AO–14–A72 |

| 7 CFR Part | Marketing Area | AO Nos. |
|---|---|---|
| 1005 | Appalachian | AO–388–A13 |
| 1006 | Florida | AO–356–A36 |
| 1007 | Southeast | AO–366–A42 |
| 1030 | Upper Midwest | AO–361–A37 |
| 1032 | Central | AO–313–A46 |
| 1033 | Mideast | AO–166–A70 |
| 1124 | Pacific Northwest | AO–368–A33 |
| 1126 | Southwest | AO–231–A66 |
| 1131 | Arizona-Las Vegas | AO–271–A38 |
| 1135 | Western | AO–380–A20 |

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule; correction.

**SUMMARY:** The Agricultural Marketing Service is correcting the proposed rule that appeared in the **Federal Register** on September 8, 2003 (68 FR 52860), which gave notice of a public hearing to be held to consider proposals to amend the Northeast and other Federal milk marketing orders. The document was published with errors in the regulatory text of proposed amendments to § 1000.40 that would reclassify milk used to produce evaporated or sweetened condensed milk in a consumer-type package from Class III to Class IV. This docket corrects these errors.

**FOR FURTHER INFORMATION CONTACT:** Antoinette M. Carter, Marketing Specialist, Order Formulation and Enforcement, USDA/AMS/Dairy Programs, Room 2971—Stop 0231, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–3465, e-mail address: *Antoinette.Carter@usda.gov*.

**SUPPLEMENTARY INFORMATION:** A notice of hearing was published in the **Federal Register** on September 8, 2003 (68 FR 52860), containing four proposals to be considered at a public hearing scheduled to begin on October 21, 2003. As published, the regulatory text included in proposals one and two of the notice of hearing does not reflect amendments that became effective April 1, 2003, in all 11 Federal milk marketing orders revising the Class III and Class IV pricing formulas. Accordingly, the errors contained in proposals one and two of the notice of hearing are misleading and need clarification.

1. On page 52862 under "Proposal No. 1", first column, § 1000.40, paragraph (d)(1)(i) is corrected to read as follows:

**§ 1000.40 Classes of utilization.**

* * * * *

(d) * * *

(1) * * *

(i) Butter;

* * * * *

2. On page 52862 under "Proposal No. 2", first column, § 1000.40, paragraph (d)(1)(i) is corrected to read as follows:

**§ 1000.40 Classes of utilization.**

* * * * *

(d) * * *

(1) * * *

(i) Butter;

* * * * *

**Authority:** 7 U.S.C. 601–674.

Dated: October 9, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03–26178 Filed 10–15–03; 8:45 am]

**BILLING CODE 3410–02–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–NE–44–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Hartzell Propeller Inc. Models HC–B5MP–3C/M10876K Propellers

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede an existing airworthiness directive (AD) for Hartzell Propeller Inc. Model HC–B5MP–3C/M10876K propellers, installed on Short Brothers Model SD3–60 airplanes. That AD currently requires initial and repetitive removal, disassembly, inspection, and rework if necessary of Hartzell Propeller Inc. Model HC–B5MP–3C/M10876K propellers until blades are replaced with new design blades, no later than March 31, 1988. This proposed AD would require installation of new design blades before further flight, on Hartzell Propeller Inc. Models HC–B5MP–3C/M10876K propellers. This proposed AD is prompted by a review of all currently effective ADs. That review determined that AD 87–16–02 was not published in the **Federal Register** to make it effective to all operators, as opposed to just the operators who received actual notice of the original AD. We are proposing this AD to prevent propeller blade separation near the hub, which could result in engine separation from the airplane.

**DATES:** We must receive any comments on this proposed AD by December 15, 2003.

**ADDRESSES:** Use one of the following addresses to submit comments on this proposed AD:

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–44–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov*.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** Melissa Bradley, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone: (847) 294–8110; fax: (847) 294–7834.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–44–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

### Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

### Discussion

On July 31, 1987, the FAA issued Priority Letter AD 87–16–02. That AD requires initial and repetitive removal, disassembly, inspection, and, if necessary, rework of Hartzell Propeller Inc. Models HC–B5MP–3C/M10876K propellers until the existing blades are replaced with new design blades. That AD requires replacement of the existing blades with new design blades by March 31, 1988. That action was prompted by reports of fatigue cracks and corrosion in propeller blades. That condition, if not corrected, could result in propeller blade separation near the hub, which could result in separation of the engine from the airplane.

### Actions Since AD 87–16–02 Was Issued

Since that AD was issued, we have reviewed all currently effective ADs. We found that Priority Letter AD 87–16–02 was not published in the **Federal Register** to make it effective to all operators, as opposed to just the operators who received the original AD. We anticipate that all affected propellers have the new design blades installed. However, we are issuing this proposed rule to ensure that all affected propellers are updated with new design propeller blades.

### FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing this AD, which would require installation of new design blades before further flight, on Hartzell Propeller Inc. Models HC–B5MP–3C/M10876K propellers.

### Changes to 14 CFR Part 39—Effect on the Proposed AD

On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

### Costs of Compliance

We anticipate that all affected propellers have complied with Priority Letter AD 87–16–02 and have the new design blades installed. Therefore, we estimate the total cost of the proposed AD to U.S. operators to be $0. However, if replacement of the blades is necessary, we estimate that it would take about 25 work hours per propeller to perform the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost about $4,300 per propeller blade. Based on these figures, we estimate the total cost of the proposed AD per propeller would be $23,125.

### Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2003–NE–44–AD" in your request.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. The FAA amends § 39.13 by adding a new airworthiness directive, to read as follows:

**Hartzell Propeller Inc.:** Docket No. 2003–NE–44–AD. Supersedes Priority Letter AD 87–16–02.

#### Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by December 15, 2003.

#### Affected ADs

(b) This AD supersedes Priority Letter AD 87–16–02.

#### Applicability

(c) This AD applies to Hartzell Propeller Inc. Model HC–B5MP–3C/M10876K propellers. These propellers are installed on, but not limited to, Short Brothers Model SD3–60 airplanes.

#### Unsafe Condition

(d) This AD is prompted a review of all currently effective ADs. That review determined that AD 87–16–02 was not published in the **Federal Register** to make it effective to all operators, as opposed to just the operators who received actual notice of the original AD. We are issuing this AD to prevent propeller blade separation near the hub, which could result in engine separation from the airplane.

#### Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

#### Required Actions

(f) Before further flight, replace propeller blades Model M10876K with blades Model M10876ASK.

(g) After the effective date of this AD, do not install propeller blades Model M10876K on any airplane.

#### Alternative Methods of Compliance

(h) The Manager, Chicago Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

**Material Incorporated by Reference**

(i) None.

**Related Information**

(j) None.

Issued in Burlington, Massachusetts, on October 8, 2003.

**Francis A. Favara,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 03–26118 Filed 10–15–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

### 26 CFR Part 301

### [REG–141669–02]

### RIN 1545–BB41

## Waiver of Information Reporting Penalties-Determining Whether Correction Is Prompt

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Cancellation of notice of public hearing on proposed rulemaking.

**SUMMARY:** This document provides notice of cancellation of a public hearing on proposed regulations providing guidance on the requirement of prompt correction of the failure to file or file correctly.

**DATES:** The public hearing originally scheduled for Tuesday, October 21, 2003, at 10 a.m., is cancelled.

**FOR FURTHER INFORMATION CONTACT:** Treena Garrett of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), (202) 622–3401 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Wednesday, July 9, 2003, (68 FR 40857), announced that a public hearing was scheduled for Tuesday, October 21, 2003, at 10 a.m. in the Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under sections 6721 and 6724 of the Internal Revenue Code. The public comment period for these proposed regulations expired on Tuesday, October 7, 2003. Outlines of oral comments were due on Tuesday, September 30, 2003.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Friday, October 10, 2003, no one has requested to speak. Therefore, the public hearing scheduled for Tuesday, October 21, 2003, is cancelled.

**LaNita Van Dyke,**

*Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 03–26216 Filed 10–15–03; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

### RIN 2900–AL49

## Copayments for Extended Care Services

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** We propose to amend VA's medical regulations by modifying provisions regarding the methodology of computing copayments for extended care services provided to veterans. This proposal enhances the protection of veterans' spouses by not counting certain assets as available resources for computing these copayments. Other non-substantive changes are proposed for purposes of clarification.

**DATES:** Comments must be received on or before December 15, 2003.

**ADDRESSES:** Mail or hand-deliver written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or fax comments to (202) 273–9026; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AL49." All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Donna Canada, Chief Business Office (161), at (202) 254–0324 and Daniel Schoeps, Geriatrics and Extended Care (114), at (202) 273–8540. Both are officials in the Veterans Health Administration, 810 Vermont Avenue NW., Washington, DC 20420. (These are not toll free numbers.)

**SUPPLEMENTARY INFORMATION:** We propose to amend VA's medical regulations at 38 CFR 17.111 concerning the computation of copayments for extended care services provided to veterans either directly by VA or obtained by contract. These copayments were established under the Veterans Millennium Health Care and Benefits Act (Pub. L. 106–117) and codified at 38 U.S.C. 1710B(c).

This proposed rule enhances and clarifies the mechanism for calculating the copayment amount. The statute set forth at 38 U.S.C. 1710B(d)(2) provides:

> The Secretary shall develop a methodology for establishing the amount of the copayment for which a veteran [receiving extended care services] is liable. That methodology shall provide for—
>
> (A) establishing a maximum monthly copayment (based on all income and assets of the veteran and the spouse of such veteran);
>
> (B) protecting the spouse of a veteran from financial hardship by not counting all of the income and assets of the veteran and spouse (in the case of a spouse who resides in the community) as available for determining the copayment obligation; and
>
> (C) allowing the veteran to retain a monthly personal allowance.

Under the current rule, a veteran is obligated to pay the copayment only if the veteran and the veteran's spouse have available resources. Available resources means the sum of the value of the liquid assets, fixed assets, and income of the veteran and the veteran's spouse minus the sum of the veteran allowance and the spousal allowance. Liquid assets and fixed assets are included in the calculations only if the veteran has been receiving extended care services for 181 days or more. Expenses are included in the veterans allowance calculations only if the veteran has been receiving extended care services for 180 days or less, the veteran is receiving only adult day health care or other noninstitutional care, or the veteran has a spouse or dependent residing in the community who is not institutionalized. These formulas are designed to allow the veteran, the veteran's spouse, and the veteran's dependents minimum amenities while allowing them to retain some of their possessions to help them maintain, to a degree, their standard of living. Also, these formulas are intended to help ensure that veterans institutionalized for 180 days or less would have the means to return home if their medical condition permits.

The current regulation has different provisions on what is included in "available resources" depending on whether or not the veteran has been receiving extended care services for more than 180 days. We propose to clarify the provisions by which we compute "available resources." So, for veterans who have been receiving extended care services for 180 days or less, we propose to determine their available resources by adding their income and the income of their spouse and then subtracting from that the sum of the veterans allowance, the spousal allowance, and expenses. For veterans who have been receiving extended care services for 181 days or more, we propose to determine their available resources by adding the value of their liquid assets, their fixed assets, and their income and the income of their spouse, minus the sum of the veterans allowance, the spousal allowance, the spousal resource protection amount, and (but only if the veteran is receiving noninstitutional care or the veteran has a spouse or a dependent residing in the community who is not institutionalized) expenses. We believe this will clarify what resources veterans have available for purposes of determining the appropriate copayment.

We also propose to clarify in the definition of "expenses" that expenses include (1) insurance premiums of the veteran and the veteran's spouse and dependents, and (2) personal property taxes, not just income taxes.

Further, in the definition of "liquid assets," we propose to exclude household and personal items such as furniture, clothing, and jewelry when the veteran's spouse or the veteran's dependents are living in the community or the veteran is receiving noninstitutional extended care services. Currently, household and personal items are included in liquid assets even if the veteran's spouse or dependents are living in the community or the veteran is receiving noninstitutional extended care services. This will further protect the veteran, spouse and dependents from financial hardship if they are living in the community.

VA Form 10–10EC, set forth in 38 CFR 17.111(g), currently requires including art, rare coins, stamp collections, and collectibles in liquid assets. We propose to refer to this requirement in the definition also.

Third, we propose to add at paragraph (d)(2)(vi) of § 17.111 a definition of "spousal resource protection amount" to permit a spouse to maintain some liquid assets while she lives in the community. This amount would equal the total value of the veteran and spouse's liquid assets up to $89,280 if the spouse resides in the community (*i.e.*, is not institutionalized). We propose using this amount because at least 23 State Medicaid Programs use it to protect spouses' assets for Medicaid purposes. This amount would be deducted from "available resources" if the veteran has been receiving extended care services for more than 180 days. This amount would not be deducted from "available resources" if the veteran has been receiving extended care services for 180 days or less because "liquid assets" are not included in "available resources" in that case.

Fourth, we propose to remove from the definition of "veterans allowance" the inclusion of expenses in certain situations because, as discussed above, we propose to include expenses in the computation of "available resources" contained in paragraph (d)(1) of § 17.111. We propose this change to simplify the methodology in determining "available resources."

Further, we propose to clarify in paragraph (d)(1) of § 17.111 that the income, assets, expenses and allowance of legally separated spouses are excluded from "available resources."

The current rule provides that, unless exempted, a veteran must report changes to the veteran or spouse's situation that would change the copayment obligation (*i.e.*, changes regarding fixed assets, liquid assets, expenses, income, or whether the veteran has a spouse or dependents residing in the community) to a VA medical facility within 10 days of the change. We propose to add a change in marital status to the list of items, which, if changed, would require the veteran to report to VA the change. A change in marital status might affect the copayment obligation and thus must be reported.

### Paperwork Reduction Act

The Office of Management and Budget have approved the collections of information requirements related to this rulemaking proceeding under OMB control number 2900–0629.

### Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This proposed rule would have no such effect on State, local, or tribal governments, or the private sector.

### Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

### Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This amendment would not affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

### Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers for the programs affected by this document are 64.005, 64.007, 64.008, 64.009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

### List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: July 9, 2003.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 17 as set forth below:

## PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

**Authority:** 38 U.S.C. 501, 1721, unless otherwise noted.

2. In § 17.111, paragraphs (d) through (g) and the authority citation at the end of the section are revised to read as follows:

### § 17.111 Copayments for extended care services.

* * * * *

(d) *Effect of the veteran's financial resources on obligation to pay copayment.* (1) A veteran is obligated to pay the copayment to the extent the veteran and the veteran's spouse have available resources. For veterans who have been receiving extended care services for 180 days or less, their available resources are the sum of the income of the veteran and the veteran's spouse, minus the sum of the veterans allowance, the spousal allowance, and expenses. For veterans who have been receiving extended care services for 181 days or more, their available resources are the sum of the value of the liquid assets, the fixed assets, and the income of the veteran and the veteran's spouse, minus the sum of the veterans allowance, the spousal allowance, the spousal resource protection amount, and (but only if the veteran is receiving noninstitutional care or the veteran has a spouse or a dependent residing in the community who is not institutionalized) expenses. When a veteran is legally separated from a spouse, available resources do not include spousal income, expenses, and assets or a spousal allowance.

(2) For purposes of determining available resources under this section:

(i) *Income* means current income (including, but not limited to, wages and income from a business (minus business expenses), bonuses, tips, severance pay, accrued benefits, cash gifts, inheritance amounts, interest income, standard dividend income from non tax deferred annuities, retirement income, pension income, unemployment payments, worker's compensation payments, black lung payments, tort settlement payments, social security payments, court mandated payments, payments from VA or any other Federal programs, and any other income). The amount of current income will be stated in frequency of receipt, *e.g.*, per week, per month.

(ii) *Expenses* means basic subsistence expenses, including current expenses for the following: rent/mortgage for primary residence; vehicle payment for one vehicle; food for veteran, veteran's spouse, and veteran's dependents; education for veteran, veteran's spouse, and veteran's dependents; court-ordered payments of veteran or veteran's spouse (*e.g.*, alimony, child-support); and including the average monthly expenses during the past year for the following: utilities and insurance for the primary residence; out-of-pocket medical care costs not otherwise covered by health insurance; health insurance premiums for the veteran, veteran's spouse, and veteran's dependents; and taxes paid on income and personal property.

(iii) *Fixed Assets* means:

(A) Real property and other non-liquid assets; except that this does not include—

(*1*) Burial plots;

(*2*) A residence if the residence is:

(*i*) The primary residence of the veteran and the veteran is receiving only noninstitutional extended care service; or

(*ii*) The primary residence of the veteran's spouse or the veteran's dependents (if the veteran does not have a spouse) if the veteran is receiving institutional extended care service.

(*3*) A vehicle if the vehicle is:

(*i*) The vehicle of the veteran and the veteran is receiving only noninstitutional extended care service; or

(*ii*) The vehicle of the veteran's spouse or the veteran's dependents (if the veteran does not have a spouse) if the veteran is receiving institutional extended care service.

(iv) *Liquid assets* means cash, stocks, dividends received from IRA, 401K's and other tax deferred annuities, bonds, mutual funds, retirement accounts (*e.g.*, IRA, 401Ks, annuities), art, rare coins, stamp collections, and collectibles of the veteran, spouse, and dependents. This includes household and personal items (*e.g.*, furniture, clothing, and jewelry) except when the veteran's spouse or dependents are living in the community.

(v) *Spousal allowance* is an allowance of $20 per day that is included only if the spouse resides in the community (not institutionalized).

(vi) *Spousal resource protection amount* means the value of liquid assets but not to exceed $89,280 if the spouse is residing in the community (not institutionalized).

(vii) *Veterans allowance* is an allowance of $20 per day.

(3) The maximum amount of a copayment for any month equals the copayment amount specified in paragraph (b)(1) of this section multiplied by the number of days in the month. The copayment for any month may be less than the amount specified in paragraph (b)(1) of this section if the veteran provides information in accordance with this section to establish that the copayment should be reduced or eliminated.

(e) *Requirement to submit information.* (1) Unless exempted under paragraph (f) of this section, a veteran must submit to a VA medical facility a completed VA Form 10–10EC and documentation requested by the Form at the following times:

(i) At the time of initial request for an episode of extended care services;

(ii) At the time of request for extended care services after a break in provision of extended care services for more than 30 days; and

(iii) Each year at the time of submission to VA of VA Form 10–10EZ.

(2) When there are changes that might change the copayment obligation (*i.e.*, changes regarding marital status, fixed assets, liquid assets, expenses, income (when received), or whether the veteran has a spouse or dependents residing in the community), the veteran must report those changes to a VA medical facility within 10 days of the change.

(f) *Veterans and care that are not subject to the copayment requirements.* The following veterans and care are not subject to the copayment requirements of this section:

(1) A veteran with a compensable service-connected disability;

(2) A veteran whose annual income (determined under 38 U.S.C. 1503) is less than the amount in effect under 38 U.S.C. 1521(b);

(3) Care for a veteran's noncompensable zero percent service-connected disability;

(4) An episode of extended care services that began on or before November 30, 1999;

(5) Care authorized under 38 U.S.C. 1710(e) for Vietnam-era herbicide-exposed veterans, radiation-exposed veterans, Persian Gulf War veterans, or post-Persian Gulf War combat-exposed veterans;

(6) Care for treatment of sexual trauma as authorized under 38 U.S.C. 1720D; or

(7) Care or services authorized under 38 U.S.C. 1720E for certain veterans regarding cancer of the head or neck.

(g) VA *Form 10–10EC.*

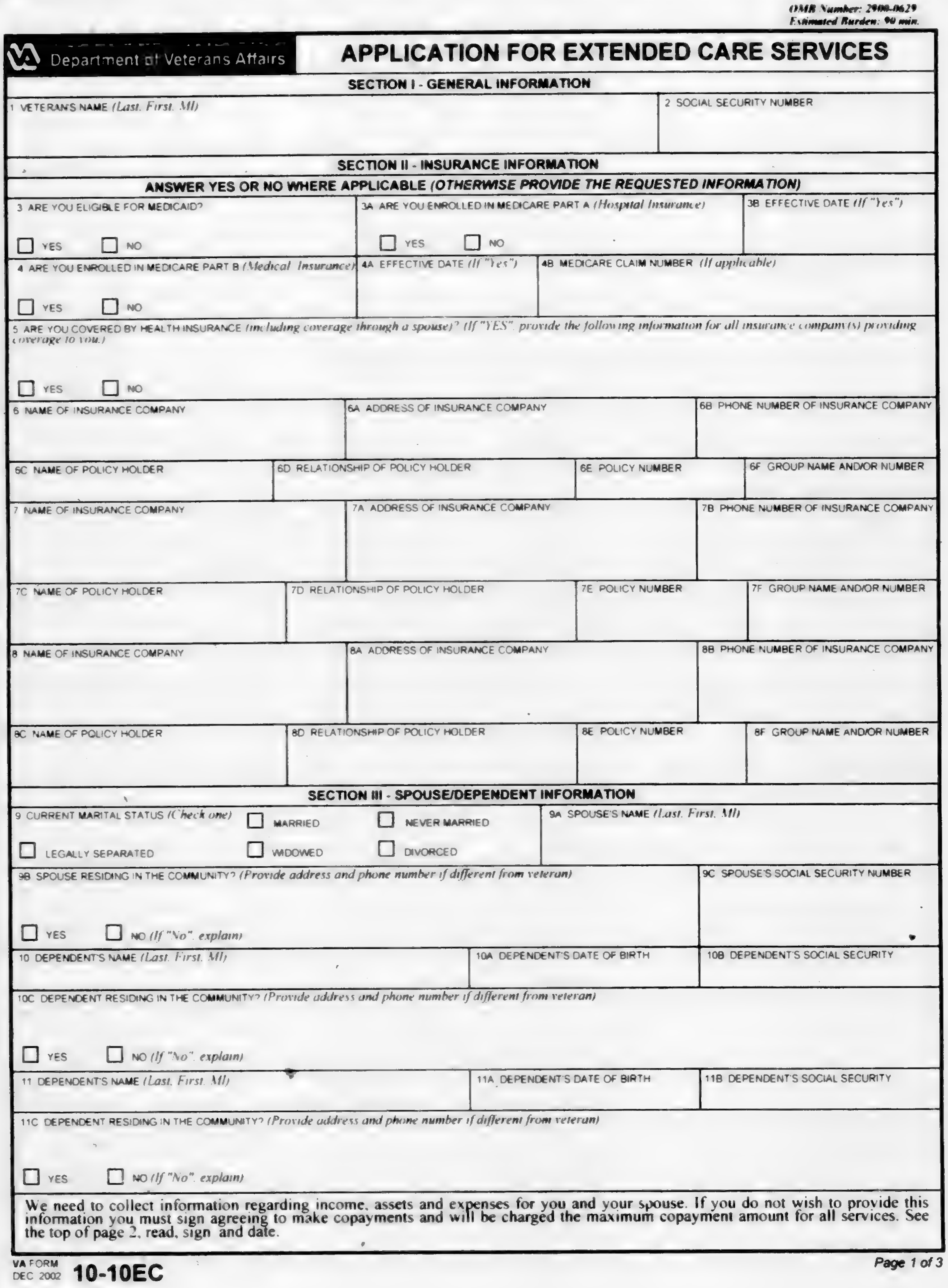

*OMB Number: 2900-0629*
*Estimated Burden: 90 min.*

Department of Veterans Affairs

## APPLICATION FOR EXTENDED CARE SERVICES

### SECTION I - GENERAL INFORMATION

1 VETERAN'S NAME *(Last, First, MI)*

2 SOCIAL SECURITY NUMBER

### SECTION II - INSURANCE INFORMATION

**ANSWER YES OR NO WHERE APPLICABLE *(OTHERWISE PROVIDE THE REQUESTED INFORMATION)***

3 ARE YOU ELIGIBLE FOR MEDICAID? ☐ YES ☐ NO

3A ARE YOU ENROLLED IN MEDICARE PART A *(Hospital Insurance)* ☐ YES ☐ NO

3B EFFECTIVE DATE *(If "Yes")*

4 ARE YOU ENROLLED IN MEDICARE PART B *(Medical Insurance)* ☐ YES ☐ NO

4A EFFECTIVE DATE *(If "Yes")*

4B MEDICARE CLAIM NUMBER *(If applicable)*

5 ARE YOU COVERED BY HEALTH INSURANCE *(including coverage through a spouse)? (If "YES", provide the following information for all insurance company(s) providing coverage to you.)* ☐ YES ☐ NO

6 NAME OF INSURANCE COMPANY

6A ADDRESS OF INSURANCE COMPANY

6B PHONE NUMBER OF INSURANCE COMPANY

6C NAME OF POLICY HOLDER

6D RELATIONSHIP OF POLICY HOLDER

6E POLICY NUMBER

6F GROUP NAME AND/OR NUMBER

7 NAME OF INSURANCE COMPANY

7A ADDRESS OF INSURANCE COMPANY

7B PHONE NUMBER OF INSURANCE COMPANY

7C NAME OF POLICY HOLDER

7D RELATIONSHIP OF POLICY HOLDER

7E POLICY NUMBER

7F GROUP NAME AND/OR NUMBER

8 NAME OF INSURANCE COMPANY

8A ADDRESS OF INSURANCE COMPANY

8B PHONE NUMBER OF INSURANCE COMPANY

8C NAME OF POLICY HOLDER

8D RELATIONSHIP OF POLICY HOLDER

8E POLICY NUMBER

8F GROUP NAME AND/OR NUMBER

### SECTION III - SPOUSE/DEPENDENT INFORMATION

9 CURRENT MARITAL STATUS *(Check one)* ☐ MARRIED ☐ NEVER MARRIED ☐ LEGALLY SEPARATED ☐ WIDOWED ☐ DIVORCED

9A SPOUSE'S NAME *(Last, First, MI)*

9B SPOUSE RESIDING IN THE COMMUNITY? *(Provide address and phone number if different from veteran)* ☐ YES ☐ NO *(If "No", explain)*

9C SPOUSE'S SOCIAL SECURITY NUMBER

10 DEPENDENT'S NAME *(Last, First, MI)*

10A DEPENDENT'S DATE OF BIRTH

10B DEPENDENT'S SOCIAL SECURITY

10C DEPENDENT RESIDING IN THE COMMUNITY? *(Provide address and phone number if different from veteran)* ☐ YES ☐ NO *(If "No", explain)*

11 DEPENDENT'S NAME *(Last, First, MI)*

11A DEPENDENT'S DATE OF BIRTH

11B DEPENDENT'S SOCIAL SECURITY

11C DEPENDENT RESIDING IN THE COMMUNITY? *(Provide address and phone number if different from veteran)* ☐ YES ☐ NO *(If "No", explain)*

We need to collect information regarding income, assets and expenses for you and your spouse. If you do not wish to provide this information you must sign agreeing to make copayments and will be charged the maximum copayment amount for all services. See the top of page 2, read, sign and date.

VA FORM DEC 2002 **10-10EC**

*Page 1 of 3*

| | | |
|---|---|---|
| **APPLICATION FOR EXTENDED CARE SERVICES, Continued** | VETERAN'S NAME | SOCIAL SECURITY NUMBER |

I do not wish to provide my detailed financial information. I understand that I will be assessed the maximum copayment amount for extended care services and agree to pay the applicable VA copayment as required by law.

| | |
|---|---|
| SIGNATURE | DATE |

| **SECTION IV - FIXED ASSETS *(VETERAN AND SPOUSE))*** | **VETERAN** | **SPOUSE** |
|---|---|---|
| 1. Primary Residence *(Market value minus mortgages or liens. Exclude if veteran receiving only non-institutional extended care services or spouse or dependent residing in the community). If the veteran and spouse maintain separate residences, and the, veteran is receiving institutional (inpatient) extended care services, include value of the veteran's primary residence.)* | $ | $ |
| 2. Other Residences/Land/Farm or Ranch *(Market value minus mortgages or liens. This would include a second home, vacation home, rental property.)* | $ | $ |
| 3. Vehicle(s) *(Value minus any outstanding lien. Exclude primary vehicle if veteran receiving only non-institutional extended care services or spouse or dependent residing in community. If the veteran and spouse maintain separate residences and vehicles, and the veteran is receiving institutional (inpatient) extended care services, include value of the veteran's primary vehicle.)* | $ | $ |
| **SECTION V - LIQUID ASSETS *(VETERAN AND SPOUSE)*** | | |
| 1. Cash, Amount in Bank Accounts *(e.g., checking and savings accounts, certificates of deposit, individual retirement accounts, stocks and bonds).* | $ | $ |
| 2. Value of Other Liquid Assets *(e.g., art, rare coins, stamp collections, collectibles)* Minus the amount you owe on these items. *Exclude household effects, clothing, jewelry, and personal items if veteran receiving only non-institutional extended care services or spouse or dependent residing in the community.* | $ | $ |
| **SUM OF ALL LINES FIXED AND LIQUID ASSETS** **TOTAL ASSETS** | $ | $ |

**SECTION VI - CURRENT GROSS INCOME OF VETERAN AND SPOUSE**

| **CATEGORY** | **VETERAN** | | **SPOUSE** | |
|---|---|---|---|---|
| | HOW MUCH | HOW OFTEN | HOW MUCH | HOW OFTEN |
| 1. Gross annual income from employment *(e.g., wages, bonuses, tips, severances pay, accrued benefits)* | $ | | $ | |
| 2. Net income from your farm/ranch, property or business. | $ | | $ | |
| 3. List other income amounts *(e.g., social security, Retirement and pension, interest, dividends)* Refer to instructions. | $ | | $ | |

**SECTION VII - DEDUCTIBLE EXPENSES**

| **ITEMS** | **AMOUNT** |
|---|---|
| 1. Educational expenses of veteran, spouse or dependent *(e.g., tuition, books, fees, material, etc.)* | $ |
| 2. Funeral and Burial *(spouse or child, amount you paid for funeral and burial expenses, including prepaid arrangements)* | $ |
| 3. Rent/Mortgage *(monthly amount or annual amount)* | $ |
| 4. Utilities *(calculate by average monthly amounts over the past 12 months)* | $ |
| 5. Car Payment for one vehicle only *(exclude gas, automobile insurance, parking fees, repairs)* | $ |
| 6. Food *(for veteran, spouse and dependent)* | $ |
| 7. Non-reimbursed medical expenses paid by you or spouse *(e.g., copayments for physicians, dentists, medications, Medicare, health insurance, hospital and nursing home expenses)* | $ |
| 8. Court-ordered payments *(e.g., alimony, child support)* | $ |
| 9. Insurance *(e.g., automobile insurance, homeowners insurance) Exclude Life Insurance* | $ |
| 10. Taxes *(e.g., personal property for home, automobile) Include average monthly expense for taxes paid on income over the past 12 months.* | $ |
| **TOTALS** | $ |

**SECTION VIII - CONSENT FOR ASSIGNMENT OF BENEFITS**

I hereby authorize the Department of Veterans Affairs to disclose any such history, diagnostic and treatment information from my medical records to the contractor of any health plan contract under which I am apparently eligible for medical care or payment of the expense of care or to any other party against whom liability is asserted. I understand that I may revoke this authorization at any time, except to the extent that action has already been taken in reliance on it. Without my express revocation, this consent will automatically expire when all action arising from VA's claim for reimbursement for my medical care has been completed. I authorize payment of medical benefits to VA for any services for which payment is accepted.

| | |
|---|---|
| SIGNATURE | DATE |

VA FORM
DEC 2002 **10-10EC**

*Page 2 of 3*

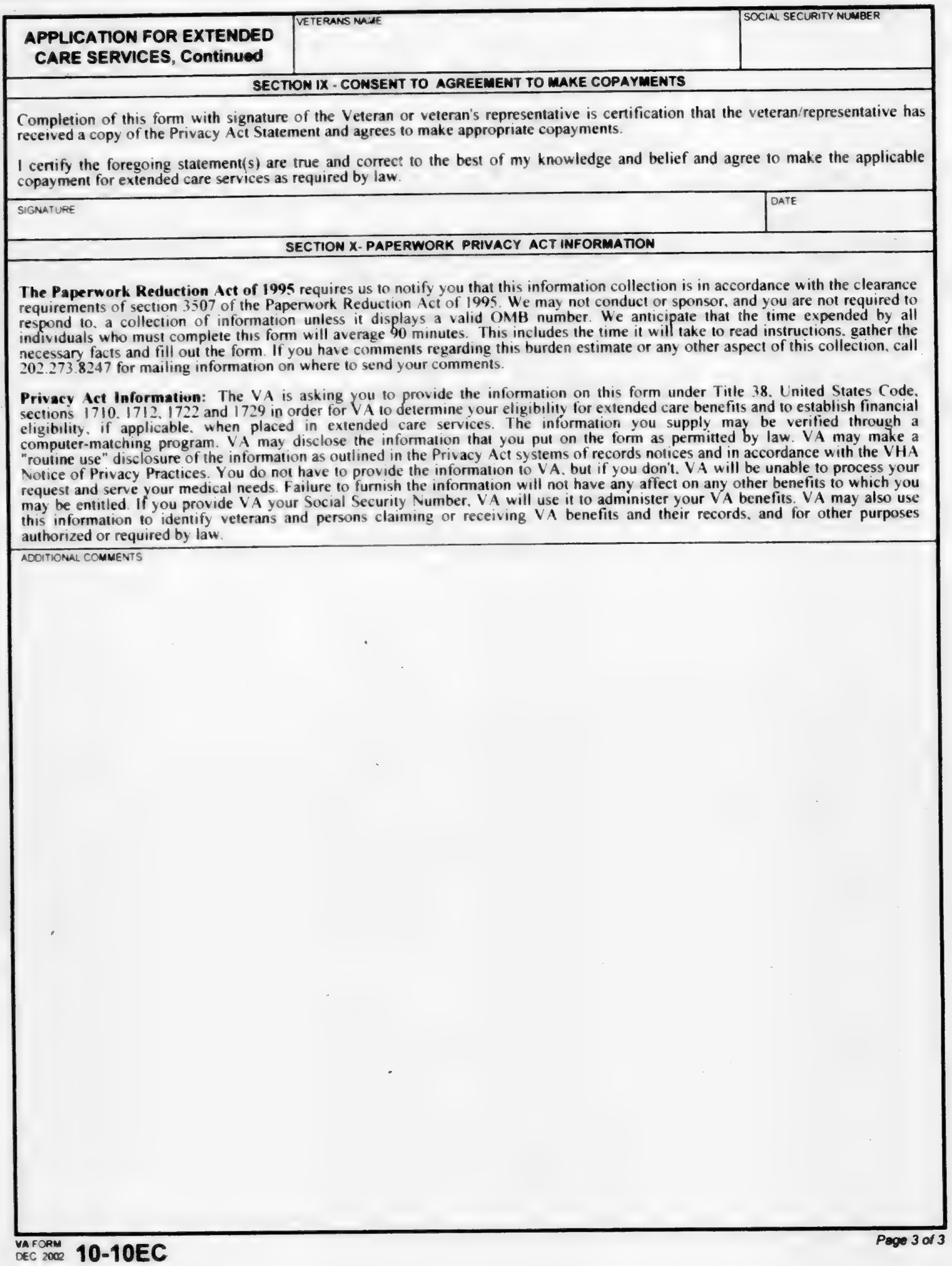

| | | |
|---|---|---|
| **APPLICATION FOR EXTENDED CARE SERVICES, Continued** | VETERANS NAME | SOCIAL SECURITY NUMBER |

**SECTION IX - CONSENT TO AGREEMENT TO MAKE COPAYMENTS**

Completion of this form with signature of the Veteran or veteran's representative is certification that the veteran/representative has received a copy of the Privacy Act Statement and agrees to make appropriate copayments.

I certify the foregoing statement(s) are true and correct to the best of my knowledge and belief and agree to make the applicable copayment for extended care services as required by law.

| | |
|---|---|
| SIGNATURE | DATE |

**SECTION X- PAPERWORK PRIVACY ACT INFORMATION**

**The Paperwork Reduction Act of 1995** requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 90 minutes. This includes the time it will take to read instructions, gather the necessary facts and fill out the form. If you have comments regarding this burden estimate or any other aspect of this collection, call 202.273.8247 for mailing information on where to send your comments.

**Privacy Act Information:** The VA is asking you to provide the information on this form under Title 38, United States Code, sections 1710, 1712, 1722 and 1729 in order for VA to determine your eligibility for extended care benefits and to establish financial eligibility, if applicable, when placed in extended care services. The information you supply may be verified through a computer-matching program. VA may disclose the information that you put on the form as permitted by law. VA may make a "routine use" disclosure of the information as outlined in the Privacy Act systems of records notices and in accordance with the VHA Notice of Privacy Practices. You do not have to provide the information to VA, but if you don't, VA will be unable to process your request and serve your medical needs. Failure to furnish the information will not have any affect on any other benefits to which you may be entitled. If you provide VA your Social Security Number, VA will use it to administer your VA benefits. VA may also use this information to identify veterans and persons claiming or receiving VA benefits and their records, and for other purposes authorized or required by law.

ADDITIONAL COMMENTS

VA FORM
DEC 2002 **10-10EC**

*Page 3 of 3*

* * * * *

(Authority: 38 U.S.C. 101(28), 501, 1701(7), 1710, 1710B, 1720B, 1720D, 1722A)

BILLING CODE 8320-01-P

[FR Doc. 03-26184 Filed 10-15-03; 8:45 am]

BILLING CODE 8320-01-C

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 30, 31, 33, 35 and 40

**[Docket ID No. OA-2002-0001; FRL-7575-4]**

**RIN 2020-AA39**

## Public Hearings on Participation by Disadvantaged Business Enterprises in Procurement Under Environmental Protection Agency Financial Assistance Agreements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; public hearings.

**SUMMARY:** This document announces the dates and locations of Tribal and other public hearings wherein EPA will take comments on its proposed rule for "Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency Financial Assistance Agreements," published on July 24, 2003, at 68 FR 43824. These Tribal and other public hearings will be held during the 180-day public comment period for the proposed rule, which ends on January 20, 2004. EPA will publish information concerning additional Tribal hearings during the comment period when that information becomes available.

**DATES:** The hearings are scheduled as follows:

1. October 23, 2003, 1:15 p.m. to 3:30 p.m., Temecula, CA
2. October 28, 2003, 9:30 a.m. to 5 p.m., San Juan, PR
3. October 30, 2003, 8:30 a.m. to 5 p.m., St. Thomas, VI

**ADDRESSES:** The hearings will be held at the following locations:

1. Pechanga Resort and Casino, 45000 Pechanga Parkway, Temecula, California 92592.
2. Inter American University of PR, Central Office of the System, 399 Galileo Street—End, Jardines Metropolitanos, Rio Piedras, San Juan, PR 00927.
3. Ron De Lugo Federal Building, 5500 Veteran's Drive, St. Thomas, VI 00802.

**FOR FURTHER INFORMATION CONTACT:** Mark Gordon, Attorney Advisor, at (202) 564-5951, Kimberly Patrick, Attorney Advisor, at (202) 564-5386, or David Sutton, Deputy Director, at (202) 564-4444, Office of Small and Disadvantaged Business Utilization, U.S. Environmental Protection Agency, Mail Code 1230A, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:** EPA published its proposed rule for Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements on July 24, 2003 at 68 FR 43824. EPA has established an official public docket for this action under Docket ID No. OA-2002-0001. The proposed rule and supporting materials are available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Office of Environmental Information is (202) 566-1752. An electronic version of the public docket is available through EPA's electronic public docket and comment systems, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," and then key in docket identification number OA-2002-0001. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr.*

Dated: October 10, 2003.

**Thomas J. Gibson,**

*Chief of Staff.*

[FR Doc. 03-26190 Filed 10-15-03; 8:45 am]

BILLING CODE 6560-50-P

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

**[FRL-7574-9]**

## West Virginia: Final Authorization of State Hazardous Waste Management Program Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** West Virginia has applied to EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to West Virginia. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we receive written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. However, if we receive comments that oppose this action, or portions thereof, we will withdraw the relevant portions of the immediate final rule, and they will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

**DATES:** Send your written comments by November 14, 2003.

**ADDRESSES:** Send written comments to Lillie Ellerbe, Mailcode 3WC21, RCRA State programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814-5454. Comments may also be submitted electronically to *ellerbe.lillie@epa.gov*, or by facsimile at (215) 814-3163. Comments in electronic format should identify this specific notice. You may inspect and copy West Virginia's's application from 8 a.m. to 4:30 p.m. at the following locations: West Virginia Department of Environmental Protection, Division of Water and Waste Management, 1356 Hansford Street, Charleston, WV 25301-1401, Phone number: (304) 558-4253, attn: Carroll Cather or EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103-2029, Phone Number: (215) 814-5254.

**FOR FURTHER INFORMATION CONTACT:** Lillie Ellerbe, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone Number: (215) 814-5454.

**SUPPLEMENTARY INFORMATION:** For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: October 7, 2003.

**Donald S. Welsh,**

*Regional Administrator, EPA Region III.*

[FR Doc. 03–26048 Filed 10–15–03; 8:45 am]

**BILLING CODE 6560–50–M**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 030922237–3237–01; I.D. 082503D]**

**RIN 0648–AQ98**

## Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program; Community Purchase

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** NMFS issues a proposed rule to implement Amendment 66 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP), and an amendment to the Pacific halibut commercial fishery regulations for waters in and off of Alaska. Amendment 66 to the FMP and the regulatory amendment would modify the Individual Fishing Quota (IFQ) Program by revising the definition of an eligible quota share holder to allow eligible communities in the Gulf of Alaska (GOA) to establish non-profit entities to purchase and hold halibut and sablefish quota share (QS) for lease to, and use by, community residents as defined by specific elements of the proposed action. This action is intended to improve the effectiveness of the IFQ Program and is necessary to promote the objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Northern Pacific Halibut Act of 1982 (Halibut Act) with respect to the IFQ fisheries.

**DATES:** Comments on the proposed rule must be received on or before December 1, 2003.

**ADDRESSES:** Comments may be sent to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall. Comments also may be delivered by hand to NMFS, Room 420, 709 West 9th Street, Juneau, AK 99801. Send comments on collection-of-information requirements to the same address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), via facsimile (202–395–7285; Attn: NOAA Desk Officer) or email at *David_Rostker@omb.eop.gov*. Comments also may be sent via facsimile (fax) to 907–586–7557. Comments will not be accepted if submitted by email or the Internet. Copies of Amendment 66 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for Amendment 66 may be obtained from the North Pacific Fishery Management Council at 605 West 4th, Suite 306, Anchorage, AK 99501–2252, Phone: (907) 271–2809.

**FOR FURTHER INFORMATION CONTACT:** Glenn Merrill, 907–586–7228 or email at *glenn.merrill@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

### Background

The groundfish fisheries in the Exclusive Economic Zone of the GOA are managed under the FMP. The FMP was developed by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act (Public Law 94–265, 16 U.S.C. 1801). The FMP was approved by the Secretary of Commerce and became effective in 1978. Fishing for Pacific halibut (*Hippoglossus stenolepis*) is managed by the International Pacific Halibut Commission (IPHC) and the Council under the Halibut Act. The IFQ Program, a limited access management system for the fixed gear Pacific halibut and sablefish (*Anoplopoma fimbria*) fisheries off Alaska, was recommended by the Council in 1992, approved by NMFS in January 1993, and initial implementing rules were published on November 9, 1993 (58 FR 59375). Fishing under the IFQ program began on March 15, 1995. The IFQ Program limits access to the halibut and sablefish fisheries to those persons holding QS in specific management areas. The IFQ Program for the sablefish fishery is implemented by the FMP and Federal regulations at 50 CFR part 679 under authority of the Magnuson-Stevens Act. The IFQ Program for the halibut fishery is implemented by Federal regulations at 50 CFR part 679 under the authority of the Halibut Act.

The IFQ Program originally was designed to resolve conservation and management problems that are endemic to open access fisheries. The background issues leading to the Council's initial action recommending the adoption of IFQs are described in the preamble to the proposed rule establishing the IFQ Program published December 3, 1992 (57 FR 57130).

A central concern of the Council in developing the IFQ Program was that QS, from which IFQ is derived, would become increasingly held by corporate entities instead of independent fishermen who typically own and operate their own vessels. To prevent this outcome, the Council designed the IFQ Program such that QS could, in most cases, be held only by individuals or natural persons, and not by corporate entities. The Council provided limited exemptions to this basic approach to accommodate existing corporate ownership of vessels at the time of implementation and to recognize the participation by corporately owned freezer vessels. However, the overall intent of the IFQ Program was for catcher vessel QS eventually to be held only by individual fishermen. The IFQ Program is designed to limit corporate holding of QS and increase holdings of QS by individual fishermen as corporate owners divest themselves of QS. The rationale for this owner-operator structure was that it would maintain a robust QS market and reasonable entry costs for new fishermen. This provision is implemented through the QS and IFQ transfer regulations at 50 CFR 679.41.

The purpose of this proposed rule is to revise existing IFQ Program regulations and policy to explicitly allow a new group of non-profit entities to hold QS on behalf of residents of specific rural communities located adjacent to the coast of the GOA. This change would allow a non-profit corporate entity that meets specific criteria to receive transferred halibut or sablefish QS on behalf of an eligible community and to lease the resulting IFQ to fishermen who are residents of the eligible community. This change is intended to provide additional opportunities to these fishermen, and may indirectly address concerns about the economic viability of those communities.

A Notice of Availability (NOA) of the FMP amendment was published on September 2, 2003 (68 FR 52173), with comments on the FMP amendment invited through November 3, 2003. Written comments may address the FMP amendment, the proposed rule, or both, but must be received by November 3, 2003, to be considered in the decision to approve or disapprove the FMP amendment.

Since initial issuance of QS, and as a result of voluntary transfers of QS, the amount of QS and the number of resident QS holders has substantially declined in most of the GOA communities that would be affected by this action. This trend may have had an effect on employment and may have reduced the diversity of fisheries to which fishermen in rural communities have access.

The ability of fishermen in small rural communities to purchase QS or maintain existing QS may be limited by a variety of factors unique to those communities. In particular, many fishermen in small rural communities may be limited in their ability to obtain access to financing due to the remote nature of the communities and their dependence on a limited range of economic opportunities. Many small rural communities are isolated from other communities and this isolation limits access to a wider variety of markets for fishery product that are available to communities with better transportation infrastructure. In addition, fishermen in these rural communities tend to have smaller vessels and fishing operations relative to fishermen in larger ports. These fishermen may have received less QS during initial issuance and may have chosen to divest themselves of QS that was not economically viable. Although the specific causes for decreasing QS holdings in rural communities may vary, the net effect is overall lower participation by residents of these communities in the halibut and sablefish IFQ fisheries.

In June 2000, representatives of several GOA communities presented the Council with a proposal to allow communities to purchase QS. The Council approved several alternatives for analysis in June 2001, reviewed an initial analysis in December 2001, and took final action in April 2002. The Council formally adopted a problem statement in June 2001 for this proposed action that recognized the fact that a number of small coastal communities "are struggling to remain economically viable." The Council stated that "[a]llowing qualifying communities to purchase halibut and sablefish quota share for use by community residents will help minimize adverse economic impacts on these small, remote, coastal communities in Southeast and Southcentral Alaska, and help provide for the sustained participation of these communities in the halibut and sablefish IFQ fisheries."

The proposed action developed by the Council would address these concerns by modifying the IFQ Program to allow non-profit entities that represent small rural communities in the GOA with a historic participation in the halibut and sablefish fisheries to hold QS. The Council's recommendations also reflect the most recent amendments to the Magnuson-Stevens Act, and IFQ policy recommendations by the National Research Council (NRC).

The 1996 amendments to the Magnuson-Stevens Act established a new national standard for fishery conservation and management (National Standard 8) that requires management programs to "take into the account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities" (16 U.S.C. 1851). The Halibut Act requires consideration of the effect of halibut allocations to fishing communities by reference to section 303(b)(6) of the Magnuson-Stevens Act. This reference requires, among other things, that the effects of halibut allocations be considered as is described under the directives of National Standard 8 of the Magnuson-Stevens Act.

The 1996 Magnuson-Stevens Act amendments also directed the NRC to submit a report to Congress on existing IFQ Programs and provide recommendations on the implementation of existing and future programs. The NRC published its report "Sharing the Fish: Toward a National Policy on Individual Fishing Quotas" in 1999. In this report, the NRC recommends that NMFS and the Regional Councils consider including fishing communities as stakeholders in fishery management programs. The NRC recommends that Regional Councils should be permitted to authorize the purchase, holding, management, and sale of QS/IFQs by communities. This action proposes to implement provisions that would address the NRC recommendations on the use of QS by communities.

The Council considered the range of comments from the public, NMFS, and the State of Alaska (State), and incorporated various suggestions in developing its proposed community QS policy. The basic provisions of this proposed policy are described as follows.

## Community QS Provisions

### *1. Community Quota Entities*

Community quota entities (CQEs), incorporated under the laws of the State to represent eligible communities, would obtain QS by transfer and hold the QS and lease the resulting annual IFQ to individual community residents. Unless otherwise specified, the restrictions that apply to any current QS holder would apply to a CQE. CQEs, however, would be subject to additional regulatory requirements beyond those applying to existing QS holders.

A CQE could represent more than one eligible community. However, no community could be represented by more than one CQE. This provision would minimize confusion and ensure effective and efficient administration of the program.

During Council deliberations, a new non-profit entity was selected as the appropriate QS holder for these communities based on recommendations from GOA communities. These recommendations indicated that a non-profit entity could be more flexible and cost-effective than either a for-profit corporation or an existing governmental body. To be considered eligible to hold QS on behalf of a community, a CQE would be required to be incorporated after April 10, 2002, the date of final Council action.

The Council stated that the purpose of designating a new non-profit entity to hold QS is that existing administrative structures such as municipal governments, tribal councils, or other community organizations may be focused on other priorities. The Council considered that a new non-profit entity may be better suited to represent an entire community with the express purpose of purchasing and managing QS. Additionally, the EA/RIR/IRFA noted that a number of communities considered as eligible for this program are unincorporated, do not have local tribal governments, or other community organizations, and therefore lack an existing governmental body that could manage the QS.

The Council also recommended that a non-profit organization provide proof of support from the community that it is seeking to represent. This support must be demonstrated in the application by a non-profit organization to become eligible as a CQE. The specific mechanism for the community to demonstrate its support for a CQE is described in the Administrative Oversight section of the preamble.

Once an application to become a CQE has been approved, then that CQE would be eligible to hold and receive QS, and lease IFQ to eligible community residents under the mechanisms established by this proposed rule. If a CQE does not remain in compliance, (e.g., by failing to submit a complete annual report), then NMFS could initiate administrative proceedings to deny the transfer of QS or IFQ to or from the CQE. As with other administrative determinations under the IFQ Program, any such determination could be appealed under the procedures set forth in regulations (50 CFR 679.43). The Council recommended regulatory measures, described below, as a means to monitor the ability of the non-profit entities to meet the goals of distributing IFQ among residents in these GOA communities.

### *2. Eligible Communities*

Communities eligible to participate in this program would need to meet all the following criteria: (a) have a population of less than 1,500 persons based on the 2000 United States Census; (b) have direct saltwater access; (c) lack direct road access to communities with a population greater than 1,500 persons; (d) have historic participation in the halibut and sablefish fisheries; and (e) be specifically designated on a list adopted by the Council and included in this proposed rule (see Table 21 to Part 679).

If a community appears to meet the eligibility criteria but is not specifically designated on the list of communities adopted by the Council, then that community would have to apply directly to the Council to be included. In this event, the Council may modify the list of eligible communities adopted by the Council through a regulatory amendment. Under the criteria established in this proposed rule, a total of 42 communities in the GOA would qualify as eligible to purchase QS. These eligible communities may designate a new non-profit entity to hold QS on behalf of that community.

The specific criteria for community eligibility were developed through Council deliberations. Generally, the Council chose criteria that were intended to define a set of communities that have experienced a similar decline in their participation in the halibut and sablefish IFQ fisheries. Analysis in the EA/RIR/IRFA indicates that all but 2 of the 42 communities designated in Table 21 to part 679 have experienced a net loss in QS held by residents of those communities since initial allocation.

#### (a) Population of Less than 1,500 persons

The Council considered a range of population criteria and chose to limit eligibility to communities less than 1,500 persons based on an analysis of QS distribution. This analysis indicated that several communities larger than 1,500, specifically Wrangell and Cordova, did not have the same decline in participation in the halibut and sablefish fisheries as the communities that this action proposes to address. The 2000 United States Census was chosen as the standard for measuring total population. This standard would be used to determine eligibility for community participation in this program because it is considered to be a more accurate measure of population than annual estimates conducted by the State. Additionally, at the time that final action to modify the IFQ Program was taken by the Council to accommodate communities, the 2000 Census was the best available demographic data.

This proposed rule establishes that a community with not less than 20 persons and not more than 1,500 persons that is defined as a Census Designated Place under the U.S. Census fulfills the requirement for the definition of a community for the purposes of this program. If communities seek inclusion as an eligible community in the future, then NMFS would review those communities using the definitions of a community as defined by this proposed rule.

The reason for using a minimum of a 20–person standard, is that two communities specifically designated by the Council for eligibility for this program have populations slightly higher than 20 persons. Specifically, Meyers Chuck and Ivanof Bay have populations of 21 and 22 persons, respectively. If a higher minimum population standard were used, neither of these communities would be eligible to participate in this program. Excluding these two communities that have experienced a loss of QS since the implementation of the IFQ program would undermine the intent of this action, which is to provide an additional opportunity for residents of those communities to receive access to halibut and sablefish resources.

The limitation on minimum population size would reduce the potential for future petitions for inclusion into the program by a small group of individuals living in a place solely for the purpose of participating in this program. Additionally, there are a number of communities that are no longer populated that could be qualified under the historic participation criteria. The Council did not intend this program to provide an opportunity for communities which do not exist to receive the ability to form non-profit entities and purchase QS. The limitation on population size would prevent this possibility and also reflects existing definitions of a community as established by the State of Alaska for purposes of revenue sharing agreements. The State defines a community as a group of not less than 25 people living in a geographic location as a social unit. Without a minimum population standard established in this proposed rule, the goals of the Council and this action to provide additional opportunities for coastal residents in established communities is undermined. All of the communities designated by the Council on the list of eligible communities meet these requirements based on the analysis of these eligibility criteria in the EA/RIR/IRFA prepared for this proposed rule.

#### (b) Have Direct Saltwater Access

A community would be defined as adjacent to saltwater if it is located on the GOA coast of the North Pacific Ocean.

#### (c) Lack of Direct Road Access

The Council recommended limiting eligibility to communities without direct road access to communities larger than 1,500 persons because such communities may lack access to markets for fishery products and could be disadvantaged relative to other communities with better transportation infrastructure. Communities that do have road access to larger communities would be expected to have access to larger markets, better access to capital, and are not likely to face the same economic conditions that this program is trying to address by providing additional harvest opportunities for community residents.

#### (d) Have Historic Participation in the Halibut and Sablefish Fisheries

Historic participation would be defined as communities for which a resident has recorded a commercial landing of either halibut or sablefish between 1980–2000 according to Commercial Fisheries Entry Commission (CFEC) data for permit and fishing activity. This definition would provide a means for the Council to consider those communities for which halibut or sablefish has some historic commercial importance. A broad range of years was chosen to accommodate the shifting patterns of halibut and sablefish harvests within these communities over the past twenty years. The year 1980 was chosen because it represents the first year of widely collected and reliable data from the CFEC , and the year 2000 was chosen because it was the last year of data available prior to the Council's decision to recommend this program.

#### (e) Be Specifically Designated on a List Adopted by the Council

The Council adopted a specific list of eligible communities to limit the entry of new communities into the Community QS Program (see Table 21 to Part 679). The Council expressed a desire to review the addition of any communities not listed. Council review is ensured by listing eligible communities in the regulations. Any change to the list of eligible communities would first require Council action to recommend such a change. The Council desired this review to ensure that communities that were not originally considered under this proposed rule provide adequate evidence of their eligibility to participate in this program. This review would reduce potential disruption in administration of the Community QS Program due to a sudden and unanticipated increase in competition for QS among eligible communities. This Council review also would provide an additional public review process before modifying the Community QS Program.

### *3. Use Caps for Individual Communities*

Each eligible community as represented by a CQE would be subject to the same use limitations on QS and IFQ currently established for QS holders as described under 50 CFR 679.42(e) for sablefish and 50 CFR 679.42(f) for halibut. Therefore, for each community it represents, a CQE would be limited to using:

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| No more than: 599,799 units of halibut QS | in IFQ regulatory area 2C. |
| No more than: 1,502,823 units of halibut QS combined | in IFQ regulatory areas 2C, 3A, and 3B. |
| No more than: 688,485 sablefish QS units | in the IFQ regulatory Area East of 140° W. long. (Southeast Outside District). |
| No more than 3,229,721 sablefish QS units combined | in the Southeast Outside District West Yakutat, Central Gulf Regulatory Area, and Western Gulf Regulatory Area. |

A CQE representing an eligible community located within Areas 3A or 3B would be prohibited from purchasing QS in Area 2C (Southeast Alaska) on behalf of that community. The Council recommended this provision because 21 of the 42 eligible communities are located in Area 2C. Allowing additional CQEs representing communities located in Areas 3A and 3B to purchase QS in Area 2C would increase competition, and possibly result in higher QS prices, for 2C communities. This increased competition could affect both prospective community QS buyers and new individual entrants to the fishery.

Likewise, a CQE representing an eligible community within Area 2C would be prohibited from purchasing and using QS in Area 3B (Western GOA) on behalf of that community. The Council recommended this limitation because residents from communities located in Area 2C traditionally did not fish in Area 3B, and one of the principal goals of the community QS program is to improve the access of residents of the eligible communities to local resources.

Although the Council recommended limiting the use of halibut QS to those areas that are adjacent to the eligible communities, a similar provision was not recommended for sablefish. The sablefish fishery occurs in deeper waters than much of the halibut fishery and typically requires larger vessels that can travel longer distances for harvesting fish.

As noted above, the Council recommended limiting QS holdings by CQEs on behalf of communities to the levels established in the current IFQ program. The Council noted that this limit would provide an adequate opportunity for communities to purchase and hold sufficient QS for leasing the resulting IFQ among community residents. This level was considered not to be so restrictive as to discourage communities from purchasing and holding quota. The Council also considered the potential effects on existing QS holders in recommending use caps for individual communities. The use caps accommodate existing QS holders who are concerned that shifting potential QS holdings to communities could disadvantage individual fishermen by reducing the amount of QS available to them in the QS market.

### *4. Cumulative Use Caps for All Communities*

Communities represented by CQEs cumulatively would be limited to holding a maximum of 3 percent of the total halibut and sablefish QS in each area in the first year after implementation of this program. In each subsequent year, the percentage would be increased by an additional 3 percent until, after 7 years, a maximum of 21 percent of the total halibut and sablefish QS could be held in each area in which CQEs are eligible to hold QS.

The Council recommended limiting cumulative community ownership of QS in each area as an additional measure to reduce the potential increase in QS price that could result if CQEs sought to purchase QS up to their respective communities' use cap(s) in each area. The Council recommended this step-up cumulative use cap to balance potential QS market competition between communities and individuals, and to accommodate the desire of GOA community representatives to have adequate access to QS as CQEs enter the program on behalf of eligible communities.

### *5. Transfer and Use Restrictions*

#### (a) Block Limits

The purchase of blocked QS by CQEs would be restricted. During Council deliberations, numerous industry representatives and fishermen indicated that allowing unrestricted purchasing of QS could disadvantage new entrants, particularly those individuals in the market for "blocked QS." Blocked QS are aggregates of small units of QS that were designated as blocks when they were initially issued and that cannot be subdivided upon transfer. The number of blocks that may be held by a person is limited under the IFQ Program. These limits were established to limit the consolidation of blocked QS and to ensure that smaller aggregate units would be available on the market. Blocked QS typically is less expensive and more attractive to new-entrants.

This proposed rule would modify the consolidation limits for blocked QS for communities represented by CQEs. The Council is recommending this change to provide additional opportunities for CQEs (on behalf of the communities they represent) to access the typically less expensive blocked QS. The Council also considered the potential effects on new entrants by allowing each community represented by a CQE to hold more QS blocks than can other types of QS holders. Each community represented by a CQEs would be limited to holding, at any point in time, a maximum of 10 blocks of halibut QS and 5 blocks of sablefish QS in each IFQ regulatory area for halibut and sablefish. The CQE could not subdivide blocked QS.

Existing regulations at 50 CFR 679.42(g) limit QS holders to a maximum of two blocks for either species in any area if a person holds only blocked QS, and no more than one block for a species in an area if a person holds any unblocked QS for that species-area combination. Allowing CQEs to hold more blocks than existing QS holders on behalf of their constituent communities would expand the potential QS market available to these communities. The Council recommended this provision because in most areas of the GOA large portions of the QS are available only in blocked shares. Limiting communities to existing unblocked QS would effectively limit the QS available to communities to a small portion of the total QS that is typically higher priced than the more available blocked QS. The proposed limits would provide additional opportunities for eligible communities represented by CQEs to purchase QS beyond those that constrain current QS holders. In recommending this modification to the existing regulations, the Council balanced the objectives of this new program with concerns about protecting the interests of individual new entrants to the fishery.

To accommodate the interests of prospective new entrants, the Council recommended prohibiting CQEs from purchasing:

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| Halibut QS blocks less than or equal to 19,992 units.<br>(e.g., 2,850 lb (1,292.8 kg) of IFQ in 2003) | in Area 2C. |
| Halibut QS blocks 27,912 units.<br>(e.g., 3,416 lb (1,549.5 kg) of IFQ in 2003). | in Area 3A. |
| Sablefish QS blocks less than or equal to 33,270 units.<br>(e.g., 4,003 lb (1,815.8 kg) of IFQ in 2003) | in the Southeast Outside District. |
| Sablefish QS blocks less than or equal to 43,390 units.<br>(e.g., 3,638 lb (1,650.2 kg) of IFQ in 2003) | in the West Yakutat District. |
| Sablefish QS blocks less than or equal to 46,055 units.<br>(e.g., 4,684 lb (2,124.7 kg) of IFQ in 2003) | in the Central GOA regulatory area. |
| Sablefish QS blocks less than or equal to 48,410 units.<br>(e.g., 6,090 lb (2,762.4 kg) of IFQ in 2003 | in the Western GOA regulatory area. |

These QS limits are specified in 50 CFR 679.41(e) as the "sweep up" limit, or the number of QS units initially issued as blocks that could be combined to form a single block.

The Council recommended that communities not be eligible to purchase or hold these smaller "sweep-up" blocks because these smaller QS blocks typically are purchased by individuals entering the IFQ fisheries. The Council recommended this measure to minimize potentially unfair competition in the QS market between CQEs and individuals for these small QS blocks. The Council did not recommend similar restrictions on QS in the halibut fishery for Area 3B because fewer "sweep-up" blocks exist in Area 3B and few new entrants in Area 3B have sought these "sweep-up" blocks.

(b) Transfer and IFQ Leasing

CQEs could only receive and use halibut QS assigned to vessel category B (greater than 60 feet length overall) and vessel category C (greater than 35 feet and less than or equal to 60 feet length overall) in Areas 2C and 3A.

This provision would prohibit CQEs from holding QS assigned to vessel category D (less than or equal to 35 feet (10.7 m) length overall) in Areas 2C and 3A. Category D QS typically is purchased by individuals seeking entry to the halibut IFQ fisheries. The Council recommended this provision to reduce potential competition in the halibut QS market between individuals and CQEs.

The Council did not recommend prohibiting CQEs from holding D category halibut QS in Area 3B. A relatively small amount of D category QS exists in Area 3B, and traditionally few prospective buyers exist for this category of QS. Existing D category QS holders in Area 3B indicated that allowing CQEs to purchase D category QS in Area 3B would increase the marketability of their QS.

The Council did not recommend catcher vessel category restrictions for CQEs holding sablefish QS. Only B and C vessel categories exist for sablefish QS and sablefish are typically harvested from larger vessels.

So that the annual IFQ derived from the QS held on behalf of a community could be fished, a CQE would lease (i.e., transfer the annual IFQ) to one or more residents of the community, or communities, it represents. Each IFQ lease would be made on annual basis, as is currently the requirement in existing regulations. IFQ so transferred could be fished from a vessel of any size regardless of the QS vessel category from which the IFQ was derived. This provision would apply only while the QS is held by the CQE. The vessel category requirements for use of the QS would apply once again after the QS is transferred from a CQE to a qualified recipient that was not a CQE.

The Council recommended this provision to facilitate the use of the IFQ on the wide range of vessel types that is present in many rural communities. Limiting CQEs to purchase only certain vessel category QS could increase demand and price competition among CQEs and other QS holders, particularly for category C QS because many vessels in the eligible communities tend to be within this size range. Broadening the use of IFQ from community-held QS could reduce this potential competition.

The amount of IFQ that may be leased annually to an eligible community resident would be limited so that no such lessee could hold IFQ permits authorizing the harvest of more than 50,000 lb (22.7 mt) of halibut and 50,000 lb (22.7 mt) of sablefish IFQ, inclusive of any IFQ derived from any source.

This limitation is intended to ensure a broad distribution of IFQ among community residents and to limit the amount of IFQ that may be leased to those residents who already hold QS or lease IFQ from another source. The Council noted that one of the principal goals of this program was to provide access to halibut and sablefish resources to community residents that do not currently have access to these resources.

Similarly, during any fishing year, no vessel participating in the community QS program could be used to harvest an amount of IFQ greater than 50,000 lb (22.7 mt) of halibut and 50,000 lb (22.7 mt) of sablefish, inclusive of all IFQ fished aboard that vessel. Currently, vessels are limited to 1 percent of the Area 2C IFQ TAC for halibut (e.g., 85,000 net pounds (38 mt) in 2003), or, outside of Area 2C, 0.5 percent of the entire IFQ TAC (e.g., 295,050 net pounds (134 mt) in 2003), and 1 percent of the Southeast IFQ TAC for sablefish (e.g. 78,484 round pounds (36 mt) in 2003), or, outside of Southeast, 1 percent of the entire sablefish TAC (e.g. 348,635 round pounds (158 mt) in 2003).

This limitation on the amount of IFQ that could be fished on any one vessel using community-held QS is intended to encourage use of a broad distribution of community-held IFQ on vessels that may otherwise have limited or no participation in the IFQ Program.

Eligibility to lease IFQ derived from community-held QS would be limited to permanent residents of the community represented by the CQE. The Council recommended this provision to explicitly tie the potential benefits of QS held by a CQE on behalf of a community to the residents of that community. Such a resident who wishes to lease IFQ would be required to state that he or she maintains a permanent domicile in that specific community and is qualified to receive QS and IFQ by transfer under the existing regulations (i.e., that he or she holds a Transfer Eligibility Certificate issued by NMFS).

Existing regulations at 50 CFR 679.41 require that, for an individual to be eligible to receive QS/IFQ by transfer, such an individual must be a U.S. citizen and must either have received QS upon initial issuance or have 150 days of experience onboard a vessel working as part of the harvesting crew in a U.S. commercial fishery. Upon having demonstrated that he or she has satisfied those requirements, such an individual is issued a Transfer Eligibility Certificate (TEC). These requirements would remain in place for individuals seeking to lease IFQ derived from community QS. Individuals receiving IFQ must meet these qualifications and attest that they are permanently domiciled within that community when receiving IFQ by transfer from a CQE. For purposes of this program, an individual would need to affirm that he or she maintained a domicile in the community from which the IFQ is leased for 12 consecutive months immediately preceding the time when the assertion of residence is made, and had not claimed residency in another community, state, territory, or country.

An individual who receives IFQ derived from QS held by a CQE may not designate a skipper to fish the community IFQ, instead that individual must be onboard the vessel when the IFQ is being fished. The Council recommended this requirement to help ensure that the potential benefits of QS held by communities would be realized by resident fishermen of those communities and not leased outside the communities.

Individuals who hold leases of IFQ from communities would be considered to be IFQ permit holders and would be subject to the regulations that govern other permit holders, including the payment of annual fees as required under 50 CFR 679.45, unless noted otherwise in this proposed rule.

(c) Sale Restrictions

Certain restrictions would apply to the transfer of QS held by a CQE on behalf of a community. A CQE is restricted to sell its QS to generate revenues to improve, sustain, or expand the opportunities for community residents to participate in the IFQ halibut and sablefish fisheries. These restrictions are designed to ensure that the goals of the program are met. NMFS would approve the transfer of QS held by a CQE on behalf of a community only if the community for which the CQE holds the QS authorizes that transfer. This authorization may be in the form of a signature from a authorized representative of the governing body of the eligible community for QS transfers on the Approval of Transfer form. The purpose of this authorization is to ensure that the community is fully aware of the transfer because certain restrictions apply to future transfers if the transfer of QS is for a reason other than to sustain, improve, or expand the program (i.e., the CQE would be prohibited from holding QS on behalf of that community for a period of three years and the CQE must divest itself of all QS held on behalf of that community).

This proposed action would also provide an opportunity for a CQE to transfer QS to dissolve the CQE; or as a result of a court order, operation of law, or as part of a security agreement. These provisions are allowed to account for those cases in which a CQE is no longer capable of representing an eligible community and seeks to divest itself of QS holdings in order to provide an opportunity for another non-profit to form and seek approval as a CQE for a community. Transfers that are required as a result of a court order, operation of law, or as part of a security requirement would be authorized under this proposed action. These forms of transfers are authorized under the existing IFQ program.

During Council deliberations, NMFS indicated that the enforcement and monitoring mechanism for these transfer provisions would be limited. The EA/RIR/IRFA prepared by the Council (see **ADDRESSES**) notes these concerns. Rather than requiring an extensive monitoring and auditing program for each transfer of QS, NMFS would rely on the declaration by the CQE about the purpose of the transfer of any QS held on behalf of a community and the authorization by the governing body of that community to transfer that QS. If subsequent information is made available to NMFS that confirms that the transfer of QS is made for reasons other than to sustain, improve, or expand the opportunities for community residents, then NMFS would withhold annual IFQ permits on any remaining QS held by the CQE on behalf of that community and would disqualify that CQE from holding QS on behalf of that community for 3 calendar years following the year in which final agency action adopting that determination is made.

NMFS would not impose this restriction until the CQE had received full administrative due process, including notice of the potential action and the opportunity to be heard. An initial administrative determination (IAD) proposing an adverse action would only become final agency action if the CQE failed to appeal the IAD within 60 days, or upon the effective date of the decision issued by the Office of Administrative Appeals. The procedures for appeal are provided at 50 CFR 679.43.

The 3–year restriction was recommended by the Council because the Council did not intend for this program to provide a mechanism for speculating in the QS market or using potential assets to fund other unrelated projects but intended to encourage the long-term participation of fishery dependent communities in the IFQ Program. The public is encouraged to comment specifically on these transfer restrictions, the administrative process that would be established to monitor these requirements, and the enforcement of these restrictions.

### *6. Joint and Several Liability for Violations*

Both the CQE and the individual fisherman to whom the CQE leases its IFQ will be considered jointly and severally liable for any IFQ fishery violation committed while the individual fisherman is in the process of fishing the leased IFQ. This joint and several liability is analogous to the joint and several liability currently imposed on IFQ permit holders and any hired skippers fishing the permit holders' IFQ.

### *7. Administrative Oversight*

Implementing this proposal would require that NMFS: (1) review applications of eligibility for non-profit entities seeking to be qualified as a CQE for a particular community and certify eligible CQEs; and (2) review an annual report detailing the use of QS and IFQ by the CQE and community residents. These reviews ensure that the CQEs are adequately representing the communities and that the program is meeting the goals established by the

Council. If a CQE fails to provide a completed annual report to NMFS for each community that it represents, then that CQE would be deemed ineligible to use the IFQ resulting from that QS on behalf of that community until a complete annual report is received. Before becoming a Final Agency Action, any such determination by NMFS may be appealed through the administrative appeals process described under the IFQ Program (50 CFR 679.43).

Each non-profit entity applying to become a CQE would have to provide NMFS with the following:

(1) Its articles of incorporation as a non-profit entity under the laws of the State;

(2) A statement designating the community, or communities, represented by that CQE;

(3) Management organization;

(4) A detailed statement describing the procedures that will be used to determine the distribution of IFQ to residents of each community represented by that CQE; and

(5) A statement of support and accountability of the non-profit entity to that community from a governing body representing each community represented by the CQE.

During Council deliberations, the State noted that it would like to have an opportunity to provide NMFS with comments on applications by non-profit entities seeking to become CQEs. NMFS will provide the State with a copy of the applications. The State will have a period of 30 days to provide comments to NMFS after they are received. NMFS will consider these comments before certifying a non-profit entity as a CQE. This opportunity for comment does not diminish the authority of NMFS to administer these regulations and certify CQEs, but does provide an opportunity for the State to provide comments on the applications. NMFS will review all applications for completeness. Those applications that are not complete would be returned to the applicant for revision. This proposed action does not establish a limit on the amount of time that a non-profit would have to correct deficiencies in an application.

To minimize potential conflicts that may exist among non-profit entities seeking qualification as a CQE, NMFS would not consider a recommendation from a community governing body supporting more than one non-profit entity to hold QS on behalf of that community. The specific community governing body that would be relied on to make a recommendation would recommend a non-profit entity would vary depending on the governance structure of the particular community.

The Council intended that any CQE establish that it is accountable to the community that it would seek to represent. By establishing a requirement that a specific governing body within a community provide a recommendation supporting a CQE, this proposed rule would establish a clear link between the governing body that represents that community and the CQE. Allowing multiple non-profits to apply as CQEs for a singly community would require additional review by NMFS to ensure accountability. Additionally, it would be difficult to establish specific criteria that would establish a clear accountability or lack of accountability. The Council did not intend that this proposed action would serve the interests of a small number of individuals within a given community who may choose to form a corporate entity to narrowly represent their interests. The specific linkage to specific recognized governing bodies within a community minimized the need for additional administrative oversight to ensure accountability to a community and provides a clear nexus between the CQE and the community members it is intended to represent by holding QS on behalf of that community.

*Communities incorporated as municipalities.* For a community that is incorporated as a municipality under State statutes, the City Council would recommend the non-profit entity to serve as the CQE.

*Communities represented by tribal governments.* For those communities that are not incorporated as municipalities but that are represented by a tribal government recognized by the Secretary of the Interior, the tribal governing body would recommend the non-profit entity to serve as the CQE.

*Communities represented by a non-profit association.* For those communities that are not incorporated as a municipality, and that are not represented by a tribal government, the community non-profit association that has an established relationship as the governmental body recognized by the State for purposes of governmental functions would recommend the non-profit entity to serve as the CQE for that community.

*Communities without governing bodies.* Those communities that are not incorporated as a municipality, or represented by a tribal government recognized by the Bureau of Indian Affairs, and that do not have a community non-profit association recognized by the State for purposes of governmental functions, would not be eligible to recommend a non-profit entity to hold QS on its behalf until a representative governing entity was formed (e.g., the community incorporated as a municipality, was represented by a tribal government recognized by the Bureau of Indian Affairs, or a community non-profit association was formed and recognized by the Alaska Department of Community and Economic Development). NMFS would consult with the State to determine if a community non-profit association is formed, and that it adequately represents the interests of the community before that community non-profit association could recommend a CQE to hold QS on behalf of that community.

This requirement would ensure that any communities that do not have a governmental structure form such a structure prior to being allowed to recommend a specific non-profit entity as a CQE. This requirement is expected to affect only two of the 42 eligible communities recommended by the Council: Halibut Cove and Meyers Chuck. Neither of these communities possess any of the governmental bodies described above. These communities could establish community non-profit associations and have those entities reviewed by the State prior to recommending a CQE. This requirement is determined to be adequate to ensure that any non-profit designated as a CQE for these communities represents the interests of the residents of those communities. The public is encouraged to comment on this particular aspect of this proposed rule.

Establishing that only one CQE to represent the interests in a given community would reduce potential conflicts and reduce administrative burdens. This requirement would not undermine a community's ability to access QS and would ensure that an entity seeking authorization to hold QS on behalf of a community is reviewed by the appropriate governing body within that community before it is certified by NMFS. The definition for "eligible community" is revised by redesignating the existing paragraph as paragraph (1) for purposes of the CDQ Program and by adding a new paragraph (2) for purposes of the IFQ Program.

(a) Annual Report.

NMFS would require each CQE to submit an annual report by January 31 to NMFS and to the governing body for each community represented by the CQE, detailing the use of QS and IFQ by the CQE and community residents during the previous year's fishing season. That annual report would contain the following information for the preceding fishing season:

(1) Identification of the eligible community, or communities, represented by the CQE;

(2) Total amount of halibut QS and sablefish QS held by the CQE at the start of the calendar year and at the end of the calendar year;

(3) Total amount of halibut and sablefish IFQ leased from the CQE;

(4) Names, business addresses, and amount of halibut and sablefish IFQ received by each individual to whom the CQE leased IFQ;

(5) The name, ADF&G vessel registration number, USCG documentation number, length overall, and home port of each vessel from which the IFQ leased from community owned QS was fished;

(6) The names, and business addresses of those individuals employed as crew members when fishing the IFQ derived from the QS held by the CQE.

(7) A detailed description of the criteria used by the CQE to distribute IFQ leases among eligible community residents;

(8) A description of efforts made to employ crew members who are eligible community residents of the eligible community aboard vessels on which IFQ derived from QS held by a CQE is being fished;

(9) A description of the process used to solicit lease applications from eligible community residents of the eligible community on whose behalf the CQE is holding QS;

(10) The names and business addresses and amount of IFQ requested by each individual applying to receive IFQ from the CQE;

(11) Any changes in the bylaws of the CQE, board of directors, or other key management personnel;

(12) Copies of minutes and other relevant decision making documents from CQE board meetings; and

(13) The number of vessels that fished for IFQ derived from QS held by a CQE.

The purpose of the annual report is to assist NMFS and the Council to assess the performance of the CQEs in meeting the objectives of providing for community-held QS. The Council expressed its intent that the use of community QS would be reviewed 5 years after the effective date of implementing the regulations. The Council may use the annual reports in this review. In particular, the Council wished to evaluate the distribution of IFQ leases within a community, the use of IFQ by local crew members, and the percentage of IFQ resulting from community-held QS that is fished on an annual basis. This annual report would also be provided to the governing body of each community represented by the CQE. This would assist the governing body and residents of that community in reviewing the activities of the CQE relative to that community.

Submitting the annual report by January 31 would provide NMFS adequate time to review the annual report before issuing annual IFQ to the CQE at the beginning of the IFQ fishing season and would provide an opportunity for NMFS to indicate to the CQE any deficiencies that may exist in the annual report and allow that CQE time to make corrections.

The Council also requested that the communities provide information on the location of landings and other biological data to assess the distribution of landings that occur. These data are routinely reported on the State Fish Ticket and IFQ landing reports and can be summarized by NMFS. CQEs would not be expected to have access to these records. NMFS routinely collects specific information on the transfer of QS as part of transfer applications. Therefore, NMFS can collect several components of the annual report and provide them to the Council and the communities as requested. Specifically, NMFS can provide directly to the Council or any of the CQEs items 1 through 4 and item 13, as described above. The CQEs may wish to incorporate this information in the annual report provided to the Council and the community governing body. This proposed rule does not require that the CQEs collect this information separately.

If a CQE fails to submit a timely and complete annual report, or if other information indicates that the CQE is not adhering to the procedures for distributing or managing QS and IFQ on behalf of a community as established under its application and these regulations, then NMFS would initiate an administrative action to suspend the ability of that CQE to transfer QS and IFQ, and to receive additional QS by transfer. This action would be implemented consistent with the administrative review procedures provided at 50 CFR 679.43. Also, a CQE would be subject to enforcement actions for violating regulations. Because of the significant impacts these restrictions can impose on a community for which the CQE holds QS, communities are encouraged to carefully monitor the actions of a CQE and to provide a mechanism to ensure that the CQE acts in the best interest of that community and fulfills all the requirements established in its application for eligibility and the regulations for this program.

### Effect of this Action

Assuming that CQEs are formed and enter the QS market, this action could affect the distribution of halibut and sablefish QS and the associated IFQ throughout the GOA. Specifically, by enabling non-profit entities to hold QS, some QS may shift from existing QS holders to these new eligible non-profit entities. No data exist to predict the source of the QS that would be purchased by CQEs, the amount that would be purchased by CQEs, or the specific fishing activities of those individuals that lease IFQ from the CQEs. Because the potential effects of this proposed rule are unknown, the Council proposed limits on the amount of QS that each community may hold individually and in the aggregate.

This action would not increase the overall harvests of either the halibut or sablefish resource. The amount of halibut and sablefish available for harvest would not be affected by this proposed rule and would remain limited by the annual catch limit established for halibut by the IPHC and the annual TAC for sablefish established by the Council.

Although this action may affect the distribution of harvests within the sablefish and halibut management areas, the potential effect of this redistribution of effort is unknown.

Some effect on the price of QS could be expected. Authorizing new entities to enter the QS market could increase the competition for QS and could result in elevated prices. However, the effect of this potential competition on the market value of QS is unknown.

Nothing in this proposed rule is expected to undermine existing management measures designed to prevent overfishing or increase the bycatch of non-target species. The intent of this proposal is to expand the opportunity for fishermen in remote fishing communities to harvest commercial halibut and sablefish. Any possible effect on local stock abundance would depend on the amount of QS purchased and the actual fishing locations of the IFQ lessees, as compared to the current distribution of fishing effort. No effect on the overall stock abundance would be expected.

### Classification

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

The Council and NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact this proposed rule, if adopted, would have on small entities. The IRFA considered two alternatives. The first alternative is the status quo alternative in which only qualified persons, as defined under current Federal regulations, would be eligible to hold QS. The second alternative would allow eligible communities in the GOA, as defined in this proposed action, to hold halibut and sablefish QS for use by residents of those eligible communities. The second alternative would address concerns noted in the IRFA regarding the lack of initially issued QS and the loss of QS in remote, fishery-dependent GOA communities and thus, address negative impacts sustained by these communities through loss of participation in the IFQ fisheries that would continue under the status quo. This action proposes to implement the second alternative considered in the IRFA.

As of December 31, 2001, the most recent year for which data are available for analysis, NMFS records show 1,534 halibut QS holders in Area 2C, 2,047 QS holders in 3A, and 585 QS holders in Area 3B. Similarly, as of December 31, 2001, NMFS data indicate 486 sablefish QS holders in the Southeast Area, 300 QS holders in the West Yakutat Area, 442 QS holders in the Central Gulf Area, and 177 QS holders in the Western Gulf Area. All of these QS holders could be considered small entities for purposes of the Regulatory Flexibility Act (RFA). The proposed rule could impact the estimated 860 registered commercial halibut buyers participating in the commercial halibut and sablefish IFQ program, many of which are small entities. Also classified as small entities under the RFA are the 42 communities that would qualify as eligible to participate in the IFQ Program as small government jurisdictions with fewer than 50,000 residents.

Analysis of the proposed action indicates no adverse impact on small entities from this action. This action does not reallocate QS away from existing QS holders. The potential adverse effects of this proposed action would be limited to the potential increase in competition which may exist between CQEs, existing QS holders, and new entrants in the QS market. This competition could increase the market price of QS for all persons seeking to purchase QS. No data exist to determine if this potential increase in QS price would occur, or if it would disadvantage existing QS holders or new entrants relative to CQEs.

The ability of CQEs to compete in the QS market is limited by 3 factors: Their access to capital, the amount of QS available on the market, and the cumulative use cap. The cap limits CQEs to holding a maximum of 3 percent of the total halibut and sablefish QS in each IFQ regulatory area per year, for a total of 21 percent of the total halibut and sablefish QS in each IFQ regulatory area in the GOA. Limiting the amount of QS that communities can purchase each year would mitigate the effects of expanding the universe of potential new participants in the QS market.

This action may have an economic benefit for small entities, to the extent that this action provides additional fishing opportunities to rural fishermen. The benefit is largely due to the redistribution of fishing opportunities, and is primarily a social benefit, not a strictly economic benefit. However, the potential economic benefits of this possibility can not now be measured or estimated.

Net benefits cannot be quantified because of the importance of non-market social costs and benefits in the proposed action. The sale of QS to the CQEs will increase the revenues of some community members who may wish to exit the fishery, or redirect capital into other industries within the larger communities incurring a net loss of QS. To the extent that residents within larger communities currently hold proportionally more quota shares, these residents, and presumably the communities where they live, will benefit from the compensation received by the sale of quota, otherwise they would not voluntarily choose to sell. Although the Council and NMFS do not anticipate that this rule would have a significant impact on a substantial number of small entities, they are unable to state this with certainty and therefore prepared an IRFA.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The following requirement and estimated response time has been approved by OMB under control number 0648–0272: 2 hours for Application for Transfer Eligibility Certificate (TEC).

The following requirements have been submitted to OMB for approval: 200 hours for the Application to Become a CQE; and 40 hours for the CQE annual report; 2 hours for an Application for Transfer of QS or IFQ; 30 minutes for Approval of Transfer of QS from Governing Body; and 10 hours for a community petition for, and State comments on, forming a governing body.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, and sending the initial application to NMFS to become a CQE, and sending the annual report to NMFS and the community governing body of the community that the CQE represents.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, at the **ADDRESSES** above, and to the Office of Information and Regulatory Affairs, OMB facsimile or email at the **ADDRESSES** above.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

There are no duplicative, overlapping, or conflicting Federal rules associated with this proposed rule.

### List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: October 8, 2003.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons discussed in the preamble, 50 CFR part 679 is proposed to be amended as follows:

## PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 et seq, 1801 *et seq.*, 3631 *et seq.*, Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31, 113 Stat. 57; 16 U.S.C. 1540(f).

2. In § 679.2, the definition for "Eligible community" is revised and new definitions for "Community quota entity (CQE)" and "Eligible community resident" are added in alphabetical order to read as follows:

### § 679.2 Definitions.

* * * * *

*Community quota entity (CQE):* (for purposes of the IFQ Program) means a non-profit organization that:

(1) Did not exist prior to April 10, 2002;

(2) Represents at least one eligible community that is listed in Table 21 of this part; and,

(3) Has been approved by the Regional Administrator to obtain by transfer and hold QS, and to lease IFQ resulting from the QS on behalf of an eligible community.

* * * * *

*Eligible community* means:

(1) *For purposes of the CDQ program,* a community that is listed in Table 7 to this part or that meets all of the following requirements:

(i) The community is located within 50 nm from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the most western of the Aleutian Islands, or on an island within the Bering Sea. A community is not eligible if it is located on the GOA coast of the North Pacific Ocean, even if it is within 50 nm of the baseline of the Bering Sea.

(ii) That is certified by the Secretary of the Interior pursuant to the Native Claims Settlement Act (Public Law 92–203) to be a native village.

(iii) Whose residents conduct more than half of their current commercial or subsistence fishing effort in the waters of the BSAI.

(iv) That has not previously deployed harvesting or processing capability sufficient to support substantial groundfish fisheries participation in the BSAI, unless the community can show that benefits form an approved CDP would be the only way to realize a return from previous investment. The community of Unalaska is excluded under this provision.

(2) *For purposes of the IFQ program,* a community that is listed in Table 21 to this part, and that:

(i) Is a municipality or census designated place as defined in the 2000 United States Census located on the GOA coast of the North Pacific Ocean;

(ii) Has a population of not less than 20 and not more than 1,500 persons based on the 2000 United States Census;

(iii) Has had a resident of that community with at least one commercial landing of halibut or sablefish made during the period from 1980 through 2000, as documented by the State of Alaska Commercial Fisheries Entry Commission; and

(iv) Is not accessible by road to a community larger than 1,500 persons based on the 2000 United States Census.

* * * * *

*Eligible community resident* means, for purposes of the IFQ Program, any individual who:

(1) Is a citizen of the United States;

(2) Has maintained a domicile in a rural community listed in Table 21 to this part for the 12 consecutive months immediately preceding the time when the assertion of residence is made, and who is not claiming residency in another community, state, territory, or country; and

(3) is an IFQ crew member.

* * * * *

3. In § 679.5, paragraph (l)(8) is added to read as follows:

### § 679.5 Recordkeeping and reporting (R&R).

* * * * *

(l) * * *

(8) *CQE Annual Report for an Eligible Community.* By January 31, the CQE shall submit a complete annual report on halibut and sablefish IFQ activity for the prior fishing year, for each community represented by the CQE to the Regional Administrator, National Marine Fisheries Service, Post Office Box 21668, Juneau, AK 99802, and to the governing body of those communities identified in Table 21 to this part.

(i) A complete annual report contains the following information:

(A) Name, ADF&G vessel registration number, USCG documentation number, length overall, and home port of each vessel from which the IFQ leased from QS held by a CQE was fished;

(B) Name and business addresses of individuals employed as crew members when fishing the IFQ derived from the QS held by the CQE;

(C) Detailed description of the criteria used by the CQE to distribute IFQ leases among eligible community residents;

(D) Description of efforts made to employ crew members who are eligible community residents of the eligible community aboard vessels on which IFQ derived from QS held by a CQE is being fished;

(E) Description of the process used to solicit lease applications from eligible community residents of the eligible community on whose behalf the CQE is holding QS;

(F) Names and business addresses and amount of IFQ requested by each individual applying to receive IFQ from the CQE;

(G) Any changes in the bylaws of the CQE, board of directors, or other key management personnel;

(H) Copies of minutes and other relevant decision making documents from CQE board meetings.

(ii) Additional information may be submitted as part of the annual report based on data available through NMFS. This includes:

(A) Identification of the eligible community, or communities, represented by the CQE;

(B) Total amount of halibut QS and sablefish QS held by the CQE at the start of the calendar year and at the end of the calendar year;

(C) Total amount of halibut and sablefish IFQ leased from the CQE;

(D) Names, business addresses, and amount of halibut and sablefish IFQ received by each individual to whom the CQE leased IFQ;

(E) Number of vessels that fished for IFQ derived from QS held by a CQE.

* * * * *

4. In § 679.7, paragraphs (f)(16) and (f)(17) are added to read as follows:

### § 679.7 Prohibitions.

* * * * *

(f) * * *

(16) Hire a master to fish for IFQ halibut or IFQ sablefish that is derived from QS held by a CQE.

(17) Process IFQ halibut or IFQ sablefish onboard a vessel on which a person is using IFQ derived from QS held by a CQE.

* * * * *

5. In § 679.41, paragraphs (d)(1) and (g)(1) are revised, and paragraphs (c)(10), (e)(4), (e)(5), (g)(5) through (g)(8), and (l) are added to read as follows:

### § 679.41 Transfer of quota shares and IFQ.

* * * * *

(c) * * *

(10) If the person applying to transfer or receive QS or IFQ is a CQE, the following determinations are required for each eligible community represented by that CQE:

(i) An individual applying to receive IFQ from QS held by a CQE is an eligible community resident of the eligible community in whose name the CQE is holding QS;

(ii) The CQE applying to receive or transfer QS, has submitted a complete annual report(s) required by 679.5 (l)(8) of this section;

(iii) The CQE applying to transfer QS has provided information on the reasons for the transfer as described in paragraph (g)(7) of this section;

(iv) The CQE applying to receive QS is eligible to hold QS on behalf of the eligible community in the halibut or sablefish regulatory area designated for that eligible community in Table 21 to this part; and

(v) The CQE applying to receive QS has received notification of approval of eligibility to receive QS/IFQ for that community as described in paragraph (d)(1) of this section.

(d) *Eligibility to receive QS or IFQ by transfer*—(1) *Application for Eligibility.* All persons applying to receive QS or IFQ must submit an Application for Eligibility to Receive QS/IFQ (Application for Eligibility), containing accurate information, to the Regional Administrator, except that an Application for Eligibility to Receive QS/IFQ (Application for Eligibility) is not required if a complete application to become a CQE, as described in paragraph (l)(3) of this section, has been approved by the Regional Administrator on behalf of an eligible community. The Regional Administrator will not approve a transfer of IFQ or QS to a person until the Application for Eligibility for that person is approved by the Regional Administrator. The Regional Administrator shall provide an Application for Eligibility form to any person on request.

* * * * *

(e) * * *

(4) A CQE may not purchase or use sablefish QS blocks less than or equal to the number of QS units specified in (e)(2)(i) through (e)(2)(iv) of this section.

(5) A CQE may not purchase or use halibut QS blocks less than or equal to the number of QS units specified in (e)(3)(i) and (e)(3)(ii) of this section.

* * * * *

(g) * * *

(1) Except as provided in paragraph (f), paragraph (g)(2), or paragraph (l) of this section, only persons who are IFQ crew members, or who were initially issued QS assigned to vessel categories B, C, or D, and meet the eligibility requirements in this section, may receive by transfer QS assigned to vessel categories B, C, or D, or the IFQ resulting from it.

* * * * *

(5) a CQE may not hold QS in halibut IFQ regulatory areas 2C or 3A that is assigned to vessel category D.

(6) Except as provided by paragraph (f) of this section, QS held by a CQE on behalf of an eligible community may be used only by an eligible community resident of that eligible community.

(7) A CQE may transfer QS:

(i) To generate revenues to provide funds to meet administrative costs for managing the community QS holdings;

(ii) To generate revenue to improve the ability of residents within the community to participate in the halibut and sablefish IFQ fisheries;

(iii) To generate revenue to purchase QS for use by community residents;

(iv) To dissolve the CQE; or

(v) As a result of a court order, operation of law, or as part of a security agreement.

(8) If the Regional Administrator determines that a CQE transferred QS for purposes other than those specified in paragraph (g)(7) of this section, then:

(i) The CQE must divest itself of any remaining QS holdings and will not be eligible to receive QS by transfer for a period of three years after the date of the Regional Administrator's determination; and

(ii) The Regional Administrator will not approve a CQE to represent the eligible community in whose name the CQE transferred quota for a period of three years after the date of the Regional Administrator's determination.

* * * * *

(l) *Transfer of QS to CQEs.*—(1) Each eligible community must designate a CQE to transfer and hold QS on behalf of that community.

(2) Each eligible community may designate only one CQE to hold QS on behalf of that community at any one time.

(3) Prior to initially receiving QS by transfer on behalf of a specific eligible community, a non-profit entity that intends to represent that eligible community as a CQE must submit a complete application to become a CQE to the Regional Administrator, National Marine Fisheries Service, Post Office Box 21668, Juneau, AK 99802. The Regional Administrator, will provide a copy to the Alaska Department of Community and Economic Development, Commissioner, P.O. Box 110809, Juneau, AK 99811–0809. Comments by the State of Alaska on an application to become a CQE must be submitted to the NMFS, P.O. Box 21668, Juneau, AK 99802 within 30 days of the application being received by the State. NMFS will consider comments received by the Alaska Department of Community and Economic Development, when reviewing applications for a non-profit entity to become a CQE. A complete application to become a CQE consists of:

(i) The articles of incorporation for that non-profit entity in the State of Alaska;

(ii) A statement designating the eligible community, or communities, represented by that non-profit entity for purposes of holding QS;

(iii) Management organization information, including:

(A) The bylaws of the non-profit entity;

(B) A list of key personnel of the managing organization including but not limited to: the board of directors, officers, representatives, and any managers;

(C) A description of the organizational management structure of the non-profit including resumes of management personnel, including the name, address, fax number, telephone, email, and any other contact information for the non-profit entity;

(D) A description of how the non-profit entity is qualified to manage QS on behalf of the eligible community, or communities, it is designated to represent, and a demonstration that the non-profit entity has the management, technical expertise, and ability to manage QS and IFQ; and

(E) The name of the non-profit organization, taxpayer ID number, NMFS person number, permanent business mailing addresses, name of contact persons and additional contact information of the managing personnel for the non-profit entity, name of community represented by the CQE, name of contact for the governing body of the community represented, date, name and notarized signature of applicant, Notary Public signature and date when commission expires.

(iv) A statement describing the procedures that will be used to determine the distribution of IFQ to residents of the community represented by that CQE, including:

(A) Procedures used to solicit requests from residents to lease IFQ; and

(B) Criteria used to determine the distribution of IFQ leases among qualified community residents and the relative weighting of those criteria;

(v) A statement of support from the governing body of the eligible community as that governing body is identified in Table 21 to this part. That statement of support is:

(A) A resolution from the City Council or other official governing body for those eligible communities incorporated as first or second class cities in the State of Alaska;

(B) A resolution from the tribal government authority recognized by the Bureau of Indian Affairs for those eligible communities that are not incorporated as first or second class cities in the State of Alaska; but are represented by a tribal government authority recognized by the Secretary of the Interior;

(C) A resolution from a non-profit community association, homeowner association, community council, or other non-profit entity for those eligible communities that are not incorporated as first or second class cities in the State of Alaska, and is not represented by a tribal government authority recognized by the Bureau of Indian Affairs. The non-profit entity that provides a statement of support must:

(*1*) Have articles of incorporation as a non-profit community association, homeowner association, community council, or other non-profit entity;

(*2*) Have an established relationship with the State of Alaska Department of Community and Economic Development for purposes of representing that community for governmental functions.

(D) If an eligible community is not incorporated as a first or second class city in the State of Alaska, is not represented by a tribal government authority recognized by the Secretary of the Interior, and does not have a non-profit community association, homeowner association, community council, or other non-profit entity within that community with an established relationship with the Alaska Department of Community and Economic Development for purposes of representing that community for purposes of governmental functions, then NMFS will not consider any statement from a non-profit entity representing that community until that community:

(*1*) Is incorporated as a first or second class city in the State of Alaska;

(*2*) Establishes a tribal government authority recognized by the Secretary of the Interior; or

(*3*) Establishes a non-profit community association, homeowner association, community council, or other non-profit entity within that community that meets the requirements established in paragraph (l)(3)(v)(E) of this section.

(E) If a community described under paragraph (l)(3)(v)(D) of this section establishes a non-profit community association, homeowner association, community council, or other non-profit entity within that community, then NMFS will consider any recommendations from this entity to support a particular applicant after reviewing:

(*1*) Petitions from residents affirming that the non-profit community association, homeowner association, community council, or other non-profit entity within that community represents the residents within that community; and

(*2*) Comments from the State of Alaska Department of Community and Economic Development on the articles of incorporation for that non-profit entity and the ability of that non-profit entity to adequately represent the interests of that community for purposes of governmental functions.

(*3*) The governing body of an eligible community as that governing body is identified in Table 21 to this part, must provide authorization for any transfer of QS by the CQE that holds QS on behalf of that eligible community prior to that transfer of QS being approved by NMFS. This authorization must be submitted as part of the Application for Transfer. That authorization consists of a signature on the Application for Transfer by a representative of the governing body that has been designated by that governing body to provide such authorization to approve the transfer of QS.

6. In § 679.42, paragraphs (a), (f), (g)(1), and (h) are revised, and paragraphs (e)(3) through (e)(8), and (i)(4) are added to read as follows:

**§ 679.42 Limitations on use of QS and IFQ.**

(a) *IFQ regulatory area and vessel category.* (1) The QS or IFQ specified for one IFQ regulatory area must not be used in a different IFQ regulatory area.

(2) The QS or IFQ assigned to one vessel category must not be used to harvest IFQ species on a vessel of a different vessel category, except:

(i) As provided in paragraph (k) of this section (processing fish other than IFQ halibut and IFQ sablefish);

(ii) As provided in § 679.41(i)(1) of this part (CDQ compensation QS exemption);

(iii) IFQ derived from QS held by a CQE may be used to harvest IFQ species from a vessel of any length.

(3) Notwithstanding § 679.40(a)(5)(ii) of this part, IFQ assigned to vessel Category B must not be used on any vessel less than or equal to 60 ft (18.3 m) LOA to harvest IFQ halibut in IFQ regulatory area 2C or IFQ sablefish in the regulatory area east of 140 degrees W. long. unless such IFQ derives from blocked QS units that result in IFQ of less than 5,000 lb (2.3 mt), based on the 1996 TAC for fixed gear specified for the IFQ halibut fishery and the IFQ sablefish fishery in each of these two regulatory areas.

* * * * *

(e) * * *

* * * * *

(3) No CQE may hold sablefish QS in the IFQ regulatory areas of the Bering Sea subarea and the Aleutian Islands subareas.

(4) No CQE may hold more than 3,229,721 units of sablefish QS on behalf of any single eligible community.

(5) In the IFQ regulatory area east of 140 degrees W. long., no CQE may hold more than 688,485 units of sablefish QS for this area on behalf of any single eligible community.

(6) In the aggregate, all CQEs are limited to holding a maximum of 3 percent of the total QS in those IFQ regulatory areas specified in § 679.41(e)(2)(i) through (e)(2)(iv) of this part for sablefish in the first calendar year implementing the regulation in this section. In each subsequent calendar year, this aggregate limit on all CQEs shall increase by an additional 3 percent in each IFQ regulatory area specified in § 679.41(e)(2)(i) through (e)(2)(iv) of this part up to a maximum limit of 21 percent of the total QS in each regulatory area specified in Section 679.41(e)(2)(i) through (e)(2)(iv) of this part for sablefish.

(7) No individual that receives IFQ derived from sablefish QS held by a CQE may hold, individually or collectively, more than 50,000 pounds (22.7 mt) of IFQ sablefish derived from any sablefish QS source.

(8) A CQE receiving category B, or C sablefish QS through transfer may lease the IFQ resulting from that QS only to an eligible community resident of the eligible community on whose behalf the QS is held.

(f) *Halibut QS use.* (1) Unless the amount in excess of the following limits was received in the initial allocation of halibut QS, no person, individually or collectively, may use more than:

(i) *IFQ Regulatory area 2C.* 599,799 units of halibut QS.

(ii) *IFQ regulatory area 2C, 3A, and 3B.* 1,502,823 units of halibut QS.

(iii) *IFQ regulatory area 4A, 4B, 4C, 4D, and 4E.* 495,044 units of halibut QS.

(2) No CQE may receive an amount of halibut QS on behalf of any single eligible community which is more than:

(i) *IFQ Regulatory area 2C.* 599,799 units of halibut QS.

(ii) *IFQ regulatory area 2C, 3A, and 3B.* 1,502,823 units of halibut QS.

(3) No CQE may hold halibut QS in the IFQ regulatory areas 4A, 4B, 4C, 4D, and 4E.

(4) A CQE representing an eligible community may receive by transfer or use QS only in the IFQ regulatory areas designated for that species and for that eligible community as described in Table 21 to this part.

(5) In the aggregate, all CQEs are limited to holding a maximum of 3 percent of the total QS in those IFQ regulatory areas specified in § 679.41(e)(3)(i) through (e)(3)(iii) of this part for halibut in the first calendar year implementing the regulation in this section. In each subsequent calendar year, this aggregate limit on all community quota entities shall increase by an additional 3 percent in each IFQ regulatory area specified in § 679.41(e)(3)(i) through (e)(3)(iii) of this

part. This limit shall increase up to a maximum limit of 21 percent of the total QS in each regulatory area specified in § 679.41(e)(3)(i) through (e)(3)(iii) to this part for halibut.

(6) No individual that receives IFQ derived from halibut QS held by a CQE may hold, individually or collectively, more than 50,000 pounds (22.7 mt) of IFQ halibut derived from any halibut QS source.

(7) A CQE receiving category B, or C halibut QS through transfer may lease the IFQ resulting from that QS only to an eligible community resident of the eligible community represented by the CQE.

(g) * * *

(1) *Number of blocks per species.* Except as provided in paragraphs (g)(1)(i) and (g)(1)(ii) of this section, no person, individually or collectively, may hold more than two blocks of each species in any IFQ regulatory area.

(i) A person, individually or collectively, who holds unblocked QS for a species in an IFQ regulatory area, may hold only one QS block for that species in that regulatory area; and

(ii) A CQE may hold no more than ten blocks of halibut QS in any IFQ regulatory area and no more than five blocks of sablefish QS in any IFQ regulatory area on behalf of any eligible community.

* * * * *

(h) *Vessel limitations.* (1) *Halibut.* No vessel may be used, during any fishing year, to harvest more than one-half percent of the combined total catch limits of halibut for IFQ regulatory areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, except that:

(i) In IFQ regulatory area 2C, no vessel may be used to harvest more than 1 percent of the halibut catch limit for this area.

(ii) No vessel may be used, during any fishing year, to harvest more than 50,000 pounds (22.7 mt) of IFQ halibut from any halibut QS source if that vessel is used to harvest IFQ halibut derived from halibut QS held by a CQE.

(2) *Sablefish.* No vessel may be used, during any fishing year, to harvest more than one percent of the combined fixed gear TAC of sablefish for the GOA and BSAI IFQ regulatory areas, except that:

(i) In the IFQ regulatory area east of 140 degrees W. long., no vessel may be used to harvest more than 1 percent of the fixed gear TAC of sablefish for this area.

(ii) No vessel may be used, during any fishing year, to harvest more than 50,000 pounds (22.7 mt) of IFQ sablefish from any sablefish QS source if that vessel is used to harvest IFQ sablefish derived from sablefish QS held by a CQE.

(3) A person who receives an approved IFQ allocation of halibut or sablefish in excess of these limitations may nevertheless catch and retain all of that IFQ with a single vessel, except that this provision does not apply if that IFQ allocation includes IFQ derived from QS held by a CQE. However, two or more persons may not catch and retain their IFQ in excess of these limitations.

* * * * *

(i) * * *

* * * * *

(4) IFQ derived from QS held by a CQE must be used only by the individual whose IFQ permit account contains the resulting IFQ.

7. In 50 CFR part 679, Table 21 is added to read as follows:

TABLE 21 TO PART 679—ELIGIBLE GOA COMMUNITIES, HALIBUT IFQ REGULATORY USE AREAS, AND COMMUNITY GOVERNING BODY THAT RECOMMENDS THE COMMUNITY QUOTA ENTITY

| Eligible GOA Community | Community Governing Body that recommends the CQE |
|---|---|
| May use halibut QS only in halibut IFQ regulatory areas 2C, 3A | |
| Angoon | City of Angoon. |
| Coffman Cove | City of Coffman Cove. |
| Craig | City of Craig. |
| Edna Bay | Edna Bay Community Association. |
| Elfin Cove | Community of Elfin Cove. |
| Gustavus | Gustavus Community Association. |
| Hollis | Hollis Community Council. |
| Hoonah | City of Hoonah. |
| Hydaburg | City of Hydaburg. |
| Kake | City of Kake. |
| Kasaan | City of Kasaan. |
| Klawock | City of Klawock. |
| Metlakatla | Metlakatla Indian Village. |
| Meyers Chuck | N/A. |
| Pelican | City of Pelican. |
| Point Baker | Point Baker Community. |
| Port Alexander | City of Port Alexander. |
| Port Protection | Port Protection Community Association. |
| Tenakee Springs | City of Tenakee Springs. |
| Thorne Bay | City of Thorne Bay. |
| Whale Pass | Whale Pass Community Association. |
| May use halibut QS only in halibut IFQ regulatory areas 3A, 3B | |
| Akhiok | City of Akhiok. |
| Chenega Bay | Chenega IRA Village. |
| Chignik | City of Chignik. |
| Chignik Lagoon | Chignik Lagoon Village Council. |
| Chignik Lake | Chignik Lake Traditional Council. |
| Halibut Cove | N/A. |
| Ivanof Bay | Ivanof Bay Village Council. |
| Karluk | Native Village of Karluk. |
| King Cove | City of King Cove. |
| Larsen Bay | City of Larsen Bay. |

TABLE 21 TO PART 679—ELIGIBLE GOA COMMUNITIES, HALIBUT IFQ REGULATORY USE AREAS, AND COMMUNITY GOVERNING BODY THAT RECOMMENDS THE COMMUNITY QUOTA ENTITY—Continued

| Eligible GOA Community | Community Governing Body that recommends the CQE |
|---|---|
| May use halibut QS only in halibut IFQ regulatory areas 3A, 3B | |
| Nanwalek | Nanwalek IRA Council. |
| Old Harbor | City of Old Harbor. |
| Ouzinkie | City of Ouzinkie. |
| Perryville | Native Village of Perryville. |
| Port Graham | Port Graham Village Council. |
| Port Lyons | City of Port Lyons. |
| Sand Point | City of Sand Point. |
| Seldovia | City of Seldovia. |
| Tatitlek | Native Village of Tatitlek. |
| Tyonek | Native Village of Tyonek. |
| Yakutat | City of Yakutat. |

[FR Doc. 03–26074 Filed 10–15–03; 8:45 am]

BILLING CODE 3510–22–S

# Notices

**Federal Register**
Vol. 68, No. 200
Thursday, October 16, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

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## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### Domestic Sugar Program—Revisions of 2002-Crop Sugar Marketing Allotments and Allocations

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice is to announce that the Commodity Credit Corporation (CCC) has reassigned the unused 2002-crop (Fiscal Year 2003) allocations among cane and beet sugar processors. This announcement lists the final revised 2002-crop sugar marketing allotments and allocations. This reassignment is effective September 26, 2003, and applies to all domestic cane and beet sugar marketed for human consumption in the United States from October 1, 2002, through September 30, 2003.

**ADDRESSES:** Barbara Fecso, Dairy and Sweeteners Analysis Group, Economic Policy and Analysis Staff, Farm Service Agency, USDA, 1400 Independence Avenue, SW., STOP 0516, Washington, DC 20250–0516; telephone (202) 720–4146; FAX (202) 690–1480; e-mail: *barbara.fecso@usda.gov*

**FOR FURTHER INFORMATION CONTACT:** Barbara Fecso at (202) 720–4146.

**SUPPLEMENTARY INFORMATION:** Section 359e(a) of the Agricultural Adjustment Act of 1938, as amended by the Farm Security and Rural Investment Act of 2002, requires a periodic review to determine (in view of current sugar inventories, estimated sugar production, expected marketings and other pertinent factors) whether (1) any sugarcane processor will be unable to market the sugar covered by the portion of the State cane sugar allotment allocated to the processor; and (2) any sugar beet processor will be unable to market its allocation. Section 359e(b)(1)(B) further provides for the reassignment of the estimated quantity of a State deficit proportionately to the allotments for other cane sugar States (depending on each State's capacity to market) when a State does not have the capacity to fulfill its allotment among its own processors.

In September 2003, sugarcane and sugar beet processors submitted revisions of their 2002-crop production and ending stocks estimates to CCC for the purpose of calculating a final reassignment. The allotments/allocations were calculated for the cane and beet sectors as follows:

*Cane Sector:*

- First, 14,878 short tons, raw value (STRV) of allocation were taken from Louisiana processors with surplus allocation and reassigned to processors with surplus supply within Louisiana (attached table, column C). This amount was insufficient to cover Louisiana's overall shortfall.
- Then, the excess allotment of 11,100 STRV for Hawaii was redistributed to the remaining cane states (attached table, column D).

*Beet Sector:*

- Using August survey data for the current year, it was determined that three beet sugar processors had 2002-crop allocation that would not be used while three processors showed an allocation shortfall. The surplus allocation of 8,679 STRV from the first three was surrendered and reassigned to other three (attached table, column D).

Two organizational changes are recognized in this **Federal Register** announcement:

1. The merger of M.A. Patout & Sons, Raceland Sugars and Sterling Sugars into M.A. Patout & Sons—a Louisiana cane processor with a single allocation.

2. The September 8, 2003, sale of all assets of the Pacific Northwest Sugar Company (PNS) to the American Crystal Sugar Company (ACS). In accordance with section 359d (b)(2)(F) of the Agriculture Adjustment Act of 1938, as amended, CCC permanently transferred the beet sugar allocation of PNS to ACS.

The final revised 2002-crop sugar marketing allotments and allocations are listed in the following table:

FISCAL YEAR 2003 SUGAR MARKETING ALLOTMENTS AND ALLOCATIONS

[Revised September, 2003]

| | B Last allotment/ allocation | C New—cane reassignments within States | D New—reassignments across all processors by sector | E New allotment/ allocation |
|---|---|---|---|---|
| | (short tons, raw value) | | | |
| Overall Beet/Cane Allotments: | | | | |
| Beet Sugar | 4,708,341 | 0 | 0 | 4,708,341 |
| Cane Sugar (includes P. Rico) | 3,954,660 | 0 | 0 | 3,954,660 |
| Total OAQ | 8,663,000 | | | 8,663,000 |
| Beet Reassignment to CCC | 174,000 | | | 174,000 |
| Allotment Available to Beet | 4,534,341 | | | 4,534,341 |
| Allotment Available to Cane | 3,954,660 | | | 3,954,660 |
| Beet Processors' Marketing Allocations: | | | | |
| Amalgamated Sugar Co. | 976,021 | | 0 | 976,021 |

FISCAL YEAR 2003 SUGAR MARKETING ALLOTMENTS AND ALLOCATIONS—Continued

[Revised September, 2003]

| | B Last allotment/ allocation | C New—cane reassignments within States | D New—reassignments across all processors by sector | E New allotment/ allocation |
|---|---|---|---|---|
| American Crystal Sugar Co. | 1,654,335 | | 7,411 | 1,661,746 |
| Holly Sugar Corp. | 299,100 | | 0 | 299,100 |
| Michigan Sugar Co. | 340,509 | | 0 | 340,509 |
| Minn-Dak Farmers Co-op. | 305,067 | | 36 | 305,103 |
| Monitor Sugar Co. | 174,268 | | −1,554 | 172,714 |
| So. Minn Beet Sugar Co-op. | 300,785 | | 1,232 | 302,018 |
| Western Sugar Co. | 446,772 | | −4,853 | 441,919 |
| Wyoming Sugar Co. | 37,483 | | −2,272 | 35,211 |
| Total Beet Sugar | 4,534,341 | | 0 | 4,534,341 |
| State Cane Sugar Allotments: | | | | |
| Florida | 2,104,337 | | 6,201 | 2,110,538 |
| Louisiana | 1,381,212 | | 4,366 | 1,385,578 |
| Texas | 178,326 | | 534 | 178,860 |
| Hawaii | 290,784 | | −11,100 | 279,684 |
| Puerto Rico | 0 | 0 | 0 | |
| Total Cane Sugar | 3,954,660 | | 0 | 3,954,660 |
| Cane Processors' Marketing Allocations: | | | | |
| Atlantic Sugar Assoc. | 163,777 | | 0 | 163,777 |
| Growers Co-op. of FL | 389,088 | | 1,219 | 390,307 |
| Okeelanta Corp. | 448,274 | | 3,568 | 451,842 |
| Osceola Farms Co. | 268,661 | | 1,414 | 270,076 |
| U.S. Sugar Corp. | 834,536 | | 0 | 834,536 |
| Total | 2,104,337 | | 6,201 | 2,110,538 |
| Alma Plantation | 77,257 | 4,847 | 1,422 | 83,526 |
| Caire & Graugnard | 6,091 | 474 | 139 | 6,704 |
| Cajun Sugar Co-op. | 106,711 | 0 | 0 | 106,711 |
| Cora-Texas Mfg. Co. | 121,906 | 1,799 | 528 | 124,232 |
| Harry Laws & Co. | 61,992 | 2,330 | 684 | 65,006 |
| Iberia Sugar Co-op. | 64,543 | −3,087 | 0 | 61,456 |
| Jeanerette Sugar Co. | 63,626 | 0 | 0 | 63,626 |
| Lafourche Sugars Corp. | 64,470 | 0 | 0 | 64,470 |
| Louisiana Sugarcane Co-op. | 81,471 | 740 | 217 | 82,429 |
| Lula Westfield, LLC | 147,840 | 4,688 | 1,376 | 153,904 |
| M.A. Patout & Sons | 387,454 | −2,060 | 0 | 385,394 |
| St. Mary Sugar Co-op. | 89,485 | −3,600 | 0 | 85,885 |
| So. Louisiana Sugars Co-op. | 108,366 | −6,131 | 0 | 102,235 |
| Total | 1,381,212 | 0 | 4,366 | 1,385,578 |
| Texas: | | | | |
| Rio Grande Valley | 178,326 | | 534 | 178,860 |
| Hawaii: | | | | |
| Gay & Robinson, Inc. | 64,298 | | −3,600 | 60,698 |
| Hawaiian Commercial & Sugar Company | 226,486 | | −7,500 | 218,986 |
| Total | 290,784 | | −11,100 | 279,684 |
| Puerto Rico: | | | | |
| Agraso | 0 | | 0 | 0 |
| Roig | 0 | | 0 | 0 |
| Total | 0 | | 0 | 0 |

Signed in Washington, DC on October 3, 2003.

**James R. Little,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 03–26175 Filed 10–15–03; 8:45 am]

**BILLING CODE 3410–05–U**

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Lincoln County Resource Advisory Committee Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Kootenai National Forests' Lincoln County Resource Advisory Committee will meet on October 28, 2003 at 6 p.m. in Libby, Montana for business meetings. The meetings are open to the public.

**DATES:** October 28, 2003.

**ADDRESSES:** The meeting will be held at the Forest Supervisor's Office, 1101 US Highway 2 West, Libby.

**FOR FURTHER INFORMATION CONTACT:** Barbara Edgmon, Committee Coordinator, Kootenai National Forest at (406) 293–6211, or e-mail *bedgmon@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** Agenda topics include discussion on field trips for 2004, revision of the project proposal form and accepting project proposals earlier in the year. If the meeting date or location is changed, notice will be posted in the local newspapers, including the Daily Interlake based in Kalispell, MT.

Dated: October 9, 2003.

**Bob Castaneda,**

*Forest Supervisor.*

[FR Doc. 03–26110 Filed 10–15–03; 8:45 am]

**BILLING CODE 3410–11–M**

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Siskiyou County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Siskiyou County Resource Advisory Committee will meet in Yreka, California, October 20, 2003. The meeting will include routine business and discussion, review, and recommendation of submitted project proposals.

**DATES:** The meeting will be held October 20, 2003, from 4 p.m. until 6 p.m.

**ADDRESSES:** The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

**FOR FURTHER INFORMATION CONTACT:** Don Hall, RAC Coordinator, Klamath National Forest, (530) 841–4468 or electronically at *donaldhall@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. A public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: October 8, 2003.

**Margaret J. Boland,**

*Designated Federal Official.*

[FR Doc. 03–26111 Filed 10–15–03; 8:45 am]

**BILLING CODE 3410–11–M**

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## DEPARTMENT OF COMMERCE

### [I.D. 101003C]

### Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency*: National Oceanic and Atmospheric Administration (NOAA).

*Title*: Southwest Region Permit Family of Forms.

*Form Number(s)*: None.

*OMB Approval Number*: 0648–0204.

*Type of Request*: Regular submission.

*Burden Hours*: 248.

*Number of Respondents*: 369.

*Average Hours Per Response*: 30 minutes for a permit application or permit transfer (unless otherwise noted below); 1 hour for additional permit information (when requested) for the coastal pelagic fishery of the Pacific coast; 1 hour for a limited entry permit application for bottomfish in the NWHI Ho'omalu Zone or the Mau Zone; 2 hours for a permit appeal; 2 hours for an application for an exemption or experimental fishing permit; and 1 hour for a waiver for NWHI Ho'omalu Zone or Mau Zone bottomfish permit renewal requirements.

*Needs and Uses*: Permits are required for persons to participate in Federally-managed fisheries in the western Pacific region and off the West Coast. The permit application forms provide basic information about permit holders and the vessels and gear being used. This information is important for understanding the nature of the fisheries and provides a link to participants. It also aids enforcement of regulations.

*Affected Public*: Business or other for-profit organizations, individuals or households.

*Frequency*: Annually, biennially, on occasion.

*Respondent's Obligation*: Mandatory.

*OMB Desk Officer*: David Rostker, (202) 395–3897.Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David__Rostker@omb.eop.gov.*

Dated: October 8, 2003.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 03–26202 Filed 10–15–03; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

### Membership of the Departmental Performance Review Board

**AGENCY:** Department of Commerce

**ACTION:** Notice of membership of Departmental Performance Review Board.

**SUMMARY:** In accordance with 5 U.S.C., 4313(c)(4), DOC announces the appointment of persons to serve as members of the Office of the Secretary (OS) Performance Review Board (PRB). The OS/PRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members. The appointment of these members to the OS/PRB will be for periods of 24 months.

**EFFECTIVE DATE:** The effective date of service of appointees to the Office of the Secretary Performance Review Board is upon publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** Janet C. Hoffheins, Deputy Director, Office of Executive Resources, Office of Human Resources Management, Office of the Director, 14th and Constitution

Avenue, NW., Washington, DC. 20230, (202) 482–4807.

**SUPPLEMENTARY INFORMATION:** The names, position titles, and type of appointment of the members of the OS/PRB are set forth below by organization:

**U.S. Department of Commerce**

*Office of the Secretary, Performance Review Board Membership*

The following individuals are eligible to serve on the Performance Review Board in accordance with the Senior Executive Service Performance Management System of the Office of the Secretary.

Kathleen J. Taylor
Linda Moye-Cheatham
Thomas N. Pyke, Jr.
Miriam Cohen
Fred L. Schwien
David S. Bohigian
Denise L. Wells
James L. Taylor

**Janet C. Hoffheins,**

*Deputy Director, Office for Human Resources Management.*

[FR Doc. 03–26086 Filed 10–15–03; 8:45 am]

**BILLING CODE 3510–BS–M**

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### President's Export Council Subcommittee on Export Administration; Notice of Partially Closed Meeting

The President's Export Council Subcommittee on Export Administration (PECSEA) will meet on November 5, 2003, 10 a.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4832, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The PECSEA provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

**Public Session**

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Bureau of Industry and Security (BIS) and Export Administration update.
4. Export Enforcement update.

**Closed Session**

5. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the PECSEA. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to PECSEA members, the PECSEA suggests that public presentation materials or comments be forwarded before the meeting to the address listed below: Ms. Lee Ann Carpenter, OSIES/EA/BIS MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

A Notice of Determination to close meetings, or portions of meetings, of the PECSEA to the public on the basis of 5 U.S.C. 522(c)(1) was approved on October 8, 2003, in accordance with the Federal Advisory Committee Act.

For more information, call Ms. Carpenter on (202) 482–2583.

Dated: October 10, 2003.

**Matthew S. Borman,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 03–26125 Filed 10–15–03; 8:45 am]

**BILLING CODE 3510–JT–M**

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

**[Docket No. 030930242–3242–01]**

### National Defense Stockpile Market Impact Committee Request for Public Comments on the Potential Market Impact of Proposed Stockpile Disposals in FY 2004 and FY 2005

**AGENCY:** U.S. Department of Commerce.

**ACTION:** Notice of inquiry.

**SUMMARY:** This notice is to advise the public that the National Defense Stockpile Market Impact Committee (co-chaired by the Departments of Commerce and State) is seeking public comments on the potential market impact of proposed changes in the disposal levels of excess materials under the Fiscal Year 2004 Annual Materials Plan and proposed disposal levels under the Fiscal Year 2005 Annual Materials Plan.

**DATES:** Comments must be received by November 17, 2003.

**ADDRESSES:** Written comments should be sent to Richard V. Meyers, Co-Chair, Stockpile Market Impact Committee, Office of Strategic Industries and Economic Security, Room 3876, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; FAX (202) 482–5650; E-mail: *rmeyers@bis.doc.gov.*

**FOR FURTHER INFORMATION CONTACT:** The co-chairs of the National Defense Stockpile Market Impact Committee. Contact either Richard V. Meyers, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, (202) 482–3634; or James Steele, Office of Bilateral Trade Affairs, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–2690.

**SUPPLEMENTARY INFORMATION:** Under the authority of the Strategic and Critical Materials Stock Piling Act of 1979, as amended, (50 U.S.C. 98 *et seq.*), the Department of Defense ("DOD"), as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. Section 3314 of the Fiscal Year ("FY") 1993 National Defense Authorization Act ("NDAA") (50 U.S.C. 98h–1) formally established a Market Impact Committee ("the Committee") to "advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile * * *" The Committee must also balance market impact concerns with the statutory requirement to protect the Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, Treasury, and the Department of Homeland Security, and is co-chaired by the Departments of Commerce and State. The FY 1993 NDAA directs the Committee to "consult from time to time with representatives of producers, processors and consumers of the types of materials stored in the stockpile."

The National Defense Stockpile Administrator is proposing (1) revision of the previously approved FY 2004 Annual Materials Plan ("AMP") quantities for four materials, and (2) the new FY 2005 AMP, as set forth in Attachment 1. The Committee is seeking public comments on the potential market impact of the sale of these materials as proposed in the revision of the FY 2004 AMP and the FY 2005 AMP.

The AMP quantities are not targets for either sale or disposal. They are only a statement of the proposed maximum disposal quantity of each listed material that may be sold in a particular fiscal year. The quantity of each material that will actually be offered for sale will depend on the market for the material at the time of the offering as well as on the quantity of each material approved for disposal by Congress.

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the sale of these commodities. Although comments in response to this Notice must be received by November 17, 2003 to ensure full consideration by the Committee, interested parties are encouraged to submit comments and supporting information at any time thereafter to keep the Committee informed as to the market impact of the sale of these commodities. Public comments are an important element of the Committee's market impact review process.

Public comments received will be made available at the Department of Commerce for public inspection and copying. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public file. The Committee will seek to protect such information to the extent permitted by law.

The records related to this Notice will be made accessible in accordance with the regulations published in Part 4 of Title 15 of the Code of Federal Regulations (15 CFR 4.1, *et seq.*). Specifically, the Bureau of Industry and Security's Freedom of Information Act ("FOIA") reading room is located on its Web page, which can be found at *http://www.bis.doc.gov*, and copies of the public comments received will be maintained at that location (see Freedom of Information Act (FOIA) heading). If requesters cannot access the web site, they may call (202) 482–2165 for assistance.

Dated: October 9, 2003.

**Matthew S. Borman,**

*Acting Assistant Secretary for Industry and Security, Bureau of Industry and Security, Department of Commerce.*

ATTACHMENT 1—PROPOSED REVISION TO FY 2004 ANNUAL MATERIAL PLAN (AMP) AND PROPOSED FY 2005 AMP

| Material | Units | Current FY 2004 quantity | Revised FY 2004 quantity | Proposed FY 2005 quantity |
|---|---|---|---|---|
| Aluminum Oxide, Abrasive | ST | 6,000 | | [1]6,000 |
| Bauxite, Refractory | LCT | [1]43,000 | | [1]43,000 |
| Beryl Ore | ST | [1]4,000 | | [1]4,000 |
| Beryllium Metal | ST | 40 | | 40 |
| Beryllium Copper Master Alloy | ST | [1]1,200 | | [1]1,200 |
| Cadmium | LB | [1]400,000 | | 0 |
| Celestite | SDT | [1]12,794 | | [1]6,000 |
| Chromite, Chemical | SDT | [1]100,000 | | [1]100,000 |
| Chromite, Refractory | SDT | [1]100,000 | | [1]100,000 |
| Chromium, Ferro | ST | 150,000 | 110,000 | 110,000 |
| Chromium, Metal | ST | 500 | | 500 |
| Cobalt | LB Co | 6,000,000 | | 6,000,000 |
| Columbium Concentrates (Minerals) | LB Cb | 560,000 | | 560,000 |
| Columbium Metal Ingots | LB Cb | 20,000 | | 20,000 |
| Diamond Stone | ct | [1]600,000 | | [1]400,000 |
| Fluorspar, Acid Grade | SDT | [1]12,000 | | [1]12,000 |
| Fluorspar, Metallurgical Grade | SDT | [1]60,000 | | [1]60,000 |
| Germanium | KG | 8,000 | | 8,000 |
| Graphite | ST | [1]2,000 | | 0 |
| Iodine | LB | 1,000,000 | | 1,000,000 |
| Jewel Bearings | PC | [1]82,051,558 | | [1]82,051,558 |
| Kyanite | SDT | 0 | 50 | 0 |
| Lead | ST | 60,000 | | [1]60,000 |
| Manganese, Battery Grade Natural | SDT | 30,000 | | 30,000 |
| Manganese, Battery Grade Synthetic | SDT [1]3,011 | | [1]3,011 | |
| Manganese, Chemical Grade | SDT | 40,000 | | [1]40,000 |
| Manganese, Ferro | ST | 50,000 | | 50,000 |
| Manganese, Metal Electrolytic | ST | 2,000 | | [1]2,000 |
| Manganese, Metallurgical Grade | SDT | [1]250,000 | | [1]250,000 |
| Mica (All Types) | LB | [1]5,000,000 | | [1]1,000,000 |
| Palladium | Tr Oz | [1,3]200,000 | | [1,3]100,000 |
| Platinum | Tr Oz | [1]25,000 | | [1]25,000 |
| Platinum—Iridium | Tr Oz | 6,000 | | 6,000 |
| Quartz Crystals | LB | [1]150,000 | | [1]25,000 |
| Quinidine | Oz | [1]2,211,122 | | 0 |
| Sebacic Acid | LB | 600,000 | | [1]600,000 |
| Talc | ST | [1]1,000 | | [1]1,000 |
| Tantalum Carbide Powder | LB Ta | [1]4,000 | [1]4,000 | |
| Tantalum Metal Ingots | LB Ta | [1]40,000 | | [1]40,000 |
| Tantalum Metal Powder | LB Ta | [1]40,000 | | [1]40,000 |
| Tantalum Minerals | LB Ta | 500,000 | | [1]500,000 |
| Tantalum Oxide | LB Ta | 20,000 | | 20,0001 |
| Thorium Nitrate | LB | [1,2]7,100,000 | ........................ | [1,2]7,100,000 |
| Tin | MT | 12,000 | | 12,000 |
| Titanium Sponge | ST | 7,000 | | [1]7,000 |
| Tungsten, Ferro | LB W | 300,000 | | 300,000 |

ATTACHMENT 1—PROPOSED REVISION TO FY 2004 ANNUAL MATERIAL PLAN (AMP) AND PROPOSED FY 2005 AMP—Continued

| Material | Units | Current FY 2004 quantity | Revised FY 2004 quantity | Proposed FY 2005 quantity |
|---|---|---|---|---|
| Tungsten, Metal Powder | LB W | 300,000 | | 300,000 |
| Tungsten Ores & Concentrates | LB W | 4,000,000 | | 4,000,000 |
| Vegetable Tannin Extract, Chestnut | LT | 0 | 250 | [1] 250 |
| Vegetable Tannin Extract, Quebracho | LT | 50,000 | | [1] 50,000 |
| Vegetable Tannin Extract, Wattle | LT | 0 | 6,500 | [1] 6,500 |
| Zinc | ST | 50,000 | | 50,000 |

**Notes:**

[1] Actual quantity will be limited to remaining sales authority or inventory.

[2] The radioactive nature of this material may restrict sales or disposal options. Efforts are underway to determine the environmentally and economically feasible disposition of the material.

[3] Pending legislative authority.

[FR Doc. 03–26106 Filed 10–15–03; 8:45 am]

**BILLING CODE 3510–DR–P**

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## DEPARTMENT OF COMMERCE

## International trade Adminstration

**[A-570-846]**

## Brake Rotors from The People's Republic of China: Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative and New Shipper Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** October 16, 2003.

**FOR FURTHER INFORMATION CONTACT:** Brian Smith at (202) 482–1766, Sophie Castro at (202) 482–0588, or Margarita Panayi at (202) 482–0049, Office 2, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**SUMMARY:** The Department of Commerce (the Department) is extending the time limit for the preliminary results of the sixth administrative and ninth new shipper reviews of the antidumping duty order on brake rotors from the People's Republic of China (PRC), which cover the period April 1, 2002, through March 31, 2003.

**SUPPLEMENTARY INFORMATION:** In accordance with section 751(a)(3)(A) of the Tariff Act of 1930 (the Act), as amended, the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

Pursuant to 751(a)(2)(B)(iv) of the Act, the Department shall make a preliminary determination in a new shipper review within 180 days after the date on which the review is initiated. However, if the case is extraordinarily complicated, it may extend the 180 day period for the preliminary results to 300 days.

The Department initiated the sixth administrative review[1] of the antidumping duty order on brake rotors from the PRC (68 FR 27781) on May 21, 2003 and the ninth new shipper review[2] of the antidumping duty order on brake rotors from the PRC (68 FR 33675) on June 5, 2003. Pursuant to section 351.214(j)(3) of its regulations, and with the agreement of Laizhou City Luqi Machinery Co., Ltd. (Luqi) and Qingdao Rotec Autoparts Co., Ltd (Rotec), the Department is conducting these reviews concurrently. The current deadline for the preliminary results in these reviews is December 31, 2003.

The Department finds that it is not practicable to complete the preliminary results in the administrative review within the above specified time limit because we must request additional information and clarifications of submitted data from multiple respondents as well as conduct verifications prior to issuing our preliminary results. In addition, we determine that it would be extraordinarily complicated to complete the preliminary results in the new shipper review under the current schedule as we need additional time to conduct verifications and to analyze issues raised in that review.

Therefore, in accordance with sections 751(a)(3)(A) and 751(a)(2)(B)(iv) of the Act, the Department is extending the time for completion of the preliminary results of these reviews until February 2, 2004.

Dated: October 8, 2003.

**Jeffrey May,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 03–26210 Filed 10–15–03; 8:45 am]

**BILLING CODE 3510–DS–S**

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[1] The administrative review respondents are China National Machinery Import & Export Company; Laizhou-Hongda Auto Replacement Parts, Co. Ltd.; Qingdao Gren Co.; Yantai Winhere Auto Part Manufacturing Co., Ltd.; Longkou Haimeng Machinery Co., Ltd.; Zibo Luzhou Automobile Parts Co., Ltd.; Hongfa Machinery (Dalian) Co., Ltd.; Qingdao Meita Automotive Industry Co., Ltd.; Shandong Laizhou Huanri Group General; Laizhou Auto Brake Equipment Company, Ltd.; and Longkou TLC Machinery Co., Ltd.

[2] The new shipper respondents are Qingdao Rotec Autoparts Co., Ltd. and Laizhou City Luqi Machinery Co., Ltd.

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## DEPARTMENT OF COMMERCE

## International Trade Adminstration

**[A-570-803]**

## Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review.

**EFFECTIVE DATE:** October 16, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mark Manning or Jeff Pedersen, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–5253 or (202) 482–2769, respectively.

**SUPPLEMENTARY INFORMATION:**

### Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the 245-day time limit for the preliminary determination to a maximum of 365 days and the time limit for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

### Background

On March 25, 2003, the Department published a notice of initiation of administrative review of the antidumping duty order on heavy forged hand tools, finished or unfinished, with or without handles from the People's Republic of China, covering the period February 1, 2002 through January 31, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 14394. The preliminary results are currently due no later than October 31, 2003.

### Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit because of the time needed to consider certain factual issues in the case. This extension results in the due date for the preliminary results falling on February 28, 2004, which is a Saturday. Therefore, the preliminary results will be due on the next business day, which is March 1, 2004. *See* Decision Memorandum from Thomas F. Futtner, Acting Office Director, to Holly A. Kuga, Acting Deputy Assistant Secretary, dated concurrently with this notice, which is on file in the Central Records Unit, Room B-099 of the Department's main building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: October 9, 2003.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary for Import Administration, Group II.*

[FR Doc. 03–26212 Filed 10–15–03; 8:45 am]

BILLING CODE 3510–DS–S

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A-412-803]

## Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Industrial Nitrocellulose from the United Kingdom

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review.

**SUMMARY:** On May 8, 2003, the Department of Commerce (the Department) initiated a changed circumstances review of the antidumping duty order on industrial nitrocellulose (INC) from the United Kingdom in order to determine whether Troon Investments Limited (TIL) is the successor-in-interest to Imperial Chemical Industries, PLC (ICI). *See Notice of Initiation of Antidumping Duty Changed Circumstances Review: Industrial Nitrocellulose from the United Kingdom*, 68 FR 27015 (May 19, 2003). TIL purchased Nobel's Explosives Company, Ltd.'s (NEC) INC business. NEC is a wholly-owned subsidiary of ICI. We preliminarily determine that TIL is the successor-in-interest to ICI for purposes of determining antidumping duty liability. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** October 16, 2003.

**FOR FURTHER INFORMATION CONTACT:** Michele Mire or Howard Smith, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4711 and (202) 482–5193, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 10, 1990, the Department published in the **Federal Register** (55 FR 28270) the antidumping duty order on INC from the United Kingdom. On March 28, 2003, TIL requested that the Department conduct a changed circumstances review of the antidumping duty order on INC from the United Kingdom claiming that it is the successor-in-interest to ICI, and, as such, it is entitled to receive the same antidumping treatment accorded to ICI. On April 11, 2003, Green Tree Chemical Technologies, Inc., the sole U.S. producer of INC and the petitioner in this proceeding, notified the Department that it opposes TIL's request to be considered the successor-in-interest to ICI. On July 18, 2003, and August 14, 2003, at the request of the Department, TIL submitted additional information and documentation pertaining to its changed circumstances request.

### Scope of Review

Imports covered by this review are shipments of INC from the United Kingdom. INC is a dry, white amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. INC is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

INC is currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item number 3912.20.0000. While the HTSUS classification is provided for convenience and customs purposes, the written description remains dispositive as to the scope of the product coverage.

### Preliminary Results of Changed Circumstances Review

In making a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review*, 57 FR 20460, 20462 (May 13, 1992) (*Canadian Brass*). While no one single factor, or combination of factors, will necessarily prove to be dispositive, the Department will generally consider a new company to be the successor-in-interest to its predecessor company if its resulting operations are essentially the same as those of its predecessor. *See, e.g., Canadian Brass* at 20460, and *Final Results of Changed Circumstances Antidumping Duty Administrative Review: Industrial Nitrocellulose From Korea*, 65 FR 2115, 2116 (January 13, 2000). Therefore, if there is evidence demonstrating that, with respect to the production and sale of subject merchandise, a new company essentially operates as the same business entity as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

In its March 28, 2003, request for a changed circumstances review, TIL advised the Department that, on December 31, 2002, it purchased NEC's (a wholly owned subsidiary of ICI) INC and energetic technologies businesses. TIL notes that the energetic technologies business is unrelated to INC. NEC was the sole producer of INC in the United Kingdom, and therefore, the only respondent in prior administrative reviews. TIL was formed to acquire NEC's INC and energetic technologies businesses.

According to TIL, the transfer of ownership of the INC business resulted in no material changes in the management, production facilities, suppliers of raw materials, or customers of NEC's former INC business. While the managing director of NEC's INC business has been replaced, TIL states that all of the other management personnel of the former entity are now employed by TIL. *See* TIL's March 28, 2003 submission to the Department at 5. Also, TIL notes that it operates the factory formerly operated by NEC using the same equipment and production process used by NEC. Furthermore, TIL reports that it uses the suppliers of raw materials used by NEC (and currently plans no changes to those suppliers) and sells to the former customers of NEC, in the United States and the United Kingdom, on the same basis as NEC sold to these customers. *See* TIL's July 18, 2003 questionnaire response at 4–5. TIL notes that there have been no changes in the customer base since the acquisition and none are currently anticipated. *See* TIL's March 28, 2003 submission to the Department at 7. Moreover, TIL points out that since the acquisition, there have been no changes in INC sales personnel, no material changes in the marketing of INC in the United States and the United Kingdom, and no systemic modifications in INC selling prices in either the U.S. or U.K. market. *See id.*

In its April 11, 2003, submission, the petitioner contends that the change in ownership of the INC business has resulted in a change in the business' cost of capital (which affects the Department's interest expense calculation), management, and sales distribution channels. Specifically, the petitioner points out that, recently, in addressing whether NEC's cost of production should include its interest expenses or those of its parent, the Department found that NEC's parent, ICI, "determined the capital structure of its group companies involved in the production of the subject merchandise." *See Industrial Nitrocellulose From the United Kingdom; Final Results of Antidumping Duty Administrative Review*, 67 FR 77747 (December 19, 2002) and accompanying Issues and Decision Memorandum. Thus, the petitioner concludes that the cost of capital for the new entity will differ from that of its predecessor. In addition to different capital costs, the petitioner points out that, under TIL, the managing director of the INC business is not the managing director formerly employed by NEC. The petitioner finds this significant because it is the managing director who has decision-making authority. Further, the petitioner states that with new ownership and senior management, there can be no assurance that pricing will have the same objectives or follow the same pattern as when NEC was owned by ICI. Finally, the petitioner claims that the sales structure changed after TIL acquired the INC business. Specifically, the petitioner notes that NEC's U.S. affiliate, ICI Americas, Inc., carried out many sales functions for NEC. Based on the foregoing, the petitioner contends that TIL should not be allowed to take advantage of ICI's current cash deposit rate.

As noted above, in determining whether a new company's operations are essentially the same as those of its predecessor, the Department examines whether there have been changes in management, production facilities, supplier relationships, or the customer base. Our review of the record indicates that the change in ownership of the INC business has not resulted in changes to the production facilities or production processes used to manufacture INC, nor has it resulted in material changes in supplier relationships or customer base. Although TIL replaced the managing director of the INC business, there is no indication that this action resulted in significant changes to the INC operations. Furthermore, while the petitioner expressed concern over a possible difference between the cost of capital for the new entity and its predecessor, the record indicates that many of the significant factors that affect costs, with the possible exception of those that affect capital costs, have not changed (*e.g.*, no changes in production process, suppliers of raw materials, and management and sales personnel). Finally, even though there has been a change in the legal entity performing U.S. selling functions (i.e., ICI Americas Inc. has ceased performing selling functions), with respect to U.S. sales of INC, the record indicates that there have been no significant changes in the order process, movement of INC from the United Kingdom, customer base, or sales terms, and no systematic price changes. See TIL's July 18, 2003 submission at 6. Thus, the record shows that TIL's operations are essentially the same as those of its predecessor. Therefore, we preliminarily determine that TIL is the successor-in-interest to ICI and should receive the same antidumping duty cash deposit rate as ICI, *i.e.*, 3.06 percent. As a result, if these preliminary results are adopted in our final results of this changed circumstances review, we will instruct the U.S. Bureau of Customs and Border Protection to suspend shipments of subject merchandise made by TIL at ICI's cash deposit rate (*i.e.*, 3.06 percent). Until that time, the cash deposit rate assigned to TIL's entries is the rate in effect at the time of entry (*i.e.*, the "all others" rate).

## Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of this notice. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication of this notice. *See* 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.

Consistent with 19 CFR 351.216(e), we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated. We are issuing and publishing this determination and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216.

Dated: October 9, 2003.

**Jeffrey May,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 03–26209 Filed 10–15–03; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

## International Trade Adminstration

[A-570-851]

## Certain Preserved Mushrooms from the People's Republic of China: Notice of Partial Rescission of Sixth New Shipper Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Partial Rescission of Sixth New Shipper Review.

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**EFFECTIVE DATE:** October 16, 2003.

**FOR FURTHER INFORMATION CONTACT:** Brian Smith or Jim Mathews, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1766 or (202) 482–2778, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On February 28, 2003, Primera Harvest (Xiangfan) Co., Ltd. (Primera Harvest) and Xiamen International Trade & Industrial Co., Ltd. (XITIC) requested a new shipper review of their sales. On March 28, 2003, the Department published a notice of initiation of an antidumping duty new shipper review on certain preserved mushrooms from the People's Republic of China with respect to these companies. *See Certain Preserved Mushrooms from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review*, 68 FR 15152.

After analyzing XITIC's May 23, 2003, questionnaire responses, the Department determined that XITIC did not produce the subject merchandise that it exported. Rather, XITIC exported subject merchandise that was produced by Inter-Foods D.S. Co., Ltd. Therefore, pursuant to CFR 351.214(b)(ii)(B), XITIC failed to provide the proper new shipper certification. (*See* Memorandum to the File from Brian Smith and Jim Mathews, International Trade Compliance Analysts, dated August 7, 2003). On August 7, 2003, the Department sent copies of this memorandum to the interested parties. The memorandum stated that the parties had two weeks from the date of receipt to comment on the Department's decision to rescind this new shipper review. No party filed comments during the period stipulated the memorandum. Accordingly, we are rescinding the new shipper review with respect to XITIC.

### Scope of the Order

The products covered by this order are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) all other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms"; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified" or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.[1]

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States[2] ("HTS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

### Period of Review

The period of review is February 1, 2002, through January 31, 2003.

### Partial Recission of Review

Section 351.214(b)(ii)(B) states that a request for a new shipper review must contain a certification from the person that produced or supplied the subject merchandise to the person requesting the review that that producer or supplier did not export the subject merchandise to the United States during the period of investigation. Due to XITIC's failure to provide the necessary certification from the producer or supplier of the subject merchandise and its misleading statements in the submitted certification that suggested that it was both the exporter and producer of subject merchandise, we are rescinding, in part, this new shipper review on certain preserved mushrooms from the People's Republic of China as to XITIC. This review will continue with respect to Primera Harvest.

### Notification

Bonding will no longer be permitted to fulfill security requirements for shipments from XITIC of certain preserved mushrooms from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these determinations and notice in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Act, as amended, and 19 CFR 351.214(f)(3).

Dated: October 9, 2003.

**Jeffrey May,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 03–26211 Filed 10–15–03; 8:45 am]

BILLING CODE 3510–DS–S

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[1] On June 19, 2000, the Department affirmed that "marinated," "acidified," or "pickled" mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* "Recommendation Memorandum-Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China," dated June 19, 2000.

[2] Prior to January 1, 2002, the HTS subheadings were as follows: 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 101003D]

### Proposed Information Collection; Comment Request; Natural Resource Damage Assessment Restoration Project Information Sheet

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before December 15, 2003.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to John Rapp, National Oceanic and Atmospheric Administration, P.O. Box 25092, Baton Rouge, LA 70894–5092 (or via the Internet at *john.rapp@noaa.gov*).

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

The Natural Resource Damage Assessment (NRDA) Restoration Project Information Sheet is designed to facilitate the collection of information on existing, planned, or proposed restoration projects. This information will be used by the Natural Resource Trustees to develop potential restoration alternatives for natural resource injuries and service losses requiring restoration during the restoration planning phase of the Natural Resource Damage Assessment (NRDA) process.

### II. Method of Collection

Project information can be submitted to the Natural Resource Trustees by either completing the NRDA Restoration Project Information Sheet or submitting project information directly to the Natural Resource Trustees without the form. The NRDA Restoration Project Information Sheet will be made available to the general public on the Internet or by requesting a hard copy or digital copy from the Natural Resource Trustees. All project information submitted to the Natural Resource Trustees with or without the NRDA Restoration Project Information Sheet will be compiled and considered for potential implementation.

### III. Data

*OMB Number:* None.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Individuals or households; businesses or other for-profit organizations; not-for-profit institutions; farms; Federal government; and State, Local, or Tribal government.

*Estimated Number of Respondents:* 165.

*Estimated Time Per Response:* 20 minutes.

*Estimated Total Annual Burden Hours:* 55.

*Estimated Total Annual Cost to Public:* $65.

### IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 8, 2003.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 03–26203 Filed 10–15–03; 8:45 am]

BILLING CODE 3510–22–S

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 101003E]

### Proposed Information Collection; Comment Request; NOAA's Teacher-At-Sea Program

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before December 15, 2003.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Jennifer Hammond at 1315 East West Highway, Rm 12746, Silver Spring, MD 20910; at 301–713–3418, ext. 138; or at *jennifer.hammond@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

The Teacher-At-Sea Program provides educators with the opportunity to participate in research projects aboard NOAA vessels and other vessels that conduct NOAA Research. The respondents are educators who provide information about themselves and their teaching situation. They also submit a follow-up report with ideas for classroom applications. Recommendations are also required.

### II. Method of Collection

Application forms must be submitted. On-line forms can be filled-in, printed, and mailed. Persons with full Adobe Acrobat software can save the on-line form and submit it electronically.

### III. Data

*OMB Number:* 0648–0283.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 375.

*Estimated Time Per Response:* 45 minutes to read an complete application; 15 minutes to complete a Health Services Questionnaire; 15 minutes to deliver and discuss recommendation forms to persons who will fill them out; 15 minutes to complete a recommendation form; and 2 hours for a follow-up report.

*Estimated Total Annual Burden Hours:* 309.

*Estimated Total Annual Cost to Public:* $536.

### IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 8, 2003.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 03–26204 Filed 10–15–03; 8:45 am]

BILLING CODE 3510–12–S

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## ENVIRONMENTAL PROTECTION AGENCY

## Minnesota and Texas Coastal Nonpoint Pollution Control Programs: Conditional Approvals, Final Findings Documents and Records of Decision

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, and the U.S. Environmental Protection Agency (EPA).

**ACTION:** Notice of conditional approval of Coastal Nonpoint Programs and availability of Final Findings Documents and Records of Decision for Minnesota and Texas.

**SUMMARY:** Notice is hereby given of the conditional approval of the Coastal Nonpoint Pollution Control Programs (coastal nonpoint programs) and of the availability of the Final Findings Documents and Records of Decision for Minnesota and Texas. Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA) requires States and Territories with coastal zone management programs that have received approval under section 306 of the Coastal Zone Management Act to develop and implement coastal nonpoint programs.

NOAA and EPA have approved, with conditions, the coastal nonpoint programs submitted by Minnesota and Texas. In order to receive final approval of their programs, Minnesota and Texas will need to meet the conditions within the associated timeframes as indicated in the Final Findings Documents.

**DATES:** The conditional approval of the coastal nonpoint pollution control programs for Minnesota and Texas is effective upon the date of publication of this Notice in the **Federal Register**.

**ADDRESSES:** Copies of the Final Findings Documents are available on the NOAA Web site at *http://www.ocrm.nos.noaa.gov/czm.* Copies of the Final Findings and Records of Decision also may be obtained upon request from: Helen Farr, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, phone (301) 713–3155, x150, e-mail *helen.farr@noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Helen Farr, NOAA, (301) 713–3155, x150; or Don Waye, EPA (202) 566–1170.

**SUPPLEMENTARY INFORMATION:** NOAA and EPA have prepared a Findings Document for each coastal nonpoint program submitted for approval. The Findings Documents were prepared by NOAA and EPA to provide the rationale for the agencies' decision to approve each State and Territory coastal nonpoint program. Proposed Findings documents, Environmental Assessments, and Findings of No Significant Impact prepared for the coastal nonpoint programs submitted by Minnesota and Texas were made available for public comment in the Federal Register on March 17, 2003 (68 FR 12675) and April 7, 2003 (68 FR 16787), respectively. No public comments were received on the programs.

In accordance with the National Environmental Policy Act (NEPA), NOAA has also prepared a Record of Decision on each program. The Record of Decision: (1) States what the decision was; (2) identifies all alternatives considered, specifying the alternative considered to be environmentally preferable; and (3) states whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted.

In March 1996, NOAA published a programmatic environmental impact statement (PEIS) that assessed the environmental impacts associated with the approval of State and Territory coastal nonpoint programs. The PEIS forms the basis for the environmental assessments NOAA has prepared for each State and Territorial coastal nonpoint program submitted to NOAA and EPA for approval. In the PEIS, NOAA determined that the approval and conditional approval of coastal nonpoint programs will not result in any significant adverse environmental impacts and that these actions will have an overall beneficial effect on the environment. Because the PEIS served only as a "framework for decision" on individual State and Territorial coastal nonpoint programs, and no actual decision was made following its publication, NOAA has prepared a NEPA Record of Decision on each individual State and Territorial program submitted for review.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration).

Dated: October 9, 2003.

**Alan Neuschatz,**

*Associate Assistant Administrator, Management and Budget Office, National Ocean Service, National Oceanic and Atmospheric Administration.*

**G. Tracy Mehan, III,**

*Assistant Administrator, Office of Water, Environmental Protection Agency.*

[FR Doc. 03–26087 Filed 10–15–03; 8:45 am]

BILLING CODE 3510–08–M

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 100903D]

## New England Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of a public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Research Steering Committee in October 2003. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** The meeting will held on Thursday, October 30, 2003 at 9:30 a.m.

**ADDRESSES:** The meeting will be held at the Peabody Marriott Hotel, 8A Centennial Drive, Peabody, MA 01960; telephone: (978) 977–6478.

*Council address*: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** The agenda will include an update on projects funded through NOAA Fisheries Cooperative Research Partners Initiative, further deliberations on a process to incorporate the results of cooperative research projects into the Council management process, and planning for 2004initiatives.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (*see* **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: October 9, 2003.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–26198 Filed 10–15–03; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 100903E]**

### New England Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

**ACTION:** Notice of public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Social Sciences Advisory Committee in November, 2003 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** The meeting will be held on Monday, November 3, 2003 at 10 a.m.

**ADDRESSES:** The meeting will be held at the Holiday Inn, One Newbury Street, Peabody, MA 01960; telephone: (978) 535–4600.

*Council address*: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** The Social Science Advisory Committee will review timelines for Council actions that extend into 2004 and decide which actions are appropriate for providing the Council guidance on social and economic analysis. The Committee will also discuss progress on developing a clearinghouse for social and economic data and a workshop to further the development of social and economic analyses of fishery management action.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (*see* **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: October 9, 2003.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–26199 Filed 10–15–03; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 100903C]**

### Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The Pacific Fishery Management Council (Council) and its advisory bodies will hold public meetings.

**DATES:** The Council and its advisory bodies will meet November 2–7, 2003. The Council meeting will begin on Monday, November 3, at 3:30 p.m., reconvening each day through Friday. All meetings are open to the public, except a closed session will be held at 3:30 p.m. on Monday, November 3 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

**ADDRESSES:** The meetings will be held at the Hilton San Diego Del Mar, 15575 Jimmy Duranto Blvd., Del Mar, CA 92014; telephone: (858) 792–5200.

*Council address*: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220.

**FOR FURTHER INFORMATION CONTACT:** Dr. Donald O. McIsaac, Executive Director; telephone: (503) 820–2280 or (866) 806–7204.

**SUPPLEMENTARY INFORMATION:** The following items are on the Council agenda, but not necessarily in this order. All items listed are subject to potential Council action.

A. Call to Order

1. Opening Remarks, Introductions
2. Roll Call
3. Executive Director's Report
4. Approve Agenda

B. Marine Protected Areas

1. Jurisdiction and Authority Issues for Marine Protected Areas

2. Update on West Coast Marine Protected Areas Issues

C. Habitat

Current Habitat Issues

D. Groundfish Management

1. NMFS Report on Groundfish Management
2. Makah Rockfish Enhancement Proposal
3. Feasibility of Using Real-time Electronic Logbook Data in Groundfish Fishery Management
4. Observer Data Flow for Fishery Years 2004–06
5. Status of Groundfish Fisheries and Inseason Adjustments
6. Cabezon and Lingcod Stock Assessments and Lingcod Rebuilding Analysis for 2005–06
7. Update on RecFin Data Improvements
8. Preliminary Optimum Yield (OY), Acceptable Biological Catch (ABC), Management Measures, and Preseason Management Schedule (November-June) for 2005–06 Fisheries
9. Planning of "Off-year" Non-regulatory Science Activities (e.g., Stock Assessment Models, B0 and BMSY Workshops)
10. Vessel Monitoring System (VMS): Transiting Requirements for Fixed-Gear Limited Entry Vessels and Expansion of the Program
11. Groundfish Bycatch Program Environmental Impact Statement
12. Development of Groundfish Trawl Individual Quotas (IQ) and Control Date
13. Final Approval of Exempted Fishing Permits (EFPs) for 2004
14. Groundfish Fishery Management Plan Amendment 16–3: Rebuilding Plans for Bocaccio, Cowcod, and Widow and Yelloweye Rockfish
15. Open Access Limitation Discussion and Planning

E. Salmon Management

1. Salmon Fishery Update
2. Inseason Consideration of Scheduled 2004 Commercial and Recreational Openings South of Cape Falcon
3. Preseason Planning for 2004 Management
4. Salmon Methodology Review

F. Pacific Halibut Management

1. Status of 2003 Pacific Halibut Fisheries
2. Proposed Changes to the Catch Sharing Plan and Annual Regulations

G. Highly Migratory Species Management

1. NMFS Report on Highly Migratory Species Management
2. Fishery Management Plan (FMP) Amendment Update: High Seas Longline Limited Entry and Other Issues

H. Coastal Pelagic Species Management

1. NMFS Report
2. Pacific Sardine Stock Assessment and Harvest Guideline for 2004

I. Administrative and Other Matters

1. Legislative Matters
2. Fiscal Matters
3. Appointments to Advisory Bodies, Standing Committees, and Other Forums for the 2004–06 Term
4. Staff Work Load Priorities and Draft March 2004 Council Meeting Agenda

## SCHEDULE OF ANCILLARY MEETINGS

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|---|---|
| *SUNDAY, November 2, 2003* | |
| Scoping Sessions: | |
| Groundfish Management Specifications for 2005–2006 | 1 p.m. |
| Groundfish Fishery Management Plan Amendment 16–3 | 3 p.m. |
| *MONDAY, November 3, 2003* | |
| Council Secretariat | 8 a.m. |
| Groundfish Advisory Subpanel | 8 a.m. |
| Groundfish Management Team | 8 a.m. |
| Scientific and Statistical Committee | 8 a.m. |
| Joint Sessions: | 8:30–12 p.m. |
| 1. Cabezon and Lingcod Stock Assessments | |
| 2. Real-time Electronic Logbook Presentation | |
| 3. Makah Rockfish Enhancement | |
| ProposalHabitat Committee | 10 a.m. |
| Legislative Committee | 11 a.m. |
| Budget Committee | 1 p.m. |
| *TUESDAY, November 4, 2003* | |
| Council Secretariat | 7 a.m. |
| California State Delegation | 7 a.m. |
| Oregon State Delegation | 7 a.m. |
| Washington State Delegation | 7 a.m. |
| Groundfish Advisory Subpanel | 8 a.m. |
| Groundfish Management Team | 8 a.m. |
| Highly Migratory Species Advisory Subpanel | 8 a.m. |
| Scientific and Statistical Committee | 8 a.m. |
| Enforcement Consultants | Immediately following Council Session |
| *WEDNESDAY, November 5, 2003* | |
| Council Secretariat | 7 a.m. |
| California State Delegation | 7 a.m. |
| Oregon State Delegation | 7 a.m. |
| Washington State Delegation | 7 a.m. |
| Groundfish Advisory Subpanel | 8 a.m. |
| Groundfish Management Team | 8 a.m. |
| Enforcement Consultants | As necessary |
| *THURSDAY, November 6, 2003* | |
| Council Secretariat | 7 a.m. |
| California State Delegation | 7 a.m. |
| Oregon State Delegation | 7 a.m. |
| Washington State Delegation | 7 a.m. |
| Groundfish Advisory Subpanel | 8 a.m. |
| Groundfish Management Team | 8 a.m. |
| Enforcement Consultants | As necessary |
| *FRIDAY, November 7, 2003* | |
| Council Secretariat | 7 a.m. |
| California State Delegation | 7 a.m. |
| Oregon State Delegation | 7 a.m. |
| Washington State Delegation | 7 a.m. |
| Groundfish Advisory Subpanel | 8 a.m. |
| Groundfish Management Team | 8 a.m. |
| Enforcement Consultants | As necessary |

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 or (866) 806–7204 at least 5 days prior to the meeting date.

Dated: October 9, 2003.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–26197 Filed 10–15–03; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 100703F]

## South Atlantic Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of a public workshop.

**SUMMARY:** The South Atlantic Fishery Management Council will hold a Deepwater Snapper Grouper Data Workshop as part of the Southeastern Data, Assessment, and Review (SEDAR) process. The SEDAR assessment of the South Atlantic and Caribbean deepwater snapper and grouper complex will begin with a Data Workshop in Charleston, SC.

**DATES:** The SEDAR Deepwater Data Workshop will be held November 3, 2003 beginning at 1:30 p.m. through November 7, 2003, ending by 4 p.m.

**ADDRESSES:** The workshop will be held at the Hampton Inn Charleston/West Ashley, 678 Citadel Haven Drive, Charleston, SC 29414; telephone: (843) 573-1200; fax: (843) 556-6078.

*Council address*: One Southpark Circle, Suite 306, Charleston, SC 29407.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, telephone: (843) 571–4366 or toll free 866/SAFMC-10; fax: (843) 769–4520.

**SUPPLEMENTARY INFORMATION:** An assessment data set will be developed during the workshop for 8 species in the South Atlantic snapper grouper management complex: snowy grouper, golden tilefish, speckled hind, Warsaw grouper, blueline tilefish, queen snapper, misty grouper and yellowedge grouper. The data set will also include the following four species from the Caribbean: queen snapper, silk snapper, sand tilefish and blackline tilefish. The assessment data set for these species will include catch statistics, fishery sampling, independent monitoring, life history and logbook information.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the council office (*see* **ADDRESSES**) by October 30, 2003.

Dated: October 9, 2003.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03-26200 Filed 10-15-03; 8:45 am]

**BILLING CODE 3510-22-S**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D.100603F]

## Endangered and Threatened Species; Take of Anadromous Fish

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Issuance of enhancement of survival permit (1425).

**SUMMARY:** On August 7, 2003, NMFS' Northwest Region issued permit 1425 (described in the SUPPLEMENTARY INFORMATION section below) under the Endangered Species Act (ESA) allowing take of threatened species for enhancement of survival actions.

**ADDRESSES:** The applications and related documents are available for review during business hours by appointment at NMFS' Washington State Branch Office, Habitat Conservation Division, 510 Desmond Drive SE, Suite 103, Lacy, WA 98503 (phone: 360–753–9530).

**FOR FURTHER INFORMATION CONTACT:** Stephanie Ehinger, Lacey, WA, *Telephone*: (360) 534–9341, fax: (360) 753–9517, e-mail: *stephanie.ehinger@noaa.gov*; or Dan Guy at the same office, *Telephone:* 360–534–9342, email: *dan.guy@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

### Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Scientific research and/or enhancement permits are issued under Section 10(a)(1)(A) of the ESA in accordance with and subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226). Authority to take listed species is subject to conditions set forth in the permits.

### Species Covered in this Notice

The following ESA-listed species and evolutionary significant units (ESUs) are covered in this notice:

Threatened Lower Columbia River (LCR) Chinook salmon (*Oncorhynchus tshawytscha*)

Threatened Columbia River (CR) Chum salmon (*O. keta*).

Threatened LCR Steelhead (*O. mykiss*)

### Take Summary

For the benefit of 29 restoration projects over a five year period, a maximum number of 48 juvenile steelhead and two juvenile spring chinook are expected to be killed. That equates to an annual take of 10 juvenile steelhead resulting from six projects. Conservatively estimating take in several instances involved intentionally inflated numbers. The number of dead juveniles could be much lower. Still, 48 dead juveniles (and 10 per year) is a small number as a portion of the total Lewis River steelhead outmigration. Steelhead smolt production for Cedar Creek, where most of the North Fork production occurs, averages 3600. Data for the East Fork were not available. Even if steelhead production in the Lewis River was limited to the average 3,600 from Cedar Creek, 10 steelhead would be 0.3 percent of the run. The effect on the entire LCR evolutionary significant unit (ESU) is smaller yet. NMFS does not have data available to calculate the percentage of summer rearing chinook smolts that may be killed. But, NMFS expects the effect to be even smaller, because the vast majority of the chinook will not be in the system during construction. Thus, the percentage of the smolts that are likely to be taken is much lower than the 0.3 percent for the Lewis River steelhead run.

Notice was published on April 2, 2003 (68 FR 15996), that Fish First, a non-profit organization based in southwest Washington State, applied for an enhancement of survival permit under section 10(a)(1)(A) of the ESA. NMFS issued permit 1425 on August 7, 2003, authorizing annual takes of the threatened salmonids listed above in the Lewis River basin. Permit 1425 expires on August 10, 2008.

Dated: October 9, 2003.

**Phil Williams,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 03–26196 Filed 10–15–03; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

### Announcement of Performance Review Board Members

**AGENCY:** National Telecommunications and Information Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** 5 CFR 430.310 requires agencies to publish notice of Performance Review Board appointees in the **Federal Register** before their service begins. This notice announces the names of new and existing members of the National Telecommunications and Information Administration's Performance Review Board.

**FOR FURTHER INFORMATION CONTACT:** Darlene Haywood, International Trade Administration, Office of Human Resources Management, at (202) 482–2850, Room 7060, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:** The purpose of the Performance Review Board is to review and make recommendations to the appointing authority on performance management issues such as appraisals, bonuses, pay level increases, and Presidential Rank Awards for members of the Senior Executive Service. The Acting Assistant Secretary for Communications and Information, Michael D. Gallagher, has named the following members of the National Telecommunications and Information Administration Performance Review Board:

1. Frederick R. Wentland, Associate Administrator for Spectrum Management (Chairperson).
2. Bernadette McGuire-Rivera, Associate Administrator for Telecommunications and Information Applications.
3. Alan W. Vincent, Associate Administrator for Telecommunication Sciences and Director, Institute for Telecommunication Sciences (new).
4. Robin R. Layton, Associate Administrator for International Affairs (new).
5. Ronald P. Hack, Deputy Chief Information Officer for Information Technology Services, Patent and Trademark office (outside reviewer).
6. Darlene F. Haywood, Executive Secretary, ITA Office of Human Resources Management at (202) 482–2850.

Dated: October 9, 2003.

**Doris W. Brown,**

*Human Resources Officer.*

[FR Doc. 03–26124 Filed 10–15–03; 8:45 am]

**BILLING CODE 3510–25–P**

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

October 10, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

**EFFECTIVE DATE:** October 17, 2003.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the *Correlation*: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 63632, published on October 15, 2002.

**Philip J. Martello,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 10, 2003.

Commissioner,

*Bureau of Customs and Border Protection, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 8, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on October 17, 2003, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Levels in Group I | |
| 335 | 316,668 dozen. |
| 338/339 | 3,533,517 dozen. |
| 347/348 | 3,540,738 dozen. |
| 635 | 428,602 dozen. |
| 638/639 | 3,195,642 dozen. |
| 647/648 | 1,947,480 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 03–26213 Filed 10–15–03; 8:45 am]

**BILLING CODE 3510–DR–S**

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## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before November 17, 2003.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov*.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 10, 2003.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

**Office of Postsecondary Education**

*Type of Review:* Revision.

*Title:* Application for Grants Under the Strengthening Institutions Program, American Indian Tribally Controlled Colleges and Universities Program, and Alaska Native and Hawaiian Serving Institutions Program.

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 415.

Burden Hours: 19,250.

*Abstract:* The information is required of institutions of higher education that apply for grants under the Strengthening Institutions Program, the American Indian Tribally Controlled Colleges and Universities Program, and the Alaska Native and Native Hawaiian Serving Institutions Program, authorized under Title III, Part A of the Higher Education Act of 1995, as amended. This information will be used in the peer review and in making funding recommendations.

This collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2362. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–26141 Filed 10–15–03; 8:45 am]

**BILLING CODE 4000–01–P**

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## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before December 15, 2003.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 10, 2003.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

**Institute of Education Sciences**

*Type of Review:* New.

*Title:* American Indian Supplement to the National Assessment of Educational Progress (NAEP), Field Test 2004.

*Frequency:* One time.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs; Individuals or household.

*Reporting and Recordkeeping Hour Burden:*

Responses: 1,300.

Burden Hours: 325.

*Abstract:* This study is a field test for a planned supplement to the National Assessment of Educational Progress. The study will determine the feasibility of oversampling the American Indian and Alaska Native student population. In addition to a standard assessment and it includes special background questionnaires for student, teacher, and school components. A 3-year clearance is requested.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2363. When you access the information collection, click on "Download Attachments "to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina.Ingalls@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–26142 Filed 10–15–03; 8:45 am]

**BILLING CODE 4000–01–P**

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## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services

**[CFDA No.: 84.133F]**

### National Institute on Disability and Rehabilitation Research—Research Fellowships Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

*Purpose of Program:* The purpose of the Research Fellowships Program is to build research capacity by providing support to highly qualified individuals, including those who are individuals with disabilities, to conduct research about the rehabilitation of individuals with disabilities. Fellows may conduct original research in an area authorized by section 204 of the Rehabilitation Act of 1973, as amended. Fellows must address problems encountered by individuals in their daily lives that are due to the presence of a disabling condition, problems associated with the provision of rehabilitation services to individuals with disabilities, and problems connected with the conduct of disability research.

The program provides two categories of Fellowships: Merit Fellowships and Distinguished Fellowships.

(a) To be eligible for a Distinguished Fellowship, an individual must have seven or more years of research experience in subject areas, methods, or techniques relevant to rehabilitation research and must have a doctorate, other terminal degree, or comparable academic qualifications.

(b) To be eligible for a Merit Fellowship, an individual must have either advanced professional training or independent study experience in an area that is directly pertinent to disability and rehabilitation. In the most recent competitions, recipients of a Merit Fellowship had research experience at the doctoral level.

Applicants are not required to submit a budget with their proposal. These are one Full Time Equivalent (FTE) awards. The Fellow must work principally on the fellowship during the year. We define one FTE as equal to 40 hours per week. The Fellow cannot receive support through any other Federal Government grants during this period.

*Eligible applicants:* Only individuals who have advanced rehabilitation research training and experience in conducting scientific research related to the solution of rehabilitation problems of individuals with disabilities are eligible.

**Note:** Institutions are not eligible to be recipients of Fellowships.

*Applications available:* October 16, 2003.

*Deadline for transmittal of applications:* December 15, 2003.

*Estimated available funds:* The Administration has requested $500,000 for this program for FY 2004. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

*Maximum Award:* Merit: $45,000; Distinguished: $55,000.

**Note:** Applicants must indicate whether they are applying for the Merit Fellowship: $45,000, or the Distinguished Fellowship: $55,000.

*Estimated Number of Awards:* 10.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* 12 months.

*Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 24 pages using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if you apply these standards and exceed the page limit.

**Note:** Applicants must place their Social Security Number in Block #2 on the ED 424 form in place of the D–U–N–S Number.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 75, 77, 81, 82, 85, and 97; and 34 CFR part 356, Disability and Rehabilitation Research Fellowships.

**SUPPLEMENTARY INFORMATION:**

**Note:** NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

The Research Fellowships Program is in concert with NIDRR's Long-Range Plan (Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/rschstat/research/pubs/index.html.*

*Selection Criteria:* In evaluating an application for a Fellowship under this competition, we use selection criteria chosen from the selection criteria in 34 CFR 356.30–32. The selection criteria to be used for this competition will be provided in the application package for this competition.

*Application Procedures:*

**Note:** Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

#### Pilot Project for Electronic Submission of Applications

In FY 2004, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Research Fellowships Program—CFDA

#84.133F is one of the programs included in the pilot project. If you are an applicant under the Research Fellowships Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424) and all necessary assurances and certifications. The Budget Information—Non-Construction Programs (ED 524) is not required by the Research Fellowships Program—CFDA #84.133F.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424.
2. The applicant must sign this form under the Research Fellowships Program—CFDA #84.133F.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.
- *Application Deadline Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Research Fellowships Program—CFDA #84.133F and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

1. You must be a registered user of e-Application, and have initiated an e-Application for this competition; and
2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm the Department's acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Research Fellowships Program—CFDA #84.133F at: *http://e-grants.ed.gov.*

*For Applications Contact:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs via its Web site: *http://www.ed.gov/pubs/edpubs.html.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA #84.133F.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Services (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

**FOR FURTHER INFORMATION CONTACT:** Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

## Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

*Program Authority:* 29 U.S.C. 762(e).

Dated: October 9, 2003.

**Robert H. Pasternack,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 03–26208 Filed 10–15–03; 8:45 am]

BILLING CODE 4000–01–P

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## DEPARTMENT OF ENERGY

## Environmental Management Advisory Board

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental

Management Advisory Board. The Federal Advisory Committee Act (Public law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Friday, November 21, 2003.

**ADDRESSES:** U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., (Room 1E–245), Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** James T. Melillo, Executive Director of the Environmental Management Advisory Board, (EM–10), 1000 Independence Avenue SW., (Room 5B–171), Washington, DC 20585. The telephone number is (202) 586–4400. The Internet address is *james.melillo@em.doe.gov*.

**SUPPLEMENTARY INFORMATION:** *Purpose of the Board:* To provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on corporate issues confronting the Environmental Management Program. The Board will contribute to the effective operation of the Environmental Management Program by providing individual citizens and representatives of interested groups an opportunity to present their views on issues facing the Office of Environmental Management and by helping to secure consensus recommendations on those issues.

*Tentative Agenda:*

Friday, November 21, 2003.

9 p.m. Public Meeting Open.

—Welcome
—Opening Remarks
—EM Overview
—EM Program Update
—Board Briefing
—Board Business

5 p.m—Public Comment and Adjournment.

*Public Participation:* This meeting is open to the public. If you would like to file a written statement with the Board, you may do so either before or after the meeting. If you would like to make an oral statement regarding any of the items on the agenda, please contact Mr. Melillo at the address or telephone number listed above, or call the Environmental Management Advisory Board office at (202) 586–4400, and we will reserve time for you on the agenda. Those who call in and or register in advance will be given the opportunity to speak first. Others will be accommodated as time permits. The Board Chair will conduct the meeting in an orderly manner.

*Minutes:* We will make the minutes of the meeting available for public review and copying by February 22, 2004. The minutes and transcript of the meeting will be available for viewing at the Freedom of Information Public Reading Room (1E–190) in the Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. The Room is open Monday through Friday from 9 a.m.–4 p.m. except on Federal holidays.

Issued in Washington, DC, on October 10, 2003.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 03–26168 Filed 10–15–03; 8:45 am]

**BILLING CODE 6450–01–P**

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## DEPARTMENT OF ENERGY

### Office of Fossil Energy; National Coal Council

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the National Coal Council. Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires notice of these meetings be announced in the **Federal Register**.

**DATES:** Thursday, December 4, 2003, 9 a.m. to 12 Noon.

**ADDRESSES:** Fairmont Hotel, 2401 M Street, NW, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Estelle W. Hebron, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585. Phone: 202/586–6837.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Committee:* The purpose of the National Coal Council is to provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues. The purpose of this meeting is to provide updates on several of these issues, which are summarized in the following agenda.

*Tentative Agenda:*

- Call to Order by Mr. Wes M. Taylor, Chairman.
- Remarks of Secretary of Energy, Spencer Abraham (invited).
- Council Business.
- Presentation by Mr. James Roewer, Exec. Director, Utility Solid Waste Activities Group, on New Source Review rulemaking.
- Presentation by Ms. Sharon Glacken, TXU Corporation, on Mercury rulemaking for coal-based generating plants.
- Presentation by (TBD), on Northeast blackout of August 14, 2003.
- Presentation by (DOE Representative), on Clean Coal Power Initiative.
- Other Business.
- Adjourn.

*Public Participation:* The meeting is open to the public. The Chairman of the NCC will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would to like to make oral statements regarding any of the items on the agenda, you should contact Estelle W. Hebron at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

*Transcripts:* The transcript will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on October 10, 2003.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 03–26169 Filed 10–15–03; 8:45 am]

**BILLING CODE 6450–01–P**

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## DEPARTMENT OF ENERGY

### Office of Fossil Energy

**[FE Docket Nos. 03–33–NG, et al.]**

### Husky Gas Marketing, Inc., et al.; Orders Granting and Vacating Authority To Import and Export Natural Gas, and Import of Liquefied Natural Gas

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of Orders.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy gives notice that during August 2003, it issued Orders granting and vacating authority to import and export natural gas, and import of liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation), or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import &

Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on September 16, 2003.

**Clifford P. Tomaszewski,**

*Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.*

### APPENDIX—ORDERS GRANTING AND VACATING IMPORT/EXPORT AUTHORIZATIONS

[DOE/FE Authority]

| Order No. | Date issued | Importer/exporter FE docket No. | Import volume | Export volume | Comments |
|---|---|---|---|---|---|
| 1882 | 8–5–03 | Husky Gas Marketing, Inc.; 03–33–NG. | 250 Bcf | | Import and export up to a combined total of natural gas from and to Canada, beginning on August 10, 2003, and extending through August 9, 2005. |
| 1883 | 8–5–03 | Weyerhaeuser Company; 03–36–NG. | 24 Bcf | | Import natural gas from Canada, beginning on November 1, 2003, and extending through October 31, 2005. |
| 1884 | 8–6–03 | NSTAR Gas Company; 03–39–NG. | 20 Bcf | | Import and export up to a combined total of natural gas from and to Canada, beginning on November 1, 2003, and extending through October 31, 2005. |
| 1885 | 8–18–03 | Padre Valencia Energy Corporation; 03–38–LNG. | 107 Mcf | | Import LNG from other sources beginning on October 1, 2003, and extending through September 30, 2005. |
| 1886 | 8–18–03 | Chevron U.S.A. Inc.; 03–41–NG. | 55 Bcf | | Import natural gas from Canada, beginning on August 18, 2003, and extending through August 17, 2005. |
| 1785–A | 8–18–03 | Chevron U.S.A. Inc.; 02–38–NG. | | | Vacate blanket authority. |
| 1887 | 8–18–03 | OXY Energy Canada, LLC; 03–40–NG. | 400 Bcf | | Import and export up to a combined total of natural gas from and to Canada, beginning on September 1, 2003, and extending through August 31, 2005. |
| 1888 | 8–19–03 | Sierra Pacific Power Company; 03–43–NG. | 100 Bcf | | Import natural gas from Canada, beginning on January 1, 2004, and extending through December 31, 2005. |
| 1889 | 8–25–03 | ConocoPhillips Company; 03–44–NG. | 300 Bcf | | Import and export up to a combined total of natural gas from and to Canada and Mexico, beginning on August 27, 2003, and extending through August 26, 2005. |
| 1801–A | 8–26–03 | Emera Energy Services, Inc.; 02–53–NG. | | | Vacate blanket authority. |
| 1890 | 8–26–03 | Emera Energy Services, Inc.; 03–37–NG. | 400 Bcf | | Import and export up to a combined total of natural gas from and to Canada, beginning on September 1, 2003, and extending through August 31, 2005. |
| 1891 | 8–26–03 | EnCana Marketing (USA) Inc.; 03–45–NG. | 500 Bcf | | Import and export up to a combined total of natural gas from and to Canada and Mexico, and import LNG from other sources, beginning on June 30, 2003, and extending through June 29, 2005. |
| 1892 | 8–28–03 | TXU Portfolio Management Company LP; 03–47–NG. | 240 Bcf | 240 Bcf | Import and export up to a combined total of natural gas from and to Canada, and import and export up to a combined total of natural gas from and to Mexico, beginning on July 27, 2003, and extending through July 26, 2005. |

[FR Doc. 03–26170 Filed 10–15–03; 8:45 am]

**BILLING CODE 6450–01–P**

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## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Rocky Flats

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

**DATES:** Thursday, November 6, 2003, 6 p.m. to 9 p.m.

**ADDRESSES:** College Hill Library, Room L211, Front Range Community College, 3705 West 112th Avenue, Westminster, CO.

**FOR FURTHER INFORMATION CONTACT:** Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 10808 Highway 93, Unit B, Building 60, Room 107B, Golden, CO, 80403; telephone (303) 966–7855; fax (303) 966–7856.

**SUPPLEMENTARY INFORMATION:** Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda*

1. Discussion and Approval of recommendations and comments on the draft Interim Measure/Interim Remedial Action document for the Present Landfill.
2. Discussion with Ray Plieness, Grand Junction Project Office, on long-term stewardship at Rocky Flats.
3. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the office of the Rocky Flats Citizens Advisory Board, 10808 Highway 93, Unit B, Building 60, Room 107B, Golden, CO 80403; telephone (303) 966–7855. Hours of operations are 7:30 a.m. to 4 p.m., Monday through Friday. Minutes will also be made available by writing or calling Ken Korkia at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML*.

Issued at Washington, DC, on October 10, 2003.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 03–26171 Filed 10–15–03; 8:45 am]

**BILLING CODE 6450–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–6–000]**

### Enbridge Pipelines (KPC); Notice of Proposed Changes in Ferc Gas Tariff

October 3, 2003.

Take notice that on September 29, 2003, Enbridge Pipelines (KPC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be made effective November 1, 2003:

Fourth Revised Sheet No. 15
Fourth Revised Sheet No. 21
Fourth Revised Sheet No. 26
Fourth Revised Sheet No. 28
Fourth Revised Sheet No. 30
Fourth Revised Sheet No. 31A
Third Revised Sheet No. 31C

KPC states that the purpose of the filing is to reflect an overall decrease in its Fuel Reimbursement Percentages pursuant to Section 23 of the General Terms and Conditions of its FERC Gas Tariff.

KPC states that copies of its transmittal letter and appendices have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

*Intervention and Protest Date:* October 14, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00064 Filed 10–15–03; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–12–000]**

### Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

October 8, 2003.

Take notice that on October 1, 2003, Florida Gas Transmission Company (FGT) tendered for filing, as part of its FERC Gas Tariff, Third Revised Volume No. 1, revised tariff sheets listed in Appendix A to the filing, proposed to become effective on November 1, 2003.

FGT states that this rate filing is made to effectuate changes in the rates and terms applicable to FGT's services under Rate Schedules FTS–1, FTS–2, FTS–WD, SFTS, NNTS, ITS–1, ITS–WD, and PNR. FGT states that based on Test Period reservation and usage determinants, the proposed rate increase under all Rate Schedules, excluding the impact of rate caps, negotiated rates, and discounts, would generate approximately $56 million in additional annual transportation revenues for FGT.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact

(202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Intervention and Protest Date:* October 14, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00060 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP04–1–000]

### Garden Banks Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

October 8, 2003.

Take notice that on October 1, 2003, Garden Banks Gas Pipeline, LLC (GBGP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets to be effective November 1, 2003:

Third Revised Sheet No. 14
Third Revised Sheet No. 24
Second Revised Sheet No. 33
Fifth Revised Sheet No. 100
Third Revised Sheet No. 101
Second Revised Sheet No. 121C
Second Revised Sheet No. 216
First Revised Sheet No. 219
First Revised Sheet No. 220
Second Revised Sheet No. 227
First Revised Sheet No. 230
Second Revised Sheet No. 238
First Revised Sheet No. 241
First Revised Sheet No. 242
Second Revised Sheet No. 278
First Revised Sheet No. 281
Second Revised Sheet No. 288
First Revised Sheet No. 289
First Revised Sheet No. 295A
First Revised Sheet No. 296A
Second Revised Sheet No. 297
Third Revised Sheet No. 302

GBGP states that the purpose of this filing is to update its tariff to: (1) Remove remnants of Order No. 637 policies that no longer apply (eliminating capacity releases at rates above max tariff rate and five-year term limit for determining best bid); (2) update the legal name of its member company that handles certain administrative functions; (3) add two informational items to its Request for Service Form—the shipper's Federal Tax ID number and DUNS number—which are required for GBGP to conduct business; and, (4) correct format and typographical errors contained on several pages.

GBGP states that copies of the filing are being mailed to each of GBGP's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

*Intervention and Protest Date:* October 14, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00057 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP04–11–000]

### Guardian Pipeline, L.L.C; Notice of Proposed Changes in FERC Gas Tariff

October 8, 2003.

Take notice that on October 1, 2003, Guardian Pipeline, L.L.C. (Guardian) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fourth Revised Sheet No. 5, proposed to become effective November 1, 2003.

Guardian states that this filing is made in accordance with Section 32 (Transporter's Use Gas Adjustment) of the General Terms and Conditions in its FERC Gas Tariff, Original Volume No. 1.

Guardian further states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

*Intervention and Protest Date:* October 14, 2003 .

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00059 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP03–628–000]

### Iroquois Gas Transmission System, L.P.; Notice of Tariff Filing

October 8, 2003.

Take notice that on September 30, 2003, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twelfth Revised Sheet No. 4A, with an effective date of November 1, 2003.

Iroquois states that pursuant to Part 154 of the Commission's regulations and Section 12.5 of the General Terms and Conditions of its tariff, it is filing Twelfth Revised Sheet No. 4A and supporting work paper as part of its annual Transportation Cost Rate Adjustment filing to reflect changes in Account No. 858 costs for the twelve month period commencing November 1, 2003.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Intervention and Protest Date:* October 14, 2003.

**Magalie R. Salas,**
*Secretary.*
[FR Doc. E3–00052 Filed 10–15–03; 8:45 am]
**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP04–4–000]**

## Kern River Gas Transmission Company: Notice of Tariff Filing

October 8, 2003.

Take notice that on October 1, 2003, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective November 1, 2003.

Kern River states that the purpose of this filing is (1) to revise Kern River's tariff to reflect its new address and phone numbers, (2) to update Kern River's system map to reflect the facilities added in its 2003 expansion project, and (3) to propose other miscellaneous modifications.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

*Intervention and Protest Date:* October 14, 2003.

**Magalie R. Salas,**
*Secretary.*
[FR Doc. E3–00056 Filed 10–15–03; 8:45 am]
**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ES03–60–000]**

## MidAmerican Energy Company; Notice of Application

October 8, 2003.

Take notice that on September 30, 2003, MidAmerican Energy Company (MidAmerican) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue and sell up to $455 million principal amount of bonds, notes, debentures, guarantees or other evidence of long-term indebtedness.

MidAmerican also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

*Comment Date:* October 27, 2003.

**Magalie R. Salas,**
*Secretary.*
[FR Doc. E3–00044 Filed 10–15–03; 8:45 am]
**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP04–5–000]**

## National Fuel Gas Supply Corporation; Notice of Tariff Filing

October 8, 2003.

Take notice that on October 1, 2003, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth

Revised Volume No. 1, the tariff sheets listed in Appendix A to its filing. The tariff sheets have a proposed effective date of November 1, 2003.

National Fuel states the purpose of the instant filing is to reflect the relocation of its principal office by replacing each reference to National Fuel's current address with a reference to its new address.

National Fuel's states that its filing indicates that copies of this filing were served upon its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

*Intervention and Protest Date:* October 14, 2003.

**Magalie R. Salas,**
*Secretary.*

[FR Doc. E3–00063 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP04–18–000]

### Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

October 8, 2003.

Take notice that on October 1, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Sixth Revised Sheet No. 414, to be effective October 1, 2003.

Natural states that the purpose of this filing is to update its list of non-conforming agreements. Natural states that it also tendered for filing copies of the Firm Transportation Rate Discount Agreement with The Board of Trustees of University of Illinois. Natural further states that copies of the filing are being mailed to its customers and interested state commissions.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

*Comment Date:* October 14, 2003.

**Magalie R. Salas,**
*Secretary.*

[FR Doc. E3–00061 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ES03–59–001]

### NRG Energy, Inc.; Notice of Application

October 8, 2003.

Take notice that on October 7, 2003, NRG Energy, Inc. submitted a filing in response to a deficiency letter issued on October 2, 2003, by the Director of the Division of Tariffs and Market Development-Central, in the above-referenced docket.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

*Comment Date:* October 17, 2003.

**Magalie R. Salas,**
*Secretary.*

[FR Doc. E3–00045 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–9–000]**

### Panhandle Eastern Pipe Line Company, LCC; Notice of Proposed Changes in Ferc Gas Tariff

October 8, 2003.

Take notice that on October 1, 2003, Panhandle Eastern Pipe Line Company, LLC (Panhandle) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing, to become effective November 1, 2003.

Panhandle states that this filing is made in accordance with Section 24 (Fuel Reimbursement Adjustment) of the General Terms and Conditions in Panhandle's FERC Gas Tariff, Second Revised Volume No. 1. Panhandle also states that the revised tariff sheets filed herewith reflect the following changes to Fuel Reimbursement Percentages:

(1) A 0.18% increase in the Gathering Fuel Reimbursement Percentage;

(2) A 0.19% increase in the Field Zone Fuel Reimbursement Percentage;

(3) A 0.07% increase in the Market Zone Fuel Reimbursement Percentage;

(4) A 0.12% decrease in the Injection and a 0.12% decrease in the Withdrawal Field Area Storage Reimbursement Percentages; and

(5) A 0.12% decrease in the Injection and a 0.12% decrease in the Withdrawal Market Area Storage Reimbursement Percentages.

Panhandle further states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

*Intervention and Protest Date:* October 14, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00043 Filed 10–15–03; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–10–000]**

### Southwest Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

October 8, 2003.

Take notice that on October 1, 2003, Southwest Gas Storage Company (Southwest) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Ninth Revised Sheet No. 5, proposed to become effective November 1, 2003.

Southwest states that this filing is made in accordance with Section 16 (Fuel Reimbursement Adjustment) of the General Terms and Conditions in Southwest's FERC Gas Tariff, First Revised Volume No. 1. Southwest also states that the Fuel Reimbursement Adjustment filed herewith reflects the following Fuel Reimbursement Percentages:

(1) West Area Storage Facilities Injection 1.17% and Withdrawal 0.35%;

(2) East Area Storage Facilities Injection 2.61% and Withdrawal 1.10%.

Southwest further states copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

*Intervention and Protest Date:* October 14, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00058 Filed 10–15–03; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–3–000]**

### Tennessee Gas Pipeline Company; Notice of Tariff Filing

October 8, 2003.

Take notice that on October 1, 2003, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff., Fifth Revised Volume No. 1, Third Revised Sheet No. 405 E with an effective date of November 1, 2003.

Tennessee states that the filing is being made in order to provide more flexibility to its current firm storage service, by primarily modifying the timeframe within which storage service can be sold.

Tennessee states that it also proposes to adopt a timeline in order to provide clarity on the requirements and timing for the future sales of capacity.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

*Intervention and Protest Date:* October 14, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00062 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP03–630–000]**

### Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

October 8, 2003.

Take notice that on September 30, 2003, Viking Gas Transmission Company (Viking) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets attached to the filing, to become effective on November 1, 2003.

Viking states that the purpose of this filing is to revise Viking's Rate Schedule PAL by adding service options, allow park and loan transactions to be electronically contracted and to make corresponding changes in Viking's General Terms and Conditions and form of Agreement related to implementing new service options under Rate Schedule PAL.

Viking states that copies of this filing have been sent to all of Viking's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Intervention and Protest Date:* October 14, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00053 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP03–631–000]**

### Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

October 8, 2003.

Take notice that on September 29, 2003, Viking Gas Transmission Company (Viking) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective on November 1, 2003:

Fifth Revised Sheet No. 5H
Second Revised Sheet No. 87.01
Second Revised Sheet No. 87A

Viking states that the purpose of its filing is to modify Section 26 of the General Terms and Conditions of its FERC Gas Tariff to implement a twice a year change to its fuel and loss retention percentage (FLRP) to become effective April 1 and November 1 of each year. Furthermore, Viking proposes to establish an FLRP of 2.58% for Zone 1–2, .2.17% for Zone 1–1 and .46% for Zone 2–2 to become effective November 1, 2003. This represents decreases of .32% for Zone 1–2, .2% to Zone 1–1 and .12% to Zone 2–2. Viking states that its proposal will provide greater fuel cost certainty and less volatility.

Viking states that copies of this filing have been sent to all of Viking's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

*Intervention and Protest Date:* October 14, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00054 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP03–633–000]**

### Williston Basin Interstate Pipeline Company; Notice of Annual Report

October 8, 2003.

Take notice that on September 30, 2003, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 Fourth Revised Sheet No. 358I, with an effective date of September 30, 2003.

Williston Basin states that as of July 31, 2003 it had a zero balance in FERC

Account No. 191. As a result, Williston Basin will neither refund nor bill its former sales customers for any amounts under the conditions of Subsection No. 39.3.1 of its Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

*Intervention and Protest Date:* October 14, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00055 Filed 10–15–03; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP03–342–000]**

### Discovery Gas Transmission, LLC; Notice of Intent to Prepare An Environmental Assessment for the Proposed Market Expansion Project and Request for Comments on Environmental Issues

October 8, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Market Expansion Project (Project) involving construction and operation of facilities by Discovery Gas Transmission, LLC (Discovery) in LaFourche and Terrebone Parishes, Louisiana.[1] These facilities would consist of construction of about 2.6 miles of various diameter pipeline, an interconnection facility, related metering and pressure regulation facilities and the purchase of approximately 32 miles of existing pipeline from DPH, Inc and Discovery Producer Services, LLC (DPS). This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Discovery provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

#### Summary of the Proposed Project

Discovery proposes to construct, install operate and maintain pipelines and meter stations at four different sites in Lafourche and Terrebone Parish, Louisiana. Discovery states that it proposes to acquire approximately 31.5 miles of existing pipeline (line 40E) from DPH, Inc., of which 22.8 miles will be used to provide the necessary interconnections, acquire approximately 0.4 miles of existing pipeline from DPS, and abandon approximately 8.8 miles of 20-inch pipeline.

*Discovery would install the following facilities:*

- 735 feet of 20-inch diameter pipeline from the existing 40E pipeline to the existing Tennessee platform located in Old Lady Lake in Terrebone Parish Louisiana. The interconnect construction would require exposing and lifting 1000 feet of the existing 40E pipeline.
- Installation of a new 40-foot by 40-foot meter platform at the 40E pipeline near Point Au Chien, in Terrebone Parish Louisiana.
- Installation of approximately 2.1 miles of 20-inch diameter pipeline running from the 40E pipeline to a new 40-foot by 40-foot platform near Isle de Jean Charles to connect with the existing Columbia Gulf Pipeline.
- Installation of 1840 feet of new 20-inch pipeline near Larose, in Lafourche Parish Louisiana.
- Construction of a new meter station near Thibodaux, in LaFourche Parish Louisiana along with 150 feet of interconnection pipeline to deliver to the Transcontinental Gas Pipe Line Corporation's system.
- Discovery also proposes to abandon approximately 8.8 miles of currently decommissioned 20-inch diameter 40E pipeline from the current Old Lady Lake Platform south to the Lake Barre platform in the Caillou Island Field. A 20-inch diameter weld cap could be installed after the introduction of a nitrogen gas blanket in the line.

The general location of the project facilities is shown in appendix 1.[2] If you are interested in obtaining detailed maps of a specific portion of the project, send in your request using the form in appendix 3.

#### Land Requirements for Construction

Construction of the proposed facilities would require about 20.8 acres of land. Following construction, about 11.2 acres would be maintained as new aboveground facility sites. The remaining 9.6 acres of land would be restored and allowed to revert to its former use.

#### The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

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[1] Discovery's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than appendix 1 (maps), are available on the Commission's website at the "eLibrary" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- land use
- water resources, fisheries, and wetlands
- cultural resources
- vegetation and wildlife
- air quality and noise
- endangered and threatened species
- hazardous waste
- public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

## Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 3.
- Reference Docket No. CP03–342–000.
- Mail your comments so that they will be received in Washington, DC on or before November 10, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

## Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

## Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

## Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The eLibrary link on the FERC Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you too keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00065 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

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[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. PF03–3–000]**

### Williston Basin Interstate Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Grasslands Expansion Project and Request for Comments on Environmental Issues

October 8, 2003.

The Federal Energy Regulatory Commission's (FERC or Commission) staff will prepare an environmental assessment (EA) on Williston Basin Interstate Pipeline Company's (Williston Basin) proposed Grasslands Expansion Project in Wyoming, Montana, and North Dakota. This notice announces the opening of the scoping process we[1] will use to gather input from the public and interested agencies on the project. Your input will help us determine which issues need to be addressed in the EA. Details on how to submit written comments are provided in the public participation section of this notice. Please note that the scoping period will close on November 24, 2003.

We are sending this notice to potentially-affected landowners whose properties are within an approximate 1-mile radius of the project locations; Federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; and local libraries and newspapers. We are asking state and local government representatives to notify their constituents of this planned action and encourage them to comment on their areas of concern.

**Summary of the Proposed Project**

Williston Basin states that the Grasslands Expansion Project would allow transportation of an additional 120 million cubic feet per day (mmcf/d) to the Northern Border Pipeline on the Grasslands Pipeline. This would increase the capacity of the Grasslands Pipeline to 200 mmcf/d. The Grasslands Pipeline (Docket Nos. CP02–37–000, 002, and 003) was originally designed to transport 80 mmcf/d.

The project facilities include:

- construction of up to three new compressor stations; one each in Campbell County, Wyoming; Carter County, Montana; and Golden Valley County, North Dakota; and
- installation of additional compression at the existing Manning Compressor Station in Dunn County, North Dakota.

Construction and operation of the planned compressor stations would require a total of about 30 acres. Construction at the existing Manning Compressor Station would occur on the existing site. A general location map of the project facilities is shown in Appendix 1.[2]

Williston Basin also plans to construct additional facilities in Fallon County, Montana that are associated with the Grasslands Expansion Project, but are not under the jurisdiction of the Commission. These non-jurisdictional facilities, which include a supply lateral, gathering lines, and well field compression, would help alleviate transmission constraints and provide needed capacity for future production increases out of the Baker Production Area.

Williston Basin plans to construct this project in 2004, with the goal of placing it in-service by November 1, 2004, if the project is fully subscribed by the time they make application with the Commission (tentatively November 1, 2003). If not fully subscribed at the time of application, Williston Basin has stated that they may propose to phase its construction schedule of the various facilities over more than 1 year.

**The EA Process**

The Commission will be the lead Federal agency for this EA process which is being conducted to satisfy the requirements of the National Environmental Policy Act (NEPA). The Commission will use the EA to consider the environmental impacts that could result if it issues Williston Basin a Certificate of Public Convenience and Necessity for its proposed project.

This notice formally announces our preparation of the EA and the beginning of the process referred to as "scoping." We are soliciting input from the public and interested agencies to help us focus the analysis in the EA on the potentially significant environmental issues related to the proposed action. All comments received will be considered during the preparation of the EA which will include our independent analysis of the identified issues.

Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all timely comments on the EA before we make our recommendations to the Commission.

Although Williston Basin has not filed a formal certificate application yet, we are initiating our review under the NEPA Pre-filing Process. The purpose of the FERC's NEPA Pre-filing Process is to: (1) Establish a framework for constructive discussion between the project proponents, potentially affected landowners, agencies, and the Commission staff; (2) encourage the early involvement of interested stakeholders to identify issues and study needs; and (3) attempt to resolve issues early, before an application is filed with the FERC.

A docket number (PF03–3–000) has been established to place information filed by Williston Basin, and related documents issued by the Commission, in the public record.[3] When Williston Basin files an application, it will be assigned a "CP docket" number, and all information filed under Docket No. PF03–3–000 will become part of the record for the "CP docket."

With this notice, we are asking other Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to the environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies, which would like to request cooperating status, should follow the instructions for filing comments described later in this notice.

If you are an affected property owner receiving this letter, a Williston Basin representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. You may have already been contacted by Williston Basin about the Grasslands Expansion Project, or may have attended the open houses sponsored by Williston Basin in early August 2003. A fact sheet has been prepared by the FERC entitled "An

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[1] "We", "us" and "our", refer to the environmental staff of the Office of Energy Projects.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices are available on the Commission's Web site (*http://www.ferc.gov*) at the "eLibrary" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call at (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] To view information in the docket, follow the instructions for using the eLibrary link at the end of this notice.

Interstate Natural Gas Facility On My Land? What Do I Need To Know?" This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

**Public Participation**

You can make a difference by providing us with your specific comments or concerns about the project. Please focus your comments on the potential environmental effects, reasonable alternatives (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please mail your comments so they will be received in Washington, DC on or before November 24, 2003, and carefully follow these instructions:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Gas Branch 1, DG2E; and
- Reference Docket No. PF03–3–000 on the original and both copies.

The Commission strongly encourages you to file your comments electronically via the Internet, in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account by clicking on "Login to File" and then "New User Account." You will be asked to select the type of filing you are making. This filing is considered a "Comment on Filing."

**Additional Information**

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The eLibrary link on the FERC Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm*.

Williston Basin has initiated public participation to provide a means of communication with participating stakeholders and has held three open houses near the proposed compressor station locations. To facilitate the communication effort, it has provided a single point of contact for the Grasslands Expansion Project in Mr. Keith Tiggelaar, Director of Regulatory Affairs, at 1–701–530–1560, e-mail *keith.tiggelaar@wbip.com*. Additionally, Williston Basin will update its Grasslands Pipeline Web site (*www.grasslandspipeline.com*) to include information on the Grasslands Expansion Project. If you have any further questions for Williston Basin regarding its planned project, we encourage you to contact their representatives to answer your questions and address your concerns.

Finally, any public meetings or site visits will be posted on the Commission(s calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00051 Filed 10–15–03; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 8, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12453–000.

c. *Date filed:* March 18, 2003.

d. *Applicant:* Deadwood Hydro LLC.

e. *Name of Project:* Deadwood Dam Project.

f. *Location:* On the Deadwood River, in Valley County, Idaho, utilizing the Deadwood Dam which is administered by the U.S. Bureau of Reclamation.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent Smith, Deadwood Hydro LLC., P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project utilizing the U. S. Bureau of Reclamation's Deadwood Dam and would consist of: (1) A proposed 300-foot-long, 120-inch-diameter steel penstock, (2) a proposed powerhouse containing generating unit having an installed capacity of 2.6 MW, (3) a proposed 10-mile-long, 15 kV transmission line, and (4) appurtenant facilities.

Applicant estimates that the average annual generation would be 25 GWh and would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00047 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

October 8, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 199–203.

c. *Date Filed:* August 11, 2003.

d. *Applicant:* South Carolina Public Service Authority.

e. *Name of Project:* Santee-Cooper Project.

f. *Location:* Santee and Cooper Rivers (Lake Marion and Lake Moultrie) in Berkeley, Calhoun, Clarendon, Orangeburg, and Sumter Counties, South Carolina. The project occupies federal lands in the Francis Marion National Forest. The proposed action would involve project lands and waters located at Lake Marion.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and 799 and 801.

h. *Applicant Contact:* Mr. G. Denton Lindsay, Jr., Santee Cooper Property Management Division, One Riverwood Drive, P.O. Box 2946101, Moncks Corner, SC 29461–4003, (843) 761–8000.

i. *FERC Contact:* Any questions on this notice should be addressed to Diana Shannon, (202) 502–8887, or e-mail address: *diana.shannon@ferc.gov.*

j. *Deadline for filing motions to intervene, protests, comments:* November 10, 2003.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

k. *Description of Proposed Action:* The Applicant seeks approval to use project lands and waters at Lake Marion for the Lake Marion Regional Water System Water Supply Project (Water Project). The applicant proposes to construct an intake structure and pump station in Orangeburg County, South Carolina. Raw water would be withdrawn from Lake Marion and delivered to a proposed water treatment plant, to be located on non-project lands approximately 1,000 feet from the intake. The treatment plant will have an initial capacity of 8 million gallons/day (MGD) and a maximum of up to 12 MGD. The licensee states that lake inflow is considered adequate to withstand the demand of the water treatment facility. The proposed structures (both on project and non-project lands) will remain the applicant's, therefore, no conveyance of project property rights is necessary. The applicant intends to sell the potable water to the Lake Marion Water Agency, which includes the City of Santee, the Town of Elloree, the City of Manning, the Town of St. George, and the Town of Holly Hill. The Water Project is divided into 5 smaller, independent projects. The initial project, referred to as the Santee Reach, includes the water treatment facility, elevated tank, and waterline to provide water to Santee and Orangeburg County. Other projects (including the Elloree, Holly Hill, St. George and Manning Reaches) will be phased in, based upon customer needs and funding availability with the last project anticipated being completed by March 2006.

l. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov/* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules and Practice and Procedure 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the project number (199–203) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link. The Commission strongly encourages e-filings. All documents should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*: Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representative.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00048 Filed 10–15–03; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

October 8, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2628–052.

c. *Date Filed:* September 9, 2003.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* R. L. Harris Dam.

f. *Location:* The project is located on the Tallapoosa River in Clay and Randolph Counties, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and 799 and 801.

h. *Applicant Contact:* Mr. R. M. Akridge, PO Box 2641, Birmingham, AL 35291, (205) 257–1398.

i. *FERC Contacts:* Any questions on this notice should be addressed to Ms. Shana High at (202) 502–8674, or e-mail address: *shana.high@ferc.gov*.

j. *Deadline for filing comments and or motions:* November 10, 2003.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2628–052) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages e-filings.

k. *Description of Request:* Alabama Power Company is requesting Commission approval to authorize Wedowee Marine to make improvements to its marina on Harris Lake in Randolph County, Alabama. Existing facilities within the project boundary include a fueling dock which can accommodate four to six watercraft and a concrete boat ramp. Proposed facilities within the project boundary include: construction of three covered, floating dock structures that will accommodate 96 watercraft; construction of a dock with six handicap-accessible boat slips; widening the existing boat ramp to 30-feet; and improvements to the existing fuel dock structure.

l. *Location of the Applications:* The filings are available for review at the Commission in the Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please call the Helpline at (866) 208–3676 or contact *FERCONLINESUPPORT@ferc.gov*. For TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00049 Filed 10–15–03; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

October 8, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 9840–031.

c. *Date Filed:* August 21, 2003.

d. *Applicants:* Appomattox River Associates, L. P. and STS HydroPower, Ltd. (Transferors) and Appomattox River Associates, L. P. (Transferee).

e. *Name of Project:* Appomattox River Water Authority Hydroelectric Project.

f. *Location:* Located on the Appomattox River, in Chesterfield and Dinwiddie Counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicants Contact:* Stephen J. Sinclair, Appomattox River Associates, L.P., c/o Northbrook Energy, 20 North Wacker Drive, Chicago, IL 60606, (312) 419–1221.

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. *Deadline for filing comments and or motions:* November 10, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–9840–031) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Transfer:* Appomattox River Associates, L.P. and STS HydroPower, Ltd., co-licensees, (STS) jointly seek Commission approval to remove STS as co-licensee from the license for the Appomattox River Water Authority Hydroelectric Project.

l. *Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00050 Filed 10–15–03; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 11883–001, et al.]**

### Notice of Surrender of Preliminary Permits

October 8, 2003.

Symbiotics, LLC, Project Nos. 11883–001, 11889–001, 11890–001, 11892–001, 11940–001, 11963–001, 11969–001, 11970–001, 11985–001, 11988–001, 11989–001, 11990–001, 11993–001, 11995–001, 12002–001, 12003–001, 12004–001, 12006–001, 12007–001, 12009–001, 12010–001, 12011–001, 12012–001, 12014–001, 12039–001, 12065–001, 12098–001; Sequoia Hydro, LLC, Project No. 12181–001; Calero Hydro, LLC, Project No. 12186–001; Skiatook Hydro, LLC, Project No. 12189–001; Crow Creek Hydro, LLC, Project No. 12197–001; Merritt Hydro, LLC, Project No. 12201–001; North San Gabriel Hydro, LLC, Project No. 12203–001; Three Mile Falls Hydro, LLC, Project No. 12209–002; Bayou D'Arbonne Hydro, LLC, Project No. 12217–001; Caddo Hydro, LLC, Project No. 12219–001; Lake Fork Hydro, LLC, Project No. 12231–001; Moose Creek Hydro, LLC, Project No. 12235–001; Pat Mayse Hydro, LLC, Project No. 12240–001; Waco Hydro, LLC, Project No. 12249–001; Ute Hydro, LLC, Project No. 12251–001; and MSR # 27 Hydro, LLC, Project No. 12267–001.

Take notice that the permittees for the subject projects have requested to surrender their preliminary permits. Investigations and feasibility studies have shown that the projects would not be economically feasible.

| Project No. | Project name | Stream | State | Expiration date |
|---|---|---|---|---|
| 11883–001 | Mackay Dam | Big Lost River | ID | 05–31–2004 |
| 11889–001 | Porcupine Dam | Bear River | UT | 07–31–2004 |
| 11890–001 | Oneida Narrows | Bear River | ID | 03–31–2005 |
| 11892–001 | Smith's Fork | Bear River | WY | 05–31–2004 |
| 11940–001 | Willow Ck. Reservoir | Willow Creek | MT | 06–30–2004 |
| 11963–001 | San Pablo Dam | San Pablo Creek | CA | 08–31–2004 |
| 11969–001 | Broines Dam | Bear Creek | CA | 08–31–2004 |
| 11970–001 | Prado Dam | Santa Ana River | CA | 08–31–2004 |
| 11985–001 | Altus Dam | Red River | OK | 08–31–2004 |
| 11988–001 | Savage Dam | Otay River | CA | 08–31–2004 |
| 11989–001 | Painted Rock Dam | Gila River | AZ | 07–31–2004 |
| 11990–001 | South Fork Dam | Humboldt River | NV | 06–30–2004 |
| 11993–001 | Topaz Dam | Walker River | NV | 08–31–2004 |
| 11995–001 | Bishop Creek Dam | Bishop Creek | NV | 06–30–2004 |
| 12002–001 | Hensley Dam | Fresno River | CA | 08–31–2004 |
| 12003–001 | El Capitan | San Diego River | CA | 08–31–2004 |
| 12004–001 | San Vincente | Upper Salinas River | CA | 08–31–2004 |
| 12006–001 | San Antonio Dam | San Antonio Creek | CA | 07–31–2004 |
| 12007–001 | Alamo Dam | Bill Williams River | AZ | 08–31–2004 |
| 12009–001 | Mathews Dam | Santa Ana River | CA | 08–31–2004 |
| 12010–001 | Crocker Diversion | Merced River | CA | 07–31–2004 |
| 12011–001 | Martis Creek Lake | Martis Creek | CA | 07–31–2004 |
| 12012–001 | Calaveras Dam | Calaveras Creek | CA | 07–31–2004 |
| 12014–001 | Dake Dam | Thousand Springs Ck. | NV | 08–31–2004 |
| 12039–001 | Alpine | Snake River | WY | 08–31–2004 |
| 12065–001 | Big Timber | Big Timber Creek | MT | 12–31–2004 |
| 12098–001 | Scofield Reservoir Falls | Price River | UT | 01–31–2005 |
| 12181–001 | Sequoia Dam | Mill Flat Creek | CA | 10–31–2005 |
| 12186–001 | Calero Dam | Calero Creek | CA | 12–31–2005 |
| 12189–001 | Skiatook Dam | Hominy Creek | OK | 10–31–2005 |
| 12197–001 | Crow Creek Dam | Crow Creek | OR | 09–30–2005 |
| 12201–001 | Merritt Dam | Snake River | NE | 11–30–2005 |
| 12203–001 | North San Gabriel | San Gabriel River | TX | 10–31–2005 |
| 12209–002 | Three Mile Falls Dam | Umatilla River | OR | 10–31–2005 |
| 12217–001 | Bayou D'Arbonne Dam | Bayou D'Arbonne Res | LA | 10–31–2005 |
| 12219–001 | Caddo Dam | Cypress Bayou | LA | 12–31–2005 |
| 12231–001 | Lake Fork Dam | Lake Fork Creek | TX | 03–31–2006 |
| 12235–001 | Moose Creek | Chena River | AK | 01–31–2006 |
| 12240–001 | Pat Mayse Dam | Sanders Creek | TX | 10–31–2005 |
| 12249–001 | Waco Dam | Bosque River | TX | 10–31–2005 |
| 12251–001 | Ute Dam | Canadian River | NM | 01–31–2006 |
| 12267–001 | Mississippi L&D #27 | Mississippi River | IL | 01–31–2006 |

The permits shall remain in effect through the thirtieth day after issuance of this notice unless that day is Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case each permit shall remain in effect through the first business day following that day. New applications involving these project sites, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00046 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

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## ENVIRONMENTAL PROTECTION AGENCY

### Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Section 104 (k); Announcement of Proposal Deadlines for the Competition for the 2004 National Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of the availability of brownfields grant application guidelines and deadlines for submissions of proposals.

**SUMMARY:** The United States Environmental Protection Agency (EPA) will begin to accept proposals for the National Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants on October 16, 2003. This notice provides information on how to obtain the application guidelines. These grants may be used to address sites contaminated by petroleum and hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum). The brownfields assessment grants (each funded up to $200,000 over two years) provide funding for a grant recipient to inventory, characterize, assess, and conduct planning and community involvement related to brownfield sites. The brownfields revolving loan fund grants (each funded up to $1,000,000 over five years) provide funding for a grant recipient to capitalize a revolving loan fund and to provide subgrants to carry out cleanup activities at brownfield sites that are owned by the subgrant recipient. The brownfields cleanup grants (each funded up to $200,000 over two years) provide funding for a grant recipient to carry out cleanup activities at brownfield sites that are owned by the grant recipient (see Catalogue of Federal Domestic Assistance Number: 66.818).

For the brownfields assessment grants, an applicant may request a waiver of the $200,000 limit and obtain funding up to $350,000 based on the anticipated level of contamination, size, or ownership status of the site. The revolving loan fund and cleanup grants require a 20 percent cost share, which may be in the form of a contribution of money, labor, material, or services from a non-federal source. If the cost share is in the form of contribution of labor, material, or other services, it must be incurred for an eligible and allowable cost under the grant and not for ineligible costs. An applicant may request a waiver of the 20 percent cost share requirement based on hardship.

The National brownfields assessment, revolving loan fund, and cleanup grants will be awarded on a competitive basis. To ensure a fair selection process, evaluation panels consisting of EPA Regional and Headquarters staff and other federal agency representatives will assess how well the proposals meet the selection criteria outlined in the application booklet, *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants (October 2003)*. Final selections will be made by EPA senior management after considering the ranking of proposals by the evaluation panels. EPA decisions may also take into account other statutory and policy considerations, such as fair distribution of funds between urban and non-urban and other geographic factors; compliance with the statutory petroleum funding allocation; the benefits of promoting the long-term availability of funds under the RLF grants; designation as a federal Empowerment Zone, Enterprise Community, or Renewal Community; population; and whether the applicant is a federally recognized Indian tribe. In addition, special consideration will be given to projects committed to achieving recognized green building and/or energy efficiency building standards.

**DATES:** This action is effective as of October 16, 2003. EPA expects to make up to 200 grant awards in fiscal year 2004, contingent upon the availability of funds. *The application deadline for proposals for the 2004 assessment, revolving loan fund, and cleanup grants is December 4, 2003.* All proposals must be postmarked by USPS or delivered to Don West, Environmental Management Support Inc., 8601 Georgia Avenue, Suite 500, Silver Spring, MD 20910 by other means, no later than December 4, 2003, and a duplicate copy sent to the appropriate U.S. EPA Regional Office.

**ADDRESSES:** Mailing addresses for EMS, U.S. EPA Regional Offices and U.S. EPA Headquarters are provided in the Proposal Guidelines.

*Obtaining Proposal Guidelines:* The proposal guidelines are available via the Internet: *http://www.epa.gov/brownfields/*.

Copies of the Proposal Guidelines will also be mailed upon request. Requests should be made by calling the U.S. EPA Call Center at the following numbers: Washington, DC, Metro Area at (703)–412–9810; Outside Washington, DC, Metro at 1–800–424–9346; and TDD for the Hearing Impaired at 1–800–553–7672.

In order to ensure that the Guidelines are received in time to be used in the preparation of the proposal, applicants should request a copy as soon as possible and in any event no later than ten (10) working days before the proposal due date. Applicants who request copies after that date might not receive the proposal guidelines in time to prepare and submit a responsive proposal.

**FOR FURTHER INFORMATION CONTACT:** The U.S. EPA's Office of Solid Waste and Emergency Response, Office of Brownfields Cleanup and Redevelopment, (202) 566–2777.

**SUPPLEMENTARY INFORMATION:** On January 11, 2002, President George W. Bush signed into law the Small Business Liability Relief and Brownfields Revitalization Act. This act amended the Comprehensive Environmental Response, Compensation and Liability Act to authorize federal financial assistance for brownfields revitalization, including grants for assessment, cleanup, and job training.

Funding for the brownfields grants is authorized under section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. 9604(k). Eligibility for brownfields assessment and revolving loan fund grants is limited to "eligible entities" as defined in section 104(k)(1) of CERCLA. These include a General Purpose Unit of Local Government; Land Clearance Authority or other quasi-governmental entity that operates under the supervision and control of, or as an agent of, a general purpose unit of local government; Governmental Entity Created by State Legislature; Regional council or group of general purpose units of local government; Redevelopment Agency that is chartered or otherwise sanctioned by a state; State; Indian Tribe other than in Alaska; and Alaska Native Regional Corporation, Alaska Native Village Corporation, and Metlakatla Indian Community. Eligibility for brownfields cleanup grants is limited to "eligible entities" and nonprofits. For the purposes of the brownfields grant program, EPA will use the definition of nonprofit organizations contained in section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999, Public Law 106–107, 31 U.S.C. 6101, Note. The term "nonprofit organization" means any corporation, trust, association, cooperative, or other organization that is operated primarily for scientific, educational, service, charitable, or similar purpose in the public interest; is not organized primarily for profit; and uses net proceeds to maintain, improve, or expand the operation of the organization.

In addition, Intertribal Consortia, other than those composed of ineligible Alaskan tribes, are eligible to apply for the brownfields assessment, revolving loan fund, and cleanup grants. Coalitions of eligible governmental entities are eligible to apply for the brownfields revolving loan fund grants, but only one member of the coalition may receive a cooperative agreement.

The evaluation panels will review the proposals carefully and assess each response based on how well it addresses the criteria, briefly outlined below. There are two different types of criteria—threshold criteria and ranking criteria. Responses to the criteria will be utilized to determine whether to make an award and the amount of funds to be awarded. There is no guarantee of an award.

**Assessment Grants**

*Threshold Criteria*

A. Applicant Eligibility
B. Community Notification
C. Letter from the State or Tribal Environmental Authority
D. Site Eligibility and Property Ownership Eligibility

*Ranking Criteria*

A. Assessment Grant Proposal Budget (a maximum of 5 points may be received for this criterion)
B. Community Need (a maximum of 15 points may be received for this criterion)
C. Site Selection Process (a maximum of 10 points may be received for

this criterion)

D. Sustainable Reuse of Brownfields/ Development Potential (a maximum of 10 points may be received for this criterion)
E. Creation and/or Preservation of Greenspace/Open Space or Other Nonprofit Purpose (a maximum of 5 points may be received for this criterion)
F. Reuse of Existing Infrastructure (a maximum of 5 points may be received for this criterion)
G. Community Involvement (a maximum of 15 points may be received for this criterion)
H. Reduction of Threats to Human Health and the Environment (a maximum of 10 points may be received for this criterion)
I. Leveraging of Additional Resources (a maximum of 15 points may be received for this criterion)
J. Ability to Manage Grants (a maximum of 10 points may be received for this criterion)

**Revolving Loan Fund Grants**

*Threshold Criteria*

A. Applicant Eligibility
B. Community Notification
C. Letter from the State or Tribal Environmental Authority
D. Site Eligibility and Property Ownership Eligibility
E. Cleanup Authority and Oversight Structure
F. Cost Share
G. Legal Authority to Manage a Revolving Loan Fund

*Ranking Criteria*

A. RLF Grant Proposal Budget (a maximum of 5 points may be received for this criterion)
B. Community Need (a maximum of 15 points may be received for this criterion)
C. Description of Target Market for RLF Loans and Subgrants (a maximum of 10 points may be received for this criterion)
D. Business Plan (a maximum of 10 points may be received for this criterion)
E. Sustainable Reuse of Brownfields/ Development Potential (a maximum of 10 points may be received for this criterion)
F. Creation and/or Preservation of Greenspace/Open Space or Other Nonprofit Purpose (a maximum of 5 points may be received for this criterion)
G. Reuse of Existing Infrastructure (a maximum of 5 points may be received for this criterion)
H. Community Involvement (a maximum of 15 points may be received for this criterion)
I. Reduction of Threats to Human Health and the Environment (a maximum of 10 points may be received for this criterion)
J. Leveraging of Additional Resources (a maximum of 15 points may be received for this criterion)
K. Ability to Manage Grants/ Management Structure (a maximum of 10 points may be received for this criterion)

**Cleanup Grants**

*Threshold Criteria*

A. Applicant Eligibility
B. Community Notification
C. Letter from the State or Tribal Environmental Authority
D. Site Eligibility and Property Ownership Eligibility
E. Cleanup Authority and Oversight Structure
F. Cost Share

*Ranking Criteria*

A. Cleanup Grant Budget (a maximum of 5 points may be received for this criterion)
B. Community Need (a maximum of 15 points may be received for this criterion)
C. Sustainable Reuse of Brownfields/ Development Potential (a maximum of 10 points may be received for this criterion)
D. Creation and/or preservation of Greenspace/Open Space or Other Nonprofit Purpose (a maximum of 5 points may be received for this criterion)
E. Reuse of Existing Infrastructure (a maximum of 5 points may be received for this criterion)
F. Community Involvement (a maximum of 15 points may be received for this criterion)
G. Reduction of Threats to Human Health and the Environment (a maximum of 10 points may be received for this criterion)
H. Leveraging of Additional Resources (a maximum of 15 points may be received for this criterion)
I. Ability to Manage Grants (a maximum of 10 points may be received for this criterion)

EPA decisions may take into account other statutory and policy considerations, such as fair distribution of funds between urban and non-urban and other geographic factors; compliance with the statutory petroleum funding allocation; the benefits of promoting the long-term availability of funds under the RLF grants; designation as a federal Empowerment Zone, Enterprise Community, or Renewal Community; population; and whether the applicant is a federally recognized Indian tribe. In addition, special consideration will be given to projects committed to achieving recognized green building and/or energy efficiency building standards.

Dated: October 7, 2003.

**Linda Garczynski,**

*Director, Office of Brownfields Cleanup and Redevelopment, Office of Solid Waste and Emergency Response.*

[FR Doc. 03–26192 Filed 10–15–03; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2003–0323; FRL–7329–2]**

## Pesticide Product Registrations; Conditional Approval

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces Agency approval of an application submitted by Interregional Research Project Number 4 (IR-4), New Jersey Agricultural Experiment Station, Technology Center, on behalf of the Arizona Cotton Research and Protection Council to conditionally register the pesticide product *Aspergillus flavus* AF36 containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**FOR FURTHER INFORMATION CONTACT:** Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8097; e-mail address:*bacchus.shanaz@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)

- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

### *B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0323. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

Legacy docket for this case is OPP–2003–0048, which was set up in connection with the Notice of receipt of an application to register the pesticide product *Aspergillus flavus* AF36 containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, Arlington, VA (703) 305–5805. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Such requests should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at: *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

## II. Did EPA Conditionally Approve the Application?

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of *Aspergillus flavus* AF36, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *Aspergillus flavus* AF36, during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C) of FIFRA, the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

## III. Conditionally Approved Registration

EPA issued a notice, published in the **Federal Register** of March 12, 2003 (68 FR 11841) (FRL–7293–8), which announced that Interregional Research Project Number 4 (IR-4), New Jersey Agricultural Experiment Station, Technology Center of New Jersey, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390, on behalf of the Arizona Cotton Research and Protection Council, 3721 East Weir Avenue, Phoenix, AZ 85040–2933, had submitted an application to register the pesticide product, *Aspergillus flavus* AF36, antifungal agent (EPA File Symbol 71693–R) containing *Aspergillus flavus* AF36 at 0.0008%, an active ingredient not included in any previously registered product.

EPA file symbol 71693–1: *Aspergillus flavus* AF36, a non aflatoxin-producing strain of *Aspergillus flavus*, is conditionally registered for use on cotton in Arizona and Texas to displace aflatoxin-producing strains of *Aspergillus flavus*.

The application was conditionally approved on June 24, 2003 for an end-use product manufactured by an integrated process:

*Aspergillus flavus* AF36 is conditionally registered for use on cotton in Arizona and Texas to reduce aflatoxin-producing colonies of *Aspergillus flavus*. The mammalian health effects and ecological effects data bases support the conditional approval of the pesticide. Soil and air monitoring studies were provided to demonstrate the efficacy of the product for the proposed uses in Arizona. Because the pesticide is to be used to reduce aflatoxin-producing strains of *Aspergillus flavus*, with a potential reduction of aflatoxin, a public health hazard, this pesticide qualifies for an automatic presumptive finding, and its use is presumed to be in the public interest. *Aspergillus flavus* AF36 was used for several years in an experimental use program without adverse effects. Conditions of registration include (a) analyses of 5 batches at production, (b) confirmation by high performance liquid chromatography (HPLC) that the strain does not produce aflatoxin, (c) polymerase chain reaction (PCR) analyses of the active ingredient to confirm product identity, and (d) efficacy (product performance) data to demonstrate the reduction of toxigenic strains by *Aspergillus flavus* AF36 in Texas. These data must be submitted within 30 months of the conditional registration date. Additional data will be required to support application of the pesticide to cotton in other states or to other food/feed commodities. An exemption from tolerance for residues of *Aspergillus flavus* AF36 on cotton was established in association with this conditional registration.

**List of Subjects**

Environmental protection, Chemicals, Pesticides and pests.

Dated: September 25, 2003.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 03–26195 Filed 10–15–03; 8:45 am]

**BILLING CODE 6560–50–S**

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## EXPORT-IMPORT BANK OF THE UNITED STATES

### Notice of Open Special Meeting of the Renewable Energy Exports Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank)

**SUMMARY:** The Renewable Energy Exports Advisory Committee was established by the Board of Directors at Ex-Im Bank to assist the Bank in meeting its objective of supporting U.S. exporters in renewable energy industries. In addition, the goal is to seek advice from the private sector about best practices when addressing renewable energy exports.

**TIME AND PLACE:** Tuesday, October 28, 2003, at 9:30 a.m. to 12:30 p.m. The meeting will be held at Ex-Im Bank in the Main Conference Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

**AGENDA:** Agenda items include discussion and presentations on current and projected market demand for renewable energy technology, its comparable cost and examples of success stories where renewable energy has met demand.

**PUBLIC PARTICIPATION:** The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpretor) or other special accommodations, please contact, prior to October 23, 2003, Teri Stumpf, Room 1203, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3542 or TDD (202) 565–3377.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact Teri Stumpf, Room 1203, 811 Vermont Ave., NW., Washington, DC 20571, (202) 565–3502.

**Peter Saba,**

*General Counsel.*

[FR Doc. 03–26179 Filed 10–15–03; 8:45 am]

**BILLING CODE 6690–01–M**

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## FEDERAL ELECTION COMMISSION

### Sunshine Act; Notices of Meeting

**AGENCY:** Federal Election Commission.

**DATE AND TIME:** *Tuesday, October 21, 2003, 10 a.m.*

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

**Mary W. Dove,**

*Secretary of the Commission.*

[FR Doc. 03–26280 Filed 10–14–03; 10:33 am]

**BILLING CODE 6715–01–M**

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## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement No.:* 010977–052.

*Title:* Hispaniola Discussion Agreement.

*Parties:* Crowley Liner Services, Inc.; Seaboard Marine Ltd.; Tropical Shipping and Construction Co., Ltd.; and Bernuth Agencies, Inc.

*Synopsis:* The amendment removes A. P. Moller-Maersk Sealand as a party to the agreement.

*Agreement No.:* 011510–021.

*Title:* West Africa Discussion Agreement.

*Parties:* Atlantic Bulk Carriers, Ltd.; HUAL A/S; P&O Nedlloyd Limited.

*Synopsis:* The amendment deletes Zim Israel Navigation Company Limited from the membership of the agreement.

*Agreement No.:* 011632–004.

*Title:* Turkey/United States Rate Agreement.

*Parties:* Farrell Lines, Inc. and Turkon Container Transport & Shipping Inc.

*Synopsis:* The amendment deletes Hapag-Lloyd Container Linie GmbH as a party to the agreement.

*Agreement No.:* 11737–011.

*Title:* The MCA Agreement.

*Parties:* Atlantic Container Line AB; Alianca Navegacao e Logistica Ltda.; Antillean Marine Shipping Corporation; A.P. Moller-Maersk A/S; Bernuth Lines, Ltd.; CMA CGM S.A.; Companhia Libra de Navegacao; Compania Sud Americana de Vapores S.A.; CP Ships (UK) Limited d/b/a ANZDL and d/b/a Contship Containerlines; Crowley Liner Services, Inc.; Dole Ocean Cargo Express, Inc.; Great White Fleet (U.S.) Ltd.; Hamburg-Sud d/b/a Columbus Line and d/b/a Crowley American Transport; Hapag-Lloyd Container Linie; Italia di Navigazione S.p.A.; King Ocean Central America S.A.; King Ocean Service de Colombia S.A.; King Ocean Service de Venezuela S.A.; Lykes Lines Limited, LLC; Montemar Maritima S.A.; Norasia Container Line Limited; P&O Nedlloyd Limited; Safmarine Container Lines N.V.; TMM Lines Limited, LLC; Tropical Shipping & Construction Co., Ltd.; Wallenius Wilhelmsen Lines AS.

*Synopsis:* The amendment would add China Shipping Container Lines Co., Ltd. to the membership list and change Maersk Sealand's legal name to A.P. Moller-Maersk A/S.

*Agreement No.:* 011864.

*Title:* USAC—Norasia Space Charter Agreement.

*Parties:* Norasia Container Line Limited and United Arab Shipping Co., S.A.G.

*Synopsis:* Norasia may charter space on UASC vessels in the trade between ports on the U.S. Atlantic Coast and ports on the Mediterranean Sea, the Red Sea, the Arabian Gulf and the Indian Ocean. Expedited Review is requested.

By Order of the Federal Maritime Commission.

Dated: October 10, 2003.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 03–26218 Filed 10–15–03; 8:45 am]

**BILLING CODE 6730–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

*Name:* National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Standards and Security (SSS).

*Time and Date:* 9 a.m. to 5 p.m., October 28, 2003; 9 a.m. to 5 p.m., October 29, 2003; 8:30 a.m. to 1 p.m., October 30, 2003.

*Place:* Silver Spring Hilton, 8727 Colesville Road, Silver Spring, MD 20910.

*Status:* Open.

*Purpose:* The agenda for Tuesday, October 28th includes discussion on the Consolidated Health Informatics Initiative (CHI) and the International Classification of Diseases 10th revision (ICD–10). The morning session on Wednesday the 28th will be devoted to CHI preliminary reports. During the afternoon session, discussion will take place on the analysis of the impact of moving to ICD–10–CM and ICD–10–PCS. Discussions on ICD–10 will continue on day two. On Thursday the 30th, a discussion on Patient Medical Record Information (PMRI) Standards will begin the day followed by Subcommittee discussion and approval of the PMRI and ICD–10 recommendation letters to the Secretary.

*Contact Person for More Information:* Substantive program information as well as summaries of meetings and a roster of Committee members may be obtained from Karen Trudel, Senior Technical Advisor, Security and Standards Group, Centers for Medicare and Medicaid Services, MS: C5–24–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, telephone: 410–786–9937; or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone: (301) 458–4245. Information also is available on the NCVHS home page of the HHS website: *http://www.ncvhs.hhs.gov/* where an agenda for the meeting will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: October 6, 2003.

**James Scanlon,**

*Acting Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.*

[FR Doc. 03–26143 Filed 10–15–03; 8:45 am]

**BILLING CODE 4151–05–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Statement of Delegation of Authority

Notice is hereby given that I have delegated to the Administrator, Health Resources and Services Administration (HRSA), with authority to redelegate, authorities vested in the Secretary of Health and Human Services under Title III, of the Public Health Service (PHS) Act, as amended, by the Bioterrorism Preparedness and Response Act of 2002, only insofar as it pertains to the functions assigned to HRSA. The authorities are as follows:

- Sec. 105—Education of Health Care Personnel; Training Regarding Pediatric Issues, section 319F(g) of the PHS Act, as amended.
- Sec. 131(a)—Grants to Improve State, Local, and Hospital Preparedness for and Response to Bioterrorism and other Public Health Emergencies, section 319C; and Partnerships for Community and Hospital Preparedness, section 319C–2 of the PHS Act, as amended.

These delegations shall be exercised under the Department's existing delegation of authority and policy on regulations.

This delegation is effective upon signature. In addition, I hereby affirm and ratify any actions taken by you or other HRSA officials which involved the exercise of this authority prior to the effective date of this delegation.

Dated: October 8, 2003.

**Tommy G. Thompson,**

*Secretary.*

[FR Doc. 03–26144 Filed 10–15–03; 8:45 am]

**BILLING CODE 4165–15–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Agency for Healthcare Research and Quality, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the proposed information collection project: "Medical Expenditure Panel Survey Household Component and Medical Provider Component (MEPS–HC and MEPS–MPC)—2004 and 2005". In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

**DATES:** Comments on this notice must be received by December 15, 2003.

**ADDRESSES:** Written comments should be submitted to: Cynthia D. McMichael, Reports Clearance Officer, AHRQ, 540 Gaither Road, Room #5022, Rockville, MD 20850.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

**FOR FURTHER INFORMATION CONTACT:** Cynthia D. McMichael, AHRQ, Reports Clearance Officer, (301) 427–1651.

**SUPPLEMENTARY INFORMATION:**

### Proposed Project

"Medical Expenditure Panel Survey Household Component and Medical Provider Component (MEPS–HC and MPC)—2004 and 2005".

The AHRQ intends to conduct an annual panel survey of U.S. households and medical providers to collect information on a variety of measures related to health status, health insurance coverage, health care use and expenditures, and source of payment for health services. This collection project consists of two parts: The MEPS Household Component (HC) and the MEPS Medical Provider Component (MPC).

Each panel of the MEPS–HC consists of a nationally representative sample of U.S. households with a data collection period covering 2½ years.

This time frame allows for the collection of annual data from the MEPS sample that covers their health care experiences over two consecutive calendar years. The first panel of MEPS began in 1996 and a new panel has been initiated annually thereafter. The MEPS–HC is jointly sponsored by the AHRQ and the National Center for Health Statistics (NCHS).

The MEPS–HC will be conducted using a sample of households selected from households which responded to the previous year's National Health Interview Survey (NHIS) sponsored by NCHS. The NHIS is a household survey which collects health data from approximately 50,000 households and 110,000 individuals. The NHIS is used as the sampling frame for the MEPS and several other surveys as part of efforts by the Department of Health and Human Services (DHHS) to integrate survey data collection activities.

Data to be collected from each household include detailed information on demographics, health conditions, current health status, utilization of health care providers, charges and payments for health care services, quality of care received, medications, employment and health insurance.

The purpose of the MEPS–MPC is to supplement the information provided by household respondents in the MEPS–HC about the use of medical services in the United States based on a nationally representative sample. The MEPS–HC will be conducted with the permission of members of the households surveyed in the MEPS–HC. The AHRQ contractor will contact the medical providers of the HC Survey respondents to determine the actual dates of service, the diagnoses, the services provided, the amount that was charged, the amount that was paid and the source of payment. Thus, the MPC is derived from or is based upon the core survey, (MEPS–HC). The MPC confirms and/or improves the quality of the core survey data.

Data from household respondents in the MEPS Household Component for calendar year 2004, will be collected, beginning in 2004, and continuing into the year 2005, data for calendar year 2005 will be collected, beginning in 2005, and continuing into the year 2006.

Data from medical providers linked to household respondents in the MEPS Household Component for calendar year 2004, will be collected, beginning in 2005, and continuing into the year 2006, provider data for calendar year 2005 will be collected, beginning in 2006, and continuing into the year 2007.

**Data Confidentiality Provisions**

MEPS data confidentiality is protected under the AHRQ and NCHS Confidentiality statutes, section 308(d) and section 924(c) of the Public Health Service Act (42 U.S.C. 242m(d) and 42 U.S.C. 299c–3(c), respectively).

In accordance with AHRQ and NCHS confidentiality statutes, statistical and non-identifying data will be made available through publications, articles in major journals as well as public use data files. The statistical and analytic data are intended to be used for purposes such as:

- Generating national estimates of individual and family health care use and expenditures, private and public health insurance coverage, and the availability, costs and scope of private health insurance benefits among Americans;
- Examining the effects of changes in how chronic care and disability are managed and financed;
- Evaluating the growing impact of managed care and of enrollment in different types of managed care plans; and,
- Examining access to and costs of health care for common diseases and conditions, health care quality, prescription drug use, and other health issues.

Statisticians and researchers will use these data to make important generalizations about the health care of civilian non-institutionalized population of the United States, as well as to conduct research in which the household is the unit of analysis.

**Methods of Collection**

Data from the MEPS–HS will be collected using a combination of modes. For example, the AHRQ intends to introduce study participants to the survey through advance mailings. The first contact will provide the household the information regarding the importance and uses of the information obtained. The AHRQ will then conduct five (in-person) interviews with each household to obtain health care use and expense data for 2 calendar years. Data will be collected using a computer-assisted personal interviewing method (CAPI). In certain cases, AHRQ will conduct interviews over the telephone, if necessary respondents may be asked to respond to 1 or more short self-administered questionnaires over the course of the survey.

The medial provider survey will be conducted predominantly by telephone, but may include self-administered mail surveys, if requested by the respondent.

Estimated Annual Respondent Burden per year for the MEPS HC: Each MEPS participant is asked to complete 5 interviews over two and one half years. Each interview averages 1.8 hours in length. Total burden is estimated in the following chart:

MEPS HOUSEHOLD COMPONENT ESTIMATED BURDEN FOR 2004 AND 2005

| Survey period | Number of completes | Burden per complete (hours) | Total burden (hours) |
|---|---|---|---|
| January–July '04 | 22,037 | 1.8 | 39,667 |
| August–December '04 | 14,746 | 1.8 | 26,543 |
| January–July '05 | 22,418 | 1.8 | 40,352 |
| August–December '05 | 15,003 | 1.8 | 27,005 |
| January–July '06 | 14,838 | 1.8 | 26,708 |
| Total |  |  | 160,275 |

*Estimated Annual Respondent Burden per year for the MEPS MPC:* The MPC for Calendar Year 2004 and 2005 estimated annual hour burden is as follows:

| Type of provider | Number of respondents | Average No. of patents/ provider | Number of patients/provider pairs | Average No. of events/ patient | Average burden/ event (minutes) | Total hours of burden |
|---|---|---|---|---|---|---|
| MPC 2004: |  |  |  |  |  |  |
| Hospital Office-based | 5,502 | 2.2 | 12,105 | 3.2 | 5 | 3,227 |
| Doctor | 23,077 | 1.3 | 30,000 | 3.5 | 5 | 8,750 |
| Separately billing doctor | 17,143 | 1.4 | 24,000 | 1.3 | 5 | 2,600 |

| Type of provider | Number of respondents | Average No. of patents/ provider | Number of patients/provider pairs | Average No. of events/ patient | Average burden/ event (minutes) | Total hours of burden |
|---|---|---|---|---|---|---|
| Home Health | 545 | 1.1 | 600 | 5.8 | 5 | 290 |
| Pharmacy | 8,077 | 2.6 | 21,000 | 10.3 | 3 | 10,815 |
| Total | 54,344 | | 87,705 | | | 25,682 |
| MPC 2005: | | | | | | |
| Hospital Office | 5,310 | 2.2 | 11,681 | 3.2 | 5 | 3,115 |
| Doctor | 22,269 | 1.3 | 28,950 | 3.5 | 5 | 8,444 |
| Separately billing doctor | 16,543 | 1.4 | 23,160 | 1.3 | 5 | 2,509 |
| Home Health | 526 | 1.1 | 579 | 5.8 | 5 | 280 |
| Pharmacy | 7,794 | 2.6 | 20,265 | 10.3 | 3 | 10,436 |
| Total | 52,442 | | 84,635 | | | 24,784 |

### Request for Comments

In accordance with the above cited legislation, comments on the AHRQ information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of functions of AHRQ, including whether the information will have practical utility; (b) the accuracy of the AHRQ's estimate of burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: October 9, 2003.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. 03–26126 Filed 10–15–03; 8:45 am]

BILLING CODE 4160–90–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Health Resources and Services Administration

## Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

**Proposed Project: The National Health Service Corps (NHSC) Professional Training and Information Questionnaire (PTIQ) (OMB No. 0915–0208)—Revision**

The National Health Service Corps (NHSC) of the HRSA's Bureau of Health Professions (BHPr), is committed to improving the health of the Nation's underserved by uniting communities in need with caring health professionals and by supporting communities' efforts to build better systems of care.

The National Health Service Corps (authorized by the Public Health Service Act, section 331) collects data on its programs to ensure compliance with legislative mandates and to report to Congress and policy makers on program accomplishments. To meet these objectives, the NHSC requires a core set of information collected annually that is appropriate for monitoring and evaluating performance and reporting on annual trends.

The PTIQ is used to collect data related to professional issues from NHSC-obligated Scholarship Program recipients including physicians, dentists, physician assistants (PAs), nurse practitioners (NPs), certified nurse midwives (CNMs), and other disciplines in the current year's placement cycle. The PTIQ is also used to collect data from NHSC Scholarship Program and Loan Repayment Program defaulters who request to satisfy their monetary debts through service. This data is used to match an individual health care professional with the most appropriate clinical practice setting.

The PTIQ will be provided to NHSC Scholarship Program participants up to twelve months in advance of the intended service availability date, and to defaulters when they submit a service request.

Estimates of annualized reporting burden are as follows:

| Type of respondent | Number of respondents | Responses per respondent | Hours per response | Total burden hours |
|---|---|---|---|---|
| Physicians and Dentists | 202 | 1 | 5 min | 17 |
| NPs, PAs, CNMs | 106 | 1 | 5 min. | 9 |
| Total | 308 | | | 26 |

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 8, 2003.

**Jon L. Nelson,**

*Associate Administrator for Management and Program Support.*

[FR Doc. 03–26187 Filed 10–15–03; 8:45 am]

**BILLING CODE 4165–15–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel, The Pediatric Brian Tumor Consortium.

*Date:* November 24–25, 2003.

*Time:* 3 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn on the Hill, 415 New Jersey Avenue, NW., Washington, DC 20001.

*Contact Person:* Mary C. Fletcher, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Rm 8115, Bethesda, MD 20892, 301/496–7413.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: October 7, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–26155 Filed 10–15–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the President's Cancer Panel.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended because the premature disclosure of information and the discussions would be likely to significantly frustrate implementation of recommendations.

*Name of Committee:* President's Cancer Panel.

*Date:* November 4–5, 2003.

*Open:* November 4, 2003, 8 a.m. to 3:15 p.m.

*Agenda:* Living Beyond Cancer: Adult Cancer Survivorship.

*Place:* Sheraton Birmingham Hotel, 2101 Civic Center Boulevard, Birmingham, AL 35203.

*Open:* November 4, 2003, 7 p.m. to 9 p.m.

*Agenda:* Town Hall Meeting.

*Place:* Sheraton Birmingham Hotel, 2101 Civic Center Boulevard, Birmingham, AL 35203.

*Closed:* November 5, 2003, 9 a.m. to 12 p.m.

*Agenda:* To review and evaluate discussion of prepublication manuscripts on adult cancer survivorship.

*Place:* Sheraton Birmingham Hotel, 2101 Civic Center Boulevard, Birmingham, AL 35203.

*Contact Person:* Maureen Wilson, PhD, Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 3A18, Bethesda, MD 20692, 301/496–1148.

This meeting is being published less than 15 days prior to the meeting due to scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: deainfo.nci.nih.gov/advisory/pcp/pcp.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 8, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–26167 Filed 10–15–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center for Research Resources Special Emphasis Panel, Comparative Medicine.

*Date:* October 30, 2003.

*Time:* 2 p.m. to Adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* Office of Review, One Democracy Plaza, 6701 Democracy Blvd., Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Eric H. Brown, PhD., Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd, MSC 4874, Room 1068, Bethesda, MD 20892–4874, 301–435–0815, *browne@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS).

Dated: October 7, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–26156 Filed 10–15–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Demonstration and Education Research.

*Date:* November 13–14, 2003.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21060.

*Contact Person:* Patricia A. Haggerty, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892, 301/435–0280.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 8, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–26145 Filed 10–15–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Initial Review Group Function, Integration, and Rehabilitation Sciences Subcommittee.

*Date:* November 3–4, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

*Contact Person:* Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Rm. 5E03, Bethesda, MD 20892, 301–435–6908, *ak41o@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 7, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–26147 Filed 10–15–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel Sperm Alpha 7 Nicotinic Acetylcholine Receptor Studies.

*Date:* November 5, 2003.

*Time:* 10 AM to 12 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 7, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–26148 Filed 10–15–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel, NICHD Population Research Center (Project 1 Supplement).

*Date:* October 27, 2003.

*Time:* 10 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 7, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–26149 Filed 10–15–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(d)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel, Galanin-Like Peptide Linking Insulin and Sex in the Rat.

*Date:* October 23, 2003.

*Time:* 10 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 7, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–26150 Filed 10–15–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, 3 R01 Applications and A K01.

*Date:* November 6, 2003.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Willco Building, 6000 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, *etaylor@niaaa.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: October 7, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–26151 Filed 10–15–03; 8:45 am]

BILLING CODE 4110–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel, Women's Reproductive Health Research Career Development Centers.

*Date:* October 23–24, 2003.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

*Contact Person:* Rita Anand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 496–1487, *anandr@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation

Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 7, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–26152 Filed 10–15–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND hUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel, Clinical Coordination Center/Data Coordination Center for the National Children's Study (NCS).

*Date:* November 3, 2003.

*Time:* 11:55 a.m. to 1 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

*Contact Person:* Hameed Khan, Phd, Scientific Review Administrator, Division of Scientific Review, National Institute of Chile Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, *khanh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.664, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–26153 Filed 10–15–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 662b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, HIV/AIDS T32.

*Date:* October 21, 2003.

*Time:* 10:45 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6100 Executive Blvd. Room 6151, MSC 9608, Bethesda, MD 20892–9608 301–443–1606, *mcarey@mail.nih.gov.*

This notice is being published less than 15 days prior the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.242, Mental Health Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health Research Service Awards for Research Training, National Institutes of Healths, HHS)

Dated: October 7, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–26154 Filed 10–15–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, (MACS) Multicenter AIDS Cohort Study.

*Date:* November 18, 2003.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Calvert Rooms I & II, Bethesda, MD 20814.

*Contact Person:* Eugene R. Baizman, PhD, Scientific Review Administrator, NIH/NIAID/DEA, Scientific Review Program, Room 2209, 6700B Rockledge Drive, Bethesda, MD 20892–7616, 301–496–2550, *eb237e@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National institutes of Health, HHS).

Dated: October 7, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–26157 Filed 10–15–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Atopic Dermatitis and Vaccinia Immunization Network: Animal Studies Consortium.

*Date:* October 27, 2003.

*Time:* 8:30 am to 2 pm.

*Agenda:* To review and evaluate contract proposals.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Cheryl K. Lapham, PhD, Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases, DEA/NIH/DHHS, 6700–B Rockledge Drive, MSC 7616, Room 3127, Bethesda, MD 20892–7616, 301–402–4598, *clapham@niaid.nih.gov.*

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Atopic Dermatitis and Vaccinia Network: Clinical Studies Consortium.

*Date:* October 27, 2003.

*Time:* 2 pm to 5:30 pm.

*Agenda:* To review and evaluate contract proposals.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Cheryl K. Lapham, PhD, Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases, DEA/NIH/DHHS, 6700–B Rockledge Drive, MSC 7616, Room 3127, Bethesda, MD 20892–7616, 301–402–4598, *clapham@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and infectious Diseases Research, National Institutes of Health, HHS).

Dated: October 7, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–26158 Filed 10–15–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel, Initiation of Human Labor: Prevention of Prematurity.

*Date:* October 20, 2003.

*Time:* 8:30 a.m. to 11:30 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Bldg. Rm. 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 7, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–26160 Filed 10–15–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Small Grant Program.

*Date:* December 3, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Stanley C. Oaks, PhD, Scientific Review Administrator, Division of Extramural Activities, NIDCD, NIH, Executive Plaza South, Room 400C, 6120 Executive Blvd—MSC7180, Bethesda, MD 20892–7180, 301–496–8683, *so14s@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: October 8, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–26162 Filed 10–15–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel Mechanism for Time-Sensitive Research Opportunities.

*Date:* October 27, 2003.

*Time:* 3 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive

Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Richard E. Weise, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6140, MSC9606, Bethesda, MD 20892–9606, 301–443–1225, *rweise@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 8, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–26163 Filed 10–15–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel Psychiatry & Psychology Training.

*Date:* October 23, 2003.

*Time:* 1 p.m. to 1:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

*Contact Person:* Houmam H Araj, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6148, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340, *haraj@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel Services Conflicts Meeting.

*Date:* November 25, 2003.

*Time:* 10:30 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

*Contact Person:* Henry J. Haiglere, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216, *hhaigler@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 8, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–26164 Filed 10–15–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel—Psychiatry and Psychology Training.

*Date:* October 23–24, 2003.

*Time:* 8 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person:* Sara K. Goldsmith, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Health, National Institute of Mental Health, 6001 Executive Blvd., Rm. 6149, Bethesda, MD 20892–9609, 301–443–6102, *sgoldsmi@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel—Imaging and Depression.

*Date:* October 28, 2003.

*Time:* 1 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel—Translational Research and Behavioral Science.

*Date:* October 29, 2003.

*Time:* 11 a.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 8, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–26165 Filed 10–15–03; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel; A Coordinated Program in Reproductive Biology: Project IV.

*Date:* October 30, 2003.

*Time:* 3 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 8, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–26166 Filed 10–15–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Hematology Integrated Review Group, Hematopoiesis Study Section.

*Date:* October 16–17, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn-Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

*Contact Person:* Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Hematology Integrated Review Group, Hemostasis and Thrombosis Study Section.

*Date:* October 16–17, 2003.

*Time:* 8:30 a.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

*Contact Person:* Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7802, Bethesda, MD 20892, (301) 435–1739, *gangulyc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Platelet Activation.

*Date:* October 17, 2003.

*Time:* 8:30 a.m. to 9:30 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

*Contact Person:* Delia Tang, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, 301–435–2506, *tangd@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 CNNT 03S: Clinical Neuroplasticity and Neurotransmitters.

*Date:* October 17, 2003.

*Time:* 9:30 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

*Contact Person:* William C. Benzing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, (301) 435–1254, *benzingw@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Pathophysiological Sciences Integrated Review Group, General Medicine A Subcommittee 2.

*Date:* October 20–21, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Fairmont Washington, DC., 2401 M Street, NW., Washington, DC 20037.

*Contact Person:* Mushtaq A. Khan, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301–435–1778, *khanm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Gastrointestinal Hepatobiliary and Pancreatic Physiology and Pathobiology.

*Date:* October 20–21, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

*Contact Person:* Najma Begum, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2175, MSC 7818, Bethesda, MD 20892, 301–435–1243, *begumn@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 and ACTS 01Q: Arthritis, Connective Tissue, and Skin: Quorum.

*Date:* October 20–21, 2003.

*Time:* 8:30 a.m. to 10 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

*Contact Person:* Harold M. Davidson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, 301/435–1776, *davidsoh@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 ACTS 10B: Small Business: Dermatology and Rheumatology.

*Date:* October 21, 2003.

*Time:* 10:30 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

*Contact Person:* Harold M. Davidson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, (301) 435–1776, *davidsoh@csr.him.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Microbial Genetics.

*Date:* October 23–24, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

*Contact Person:* Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *politisa@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, R01 Review Grant.

*Date:* October 24, 2003.

*Time:* 10 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Raya Mandler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, (301) 402–8228.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Skeletal Biology Development and Disease Study Section.

*Date:* October 27–28, 2003.

*Time:* 7:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Washington Marriott Hotel, 1221 22nd Street, NW., Washington, DC 20037.

*Contact Person:* Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Skeletal Biology Structure and Regeneration Study Section.

*Date:* October 27–28, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Washington Marriott Hotel, 1221 22nd Street, NW., Washington, DC 20037.

*Contact Person:* Daniel F. McDonald, PhD, Chief, Musculoskeletal, Oral, and Skin Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* AIDS and Related Research Integrated Review Group, Behavioral and Social Consequences of HIV/AIDS Study Section.

*Date:* October 27–28, 2003.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Wyndam City Center Hotel, 1143 New Hampshire Ave., NW., Washington, DC 20037.

*Contact Person:* Mark P. Rubert, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, (301) 435–2398, *rubertm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Special R01 Review Grant.

*Date:* October 27, 2003.

*Time:* 1:30 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Raya Mandler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, (301) 402–8228.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Skeletal Biology.

*Date:* October 28, 2003.

*Time:* 8 a.m. to 8:30 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Washington Marriott Hotel, 1221 22nd Street, NW., Washington, DC 20037.

*Contact Person:* Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 8, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–26159 Filed 10–15–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Adult Psychopathology and Disorders of Aging Study Section, October 20, 2003, 9 a.m. to October 21, 2003, 6 p.m. Radisson Barcello, 2121 P Street, NW., Washington, DC 20037 which was published in the **Federal Register** on September 16, 2003, 68 FR 54235–54237.

The meeting times have been changed to 8:30 a.m. on October 20, 2003, to 1 p.m. on October 21, 2003. The meeting dates and location remain the same. The meeting is closed to the public.

Dated: October 8, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–26161 Filed 10–16–03; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Clinical Center; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center, September 19, 2003, 9 a.m. to September 19, 2003, 12 p.m., National Institutes of Health, Building 10, 10 Center Drive, Medical Board Room 2C116, Bethesda, MD 20892 which was published in the **Federal Register** on September 11, 2003, FR68, 176–53614.

The meeting will be held October 10, 2003 from 9 a.m. to 12 p.m. The meeting is open to the public.

Dated: October 8, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–26146 Filed 10–15–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[USCG–2003–16279]**

### National Boating Safety Advisory Council

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of meetings.

**SUMMARY:** The National Boating Safety Advisory Council (NBSAC) and its subcommittees on boats and associated equipment, aftermarket marine equipment, and prevention through people will meet to discuss various issues relating to recreational boating safety. All meetings will be open to the public.

**DATES:** NBSAC will meet on Saturday, November 1, 2003, from 1:30 p.m. to 4:30 p.m., on Monday, November 3, 2003, from 1:30 p.m. to 4:30 p.m. and on Tuesday, November 4, 2003, from 8:30 a.m. to 12 noon. The Prevention Through People Subcommittee will meet on Sunday, November 2, 2003, from 8:30 a.m. to 12 noon. The Boats and Associated Equipment Subcommittee will meet on Sunday, November 2, 2003, from 1:30 p.m. to 4:30 p.m. The Aftermarket Marine Equipment Subcommittee will meet on Monday, November 1, 2003, from 8:30 a.m. to 12 noon. These meetings may close early if all business is finished. On Sunday, November 2, a Subcommittee meeting may start earlier if the preceding Subcommittee meeting has closed early. Written material and requests to make oral presentations should reach the Coast Guard on or before Tuesday, October 28, 2003. Requests to have a copy of your material distributed to each member of the committee or subcommittees should reach the Coast Guard on or before Friday, October 24, 2003.

**ADDRESSES:** NBSAC will meet at the Hyatt Regency Chicago on The River Walk, 151 East Wacker Drive, Chicago, IL 60601. The subcommittee meetings will be held at the same address. Send written material and requests to make oral presentations to Mr. Jeff Hoedt, Executive Director of NBSAC, Commandant (G-OPB–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov* or at the Web Site for the Office of Boating Safety at URL address *http://www.uscgboating.org.*

**FOR FURTHER INFORMATION CONTACT:** Jeff Hoedt, Executive Director of NBSAC, telephone 202–267–0950, fax 202–267–4285. You may obtain a copy of this notice by calling the U. S. Coast Guard Infoline at 1–800–368–5647.

**SUPPLEMENTARY INFORMATION:** Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

#### Tentative Agendas of Meetings

*National Boating Safety Advisory Council (NBSAC).* The agenda includes the following:

(1) Remarks—Rear Admiral Jeffrey J. Hathaway, Director of Operations Policy and Council Sponsor.

(2) Chief, Office of Boating Safety Update on NBSAC Resolutions.

(3) Executive Director's report.

(4) Chairman's session.

(5) Recreational Boating Safety Program report.

(6) Coast Guard Auxiliary report.

(7) National Association of State Boating Law Administrators Report.

(8) Wallop Breaux reauthorization update.

(9) Prevention Through People Subcommittee report.

(10) Boats and Associated Equipment Subcommittee report.

(11) Aftermarket Marine Equipment Subcommittee report.

*Boats and Associated Equipment Subcommittee.* The agenda includes the following: Discuss current regulatory projects, grants, contracts and new issues impacting boats and associated equipment.

*Aftermarket Marine Equipment Subcommittee.* The agenda includes the following: Discuss current regulatory projects, grants, contracts and new issues impacting aftermarket marine equipment.

*Prevention Through People Subcommittee.* The agenda includes the following: Discuss current regulatory projects, grants, contracts and new issues impacting prevention through people.

#### Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than Friday, October 24, 2003. Written material for distribution at a meeting should reach the Coast Guard no later than Friday, October 24, 2003. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Executive Director no later than Friday, October 24, 2003.

#### Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: October 6, 2003.

**Jeffrey J. Hathaway,**

*Rear Admiral, Coast Guard, Director of Operations Policy.*

[FR Doc. 03–26130 Filed 10–15–03; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[USCG–2003–16297]**

### National Preparedness for Response Exercise Program (PREP)

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice; request for public comments on PREP triennial exercise schedule for 2004, 2005, and 2006.

**SUMMARY:** The Coast Guard, the Research and Special Programs Administration, the Environmental Protection Agency and the Minerals Management Service, in concert with representatives from various State governments, industry, environmental interest groups, and the general public,

developed the Preparedness for Response Exercise Program (PREP) Guidelines to reflect the consensus agreement of the entire oil spill response community. This notice announces the PREP triennial cycle, 2004 through 2006, requests comments from the public, and requests industry participants to volunteer for scheduled PREP Area exercises.

**DATES:** Comments and related material must reach the Docket Management Facility on or before December 15, 2003.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG–2003–16297 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Web Site: http://dms.dot.gov.*

(2) *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) *Fax:* 202–493–2251.

(4) *Delivery:* Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(5) *Federal eRulemaking Portal: http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, or need general information regarding the PREP Program and the schedule, contact Mr. Robert Pond, Office of Response, Plans and Preparedness Division (G–MOR–2), U.S. Coast Guard Headquarters, telephone 202–267–6603, fax 202–267–4065 or e-mail *rpond@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

**SUPPLEMENTARY INFORMATION:** The Preparedness for Response Exercise Program (PREP) Area exercise schedule and exercise design manuals are available on the Internet at *http://www.uscg.mil/hq/nsfweb/nsfcc/prep/index.html.* To obtain a hard copy of the exercise design manual, contact Ms. Melanie Barber at the Research and Special Programs Administration, Office of Pipeline Safety, at 202–366–4560. The 2003 PREP Guidelines booklet is available at no cost on the Internet at *http://www.uscg.mil/hq/nsfweb/nsfcc/prep/index.html* or by writing or faxing the TASC DEPT Warehouse, 33141Q 75th Avenue, Landover, MD 20785, facsimile: 301–386–5394. The stock number of the manual is USCG–X0241. Please indicate the quantity when ordering. Quantities are limited to 10 per order.

## Public Participation and Request for Comments

We encourage you to respond to this notice by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" three paragraphs below.

*Submitting comments:* If you submit a comment, please include your name and address, identify the docket number for this notice (USCG–2003–16297), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this triennial exercise schedule in view of them.

*Viewing comments and documents:* To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

## Background and Purpose

In 1994, the Coast Guard (USCG) and the Research and Special Programs Administration (RSPA) of the Department of Transportation, the U.S. Environmental Protection Agency (U.S. EPA), and the Minerals Management Service (MMS) of the Department of Interior, coordinated the development of the National Preparedness for Response Exercise Program (PREP) Guidelines to provide guidelines for compliance with the Oil Pollution Act of 1990 (OPA 90) pollution response exercise requirements (33 U.S.C. 1321(j)). The guiding principles for PREP distinguish between internal and external exercises. Internal exercises are conducted within the plan holder's organization. External exercises extend beyond the plan holder's organization to involve other members of the response community. External exercises are separated into two categories: (1) Area exercises, and (2) Government-initiated unannounced exercises. These exercises are designed to evaluate the entire response mechanism in a given area to ensure adequate pollution response preparedness.

Since 1994, the USCG, U.S. EPA, MMS, and RSPA's Office of Pipeline Safety (OPS) have published a triennial schedule of Area exercises. In short, the Area exercises involve the entire response community (Federal, State, local, and industry participants) and therefore, require more extensive planning than other oil spill response exercises. The PREP Guidelines describe all of these exercises in more detail.

Table 1 below lists the dates and **Federal Register** cites of past PREP exercise notices.

TABLE 1—PAST PREP EXERCISE NOTICES

| Date published | Federal Register Cite | Notice |
|---|---|---|
| October 30, 2002 | 67 FR 66189 | PREP triennial exercise schedule for 2003, 2004, and 2005. |
| January 22, 2002 | 67 FR 2944 | PREP triennial exercise schedule for 2002, 2003, and 2004. |

TABLE 1—PAST PREP EXERCISE NOTICES—Continued

| Date published | Federal Register Cite | Notice |
|---|---|---|
| February 9, 2001 | 66 FR 9744 | PREP triennial exercise schedule for 2001, 2002, and 2003. |
| March 7, 2000 | 65 FR 12049 | PREP triennial exercise schedule for 2000, 2001, and 2002. |
| June 15, 1999 | 64 FR 32090 | PREP triennial exercise schedule for 1999, 2000, and 2001. |
| January 8, 1998 | 63 FR 1141 | PREP triennial exercise schedule for 1998, 1999, and 2000. |
| March 26, 1997 | 62 FR 14494 | PREP triennial exercise schedule for 1997, 1998, and 1999. |
| January 26, 1996 | 61 FR 2568 | Correction to PREP triennial exercise schedule for 1996, 1997, and 1998. |
| November 13, 1995 | 60 FR 57050 | PREP triennial exercise schedule for 1996, 1997, and 1998. |
| October 26, 1994 | 59 FR 53858 | Revision to PREP triennial exercise schedule for 1995, 1996, and 1997. |
| March 25, 1994 | 59 FR 14254 | PREP triennial exercise schedule for 1995, 1996, and 1997. |

This notice announces the next triennial schedule of Area exercises. If a company wants to volunteer for an Area exercise, a company representative may call either the Coast Guard or EPA On-Scene Coordinator (OSC) where the exercise is scheduled.

Table 2 below is the PREP schedule for calendar years 2004, 2005, and 2006.

TABLE 2.—PREP SCHEDULE

| Area | Agency | Qtr[1] | Participant |
|---|---|---|---|
| **Government-Led Area Exercises** | | | |
| **Calendar Year 2004** | | | |
| Guam (Marine Safety Office (MSO) Guam) | CG | 1 | |
| Los Angeles/Long Beach South (MSO LA/LB), SONS[2] | CG | 2 | |
| San Diego (MSO San Diego), SONS[2] | CG | 2 | |
| Prince William Sound (MSO Valdez) | CG | 4 | |
| **Calendar Year 2005** | | | |
| Houston-Galveston (MSO Houston) | CG | 1 | |
| Virginia Coastal (MSO Hampton Road) | CG | 1 | |
| Alabama-Mississippi (MSO Mobile) | CG | 2 | |
| Providence (MSO Providence) | CG | 3 | |
| Western Alaska (MSO Anchorage) | CG | 3 | |
| Region V Regional Contingency Plan (RCP) (EPA Region V) | EPA | 4 | |
| **Calendar Year 2006** | | | |
| Cleveland, OH (MSO Cleveland) | CG | 1 | |
| Jacksonville, FL (MSO Jacksonville) | CG | 2 | |
| To Be Determined | CG | 2 | |
| Northwest Area-Portland (MSO Portland) | CG | 3 | |
| Region IX RCP or Oceania (EPA Region IX) | EPA | 3 | |
| New Orleans, LA (MSO New Orleans) | CG | 4 | |

| Area | Qtr[1] | Participant |
|---|---|---|
| **Industry-Led Area Exercises** | | |
| **Calendar Year 2004** | | |
| Chicago, IL (MSO Chicago) | 2 | |
| Long Island Sound (MSO Long Island) | 2 | |
| Maryland Coastal (MSO Baltimore) | 2 | |
| San Francisco Bay (MSO San Francisco) | 2 | |
| South Texas Coast (MSO Corpus Christi) | 2 | |
| Charleston, SC (MSO Charleston) | 3 | |
| Morgan City, LA (MSO Morgan City) | 3 | |
| New York, NY (Activities NY) | 3 | |
| Savannah, GA (MSO Savannah) | 3 | |
| Duluth-Superior (MSO Duluth) | 4 | |
| Eastern Wisconsin (MSO Milwaukee) | 4 | |
| Northwest-Puget Sound (MSO Puget Sound) | 4 | |
| Region IV RCP (EPA Region IV) | 4 | |
| Region VII RCP (EPA Region VII) | 4 | |
| **Calendar Year 2005** | | |
| Detroit, MI (MSO Detroit) | 1 | |

| Area | Qtr[1] | Participant |
|---|---|---|
| Region VIII (EPA Region VIII) | 1 | |
| Boston (MSO Boston) | 2 | |
| Hawaiian Islands (MSO Honolulu) | 2 | |
| South Florida (MSO Miami) | 2 | |
| South Los Angeles/Long Beach, CA (MSO LA/LB) | 2 | |
| S. North Carolina (MSO Wilmington) | 3 | |
| SW La./SE Texas (MSO Port Arthur) | 3 | |
| Tampa, FL (MSO Tampa) | 3 | |
| Region X or EPA Alaska RCP (EPA Region X) | 4 | |
| Sault Ste. Marie, MI (MSO Sault Ste. Marie) | 4 | |
| **Calendar Year 2006** | | |
| Florida Panhandle (MSO Mobile) | 1 | |
| SE Alaska (MSO Juneau) | 1 | |
| Buffalo (MSO Buffalo) | 2 | |
| Maine-New Hampshire (MSO Portland, ME) | 2 | |
| Philadelphia, PA (MSO Philadelphia) | 2 | |
| Region II RCP or Caribbean (EPA Region II) | 2 | |
| North Coast (CA) Area (MSO San Francisco) | 3 | |
| Region III RCP (EPA Region III) | 3 | |
| Region VI RCP (EPA Region VI) | 3 | |
| Caribbean Area (MSO San Juan) | 4 | |
| Northern Marianas (MSO Guam) | 4 | |
| Western Lake Erie (MSO Toledo) | 4 | |

[1] Quarters: 1 (January-March); 2 (April-June); 3 (July-September); 4 (October-December).

[2] SONS: 2004 Spill of National Significance Exercise.

Dated: October 9, 2003.

**Joseph J. Angelo,**

*Director of Standards, Marine Safety, Security and Environmental Protection.*

[FR Doc. 03–26129 Filed 10–15–03; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Customs and Border Protection

### Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

**AGENCY:** Customs and Border Protection, Department of Homeland Security.

**ACTION:** General notice.

**SUMMARY:** This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of Customs duties. For the calendar quarter beginning October 1, 2003, the interest rates for overpayments will be 3 percent for corporations and 4 percent for non-corporations, and the interest rate for underpayments will be 4 percent. This notice is published for the convenience of the importing public and Customs personnel.

**EFFECTIVE DATE:** October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278; telephone 317/298–1200, extension 1349.

**SUPPLEMENTARY INFORMATION:**

### Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2003–104 (*see*, 2003–39 IRB __, dated September 29, 2003), the IRS determined the rates of interest for the calendar quarter beginning October 1, 2003, and ending December 31, 2003. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%). For corporate overpayments, the rate is the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%). For overpayments made by non-corporations, the rate is the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%). These interest rates are subject to change for the calendar quarter beginning January 1, 2004, and ending March 31, 2004.

For the convenience of the importing public and Customs personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

| Beginning date | Ending date | Underpayments (percent) | Overpayments (percent) | Corporate overpayments (Eff. 1-1-99) (percent) |
|---|---|---|---|---|
| 070174 | 063075 | 6 | 6 | |

| Beginning date | Ending date | Underpayments (percent) | Overpayments (percent) | Corporate overpayments (Eff. 1–1–99) (percent) |
|---|---|---|---|---|
| 070175 | 013176 | 9 | 9 | |
| 020176 | 013178 | 7 | 7 | |
| 020178 | 013180 | 6 | 6 | |
| 020180 | 013182 | 12 | 12 | |
| 020182 | 123182 | 20 | 20 | |
| 010183 | 063083 | 16 | 16 | |
| 070183 | 123184 | 11 | 11 | |
| 010185 | 063085 | 13 | 13 | |
| 070185 | 123185 | 11 | 11 | |
| 010186 | 063086 | 10 | 10 | |
| 070186 | 123186 | 9 | 9 | |
| 010187 | 093087 | 9 | 8 | |
| 100187 | 123187 | 10 | 9 | |
| 010188 | 033188 | 11 | 10 | |
| 040188 | 093088 | 10 | 9 | |
| 100188 | 033189 | 11 | 10 | |
| 040189 | 093089 | 12 | 11 | |
| 100189 | 033191 | 11 | 10 | |
| 040191 | 123191 | 10 | 9 | |
| 010192 | 033192 | 9 | 8 | |
| 040192 | 093092 | 8 | 7 | |
| 100192 | 063094 | 7 | 6 | |
| 070194 | 093094 | 8 | 7 | |
| 100194 | 033195 | 9 | 8 | |
| 040195 | 063095 | 10 | 9 | |
| 070195 | 033196 | 9 | 8 | |
| 040196 | 063096 | 8 | 7 | |
| 070196 | 033198 | 9 | 8 | |
| 040198 | 123198 | 8 | 7 | |
| 010199 | 033199 | 7 | 7 | 6 |
| 040199 | 033100 | 8 | 8 | 7 |
| 040100 | 033101 | 9 | 9 | 8 |
| 040101 | 063001 | 8 | 8 | 7 |
| 070101 | 123101 | 7 | 7 | 6 |
| 010102 | 123102 | 6 | 6 | 5 |
| 010103 | 093003 | 5 | 5 | 4 |
| 100103 | 123103 | 4 | 4 | 3 |

Dated: October 8, 2003.

**Robert C. Bonner,**

*Commissioner, Customs and Border Protection.*

[FR Doc. 03–26109 Filed 10–15–03; 8:45 am]

BILLING CODE 4820–02–P

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR 4817–N–18]**

## Notice of Proposed Information Collection for Public Comment—Public Housing Operating Subsidy Program Computation of Payments in Lieu of Taxes Form

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* December 15, 2003.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4249, Washington, DC 20410–5000.

**FOR FURTHER INFORMATION CONTACT:** Mildred M. Hamman, (202) 708–0614, extension 4128. (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

The Public Housing Computation of Payment in Lieu of Taxes (PILOT) form is used by the Department to collect information from Public Housing Agencies (PHAs), financial data on supporting funding request under the operating subsidy program.

The title, purpose, and estimated time it will take applicants to complete the form is described in the section below.

This Notice also lists the following information:

*Title of Proposal:* Computation of Payment in Lieu of Taxes.

*OMB Control Number:* 2577–0072.

*Description of the need for the information and proposed use:* In order for the Department to adequately and accurately fund the statutorily required payments in lieu of taxes, the Department collects data from PHAs to support this cost.

The form is used by the Department for calculation and documentation of cost paid to PHAs for payments in lieu of taxes to local governments. The form captures specific financial data to detail the allowed amount of the payments in lieu of taxes in accordance with regulatory requirements.

*Agency form numbers, if applicable:* HUD–52267.

*Members of affected public:* Local, State, or Tribal Governments, and Resident Associations.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* For public housing agencies: 3,200 respondents, one response per year; .4 hours per response; 1,280 total burden hours.

*Status of the proposed information collection:* Reinstatement, without change, of previously approved collection for which approval has expired.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

**Paula O. Blunt,**

*General Deputy Assistant Secretary for Public and Indian Housing.*

BILLING CODE 4210–33–M

# Computation of Payments in Lieu of Taxes

**U.S. Department of Housing and Urban Development**
**Office of Public and Indian Housing**

For Fiscal Year Ended _____

OMB Approval No. ) (Exp. )

Public Reporting Burden for this collection of information is estimated to average .4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-0072), Washington, D.C. 20503.

| Name of Local Authority | Location | Contract Number | Project Number |
|---|---|---|---|
| | | | |

**Part I - Computation of Shelter Rent Charged**

1. Dwelling Rental (Account 3110) $__________
2. Excess Utilities (Account 3120) __________
3. Nondwelling Rental (Account 3190) __________
4. **Total Rental Charged** (Lines 1, 2 & 3) $__________
5. Utilities Expense (Accounts in 4300 group) __________
6. Shelter Rent Charged (Line 4 Minus Line 5) __________

**Part II - Computation of Shelter Rent Collected** To be completed only if Cooperation Agreement Provides for payment of PILOT on basis of Shelter Rent Collected)

1. Shelter Rent Charged (Line 6 of Part I above) $__________
2. Add: Accounts Receivable (Account 1122) at Beginning of Fiscal Year __________
3. Less: Collection Losses (Account 4570) During Current Fiscal Year __________
4. Less: Accounts Receivable (Account 1122) at end of Fiscal Year __________
5. Shelter Rent Collected (Line 1 Plus Line 2 Minus Lines 3 & 4) __________

**Part III - Computation of Approximate Full Real Property Taxes**

| Taxing Districts (1) | Assessable Value (2) | Tax Rate (3) | Approximate Full Real Property Taxes (4) |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| **Total** | | | |

**Part IV - Limitation Based on Annual Contribution** (To be completed if Cooperation Agreement limits PILOT to an amount by which real property taxes exceed 20% of Annual Contribution)

1. Approximate Full Real Property Taxes $__________
2. Accruing Annual Contribution for All Projects Under the Contract $__________
3. Prorata share of Accruing Annual Contribution* __________
4. 20% of Accruing Annual Contribution (20% of Line 3) __________
5. Approximate Full Real Property Taxes less 20% of Accruing Annual Contribution (Line 1 minus Line 4, if Line 4 exceeds Line 1, enter zero) __________

**Part V - Payments in Lieu of Taxes**

1. 10% of Shelter Rent (10% of Line 6 of Part I or 10% of Line 5 of Part II, whichever is applicable)** $__________
2. Payments in Lieu of Taxes (If Part IV is not applicable, enter the amount shown on Line 1 above or the total in Part III, whichever is the lower. If Part IV is applicable, enter the amount shown on Line 1 above or the amount shown on Line 5 of Part IV, whichever is lower) $__________

*Same as Line 2 if the statement includes all projects under the annual contributions contract. If this statement does not include all projects under the contract, enter prorata share based upon the development cost of each project,
**If the percentage specified in the cooperation agreement or the contract with HUD is lower, such lower percentage shall be used.

**Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012: 31 U.S.C. 3729, 3802)

| | | | |
|---|---|---|---|
| **Prepared By:** | | **Approved By:** | |
| Name | | Name | |
| Title | Date | Title | Date |

Previous Editions are Obsolete

Page 1 of 1

**Form HUD-52267** (9/30/03)

[FR Doc. 03–26088 Filed 10–15–03; 8:45 am]

**BILLING CODE 4210–33–C**

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

### Information Collection Renewal To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Declaration for Importation or Exportation of Fish or Wildlife

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** The U.S. Fish and Wildlife Service (We) has submitted the collection of information described below to OMB for approval under the provisions of the Paperwork Reduction Act of 1995. A description of the information collection requirement is included in this notice. If you wish to obtain copies of the information collection requirements, related forms, or explanatory material, contact the Service Information Collection Clearance Officer at the address or telephone number listed below.

**DATES:** We will accept comments until November 17, 2003.

**ADDRESSES:** Submit your comments on this information collection renewal to the Desk Officer for the Department of the Interior at OMB–OIRA via facsimile or e-mail using the following fax number or e-mail address: (202) 395–6566 (fax); *OIRA_DOCKET@omb.eop.gov* (e-mail). Please provide a copy of your comments to the Fish and Wildlife Service's Information Collection Clearance Officer, 4401 N. Fairfax Dr., MS 222 ARLSQ, Arlington, VA 22207; (703) 358–2269 (fax); or *anissa_craghead@fws.gov* (e-mail).

Form 3–177 (with instructions for its completion) is available for electronic submission using the electronic declaration system (eDecs) at the following Web site: *https://edecs.fws.gov.*

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the information collection request, related forms, or explanatory material, contact Anissa Craghead at telephone number (703) 358–2445, or electronically at *Anissa_Craghead@fws.gov.*

**SUPPLEMENTARY INFORMATION:** OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)).

We have submitted a request to OMB to renew its approval of the collection of information included on Form 3–177, Declaration For Importation or Exportation of Fish or Wildlife. The current OMB control number for Form 3–177 is 1018–0012, and the OMB approval for this collection of information expires on October 31, 2003. This form (with instructions for its completion) is now available for electronic submission at the following Web site: *https://edecs.fws.gov.* We are requesting a three year term of approval for this information collection activity. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The Endangered Species Act (16 U.S.C. 1531 *et seq.*) makes it unlawful to import or export fish, wildlife, or plants without filing a declaration or report deemed necessary for enforcing the Act or upholding the Convention on International Trade in Endangered Species (CITES) (*see* 16 U.S.C. 1538(e)). The U.S. Fish and Wildlife Service's Form 3–177, Declaration for Importation or Exportation of Fish or Wildlife, is the declaration form required of any business or individual importing into or exporting from the United States any fish, wildlife, or wildlife products. The information collected is unique to each wildlife shipment and enables us to accurately inspect the contents of the shipment; enforce any regulations that pertain to the fish, wildlife, or wildlife products contained in the shipment; and maintain records of the importation and exportation of these commodities. Additionally, since the United States is a member of CITES, much of the collected information is compiled in an annual report that is forwarded to the CITES Secretariat in Geneva, Switzerland. Submission of an annual report on the number and types of imports and exports of fish, wildlife, and wildlife products is one of our treaty obligations under CITES. We also use the information obtained from Form 3–177 as an enforcement tool and management aid in monitoring the international wildlife market and detecting trends and changes in the commercial trade of fish, wildlife, and wildlife products. Our Division of Scientific Authority and Division of Management Authority use this information to assess the need for additional protection for native species. In addition, nongovernment organizations, including the commercial wildlife community, request information from us that we obtain from Form 3–177. You must file Form 3–177 with us at the time and port where you request clearance of your import or export wildlife shipment. In certain instances, Form 3–177 may be filed with the U.S. Bureau of Customs and Border Protection. The standard information collection includes the name of the importer or exporter and broker, the scientific and common name of the fish or wildlife, permit numbers (if a permit is required), a description of the fish or wildlife, quantity and value of the fish or wildlife, and natural country of origin of the fish or wildlife. In addition, certain information, such as the airway bill or bill of lading number, the location of the wildlife shipment, and the number of cartons containing fish or wildlife, assists our wildlife inspectors if a physical examination of the shipment is required.

*Title:* Declaration for Importation or Exportation of Fish or Wildlife.

*Approval Number:* 1018–0012.

*Service Form Number:* 3–177.

*Associated Regulations:* 50 CFR 14.61 through 14.64.

*Frequency of Collection:* Whenever clearance is requested for an importation or exportation of fish, wildlife, or wildlife products.

*Description of Respondents:* Businesses or individuals that import or export fish, wildlife, or wildlife products; scientific institutions that import or export fish or wildlife scientific specimens; government agencies that import or export fish or wildlife specimens for various purposes.

*Total Annual Responses:* Approximately 120,000 individual Form 3–177s are filed with us in a fiscal year.

*Total Annual Burden Hours:* The total annual burden is approximately 26,832 hours. We estimate that approximately two-thirds (67%), or 80,400, of these responses will be completed by hand. Each of these responses will require approximately .25 hours (15 minutes) of the importer's or exporter's time. This amount includes approximately .08 hours (5 minutes) for reviewing instructions and approximately .17 hours (10 minutes) to complete Form 3–177. We estimate that approximately one-third (33%), 39,600, of the responses received will be submitted electronically. Using eDecs should reduce the time to complete Form 3–177 to about .08 hours (5 minutes) per response. Therefore, the total time to review instructions (.08 hours/5 minutes) and complete Form 3–177 electronically amounts to approximately

.17 hours (10 minutes) per response. As such, the total estimated reporting burden for completing Form 3–177 is approximately 26,832 hours [(80,400 × .25 hours = 20,100 hours) + (39,600 × .17 hours = 6,732 hours)]. The estimate of electronic responses we expect to receive is based upon a recent pilot program of eDecs. We anticipate that the use of eDecs will expand in the future, which would further reduce the burden on the public.

We invite comments concerning this renewal on: (1) Whether the collection of information is useful and necessary for us to do our job, (2) the accuracy of our estimate of the burden on the public to complete the form; (3) ways to enhance the quality and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. This information collection is part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. There may also be limited circumstances in which we would withhold a respondent's identity from the rulemaking record, as allowable by law. If you wish us to withhold your name and/or address, you must state this clearly at the beginning of your comment. We will not consider anonymous comments. We generally make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: September 22, 2003.

**Anissa Craghead,**

*Information Collection Officer, Fish and Wildlife Service.*

[FR Doc. 03–26120 Filed 10–15–03; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Draft Revised Recovery Plan for Hawaiian Forest Birds

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** The U.S. Fish and Wildlife Service ("we") announce the availability for public review and comment, the Draft Revised Recovery Plan for Hawaiian Forest Birds. There are 21 bird taxa included in this plan, 19 are listed as endangered, 1 is a candidate species for Federal listing, and 1 is a species of concern. These taxa are from four bird families, with the majority being Hawaiian Honeycreepers (subfamily Drepanidinae within Fringillidae). This is a new recovery plan for two of the listed birds.

**DATES:** Comments on the draft recovery plan received by December 15, 2003, will receive our consideration.

**ADDRESSES:** The document is available online at *http://www.rl.fws.gov/ecoservices/endangered/recovery/default.htm*. Copies of the draft revised recovery plan are available for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, P.O. Box 50088, Honolulu, Hawaii 96850 (phone: 808/541–3441) and Hawaii State Library, 478 S. King Street, Honolulu, Hawaii 96813. Requests for copies of the draft revised recovery plan and written comments and materials regarding this plan should be addressed to Paul Henson, Field Supervisor, Ecological Services, at the above U.S. Fish and Wildlife Service Honolulu address.

**FOR FURTHER INFORMATION CONTACT:** Jay Nelson, Fish and Wildlife Biologist, at the above Honolulu address.

**SUPPLEMENTARY INFORMATION:**

### Background

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program and the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.* Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Act requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. We, along with other Federal agencies, will also take these comments into account in the course of implementing approved recovery plans. Individual responses to comments will not be provided.

This Draft Revised Recovery Plan for Hawaiian Forest Birds addresses 21 bird taxa. Three taxa are endemic to the island of Hawai'i, four taxa are endemic to the island of Maui, one taxon is endemic to the island of Moloka'i, two taxa are endemic to the island of O'ahu, and six taxa are endemic to the island of Kaua'i. Two taxa are endemic to all the major islands of Hawai'i, two taxa are endemic to the islands of Maui and Moloka'i, and one taxon is endemic to the islands of Moloka'i and Lā'i. The birds federally listed as endangered are: Maui nuku pu'u (*Hemignatus lucidus affinus*); Kaua'i nuku pu'u (*Hemignathus lucidus hanapepe*); Kaua'i 'akialoa (*Hemignathus procerus*); 'ō'ō'ā'ā or Kaua'ī'ō'ō *Moho braccatus*); oloma'o or Moloka'i thrush (*Myadestes lanaiensis rutha*); kāma'o or large Kaua'i thrush (*Myadestes myadestinus*); kākāwahie or Moloka'i creeper (*Paroreomyza flammea*); O'ahu 'ālauahio or O'ahu creeper (*Paroreomyza maculata*); Maui 'ākepa (*Loxops coccineus ochraceus*); 'ō'ū (*Psittirostra psittacea*); po'ouli (*Melamprosops phaeosoma*); puaiohi or small Kaua'i thrush (*Myadestes palmeri*); Maui parrotbill (*Pseudonesor xanthophrys*); 'akia pōlā'au (*Hemignathus munroi*); palila (*Loxioides bailleui*); 'ā kohekohe or crested honeycreeper (*Palmeria dolei*); O'ahu 'elepaio (*Chasiempis sandwichensis ibidis*); Hawai'i 'ā kepa (*Loxops coccineus coccineus*); and Hawai'i creeper (*Oreomystis mana*). The candidate species is the Kaua'i creeper (*Oreomystis bairdi*), and the species of concern is the Bishop's 'ō'ō (*Moho bishopi*).

Most taxa are now found only in upper elevation rain forests on the islands of Hawai'i, Maui, and Kaua'i. The palila is limited to dryland forests on Mauna Kea volcano on the island of Hawai'i. The O'ahu 'elepaio occurs at elevations as low as 100 meters (330 feet) in non-native forests on the island of O'ahu. Sub-fossil records and observations by early naturalists to the Hawaiian islands indicate that most of the species included in this plan once occurred at lower elevations. These taxa and their habitats have been variously affected or are currently threatened by one or more of the following: habitat degradation by wild, feral, or domestic animals (pigs, goats, and deer); predation by animals (rats, cats, and mongoose); avian disease (malaria and avian pox); and habitat loss due to agriculture, ranching, forest cutting, and urbanization. Threats also include the expansion of invasive non-native plant species into native-dominated plant communities. In addition, due to the small number of existing individuals and their very narrow distribution, these taxa and most of their populations are subject to an increased likelihood of extinction from naturally-occurring events such as hurricanes.

The objective of this plan is to provide a framework for the recovery of these 21 taxa so that their protection by the Act is no longer necessary. Recovery will require protecting and managing forest bird habitat to maintain and enhance viable populations of endangered Hawaiian forest birds. Recovery actions include: measures to protect habitat where the taxa occur; restoration of degraded habitat; removal of feral ungulates from habitat areas; control of introduced rodents and feral cats that feed on forest birds; control of invasive plant species; reduction in numbers of mosquito breeding sites; captive propagation and translocation; and the development of means to address threats of avian disease. Management emphasis may differ among species, as taxa are affected differently and to varying degrees by different limiting factors. Habitat management and restoration will encourage the expansion of current populations into unoccupied habitat. However, the establishment of new populations using various translocation and/or captive propagation techniques will be needed in some cases to accelerate population expansion and to establish new populations in suitable habitat.

Recovery objectives for each taxon are to: (1) Restore populations to levels that allow the taxon to persist despite demographic and environmental chance events, and are large enough to allow natural demographic and evolutionary processes to occur; (2) to protect enough habitat to support these population levels; and (3) to identify and remove the threats responsible for a taxon's endangered status. For all taxa, stabilization is the first (interim) objective. For species that are exceedingly rare (no individuals can currently be located), an interim objective is to first locate remaining individuals. In a few cases, insufficient forest bird habitat remains within a species' historic range to establish a second separate and distinct population, and further opportunities for habitat restoration do not exist. In these situations a species is unlikely to be delisted (by the criteria listed below), and downlisting is considered the interim recovery objective.

The draft revised recovery plan indicates that a taxon may be reclassified from endangered to threatened based on the following criteria apply: (1) The species occurs in two or more viable populations or a viable metapopulation that represent the ecological, morphological, behavioral, and genetic diversity of the species; (2) quantitative surveys show either (a) the number of individuals in each isolated population or in the metapopulation has been stable or increasing for 15 consecutive years, or (b) demographic monitoring exhibits an average intrinsic growth rate (lambda, L) not less than 1.0 over a period of at least 15 consecutive years; *and* total population size is not expected to decline by more than 20 percent within the next 15 consecutive years for any reason; (3) sufficient habitat is protected and managed to achieve criteria 1 and 2 above; and (4) the major threats that were responsible for the species becoming endangered have been identified and controlled. The draft revised plan indicates delisting a taxon may be considered on the basis of persistence of those criteria for a period of 30 consecutive years.

### Public Comments Solicited

We solicit written comments on the draft revised recovery plan described. All comments received by the date specified above will be considered in developing a final revised Hawaiian forest bird recovery plan.

### Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: August 19, 2003.

**David J. Wesley,**

*Deputy Regional Director, Region 1, Fish and Wildlife Service.*

[FR Doc. 03–26112 Filed 10–15–03; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[NM–910–04–1020–PG]

## Notice of Public Meeting, New Mexico Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management, New Mexico Resource Advisory Council (RAC) will meet as indicated below.

**DATES:** The meeting will be held on November 13–14, 2003, at the Hotel Santa Fe, 1501 Paseo de Peralta, Santa Fe, New Mexico, beginning at 8 a.m. both days. The meeting will adjourn approximately 5 p.m. on Thursday and 1 p.m. on Friday. The two established RAC subcommittees may have a late afternoon or an evening meeting on Thursday, November 13, 2003.

On Wednesday, November 12, 2003, there will be a half-day orientation for new RAC members. An optional field trip is planned for the afternoon of November 12, 2003. The public comment period is scheduled for Wednesday, November 12, 2003, from 6–8 p.m. The public may present written comments to the RAC. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, individual oral comments may be limited.

**SUPPLEMENTARY INFORMATION:** The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in New Mexico. All meetings are open to the public. At this meeting, topics for discussion include:

Access, healthy forest initiative, land disposal, overview of the vegetation monitoring and analysis pilot project in New Mexico, oil and gas reclamation standards, update on Otero Mesa, BLM/New Mexico Association of Counties liaison role, and preview of the legacy lands program.

**FOR FURTHER INFORMATION CONTACT:** Theresa Herrera, New Mexico State Office, Office of External Affairs, Bureau of Land Management, P.O. Box 27115, San Fe, New Mexico 87502–0115, (505) 438–7517.

Dated: October 9, 2003.

**Ron Dunton,**

*Acting State Director.*

[FR Doc. 03–26113 Filed 10–15–03; 8:45 am]

BILLING CODE 4310–FB–M

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[NM–952–03–1420–BJ]**

### Notice of Filing of Plats of Survey; New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, (30) thirty calendar days from the date of this publication.

**SUPPLEMENTARY INFORMATION:**

**Supplemental Plat for:**

T. 10 S., R. 26 E., approved July 28, 2003, NM;
T. 13 S., R. 4 W., approved August 15 2003, NM;

**Protraction Diagrams for:**

T. 17 S., R. 11 E., approved June 18, 2003, NM;
T. 10 S., R. 12 E., approved June 24, 2003, NM;

**New Mexico Principal Meridian, New Mexico:**

T. 16 N., R. 6 W., approved July 16, 2003, for Group 995 NM;
T. 23 N., R. 10 E., approved August 21, 2003, for Group 1011 NM;

**Sixth Principal Meridian, Kansas:**

T. 33 S., R 41 W., approved August 15, 2003, for Group 25 KS;

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the NM State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of a protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed. The above-listed plats represent dependent resurveys, surveys, and subdivisions.

**FOR FURTHER INFORMATION CONTACT:** These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico, 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: August 26, 2003.

**Robert A. Casias,**

*Chief Cadastral Surveyor.*

[FR Doc. 03–26182 Filed 10–15–03; 8:45 am]

**BILLING CODE 4310–FB–P**

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## DEPARTMENT OF JUSTICE

## Bureau of Alcohol, Tobacco, Firearms and Explosives

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day notice of information collection under review: release and receipt of imported firearms, ammunition and implements of war.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until December 15, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Tom Stewart, Chief, Firearms and Explosives Import Branch, Room 5100, 650 Massachusetts Avenue NW., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1)Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Release and Receipt of Imported Firearms, Ammunition and Implements of War.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number: ATF F 6A (5330.3C). Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. Other: Business or other for-profit, Not-for-profit institutions. The data provided by this information collection request is used by ATF to determine if articles imported meet the statutory and regulatory criteria for importation and if the articles shown on the permit application have been actually imported.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 20,000 respondents will complete a 24-minute form.

(6) An estimate of the total public burden (in hours) associated with the collection: There are 8,000 estimated annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: October 9, 2003.

**Brenda E. Dyer,**

*Deputy Clearance Officer, Department of Justice.*

[FR Doc. 03–26261 Filed 10–15–03; 8:45 am]

**BILLING CODE 4410–FY–P**

## DEPARTMENT OF JUSTICE

### Federal Bureau of Investigation

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-Day Notice of Information Collection Under Review: Cost Recovery Regulations, Communications Assistance for Law Enforcement Act of 1994.

The Department of Justice (DOJ), Federal Bureau of Investigation has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 127, page 39597 on July 2, 2003, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until November 17, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

### Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Cost Recovery Regulations, Communications Assistance for Law Enforcement Act of 1994.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. Federal Bureau of Investigation, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. This collection is facilitated by the procedures whereby telecommunications carriers can recover the costs associated with complying with the Communications Assistance for Law Enforcement Act, which went into effect on October 25, 1994.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The average time burden of the approximately 3,000 respondents to provide the information requested is approximately four hours per telecommunications switch.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden, to provide the information necessary to file a claim under the Cost Recovery Regulation, is approximately 46,000 annual burden hours.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: October 10, 2003.

**Brenda E. Dyer,**

*Deputy Clearance Officer, Department of Justice.*

[FR Doc. 03–26262 Filed 10–15–03; 8:45 am]

**BILLING CODE 4410–02–P**

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## DEPARTMENT OF JUSTICE

### Federal Bureau of Investigation

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-Day Notice of Information Collection Under Review: Flexible Deployment Assistance Guide.

The Department of Justice (DOJ), Federal Bureau of Investigation has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 147, on page 44969 on July 31, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until November 17, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *Title of the form/collection:* Flexible Deployment Assistance Guide.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. Federal Bureau of Investigation, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. The Flexible Deployment Assistance Guide has been developed to assist the telecommunications industry in meeting its obligations under the Communications Assistance for Law Enforcement Act 47 U.S.C. 1001–1010 (1994).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The average time burden of the approximately 5,000 respondents to provide the information requested is approximately four hours and fifteen minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to provide the information requested by the Flexible Deployment Assistance Guide is approximately 21,250 hours.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: October 10, 2003.

**Brenda E. Dyer,**

*Deputy Clearance Officer, Department of Justice.*

[FR Doc. 03–26263 Filed 10–15–03; 8:45 am]

**BILLING CODE 4410–02–P**

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## DEPARTMENT OF JUSTICE

### Office of Justice Programs

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** 30-Day Notice of Information Collection Under Review; New Collection Semi-Annual Progress Report for Grants to Encourage Arrest Polices and Enforcement of Protection Orders Program.

The Department of Justice, Office of Justice Programs, Office on Violence Against Women, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register**, Volume 68, Number 147, page 44696, on July 31, 2003, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until November 17, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* New collection.

(2) *Title of the form/collection:* Semi-Annual Progress Report for Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: none. Office on Violence Against Women, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The affected public includes approximately 200 grantees of the Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program (Arrest Program) whose eligibility is determined by statute. The Arrest Program was authorized through the Violence Against Women Act (VAWA) and reauthorized and amended by the Violence Against Women Act of 2000 (VAWA 2000). The Arrest Program promotes mandatory or pro-arrest policies and encourages jurisdictions to treat domestic violence as a serious crime, establish coordinated community responses and facilitate the enforcement of protection orders. By statute, eligible grantees for the Arrest Program are States, Indian tribal governments, State and local courts including juvenile courts, tribal courts, and units of local government. For the purpose of the Program, a unit of local government is any city, county, township, town, borough, parish, village, or other general-purpose political subdivision of a State; an Indian tribe that performs law enforcement functions as determined by the Secretary of the Interior; or, for the purpose of assistance eligibility, any agency of the District of Columbia government or the United States Government performing law enforcement functions in and for the District of Columbia, and any Trust Territory of the U.S.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that it will take the 200 respondents (Arrest Program grantees) approximately one hour to complete a semiannual progress report. The semiannual progress report is divided into sections that pertain to the different types of activities that grantees may engage in, *i.e.*, law enforcement agencies, prosecutors' offices, courts, victim services agencies, etc. An Arrest Program grantee will be required to complete those sections of the form that pertain to their own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual

hour burden to complete the data collection forms is 400 hours. Two hundred grantees will complete a form twice a year with an estimated completion time of one hour per form.

If additional information is required contact: Ms. Brenda E. Dyer, Department Deputy Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: October 10, 2003.

**Brenda E. Dyer,**

*Department Deputy Clearance Officer, United States Department of Justice.*

[FR Doc. 03–26264 Filed 10–15–03; 8:45 am]

**BILLING CODE 4410–18–P**

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## DEPARTMENT OF JUSTICE

### Office of Justice Programs

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** 30-Day Notice of Information Collection Under Review; New Collection Semi-Annual Progress Report for the Legal Assistance for Victims Grant Program.

The Department of Justice, Office of Justice Programs, Office on Violence Against Women, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register**, Volume 68, Number 89, page 24762, on May 8, 2003, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until November 17, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Overview of this information:*

(1) *Type of information collection:* New Collection.

(2) *The title of the form/collection:* Semi-Annual Progress Report for the Legal Assistance for Victims Grant Program.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no agency form number. The component is the Office on Violence Against Women, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The affected public includes the approximately 200 grantees of the Legal Assistance for Victims Grant Program (LAV Program) whose eligibility is determined by statute. In 1998, Congress appropriated funding to provide civil legal assistance to domestic violence victims through a set-aside under the Grants to Combat Violence Against Women, Public Law 105–277. In the Violence Against Women Act of 2000, Congress statutorily authorized the Legal Assistance for Victims Grant Program (LAV Program). 42 U.S.C. 3796gg–6. The LAV Program is intended to increase the availability of legal assistance necessary to provide effective aid to victims of domestic violence, stalking, or sexual assault who are seeking relief in legal matters arising as a consequence of that abuse or violence. The LAV Program awards grants to law school legal clinics, legal aid or legal services programs, domestic violence victims' shelters, bar associations, sexual assault programs, private nonprofit entities, and Indian tribal governments. These grants are for providing direct legal services to victims of domestic violence, sexual assault, and stalking in matters arising from the abuse or violence and for providing enhanced training for lawyers representing these victims. The goal of the Program is to develop innovative, collaborative projects that provide quality representation to victims of domestic violence, sexual assault, and stalking.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 200 respondents (LAV Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities that grantees may engage in and the different types of grantees that receive funds. An LAV Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 400 hours, that is 200 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Ms. Brenda E. Dyer, Department Deputy Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, 601 D Street, NW., Washington, DC 20530, or via facsimile at (202) 514–1590.

Dated: October 10, 2003.

**Brenda E. Dyer,**

*Department Deputy Clearance Officer, United States Department of Justice.*

[FR Doc. 03–26265 Filed 10–15–03; 8:45 am]

**BILLING CODE 4410–18–P**

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## NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

### Proposed Collection, Comment Request, of IMLS Funded Digital Collections and Content—Collection Registry

**AGENCY:** Institute of Museum and Library Services, NFAH.

**ACTION:** Notice.

**SUMMARY:** The Institute of Museum and Library Services as part of its continuing effort to reduce paperwork and respondent burdens, conducts a preclearance consultation program to

provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3508(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Institute of Museum and Library Services is soliciting comments concerning the proposed study of IMLS Funded Digital Collections and Content.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before December 15, 2003.

IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submissions of responses.

**ADDRESSES:** Send comments to: Martha Crawley, Senior Program Officer, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 802, Washington, DC 20506. Ms. Crawley can be reached on Telephone: (202) 606–5513, Fax: (202) 606–1077 or by e-mail at *mcrawley@imls.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services Act, Pub. L. 104–208. The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs. In the National Leadership Grant Program, IMLS funds the digitization of library and museum collections. This study is to determine the feasibility of using the Open Archives Initiative (OAI) metadata harvesting protocol to aggregate and provide integrated item-level search access to the collections that Institute of Museum and Library Services funding has helped to digitize through the National Leadership Grant program and to create a collection level registry of those collections.

*Agency:* Institute of Museum and Library Services.

*Title:* Study of IMLS Funded Digital Collections and Content.

*OMB Number:* n/a.

*Agency Number:* 3137.

*Affected Public:* Museums and Libraries that created digital collections with IMLS funding.

*Number of Respondents:* All institutions that digitize collections with IMLS National Leadership Grant Funds.

*Frequency:* One time.

*Estimated time per respondent:* 30 minutes.

*Estimated cost per respondent:* $12.50 (30 minutes × $25 hour).

*Total Burden Hours:* 77 hours (94 respondents plus about 60 from 2003, 2004, 2005 grants).

*Total annualized capital/startup costs:* Zero.

*Total annual costs:* $962.50.

*Contact:* Mamie Bittner, Director of Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, telephone (202) 606–4648.

Dated: October 9, 2003.

**Mamie Bittner,**

*Director of Public and Legislative Affairs.*

[FR Doc. 03–26180 Filed 10–15–03; 8:45 am]

BILLING CODE 7036–01–M

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## NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

### Proposed Collection, Comment Request, of IMLS Funded Digital Collections and Content—Focus Groups

**AGENCY:** Institute of Museum and Library Services, NFAH.

**ACTION:** Notice.

**SUMMARY:** The Institute of Museum and Library Services as part of its continuing effort to reduce paperwork and respondent burdens, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3508(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Institute of Museum and Library Services is soliciting comments concerning the proposed study of IMLS Funded Digital Collections and Content.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before December 15, 2003.

IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submissions of responses.

**ADDRESSES:** Send comments to: Martha Crawley, Senior Program Officer, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 802, Washington, DC 20506. Ms. Crawley can be reached on telephone: (202) 606–5513, Fax: (202) 606–1077 or by e-mail at *mcrawley@imls.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services Act, Public Law 104–208. The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs. In the National Leadership Grant program, IMLS funds the digitization of library and museum collections. This study is to determine the feasibility of using the Open Archives Initiative (OAI) metadata harvesting protocol to aggregate and provide integrated item-level search access to the collections that Institute of Museum and Library Services funding has helped to digitize through the National Leadership Grant program and to create a collection level registry of those collections.

*Agency:* Institute of Museum and Library Services.

*Title:* Study of IMLS Funded Digital Collections and Content—Focus Groups.

*OMB Number:* n/a.

*Agency Number:* 3137.

*Affected Public:* Museums and Libraries that created digital collections with IMLS funding.

*Number of Respondents:* 24 (maximum two focus groups with 12 participants each).

*Frequency:* Once.

*Estimated time per respondent:* 2 hours.

*Estimated cost per respondent:* $50 (2 × $25 per hour).

*Total Burden Hours:* 48 hours.

*Total Annualized capital/startup costs:* Zero.

*Total Annual costs:* $1200 (48 × $25 per hour = $1200).

*Contact:* Rebecca Danvers, Director of Research and Technology, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, telephone (202) 606–2478.

**Mamie Bittner,**

*Director of Public and Legislative Affairs.*

[FR Doc. 03–26181 Filed 10–15–03; 8:45 am]

BILLING CODE 7036–01–M

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## NATIONAL SCIENCE FOUNDATION

### Committee Management

### Notice of Establishment

The Deputy Director of the National Science Foundation has determined that the establishment of the Earthscope Science and Education Advisory Committee is necessary and in the public interest in connection with the performance of duties imposed upon the National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: EarthScope Science and Education Advisory Committee (#16638)

Purpose: Provide advice and recommendations to the National Science Foundation concerning support for research, education and outreach in the EarthScope program. The committee will: review and advise on the impact of research and facility support programs in the disciplines and fields encompassed by the EarthScope program; advise on program management, overall program balance, diversity and other aspects of program performance; and advise as to the impact of overall NSF-wide policies on the EarthScope facility and community.

Responsible NSF Official: James Whitcomb, Division of Earth Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 995, Arlington, VA 22230. Telephone: (703) 292–8550.

Dated: October 9, 2003.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 03–26094 Filed 10–15–03; 8:45 am]

BILLING CODE 7555–01–M

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## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Education and Human Resources; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* Advisory Committee for Education and Human Resources (#1119).

*Date & Time:* November 5, 8:30 a.m.–6 p.m.; November 6, 8:30 a.m.–3 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

*Type of Meeting:* Open.

*Contact Person:* Sheila R. Tyndell, Staff Assistant, Directorate for Education and Human Resources, National Science Foundation, 4201 Wilson Boulevard, Room 805, Arlington, VA 22230, 703–292–8601.

*Summary Minutes:* May be obtained from contact person listed above.

*Purpose of Meeting:* To provide advice and recommendations concerning NSF support for Education and Human Resources.

*Agenda:* Discussion of FY 2003 programs of the Directorate for Education and Human Resources and planning for future activities.

Dated: October 9, 2003.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 03–26096 Filed 10–15–03; 8:45 am]

BILLING CODE 7555–01–M

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## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Geosciences (1755).

*Dates:* November 12–14, 2003.

*Time:* 1:30–5:30 p.m., Wednesday, November 12, 2003; 8:30 a.m.–5:30 p.m., Thursday, November 13, 2003; 8:30 a.m.–2:30 p.m. Friday, November 14, 2003.

*Place:* National Science Foundation, 4200 Wilson Boulevard, Room 1235, Arlington, VA 22230.

*Type of Meeting:* Open.

**FOR FURTHER INFORMATION CONTACT:** Dr. Thomas Spence, Directorate for Geosciences, National Science Foundation, Suite 705, 4210 Wilson Boulevard, Arlington, Virginia 22230, Phone 703–292–8500.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To provide advice, recommendations, and oversight concerning support for research, education, and human resources development in the geosciences.

*Agenda: Day 1:* Cyberinfrastructure Subcommittee Meeting, Directorate activities and plans. *Day 2:* Division Subcommittee Meetings, Directorate initiatives. *Day 3:* Committee of Visitors report, Sensors and Sensor Networks, Intersessional activities.

Dated: October 9, 2003.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 03–26095 Filed 10–15–03; 8:45 am]

BILLING CODE 7555–01–M

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## NUCLEAR REGULATORY COMMISSION

### Dominion Nuclear North Anna, LLC; Notice of Receipt and Availability of Application for Early Site Permit for the North Anna ESP Site

On September 25, 2003, the Nuclear Regulatory Commission (NRC, the

Commission) received an application from Dominion Nuclear North Anna, LLC dated September 25, 2003, filed pursuant to section 103 of the Atomic Energy Act and 10 CFR part 52, for an early site permit (ESP) for a location in central Virginia (near Mineral, Virginia) identified as the North Anna ESP site.

An applicant may seek an early site permit in accordance with subpart A of 10 CFR part 52 separate from the filing of an application for a construction permit (CP) or combined license (COL) for a nuclear power facility. The ESP process allows resolution of issues relating to siting. At any time during the period of an ESP (up to 20 years), the permit holder may reference the permit in an application for a CP or COL.

Subsequent **Federal Register** notices will address the acceptability of the tendered ESP application for docketing and provisions for participation of the public and other parties in the ESP review process.

A copy of the application is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland and via the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* The accession number for the application is ML032731517. Future publicly available documents related to the application will also be posted in ADAMS. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

The application is also available to local residents at the Louisa County Library, near Mineral, Virginia, and it will be available on the NRC Web page at *http://www.nrc.gov/reactors/new-licensing/license-reviews/esp.html.*

Dated at Rockville, Maryland, this 9th day of October, 2003.

For the Nuclear Regulatory Commission.

**Michael L. Scott,**

*Senior Project Manager, New, Research and Test Reactors Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

[FR Doc. 03–26139 Filed 10–15–03; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Nuclear Waste; Procedures for Meetings

### Background

This notice describes procedures to be followed with respect to meetings conducted pursuant to the Federal Advisory Committee Act by the Nuclear Regulatory Commission's (NRC's) Advisory Committee on Nuclear Waste (ACNW). These procedures are set forth so that they may be incorporated by reference in future notices for individual meetings.

The ACNW advises the NRC on technical issues related to nuclear materials and waste management. The bases of ACNW reviews include 10 CFR parts 20, 60, 61, 63, 70, 71, and 72 and other applicable regulations and legislative mandates, such as the Nuclear Waste Policy Act as amended, the Low-Level Radioactive Waste Policy Act and amendments, and the Uranium Mill Tailings Radiation Control Act, as amended. The Committee's reports become a part of the public record.

The ACNW meetings are normally open to the public and provide opportunities for oral or written statements from members of the public to be considered as part of the Committee's information gathering process. The meetings are not adjudicatory hearings such as those conducted by the NRC's Atomic Safety and Licensing Board Panel as part of the Commission's licensing process. ACNW meetings are conducted in accordance with the Federal Advisory Committee Act.

### General Rules Regarding ACNW Meetings

An agenda is published in the **Federal Register** for each full Committee meeting and is available on the Internet at *http://www.nrc.gov/ACRSACNW.* There may be a need to make changes to the agenda to facilitate the conduct of the meeting. The Chairman of the Committee is empowered to conduct the meeting in a manner that, in his/her judgment, will facilitate the orderly conduct of business, including making provisions to continue the discussion of matters not completed on the scheduled day during another meeting. Persons planning to attend a meeting may contact the Designated Federal Official (DFO) specified in the individual **Federal Register** notice prior to the meeting to be advised of any changes to the agenda that may have occurred.

The following requirements shall apply to public participation in ACNW meetings:

(a) Persons who plan to make oral statements and/or submit written comments at the meeting should provide 35 copies to the DFO at the beginning of the meeting. Persons who cannot attend the meeting but wishing to submit written comments regarding the agenda items may do so by sending a readily reproducible copy addressed to the DFO specified in the **Federal Register** notice for the individual meeting in care of the Advisory Committee on Nuclear Waste, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments should be in the possession of the DFO prior to the meeting to allow time for reproduction and distribution. Comments should be limited to topics being considered by the Committee.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the DFO. If possible, the request should be made five days before the meeting, identifying the topics to be discussed and the amount of time needed for presentation so that orderly arrangements can be made. The Committee will hear oral statements on topics being reviewed at an appropriate time during the meeting as scheduled by the Chairman.

(c) Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the DFO specified in the individual **Federal Register** notice.

(d) The use of still, motion picture, and television cameras will be permitted at the discretion of the Chairman and subject to the condition that the physical installation and presence of such equipment will not interfere with the conduct of the meeting. The DFO will have to be notified prior to the meeting and will authorize the installation or use of such equipment after consultation with the Chairman. The use of such equipment will be restricted as is necessary to protect proprietary or privileged information that may be in documents, folders, etc., in the meeting room. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

(e) A transcript is kept for certain open portions of the meeting and will be available in the NRC Public Document Room (PDR), One White Flint North, Room O–1F21, 11555 Rockville Pike, Rockville, MD 20852–2738. ACNW meeting agenda, transcripts, and letter reports are available through the NRC

Public Document Room at *pdr@nrc.gov*, by calling the PDR at 1–800–394–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/*. A copy of the certified minutes of the meeting will be available at the same location up to three months following the meeting. Copies may be obtained upon payment of appropriate reproduction charges.

(f) Video teleconferencing service is available for observing open sessions of some ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audio Visual Technician, (301–415–8066) between 7:30 a.m. and 3:45 p.m. eastern time at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

### ACNW Working Group Meetings

From time to time the ACNW may sponsor an in-depth meeting on a specific technical issue to understand staff expectations and review work in progress. Such meetings are called Working Group meetings. These Working Group meetings will also be conducted in accordance with these procedures noted above for the ACNW meeting, as appropriate. When Working Group meetings are held at locations other than at NRC facilities, reproduction facilities may not be available at a reasonable cost. Accordingly, 25 additional copies of the materials to be used during the meeting should be provided for distribution at such meetings.

### Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACNW meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The DFO should be informed of such an agreement at least five working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the DFO prior to the beginning of the meeting for admittance to the closed session.

Dated: October 9, 2003.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 03–26135 Filed 10–15–03; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

## Advisory Committee on Reactor Safeguards; Procedures for Meetings

### Background

This notice describes procedures to be followed with respect to meetings conducted by the Nuclear Regulatory Commission's (NRC's) Advisory Committee on Reactor Safeguards (ACRS) pursuant to the Federal Advisory Committee Act (FACA). These procedures are set forth so that they may be incorporated by reference in future notices for individual meetings.

The ACRS is a statutory group established by Congress to review and report on nuclear safety matters and applications for the licensing of nuclear facilities. The Committee's reports become a part of the public record.

The ACRS meetings are conducted in accordance with FACA; they are normally open to the public and provide opportunities for oral or written statements from members of the public to be considered as part of the Committee's information gathering process. ACRS reviews do not normally encompass matters pertaining to environmental impacts other than those related to radiological safety.

The ACRS meetings are not adjudicatory hearings such as those conducted by the NRC's Atomic Safety and Licensing Board Panel as part of the Commission's licensing process.

### General Rules Regarding ACRS Meetings

An agenda is published in the **Federal Register** for each full Committee meeting. There may be a need to make changes to the agenda to facilitate the conduct of the meeting. The Chairman of the Committee is empowered to conduct the meeting in a manner that, in his/her judgment, will facilitate the orderly conduct of business, including making provisions to continue the discussion of matters not completed on the scheduled day on another meeting day. Persons planning to attend the meeting may contact the Designated Federal Official (DFO) specified in the **Federal Register** notice prior to the meeting to be advised of any changes to the agenda that may have occurred.

The following requirements shall apply to public participation in ACRS full Committee meetings:

(a) Persons who plan to make oral statements and/or submit written comments at the meeting should provide 35 copies to the DFO at the beginning of the meeting. Persons who cannot attend the meeting but wishing to submit written comments regarding the agenda items may do so by sending a readily reproducible copy addressed to the DFO specified in the **Federal Register** notice, care of the Advisory Committee on Reactor Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments should be limited to items being considered by the Committee. Comments should be in the possession of the DFO prior to the meeting to allow time for reproduction and distribution.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the DFO. If possible, the request should be made five days before the meeting, identifying the topics to be discussed and the amount of time needed for presentation so that orderly arrangements can be made. The Committee will hear oral statements on topics being reviewed at an appropriate time during the meeting as scheduled by the Chairman.

(c) Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the DFO.

(d) The use of still, motion picture, and television cameras will be permitted at the discretion of the Chairman and subject to the condition that the physical installation and presence of such equipment will not interfere with the conduct of the meeting. The DFO will have to be notified prior to the meeting and will authorize the installation or use of such equipment after consultation with the Chairman. The use of such equipment will be restricted as is necessary to protect proprietary or privileged information that may be in documents, folders, etc., in the meeting room. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

(e) A transcript is kept for certain open portions of the meeting and will be available in the NRC Public Document Room (PDR), One White Flint North, Room O–1F21, 11555 Rockville Pike, Rockville, MD 20852–2738. ACRS meeting agenda, transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, by calling the PDR at 1–800–394–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/*. A copy of the certified minutes of the meeting will be available at the same location up to three months following the meeting. Copies may be obtained upon payment of appropriate reproduction charges.

(f) Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician, (301–415–8066) between 7:30 a.m. and 3:45 p.m. eastern time at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

### ACRS Subcommittee Meetings

In accordance with the revised FACA, the agency is no longer required to apply the FACA requirements to meetings conducted by the Subcommittees of the NRC Advisory Committees, if the Subcommittee's recommendations would be independently reviewed by its parent Committee.

The ACRS, however, chose to conduct its Subcommittee meetings in accordance with the above procedures noted above for ACRS meetings, as appropriate, to facilitate public participation, and to provide a forum to stakeholders to express their views on regulatory matters being considered by the ACRS. When Subcommittee meetings are held at locations other than at NRC facilities, reproduction facilities may not be available at a reasonable cost. Accordingly, 25 additional copies of the materials to be used during the meeting should be provided for distribution at such meetings.

### Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The DFO should be informed of such an agreement at least five working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the DFO prior to the beginning of the meeting for admittance to the closed session.

Dated: October 9, 2003.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 03–26136 Filed 10–15–03; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

### Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued a revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in its review of applications for permits and licenses, and data needed by the NRC staff in its review of applications for permits and licenses.

Revision 1 of Regulatory Guide 1.159, "Assuring the Availability of Funds for Decommissioning Nuclear Reactors," provides guidance to licensees and applicants of nuclear power, research, and test reactors concerning methods acceptable to the NRC staff for complying with requirements in the rules regarding the amount of funds for decommissioning. It also provides guidance on the content and form of the financial assurance mechanisms in those rule amendments.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555. Questions on the content of this guide may be directed to Mr. B.J. Richter, (301) 415–1978; e-mail *BJR@NRC.GOV*.

Regulatory guides are available for inspection or downloading at the NRC's Web site at *http://www.nrc.gov* under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by e-mail to *DISTRIBUTION@NRC.GOV*. Issued guides may also be purchased from the National Technical Information Service (NTIS) on a standing order basis. Details on this service may be obtained by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161; telephone 1–800–553–6847; *http://www.ntis.gov/*. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, MD, this 2nd day of October, 2003.

For the Nuclear Regulatory Commission.

**Ashok C. Thadani,**

*Director, Office of Nuclear Regulatory Research.*

[FR Doc. 03–26138 Filed 10–15–03; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8989]

### Issuance of Environmental Assessment and Finding of No Significant Impact for Exemption From Certain NRC Licensing Requirements for Special Nuclear Material for Envirocare of Utah, Inc.

### I Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an Order pursuant to

Section 274f of the Atomic Energy Act that would modify an Order transmitted to Envirocare of Utah, Inc. (Envirocare). The original Order was published in the **Federal Register** on May 21, 1999 (64 FR 27826). The 1999 Order exempted Envirocare from certain NRC regulations and permitted Envirocare, under specified conditions, to possess waste containing special nuclear material (SNM), in greater quantities than specified in 10 CFR part 150, at Envirocare's low-level waste (LLW) disposal facility located in Clive, Utah, without obtaining an NRC license pursuant to 10 CFR part 70. At the request of Envirocare, the Order was subsequently modified on January 30, 2003, and published in the **Federal Register** on February 13, 2003 (68 FR 7399).

Envirocare is licensed by the State of Utah, an NRC Agreement State, under a 10 CFR part 61 equivalent license for the disposal of LLW. Envirocare is also licensed by Utah to dispose of mixed-radioactive and hazardous waste. In addition, Envirocare has an NRC license (SMC–1559) to dispose of waste containing 11(e)2 byproduct material.

In a letter dated July 8, 2003, Envirocare requested that the January 2003 Order be amended as discussed below. Staff's safety analysis for the revisions to the January 2003 Order is discussed in the companion Safety Evaluation Report (SER).

## II Environmental Assessment (EA)

### *Identification of Proposed Action*

Envirocare proposes that NRC amend the January 2003 Order to: (1) Modify the table in Condition 1 to a criticality basis for uranium-233 and plutonium isotopes, and revise the concentration limits for uranium and plutonium to include limits for waste without magnesium oxide; (2) modify the units of the table from pCi of SNM per gram of waste material to gram of SNM per gram of waste material; and (3) revise the language of Condition 5 to be consistent with the revised units in the table.

### *Need for the Proposed Action*

The table in Condition 1 of the January 2003 Order prescribes concentration limits that are based on Class A low-level radioactive waste limits rather than a criticality-based analysis. Envirocare would like to expand its capabilities to accept additional waste streams. In order to do so, the SNM concentration limits in the table in Condition 1 of the Order would need to be revised.

### *Alternatives to the Proposed Action*

The NRC staff considered the proposed action and the no-action alternative. The no-action alternative would be not to revise the Order.

### *Affected Environment*

NRC has prepared an environmental impact statement (EIS) (NUREG–1476), SERs, and EAs for its previous actions. The affected environment for the Envirocare site is described in detail in NUREG–1476.

### *Environmental Impacts of the Alternatives*

*No-Action Alternative:* For the no-action alternative, the environmental impacts would be the same as evaluated in the Environmental Assessments to support the 1999 Order (64 FR 26463, May 14, 1999) and the January 2003 modification of the Order (68 FR 3281). The regulations regarding SNM possession in 10 CFR part 150 set mass limits whereby a licensee is exempted from the licensing requirements of 10 CFR part 70 and can be regulated by an Agreement State. The licensing requirements in 10 CFR part 70 apply to persons possessing greater than critical mass quantities (as defined in 10 CFR 150.11). The principle emphasis of 10 CFR part 70 is criticality safety and safeguarding SNM against diversion or sabotage. The NRC staff considers that criticality safety can be maintained by relying on concentration limits, under the specified conditions. These concentration limits are considered an alternative definition of quantities not sufficient to form a critical mass to the weight limits in 10 CFR 150.11; thereby, assuring the same level of protection. The 1999 and January 2003 EAs concluded that the Order would have no significant radiological or nonradiological environmental impacts.

*Proposed Action:* For the proposed action, the environmental impacts are not expected to be significant. Effluent releases and potential doses to the public are regulated by the State of Utah and are not anticipated to change as a result of this revision. In a 2001 EA for Waste Control Specialists, LLC (WCS) (66 FR 56358), the staff found that there would be no significant radiological or nonradiological impacts resulting from the proposed limits of uranium and plutonium, and the same limits are being applied to Envirocare in this revision of its Order. In addition, these revisions to the Order are not expected to significantly change environmental impacts from current operations at Envirocare. WCS does not use magnesium oxide in its processing; therefore, in order to use the same limits for uranium and plutonium at its facility, Envirocare will not use magnesium oxide during treatment of the waste stream allowed by the revision. This will help ensure criticality safety during processing.

For Envirocare, the changes to the limits will allow the site to accept a new waste stream, which may increase the number of waste shipments to the site. The addition of a new waste stream would result in approximately 40 additional shipments per year to the site, which equates to less than one shipment per week. It is not expected that the small increase in shipments would have a significant environmental impact to the local area.

### *Preferred Alternative*

The staff has concluded that the proposed action is the preferred alternative. The radiological and nonradiological impacts are not expected to be significant.

### *Agencies and Persons Consulted*

Officials from the State of Utah, Department of Environmental Quality, Division of Radiation Control were contacted about this EA for the proposed action and had no comments. Because the proposed action is not expected to have any impact on threatened or endangered species or historic resources, the Fish and Wildlife Service and the State of Utah Historic Preservation Officer were not contacted.

## III. Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the forgoing EA, the NRC finds that the preferred alternative of the proposed action will not significantly impact the quality of the human environment. Accordingly, the NRC has decided not to prepare an EIS for the proposed exemption.

## IV. Further Information

The request for modifying the Order is available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html* ML031950334. The September 23, 2003, Safety Evaluation Report is available at ML032680942. The EA for the January 2003 Order is available in the **Federal Register** at 68 FR 3281. The EA for the exemption for WCS is available in the **Federal Register** at 66 FR 56358. Documents may also be obtained from NRC's Public Document Room at U.S. Nuclear Regulatory Commission, Public Document Room, Washington DC 20555. Any questions with respect to this action should be referred to Anna H. Bradford, Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001. Telephone: (301) 415–5228, Fax: (301) 415–5397.

Dated at Rockville, Maryland, this 8th day of October, 2003.

For the Nuclear Regulatory Commission.

**Lawrence E. Kokajko,**

*Chief, Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 03–26137 Filed 10–15–03; 8:45 am]

**BILLING CODE 7590–01–P**

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## OVERSEAS PRIVATE INVESTMENT CORPORATION

### Sunshine Act Meetings; Public Hearing

October 14, 2003.

OPIC's Sunshine Act notice of its public hearing was published in the **Federal Register** (Volume 68, Number 193, page 57716) on October 6, 2003. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing in conjunction with OPIC's October 15, 2003 Board of Directors meeting scheduled for 11 AM on October 14, 2003 has been cancelled.

**FOR FURTHER INFORMATION CONTACT:** Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via email at *cdown@opic.gov.*

Dated: October 14, 2003.

**Connie M. Downs,**

*OPIC Corporate Secretary.*

[FR Doc. 03–26278 Filed 10–14–03; 11:45 am]

**BILLING CODE 3210–01–M**

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## OFFICE OF PERSONNEL MANAGEMENT

### Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 30–1

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 30–1, Request to Disability Annuitant for Information on Physical Condition and Employment, is used by persons who are not yet age 60 and who are receiving disability annuity and are subject to inquiry as to their medical condition as OPM deems reasonably necessary. RI 30–1 collects information as to whether the disabling condition has changed.

Approximately 8,000 RI 30–1 forms will be completed annually. We estimate it takes approximately 60 minutes to complete the form. The annual burden is 8,000 hours.

Comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology. For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, fax (202) 418–3251 or E-mail to *mbtoomey@opm.gov.* Please include your mailing address with your request.

**DATES:** Comments on this proposal should be received on or before December 15, 2003.

**ADDRESSES:** Send or deliver comments to Ronald W. Melton, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415–3540.

*For Information Regarding Administrative Coordination— Contact: Cyrus S. Benson, Team Leader, Publications Team, (202) 606–0623.*

U.S. Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 03–26215 Filed 10–15–03; 8:45 am]

**BILLING CODE 6325–50–P**

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## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

### Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

*Extension:* Rule 17f–6 [17 CFR 270.17f–6]; SEC File No. 270–392; OMB Control No. 3235–0447.

Notice is hereby given that, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 17f–6 under the Investment Company Act of 1940 [17 CFR 270.17f–6] permits registered investment companies ("funds") to maintain assets (*i.e.*, margin) with futures commission merchants ("FCMs") in connection with commodity transactions effected on both domestic and foreign exchanges. Before the rule was adopted, funds generally were required to maintain such assets in special accounts with a custodian bank.[1]

The rule requires a written contract that contains certain provisions to ensure important safeguards and other benefits relating to the custody of fund assets by FCMs. The requirement that FCMs comply with the segregation or secured amount requirements of the Commodity Exchange Act ("CEA") and the rules under that statute is designed to protect fund assets held by FCMs. The contract requirement that an FCM obtain an acknowledgment from an entity that clears fund transactions that the fund's assets are held on behalf of the FCM's customers according to CEA provisions seeks to accommodate the legitimate needs of the participants in the commodity settlement process, consistent with the protection of fund assets. Finally, FCMs are required to furnish to the Commission or its staff on request information concerning the fund's assets in order to facilitate Commission inspections of funds.

The Commission estimates that approximately 2,154 funds effect commodities transactions and could deposit margin with FCMs under rule 17f–6 in connection with those transactions. Commission staff estimates that each fund uses and deposits margin with 2 different FCMs in connection with its commodity transactions.[2] Approximately 179 FCMs are eligible to hold fund margin under the rule.[3]

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[1] *See* Custody of Investment Company Assets With Futures Commission Merchants and Commodity Clearing Organizations, Investment Company Act Release No. 22389 (Dec. 11, 1996) [61 FR 66207 (Dec. 17, 1996)].

The Commission estimates that each of the 2,154 funds spend an average of 1 hour annually complying with the contract requirements of the rule (*e.g.*, executing contracts that contain the requisite provisions with additional FCMs), for a total of 2,154 burden hours. The estimate does not include the time required by an FCM to comply with the rule's contract requirements because, to the extent that complying with the contract provisions could be considered "collections of information," the burden hours for compliance are already included in other PRA submissions or are *de minimis*.[4] The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule. If an FCM furnishes records pertaining to a fund's assets at the request of the Commission or its staff, the records will be kept confidential to the extent permitted by relevant statutory or regulatory provisions. The rule does not require these records be retained for any specific period of time. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days after this notice.

Dated: October 8, 2003.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–26097 Filed 10–15–03; 8:45 am]

**BILLING CODE 8010–01–P**

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[2] This estimate is based on information conversations with representatives of the fund industry.

[3] Commodity Futures Trading Commission, Annual Report (2002).

[4] The rule requires a contract with the FCM to contain three provisions. Two of the provisions require the FCM to comply with existing requirements under the CEA and rules adopted under that Act. Thus, to the extent these provisions could be considered collections of information, the hours required for compliance would be included in the collection of information burden hours submitted by the Commodity Futures Trading Commission for its rules. The third contract provision requires that the FCM produce records or other information requested by the Commission or its staff. Commission staff has requested this type of information from an FCM so infrequently in the past that the annual burden hours are *de minimis*.

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–26205; 812–13023]**

## JF International Management Inc., et al.; Notice of Application and Temporary Order

October 8, 2003.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

*Summary of Application:* Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against J.P. Morgan Securities Inc. ("JPMSI") on October 8, 2003 by the United States District Court for the District of Columbia (the "Injunction"), until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order.

*Applicants:* JF International Management Inc., J.P. Morgan Alternative Asset Management Inc., J.P. Morgan Fleming Asset Management (London) Limited, and J.P. Morgan Investment Management Inc. (together, the "Applicants").[1]

*Filing Dates:* The application was filed on October 1, 2003. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 3, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Scott G. Campbell, Esq., J.P. Morgan Chase & Co., Legal Department, One Chase Manhattan Plaza, New York, NY 10081.

**FOR FURTHER INFORMATION CONTACT:** Keith A. Gregory, Senior Counsel, or Mary Kay Frech, Branch Chief, at 202–942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a temporary order and a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone 202–942–8090).

### Applicants' Representations

1. Each Applicant is an investment adviser registered under the Investment Advisers Act of 1940 (the "Advisers Act") and an indirect subsidiary of J.P. Morgan Chase & Co. ("JPMC"), a holding company that, through its subsidiaries and affiliates, provides investment, financing, advisory, banking and related products and services on a global basis. JPMC also is the ultimate parent company of JPMSI. JPMSI, a Delaware corporation, is a full service investment-banking firm and is registered as a broker-dealer under the Securities Exchange Act of 1934 (the "Exchange Act") and as an investment adviser under the Advisers Act. Each Applicant serves as investment adviser or sub-adviser to certain registered investment companies ("Funds").

2. On October 8, 2003, the United States District Court for the District of Columbia entered the Injunction against JPMSI in a matter brought by the Commission.[2] The Commission alleged

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[1] Applicants request that any relief granted pursuant to the application also apply to JPMSI and any other existing company of which JPMSI is an affiliated person within the meaning of section 2(a)(3) of the Act and to any other company of which JPMSI may become an affiliated person in the future (together with Applicants, "Covered Persons").

[2] *Securities and Exchange Commission* v. *J.P. Morgan Securities Inc.*, Final Judgment Against J.P. Morgan Securities Inc., 03:CV 02028 (ESH) (D.D.C., filed October 8, 2003).

in the complaint ("Complaint") that JPMSI violated Rule 101 of Regulation M under the Exchange Act by attempting to induce certain institutional customers to place orders for shares in the aftermarket for certain initial public offerings ("IPOs") it underwrote during the restricted period of such IPOs. In addition, the Complaint alleged that JPMSI violated NASD Conduct Rule 2110 by persuading one or more institutional customers to take an allocation of a "cold" IPO by promising to reward the customer with an allocation of an upcoming "hot" IPO. The alleged violations occurred in connection with certain IPOs underwritten by JPMSI from March 1999 through August 2000. Without admitting or denying any of the allegations in the Complaint, except as to jurisdiction, JPMSI consented to the entry of the Injunction as well as the payment of a civil penalty of $25 million.

**Applicants' Legal Analysis**

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that because JPMSI and the Applicants are under common control of JPMC, JPMSI is an "affiliated person" of each of the Applicants within the meaning of section 2(a)(3) of the Act. Applicants state that, as a result of the Injunction, they would be subject to the prohibitions of section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that none of their officers or employees who are engaged in the provision of investment advisory services to the Funds participated in any way in the conduct underlying the Injunction. Applicants further state that the conduct underlying the Injunction did not involve any Funds.

5. Applicants state that the inability to continue providing advisory services to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also state that they have distributed, or will distribute as soon as reasonably practical, written materials, including an offer to meet in person to discuss the materials, to the boards of directors or trustees of the Funds (the "Boards"), including the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, of such Funds and their independent legal counsel as defined in rule 0–1(a)(6) under the Act, if any, regarding the Injunction, any impact on the Funds, and the application. The Applicants will provide the Boards with all information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources to establish an expertise in advising and subadvising Funds. Applicants recently applied for, and received, an order of exemption pursuant to section 9(c) of the Act for conduct relating to Enron Corp.'s financial statement disclosure of transactions with affiliates of JPMC.[3] In addition, Applicants recently applied for an exemption pursuant to section 9(c) of the Act for conduct relating to certain research analysts' conflicts of interest.[4]

**Applicants' Condition**

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order:

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

*It is hereby ordered*, pursuant to section 9(c) of the Act, that Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunction, subject to the condition in the application, until the date the Commission takes final action on an application for a permanent order.

By the Commission.

**Margaret H. McFarland,**
*Deputy Secretary.*

[FR Doc. 03–26098 Filed 10–15–03; 8:45 am]

BILLING CODE 8010–01–P

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** [68 FR 58728, October 10, 2003]

**STATUS:** Closed meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING:** Thursday, October 16, 2003 at 10 a.m.

**CHANGE IN THE MEETING:** Additional item.

The following item has been added to the closed meeting of Thursday, October 16, 2003: Litigation matter.

Commissioner Campos, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

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[3] JF International Management Inc., *et al.*, Investment Company Act Release Nos. 26141 (July 28, 2003)(notice and temporary order) and 26168 (August 26, 2003)(permanent order).

[4] J.P. Morgan Securities Inc. *et al.*, File No. 812–12959.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: October 14, 2003.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 03–26344 Filed 10–14–03; 3:57 pm]

**BILLING CODE 8010–01–M**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48610; File No. SR–Amex–2003–42]**

## Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1, 2 and 3 Thereto by the American Stock Exchange LLC Relating to Shareholder Approval of Stock Option Plans and Other Equity Compensation Arrangements

October 9, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 6, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On July 24, 2003, the Amex filed Amendment No. 1 to the proposed rule change.[3] On September 10, 2003, the Amex filed Amendment No. 2 to the proposed rule change.[4] On October 1, 2003, the Amex filed Amendment No. 3 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal, as amended, on an accelerated basis.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 711 of the Amex *Company Guide* relating to shareholder approval of stock option and equity compensation plans.

Below is the text of the proposed rule change, as amended. Proposed new language is *italicized;* proposed deleted language is [bracketed].

* * * * *

**American Stock Exchange LLC Company Guide**

* * * * *

### Sec. 711, [Options to Officers, Directors or Key Employees]—*Shareholder Approval of Stock Option and Equity Compensation Plans*

Approval of shareholders is required in accordance with Section 705 [(unless exempted under paragraphs (a) and (b) below) as a prerequisite to approval of applications to list additional shares reserved for] *with respect to the establishment of (or material amendment to) a stock* option[s] *or purchase plan or other equity compensation arrangement pursuant to which options or stock may be acquired by officers, directors, employees, or consultants* [granted or to be granted to officers, directors or key employees], regardless of whether or not such authorization is required by law or by the company's charter, *except for:*[.]

[**Note:** This policy does not preclude the adoption of a stock option plan, or the granting of options, subject to ratification by shareholders, prior to the filing of an application for the listing of the shares reserved for such purpose.

The Exchange will not require shareholders' approval as a condition to listing shares reserved for the exercise of options when:]

(a) [such options are issued] *issuances* to an individual, not previously *an* employee[d] *or director of* [by] the company, *or following a bonafide period of non-employment,* as an inducement [essential] *material* to entering into [a contract of] employment with the company provided that *such issuances are approved by the company's independent compensation committee or a majority of the company's independent directors, and, promptly following an issuance of any employment inducement grant in reliance on this exception, the company discloses in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved* [the potential issuance of shares pursuant to such options does not exceed 5% of the company's outstanding common stock]; or

(b) [such options are to be granted:]

[(i)] [under a] *tax qualified, non-discriminatory employee benefit* plans [or arrangement] (*e.g., plans that meet the requirements of Section 401(a) or 423 of the Internal Revenue Code) or parallel nonqualified plans, provided such plans are approved by the company's independent compensation committee or a majority of the company's independent directors; or plans that merely provide a convenient way to purchase shares in the open market or from the issuer at fair market value* [in which all, or substantially all, of the company's employees participate, in a fair and equitable manner]; or

*(c) a plan or arrangement relating to an acquisition or merger; or*

*(d) warrants or rights issued generally to all security holders of the company or stock purchase plans available on equal terms to all security holders of the company (such as a typical dividend reinvestment plan).*

*A listed company is required to notify the Exchange in writing with respect to the use of any of the exceptions set forth in paragraphs (a) through (d).*

[(ii) under a plan or arrangement for officers, directors or key employees provided such incentive arrangements do not authorize the issuance of more than 5% of outstanding common stock in any one year and provided that all arrangements adopted without shareholder approval in any five-year period do not authorize, in the aggregate, the issuance of more than 10% of such common stock. (For the purpose of calculating the percentage of stock issued in the aggregate, stock to be issued pursuant to options which have expired and/or been cancelled shall not be included.)]

[For purposes of the above policy, the term "options" includes not only the usual type of nontransferable options granted in consideration of continued employment, but also any other arrangement under which controlling shareholders, officers, directors or key employees may acquire (other than as part of a public offering) stock or convertible securities of a company at a price below market price at the time such stock is acquired or through the use of credit extended, directly or indirectly, by the company. Thus, the sale to such a person(s) of a common stock purchase warrant or right (not part of a public offering) or the sale of stock to such person who has borrowed money from the company, will normally necessitate shareholder approval.]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 22, 2003 ("Amendment No. 1"). Amendment No. 1 supercedes and replaces Amex's original Rule 19b–4 filing in its entirety.

[4] *See* letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated September 9, 2003 ("Amendment No. 2"). Amendment No. 2 supercedes and replaces Amex's original Rule 19b–4 filing and Amendment No. 1 in their entirety.

[5] *See* letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Sapna C. Patel, Special Counsel, Division, Commission, dated October 1, 2003 ("Amendment No. 3"). In Amendment No. 3, the Amex made a technical change to the proposed rule language.

Commentary * * *

*.01 Section 711 requires shareholder approval when a plan or other equity compensation arrangement is established or materially amended. For these purposes, a material amendment would include, but not be limited to, the following:*

*(a) any material increase in the number of shares to be issued under the plan (other than to reflect a reorganization, stock split, merger, spinoff or similar transaction);*

*(b) any material increase in benefits to participants, including any material change to: (i) permit a repricing (or decrease in exercise price) of outstanding options, (ii) reduce the price at which shares or options to purchase shares may be offered, or (iii) extend the duration of a plan;*

*(c) any material expansion of the class of participants eligible to participate in the plan; and*

*(d) any expansion in the types of options or awards provided under the plan.*

*While general authority to amend a plan would not obviate the need for shareholder approval, if a plan permits a specific action without further shareholder approval, then no such approval would generally be required. However, if a plan contains a formula for automatic increases in the shares available (sometimes called an "evergreen formula"), or for automatic grants pursuant to a dollar-based formula (such as annual grants based on a certain dollar value, or matching contributions based upon the amount of compensation the participant elects to defer), such plans cannot have a term in excess of ten years unless shareholder approval is obtained every ten years. Plans that do not contain a formula and do not impose a limit on the number of shares available for grant would require shareholder approval of each grant under the plan. A requirement that grants be made out of treasury shares or repurchased shares will not alleviate these additional shareholder approval requirements.*

*As a general matter, when preparing plans and presenting them for shareholder approval, issuers should strive to make plan terms easy to understand. In that regard, it is recommended that plans meant to permit repricing use explicit terminology to make this clear.*

*Section 711 provides an exception to the requirement for shareholder approval for shareholder approval for warrants or rights offered generally to all shareholders. In addition, an exception is provided for tax qualified, non-discriminatory employee benefit plans as well as parallel nonqualified plans*[1] *as these plans are regulated under the Internal Revenue Code and Treasury Department regulations. An equity compensation plan that provides non-U.S. employees with substantially the same benefits as a comparable tax-qualified, non-discriminatory employee benefit plan or parallel nonqualified plan that the issuer provides to its U.S. employees, but for features necessary to comply with applicable foreign tax law, is also exempt from shareholder approval under this section.*

*Further, there is an exception for inducement grants to new employees because in these cases a company has an arm's length relationship with the new employees. Inducement grants for these purposes include grants of options or stock to new employees in connection with a merger or acquisition. Section 711 requires that such issuances must be approved by the issuer's independent compensation committee or a majority of the issuer's independent directors. Also, promptly following an issuance of any employment inducement grant in reliance on this exception, the listed company must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.*

*In addition, plans or arrangements involving a merger or acquisition do not require shareholder approval in two situations. First, shareholder approval will not be required to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, shares available under certain plans acquired in acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exception applies to situations where the party which is not a listed company following the transaction has shares available for grant under pre-existing plans that meet the requirements of this Section 711. These shares may be used for post-transaction grants of options and other equity awards by the listed company (after appropriate adjustment of the number of shares to reflect the transaction), either under the pre-existing plan or arrangement or another plan or arrangement, without further shareholder approval, provided: (1) The time during which those shares are available for grants is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction, and (2) such options and other awards are not granted to individuals who were employed by the granting company or its subsidiaries at the time the merger or acquisition was consummated. A plan or arrangement adopted in contemplation of the merger or acquisition transaction would not be viewed as pre-existing for purposes of this exception. This exception is appropriate because it will not result in any increase in the aggregate potential dilution of the combined enterprise. In this regard, any additional shares available for issuance under a plan or arrangement acquired in connection with a merger or acquisition would be counted in determining whether the transaction involved the issuance of 20% or more of the company's outstanding common stock, thus triggering the shareholder approval requirements of Section 712(b).*

*Inducement grants, tax qualified non-discriminatory benefit plans, and parallel nonqualified plans are subject to approval by either the issuer's independent compensation committee, or a majority of the issuer's independent directors. A listed company is not permitted to use repurchased shares to fund option plans or grants without prior shareholder approval. In addition, the issuer must notify the Exchange in writing when it uses any of these exceptions (see also Part 3 with respect to the requirements applicable to additional listing of the underlying shares).*

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[1] *The term "parallel nonqualified plan" means a plan that is a "pension plan" within the meaning of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1002 (1999), that is designed to work in parallel with a plan intended to be qualified under Internal Revenue Code Section 401(a), to provide benefits that exceed the limits set forth in Internal Revenue Code Section 402(g) (the section that limits an employee's annual pre-tax contributions to a 401(k) plan), Internal Revenue Code Section 401(a)(17) (the section that limits the amount of an employee's compensation that can be taken into account for plan purposes) and/or Internal Revenue Code Section 415 (the section that limits the contributions and benefits under qualified plans) and/or any successor or similar limitations that may thereafter be enacted. However, a plan will not be considered a parallel nonqualified plan unless (i) it covers all or substantially all employees of an employer who are participants in the related qualified plan whose annual compensation is in excess of the limit of Code Section 401(a)(17) (or any successor or similar limitation that may hereafter be enacted) and (ii) its terms are substantially the same as the qualified plan that it parallels except for the elimination of*

*the limitations described in the preceding sentence; and (iii) no participant receives employer equity contributions under the plan in excess of 25% of the participant's cash compensation.*

*See also Section 806.*

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## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

### 1. Purpose

The Exchange represents that Section 711 of the Amex *Company Guide* currently requires listed companies to obtain shareholder approval for many stock option plans and other arrangements in which officers, directors and key employees participate, to address concerns about the possibility of self-dealing and dilution to the detriment of shareholders. The Exchange further states that under Section 711(b)(i) of the Amex *Company Guide* there is an exception for "broadly based" plans in which all, or substantially all, of the company's employees participate in a fair and equitable manner, even if officers, directors and key employees receive option grants under the plan, as well as for *de minimus* grants.

The Exchange represents that, in order to enhance investor confidence and provide consistency across marketplaces, it is proposing to eliminate the existing exceptions to the shareholder approval requirements under current Section 711 of the Amex *Company Guide* and to require shareholder approval of all stock option and equity compensation plans, subject to limited exceptions.[6] The proposed amendments to Section 711 of the Amex *Company Guide* will become effective upon SEC approval.

The Exchange represents that existing plans will not require shareholder approval unless there is a material amendment to the plan. Proposed Commentary .01 to Section 711 of the Amex *Company Guide* specifies a non-exclusive list of plan amendments that would be considered material, and also clarifies that while broad general authority to amend a plan would not obviate the need for shareholder approval, if a plan permits a specific action without further shareholder approval, then no such approval would be required. Certain provisions in a plan, however, cannot be amended without shareholder approval. For example, plans that contains a formula for automatic increases in the shares available (sometimes called an "evergreen plan") or for automatic grants pursuant to a dollar-based formula cannot have a term in excess of ten years unless shareholder approval is obtained every ten years. In addition, plans that do not contain a formula and do not impose a limit on the number of shares available for grant would require shareholder approval of each grant under the plan. A requirement that grants be made out of treasury shares or repurchased shares will not alleviate these additional shareholder approval requirements. The proposed Commentary also provides that issuers should strive to make plan terms easily understandable and that plans meant to permit repricing should use explicit terminology in this regard.

With respect to plans involving a merger or acquisition, shareholder approval would not be required in two situations. First, shareholder approval would not be required to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, shares available under certain plans acquired in corporate acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exception applies to situations where the party which is not a listed company following the transaction has shares available for grant under pre-existing plans that meet the requirements of revised Section 711 of the Amex *Company Guide*.[7] These shares may be used for post-transaction grants of options and other equity awards by the listed company (after appropriate adjustment of the number of shares to reflect the transaction), either under the pre-existing plan or another plan, without further shareholder approval, so long as (1) the time during which those shares are available for grants is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction, and (2) such options and other awards are not granted to individuals who were employed by the granting company at the time the merger or acquisition was consummated. The Exchange would view a plan adopted in contemplation of the merger or acquisition as not pre-existing for purposes of this exception. This exception is appropriate because it would not result in any increase in the aggregate potential dilution of the combined enterprise.[8]

The adoption of tax-qualified, non-discriminatory benefit plans (pursuant to Internal Revenue Code and Treasury Department regulations) or parallel nonqualified plans, will not require shareholder approval, but must be approved by either the issuer's independent compensation committee or a majority of its independent directors. In addition, an equity compensation plan that provides non-U.S. employees with substantially the same benefits as a comparable tax-qualified, non-discriminatory employee benefit plan or parallel nonqualified plan that the issuer provides to its U.S. employees, but for features necessary to comply with applicable foreign tax law, is also exempt from shareholder approval under Section 711 of the Amex *Company Guide*. However, the proposed rule addresses only the issue of whether shareholder approval is required pursuant to Amex rules, and would not impact any shareholder approval or other requirements under the Internal Revenue Code or other applicable laws or requirements with respect to such plans.

The Exchange is also proposing to retain its existing exception for inducement grants to new employees (including a previous employee following a bonafide period of non-employment by the listed company), including grants to new employees in connection with a merger or acquisition. The Exchange is also proposing to remove the existing restriction which limits such grants to five percent of the company's outstanding common stock, which is in conformance with recently approved New York Stock Exchange, Inc. ("NYSE") and The Nasdaq Stock Market, Inc. ("Nasdaq") proposals.[9] The Exchange does not believe that shareholder approval is necessary in these circumstances for several reasons. The Exchange believes that inducement grants are often subject to some urgency and the need to obtain shareholder approval could thus be impracticable. Furthermore, the Exchange believes that such grants are negotiated at "arms" length" and do not involve the potential for self-dealing on the part of existing officers and directors. However, the Exchange represents that all inducement grants will be subject to approval by either the issuer's independent compensation committee or a majority of its independent directors. Additionally, the Exchange represents that promptly following an issuance of any employment inducement grant in reliance on this exception, a company must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.

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[6] Section 302 of the Amex *Company Guide* provides that listed companies may not reissue treasury shares without first obtaining shareholder approval, for any purpose where the rules or policies of the Exchange would require such approval had the shares to be issued been previously authorized but unissued. This requirement is unchanged by the current proposal.

[7] The Amex represents that such post-transaction grants can only be made under pre-existing plans that were previously approved by shareholders. Telephone conversation between Claudia Crowley, Vice President, Listing Qualifications, Amex, and Sapna C. Patel, Attorney, Division, Commission, on July 23, 2003.

[8] The Amex notes that any such shares reserved for listing in connection with the transaction would be counted by the Amex in determining whether the transaction involved the issuance of 20% or more of the company's outstanding common stock and thus required shareholder approval under Section 712(b) of the Amex *Company Guide*.

In addition, rights and warrants issued generally to all shareholders will not require shareholder approval, nor would plans that merely provide a convenient way for all security holders to purchase shares on the open market or from the issuer at fair market value on equal terms. The Amex believes that such issuances do not raise the same concerns regarding self-dealing and dilution as stock option plans.

Further, the Exchange proposes to require the issuer to notify the Exchange in writing when it uses any of the exceptions to the shareholder approval requirement contained in Section 711 of the Amex *Company Guide*, and such grants are also subject to Part 3 of the Amex *Company Guide* with respect to the requirements applicable to the additional listing of the underlying shares.

The Exchange also proposes to delete the existing provision of Section 711 of the Amex *Company Guide*, which contains an exception from the shareholder approval requirement for an option plan that does not authorize the issuance to officers, directors or key employees of more than five percent of outstanding common stock in any one year (provided all such arrangements adopted without shareholder approval in any five year period do not authorize the issuance of more than ten percent of outstanding common stock), and which governs participation by controlling shareholders, officers, directors and key employees in discounted private placements.[10]

Finally, the Exchange notes that the Commission has asked the Amex to adopt a rule similar to the NYSE's rule prohibiting members and member organizations from giving a proxy to vote without instructions from beneficial owners when the matter to be voted on authorizes the implementation of any equity compensation plan, or any material revision to the terms of any existing equity compensation plan.[11] The Amex has consented to reconsidering this issue.[12]

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6 of the Act[13] in general and furthers the objectives of Section 6(b)(5)[14] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2003–42 and should be submitted by November 6, 2003.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the Amex's proposal, as amended, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b) of the Act.[15] Specifically, the Commission finds that approval of the Amex's proposal, as amended, is consistent with Section 6(b)(5) of the Act[16] in that it is designed to, among other things, facilitate transactions in securities; to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general, to protect investors and the public interest, and does not permit unfair discrimination among issuers.

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[9] *See* Securities Exchange Act Release No. 48108 (June 30, 2003), 68 FR 39995 (July 3, 2003) (order approving File Nos. SR–NYSE–2002–46 and SR–NASD–2002–140). *See* also Section 303A(8) of the NYSE's Listed *Company Manual*; NASD Rule 4350(i) and IM–4350–5; and File No. SR–NASD–2003–130.

[10] The Exchange has submitted a separate rule change proposal (SR–Amex–2003–70) to amend Section 713 of the Amex *Company Guide* to reincorporate this policy solely in the context of discounted private placements. The Commission notes that this separate proposed rule change filed by the Amex is currently pending before the Commission and has not been approved.

[11] *See* NYSE Rule 452 and Section 402.08 of the NYSE's *Listed Company Manual.*

[12] Telephone conversation between Claudia Crowley, Vice President, Listing Qualifications, Amex, and Sapna C. Patel, Special Counsel, Division, Commission, on October 2, 2003. The Commission notes that equity compensation plans have become an important issue for shareholders. Because of the potential for dilution from such issuances, the Commission believes that shareholders should be making the determination rather than brokers on their behalf. The Commission further notes that, generally under Amex rules, only matters that are considered routine are allowed to be voted on by a broker on behalf of a beneficial owner. Because of the recent significance and concern about equity compensation plans, the Commission strongly urges the Amex to designate that shareholder approval of equity compensation plans is not a routine matter and must be voted on by the beneficial owner.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b). In approving the Amex's proposal, as amended, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(5).

The Commission has long encouraged exchanges to adopt and strengthen their corporate governance listing standards in order to, among other things, restore investor confidence in the national marketplace. The Commission believes that the Amex's amended proposal, which requires shareholder approval of equity compensation plans and which follows the Commission's approval of similar proposals by the NYSE and Nasdaq,[17] is the first step under this directive because it should have the effect of safeguarding the interests of shareholders, while placing certain restrictions on Amex-listed companies.

In addition, the Commission notes that the Amex's proposal, as amended, is similar and almost identical to proposals by NYSE and Nasdaq requiring shareholder approval of equity compensation plans that have previously been approved by the Commission.[18] The Commission believes that it has already considered and addressed the issues that may be raised by the Amex's proposal when it approved the NYSE and Nasdaq's proposals. The Commission notes that approval of the Amex's proposal, as amended, will conform Amex's shareholder approval requirements for equity compensation plans with those of the NYSE and Nasdaq, and will immediately impose the same requirements on Amex issuers as those imposed upon NYSE and Nasdaq issuers. The adoption of these standards by the Amex is an important step to ensure that issuers will not be able to avoid shareholder approval requirements for equity compensation plans based on their listed marketplace.

### *A. Exception From Shareholder Approval for Inducement Grants*

The Commission believes that the requirement that the issuance of all inducement grants be subject to review by either the issuer's independent compensation committee or a majority of the board's independent directors, under the Amex's amended proposal, should prevent abuse of this exception from shareholder approval. The Commission notes that the Amex is proposing to include a requirement, similar to the requirement under NYSE's recently approved shareholder approval rule, that, promptly following the grant of any inducement award, companies must disclose in a press release the material terms of the award, including the recipient(s) of the award and the number of shares involved.[19] The Commission notes that the Amex is also proposing a requirement, similar to the requirements under the NYSE and Nasdaq's recently approved shareholder approval rules,[20] that an issuer must notify it in writing when it uses this exception, and/or any other exception, from its shareholder approval requirement. The Commission believes that these disclosure and notification requirements will provide transparency to investors and should reduce the potential for abuse of this exception for inducement grants.

In addition, the Amex proposes to limit its exception for inducement grants to new employees or to previous employees being rehired after a bona fide period of interruption of employment, and to new employees in connection with an acquisition or merger. The Commission believes that these limitations should help to prevent the inducement exception from being used inappropriately.

### *B. Exception From Shareholder Approval for Mergers and Acquisitions*

The Commission notes that the Amex's exception from shareholder approval for mergers and acquisitions contains safeguards that should prevent abuse in this area. First, only pre-existing plans that were previously approved by the acquired company's shareholders would be available to the listed company for post-transactional grants. In addition, shares under those previously approved plans could not be granted to individuals who were employed, immediately before the transaction, by the post-transaction listed company or its subsidiaries. The Commission also notes that, under both the Amex's proposal, as amended, any shares reserved for listing in connection with a merger or acquisition pursuant to this exception would be counted by the Amex in determining whether the transaction involved the issuance of 20% or more of the company's outstanding common stock, thereby requiring shareholder approval under Section 712(b) of the Amex *Company Guide*. Finally, the Commission notes that the Amex proposes an additional requirement that an issuer must notify it in writing when it uses this exception, and/or any other exception, from its shareholder approval requirement. Based on the above, the Commission believes that the Amex has provided measures to ensure that the exception for mergers and acquisitions is only used in limited circumstances, which should help reduce the potential for dilution of shareholder interests.

### *C. Exception From Shareholder Approval for Tax Qualified and Parallel Nonqualified Plans*

The Commission believes that, given the extensive government regulation—the Internal Revenue Code and Treasury regulations—for tax qualified plans and the general limitations associated with parallel nonqualified plans, shareholders should not experience significant dilution as a result of this exception. In addition, the Commission notes that the Amex proposes to add a limitation under this exception that a plan would not be considered a nonqualified parallel under its proposal if employees who are participants in such plans receive employer contributions under the plans in excess of 25% of the participants' cash compensation. The Commission further notes that the Amex proposes an additional requirement that an issuer must notify it in writing when it uses this exception, and/or any other exception, from its shareholder approval requirement. The Commission believes that, taken together, these limitations should reduce concerns regarding abuse of this exception from the shareholder approval requirements.

In addition, the Commission notes that, similar to the exemption under Section 303A(8) of the NYSE's *Listed Company Manual*, the Amex proposes to adopt an exception from the shareholder approval requirements for an equity compensation plan that provides non-U.S. employees with substantially the same benefits as a comparable tax qualified, non-discriminatory employee benefit plan or parallel nonqualified plan that the issuer provides to its U.S. employees, but for features necessary to comply with applicable foreign tax law. The Commission believes that this change will conform Amex's shareholder approval rule to that of the NYSE and will provide greater clarity for issuers regarding tax qualified, non-discriminatory employee benefit plans and parallel nonqualified plans for their non-U.S. employees.

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[17] *See supra* note 9.

[18] *See supra* note 9.

[19] This disclosure would, of course, be in addition to any information that is required to be disclosed in annual reports filed with the Commission. For example, Item 201(d) of Regulation S–K [17 CFR 229.201(d)] and Item 201(d) of Regulation S–B [17 CFR 228.201(d)] require issuers to present—in their annual reports on Form 10–K or Form 10–KSB—separate, tabular disclosure concerning equity compensation plans that have been approved by shareholders and equity compensation plans that have not been approved by shareholders.

[20] *See* Section 303A(8) of the NYSE's *Listed Company Manual* and NASD Rules 4310(c)(17)(A) and 4320(e)(15)(A).

*D. Material Amendments to Plans*

The Commission notes that the Amex proposes to provide a non-exclusive list, similar to lists found in the NYSE and Nasdaq's shareholder approval rules,[21] as to what constitutes a material amendment to a plan. As noted above, material amendments to plans will require shareholder approval under Amex rules. A material amendment under the Amex proposal, as amended, would include, but is not limited to: A material increase in the number of shares to be issued under the plan (other than to reflect a reorganization, stock split, merger, spinoff or similar transaction); a material increase in benefits to participants, including any material change to (1) permit a repricing (or decrease in exercise price) of outstanding options, (2) reduce the price at which shares or options to purchase shares may be offered, or (3) extend the duration of the plan; a material expansion of the class of participants eligible to participate in the plan; an expansion of the type of options or awards available under the plan. The Amex's proposal, as amended, also describes what would constitute a material amendment for plans containing a formula for automatic increases (such as evergreen plans) and automatic grants requiring shareholder approval.

The Commission believes that the Amex's non-exclusive list of what would constitute a material amendment to a plan provides companies with clarity and guidance for when certain amendments to plans would require shareholder approval. The Commission also believes that the Amex's proposal to conform its non-exclusive list with the NYSE and Nasdaq's rules on material amendments/revisions should help to ensure that the concept of material amendments is consistent among the markets so that differences between the markets cannot be abused.

*E. Repricing of Plans*

The Commission notes that, under the Amex's proposal, as amended, if a plan is amended to permit repricing, such an amendment would be considered a material amendment to a plan requiring shareholder approval. In addition, the Amex recommended in its proposal that plans meant to permit repricing should explicitly and clearly state that repricing is permitted.

The Commission believes that the Amex's proposal, as amended, should benefit shareholders by ensuring that companies cannot do a repricing of options, which can have a dilutive effect on shares, without explicit shareholder approval of such provisions and their terms. The Commission also believes that the Amex's approach to repricings is similar to the NYSE and Nasdaq's respective approaches to repricings, and should offer companies clarity and guidance as to when a change in a plan regarding the repricing of options would trigger a shareholder approval requirement.

*F. Evergreen or Formula Plans and Plans Without a Formula or Limit on the Number of Shares Available*

The Commission notes the Amex's proposal, as amended, provides guidance for the treatment of evergreen/formula plans. More specifically, under the Amex's proposal, as amended, if a plan contains a formula for automatic increases in the shares available or for automatic grants pursuant to a formula, such plans cannot have a term in excess of ten years unless shareholder approval is obtained every ten years. In addition, under the Amex's proposal, as amended, if a plan contains no limit on the number of shares available and is not a formula plan, then each grant under the plan will require separate shareholder approval. Furthermore, the Amex's proposal, as amended, provides that a requirement that grants be made out of treasury or repurchased shares will not alleviate the need for shareholder approval for additional grants.[22]

The Commission believes that these provisions should help to ensure that certain terms of a plan cannot be drafted so broad as to avoid shareholder scrutiny and approval. The Commission also believes that Amex's proposed rules relating to the treatment of evergreen/formula plans and plans that do not contain a formula or place a limit on the number of shares available should provide more clarity and transparency to issuers as to when shareholder approval would be required for such plans. Finally, the Commission believes that the provision ensuring that treasury and repurchased shares cannot be used to avoid these additional shareholder approval requirements strengthens the proposal and ensures that companies cannot avoid compliance with the rule.

*G. Miscellaneous Provisions and Other Items*

The Commission notes that the Amex's amended proposal—similar to the NYSE and Nasdaq's recently approved shareholder approval rules[23]—incorporates the term "equity compensation" and proposes that plans that merely provide a convenient way to purchase shares in the open market or from the issuer at fair market price on equal terms to all security holders would not require shareholder approval. The Commission believes that the Amex's proposal, as amended, is consistent with the NYSE and Nasdaq's rules in this area and should provide greater clarity with respect to which plans would and would not require shareholder approval.

The Commission notes that the Amex's proposal, as amended, provides that pre-existing plans, which were adopted prior to the SEC's approval of the Amex's proposal, would essentially be "grandfathered" and would not require shareholder approval unless the plans were materially amended. The Commission believes that this clarification should provide companies with guidance as to which plans would be subject to the new Amex shareholder approval requirements.

Finally, the Commission urges the Amex to quickly adopt a standard prohibiting discretionary broker voting of equity compensation plans. NASD rules do not provide for broker voting on any matters, and NYSE rules prohibit broker voting on equity compensation plans. In its approval of the NYSE and Nasdaq proposals, the Commission considered the impact on smaller issuers, such as those listed on Nasdaq and the Amex, in response to the comments received on this issue.[24] The Commission believes that the benefit of ensuring that the votes reflect the views of beneficial shareholders on equity compensation plans outweighs the potential difficulties in obtaining the vote, and, therefore, strongly recommends that the Amex quickly adopt a prohibition on broker voting of equity compensation plans.[25]

*H. Summary*

Overall, the Commission believes that the Amex's proposal, as amended, is similar to the NYSE and Nasdaq's recently approved shareholder approval rules.[26] The Commission therefore believes that the Amex's proposal, as amended, should provide for more clear and uniform standards for shareholder approval of equity compensation plans. The Commission notes that, even with the availability of the proposed limited exceptions to shareholder approval under the Amex's proposal, as amended, shareholder approval under the new standards would be required in more circumstances than under existing Amex rules. The Commission further notes that the Amex proposes to adopt a requirement that an issuer must notify it in writing when it uses one of the exceptions from the shareholder approval requirements. The Commission believes that such a requirement, coupled with the additional disclosure requirements for inducement grants, should reduce the potential for abuse of any of the exceptions.[27]

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[21] *See supra* note 9.

[22] *See also supra* note 8.

[23] *See supra* note 9.

[24] *See also supra* notes 9 and 11.

[25] *See also supra* note 12 and accompanying text.

[26] *See supra* note 9.

The Commission believes that the Amex's proposal, as amended, which is similar to the NYSE's shareholder approval rule and almost identical to Nasdaq's shareholder approval rule,[28] sets a consistent, minimum standard for shareholder approval of equity compensation plans. The Commission believes that the Amex's proposal, as amended, should help to ensure that companies will not make listing decisions simply to avoid shareholder approval requirements for equity compensation plans and should provide shareholders with greater protection from the potential dilutive effect of equity compensation plans. Based on the above, the Commission finds that the Amex's proposal, as amended, should help to protect investors, are in the public interest, and do not unfairly discriminate among issuers, consistent with Sections 6(b) of the Act.[29] The Commission therefore finds the Amex's proposal, as amended, to be consistent with the Act and the rules and regulations thereunder.

## V. Accelerated Approval of the Amex's Proposal and Amendment Nos. 1, 2 and 3

The Commission finds good cause for approving the Amex's proposal, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the Amex's proposal, as amended, is similar to the NYSE's proposal and almost identical to the Nasdaq's proposal requiring shareholder approval of equity compensation plans. Both the NYSE and Nasdaq proposals were published for comment in the **Federal Register** and recently approved by the Commission.[30] The Commission believes that it already considered and addressed the issues that may be raised by the Amex's proposal in its approval of the NYSE and Nasdaq's proposals.[31]

The Commission believes that accelerated approval of the Amex's proposal, as amended, is essential to allow for immediate harmonization of, and consistency in, the shareholder approval requirements for equity compensation plans between the Amex, the NYSE, and Nasdaq. This will prevent issuers from making listing decisions based on differences in self-regulatory organization shareholder approval requirements and should provide equal investor protection to shareholders on the dilutive effects of plans irrespective of where the security trades. The Commission further believes that making the Amex's new shareholder approval rules effective upon Commission approval will immediately impose the same requirements on Amex issuers as those imposed upon NYSE and Nasdaq issuers. Based on the above, the Commission finds good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act[32] to approve the Amex's proposal, as amended, on an accelerated basis.

## VI. Conclusion

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[33] that the proposed rule change (SR–Amex–2003–42) and Amendment Nos. 1, 2 and 3 are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[34]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–26103 Filed 10–15–03; 8:45 am]

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[27] *See also supra* note 19 and accompanying text.

[28] *See supra* note 9.

[29] 15 U.S.C. 78f(b)(5).

[30] *See* Securities Exchange Act Release No. 46620 (October 8, 2002), 67 FR 63486 (notice of the NYSE's proposal). The Commission also published a correction to the notice of the NYSE's proposal. *See* Securities Exchange Act Release No. 44620A (October 21, 2002), 67 FR 65617 (October 25, 2002). *See* Securities Exchange Act Release No. 46649 (October 11, 2002), 67 FR 64173 (notice of Nasdaq's proposal). *See supra* note 9.

[31] Some of the substantive provisions ultimately adopted by the NYSE and Nasdaq, and now being proposed for adoption by the Amex, were in response to these comments. The comments on the NYSE and Nasdaq proposals were also discussed in detail in the Commission's approval order of the NYSE and Nasdaq proposals. *See supra* note 9.

[32] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[33] 15 U.S.C. 78s(b)(2).

[34] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48609; File No. SR–CBOE–2003–22]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Relating to the Limitation of Liability of the Options Clearing Corporation to Exchange Members

October 9, 2003.

## I. Introduction

On May 22, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to add an interpretation to its Rule 6.7. On August 12, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on August 19, 2003.[4] On September 10, 2003, the CBOE submitted Amendment No. 2 to the proposed rule change.[5] On October 6, 2003, the CBOE submitted Amendment No. 3 to the proposed rule change.[6]

The Commission received no comments on the proposed rule change, as amended. This order approves the proposed rule change, as amended, and issues notice of, and grants accelerated approval to, Amendment No. 3.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from David Doherty, Attorney, Legal Division, CBOE to Timothy Fox, Attorney, Division of Market Regulation ("Division"), Commission, dated August 11, 2003 ("Amendment No. 1"). In Amendment No. 1, the CBOE replaced the phrase "persons associated therewith" with the phrase "associated persons" in proposed Interpretation .04 to CBOE Rule 6.7.

[4] Securities Exchange Act Release No. 48320 (August 12, 2003), 68 FR 49827.

[5] *See* letter from David Doherty, Attorney, Legal Division, CBOE to Timothy Fox, Attorney, Division, Commission, dated September 9, 2003 ("Amendment No. 2"). In Amendment No. 2, the CBOE deleted the provisions of proposed Interpretation .04 to CBOE Rule 6.7 that provided that the Options Intermarket Linkage ("Linkage") is a facility or service afforded by the Exchange for the purposes of CBOE Rule 6.7. Further, the CBOE proposed that the Exchange would have no liability to its members with respect to the use, non-use or inability to use the Linkage.

[6] *See* letter from David Doherty, Attorney, Legal Division, CBOE to Jennifer Colihan, Special Counsel, Division, Commission, dated October 3, 2003 ("Amendment No. 3"). In Amendment No. 3, which superseded and replaced Amendment No. 2 in its entirety, CBOE deleted the provisions of proposed Interpretation .04 to CBOE Rule 6.7 that provided that Linkage is a facility or service afforded by the Exchange for the purposes of CBOE Rule 6.7.

## II. Description of the Proposed Rule Change

Pursuant to the Linkage Project and Facilities Management Agreement ("Agreement"),[7] the Linkage Participants, including the Exchange, are required to file a proposed rule change with the Commission to provide the Options Clearing Corporation ("OCC") with limited liability with respect to the members" use of the Linkage. The CBOE represents that it filed this proposed rule change to fulfill its obligation under the Agreement. The CBOE proposes to adopt Interpretation .04 to CBOE Rule 6.7 to limit the liability for the OCC with respect to CBOE members' use of the Linkage.

## III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[8] and, in particular, the requirements of Section 6(b) of the Act[9] and the rules and regulations thereunder. The Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of the Exchange be designed to foster cooperation and coordination with persons engaged in regulation, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission believes that this proposed rule change, as amended, should foster cooperation and should promote a relationship between the CBOE and the OCC that is conducive to the effective operation of the Linkage.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[11] for approving Amendment No. 3 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 3, the CBOE proposes to eliminate a provision from proposed Interpretation .04 to CBOE Rule 6.7 that characterized Linkage as a facility or service of the Exchange for purposes of Exchange Rule 6.7. The Commission believes that removing this provision makes the CBOE's rules consistent with the rules of some of the other Exchanges recently approved by the Commission.[12]

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2003–22 and should be submitted by November 6, 2003.

## V. Conclusion

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change, as amended, (File No. SR–CBOE–2003–22) is approved, and Amendment No. 3 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–26206 Filed 10–15–03; 8:45 am]

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[7] Linkage Project and Facilities Management Agreement (January 30, 2003).

[8] In approving this proposed rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] *See* Exchange Act Release Nos. 48530 (September 24, 2003), 68 FR 56357 (September 30, 2003) (SR–ISE–2003–15), and 48531 (September 24, 2003), 68 FR 56370 (SR–Phlx–2003–43).

[13] *Id.*

[14] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48600, File No. SR–CBOE–2003–44]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Chicago Board Options Exchange, Inc., To Amend a Rule Regarding Nullification and Adjustment of Transactions

October 7, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 7, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is granting accelerated approval of the proposed rule change, which will be in effect on a temporary basis.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its obvious error rule, CBOE Rule 6.25, on a pilot basis. Proposed new language is *italicized.*

* * * * *

Rule 6.25 Nullification and Adjustment of Electronic Transactions

(a)–(e) No Change.

Interpretations and Policies.......

*.03 (a) Trades may be adjusted or nullified when the execution price of the trade is higher or lower than the Theoretical Price for the series by an amount equal to at least two times the maximum bid/ask spread allowed for the option under Rule 8.7(b)(4), so long as such amount is $0.50 or more or $0.25 or more for options priced under $3. For purposes of this subparagraph, the Theoretical Price of an option is the last bid (offer) price, just prior to the trade, from the exchange providing the most volume in the option with respect to an erroneous bid (offer) entered on the Exchange. If there are no quotes for comparison purposes, then the Theoretical Price of an option is as determined by two Trading Officials. CBOE will use the volume figures for*

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*that day (up to the time of the transaction in question) to determine which exchange provides the most volume. If CBOE is the volume leader, it will use volume figures from the exchange with the next highest volume level.*

*(b) This Interpretation expires upon final approval of SR–CBOE–2001–04 or December 1, 2003, whichever occurs earlier.*

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## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On September 29, 2003, the Commission granted partial accelerated approval on a pilot basis of a provision of CBOE's proposed obvious error rule that allows for the adjustment and nullification of trades resulting from verifiable disruptions or malfunctions of Exchange systems.[3] According to CBOE, while approval of this section provides a degree of relief to market makers and Designate Primary Market Makers ("DPMs") who, through no fault of their own, execute trades electronically based on erroneous prices, it does not provide any protection against transactions executed at obviously erroneous prices that are not the result of Exchange systems disruptions. The purpose of this proposal, therefore, is to request accelerated approval, of new temporary Interpretation .03 to CBOE Rule 6.25, which is substantially similar to the SBT trade nullification rule (CBOE Rule 43.5) provision relating to obvious pricing errors, as described below.[4]

Proposed Interpretation .03 to CBOE Rule 6.25 will allow for the adjustment or nullification of trades when the execution price of the trade is higher or lower than the "Theoretical Price" for the series by an amount equal to at least two times the maximum bid/ask spread allowed for the option under CBOE Rule 8.7(b)(4), provided the amount is $0.50 or more or $0.25 or more for options priced under $3. For purposes of this Interpretation, the Theoretical Price of an option is defined as the last bid (offer) price, just prior to the trade, from the exchange providing the most volume in the option with respect to an erroneous bid (offer) entered on the Exchange. If there are no quotes for comparison purposes, then the Theoretical Price of an option is as determined by two Trading Officials. CBOE will look to the volume figures for that day, up to the time of the transaction in question, to determine which exchange provides the most volume. If CBOE is the volume leader, it will use volume figures from the exchange with the next highest volume level.

The Exchange represents that approval is both necessary and justified for several reasons. First, as indicated above, the Commission has already approved a substantially similar rule provision in the context of CBOE's SBT. The SBT rules were published for comment and the Commission received no negative comments. Second, and most important, the rule is necessary from a protective standpoint: trades executed at obviously erroneous prices can have extreme financial ramifications on a market maker and the inability to seek relief for obvious errors imposes a form of strict liability trading upon participants. The Exchange is not requesting relief from errors that do not qualify as obvious, and readily accepts that in some instances the cost of doing business means that market makers must honor trades executed at inaccurate prices. CBOE believes that requiring a market maker to honor trades executed at prices that are not even remotely close to theoretical value, will have nothing but a chilling effect and cause those market participants to stop quoting or reduce their sizes. CBOE notes that both the International Securities Exchange ("ISE") and Pacific Exchange ("PCX") have "clearly erroneous" rules, and CBOE represents that the obvious pricing component that it proposes herein is much more restrictive than either of those Exchanges' rules. According to CBOE, this means that the same trade executed on CBOE and ISE or PCX could be nullified or adjusted on the PCX or ISE while it would stand on CBOE. Accordingly, CBOE believes that competitive forces necessitate this proposal.

The Exchange requests approval of this Interpretation on a temporary basis until the earlier of final Commission approval of File No. SR–CBOE–2001–04 or December 1, 2003. The procedural requirements necessary for implementation of CBOE Rule 6.25 (*i.e.*, Sections (b)–(e)) were approved by the Commission on a pilot basis on September 29, 2003 and will be utilized to implement proposed Interpretation .03.

2. Statutory Basis

By providing for the adjustment or nullification of trades executed at clearly erroneous prices, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[6] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

CBOE did not solicit or receive written comments on the proposed rule change.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2003–44 and should be submitted by November 6, 2003.

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[3] *See* Securities Exchange Act Release No. 48556 (September 29, 2003), 68 FR 57716 (October 6, 2003), (File No. SR–CBOE–2001–04). The Exchange's proposed obvious error rule, CBOE Rule 6.25, defines six instances that qualify as "obvious errors" and hence are subject to adjustment or nullification. The Commission approved on a temporary basis until December 1, 2003 the following sections of CBOE Rule 6.25: (a)(3) and (b)–(e). The following sections of CBOE Rule 6.25 have not yet been approved: (a)(1), (2), (4)–(6) and Interpretations .01 and .02.

[4] The Commission approved CBOE Rule 43.5 as part of the Exchange's screen-based trading ("SBT") rules. *See* Securities Exchange Act Release No. 47628 (April 3, 2003), 68 FR 17697 (April 10, 2003) (File No. SR–CBOE–2000–55). CBOE represents that SBT rules have no application to trading that is not effected through the SBT.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

### IV. Commission's Findings and Order Granting Accelerated Approval on a Pilot Basis

After careful review, the Commission finds that proposed Interpretation .03 to CBOE Rule 6.25 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed Interpretation is consistent with the requirements of Section 6(b)(5)[8] of the Act, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principals of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Commission considers that in most circumstances trades that are executed between parties should be honored. On rare occasions, the price of the executed trade is such that execution of a trade at that particular price indicates that an "obvious error" may exist, suggesting that it is unrealistic to expect that the parties to the trade had come to a meeting of the minds regarding the terms of the transaction. In the Commission's view, the determination of whether such an "obvious error" has occurred should be based on specific and objective criteria and subject to specific and objective procedures. The Commission believes that CBOE's proposed Interpretation .03 to CBOE Rule 6.25 establishes such specific and objective criteria for determining when a trade may involve an "obvious price error," and thus may be adjusted or nullified in a fair and non-discriminatory manner. The Commission notes that if there are no quotes for comparison, CBOE has specified that trading officials may determine the Theoretical Price, which would then be used to adjust or nullify transactions resulting from an obvious price error.

The Commission finds good cause, pursuant to Section 6(b)(5)[9] and Section 19(b)[10] thnsp: of the Act, to accelerate approval of Interpretation .03 to CBOE Rule 6.25 on a pilot basis, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the provisions of the proposal are substantially similar to CBOE's SBT obvious price error rule, CBOE Rule 43.5(b)(5), which the Commission has approved.[11] The Commission also notes that it has recently approved "obvious error" rules for ISE and PCX that provide procedures for the nullification or adjustment of a trade.[12] Furthermore, the provisions of the proposed rule change would be in effect on a temporary basis until the earlier of approval of File No. SR–CBOE–2001–04 or December 1, 2003, whichever occurs earlier. Finally, the Commission notes that the procedures to implement Interpretation .03 to CBOE Rule 6.25 were adopted on a pilot basis in Securities Exchange Act Release No. 48556.[13] The Commission finds, therefore, that granting accelerated approval of the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**, is appropriate and consistent with Section 6(b)(5)[14] of the Act.

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[15] that Interpretation .03 to CBOE Rule 6.25, as set forth in the proposed rule change be and hereby is approved on an accelerated basis. Interpretation .03 to CBOE Rule 6.25 specifies that the Interpretation will expire upon final Commission approval of File No. SR–CBOE–2001–04 or December 1, 2003, whichever occurs earlier.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–26207 Filed 10–15–03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48606; File No. SR–NASD–2003–134]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Amend Rule 4710 To Allow Nasdaq National Market Execution System Order Entry Firms To Automatically Internalize in SuperMontage

October 8, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 22, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. On September 26, 2003, Nasdaq amended the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend Rule 4710 to allow the Nasdaq National Market Execution System ("NNMS" or "SuperMontage") to automatically match any non-directed buy and sell quotes/orders entered by an NNMS Order Entry Firm against the quotes/orders of that same NNMS Order Entry Firm on the other side of the market if such a quote/order on the other side of the market is at the best bid/offer in Nasdaq. Nasdaq expects to implement the proposed rule change within 60 days after approval by the Commission. The text of the proposed rule change is set forth below. Proposed new language is in italic; proposed deletions are in [brackets].

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[7] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b).

[11] *See* Securities Exchange Act Release No. 47628 (April 3, 2003), 68 FR 17697 (April 10, 2003) (File No. SR–CBOE–00–55).

[12] *See* Securities Exchange Act Release No. 48538 (September 25, 2003), 68 FR 56858 (October 2, 2003) (File No. SR–PCX–2002–01); and Securities Exchange Act Release No. 48097 (June 26, 2003), 68 FR 39604 (July 2, 2003) (File No. SR–ISE–2003–10).

[13] *See supra* note 3.

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 25, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq expands upon the purpose of the proposed rule change.

4710. Participant Obligations in NNMS

(a) No change.

(b) Non-Directed Orders

(1) No change.

(A) No change.

(B) No change.

(i) through (iii) No change.

(iv) Exceptions—The following exceptions shall apply to the above execution parameters:

(a) If a Nasdaq Quoting Market Participant *or NNMS Order Entry Firm* enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the NNMS will first attempt to match off the order against the Nasdaq Quoting Market Participant's *or NNMS Order Entry Firm's* own Quote/Order if the participant is at the best bid/best offer in Nasdaq. [This exception shall not apply to Non-Directed Orders entered by NNMS Order Entry Firms.] Nasdaq Quoting Market Participants *and NNMS Order Entry Firms* may [, and NNMS Order Entry Firms must,] avoid any attempted automatic system matching permitted by this paragraph through the use of an anti-internalization qualifier (AIQ) quote/order flag containing the following values: "Y" or "I", subject to the following restrictions:

Y—if the Y value is selected, the system will execute the flagged quote/order solely against attributable and non-attributable quotes/orders (displayed and reserve) of Quoting Market Participants and NNMS Order Entry Firms other than the party entering the AIQ "Y" flagged quote/order. If the only available trading interest is that of the same party that entered the AIQ "Y" flagged quote/order, the system will not execute at an inferior price level, and will instead return the latest entered of those interacting quote/orders (or unexecuted portions thereof) to the entering party.

I—if the I value is selected, the system will execute against all available trading interest, including the quote/orders of the NNMS Order Entry Firm or Nasdaq Quoting Market Participant that entered the AIQ "I" flagged order, based exclusively on the execution algorithm selected when entering the AIQ I flagged quote/order.

[The I value described above shall be available for the use of Nasdaq Quoting Market Participants on May 12, 2003.]

(b) No change.

(2) through (8) No change.

(c) through (e) No change.

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### 1. Purpose

Currently, SuperMontage rules provide a general exception to the system's execution algorithms that allow non-directed orders entered by NNMS Market Makers and NNMS ECNs to first match off against any quotes/order previously entered by that same party on the opposite side of the market if that previously entered quote/order is at the best bid/offer in Nasdaq.[4] Market participants can voluntarily avoid or control this automatic matching functionality through use of anti-internalization qualifiers that will either skip quotes/orders entered by them on the opposite side of the market or execute against them based solely on the execution algorithm selected.

NNMS Order Entry Firms are currently prohibited from using this automatic matching functionality and are instead required to enter all non-directed orders with an anti-internalization qualifier that prevents an automatic match. Nasdaq represents that, in response to requests from NNMS Order Entry Firms, it seeks to give NNMS Order Entry Firms the same capability as all other NNMS users to have their non-directed orders match off against quote/orders previously entered by them on the opposite side of the market if those previously entered quotes/orders are at the best bid or offer price in Nasdaq, as appropriate. Like all other system users, NNMS Order Entry Firms would have the voluntary ability to prohibit or control any automatic matching through the use of an anti-internalization qualifier. Nasdaq believes that providing NNMS Order Entry Firms with the opportunity to have their quotes/orders on opposite sides of the market match off against each other will provide an additional incentive for such firms to post increased liquidity in the SuperMontage system, thereby benefiting all users.[5]

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[6] in general, and with Section 15A(b)(6) of the Act,[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with person engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

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[4] Nasdaq clarified that the rules governing UTP Exchanges do not explicitly permit this function, although NASD Rule 4710(e) contemplates that such a function may be provided by Nasdaq to a UTP Exchange pursuant to contract. Consequently, at the request of Nasdaq, Commission staff has removed a reference to UTP Exchanges contained in the original filing. Telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and Ann E. Leddy, Attorney, Division, Commission (October 8, 2003).

[5] *See* Amendment No. 1, *supra* note 3.

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(6).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, as amended, or

B. Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–134 and should be submitted by November 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–26099 Filed 10–15–03; 8:45 am]

**BILLING CODE 8010–01–P**

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[8] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48603; File No. SR–PCX–2003–48]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto, by the Pacific Exchange, Inc. Relating to the Establishment of a New Total Order Imbalance Indicator

October 8, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on September 22, 2003, the Pacific Exchange, Inc. ("PCX") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. On September 30, 2003, the PCX submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its rules governing the Archipelago Exchange facility ("ArcaEx"), the equities trading facility of PCXE, by: (1) amending PCXE Rule 1.1(q) to add the definition of Total Imbalance and Market Imbalance; and (2) amending PCXE Rule 7.35 to add a new Total Imbalance indicator to its Market Order Auction and Trading Halt Auction display.

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics*.

* * * * *

**PCX Equities, Inc.**

Rule 1—Definitions

Rule 1.1—(No change).

(a)–(p)—(No change).

(q) For the purposes of the Opening Auction, the Market Order Auction and the Trading Halt Auction, as the case may be[,]*:*

*(1)* the term "Imbalance" shall mean the number of buy or sell shares that [can not] *cannot* be matched with other shares at the Indicative Match Price at any given time.

*(A) the term "Total Imbalance" shall mean the net Imbalance of buy (sell) orders at the Indicative Match Price for all orders that are eligible for execution during the applicable auction.*

*(B) the term "Market Imbalance" shall mean the imbalance of any remaining buy (sell) Market Orders that are not matched for execution during the applicable auction.*

(r)–(aaa)—No change.

* * * * *

Rule 7—Equities Trading

Opening Session Auctions

Rule 7.35 (No change).

(a)–(b)—(No change.)

(c) Market Order Auction.

(1) Publication of Indicative Match Price and Imbalances

(A) Beginning at 5:00 am (Pacific Time), and *updated real-time thereafter,* [various times thereafter as determined from time to time by the Corporation,] the Indicative Match Price of the Market Order Auction and the volume of *Market and Limit orders* available to trade at such price, *and the Market and Total Imbalance associated with the Market Order Auction, if any,* shall be published via electronic means [as determined from time to time by the Corporation. If such a price does not exist (*i.e.*, there is an Imbalance of market orders), the Archipelago Exchange shall indicate via electronic means that an Indicative Match Price does not exist]. *Market orders shall be included for purposes of calculating the Total Imbalance and Market Imbalance. Limit orders shall only be included in the Total Imbalance calculations.*

*Example 1:*

*(1) Market order to buy 5000 shares;*

*(2) Auction-Only Limit Order to sell 1000 at 50;*

*(3) Limit order to sell 1000 at 50.50; and*

*(4) Limit order to sell 500 at 50.75.*

*The Archipelago Exchange will publish an Indicative Match Price of 50.75, a volume of 2500 shares, a buy Market Imbalance of 2500 shares, and a Total Imbalance of 2500 shares.*

*Example 2:*

*(1) Market order to buy 3000 shares;*

*(2) Market order to sell 1000 shares;*

*(3) Limit order to sell 1000 shares at 41.00; and*

*(4) Limit order to sell 1000 shares at 41.25.*

*The Archipelago Exchange will publish an Indicative Match Price of*

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Peter D. Bloom, Managing Director, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 29, 2003 ("Amendment No. 1"). In Amendment No. 1, the PCX submitted a new Form 19b–4, which replaced the original filing in its entirety.

*41.25 and a match volume of 3000 shares and will not publish an Imbalance.*

(B) *If an Indicative Match Price does not exist, the Archipelago Exchange shall indicate via electronic means that an Indicative Match Price does not exist.* [Beginning at 5:00 am (Pacific Time), and various times thereafter as determined from time to time by the Corporation, the market order Imbalance associated with the Market Order Auction, if any, shall be published via electronic means as determined from time to time by the Corporation.]

(C) If the difference between the Indicative Match Price and the closing price of the previous trading day's normal market hours, as determined by the Consolidated Tape, is equal to or greater than a pre-determined amount, as determined from time to time by the Corporation, the Archipelago Exchange will assign a "SIG" designator to such Indicative Match Price and publish such designator via electronic means as determined from time to time by the Corporation.

[Example:

(1) Market order to buy 5000 shares;

(2) Auction-Only Limit Order to sell 1000 at 50;

(3) Limit order to sell 1000 at 50.50; and

(4) Limit order to sell 500 at 50.75.

The Archipelago Exchange will publish an Indicative Match Price of 50.75, a volume of 2500 shares, and a buy Imbalance of 2500 shares.]

[Example:

(1) Market order to buy 3000 shares;

(2) Market order to sell 1000;

(3) Limit order to sell 1000 at 41.00; and

(4) Limit order to sell 1000 at 41.25.

The Archipelago Exchange will publish an Indicative Match Price of 41.25 and a volume of 3000 shares and will not publish an Imbalance.]

(2)–(3)—(No change).

(d) Re-Opening After Trading Halts. To re-open trading in a security following a trading halt in that security, the Archipelago Exchange shall conduct a Trading Halt Auction, as described below:

(1)—(No change).

(2) Publication of Indicative Match Price and Imbalances.

(A) Immediately after trading is halted in a security, and *updated real-time thereafter* [various times thereafter as determined from time to time by the Corporation], the Indicative Match Price of the Trading Halt Auction and the volume available to trade at such price, shall be published via electronic means [as determined from time to time by the Corporation]. If such a price does not exist [(*i.e.*, there is an Imbalance of market orders)], the Archipelago Exchange shall indicate via electronic means that an Indicative Match Price does not exist.

(B) Immediately after trading is halted in a security, and [various times thereafter as determined from time to time by the Corporation] *updated real-time thereafter,* the [m]Market [order] *and Total* Imbalance associated with the Trading Halt Auction, if any, shall be published via electronic means [as determined from time to time by the Corporation]. *Market orders shall be included for purposes of calculating the Total Imbalance and Market Imbalance. Limit orders shall only be included in the Total Imbalance calculations.*

(C)—(No change).

(3)–(6)—(No change).

(e)–(f)—(No change).

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### 1. Purpose

As part of its continuing efforts to enhance participation on ArcaEx, the PCX is proposing to add a new imbalance indicator to its Market Order Auction and Trading Halt Auction display to reflect the total net imbalance of market and limit orders at the indicative match price. This imbalance indicator will be in addition to the already existing market imbalance indicator that displays the imbalance of unmatched market orders. The PCX believes that the display of the new total imbalance indicator will provide ETP Holders and Sponsored Participants (collectively "Users") with more information regarding auction imbalances. Furthermore, the PCX proposes to add the terms "Total Imbalance" and "Market Imbalance" to PCXE Rule 1.1(q). The PCX is also proposing to amend PCXE Rule 7.35(c) and (d) to clarify that the published Total Imbalance or Market Imbalance (if any exist) may contain market and/or limit orders.

Currently, PCXE Rule 1.1(q) refers to the term "Imbalance." The PCX proposes to amend PCXE Rule 1.1(q) to define the terms "Total Imbalance" and "Market Imbalance" for clarity. Total Imbalance shall mean the net imbalance of buy (sell) orders at the Indicative Match Price for all orders that are eligible for execution during the applicable auction. The term "Market Imbalance" shall mean the imbalance of any remaining buy (sell) Market Orders that are not matched for execution during the applicable auction.

The PCXE's current rules governing the publication of imbalances associated with its Market Order Auction and Trading Halt Auction are set forth in PCXE Rule 7.35. The PCX now proposes to add to PCXE Rule 7.35(c) and (d) a Total Imbalance indicator. The current rule only refers to publishing a Market Imbalance. In order to provide more information about the auction imbalance during the Market Order Auction and Trading Halt Auction, the PCX proposes to also publish the Total Imbalance, if any exists, to reflect the fact that the total size of the order imbalance includes both market and limit orders. The dissemination of this new imbalance indicator does not impact the operation of the existing Market Order Auction or Trading Halt Auction processes as described in PCXE Rule 7.35(c) and (d), respectively.

The PCX believes that the dissemination of the aforementioned imbalance indicators would provide Users with additional information with which to make trading decisions during the auction process. Accordingly, this would facilitate enhanced order interaction and foster price competition. The PCX believes that the proposed rule change, as amended, would provide a more efficient and effective market operation, and would enhance the information available to investors.

#### 2. Statutory Basis

The PCX believes that the proposed rule change, as amended, is consistent with Section 6(b)[4] of the Act, in general, and further the objectives of Section 6(b)(5),[5] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest. In addition, the PCX believes that the proposed rule change, as amended, is consistent with provisions of Section 11A(a)(1)(B) of the Act,[6] which states that new data processing and communications techniques create an opportunity for more efficient and effective market operations.

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[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The PCX does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The PCX neither solicited nor received written comments concerning the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the PCX consents, the Commission will:

(A) by order approve such proposed rule change, as amended; or

(B) institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of such filings will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–48 and should be submitted by November 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–26100 Filed 10–15–03; 8:45 am]

BILLING CODE 8010–01–P

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48598; File No. SR–PCX–2003–46]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Transmission of Identity Orders

October 7, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 5, 2003, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which the PCX has prepared. On September 30, 2003 the PCX submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its rules governing the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE. Specifically, the PCX proposes to offer an identity order feature to its Equities Trading Permit ("ETP") Holders.[4] In accordance with the proposal, an ETP Holder may affirmatively choose, on an order-by-order basis, to display orders with its unique ETP identifier (hereinafter referred to as the "ETPID"). To facilitate the change, the PCX proposes to amend PCXE Rules 7.7(b) ("Transmission of Bids or Offers") and 7.36(b) ("Order Ranking and Display") to clarify and reconcile when ETP Holders may display their identities. The PCX also wishes to make additional changes to PCXE Rule 7.7(a). The text of the proposed rule change is below. Proposed new language is italicized; deletions are in brackets.

* * * * *

Rule 7.7(a). [The names of ETP Holders bidding for or offering securities through the use of the facilities of the Corporation shall not be transmitted from the facilities of the Corporation to a non-holder of an ETP.] No ETP Holder having the right to trade through the facilities of the Corporation and who has been a party to or has knowledge of an execution shall be under obligation to divulge the name of the buying or selling firm in any transaction.

(b) Except as otherwise permitted by these Rules, no ETP Holder shall transmit through the facilities of the Corporation any information regarding a bid, offer, [or] other indication of an order, *or the ETP Holder's identity* to a non-holder of an ETP *or to another ETP Holder* until *permission to disclose and transmit* such bid, offer, [or] other indication of an order, *or the ETP Holder's identity* has been [disclosed and permission to transmit such information has been] obtained from the originating ETP Holder *or the originating ETP Holder affirmatively elects to disclose its identity.*

* * * * *

Order Ranking and Display

Rule 7.36—No change.

(a)(1)–(a)(2)—No change.

(b) Display. *Except as otherwise permitted by Rule 7.7,* [A] *all* orders at all price levels in the Display Order Process of the Arca Book shall be displayed to all Users and other market participants on an anonymous basis.

(c)—No change.

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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[6] 15 U.S.C. 78k(a)(1)(B).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Peter Bloom, Managing Director of Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission dated September 29, 2003 ("Amendment No. 1"). In Amendment No. 1, the PCX replaced its proposed rule change in its entirety.

[4] *See* PCXE Rule 1.1(n) for the definition of "ETP Holder."

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

### 1. Purpose

### A. Introduction

The PCX proposes to offer ETP Holders the ability to display their identities with orders entered into the ArcaEx. The identity order feature would offer an ETP Holder the choice to display its unique ETPID with a specified order. Alternatively, an ETP Holder may choose to remain anonymous.

Any identity orders entered into ArcaEx would be included in the Arca Book data feed that ArcaEx makes available free of charge to Users[5] and other subscribers. Identity orders would also be included in the ArcaEx limit order book that is displayed for free on the ArcaEx Web site.

ArcaEx would process orders designated as identity orders no differently from other orders sent to ArcaEx. PCXE Rules 7.36 (Order Ranking and Display) and 7.37 (Order Execution) set forth the order interaction process for orders entered on the ArcaEx. Orders designated as identity orders would be ranked, displayed, and executed under the same criteria (under PCXE Rules 7.36 and 7.37) as anonymous orders in the ArcaEx. ArcaEx has no capacity limitations on the number of identity orders that could be displayed for an individual security.

The purpose of the identity order feature is to provide more visibility to those ETP Holders who may choose to identify their ETPIDs with their trading interest in a particular security. The PCX believes that the identity order feature would benefit investors by increasing market transparency in an automatic execution venue such as ArcaEx. By providing a mechanism by which ETP Holders could display their identities, ArcaEx hopes to attract more orders and contribute more liquidity to the market while adding to the transparency of trading interest.

### B. Order Interaction

As with all orders entered on ArcaEx, identity orders would be centrally processed for execution by computer, subject to the price, time, and priority rules that govern the automated matching and execution of orders. No ETP Holder has any special control over the timing of an execution or any special order handling advantages on ArcaEx. All Users would see and be privy to the same orders ranked in the ArcaEx Book. No User would have special access to trading interest that is not also available to others on ArcaEx, and all Users would have the equivalent opportunity to receive fills.

An ETP Holder displaying an identity order would be subject to the same rules applicable to the ETP Holder's orders entered on ArcaEx on an anonymous basis.[6] Use of the identity order by ETP Holders would not require registration as a Market Maker[7] on ArcaEx under PCXE rules. Market Maker status is available only to those ETP Holders who seek registration as Market Makers.[8] Only those ETP Holders that seek registration as a Market Makers are required to maintain two-sided markets in return for the benefits of Market Maker status, *e.g.*, the ArcaEx rebates to Market Makers for the execution of "Q Orders"[9] and the ability to obtain exempt credit under Regulation T. ETP Holders that elect to use the identity order would have no commitment to ArcaEx to maintain two-sided identity orders on a continuous basis.

### C. Market Makers

With respect to Market Makers, the PCX's proposal would not alter the responsibilities of Market Makers, nor does it change the manner in which Market Maker orders would be processed and executed within ArcaEx. Market Makers are obligated to enter and maintain continuous, two-sided limit orders in the securities in which they are registered. There would be no limit, however, on the number of orders a Market Maker may enter into ArcaEx, whether anonymous or identity orders. A Market Maker would be able to maintain multiple proprietary orders, including multiple Q Orders in the securities in which were registered. Under the proposal, Market Makers would be permitted to use the identity order feature for any and all of the orders that they are eligible to use. As with any identity order, a Market Maker's ETPID would be displayed in relation to a specified order. A Market Maker may choose to make the Q Order or any other order an identity order.[10]

Whether utilizing anonymous orders or identity orders, Market Makers would remain subject to the rules governing their conduct and the handling of orders. Specifically, PCXE Rule 7.26(a) states that a Market Maker must maintain an information barrier between the market making activities and other business activities, including conducting a public securities business and acting as a General Authorized Trader ("GAT")[11] on ArcaEx. This separation between the Market Making activities of an ETP Holder and the handling of public orders is an important mechanism to separate the Market Maker from knowledge of pending transactions, order flow information, and other sensitive information at other parts of the firm.[12] As long as the Market Maker has an effective system of internal controls that operate to prevent the Market Making desk from obtaining knowledge of customers' limit orders that are received for execution by other business units of the broker-dealer, the Market Maker does not have responsibilities to protect customer limit orders received by other parts of the firm.[13]

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[5] *See* PCXE Rule 1.1(yy) for the definition of "User."

[6] For example, ETP Holders would remain prohibited from trading ahead of customer limit orders pursuant to PCXE Rule 6.16(a), which provides that "[n]o ETP Holder may accept and hold an unexecuted limit order from its customer (whether its own customer or a customer of another ETP Holder) and continue to trade on the Corporation the subject security for its own account at prices that would satisfy the customer's limit order, without executing that limit order; provided, however, that an ETP Holder may negotiate specific terms and conditions applicable to the acceptance of limit orders. * * *"

[7] See PCXE Rule 1.1(u) states that "[t]he term "Market Maker" shall refer to an ETP Holder that acts as a Market Maker pursuant to Rule 7."

[8] PCXE Rule 7.20(a) states that "[n]o ETP Holder shall act as a Market Maker in any security unless such ETP Holder is registered as a Market Maker in such security by the Corporation pursuant to this Rule. * * *" PCXE Rule 7.23 and Rule 7.34(b) set forth the obligations of market makers and apply only to those ETP Holders who are registered as Market Makers. For example, a Market Maker must maintain a two-sided order or "Q Order" in every stock in which the Market Maker is registered.

[9] *See* PCXE Rule 7.31(k) for the definition of "Q Order."

[10] As stated above, ArcaEx has no capacity limitations on the number of identity orders that can be displayed for an individual security.

[11] Rule 1.1(*o*) defines a General Authorized Trader "GAT" to mean "an authorized trader who performs only non-market making activities on behalf of an ETP Holder."

[12] *See* PCXE Rule 7.26(b).

[13] For example, where an ETP Holder has an agency desk and a Market Maker desk, both desks will be permitted to use identity orders. Should an agency desk utilize identity orders to represent customer orders, Market Makers from the same firm would not have responsibilities to protect the customer orders, assuming an appropriate information barrier is in place. Once the agency desk displays an identity order in the ArcaEx limit order book, the price time rules in the automated execution system of the ArcaEx ensure that the

### D. Section 11(a) Under the Act

The PCX believes that the use of identity orders on ArcaEx would not confer ETP Holders any time and place advantages over other orders on ArcaEx. As such, the introduction of identity orders would not change the analysis of Section 11(a) of the Act[14] to the PCX provided to the Commission prior to the approval of ArcaEx.[15] Accordingly, the introduction of the identity order would not change the PCX's conclusion that the order execution algorithm of ArcaEx complies with the requirements of, and satisfies the policy concerns underlying, Section 11(a) of the Act[16] without requiring public customer priority.

Section 11(a) of the Act[17] prohibits a member of a national securities exchange from effecting transactions on the exchange for its own account, the account of an associated person, or an account in which it or an associated person exercises investment discretion (collectively, "covered accounts"), unless an exception applies. In enacting this provision, Congress was concerned about members benefiting in their principal transactions from special "time and place" advantages associated with floor trading—such as the ability to "execute decisions faster than public investors."[18] The Commission, however, has adopted a number of exceptions to the general statutory prohibition for situations in which the principal transactions contribute to the fairness and orderliness of exchange markets or do not reflect any time and place trading advantages. The PCX believes that the use of identity orders on ArcaEx would not alter Rule 11a2–2(T),[19] commonly referred to as the "effect versus execute" rule,[20] which provides an exemption that applies to the PCX. The effect versus execute rule imposes four requirements "designed to put members and non-members on the same footing, to the extent practicable, in light of the purposes of Section 11(a)."[21] Given ArcaEx's automated matching and execution services, no ETP Holder enjoys any special control over the timing of execution or special order handling advantages, as all orders would be centrally processed for execution by computer, rather than being handled by a member through bids or offers made on the trading floor. Because ArcaEx's open, electronic structure is designed to prevent any ETP Holders from gaining any time and place advantages, the PCX believes that ArcaEx satisfies the four requirements of the "effect versus execute" rule as well as the general policy objectives of Section 11(a) of the Act.[22]

### E. Surveillance

According to the PCX, PCXE has developed procedures to maintain a high level of surveillance of ETP Holders and their use of specific order types, including those orders designated as identity orders, for executions that take place on ArcaEx. Among its procedures, the PCX has developed mechanisms to help detect manipulation of prices on ArcaEx whether or not through use of identity orders.

Use of identity orders would help an ETP Holder to advertise the trading interest and activity the firm has in a particular stock. Should an ETP Holder attract order flow and wish to match buy and sell orders for execution away from the centralized limit order book of ArcaEx, an ETP Holder would have to report that trade to a marketplace that allows broker-dealers to "print" trades to the tape. Specifically, broker-dealers in the Nasdaq dealer market are permitted to define parameters of a trade (*i.e.*, price) without bringing the trade to an exchange system for validation. By design, the Nasdaq dealer market enables broker-dealers to control trade execution outside of a centralized price validation system. The regulation of these trades is the responsibility of the marketplace that supports and encourages the execution of these trades away from an exchange infrastructure. Any executions by a broker-dealer brought to a marketplace that permits "printing" are trades appropriately within the jurisdiction of the alternate marketplace.[23] Should Nasdaq (or other marketplace) determine that it requires information or assistance from the PCX for the surveillance of these trades, the PCX would provide such information and assistance.

To facilitate the identity order feature, the Exchange proposes to make changes to PCXE Rules 7.7(b) and 7.36(b). Currently, PCXE Rule 7.7(b) prohibits an ETP Holder from transmitting information "regarding a bid, offer or other indication of an order" to a non-ETP Holder until the bid, offer or other indication information has been disclosed and permission to transmit the information has been obtained from the originating ETP Holder. Conversely, PCXE Rule 7.36(b) provides for anonymity in displaying orders in the Display Order Process[24] of the ArcaEx Book.[25]

The Exchange wishes to revise PCXE Rule 7.36(b) to state that except as provided by PCXE Rule 7.7(b), all orders at all price levels will continue to be displayed on an anonymous basis. Therefore, a User could choose to either display its ETPID or remain anonymous.

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customer order will be executed in a fair and consistent manner. A Market Maker from that same firm is subject to the same rules, and importantly, has no special advantage over the execution of other orders in the book, including the customer order represented by the agency desk. The price time priority granted to orders in the ArcaEx book dictate that orders with the best price are executed first, and, where there is more than one order at the best price, the order first in time receives an execution. With these rules, a Market Maker's order at a price equal to the price of other orders in the ArcaEx book, would receive an execution over these orders only if the Market Maker's order was entered first. A Market Maker's order entered *after* other orders in the book can receive an execution over other orders in the book only if the Market Maker order is at a better price (by a minimum of one penny) than the orders displayed. These rules for the ranking, display and interaction of orders apply equally to all orders entered by all Users of the ArcaEx.

[14] 15 U.S.C. 78k.

[15] *See* Letter, dated April 19, 2001 from Cherie MacCauley, Counsel to PCX, Wilmer Cutler & Pickering to John Polise, Division of Market Regulation.

[16] 15 U.S.C. 78k(a).

[17] 15 U.S.C. 78k(a).

[18] *See* Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978); Securities Exchange Act Release No. 14713 (April 28, 1978), 43 FR 18557 (May 1, 1978); Securities Exchange Act Release No. 15533 (January 29, 1979), 44 FR 6093 (Jan. 31, 1979). The 1978 and 1979 Releases cite the House Report at 54–57.

[19] 17 CFR 240.11a2–2(T).

[20] Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions directly on the exchange floor. To comply with the rule's conditions, a member (1) must transmit the order from off the exchange floor; (2) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution; (3) may not be affiliated with the executing member; and (4) with respect to an account over which the member or an associated person has investment discretion, neither the member nor the associated person may retain any compensation in connection with effecting the transaction without express written consent from the person authorized to transact business for the account in accordance with the rule.

[21] *See* 1978 Release II at 18560.

[22] 15 U.S.C. 78k(a).

[23] The ability of broker-dealers to advertise trading interest is not limited to the use of exchange trading systems. Broker-dealers can display indications of interest through services such as Autex (offered by Thompson Financial). Autex permits broker-dealers to display the price and size of indications of interest and communicate with other subscribers interested in facilitating trades. While not a trading system, Autex allows broker-dealers to advertise their trading activity and attract trading interest. Broker-dealers finding counterparties through this service must bring such trades to Nasdaq's dealer market which permits the printing of trades. Whether the prices of these transactions are executed within the standards of best execution or other standards of appropriate order handling is the business of the regulator for the marketplace supporting the "printing" infrastructure.

[24] *See* PCXE Rule 7.36(a)–(c) for a discussion of the Display Order Process.

[25] *See* PCXE Rule 1.1(a) for a definition of Arca Book.

Additionally, the Exchange proposes to revise PCXE Rule 7.7(a)[26] to reflect the proposed changes to PCXE Rules 7.7(b) and 7.36(b).

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[27] in general, and Section 6(b)(5) of the Act,[28] in particular, in that it will promote just and equitable principles of trade; facilitate transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system; and protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments on the proposed rule change were neither solicited nor received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to file number SR–PCX–2003–46 and should be submitted by November 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–26102 Filed 10–15–03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48601; File No. SR–Phlx–2003–51]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Listing Standards Regarding Issuers' Audit Committees and Delisting Procedures

October 8, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 14, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Phlx Rule 849, Audit Committee/Conflicts of Interest, and Phlx Rule 811, Delisting Policies and Procedures. The majority of the proposed rule changes are intended to comply with the requirements of new Commission Rule 10A–3 under the Act.[3] Specifically, the new listing standards proposed to be adopted by the Exchange pursuant to Commission Rule 10A–3 would require that:

(1) Each member of the audit committee of the issuer must be independent according to specified criteria (proposed Phlx Rule 849(b)(1));[4]

(2) The audit committee of each issuer must be directly responsible for the appointment, compensation, retention and oversight of the work of any registered public accounting firm engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the issuer, and each such registered public accounting firm must report directly to the audit committee (proposed Phlx Rule 849(b)(2));

(3) Each audit committee must establish procedures for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls or auditing matters, including procedures for the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters (proposed Phlx Rule 849(b)(3));

(4) Each audit committee must have the authority to engage independent counsel and other advisors, as it determines necessary to carry out its duties (proposed Phlx Rule 849(b)(4)); and

(5) Each issuer must provide appropriate funding for the audit committee (proposed Phlx Rule 849(b)(5)).

Additional changes relating to audit committee charters, audit committee composition requirements, audit committee approval of related party transactions, and revisions to the Exchange's delisting rule are also proposed.[5]

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[26] PCXE Rule 7.7(a) provides that "[t]he names of ETP Holders bidding for or offering securities through the use of the facilities of the Corporation shall not be transmitted from the facilities of the Corporation to a non-holder of an ETP. No ETP Holder having the right to trade through the facilities of the Corporation and who has been a party to or has knowledge of an execution shall be under obligation to divulge the name of the buying or selling firm in any transaction."

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

[29] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.10A–3.

[4] Currently, Phlx Rule 849 requires listed companies to maintain audit committees, a majority of the members of which are "independent directors" as defined in Phlx Rule 851. This current requirement would remain in effect pending the implementation of the higher standards proposed in this rule change. (Phlx Rule 851 requires listed issuers to maintain a minimum of two independent directors on their boards. It also defines "independent director" as a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.)

Below is the text of the proposed rule change. Proposed new language is italicized; deletions are in brackets.

### Rule 849. Audit Committee/Conflicts of Interest

Rule 849

*(a)* A listed company shall establish and maintain an audit committee, a majority of the members of which shall be independent directors, as defined in Rule 851. [The audit committee shall conduct an appropriate review of all related party transactions on an ongoing basis in order to review for potential conflict of interest situations]. *The requirements set forth in this Rule 849(a) shall continue to apply pending the implementation of the new requirements set forth in 849(b)–(j) and Commentary Sections (1)–(4). Listed issuers must be in compliance with such new requirements, subject to any applicable exemptions set forth therein, by the following dates: (A) July 31, 2005 for foreign private issuers and small business issuers as defined in Commission Rule 12b–2 under the Securities Exchange Act of 1934 (the "Act"); and (B) for all other listed issuers, the earlier of the listed issuer's first annual shareholders meeting after January 15, 2004, or October 31, 2004.*

*(b) Listing Standards Relating to Audit Committees. Each issuer of securities listed on the Exchange must have, and certify that it has and will continue to have, an audit committee, as defined in Section 3(a)(58) of the Securities Exchange Act of 1934, of at least three members each of whom meet the following criteria.*

*(1) Independence.*

*(i) Each member of the audit committee must be a member of the board of directors of the listed issuer, and must otherwise be independent; provided that, where a listed issuer is one of two dual holding companies, those companies may designate one audit committee for both companies so long as each member of the audit committee is a member of the board of directors of at least one of such dual holding companies. The following restrictions apply to every audit committee member:*

*(A) Employees. A director who is an employee (including non-employee executive officers) of the company or any of its affiliates may not serve on the audit committee until three years following the termination of his or her employment. In the event the employment relationship is with a former parent or predecessor of the company, the director could serve on the audit committee after three years following the termination of the relationship between the company and the former parent or predecessor. "Affiliate" for purposes of this subsection (A) includes a subsidiary, sibling company, predecessor, parent company, or former parent company.*

*(B) Business Relationship. A director (a) who is a partner, controlling shareholder, or executive officer of an organization that has a business relationship with the company, or (b) who has a direct business relationship with the company (e.g., as a consultant), may serve on the audit committee only if the issuer's board of directors determines in its business judgment that the relationship does not interfere with the director's exercise of independent judgment. In making a determination regarding the independence of a director pursuant to this paragraph, the board of directors should consider, among other things, the materiality of the relationship to the issuer, to the director, and, if applicable, to the organization with which the director is affiliated.*

*"Business relationships" can include commercial, industrial, banking, consulting, legal, accounting and other relationships. A director can have this relationship directly with the company, or the director can be a partner, officer or employee of an organization that has such a relationship. The director may serve on the audit committee without the above-referenced board of directors' determination after three years following the termination of, as applicable, either (a) the relationship between the organization with which the director is affiliated and the company, (b) the relationship between the director and his or her partnership status, shareholder interest or executive officer position, or (c) the direct business relationship between the director and the company.*

*(C) Cross Compensation Committee Link. A director who is employed as an executive of another corporation where any of the company's executives serves on that corporation's compensation committee may not serve on the audit committee.*

*(D) Immediate Family. A director who is an Immediate Family member of an individual who is an executive officer of the company or any of its affiliates cannot serve on the audit committee until three years following the termination of such employment relationship. "Immediate Family" includes a person's spouse, parents, children, siblings, mothers-in-law and fathers-in-law, sons and daughters-in-law, and anyone (other than employees) who shares such person's home.*

*(ii) Independence requirements for non-investment company issuers. In order to be considered to be independent for purposes of this paragraph (b)(1), a member of an audit committee of a listed issuer that is not an investment company may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee:*

*(A) Accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer or any subsidiary thereof, provided that compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the listed issuer (provided that such compensation is not contingent in any way on continued service); or*

*(B) Be an affiliated person of the issuer or any subsidiary thereof.*

*(iii) Independence requirements for investment company issuers. In order to be considered to be independent for purposes of this paragraph (b)(1), a member of an audit committee of a listed issuer that is an investment company may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee:*

*(A) Accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer or any*

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[5] The Exchange intends to file additional proposed rule changes relating to other corporate governance listing standards, including board independence and independent committees, issuers' codes of conduct, and announcement of going concern qualification in the near future. The New York Stock Exchange ("NYSE") and the National Association of Securities Dealers ("NASD") have proposed a number of rule changes in these areas. *See, e.g.*, Securities Exchange Act Release Nos. 47516 (March 17, 2003), 68 FR 14451 (March 25, 2003) (SR–NASD–2002–141, a proposed rule change relating to board independence and independent committees); 48123 (July 2, 2003), 68 FR 41191 (July 10, 2003) (SR–NASD–2002–77, disclosure of audit opinions with going concern qualifications); 48125 (July 2, 2003), 68 FR 41194 (July 10, 2003) (SR–NASD–2002–139 and Amendment No. 1 thereto, requiring listed companies to adopt a code of conduct for all directors, officers, and employees); and 47672 (April 11, 2003), 68 FR 19051 (April 17, 2003) (SR–NYSE–2002–33 and Amendment No. 1 thereto, proposing corporate governance rule changes). The Commission has recently approved NYSE and Nasdaq proposals relating to shareholder approval of equity compensation plans. *See* Securities Exchange Act Release No. 48108 (June 30, 2003), 68 FR 39995 (July 3, 2003) (approving SR–NYSE–2002–46 and SR–NASD–2002–140). The Exchange filed a proposed rule change relating to equity compensation on September 30, 2003 (File No. SR–Phlx–2003–67).

*subsidiary thereof, provided that compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the listed issuer (provided that such compensation is not contingent in any way on continued service); or*

*(B) Be an "interested person" of the issuer as defined in section 2(a)(19) of the Investment Company Act of 1940.*

*(iv) Exemptions from the independence requirements.*

*(A) For an issuer listing securities pursuant to a registration statement under section 12 of the Act, or for an issuer that has a registration statement under the Securities Act of 1933 covering an initial public offering of securities to be listed by the issuer, where in each case the listed issuer was not, immediately prior to the effective date of such registration statement, required to file reports with the Commission pursuant to section 13(a) or 15(d) of the Act;*

*(1) [Reserved]; and*

*(2) A minority of the members of the listed issuer's audit committee may be exempt from the independence requirements of paragraph (b)(1)(ii) of this section for one year from the date of effectiveness of such registration statement.*

*(B) An audit committee member that sits on the board of directors of a listed issuer and an affiliate of the listed issuer is exempt from the requirements of paragraph (b)(1)(ii)(B) of this section if the member, except for being a director on each such board of directors, otherwise meets the independence requirements of paragraph (b)(1)(ii) of this section for each such entity, including the receipt of only ordinary-course compensation for serving as a member of the board of directors, audit committee or any other board committee of each such entity.*

*(C) An employee of a foreign private issuer who is not an executive officer of the foreign private issuer is exempt from the requirements of paragraph (b)(1)(ii) of this section if the employee is elected or named to the board of directors or audit committee of the foreign private issuer pursuant to the issuer's governing law or documents, an employee collective bargaining or similar agreement or other home country legal or listing requirements.*

*(D) An audit committee member of a foreign private issuer may be exempt from the requirements of paragraph (b)(1)(ii)(B) of this section if that member meets the following requirements:*

*(1) The member is an affiliate of the foreign private issuer or a representative of such an affiliate;*

*(2) The member has only observer status on, and is not a voting member or the chair of, the audit committee; and*

*(3) Neither the member nor the affiliate is an executive officer of the foreign private issuer.*

*(E) An audit committee member of a foreign private issuer may be exempt from the requirements of paragraph (b)(1)(ii)(B) of this section if that member meets the following requirements:*

*(1) The member is a representative or designee of a foreign government or foreign governmental entity that is an affiliate of the foreign private issuer; and*

*(2) The member is not an executive officer of the foreign private issuer.*

*(F) In addition to paragraphs (b)(1)(iv)(A) through (E) of this section, if the Commission exempts from the requirements of paragraphs (b)(1)(ii) or (b)(1)(iii) of Commission Rule 10A–3 under the Act a particular relationship with respect to audit committee members, as the Commission determines appropriate in light of the circumstances, such relationship shall also be exempt from the requirements of paragraphs (b)(1)(ii) or (b)(1)(iii) of this Rule 849.*

*(2) Responsibilities relating to registered public accounting firms. The audit committee of each listed issuer, in its capacity as a committee of the board of directors, must be directly responsible for the appointment, compensation, retention and oversight of the work of any registered public accounting firm engaged (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the listed issuer, and each such registered public accounting firm must report directly to the audit committee.*

*(3) Complaints. Each audit committee must establish procedures for:*

*(i) The receipt, retention, and treatment of complaints received by the listed issuer regarding accounting, internal accounting controls, or auditing matters; and*

*(ii) The confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters.*

*(4) Authority to engage advisers. Each audit committee must have the authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties.*

*(5) Funding. Each listed issuer must provide for appropriate funding, as determined by the audit committee, in its capacity as a committee of the board of directors, for payment of:*

*(i) Compensation to any registered public accounting firm engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the listed issuer;*

*(ii) Compensation to any advisers employed by the audit committee under paragraph (b)(4) of this section; and*

*(iii) Ordinary administrative expenses of the audit committee that are necessary or appropriate in carrying out its duties.*

*(c) General exemptions.*

*(1) At any time when an issuer has a class of common equity or similar securities that is listed on a national securities exchange or national securities association subject to the requirements of listing standards which comply with the requirements of Commission Rule 10A–3 under the Act, the listing of other classes of securities on the Exchange is not subject to the requirements of this section.*

*(2) At any time when an issuer has a class of common equity securities (or similar securities) that is listed on a national securities exchange or national securities association subject to the requirements of listing standards which comply with the requirements of Commission Rule 10A–3 under the Act, the listing on the Exchange of classes of securities of a direct or indirect consolidated subsidiary or an at least 50% beneficially owned subsidiary of the issuer (except classes of equity securities, other than non-convertible, non-participating preferred securities, of such subsidiary) is not subject to the requirements of this section.*

*(3) The listing of securities of a foreign private issuer is not subject to the requirements of paragraphs (b)(1) through (b)(5) of this section if the foreign private issuer meets the following requirements:*

*(i) The foreign private issuer has a board of auditors (or similar body), or has statutory auditors, established and selected pursuant to home country legal or listing provisions expressly requiring or permitting such a board or similar body;*

*(ii) The board or body, or statutory auditors is required under home country legal or listing requirements to be either:*

*(A) Separate from the board of directors; or*

*(B) Composed of one or more members of the board of directors and*

one or more members that are not also members of the board of directors;

(iii) The board or body, or statutory auditors, are not elected by management of such issuer and no executive officer of the foreign private issuer is a member of such board or body, or statutory auditors;

(iv) Home country legal or listing provisions set forth or provide for standards for the independence of such board or body, or statutory auditors, from the foreign private issuer or the management of such issuer;

(v) Such board or body, or statutory auditors, in accordance with any applicable home country legal or listing requirements or the issuer's governing documents, are responsible, to the extent permitted by law, for the appointment, retention and oversight of the work of any registered public accounting firm engaged (including, to the extent permitted by law, the resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the issuer; and

(vi) The audit committee requirements of paragraphs (b)(3), (b)(4) and (b)(5) of this section apply to such board or body, or statutory auditors, to the extent permitted by law.

(4) The listing of a security futures product cleared by a clearing agency that is registered pursuant to Section 17A of the Act or that is exempt from the registration requirements of Section 17A pursuant to paragraph (b)(7)(A) of such section is not subject to the requirements of this section.

(5) The listing of a standardized option, as defined in Commission Rule 9b–1(a)(4) under the Act, issued by a clearing agency that is registered pursuant to Section 17A of the Act is not subject to the requirements of this section.

(6) The listing of securities of the following listed issuers are not subject to the requirements of this section:

(i) Asset-Backed Issuers (as defined in Commission Rules 13a–14(g) and 15d–14(g) under the Act);

(ii) Unit investment trusts (as defined in 15 U.S.C. 80a–4(2)); and

(iii) Foreign governments (as defined in Commission Rule 3b–4(a) under the Act).

(7) The listing of securities of a listed issuer is not subject to the requirements of this section if:

(i) The listed issuer, as reflected in the applicable listing application, is organized as a trust or other unincorporated association that does not have a board of directors or persons acting in a similar capacity; and

(ii) The activities of the listed issuer that is described in paragraph (c)(7)(i) of this section are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.

(d) [Reserved]

(e) Definitions. Unless the context otherwise requires, all terms used in this section have the same meaning as in the Act. In addition, unless the context otherwise requires, the following definitions apply for purposes of this section:

(1)(i) The term affiliate of, or a person affiliated with, a specified person, means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(ii)(A) A person will be deemed not to be in control of a specified person for purposes of this section if the person:

(1) Is not the beneficial owner, directly or indirectly, of more than 10% of any class of voting equity securities of the specified person; and

(2) Is not an executive officer of the specified person.

(B) Paragraph (e)(1)(ii)(A) of this section only creates a safe harbor position that a person does not control a specified person. The existence of the safe harbor does not create a presumption in any way that a person exceeding the ownership requirement in paragraph (e)(1)(ii)(A)(1) of this section controls or is otherwise an affiliate of a specified person.

(iii) The following will be deemed to be affiliates:

(A) An executive officer of an affiliate;

(B) A director who also is an employee of an affiliate;

(C) A general partner of an affiliate; and

(D) A managing member of an affiliate.

(iv) For purposes of paragraph (e)(1)(i) of this section, dual holding companies will not be deemed to be affiliates of or persons affiliated with each other by virtue of their dual holding company arrangements with each other, including where directors of one dual holding company are also directors of the other dual holding company, or where directors of one or both dual holding companies are also directors of the businesses jointly controlled, directly or indirectly, by the dual holding companies (and, in each case, receive only ordinary-course compensation for serving as a member of the board of directors, audit committee or any other board committee of the dual holding companies or any entity that is jointly controlled, directly or indirectly, by the dual holding companies).

(2) In the case of foreign private issuers with a two-tier board system, the term board of directors means the supervisory or non-management board.

(3) In the case of a listed issuer that is a limited partnership or limited liability company where such entity does not have a board of directors or equivalent body, the term board of directors means the board of directors of the managing general partner, managing member or equivalent body.

(4) The term control (including the terms controlling, controlled by and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(5) The term dual holding companies means two foreign private issuers that:

(i) Are organized in different national jurisdictions;

(ii) Collectively own and supervise the management of one or more businesses which are conducted as a single economic enterprise; and

(iii) Do not conduct any business other than collectively owning and supervising such businesses and activities reasonably incidental thereto.

(6) The term executive officer has the meaning set forth in Commission Rule 3b–7.

(7) The term foreign private issuer has the meaning set forth in Commission Rule 3b–4(c).

(8) The term indirect acceptance by a member of an audit committee of any consulting, advisory or other compensatory fee includes acceptance of such a fee by a spouse, a minor child or stepchild or a child or stepchild sharing a home with the member or by an entity in which such member is a partner, member, an officer such as a managing director occupying a comparable position or executive officer, or occupies a similar position (except limited partners, non-managing members and those occupying similar positions who, in each case, have no active role in providing services to the entity) and which provides accounting, consulting, legal, investment banking or financial advisory services to the issuer or any subsidiary of the issuer.

(9) The terms listed and listing refer to securities listed on a national securities exchange or listed in an automated inter-dealer quotation

*system of a national securities association or to issuers of such securities.*

*(f) Opportunity to cure defects. A listed issuer shall have the opportunity provided for in Rule 811 to cure any defects that would be the basis for delisting under paragraph (a) of this section, before the imposition of such delisting. Additionally, if a member of an audit committee ceases to be independent in accordance with the requirements of this section for reasons outside the member's reasonable control, that person, with notice by the issuer to the Exchange, may remain an audit committee member of the listed issuer until the earlier of the next annual shareholders meeting of the listed issuer or one year from the occurrence of the event that caused the member to be no longer independent.*

*(g) Notification of noncompliance. Listed issuers must notify the Exchange promptly after an executive officer of the listed issuer becomes aware of any material noncompliance by the listed issuer with the requirements of this section.*

*(h) Audit Committee Charter. The board of directors must adopt and approve a formal written charter for the audit committee. The audit committee must review and reassess the adequacy of the formal written charter on an annual basis. The charter must specify the following:*

*(i) The scope of the audit committee's responsibilities and how it carries out those responsibilities, including structure, processes, and membership requirements;*

*(ii) That the outside auditor is ultimately accountable to the board of directors and the audit committee of the company, that the audit committee and board of directors have the ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement), and that the audit committee is vested with all responsibilities and authority required by Rule 10A–3 under the Securities Exchange Act of 1934; and*

*(iii) That the audit committee is responsible for ensuring that the outside auditor submits on a periodic basis to the audit committee a formal written statement delineating all relationships between the auditor and the company and that the audit committee is responsible for actively engaging in a dialogue with the outside auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the outside auditor and for recommending that the board of directors take appropriate action in response to the outside auditors' report to satisfy itself of the outside auditors' independence.*

*(i) Expertise Requirement of Audit Committee Members.*

*(i) Each member of the audit committee must be financially literate, as such qualification is interpreted by the company's board of directors in its business judgment, or must become financially literate within a reasonable period of time after his or her appointment to the audit committee; and*

*(ii) At least one member of the audit committee must have accounting or related financial management expertise, as the Board of Directors interprets such qualification in its business judgment.*

*(j) Written Affirmation. As part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each company should provide the Exchange written confirmation regarding:*

*(i) any determination that the company's board of directors has made regarding the independence of directors pursuant to any of the subparagraphs above;*

*(ii) the financial literacy of the audit committee member;*

*(iii) the determination that at least one of the audit committee members has accounting or related financial management expertise; and*

*(iv) the annual review and reassessment of the adequacy of the audit committee charter.*

*(k) Related Party Transactions. Each issuer shall conduct an appropriate review of all related party transactions on an ongoing basis and all such transactions must be approved by the company's audit committee or another independent body of the board of directors. For purposes of this rule, the term "related party transaction" shall refer to transactions required to be disclosed pursuant to SEC Regulation S–K, Item 404.*

Commentary:

*1. The requirements in paragraphs (b)(2) through (b)(5), (c)(3)(v) and (c)(3)(vi) of this section do not conflict with, and do not affect the application of, any requirement or ability under a listed issuer's governing law or documents or other home country legal or listing provisions that requires or permits shareholders to ultimately vote on, approve or ratify such requirements. The requirements instead relate to the assignment of responsibility as between the audit committee and management. In such an instance, however, if the listed issuer provides a recommendation or nomination regarding such responsibilities to shareholders, the audit committee of the listed issuer, or body performing similar functions, must be responsible for making the recommendation or nomination.*

*2. The requirements in paragraphs (b)(2) through (b)(5), (c)(3)(v), (c)(3)(vi) and Commentary 1 of this section do not conflict with any legal or listing requirement in a listed issuer's home jurisdiction that prohibits the full board of directors from delegating such responsibilities to the listed issuer's audit committee or limits the degree of such delegation. In that case, the audit committee, or body performing similar functions, must be granted such responsibilities, which can include advisory powers, with respect to such matters to the extent permitted by law, including submitting nominations or recommendations to the full board.*

*3. The requirements in paragraphs (b)(2) through (b)(5), (c)(3)(v) and (c)(3)(vi) of this section do not conflict with any legal or listing requirement in a listed issuer's home jurisdiction that vests such responsibilities with a government entity or tribunal. In that case, the audit committee, or body performing similar functions, must be granted such responsibilities, which can include advisory powers, with respect to such matters to the extent permitted by law.*

*4. For purposes of this section, the determination of a person's beneficial ownership must be made in accordance with Rule 13d–3 under the Act.*

Rule 811. Delisting Policies and Procedures

Rule 811. *Once Exchange staff identifies a company as being below the Exchange's continued listing criteria (and not able to otherwise qualify under an initial listing standard), Exchange staff will so notify the company by letter. This letter will also provide the company with an opportunity to provide the Exchange staff with a plan (the "Plan") advising the Exchange of action the company has taken, or will take, that would bring it into compliance with the continued listing standards within three months of receipt of the letter. The company has 30 days from the receipt of the letter to submit its Plan to the Exchange for review; if it does not submit a Plan within this period the Exchange will promptly initiate delisting proceedings as provided in subsections (a)–(g) below. The Exchange's Allocation, Evaluation and Securities Committee (the "Committee")* *will evaluate the Plan and determine whether the company has made reasonable demonstration in the Plan of an ability to regain compliance with the continued listing standards within the three month period. The Committee will make such determination within 45 days of receipt of the proposed Plan, and will promptly notify the company of its determination in writing. If the Committee does not accept the Plan, the Exchange will promptly initiate delisting proceedings as provided in subsections (a)–(g) below. If Exchange staff accepts the Plan, the three month Plan period will commence on the date the issuer is notified of such acceptance. The Exchange will then review the company on a periodic basis for compliance with the Plan. If the company does not show progress consistent with the Plan, the Committee will review the circumstances and variance, and determine whether such variance warrants the commencement of delisting procedures. Should the Committee determine to proceed with delisting procedures, it may do so regardless of the company's continued listing status at that time. If, prior to the end of the three month Plan period, the company is able to demonstrate compliance with the continued listing standards at the end of the three month Plan period, the Exchange will deem the Plan period over. If the company does not meet continued listing standards at the end of the three month Plan period, the Exchange will promptly initiate delisting procedures. If the company, within twelve months of the end of the Plan (including any early termination of the Plan period) is again determined to be below continued listing standards, the Committee will examine the relationship between the two incidents of falling below continued listing standards and re-evaluate the company's method of recovery from the first incident. It will then take appropriate action which, depending upon the circumstances, may include truncating the procedures described above or immediately initiating delisting procedures.*

Whenever the Exchange determines that it is appropriate to consider removing a security from listing [(or from unlisted trading)] for other than routine reasons (redemptions or maturities) it will follow the following procedures:

(a)–(g) No change.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

### 1. Purpose

The purpose of the proposed rule change is to amend Phlx Rule 849 to provide enhanced listing standards related to Phlx-listed issuers' audit committees, and to amend Phlx Rule 811 to incorporate a procedure to provide issuers a "cure period" prior to being delisted for failure to meet Exchange listing standards. The changes are summarized below.

*Rule 849, Audit Committee/Conflicts of Interest.*

*Independence—Background.* Currently, Phlx Rule 849 requires listed companies to maintain audit committees, a majority of the members of which are "independent directors" as defined in Phlx Rule 851. Phlx Rule 851 requires listed issuers to maintain a minimum of two independent directors on its board and defines "independent director" as a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. This current requirement would remain in effect pending the implementation of the higher standards proposed in Phlx Rules 849(b)–(j). Proposed Phlx Rule 849(b) would require a listed issuer to have, and to certify that it has and will continue to have, an audit committee, as defined in Section 3(a)(58) of the Act, of at least three members, each of whom meet certain criteria set forth in proposed Phlx Rule 849(b).

*Independence—Blue Ribbon Committee Recommendations.* Proposed Phlx Rule 849(b)(1)(i) would require each member of the audit committee to be a member of the board of directors of the listed issuer and to be otherwise independent.[6] Proposed Rules 849(b)(1)(i)(A) through (D) are based in large part upon Rule 5.3(b)(3)(i)–(iv) of PCX Equities, Inc.,[7] and would preclude employees and those with business relationships from serving on a listed company's audit committee. They would also prohibit audit committee service by a director who is employed as an executive of another corporation where any of the company's executives serves on that corporation's compensation committee. Further, a director who is an "Immediate Family" member of an individual who is an executive officer of the company or any of its affiliates cannot serve on the audit committee until three years following the termination of such employment relationship.

*Independence—Rule 10A–3 Requirements.* Proposed Phlx Rules 849(b)(1)(ii) and (iii) prescribe certain independence requirements for audit committee members of non-investment company issuers and for investment company issuers, respectively, which are mandated by Commission Rule 10A–3(b)(1)(ii) and (iii). Proposed Phlx Rules 849(b)(1)(iv)(A) through (F) provide a number of exemptions from the Phlx Rule 849(b)(1) independence requirements as permitted by Commission Rule 10A–3(b)(1)(iv).[8]

*Responsibilities Relating to Registered Public Accounting Firms, Complaints, Authority to Engage Advisers and Funding.* Phlx Rules 849(b)(2)–(5) provide for the audit committee's responsibility to select and oversee the issuer's independent accountant, procedures for handling complaints regarding the issuer's accounting practices, the authority of the audit committee to engage advisors, and funding for the independent auditor and any outside advisors engaged by the audit committee. As noted above, these standards are required by Commission Rule 10A–3(b)(2)–(5).

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[6] However, where a listed issuer is one of two dual holding companies, those companies may designate one audit committee for both companies so long as each member of the audit committee is a member of the board of directors of at least one of such dual holding companies.

[7] PCX Equities, Inc. Rules 5.3(b)(3)(i)–(iv) were approved by the Commission on February 7, 2001. *See* Securities Exchange Act Release No. 43941 (February 7, 2001), 66 FR 10545 (February 15, 2001) (approving SR–PCX–00–40). The rules had been proposed to conform to recommendations made in 1999 by the Blue Ribbon Committee on Improving Effectiveness of Corporate Audit Committees (the "Blue Ribbon Committee") and rule changes adopted by other self-regulatory organizations. The Blue Ribbon Committee's recommendations were intended to strengthen the independence of the audit committee, make the audit committee more effective, and address mechanisms for accountability among the audit committee, the outside auditors, and management.

[8] The Commission notes that Phlx did not include the exception provided for in Commission Rule 10A–3(b)(1)(iv)(A)(*1*).

*General Exemptions.* Phlx Rule 849(c)(1)–(7) provides a number of exemptions from Phlx Rule 849, which are provided for in Commission Rule 10A–3(c).

*Definitions.* Phlx Rule 849(e) defines a number of terms used in Phlx Rule 849, including the terms "affiliate" and "control," and also including the term "board of directors" in the case of foreign private issuers with a two-tier board system or a limited partnership or limited liability company where such entity does not have a board of directors or equivalent body.

*Opportunity to Cure Defects.* Phlx Rule 849(f) provides that a listed issuer shall have the opportunity provided for in Phlx Rule 811 (see below) to cure any defects that would be the basis for delisting under Phlx Rule 849(a) before the imposition of such delisting. It also provides that if a member of an audit committee ceases to be independent in accordance with the requirements of Phlx Rule 849 for reasons outside the member's reasonable control, that person, with notice by the issuer to the Exchange, may remain an audit committee member of the listed issuer until the earlier of the next annual shareholders meeting or one year from the occurrence of the event that caused the member to be no longer independent.

*Notification of Noncompliance.* Proposed Phlx Rule 849(g) requires listed issuers to notify the Exchange promptly after an executive officer of the listed issuer becomes aware of any material noncompliance by the listed issuer with the requirements of Phlx Rule 849.

*Audit Committee Charter.* Proposed Phlx Rule 849(h) requires the board of directors to adopt and approve a formal written charter for the audit committee, and requires the audit committee to review and reassess the adequacy of the formal written charter on an annual basis. The proposed rule details the required content of the charter.

*Expertise Requirement of Audit Committee Members.* Proposed Phlx Rule 849(i) requires each member of the audit committee to be financially literate or become financially literate within a reasonable period of time after his or her appointment to the audit committee. It requires at least one member of the audit committee to have accounting or related financial management expertise.

*Written Affirmation.* Proposed Phlx Rule 849(j) provides that as part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each listed company should provide the Exchange written confirmation regarding determinations of directors' independence, the financial literacy of audit committee members, the determination that at least one of the audit committee members has accounting or related financial management expertise, and the annual review and reassessment of the adequacy of the audit committee charter.

*Related Party Transactions.* Proposed Phlx Rule 849(k) replaces the second sentence of current Phlx Rule 849. It defines "related party transactions" and requires issuers to conduct an appropriate review of all such transactions on an ongoing basis. It also requires all such transactions to be approved by the audit committee or another independent body of the board of directors.

*Commentary.* Commentary sections 1–4 replicate the Instructions adopted by the Commission as part of Rule 10A–3, and are designed to clarify the applicability of certain other Rule 849 provisions.

*Rule 811. Delisting Policies and Procedures.*

Rule 811, Delisting Policies and Procedures, is proposed to be amended by the addition of introductory text prior to subsection (a). The new language would provide a process pursuant to which a company identified by Exchange staff as being below the Exchange's continued listing criteria would be provided an opportunity to provide Exchange staff with a plan advising the Exchange of action the company has taken, or will take, that would bring it into compliance with the continued listing standards within three months (the "Plan"). The company would have 30 days from receipt of a letter from the Exchange notifying the company of the deficiency to submit the plan. The Exchange's Allocation, Evaluation and Securities Committee, within 45 days of receipt of the proposed plan, will determine whether the company has made a reasonable demonstration of an ability to regain compliance with the continued listing standards within the three month period. If Exchange staff accepts the Plan, the three-month Plan period will commence on the date the issuer is notified of such acceptance. If the company does not show progress consistent with the Plan, it may proceed with delisting. If the company does not meet continued listing standards at the end of the three month Plan period, the Exchange will promptly initiate delisting procedures.

### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, Amex believes the proposed rule change is designed to increase investor protection by promoting accountability, transparency and integrity by listed companies.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

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[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–51 and should be submitted by November 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–26101 Filed 10–15–03; 8:45 am]

**BILLING CODE 8010–01–P**

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## SOCIAL SECURITY ADMINISTRATION

### The Ticket to Work and Work Incentives Advisory Panel Meeting

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice of meeting.

**DATES:** November 5, 2003, 9:30 a.m.–4:45 p.m.*, November 6, 2003, 9 a.m.–5 p.m., November 7, 2003, 9 a.m.–1 p.m.

*The full Panel deliberative meeting will end at 4:45 p.m. The standing committees of the Panel will meet from 5 p.m. to 6:30 p.m.

**ADDRESSES:** Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202, Phone: (703) 418–1234.

**SUPPLEMENTARY INFORMATION:** *Type of meeting:* This is a quarterly meeting open to the public. The public is invited to participate by coming to the address listed above. Public comment will be taken during the quarterly meeting. The public is also invited to submit comments in writing on the implementation of the Ticket to Work and Work Incentives Improvement Act (TWWIIA) of 1999 at any time.

*Purpose:* In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces a meeting of the Ticket to Work and Work Incentives Advisory Panel (the Panel). Section 101(f) of Public Law 106–170 establishes the Panel to advise the President, the Congress and the Commissioner of SSA, on issues related to work incentives programs, planning and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Interested parties are invited to attend the meeting. The Panel will use the meeting time to receive briefings, hear presentations, conduct full Panel deliberations on the implementation of TWWIIA and receive public testimony. The topics for the meeting will include presentations of briefing papers prepared for the Panel, discussion of topics for the next Annual Report, and agency updates from SSA, the Department of Education and the Department of Health and Human Services.

The Panel will meet in person commencing on Wednesday, November 5, 2003 from 9:30 a.m. to 4:45 p.m.; Thursday, November 6, 2003 from 9 a.m. to 5 p.m.; and Friday, November 7, 2003 from 9 a.m. to 1 p.m.

*Agenda:* The Panel will hold a quarterly meeting. Briefings, presentations, full Panel deliberations and other Panel business will be held on Wednesday, Thursday and Friday, November 5, 6, and 7, 2003. Public testimony will be heard in person on Wednesday, November 5, 2003 from 2:30 p.m. to 3 p.m. and on Friday, November 7, 2003 from 9:05 a.m. to 9:35 a.m. Members of the public must schedule a timeslot in order to comment. In the event that the public comments do not take up the scheduled time period for public comment, the Panel will use that time to deliberate and conduct other Panel business.

Individuals interested in providing testimony in person should contact the Panel staff as outlined below to schedule time slots. Each presenter will be called on by the Chair in the order in which they are scheduled to testify and is limited to a maximum five-minute verbal presentation. Full written testimony on TWWIIA implementation, no longer than 5 pages, may be submitted in person or by mail, fax or email on an on-going basis to the Panel for consideration.

Since seating may be limited, persons interested in providing testimony at the meeting should contact the Panel staff by e-mailing Kristen M. Breland, at *kristen.m.breland@ssa.gov* or calling (202) 358–6423.

The full agenda for the meeting will be posted on the Internet at *http://www.ssa.gov/work/panel* at least one week before the meeting or can be received in advance electronically or by fax upon request.

*Contact Information:* Anyone requiring information regarding the Panel should contact the TWWIIA Panel staff. Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the Panel staff by:

- Mail addressed to Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 400 Virginia Avenue, SW., Suite 700, Washington, DC, 20024.
- Telephone contact with Kristen Breland at (202) 358–6423.
- Fax at (202) 358–6440.
- E-mail to *TWWIIAPanel@ssa.gov.*

Dated: October 9, 2003.

**Carol Brenner,**

*Designated Federal Officer.*

[FR Doc. 03–26140 Filed 10–15–03; 8:45 am]

**BILLING CODE 4191–02–P**

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## DEPARTMENT OF STATE

**[Public Notice 4513]**

### Culturally Significant Objects Imported for Exhibition; Determinations: "Verrocchio's David Restored: A Renaissance Bronze From the National Museum of Bargello, Florence"

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the object to be included in the exhibition "Verrocchio's David Restored: A Renaissance Bronze from the National Museum of Bargello, Florence," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is

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[11] 17 CFR 200.30–3(a)(12).

imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit object at the High Museum of Art, Atlanta, GA from on or about November 22, 2003, to on or about February 8, 2004, the National Gallery of Art, Washington, DC, from on or about February 13, 2004, to on or about March 21, 2004, and at possible additional venues yet to be determined, is in the national interest. Public notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit object, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/619–6981). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: October 8, 2003.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 03–26186 Filed 10–15–03; 8:45 am]

BILLING CODE 4710–08–P

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## DEPARTMENT OF STATE

[Public Notice 4514]

## Bureau of Democracy, Human Rights and Labor Request for Grant Proposals: Human Rights and Democratization Cross-Regional Initiatives in the Non-Arab Muslim World

**SUMMARY:** The Office for the Promotion of Human Rights and Democracy of the Bureau of Democracy, Human Rights and Labor (DRL/PHD) announces an open competition for assistance awards. Organizations may submit grant proposals that focus on promotion of human rights, political participation and freedom of opportunity in the non-Arab Muslim World.

Awards are contingent upon the availability of Fiscal Year 2003 funds. Up to $4,500,000 may be available under the Economic Support Fund for projects that address cross-regional Bureau objectives in the non-Arab Muslim World. Funds will be targeted toward Muslim populations outside the Middle East. Regions that fall into this category may include Africa, East Asia and the Pacific, South Asia, and Eurasia. Projects must be targeted at multiple countries, either within a single region or across regions. Projects may also include countries with sizeable Muslim minority populations, such as Russia, India and Thailand, among others. The Bureau anticipates awarding between 5–15 grants in amounts of $250,000—$1,000,000.

*Background:* DRL/PHD supports innovative, cutting-edge programs which uphold democratic principles, support and strengthen democratic institutions, promote human rights, and build civil society in countries and regions of the world that are geo-strategically important to the U.S.

DRL/PHD funds projects that have an immediate impact but that also have potential for continued funding beyond DRL/PHD resources. Projects must not duplicate or simply add to efforts by other entities.

**SUPPLEMENTARY INFORMATION:** The Bureau of Democracy Human Rights and Labor has identified the following issues as priorities. Projects that address these issues may receive a higher priority, but DRL is open to innovative programming ideas on other issues that meet our general criteria:

1. Empowerment of Muslim women, including projects that promote capacity building and/or networks of women or women's organizations, especially as they relate to human-rights;
2. Addressing the problem of disenfranchised youth and the need to reach out to this group to prevent growth of extremism;
3. Political reform programs that would entail support for conducting free and fair elections, issues of good governance and corruption;
4. Independent media and access to a diversity of sources of information;
5. Judicial systems, especially in the context of Shari'a;
6. Promotion of the compatibility of democracy with Islam; and
7. Civil society and increasing political participation.

### Project Criteria

- Project implementation should begin no earlier than March 2004.
- Projects should not exceed two years in duration. Shorter projects with more immediate outcomes may receive preference.
- Project activity should take place abroad. U.S.-based or exchange projects are strongly discouraged.
- Projects that have a strong academic or research focus will not be highly considered. DRL will not fund health, technology, environmental, or scientific projects unless they have an explicit democracy, human rights, or rule of law component.
- Projects should include a follow-on plan that extends beyond the grant period ensuring that Bureau-supported programs are not isolated events.

In order to avoid the duplication of activities and programs, proposals should also indicate knowledge of similar projects being conducted in the regions and how the submitted proposal will complement them.

### Applicant/Organization Criteria

Organizations applying for a grant should meet the following criteria:

- Be a U.S. non-profit organization meeting the provisions described in Internal Revenue Code section 26 USC 501(c)(3). Applicant must submit proof of its non-profit status in the application at the time of submission.
- Have demonstrated experience administering successful projects in the regions in which it is proposing to administer a project.
- Have existing, or the capacity to develop, active partnerships with in-country organization(s).
- Organizations that have not previously received and successfully administered U.S. government grant funds will be subject to additional scrutiny before an award can be granted.

**Note:** Organizations are welcome to submit more than one proposal, but should know that DRL wishes to reach out to as many different organizations as possible with its limited funds.

### Budget Guidelines

Please refer to the Proposal Submission Instructions (PSI) for complete budget guidelines and formatting instructions.

### Deadline for Proposals

All proposals must be received at the Bureau of Democracy, Human Rights and Labor by 5 p.m. eastern standard time (e.s.t.) on Thursday, November 13, 2003. Please refer to the PSI for specific delivery instructions.

### Review Process

The Bureau will acknowledge receipt of all proposals and will review them for eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the PSI. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements.

### Review Criteria

Eligible applications will be competitively reviewed according to the criteria stated below. Further explanation of these criteria is included in the PSI. These criteria are not rank-ordered and all carry equal weight in the proposal evaluation: Quality of the program idea; program planning and ability to achieve program objectives; multiplier effect/impact; institution's record/ability/capacity; cost-effectiveness.

**FOR FURTHER INFORMATION CONTACT:** The Office for the Promotion of Human Rights and Democracy of the Bureau of Democracy, Human Rights and Labor (DRL/PHD). Please specify Sondra Govatski 202–647–9734 on all inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

### To Download a Solicitation Package Via Internet

The Solicitation Package consists of this RFP plus the Proposal Submission Instructions (PSI). The PSI contains detailed award criteria, specific budget instructions, and standard guidelines for proposal preparation. The PSI may be downloaded from the HRDF section on the Bureau's Web site at *http://www.state.gov/g/drl/*.

### Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding.

Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements. Final technical authority for assistance awards resides with the Office of Acquisition Management's Grants Officer.

### Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: October 9, 2003.

**Lorne W. Craner,**

*Assistant Secretary for Democracy, Human Rights and Labor, Department of State.*

[FR Doc. 03–26185 Filed 10–15–03; 8:45 am]

**BILLING CODE 4710–18–P**

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[Docket No.: OST–2003–15962]**

### Notice of Request for Renewal of a Previously Approved Collection.

**AGENCY:** Office of the Secretary.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for renewal and comment. The ICR describes the nature of the information collection and its expected cost and burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 22, 2003 [68 FR 50825]. No comments were received.

**DATES:** Comments on this notice must be received by November 17, 2003.

**ADDRESSES:** You may submit comments [identified by DOT DMS Docket Number OST 2003–15962 by the following methods:

- Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on Plaza Level of the Nassif Building, 400 Seventh Street, SW., Washington DC, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notes.

*Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Delores King, Air Carrier Fitness Division (X–56), Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2343.

**SUPPLEMENTARY INFORMATION:**

*Title:* Procedures and Evidence Rules for Air Carrier Authority Applications: 14 CFR part 201—Air Carrier Authority under Subtitle VII of title 49 of the United States Code—(Amended); 14 CFR Part 204—Data to Support Fitness Determinations; 14 CFR Part 291—Cargo Operations in Interstate Air Transportation.

*OMB Control Number:* 2106–0023.

*Affected Public:* Persons seeking initial or continuing authority to engage in air transportation of persons, property, and/or mail.

*Annual Estimated Burden:* 4,604 hours.

*Abstract:* In order to determine the fitness of persons seeking authority to engage in air transportation, the Department collects information from them about their ownership, citizenship, managerial competence, operating proposal, financial condition, and compliance history. The specific information to be filed by respondents is set forth in 14 CFR part 201 and 204.

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval.

Issued in Washington, DC on October 8, 2003.

**Michael A. Robinson,**

*Information Technology Program Management, United States Department of Transportation.*

[FR Doc. 03–26127 Filed 10–15–03; 8:45 am]

**BILLING CODE 4910–62–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## Notice of Extension of Scoping

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of extension of scoping for the Programmatic Environmental Impact Statement for Licensing Launches of Horizontally Launched Vehicles and Reentries of Reentry Vehicles.

**SUMMARY:** The FAA is preparing a Programmatic Environmental Impact Statement (PEIS) in accordance with the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality implementing regulations and is requesting comments in preparation of the PEIS. The FAA has extended public scoping for the PEIS to ensure that all interested government and private organizations, and the general public have an opportunity to express their concerns and identify topics that should be addressed in the PEIS. Scoping comments will be accepted until October 31, 2003. This PEIS will assess environmental impacts associated with the proposed action, reasonable alternatives including those identified during scoping, the no action alternative, and cumulative impacts. This PEIS will support decisions made to meet the FAA's responsibility to license commercial launch and reentry operations and the operation of launch and reentry sites consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States. Issuing a launch or reentry license is a Federal action and is therefore subject to NEPA review.

*Proposed Action and Possible Alternatives:* The proposed action for this PEIS is to license the launch and landing of horizontally launched vehicles and the reentry of reentry vehicles. A reentry vehicle is defined in 14 CFR 401.5 as "a vehicle designed to return from Earth orbit or outer space to Earth substantially intact. A reusable launch vehicle (RLV) that is designed to return from Earth orbit or outer space to Earth substantially intact is a reentry vehicle." Launch, as defined in 14 CFR 401.5, means "to place or try to place a launch vehicle or reentry vehicle and any payload from Earth in a suborbital trajectory, in Earth orbit in outer space, or otherwise in outer space, and includes activities involved in the preparation of a launch vehicle for flight, when those activities take place at a launch site in the United States. The term launch includes the flight of a launch vehicle and pre-flight ground operations beginning with the arrival of a launch vehicle or payload at a U.S. launch site. For purposes of an expendable launch vehicle launch, flight ends after the licensee's last exercise of control over its launch vehicle. For purposes of an orbital RLV launch, flight ends after deployment of a payload for an RLV having payload deployment as a mission objective. For other orbital RLVs, flight ends upon completion of the first sustained, steady-state orbit of an RLV at its intended location."

Alternatives to the proposed action may include activities such as not licensing horizontal launches, not licensing vertical reentries, not licensing horizontal reentries, not licensing powered reentries, and not licensing unpowered reentries.

FAA exercises licensing authority in accordance with the Commercial Space Launch Act and Commercial Space Transportation Licensing Regulations, 14 CFR Ch.III, which authorize the FAA to license the launch of a launch vehicle when conducted within the U.S. and those operated by U.S. citizens abroad. The scope of the PEIS would include launches on both orbital and suborbital trajectories.

In May 1992, the U.S. Department of Transportation issued the Final Programmatic Environmental Impact Statement for Commercial Reentry Vehicles that assessed the environmental impacts of licensing the unpowered reentry of reentry vehicles from space to Earth. This 1992 PEIS relied in part on the analysis in the Programmatic Environmental Assessment of Commercial Expendable Launch Vehicle Programs, February 1986.

In May 2001, the FAA issued the Programmatic Environmental Impact Statement for Licensing Launches, which assessed the environmental impacts of licensing commercial launches. This 2001 PEIS updated and replaced the 1986 Programmatic Environmental Assessment (EA).

The PEIS for Licensing Launches of Horizontally Launched Vehicles and Reentries of Reentry Vehicles will update and replace the 1992 PEIS and address the launch of horizontally launched vehicles and the reentry of all reentry vehicles.

*Scoping:* Public scoping will be conducted as part of the PEIS development process to ensure that all interested government and private organizations, and the general public have an opportunity to express their concerns and identify topics that should be addressed in the PEIS. The FAA has developed a public participation Web site (*http://ast.faa.gov/*), which provides information on the development of this PEIS and provides the public an opportunity to submit comments electronically. Materials on the web site include information about licensing and the NEPA process; frequently asked questions, a fact sheet on the PEIS; a comparison of the analysis of the previous programmatic documents; and public comment forms. Scoping meetings may be requested by organizations or individuals that feel their concerns cannot be met through the online opportunity to comment. Information regarding the development of the PEIS is available on the public participation web site at *http://ast.faa.gov/*, under the "What's new on the AST Web site "Announcements" section.

*To Submit Comments:* Written comments, statements, and/or questions regarding scoping issues or the PEIS process should be addressed to Ms. Michon Washington, FAA Environmental Specialist, FAA PEIS, c/o ICF Consulting, 9300 Lee Highway, Fairfax, Virginia 22031; phone (703) 934–3950; fax (703) 934–3951; e-mail at *FAA.PEIS@icfconsulting.com*; or by Web site *http://ast.faa.gov/*. Comments should clearly identify and describe the specific issue(s) or topics to be included in the PEIS. To ensure sufficient time to consider issues identified during public scoping, comments should be submitted no later than October 31, 2003.

**Charles Larsen,**

*(Acting) Manager, Space Systems Development Division.*

[FR Doc. 03–26090 Filed 10–15–03; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[FMCSA Docket No. FMCSA–2003–14652]**

### Commercial Driver's License Standards; Isuzu Motors America, Inc. Exemption Application

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition; granting of application for exemption.

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**SUMMARY:** The FMCSA announces its decision to grant the Isuzu Motors America, Inc. request for an exemption from the Federal commercial driver's license (CDL) requirement in 49 CFR 383.23. The exemption is for 31 Japanese engineers and technicians who will be test-driving commercial motor vehicles (CMVs) for Isuzu. All of the individuals hold a valid Japanese commercial driver's license and are specially trained in driving CMVs in Japan. They normally work at Isuzu Motors Limited in Japan where their duties involve developing, designing, and/or testing engines for CMVs that will be manufactured, assembled, sold or primarily used in the United States. The FMCSA believes that enforcement of the terms and conditions of the exemption would ensure that the level of safety for the drivers is equivalent to or greater than the level of safety that would be achieved by complying with the Federal regulations. The exemption would preempt inconsistent State requirements applicable to interstate commerce.

**DATES:** The exemption is effective November 17, 2003. The exemption expires October 17, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ms. Teresa Doggett, Office of Bus and Truck Standards and Operations, (202) 366–2990, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA–21) (Public Law 105–178, 112 Stat. 107, now codified at 49 U.S.C. 31315 and 31136), requires the FMCSA to publish a notice in the **Federal Register** for each exemption requested, explaining that the request has been filed, provide the public with an opportunity to inspect the safety analysis and any other relevant information known to the agency, and provide an opportunity for public comment on the request. Prior to granting a request for an exemption, the agency must publish a notice in the **Federal Register** identifying the person or class of persons who would receive the exemption, the provisions from which the person would be exempt, the effective period, and all terms and conditions of the exemption. The terms and conditions established by the FMCSA must ensure that the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation.

On December 8, 1998, the FMCSA published an interim final rule implementing section 4007 of TEA–21 (63 FR 67600). The regulations at 49 CFR part 381 establish the procedures to be followed to request waivers and to apply for exemptions from the FMCSRs, and the provisions used to process them.

### Exemption Request

Isuzu Motors America, Inc. (Isuzu), a private motor carrier of property as defined by 49 CFR 390, filed an application for an exemption from the commercial driver s licensing rules in 49 CFR part 383, that would allow drivers Shintaro Moroi, Shigeru Takamatsu, Norio Takeda, Takeshi Yamagishi, Satoru Amemiya, Toshiya Asari, Yasunori Fujita, Shiro Fukuda, Tetsuya Hiromatsu, Kazunori Ligo, Masao Inoue, Akihuro Kashiwakura, Kinya Kitamura, Tsuyoshi Koyama, Takao Kudo, Wataru Kumakura, Yoshihiko Matsubara, Nobuyuki Miyazaki, Ryo Natsume, Motoki Nishi, Takuo Nishi, Fumio Oota, Masuru Otsu, Toshimitsu Sato, Kazuyoshi Shimamura, Masahito Suzuki, Yasuhito Tahara, Hiroyoshi Takahashi, Takashi Tanabe, Takehito Yaguchi, and Tsutomu Yamazaki—to test-drive CMVs within the United States. According to its application, the drivers working for Isuzu hold current commercial driver's licenses issued by the Japanese authorities. The drivers also meet testing and driver qualification standards, including medical examinations, which are comparable to State-issued CDLs. The Japanese-issued license indicates that the drivers have the knowledge and skills necessary to comply with the Federal Motor Carrier Safety Regulations (FMCSRs). A copy of the application for exemption is in the docket.

Isuzu seeks this exemption because the drivers it employs are citizens and residents of Japan and the company needs their specialized services before they could qualify for a CDL in the United States. It does not anticipate any adverse safety impacts from this exemption due to the fact that the Japanese authorities adhere to very strict commercial driver testing and licensing procedures.

There will always be two qualified drivers in each motor vehicle. The drivers employed by Isuzu are fully qualified CMV operators with valid Japanese CDLs. The company ensures that the qualifications are maintained and all current laws in Japan are followed. Due to strict regulations in Japan for drivers holding Japanese CDLs, Isuzu believes that it will achieve a greater level of safety than would be achieved if it used United States drivers unfamiliar with its process for testing, designing, and producing safe commercial vehicles.

Drivers applying to obtain a Japanese CDL must take both a knowledge test and skills test before a license to operate CMVs is issued. Prior to taking the tests, drivers are required to hold a conventional driver's license for at least three years. The process for obtaining a Japanese-issued commercial driver's license is very rigorous and comprehensive, and Isuzu considers it to be comparable to, or as effective as, the requirements in part 383 of the FMCSRs. Isuzu believes it adequately assesses the driver's ability to operate CMVs in the United States.

Once a Japanese driver is granted a commercial driver's license, he/she is allowed to drive any CMV currently allowed on roads in Japan. There are no limits to the types or weights of vehicles that may be operated by the drivers. The drivers affected by the exemption will be operating tractor-trailer units. These vehicles will be used for transporting merchandise as a commercial activity. It is estimated that each driver will drive approximately 5,000 miles on U.S. roads. The drivers expect to operate CMVs through the states of Arizona, California, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Nebraska, Nevada, Ohio, Utah, and Wyoming.

### Discussion of Comments

On April 30, 2003, the FMCSA published notice of its receipt of an application from Isuzu on behalf of the above-referenced 31 drivers, and requested comments from the public (67 FR 34515). The comment period closed on May 30, 2003. The FMCSA received one comment, which is from Michael D. Millard. Mr. Millard opposes granting Isuzu an exemption from the CDL requirements regardless of the individuals' engineering and mechanical abilities. Mr. Millard believes that an important safety factor is that these drivers be capable of operating commercial vehicles that have the steering wheel on the left side of the vehicle. Commercial vehicles manufactured in Japan are equipped with steering wheels that are operated from the right side of the vehicle. Mr. Millard stated that the need to train and qualify these drivers in left-side steering maneuvers should be emphasized, since the vehicles being driven could cause a great deal of damage to the public and to private property if involved in an accident. Mr. Millard further stated that Isuzu could hire experienced U.S. drivers to operate its test vehicles, or take the necessary measures to train the Japanese drivers to obtain a CDL issued in the U.S.

## FMCSA Response to Comments

Although the commenter opposed granting the exemption, the FMCSA believes that granting the exemption to Isuzu would achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved by complying with the FMCSRs.

The FMCSA believes the drivers for Isuzu have the knowledge and skills necessary to safely operate CMVs in the U.S. The FMCSA determined that the Japanese CDLs are comparable to the CDLs that are issued from the various State licensing agencies in the U.S. CMV drivers in both Japan and the U.S. are given extensive and comprehensive knowledge and skills tests and must be medically qualified before a commercial license is issued. There is no data to suggest that a driver's ability to control and maneuver a vehicle in traffic would be contingent upon the placement of the steering wheel in the vehicle. These drivers have demonstrated that they can safely operate a CMV with the steering wheel on the right-side of the vehicle and there is no data to indicate they would be less safe operating CMVs with the steering wheel on the left-side of the vehicle. Alternatively, drivers of certain types of refuse trucks operated in residential neighborhoods in the U.S. drive vehicles with dual steering wheels to enable them to steer from either the left-or the right-side to expedite the collection of garbage. There has been no indication that U.S. drivers are less safe when they operate refuse trucks from the right-side driving position versus the left-side.

## Basis for FMCSA's Determination

The agency has determined that it is in the public's interest to grant these exemptions because the drivers are over the age of 21 years, hold currently valid Japanese CDLs that allow them to drive such vehicles in their home country, and have passed medical examinations that are compatible with the agency's medical standards. The exemptions are likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the exemptions because the drivers will meet all applicable FMCSRs, except for having a State-issued CDL. Drivers, who meet license testing and driver qualification standards, including medical examinations that are compatible with U.S. standards and have behind-the-wheel experience operating these vehicles, will operate the vehicles.

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the agency to renew exemptions at the end of the 2-year period. Accordingly, the FMCSA has evaluated the exemption request on its merit, and made a determination to grant the exemption to all of the drivers.

## Terms and Conditions for the Exemption

After considering the comments to the docket and based upon its evaluation of the application for an exemption, the FMCSA grants Isuzu an exemption from the Federal commercial driver's license requirement in 49 CFR 383.23 for 31 drivers—Shintaro Moroi, Shigeru Takamatsu, Norio Takeda, Takeshi Yamagishi, Satoru Amemiya, Toshiya Asari, Yasunori Fujita, Shiro Fukuda, Tetsuya Hiromatsu, Kazunori Ligo, Masao Inoue, Akihuro Kashiwakura, Kinya Kitamura, Tsuyoshi Koyama, Takao Kudo, Wataru Kumakura, Yoshihiko Matsubara, Nobuyuki Miyazaki, Ryo Natsume, Motoki Nishi, Takuo Nishi, Fumio Oota, Masuru Otsu, Toshimitsu Sato, Kazuyoshi Shimamura, Masahito Suzuki, Yasuhito Tahara, Hiroyoshi Takahashi, Takashi Tanabe, Takehito Yaguchi, and Tsutomu Yamazaki—to test-drive CMVs within the United States, subject to the following terms and conditions: (1) That these drivers will be subject to drug and alcohol testing, (2) that these drivers are subject to the same driver disqualification rules under 49 CFR 383 and 391 that apply to other CMV drivers in the U.S., (3) that these drivers keep a copy of the exemption on the vehicle at all times, (4) that Isuzu notify FMCSA in writing of any accident involvement by a driver as defined in 49 CFR 390.5 and, (5) that Isuzu notify FMCSA in writing if any driver is convicted of disqualification offenses in §§ 383.51 or 391.15 of the FMCSRs.

In accordance with 49 U.S.C. 31315 and 31136(e), the exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) the drivers for Isuzu fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136.

Issued on: October 10, 2003.

**Pamela M. Pelcovits,**

*Office Director, Policy, Plans, and Regulation.*

[FR Doc. 03–26119 Filed 10–15–03; 8:45 am]

BILLING CODE 4910–EX–P

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# DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

**[U.S. DOT Docket Number NHTSA–2003–16162]**

## Reports, Forms, and Recordkeeping Requirements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Request for public comment on proposed collection of information.

**SUMMARY:** Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes an existing collection of information for Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child restraint systems," for which NHTSA intends to seek OMB approval.

**DATES:** You should submit your comments early enough to ensure that Docket Management receives them not later than December 15, 2003.

**ADDRESSES:** You may submit comments [identified by DOT DMS Docket Number NHTSA –2003–16162] by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0003.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name and docket number for this collection. It is requested, but not required, that two copies of the comments be provided. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

*Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Complete copies of each request for collection of information may be obtained at no charge from Mr. Michael Huntley, NHTSA, 400 Seventh Street, SW., Room 5320, NVS–113, Washington, DC 20590.

Mr. Huntley's telephone number is (202) 366–0029. Please identify the relevant collection of information by referring to its OMB Control Number.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information:

*Title:* 49 CFR 571.213, "Child Restraint Systems".

*OMB Control Number:* 2127–0511.

*Affected Public:* Business.

*Abstract:* Manufacturers are required to provide owner registration cards and to label each child restraint system with a message informing users of the importance of registering the restraint with the manufacturer. The owner registration information is then retained in the event that owners need to be contacted for recall or replacement campaigns. The manufacturer is also required to provide a printed instructions brochure with step-by-step information on how the restraint is to be used. Without proper use, the effectiveness of these systems is greatly diminished. Each child restraint system must also have a permanent label. A permanently attached label gives quick-look information on whether the restraint meets the safety requirements, recommended installation and use, and warnings against misuse.

*Estimated Annual Burden:* 90,000 hours.

*Number of Respondents:* 15.

Currently, approximately 15 manufacturers produce, on average, a total of approximately 4,500,000 child restraints per year. The agency estimates that manufacturers use a total of 0.02 hours per response. The estimated annual burden hour is 90,000 hours. This number reflects the total responses (4,500,000) times the total hours per response (0.02). Prior years' information indicates that it takes an average of $20.00 per hour for professional/clerical personnel to collect the information for Standard No. 213. Therefore, the agency estimates that the cost associated with the burden hours is $1,800,000 ($20.00 per hour x 90,000 burden hours).

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on October 9, 2003.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 03–26091 Filed 10–15–03; 8:45 am]

BILLING CODE 4910–59–P

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on June 12, 2003 [68 FR 35253–35254].

**DATES:** Comments must be submitted on or before November 17, 2003.

**FOR FURTHER INFORMATION CONTACT:** Marvin Levy, Ph.D. at the National Highway Traffic Safety Administration, Office of Research and Technology (NTI–131), 202–366–5597, 400 Seventh Street, SW, Room 5319, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

### National Highway Traffic Safety Administration

*Title:* National Survey of Drinking and Driving Attitudes and Behavior.

*OMB Number:* 2127—New.

*Type of Request:* New Collection.

*Abstract:* Recent data show an increase in alcohol-related crashes. In 1999, 16,572 persons were killed in alcohol related crashes; in 2000, it rose to 17,380 and for 2001, it rose again to 17,448 deaths. Based on this alarming trend, the NHTSA Administrator has made it an agency goal to reduce the death rate, from 0.63 to 0.53 deaths per 100-million vehicle miles traveled. In order to plan and evaluate programs intended to reduce alcohol-impaired driving, NHTSA needs to periodically update its knowledge and understanding of the public's attitudes and behaviors with respect to drinking and driving . The proposed survey, the seventh in this series of biennial surveys, will be administered by telephone to a national probability sample of the driving-age public (aged 16 years or older as of their last birthday).

The findings from this proposed collection will assist NHTSA in addressing the problem of alcohol-impaired driving and in formulating programs and recommendations to Congress. NHTSA will use the findings to help focus future programs and activities to achieve improved efficiencies and outcomes. Also, comparisons with previous surveys will be made.

*Affected Public:* Individuals or households.

*Estimated Total Annual Burden:* 1,800 hours.

**ADDRESSES:** Send comments, within 30 days, to the Office of Information and Regulatory affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

**Marilena Amoni,**

*Associate Administrator, Program Development and Delivery.*

[FR Doc. 03–26092 Filed 10–15–03; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Section 5a Application No. 45 (Amendment No. 17)]**

### Niagara Frontier Tariff Bureau, Inc.—Agreement

By application filed on July 25, 2003, the Niagara Frontier Tariff Bureau, Inc. (NFTB) seeks approval of two categories of changes to its collective ratemaking agreement: (1) amendments that appear to be minor;[1] and (2) amendments that are designed to conform to the Board's decisions in *EC–MAC Motor Carrier Service Association, Inc., et al.*, Section 5a Application No. 118 (Sub-No. 2), *et al.* (*EC–MAC*).[2]

The minor amendments proposed by NFTB include: (1) A change in the name of the organization to North American Transportation Council, Inc., with an office located in Ontario, Canada; (2) a non-substantive rewording of the services to be provided by the organization; (3) changes to reflect statutory revisions; (4) a reduction in the quorum required to take action; (5) rates and rules no longer to be discussed at special meetings or annual meetings; (6) membership class of "participating" carriers eliminated (all carriers to be members); (7) new membership class of associate membership for noncarrier entities established; (8) changes in titles of officers; (9) "Rate and Tariff Agreement" provisions to be eliminated as no longer required; (10) changes in "Rate Procedure" provisions so as to eliminate time requirements and other provisions that no longer apply, to reduce notice requirements for meetings, to combine committees, and to eliminate certain provisions governing independent rate action; and (11) changes to eliminate agreements with two other bureaus, the Southern Motor Carriers Rate Conference, Inc., and the Rocky Mountain Motor Tariff Bureau, Inc.

The Board tentatively concludes that the amendments are minor and are consistent with the statutory requirements of 49 U.S.C. 13703. Accordingly, these minor amendments will be approved if no adverse comments are timely filed. Because the issues involving the amendments required by the Board in the *EC–MAC* proceeding have been fully addressed in that proceeding, the Board is not seeking comments on them here.

By this notice, the Board is giving the public an opportunity to comment on the minor changes proposed by NFTB. An original and 10 copies of any comments, referring to STB Section 5a Application No. 45 (Amendment No. 17), must be sent to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of any comments filed with the Board must also be served on applicant's representative: David J. Sirgey, North American Transportation Council, Inc., P.O. Box 548, Buffalo, NY 14225–0548.

NFTB must provide a copy of its application on request to members of the public. A copy of the application, as well as Board decisions and notices, also is available on the Board's Web site at *http://www.stb.dot.gov*.

Comments must be filed with the Surface Transportation Board by November 17, 2003. NFTB's reply to any comments is due by December 1, 2003.

For more information, contact Joseph H. Dettmar, (202) 565–1609. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS): 1–800–877–8339.]

Decided: October 9, 2003.

By the Board, Chairman Nober.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 03–26132 Filed 10–15–03; 8:45 am]

**BILLING CODE 4915–00–P**

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 34341]**

### Wheeling & Lake Erie Railway Company—Acquisition and Operation Exemption—CSX Transportation, Inc.

By petition filed on August 1, 2003, Wheeling & Lake Erie Railway Company (W&LE) seeks an exemption pursuant to 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10902 to acquire the rail freight operating easement of CSX Transportation, Inc. (CSXT) over a 17.77-mile rail line between approximately milepost 15.93 at Canton, OH, and approximately milepost 33.70 at Krumroy, OH (the Canton Line), owned by Metro Regional Transit Authority (METRO). The petition will be granted subject to employee protective conditions.

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[1] By application filed on December 14, 1998, in *Niagara Frontier Tariff Bureau, Inc.*, Section 5a Application No. 45 (Sub-No. 16), NFTB applied for renewal of its agreement without change. The minor amendments proposed in the instant proceeding apply to NFTB's renewed agreement.

[2] There, the Board has been considering renewal of the collective ratemaking agreements of NFTB and other bureaus. In decisions served on March 27, 2003, and November 20, 2001, the Board renewed its approval of the bureau agreements, subject to three conditions. First, the bureaus were directed to propose amendment of their agreements to require bureau members to give the truth-in-rates notice described in those decisions when they list rates or otherwise give a rate quote that references a collectively set rate. Second, the bureaus were directed to submit the range-of-discount information specified in the decisions. Third, bureau agreements must require members to certify that they will not apply a loss-of-discount provision that would reinstate the collectively set rate as a penalty for late payment. NFTB's proposed amendments implement these conditions.

## Background

The Canton Line consists of two segments—the Canton-Aultman segment, which extends from approximately milepost 15.93 at Canton to approximately milepost 25.55 at Aultman, OH, and the Aultman-Krumroy segment, which extends from approximately milepost 25.55 at Aultman to approximately milepost 33.70 at Krumroy.

In 1992, W&LE, a Class II carrier, leased from CSXT an approximately 10.25-mile segment extending north from Canton to Aultman.[1] In 1997, CSXT abandoned, and W&LE discontinued service over, a short segment of this leased line in Canton.[2] The part of this line that CSXT retained constitutes the Canton-Aultman segment involved in this proceeding. In 1993, CSXT discontinued service over, but did not abandon, the Aultman-Krumroy segment.[3] No rail freight service of any kind has been conducted on this segment since the discontinuance.[4] In May 2000, CSXT sold to METRO the assets of the Canton Line and a segment of rail line extending from Krumroy north to Akron, OH.[5] As part of that transaction, CSXT retained an exclusive rail freight easement over all three segments, subject to W&LE's pre-existing lease of the Canton-Aultman segment. Also as part of that transaction, CSXT agreed to transfer its freight easement over the Canton Line to METRO or its designee.

According to W&LE, METRO designated it to receive the rail freight easement over the Canton Line from CSXT. Therefore, pursuant to a July 1, 2003 Purchase and Sale Agreement between W&LE and CSXT, W&LE proposes to acquire CSXT's rail freight easement over the Canton Line. Under the agreement, W&LE will continue to provide service to shippers on the Canton-Aultman segment in the same manner that it does today. As to the Aultman-Krumroy segment, W&LE will acquire CSXT's freight operating rights and obligations on that segment in its current, discontinued state, and will seek further, appropriate Board authority should W&LE wish to reinstate rail freight operations thereon in the future.

W&LE currently provides rail service on the Canton-Aultman segment approximately two days per week. No other carrier provides rail freight service on that segment. Approximately four active shippers exist on the segment, accounting for approximately 340 carloads per year of kaolin clay, synthetic rubber, lumber, plastics, and other commodities.

According to W&LE, this transaction will not change existing rail freight operations or service. W&LE states that it will simply become the owner rather than the lessee of the freight common carrier interests in the rail line on which it has operated since 1992, thereby enhancing effective rail management and the long-term stability of its operations.[6]

## Discussion and Conclusions

Under 49 U.S.C. 10502, the Board must exempt a transaction or service from regulation upon finding that: (1) Regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

An exemption from the prior approval requirements of 49 U.S.C. 10902 is warranted under the standards of 49 U.S.C. 10502. Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption from the application process will minimize the need for Federal regulatory control [49 U.S.C. 10101(2)], foster sound economic conditions in transportation [49 U.S.C. 10101(5)], reduce regulatory barriers to entry into and exit from the rail industry [49 U.S.C. 10101(7)], and encourage efficient management of railroads [49 U.S.C. 10101(9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of this transaction is not needed to protect shippers from the abuse of market power. W&LE has stated that shippers will continue to have the same service options that they have now. Indeed, no shipper has opposed the transaction. Nevertheless, to ensure that shippers are informed of the Board's actions here, W&LE will be required to serve all shippers on the line with a copy of this decision within 5 days after its service date and to certify to the Board that it has done so. Given this market power finding, it is not necessary to determine whether the transaction is limited in scope.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of employees. Accordingly, as a condition to granting this exemption, the employee protective conditions set forth in *Wisconsin Central Ltd.—Acquisition Exem.—Union Pac. RR*, 2 S.T.B. 218 (1997), *rev'd in part sub nom. Association of American Railroads* v. *Surface Transp. Bd*, 162 F.3d 101 (DC Cir. 1998), will be imposed.

This transaction is exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

*It is ordered:*

1. Under 49 U.S.C. 10502, the above-described transaction is exempted from the prior approval requirements of 49 U.S.C. 10902, subject to the employee protective conditions set forth in *Wisconsin Central Ltd.—Acquisition Exem.—Union Pac. RR*, 2 S.T.B. 218 (1997), *rev'd in part sub nom. Association of American Railroads* v. *Surface Transp. Bd*, 162 F.3d 101 (DC Cir. 1998).

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[1] Also in that transaction, W&LE purchased from CSXT an approximately 12.26-mile rail line extending south from Canton to Sandyville, OH. *See Wheeling & Lake Erie Railway Company—Lease, Purchase and Operation Exemption—CSX Transportation, Inc.*, Finance Docket No. 32083 (ICC served Oct. 15, 1992).

[2] *See CSX Transportation, Inc.—Abandonment Exemption—In Stark County, OH*, STB Docket No. AB–55 (Sub-No. 535X) (STB served Apr. 1, 1997). Following the abandonment and discontinuance of this short segment, W&LE reached the current Canton-Aultman segment via trackage rights over the Reed Runner track and via the former wye track leased from CSXT at McKinley, OH.

[3] *See CSX Transportation, Inc.—Abandonment Exemption—Summit County, OH*, Docket No. AB–55 (Sub-No. 447X) (ICC served Jan. 12, 1993).

[4] W&LE states that, although no freight service has been provided on this segment for 10 years, the track remains in place and is expected to be utilized for the operation of excursion trains and commuter passenger service under the auspices of METRO.

[5] On May 24, 2000, METRO filed a verified notice of exemption for authority to acquire the assets of all three segments from CSXT. It simultaneously filed a motion to dismiss the notice of exemption on jurisdictional grounds. On June 23, 2000, the Board served notice of METRO's notice of exemption, indicating that the Board would address the motion to dismiss in a separate decision. *See Metro Regional Transit Authority—Acquisition Exemption—CSX Transportation, Inc.*, STB Finance Docket No. 33838 (STB served June 23, 2000). A separate Board decision will address that motion.

[6] In a prior decision in this proceeding, the Board granted W&LE a waiver of the 60-day labor notice requirement of 49 CFR 1121.4(h). *See Wheeling & Lake Erie Railway Company—Acquisition and Operation Exemption—CSX Transportation, Inc.*, STB Finance Docket No. 34341 (STB served Sept. 2, 2003).

2. Within 5 days of service of this decision, W&LE shall serve a copy of the decision on all shippers on the line and certify to the Board that it has done so.

3. This decision will be published in the **Federal Register** on October 16, 2003.

4. The exemption will become effective on November 9, 2003.

5. Petitions to stay must be filed by October 27, 2003. Petitions to reopen must be filed by November 4, 2003.

Decided: October 8, 2003.

By the Board, Chairman Nober.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 03–26038 Filed 10–15–03; 8:45 am]

**BILLING CODE 4915–00–P**

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## DEPARTMENT OF VETERANS AFFAIRS

### Disciplinary Appeals Board Panel

**AGENCY:** Department of Veterans Affairs

**ACTION:** Notice with request for comments.

**SUMMARY:** Section 203 of the Department of Veterans Affairs Health Care Personnel Act of 1991 (Pub. L. 102–40), dated May 7, 1991, revised the disciplinary grievance and appeal procedures for employees appointed under 38 U.S.C. 7401(1). It also required the periodic designation of employees of the Department who are qualified to serve on Disciplinary Appeals Boards. These employees constitute the Disciplinary Appeals Board panel from which Board members in a case are appointed. This notice announces that the roster of employees on the panel is available for review and comment. Employees, employee organizations, and other interested parties shall be provided, without charge, a list of the names of employees on the panel upon request and may submit comments concerning the suitability for service on the panel of any employee whose name is on the list.

**DATES:** Names that appear on the panel may be selected to serve on a Board or as a grievance examiner after November 17, 2003.

**ADDRESSES:** Requests for the list of names of employees on the panel and written comments may be directed to: Secretary of Veterans Affairs (051E), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Requests and comments may also be faxed to (202) 273–9776.

**FOR FURTHER INFORMATION CONTACT:** Catherine Baranek, Employee Relations Specialist (051E), Office of Human Resources Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Ms. Baranek may be reached at (336) 631–5019.

**SUPPLEMENTARY INFORMATION:** Public Law 102–40 requires that the availability of the roster be posted in the **Federal Register** periodically, and not less than annually.

Dated: October 8, 2003.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

[FR Doc. 03–26253 Filed 10–15–03; 8:45 am]

**BILLING CODE 8320–01–P**

# Federal Register

**Thursday,**
**October 16, 2003**

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## Part II

# Department of Homeland Security

**Office of the Secretary**

**6 CFR Part 25**

**Regulations Implementing the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (the SAFETY Act); Interim Rule**

**DEPARTMENT OF HOMELAND SECURITY**

**Office of the Secretary**

**6 CFR Part 25**

**[USCG–2003–15425]**

**RIN 1601–AA15**

## Regulations Implementing the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (the SAFETY Act)

**AGENCY:** Office of the Secretary, Department of Homeland Security.

**ACTION:** Interim rule with request for comments.

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**SUMMARY:** This interim rule implements Subtitle G of Title VIII of the Homeland Security Act of 2002—the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 ("the SAFETY Act" or "the Act"), which provides critical incentives for the development and deployment of anti-terrorism technologies by providing liability protections for Sellers of "qualified anti-terrorism technologies." This rule provides the application process by which a seller will apply for liability protections for anti-terrorism technologies. Its purpose is to facilitate and promote the development and deployment of anti-terrorism technologies that will save lives.

**DATES:** This interim rule is effective October 16, 2003. Comments and related material must reach the Docket Management Facility on or before December 15, 2003. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before December 15, 2003.

**ADDRESSES:** Because the Department of Homeland Security does not yet have electronic docketing capability, for the purposes of this rule, we are using the Department of Transportation Docket Management System for the U.S. Coast Guard. You may submit comments identified by Coast Guard docket number USCG–2003–15425 to the Docket Management Facility at the Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Web site: http://dms.dot.gov.*

(2) *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) *Fax:* 202–493–2251.

(4) *Delivery:* Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(5) Federal eRulemaking portal: *http://www.regulations.gov.*

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, ATTN: Desk Officer, Department of Homeland Security.

Comments and materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2003–15425 and are available for inspection or copying from the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.* You may also access the Federal eRulemaking Portal at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this interim rule, call Wendy Howe, Directorate of Science and Technology, Department of Homeland Security, telephone 202–772–9887. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

**SUPPLEMENTARY INFORMATION:**

### Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG–2003–15425), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

*Viewing comments and document:* To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone can search the electronic form of all comments received in the docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

### Regulatory History

On July 11, 2003, we published a notice of proposed rulemaking entitled "Regulations Implementing the Support Anti-Terrorism by Fostering Effective Technologies Act of 2002 (the SAFETY Act)" in the **Federal Register** (68 FR 41420). No public hearing was requested and none was held. As stated in the notice of proposed rulemaking, we intended to implement this interim rule as soon as possible. The Department of Homeland Security (Department) finds that the need to foster anti-terrorism technology by instituting liability protection measures, as soon as practicable, furnishes good cause for this interim rule to take effect immediately under both the Administrative Procedure Act, 5 U.S.C. 552(d)(3), and section 808 of the Congressional Review Act. The Department believes the current development of anti-terrorism technologies has been slowed due to the potential liability risks associated with their development and eventual deployment. In a fully functioning insurance market, technology developers would be able to insure themselves against excessive liability risk; however, the terrorism risk insurance market appears to be in disequilibrium. The attacks of September 11 fundamentally changed the landscape of terrorism insurance. Congress, in its statement of findings and purpose in the Terrorism Risk Insurance Act of 2002 ("TRIA"), concluded that temporary financial assistance in the insurance market is needed to "allow for a transitional period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses * * *.” TRIA § 101(b)(2).

The United States remains at risk to terrorist attacks. It is in the public's interest to have this interim rule effective immediately because its aim is to foster the development and deployment of anti-terrorism technologies. Additionally, this interim rule will clarify to the greatest extent possible the application of the liability protections created by the SAFETY Act, thus providing an instant incentive for prospective applicants to apply for its protections and for others to begin exploring new measures that will prevent or reduce acts of terrorism. The interim rule will also provide the Department with sufficient program flexibility to address the specific circumstances of each particular request for SAFETY Act coverage. The application process is interactive. Those persons availing themselves of the protections afforded in this interim rule will also be interacting with the Department in the application process. Furthermore, the Department will continue to consider comments on this interim rule. Since the use of the liability protections afforded in this interim rulemaking is voluntary, there are no mandatory costs or burdens associated with the immediate implementation of this rule.

By having these provisions in place, the Department may begin processing applications for the liability protections and thus provide qualified Sellers of anti-terrorism technologies valuable incentives to develop and sell such technologies, as well as incentives for others to deploy such technologies. The purpose of those technologies is to detect, deter, mitigate, or assist in the recovery from a catastrophic act of terrorism. Thus, the Department finds that it is not only impracticable to delay an effective date of implementation, but it is also in the public's interest to make the interim rule effective upon publication in the **Federal Register**.

As previously mentioned in the proposed rule, the Department does not intend to resolve every conceivable programmatic issue through this interim rule. Instead, this interim rule sets out a basic set of regulations that implements the SAFETY Act program. The Department will continue to consider public comments and determine whether possible supplemental regulations are needed as we gain experience with implementing the Act.

## Discussion of Comments and Changes

The Department received 43 different sets of comments on the proposed rule during the comment period. Two additional sets of comments were received on August 12, 2003, the day after the comment period ended, but in view of the relatively brief comment period (30 days), the Department has decided to accept those comments as well. The Department has considered all of the aforementioned 45 sets of comments, and summaries of the comments and the Department's responses follow.

### *Applicability and Use of Standards*

The Department received a total of 24 comments relating to references to standards in the proposed rule. A change in the term “safety and effectiveness standards,” used in Section 25.3(c) of the proposed rule, to the industry accepted term “technical standards,” was suggested and has been implemented in Section 25.3(c) of the interim rule. A number of comments were made regarding the use of voluntary consensus technical standards and the advisability of ensuring that the Department provide for stakeholder participation in any standard development activities. The Department recognizes the advisability of such participation and has instituted a comprehensive program based on using the voluntary consensus process for the majority of its standard development activities. This process is designed to involve users, manufacturers, and private and public sector technical communities in all phases of standard development. The American National Standards Institute, numerous Standards Development Organizations, and the National Institute for Standards and Technology already have been actively involved in assisting the Department in accomplishing its standard development goals. Although the Department is vested with the authority to promulgate regulatory standards, the circumstances under which Department regulations governing anti-terrorism technologies are likely to be required are unusual. Therefore, the Department does not believe that there is a need for specific language about rulemaking with respect to standards.

One comment suggested postponing standard setting activities for two years in order to allow the market to stabilize. Other comments indicated a concern regarding possible prejudice against technologies that were not governed by formally accepted standards. The Department believes, however, that because of the rapidly evolving threat environment and the lack of basic standards for many classes of technologies, it is not in the best interest of the nation—and particularly of the emergency response community—to delay standard development activities. The Department also understands, however, that there is a continuing need for flexibility in the technical evaluation criteria under the SAFETY Act, and accordingly the Department will apply standards in SAFETY Act evaluations only to the extent that they are applicable to a particular technology and the circumstances of its proposed deployment. For those technologies without applicable standards (or with incomplete standards), additional methods of evaluation will be used, such as best practices, existing laboratory or field testing, etc. It will be highly desirable to use test information, where appropriate, from independent, accredited laboratories. The Department has also initiated a program to establish a network of certified labs that should address this need.

It will be important for SAFETY Act applicants to identify applicable standards that are appropriate to the specific operating environment and threat conditions for any potential anti-terrorism technology. The degree to which a proposed technology meets applicable standards will certainly be used to inform the technical evaluation process. However, technical effectiveness is only one facet of the criteria for issuance of a Designation or a Certification. Therefore, prior approval or certification by a United States Government agency (such as the Food and Drug Administration) will not be sufficient to form the basis for a SAFETY Act Designation or Certification per se, although such approval or certification might constitute relevant evidence of utility, effectiveness, or safety, and of course prior use of a technology by the United States Government is expressly relevant to the first criterion in Section 862(b)(1) of the SAFETY Act and the corresponding provision of the interim rule (§ 25.3(b)(1)).

Section 25.3(c) of the proposed rule stated that the Department will make available standards that are developed for anti-terrorism technologies. This service will apply only to potential regulatory criteria established by the Department. As noted by several commenters, many voluntary consensus technical standards are developed and owned by private sector entities. Where voluntary consensus standards are identified by the Department as being applicable to anti-terrorism technologies, a summary of such standards may be published, along with a link to the appropriate site for the applicant to obtain or purchase the required or suggested standard. In preparing applications for SAFETY Act protections, however, applicants are encouraged not to limit themselves to standards previously promulgated or recognized by the Department, but rather to consider and reference any consensus technical standards that they believe to be applicable to technology.

Several standards development organizations suggested that voluntary consensus standards themselves be designated as qualified anti-terrorism technologies under the SAFETY Act. Although the Department believes it is unlikely that standards themselves will qualify for a Designation because it is unlikely that a standard will fall within the definition of "qualified anti-terrorism technology" in the Act, the Department will fully evaluate all applications for SAFETY Act protections received from Sellers of standards.

### *Scope of Required Insurance Coverage*

Thirteen comments expressed concerns or confusion regarding the scope of required insurance coverage. Some commenters expressed uncertainty regarding the definition of the term "Seller," the issue of who may be a defendant in the Federal cause of action prescribed in the SAFETY Act, and the nature of protection from liability afforded to entities other than the "Seller" in the manufacturing and distribution chains of the technology. In response, the Department has revised the definition of "Seller" in Section 25.9 of the interim rule in order to clarify that the "Seller" is the actual recipient of the Designation for a qualified anti-terrorism technology. The Department has also revised Section 25.4(a) of the interim rule to clarify that only the Seller is required to obtain the required liability insurance coverage.

Concern was expressed regarding the availability of insurance covering all of the parties specified in Section 864(a)(3) of the SAFETY Act and the corresponding provision in the interim rule (§ 25.4(c)). First, under the interpretation of Section 863 of the Act expressed by the Department in the preamble of the interim rule, (1) there is one exclusive Federal cause of action for claims relating to the deployment of a qualified anti-terrorism technology with respect to an act of terrorism, and (2) such cause of action may be brought only against the Seller, and only for injuries proximately caused by the Seller. Therefore, although other persons and entities must be covered by the required insurance coverage, the actuarial analyses of the insurance industry should focus mainly, if not exclusively, on the Seller's potential liability, which should facilitate the issuance of insurance policies. Moreover, in this context, the provisions of Section 864(a)(2) of the Act and the corresponding provision of the interim rule (§ 25.4(b)), which limit the required insurance to no more than the maximum amount reasonably available from private sources on the world market at prices and terms that will not unreasonably distort the sales price of Seller's anti-terrorism technologies (which the Department intends to interpret with regard to the effect of the insurance requirement on the price of the technology and ultimately on the demand for and deployment of the technology for anti-terrorism purposes), should be emphasized. It should also be noted that the Department has revised Section 25.4(a) of the interim rule to provide specifically for the possibility of self-insurance if the Under Secretary determines that insurance in appropriate amounts or of appropriate types is not available for a particular technology from third-party insurance carriers.

### *Term, Expiration, and Termination of Designation*

Twenty-four comments were made suggesting that SAFETY Act Designations either should not expire or should have a longer duration (10–20 years) than provided for in the proposed rule (five to eight years). In response, the Department notes that qualification for a SAFETY Act Designation depends on a combination of the ability of the technology to be effective in a specific threat environment, the nature and cost of available insurance, and other factors, all of which are subject to rapid and unpredictable change. At the same time, the Department is very cognizant of the need for a guaranteed period of protection for successful SAFETY Act applicants in order to achieve the main goal of the Act, which is to facilitate the commercialization of needed anti-terrorism technologies. The Department believes that mandatory reconsideration of Designations after five to eight years provides a fair balancing of public and private interests.

Several comments suggested that SAFETY Act protections should have retroactive effect. There are two different senses of retroactivity that must be addressed. The first sense relates to the deployment of a technology. The Department believes that it would be inappropriate to apply SAFETY Act protections retroactively to deployments of a qualified anti-terrorism technology that occurred prior to the effective date of the Designation issued for such technology. The reasons are (1) there is no explicit authority to issue retroactive protections under the SAFETY Act, (2) a Designation with such retroactive effect would be potentially unlawful if it extinguishes an already accrued cause of action, (3) retroactive designation is not necessary to achieve, and does not further, the goals of the Act, and (4) there is no equitable method for determining the retroactivity of particular Designations. The Department believes that SAFETY Act protections should apply only to deployments of a qualified anti-terrorism technology that occur on or after the effective date of the Designation issued for such technology.

The second sense of retroactivity relates to the date of the sale of the qualified anti-terrorism technology by the Seller. The Department recognizes that, in some cases, technologies that qualify for SAFETY Act protections will have been sold by the Seller prior to the effective date of such protections. The Department believes that the date on which a technology was sold by a Seller, per se, is not necessarily relevant to the applicability of SAFETY Act protections to a deployment of the technology in defense against, response to, or recovery from an act of terrorism, provided that the technology is within the scope of a Designation and was originally sold by the Seller to which the Designation is issued. In other words, it might be appropriate for SAFETY Act protections to be applicable to any deployment of a qualified anti-terrorism technology that occurs on or after the effective date of the Designation issued for such technology even if such technology was originally sold by the Seller before the effective date of such Designation. The Department believes that any other interpretation would lead to anomalous and inequitable results. Therefore, provisions have been added to Sections 25.3(f), 25.4(f), 25.6(b), and 25.7(g) of the interim rule to clarify this issue, and in particular to require the Under Secretary to specify in each Designation and Certification the earliest date of the sale of the technology to which the protections will apply.

The Department notes that many qualified anti-terrorism technologies might be designed for continuous "deployment" (*e.g.*, sensors). The fact that a qualified anti-terrorism technology was sold and "deployed" prior to the effective date of an applicable Designation or Certification, or is, in a sense, continuously "deployed," should not prevent such protections from applying to any deployment of such technology that occurs on or after the effective date of the applicable Designation or Certification in defense against, response to, or recovery from any act of terrorism.

### *Termination of a Designation Resulting From Significant Modification*

Several comments expressed concern regarding Section 25.5(i) of the proposed rule, which provided for automatic termination if a designated technology is significantly modified or changed as defined in that provision. The concern was essentially that the standard for termination is too vague, although at least one commenter opposed automatic termination for any reason.

It is vital that the Department be able to ensure that technologies for which protections are granted are not changed in a way that will significantly affect their safety or effectiveness. The Department does not have the ability to monitor every change to a designated technology, however, and therefore the interim rule must place the burden on Sellers to submit proposed changes to the Department so that they may be properly evaluated.

That said, the Department agrees with one of the comments that suggested that only changes that significantly reduce the safety or effectiveness of the technology should be subject to automatic termination, and Section 25.5(i) of the interim rule has been revised accordingly. In addition, that Section has been revised to authorize the Under Secretary, in lieu of issuing a modified Designation, to issue a certificate to a Seller that certifies that a proposed change or modification to a technology does not significantly reduce its safety or effectiveness and reaffirms the applicability of the existing Designation to the technology. That option should enable the Under Secretary to respond swiftly to submissions of relatively minor changes. The Department strongly encourages holders of Designations to submit to the Under Secretary any proposed modifications or changes that could significantly reduce the safety or effectiveness of the designated technology.

One commenter wondered how the Department will evaluate a proposed change in advance when the factors to be evaluated would seem to require actual "implementation" of the change. The Department is confident that Sellers will have effective methods to evaluate the safety and effectiveness of changes to their technologies prior to actual commercialization, and the Department will take advantage of those same methods in its evaluation.

### *Confidentiality of Information*

Seventeen commenters indicated a concern regarding the Department's ability to protect the confidentiality of information that is provided in an application. In particular, there is apprehension that the Freedom of Information Act (FOIA) protections might be inadequate to guarantee nondisclosure of an applicant's trade secrets or confidential business information. It was suggested that explicit protections similar to those available for source selection or procurement information under FAR section 3, or a declaration that all financial information provided is deemed voluntary, or both, be included in the interim rule.

The Department is committed to the protection of applicants' proprietary information to the fullest extent required or permitted by law. Although the interim rule does not establish any new special protections (such as those in section 3 of the FAR), there are multiple protections available for applicants' sensitive information. Those protections include the Trade Secrets Act (18 U.S.C. 1905), Exemption 1 ("national security") of FOIA, and Exemption 4 ("privileged or confidential information") of FOIA. In particular, Federal employees are subject to criminal penalties for unauthorized disclosure of information qualifying under Exemption 4 of FOIA. All contractors or other agents of the Secretary will be required to enter into nondisclosure agreements, and each will be examined on an Application-by-Application basis for potential conflicts of interest, before being granted access to any confidential information provided by applicants.

### *Services as Distinguished From Products*

Fourteen comments expressed concerns that the language in the proposed rule did not make clear how certain provisions of the SAFETY Act will apply to services, as opposed to physical products. The Department recognizes that the Act applies equally to product-based technologies and service-based technologies.

The Department will evaluate services and products using the same seven non-exclusive criteria set forth in Section 862(b) and the corresponding provision in the interim rule (§ 25.3(b)), as required by the Act. These criteria include "demonstrated substantial utility and effectiveness" and "studies * * * to assess the capability of the technology to substantially reduce risks of harm." Similarly, qualified Sellers of service-based technologies must satisfy the same post-Designation obligations as Sellers of products. These obligations include reporting insurance status, notifying the Secretary of any transfer or licensing of the designated technology, and applying for modification of a Designation prior to making any significant change to the designated technology. Appropriate revisions have been made to Section 25.5(i) and other provisions of the interim rule to clarify their applicability to services.

Transfer or licensing of Designations for products and, in particular, services may not be appropriate, since the identity and established expertise of the Seller is often be an integral basis for a Designation. That issue will be addressed in appropriate cases in individual Designations, as provided in Section 25.3(f) of the interim rule.

### *Determining the Required Amount of Insurance*

A number of commenters discussed the potential difficulty of determining the amounts of insurance that must be carried to satisfy claims arising out of, relating to, or resulting from an act of terrorism with respect to which qualified anti-terrorism technologies have been deployed. Issues revolve around concern that most liability insurance is not purchased product-by-product, so that it might be difficult to estimate the "price distortion" caused by needing to insure a proposed new product or service. It was also suggested that there is a circular dependency between insurance costs and Designation: *i.e.*, the cost of insurance depends on the liability exposure, which depends on the content of the Designation (if any), which in turn depends on the cost of insurance. There was also concern expressed that insurance is not available at any price for certain technologies.

The Department is aware of the difficulties involved in quantifying the price impact of insuring (or self-insuring) against the specific potential liabilities addressed by the Act. The Department will rely on expert opinion and analysis in this area, as it will with technical determinations of safety and effectiveness. The Department will address the potential circularity issue by evaluating the need for SAFETY Act protections assuming the non-existence of such protections, and then setting the required amount of insurance by taking into account all relevant factors, including the cost and availability of insurance coverage at different liability limitation levels.

Regarding potential unavailability of insurance for certain technologies, the Department notes that the granting of a Designation may render a previously uninsurable technology insurable through reduction of liability exposure. Where necessary to address unavailability of insurance, however, Designations may be granted that permit the insurance requirement to be satisfied by self-insurance up to a specified limit of liability. A new Section 25.4(f) and other provisions have been inserted in the interim rule to address this issue, as well as the continuing applicability of SAFETY Act protections after the expiration or termination of a Designation (which had been addressed in the proposed rule only in the preamble).

*Clarification of Government Contractor Defense (GCD)*

The precise nature and consequences of the GCD as applied by the Act were considered by 14 commenters to be unclear in the proposed rule. In particular, the interaction between the scope of the judicially derived GCD and the scope of the presumption defined in the Act was believed to be unclear.

As defined in the Act, the rebuttable presumption of the applicability of the GCD is accorded to any Seller who (1) has received Certification as described in Section 863(d), and (2) is the defendant in the Federal cause of action arising in Section 863(a). Pursuant to Section 863(d)(1), the presumption may only be overcome by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information during the SAFETY Act application process.

The view of the Department is that the GCD protections afforded by the SAFETY Act to recipients of Certifications are similar to those affirmed by the courts in *Boyle* v. *United Technologies* and its progeny as of the date of the enactment of the SAFETY Act. In applying those protections, the Department believes that Congress intended that, for purposes of applying the GCD, courts presume that all of the legal and factual requirements for establishment of the GCD by a government contractor are met by the existence of an applicable SAFETY Act Certification.

The Department has added a new paragraph to Section 25.6 of the interim rule that corresponds to Section 863(d)(1) of the Act. Such new paragraph makes it clear that the presumption of the GCD will continue to apply in perpetuity to all deployments of technologies that receive a Certification, provided that the sale of the technology was consummated by the Seller prior to the expiration or termination of the applicable Certification.

*Relationship of the SAFETY Act and Indemnification Under Public Law 85–804*

Thirteen comments related to the relationship between SAFETY Act protections and indemnification under Public Law 85–804. The Department believes, however, that the language contained in part 8 of the "Special Issues" section of the preamble of the interim rule adequately explains such relationship, and makes it clear that eligibility for a SAFETY Act Designation does not preclude the granting of indemnification under Public Law 85–804.

*Detailed Specification of the Seller, Technology, and Scope of a Designation*

Twenty comments focused on the detailed specification of the Seller, technology, and scope of a Designation. Commenters suggested that there are advantages to the public, to industry, and to the application evaluation process in designating entire classes of technology, rather than designating each Seller of a technology individually.

The Department seeks to balance the need for rapid deployment of anti-terrorism technologies with the need for careful evaluation of each technology and the need to avoid uncertainty in the marketplace concerning which specific product or service deployments are protected by Designation. In general, Designations will be restricted in scope to a particular Seller, a specific product or service, and delineated types of deployment or application. This approach addresses the comment that it is beneficial to the public to be able to learn precisely which Sellers and which of their products/services have been designated, and for what scope of deployment. At some in the near future, as relevant standards are adopted and the body of "substantially equivalent" technologies increases, the Department will revisit the advisability of awarding broader Designations ("Block Designations") to classes of technology.

*Definition of "Act of Terrorism"*

Ten comments indicated a belief that the definition of "act of terrorism" in Section 865(2) of the Act (and in Section 25.9 of the interim rule) is ambiguous. One suggested that the definition coincide with other federal definitions of "terrorism," such as the definition in 22 U.S.C. 2656f(d)(2). The Department notes that the definition of "act of terrorism" was prescribed by Congress in the SAFETY Act. The Department believes that the definition in the Act provides an appropriate degree of flexibility in the evolving threat environment, including the use of the broad term "harm." Regarding the comment concerning whether acts that occur on foreign territory are covered by the definition, the Department's view is that the term "act of terrorism," as defined, potentially encompasses acts that occur outside the territory of the United States. The basis for that view is that there is no geographic requirement in the definition; rather, an act that occurs anywhere may be covered if it causes harm to a person, property, or an entity in the United States. The statutory definition of "act of terrorism" has been added to Section 25.9 of the interim rule.

*Determinations Not Subject to Review or Appeal*

Five commenters observed that the SAFETY Act Designation and Certification processes are complex and that many apparently subjective assessments will be made during the evaluation process. They were concerned that the Secretary's decision is final, without recourse or appeal. Some commenters suggested that the Administrative Procedures Act (APA) requires a formal review as part of the process.

The Department is aware of the complexity of the review process and has made numerous allowances for exchange of information and concerns between evaluators and applicants at multiple points during the process, in order to clarify uncertainties and to give the applicant an opportunity to provide supplemental information and address issues. The Department believes that this interactive process provides sufficient recourse to applicants. The SAFETY Act is a discretionary authority accorded by Congress to the Secretary of Homeland Security in order to facilitate the commercialization and deployment of needed anti-terrorism technologies. The exercise of that authority with respect to a particular technology requires that many discretionary judgments be made regarding the applicability and application of the SAFETY Act criteria to the technology and the weighting of the criteria in each case. It would be inappropriate to provide for what would amount to the second-guessing of the Secretary's discretionary judgment by empowering another entity to substitute its own discretionary judgment for that of the Secretary.

SAFETY Act protections are not required to market any technology, and therefore the absence of a grant of protection under the SAFETY Act will not prevent any person or entity from doing business. The Department also notes that a SAFETY Act Designation is not a "license required by law" within the meaning of Section 558(c) of the APA, and thus is not covered by the APA.

### *Allowability of Insurance Costs*

Four comments questioned whether the cost of maintaining the insurance required by a SAFETY Act Designation is an "allowable cost" under Federal contracting practices. The Department notes that each Federal procurement and contracting arrangement is unique to the Federal agency involved. When an applicant has questions regarding allowability for a specific case involving Federal procurements, the applicant should consult with the procuring agency and, if appropriate, with the applicant's legal counsel.

### *Burden of Proof With Regard to Evaluation Criteria*

Three commenters asked, in essence, if the applicant bears the responsibility for demonstrating the applicability of each of the seven evaluation criteria. In particular, it was asked whether the applicant must establish the existence of an extraordinarily large or unquantifiable potential risk exposure (criterion 3), or the magnitude of risk exposure to the public if applicant's technology were not deployed (criterion 5). It was also asked whether applicants will bear the cost of scientific studies (criterion 6).

An application for a Designation or a Certification is a positive assertion on the applicant's part that the technology in question deserves special protections under the law in order to promote a public good. It is the applicant's responsibility to make a persuasive and defensible case. This will involve, at a minimum, submitting evidence that the technology satisfies the criteria in Section 862(b) of the SAFETY Act and the corresponding provision of the interim rule (§ 25.3(b)). To that end, an application that contains the most complete suite of supporting information regarding concrete evidence of proven or potential effectiveness will be more persuasive than an application that relies solely on the applicant's personal effectiveness estimates and *a priori* threat and liability assessments. Any evaluations needed to address the criteria will be the financial responsibility of the applicant.

### *Relationship of Designation and Certification Processes*

Three comments addressed the linkage of the Designation and Certification processes. The Department believes that it is appropriate for these two aspects of the Act to remain closely aligned, and that the SAFETY Act indeed requires the issuance of a Designation for a technology to be a prerequisite (but not sufficient in itself) for issuance of a Certification. The same high standard of review will be applied to evaluations for Designations and Certifications, and a substantial amount of the information that is needed to evaluate applications for Designations is also integral to the Certification process (although there is additional information required to support the evaluation for a Certification). The Designation and the Certification are two separate protections with separate (but overlapping) criteria, and therefore they require two discrete application processes. The Department notes again, however, that applications for both protections may be considered in parallel, and that both protections may be granted simultaneously.

### *Multi-use Technologies and "Specific Purpose"*

Four commenters noted that the proposed rule stated that a technology must be "designed, developed, modified, or procured for the specific purpose of preventing, detecting, identifying or deterring acts of terrorism * * *." They stated that the word "specific," as used in this context, seems overly restrictive. They believe that this narrow reading could exclude from designation any product originally developed for another use.

The "specific purpose" clause was prescribed by Congress in Section 865(1) of the Act, and the Department does not have the authority to change that definition. The Department believes, however, that Congress did not intend for "specific purpose" to mean "exclusive purpose." An applicant need only show that one specific purpose of the subject technology is to prevent, detect, identify, or deter acts of terrorism or limit the harm such acts might otherwise cause; it is irrelevant for purposes of the definition of "qualified anti-terrorism technology" that a technology might have other purposes or uses. Applications for SAFETY Act protections, and their component parts, should, of course, focus on the specific purpose(s) of the technology for which the applicant is seeking protection.

### *Expedited Reviews*

Thirteen comments expressed a desire for the Department to provide expedited reviews for specific technologies based on various criteria. The approach of the Department will be to prioritize and expedite SAFETY Act applications in order to ensure that the highest risk vulnerabilities to the highest consequence threats are addressed first. In general, the Department will expedite reviews of SAFETY Act applications as its resources allow.

### *Reciprocal Waivers*

Several comments stated that reciprocal waivers of the type described in the Act (reciprocal waivers of claims by the specified parties for losses sustained by them or their employees arising from an act of terrorism with respect to which a qualified anti-terrorism technology is deployed) are not standard practice in most industries, and that some customers, vendors, and suppliers may be unwilling to enter into such reciprocal agreements. The Department will not withhold or revoke a Designation based on the failure to obtain one or more required reciprocal waivers, provided that the Seller shows that it made diligent efforts in good faith to obtain such waivers.

The Department's view is that such waivers are not an absolute condition (precedent or subsequent) for the issuance, validity, effectiveness, duration, or applicability of a Designation, because (1) obtaining such waivers often will be beyond the control of SAFETY Act applicants, (2) requiring all of such waivers as such a condition would thwart the intent of Congress in enacting the SAFETY Act by rendering the benefits of the SAFETY Act inapplicable in many otherwise appropriate situations, and (3) the consequences of failing to obtain the waivers are not specified in the Act. Section 25.4(e) of the interim rule has been revised accordingly.

### *Mass Casualty Data*

Four comments expressed concern over the use of mass casualty data. In particular, the proposed rule stated that the Secretary's inquiry concerning an application "may involve * * * data and history regarding mass casualty losses." It was noted that, in the case of past mass tort settlements, such data may exist but be confidential. Questions were asked regarding whether providing such data (where it exists) would be mandatory for a Designation or a Certification, even when restricted by prior court-ordered confidentiality agreements, and whether special protections would exist to prevent unauthorized disclosure.

The Department will not ask applicants to violate court ordered confidentiality agreements, but will expect that every reasonable effort will be made to extract relevant non-protected information or to provide equivalent information—*e.g.*, from industry aggregate data or summaries, etc.

*Multiple Sellers*

Questions were posed regarding whether it will be possible for joint ventures or other multi-party arrangements to receive SAFETY Act protections, and who will be responsible for obtaining insurance for such a multi-Seller Designation. A joint venture may take many forms. A joint venture that takes the form of a recognized business association with legal personality will be treated as a single Seller, and will be required to obtain insurance coverage itself.

As specified in the proposed rule, SAFETY Act protections may be issued to multiple Sellers (*e.g.*, a situation in which the owner of a technology and one or more of its licensees are to be covered by a single Designation). In that situation, the parties' respective obligations to obtain insurance will be specified in the Designation.

**Discussion of Interim Rule**

As part of the Homeland Security Act of 2002, Public Law 107–296, Congress enacted several liability protections for providers of anti-terrorism technologies. The SAFETY Act provides incentives for the development and deployment of anti-terrorism technologies by creating a system of "risk management" and a system of "litigation management." The purpose of the Act is to ensure that the threat of liability does not deter potential manufacturers or Sellers of anti-terrorism technologies from developing and commercializing technologies that could save lives. The Act thus creates certain liability limitations for "claims arising out of, relating to, or resulting from an act of terrorism" where qualified anti-terrorism technologies have been deployed. The Act does not limit liability for harms caused by anti-terrorism technologies when no act of terrorism has occurred.

Together, the risk and litigation management provisions provide the following protections:

- Exclusive jurisdiction in Federal court for suits against the Sellers of "qualified anti-terrorism technologies" (§ 863(a)(2));
- A limitation on the liability of Sellers of qualified anti-terrorism technologies to an amount of liability insurance coverage specified for each individual technology, provided that Sellers will not be required to obtain any more liability insurance coverage than is reasonably available "at prices and terms that will not unreasonably distort the sales price" of the technology (Section 864(a)(2));
- A prohibition on joint and several liability for noneconomic damages, so that Sellers can only be liable for that percentage of noneconomic damages proportionate to their responsibility for the harm (§ 863(b)(2));
- A complete bar on punitive damages and prejudgment interest (§ 863(b)(1));
- A reduction of plaintiffs' recovery by amounts that plaintiffs received from "collateral sources," such as insurance benefits or other government benefits (§ 863(c)); and
- A rebuttable presumption that the Seller is entitled to the "government contractor defense" (§ 863(d)).

The Act provides that these liability protections are conferred by two separate actions by the Secretary. The Secretary's designation of a technology as a "qualified anti-terrorism technology" confers all of the liability protections *except* the rebuttable presumption in favor of the government contractor defense. The presumption in favor of the government contractor defense requires an additional "approval" by the Secretary under Section 863(d) of the Act. In many cases, however, the designation and the approval can be conferred simultaneously.

*Analysis*

This preamble to the interim rule first addresses the two major aspects of the Act—the designation of qualified anti-terrorism technologies and the approval of technologies for purposes of the government contractor defense. Following that discussion, the preamble addresses specific issues regarding the interim rule and the Department's interpretation of the Act.

*Designation of Qualified Anti-Terrorism Technologies*

As noted above, the designation of a technology as a qualified anti-terrorism technology confers all of the liability protections provided in the Act, except for the presumption in favor of the government contractor defense. The Act gives the Secretary broad discretion in determining whether to designate a particular technology as a "qualified anti-terrorism technology," although the Act sets forth the following criteria that must be considered to the extent that they are applicable to the technology: (1) Prior United States Government use or demonstrated substantial utility and effectiveness; (2) availability of the technology for immediate deployment; (3) the potential liability of the Seller; (4) the likelihood that the technology will not be deployed unless the SAFETY Act protections are conferred; (5) the risk to the public if the technology is not deployed; (6) evaluation of scientific studies; and (7) the effectiveness of the technology in defending against acts of terrorism. These criteria are not exclusive—the Secretary may consider other factors that he deems appropriate. The Secretary has discretion to give greater weight to some factors over others, and the relative weighting of the various criteria may vary based upon the particular technology at issue and the threats that the technology is designed to address. The Secretary may, in his discretion, determine that failure to meet a particular criterion justifies denial of an application under the SAFETY Act. However, the Secretary is not required to reject an application that fails to meet one or more of the criteria. Rather the Secretary, after considering all of the relevant criteria, may conclude that a particular technology merits designation as a "qualified anti-terrorism technology" even if a particular criterion is not satisfied. The Secretary's considerations will also vary with the constantly evolving threats and conditions that give rise to the need for the technologies. The interim rule provides for designation as a qualified anti-terrorism technology for five to eight years.

The SAFETY Act applies to a very broad range of technologies, including products, services, software, and other forms of intellectual property, as long as the Secretary, as an exercise of discretion and judgment, determines that a technology merits designation under the statutory criteria. Further, as the statutory criteria suggest, a "qualified anti-terrorism technology" is not necessarily required to be newly developed—it may have already been employed (*e.g.* "prior United States government use") or may be a new application of an existing technology.

The Act also provides that, before designating a "qualified anti-terrorism technology," the Secretary will examine the amount of liability insurance the Seller of the technology proposes to maintain for coverage of the technology at issue. Under § 864(a), the Secretary must certify that the coverage level is appropriate "to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed." Section 864(a)(1). The Act further provides that "the Seller is not required to obtain liability insurance of more than the maximum amount of liability insurance reasonably available from private sources on the world market at prices and terms that will not unreasonably distort the sales price of Seller's anti-terrorism technologies" (which the Department intends to interpret with regard to the effect of the insurance requirement on the price of the technology and ultimately on the demand for and deployment of the technology for anti-terrorism purposes). Section 864(a)(2).

The Secretary does not intend to set a "one-size-fits-all" numerical requirement regarding required insurance coverage for all technologies. Instead, as the Act suggests, the inquiry will be specific to each application and may involve an examination of several factors, including the following: the amount of insurance the Seller has previously maintained; the amount of insurance maintained by the Seller for other technologies or for the Seller's business as a whole; the amount of insurance typically maintained by sellers of comparable technologies; data and history regarding mass casualty losses; and the particular technology at issue. The Secretary will not require insurance beyond the point at which the cost of coverage would "unreasonably distort" the price of the technology. Once the Secretary concludes the analysis regarding the appropriate level of insurance coverage (which might include discussions with the Seller in appropriate cases), the Secretary will identify in a short certification a description of the coverage appropriate for the particular qualified anti-terrorism technology. If, during the term of the designation, the Seller would like to request reconsideration of that insurance certification due to changed circumstances or for other reasons, the Seller may do so. If the Seller fails to maintain coverage at the certified level during that time period, the liability protections of the Act will continue to apply, but the Seller's liability limit will remain at the certified insurance level. Such failure, however, will be regarded as a negative factor in the consideration of any future application by the Seller for renewal of the applicable designation, and perhaps in any other application by the Seller.

The Department solicits comment on the designation of qualified anti-terrorism technologies, including whether the five to eight year period is an appropriate length of time for such a designation.

*Government Contractor Defense*

The Act creates a rebuttable presumption that the government contractor defense applies to qualified anti-terrorism technologies "approved by the Secretary" in accordance with certain criteria specified in Section 863(d)(2). The government contractor defense is an affirmative defense that immunizes Sellers from liability for certain claims brought under Section 863(a) of the Act. *See* § 863(d)(1). The presumption of this defense applies to all "approved" qualified anti-terrorism technologies for claims brought in a "product liability or other lawsuit" and "arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies * * * have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller." *Id.* While the government contractor defense is a judicially-created doctrine, Section 863's express terms supplant many of the requirements in the case law for application of the defense.

First, and most obviously, the Act expressly provides that the government contractor defense is available not only to government contractors, but also to those who sell to state and local governments and the private sector. *See* § 863(d)(1) ("This presumption of the government contractor defense shall apply regardless of whether the claim against the Seller arises from a sale of the product to federal government or non-federal government customers.").

Second, Sellers of qualified anti-terrorism technologies need not design their technologies to federal government specifications in order to obtain the government contractor defense under the SAFETY Act. Instead, the Act sets forth criteria for the Department's "approval" of technologies. Specifically, the Act provides that during the process of approval for the government contractor defense the Secretary will conduct a "comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended." Section 863(d)(2). The Act also provides that the Seller will "conduct safety and hazard analyses" and supply such information to the Secretary. *Id.* This express statutory framework thus governs in lieu of the requirements developed in case law for the application of the government contractor defense.

Third, the Act expressly states the limited circumstances in which the applicability of the defense can be rebutted. The Act provides expressly that the presumption can be overcome *only* by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary's consideration of such technology. *See* § 863(d)(1) ("This presumption shall only be overcome by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary's consideration of such technology under this subsection.").

The applicability of the government contractor defense to particular technologies is thus governed by these express provisions of the Act, rather than by the judicially-developed criteria for applicability of the government contractor defense outside the context of the SAFETY Act.

While the Act does not expressly delineate the scope of the defense (*i.e.*, the types of claims that the defense bars), the Act and the legislative history make clear that the scope is broad. For example, it is clear that any Seller of an "approved" technology cannot be held liable under the Act for design defects or failure to warn claims, unless the presumption of the defense is rebutted by evidence that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary's consideration of such technology.

The government contractor defense under *Boyle* and its progeny bars a broad range of claims. The Supreme Court in *Boyle* concluded that "state law which holds government contractors liable for design defects" can present a significant conflict with Federal policy (including the discretionary function exception to the Federal Tort Claims Act) and therefore "must be displaced." *Boyle* v. *United Technologies Corp.*, 487 U.S. 500, 512 (1988). The Department believes that Congress incorporated the Supreme Court's *Boyle* line of cases as it existed on the date of enactment of the SAFETY Act, rather than incorporating future developments of the government contractor defense in the courts. Indeed, it is hard to imagine that Congress would have intended a statute designed to provide certainty and protection to Sellers of anti-terrorism technologies to be subject to future developments of a judicially-created doctrine. In fact, there is evidence that Congress rejected such a construction. *See, e.g.*, 148 Cong. Rec.

E2080 (November 13, 2001) (statement of Rep. Armey) ("[Companies] will have a government contractor defense as is commonplace in *existing law*.") (emphasis added).

Procedurally, the presumption of applicability of the government contractor defense is conferred by the Secretary's "approval" of a qualified anti-terrorism technology specifically for the purposes of the government contractor defense. This approval is a separate act from the Secretary's "designation" of a qualified anti-terrorism technology. Importantly, the Seller may submit applications for both designation as a qualified anti-terrorism technology and approval for purposes of the government contractor defense at the same time, and the Secretary may review and act upon both applications simultaneously. The distinction between the Secretary's two actions is important, however, because the approval process for the government contractor defense includes a level of review that is not required for the designation of a qualified anti-terrorism technology. Specifically, the Act provides that during the process of approval for the government contractor defense the Secretary will conduct a "comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended." Section 863(d)(2). The Department believes that certain Sellers will be able to obtain the protections that come with designation as a qualified anti-terrorism technology even if they have not satisfied the requirements for the government contractor defense. Similarly, even if the applicability of the government contractor defense were rebutted under the test set forth in Section 863(d)(1) of the Act, the technology may still retain the designation and protections as a qualified anti-terrorism technology. Fraud or willful misconduct in the submission of information to the Department in connection with an application under the Act may result not only in rebuttal of the presumed application of the government contractor defense, but may also prompt the Department to refer the matter to the Department of Justice for pursuit of criminal or civil penalties.

The Department invites comment regarding the government contractor defense.

### *Specific Issues Regarding the Act and This Interim Rule*

1. *Definition of Anti-Terrorism Technologies.* The Department recognizes that the universe of technologies that can be deployed against terrorism includes far more than physical products. Rather, the defense of the homeland will require deployment of a broad range of technologies that includes services, software, and other forms of intellectual property. Thus, consistent with Section 865 of the Act, Section 25.3(a) of the interim rule defines qualified anti-terrorism technologies very broadly to include "any qualifying product, equipment, service (including support services), device, or technology (including information technology)" that the Secretary, as an exercise of discretion and judgment, determines to merit designation under the statutory criteria.

2. *Development of New Technologies.* The Act's success depends not only upon encouraging Sellers to provide existing anti-terrorism technologies, but also upon encouraging Sellers to develop new and innovative technologies to respond to the ever-changing threats to the American people. The interim rule is thus designed to allow the Department to assist would-be Sellers during the invention, design, and manufacturing phases in two important respects. First, Section 25.3(h) of the proposal makes clear that the Department, within its discretion and where feasible, may provide feedback to inventors and manufacturers regarding whether proposed or developing anti-terrorism technologies might meet the qualification factors under the Act. The Department has developed a pre-application submission process in order to facilitate the procurement of such feedback. To be sure, the Department cannot provide advance designation, as some of the factors for the Secretary's consideration cannot be addressed in advance. The Department may, however, provide feedback regarding other factors, with the goal of giving potential Sellers some understanding of whether it might be advantageous to proceed with further development of the technology. Departmental feedback at the design, prototyping, or testing stage of development, to the extent feasible, may provide manufacturers with added incentive to commence and/or complete production of cutting-edge anti-terrorism technology that otherwise might not be produced or deployed in the absence of the risk and litigation management protections in the Act. The Department will perform these consultations with potential Sellers in a manner consistent with the protection of intellectual property and trade secrets, as discussed below.

Second, Section 25.3(g) of the interim rule recognizes that Federal, state, and local government agencies will often be the purchasers of anti-terrorism technologies. The Department recognizes that terms on which Sellers are able to provide anti-terrorism technologies to government agencies may vary depending on whether the technologies receive SAFETY Act coverage or not. The interim rule thus provides that the Department may coordinate SAFETY Act reviews with government agency procurements. The Department also intends to review SAFETY Act applications relating to technologies that are the subject of government agency procurements on an expedited basis.

The Department requests public comments regarding the best way for the Department to provide feedback to potential Sellers regarding SAFETY Act coverage and the best way for the Department to coordinate SAFETY Act review with agency procurements.

3. *Protection of Intellectual Property and Trade Secrets.* The Department believes that successful implementation of the Act requires that applicants' intellectual property interests and trade secrets remain protected in the application process and beyond. Toward that end, the Department will create an application and review process in which the Department maintains the confidentiality of an applicant's proprietary information. The Department notes that laws mandating disclosure of information submitted to the government generally contain exclusions or exceptions for such information. The Freedom of Information Act, for instance, provides specific exceptions for proprietary information submitted to Federal agencies.

4. *Evaluation of Scientific Studies; Consultation with Scientific and Technical Experts.* Section 862(b)(6) of the Act provides that, as one of many factors in determining whether to designate a particular technology under the Act, the Secretary shall consider evaluation of all scientific studies "that can be feasibly conducted" in order to assess the capability of the technology to substantially reduce the risks of harm. An important part of this provision is that it contemplates review only of such studies as can "feasibly" be conducted. The Department believes that the need to protect the American public by facilitating the manufacture and marketing of anti-terrorism technologies might render it infeasible to defer a designation decision until after every conceivable scientific study is completed. In many cases, existing

information (whether based on scientific studies, experience with the technology or a related technology, or other factors) might enable the Secretary to perform an appropriate assessment of the capability of the technology to reduce risks of harm. In other cases, even where less information is available about the capability of a technology to reduce risks of harm, the public interest in making the technology available as soon as practicable may render it infeasible to await the conduct of further scientific studies on that issue. In considering whether or to what extent it is feasible to defer a designation decision until additional scientific studies can be conducted, the Department will bring to bear its expertise concerning the protection of the American homeland and will consider the urgency of the need for the technology and other relevant factors and circumstances.

5. *"Exclusive Federal Jurisdiction" and "Scope" of Insurance Coverage under Section 864(a)(3).* The Act creates an exclusive Federal cause of action "for any claim for loss of property, personal injury, or death arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller." Section 863(a)(2); *see also* section 863(a)(1). This exclusive "Federal cause of action shall be brought only for claims for injuries that are proximately caused by sellers that provide qualified anti-terrorism technology." Section 863(a)(1). The best reading of Section 863(a), and the reading the Department hereby adopts, is that (1) only one Federal cause of action exists for loss of property, personal injury, or death when a claim relates to the deployment (performance or non-performance) of the Seller's qualified anti-terrorism technology in defense against, response to, or recovery from an act of terrorism, and (2) such cause of action may be brought *only against the Seller.*

The exclusive Federal nature of this cause of action is evidenced in large part by the exclusive jurisdiction provision in Section 863(a)(2). That subsection states: "Such appropriate district court of the United States shall have original and exclusive jurisdiction over all actions for any claim for loss of property, personal injury, or death arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller." *Id.* Any presumption of concurrent causes of action (between State and Federal law) is overcome by two basic points. First, Congress would not have created in this Act a Federal cause of action to complement State law causes of action. Not only is the substantive law for decision in the Federal action derived from State law (and thus would be surplusage), but in creating the Act Congress plainly intended to limit rather than increase the liability exposure of Sellers. Second, the granting of exclusive jurisdiction to the Federal district courts provides further evidence that Congress wanted an exclusive Federal cause of action. Indeed, a Federal district court (in the absence of diversity) does not have jurisdiction over state law claims, and the statute makes no mention of diversity claims anywhere in the Act.

Further, it is clear that the Seller is the only appropriate defendant in this exclusive Federal cause of action. First and foremost, the Act unequivocally states that a "cause of action shall be brought only for claims for injuries that are *proximately caused by sellers* that provide qualified anti-terrorism technology." Section 863(a)(1) (emphasis added). Second, if the Seller of the qualified anti-terrorism technology at issue was not the only defendant, would-be plaintiffs could, in an effort to circumvent the statute, bring claims (arising out of or relating to the performance or non-performance of the Seller's qualified anti-terrorism technology) against arguably less culpable persons or entities, including but not limited to contractors, subcontractors, suppliers, vendors, and customers of the Seller of the technology. Because the claims in the cause of action would be predicated on the performance or non-performance of the Seller's qualified anti-terrorism technology, those persons or entities, in turn, would file a third-party action against the Seller. In such situations, the claims against non-Sellers thus "may result in loss to the Seller" under section 863(a)(2). The Department believes Congress did not intend through the Act to increase rather than decrease the amount of litigation arising out of or related to the deployment of qualified anti-terrorism technology. Rather, Congress balanced the need to provide recovery to plaintiffs against the need to ensure adequate deployment of anti-terrorism technologies by creating a cause of action that provides a certain level of recovery against Sellers, while at the same time protecting others in the supply chain.

The scope of Federal preemption of state laws is highly relevant to the Department's implementation of the Act, as the Department will have to determine the amount of insurance that Sellers must obtain. Accordingly, the Department seeks comment on that matter.

6. *Amount of Insurance.* The Act requires that Sellers obtain liability insurance "of such types and in such amounts" certified by the Secretary "to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed." Section 864(a)(1). However, the Act makes clear that Sellers are *not* required to obtain liability insurance beyond "the maximum amount of liability insurance reasonably available from private sources on the world market at prices and terms that will not unreasonably distort the sales price of Seller's anti-terrorism technologies." Section 864(a)(2).

As explained above, the Department eschews any "one-size-fits-all" approach to the insurance coverage requirement. Instead, the Department construes the Act as contemplating the examination of several factors. Section 25.4(b) of the interim rule therefore sets forth a nonexclusive list of several factors that the Department may consider. These include the amount of insurance the Seller has previously maintained; the amount of insurance maintained by the Seller for other technologies or for the Seller's business as a whole; the amount of insurance typically maintained by sellers of comparable technologies; data and history regarding mass casualty losses; information regarding the amount of liability insurance offered on the world market; the particular technology at issue and its intended use; and the point at which the cost of coverage would "unreasonably distort" the price of the technology.

In the course of determining the amount of insurance required under the Act for a particular technology, the Department may consult with the Seller, the Seller's insurer, and others. While the decision regarding the amount of insurance required will generally be specific to each Seller or each technology, the Department recognizes that the incentive-based purposes of the Act may be furthered if the Department provides information to potential Sellers regarding the types and amounts of insurance that they will likely be required to obtain. Thus the Secretary may, where appropriate, give guidance to potential Sellers regarding the type and amounts of insurance that may be sufficient under the Act for particular technologies or categories of technologies.

The Department also recognizes that the amount of insurance available at prices that will not unreasonably distort the price of the anti-terrorism technology may vary over time. Thus, the interim rule is written to give the Department flexibility to address fluctuating insurance prices by providing that, during the term of the designation, the Seller may request reconsideration of the insurance certification due to changed circumstances or other reasons.

The interim rule provides that the Seller shall certify on an annual basis that the Seller has maintained the insurance required by the Under Secretary's certification. It further provides that the Under Secretary may terminate the designation as a qualified anti-terrorism technology if the Seller fails to provide the certification or provides a false certification. Termination of the designation would mean that the Seller would not be able to sell the technology as a qualified anti-terrorism technology after the date of the termination. The Seller's failure to maintain the insurance also may adversely affect the Seller's ability to obtain a renewal of the designation for the technology, and may even adversely affect the Seller's ability to obtain future designations of "qualified anti-terrorism technologies." Finally, a false certification may result in criminal or other penalties under existing laws.

The liability protections of the Act will continue to apply to technologies sold while the SAFETY Act designation was effective, regardless of whether the seller maintains the required insurance. This is necessary because the SAFETY Act protects not only the Seller, but also others in the manufacturing and distribution chains. For example, a buyer who purchases the technology while the SAFETY Act designation is still in effect should not be punished for the Seller's failure to maintain the insurance. The Seller, however, will face potential uninsured liability, because the Seller's liability limit will remain at the certified insurance level. This is because subsection (c) of Section 864 makes clear that the Seller's liability is capped at the amount of insurance "*required*" to be maintained under Section 864, rather than the amount of coverage actually obtained. The limitation of liability thus relates entirely to the amount of insurance required and makes no reference to whether such insurance is, in fact, maintained by the Seller.

The Department, as part of each certification, will specify the Seller or Sellers of the anti-terrorism technology for purposes of SAFETY Act coverage. The Department may, but need not, specify in the certification the others who are covered by the liability insurance required to be purchased by the Seller.

7. *Use of Standards.* Section 25.3(c) of the interim rule provides that the Under Secretary may issue technical standards for categories of anti-terrorism technologies, and that the Under Secretary may consider compliance with any such applicable standards in determining whether to grant a designation under the Act.

8. *Relationship of the SAFETY Act to Indemnification under Public Law 85–804.* The Department recognizes that Congress intended that the SAFETY Act's liability protections would substantially reduce the need for the United States to provide indemnification under Public Law 85–804 to Sellers of anti-terrorism technologies. Where applicable, the strong liability protections of the SAFETY Act should, in most circumstances, make it unnecessary to provide indemnification to Sellers. The Department recognizes, however, that there might be, in some limited circumstances, technologies or services with respect to which both SAFETY Act coverage and indemnification might be warranted. *See* 148 Cong. Rec. E2080 (statement by Rep. Armey) (November 13, 2002) (stating that in some situations the SAFETY Act protections will "complement other government risk-sharing measures that some contractors can use such as Public Law 85–804").

In recognition of this close relationship between the SAFETY Act and indemnification authority, in Section 73 of Executive Order 13286 of February 28, 2003, the President recently amended the existing Executive Order on indemnification—Executive Order 10789 of November 14, 1958, as amended. The amendment granted the Department of Homeland Security authority to indemnify under Public Law 85–804. At the same time, it requires that *all* agencies—not just the Department of Homeland Security—follow certain procedures to ensure that the potential applicability of the SAFETY Act is considered before any indemnification is granted for an anti-terrorism technology. Specifically, the amendment provides that Federal agencies cannot provide indemnification "with respect to any matter that has been, or could be, designated by the Secretary of Homeland Security as a qualified anti-terrorism technology" unless the Secretary of Homeland Security has advised whether SAFETY Act coverage would be appropriate and the Director of the Office of Management and Budget has approved the exercise of indemnification authority. The amendment includes an exception for the Department of Defense where the Secretary of Defense has determined that indemnification is "necessary for the timely and effective conduct of United States military or intelligence activities."

## Application of Various Laws and Executive Orders to This Interim Rulemaking

### *Executive Order 12866—Regulatory Planning and Review*

The Department has examined the economic implications of this interim rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues.

The Department did not receive any comments on our economic analysis.

The Department concludes that this interim rule is a significant regulatory action under the Executive Order because it will have a positive, material effect on public safety under Section 3(f)(1), and it raises novel legal and policy issues under Section 3(f)(4). The Department concludes, however, that this interim rule does not meet the significance threshold of $100 million effect on the economy in any one year under Section 3(f)(1), due to the relatively low estimated burden of applying for this technology program, the unknown number of certifications and designations that the Department will dispense, and the unknown probability of a terrorist attack that would have to occur in order for the protections put in place in this interim rule to have a large impact on the public.

*Need for the Regulation and Market Failure*

This regulation implements the SAFETY Act and is intended to implement the provisions set forth in that Act. The Department believes the current development of anti-terrorism technologies has been slowed due to the potential liability risks associated with their development and eventual deployment. In a fully functioning insurance market, technology developers would be able to insure themselves against excessive liability risk; however, the terrorism risk insurance market appears to be in disequilibrium. The attacks of September 11 fundamentally changed the landscape of terrorism insurance. Congress, in the findings of TRIA, concluded that temporary financial assistance in the insurance market is needed to "allow for a transitional period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses." TRIA § 101(b)(2). This interim rulemaking addresses a similar concern, to the extent that potential technology developers are unable to efficiently insure against large losses due to an ongoing reassessment of terrorism issues in insurance markets.

Even after a temporary insurance market adjustment, purely private terrorism risk insurance markets may exhibit negative externalities. Because the risk pool of any single insurer may not be large enough to efficiently spread and therefore insure against the risk of damages from a terrorist attack, and because the potential for excessive liability may render any terrorism insurance prohibitively expensive, society may suffer from less than optimal technological protection against terrorist attacks. The measures set forth in this interim rule are designed to meet this goal; they will provide certain liability protection from lawsuits and consequently will increase the likelihood that businesses will pursue important technologies that may not be pursued without this protection.

*Costs and Benefits to Technology Development Firms*

Since this interim rulemaking puts in place an additional voluntary option for technology developers, the expected direct net benefits to firms of this interim rulemaking will be positive; companies presumably will not choose to pursue the designation of "anti-terrorism technology" unless they believe it to be a profitable endeavor. The Department cannot predict with certainty the number of applicants for this program. An additional source of uncertainty is the reaction of the insurance market to this designation. As mentioned above, insurance markets appear currently to be adjusting their strategy for terrorism risk, so little market information exists that would inform this estimate. The Department invites comments on these issues.

If a firm chooses to invest effort in pursuing SAFETY Act liability protection, the direct costs to that firm will be the time and money required to submit the required paperwork and other information to the Department. Only companies that choose to request this protection will incur costs. Please see the accompanying PRA analysis for an estimate of these costs.

The direct benefits to firms include lower potential losses from liability for terrorist attacks, and as a consequence a lower burden from liability insurance for this type of technology. In this assessment, we were careful to only consider benefits and costs specifically due to the implementation of the interim rule and not costs that would have been incurred by companies absent any interim rulemaking. The SAFETY Act requires the sellers of the technology to obtain liability insurance "of such types and in such amounts" certified by the Secretary. The entire cost of insurance is not a cost specifically imposed by the proposed rulemaking, as companies in the course of good business practice routinely purchase insurance absent Federal requirements to do so. Any difference in the amount or price of insurance purchased as a result of the SAFETY Act would be a cost or benefit of this interim rule for firms.

The wording of the SAFETY Act clearly states that sellers are not required to obtain liability insurance beyond the maximum amount of liability insurance reasonably available from private liability sources on the world market at prices and terms that will not unreasonably distort the sales price of the seller's anti-terrorism technologies. We tentatively conclude, however, that this interim rulemaking will impact both the prices and terms of liability insurance relative to the amount of insurance coverage absent the SAFETY Act. The probable effect of this interim rule is to lower the quantity of liability coverage needed in order for a firm to protect itself from terrorism liability risks, which would be considered a benefit of this interim rule to firms. This change will most likely be a shift back in demand that leads to a movement along the supply curve for technology firms already in this market; they probably will buy less liability coverage. This will have the effect of lowering the price per unit of coverage in this market.

The Department also expects, however, that this interim rulemaking will lead to greater market entry, which will generate surplus for both technology firms and insurers. Again, this market is still in development, and the Department solicits comments on exactly how to predict the effect of this interim rulemaking on technology development.

*Costs and Benefits to Insurers*

The Department has little information on the future structure of the terrorism risk insurance market, and how this interim rulemaking will affect that structure. As stated above, this type of intervention could serve to lower the demand for insurance in the current market, thus the static effect on the profitability of insurers is negative. The benefits of the lower insurance burden to technology firms would be considered a cost to insurers; the static changes to insurance coverage would cause a transfer from insurers to technology firms. On the other hand, this type of intervention should serve to increase the surplus of insurers by making some types of insurance products possible that would have been prohibitive to customers or impossible for insurers to design in the absence of this interim rulemaking. The Department is interested in public comment on any possible negative or positive impacts to insurers caused by the SAFETY Act and this interim rulemaking, and whether these impacts would result in transfers within this market or an efficiency change not captured by another party. We encourage commenters to be as specific as possible.

*Costs and Benefits to the Public*

The benefits to the public of this interim rulemaking are very difficult to put in dollar value terms since its ultimate objective is the development of new technologies that will help prevent or limit the damage from terrorist attacks. It is not possible to even determine whether these technologies could help prevent large or small scale attacks, as the SAFETY Act applies to a vast range of technologies, including products, services, software, and other forms of intellectual property that could have a widespread impact. In qualitative terms, the SAFETY Act removes a great deal of the risk and uncertainty associated with product liability and in the process creates a powerful incentive that will help fuel the development of critically needed anti-terrorism technologies. Additionally, we expect the SAFETY Act to reduce the research and development costs of these technologies.

The tradeoff, however, may be that a greater number of technologies may be developed and qualify for this program that have a lower average effectiveness against terrorist attacks than technologies currently on the market, or technologies that would be developed in the absence of this interim rulemaking. In the absence of this rulemaking, strong liability discouragement implies that the fewer products that are deployed in support of anti-terrorist efforts may be especially effective, since profit maximizing firms will always choose to develop the technologies with the highest demand first. It is the tentative conclusion of the Department that liability discouragement in this market is too strong or prohibitive, for the reasons mentioned above. The Department tentatively concludes that this interim rule will have positive net benefits to the public, since it serves to strike a better balance between consumer protection and technological development. The Department welcomes comments informing this tradeoff argument, and public input on whether this interim rulemaking does strike the correct balance.

### *Collection of Information*

### Paperwork Reduction Act of 1995

This interim rule includes collection of information under the Paperwork Reduction Act of 1995 (Paperwork Reduction Act) (44 U.S.C. 3501–3520). As defined in 5 CFR 1320(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

The Department submitted the following information collection requests to the Office of Management and Budget (OMB) for emergency review with an expiration of six months from the date of publication of this interim rule in accordance with procedures of the Paperwork Reduction Act of 1995. The proposed information collection will be published to obtain comments from the public and affected agencies.

The Department requests comments on at least the following four points:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) The quality, utility, and clarity of the information to be collected; and

(4) The burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

For the purpose of each analysis described below and associated with each collection of information, the Department assumes a loaded labor rate of the personnel preparing each collection of information to be $100 per hour. The Department does not have sufficient information to provide a known number of applicants or submitters of information. All numbers are estimates.

This rule requires persons to conduct safety, effectiveness, utility, and hazard analyses and provide them to the Under Secretary in the course of applying for Designation of qualified anti-terrorism technology. We do not have quantified estimates of the impact of this provision, but we expect that much of the safety, effectiveness, utility, and hazard analysis activity will already take place in the normal course of technology development, since those matters are fundamental characteristics of a product. The Department acknowledges considerable uncertainty in these estimates, but even if the estimates were considerably higher, this does not represent a large investment by firms relative to overall development costs.

### Overview of Requests for Collection of Information

(a) Collection of Information Form No. DHS–S&T–I–SAFETY–001.

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Pre-Application for Designation of Qualified Anti-terrorism Technology.

(3) *Agency form numbers and applicable component sponsoring the collection:* Form Number: DHS–S&T–I–SAFETY–001, Directorate of Science and Technology, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Sellers and potential Sellers of qualified anti-terrorism technology. Abstract: The Pre-Application Form for Designation of Qualified Anti-Terrorism Technology will be used to provide information to the Under Secretary for Science and Technology of the Department of Homeland Security in determining whether Sellers pre-qualify for risk and litigation management protections under the SAFETY Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,000 applicants annually; 14 to 72 hours per application.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 14,000 to 72,000 hours.

(b) Collection of Information Form No. DHS–S&T–I–SAFETY–002.

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Application for Designation of Qualified Anti-Terrorism Technology.

(3) *Agency form numbers and applicable component sponsoring the collection:* Form Number: DHS–S&T–I–SAFETY–002, Directorate of Science and Technology, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Sellers and potential Sellers of qualified anti-terrorism technology. Abstract: The Application Form for Designation of Qualified Anti-Terrorism Technology will be used to provide information to the Under Secretary for Science and Technology of the Department of Homeland Security in determining whether Sellers qualify for risk and litigation management protections under the SAFETY Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,000 applicants annually; 36 to 180 hours per application.

(6) *An estimate of the annual total public burden associated with the collection:* 36,000 to 180,000 hours.

(c) Collection of Information Form No. DHS–S&T–I–SAFETY–003.

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Application of Transfer of Designation.

(3) *Agency form numbers and applicable component sponsoring the collection:* Form Number: DHS–S&T–I–SAFETY–003, Directorate of Science and Technology, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Sellers of qualified anti-terrorism technology. Abstract: The Application Form for Transfer of Designation will be used by Sellers to notify the Under Secretary for Science and Technology of the Department of Homeland Security of a transfer of Designation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 250 to 500 applicants annually, 15 to 30 minutes per application.

(6) *An estimate of the annual total public burden (in hours) associated with the collection:* 250 hours.

(d) Collection of Information Form No. DHS–S&T–I–SAFETY–004.

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Notice of License of Qualified Anti-Terrorism Technology.

(3) *Agency form numbers and applicable component sponsoring the collection:* Form Number: DHS–S&T–I–SAFETY–004, Directorate of Science and Technology, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Sellers of qualified anti-terrorism technology. Abstract: The Notice of License of Qualified Anti-Terrorism Technology.

Application Form for Transfer of Designation will be used by Sellers to notify the Under Secretary for Science and Technology of the Department of Homeland Security of its license of the right to manufacture, use or sell Designated technology.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 250 to 500 applicants annually; fifteen to thirty minutes per application.

(6) *An estimate of the annual total public burden (in hours) associated with the collection:* 250 hours.

(e) Collection of Information Form No. DHS–S&T–I–SAFETY–005.

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Notice of License of Approved Technology.

(3) *Agency form numbers and applicable component sponsoring the collection:* Form Number: DHS–S&T–I–SAFETY–005, Directorate of Science and Technology, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Sellers of approved anti-terrorism technology. Abstract: The Form for Notice of License of Approved Anti-Terrorism Technology will be used by Sellers to notify the Under Secretary for Science and Technology of the Department of Homeland Security of the right to manufacture and sell approved technology.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 250 to 500 applicants annually; fifteen to thirty minutes per application.

(6) *An estimate of the annual total public burden (in hours) associated with the collection:* 250 hours.

(f) Collection of Information Form No. DHS–S&T–I–SAFETY–006.

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Application for Modification of Designation.

(3) *Agency form numbers and applicable component sponsoring the collection: Form Number:* DHS–S&T–I–SAFETY–006, Directorate of Science and Technology, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Sellers of qualified anti-terrorism technology. Abstract: The Application Form for Modification of Designation will be used by Sellers to apply to the Under Secretary for Science and Technology of the Department of Homeland Security for approval of modification of a designation of Qualified Anti-Terrorism Technology.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 250 applicants annually; 10 to 20 hours per application.

(6) *An estimate of the annual total public burden (in hours) associated with the collection:* 5,000 hours.

(g) Collection of Information Form No. DHS–S&T–I–SAFETY–007.

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Application for Renewal of Certification of an Approved Product for Homeland Security.

(3) *Agency form numbers and applicable component sponsoring the collection:* Form Number: DHS–S&T–I–SAFETY–007, Directorate of Science and Technology, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Sellers of qualified anti-terrorism technology. Abstract: The Application Form for Renewal of Certification of an Approved Product for Homeland Security will be used by Sellers to request renewal of Certification of an approved product for Homeland Security to the Under Secretary for Science and Technology of the Department of Homeland Security.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 250 to 500 applicants annually; fifteen to thirty minutes per application.

(6) *An estimate of the annual total public burden (in hours) associated with the collection:* 250 hours.

(h) *Additional Information:* If additional information is required on any of these forms, contact: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528.

(i) *Submission of Comments on the Collection of Information:* If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under addresses, by the date under Dates.

(j) *Valid OMB Control Document:* You need not respond to a collection of information unless it displays a currently valid control document from OMB.

## Regulatory Flexibility Act

The Regulatory Flexibility Act requires the Department to determine whether this interim rulemaking will have a significant impact on a substantial number of small entities. Although we expect that many of the applicants for SAFETY Act protection are likely to meet the Small Business Administration's criteria for being a small entity, we do not believe this interim rulemaking will impose a significant financial impact on them. In fact, we believe this interim rule will be a benefit to technology development businesses, especially small businesses, by presenting them with an attractive, voluntary option of pursuing a potentially profitable investment by reducing the amount of risk and uncertainty of lawsuits associated with developing anti-terrorist technology. The requirements of this interim rulemaking will only be imposed on such businesses that *voluntarily* seek the liability protection of the SAFETY Act. If a company does not request that protection, the company will bear no cost.

To the extent that demand for insurance falls, however, insurers may be adversely impacted by this interim rule. The Department believes that eventual new entry into this market and further opportunities to insure against terrorism risk implies that the long-term impact of this interim rulemaking on insurers is ambiguous but could very well be positive. We also expect that this interim rulemaking will affect relatively few firms and relatively few insurers either positively or negatively, as this appears to be a specialized industry. Therefore, we preliminarily certify this notice of interim rulemaking will not have a significant impact on a substantial number of small entities, and we request comments on this certification.

Unfunded Mandates Reform Act of 1995

This interim rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Fairness Act of 1996

As noted above, the Department has tentatively determined that this interim rule would not qualify as a "major rule" as defined by section 804 of the Small Business and Regulatory Enforcement Act of 1996.

Executive Order 13132—Federalism

The Department of Homeland Security does not believe this interim rule will have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. States will, however, benefit from this interim rule to the extent that they are purchasers of qualified anti-terrorism technologies. The Department requests comment on the federalism impact of this Interim rule. In particular, the Department seeks comment on whether this interim rule will raise significant federalism implications and, if so, what is the nature of those implications.

**List of Subjects in 6 CFR Part 25**

Business and industry, Insurance, Practice and procedure, Science and technology, Security measures.

■ For the reasons discussed in the preamble, 6 CFR Chapter I is amended by adding part 25 to read as follows:

## PART 25—REGULATIONS TO SUPPORT ANTI-TERRORISM BY FOSTERING EFFECTIVE TECHNOLOGIES

Sec.

25.1 Purpose.
25.2 Delegation.
25.3 Designation of qualified anti-terrorism technologies.
25.4 Obligations of seller.
25.5 Procedures for designation of qualified anti-terrorism technologies.
25.6 Government contractor defense.
25.7 Procedures for certification of approved products for homeland security.
25.8 Confidentiality and protection of intellectual property.
25.9 Definitions.

**Authority:** Subtitle G, Title VIII, Pub. L. 107–296, 116 Stat. 2238 (6 U.S.C. 441–444).

### § 25.1 Purpose.

This part implements the Support Anti-terrorism by Fostering Effective Technologies Act of 2002, Subtitle G of Title VIII of Public Law 107–296 ("the SAFETY Act" or "the Act").

### § 25.2 Delegation.

All of the Secretary's responsibilities, powers, and functions under the SAFETY Act may be exercised by the Under Secretary for Science and Technology of the Department of Homeland Security ("the Under Secretary") or the Under Secretary's designees.

### § 25.3 Designation of qualified anti-terrorism technologies.

(a) *General.* The Under Secretary may designate as a qualified anti-terrorism technology for purposes of protections set forth in Subtitle G of Title VIII of Public Law 107–296 any qualifying product, equipment, service (including support services), device, or technology (including information technology) designed, developed, modified, or procured for the specific purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause.

(b) *Criteria to be considered.* In determining whether to grant the designation under paragraph (a) (a "Designation"), the Under Secretary may exercise discretion and judgment in interpreting and weighting the following criteria in each case:

(1) Prior United States Government use or demonstrated substantial utility and effectiveness.

(2) Availability of the technology for immediate deployment in public and private settings.

(3) Existence of extraordinarily large or extraordinarily unquantifiable potential third party liability risk exposure to the Seller or other provider of such anti-terrorism technology.

(4) Substantial likelihood that such anti-terrorism technology will not be deployed unless protections under the system of risk management provided under 6 U.S.C. 441–444 are extended.

(5) Magnitude of risk exposure to the public if such anti-terrorism technology is not deployed.

(6) Evaluation of all scientific studies that can be feasibly conducted in order to assess the capability of the technology to substantially reduce risks of harm.

(7) Anti-terrorism technology that would be effective in facilitating the defense against acts of terrorism, including technologies that prevent, defeat or respond to such acts.

(8) Any other factor that the Under Secretary may consider to be relevant to the determination or to the homeland security of the United States.

(c) *Use of standards.* From time to time the Under Secretary may develop, issue, revise, and adopt technical standards for various categories of anti-terrorism technologies. Such standards will be published by the Department at *http://www.dhs.gov,* and copies may also be obtained by mail by sending a request to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528. Compliance with any such standards that are applicable to a particular anti-terrorism technology may be considered before any Designation will be granted for such technology under paragraph (a) of this section; in such cases, the Under Secretary may consider test results produced by an independent laboratory or other entity engaged to test or verify the safety, utility, performance, or effectiveness of such technology.

(d) *Consideration of substantial equivalence.* In determining whether a particular technology satisfies the criteria in paragraph (b) and complies with any applicable standards referenced in paragraph (c), the Under Secretary may take into consideration evidence that the technology is substantially equivalent to other, similar technologies ("predicate technologies") that have been previously designated as "qualified anti-terrorism technologies" under the SAFETY Act. A technology may be deemed to be substantially equivalent to a predicate technology if:

(1) it has the same intended use as the predicate technology; and

(2) it has the same or substantially similar technological characteristics as the predicate technology.

(e) *Duration and depth of review.* Recognizing the urgency of certain security measures, the Under Secretary will make a judgment regarding the duration and depth of review appropriate for a particular technology. This review will include submissions by the applicant for SAFETY Act coverage, along with information that the Under Secretary can feasibly gather from other sources. For technologies with which a Federal, state, or local government agency already has substantial experience or data (through the procurement process or through prior use or review), the review may rely in part upon that prior experience and, thus, may be expedited. The Under Secretary may consider any scientific studies, testing, field studies, or other experience with the technology that he deems appropriate and that are available or can be feasibly conducted or obtained in order to assess the capability of the technology to substantially reduce risks of harm. Such studies may, in the Under Secretary's discretion, include:

(1) Public source studies;

(2) Classified and otherwise confidential studies;

(3) Studies, tests, or other performance records or data provided by or available to the producer of the specific technology; and

(4) Proprietary studies that are available to the Under Secretary.

In considering whether or the extent to which it is feasible to defer a decision on a Designation until additional scientific studies can be conducted on a particular technology, the Under Secretary will bring to bear his or her expertise concerning the protection of the security of the American homeland and will consider the urgency of the need for the technology.

(f) *Content of Designation.* A Designation shall specify the technology, the Seller(s) of the technology, and the earliest date of sale of the technology to which the Designation shall apply (which shall be determined by the Under Secretary in his or her discretion, and may be prior to, but shall not be later than, the effective date of the Designation). The Designation may, but need not, also specify others who are required to be covered by the liability insurance required to be purchased by the Seller. The Designation shall include the Under Secretary's certification required by § 25.4(h). The Designation may also include such other specifications as the Under Secretary may deem to be appropriate, including, but not limited to, specific applications of the technology, materials or processes required to be used in producing or using the technology, restrictions on transfer or licensing, and training and instructions required to be provided to persons involved in the deployment of the technology. Failure to specify a covered person or entity in a Designation will not preclude application of the Act's protections to that person or entity.

(g) *Government procurements.* The Under Secretary may coordinate a SAFETY Act review in connection with a Federal, state, or local government agency procurement of an anti-terrorism technology in any manner he or she deems appropriate and consistent with the Act and other applicable laws.

(h) *Pre-application consultations.* To the extent that he or she deems it appropriate, the Under Secretary may consult with potential SAFETY Act applicants regarding the need for or advisability of particular types of anti-terrorism technologies, although no pre-approval of any particular technology may be given. Such potential applicants may request such consultations through the Pre-Application process set forth in the SAFETY Act Application Kit. The confidentiality provisions in § 25.8 shall be applicable to such consultations.

### § 25.4 Obligations of Seller.

(a) *Liability insurance required.* The Seller shall obtain liability insurance of such types and in such amounts as shall be required in the applicable Designation, which shall be the amounts and types certified by the Under Secretary to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against, response to, or recovery from, such act. Notwithstanding the foregoing, if the Under Secretary determines that insurance in appropriate amounts or of appropriate types is not available for a particular technology, the Under Secretary may authorize a Seller to self-insure and prescribe the amount and terms of the Seller's liability in the applicable Designation, which amount and terms shall be such as will not unreasonably distort the sales price of the Seller's anti-terrorism technology. The Under Secretary may request at any time (before or after the insurance certification process established under this section) that the Seller or any other provider of qualified anti-terrorism technology submit any information that would:

(1) Assist in determining the amount of liability insurance required, or

(2) Show that the Seller or any other provider of qualified anti-terrorism technology otherwise has met all the requirements of this section.

(b) *Maximum Amount.* For the total claims related to one act of terrorism, in determining the required amounts and types of liability insurance that the Seller will be required to obtain, the Under Secretary shall not require the Seller to obtain liability insurance of more than the maximum amount of liability insurance reasonably available from private sources on the world market at prices and terms that will not unreasonably distort the sales price of the Seller's anti-terrorism technology. The Under Secretary will determine the amount of liability insurance required for each technology, or, to the extent feasible and appropriate, a particular group of technologies. The Under Secretary or his designee may find that—notwithstanding the level of risk exposure for a particular technology, or group of technologies—the maximum amount of liability insurance from private sources on the world market is set at a price or contingent on terms that will unreasonably distort the sales price of a Seller's technology, thereby necessitating liability insurance coverage below the maximum amount available. In determining the amount of liability insurance required, the Under Secretary may consider any factor, including, but not limited to, the following:

(1) The particular technology at issue;

(2) The amount of liability insurance the Seller maintained prior to application;

(3) The amount of liability insurance maintained by the Seller for other technologies or for the Seller's business as a whole;

(4) The amount of liability insurance typically maintained by sellers of comparable technologies;

(5) Information regarding the amount of liability insurance offered on the world market;

(6) Data and history regarding mass casualty losses;

(7) The intended use of the technology;

(8) The possible effects of the cost of insurance on the price of the product, and the possible consequences thereof for development, production, or deployment of the technology; and

(9) In the case of a Seller seeking approval to self-insure, the factors described in 48 CFR 28.308(d).

(c) *Scope of coverage.* Liability insurance required to be obtained (or self-insurance required) pursuant to this section shall, in addition to the Seller, protect the following, to the extent of their potential liability for involvement in the manufacture, qualification, sale, use, or operation of qualified anti-terrorism technologies deployed in defense against, response to, or recovery from, an act of terrorism:

(1) Contractors, subcontractors, suppliers, vendors and customers of the Seller.

(2) Contractors, subcontractors, suppliers, and vendors of the customer.

(d) *Third party claims.* Any liability insurance required to be obtained (or self-insurance required) pursuant to this section shall provide coverage against third party claims arising out of, relating to, or resulting from an act of terrorism when the applicable qualified anti-terrorism technologies have been deployed in defense against, response to, or recovery from such act.

(e) *Reciprocal waiver of claims.* The Seller shall enter into a reciprocal waiver of claims with its contractors, subcontractors, suppliers, vendors, and customers, and contractors and subcontractors of the customers, involved in the manufacture, sale, use, or operation of qualified anti-terrorism technologies, under which each party to the waiver agrees to be responsible for losses, including business interruption losses, that it sustains, or for losses sustained by its own employees resulting from an activity resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against, response to, or recovery from such act. Notwithstanding the foregoing, if the Seller has used diligent efforts in good faith to obtain all required reciprocal waivers, then obtaining such waivers shall not be a condition precedent or subsequent for, nor shall the failure to obtain one or more of such waivers adversely affect, the issuance, validity, effectiveness, duration, or applicability of a Designation or a Certification. Nothing in this paragraph (e) shall be interpreted to render the failure to obtain one or more of such waivers a condition precedent or subsequent for the issuance, validity, effectiveness, duration, or applicability of a Designation or a Certification.

(f) *Extent of liability.* Liability for all claims against a Seller arising out of, relating to, or resulting from an act of terrorism when such Seller's qualified anti-terrorism technology has been deployed in defense against, response to, or recovery from such act in accordance with the applicable Designation and such claims result or may result in loss to the Seller, whether for compensatory or punitive damages or for contribution or indemnity, shall not be in an amount greater than the limits of liability insurance coverage required to be maintained by the Seller under this Section, or, in the case of a Seller authorized by the Under Secretary to self-insure pursuant to this Section, shall not be in an amount greater than the liability limit prescribed by the Under Secretary in the applicable Designation.

(1) In addition, in any action brought under Section 863 of the Act for damages:

(i) No punitive damages intended to punish or deter, exemplary damages, or other damages not intended to compensate a plaintiff for actual losses may be awarded, nor shall any party be liable for interest prior to the judgment,

(ii) Noneconomic damages may be awarded against a defendant only in an amount directly proportional to the percentage of responsibility of such defendant for the harm to the plaintiff, and no plaintiff may recover noneconomic damages unless the plaintiff suffered physical harm, and

(iii) any recovery by a plaintiff shall be reduced by the amount of collateral source compensation, if any, that the plaintiff has received or is entitled to receive as a result of such acts of terrorism that result or may result in loss to the Seller.

(2) Without prejudice to the authority of the Under Secretary to terminate a Designation pursuant to paragraph (h) of this Section, such liability limitations and reductions shall apply in perpetuity to all deployments of a qualified anti-terrorism technology that occur on or after the effective date of the Designation applicable to such technology in defense against, response to, or recovery from any act of terrorism, regardless of whether any liability insurance coverage required to be obtained by the Seller is actually maintained or not, provided that the sale of such technology was consummated by the Seller on or after the earliest date of sale of such technology specified in such Designation (which shall be determined by the Under Secretary in his or her discretion, and may be prior to, but shall not be later than, such effective date) and prior to the expiration or termination of such Designation.

(g) *Information to be submitted by the Seller.* As part of any application for a Designation, the Seller shall provide a statement, executed by a duly authorized representative of the Seller, of all liability insurance coverage applicable to third-party claims arising out of, relating to, or resulting from an act of terrorism when the Seller's qualified anti-terrorism technology has been deployed in defense against, response to, or recovery from such act, including:

(1) Names of insurance companies, policy numbers, and expiration dates;

(2) A description of the types and nature of such insurance (including the extent to which the Seller is self-insured or intends to self-insure);

(3) Dollar limits per occurrence and annually of such insurance, including any applicable sublimits;

(4) Deductibles or self-insured retentions, if any, that are applicable;

(5) Any relevant exclusions from coverage under such policies;

(6) The price for such insurance, if available, and the per-unit amount or percentage of such price directly related to liability coverage for the Seller's qualified anti-terrorism technology deployed in defense against, or response to, or recovery from an act of terror;

(7) Where applicable, whether the liability insurance, in addition to the Seller, protects contractors, subcontractors, suppliers, vendors and customers of the Seller and contractors, subcontractors, suppliers, vendors and customers of the customer to the extent of their potential liability for involvement in the manufacture, qualification, sale, use or operation of Qualified Anti-terrorism Technologies deployed in defense against, response to, or recovery from an act of terrorism;

(8) Any limitations on such liability insurance; and

(9) In the case of a Seller seeking approval to self-insure, all of the information described in 48 CFR 28.308(a)(1) through (10).

(h) *Under Secretary's certification.* For each qualified anti-terrorism technology, the Under Secretary shall certify the amount of insurance required under Section 864 of the Act. The Under Secretary shall include the certification under this section as a part of the applicable Designation. The certification may specify a period of time for which the certification will apply. The Seller of a qualified anti-terrorism technology may at any time petition the Under Secretary for a revision or termination of the certification under this section. The Under Secretary or his designee may at any time request information from the Seller regarding the insurance maintained by the Seller or the amount of insurance available to the Seller.

(i) *Seller's continuing obligations.* Within 30 days after the Under Secretary's certification required by paragraph (h), and within 30 days after each subsequent anniversary of the issuance of a Designation, the Seller shall certify to the Under Secretary that the Seller has maintained the insurance required by such certification. The Under Secretary may terminate a Designation if the Seller fails to provide the certification required by this paragraph or provides a false certification. The Under Secretary may also consider such failure to provide the certification or provision of a false certification when reviewing future applications from the same Seller. The Seller must also notify the Under Secretary of any changes in types or amounts of liability insurance coverage for any qualified anti-terrorism technology.

**§ 25.5 Procedures for designation of qualified anti-terrorism technologies.**

(a) *Application procedure.* Any Seller seeking a designation shall submit information supporting such request to the Assistant Secretary for Plans, Programs, and Budget of the Department of Homeland Security Directorate of Science and Technology ("the Assistant Secretary"), or such other official of such Directorate as may be designated from time to time by the Under Secretary. The Under Secretary shall make application forms available at *http://www.dhs.gov* and by mail upon request sent to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528.

(b) *Initial notification.* Within 30 days after receipt of an Application for a Designation, the Assistant Secretary or his or her designee shall notify the applicant in writing that:

(1) The Application is complete and will be reviewed, or

(2) That the Application is incomplete, in which case the missing or incomplete parts will be specified.

(c) *Review process.* The Assistant Secretary or his or her designee will review each complete Application and any included supporting materials. In performing this function, the Assistant Secretary or his or her designee may, but is not required to:

(1) Request additional information from the Seller;

(2) Meet with representatives of the Seller;

(3) Consult with, and rely upon the expertise of, any other Federal or nonfederal entity;

(4) Perform studies or analyses of the technology or the insurance market for such technology; and

(5) Seek information from insurers regarding the availability of insurance for such technology.

(d) *Recommendation of the Assistant Secretary.* (1) Within 90 days after receipt of a complete Application for a Designation, the Assistant Secretary shall make one of the following recommendations to the Under Secretary regarding such Application:

(i) That the Application be approved and a Designation be issued to the Seller;

(ii) That the Seller be notified that the technology is potentially eligible for a Designation, but that additional specified information is needed before a decision may be reached; or

(iii) That the Application be denied.

(2) If approval is recommended, the recommendation shall include a recommendation regarding the certification required by § 25.4(h). The Assistant Secretary may extend the time period beyond 90 days upon notice to the Seller; the Assistant Secretary is not required to provide a reason or cause for such extension.

(e) *Action by the Under Secretary.* Within 30 days after receiving a recommendation from the Assistant Secretary pursuant to paragraph (d) of this section, the Under Secretary shall take one of the following actions:

(1) Approve the Application and issue an appropriate Designation to the Seller, which shall include the certification required by §25.4(h);

(2) Notify the Seller in writing that the technology is potentially eligible for a Designation, but that additional specified information is needed before a decision may be reached; or

(3) Deny the Application, and notify the Seller in writing of such decision. The Under Secretary may extend the time period beyond 30 days upon notice to the Seller; the Under Secretary is not required to provide a reason or cause for such extension. The Under Secretary's decision shall be final and not subject to review, except at the discretion of the Under Secretary.

(f) *Term of Designation; renewal.* A Designation shall be valid and effective for a term of five to eight years (as determined by the Under Secretary based upon the technology) commencing on the date of issuance. At any time commencing two years prior to the expiration of a Designation, the Seller may apply for renewal of the Designation. The Under Secretary shall make the application form for renewals available at *http://www.dhs.gov* and by mail upon request sent to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528.

(g) *Transfer of Designation.* (1) Except as may be restricted by the terms and conditions of a Designation, any Designation may be transferred and assigned to any other person or entity to which the Seller transfers and assigns all right, title, and interest in and to the technology covered by the Designation, including the intellectual property rights therein (or, if the Seller is a licensee of the technology, to any person or entity to which such Seller transfers all of its right, title, and interest in and to the applicable license agreement). Such transfer and assignment of a Designation will not be effective unless and until:

(i) the Under Secretary is notified in writing of the transfer using the "Application for Transfer of Designation" form issued by the Under Secretary (the Under Secretary shall make this application form available at *http://www.dhs.gov* and by mail by written request sent to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528), and

(ii) the transferee complies with all applicable provisions of the SAFETY Act, this Part, and the relevant Designation as if the transferee were the Seller.

(2) Upon the effectiveness of such transfer and assignment, the transferee will be deemed to be a Seller in the place and stead of the transferor with respect to the applicable technology for all purposes under the SAFETY Act, this Part, and the transferred Designation. The transferred Designation will continue to apply to the transferor with respect to all transactions and occurrences that occurred through the time at which the transfer and assignment of the Designation became effective, as specified in the applicable Application for Transfer of Designation.

(h) *Application of Designation to licensees.* Except as may be restricted by the terms and conditions of a Designation, any Designation shall apply to any other person or entity to which the Seller licenses (exclusively or nonexclusively) the right to manufacture, use, or and sell the technology, in the same manner and to the same extent that such Designation applies to the Seller, effective as of the date of commencement of the license, provided that the Seller notifies the Under Secretary of such license by submitting, within 30 days after such date of commencement, a "Notice of License of Qualified Anti-terrorism Technology" form issued by the Under Secretary. The Under Secretary shall make this form available at *http://www.dhs.gov* and by mail upon request sent to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528. Such notification shall not be required for any licensee listed as a Seller on the applicable Designation.

(i) *Termination of Designation resulting from significant modification.*

A Designation shall terminate automatically, and have no further force or effect, if the designated qualified anti-terrorism technology is significantly changed or modified. A significant change or modification in the technology is one that could significantly reduce the safety or effectiveness of the technology. This could include, in the case of a device, a significant change or modification in design, material, chemical composition, energy source, manufacturing process, or purpose for which it is to be sold, and in the case of a service, a significant change or modification in methodology, procedures, or purpose for which it is to be sold. If a Seller is planning a change or modification to a designated technology, such Seller may apply for a corresponding modification of the applicable Designation in advance of the implementation of such modification. Application for such a modification must be made using the "Application for Modification of Designation" form issued by the Under Secretary. The Under Secretary shall make this application form available at *http://www.dhs.gov* and by mail upon request sent to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528. Changes or modifications will be evaluated at a minimum with reference to the description of the technology and its purposes as provided in the Seller's application and with reference to what was designated in the applicable Designation. In lieu of issuing a modified Designation in response to such an application, the Under Secretary may elect to issue a certificate to the Seller certifying that the submitted changes or modifications are not significant within the meaning of this paragraph (i) and that the Seller's existing Designation continues to be applicable to the changed or modified technology.

### § 25.6 Government contractor defense.

(a) *Criteria for certification.* The Under Secretary may certify a qualified anti-terrorism technology as an Approved Product for Homeland Security for purposes of establishing a rebuttable presumption of the applicability of the government contractor defense. In determining whether to grant such certification, the Under Secretary or his or her designee shall conduct a comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended. The Seller shall provide safety and hazard analyses and other relevant data and information regarding such technology to the Department in connection with an application. The Under Secretary or his designee may require that the Seller submit any information that the Under Secretary or his designee considers relevant to the application for approval. The Under Secretary or his designee may consult with, and rely upon the expertise of, any other governmental or non-governmental person or entity, and may consider test results produced by an independent laboratory or other person or entity engaged by the Seller.

(b) *Extent of liability.* Should a product liability or other lawsuit be filed for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies certified by the Under Secretary as provided in §§ 25.6 and 25.7 of this part have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller, there shall be a rebuttable presumption that the government contractor defense applies in such lawsuit. This presumption shall only be overcome by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Assistant Secretary during the course of the Assistant Secretary's consideration of such technology under this subsection. This presumption of the government contractor defense shall apply regardless of whether the claim against the Seller arises from a sale of the product to Federal Government or non-Federal Government customers. Such presumption shall apply in perpetuity to all deployments of a qualified anti-terrorism technology (for which a Certification has been issued by the Under Secretary as provided in this section and § 25.7) that occur on or after the effective date of the Certification applicable to such technology in defense against, response to, or recovery from any act of terrorism, provided that the sale of such technology was consummated by the Seller on or after the earliest date of sale of such technology specified in such Certification (which shall be determined by the Under Secretary in his or her discretion, and may be prior to, but shall not be later than, such effective date) and prior to the expiration or termination of such Certification.

### § 25.7 Procedures for Certification of Approved Products for Homeland Security.

(a) *Application procedure.* A Seller seeking certification of anti-terrorism technology as an Approved Product for Homeland Security under §25.6 (a "Certification") shall submit information supporting such request to the Assistant Secretary. The Under Secretary shall make application forms available at *http://www.dhs.gov*, and copies may also be obtained by mail by sending a request to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528. An application for a certification may not be filed unless the Seller has also filed an application for designation of qualified anti-terrorism technology for the same technology. The two applications may be filed simultaneously and may be reviewed simultaneously.

(b) *Initial notification.* Within 30 days after receipt of an Application for a Certification, the Assistant Secretary or his or her designee shall notify the applicant in writing that:

(1) The Application is complete and will be reviewed, or

(2) That the Application is incomplete, in which case the missing or incomplete parts will be specified.

(c) *Review process.* The Assistant Secretary or his or her designee will review each complete Application for a Certification and any included supporting materials. In performing this function, the Assistant Secretary or his or her designee may, but is not required to:

(1) Request additional information from the Seller;

(2) Meet with representatives of the Seller;

(3) Consult with, and rely upon the expertise of, any other Federal or nonfederal entity; and

(4) Perform or seek studies or analyses of the technology.

(d) *Recommendation of the Assistant Secretary.* (1) Within 90 days after receipt of a complete Application for a Certification, the Assistant Secretary shall make one of the following recommendations to the Under Secretary regarding such Application:

(i) That the Application be approved and a Certification be issued to the Seller;

(ii) That the Seller be notified that the technology is potentially eligible for a Certification, but that additional specified information is needed before a decision may be reached; or

(iii) That the Application be denied.

(2) The Assistant Secretary may extend the time period beyond 90 days upon notice to the Seller; the Assistant Secretary is not required to provide a reason or cause for such extension.

(e) *Action by the Under Secretary.* (1) Within 30 days after receiving a recommendation from the Assistant Secretary pursuant to paragraph (d) of this section, the Under Secretary shall take one of the following actions:

(i) Approve the Application and issue an appropriate Certification to the Seller;

(ii) Notify the Seller in writing that the technology is potentially eligible for a Certification, but that additional specified information is needed before a decision may be reached; or

(iii) Deny the Application, and notify the Seller in writing of such decision.

(2) The Under Secretary may extend the time period beyond 30 days upon notice to the Seller, and the Under Secretary is not required to provide a reason or cause for such extension. The Under Secretary's decision shall be final and not subject to review, except at the discretion of the Under Secretary.

(f) *Designation is a pre-condition.* The Under Secretary may approve an application for a certification only if the Under Secretary has also approved an application for a designation for the same technology under section 25.3.

(g) *Content and term of certification; renewal.* A Certification shall specify the technology, the Seller(s) of the technology, and the earliest date of sale of the technology to which the Certification shall apply (which shall be determined by the Under Secretary in his or her discretion, and may be prior to, but shall not be later than, the effective date of the Certification). The Certification may also include such other specifications as the Under Secretary may deem to be appropriate, including, but not limited to, specific applications of the technology, materials or processes required to be used in producing or using the technology, restrictions on transfer or licensing, and training and instructions required to be provided to persons involved in the deployment of the technology. A certification shall be valid and effective for the same period of time for which the related Designation is issued, and shall terminate upon the termination of such related Designation. The Seller may apply for renewal of the Certification in connection with an application for renewal of the related Designation. An application for renewal must be made using the "Application for Certification of an Approved Product for Homeland Security" form issued by the Under Secretary.

(h) *Application of Certification to licensees.* Any certification shall apply to any other person or entity to which the Seller licenses (exclusively or nonexclusively) the right to manufacture and sell the technology, in the same manner and to the same extent that such certification applies to the Seller, effective as of the date of commencement of the license, provided that the Seller notifies the Under Secretary of such license by submitting, within 30 days after such date of commencement, a "Notice of License of Approved Anti-terrorism Technology" form issued by the Under Secretary. The Under Secretary shall make this form available at *http://www.dhs.gov* and by mail upon request sent to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528. Such notification shall not be required for any licensee listed as a Seller on the applicable Certification.

(i) *Transfer of Certification.* In the event of any permitted transfer and assignment of a Designation, any related Certification for the same anti-terrorism technology shall automatically be deemed to be transferred and assigned to the same transferee to which such Designation is transferred and assigned. The transferred Certification will continue to apply to the transferor with respect to all transactions and occurrences that occurred through the time at which such transfer and assignment of the Certification became effective.

(j) *Issuance of Certificate; Approved Product List.* For anti-terrorism technology reviewed and approved by the Under Secretary and for which a Certification is issued, the Under Secretary shall issue a certificate of conformance to the Seller and place the anti-terrorism technology on an Approved Product List for Homeland Security, which shall be published by the Department of Homeland Security.

### § 25.8 Confidentiality and protection of intellectual property.

The Secretary, in consultation with the Office of Management and Budget and appropriate Federal law enforcement and intelligence officials, and in a manner consistent with existing protections for sensitive or classified information, shall establish confidentiality protocols for maintenance and use of information submitted to the Department under the SAFETY Act and this Part. Such protocols shall, among other things, ensure that the Department will utilize all appropriate exemptions from the Freedom of Information Act.

### § 25.9 Definitions.

*Act of Terrorism*—The term "act of terrorism" means any act that—

(1) Is unlawful;

(2) Causes harm to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States-flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States; and

(3) Uses or attempts to use instrumentalities, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the United States.

*Assistant Secretary*—The term "Assistant Secretary" means the Assistant Secretary for Plans, Programs, and Budget of the Department of Homeland Security Directorate of Science and Technology, or such other official of such Directorate as may be designated from time to time by the Under Secretary.

*Certification*—The term "Certification" means (unless the context requires otherwise) a certification that a qualified anti-terrorism technology for which a Designation has been issued will perform as intended, conforms to the Seller's specifications, and is safe for use as intended.

*Contractor*—The term "contractor" of a Seller means any person or entity with whom or with which the Seller has entered into a contract relating to the manufacture, sale, use, or operation of anti-terrorism technology for which a Designation is issued (regardless of whether such contract is entered into before or after the issuance of such Designation), including, without limitation, an independent laboratory or other entity engaged in testing or verifying the safety, utility, performance, or effectiveness of such technology, or the conformity of such technology to the Seller's specifications.

*Designation*—The term "Designation" means a designation of a qualified anti-terrorism technology under the SAFETY Act issued by the Under Secretary under authority delegated by the Secretary of Homeland Security.

*Loss*—The term "loss" means death, bodily injury, or loss of or damage to property, including business interruption loss (which is a component of loss of or damage to property).

*Noneconomic damages*—The term "noneconomic damages" means damages for losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, hedonic damages, injury to reputation, and any other nonpecuniary losses.

*Physical harm*—The term "physical harm" as used in the Act shall mean a physical injury to the body that caused, either temporarily or permanently, partial or total physical disability, incapacity or disfigurement. In no event shall physical harm include mental pain, anguish, or suffering, or fear of injury.

*Qualified Anti-Terrorism Technology (QATT)*—The term "'qualified anti-terrorism technology'" means any product, equipment, service (including support services), device, or technology (including information technology) designed, developed, modified, or procured for the specific purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause, for which a Designation has been issued under this Part.

*SAFETY Act or Act*—The term "SAFETY Act" or "Act" means the Support Anti-terrorism by Fostering Effective Technologies Act of 2002, enacted as Subtitle G of Title VIII of the Homeland Security Act of 2002, Public Law 107–296.

*Seller*—The term "Seller" means any person or entity to whom or to which (as appropriate) a Designation has been issued under this Part (unless the context requires otherwise).

*Under Secretary*—The term "Under Secretary" means the Under Secretary for Science and Technology of the Department of Homeland Security.

Dated: October 10, 2003.

**Tom Ridge,**

*Secretary of Homeland Security.*

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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

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**H.R. 2152/P.L. 108–99**

To amend the Immigration and Nationality Act to extend for an additional 5 years the special immigrant religious worker program. (Oct. 15, 2003; 117 Stat. 1176)

**Last List October 15, 2003**

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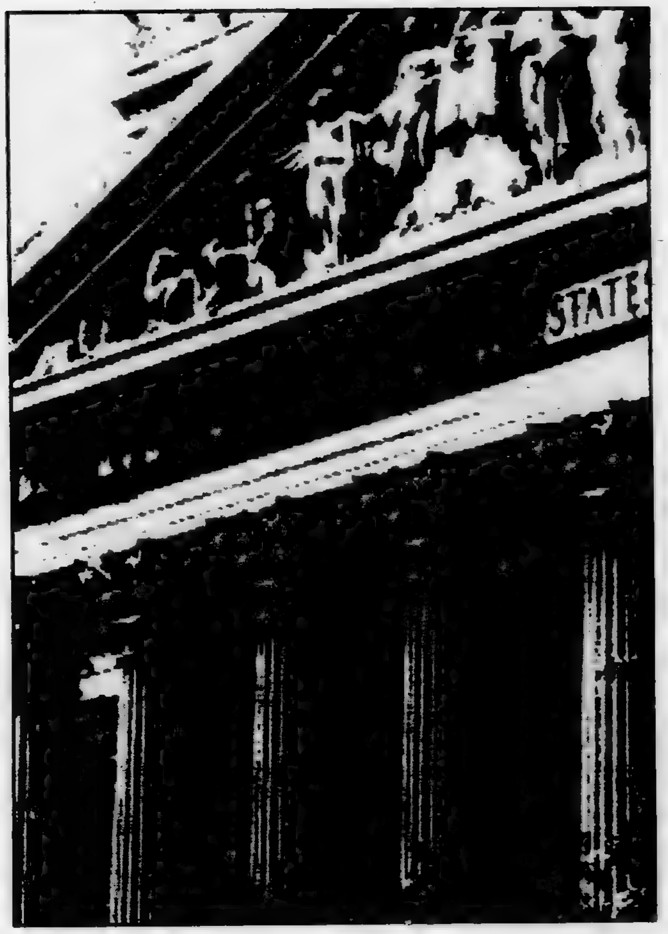

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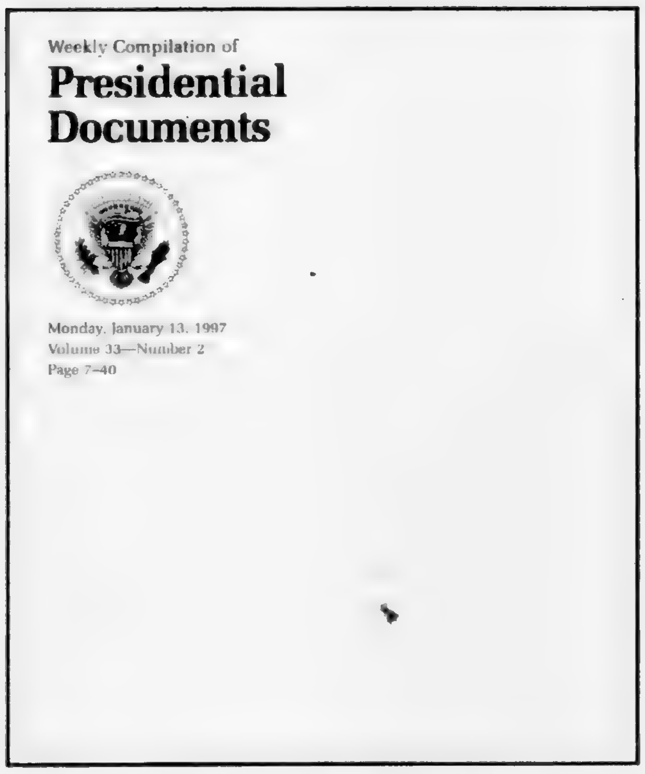

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# Rules and Regulations

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 25

**[Docket No. NM267; Special Conditions No. 25–251–SC]**

## Special Conditions: Gulfstream Aerospace Corporation Model Gulfstream 200 (Galaxy); Single-Occupant Side-Facing Seats

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Gulfstream Aerospace Corporation Model Gulfstream 200 (Galaxy) airplane. This airplane as modified by Gulfstream Aerospace Corporation will have novel or unusual design features associated with single-occupant side-facing seats. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is October 9, 2003. Comments must be received on or before November 17, 2003.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM267, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM267. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Michael Thompson, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–1157; facsimile (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice and opportunity for prior public comment are impracticable because these procedures would significantly delay issuance of the design approval. In addition, the substance of these special conditions has been subject to the public comment process with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

### Comments Invited

Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the rules docket number and be submitted in duplicate to the address specified above. The Administrator will consider all communications received on or before the closing date for comments. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to these special conditions must include with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NMxxx." The postcard will be date stamped and returned to you.

### Background

On May 30, 2003, Gulfstream Aerospace Corporation, 7440 Aviation Place, Dallas, Texas, 75235, applied for a supplemental type certificate for installation of single-occupant side-facing seats on Gulfstream 200 (Galaxy) airplanes. Gulfstream requested special conditions for these seats and that the special conditions be listed on the supplemental type certificate. The Gulfstream 200 (Galaxy) airplane is a twin engine, turbofan powered, transport category airplane, which is currently the subject of a type certification program.

Section 25.785(b) requires that "each seat * * * at each station designated as occupiable during takeoff and landing must be designed so that a person making proper use of these facilities will not suffer serious injury in an emergency landing as a result of the inertia forces specified in §§ 25.561 and 25.562." Additionally, § 25.562 requires dynamic testing of all seats that are occupied during takeoff and landing. However, side-facing seats are considered a novel design for transport category airplanes that include Amendment 25–64 in the certification basis and were not considered when those airworthiness standards were promulgated. Hence, the existing regulations do not provide adequate or appropriate safety standards for occupants of side-facing seats. In order to provide a level of safety that is equivalent to that afforded occupants of forward and aft facing seats, additional airworthiness standards in the form of special conditions are necessary.

These special conditions are applicable only to single-occupant side-facing seats. They are not sufficient or intended to be used for the certification of multiple-occupant side-facing divans or sofas.

### Type Certification Basis

Under the provisions of § 21.101, Gulfstream Aerospace Corporation must show that the Gulfstream Model 200 (Galaxy) airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A53NM or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A53NM are as follows: 14 CFR part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–82.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Gulfstream Aerospace Corporation Model Gulfstream 200 (Galaxy) because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Gulfstream Aerospace Corporation Model Gulfstream 200 (Galaxy) must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model.

## Novel or Unusual Design Features

Gulfstream Aerospace Corporation will install single-occupant, side-facing seats on Gulfstream 200 (Galaxy) airplanes. Section 25.785(b) requires that "each seat * * * at each station designated as occupiable during takeoff and landing must be designed so that a person making proper use of these facilities will not suffer serious injury in an emergency landing as a result of the inertia forces specified in §§ 25.561 and 25.562." Additionally, § 25.562 requires dynamic testing of all seats that are occupied during takeoff and landing. However, side-facing seats are considered a novel design for transport category airplanes that include Amendment 25–64 in the certification basis, and were not considered when those airworthiness standards were promulgated. Hence, the existing regulations do not provide adequate or appropriate safety standards for occupants of side-facing seats. In order to provide a level of safety that is equivalent to that afforded occupants of forward and aft facing seats, additional airworthiness standards, in the form of special conditions, are necessary.

## Discussion

The following special conditions are considered to provide occupants of single-occupancy side-facing seats a level of safety that is equivalent to that afforded occupants of forward and aft facing seats. These special conditions supplement 14 CFR part 25 and, more specifically, they supplement §§ 25.785 and 25.562.

## Applicability

As discussed above, these special conditions are applicable to the Gulfstream Aerospace Corporation Model Gulfstream 200 (Galaxy) modified by Gulfstream Aerospace Corporation. Should Gulfstream Aerospace Corporation apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A53NM to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

## Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

## List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

## The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Gulfstream Aerospace Corporation Model Gulfstream 200 (Galaxy) airplanes. In addition to the airworthiness standards of §§ 25.562 and 25.785, the minimum acceptable standards for dynamic certification of Model Gulfstream 200 (Galaxy) single-occupant side-facing seats are as follows:

### Injury Criteria

(a) *Existing Criteria:* All injury protection criteria of § 25.562(c)(1) through (c)(6) apply to the occupant of a side-facing seat. Head Injury Criterion (HIC) assessments are required only for head contact with the seat and/or adjacent structures.

(b) *Body-to-Wall/Furnishing Contact:* The seat must be installed aft of a structure, such as an interior wall or furnishing, that will support the pelvis, upper arm, chest, and head of an occupant seated next to the structure. A conservative representation of the structure and its stiffness must be included in the tests. It is recommended, but not required, that the contact surface of this structure be covered with at least two inches of energy absorbing protective padding (foam or equivalent), such as Ensolite.

(c) *Thoracic Trauma:* The Thoracic Trauma Index (TTI) injury criterion must be substantiated by dynamic test or by rational analysis, based on a previous test or tests of a similar seat installation. Testing must be conducted with a Side Impact Dummy (SID), as defined by 49 CFR Part 572, Subpart F, or its equivalent. TTI must be less than 85, as defined in 49 CFR Part 572, Subpart F. TTI data must be processed as defined in Federal Motor Vehicle Safety Standard (FMVSS) Part 571.214, section S6.13.5.

(d) *Pelvis:* Pelvic lateral acceleration must be shown by dynamic test or by rational analysis based on previous test(s) of a similar seat installation to not exceed 130g. Pelvic acceleration data must be processed as defined in FMVSS Part 571.214, section S6.13.5.

(e) *Shoulder Strap Loads:* Where upper torso straps (shoulder straps) are used for occupants, tension loads in individual straps must not exceed 1,750 pounds. If dual straps are used for restraining the upper torso, the total strap tension loads must not exceed 2,000 pounds.

### Test Requirements

The above performance measures must not be exceeded during the following dynamic tests:

(a) Conduct a longitudinal test per § 25.562(b)(2) with a SID, undeformed floor, no yaw, and with all lateral structural supports (armrests/walls).

Pass/fail injury assessments: TTI and pelvic acceleration.

(b) Conduct a longitudinal test per § 25.562(b)(2) with the Hybrid II ATD, deformed floor, 10 degrees yaw, and with all lateral structural supports (armrests/walls).

Pass/fail injury assessments: HIC, upper torso restraint load, restraint system retention and pelvic acceleration.

(c) Conduct a downward vertical test per § 25.562(b)(1) with a modified Hybrid II ATD with existing pass/fail criteria.

Issued in Renton, Washington, on October 9, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–26310 Filed 10–16–03; 8:45 am]

**BILLING CODE 4910–13–U**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–CE–41–AD; Amendment 39–13339; AD 2003–21–04]**

**RIN 2120–AA64**

## Airworthiness Directives; Cessna Aircraft Company Models 208 and 208B Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Cessna Aircraft Company (Cessna) Models 208 and 208B airplanes. This AD requires you to inspect the right inboard forward flap bell crank for cracks, deformation, and missing/incomplete welds. If cracks, deformation, or missing/incomplete welds are found, the AD would require you to immediately replace the flap bell crank or temporarily incorporate certain flap limitations. This AD is the result of reports of cracks and missing/incomplete welds in the right inboard forward flap bell crank. We are issuing this AD to prevent failure of the right inboard forward flap bell crank due to cracks, deformation, or missing/incomplete welds. Such failure could lead to damage to the flap system and surrounding structure and result in reduced or loss of control of the airplane.

**DATES:** This AD becomes effective on October 21, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of October 21, 2003.

We must receive any comments on this AD by December 15, 2003.

**ADDRESSES:** Use one of the following to submit comments on this AD:

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–41–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2003–CE–41–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may also view this information at the Rules Docket at the address above.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–41–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4125; facsimile: 816–946–4107.

**SUPPLEMENTARY INFORMATION:**

### Discussion

*What events have caused this AD?* The FAA has received reports that the right inboard forward flap bell crank on Cessna Models 208 and 208B airplanes could have missing/incomplete welds. Without complete welds, the flap bell cranks may not have sufficient strength or fatigue endurance to carry critical load with the use of flaps. This could result in cracking or deformation of the flap bell crank and lead to failure of the flap system.

*What are the consequences if the condition is not corrected?* Failure of the flap system, if not prevented, could lead to damage to the flap system and surrounding structure and result in reduced or loss of control of the airplane.

*Is there service information that applies to this subject?* Cessna issued Caravan Service Bulletin CAB03–11, Revision 1, dated September 24, 2003.

*What are the provisions of this service information?* The service bulletin includes procedures for inspecting all the flap system flap bell cranks for cracks, deformation, and missing/incomplete welds. If cracks, deformation, or missing/incomplete welds are found, this service bulletin specifies either:

—Replacing the subject flap bell crank; or

—Incorporating Temporary Revision 208PHTR02, dated September 23, 2003, to the Other Limitations section of the Pilot's Operating Handbook (POH). This is a temporary option and replacing the subject flap bell crank is mandatory within a certain time frame.

### FAA's Determination and Requirements of the AD

*What has FAA decided?* We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design.

Since the unsafe condition described previously is likely to exist or develop on other Cessna Models 208 and 208B airplanes of the same type design, this AD is being issued to prevent failure of the right inboard forward flap bell crank due to cracks, deformation, or missing/incomplete welds.

*What does this AD require?* This AD requires you to inspect the right inboard forward flap bell crank for cracks, deformation, and missing/incomplete welds. If cracks, deformation, or missing/incomplete welds are found, the AD would require you to immediately replace the flap bell crank or temporarily incorporate certain flap limitations.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included, in the rulemaking docket, a discussion of any information that may have influenced this action.

*Are there differences between the service information and this AD?* Yes. The service information requires an inspection on all flap bell cranks within the flap system. However, this AD only addresses the right inboard forward flap bell crank.

To date, FAA has only received reports on the right inboard forward flap bell cranks, and we are addressing this issue through a final rule; request for comments (immediately adopted rule) AD action. After issuing this AD, we will evaluate the condition of the entire flap system and determine whether additional action is necessary.

*How does the revision to 14 CFR part 39 affect this AD?* On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

### Comments Invited

*Will I have the opportunity to comment prior to the issuance of the rule?* This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 2003–CE–41–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

### Regulatory Findings

*Will this AD impact various entities?* We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various , levels of government.

*Will this AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2003–CE–41–AD" in your request.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**2003–21–04 Cessna Aircraft Company:** Amendment 39–13339; Docket No. 2003–CE–41–AD.

### When Does This AD Become Effective?

(a) This AD becomes effective on October 21, 2003.

### Are Any Other ADs Affected by This Action?

(b) None.

### What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are certificated in any category:

| Model | Serial No. |
|---|---|
| 208 ..... | 20800001 through 20800369. |
| 208B ... | 208B0001 through 208B1014, 208B1017, 208B1018, 208B1020 through 208B1024, 208B1026, and 208B1029 through 208B1033. |

### What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of reports of cracks and missing/incomplete welds in the right inboard forward flap bell crank. We are issuing this AD to prevent failure of the right inboard forward flap bell crank due to cracks, deformation, or missing/incomplete welds. Such failure could lead to damage to the flap system and surrounding structure and result in reduced or loss of control of the airplane.

### What Must I Do To Address This Problem?

(e) To address this problem, you must accomplish the following, unless already accomplished (compliance with Cessna Caravan Service Bulletin CAB03–11, Revision 1, dated September 24, 2003):

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Inspect the right inboard forward flap bell crank assembly for cracks, deformation, and missing/incomplete welds. The affected flap bell crank incorporates one of the following part numbers (P/N):<br>(i) P/N 2622083–18;<br>(ii) P/N 2622281–2;<br>(iii) P/N 2692001–2; or<br>(iv) P/N 2622281–12. | Within the next 25 landings after October 21, 2003 (the effective date of this AD). If landings are unknown, then you may multiply hours time-in-service (TIS) by 1.25. For the purposes of this AD, you may substitute 20 hours TIS for 25 landings. | Use a flashlight and a mirror as necessary to see if welds (1), (4), (5), and (6) exist and are at least 0.06-inch thick around the full circumference of the shaft. These welds and the inspection procedures are referenced in Figure 1, details A, B, and C; and Views A–A and B–B of Cessna Caravan Service Bulletin CAB03–11, Revision 1, dated September 24, 2003. |

| Actions | Compliance | Procedures |
|---|---|---|
| (2) If you find cracks, deformation, or missing/incomplete welds during the inspection required by paragraph (e)(1) of this AD, then accomplish one of the following:<br>(i) Replace the flap bell crank with a P/N 2622311–7 flap bell crank; or<br>(ii) Prohibit the use of flaps through the actions of paragraph (f) of this AD. | Replace or do the flap prohibition actions prior to further flight after the inspection required in paragraph (e)(1) of this AD. If you choose the flap prohibition, you must have the replacement done within 200 hours TIS after the inspection required by paragraph (e)(1) of this AD. After the new flap bell crank (2622311–7) is installed, the Temporary Revision 208PHTR02, dated September 23, 2003, should be removed. | *Replacement:* Use the Accomplishment Instructions of Cessna Caravan Service Bulletin No.: CAB02–12, Revision 1, dated January 27, 2003, and the Accomplishment Instructions of Cessna Caravan Service Kit No.: SK208–148A, dated January 27, 2003.<br>*Flap Prohibition:* Use the information in the Temporary Revision 208PHTR02, dated September 23, 2003. The action is referenced in Cessna Caravan Service Bulletin CAB03–11, Revision 1, dated September 24, 2003. |

**What Are the Actions I Must Do if I Choose the Flap Prohibition Option?**

(f) Insert Temporary Revision, 208PHTR02, dated September 23, 2003, into the applicable pilot's operating handbook and FAA-approved airplane flight manual. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may incorporate this information into the AFM. Make an entry into the aircraft records showing compliance with this portion of the AD in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(1) This procedure applies to Cessna Models 208 and 208B landplanes. For other FAA-approved aircraft configurations (*e.g.*, amphibian, floatplanes, *etc.*), you must operate with flaps up per the appropriate airplane flight manual supplement.

(2) This procedure allows for applicable deviation from the Master Minimum Equipment List (MMEL) for these airplanes until the flap bell crank is replaced. The applicable MMEL requirements go back into effect at the time of flap bell crank replacement.

**Are There Differences Between the Service Information and This AD?**

(g) Yes. The service information requires an inspection on all flap bell cranks within the flap system. However, this AD only addresses the right inboard forward flap bell crank. To date, FAA has only received reports on the right inboard forward flap bell cranks, and we are addressing this issue through a final rule; request for comments (immediately adopted rule) AD action. After issuing this AD, we will evaluate the condition of the entire flap system and determine whether additional action is necessary.

**What About Alternative Methods of Compliance?**

(h) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13. Send your request to the Manager, Wichita Aircraft Certification Office (ACO). For information on any already approved alternative methods of compliance, contact Paul Nguyen, Aerospace Engineer, FAA, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4125; facsimile: 316–946–4107.

**Is There Material Incorporated by Reference?**

(i) You must do the actions required by this AD per Cessna Caravan Service Bulletin CAB03–11, Revision 1, dated September 24, 2003; Cessna Caravan Service Bulletin No.: CAB02–12, Revision 1, dated January 27, 2003; and Cessna Caravan Service Kit No.: SK208–148A, dated January 27, 2003 (Original issue: October 21, 2002). The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Issued in Kansas City, Missouri, on October 8, 2003.

**James E. Jackson,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–26115 Filed 10–16–03; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NM–57–AD; Amendment 39–13340; AD 2003–21–05]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model MD–11 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 airplanes, that currently requires a one-time detailed visual inspection of the wire bundle installation behind the first observer's station to detect damaged or chafed wires; and corrective action, if necessary. This amendment requires a new inspection of the wire bundle installation behind the first observer's station to detect damaged or chafed wires; repair if necessary; installation of a grommet around the lower edge of the feed-through; replacement of the support bracket with a new bracket; and relocation of the support clamp of the wire bundle; as applicable. The actions specified by this AD are intended to prevent the wire bundle contained in the feed-through from contacting the bottom of the feed-through, which could cause cable chafing, electrical arcing, and smoke or fire in the cockpit. This action is intended to address the identified unsafe condition.

**DATES:** Effective November 21, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 21, 2003.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal

Aviation Regulations (14 CFR part 39) by superseding AD 2000–03–13, amendment 39–11572 (65 FR 8028, February 17, 2000), which is applicable to certain McDonnell Douglas Model MD–11 airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on July 24, 2003 (68 FR 43686). The action proposed to require a new inspection of the wire bundle installation behind the first observer's station to detect damaged or chafed wires; repair if necessary; installation of a grommet around the lower edge of the feed-through; replacement of the support bracket with a new bracket; and relocation of the support clamp of the wire bundle; as applicable. The action also specified new corrective actions.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the supplemental NPRM or the FAA's determination of the cost to the public.

### Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

### Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

### Cost Impact

There are approximately 193 airplanes of the affected design in the worldwide fleet. The FAA estimates that 62 airplanes of U.S. registry will be affected by this AD.

The actions that are required by this AD will take approximately 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts will cost approximately $407 per airplane. Based on these figures, the cost impact of the requirements of this AD on U.S. operators is estimated to be $33,294, or $537 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this AD. As a result, the costs attributable to this AD may be less than stated above.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–11572 (65 FR 8028, February 17, 2000), and by adding a new airworthiness directive (AD), amendment 39–13340, to read as follows:

**2003–21–05 McDonnell Douglas:** Amendment 39–13340. Docket 2001–NM–57–AD. Supersedes AD 2000–03–13, Amendment 39–11572.

*Applicability:* Model MD–11 airplanes, as listed in Boeing Alert Service Bulletin MD11–24A041, Revision 03, dated September 11, 2002; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the wire bundle contained in the feed-through from contacting the bottom of the feed-through, which could cause cable chafing, electrical arcing, and smoke or fire in the cockpit, accomplish the following:

### Inspection

(a) Within 1 year after the effective date of this AD, do a one-time detailed inspection of the wire bundle installation behind the first observer's station to detect damaged or chafed wires, per Boeing Alert Service Bulletin MD11–24A041, Revision 03, dated September 11, 2002.

**Note 2:** For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, *etc.*, may be used. Surface cleaning and elaborate access procedures may be required."

**Condition 1: No Damaged or Chafed Wire**

(b) If no damaged or chafed wire is detected during the detailed inspection required by paragraph (a) of this AD, before further flight, revise the wire bundle support clamp installation, per Boeing Alert Service Bulletin MD11–24A041, Revision 03, dated September 11, 2002.

**Condition 2: Any Damaged or Chafed Wire**

(c) If any damaged or chafed wire is detected during the detailed inspection required by paragraph (a) of this AD, before further flight, repair wiring, and revise the wire bundle support clamp installation, per Boeing Alert Service Bulletin MD11–24A041, Revision 03, dated September 11, 2002.

**Alternative Methods of Compliance**

(d)(1) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–03–13, amendment 39–11572, are approved as alternative methods of compliance with this AD.

**Incorporation by Reference**

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin MD11–24A041, Revision 03, dated September 11, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Effective Date**

(f) This amendment becomes effective on November 21, 2003.

Issued in Renton, Washington, on October 9, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–26116 Filed 10–16–03; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NM–353–AD; Amendment 39–13341; AD 2003–21–06]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A330–301, –321, –322, –341, and –342 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330–301, –321, –322, –341, and –342 airplanes. This action requires modifying the rear fuselage to reinforce a certain frame segment. This action is necessary to prevent fatigue cracking of the rear fuselage, which could result in reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective November 3, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 3, 2003.

Comments for inclusion in the Rules Docket must be received on or before November 17, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–353–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–353–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330–301, –321, –322, –341, and –342 airplanes. The DGAC advises that, during fatigue testing, after 57,457 simulated flights, a crack initiated and propagated in the rear fuselage on the right-hand side of the airplane in the web of frame 65 at stringer 27, at the first lower rivet row of the cross-beam attach fitting. Such cracking, if not corrected, could result in reduced structural integrity of the airplane.

### Explanation of Relevant Service Information

Airbus has issued Service Bulletin A330–53–3059, Revision 01, dated October 15, 1997. That service bulletin describes procedures for modifying the rear fuselage to reinforce frame 65 in the area of stringer 27 at the first lower rivet row of the cross-beam attach fitting. This modification includes performing rotating probe inspections for cracking of certain fastener holes, reaming certain fastener holes (either as a corrective action if cracking is found in certain areas, or as a follow-on action for uncracked fastener holes), cold-expanding certain fastener holes, replacing certain existing fasteners with improved fasteners, and applying sealant. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2001–496(B), dated October 17, 2001, to ensure the continued airworthiness of these airplanes in France.

### FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

### Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some time in the future, this AD is being issued to prevent fatigue cracking of the rear fuselage, which could result in reduced structural integrity of the airplane. This AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

### Differences Between This AD and Service Bulletin

Although the service bulletin specifies that operators may contact the manufacturer for disposition of certain repair conditions, this AD requires operators to repair those conditions per a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair that is required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this AD.

### Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 3 work hours to accomplish the required actions, at an average labor rate of $65 per work hour. Required parts would cost approximately $120 per airplane. Based on these figures, the cost impact of this AD would be $315 per airplane.

### Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

### Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–353–AD." The postcard will be date stamped and returned to the commenter.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

**2003–21–06 Airbus:** Amendment 39–13341. Docket 2001–NM–353–AD.

*Applicability:* Model A330–301, –321, –322, –341, and –342 airplanes; certificated in any category; except those on which Airbus Modification 43761, 44203, or 44052 has been accomplished in production.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the rear fuselage, which could result in reduced structural integrity of the airplane, accomplish the following:

### Service Bulletin Reference

(a) The following information pertains to the service bulletin referenced in this AD:

(1) The term "service bulletin" as used in this AD, means the Accomplishment Instructions of Airbus Service Bulletin A330–53–3059, Revision 01, dated October 15, 1997.

(2) Modifications accomplished before the effective date of this AD per Airbus Service Bulletin A330–53–3059, dated June 18, 1996, are acceptable for compliance with this AD.

### Modification

(b) Prior to the accumulation of 20,000 total flight cycles, modify the rear fuselage to reinforce frame 65 in the area of stringer 27 at the first lower rivet row of the cross-beam attach fitting (including performing rotating probe inspections for cracking of certain fastener holes; accomplishing any applicable repair; and replacing certain fasteners with new, improved fasteners) by accomplishing all actions specified in paragraphs 2.A. through 2.D. of the service bulletin. Do the actions per the service bulletin, except as required by paragraph (c) of this AD. Any applicable repair must be accomplished prior to further flight.

### Repairs

(c) If any crack is found during any inspection required by this AD, and the service bulletin recommends contacting Airbus for appropriate action: Before further flight, repair per a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (or its delegated agent).

### Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, is authorized to approve alternative methods of compliance for this AD.

### Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with Airbus Service Bulletin A330–53–3059, Revision 01, dated October 15, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 1:** The subject of this AD is addressed in French airworthiness directive 2001–496(B), dated October 17, 2001.

### Effective Date

(f) This amendment becomes effective on November 3, 2003.

Issued in Renton, Washington, on October 9, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–26117 Filed 10–16–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2003–15723; Airspace Docket No. 03–ACE–65]**

## Modification of Class E Airspace; Meade, KS

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This document confirms the effective date of the direct final rule which revises Class E airspace at Meade, KS.

**EFFECTIVE DATE:** 0901 UTC, December 25, 2003.

**FOR FURTHER INFORMATION CONTACT:** Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C. DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on August 18, 2003 (68 FR 49346). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 25, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on October 3, 2003.

**Herman J. Lyons, Jr.,**

*Manager, Air Traffic Division, Central Region.*

[FR Doc. 03–26229 Filed 10–16–03; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2003–15724; Airspace Docket No. 03–ACE–66]**

## Modification of Class E Airspace; Centerville, IA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This document confirms the effective date of the direct final rule which revises Class E airspace at Centerville, IA.

**EFFECTIVE DATE:** 0901 UTC, December 25, 2003.

**FOR FURTHER INFORMATION CONTACT:** Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on August 19, 2003 (68 FR 49691) and subsequently published a correction to the direct final rule in the **Federal Register** on August 29, 2003 (68 FR 52075). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 25, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on October 3, 2003.

**Herman J. Lyons, Jr.,**

*Manager, Air Traffic Division, Central Region.*

[FR Doc. 03–26228 Filed 10–16–03; 8:45 am]

BILLING CODE 4910–13–M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Parts 111 and 310**

**[Docket Nos. 91P–0186 and 93P–0306]**

## Iron-Containing Supplements and Drugs; Label Warning Statements and Unit-Dose Packaging Requirements; Removal of Regulations for Unit-Dose Packaging Requirements for Dietary Supplements and Drugs

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; removal of regulatory provisions in response to court order.

**SUMMARY:** The Food and Drug Administration (FDA) is removing, in part, a final rule that required unit-dose packaging for iron-containing dietary supplement and drug products that contain 30 milligrams (mg) or more of iron per dosage unit. FDA is taking this action in response to the Court's ruling in *Nutritional Health Alliance* v. *FDA*, in which the Court concluded that the Federal Food, Drug, and Cosmetic Act (the act) does not provide FDA with authority to require manufacturers of iron-containing dietary supplement and drug products to use unit-dose packaging for poison prevention purposes. Today's action takes the ministerial step of removing the unit-dose packaging provisions from title 21 of the Code of Federal Regulations.

**DATES:** This rule is effective October 17, 2003.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Moore, Center for Food Safety and Applied Nutrition (HFS–810), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1441.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In the **Federal Register** of January 15, 1997 (62 FR 2218), FDA published a final rule (1997 final rule) that, among other things, required unit-dose packaging[1] for iron-containing dietary supplement and drug products in solid oral dosage form that contain 30 mg or more of iron per dosage unit (§ 111.50 (21 CFR 111.50 (dietary supplements) and § 310.518(a) (21 CFR 310.518(a) (drugs)). These provisions were challenged by the Nutritional Health Alliance (NHA), an association including manufacturers and distributors of iron-containing dietary supplements, on the basis that FDA did not have authority under the act to issue and enforce regulations for the purpose of poison prevention. On November 1, 2000, the U.S. District Court for the Eastern District of New York upheld FDA's authority to issue the regulations under the act (*Nutritional Health Alliance* v. *FDA*, No. 97–CV–5042, 2000 U.S. Dist. LEXIS 22330 (E.D.N.Y. Nov. 1, 2000)). NHA appealed. On January 21, 2003, the U.S. Court of Appeals for the Second Circuit reversed the judgment of the District Court and remanded the case to the District Court to fashion an appropriate remedy. On May 9, 2003, the District Court signed a final judgment declaring the provisions of §§ 111.50 and 310.518(a) invalid and without legal force or effect (*Nutritional Health Alliance* v. *FDA*, No. 97–CV–5042 (E.D.N.Y. filed May 29, 2003).

### II. Summary of the Final Rule

In accordance with the Court's ruling and the District Court's final judgment, FDA is removing those parts of the 1997 final rule that established regulations in §§ 111.50 and 310.518(a), which required unit-dose packaging for dietary supplement and drug products that contain 30 mg or more of iron per dosage unit. The agency is also revising § 310.518(b), which provided a temporary exemption from unit-dose packaging requirements for certain iron-containing drug products, and revising appropriate paragraphs in § 310.518 accordingly.

This rule does not affect the provisions of 21 CFR 101.17(e), which requires label warning statements on all iron-containing dietary supplements in solid oral dosage form, or the provisions of § 310.518(c) (which is redesignated in this rule as § 310.518(a)), which requires label warning statements on all iron-containing drugs in solid oral dosage form, except iron-containing inert tablets supplied in monthly packages of oral contraceptives. Nor does this rule affect the provisions of 16 CFR 1700.14(a)(12) and (a)(13), which require special packaging for iron-containing drug and dietary supplement products, respectively, to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances (16 CFR 1700.14(a), (a)(12), and (a)(13)). The regulations in 16 CFR 1700.14 were issued under the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 *et seq.*) (PPP Act). The authority to administer and enforce the PPP Act was transferred from FDA to the Consumer Product Safety Commission in 1972 under the enactment of the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*).

### III. Authority for Issuing Final Rule

Section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) provides that when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. FDA has determined that there is good cause under 5 U.S.C. 553(b)(3)(B) and 21 CFR 10.40(d) to forgo notice and comment. As a matter of law, the decision issued by the U.S. Court of Appeals for the Second Circuit and the final judgment of the U.S. District Court for the Eastern District of New York invalidated the provisions of the 1997 final rule requiring unit-dose packaging for solid oral dosage form dietary supplement and drug products that contain 30 mg or more per dosage unit, thereby making these provisions nonbinding and unenforceable. FDA finds that it is therefore unnecessary to provide notice and opportunity for public comment on this action, which merely implements the Court's order. For the same reasons, FDA finds that there is good cause, within the meaning of 5 U.S.C. 553(d)(3) and in accordance with the Congressional Review Act (5 U.S.C. 801 *et seq.*, at 808(2)), to make this rule effective immediately.

### IV. Environmental Impact

The agency has determined under 21 CFR 25.301(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

### V. Analysis of Impacts

Under Executive Order 12866, this action is not a regulatory action that is subject to review by the Office of Management and Budget (OMB). Because the agency has determined that there is good cause to forgo notice and comment requirements under the Administrative Procedure Act or any other statute, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) do not apply.

However, FDA has examined the impacts of this final rule under those provisions. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. When applicable, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. This rule is merely technical in nature and imposes no new burdens on small entities. Indeed, the effect of this rule is to remove a requirement that manufacturers package certain iron-containing dietary supplement and drug products in unit-dose packaging. Finally, a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is required only for nonprocedural rules that impose costs of $110 million or more on either the private sector or State, local, and tribal governments in the aggregate. This rule imposes no such costs.

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[1] For purposes of the rule, "unit-dose packaging" means a method of packaging a product into a nonreusable container designed to hold a signle dosage intended for administration directly from that container, irrespective of whether the recommended dose is one or more than one of these units (62 FR 2218, n.1; see also §111.50(a) and 21 CFR 310.510(a)).

### VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that this final rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

### VII. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by OMB under the Paperwork Reduction Act of 1995 is not required.

### List of Subjects

*21 CFR Part 111*

Dietary foods, Drugs, Foods, Packaging and containers.

*21 CFR Part 310*

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 111 and 310 are amended as follows:

## PART 111—CURRENT GOOD MANUFACTURING PRACTICE FOR DIETARY SUPPLEMENTS

■ 1. The authority citation for 21 CFR part 111 continues to read as follows:

**Authority:** 21 U.S.C. 321, 342, 371.

## PART 111—[REMOVED AND RESERVED]

■ 2. Part 111, consisting of §111.50, is removed and reserved.

## PART 310—NEW DRUGS

■ 3. The authority citation for 21 CFR part 310 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

■ 4. Section 310.518 is revised to read as follows:

### § 310.518 Drug products containing iron or iron salts.

Drug products containing elemental iron or iron salts as an active ingredient in solid oral dosage form, e.g., tablets or capsules shall meet the following requirements:

(a) *Labeling.* (1) The label of any drug in solid oral dosage form (e.g., tablets or capsules) that contains iron or iron salts for use as an iron source shall bear the following statement:

> WARNING: Accidental overdose or iron-containing products is a leading cause of fatal poisoning in children under 6. Keep this product out of reach of children. In case of accidental overdose, call a doctor or poison control center immediately.

(2)(i) The warning statement required by paragraph (a)(1) of this section shall appear prominently and conspicuously on the information panel of the immediate container label.

(ii) If a drug product is packaged in unit-dose packaging, and if the immediate container bears labeling but not a label, the warning statement required by paragraph (a)(1) of this section shall appear prominently and conspicuously on the immediate container labeling in a way that maximizes the likelihood that the warning is intact until all of the dosage units to which it applies are used.

(3) Where the immediate container is not the retail package, the warning statement required by paragraph (a)(1) of this section shall also appear prominently and conspicuously on the information panel of the retail package label.

(4) The warning statement shall appear on any labeling that contains warnings.

(5) The warning statement required by paragraph (a)(1) of this section shall be set off in a box by use of hairlines.

(b) The iron-containing inert tablets supplied in monthly packages of oral contraceptives are categorically exempt from the requirements of paragraph (a) of this section.

Dated: October 7, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–26188 Filed 10–16–03; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF THE TREASURY

### 31 CFR Part 50

### RIN 1505–AA99

## Terrorism Risk Insurance Program; State Residual Market Insurance Entities

**AGENCY:** Departmental Offices, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury (Treasury) is issuing this final rule as part of its implementation of Title I of the Terrorism Risk Insurance Act of 2002 (Act). The Act established a temporary Terrorism Risk Insurance Program (Program) under which the Federal Government will share the risk of insured loss from certified acts of terrorism with commercial property and casualty insurers until the Program ends on December 31, 2005. Treasury published a proposed rule with a request for comment on April 18, 2003. This rule is issued pursuant to section 103(d)(1) of the Act, which directs Treasury to issue regulations that apply the provisions of the Act specifically to State residual market insurance entities and State workers' compensation funds. This rule is the third final rule in a series of regulations that Treasury is issuing to implement the Program.

**DATES:** This final rule is effective October 17, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mario Ugoletti, Deputy Director, Office of Financial Institutions Policy (202) 622–2730, or Martha Ellett or Cynthia Reese, Attorney-Advisors, Office of the Assistant General Counsel (Banking & Finance), (202) 622–0480, or C. Christopher Ledoux, Senior Attorney, Terrorism Risk Insurance Program (202) 622–6770 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. Terrorism Risk Insurance Act of 2002*

On November 26, 2002, President Bush signed into law the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297, 116 Stat. 2322). The Act was effective immediately. The Act's purposes are to address market disruptions, ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for a transition period for the private markets to stabilize and build capacity while preserving State insurance regulation and consumer protections.

Title I of the Act establishes a temporary Federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an act of terrorism, which as defined in the Act is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General. The Act authorizes Treasury to administer and implement the Terrorism Risk Insurance Program, including the issuance of regulations and procedures. The Program will end on December 31, 2005.

Each entity that meets the definition of "insurer" (well over 2000 firms) must participate in the Program. The amount of Federal payment for an insured loss resulting from an act of terrorism is to be determined based upon the insurance company deductibles and excess loss sharing with the Federal Government, as specified by the Act and the implementing regulations. An insurer's deductible increases each year of the Program, thereby reducing the Federal Government's share prior to expiration of the Program. An insurer's deductible is calculated based on the value of "direct earned premiums" collected over certain statutory periods. Once an insurer has met its individual deductible, the Federal payments cover 90 percent of insured losses above the deductible, subject to an industry-aggregate limit of $100 billion.

The Program provides a Federal reinsurance backstop for three years. The Act provides Treasury with authority to recoup Federal payments made under the Program through policyholder surcharges, up to a maximum annual limit. The Act also prohibits duplicative payments for insured losses that have been covered under any other Federal program.

The mandatory availability or "make available" provisions in section 103(c) of the Act require that, for Program Year 1 and Program Year 2 and, if so determined by Treasury, in Program Year 3, all entities that meet the definition of insurer under the Program must make available in all of their property and casualty insurance policies coverage for insured losses resulting from an act of terrorism. This coverage can not differ materially from the terms amounts and other coverage limitations arising from events other than acts of terrorism.

As conditions for Federal payment under the Program, insurers must provide clear and conspicuous disclosure to the policyholders of the premium charged for insured losses covered by the Program and the Federal share of compensation for insured losses under the Program. In addition, the Act requires that insurers must submit a claim and certain certifications to Treasury. Treasury will engage in rulemaking to prescribe claims procedures for the Program at a later date.

The Act also contains specific provisions designed to manage litigation arising from or relating to a certified act of terrorism. Section 107 creates an exclusive Federal cause of action, provides for claims consolidation in Federal court and contains a prohibition on Federal payments for punitive damages under the Program. The Act provides the United States with the right of subrogation with respect to any payment or claim paid by the United States under the Program.

#### 1. Three Year Program

The duration of the Program is three years. The Act was signed into law on November 26, 2002, and section 108(a) of the Act provides that, "[t]he Program shall terminate on December 31, 2005." Thereafter, the Act provides Treasury with certain continuing authority to take actions as necessary to ensure payment, recoupment, adjustments of compensation and reimbursement for insured losses arising out of any act of terrorism occurring during the period between November 26, 2002, and December 31, 2005. The duration of the Program and the Program's termination date should *not* be confused with the make available requirements contained in section 103(c) of the Act. As reflected in both the interim final and final rules, the make available requirements in section 103(c) of the Act apply to all insurers, through the end of Program Year 2. However, the Secretary of the Treasury may determine, not later than September 1, 2004, to extend the make available requirements through Program Year 3, based on factors referenced in section 108(d)(1) of the Act. Regardless of whether the make available requirements of section 103 are extended, the Program and the Act's Federal backstop for insured losses for acts of terrorism continue through December 31, 2005.

#### 2. Program Implementation Goals

In implementing the Program, Treasury is guided by several goals. First, Treasury strives to implement the Act in a transparent and effective manner that treats comparably those insurers required to participate in the Program and provides necessary information to policyholders in a useful and efficient manner. Second, in accord with the Act's stated purposes, Treasury seeks to rely as much as possible on the State insurance regulatory structure. In that regard, Treasury has coordinated the implementation of all aspects of the Program with the National Association of Insurance Commissioners (NAIC). Third, to the extent possible within statutory constraints, Treasury seeks to allow insurers to participate in the Program in a manner consistent with procedures used in their normal course of business. Finally, given the temporary and transitional nature of the Program, Treasury is guided by the Act's goal for insurers to develop their own capacity, resources, and mechanisms for terrorism insurance coverage when the Program expires.

### *B. The Proposed Rule*

The proposed rule proposed to amend subpart D of part 50 in title 31 of the Code of Federal Regulations by adding sections 50.30, 50.33, 50.35, and 50.36. Subpart A of part 50 addresses the scope and purpose of the Program, key definitions and certain general provisions and was finalized and published in the **Federal Register** at 68 FR 41250 (July 11, 2003) (as amended at 68 FR 48280 (August 13, 2003)). Subparts B and C were established by an interim final rule published in the **Federal Register** at 68 FR 19301 (Apr. 18, 2003) and were recently finalized. Subpart B incorporates and clarifies certain conditions for Federal payment contained in section 103(b) of the Act that require insurers to provide certain clear and conspicuous disclosures to their policyholders with regard to terrorism risk insurance for insured losses under the Program. Subpart C clarifies requirements in section 103(c) of the Act that insurers "make available," in all of their commercial property and casualty insurance policies, coverage for insured losses resulting from an act of terrorism as defined by section 102(1) of the Act. In this regard, section 103(c) requires insurers to make such terrorism risk coverage available at terms, amounts and other coverage limitations that do not differ materially from those applicable to losses arising from events other than from acts of terrorism. Subpart D, as directed by section 103(d)(1) of the Act, applies the provisions of the Act to State residual market insurance entities and State workers' compensation funds. In the preamble to the proposed rule, Treasury requested comment on application of the disclosure requirements of the Act to State residual market insurance entities and State workers' compensation funds. As part of this rulemaking, Treasury is amending section 50.19 of subpart B, which was previously reserved, to apply the disclosure requirements to those entities.

The various rules reflect earlier interim guidance notices, issued by Treasury soon after the Act's enactment date, and designed to assist insurers, policyholders, and other interested parties in complying with immediately applicable and time-sensitive requirements.[1] In finalizing this rule, Treasury carefully considered the comments submitted and consulted with the NAIC.

## II. Summary of Comments and Final Rule

Treasury received four comments on the proposed rule. Comments were submitted by a group of insurance trade associations, the Ohio Bureau of Workers' Compensation, and a State residual market insurance entity. After review and careful consideration of these comments, as well as additional research and consultation with the NAIC, Treasury is now promulgating a final rule applying the Act to State residual market insurance entities and State workers' compensation funds (referred to collectively as "residual market mechanisms" where appropriate). Treasury has made no changes to the proposed rule. Treasury is, however, adding specific disclosure provisions by amending section 50.19. The final rule and amendment to section 50.19, including clarifications, are discussed in the summary of comments below.

### *A. Mandatory Participation by Residual Market Mechanisms (Section 50.30)*

In subpart D of this final rule, Treasury is setting forth regulations specific to the participation of residual market mechanisms in the Program. Section 102(6) of the Act specifically includes State residual market insurance entities and State workers' compensation funds as insurers that are required to participate in the Program. As we stated in the notice of proposed rulemaking (published in the **Federal Register** at 68 FR 19309 on April 18, 2003), Treasury considers the Act's terms "State residual market insurance entities" and "State workers' compensation funds" to encompass all State legislatively-created residual market mechanisms that facilitate the availability of primary and excess commercial property and casualty insurance coverage for risks that face difficulties in obtaining such coverage from the voluntary market. This includes—but is not limited to—residual market mechanisms associated with the provision of commercial property, commercial liability, workers' compensation, and commercial automobile coverage. Sections 50.30(a) and (b) of this final rule, taken together, provide that residual market mechanisms are insurers under the Program, even if they do not receive direct earned premiums, and thus are mandatory participants in the Program.

### 1. List of Residual Market Mechanisms

In its second notice of interim guidance (67 FR 78864), Treasury first published a list of entities that Treasury, in consultation with the NAIC, identified as residual market mechanisms required to participate in the Program and that provide commercial property and casualty insurance, as defined by the Act and regulations. The list is not exclusive. A residual market mechanism should not assume that because it is not listed on Treasury's *List of State Residual Market Mechanisms* it is not required to participate in the Program. *All* State residual market insurance entities and State workers' compensation funds are insurers that *must* participate in the Program. See sections 50.5(f)(1)(D) and 50.4. Treasury's list was merely intended to provide guidance and certainty to those entities on the list as well as to foster transparency in the Program.

In the notice of interim guidance, Treasury encouraged residual market mechanisms that were not included on the list to notify Treasury. Since the publication of that notice of interim guidance, Treasury has continued to work with the NAIC to revise the *List of State Residual Market Mechanisms*. Section 50.30(c) of this final rule explains that Treasury will maintain and continue to update this list from time to time, as necessary. Treasury's list will be publicly available at *www.treasury.gov/trip*, along with the procedures for providing comments and updates.

Treasury, in consultation with the NAIC, has considered the following characteristics in identifying residual market mechanisms that should be included on Treasury's list:

- Was the mechanism created by a state legislature?
- Does the mechanism provide commercial property and casualty insurance to policyholders, either directly or through servicing carriers?
- Does the mechanism seek to make available commercial property and casualty insurance for risks that are "distressed" or "hard to place" in the voluntary market?
- How does the mechanism share or allocate its profits and losses from its operations?
- Does the mechanism meet the requirements of § 50.5(f)?

### 2. State Workers' Compensation Reinsurance Pools

Treasury received a comment from the Minnesota Workers' Compensation Reinsurance Association ("WCRA"), a State workers" compensation reinsurance pool, that requested the Secretary exercise his discretion under section 103(f) of the Act (which mentions State workers' compensation reinsurance pools) and include such pools in the Program. Treasury is not making a section 103(f) determination at this time. However, looking beyond the commenter's name to its function, Treasury has determined that the commenter fits within the residual market mechanism category under section 103(d) of the Act, as explained below.

The WCRA is a State-mandated reinsurance pool from which workers' compensation insurers are required by State law to purchase excess reinsurance. WCRA also provides workers' compensation insurance directly to self-insured employers. While section 102(12)(vii) of the Act expressly excludes reinsurance from the definition of property and casualty insurance covered by the Program, Treasury believes that an insurance arrangement between a self-insured and an insurer, or a pool of insurers, is more like direct primary or excess property and casualty insurance versus traditional reinsurance (*i.e.*, an insurer reinsuring another insurer).

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[1] These interim guidance notices were published in the **Federal Register** at 67 FR 76206 (Dec. 11, 2002); 67 FR 78864 (Dec. 26, 2002) and at 68 FR 4544 (Jan. 29, 2003). Treasury also issued a fourth interim guidance at 68 FR 15039 (Mar. 27, 2003), which has subsequently been superceded by a new provision in the final rule for Subpart A, published at 68 FR 41250 (July 11, 2003). The interim guidance and all regulations can also be located on Treasury's Terrorism Risk Insurance Program Web site at *www.treasury.gov/trip*.

After consulting with the NAIC and considering the characteristics described above, Treasury considers WCRA to be similar to a residual market mechanism. WCRA is a legislatively-established risk pool that issues insurance directly to policyholders, which risks are hard to place in the voluntary insurance market. WCRA also has a procedure through which it shares or allocates its profits and losses with private sector insurers. Therefore, for these reasons, Treasury has added WCRA to its *List of State Residual Market Mechanisms* and its participation in the Program is confirmed. If any other State workers' compensation reinsurance pool believes that it shares the characteristics of a residual market mechanism and believes it should be included on the list, under section 50.9, the reinsurance pool should submit a request for an interpretation of the application of these regulations to its particular circumstance.

### *B. Allocation of Premium (Sections 50.33 through 50.36)*

Section 103(d)(2) of the Act divides residual market mechanisms into two broad classes for purposes of their treatment as insurers under the Program: (1) entities that do not share profits and losses with private sector insurance companies; and (2) entities that do share profits and losses with private sector insurance companies.

Section 103(d)(2)(A) provides that "a State residual market insurance entity that does not share its profits and losses with private sector insurers shall be treated as a separate insurer." For State residual market insurance entities that fall under section 103(d)(2)(A) of the Act or for State workers' compensation funds, section 50.33 of the final rule provides that these mechanisms follow the regulations set forth in sections § 50.5(d)(1) or § 50.5(d)(2) for the purposes of calculating the appropriate measure of direct earned premium. Residual market mechanisms functioning in this manner are thus treated as risk bearers in the same manner as private sector insurers. Treasury received a comment from a group of trade associations that endorsed this approach. These provisions of the proposed rule are adopted without change.

Section 103(d)(2)(B) of the Act provides that "a State residual market insurance entity that shares its profits and losses with private sector insurers shall not be treated as a separate insurer, and shall report to each private sector insurance participant its share of the insured losses of the entity, which shall be included in each private sector insurer's insured losses." Section 103(d)(3) of the Act provides that "any insurer that participates in sharing profits and losses of a State residual market insurance entity shall include in its calculations or premiums any premiums distributed to the insurer by the State residual market insurance entity." Residual market insurance mechanisms functioning in this manner are thus treated as risk apportioning entities and not risk bearing entities. Proposed section 50.35 reflected this treatment and also provided that these entities should continue to report, in accordance with normal business practices, to each participant insurer its share of premium income and insured losses, which is to be included respectively in the participant insurer's direct earned premium and insured loss calculations. Treasury received a comment from a group of trade associations that supported this approach. This provision of the proposed rule is adopted without change.

Section 50.36 of the proposed rule further addressed the calculation of direct earned premium based on the allocation of premium income shared between the residual market mechanism and its servicing carriers or participant insurers. Favorable comments were received on this provision, which is adopted without change.

### *C. Other Issues*

State Residual Market Mechanisms and Natural Disaster Insurance

Treasury received a comment from a residual market mechanism that issues commercial policies that provide coverage only for the peril of wind. The commenter requested that Treasury modify section 50.5(l) of the regulations to exclude commercial single peril wind insurance from the provisions of the Act. The commenter analogized single peril wind insurance to that of flood insurance and earthquake insurance, which are not included in the Program. *See* section 50.5(l)(1). Upon consideration of the comment, Treasury is not revising section 50.5(l). However, as stated in the preamble to the final rule published July 11, 2003, Treasury may later request comment on the exclusion from the Program definition of commercial property and casualty insurance single-peril natural disaster insurance currently included in the Program.

### *D. Disclosure Requirements (Section 50.19)*

Subpart B of 31 CFR part 50 sets forth regulations that address, *inter alia*, the clear and conspicuous disclosures that all insurers are required by the Act to provide to policyholders. Section 50.19 of subpart B, entitled *Disclosure by State residual market insurance entities and State workers' compensation funds*, had been reserved pending this rulemaking. This final rule amends 50.19 to address how residual market mechanisms are to comply with the Act's disclosure requirements.

Section 102(6) of the Act specifically includes residual market mechanisms as insurers that are required to participate in the Program. As a condition for Federal payment under the Program, section 103(b)(2) of the Act requires that insurers provide clear and conspicuous disclosure to policyholders of the premium charged for insured losses covered by the Program and the Federal share of compensation under the Program. Section 103(d) of the Act directed the Secretary of the Treasury to issue regulations as soon as practicable that apply the provisions of the Act (including the disclosure requirements) to residual market mechanisms.

On December 18, 2002, Treasury issued a second notice of interim guidance (67 FR 78864). In this notice of interim guidance Treasury indicated it would temporarily waive the disclosure requirements for those insurers that: (1) are State residual market insurance entities and State workers' compensation funds; and (2) have insufficient information to issue the disclosures, until Treasury issued regulations as required under section 103(d) to apply the provisions of the Act to these entities. Thus, the waiver provided a safe harbor pending the issuance of this final rule. We expected residual market mechanisms to have provided the disclosures if they possessed sufficient information to do so.

In the preamble to the proposed rule, Treasury stated that it was still evaluating the applicability of the disclosure requirements to certain insurers in this category and asked for public comment. Treasury received two comments on this issue. One comment deferred the issue to Treasury. Another commenter requested that Treasury exempt State workers' compensation funds from the disclosure requirements. The commenter argued that the burden and cost associated with providing the disclosures outweighs the goals of such notice, especially where the fund does not charge additional premium for insured losses.

Section 103(b) of the Act requires that insurers make certain disclosures to policyholders as a condition for federal payment under the Act. Section 50.10 of the regulations states, in part, that an insurer must provide clear and conspicuous disclosure to the policyholder of: (1) the premium charged for insured losses covered by the Program; and (2) the Federal share of compensation for insured losses under the Program. Congress required this disclosure in order "to enhance the competitiveness of the marketplace by better enabling consumers to comparison shop for terrorism insurance coverage, and to make policyholders better aware that the Federal government will be sharing the costs of such coverage with insurers thereby reducing the insurers' exposure." H.R. Conf. Rep. No. 107–779, at 24 (2002).

After consideration of the comment and the relevant provisions of the Act, and following consultation with NAIC and additional study of the issue, Treasury is applying disclosure provisions to residual market mechanisms that have not yet issued disclosures to policyholders. Thus, Treasury is issuing regulations relating to the disclosures required of State residual market insurance entities and State workers' compensation funds by amending section 50.19 of subpart B in this final rule. These regulations supercede the earlier interim guidance referenced above and the safe-harbor provided in that guidance will no longer be available to these insurers.

Section 50.19 generally follows the regulations applicable to all other insurers. In order to provide residual market insurance mechanisms with sufficient time to come into compliance (if they are not already), section 50.19 provides a 90-day safe harbor. For policies in force on October 17, 2003, or issued or renewed on or before January 15, 2004, the disclosure is required by the Act but the condition for Federal payment is waived with regard to those policies until January 15, 2004. In section 50.12(c), Treasury has provided that "an insurer may provide disclosure using normal business practices, including forms and methods of communication used to communicate similar policyholder information to policyholders." Section 50.19(b) extends this rule to State residual market insurance entities and State workers' compensation funds and clarifies that while disclosures may be made by the residual market mechanism, the individual insurers that participate in the residual market, or the servicing carriers (depending on their normal business practices), the ultimate responsibility for ensuring that the disclosure requirements have been met rests with the insurer that will be filing any claim. In accordance with other requirements of subpart B, disclosure must be clear and conspicuous, made on a separate line item in the policy at the time of offer, purchase, and renewal of the policy.

## III. Procedural Requirements

The Act established a Program to provide for loss sharing payments by the Federal Government for insured losses resulting from certified acts of terrorism. The Act became effective immediately upon the date of enactment (November 26, 2002). Preemptions of terrorism risk exclusions in policies, mandatory participation provisions, disclosure and other requirements and conditions for Federal payment contained in the Act applied immediately to those entities that come within the Act's definition of "insurer."

This rule amends subpart D to part 50 in title 31 that addresses how the Program applies to State residual market insurance entities and State workers' compensation funds. This rule also amends section 50.19 of subpart B. This rule is intended to respond to section 103(d)(1) of the Act, which directs Treasury to issue regulations that apply the provisions of the Act to State residual market insurance entities and State workers' compensation funds. Given the importance of applying regulations to State residual market insurance entities and State workers' compensation funds, there is an urgent need to issue immediately effective regulations.

Accordingly, pursuant to 5 U.S.C. 553(d)(3), Treasury has determined that there is good cause for the final rule to become effective immediately upon publication.

This final rule is a significant regulatory action and has been reviewed by the Office of Management and Budget under the terms of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Act itself requires State residual market insurance entities and State workers' compensation funds to participate in the Program, and these entities or funds are generally not small entities.

The Act itself requires all licensed or admitted insurers to participate in the Program. This includes all insurers regardless of size or sophistication. Although insurers that participate in sharing profits and losses of a State residual market insurance entity or State workers' compensation fund may include small entities, the proposed rule is based on existing business practices of residual market entities in determining the impact on participating insurers. The Act also defines property and casualty insurance to mean commercial lines without any reference to the size or scope of the commercial entity. Accordingly, any economic impact associated with the proposed rule flows from the Act and not the proposed rule. However, the Act and the Program are intended to provide benefits to the U.S. economy and all businesses, including small businesses, by providing a Federal reinsurance backstop to commercial property and casualty insurance policyholders and spreading the risk of insured loss resulting from an act of terrorism. Accordingly, a regulatory flexibility analysis is not required.

### List of Subjects in 31 CFR Part 50

Terrorism risk insurance.

### Authority and Issuance

■ For the reasons set forth above, 31 CFR part 50 is amended as follows:

## PART 50—TERRORISM RISK INSURANCE PROGRAM

■ 1. The authority citation for part 50 continues to read as follows:

**Authority:** 5 U.S.C. 301; 31 U.S.C. 321; Title I, Pub. L. 107–297, 116 Stat. 2322 (15 U.S.C 6701 note).

■ 2. Section 50.19 of subpart B is revised to read as follows:

### § 50.19 1General disclosure requirements for State residual market insurance entities and State worker's compensation funds.

(a) *Policies in force on October 17, 2003, or renewed or issued on or before January 15, 2004.* For policies in force on October 17, 2003, or renewed or issued on or before January 15, 2004, the disclosure required by section 103(b) of the Act as a condition for Federal payment is waived for those State residual market insurance entities and State workers' compensation funds that since November 26, 2002, have not provided disclosures to policyholders, until January 15, 2004, after which disclosures are to be made to policyholders for policies then in force and subsequently issued.

(b) *Residual Market Mechanism Disclosure.* A State residual market insurance entity or State workers' compensation fund may provide the disclosures required by this subpart B to policyholders using normal business practices, including forms and methods of communication used to communicate similar policyholder information to policyholders. The disclosures may be made by the State residual market insurance entity or State workers' compensation fund itself, the individual insurers that participate in the State residual market insurance entity or a State workers' compensation fund, or its servicing carriers. The ultimate responsibility for ensuring that the disclosure requirements have been met rests with the insurer filing a claim under the Program.

(c) *Other requirements.* Except as provided in this section, all other disclosure requirements set out in this subpart B apply to State residual insurance market entities and State workers' compensation funds.

(d) *Prior safe harbor superseded.* This section supersedes the disclosure safe harbor provisions found at paragraph C.4 of the Interim Guidance issued by Treasury in a notice published on December 18, 2002, and published at 67 FR 78864 (December 26, 2002).

■ 3. Subpart D of part 50 is amended by adding §§ 50.30, 50.33, 50.35, and 50.36 to read as follows:

### § 50.30 General participation requirements.

(a) *Insurers.* As defined in § 50.5(f), all State residual market insurance entities and State workers' compensation funds are insurers under the Program even if such entities do not receive direct earned premiums.

(b) *Mandatory Participation.* State residual market insurance entities and State workers' compensation funds that meet the requirements of § 50.5(f) are mandatory participants in the Program subject to the rules issued in this Subpart.

(c) *Identification.* Treasury will release and maintain a list of State residual market insurance entities and State workers' compensation funds at *www.treasury.gov/trip.* Procedures for providing comments and updates to that list will be posted with the list.

### § 50.33 Entities that do not share profits and losses with private sector insurers.

(a) *Treatment.* A State residual market insurance entity or a State workers' compensation fund that does not share profits and losses with a private sector insurer is deemed to be a separate insurer under the Program.

(b) *Premium calculation.* A State residual market insurance entity or a State workers' compensation fund that is deemed to be a separate insurer should follow the guidelines specified in § 50.5(d)(1) or 50.5(d)(2) for the purposes of calculating the appropriate measure of direct earned premium.

### § 50.35 Entities that share profits and losses with private sector insurers.

(a) *Treatment.* A State residual market insurance entity or a State workers' compensation fund that shares profits and losses with a private sector insurer is not deemed to be a separate insurer under the Program.

(b) *Premium and loss calculation.* A State residual market insurance entity or a State workers' compensation fund that is not deemed to be a separate insurer should continue to report, in accordance with normal business practices, to each participant insurer its share of premium income and insured losses, which shall then be included respectively in the participant insurer's direct earned premium or insured loss calculations.

### § 50.36 Allocation of premium income associated with entities that do share profits and losses with private sector insurers.

(a) *Servicing Carriers.* For purposes of this Subpart, a servicing carrier is an insurer that enters into an agreement to place and service insurance contracts for a State residual market insurance entity or a State workers' compensation fund and to cede premiums associated with such insurance contracts to the State residual market insurance entity or State workers' compensation fund. Premiums written by a servicing carrier on behalf of a State residual market insurance entity or State workers' compensation fund that are ceded to such an entity or fund shall not be included as direct earned premium (as described in § 50.5(d)(1) or 50.5(d)(2)) of the servicing carrier.

(b) *Participant Insurers.* For purposes of this Subpart, a participant insurer is an insurer that shares in the profits and losses of a State residual market insurance entity or a State workers' compensation fund. Premium income that is distributed to or assumed by participant insurers in a State residual market insurance entity or State workers' compensation fund (whether directly or as quota share insurers of risks written by servicing carriers), shall be included in direct earned premium (as described in § 50.5(d)(1) or 50.5(d)(2)) of the participant insurer.

Dated: October 1, 2003.

**Wayne A. Abernathy,**

*Assistant Secretary of the Treasury.*

[FR Doc. 03–26250 Filed 10–16–03; 8:45 am]

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## DEPARTMENT OF THE TREASURY

## 31 CFR Part 50

## RIN 1505–AA98

## Terrorism Risk Insurance Program; Disclosures and Mandatory Availability Requirements

**AGENCY:** Departmental Offices, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury (Treasury) is issuing this final rule concerning disclosures and mandatory availability requirements as part of its implementation of Title I of the Terrorism Risk Insurance Act of 2002 (Act). The final rule incorporates and clarifies conditions for federal payment, set forth in section 103(b) of the Act, that require insurers to make certain disclosures to policyholders. It also incorporates and clarifies the section 103(c) requirements that insurers "make available" in their commercial property and casualty policies terrorism risk insurance coverage for insured losses resulting from certified acts of terrorism under the Act. Treasury issued an interim final rule and proposed rule with request for comment. This final rule, which is the second in a series of regulations that Treasury is issuing to implement the Program, adopts the interim final rule with several modifications as discussed below.

**DATES:** This final rule is effective October 17, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mario Ugoletti, Deputy Director, Office of Financial Institutions Policy (202) 622–2730, or Martha Ellett or Cynthia Reese, Attorney-Advisors, Office of the Assistant General Counsel (Banking & Finance), (202) 622–0480, or C. Christopher Ledoux, Senior Attorney, Terrorism Risk Insurance Program (202) 622–6770 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### I. Background

### *A. Terrorism Risk Insurance Act of 2002*

On November 26, 2002, President Bush signed into law the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297, 116 Stat. 2322). The Act was effective immediately. The Act's purposes are to address market disruptions, ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for a transition period for the private markets to stabilize and build capacity while preserving State insurance regulation and consumer protections.

Title I of the Act establishes a temporary federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an act of terrorism which, as defined by the Act, is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General. The Act authorizes Treasury to administer and implement the Terrorism Risk Insurance Program, including the issuance of regulations and procedures. The Program will end on December 31, 2005.

Each entity that meets the Act's definition of "insurer" (well over 2000 firms) must participate in the Program. The amount of federal payment for an insured loss resulting from an act of terrorism is to be determined, based upon the insurance company deductibles and excess loss sharing with the Federal Government, as specified by the Act and the implementing regulations. An insurer's deductible increases each year of the Program, thereby reducing the Federal Government's involvement prior to expiration of the Program. An insurer's deductible is calculated based on the value of "direct earned premiums" collected over certain statutory periods. Once an insurer has met its individual deductible, the federal payments cover 90 percent of the insured losses above the deductible, subject to an industry-aggregate limit of $100 billion.

The Program provides a federal reinsurance backstop for three years. The Act gives Treasury authority to recoup federal payments made under the Program through policyholder surcharges, up to a maximum annual limit. The Act also prohibits duplicative federal payments for insured losses that have been covered under any other federal program.

The mandatory availability or "make available" provisions in section 103(c) of the Act require that, for Program Year 1 and Program Year 2 and, if so determined by Treasury, in Program Year 3, all entities that meet the Act's definition of insurer must make available, in all of their property and casualty insurance policies, coverage for insured losses resulting from an act of terrorism. This coverage can not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

As conditions for federal payment under the Program, clear and conspicuous disclosures must be provided by insurers to the policyholders of the premium charged for insured losses covered by the Program and the federal share of compensation for insured losses under the Program. In addition, the Act requires that insurers submit a claim to Treasury for federal payment as well as certain certifications. Treasury will engage in rulemaking to prescribe claims procedures for the Program at a later date.

The Act also contains provisions designed to manage litigation arising from or relating to a certified act of terrorism. Section 107 of the Act creates an exclusive federal cause of action, provides for claims consolidation in federal court, and contains a prohibition on federal payments for punitive damages under the Program. The Act provides the United States with the right of subrogation with respect to any payment or claim paid by the United States under the Program.

### 1. Three Year Program

The duration of the Program is three years. The Act was signed into law on November 26, 2002 and section 108(a) of the Act provides that, "[t]he Program shall terminate on December 31, 2005." Thereafter, the Act provides Treasury with certain continuing authority to take actions as necessary to ensure payment, recoupment, adjustments of compensation and reimbursement for insured losses arising out of any act of terrorism occurring during the period between November 26, 2002 and December 31, 2005. The duration of the Program and the Program's termination date should not be confused with the make available requirements contained in section 103(c). As reflected in both the interim final and final rules, the make available requirements in section 103(c) of the Act apply to all insurers, through the end of Program Year 2. However, the Secretary of the Treasury may determine, not later than September 1, 2004, to extend the make available requirements through Program Year 3, based on factors referenced in section 108(d)(1) of the Act. Regardless of whether the make available requirements of section 103 are extended, the Program and the Act's federal backstop for insured losses for acts of terrorism continue through December 31, 2005.

### 2. Program Implementation Goals

In implementing the Program, Treasury is guided by several goals. First, Treasury strives to implement the Act in a transparent and effective manner that treats comparably those insurers required to participate in the Program and provides necessary information to policyholders. Second, in accord with the Act's stated purposes, Treasury seeks to rely as much as possible on the State insurance regulatory structure. In that regard, Treasury has closely coordinated its implementation of all aspects of the Program with the National Association of Insurance Commissioners (NAIC). Third, to the extent possible within statutory constraints, Treasury seeks to allow insurers to participate in the Program in a manner consistent with procedures used in their normal course of business. Finally, given the temporary and transitional nature of the Program, Treasury is guided by the Act's goal for insurers to develop their own capacity, resources, and mechanisms for terrorism insurance coverage when the Program expires on December 31, 2005.

### *B. The Interim Final Rule*

The interim final rule was published in the **Federal Register** at 68 FR 19302 (April 18, 2003). It added sections 50.10 through 50.14 and 50.17 through 50.19 to Subpart B, and sections 50.20, 50.21, 50.23, and 50.24 to Subpart C of Part 50 in Title 31, Code of Federal Regulations. Subpart A of Part 50, which addresses the scope and purpose of the Program, key definitions and certain general provisions, was finalized and published in the **Federal Register** at 68 FR 41250 (July 11, 2003) and subsequently revised at 68 FR 48280 (August 13, 2003). Subpart B incorporates and clarifies certain conditions for federal payment contained in section 103(b) of the Act that require insurers to make certain clear and conspicuous disclosures to their policyholders with regard to terrorism risk insurance for insured losses under the Program. Subpart C incorporates and clarifies requirements in section 103(c) of the Act that insurers "make available," in all of their commercial property and casualty insurance policies, coverage for insured losses resulting from an act of terrorism as defined by section 102(1) of the Act. In this regard, section 103(c) requires insurers to make such terrorism risk coverage available at terms, amounts, and other coverage limitations that do not differ materially from those applicable to losses arising from events other than from acts of terrorism.

This final rule (and the preceding interim final rule) reflect earlier interim guidance, issued by Treasury in notices that were published soon after the Act's enactment date, and were designed to assist insurers, policyholders and other interested parties in complying with immediately applicable and time-sensitive requirements.[1] In finalizing the interim final rule, Treasury carefully considered the comments submitted and consulted with the NAIC.

## II. Summary of Comments and Final Rule

Treasury received 12 comments on the interim final rule. Comments were submitted by individual insurance companies and their legal counsel, by insurance and mortgage banker industry trade associations, by a coalition of trade and professional associations and by the American Academy of Actuaries. After review and careful consideration of these comments, as well as additional research and consultation with the NAIC, Treasury is now promulgating a final rule concerning the Act's disclosure and make available requirements. The final rule makes few changes to the interim final rule. Clarifications were made in several areas based on comments received. These clarifications are discussed in the summary of comments below.

### *A. Disclosures*

#### 1. General Disclosure Requirements (Section 50.10)

Section 103(b) of the Act requires insurers to make certain disclosures to policyholders as a condition for federal payment under the Act. The general disclosure requirements of section 50.10 of the interim final rule incorporate the Act's requirements. This section of the final rule is unchanged from the interim final rule. Section 50.10 states, in part, that an insurer must provide clear and conspicuous disclosure to the policyholder of: (1) The premium charged for insured losses covered by the Program; and (2) the federal share of compensation for insured losses under the Program. As discussed below, the disclosure provisions are a condition for federal payment under the Act and a mechanism through which Congress sought to enhance competition and comparison shopping in the purchase of terrorism risk insurance and to increase awareness of the federal contribution to the Program.

One commenter, a mortgage banking trade association, urged Treasury to revise the interim final rule to specifically require insurers to notify lenders, securitizers, and servicers of commercial mortgages (collectively referred to in this preamble as mortgage finance providers) of the terrorism coverage options offered under the Act. The commenter also requested that the interim final rule be changed to require insurers to provide notice to these mortgage finance providers of their borrowers' acceptance or rejection of the terrorism risk insurance coverage made available by the insurer. In support of these suggested revisions, the commenter stated that mortgage finance providers are having difficulty determining "whether most of the properties in their portfolios carry adequate terrorism risk insurance as required by loan documents." The commenter also asserts that the absence of these suggested extensions to the current regulatory disclosure requirements produces inefficiencies in the commercial real estate and capital markets, including information gaps that may have an adverse effect on economic growth and on the condition of key financial institutions.

In a careful evaluation of whether the suggested revisions to the interim final rule were appropriate, Treasury first reviewed the scope of the disclosure provisions of section 103(b) of the Act and then considered the legislative history concerning those disclosure requirements. Treasury also considered whether there were alternative ways in which these mortgage finance providers may obtain the insurance coverage information they seek from their borrowers. Treasury consulted with the NAIC concerning definitions in various state laws and typical industry business practices and standards. For the reasons discussed below, Treasury is not extending the disclosure requirement in the interim final rule as suggested by the commenter.

Section 103(b) requires that clear and conspicuous disclosure of certain information be provided by insurers to "policyholders." The Conference Report to the Act states that Congress required the disclosures in section 103(b) in order, "to enhance the competitiveness of the marketplace by better enabling consumers to comparison shop for terrorism insurance coverage, and to make policyholders better aware that the Federal government will be sharing the costs of such coverage with insurers thereby reducing the insurers' exposure." H.R. Conf. Rep. No. 107–779, at 24 (2002). Neither the language in section 103(b) of the Act, nor the congressional intent of these disclosures as explained in the Conference Report, requires that these disclosures be made to mortgage finance providers or other entities that are not policyholders. Similarly, there is no third party notification requirement in the Act concerning whether a policyholder has, or has not, elected to purchase terrorism risk insurance coverage. The stated legislative intent of the disclosures is to enhance comparison shopping and Program awareness by policyholders.

For purposes of the Program, policyholder refers to the "person" to whom the insurer issues a commercial property and casualty insurance policy and who has apparent authority to negotiate, determine or modify the terms of the insurance contract. In this regard, the Act and Treasury's regulations require insurers to disclose information about the premium and the federal share of compensation to policyholders at the time of offer, purchase, and renewal.

In its comment, the association also expressed a concern that, "under notice provisions to the mortgagee contained in existing insurance policies, a partial cancellation of coverage for terrorism (as opposed to a cancellation of the entire policy) may be deemed by the insurers as an endorsement of the policy that does not require the insurer to send notice to the mortgage lender." Thus, the commenter is concerned that mortgage finance providers may not be notified if there is a subsequent change in the policy with regard to terrorism risk insurance. However, the commenter also acknowledges that the failure of mortgage finance providers to obtain such notice appears to be due to the drafting of notice provisions in policies.

Treasury considered whether there were other, perhaps more appropriate ways, in which mortgage finance providers could obtain the information they seek from their borrowers instead of through the expansion of the statutory disclosure requirements under this temporary Program. Treasury understands that mortgage finance providers generally may obtain the information about the status of a borrower's coverage for terrorism risks (whether the losses are those covered by the Program or broader in scope) through their underwriting requirements and/or by contract. For example, loan documents generally require that borrowers provide appropriate insurance coverage information to their mortgage finance providers, including information on terrorism risk insurance coverage. In its comment, the association acknowledged this, but stated that these requirements are frequently ignored by borrowers and costly to enforce. In Treasury's view, the issue appears to be one of contract negotiation, monitoring and enforcement by the parties rather than of regulation under the Program.

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[1] These interim guidance notices were published in the **Federal Register** at 67 FR 76206 (Dec. 11, 2002); 67 FR 78864 (Dec. 26, 2002) and at 68 FR 4544 (Jan. 29, 2003). Treasury also issued a fourth interim guidance at 68 FR 15039 (Mar. 27, 2003), which has subsequently been superceded by a new provision in the final rule for Subpart A, published at 68 FR 41250 (July 11, 2003). The interim guidance and all regulations can also be located on Treasury's Terrorism Risk Insurance Program Web site at *http://www.treasury.gov/trip.*

In this regard, we also understand that ACORD, an independent, nonprofit insurance group comprised of insurance company, reinsurance company and financial service institution affiliated members that assists in the cooperative development and implementation of insurance (and related financial services) standards, has agreed to work with mortgage finance providers to revise standard insurance certificates. The goal of this market driven effort is to better facilitate access by the mortgage finance providers to the insurance coverage information concerning terrorism risk insurance and other types of insurance coverage.

Based on our review of section 103(b) and of the legislative intent of the disclosure requirements as described in the Conference Report, and our understanding of industry practice and ongoing initiatives, as indicated by the commenter and in consultations with NAIC, Treasury is not expanding the reach of the disclosure to policyholder requirements set forth in the interim final rule.

2. Clear and Conspicuous Disclosure (Section 50.12)

As stated above, section 50.10 reflects the requirement in section 103(b) of the Act that the insurer must provide "clear and conspicuous disclosure" to the policyholder of the premium charged and the federal share of payments for insured losses under the Program. Section 50.12 of the interim final rule addresses the meaning of "clear and conspicuous" disclosure for purposes of the Program. Except as noted below with respect to section 50.12(d), this final rule adopts interim section 50.12 without change.

Section 50.12(a) of the interim final rule provides that whether a disclosure is clear and conspicuous depends on the totality of the facts and circumstances. Consistent with the Program implementation goals, the interim final rule does not specify an exclusive form or means of satisfying the statutory disclosure requirements, nor does it prescribe precise language, typeface, or font for the disclosures. In interim guidance issued by Treasury soon after enactment of the Act, Treasury deemed certain NAIC model forms to be an acceptable, nonexclusive way in which an insurer could satisfy the disclosure requirement. (These model forms are available at the Program's Web site: *http://www.treasury.gov/trip*). Treasury stated that insurers could modify the NAIC model forms to meet individual circumstances, or use other forms, as long as the modifications met the statutory standards. This interim guidance was incorporated into the interim final rule and is now in the final rule, which also provides a safe harbor (see section 50.17). Insurers may continue to use certain NAIC model forms if appropriate or they may develop other disclosure forms that meet the requirements of the Act and the regulations. Treasury received one comment on section 50.12(a) of the interim final rule, which was supportive of Treasury's approach. Section 50.12(a) of the interim final rule is adopted without change.

Section 50.12(b) of the interim final rule provides that, in describing the premium charged for insured losses covered by the Program, an insurer may refer to it as a portion or percentage of an annual premium, if consistent with normal business practice; but, may not describe this premium in a manner that would be misleading in the context of the Program, such as by characterizing it as a "surcharge." It is inappropriate and misleading to use the term "surcharge" in the disclosures because surcharge is a term used in section 103(e)(8) of the Act in connection with the statutorily required recoupment.

Treasury received two comments on this provision. One commenter, an association of insurance brokers and agents, strongly supported Treasury's position. This commenter believed the use of the term "surcharge" in disclosing the premium, "threatened both to undermine the ability of consumers to properly evaluate their coverage needs and to call into question the legitimacy of the Program." An insurance industry association commented that the group had "no objection" to this section in the interim final rule. Section 50.12(b) of the interim final rule is adopted without change.

Section 50.12(c) of the interim final rule allows insurers to make the required disclosures using normal business practices, including forms and methods of communication used to communicate similar policyholder information to policyholders. The comments generally supported this approach, which is adopted without change.

Section 50.12(d) of the interim final rule provides further guidance on the use of an agent to provide the required disclosures to policyholders. The interim final rule refers to an insurance broker or other intermediary acting as agent for the insurer, if the insurer normally communicates with a policyholder in this fashion. An insurance industry association commenter suggested that, in view of the diverse treatment of the legal status of insurance brokers under the laws of the various States, unnecessary confusion may result from the use of terms such as "agent" and "broker" with varying implications in different jurisdictions. The commenter suggested that the final rule instead use the term "producer." Treasury agrees with this suggestion, but emphasizes that if the insurer elects to make the required disclosure through a producer or other intermediary, regardless of on whose behalf the producer or other intermediary is acting, the insurer remains responsible for ensuring that the disclosures are provided by the producer or other intermediary to policyholders in accordance with the Act. Accordingly, Treasury is modifying section 50.12(d) consistent with this comment.

Section 50.12(e) of the interim final rule provides generally that an insurer may demonstrate that it has satisfied the requirement to provide clear and conspicuous disclosure through use of appropriate systems and normal business practices that demonstrate a practice of compliance. Although no comments explicitly addressed this provision, the comments generally supported the overall approach in section 50.12. Section 50.12(e) is adopted without change.

Section 50.12(f) of the interim final rule provides that an insurer must certify that it has complied with the requirement to provide disclosure to the policyholder on all policies that form the basis for the underlying claim(s) submitted by the insurer for federal payment under the Program. One commenter believed the language of section 50.12(f) itself was clear, but stated that the corresponding discussion in the preamble to the interim final rule was not as clear and requested further clarification in the final rule.

This final rule adopts section 50.12(f) of the interim final rule without change. Section 50.12(f) requires that, on all policies that form the basis for any claim that the insurer submits for federal payment for insured losses under the Program, an insurer must certify that it has complied with requirements to make disclosures to those policyholders covered by the policies. These insured losses are used in determining whether an insurer has met its insurer deductible under the Program. If an insurer chooses not to provide disclosures on a block of policies covered by the Program, the insurer will not receive federal payment for any claims it may submit to Treasury for insured losses covered by such policies because the required disclosures—a condition for federal payment—were not made. The insurer could submit a claim for federal payment under the Program on another block of policies, as long as the insurer made the required disclosures to those policyholders, and otherwise met all other conditions for payment of those insured losses. Treasury will initiate a future rulemaking concerning claims and certification procedures for purposes of the Program.

The following example provides further clarification of section 50.12(f). A surety insurer may satisfy the Act's make available requirement by providing terrorism risk insurance coverage under the Program to a block of notary public bond policyholders at no cost. The surety insurer may decide not to provide disclosure notices to those policyholders because it considers the expense of making the disclosures as being greater than the benefit of receiving the federal payments under the Program. Therefore, the insurer would be liable for any insured losses on the notary public bonds, but would not be eligible to receive any federal payment under the Program backstop on such losses because a condition for federal payment (making the requisite disclosures to policyholders) was not met. However, if the insurer provides the required disclosures to policyholders insured under a separate block of construction bond policies, the failure to make disclosures to the notary public bond policyholders would not prevent the insurer from certifying that it provided the required disclosure to policyholders insured under the construction bond policies for which the insurer was seeking federal payment for insured losses under the Program. The insured losses under the construction bond policies "form the basis" for a claim submitted for federal payment; the insured losses under the notary public bonds do not. Regardless of whether disclosures are provided, direct earned premiums on the notary public bonds would be included in the calculation of the insurer deductible for purposes of the Program and such notary public bond policyholders would be subject to any subsequent recoupment. The insurer's calculation of insured losses under the Program for purposes of meeting its insurer deductible would include only those losses on the construction bonds.

Section 50.12(f) relates to other aspects of the Program in the following ways. First, regardless of whether an insurer intends to submit a claim for federal payment, all insurers must comply with the make available requirements of section 103(c) of the Act and in the regulations. Second, in calculating its direct earned premium and insurer deductible under the Program, an insurer must include premium income from all policies for commercial property and casualty insurance for losses occurring at certain locations (see section 50.5(d)), whether or not the insurer made the required disclosures. Third, an insurer may submit a claim for federal payment only for those "insured losses" on policies on which the insurer made required disclosures to policyholders. Finally, all commercial property and casualty insurance policies are subject to the Act's surcharge provisions, regardless of whether the insurer made the disclosures. Accordingly, if an insurer fails to provide the disclosure notices to its policyholders, the insurer will not have met conditions for federal payment and will not be eligible for federal payment for insured losses under those policies. The insurer, however, will continue to be subject to the make available requirements, and the insurer and its policyholders will continue to be subject to the surcharge provisions under the Act and the Program.

### 3. Separate Line Item (Section 50.14)

Section 50.14 of the interim final rule incorporates interim guidance previously issued by Treasury that deems an insurer to be in compliance with the requirement of providing disclosure on a "separate line item in the policy" under section 50.10(d), and in compliance with section 103(b)(2)(C) of the Act, if the insurer makes the disclosure: (1) on the declarations page of the policy; (2) elsewhere within the policy itself; or (3) in any rider or endorsement that is made a part of the policy. In addition to the clear and conspicuous requirement, the Act requires that the separate line item disclosure be "in the policy."

Rather than require insurers to rewrite all of their policies, Treasury has determined that the disclosure is sufficient if made on the declarations page or within any rider or endorsement that is made a part of the policy. One commenter suggested revising the interim final rule to clarify that other documents could be used. This commenter contended this would make it clear that compliance is not dependent on the name or title of the document, but rather on the fact that such disclosure document is made part of the policy. Treasury agrees and is amending section 50.14(c) accordingly.

## *B. Mandatory Availability*

### 1. General Mandatory Availability Requirements (Sections 50.20 and 50.21)

Sections 103(c)(1)(A) and (B) of the Act require an insurer (as defined by the Act and the implementing regulations) to make available, in all of its property and casualty insurance policies, coverage for insured losses; and to make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other that acts of terrorism. The make available requirements apply during the period beginning on the first day of the Transition Period and ending on the last day of Program Year 2 unless the make available requirements are extended by the Secretary through Program Year 3. The duration and possible extension of the make available requirements in section 103(c) should not be confused with the established three-year duration of the Program as provided by section 108 of the Act.

### 2. Policies in Existence on November 26, 2002

Section 50.21(a) of the interim final rule states, in part, that the make available requirement of the Act applies to insurance policies in existence on November 26, 2002 (the date of enactment of the Act). One commenter suggested this provision may not be technically correct. The commenter reasoned that the make available requirement applies at the time of initial offer of coverage and that for policies in existence on November 26, 2002, the initial offer of coverage had already occurred, and, further, that only section 105 (voiding of terrorism exclusions) is applicable for policies in existence at the time of enactment.

It is Treasury's view that the make available requirement applies to policies in existence on November 26, 2002. Section 103(c)(1)(A) of the Act mandates that beginning on the first day of the Transition Period (defined in section 102(11) as of the date of enactment), an insurer shall make available coverage for insured losses in all of its property and casualty insurance policies. Section 105 of the Act, in effect, made coverage available upon enactment of the Act by voiding any exclusions within insurance policies that were in existence on November 26, 2002. Because the make available requirement and the process in section 105 of the Act for voiding terrorism risk insurance exclusions and offering coverage are generally consistent for commercial property and casualty policies in effect on November 26, 2002, Treasury has decided that no additional clarification is needed. See below for a discussion of the "initial offer of coverage" provision in the rule.

### 3. Initial Offer of Coverage

Section 50.21(a) of the interim final rule provides that the make available requirement also applies to new policies issued and renewals of existing policies during the period beginning on November 26, 2002 and ending on December 31, 2004 (the last day of Program Year 2) and, if the requirement is extended by the Secretary, to new policies issued and renewals of existing policies in Program Year 3 (calendar year 2005). The last line of 50.21(a) states that the "requirement applies at the time an insurer makes the initial offer of coverage."

One commenter, an insurance trade association, proposed revising the interim final rule by adding language to the end of section 50.21 stating that the make available requirement applies at the time an insurer makes the initial offer of coverage "and at no other time." The commenter suggested this revision because of a concern that a policyholder may try to purchase terrorism risk insurance coverage during a policy period (for example, upon a heightened state of terror alert) despite having rejected an initial offer of coverage by an insurer.

In context, Treasury believes the requirement in section 50.21(a) is clear. It is Treasury's view that by offering the coverage at the time of initial offer, the insurer has satisfied the make available requirement. However, the commenter's suggested change would limit the make available requirement more narrowly than intended by Treasury. This is because the initial offer of coverage is not the only time when the make available requirement applies. Treasury did not intend section 50.21 of the interim final rule to be read to mean that, as long as an insurer makes coverage available through an initial offer, the insurer has no further obligation to make coverage available to the policyholder during the Program's duration (*e.g.*, at initial offer of renewal or in a new policy.) An insurer must make the coverage available, not only at the time of initial offer, but also upon offer of policy renewal.

It is Treasury's view that an insurer need not make coverage available to a policyholder who did not accept an initial offer of coverage and later demands the coverage be added to the same policy during the policy period (*i.e.*, through endorsement). In such a situation, the policyholder is not left without options; a policyholder can cancel its policy and solicit a new offer or proposal for insurance. Treasury is modifying section 50.21(a) to clarify the make available requirement applies at the time an insurer makes the initial offer of coverage as well as at the time an insurer makes an initial offer of renewal of an existing policy.

This insurance association commenter also suggested that Treasury consider changing the rule to eliminate the requirement that an insurer make available coverage through an initial offer. Instead, the commenter proposed that an insurer only be required to simply disclose that coverage is available for purchase and to invite policyholders to contact the insurer for an offer or quote, if desired. The commenter suggested that insurers could still make a formal offer of coverage if consistent with their normal business practice, but an offer would not be required. Treasury is not adopting this suggestion, which is inconsistent with the purposes of the statutory provisions.

### 4. Umbrella-Type Policies

An insurance industry trade association commenter raised several questions about the applicability of the make available requirement for insured losses through commercial property and casualty umbrella insurance. In response, Treasury emphasizes that commercial property and casualty umbrella insurance is included in the Program because it falls within the Program's definition of commercial property and casualty insurance. Therefore, an insurer that offers such umbrella insurance coverage is subject to the make available requirements.

Section 102(12) of the Act defines commercial lines of property and casualty insurance to specifically include "excess insurance." Section 50.5(l) of the regulations further defines commercial property and casualty insurance with reference to certain lines of insurance business reported on NAIC's Annual Statement's Exhibit of Premiums and Losses, commonly known as Statutory Page 14. Commercial property and casualty umbrella insurance is reported on Statutory Page 14 and not otherwise excluded. Such umbrella policies are within the definition of "commercial property and casualty insurance." If the umbrella policy issuer is an insurer under the Act, it must participate in the Program and it is subject to the Act's requirements.

Accordingly, insurers that issue commercial property and casualty insurance through umbrella policies are subject to the make available requirements of the Program. This means that they must (1) make available in all of their commercial property and casualty insurance policies coverage for insured losses and (2) make available such coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

The commenter also stated that some policyholders have declined insurance coverage for losses caused by an act of terrorism from their primary insurance carriers, electing instead to have such losses covered by the "drop down" coverage afforded through their (presumably less expensive) umbrella insurance policies. To prevent what the commenter characterizes as policyholder "gaming," the commenter suggests that "Treasury permit an umbrella insurer, in accordance with normal business practice, to refuse to drop down where the insured intentionally elected to forego primary coverage for acts of terrorism."

Although Treasury understands that certain provisions of the Act may not fit neatly with typical business practices of umbrella policy underwriters and other insurers, Treasury has determined to not revise the interim final rule as suggested because it may create a situation that appears to excuse an insurer from fulfilling its contractual obligation to pay a policyholder's claim for an insured loss that otherwise may be covered by the terms and conditions of a policy covered by the Program. Instead, it is Treasury's view that the commenter's concern is more appropriately addressed by the insurer that issues the umbrella policy, for example, through the insurer's underwriting procedures, pricing, and/or policy drafting. Therefore, an umbrella insurer could draft policy language that excludes from "drop down" coverage any losses arising from perils for which insurance was available from the primary or underlying insurer but was intentionally not purchased by the policyholder, provided: (1) The language does not differ materially from the terms and other coverage limitations applicable to losses arising from events other than acts of terrorism and (2) the exclusion is otherwise permitted by State law.

Another commenter raised similar questions with regard to Difference-In-Conditions (DIC) commercial property and casualty insurance. DIC insurance is included within the Program definition of commercial property and casualty insurance. DIC insurance is reported by insurers on commercial lines of Statutory Page 14 included in the Program (see section 50.5(l)). DIC insurance policies generally provide coverage for certain risks not covered by other policies. The commenter suggested that DIC commercial property and casualty insurance should not be included in the Program. The commenter contended that the Act and section 50.23 mean that all underlying commercial property and casualty policies must provide for—and cannot exclude—insured losses caused by an act of terrorism, and thus DIC coverage will never be triggered.

Treasury does not agree. As stated above with regard to umbrella polices, the Act requires all insurers under the Program to make available commercial property and casualty coverage for insured losses under the Program. If the issuer of a DIC commercial property and casualty insurance policy is an insurer as defined under the Program, then the DIC insurer must comply with the requirements of the Act and Treasury's implementing regulations, including those concerning the make available requirements. Insurers can exclude coverage for insured losses if the policyholder declines or elects not to purchase the coverage. If a DIC insurer's policyholder declines or elects not to purchase terrorism risk insurance coverage in an underlying policy, the Act requires that the DIC insurer must make available terrorism risk insurance for insured losses as part of the DIC policy. As with umbrella policies, Treasury recognizes that certain provisions of the Act may not fit neatly within typical business practices of DIC insurers but it is Treasury's view that the commenter's concern is more appropriately addressed through DIC underwriting procedures, pricing or policy drafting. Thus, in the final rule, Treasury is making no change to section 50.21 to provide special treatment to DIC or umbrella insurance policies.

5. Limitations on Types of Risk (Section 50.23)

Section 103(c)(1)(B) of the Act provides that insurers under the Program "shall make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism." Sections 50.20 through 50.24 of the interim final rule reflect the statutory language and previously issued interim guidance. Section 50.23(b) addresses limitations on types of risk and provides that if an insurer does not cover all types of commercial property and casualty risks, then it is not required to cover the excluded risks in satisfying the make available requirements. For example, if an insurer does not cover all types of commercial property and casualty risk, either because the insurer is outside of direct State regulatory oversight, or because a State permits certain exclusions for certain types of losses, such as nuclear, biological, or chemical events, then the insurer is not required to make such coverage available. In addition, Section 50.24 addresses the applicability of State law.

A comment, submitted by a coalition of trade and professional associations expressed concern about the make available provisions in the interim final regulation. The commenter contended that the interim final rule's deference to State law exclusions for certain types of losses is not consistent with the purposes of the Act. The commenter also stated that the purpose of the Act was to put policyholders back to the level of coverage (or availability) that existed prior to September 11, 2001. Although acknowledging that whether a policyholder purchases terrorism risk insurance may be related to the price of the coverage, the commenter suggested that a lack of coverage for biological and chemical perils may adversely affect the policyholder's decision to purchase terrorism risk insurance.

After carefully considering the concerns expressed by the commenter and reviewing the purposes of the Act, Treasury is not making any change in the make available requirement as set forth in the interim final rule for the following reasons. First, it is Treasury's view that the make available requirement in the interim final rule, including the deference to state law exclusions, is fully consistent with the purposes of the Act. As stated in Section 101(b), the purposes of the Act include establishment of a temporary federal Program to "allow for a transitional period for the private markets to stabilize, resume pricing of such insurance and build capacity to absorb any future losses, while preserving State insurance regulation and consumer protections." In addition, other provisions of the Act, such as section 106, generally support narrow State law preemption, consistent with the McCarran Ferguson Act. Moreover, throughout the implementation process, Treasury has followed Congress's direction to consult with the NAIC, and in that regard, has relied to the greatest extent possible on the existing State regulatory structure for this temporary Program.

Second, based on information provided by the NAIC, it is Treasury's understanding that, even prior to September 11, 2001, insurers offered limited coverage for nuclear reaction or radiation or radioactive contamination, however caused, in commercial property and casualty insurance. In addition, deference to existing State law as it relates to the make available requirement does not mean that all losses associated with a nuclear, biological or chemical event would be excluded under the Program. Even with State exclusions, there may be commercial property and casualty insurance coverage in certain circumstances for certain biological, chemical or nuclear events. Moreover, the make available requirements in the interim final rule do not limit an insurer's ability to provide coverage for nuclear, biological, or chemical exposures as part of the Program, if the insurer chooses to offer such coverage. If an insurer provided such coverage in a commercial property and casualty policy, and met its insurer deductible and other conditions for federal payment, the insurer would receive federal payment under the Program for a claim filed based on that policy.

Third, the availability of terrorism risk insurance is affected by the affordability of such insurance. Neither the Act nor the Program mandates particular pricing. Therefore even if the "make available" requirement were applied in markets where exclusions are permitted, insurers would be able to price the coverage as appropriate, within any constraints, if any, imposed by the particular State. In such cases, if insurers believed they had insufficient capacity or that they lacked the ability to adequately evaluate the risks associated with a nuclear, biological, or chemical event, the corresponding price for such coverage along with the overall price for terrorism coverage could remain relatively high as insurers sought to build greater capacity and to account for greater uncertainty associated with these types of events.

## III. Procedural Requirements

The Act established a Program to provide for loss sharing payments by the Federal Government for insured losses resulting from certified acts of terrorism. The Act became effective immediately upon the date of enactment (November 26, 2002). Preemptions of terrorism risk exclusions in policies, mandatory participation provisions, disclosure and other requirements, and conditions for federal payment contained in the Act applied immediately to those entities that came within the Act's definition of "insurer."

The disclosure requirements are statutory conditions for federal payment under the Program. The disclosure requirements were effective immediately upon enactment and remain ongoing requirements that apply to new and renewed policies throughout the life of the Program. In the event of an act of terrorism resulting in insured losses under the Program, insurers must certify, and Treasury must ascertain, that these disclosure requirements have been met before federal payment is made. Similarly, the make available requirements are important elements of the Act. These requirements were effective immediately upon enactment and applied to policies in effect at that time. The make available requirements will continue to apply to new and renewed policies through the end of 2004 (and if the requirements are extended by the Secretary, through 2005). Given the significance of the disclosure and make available requirements to policyholders and insurers, there is an urgent need to issue immediately effective regulations. This includes the need to clarify, as necessary, the previously issued interim final rule. Moreover, because the changes are in the nature of clarifications, there should be no operational impact on insurers and no need for a delayed effective date.

Accordingly, pursuant to 5 U.S.C. 553(d)(3), Treasury has determined that there is good cause for this final rule to become effective immediately upon publication.

This final rule is a significant regulatory action and has been reviewed by the Office of Management and Budget under the terms of Executive Order 12866.

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. The Act requires all licensed or admitted insurers to participate in the Program. This includes all insurers regardless of size or sophistication. The Act also defines property and casualty insurance without any reference to the size or scope of the commercial entity. The disclosure and make available requirements are required by the Act. The final rule allows all insurers, whether large or small, to use existing systems and business practices to demonstrate compliance. Accordingly, any economic impact associated with the final rule flows from the Act and not the final rule. However, the Act and the Program are intended to provide benefits to the U.S. economy and all businesses, including small businesses, by providing a federal reinsurance backstop to commercial property and casualty insurers and their policyholders and by spreading the risk of insured loss resulting from an act of terrorism.

### List of Subjects in 31 CFR Part 50

Terrorism risk insurance.

### Authority and Issuance

■ For the reasons set forth above, the interim final rule amending Subparts B and C of 31 CFR Part 50, which was published at 68 FR 19302 on April 18, 2003, is adopted as a final rule with the following changes:

## PART 50—TERRORISM RISK INSURANCE PROGRAM

■ 1. The authority citation for 31 CFR Part 50 continues to read as follows:

**Authority:** 5 U.S.C. 301; 31 U.S.C. 321; Title I, Pub. L. 107–297, 116 Stat. 2322 (15 U.S.C. 6701 note).

■ 2. Section 50.12(d) of Subpart B is revised to read as follows:

### § 50.12 Clear and conspicuous disclosure.

* * * * *

(d) *Use of producer.* If an insurer normally communicates with a policyholder through an insurance producer or other intermediary, an insurer may provide disclosures through such producer or other intermediary. If an insurer elects to make the disclosures through an insurance producer or other intermediary, the insurer remains responsible for ensuring that the disclosures are provided by the insurance producer or other intermediary to policyholders in accordance with the Act.

* * * * *

■ 3. Section 50.14 of Subpart B is revised to read as follows:

### § 50.14 Separate line item.

An insurer is deemed to be in compliance with the requirement of providing disclosure on a "separate line item in the policy" under § 50.10(d) if the insurer makes the disclosure:

(a) On the declarations page of the policy;

(b) Elsewhere within the policy itself; or

(c) In any rider or endorsement, or other document that is made a part of the policy.

■ 4. Section 50.18(b)(2) of Subpart B is revised to read as follows:

### § 50.18 Disclosure required by reinstatement provision

* * * * *

(b) * * *

(2) The insurer provided notice at least 30 days before any such reinstatement of the increased premium for such terrorism coverage and the rights of the insured with respect to such coverage, including the date upon which the exclusion would be reinstated if no payment is received, and the insured fails to pay any increased premium charged by the insurer for providing such terrorism coverage.

■ 5. Section 50.21(a) of Subpart C is revised to read as follows:

### § 50.21 Make available.

(a) *General.* The requirement to make available coverage as provided in § 50.20 applies to policies in existence on November 26, 2002, new policies issued and renewals of existing policies during the period beginning on November 26, 2002 and ending on December 31, 2004 (the last day of Program Year 2), and if the requirement is extended by the Secretary, to new policies issued and renewals of existing policies in Program Year 3 (calendar year 2005). The requirement applies at the time an insurer makes the initial offer of coverage as well as at the time an insurer makes an initial offer of renewal of an existing policy.

* * * * *

Dated: October 1, 2003.

**Wayne A. Abernathy,**

*Assistant Secretary of the Treasury.*

[FR Doc. 03–26251 Filed 10–16–03; 8:45 am]

BILLING CODE 4811–15–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

## [CGD09–03–270]

## RIN 1625–AA00

## Safety Zone; Wisconsin Central Rail Road Bridge Fox River, Green Bay, WI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on

the East side of the channel of the Wisconsin Central Rail Road Bridge at mile 2.61 Fox River. The east side of the channel will be closed to all vessel traffic. The rule is necessary to prevent vessels from transiting too close to the potentially unstable bridge. This rule is intended to restrict vessel traffic from a portion of Fox River mile 2.61, Green Bay, Wisconsin.

**DATES:** This rule is effective from October 1, 2003 until 11:59 p.m. December 1, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [CGD09–03–270] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207 between 7 a.m. (CST) and 3:30 p.m. (CST), Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Marine Science Technician Michael Schmidtke, Marine Safety Office Milwaukee, (414) 747–7155.

**SUPPLEMENTARY INFORMATION:**

## Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Due to a recent fire on the bridge, delaying this rule would be contrary to the public interest of ensuring the safety of those transiting the Fox River. This rule also ensures that any interested spectators do not accidentally place themselves in danger should any problems occur. As such, immediate action is necessary to prevent possible loss of life or property.

## Background and Purpose

This Safety Zone is established to safeguard the public until the bridge is deemed safe and structurally sound. The size of the zone was determined by the necessities of safe navigation in the Captain of the Port zone and local knowledge about wind, waves, and currents in this particular area.

The safety zone is effective from October 1, 2003 until 11:59 p.m. December 1, 2003. This rule will be enforced until the bridge is deemed safe and structurally sound.

## Discussion of Rule

The Coast Guard will implement a safety zone on the East side of the channel of the Wisconsin Central Rail Road Bridge at mile 2.61 Fox River. The east side of the channel will be closed to all vessel traffic. The purpose of the safety zone is to protect the public from transiting too close to the unstable bridge. The safety zone will remain in place until the bridge is deemed safe and structurally sound. In addition, the Coast Guard will notify the public, in advance, by way of Ninth Coast Guard District Local Notice to Mariners, marine information broadcasts, and for those who request it from Marine Safety Office Milwaukee, by facsimile (fax).

All persons and vessels shall comply with the instructions of the Captain of the Port Milwaukee or his designated on-scene representative. Entry into, transiting through, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Milwaukee or his designated on scene representative. The Captain of the Port Milwaukee may be contacted via VHF Channel 16.

## Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zone's activation.

## Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities: the owners or operators of vessels intending to transit the east side of the channel of the Fox River mile 2.61 from October 1, 2003 until 11:59 p.m. December 1, 2003.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be enforced to safeguard the boating public. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect. Vessel traffic may enter or transit through the safety zone with the permission of the Captain of the Port Milwaukee or his designated on-scene representative.

## Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Milwaukee (See **ADDRESSES.**)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

## Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

## Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

## Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2. of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Commandant Instruction M16475.1D, from further environmental documentation.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T09–270 is added to read as follows:

### § 165.T09–270 Safety Zone; Wisconsin Central Bridge Fox River mile 2.61, Green Bay, WI.

(a) *Location.* The following area is designated a safety zone: the eastern side of the channel of the Wisconsin Central Rail Road Bridge at mile 2.61 on the Fox River. The east side of the channel will be closed to all vessel traffic, Green Bay, WI.

(b) *Effective Time and Date.* This rule is effective from October 1, 2003 until 11:59 p.m. December 1, 2003.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port Milwaukee or the designated on scene representative. Coast Guard patrol personnel include commissioned, warrant or petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed.

(3) This safety zone should not adversely affect shipping. However, commercial vessels must request permission from the Captain of the Port Milwaukee to enter or transit the safety zone. Approval will be made on a case-by-case basis. Requests must be in advance and approved by the Captain of the Port Milwaukee before transits will be authorized. The Captain of the Port Milwaukee may be contacted via U.S. Coast Guard Group Milwaukee on Channel 16, VHF–FM.

Dated: September 16, 2003.

**H.M. Hamilton,**

*Commander, U.S. Coast Guard, Captain of the Port Milwaukee.*

[FR Doc. 03–26304 Filed 10–16–03; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF DEFENSE

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## DEPARTMENT OF VETERANS AFFAIRS

## 38 CFR Part 21

## RIN 2900–AL34

# Veterans Education: Independent Study Approved for Certificate Programs and Other Miscellaneous Issues

**AGENCIES:** Department of Defense, Department of Homeland Security (Coast Guard), and Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Veterans Education and Benefits Expansion Act of 2001 allows payment of Montgomery GI Bill—Selected Reserve (MGIB–SR) benefits for accredited independent study courses that lead to a certificate that reflects educational attainment. The certificate must be offered by an institution of higher learning. The Department of Veterans Affairs (VA) can provide MGIB–SR benefits for enrollments on or after December 27, 2001, in these independent study courses. We are also making changes in regulations in accordance with The National Defense Authorization Act for Fiscal Year 1998. The Act removed the language "in connection with the Persian Gulf War" and "during the Persian Gulf War" from certain sections in title 10, United States Code, regarding preservation of entitlement to MGIB–SR benefits for Selected Reserve members ordered to active duty in support of contingency operations. We are amending our regulations to reflect the statutory

changes. Since these changes are nothing more than restatements of statutes, they do not require notice and comment under 5 U.S.C. 553.

**DATES:** *Effective Date:* This final rule is effective October 17, 2003.

*Applicability Dates.* The revisions to the various sections of the Code of Federal Regulations amended in this final rule are applied retroactively to conform to the effective date of the underlying statutory provisions. See **SUPPLEMENTARY INFORMATION** for further information about applicability dates.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lynn M. Cossette, Education Advisor (225C), Education Service, Veterans Benefit Administration, 810 Vermont Avenue, NW., Washington, DC, (202) 273–7294.

**SUPPLEMENTARY INFORMATION:** Before enactment of the Veterans Education and Benefits Expansion Act of 2001 ("Act"), VA could provide Montgomery GI Bill—Selected Reserve (MGIB–SR) benefits for independent study only when the independent study course was accredited and a part of a standard college degree program. The Act now allows VA to provide MGIB–SR benefits for accredited independent study courses that lead to a certificate that reflects educational attainment. This provision applies only to certificate programs offered by institutions of higher learning and for enrollments after December 26, 2001. We revised our regulations to reflect this change.

We are further revising regulations to comply with changes in title 10, U.S.C. The National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85) removed the language "during the Persian Gulf War" from section 16133(b)(4), title 10, United States Code (U.S.C.). By removing the language, Selected Reserve members ordered to active duty in support of contingency operations, not just in support of the Persian Gulf War, became eligible for the extension of their eligibility period. We revised our regulations to comply with the Act, and the language in title 10, U.S.C.

In addition, the Act removed "during the Persian Gulf War" from section 16131(c)(3)(B)(i), title 10, U.S.C. Section 16131(c)(3)(B)(i) restores MGIB–SR entitlement to Selected Reserve members who discontinue their education course(s) due to being ordered to active duty in support of contingency operations. By removing the language "in connection with the Persian Gulf War," Selected Reserve members who are ordered to active duty in support of contingency operations, not just in support of the Persian Gulf War, are eligible for restoration of entitlement. Generally, most individuals are eligible for 36 months of full-time MGIB–SR benefits. We refer to the 36 months of benefits as 36 months of "entitlement". For each day of full-time benefits that we pay, we deduct 1 day of entitlement. If an individual is called to active duty as indicated above, and has to withdraw from his or her course(s), VA will pay benefits up to the date of withdrawal. Under these circumstances, however, we will not deduct any entitlement if the individual received no credit for the course(s). For example, if an individual started a course with 36 months of benefits available and we paid for 2 months of benefits before the individual discontinued the course, we would charge 2 months of entitlement, leaving the individual 34 months of benefits remaining. Under restoration of entitlement provisions, we give back the 2 months of entitlement. So, although the individual received benefits for 2 months, he or she has the same amount of benefits remaining as before the course started. We are revising the pertinent regulations to make them conform to the Act.

Moreover, the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261), amended a provision affecting the eligibility period for certain Selected Reserve members. Generally, a Selected Reserve member's eligibility period ends when the member leaves the Selected Reserves. Before enactment of Pub. L. 105–261, if an individual ceased to be a member of the Selected Reserves because his or her unit was deactivated, or by reason of involuntarily ceasing to be designated as a member of the Selected Reserve pursuant to section 10143(a) of title 10, U.S.C., eligibility could continue beyond the separation date. To qualify, the member must have been involuntarily released during the period beginning October 1, 1991, and ending September 30, 1999. Pub. L. 105–261 extended the ending date from September 30, 1999 to September 30, 2001. Subsequently, the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398) extended the ending date from September 30, 2001 to December 31, 2001. However, we did not update our regulations to reflect the change made by Pub. L. 105–261. We are amending our regulations to reflect the most recent legislation, Pub. L. 106–398.

Since the changes we made merely restate statutes, we are publishing this rule as a final rule without a comment period.

## Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

## Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This final rule would have no such effect on State, local, or tribal governments, or the private sector.

## Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

## Regulatory Flexibility Act

The Secretary of Veterans Affairs, the Secretary of Defense, and the Commandant of the Coast Guard hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will directly affect only individuals and will not directly affect small entities. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

## Catalog of Federal Domestic Assistance Program Numbers

There is no Catalog of Federal Domestic Assistance number for the program affected by this final rule.

## Lists of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflicts of interest, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 14, 2003.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

Approved: June 5, 2003.

**Kenneth T. Venuto,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Human Resources.*

Approved: August 4, 2003.

**Charles S. Abell,**

*Principal Deputy Under Secretary (Personnel and Readiness), Department of Defense.*

■ For reasons set out in the preamble, 38 CFR part 21 (subpart L) is amended as set forth below.

## PART 21—VOCATIONAL REHABILITATION AND EDUCATION

### Subpart L—Educational Assistance for Members of the Selected Reserve

■ 1. The authority citation for part 21, subpart L, continues to read as follows:

**Authority:** 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), 512, ch. 36, unless otherwise noted.

■ 2. Section 21.7540 is amended by:
■ a. Revising paragraph (b)(3)(iii).
■ b. Redesignating paragraphs (b)(3)(iv), (b)(3)(v), (b)(3)(vi), and (b)(3)(vii) as paragraphs (b)(3)(v), (b)(3)(vi), (b)(3)(vii), and (b)(3)(viii), respectively.
■ c. Adding a new paragraph (b)(3)(iv).
■ d. Revising the authority citation at the end of paragraph (b)(3).

The revisions and addition read as follows:

### § 21.7540 Eligibility for educational assistance.

* * * * *

(b) * * *

(3) * * *

(iii) An accredited independent study course leading to a standard college degree. (See § 21.7622(f) concerning enrollment in a nonaccredited independent study course after October 28, 1992);

(iv) An accredited independent study course leading to a certificate that reflects educational attainment from an institution of higher learning. This provision applies to enrollment in an independent study course that begins on or after December 27, 2001. (See § 21.7622(f) concerning enrollment in a nonaccredited independent study course after October 28, 1992);

* * * * *

(Authority: 10 U.S.C. 16131, 16132, 16136; sec. 705(a)(1), Pub. L. 98–525, 98 Stat. 2565, 2567; 38 U.S.C. 3680A)

* * * * *

■ 3. Section 21.7550 is amended by:
■ a. Revising paragraph (a)(3) and the authority citation at the end of the paragraph.
■ b. In paragraph (d)(1), removing "September 30, 1999," and adding, in its place, "December 31, 2001,".

The revision reads as follows:

### § 21.7550 Ending dates of eligibility.

(a) * * *

(3) If the reservist serves on active duty pursuant to an order to active duty issued under sections 12301(a),(d),(g), 12302, or 12304 of title 10, U.S. Code, the period of this active duty plus 4 months shall not be considered in determining the time limit on eligibility found in paragraphs (a)(1) and (a)(2) of this section.

(Authority: 10 U.S.C. 16133)

* * * * *

■ 4. Section 21.7576 is amended by revising paragraph (e)(1)(i) and the authority citation at the end of paragraph (e) to read as follows:

### § 21.7576 Entitlement charges.

* * * * *

(e) * * *

(1) * * *

(i) While not serving on active duty, had to discontinue pursuit of a course or courses as a result of being ordered to serve on active duty under sections 12301(a),(d),(g), 12302, or 12304 of title 10, U. S. Code; and

* * * * *

(Authority: 10 U.S.C. 16131(c)(3))

■ 5. Section 21.7620 is amended by revising paragraph (c)(2) to read as follows:

### § 21.7620 Courses included in programs of education.

* * * * *

(c) * * *

(2) Only a reservist who meets the requirements of § 21.7540(b)(1) may be paid educational assistance for an enrollment in an independent study course or unit subject without a simultaneous enrollment in a course or unit subject offered by resident training. The independent study course or unit subject must be accredited and lead to a standard college degree. Beginning with enrollments on or after December 27, 2001, a reservist may receive educational assistance for an independent study course that leads to a certificate. The certificate must reflect educational attainment and must be offered by an institution of higher learning.

(Authority: 38 U.S.C. 3680A(a)(4))

* * * * *

[FR Doc. 03–26254 Filed 10–16–03; 8:45 am]

**BILLING CODE 8320–01–P**

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## POSTAL SERVICE

## 39 CFR Part 111

## Revised Format for Pressure-Sensitive Presort Destination Package Labels

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This final rule sets forth the *Domestic Mail Manual* (DMM) standards adopted by the Postal Service to implement the use of redesigned pressure-sensitive package labels. The redesigned labels—similar to the current labels that mailers affix to the top mailpiece in packages of mailpieces (bundles of individual mailpieces secured together) instead of using optional endorsement lines (OELs)—will continue to indicate the presort level of all the pieces banded into individual presort destination packages.

The redesigned pressure-sensitive package labels will support the deployment of a new system, designated as the Automated Package Processing System (APPS), that will extend the benefits of automated handling to the processing of small, lightweight parcels and flat-size pieces such as magazines and catalogs prepared in packages (several mailpieces presorted and secured together into a single unit).

Mailers may begin affixing the new labels starting on October 16, 2003. Mailers using the current nonbarcoded pressure-sensitive labels may continue using those labels until April 1, 2004.

**EFFECTIVE DATE:** This final rule takes effect on October 30, 2003.

**FOR FURTHER INFORMATION CONTACT:** Neil Berger at (703) 292–3645, Mailing Standards, U.S. Postal Service; or Jamie Gallagher at (202) 268–4031, P&DC Operations, U.S. Postal Service.

**SUPPLEMENTARY INFORMATION:** On August 18, 2003, the Postal Service published a proposed rule in the **Federal Register** (68 FR 49396–49406) that contained minor changes to mailing standards in the *Domestic Mail Manual* (DMM) to implement the use of reformatted pressure-sensitive presort destination package labels. In that proposed rule, the Postal Service also requested comments from the public and the mailing industry. No comments were received on the proposed rule.

As explained in the proposed rule, the new barcoded pressure-sensitive package labels would be one method to support the use of the APPS, which the Postal Service plans to deploy beginning in 2004 in major processing and distribution centers to improve operational efficiency and increase workhour productivity.

The use of these new labels will have no significant effect on mail preparation standards and processes or on current mailer operations, especially mailer operations using optional endorsement lines (OELs) for designating the presort level of packages containing letter-size pieces or flat-size pieces. This change will not replace OELs. In fact, mailers currently using OELs should continue using these cost-effective, time saving information lines rather than converting to the use of pressure-sensitive package labels.

For the reasons presented in the proposed rule and those noted above in this final rule, the Postal Service adopts the following changes in the Domestic Mail Manual, which is incorporated by reference in the *Code of Federal Regulations*. See 39 CFR 111.1.

**List of Subjects in 39 CFR Part 111**

Postal Service.

## PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Amend the following sections of the *Domestic Mail Manual* (DMM) as set forth below:

**Domestic Mail Manual (DMM)**

* * * * *

### M Mail Preparation and Sortation

*M000 General Preparation Standards*

* * * * *

*M020 Packages*

1.0 BASIC STANDARDS

* * * * *

**1.3 Labeling**

[Revise 1.3 to read as follows:]

Unless excepted by standard, the presort level of each package (other than carrier route packages) must be identified either with an optional endorsement line under M013 or with a barcoded pressure-sensitive package label. On letter-size mail (including card-size pieces), the package label must be placed in the lower left corner of the address side of the top piece in the package. On flat-size mail, the label may be placed anywhere on the address side of the top piece in the package. Package labels must not be obscured by banding or shrinkwrap. The following colors and presort characters apply to package labels (nonbarcoded labels, including red Label D and tan Label MXD, may be used until April 1, 2004):

a. Firm (Periodicals use only), blue Label F.

b. Five-digit presort level, red Label 5 or red Label D.

c. Three-digit presort level, green Label 3.

d. ADC presort level, pink Label A.

e. Mixed ADC presort level, tan Label X or tan Label MXD.

* * * * *

*M030 Containers*

*M031 Labels*

1.0 SACK AND TRAY LABELS

* * * * *

[Revise heading of 1.2 to read as follows:]

**1.2 Line 1 (Destination Line)**

[Revise 1.2 to read as follows:]

Line 1 (destination line) must meet these standards:

a. Placement. Line 1 must be the first visible line on the label. It must be completely visible and legible when placed in the label holder. This visibility is ensured if the top of this line is no less than 1/8 (0.125) inch below the top of the label when the label is cut and prepared.

b. Information. Line 1 must contain only the information specified by standard, including the appropriate destination facility prefix (*e.g.*, "ADC"). Two zeros may follow the 3-digit ZIP Code prefix required by labeling standards (*e.g.*, 223 as 22300).

c. Overseas Military Mail. On 5-digit sacks and trays for overseas military destinations, Line 1 shows, from left to right, "APO" or "FPO," followed by "AE" (for ZIP Codes within the ZIP Code prefix range 090–098), "AA" (for ZIP Codes within the 3-digit ZIP Code prefix 340), or "AP" (for ZIP Codes within the ZIP Code prefix range 962–966), followed by the destination 5-digit ZIP Code of the mail in the sack or tray.

[Revise heading of 1.3 to read as follows:]

**1.3 Line 2 (Content Line)**

* * * * *

[Revise heading of 1.4 to read as follows:]

**1.4 Line 3 (Origin Line)**

* * * * *

4.0 PALLET LABELS

* * * * *

[Revise heading of 4.5 to read as follows:]

**4.5 Line 1 (Destination Line)**

[Revise 4.5 to read as follows:]

Line 1 (destination line) must meet these standards:

a. Placement. Line 1 must be the first visible line on the label. It must be completely visible and legible when placed on the pallet. If the pallet label does not provide enough space for all required Line 1 information, the destination ZIP Code may be placed right-justified on the line immediately below the rest of Line 1 and above Line 2 (content line). A standard abbreviation for the destination city name may be used.

b. Information. Line 1 must contain only the information specified by standard, including the appropriate destination facility prefix (*e.g.*, "ADC"). Two zeros may follow the 3-digit ZIP Code prefix required by labeling standards (*e.g.*, 223 as 22300).

c. Overseas Military Mail. On 5-digit pallets for overseas military destinations, Line 1 shows, from left to right, "APO" or "FPO," followed by "AE" (for ZIP Codes within the ZIP Code prefix range 090–098), "AA" (for ZIP Codes within the 3-digit ZIP Code prefix 340), or "AP" (for ZIP Codes within the ZIP Code prefix range 962–966), followed by the destination 5-digit ZIP Code of the mail on the pallet.

[Revise heading of 4.6 to read as follows:]

**4.6 Line 2 (Content Line)**

* * * * *

[Revise heading of 4.7 to read as follows:]

**4.7 Line 3 (Origin Line)**

* * * * *

*M032 Barcoded Labels*

1.0 BASIC STANDARDS—TRAY AND SACK LABELS

* * * * *

[Revise heading of 1.2 to read as follows:]

**1.2 Line 1 (Destination Line)**

* * * * *

[Revise 1.2c to read as follows:]

c. Overseas Military Mail. On 5-digit sacks and trays for overseas military destinations, Line 1 shows, from left to right, "APO" or "FPO," followed by "AE" (for ZIP Codes within the ZIP Code prefix range 090–098), "AA" (for ZIP Codes within the 3-digit ZIP Code prefix 340), or "AP" (for ZIP Codes within the ZIP Code prefix range 962–966), followed by the destination 5-digit ZIP Code of the mail in the sack or tray.

[Revise heading of 1.3 to read as follows:]

**1.3 Line 2 (Content Line)**

* * * * *

[Change "STD MACH & IRREG 5D" to "STD MACH-IRREG 5D" in Exhibit 1.3 to read as follows:]

| Class and mailing | CIN | Human-readable content line |
|---|---|---|
| * * * * * | * | * |
| Standard Mail: | | |
| * * * * * | * | * |
| STD Machinable and Irregular Parcels—Presorted: | | |
| 5-digit sacks | 603 | STD MACH-IRREG 5D |
| * * * * * | * | * |

[Revise heading of 1.4 to read as follows:]

**1.4 Line 3 (Origin Line)**

* * * * *

*M070 Mixed Classes*

* * * * *

*M073 Combined Mailings of Standard Mail and Package Services Parcels*

1.0 COMBINED MACHINABLE PARCELS—RATES OTHER THAN PARCEL POST OBMC PRESORT, BMC PRESORT, DSCF, AND DDU

* * * * *

[Revise heading of 1.6 to read as follows:]

**1.6 Sacking and Labeling**

[Revise 1.6 to read as follows:]

Preparation sequence, sack size, and labeling:

a. 5-digit scheme (optional, but required for Standard Mail 3/5 rate eligibility); 10-piece or 20-pound minimum; labeling:

(1) Line 1: L606.

(2) Line 2: "STD/PSVC MACH 5D SCH."

b. 5-digit (optional, but required for Standard Mail 3/5 rate eligibility); 10-piece or 20-pound minimum; labeling:

(1) Line 1: 5-digit ZIP Code on mail (see M031 for overseas military mail).

(2) Line 2: "STD/PSVC MACH 5D."

c. ASF (optional; allowed only for mail deposited at an ASF to claim DBMC rate); 10-piece or 20-pound minimum; labeling:

(1) Line 1: L602. DBMC rate eligibility determined by Exhibit E650.5.1 and Exhibit E751.1.3.

(2) Line 2: "STD/PSVC MACH ASF."

d. BMC (required); 10-piece or 20-pound minimum; labeling:

(1) Line 1: L601. DBMC rate eligibility determined by Exhibit E650.5.1 and Exhibit E751.1.3.

(2) Line 2: "STD/PSVC MACH BMC."

e. Mixed BMC (required); no minimum; labeling:

(1) Line 1: "MXD" followed by L601 Column B information for BMC serving 3-digit ZIP Code prefix of entry post office.

(2) Line 2: "STD/PSVC MACH WKG."

* * * * *

*M100 First-Class Mail (Nonautomation)*

* * * * *

*M130 Presorted First-Class Mail*

* * * * *

2.0 PREPARATION—MACHINABLE LETTER-SIZE PIECES

* * * * *

[Revise heading of 2.2 to read as follows:]

**2.2 Traying and Labeling**

[Revise 2.2 to read as follows:]

Preparation sequence, tray size, and labeling:

a. 5-digit (optional); full trays (no overflow); labeling:

(1) Line 1: city, state, and 5-digit ZIP Code on mail (see M031 for overseas military mail).

(2) Line 2: "FCM LTR 5D MACH."

b. 3-digit (required); full trays (no overflow), except for one less-than-full tray for each origin 3-digit(s); labeling:

(1) Line 1: L002, Column A.

(2) Line 2: "FCM LTR 3D MACH."

c. AADC (required); full trays (no overflow), with pieces grouped by 3-digit ZIP Code prefix; labeling:

(1) Line 1: L801.

(2) Line 2: "FCM LTR AADC MACH."

d. Mixed AADC (required); no minimum, with pieces grouped by AADC; labeling:

(1) Line 1: "MXD" followed by city, state, and 3-digit ZIP Code prefix of facility serving 3-digit ZIP Code prefix of entry office, as shown in L002, Column C.

(2) Line 2: "FMC LTR MACH WKG."

3.0 PREPARATION—NONMACHINABLE LETTER-SIZE PIECES

[Revise heading of 3.1 to read as follows:]

**3.1 Packaging and Labeling**

[Revise 3.1 to read as follows:]

Except as provided in M020.1.9, packaging is required before traying. A package must be prepared when the quantity of addressed pieces for a required presort level reaches a minimum of 10 pieces. Smaller volumes are not permitted except for mixed ADC packages. Mailers who prefer that the USPS not automate letter-size pieces must also identify each package with a facing slip marked "MANUAL ONLY" or use a "MANUAL ONLY" optional endorsement line (see M013). Preparation sequence, package size, and labeling:

[Change in 3.1a "red Label D" to "red Label 5"; change in 3.1d "tan Label MXD" to "tan Label X" to read as follows:]

a. 5-digit (required); 10-piece minimum; red Label 5 or optional endorsement line (OEL); labeling not required for pieces in full 5-digit trays.

b. 3-digit (required); 10-piece minimum; green Label 3 or OEL.

c. ADC (required); 10-piece minimum; pink Label A or OEL.

d. Mixed ADC (required); no minimum; tan Label X or OEL.

[Delete current 3.2 and redesignate current 3.3 as new 3.2; revise heading of new 3.2 to read as follows:]

**3.2 Traying and Labeling**

[Revise 3.2 to read as follows:]

Preparation sequence, tray size, and labeling:

a. 5-digit (required); full trays (no overflow); labeling:

(1) Line 1: city, state, and 5-digit ZIP Code on mail (see M031 for overseas military mail).

(2) Line 2: "FCM LTR 5D MANUAL."

b. 3-digit (required); full trays (no overflow), except for one less-than-full tray for each origin 3-digit(s); labeling:

(1) Line 1: L002, Column A.

(2) Line 2: "FCM LTR 3D MANUAL."

c. ADC (required); full trays (no overflow); labeling:

(1) Line 1: L004.

(2) Line 2: "FCM LTR ADC MANUAL."

d. Mixed ADC (required); no minimum; labeling:

(1) Line 1: "MXD" followed by city, state, and 3-digit ZIP Code prefix of facility serving 3-digit ZIP Code prefix of entry post office, as shown in L002, Column C.

(2) Line 2: "FCM LTR MANUAL WKG."

[Revise heading of 4.0 to read as follows:]

4.0 PREPARATION—FLAT-SIZE PIECES

[Revise heading of 4.1 to read as follows:]

### 4.1 Packaging and Labeling

[Revise 4.1 to read as follows:]

Except as provided in M020.1.9, packaging is required before traying. A package must be prepared when the quantity of addressed pieces for a required presort level reaches a minimum of 10 pieces. Smaller volumes are not permitted except for mixed ADC packages. Preparation sequence, package size, and labeling:

[Change in 4.1a "red Label D" to "red Label 5"; change in 4.1d "tan Label MXD" to "tan Label X" to read as follows:]

a. 5-digit (required); 10-piece minimum; red Label 5 or optional endorsement line (OEL).

b. 3-digit (required); 10-piece minimum; green Label 3 or OEL.

c. ADC (required); 10-piece minimum; pink Label A or OEL.

d. Mixed ADC (required); no minimum; tan Label X or OEL.

[Delete current 4.2 and redesignate current 4.3 as new 4.2; revise heading of new 4.2 to read as follows:]

### 4.2 Traying and Labeling

[Revise new 4.2 to read as follows:]

Preparation sequence, tray size, and labeling:

a. 5-digit (required); full trays (no overflow); labeling:

(1) Line 1: city, state, and 5-digit ZIP Code on mail (see M031 for overseas military mail).

(2) Line 2: "FCM FLTS 5D NON BC."

b. 3-digit (required); full trays (no overflow), except for one less-than-full tray for each origin 3-digit(s); labeling:

(1) Line 1: L002, Column A.

(2) Line 2: "FCM FLTS 3D NON BC."

c. ADC (required); full trays (no overflow); labeling:

(1) Line 1: L004.

(2) Line 2: "FCM FLTS ADC NON BC."

d. Mixed ADC (required); no minimum; labeling:

(1) Line 1: "MXD" followed by city, state, and 3-digit ZIP Code prefix of facility serving 3-digit ZIP Code prefix of entry post office, as shown in L002, Column C.

(2) Line 2: "FCM FLTS NON BC WKG."

[Delete current 4.4.]

[Revise heading of 5.0 to read as follows:]

5.0 PREPARATION—PARCELS

[Delete current 5.1 and redesignate current 5.2 as new 5.1; revise heading of new 5.1 to read as follows:]

### 5.1 Packaging and Labeling

[Revise introductory text of new 5.1 to read as follows] Packaging is generally required before sacking. A package must be prepared when the quantity of addressed pieces for a required presort level reaches a minimum of 10 pieces. Smaller volumes are not permitted except for mixed ADC packages. Packaging is not required if the parcels are ½ inch thick or greater and placed in a sack to the same destination to which they would otherwise be packaged (*e.g.*, in a 3-digit sack rather than in a 3-digit package). Packaging is also not required if the parcels are so large that 10 or fewer fill a sack. Preparation sequence, package size, and labeling:

[Change in new 5.1a "red Label D" to "red Label 5"; change in new 5.1d "tan Label MXD" to "tan Label X" to read as follows:]

a. 5-digit (required); 10-piece minimum; red Label 5 or optional endorsement line (OEL).

b. 3-digit (required); 10-piece minimum; green Label 3 or OEL.

c. ADC (required); 10-piece minimum; pink Label A or OEL.

d. Mixed ADC (required); no minimum; tan Label X or OEL.

[Redesignate current 5.3 as new 5.2; revise heading of new 5.2 to read as follows:]

### 5.2 Sacking and Labeling

[Revise new 5.2 to read as follows:]

Preparation sequence, sack size, and labeling:

a. 5-digit (required); 10-pound minimum; labeling:

(1) Line 1: city, state, and 5-digit ZIP Code on mail (see M031 for overseas military mail).

(2) Line 2: "FCM PARCELS 5D."

b. 3-digit (required); 10-pound minimum, except for required origin 3-digit(s); labeling:

(1) Line 1: L002, Column A.

(2) Line 2: "FCM PARCELS 3D."

c. ADC (required); 10-pound minimum; labeling:

(1) Line 1: L004.

(2) Line 2: "FCM PARCELS ADC."

d. Mixed ADC (required); no minimum; labeling:

(1) Line 1: "MXD" followed by city, state, and 3-digit ZIP Code prefix of facility serving 3-digit ZIP Code prefix of entry post office, as shown in L002, Column C.

(2) Line 2: "FCM PARCELS WKG."

[Delete current 5.4.]

* * * * *

*M200 Periodicals (Nonautomation)*

*M210 Presorted Periodicals*

* * * * *

2.0 PACKAGE PREPARATION

[Revise 2.0 by combining current 2.1 and 2.2 to read as follows:]

Packaging is required before traying or sacking. A package must be prepared when the quantity of addressed pieces for a required presort level reaches the minimum package size. Smaller volumes are not permitted except mixed ADC packages and 5-digit and 3-digit packages prepared under 1.5. Packaging is also subject to M020. Preparation sequence, package size, and labeling:

[Change in 2.0b "red Label D" to "red Label 5"; change in 2.0e "tan Label MXD" to "tan Label X" to read as follows:]

a. Firm (optional); two-piece minimum; blue Label F or optional endorsement line (OEL).

b. 5-digit (required); six-piece minimum; red Label 5 or OEL; package labeling optional for pieces in full 5-digit trays.

c. 3-digit (required); six-piece minimum; green Label 3 or OEL.

d. ADC (required); six-piece minimum; pink Label A or OEL.

e. Mixed ADC (required); no minimum; tan Label X or OEL.

[Revise heading of 3.0 to read as follows:]

3.0 TRAY PREPARATION—LETTER-SIZE PIECES

[Revise introductory text to read as follows:]

Preparation sequence, tray size, and labeling:

* * * * *

[Revise 3.0a(1) to read as follows:]

* * * * *

(1) Line 1: use city, state and 5-digit ZIP Code on mail (see M031 for overseas military mail).

* * * * *

[Revise heading of 4.0 to read as follows:]

### 4.0 SACK PREPARATION—FLAT-SIZE PIECES AND IRREGULAR PARCELS

[Revise second sentence in introductory text to read as follows:]

* * * For other mailing jobs, preparation sequence, tray size, and labeling:

* * * * *

[Revise 4.0a(1) to read as follows:]

* * * * *

(1) Line 1: use city, state and 5-digit ZIP Code on mail (see M031 for overseas military mail).

* * * * *

## *M220 Carrier Route Periodicals*

* * * * *

### 2.0 PACKAGE PREPARATION

* * * * *

[Revise heading of 2.4 to read as follows:]

### 2.4 Packaging and Labeling

[Revise 2.4 to read as follows:]

Preparation sequence, package size, and labeling:

a. Firm (optional); two-piece minimum; blue Label F or optional endorsement line (OEL).

b. Carrier route (optional, but required for rate eligibility); six-piece minimum (fewer pieces permitted under 1.5); labeling required (facing slip, OEL, or carrier route information line) except for packages placed in a carrier route tray or sack.

[Revise heading of 3.0 to read as follows:]

### 3.0 PREPARATION—LETTER-SIZE PIECES

### 3.1 Basic Preparation

[Revise introductory text to read as follows:]

Preparation sequence, tray size, and labeling:

* * * * *

[Revise 3.1a(1) to read as follows:]

* * * * *

(1) Line 1: use city, state and 5-digit ZIP Code on mail (see M031 for overseas military mail).

* * * * *

[Revise heading of 4.0 to read as follows:]

### 4.0 PREPARATION—FLAT-SIZE PIECES AND IRREGULAR PARCELS

[Revise introductory text to read as follows:]

Preparation sequence, sack size, and labeling:

* * * * *

[Revise 4.0a(1) to read as follows:]

* * * * *

(1) Line 1: use city, state and 5-digit ZIP Code on mail (see M031 for overseas military mail).

* * * * *

## *M600 Standard Mail (Nonautomation)*

## *M610 Presorted Standard Mail*

* * * * *

### 2.0 PREPARATION—MACHINABLE LETTER-SIZE PIECES

* * * * *

### 2.2 Traying and Labeling

* * * * *

[Revise 2.2a(1) to read as follows:]

(1) Line 1: city, state, and 5-digit ZIP Code on mail (see M031 for overseas military mail).

* * * * *

### 3.0 PREPARATION—NONMACHINABLE LETTER-SIZE PIECES

[Revise heading of 3.1 to read as follows:]

### 3.1 Packaging and Labeling

[Revise introductory text of 3.1 to read as follows:]

Except as provided in M020.1.9, packaging is required before traying. A package must be prepared when the quantity of addressed pieces for a required presort level reaches a minimum of 10 pieces. Smaller volumes are not permitted except for mixed ADC packages. Mailers who prefer that the USPS not automate letter-size pieces must also identify each package with a facing slip marked "MANUAL ONLY" or use a "MANUAL ONLY" optional endorsement line (see M013). Preparation sequence, package size, and labeling:

[Change in 3.1a "red Label D" to "red Label 5"; change in 3.1d "tan Label MXD" to "tan Label X".]

[Delete current 3.2 and redesignate current 3.3 as new 3.2.]

### 3.2 Traying and Labeling

* * * * *

[Revise new 3.2a(1) to read as follows:]

(1) Line 1: city, state, and 5-digit ZIP Code on mail (see M031 for overseas military mail).

* * * * *

[Revise 4.0 by moving standards for irregular parcels to new 5.0; redesignate current 5.0 as new 6.0; revise current 4.0 to read as follows:]

### 4.0 PREPARATION—FLAT-SIZE PIECES

### 4.1 Required Packaging

Except as provided in 4.3, packaging is required before sacking. A package must be prepared when the quantity of addressed pieces for a required presort level reaches the required minimum package size in 4.2. Smaller volumes are not permitted except for mixed ADC packages.

### 4.2 Packaging and Labeling

Preparation sequence, package size, and labeling:

a. 5-digit (required); 17-piece minimum, optional 10-to 16-piece minimum (one consistent minimum required for a mailing job); red Label 5 or optional endorsement line (OEL).

b. 3-digit (required); 10-piece minimum; green Label 3 or OEL.

c. ADC (required); 10-piece minimum; pink Label A or OEL.

d. Mixed ADC (required); no minimum; tan Label X or OEL.

### 4.3 Loose Packing

District managers may authorize loose packing of unpackaged pieces to fill Number 3 sacks if no pieces in a sack would be more finely sorted if packaged. Pieces must be faced and packed to remain oriented in transit. The total weight of sacks containing such pieces may not exceed 70 pounds. Requests for loose packing must be made in advance through the post office of mailing.

### 4.4 Required Sacking

Except as provided in 4.5, a sack, or a letter tray under M033, must be prepared when the quantity of mail for a required presort destination reaches either 125 pieces or 15 pounds of pieces, whichever occurs first, subject to these conditions:

a. For identical-weight pieces, mailers must apply these methods:

(1) Pieces weighing 1.92 ounces (0.12 pound) or less must be prepared using the 125-piece minimum.

(2) Pieces weighing more than 1.92 ounces must be prepared using the 15-pound minimum.

b. For nonidentical-weight pieces, mailers must apply either one of these methods:

(1) The minimum that applies to the average piece weight for the entire mailing is used. The net weight of the mailing is divided by the number of pieces, and the resulting average single-

piece weight is used to determine whether the 125-piece or 15-pound minimum applies.

(2) The actual piece count or mail weight for each sack is used, if documentation can be provided with the mailing that shows for each sack the number of pieces and the total weight.

c. The accompanying postage statement must indicate whether the 125-piece minimum, the 15-pound minimum, or both minimums are applied.

### 4.5 Drop Shipment

A mailer using Priority Mail or Express Mail to drop ship Standard Mail flat-size pieces may prepare sacks containing fewer than 125 pieces or less than 15 pounds of mail.

### 4.6 Sacking and Labeling

Preparation sequence, sack size, and labeling:

a. 5-digit (required); 125-piece or 15-pound minimum; labeling:

(1) Line 1: city, state, and 5-digit ZIP Code on mail (see M031 for overseas military mail).

(2) Line 2: "STD FLTS 5D NON BC."

b. 3-digit (required); 125-piece or 15-pound minimum; labeling:

(1) Line 1: L002, Column A.

(2) Line 2: "STD FLTS 3D NON BC."

c. Origin 3-digit(s) (required) and entry 3-digit(s) (optional); one-package minimum (for origin or entry); labeling:

(1) Line 1: L002, Column A.

(2) Line 2: "STD FLTS 3D NON BC."

d. ADC (required); 125-piece or 15-pound minimum; labeling:

(1) Line 1: L004.

(2) Line 2: "STD FLTS ADC NON BC."

e. Mixed ADC (required); no minimum; labeling:

(1) Line 1: "MXD" followed by city, state, and ZIP Code of ADC serving 3-digit ZIP Code prefix of entry post office as shown in L004; if placed on an ASF or BMC pallet under option in M045.3.2, L802.

(2) Line 2: "STD FLTS NON BC WKG."

[Redesignate current 5.0 as new 6.0 and add new 5.0 to read as follows:]

## 5.0 PREPARATION—IRREGULAR PARCELS

### 5.1 Required Packaging

Except as provided in 5.3 and 5.5, packaging is required before sacking. A package must be prepared when the quantity of addressed irregular parcels for a required presort level reaches the required minimum package size. Smaller volumes are not permitted except for mixed ADC packages and packages prepared under 5.4.

### 5.2 Packaging and Labeling

Preparation sequence, package size, and labeling:

a. 5-digit (required); 10-piece minimum; red Label 5 or optional endorsement line (OEL).

b. 3-digit (required); 10-piece minimum; green Label 3 or OEL.

c. ADC (required); 10-piece minimum; pink Label A or OEL.

d. Mixed ADC (required); no minimum; tan Label X or OEL.

### 5.3 Packaging Exceptions

Packaging is not required for irregular parcels under any of these conditions:

a. The parcels are ½ inch thick or greater and placed in a sack to the same destination to which they would otherwise be packaged (*e.g.*, in a 3-digit sack rather than a 3-digit package).

b. The parcels are so large that 10 or fewer fill a sack.

c. The parcels are in a 5-digit scheme or 5-digit sack containing both machinable and irregular parcels. Sacks containing both machinable and irregular parcels may not be prepared to other presort levels.

### 5.4 Commingling Irregular Parcel Mailings

Business Mailer Support (BMS) (see G043 for address) may authorize the commingling of several permit imprint mailings of irregular parcels to achieve a finer presort if the payment of proper postage can be documented. BMS may waive minimum quantity standards for preparation of 5-digit and 3-digit presort destination packages if doing so results in a finer preparation of at least 50% of the mail.

### 5.5 Loose Packing

District managers may authorize loose packing of unpackaged irregular parcels to fill Number 3 sacks if no parcels in a sack would be more finely sorted if packaged. Parcels must be faced and packed to remain oriented in transit. The total weight of sacks containing such parcels may not exceed 70 pounds. Requests for loose packing must be made in advance through the post office of mailing.

### 5.6 Required Sacking

Except as provided in 5.7, a sack must be prepared when the quantity of mail for a required presort destination reaches either 125 pieces or 15 pounds of pieces, whichever occurs first, subject to these conditions:

a. For identical-weight pieces, mailers must apply these methods:

(1) Pieces weighing 1.92 ounces (0.12 pound) or less must be prepared using the 125-piece minimum.

(2) Pieces weighing more than 1.92 ounces must be prepared using the 15-pound minimum.

b. For nonidentical-weight pieces, mailers must apply either one of these methods:

(1) The minimum that applies to the average piece weight for the entire mailing is used. The net weight of the mailing is divided by the number of pieces, and the resulting average single-piece weight is used to determine whether the 125-piece or 15-pound minimum applies.

(2) The actual piece count or mail weight for each sack is used, if documentation can be provided with the mailing that shows for each sack the number of pieces and the total weight.

c. The accompanying postage statement must indicate whether the 125-piece minimum, the 15-pound minimum, or both minimums are applied.

### 5.7 Drop Shipment

A mailer using Priority Mail or Express Mail to drop ship Standard Mail irregular parcels may prepare sacks containing fewer than 125 pieces or less than 15 pounds of mail.

### 5.8 Sacking and Labeling

Preparation sequence, sack size, and labeling:

a. 5-digit scheme (optional), as applicable:

(1) Irregular parcels: 125-piece or 15-pound minimum; labeling for Line 1, L606; for Line 2, "STD IRREG 5D SCHEME" or "STD IRREG 5D SCH."

(2) Commingled machinable and irregular parcels: no minimum; labeling for Line 1, L606; for Line 2, "STD MACH–IRREG 5D SCH."

b. 5-digit (required), as applicable:

(1) Irregular parcels: 125-piece or 15-pound minimum; labeling for Line 1, city, state, and 5-digit ZIP Code on mail (see M031 for overseas military mail); for Line 2, "STD IRREG 5D."

(2) Commingled machinable and irregular parcels: 10-pound minimum; labeling for Line 1, city, state, and 5-digit ZIP Code on mail (see M031 for overseas military mail); for Line 2, "STD MACH–IRREG 5D."

c. 3-digit (required); 125-piece or 15-pound minimum; labeling:

(1) Line 1: L002, Column A.

(2) Line 2: "STD IRREG 3D."

d. Origin 3-digit(s) (required) and entry 3-digit(s) (optional); one-package minimum (for origin or entry); labeling:

(1) Line 1: L002, Column A.

(2) Line 2: "STD IRREG 3D."

e. ADC (required); 125-piece or 15-pound minimum; labeling:

(1) Line 1: L603.

(2) Line 2: "STD IRREG ADC."

f. Mixed ADC (required); no minimum; labeling:

(1) Line 1: "MXD" followed by city, state, and ZIP Code of ADC serving 3-digit ZIP Code prefix of entry post office as shown in L604.

(2) Line 2: "STD IRREG WKG."

### 6.0 PREPARATION—MACHINABLE PARCELS

#### 6.1 5-Digit Sacks

[Change at end of first sentence in 6.1 "under 4.0" to "under 5.0.")

* * * * *

[Revise heading of redesignated 6.2 to read as follows:]

#### 6.2 Sacking and Labeling

* * * * *

## M620 Enhanced Carrier Route Standard Mail

* * * * *

### 3.0 PREPARATION—LETTER-SIZE PIECES

#### 3.1 Required Tray Preparation

Preparation sequence, tray size, and labeling

* * * * *

[Revise 3.1a(1) to read as follows:]

(1) Line 1: city, state, and 5-digit ZIP Code on mail (see M031 for overseas military mail).

* * * * *

[Revise 3.1b(1) to read as follows:]

(1) Line 1: city, state, and 5-digit ZIP Code on mail (see M031 for overseas military mail).

* * * * *

[Revise 3.1c(1) to read as follows:]

(1) Line 1: city, state, and 3-digit ZIP Code prefix shown in L002, Column A, that corresponds to 3-digit ZIP Code prefix on mail.

* * * * *

[Revise heading of 3.2 to read as follows:]

#### 3.2 Alternative Line 2 Information

[Revise 3.2 to read as follows:]

For trays containing nonbarcoded or nonmachinable letter-size pieces, these Line 2 label designations are used in place of "BC":

a. Trays containing nonbarcoded machinable pieces: "MACH."

b. Trays containing nonmachinable pieces: "MAN."

c. Trays containing simplified address pieces: "MAN."

[Delete current 3.3 and 3.4.]

### 4.0 PREPARATION—FLATS

* * * * *

#### 4.2 Sack Preparation

[Revise introductory text to read as follows:]

Preparation sequence, sack size, and labeling:

* * * * *

[Revise 4.2a(1) to read as follows:]

(1) Line 1: city, state, and 5-digit ZIP Code on mail (see M031 for overseas military mail).

* * * * *

[Revise 4.2c(1) to read as follows:]

(1) Line 1: city, state, and 5-digit ZIP Code on mail (see M031 for overseas military mail).

* * * * *

### 5.0 PREPARATION—IRREGULAR PARCELS

* * * * *

#### 5.2 Sack Preparation

[Revise introductory text to read as follows:]

Preparation sequence, sack size, and labeling:

* * * * *

[Revise 5.2a(1) to read as follows:]

(1) Line 1: city, state, and 5-digit ZIP Code on mail (see M031 for overseas military mail).

* * * * *

[Revise 5.2b(1) to read as follows:]

(1) Line 1: city, state, and 5-digit ZIP Code on mail (see M031 for overseas military mail).

* * * * *

## *M700 Package Services*

## *M710 Parcel Post*

* * * * *

### 2.0 DSCF RATE

* * * * *

[Revise heading of 2.2 to read as follows:]

#### 2.2 Sacking and Labeling

* * * * *

[Revise 2.2d to read as follows:]

d. 5-digit sack labeling: Line 1, use city, state, and 5-digit ZIP Code on mail (see M031 for overseas military mail); for Line 2, "PSVC PARCELS 5D."

* * * * *

### 3.0 DDU RATE

The requirements for the DDU rate are as follows:

* * * * *

[Revise 3.0e to read as follows:]

e. Sacked mail must be labeled as follows:

(1) 5-digit scheme: Line 1, L606; Line 2, "PSVC PARCELS 5D SCH."

(2) 5-digit: Line 1, city, state, and 5-digit ZIP Code on mail (see M031 for overseas military mail); Line 2, "PSVC PARCELS 5D."

* * * * *

## *M720 Bound Printed Matter*

* * * * *

## *M722 Presorted Bound Printed Matter*

* * * * *

[Revise heading of 2.0 to read as follows:]

### 2.0 PREPARATION—FLATS

#### 2.1 Required Packaging

[Add sentence to beginning of 2.1 to read as follows:]

Packaging is required before sacking.* * *

* * * * *

[Revise heading of 2.2 to read as follows:]

#### 2.2 Packaging and Labeling

[Revise 2.2 to read as follows:]

Preparation sequence and labeling:

a. 5-digit (required); red Label 5 or optional endorsement line (OEL).

b. 3-digit (required); green Label 3 or OEL.

c. ADC (required); pink Label A or OEL.

d. Mixed ADC (required); tan Label X or OEL.

* * * * *

[Revise heading of 2.4 to read as follows:]

#### 2.4 Sacking and Labeling

[Revise 2.4 to read as follows:]

Preparation sequence and labeling:

a. 5-digit (required); labeling:

(1) Line 1: city, state, and 5-digit ZIP Code on mail (see M031 for overseas military mail).

(2) Line 2: "PSVC FLTS 5D NON BC."

b. 3-digit (required); labeling:

(1) Line 1: L002, Column A.

(2) Line 2: "PSVC FLTS 3D NON BC."

c. SCF (optional); labeling:

(1) Line 1: L005.

(2) Line 2: "PSVC FLTS SCF NON BC."

d. ADC (required); labeling:

(1) Line 1: L004.

(2) Line 2: "PSVC FLTS ADC NON BC."

e. Mixed ADC (required); labeling:

(1) Line 1: "MXD" followed by city, state, and ZIP Code of ADC serving 3-digit ZIP Code prefix of entry post office, as shown in L004.

(2) Line 2: "PSVC FLTS NON BC WKG."

[Delete current 2.5.]

[Revise heading of 3.0 to read as follows:]

## 3.0 PREPARATION—IRREGULAR PARCELS WEIGHING LESS THAN 10 POUNDS

### 3.1 Required Packaging

[Revise first sentence of 3.1 to read as follows:]

Packaging is required before sacking, except for pieces placed in 5-digit scheme and 5-digit sacks when such pieces are enclosed in an envelope, full-length sleeve, full-length wrapper, or polybag and the minimum package size is met.* * *

* * * * *

[Revise heading of 3.2 to read as follows:]

### 3.2 Packaging and Labeling

[Revise 3.2 to read as follows:]

Preparation sequence and labeling:
a. 5-digit (required); red Label 5 or optional endorsement line (OEL).
b. 3-digit (required); green Label 3 or OEL.
c. ADC (required); pink Label A or OEL.
d. Mixed ADC (required); tan Label X or OEL.

### 3.3 Required Sacking

[Revise 3.3 by adding current 3.6 before last sentence of introductory text to read as follows:]

* * * Sacking is not required for 5-digit packages when prepared for and entered at DDU rates. Such packages may be bedloaded and may weigh up to 40 pounds.* * *

* * * * *

[Revise heading of 3.4 to read as follows:]

### 3.4 Sacking and Labeling

[Revise 3.4 to read as follows:]

Preparation sequence and labeling:
a. 5-digit scheme (optional); labeling:
(1) Line 1: L606.
(2) Line 2: "PSVC IRREG 5D SCHEME" or "PSVC IRREG 5D SCH."
b. 5-digit (required); labeling:
(1) Line 1: city, state, and 5-digit ZIP Code on mail (see M031 for overseas military mail).
(2) Line 2: "PSVC IRREG 5D."
c. 3-digit (required); labeling:
(1) Line 1: L002, Column A.
(2) Line 2: "PSVC IRREG 3D."
d. SCF (optional); labeling:
(1) Line 1: L005.
(2) Line 2: "PSVC IRREG SCF."
e. ADC (required); labeling:
(1) Line 1: L004.
(2) Line 2: "PSVC IRREG ADC."
f. Mixed ADC (required); labeling:
(1) Line 1: "MXD" followed by city, state, and ZIP Code of ADC serving 3-digit ZIP Code prefix of entry post office, as shown in L004.
(2) Line 2: "PSVC IRREG WKG."

[Delete current 3.5 and 3.6.]

[Revise heading of 4.0 to read as follows:]

## 4.0 PREPARATION—IRREGULAR PARCELS WEIGHING 10 POUNDS OR MORE

* * * * *

### 4.2 Required Sacking

[Revise 4.2 by adding amended 4.5 to end of 4.2 to read as follows:]

* * * Sacking is not required for 5-digit packages when prepared for and entered at DDU rates. Such packages may be bedloaded and may weigh up to 40 pounds.

[Revise heading of 4.3 to read as follows:]

### 4.3 Sacking and Labeling

[Revise 4.3 to read as follows:]

Preparation sequence and labeling:
a. 5-digit scheme (optional); labeling:
(1) Line 1: L606.
(2) Line 2: "PSVC IRREG 5D SCHEME" or "PSVC IRREG 5D SCH."
b. 5-digit (required); labeling:
(1) Line 1: city, state, and 5-digit ZIP Code on mail (see M031 for overseas military mail).
(2) Line 2: "PSVC IRREG 5D."
c. 3-digit (required); labeling:
(1) Line 1: L002, Column A.
(2) Line 2: "PSVC IRREG 3D."
d. SCF (optional); labeling:
(1) Line 1: L005.
(2) Line 2: "PSVC IRREG SCF."
e. ADC (required); labeling:
(1) Line 1: L004.
(2) Line 2: "PSVC IRREG ADC."
f. Mixed ADC (required); labeling:
(1) Line 1: "MXD" followed by city, state, and ZIP Code of ADC serving 3-digit ZIP Code prefix of entry post office, as shown in L004.
(2) Line 2: "PSVC IRREG WKG."

[Delete current 4.4 and 4.5.]

[Revise heading of 5.0 to read as follows:]

## 5.0 PREPARATION—MACHINABLE PARCELS

[Revise heading of 5.1 to read as follows:]

### 5.1 DBMC Rates Not Claimed—Required Sacking

* * * * *

[Revise heading of 5.2 to read as follows:]

### 5.2 DBMC Rates Not Claimed—Sacking and Labeling

[Revise 5.2 by combining with current 5.3 to read as follows:]

Preparation sequence and labeling:
a. 5-digit scheme (optional); labeling:
(1) Line 1: L606.
(2) Line 2: "PSVC MACH 5D SCHEME" or "PSVC MACH 5D SCH."
b. 5-digit (required); labeling:
(1) Line 1: city, state, and 5-digit ZIP Code on mail (see M031 for overseas military mail).
(2) Line 2: "PSVC MACH 5D."
c. BMC (required); labeling:
(1) Line 1: L601.
(2) Line 2: "PSVC MACH BMC."
d. Mixed BMC (required); labeling:
(1) Line 1: "MXD" followed by L601, Column B, information for BMC serving 3-digit ZIP Code prefix of entry post office.
(2) Line 2: "PSVC MACH WKG."

[Redesignate current 5.4 and 5.5 as new 5.3 and 5.4, respectively.]

[Revise heading of new 5.3 to read as follows:]

### 5.3 DMBC Rates—Required Sacking

* * * * *

[Revise heading of new 5.4 to read as follows:]

### 5.4 DBMC Rates—Sacking and Labeling

[Revise new 5.4 by combining with current 5.6 to read as follows:]

Preparation sequence and labeling:
a. 5-digit scheme (optional); labeling:
(1) Line 1: L606.
(2) Line 2: "PSVC MACH 5D SCHEME" or "PSVC MACH 5D SCH."
b. 5-digit (required); labeling:
(1) Line 1: city, state, and 5-digit ZIP Code on mail (see M031 for overseas military mail).
(2) Line 2: "PSVC MACH 5D."
c. ASF (optional, allowed only for mail deposited at an ASF to claim DBMC rate); labeling:
(1) Line 1: L602. DBMC rate eligibility determined by E752 and Exhibit E751.1.3.
(2) Line 2: "PSVC MACH ASF."
d. BMC (required); labeling:
(1) Line 1: L601. DBMC rate eligibility determined by E752 and Exhibit E751.1.3.
(2) Line 2: "PSVC MACH BMC."
e. Mixed BMC (required); labeling:
(1) Line 1: "MXD" followed by information in L601, Column B, for BMC serving 3-digit ZIP Code prefix of entry post office.
(2) Line 2: "PSVC MACH WKG."

[Delete current 5.6.]

*M723 Carrier Route Bound Printed Matter*

* * * * *

[Revise heading of 2.0 to read as follows:]

## 2.0 PREPARATION—FLATS

* * * * *

**2.3 Sack Preparation**

* * * * *

[Revise 2.3a to read as follows:]

a. Carrier route: required; for Line 1, use city, state, and 5-digit ZIP Code on mail (see M031 for overseas military mail).

* * * * *

[Revise heading of 3.0 to read as follows:]

3.0 PREPARATION—IRREGULAR PARCELS WEIGHING LESS THAN 10 POUNDS

* * * * *

**3.3 Sack Preparation**

* * * * *

[Revise 3.3a to read as follows:]

a. Carrier route: required; for Line 1, use city, state, and 5-digit ZIP Code on mail (see M031 for overseas military mail).

* * * * *

[Revise heading of 4.0 to read as follows:]

4.0 PREPARATION—IRREGULAR PARCELS WEIGHING 10 POUNDS OR MORE

* * * * *

[Revise heading of 5.0 to read as follows:]

5.0 PREPARATION—MACHINABLE PARCELS

* * * * *

*M730 Media Mail*

* * * * *

2.0 PREPARATION—FLATS

[Revise heading of 2.1 to read as follows:]

**2.1 Required Packaging**

[Revise second sentence in 2.1 to read as follows:]

* * * Smaller volumes are not permitted except for mixed ADC packages.* * *

* * * * *

[Revise heading of 2.2 to read as follows:]

**2.2 Packaging and Labeling**

[Revise 2.2 and change in 2.2a "red Label D" to "red Label 5" and in 2.2d "tan Label MXD" to "tan Label X" to read as follows:]

Preparation sequence, package size, and labeling:

a. 5-digit (optional, but required for 5-digit rate eligibility); 10-piece minimum; red Label 5 or optional endorsement line (OEL).

b. 3-digit (required); 10-piece minimum; green Label 3 or OEL.

c. ADC (required); 10-piece minimum; pink Label A or OEL.

d. Mixed ADC (required); no minimum; tan Label X or OEL.

[Revise heading of 2.3 to read as follows:]

**2.3 Required Sacking**

* * * * *

[Revise heading of 2.4 to read as follows:]

**2.4 Sacking and Labeling**

[Revise introductory text of 2.4 to read as follows:]

Preparation sequence, sack size, and labeling:

* * * * *

[Revise 2.4a(1) to read as follows:]

(1) Line 1: use city, state, and 5-digit ZIP Code on mail (see M031 for overseas military mail).

* * * * *

3.0 PREPARATION—IRREGULAR PARCELS

[Revise heading of 3.1 to read as follows:]

**3.1 Required Packaging**

[Replace first sentence of 3.1 with following text to read as follows:]

A package must be prepared when the quantity of addressed pieces for a required presort level reaches a minimum of 10 pieces. Smaller volumes are not permitted except for mixed ADC packages. Packaging is not required for pieces placed in 5-digit scheme sacks and 5-digit sacks when such pieces are enclosed in an envelope, full-length sleeve, full-length wrapper, or polybag and the minimum package volume is met.* * *

* * * * *

[Revise heading of 3.2 to read as follows:]

**3.2 Packaging and Labeling**

[Revise 3.2 and change in 3.2a "red Label D" to "red Label 5" and in 3.2d "tan Label MXD" to "tan Label X" to read as follows:]

Preparation sequence, package size, and labeling:

a. 5-digit (optional, but required for 5-digit rate eligibility); 10-piece minimum; red Label 5 or optional endorsement line (OEL).

b. 3-digit (required); 10-piece minimum; green Label 3 or OEL.

c. ADC (required); 10-piece minimum; pink Label A or OEL.

d. Mixed ADC (required); no minimum; tan Label X or OEL.

[Revise heading of 3.3 to read as follows:]

**3.3 Required Sacking**

* * * * *

[Revise heading of 3.4 to read as follows:]

**3.4 Sacking and Labeling**

[Revise introductory text to read as follows:]

Preparation sequence and labeling:

* * * * *

[Revise 3.4b(1) to read as follows:]

(1) Line 1: use city, state, and 5-digit ZIP Code on mail (see M031 for overseas military mail).

* * * * *

4.0 PREPARATION—MACHINABLE PARCELS

[Revise heading of 4.1 to read as follows:]

**4.1 Required Sacking**

* * * * *

[Revise heading of 4.2 to read as follows:]

**4.2 Sacking and Labeling**

[Revise introductory text to read as follows:]

Preparation sequence and labeling:

* * * * *

[Revise 4.2b(1) to read as follows:]

(1) Line 1: use city, state, and 5-digit ZIP Code on mail (see M031 for overseas military mail).

* * * * *

*M740 Library Mail*

* * * * *

2.0 PREPARATION—FLATS

[Revise heading of 2.1 to read as follows:]

**2.1 Required Packaging**

[Revise second sentence in 2.1 to read as follows:]

* * * Smaller volumes are not permitted except for mixed ADC packages.* * *

* * * * *

[Revise heading of 2.2 to read as follows:]

**2.2 Packaging and Labeling**

[Revise 2.2 and change in 2.2a "red Label D" to "red Label 5" and in 2.2d "tan Label MXD" to "tan Label X" to read as follows:]

Preparation sequence, package size, and labeling:

a. 5-digit (optional, but required for 5-digit rate eligibility); 10-piece minimum; red Label 5 or optional endorsement line (OEL).

b. 3-digit (required); 10-piece minimum; green Label 3 or OEL.

c. ADC (required); 10-piece minimum; pink Label A or OEL.
d. Mixed ADC (required); no minimum; tan Label X or OEL.

[Revise heading of 2.3 to read as follows:]

### 2.3 Required Sacking

* * * * *

[Revise heading of 2.4 to read as follows:]

### 2.4 Sacking and Labeling

[Revise introductory text to read as follows:]

Preparation sequence, sack size, and labeling:

* * * * *

[Revise 2.4a(1) to read as follows:]

(1) Line 1: use city, state, and 5-digit ZIP Code on mail (see M031 for overseas military mail).

* * * * *

## 3.0 PREPARATION—IRREGULAR PARCELS

[Revise heading of 3.1 to read as follows:]

### 3.1 Required Packaging

[Replace first sentence of 3.1 with following text to read as follows:]

A package must be prepared when the quantity of addressed pieces for a required presort level reaches a minimum of 10 pieces. Smaller volumes are not permitted except for mixed ADC packages. Packaging is not required for pieces placed in 5-digit scheme sacks and 5-digit sacks when such pieces are enclosed in an envelope, full-length sleeve, full-length wrapper, or polybag and the minimum package volume is met.* * *

* * * * *

[Revise heading of 3.2 to read as follows:]

### 3.2 Packaging and Labeling

[Revise 3.2 and change in 3.2a "red Label D" to "red Label 5" and in 3.2d "tan Label MXD" to "tan Label X" to read as follows:]

Preparation sequence, package size, and labeling:
a. 5-digit (optional, but required for 5-digit rate eligibility); 10-piece minimum; red Label 5 or optional endorsement line (OEL).
b. 3-digit (required); 10-piece minimum; green Label 3 or OEL.
c. ADC (required); 10-piece minimum; pink Label A or OEL.
d. Mixed ADC (required); no minimum; tan Label X or OEL.

[Revise heading of 3.3 to read as follows:]

### 3.3 Required Sacking

* * * * *

[Revise heading of 3.4 to read as follows:]

### 3.4 Sacking and Labeling

[Revise introductory text to read as follows:]

Preparation sequence and labeling:

* * * * *

[Revise 3.4b(1) to read as follows:]

(1) Line 1: use city, state, and 5-digit ZIP Code on mail (see M031 for overseas military mail).

* * * * *

## 4.0 PREPARATION—MACHINABLE PARCELS

[Revise heading of 4.1 to read as follows:]

### 4.1 Required Sacking

* * * * *

[Revise heading of 4.2 to read as follows:]

### 4.2 Sacking and Labeling

[Revise introductory text to read as follows:]

Preparation sequence and labeling:

* * * * *

[Revise 4.2b(1) to read as follows:]

(1) Line 1: use city, state, and 5-digit ZIP Code on mail (see M031 for overseas military mail).

* * * * *

*M800 All Automation Mail*

* * * * *

*M820 Flat-Size Mail*

* * * * *

## 2.0 FIRST-CLASS MAIL—REQUIRED PACKAGE-BASED PREPARATION

[Revise heading of 2.1 to read as follows:]

### 2.1 Packaging and Labeling

[Change in 2.1a "red Label D" to "red Label 5"; change in 2.1d "tan Label MXD" to "tan Label X".]

[Revise heading of 2.2 to read as follows:]

### 2.2 Traying and Labeling

* * * * *

[Revise 2.2a(1) to read as follows:]

(1) Line 1: city, state, and 5-digit ZIP Code on mail (see M032 for overseas military mail).

* * * * *

## 4.0 PERIODICALS

[Revise heading of 4.1 to read as follows:]

### 4.1 Packaging and Labeling

[Change in 4.1b "red Label D" to "red Label 5"; change in 4.1e "tan Label MXD" to "tan Label X".]

[Revise heading of 4.2 to read as follows:]

### 4.2 Sacking and Labeling

* * * * *

[Revise 4.2b(1) to read as follows:]

(1) Line 1: city, state, and 5-digit ZIP Code on mail (see M032 for overseas military mail).

* * * * *

## 5.0 STANDARD MAIL

[Revise heading of 5.1 to read as follows:]

### 5.1 Packaging and Labeling

[Change in 5.1b(1) and 5.1b(2) "red Label D" to "red Label 5"; change in 5.1e "tan Label MXD" to "tan Label X".]

* * * * *

[Revise heading of 5.3 to read as follows:]

### 5.3 Sacking and Labeling

* * * * *

[Revise 5.3b(1) to read as follows:]

(1) Line 1: city, state, and 5-digit ZIP Code on mail (see M032 for overseas military mail).

* * * * *

## 6.0 BOUND PRINTED MATTER

[Revise heading of 6.1 to read as follows:]

### 6.1 Packaging and Labeling

[Change in 6.1b "red Label D" to "red Label 5"; change in 6.1e "tan Label MXD" to "tan Label X".]

[Revise heading of 6.2 to read as follows:]

### 6.2 Sacking and Labeling

* * * * *

[Revise 6.2b(1) to read as follows:]

(1) Line 1: city, state, and 5-digit ZIP Code on mail (see M032 for overseas military mail).

* * * * *

*M900 Advanced Preparation Options for Flats*

*M910 Co-Traying and Co-Sacking Packages of Automation and Presorted Mailings*

* * * * *

## 4.0 BOUND PRINTED MATTER

### 4.1 Basic Standards

[Change in first sentence of 4.1 "Effective September 1, 2003, packages" to "Packages".]

* * * * *

**4.4 Sack Preparation and Labeling**

* * * * *

[Revise 4.4a(1) to read as follows:]

(1) Line 1: city, state, and 5-digit ZIP Code destination (see M031 for overseas military mail).

* * * * *

*M950 Co-Packaging Automation Rate and Presorted Rate Pieces*

**1.0 FIRST-CLASS MAIL**

* * * * *

**1.2 Package Preparation**

[Change in 1.2a "red Label D" to "red Label 5"; change in 1.2d "tan Label MXD" to "tan Label X".]

* * * * *

2.0 PERIODICALS

* * * * *

**2.2 Package Preparation**

[Change in 2.2c "red Label D" to "red Label 5"; change in 2.2f "tan Label MXD" to "tan Label X".]

* * * * *

3.0 STANDARD MAIL

* * * * *

**3.2 Package Preparation**

[Change in 3.2b all instances of "red Label D" to "red Label 5"; change in 3.2e "tan Label MXD" to "tan Label X".]

* * * * *

4.0 BOUND PRINTED MATTER

* * * * *

**4.2 Package Preparation**

[Change in 4.2b "red Label D" to "red Label 5"; change in 4.2e "tan Label MXD" to "tan Label X".]

* * * * *

An appropriate amendment to 39 CFR 111 to reflect these changes will be published.

**Neva R. Watson,**

*Attorney, Legislative, Office of Legal Policy and Ratemaking.*

[FR Doc. 03–26299 Filed 10–16–03; 8:45 am]

BILLING CODE 7710–12–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[PA203–4209a; FRL–7570–7]**

## Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO$_X$ RACT Determinations for Five Individual Sources

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for five major sources of volatile organic compounds (VOC) and nitrogen oxides (NO$_X$) located in Pennsylvania. EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

**DATES:** This rule is effective on December 16, 2003, without further notice, unless EPA receives adverse written comment by November 17, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in Part IV of the **SUPPLEMENTARY INFORMATION** section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto at (215) 814–2182, or via e-mail at *quinto.rose@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Pursuant to sections 182(b)(2) and 182(f) of the CAA, the Commonwealth of Pennsylvania (the Commonwealth or Pennsylvania) is required to establish and implement RACT for all major VOC and NO$_X$ sources. The major source size is determined by its location, the classification of that area, and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT, as specified in sections 182(b)(2) and 182(f) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

### II. Summary of the SIP Revision

On February 4, 2003, PADEP submitted formal revisions to its SIP to establish and impose case-by-case RACT for several major sources of VOC and NO$_X$. This rulemaking pertains to five of those sources. The other sources are subject to separate rulemaking actions. The RACT determinations and requirements in this SIP revision are included in operating permits (OP) issued by PADEP.

The following table identifies the individual operating permit that EPA is approving for each source located in Pennsylvania.

VOC AND NO$_X$ RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

| Source | County | Op No. | Source type | Major source pollutant |
|---|---|---|---|---|
| Keystone Carbon Company | Elk | OP 24–016 | Powder Metal Parts Manufacturing | VOC |
| Mack Trucks, Inc. | Northampton | 39–0004 | Heavy Duty Trucks Assembly | VOC & NO$_X$ |
| Owens-Brockway Glass Container, Inc. | Jefferson | OP 33–033 | Glass Melting | NO$_X$ |
| Resilite Sports Products, Inc. | Northumberland | OP–49–0003 | Wrestling Mat Manufacturing Operations. | VOC |
| Westfield Tanning Company | Tioga | OP–59–0008 | Leather Manufacturing | VOC |

*A. Keystone Carbon Company*

Keystone Carbon Company operates a powder metal parts and self-lube bearings manufacturing facility located in Elk County, Pennsylvania and is considered a major source of VOC. In this instance, RACT has been established and imposed by PADEP in an operating permit. On February 4, 2003, PADEP submitted operating permit No. OP 24–016 to EPA as a SIP revision. The permit lists the following sources and their respective control devices: (1) Powder blending process—methanol condensation system, (2) sintering ovens—pilot light (flare), (3) primary processing (hot forming)—0.08 pounds methanol/pound hot formed product, (4) heat treating (three tempering furnaces)—thermal oxidizers, (5) heat treating (two draw furnaces)—electrostatic precipitator, (6) heat treating (two induction hardening machines)—electrostatic precipitator, and (7) miscellaneous plant heating units. The permit contains a requirement for the facility to implement the RACT plan as defined in 25 Pa. Code Chapter 129 section 129.91. The permit also contains a requirement to maintain and operate facility degreasers (sealing and parts cleaning) in accordance with 25 Pa. Code Chapter 129 section 129.63. In addition, the permit contains the primary processing methanol (MeOH) emission limit of 0.08 pounds per pound of hot formed part produced. Records shall be maintained for the methanol usage and hot formed parts produced. Records shall also be maintained in accordance with 25 Pa. Code Chapter 129 section 129.95 and shall be made available to PADEP upon request.

*B. Mack Trucks, Inc.*

Mack Trucks, Inc., Macungie Assembly facility is located in Lower Macungie Township, Northampton County, Pennsylvania. Heavy duty trucks are assembled at the facility and it is considered a major source of VOC and $NO_X$. In this instance, RACT has been established and imposed by PADEP in an operating permit. On February 4, 2003, PADEP submitted operating permit No. 39–0004 to EPA as a SIP revision. This permit requires Mack Trucks, Inc. and any associated air cleaning devices to be operated and maintained in a manner consistent with good operating and maintenance practices. The permit lists the following sources that are regulated under the Commonwealth's presumptive RACT requirements: (a) Four (4) 6-cylinder engines, two (2) Cummin series NT–85–5–f2, one (1) Caterpillar series 3304 and one (1) Detroit series 92 engine which are limited to an annual capacity factor of less than five percent, or (b) an emergency standby engine operating less than 500 hours in a consecutive 12-month period. These sources shall be operated and maintained in accordance with good air pollution control practices. The permit contains a $NO_X$ RACT emission limit of 441 gallons fuel oil/hour/boiler for the three (3) 67.1 MMBTU/hour cleaner Brooks boilers. The permit also contains a VOC RACT emission limit for clean-up solvent usage, 91.0 tons per year, for the entire facility. All cleaning operations are required to store new and used cleaning solvents in closed containers. A record of the quantity and identity of all VOC solvents used in clean-up operations for the entire facility are required to be recorded on an annual basis. These records shall be submitted to PADEP, in an approved format, within 90 days after the end of the year.

The VOC RACT for the facility is regulated by source and listed below:

1. Small Parts/Oven (39–318–088)

(a) The operation of this source is limited to 12,500 trucks per year.

(b) The maximum VOC emissions limit from this source is 175.0 pounds per day and 21.9 tons per year based on coating usage.

(c) The maximum coating usage for this source is 50 gallons per day and 12,500 gallons per year.

(d) The limit for all coatings used in this source shall not exceed an in-line average of 3.5 pounds per gallon minus water for any 24-hour period.

(e) The facility is required to keep on hand chemical composition data for all coatings used by this source, and to record on a daily basis all coatings and any VOC solvent or thinner usage. These data are to be submitted to PADEP in an approved format on a quarterly basis within 30 days after the end of the quarter.

2. Cab Color Spray Paint Booth/Undercoat and Oven (39–318–090)

(a) The operation of this source is limited to 12,500 trucks per year.

(b) The maximum VOC emissions limit from the cab operation is 612.5 pounds per day and 76.6 tons per year based on coating usage.

(c) The maximum coating usage for the cab color operation is 175 gallons per day and 43,750 gallons per year.

(d) The limit for all coatings used in this source shall not exceed an in-line average of 3.5 pounds per gallon minus water for any 24-hour period.

(e) The facility is required to keep on hand chemical composition data for all coatings used by the cab coating operation, and to record on a daily basis all coatings and any VOC solvent or thinner usage. These data are to be submitted to PADEP in an approved format on a quarterly basis within 30 days after the end of the quarter.

(f) The facility is required to record the quantity and identify all VOC solvents used for clean up purposes for the entire plant facility on an annual basis and submitted to PADEP in an approved format within 90 days after the end of the year.

(g) The maximum VOC emissions limit from the undercoat operation is 153.5 pounds per day and 19.2 tons per year based on coating usage.

(h) The maximum coating usage for the undercoat operation is 50 gallons per day and 12,500 gallons per year.

(i) The limit for all coatings for the undercoating operation is 3.07 pounds VOC per gallon.

(j) The facility is required to keep on hand chemical composition data for all coatings used by the undercoat operation, and to record on a daily basis all coatings and any VOC solvent or thinner usage. These data are to be submitted to PADEP in an approved format on a quarterly basis within 30 days after the end of the quarter.

3. Final Touch-Up Paint Spray Booth and Oven (39–318–091)

(a) The operation of this source is limited to 50 trucks per day, 250 trucks per week and 12,500 trucks per year.

(b) The maximum VOC emissions limit from this source is 87.5 pounds per day and 10.9 tons per year based on coating usage.

(c) The maximum coating usage from this source is 25 gallons per day and 6,250 gallons per year.

(d) The limit for all coatings used in this source shall not exceed an in-line average of 3.5 pounds per gallon minus water for any 24-hour period.

(e) The facility is required to keep on hand chemical composition data for all coatings used by this source, and to record on a daily basis all coatings and any VOC solvent or thinner usage. These data are to be submitted to PADEP in an approved format on a quarterly basis within 30 days after the end of the quarter.

4. "O" Line Chassis Paint Spray Booth (39–318–092)

(a) The operation of this source is limited to 50 trucks per day, 250 trucks per week and 12,500 trucks per year.

(b) The maximum VOC emissions limit from this source is 87.5 pounds per day and 10.9 tons per year based on coating usage.

(c) The maximum coating usage for this source is 25 gallons per day and 6,250 gallons per year.

(d) The limit for all coatings used in an in-line average for this source is 3.5 pounds per gallon minus water for any 24-hour period.

(e) The facility is required to keep on hand chemical composition data for all coatings used by this source, and to record on a daily basis all coatings and any VOC solvent or thinner usage. These data are to be submitted to PADEP in an approved format on a quarterly basis within 30 days after the end of the quarter.

5. "G" Line Chassis Paint Spray Booth and Oven With "H" Chassis (39–318–093 and 39–318–095)

(a) The "G" and "H" line chassis paint booths and ovens are limited to a total of 12,500 trucks per year, this limit maybe distributed between either chassis line.

(b) The maximum VOC emissions limit from this source and the "H" line chassis paint spray booths and ovens are 1,455.5 pounds per day and 180.5 tons per year based on coating usage. These limits can be distributed between either chassis line.

(c) The maximum coating usage for these sources, are 413 gallons per day and 103,125 gallons per year. These limits can be distributed between either chassis line.

(d) The limit coatings used in these sources shall not exceed 3.5 pounds per gallon minus water for any 24-hour period.

(e) The facility is required to keep on hand chemical composition data for all coatings used by these sources, and to record on a daily basis all coatings and any VOC solvent or thinner usage. These data are to be submitted to PADEP, in an approved format, on a quarterly basis within 30 days after the end of the quarter.

6. Multi-Tone Paint Spray Booth and Oven (39–318–094)

(a) The operation of this source is limited to12,500 trucks per year.

(b) The maximum VOC emissions limit from this source is 133 pounds per day and 16.4 tons per year based on coating usage.

(c) The maximum coating usage from this source shall not exceed 38 gallons per day and 9.375 gallons per year.

(d) The limit coatings used in this source shall not exceed an in-line average of 3.5 pounds per gallon minus water for any 24-hour period.

(e) The facility is required to keep on hand chemical composition data for all coatings used by this source, and to record on a daily basis all coatings and any VOC solvent or thinner usage. These data are to be submitted to PADEP, in an approved format, on a quarterly basis within 30 days after the end of the quarter.

The facility shall maintain a file containing all records and other data that are required to be collected, pursuant to 25 Pa. Code Chapter 129 section 129.95, these records provide sufficient data and calculations to clearly demonstrate the requirements of 25 Pa. Code Chapter 129 sections 129.91–4 are met. The file shall include, but not be limited to: (1) Quality of fuel used on a daily basis, (2) total facility VOC emission calculated on a monthly basis (12-month rolling sum), and (3) all air pollution control systems performance evaluations and records of calibration checks, adjustments and maintenance performed on all equipment which is subject to the operating permit. All measurements, records and other data required to be maintained by the facility shall be retained for at least two years following the date on which such measurements, records or data are recorded. If requested by PADEP, the facility shall perform a stack test in accordance with the provisions of 25 Pa. Code Chapter 139 within the time specified by PADEP.

*C. Owens-Brockway Glass Container, Inc.*

Owens-Brockway Glass Container, Inc. is a facility located in Jefferson County, Pennsylvania that processes glass containers and is considered a major source of $NO_X$. In this instance, RACT has been established and imposed by PADEP in an operating permit. On February 4, 2003, PADEP submitted operating permit No. OP 33–033 to EPA as a SIP revision. The permit contains $NO_X$ emission limits for "A" and "B" glass melting furnaces of 5.5 pounds per ton per furnace of glass melted in the furnace. "A" and "B" glass melting furnaces shall be stack tested for $NO_X$ emissions on an annual schedule (once per calendar year), commencing no later than May 31, 1995. Stack testing shall be performed in accordance with 25 Pa. Code Chapter 139 for $NO_X$ emissions from stationary sources. If, after three consecutive annual tests, emission data consistently shows compliance with established RACT emission limits, the testing frequency may be altered as determined by PADEP. At least 30 days prior to stack testing, a pretest protocol shall be submitted to PADEP. The protocol shall include sampling port locations, specification of test methods, procedures and equipment, and additional applicable information regarding planned test protocol. In addition, at least two weeks prior to testing, PADEP shall be informed of the date and time of testing. Within 60 days after the testing, two copies of the complete test reports, including operational parameters, shall be submitted to PADEP for approval.

*D. Resilite Sports Products, Inc.*

Resilite Sports Products, Inc. (Resilite) operates a spray coating system for the production of wrestling mats. The facility in Northumberland County, Pennsylvania is considered a major source of VOC. In this instance, RACT has been established and imposed by PADEP in an operating permit. On February 4, 2003, PADEP submitted operating permit No. OP–49–0003 to EPA as a SIP revision. This permit requires Resilite and any associated air cleaning devices to be operated and maintained in a manner consistent with good operating and maintenance practices. The permit incorporates RACT determinations as required by the provisions of Title I of the CAA and 25 Pa. Code Chapter 129 sections 129.91 through 129.95 for the following wrestling mat manufacturing operations: (a) Adhesive application operations—one (1) spray booth and one (1) spray station, (b) mat finish and cure operations—four (4) spray bays, (c) mat reconditioning operations, (d) spray equipment cleanup operations, (e) air stripper—remediation of contaminated groundwater, and (f) one (1) 16,800,000 BTU per hour No. 2 fuel oil-fired Continental boiler.

The permit contains a combined VOC emissions limit for all operations existing at this facility, other than the air stripper and the boiler, of a total of 1,575 tons for the period beginning upon the date of issuance of this permit and ending three years from said date; a total of 725 tons during any consecutive 12-month period occurring within the previously referenced three year period, and a total of 425 tons during any consecutive 12-month period occurring after the conclusion of the previously referenced three year period. The permit also contains the following VOC limits: (a) 5.98 pounds per gallon of adhesive (minus water), as applied; (b) 6.83 pounds per gallon of organic solvent-based mat coating material (minus water), as applied; and (c) 1.0 pound per gallon of water-based mat coating material (minus water) as applied. In addition, no equipment shall be cleaned with VOC-containing solvents or cleaning materials other than spray guns and spray gun components.

The cleaning of all spray guns and spray gun components shall consist of soaking these items in closed containers of cleaning solvents. Under no circumstance shall VOC containing solvents be sprayed into the atmosphere. All containers of VOC containing adhesives, mat coating materials, and cleaning solvents shall be kept closed except when transferring material into or out of the containers.

The permit contains potential to emit VOC limits of three (3) pounds per hour, 15 pounds per day or 2.7 tons per year, for the air stripper, and the Continental boiler. A detailed RACT analysis which meets the criteria specified in 25 Pa. Code Chapter 129 section 129.92, must be submitted to PADEP for each source if any of these limits are exceeded. In addition, the Continental boiler is to be fired on gas (natural or LP) or No. 2 fuel oil, to which there had been no reclaimed, waste oil or other waste material added. The facility shall, upon request by PADEP, provide fuel analyses, or fuel samples, of the fuel used in the boiler.

Resilite is required to maintain copies of manufacturer's formulation or composition data sheets for all adhesives, mat coating materials, cleaning solvents, and other VOC-containing materials used within the previous two years and shall make this if available to PADEP. These data sheets are to contain all of the information needed to determine compliance with the VOC emission limits. Resilite is also required to maintain a mat reconditioning/cleanup solvent log in which the following data are recorded: (a) Identification, quantities and dates of use of all VOC-containing solvents used for mat reconditioning; (b) identification, quantities and dates of all VOC-containing solvents used for cleanup of spray guns and spray gun components; (c) identification, quantities and dates of all VOC-containing solvents used for cleanup purposes other than mat reconditioning and spray gun cleanup; and (d) quantities and dates of shipment for all spent mat reconditioning solvent and cleanup solvent shipped offsite for disposal or recycle. This information is to be retained for at least two years and made available to PADEP upon request.

Resilite shall implement the "Employee Training Program" and "Leak Detection and Maintenance Program" for all new and existing Resilite employees involved in adhesive application, mat coating material application, mat reconditioning and spray equipment cleanup activities. This training will also address the requirements of this permit as well as the requirements of any applicable state and federal regulations.

The permit contains recordkeeping requirements pursuant to 25 Pa. Code Chapter 129 section 129.95. Resilite shall keep accurate, comprehensive records sufficient to demonstrate compliance with the RACT requirements specified in this permit and shall, at a minimum, include the following: (a) Identity and amount of each adhesive used per month as well as identify and amount of any thinner added to the adhesive, (b) the mix ratio (gallons of thinner per gallon of adhesive) for each batch of adhesive used to which the thinner was added, (c) identity and amount of mat coating material used per month as well as the identity and amount of any thinner added to the mat coating material, (d) the mix ratio (gallons of thinner per gallon of coating material) for each batch of coating material used to which the thinner was added, and (e) gallons of groundwater processed through the air stripper per year as well as the VOC concentration in the influent to the air stripper, that is determined at least once per calendar quarter.

### *E. Westfield Tanning Company*

Westfield Tanning Company is a leather manufacturing facility located in Tioga County, Pennsylvania and is considered a major source of VOC. In this instance, RACT has been established and imposed by PADEP in an operating permit. On February 4, 2003, PADEP submitted operating permit No. OP–59–0008 to EPA as a SIP revision. This permit requires Westfield Tanning Company and any associated air cleaning devices to be operated and maintained in a manner consistent with good operating and maintenance practices. The permit incorporates RACT determinations as required by the provisions of Title I of the CAA and 25 Pa. Code Chapter 129 sections 129.91 through 129.95 for the following sources: (1) Leather tanning operation consisting of the following: (a) tanning solutions prep room, (b) tanning solutions storage tank, and (c) tanning vats; (2) leather waterproofing operations consisting of the following: (a) four 165 gallon custom designed leather dip tanks (Tanks 1–4), (b) one 135 gallon custom designed leather dip tank (Tank 5), (c) one 475 gallon custom designed leather dip tank (Tank 6), and (d) one leather drying room; (3) two 750 horsepower natural gas/No. 2 fuel oil fired Johnson boilers; (4) three Safety Kleen degreasing sinks; (5) a gasoline storage consisting of a 250 gallon capacity horizontal gasoline storage vessel; (6) kerosene cleaning of the leather splitting blades; and (7) sponge solution fungicide leather treatment.

The permit contains a maximum VOC emission limit from the leather tanning operation of 11.4 tons in any 12 consecutive month period. The facility shall provide training to all employees involved in handling of VOC-containing materials associated with the leather tanning operation. The training shall, at a minimum, address the topics of VOC emission minimization techniques and good housekeeeping practices. The facility is required to maintain comprehensive, accurate records for the leather tanning operation in accordance with 25 Pa. Code Chapter 129 section 129.95 which, at a minimum, shall include monthly usage records for all VOC-containing materials associated with the tanning operation. These records shall be retained for a minimum of two years and made available to PADEP upon request.

The leather waterproofing operation requirements in the permit are pursuant to the RACT provisions of 25 Pa. Code Chapter 129 sections 129.91 through 129.95, and the Best Available Control Technology provisions of 25 Pa. Code Chapter 127 sections 127.1 and 127.12. The permit contains a maximum VOC emissions limit from the leather waterproofing operation of 55 tons in any 12 consecutive month period. All materials added to each waterproofing dip tank shall contain, in aggregate, no more than 5.5 pounds of VOC per gallon. Compliance is determined based on a quarterly average VOC content to be calculated based on all material additions to each tank in a given calendar quarter. All dip tanks shall be kept closed when not in actual use. The facility shall provide training to all employees involved in the waterproofing operation. The training shall, at a minimum, address the topics of VOC emission minimization techniques and good housekeeping practices. In addition, the wetting of cleaning rags associated with the waterproofing operation shall be done using a closed top cleanup solvent plunger cans and no waste cleanup solvents, either in bulk or remaining in used remaining in used cleanup rags, shall be disposed of through evaporation.

The facility shall maintain comprehensive, accurate records for the leather waterproofing tanning operation in accordance with 25 Pa. Code Chapter 129 section 129.95 and the Best Available Technology provisions of 25 Pa. Code Chapter 127 sections 127.1 and 127.12 which, at a minimum, shall include the following with respect to each waterproofing dip tank incorporated in the waterproofing operation to which diluents (thinners, reducers, etc.) and/or any other VOC-containing material, other than dipping compounds are added: (1) The types and amount of dipping compounds added to each dip tank and the dates of addition, and (2) the types and amounts of any diluents and/or any other VOC-containing materials added to each dip tank and the dates of addition. For each waterproofing dip tank incorporated in the waterproofing operation to which a dipping compound is added, the facility shall maintain records of the type and amounts of dipping compound added to the tank. In addition, the facility shall also maintain separate records of all cleanup solvents used in the waterproofing operation. The records generated for each calendar quarter shall be submitted to PADEP by no later than the thirtieth day of the month following the respective calendar quarter.

The permit contains a potential to emit VOC emission limits of 3 pounds per hour, 15 pounds per day, or 2.7 tons per year for the following sources: (1) Two (2) Johnson boilers, (2) three (3) Safety Kleen degreasing sinks, (3) a 250 gallon capacity horizontal gasoline storage vessel, (4) kerosene cleaning of the leather splitting blades, and (5) sponge solution fungicide leather treatment. The two Johnson boilers are to be fired only on gas (natural or LP) or No. 2 fuel oil to which no reclaimed or waste oil or other waste materials have been added. The facility shall provide fuel analyses or fuel samples of the fuel used by the two boilers upon request by PADEP.

The facility shall also maintain comprehensive, accurate records for the following sources in accordance with 25 Pa. Code Chapter 129 section 129.95 which, at a minimum, shall include the following: (1) The amounts of natural gas and No. 2 fuel oil used, per calendar year, in each of the boilers, (2) the amount of degreasing solvent used and the amount of spent degreasing solvent shipped offsite, as liquid hazardous waste, per calendar year, for the degreasing sinks, (3) the amount of gasoline stored, per calendar year, in the gasoline storage tank, (4) the amount of kerosene used, per calendar year, for cleaning the leather splitting blades, and (5) the amount of sponge solution fungicide used, per calendar year, in the leather treatment operation. The facility shall retain these records onsite for at least two years and made available to PADEP upon request.

### III. EPA's Evaluation of the SIP Revisions

EPA is approving these SIP submittals because the Commonwealth established and imposed requirements in accordance with the criteria set forth in SIP-approved regulations for imposing RACT or for limiting a source's potential to emit. The Commonwealth has also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with these requirements.

### IV. Final Action

EPA is approving revisions to the Commonwealth of Pennsylvania's SIP which establish and require RACT for the five major sources of VOC and $NO_X$ listed in this document. EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This direct final rule will be effective on December 16, 2003, without further notice unless we receive adverse comment by November 17, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number PA203–4209 in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *morris.makeba@epa.gov*, attention: PA203–4209. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

ii. *Regulations.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov*, then select "Environmental Protection Agency" at the top of the page and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

*Submittal of CBI Comments*

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

*Considerations When Preparing Comments to EPA*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

## V. Statutory and Executive Order Reviews

### *A. General Requirements*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### *B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for five named sources.

### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 16, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the Pennsylvania's source-specific RACT requirements to control VOC and $NO_X$ from five individual sources may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 29, 2003.

**James W. Newsom,**

*Acting Regional Administrator, Region III.*

■ 40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart NN—Pennsylvania

■ 2. Section 52.2020 is amended by adding paragraph (c)(207) to read as follows:

### § 52.2020 Identification of plan.

* * * * *

(c) * * *

(207) Revisions pertaining to VOC and $NO_X$ RACT for major sources submitted on February 4, 2003.

(i) Incorporation by reference.

(A) Letter submitted on February 4, 2003 by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or $NO_X$ RACT determinations, in the form of plan approvals or operating permits.

(B) The following Operating Permits (OP):

(*1*) Keystone Carbon Company, Elk County, OP 24–016, effective May 15, 1995.

(*2*) Mack Trucks, Inc., Northampton County, 39–0004, effective May 31, 1995.

(*3*) Owens-Brockway Glass Container, Inc., Jefferson County, OP 33–033, effective March 27, 1995.

(*4*) Resilite Sports Products, Inc., Northumberland County, OP–49–0003, effective December 3, 1996.

(*5*) Westfield Tanning Company, Tioga County, OP–59–0008, effective November 27, 1996.

(ii) Additional Material.

(A) Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the sources listed in paragraph (c)(207)(i) of this section.

(B) [Reserved]

[FR Doc. 03–26191 Filed 10–16–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 0

### [DA 03–2899]

## Commission Organization

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document revises part 0 of the Commission's rules to update the geographical coordinate locations of the Commission's protected field installations where radio spectrum monitoring operations are conducted to add the Commission's new Kenai, Alaska monitoring facility.

**DATES:** Effective October 17, 2003.

**FOR FURTHER INFORMATION CONTACT:** Kathy Berthot, Enforcement Bureau, Spectrum Enforcement Division, (202) 418–1160.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Order of the Commission's Managing Director, DA 03–2899, adopted on September 23, 2003, and released on September 24, 2003. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text may be retrieved from the FCC's Web site at *www.fcc.gov.* The text may also be purchased from the Commission's duplicating contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone: (202) 863–2893.

The Order amends § 0.121(b) of the rules to update the geographical coordinate locations of the Commission's protected field installations where radio spectrum monitoring operations are conducted. Specifically, the Order adds the geographical coordinates of the Commission's new Kenai, Alaska monitoring facility to the list of protected field installations set forth in § 0.121(b) of the rules. These locations are protected from harmful radio frequency interference to the Commission's monitoring activities that could be produced by the proximity of any nearby radio transmitting facilities.

**Ordering Clauses**

Accordingly, pursuant to the authority contained in sections 4(i) and (5) of the Communications Act of 1934, as amended, and § 0.231(b) of the rules, part 0 of the rules is amended as set forth in the rule changes.

As the rule amendment adopted in the Order pertains to agency organization, procedure and practice, the notice and comment provision of the Administrative Procedure Act contained in 5 U.S.C. 553(b) is inapplicable.

The rule amendment set forth in the rule changes will become effective October 17, 2003.

**List of Subjects in 47 CFR Part 0**

Organization and functions (Government agencies).

Federal Communications Commission.

**Andrew S. Fishel,**

*Managing Director.*

**Rule Changes**

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 0 as follows:

## PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for Part 0 continues to read as follows:

**Authority:** Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

### § 0.121 [Amended]

■ 2. Section 0.121 is amended by revising paragraph (b) to read as follows:

* * * * *

(b) Protected field offices are located at the following geographical coordinates (coordinates are referenced to North American Datum 1983 (NAD83)):

Allegan, Michigan, 42°36′20.1″ N. Latitude, 85°57′20.1″ W. Longitude
Anchorage, Alaska, 61°09′41.0″ N. Latitude, 150°00′03.0″ W. Longitude
Belfast, Maine, 44°26′42.3″ N. Latitude, 69°04′56.1″ W. Longitude
Canandaigua, New York, 42°54′48.2″ N. Latitude, 77°15′57.9″ W. Longitude
Douglas, Arizona, 31°30′02.3″ N. Latitude, 109°39′14.3″ W. Longitude
Ferndale, Washington, 48°57′20.4″ N. Latitude, 122°33′17.6″ W. Longitude
Grand Island, Nebraska, 40°55′21.0″ N. Latitude, 98°25′43.2″ W. Longitude
Kenai, Alaska, 60°43′26.0″ N. Latitude, 151°20′15.0″ W. Longitude
Kingsville, Texas, 27°26′30.1″ N. Latitude, 97°53′01.0″ W. Longitude
Laurel, Maryland, 39°09′54.4″ N. Latitude, 76°49′15.9″ W. Longitude

Livermore, California, 37°43′29.7″ N. Latitude, 121°45′15.8″ W. Longitude
Powder Springs, Georgia, 33°51′44.4″ N. Latitude, 84°43′25.8″ W. Longitude
Santa Isabel, Puerto Rico, 18°00′18.9″ N. Latitude, 66°22′30.6″ W. Longitude
Vero Beach, Florida, 27°36′22.1″ N. Latitude, 80°38′05.2″ W. Longitude
Waipahu, Hawai, 21°22′33.6″ N. Latitude, 157°59′44.1″ W. Longitude

[FR Doc. 03–26319 Filed 10–16–03; 8:45 am]

**BILLING CODE 6712–01–U**

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 03–2980; MM Docket No. 02–76; RM–10405, RM–10499*]**

### Radio Broadcasting Services; Belle Haven, VA; Crisfield, MD; Exmore, Nassawadox, and Poquoson, VA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In response to a *Notice of Proposed Rule Making,* 67 FR 20485 (April 25, 2002), this *Report and Order* allots Channel 250B1 to Belle Haven, Virginia, reallots Channel 241B from Cape Charles to Exmore, Virginia; substitutes Channel 290A for 252A at Nassawadox, Virginia, and substitutes Channel 291A for Channel 291B at Exmore, Virginia, and reallots Channel 291A to Poquoson, Virginia. It also provides Belle Haven and Poquoson, Virginia, with their first local aural transmission services. This document dismisses the petition for rule making filed by Bay Broadcasting, Inc. the licensee of Station WBEY(FM), Crisfield, Maryland, to substitute Channel 250A for Channel 245A at Crisfield, Maryland. The coordinates for Channel 250B1 at Belle Haven are 37–32–49 NL and 75–49–48 WL, with a site restriction of 1.1 kilometers (0.7 miles) southwest of Belle Haven. The coordinates for Channel 290A at Nassawadox are 37–33–43 NL and 75–44–24 WL, with a site restriction of 14.3 kilometers (8.9 miles) northeast of Nassawadox. The coordinates for Channel 291A at Poquoson are 37–12–30 NL and 76–25–07 WL, with a site restriction of 8 kilometers (4.9 miles) north of Poquoson. The coordinates for Channel 241B at Exmore are 37–18–02 NL and 75–59–05 WL.

**DATES:** Effective November 13, 2003.

**FOR FURTHER INFORMATION CONTACT:** R. Barthen Gorman, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 02–76, adopted September 25, 2003, and released September 29, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 reads as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

### § 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by adding Belle Haven, Channel 250B1; by removing Cape Charles, Channel 241B; by removing Channel 291B and by adding Channel 241B at Exmore; by adding Nassawadox, Channel 290A; [1] and by adding Poquoson, Channel 291A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 03–26318 Filed 10–16–03; 8:45 am]

**BILLING CODE 6712–01–P**

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[1] Nassawadox and Channel 252A are not listed in the FM Table of Allotments under Virginia. Channel 252A was allotted to Nassawadox in MM Docket No. 97–189. *See* 63 FR 45012, August 24, 1998.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 021212307–3037–02; I.D. 100703C]**

### Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Reallocation.

**SUMMARY:** NMFS is reallocating the projected unused amount of Pacific cod from vessels using trawl, jig, and pot gear to vessels using hook-and-line in the BSAI. These actions are necessary to allow the 2003 total allowable catch (TAC) of Pacific cod to be harvested.

**DATES:** Effective October 14, 2003, until 2400 hours, A.l.t., December 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Andrew N Smoker, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 BSAI Pacific cod TAC was established by the final 2003 harvest specifications for groundfish in the BSAI (68 FR 9907, March 3, 2003) as 191,938 metric tons (mt). Pursuant to § 679.20(a)(7)(i)(A), 3,893 mt was allocated to vessels using jig gear, 97,388 mt to vessels using hook-and-line or pot gear directed fishing allowance, and 90,211 mt to vessels using trawl gear. The share of the Pacific cod TAC allocated to trawl gear was further allocated 50 percent to catcher vessels and 50 percent to catcher/processor vessels (§ 679.20(a)(7)(i)(B)). The share of the Pacific cod TAC allocated to hook-and-line or pot gear was further allocated 80 percent to catcher/processor vessels using hook-and-line gear; 0.3 percent to catcher vessels using hook-and-line gear; 18.3 percent to vessels using pot gear; and 1.4 percent to catcher vessels less than

60 ft LOA that use either hook-and-line or pot gear (§ 679.20(a)(7)(i)).

As of September 27, 2003, the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that trawl catcher/processors will not be able to harvest 11,000 mt and trawl catcher vessels will not be able to harvest 6,000 mt of Pacific cod allocated to those vessels under 679.20(a)(7)(i)(B). Therefore, in accordance with § 679.20(a)(7)(ii), NMFS apportions 17,000 mt of Pacific cod from trawl gear to vessels using hook-and-line gear.

The Regional Administrator has determined that vessels using jig gear will not harvest 3,600 mt of their Pacific cod allocation by the end of the year. Therefore, in accordance with § 679.20(a)(7)(ii), NMFS is reallocating the unused amount of 3,600 mt of Pacific cod allocated to vessels using jig gear to vessels using hook-and-line gear.

The Regional Administrator has determined that vessels using pot gear will not be able to harvest 500 mt of their Pacific cod allocation by the end of the year. Therefore, in accordance with § 679.20(a)(7)(ii), NMFS is reallocating the unused amount of 500 mt of Pacific cod allocated to vessels using pot gear to vessels using hook-and-line gear.

In accordance with § 679.20(a)(7)(ii)(C)(1), 200 mt of the combined reallocation of unused Pacific cod from trawl, jig and pot gear is apportioned to catcher vessels using hook-and-line gear.

The harvest specifications for Pacific cod included in the harvest specifications for groundfish in the BSAI (68 FR 9907, March 3, 2003) are revised as follows: 293 mt to vessels using jig gear, 98,811 mt to catcher processor vessels using hook-and-line gear, 492 mt to catcher vessels using hook-and-line gear, 17,322 mt to vessels using pot gear, 34,105 mt to trawl catcher/processors, and 39,105 mt to trawl catcher vessels.

## Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent the Agency from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of the Pacific cod TAC, thus preventing full utilization of the TAC and reducing the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is taken under 50 CFR 679.20 and is exempt from OMB review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: October 10, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–26294 Filed 10–14–03; 2:35 pm]

BILLING CODE 3510–22–S

# Proposed Rules

**Federal Register**
Vol. 68, No. 201
Friday, October 17, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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## DEPARTMENT OF COMMERCE

### Bureau of Economic Analysis

### 15 CFR Part 801

**[Docket No. 030929241–3241–01]**

**RIN 0691–AA55**

## International Services Surveys: BE–9, Quarterly Survey of Foreign Airline Operators' Revenues and Expenses in the United States

**AGENCY:** Bureau of Economic Analysis, Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document sets forth proposed rules to amend regulations to institute a new survey, BE–9, Quarterly Survey of Foreign Airline Operators' Revenues and Expenses in the United States, to be conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce.

The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The proposed survey is mandatory and will be conducted quarterly under the International Investment and Trade in Services Survey Act. The first BE–9 quarterly survey conducted if these proposed rules are adopted cover transactions in the first quarter of 2004. BEA would send the survey to potential respondents in January of 2004; responses would be due 50 days after the end of the calendar quarter. Data from the proposed BE–9 survey are needed for the compilation of the U.S. balance of payments accounts. The information collected in this survey will be used in developing the "transportation" portion of the U.S. balance of payments accounts. The balance of payments accounts, which are published quarterly in the Survey of Current Business, are one of the major statistical products of BEA. They are used extensively by both government and private organizations. Without the information collected in this survey, quarterly data needed for estimating an integral component of the transportation account would be unavailable. The data are utilized by private organizations and numerous government agencies for analyzing economic trends. The data collected are also used for compiling the U.S. national income and product accounts, and for reporting to international organizations such as the International Monetary Fund.

Foreign air carriers with total annual covered revenues or total annual covered expenses incurred in the U.S. of $5 million or more would be required to respond to the survey if this rule is adopted.

**DATES:** Comments on these proposed rules will receive consideration if submitted in writing on or before December 16, 2003.

**ADDRESSES:** Mail comments to the Office of the Chief, Balance of Payments Division (BE–58), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230, or hand deliver comments to room M–100, 1441 L Street, NW., Washington, DC 20005. Comments will be available for public inspection in room 8013, 1441 L Street, NW., between 8 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Edward Dozier, Balance of Payments Division (BE–58), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; via the Internet at edward.dozier@bea.gov; or via telephone at 202–606–9559.

**SUPPLEMENTARY INFORMATION:** These proposed rules amend 15 CFR part 801.9 to set forth the reporting requirements for the BE–9, Quarterly Survey of Foreign Airline Operators' Revenues and Expenses in the United States. The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act, 22 U.S.C. 3101–3108 (hereinafter "the Act"). Section 4(a) of the Act (22 U.S.C. 3103(a)) provides that "The President shall, to the extent he deems necessary and feasible— * * * (1) conduct a regular data collection program to secure current information * * * related to international investment and trade in services * * * ; and (5) publish for the use of the general public and United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection * * * " In section 3 of Executive Order 11961, the President delegated authority granted under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated it to BEA.

The major purpose of the survey is for the compilation of the U.S. balance of payments accounts. The information collected in this survey is used in developing the "transportation" portion of the U.S. balance of payments accounts. The balance of payments accounts, which are published quarterly in the Survey of Current Business, are one of the major statistical products of BEA. They are used extensively by both Government and private organizations. Without the information collected in this survey, quarterly data needed for estimating an integral component of the transportation account would be unavailable. The data are utilized by private organizations and numerous government agencies for analyzing economic trends. The data collected are also used for compiling the U.S. national income and product accounts, and for reporting to international organizations such as the International Monetary Fund.

As proposed, BEA will conduct the BE–9 survey on a quarterly basis beginning with the first quarter of 2004. The survey requests information from foreign air carriers operating in the United States. Information is collected on a quarterly basis from foreign air carriers with total annual covered revenues or total annual covered expenses incurred in the United States of $5 million or more. Foreign air carriers with total annual covered revenues and expenses below $5 million are exempt from reporting.

The exemption criterion is based on the annual revenues or expenses covered by the survey for both the current and previous year. Thus, if a foreign airline operator had revenues or expenses covered by the survey of $5 million or more during the previous year or if the company expects its revenues or expenses will be $5 million or more during the current year, then it must complete the survey for each of the four quarters of the current year.

The proposed quarterly survey will cover the transactions currently covered on the BE–36, Foreign Airline Operators' Revenues and Expenses in the United States, which is collected annually. If the proposed quarterly survey is approved the collection of the BE–36 will be discontinued. The first BE–9 quarterly survey conducted if these proposed rules are adopted cover transactions in the first quarter of 2004. BEA would send the survey to potential respondents in January of 2004; responses would be due 50 days after the end of the calendar quarter.

### Executive Order 12866

These proposed rules are not significant for purposes of E.O. 12866.

### Executive Order 13132

These proposed rules do not contain policies with Federalism implications as that term is defined in E.O. 13132.

### Paperwork Reduction Act

These proposed rules contain a collection of information requirement subject to the Paperwork Reduction Act (PRA) and have been submitted to the Office of Management and Budget for review under the PRA.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget Control Number. This collection of information has been submitted to OMB for approval.

The BE–9 survey, as proposed, is expected to result in the filing of reports from about 56 respondents on a quarterly basis, or about 224 responses annually. The average number of hours per response is 5.0 hours, or an annual reporting burden of 1,120 hours (224 responses multiplied by 5 hours average burden). This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The actual burden may vary from reporter to reporter, depending upon the number and variety of the respondent's transactions and the ease of assembling the data.

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Comments should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; or faxed (202–395–7245) or e-mailed (*pbugg@omb.eop.gov*) to the Office of Management and Budget, O.I.R.A. (Attention PRA Desk Officer for BEA).

### Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. The information collection excludes most small foreign air carriers from mandatory reporting because the reporting threshold for this survey is set at a level that will exempt most small foreign air carriers. The proposed BE–9 quarterly survey requests information from foreign air carriers operating in the United States with total annual covered revenues or total annual covered expenses incurred in the United States of $5 million or more. Foreign air carriers with total annual covered revenues and expenses below $5 million are exempt from reporting. Thus, the exemption level will exclude most small foreign air carriers from mandatory coverage.

### List of Subjects in 15 CFR Part 801

International transactions, Economic statistics, Foreign trade, Penalties, Reporting and record keeping requirements.

Dated: September 3, 2003.

**J. Steven Landefeld,**

*Director, Bureau of Economic Analysis.*

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR Part 801, as follows:

## PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

1. The authority citation for 15 CFR Part 801 continues to read as follows:

**Authority:** 5 U.S.C. 301, 15 U.S.C. 4908, 22 U.S.C. 3101–3108; E.O. 11961, 3 CFR, 1977 Comp., p. 86 as amended by E.O. 12013, 3 CFR, 1977 Comp., p. 147, E.O. 12318, 3 CFR, 1981 Comp., p. 173, and E.O. 12518 3 CFR, 1985 Comp., p. 348.

2. Section 801.9 is amended by adding new paragraph (c)(3) to read as follows:

### § 801.9 Reports required.

(c) Quarterly surveys. * * *

(3) BE–9, Quarterly Survey of Foreign Airline Operators' Revenues and Expenses in the United States:

(i) *Who must report.* A BE–9 report is required from U.S. offices, agents, or other representatives of foreign airlines that are engaged in transporting passengers or freight and express to or from the United States. If the U.S. office, agent, or other representative does not have all the information required, it must obtain the additional information from the foreign airline operator.

(ii) *Exemption.* A U.S. person otherwise required to report is exempt from reporting if total annual covered revenues and total annual covered expenses incurred in the United States were each less than $5 million during the previous year and are expected to be less than $5 million during the current year. If either total annual covered revenues or total annual covered expenses were or are expected to be $5 million or more, a report must be filed.

[FR Doc. 03–26298 Filed 10–16–03; 8:45 am]

BILLING CODE 3510–06–P

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## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## 29 CFR Part 1926

### [Docket No. S–030]

### RIN No. 1218–AC01

## Safety Standards for Cranes and Derricks

**AGENCY:** Occupational Safety and Health Administration (OSHA), U.S. Department of Labor

**ACTION:** Notice of Negotiated Rulemaking Committee meeting.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) announces the fourth meeting of the Crane and Derrick Negotiated Rulemaking Advisory Committee (C–DAC). The Committee will review summary notes of the prior meeting, review draft regulatory text and continue to address substantive issues. The meeting will be open to the public.

**DATES:** The meeting will be on November 5, 6, 7, 2003. It will begin each day at 8:30 a.m.

**ADDRESSES:** The meeting will be held at the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 and will be in conference room S–4215 A, B, C.

Written comments to the Committee may be submitted in any of three ways: by mail, by fax, or by email. Please include "Docket No. S–030" on all submissions.

By mail, submit three (3) copies to: OSHA Docket Office, Docket No. S–030, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC 20210, telephone (202) 693–2350. Note that receipt of comments submitted by mail may be delayed by several weeks.

By fax, written comments that are 10 pages or fewer may be transmitted to the OSHA Docket Office at fax number (202) 693–1648.

Electronically, comments may be submitted through OSHA's Webpage at *http://ecomments.osha.gov*. Please note that you may not attach materials such as studies or journal articles to your electronic comments. If you wish to include such materials, you must submit three copies to the OSHA Docket Office at the address listed above. When submitting such materials to the OSHA Docket Office, clearly identify your electronic comments by name, date, subject, and Docket Number, so that we can attach the materials to your electronic comments.

**FOR FURTHER INFORMATION CONTACT:** Michael Buchet, Office of Construction Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3468, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 693–2345.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. Background
II. Agenda
III. Anticipated Key Issues for Negotiation
IV. Public Participation

## I. Background

On July 16, 2002, OSHA published a notice of intent to establish a negotiated rulemaking committee, requesting comments and nominations for membership (Volume 67 of the **Federal Register**, page 46612). In subsequent notices the Department of Labor announced the establishment of the Committee (Volume 68 of the **Federal Register**, page 35172, June 12, 2003), requested comments on a list of proposed members (68 FR 9036, February 27, 2003), published a final membership list (68 FR 39877, July 3, 2003), announced the first meeting, (68 FR 39880, July 3, 2003), which was held July 30–August 1, 2003 and announced the second meeting (68 FR 48843, August 15, 2003), which was held September 3–5, 2003.

## II. Agenda

The Committee will address the locations for future meetings, review draft materials prepared by the Agency on issues discussed at prior meetings, and address additional issues.

## III. Anticipated Key Issues for Negotiation

OSHA anticipates that key issues to be addressed will include:

1. The identification/description of what constitutes "cranes and derricks" for purposes of determining the equipment that will be covered by the proposed rule.
2. Qualifications of individuals, who operate, maintain, repair, assemble, and disassemble cranes and derricks.
3. Work zone control.
4. Crane operations near electric power lines.
5. Qualifications of signal-persons and communication systems and requirements.
6. Load capacity and control procedures.
7. Wire rope criteria.
8. Crane inspection/certification records.
9. Rigging procedures.
10. Requirements for fail-safe, warning and other safety-related devices/technologies.
11. Verification criteria for the structural adequacy of crane components.
12. Stability testing requirements.
13. Blind pick procedures.
14. Fall protection.
15. Crane on barges and barge cranes.
16. Self-erecting hydraulic piling rigs.

## IV. Public Participation

All interested parties are invited to attend this public meeting at the time and place indicated above. Note, however, that a government issued photo ID card (State or Federal) is required for entry into the Department of Labor building. No advanced registration is required. The public must enter the Department of Labor for this meeting through the 3rd and C Street, NW entrance. Seating will be available to the public on a first-come, first-served basis. Individuals with disabilities wishing to attend should contact Luz DelaCruz by telephone at 202–693–2020 or by fax at 202–693–1689 to obtain appropriate accommodations no later than Wednesday, October 29, 2003. The C–DAC meeting is expected to last two and a half days.

In addition, members of the general public may request an opportunity to make oral presentations to the Committee. The Facilitator has the authority to decide to what extent oral presentations by members of the public may be permitted at the meeting. Oral presentations will be limited to statements of fact and views, and shall not include any questioning of the committee members or other participants.

Minutes of the meetings and materials prepared for the Committee will be available for public inspection at the OSHA Docket Office, Room N–2625, 200 Constitution Ave., NW., Washington, DC 20210; Telephone (202) 693–2350. Minutes will also be available on the OSHA Docket Web page: *http://dockets.osha.gov/*

The Facilitator, Susan Podziba, can be reached at Susan Podziba and Associates, 21 Orchard Road, Brookline, MA 02445; telephone (617) 738 5320, fax (617) 738–6911.

Signed at Washington, DC, this 10th day of October, 2003.

**John L. Henshaw,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 03–26300 Filed 10–16–03; 8:45 am]

BILLING CODE 4510–26–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

[CGD09–03–277]

RIN 2115–AA00

## Security Zone; Captain of the Port Milwaukee Zone, Lake Michigan

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to revise the security zone size of the Kewanuee Nuclear Power Plant on Lake Michigan. This security zone is necessary to protect the nuclear power plant from possible sabotage or other subversive acts, accidents, or possible acts of terrorism. The zone is intended to restrict vessel traffic from a portion of Lake Michigan.

**DATES:** Comments and related material must reach the Coast Guard on or before December 16, 2003.

**ADDRESSES:** You may mail comments and related material to U.S. Coast Guard Marine Safety Office (MSO) Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207. MSO Milwaukee maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at MSO Milwaukee between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** MSTC Dave McClintock, MSO Milwaukee, at 1 (414) 747–7155.

**SUPPLEMENTARY INFORMATION:**

## Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD09–03–277), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

## Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to U.S. Coast Guard Marine Safety Office Milwaukee at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

## Background and Purpose

On September 11, 2001, the United States was the target of coordinated attacks by international terrorists resulting in catastrophic loss of life, the destruction of the World Trade Center, and significant damage to the Pentagon. Current events indicate that significant threats of this type of attack still exist. National security and intelligence officials warn that future terrorists attacks are likely. The Coast Guard is responding by, amongst many other things, enacting security zones around critical infrastructure.

This regulation proposes to revise the size of the security zone for the Kewaunee Nuclear Power Plant. This security zone is necessary to protect the public, facilities, and the surrounding area from possible sabotage or other subversive acts. All persons other than those approved by the Captain of the Port Milwaukee, or his on-scene representative, are prohibited from entering or moving within the zone. The Captain of the Port Milwaukee may be contacted via VHF Channel 16 for further instructions to request permission before transiting through the restricted area. The Captain of the Port Milwaukee's on-scene representative would be the patrol commander.

## Discussion of Proposed Rule

On July 31, 2002, the Coast Guard created a permanent security zone around the Kewaunee Nuclear Power Plant (67 FR 49578, July 31, 2002). This rulemaking proposes to change the location of that security zone to the following: All navigable waters of Western Lake Michigan encompassed by a line commencing from a point on the shoreline at 44°20.715′ N, 087°32.080′ W; then easterly to 44°20.720′ N, 087°31.630′ W; then southerly to 44°20.480′ N, 087°31.630′ W; then westerly to 44°20.480′ N, 087°31.970′ W; then northerly following the shoreline back to the point of origin. These coordinates are based upon North American Datum 1983 (NAD 83).

## Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Since this security zone would not be located near commercial vessel shipping lanes, there would be no impact on commercial vessel traffic.

## Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This security zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would not obstruct the regular flow of traffic and would allow vessel traffic to pass around the security zone.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

## Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the office listed in **ADDRESSES** in this preamble.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

## Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

## Federalism

A rule has implications for Federalism under Executive Order

13132, if it has a substantial direct effect on State or Local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

### Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian tribal governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

### Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

### Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

Under figure 2–1, paragraph (34)(g) of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this proposed rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to revise 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

2. Revise paragraph (a)(1) of § 165.916 to read as follows:

**§ 165.916 Security Zones; Captain of the Port Milwaukee Zone, Lake Michigan.**

(a) *Location.* * * *

(1) *Kewaunee Nuclear Power Plant*—All navigable waters of Western Lake Michigan encompassed by a line commencing from a point on the shoreline at 44°20.715′ N, 087°32.080′ W; then easterly to 44°20.720′ N, 087°31.630′ W; then southerly to 44°20.480′ N, 087°31.630′ W; then westerly to 44°20.480′ N, 087°31.970′ W, then northerly following the shoreline back to the point of origin. (NAD 83).

* * * * *

Dated: 24 September 2003.

**H.M. Hamilton,**

*Commander, U.S. Coast Guard, Captain of the Port Milwaukee.*

[FR Doc. 03–26305 Filed 10–16–03; 8:45 am]

**BILLING CODE 4910–15–P**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[PA203–4209b; FRL–7570–6]**

## Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO$_X$ RACT Determinations for Five Individual Sources

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania to establish and require reasonably available control technology (RACT) related requirements to limit volatile organic compounds (VOCs) and nitrogen oxides (NO$_X$) from five individual sources. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by November 17, 2003.

**ADDRESSES:** Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental

Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto at (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*.

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, Pennsylvania's Approval of VOC and $NO_X$ RACT Requirements for Five Individual Sources, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number PA203–4209 in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *morris.makeba@epa.gov*, attention: PA203–4209. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

ii. *Regulations.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov*, then select "Environmental Protection Agency" at the top of the page and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

### Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

### Considerations When Preparing Comments to EPA

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: September 29, 2003.

**James W. Newsom,**

*Acting Regional Administrator, Region III.*

[FR Doc. 03–26194 Filed 10–16–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Chapter I

## [CC Docket No. 96–128; FCC 03–220]

## Implementation of Section 273 of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** This document terminates the pending Notice of Proposed Rulemaking to implement provisions of section 273 of the Telecommunications Act of 1996 (the Act) that pertain to manufacturing by the Bell Operating Companies (BOCs). (*In the Matter of Implementation of Section 273 of the Communications Act of 1934, as Amended in the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, CC Docket No. 96–254, 62 FR 3638, January 24, 1997 (*BOC Manufacturing NPRM*)). The statute, as written, is sufficiently detailed and clear as to cover most circumstances at this time. Adopting rules to implement the provisions of section 273 would not serve the public interest and would impose unnecessary regulatory burdens inconsistent with the pro-competitive, deregulatory goals of the Act. Accordingly, for the reasons indicated below, the Commission concludes that it is unnecessary to adopt rules to implement section 273 at this juncture and terminates this proceeding.

**DATES:** This proposed rule is withdrawn as of October 17, 2003.

**FOR FURTHER INFORMATION CONTACT:** Henry L. Thaggert, Attorney-Advisor, Competition Policy Division, Wireline Competition Bureau, at (202) 418–7941, or via the Internet at *hthaggert@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Memorandum Opinion and Order in CC Docket No. 96–254, FCC 03–220, adopted September 15, 2003, and released September 16, 2003. The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. It is also available on the Commission's Web site at *http://www.fcc.gov*.

### Synopsis of the Memorandum Opinion and Order

1. *Background*. Section 273 permits a BOC to manufacture telecommunications equipment and customer premises equipment through a structurally separate corporate affiliate once the Commission authorizes the BOC to provide in-region, interLATA services pursuant to section 271(d) of the Act. Section 273 provides for two important exceptions to the requirement that a BOC refrain from all manufacturing activity until after it receives section 271 approval. First, section 273(b)(1) permits a BOC at any time to engage in "close collaboration" with manufacturers on product design and development. Second, section 273 (b)(2) permits a BOC at any time to enter into "royalty agreements" with manufacturers.

2. The *BOC Manufacturing NPRM* invited comment and proposed numerous tentative conclusions to implement rules governing section 273. The *BOC Manufacturing NPRM* generated comment from BOCs, competitive LECs, manufacturers, and others. Since the issuance of the *BOC Manufacturing NPRM*, each BOC has obtained section 271 authority to provide in-region interLATA service in at least one of its states, and Verizon and BellSouth have received section 271 authority throughout their regions. Yet to our knowledge, no BOC has created a manufacturing affiliate, nor has the Commission received complaints that BOCs have violated section 273.

3. The Commission concludes that the provisions of section 273 are sufficiently detailed as to be self-executing and sufficiently clear as to cover most circumstances. Thus, section 273 requires no further elaboration at this time. More than seven years have passed since the passage of the Act, and the Commission has granted section 271 authorization to provide in-region interLATA service in forty-two states and the District of Columbia. Our experience over this time frame persuades us, with the benefit of hindsight, that the concerns the Commission articulated in the *BOC Manufacturing NPRM* were unwarranted because the competitive harms the Commission envisioned simply have not materialized.

4. Whenever the Commission adopts rules, it must consider whether the benefit of such rules outweighs the burden on regulated entities. As written, section 273 provides detailed requirements that should facilitate quick review and disposal of alleged violations on a case-by-case basis. Moreover, if a party believes that section 273 does not clearly indicate the proper course of conduct, the Commission has in place adequate mechanisms for addressing the party's concerns. Accordingly, we believe a case-by-case approach would serve the public interest more efficiently than imposing a new rules regime.

### Regulatory Flexibility Act

5. The Commission concludes that, because it does not adopt rules in this Memorandum Opinion & Order to implement section 273, our resolution of this matter raises no Regulatory Flexibility Act issues. Although section 273 focuses primarily on BOC manufacturing activity, in the *BOC Manufacturing NPRM* the Commission questioned whether development of rules would "have a significant economic impact on a substantial number of small businesses insofar as they apply to entities that develop standards, develop generic requirements and conduct certification activity." However, in this Memorandum Opinion & Order, the Commission neither promulgates new rules nor revises existing rules, thus the action does not require any change in the current practices of any standard setting entities, large or small. Accordingly, because the Commission implements no rules, it takes no action that would require entities to modify their practices. Thus, the Commission finds that the action will not have a "significant economic impact on a substantial number of small entities."

### Paperwork Reduction Act of 1995

6. The Commission finds that this Memorandum Opinion and Order does not contain information collection provisions and therefore does not implicate the Paperwork Reduction Act of 1995.

### Ordering Clauses

1. Accordingly, pursuant to sections 1, 3, 4(i)–(j), 7, 201–209, 218–220, 251, 271–273 and 403 of the

Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154(i)–(j), 157, 201–209, 218–220, 251, 271–273, and 403 that this Memorandum Opinion and Order *is adopted*.

2. The Commission has thus completed its review of the record in the above-captioned rulemaking. Accordingly, the above-captioned proceeding *is terminated*.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03–26108 Filed 10–16–03; 8:45 am]

**BILLING CODE 6712–01–U**

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 51

**[WC Docket No. 03–173; FCC 03–224]**

## Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document initiates a rulemaking proceeding to examine the rules applicable to pricing of unbundled network elements (UNEs) and resold telecommunications services made available by incumbent local exchange carriers (LECs) to competitive LECs. The Federal Communications Commission (Commission) adopted the current UNE pricing regime known as the Total Element Long Run Incremental Cost (TELRIC) methodology in 1996. This Commission stated at that time that it intended to re-examine this methodology over time, and this rulemaking represents the Commission's first such re-examination of its UNE pricing rules. The Commission also adopted resale pricing rules in 1996. The U.S. Court of Appeals for the Eighth Circuit reversed the resale pricing rules in 2000. This document seeks comment on whether, and, if so, in what manner, to revise the Commission's UNE pricing rules and on whether, and, if so, in what manner, to promulgate resale pricing rules.

**DATES:** Comments due December 16, 2003, and reply comments due January 30, 2004.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for filing instructions.

**FOR FURTHER INFORMATION CONTACT:** Steve Morris, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket No. 03–173, adopted on September 10, 2003, and released on September 15, 2003. The full text of this document is available on the Commission's website Electronic Comment Filing System and for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365. The full text of the NPRM may also be purchased from the Commission's duplicating contractor, Qualex International, Room CY–B402, 445 Twelfth Street, SW., Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or e-mail at *qualexint@aol.com.*

### Background

1. This NPRM, adopted September 10, 2003 and released September 15, 2003 in WC Docket No. 03–173, FCC 03–224, initiates a proceeding to examine the Commission's UNE pricing and resale pricing rules. Currently, the Commission's TELRIC rules, 47 CFR 51.501 *et seq.*, which were promulgated in 1996, apply to the pricing of UNEs. The U.S. Supreme Court affirmed the Commission's jurisdiction to promulgate these rules in 1999 and affirmed the reasonableness of these rules in 2002. In contrast, however, because the U.S. Court of Appeals for the Eighth Circuit reversed the Commission's resale pricing rules in 2000, there currently are no resale pricing rules. Because the Commission's UNE pricing rules have not been examined in over seven years, and because the Commission does not have resale pricing rules, we conclude that it is time to examine the pricing rules for UNEs and resale.

### Discussion

2. We undertake this rulemaking with the goal of modifying or clarifying the Commission's UNE and resale pricing rules to aid state commissions in more easily developing UNE pricing and resale discounts that meet the statutory standards established by Congress in section 252(d) of the Telecommunications Act of 1996 and to provide more certainty and consistency in the results of these state proceedings. *See* 47 U.S.C. 252(d). We seek to determine whether our UNE pricing methodology is working as intended and, in particular, whether it is conducive to efficient facilities investment. We also undertake this rulemaking to examine whether, and, if so, in what manner, to promulgate resale pricing rules.

3. As a preliminary matter, we reaffirm our commitment to using forward-looking costing principles to determine UNE rates. We decline to open an inquiry into alternative pricing theories, including historical cost, efficient component pricing rule, and Ramsey pricing theories. Instead, in examining UNE pricing rules, the NPRM focuses, and seeks comment, on whether clarifications or modifications should be made to the current forward-looking economic cost-based rules.

4. In the NPRM, we will examine whether the UNE pricing rules distort our intended pricing signals by understating forward-looking costs and thereby thwart the development of facilities-based competition. We will consider whether modifications to the current UNE pricing rules are necessary to both preserve their forward-looking emphasis and pro-competitive purposes, while simultaneously making the rules more transparent and theoretically sound. Specifically, we tentatively conclude that UNE prices should be based on costs more firmly rooted in the real-world attributes of the existing networks of incumbent LECs rather than the speculative attributes of a purely hypothetical network. We seek comment on this tentative conclusion.

5. We seek comment on the appropriate goals of a UNE pricing regime. Should UNE prices continue to be set in a manner that sends efficient entry and investment signals to competitors and that enables incumbent LECs to recover their forward-looking costs? We ask that parties comment on whether these remain the appropriate goals and, if not, that parties identify alternative pricing goals. We seek information on how the Commission can measure whether a pricing regime is sending appropriate entry and investment signals. We request parties comment on the value of comparisons to an incumbent LEC's historical costs? We also seek comment on potential other goals of a pricing regime, such as transparency and verifiability.

6. We seek comment on the effect of the Commission's recent decision in the *Triennial Review Order*, 68 FR 52276, September 2, 2003. In particular, the Commission adopted a new interpretation for determining whether requesting telecommunications carriers

are entitled to access a network element on an unbundled basis. We ask that comments discuss in detail the relationship, if any, between this new interpretation and the Commission's UNE pricing rules. In particular, we seek comment on the affect on our pricing rules of the limitations on the unbundling mandates associated with hybrid fiber/copper loops. We also seek comment on the affect limitations on fiber loop unbundling should have on UNE pricing rules. Further, we request that parties comment on how states should set rates for network elements that no longer are required to be provided on an unbundled basis.

7. In the universal service proceeding, the Commission determined that funding should be based on the forward-looking cost of providing universal service, and identified criteria to guide in the selection of a forward-looking universal service cost model. *Universal Service Order*, 62 FR 32862, June 17, 1997. The Commission applied these criteria to develop a computer cost model and to select the inputs necessary to develop forward-looking costs using this model. *USF Platform Order*, 63 FR 63993, November 18, 1998; *USF Inputs Order*, 64 FR 67372, December 1, 1999. In developing the universal service cost model and inputs, the Commission did not intend to provide any systematic guidance for TELRIC rate-setting, and emphasized that universal service cost inputs may not be appropriate for use in determining UNE prices. The Commission continues to discourage states from using the universal service nationwide inputs for the purpose of developing UNE rates. We invite parties to comment on the relationship between universal service cost rules and UNE pricing rules.

8. *Network Assumptions—General Theory*. One of the central internal tensions in the application of the TELRIC methodology is that it purports to replicate the conditions of a competitive market by assuming that the latest technology is deployed throughout the hypothetical network, while at the same time assuming that this hypothetical network benefits from the economies of scale associated with serving all of the lines in a study area. In the real world, however, even the most efficient carrier's network will reflect a mix of new and older technology at any given time. We thus seek comment on whether TELRIC's technology assumptions may result in forward-looking costs that are not achievable even in the most competitive markets and whether the TELRIC methodology, therefore, may undermine the incentive for either competitive LECs or incumbent LECs to build new facilities.

9. We tentatively conclude that the TELRIC rules should more closely account for real-world attributes of the routing and topography of an incumbent LEC's network in the development of forward-looking costs. We seek comment on this approach and, in particular, on how such an approach may differ from the practices of state commissions in UNE pricing proceedings. We also ask parties to comment on proposals that would achieve these objectives. We seek comment on whether it is appropriate to assume that the cost of an existing element is the cost of that element if it were being replaced today. We also seek comment on whether we should define the relevant network as one that incorporates upgrades planned by the incumbent LEC over some objective time horizon (*e.g.*, three or five years), as documented, for example, in an incumbent LEC's actual engineering plans. We request parties comment on any other alternatives that would ground the TELRIC rules in the attributes of an incumbent LEC's existing network. Further, we seek comment on whether any of these approaches would produce results that are more consistent across states and send better entry and investment signals to both incumbents and competitors.

10. The TELRIC methodology currently defines the term "long run" to mean a period long enough for all of a firm's costs to be variable or avoidable. We seek comment on whether our tentative conclusion compels us to shift away from a long run average cost methodology to a short run average cost methodology and, if so, what are the consequences of such a shift. We request parties comment on whether such an approach is consistent with the statute's heavy presumption against the use of embedded costs.

11. We ask the parties to suggest other ways of defining the network that is to be modeled in a UNE pricing proceeding. To what extent should network assumptions reflect evidence of the network decisions made by competitive LECs? Parties should explain in detail the network assumptions they advocate and the competitive assumptions implicit in their proposals. Parties should also explain whether they are proposing a theory based on short-run costs or long-run costs, and how their proposed definition of the network will produce more accurate economic signals and more consistent results than the current pricing regime.

12. The dispute as to the relevant network for pricing purposes is in large part a dispute over what constitutes efficiency. We seek comment on the efficiency standard that the Commission should use in order to achieve UNE prices that send correct economic signals regarding investment, while still achieving the necessary level of cost recovery. A central principle of the current UNE pricing rules is that competitive LECs should not pay rates that compensate incumbent LECs for past inefficiencies. Given that many incumbent LECs have been subject to price cap regulation for some time, we seek comment on whether we should find an incumbent LEC's practices presumptively efficient. Would the adoption of a productivity factor be necessary as part of a transition to a regime based more on the network assumptions of an existing network? We also ask parties to identify the evidence that would be necessary to overcome a presumption of efficiency by an incumbent LEC and what effect any asymmetry in access to information about an incumbent's practices and costs should have on any presumption we create. We ask parties to be very specific in defining the standard of efficiency and explaining how to determine whether a network is optimized for economic efficiency. We further ask parties that favor a change in network assumptions to identify how such a change would affect each component of the pricing rules (*e.g.*, operating expenses, cost of capital, depreciation).

13. We ask parties to discuss whether a regime focused more closely on the existing network of an incumbent would be easier for state commissions to implement than the current TELRIC regime. For example, we seek comment on whether there would be issues of transparency and verifiability in placing a greater reliance on the attributes of an incumbent LEC's existing network. We seek comment on whether focusing the cost inquiry on an incumbent's existing network might place competitive LECs at an informational disadvantage in litigating any factual issues about which the incumbent LEC, as owner of that network, may have better information. We request parties propose concrete procedural safeguards designed to minimize risks of an informational imbalance resulting from methodological reforms discussed in the NPRM. We also ask parties to comment on ways in which UNE pricing proceedings can be streamlined without placing any party at a material informational disadvantage.

14. *Network Assumptions—Specific Network Inputs.* In addition to our tentative conclusion that a forward-looking pricing methodology should more closely account for the real-world attributes of the routing and topography of an incumbent LEC's network, we believe there are a number of aspects of the current efficient network assumption that might benefit from clarification or modification. We discuss some of these issues below, and we encourage parties to identify additional steps we might take to produce prices that satisfy the objectives we have identified.

15. We seek comment on the network routing assumptions that would be consistent with our tentative conclusion that prices should account for the real-world attributes of the routing and topography of an incumbent LEC's network. Specifically, we seek comment on the importance of the locations of existing rights-of-way, existing poles, and existing conduit for all wireline carriers when new facilities are built. We also seek comment on whether there is any theoretical basis for an approach that does not assume the existence of current roads, buildings, and natural obstacles. We request parties to comment on whether and how existing rights-of-way should be accounted for in network routing assumptions. Parties supporting the use of existing rights-of-way as a basis for network routing assumptions should explain how states can best determine current rights-of-way routes, and how such routes can be compared to the routes of incumbent LEC facilities and of the routes generated by computer cost models. We ask parties to explain how their proposed network principles reflect the variables than incumbent and competitive LECs consider in making routing and construction decisions. To the extent parties propose principles based on the real-world attributes of an incumbent LEC's existing network, they should explain in detail how a state commission would establish the forward-looking cost of an existing network, and how such a costing approach differs from "rate-of-return or other rate-based" methodologies prohibited under section 252(d)(1). 47 U.S.C. 252(d)(1). We also ask parties to comment on the applicability, if any, of the Commission's conclusion in the *USF Platform Order* that incumbent LEC networks are an inappropriate basis to use to determine outside plan design because they "may not represent the least-cost, most-efficient design in some cases." Finally, we invite parties, and in particular state commissions, to comment on whether, and how, our tentative conclusion to account more closely for the real-world routing and topography of an incumbent's network would affect the ability of carriers to use computer cost models.

16. We seek comment on the technology assumptions that should be assumed in developing UNE prices. We invite parties to comment on how our tentative conclusion above affects the technology assumptions used to develop UNE prices. We request parties to comment on the relevance to the development of UNE prices of the Commission's statement in the *USF Platform Order* that existing incumbent LEC plant likely does not reflect forward-looking technology choices. We seek comment on how to determine prices for equipment types that are no longer widely used in the industry, such as analog switches or older versions of digital loop carrier systems. We also seek comment on how an approach that replicates an incumbent LEC's existing technology compares to a reproduction cost methodology.

17. We encourage parties to identify the specific factors that influence their decisions with respect to how quickly to deploy new technology. How, if at all, should we factor in the uncertainty associated with the timing and efficiency of new technology? Of what relevance, if any, is the pace at which incumbent LECs have deployed new technologies in the past? Is there evidence of the diffusion rates of new technology in competitive markets as opposed to monopoly markets that might inform our analysis?

18. We seek comment on certain specific cost input issues. Structure sharing refers to how much of the cost of installing poles, digging trenches, and placing conduit would be shared on a forward-looking basis by the incumbent LEC with other entities. The more sharing that is assumed, the lower the cost to the incumbent LEC of providing the element. We seek comment on the guidance the Commission should provide to state commissions on the method for establishing structure sharing percentages, particularly in light of our tentative conclusion, above. Should sharing opportunities that were available at the time plant was build be considered? How relevant are an incumbent LEC's actual sharing percentages? What other sources of data might be relevant? We request parties identify factors that either encourage or discourage parties from sharing construction costs today and explain how these factors should be reflected in determining UNE prices. Parties should provide empirical data with respect to their experiences sharing construction costs with other entities.

19. A fill factor represents the percentage of capacity of a particular facility or piece of equipment that is used on average over its life. Increasing fill factors effectively lowers costs by reducing the amount of spare capacity allocated to working units. We seek comment on the appropriate guidelines for states to follow in establishing fill factors. What factors do states currently consider in developing fill factors? How relevant are an incumbent's existing fill factors in establishing forward-looking fill factors? Should they be dispositive in light of our tentative conclusion, above? If not, what other evidence should be considered? Are carrier of last resort obligations relevant to determining the appropriate fill factors? Would the fill factors of other incumbent LECs be relevant to demonstrate achievable efficiencies? We seek comment whether carriers would operate at higher or lower fill factors as the level of facilities-based competition increases in a market. We request that parties submit empirical evidence that distinguishes between the fill factors that carriers experience in competitive markets and monopoly markets. We also seek comment on how fill factors are likely to vary as the rate of demand growth varies. Finally, we seek comment on methods for quantifying dynamically efficient fill factors on a forward-looking basis.

20. One of the key issues in determining unbundled switching prices is the switching discounts. In setting switching rates, state commissions have had to determine the appropriate mix of new switches, growth switching equipment, and technology upgrades to existing equipment. This issue arises because switch manufacturers typically offer a relatively large price discount for an entirely new switch and a smaller discount on growth or upgrade equipment added to an existing switch. The Commission has rejected assumptions of both 100 percent new switches and 100 percent growth equipment.

21. Because switching equipment has a high degree of modularity, carriers over time grow their switches and upgrade them with new technology as it evolves over time on the premise that this is a better way to minimize costs than purchasing a switch large enough to satisfy anticipated demand over the entire life of the switch. We seek comment on whether unbundled switching costs should be based on the prices that an efficient incumbent LEC or other entrant would pay for switching

equipment over the life of the switch and not at a particular point in the switch's life cycle. In addressing this question, parties should explain the assumptions they make with respect to line demand and technology improvements, and their assumptions regarding vendor pricing strategies.

22. The basic formula for developing a price for an element is to divide total cost by total demand. We ask for comment on the use of this principle in developing a price that is based on costs of equipment installed in increments over the life of the switch. Parties should also explain whether, and how, these calculations should account for the time value of money. Is the appropriate discount rate for use in determining the time value of money the cost of capital used in calculating UNE prices generally?

23. Assuming that unbundled switching prices should reflect vendor prices for switch equipment that is installed in increments over the life of the switch, we seek comment on whether the starting point for calculating costs should be a new switch that is installed today. We also seek comment on whether unbundled switching prices should reflect, in addition to costs for the initial switch equipment, costs of growth additions and technology upgrades, growth additions alone, or upgrades alone for the years following the initial installation. Commenters that believe current prices should recover costs of future upgrades should explain why current competitive LECs should pay for benefits that they do not yet receive. In light of our conclusion that UNE pricing should continue to be based on a forward-looking methodology, we ask commenters to describe in detail any rationale for supporting or rejecting UNE prices based on vendor prices that incumbent LECs currently pay for equipment they are installing today in existing switches.

24. We ask parties to explain in detail the methodology that should be used to develop total cost and total demand under this approach. We also invite parties to submit studies showing how to develop an unbundled switching price. These studies should assume that service is provided using modern digital switches that are installed today. We ask that commenters develop this price for either an incumbent LEC's study area or a UNE zone within a study area. One study should develop the costs of initial new equipment and all future growth equipment that is expected to be installed periodically over the life of the switch. A second study should develop costs for these two components plus costs of all future technology upgrade equipment that is expected to be installed periodically over the life of the switch. Parties should explain and fully document the methodology, assumptions, and data they use to estimate these costs and the demand over which these costs are spread. If a commenter believes UNE prices should be based on a switch technology other than digital technology, that party may submit other studies in addition to, rather than in place of, the studies requested above.

25. *Cost of Capital.* The cost of capital is the cost a firm will incur in raising funds in a competitive capital market. It is generally estimated as a weighted average of the cost of equity and the cost of debt. In the *Triennial Review Order,* the Commission clarified that the TELRIC-based cost of capital should reflect the risks of a competitive market. Because the objective of TELRIC is to establish a price that replicates the price that would exist in a market in which there is facilities-based competition, the Commission held that TELRIC prices should reflect the risk of losing customers to other facilities-based carriers. The importance of this clarification was to confirm that state commission must use a consistent set of assumptions when they calculate the three main rate components (*i.e.*, operating expenses, cost of capital, and depreciation). We invite parties to comment on whether this principle should apply even if the Commission adopts a UNE pricing methodology that is tied more closely to the existing network of an incumbent LEC.

26. We ask parties to identify the specific variables that determine the cost of capital under the network assumptions that they advocate, and to offer suggestions as to how to quantify the various components of risk that should be reflected in a company's cost of capital. We request parties to identify both the theoretical arguments and empirical evidence supporting the use of these variables. We seek comment on how the cost of debt and equity should be weighted and on how states should determine the appropriate capital structure. We seek comment on whether incremental investment is typically funded through debt or equity and whether the cost of capital should reflect this.

27. One important risk factor is the risk of losing customers to facilities-based competitors. How should this risk be measured? What is the relationship between this risk and the network assumptions we adopt. Is the risk of supplying a product or service always greater in a competitive market than in a monopoly market? We also seek comment on the role of fixed and sunk costs, assumptions about the level and kind of competition, and entry strategies of competitors in affect risk and cost of capital of incumbent carriers.

28. We seek comment on the relationship, if any, between our unbundling rules and the risk of stranded investment. Have long-term contracts been used in the provision of UNEs and how does this answer affect the cost of capital? How can the risks associated with month-to-month contracts be quantified? Does the use of economic depreciation eliminate the need to compensate separately an incumbent LEC for any additional risk of stranded investment?

29. We ask parties to comment on ways in which the Commission might simplify the task of setting the cost of capital. For example, if we retain our current rules, should the cost of capital vary among different states or among different companies, and, if not, should the Commission establish a particular cost of capital for states to employ? If we move to a pricing regime that looks more closely at the incumbent LEC's actual network, are there any presumptions we could establish to facilitate selection of a cost of capital? We ask parties to provide studies in support of their proposals. Regardless of our network assumptions, are there particular models for projecting cost of capital that should or should not be used and are there particular data sources that should or should not be given deference? We ask parties to identify proxy companies or industries for use in estimating UNE cost of capital.

30. We ask parties to comment on when it would be appropriate for a state commission to establish different costs of capital for different UNEs and, in those situations, to identify what types of risks distinguish one element from another. Would such an approach accurately reflect how incumbent LECs actually raise capital and, if not, is this relevant? We also seek comment on why such an approach has not been implemented in the states. We seek comment, particularly from state commissions, on whether and, if so, why such an approach has been considered and rejected. Are there steps the Commission could take to facilitate the ability of states to establish UNE-specific costs of capital? Do the benefits of using a cost of capital that more accurately reflects the risk associated with providing a particular UNE outweigh the administrative burden of such an approach?

31. We ask parties to explain whether different proxy groups should be used to estimate the cost of capital for different UNEs. Parties should identify these proxy groups and explain in detail why they are appropriate. Alternatively, parties that advocate using a single proxy group and then adjusting that cost of capital according to the relative risk of the particular UNE should explain in detail how to make the relevant adjustments.

32. *Depreciation Expense.* Economic depreciation is a method of reflecting anticipated declines in the net present value of an asset of the course of its useful life. Calculating the appropriate rate of a price decline is complicated because it is based largely on projections about future events. In UNE pricing cases, the task is even more difficult because most models include a levelization function that imposes a constant price schedule over the life of the asset. There are two components of depreciation—the useful life of the asset and the rate at which the asset is depreciated over that useful life. Although the Commission has yet to provide guidance regarding the use of economic depreciation or to mandate a specific set of economic lives, in the *Triennial Review Order*, the Commission clarified that a carrier may accelerate recovery of the initial capital outlay for an asset over its life to reflect any anticipated decline in its value.

33. The useful life of an asset normally is determined by comparing the operating cost of the existing asset with the operating cost plus investment cost of a new asset that performs the same functions (assuming the new equipment will generate the same revenue as the existing equipment). Estimating asset lives is difficult because the estimate depends on the physical life of the existing asset, the expected operating costs of the existing asset, and the expected investment and operating cost of new assets, some of which may not yet have been invented.

34. We seek comment on the guidance that we may provide to the states on the issue of asset lives. For example, is the Commission's past reluctance to rely solely on Generally Accepted Accounting Principles (GAAP) financial reporting lives warranted in the context of UNE ratesetting? We seek comment on the relationship between the financial lives used to develop earnings reported to shareholders and the financial lives those that companies use to plan their future capital expenditures? If those lives differ, we request that parties explain why. We also request that competitive LECs and incumbent LECs submit the lives that they use to plan their capital expenditures. We further seek comment on whether compliance with GAAP results in any systematic bias.

35. We seek comment on how financial reporting lives are developed and whether they accurately represent the anticipated economic lives of assets. For example, how do financial lives reflect the potential impact of future technologies? What asset lives are appropriate for equipment in the existing incumbent LEC network that is, or soon will be, obsolete? How relevant, if at all, is the actual retirement experience of an incumbent LEC, its depreciation reserves, or its projected investment plans for the near future? Is there other objective evidence the Commission should consider in this regard? We encourage parties to provide studies forecasting the economic lives of the major local exchange carrier assets in support of their proposals.

36. We also ask parties to comment on whether FCC regulatory lives reflect the competition and technology assumptions required under a forward-looking costing methodology. We seek comment on whether these lives, first established a decade ago, are still accurate. We ask parties to explain whether the validity of FCC asset lives depends in part on whether the Commission retains a scorched node approach to network design or instead adopts its tentative conclusion that forward-looking costs should more closely account for the real-world attributes of the routing and topography of an incumbent LEC's network.

37. The second component of depreciation is the depreciation rate. Where equipment prices are expected to decline over time, the value of existing network assets (and therefore prices under a forward-looking methodology) should decline at the same rate. We seek comment on the relationship between the rate of change in equipment prices and the rate of change in final product prices. To what extent do companies in competitive markets consider changes in the economic efficiency of assets (*e.g.*, price changes, technological advances) in deciding how quickly to recover investments? How can we measure anticipated changes in the efficiency of equipment? Must any measure of equipment price also reflect advances in the capabilities of the equipment? What sources of information would be appropriate for use in establishing rates based on a forward-looking costing methodology? We request that parties explain how different sources of data address changing capabilities of equipment over time. We also request that parties explain whether recent declines in equipment costs, if any, are useful in establishing a general approach, or are they instead extraordinary events caused by the recent sudden decline in markets for telecommunications equipment generally and therefore not reliable indicators of general trends in equipment pricing.

38. We seek comment on whether, if the investment cost of equipment changes from year to year, should UNE prices also similarly change from year to year, all else being equal. We ask parties to comment on the costs and benefits of using a wholesale pricing regime responds to a market where investment costs are changing and facilities-based competition exists or is expected to exist. We also ask parties to address whether adjustments to depreciation expense are the best mechanism for reflecting anticipated equipment price changes in UNE rates.

39. Although carriers continually invest in new assets and depreciate old assets, UNE cost models typically assume that the entire investment in the network is made at a single point in time, and that no additional investment is made in subsequent periods. This same process is repeated each time a state commission sets new rates. Because the return on investment will decline in each period as the base of undepreciated investment declines, even straight-line depreciation will result in rapidly declining prices over time unless recovery is levelized across time periods. Consequently, a "levelization" function is included in most cost models to replicate real-world investment and recovery patterns.

40. The levelization of rates that occurs in most cost models appears to be inconsistent with the concept of adjusting UNE prices to reflect anticipated changes in equipment prices. We ask parties to comment on this statement and to discuss the consequences of running current cost models without the levelization function. Would there be dramatic variation in rates from year to year if rates were not levelized? Does the use of levelization send incorrect signals to the extent that it produces UNE prices that do not vary over time even when input prices are rising or falling? We seek comment on whether a better approach might be to recover through depreciation expense the difference between the current value of the asset and the anticipated value of the asset at the next rate proceeding. We request that parties explain how such an approach would work as a practical matter, including whether and how prices should be adjusted if a state

commission's expectation regarding equipment prices prove to be incorrect. We ask parties to identify any other approaches to economic depreciation that might be used.

41. We also seek comment on whether a reduction in asset lives might be used as a proxy for changing investment costs. Under what circumstances would a carrier retire an asset before the end of its useful life? We ask parties to comment on how unregulated companies account for the uncertainties associated with equipment price changes and other consequences of advancing technologies.

42. *Expense Factors.* Regulators often estimate projected operating expenses by multiplying the projected investment in the network by an annual cost factor (ACF). An ACF typically is a ratio of current expenses to current investment for a particular account. The ratio is multiplied by the projected investment to obtain the projected expenses. An alternative method of calculating monthly operating costs is to look at current operating expenses and make any adjustments that reflect anticipated experience in the period for which the projection is made, such as adjustments for productivity and inflation. We seek comment on these approaches to estimating expenses. Is one approach superior to the others? Under the network assumptions required by our TELRIC rules, is it correct to assume that expenses will be reduced in proportion to reductions in investment? Would such an assumption be more acceptable if we changed the network assumptions to more closely track an incumbent LEC's existing network? We request parties to explain whether it would be reasonable to assume that an incumbent LEC's current expenses represent the forward-looking costs of operating a network. We also request parties to identify if there are other approaches to projecting expenses that do not rely on an incumbent LEC's past experience. We invite parties to provide empirical evidence that demonstrates the factors that most influence the level of expenses.

43. If we find that the best method of projecting expenses is to make forward-looking adjustments to actual expenses, we seek comment on the type of adjustments that would be appropriate. If adjustments are made for inflation and productivity, how should those factors be measured? From what sources should this information be developed?

44. We ask parties to address any specific issues that arise in connection with estimating non-plant specific expenses, such as customer care or common overhead. How should these costs be allocated among different elements? Is it appropriate to allocate these costs to non-recurring charges, or should they be recovered only through recurring charges.

45. *Non-Recurring Charges.* Non-recurring costs may be thought of as the "installation" or "set-up" costs an incumbent LEC incurs processing and provisioning a competitive LEC order for a UNE. Non-recurring charges (NRCs) constitute an up-front cost to the competitive LEC that is generally not recoverable if it subsequently loses the end-user customer served with the UNE. Consequently, NRCs can be a barrier to entry, especially if they are unduly high.

46. There are two primary sets of issues that pertain to NRCs. The first set of issues relates to the costs an incumbent LEC should be permitted to recover for the activities needed to initiate service to a competitive LEC. We believe that consistency among the various components of rates is important. Using one set of network assumptions for recurring charges and a different set of network assumptions for NRCs potentially results in some over-recovery or under-recovery. Nevertheless, we are sensitive to the practical concern that network assumptions that depart significantly from an incumbent LEC's existing network might preclude recovery of the cost of non-recurring activities that would be required in establishing a competitive market. We ask parties to address whether our tentative conclusion that the pricing rules should more closely account for the real-world attributes of the routing and topography of and incumbent's network should apply with respect to NRCs and, if it does, whether this ensures that incumbent LECs will be able to recover all of their forward-looking costs of non-recurring activities.

47. A related issue is the relationship between NRCs for manual activities and an incumbent LEC's operational support systems (OSS). In light of our tentative conclusion, above, we seek comment on what assumptions should be made with respect to the capability of the incumbent LEC's OSS. Should OSS costs be recovered through expense factors or through a separate charge? If through a separate charge, how should that charge be calculated? Should incumbent LECs be permitted to recover through separate OSS charges the costs associated with systems that are used for both wholesale and retail services and, if so, how should regulators allocate OSS costs between these functions? Should all costs of making OSS available to competitors be borne by them or are there costs more appropriately spread among the incumbent LEC's retail customers as well?

48. We seek comment on which activities are susceptible to automation and on how state commissions should determine the costs of performing these activities. We request that parties comment on how, in addition to subjective opinions of subject matter experts, state commissions might develop more objective evidence on non-recurring costs. Would a shift to network assumptions that more closely track the incumbent LEC's existing network eliminate some of the speculation that often characterizes state proceedings? Is it appropriate to establish a presumption that an incumbent LEC's current practices with respect to non-recurring activities are efficient, or are an incumbent LEC's incentives to be efficient diminished when competitive LECs are the primary users of a particular activity?

49. The second main set of NRC issues relates to whether non-recurring costs should be recovered through NRCs or through recurring charges. Generally, the non-recurring costs at issue are labor costs, such as the cost of sending a technician to a particular location to enable the competitive LEC to provide service to a particular end-user. One possible solution to this issue would be to limit recovery through NRCs to those costs that exclusively benefit the competitive LEC ordering the UNE. The cost of activities for which NRCs would not be permitted generally would be recovered in recurring charges through expense factors. We seek comment on this approach. What affect would this approach have on the number of activities for which NRCs would be permitted? How would such an approach be implemented by the states? Although such an approach would reduce the likelihood that NRCs would impose a barrier to competitive entry, would it also provide incumbent LECs with full recovery of their forward-looking costs? Under this approach to NRCs, would there be cost double recovery issues between expenses and NRCs with regard to carriers that already paid the NRCs and would now be paying for the costs again through ACFs in recurring charges?

50. We solicit comment on whether a contrary approach, allowing NRCs for every activity related to a competitive LEC order, would provide sufficient incentive for incumbent LECs to use mechanized processes when it is efficient to do so. Would such an approach increase the risk of over-recovery by the incumbent? Would regulators need to develop mechanisms

to back out these costs in developing expense factors? Would it be necessary to develop some type of refund mechanism if other carriers also benefit from the work? Parties that oppose limiting the activities for which NRCs are permitted should suggest practical methods for making such adjustments.

51. We invite parties to offer other suggestions on principles that states could apply to identify when it is appropriate to recover costs through NRCs, and the consequences of those principles on competitive entry and cost recovery. For example, of what relevance are the NRCs imposed by incumbent LECs on retail customers? Would eliminating or reducing the allocation of common costs and overhead to activities for which NRCs are imposed resolve concerns about the level of NRCs?

52. Beyond these general NRC issues, we seek comment on some specific issues. We request that parties comment on whether disconnection costs should be recovered as a separate cost at the time of disconnection or if they should be recovered through a NRC imposed at the time of installation. We ask that parties provide empirical evidence with respect to the frequency with which facilities actually are disconnected and the costs are not recovered through other charges. We ask parties that favor recovering disconnection costs at the time of installation to explain how to reflect the time value of money in calculating the costs at the time of installation and to explain whether there are other factors that outweigh the consequences of having an intentional mismatch between costs and revenues (caused by recovering the costs before they are incurred).

53. A second specific issue on which we seek comment is loop conditioning. In the *Triennial Review Order,* the Commission stated that state commissions have discretion to determine whether loop conditioning costs are forward-looking costs, and whether those costs should be recovered through recurring or non-recurring charges. We ask parties to comment on when and how the costs associated with loop conditioning should be recovered through recurring or non-recurring charges. We noted in the *Triennial Review Order* that one option available to state commissions would be to permit NRCs for loop conditioning only in extraordinary circumstances, such as copper loops that are longer than 18,000 feet. We seek comment on whether this is a useful distinction. We also seek comment on how, if at all, should such NRCs be distributed among the competitive LEC requesting conditioning and the future carriers that provide digital subscriber line service over the conditioned loop.

54. *Rate Structure.* The current rules contain a variety of requirements regarding how UNE rates should be structured. 47 CFR 51.509. We seek comment on whether, and under what circumstances, changes are needed to our rate structure requirements. For example, would it be appropriate to require switching costs or shared transport costs to be recovered solely through flat-rated charges?

55. *Rate Deaveraging.* The Commission's current rules require that UNE rates be geographically deaveraged into at least three cost-based rate zones, and do not permit "class-of-service" deaveraging. We seek comment on whether, given the Commission's limited ability to influence or control retail local exchange rates, changes to our deaveraging policies with respect to UNEs are necessary to achieve the Commission's goal of sending appropriate economic signals with respect to competitive entry and investment or are there alternative steps the Commission might take. We seek comment on whether, and under what circumstances we should retain the requirement of geographic deaveraging. What are the consequences of deaveraging UNE prices in states where retail rates are not similarly deaveraged? Would it be appropriate to require deaveraging only in states where retail rates are deaveraged? Can such an approach be reconciled with the cost-based pricing standard contained in section 252(d)? We also seek comment on whether, and under what circumstances, to retain the requirement to average rates across different classes of service. Parties that favor elimination or modification of this requirement should present evidence demonstrating that the costs of serving different classes of customers are sufficiently different to warrant deaveraging of those rates. Also, we seek comment on whether deaveraging UNE rates across classes of customers is appropriate is retail rates do not reflect these same cost differences.

56. *Rate Changes Over Time.* UNE pricing proceedings require a substantial commitment of resources from everyone involved and typically take a considerable time to complete. We ask parties to comment on whether there might be mechanisms that could be used to adjust prices over time, thereby reducing the need for state commissions to conduct a full UNE pricing proceeding every few years. Would an approach, similar to many price cap regimes, which periodically adjust rates based on productivity and inflation factors work for UNE prices and, if so, how? In particular, we ask parties how productivity factors might be calculated. We invite parties to produce empirical evidence regarding productivity, such as productivity studies, that could be used to establish productivity factors if we pursue this approach. We also seek comment on, if the use of productivity factors to adjust rates periodically is feasible, whether it should be mandatory and whether it satisfies a state's legal obligations under section 252. Are there methods other than the use of productivity factors that could be used to make periodic rate adjustments?

57. *Resale Pricing.* Section 252(d)(3) of the Telecommunications Act of 1996 requires that state commissions establish wholesale rates for resold services based on the incumbent LEC's retail rates, "excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier." 47 U.S.C. 252(d)(3). The Commission's original resale pricing rules were vacated the by U.S. Court of Appeals for the Eighth Circuit, which found that the appropriate standard for determining avoided costs is not those costs that "can be avoided," but rather "those costs that the [incumbent LEC] will actually avoid in the future." *Iowa Utils. Bd.* v. *FCC,* 219 F.3d 744, 755 (8th Cir. 2000). In light of this decision, we ask parties to comment on the need for the Commission to adopt new rules implementing section 252(d)(3). Is the statutory language, as interpreted by the Eighth Circuit, sufficiently clear that further guidance from the Commission is unnecessary? Parties that favor the establishment of national rules should explain what those rules would require. Is it necessary or helpful for the Commission to identify categories of costs that either are or are not presumptively avoided? Parties that favor the Commission establishing this type of presumption should provide objective evidence demonstrating the type of costs that incumbent LECs actually avoid when they provide services to competitors for resale. For example, how should common costs be treated?

58. We ask parties to discuss whether it is necessary, or helpful, for the Commission to establish evidentiary guidelines with respect to the resale discount. Should incumbent LECs be obligated to file cost studies in support of their proposed discounts, or are there alternative showings that might be sufficient? If studies are required, what level of detail should they contain?

Must direct and indirect costs be specifically identified?

59. Finally, we ask parties to address whether the subscriber line charge should be subject to the resale discount.

60. *Interconnection Pricing and Reciprocal Compensation.* Under section 252(d)(1), interconnection is subject to the same cost-based pricing standard as UNEs. We ask parties to comment on whether there is any reason that changes to the current pricing rules for UNEs should not also apply to interconnection provided pursuant to section 251(c)(2). We note that the Commission is considering issues related to the costs associated with interconnecting networks in the pending *Intercarrier Compensation NPRM,* 66 FR 28410, May 23, 2001. Parties are invited to comment on the relationship between the section 251(d)(1) pricing standard and the proposals for recovery of interconnection costs that are now under consideration in that proceeding. We also invite parties to comment on issues related to the pricing of collocation, which is also subject to the section 252(d)(1) pricing standard. For example, we solicit comment on whether charges for direct current (DC) power should be based on the number of amps consumed or the number of amps fused. Finally, we ask parties to address whether the Commission should continue to apply the same pricing rules to UNEs and to reciprocal compensation. What would be the consequences of having different pricing regimes for these two different functions?

61. *Implementation Issues.* We ask parties to comment on how any changes to the Commission's UNE pricing rules should be implemented by the states. We ask parties to explain how state commissions have proceeded in establishing prices under section 252(d)(1).

62. We seek comment on whether we should establish a national timetable pursuant to which states will conduct new UNE cost proceedings to reset all rates in accordance with any new rules. If we establish a timetable for initiating new UNE rate proceedings, should we require that such proceedings be resolved within a certain time period, consistent with our direction to the states to perform the granular inquiries set forth in the *Triennial Review* proceeding? If so, is a nine-month time period sufficient to establish new UNE prices? What recourse should carriers have if a state fails to act in the allotted time?

63. We also seek comment on whether to establish a true-up mechanism for the difference between what a competitor pays for network elements under rates established pursuant to the current TELRIC rules and what that competitor would pay for the same facilities or services under rates established pursuant to any new rules we may adopt in this proceeding. If a true-up mechanism is appropriate, to what period should any true-up be applicable? Should the beginning of the true-up period be the effective date of the final Commission order in this proceeding? Or is some other true-up period more appropriate?

## Procedural Matters

### *Paperwork Reduction Act*

64. This Notice of Proposed Rulemaking (NPRM) does not contain proposed or modified information collection requirements.

### *Initial Regulatory Flexibility Act Analysis*

65. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 603, the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided below. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the NPRM and IRFA (or summaries thereof) are being published in the **Federal Register**.

### *Need for, and Objectives of, the Proposed Rules*

66. In this NPRM, the Commission initiates the first comprehensive review of TELRIC pricing rules since they were adopted. Section 252(d)(1) of the Act sets forth the pricing standard for UNEs. Section 252(d)(3) of the Act requires that state commissions establish wholesale rates for resold services based on the incumbent LEC's retail rates. Seven years ago, the Commission adopted its current rules that base UNE prices on the Total Element Long Run Incremental Cost (TELRIC) of a UNE. *Local Competition First Report and Order,* 61 FR 52706, October 8, 1996. The Commission stated at that time that it would continue to review its pricing rules based on the results of state arbitration proceedings and provide additional guidance as necessary.

67. Based on the wealth of experience that has been developed over the last seven years, the Commission initiates this proceeding to consider whether the TELRIC methodology for pricing UNEs under the Act is working as intended and whether it is conducive to efficient facilities investment. The Commission also requests comment in this proceeding on its resale pricing rules. Incumbent LECs are required to resell retail services pursuant to section 251(c)(4) of the Act. This NPRM seeks to preserve the forward-looking emphasis and pro-competitive purposes of TELRIC, while simplifying this methodology. The Commission's objective is to help state commissions more easily develop UNE prices and resale discounts that meet the statutory standards established by Congress in section 252(d) and to provide more certainty and consistency in the results of these state proceedings.

68. Although the Commission has addressed some specific TELRIC cost input disputes as they have arisen in section 271 proceedings, the Commission's disposition has provided no systematic guidance on pricing issues. This proceeding will provide states and interested parties comprehensive guidance lacking in our consideration of section 271 applications. In the *Triennial Review Order,* the Commission clarified the existing rules regarding two key components of TELRIC—cost of capital and depreciation.

69. Because of the general nature of the Commission's rules and the hypothetical and complex nature of the TELRIC inquiry, it is often difficult to understand how actual UNE rates are derived. Uncertainty or inconsistency in how to apply TELRIC rules may also result in rates that significantly vary from state to state without regard to genuine cost differences. This lack of predictability in UNE rates is difficult to reconcile with the Commission's desire that UNE prices send correct economic signals for competitive and investment purposes. This NPRM seeks to simplify TELRIC pricing, provide more specific guidance to make the TELRIC rate-setting process less speculative and improve the accuracy of its pricing signals.

### *Legal Basis*

70. This NPRM is adopted pursuant to sections 1, 4(i), (4j), 201–205, 251, 252,

and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), (j), 201–205, 251, 252, and 303.

*Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply*

71. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." 15 U.S.C. 632. As of 1997, there were about 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer. We also note that the term "small governmental jurisdiction" includes state regulatory bodies commonly known as state public utilities commissions or public service commissions which may be directly affected by this NPRM.

72. In this section, we further describe and estimate the number of small entity licensees and regulatees that may also be indirectly affected by rules adopted pursuant to this NPRM. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

73. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a wired telecommunications carrier having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

74. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small.

75. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,329 carriers reported that they were engaged in the provision of local exchange services. Of these 1,329 carriers, an estimated 1,024 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted herein.

76. *Competitive Local Exchange Carriers (CLECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to "Other Local Exchange Carriers," all of which are discrete categories under which TRS data are collected. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 532 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 532 companies, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees. In addition, 55 carriers reported that they were "Other Local Exchange Carriers." Of the 55 "Other Local Exchange Carriers," an estimated 53 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rules and policies adopted herein.

77. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 229 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 229 companies, an estimated 181 have 1,500 or fewer employees and 48 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by the rules and policies adopted herein.

78. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to operator service providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 22 companies reported that they were engaged in the provision of operator services. Of these 22 companies, an estimated 20 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission

estimates that the great majority of operator service providers are small entities that may be affected by the rules and policies adopted herein.

79. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to payphone services providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 936 companies reported that they were engaged in the provision of payphone services. Of these 936 companies, an estimated 933 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the great majority of payphone service providers are small entities that may be affected by the rules and policies adopted herein.

80. *Prepaid Calling Card Providers.* The SBA has developed a size standard for a small business within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 32 companies reported that they were engaged in the provision of prepaid calling cards. Of these 32 companies, an estimated 31 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the great majority of prepaid calling card providers are small entities that may be affected by the rules and policies adopted herein.

81. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 42 companies reported that their primary telecommunications service activity was the provision of payphone services. Of these 42 companies, an estimated 37 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most "Other Toll Carriers" are small entities that may be affected by the rules and policies adopted herein.

82. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of Paging and Cellular and Other Wireless Telecommunications. Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1320 firms in this category, total, that operated for the entire year. Of this total, 1303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

83. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years." These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Based on this information, the Commission concludes that the number of small broadband PCS licenses will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F Block auctions, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. Consequently, the Commission estimates that 260 broadband PCS providers are small entities that may be affected by the rules and policies adopted herein.

84. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order.* A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's rules. The Commission assumes, for purposes of this analysis, that a large portion of

the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

85. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This standard provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

86. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order,* we adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: Three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

87. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years. The SBA has approved these size standards. The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz bands to firms that had revenues of no more than $40 million in each of the three previous calendar years, or that had revenues of no more than $15 million in each of the previous calendar years. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, the Commission estimates that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies adopted herein.

88. *Paging.* In the *Paging Third Report and Order,* we developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service,* 471 carriers reported that they were engaged in the provision of either paging and messaging services or other mobile services. Of those, the Commission estimates that 450 are small, under the SBA business size standard specifying that firms are small if they have 1,500 or fewer employees.

89. *700 MHz Guard Band Licensees.* In the 700 MHz Guard Band Order, we adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

90. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to

the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). The Commission uses the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

91. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. We will use SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

92. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

93. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

94. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for "Cellular and Other Wireless Telecommunications" services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

95. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A "small business" is an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as "very small business" entities, and one that qualified as a "small business" entity. We conclude that the number of geographic area WCS licensees affected by this analysis includes these eight entities.

96. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and polices adopted herein.

97. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and ITFS.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program

Distribution, which includes all such companies generating $12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

98. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

99. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* we established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. The SBA has approved these size standards. We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum.

100. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications" companies. This category provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

101. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for "small business" is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. "Very small business" in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

102. *Internet Service Providers.* While internet service providers (ISPs) are only indirectly affected by our present actions, and ISPs are therefore not formally included within this present IRFA, we have addressed them informally to create a fuller record. The SBA has developed a small business size standard for Online Information Services, which consists of all such companies having $21 million or less in annual receipts. According to Census Bureau data for 1997, there were 2,751 firms in this category, total, that operated for the entire year. Of this total, 2,659 firms had annual receipts of $9,999,999 or less, and an additional 67 had receipts of $10 million to $24,999,999. Thus, under this size standard, the great majority of firms can be considered small.

### *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

103. We do not intend that any proposal we may adopt pursuant to this NPRM will increase existing reporting, recordkeeping or other compliance requirements. Rather, we seek to simplify TELRIC pricing and modify or clarify the Commission's rules to help state commissions more easily develop UNE prices and resale discounts that meet the statutory standards established by Congress in section 252(d) and to provide more certainty and consistency in state proceeding outcomes.

### *Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

104. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

105. We will consider any proposals made to minimize significant economic

impact on small entities. The overall objective of this proceeding is to simplify TELRIC pricing while simultaneously improving the accuracy of its pricing signals. The NPRM seeks comment on an approach that bases UNE prices on a cost inquiry that is more firmly rooted in the real-world attributes of the existing telecommunications network, rather than the speculative attributes of a purely hypothetical network. This may change the standards applicable to cost studies on which UNE prices are based and indirectly result in changes to rates for UNEs that competitive LECs, including small carriers, order from incumbent LECs.

106. State commissions stand to benefit directly to the extent that we clarify our TELRIC rules and provide more specific guidance so that state proceedings to determine UNE pricing and the resale discount become a less complex and speculative process. Providing greater certainty and consistency in how to apply our rules could help make the regulatory process throughout states more efficient and streamlined, indirectly benefiting small entities which participate in these proceedings. Complicated and time-consuming proceedings may work to divert scarce resources from small carriers that otherwise would use those resources to compete in local markets. Moreover, to the extent that we may be able to enhance the TELRIC ratemaking process, we may better be able to achieve the Commission's goal of sending appropriate economic signals to the marketplace for efficient competition and entry among providers that include small entities.

*Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

107. None.

*Ex Parte Presentations*

108. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 *et seq.* Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules. 47 CFR 1.1206(b).

*Comment Filing Procedures*

109. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments not later than December 16, 2003, and may file reply comments not later than January 30, 2004. In order to facilitate review of comments and reply comments, parties should include the name of the filing party and the date of the filing on all pleadings. Comments and reply comments must clearly identify the specific portion of the NPRM to which a particular comment or set of comments is responsive. Each new section should begin on a new page. If a portion of a party's comments does not fall under a particular topic listed in the Table of Contents, such comments should be included in a clearly labeled section at the beginning or end of the filing.

110. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply.

111. Parties who choose to file by paper must file an original and five copies of each filing. Two (2) copies of the comments should also be sent to the Chief, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

112. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than United States Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be sent to 445 12th Street, SW., Washington, DC 20554. The Commission advises that electronic media not be sent through USPS. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

113. Documents in this docket are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The documents may also be purchased from Qualex International, telephone (202) 863-2893, facsimile (202) 863-2898.

## Ordering Clauses

114. *It is ordered* that, pursuant to the authority contained in sections 1, 4(i), 4(j), 201-205, 251, 252, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), (j), 201-205, 251, 252, and 303, notice is hereby given of the rulemaking described above and comment is sought on those issues.

115. *It is further ordered* that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03-26107 Filed 10-16-03; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 660

[I.D. 101003B]

## Pelagic Fisheries Managed Under the Fishery Management Plan, Pelagic Fisheries of the Western Pacific Region

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of Intent to prepare a Supplemental Environmental Impact Statement (SEIS); notice of scoping meetings; request for written comments.

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**SUMMARY:** The NMFS and the Western Pacific Fishery Management Council, (Council), announce their intent to prepare an SEIS in accordance with the National Environmental Policy Act of 1969 (NEPA) on the Federal management of pelagic fishery resources in the waters of the United States exclusive economic zone, (EEZ), around the State of Hawaii, the territories of American Samoa and Guam, the Commonwealth of the Northern Mariana Islands (CNMI) and several western Pacific remote islands and atolls under direct Federal jurisdiction.

The NMFS will convene public scoping meetings to solicit comments on pelagic fishery issues and potential management options related to those issues. The scope of the EIS analysis will include, among other things, interactions of fisheries managed under the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (Pelagics FMP).

The scoping meetings will provide for public input on the issues, range of alternatives, and impacts the SEIS should consider. Written comments will also be accepted concerning the various management options the SEIS should consider.

**DATES:** See **SUPPLEMENTARY INFORMATION** for specific dates, times, and locations of the meetings.

**ADDRESSES:** Written comments on the issues, priorities, range of alternatives, and impacts that should be discussed in the SEIS may be sent to Sam Pooley, Acting Regional Administrator, NMFS, Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814. Comments may be sent via facsimile (fax) at 808–973–2941 and must be received by December 15, 2003.

**FOR FURTHER INFORMATION CONTACT:** Alvin Katekaru, NMFS, 808–973–2937.

**SUPPLEMENTARY INFORMATION:** Under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), the United States has exclusive management authority over all living marine resources found within the EEZ. The management of these marine resources with the exception of sea birds and some marine mammals, is vested in the Secretary of Commerce (Secretary). Eight Regional Fishery Management Councils prepare fishery management plans for approval and implementation by the Secretary. The Council has the responsibility to prepare fishery management plans for fishery resources in the EEZ of the Western Pacific Region. NEPA requires preparation of an EIS for major Federal actions significantly impacting the quality of the human environment.

The pelagics fishery resources that occur in the EEZ waters of the Western Pacific Region, have been managed under the Pelagics FMP and its amendments since 1986. Managed resources include both marketable, (primarily billfish and tunas), and non-marketable, (primarily sharks), species. Fisheries managed include pelagic longline, troll, handline, pole-and-line (bait boat), and charter boat fisheries. Management measures employed include gear restrictions, vessel size limitations, time and area closures, access limitations and other measures.

The largest fishery managed under this plan is the Hawaii-based, limited-access pelagic longline fishery. Emergency regulations imposed on this fishery in 2001, and subsequent final regulations promulgated in 2002 eliminated the "shallow set" component of this fishery that targeted swordfish. The remaining component of this fishery is a "deep set" tuna-targeting fishery. On August 31, 2003, a Memorandum Opinion issued in *Hawaii Longline Assoc.* v. *NMFS*, (D. D.C., Civ No. 01–765), invalidated the June 12, 2002 (67 FR 40232), final regulations as well as the November 15, 2002, Biological Opinion for Pelagic Fisheries of the Western Pacific and the associated incidental take statement. This had the immediate effect of leaving the Pelagics FMP in place without restrictions that NMFS had concluded in March 2001 were necessary to eliminate the likelihood that fishing pursuant to the Pelagics FMP would jeopardize the continued existence of species listed under the Endangered Species Act (ESA). To avoid this disruption, on October 6, 2003, the Court postponed the effectiveness of its action until April 1, 2004, to allow the agency to take appropriate action. Consequently, NMFS and the Council are considering fishery management measures to comply with ESA requirements for sea turtle protection. During the week of October 20, 2003, the Council is expected to consider longer-term proposals for the fishery.

The regulatory situation is thus subject to change. Additionally, recent research has identified practical measures (e.g., bait-setting chute; side-setting operations) that have significant potential for reducing interactions of the longline fleet with seabirds. As a consequence, it is now appropriate to re-examine in an SEIS the management measures imposed to minimize interactions between the Hawaii-based longline fishery and protected species. Also, since publication of the EIS for the Pelagics FMP, issues associated with marlins (billfish) and fish aggregating devices have surfaced, and a new industrial-scale squid fishery has emerged in Hawaii. The environmental impacts and need for management to address these matters are currently unknown. These issues will also be examined in the SEIS.

Comments and public input on any and all aspects of Pelagics FMP management are solicited and will be accepted during scoping. Input is especially sought on priorities to apply in addressing management issues and initiatives. The agency anticipates that certain measures will require expedited treatment. Others may be addressed on a longer timetable.

### Public Involvement

Public scoping is an early and open process for determining the scope of issues to be addressed. A principle objective of the scoping and public involvement process is to identify a reasonable range of management alternatives that, with adequate analysis, will delineate critical issues and provide a clear basis for distinguishing between those alternatives and selecting a preferred alternative.

### Alternatives

Scoping is being conducted to establish a reasonable range of alternatives, which may include modification of the current management regimes for the Hawaii-based longline fishery including, but not limited to, gear restrictions and requirements, time and area closures, limited access permits and reporting requirements, and catch limits; inclusion of certain squid species as Management Unit Species under the Pelagics FMP; and imposition on the squid fishery of management measures including, but not limited to, observer coverage and reporting requirements. In addition to developing possible alternatives, the scoping meetings will serve to identify and eliminate the issues which are not significant or which have been covered by prior environmental review.

### Dates, Times, and Locations for Public Scoping Meetings

1. Tuesday, October 21, 2003, at 6 p.m. at Fisherman's Wharf Restaurant, 1009 Ala Moana Blvd. Honolulu, HI;
2. Monday, October 27, 2003, at 7 p.m. at the Chiefess Kamakahelei Middle School, 4431 Nuhou St., Lihue, Kauai, HI;
3. Tuesday, October 28, 2003, at 7 p.m. at the Maui Beach Hotel, 170 Kaahumanu Ave., Kahului, Maui, HI;
4. Thursday, October 30, 2003, at 7 p.m. at the King Kamehameha Hotel, 75–5660 Palani Rd., Kailua-Kona, HI;
5. Thursday, November 6, 2003, at 7 p.m. at the Department of Marine Resources and Wildlife Conference Room, Dockside, Pago Pago Harbor, American Samoa;
6. Wednesday, December 3, 2003, 7 p.m. at the Pedro P. Tenorio Multipurpose Bldg., Susupe, Saipan, CNMI;
7. December 4, 2003, 7 p.m. at the Guam Fisherman's Cooperative, Lot 12 section 4, Greg D. Perez Marina, Hagatna, Guam.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Alvin Katekaru, 808–973–2937 (voice) or 808–973–2941(fax), at least five days prior to the meeting date.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: October 10, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–26295 Filed 10–14–03; 2:35 pm]

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# Notices

**Federal Register**

Vol. 68, No. 201

Friday, October 17, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Chugach National Forest, Resurrection Creek Stream and Riparian Restoration Project

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** In accordance with the National Environmental Policy Act, notice is hereby given that the Forest Service, Chugach National Forest will prepare a Draft Environmental Impact Statement to disclose the environmental consequences of the proposed Resurrection Creek Stream and Riparian Restoration Project which encompasses approximately 120 acres of National Forest System Land (NFS) and approximately 18 acres of adjacent private lands. Historic placer mining operations have affected Resurrection Creek by straightening and simplifying the stream, and separating it from its floodplain. These impacts have degraded fish rearing and spawning habitat on Resurrection Creek, as well as adjacent wildlife riparian habitat for species such as bears and eagles. Natural recovery from mining impacts has been minimal on this segment of Resurrection Creek. The proposed project would greatly accelerate the recovery of riparian areas, and fish and wildlife habitat on Resurrection Creek. In order to move towards the desired future condition as described in the Chugach National Forest Land and Resource Management Plan as well as meet the purpose and need of the project proposal to restore Resurrection Creek's channel, floodplain and streamside vegetation to pre-mining conditions and enhance fish and riparian wildlife habitat, proposed activities include: (1) Providing access for heavy equipment, which might include a temporary bridge or stream crossing over Resurrection Creek and Palmer Creek; (2) mechanical manipulation and grading of up to 140,000 cubic yards of mine tailings to recover floodplain width and elevations; (3) excavation of a meandering river channel and adjacent side channels, including the development of a channel instream pools and spawning habitat; (4) harvesting up to 5,000 trees, with and without root wads, for use on the new river channel and floodplain. Trees would be taken primarily from the project area. If constraints to harvest at the project area are too high, additional off-site harvest in areas that have gone through a separate NEPA analysis might be needed; (5) replacing soils and organics stripped away during historic placer mining operations Soil enhancement would improve growing conditions for native plant communities in constructed floodplains and riparin areas. Soil and sod would likely be gathered from source areas both within and outside the project area; (6). thinning existing overstocked riparian sapling spruce and cottonwood stands adjacent to Resurrection Creek; (7) re-vegetation of native plant species on constructed floodplains and riparian areas. Natural re-vegetation (without planting) would be used where seed sources and site conditions are favorable. Where such conditions are lacking, the site would be planted; and (8) stockpiling excess tailings could occur within the project area or off-site.

**DATES:** Comments concerning the scope of the analysis must be received within 30 days of publication of this notice in the **Federal Register**. The draft environmental impact statement is expected to be available for public review in January 2004 and the final environmental impact statement is expected to be available in May 2004.

**ADDRESSES:** Submit written, oral, or email comments by: (1) Mail—Resurrection Creek Restoration Project, Dave Blanchet, 3301 C Street, Suite 300, Anchorage, Alaska, Zip Code 99503-3998. (2) phone—(907) 743-9538; (3) e-mail—*dblanchet@fs.fed.us.*

**FOR FURTHER INFORMATION CONTACT:** Dave Blanchet at (907) 743-9538.

**SUPPLEMENTARY INFORMATION:**

#### Purpose and Need for Action

The purpose and need for action of the Resurrection Creek Stream and Riparian Restoration Project is to accelerate the recovery of riparian areas, and fish and wildlife habitat on a 0.8 mile segment of Resurrection Creek. Natural recovery from mining impacts has been minimal on this segment of Resurrection Creek. Historic placer mining operations have affected Resurrection Creek by straightening and simplifying the stream, and separating it from its floodplain. These impacts have degraded fish rearing and spawning habitat on Resurrection Creek, as well as adjacent wildlife riparian habitat for species such as bears and eagles. Natural recovery from mining impacts has been minimal on this segment of Resurrection Creek. The proposed project would greatly accelerate the recovery of riparian areas, and fish and wildlife habitat on Resurrection Creek. There is a need to examine a portion of the creek immediately downstream of the project area on private land within the Haun Trust lands. Additional restoration activities may be implemented on the Haun Trust lands in lieu of gaining access to the project area through this site.

#### Proposed Action

The proposed actions to meet the purpose and need include: (1) Providing access for heavy equipment, which might include a temporary bridge or stream crossing over Resurrection Creek and Palmer Creek; (2) mechanical manipulation and grading of up to 140,000 cubic yards of mine tailings to recover floodplain width and elevations; (3) excavation of a meandering river channel and adjacent side channels, including the development of a channel with instream pools and spawning habitat; (4) harvesting up to 5,000 trees, with and without root wads, for use on the new river channel and floodplain. Trees would be taken primarily from the project area. If constraints to harvest at the project area are high, additional off-site harvest in areas that have gone through a separate NEPA analysis might be needed; (5) replacing soils and organics stripped away during historic placer mining operations. Soil enhancement would improve growing conditions for native plant communities in constructed floodplains and riparian areas. Soil and sod would likely be gathered from source areas both within and outside the project area; (6) thinning existing overstocked riparian sapling spruce and cottonwood stands adjacent to Resurrection Creek; and (7) re-vegetation of native plant species on constructed floodplains and riparian areas. Natural re-vegetation (without planting) would be used where seed sources and site conditions are favorable. Where such conditions are lacking, the site would be planted.

## Responsible Official

The responsible official for the Resurrection Creek Stream and Riparian Restoration Project is Joe Meade, Forest Supervisor, Chugach National Forest.

## Nature of Decision To Be Made

The Resurrection Creek Restoration environmental impact statement will evaluate site specific management proposals, consider alternatives, and analyze the effects of the activities proposed in these alternatives. It will form the basis for the Responsible Official to determine: (1) Whether or not the proposed activities and alternatives are responsive to the issues, are consistent with Forest Plan direction, meet the purpose and need, and are consistent with other related laws and regulations directing National Forest Management Activities; (2) which actions, if any, to approve; (3) and, whether or not the information in the analysis is sufficient to implement proposed activities.

## Scoping Process

Two previous scoping efforts have occurred for this project. The first effort began on February 5, 2003, and the second on June 6, 2003. Since these scoping comment opportunities were provided to the public, the Forest Service has gathered more information regarding this proposal. Subsequently the Forest Service has determined that the appropriate level of analysis for this proposal is an environmental impact statement.

Comments will be accepted during the 30-day scoping period as described in this notice of intent. Those who provided comments to the previous scoping notices that wish to supplement their earlier comments are encouraged to do so. However, previous comments on this proposal will still be used in the analysis process. Comments will be reviewed and issues identified. Issues that cannot be resolved by mitigation or minor changes to the proposed action may generate alternatives to the proposed action. This process is driven by comments received from the public, other agencies, and internal Forest Service concerns. To assist in commenting, a scoping letter providing more detailed information on the project proposal has been prepared and is available to interested parties. Contact Dave Blanchet, at the address listed in this notice of intent if you would like to receive a copy.

## Preliminary Issues

Some preliminary issues have been identified based on past public scoping efforts for the project area, issues developed for similar projects, and Forest Service concerns and opportunities identified by resource specialist. These issues include the following:

1. Direct short term impacts to fish and their habitat from construction activities. Possible impacts to fish and their habitat are temporary loss of habitat, turbidity during construction activities could cause gill abrasion. Some fish will be stranded and buried.
2. Methyl mercury may be present in the project reach. Mercury was used historically to separate fine gold from the "black sands" after the sands had been sorted from the stream gravels. Potential may exist for a release of methyl mercury during restoration which might be a hazard to fish, wildlife, and the public.
3. Presence of heavy equipment could impact landowners and their business during construction of the channel and floodplain. Restoration activities could impact nearby landowners and their business (resort) during construction through the presence of noise, odor, dust, and visual quality.
4. Lack of an easement through private lands on the east side of Resurrection Creek to the project area. Access to the project area requires crossing ¼ mile of a private land (Haun Trust Lands) immediately downstream from the project area. The Forest Service needs access to the east side of Resurrection Creek to implement the project. A temporary bridge or other type of crossing may be needed over Resurrection Creek, on its west wide in order to access an existing easement through the private lands.
5. Examine the potential of additional restoration/construction activities on private lands immediately downstream from the project area.
6. Recreational mining—Recreational mining has potential to damage/erode the channel after reconstruction is complete. There is a need to consider limitations on recreational mining activities that have potential to impact the newly created and vegetated stream banks. A potential limitation to this activity would be to issuing a closure order on recreation mining in the restoration area.
7. Heritage Resources—Construction activities have the potential for disturbing and/or damaging undiscovered mining artifacts and prehistoric cultural artifacts and sites within the project area.
8. Other issues include impacts to recreationists during construction, impacts to scenery during and after construction, impacts to water quality, impacts to fish and wildlife habitat, introduction of noxious weed, impacts to wetlands, and how to dispose of excess tailings.

These issues may be modified as additional issues are identified during scoping. A range of alternatives will be considered after public comments are received and analyzed.

## Comments Requested

This notice of intent initiates the scoping process that guides the development of the environmental impact statement. Comments that are site-specific in nature are most helpful to resource professionals when trying to narrow and address the public's issues and concerns.

## Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: October 9, 2003.

**Joe L. Meade,**

*Forest Supervisor.*

[FR Doc. 03–26292 Filed 10–16–03; 8:45 am]

**BILLING CODE 3410–11–M**

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee will meet on Wednesday, November 5, 2003, at the Okanogan and Wenatchee National Forests Headquarters Office, 215 Melody Lane, Wenatchee, Washington. The meeting will begin at 9 a.m. and continue until 3 p.m. During this meeting we will discuss management of motorized recreation vehicle use and updates on implementation of the Northwest Forest Plan. All Eastern Washington Cascades and Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

**FOR FURTHER INFORMATION CONTACT:** Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, (509) 662–4335.

Dated: October 8, 2003.

**Paul Hart,**

*Designated Federal Official, Okanogan and Wenatchee National Forests.*

[FR Doc. 03–26274 Filed 10–16–03; 8:45 am]

**BILLING CODE 3410–11–M**

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## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List Proposed Additions

**AGENCY:** Committee for Purchase from People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to Procurement List.

**SUMMARY:** The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

*Comments must be Received on or Before:* November 16, 2003.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Sheryl D. Kennerly, (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments of the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

**Regulatory Flexibility Act Certification**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.
2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

**End of Certification**

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

**Products**

*Product/NSN:* Skilcraft Savvy.

BK–1260 General Purpose Disinfectant Detergent—32 oz./7930–00–NIB–0176.
BK–1260 General Purpose Disinfectant Detergent—1 Gallon/7930–00–NIB–0177.
BK–1260 General Purpose Disinfectant Detergent—5 Gallon/7930–00–NIB–0178.
BK–1260 General Purpose Disinfectant Detergent—55 Gallon/7930–00–NIB–0179.
BK–14 Heavy Duty Degreasing Detergent—32 oz./7930–00–NIB–0144.
BK–14 Heavy Duty Degreasing Detergent—1 Gallon/7930–00–NIB–0145.
BK–14 Heavy Duty Degreasing Detergent—5 Gallon/7930–00–NIB–0146.
BK–14 Heavy Duty Degreasing Detergent—55 Gallon/7930–00–NIB–0147.
TR–43 Commercial Vehicle Cleaner—1 Gallon/7930–00–NIB–0127.
TR–43 Commercial Vehicle Cleaner—5 Gallon/7930–00–NIB–0142.
TR–43 Commercial Vehicle Cleaner—55 Gallon/7930–00–NIB–0143.

*NPA:* Susquehanna Association for the Blind and Visually Impaired, Lancaster, Pennsylvania Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

**Services**

*Service Type/Location:* Custodial Services, Naval Exchange, National Naval Medical Center, Bethesda, Maryland.

*NPA:* Opportunities, Inc., Alexandria, Virginia.

*Contract Activity:* Navy Exchange Service Command (NEXCOM), Virginia Beach, Virginia.

*Service Type/Location:* Janitorial/Custodial, Eugene Outpatient Clinic, Department of Veteran Affairs, Eugene, Oregon.

*NPA:* Garten Services, Inc., Salem, Oregon.

*Contract Activity:* VA Medical Center, Rosenburg, Oregon.

*Service Type/Location:* Janitorial/Custodial, Robert J. Dole U.S. Courthouse, Kansas City, Kansas.

*NPA:* Independence and Blue Springs Industries, Inc., Independence, Missouri.

*Contract Activity:* GSA, Service Contracts (6PEF–C), Kansas City, Missouri.

**Sheryl D. Kennerly,**

*Director, Information Management.*

[FR Doc. 03–26327 Filed 10–16–03; 8:45 am]

BILLING CODE 6353–01–P

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## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List Additions and Deletions

**AGENCY:** Committee for Purchase from People Who Are Blind or Severely Disabled.

**ACTION:** Additions to and deletions from Procurement List.

**SUMMARY:** This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products and services previously furnished by such agencies.

**EFFECTIVE DATE:** November 16, 2003.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Sheryl D. Kennerly, (703) 603–7740.

**SUPPLEMENTARY INFORMATION:**

#### Additions

On March 14, August 8, and August 15, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 12340, 47292, and 48879) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

*Regulatory Flexibility Act Certification*

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

*End of Certification*

Accordingly, the following products and services are added to the Procurement List:

#### Products

*Product/NSN:* Markers, Liquid Impression.

7520–00–NIB–1677—Set/Medium Point (Black, Blue, Red, Green).
7520–00–NIB–1678—Medium Point (Black).
7520–00–NIB–1679—Medium Point (Red).
7520–00–NIB–1680—Medium Point (Blue).
7520–00–NIB–1681—Set/Extra Fine Tip (Black, Blue, Red, Green).
7520–00–NIB–1682—Extra Fine Tip (Black).
7520–00–NIB–1683—Extra Fine Tip (Red).
7520–00–NIB–1684—Extra Fine Tip (Blue).

*NPA:* Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.

*Contract Activity:* Office Supplies & Paper Products Acquisition Center, New York, New York.

*Product/NSN:* Markers, Permanent Impression.

7520–00–NIB–1667—Fine Tip (Black).
7520–00–NIB–1668—Fine Tip (Red).
7520–00–NIB–1669—Fine Tip (Blue).
7520–00–NIB–1670—Fine Tip (Green).
7520–00–NIB–1671—Set/Fine Tip (Black, Blue, Red, Green).
7520–00–NIB–1672—Ultra Fine Tip (Black).
7520–00–NIB–1673—Ultra Fine Tip (Red).
7520–00–NIB–1674—Ultra Fine Tip (Blue).
7520–00–NIB–1675—Ultra Fine Tip (Green).
7520–00–NIB–1676—Set/Ultra Fine Tip (Black, Blue, Red, Green).

*NPA:* Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.

*Contract Activity:* Office Supplies & Paper Products Acquisition Center, New York, New York.

#### Services

*Service Type/Location:* Custodial Services, FAA, New Air Traffic Control Tower & Administrative Office Space, (Located on 3rd & 4th floor of the Old ATCT), Cleveland, Ohio.

*NPA:* Murray Ridge Production Center, Inc., Elyria, Ohio.

*Contract Activity:* Federal Aviation Administration, North Olmsted, Ohio.

*Service Type/Location:* Janitorial/Custodial, USDA Service Center, 3622 Avtech Parkway, Shasta Trinity National Forest, Redding, California.

*NPA:* Shasta County Opportunity Center, Redding, California.

*Contract Activity:* USDA, Northern Province Operations, Redding, California.

*Service Type/Location:* Landscaping Service, Department of Justice, Bureau of Prisons, Washington, DC.

*NPA:* Davis Memorial Goodwill Industries, Washington, DC.

*Contract Activity:* Department of Justice, Washington, DC.

#### Deletions

On August 15, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 48879) of proposed deletions to the Procurement List. After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

*Regulatory Flexibility Act Certification*

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services deleted from the Procurement List.

*End of Certification*

Accordingly, the following products and services are deleted from the Procurement List:

**Products**

*Product/NSN:* Bag, Vacuum Cleaner, Disposable, M.R. 1001, M.R. 1002, M.R. 1003, M.R. 1004, M.R. 1005, M.R. 1006, M.R. 1007, M.R. 1008.
*NPA:* New York City Industries for the Blind, Inc., Brooklyn, New York.
*Contract Activity:* Defense Commissary Agency, Fort Lee, Virginia.
*Product/NSN:* Broom, Whisk, M.R. 909.
*NPA:* None currently authorized.
*Contract Activity:* Defense Commissary Agency (DeCA), Ft. Lee, Virginia.
*Product/NSN:* Dustpan, M.R. 995.
*NPA:* None currently authorized.
*Contract Activity:* Defense Commissary Agency (DeCA), Ft. Lee, Virginia.
*Product/NSN:* Egg Slicer, M.R. 843.
*NPA:* Alabama Industries for the Blind, Talladega, Alabama.
*Contract Activity:* Defense Commissary Agency (DeCA), Ft. Lee, Virginia.
*Product/NSN:* Fabric Softener Sheets, Reusable, M.R. 520.
*NPA:* Industries of the Blind, Inc., Greensboro, North Carolina.
*Contract Activity:* Defense Commissary Agency (DeCA), Ft. Lee, Virginia.
*Product/NSN:* Kitchen, Utensils, M.R. 821.
*NPA:* Cincinnati Association for the Blind, Cincinnati, Ohio.
*Contract Activity:* Defense Commissary Agency (DeCA), Ft. Lee, Virginia.
*Product/NSN:* Nylon & Plastic Kitchen Utensils, M.R. 839, M.R. 840.
*NPA:* The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, Washington.
*Contract Activity:* Defense Commissary Agency (DeCA), Ft. Lee, Virginia.
*Product/NSN:* Pencil, Mechanical, Dual Action, M.R. 052.
*NPA:* San Antonio Lighthouse, San Antonio, Texas.
*Contract Activity:* Defense Commissary Agency (DeCA), Ft. Lee, Virginia.
*Product/NSN:* Pens and Markers, M.R. 062, M.R. 063, M.R. 064, M.R. 065, M.R. 066, M.R. 067.
*NPA:* West Texas Lighthouse for the Blind, San Angelo, Texas.
*Contract Activity:* Defense Commissary Agency (DeCA), Ft. Lee, Virginia.
*Product/NSN:* Potpourri, M.R. 400, M.R. 401, M.R. 403.
*NPA:* Envision, Inc., Wichita, Kansas.
*Contract Activity:* Defense Commissary Agency (DeCA), Ft. Lee, Virginia.
*Product/NSN:* PVA Mop, M.R. 1027.
*NPA:* The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, Washington.
*Contract Activity:* Defense Commissary Agency (DeCA), Ft. Lee, Virginia.
*Product/NSN:* Scrubber, M.R. 543.
*NPA:* Beacon Lighthouse, Inc., Wichita Falls, Texas.
*Contract Activity:* Defense Commissary Agency (DeCA), Ft. Lee, Virginia.
*Product/NSN:* Scrubber, Sponge, M.R. 548.
*NPA:* Mississippi Industries for the Blind, Jackson, Mississippi.
*NPA:* New York City Industries for the Blind, Inc., Brooklyn, New York.
*Contract Activity:* Defense Commissary Agency (DeCA), Ft. Lee, Virginia.
*Product/NSN:* Towels, Seasonal, M.R. 1009.
*NPA:* Chester County Branch of the PAB, Coatesville, Pennsylvania.
*Contract Activity:* Defense Commissary Agency, Fort Lee, Virginia.
*Product/NSN:* Wipes, Scrubber, M.R. 588.
*NPA:* Mississippi Industries for the Blind, Jackson, Mississippi.
*Contract Activity:* Defense Commissary Agency (DeCA), Ft. Lee, Virginia.

**Services**

*Service Type/Location:* Food Service Attendant, Charleston Naval Weapons Station, Building 306, Charleston, South Carolina.
*NPA:* Goodwill Industries of Lower South Carolina, Inc., North Charleston, South Carolina.
*Contract Activity:* Department of the Navy.
*Service Type/Location:* Food Service Attendant, Charleston Naval Weapon Station, Building NS–43, Charleston, South Carolina.
*NPA:* Goodwill Industries of Lower South Carolina, Inc., North Charleston, South Carolina.
*Contract Activity:* Department of the Navy.
*Service Type/Location:* Food Service Attendant, Orlando Naval Training Center, Orlando, Florida.
*NPA:* Goodwill Industries of Central Florida, Orlando, Florida.
*Contract Activity:* Department of the Navy.
*Service Type/Location:* Janitorial/Custodial, U.S. Army Reserve Center, Memphis, Tennessee.
*NPA:* Shelby Residential and Vocational Services, Inc., Memphis, Tennessee.
*Contract Activity:* Department of the Army.

**Sheryl D. Kennerly,**
*Director, Information Management.*
[FR Doc. 03–26328 Filed 10–16–03; 8:45 am]
BILLING CODE 6353–01–P

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## CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

### Sunshine Act Meeting

In connection with its investigation into the cause of a benzoyl peroxide explosion and fire that occurred on January 2, 2003, at the Catalyst Systems facility in Gnadenhutten, Ohio, the United States Chemical Safety and Hazard Investigation Board announces that it will convene a Public Meeting beginning at 2 pm local time on October 29, 2003, at the George Washington University Conference Center's Third Floor Amphitheater, 800 21st Street, NW., Washington, DC.

At this meeting CSB staff will present to the Board a case study of this incident, which examines three key issues: Hazards of benzoly peroxide, reactive chemical hazards, and process safety management systems. The Board will also conduct other business; the Chief Operating Officer will provide an update on current CSB investigations, the status of the CSB FY '04 budget, and discuss the revision to the CSB's overtime policy. Finally, the General Counsel will present a proposed rule outlining the CSB organization.

After the staff presentation, the Board will allow time for public comment. Following the conclusion of the public comment period, the Board will consider whether to vote to approve the final case study.

All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the issues and factors involved in this case. No factual analyses, conclusions or findings should be considered final. Only after the Board has considered the staff presentation and approved the staff report will there be an approved final record of this incident.

The meeting will be open to the public. Please notify CSB if a translator or interpreter is needed, at least 5 business days prior to the public meeting. For more information, please contact the Chemical Safety and Hazard Investigation Board at (202) 261–7600, or visit our Web site at: *www.csb.gov.*

**Ray Porfiri,**

*Deputy General Counsel.*

[FR Doc. 03–26379 Filed 10–15–03; 11:14 am]

**BILLING CODE 6350–01–U**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[Docket No. 030602141–3244–03; I.D. 061703A]**

**RIN 0648–ZB55**

## Availability of Grant Funds for Fiscal Year 2004

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Omnibus Notice Announcing the Availability of Grant Funds for Fiscal Year 2004

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) announces a second availability of grant funds for Fiscal Year 2004. The purpose of this notice is to provide the general public with a single source of program and application information related to the Agency's competitive grant offerings, and it contains the information about those programs required to be published in the **Federal Register**. This second omnibus notice is designed to replace the multiple **Federal Register** notices that traditionally advertised the availability of NOAA's discretionary funds for its various programs. It should be noted that additional program initiatives unanticipated at the time of the publication of this notice may be announced through both subsequent **Federal Register** notices and the NOAA website: *http://www.ofa.noaa.gov/~amd/SOLINDEX.HTML*

**DATES:** Proposals must be received by the date and time indicated under each program listing in the **SUPPLEMENTARY INFORMATION** section.

**ADDRESSES:** Proposals must be submitted to the addresses listed in the **SUPPLEMENTARY INFORMATION** section for each program.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the full funding opportunity announcement and/or application kit, please contact the person listed as the information contact under each program or access it via NOAA's website: *http://www.ofa.noaa.gov/~amd/SOLINDEX.HTML*

**SUPPLEMENTARY INFORMATION:** NOAA published its first omnibus notice announcing the availability of grant funds for both projects and fellowships/scholarships/internships for Fiscal Year 2004 in the **Federal Register** on June 30, 2003 (68 FR 38678). The evaluation criteria and selection procedures contained in the June 30, 2003 omnibus notice are applicable to this solicitation. For a copy of the June 30, 2003 omnibus notice, please go to: *http://www.ofa.noaa.gov/~amd/SOLINDEX.HTML*

### Electronic Access

The full funding announcement for each program is available via website: *http://www.ofa.noaa.gov/~amd/SOLINDEX.HTML* or by contacting the program official identified below. These announcements will also be available through FedGrants at *http://www.fedgrants.gov.*

### NOAA Project Competitions

This second omnibus notice describes funding opportunities for the following NOAA discretionary grant programs:

*National Marine Fisheries Service*

1. Bay Watershed Education & Training (B-WET) Program

Summary Description: The B-WET grant program is a competitively based program that supports existing environmental education programs, fosters the growth of new programs, and encourages the development of partnerships among environmental education programs throughout the entire Chesapeake Bay watershed. Funded projects assist in meeting the Stewardship and Community Engagement goals of the Chesapeake 2000 Agreement. Projects support organizations that provide students "meaningful" Chesapeake Bay or stream outdoor experiences and professional development opportunities for teachers in the area of environmental education related to the Chesapeake Bay watershed.

Funding Availability: This solicitation announces that approximately $1.85M may be available in FY 2004 in award amounts to be determined by the proposals and available funds. The NOAA Chesapeake Bay Office (NCBO) anticipates that approximately 30 grants will be awarded with these funds. About $925,000 will be for proposals that provide opportunities for students (K through 12) to participate in a "Meaningful" Chesapeake Bay or Stream Outdoor Experience. Of the amount available for this area of interest, about $100,000 will be awarded to smaller, community-based organizations that work at a local level to provide environmental education programs. About $925,000 will be for proposals that provide opportunities for Professional Development in the area of Environmental Education for Teachers within the Chesapeake Bay Watershed. The NCBO anticipates that typical project awards for "Meaningful" Bay or Stream Outdoor Experiences and Professional Development in the Area of Environmental Education for Teachers will range from $10,000 to $150,000. Proposals will be considered for funds greater than the specified range.

Statutory Authority: 16 U.S.C 661, 15 U.S.C. 1540.

CFDA: 11.457 Chesapeake Bay Studies, Education.

Application Deadline: Preliminary proposals must be received by 5 p.m. eastern standard time (EST) on November 17, 2003. Full proposals must be received by 5 p.m. EST on December 31, 2003.

Address for submitting Proposals: NOAA Chesapeake Bay Office; Education Coordinator; 410 Severn Avenue, Suite 107A; Annapolis, MD 21403.

Information Contact(s): Shannon Sprague: 410–267–5664 or shannon.sprague@noaa.gov.

Eligibility: Eligible applicants for both areas of interest (i.e., "Meaningful" Chesapeake Bay or Stream Outdoor Experience and Professional Development in the Area of Environmental Education for Teachers Within the Chesapeake Bay Watershed) are K-through–12 public and independent schools and school systems, institutions of higher education, nonprofit organizations, state or local government agencies, interstate agencies, and Indian tribal governments in the Chesapeake Bay watershed.

Cost Sharing Requirements: Encouraged, but not required.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

2. Chesapeake Bay Fisheries Research Program.

Summary Description: The Chesapeake Bay Fisheries Research Program is a competitively based program that supports research, monitoring, modeling and management addressing various aspects of Chesapeake Bay fisheries. The Chesapeake Bay is a complex and dynamic ecosystem that supports many fisheries that are economically important both regionally and nationally. The NOAA Chesapeake Bay Office (NCBO) established the Fisheries Steering Committee in 2001 to guide various Chesapeake Bay fisheries' issues including management and research in an ecosystem context. Funded projects foster our knowledge and understanding of the Chesapeake Bay ecosystem by: (1) providing biological information and life history characteristics for many individual Chesapeake Bay fisheries stocks, and (2) broadening the multispecies knowledge base for development of Fisheries Ecosystem Planning. All projects supported through this program will address recommendations of the Chesapeake Bay Fisheries Ecosystem Plan (*http://noaa.chesapeakebay.net/fisheries*) and provide timely (real-time) information for making resource management decisions in an ecosystem context.

Funding Availability: This solicitation announces that approximately $1.5M may be available in FY 2004 for cooperative agreements in amounts to be determined by the proposals and available funds. Proposals may be submitted for up to 3 years. However, funds will be made available for only a 12–month award period and any renewal of the award period will depend on submission of a successful proposal subject to merit review, adequate progress on previous award(s), and available funding to renew the award. It is the intent of the NCBO to renew funding for several projects currently being supported and to make awards with funding through this notice to these programs pending successful review of a new application package, and adequate progress reports and/or site visits.

Statutory Authority: 16 U.S.C. 661.

CFDA: 11.457, Chesapeake Bay Studies, Fisheries Research.

Application Deadline: Applicants are strongly encouraged to submit applications electronically through *http://www.grants.gov*, however, you may also submit your application to NOAA in paper format.

For electronic submission - Proposals must be received by 5 p.m. eastern time on December 1, 2003. Proposals received after that time will not be considered for funding. Users of Grants.gov will be able to download a copy of the application package, complete it off line, and then upload and submit the application package and associated proposal information via the Grants.gov website.

For paper submission - proposals must be received by 5 p.m. eastern time on December 1, 2003. Proposals received after that time will not be considered for funding. NCBO determines whether an application has been submitted before the deadline by date/time stamping the applications as they are physically received in the NCBO office.

Address for submitting Proposals: Electronic submission online: *http://www.grants.gov/*

Paper submission: Derek M. Orner, NOAA Chesapeake Bay Office, 410 Severn Avenue, Suite 107A, Annapolis, MD 21403.

Information Contact(s): Derek M. Orner, NOAA Chesapeake Bay Office, 410 Severn Avenue, Suite 107A, Annapolis, MD 21403, or by phone at 410–267–5676, or fax to 410–267–5666, or via internet at derek.orner@noaa.gov.

Eligibility: Eligible applicants are institutions of higher education, other nonprofits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, state, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive Federal assistance under this notice.

Cost Sharing Requirements: No cost sharing is required under this program, however, the NCBO strongly encourages applicants applying for either area of interest to share as much of the costs of the award as possible. Funds from other Federal awards may not be considered matching funds. The nature of the contribution (cash versus in-kind) and the amount of matching funds will be taken into consideration in the review process. Priority selection will be given to proposals that propose cash rather than in-kind contributions.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

### *National Ocean Service*

### 1. Geodetic Science and Applied Research (GSAR) Program

Summary Description: The GSAR Program represents an NOAA/NGS effort to conduct basic and applied research in the geodetic sciences that advances positioning operations and services in support of transportation and commerce on a national basis. This initial opportunity is focused on a specific problem: Three-Frequency Real-Time Kinematic (RTK) Positioning by Different Support Architectures. There are at least 8 additional priorities that will be addressed in the future in the GSAR Program.

Funding Availability: One award of no more than $65,000 is expected to be made through this announcement, depending on availability of funds.

Statutory Authority: Authority for the GSAR program is provided by the following: Coast and Geodetic Survey Act, Public Law 80–373, 33 U.S.C. 883d.

CFDA: 11.400, Applied Geodetic Research.

Application Deadline: Proposals must be received by the NGS no later than 5 p.m., EDT, November 17, 2003.

Address for submitting Proposals: Geodetic Services Division; NOAA National Geodetic Survey; N/NGS1; 1315 East-West Highway, Room 9356; Silver Spring, Maryland 20910–3282.

Information Contact(s): Gilbert J. Mitchell: 301–713–3228 ext. 114, or fax to 301–713–4176, or via internet at *Gilbert.Mitchell@noaa.gov*.

Eligibility: Eligible applicants are institutions of higher education and federally funded educational institutions such as the Naval Postgraduate School.

Cost Sharing Requirements: No cost sharing is required under this program.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

### *Oceans and Atmospheric Research*

### 1. The Gulf of Mexico Oyster Industry Program

Summary Description: It is the goal of the Gulf Oyster Industry Program to encourage multi-disciplinary research and extension projects that contribute directly to the efficiency and profitability of oyster-related businesses and to the safety of oyster products. It encourages multi-disciplinary approaches to meet the challenges faced by the oyster industry in producing wholesome seafood products. Oyster businesses seek innovative solutions at all producing and processing levels, including: production (landings), oyster disease diagnostics, harvesting, post-harvest treatment, processing, distribution, marketing, consumer education, and food safety.

Funding Availability: Approximately $1 million is available for the Gulf Oyster Industry competition in 2004 and a similar amount is expected but not assured for FY–2005, therefore, two-year projects will be considered. Proposals are limited to a total of

$200,000 for each year and approximately 7 full proposals will be funded.

Statutory Authority: 33 U.S.C. 1121–1131.

CFDA: 11.417, Sea Grant Support.

Application Deadline: Pre-proposals must be received by 5 p.m. (local time) on December 1, 2003 and full proposals by 5 p.m. (local time) February 3, 2004 by a state Sea Grant Program [or by the National Sea Grant Office (NSGO) in the case of an applicant in a non-Sea Grant state]. Applications are to be forwarded to the NSGO by the state Sea Grant Programs by 5 p.m. EST on December 8, 2003 for pre-proposals and by 5 p.m. EST February 10, 2004 for full proposals.

Address for submitting Proposals: Prospective applicants living in Sea Grant States should submit their preliminary and full proposals to the their state's Sea Grant program. Addresses for state Sea Grant programs are available at www.mdsg.umd.edu/ngo/research or by contacting NOAA at National Sea Grant College Program, R/SG, Attn: Gulf Oyster Industry Competition, Room 11838, NOAA, 1315 East-West Highway, Silver Spring, MD 20910, Phone: 301–713–2451. Applicants from non-Sea Grant states should send preliminary and full proposals to the above address.

Information Contact(s): James P. McVey, Program Director for Aquaculture, or Mary Robinson, Secretary, National Sea Grant Office, 301–713–2451, facsimile 301–713–0799, e-mail-Jim.McVey@NOAA.gov.

Eligibility: Individuals, institutions of higher education, nonprofit organizations, commercial organizations, State, local and Indian tribal governments, are eligible. Only those who submit preliminary proposals by the preliminary proposal deadline are eligible to submit full proposals. Those submitting preliminary proposals by the preliminary proposal deadline that are not recommended by the pre-proposal review process still are eligible to submit full proposals.

Cost Sharing requirements: Applicants are required to provide one dollar for every two of Federal funds.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

2. National Marine Aquaculture Initiative

Summary Description: The NOAA Office of Oceanic and Atmospheric Research, in cooperation with the National Sea Grant College Program, the National Marine Fisheries Service, and the National Ocean Service, is seeking preliminary proposals and full proposals in innovative research, policy and regulatory analysis and development, and outreach and demonstration for the development of marine and Great Lakes aquaculture in the United States.

Funding Availability: Depending upon appropriations, it is anticipated that $3.1 million will be available for proposals of one or two years duration. The maximum request for a single proposal is $400,000 for a one-year proposal and $800,000 for a two-year proposal. Approximately 10 awards will be made.

Statutory Authority: 33 U.S.C. 1121–1131

CFDA: 11.417, Sea Grant Support

Application Deadline: The pre-proposals are due by 5 p.m. (local time) on December 1, 2003 and full proposals are due by 5 p.m. (local time) on February 3, 2004 at a state Sea Grant Program [or by the National Sea Grant Office (NSGO) in the case of an applicant from a non-sea Grant state]. Applications are to be forwarded to the NSGO by the state Sea Grant Programs by 5 p.m. EST on December 8, 2003 for pre-proposals and by 5 p.m. EST on February 10, 2004 for full proposals.

Address for submitting Proposals: Prospective applicants living in Sea Grant States should submit their preliminary and full proposals to the their state's Sea Grant program. Addresses for state Sea Grant programs are available at www.mdsg.umd.edu/ngo/research or by contacting NOAA at National Sea Grant College Program, R/SG, Attn: Gulf Oyster Industry Competition, Room 11838, NOAA, 1315 East-West Highway, Silver Spring, MD 20910, Phone: 301–713–2451. Applicants from non-Sea Grant states should send preliminary and full proposals to the above address.

Information Contact(s): James P. McVey, Program Director for Aquaculture, or Mary Robinson, Secretary, National Sea Grant Office, 301 713 2451, facsimile 301–713–0799, e-mail-Jim.McVey@NOAA.gov.

Eligibility: Individuals, institutions of higher education, nonprofit organizations, commercial organizations, Federal, State, local and Indian tribal governments, are eligible. Only those who submit preliminary proposals by the preliminary proposal deadline are eligible to submit full proposals. Those submitting preliminary proposals by the preliminary proposal deadline that are not recommended by the pre-proposal review process still are eligible to submit full proposals.

Cost Sharing Requirements: None.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

## NOAA Fellowships/Scholarships/ Internships Competitions

This second omnibus notice describes funding opportunities for the following NOAA discretionary fellowship, scholarship, and internship programs:

*Oceans and Atmospheric Research*

1. Sea Grant - Industry Fellowship Program

Summary Description: The National Sea Grant College Program (Sea Grant) within OAR is seeking applications for one of its fellowship programs to fulfill its broad educational responsibilities and to strengthen the collaboration between Sea Grant and industry. The Sea Grant - Industry Fellowship is available to graduate students enrolled in either MS or PhD degree programs in institutions of higher education in the United States and its territories, with required matching funds from private industrial sponsors. Industry Fellows will work on research and development projects on topics of interest to a particular industry/company. In a true partnership, the student, the faculty advisor, the Sea Grant College or institute, and the industry representative will work together, sharing research facilities and the cost of the activity.

Funding Availability: Sea Grant anticipates awarding a total of $300,000 in Federal funds through this announcement by supporting five new Industry Fellows for two years beginning in FY 2004. The award for each Industry Fellowship, contingent upon the availability of Federal funds, will be in the form of a grant of up to $30,000 per year from Sea Grant; at least 50% of the Federal share is required as a match by the applicant (i.e., $15,000 match for $30,000 in Federal funds for a total project cost of $45,000). Awards will have an anticipated start date of June 1, 2004.

Statutory Authority: 33 U.S.C. 1127(a).

CFDA: 11.417, Sea Grant Support.

Application Deadline: Applications must be received by 5 p.m. (local time) on December 1, 2003, by a state Sea Grant Program [or by the National Sea Grant Office (NSGO) in the case of an institution of higher education in a non-Sea Grant state]. Applications are to be forwarded to the NSGO by the state Sea Grant Programs by 5 p.m. (local time) on December 8, 2003.

Address for Submitting Applications: Applications from institutions of higher education in Sea Grant states must be submitted to the state Sea Grant Program. The addresses of the state Sea Grant College Programs may be found at the following Internet website: (*http://www.nsgo.seagrant.org/SGDirectors.html*) or may also be obtained by contacting Mr. Joseph Brown at the NSGO (mail address: National Sea Grant College Program, 1315 East-West Highway, Silver Spring, MD 20910; phone: 301–713–2438 x135; or e- mail: *joe.brown@noaa.gov*). Applications from elsewhere may be submitted either to the nearest state Sea Grant Program or directly to the NSGO. Applications submitted to the NSGO should be addressed to: National Sea Grant Office, R/SG, Attn: Mrs. Geraldine Taylor, Proposal Processing, Room 11732, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (telephone number for express mail applications is 301–713–2445).

Information Contact(s): Dr. Leon M. Cammen, National Sea Grant College Program, 1315 East-West Highway, Silver Spring, MD 20910; tel: (301) 713–2435 ext. 136; e-mail: leon.cammen@noaa.gov; or any state Sea Grant Program.

Eligibility: Prospective Fellows must be enrolled or provisionally accepted in an MS or PhD degree program at an institution of higher education in the United States or its territories. Applications must be submitted by the institution of higher education.

Cost Sharing Requirements: Required 50 percent match of the Federal funds by the industrial partner.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

2. GradFell 2004 NMFS - Sea Grant Joint Graduate Fellowship Program in Population Dynamics and Marine Resource Economics.

Summary Description: The National Sea Grant College Program (Sea Grant) within OAR is seeking applications for one of its fellowship programs to fulfill its broad educational responsibilities and to strengthen the collaboration between Sea Grant and NMFS. Fellows will work on thesis problems of public interest and relevance to NMFS and have summer internships at participating NMFS Science Centers or Laboratories under the guidance of NMFS mentors.

Funding Availability: The NMFS - Sea Grant Joint Graduate Fellowship Program in Population Dynamics and Marine Resource Economics expects to support four new Fellows for 2–3 years beginning in FY 2004. The award for each fellowship will be a cooperative agreement of $38,000 per year, with an anticipated start date of June 1, 2004.

Statutory Authority: 33 U.S.C. 1127(a).

Catalog of Federal Domestic Assistance Number: 11.417, Sea Grant Support.

Application Deadline: Applications must be received by 5 p.m. (local time) on December 1, 2003 by a state Sea Grant Program [or by the National Sea Grant Office (NSGO) in the case of an institution of higher education in a non-Sea Grant state]. Applications are due at the NSGO from state Sea Grant Programs by 5 p.m. EST on December 8, 2003.

Address for Submitting Applications: Applications from institutions of higher education in Sea Grant states must be submitted to the state Sea Grant Program. The addresses of the state Sea Grant College Programs may be found at the following Internet website: (*http://www.nsgo.seagrant.org/SGDirectors.html*) or may also be obtained by contacting Mr. Joseph Brown at the NSGO [mail address: National Sea Grant College Program, 1315 East-West Highway, Silver Spring, MD 20910; tel: (301) 713–2438 ext. 135; or e- mail: joe.brown@noaa.gov]. Applications from elsewhere may be submitted either to the nearest state Sea Grant Program or directly to the NSGO. Applications submitted to the NSGO should be addressed to: National Sea Grant Office, R/SG, Attn: Mrs. Geraldine Taylor, Proposal Processing, Room 11732, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (telephone number for express mail applications is 301–713–2445).

Information Contact: Dr. Emory D. Anderson, National Sea Grant College Program, 1315 East-West Highway, Silver Spring, MD 20910; tel: (301) 713–2435 ext. 144; e-mail: emory.anderson@noaa.gov; any state Sea Grant Program; or any participating NMFS facility.

Eligibility: Applicants must be United States citizens and must be enrolled or provisionally accepted in a PhD degree program in population dynamics or a related field (e.g., applied mathematics, statistics, or quantitative ecology) or in natural resource economics or a related field at an institution of higher education in the United States or its territories. Applications must be submitted by an institution of higher education.

Cost Sharing Requirements: Required 50 percent match of the NSGO funds by the academic institution (i.e.,$6,333).

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

## Limitation of Liability

Funding for programs listed in this notice is contingent upon the availability of Fiscal Year 2004 appropriations. NOAA issues this notice subject to the appropriations made available under the current continuing resolution (CR), H.J. Res. 69, "Making continuing appropriations for the fiscal year 2004, and for other purposes," Public Law 108–85. NOAA anticipates making awards for programs listed in this notice provided that funding for the programs is continued beyond October 31, 2003, the expiration of the current continuing resolution. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

## Universal Identifier

Applicants should be aware that, for programs that have deadline dates on or after October 1, 2003, they will be required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the June 27, 2003 (68 FR 38402) **Federal Register** notice for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or via the internet (*http://www.dunandbradstreet.com*).

## The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation.

## Paperwork Reduction Act

This document contains collection-of-information requirements subject to the

Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF-LLL, and CD–346 have been approved by Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

### Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866.

### Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

### Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: October 10, 2003.

**John J. Kelly, Jr.,**

*Deputy Undersecretary of Commerce for Oceans and Atmosphere, National Oceanic and Atmospheric Administration.*

[FR Doc. 03–26297 Filed 10–16–03; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## Science Advisory Board

**AGENCY:** Office of Oceanic and Atmospheric Research, NOAA, DOC.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for research, education, and application of science to resource management. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

*Time and Date:* The meeting will be held Monday, November 3, 2003, from 8:30 a.m. to 5 p.m. and Tuesday, November 4, 2003 from 10 a.m. to 5 p.m. These times and the agenda topics described below may be subject to change. Refer to the web page listed below for the most up-to-date meeting agenda.

*Place:* The meeting will be held both days at the Key Bridge Marriott Hotel, 1401 Lee Highway, Arlington, VA.

*Status:* The meeting will be open to public participation with a 30-minute time period set aside on Monday, November 3 for direct verbal comments or questions from the public. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 35 copies) should be received in the SAB Executive Director's Office by October 22, 2003, to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after October 22, 2003, will be distributed to the SAB, but may not be reviewed prior to the meeting date. Approximately thirty (30) seats will be available for the public including five (5) seats reserved for the media. Seats will be available on a first-come, first-served basis.

*Matters to be Considered:* The meeting will include the following topics: (1) NOAA Research Review, (2) Minority Serving Institutions, (3) NOAA Programming Planning and Budgeting, (4) Hydrology in NOAA, (5) Homeland Security, and (6) public statements.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael Uhart, Executive Director, Science Advisory Board, NOAA, Rm. 11142, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–713–9121, Fax: 301–713–0163, e-mail: *Michael.Uhart@noaa.gov*); or visit the NOAA SAB Web site at *http://www.sab.noaa.gov.*

Dated: October 10, 2003.

**Louisa Koch,**

*Deputy Assistant Administrator, OAR.*

[FR Doc. 03–26293 Filed 10–16–03; 8:45 am]

**BILLING CODE 3510–KD–P**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 100603D]**

## Marine Mammals; File No.753–1599

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Receipt of application for amendment.

**SUMMARY:** Notice is hereby given that Jim Darling, Ph.D., 2155 West 13th Avenue, Vancouver, B.C. VOR 2ZO, Canada, has requested an amendment to scientific research Permit No. 753–1599–00.

**DATES:** Written or telefaxed comments must be received on or before November 17, 2003.

**ADDRESSES:** The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249; and

Protected Species Coordinator, Pacific Area Office, NMFS, 1601 Kapiolani Blvd., Rm, 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941. Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

**FOR FURTHER INFORMATION CONTACT:** Jill Lewandowski, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** The subject amendment to Permit No. 753–1599–00, issued on January 10, 2001 (66 FR 1957–1958), is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16

U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 753–1599–00 authorizes the permit holder to conduct studies on the mating behavior, social organization and behavioral ecology of humpback whales (*Megaptera novaeangliae*) and gray whales (*Eschrichtius robustus*) in the state waters of Alaska, Hawaii, Oregon, Washington and California. The current permit expires on January 1, 2006.

The permit holder is now requesting additional takes for humpback whales only to further study the whales' songs in Hawaiian and Alaskan waters. Specifically, the permit holder is requesting the following additional annual takes: 100 humpback whales through the playback of recorded humpback whale songs, 50 humpback whales through suction cup and implantable tags designed to study the short-term movement patterns of the animals, and 300 humpback whales through harassment incidental to these research activities.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 8, 2003.

**Jill K. Lewandowski,**

*Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 03–26296 Filed 10–16–03; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

## Patent and Trademark Office

## Post Allowance and Refilling

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before December 16, 2003.

**ADDRESSES:** Direct all written comments to Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, 703–308–7400, U.S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313, Attn: CPK 3 Suite 310; by e-mail at *susan.brown@uspto.gov*; or by facsimile at (703) 308–7407.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Robert J. Spar, Director, Office of Patent Legal Administration, USPTO, PO Box 1450, Alexandria, VA 22313–1450; by telephone at (703) 308–5107; or by e-mail at *bob.spar@uspto.gov*.

**SUPPLEMENTARY INFORMATION**

### I. Abstract

The United States Patent and Trademark Office (USPTO) is required by 35 U.S.C. 131 and 151 to examine applications and, when appropriate, allow applications and issue them as patents. When an application for a patent is allowed by the USPTO, the USPTO issues a notice of allowance and the applicant must pay the specified issue fee (including the publication fee, if applicable) within three months to avoid abandonment of the application. If the appropriate fees are paid within the proper time period, the USPTO can then issue the patent. If the fees are not paid within the designated time period, the application is abandoned and the applicant may petition the Director to accept a delayed payment with a satisfactory showing that the delay was unavoidable. This Petition for Revival of an Application for Patent Abandoned Unavoidably (Form PTO/SB/61) is approved under information collection 0651–0031. The rules outlining the procedures for payment of the issue fee and issuance of a patent are found at 37 CFR 1.18 and 1.311–1.317.

Chapter 25 of Title 35 U.S.C. provides that there are several actions that the applicant may take after issuance of a patent, including requesting the correction of errors in a patent. For original patents that are deemed wholly or partly inoperative, applicants may file a reissue application, which entails several formal requirements including an oath or declaration that the errors in the patent were not the result of any deceptive intention on the part of the applicant. The rules outlining these procedures are found at 37 CFR 1.171–1.179 and 1.322–1.325.

Chapter 30 of Title 35 U.S.C. provides that any person at any time may file a request for reexamination by the USPTO of any claim of a patent on the basis of prior art patents or printed publications. Once initiated, the reexamination proceedings are substantially ex parte and do not permit input from third parties, but Chapter 31 also provides for optional inter partes reexamination allowing third parties to participate. The rules outlining *ex parte* and *inter partes* reexaminations are found at 37 CFR 1.510–1.570 and 1.902–1.997.

If a request for *ex parte* or *inter partes* reexamination is denied, the requester may petition the Director to review the examiner's refusal of reexamination. The USPTO is adding these two petitions, the Petition to Review Refusal to Grant *Ex Parte* Reexamination (37 CFR 1.515(c)) and the Petition to Review Refusal to Grant *Inter Partes* Reexamination (37 CFR 1.927), to this information collection. These petitions are not new requirements but were not previously covered in this collection. No forms are provided for these petitions.

The public uses this information collection to request corrections of errors in issued patents, to request reissue patents, to request reexamination proceedings, and to ensure that associated fees and documentation are submitted to the USPTO. The USPTO provides 10 paper forms that the public may use to submit the necessary information for these requirements, although there are no forms provided for some of the documentation necessary for a reissue application.

This collection was previously approved by OMB in January 2001, at which time Form PTO/SB/58 Request for *Inter Partes* Reexamination was added to this collection to support the USPTO's amended rules of practice implementing third party reexamination proceedings as found in the American Inventors Protection Act of 1999. In May 2001, OMB approved a change worksheet to delete Form PTO/SB/54 Reissue Application by the Assignee, Offer to Surrender Patent from this collection due to the elimination of the requirement to file an offer to surrender the original patent at the time of filing a reissue application. The USPTO also revised Form PTOL–85B Issue Fee Transmittal in order to support a change in practice regarding publication fees and to accommodate the acceptance of payments by credit card. In November 2001, OMB approved another change worksheet that increased the total responses and burden hours as an administrative adjustment to reflect a net increase in filings for the items covered under this collection.

The USPTO also recently submitted this collection in conjunction with a notice of proposed rulemaking entitled "Changes to Support Implementation of the United States Patent and Trademark Office 21st Century Strategic Plan" (RIN 0651–AB64), which was published in the **Federal Register** on September 12, 2003 (Vol. 68, No. 177). The proposed rulemaking would eliminate the requirement in 37 CFR 1.178 for a ribbon copy of the patent grant to be surrendered in a reissue application and consequently delete Form PTO/SB/55 Reissue Patent Application Statement as to Loss of Original Patent from this collection. The rulemaking would also allow applicants to use electronic signatures to sign patent and examination proceeding documents that have been created electronically with a word processor or obtained from the USPTO website as fillable forms. The information collection package for 0651–0033 associated with this proposed rulemaking is currently under review at OMB.

## II. Method of Collection

By mail, facsimile, or hand delivery to the USPTO.

## III. Data

*OMB Number:* 0651–0033.

*Form Number(s):* PTO/SB/44/50/51/51S/52/53/56/57/58 and PTOL–85B.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Individuals or households; businesses or other for-profits; not-for-profit institutions; farms; the Federal Government; and state, local or tribal governments.

*Estimated Number of Respondents:* 223,411 responses per year. This estimate includes the decrease of 95 responses per year that would result from the deletion of Form PTO/SB/55 Reissue Patent Application Statement as to Loss of Original Patent, which is currently under review at OMB.

*Estimated Time Per Response:* The USPTO estimates that it will take the public from 1.8 minutes (0.03 hours) to 2 hours to gather the necessary information, prepare the appropriate form or other document, and submit the information to the USPTO.

*Estimated Total Annual Respondent Burden Hours:* 67,261 hours per year. This estimate includes the decrease of 5 hours per year that would result from the deletion of Form PTO/SB/55 Reissue Patent Application Statement as to Loss of Original Patent, which is currently under review at OMB.

*Estimated Total Annual Respondent Cost Burden:* $8,380,572 per year. The USPTO expects that the information in this collection will be prepared by attorneys, except for the Issue Fee Transmittal, which will be prepared by paraprofessionals. Using the professional rate of $252 per hour for associate attorneys in private firms, the USPTO estimates that the respondent cost burden for attorneys submitting the information in this collection will be $7,222,572 per year. Using the paraprofessional rate of $30 per hour, the USPTO expects that the respondent cost burden for submitting the Issue Fee Transmittal form will be $1,158,000 per year. These estimates exclude the respondent cost burden for Form PTO/SB/55 Reissue Patent Application Statement as to Loss of Original Patent due to the pending deletion of this form in the 0651–0033 information collection submission that is currently under review at OMB.

| Item | Form number | Estimated time for response | Estimated annual responses | Estimated annual burden hours |
|---|---|---|---|---|
| Certificate of Correction | PTO/SB/44 | 1 hour | 25,000 | 25,000 |
| Reissue Documentation | None | 2 hours | 870 | 1,740 |
| Reissue Patent Application Transmittal | PTO/SB/50 | 12 minutes | 870 | 174 |
| Reissue Application Declaration by the Inventor or the Assignee | PTO/SB/51/52 | 30 minutes | 870 | 435 |
| Supplemental Declaration for Reissue Patent Application to Correct "Errors" Statement (37 CFR 1.175). | PTO/SB/51S | 1.8 minutes | 550 | 17 |
| Reissue Application: Consent of Assignee; Statement of Non-assignment. | PTO/SB/53 | 6 minutes | 850 | 85 |
| Reissue Application Fee Transmittal Form | PTO/SB/56 | 12 minutes | 870 | 174 |
| Request for Ex Parte Reexamination Transmittal Form | PTO/SB/57 | 2 hours | 330 | 660 |
| Request for Inter Partes Reexamination Transmittal Form | PTO/SB/58 | 2 hours | 175 | 350 |
| Petition to Review Refusal to Grant Ex Parte Reexamination | None | 1 hour | 25 | 25 |
| Petition to Review Refusal to Grant Inter Partes Reexamination | None | 1 hour | 1 | 1 |
| Issue Fee Transmittal | PTOL–85B | 12 minutes | 193,000 | 38,600 |
| Total | | | 223,411 | 67,261 |

*Estimated Total Annual Non-hour Respondent Cost Burden:* $257,516,601 per year. There are no capital start-up costs, maintenance costs, or recordkeeping costs associated with this information collection. However, this collection does have annual (non-hour) costs in the form of filing fees and postage costs.

The total estimated annual filing fees for this collection are calculated in the accompanying chart. The fees listed correspond to the USPTO Fee Schedule effective October 1, 2003. The Reissue Fee Transmittal Form includes the filing fees for the reissue application (including small entities) and covers all parts of the application, including reissue documentation, reissue application transmittal, reissue application declarations, and consent of assignee or statement of non-assignment. There is no fee for the supplemental declaration for a reissue patent application to correct an "errors" statement.

Additionally, there are several different issue fees under 37 CFR 1.18 depending on the type of patent being issued, whether a publication fee is required, and whether the inventor is entitled to the discounted small entity fee. The additional publication fee may not be owed at the time of patent issue for any of the following reasons: (1) The application requested non-publication under 35 U.S.C. 122(b)(2)(B)(i); (2) the application will not be published due to national security concerns as provided in 35 U.S.C. 122(d); (3) the applicant has paid the publication fee prior to issue due to a request for early or amended publication under 37 CFR 1.219; or (4) the application was filed prior to November 29, 2000 and therefore not subject to eighteen-month publication under 35 U.S.C. 122(b). The USPTO estimates that the total filing costs associated with this collection will be $257,407,130 per year.

| Item | Form No. | Estimated annual responses | Fee amount | Estimated annual filing costs |
|---|---|---|---|---|
| Certificate of Correction | PTO/SB/44 | 25,000 | $100.00 | $2,500,000.00 |
| Reissue Documentation | None | 870 | 0.00 | 0.00 |
| Reissue Patent Application Transmittal | PTO/SB/50 | 870 | 0.00 | 0.00 |
| Reissue Application Declaration by the Inventor or the Assignee | PTO/SB/51/52 | 870 | 0.00 | 0.00 |
| Supplemental Declaration for Reissue Patent Application to Correct "Errors" Statement (37 CFR 1.175). | PTO/SB/51S | 550 | 0.00 | 0.00 |
| Reissue Application: Consent of Assignee; Statement of Non-assignment. | PTO/SB/53 | 850 | 0.00 | 0.00 |
| Reissue Application Fee Transmittal Form | PTO/SB/56 | 520 | 770.00 | 400,400.00 |
| Reissue Application Fee Transmittal Form (small entity) | PTO/SB/56 | 350 | 385.00 | 134,750.00 |
| Request for Ex Parte Reexamination Transmittal Form | PTO/SB/57 | 330 | 2,520.00 | 831,600.00 |
| Request for Inter Partes Reexamination Transmittal Form | PTO/SB/58 | 175 | 8,800.00 | 1,540,000.00 |
| Petition to Review Refusal to Grant Ex Parte Reexamination | None | 25 | 130.00 | 3,250.00 |
| Petition to Review Refusal to Grant Inter Partes Reexamination | None | 1 | 130.00 | 130.00 |
| Issue Fee (utility patent, no publication fee) | PTOL–85B | 25,000 | 1,330.00 | 33,250,000.00 |
| Issue Fee (utility patent, no publication fee, small entity) | PTOL–85B | 9,000 | 665.00 | 5,985,000.00 |
| Issue Fee (utility patent, with publication fee) | PTOL–85B | 105,000 | 1,630.00 | 171,150,000.00 |
| Issue Fee (utility patent, with publication fee, small entity) | PTOL–85B | 36,000 | 965.00 | 34,740,000.00 |
| Issue Fee (design patent, no publication fee) | PTOL–85B | 8,500 | 480.00 | 4,080,000.00 |
| Issue Fee (design patent, no publication fee, small entity) | PTOL–85B | 8,500 | 240.00 | 2,040,000.00 |
| Issue Fee (plant patent, no publication fee) | PTOL–85B | 120 | 640.00 | 76,800.00 |
| Issue Fee (plant patent, no publication fee, small entity) | PTOL–85B | 80 | 320.00 | 25,600.00 |
| Issue Fee (plant patent, with publication fee) | PTOL–85B | 480 | 940.00 | 451,200.00 |
| Issue Fee (plant patent, with publication fee, small entity) | PTOL–85B | 320 | 620.00 | 198,400.00 |
| Total | | 223,411 | | $257,407,130.00 |

Customers may incur postage costs when submitting the information in this collection to the USPTO by mail. The USPTO estimates that the average first-class postage cost for a mailed submission will be 49 cents and that up to 223,411 submissions will be mailed to the USPTO per year. The total estimated postage cost for this collection is $109,471 per year.

These estimated annual (non-hour) costs exclude the costs for Form PTO/SB/55 Reissue Patent Application Statement as to Loss of Original Patent due to the pending deletion of this form in the 0651–0033 information collection submission that is currently under review at OMB. The total non-hour respondent cost burden for this collection in the form of filing fees and postage costs is $257,516,601 per year.

### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 10, 2003.

**Susan K. Brown,**

*Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.*

[FR Doc. 03–26275 Filed 10–16–03; 8:45 am]

**BILLING CODE 3510–16–P**

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## DEPARTMENT OF DEFENSE

## Department of the Air Force

## HQ USAF Scientific Advisory Board

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the 2003 Science and Technology Review. The purpose of the meeting is to allow the SAB and study leadership to assess the quality and long-term relevance of Air Vehicle research. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

**DATES:** November 3–7, 2003.

**ADDRESSES:** Wright-Patterson Air Force Base, Ohio.

**FOR FURTHER INFORMATION CONTACT:** Major Dwight Pavek, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

**Pamela D. Fitzgerald,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 03–26291 Filed 10–16–03; 8:45 am]

**BILLING CODE 5001–05–P**

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## DEPARTMENT OF DEFENSE

## Department of the Navy

## Meeting of the Chief of Naval Operations (CNO) Executive Panel

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice of closed meeting.

**SUMMARY:** The CNO Executive Panel reported the recommendations of the South Asia Study Group to the Chief of Naval Operations. This meeting consisted of discussions relating to

South Asia security issues as context for potential expansion of U.S. security cooperation with nations of the region.

**DATES:** The meeting was held on Tuesday, October 7, 2003, from 7 a.m. to 8 a.m.

**ADDRESSES:** The meeting was held at the Chief of Naval Operations dining room, Room 4E641, 2000 Navy Pentagon, Washington, DC 20350–2000.

**FOR FURTHER INFORMATION CONTACT:** Commander David Hughes, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311, (703) 681–4908 or Commander Jonathan Huggins, CNO Executive Panel, (703) 681–6207.

**SUPPLEMENTARY INFORMATION:** Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constituted classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy determined in writing that the public interest required that the meeting be closed to the public because it was concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Due to an unavoidable delay in administrative processing, the 15 days advance notice could not be provided.

Dated: October 10, 2003.

**E.F. McDonnell,**

*Major, U.S. Marine Corps, Federal Register Liaison Officer.*

[FR Doc. 03–26271 Filed 10–16–03; 8:45 am]

**BILLING CODE 3810–FF–U**

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## DEPARTMENT OF DEFENSE

### Department of the Navy

### Meeting of the Board of Advisors (BOA) to the President, U.S. Naval War College (NWC)

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice of open meeting.

**SUMMARY:** The BOA to the President, U.S. NWC, will meet to discuss educational, doctrinal, and research policies and programs at the NWC. This meeting will be open to the public.

**DATES:** The meeting will be held on Friday, November 21, 2003, from 8 a.m. to 4 p.m.

**ADDRESSES:** The meeting will be held in Conolly Hall, U.S. NWC, 686 Cushing Road, Newport, RI.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard R. Menard, Office of the Provost, U.S. NWC, 686 Cushing Road, Newport, RI 02841–1207, telephone number (401) 841–3589.

**SUPPLEMENTARY INFORMATION:** This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The purpose of the Board of Advisors meeting is to elicit advice on educational, doctrinal, and research policies and programs. The agenda will consist of presentations and discussions on the curriculum, programs and plans of the College since the last meeting of the BOA on March 20–21, 2003.

Dated: October 3, 2003.

**E.F. McDonnell,**

*Major, U.S. Marine Corps, Federal Register Liaison Officer.*

[FR Doc. 03–26290 Filed 10–16–03; 8:45 am]

**BILLING CODE 3810–FF–P**

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## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before November 17, 2003.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 10, 2003.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

### Office of Safe and Drug Free Schools

*Type of Review:* Revision.

*Title:* Grants to States for Training Incarcerated Youth Offenders—Eligible Population Data Request Form.

*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 56.

Burden Hours: 2,275.

*Abstract:* To receive an award under the Youth Offenders Program, a State Correctional Education Agency (SCEA) must submit a state plan describing how the program will operate. States must also submit an annual evaluation report. The date requested from the state on the eligible population request form is necessary to run the allocation formula.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2360. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–26259 Filed 10–16–03; 8:45 am]

BILLING CODE 4000–01–P

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## ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6644–6]

## Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 260–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed October 06, 2003 Through October 10, 2003

Pursuant to 40 CFR 1506.9.

*EIS No. 030460,* Final EIS, AFS, MT, Windmill Timber Sale and Road Decommissioning Project, Timber Harvesting, Road Construction and Road Decommissioning, Mill Creek Drainage, Absaroka Mountain Range, Gallatin National Forest, Park County, MT, Due: November 17, 2003, Contact: Mike Dettori (406) 222–1892.

This document is available on the Internet at: *http://www.fs.fed.us/rl/gallatin.*

*EIS No. 030461, Final EIS, FHW, WY,* US 287/26 Improvements Project, Moran Junction to 12 miles west of Dubois to where the roadway traverses thru the Bridger-Teton and Shoshone National Forests and Grand Teton National Park, NPDES and US Army COE Section 404 Permits Issuance, Teton and Fremont Counties, WY, Due: December 19, 2003, Contact: Galen W. Hesterberg (307) 772–2012.

*EIS No. 030462, Draft EIS, AFS, AZ,* Rodeo-Chediski Fire Salvage Project, Timber Harvest of Merchantable Dead Trees as Sawtimber and Products other than Lumber (POL), Implementation, Apache-Sitgreaves and Tonto National Forest, Apache, Coconino and Navajo Counties, AZ, Due: December 1, 2003, Contact: Jimmy E. Hibbetts (928) 333–4301.

*EIS No. 030463, Draft EIS, FHW, NY,* Cumberland Head Connector Road Construction, County Road 57 between US 9 and the Peninsula (known as the Parkway), Funding, Town of Plattsburg, Clinton County, NY, Due: December 1, 2003, Contact: Robert Arnold (518) 431–4127.

*EIS No. 030464, Draft EIS, AFS, MT,* Helena National Forest Noxious Weed Treatment Project, Implementation, Lewis and Clark, Powell, Jefferson, Broadwater and Meagher Counties, MT, Due: December 1, 2003, Contact: Dea Nelson (406) 266–3405.

*EIS No. 030465, Final EIS, COE, CA,* East Cliff Drive Bluff Protection and Parkway Project, Alternatives Evaluation for Coastal Bluff Erosion Protection, City of Santa Cruz, Santa Cruz County, CA, Due: November 17, 2003, Contact: Yvonne LeTellier (415) 977–8466.

*EIS No. 030466, Draft EIS, BLM, OR,* Upper Deschutes Resource Management Plan, Implementation, Deschutes, Klamath, Jefferson and Cook Counties, OR, Due: January 15, 2004, Contact: Mollie Chaudet (541) 416–6700.

*EIS No. 030467, Draft EIS, AFS, OR,* Monument Fire Recovery Project, Whitman Unit—Wallowa—Whitman National Forest (WWNF) Timber Harvest of Fire Killed/Dying Trees, Reforestation, Recovery of Herbaceous, Native Vegetation and Maintenance or Improvement of Water Quality, Implementation, Baker County, OR, Due: December 1, 2003, Contact: Roger LeMaster (541) 523–4476.

*EIS No. 030468,* Draft Supplement, AGS, OR, Lemolo Watershed Projects, Updated and New Information concerning Recommendations Steamed from the Diamond Lake/Lemolo Lake Watershed Analysis (WA), Implementation, Umpqua National Forest, Diamond Lake Ranger District, Douglas County, OR, Due: December 1, 2003, Contact: Steve Buskie (541) 498–2531.

*EIS No. 030469,* Final Supplement, FHW, WA, Elliott Bridge No. 3166 Replacement, Updated and Reevaluated Information concerning Replacement of the 149th Avenue SE Crossing over the Cedar River, Funding, US CGD Bridge Permit and US Army COE Section 404 Permit Issuance, City of Renton, King County, WA, Due: November 17, 2003, Contact: James A. Leonard (360) 753–9408.

*EIS No. 030470, Draft EIS, FHW, TX,* Grand Parkway/TX–99 Segment F–1 Highway Construction, US 290 to TX–249, Funding and US Army COE Section 404 Permit Issuance, Harris, Montgomery, Fort Bend, Liberty, Brazoria, Galveston and Chambers Counties, TX, Due: January 16, 2004, Contact: John R. Mack (512) 536–5960.

*EIS No. 030471, Draft EIS, FHW, WI,* WI–83 Highway Improvements, County NN in Mukwonago to WI–16 in Hartland, Funding and US Army COE Section 404 Permit Issuance, Waukesha County, WI, Due: December 4, 2003, Contact: David Platz (608) 829–7509.

*EIS No. 030472, Draft EIS, COE, AL,* Choctaw Point Terminal Project, Construction and Operation of a Container Handling Facility, Department of the Army (DA) Permit Issuance, Mobile County, AL, Due: January 5, 2004, Contact: Dr. Susan I. Rees (251) 694–4141.

*EIS No. 030473, Final EIS, FHW,* WA, I–5 Toutle Park Road to Maytown Transportation Improvements, Funding, US Army COE Section 404 Permit, US Coast Guard Permit and NPDES Permit Issuance, Cowlitz, Lewis and Thurston Counties, WA, Due: November 24, 2003, Contact: Michael Kulbacki (360) 753–9413.

*EIS No. 030474, Draft EIS, NOA, HI, GU, AS,* Bottomfish and Seamount Groundfish Fisheries Conservation and Management Plan, Implementation, US Economic Zone (EEZ) around the State of Hawaii, Territories of Samoa and Guam, Commonwealth of the Northern Mariana and various Islands and Atolls known as the US Pacific remove island areas, HI, GU and AS, Due: December 1, 2003, Contact: Kitty M. Simonds (808) 522–8220.

*EIS No. 030475, Draft EIS, BLM, CO,* Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness Resource Management Plan, Implementation, Mesa County, CO, Due: January 31, 2004, Contact: Jane Ross (970) 244–3007.

*EIS No. 030476, Draft EIS, COE, AL,* Arlington and Garrows Bend Channels and Adjacent Area restoration, Maintenance Dredging, City of Mobile, Mobile County, AL, Due: January 5, 2004, Contact: Dr. Susan Ivester Rees (215) 694–4141.

### Amended Notices

*EIS No. 030389, Draft EIS, FHW, NC,* Greensboro-High Point Road (NC –1486–NC–4121) Improvements from US 311 (I–74) to Hilltop Road (NC–1404), Cities of Greensboro and High Point, the Town of Jamestown, Guilford County, NC, Due: November 7, 2003, Contact: John F. Sullivan (919) 856–4346.

Revision of FR Notice Published on 8/28/03: CEQ Comment Period Ending 10/14/2003 has been Extended to 11/7/2003.

*EIS No. 030401, Draft EIS, FRC, OR,* Pelton Round Butte Hydroelectric Project, (FERC No. 2030–0306), Application for a New License for Existing 366.82-megawatt Project, Deschutes River, OR, Due: December 31, 2003, Contact: Nicholas JayJack (202) 502–6073.

Revision of FR Notice Published on 9/5/2003: CEQ Comment Period Ending on 10/[illegible]0/2003 has been Extended to 12/31/20[illegible]

Dated: October 14, 2003.

**Ken Mittelholtz,**

*Environmental Protection Specialist, Office of Federal Activities.*

[FR Doc. 03–26325 Filed 10–16–03; 8:45 am]

**BILLING CODE 6560–50–M**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7575–7]**

### Notice of Administrative Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with sections 122(a)(1) and 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9604(a)(1) and 9622(h)(1), notice is hereby given of a proposed administrative settlement agreement concerning the Coeburn Town Dump Site, Coeburn, Wise County, Virginia (Proposed Settlement). The Proposed Settlement with the Town of Coeburn (Settling Party) has been approved by the Attorney General, or his designee, of the United States Department of Justice. The Proposed Settlement was signed by the Regional Administrator of the U.S. Environmental Protection Agency (EPA), Region III, on June 26, 2003, pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622, and is subject to review by the public pursuant to this notice.

The Proposed Settlement resolves EPA's claim for past response costs under section 107 of CERCLA, 42 U.S.C. 9607, against the Settling Party and requires the Settling Party to implement post removal site controls at the site in exchange for a limited covenant for past response costs.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the Proposed Settlement. EPA will consider all comments received and may withdraw or withhold consent to the Proposed Settlement if such comments disclose facts or considerations which indicate the Proposed Settlement is inappropriate, improper, or inadequate. EPA's response to any written comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

**DATES:** Comments must be submitted on or before November 17, 2003.

**ADDRESSES:** The proposed settlement agreement is available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed settlement agreement may be obtained from, Regional Docket Clerk (3RC00), U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103; telephone number (215) 814–2489. Comments should reference the "Coeburn Town Dump Site" and "EPA Docket No. 01–66–DC" and should be forwarded to Lydia Guy at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ami Y. Antoine (3RC43), Sr. Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814–2497.

**Thomas Voltaggio,**

*Acting Regional Administrator, Region III.*

[FR Doc. 03–26324 Filed 10–16–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7575–5]**

### Notice of Intent To Assess Administrative Penalty and Opportunity for Public Comment

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; request for public comment.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA), Region IX, is hereby giving notice that it has issued an Administrative Complaint to Sofia's Mexican Food, Inc. and notice of its intent to assess Class I administrative penalties in an amount not to exceed twenty-seven thousand five-hundred dollars ($27,500) under section 309(g) of the Clean Water Act, 33 U.S.C. part 1319(g). This Complaint was issued to Sofia's Mexican Foods, Inc. for failure to comply with the self-monitoring reporting requirements required under 40 CFR 403.12(h), and required under its Industrial Wastewater Discharge Permit issued by the Sanitation Districts of Los Angeles County.

**DATES:** Comments must be submitted on or before November 17, 2003.

**ADDRESSES:** Submit comments to: Danielle Carr, Regional Hearing Clerk, U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Documents from the administrative record file may be obtained by writing Ms. Carr at the above address.

**FOR FURTHER INFORMATION CONTACT:** Interested parties may contact the following EPA representative to learn more about this action. Richard Campbell, U.S. Environmental Protection Agency Region IX, 75 Montgomery Street, San Francisco, CA 94105–3901, (415) 972–3870.

**SUPPLEMENTARY INFORMATION:** The following further identifies the case and should be included in any written comments submitted:

*Name of Case:* In the Matter of Sofia's Mexican Food, Inc., 1100 East Holt Avenue, Pomona, CA 91767.

*Docket Number:* CWA–9–2003–0004.

*Date Filed:* September 25, 2003.

Section 309(g) of the Act, 33 U.S.C. 1319(g), requires that interested persons be given notice of the proposed penalty and a reasonable opportunity to comment. Procedures by which the public may submit written comments or participate in the proceedings are described in the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 CFR part 22. The deadline for submission of written public comments is thirty (30) days after issuance of this public notice. Comments should be made to Danielle Carr at the address typed above.

If Respondent requests a hearing within thirty (30) days of receiving the Administrative Complaint, those submitting written comments in response to this Notice will be advised of the time and date of the hearing and may appear to present evidence on the appropriateness of the proposed penalty. The final administrative penalty order will be issued at the close of the thirty-day comment period unless a public hearing is requested.

Dated: October 7, 2003.

**Alexis Strauss,**

*Director, Water Division, Region IX.*

[FR Doc. 03–26322 Filed 10–16–03; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–7575–6]

### Clean Water Act Section 303(d): Final Agency Action on 5 Total Maximum Daily Loads (TMDLs)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces final agency action on 5 TMDLs prepared by EPA Region 6 for waters listed in the state of Arkansas, under section 303(d) of the Clean Water Act (CWA). These TMDLs were completed in response to the lawsuit styled *Sierra Club, et al.* v. *Clifford, et al.*, No. LR–C–99–114. Documents from the administrative record files for the final 5 TMDLs, including TMDL calculations and responses to comments, may be viewed at *http://www.epa.gov/earth1r6/6wq/artmdl.htm*.

**ADDRESSES:** The administrative record files for these 5 TMDLs may be obtained by writing or calling Ms. Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. Please contact Ms. Caldwell to schedule an inspection.

**FOR FURTHER INFORMATION CONTACT:** Ellen Caldwell at (214) 665–7513.

**SUPPLEMENTARY INFORMATION:** In 1999, five Arkansas environmental groups, the Sierra Club, Federation of Fly Fishers, Crooked Creek Coalition, Arkansas Fly Fishers, and Save our Streams (plaintiffs), filed a lawsuit in Federal Court against the United States Environmental Protection Agency (EPA), styled *Sierra Club, et al.* v. *Browner et al.*, No. LR–C–99–114. Among other claims, plaintiffs alleged that EPA failed to establish Arkansas TMDLs in a timely manner.

### EPA Takes Final Agency Action on 5 TMDLs

By this notice EPA is taking final agency action on the following 5 TMDLs for waters located within the state of Arkansas:

| Segment-Reach | Waterbody name | Pollutant |
|---|---|---|
| 08040201–706–16. | Flat Creek ... | Chloride. |
| 08040201–706–16. | Flat Creek ... | Sulfate. |
| 08040201–706–16. | Flat Creek ... | TDS. |
| 08040201–806–8 | Salt Creek ... | Chloride. |
| 08040201–806–8 | Salt Creek ... | TDS. |

EPA requested the public to provide EPA with any significant data or information that may impact the 5 TMDLs at 68 FR 45819 (August 4, 2003). The comments received and EPA's response to comments may be found at *http://www.epa.gov/earth1r6/6wq/artmdl.htm*.

Dated: October 8, 2003.

**Jane B. Watson,**

*Acting Director, Water Quality Protection Division, Region 6.*

[FR Doc. 03–26323 Filed 10–16–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## FEDERAL COMMUNICATIONS COMMISSION

### Sunshine Act Meeting; Open Commission Meeting; Thursday, October 16, 2003

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, October 16, 2003, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW, Washington, DC.

| Item No. | Bureau | Subject |
|---|---|---|
| 1 | Wireless Tele-Communications | *Title:* Allocations and Service Rules for the 71–76 GHz, 81–86 GHz and 92–95 GHz Bands (WT Docket No. 02–146); and Loea Communications Corporation Petition for Rulemaking (RM–10288).<br>*Summary:* The Commission will consider a Report and Order concerning the allocation, band plan and service rules in the 71–76 GHz, 81–86 GHz and 92–95 GHz bands. |
| 2 | Wireline Competition | *Title:* Federal-State Joint Board on Universal Service (CC Docket No. 96–45).<br>*Summary:* The Commission will consider an Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order concerning the universal service support mechanism for non-rural carriers. The item responds to the decision of the United States Court of Appeals for the Tenth Circuit remanding the Ninth Report and Order and the recommendations of the Federal-State Joint Board on Universal Service. |
| 3 | Wireless Tele-Communications and International | *Title:* Auction of Direct Broadcast Satellite Licenses (AUC–03–52).<br>*Summary:* The Commission will consider an Order to resolve issues raised in the Auction No. 52 Comment Public Notice related to the Commission's authority to auction Direct Broadcast Satellite ("DBS") licenses and eligibility for the U.S. DBS licenses currently available. |
| 4 | Media | *Title:* DTV Build-out; Requests for Extension of the Digital Television Construction Deadline; and Commercial Television Stations with May 1, 2002, Deadline.<br>*Summary:* The Commission will consider an Order concerning applications submitted by commercial television stations seeking extensions of the May 1, 2002, deadline for construction of their digital television facilities. |

| Item No. | Bureau | Subject |
|---|---|---|
| 5 .................. | Wireless Tele-Communications ........................................... | *Title:* Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands (WT Docket No. 02–353).<br>*Summary:* The Commission will consider a Report and Order concerning licensing, technical and competitive bidding rules for spectrum at 1710–1755 MHz and 2110–2155 MHz allocated for advanced wireless services (AWS). |

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322.

Audio/Video coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events Web page at *http://www.fcc.gov/realaudio.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu.* Audio and video tapes of this meeting can be purchased from CACI Productions, 341 Victory Drive, Herndon, VA 20170, (03) 834–1470, Ext. 19; Fax (703) 834–0111.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Qualex International (202) 863–2893; Fax (202) 863–2898; TTY (202) 863–2897. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. Qualex International may be reached by e-mail at *Qualexint@aol.com.*

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03–26418 Filed 10–15–03; 2:18 pm]

**BILLING CODE 6712–01–P**

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## FEDERAL MARITIME COMMISSION

**[Docket No. 03–11]**

### Deans Overseas Shippers, Inc., and Sharon Stephenson Deans—Possible Violations of Sections 8(a), 10(a)(1) and 19 of the Shipping Act of 1984, as Amended, and the Commission's Regulations at 46 CFR Parts 515 and 520; Deans International Shipping Co., Ltd.—Application for License as an Ocean Transportation Intermediary; Order of Investigation and Hearing

Notice is given that on October 8, 2003, the Federal Maritime Commission served an Order of Investigation and Hearing on Deans Overseas Shippers, Inc. ("Deans Overseas"), Sharon Stephenson Deans ("Ms. Deans"), and Deans International Shipping Co., Ltd. ("Deans International"). Deans Overseas, incorporated in New York, is doing business as a household goods mover in the United States export trades, primarily to Caribbean destinations. Ms. Deans is the chief executive officer and owns 100% of Deans Overseas' capital stock. Deans Overseas operated as a non-vessel-operating common carrier ("NVOCC") prior to revocation of its tariff effective September 1996, when its bond was not renewed. Deans International was incorporated in New York on June 28, 2002. Ms. Deans serves as chief executive officer of Deans International and owns 100% of the company's stock. Ms. Deans has filed an application with the Commission seeking a freight forwarder license on behalf of Deans International.

It appears that, from at least October 2000 to the present, Deans Overseas and its principal, Ms. Deans, provided NVOCC services from the United States to destinations in the Caribbean without first obtaining an ocean transportation intermediary ("OTI") license, a bond or other surety, and publishing a tariff open for public inspection. It also appears that Deans Overseas, through Ms. Deans, misrepresented itself as the actual cargo owner in order to enter into service contracts with ocean common carriers and to receive transportation for property at rates more favorable than those published in the carriers' tariffs.

This proceeding therefore seeks to determine: (1) Whether Deans Overseas Shippers, Inc., and or Sharon Stephenson Deans violated sections 8(a) and 19 of the Shipping Act of 1984 ("1984 Act") and the Commission's regulations at 46 CFR parts 515 and 520 by knowingly and willfully performing NVOCC services without having obtained an OTI license from the Commission, without having filed a bond or other financial responsibility, and without having published a tariff; (2) whether Deans Overseas Shippers, Inc., and/or Sharon Stephenson Deans violated section 10(a)(1) of the 1984 Act by knowingly and willfully obtaining transportation for property at less than the rates or charges that otherwise would be applicable by the unjust or unfair device or means of unlawfully entering into service contracts; (3) whether the application of Deans International Shipping Co., Ltd., for an OTI license to operate as a freight forwarder should be granted or denied; (4) whether, in the event violations of sections 8(a), 10(a)(1) and 19 of the 1984 Act or the Commission's regulations at 46 CFR parts 515 and 520 are found, civil penalties should be assessed and, if so, the amount; and (5) whether, in the event violations are found, an appropriate cease and desist order should be issued.

The full text of the Order may be viewed on the Commission's Home Page at *http//www.fmc.gov* or at the Office of the Secretary, Room 1046, 800 N. Capitol Street, NW., Washington, DC. Any person may file a petition for leave to intervene in accordance with 46 CFR 502.72.

Dated: October 10, 2003.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 03–26236 Filed 10–16–03; 8:45 am]

**BILLING CODE 6730–01–P**

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## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

*License Number:* 14941N.

*Name:* Air Freight Consolidators International, Inc. dba ACI Line.

*Address:* 1251 E. Dyer Road, Suite 200, Santa Ana, CA 92705.

*Date Revoked:* August 14, 2003.

*Reason:* Surrendered license voluntarily.

*License Number:* 3235F.

*Name:* All Points Freight Forwarding Inc.

*Address:* 28 Taylor's Bills Road, Manalapan, NJ 07726.

*Date Revoked:* September 20, 2003.

*Reason:* Failed to maintain a valid bond.

*License Number:* 17893F.

*Name:* All World Logistics, Inc. dba Internet Shipping Line.

*Address:* 969 Newark Turnpike, Kearny, NJ 07032.

*Date Revoked:* September 18, 2003.

*Reason:* Failed to maintain a valid bond.

*License Number:* 18051N.

*Name:* Dominicana Air & Ocean Freight Corp.

*Address:* 1332 NW. 36th Street, Miami, FL 33142.

*Date Revoked:* September 25, 2003.

*Reason:* Failed to maintain a valid bond.

*License Number:* 17255NF.

*Name:* Fagioli PSC USA, Inc.

*Address:* 3050 Post Oak Blvd., Suite 205, Houston, TX 77056–6570.

*Date Revoked:* August 20, 2003.

*Reason:* Failed to maintain valid bonds.

*License Number:* 15628N.

*Name:* Freight Brokers International, Inc.

*Address:* 207 Meadow Road, Edison, NJ 08817.

*Date Revoked:* September 23, 2003.

*Reason:* Surrendered license voluntarily.

*License Number:* 16950NF.

*Name:* Global Cargo Corporation.

*Address:* 8470 NW. 30th Terrace, Miami, FL 33122.

*Date Revoked:* September 25, 2003.

*Reason:* Failed to maintain valid bonds.

*License Number:* 16414N and 16414F.

*Name:* Global Logistics Services, Inc. dba Global Sea.

*Address:* 5350 South Kirkwood Ave., Cudahy, WI 53110.

*Date Revoked:* August 16, 2003 and August 22, 2003.

*Reason:* Failed to maintain valid bonds.

*License Number:* 17537NF.

*Name:* Green Freight LLC dba Greenfreight.

*Address:* 1107 First Ave., Suite 1101, Seattle, WA 98101.

*Date Revoked:* August 30, 2003.

*Reason:* Failed to maintain valid bonds.

*License Number:* 15742F.

*Name:* JB Han Company, Inc. dba Joinus Freight System.

*Address:* 550 E. Carson Plaza Drive, Suite 217, Carson, CA 90746.

*Date Revoked:* September 5, 2003.

*Reason:* Failed to maintain a valid bond.

*License Number:* 17412N.

*Name:* PDS Express, Inc.

*Address:* 473 Broadway, Suite 215, Bayonne, NJ 07002.

*Date Revoked:* September 28, 2003.

*Reason:* Failed to maintain a valid bond.

*License Number:* 14874N.

*Name:* PRO Freight Ocean Cargo, Inc.

*Address:* 15343 NW. 33rd Place, Opalocka, FL 33054.

*Date Revoked:* September 21, 2003.

*Reason:* Failed to maintain a valid bond.

*License Number:* 4135F.

*Name:* Transworld Export Services, Inc.

*Address:* 910 Bergen Aven., Suite 204–B, Jersey City, NJ 07306.

*Date Revoked:* September 20, 2003.

*Reason:* Failed to maintain a valid bond.

**Sandra L. Kusumoto,**

*Director, Bureau of Consumer Complaints and Licensing.*

[FR Doc. 03–26238 Filed 10–16–03; 8:45 am]

BILLING CODE 6730–01–P

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## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

| License No. | Name/Address | Date Reissued |
|---|---|---|
| 1530F | Colombo Services, Inc., 4000–A Airline Drive, Houston, TX 77022 | May 7, 2003. |
| 17507N | ECO Freight International Corporation, 5422 W. Rosecrans Avenue, Hawthorne, CA 90250 | August 21, 2003. |

**Sandra L. Kusumoto,**

*Director, Bureau of Consumer Complaints and Licensing.*

[FR Doc. 03–26239 Filed 10–16–03; 8:45 am]

BILLING CODE 6730–01–P

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## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

**Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants**

Global Alliance Logistics (MIA) Inc., 10461 NW. 36 Street, Miami, FL 33178, Officers: Tahiry Tijerino, President (Qualifying Individual), Joseph Ng, Chief Finance Officer.

Marine Research & Planning, Inc., 260 California Street, San Francisco, CA 94111–4323, Officer: Torben F. Henry, Director (Qualifying Individual).

Global Freight Systems, Inc., 5523 NW. 72nd Avenue, Miami, FL 33166, Officer: Mario Gutierrez, Jr., President (Qualifying Individual).

**Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants**

Skycel, Inc. dba Econcargo, 8211 NW. 68 Street, Miami, FL 33166, Officer: Veronica Caraballo, Vice President (Qualifying Individual), Syed Abdul Cader, Member.

Freight Cargo Logistics, LLC, 38 Genesee Drive, Commack, NY 11725, Officer: Steven Soricillo, President (Qualifying Individual).

Global Parcel System LLC, 8248 NW. 30 Terrace, Miami, FL 33122, Officer: Alejandro J. Alvarez, President (Qualifying Individual), David Phillips, President.

### Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Access Freight Forwarders, LLC, 184 East Bay Street, Suite 202, Charleston, SC 29401, Officers: David Holst, Jr., President (Qualifying Individual), John H. Chapman, Treasurer.

Gruen International, Inc., 6310 N. Port Washington Road, Milwaukee, WI 53217, Officers: Michael J. Karman, Asst. Vice President (Qualifying Individual), Steven Gruen, President.

Dated: October 10, 2003.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 03–26237 Filed 10–16–03; 8:45 am]

BILLING CODE 6730–01–P

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## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 10, 2003.

**A. Federal Reserve Bank of Chicago** (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Northern States Financial Corporation*, Waukegan, Illinois; to merge with Round Lake Bankcorp, Inc., Round Lake, Illinois, and thereby indirectly acquire First State Bank of Round Lake, Round Lake Beach, Illinois.

Board of Governors of the Federal Reserve System, October 10, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–26233 Filed 10–16–03; 8:45 am]

BILLING CODE 6210–01–S

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## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 11:15 a.m., Wednesday, October 15, 2003. The business of the Board requires that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**FOR FURTHER INFORMATION CONTACT:** Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 14, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–26355 Filed 10–15–03; 8:49 am]

BILLING CODE 6210–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### National Center for Health Statistics; Meeting

National Center for Health Statistics (NCHS), Classifications and Public Health Data Standards Staff, announces the following meeting.

*Name:* ICD–9–CM Coordination and Maintenance Committee meeting.

*Time and Date:* 9 a.m.–4 p.m., December 4–5, 2003.

*Place:* Centers for Medicare and Medicaid Services (CMS) Auditorium, 7500 Security Boulevard, Baltimore, Maryland.

*Status:* Open to the public.

*Purpose:* The ICD–9–CM Coordination and Maintenance (C&M) Committee will hold its final meeting of the 2003 calendar year cycle on Thursday and Friday December 4–5, 2003. The C&M meeting is a public forum for the presentation of proposed modifications to the International Classification of Diseases, Ninth-Revision, Clinical Modification.

*Matters To Be Discussed:* Agenda items include:

ICD–10–CM update
West Nile virus with and without encephalitis
Alpha-1 antitrypsin deficiency and other metabolic conditions
Long-term (current) use of aspirin
Multiple sclerosis
Sleep disorders
Genital prolapse
Bethesda system
Chondritis of ear
Worn out joint prosthesis
Awaiting heart transplant status
Dental expansions
Decubitus ulcers
Automatic implantable cardioverter/defibrillator (AICD) check
Spinal procedures—nucleus replacement device
Laparoscopic/Thorascopic approaches
Insertion/replacement of neurostimulator components
Axial flow left ventricular assist device
Prevention of vein graft failure
Intravascular ultrasound (IVUS)
ICD–10—Procedure classification system (ICD–10–PCS) update
Addenda

*For Further Information Contact:* Amy Blum, Medical Classification Specialist, Classifications and Public Health Data Standards Staff, NCHS, 3311 Toledo Road, rm. 2402, Hyattsville, Maryland 20782, telephone 301/458–4106 (diagnosis), Amy Gruber, Health Insurance Specialist, Division of Acute Care, CMS, 7500 Security Blvd., Room C4–07–07, Baltimore, Maryland 21244 telephone (410) 786–1542 (procedures).

*Notice:* In the interest of security, (CMS) has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo

I.D. and sign-in at the security desk upon entering the building.

Because of increased security requirements, those who wish to attend a specific ICD–9–CM C&M meeting in the CMS auditorium must submit their name and organization for addition to the meeting visitor list. Those wishing to attend the December 4–5, 2003 meeting must submit their name and organization by November 28, 2003 for inclusion on the visitor list.

This visitor list will be maintained at the front desk of the CMS building and used by the guards to admit visitors to the meeting. Those who attended previous ICD–9–CM C&M meetings will no longer be automatically added to the visitor list. You must request inclusion of your name prior to each meeting you attend.

Send your name and organization to one of the following by November 28, 2003 in order to attend the December 4–5, 2003 meeting: Pat Brooks *pbrooks1@cms.hhs.gov* (410) 786–5318. Ann Fagan *afagan@cms.hhs.gov* (410) 786–5662. Amy Gruber *agruber@cms.hhs.gov* (410) 786–1542.

*Notice:* This is a public meeting. However, because of fire code requirements, should the number of attendants meet the capacity of the room, the meeting will be closed.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 10, 2003.

**Diane Allen,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 03–26272 Filed 10–16–03; 8:45 am]

**BILLING CODE 4160–18–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### President's Committee for People With Intellectual Disabilities (PCPID); Notice of Meeting

**AGENCY:** President's Committee for People with Intellectual Disabilities (PCPID); Department of Health and Human Services.

**ACTION:** Corrected notice of meeting.

**SUMMARY:** This document clarifies and corrects the notice that was published in the **Federal Register** on October 9, 2003 (68 FR 58352). It corrects a statement that a portion of the meeting would be closed to the public. The full Committee meeting of the President's Committee for People with Intellectual Disabilities will be open to the public pursuant to section 10(a)(1) of the Federal Advisory Committee Act (5 U.S.C. App. 2). Subcommittees of the Committee will have breakout working sessions from 1:30 p.m. to 4 p.m. for the purpose of preliminary discussions on issues of the PCPID. This notice is filed less than 15 calendar days prior to the meeting date due to scheduling conflicts.

**FOR FURTHER INFORMATION CONTACT:** Sally Atwater, Executive Director, President's Committee for People with Intellectual Disabilities. Aerospace Center Building, Suite 701, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone (202) 619–0634, Fax (202) 205–9519, E-mail: *satwater@acf.hhs.gov.*

Dated: October 9, 2003.

**Sally Atwater,**

*Executive Director, President's Committee for People with Intellectual Disabilities.*

[FR Doc. 03–26277 Filed 10–16–03; 8:45 am]

**BILLING CODE 4184–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 2003N–0463]

### Agency Information Collection Activities; Proposed Collection; Comment Request; Infant Formula Requirements

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection regarding the manufacture of infant formula, including infant formula labeling, quality control procedures, notification requirements, and recordkeeping.

**DATES:** Submit written or electronic comments on the collection of information by December 16, 2003.

**ADDRESSES:** Submit electronic comments on the collection of information to *http://www.fda.gov/dockets/ecomments.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Infant Formula Requirements—21 CFR Parts 106 and 107 (OMB Control Number 0910–0256)—Extension**

Statutory requirements for infant formula under the Federal Food, Drug, and Cosmetic Act (the act) are intended to protect the health of infants and include a number of reporting and recordkeeping requirements. Among other things, section 412 of the act (21 U.S.C. 350a) requires manufacturers of infant formula to establish and adhere to quality control procedures, notify FDA when a batch of infant formula that has left the manufacturers' control may be adulterated or misbranded, and keep records of distribution. FDA has issued regulations to implement the act's requirements for infant formula in 21 CFR part 106 and part 107 (21 CFR part 107). FDA also regulates the labeling of infant formula under the authority of section 403 of the act (21 U.S.C. 343). Under the labeling regulations for infant formula in part 107, the label of an infant formula must include nutrient information and directions for use. The purpose of these labeling requirements is to ensure that consumers have the information they need to prepare and use infant formula appropriately. In a notice of proposed rulemaking published in the **Federal Register** of July 9, 1996 (61 FR 36154), FDA proposed changes in the infant formula regulations, including some of those listed in tables 1 and 2 of this document. The document included revised burden estimates for the proposed changes and solicited public comment. In the interim, however, FDA is seeking an extension of OMB approval for the current regulations so that it can continue to collect information while the proposal is pending.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| Federal Food, Drug, and Cosmetic Act or 21 CFR Section | No. of Respondents | Annual Frequency per Response | Total Annual Responses[2] | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| Section 412(d) of the act | 4 | 13 | 52 | 10 | 520 |
| 106.120(b) | 4 | 0.25 | 1 | 4 | 4 |
| 107.10(a) and 107.20 | 4 | 13 | 52 | 8 | 416 |
| 107.50(b)(3) and (b)(4) | 3 | 2 | 6 | 4 | 24 |
| 107.50(e)(2) | 3 | 0.33 | 1 | 4 | 4 |
| Total | | | | | 968 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] Manufacturers may submit infant formula notifications in electronic format.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

| 21 CFR Section | No. of Recordkeepers | Annual Frequency of Recordkeeping | Total Annual Records | Hours per Recordkeeper | Total Hours |
|---|---|---|---|---|---|
| 106.100 | 4 | 10 | 40 | 4,000 | 160,000 |
| 107.50(c)(3) | 3 | 10 | 30 | 3,000 | 90,000 |
| Total | | | | | 250,000 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In compiling these estimates, FDA consulted its records of the number of infant formula submissions received in the past. The figures for hours per response are based on estimates from experienced persons in the agency and in industry.

Dated: October 9, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–26284 Filed 10–16–03; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003F–0471]**

### T&R Chemicals, Inc.; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that T&R Chemicals, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of glycerol ester of gum rosin to adjust the density of citrus oils used in the preparation of beverages.

**FOR FURTHER INFORMATION CONTACT:** Clarence W. Murray, III, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3601.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409 (b)(5) (21 U.S.C. 348(b)(5))) notice is given that a food additive petition (FAP 3A4749) has been filed by T&R Chemicals, Inc., c/o The Environ Health Sciences Institute, 4350 N. Fairfax Dr., suite 300, Arlington, VA 22203. The petition proposes to amend the food additive regulations in Part 172 *Food Additives Permitted for Direct Addition to Food for Human Consumption* (21 CFR part 172) to provide for the safe use of glycerol ester of gum rosin to adjust the density of citrus oils used in the preparation of beverages. The agency has determined under 21 CFR 25.32(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: September 25, 2003.

**Laura M. Tarantino,**

*Deputy Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.*

[FR Doc. 03–26267 Filed 10–16–03; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Cooperative Agreement to Support the National Center for Food Safety and Technology; Notice of Intent to Supplement

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA), Center for Food Safety and Applied Nutrition (CFSAN), announces its intent to award on an urgent basis, a single-source, program expansion supplement to the current cooperative agreement with the Illinois Institute of Technology (IIT) for $1.1 million in fiscal year (FY) 2004. This cooperative agreement provides support for the National Center for Food Safety and Technology (NCFST), which is located on IIT's Moffett Campus in Summit-Argo, IL. The additional funding will enable IIT to undertake two new food contaminant mitigation projects and to continue the build-out of the biosafety level 3 (BSL–3) laboratory that began last year.

**FOR FURTHER INFORMATION CONTACT:**

*Regarding the administrative and financial management aspects of this notice*: Maura Stephanos, Division of Contracts and Grants Management (HFA–531), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7183, e-mail: *mstepha1@oc.fda.gov*.

*Regarding the programmatic aspects*: Karen Carson, Center for Food Safety and Applied Nutrition (HFS–300), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1664, e-mail: *kcarson@cfsan.fda.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Restricted Eligibility

Assistance will be provided to IIT for the following reasons:

1. As part of FDA's food safety and security program, development of effective mitigation strategies requires a better understanding of food processing techniques that could be used to reduce the likelihood that contaminants persist in food following processing. This type of research requires expertise in food processing and packaging in addition to the availability of facilities and equipment appropriate to this type of research. The IIT/NCSFT has these resources. Additionally, IIT/NCSFT has available through this collaborative research program, the scientific and practical experience in a wide variety of food commodities and processing techniques that will feed into the development of mitigation strategies. This research will build on the ongoing food safety research program.

2. Last fiscal year FDA provided funds to IIT to expand the existing BSL–3 pilot plant facility to include BSL–3 laboratories. This is the only BSL–3 food processing pilot plant to which FDA has ready access. Expansion of the BSL–3 pilot plant facility will provide critical support to the overall research and will provide the flexibility to have more than one ongoing research project at a time. The additional funds will assure full operation of the facility and implementation of security measures consistent with Federal, State, and local requirements. Supplemental funds will allow the work on the BSL–3 pilot plant to be completed as quickly as possible.

### II. Funding

It is anticipated that $1.1 million will be made available to fund this urgent, single-source, program expansion supplement in FY 2004.

Dated: October 9, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–26269 Filed 10–16–03; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Food Labels, Packaging, Restaurants, and Weight Management; Public Workshop

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public workshop.

**SUMMARY:** The Food and Drug Administration (FDA), in collaboration with the Department of Health and Human Service's Office of the Assistant Secretary for Planning and Evaluation (OASPE) and FDA's Center for Food Safety and Applied Nutrition (CFSAN), is announcing a public workshop entitled "Exploring the Connections Between Weight Management and Food Labels and Packaging." The workshop is being held in response to the growing concern about obesity in the United States. It is intended to be a science workshop (i.e., nutrition, consumer science, economics, marketing and other relevant sciences) that will look at available data to identify options (and pros and cons) about FDA's food labeling and food packaging requirements that are relevant to consumer weight management decisions.

**DATES:** The public workshop will be held on November 20, 2003, from 8:30 a.m. to 6 p.m.

*Location:* The public workshop will be held at the Lister Hill Conference Center, National Institutes of Health Bldg. 38A, 8600 Rockville Pike, Bethesda, MD 20814.

**FOR FURTHER INFORMATION CONTACT:** Amber Jessup, Center for Food Safety and Applied Nutrition (HFS–726), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1689, *amber.jessup@fda.gov*.

*Registration:* There is no registration fee for the workshop; however, seating is limited. Therefore, interested parties are encouraged to register early. You may register online by clicking on *https://secure.z-techcorp.com/cmt/* (FDA has verified the Web site address but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**). All those planning to preregister must register no later than Friday, November 7, 2003. Registration will close after the workshop is filled. Onsite registration will be done on a space-available basis on the day of the public workshop beginning at 8 a.m. If you have any questions, please contact Karen Ellis at 301–315–2806 or via e-mail at *kellis@z-techcorp.com*. If you need special accommodations due to a disability, please contact Ms. Ellis at least 7 days in advance.

**SUPPLEMENTARY INFORMATION:** The workshop is being held in response to the growing concern about obesity in the United States. The workshop is co-sponsored by FDA, CFSAN and OASPE. The workshop will be of primary interest to nutritionists, marketing experts, social marketing experts, industry, the legal community involved in food labeling and marketing issues, government agencies, consumer groups, and clinicians with obesity expertise. The goal of this science workshop is to look at the available data and to identify options (pro & con) for food labeling and food packaging, which are relevant to consumers' weight management decisions. Topics to be discussed at the workshop include: "Current food labels and packaging: Effects on weight management and reduced risk of overweight and obesity" and "Data supporting options for change." The workshop will include sessions with expert views on food packaging and labeling, and on messaging in the restaurant environment relevant to overall weight management.

*Transcripts:* Transcripts of the public workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the public workshop at a cost of 10 cents per page.

Dated: October 8, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–26268 Filed 10–16–03; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003N–0470]**

### Preparation for the International Conference on Harmonisation Meetings and ICH 6 Conference in Osaka, Japan; Public Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a public meeting entitled "Preparation for ICH Meetings and ICH 6 Conference in Osaka, Japan, November 9–15, 2003" to provide information and receive comments on the International Conference on Harmonisation (ICH) as well as the upcoming meetings in Osaka, Japan. The topics to be discussed are the topics for discussion at the forthcoming ICH Steering Committee Meeting. The purpose of the meeting is to solicit public input prior to the next Steering Committee and Experts Working Groups meetings and ICH 6 Public Conference in Osaka, Japan, November 2003, at which discussion of the topics underway and the future of ICH will continue.

*Date and Time:* The meeting will be held on November 3, 2003, from 1 p.m. to 4 p.m.

*Location:* The meeting will be held at 5600 Fishers Lane, 3d floor, Twinbrook Conference Room, Rockville, MD 20857.

*Contact Person:* Christelle Anquez, Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20817, 301–827–0037, FAX: 301–480–0716, *e-mail: canquez@oc.fda.gov.*

*Registration and Requests for Oral Presentations:* Send registration information (including name, title, firm name, address, telephone, and fax number), and written material and requests to make oral presentations, to the contact person by October 24, 2003. If you need special accommodations due to a disability, please contact Christelle Anquez at least 7 days in advance.

*Transcripts:* Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

**SUPPLEMENTARY INFORMATION:** The International Conference on Harmonisation of Technical Requirements for the Registration of Pharmaceuticals for Human Use was established in 1990 as a joint regulatory/industry project to improve, through harmonization, the efficiency of the process for developing and registering new medicinal products in Europe, Japan, and the United States without compromising the regulatory obligations of safety and effectiveness.

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for medical product development among regulatory agencies. ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. ICH is concerned with harmonization among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health, Labor and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA). The ICH Steering Committee includes representatives from each of the ICH sponsors and Health Canada, the European Free Trade Area and the World Health Organization. The ICH process has achieved significant harmonization of the technical requirements for the approval of pharmaceuticals for human use in the three ICH regions.

The current ICH process and structure can be found at the following Web site: *http://www.ich.org* (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**).

Interested persons may present data, information, or views orally or in writing, on issues pending at the public meeting. Oral presentations from the public will be scheduled between approximately 3:15 p.m. and 4 p.m. Time allotted for oral presentations may be limited to 10 minutes. Those desiring to make oral presentations should notify the contact person by October 24, 2003, and submit a brief statement of the general nature of the evidence or arguments they which to present, the names and addresses, phone number, fax, and e-mail of proposed participants, and an indication of the approximate time requested to make their presentation.

The agenda for the public meeting will be made available on October 17, 2003, via the Internet at *http://www.fda.gov/cder/calendar/meeting/ich2003/nov3meeting.htm.*

Information on the ICH 6 Public Conference in Osaka, Japan on November 12–15, 2003, can be obtained via the internet at *http://www.ich.org/ich6tris.html* (FDA has verified the Web site address, but is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**).

Dated: October 9, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–26283 Filed 10–16–03; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 1997D–0443]**

### Iron-Containing Supplements and Drugs: Label Warning Statement Requirements; Small Entity Compliance Guide; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a small entity compliance guide (SECG) entitled "Iron-Containing Supplements and Drugs: Label Warning Statements; Small Entity Compliance Guide" to revise and update an earlier SECG entitled "Iron-Containing Supplements and Drugs: Label Warning Statements and Unit-Dose Packaging Requirements; Small Entity Compliance Guide." The revised SECG is being issued in response to the withdrawal, in part, of a final rule. The SECG is intended to set forth in plain language the requirements for label warning statements for iron-containing dietary supplement and drug products in solid oral dosage form and to help small businesses understand these requirements.

**DATES:** Submit written or electronic comments on the SECG at any time.

**ADDRESSES:** Submit written comments on the SECG to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the SECG to *http://www.fda.gov/dockets/ecomments.*

Submit written requests for single copies of the SECG to the Iron Labeling, Industry Activities Staff (HFS–565), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to this guidance document.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Moore, Center for Food Safety and Applied Nutrition (HFS–810), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1441.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

In the **Federal Register** of January 15, 1997 (62 FR 2218), FDA issued a final rule (1997 final rule) requiring: (1) Label warning statements on iron-containing products taken in solid oral dosage form to supplement the dietary intake of iron or to provide iron for therapeutic purposes, and (2) unit-dose packaging for iron-containing dietary supplement and drug products that contain 30 milligrams (mg) or more of iron per dosage unit. This final rule became effective July 15, 1997. In the **Federal Register** of December 12, 1997 (62 FR 65432), FDA announced the availability of a SECG entitled "Iron-Containing Supplements and Drugs; Label Warning Statements and Unit-Dose Packaging Requirements; Small Entity Compliance Guide" (1997 SECG). The 1997 SECG was prepared in accordance with section 212 of the Small Business Regulatory Enforcement Act (Public Law 104–121) and was intended to help small businesses understand the requirements of the 1997 final rule.

Elsewhere in this issue of the **Federal Register**, FDA is withdrawing those parts of the 1997 final rule that established regulations in §§111.50 and 310.518(a) and (b) (21 CFR 111.50 and 310.518(a) and (b)) requiring unit-dose packaging for iron-containing dietary supplement and drug products that contain 30 mg or more of iron per dosage unit. FDA is taking this action in response to the Court's ruling in *Nutritional Health Alliance* v. *FDA* (318 F.3d 92 (2d Cir. 2003)), in which the U.S. Court of Appeals for the Second Circuit invalidated the unit-dose packaging regulations based upon its conclusion that the Federal Food, Drug, and Cosmetic Act does not provide FDA with authority to regulate packaging of iron-containing dietary supplement and drug products for poison prevention purposes. The Court's ruling affects only the unit-dose packaging requirements of the 1997 final rule and not the label warning statement requirements. On remand, the U.S. District Court for the Eastern District of New York entered final judgment in accordance with the Court's decision, declaring the provisions of §§ 111.50 and 310.518(a) invalid and without legal force or effect (*Nutritional Health Alliance* v. *FDA*, No. 97–CV–5042 (E.D.N.Y. filed May 29, 2003)). As a result, the 1997 SECG is being revised in accordance with the Court's ruling and FDA's withdrawal of the unit-dose packaging regulations.

Therefore, FDA is making available the revised SECG entitled "Iron-Containing Supplements and Drugs: Label Warning Statements; Small Entity Compliance Guide," which states in plain language the requirements of the final rule on label warning statements for iron-containing dietary supplement and drug products.

FDA is revising this SECG as level 2 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115(c)(2)). The SECG represents the agency's current thinking on this subject. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations. If you want to discuss an alternative approach, contact the FDA staff responsible for implementing this guidance (see **FOR FURTHER INFORMATION CONTACT**).

#### II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

#### III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.cfsan.fda.gov/guidance.html.*

Dated: October 7, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–26189 Filed 10–16–03; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003D–0231]**

### Draft Guidance for Industry on Providing Regulatory Submissions in Electronic Format—Postmarketing Periodic Adverse Drug Experience Reports; Reopening of the Comment Period

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; reopening of the comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is reopening until December 16, 2003, the comment period for the draft guidance for industry

entitled "Providing Submissions in Electronic Format—Postmarketing Periodic Adverse Drug Experience Reports." FDA published a notice of availability of the draft guidance in the **Federal Register** of June 24, 2003 (68 FR 37504). The agency is taking this action in response to a request for an extension of the comment period.

**DATES:** Submit written or electronic comments on the draft guidance by December 16, 2003. General comments on agency guidance documents are welcome at any time.

**ADDRESSES:** Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:**

Randy Levin, CDER (HFD–140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5411, *Levinr@cder.fda.gov*, or

Michael Fauntleroy, CBER (HFM–588), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–5132, *Fauntleroy@cber.fda.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In the **Federal Register** of June 24, 2003 (68 FR 37504), FDA published a notice announcing the availability of a draft guidance for industry entitled "Providing Submissions in Electronic Format—Postmarketing Periodic Adverse Drug Experience Reports." This draft guidance discusses issues related to the electronic submission of postmarketing periodic adverse drug experience reports for drug products marketed for human use with new drug applications (NDAs) and abbreviated new drug applications (ANDAs), and therapeutic and blood products marketed for human use with biologics license applications (BLAs). The draft guidance does not apply to vaccines, whole blood, or components of whole blood. Interested persons were given until August 25, 2003, to submit written or electronic comments on the draft guidance. In response to a comment requesting an extension of the comment period, FDA has decided to reopen the comment period on the draft guidance until December 16, 2003, to allow interested persons additional time to submit comments.

## II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance on or before December 16, 2003. Two copies of any mailed comments are to be submitted, except individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

## III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/cber/guidelines.htm*.

Dated: October 8, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–26266 Filed 10–16–03; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Citizenship and Immigration Services

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** 30-Day Notice of Information Collection Under Review: Petition for Alien Relative; Form I–130.

The Department of Homeland Security, Bureau of Citizenship and Immigration Services (BCIS), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

The BCIS published a **Federal Register** notice on May 9, 2003 at 68 FR 25054, to solicit public comments for a 60-day period regarding the extension of Form I–130 (Petition for Alien Relative). The BCIS have received no public comment on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 17, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Room 10235, Washington, DC 20530; Attention: Department of Homeland Security Desk Officer.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

### Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Petition for Alien Relative.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–130, Bureau of Citizenship and Immigration Services, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or

Households. The information collected on this form will be used by BCIS to determine eligibility for benefits sought for relatives of U.S. citizens and lawful permanent residents.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 183,034 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 91,517 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, U.S. Department of Homeland Security, 425 I Street, NW., Suite 4034, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Ms. Theresa O'Malley, Chief Information Officer, U.S. Department of Homeland Security, Regional Office Building 3, 7th and D Streets, SW., Suite 4636–26, Washington, DC 20202.

Dated: October 9, 2003.

**Richard A. Sloan,**

*Department Clearance Officer, U.S. Department of Homeland Security, Bureau of Citizenship and Immigration Services.*

[FR Doc. 03–26221 Filed 10–16–03; 8:45 am]

BILLING CODE 4410–10–M

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## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** 30-Day notice of information collection under review: visa waiver program passenger arrival and department data (file No. OMB–32).

The Department of Homeland Security, Bureau of Customs and Border Protection (CBP), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and temporary clearance in accordance with the Paperwork Reduction Act of 1995. The legacy Immigration and Naturalization Service (INS) published an interim rule containing the proposed information collection in the **Federal Register** on October 11, 2002 at 67 FR 63246. The interim rule also solicited public review and comments on the information collection for a period of 30 days. No comments were received. The INS received temporary OMB approval of this information collection.

The purpose of this notice is to allow an additional 30 days for public comments to extend the use of this information collection for a temporary approval. Comments are encouraged and will be accepted until November 17, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725 17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Visa Waiver Program Passenger Arrival and Departure Date.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number (file No. OMB–32); Bureau of Customs and Border Protection, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Section 217(h) of the INA requires an automated entry and exit control system by specifying those passenger data elements that must be electronically transmitted to the CBP by carriers seeking to transport Visa Waiver Program passengers into and out of the U.S.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 600 responses at 5 minutes (.083 hours) per response. Frequency of response is 365.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 36,500 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations, and Forms Services Division, Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Ms. Theresa O'Malley, Chief Information Officer, Department of Homeland Security, Regional Office Building 3, 7th and D Streets, SW., Suite 4636–26, Washington, DC 20202.

Dated: October 9, 2003.

**Richard A. Sloan,**

*Department Clearance Officer, Department of Homeland Security, Bureau of Customs and Border Protection.*

[FR Doc. 03–26223 Filed 10–16–03; 8:45 am]

BILLING CODE 4410–10–M

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## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

### Agency Information Collection Activities; Proposed Collection; Comment Request

**ACTION:** 30-Day notice of information collection under review: passenger list, crew list; Form I–418.

The Bureau of Customs and Border Protection (CBP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on February 20, 2003 at 68 FR 8308, allowing for a 30-day public comment period. No public comment was received on this information collection and the collection was granted temporary approval by the OMB.

The purpose of this notice is to allow an additional 30 days for public comments on the extension of the current information collection. Comments are encouraged and will be accepted until November 17, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725 17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Passenger List, Crew List.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–418, Bureau of Customs and Border Protection, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary Individuals or Households. This form is prescribed by the Attorney General for the CBP for use by masters, owners or agents of vessels in complying with sections 231 and 251 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 95,000 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 95,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Department of Homeland Security, 425 I Street, NW., Room 4034, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Ms. Theresa O'Malley, Chief Information Officer, Department of Homeland Security, Regional Office Building 3, 7th and D Streets, SW., Suite 4636–26, Washington, DC 20202.

Dated: October 9, 2003.

**Richard A. Sloan,**

*Department Clearance Officer, Department of Homeland Security, Bureau of Customs and Border Protection.*

[FR Doc. 03–26225 Filed 10–16–03; 8:45 am]

BILLING CODE 4410–10–M

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## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Immigration and Customs Enforcement

### Agency Information Collection Activities: Comment Request

**ACTION:** Request OMB Emergency Approval; fee remittance form for certain F–1; J–1 and M–1 nonimmigrants; form I–901.

The Department of Homeland Security (DHS) and the Bureau of Customs and Immigration Enforcement (ICE) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with sections 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The ICE has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. ICE is requesting emergency review from OMB of this information collection to ensure compliance section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), and under 31 U.S.C. 9701 and section 286(m) of the Act. Therefor, OMB approval has been requested by October 24, 2003. If granted, the emergency approval is only valid for 180 days. ALL comments and/or questions pertaining to this pending request for emergency approval MUST be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Karen Lee, Department of Justice Desk Officer, 725 17th Street, NW., Suite 10235, Washington, DC 20503. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to Ms. Lee at 202–395–5806.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the ICE requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until [Insert date of the 60th day from the date that this notice is published in the **Federal Register**]. During the 60-day regular review, ALL comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Customs and Immigration Enforcement, U.S. Department of Homeland Security, Room 4304, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Fee Remittance Form for Certain F–1, J–1, and M–1 Nonimmigrants.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–901. Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is used by nonimmigrant students and exchange visitors to submit the fee authorized by Public Law 104–208, subtitle D, section 641. Additionally, this information is required to send receipt to the student or exchange visitor upon payment and to positively identify that a particular student or exchange visitor has paid the fee.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 900,000 responses at 19 minutes (.32 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 288,000 annual burden hours.

If additional information is required contact: Ms. Theresa O'Malley, Chief Information Officer, U.S. Department of Homeland Security, Regional Office Building 3, 7th and D Streets, SW., Suite 4636–26, Washington, DC 20202.

Dated: October 9, 2003.

**Stephen R. Tarragon.**

*Acting Department Clearance Officer, Department of Homeland Security, Bureau of Immigration and Customs Enforcement.*

[FR Doc. 03–26220 Filed 10–16–03; 8:45 am]

BILLING CODE 4410–10–M

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## DEPARTMENT OF HOMELAND SECURITY

## Bureau of Immigration and Customs Enforcement

## Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** 30-Day Notice of Information Collection Under Review: Visa Waiver Program Carrier Agreement; Form I–775.

The Department of Homeland Security (DHS), Bureau of Immigration and Customs Enforcement (ICE), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on June 26, 2003 at 68 FR 38085, allowing for a 60-day public comment period. No public comment was received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 17, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725–17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Visa Waiver Program Carrier Agreement.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–775, Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. The agreement between a transportation company and the United States is needed to ensure that the transportation company will remain responsible for the aliens it transports to the United States under the Visa Waiver Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 400 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 800 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Immigration and Customs Enforcement, Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Ms. Theresa O'Malley, Chief Information Officer, Department of Homeland Security, Regional Office Building 3, 7th and D Streets, NW., Suite 4636–26, Washington, DC 20202.

Dated: October 9, 2003.

**Richard A. Sloan,**

*Department Clearance Officer, Department of Homeland Security, Bureau of Immigration and Customs Enforcement.*

[FR Doc. 03–26222 Filed 10–16–03; 8:45 am]

BILLING CODE 4410–10–M

## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Immigration and Customs Enforcement

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** 30-Day notice of information collection under review: aircraft/vessel report; Form I–92.

The Department of Homeland Security (DHS), Bureau of Immigration and Customs Enforcement (ICE), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The request for an extension of this information collection was previously published in the **Federal Register** on February 20, 2003 at 68 FR 8307, allowing for public review and comment for a period of 30 days. Comments were reconciled during the OMB approval process and temporary approval was received.

The purpose of this notice is to notify the public of the agency request to extend this information collection and to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 17, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725 17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

### Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Aircraft/Vessel Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–92, Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is part of the manifest requirements of Section 231 and 251 of the Immigration and Nationality Act and is used by the DHS and other agencies for data collection and statistical analysis.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 720,000 responses at 11 minutes (.183 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 129,600 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required, contact: Ms. Theresa O'Malley, Chief Information Officer, Department of Homeland Security, Regional Office Building 3, 7th and D Streets, SW., Suite 4636–26, Washington, DC 20202.

Dated: October 9, 2003.

**Richard A. Sloan,**

*Department Clearance Officer, Department of Homeland Security, Bureau of Immigration and Customs Enforcement.*

[FR Doc. 03–26224 Filed 10–16–03; 8:45 am]

**BILLING CODE 4410–10–M**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4817–N–19]**

### Notice of Proposed Information Collection for Public Comment—Statement of Homeowner Obligations, Housing Choice Homeownership Voucher Program

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* December 16, 2003.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4249, Washington, DC 20410–5000.

**FOR FURTHER INFORMATION CONTACT:** Mildred M. Hamman, (202) 708–0614, extension 4128. (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

*This Notice also lists the following information:*

*Proposal:* Statement of Homeownership Obligations, Housing Choice Homeownership Voucher Program.

*OMB Control Number:* 2577–0169.

*Description of the need for the information and proposed use:* A Public Housing Agency (PHA) may use the Housing Choice Voucher program funding already under the Annual Contributions Contract (ACC) or new tenant-based housing voucher funding for rental or homeownership purposes. The PHA and family participating in the homeownership voucher program must execute a "statement of homeowner obligations" before housing assistance payments begin. The information provided will be reviewed by the PHA to further determine eligibility and ensure program compliance.

*Agency form numbers, if applicable:* HUD–52649.

*Members of affected public:* State and Local Governments, businesses or other for profits, individuals or households.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* 400 PHAs, five families per year, one hour, 2000 hours reporting burden; 2000 families per year, .05, 100 hours; 400 PHAs maintaining records, .25, 100 hours recordkeeping burden. The total burden is 2,200 hours.

*Status of the proposed information collection:* Revision of a currently approved collection.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

**Michael Liu,**

*Assistant Secretary for Public and Indian Housing.*

**BILLING CODE 4210–29–M**

## Statement of Homeowner Obligations Housing Choice Homeownership Voucher Program

**U.S. Department of Housing and Urban Development**
Office of Public and Indian Housing

OMB Approval No. xxxx-xxxx
(exp. 99/99/9999)

Public Reporting Burden for this collection of information is estimated to average 0.25 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information , including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washingon, D.C. 20410-3600 and the Office of Management and Budget, Paperwork Reduction Project (2577-0169), Washington, D.C. 20503. Do not send this completed form to either of the above addresses.

1. **Homeowner Obligations.** A family participating in the homeownership voucher program of the undersigned public housing agency (PHA) must follow the rules listed below in order to receive homeownership assistance. Any information the family supplies must be true and complete. Each family member (plus any PHA-approved live-in aide for rules associated with criminal activity or alcohol abuse) must:

A. Disclose and verify social security numbers and employer identification numbers, sign and submit consent forms for obtaining information (including criminal conviction records of adult household members), and supply any other information that the PHA or HUD determines to be necessary (including evidence of citizenship or eligible immigration status, information for use in determining eligibility to receive homeownership assistance, and information for use in a regularly scheduled reexamination or interim reexamination of family income and composition).

B. Submit any PHA-required reports on the family's progress in finding and purchasing a home.

C. Attend and satisfactorily complete any PHA-required homeownership and housing counseling.

D. Select and pay for a pre-purchase inspection by an independent professional inspector. The inspection must be conducted in accordance with PHA requirements.

E. Enter into a contract of sale with the seller of the unit and promptly provide a copy of the contract of sale to the PHA. The provisions of the contract of sale must comply with PHA requirements.

F. Obtain and maintain flood insurance for homes in special flood hazard areas.

G. Comply with the terms of any mortgage securing debt incurred to purchase the home (or any refinancing of such debt).

H. Promptly notify the PHA in writing when (1) the family is away from the home for an extended period of time in accordance with PHA policies, and (2) before the family moves out of the home. Supply any information or certification requested by the PHA to verify that the family is living in the home or information related to family absence from the home.

I. Only use the assisted home for residence by the PHA-approved family members, live-in aide or foster child. No other person may reside in the home. The home must be the family's only residence and no family member may have any ownership interest in any other residential property. Any legal profit making activities in the home must be incidental to the primary use of the home as a residence. The family must not lease any portion of the home or grounds.

J. Promptly notify the PHA in writing of the birth, adoption, or court-awarded custody of a child, and request PHA written approval to add any other family member as an occupant of the home. Promptly notify the PHA in writing if any family member no longer lives in the home.

K. Supply any information as required by the PHA or HUD concerning: (1) any mortgage or other debt incurred to purchase the home, any refinancing of such debt (including information needed to determine whether the family has defaulted on the debt, and the nature of any such default), and information on any satisfaction or payment of the mortgage debt; (2) any sale or other transfer of any interest in the home; or (3) the family's homeownership expenses.

L. Promptly notify the PHA in writing if the family defaults on a mortgage securing any debt incurred to purchase the home.

M. Not commit fraud, bribery, or any other corrupt or criminal act in connection with any Federal housing program. Not engage in drug-related criminal activity or violent criminal activity. Not engage in other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. Not abuse alcohol in a way that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. Not engage in or threaten abusive or violent behavior toward PHA staff. Not engage in other criminal activity which may threaten the health or safety of persons performing a contract administration function or responsibility on behalf of the PHA (including PHA staff and PHA contractor/subcontractor/agent staff).

N. Not lease, let, transfer or convey the home except to grant a mortgage on the home for debt incurred to finance purchase of the home or any refinancing of such debt.

O. Not receive homeownership voucher program assistance while receiving another housing subsidy for the same home or a different unit under any duplicative Federal, State or local housing assistance program.

P. Comply with any additional PHA requirements for family search and purchase of a home and continuation of homeownership assistance for the family. The PHA must attach to this document a list of any such requirements.

2. **Termination of assistance.** Homeownership assistance may only be paid while the family is residing in the home. The PHA may deny or terminate homeownership assistance for any of the reasons listed below:

A. The family violates or has violated any family obligation under section 1.

B. Any member of the family has been evicted from federally assisted housing in the last five years, or any household member has been evicted from federally assisted housing for drug-related criminal activity in the last three years.

C. A PHA has ever terminated assistance under the certificate or voucher program for any member of the family.

D. The family currently owes any money to the PHA or another PHA in connection with Section 8 or public housing assistance. The family has not reimbursed any PHA for amounts paid to an owner under a housing assistance payments contract for rent, damages to the unit, or other amounts owed by the family. The family breaches an agreement with the PHA to pay amounts owed to a PHA, or amounts paid to an owner by a PHA.

E. Any household member is subject to a lifetime registration requirement under a State sex offender registration program.

F. Any household member has ever been convicted for manufacture or production of methamphetamine on the premises of federally assisted housing.

G. The family fails to comply, without good cause, with any family self-sufficiency program contract of participation.

H. The family fails, willfully and persistently, to fulfill any welfare-to-work program obligations.

I. The family has been dispossessed from the home pursuant to a judgment order of foreclosure on any mortgage securing debt incurred to purchase the home (or any refinancing of such debt).

J. The PHA determines that homeownership assistance has been provided for the maximum term permitted under the homeownership voucher program, or it has been 180 calendar days since the last homeownership assistance payment on behalf of the family.

K. The PHA determines there is insufficient funding to provide continued homeownership assistance.

**KEEP THIS DOCUMENT FOR YOUR RECORDS**

**Family**

| | |
|---|---|
| Name of Head of Household | Address, Telephone Number: |
| Names of Other Family Members | |
| Signature of Family Representative | Date: |

**Public Housing Agency**

| | |
|---|---|
| Name of PHA | Address, Telephone Number: |
| PHA Representative Title | |
| Signature of PHA Representative | Date: |

form **HUD-52649** (05/13/2003)

N. Not lease, let, transfer or convey the home except to grant a mortgage on the home for debt incurred to finance purchase of the home or any refinancing of such debt.

O. Not receive homeownership voucher program assistance while receiving another housing subsidy for the same home or a different unit under any duplicative Federal, State or local housing assistance program.

P. Comply with any additional PHA requirements for family search and purchase of a home and continuation of homeownership assistance for the family. The PHA must attach to this document a list of any such requirements.

**2. Termination of assistance.** Homeownership assistance may only be paid while the family is residing in the home. The PHA may deny or terminate homeownership assistance for any of the reasons listed below:

A. The family violates or has violated any family obligation under section 1.

B. Any member of the family has been evicted from federally assisted housing in the last five years, or any household member has been evicted from federally assisted housing for drug-related criminal activity in the last three years.

C. A PHA has ever terminated assistance under the certificate or voucher program for any member of the family.

D. The family currently owes any money to the PHA or another PHA in connection with Section 8 or public housing assistance. The family has not reimbursed any PHA for amounts paid to an owner under a housing assistance payments contract for rent, damages to the unit, or other amounts owed by the family. The family breaches an agreement with the PHA to pay amounts owed to a PHA or amounts paid to an owner by a PHA.

E. Any household member is subject to a lifetime registration requirement under a State sex offender registration program.

F. Any household member has ever been convicted for manufacture or production of methamphetamine on the premises of federally assisted housing.

G. The family fails to comply, without good cause, with any family self-sufficiency program contract of participation.

H. The family fails, willfully and persistently, to fulfill any welfare-to-work program obligations.

I. The family has been dispossessed from the home pursuant to a judgment order of foreclosure on any mortgage securing debt incurred to purchase the home (or any refinancing of such debt).

J. The PHA determines that homeownership assistance has been provided for the maximum term permitted under the homeownership voucher program, or it has been 180 calendar days since the last homeownership assistance payment on behalf of the family.

K. The PHA determines there is insufficient funding to provide continued homeownership assistance.

**KEEP THIS DOCUMENT FOR YOUR RECORDS**

**Family**

| | |
|---|---|
| Name of Head of Household | Address, Telephone Number: |

Names of Other Family Members

Signature of Family Representative Date:

**Public Housing Agency**

| | |
|---|---|
| Name of PHA | Address, Telephone Number: |

PHA Representative Title

Signature of PHA Representative Date:

form **HUD-52649** (05/13/2003)

[FR Doc. 03–26249 Filed 10–16–03; 8:45 am]

**BILLING CODE 4210–29–C**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4809–N–42]**

## Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice

**SUMMARY:** This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Shirley Kramer, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265 (This is not a toll-free number). HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to mark Johnston at the address listed at the beginning of this notice. Included in the request for review should be the property address (including ZIP Code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following address: *Army:* Ms. Julie Jones-Conte, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM–ME, Room 1E677, 600 Army Pentagon, Washington, DC 20310–0600; (703) 692–9223; *Energy:* Mr. Andy Duran, Department of Energy, Office of Engineering & Construction Management, ME–90, Washington, DC 20585; (202) 586–8715; *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; *Interior:* Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS5512, Washington, DC 20240; (202) 219–0728; *Navy:* Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200. These are not toll-free numbers.

Dated: October 9, 2003.

**John D. Garrity,**

*Director, Office of Special Needs Assistance Programs.*

### TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 10/17/2003

### Suitable/Available Properties

*Buildings (by State)*

Washington

Bldg. 87
1917 Marsh Road
Yakima Co: WA 98901–
Landholding Agency: Interior
Property Number: 61200340006
Status: Unutilized
Comment: 1032 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 88
1917 Marsh Road
Yakima Co: WA 98901–
Landholding Agency: Interior
Property Number: 61200340007
Status: Unutilized
Comment: 1032 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

*Land (by State)*

North Carolina

0.99 acre
Camp Lejeune
Hubert Co: Onslow NC
Landholding Agency: Navy
Property Number: 77200340013
Status: Excess
Comment: land

Utah

0.5 acre
2968 W. Alice Way
West Valley Co: Salt Lake UT 84119–
Landholding Agency: GSA
Property Number: 54200340004
Status: Excess

Comment: paved
GSA Number: 7–U–UT–0515

**Suitable/Unavailable Properties**

*Buildings (by State)*

Mississippi

Federal Building
500 West Main Street
Tupelo Co: Lee MS 38801–
Landholding Agency: GSA
Property Number: 54200340002
Status: Surplus
Comment: 28,867 sq. ft., presence of asbestos/possible lead paint
GSA Number: 4–G–MS–0561

*Land (by State)*

Maryland

1 acre
Naval Air Station
Patuxent River Co: St. Mary's MD 20670–
Landholding Agency: Navy
Property Number: 77200340014
Status: Underutilized
Comment: 1 acre

**Unsuitable Properties**

*Buildings (by State)*

Alabama

Bldg. 7339A
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200340011
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 08025
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200340012
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Alaska

Bldg. 968
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200340001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 27054
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200340002
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 28050, 28051, 28105
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200340003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 36015
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200340004
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 45094, 47782
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200340005
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 55294, 55298, 55805
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200340006
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2060
Fort Wainwright
Ft. Wainwright Co: AK 99703–6505
Landholding Agency: Army
Property Number: 21200340007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone

Bldg. 2108
Fort Wainwright
Ft. Wainwright Co: AK 99703-6505
Landholding Agency: Army
Property Number: 21200340008
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4108
Fort Wainwright
Ft. Wainwright Co: AK 99703-6505
Landholding Agency: Army
Property Number: 21200340009
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4391
Fort Wainwright
Ft. Wainwright Co: AK 99703-6505
Landholding Agency: Army
Property Number: 21200340010
Status: Unutilized
Reason: Extensive deterioration

California

Bldg. 1361
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200340001
Status: Excess
Reason: Extensive deterioration

Bldg. 22135
Marine Corps Base
Camp Pendleton Co: CA 92055
Landholding Agency: Navy
Property Number: 77200340002
Status: Excess
Reason: Extensive deterioration

Bldg. 22136
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200340003
Status: Excess
Reason: Extensive deterioration

Bldg. 22144
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200340004
Status: Excess
Reason: Extensive deterioration

Bldg. 22147
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200340005
Status: Excess
Reason: Extensive deterioration

Bldg. 22148
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200340006
Status: Excess
Reason: Extensive deterioration

Bldg. 22149
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200340007
Status: Excess
Reason: Extensive deterioration

Colorado

Bldgs. 112, 115
Rocky Flats Env Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200340002
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 116, 119
Rocky Flats Env Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200340003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 120, 120B
Rocky Flats Env Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200340004
Status: Excess
Reason: Secured Area

Bldgs. 121, 122, 122S
Rocky Flats Env Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200340005
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 126, 127, 128
Rocky Flats Env Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200340006
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 130, 131
Rocky Flats Env Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200340007
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 223
Rocky Flats Env Tech Site
Golden Co: Jefferson CO 80020–

Landholding Agency: Energy
Property Number: 41200340008
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 302, 303
Rocky Flats Env Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200340009
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 331, 331A
Rocky Flats Env Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200340010
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 334, 335
Rocky Flats Env Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200340011
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 427, 439, 440
Rocky Flats Env Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200340012
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 444, 445
Rocky Flats Env Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200340013
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 447, 448
Rocky Flats Env Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200340014
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 450, 451, 455
Rocky Flats Env Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200340015
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 460
Rocky Flats Env Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200340016
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

6 Bldgs.
Rocky Flats Env Tech Site
Golden Co: Jefferson CO 80020–
Location: 549, 551, 552, 553, 554, 556
Landholding Agency: Energy
Property Number: 41200340017
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 664, 668
Rocky Flats Env Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200340018
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 920, 920B
Rocky Flats Env Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200340019
Status: Excess
Reason: Secured Area

### Connecticut

Bldgs. A92, A93, A94
Naval Submarine Base
Groton Co: New London CT 06349–
Landholding Agency: Navy
Property Number: 77200340008
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

### Georgia

Bldg. 00111
Fort Gillem
Ft. Gillem Co: Forest Park GA 30050–5101
Landholding Agency: Army
Property Number: 21200340013
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00116
Fort Gillem
Ft. Gillem Co: Forest Park GA 30050–5101
Landholding Agency: Army
Property Number: 21200340014
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00226
Fort Gillem
Ft. Gillem Co: Forest Park GA 30050–5101
Landholding Agency: Army
Property Number: 21200340015
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 00733, 00753
Fort Gillem
Ft. Gillem Co: Forest Park GA 30050–5101
Landholding Agency: Army
Property Number: 21200340016
Status: Unutilized
Reason: Extensive deterioration

### Hawaii

Bldg. 450
Fleet Ind. Supply Center
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77200340009
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 10
NAVMAG
Lualualei Co: Honolulu HI 96792–
Landholding Agency: Navy
Property Number: 77200340010
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 417
NAVMAG
Lualualei Co: Honolulu HI 96792–
Landholding Agency: Navy
Property Number: 77200340011
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 419
NAVMAG
Lualualei Co: Honolulu HI 96792–
Landholding Agency: Navy
Property Number: 77200340012
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

### Iowa

Bldgs. 00152, 00895
Iowa Army Ammo Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 21200340017
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

### Kentucky

Bldgs. 02968, 04555
Fort Knox
Ft. Knox Co: KY 40121–
Landholding Agency: Army
Property Number: 21200340018
Status: Unutilized
Reason: Extensive deterioration

### Massachusetts

Bldgs. T4321, T4344
Devens RFTA
Devens Co: MA 01432–4429
Landholding Agency: Army
Property Number: 21200340019
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T4354, T4394,
Devens RFTA
Devens Co: MA 01432–4429
Landholding Agency: Army
Property Number: 21200340020
Status: Unutilized
Reason: Extensive deterioration

Bldg. T4364
Devens RFTA
Devens Co: MA 01432–4429
Landholding Agency: Army
Property Number: 21200340021
Status: Unutilized
Reason: Extensive deterioration

### New Jersey

Bldg. P4329
Fort Dix
Ft. Dix Co: Burlington NJ 08640–5506
Landholding Agency: Army
Property Number: 21200340022
Status: Unutilized
Reason: Extensive deterioration

Bldg. P4334
Fort Dix
Ft. Dix Co: Burlington NJ 08640–5506
Landholding Agency: Army
Property Number: 21200340023
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T9428, T9422
Fort Dix
Ft. Dix Co: Burlington NJ 08640–5506

Landholding Agency: Army
Property Number: 21200340024
Status: Unutilized
Reason: Extensive deterioration

Bldg. T9461
Fort Dix
Ft. Dix Co: Burlington NJ 08640–5506
Landholding Agency: Army
Property Number: 21200340025
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T9489, T9468
Fort Dix
Ft. Dix Co: Burlington NJ 08640–5506
Landholding Agency: Army
Property Number: 21200340026
Status: Unutilized
Reason: Extensive deterioration

New York

Bldg. 00138
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200340027
Status: Unutilized
Reason: Extensive deterioration

Bldg. T–215
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200340028
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00526
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200340029
Status: Unutilized
Reason: Extensive deterioration

Gardiners Point
Long Island Co: Suffolk NY
Landholding Agency: GSA
Property Number: 54200340003
Status: Excess
Reasons: no access/unexploded ordnance; Extensive deterioration
GSA Number: 1–N–NY–897

North Carolina

Bldgs. C3731, C3831
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–
Landholding Agency: Army
Property Number: 21200340030
Status: Excess
Reason: Extensive deterioration

Bldgs. C5430, C5528
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–
Landholding Agency: Army
Property Number: 21200340031
Status: Excess
Reason: Extensive deterioration

Bldgs. C5626, C5630
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–
Landholding Agency: Army
Property Number: 21200340032
Status: Excess
Reason: Extensive deterioration

Bldgs. C5725, C5823, C5826
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–
Landholding Agency: Army
Property Number: 21200340033
Status: Excess
Reason: Extensive deterioration

Bldgs. C6032, C6231, C6329
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–
Landholding Agency: Army
Property Number: 21200340034
Status: Excess
Reason: Extensive deterioration

Bldgs. C6427, C6432, C6433
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–
Landholding Agency: Army
Property Number: 21200340035
Status: Excess
Reason: Extensive deterioration

Bldgs. C6525, C6530
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–
Landholding Agency: Army
Property Number: 21200340036
Status: Excess
Reason: Extensive deterioration

Bldgs. C6628, C6726, C6931
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–
Landholding Agency: Army
Property Number: 21200340037
Status: Excess
Reason: Extensive deterioration

Bldgs. C7037, C7137
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–
Landholding Agency: Army
Property Number: 21200340038
Status: Excess
Reason: Extensive deterioration

Bldgs. C7236, C7334, C7339
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–
Landholding Agency: Army
Property Number: 21200340039
Status: Excess
Reason: Extensive deterioration

Bldgs. C7433, C7437
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–
Landholding Agency: Army
Property Number: 21200340040
Status: Excess
Reason: Extensive deterioration

Bldgs. C7535, C7540
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–
Landholding Agency: Army
Property Number: 21200340041
Status: Excess
Reason: Extensive deterioration

Bldgs. C7634, C7732
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–
Landholding Agency: Army
Property Number: 21200340042
Status: Excess
Reason: Extensive deterioration

Bldg. 25453
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–
Landholding Agency: Army
Property Number: 21200340043
Status: Excess
Reason: Extensive deterioration

Bldg. 37225
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–
Landholding Agency: Army
Property Number: 21200340044
Status: Excess
Reason: Extensive deterioration

Bldg. 37450
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–
Landholding Agency: Army
Property Number: 21200340045
Status: Excess
Reason: Extensive deterioration

Ohio

Bldg. T091
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 21200340046
Status: Unutilized
Reason: Extensive deterioration

Pennsylvania

Bldg. 00011
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200340047
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00060
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200340048
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00086
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200340049
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 00402, 00442
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200340050
Status: Unutilized
Reason: Extensive deterioration

Bldg. 02006
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200340051
Status: Unutilized
Reason: Extensive deterioration

Puerto Rico

Bldgs. 01108, 01119, 01128
Fort Buchanan
Ft. Buchanan Co: Guaynabo PR 00934–
Landholding Agency: Army
Property Number: 21200340052
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldgs. 01222, 01251, 01258
Fort Buchanan
Ft. Buchanan Co: Guaynabo PR 00934–
Landholding Agency: Army
Property Number: 21200340053
Status: Excess

Reasons: Secured Area; Extensive deterioration

Bldgs. 01260, 01262, 01264
Fort Buchanan
Ft. Buchanan Co: Guaynabo PR 00934–
Landholding Agency: Army
Property Number: 21200340054
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldgs. 01266, 01268, 01270
Fort Buchanan
Ft. Buchanan Co: Guaynabo PR 00934–
Landholding Agency: Army
Property Number: 21200340055
Status: Excess
Reasons: Secured Area; Extensive deterioration

Tennessee

Bldg. A–35
Holston Army Ammo Plant
Kingsport Co: Sullivan TN 37660–
Landholding Agency: Army
Property Number: 21200340056
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. SC–3
ORISE
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200340001
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Texas

Bldg. 1159
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200340057
Status: Unutilized
Reason: Extensive deterioration

Bldg. 6078
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200340058
Status: Unutilized
Reason: Extensive deterioration

Bldg. 7289
Fort Bliss
El Paso. Co: TX 79916–
Landholding Agency: Army
Property Number: 21200340059
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 11309, 11311
Fort Bliss
El Paso. Co: TX 79916–
Landholding Agency: Army
Property Number: 21200340060
Status: Unutilized
Reason: Extensive deterioration

Bldgs. D5026, D5027, D5029,
Grand Prairie Reserve Complex
Grand Prairie Co: Tarrant TX 75051–
Landholding Agency: Army
Property Number: 21200340061
Status: Unutilized
Reason: Extensive deterioration

Bldgs. YAREA
Longhorn Army Ammo Plant
Kamack Co: Harrison TX 75661–
Location: 0003Y, 0004Y, 004Y2, 0013Y, 0016Y, 16Y1, 16Y2, 0018Y, 018Y1, 0029Y, 0032Y, 0034Y, 0038Y, 0040Y, 0045Y
Landholding Agency: Army
Property Number: 21200340062
Status: Excess
Reason: Secured Area

Bldgs. P–3X, 3X–4 of 5
Longhorn Army Ammo Plant
Karnack Co: Harrison TX 75661–
Location: 00P10, 00P11, 0046A, 0049B, 0053B, 0054B. 0055B, 0056B, 0059B, 0060B, 0068F, 0026E, 0032E, 0029D
Landholding Agency: Army
Property Number: 21200340063
Status: Excess
Reason: Secured Area

Bldgs. P–3X, 3X–3 of 5
Longhorn Army Ammo Plant
Karnack Co: Harrison TX 75661–
Location: 00S13, 00P13, 00B10, 00B16, SHEDC, 00B15, 00B13, 00B11, 000B9, 000B7, SHEDJ, SHEDD, 000M4, 000P3, 000P1
Landholding Agency: Army
Property Number: 21200340064
Status: Excess
Reason: Secured Area

Bldgs. P–3X 5 of 5
Longhorn Army Ammo Plant
Karnack Co: Harrison TX 75661–
Location: 0025D, 0025C, 0050G, 0054F, 0053D, 0054G, 0031G, 00403, 00406, 00408, 00409, 0016T, 0020T, 0035T, 0036T036T1
Landholding Agency: Army
Property Number: 21200340065
Status: Excess
Reason: Secured Area

Bldgs. Inert SH1of 3
Longhorn Army Ammo Plant
Karnack Co: Harrison TX 75661–
Location: 00101, 00102, 0102R, 00103, 000L6, 00402, 000L5, SHEDL, SHEDB, 0061I, 0060I, 0022B, 0032B, 0029A, 0031A
Landholding Agency: Army
Property Number: 21200340066
Status: Excess
Reason: Secured Area

Bldgs. Inert SH3of 3
Longhorn Army Ammo Plant
Karnack Co: Harrison TX 75661–
Location: 016T1, 020T1, 0034T, 034T1, 0020X, 022X1
Landholding Agency: Army
Property Number: 21200340067
Status: Excess
Reason: Secured Area

Bldgs. SH2 of 3
Longhorn Army Ammo Plant
Karnack Co: Harrison TX 75661–
Location: 068G1, 068F1, 0022B, 0032B, 054F1, 0040H, 00402, 00404, 00405, 0018G, 0015G, 0009G, 0010G, 0011G
Landholding Agency: Army
Property Number: 21200340068
Status: Excess
Reason: Secured Area

Bldgs. Inert
Longhorn Army Ammo Plant
Karnack Co: Harrison TX 75661–
Location: 00703, 0703A, 0703C, 0707E, 0018K, 01ST1, 0201A, 00202, 00204, 0022G, 0025G, 0031W, 0049W, 0501E, 510B2, 0601B, 018K1
Landholding Agency: Army
Property Number: 21200340069
Status: Excess
Reason: Secured Area

Bldgs. SHOPS
Longhorn Army Ammo Plant
Karnack Co: Harrison TX 75661–
Location: 00723, 0722P, 0704D, 00715, 00744, 0722G
Landholding Agency: Army
Property Number: 21200340070
Status: Excess
Reason: Secured Area

Bldgs. Magaz
Longhorn Army Ammo Plant
Karnack Co: Harrison TX 75661–
Location: 08111, 08117, 81110, 81111, 81112, 81113, 81114, 81117, 81118, 81121, 81122, 81124, 81128, 81141, 81143, 81156
Landholding Agency: Army
Property Number: 21200340071
Status: Excess
Reason: Secured Area

Bldgs. P–3X SHT1of 5
Longhorn Army Ammo Plant
Karnack Co: Harrison TX 75661–
Location: 02121thru21211, 21214thru21221, 21223, 21225, 21227, 21231Dthru21240, 21242, 21244, 21246, 21248
Landholding Agency: Army
Property Number: 21200340072
Status: Excess
Reason: Secured Area

Bldgs. P–3X SHT2of5
Longhorn Army Ammo Plant
Karnack Co: Harrison TX 75661–
Location: 21250thru21257, 21259, 0027X, 0022X, 0035X
Landholding Agency: Army
Property Number: 21200340073
Status: Excess
Reason: Secured Area

Virginia

Bldg. 02611
Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 21200340074
Status: Unutilized
Reason: Extensive deterioration

Washington

Bldg. 81
39307 Kelly Road
Benton City Co: Benton WA 99320–
Landholding Agency: Interior
Property Number: 61200340001
Status: Unutilized
Reason: Extensive deterioration

Garage/81
39307 Kelly Road
Benton City Co: Benton WA 99320–
Landholding Agency: Interior
Property Number: 61200340002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 73
1171 Beane Road
Moxee Co: Yakima WA 98936–
Landholding Agency: Interior
Property Number: 61200340003
Status: Unutilized

Reason: Extensive deterioration

Garage/73
1171 Beane Road
Moxie Co: Yakima WA 98936–
Landholding Agency: Interior
Property Number: 61200340004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 129
1917 Marsh Road
Yakima Co: WA 98901–
Landholding Agency: Interior
Property Number: 61200340005
Status: Unutilized
Reason: Extensive deterioration

**Unsuitable Properties**

*Land (by State)*

Alabama

Tract E715
Demopolis Lock & Dam
Greensboro Co: Hale AL 36744–
Landholding Agency: GSA
Property Number: 54200340001
Status: Excess
Reason: no legal access
GSA Number: 4–D–AL–564D–I

Alaska

0.56 acre
Sitka Airport
Sitka Co: AK
Landholding Agency: GSA
Property Number: 54200340005
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone
GSA Number: 9–I–AK–791

[FR Doc. 03–26034 Filed 10–16–03; 8:45 am]

**BILLING CODE 4210–29–M**

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Issuance of Permits

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of issuance of permits for endangered species and/or marine mammals.

**SUMMARY:** The following permits were issued.

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone: 703/358–2104.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*), and the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361, *et seq.*), the Fish and Wildlife Service issued the requested permit(s) subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

### Endangered Species

| Permit No. | Applicant | Receipt of application **Federal Register** notice | Permit issuance date |
|---|---|---|---|
| 075567 | Adam Vinatieri | 68 FR 50804; August 22, 2003 | September 29, 2003. |

### Marine Mammals

| Permit No. | Applicant | Receipt of application **Federal Register** notice | Permit issuance date |
|---|---|---|---|
| 073605 | Charles Walker | 68 FR 41167; July 10, 2003 | September 24, 2003. |

Dated: October 3, 2003.

**Charles S. Hamilton,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 03–26234 Filed 10–16–03; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Receipt of Applications for Permit

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications for permit.

**SUMMARY:** The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

**DATES:** Written data, comments or requests must be received by November 17, 2003.

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax: 703/358–2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone: 703/358–2104.

**SUPPLEMENTARY INFORMATION:**

### Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

**PRT–077886**

*Applicant:* Gary H. Tennison, Gig Harbor, WA

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

**PRT–077300**

*Applicant:* Grant R. Oliver, Coolidge, AZ

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

**PRT–077297**

*Applicant:* Greg J. Gallacher, Wantagh, NY

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

**PRT–077812**

*Applicant:* Philip J. Gaines, Davis, CA

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

**PRT–076576**

*Applicant:* George H. Brannen, Inverness, FL

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

**PRT–067307**

*Applicant:* Shark Reef at Mandalay Bay, Las Vegas, NV

The applicant requests amendment of their permit for interstate commerce to obtain three live, captive born Komodo monitors (*Varanus komodoensis*) from the Miami Metro Zoo. The applicant now indicates that only two specimens will be available from Miami with the third captive born animal to be obtained based on AZA SSP recommendation from an institution yet to be designated. The purpose will remain enhancement of the survival of the species through both conservation education and in-situ conservation.

### Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The application(s) was/were submitted to satisfy requirements of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and/or the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361, *et seq.*), and the regulations governing endangered species (50 CFR part 17) and/or marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

**PRT–049136**

*Applicant:* Charles J. Grossman/Xavier University, Cincinnati, OH

The applicant requests amendment of their permit to conduct auditory response research on captive held and or captive born manatees (*Trichechus manatus latirosis*), to include more then two specimens and broadened scope including response to playback sounds of motor boats, manatee vocalizations, etc., in captivity. This notification covers activities to be conducted by the applicant through June 18, 2005.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding a copy of the above application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

**PRT–077783**

*Applicant:* Julian Alfredo, Vancouver, WA

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Norwegian Bay polar bear population in Canada for personal use.

**PRT–077954**

*Applicant:* Richard Guy Ferrara, South Bend, IN

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal use.

Dated: October 3, 2003.

**Charles S. Hamilton,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 03–26235 Filed 10–16–03; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## Submission of Information Collection to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** As required by the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request for the Payment for Appointed Counsel in Involuntary Indian Child Custody Proceedings in State courts has been submitted to the Office of Management and Budget for review and renewal. This information collection is cleared under OMB Control Number 1076–0111.

**DATES:** Written comments must be submitted on or before November 17, 2003.

**ADDRESSES:** Comments should be submitted to the Desk Officer for the Department of the Interior, Office of Management and Budget, either by facsimile at (202) 395–6566 or you may send an e-mail to: *OIRA_DOCKET@omb.eop.gov*

Please send a copy of your comments to Larry Blair, Office of Tribal Services, Bureau of Indian Affairs, 1951 Constitution Avenue, NW., MS–320–SIB, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Larry Blair (202) 513–7621.

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

A State court that appoints counsel for an indigent Indian parent or Indian custodian in an involuntary Indian child custody proceeding in a State court may send written notice to the Bureau of Indian Affairs (Bureau) when appointment of counsel is not authorized by State law. The cognizant Bureau Regional Director uses this information to decide whether to certify that the client in the notice is eligible to have his counsel compensated by the Bureau in accordance with the Indian Child Welfare Act, Public Law 95–608.

On June 9, 2003, the Department of the Interior published a notice in the **Federal Register** (68 FR 34413) requesting public comments on the proposed information collection. The comment period ended August 8, 2003. No comments were received.

### II. Method of Collection

The following information is collected from State courts in order to certify payment of appointed counsel in involuntary Indian child custody proceedings. The information collection is submitted to obtain or retain a benefit; *i.e.*, payment for appointed counsel. The reasons for the collection are listed in the following table:

| Information collected | Reason for collection |
|---|---|
| (a) Name, address and telephone number of attorney appointed | (a) To identify attorney appointed as counsel and method of contact. |
| (b) Name and address of client for whom counsel is appointed | (b) To identify indigent party in an Indian child custody proceeding for whom counsel is appointed. |
| (c) Applicant's relationship to child | (c) To determine if the person is eligible for payment of attorney fees as specified in Public Law 95–608. |
| (d) Name of Indian child's tribe | (d) To determine if the child is a member of a federally recognized tribe and is covered by the Indian Child Welfare Act (ICWA). |
| (e) Copy of petition or complaint | (e) To determine if this custody proceeding is covered by the ICWA. |
| (f) Certification by the court that State law does not provide for appointment of counsel in such proceedings. | (f) To determine if other State laws provide for such appointment of counsel and to prevent duplication of effort. |
| (g) Certification by the court that the Indian client is indigent | (g) To determine if the client has resources to pay for counsel. |
| (h) The amount of payments due counsel utilizing the same procedures used to determine expenses in juvenile delinquency proceedings. | (h) To determine if the amount of payment due appointed counsel is based on State court standards in juvenile delinquency proceedings. |
| (i) Approved vouchers with court certification that the amount requested is reasonable considering the work and the criteria used for determining fees and expenses for juvenile delinquency proceedings. | (i) To determine the amount of payment considered reasonable in accordance with State standards for a particular case. |

*Proposed use of the information:* The information collected will be used by the respective Bureau Regional Director to determine:

(a) If an individual Indian involved in an Indian child custody proceeding is eligible for payment of appointed counsel's attorney fees;

(b) If any State statutes provide for coverage of attorney fees under these circumstances;

(c) The State standards for payment of attorney fees in juvenile delinquency proceedings; and,

(d) The name of the attorney, and his actual voucher certified by the court for the work completed on a preapproved case. This information is required for payment of appointed counsel as authorized by Public Law 95–608.

## III. Data

(1) *Title of the Collection of Information:* The Department of the Interior, Bureau of Indian Affairs, Payment for Appointed Counsel in Involuntary Indian Child Custody Proceedings in State Courts, 25 CFR 23.13.

*OMB Control Number:* 1076–0111.

*Type of Review:* Extension of a currently-approved collection.

*Affected Entities:* State courts and individual Indians eligible for payment of attorney fees pursuant to 25 CFR 23.13 in order to obtain a benefit.

*Estimated number of respondents:* 4.

*Proposed frequency of response:* 1.

(2) *Estimate of total annual reporting and record keeping burden that will result from the collection of this information:* 12 hours.

*Reporting:* 2 hours per response × 4 respondents = 8 hours.

*Recordkeeping:* 1 hour per response × 4 respondents = 4 hours.

*Estimated Total Annual Burden Hours:* 12 hours.

*Estimated Annual Costs:* $540.00 (12 hours × $45.00 per hour).

(3) *Description of the need for the information and proposed use of the information:* Submission of this information is required in order to receive payment for appointed counsel under 25 CFR 23.13. The information is collected to determine applicant eligibility for services.

## IV. Request for Comments

The Department of the Interior invites comment on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to a federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

The comments, names and addresses of commenters will be available for public view during regular business hours. If you wish us to withhold this information, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget control number.

Dated: September 3, 2003.

**Aurene M. Martin,**

*Acting Assistant Secretary—Indian Affairs.*

[FR Doc. 03–26288 Filed 10–16–03; 8:45 am]

BILLING CODE 4310–4J–P

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[1610 DP 001H]**

## Notice of Availability of the Draft Upper Deschutes Resource Management Plan and Draft Environmental Impact Statement

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the National Environmental Policy Act, a Draft Resource

Management Plan/Environmental Impact Statement (DRMP/EIS) has been prepared for the Upper Deschutes planning area of the Prineville District.

**DATES:** Written comments on the DRMP/EIS will be accepted for 90 days following the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**. Future meetings or hearings and any other public involvement activities will be announced at least 15 days in advance through public notices, media new releases, and/or mailings.

**ADDRESSES:** Written comments should be sent to: Prineville District Office, ATTN: Teal Purrington. Comments submitted by electronic mail should be sent to: *upper_deschutes_RMP@or.blm.gov*. Individual respondents may request confidentiality.

If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such request will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Copies of the DRMP/EIS (or an executive summary) have been sent to approximately 1,000 affected federal, state and local agencies, tribal governments and interested members of the public. Copies of the Upper Deschutes Draft Resource Management Plan and Environmental Impact Statement are available in the Prineville District Office at the above address during normal working hours (8 a.m. to 4:30 p.m.) Copies may also be obtained at public libraries located in Bend, Redmond, Prineville, Sisters, and Madras. Copies of the Draft Resource Management Plan and Environmental Impact Statement and associated maps are also available on-line at: *www.or.blm.gov/Prineville/Deschutes_RMP/Home.html*.

**FOR FURTHER INFORMATION CONTACT:** Mollie Chaudet, Project Manager, Prineville District, Prineville, Oregon (541) 416–6872.

**SUPPLEMENTARY INFORMATION:** The area covered by the DRMP/EIS includes approximately 400,000 acres of public domain lands in portions of Deschutes, Crook, Jefferson, and Klamath Counties in central Oregon. The planning boundary extends roughly north between the communities of La Pine, Sisters, and Madras, east to Ochoco and Prineville Reservoirs, and south to the Deschutes National Forest boundary. The planning effort was first initiated in 1995 as the Urban Interface EIS and was reinitiated in October 2001 with the publication of the Upper Deschutes Resource Management Plan Analysis of the Management Situation (AMS).

The Upper Deschutes Resource Management Plan will supersede and revise portions of the Brothers-La Pine Resource Management Plan (1989) and the Two Rivers Resource Management Plan (1986). Some management direction would clarify or improve management direction within the Middle Deschutes and Lower Crooked River Wild and Scenic River Plans. The Upper Deschutes Resource Management Plan will also incorporate strategies and direction identified in the National and Central Oregon Fire Management Plan.

The following local, state, or Federal Governments are Cooperative Agencies for the DRMP/EIS: Deschutes County, City of Redmond, Oregon Military Department, Oregon Department of Transportation, and the Federal Highway Department.

A no action alternative and six "action" alternatives were developed using a community-based collaboration strategy. The Resource Management Plan provides future broad-scale management direction for land use allocations and allowable uses on public lands within the planning area. The DEIS examines seven alternatives that respond to the significant issues identified during scoping. These issues include: Ecosystem Health, Land Uses, Recreation, Land Ownership, Transportation and Utility Corridors, and Public Health and Safety. Alternative 7 has been identified as the Preferred Alternative.

Dated: August 12, 2003.

**Elaine M. Brong,**

*State Director, Oregon–Washington USDI–Bureau of Land Management.*

[FR Doc. 03–24809 Filed 10–16–03; 8:45 am]

**BILLING CODE 4310–33–P**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[WO–350–1430–PB]**

## Notice of Intent To Prepare a Programmatic Environmental Impact Statement (EIS) To Evaluate Wind Energy Development on Western Public Lands Administered by the Bureau of Land Management

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701), as amended; the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321), as amended; and the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508), the Bureau of Land Management (BLM) will prepare a Programmatic Environmental Impact Statement (EIS) to evaluate issues associated with wind energy development on western public lands (excluding Alaska) administered by the BLM.

**DATES:** The BLM will accept written comments on the scope of the Programmatic EIS postmarked by December 19, 2003, and electronic or faxed comments received by December 19, 2003.

The BLM will hold public scoping meetings to obtain comments for the Programmatic EIS at the locations and dates specified in the **SUPPLEMENTARY INFORMATION** section of this notice.

**ADDRESSES:** You may submit comments by the following methods:

Written: BLM Wind Energy Programmatic EIS Scoping, Argonne National Laboratory EAD/900, 9700 S. Cass Avenue, Argonne, IL 60439.

Web site: *windeis.anl.gov*

Fax: 1–866–542–5903

**FOR FURTHER INFORMATION, CONTACT:** For general information, including information on how to comment, you may contact Lee Otteni, Bureau of Land Management, Farmington Field Office, 1235 La Plata Highway, Suite A, Farmington, NM 87401, (505) 599–8911 or visit the Wind Energy Development Programmatic EIS Web site at windeis.anl.gov.

**SUPPLEMENTARY INFORMATION:**

### Meetings

The BLM will hold public scoping meetings to obtain comments for the Programmatic EIS at the following locations on the dates specified below:

Sacramento, California: Monday, November 3, 2003
Salt Lake City, Utah: Wednesday, November 5, 2003
Cheyenne, Wyoming: Wednesday, November 12, 2003
Las Vegas, Nevada: Tuesday, November 18, 2003
Boise, Idaho: Thursday, November 20, 2003

BLM will announce all public meetings through the local media, newsletters, and the project Web site (*windeis.anl.gov*) at least 15 days prior to the meeting.

## Comments

The public is encouraged to contact the BLM with information and comments on specific issues it believes BLM should address in the Programmatic EIS. The agency requests information and comments on resources in the western United States that wind energy development may impact. Comments may be in terms of broad areas or restricted to specific areas of concern.

After gathering public comments on what issues BLM should address in the Programmatic EIS, the BLM will identify and provide rationale on those issues we will address in the EIS or those issues beyond the scope of the EIS. In addition to the major issues, BLM will address a number of management questions and concerns in the Programmatic EIS. The public is encouraged to help identify these questions and concerns during the public scoping period.

Scoping comments will be available for public review approximately 45 days following closure of the scoping period. Scoping comments will be posted on the Internet (*windeis.anl.gov*). You may also view the public scoping comments at the Argonne National Laboratory, 1200 Internationale Parkway, Woodridge, IL 60517, Monday through Friday, 9 a.m. to 11:30 a.m., except holidays. To ensure easy access to the comments at Argonne's offices, we ask that you contact the Document Retrieval Center at (630) 252–4587 prior to your visit. Visitors to Argonne will be escorted at all times and will be issued a temporary badge; specific arrangements must be made for visitors who are not U.S. citizens.

Individual respondents may request confidentiality. If you wish BLM to withhold your name or street address, except for the city or town, from public view or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. We will honor requests to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

## Background Information

In response to recommendations contained in the President's National Energy Policy that encourages the development of renewable energy resources, the BLM is undertaking efforts to evaluate additional wind energy development on public lands, including the establishment of a national wind energy program and policy. The BLM currently administers numerous wind energy right-of-way authorizations on lands in several western states and has received a large number of new project proposals. The BLM has issued interim wind energy development policy (Instruction Memorandum No. 2003–020) that establishes requirements for wind energy site monitoring and testing activities and full commercial development activities. Under the interim policy industry is required to conduct appropriate levels of environmental review before BLM will issue a right-of-way authorization for either monitoring and testing or full commercial development.

The BLM has determined that the establishment of a national wind energy program and additional related policy would be a major federal action as defined by the NEPA and, thus, the BLM will prepare a Programmatic EIS. This NOI provides public notice of preparation of the Programmatic EIS and announces the opportunity for the public to provide comments relating to the preparation, scope, and content of the Programmatic EIS.

The Programmatic EIS will address the possible amendment of individual land use plans to address future development of wind energy resources on BLM-administered lands. BLM will develop a reasonably foreseeable development scenario to define the magnitude of future wind energy development activities and to identify which land use plans might be amended. Examples of possible amendments to land use plans include the:

(1) Adoption of stipulations (*e.g.*, wildlife management guidelines) applicable to wind energy development projects, and

(2) Designation of lands for competitive leasing of wind energy resources.

BLM will include in the scope of this analysis all BLM-administered lands in the western United States, excluding Alaska. The Programmatic EIS will also address the no-action alternative of not establishing national wind energy policies or amending land use plans. Under the no-action alternative, BLM will continue to allow wind energy development in accordance with the requirements of the interim policy, Instruction Memorandum No. 2003–020. BLM may develop other alternatives as a result of scoping.

The BLM anticipates that the Wind Energy Development Programmatic EIS and Record of Decision will be completed in approximately 24 months and will include public and agency scoping; coordination and consultation with Federal, State, and local agencies and tribal governments; publication of a draft EIS; public review of the draft EIS; and publication of a final EIS and Record of Decision. As currently envisioned, the Programmatic EIS will pay special attention to the resources listed below as we understand they are significant issues associated with wind energy development:

Wildlife and wildlife habitat including avian impacts,

Proximity to military activities,

Visual environment, and

Proximity to wilderness or other special management areas.

The Programmatic EIS will also address the indirect and cumulative impacts associated with wind energy development on a wide range of other resource issues.

The Programmatic EIS will describe wind energy technologies, activities undertaken for site monitoring and evaluation, activities undertaken for full commercial development, and the distribution of wind energy resources on a regional scale. The Programmatic EIS will also describe the impact associated with current technologies, monitoring, and mitigation measures and constraints relevant to wind energy development. It will include a statement of the purpose and need for the proposed action, including the effect of wind energy development on the nation's energy supply, economy, and energy security.

The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns. Early participation is encouraged and will help determine the future management of the public lands. In addition to the ongoing public participation process, we will provide opportunities for formal participation through comment on the alternatives and upon publication of the draft EIS.

**Ray Brady,**

*Group Manager, Lands and Realty.*

[FR Doc. 03–26123 Filed 10–16–03; 8:45 am]

BILLING CODE 4310–84–P

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of extension of an information collection (1010–0091).

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**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 254, "Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line." This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

**DATES:** Submit written comments by November 17, 2003.

**ADDRESSES:** You may submit comments either by fax (202) 395–6566 or email (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0091). Mail or hand carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail your comments to MMS, the address is: *rules.comments@mms.gov*. Reference Information Collection 1010–0091 in your subject line and mark your message for return receipt. Include your name and return address in your message text.

**FOR FURTHER INFORMATION CONTACT:** Arlene Bajusz, Rules Processing Team, (703) 787–1600. You may also contact Arlene Bajusz to obtain a copy, at no cost, of the regulations that require the subject collection of information.

**SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR part 254, Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line.

*OMB Control Number:* 1010–0091.

*Abstract:* The Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990 (OPA), requires that a spill-response plan be submitted for offshore facilities prior to February 18, 1993. The OPA specifies that after that date, an offshore facility may not handle, store, or transport oil unless a plan has been submitted. This authority and responsibility have been delegated to the Minerals Management Service (MMS). Regulations at 30 CFR part 254 establish requirements for spill-response plans for oil-handling facilities seaward of the coast line, including associated pipelines.

MMS uses the information collected under 30 CFR part 254 to determine compliance with OPA by owners/operators. Specifically, MMS needs the information to:

- Determine effectiveness of the spill-response capability of owners/operators;
- Review plans prepared under the regulations of a State and submitted to MMS to satisfy the requirements of this rule to ensure that they meet minimum requirements of OPA;
- Verify that personnel involved in oil-spill response are properly trained and familiar with the requirements of the spill-response plans and to witness spill-response exercises;
- Assess the sufficiency and availability of contractor equipment and materials;
- Verify that sufficient quantities of equipment are available and in working order;
- Oversee spill-response efforts and maintain official records of pollution events; and
- Assess the efforts of owners/operators to prevent oil spills or prevent substantial threats of such discharges.

No proprietary, confidential, or sensitive information is collected. However, we will protect any information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR parts 250, 251, and 252. Responses are mandatory or required to obtain or retain a benefit.

*Frequency:* On occasion and annual.

*Estimated Number and Description of Respondents:* Approximately 197 owners or operators of facilities located in both State and Federal waters seaward of the coast line.

*Estimated Reporting and Recordkeeping "Hour" Burden:* The estimated annual "hour" burden for this information collection is a total of 38,322 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

| Citation 30 CFR 254 | Reporting requirement | Hour burden | Average No. annual responses | Annual burden hours |
|---|---|---|---|---|
| 254.1(a) thru (d); 254.2(a); 254.3 thru 254.5; 254.7; 254.20 thru 254.29; | Submit spill response plan for OCS facilities and related documents. | 120 | 25 new plans | 3,000 |
| 254.44(b) | | | | |
| 254.1(e) | Request MMS jurisdiction over facility landward of coast line (no recent request received). | 0.5 | 2 requests | 1 |
| 254.2(b) | Submit certification of capability to respond to worst case discharge or substantial threat of such. | 15 | 1 certification | 15 |
| 254.2(c); 254.30 | Submit revised spill response plan for OCS facilities at least every 2 years. | 36 | 174 revised plans. | 6,264 |
| 254.2(c) | Request deadline extension for submission of revised plan. | 4 | 10 | 40 |
| 254.8 | Appeal MMS orders or decisions | Burden covered under 30 CFR 290 (1010–0121). | | 0 |
| 254.42(f) | Inform MMS of the date of any exercise (triennial) | 1 | 158 notifications. | 158 |
| 254.46(a) | Notify NRC of all oil spills from owner/operator facility. | Burden would be included in the NRC inventory. | | 0 |

| Citation 30 CFR 254 | Reporting requirement | Hour burden | Average No. annual responses | Annual burden hours |
|---|---|---|---|---|
| 254.46(b) | Notify MMS of oil spills of one barrel or more from owner/operator facility; submit followup report. | 2 | 60 notifications & reports. | 120 |
| 254.46(c) | Notify MMS & responsible party of oil spills from operations at another facility. | 2 | 24 notifications. | 48 |
| 254.50; 254.51 | Submit response plan for facility in State waters by modifying existing OCS plan. | 42 | 10 plans | 420 |
| 254.50; 254.52 | Submit response plan for facility in State waters following format for OCS plan. | 100 | 9 plans | 900 |
| 254.50; 254.53 | Submit response plan for facility in State waters developed under State reqmts. | 89 | 18 plans | 1,602 |
| 254.54 | Submit description of oil-spill prevention procedures. | 5 | 36 submissions. | 180 |
| Subtotal—Reporting | | | 527. | |
| 254.40 | Make records of all OSRO-provided services, equipment, personnel available to MMS. | 5 | 20 | 100 |
| 254.41 | Conduct annual training; retain training records for 2 years. | 50 | 180 owners/operators. | 9,000 |
| 254.42(a) thru (e) | Conduct triennial response plan exercise; retain exercise records for 3 years. | 1101 | 31 exercises | 14,410 |
| 254.43 | Inspect response equipment monthly; retain inspection & maintenance records for 2 years. | 3.5 | 42 inspections x 12 months = 504. | 1,764 |
| 254.1 thru 254.54 | General departure or alternative compliance requests not specifically covered elsewhere in part 254. | 50 | 6 | 300 |
| Subtotal—Recordkeeping | | | 841 Recordkeepers (RKs). | |
| Total Hour Burden | | | 1,368 Responses/RKs. | 38,322 |

*Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden:* We have identified no non-hour cost burdens for this collection.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

*Comments:* Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on April 24, 2003, we published a **Federal Register** notice (68 FR 20168) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 254.9 displays the OMB control number, specifies that the public may comment at anytime on the collection of information required in the 30 CFR part 254 regulations, and provides the address to which they should send comments. We have received no comments in response to those efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by November 17, 2003.

*Public Comment Policy:* MMS practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that their home address be withheld from the record, which will be honored to the extent allowable by the law. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. However, anonymous comments will not be considered. MMS will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

*MMS Information Collection Clearance Officer:* Denise Johnson, (202) 208–3976.

Dated: July 22, 2003.

**E.P. Danenberger,**

*Chief, Engineering and Operations Division.*

[FR Doc. 03–26326 Filed 10–16–03; 8:45 am]

BILLING CODE 4310–MR–P

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## INTERNATIONAL BOUNDARY AND WATER COMMISSION UNITED STATES AND MEXICO

### Notice of Availability of a Draft Environmental Impact Statement and Draft Finding of No Significant Impact for Sediment Removal Downstream of Retamal Diversion Dam, in the Lower Rio Grande Flood Control Project, located in Hidalgo County, TX

**AGENCY:** United States Section, International Boundary and Water Commission, United States and Mexico.

**ACTION:** Notice of Availability of Draft Environmental Assessment (EA) and Draft Finding of No Significant Impact (FONSI).

**SUMMARY:** Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR parts 1500 through 1508); and the U.S. Section's Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981, (46 FR 44083); the U.S. Section hereby gives notice that the Draft Environmental Assessment and Draft Finding of No Significant Impact for *Sediment Removal Downstream of Retamal Diversion Dam,* in the Lower Rio Grande Flood Control Project, located in Hidalgo County, Texas are available.

The project includes dredging the sediment and beneficially use or dispose of all the material on vacant Mexican Federal Government land adjacent to the river at the dredging location. The size of the project area is approximately 4.94 acres, which includes 2.1 acres of wetland. The EA analyzes potential impacts from dredging approximately 54,000 cubic yards of sediment material, either hydraulically or mechanically, during the non-irrigation season between September and February when water levels in the Rio Grande are maintained at lower levels. Construction activities include transporting dredged materials to dewatering cells on the Mexican riverbank. A hydraulic piping system may be set up to transport the slurry mix directly to the final disposal area or the materials may be transported by trucks provided by Mexico, depending on the disposal method. A coffer dam may also be constructed to de-water alternate sides of the river during dredging activities. The EA provides details of the action, explains the purpose and need for the action, and assesses the potential impacts of the Proposed Action. The EA also analyzes the No Action Alternative. On the basis of the Draft EA, the United States Section has determined that an environmental impact statement is not required to implement the proposed action and hereby provides notice of a finding of no significant impact. An environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within thirty (30) days of the date of this Notice.

The Draft EA and Draft Finding of No Significant Impact have been sent to the Environmental Protection Agency and various federal, state, and local agencies and interested parties. The Draft EA and Draft FONSI are available under "What's New?" on the USIBWC Home Page at *www.ibwc.state.gov*; the reference desk at the public libraries in Weslaco or Harlingen, TX; or at the USIBWC Mercedes Field Office at 325 Golf Course Road, Mercedes, TX 78570.

**DATES:** Written comments on the Draft EA and Draft FONSI will be accepted through November 17, 2003.

**ADDRESSES:** Written comments and inquiries on the Draft FONSI and Draft EA should be directed to Mr. Daniel Borunda, 4171 N. Mesa, Suite C–100, El Paso, Texas 79902. Phone: (915) 832–4701, Fax: (915) 832–4167, e-mail: *danielborunda@ibwc.state.gov.*

Dated: October 7, 2003.

**Mario Lewis,**

*General Counsel.*

[FR Doc. 03–25980 Filed 10–16–03; 8:45 am]

BILLING CODE 4710–03–P

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## INTERNATIONAL TRADE COMMISSION

### [USITC SE–03–033]

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** International Trade Commission.

**TIME AND DATE:** October 24, 2003 at 11 a.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–1054–1055 (Preliminary) (Light-Walled Rectangular Pipe and Tube from Mexico and Turkey)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on October 24, 2003; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before October 31, 2003.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: October 15, 2003.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 03–26393 Filed 10–15–03; 12:36 pm]

BILLING CODE 7020–02–P

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## INTERNATIONAL TRADE COMMISSION

### [USITC SE–03–032]

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** International Trade Commission.

**TIME AND DATE:** October 22, 2003 at 11 a.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1022 (Final) (Refined Brown Aluminum Oxide From China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before November 3, 2003.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: October 15, 2003.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 03–26394 Filed 10–15–03; 12:36 pm]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Judgment Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on September 30, 2003, a proposed Consent Judgment in *United States* v. *City of Glen Cove, et al.*, Civil Action No. CV–03–4975, was lodged with the United States District Court for the Eastern District of New York.

The Proposed Consent Judgment will resolve the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, on behalf of the U.S. Environmental Protection Agency ("EPA") against defendants City of Glen Cove ("City"), and Wah Chang Smelting and Refining Company of America, Inc. ("WCSRCA") in connection with the Li Tungsten Superfund Site in Glen Cove, New York. The proposed Consent Judgment also resolves the potential contribution liability of four Settling Federal Agencies, the Department of Defense, the General Services Administration, the Department of Commerce, and the Department of the Treasury, to the City and WCSRCA. Pursuant to the Consent Judgment, based on their respective ability to pay, the City will pay $1.6 million (in addition to the $3.6 million in funds and in-kind services it has already provided to EPA) and WCSRCA will pay $700,000 to a Li Tungsten Site Special Account within the Superfund. The United States, on behalf of the Settling Federal Agencies, will pay $20 million to the Special Account, and thereafter be required to make additional payments in the amount of 51 percent of the amount by which the total response costs at the Site exceed $39,216,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Judgment. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Glen Cove, et al.*, Civil Action No. CV–03–4975, D.J. Ref. 90–11–3–06561/2.

The proposed Consent Judgment may be examined at the Office of the United States Attorney, Eastern District of New York, One Pierrepont Plaza, 14th Fl., Brooklyn, New York 11201, and at the United States Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007–1866. During the public comment period, the proposed Consent Judgment may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed Consent Judgment may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy of the proposed Consent Judgment, please so note and enclose a check in the amount of $14.25 (25 cent per page reproduction cost) payable to the U.S. Treasury.

**Ronald Gluck,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 03–26248 Filed 10–16–03; 8:45 am]

BILLING CODE 4410–15–M

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on September 30, 2003, a Consent Decree in *United States and New Jersey* v. *Coastal Eagle Point Oil Co.*, Civil Action No. 1:03cv04525 (JHR) was lodged with the United States District Court for the District of New Jersey.

In a complaint that was filed simultaneously with the Consent Decree, the United States and New Jersey sought injunctive relief and penalties against Coastal Eagle Point Oil Co. ("CEOPOC"), pursuant to sections 113(b) and 304(a) of the Clear Air Act ("CAA"), 42 U.S.C. 7413(b), 7604(a) (1983), *amended by*, 42 U.S.C. 7413(b) (Supp. 1991), for alleged CAA and New Jersey Air Pollution Control Act violations at CEPOC's refinery in Westville, New Jersey.

Under the settlement, CEPOC will implement innovative pollution control technologies to reduce emissions of nitrogen oxides, sulfur dioxide, and particulate matter from refinery process units. CEPOC also will adopt facility-wide enhanced benzene waste monitoring and fugitive emission control programs. In addition, CEPOC will pay a civil penalty of $2.5 million for settlement of the claims in the United States' and New Jersey's complaint. Finally, CEPOC will pay $1 million to the Northeast States for Coordinated Air Use Management to be used to eliminate diesel emissions from idling trucks at the Paulsboro Travel Central on Interstate 295 in New Jersey. New Jersey joined in the settlement as a co-plaintiff and co-signatory to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and New Jersey* v. *Coastal Eagle Point Refining Co.*, D.J. Ref. No. 90–5–2–1–08096.

The Consent Decree may be examined at the Office of the United States Attorney, 401 Market St., 4th Floor, Camden, NJ 08101, and at U.S. EPA Region 2, 290 Broadway, New York, New York, 10007–1866. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclosed a check in the amount of $32.00 (25 Cents per page reproduction cost) payable to the U.S. Treasury.

**Robert D. Brook,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 03–26243 Filed 10–16–03; 8:45 am]

BILLING CODE 4410–15–M

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on September 30, 2003, the United States lodged a proposed consent Decree between the United States, the Mississippi Commission on Environmental Quality, the West Virginia Department of Environmental Protection, Ergon Refining, Inc. ("ERI"), and Ergon-West Virginia, Inc. ("EWV") with the United States District Court for the South District of Mississippi in the case of *United States, et al.* v. *Ergon Refining, Inc. et al.*, Civil Action No. 3:03CV1140WSU.

In a complaint that was filed simultaneously with the Consent Decree, the United States sought injunctive relief and penalties against ERI and EWV pursuant to section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), for alleged Clean Air Act violations at ERI's refinery located in Vicksburg, Mississippi, and EWV's refinery located in Newell, West Virginia.

Under the settlement, ERI and EWV will implement innovative pollution control technologies to greatly reduce emissions of nitrogen oxides ("$NO_2$"), sulfur dioxide ("$SO_2$"), particulate matter ("PM"), carbon monoxide ("CO"), and benzene from refinery process units and will adopt facility-wide enhanced monitoring and fugitive emission control programs. ERI and EWV have estimated that this injunctive relief will cost the companies approximately $8,315,000. ERI will pay a civil penalty of $138,000, which the State of Mississippi will share, and spend more than $80,000 on a supplemental environmental project to make modifications to and purchase equipment for the Vicksburg Volunteer Fire Department. EWV will pay a civil penalty of $111,6000, which the State of West Virginia will share, and spend more than $167,000 on supplemental environmental projects by upgrading controls on existing drains, replacing four conventional burners with ultra low $NO_X$ burners, and purchasing equipment for the Newell Volunteer Fire Department. ERI also will perform additional injunctive relief by installing a new oil water separator tank for the wastewater treatment system totaling approximately $1.5 million. The States of Mississippi and West Virginia will join in this settlement as signatories to the Consent Decree. In addition, EPA and EWV have entered into an administrative Consent Agreement and Final Order in which EWV has agreed to pay a $155,000 civil penalty to EPA, and an Administrative Compliance Order by consent in which EWV has agreed to install certain wastewater treatment controls. The administrative orders are incorporated by reference and fully enforceable under the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States, et al.*, v. *Ergon Refining, Inc. et al.*, D.J. Ref. 90–5–2–1–06064/3.

The Consent Decree may be examined at U.S. EPA Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104, and U.S. EPA Region 3, 1650 Arch Street, Philadelphia, Pennsylvania, 19103–2029. During the public comment period, the Consent decree may be viewed on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. a copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or emailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $35.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**Robert D. Brook,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 03–26247 Filed 10–16–03; 8:45 am]

**BILLING CODE 4410–15–M**

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## DEPARTMENT OF JUSTICE

### Notice of Lodging Proposed Consent Decree

In accordance with Department Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *G & R Farms, Inc. and Robert E. Dasher* (S.D. Ga.), CV 603–115, was lodged with the United States District Court for the Southern District of Georgia, Stateboro Division, on September 25, 2003.

This proposed Consent Decree concerns a compliant filed by the United States against G & R Farms, Inc. and Robert E. Dasher, pursuant to section 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1319(b) and (d), to obtain injunctive relief from and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the defendants to restore the impacted areas and to pay a civil penalty. The Consent Decree also provides for the defendants to perform a supplemental environmental project.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Pamela S. Tonglao, Trial Attorney, United States Department of Justice, Environmental and Natural Resources Division, P.O. Box 23986, Washington, DC 20026–3986 and refer to *United States* v. *G &R Farms and Robert E. Dasher* (S.D. Ga) CV603–115, DJ #90–5–1–1–05552.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Southern District of Georgia, Statesboro Division, 52 N. Main Street, Statesboro, GA 30458. In addition, the proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/open.html.*

**Stephen Samuels,**

*Assistant Chief, Environmental Defense Section, Environment & Natural Resources Division.*

[FR Doc. 03–26245 Filed 10–16–03; 8:45 am]

**BILLING CODE 4410–15–M**

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of a Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7 and 42 U.S.C. 9622(i), notice is hereby given that on October 2, 2003, a proposed Consent Decree in *United States* v. *Sidney Hasselquist, et al.*, Civil Action No. 8:03CV404 was lodged with the United States District Court for the District of Nebraska.

In this action the United States sought response costs relating to response actions by the Environmental Protection Agency ("EPA") at the 10th Street Superfund Site in Columbus, Nebraska at which concentrations of trichloroethylene and tetrachloroethylene were discovered in the soil, soil gas and groundwater. The Consent Decree settles the United States' claims in exchange for EPA access to the Site and injunctive relief.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *U.S.* v. *Sidney Hasselquist* Consent Decree, D.J. Ref. 90–11–2–07430.

The Consent Decree may be examined at the Office of the United States Attorney, District of Nebraska, 1620 Dodge Street, Suite 1400, Omaha, NE 68102–1506, (402) 661–3700, and at U.S. EPA Region VII, U.S. EPA, Region VII, 901 N. 5th Street, Kansas City, KS

66101, (913) 551–7471. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy form the Consent Decree Library, please enclose a check in the amount of $10.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**Robert Maher,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 03–26246 Filed 10–16–03; 8:45 am]

**BILLING CODE 4410–15–M**

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act

In accordance with 28 CFR 50.7, notice is hereby given that on October 7, 2003, a proposed Consent Decree in *United States, et al.* v. *National Cooperative Refinery Association,* Civil Action No. 03–1348–JTM was lodged with the United States District Court for the District of Kansas.

This Consent Decree resolved claims by the United States on behalf of the Environmental Protection Agency and the State of Kansas on behalf of the Kansas Department of Health and the Environment for injunctive relief and civil penalties pursuant to the Clean Air Act, against the National Cooperative Refinery Association (NCRA) arising out of their operation of the McPherson, Kansas petroleum refinery. The Consent Decree requires NCRA to pay a civil penalty of $350,000, to implement technologies and programs valued at more than $339 million to reduce sulphur dioxide, nitrogen oxides and particulate matter emissions and perform a supplemental environmental project valued at $1.5 million to remove chloride pollutants from groundwater at the faculty.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment an Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States, et al.* v. *National Cooperative Refinery Association,* Civil Action No. 03–1348–JTM (D.Kan.), D.J. Ref. 90–5–1–1–06025/2.

The Consent Decree may be examined at the Office of the United States Attorney, District of Kansas, 1200 Epic Center, 301 N. Main St., Wichita, Kansas 67202 and at the Region 7 offices of the US EPA at 901 North Fifth Street, Kansas City, KS 66101. During the public comment period, the Consent Decree, may also be examined on the Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $24.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**Robert E. Maher,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 03–26241 Filed 10–16–03; 8:45 am]

**BILLING CODE 4410–15–M**

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Under 42 U.S.C. 9622(d)(2), 42 U.S.C. 6973(d), and 28 C.F.R. 50.7, notice is hereby given that on October 1, 2003, a proposed Consent Decree in *United States and the State of Wisconsin* v. *P.H. Glatfelter Company and WTM I Company,* Civil Action No. 03–C–949 (E.D. Wis.) was lodged with the United States District Court for the Eastern District of Wisconsin.

The Consent Decree concerns polychlorinated biphenyl ("PCB") contamination in the portion of the Lower Fox River and Green Bay Site designated as Operable Unit 1. Under the proposed settlement set forth in the Consent Decree, P.H. Glatfelter Company and WTM I Company (the "Defendants") would implement the cleanup remedy for Operable Unit 1 that was selected in a December 2002 Record of Decision issued jointly by the U.S. Environmental Protection Agency ("EPA") and the Wisconsin Department of Natural Resources ("WDNR"). The Defendants would pay for that remedial action work using a specially-dedicated fund to be established by the companies. That fund would ultimately hold more than $60 million, including $50 million from the Defendants, an additional $10 million available under a prior interim settlement with Appleton Paper Inc. and NCR Corporation, and all interest earned on the money placed in the fund. If that dedicated fund is not sufficient to finance the completion of the work, the Consent Decree reserves the Plaintiffs' rights to require the Defendants to perform or pay for the continuation and completion of the work. The settlement would not resolve the Defendants' potential liability for response activities or response costs relating to areas of the Site other than Operable Unit 1. The Consent Decree also would require the Defendants to pay $3,000,000 for natural resource damages and $1,050,000 as partial reimbursement of past costs incurred by EPA, WDNR, and the U.S. Department of the Interior. Even so, the Consent Decree would not resolve the Defendant's potential liability for payment of additional natural resources damages or for additional unreimbursed past costs incurred by the United States or the State of Wisconsin.

The United States intends to hold a public meeting regarding the Consent Decree in the affected area, in accordance with Section 7003(d) of the Resource Conservation and Recovery Act, 42 U.S.C. 6973(d). The meeting will be held at the Neenah Public Library, 240 E. Wisconsin Street in Neenah, from 7:00 p.m. to 9 p.m. on Wednesday, October 29, 2003. Representatives of the Department of Justice, EPA, and WDNR will attend the public meeting to provide information and to answer questions concerning the Consent Decree. Formal comments relating to the Consent Decree will not be accepted in oral form at the public meeting. Any such comments should be submitted in writing as described below.

The Department of Justice will receive comments relating to the Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and the State of Wisconsin* v. *P. H. Glatfleter Company and WTM I Company,* Civil Action No. 03–C–949 (E.D. Wis.) and D.J. Ref. 90–11–2–1045/2.

The Consent Decree may be examined at: (1) The offices of the United States Attorney, 517 E. Wisconsin Avenue, Room 530, Milwaukee, Wisconsin; and (2) the offices of EPA Region 5, 77 West Jackson Boulevard, 14th Floor, Chicago, Illinois. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.htm*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $77.00 (308 pages at 25 cents per page reproduction cost) payable to the U.S. Treasury. For a copy of the Consent Decree alone, without appendices, please enclose a check a check in the amount of $27.50 (110 pages at 25 cents per page reproduction cost) payable to the U.S. Treasury.

**William D. Brighton,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 03–26244 Filed 10–16–03; 8:45 am]

**BILLING CODE 4410–15–M**

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *State of Washington Through The Washington Department of Natural Resources*, Civil Action No. C03–5543RBL was lodged on October 6, 2003, with the United States District Court for the Western District of Washington. The consent decree requires the defendant to perform injunctive relief, requiring two groups of performing parties to perform the cleanup of the Thea Foss and Wheeler Osgood Waterway Problem Areas of the Commencement Bay/Nearshore Tideflats Superfund Site and the funding parties to pay a total of $13,000,000 to fund cleanup activities at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *State of Washington Through The Washington Department of Natural Resources*, DOJ Ref. #90–11–2–1049/1.

The proposed consent decrees may be examined at the office of the United States Attorney, 601 Union Street, Suite 5100, Seattle, WA 98101 and at U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101. During the comment period, the consent decrees may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. Copies of the consent decrees also may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $11.25, (25 cents per page reproduction cost) payable to the U.S. Treasury.

**Robert Maher,**

*Assistant Section Chief, Environmental Enforcement Section.*

[FR Doc. 03–26242 Filed 10–16–03; 8:45 am]

**BILLING CODE 4410–15–M**

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## DEPARTMENT OF LABOR

### Employment Standards Administration, Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of ever contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of

Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

**Modification to General Wage Determination Decisions**

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

Rhode Island
RI030001 (Jun. 13, 2003)

*Volume II*

None

*Volume III*

None

*Volume IV*

None

*Volume V*

None

*Volume VI*

Wyoming
WY030005 (Jun. 13, 2003)
WY030006 (Jun. 13, 2003)
WY030007 (Jun. 13, 2003)
WY030008 (Jun. 13, 2003)
WY030009 (Jun. 13, 2003)

*Volume VII*

None

*General Wage Determination Publication*

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 9th day of October 2003.

**Terry Sullivan,**

*Acting Chief, Branch of Construction Wage Determinations.*

[FR Doc. 03–26045 Filed 10–16–03; 8:45 am]

BILLING CODE 4510–27–M

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## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; President's Committee on the Arts and the Humanities: Meeting #54

Pursuant to section 10 (a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the President's Committee on the Arts and the Humanities will be held on Thursday, November 6, 2003 from 9 a.m. to approximately 12 p.m. The meeting will be held in the Potomac Room at the St. Regis Hotel, 923 16th Street, NW., Washington, DC.

The Committee meeting will begin at 9 a.m. with a welcome, introduction of new staff members, announcements, and remarks by Adair Margo, Committee Chairman. The meeting will include updates on Youth Orchestra of the Americas and Save America's Treasures. The remainder of the meeting will focus on PCAH support for After School Youth Arts and Humanities programs, including a discussion on the Coming Up Taller assessment developed by the National Assembly of State Arts Agencies. The meeting will adjourn following Closing Remarks.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982 to advise the President, the two Endowments, and the Institute of Museum and Library Services on measures to encourage private sector support for the nation's cultural institutions and to promote public understanding of the arts and the humanities.

Any interested persons may attend as observers, on a space available basis, but seating is limited. Therefore, for this meeting, individuals wishing to attend must contact Georgiana Paul of the President's Committee seven days in advance at (202) 682–5409 or write to the Committee at 1100 Pennsylvania Avenue, NW., Suite 526, Washington, DC 20506. Further information with reference to this meeting can also be obtained from Ms. Paul.

If you need special accommodations due to a disability, please contact Ms. Hoffman through the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Dated: October 14, 2003.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations, National Endowment for the Arts.*

[FR Doc. 03–26354 Filed 10–16–03; 8:45 am]

BILLING CODE 7537–01–P

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## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Arts Education section (Learning in the Arts for Children and Youth category, Music, Musical Theater, Opera, & Theater) to the National Council on the Arts will be held on November 3–7, 2003 in Room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting, from 12:30 p.m. to 1:30 p.m. on November 7th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on November 3rd, 5th, and 6th, from 9:30 a.m. to 6 p.m. on November 4th, and from 9 a.m. to 12:30 p.m. and 1:30 p.m. to 3:45 p.m. on November 7th, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: October 14, 2003.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations, National Endowment for the Arts.*

[FR Doc. 03–26353 Filed 10–16–03; 8:45 am]

**BILLING CODE 7537–01–P**

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## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Biological Sciences (1110).

*Date and Time*

November 13, 2003; 8:30 a.m.–5 p.m.
:November 14, 2003; 8:30 a.m.–3 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Room 375.

*Type of Meeting* Open.

*Contact Person:* Dr. Mary E. Clutter, Assistant Director, Biological Sciences, Room 605, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Tel. No.: (703) 292–8400.

*Minutes* May be obtained from the contact person listed above.

*Purpose of Meeting:* The Advisory Committee for BIO provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

*Agenda:* Planning and Issues Discussion:

- Reports on AC Workshops.
- Reports on Working Groups.
- Committee of Visitors Reports.

Dated: October 14, 2003.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 03–26303 Filed 10–16–03; 8:45 am]

**BILLING CODE 7555–01–M**

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–440]**

### Firstenergy Corporation, Perry Nuclear Power Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a one-time schedular exemption from Title 10 of the Code of Federal Regulations (10 CFR) part 50, Section 50.71(e)(4) for Facility Operating License No. NPF–58, issued to FirstEnergy Corporation (the licensee), for operation of the Perry Nuclear Power Plant, located in Lake County, Ohio. Therefore, pursuant to 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed action would allow the licensee to extend the time for submitting the periodic update to the Final Safety Analysis Report (FSAR) by 120 days from September 10, 2003, to January 8, 2004. Specifically, 10 CFR part 50.71(e)(4) requires that licensees provide the NRC with updates to the FSAR annually or 6 months after each refueling outage provided the interval between successive updates does not exceed 24 months. The revisions must reflect changes up to 6 months prior to the date of filing. This regulation would require the submittal of the Perry Nuclear Power Plant (PNPP) FSAR update by September 10, 2003.

The proposed action is in accordance with the licensee's application for exemption dated August 8, 2003.

*The Need for the Proposed Action*

While preparing the scheduled submittal, a computer failure occurred affecting the PNPP electronic data management system which resulted in the loss of over 11,000 electronic documents. Updates to the FSAR that were being prepared were among the documents lost. Due to the need to reconstruct the updated FSAR information that was lost, additional time is needed to complete the submittal. The requirement to reflect changes up to 6 months prior to the date of filing would still apply. The exemption is requested to allow adequate time to complete the submittal.

*Environmental Impacts of the Proposed Action*

The NRC has completed its evaluation of the proposed action and concludes that the exemption is administrative and would not affect any plant equipment, operation, or procedures. The FSAR contains the analysis, assumptions, and technical details of the facility design and operating parameters. Until the FSAR is updated, the recent changes are documented in the licensee's written evaluations of changes prepared pursuant to 10 CFR 50.59, and in the Commission's Safety Evaluations for actions requiring prior approval. A delay in submitting the FSAR update will not change the plant design or the manner in which it is operated.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

*Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for Perry Nuclear Power Plant, dated April 1974.

*Agencies and Persons Consulted*

On September 26, 2003, the staff consulted with the Ohio State official, Carol O'Claire of the Ohio Emergency Management Agency, regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 8, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 30th day of September.

For the Nuclear Regulatory Commission.

**L. Raghavan,**

*Chief, Section 1, Project Directorate III–1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 03–26279 Filed 10–16–03; 8:45 am]

BILLING CODE 7590–01–P

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–27735]**

### Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

October 10, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission under provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 4, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After November 4, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Northeast Utilities, et al. (70–10112)**

Northeast Utilities ("NU"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01090, a registered public-utility holding company, and Northeast Nuclear Energy Company ("NNECO"), 107 Selden Street, Berlin, Connecticut 06037, NU's wholly owned subsidiary (together "Applicants"), have filed an application-declaration under sections 6(a), 7 and 12(c) of the Act and rules 26(c)(3), 42, 43, 44 and 46(a). Applicants request authorization for NNECO to pay dividends to and, or in the alternative, to repurchase stock from, NU out of capital or unearned surplus through December 31, 2004 ("Authorization Period").

NNECO was incorporated in 1950. Through a Special Act of the Connecticut Legislature passed in 1967, the company has a valid franchise under Connecticut law to sell electricity to utility companies engaging in electric business in Connecticut and other states; to manufacture, generate and transmit electricity; and to erect and maintain facilities on certain public highways and grounds. NNECO's sole activity has been to act as agent for the NU system companies and other New England utilities in operating and maintaining the Millstone nuclear generating facilities located in Waterford, Connecticut ("Millstone").

Until March 2001, Millstone's facilities were jointly owned by The Connecticut Light and Power Company ("CL&P") and Western Massachusetts Electric Company ("WMECO") (two public utility subsidiaries of NU and affiliates of NNECO) and other nonaffilitated utility companies. In March 2001, CL&P, WMECO and most of the other joint owners of Millstone sold their interests in Millstone to a subsidiary of Dominion Resources, Inc. CL&P and WMECO sold their 100% interests in Millstone 1 and 2 and, with other selling owners, 94% of Millstone 3. As a result, NNECO no longer acts as agent for any owner in the operation and maintenance of Millstone 1, 2 or 3. It is largely inactive and is winding up its business. NU continues to maintain NNECO as a corporate entity in the event that any unforeseen liabilities arise from past Millstone operations. Nevertheless, to simplify its corporate structure, NU intends to liquidate and dissolve NNECO eventually.

NNECO would like to return up to $16.2 million to NU, an amount equal to the approximate value of NNECO's common stockholders' equity. The Applicants represent that, as of June 30, 2003, NNECO's paid-in-capital surplus equaled approximately $15.3 million and retained earnings equaled approximately $0.9 million, for total capitalization of approximately $16.2 million. As of June 30, 2003, NNECO had approximately $48.3 million invested in the NU system money pool and approximately $0.7 million in other current and accrued assets. As of June 30, 2003, NNECO's net liabilities totaled approximately $32.8 million. These net liabilities are mainly comprised of (i) approximately $20.6 million of net accrued pension costs reflecting amounts due former employees of NNECO,[1] (ii) approximately $9.2 million of other employee related costs, (iii) $1.4 million in federal income taxes due, and (iv) approximately $1.6 million of other obligations.[2]

The Applicants seek authorization for NNECO to pay dividends to and, or in the alternative, to repurchase its common stock from, NU out of paid-in-capital and unearned surplus up to $16.2 million during the Authorization Period. The Applicants state that they do not anticipate any further obligations being incurred. They further assert that the proposed transactions will not impair NNECO's ability to meet its obligations nor render its assets insufficient to meet anticipated expenses or liabilities.

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[1] NNECO has $48.9 million of accrued pension costs and an accumulated deferred income tax credit of $28.3 million, which is realized as NNECO makes contributions to the pension plan, leaving a net obligation of $20.6 million.

[2] Because NNECO's net accrued pension obligations are owed to the Northeast Utilities Retirement Plan and the plan owes the employees, NNECO need not continue to exist until all former employees receive their pension benefits. The plan will pay these benefits. NNECO's obligations to the plan will be paid or otherwise satisfied prior to NNECO's dissolution.

## KeySpan Corporation, et al. (70–10123)

KeySpan Corporation ("KeySpan"), a registered holding company under the Act, and KeySpan Energy Management LLC ("KEM"),[3] an indirect, nonutility subsidiary (collectively, "Applicants"), both located at 201 Old Country Road, Suite 300, Melville, New York 11747, have filed an application/declaration ("Application") under sections 9(a) and 10 of the Act seeking authorization for KEM to acquire all of the issued and outstanding securities of Metro Energy LLC ("Metro Energy"), a nonaffiliated New York limited liability company ("Transaction").

### I. Parties

#### *A. KEM*

KEM is a nonutility engaged in the service, installation, and construction of power supply and HVAC systems, including burners and boilers for heating purposes. It operates and maintains power supply, heating, ventilation and air conditioning systems, including burners and boilers for heating purposes. KEM serves large commercial, industrial and institutional customers throughout the Northeast, and may become involved in the development, ownership, construction, financing, operation and maintenance of thermal energy facilities, including central steam and chilled water facilities.[4]

#### *B. Metro Energy*

Metro Energy is an unaffiliated New York limited liability company in the business of developing, operating and maintaining thermal energy systems in the New York metropolitan area. Through certain loans made to Metro Energy by KEM in the aggregate principal amount of $11,715,161.82, plus 8.38% interest per annum, KEM financed the construction of a central heating and cooling facility owned, operated, and maintained by Metro Energy at a hotel in the New York metropolitan area. This prior financing relationship between KEM and Metro Energy does not constitute a variable interest arrangement as determined under the Financial Accounting Standards Board, Interpretation No. 46 (Consolidation of Variable Interest Entities). Metro Energy's business activities involve the types of energy-related activities enumerated in rule 58(b)(1)(vi).

### II. The Transaction

KEM proposes to acquire all of the issued and outstanding membership interests of Metro Energy. Upon consummation of the acquisition, Metro Energy will become a direct, wholly-owned subsidiary of KEM. KEM will acquire Metro Energy in a cash transaction for the purchase price of approximately $600,000 payable in three installments within a one year period, plus the conversion of the outstanding debt owed to KEM by Metro Energy, including principal and interest amounting to approximately $13,785,763, in goodwill. The purpose of the Transaction is to provide KEM with the benefit of revenues currently generated by Metro Energy in furtherance of KeySpan's operations as a diversified and integrated gas and electric public-utility system.

## CenterPoint Energy, Inc., et al. (70–10162)

CenterPoint Energy, Inc. ("CenterPoint"), a registered holding company, located at 1111 Louisiana, Houston, Texas 77002; and Utility Holding, LLC ("Holding"), a direct, wholly-owned registered holding company subsidiary of CenterPoint located at 200 West Ninth Street Plaza, Suite 411, Wilmington, Delaware 19801 (collectively, the "Applicants") have filed an application/declaration (the "Application") under sections 6, 7, 9, 10, 12, and 13 under the Act and rules 88, 90 and 91 under the Act.

### I. Prior Authorizations

By order dated July 5, 2002 (Holding Company Act Release No. 27584) (the "July Order") the Commission authorized the formation of CenterPoint as a new registered holding company, and the distribution to shareholders of the remaining common stock of Reliant Resources, Inc. (the "Distribution"). The formation of CenterPoint and the Distribution were part of a plan adopted in 2000 for the restructuring of Reliant Energy, Incorporated under the requirements of the Texas electric restructuring legislation adopted in 1999. The Distribution, which was made on September 30, 2002, completed the separation from CenterPoint of the merchant power generation and energy trading and marketing business of Reliant Resources, Inc. Since CenterPoint expected to qualify for an exemption from registration under the Act within a year of the July Order, CenterPoint did not intend to form a service company following the restructuring. Instead, the July Order authorized CenterPoint to provide a variety of services to its subsidiaries on an interim basis, including accounting, rates and regulation, internal auditing, strategic planning, external relations, legal services, risk management, marketing, financial services and information systems and technology.

Since the July Order, CenterPoint has announced that it will remain a registered holding company under the Act. In its order dated June 30, 2003 (Holding Company Act Release No. 35–27692), the Commission noted that CenterPoint intended to form a service company and granted CenterPoint interim authority to continue to provide goods and services to its subsidiaries through December 31, 2003 (the "Interim Period").

### II. Request To Form the Service Company and Provide Services

#### *A. Summary of Requests*

The Application seeks the authorization and approval by the Commission of the provision of intra-system services and goods following the expiration of the Interim Period, under section 13 of Act and the rules under the Act. Specifically, Applicants request that the Commission: (1) Approve the formation and capitalization of CenterPoint Energy Service Company, LLC (the "ServiceCo"); (2) approve the designation of ServiceCo as a subsidiary service company in accordance with the provisions of rule 88 under the Act and find that ServiceCo is organized and will conduct its operations so as to meet the requirements of section 13 of the Act and the rules under the Act; (3) approve the master services agreement in the form attached as Exhibit B–1 to the Application (the "Master Services Agreement"), and the form of service agreement for services rendered by system companies; and (4) authorize, to the extent not exempt under rules 81 and 87, CenterPoint and certain CenterPoint subsidiaries providing certain services and goods to associate companies.

#### *B. Services Provided by ServiceCo*

Applicants request authorizations with respect to the activities of ServiceCo, which will be formed in Texas as a limited liability company wholly-owned by Holdings, as the service company for the CenterPoint system. ServiceCo will:

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[3] KEM is a wholly-owned subsidiary of KeySpan Business Solutions LLC, which is a wholly-owned subsidiary of KeySpan Services Inc. KeySpan Services is a wholly owned subsidiary of KeySpan Energy Corporation, which is a wholly-owned subsidiary of KeySpan.

[4] By Commission order dated April 24, 2003 (HCAR No. 27670) the Commission found these activities to be functionally related to KeySpan's integrated gas and electric operations and retainable.

- Have a minimal equity capitalization of not more than 1,000 membership interests with total equity capitalization of not more than $1,000;
- Derive substantially all of its needs for additional working capital from borrowings under CenterPoint's money pool and/or additional investments by CenterPoint pursuant to rule 45 and/or rule 52, as applicable;
- Provide recipients[5] certain administrative and service functions involving system-wide coordination and strategy, compliance and oversight, including accounting, internal auditing, finance and treasury, communications, legal, human resources, executive, regulatory and governmental affairs, information systems and technology, mainframe operations, business services, and leasing services.
- Administer the CenterPoint money pool;
- Be staffed by a transfer of personnel from CenterPoint and GasCo;
- Lease office and other space currently owned by CenterPoint Energy Properties, Inc. (Properties), and from time-to-time lease other space that may be acquired by Properties either in fee or by lease. ServiceCo will enter into one or more lease agreements with Properties and, as applicable, will enter into subleases with Recipients that occupy space obtained from Properties, at cost in accordance with the Act and the applicable rules under the Act. Applicants state that none of the property proposed to be occupied, used by, or provided to ServiceCo constitute facilities used for the production, transmission, transportation, or distribution of electric energy or natural or manufactured gas;
- License, lease, sublease or enter into service arrangements with CenterPoint and T&D Utility for the use of computer hardware, software, communications facilities (including local, long distance, internet and wireless services), office equipment and furnishings, and vehicles currently owned, licensed or leased by CenterPoint or T&D Utility at cost in accordance with the Act and the applicable rules under the Act. Applicants state that none of the property proposed to be occupied, used by, or provided to ServiceCo constitutes facilities used for the production, transmission, transportation, or distribution of electric energy or natural or manufactured gas;
- Assume CenterPoint's obligation to provide transition services and facilities, including business, corporate, and information technology services to Reliant Resources, Inc., which obligations will largely terminate in early 2004;
- Assume CenterPoint's obligation to provide business, corporate, and information technology services to Texas Genco at cost in accordance with the Act and the applicable rules under the Act, until CenterPoint's investment in Texas Genco is sold, and for a brief transition period after a sale;
- Comply with the Commission's standards for accounting and cost allocation methods and procedures for service companies in registered holding company systems;
- Use the Commission's "Uniform System of Accounts for Mutual Service Companies and Subsidiary Service Companies" for ServiceCo's billing system, as may be adjusted to use the Federal Energy Regulatory Commission's uniform system of accounts; and
- Provide all services to affiliated companies on an "at cost" basis as determined by rules 90 and 91 of the Act. ServiceCo will distribute all charges among Recipients, to the extent possible, based on direct assignment. Amounts remaining after direct assignment shall be allocated among Recipients in a fair and equitable manner, using the allocation methods set forth in the Master Services Agreement.

### *C. Services Provided by Certain Subsidiaries*

### 1. T&D Utility and GasCo's Shared Services

Applicants request authorization for the T&D Utility and GasCo to provide the following services to each other in their overlapping service territory: meter reading, trenching operations, vehicle maintenance, line locating, call center, and credit and collections functions when the companies determine it is efficient and cost effective to do so. The companies also share common warehouse space. Some of these functions are provided by GasCo to the T&D Utility and others are provided by the T&D Utility to GasCo. In addition, the T&D Utility provides GIS mapping for GasCo and its pipeline subsidiaries, Texas Genco, and other CenterPoint system companies. When such services are provided, costs are allocated based on appropriate cost allocation measures, such as number of meters with respect to meter reading, square footage occupied and location of shared space. All of these services are provided at cost in accordance with rules 90 and 91 under the Act.

### 2. GasCo and GasCo's Pipeline Subsidiaries' Shared Services

Applicants request authorization for GasCo to share with GasCo's pipeline subsidiaries and GasCo's other subsidiaries certain services when the companies determine it is efficient and cost effective to do so. Services proposed to be shared are environmental services provided to GasCo by personnel from its pipeline subsidiaries, along with support for compliance with the new pipeline integrity law. In addition, GasCo's telephone operations provide some services to its pipeline subsidiary, and pipeline personnel use office and warehouse space in GasCo facilities. GasCo and its subsidiary, CenterPoint Energy Gas Transmission Company ("CEGT"), share signals from a system that electronically monitors the physical operating conditions of the distribution system, with CEGT maintaining the equipment. CEGT and GasCo also share meter testing responsibilities, with GasCo testing small pipeline meter stations and CEGT testing large distribution meters. Similarly, GasCo and CEGT share some cathodic protection from rectifiers at certain points on the system, and GasCo reads some rural and town border station meters where CEGT maintains the equipment. All of these services are provided at cost in accordance with rules 90 and 91 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–26255 Filed 10–16–03; 8:45 am]

**BILLING CODE 8010–01–P**

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[5] Applicants state that it is expected that ServiceCo will enter into service agreements with CenterPoint, CenterPoint Energy Houston Electric, LLC (the "T&D Utility"), Texas Genco, LP ("Texas Genco"), CenterPoint Energy Resources Corp. ("GasCo") and any other subsidiaries that request services from ServiceCo by executing a Master Services Agreement (the "Recipients"). T&D Utility, Texas Genco and GasCo are the public-utility subsidiaries in the CenterPoint system.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48622; File No. SR–BSE–2003–18]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Boston Stock Exchange, Inc. To Adopt an Anti-Money Laundering Compliance Program

October 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 24, 2003, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange amended the proposal on October 3, 2003 and October 9, 2003. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the proposed rule change.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new section entitled "Anti-Money Laundering Compliance Program" to its Rules under Chapter II, Dealings on the Exchange. The text of the proposed rule change follows. Additions are in *italics*.

* * * * *

### Chapter II

### Dealings on the Exchange

Secs. 1–41, no change

*Anti-Money Laundering Compliance Program*

*Sec. 42. Each member organization and each member not associated with a member organization shall develop and implement a written anti-money laundering program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311, et seq.), and the implementing regulations promulgated thereunder by the Department of the Treasury. Each member organization's anti-money laundering program must be approved, in writing, by a member of senior management.*

*The anti-money laundering programs required by this Section shall, at a minimum:*

*(1) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder;*

*(2) Establish and implement policies and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder;*

*(3) Provide for independent testing for compliance to be conducted by Participant personnel or by a qualified outside party;*

*(4) Designate, and identify to the Exchange (by name, title, mailing address, e-mail address, telephone number, and facsimile number) a person or persons responsible for implementing and monitoring the day-to-day operations and internal controls of the program and provide prompt notification to the Exchange regarding any change in such designation(s); and*

*(5) Provide ongoing training for appropriate persons.*

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In response to the events of September 11, 2001, President Bush signed into law on October 26, 2001 the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "Patriot Act")[3] to address terrorist threats through enhanced domestic security measures, expanded surveillance powers, increased information sharing and broadened anti-money laundering requirements. The Patriot Act amends, among other laws, the Bank Secrecy Act, as set forth in Title 31 of the United States Code.[4] Certain provisions of Title III of the Patriot Act, also known as the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 ("MLAA"), impose affirmative obligations on a broad range of financial institutions, including broker-dealers, specifically requiring the establishment of anti-money laundering monitoring and supervisory programs.

MLAA Section 352 required all financial institutions (including broker-dealers) to establish anti-money laundering programs that include, at a minimum: (i) Internal policies, procedures and controls; (ii) the specific designation of an anti-money laundering compliance officer; (iii) an ongoing employee training programs; and (iv) an independent audit function to test the anti-money laundering program.

The Commission has approved NASD's and several other exchanges' proposals to adopt rules requiring their members and member organizations to establish anti-money laundering compliance programs with the minimum standards described above.[5] Proposed BSE Section 42, entitled "Anti-Money Laundering Compliance Program" of Chapter II, Dealings on the Exchange, of the Rules of the Board of Governors of the Boston Stock Exchange, Inc. involves similar requirements. Adoption of the proposed rule would establish a regulatory framework for members and member organizations to comply with the requirements of the Patriot Act in this area.

2. Statutory Basis

The Exchange believes that the statutory basis for the proposed rule change is section 6(b)(5) of the Act,[6] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and is not designed to permit unfair

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107–56, 115 Stat. 272 (2001).

[4] 31 U.S.C. 5311, *et seq.*

[5] *See, e.g.,* Securities Exchange Act Release No. 45798 (April 22, 2002), 67 FR 20854 (April 26, 2002) (Order approving SR–NASD–2002–24 and SR-NYSE–2002–10).

[6] 15 U.S.C. 78f(b)(5).

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discrimination between customers, issuers, brokers or dealers.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, and amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–2003–18 and should be submitted by November 7, 2003.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[7] which, among other things, requires that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, and, in general, protect investors and the public interest.

The Commission believes that the Exchange's proposal to adopt an Anti-Money Laundering Compliance Program accurately, reasonably, and efficiently implements the requirements of the Patriot Act as it applies to their members. The Commission also recognizes that anti-money laundering compliance programs will evolve over time, and that improvements to these programs are inevitable as members find new ways to combat money laundering and to detect suspicious activities.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that the Rule is substantially similar to anti-money laundering compliance program rules that the Commission has previously approved for other self-regulatory organizations.[8] Accordingly, the Commission believes that there is good cause, consistent with Section 19(b) of the Act,[9] to approve the proposed rule change on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act, [10] that the proposed rule change, as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–26286 Filed 10–16–03; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48623; File No. SR–CBOE–2003–43]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated To Make Changes to Its Fee Schedule Involving the Exchange's Hybrid Trading System and Retail Automatic Execution System Orders

October 10, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on October 1, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On October 7, 2003, the CBOE filed an amendment to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to make four changes to its Fee Schedule. The first three changes involve fees connected to the Exchange's Hybrid trading system. The fourth change involves the access fee for Retail Automatic Execution System ("RAES") orders. The text of the proposed rule change, as amended, to the fee schedule is available at the Office of the Secretary, the CBOE, and at the Commission.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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[7] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] *See* Securities Exchange Act Release Nos. 45798 (April 22, 2002), 67 FR 20854 (April 26, 2002) (Order approving SR–NASD–2002–24 and SR–NYSE–2002–10); 46041 (June 6, 2002), 67 FR 40366 (June 12, 2002) (Order Approving SR–Phlx–2002–29); 46258 (July 25, 2002), 67 FR 49715 (July 31, 2002) (Order Approving SR–Amex–2002–52); 446462 (September 5, 2002), 67 FR 58665 (September 17, 2002) (Notice of Filing and Order Granting Accelerated Approval of SR–CBOE–2002–45); 46468 (September 6, 2002), 67 FR 58095 (September 13, 2002) (Notice of Filing and Immediate Effectiveness of SR–PCX–2002–44); and 46739 (October 29, 2002), 67 FR 67432 (November 5, 2002) (Notice of Filing and Immediate Effectiveness of SR–NASD–2002–146).

[9] 15 U.S.C. 78f(b)(5) and 78s(b).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### 1. Purpose

The Exchange proposes to make several changes to its Fee Schedule involving Hybrid and RAES fees.

**Actant Infrastructure User Charge**

The Exchange is providing certain hardware and related maintenance needed by Actant, a third party vendor that is providing quoting software and a connection to the CBOEdirect system that many CBOE members are using to stream quotes to the Hybrid trading system. The Exchange provided the hardware and maintenance in order to facilitate Actant's service of Exchange members; however, the Exchange wishes to recover its costs in doing so. As a result, beginning on October 1, 2003, all users of Actant software for the Hybrid system will incur a $100 per month Exchange user fee. The Exchange states that this fee will offset the cost of the hardware and ongoing maintenance that the Exchange is incurring in order to facilitate Actant's service.

**Market Data User Fee**

The Exchange states that numerous Exchange members making markets on the CBOE's trading floor in the Hybrid trading system make use of data feeds of underlying market information that are provided by the CBOE through its TickerXpress service ("TX"). The Exchange proposes to charge a fee of $100 per month to members receiving TX market data to compensate the CBOE for providing the infrastructure to make this market data available. Alternatively, members may receive TX market data from the Exchange that has been enhanced by the data processing services of a third party service provider to the Exchange. The Exchange proposes to charge a fee of $200 per month to members receiving the enhanced TX data to compensate the CBOE for providing the infrastructure to make this market data available. The Exchange proposes to waive these TX fees through the end of 2003 and to make them effective on January 1, 2004.

**CBOEdirect Connectivity Fee Waiver**

Currently, the Exchange charges monthly connection fees for users of its CBOEdirect electronic trading platform of $900 per month for each connection to CBOEdirect through the CBOE Market Interface (CMi) and $600 for a connection through the FIX (Financial Information Exchange) interface. The Exchange states that these fees help the CBOE begin to recover its substantial investment in CBOEdirect.

However, as the Exchange expands its rollout of the Hybrid trading system, which also uses CBOEdirect, the Exchange proposes to waive the CBOEdirect connectivity fees for all connections to CBOEdirect for the purpose of using the CBOE's Hybrid system effective October 1, 2003. The Exchange believes that this wavier will encourage members to begin using Hybrid, and help offset the related costs that members must incur in order to stream quotes for Hybrid.

The Exchange will review the subject of this waiver again when it conducts next year's budget review of fees.

**RAES Access Fee Waiver for Non-Customer Equity Orders Submitted From the Trading Floor**

Currently, the Exchange charges a $.30 per contract access fee for all Non-Customer orders (*i.e.*, those with an origin code other than "C") entered into RAES.[3] The Exchange proposes to waive this fee, effective October 1, 2003, in cases where a RAES order in an equity option class is entered from the Exchange trading floor. In such cases, a floor broker, who assumes responsibility for filling such an order in exchange for a floor brokerage fee, may have come to believe that his/her customer will receive a better "fill" electronically through RAES. However, the Exchange believes that imposing the RAES access fee burdens such orders with what is tantamount to a second execution fee (in addition to the floor broker's fee). The Exchange does not believe that it should place such an additional burden on the best execution of such orders. For this reason, the Exchange believes it is fair and equitable to waive the fee in such circumstances.

#### 2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(4) of the Act[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among the CBOE members.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and Rule 19b–4(f)(2)[7] thereunder because it establishes or changes a due, fee, or other charge imposed by the CBOE. At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2003–43 and should be submitted by November 7, 2003.

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[3] See Securities Exchange Act Release No. 48223 (July 24, 2003), 68 FR 44978 (July 31, 2003).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on October 7, 2003, the date on which the Exchange filed Amendment No. 1.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–26285 Filed 10–16–03; 8:45 am]

BILLING CODE 8010–01–P

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48615; File No. SR–EMCC–2003–05]**

## Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Return of Clearing Fund Deposits

October 9, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),[1] notice is hereby given that on September 29, 2003, Emerging Markets Clearing Corporation (“EMCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which items have been prepared primarily by EMCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of changes to EMCC’s rules relating to the return of clearing fund deposits.

### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. EMCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

### *(A) Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

In File No. SR–EMCC–2003–02, EMCC sought Commission approval (1) to establish a fixed clearing fund requirement for inter-dealer brokers (“IDBs”) or members who clear for IDBs and (2) to have the difference between an IDB’s calculated clearing fund requirement and the fixed amount be paid by other members on a pro rata basis. As part of that filing, EMCC also sought Commission approval to eliminate the “look back” feature from its clearing fund formula. EMCC expected that the elimination of the look back feature would offset its non-IDB members’ obligation to deposit additional clearing fund to cover the difference between the IDB’s calculated clearing fund requirement and the fixed amount. On August 19, 2003, the Commission approved the proposed rule change.[3]

In connection with its members’ depositing additional clearing fund to cover the difference between the IDB’s calculated clearing fund requirement and the fixed amount, EMCC had planned on allowing its members to receive upon request the return of excess clearing fund deposits on a daily basis instead of on a monthly basis. The appropriate change to EMCC’s rules to accomplish the daily return of excess clearing fund deposits was inadvertently omitted from that filing. Accordingly, the purpose of this filing is to modify EMCC Rule to provide for a daily return upon request of excess clearing fund deposits and to provide that EMCC will begin honoring such requests concurrent with the implementation of the changes covered by File No. SR–EMCC–2003–02.

EMCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to EMCC because it will permit the equitable allocation of charges among participants.

### *(B) Self-Regulatory Organization’s Statement on Burden on Competition*

EMCC does not believe that the proposed rule change will have any impact on or impose a burden on competition.

### *(C) Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments received by EMCC.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.[4] Approval of File No. SR–EMCC–2003–02 resulted in a more accurate clearing fund calculation and a more timely collection of members’ required clearing fund deposits. It also resulted in EMCC’s members having to pay the difference between the calculated clearing fund requirement and the fixed clearing fund amount for each IDB or member who clears for IDBs. Under EMCC’s existing rule, if a member had on deposit clearing fund in excess of its required deposit, the excess could be returned to the member no more frequently than once a month. By providing that members are entitled to have their excess clearing fund deposits returned to them upon request on a daily basis, the proposed rule change allows EMCC to implement the changes in File No. SR–EMCC–2003–02 in a way that accommodates the needs of EMCC’s members while not affecting EMCC’s ability to safeguard securities and funds which are in its custody or control or for which it is responsible.

EMCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice because accelerated approval will facilitate the implementation of File No. SR–EMCC–2003–02 which the Commission previously determined met the requirements of Section 17A(b)(3)(F) of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Securities Exchange Act Release No. 48366, 68 FR 51311 (August 26, 2003).

[4] 15 U.S.C. 78q–1(b)(3)(F).

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–EMCC–2003–05. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of EMCC. All submissions should refer to the File No. SR–EMCC–2003–05 and should be submitted by November 7, 2003.

## V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–EMCC–2003–05) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–26256 Filed 10–16–03; 8:45 am]

**BILLING CODE 8010–01–P**

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[5] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48619; File No. SR–NASD–2003–137]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 thereto by the National Association of Securities Dealers, Inc. To Extend a Pilot Relating to the Issuance of Market Participant Identifiers

October 9, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 28, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On September 29, 2003, Nasdaq amended the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposed rule change, as amended, on an accelerated basis.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to extend retroactively to September 1, 2003, and prospectively to March 1, 2004, a pilot program that enables members that are registered as market makers or electronic communications networks ("ECNs") to request and receive a second market participant identifier ("MMID") with which to enter a second Attributable Quote/Order in the Nasdaq Quotation Montage.[4] The text of the proposed rule change is set forth below. Proposed deletions are in [brackets]; proposed new language is in *italics*.

* * * * *

**4613.Character of Quotations**

(a) Quotation Requirements and Obligations

(1) No Change.

(2) For a [two] *six*-month pilot period *beginning September 1, 2003*, market makers and ECNs may request the use of a second MMID. A market maker may request the use of a second MMID for displaying Attributable Quotes/Orders in the Nasdaq Quotation Montage for any security in which it is registered and meets the obligations set forth in subparagraph (1) of this rule. An ECN may request the use of a second MMID for displaying Attributable Quotes/Orders in the Nasdaq Quotation Montage for any security in which it meets the obligations set forth in Rule 4623. A market maker or ECN that ceases to meet the obligations appurtenant to its first MMID in any security shall not be permitted to use the second MMID for any purpose in that security.

(3) No Change.

(b)–(e) No Change.

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

An NASD member that registers as a market maker or ECN is permitted to enter one two-sided quotation per security in the Nasdaq Quotation

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated September 29, 2003 ("Amendment No. 1"). Amendment No. 1 replaces the proposed rule change in its entirety. In Amendment No. 1, Nasdaq corrected a statement in its initial proposal regarding the use of second MMIDs by market participants. Because Amendment No. 1 was filed after the pilot program had lapsed, Amendment No. 1 also revised the proposed rule change to convert it from a filing pursuant to Rule 19(b)(3)(A) under the Act to a filing pursuant to Rule 19(b)(2) under the Act, with a request for retroactive effectiveness.

[4] Nasdaq originally filed the proposed rule change on August 28, 2003, designating it as a non-controversial proposed rule change suitable for immediate effectiveness pursuant to Section 19(b)(3) of the Act and Rule 19b–4(f)(6) thereunder. 15 U.S.C. 78s(b)(3)(A); 17 CFR 240.19b–4(f)(6). On September 29, 2003, Nasdaq submitted Amendment No. 1, which replaces the original proposed rule change in its entirety, and requested that the proposed rule change be approved retroactive to September 1, 2003.

Montage, and is assigned a unique MMID with which to enter such quotations. The NASD 4600 Rule Series governs the character of such quotations and the rights and obligations of members that display quotations in the Nasdaq Quotation Montage via their MMIDs. The NASD Rule 4700 Series sets forth the rights and obligations of members that participate in the Nasdaq National Market Execution System ("SuperMontage"), including the entry of quotes and orders and the display of quotations. Numerous other NASD and Commission rules govern the conduct of members in their use of MMIDs to enter and execute orders and display quotes, including, for example, NASD IM–2110–2 (the "Manning Interpretation"), NASD Rule 6950 (the "Order Audit Trail System"), and NASD Rule 2320 (the "Best Execution" rule).

Effective July 1, 2003, Nasdaq amended NASD Rule 4613(a) for a two-month pilot period to permit market makers and ECNs to request the use of a second MMID for displaying Attributable Quotes/Orders in the Nasdaq Quotation Montage (the "Pilot").[5] Under the Pilot, a market maker may request the use of a second MMID for displaying Attributable Quotes/Orders in any security in which it is registered and meets the obligations set forth in NASD Rule 4613(a)(1), including the maintenance of a continuous two-sided quotation. The Pilot also provides that an ECN may request the use of a second MMID for displaying Attributable Quotes/Orders in the Nasdaq Quotation Montage for any security in which it meets the obligations set forth in NASD Rule 4623.

Through this rule filing, Nasdaq is proposing to extend the Pilot retroactively to September 1, 2003, and prospectively to March 1, 2004. Since the Pilot began, Nasdaq has granted two market makers' applications for second MMIDs for displaying additional Attributable Quotes/Orders. As of the date of this filing, Nasdaq represents that neither market maker has begun displaying additional Attributable Quotes/Orders under the Pilot. In addition, three ECNs are authorized to use second MMIDs for displaying additional Attributable Quotes/Orders in SuperMontage. Nasdaq represents that those ECNs were authorized to use second MMIDs prior to the launch of the Pilot. However, Nasdaq believes that their continued use of the second MMIDs is subsumed within the later-filed Pilot. According to Nasdaq, two of those three ECNs are currently using second MMIDs for displaying additional Attributable Quotes/Orders in SuperMontage.

Nasdaq believes the Pilot, though not yet widely used by NASD members, will prove to be an important step in the evolution of its marketplace. Nasdaq represents that trading of Nasdaq securities has changed rapidly and dramatically due to increasingly sophisticated routing and linkage systems that are available to public investors, institutions, broker/dealers and vendors. Nasdaq believes that the ability to enter quotes and orders and to display quotations under a second MMID would help it keep pace with recent changes and allow it to offer functionality that market participants already find elsewhere today. Nasdaq believes that the Pilot should also improve the quality of executions within Nasdaq by enabling members to contribute more liquidity to the market and add to the transparency of trading interest. Due to the surveillance procedures described below, Nasdaq believes that the Pilot should also improve the regulation of trading in Nasdaq securities to the extent members consolidate more of their trading activity in Nasdaq.

Nasdaq believes that it is essential to maintain its regulation of trading on Nasdaq at the same high level of compliance with NASD and Commission rules that it believes it has achieved to date. Except as noted in the proposed rule, members that use a second MMID would be required to comply with all NASD and Commission rules applicable to their current use of a single MMID. Members would be prohibited from using a second MMID to accomplish indirectly what they are prohibited from doing directly through a single MMID. For example, members would not be permitted to use a second MMID to avoid their Manning obligations under NASD IM–2110–2, best execution obligations under NASD Rule 2320, or their obligations under the Commission's Order Handling Rules. Members would be required to continue to comply with the firm quote rule, the OATS rules, and the Commission order routing and execution quality disclosure rules. In addition, NASD Rule 4613(a) specifically prohibits firms from displaying a second Attributable Quote/Order to engage in passive market making or to enter stabilizing bids because this could violate NASD Rules 4614 and 4619 and Regulation M under the Act. To the extent that the allocation of second MMIDs were to create regulatory confusion or ambiguity, every inference would be drawn against the use of a second MMID in a manner that would diminish the quality or rigor of the regulation of the Nasdaq market.

Nasdaq represents that it, in conjunction with NASD, has developed procedures to maintain a high level of surveillance and member compliance with its rules with respect to members' use of both Primary and Secondary MMIDs to display quotations in Nasdaq systems. Nasdaq and NASD have implemented a review process to ensure that firms utilizing second MMIDs under the Pilot do so in accordance with the terms under which use of the second MMID was granted.

Further, Nasdaq represents that new, fully automated surveillance technology has been developed to enable NASD systems to analyze trading and generate alerts at the firm level (*i.e.*, aggregating activity across all MMIDs for a firm into one primary MMID) or the individual MMID level (*i.e.*, treating each MMID separately), depending on the particular surveillance requirements. Nasdaq believes that the use of firm-level information is essential to detecting market participants that may exceed certain surveillance thresholds at the firm level, but would otherwise go undetected at the individual MMID level. Further, Nasdaq believes that the ability to aggregate data and analyze data at the firm level is critical to identifying instances where a firm is using different MMIDs to engage in conduct such as marking-the-close and trading ahead, among other things.[6] Conversely, Nasdaq believes that the use of specific MMID information is critical for the surveillance of individual quotes, trades and orders for compliance with firm quote obligations, among other things.

If it were to be determined that a Secondary MMID issued under the Pilot was being used improperly, Nasdaq would withdraw its grant of the Secondary MMID for all purposes for all securities. In addition, if a market maker or ECN were to no longer fulfill the conditions appurtenant to its Primary MMID (*e.g.*, by being placed into an unexcused withdrawal), it would not be permitted to use the Secondary MMID for any purpose in that security.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the Act, including section 15A(b)(6) of the Act,[7] which requires, among other things, that a registered national securities association's rules must be designed to promote just and equitable principles of trades, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq believes that the proposed rule change, as amended, is consistent with these requirements because it would facilitate transactions in securities, remove impediments to a free and open market, and protect investors by improving the transparency and efficiency of transactions.

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[5] For a more detailed explanation of the Pilot, *see* Securities Exchange Act Release No. 47954 (May 30, 2003), 68 FR 34017 (June 6, 2003) (File No. SR–NASD–2003–87).

[6] Nasdaq represents that it has had no occasion to withdraw the grant of a Secondary MMID due to improper usage under the Pilot.

[7] 15 U.S.C. 78*o*–3(b)(6).

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–137 and should be submitted by November 7, 2003.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[8] In particular, the Commission finds that the proposed rule change is consistent with section 15A(b)(6) of the Act, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[9]

The Commission believes that an extension of the Pilot for an additional six months, retroactive to September 1, 2003, may allow market participants more time to utilize the Pilot. The Commission believes that the continued Pilot may benefit investors by increasing transparency and liquidity of trading interest in SuperMontage. The Commission also believes that the extension of the Pilot should enable Nasdaq to further evaluate the Pilot.

The Commission notes that Nasdaq has represented that it, in conjunction with NASD, has developed procedures to maintain surveillance and member compliance with NASD and Commission rules. Furthermore, the Commission notes that Nasdaq represents that a firm's Secondary MMID would be withdrawn for all purposes and for all securities if it were to be determined that the firm was using the Secondary MMID improperly.

Nasdaq has requested that the Commission find good cause for approving the proposed rule change and Amendment No. 1 thereto prior to the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval to extend the Pilot for an additional six months, and making such extension retroactive to September 1, 2003, will allow Nasdaq to continue, without interruption, the existing operation of the Pilot. Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,[10] for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NASD–2003–137), and Amendment No. 1 thereto, are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–26257 Filed 10–16–03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48614; File Nos. SR–NSCC–2003–19 and SR–DTC–2003–11]**

## Self-Regulatory Organizations; National Securities Clearing Corporation; The Depository Trust Company; Notice of Filing of Proposed Rule Changes Relating to the Consolidation of Settlement Processing Operations and to the Use of the Federal Reserve Banks' Net Settlement Service

October 9, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 26, 2003, the National Securities Clearing Corporation ("NSCC") and The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes (File Nos. SR-NSCC–2003–19 and SR-DTC–2003–11). The proposed rule changes are described in Items I, II, and III below, which items have been prepared primarily by NSCC and DTC. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested parties.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The NSCC proposed rule change proposes that NSCC require all its settling banks to use the Federal Reserve

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[8] In approving this proposal, as amended, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78o-3(b)(6).

[10] 15 U.S.C. 78s(b)(2).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

Banks' ("FRBs") Net Settlement Service ("NSS") to satisfy their end-of-day settlement obligations.[2] The NSCC and DTC proposed rule changes propose that NSCC and DTC consolidate their settlement processing operations.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, NSCC and DTC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. NSCC and DTC have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

### *(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes*

#### 1. Consolidated Settlement Processing Operation

Currently, DTC and NSCC settlements are run on two separate systems each of which is fed throughout the day with debit and credit data generated by participant/member activities. At the end of the processing day, the data is summarized and reported by product category (*e.g.*, in the case of NSCC, continuous net settlement, mutual funds, envelope services, *etc.* and in the case of DTC, delivery orders, stock loans, dividends, redemptions, *etc.*) on the Participant Terminal System ("PTS") via separate DTC and NSCC screens. The data is netted separately at DTC and at NSCC to produce an aggregate debit or credit at each clearing agency.

Following the determination of final net numbers for each participant/member for each clearing agency, a participant/member's credit balance at one clearing agency is netted against any debit balance at the other ("cross-endorsement"). The settling banks subsequently authorize settlement for their participant customers in an "acknowledgement" process and then transmit or receive funds to or from DTC's account and to or from NSCC subaccount at the Federal Reserve Bank of New York ("FRBNY").

In order to promote operating efficiencies, improve risk management, and lower transaction processing costs, DTC and NSCC are seeking to introduce a consolidated settlement processing operation. A consolidated settlement processing operation will provide participants/members with consolidated NSCC and DTC settlement reporting, a single point of access for both NSCC and DTC settlement information, and reduced settlement risk. This consolidation is intended to be operational only. It is not intended to affect the legal relationship that participants/members and their settling banks have with NSCC or DTC.

The new consolidated settlement processing operation will provide DTC and NSCC participants/members and their settling banks with a single set of enhanced PTS functions. Each participant/member will be able to view its DTC and NSCC settlement activity and will be provided a consolidated end-of-day netted DTC/NSCC settlement obligation. A participant/member's debits and credits at DTC and at NSCC will be separately summarized in one consolidated activity statement which will show the final DTC and NSCC balances and the netted amount for each participant/member.

#### 2. Net Settlement Service

To reduce settlement risk and to permit settling banks to settle their net-net debits at NSCC and at DTC with a single payment, NSCC is amending its procedures to require that NSCC settling banks satisfy their daily net-net debit balances at NSCC through the use of NSS.

The change being sought is consistent with DTC's requirement that its settling banks utilize NSS.[4]

As more fully described below, NSS will permit DTC, as NSCC's settlement agent, to submit instructions to have the FRB accounts of the NSCC settling banks charged for their NSCC net-net debit balance. By centralizing DTC and NSCC's settlement processing and by adopting NSS as the payment mechanism, each settling bank's balance at NSCC (whether a net-net debit or a net-net credit) will also be aggregated or netted with its settlement balance at DTC resulting in only a single debit or single credit having to be made to the settling bank's FRB account. Utilization of NSS by NSCC members and their settling banks will eliminate the need for a settling bank to initiate a wire transfer in satisfaction of a net-net debit balance, which should reduce the risk a settling bank may incur a late payment fee due to a delay in wiring settlement funds and will permit the aggregation or netting of such amounts with its DTC balance.[5]

NSCC is proposing certain technical corrections to assure that defined terms and other provisions are used consistently. Accordingly, NSCC's Rule 1 (Definitions and Descriptions) is being amended to (1) include a new definition of "Settlement Agent" as DTC will act as NSCC's settlement agent in collecting and paying out settlement monies and (2) set forth the definition for "Net Credit Balance" which is currently used in Rule 12 (Settlement) and elsewhere in the Rules.

NSCC Rule 12 and Rule 55 (Settling Banks) are being amended to make clear that in those instances where NSCC permits a Settling Member, Insurance Carrier Member, or Fund Member to settle other than through a settling bank, it will be deemed to have failed to settle if it fails to pay its Net Debit Balance.[6] In addition, rule language is being modified to make clear that settlement of monies will be effected in the manner provided for in NSCC's Procedures.

NSCC Procedure VIII (Money Settlement Service) is being amended to reflect the requirement that settling banks use NSS and to provide the procedures whereby settling banks that act as such for both NSCC and DTC ("common settling banks") will have their settlement balances at both clearing agencies aggregated or netted into a single payment or credit amount.

Prior to using NSS, settling banks will be required to sign a Settler Agreement with an FRB which incorporates a requirement that the settling bank agrees to the terms of the FRB's Operating Circular No. 12. Under Section 6.4 of Operating Circular No. 12, the settlement agent (*i.e.*, DTC acts as settlement agent for NSCC) has certain responsibilities regarding allocation among settling banks of a claim for indemnity by the FRB. The allocation of any such claim among NSCC's members will be as described in NSCC Procedure VIII, Section 4(iv). The signed Settler Agreement must be on the settling bank's letterhead, signed by an authorized signer recognized by the FRB, and submitted to the FRB through DTC as NSCC's settlement agent.

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[2] On September 2, 2003, DTC implemented the requirement that all DTC settling banks use NSS. Securities Exchange Act Release No. 48089 (June 25, 2003), 68 FR 40314 (July 7, 2003) [File No. SR-DTC-2002-06].

[3] The Commission has modified the text of the summaries prepared by NSCC and DTC.

[4] *Supra* note 2.

[5] Should NSS not be available for any reason, then Settling Banks will be obligated to settle their NSCC and DTC obligations by wire transfer.

[6] Net Debit Balance for a business day as used with respect to a Member, Insurance Carrier Member, or Fund Member means the amount by which the Member's, Insurance Carrier Member, or Fund Member's gross debit balance for such business day exceeds its gross credit balance on such business day.

Settling banks that also act as settling banks for DTC participants have to sign a Settler Agreement with the FRB designating DTC as their NSS settlement agent. Accordingly, these settling banks will not be required to sign new Settler Agreements to cover NSCC's NSS settlement. Instead, as provided in NSCC Procedure VIII, the Settler Agreements they provide to DTC for delivery to the FRB designating DTC as their NSS settlement agent will, upon the approval and effectiveness of NSCC's proposed rule change, be deemed to include the settling bank's NSCC settlement obligations as well as its DTC settlement obligations.

As is currently required, each settling bank will be required to acknowledge its NSCC net-net balance at the end of the day. However, any settling bank that is a Member and settles solely for its own account may elect to not acknowledge its net-net settlement balance at the end of the day.[7] This option will not be made available to settling banks that settle for others because the acknowledgement process includes the option to refuse to pay for a participant for whom the settling bank provides settlement services. Unless a settling bank has elected not to acknowledge its net-net settlement balance as provided above, DTC will not send a settling bank's net-net debit balance to a FRB for collection until the settling bank has acknowledged its balance.

As NSCC's settlement agent, DTC will send a "preadvice" to each settling bank, notifying the settling bank that DTC is about to send its NSS transmission to the FRB. If a settling bank does not have sufficient funds in its FRB account to enable DTC, as settlement agent, to debit the full amount of its settlement balance or should NSS not be available to a settling bank for any reason, the settling bank will be obligated to wire all such amounts to DTC prior to the designated cut-off time.[8]

A new item 4 in NSCC Procedure VIII sets forth the netting and payment obligations among common settling banks, NSCC, and DTC. For each common settling bank, DTC, as settlement agent, will aggregate or net the net-net debit or net-net credit as applicable due by or due to such bank from or to NSCC and DTC. If the common settling bank owes a settlement debit to both clearing agencies, DTC will debit the FRB account the sum of the debit amounts. If the bank is owed a settlement credit from both, DTC will wire the bank the sum of the credit amounts.

Where the common settling bank owes a debit to one clearing agency and is owed a credit from the other, the common settling bank will be obligated to pay the net amount of that sum (if a net debit) or be entitled to receive the net amount (if a net credit). The clearing agency which prenet owes the settlement credit to the common settling bank will pay the net credit difference to the other clearing agency if the other clearing agency has a prenet debit.[9] NSCC will implement its failure to settle procedures if any common settling bank that had a net-net debit to NSCC before aggregation or netting of such amounts with the common settling bank's DTC settlement balance fails to pay its aggregate NSCC/DTC net debit amount, referred to as the "consolidated settlement debit amount," in full by the time specified in NSCC and DTC's procedures.

NSCC and DTC believe that the proposed rule changes are consistent with the requirements of section 17A of the Act[10] and the rules and regulations thereunder applicable to NSCC and DTC because they are designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agencies or for which they are responsible by reducing the risk that the completion of settlement will be delayed because a settling bank is late or is unable to wire funds to DTC or NSCC in settlement of its obligations.

### *(B) Self-Regulatory Organization's Statement on Burden on Competition*

NSCC and DTC do not believe that the proposed rule changes will have an impact on or impose a burden on competition.

### *(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others*

NSCC and DTC have discussed this proposal with various participants and industry groups, a number of whom have worked closely with NSCC and DTC in developing the proposed consolidated settlement system. NSCC and DTC will notify the Commission of any written comments received.

## III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File Nos. SR–NSCC–2003–19 and SR–DTC–2003–11. These file numbers should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of NSCC and DTC.

All submissions should refer to File Nos. SR–NSCC–2003–19 and SR–DTC–2003–11 and should be submitted by November 3, 2003.

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[7] Settling banks electing not to acknowledge their settlement balance will be required to sign an Acknowledgement Option Form. A common settling bank may not elect to opt out of acknowledging its balances unless it settles solely for its own account at both DTC and NSCC in which case that election will cover both the bank's NSCC and DTC net settlement balances.

[8] If a settling bank is experiencing extenuating circumstances and as a result needs to opt out of NSS for one business day and send its wire directly to DTC's FRBNY account for its debit balance, that settling bank must notify NSCC/DTC prior to acknowledging its settlement balance.

[9] For example, if NSCC owes the common settling bank $5 million, and DTC is owed $2 million by the common settling bank, NSCC will pay DTC $3 million dollars which DTC will pay to the common settling bank using NSS.

[10] 15 U.S.C. 78q–1.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–26258 Filed 10–16–03; 8:45 am]

BILLING CODE 8010–01–P

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## SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3545]

### State of North Carolina; Amendment #3

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective October 8, 2003, the above numbered declaration is hereby amended to include Bladen, Columbus, Cumberland, Davidson, Duplin, Durham, Harnett, Johnston, Robeson, Sampson and Wake Counties as disaster areas due to damages caused by Hurricane Isabel occurring on September 18, 2003 and continuing through September 26, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Chatham, Davie, Forsyth, Guilford, Hoke, Lee, Montgomery, Moore, Randolph, Rowan, Scotland and Stanly in the State of North Carolina; and Dillon and Marlboro Counties is the State of South Carolina may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 17, 2003, and for economic injury the deadline is June 18, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 9, 2003.

**S. George Camp,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 03–26287 Filed 10–16–03; 8:45 am]

BILLING CODE 8025–01–P

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## DEPARTMENT OF STATE

[Public Notice 4282]

### Notice of Meeting; United States International Telecommunication Advisory Committee; Information Meeting on the World Summit on the Information Society and the U.S. Preparatory Process

The Department of State announces a meeting of the U.S. International Telecommunication Advisory Committee (ITAC). The purpose of the Committee is to advise the Department on matters related to telecommunication and information policy matters in preparation for international meetings pertaining to telecommunication and information issues.

The ITAC will meet to discuss the matters related to the World Summit on the Information Society (WSIS), which will take place in December 2003, including U.S. preparations for the WSIS. The meeting will take place on November 6, 2003 from 10:30 a.m. to 12 p.m. at the Historic National Academy of Science Building. The National Academy of Sciences is located at 2100 C St., NW., Washington, DC.

Members of the public are welcome to participate and may join in the discussions, subject to the discretion of the Chair. Persons planning to attend this meeting should send the following data by fax to (202) 647–7407 or e-mail to *worsleydm@state.gov* not later than 24 hours before the meeting: (1) Name of the meeting, (2) your name, and (3) organizational affiliation. A valid photo ID must be presented to gain entrance to the National Academy of Sciences Building. Directions to the meeting location may be obtained by calling the ITAC Secretariat at (202) 647–2592 or email to *worsleydm@state.gov*.

Dated: October 7, 2003.

**Anne Jillson,**

*Foreign Affairs Officer, Department of State.*

[FR Doc. 03–26301 Filed 10–16–03; 8:45 am]

BILLING CODE 4710–07–U

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE–2003–58]

### Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before November 6, 2003.

**ADDRESSES:** You may submit comments [identified by DOT DMS Docket Number FAA–200X–XXXXX] by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590-001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building,400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

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[11] 17 CFR 200.30–3(a)(12).

Issued in Washington, DC, on October 10, 2003.

**Richard D. McCurdy,**

*Acting Assistant Chief Counsel for Regulations.*

### Petitions for Exemption

*Docket No.:* FAA–2003–16105.

*Petitioner:* Venture Travel, LLC d.b.a. Taquan Air.

*Section of 14 CFR Affected:* 14 CFR 135.203(a)(1).

*Description of Relief Sought:* To permit Venture Travel, LLC d.b.a. Taquan Air to operate under visual flight rules outside controlled airspace over water at an altitude below 500 feet.

[FR Doc. 03–26226 Filed 10–16–03; 8:45 am]

**BILLING CODE 4910–13–U**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

**[Summary Notice No. PE–2003–59]**

## Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before October 27, 2003.

**ADDRESSES:** You may submit comments [identified by DOT DMS Docket Number FAA–200X–XXXXX] by any of the following methods:

- Web Site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on October 10, 2003.

**Richard D. McCurdy,**

*Acting Assistant Chief Counsel for Regulations.*

### Petitions for Exemption

*Docket No.:* FAA–2003–15161.

*Petitioner:* Saudi Arabian Oil Company.

*Section of 14 CFR Affected:* 14 CFR 61.72(a)(2).

*Description of Relief Sought:* To permit Saudi Arabian Oil Company pilots who hold foreign pilot licenses to obtain special purpose pilot authorizations to operate civil aircraft of U.S. registry leased to Saudi Arabian Oil Company for a purpose other than carrying persons or property for compensation or hire.

[FR Doc. 03–26227 Filed 10–16–03; 8:45 am]

**BILLING CODE 4910–13–U**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

**[Summary Notice No. PE–2003–61]**

## Petitions for Exemption; Summary of Petitions Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before November 6, 2003.

**ADDRESSES:** Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16037 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** Annette Kovite (425–227–1262), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or Caren Centorelli (202–267–8199), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on October 14, 2003.

**Richard D. McCurdy,**

*Acting Assistant Chief Counsel for Regulations.*

### Petitions for Exemption

*Docket No.:* FAA–2003–16037.

*Petitioner:* Custom Air Transport.

*Section of 14 CFR Affected:* 14 CFR 25.855(a), 25.857(e) and 25.1447(c)(1).

*Description of Relief Sought:* To allow the carriage of up to 12 livestock attendants or grooms on the main deck of Boeing 727–200 all-cargo airplanes.

[FR Doc. 03–26308 Filed 10–16–03; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2003–60]**

### Petitions for Exemption, Disposition of Petition Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of disposition of prior petition.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the disposition of a certain petition previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**FOR FURTHER INFORMATION CONTACT:** Caren Centorelli, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–8199.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on October 14, 2003.

**Richard D. McCurdy,**

*Acting Assistant Chief Counsel for Regulations.*

### Disposition of Petition

*Docket No.:* FAA–2002–12918.

*Petitioner:* Asia Pacific Airlines.

*Section of 14 CFR Affected:* 14 CFR 25.785(j), 25.813(b), 25.857(e) and 25.1447(c)(1).

*Description of Relief Sought/ Disposition:* To allow carriage of two supernumeraries with the flight deck door closed during taxi, takeoff and landing and exits in the Class E compartment designated for supernumerary use in lieu of the right flight deck window exit.

*Partial Grant, 09/10/2003, Exemption No. 8136.*

[FR Doc. 03–26309 Filed 10–16–03; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### RTCA Special Committee 202: Portable Electronic Devices

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of RTCA Special Committee 202 meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 202: Portable Electronic Devices.

**DATES:** The meeting will be held on October 28–30, 2003 from 9 a.m. to 4:30 p.m.

**ADDRESSES:** The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036–5133.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133; telephone (202) 833–9339; fax: (202) 833–9434; Web site: *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 202 meeting. The agenda will include:

- October 28:
  - Working Groups 1 through 4 meet all day
- October 29:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review Agenda, Review/Approve Previous Common Plenary Summary, Review Open Action Items)
  - Review and update of EUROCAE WG58 Activities
  - Report and Update on Plans for IATA SPSG#9 Activities
  - Summary Scoping and Plan for SC–202 Phase 1 Deliverables
  - Review Working Group (WG) Progress and Identify Issues for Resolution (will continue into second day as required)
  - Working Group 1 (PEDs characterization, test, and evaluation)
  - Overview of SC–202 Phase 1 report materials completed in draft form
  - Preliminary or summary list of devices type/categorizations
  - Grouped by frequencies used, modulation type, power, etc.
  - Prioritized device categories for Phase 1 document
  - Equipment needs or other support required
  - Working Group 2 (Aircraft test and analysis)
  - Overview of SC–202 Phase 1 report materials completed in draft form
  - Current state of planning for aircraft test
  - What has to be determined to be already existing and useable data
  - Needs for airplane availability
  - What needs to be done for Phase 1 documentation
  - Equipment needs or other support required
- October 30:
  - Continue Plenary Session
  - Review of Working Group (WG) Progress and Identify Issues for Resolution
  - Working Group 3 (Aircraft systems susceptibility)
  - Overview of SC–202 Phase 1 report materials completed in draft form
  - Definition of systems susceptibility presentation format
  - Prioritized list of on-aircraft systems to identify "most critical" victim systems
  - Summary of timeframe for data availability
  - Testing requirements identified, plan for initial susceptibility testing
  - What remains to be done for Phase 1 documentation
  - Working Group 4 (Risk assessment, practical application, and final documentation)
  - Overview of SC–202 Phase 1 report materials completed in draft form
  - First cut or current plan for what guidance, and identify where the gaps are that should be addressed in SC–202 report
  - Final requests for data from other WGs (what data is needed first)
  - What needs to be done for Phase 1 documentation
  - Issues identified for resolution by several Working Groups
  - How to address the intermodulation issue
  - How to address the multiple-PED issue
  - Assignment/Review of Future Work
  - Closing Session (Other Business, Date and Place of Next Meeting, Closing Remarks, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION**

**CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 3, 2003.

**Robert Zoldos,**

*FAA System Engineer, RTCA Advisory Committee.*

[FR Doc. 03–26230 Filed 10–16–03; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### RTCA Special Committee 197: Rechargeable and Starting Batteries

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of RTCA Special Committee 197 meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 197: Rechargeable and Starting Batteries.

**DATES:** The meeting will be held October 21–23, 2003, starting at 9 a.m.

**ADDRESSES:** The meeting will be held at the Wyndham Riverfront Hotel, 701 Convention Center Blvd., New Orleans, LA 70130.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Street, NW., Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 197 meeting. The agenda will include:

- October 21:
  - Opening Session (Welcome and Introductory Remarks, Review of Agenda, Approve Summary Meeting #4)
  - Review of Submitted comments
  - Review SC–197 MOPS Draft, RTCA Paper No. 174–03/SC–197–011
- October 22:
  - Continuation of Review of SC–197 MOPS Draft
- October 23:
  - Proposed Schedule for Subsequent Meetings
  - Other Business
  - Closing Session (Establish Agenda for Next Meeting, Date and Place of Next Meeting)
  - Meeting for Advanced Technologies (IEC)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Dated: Issued in Washington, DC, on September 24, 2003.

**Bob Zoldos,**

*FAA System Engineer, RTCA Advisory Committee.*

[FR Doc. 03–26231 Filed 10–16–03; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Change Notice for RTCA Program Management Committee

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of RTCA Program Management Committee meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the RTCA Program Management Committee.

**DATES:** The meeting will be held October 28, 2003, starting at 9 a.m.

**ADDRESSES:** The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Street, NW., Suite 850, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Program Management Committee meeting. The revised agenda will include:

- October 28:
  - Opening Session (Welcome and Introductory Remarks, Review/Approve Summary of Previous Meeting)
  - Publication Consideration/Approval:
    - Final Draft, Revised DO–236A—*Minimum Aviation System Performance Standards: Required Navigation Performance for Area Navigation, TRCA Paper No. 166–03/PMC–290, prepared by SC–181.*
    - Final Draft, Revised DO–283—*Minimum Operational Performance Standards for Required Navigation Performance for Area Navigation, RTCA Paper No. 167–03/PMC–291, prepared by SC–181.*
    - Final Draft, Revised DO–271A—*Minimum Operational Performance Standards for Aircraft VDL Mode 3 Transceiver Operating in the Frequency Range 117.975–137.000 MHz, RTCA Paper No. 181–03/PMC–293, prepared by SC–172.*
    - Final Draft, *Next Generation Air/Ground Communication System (NEXCOM) Implementation Considerations: Factors to be Considered in Planning for Transition to VDL Mode 3 Integrated Voice and Data Communications in the National Airspace System, RTCA Paper No. 188–03/PMC–295, prepared by SC–198.*
- Discussion:
  - Special Committee 186, ADS–B
  - Discuss Display Integration of ADS–B and TCAS
  - Special Committee 193
  - Update Terms of Reference
  - Special Committee 196
  - Review/Status of Training Guidance Document
  - Special Committee Chairman's Reports
- Action Item Review:
  - Review/Status—All open action items
  - Closing Session (Other Business, Document Production, Date and Place of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 1, 2003.

**Robert Zoldos,**

*FAA System Engineer, RTCA Advisory Committee.*

[FR Doc. 03–26232 Filed 10–16–03; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Somerset County, Pennsylvania and Garrett County, MD

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed transportation project along Section 019 of U.S. 219. This section extends from the southern terminus of the Meyersdale Bypass in Somerset County, Pennsylvania to I–68 in Garrett County, Maryland.

**FOR FURTHER INFORMATION CONTACT:** David W. Cough P.E., Director of Operations, Federal Highway Administration, Pennsylvania Division Office, 228 Walnut Street, Room 508, Harrisburg, Pennsylvania, 17101–1720, Telephone: (717) 221–3411; David L. Sherman, P.E., Project Manager, Pennsylvania Department of Transportation, Engineering District 9, 1620 North Juniata Street, Hollidaysburg, Pennsylvania, 16648, Telephone: (814) 696–7170; or Russell Walto, P.E., Project Manager, Maryland State Highway Administration, 707 North Calvert Street, Mailstop C–301, Baltimore, Maryland 21202, Telephone: (410) 545–8547.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Pennsylvania Department of Transportation (PENNDOT) and the Maryland State Highway Administration (SHA), will conduct a Design Location Study and will prepare an Environmental Impact Statement (EIS) to evaluate alternatives that upgrade the current two-lane transportation system. The study area will extend from the southern terminus of the Meyersdale Bypass in Somerset County, Pennsylvania to I–68 in Garrett County, Maryland. The corridor is approximately 8.1 miles in length.

The initial stage of this process is for development of conceptual alternatives. A range of conceptual alternatives will be developed and examined within the context of the identified project needs, environmental and socioeconomic constraints, and public input, as well as their consistency with county and municipal plans and policies. Alternatives to be examined will include the No-Build Alternative as well as Build Alternatives. This analysis will be used to refine the alternatives or eliminate a particular alternative(s) from further consideration due to the potential for socio-economic, environmental, or engineering impacts. This stage of the study will result in a Preliminary Alternatives Analysis Report.

Following the preliminary analysis, the alternatives that are recommended for further study will be developed in greater detail and the environmental impacts for each will be assessed and described in the Environmental Impact Statement.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who express an interest in the proposal. Public involvement and inter-agency coordination will be maintained throughout the development of the study. Public notices of the time and place of the public meetings and any required public hearings will be provided.

To ensure that the full range of issues related to this proposed action is addressed and that all significant issues are identified, comments and suggestions are invited form interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA, PENNDOT, or MDSHA at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Dated: October 10, 2003.

**David C. Lawton,**

*Assistant Division Administrator, Harrisburg, Pennsylvania.*

[FR Doc. 03–26273 Filed 10–16–03; 8:45 am]

BILLING CODE 4910–22–M

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## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

**[STB Docket No. AB–55 (Sub-No. 644X)]**

## CSX Transportation, Inc.—Discontinuance of Service Exemption—in Allegheny County, PA

CSX Transportation, Inc. (CSXT) has filed a verified notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over an approximately 11.2-mile line of railroad, extending between milepost BG 7.2 at Glenshaw and milepost BG 18.4 at Bakerstown, in Allegheny, County, PA. The line traverses United States Postal Service Zip Codes 15044, 15101, and 15116. There are no stations on the line.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 18, 2003,[1] unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] must be filed by October 27, 2003. Petitions to reopen must be filed by November 6, 2003, with: Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: Natalie S. Rosenberg, 500 Water Street, J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: October 8, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 03–26133 Filed 10–16–03; 8:45 am]

BILLING CODE 4915–00–P

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[1] Because this is a discontinuance of service proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Additionally, this proceeding is exempt from environmental and historic reporting requirements under 49 CFR 1105.6(c)(6) and 1105.8. Nevertheless, CSXT filed environmental and historic reports with its notice.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–55 (Sub–No. 642X)]**

### CSX Transportation, Inc.—Abandonment Exemption—in Vermillion County, IL

On September 29, 2003, CSX Transportation, Inc. (CSXT), filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon an approximately 5.9-mile line of railroad, in CSXT's Western Region, Chicago Division, Woodland Subdivision, extending from milepost OZE 107.1 at Rossville Junction to milepost OZE 113.0 at Henning, in Vermillion County, IL. The line traverses U.S. Postal Service Zip Codes 61848 and 60963 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 16, 2004.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than November 6, 2003. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 642X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Natalie S. Rosenberg, 500 Water Street, J150, Jacksonville, FL 32202. Replies to the CSXT petition are due on or before November 6, 2003.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on the Board's Web site at "*www.stb.dot.gov*."

Decided: October 8, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 03–26039 Filed 10–16–03; 8:45 am]

**BILLING CODE 4915–00–P**

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## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

October 7, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW Washington, DC 20220.

**DATES:** Written comments should be received on or before November 17, 2003 to be assured of consideration.

**Internal Reveaue Service (IRS)**

*OMB Number:* 1545–0028.

*Form Number:* IRS Forms 940 and 940–PR.

*Type of Review:* Extension.

*Title:* Form 940: Employer's Annual Federal Unemployment (FUTA) Tax Return; and Form 940–R: Planilla Para La Declaración Annual Del Patrono—La Contribución Federal Para El Desempleo (FUTA).

*Description:* Internal Revenue Code (IRC) section 3301 imposes a tax on employees based on the first $7,000 of taxable annual wages paid to each employee. IRS uses the information reported on Forms 940 and 940–PR (Puerto Rico) to ensure that employers have reported and figured the correct FUTA wages and tax.

*Respondents:* Business or other for-profit, Individuals or households, Farms.

*Estimated Number of Respondents/Recordkeepers:* 1,367,000.

*Estimated Burden Hours Respondent/Recordkeepers:*

| | Form 940 | Form 940–PR |
|---|---|---|
| Recordkeeping | 13 hr., 52 min. | 14 hr., 35 min. |
| Learning about the law or the form | 1 hr., 17 min. | 1 hr., 0 min. |
| Preparing and sending the form to the IRS | 1 hr., 50 min. | 1 hr., 35 min. |

*Frequency of Response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 20,940,530 hours.

*OMB Number:* 1545–0052.

*Form Number:* IRS Forms 990–PF and 4720.

*Type of Review:* Revision.

Title: Form 990–PF: Return of Private Foundation or Section 4974(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation; and Form 4720: Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the Internal Revenue Code.

*Description:* Internal Revenue Code (IRC) section 6033 requires all private foundations, including section 4947(a)(1) trusts treated as private foundations, to file an annual information return. Section 53.4940–1(a) of the Income Tax Regulations requires that the tax on net investment income be reported on the return filed under section 6033. Form 990–PF is used for this purpose. Section 6011 requires a report of taxes under Chapter 42 of the Code for prohibited acts by private foundation and certain related parties. Form 4720 is used by foundations and/or related persons to report prohibited activities in detail and pay the tax on them.

*Respondents:* Not-for-profit institutions.

*Estimated Number of Respondents/ Recordkeepers:* 54,000.

*Estimated Burden Hours Respondent/ Recordkeeper:*

| | Form 990–PF | Form 4720 |
|---|---|---|
| Recordkeeping | 141 hr., 20 min. | 39 hr., 55 min. |
| Learning about the law or the form | 28 hr., 8 min. | 16 hr., 30 min |
| Preparing the form | 33 hr., 33 min. | 23 hr., 0 min. |
| Copying, assembling, and sending the form to the IRS | 32 min. | 1 hr., 22 min. |

*Frequency of Response:* Annually.

*Estimated Total Reporting/ Recordkeeping Burden:* 11,057,373 hours.

*OMB Number:* 1545–0196.

*Form Number:* IRS Form 5527.

*Type of Review:* Revision.

*Title:* Split-Interest Trust Information Return.

*Description:* The data reported is used to verify the beneficiaries of a charitable remainder trust include the correct amounts in their tax returns, and that the split-interest trust is not subject to private foundation taxes.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/ Recordkeepers:* 88,640.

*Estimated Burden Hours Respondent/ Recordkeeper:*

| | |
|---|---|
| Recordkeeping | 62 hr., 24 min. |
| Learning about the law or the form. | 11 hr., 19 min. |
| Preparing the form | 19 hr., 20 min. |
| Copying, assembling, and sending the form to the IRS. | 1 hr., 52 min. |

*Frequency of Response:* Annually.

*Estimated Total Reporting/ Recordkeeping Burden:* 7,502,233 hours.

*OMB Number:* 1545–1222.

*Form Number:* IRS forms 8635 and 9383.

*Type of Review:* Extension.

*Title:* Form 8635: Federal Income Tax Products Order Blank; and Form 9383: Fax Order Blank for BPOL Reorders.

*Description:* Form 8635 serves as an order blank for participants of the BPOL Program. It collects information from banks, post offices and libraries detailing the quantities and types of tax forms and related materials that they will distribute to taxpayers during the tax-filing season. The fax sheet (Form 9383) allows participants to order products via fax.

*Respondents:* Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

*Estimated Number of Respondents:* 36,688.

*Estimated Burden Hours Respondent:* 6 minutes.

*Frequency of Response:* Annually.

*Estimated Total Reporting Burden:* 3,669 hours.

*OMB Number:* 1545–1851.

*Regulation Project Number:* REG–124312–02 Final.

*Type of Review:* Extension.

*Title:* Golden Parachute Payments.

*Description:* These regulations deny a deduction for excess parachute payments. A parachute payment is a payment in the nature of compensation to a disqualified individual that is contingent on a change in ownership or control of its corporation. Certain payments, including payments from a small corporation, are exempt from the definition of parachute payment if certain requirements are met (such as shareholder approval and disclosure requirements).

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 800.

*Estimated Burden Hours Respondent:* 15 hours.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 12,000 hours.

*Clearance Officer:* Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Treasury PRA Clearance Officer.*

[FR Doc. 03–26173 Filed 10–16–03; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF THE TREASURY

### Departmental Offices; Debt Management Advisory Committee Meeting Correction

Notice is hereby given, pursuant to 5 U.S.C. App. 2, § 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, NW., Washington, DC, on November 4, 2003, at 11 a.m. of the following debt management advisory committee:

Treasury Borrowing Advisory Committee of The Bond Market Association ("Committee")

This Notice corrects the date of the meeting shown in the Notice published on October 10, 2003 (68 FR 58750).

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues, and a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, § 10(d) and Pub. L. 103–202, § 202(c)(1)(B)(31 U.S.C. § 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, Section 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to P.L. 103–202, Section 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. § 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, Section 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions, financing estimates and technical charts. This briefing will give the press an opportunity to ask questions about financing projections and technical charts. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Financial Markets is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Tim Bitsberger, Deputy Assistant Secretary, Federal Finance, at (202) 622–2245.

Dated: October 14, 2003.

**Brian C. Roseboro,**

*Assistant Secretary Financial Markets.*

[FR Doc. 03–26382 Filed 10–15–03; 2:16 pm]

**BILLING CODE 4810–25–M**

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

### Open Meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) will be discussing issues on IRS Customer Service.

**DATES:** The meeting will be held Monday, November 3, 2003.

**FOR FURTHER INFORMATION CONTACT:** Judi Nicholas at 1–888–912–1227, or 206–220–6096.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Monday, November 3rd, 2003, from 8 a.m. Pacific time to 10 a.m. Pacific time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Judi Nicholas, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Judi Nicholas. Ms. Nicholas can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: various IRS issues.

Dated: October 10, 2003.

**Tersheia Carter,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 03–26314 Filed 10–16–03; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

### Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, New Mexico, Nevada, Oregon, Washington and Wyoming)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 6 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

**DATES:** The meeting will be held Monday, November 17, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mary Peterson O'Brien at 1–888–912–1227, or 206–220–6096.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Monday, November 17th, 2003 from 2 p.m. Pacific Time to 4 p.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Judi Nicholas, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Judi Nicholas. Ms. Nicholas can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: various IRS issues.

Dated: October 10, 2003.

**Tersheia Carter,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 03–26315 Filed 10–16–03; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

### Open Meeting of the Small Business/Self Employed—Payroll Committee of the Taxpayer Advocacy Panel

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Small Business/Self Employed—Payroll Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The TAP will be discussing issues pertaining to increasing compliance and lessoning the burden for Small Business/Self Employed individuals. Recommendations for IRS systemic changes will be developed.

**DATES:** The meeting will be held Thursday, November 6, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mary O'Brien at 1–888–912–1227, or 206 220–6096.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory

Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Payroll Committee of the Taxpayer Advocacy Panel will be held Thursday, November 6th, 2003 from 3 p.m. EDT to 4:30 p.m. EDT via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary O'Brien. Ms O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: October 10, 2003.

**Tersheia Carter,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 03–26316 Filed 10–16–03; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF VETERANS AFFAIRS

### Research and Development Office; Government Owned Invention Available for Licensing

**AGENCY:** Research and Development Office, VA.

**ACTION:** Notice of Government owned invention available for licensing.

**SUMMARY:** The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

**FOR FURTHER INFORMATION CONTACT:** Technical and licensing information on the invention may be obtained by writing to: Robert W. Potts, Department of Veterans Affairs, Director Technology Transfer Program, Research and Development Office, 810 Vermont Avenue NW., Washington, DC 20420; fax: 202–254–0473; email at *bob.potts@hq.med.va.gov.* Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** The invention available for licensing is:

International Patent Application No. PCT/US03/19559 "Isolated/Cloned Human NT2 Cell Lines Expressing Serotonin and GABA"

Dated: October 3, 2003.

**Anthony J. Principi,**

*Secretary, Department of Veterans Affairs.*

[FR Doc. 03–26183 Filed 10–16–03; 8:45 am]

BILLING CODE 8320–01–U

# Corrections

**Federal Register**

Vol. 68, No. 201

Friday, October 17, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF THE INTERIOR

## Office of the Special Trustee for American Indians

## New Information Collection

*Correction*

In notice document 03–24795 beginning on page 56318 in the issue of Tuesday, September 30, 2003 make the following correction:

On page 56319, in the table, under the heading "CFR Section" in the first line, "15.705" should read "115.705"

[FR Doc. C3–24795 Filed 10–16–03; 8:45 am]

**BILLING CODE 1505–01–D**

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

# Federal Register

**Friday,**
**October 17, 2003**

## Part II

# Department of Housing and Urban Development

**24 CFR Part 5**

**Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects; Final Rule**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**24 CFR Part 5**

**[Docket No. FR–4695–F–02]**

**RIN 2501–AC98**

## Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule.

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**SUMMARY:** This final rule provides for codification of the requirements of Executive Order 13202 (the Executive Order), entitled "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects." The Executive Order provides that, to the extent permitted by law, agencies may not permit inclusion of contract conditions requiring or prohibiting entering into or adhering to agreements with a labor organization, or otherwise discriminating against parties entering into or adhering to such agreements, as a condition for award of any federally funded contract or subcontract for construction. This final rule follows publication of a May 22, 2003, interim rule. HUD did not receive any public comments on the interim rule and, therefore, is adopting the interim rule without change.

**DATES:** Effective Date: November 17, 2003.

**FOR FURTHER INFORMATION CONTACT:** Edward L. Johnson, Director, Office of Labor Relations, Office of Departmental Operations and Coordination, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–0370 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Background—HUD's May 22, 2003, Interim Rule

On May 22, 2003 (68 FR 28102), HUD published an interim rule establishing regulations to codify the requirements of Executive Order 13202 for HUD's programs. President George W. Bush signed Executive Order 13202, entitled "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects" on February 17, 2001 (the Order was published in the **Federal Register** on February 22, 2001, at 66 FR 11225). Executive Order 13202 is intended to improve the internal management of the Executive Branch. The Order provides that agencies may not require or prohibit bidders, offerors, contractors, or subcontractors from entering into or adhering to agreements with one or more labor organizations. The Executive Order also permits agency heads to exempt a project from its requirements under special circumstances, but the exemption may not be related to the possibility of or an actual labor dispute.

The Order was amended by Executive Order 13208, issued on April 6, 2001. The amendment was to add a paragraph (c) to section 5 of Executive Order 13202. The new paragraph (c) addresses exemption of a project from the provisions of sections 1 and 3 of the Executive Order. (Executive Order 13208 was published in the **Federal Register** on April 11, 2001, at 66 FR 18717.)

HUD's May 22, 2003, interim rule added a new section § 5.108 to HUD's regulations in 24 CFR part 5, subpart A. The interim rule codified the requirements of Executive Order 13202 for HUD's programs. The regulations in subpart A of part 5 contain the definitions and federal requirements generally applicable to all of HUD's programs. By placing the requirements of the Executive Order in those HUD regulations that contain across-the-board requirements, HUD is ensuring the broadest applicability of the requirements of Executive Order 13202. The preamble to the May 22, 2003, interim rule provides a detailed description of the regulatory amendments to 24 CFR part 5.

### II. This Final Rule

This final rule follows publication of the May 22, 2003, interim rule. The interim rule became effective on June 23, 2003, and provided for a 60-day public comment period. The comment period on the interim rule closed on July 21, 2003. HUD did not receive any public comments on the interim rule. Accordingly, this final rule adopts the interim rule without changes.

### III. Findings and Certifications

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The final rule implements Executive Order 13202, which revokes previous requirements encouraging the inclusion of project labor agreements as a condition for award of federally funded contracts or subcontracts on construction projects. The Executive Order directs government neutrality towards the use of such agreements, thus placing the decision of whether to enter into a project labor agreement with individual contractors and subcontractors.

This applies equally to large and small entities that seek federally funded construction contracts and does not establish requirements applicable to entities based on their size. Further, HUD neither requires nor prohibits the use of project labor agreements on HUD-funded construction projects. Although some HUD-funded construction projects are subject to project labor agreements, in many instances this is due to the voluntary decision of individual contractors and subcontractors. Therefore, the final rule will not significantly revise existing practices or hiring costs for small contractors and subcontractors participating in HUD's construction programs. To the extent the rule has an impact on small entities, it should be a positive economic impact on those small entities that are not union shops, because the rule may provide additional opportunities to work on federally funded construction projects by non-union small businesses.

*Environmental Impact*

A Finding of No Significant Impact with respect to the environment was made at the interim rule stage, in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This final rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of the UMRA.

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

**List of Subjects in 24 CFR Part 5**

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, the interim rule for part 5 of subtitle A of title 24 of the Code of Federal Regulations, published on May 22, 2003, at 68 FR 28102, is promulgated as final, without change.

Dated: October 7, 2003.

**Mel Martinez,**

*Secretary.*

[FR Doc. 03–26317 Filed 10–16–03; 8:45 am]

BILLING CODE 4210–32–U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

# Federal Register

**Friday,**
**October 17, 2003**

## Part III

## The President

### Proclamation 7722—White Cane Safety Day, 2003

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Title

The

**Federal Register**
Vol. 68, No. 201
Friday, October 17, 2003

# Presidential Documents

**Title 3—**

**The President**

**Proclamation 7722 of October 15, 2003**

## White Cane Safety Day, 2003

**By the President of the United States of America**

**A Proclamation**

Every day, millions of Americans who are blind or visually impaired use the white cane as they travel, attend school, or work. The white cane remains one of the most important and reliable tools for people who are blind or visually impaired. It increases the mobility of these citizens, facilitating their inclusion in all aspects of American life. Since 1964 on White Cane Safety Day, America has reaffirmed our commitment to achieving equal opportunity and full independence for those who are blind or visually impaired.

Today, more people with disabilities are attending school and working than ever before. However, much work remains to fully open the doors of opportunity for citizens who are blind or visually impaired. To meet these challenges, I have created the New Freedom Initiative, a comprehensive plan to assist Americans with disabilities by increasing access to educational and employment opportunities. This initiative is lowering barriers more so that Americans can participate fully in their communities, and live and work in dignity and freedom.

My Administration also continues to promote implementation of section 508 of the Rehabilitation Act of 1973. This important statute requires the Federal Government to make more of its electronic and information technology resources, including Government websites, accessible to people with disabilities.

As we recognize the contributions of people who are blind or visually impaired, we resolve to continue building a better America where all individuals are celebrated for their abilities and encouraged to achieve their dreams.

The Congress, by joint resolution (Public Law 88–628) approved on October 6, 1964, as amended, has designated October 15 of each year as "White Cane Safety Day."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 15, 2003, as White Cane Safety Day. I call upon public officials, educators, librarians, and all the people of the United States to join with me in ensuring that all the benefits and privileges of life in our great Nation are available to blind and visually impaired individuals, and to observe this day with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of October, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.

[FR Doc. 03–26459
Filed 10–16–03; 8:54 am]
Billing code 3195–01–P

# Reader Aids

Federal Register

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Friday, October 17, 2003

## CUSTOMER SERVICE AND INFORMATION

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| **Federal Register/Code of Federal Regulations** | |
| General Information, indexes and other finding aids | **202–741–6000** |
| **Laws** | **741–6000** |
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| Executive orders and proclamations | **741–6000** |
| **The United States Government Manual** | **741–6000** |
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| Privacy Act Compilation | **741–6064** |
| Public Laws Update Service (numbers, dates, etc.) | **741–6043** |
| TTY for the deaf-and-hard-of-hearing | **741–6086** |

## ELECTRONIC RESEARCH

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**DEFENSE DEPARTMENT**

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- Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
  - Wildlife; 2004-2005; subsistence taking; comments due by 10-24-03; published 8-19-03 [FR 03-21121]

**AGRICULTURE DEPARTMENT**

**Farm Service Agency**

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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

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**H.R. 2152/P.L. 108–99**

To amend the Immigration and Nationality Act to extend for an additional 5 years the special immigrant religious worker program. (Oct. 15, 2003; 117 Stat. 1176)

**Last List October 15, 2003**

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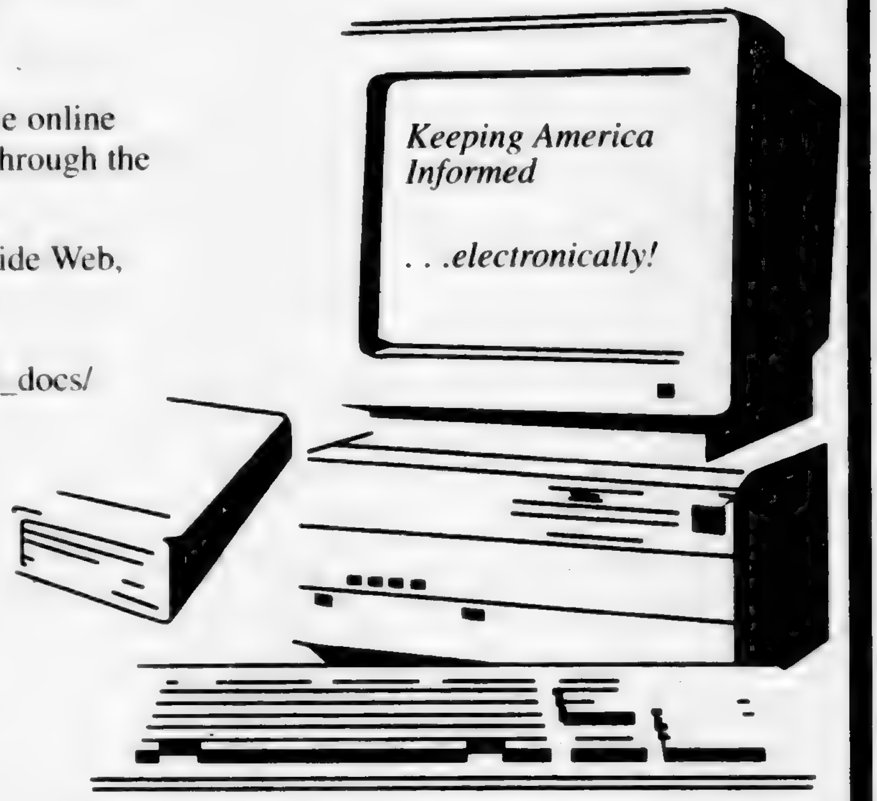

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# Presidential Documents

**Title 3—**

**The President**

## Presidential Determination No. 2004–02 of October 6, 2003

## Designation of the Philippines as a Major Non-NATO Ally

### Memorandum for the Secretary of State

Consistent with the authority vested in me by section 517 of the Foreign Assistance Act of 1961, as amended (the "Act"), I hereby designate the Republic of the Philippines as a major non-NATO ally of the United States for the purposes of the Act and the Arms Export Control Act.

You are authorized and directed to publish this determination in the **Federal Register**.

THE WHITE HOUSE,
*Washington, October 6, 2003.*

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# Presidential Documents

**Presidential Determination No. 2004–03 of October 6, 2003**

## Waiving Prohibition on United States Military Assistance to Parties to the Rome Statute Establishing the International Criminal Court

**Memorandum for the Secretary of State**

Consistent with the authority vested in me by section 2007 of the American Servicemembers' Protection Act of 2002 (the "Act"), title II of Public Law 107–206 (22 U.S.C. 7421 *et seq.*), I hereby:

- Determine that Colombia has entered into an agreement with the United States pursuant to Article 98 of the Rome Statute preventing the International Criminal Court from proceeding against U.S. personnel present in such country; and
- Waive the prohibition of section 2007(a) of the Act with respect to this country for as long as such agreement remains in force.

You are authorized and directed to report this determination to the Congress, and to arrange for its publication in the **Federal Register**.

THE WHITE HOUSE,
*Washington, October 6, 2003.*

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## MERIT SYSTEMS PROTECTION BOARD

## 5 CFR Parts 1201, 1203, 1208, 1209

## Interim Regulatory Changes for Implementation of e-Appeal and e-Filing

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure to provide parties to Board proceedings the option of transacting business electronically, as required by the Government Paperwork Elimination Act. The interim regulations allow appellants to initiate an appeal by using e-Appeal, an interactive application available from the Board's Web site (*http://www.mspb.gov/e-appeal.html*). Parties to appeals and other Board proceedings may engage in electronic case filing on an ongoing basis by making an election to file and receive pleadings and Board documents via electronic mail.

**DATES:** Effective date October 20, 2003. Written comments should be submitted on or before December 20, 2003.

**ADDRESSES:** Submit comments to the Office of the Clerk of the Board, Merit Systems Protection Board, 1615 M St., NW, Washington, DC 20419. Comments may be submitted by regular mail to this address, by facsimile to (202) 653–7130, or by e-mail to *mspb@mspb.gov*.

**FOR FURTHER INFORMATION CONTACT:** Timothy L. Korb, Merit Systems Protection Board, 1615 M Street, NW, Washington, DC 20419; (202) 653–7200; fax: (202) 653–7130; or e-mail: *mspb@mspb.gov*.

**SUPPLEMENTARY INFORMATION:**

### What the Law Requires

Section 1704 of the Government Paperwork Elimination Act, Pub. L. No. 105–277, 112 Stat. 2681–750 (1998), mandated that Federal Executive agencies provide, by October 21, 2003, "(1) for the option of the electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper; and (2) for the use and acceptance of electronic signatures, when practicable." As defined in § 1710 of the Act, an electronic signature means "a method of signing an electronic message that—(A) identifies and authenticates a particular person as the source of the electronic message; and (B) indicates such person's approval of the information contained in the electronic message." 112 Stat. at 2681–751.

The MSPB for some time has been accepting and processing requests submitted by electronic mail (e-mail) under the Freedom of Information and Privacy Acts. The Board has also experimented on a limited basis with accepting pleadings filed as electronic attachments to e-mail in the appeals that come before it. These interim regulations represent the Board's first agency-wide use of electronic filing in case adjudication.

The Board recently announced that it had forwarded to the Office of Management and Budget a proposed information collection: e-Appeal, a new electronic application for filing an appeal with the Board; and MSPB Form 185, a revised MSPB paper Appeal Form. 68 FR 44971 (July 31, 2003). This interim rule makes e-Appeal and Form 185 effective in Board proceedings. It also introduces filing by electronic mail.

Participation in electronic filing (e-Filing) is voluntary. An individual may still initiate a Board appeal by filing a paper appeal by any of the conventional means. Similarly, no party is obligated to participate in e-Filing during the course of a Board proceeding.

### Future Plans for E-Filing

Part of the reason for issuing an interim rule is that the electronic case filing procedures we now institute are themselves interim in nature. Our long-term goal is to conduct all e-Filing through the Internet, including both the pleadings filed by the parties with the Board, and the notices, orders, and decisions issued by the Board to the parties. In the future, e-Filing will include automatic notice of filing, and parties will be able to view and download pleadings and Board documents from our Web site. At the present time, however, the only part of e-Filing that is Web-enabled is the initiation of an appeal through e-Appeal.

### Commencing a Board Proceeding via e-Appeal

e-Appeal is an interactive Web application that allows appellants or their representatives to create and submit appeals using an interview format. The application includes Help and Question and Answer links appropriate to each section of the interview.

As part of the e-Appeal process, an individual creates a unique user ID and password, which constitutes his or her electronic signature. The filer can print a copy of the appeal either at the time of filing or afterward. The Board will send an electronic confirmation that it has received and is processing the appeal.

### Election To Participate in E-Filing by E-Mail

Under the interim rule, electronic filing after the commencement of a Board proceeding will be limited to filing and receiving documents via e-mail. To participate, a party must file an election with the Board which lists the e-mail address from which pleadings will be filed, and to which pleadings and Board documents may be sent. An election to engage in e-Filing, which may itself be filed by e-mail, constitutes consent to accept electronic service of pleadings and Board documents. Such an election also permits a party to file pleadings electronically, but a party who has elected e-Filing may still opt to file any pleading by conventional means. An election to engage in e-Filing may be terminated at any point in a Board proceeding.

Sending a pleading from the designated e-mail address constitutes an electronic signature. Parties can submit a declaration made under penalty of perjury (equivalent to an affidavit) electronically, as described in paragraph (n) of new § 1201.5.

A party who has elected to engage in e-Filing files a pleading by sending an e-mail to the appropriate Board office. If the other party has also elected e-Filing, service of that party is accomplished by including the party in the address portion of the e-mail. If the other party has not elected e-Filing, service is by conventional means. The Board will confirm receipt of e-mailed pleadings by sending a return e-mail.

Especially where both parties elect to participate, e-Filing should permit faster case processing because the Board and the parties will receive filings the same day they are submitted. This is particularly important for pleadings filed with the Clerk of the Board in Washington, D.C., because mailed pleadings are first sent to Ohio for irradiation. Where only one party elects to engage in e-Filing, the Board will set deadlines so that the party filing and receiving documents by conventional means will have adequate time to prepare and file a response.

### Electronic Formats Allowed

Our interim rule allows electronic pleadings to be filed in "any widely-used electronic format." We believe that e-Filing should require as little specialized equipment, software, and expertise as possible. Ideally, all a person should require is a personal computer equipped with a word-processing application, a Web browser, and access to e-mail and the Internet. Keeping technical requirements to a minimum is important in Board proceedings because a significant proportion of the parties appearing before us are representing themselves, or are represented by non-attorneys. To require specialized equipment and software, or significant computer expertise, would preclude many parties from participating in e-Filing. If the Board or receiving party has difficulty viewing or printing an electronic pleading, the regulations require informal attempts to resolve the problem. If such efforts are unsuccessful, the filing party must serve the pleading by conventional means.

The Board expects that the primary pleading in most e-Filings will consist of an electronic attachment to the e-mail such as a word-processing file. However, we will allow the submission of very brief pleadings, one or two paragraphs, in the body of the e-mail message. The reason for this restriction is a concern that the formatting of the pleading may be adversely affected, making it difficult to read. We ask that parties identify the nature of the pleading and the appeal to which it is related in the Subject portion of the e-mail, *e.g.*, Appellant's Prehearing Submission in Doe v. Agency, XX–0752–03–XXXX–I–1.

### Hybrid Filings

Only a small proportion of the contents of an MSPB case file typically originate as electronic files created for the Board proceeding. Most are paper documents that could only be converted to electronic format by scanning. For that reason, pleadings that include both an electronic file created for the Board proceeding and one or more paper documents will be common. Such "hybrid" filings are allowed under the interim rule. When a pleading contains both an electronic component and a non-electronic component, the party files the electronic component by e-mail, and the non-electronic component by conventional means. Such a pleading is considered filed and served when all components have been filed and served. We note, however, that an e-Appeal is filed when submitted electronically, regardless of when requested attachments are filed. The reason is that our regulations do not require that an appeal include any documentation; they require information only. *See* 5 CFR 1201.24(a).

### Large Image Files Limitation

When paper documents have been converted to electronic format by scanning, they consume much more disk space than do electronic text files, such as word-processing files. Because transmitting and downloading image files can consume a great deal of time and resources, our regulations provide that documents that can only be converted to electronic format by scanning must be filed by traditional means when the paper document exceeds 25 pages.

### List of Subjects

*5 CFR Part 1201*

Administrative practice and procedure, Civil rights, Government employees.

*5 CFR Part 1203*

Administrative practice and procedure, Civil rights, Government employees.

*5 CFR Part 1208*

Administrative practice and procedure, Government employees, Veterans.

*5 CFR Part 1209*

Administrative practice and procedure, Government employees, Whistleblowing.

■ Accordingly, the Board amends 5 CFR parts 1201, 1203, 1208, and 1209 as follows:

## PART 1201—[AMENDED]

■ 1. The authority citation for part 1201 continues to read as follows:

**Authority:** 5 U.S.C. 1204 and 7701, unless otherwise noted.

■ 2. Section 1201.4 is amended by revising paragraphs (i), (k), and (l) and by adding new paragraphs (m), (n), and (o) to read as follows:

### § 1201.4 General definitions.

* * * * *

(i) *Service.* The process of furnishing a copy of any pleading to Board officials, other parties, or both, either by mail, by facsimile, by commercial or personal delivery, or by electronic mail, provided the requirements of § 1201.5 of this part have been met.

* * * * *

(k) *Certificate of Service.* A document certifying that a party has served copies of pleadings on the other parties. If a pleading is served by electronic mail, the address portion of the electronic mail message serves as a certificate of service.

(l) *Date of filing.* A document that is filed with a Board office by personal delivery is considered filed on the date on which the Board office receives it. The date of filing by facsimile is the date of the facsimile. The date of filing by mail is determined by the postmark date; if no legible postmark date appears on the mailing, the submission is presumed to have been mailed five days (excluding days on which the Board is closed for business) before its receipt. The date of filing by commercial delivery is the date the document was delivered to the commercial delivery service. The date of filing by electronic mail is the date on which the electronic mail is sent.

(m) *Internet filing option.* The option that an appellant may exercise to commence an appeal proceeding before the Board by filing through the electronic application (e-Appeal) available at the Board's Web site (*http://www.mspb.gov/e-appeal.html*).

(n) *Electronic mail filing and service.* The process of filing certain pleadings with the Board and serving certain pleadings on other parties using electronic mail.

(o) *Electronic signature.* The term "electronic signature" means a method that identifies and authenticates a particular person as the source of the electronic message and indicates such person's approval of the information contained in the electronic message.

■ 3. Subpart A of part 1201 is amended by adding a new § 1201.5 to read as follows:

**§ 1201.5 Electronic mail and Internet filing procedures.**

(a) *Scope.* This section sets forth the rules applicable to the filing and service of pleadings by electronic mail and the Board's Internet filing option for matters within the Board's original jurisdiction (as explained in § 1201.2 of this subpart) and matters within the Board's appellate jurisdiction (as explained in § 1201.3 of this subpart). The electronic submission of a pleading commencing an appeal proceeding before the Board in a matter identified in § 1201.3 of this subpart must be filed using the Board's Internet filing option available at the Board's Web site (*http://www.mspb.gov/e-appeal.html*). Except for matters identified in paragraph (b) of this section, pleadings relating to the adjudication of a matter identified in either § 1201.2 or § 1201.3 of this subpart may be filed using electronic mail, provided the requirements of this section are satisfied.

(b) *Matters not covered.* Matters that may not be filed by electronic mail or the Internet filing option are:

(1) A request to hear a case as a class appeal and any opposition thereto (§ 1201.27 of this subpart),

(2) Service of subpoenas (§ 1201.83 of this subpart),

(3) The initial filing in a Special Counsel complaint seeking disciplinary action (§ 1201.122 of subpart D),

(4) The initial filing in a Special Counsel complaint seeking corrective action (§ 1201.128 of subpart D),

(5) The initial filing in a Special Counsel request for a stay (§ 1201.134 of subpart D),

(6) The initial filing in an agency action seeking to discipline an administrative law judge (§ 1201.137 of subpart D),

(7) The initial filing in a case involving a proposal to remove a career appointee from the Senior Executive Service (§ 1201.143 of subpart D), and

(8) Filings with the Special Panel (§ 1201.173 of subpart E).

(c) *Internet filing option.* The electronic filing of an appeal is only allowed by using the Board's Internet filing option (e-Appeal) available at the Board's Web site (*http://www.mspb.gov/e-appeal.html*). The Internet filing option allows an appellant to contest various types of agency actions and decisions and to raise various types of defenses and claims. The Internet filing option also includes the option of designating a representative and provides for an electronic signature. Detailed instructions explaining how to use the Board's Internet filing option are available at the Board's Web site.

(d) *Filing electronic mail pleadings with the Board.* With the exception of pleadings commencing an appeal before the Board and the exceptions noted in paragraphs (b)(1) through (b)(8) of this section, a party may make any filing regarding a matter covered by this section by electronic mail if the party has completed the authorization under paragraph (f) of this section. All electronic mail filings should be addressed to the appropriate regional or field office or to the Clerk of the Board for matters pending at Headquarters. Electronic mail addresses to be used when filing with the Board will be specified in acknowledgement orders.

(e) *Electronic mail service by the Board and parties.* The Board may serve upon any party a document regarding a matter covered by this section by electronic mail provided that the party being served has authorized electronic mail service and acceptance of electronic mail service in accordance with paragraph (f) of this section. A party may serve upon any party a pleading or document regarding a matter covered by this section by electronic mail provided that both the sending and receiving parties have authorized electronic mail service and acceptance of electronic mail service in accordance with paragraph (f) of this section.

(f) *Election to engage in electronic mail filing.* (1) A party may elect to engage in electronic mail filing during a Board proceeding by filing with the judge or Board, and serving upon the other parties, a written statement of such election that includes the electronic mail address at which the party agrees to receive service. An election to engage in electronic mail filing constitutes consent to accept electronic service of pleadings and Board issuances at the electronic mail address specified. Such an election may be filed by any means provided in paragraph (i) of § 1201.4 of this part, including electronic mail.

(2) All electronic mail filings must be sent from the electronic mail address specified in the election.

(3) A pleading or Board issuance served electronically on a party who has made an election under this section is deemed received on the date of electronic submission.

(4) A party who elects to engage in electronic mail filing may file any pleading, or portion of a pleading as described in paragraph (k) of this section, by non-electronic means.

(5) A party may rescind an election to engage in electronic mail filing at any time by filing notice of the rescission with the judge or, if applicable, the Clerk and serving notice of the rescission on the other parties.

(g) *Board acknowledgement of electronic filing.* The Board will acknowledge receipt of a pleading filed by electronic mail by sending an electronic mail confirmation of receipt.

(h) *Failed electronic mail service.* If an attempt to serve a pleading or document upon the Board or a party by electronic mail is unsuccessful, the sending party must attempt to resolve the problem. If electronic service cannot be accomplished within a reasonable period, the sending party must serve a copy of the pleading by one of the other means authorized in, and as provided by, § 1201.26(b)(2) of subpart B.

(i) *Requirements relating to electronic mail.* Parties should include the title of the pleading, the Board docket number, and the case title, *e.g.* Doe v. Agency, in the subject heading of any electronic mail served upon the Board or another party. Pleadings up to two paragraphs in length may be included in the body of an electronic mail. Pleadings exceeding two paragraphs in length must be served as an attachment, or attachments, to an electronic mail.

(j) *Attachments to electronic mail pleadings.* (1) Electronic mail attachments may be in any widely-used electronic format.

(2) If a recipient is unable to view, open, or print an electronic mail attachment sent with a pleading, the recipient shall be responsible for informing the sender of the problem as soon as practicable and identifying all attachments that could not be viewed, opened, or printed. In response to such a report, the sending party shall attempt to resolve the problem as soon as practicable. In the event that problems relating to the transmission of the document cannot be resolved, the sending party shall have three calendar days to send a paper copy of all identified attachments to the complaining party.

(3) Electronic mail documents and all attachments must be formatted so that they will print on standard 8½ inch by 11 inch paper.

(4) Documents that can only be converted to electronic format by scanning may not be filed electronically if the length of the paper document exceeds 25 pages.

(k) *Hybrid pleadings containing both electronic files and paper documents.* A party who has elected electronic mail filing under this section may file a hybrid pleading in which part of the pleading is submitted electronically, and part of the pleading consists of one or more paper documents filed by non-electronic means. When a hybrid pleading is submitted, the electronic mail submission shall inform the Board and the other party of the portions of the pleading being submitted by non-electronic means. A hybrid pleading is deemed filed and served when all parts of the pleading have been filed and served.

(l) *Certificates of Service for e-mail pleadings filed or served by electronic mail.* If a pleading is served by electronic mail, the address portion of the electronic-mail message shall serve as the certificate of service.

(m) *Use of electronic filing and service subject to control by the Judge and the Clerk of the Board.* In the event that the Board or the parties encounter repeated or unexplained difficulties filing, serving, or receiving electronic mail pleadings, documents, or attachments, the judge or the Clerk of the Board may order a party to cease filing and serving pleadings by electronic mail and may cease the Board's use of electronic mail to serve documents. In such instances, filing and service shall be undertaken in accordance with § 1201.26 of subpart B. The authority to order the cessation of the use of electronic mail may be for a particular submission, a particular time frame, or for the duration of the pendency of a case.

(n) *Requirements relating to documents requiring a signature.* An electronic document filed by a party who has elected to engage in electronic mail filing pursuant to this section shall be deemed to be signed for purposes of any regulation in part 1201, 1203, 1208, or 1209 of this title that requires a signature. An electronically filed document shall constitute a declaration made under penalty of perjury if it contains the statement required by 28 U.S.C. 1746, as set forth in Appendix IV of this part.

(o) *Authority of a judge or the Clerk of the Board to require signed submissions.* A judge or the Clerk of the Board may require that any document filed electronically be submitted in non-electronic form and bear the written signature of the submitter. A party receiving such an order from a judge or the Clerk of the Board shall, within 5 calendar days, serve on the judge or Clerk of the Board by regular mail, by facsimile, or by commercial or personal delivery a signed non-electronic copy of the document.

■ 4. Section 1201.22 is amended by revising paragraph (d) and by adding new paragraphs (e) and (f) to read as follows:

### § 1201.22 Filing an appeal and responses to appeals.

* * * * *

(d) *Method of filing an appeal.* Filing of an appeal must be made with the appropriate Board office by personal or commercial delivery, by facsimile, by mail, or by the Internet filing option described in paragraph (e) of this section.

(e) *Internet filing option.* An appeal may be filed electronically by using the electronic filing option available at the Board's Web site (*http://www.mspb.gov/e-appeal.html*).

(f) *Filing a response.* Filing of a response must be made with the appropriate Board office by personal or commercial delivery, by facsimile, by mail, or by electronic mail as specified in § 1201.5 of this part.

■ 5. Section 1201.24 is amended by revising paragraph (a), subparagraph (a)(9), and paragraph (c) to read as follows:

### § 1201.24 Content of an appeal; right to hearing.

(a) *Content.* Only an appellant, his or her designated representative, or a party properly substituted under § 1201.35 may file an appeal. Appeals may be in any format, including letter form. Electronic appeals must be filed using the Board's Internet filing option. All appeals must contain the following:

* * * * *

(9) The signature of the appellant or, if the appellant has a representative, of the representative. If using the Internet filing option, the appellant or the appellant's representative must complete the electronic signature portion of the Board's Internet filing option in accordance with instructions at the Board's Web site, as set forth in § 1201.5 of this part.

* * * * *

(c) *Use of Board form or Internet filing option.* An appellant may comply with paragraph (a) of this section, and with § 1201.31 of this part, by completing MSPB Form 185, or by completing all requests for information marked as required in the Internet filing option. Both MSPB Form 185 and the Internet filing option can be accessed at the Board's Web site (*http://www.mspb.gov/e-appeal.html*).

■ 6. Section 1201.26 is amended by revising paragraph (a), paragraph (b)(2), and paragraph (c) to read as follows:

### § 1201.26 Number of pleadings, service, and response.

(a) *Number.* The appellant must file two copies of both the appeal and all attachments with the appropriate Board office, unless the appellant files an appeal under the Board's Internet filing option.

(b) Service—(1) * * *

(2) *Service by the parties.* The parties must serve on each other one copy of each pleading, as defined by § 1201.4(b), and all documents submitted with it, except for the appeal. They may do so by mail, by facsimile, by personal or commercial delivery, or by electronic mail in accordance with § 1201.5 of this part. Documents and pleadings must be served upon each party and each representative. A certificate of service stating how and when service was made must accompany each pleading. The parties must notify the appropriate Board office and one another, in writing, of any changes in the names, or addresses on the service list.

(c) *Paper size.* Pleadings and attachments must be filed on 8½ by 11-inch paper, except for good cause shown. This requirement enables the Board to comply with standards established for U.S. courts. Requirements for pleadings and attachments filed electronically are set forth in §§ 1201.4 and 1201.5 of this part.

■ 7. Section 1201.27 is amended by adding new paragraph (d) as follows:

### § 1201.27 Class appeals.

* * * * *

(d) *Electronic filing.* A request to hear a case as a class appeal and any opposition thereto may not be filed by electronic mail or by using the Board's Internet filing option. Subsequent pleadings may be filed and served as provided in § 1201.5 of this part.

■ 8. Section 1201.31 is amended by revising paragraph (a) to read as follows:

### § 1201.31 Representatives.

(a) *Procedure.* A party to an appeal may be represented in any matter related to the appeal. Parties may designate a representative, revoke such a designation, and change such a designation in a signed submission as follows:

(1) *By written pleading.* Provided the filing and service requirements in § 1201.26 of this subpart are satisfied, parties may designate a representative, revoke a representative's designation, or change representatives, in writing.

(2) *By using the Board's Internet filing option.* Parties are allowed to designate a representative when filing an appeal using the Board's Internet filing option. This means of designation may only be used when filing an appeal using the Internet filing option.

(3) *By electronic mail.* Provided the requirements in § 1201.5 of this part are satisfied, parties may designate a representative, revoke a representative's designation, or change representatives

by e-mail filed with the Board and served on the other parties.

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■ 9. Section 1201.114 is amended by revising paragraphs (c), (e), (f) introductory text, and (h) to read as follows:

**§ 1201.114 Filing petition and cross petition for review.**

* * * * *

(c) *Place for filing.* A petition for review, cross petition for review, responses to those petitions, and all motions and pleadings associated with them must be filed with the Clerk of the Merit Systems Protection Board, Washington, DC 20419, by personal or commercial delivery, by facsimile, by mail, or by electronic mail in accordance with § 1201.5 of this part.

* * * * *

(e) *Extension of time to file.* The Board will grant a motion for extension of time to file a petition for review, a cross petition, or a response only if the party submitting the motion shows good cause. Motions for extensions must be filed with the Clerk of the Board before the date on which the petition or other pleading is due. The Board, in its discretion, may grant or deny those motions without providing the other parties the opportunity to comment on them. A motion for an extension must be accompanied by an affidavit or sworn statement under 28 U.S.C. 1746. (*See* appendix IV to part 1201.) The affidavit or sworn statement must include a specific and detailed description of the circumstances alleged to constitute good cause, and it should be accompanied by any available documentation or other evidence supporting the matters asserted.

(f) *Late filings.* Any petition for review, cross petition for review, or response that is filed late must be accompanied by a motion that shows good cause for the untimely filing, unless the Board has specifically granted an extension of time under paragraph (e) of this section, or unless a motion for extension is pending before the Board. The motion must be accompanied by an affidavit or sworn statement under 28 U.S.C. 1746. (*See* appendix IV to part 1201.) The affidavit or sworn statement must include:

* * * * *

(h) *Service.* A party submitting a pleading must serve a copy of it on each party and on each representative as provided in § 1201.5 or § 1201.26(b)(2) of this part.

* * * * *

■ 10. Section 1201.122 is amended by revising paragraphs (b) and (d) and by adding a new paragraph (e) to read as follows:

**§ 1201.122 Filing complaint; serving documents on parties.**

* * * * *

(b) *Initial filing and service.* The Special Counsel must file two copies of the complaint, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing each party or the party's representative. The certificate of service must show the last known address, telephone number, and facsimile number of each party or representative. The Special Counsel must serve a copy of the complaint on each party or the party's representative, as shown on the certificate of service. The initial filing in a complaint may not be filed by electronic mail or by using the Internet filing option.

* * * * *

(d) *Method of filing and service.* Filing may be by mail, by facsimile, or by personal or commercial delivery to the Clerk of the Board. Service may be by mail, by facsimile, or by personal or commercial delivery to each party or the party's representative, as shown on the certificate of service.

(e) *Electronic mail filing.* All pleadings, other than the complaint, may be filed and served by electronic mail, provided the requirements in § 1201.5 of this part are satisfied.

■ 11. Section 1201.128 is amended by revising paragraphs (b) and (d) and by adding a new paragraph (e) to read as follows:

**§ 1201.128 Filing complaint; serving documents on parties.**

* * * * *

(b) *Initial filing and service.* The Special Counsel must file two copies of the complaint, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing the respondent agency or the agency's representative, and each person on whose behalf the corrective action is brought. The certificate of service must show the last known address, telephone number, and facsimile number of the agency or its representative, and each person on whose behalf the corrective action is brought. The Special Counsel must serve a copy of the complaint on the agency or its representative, and each person on whose behalf the corrective action is brought, as shown on the certificate of service. The initial filing in a complaint may not be filed by electronic mail or by using the Internet filing option.

* * * * *

(d) *Method of filing and service.* A filing may be by mail, by facsimile, or by personal or commercial delivery to the office determined under paragraph (a) of this section. Service may be by mail, by facsimile, or by personal or commercial delivery to each party or the party's representative, as shown on the certificate of service.

(e) *Electronic mail filing.* All pleadings, other than the complaint, may be filed and served by electronic mail, provided the requirements in § 1201.5 of this part are satisfied.

■ 12. Section 1201.134 is amended by revising paragraphs (d) and (f) and by adding a new paragraph (g) to read as follows:

**§ 1201.134 Deciding official; filing stay request; serving documents on parties.**

* * * * *

(d) *Initial filing and service.* The Special Counsel must file two copies of the request, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing the respondent agency or the agency's representative. The certificate of service must show the last known address, telephone number, and facsimile number of the agency or its representative. The Special Counsel must serve a copy of the request on the agency or its representative, as shown on the certificate of service. The initial filing in a request for a stay may not be filed by electronic mail or by using the Internet filing option.

* * * * *

(f) *Method of filing and service.* A filing may be by mail, by facsimile, or by personal or commercial delivery to the Clerk of the Board. Service may be by mail, by facsimile, or by personal or commercial delivery to each party or the party's representative, as shown on the certificate of service.

(g) *Electronic mail filing.* All pleadings, other than the complaint, may be filed and served by electronic mail, provided the requirements in § 1201.5 of this part are satisfied.

■ 13. Section 1201.137 is amended by revising paragraphs (c) and (e) and by adding a new paragraph (f) to read as follows:

**§ 1201.137 Covered actions; filing complaint; serving documents on parties.**

* * * * *

(c) *Initial filing and service.* The agency must file two copies of the complaint, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing each party or the party's representative. The certificate of service must show the last known address, telephone number, and facsimile number of each party or representative. The agency must serve a copy of the complaint on each party or the party's representative, as shown on the certificate of service. The initial filing in a complaint may not be filed by electronic mail or by using the Internet filing option.

* * * * *

(e) *Method of filing and service.* A filing may be by mail, by facsimile, or by personal or commercial delivery to the Clerk of the Board. Service may be by mail, by facsimile, or by commercial or personal delivery to each party or the party's representative, as shown on the certificate of service.

(f) *Electronic mail service and filing.* All pleadings, other than the complaint, may be filed and served by electronic mail, provided the requirements in § 1201.5 of this part are satisfied.

■ 14. Section 1201.143 is amended by revising paragraphs (c) and (e) and by adding a new paragraph (f) to read as follows:

### § 1201.143 Right to hearing; filing complaint; serving documents on parties.

* * * * *

(c) *Initial filing and service.* The appointee must file two copies of the request, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing the agency proposing the appointee's removal or the agency's representative. The certificate of service must show the last known address, telephone number, and facsimile number of the agency or its representative. The appointee must serve a copy of the request on the agency or its representative, as shown on the certificate of service. The initial filing may not be filed by electronic mail or by using the Internet filing option.

* * * * *

(e) *Method of filing and service.* A filing may be by mail, by facsimile, or by personal or commercial delivery, to the office determined under paragraph (b) of this section. Service may be by mail, by facsimile, or by personal or commercial delivery to each party or the party's representative, as shown on the certificate of service.

(f) *Electronic mail service and filing.* All pleadings, other than the initial complaint, may be filed and served by electronic mail, provided the requirements in § 1201.5 of this part are satisfied.

■ 15. Section 1201.153 is amended by revising paragraph (b) to read as follows:

### § 1201.153 Contents of appeal.

* * * * *

(b) *Use of Board form or Internet filing option.* An appellant may comply with paragraph (a) of this section by completing MSPB Form 185, or by completing all requests for information marked as required in the Internet filing option. Both MSPB Form 185 and the Internet filing option can be accessed at the Board's Web site (*http://www.mspb.gov/e-appeal.html*).

■ 16. Section 1201.173 is amended by adding new paragraph (k) to read as follows:

### § 1201.173 Practices and procedures of Special Panel.

* * * * *

(k) *Electronic mail filing and service.* Pleadings in matters before the Special Panel may not be filed or served using electronic mail.

## Appendix I to Part 1201—[Reserved]

■ 17. Remove and reserve appendix I to part 1201.

## PART 1203—[AMENDED]

■ 18. The authority citation for part 1203 continues to read as follows:

**Authority:** 5 U.S.C. 1204.

■ 19. Section 1203.13 is amended by revising paragraph (d) to read as follows:

### § 1203.13 Filing pleadings.

* * * * *

(d) *Method and date of filing.* An initial filing in a request for review of a regulation may be filed with the Office of the Clerk either by mail, by personal or commercial delivery, or by facsimile. Pleadings, other than an initial request for a regulation review under this part, may be filed with the Office of the Clerk either by mail, by personal or commercial delivery, by facsimile, or by electronic mail in accordance with § 1201.5 of this chapter. If the document was submitted by certified mail, it is considered to have been filed on the mailing date. If it was submitted by regular mail, it is presumed to have been filed five days before the Office of the Clerk receives it, in the absence of evidence contradicting that presumption. If it was delivered personally, it is considered to have been filed on the date the Office of the Clerk receives it. If it was submitted by facsimile, the date of the facsimile is considered to be the filing date. If it was submitted by commercial delivery, the date of filing is the date it was delivered to the commercial delivery service. If it was submitted by electronic mail, it is considered to have been filed on the date sent.

* * * * *

■ 20. Section 1203.14 is amended by revising paragraph (b) and adding new paragraph (c) to read as follows:

### § 1203.14 Serving documents.

* * * * *

(b) *Method of serving documents.* Pleadings may be served on parties by mail, by personal delivery, by facsimile, or by commercial delivery. Service by mail is accomplished by mailing the pleading to each party or representative, at the party's or representative's last known address. Service by facsimile is accomplished by transmitting the pleading by facsimile to each party or representative. Service by personal delivery or by commercial delivery is accomplished by delivering the pleading to the business office or home of each party or representative and leaving it with the party or representative, or with a responsible person at that address. Regardless of the method of service, the party serving the document must submit to the Board, along with the pleading, a certificate of service as proof that the document was served on the other parties or their representatives. The certificate of service must list the names and addresses of the persons on whom the pleading was served, must state the date on which the pleading was served, must state the method (*i.e.*, mail, personal delivery, facsimile, or commercial delivery) by which service was accomplished, and must be signed by the person responsible for accomplishing service.

(c) *Electronic mail filing and service.* Other than the initial request for a regulation review, pleadings in a regulation review proceeding may be filed with the Board and served upon other parties by electronic mail, provided the requirements in § 1201.5 of this chapter are satisfied.

■ 21. Section 1203.22 is amended by revising paragraph (a) to read as follows:

### § 1203.22 Enforcement of order.

(a) Any party may ask the Board to enforce a final order it has issued under this part. The request may be made by filing a petition for enforcement with the Office of the Clerk of the Board and by serving a copy of the petition on each party to the regulation review. The request may be filed by electronic mail, provided the requirements in § 1201.5 of this part are satisfied. The petition must include specific reasons why the petitioning party believes that there has been a failure to comply with the Board's order.

* * * * *

## PART 1208—[AMENDED]

■ 22. The authority citation for part 1208 continues to read as follows:

**Authority:** 5 U.S.C. 1204(h), 3330a, 3330b, 38 U.S.C. 4331.

■ 23. Section 1208.13 is amended by adding new paragraph (c) to read as follows:

### § 1208.13 Content of appeal; request for hearing.

* * * * *

(c) *Internet filing option.* An appeal may be filed electronically by using the Board's Internet filing option available at the Board's Web site (*http://www.mspb.gov/e-appeal.html*).

■ 24. Section 1208.14 is revised to read as follows:

### § 1208.14 Representation by Special Counsel.

The Special Counsel may represent an appellant in a USERRA appeal before the Board. A written statement (in any format) that the appellant submitted a written request to the Secretary of Labor that the appellant's complaint under 38 U.S.C. 4322(a) be referred to the Special Counsel for litigation before the Board, and that the Special Counsel has agreed to represent the appellant, will be accepted as the written designation of representative required by 5 CFR 1201.31(a). The designation of representative may be filed by electronic mail, provided the requirements in § 1201.5 of this chapter are satisfied.

■ 25. Section 1208.23 is amended by adding new paragraph (c) to read as follows:

### § 1208.23 Content of appeal; request for hearing.

* * * * *

(c) *Internet filing option.* An appeal may be filed electronically by using the Board's Internet filing option available at the Board's Web site (*http://www.mspb.gov/e-appeal.html*).

■ 26. Section 1208.24 is amended by revising paragraph (a) to read as follows:

### § 1208.24 Election to terminate MSPB proceeding.

(a) *Election to terminate.* At any time beginning on the 121st day after an appellant files a VEOA appeal with the Board, if a judicially reviewable Board decision on the appeal has not been issued, the appellant may elect to terminate the Board proceeding as provided under 5 U.S.C. 3330b and file a civil action with an appropriate United States district court. Such election must be in writing, signed, filed with the Board office where the appeal is being processed, and served on the parties. The election is effective immediately on the date of receipt by the Board office where the appeal is being processed. The election may be filed by electronic mail provided the requirements in § 1201.5 of this chapter are satisfied.

* * * * *

## PART 1209—[AMENDED]

■ 27. The authority citation for part 1209 continues to read as follows:

**Authority:** 5 U.S.C. 1204, 1221, 2302(b)(8), and 7701.

■ 28. Section 1209.6 is amended by adding new paragraph (d) to read as follows:

### § 1209.6 Content of appeal; right to hearing.

* * * * *

(d) *Internet filing option.* An appeal may be filed electronically by using the Board's Internet filing option available at the Board's Web site (*http://www.mspb.gov/e-appeal.html*).

■ 29. Section 1209.8 is amended by revising paragraphs (a) and (d) and by adding new paragraphs (e) and (f) to read as follows:

### § 1209.8 Filing a request for a stay.

(a) *Time of filing.* An appellant may request a stay of a personnel action allegedly based on whistleblowing at any time after the appellant becomes eligible to file an appeal with the Board under § 1209.5 of this part, but no later than the time limit set for the close of discovery in the appeal. The request may be filed prior to, simultaneous with, or after the filing of an appeal.

* * * * *

(d) *Method of filing.* A stay request must be filed with the appropriate Board regional or field office by personal delivery, by facsimile, by mail, or by commercial delivery.

(e) *Internet filing option.* An appeal may be filed electronically by using the Board's Internet filing option available at the Board's Web site (*http://www.mspb.gov/e-appeal.html*).

(f) *Electronic mail option.* A stay request, made after the filing of an appeal, may be filed by electronic mail after the filing of the appeal, provided the requirements in § 1201.5 of this chapter are satisfied.

Dated: October 10, 2003.

**Bentley M. Roberts,**

*Clerk of the Board.*

[FR Doc. 03–26172 Filed 10–17–03; 8:45 am]

BILLING CODE 7400–01–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 25

**[Docket No. NM81; Special Conditions No. 25–ANM–84A]**

## Special Conditions: Extended Range Operation of Boeing Model 777 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Amended special conditions.

**SUMMARY:** These special conditions amend Special Conditions No. 25–ANM–84, applicable to Boeing Model 777 series airplanes. They revise the extended range operations with two-engine airplanes (referred to as "ETOPS") test requirements defined in the original special conditions. The revisions include changing the airplane demonstration test requirement from a required 1000 flight cycles to a demonstration of capability in ETOPS flight conditions, and allowing more than one airplane to be used for the airplane demonstration test. In addition, this revision adds post-test inspection requirements for both the engine demonstration test and the airplane demonstration test articles.

**EFFECTIVE DATE:** October 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Steve Clark, FAA, ETOPS Project Manager, Seattle Aircraft Certification Office, Propulsion Branch, ANM–140S, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 917–6496; facsimile (425) 227–1180.

**SUPPLEMENTARY INFORMATION:**

### Background

Because of concerns over engine and airplane reliability, for many years 14 CFR 121.161 has generally prohibited operations of two-engine airplanes on routes including segments that are more than one hour flight time from a suitable airport. This regulation contains an exception that allows such operations when specifically authorized by the Administrator. These extended range operations with two-engine airplanes are referred to as ETOPS. Advisory Circular (AC) 120–42A describes a method for obtaining ETOPS authorization if an operator can demonstrate sufficient engine and airplane reliability. This method is based on a combination of various design features and operational and maintenance procedures. The AC states that eligibility for 120-minute ETOPS authorization is normally based on a showing of reliable operation for a minimum of 250,000 engine hours of service in the world fleet. Eligibility for 180-minute ETOPS authorization is normally based on a showing of reliable operation for at least one year in 120-minute ETOPS. The AC also describes an option for reducing the number of hours of service if adequate compensating factors are identified to give a reasonably equivalent database.

On May 18, 1994, the FAA issued Special Conditions No. 25–ANM–84 for the Boeing Model 777 series airplanes (59 FR 28234). These special conditions define requirements for 180-minute ETOPS approval concurrent with basic type certification of the airplane without the service experience outlined in AC 120–42A that would normally be necessary. These special conditions define additional safety standards that the FAA considered necessary to establish a level of safety equivalent to that provided by the airworthiness standards for non-ETOPS airplanes.

The current 777 ETOPS special conditions consist of five main elements needed to provide adequate compensation for the service experience normally required for 180-minute ETOPS eligibility described in AC 120–42A. No single element is considered sufficient by itself, but the FAA has found that the five elements combined provide an acceptable substitute for actual airline service experience. The five elements are:

1. Design for reliability
2. Lessons learned
3. Test requirements
4. Demonstrated reliability
5. Problem tracking system

A description of each of these five elements is contained in the preamble to Special Conditions No. 25–ANM–84.

On December 13, 1999, Boeing Commercial Airplane Group applied for an amendment to Type Certificate No. T00001SE to include the new Model 777–200LR and 777–300ER airplanes. The Model 777–200LR, which is a derivative version of the existing Model 777–200 series airplanes, has the following differences from the Model 777–200:

- The wingspan is increased from 199 feet, 11 inches to 212 feet, 7 inches.
- Maximum intended takeoff weight is 750,000 pounds.
- It is capable of carrying from 301 to 440 passengers.
- It has provisions for overhead crew and attendant rest areas.
- Its range capability will be up to 8,800 nautical miles (16,298 kilometers).
- It has 110,100 pounds thrust GE90 engines.
- It has a supplemental electronic tail skid.
- It has provisions for up to 3 auxiliary fuel tanks in the forward area of the aft cargo bay.

The Model 777–300ER, which is a derivative of the Model 777–300 airplanes, has the following differences from the Model 777–300:

- The wingspan is increased from 199 feet, 11 inches to 212 feet, 7 inches.
- Maximum intended takeoff weight is 750,000 pounds.
- It is capable of carrying from 359 to 550 passengers.
- It has provisions for overhead crew and attendant rest areas.
- Its range capability will be up to 7,250 nautical miles (13,427 kilometers).
- It has 115,300 pound thrust GE90 engines.
- It has a supplemental electronic tail skid.
- It has a semi-levered main landing gear.

Both models are currently approved under Type Certificate No. T00001SE.

For the Model 777–300ER and Model 777–200LR, Boeing has proposed certain changes to the ETOPS special conditions in order to take into account the experience from the original baseline Model 777 engine programs and to eliminate any unnecessary burden from the airplane demonstration testing required by paragraph (e)(7) of those special conditions.

## Type Certification Basis

Under the provisions of 14 CFR 21.101, Boeing must show that the Boeing Model 777 series airplanes meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. T00001SE or the applicable regulations in effect on the date of application for the change to the type certificate. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. T00001SE for the Boeing Model 777 series airplanes include 14 CFR part 25, as amended by Amendments 25–1 through 25–82. The original type certification basis is listed in Type Certificate Data Sheet No. T00001SE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model 777 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, Boeing Model 777 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model.

## ETOPS Certification

All two-engine airplanes operating under 14 CFR part 121 are required to comply with § 121.161, which states, in pertinent part, that "Unless authorized by the Administrator * * * no certificate holder may operate two-engine airplanes * * * over a route that contains a point farther than one hour flying time * * * from an adequate airport." Advisory Circular (AC) 120–42A, "Extended Range Operation With Two-Engine Airplanes (ETOPS)," provides an acceptable means for obtaining FAA approval for two-engine airplanes to operate over a route that contains a point farther than one hour flying time from an adequate airport. The two basic objectives of this advisory circular are to establish that the airplane and its supporting systems are suitable for the extended range mission and that the maintenance and procedures to be employed in conducting ETOPS operations are adequate. This is accomplished by acquiring a substantial amount of service experience during non-ETOPS operation and then extensively evaluating this experience in the areas of systems reliability, maintenance tasks, and operating procedures. When it is determined that the appropriate reliabilities and capabilities have been achieved, the airplane is found eligible to be considered for use in ETOPS operation by an airline.

When Boeing was developing the Model 777 series airplane, it proposed that the Model 777 be approved for ETOPS operation simultaneously with the issuance of the basic type certificate. At that time, procedures did not exist for a finding of this type. The proposed issuance of ETOPS type design approval at certification would have precluded using accumulation of service experience, as outlined in AC 120–42A, as a means to meet ETOPS approval requirements. So an alternative method was devised that provided an adequate level of inherent airplane reliability for ETOPS. It is important to note that the requirements for certification of the airplane regarding the design's suitability for ETOPS operation, as described in those special conditions, relate to type certification approval only. Advisory Circular 120–42A contains guidance regarding operational and maintenance practices criteria that must be met by the operator before ETOPS operations can be conducted. It is incumbent upon the operator to apply for operational approval in accordance with appropriate guidance issued by the FAA for such approvals. Compliance with these special conditions does not constitute operational approval.

Special Conditions No. 25–ANM–84 contained the additional safety standards that the Administrator considered necessary to establish a level of safety equivalent to that provided by the airworthiness standards for transport category airplanes for non-ETOPS airplanes. Experience with those special conditions since issuance has provided the FAA with additional data to justify an amendment to Special Conditions No. 25–ANM–84 as described in this document.

## Discussion

Boeing has requested the FAA to revise certain parts of the test requirements of Special Conditions No. 25–ANM–84 defined in paragraph (e). The FAA has concurred that some changes are justified based on an analysis of previous experience applying those special conditions to the original three engine types approved for installation on the Model 777 airplane. The specific changes to those requirements and the justification for each proposed change are discussed below.

### Paragraph (e)(6) Engine Demonstration Test

The FAA has concluded from a review of in-service experience of the Model 777 series airplanes that the 3000-cycle engine and propulsion system test required by paragraph (e)(6) of Special Conditions No. 25–ANM–84 provides an adequate opportunity to discover cyclic-related failure modes associated with the design, provided that an adequate post-test evaluation is conducted to find conditions that could result in an inflight shutdown, power loss, or inability to control engine thrust. An FAA review of the test data from the 3000-cycle tests for the three original engine types installed on the Model 777 series airplanes has shown that most of the early in-service Model 777 engine failure modes could have been discovered had Boeing and the engine manufacturers conducted a more thorough teardown inspection and analysis of the 3000-cycle test engine and propulsion system hardware. Part conditions noted in the teardown inspection reports for the three baseline Model 777 engine types did later occur in service, and they resulted in engine inflight shutdowns or airplane diversions. However, because the specific condition of those 3000-cycle test parts had been characterized as minor deviations from normal, no specific investigations into how they might progress in service had been required as a prerequisite for ETOPS approval.

Special Conditions No. 25–ANM–84 currently do not require a post-test teardown inspection. However, all three engine companies, in cooperation with Boeing, conducted post-test teardown inspections on the original baseline engines installed on the Model 777 series airplanes based on their own experience of what would constitute an adequate evaluation. In order to provide a consistent standard for a post-test evaluation of the 3000-cycle test hardware, the FAA considers that a change to paragraph (e)(6) to require a complete teardown inspection of the engine and airplane nacelle test hardware after completion of the test is necessary. The inspection must include an analysis of any abnormal conditions found. The analysis must consider the possible consequences of similar occurrences in service to determine if they might become sources of engine inflight shutdowns, power loss, or inability to control engine thrust. The intent of this change to paragraph (e)(6) is to require further design analysis to catch potential sources of engine inflight shutdowns or diversions.

For similar reasons, we consider that adding a new subparagraph (e)(7)(v) to require a post-test external and internal visual inspection of the airplane demonstration test engines and propulsion system hardware is needed. An analysis of the inspection results must identify any potential sources of engine inflight shutdown. Appropriate corrective actions must be performed in accordance with the provisions of the special conditions.

Boeing proposed to delete the word *complete* from the description of the airplane nacelle package required for the 3000-cycle test. The rationale for this proposed change was that without the term *complete,* it is still understood that the test is intended to be a propulsion system test inclusive of the engine buildup items, but some allowance is made for configuration differences necessary to accommodate the test setup. The FAA is concerned that, without this qualifier, it is not clear what nacelle hardware must be installed for this test. It could be misinterpreted in such a way that, for instance, a functioning thrust reverser need not be installed. Therefore, the FAA has concluded that the word *complete* must remain in the requirement. However, we agree with Boeing that those configuration differences associated with test instrumentation and test stand interfaces with the engine nacelle package may be excluded, and we have added that qualification to the requirement in order to clarify this intent.

### Paragraph (e)(7) Airplane Demonstration Test

*Number of Test Airplanes:* Boeing has proposed a change to paragraph (e)(7) to allow the use of more than one airplane to comply with the airplane demonstration test requirement (three test airplanes for the current Model 777–300ER program). Boeing's justification includes the argument that using multiple airplanes is an enhancement to the ETOPS validation program that takes into account airplane-to-airplane variation. The value of obtaining ETOPS data on multiple airplanes versus one is the increased sample size. The FAA agrees that increasing the number of test airplanes in the airplane demonstration test would provide a better evaluation of airplane-to-airplane variability. The limited experience obtained during the airplane demonstration test program is not really sufficient to evaluate end-of-life wear-out failure modes, so accumulating all of the time and cycles on one airplane is not necessary. The main program schedule benefit from using multiple flight test airplanes is that testing can be completed in a shorter period. The FAA agrees to a change to paragraph (e)(7) to require that one or more airplanes must complete the airplane demonstration test required by that paragraph.

*Capability Demonstration vs. Reliability Demonstration:* The 1000-cycle airplane demonstration test requirement was developed with the intent of exposing the airplane to the conditions where the greatest numbers of inflight shutdowns occur. Most inflight shutdowns occur during takeoff and climb. The failure modes associated with these takeoff- and climb-related shutdowns tend to be cyclic in nature for a couple of reasons.[1] For failure modes where the risk of failure increases with engine thrust, the takeoff portion of the flight is most critical. Failure modes that occur due to improper maintenance or engine servicing, for instance loss of engine oil due to improper assembly of an oil tube connection, also tend to occur early in the flight. A larger number of airplane flights increases the exposure to these types of failures. The FAA considered a cyclic test to be the most appropriate airplane validation test for the original Model 777 ETOPS special conditions. However, as stated above, we now consider that the 3000-cycle engine and propulsion system test required by paragraph (e)(6) provides an adequate opportunity to discover cyclic-related failure modes associated with the design when the test hardware goes through an appropriate level of post-test teardown and inspection.

For inflight shutdowns where improper maintenance is a main causal factor, the 1000-cycle airplane demonstration test provides multiple opportunities for these types of failures to occur. However, the maintenance procedure validation program required by paragraph (d)(2) is intended to minimize the probability of these occurrences. The airplane used for the airplane demonstration test provides opportunities to demonstrate those maintenance tasks associated with the normal operation of the airplane. The FAA considers that these demonstrations can be accomplished in fewer than 1000 cycles.

Although the fewest inflight shutdowns occur during cruise, this is the phase of flight that is most important to an ETOPS operation. Traditionally, the FAA and industry have avoided trying to differentiate between those inflight shutdowns that may occur during cruise from those that would only occur in a non-ETOPS environment. The main reason for this approach in existing ETOPS policy is that by correcting all causes of inflight shutdowns, the overall integrity of the propulsion system is assured. Since adequate cyclic exposure would be evaluated by an enhanced 3000-cycle engine demonstration test, as proposed for paragraph (e)(6) of these special conditions, the FAA has concluded that the airplane validation program should emphasize exposure to the cruise phase of flight. During the three 1000-cycle tests conducted for the original Model 777 engine installation certification programs, only 91 of the total 1000 cycles were of durations of two hours or more. Since the intent of paragraph (e)(7) is to simulate an actual airline operation, this would better be accomplished through longer duration flight cycles. Long duration flight exposure provides additional confidence in the design against those cruise-related failure modes that cannot be evaluated in a cyclic test environment. Such failure modes could include freezing of entrapped water condensation or binding of propulsion system components, neither of which would likely occur in a sea level test facility.

Based on these considerations, the FAA has determined that the airplane demonstration test requirement should be refocused on those conditions that are most prevalent in an ETOPS operating environment. Those conditions include long flights to a variety of airports with broad variations of airport elevation, temperature, and humidity. It is also important that these flights expose the airplane to several enroute climbs, such as may occur with a fully loaded Model 777–300ER on a long-range flight, and a number of single engine diversions. As such, the airplane demonstration test requirement of paragraph (e)(7) is revised to more clearly state the objectives of the test program. Those objectives include demonstrations that the aircraft, its components, and equipment are capable of long-range operations and airplane diversions, including engine-inoperative diversions, and function properly during those operations and diversions. This change in focus constitutes a significant departure from the original purpose of the 1000-cycle airplane demonstration test requirement, as discussed in the preamble to Special Conditions No. 25–ANM–84.

### Reliability of 777

In order to further justify this change in philosophy for the airplane demonstration test requirement from being a demonstration of "reliability" to a demonstration of "capability," the FAA reviewed the original intent of Special Conditions No. 25–ANM–84, as documented in the preamble to those special conditions. The purpose of this review was to assess whether the assumptions we made in justifying the special conditions are still valid, or whether they should be revised based on ETOPS certification experience since their issuance in June 1994.

In the preamble to Special Conditions No. 25–ANM–84, the FAA stated that:

> existing practices to achieve airplane certification safety objectives have involved definition of performance requirements, incorporation of safety margins, and prediction of failure probabilities through analysis and test. However, historical evidence, in general, indicates that a period of actual revenue service experience is necessary to identify and resolve problems not observed during the normal certification process. Successful achievement of this experience has been a prerequisite for granting ETOPS type design approval for a specific airplane engine combination. However, several recent airplane engine combinations incorporating new or substantially modified propulsion systems have demonstrated a high level of reliability consistent with ETOPS operation upon entry into revenue service. In addition, this high level of reliability was demonstrated by the small number of problems encountered during basic certification activity. Based on these successful airplane and engine development and certification programs, the special conditions were designed to "result in a level of airplane reliability that is equivalent to the level of reliability previously found to be acceptable based upon service experience."

The basic premise behind the engine and airplane demonstration tests required by paragraphs (e)(6) and (e)(7) of the original special conditions was that those tests would provide a final validation of an "inherent" level of reliability that was the product of an enhanced design and test process. This is similar to the purpose of the function and reliability testing required by § 21.35(b)(2). The FAA's expectation for these tests was that no significant failures would occur. The probability of significant design failures occurring on a one-airplane flight test is so low that if any *do* occur, that would be indicative of a design that is not suitable for ETOPS approval. This expectation is contained in the "type and frequency" requirement of special conditions paragraph (h)(1). Statistical reliability studies have shown that a much larger database would be required to validate a design's true reliability with a significant degree of confidence.

No major engine failures occurred during the 1000-cycle airplane demonstration tests for any of the three engine types certified on the Model 777 series airplane, although several engine design problems were discovered during other certification testing that affected the start and conduct of those tests. The Reliability Assessment Board (RAB) evaluated each of these design problems in compliance with paragraph (g) of the special conditions, and found the Model

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[1] Data provided to the Aviation Rulemaking Advisory Committee (ARAC) ETOPS Working Group confirm that the inflight shutdown rate during the takeoff flight phase is on the order of 6 to 16 times the fleet average inflight shutdown rate and during the climb phase is 2.5 to 4.5 times the fleet average.

777 to be suitable for ETOPS type design approval with the incorporation of corrective actions identified in Appendix 1 of the RAB final recommendation reports for the three engine types. There were hardware similarities between engines with the original certified thrust ratings and follow-on higher-thrust-rated engines, and the FAA certified each of those follow-on engine derivatives for ETOPS in consideration of those hardware similarities. The FAA accepted the original baseline engine test programs as showing compliance with the 3000-cycle propulsion system ground test and 1000-cycle airplane demonstration test requirements for the follow-on derivative engines. Although the 3000-cycle and 1000-cycle tests were not repeated for those follow-on derivative engines, Boeing and the engine companies completed reduced ground and flight test demonstrations tailored to the design changes being introduced in compliance with the Test Features requirement of special conditions paragraph (c)(4). Therefore, the follow-on engine derivatives are not included in this analysis of the 1000-cycle airplane demonstration test requirement.

The Boeing Model 777–200 series airplane powered by Pratt & Whitney PW4077 engines was approved for ETOPS on May 30, 1995 and entered service in June 1995. By all accounts, it was a very successful new model introduction. This was followed by ETOPS approval of the Model 777–200 series airplanes powered by General Electric GE90–77B and Rolls-Royce RB211-Trent 877–17 engines in October 1996. The inflight shutdown (IFSD) rate for all three engine types was zero for at least the first year in service. The Pratt & Whitney PW4000 series engines reached a peak 12-month rolling average engine IFSD rate of .018/1000 hours in October 1996. The General Electric GE90 series engines reached a peak of .021 for one month in July 1998 and the Rolls-Royce Trent series engines reached a peak of .016 in December 1997. Although the inflight shutdown rates stayed within the allowable .02/1000 hour standard for 180-minute ETOPS, significant design problems were discovered on each engine type after ETOPS approval.

During the first two years after ETOPS approval of each engine type on the Model 777 series airplanes, the FAA was concerned that the design problems being discovered may have indicated a failure of the early ETOPS process to identify those failure modes before they occurred in service. Some failure modes had the potential to result in inflight shutdowns had they occurred under different circumstances or had they not been detected during maintenance for unassociated reasons. A summary of the actual problem reports for these inflight shutdowns and other events, which were submitted in compliance with paragraph (f) of these special conditions, is contained in Table 1. Had every one of those events resulted in an engine inflight shutdown, the resulting IFSD rates for each engine type would have been significantly higher. Boeing, the engine manufacturers, the FAA, and other regulatory authorities worked together to prevent additional inflight occurrences of these failure types. The actual inflight shutdown rates prove that these early in-service problems were successfully managed to maintain the safety of 777 ETOPS operations worldwide.

TABLE 1

| Date occurred | EE–1 # | Engine type | Affected system | Event description |
|---|---|---|---|---|
| 10/1/1995 | 101 | PW | ENGINE—OIL PUMP | Airplane diversion due to low oil quantity. Engine not shut down, but oil quantity indication went to zero. Related to LP01 problem. |
| 5/19/1996 | 179 | PW | ENGINE | Takeoff aborted due to EGT exceedance. A loose B-nut was found on the PS3 line to the 2.95 bleed valve, which caused erratic operation. |
| 5/30/1996 | 181 | PW | ENGINE | Air turnback due to high oil consumption. Oil wetness noted and corrected from previous flights. Consumption continued to be high. |
| 8/24/1996 | 233 | PW | ENGINE | IFSD—Inflight shutdown due to low oil pressure indication. Plastic shipping cap was left in the LPO1 oil line during installation as part of fleet upgrade. |
| 10/5/1996 | 254 | PW | ENGINE | IFSD—Engine was shut down due to low oil quantity and low oil pressure. Loose main oil line at filter housing. Repeat of oil line shipping cap problem. |
| 10/11/1996 | 261 | PW | ENGINE | Air turnback. Engine experienced high vibration during cruise. Vibration indication exceeded EICAS "Pop-up" level at 4.06. |
| 3/26/1997 | 385 | PW | ENGINE | Twelve quarts of oil lost after a series of training flights due to a leak of an oil line to the fuel/oil cooler. Oil loss took place over approximately 3 hours of flight time. |
| 2/24/1997 | G–65 | GE | ENGINE GEARBOX | Air turnback due to loss of right backup generator followed by engine oil filter EICAS message. Root cause was a failed gearbox backup generator pad bearing. |
| 11/4/1997 | G–84 | GE | ENGINE | IFSD—Engine experienced a power loss during approach. A restart attempt was unsuccessful. Root cause was a sticking bypass valve in the hydromechanical unit (HMU). |
| 11/9/1997 | G–87 | GE | ENGINE | Flight crew heard a surge toward the end of the takeoff roll and tower reported seeing flames from the engine. At 600 feet, the engine surged again. The flight crew reduced power and returned to the airport. |
| 3/12/1998 | G–96 | GE | ENGINE | Pilot heard a bang and a tower reported fire from the tailpipe after power was set for takeoff. The takeoff was aborted. Metal was found in the tailpipe. |
| 6/22/1998 | G–108 | GE | ENGINE | IFSD—After takeoff, the pilot received low oil pressure and low oil quantity indications. The pilot shut down the engine. Two of four oil filter cover bolts were loose due to inserts pulling out of the filter housing casting. |

TABLE 1—Continued

| Date occurred | EE–1 # | Engine type | Affected system | Event description |
|---|---|---|---|---|
| 7/1/1998 | G–110 | GE | ENGINE | IFSD—Uncommanded engine inflight shutdown during cruise at flight level 370. Flight crew noted a rapid loss of oil pressure and N2. Root cause was a Number 3 bearing failure. |
| 7/22/1998 | G–112 | GE | ENGINE | IFSD—During cruise, EICAS indication of low oil quantity. Pilot shut down the engine. Oil filter housing cover bolts were over-torqued resulting in stripped threads in the oil filter housing inserts. |
| 11/20/1998 | G–120 | GE | IDG Installation | IFSD—Crew started return to departure airport due to indication of complete oil loss. Engine was subsequently shut down when oil pressure dropped to 10 psi. The integrated drive generator (IDG) packing was damaged during installation. |
| 10/11/1996 | R–63 | RR | ENGINE—RADIAL DRIVE SHROUD. | Flight diverted after crew observed right engine oil quantity loss approx. 5 hours into flight. Found cracked upper radial drive shroud. |
| 10/11/1996 | R–64 | RR | ENGINE—FUEL NOZZLE | Fuel found leaking from Zone 2 during investigation of R–63 oil loss. Source of fuel leak was a cracked weld on the No. 24 fuel nozzle (top dead center). |
| 10/25/1996 | R–65 | RR | ENGINE—RADIAL DRIVE SHROUD. | After engine shutdown at the gate, the right engine oil quantity indicated 9 qts. Upper radial drive shroud found cracked. |
| 11/12/1996 | R–67 | RR | ENGINE | "ENGINE OIL PRESS R" EICAS message displayed after landing. Engine shut down. Oil pump drive shaft found sheared. |
| 1/26/1997 | R–91 | RR | ENGINE—STEP ASIDE GEARBOX | Low oil quantity caused by crack in step aside gearbox housing approximately 4 to 5 inches long. |
| 5/24/1997 | R–109 | RR | ENGINE | Engine was shut down on takeoff following high power surge. Subsequent borescope inspection revealed HPC rotor 1 blade failure caused by foreign object damage that was consistent with blade damage noted on 5/20/97 inspection. |
| 7/7/1997 | R–112 | RR | ENGINE | Aircraft diversion caused by excessive oil leakage due to incorrectly installed lower bevel box O-ring seal following radial drive shaft replacement. |
| 7/26/1997 | | RR | ENGINE | Aircraft diversion due to high oil consumption. Not related to step aside gearbox housing cracking problem. |
| 9/16/1997 | R–113 | RR | ENGINE | IFSD—Engine shutdown at 400 feet after takeoff due to high-pressure compressor failure. |

### Reliability of 737 Next Generation (737NG)

As part of the process of reviewing existing methods for ETOPS approval, the FAA also analyzed data from the initial in-service period for Boeing Model 737–600, 737–700, and 737–800 airplanes powered by CFM56–7 engines. As a group, these variants of the Model 737 were referred to as the 737 Next Generation, or "737NG." Even though early ETOPS special conditions were not issued, the 737NG was chosen for this analysis because it followed an ETOPS approval process program that was very similar to what Boeing is proposing for the Model 777–300ER airplane. Several months after entry into service, however, the 737NG did not exhibit an acceptable level of propulsion system reliability for ETOPS approval. Early ETOPS special conditions were intended to identify a design not suitable for ETOPS approval prior to type certification.

Boeing proposed in 1994, prior to the Model 777's type certification, that the 737NG be certified as an early ETOPS airplane in a manner similar to the Model 777, but without all of the testing required in the Model 777 special conditions. Since the success of the Model 777 program was still an unknown at the time of Boeing's request for the 737NG, the FAA did not agree to Boeing's proposed changes to the airplane demonstration test requirement. Early ETOPS special conditions for the 737NG were never issued. Even so, Boeing proceeded with those elements of the Model 777 special conditions that the company had proposed to accomplish. These included the relevant experience assessment, design requirements assessment, 3000-cycle propulsion system ground test, and enhanced problem reporting and resolution.

Although the FAA never issued special conditions for the 737NG program, we agreed that the elements from the Model 777 special conditions that Boeing did accomplish justified a reduction in the service experience normally required for ETOPS type design approval, as outlined in AC 120–42A. Boeing presented the following information in support of its request for a reduction in service experience required for ETOPS certification.

- "Design involved lessons learned, similar to 777 Early ETOPS process.
- "APU most thoroughly tested in Allied Signal history—more than 3000-cycle ground test, including hot/cold exposure.
- "Propulsion system subjected to 3000-cycle ground test, intentionally unbalanced, with three 180-minute diversion cycles.
- "Flight testing included a Southwest Airlines 50-cycle demonstration, using airline crews and maintenance. During the Function and Reliability testing, 61 ETOPS cycles were conducted with three single engine 180-minute diversions.
- "A proposed ETOPS problem tracking and resolution system, similar to that used on the 777 that will remain in effect until the fleet attains 250,000 engine fleet hours."

In its analysis of the 737NG approval process, the FAA noted that these program elements, at the time, had been accomplished with good results. The engines and airplane system had performed well during the test programs, with results comparable to the Model 777 test fleet (all engines). The in-service 737NG airplanes had achieved a 98.96% dispatch reliability rate after 45 days in service, better than any previous Boeing airplane. Boeing's proposal included an accumulation of 15,000 fleet engine hours of service experience before requesting ETOPS approval. At that time, there would be three airplanes with more than 1000 flight cycles, the total 737NG fleet would have accumulated more than 20,000 flight cycles, and the high-time airplane/engines would have more than 2000 flight cycles. During the 737NG approval process, the FAA concurred with Boeing's proposal to require 15,000 hours of service experience based on the following:

- "The FAA has agreed to the concept that ETOPS at entry into service can be achieved by appropriate design and testing as evidenced by the 777 special conditions, which have now been validated through actual service experience,
- "The 737NG/CFM56–7B airframe/engine configuration is a derivative/evolution of the existing 737–300/400/500 which through extensive service experience has demonstrated exceptional reliability, and, is approved for 120-minute ETOPS,
- "Except for the lack of a dedicated 1000-cycle ETOPS test program, design and testing of the 737NG/CFM56–7B mirrors what was done on the 777 to satisfy Early-ETOPS approval,
- "The additional 15,000 engine hour in-service evaluation plus the fact that three 180-minute single engine diversions were performed during Function and Reliability testing more than compensates for the omission of a 1000-cycle test,
- "The satisfactory performance of the 737NG/CFM56–7B airframe/engine configuration during the certification testing, and
- "The proven ability of Boeing to satisfactorily manage ETOPS airworthiness of the 777 fleet in the face of problems encountered in service. The 737NG proposal includes a problem tracking and resolution system that will remain in effect for a full 250,000 engine hours."

The Model 737–700 was the first variant of the 737NG to enter service, in December 1997. Section 4.2 of the FAA-approved 120-minute ETOPS Airplane Assessment Report for the Model 737–700, Boeing Document Number D033A003, Revision B, states that the Model 737–700 was designed, manufactured, and tested for extended range operations at entry into service. The following additional supporting statements were also made.

a. "The 737–700 airplanes have been designed and manufactured based on regimented application of lessons learned from other ETOPS program experience as well as the in-service experience of earlier 737 models.

b. "The 737–700 airplane was subjected to a rigorous test program as described in following paragraphs. Production equivalent equipment where appropriate, was used to support test objectives. Equipment was production equivalent as defined at the time of the test."

No significant propulsion system design problems occurred during any of the testing described above. Two inflight shutdowns did occur during certification flight testing. One was caused by an indication fault within the electronic engine control that was corrected with a simple software change. The other was caused by an inappropriate flight test condition.

Boeing stated in the Model 737–700's 120-minute ETOPS Airplane Assessment Report that the fleet reached the 15,000-hour mark during the month of April 1998. At that time, there had been no inflight shutdowns in service. However, on May 9, 1998, before the FAA had completed its assessment of the airplane for ETOPS approval, the first inflight shutdown occurred. A second inflight shutdown occurred during the month of May, and the fleet exceeded the accepted 120-minute ETOPS standard of .05 inflight shutdowns per 1000 engine hours. Three inflight shutdowns occurred in June 1998, and one in July 1998. The peak inflight shutdown rate during this period was .085/1000 hours at the end of June 1998, which clearly did not meet the minimum standard for ETOPS type design approval.

The six engine inflight shutdowns were caused by three different failure root causes. Boeing and CFMI, the engine manufacturer, undertook aggressive actions to correct each of these design problems as they occurred. The high rate of fleet hourly accumulation during this period, however, resulted in new ETOPS reportable events occurring faster than the known problems could be corrected. This delayed FAA consideration of the Model 737–700 for ETOPS approval until the problems were brought under control. A consequence of the high rate of fleet hourly accumulation was that, with no additional inflight shutdowns, the inflight shutdown rate decreased rapidly and was within the ETOPS type design approval standard by the end of 1998. The FAA approved the Model 737–600/–700/–800 (737NG) for 120-minute ETOPS approximately one year after entry into service with over 300,000 engine-hours of service experience and an inflight shutdown rate of .020/1000 hours.

## Conclusions From Comparison of Model 777 and 737NG

In comparing the 737NG experience with that of the Model 777, the FAA observes that there is a fleet hourly accumulation rate above which aggressive problem management to qualify for early ETOPS certification may become resource prohibitive. Therefore, when certifying an airplane/engine combination that will be entering service with a high production rate resulting in a rapid accumulation of engine hours, manufacturers may find it more cost-effective to use the service experience criteria of AC 120–42A than to follow the rigorous requirements of the early ETOPS process.

As stated earlier, the Model 777 ETOPS special conditions were designed to "result in a level of airplane reliability that is equivalent to the level of reliability previously found to be acceptable based upon service experience." As previously noted, the current Model 777 ETOPS special conditions consist of five main elements needed to provide adequate compensation for the service experience normally required for 180-minute ETOPS eligibility described in AC 120–42A. No single element is considered sufficient by itself, but the FAA has found that the five elements combined provide an acceptable substitute for actual airline service experience. The five elements are:

1. Design for reliability.
2. Lessons learned.
3. Test requirements.
4. Demonstrated reliability.
5. Problem tracking system.

Even though the overall objective is a level of airplane and propulsion system reliability that is equivalent to that achieved through service experience, we considered the uncertainty of actually achieving that goal in the development of these special conditions. The first three elements focus on designing an airplane to eliminate sources of engine inflight shutdowns and diversions to the greatest practical extent. This is accomplished by an overall design philosophy to preclude sources of engine inflight shutdowns and diversions using the manufacturer's experience with earlier designs to identify successful and unsuccessful design features. The additional testing required by the special conditions focuses on exposing the design to conditions that in the past have contributed to engine failures, such as high engine vibration or repeated exposure to humid and inclement weather on the ground followed by long-range operation at the extreme cold temperatures at high altitude. These design and test elements do not assure a level of reliability that is equivalent to that based on service experience. Instead, they result in an acceptable level of inherent design reliability from which we can successfully manage ETOPS fleet safety once the airplane enters service.

The fourth element, "demonstrated reliability," provides the FAA with a standard by which to judge a design against existing ETOPS-approved airplanes. This gives the FAA a standard from which to withhold ETOPS approval from airplanes that experience significant failures during certification testing, demonstrating that they are not suitable for ETOPS. However, it does not by itself guarantee that designs showing no significant failures during flight testing will have adequate reliability for ETOPS.

To manage fleet safety after ETOPS approval, we rely on the fifth element of the ETOPS special conditions. Paragraph (f) of the special conditions requires a problem tracking system for the prompt identification of those problems that could impact ETOPS safety. The FAA uses this enhanced problem reporting system to work with the airplane and engine manufacturers to aggressively manage and correct significant design problems identified after ETOPS approval. This requirement is the "catch-all" for those design flaws that are not caught by the other elements of the special conditions during airplane design and testing.

The first in-service inflight shutdown of the Model 737–700 variant of the 737NG did not occur until the fleet had accumulated approximately 30,000 engine-hours. The FAA could not have expected that a complete 1000-cycle airplane demonstration test would have had a better chance of discovering the types of problems that occurred in service on the 737NG than the nearly 30,000 hours accumulated on multiple airplanes and engines prior to the first inflight engine shutdown. While significant propulsion system failures occurring during type certification testing, including the additional testing required by the ETOPS special conditions, may indicate that a design is not yet ready to enter ETOPS service, the 737NG experience shows that the reverse cannot be stated with a significant degree of confidence. A lack of significant failures during certification testing does not in itself assure an ETOPS-suitable design at entry into service.

The Model 777 experience shows that a relatively small fleet can be managed successfully during the initial service period based on the data provided by the enhanced problem tracking system required by special conditions paragraph (f). The 737NG experience shows that a larger fleet may require a much more resource-intensive fleet management program. However, had the 737NG received its ETOPS approval as originally proposed prior to its first inflight shutdown in service, the problem reporting system that Boeing had in place gave the FAA timely identification of the problems causing inflight shutdowns so that we could have required appropriate corrective action through the airworthiness directive process to maintain ETOPS safety. Such airworthiness directives could have required the operators to incorporate design changes prior to further ETOPS flight or withdrawn ETOPS approval.

Although we cannot be certain that an airplane approved for ETOPS under the special conditions will have the same maturity at original type certification as an airplane that we have approved based on service experience, our experience with the Model 777 and the 737NG confirms that the five elements of the special conditions, in conjunction with the FAA's normal safety oversight processes, adequately compensate for that uncertainty.

The changes to the engine demonstration test and the airplane demonstration test include enhanced post-test inspection requirements and are intended to address our experience with the original ETOPS special conditions, which identified several shortcomings in the original test requirements. These changes are needed to more clearly focus the testing on the objective of exposing the engines and airplane to those operating conditions that give us the best chance of identifying underlying major design flaws that could jeopardize ETOPS safety in service. These changes provide a better evaluation of the design than the existing requirements, including the 1000-cycle airplane flight test as previously conducted.

The FAA therefore is changing the purpose of the airplane demonstration test requirement of paragraph (e)(7) from a demonstration of reliability to a demonstration of airplane capability under the types of ETOPS operational and diversion scenarios discussed in this document. The requirements of that airplane demonstration test have been changed accordingly.

## Aged Engine Requirement

In response to Boeing's request, the FAA is deleting paragraph (e)(7)(ii), which currently requires the installation of the engine and propulsion system from the 3000-cycle engine demonstration test required by paragraph (e)(6), or another suitable aged engine, on the 1000-cycle demonstration test airplane for a minimum of 500 cycles. Boeing provided the following information in support of its request for deleting the aged engine requirement.

Review of the aged engine data from the baseline Model 777 program showed that the nature of the findings, which occurred on the aged engines, was not related to the aging of the engines. Instead, the findings were related to the variation that occurs during manufacturing, assembly, etc. This lesson learned on the aged engines is consistent for each engine manufacturer's baseline Model 777 ETOPS test program.

The lack of findings related to the aging of an engine in the ETOPS flight test program has been demonstrated three times. Based on this consistent demonstration, there is no further need to maintain the requirement for an aged engine in the flight test program. Additionally, flying more airplane/engine combinations will provide increased opportunities for evaluating potential problem areas.

Boeing reported nine events (EE–1 Reports) which occurred during the aged engine portions of the 1000-cycle tests for the three baseline engine types, with an explanation of why the aged engine requirement was not necessary in order to identify each failure. Boeing stated that the lack of any EE–1 reports from the post-test inspections is an indication that there were no significant findings from the aged engine testing.

### *FAA Analysis of Boeing's Proposal*

The original intent of the aged engine requirement was to expose the 3000-cycle test engine, or equivalent, to inflight conditions that cannot be simulated in a ground test environment. This would further validate the propulsion system design out to an age beyond 3000 cycles. Boeing data available at the time the ETOPS special conditions were developed indicated that 95% of all new significant failure modes occur on airplane propulsion systems with 3000 cycles or less. That concept is still valid. The lack of specific findings on the aged engine during the 1000-cycle airplane validation test only confirms the validity of the Reliability Assessment Board's conclusion that those baseline Model 777 engine installations were suitable for 180-minute ETOPS. A number of significant events during the

1000-cycle test program would have jeopardized that conclusion.

The question that the FAA considers to be more relevant is whether or not a greater benefit would come from a more thorough teardown inspection and analysis of the 3000-cycle test engine and propulsion system hardware than from this additional level of validation. In this regard, the FAA agrees with Boeing that other test articles may provide sufficient experience to uncover the majority of age-related problems independent of the additional exposure provided by the 1000-cycle test inflight exposure.

In consideration of the need to perform a detailed analysis of the 3000-cycle test engine and the extra expense of using a parallel 3000-cycle test engine as "another suitable aged engine," the FAA agrees that the requirement for installation of an aged engine on the ETOPS test airplane can be eliminated provided significantly improved processes are used to analyze the condition of the 3000-cycle test and airplane demonstration test engines at the conclusion of these tests, as reflected in the revised paragraphs (e)(6) and (e)(7).

## Miscellaneous Revisions

We are also incorporating the following revisions to the special conditions.

Re-identification of paragraph (e)(7)(iii) as (e)(7)(iv) and revision of the requirement that the 1000-cycle test airplane be operated and maintained using the recommended operations and maintenance procedures to recognize that more than one test airplane may be used.

Replacement of the reference to the "1000-cycle ETOPS test" with "Airplane Demonstration Test" in paragraph (g)(2) in order to be consistent with the changes to paragraph (e)(7).

Replacement of the reference to the "1000-flight-cycle ETOPS test" with "Airplane Demonstration Test" in paragraph (h)(1) in order to be consistent with the changes to paragraph (e)(7).

## Discussion of Comments

Notice of Proposed Special Conditions No. 25–03–04–SC for the Boeing Model 777 series airplanes was published in the **Federal Register** on June 13, 2003 (68 FR 35335), with a correction to the original publication issued on June 23, 2003 (68 FR 37205). Four comments were received, and all of them concur with the special conditions as proposed. Therefore, the special conditions are adopted as proposed.

## Special Conditions Revisions

For clarity, the revised sections of the original Special Conditions No. 25–ANM–84 are printed below. The final special conditions are printed in their entirety, with revisions incorporated, at the end of this document. Portions of the special conditions that remain unchanged are discussed in the preamble to the original Special Conditions No. 25–ANM–84 (59 FR 28234).

## Revisions to Special Conditions No. 25–ANM–84

(e)(6) Engine Demonstration Test. One engine of each type to be certificated with the airplane must complete 3000 equivalent airplane operational cycles. The engine must be configured with a complete airplane nacelle package for this demonstration, including engine-mounted equipment except for any configuration differences necessary to accommodate test instrumentation and test stand interfaces with the engine nacelle package. At completion of the engine demonstration test, the engine and airplane nacelle test hardware must undergo a complete teardown inspection. This inspection must be conducted in a manner to identify abnormal conditions that could become potential sources of engine inflight shutdown. An analysis of any abnormal conditions found must consider the possible consequences of similar occurrences in service to determine if they may become sources of engine inflight shutdowns, power loss, or inability to control engine thrust. Any potential sources of engine inflight shutdown identified must be corrected in accordance with paragraph (g)(2).

(e)(7) Airplane Demonstration Test. In addition to the function and reliability testing required by 14 CFR 21.35(b)(2), for each engine type to be certificated with the airplane, one or more airplanes must complete flight testing which demonstrates that the aircraft, its components, and equipment, are capable of and function properly during long range operations and airplane diversions, including engine-inoperative diversions.

(i) The flight conditions must expose the airplane to representative operational variations based on the airplane's system and equipment design and the intended use of the airplane including:

(A) Engine inoperative maximum length diversions to demonstrate the airplane and propulsion system's capability to safely conduct a diversion.

(B) Non-normal conditions to demonstrate the airplane's capability to safely divert under worst case probable system failure conditions.

(C) Simulated airline operations including normal cruise altitudes, step climbs, and maximum expected flight durations out of and into a variety of departure and arrival airports.

(D) Diversions to worldwide airports representative of those intended as operational alternates.

(E) Repeated exposure to humid and inclement weather on the ground followed by long-range operation at normal cruise altitude.

(ii) The flight testing must validate expected airplane flying qualities and performance considering engine failure, electrical power losses, etc. The testing must demonstrate the adequacy of remaining airplane systems and performance and flightcrew ability to deal with an emergency considering remaining flight deck information following expected failure conditions.

(iii) The engine-inoperative diversions must be evenly distributed among the number of engines in the applicant's flight test program.

(iv) The test airplane(s) must be operated and maintained using the recommended operations and maintenance manual procedures during the airplane demonstration test.

(v) At completion of the airplane demonstration test, the test engines and engine-mounted equipment must undergo a complete external on-wing visual inspection. The engines must also undergo a complete internal visual inspection. These inspections must be conducted in a manner to identify abnormal conditions that could become potential sources of engine inflight shutdowns. An analysis of any abnormal conditions found must consider the possible consequences of similar occurrences in service to determine if they may become sources of engine inflight shutdowns. Any potential sources of engine inflight shutdown that are identified must be corrected in accordance with paragraph (g)(2).

(g)(2) The FAA Reliability Assessment Board will review and evaluate the data from the problem tracking and resolution system to establish compliance with the requirements of paragraph (h). The board will evaluate the overall type design for ETOPS suitability as demonstrated in flight test, and the Airplane Demonstration Test,

(h)(1) For the engine and airplane systems, the type and frequency of failures that occur during the airplane flight test program and the Airplane Demonstration Test must be consistent with the type and frequency of failures or malfunctions that would be expected to occur on presently certified 180-minute ETOPS airplanes. The failures to be considered are those associated with system components that conform to the type design requested for certification. The Reliability Assessment Board will determine compliance with this requirement based on an evaluation of the problem reporting system data, considering system redundancies, failure significance, problem resolution, and engineering judgment.

## Applicability

As discussed above, these special conditions are applicable to Boeing Model 777 series airplanes. Should The Boeing Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as flight testing addressed by the changes incorporated into these final special conditions is imminent for the Boeing Model 777–200LR and 777–300ER series airplanes, the FAA finds that good cause exists to make these special conditions effective upon issuance.

## Conclusion

This action affects only certain novel or unusual design features on Boeing Model 777 series airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

## List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

## The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following amended special conditions are issued as part of the type certification basis for Boeing Model 777 series airplanes.

In addition to the airworthiness requirements of 14 CFR part 25, the Model 777 airplane must comply with the following requirements in order to be eligible for Extended Range Operation with Two-Engine Airplanes (ETOPS) without the requisite operating experience specified in Advisory Circular (AC) 120–42A:

(a) *Introduction.* An approved ETOPS Type Design Assessment Plan covering the engine and each applicable airplane system must be established. The specific methods that will be used to substantiate compliance with the requirements of these special conditions must be defined in the plan. Specific systems that will undergo the complete analysis, testing, and development program tracking defined in paragraph (c) of these special conditions must be identified. Other airplane systems that may contribute to the overall safety of an ETOPS operation, but that do not warrant the rigorous type design requirements and relevant experience assessments defined in paragraph (c) of these special conditions, must be identified and agreed to by the FAA. Compliance must be shown for these other systems with all provisions of these special conditions, except paragraph (c). In showing compliance with these special conditions, tests and analyses conducted to substantiate compliance with the basic airworthiness standards of part 25 may be referenced, if applicable.

(b) *Engine Assessment.* (1) The ETOPS eligibility of the engine must be determined specifically for the airplane installation for which early ETOPS type design approval is requested.

(2) Procedures for an engine condition monitoring program must be defined and validated at the time of ETOPS type design approval. The engine condition monitoring program must be able to predict when an engine is no longer capable of providing, within certified engine operating limits, the maximum thrust required for a single engine diversion.

(c) *ETOPS Type Design Assessment.* (1) *Design Requirements Assessment.* 14 CFR part 25, including applicable amendments, defines most of the requirements necessary to design an airplane that is suitable for ETOPS operation, as long as the ETOPS mission is considered in applying these requirements for all anticipated dispatch configurations. In addition to these requirements, the propulsion system must be designed to preclude failures or malfunctions that could result in an engine inflight shutdown. The applicant must identify and list methods of compliance for each of the applicable ETOPS requirements, including those specific part 25 requirements for which methods of compliance relative to the ETOPS mission are different from those traditionally used for two-engine airplanes. Paragraph (c)(3) of these special conditions lists certain design feature categories that may be affected by a consideration of the ETOPS mission in the design of these systems. The effects of the applicable ETOPS requirements on the design of any of those design feature categories listed in paragraph (c)(3) must be specifically addressed by this assessment.

(2) *Relevant Experience Assessment.* For each system covered by the ETOPS Type Design Assessment, there must be an assessment of the relevant design, manufacturing, and operational problems experienced on previous airplanes built by the applicant. The assessment must include the applicable relevant service experience of vendor supplied systems or, to the extent possible, the service experience of components on aircraft built by other manufacturers. Specific corrective actions taken to preclude similar problems from occurring on the new airplane must be identified.

(3) *Design Features.* (i) The applicant must define any design features implemented to comply with the design requirements listed in paragraph (c)(1). Consideration of the following design feature categories must be specifically addressed:

(A) Airplane capabilities and capacities of the ETOPS mission;

(B) Fuel system integrity, including consideration of uncontained main engine rotor burst and fuel availability as affected by cross-feed capability and electrical power to pumps and other components;

(C) Fuel quantity indication to the flightcrew, including alerts that consider the fuel required to complete the mission, abnormal fuel management or transfer between tanks, and possible fuel leaks between the tanks and the main engines;

(D) Communication systems for the ETOPS environment;

(E) Navigation systems for the ETOPS environment;

(F) Minimum single engine cruise altitude capability; and

(G) Failure tolerant designs of cockpit indicating systems or avionics systems to prevent unnecessary airplane diversions.

(ii) The applicant must define the specific design features used to address problems identified in the relevant service experience assessment of paragraph (c)(2).

(4) *Test Features.* The applicant must define specific new tests, or enhanced tests, that will be used to assure engine and airplane system design integrity. These test features may be derived from the requirements assessment of paragraph (c)(1) and the relevant service experience assessment of paragraph (c)(2).

(5) *Analysis Features.* The applicant must define specific new analyses, or enhanced analyses, that will be used to assure engine and airplane system design integrity. These analysis features may be derived from the requirements assessment of paragraph (c)(1) and the relevant service experience assessment of paragraph (c)(2).

(6) *Manufacturing, Maintenance, or Operational (Other) Features.* The applicant must define specific new, or enhanced, manufacturing processes or procedures, and maintenance or operational procedures that are being implemented to assure engine and airplane system integrity. These "other" features may be derived from the requirements assessment of paragraph (c)(1) of this section and the relevant service experience assessment of paragraph (c)(2).

(d) *Additional ETOPS Analysis Requirements.* (1) *Performance and Failure Analyses.* Engine and airplane performance and failure analyses required for certification must be expanded to consider ETOPS mission requirements, including exposure times associated with a 180-minute single-engine diversion and a subsequent 15-minute hold in the terminal airspace at the diversion airport. Consideration must be given to crew workload and operational implications of continued operation with failure effects for an extended period of time. The rationale and all assumptions used in the analyses must be documented, justified, and validated, including maintenance interval and maintainability assumptions.

(2) *Maintenance and Flight Operations Evaluation.* The Type Design Assessment Plan must contain a program to systematically detect and correct problems occurring as a result of improper execution of maintenance or flight operations. Corrective actions for any problems found must be identified and implemented through the Problem Tracking and Resolution System required by paragraph (f).

(3) *Manufacturing Variability.* The Type Design Assessment Plan must contain a program to minimize potential manufacturing problems. The plan should address early validation of tooling and procedures, as well as any related problems, as identified in paragraph (c)(2). Corrective actions for problems that impact the safe operation of the airplane must be identified and implemented through the problem tracking and resolution system required by paragraph (f).

(e) *Additional ETOPS Test Requirements.* As part of, or in addition to, the testing identified in paragraph (c)(4), the following specific test requirements apply:

(1) *Configuration Requirements.* All testing defined in paragraph (e) must be conducted with the configuration proposed for certification, and must include sufficient interfacing system hardware and software to simulate the actual airplane installation.

(2) *Completion of Applicable Failure Analyses.* Failure analyses required for ETOPS type design approval must be submitted to the FAA prior to the start of the testing defined in paragraph (e).

(3) *Vibration Testing.* Vibration testing must be conducted on the complete installed engine configuration to demonstrate that no damaging resonances exist within the operating envelope of the engine that could lead to component, part, or fluid line failures. The complete installed engine configuration includes the engine, nacelle, engine mounted components, and engine mounting structure up the strut to wing interface.

(4) *New Technology Demonstration Testing.* Testing must be conducted to substantiate the suitability of any technology new to the applicant, including substantially new manufacturing techniques.

(5) *Auxiliary Power Unit Demonstration Test.* If requesting credit for APU backup electrical power generation, one auxiliary power unit (APU), of the type to be certificated with the airplane, must complete 3000 equivalent airplane operational cycles.

(6) *Engine Demonstration Test.* One engine of each type to be certificated with the airplane must complete 3000 equivalent airplane operational cycles. The engine must be configured with a complete airplane nacelle package for this demonstration, including engine-mounted equipment except for any configuration differences necessary to accommodate test instrumentation and test stand interfaces with the engine nacelle package. At completion of the engine demonstration test, the engine and airplane nacelle test hardware must undergo a complete teardown inspection. This inspection must be conducted in a manner to identify abnormal conditions that could become potential sources of engine inflight shutdown. An analysis of any abnormal conditions found must consider the possible consequences of similar occurrences in service to determine if they may become sources of engine inflight shutdowns, power loss, or inability to control engine thrust. Any potential sources of engine inflight shutdown identified must be corrected in accordance with paragraph (g)(2).

(7) *Airplane Demonstration Test.* In addition to the function and reliability testing required by 14 CFR 21.35(b)(2), for each engine type to be certificated with the airplane, one or more airplanes must complete flight testing which demonstrates that the aircraft, its components, and equipment, are capable of and function properly during long range operations and airplane diversions, including engine-inoperative diversions.

(i) The flight conditions must expose the airplane to representative operational variations based on the airplane's system and equipment design and the intended use of the airplane including:

(A) Engine inoperative maximum length diversions to demonstrate the airplane and propulsion system's capability to safely conduct a diversion.

(B) Non-normal conditions to demonstrate the airplane's capability to safely divert under worst case probable system failure conditions.

(C) Simulated airline operations including normal cruise altitudes, step climbs, and maximum expected flight durations out of and into a variety of departure and arrival airports.

(D) Diversions to worldwide airports representative of those intended as operational alternates.

(E) Repeated exposure to humid and inclement weather on the ground followed by long-range operation at normal cruise altitude.

(ii) The flight testing must validate expected airplane flying qualities and performance considering engine failure, electrical power losses, etc. The testing must demonstrate the adequacy of remaining airplane systems and performance and flightcrew ability to deal with an emergency considering remaining flight deck information following expected failure conditions.

(iii) The engine-inoperative diversions must be evenly distributed among the number of engines in the applicant's flight test program.

(iv) The test airplane(s) must be operated and maintained using the recommended operations and maintenance manual procedures during the airplane demonstration test.

(v) At completion of the airplane demonstration test, the test engines and engine-mounted equipment must undergo a complete external on-wing visual inspection. The engines must also undergo a complete internal visual inspection. These inspections must be conducted in a manner to identify abnormal conditions that could become potential sources of engine inflight shutdowns. An analysis of any abnormal conditions found must consider the possible consequences of similar occurrences in service to determine if they may become sources of engine inflight shutdowns. Any potential sources of engine inflight shutdown that are identified must be corrected in accordance with paragraph (g)(2).

(f) *Problem Tracking System.* An FAA-approved problem tracking system must be established to address problems encountered on the engine and airplane systems that could affect the safety of ETOPS operations.

(1) The system must contain a means for the prompt identification of those problems that could impact the safety of ETOPS operations in order that they may be resolved in a timely manner.

(2) The system must contain the process for the timely notification to the responsible FAA office of all relevant problems encountered, and corrective actions deemed necessary, in a manner that allows for appropriate FAA review of all planned corrective actions.

(3) The system must be in effect during the phases of airplane development that will be used to assess early ETOPS eligibility, and for at least the first 250,000 engine-hours of fleet operating experience after the airplane enters revenue service. For the revenue service period, this system must define the sources and content of in-service data that will be made available to the manufacturers in support of the problem tracking system. The content of the data provided must include, as a minimum, the data necessary to evaluate the specific cause of all service incidents reportable under Sec. 21.3(c) of part 21, in addition to any other failure or malfunction that could prevent safe flight and landing of the airplane, or affect the ability of the crew to cope with adverse operating conditions.

(4) Corrective actions for all problems discovered during the development and certification test program that could affect the safety of ETOPS operations, or the intended function of systems whose use is relied upon to accomplish the ETOPS mission, must be identified and implemented in accordance with paragraph (g)(2). If, during the certification program, it is discovered that a fault has developed that requires significant rework of manufacturing, maintenance, and/or operational procedures, the FAA will review the ETOPS suitability of the affected system and interfacing hardware and identify any additional actions to be accomplished to substantiate the corrective actions.

(5) For each engine type to be certificated with the airplane, the system must include provisions for an accelerated engine cyclic endurance test program that will accumulate cycles on one representative production-equivalent propulsion system in advance of the high-cycle revenue fleet engine. This test program will assist the applicant and the FAA in identifying and correcting problems before they occur in revenue service. This program must be in place for, at a minimum, the first 250,000 engine-hours of fleet operating experience after the airplane enters revenue service. The representative production-equivalent propulsion system may, at the manufacturer's discretion, be used for other fleet support activities.

(g) *Reliability Assessment Board.* (1) An FAA Reliability Assessment Board will be formed to evaluate the suitability of the airplane for ETOPS approval and make a recommendation to the Manager, Transport Airplane Directorate, regarding the adequacy of the type design for 180-minute ETOPS operation. The purpose of this board will be:

(i) To periodically review the development and certification flight test program accomplishments from both type design and operational perspectives;

(ii) To ensure that all specific problems, as well as their implications on the effectiveness of the Early ETOPS process, are resolved; and

(iii) To assess the design suitability for ETOPS. The board will consider design, maintenance, manufacturing, and operational aspects of the type design when finding suitability for ETOPS approval.

(2) The FAA Reliability Assessment Board will review and evaluate the data from the problem tracking and resolution system to establish compliance with the requirements of paragraph (h). The board will evaluate the overall type design for ETOPS suitability as demonstrated in flight test, and the Airplane Demonstration Test, considering all resolutions of problems. The following suitability criteria will be applied:

(i) Sources of engine shutdown/thrust loss, engine anomalies, or airplane system problems that have a potential significant adverse effect on in-service safety will be resolved.

(ii) Resolutions are identified for all items in paragraph (i) with analysis and/or testing to show all resolutions are effective. These resolutions may be accomplished through one or more of the following categories:

Design change
Operating procedure revision
Maintenance procedure revision
Manufacturing change

(iii) The resolutions of paragraphs (i) and (ii) will be incorporated prior to entry into service.

(iv) The engine shutdown history of the test program indicates that the engine reliability of the configuration is suitable for the ETOPS approval being considered.

(v) Where interim resolutions having operational impact are defined, the cumulative effect must be determined to be acceptable.

(vi) System or component failures experienced during the program are consistent with the assumptions made in the failure analyses.

(h) *Reliability Demonstration Acceptance Criteria.*

(1) For the engine and airplane systems, the type and frequency of failures that occur during the airplane flight test program and the Airplane Demonstration Test must be consistent with the type and frequency of failures or malfunctions that would be expected to occur on presently certified 180-minute ETOPS airplanes. The failures to be considered are those associated with system components that conform to the type design requested for certification. The Reliability Assessment Board will determine compliance with this requirement based on an evaluation of the problem reporting system data, considering system redundancies, failure significance, problem resolution, and engineering judgment.

(2) Corrective action for any of the following classes of problems occurring during the testing identified in paragraph (h)(1) that requires a major system redesign would delay ETOPS type design approval, or result in approval of a reduced single-engine diversion time, unless corrective action has been substantiated to, and accepted by, the FAA Reliability Assessment Board:

(i) Any source of unplanned inflight shutdown or loss of thrust.

(ii) Any problem that jeopardizes the safety of an airplane diversion.

(3) The FAA Reliability Assessment Board must determine that the suitability criteria of paragraph (g)(2) have been met.

(i) *Demonstration of Compliance.* In order to be eligible for 180-minute ETOPS type design approval, the following conditions apply:

(1) The engine assessment has been completed and eligibility for ETOPS operation has been approved by the FAA Engine Certification Office.

(2) All design, manufacturing, maintenance, operational, and other features necessary to meet the ETOPS requirements of paragraph (c)(1), and to resolve the problems identified in

paragraph (c)(2), have been successfully implemented.

(3) The identified test and analysis features in paragraph (c)(4) and (c)(5) have been shown to be effective in validating the successful implementation of the features in paragraph (i)(2).

(4) The additional analysis requirements of paragraph (d) have been completed and the results have been approved.

(5) The additional test requirements of paragraph (e) have been successfully completed.

(6) All significant problems identified in accordance with paragraph (f) have been resolved, and fixes substantiated to be effective have been implemented.

(7) The accelerated engine cyclic endurance test program of paragraph (f)(5) must be in place.

(8) Compliance with the reliability demonstration acceptance criteria of paragraph (h) has been found by the Reliability Assessment Board.

Issued in Renton, Washington, on October 8, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–26378 Filed 10–17–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF COMMERCE

## Bureau of the Census

## 15 CFR Part 30

**[Docket Number 030820208–3208–01]**

**RIN 0607–AA39**

## Automated Export System Mandatory Filing for Exports (Reexports) of Rough Diamonds

**AGENCY:** Bureau of the Census, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Census Bureau (Census Bureau) is amending the Foreign Trade Statistics Regulations (FTSR) to incorporate requirements for the mandatory electronic filing via the Automated Export System (AES) of exports of rough diamonds classified under Harmonized System subheadings 7102.10, 7102.21, and 7102.31 in accordance with the Clean Diamond Trade Act, which authorizes the President to implement the Kimberley Process Certification Scheme (the Kimberley Process) in the United States. The Kimberley Process sets forth an international certification scheme for trade in rough diamonds to combat the use of diamonds to support conflict in Africa and other world areas. This requirement is mandated by the Clean Diamond Trade Act. Executive Order 13312 of July 29, 2003, implements the Clean Diamond Trade Act. This rule provides for AES mandatory filing in the FTSR.

**EFFECTIVE DATE:** This rule is effective October 20, 2003.

**FOR FURTHER INFORMATION CONTACT:** C. Harvey Monk, Jr., Chief, Foreign Trade Division, U.S. Census Bureau, Room 2104, Federal Building 3, Washington, DC 20233–6700, (301) 763–2255, by fax (301) 457–2645, or by e-mail: *c.harvey.monk.jr@census.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

*Reporting Requirements*

The Census Bureau is responsible for collecting, compiling, and publishing export trade statistics for the United States under the provisions of Title 13, United States Code (U.S.C.), chapter 9, section 301. The paper Shipper's Export Declaration (SED) and the AES are the primary media used for collecting such trade data, and the information contained therein is used by the Census Bureau for statistical purposes only. This information is exempt from public disclosure under the provisions of Title 13, U.S.C., chapter 9, section 301(g). The SED and AES records also are used for export control purposes under Title 50, U.S.C., and Title 22, U.S.C., to detect and prevent the export of certain critical or sensitive commodities to unauthorized destinations or end-users.

*Conflict Diamonds*

On December 1, 2000, the United Nations General Assembly adopted Resolution 55/56. Provisions of Resolution 55/56 charged the international community with developing proposals and procedures to address the potential negative impact of illicit trade in rough diamonds on world peace, safety, and security. Trade in rough diamonds has in the past been linked to the finance of armed conflicts in certain world areas, specifically in some African nations (referred to as "conflict" diamonds). Funds derived from the sale of rough diamonds have been used by rebel groups to finance military activities, overthrow legitimate governments, commit atrocities against unarmed civilians, and subvert international efforts to promote peace and stability within and among the governments of nations.

This trade, if allowed to continue, poses a serious threat to the economies of many producing, processing, exporting, and importing states. Representatives of nations with a stake in resolving the problem of "conflict" diamonds, including the United States, along with members of the diamond industry and concerned nongovernmental institutions, have worked together for nearly 3 years to develop a certification scheme, designed to control the worldwide movement of illicit rough diamonds. This process, which culminated in the Interlaken Declaration of November 5, 2002, launched the Kimberley Process. Under the Kimberley Process, participating nations or entities, in cooperation with industry, will establish internal control systems designed to eliminate "conflict" diamonds from shipments of rough diamonds imported into and exported from their territories.

Public Law 108–19, April 25, 2003, 117 stat. 631, known as the "Clean Diamond Trade Act," implements the Kimberley Process in the United States by authorizing the President to prohibit the importation into or the exportation from the United States of any rough diamond, from whatever source, unless the rough diamond is controlled through the Kimberley Process Certification Scheme. Executive Order 13312, signed on July 29, 2003, implements these prohibitions, effective July 30, 2003. In accordance with section 15 of the Clean Diamond Trade Act, the President certified in a letter to Congress on July 29, 2003, that an applicable waiver granted by the World Trade Organization is in effect until December 31, 2006.

Section 6 of Public Law 108–19 names the Census Bureau as the exporting authority for the purposes of the Clean Diamond Trade Act. This requires the Census Bureau to validate the Kimberley Process Certificate (the Certificate) for exports of rough diamonds by verifying that an Internal Transaction Number (ITN) provided by the AES is shown on the Certificate. The ITN is the confirmation number provided by the AES when the data transmission for exports of rough diamonds is accepted. Shipments of rough diamonds from the United States must also meet additional Department of the Treasury exporting requirements identified in the Office of Foreign Assets Control's (OFAC) Rough Diamonds Control Regulations, Title 31, Code of Federal Regulations (CFR), part 592. Section 8 of Public Law 108–19 authorizes the Bureau of Customs and Border Protection and the Bureau of Immigration and Customs Enforcement to enforce the provisions of the Clean Diamond Trade Act. OFAC also has enforcement authority pursuant to section 5(a) of the Clean Diamond Trade Act and the Rough Diamonds Control Regulations (31 CFR part 592).

### Program Requirements

To comply with the requirements of the Act and Executive Order 13312, which implements the Clean Diamond Trade Act, the Census Bureau is amending the appropriate sections of the FTSR to specify the requirements for the mandatory electronic filing via the AES for exports of rough diamonds.

The Census Bureau is revising the following sections of the FTSR:

- Section 30.1 is amended to require mandatory filing via AES for exports of rough diamonds;
- Section 30.2 is amended to stipulate that electronic SED filing through the AES is subject to export control regulations;
- Section 30.55 is amended to require filing through AES for all exports of rough diamonds regardless of value;
- Section 30.58 is amended to require filing through AES for exports of rough diamonds destined for Canada;
- Section 30.60 is amended to require mandatory participation in the AES for filers of information on exports of rough diamonds;
- Section 30.61 is amended to require full reporting, that is, reporting of all required information under the AES filing Option 2, prior to exportation for shipments of rough diamonds;
- Section 30.63 is amended to specify the Harmonized System subheadings for rough diamond exports subject to the Clean Diamond Trade Act and the Rough Diamonds Control Regulations (31 CFR part 592) and required to be reported through the AES;
- Section 30.65 is amended to specify the requirements for annotating commercial documents with the proper proof of filing citation when exports of rough diamonds are filed through the AES, and to require the reporting of an AES confirmation number on the Kimberley Process Certificate; and
- Section 30.95 is amended to specify penalty provisions mandated by the Clean Diamond Trade Act.

The Departments of State and Homeland Security concur with the provisions contained in this notice of final rulemaking.

### Rulemaking Requirements

*Administrative Procedure Act*

Executive Order 13312 addresses further threats to international peace and security by the trade in conflict diamonds and implements Public Law 108–19, the Clean Diamond Trade Act. This final rule is issued in response to Public Law 108–19 and is exempt from requirements of section 553 of the Administrative Procedures Act because it deals with a foreign affairs function of the United States (5 U.S.C. 553 (a)(1)). Therefore, the Census Bureau is not required to solicit public comment on this rule or provide a delay in the rule's effective date. No other law requires a notice of proposed rulemaking and an opportunity for public comment on this rule.

*Regulatory Flexibility Act*

Because a notice and opportunity for public comment are not required by 5 U.S.C. 553, or any other law for a rule regarding a foreign affairs function, a Regulatory Flexibility Analysis is not required and has not been prepared (5 U.S.C. 603 (a)).

*Paperwork Reduction Act*

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a current, valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., chapter 35, OMB has approved on July 22, 2003, with control number 0607–0152, the collection of all information associated with the AES and the SED under this rule. We estimate that each electronic SED will take approximately 3 minutes to complete; we estimate that each paper SED will take approximately 11 minutes to complete. A decrease of 31 burden hours accounts for the difference in time it takes to complete an AES transaction versus filling out a paper SED.

*Executive Order 12866*

This rule has been determined to be significant for purposes of Executive Order 12866.

### List of Subjects in 15 CFR Part 30

Economic statistics, foreign trade, exports, reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, title 15 CFR part 30, is amended as follows:

## PART 30—FOREIGN TRADE STATISTICS

■ 1. Revise the authority citation for part 30 to read as follows:

**Authority:** 5 U.S.C. 301; 13 U.S.C. 301–307; 19 U.S.C. 3901–3913; Reorganization Plan 5 of 1950 (3 CFR 1949–1953 Comp., 1004); E.O. 13312; and Department of Commerce Organization Order No. 35–2A, July 22, 1987, as amended, and No. 35–2B, December 20, 1996, as amended.

### Subpart A—General Requirements—U.S. Principal Party in Interest (USPPI)

■ 2. In § 30.1, revise paragraph (c) to read as follows:

#### § 30.1 General statement of requirement for Shipper's Export Declarations.

* * * * *

(c) In lieu of filing paper SEDs as provided elsewhere in this section, when an SED would be required, the USPPI or the authorized agent is required to file shipper's export information electronically through the AES for the export of items identified on the CCL of the EAR (15 CFR Supp. No. 1 to part 774) or the USML of the ITAR (22 CFR part 121) as provided for in subpart E of this part, Electronic Filing Requirements—Shipper's Export Information. Information for items identified on the USML, including those exported under an export license exemption, must be filed electronically prior to export, unless exempted from the AES filing requirement by the State Department. For USML shipments, refer to the ITAR (22 CFR parts 120–130) for requirements concerning the AES proof of filing citation and filing time requirements. USPPIs or their authorized agents are required to file export information through the AES for shipments of rough diamonds classified under Harmonized System subheadings 7102.10, 7102.21, and 7102.31 and exported (reexported) in accordance with the Clean Diamond Trade Act and the Rough Diamonds Control Regulations (31 CFR part 592) as provided for in subpart E of this part. Use of the SED form is not permitted for reporting exports of rough diamonds. Entities serving as data entry and other forms of processing centers are not authorized to either collect or file export information on shipments of rough diamonds using any export reporting option. The USPPI or the authorized agent filing SEDs for the export of items not on the CCL, the USML, or exported (reexported) under the provisions of the Clean Diamond Trade Act and the Rough Diamonds Control Regulations (31 CFR part 592) has the option of filing this information electronically as provided for in subpart E of this part.

* * * * *

■ 3. In § 30.2, add paragraph (c) to read as follows:

#### § 30.2 Related export control requirements.

* * * * *

(c) Export shipments to all foreign destinations, including those filed electronically through the AES, are subject to export control regulations. This applies to mandatory, as well as voluntary AES filing. Executive Order 13312, signed July 29, 2003, implements the Clean Diamond Trade Act, which authorizes the President to implement the Kimberley Process Certification scheme in the United States. The Kimberley Process was developed to stem the worldwide movement of rough diamond exports linked to the finance of armed conflicts in certain world areas ("conflict" diamonds), specifically in some Southern African countries. The Kimberley Process Certificate serves as the mechanism to verify the absence of "conflict" diamonds from diamonds exported (reexported) from the United States.

## Subpart D—Exemptions From the Requirements for the Filing of Shipper's Export Declarations

■ 4. In § 30.55, add paragraph (h)(2)(vi) to read as follows:

### § 30.55 Miscellaneous exemptions.

* * * * *

(h) * * *

(2) * * *

(vi) Classified as rough diamonds under 6-digit Harmonized System subheadings 7102.10, 7102.21, and 7102.31, regardless of value.

* * * * *

■ 5. Amend § 30.58 as follows:

■ a. Redesignate current paragraph (c)(6) as paragraph (c)(7).

■ b. Add a new paragraph (c)(6).

The addition reads as follows:

### § 30.58 Exemptions for shipments from the United States to Canada.

* * * * *

(c) * * *

(6) Shipments of rough diamonds exported (reexported) to Canada for use or consumption in Canada.

* * * * *

## Subpart E—Electronic Filing Requirements—Shipper's Export Information

■ 6. In § 30.60, add a new second sentence to paragraph (a) to read as follows:

### § 30.60 General requirements for filing export and manifest data electronically using the Automated Export System (AES).

* * * * *

(a) *Participation.* * * * Filing using the AES also is mandatory for all exports (reexports) of rough diamonds regardless of destination, method of transport, or value. * * *

* * * * *

■ 7. In § 30.61, add sentence (a)(5) to read as follows:

### § 30.61 Electronic filing options.

* * * * *

(a) * * *

(5) Shipments of rough diamonds exported (reexported) in accordance with the Clean Diamond Trade Act and the Rough Diamonds Control Regulations (31 CFR part 592).

* * * * *

■ 8. In § 30.63, add a sentence after the second sentence of paragraph (a)(12) to read as follows:

### § 30.63 Information required to be reported electronically through AES (data elements).

* * * * *

(a) * * *

(12) * * * Shipments of rough diamonds at the 10-digit Schedule B level that are classified under 6-digit Harmonized System subheadings 7102.10, 7102.21, and 7102.31 must be reported electronically through the AES. * * *

* * * * *

■ 9. Amend § 30.65 as follows:

■ a. Revise paragraphs (b) introductory text and (b)(1).

■ b. Redesignate current paragraph (b)(2) as paragraph (b)(4).

■ c. Add new paragraphs (b)(2) and (b)(3).

The additions and revisions read as follows:

### § 30.65 Annotating the proper exemption legends or proof of filing citations for shipments transmitted electronically.

(a) * * *

(b) The USPPI or the authorized agent is responsible for annotating the proper exemption legend or proof of filing citation on the bill of lading, air waybill, or other commercial loading document for presentation to the carrier prior to tendering the cargo to the exporting carrier. The carrier is responsible for transmitting the appropriate exemption legend or proof of filing citation to the CBP Port Director at the port of exportation as stated in § 30.21 and § 30.22 of this part. Such transmittal shall be without material change or amendment of the exemption legend or proof of filing citation as provided to the carrier by the USPPI or the authorized agent. The exemption legend or proof of filing citation will identify that the shipment information has been accepted as transmitted and electronically filed using the AES. The exemption legend or proof of filing citation must appear on the bill of lading, air waybill, or other commercial loading documentation and the manifest and must be clearly visible and include any of the following:

(1) The exemption legend or proof of filing citation will include the statement, "NO SED REQUIRED—AES," followed by the filer's identification number and a unique shipment reference number referred to as the External Transaction Number (XTN) or the returned confirmation number provided by AES when the transmission is accepted, referred to as the Internal Transaction Number (ITN).

(2) Shipments of USML articles must meet the predeparture reporting requirements in the ITAR (22 CFR parts 120–130).

(3) For shipments of rough diamonds, the proof of filing citation shall include the statement, "NO SED REQUIRED—AES," followed by the returned confirmation number provided by the AES when the transmission is accepted, referred to as the ITN. The ITN is required to be shown on the Kimberley Process Certificate for all exports (reexports) of rough diamonds to certify that the diamonds have been controlled through the Kimberley Process Certification Scheme, as defined in section 3 of Public Law 108–19 of the Clean Diamond Trade Act and implemented in the Rough Diamonds Control Regulations (31 CFR part 592).

## Subpart H—General Administrative Provisions

■ 10. Revise § 30.95 to read as follows:

### § 30.95 Penalties for violations.

(a) *Exports (reexports) of rough diamonds.*

The Clean Diamond Trade Act, section 8(c), authorizes the Bureau of Customs and Border Protection (CBP) and the Bureau of Immigration and Customs Enforcement (BICE), as appropriate, to enforce the laws and regulations governing exports of rough diamonds, including with respect to the validation of the Kimberley Process Certificate by the exporting authority. The Treasury Department's Office of Foreign Assets Control (OFAC) also has enforcement authority pursuant to section 5(a) of the Clean Diamond Trade Act (the Act), Executive Order 13312, and the Rough Diamonds Control Regulations (31 CFR part 592). The CBP, the BICE, and OFAC, pursuant to section 5(a) of the Act, are further authorized to enforce provisions of section 8(a) of the Act that provide for the following civil and criminal penalties:

(1) A civil penalty not to exceed $10,000 may be imposed on any person who violates, or attempts to violate, any order or regulation issued under the Act.

(2) A criminal penalty not to exceed $50,000, or;

(i) If a natural person, imprisonment for not more than 10 years, or both, may be imposed for willful violation of any license, order, or regulation issued under the Act.

(ii) If a corporation, imprisonment for not more than 10 years, or both may be imposed on any officer, director, or agent of the corporation for willful violation of any license, order, or regulation issued under the Act.

(b) *Exports of other than rough diamonds.* Any person who violates any provisions of this part, except for violations of the provisions relating to delayed filing of documents under bond as provided by § 30.24 and violations of section 8 of Public Law 108–19, the Clean Diamond Trade Act, shall be liable to the United States in an amount not exceeding $1,000 for each violation, as authorized by section 305, chapter 9, title 13 U.S.C.

Dated: October 10, 2003.

**Charles Louis Kincannon,**

*Director, Bureau of the Census.*

[FR Doc. 03–26282 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–07–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Parts 510, 520, 522, and 529

## New Animal Drugs; Change of Sponsor

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for 12 approved new animal drug applications (NADAs) and 1 abbreviated new animal drug application (ANADA) from Anthony Products Co. to Cross Vetpharm Group, Ltd.

**DATES:** This rule is effective October 20, 2003.

**FOR FURTHER INFORMATION CONTACT:** David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967, e-mail: *dnewkirk@cvm.fda.gov*.

**SUPPLEMENTARY INFORMATION:** Anthony Products Co., 5600 Peck Rd., Arcadia, CA 91006, has informed FDA that it has transferred ownership of, and all rights and interest in, the following 12 approved NADAs and one approved ANADA to Cross Vetpharm Group, Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland.

| Application No. | 21 CFR Section | Trade Name |
|---|---|---|
| NADA 046–780 | 522.1720 | PHEN–BUTA–VET (phenylbutazone) Injection |
| NADA 096–671 | 522.1720 | PHEN–BUTA–VET (phenylbutazone) Injection |
| NADA 096–672 | 520.1720a | PHEN–BUTA–VET (phenylbutazone) Tablets |
| NADA 098–288 | 522.1883 | PREDNIS–A–VET (prednisolone sodium phosphate) Injection |
| NADA 099–604 | 522.540 | DEX–A–VET (dexamethasone sodium phosphate) Injection |
| NADA 099–605 | 522.540 | DEX–A–VET (dexamethasone sodium phosphate) Injection |
| NADA 099–606 | 522.540 | DEXAMETH–A–VET (dexamethasone) Injection |
| NADA 099–607 | 522.540 | DEXAMETH–A–VET (dexamethasone) Injection |
| NADA 118–550 | 522.1010 | FUROS–A–VET (furosemide) Injection |
| NADA 119–141 | 522.1962 | TRANQUAZINE (promazine hydrochloride) Injection |
| NADA 138–405 | 522.2063 | Pyrilamine Maleate Injection |
| NADA 140–583 | 522.480 | ACTH Gel |
| ANADA 200–115 | 529.1044a | GENTAMEX 100 (gentamicin sulfate) |

Accordingly, the agency is amending the regulations in 21 CFR 520.1720a, 522.480, 522.540, 522.1010, 522.1720, 522.1883, 522.1962, 522.2063, and 529.1044a to reflect the transfer of ownership. Sections 522.1883 and 522.1962 are also being revised to reflect a current format.

Following these changes of sponsorship, Anthony Products Co. is no longer the sponsor of an approved application. Accordingly, § 510.600(c) is being amended to remove the entries for Anthony Products Co.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

**List of Subjects**

*21 CFR Part 510*

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

*21 CFR Parts 520, 522, and 529*

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, 522, and 529 are amended as follows:

### PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

**§ 510.600 [Amended]**

■ 2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "Anthony Products Co." and in the table in paragraph (c)(2) by removing the entry for "000864".

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 520 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

**§ 520.1720a [Amended]**

■ 4. Section 520.1720a *Phenylbutazone tablets and boluses* is amended in paragraph (b)(3) by removing "000864".

## PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 5. The authority citation for 21 CFR part 522 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

**§ 522.480 [Amended]**

■ 6. Section 522.480 *Repository corticotropin injection* is amended in paragraph (b)(2) by removing "000864" and by adding in its place "061623".

**§ 522.540 [Amended]**

■ 7. Section 522.540 *Dexamethasone injection* is amended in paragraphs (b)(2)(i) and (c)(2) by removing "000864" and by adding in its place "061623".

**§ 522.1010 [Amended]**

■ 8. Section 522.1010 *Furosemide* is amended in paragraph (b)(2) by removing "000864" and by adding in its place "061623".

**§ 522.1720 [Amended]**

■ 9. Section 522.1720 *Phenylbutazone injection* is amended in paragraph (b)(1) by removing "and 059130" and by adding in its place "059130, and 061623"; in paragraph (b)(2) by removing "Nos. 000010 and 000864" and by adding in its place "No. 000010"; and by removing paragraph (b)(4).

■ 10. Section 522.1883 is revised to read as follows:

**§ 522.1883 Prednisolone sodium phosphate.**

(a) *Specifications.* Each milliliter of solution contains 20 milligrams (mg) prednisolone sodium phosphate (equivalent to 14.88 mg of prednisolone).

(b) *Sponsor.* See No. 061623 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* Administer intravenously in a dosage of 2 1/2 to 5 mg per pound of body weight, initially for shock and shock-like states, followed by equal maintenance doses at 1-, 3-, 6-, or 10-hour intervals as determined by the condition of the animal.

(2) *Indications for use.* Administer when a rapid adrenal glucocorticoid and/or anti-inflammatory effect is necessary.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 11. Section 522.1962 is amended:

■ a. By removing "injection" from the heading;

■ b. By removing footnote 1;

■ c. In paragraph (b) by removing "000864" and by adding in its place "061623";

■ d. By removing paragraphs (c)(3) and (c)(4);

■ e. By revising paragraphs (a) and (c)(2); and

■ f. By adding a heading to (c)(1).

■ The amendments read as follows:

**§ 522.1962 Promazine hydrochloride.**

(a) *Specifications.* Each milliliter of solution contains 50 milligrams (mg) promazine hydrochloride.

* * * * *

(c) * * *

(1) *Amounts and indications for use.* (i) * * *

* * * * *

(2) *Limitations.* Not for use in horses intended for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

**§ 522.2063 [Amended]**

■ 12. Section 522.2063 *Pyrilamine maleate injection* is amended in paragraph (b) by removing "000864" and by adding in its place "061623".

## PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 13. The authority citation for 21 CFR part 529 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

**§ 529.1044a [Amended]**

■ 14. Section 529.1044a *Gentamicin sulfate intrauterine solution* is amended in paragraph (b) by removing "000864, 057561, and 059130" and by adding in its place "057561, 059130, and 061623".

Dated: October 2, 2003.

**Steven D. Vaughn,**

*Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 03–26336 Filed 10–17–03; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF COMMERCE

## Patent and Trademark Office

## 37 CFR Part 1

**[Docket No. 2003–P–021]**

**RIN 0651–AB61**

## January 2004 Revision of Patent Cooperation Treaty Application Procedure

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The United States Patent and Trademark Office (Office) is amending the rules of practice to conform them to certain amendments made to the Regulations under the Patent Cooperation Treaty (PCT) that will take effect on January 1, 2004. These amendments will result in the addition of a written opinion in PCT Chapter I, as well as a simplification of PCT designations and the PCT fee structure. In addition, the Office is adjusting the transmittal, search, and international preliminary examination fees for international applications filed under the PCT to be more closely aligned with the actual average costs of processing a PCT application and conducting a PCT search and international preliminary examination under the new process.

**EFFECTIVE DATE:** January 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Richard R. Cole, Legal Examiner, Office of PCT Legal Administration (OPCTLA) directly by telephone at (703) 305–6639, or by facsimile at (703) 308–6459.

**SUPPLEMENTARY INFORMATION:** During the September-October 2002 meeting of the Governing Bodies of the World Intellectual Property Organization (WIPO), the PCT Assembly adopted various amendments to the Regulations under the PCT that enter into force on January 1, 2004. The amended PCT Regulations were published in the PCT Gazette of December 5, 2002 (49/2002), in Section IV, at pages 25004–61. The purposes of these amendments are to: (1) Improve coordination of international search (Chapter I of the PCT) and international preliminary examination (Chapter II of the PCT) through the provision of an enhanced international search and preliminary examination system; (2) simplify the PCT by changing the concept and operation of the designation system and the fee system; and (3) simplify signature and other filing requirements.

*Enhanced International Search and Preliminary Examination System:* Under the enhanced international search and preliminary examination system, the written opinion currently established during the Chapter II procedure by the International Preliminary Examining Authority (IPEA) has been added to the Chapter I procedure. Accordingly, the International Searching Authority (ISA) will be responsible for establishing a preliminary and non-binding written opinion on whether the claimed invention appears to be novel, to involve an inventive step and to be industrially applicable. In the event that a Demand for international preliminary examination is timely filed by applicant, the written opinion of the ISA will be considered to be the written opinion of the IPEA. If a Demand is not timely filed, the written opinion of the ISA will form the basis for the issuance, by the International Bureau (IB) on behalf of the ISA, of an “International Preliminary Report on Patentability (Chapter I of the Patent Cooperation Treaty)” (“IPRP”), which will be communicated to all designated Offices and made available for public inspection after the expiration of thirty months from the priority date.

Under the revised system, the time limit for filing a Demand for international preliminary examination has changed. Specifically, the Demand must be filed within the later of: (1) Three months from issuance of the international search report and the written opinion of the ISA (or, if a search cannot be made, of the declaration under Article 17.2(a)); or (2) twenty-two months from the priority date. *See* PCT Rule 54*bis*.1(a). Any Demand made after the expiration of this time limit will be considered as if it had not been submitted. *See* PCT Rule 54*bis*.1(b). Any arguments or amendments in response to the written opinion of the ISA must be submitted within the time limit for filing the Demand to ensure consideration by the IPEA. It is noted that applicants may still desire to file the Demand prior to the expiration of nineteen months from the priority date in order to delay entry into the national stage for those few remaining Contracting States that have taken a reservation to the thirty-month time limit in Article 22(1).

As in current PCT Chapter II procedures, the IPEA will still establish an international preliminary examination report, though the report will now bear the title “International Preliminary Report on Patentability (Chapter II of the Patent Cooperation Treaty).” This report will be established within the applicable time limit under PCT Rule 69 (usually within twenty-eight months from the priority date).

Under the revised system, payment of the international preliminary examination fee and handling fee is not required until the later of one month from the filing of the Demand or twenty-two months from the priority date. *See* PCT Rules 57.3(a) and 58.1(b). However, where the IPEA and the ISA are the same and the IPEA wishes to start examination at the same time as the international search, the IPEA may require that the examination and handling fees be paid within one month of an invitation by the IPEA to pay such fees. *See* PCT Rule 57.3(c).

*Automatic Indication of All Designations Possible under the PCT; Relaxed Signature and other Filing Requirements; Simplified Fee System:* Under the amendments to the Regulations of the PCT, upon filing an international application, applicant will obtain automatic and all-inclusive coverage of all designations available under the PCT, including all kinds of protection as well as both national and regional patent protection. *See* PCT Rule 4.9. Similarly, the mere filing of a Demand will constitute the election of all designated States. *See* PCT Rule 53.7. Thus, applicants need not, at the time of filing the international application, specifically designate individual Contracting States, or choose certain kinds of protection or indicate expressly whether national or regional protection is sought. Such matters will be resolved in the national phase.

This automatic and all-inclusive designation system overcomes a current pitfall for applicants who have inadvertently omitted specific designations upon filing the international application and such designations were not, or could not be, timely confirmed under PCT Rule 4.9(c). For example, if the original international application papers did not contain at least one designation, an international filing date could not be accorded as of the initial receipt date of the application papers. *See* PCT Article 11(1)(iii)(b). Furthermore, even in those applications containing at least one designation, PCT Rule 4.9(b) required that any additional States and/or additional kinds of protection be confirmed by the submission of a written notice, accompanied by payment of the appropriate confirmation fee, within a relatively short time period (*i.e.*, fifteen months from the priority date). This time period was frequently overlooked by applicants. Under the new system of automatic designations/elections, the current procedures for precautionary designations and later elections become unnecessary and have been eliminated from the PCT Rules. This will reduce the workload on the PCT Receiving Office (RO) and IPEA by eliminating processing of precautionary designations and later elections, as well as petitions relating to omitted designations.

As a further benefit of the automatic designation system is the simplification of the PCT fee system. Under the current PCT fee structure, both a “basic” fee and a “designation” fee are required. Moreover, these fees are due at different times in different amounts depending on when they are paid. Under the new system, these fees have been eliminated in favor of a single international filing fee (comprised of two fee components, a first fee component for up to thirty sheets of paper and a second fee component for sheets of paper in excess of thirty) due at one time.

As a consequence of the automatic designation system, applicant/inventors will have to be named in the international application. To alleviate hardships with regard to obtaining signatures of all the applicants named on the Request, PCT Rule 26 has been amended to provide that, for purposes of Article 14(a)(i), the international application will be considered as signed in accordance with the PCT Regulations if the Request has been signed by at least one applicant. *See* PCT Rule 26.2*bis*(a). In addition, if there is more than one applicant, PCT Rule 26.2*bis*(b) provides that, for purposes of PCT Article 14(1)(a)(ii), it is sufficient that the identifying information (*i.e.*, address, residence and nationality) be provided for only one applicant who is entitled under PCT Rule 19.1 to file the international application with the RO. This means that for purposes of filing an international application with the United States Receiving Office (RO/US) as the competent RO, this information must be provided with respect to at least one applicant who is a citizen or resident of the United States. Notwithstanding the amendments to PCT Rule 26, a designated/elected Office may still require applicants to furnish, during the national stage, confirmation of the international application by the signature of any applicant who has not signed the Request and any missing identifying information. *See* PCT Rule 51*bis*.1(a).

PCT Rule 90.4 has been revised to permit the RO, ISA, or IPEA to waive the requirement for a power of attorney, except in instances of applicant initiated withdrawals under PCT Rule 90*bis*.

**Discussion of Specific Rules**

Title 37 of the Code of Federal Regulations, Part 1, is amended as follows:

*Section 1.14:* Sections 1.14(g)(1)(ii) and 1.14(g)(3) are amended to exclude members of the public from obtaining a copy of the written opinion of the United States International Searching Authority (ISA/US) until the expiration of thirty months from the priority date of the international application. Under PCT Rule 44*ter*.1 (as amended), the ISA is not permitted to allow access to the written opinion of the ISA before the expiration of thirty months from the priority date unless authorized by the applicant.

*Section 1.413:* Section 1.413(c) is amended to reflect the additional major function of the ISA/US of preparing and transmitting written opinions.

*Section 1.421:* Section 1.421(b) is amended to remove reference to § 1.425 (§ 1.425 is removed). Under PCT Rule 26.2*bis*(a) (as amended), the international application will be considered to satisfy the signature requirement for purposes of PCT Article 14(1)(a)(i) if the request is signed by at least one applicant (except that all of the applicants' signatures will still be required for withdrawals, *see* discussion of § 1.421(g)). Accordingly, the current requirement in § 1.425 that the failure of an inventor to sign the request in an international application designating the United States will only be excused where the inventor could not be found or reached after diligent effort or refused to sign the request will no longer be applicable. Section 1.421(b) is also amended to include the requirement of § 1.424 that joint inventors must jointly apply for an international application. Section 1.424 is removed (*see* discussion of § 1.424).

Section 1.421(c) is amended as a consequence of the change to PCT Rule 4.9, as the United States will always be designated upon filing of an international application.

Section 1.421(d) is amended to reflect the change to PCT Rule 90.4(d) permitting the RO to waive the requirement for a separate power of attorney.

Section 1.421(f) is amended to clarify that for purposes of requests under PCT Rule 92*bis* to effect a change in an indication concerning the applicant, agent or common representative, such requests may be required to be signed by all applicants.

Section 1.421(g) is amended to remove the text of PCT Rule 92*bis* as unnecessary and to clarify that for purposes of withdrawals under PCT Rule 90*bis* of the international application, designations, priority claim, demand or elections, the request for withdrawal must be signed by all applicants. Furthermore, where the request for withdrawal is signed by an attorney, agent, or common representative, a power of attorney from the applicants appointing that attorney, agent or common representative will be required. This clarification is consistent with PCT Rule 90.4(e) (as amended), which prohibits the RO, ISA, IPEA, and IB from waiving the separate power of attorney requirement in cases of withdrawals under Rule 90*bis*. An exception to this signature requirement is made in cases where an inventor cannot be found or reached after diligent effort. *See* PCT Rule 90*bis*.5(b).

*Section 1.424:* This section is removed. The requirement in § 1.424 regarding the naming of joint inventors in international applications will be moved to § 1.421(b). The further requirement relating to signature requirements of joint inventors, including reference to § 1.425, will no longer be applicable (*see* discussion of § 1.421(b)).

*Section 1.425:* This section is removed (*see* discussion of § 1.421(b)).

*Section 1.431:* Section 1.431(b)(3) is amended to remove reference to § 1.424 (§ 1.424 is removed). Sections 1.431(c) and (d) are amended to reflect the new fee structure applicable to international applications under revised PCT Rule 15. Specifically, the international "basic fee" and "designation fee" have been combined into a single "international filing fee." In addition, the late payment fee provision of § 1.431(c)(1) is amended as a consequence of this new fee structure, consistent with amended PCT Rule 16*bis*.2.

*Section 1.432:* Section 1.432 is amended to reflect the change to PCT Rule 4.9, which provides that the filing of the request shall constitute: (1) The designation of all Contracting States that are bound by the PCT on the international filing date; (2) an indication that for those States for which PCT Articles 43 or 44 apply, the filing of the request constitutes an indication for the grant of every kind of protection which is available by way of the designation of that State; and (3) an indication that the international application is, for those States to which PCT Article 45(1) applies, for the grant of a regional patent and also, unless PCT Article 45(2) applies, a national patent. As a consequence of the "automatic" designation system provided under revised PCT Rule 4.9, the procedure under former PCT Rule 4.9(b) and (c) regarding confirmation of precautionary designations has been eliminated from that rule, and therefore, is removed from § 1.432.

*Section 1.434:* Section 1.434(d) is amended to remove the requirement that international applications designating the United States must include the address and the signature of the inventor except as provided by §§ 1.421(d), 1.422, 1.423 and 1.425. Under PCT Rule 26.2*bis* (as amended), if there is more than one applicant, it is sufficient that the request is signed by only one of them, and that the address is provided with respect to one of the applicants who is entitled, in accordance with Rule 19.1, to file the international application with the RO. Section 1.434(d)(3) is also redesignated as new § 1.434(e) for clarity.

*Section 1.445:* Section 1.445(a)(1) is amended to increase the transmittal fee from $240.00 to $300.00. 35 U.S.C. 376(b) authorizes the Office to (*inter alia*) prescribe the transmittal fee, search fee, supplemental search fee, and preliminary examination fee for PCT international applications. This transmittal fee amount more accurately reflects the Office's actual average costs of processing international applications, and is also consistent with the filing fee for applications under 35 U.S.C. 111(a) proposed by the Office in the 21st Century Strategic Plan (information concerning the Office's 21st Century Strategic Plan is available on the Office's Internet Web site *http://www.uspto.gov*).

Section 1.445(a)(2)(i) is amended to reduce the search fee charged by the ISA/US where there is a corresponding prior U.S. application filed under 35 U.S.C. 111(a) from $450 to $300. Section 1.445(a)(2)(i) is also amended to clarify the conditions for obtaining benefit of the reduced search fee where there is such a prior corresponding application.

Pursuant to PCT Rule 42.1, the ISA/US has, in most cases, only three months to establish the International Search Report. In order for the ISA/US to be able to utilize the benefits of a search conducted in a prior corresponding application filed under 35 U.S.C. 111(a), the Office must be informed of the prior corresponding application in sufficient time and in such manner so as to permit the Office to utilize the search and examination conducted in the prior application. Accordingly, § 1.445(a)(2)(i) is amended to require applicants to timely furnish adequate identifying information of the prior U.S. application in order to qualify for the lower search fee. Specifically, applicant must identify the prior nonprovisional application by U.S. application number upon filing the international application, if such number is known. If such number is not known, then applicant must identify the prior application by filing date, title, and name of applicant (and preferably the application docket number) so that the Office will be able to identify the prior application.

Section 1.445(a)(2)(ii) is amended to increase the search fee charged by the ISA/US in situations not covered by § 1.445(a)(2)(i) from $700 to $1,000. This search fee amount more accurately reflects the Office's actual average costs of searching international applications in situations not covered by § 1.445(a)(2)(i). This search fee amount is higher than the search fee amount for applications under 35 U.S.C. 111(a) as proposed by the Administration because of additional costs associated with both searching international applications and the preparation and transmittal of a written opinion of the ISA. Additionally, international applications must be searched (and examined) under the PCT unity of invention standard, where applications under 35 U.S.C. 111(a) are searched (and examined) under the restriction standard set forth in 35 U.S.C. 121. Moreover, the search fee set forth in § 1.445(a)(2)(i) must also cover preparation of a written opinion (the "International Preliminary Report on Patentability (Chapter I of the Patent Cooperation Treaty)" ("IPRP")) under the revised system.

In addition, the fee charged by the ISA/US for searching an additional invention is increased from $210 to $1,000. This amount more accurately reflects the Office's actual average costs of searching and examining additional inventions. In this regard, it is noted that the search fee and the supplemental search fee charged by every other international searching authority are the same (except for the ISA/JP, which charges a supplemental search fee that is only slightly lower than the search fee).

Section 1.445(a)(4) is deleted, as confirmation fees will no longer be applicable.

Section 1.445(b) is amended to reflect the combining of the basic and designation fees into a single "international filing fee".

*Section 1.455:* Section 1.455(b) is amended to be consistent with PCT Rule 90.4 as it relates to the manner of appointment of agent, attorney or common representative.

*Section 1.480:* Section 1.480(a) is amended to reflect the new time limits in PCT Rule 57.3 and 58.2 for submitting the handling and preliminary examination fees.

Section 1.480(d) is added, consistent with PCT Rule 53.7 (as amended), to provide that the filing of a Demand shall constitute the election of all Contracting States that are designated and bound by Chapter II of the Treaty on the international filing date. Accordingly, it will no longer be necessary to specify in the Demand those States that are elected.

Section 1.480(e) is added to provide that any Demand filed after the expiration of the applicable time limit in PCT Rule 54*bis*.1(a) shall be considered as if it had not been submitted. *See* PCT Rule 54*bis*.1(b) (as amended).

*Section 1.481:* Section 1.481(a) is amended to provide that the handling fee and preliminary examination fee that are due are those fees in effect on the date of payment of the handling and preliminary examination fees. *See* PCT Rules 57.3(d) and 58.1(b).

*Section 1.482:* Section 1.482(a)(1) is amended to increase the preliminary examination fee charged by the IPEA/US from $490 to $600 if the international search fee was paid to the United States Patent and Trademark Office as an ISA (the preliminary examination fee charged by the IPEA/US if the international search fee was not paid to the United States Patent and Trademark Office as an ISA will remain at $750). This increase is necessary to cover the additional cost associated with conducting the preliminary examination by the IPEA/US.

For the same reason, as well as reasons set forth with regard to the increase in the supplemental search fee under § 1.445(a)(3), § 1.482(a)(2) is amended to increase the additional preliminary examination fee for examining additional inventions to $600 (regardless of whether the international search fee was paid to the United States Patent and Trademark Office as an ISA).

Section 1.482(b) is amended to refer to revised PCT Rule 57 as it relates to handling fee requirements.

*Section 1.484:* Section 1.484(b) is amended to refer to revised PCT Rule 69.1 as to when the IPEA/US may start international preliminary examination. PCT Rule 69.1 was revised to prohibit the IPEA from starting preliminary examination until it is in possession of, *inter alia*, the written opinion of the ISA. PCT Rule 69.1 provides for two exceptions to this requirement. Both exceptions apply when the IPEA and the ISA for the international application are the same authority. The first exception permits the IPEA to start examination at the same time as the international search, subject to certain limitations. *See* PCT Rule 69.1(b). The second exception occurs when the ISA considers the conditions under PCT Article 34(2)(c)(i) to (iii) to be fulfilled. In such cases, a written opinion by the ISA need not be established. *See* PCT Rule 69.1(b)*bis*.

Sections 1.484(e) through (g) are redesignated as §§ 1.484(g) through (i), respectively. Section 1.484(e) now provides, consistent with PCT Rule 66.1*bis*, that the written opinion of the ISA shall be considered to be the written opinion of the IPEA/US.

Section 1.484(f) now provides that the IPEA may establish further written opinions, subject to the conditions specified in § 1.484(d). Establishment of additional written opinions by the IPEA is provided for in PCT Rule 66.4(a).

Section 1.484(g) is amended as a consequence of the amendment to § 1.484(f).

Section 1.484(h) is amended to provide clarification regarding conducting personal and telephonic interviews with the examiner under the revised system.

*Response to comments:* The Office published a notice proposing changes to the rules of practice to conform them to certain amendments made to the Regulations under the Patent Cooperation Treaty (PCT) that will take effect on January 1, 2004. *See January 2004 Revision of Patent Cooperation Treaty Application Procedure*, 68 FR 32441 (May 30, 2003), 1271 *Off. Gaz. Pat. Office* 147 (June 24, 2003) (proposed rule). The Office received two written comments (one from an intellectual property organization and another by a patent practitioner) in response to this notice. The comments and the Office's responses to the comments follow:

*Comment 1:* One comment suggested that § 1.14 should provide that the written opinion of the International Searching Authority is available to third parties upon publication of the international application instead of at thirty months as provided in § 1.14.

*Response:* The suggestion has not been adopted. PCT Rule 44*ter*.1, which is set to enter into force on January 1, 2004, provides that the International Searching Authority, unless requested or authorized by the applicant, shall not allow access to the written opinion of the International Searching Authority by any person before the expiration of thirty months from the priority date. Therefore, the suggested change to § 1.14 would be inconsistent with the requirements of the PCT.

*Comment 2:* One comment suggested that the rules be amended to provide that if applicant timely files a Demand with Article 34 amendments to the claims, the examiner be required to render a new written opinion. The comment indicates that without such a provision, the IPEA/US, in adopting the written opinion as established by the ISA, will be delivering to applicants written opinions which are totally inconsistent with the claims as amended.

*Response:* The suggestion has been adopted in part. Under the enhanced search and examination system, the IPEA/US will not deliver to applicants a written opinion which does not take into account the claims as amended. In general, under the procedures established under the enhanced search and examination system, a written opinion will be established by the ISA, and upon filing of a Demand by applicant, that written opinion will be considered to be the first written opinion of the IPEA. In turn, any amendments under PCT Article 34 which are timely filed, either with or subsequent to the Demand, will be considered to be a response to that written opinion. In response to the Demand and any amendments, the IPEA/US will then issue one of the following: (1) A further written opinion under § 1.484(f) if such is warranted; or (2) an international preliminary examination report under § 1.484(g). In both instances, the response by the IPEA will fully take into consideration any amendments which have been timely filed by the applicant.

*Comment 3:* One comment also opposed the proposed changes in the PCT fees set forth in §§ 1.445 and 1.482. First, the comment indicated that the transmittal, search, and preliminary examination fees proposed in §§ 1.445 and 1.482 would be sixty percent higher than the filing fee, search fee, and examination fee proposed in the 21st Century Strategic Plan. Second, the comment indicated that an applicant must also pay the preliminary examination fee to obtain the "same benefits" under PCT Chapters I and II. The comment further indicated that a truer picture of the proposed fee change is revealed by comparing the existing and revised transmittal, search, and international preliminary examination fees on an item-by-item basis.

*Response:* The Office indicated that the $300 transmittal fee amount in proposed § 1.445(a)(1) would be consistent with the filing fee for applications under 35 U.S.C. 111(a) proposed by the Office in the 21st Century Strategic Plan ($300). The Office did not state that the sum of the transmittal, search, and international preliminary examination fees would be consistent with the sum of the filing fee, search fee, and examination fees for applications under 35 U.S.C. 111(a) proposed by the Office in the 21st Century Strategic Plan. The Office proposed search and examination fee amounts for international applications that are in certain situations higher than the corresponding fees for applications under 35 U.S.C. 111(a) because: (1) There are additional costs associated with searching international applications and international preliminary examination under the enhanced international search and preliminary examination system (*see January 2004 Revision of Patent Cooperation Treaty Application Procedure*, 68 FR 32441, 32444 (May 30, 2003), 1271 *Off. Gaz. Pat. Office* 147, 149 (June 24, 2003) (proposed rule)); and (2) the examination fee for applications under 35 U.S.C. 111(a) proposed by the Office in the 21st Century Strategic Plan does not recover the Office's cost of examining applications and is subsidized by fees that are not applicable during the PCT international stage (*see* H.R. Rep. 108–241, at 15 (2003)).

The comment correctly notes that a PCT applicant must also pay the preliminary examination fee to amend the claims in an international application and obtain a written opinion reflecting the amended claims. Nevertheless, it is the Office's experience that PCT applicants who file a Demand for international preliminary examination rarely include an amendment under PCT Article 34 with the Demand. Therefore, the enhanced international search and preliminary examination system will reduce costs for most PCT applicants by providing them with the benefits they seek from PCT Chapter II, namely, an extension (from twenty to thirty months) of the time limit for entering the national stage and a written opinion indicating whether the claims are in compliance with PCT Article 33(2)–(4), without requiring them to file a timely Demand for international preliminary examination and pay the international preliminary examination fee.

When making an item-by-item comparison of the existing transmittal, search, and international preliminary examination fees with the revised transmittal, search, and international preliminary examination fees, one would readily appreciate the following: The enhanced international search and preliminary examination system reduces costs for most PCT applicants by providing them with the benefits they seek from PCT Chapter II without requiring them to pay the international preliminary examination fee. The Office's costs for searching international applications are higher under the enhanced international search and preliminary examination system because international applications must be searched (and examined) under the PCT unity of invention standard and the search fee must also cover the preparation of a written opinion. The Office's costs for international preliminary examination will be higher in certain situations under the enhanced international search and preliminary examination system because the Office will be required to provide an international preliminary examination on the basis of one or more amendments under PCT Article 34 since applicants filing a Demand under the revised system will likely be doing so to obtain a positive "International Preliminary Report on Patentability (Chapter II of the Patent Cooperation Treaty)" and thus will file one or more amendments under PCT Article 34 in the international application (under the former system, the majority of Demands were filed for the sole purpose of extending the national stage entry period and thus were filed without any substantial amendments to the claims). Finally, the fees set forth in former §§ 1.445 and 1.482 for search and examination of additional inventions were far too low to recover the Office's actual average cost for search and examination of additional inventions.

*Rule Making Considerations: Regulatory Flexibility Act:* The USPTO published a proposed rule and certified that an initial Regulatory Act Analysis was not required. Only one comment was received which objected, in general, to the fee increases and made no reference to any impact of the fee increases on small entities. The Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that changes in this final rule will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)).

The changes in this final rule primarily implement corresponding changes required to conform United States rules for international applications to the amendments to the PCT Regulations, which become effective on January 1, 2004. The amendments to the PCT Regulations will simplify the PCT application process and fee structure. The changes to the PCT international stage fees are to adjust these fees to be in alignment with the actual average costs of conducting a PCT search and international preliminary examination under the new process.

*Executive Order 13132:* This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

*Executive Order 12866:* This rule making has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

*Paperwork Reduction Act:* This final rule involves information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information involved in this final rule have been reviewed and previously approved by OMB under the following control numbers: 0651–0021 and 0651–0031. The United States Patent and Trademark Office is not resubmitting any information collection package to OMB for its review and approval because the changes in this notice do not affect the information collection requirements associated with the information collection under these OMB control numbers.

The title, description and respondent description of the information collection is shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*OMB Number:* 0651–0021.

*Title:* Patent Cooperation Treaty.

*Form Numbers:* PCT/RO/101, PCT/RO/134, PCT/RO/144, PTO–1382, PCT/IPEA/401, PCT/IB/328, PCT/SB/61/PCT, PCT/SB/64/PCT.

*Type of Review:* Approved through December of 2003.

*Affected Public:* Individuals or households, business or other for-profit institutions, not-for-profit institutions, farms, Federal Government and State, Local and Tribal Governments.

*Estimated Number of Respondents:* 331,407.

*Estimated Time Per Response:* Between 15 minutes and 4 hours.

*Estimated Total Annual Burden Hours:* 401,202.

*Needs and Uses:* The information collected is required by the Patent Cooperation Treaty (PCT). The general purpose of the PCT is to simplify the filing of patent applications on the same invention in different countries. It provides for a centralized filing procedure and a standardized application format.

*OMB Number:* 0651–0031.

*Title:* Patent Processing (Updating).

*Form Numbers:* PTO/SB/08A, PTO/SB/08B, PTO/SB/21–27, PTO/SB/30–32, PTO/SB/35–37, PTO/SB/42–43, PTO/SB/61–64, PTO/SB/67–68, PTO/SB/91–92, PTO/SB/96–97, PTO–2053-A/B, PTO–2054-A/B, PTO–2055-A/B, PTOL–413A, eIDS, EFS form.

*Type of Review:* Approved through July of 2006.

*Affected Public:* Individuals or households, business or other for-profit institutions, not-for-profit institutions, farms, Federal Government and State, Local and Tribal Governments.

*Estimated Number of Respondents:* 2,208,339.

*Estimated Time Per Response:* 1 minute 48 seconds to 8 hours.

*Estimated Total Annual Burden Hours:* 830,629 hours.

*Needs and Uses:* During the processing of an application for a patent, the applicant/agent may be required or desire to submit additional information to the Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information Disclosure Statements; Terminal Disclaimers; Petitions to Revive; Express Abandonments; Appeal Notices; Petitions for Access; Powers to Inspect; Certificates of Mailing or Transmission; Statements under § 3.73(b); Amendments, Petitions and their Transmittal Letters; and Deposit Account Order Forms.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia, 22313–1450, or to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, 725 17th Street, NW., Room 10235, Washington, DC 20503, Attention: Desk Officer for the United States Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

**List of Subjects in 37 CFR Part 1**

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

■ For the reasons set forth in the preamble, 37 CFR Part 1 is amended as follows:

## PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR Part 1 continues to read as follows:

**Authority:** 35 U.S.C. 2(b)(2).

■ 2. Section 1.14 is amended by revising paragraphs (g)(1)(ii) and (g)(3) to read as follows:

### § 1.14 Patent applications preserved in confidence.

* * * * *

(g) * * *

(1) * * *

(ii) With respect to the Search Copy (the copy of an international application kept by the Office in its capacity as the International Searching Authority, see PCT Article 12(1)), the U.S. acted as the International Searching Authority, except for the written opinion of the International Search Authority which shall not be available until the expiration of thirty months from the priority date; or

* * * * *

(3) Access to international application files for international applications which designate the U.S. and which have been published in accordance with PCT Article 21(2), or copies of a document in such application files, will be permitted in accordance with PCT Articles 30 and 38 and PCT Rules 44*ter*.1, 94.2 and 94.3, upon written request including a showing that the publication of the application has occurred and that the U.S. was designated.

* * * * *

■ 3. Section 1.413 is amended by revising paragraphs (a) and (c) to read as follows:

### § 1.413 The United States International Searching Authority.

(a) Pursuant to appointment by the Assembly, the United States Patent and Trademark Office will act as an International Searching Authority for international applications filed in the United States Receiving Office and in other Receiving Offices as may be agreed upon by the Director, in accordance with the agreement between the Patent and Trademark Office and the International Bureau (PCT Art. 16(3)(b)).

* * * * *

(c) The major functions of the International Searching Authority include:

(1) Approving or establishing the title and abstract;

(2) Considering the matter of unity of invention;

(3) Conducting international and international-type searches and preparing international and international-type search reports (PCT Art. 15, 17 and 18, and PCT Rules 25, 33 to 45 and 47), and issuing declarations that no international search report will be established (PCT Article 17(2)(a));

(4) Preparing written opinions of the International Searching Authority in accordance with PCT Rule 43*bis* (when necessary); and

(5) Transmitting the international search report and the written opinion of the International Searching Authority to the applicant and the International Bureau.

■ 4. Section 1.421 is amended by revising paragraphs (b) through (g) as follows:

### § 1.421 Applicant for international application.

* * * * *

(b) Although the United States Receiving Office will accept international applications filed by any resident or national of the United States of America for international processing, for the purposes of the designation of the United States, an international application must be filed, and will be accepted by the Patent and Trademark Office for the national stage only if filed, by the inventor or as provided in §§ 1.422 or 1.423. Joint inventors must jointly apply for an international application.

(c) For the purposes of designations other than the United States, international applications may be filed by the assignee or owner.

(d) A registered attorney or agent of the applicant may sign the international application Request and file the international application for the applicant. A separate power of attorney from each applicant may be required.

(e) Any indication of different applicants for the purpose of different Designated Offices must be shown on the Request portion of the international application.

(f) Requests for changes in the indications concerning the applicant, agent, or common representative of an international application shall be made in accordance with PCT Rule 92*bis* and may be required to be signed by all applicants.

(g) Requests for withdrawals of the international application, designations, priority claims, the Demand, or elections shall be made in accordance with PCT Rule 90*bis* and must be signed by all applicants. A separate power of attorney from the applicants will be required for the purposes of any request for a withdrawal in accordance with PCT Rule 90bis which is not signed by all applicants. The submission of a separate power of attorney may be excused upon the request of another applicant where one or more inventors cannot be found or reached after diligent effort. Such a request must be accompanied by a statement explaining to the satisfaction of the Director the lack of the signature concerned.

### § 1.424 [Removed]

■ 5. Section 1.424 is removed.

### § 1.425 [Removed]

■ 6. Section 1.425 is removed.

■ 7. Section 1.431 is amended by revising paragraphs (b)(3), (c) and (d) to read as follows:

### § 1.431 International application requirements.

* * * * *

(b) * * *

(3) The international application contains at least the following elements (PCT Art. 11(1)(iii)):

(i) An indication that it is intended as an international application (PCT Rule 4.2);

(ii) The designation of at least one Contracting State of the International Patent Cooperation Union (§ 1.432);

(iii) The name of the applicant, as prescribed (note §§ 1.421–1.423);

(iv) A part which on the face of it appears to be a description; and

(v) A part which on the face of it appears to be a claim.

(c) Payment of the international filing fee (PCT Rule 15.2) and the transmittal and search fees (§ 1.445) may be made in full at the time the international application papers required by paragraph (b) of this section are deposited or within one month thereafter. The international filing, transmittal, and search fee payable is the international filing, transmittal, and search fee in effect on the receipt date of the international application.

(1) If the international filing, transmittal and search fees are not paid within one month from the date of receipt of the international application and prior to the sending of a notice of deficiency which imposes a late payment fee, applicant will be notified and given one month within which to pay the deficient fees plus the late payment fee. Subject to paragraph (c)(2) of this section, the late payment fee will be equal to the greater of:

(i) Fifty percent of the amount of the deficient fees; or

(ii) An amount equal to the transmittal fee;

(2) The late payment fee shall not exceed an amount equal to the 25% of the international filing fee not taking into account any fee for each sheet of the international application in excess of thirty sheets (PCT Rule 16*bis*).

(3) The one-month time limit set pursuant to paragraph (c) of this section to pay deficient fees may not be extended.

(d) If the payment needed to cover the transmittal fee, the international filing fee, the search fee, and the late payment fee pursuant to paragraph (c) of this section is not timely made in accordance with PCT Rule 16*bis*.1(e), the Receiving Office will declare the international application withdrawn under PCT Article 14(3)(a).

■ 8. Section 1.432 is revised to read as follows:

### § 1.432 Designation of States by filing an international application.

The filing of an international application request shall constitute:

(a) The designation of all Contracting States that are bound by the Treaty on the international filing date;

(b) An indication that the international application is, in respect of each designated State to which PCT Article 43 or 44 applies, for the grant of every kind of protection which is available by way of the designation of that State; and

(c) An indication that the international application is, in respect of each designated State to which PCT Article 45(1) applies, for the grant of a regional patent and also, unless PCT Article 45(2) applies, a national patent.

■ 9. Section 1.434 is amended by revising paragraph (d) and adding paragraph (e) to read as follows:

### § 1.434 The request.

* * * * *

(d) For the purposes of the designation of the United States of America, an international application shall include:

(1) The name of the inventor; and

(2) A reference to any prior-filed national application or international application designating the United States of America, if the benefit of the filing date for the prior-filed application is to be claimed.

(e) An international application may also include in the Request a declaration of the inventors as provided for in PCT Rule 4.17(iv).

■ 10. Section 1.445 is revised to read follows:

### § 1.445 International application filing, processing and search fees.

(a) The following fees and charges for international applications are established by the Director under the authority of 35 U.S.C. 376:

(1) A transmittal fee (see 35 U.S.C. 361(d) and PCT Rule 14)—$300.00

(2) A search fee (see 35 U.S.C. 361(d) and PCT Rule 16):

(i) If a corresponding prior United States National application filed under 35 U.S.C. 111(a) with the filing fee under § 1.16(a) has been filed and the corresponding prior United States National application is identified by application number, if known, or if the application number is not known by the filing date, title, and name of applicant (and preferably the application docket number), in the international application or accompanying papers at the time of filing the international application—$300.00

(ii) For all situations not provided for in paragraph (a)(2)(i) of this section—$1,000.00

(3) A supplemental search fee when required, per additional invention—$1,000.00

(4) A fee equivalent to the transmittal fee in paragraph (a)(1) of this section for transmittal of an international application to the International Bureau for processing in its capacity as a Receiving Office (PCT Rule 19.4).

(b) The international filing fee shall be as prescribed in PCT Rule 15.

■ 11. Section 1.455 is amended by revising paragraph (b) to read as follows:

### § 1.455 Representation in international applications.

* * * * *

(b) Appointment of an agent, attorney or common representative (PCT Rule 4.8) must be effected either in the Request form, signed by applicant, in the Demand form, signed by applicant, or in a separate power of attorney submitted either to the United States Receiving Office or to the International Bureau.

* * * * *

■ 12. Section 1.480 is amended by revising paragraph (a) and adding paragraphs (d) and (e) to read as follows:

### § 1.480 Demand for international preliminary examination.

(a) On the filing of a proper Demand in an application for which the United States International Preliminary Examining Authority is competent and for which the fees have been paid, the international application shall be the subject of an international preliminary examination. The preliminary examination fee (§ 1.482(a)(1)) and the handling fee (§ 1.482(b)) shall be due within the applicable time limit set forth in PCT Rule 57.3.

* * * * *

(d) The filing of a Demand shall constitute the election of all Contracting States which are designated and are bound by Chapter II of the Treaty on the international filing date (PCT Rule 53.7).

(e) Any Demand filed after the expiration of the applicable time limit set forth in PCT Rule 54*bis*.1(a) shall be considered as if it had not been submitted (PCT Rule 54*bis*.1(b)).

■ 13. Section 1.481 is amended by revising paragraph (a) to read as follows:

### § 1.481 Payment of international preliminary examination fees.

(a) The handling and preliminary examination fees shall be paid within the time period set in PCT Rule 57.3. The handling fee or preliminary examination fee payable is the handling fee or preliminary examination fee in effect on the date of payment.

(1) If the handling and preliminary examination fees are not paid within the time period set in PCT Rule 57.3, applicant will be notified and given one month within which to pay the deficient fees plus a late payment fee equal to the greater of:

(i) Fifty percent of the amount of the deficient fees, but not exceeding an amount equal to double the handling fee; or

(ii) An amount equal to the handling fee (PCT Rule 58*bis*.2).

(2) The one-month time limit set in this paragraph to pay deficient fees may not be extended.

* * * * *

■ 14. Section 1.482 is revised to read as follows:

### § 1.482 International preliminary examination fees.

(a) The following fees and charges for international preliminary examination are established by the Director under the authority of 35 U.S.C. 376:

(1) The following preliminary examination fee is due on filing the Demand:

(i) If an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority—$600.00

(ii) If the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office—$750.00

(2) An additional preliminary examination fee when required, per additional invention—$600.00

(b) The handling fee is due on filing the Demand and shall be as prescribed in PCT Rule 57.

■ 15. Section 1.484 is amended by revising paragraphs (b), (e) through (g) and adding paragraphs (h) and (i) to read as follows:

### § 1.484 Conduct of international preliminary examination.

* * * * *

(b) International preliminary examination will begin in accordance with PCT Rule 69.1.

* * * * *

(e) The written opinion established by the International Searching Authority under PCT Rule 43*bis*.1 shall be considered to be a written opinion of the United States International Preliminary Examining Authority for the purposes of paragraph (d) of this section.

(f) The International Preliminary Examining Authority may establish further written opinions under paragraph (d) of this section.

(g) If no written opinion under paragraph (d) of this section is necessary, or if no further written opinion under paragraph (f) of this section is to be established, or after any written opinion and the reply thereto or the expiration of the time limit for reply to such written opinion, an international preliminary examination report will be established by the International Preliminary Examining Authority. One copy will be submitted to the International Bureau and one copy will be submitted to the applicant.

(h) An applicant will be permitted a personal or telephone interview with the examiner, which may be requested after the filing of a Demand, and must be conducted during the period between the establishment of the written opinion and the establishment of the international preliminary examination report. Additional interviews may be conducted where the examiner determines that such additional interviews may be helpful to advancing the international preliminary examination procedure. A summary of any such personal or telephone interview must be filed by the applicant or, if not filed by applicant be made of record in the file by the examiner.

(i) If the application whose priority is claimed in the international application is in a language other than English, the United States International Preliminary Examining Authority may, where the validity of the priority claim is relevant for the formulation of the opinion referred to in Article 33(1), invite the applicant to furnish an English translation of the priority document within two months from the date of the invitation. If the translation is not furnished within that time limit, the international preliminary report may be established as if the priority had not been claimed.

Dated: October 10, 2003.

**Jon W. Dudas,**

*Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.*

[FR Doc. 03–26338 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–16–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 021122286–3036–02; I.D. 101403B]**

## Fisheries of the Economic Exclusive Zone Off Alaska; Trawl Gear in the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is closing directed fishing for groundfish by vessels using trawl gear in the Gulf of Alaska (GOA), except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This action is necessary because the 2003 Pacific halibut prohibited species catch (PSC) limit specified for trawl gear in the GOA has been caught.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), October 15, 2003, until 1200 hrs, A.l.t., December 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 Pacific halibut PSC limit for vessels using trawl was established as 2,000 metric tons (mt) by the final 2003 harvest specifications for groundfish of the GOA (68 FR 9924, March 3, 2003).

The Administrator, Alaska Region, has determined, in accordance with § 679.21(d)(7)(i), that vessels engaged in directed fishing for groundfish with trawl gear in the GOA have caught the 2003 Pacific halibut PSC limit. Therefore, NMFS is closing the directed fishery for groundfish by vessels using trawl gear in the GOA, except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA that remain open to directed fishing for pollock.

### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2003 Pacific halibut PSC limit and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: October 14, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–26392 Filed 10–15–03; 3:31 pm]

BILLING CODE 3510–22–S

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 021213310–3251–03; I.D. 100203C]**

**RIN 0648–AP92**

## Individual Fishing Quota (IFQ) Program for Pacific Halibut and Sablefish; Technical Amendment

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This document reinstates recordkeeping and reporting regulations implementing the IFQ Cost Recovery Program which were inadvertently removed from regulations in a final rule published in the **Federal Register** on July 29, 2003. That final rule implemented Amendment 72 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (Amendment 72) and Amendment 64 to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (Amendment 64) (collectively, Amendments 72/64) and revised recordkeeping and reporting requirements for the IFQ and CDQ halibut programs. This action is necessary to correct the error and restore the regulations implementing the IFQ Cost Recovery Program.

**DATES:** Effective October 15, 2003.

**FOR FURTHER INFORMATION CONTACT:** Patsy A. Bearden, 907–586–7228 or *patsy.bearden@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The IFQ Cost Recovery Program is managed by the NMFS, Alaska Region, Restricted Access Management (RAM). Regulations implementing the IFQ Cost Recovery Program were published in the **Federal Register** on March 20, 2000 (65 FR 14919) and amended by publication in the **Federal Register** on January 28, 2002 (67 FR 4100). Under the regulations, an IFQ permit holder incurs a cost recovery fee liability for each pound of IFQ halibut or sablefish landed on his/her permit(s). The regulations included recordkeeping and reporting requirements at §679.5(l)(7) necessary to implement the IFQ Cost Recovery Program. See 65 FR 14923 (March 20, 2000), amended at 67 FR 4130 (January 28, 2002). A final rule published in the **Federal Register** on

July 29, 2003, implemented additional amendments to §679.5(l) as NMFS intended, but erroneously removed §679.5(l)(7) in its entirety (68 FR 9907). NMFS intended to amend § §679.5(l)(1) through (l)(6), but amendatory instruction number 4 incorrectly removed §679.5(l)(7). This final rule restores §679.5(l)(7) to the recordkeeping and reporting regulations implementing the IFQ Cost Recovery Program.

This final rule must be effective by October 15 to collect information necessary to carry out the IFQ Cost Recovery Program. Under § 679.5(l)(7), an IFQ Registered Buyer that also operates as a shoreside processor and receives and purchases IFQ landings of sablefish or halibut must submit annually to NMFS a complete IFQ Buyer Report for each reporting period in which the Registered Buyer receives IFQ fish. A complete IFQ Buyer Report must be postmarked or received by the Regional Administrator by October 15 following the reporting period in which the IFQ Registered Buyer receives the IFQ fish. Submission of these reports is essential to implementation of the IFQ Cost Recovery Program.

## Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that this final rule is necessary for the conservation and management of the groundfish fisheries of the BSAI and GOA. The Regional Administrator also has determined that this action is consistent with the Magnuson-Stevens Act and other applicable laws.

This rule has been determined to be not significant for purposes of Executive Order 12866.

By this action, NMFS restores the IFQ Cost Recovery Program recordkeeping and reporting requirements that had been in effect from March 15, 2000, to August 28, 2003, when they were erroneously rescinded. The rescission has had no substantive effect on the conduct of persons subject to these recordkeeping and reporting requirements because, the information gathered for the report is collected as part of normal business practices. Additionally, the October 15 deadline for submission of the IFQ Buyer Report had not yet arrived so participants in this fishery have not missed any relevant deadlines.

Accordingly, the Assistant Administrator for Fisheries finds good cause to waive prior notice and opportunity for public comment pursuant to 5 U.S.C. 553(b)(B) because prior notice and opportunity for public comment is unnecessary: neither the erroneous rescission nor this final rule has a substantive effect on the conduct of regulated persons. Because the affected industry gathers this information as part of their normal business practices, additional time is not required to allow them to come into compliance since they are already undertaking the obligation. The Assistant Administrator for Fisheries also finds that there exists good cause to waive the requirement of a 30 day delay in the effective date of this rule pursuant to 5 U.S.C. 553(d)(3), in order to allow participants in the fishery to meet the next deadline for submission of reports.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0648–0398 (see 65 FR 14922, col. 1; March 20, 2000).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information requirement displays a currently valid OMB control number.

## List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: October 14, 2003.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set forth in the preamble, 50 CFR part 679 is amended as follows:

## PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*, Title II of Division C, Pub. L. 105 277; Sec. 3027, Pub. L. 106 31; 113 Stat. 57; 16 U.S.C. 1540(f); and Sec. 209, Pub. L. 106 554.

■ 2. In § 679.5, paragraph (l)(7) is added to read as follows:

### § 679.5 Recordkeeping and reporting (R&R).

* * * * *

(l) * * *

(7) *IFQ cost recovery program*.—(i) *IFQ buyer report*.

(A) *Applicability*. An IFQ registered buyer that also operates as a shoreside processor and receives and purchases IFQ landings of sablefish or halibut must submit annually to NMFS a complete IFQ Buyer Report as described in this paragraph (l) and as provided by NMFS for each reporting period, as described at § 679.5(l)(7)(i)(E), in which the registered buyer receives IFQ fish.

(B) *Due date*. A complete IFQ Buyer Report must be postmarked or received by the Regional Administrator not later than October 15 following the reporting period in which the IFQ registered buyer receives the IFQ fish.

(C) *Information required*. A complete IFQ Buyer Report must include the following information:

(*1*) *IFQ registered buyer identification*, including:

(*i*) Name,

(*ii*) Registered buyer number,

(*iii*) Social Security number or tax identification number,

(*iv*) NMFS person identification number (if applicable),

(*v*) Business address,

(*vi*) Telephone number,

(*vii*) Facsimile telephone number,

(*viii*) Primary registered buyer activity,

(*ix*) Other registered buyer activity, and

(*x*) Landing port location;

(*2*) *Pounds purchased and values paid*. (*i*) The monthly total weights, represented in IFQ equivalent pounds by IFQ species, that were landed at the landing port location and purchased by the IFQ registered buyer;

(*ii*) The monthly total gross ex-vessel value, in U.S. dollars, of IFQ pounds, by IFQ species, that were landed at the landing port location and purchased by the IFQ registered buyer;

(*3*) *Value paid for price adjustments*. (*i*) The monthly total U.S. dollar amount of any IFQ retro-payments (correlated by IFQ species, landing month(s), and month of payment) made in the current year to IFQ permit holders for landings made during the previous calendar year;

(*ii*) Certification, including the signature or electronic PIN of the individual authorized by the IFQ registered buyer to submit the IFQ Buyer Report, and date of signature or date of electronic submittal.

(D) *Submission address*. The registered buyer must complete an IFQ Buyer Report and submit by mail or FAX to:

Administrator, Alaska Region, NMFS,
Attn: RAM Program,P.O. Box 21668,
Juneau, AK 99802–1668, FAX: (907)
586–7354

or electronically to NMFS via forms available from RAM or on the RAM area of the Alaska Region Home Page at *http://www.fakr.noaa.gov/ram* .

(E) *Reporting period.* The reporting period of the IFQ Buyer Report shall extend from October 1 through September 30 of the following year, inclusive.

(*ii*) *IFQ permit holder Fee Submission Form*—(A) *Applicability.* An IFQ permit holder who holds an IFQ permit against which a landing was made must submit to NMFS a complete IFQ permit holder Fee Submission Form provided by NMFS.

(B) *Due date and submittal.* A complete IFQ permit holder Fee Submission Form must be postmarked or received by the Regional Administrator not later than January 31 following the calendar year in which any IFQ landing was made.

(C) *Contents of an IFQ Fee Submission Form.* For each of the sections described here, a permit holder must provide the specified information.

(*1*) *Identification of the IFQ permit holder.* An IFQ permit holder with an IFQ landing must accurately record on the identification section of the IFQ Fee Submission Form the following information:

(*i*) The printed name of the IFQ permit holder;

(*ii*) The NMFS person identification number;

(*iii*) The Social Security number or tax ID number of the IFQ permit holder;

(*iv*) The business mailing address of the IFQ permit holder; and

(*v*) The telephone and facsimile number (if available) of the IFQ permit holder.

(*2*) *IFQ landing summary and estimated fee liability.* NMFS will provide to an IFQ permit holder an IFQ Landing Summary and Estimated Fee Liability page as required by § 679.45(a)(2). The IFQ permit holder must either accept the accuracy of the NMFS estimated fee liability associated with his or her IFQ landings for each IFQ permit, or calculate a revised IFQ fee liability in accordance with paragraph (l)(7)(ii)(C)(2)(i) of this section. The IFQ permit holder may calculate a revised fee liability for all or part of his or her IFQ landings.

(*i*) *Revised fee liability calculation.* To calculate a revised fee liability, an IFQ permit holder must multiply the IFQ percentage in effect by either the IFQ actual ex-vessel value or the IFQ standard ex-vessel of the IFQ landing. If parts of the landing have different values, the permit holder must apply the appropriate values to the different parts of the landings.

(*ii*) *Documentation.* If NMFS requests in writing that a permit holder submit documentation establishing the factual basis for a revised IFQ fee liability, the permit holder must submit adequate documentation by the 30th day after the date of such request. Examples of such documentation regarding initial sales transactions of IFQ landings include valid fish tickets, sales receipts, or check stubs that clearly identify the IFQ landing amount, species, date, time, and ex-vessel value or price.

(*3*) *Fee calculation section.*—(*i*) *Information required.* An IFQ permit holder with an IFQ landing must record the following information on the Fee Calculation page: The name of the IFQ permit holder; the NMFS person identification number; the fee liability amount due for each IFQ permit he or she may hold; the IFQ permit number corresponding to such fee liability amount(s) due; the total price adjustment payment value for all IFQ halibut and/or sablefish (e.g., IFQ retro-payments) received during the reporting period for the IFQ Fee Submission Form as described in § 679.5(l)(7)(ii)(D); and the fee liability amount due for such price adjustments.

(*ii*) *Calculation of total annual fee amount.* An IFQ permit holder with an IFQ landing must perform the following calculations and record the results on the Fee Calculation page: add all fee liability amount(s) due for each IFQ permit and record the sum as the sub-total fee liability for all permits; multiply price adjustment payment(s) received for each IFQ species by the fee percentage in effect at the time the payment(s) was received by the IFQ permit holder; add the resulting fee liability amounts due for all price adjustment payments for each IFQ species, then enter the sum as the sub-total fee for price adjustments; add the sub-total fee liability for all permits and the sub-total fee for price adjustments, then enter the resulting sum as the total annual fee amount on the Fee Calculation page and on the Fee Payment page.

(*4*) *Fee payment and certification section.*—(*i*) *Information required.* An IFQ permit holder with an IFQ landing must provide his or her NMFS person identification number, signature, and date of signature on the Fee Payment section of the form or provide the electronic equivalent and record the following: his or her printed name; the total annual fee amount as calculated and recorded on the Fee Calculation page; the total of any pre-payments submitted to NMFS that apply to the total annual fee amount; the remaining balance fee; and the enclosed payment amount.

(*ii*) *Calculation of balance fee payment.* An IFQ permit holder with an IFQ landing must perform the following calculation on the Fee Payment section of the Fee Submission Form: Subtract from the total annual fee amount the total of all pre-payments made (if any) to NMFS and any credits held by NMFS that are applicable to that year's total IFQ cost recovery fees, and record the result as the balance of the fee amount due.

(D) *Reporting Period.* The reporting period of the IFQ Fee Submission Form shall extend from January 1 to December 31 of the year prior to the January 31 due date described in § 679.5(l)(7)(ii)(B).

* * * * *

[FR Doc. 03–26391 Filed 10–15–03; 3:31 pm]

**BILLING CODE 3510–22–S**

# Proposed Rules

**Federal Register**
Vol. 68, No. 202
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2002–NM–11–AD]**

**RIN 2120–AA64**

### Airworthiness Directives; Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes, that currently requires a one-time inspection to detect chafing of electrical wires in the cable trough below the cabin floor; repair, if necessary; installation of additional tie-mounts and tie-wraps; and application of sealant to rivet heads. This action would add an additional modification of the electrical wires in certain sections. The actions specified by the proposed AD are intended to prevent chafing of electrical wires, which could result in an uncommanded shutdown of an engine during flight. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by November 19, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–11–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–11–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

**FOR FURTHER INFORMATION CONTACT:** Douglas G. Wagner, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7506; fax (516) 568–2716.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–11–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–11–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

On September 28, 1999, the FAA issued AD 99–21–09, amendment 39–11352 (64 FR 54199, October 6, 1999), which superseded AD 98–20–14, amendment 39–10781 (63 FR 50501, September 22, 1998), applicable to certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes. That AD requires a one-time inspection to detect chafing of electrical wires in the cable trough below the cabin floor; repair, if necessary; installation of additional tie-mounts and tie-wraps; and application of sealant to rivet heads. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to prevent chafing of electrical wires, which could result in an uncommanded shutdown of an engine during flight.

### Actions Since Issuance of Previous Rule

Since the issuance of AD 99–21–09, Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, has informed us that an uncommanded engine shutdown during flight occurred on a Bombardier Model DHC–8 airplane. The shutdown was due to a short circuit between adjacent wires located in the cable trough below the cabin floor, which sent a 28-volt signal to the fuel shutoff valve. Investigation revealed that the short circuit was caused by chafing of the wires on the sharp edges of the cherrymax rivets in the cable trough. Such chafing of electrical wires could result in an uncommanded shutdown of an engine during flight.

### Explanation of Relevant Service Information

Bombardier has issued Service Bulletin 8–53–80, Revision "A", dated July 25, 2000, which describes procedures for an additional modification of the electrical wires in the cable trough below the cabin floor. The modification is to be done in sections X510.00 to X580.50 of the cable trough; those sections were inadvertently omitted from the modification specified in Bombardier Service Bulletin 8–53–66, dated March 27, 1998 (the service bulletin referenced in the existing AD). TCCA classified Service Bulletin 8–53–80, Revision "A", as mandatory and issued Canadian airworthiness directive CF–1998–08R2, dated July 10, 2000, to ensure the continued airworthiness of these airplanes in Canada.

### FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept us informed of the situation described above. We have examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

### Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 99–21–09 to continue to require a one-time inspection to detect chafing of electrical wires in the cable trough below the cabin floor; repair, if necessary; installation of additional tie-mounts and tie-wraps; and application of sealant to rivet heads. The proposed AD would add an additional modification of the electrical wires in certain sections. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

### Difference Between This Proposed AD and Service Bulletin

Although the service bulletin specifies to submit certain information to the manufacturer, the proposed AD does not include such a requirement.

### Cost Impact

There are approximately 173 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 99–21–09 take between 80 and 100 work hours per airplane (depending on the airplane model) to accomplish, at an average labor rate of $65 per work hour. Required parts are provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the currently required actions is estimated to be between $5,200 and $6,500 per airplane.

The additional modification that is proposed in this AD action would take approximately 10 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be $112,450, or $650 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11352 (64 FR 54199, October 6, 1999), and by adding a new airworthiness directive (AD), to read as follows:

**Bombardier, Inc. (Formerly de Havilland, Inc.):** Docket 2002–NM–11–AD. Supersedes AD 99–21–09, Amendment 39–11352.

*Applicability:* Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes; serial numbers 3 through 540 inclusive, excluding serial number 462; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent chafing of electrical wires, which could result in an uncommanded shutdown of an engine during flight, accomplish the following:

### Restatement of Requirements of AD 99–21–09

#### *One-Time Inspection, Corrective Action, and Modification*

(a) Perform a one-time general visual inspection to detect chafing of electrical wires in the cable trough below the cabin floor; install additional tie-mounts and tie-wraps; and apply sealant to rivet heads (reference Bombardier Modification 8/2705); in accordance with Bombardier Service Bulletin 8–53–66, dated March 27, 1998, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. If any chafing is detected during the inspection required by this paragraph, prior to further flight, repair in accordance with the service bulletin.

**Note 1:** For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) For airplanes having serial numbers 3 through 519 inclusive, excluding serial number 462: Inspect within 36 months after October 27, 1998 (the effective date of AD 98–20–14, amendment 39–10781).

(2) For airplanes having serial numbers 520 through 540 inclusive: Inspect within 36 months after November 10, 1999 (the effective date of AD 99–21–09, amendment 39–11352, which superseded AD 98–20–14), or at the next "C" check, whichever occurs first.

### New Requirements of This AD

*Modification*

(b) For all airplanes: Within 36 months after the effective date of this AD; modify the electrical wires in the cable trough below the cabin floor at Sections X510.00 to X580.50 (including a general visual inspection and any applicable repair) per Part III, paragraphs 1 through 9 and 12 through 20, of the Accomplishment Instructions of Bombardier Service Bulletin 8–53–80, Revision "A", dated July 25, 2000. Any applicable repair must be done before further flight.

### Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, New York Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

**Note 2:** The subject of this AD is addressed in Canadian airworthiness directive CF–1998–08R2, dated July 10, 2000.

Issued in Renton, Washington, on October 14, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–26368 Filed 10–17–03; 8:45 am]

**BILLING CODE 4910–13–P**

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 131

## [FRL–7576–2]

## Water Quality Standards for Puerto Rico

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to establish designated uses and associated water quality criteria for six waterbodies and an area of coastal waters known as the *coastal ring* in the Commonwealth of Puerto Rico. These waterbodies are: Mayaguez Bay (from Punta Guanajibo to Punta Algarrobo); Yabucoa Port; Guayanilla and Tallaboa Bays (from Cayo Parguera to Punta Verraco); Ponce Port (from Punta Carenero to Punta Cuchara) and San Juan Port (from the mouth of Río Bayamón to Punta El Morro), as well as the area of coastal waters known as the coastal ring, defined as all coastal waters from 500 meters seaward to a maximum of three miles seaward. If this proposal is promulgated, the Federally designated use of primary contact recreation and the associated water quality criteria will be added to the Commonwealth's designated use for the above-referenced embayments and the coastal ring (referred to collectively below as the "Subject Waterbodies").

**DATES:** EPA will accept public comments on this proposed rule until November 19, 2003. A public hearing will be held on November 6, 2003, from 2 p.m. to 5 p.m. and from 7 p.m. to 9 p.m. Both oral and written comments will be accepted at the hearing.

**ADDRESSES:** Comments may be submitted by mail to Docket Manager, Proposed Water Quality Standards for Puerto Rico, U.S. EPA Region 2, 290 Broadway, New York, New York 10007, Attention Docket ID No. OW–2003–0072. Comments may also be submitted electronically or through hand delivery/courier. Follow the detailed instructions as provided in Section I.C. of the **SUPPLEMENTARY INFORMATION** section. The public hearing will occur at the Universidad Metropolitana (UMET) Theatre, Ave. Ana G. Mendez, Km 0.3, Cupey, Puerto Rico 00928.

**FOR FURTHER INFORMATION CONTACT:** Wayne Jackson, U.S. EPA Region 2, Division of Environmental Planning and Protection, 290 Broadway, New York, New York 10007 (telephone: 212–637–3807 or e-mail: *jackson.wayne@epa.gov*) or Claudia Fabiano, U.S. EPA Headquarters, Office of Science and Technology, 1200 Pennsylvania, Avenue NW., Mail Code 4305T, Washington, DC 20460 (telephone: 202–566–0446 or e-mail: *fabiano.claudia@epa.gov*).

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## I. General Information

### *A. Who Is Potentially Affected by This Rule?*

Citizens concerned with water quality in Puerto Rico may be interested in this rulemaking. Facilities discharging pollutants to certain waters of the United States in Puerto Rico could be indirectly affected by this rulemaking since water quality standards are used in determining water quality-based National Pollutant Discharge Elimination System (NPDES) permit limits. Categories and entities that may indirectly be affected include:

| Category | Examples of potentially regulated entities |
|---|---|
| Industry | Industries discharging pollutants to the waters identified in § 131.40. |
| Municipalities | Publicly-owned treatment works discharging pollutants to the waters identified in § 131.40. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility may be affected by this action, you should carefully examine the water bodies identified in § 131.40 of today's proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

### *B. How Can I Get Copies of This Document and Other Related Information?*

1. Docket. EPA has established an official public docket for this action under Docket ID No. OW–2003–0072. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing under *Proposed Water Quality Standards for Puerto Rico* at Division of Environmental Planning and Protection, U.S. EPA Region 2, 290 Broadway, New York, New York 10007, and Carribean Environmental Protection Division, U.S. EPA Region 2, 1492 Ponce De Leon Avenue, Suite 417, Santurce, Puerto Rico 00907. These Docket Facilities are open from 9 a.m. to 3:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone numbers are 212–637–3807 and 787–977–5836, respectively. A reasonable fee will be charged for copies.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket identified in section I.B.1.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

### *C. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID OW–2003–0072. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *OW-Docket@epa.gov,* Attention Docket ID No. OW–2003–0072. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD–ROM.* You may submit comments on a disk or CD–ROM that you mail to the address identified in section I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Docket Manager, Proposed Water Quality Standards for Puerto Rico, U.S. EPA Region 2, 290 Broadway, New York, New York 10007, Attention Docket ID No. OW–2003–0072.

3. *By Hand Delivery or Courier.* Deliver your comments to the address identified in section I.C.2., attention Docket ID OW–2003–0072. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.B.1.

### D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

## II. Background

### A. Statutory and Regulatory Background

Section 303 (33 U.S.C. 1313) of the Clean Water Act (CWA or "the Act") directs States, Territories, and authorized Tribes (hereafter referred to as "States"), with oversight by EPA, to adopt water quality standards to protect the public health and welfare, enhance the quality of water and serve the purposes of the CWA. Under section 303, States are required to develop water quality standards for navigable waters of the United States within the State. Section 303(c) provides that water quality standards shall include the designated use or uses to be made of the water and water quality criteria necessary to protect those uses. The designated uses to be considered by States in establishing water quality standards are specified in the Act: public water supplies, propagation of fish and wildlife, recreation, agricultural uses, industrial uses and navigation. States are required to review their water quality standards at least once every three years and, if appropriate, revise or adopt new standards. The results of this triennial review must be submitted to EPA, and EPA must approve or disapprove any new or revised standards.

Section 303(c) of the CWA authorizes the EPA Administrator to promulgate water quality standards to supersede State standards that have been disapproved or in any case where the Administrator determines that a new or revised standard is needed to meet the CWA's requirements. In an August 11, 2003, Opinion and Order from the United States District Court for the District of Puerto Rico in the case of *CORALations and the American Littoral Society* v. *United States Environmental Protection Agency, et al.* (No. 02–1266 (JP) (D. Puerto Rico)), the Court ordered EPA to prepare and publish new or revised water quality standards for those waters which are currently classified as "Class SC" (secondary contact recreation) waters by the Commonwealth of Puerto Rico. EPA is, therefore, proposing Federal water quality standards for these waters in Puerto Rico.

EPA regulations implementing CWA section 303(c) are published at 40 CFR part 131. Under these rules, the minimum elements that must be included in a State's water quality standards include: use designations for all water bodies in the State, water quality criteria sufficient to protect those use designations, and an antidegradation policy (*see* 40 CFR 131.6).

Water quality standards establish the "goals" for a water body through the establishment of designated uses. Designated uses, in turn, determine what water quality criteria apply to specific water bodies. Section 101(a)(2) of the Act establishes as a national goal "water quality which provides for the protection and propagation of fish, shellfish, and wildlife and * * * recreation in and on the water," wherever attainable. These national goals are commonly referred to as the "fishable/swimmable" goals of the Act. Section 303(c)(2)(A) requires water quality standards to "protect the public health or welfare, enhance the quality of water, and serve the purposes of this [Act]." EPA's regulations at 40 CFR part 131 interpret and implement these provisions by requiring that water quality standards provide for fishable/swimmable uses unless those uses have been shown to be unattainable. The mechanism in EPA's regulations used to overcome this presumption is a use attainability analysis (UAA).

Under 40 CFR 131.10(j), States are required to conduct a UAA whenever the State designates or has designated uses that do not include the uses specified in section 101(a)(2) of the CWA or when the State wishes to remove a designated use that is specified in section 101(a)(2) of the CWA or adopt subcategories of uses that require less stringent criteria. Uses are considered by EPA to be attainable, at a minimum, if the uses can be achieved (1) when effluent limitations under section 301(b)(1)(A) and (B) and section 306 are imposed on point source dischargers and (2) when cost effective and reasonable best management practices are imposed on nonpoint source dischargers. 40 CFR 131.10 lists grounds upon which to base a finding that attaining the designated use is not feasible, as long as the designated use is not an existing use: (i) Naturally occurring pollutant concentrations prevent the attainment of the use; (ii) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; (iii) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; (iv) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way which would result in the attainment of the use; (v) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like unrelated to water quality, preclude attainment of aquatic life protection uses; or (vi) Controls more stringent than those required by sections 301(b) and 306 of the CWA would result in substantial and widespread economic and social impact.

A UAA is defined in 40 CFR 131.3(g) as a "structured scientific assessment of the factors affecting the attainment of a use which may include physical, chemical, biological, and economic factors" (*see* §§ 131.3 and 131.10). In a UAA, the physical, chemical and biological factors affecting the attainment of a use are evaluated through a water body survey and assessment.

Guidance on water body survey and assessment techniques is contained in the *Technical Support Manual, Volumes I–III: Water Body Surveys and Assessments for Conducting Use Attainability Analyses*. Volume I provides information on water bodies in general; Volume II contains information on estuarine systems; and Volume III contains information on lake systems (Volumes I–II, November 1983; Volume III, November 1984). Additional guidance is provided in the *Water Quality Standards Handbook: Second Edition* (EPA–823–B–94–005, August 1994). Guidance on economic factors affecting the attainment of a use is contained in the *Interim Economic Guidance for Water Quality Standards: Workbook* (EPA–823–B–95–002, March 1995). In developing today's proposal, EPA followed the same procedures set out for States in 40 CFR part 131 and EPA's implementing policies, procedures, and guidance.

EPA regulations effectively establish a "rebuttable presumption" that fishable/swimmable uses are attainable and, therefore, should apply to a water body unless it is demonstrated that such uses are not attainable. EPA adopted this approach to help achieve the national goal articulated by Congress that, "wherever attainable," water quality provide for the "protection and propagation of fish, shellfish and wildlife" and for "recreation in and on the water." CWA section 101(a). While facilitating achievement of Congress' goals, the rebuttable presumption approach preserves States' paramount role in establishing water quality standards in weighing any available evidence regarding the attainable uses of a particular water body. The rebuttable presumption approach does not restrict the discretion that States have to determine that fishable/swimmable uses are not, in fact, attainable in a particular case. Rather, if the water quality goals articulated by Congress are not to be met in a particular water body, the regulations simply require that such a determination be based upon a credible "structured scientific assessment" of use attainability.

EPA's approach in this rulemaking does not undermine the Commonwealth's primary role in designating uses and setting criteria for waters in Puerto Rico. If the Commonwealth reclassifies the Subject Waterbodies to a swimmable designated use or adopts criteria sufficient to protect a swimmable use prior to EPA's finalizing this rule, EPA would expect to approve the Commonwealth's action and not finalize this rule. Alternatively, if the Commonwealth completes a sound analysis of use attainability, taking into account appropriate biological, chemical and physical factors, and concludes that the swimmable use is not attainable for these water bodies, EPA would expect to approve the Commonwealth's action, if it meets all requirements of EPA's regulations at 40 CFR part 131, and not finalize this rule. If the Commonwealth submits an adequate analysis which concludes that the swimmable use is not attainable after EPA takes final action, EPA would expect to initiate a rulemaking to rescind the rule. EPA encourages the Commonwealth to continue evaluating the appropriate use designation for these water bodies.

### *B. Current Puerto Rico Water Quality Standards*

Puerto Rico's water quality standards regulation (PRWQSR) at Article 2 establishes a classification system containing the designated uses for water bodies in the Commonwealth. Puerto Rico has applied these use designations to all coastal, estuarine, and surface waters of the Commonwealth.

The current use designation adopted by the Commonwealth for the Subject Waterbodies is Class SC. Coastal waters designated as Class SC are "intended for uses where the human body may come into indirect contact with the water (such as fishing, boating, etc.) and for use in propagation and preservation of desirable species, including threatened or endangered species." (PRWQSR, at Article 3.2.3.)

EPA's regulations at 40 CFR part 131 require that waters designated for a use less protective than a fishable/swimmable use be supported by a use attainability analysis, because neither the best usage or conditions related to the best usage for these waters include the fishable/swimmable uses, nor do all the criteria necessary to protect those uses apply. "Fishing" and "propagation and preservation of desirable species" are included as a condition of the best usage. As such, Class SC includes the "fishable" use established as a goal in the Clean Water Act. However, primary contact recreation and the criteria necessary to protect this use are not included for Class SC. Puerto Rico uses fecal coliform and enterococci bacteria criteria to protect for the primary contact recreation use. Class SC includes bacteria criteria sufficient to protect secondary contact recreation. However, these criteria do not provide protection from pathogens associated with fecal contamination during direct contact with the water and, therefore, do not protect for the swimming use.

Section 3.2.3 of the PRWQSR contains the use classifications and associated use-specific criteria for Class SC waters for dissolved oxygen, fecal coliforms, pH, color, turbidity, taste and odor producing substances, sulfates, and surfactants as MBAS (methylene blue active substances). With the exception of the criteria for fecal coliforms, which are not fully protective of the primary contact recreation use, these criteria for Class SC waters have been found to be protective of CWA section 101(a) uses and have been previously approved by EPA. These criteria are intended to protect aquatic life and/or general aesthetic conditions in these waters.

Water Quality Criteria for bacteria is the only parameter that is specifically intended to protect the primary contact recreation use. Water quality criteria for bacteria are intended to protect bathers from gastrointestinal illness in recreational waters. The water quality criteria establish levels of indicator bacteria that demonstrate the presence of fecal contamination. These levels should not be exceeded in order to protect bathers in fresh and marine recreational waters. The inclusion of primary contact recreation as a use for Class SC waters and the application of the indicator bacteria criteria described above would result in the Class SC waters being fully "swimmable." The remainder of the criteria that Puerto Rico applies to its coastal waters are sufficient to protect other CWA section 101(a) uses, such as aquatic life protection and human health protection from the consumption of fish based on the level of toxic pollutants in the water and in the fish tissue.

Section 3.1 of the PRWQSR contains narrative water quality criteria and numeric criteria for substances in toxic concentrations including inorganic substances, pesticides, non-pesticide organic substances, carbon tetrachloride, volatile organic substances, and semi-volatile organic substances. The criteria in section 3.1 are applicable to all waters of Puerto Rico, including those waters classified as Class SC. These criteria are protective of all applicable uses, and have been approved by EPA.

The Puerto Rico Environmental Quality Board (EQB) applies the Class SC designation for the bay components of the Subject Waterbodies from the zone subject to the ebb and flow of tides (mean sea level) to 10.3 nautical miles seaward, and from 500m from the shoreline to 10.3 nautical miles seaward for the coastal ring. However, as discussed below, it is clear that State jurisdiction under the CWA is limited to "navigable waters" of the United States, including territorial seas which extend only three miles seaward. Accordingly, in this proposal, the new use designation for coastal waters is limited to the territorial seas.

Section 303(c)(2)(A) of the CWA provides that States are to adopt water quality standards for "navigable waters." Under section 303(c)(3) (which provides for EPA review of State water quality standards), if EPA approves the State's water quality standards, they become the standards for the applicable waters of the State. Where the Administrator proposes and promulgates water quality standards, section 303(c)(4) provides that the State water quality standards shall apply to "navigable waters."

Section 502(7) of the CWA defines "navigable waters" as waters of the United States, including the "territorial seas." Section 502(8) defines "territorial seas" to mean "the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles." The "contiguous zone" and "ocean" are defined separately (*see* sections 502(9) and (10)).

The CWA also includes two other definitions (for "effluent limitations" and "discharge of a pollutant") that distinguish navigable waters from the contiguous zone and the ocean. These definitions also indicate that navigable waters are not meant to include the contiguous zone and the ocean. EPA has a long standing interpretation of the statute that does not include the contiguous zone and ocean in the definition of navigable waters which is reflected in its regulations (40 CFR 122.2). The CWA authorizes each State that elects to administer its own NPDES permit program for discharges into navigable waters within its jurisdiction, to submit its program for EPA review (*see* section 402(b)). If EPA approves the State program, EPA suspends its issuance of permits under section 402(a), but only as to those navigable waters subject to the State program (*see* section 402(c)(1)). While the CWA definition of navigable waters includes the territorial sea, it does not include the contiguous zone or the ocean, both of which are defined as regions beyond the territorial sea. Read together, these provisions plainly indicate that Congress intended the State NPDES program jurisdiction to be limited to navigable waters including the territorial sea. States cannot assume NPDES permitting authority beyond the three-mile limit of the territorial sea.

Two decisions in the Ninth Circuit Court have addressed these jurisdictional issues. In *Pacific Legal Foundation et al.* v *Costle, 586 F. 2d 657 (9th Cir. 1978) rev'd on other grounds, 445 U.S. 198.*, the Court held that only the Administrator has authority to issue NPDES permits for waters beyond the territorial seas, and that the contiguous zone and the ocean clearly extend beyond the outer limits of the "navigable waters" which mark the extent of the power of the States to administer their own permit programs. The Court noted that "had Congress intended the power of the States to extend beyond the territorial seas," it easily could have so provided." *Id.* at 656. Further, citing the definition of "discharge of a pollutant," which distinguishes discharges to navigable waters from discharges to the contiguous zone or the ocean, the Court concluded that "it is apparent that 'ocean' and 'contiguous zone' waters are not included within the scope of 'navigable waters' * * *" *Id.*

In *Natural Resources Defense Council* v. *EPA, 863 F.2d 1420, (9th Cir. 1988)*, the Court held that "navigable waters" include only those waters landward from the territorial sea. *Id.* at 1435. In this case, Florida argued that it had jurisdiction to apply water quality standards more than three miles from the coast. The State contended that its maritime boundaries extended three maritime leagues (approximately 10.3 miles). Florida maintained that EPA must assure that discharges under EPA's general permit would comply with the State's water quality standards out to 10.3 miles. The Court disagreed, finding that the State's jurisdiction is limited to the territorial seas. The Court noted that it is "difficult to ignore the express language of the Clean Water Act's definition of territorial seas." And, further, that "if there were any doubt that Congress intended to create a uniform three-mile boundary in the (CWA), the legislative history * * * indicates Congress consciously defined the term 'territorial seas' to make clear the jurisdiction limits of this particular legislation and its relationship to other statutes." *Id.* at 1436. For these reasons, EPA is proposing the new use designation for coastal waters limited to the territorial seas.

EPA is proposing to include primary contact recreation as a specified designated use for the Subject Waterbodies. In developing today's proposal, EPA evaluated the PRWQSR to determine which bacteria criteria would protect for the "swimmable" use, and would therefore ensure achievement of the CWA section 101(a)(2) goals. As a result, EPA is proposing the bacteriological criteria associated with Class SB (primary contact recreation) for fecal coliform and enterococci set out at Section 3.2.2 of the PRWQSR for the Subject Waterbodies because these criteria are protective of primary contact recreation. The proposed water quality standards for these water bodies, if ultimately promulgated, will be the basis for establishing NPDES permit limits by EPA Region 2.

### *C. Factual Background*

#### 1. Summary of Commonwealth and EPA Administrative Actions

In August 1990, the Commonwealth of Puerto Rico adopted revisions to the PRWQSR. These were sent to EPA on September 21, 1990, with the caveat from the Chairman of the EQB that the transmittal may not be the final submittal, since EQB was going to have public hearings on November 1, 1990. Because of this caveat, and because the requisite certification from the Commonwealth's Secretary of Justice was not submitted with the revisions as required by 40 CFR 131.6(e), EPA did not act on these revisions immediately.

From 1991 to 1993, EPA Region 2 worked with EQB on a series of draft revisions to the PRWQSR. These drafts were never adopted by Puerto Rico. In 1992, EPA included Puerto Rico in the National Toxics Rule, in large part because EPA did not consider the 1990 revisions to be officially adopted.

The requisite certification from the Commonwealth's Secretary of Justice was ultimately submitted to EPA on

February 25, 2002. Upon receipt of this certification EPA took final action on all new and revised provisions of the 1990 PRWQSR on March 28, 2002. These revisions included 11 separate new or revised provisions.The 1990 revisions to the PRWQSR, however, did not include any changes to the designation of specific waterbody segments, including upgrades from Class SC to SB.

On March 28, 2003, EQB submitted additional revisions to the PRWQSR that EPA approved on June 26, 2003. These revisions included the reclassification of ten bays/estuaries, previously classified as Class SC waters, to Class SB (Article 2.1.3). These included: Aguadilla Bay (from Punta Boquerón to Punta Borinquen); Arecibo Bay (from Punta Maracayo to Punta Caracoles); Fajardo Bay (from Playa Sardinera to Playa de Fajardo); Roosevelt Roads (from Punta Cabra de Tierra to Punta Cascajo); Port of Naguabo (from Playa de Naguabo to El Morrillo); Jobos Bay and Laguna de la Mareas (from Punta Rodeo to Punta Colchones); Guánica Bay inland waters north of the mouth of the river; Port of Dewey in Culebra; and Port of Isabel Segunda in Vieques and Puerto Real in Vieques between Cayo de Tierra and Cayo Real.

While the March 28, 2003, revisions to the PRWQSR did address ten bays/estuaries that were previously classified as Class SC waters by reclassifying them to Class SB, Puerto Rico recognized that it still needed to address the Subject Waterbodies. In an effort to do so, EQB, in its State Fiscal Year 2003 CWA Section 604(b) Consolidated Workplan, committed to develop a plan to outline a schedule for data collection and analysis and identify the applicable regulatory actions for these waters. EQB is currently completing this plan.

### 2. Summary of Legal Actions

On February 20, 2002, a complaint was filed in the U.S. District Court for the District of Puerto Rico by three environmental groups: CORALations, American Littoral Society, and the American Canoe Association. In this action, the plaintiffs alleged, among other things, that certain actions by EPA personnel had triggered a mandatory duty under section 303(c) of the CWA for EPA to prepare and propose regulations setting forth a revised water quality standard for any coastal waters that remained classified SC. The Court, in its August 11, 2003, Opinion and Order, ordered EPA to prepare and publish new or revised water quality standards for those coastal waters which are currently classified as Class SC waters.

## III. Use Designations and Criteria for Waters Currently Designated as Class SC

### *A. Proposed Use Designations and Criteria for the Subject Waterbodies*

EPA evaluated all available data and information to determine whether the swimmable use is attainable in the Subject Waterbodies. EPA's analysis was informed by the regulatory provisions at 40 CFR part 131 and technical guidance that EPA provided to States for developing use attainability analyses. The information that EPA used in its evaluation of the coastal ring component of the Subject Waterbodies shows that the swimmable use is attainable in these waters. That information included all available Quarterly Reports of the 301(h) Waiver Demonstration Studies for five Regional Wastewater Treatment Plants that discharge to the waters comprising the coastal ring. The ambient water quality data collected as part of these quarterly reports showed that the applicable bacteria criteria to protect primary contact recreation (fecal coliform and enterococci) were being attained in the waters of the coastal ring outside of the designated mixing zones. The quarterly reports also demonstrated that the bacteria criteria to protect primary contact recreation are being met at the edge of the mixing zone (based on the measured end-of-pipe concentrations of bacteria at each Regional Wastewater Treatment Plant and the critical initial dilution that is achieved at each ocean outfall).

As discussed in the *Puerto Rico Water Quality Inventory and List of Impaired Waters—2002 305(b)/303(d) Integrated Report Final Version* (February 2003), there is currently little or no data available on which to determine the attainability of the swimmable use in the bay components of the Subject Waterbodies. According to this report, there is insufficient data to determine the use attainment for 38% of the coastal miles and 89% of the estuarine acres. The Subject Waterbodies with insufficient data to make a use attainment determination include Yabucoa Port, portions of Guayanilla and Tallaboa Bays, and San Juan Port. The EQB determined that the following Subject Waterbodies were attaining water quality standards: Mayaguez Bay, Ponce Port, and portions of Guayanilla and Tallaboa Bays. However, EPA's regulations at 40 CFR part 131 require that water quality standards provide for fishable/swimmable uses unless those uses have been shown to be unattainable, which effectively creates a rebuttable presumption of attainability. If the Commonwealth takes into account the appropriate biological, chemical, and physical factors in completing a sound analysis of use attainability and concludes that the swimmable use is not attainable in these waterbodies, EPA would expect to approve the Commonwealth's action (if it meets all requirements of EPA's regulations at 40 CFR part 131). In an effort to properly characterize the attainability of the bays which remain classified SC, EQB is developing a plan to outline a schedule for data collection and analysis in order to provide the information necessary for EQB to demonstrate whether the swimmable use is attainable in these waters.

The last broad category of information considered by EPA in its decision-making process was monitoring data from a sample of potentially affected dischargers to the water bodies (as reflected in Discharge Monitoring Reports or DMRs). As discussed in section V, EPA analyzed the extent to which the proposed Federal use designations and criteria may lead to the development of more stringent NPDES permit limits and, if so, what types of controls would be needed by potentially affected facilities to meet such limits. Discharger information was used in one of two ways by the Agency. First, EPA used monitoring data to assess point sources to the affected water bodies and to help determine whether their pollutant discharges could contribute to ambient exceedances of criteria. Second, the Agency used the monitoring data to determine whether potentially affected dischargers would need to make significant alterations to their operations (or if they could, in fact, meet permit limits for bacteria that would be associated with the swimmable use). Information indicating that potentially affected dischargers could generally meet such revised limits based on the proposed bacteria criteria would support the presumption that the swimmable use is attainable.

Based upon this approach, EPA evaluated all available data and information to determine whether the swimmable use is attainable for the Subject Waterbodies. As a result, EPA is proposing to include primary contact recreation as a specified designated use for the Subject Waterbodies. In addition, EPA is proposing to include bacteria criteria which are protective of primary contact recreation for the Subject Waterbodies. The proposed bacteria criteria are the same as the Commonwealth's criteria associated with the Class SB use for fecal coliform and enterococci, set out at Section 3.2.2 of the PRWQSR. If Puerto Rico classifies these waterbodies with use designations consistent with the CWA and 40 CFR part 131 before a final rulemaking, EPA would expect to approve those use designations. This would eliminate the need to promulgate Federal water quality standards for any waterbody so reclassified. EPA notes that a water's use designation of primary contact recreation (made solely for CWA purposes) and adoption of water quality criteria protective of that use are intended to ensure that water quality will protect swimming if it occurs in such waters. A water's use designation of primary contact recreation is not an official government sanction that swimming necessarily is recommended in such waters. There may be other considerations, such as safety, in deciding whether swimming is appropriate.

EPA is soliciting comment for information about use attainability, especially for any Subject Waterbodies with no or limited data.

### *B. Request for Comment and Data*

EPA believes the proposed primary contact recreation designated use and the bacteria criteria to protect primary contact recreation for the Subject Waterbodies are appropriate considering the requirements of the CWA and the information available to EPA at this time. EPA acknowledges that additional information may exist that may further support or contradict the attainability of a proposed primary contact recreation designated use and bacteria criteria in Subject Waterbodies. The Agency will evaluate any new information that is submitted to EPA during the public comment period with regard to the primary contact recreation use and bacteria criteria for the Subject Waterbodies. Based on the evaluation of new information, EPA will decide whether the primary contact recreation use and bacteria criteria for the Subject Waterbodies in today's proposal are appropriate and consistent with the CWA. To help the Agency ensure that this decision is based on the best available information, the Agency is soliciting additional information. The following paragraphs provide guidance on the type of information EPA considers relevant.

Specifically, EPA seeks information on the Subject Waterbodies that would help determine: (1) Whether primary contact recreation is or has been an existing use; (2) whether the designated use and criteria identified above are being attained or have been attained in the past; (3) whether natural conditions or features or human caused conditions prevent the attainment of this use and criteria and whether these conditions can be remedied or would cause more environmental damage to correct than to leave in place; or (4) whether controls more stringent than those required by section 301(b) and 306 of the CWA would be needed to attain the use, and whether implementation of such controls would result in substantial and widespread social and economic impact. Below is a general discussion of the types of data/information requested by the Agency:

*Ambient Monitoring Information:* (1) Any ambient water quality data for the Subject Waterbodies reflecting either natural conditions or human-caused conditions which cannot be remedied and which prevent the swimmable use or water quality criteria from being attained; (2) any available ambient biological data; (3) any chemical and biological monitoring data that verify improvements to water quality resulting from treatment plant/facility upgrades and/or expansions; and (4) any ambient water quality data reflecting nonpoint sources of pollution or best management practices that have been implemented for nonpoint source control.

*Economic Data:* Any information relating to costs and benefits associated with or incurred as a result of facility or treatment plant expansions or upgrades, including: (1) Qualitative descriptions or quantitative estimates of any costs and benefits associated with facility or treatment plant expansions or upgrades, or associated with facilities or treatment plants meeting permit limits; (2) any information on costs to households in the community with facility or treatment plant expansions or upgrades, whether through an increase in user fees, an increase in taxes, or a combination of both; (3) descriptions of the geographical area affected; (4) any changes in median household income, employment, and overall net debt as a percent of full market value of taxable property; and (5) any effects of changes in tax revenues if the private-sector entity were to go out of business, including changes in income to the community if workers lose their jobs, and effects on other businesses both directly and indirectly influenced by the continued operation of the private sector entity.

## IV. Alternative Regulatory Approaches and Implementation Mechanisms

Today's proposal reflects EPA's determination that primary contact recreation is an appropriate use designation for the Subject Waterbodies based upon the information currently available to EPA. In developing a final rule, EPA will consider any data or information submitted to the Agency during the comment period. However, it is possible that relevant information for these waterbodies may become available after completion of this rulemaking. If EPA ultimately promulgates a Federal "swimmable" use designation for these waterbodies, there are several ways to ensure that the use and its implementing mechanisms appropriately take into account such future information.

### *A. Designating Uses*

States have considerable discretion in designating uses. A State may find that changes in use designations are warranted. EPA will review any new or revised use designations adopted by the Commonwealth for these waters to determine if the standards meet the requirements of the CWA and implementing regulations. If approved, EPA would withdraw any final Federal water quality standards which may result from today's proposal.

In adopting recreation uses, the Commonwealth may wish to consider additional categories of recreation uses. For example, Puerto Rico could establish more than one category of primary contact recreation to differentiate between waters where recreation is known to occur and waters where recreation is not known to occur but may be attained based on water quality, flow, and depth characteristics.

EPA cautions the Commonwealth that it must conduct use attainability analyses as described in 40 CFR 131.10(g) when adopting water quality standards that result in uses not specified in section 101(a)(2) of the CWA or that result in subcategories of uses specified in section 101(a)(2) that require less stringent criteria (*see* 40 CFR 131.10(j)).

### *B. Site-Specific Criteria*

The Commonwealth may also develop data indicating a site-specific water quality criterion for a particular pollutant is appropriate and take action to adopt such a criterion into their water quality standards. Site-specific criteria are allowed by regulation and are subject to EPA review and approval. 40 CFR 131.11(a) requires States to adopt criteria to protect designated uses based on sound scientific rationale and containing sufficient parameters or constituents to protect the designated use. In adopting water quality criteria, States should establish numerical values based on 304(a) criteria, 304(a) criteria modified to reflect site-specific conditions or other scientifically defensible methods. Alternatively, States may establish narrative criteria where numerical criteria cannot be determined or to supplement numeric criteria (*see* 40 CFR 131.11(b)). EPA does not have specific guidance for States and authorized Tribes on developing site-specific criteria for the protection of recreation uses, but this does not preclude the Commonwealth from developing its own scientifically defensible methods. Today's proposed rule does not limit Puerto Rico's ability to modify the criteria applicable to the Federal swimmable use.

### *C. Variances*

Water quality standards variances are another alternative that can give a facility a limited period of time to comply with water quality standards. Puerto Rico has an EPA-approved variance procedure in the PRWQSR (Article 9). As discussed above, the proposed rule contains a Federal variance procedure.

EPA believes variances are particularly suitable when the cause of non-attainment is discharger-specific and/or it appears that the designated use in question will eventually be attainable. EPA has approved the granting of water quality standards variances by States when circumstances might otherwise justify changing a use designation on grounds of unattainability (*i.e.*, the six circumstances described in 40 CFR 131.10(g)). In contrast to a change in standards that removes a use designation for a water body, a water quality standards variance is time-limited and only applies to the discharger to whom it is granted and only to the pollutant parameter(s) upon which the finding of unattainability was based. The underlying standard remains in effect for all other purposes.

For example, if the Commonwealth or a permittee demonstrates that the primary contact recreation use can not be attained pursuant to 40 CFR 131.10(g) because of high levels of fecal coliforms from a wastewater treatment facility, but where an upgraded treatment technology might allow the designated use to be attained, a temporary variance may be appropriate. The variance would allow the discharger's permit to include limits based on relaxed criteria for fecal coliform until the new technology is put in place and it is determined if the underlying designated use is attainable. The practical effect of such a variance is to allow a permit to be written using less stringent criteria, while encouraging ultimate attainment of the underlying standard. A water quality standards variance provides a mechanism for ensuring compliance with sections 301(b)(1)(C) and 402(a)(1) of the CWA while also granting temporary relief to point source dischargers.

While 40 CFR 131.13 allows States to adopt variance procedures for State-adopted water quality standards, such State procedures may not be used to grant variances from Federally promulgated standards. EPA believes that it is appropriate to provide comparable Federal procedures to address new information that may become available. Therefore, under EPA's proposal, the Region 2 Regional Administrator may grant water quality standard variances where a permittee submits data indicating that the primary contact recreation designated use is not attainable for any of the reasons in 40 CFR 131.10(g). This variance procedure will apply to the primary contact recreation use for the Subject Waterbodies.

Today's proposed rule spells out the process for applying for and granting such variances. EPA is proposing to use informal adjudication processes in reviewing and granting variance requests. That process is contained in 40 CFR 131.40(c)(4) of today's proposed rule. Because water quality standards variances are revisions to water quality standards, the proposal provides that the Regional Administrator will provide public notice of the proposed variance and an opportunity for public comment. EPA understands that variance related issues may arise in the context of permit issuance.

The proposed variance procedures require an applicant for a water quality standards variance to submit a request and supporting information to the Regional Administrator (or his/her delegatee). The applicant must demonstrate that the designated use is unattainable for one of the reasons specified in 40 CFR 131.10(g). A variance may not be granted if the use could be attained, at a minimum, by implementing effluent limitations required under sections 301(b) and 306 of the CWA and reasonable best management practices for nonpoint source control.

Under the proposal, a variance may not exceed five years or the term of the NPDES permit, whichever is less. A variance may be renewed if the permittee demonstrates that the use in question is still not attainable. Renewal of the variance may be denied if EPA finds that the conditions of 40 CFR 131.10(g) are not met or if the permittee did not comply with the conditions of the original variance.

EPA is soliciting comment on the need for a variance process for EPA-promulgated use designations, the appropriateness of the particular procedures proposed today, and whether the proposed variance procedures are sufficiently detailed.

## V. Economic Analysis

This proposed rule will have no direct impact on any entity because the rule simply establishes water quality standards (*e.g.*, use designations) which by themselves do not directly impose any costs. These standards, however, may serve as a basis for development of NPDES permit limits. In Puerto Rico, EPA Region 2 is the NPDES permitting authority and retains considerable discretion in implementing standards. Thus, until EPA Region 2 implements these water quality standards, there will be no effect on any entity. Nonetheless, EPA prepared a preliminary analysis to evaluate potential costs to NPDES dischargers in Puerto Rico associated with future implementation of EPA's Federal standards.

Any NPDES-permitted facility that discharges to water bodies affected by this proposed rule could potentially incur costs to comply with the rule's provisions. The types of affected facilities may include industrial facilities and publicly owned treatment works (POTWs). EPA did not consider the potential costs for nonpoint sources, such as agricultural and forestry-related nonpoint sources, although EPA recognizes that the Commonwealth may decide to impose controls on these sources to achieve water quality standards. As a technical matter, nonpoint source discharges are difficult to model and evaluate for potential costs because they are intermittent, highly variable, and occur under different hydrologic or climatic conditions than continuous discharges from industrial and municipal facilities, which are evaluated under critical low flow or drought conditions. Thus, the evaluation of nonpoint sources and their effects on the environment is highly site-specific and data-sensitive. In addition, EPA did not address the potential monetary benefits of this proposed rule for Puerto Rico.

### *A. Identifying Affected Facilities*

According to EPA's Permit Compliance System (PCS), there are 593 NPDES-permitted facilities in Puerto Rico. Eighty-four of the facilities are classified as major dischargers, and 509 are minor or general permit dischargers. However, EPA did not include general permit facilities in its analysis because data for such facilities are extremely limited and flows are usually negligible. Furthermore, EPA could not determine if any of these facilities actually discharge to the affected water bodies because location information is not available in EPA's PCS database. Therefore, EPA's analysis includes a universe of 285 permitted facilities (84 majors and 201 minors).

To identify facilities potentially affected by the proposed rule, EPA assumed that only facilities that have the potential to affect (*i.e.*, cause an increase in fecal coliform levels) the Subject Waterbodies for which EPA is designating a new primary contact recreation use may be affected by the proposed rule. EPA identified these facilities by overlaying PCS facilities with the potentially affected waters and their tributaries currently designated for a Class SC use using GIS software. EPA assumed that only wastewater treatment plants or military facilities with similar effluent characteristics (*i.e.*, facilities having the potential to discharge fecal coliforms) would potentially be affected by the proposed rule. Table 1 summarizes the universe of potentially affected facilities by type and category.

TABLE 1.—ESTIMATED NUMBER OF FACILITIES POTENTIALLY AFFECTED BY THE PROPOSED RULE

| Category | Number of facilities | | |
|---|---|---|---|
| | Major | Minor | Total |
| Military | 1 | 2 | 3 |
| Municipal | 19 | 10 | 29 |
| Total | 20 | 12 | 32 |

*B. Method for Estimating Potential Compliance Costs*

EPA identified a total of 32 facilities (20 majors and 12 minors) that may be potentially affected by the proposed primary contact designated use. EPA evaluated a sample of facilities based on discharger type and category from this group for potential cost impacts associated with the proposed rule. For these sample facilities, EPA evaluated available effluent data from its PCS database to determine the potential controls that may ultimately be needed as a result of the proposed rule.

EPA estimated on a case-by-case basis the most cost-effective control strategy for each sample facility to achieve compliance with the proposed criteria. EPA assumed that projected effluent limits for fecal coliform would be applied as criteria end-of-pipe (a monthly geometric mean of 200 colonies/100 mL and not more than 20% of samples exceeding 400 colonies/100 mL) because the facilities' current permits apply the current criteria in the same manner. EPA assumed that a sample facility would incur costs if average monthly effluent concentrations (or existing permit limit, whichever is smaller) indicate that the facility would not be in compliance with the most stringent criterion.

EPA evaluated each facility's potential compliance with projected permit limits based on available monthly average fecal coliform values from the Agency's PCS database. If monthly average values are not available, EPA evaluated potential compliance based on maximum monthly values. EPA determined potential compliance with the projected limit for each sample facility based on the relative magnitude of the maximum average monthly values, the pattern of occurrence of such values (*i.e.*, when maximum values occurred), and current treatment performance characteristics (*e.g.*, BOD and TSS concentrations, compliance with current permit). For facilities exceeding their current limits, EPA assumed that facilities would install the necessary controls for compliance with current standards, and would incur costs for additional treatment process optimization (*e.g.*, increase chlorine dose, improve mixing conditions, increase contact time) for compliance with the projected limit. For facilities that are in compliance with their current permit limits but would not comply with the projected limit, EPA also assumed that process optimization of their chlorination process may be necessary for compliance with the projected limit.

*C. Results*

EPA estimated the potential costs associated with the proposed primary contact designated use for the Subject Waterbodies. Based on evaluation of the sample of potentially affected facilities, EPA estimated that the potential total annual cost associated with the proposed rule is $2.7 million.

## VI. Statutory and Executive Order Reviews

*A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

*B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). It does not include any information collection, reporting, or recordkeeping requirements.

Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business according to RFA default definitions for small business (based on SBA size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering these economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. The RFA requires analysis of the impacts of a rule on the small entities subject to the rule's requirements. *See United States Distribution Companies* v. *FERC,* 88 F.3d 1105, 1170 (D.C. Cir. 1996). Today's proposed rule establishes no requirements applicable to small entities, and so is not susceptible to regulatory flexibility analysis as prescribed by the RFA. ("[N]o [regulatory flexibility] analysis is necessary when an agency determines that the rule will not have a significant economic impact on a substantial number of small entities *that are subject to the requirements of the rule,*" *United Distribution* at 1170, quoting *Mid-Tex Elec. Co-op* v. *FERC,* 773 F.2d 327, 342 (D.C. Cir. 1985) (emphasis added by *United Distribution* court).)

Under the CWA water quality standards program, States must adopt water quality standards for their waters and must submit those water quality standards to EPA for approval; if the Agency disapproves a State standard and the State does not adopt appropriate revisions to address EPA's disapproval, EPA must promulgate standards consistent with the statutory requirements. EPA also has the authority to promulgate criteria or standards in any case where the Administrator determines that a new or revised standard is necessary to meet the requirements of the Act. These State standards (or EPA-promulgated standards) are implemented through various water quality control programs including the NPDES program, which limits discharges to navigable waters except in compliance with an NPDES permit. The CWA requires that all NPDES permits include any limits on discharges that are necessary to meet applicable water quality standards.

Thus, under the CWA, EPA's promulgation of water quality standards establishes standards that the State generally implements through the NPDES permit process. In this case, however, EPA Region 2 is the NPDES permitting authority in Puerto Rico. As such, EPA Region 2 has discretion in developing discharge limits as needed to meet the standards. While Region 2's implementation of Federally promulgated water quality standards may result in new or revised discharge limits being placed on small entities, the standards themselves do not apply to any discharger, including small entities.

Today's proposed rule, as explained earlier, does not itself establish any requirements that are applicable to small entities. As a result of this action, EPA Region 2 will need to ensure that permits it issues include any limitations on discharges necessary to comply with the standards established in the final rule. In doing so, the Region will have a number of choices associated with permit writing. While the implementation of the rule may ultimately result in some new or revised permit conditions for some dischargers, EPA's action today does not impose any of these as yet unknown requirements on small entities.

### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. The definition of "State" for the purposes of UMRA includes "a territory or possession of the United States." Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or Tribal governments or the private sector. The proposed rule imposes no enforceable duty on the Commonwealth of Puerto Rico, or any other State, local or Tribal governments or the private sector; rather, this rule proposes a designated use for primary contact recreation and associated bacteria criteria for the Subject Waterbodies, which, when combined with Commonwealth adopted water quality criteria, constitute water quality standards for those waterbodies. The Commonwealth and EPA may use these resulting water quality standards in implementing its water quality control programs. Today's proposed rule does not regulate or affect any entity and, therefore, is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. As stated, the proposed rule imposes no enforceable requirements on any party, including small governments. Thus, this proposed rule is not subject to the requirements of section 203 of the UMRA.

### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule would not affect the nature of the relationship between EPA and States generally, for the rule only applies to waterbodies in Puerto Rico (which is considered a "State" for purposes of the water quality standards program). Further, the proposed rule would not substantially affect the relationship of EPA and the Commonwealth of Puerto Rico, or the distribution of power or responsibilities between EPA and the various levels of government. The proposed rule would not alter the Commonwealth's considerable discretion in implementing these water quality standards. Further, this proposed rule would not preclude Puerto Rico from adopting water quality standards that meet the requirements of the CWA. Thus, Executive Order 13132 does not apply to this proposed rule.

Although Executive Order 13132 does not apply to this rule, EPA did consult with representatives of the Commonwealth in developing this rule. Prior to this proposed rulemaking action, EPA had numerous phone calls, meetings and exchanges of written correspondence with EQB to discuss EPA's concerns with the Commonwealth's water quality standards, possible remedies for addressing the inadequate sections of their water quality standards, the use designations and criteria in today's proposal, and the Federal rulemaking process. For a more detailed description of EPA's interaction with the Commonwealth on this proposed rulemaking, refer to section II.C.2. EPA will continue to work with the Commonwealth before finalizing these water quality standards for Puerto Rico. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. There are no Indian Tribes in Puerto Rico, where this rule would apply. Thus, Executive Order 13175 does not apply to this rule.

### *G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

*Executive Order 13045:* "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. Further, it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. This proposed rule, if promulgated, would establish water quality standards to meet the requirements of the CWA and the implementing Federal regulations.

### *H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

EPA welcomes comment on this aspect of the proposed rulemaking, and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

### List of Subjects in 40 CFR Part 131

Environmental protection, Indians—lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: October 14, 2003.

**Marianne Lamont Horinko,**

*Acting Administrator.*

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 131 as follows:

## PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

**Authority:** 33 U.S.C. 1251 *et seq.*

### Subpart D—[Amended]

2. Section 131.40 is added to read as follows:

**§ 131.40 Puerto Rico.**

(a) *Use designations for marine waters.* In addition to the Commonwealth's adopted use designations, the following waterbodies in Puerto Rico have the beneficial use designated in this paragraph (a) within the bays specified below, and within the Commonwealth's territorial seas, as defined in section 502(8) of the Clean Water Act, and 33 CFR 2.05–5, except such waters classified by the Commonwealth as SB.

| Waterbody segment | From | To | Designated use |
|---|---|---|---|
| Coastal Waters | 500m offshore | 3 miles offshore | Primary Contact. Recreation. |
| Guayanilla & Tallaboa Bays | Cayo Parguera | Punta Verraco | Primary Contact. Recreation. |
| Mayaguez Bay | Punta Guanajibo | Punta Algarrobo | Primary Contact. Recreation. |
| Ponce Port | Punta Carenero | Punta Cuchara | Primary Contact. Recreation. |
| San Juan Port | Mouth of Río Bayamón | Punta El Morro | Primary Contact. Recreation. |
| Yabucoa Port | N/A | N/A | Primary Contact. Recreation. |

(b) *Criteria that apply to Puerto Rico's marine waters.* In addition to all other Commonwealth criteria, the following criteria for bacteria apply to the waterbodies in paragraph (a) of this section:

Bacteria: The fecal coliform geometric mean of a series of representative samples (at least five samples) of the waters taken sequentially shall not exceed 200 colonies/100 ml, and not more than 20 percent of the samples shall exceed 400 colonies/100 ml. The enterococci density in terms of geometric mean of at least five representative samples taken sequentially shall not exceed 35/100 ml. No single sample should exceed the upper confidence limit of 75% using 0.7 as the log standard deviation until sufficient site data exist to establish a site-specific log standard deviation.

(c) *Water quality standard variances.* (1) The Regional Administrator, EPA Region 2, is authorized to grant variances from the water quality standards in paragraphs (a) and (b) of this section where the requirements of this paragraph (c) are met. A water quality standard variance applies only to the permittee requesting the variance and only to the pollutant or pollutants specified in the variance; the underlying water quality standard otherwise remains in effect.

(2) A water quality standard variance shall not be granted if:

(i) Standards will be attained by implementing effluent limitations required under sections 301(b) and 306 of the CWA and by the permittee implementing reasonable best management practices for nonpoint source control; or

(ii) The variance would likely jeopardize the continued existence of any threatened or endangered species listed under section 4 of the Endangered Species Act or result in the destruction or adverse modification of such species' critical habitat.

(3) A water quality standards variance may be granted if the applicant demonstrates to EPA that attaining the water quality standard is not feasible because:

(i) Naturally occurring pollutant concentrations prevent the attainment of the use;

(ii) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating Commonwealth water conservation requirements to enable uses to be met;

(iii) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place;

(iv) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way which would result in the attainment of the use;

(v) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like unrelated to water quality, preclude attainment of aquatic life protection uses; or

(vi) Controls more stringent than those required by sections 301(b) and 306 of the CWA would result in substantial and widespread economic and social impact.

(4) Procedures. An applicant for a water quality standards variance shall submit a request to the Regional Administrator of EPA Region 2. The application shall include all relevant information showing that the requirements for a variance have been met. The applicant must demonstrate that the designated use is unattainable for one of the reasons specified in paragraph (c)(3) of this section. If the Regional Administrator preliminarily determines that grounds exist for granting a variance, he/she shall provide public notice of the proposed variance and provide an opportunity for public comment. Any activities required as a condition of the Regional Administrator's granting of a variance shall be included as conditions of the NPDES permit for the applicant. These terms and conditions shall be incorporated into the applicant's NPDES permit through the permit reissuance process or through a modification of the permit pursuant to the applicable permit modification provisions of Puerto Rico's NPDES program.

(5) A variance may not exceed five years or the term of the NPDES permit, whichever is less. A variance may be renewed if the applicant reapplies and demonstrates that the use in question is still not attainable. Renewal of the variance may be denied if the applicant did not comply with the conditions of the original variance, or otherwise does not meet the requirements of this section.

[FR Doc. 03–26409 Filed 10–17–03; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[I.D. 101403A]**

### New England Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) will hold a 3–day Council meeting on November 4–6, 2003, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

**DATES:** The meeting will be held on Tuesday, November 4, 2003, beginning at 9 a.m. and on Wednesday and Thursday November 5 and 6, beginning at 8:30 a.m.

**ADDRESSES:** The meeting will be held at the Holiday Inn, One Newbury Street, Peabody, MA 01960; telephone (978) 535–4600. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

**SUPPLEMENTARY INFORMATION:**

### Tuesday, Wednesday, and Thursday, November 4–6, 2003

Following introductions, the Council will receive reports on recent activities from the Council Chairman and Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel and representatives of the U.S. Coast Guard, NMFS Enforcement and the Atlantic States Marine Fisheries Commission. For the remainder of the day the Council will focus on discussion, selection, and approval of final management measures for inclusion in Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP). This process will continue through mid-day on Wednesday, November 5. At that time the Council has scheduled an open period for public comment on items relevant to Council business, but not otherwise listed on the agenda. The Council will then continue with the Amendment 13 decision-making process through Thursday, November 6. During the afternoon session on November 6 the Council will consider initial action on a framework adjustment that would allow limited access scallop vessels to fish in the Georges Bank areas now closed to protect groundfish. Framework Adjustment 16 to the Sea Scallop FMP/ Framework Adjustment 39 to the Northeast Multispecies FMP could include Total Allowable Catch and possession limits for finfish, seasonal access, gear modifications, mandatory observer coverage and other measures to minimize bycatch. The meeting will adjourn once any other business-related issues have been addressed.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: October 14, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–26395 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–22–S

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 697

**[I.D. 063003A]**

**RIN 0648–AR33**

### Atlantic Striped Bass Conservation Act; Atlantic Striped Bass Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement (EIS) and notice of scoping process; request for comments.

**SUMMARY:** Based on recommendations from the Atlantic States Marine Fisheries Commission (Commission) and comments received from an advance notice of proposed rulemaking (ANPR), NMFS announces its intent to prepare an environmental impact statement (EIS) to analyze the impacts on the human environment of potential revisions to Federal Atlantic striped bass regulations for the U.S. Exclusive Economic Zone (EEZ). In addition, NMFS announces that the public will have additional opportunities to comment on potential management measures, including a no action alternative, addressing the Commission's recommendations and on issues that should be considered in development of the EIS during scheduled scoping meetings. The purpose of this notice is to alert the interested public: (1) of NMFS intent to prepare an EIS; (2) that NMFS will be accepting written comments on its intention to draft an EIS; and (3) that NMFS will conduct public scoping hearings for the impact statement during which the public is invited to attend and comment.

**DATES:** NMFS will discuss and take scoping comments at public meetings in November and December 2003. Written scoping comments will also be accepted and must be received at the appropriate address or facsimile (fax) number (see **ADDRESSES**) no later than 5 p.m. Eastern Standard Time on or before December 22, 2003.

**ADDRESSES:** Written scoping comments and requests for copies of the scoping document and other information should be sent to: Anne Lange, Chief, State-Federal Fisheries Division, Office of Sustainable Fisheries, NMFS, 1315 East West Highway, Room 13317, Silver Spring, MD 20910. Copies of scoping documents may also be obtained on the State-Federal Fisheries Division's website at *http://www.nmfs.noaa.gov/sfa/state_federal/state_federal.htm* after 5 p.m. Eastern Standard Time on November 3, 2003. Comments may also be sent via fax to (301) 713–0596. Comments submitted via e-mail or Internet will not be accepted.

**FOR FURTHER INFORMATION CONTACT:** Anne Lange, telephone (301)713-2334.

**SUPPLEMENTARY INFORMATION:**

### Background

NMFS published an ANPR concerning striped bass in the **Federal**

**Register** on July 21, 2003 (68 FR 43074). In the ANPR, NMFS announced that it was considering whether to propose rulemaking to revise Federal Atlantic striped bass regulations to be compatible with the Commission's Amendment 6 to the Interstate Fishery Management Plan for Atlantic Striped Bass (Amendment 6). Under the Atlantic Striped Bass Conservation Act, NMFS is obligated to regulate striped bass in the EEZ in a manner that is compatible with state management, which is set forth under the Commission's plan. In the ANPR, NMFS sought comments on the Commission's recommendations to the Secretary of Commerce (Secretary) to open the EEZ to the harvest of Atlantic striped bass. NMFS also solicited comments on possible alternative management measures and issues that NMFS should consider relative to these recommendations. The comment period closed on August 20, 2003. The public requested more time to submit comments; NMFS agreed, and reopened the comment period from August 26, 2003, until September 25, 2003 (68 FR 51232).

Atlantic Striped Bass management is based on the Commission's Atlantic Striped Bass Interstate Fishery Management Plan (ISFMP), first adopted in 1981. From 1981 - 1994, four ISFMP Amendments were developed that provided a series of management measures that led to the rebuilding of the stocks. In 1995, the Commission declared the Atlantic striped bass population fully restored and implemented Amendment 5 to the ISFMP to perpetuate the stock so as to allow a commercial and recreational harvest consistent with the long-term maintenance of the striped bass stock. Since then, the Commission has found that the population has expanded to record levels of abundance.

To maintain this recovered population, the Commission approved Amendment 6 to the ISFMP in February 2003 (copies of Amendment 6 are available via the Commission's websiteat *http://www.asmfc.org*). The Commission believes that the measures contained in Amendment 6 are necessary to prevent the overfishing of the Atlantic striped bass resource while allowing growth in both the commercial and recreational fishery. Development of Amendment 6 took almost 4 years and involved extensive input from technical and industry advisors, and provided numerous opportunities for the public to comment on the future management of the species.

Amendment 6 incorporates results of the most recent Atlantic striped bass stock assessment, developed by the Atlantic Coast States, the Commission, NMFS, and the U.S. Fish and Wildlife Service (see section 1.2.2 of Amendment 6). In summary, the 2001 stock assessment concluded that the overall abundance of the stock is very high and fishing mortality remains below the target rate. The stock=s abundance increased steadily between 1982 and 1997 and since then has remained stable. The fishing mortality rate increased steadily until 1999, but decreased slightly in 2000. Amendment 6 also includes recommendations to the Secretary on the development of complementary measures in the EEZ. Management of Atlantic striped bass in the EEZ was one of the issues that was considered throughout development of Amendment 6.

## Recommendation to the Secretary

On April 24, 2003, the Secretary received a letter from the Commission with the following three recommendations for implementation of regulations in the EEZ: (1) Remove the moratorium on the harvest of Atlantic striped bass in the EEZ; (2) implement a 28–inch (71.1 cm) minimum size limit for recreational and commercial Atlantic striped bass fisheries in the EEZ; and (3) allow states the ability to adopt more restrictive rules for fishermen and vessels licensed in their jurisdictions.

In support of its request, the Commission provided a number of reasons to justify opening the EEZ to striped bass fishing. These reasons include:

(1) In 1995, due in part to a closure of the EEZ in 1990 to striped bass harvest, the population of this species was declared fully restored by the Commission. The purpose of closing the EEZ was to protect strong year classes entering the population and to promote rebuilding of the overfished population.

(2) The commercial harvest is controlled by hard quotas; when they are reached the fishery is closed; and overages are taken out of next year's quotas. The Commercial quota will be landed regardless of whether or not the EEZ is opened.

(3) Currently, recreational and commercial catches are occurring in the EEZ and these fish are required to be discarded. Opening the EEZ will convert discarded bycatch of striped bass to landings.

(4) Because of management measures implemented since 1990, the striped bass population has recovered to a point where further examination of whether this fishery should occur in the EEZ is appropriate. There are expectations among a number of fishing industry stakeholders that their past sacrifices would result in future opportunities to harvest striped bass, and therefore, there are potential credibility issues associated with keeping the EEZ closed, especially in light of the current status of the Atlantic striped bass stock.

(5) The recommendation to open the EEZ is part of Amendment 6 which incorporates new management standards to ensure stock conservation including targets and thresholds for both mortality and spawning stock biomass. Fishing mortality is currently below the target level, and spawning stock biomass is 1.5 times the target level.

(6) Amendment 6 includes monitoring requirements and triggers that will allow the Commission to respond quickly to increased mortality.

(7) The bulk of the public comment (greater than 75 percent) received in opposition during the Amendment 6 process cited expansion of the commercial fishery as rationale not to open the EEZ. The Commission believes the rationale is incorrect because the commercial fishery is controlled by a hard quota.

The Commission stated that its Atlantic Striped Bass Technical Committee would monitor annually the Atlantic striped bass population, and, if at some point in the future the Commission determines that the Atlantic striped bass population is overfished or that overfishing is occurring, it may recommend further management measures for the EEZ.

## Summary of ANPR Comments

In addition to the Commission's reasons for its recommendation to the Secretary, the following summarizes comments in support of opening the EEZ: (1) Opening the EEZ to the harvest of striped bass will not increase pressure on the resource, but will dissipate effort over a larger area and reduce the congestion by small trawlers and recreational boats in state waters; and (2) enforcement of the EEZ closure is difficult, but state controls at the point of landing work, regardless of where the fish are harvested. Comments in opposition to opening the EEZ are summarized as follows: (1) Opening the EEZ could create conflicts between state and Federal jurisdictions, such as in those states with game fish status; (2) bycatch concerns may be more difficult to address if fishing for striped bass is allowed in the EEZ; (3) fishing for striped bass in the EEZ may result in a directed fishery for the larger, older, more successful breeders assumed to concentrate offshore; (4) fishing for striped bass in the EEZ may result in an increase in mortality because overall harvest may increase; (5) allowing fishing for striped bass in the EEZ may result in landings in excess of target mortality rates set forth in Amendment 6; and (6) opening the EEZ to fishing for striped bass may have impacts on both human and fish health (such concerns relate to PCB consumption and bacterial infections in striped bass). NMFS believes the best way to address the issues and concerns raised during the ANPR comment period is to hold a series of hearings along the Atlantic coast to help determine the scope of the eventual EIS that it intends to develop. This eventual EIS would offer analysis of the aforementioned issues. In addition, during the scoping process, NMFS would like the public to comment further on the Commission's recommendations, including comments both on other potential management measures, including a no action alternative, as well as comments on other issues that the public thinks should to be analyzed in the development of this EIS.

## Potential Management Measures Being Considered

All persons affected by or otherwise interested in Atlantic striped bass management in the EEZ are invited to participate in determining the scope and significance of issues to be analyzed in development of an EIS by submitting written comments (see ADDRESSES) or by participating in one or more of the scheduled scoping hearings. Potential management measures being considered include: (1) no action - maintain moratorium in EEZ; and (2) open the entire EEZ, implement a 28–inch (71.1 cm) minimum size limit, and allow states to adopt more restrictive regulations for fishermen and vessels licensed in their state (Commission recommendation). In addition, NMFS will consider additional management measures received during the scoping process that will both benefit the sustainability of this fishery and be compatible with the Commission plan. NMFS will consider, through the EIS, all impacts, including direct, indirect and cumulative, of the potential management measures to be considered. The scoping process will also identify and eliminate from detailed study issues that are not significant. Once an EIS is developed, NMFS will hold public hearings to receive comments, on the draft EIS.

## Schedule of Public Scoping Hearings

1. Wednesday, November 5, 2003 - Portsmouth, NH, 7–8:30 p.m.

Urban Forestry Center, 45 Elwin Road, Portsmouth, NH 03801

2. Wednesday, November 12, 2003 - Manteo, NC, 7–9 p.m.

North Carolina Aquarium on Roanoke Island, 374 Airport Road, Manteo, NC 27954

3. Tuesday, November 18, 2003 -Toms River, NJ, 6–9 p.m.

Quality Inn, 815 Route 37, Toms River, NJ 08755

4. Wednesday, November 19, 2003 - Dover, DE, 6:30–7:30 p.m.

Delaware Department of Natural Resources and Environmental Control, Richardson & Robbins Bldg., 89 Kings Highway, Dover, DE

5. Monday, December 1, 2003 - Stony Brook, NY, 7:30–9:30 p.m.

State University of New York at Stony Brook (SUNY), Student Activities Center, Nicolls Road, Stony Brook, NY 11794

6. Tuesday, December 2, 2003 - Old Lyme, CT, 7–9 p.m.

Connecticut Department of Environmental Protection, Marine Headquarters, Boating Education Building, 333 Ferry Road, Old Lyme, CT 06371 7. Monday, December 8, 2003 - Portland, ME, 7–9 p.m.

Holiday Inn By The Bay, 88 Spring Street, Portland, ME 04101

8. Tuesday, December 9, 2003- Bourne, MA, 7–10 p.m.

Canal Club, 100 Trowbridge Road, Bourne, MA 02532

9. Wednesday, December 10, 2003 - Narragansett, RI, 7–9 p.m.

University of Rhode Island, Bay Campus, Corless Auditorium, South Ferry Road, Narragansett, RI

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a NMFS representative will explain the ground rules (e.g., alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The NMFS representative will attempt to structure the hearing so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the hearing.

## Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tom Meyer, (301) 713–2334, at least 7 days prior to the hearing in question.

**Authority:** 16 U.S.C. 1851 note.

Dated: October 15, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–26400 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–22–S

# Notices

Federal Register
Vol. 68, No. 202
Monday, October 20, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

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## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

**[Docket No. 03–035N]**

### National Advisory Committee on Meat and Poultry Inspection; Nomination for Membership

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Department of Agriculture (USDA) is soliciting nominations for membership on the National Advisory Committee on Meat and Poultry Inspection (NACMPI). This notice will be used to fill one vacancy on the Committee. The full Committee consists of 16–18 members, and each person selected is expected to serve a 2-year term. The term for the individual selected to fill this vacancy will expire with the current Committee in March 2005.

**DATES:** The names of the nominees and their typed curricula vitae or resumes must be postmarked no later than November 19, 2003. Applications are available on-line at *http://www.fsis.usda.gov/OPPDE/NACMPI/Nominations.htm.*

**ADDRESSES:** Nominating materials should be submitted to Dr. Garry L. McKee, Administrator, Food Safety and Inspection Service, USDA, Room 615 Cotton Annex Building, 300 12th Street, SW, Washington, DC 20250–3700.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sonya L. West, Meat and Poultry Advisory Committee Staff; telephone (202) 720–2561; Fax (202) 205–0157; e-mail: *sonya.west@fsis.usda.gov.*

**SUPPLEMENTARY INFORMATION:** USDA is seeking nominees for membership on the National Advisory Committee on Meat and Poultry Inspection. The Committee provides advice and recommendations to the Secretary on the meat and poultry inspection programs, pursuant to sections 7(c), 24, 205, 301(a)(3), 301(a)(4), and 301(c) of the Federal Meat Inspection Act (21 U.S.C. 607(c), 624, 645, 661(a)(3), 661(a)(4)), and 661(c) and the sections 5(a)(3), 5(a)(4), 5(c), 8(b), and 11(e) of the Poultry Products Inspection Act (21 U.S.C. 454(a)(3), 454(a)(4), 454(c), 457(b), and 460(e)). Nominations for membership are generally sought from persons representing producers; processors; exporters and importers of meat and poultry products; academia; Federal and State government officials; and consumers. Due to the resignation of a member appointed in March 2003, we are currently seeking a consumer representative at this time in order to maintain the balance of representation in all areas of interest on the Committee. This appointee will serve out the remainder of this term which ends in March 2005.

Appointments to the Committee will be made by the Secretary. To ensure that recommendations of the Committee take into account the needs of the diverse groups served by the Department, membership should include, to the extent practicable, persons with demonstrated ability to represent minorities, women, and persons with disabilities. It is anticipated that the Committee will meet at least twice annually.

#### Background

On April 15, 2003, the Secretary of Agriculture renewed the charter for the NACMPI. The Administrator of FSIS is the Chairperson of the Committee. The current members of the NACMPI are: Ms. Deanna Baldwin, Maryland Department of Agriculture; Dr. Gladys Bayse, Spelman College; Dr. David Carpenter, Southern Illinois University; Dr. James Denton, University of Arkansas; Dr. Kevin Elfering, Minnesota Department of Agriculture; Ms. Sandra Eskin, American Association of Retired Persons; Mr. Michael Govro, Oregon Department of Agriculture; Dr. Joseph Harris, Southwest Meat Association; Dr. Jill Hollingsworth, Food Marketing Institute; Dr. Alice Johnson, National Turkey Federation; Mr. Michael Kowalcyk, Safe Tables Our Priority; Dr. Irene Leech, Virginia Citizens Consumer Council; Mr. Charles Link, Cargill Meats; Dr. Catherine Logue, North Dakota State University; and Mr. Mark Schad, Schad Meats.

#### Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of the notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail Subscription service. In addition, the update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** Notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the Internet at: *http://www.fsis.usda.gov/oa/update/subscribe.asp.* Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done in Washington, DC, on October 14, 2003.

**Garry L. McKee,**

*Administrator.*

[FR Doc. 03–26387 Filed 10–17–03; 8:45 am]

BILLING CODE 3410–DM–P

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Northwest Sacramento Provincial Advisory Committee (SAC PAC)

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Northwest Sacramento Provincial Advisory Committee (PAC) will meet on December 17, 2003, at the Bureau of Land Management Conference Room, Redding, California. The purpose of the meeting is to discuss issues

relating to implementing the Northwest Forest Plan.

**DATE AND TIME:** The meeting will be held December 17, 2003 from 9 a.m. to 4 p.m.

**LOCATION:** The meeting will be held in the Bureau of Land Management Conference Room, 355 Hemsted Road in Redding, California.

**FOR FURTHER INFORMATION CONTACT:** Julie Nelson, Committee Coordinator, USDA, Shasta-Trinity National Forest, 2400 Washington Ave., Redding, CA 96001, (530) 242–2269; e-mail: *jknelson@fs.fed.us*.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Opportunity will be provided for public input and individuals will have the opportunity to address the Committee at that time.

Dated: October 14, 2003.

**J. Sharon Heywood,**

*Forest Supervisor.*

[FR Doc. 03–26365 Filed 10–17–03; 8:45 am]

**BILLING CODE 3410–FK–M**

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Shasta County Resource Advisory Committee (RAC)

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Shasta County Resource Advisory Committee (RAC) will meet on October 29, 2003, in Redding, California. The purpose of the meeting will be to hear presentations from applicants proposing projects, review project proposals, and receive reports from working committees.

**DATES:** The meeting will be held on October 29, 2003, from 8 a.m. to noon.

**ADDRESSES:** The meeting will be held at Northern California Service Center, 6101 Airport Road.

**FOR FURTHER INFORMATION CONTACT:** Kevin McIver, coordinator, USDA Forest Service, (530) 242–2494. E-mail: *kmciver@fs.fed.us*.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Discussion is limited to Forest Service staff and committee members. However, time will be provided for public input, giving individuals the opportunity to address the committee.

Dated: October 14, 2003.

**J. Sharon Heywood,**

*Forest Supervisor.*

[FR Doc. 03–26364 Filed 10–17–03; 8:45 am]

**BILLING CODE 3410–11–M**

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## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

### Notice of Request for Extension of a Currently Approved Information Collection

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Proposed collection; comments requested.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request an extension for a currently approved information collection in support of the program for the Annual Survey of Farmer Cooperatives, as authorized in the Cooperative Marketing Act of 1926.

**DATES:** Comments on this notice must be received by December 19, 2003, to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** E. Eldon Eversull, (Acting) Director, Statistics Staff, RBS, U.S. Department of Agriculture, STOP 3256, 1400 Independence Avenue, SW., Washington, DC 20250–3256, Telephone (202) 690–1415 or send an e-mail message to: *eldon.eversull@usda.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Annual Survey of Farmer Cooperatives.

*OMB Number:* 0570–0007.

*Expiration Date of Approval:* April 30, 2004.

*Type of Request:* Intent to extend and revise a currently approved information collection.

*Abstract:* The primary objective of Rural Business-Cooperative Service (RBS) is to promote understanding, use and development of the cooperative form of business as a viable option for enhancing the income of the agricultural producers and other rural residents. RBS' direct role is providing knowledge to improve the effectiveness and performance of farmer cooperative businesses through technical assistance, research, information, and education. The annual survey of farmer cooperatives collects basic statistics on cooperative business volume, net income, members, financial status, employees, and other selected information to support RBS' objective and role. Cooperative statistics are published in various reports and used by the U.S. Department of Agriculture, cooperative management, educators and others in planning and promoting the cooperative form of business.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 1 hour or less per response.

*Respondents:* Farmer cooperatives.

*Estimated Number of Respondents:* 1,766.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Number of Responses:* 1.

*Estimated Total Annual Burden on Respondents:* 1,685 Hours.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Division, at (202) 692–0043.

#### Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of the RBS' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or forms of information technology. Comments may be sent to Cheryl Thompson, Regulation and Paperwork Management ranch, support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: October 6, 2003.

**John Rosso,**

*Administrator, Rural Business-Cooperative Service.*

[FR Doc. 03–26366 Filed 10–17–03; 8:45 am]

**BILLING CODE 3410–XY–P**

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## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

### Notice of Request for Extension of a Currently Approved Information Collection

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Proposed collection; comments requested.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's intention to request an extension for a currently approved information collection in support of the program for Research on Rural Cooperative Opportunities and Problems.

**DATES:** Comments on this notice must be received by December 19, 2003 to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** Thomas H. Stafford, Director, Cooperative Marketing Division, Rural Business-Cooperative Service, U.S. Department of Agriculture (USDA), STOP 3252, 1400 Independence Avenue, SW., Washington, DC 20250–3252, Telephone (202) 690–0368, Fax (202) 690–2723 or send an e-mail message to *thomas.stafford@usda.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Research on Rural Cooperative Opportunities and Problems.

*OMB Number:* 0575–0028.

*Expiration Date of Approval:* February 29, 2004.

*Type of Request:* Intent to extend and revise a currently approved information collection.

*Abstract:* The mission of Rural Business-Cooperative Service, USDA (RBS) is to improve the quality of life in rural America by financing community facilities and businesses, providing technical assistance and creating effective strategies for rural development. One of RBS's direct roles is in providing knowledge to improve the effectiveness and performance of farmer cooperative businesses.

This information collection is for the purpose of responding to a solicitation for proposals to conduct research through cooperative agreements. Research proposals are to be on critical issues vital to the development and sustainability of user-owned cooperatives as a means of improving the quality of life in America's rural communities. The availability of funds will be announced on an annual basis. The announcement will seek proposals from institutions of higher education and nonprofit organizations. The funds will be awarded on a competitive basis using specific selection criteria.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to range from 10 minutes to 15 hours per response.

*Respondents:* Not-for-profit institutions and institutions of higher education.

*Estimated Number of Respondents:* 50.

*Estimated Number of Responses per Respondent:* 5.

*Estimated Number of Responses:* 248.

*Estimated Total Annual Burden on Respondents:* 1,339.

Copies of this information collection can be obtained from Renita Bolden, Regulations and Paperwork Management Branch, at (202) 692–0035.

**Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of RBS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Renita Bolden, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: October 8, 2003.

**Peter J. Thomas,**

*Acting Administrator, Rural Business—Cooperative Service.*

[FR Doc. 03–26417 Filed 10–17–03; 8:45 am]

BILLING CODE 3410–XY–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 101503A]

## Proposed Information Collection; Comment Request; Applications and Reporting Requirements for Small Take of Marine Mammals by Specified Activities Under the Marine Mammal Protection Act

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before December 19, 2003.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Kenneth R. Hollingshead, fishery biologist, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225 (telephone 301–713–2055, ext 128).

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

The taking by harassment, injury, or mortality of marine mammals is prohibited by the Marine Mammal Protection Act (MMPA) unless exempted or authorized by permit. The incidental-take program authorizes the taking of marine mammals incidental to maritime activities (military, oil industry, oceanographic research). It is the responsibility of the activity to determine if it might have a "taking" and, if it does, to apply for an authorization. Applications are necessary for NOAA to know that an authorization is needed and to determine whether authorization can be made under the MMPA. Reporting requirements are mandated by the MMPA and are necessary to ensure that determinations made in regard to the impact on marine mammals are valid.

### II. Method of Collection

Information is supplied in response to regulations or other guidance. No forms are involved.

### III. Data

*OMB Number:* 0648–0151.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit organizations; not-for-profit institutions; Federal government; and State, Local, or Tribal Government.

*Estimated Number of Respondents:* 67.

*Estimated Time Per Response:* 483 hours for a request for new or the renewal of regulations; 45 hours for an application for Letter of Authorization (response times vary significantly based on the complexity of the application); 200 hours for an application for an Incidental Harassment Authorization; and 93–120 hours for a 90–day, quarterly, or annual report under a Letter of Authorization or Incidental Harassment Authorization.

*Estimated Total Annual Burden Hours:* 15,912.

*Estimated Total Annual Cost to Public:* $24,200.

## IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 14, 2003.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 03–26397 Filed 10–17–03; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 101503B]**

## Proposed Information Collection; Comment Request; Shelf Rockfish Habitat in the Southern California Bight

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before December 19, 2003.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to John Harms, 2725 Montlake Blvd E, Seattle, WA 98112, (206) 860–3414, or *john.harms@noaa.gov*

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

The Northwest Fisheries Science Center (NWFSC) seeks to expand its information base for shelf rockfish within the Southern California Bight by developing a hook and line survey. In order to most efficiently sample the Bight, the NWFSC is interested in collaborating with local sport and commercial fishermen familiar with bocaccio and other shelf rockfish. Specifically, the NWFSC would like to solicit industry input on habitat and location information (such as, latitude and longitude for locations known to contain shelf rockfish; the predominant species of rockfish found at that location; general information on the name of the bank or reef at that location; and the depth of the water at that location) for shelf rockfish that will then be directly incorporated into the design and site selection for the resulting hook and line study. The information collected will be on a voluntary basis.

## II. Method of Collection

The NWFSC will develop a questionnaire that can be distributed in both paper and electronic formats. that will Various means will be used to distribute the questionnaire including word of mouth, placing the questionnaire on the Internet, working through industry groups, personal contact, etc.

## III. Data

*OMB Number:* None.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Individuals or households, business or other for-profit organizations.

*Estimated Number of Respondents:* 50.

*Estimated Time Per Response:* 30 minutes.

*Estimated Total Annual Burden Hours:* 25.

*Estimated Total Annual Cost to Public:* $10. (Respondents who are not able to respond electronically or by fax would incur standard postage fees which are not expected to exceed the cost of a $.37 stamp.)

## IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 14, 2003.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 03–26398 Filed 10–17–03; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 101503C]**

## Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Subsistence Fishery for Pacific Halibut on Waters Off Alaska: Registration and Marking of Gear.

*Form Number(s):* None.

*OMB Approval Number:* 0648–0460.

*Type of Request:* Regular submission.

*Burden Hours:* 1,739.

*Number of Respondents:* 13,350.

*Average Hours Per Response:* 10 minutes for a registration and 15 minutes to mark buoys.

*Needs and Uses:* This program for the Pacific halibut subsistence fishery includes requirements for registration to participate in the fishery, and the marking of certain types of gear used in this fishery. The registration requirement is intended to allow qualified persons to practice the long-term customary and traditional harvest of Pacific halibut for food in a non-commercial manner. The gear-marking requirement aids in enforcement and in actions related to gear damage or loss. The registration information may be submitted by an individual or as a list of multiple individuals from an Alaska Native tribe. Submissions may be made by mail, FAX, e-mail, or on-line.

*Affected Public:* Individuals or households; business or other for-profit organizations; State, Local, or Tribal Government.

*Frequency:* On occasion, every 2 or 4 years.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number 202-395-7285, or *David__Rostker@omb.eop.gov*.

Dated: October 14, 2003.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 03–26399 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–22–S

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[Docket No. 030905221–3249–02]**

## National Weather Service Modernization and Associated Restructuring; Final Certification of No Degradation of Service for the Closure of One Weather Service Office (WSO)

**AGENCY:** National Weather Service (NWS), National Oceanic and Atmospheric Administration, Department of Commerce, Commerce.

**ACTION:** Notice.

**SUMMARY:** On September 26, 2003, the Under Secretary of Commerce for Oceans and Atmosphere certified that closure of the Meridian, Mississippi, Weather Service Office (WSO) will not cause a degradation in service to the affected service area. On September 26, 2003, the Under Secretary of Commerce for Oceans and Atmosphere transmitted to Congress notice of approval of the closure certification for WSO Meridian, Mississippi. Public Law 102–567 requires final certifications be published in the **Federal Register**. This notice satisfies that requirement.

**ADDRESSES:** Requests for copies of the final certification packages should be sent to John Sokich, Room 11426, 1325 East-West Highway, Silver Spring, MD 20910–3283.

**FOR FURTHER INFORMATION CONTACT:** John Sokich, 301–713–0258.

Dated: October 14, 2003.

**John E. Jones,**

*Deputy Assistant Administrator for Weather Services.*

[FR Doc. 03–26372 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–KE–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 100703A]**

## Endangered Species; Permit No. 1123

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Scientific research permit modification.

**SUMMARY:** Notice is hereby given that requests for modifications of scientific research permits No. 1123 submitted by U.S. Fish and Wildlife Service (Edgard O. Espinoza, Primary Investigator), Office of Law Enforcement, National Fish and Wildlife Forensics Laboratory, 1490 East Main Street, Ashland, Oregon 97520, have been granted.

**ADDRESSES:** The modifications and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (phone 301/713–2289, fax 301/713–0376); and,

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Jefferies or Ruth Johnson, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** The requested modifications have been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the provisions of § 222.306 of the regulations governing the taking, importing, and exporting of endangered and threatened fish and wildlife (50 CFR 222–226).

NFWFL is authorized to possess samples of ESA-listed non-marine mammal and non-reptilian species under NMFS jurisdiction associated with genetic research studies and support of law enforcement actions. Law enforcement personnel have an ongoing need for scientific assistance in cases concerning endangered, protected, and managed marine species. The Fish and Wildlife Forensics Center provides technical/scientific assistance to a variety of law enforcement agencies including NMFS Enforcement, US Customs, US Fish and Wildlife Service as well as state wildlife enforcement agencies. Forensics analyses generally involve a biochemical or genetic test when a comparison is made between evidence and voucher samples. Voucher samples which are used in a forensics analysis are collected and maintained under strict criteria that includes documentation (species identification form) from the expert who has authenticated the samples; a chain of custody which originates with the sample collection; and storage under secure conditions. The issuance of this modification will extend the authorized activities through December 31, 2004.

Issuance of these modifications, as required by the ESA was based on a finding that such permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of these permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: October 10, 2003.

**Carrie W. Hubard,**

*Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 03–26396 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–22–S

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Agency Information Collection

**ACTION:** Request for information.

**SUMMARY:** In furtherance of its implementation of the new U.S. Commercial Remote Sensing Policy authorized by the President on April 25, 2003, the National Oceanic and Atmospheric Administration (NOAA) is seeking public comment with regard to NOAA's licensing of commercial remote sensing satellite systems, including existing Federal regulations, current licensing conditions, and possible alternative approaches. This Request for Information extends the comment period of a previous NOAA request which was published on July 15, 2003.

**DATES:** Submit comments on or before November 19, 2003.

**ADDRESSES:** Submit written comments to: NOAA/NESDIS International and Interagency Affairs Office, 1335 East-West Highway SSMC1, Room 7311, Silver Spring, MD 20910, attn: Timothy Stryker, Chief, Satellite Activities Branch.

**SUPPLEMENTARY INFORMATION:** The new U.S. National Space Policy, as authorized by the President on April 25, 2003, establishes guidance and implementation actions for commercial remote sensing space capabilities. A fact sheet regarding the new policy directive may be found in the "What's New" section on the NOAA Commercial Remote Sensing Licensing Web site at *http://www.licensing.noaa.gov*. The policy's goal is "to advance and protect U.S. national security and foreign policy interests by maintaining the nation's leadership in remote sensing space activities, and by sustaining and enhancing the U.S. remote sensing industry."

As part of the implementation of the new policy, NOAA is seeking public comment on all aspects of its licensing program for commercial remote sensing satellite systems. NOAA is seeking comments on topics such as:

- The current NOAA regulations on commercial remote sensing satellite systems (15 CFR 960);
- The current thresholds for commercial operations of U.S. systems;
- The U.S. Government's manner of conditioning operations of U.S. system operators;
- Issues of foreign availability and competition; and,
- Possible alternative approaches to address U.S. national security, foreign policy, and commercial interests.

For public reference, the Land Remote Sensing Policy Act of 1992, NOAA regulations, and other relevant materials may be found in the "Reference Materials" section on the NOAA Commercial Remote Sensing Licensing Web site at *http://www.licensing.noaa.gov*. Comments should be received by NOAA no later than November 19, 2003 by postal service to the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Timothy Stryker, NOAA/NESDIS International and Interagency Affairs, 1335 East-West Highway, Room 7311, Silver Spring, Maryland 20910; telephone (301) 713–2024 x205, fax (301) 713–2032, e-mail *Timothy.Stryker@noaa.gov*, or Bernard Crawford at telephone (301) 713–2024 x204, e-mail *Bernard.Crawford@noaa.gov*.

**Gregory W. Withee,**

*Assistant Administrator for Satellite and Information Services.*

[FR Doc. 03–26371 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–HR–P

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Bahrain

October 14, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

**EFFECTIVE DATE:** January 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Bahrain and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the limits for the 2004 period.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the availability of the 2004 Correlation will be published in the **Federal Register** at a later date.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 14, 2003.

Commissioner,
*Bureau of Customs and Border Protection, Washington, DC 20229.*

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Bahrain and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

| Category | Twelve-month restraint limit |
|---|---|
| Group I | |
| 237, 239pt. [1], 331pt. [2], 332–336, 338, 339, 340–342, 345, 347, 348, 351, 352, 359pt. [3], 433–436, 438, 440, 442–448, 459pt. [4], 631pt. [5], 633–636, 638, 639, 640–647, 648, 651, 652, 659pt. [6], 845, 846 and 852, as a group. | 80,069,154 square meters equivalent. |
| Sublevels in Group I | |
| 338/339 | 1,112,625 dozen. |
| 340/640 | 533,818 dozen of which not more than 400,363 dozen shall be in Categories 340–Y/640–Y [7]. |

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[3] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[4] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[5] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[6] Category 659pt.: all HTS numbers except 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[7] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated September 3, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–26419 Filed 10–17–03; 8:45 am]

**BILLING CODE 3510–DR–S**

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

October 14, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

**EFFECTIVE DATE:** January 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Bangladesh and exported during the period January 1, 2004 through December 31, 2004 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the limits for the 2004 period. Carryforward applied to the 2003 limits is being deducted from the 2004 limits.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the availability of the 2004 Correlation will be published in the **Federal Register** at a later date.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 14, 2003.

Commissioner,

*Bureau of Customs and Border Protection, Washington, DC 20229.*

Dear Commissioner: Pursuant to Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Bangladesh and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

| Category | Twelve-month restraint limit |
|---|---|
| 237 | 883,619 dozen. |
| 331pt. [1] | 207,754 dozen pairs. |
| 334 | 269,572 dozen. |
| 335 | 484,017 dozen. |
| 336/636 | 866,160 dozen. |
| 338/339 | 2,509,175 dozen. |
| 340/640 | 5,672,148 dozen. |
| 341 | 4,698,862 dozen. |
| 342/642 | 812,976 dozen. |
| 347/348 | 4,228,973 dozen. |
| 351/651 | 1,291,175 dozen. |
| 352/652 | 19,262,987 dozen. |
| 363 | 48,127,473 numbers. |
| 369–S [2] | 3,226,019 kilograms. |
| 634 | 943,109 dozen. |
| 635 | 611,024 dozen. |
| 638/639 | 3,182,095 dozen. |
| 641 | 1,967,544 dozen. |
| 645/646 | 747,279 dozen. |

| Category | Twelve-month restraint limit |
|---|---|
| 647/648 | 2,659,732 dozen. |

[1] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[2] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (*see* directive dated October 18, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–26420 Filed 10–17–03; 8:45 am]

**BILLING CODE 3510–DR–S**

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Arab Republic of Egypt

October 14, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

**EFFECTIVE DATE:** January 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Egypt and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the 2004 Correlation will be published in the **Federal Register** at a later date.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 14, 2003.

Commissioner,
Bureau of Customs and Border Protection,
Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Egypt and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

| Category | Twelve-month restraint limit |
|---|---|
| Fabric Group | |
| 218–220, 224–227, 313–O[1], 314–O[2], 315–O[3], 317–O[4] and 326–O[5], as a group | 205,916,302 square meters. |
| Sublevels within Fabric Group | |
| 218 | 2,508,000 square meters. |
| 219 | 48,447,510 square meters. |
| 220 | 48,447,510 square meters. |
| 224 | 48,447,510 square meters. |
| 225 | 48,447,510 square meters. |
| 226 | 48,447,510 square meters. |
| 227 | 48,447,510 square meters. |
| 313–O | 88,963,510 square meters. |
| 314–O | 48,447,510 square meters. |
| 315–O | 56,892,347 square meters. |
| 317–O | 48,447,510 square meters. |
| 326–O | 2,508,000 square meters. |
| Levels not in a group | |
| 300/301 | 19,274,099 kilograms of which not more than 6,045,035 kilograms shall be in Category 301. |
| 338/339 | 5,287,822 dozen. |
| 340/640 | 2,190,671 dozen. |
| 369–S[6] | 2,774,069 kilograms. |
| 448 | 21,315 dozen. |

[1] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[2] Category 314–O: all HTS numbers except 5209.51.6015.

[3] Category 315–O: all HTS numbers except 5208.52.4055.

[4] Category 317–O: all HTS numbers except 5208.59.2085.

[5] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[6] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (*see* directive dated October 8, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–26421 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–DR–S

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

## Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

October 14, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

**EFFECTIVE DATE:** January 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Hong Kong and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection, to establish the 2004 limits. These limits have been adjusted, variously, pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. These limits are subject to further adjustment pursuant to these provisions. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) has been made nor will such an adjustment be available in the future.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the 2004 Correlation will be published in the **Federal Register**.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 14, 2003.

Commissioner,

*Bureau of Customs and Border Protection,*

*Washington, DC 20229.*

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Hong Kong and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

| Category | Twelve-month restraint limit |
|---|---|
| Group I | |
| 200–220, 224–227, 300–326, 360–363, 369(1) [1], 369pt. [2], 400–414, 469pt. [3], 603, 604, 611–620, 624–629 and 666pt. [4], as a group. | 181,028,517 square meters equivalent. |
| Sublevels in Group I | |
| 218/225/317/326 | 84,752,686 square meters of which not more than 4,667,846 square meters shall be in Category 218(1) [5] (yarn dyed fabric other than denim and jacquard). |
| 219 | 53,307,547 square meters. |
| 611 | 8,404,654 square meters. |
| 617 | 5,302,747 square meters. |
| Group I subgroup | |
| 200, 226/313, 314, 315, 369(1) and 604, as a group | 142,861,341 square meters equivalent. |
| Within Group I subgroup | |
| 200 | 459,597 kilograms. |
| 226/313 | 95,622,293 square meters. |
| 314 | 25,788,184 square meters. |
| 315 | 12,749,766 square meters. |
| 369(1) (shoptowels) | 1,047,772 kilograms. |
| 604 | 315,482 kilograms. |
| Group II | |
| 237, 239pt. [6], 331pt. [7] 332–348, 351, 352, 359(1) [8], 359(2) [9], 359pt. [10], 433–438, 440–448, 459pt. [11], 631pt. [12] 633–648, 651, 652, 659(1) [13], 659(2) [14], 659pt. [15], and 443/444/643/644(1), as a group. | 936,285,136 square meters equivalent. |
| Sublevels in Group II | |
| 237 | 1,541,510 dozen. |
| 331pt. | 1,640,761 dozen pairs. |
| 333/334 | 350,628 dozen. |
| 335 | 358,766 dozen. |
| 338/339 [16] (shirts and blouses other than tank tops and tops, knit) | 3,049,398 dozen. |
| 338/339(1) [17] (tank tops and knit tops) | 2,291,027 dozen. |

| Category | Twelve-month restraint limit |
|---|---|
| 340 | 2,920,118 dozen. |
| 345 | 533,362 dozen. |
| 347/348 | 7,069,946 dozen of which not more than 6,979,946 dozen shall be in Categories 347–W/348–W [18]; and not more than 5,289,668 dozen shall be in Category 348–W. |
| 352 | 9,066,956 dozen. |
| 359(1) (coveralls, overalls and jumpsuits) | 759,420 kilograms. |
| 359(2) (vests) | 1,582,787 kilograms. |
| 433 | 11,484 dozen. |
| 434 | 12,328 dozen. |
| 435 | 80,278 dozen. |
| 436 | 104,558 dozen. |
| 438 | 858,711 dozen. |
| 442 | 101,869 dozen. |
| 443 | 65,969 numbers. |
| 444 | 46,127 numbers. |
| 445/446 | 1,419,334 dozen. |
| 447/448 | 71,378 dozen. |
| 631pt. | 157,772 dozen pairs. |
| 633/634/635 | 1,572,748 dozen of which not more than 588,244 dozen shall be in Categories 633/634; and not more than 1,207,693 dozen shall be in Category 635. |
| 638/639 | 5,119,306 dozen. |
| 641 | 884,594 dozen. |
| 644 | 58,029 numbers. |
| 645/646 | 1,402,458 dozen. |
| 647 | 711,711 dozen. |
| 648 | 1,225,512 dozen of which not more than 1,210,722 dozen shall be in Category 648–W [19]. |
| 652 | 6,111,333 dozen. |
| 659(1) (coveralls, overalls and jumpsuits) | 839,358 kilograms. |
| 659(2) (swimsuits) | 361,847 kilograms. |
| 443/444/643/644(1) (made-to-measure suits) | 63,816 numbers. |
| Group II subgroup | |
| 336, 341, 342, 351, 636, 640, 642 and 651, as a group | 170,125,863 square meters equivalent. |
| Within Group II subgroup | |
| 336 | 297,728 dozen. |
| 341 | 2,955,832 dozen. |
| 342 | 651,966 dozen. |
| 351 | 1,248,409 dozen. |
| 636 | 400,690 dozen. |
| 640 | 1,182,637 dozen. |
| 642 | 318,643 dozen. |
| 651 | 433,937 dozen. |
| Group III–only 852 | 11,125,041 square meters equivalent. |
| Limits not in a group | |
| 845(1) [20] (sweaters made in Hong Kong) | 1,129,483 dozen. |
| 845(2) [21] (sweaters assembled in Hong Kong from knit-to-shape components, knit elsewhere). | 2,703,551 dozen. |
| 846(1) [22] (sweaters made in Hong Kong) | 182,647 dozen. |
| 846(2) [23] (sweaters assembled in Hong Kong from knit-to-shape components, knit elsewhere). | 440,113 dozen. |

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[1] Category 369(1): only HTS number 6307.10.2005.

[2] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302,51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040, 9404.90.9505 and HTS number in 369(1).

[3] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[4] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

[5] Category 218(1): all HTS numbers except 5209.42.0060, 5209.42.0080, 5211.42.0060, 5211.42.0080, 5514.32.0015 and 5516.43.0015.

[6] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[7] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[8] Category 359(1): only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[9] Category 359(2): only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[10] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060, 6505.90.2545 and HTS numbers in 359(1) and 359(2).

[11] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505, 6406.99.1560.

[12] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[13] Category 659(1): only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[14] Category 659(2): only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[15] Category 659pt.: all HTS numbers except 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510, 6406.99.1540 and HTS numbers in 659(1) and 659(2).

[16] Categories 338/339: all HTS numbers except 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

[17] Category 338/339(1): only HTS numbers 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

[18] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[19] Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

[20] Category 845(1): only HTS numbers 6103.29.2074, 6104.29.2079, 6110.90.9024, 6110.90.9042 and 6117.90.9015.

[21] Category 845(2): only HTS numbers 6103.29.2070, 6104.29.2077, 6110.90.9022 and 6110.90.9040.

[22] Category 846(1): only HTS numbers 6103.29.2068, 6104.29.2075, 6110.90.9020 and 6110.90.9038.

[23] Category 846(2): only HTS numbers 6103.29.2066, 6104.29.2073, 6110.90.9018 and 6110.90.9036.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (*see* directive dated November 1, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

The conversion factors for merged Categories 333/334, 633/634/635 and 638/639 are 33, 33.90 and 13, respectively. The conversion factor for Category 239pt. is 8.79.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–26422 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–DR–S

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India; Correction

October 14, 2003.

In the letter to the Commissioner, Bureau of Customs and Border Protection published on July 29, 2003 (68 FR 44528), on page 44528, 2nd column, in the table listing import restrain limits, the limit of 4,017,873 dozen for Category 341-Y is in error. Please replace with the correct amount of 3,844,689 dozen.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 03–26423 Filed 10–17–03 8:45 am]

BILLING CODE 3510–DR–S

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Korea

October 14, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

**EFFECTIVE DATE:** January 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Korea and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits. Carryforward applied to the 2003 limits is being deducted from the 2004 limits.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the

2004 Correlation will be published in the **Federal Register** at a later date.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 14, 2003.

Commissioner,

*Bureau of Customs and Border Protection, Washington, DC 20229.*

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in the Republic of Korea and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

| Category | Twelve-month restraint limit |
|---|---|
| Group I | |
| 200–220, 224–V [1], 224–O [2], 225–227, 300–326, 360–363, 369pt., [3], 400–414, 469pt., [4], 603, 604, 611–620, 625-629, 666pt. [5], as a group | 251,715,942 square meters equivalent. |
| Sublevels within Group I | |
| 200 | 576,047 kilograms. |
| 201 | 3,839,661 kilograms. |
| 218 | 11,904,271 square meters. |
| 219 | 10,839,662 square meters. |
| 224–V | 13,665,051 square meters. |
| 300/301 | 3,993,265 kilograms. |
| 313 | 65,076,679 square meters. |
| 314 | 36,283,903 square meters. |
| 315 | 21,151,383 square meters. |
| 317/326 | 24,184,185 square meters. |
| 363 | 1,393,671 numbers. |
| 410 | 3,917,219 square meters. |
| 604 | 519,053 kilograms. |
| 611 | 4,670,666 square meters. |
| 613/614 | 7,936,180 square meters. |
| 617 | 6,581,224 square meters. |
| 619/620 | 102,210,837 square meters. |
| 624 | 11,613,923 square meters. |
| 625/626/627/628/629 | 19,928,173 square meters. |
| Group II | |
| 237, 239pt. [6], 331pt. [7], 332–348, 351, 352, 359pt. [8], 433–438, 440–448, 459–W [9], 459pt. [10], 631pt. [11], 633–648, 651, 652, 659–H [12], 659–S [13] and 659pt. [14], as a group | 582,607,892 square meters equivalent. |
| Sublevels within Group II | |
| 237 | 78,973 dozen. |
| 239pt. | 319,325 kilograms. |
| 333/334/335 | 350,301 dozen of which not more than 179,044 dozen shall be in Category 335. |
| 336 | 74,751 dozen. |
| 338/339 | 1,556,888 dozen. |
| 340 | 809,582 dozen of which not more than 420,361 dozen shall be in Category 340–D [15]. |
| 341 | 207,399 dozen. |
| 342/642 | 281,556 dozen. |
| 345 | 152,723 dozen. |
| 347/348 | 576,047 dozen. |
| 351/651 | 298,663 dozen. |
| 352 | 232,413 dozen. |
| 433 | 14,493 dozen. |
| 434 | 7,433 dozen. |
| 435 | 38,474 dozen. |
| 436 | 16,287 dozen. |
| 438 | 65,298 dozen. |
| 440 | 208,662 dozen. |
| 442 | 55,038 dozen. |
| 443 | 318,836 numbers. |
| 444 | 59,975 numbers. |
| 445/446 | 54,368 dozen. |
| 447 | 92,757 dozen. |
| 448 | 38,720 dozen. |
| 459–W | 104,740 kilograms. |
| 631pt. | 79,754 dozen pairs. |
| 633/634/635 | 1,385,451 dozen of which not more than 157,107 dozen shall be in Category 633 and not more than 585,489 dozen shall be in Category 635. |
| 636 | 311,222 dozen. |
| 638/639 | 5,339,862 dozen. |
| 640–D [16] | 3,294,663 dozen. |

| Category | Twelve-month restraint limit |
|---|---|
| 640–O[17] | 2,718,346 dozen. |
| 641 | 1,106,570 dozen of which not more than 41,797 dozen shall be in Category 641–Y[18]. |
| 643 | 819,801 numbers. |
| 644 | 1,233,354 numbers. |
| 645/646 | 3,699,208 dozen. |
| 647/648 | 1,450,258 dozen. |
| 659–H | 1,536,487 kilograms. |
| 659–S | 233,967 kilograms. |
| Group III–only 852 | 13,340,356 square meters equivalent. |
| Levels not in a group | |
| 845 | 2,315,056 dozen. |
| 846 | 826,905 dozen. |

[1] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36,0020.

[2] Category 224–O: all remaining HTS numbers in Category 224.

[3] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302,51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505.

[4] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[5] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

[6] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[7] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[8] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[9] Category 459–W: only HTS number 6505.90.4090.

[10] Category 459pt.: all HTS numbers except 6505.90.4090 (Category 459–W); 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505, 6406.99.1560.

[11] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[12] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[13] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[14] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[15] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030.

[16] Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[17] 640–O: only HTS numbers 6203.23.0080, 6203.29.2050, 6205.30.1000, 6205.30.2050, 6205.30.2060, 6205.30.2070, 6205.30.2080 and 6211.33.0040.

[18] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (*see* directive dated October 8, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

The conversion factors for the following merged categories are listed below:

| Category | Conversion factor (Square meters equivalent/category unit) |
|---|---|
| 333/334/335 | 33.75 |
| 633/634/635 | 34.1 |
| 638/639 | 12.96 |

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–26424 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–DR–S

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Malaysia

October 14, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

**EFFECTIVE DATE:** January 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Malaysia and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits. Carryforward applied to the 2003 limits is being deducted from the 2004 limits.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the 2004 Correlation will be published in the **Federal Register** at a later date.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 14, 2003.

Commissioner,
*Bureau of Customs and Border Protection, Washington, DC 20229.*

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in Malaysia and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following limits:

| Category | Twelve-month restraint limit |
|---|---|
| Fabric Group | |
| 218–220, 225–227, 313–326, 611–O[1], 613/614/615/617, 619 and 620, as a group | 217,632,182 square meters equivalent. |
| Sublevels within the group | |
| 218 | 12,486,665 square meters. |
| 219 | 60,490,956 square meters. |
| 220 | 60,490,956 square meters. |
| 225 | 60,490,956 square meters. |
| 226 | 60,490,956 square meters. |
| 227 | 60,490,956 square meters. |
| 313 | 72,145,175 square meters. |
| 314 | 86,796,101 square meters. |
| 315 | 60,490,956 square meters. |
| 317 | 60,490,956 square meters. |
| 326 | 11,697,587 square meters. |
| 611–O | 7,018,553 square meters. |
| 613/614/615/617 | 69,436,883 square meters. |
| 619 | 9,358,070 square meters. |
| 620 | 11,697,587 square meters. |
| Other specific limits | |
| 200 | 526,555 kilograms. |
| 237 | 708,479 dozen. |
| 300/301 | 5,282,976 kilograms. |
| 331pt./631pt.[2] | 982,465 dozen pairs. |
| 333/334/335 | 439,597 dozen of which not more than 263,836 dozen shall be in Category 333. |
| 336/636 | 853,731 dozen. |
| 338/339 | 2,002,242 dozen. |
| 340/640 | 2,465,429 dozen. |
| 341/641 | 3,195,288 dozen of which not more than 1,139,921 dozen shall be in Category 341. |
| 342/642 | 762,971 dozen. |
| 345 | 293,484 dozen. |
| 347/348 | 848,553 dozen. |
| 351/651 | 449,238 dozen. |
| 363 | 7,439,664 numbers. |
| 435 | 17,028 dozen. |
| 438–W[3] | 13,935 dozen. |
| 442 | 20,751 dozen. |
| 445/446 | 32,939 dozen. |
| 604 | 2,448,774 kilograms. |
| 634/635 | 1,491,336 dozen. |
| 638/639 | 878,508 dozen. |

| Category | Twelve-month restraint limit |
|---|---|
| 645/646 | 671,934 dozen. |
| 647/648 | 3,162,056 dozen of which not more than 2,213,435 dozen shall be in Category 647–K[4] and not more than 2,213,435 dozen shall be in Category 648–K[5]. |
| Group II | |
| 201, 224, 239pt[6], 332, 352, 359pt.[7], 360–362, 369pt.[8], 400–414, 433, 434, 436, 438–O[9], 440, 443, 444, 447, 448, 459pt.[10], 469pt.[11], 603, 618, 624–629, 633, 643, 644, 652, 659pt.[12], 666pt.[13], 845, 846 and 852, as a group | 32,342,281 square meters equivalent. |

[1] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085.

[2] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[3] Category 438–W: only HTS numbers 6104.21.0060, 6104.23.0020, 6104.29.2051, 6106.20.1010, 6106.20.1020, 6106.90.1010, 6106.90.1020, 6106.90.2520, 6106.90.3020, 6109.90.1540, 6109.90.8020, 6110.11.0080, 6110.12.2080, 6110.19.0080, 6110.30.1560, 6110.90.9074 and 6114.10.0040.

[4] Category 647–K: only HTS numbers 6103.23.0040, 6103.23.0045, 6103.29.1020, 6103.29.1030, 6103.43.1520, 6103.43.1540, 6103.43.1550, 6103.43.1570, 6103.49.1020, 6103.49.1060, 6103.49.8014, 6112.12.0050, 6112.19.1050, 6112.20,.1060 and 6113.00.9044.

[5] Category 648–K: only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1030, 6104.29.1040, 6104.29.2038, 6104.63.2006, 6104.63.2011, 6104.63.2026, 6104.63.2028, 6104.63.2030, 6104.63.2060, 6104.69.2030, 6104.69.2060, 6104.69.8026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.9052 and 6117.90.9070.

[6] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[7] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[8] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302,51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505.

[9] Category 438–O: only HTS numbers 6103.21.0050, 6103.23.0025, 6105.20.1000, 6105.90.1000, 6105.90.8020, 6109.90.1520, 6110.11.0070, 6110.12.2070, 6110.19.0070, 6110.30.1550, 6110.90.9072, 6114.10.0020 and 6117.90.9025.

[10] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505, 6406.99.1560.

[11] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[12] Category 659pt.: all HTS numbers except 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000. 6406.99.1510 and 6406.99.1540.

[13] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (*see* the October 9, 2002 directive) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–26425 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–DR–S

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

## Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

October 14, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

**EFFECTIVE DATE:** January 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the Philippines and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection, to establish the 2004 limits. Carryforward used in 2003 is being deducted from the 2004 limits.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the availability of the 2004 Correlation will be published in the **Federal Register** at a later date.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 14, 2003.

Commissioner,
*Bureau of Customs and Border Protection, Washington, DC 20229.*

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in the Philippines and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

| Category | Twelve-month restraint limit |
|---|---|
| Levels in Group I | |
| 237 | 3,128,532 dozen. |
| 331pt./631pt. [1] | 2,785,156 dozen pairs. |
| 333/334 | 490,090 dozen of which not more than 70,358 dozen shall be in Category 333. |
| 335 | 301,763 dozen. |
| 336 | 1,160,863 dozen. |
| 338/339 | 3,052,027 dozen. |
| 340/640 | 1,435,500 dozen. |
| 341/641 | 1,222,968 dozen. |
| 342/642 | 949,837 dozen. |
| 345 | 282,859 dozen. |
| 347/348 | 3,327,704 dozen. |
| 351/651 | 1,035,985 dozen. |
| 352/652 | 4,068,587 dozen. |
| 359–C/659–C [2] | 1,487,936 kilograms. |
| 361 | 3,163,024 numbers. |
| 369–S [3] | 757,929 kilograms. |
| 433 | 3,487 dozen. |
| 443 | 42,155 numbers. |
| 445/446 | 30,595 dozen. |
| 447 | 8,506 dozen. |
| 611 | 10,034,662 square meters. |
| 633 | 64,698 dozen. |
| 634 | 802,729 dozen. |
| 635 | 421,723 dozen. |
| 636 | 3,025,280 dozen. |
| 638/639 | 3,135,262 dozen. |
| 643 | 1,545,368 numbers. |
| 645/646 | 1,212,560 dozen. |
| 647/648 | 2,007,904 dozen. |
| 659–H [4] | 2,492,794 kilograms. |
| Group II | |
| 200–220, 224–227, 300–326, 332, 359pt. [5], 360, 362, 363, 369pt. [6], 400–414, 434–438, 442, 444, 448, 459pt. [7], 469pt. [8], 603, 604, 613–620, 624–629, 644, 659–O [9], 666pt. [10], 845, 846 and 852, as a group | 260,167,321 square meters equivalent. |
| Sublevel in Group II | |
| 604 | 3,544,939 kilograms. |

[1] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[5] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[6] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302,51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700; 9404.90.1000, 9404.90.8040 and 9404.90.9505.

[7] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505, 6406.99.1560.

[8] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[9] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[10] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (*see* directive dated October 8, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner, Bureau of Customs, and Border Protection, should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–26426 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–DR–S

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

October 14, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

**EFFECTIVE DATE:** January 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Singapore and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the availability of the 2004 CORRELATION will be published in the **Federal Register** at a later date.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 14, 2003.

Commissioner,

Bureau of Customs and Border Protection,

Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Singapore and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

| Category | Twelve-month restraint limit |
|---|---|
| 237 | 410,730 dozen. |
| 239pt. [1] | 290,977 kilograms. |
| 331pt. [2] | 95,940 dozen pairs. |
| 334 | 100,029 dozen. |
| 335 | 300,886 dozen. |
| 338/339 | 2,227,426 dozen of which not more than 1,301,728 dozen shall be in Category 338 and not more than 1,447,360 dozen shall be in Category 339. |
| 340 | 1,558,867 dozen. |
| 341 | 391,978 dozen. |
| 342 | 241,216 dozen. |
| 347/348 | 1,408,087 dozen of which not more than 880,052 dozen shall be in Category 347 and not more than 684,488 dozen shall be in Category 348. |

| Category | Twelve-month restraint limit |
|---|---|
| 435 | 7,623 dozen. |
| 604 | 1,259,653 kilograms. |
| 631pt. [3] | 600,997 dozen pairs. |
| 634 | 381,889 dozen. |
| 635 | 390,802 dozen. |
| 638 | 1,402,620 dozen. |
| 639 | 4,316,399 dozen. |
| 640 | 332,337 dozen. |
| 641 | 542,077 dozen. |
| 642 | 582,654 dozen. |
| 645/646 | 215,126 dozen. |
| 647 | 921,763 dozen. |
| 648 | 1,711,652 dozen. |

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[3] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated September 3, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03-26427 Filed 10-17-03; 8:45 am]

BILLING CODE 3510-DR-S

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

## Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka

October 14, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

**EFFECTIVE DATE:** January 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Sri Lanka and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits. Caryforward used thus far in 2003 has been deducted from the 2004 limits.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the availability of the 2004 CORRELATION will be published in the **Federal Register** at a later date.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 14, 2003.

Commissioner,

*Bureau of Customs and Border Protection,*

*Washington, DC 20229.*

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Sri Lanka and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

| Category | Twelve-month restraint limit |
|---|---|
| 237 | 564,171 dozen. |
| 314 | 8,422,263 square meters. |
| 331pt./631pt. [1] | 1,242,174 dozen pairs. |
| 333/633 | 106,198 dozen. |
| 334/634 | 1,177,254 dozen. |
| 335 | 542,678 dozen. |
| 336/636 | 688,547 dozen. |
| 338/339 | 2,354,510 dozen. |
| 340/640 | 2,050,352 dozen. |
| 341/641 | 3,375,000 dozen of which not more than 2,250,000 dozen shall be in Category 341 and not more than 2,250,000 dozen shall be in Category 641. |
| 342/642 | 1,207,438 dozen. |
| 345/845 | 317,079 dozen. |
| 347/348 | 1,599,566 dozen. |
| 351/651 | 608,667 dozen. |
| 352/652 | 2,511,474 dozen. |
| 359-C/659-C [2] | 2,556,197 kilograms. |
| 360 | 2,807,422 numbers. |
| 363 | 24,060,215 numbers. |
| 369-S [3] | 1,505,310 kilograms. |
| 434 | 8,108 dozen. |
| 435 | 17,373 dozen. |
| 440 | 11,582 dozen. |
| 611 | 10,995,734 square meters. |
| 635 | 730,106 dozen. |

| Category | Twelve-month restraint limit |
|---|---|
| 638/639 | 1,773,325 dozen. |
| 644 | 995,594 numbers. |
| 645/646 | 398,237 dozen. |
| 647/648 | 2,019,842 dozen. |

[1] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated November 1, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 03–26428 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–DR–S

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

October 14, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

**EFFECTIVE DATE:** January 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Taiwan and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the World Trade Organization (WTO) Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the 2004 CORRELATION will be published in the **Federal Register** at a later date.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 14, 2003.

Commissioner,

*Bureau of Customs and Border Protection, Washington, DC 20229.*

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Taiwan and exported during the twelve-month period which begins on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

| Category | Twelve-month limit |
|---|---|
| Group I | |
| 200–220, 224, 225/317/326, 226, 227, 300/301, 313–315, 360–363, 369–S[1], 369–O[2], 400–414, 469pt[3], 603, 604, 611, 613/614/615/617, 618, 619/620, 624, 625/626/627/628/629 and 666pt[4], as a group. | 211,431,409 square meters equivalent. |
| Sublevels in Group I | |
| 218 | 24,994,474 square meters. |
| 225/317/326 | 44,365,123 square meters. |
| 226 | 8,050,854 square meters. |
| 300/301 | 1,856,936 kilograms of which not more than 1,558,200 kilograms shall be in Category 300; not more than 1,558,200 kilograms shall be in Category 301. |
| 363 | 12,503,087 numbers. |

| Category | Twelve-month limit |
|---|---|
| 611 | 3,602,683 square meters. |
| 613/614/615/617 | 22,343,481 square meters. |
| 619/620 | 16,422,804 square meters. |
| 625/626/627/628/629 | 21,369,949 square meters. |
| Group I subgroup | |
| 200, 219, 313, 314, 315, 361, 369–S and 604, as a group | 161,759,428 square meters equivalent. |
| Within Group I subgroup | |
| 200 | 807,619 kilograms. |
| 219 | 18,380,605 square meters. |
| 313 | 70,614,729 square meters. |
| 314 | 32,740,729 square meters. |
| 315 | 25,087,743 square meters. |
| 361 | 1,622,330 numbers. |
| 369–S | 499,431 kilograms. |
| 604 | 249,522 kilograms. |
| Group II | |
| 237, 239pt[5], 331pt.[6], 332, 333/334/335, 336, 338/339, 340–345, 347/348, 351, 352/652, 359–C/659–C[7], 659–H[8], 359pt.[9], 433-438, 440, 442, 443, 444, 445/446, 447/448, 459pt.[10], 631pt.[11], 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 651, 659–S[12], 659pt.[13], 846 and 852, as a group. | 622,375,380 square meters equivalent. |
| Sublevels in Group II | |
| 237 | 789,054 dozen. |
| 239pt. | 1,404,233 kilograms. |
| 331pt. | 146,013 dozen pairs. |
| 336 | 134,433 dozen. |
| 338/339 | 866,702 dozen. |
| 340 | 1,126,552 dozen. |
| 345 | 140,467 dozen. |
| 347/348 | 1,064,931 dozen of which not more than 1,064,931 dozen shall be in Categories 347–W/348–W[14]. |
| 352/652 | 3,566,630 dozen. |
| 359–C/659–C | 1,447,633 kilograms. |
| 433 | 16,145 dozen. |
| 434 | 11,213 dozen. |
| 435 | 26,623 dozen. |
| 436 | 5,301 dozen. |
| 438 | 29,918 dozen. |
| 440 | 5,796 dozen. |
| 442 | 43,995 dozen. |
| 443 | 45,206 numbers. |
| 444 | 64,382 numbers. |
| 445/446 | 140,097 dozen. |
| 633/634/635 | 1,634,440 dozen of which not more than 959,317 dozen shall be in Categories 633/634 and not more than 850,077 dozen shall be in Category 635. |
| 638/639 | 6,565,058 dozen. |
| 640 | 1,058,909 dozen of which not more than 281,710 dozen shall be in Category 640–Y[15]. |
| 642 | 777,133 dozen. |
| 643 | 537,973 numbers. |
| 644 | 856,003 numbers. |
| 645/646 | 4,107,691 dozen. |
| 647/648 | 5,248,544 dozen of which not more than 5,248,544 dozen shall be in Categories 647–W/648–W[16]. |
| 659–H | 2,384,477 kilograms. |
| 659–S | 1,601,702 kilograms. |
| Group II Subgroup | |
| 333/334/335, 341, 342, 351, 447/448, 636, 641 and 651, as a group | 74,480,968 square meters equivalent. |
| Within Group II Subgroup | |
| 333/334/335 | 345,855 dozen of which not more than 187,340 dozen shall be in Category 335. |
| 341 | 349,910 dozen. |
| 342 | 218,590 dozen. |
| 351 | 363,662 dozen. |
| 447/448 | 22,062 dozen. |
| 636 | 406,321 dozen. |
| 641 | 735,338 dozen of which not more than 257,368 dozen shall be in Category 641–Y[17]. |
| 651 | 456,057 dozen. |
| Group III | |
| Sublevel in Group III | |
| 845 | 857,026 dozen. |

[1] Category 369–S: only HTS number 6307.10.2005.

[2] Category 369–O: all HTS numbers except 6307.10.2005 (Categorv 369–S); and 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[3] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[4] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

[5] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[6] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[7] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[8] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[9] Category 359pt.: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[10] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[11] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[12] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[13] Category 659pt.: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[14] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[15] Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[16] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

[17] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated November 1, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

The conversion factors are as follows:

| Category | Conversion factors (square meters equivalent/category unit) |
|---|---|
| 333/334/335 | 33.75 |
| 352/652 | 11.3 |
| 359–C/659–C | 10.1 |
| 633/634/635 | 34.1 |
| 638/639 | 12.5 |

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 03–26430 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–DR–S

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

## Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Thailand

October 14, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection.

**EFFECTIVE DATE:** October 20, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota

Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for the charging of additional carryforward used, swing, carryover, and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 63633, published on October 15, 2002.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 14, 2003.

Commissioner,
*Bureau of Customs and Border Protection, Washington, DC 20229*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 8, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on October 20, 2003, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Levels in Group I | |
| 200 | 2,088,878 kilograms. |
| 218 | 27,328,680 square meters. |
| 219 | 11,843,261 square meters. |
| 300 | 7,422,111 kilograms. |
| 301–O [2] | 1,696,915 kilograms. |
| 314–O [3] | 78,712,514 square meters. |
| 315–O [4] | 55,703,467 square meters. |
| 317–O/326–O [5] | 23,384,855 square meters. |
| 363 | 36,207,254 numbers. |
| 604 | 1,303,272 kilograms of which not more than 835,551 kilograms shall be in Category 604–A [6]. |
| 613/614/615 | 84,185,472 square meters of which not more than 49,019,053 square meters shall be in Categories 613/615 and not more than 49,019,053 square meters shall be in Category 614. |
| 617 | 30,400,308 square meters. |
| 619 | 12,903,804 square meters. |
| 620 | 12,759,104 square meters. |
| 625/626/627/628/629 | 23,078,445 square meters of which not more than 17,564,156 square meters shall be in Category 625. |
| Group II | |
| 237, 331pt. [7], 332–348, 351, 352, 359pt. [8], 433–438, 440, 442–448, 459pt. [9], 631pt. [10], 633–648, 651, 652, 659–H [11], 659pt. [12], 845, 846 and 852, as a group | 477,314,603 square meters equivalent. |
| Sublevels in Group II | |
| 334/634 | 1,086,218 dozen. |
| 335/635 | 895,186 dozen. |
| 336/636 | 577,905 dozen. |
| 338/339 | 2,801,379 dozen. |
| 340 | 532,949 dozen. |
| 341/641 | 1,258,348 dozen. |
| 342/642 | 1,095,502 dozen. |
| 345 | 538,719 dozen. |
| 347/348 | 1,386,349 dozen. |
| 351/651 | 425,302 dozen. |
| 433 | 11,591 dozen. |
| 434 | 14,953 dozen. |
| 435 | 67,943 dozen. |
| 438 | 22,428 dozen. |
| 442 | 26,045 dozen. |
| 638/639 | 3,339,939 dozen. |
| 640 | 919,104 dozen. |
| 645/646 | 557,035 dozen. |
| 647/648 | 1,989,414 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Category 301–O: only HTS numbers 5205.21.0020, 5205.21.0090, 5205.22.0020, 5205.22.0090, 5205.23.0020, 5205.23.0090, 5205.24.0020, 5205.24.0090, 5205.26.0020, 5205.26.0090, 5205.27.0020, 5205.27.0090, 5205.28.0020, 5205.28.0090, 5205.41.0020, 5205.41.0090, 5205.42.0020, 5205.42.0090, 5205.43.0020, 5205.43.0090, 5205.44.0020, 5205.44.0090, 5205.46.0020, 5205.46.0090, 5205.47.0020, 5205.47.0090, 5205.48.0020 and 5205.48.0090.

[3] Category 314–O: all HTS numbers except 5209.51.6015.

[4] Category 315–O: all HTS numbers except 5208.52.4055.

[5] Category 317–O: all HTS numbers except 5208.59.2085; Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[6] Category 604–A: only HTS number 5509.32.0000.

[7] Categories 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[8] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[9] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[10] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[11] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[12] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 03–26429 Filed 10–17–03; 8:45 am]

**BILLING CODE 3510–DR–S**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Proposed Collection; Comment Requested

**AGENCY:** Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

**ACTION:** Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by December 19, 2003.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Program Integration) Legal Policy, ATTN: Lt Col Patrick Lindemann, 4000 Defense Pentagon, Washington, DC 20301–4000.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call at (703) 697–3387.

*Title, Associated form, and OMB Control Number:* Involuntary Allotment Application; DD Form 2653, OMB Control Number 0704–0367.

*Needs and Uses:* This information collection requirement is necessary to initiate an involuntary allotment from the pay of a member of the Uniformed Services for indebtedness owed a third party under 5 U.S.C. 5520a. 5 U.S.C. 5520a authorizes involuntary allotments if there is a final court judgment acknowledging the debt and it is determined by competent military or executive authority to be in compliance with the procedural requirements of the Soldiers' and Sailors' Civil Relief Act. In order to satisfy these statutory requirements, the DD Form 2653, requires the respondent to provide identifying information on the member of the Uniformed Services; provide a certified copy of the judgment, and certify, if applicable, that the judgment complies with the Soldiers' and Sailors' Civil Relief Act.

*Affected Public:* Individuals or households; businesses or other for profit.

*Annual Burden Hours:* 4,650.

*Number of Respondents:* 9,300.

*Responses Per Respondent:* 1.

*Average Burden Per Response:* 30 minutes.

*Frequency:* On Occasion.

**SUPPLEMENTARY INFORMATION:**

### Summary of Information Collection

This information is used by the Department of Defense to initiate an involuntary allotment from the pay of a member of the Uniformed Services for indebtedness owed a third party as determined by the final judgment of a court.

This requirement was created by "The Hatch Act Reform amendments of 1993," Pub. L. 103–94. The DD Form 2653, "Involuntary Allotment Application," requires the creditor to provide identifying information on the member of the Uniformed Services, provide a certified copy of the judgment, and certify that the members' rights under the Soldiers' and Sailors' Civil Relief Act were protected.

Dated: October 6, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 03–26334 Filed 10–17–03; 8:45 am]

BILLING CODE 5001–08–M

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### National Security Education Board Meeting

**AGENCY:** National Defense University, DoD.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to Pub. L. 92–463, notice is hereby given of a forthcoming meeting of the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Secretary concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Pub. L. 102–183, as amended.

**DATES:** October 31, 2003.

**ADDRESSES:** The Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

**FOR FURTHER INFORMATION CONTACT:** Dr. Edmond J. Collier, Deputy Director, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn, Virginia 22209–2248; (703) 696–1991. Electronic mail address: *colliere@ndu.edu.*

**SUPPLEMENTARY INFORMATION:** The Board meeting is open to the Public.

Dated: September 26, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 03–26335 Filed 10–17–03; 8:45 am]

BILLING CODE 5001–08–M

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## DEPARTMENT OF EDUCATION

### Brown v. Board of Education 50th Anniversary Commission; Meeting

**AGENCY:** Brown v. Board of Education 50th Anniversary Commission, U.S. Department of Education (ED).

**ACTION:** Notice of meeting.

**SUMMARY:** This notice provides the schedule of a forthcoming meeting of the Brown v. Board of Education 50th Anniversary Commission. This notice also describes the functions of the commission. This document is intended to notify the general public of their opportunity to attend.

**DATE AND TIME:** October 30, 2003, at 8:30 a.m.

**ADDRESSES:** Hotel du Pont, 11th & Market Streets, Wilmington, Delaware, (800) 441–9019.

**FOR FURTHER INFORMATION CONTACT:** Mary McPhail, Attorney, 330 C Street SW., Washington, DC 20202, (202) 205–9529.

**SUPPLEMENTARY INFORMATION:** The Brown v. Board of Education 50th Anniversary Commission is established under Pub. L. 107–41 to commemorate the 50th anniversary of the Brown decision. The Commission, in conjunction with the U.S. Department of Education, is responsible for planning and coordinating public education activities and initiatives. Also, the Commission, in cooperation with the Brown Foundation for Educational Equity, Excellence, and Research in Topeka, Kansas, and such other public or private entities as the Commission deems appropriate, is responsible for encouraging, planning, developing, and coordinating observances of the anniversary of the Brown decision. The meeting of the Commission is open to the public. Individuals who will need accommodations for a disability in order to attend the meeting (i.e. interpreting services, assistive listening devices, materials in alternative format) should notify Mary McPhail at (202) 205–9529 by no later than October 24, 2003. We will attempt to meet requests after that date, but cannot guarantee availability.

Dated: October 15, 2003.

**Gerald A. Reynolds,**

*Assistant Secretary for Civil Rights.*

[FR Doc. 03–26260 Filed 10–17–03; 8:45 am]

BILLING CODE 4000–01–M

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## DEPARTMENT OF ENERGY

### Senior Executive Service; Performance Review Board

**AGENCY:** Department of Energy.

**ACTION:** Designation of Performance Review Board Chair.

**SUMMARY:** This notice provides the Performance Review Board Chair designee for the Department of Energy.

**EFFECTIVE DATE:** This appointment is effective as of September 30, 2003.

James T. Campbell.

Issued in Washington, DC, on October 10, 2003.

**Claudia A. Cross,**

*Chief Human Capital Officer/Director, Office of Human Resources Management.*

[FR Doc. 03–26401 Filed 10–17–03; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

### Senior Executive Service; Performance Review Board

**AGENCY:** Department of Energy.

**ACTION:** SES Performance Review Board Standing Register.

**SUMMARY:** This notice provides the Performance Review Board Standing Register for the Department of Energy. This listing supersedes all previously published lists of PRB members.

**EFFECTIVE DATE:** These appointments are effective as of September 30, 2003.

ACKERLY, LAWRENCE R
ALLISON, JEFFREY M
ANDERSON, CHARLES E
ANDERSON, MARGOT H
ANGULO, VERONICA A
AOKI, STEVEN NMN
ARKIN, RICHARD W
ARTHUR III, WILLIAM JOHN
ASCANIO, XAVIER NMN
BACA, FRANK A
BACA, MARK C
BAILEY JR, LAWRENCE O
BAJURA, RITA A
BAKER, KENNETH E
BALLARD, WILLIAM W
BARKER JR, WILLIAM L
BASHISTA, JOHN R
BAUER, CARL O
BECK, DAVID E
BECKETT, THOMAS H
BEECY, DAVID J
BESERRA, FRANK J
BIELAN, DOUGLAS J
BIENIAWSKI, ANDREW J
BILSON, HELEN E
BLACK, RICHARD L
BLACK, STEVEN K
BLACKWOOD, EDWARD B
BLADOW, JOEL K
BOARDMAN, KAREN L
BORCHARDT, CHARLES A
BORGSTROM, CAROL M
BORGSTROM, HOWARD G
BOWMAN, GERALD C
BOYD, GERALD G
BRADEN JR, ROBERT C
BRADLEY, SAMUEL M
BRENDLINGER, TERRY L
BREWER, ROBERT H
BREZNAY, GEORGE B
BROCOUM, STEPHAN J
BRODMAN, JOHN R
BROMBERG, KENNETH M
BRONSTEIN, ELI B
BROWN III, ROBERT J
BROWN, RICHARD D
BRUMLEY, WILLIAM J
BUBAR, PATRICE M
BURNS, ALLEN L
BURROWS, CHARLES W
BUTLER, JEROME M
BUTLER, ROGER A
CAMPBELL, ELIZABETH E
CAMPBELL, JAMES THOMAS
CARABETTA, RALPH A
CARAVELLI, JOHN M
CARDINALI, HENRY A
CAREY JR, ROBERT H
CARLSON, JOHN T
CARLSON, KATHLEEN ANN
CARY, STEVEN V
CAVANAGH, JAMES J
CHACEY, KENNETH A
CHALK, STEVEN G
CHANEY, KIMBERLY A HAYES
CHUN, SUN W
CLARK, JOHN R
COBURN, LEONARD L
COMBS, MARSHALL O
CONOVER, DAVID W
CONTI, JOHN J
COOK, JOHN S
COREY, RAY J
COSTLOW, BRIAN D
COWAN, GWENDOLYN S
CRAIG JR, JACK R
CRANDALL, DAVID H
CRAWFORD, DAVID W
CROSS, CLAUDIA A
CROWE, RICHARD C
CUMESTY, EDWARD G
CURTIS, JAMES H
CYGELMAN, ANDRE I
D'AGOSTINO, THOMAS PAUL
DAVIES, NELIA A
DE LORENZO, RALPH H
DECKER, JAMES F
DEDIK, PATRICIA NMN
DEGRASSE JR, ROBERT W
DEHMER, PATRICIA M
DEHORATIIS JR, GUIDO NMN
DEIHL, MICHAEL A
DELWICHE, GREGORY K
DEMKO, JOSEPH C
DENNISON, WILLIAM J
DER, VICTOR K
DEVER, GERTRUDE L
DIFIGLIO, CARMEN NMN
DIXON, ROBERT K
DOBRIANSKY, LARISA E
DOGGETT, FREDERICK D
DOOLEY III, GEORGE J
DURNAN, DENIS D
DYER, J RUSSELL
EDMONDSON, JOHN J
EGGER, MARY H
ELWOOD, JERRY W
ERICKSON, LEIF NMN
ERICKSON, RALPH E
ERRINGTON, GORDON V
ESVELT, TERENCE G
EVANS, KAREN S
FAULKNER, DOUGLAS L
FIORE, JAMES J
FITZGERALD, CHERYL P
FOLEY, KATHLEEN Y
FOWLER, JENNIFER JOHNSON
FRANKLIN, CHARLES ANSON
FRAZIER, MARVIN E
FREI, MARK W
FRESCO, MARYANN E
FRYBERGER, TERESA A
FYGI, ERIC J
GALE, BARRY G
GARCIA, MARVIN L
GARLAND, ROBERT W
GARRISH, THEODORE J
GARSON, HENRY K
GEBUS, GEORGE R
GERRARD, JOHN E
GIBSON JR, WILLIAM C
GILBERTSON, MARK A
GINSBERG, MARK B
GLENN, DANIEL E
GLOTFELTY, JAMES W
GOLAN, PAUL M
GOLDSMITH, ROBERT NMN
GOLLOMP, LAWRENCE A
GOODRUM, WILLIAM S
GORDON-HAGERTY, LISA E
GOTTLIEB, PAUL A
GREENBERG, RAYMOND F
GREENWOOD, JOHNNIE D
GRESHAM, LARRY M
GROSE, AMY E
GROSS, THOMAS J
GRUENSPECHT, HOWARD K
GUEVARA, ARNOLD E
GUNN JR, MARVIN E
HACSKAYLO, MICHAEL S
HAFNER, STEVEN C
HANSEN, CHARLES A
HARDIN, MICHAEL G
HARDWICK JR, RAYMOND J
HARRIS, ROBERT J
HARTMAN, JAMES K
HARTMAN, JOHN R
HARVEY, JOHN R
HARVEY, TOBIN K
HASS, RICKEY R
HAWTHORNE, JOAN GATES
HEADLEY, LARRY C
HENDERSON, SHANNON D
HIBBITTS JR, HOWARD D
HICKOK, STEVEN G
HILL, DAVID R
HIRAHARA, JAMES S
HODSON, PATRICIA J
HOLLAND, MICHAEL D
HOLLANDER, MARC S
HOLLOWELL, BETTY L N
HOOD, ROBERT R
HOPF, RICHARD H
HUIZENGA, DAVID G
HUNEMULLER, MAUREEN A
HUTZLER, MARY JEAN

IZELL, KATHY D
JAFFE, HAROLD NMN
JENKINS, ROBERT G
JOHNSON, FREDERICK M
JOHNSON, MILTON D
JOHNSON, OWEN B
JOHNSON, ROBERT SHANE
JOHNSON, SANDRA L
JOHNSTON, MARC NMN
JONES, C RICK
JONES, HERBERT M
JORDAN, ROBERT R
JORDAN, ROSALIE M
JOSEPH, ANTIONETTE GRAYSO
JUAREZ, LIOVA D
JUCKETT, DONALD A
KAEMPF, DOUGLAS E
KANE, MICHAEL C
KELLIHER, JOSEPH T
KENNEDY, JOHN P
KERSTEN, JOHN H
KESELBURG, JAMES D
KESSLER, ELIZABETH A
KIGHT, GENE H
KILGORE, WEBSTER C
KILPATRICK, MICHAEL A
KIRKENDALL, NANCY J
KIRKMAN, LARRY D
KLEIN, KEITH A
KNIPP, ROBERT M
KNOX, ERIC K
KOLB, INGRID A C
KOLEVAR, KEVIN M
KONOPNICKI, THAD T
KOTEK, JOHN F
KOUTS, CHRISTOPHER A
KOVAR, DENNIS G
KRUGER, PAUL W
LAMBERT, JAMES B
LANGE, ROBERT G
LANTHRUM, J GARY
LAWRENCE, ANDREW C
LAZOR, JOHN D
LEE, STEVEN NMN
LEHMAN, DANIEL R
LERSTEN, CYNTHIA A
LEVIN JR, WILLIAM B
LEWIS III, CHARLES B
LEWIS JR, WILLIAM A
LEWIS, ROGER A
LOPATTO, JEANNE T
LOWE, OWEN W
LUCZAK, JOANN H
MADDOX, MARK R
MAGWOOD IV, WILLIAM D
MAHALEY, JOSEPH S
MAHARAY, WILLIAM S
MAHER, MARK W
MALE, BARBARA D
MALOSH, GEORGE J
MANGENO, JAMES J
MANN, THOMAS O
MARCUS, GAIL H
MARKEL JR, KENNETH E
MARKS JR, DAVID L
MARLAY, ROBERT C
MARMOLEJOS, POLI A
MASTERSON, MARY A
MC CABE, MICHAEL J
MCCLOUD, FLOYD R
MCCORMICK, MATTHEW S
MCCRACKEN, STEPHEN H
MCKEE, BARBARA N
MCKENZIE, JOHN M
MCMONIGLE, JOSEPH P
MCMULLAN, ROBERT L
MCRAE, JAMES BENNETT
MEEKS, TIMOTHY J
MELLINGTON, SUZANNE P
MEYER, CHARLES E
MICHELSEN, STEPHEN J
MILLER, CLARENCE L
MILLER, DEBORAH C
MILLHONE, JOHN P
MILNER, RONALD A
MIOTLA, DENNIS M
MONETTE, DEBORAH D
MONHART, JANE L
MOORER, RICHARD F
MORRELL, PAUL CHARLES
MOSQUERA, JAMES P
MOURNIGHAN, STEPHEN D
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TURI, JAMES A
TURNER, CLARKE D
TURNER, JAMES M
UNDERWOOD, WILLIAM R
VAGTS, KENNETH A
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VANZANDT, VICKIE A
VIETH, JILL SCHROEDER
WAGNER, M PATRICE
WAHLQUIST, EARL J
WAISLEY, SANDRA L
WALLACE, TERRY L
WALSH, ROBERT J
WARNICK, WALTER L
WARTHER, ROBERT F
WEEDALL, MICHAEL J
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WHITAKER JR, MARK B
WIEKER, THOMAS L
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WILMOT, EDWIN L
WORTHINGTON, PATRICIA R
WRIGHT, STEPHEN J
WUNDERLICH, ROBERT C
YUAN-SOO HOO, CAMILLE C
ZAMORSKI, MICHAEL J
ZIEGLER, JOSEPH D
ZIESING, ROLF F

Issued in Washington, DC on October 14, 2003.

**Claudia A. Cross,**

*Chief Human Capital Officer/Director, Office of Human Resources Management.*

[FR Doc. 03–26402 Filed 10–17–03; 8:45 am]

**BILLING CODE 6450–01–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[OAR–2003–0171, FRL–7576–3]**

## Agency Information Collection Activities: Proposed Collection; Comment Request; Recordkeeping and Reporting Requirements Regarding the Sulfur Content of Motor Vehicle Gasoline Under the Tier 2 Rule, EPA ICR Number 1907.02, OMB Control Number 20 2060–0437

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for renewal of an existing approved collection. This ICR is scheduled to expire on 1/31/04. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before December 19, 2003.

**ADDRESSES:** Submit your comments, referencing docket ID number OAR–2003–0171, to EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Air and Radiation Docket, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Bennett, Office of Transportation and Air Quality, Mail Code 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460; telephone number: (202) 564–8989; fax number: (202) 565–2085; e-mail address: *bennett.marilyn@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has established a public docket for this ICR under Docket ID number OAR–2003–0171, which is available for public viewing at the Office of Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Air and Radiation Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

*Affected entities:* Entities potentially affected by this action are those who manufacture, import, distribute and sell gasoline.

*Title:* Recordkeeping and Reporting Requirements Regarding the Sulfur Content of Motor Vehicle Gasoline Under the Tier 2 Rule.

*Abstract:* The requirements covered under this ICR are included in the final Tier 2 rule, published on the February 10, 2000 (65 FR 6698). A minor additional ICR requirement was added to the Tier 2 rule on June 12, 2002 (67 FR 40169).

The scope of the recordkeeping and reporting requirements for each type of party (*e.g.*, refiners, importers, distributors, or retailers of gasoline), and therefore the cost to that party, reflects the party's opportunity to create, control or alter the sulfur content of gasoline. As a result, refiners and importers have significant requirements, which are necessary both for their own tracking and that of downstream parties, and for EPA enforcement, while parties downstream from the gasoline production or import point, such as retailers, have minimal burdens under the rule. Many of the reporting and recordkeeping requirements for refiners and importers regarding the sulfur content of gasoline on which the Tier 2 sulfur program relies currently exist under EPA's reformulated gasoline (RFG) and conventional gasoline (CG) anti-dumping programs. The ICR for the RFG/CG programs covered the majority of the start-up costs associated with the reporting of gasoline sulfur content. Consequently, much of the cost associated with the sulfur-control requirements under the sulfur program has already been accounted for under the ICR for the RFG/CG programs.

The information under this ICR will be collected by EPA's Transportation and Regional Programs Division, Office of Transportation and Air Quality, Office of Air and Radiation (OAR), and by EPA's Air Enforcement Division, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance (OECA). The information collected will be used by EPA to evaluate compliance with the gasoline sulfur control requirements under the Tier 2 rule. This oversight by EPA is necessary to ensure attainment of the air quality goals of the Tier 2 program. Proprietary information will be submitted by refiners and importers for demonstrating compliance with the sulfur standards, and for establishing baseline sulfur levels under the credit trading and hardship programs associated with the rule. Confidentiality is handled in accordance with the Freedom of Information Act and EPA regulations at 40 CFR part 2. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Burden Statement:* For the early years of the Tier 2 gasoline sulfur program (to December 31, 2003), EPA estimated a total of 192,063 responses, a total annual burden of 12,532 hours, and a total annual cost of $325,702 to industry. This estimate includes the initial burden associated with learning and adapting to the new requirements. Most of the burdens associated with the early years of the program relate to applications for various hardship provisions and the generation of early credits, which will not be applicable after 2004.

The standards for gasoline sulfur become effective beginning January 1, 2004. Compliance with these standards requires some additional testing and reporting beyond that required under the RFG/CG programs. The most significant increase in the testing and reporting burden is due to the requirement that refiners and importers test and report every batch of gasoline for compliance with the sulfur standards. Currently, all refiners and importers of RFG are required to test and report every batch of RFG; however, refiners and importers of conventional gasoline currently are allowed to composite samples for purposes of demonstrating compliance with the CG anti-dumping regulations. EPA estimates that the annual burden on refiners associated with this every batch testing/reporting requirement will be about one hour per response per refiner, and 400 responses per year per refiner. There are about 75 refiners that will be affected by this requirement. For importers, the burden will be one hour per response per importer, and 27 responses per year per importer. About 30 importers will be affected by this requirement. The cost associated with this burden for refiners will depend on whether the refiner uses its own testing equipment or uses an independent laboratory. Most importers will use an independent laboratory. The estimated annual cost is $24,800 for refiners that use their own equipment and $29,600 for refiners that use an independent laboratory. The estimated annual cost for importers is $1,998. There are some additional modest burdens and costs for refiners and importers associated with this rule. Some of these burdens are related to additional information regarding sulfur content required on annual reports currently being submitted to EPA under the RFG/CG programs. Several of the additional burdens are related to various hardship or other flexibility provisions provided in the rule. There are also some modest burdens on terminals and pipelines associated with this rule due to additional Q/A testing requirements. Beginning in 2004, EPA estimates there will be a total of about 2,536 annual responses, a total annual average burden of 38,742 hours, and a total annual cost of $2,405,355 to industry. There are no capital and start-up costs or operation and maintenance costs associated with this rule. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: October 14, 2003.

**David J. Kortum,**

*Acting Director, Transportation and Regional Programs Division.*

[FR Doc. 03–26410 Filed 10–17–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[RCRA–2003–0023; FRL–7576–1]**

## Hazardous Waste Management System: Petroleum Refining Process Wastes; Identification of Characteristically Hazardous Self-Heating Solids; Land Disposal Restrictions: Treatment Standards for Spent Hydrorefining Catalyst (K172) Hazardous Waste

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of data availability.

**SUMMARY:** This notice of data availability (NODA) makes available to the public certain analytical data pertaining to the polyaromatic hydrocarbon (PAH) content of spent hydrorefining catalyst from petroleum refining operations (K172). These analytical data are contained in a petition for rulemaking (petition) submitted to EPA by the Vanadium Producers and Reclaimers Association (VPRA), formerly known as the Ferroalloys Association (TFA). The data were submitted by the petitioner to support its request that EPA amend the land disposal restriction (LDR) treatment standards for the K172 listed waste. The VPRA petition also asserted that K171 and K172 wastes are often being landfilled without being decharacterized for their ignitability/reactivity potential. Therefore, this notice provides information supporting the petitioner's assertions and requests comment and submittal of any additional relevant documentation. At this time, EPA is requesting comment only on the analytical data for K172 and information supporting VPRA's concerns about characteristically hazardous solids. The Agency is not proposing any rule changes in today's notice, and any future action the Agency takes in response to the VPRA petition will be noticed in a subsequent **Federal Register**.

**DATES:** Submit comments on or before December 4, 2003. Comments postmarked after this date will be marked "late" and may not be considered.

**ADDRESSES:** You may view the supporting materials for this NODA in the EPA Docket Center (EPA/DC), Room B102, EPA West, 1301 Constitution Avenue, NW., Washington, DC. The docket number is RCRA–2003–0023. The EPA/DC is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. Copies cost $0.15 per page. For information on accessing an electronic copy of the treatability study and peer review documents, see the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** For general information, call the RCRA Call Center at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial (703) 412–9810 or TDD (703) 412–3323 (hearing impaired). The RCRA Call Center is open Monday–Friday, 9 a.m. to 5 p.m., Eastern Standard Time. For more information on specific aspects of this NODA, contact Ross Elliott at (703) 308–8748, *elliott.ross@epa.gov*, or write him at the Office of Solid Waste, Mail Code 5304W, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:**

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## I. General Information

### *A. How Can I Get Copies of This Document and Other Related Information?*

1. Docket

EPA has established an official public docket for this action under Docket Number: RCRA–2003–0023. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. The official public docket is the collection of materials that are available for public viewing at the OSWER Docket in the EPA Docket Center, Room B102, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0270. Copies cost $0.15/page.

2. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the "Federal Register" listings at *http://www.epa.gov/fedrgstr/*, and you can make comments on this proposed rule at the federal e-rulemaking portal, *http://www.regulations.gov*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket or to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center facility identified above. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Docket. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.A.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

### *B. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. Electronically

If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*EPA Dockets*—Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *<http://www.epa.gov/edocket,>* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID Number RCRA–2003–0023. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

*E-mail*—Comments may be sent by electronic mail (e-mail) to "rcra-docket@epamail.epa.gov", Attention Docket ID Number RCRA–2003–0023. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

*Disk or CD ROM*—You may submit comments on a disk or CD ROM that you mail to the mailing address identified in this section. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail

Send your comments to: OSWER Docket, EPA Docket Center, Mailcode: 5305T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID Number RCRA–2003–0023.

3. By Hand Delivery or Courier

Deliver your comments to: Environmental Protection Agency, EPA Docket Center, Room B102, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID Number RCRA–2003–0023. Such deliveries are only accepted during the Docket's normal hours of operation as identified above.

4. By Facsimile

Fax your comments to: (202) 566–0272, Attention Docket ID Number RCRA–2003–0023.

### *C. How Should I Submit Confidential Business Information (CBI) to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. RCRA–2003–0023. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

### *D. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

## II. What Did VPRA Petition the EPA To Change?

Pursuant to 40 CFR 260.20, VPRA submitted a rulemaking petition to the EPA (a copy of which is included in the Docket to today's notice) which requests that the Agency amend the hazardous waste regulations as follows:

1. Amend the LDR treatment standards for K171 and K172 spent catalysts by requiring prescriptive technology-based treatment standards, such as (1) recycling and metals recovery, or (2) oxidation and stabilization to address landfilling of catalyst with untreated PAHs and self-heating characteristics; and, if the process for requiring prescriptive LDRs is expected to take a considerable amount of time, amend the LDR treatment standards for K172 to add numerical (concentration-based) standards for PAHs to be consistent with the K171 standards in the interim period; and
2. Clarify that the hazardous oil-bearing secondary material exclusion (40 CFR 261.4(a)(12)(i)) does not apply to K171 and K172 catalysts; or amend the F037 LDR treatment standards by adding vanadium, arsenic and antimony to be consistent with the K171 and K172 standards.

## III. What Is the Purpose of This NODA?

Today's notice presents analytical data contained in VPRA's petition pertaining to six samples of spent hydrorefining catalyst (K172) collected and analyzed by VPRA from various refineries located in the U.S. The data represents the concentration of PAHs contained in the VPRA samples to show that PAHs do exist in K172. The original data collected and analyzed by EPA presented in the supporting documents to the *1998 Final Rule for Petroleum Refining Process Wastes* ("Petroleum Refinery Rule") (63 FR 42110, August 6, 1998) indicated that detectable levels of PAHs did not exist in K172.

This notice also presents information provided by the petitioner regarding the decharacterization of K171 and K172 for ignitability/reactivity potential prior to landfill disposal, and solicits comments on this data as well as submission of other data relevant to this topic.

### IV. What Is the VPRA Petition?

*A. Who Is VPRA?*

The Vanadium Producers and Reclaimers Association (VPRA, formerly known as The Ferroalloys Association or TFA) represents the following five member companies: Bear Metallurgical Company, C.S. Metals of Louisiana, Gulf Chemical & Metallurgical Corporation, Shieldalloy Metallurgical Corporation and Strategic Minerals Corporation. VPRA initially submitted the rulemaking petition on August 1, 2001, but provided supplementary information on April 3, 2002, May 28, 2003, July 10, 2003, and July 14, 2003.

*B. What Is VPRA Petitioning EPA To Do?*

VPRA is petitioning EPA to amend several alleged deficiencies in the LDR treatment standards for K172 and F037 as established in the Petroleum Refinery Rule. The petition states that the correction of these deficiencies will prevent the mismanagement of spent catalyst and will result in increased recycling to recover metal resources. The petition maintains that the combination of the lack of LDR treatment standards for PAHs in K172 and the lack of effective guidance for identifying and treating waste that exhibits the ignitability or reactivity characteristics has caused increased landfilling of spent catalyst since the Petroleum Refinery Rule was promulgated in August 1998.

*C. What Is the Basis for the Petitioner's Amendment of the LDR Treatment Standards for K172?*

The basis for the petitioner's request for amending the LDR treatment standards for K172 is that PAHs are not included in list of constituents requiring treatment prior to disposal. In addition to several organic and inorganic constituents included in the K172 LDR treatment standards (*see* 63 FR 42187), a prescriptive standard of deactivation was established for reactive sulfides. The petitioner asserts that PAHs were not included in the K172 LDR treatment standards because the original samples collected by EPA were not properly characterized as spent hydrorefining catalyst (which is now listed as K172). The data presented in VPRA's petition for K172 spent catalysts are new data collected and analyzed after the K172 wastes were listed. The petitioner argues that these data demonstrate that PAHs are present in the majority of the K172 samples above the LDR treatment standards. The samples were classified by the petitioner based on the guidance provided by EPA in the original rule and in the *Dual Purpose Reactor Notice*. (*See* May 8, 2002 **Federal Register**; 67 FR 30811.) The petitioner also relied on interviews with industry personnel familiar with the processes from which the samples originated and on general refining industry knowledge.

The petitioner also raised concern with the adequate treatment of the reactivity and self-heating properties of both K171 and K172 spent catalysts. This issue is discussed in more detail below.

*D. What Are the Analytical Data Results for K172 Presented in the Petition?*

The analytical data for K172 submitted by the petitioner are located in Table 1 below and in Exhibit B of the original petition, entitled *Determination of Treatment Methods used by the Hazardous Waste Industry for Spent Hydroprocessing Catalyst K171/K172*, Scherger Associates, May 2001 (hereinafter the "Scherger Report") and in the *Supplement to Petition for Rulemaking*, April 3, 2002. The original and supplemental petitions are included in the docket for today's notice.

TABLE 1.—VPRA ANALYTICAL DATA RESULTS FOR K172 (PAH RESULTS IN MG/KG)

| | Sample ID | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | C[1,2] | D[1,2] | E[3] | M[4] | N[5] | W1[6] | W2[6] | W3[6] | W4[6] | W5[6] | W6[6] | W7[6] | W8[6] | Ex.A[7] |
| Benz(a)anthracene | <33 | <32.8 | <0.33 | <50.0 | <1.3 | <3.27 | <3.25 | <3.28 | <3.26 | <3.30 | <3.31 | <3.29 | <3.32 | <26 |
| Chrysene | <33 | <32.8 | <0.33 | <50.0 | 3.0 | <3.27 | <3.25 | <3.28 | <3.26 | <3.30 | <3.31 | <3.29 | <3.32 | **13 J** |
| Napthalene | <33 | <32.8 | 0.485 | **50 J** | **7.4** | <3.27 | <3.25 | <3.28 | <3.26 | <3.30 | <3.31 | <3.29 | <3.32 | <26 |
| Phenanthrene | <33 | <32.8 | <0.33 | **50 J** | **41.0** | <3.27 | <3.25 | **6.56** | <3.26 | **5.58** | **5.62** | <3.29 | <3.32 | **150** |
| Pyrene | <33 | <32.8 | <0.33 | **50 J** | **17.0** | <3.27 | <3.25 | <3.28 | <3.26 | <3.30 | <3.31 | <3.29 | <3.32 | **38** |

Bold indicates that the maximum concentration in any one sample meets or exceeds Universal Treatment Standards (UTS—see 40 CFR 268.48). Notes below reproduced from petition.

[1] The sample extract could not be concentrated to the normal final volume. This results in elevated practical reporting limit.

[2] Sample was diluted due to high concentrations of non-target compounds.

[3] Internal standard and surrogate failure attributed to matrix interference based on review of chromatogram.

[4] Sample diluted 150 to 1 due to matrix and presence of many compounds; J means detected between the MDL (Method Detection Limit) (0.33 mg/kg) and the PQL (Practical Quantitation Limit) (50.0 mg/kg).

[5] Sample diluted 4:1 and 20:1 due to the presence of numerous target compounds including acenaphthene, fluoranthene, fluorene in addition to LDR PAH compounds.

[6] These sample extracts could not be concentrated to the normal final volume. This results in elevated practical reporting limit.

[7] Sample from "Exhibit A" of Supplemental Petition dated April 3, 2002. (J = estimated value between the MDL and the PQL.)

### V. Reactivity and Ignitability Concerns With K171 and K172

*A. What Are the Petitioner's Concerns With K171 and K172 Ignitability/Reactivity?*

VPRA asserts that K171 and K172 are not being adequately decharacterized with regard to the ignitability and reactivity hazardous characteristics (40 CFR 261.21(a)(2) and 261.23(a)(5), respectively), but are nonetheless being landfilled. In the Petroleum Refinery Rule, EPA identified the self-heating properties of this catalyst, and the potential formation of hydrogen sulfide gas from metal sulfides formed in the catalyst during use, as posing ignitability concerns (D001) and reactivity concerns (D003). The petitioner asserts that the existing regulations for identifying and treating (*i.e.*, permanently decharacterizing) characteristic hazardous wastes have proved ineffective in ensuring adequate treatment before disposal, because there is currently no EPA sanctioned test method and regulatory value for identifying ignitable solids or reactive wastes.[1]

Although the Petroleum Refinery Rule established prescriptive LDR treatment standards for K171 and K172 (deactivation for reactive sulfides), the petitioner argues that the lack of test methods or guidance is making waste classification determinations by spent catalyst generators difficult, and is resulting in the land placement of K171 and K172 spent catalysts without proper treatment.

EPA cited ignitability as part of the basis for listing K171 and K172 (40 CFR 261.32), but did not specifically identify the need to treat K171/172 for this hazardous characteristic. This is because the Agency believed that high temperature thermal treatment would be used to treat for the organic chemicals found in this waste, and that this treatment would also appropriately treat for the ignitability characteristic of the waste (by oxidizing the metal sulfides in the waste; November 20, 1995 **Federal Register**, 60 FR at 57785). However, the petitioner asserts that lower temperature thermal desorption, which does not oxidize the metal sulfides, is the primary mode of organics treatment for K171, and that K172 receives no thermal treatment before landfilling (only solidification/stabilization for metals), because the LDR does not include a requirement to treat for PAHs. Thus, VPRA argues that this results in significant volumes of spent catalyst being land disposed without adequate treatment for ignitability.

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[1] 40 CFR 261.21(a)(2) and 261.23(a)(5) define ignitable waste solids, and reactive cyanide or sulfide wastes, using narrative standards—that is, there are no established tests, with corresponding regulatory trigger values, for identifying these wastes. Identification of these wastes is done by applying the narrative criteria to the waste.

VPRA also asserts that changes in industry waste coding practices for these wastes contribute to inadequate identification and decharacterization before disposal. These spent catalysts are currently identified (by the generator) only by their K waste codes, according to the petitioner, and are no longer identified as D001 or D003, as was the previous practice (9 percent of these spent catalysts were being classified as D001 before rule promulgation).[2] VPRA believes that by using only the K codes for waste identification, waste generators are facilitating disposal of spent catalyst without adequate treatment for reactive sulfides (D003) that may be present (as required by the LDR treatment standards for these wastes), or ignitability (D001). (The Agency notes, however, that a review of EPA's 1999 Biennial Reporting System database indicates eighteen refineries reported generating a total of 6,800 tons (20 percent of the total) of hazardous waste coded as D001/D003 in 1999, in addition to the codes reported in the table as K171 or K172.)

The petitioner also asserts via the Scherger Report (p. 7) that spent catalyst receives special handling at petroleum refineries. Specifically, petroleum refineries are reported to routinely have special safety programs for handling spent catalyst and for addressing potential fires or hydrogen sulfide generation, ship spent catalyst in special bins to reduce air contact, and frequently designate spent catalyst under DOT (Department of Transportation) pyrophoric or self-heating designations for hazardous materials. The Scherger Report asserts that landfills treat spent catalyst (by solidification/stabilization treatment) and landfill it soon after its arrival, and if it must be stored before treatment, store it in bins to reduce its air exposure or wet it with water (p. 14). The petitioner asserts that this special handling of the spent catalyst, and DOT designation as pyrophoric, support a conclusion that the spent catalyst is an ignitable hazardous waste being landfilled without proper deactivation treatment.

### *B. How Can Waste Generators and Treaters Determine Whether Their K171/172 Is Ignitable or Reactive Hazardous Waste?*

As discussed in both the proposed and final Petroleum Refinery Rules, a significant finding of the Agency in listing K171/172 was the self-heating potential of these spent catalysts, which would make them ignitable hazardous waste, and their potential to react and emit hydrogen sulfide, which would make them reactive hazardous wastes. 60 FR at 57767; 63 FR at 42154 and 42157. The petitioner has asserted that generators and treaters are having difficulty properly characterizing spent catalyst because EPA has not established a test(s) with numerical criteria for determining whether a waste is ignitable and/or reactive hazardous waste.

The Agency believes that the K171/172 Petroleum Refinery Rule, as well as the original 1980 **Federal Register** discussion promulgating the hazardous characteristics regulations, provide considerable guidance to generators and others for applying the narrative regulatory criteria to this waste in the absence of specific tests. Testing was also an issue in 1980, and the Agency provided generators with the following guidance for identifying reactive hazardous waste:

> "The unavailability of suitable test methods for measuring reactivity should not cause problems. Most generators of reactive wastes are aware that their wastes possess this property and require special handling. This is because such wastes are dangerous to the generators' own operations, and are rarely generated from unreactive feedstocks." (May 19, 1980 **Federal Register**; 45 FR at 33110)."

While this passage specifically refers to the reactivity characteristic, the Agency believes its logic is equally applicable to classifying non-liquid wastes which may be ignitable under 40 CFR 261.21(a)(2), as discussed in the *Background Document for the Characteristic of Ignitability* (May 2, 1980, p. 42).

In the preamble to the Petroleum Refinery Rule, the Agency documented and described the potential hazards of spent catalyst, as well as several types of special handling precautions for managing spent catalyst. EPA staff studying these wastes observed that some spent catalyst is removed from process units and is immediately placed in air-tight containers (sometimes under an inert gas atmosphere) to prevent self-heating. In collecting catalyst samples to support waste characterization for the listing determination, EPA samplers were twice denied access to inert gas catalyst storage bins, in favor of specially trained refinery sampling personnel, who collected samples under EPA observation. 60 FR at 57767. Spent catalyst being staged for recycling has also been found to be smoking, and occasional fires have been reported. 63 FR at 42154.

The Agency also clarified the role of testing and other information in applying the narrative hazardous characteristic criteria to waste in the absence of a specific test, in a 1997 letter from David Bussard, Director, Hazardous Waste Identification Division to Paul Wallach, Hale and Dorr, LLP, dated August 14, 1997. The letter said, in part:

> With regard to the hazardous waste determination, it is the generator's obligation to make a determination. For the hazardous characteristics, this determination is made by evaluating the waste using a required test or by comparing the properties of the waste with the narrative standards. The narrative standard is what is enforced if there is no applicable test that is required by the regulations. For the characteristics of ignitability of solids and reactivity, there is no test method specified as to the operational definition of the characteristic, and we have therefore given reasonable deference to the operational experience of the waste generator or facility. However, we agree with the Region that this is not a blanket shield from consideration of information or test data in the case where there is reason to question the generator's RCRA determination. In fact, in this case, we believe the Region has a reasonable position in that the manufacturers of the catalyst routinely inform users of the

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[2] In the *1995 Notice of Proposed Rulemaking for Petroleum Refining Process Wastes*, EPA documented the petroleum refining industry's responses to the RCRA 3007 survey indicating that hydrotreating and hydrorefining spent catalyst wastes exhibit D001 (ignitability), D003 (reactivity), and other hazardous constituent characteristics (primarily D004-arsenic and D018-benzene). See 60 FR at 57785. The survey data showed approximately 9 percent of hydrotreating and hydrorefining residuals as ignitable [513 metric tons (mt) of 5,640 mt total hydrotreating residuals; 1,671 mt of 18,634 mt total hydrorefining residuals]. *See Listing Background Document for the 1992–1996 Petroleum Refining Listing Determination*, October 31, 1995, pages 75 and 88. EPA found that: "These wastes are routinely managed in thermal processes that destroy organics and thus, leave behind residues free of the ignitable characteristic and other corrosive causing constituents." 60 FR at 57785.

> potential hazards of the catalyst, that they often advise users to treat the spent catalyst to remove the potential hazard, and that Pfizer's own material safety data sheet (MSDS) indicated that Pfizer considered the material to pose a potential hazard. Given these circumstances, I believe it is totally appropriate for the Region to obtain and consider test information that illustrates the properties of the waste along with other information in determining whether or not this material meets one or more of the narrative standards of the hazardous characteristics.

Much of the information discussed in the preamble to the Petroleum Refinery Rule can be used by waste generators and others to classify spent catalyst appropriately. The Agency also believes that some of the types of information suggested as useful by the Scherger Report are in fact relevant and appropriate to use in this regard. Specifically, the following types of information are relevant and appropriate to use in understanding the properties of spent catalyst for applying the narrative hazardous characteristics definitions at 40 CFR 261.21 and 261.23 to this waste:

—Landfill or other fires attributable to spent catalyst disposal
—Observation of spent catalyst emitting smoke during any phase of waste management
—Transport of spent catalyst with a DOT designation as a pyrophoric or self-heating material, or packaged as required by DOT for materials with this designation
—Failing the DOT test for self-heating material (49 CFR 173.125)
—Information from catalyst new-product MSDS (Material Safety Data Sheet)
—Storage of spent catalyst in special containers or under inert gas such as nitrogen
—Any other management practice intended to, or with no reasonable purpose other than to, limit exposure of waste spent catalyst to the air, such as coating with oil or wetting with water.

Only the first of these waste properties listed above, *landfill or other fires attributable to spent catalyst disposal*, would be sufficient by itself for definitive classification of spent catalyst as an ignitable hazardous waste under 40 CFR 261.21(a)(2). Prevention of landfill fires was one of the underlying reasons for developing an ignitability hazardous characteristic for waste (*see Background Document for the Characteristic of Ignitability*, May 2, 1980, p. 3). Waste generators and others should use the other types of information collectively to make an appropriate determination regarding the ignitable/reactive properties of spent catalysts. Testing data alone are not sufficient to determine waste status (because the Agency has established no such tests to date[3]), but the DOT test may be useful in understanding the properties of the waste. The special handling described in this list is relevant because the Agency assumes that waste generators and transporters would not incur the extra cost of special shipping containers or handling and shipping under inert gas absent the need for these measures to ensure the safety of those workers handling the materials. Given what the Agency knows about the potential hazardous properties of spent catalysts, the Agency presumes that any particular spent catalyst managed under these special conditions would very likely pose significant hazards were it managed as non-ignitable waste. RCRA requires the Agency to regulate as hazardous those wastes which may pose a substantial hazard to human health or the environment when improperly managed. The special management of spent catalyst clearly leads to the conclusion that "normal" management of the waste, *e.g.*, in contact with ambient air, poses hazards that RCRA was intended to control by designation of the waste as hazardous.

Disposal of waste spent catalyst that is D001 or D003 hazardous (as determined using the types of information described in the previous paragraphs), which is not decharacterized before disposal, would violate RCRA and its regulations. This may be of particular concern for spent catalyst being sent to a landfill not permitted to manage D001 or D003 wastes.

The Agency solicits from the public any comment on the supporting documentation provided by the petitioner regarding ongoing mismanagement of spent catalyst waste. The Agency also solicits any additional documentary information (as described above) relevant to the potential mismanagement of ignitable spent catalyst that has occurred subsequent to the effective date of the listing determination (February 8, 1999).

### What Can You Do To Respond to This NODA?

EPA is seeking comment on the data presented in the VPRA petition regarding PAH concentrations contained in the K172 samples. In particular, we are interested in whether there are other data available on typical concentrations of PAHs in K172 (spent hydrorefining catalysts). In order for any data you submit to be considered by us in making a determination, the data should be collected, transported, and analyzed under the proper quality assurance and quality control protocols as described at *http://www.epa.gov/quality/*. In addition, process information such as a simplified process diagram and the type of feed for the hydroprocessing reactor from which the sample was collected should be provided to verify the sample represents a K172 spent catalyst. We are also seeking comment on the guidance provided in this notice to aid in the identification of D001 ignitable solids.

### What Are the Potential Outcomes of This NODA?

The potential outcomes based on the comments and/or data received under this NODA include a proposed rulemaking to revise the numerical LDR treatment standards for K172, and/or to revise technology-based standards for the self-heating properties of K171 and K172. Also, a potential outcome of this NODA is additional clarification for identifying D001 ignitable solids.

Dated: September 30, 2003.

**Matt Hale,**

*Acting Director, Office of Solid Waste.*

[FR Doc. 03–26411 Filed 10–17–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

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[3] The Agency is currently in the process of deleting from SW–846 the 1985 guidance for evaluating waste for sulfide/cyanide reactivity, which was withdrawn from use in 1998.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 13, 2003.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. *Freedom Bancshares of Southern Missouri, Inc.*, Cassville, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Freedom Bank of Southern Missouri, Cassville, Missouri.

Board of Governors of the Federal Reserve System, October 14, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–26405 Filed 10–17–03; 8:45 am]

**BILLING CODE 6210–01–S**

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## FEDERAL RESERVE SYSTEM

### Sunshine Act Notice

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 10 a.m., Wednesday, October 22, 2003.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th Street entrance between Constitution Avenue and C Streets, NW., Washington, DC 20551.

**STATUS:** Open.

We ask that you notify us in advance if you plan to attend the open meeting and provide your name, date of birth, and social security number (SSN) or passport number. You may provide this information by calling (202) 452–2474 or you may *register on-line*. You may pre-register until close of business October 21, 2003. You also will be asked to provide identifying information, including a photo ID, before being admitted to the Board meeting. The Public Affairs Office must approve the use of cameras; please call (202) 452–2955 for further information.

*Privacy Act Notice:* Providing the information requested is voluntary; however, failure to provide your name, date of birth, and social security number or passport number may result in denial of entry to the Federal Reserve Board. This information is solicited pursuant to Sections 10 and 11 of the Federal Reserve Act and will be used to facilitate a search of law enforcement databases to confirm that no threat is posed to Board employees or property. It may be disclosed to other persons to evaluate a potential threat. The information also may be provided to law enforcement agencies, courts and others, but only to the extent necessary to investigate or prosecute a violation of law.

**MATTERS TO BE CONSIDERED:**

*Summary Agenda:* Because of its routine nature, no discussion of the following item is anticipated. The matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed 2004 Private Sector Adjustment Factor.

*Discussion Agenda*

2. Proposed revisions to the method for imputing earnings on clearing balance investments.

3. Proposed 2004 fee schedules for priced services and electronic connections.

4. Any items carried forward from a previously announced meeting.

**Note:** This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**FOR FURTHER INFORMATION CONTACT:** Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: October 15, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–26553 Filed 10–16–03; 2:34 pm]

**BILLING CODE 6210–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### National Center on Birth Defects and Developmental Disabilities; Meeting

**NAME:** Newborn Screening for Cystic Fibrosis (CF).

**TIMES AND DATES:** 8 a.m.–5:30 p.m., November 20, 2003. 7:50 a.m.–4 p.m., November 21, 2003.

**PLACE:** Renaissance Atlanta Hotel Downtown, 590 West Peachtree Street NW., Atlanta, Georgia 30308–3586, Telephone (404) 881–6000.

**STATUS:** Open to the public, limited only by the space available.

**PURPOSE:** The meeting will review the recommendations from the 1997 Newborn Screening for Cystic Fibrosis: A Paradigm for Public Health Genetics Policy Workshop, and will evaluate the current evidence examining the benefits and risks of screening newborns for CF. In addition, the meeting will review the role of screening, diagnostics, and follow-up issues in CF newborn screening decision-making.

**MATTERS TO BE DISCUSSED:** The agenda will include an overview of newborn screening; the role of evidence based decision-making; the epidemiology and natural history of the disease; a review of the published and unpublished literature assessing the risks and benefits of screening newborns for CF; discussion about grading the evidence; weighting risks and benefits; planning challenges; screening issues; informed consent; diagnostics and sweat testing referrals, linking screening programs with CF centers for care of diagnosed infants; implications for state programs considering screening; communication; costs; and the evidence to support a public health response to CF newborn screening.

Agenda items are subject to change as priorities dictate.

**FOR FURTHER INFORMATION CONTACT:** Scott Grosse, Ph.D., National Center on Birth Defects and Developmental Disabilities, CDC, 1600 Clifton Road, NE, m/s E–87, Atlanta, Georgia 30333, telephone 404/498–3074.

The Director, Management Analysis and Services office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 9, 2003.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 03–26270 Filed 10–17–03; 8:45 am]

**BILLING CODE 4163–18–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003N–0102]**

### Robert Ray Courtney; Debarment Order

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Robert Ray Courtney from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Mr. Courtney was convicted of a felony under Federal law for conduct otherwise relating to the regulation of any drug product under the act. Mr. Courtney failed to request a hearing and, therefore, has waived his opportunity for a hearing concerning this action.

**DATES:** This order is effective October 20, 2003.

**ADDRESSES:** Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Nicole K. Mueller, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On February 26, 2002, Mr. Robert Ray Courtney entered into an agreement pleading guilty to eight counts of tampering with consumer products in violation of 18 U.S.C. 1365(a) and (a)(3), and six counts each of misbranding and adulterating drugs in violation of sections 301(k) and 303(a)(2) of the act (21 U.S.C. 331(k) and 333(a)(2)). On December 5, 2002, the U.S. District Court for the Western District of Missouri sentenced Mr. Courtney to the maximum 30 years in prison and required Mr. Courtney to pay a fine of $25,000 and $10.4 million in restitution for diluting drugs he dispensed to his pharmacy customers. Such drugs included the chemotherapy medications Gemzar (gemcitabine) and Taxol (paclitaxel).

At the time of Mr. Courtney's criminal actions, he was a pharmacist and owner of Courtney Pharmacy, Inc., d/b/a Research Medical Tower Pharmacy, a company that operated two pharmacies: Research Medical Tower Pharmacy in Kansas City, MO, and Courtney Pharmacy in Overland Park, KS. Among other things, Mr. Courtney was responsible for mixing, preparing, labeling, and distributing intravenous drug mixtures.

In 2001, the Federal Bureau of Investigations (FBI) and FDA set up an investigation that revealed that certain medications Mr. Courtney dispensed were far less potent than the medications ordered by prescribing physicians. One drug sample contained less than 1 percent of the prescribed amount. The investigation resulted in the filing of a complaint on August 14, 2001, charging Mr. Courtney with adulteration and misbranding. It was eventually determined that more than 4,000 patients may have had their prescriptions diluted by Mr. Courtney over a 10-year period. The investigation and admissions by Mr. Courtney culminated in his guilty plea to all 20 counts of the indictment.

As a result of this conviction, FDA served Mr. Courtney by certified mail on May 16, 2003, a notice proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application. The proposal also offered Mr. Courtney an opportunity for a hearing on the proposal. The proposal was based on a finding, under section 306(a)(2)(B) of the act (21 U.S.C. 335a(a)(2)(B)), that Mr. Courtney was convicted of a felony under Federal law for conduct otherwise relating to the regulation of any drug product under the act. Mr. Courtney was provided 30 days to file objections and request a hearing. Mr. Courtney did not request a hearing. His failure to request a hearing constitutes a waiver of his opportunity for a hearing and a waiver of any contentions concerning his debarment.

### II. Findings and Order

Therefore, the Director, Center for Drug Evaluation and Research, under section 306(a)(2)(B) of the act, and under authority delegated to her (21 CFR 5.34), finds that Mr. Robert Ray Courtney has been convicted of a felony under Federal law for conduct otherwise relating to the regulation of any drug product under the act.

As a result of the foregoing finding, Mr. Robert Ray Courtney is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective October 20, 2003 (see sections 306(c)(1)(B) and (c)(2)(A)(ii) and 201(dd) of the act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly uses the services of Mr. Courtney, in any capacity, during his period of debarment, will be subject to civil money penalties (section 307(a)(6) of the act (21 U.S.C. 335b(a)(6))). If Mr. Courtney, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (section 307(a)(7) of the act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Mr. Courtney during his period of debarment.

Any application by Mr. Courtney for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 03N–0102 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 1, 2003.

**Janet Woodcock,**

*Director, Center for Drug Evaluation and Research.*

[FR Doc. 03–26385 Filed 10–17–03; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Factor VIII Inhibitors; Public Workshop

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled "Factor VIII Inhibitors." The purpose of the public workshop is to provide a forum for addressing regulatory and scientific concerns about inhibitors to Factor VIII, one of the components of blood necessary for clotting, with regard to inhibitor antibodies in Factor VIII products.

*Date and Time:* The workshop will be held on November 21, 2003, from 8 a.m. to 5 p.m.

*Location:* The workshop will be held at Lister Hill Auditorium, Bldg. 38A, National Institutes of Health, 8600 Rockville Pike, Bethesda, MD 20894.

*Contact Person:* Joseph Wilczek, Center for Biologics Evaluation and Research (HFM–302), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6129, FAX: 301–827–2843, e-mail: *wilczek@cber.fda.gov.*

*Registration:* Send registration information (including name, title, firm name, address, telephone, and fax number) to the contact person by November 7, 2003. Early registration is recommended because seating is limited to 176 participants. Registration will be done on a space available basis on the day of the workshop, beginning at 7:15 a.m. There is no registration fee.

If you need special accommodations due to a disability, please contact Joseph Wilczek (see *Contact Person*) at least 7 days in advance.

*Transcripts:* Transcripts of the workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. In addition, the transcript will be placed on the FDA Web site at *http://www.fda.gov/cber/minutes/workshop-min.htm.*

**SUPPLEMENTARY INFORMATION:** FDA and the International Association for Biologicals (IABs) are co-sponsoring a public workshop on regulatory and scientific concerns pertaining to the potential immunogenicity of Factor VIII products. The purpose of the workshop is to provide a forum for discussion of the inhibitor phenomenon with respect to currently available products and products that are under development by various sponsors. National and international regulatory authorities, manufacturers, clinicians, and academics will discuss their experiences with this issue regarding preclinical testing requirements, the results of clinical trials, and post-marketing surveillance. Other issues to be discussed at the workshop include properties of Factor VIII inhibitor assays, epidemiological aspects of inhibitor formation, and the design of prospective clinical studies. The public workshop agenda is posted on the FDA Internet at *http://www.fda.gov/cber/meetings/fctrviii112103.htm.*

Dated: October 10, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–26386 Filed 10–17–03; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

**[HRSA–04–030]**

### Amendment to a Notice of Availability of Funds Announced in the HRSA Preview—Primary Health Care Programs: Community and Migrant Health Centers

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Amendment to a Notice of Availability of Funds announced in the HRSA Preview—Primary Health Care Programs: Community and Migrant Health Centers HRSA–04–030.

**SUMMARY:** A Notice of Availability of Funds announced in the HRSA Preview, Primary Health Care Programs: Community and Migrant Health Centers HRSA–04–030, was published in the **Federal Register** on September 4, 2003, (Volume 68, Number 171), FR Doc. 03–22427. On page 52650, under eligibility, the following service areas are added to the list of areas HRSA intends to continue to support health services, given the unmet need inherent in their provisions of services to medically underserved populations. There are no other changes.

COMMUNITY/MIGRANT HEALTH CENTERS

| City | State | Expiration date |
|---|---|---|
| Contact: Jack Egan 301–594–4339 | | |
| Hartford | CT | 1/31/2004 |
| Great Barrington | MA | 1/31/2004 |
| Salem | MA | 3/31/2004 |
| Littleton | NH | 6/30/2004 |
| Middletown | CT | 6/30/2004 |
| White Plains | NY | 11/30/2003 |
| Penn Yan | NY | 12/31/2003 |
| Hatillo | PR | 1/31/2004 |
| Bronx | NY | 1/31/2004 |
| Morovis | PR | 1/31/2004 |
| New York | NY | 6/30/2004 |
| Baltimore | MD | 11/30/2003 |
| Contact: Jerri Regan 301–594–4283 | | |
| Tylertown | MS (2) | 11/30/2003 |
| Miami | FL | 1/31/2004 |
| Pompano Beach | FL | 1/31/2004 |
| Columbia | SC | 1/31/2004 |
| Manning | SC | 1/31/2004 |
| Foley | AL | 2/29/2004 |
| Greensboro | GA | 2/29/2004 |
| Bowling Green | KY | 2/29/2004 |
| Russellville | AL | 6/30/2004 |
| Wilmington | NC | 6/30/2004 |
| Tallahassee | FL | 6/30/2004 |
| Contact: Barbara Bailey 301–594–4317 | | |
| Houghton Lake | MI | 12/31/2003 |
| Milwaukee | WI | 1/31/2004 |
| Muncie | IN | 2/29/2004 |
| Oak Park | IL | 5/31/2004 |
| Indianapolis | IN | 6/30/2004 |
| Contact: Theresa Watkins-Bryant 301–594–4423 | | |
| Natchitoches | LA | 1/31/2004 |
| River Ridge | LA | 2/29/2004 |
| Baton Rouge | LA | 5/31/2004 |
| Opelousas | LA | 6/30/2004 |
| Contact: Jerri Regan 301–594–4283 | | |
| St. Louis | MO | 1/31/2004 |
| Columbia | MO | 6/30/2004 |
| Contact: Theresa Watkins-Bryant 301–594–4423 | | |
| Green Valley | AZ | 1/31/2004 |
| Los Angeles | CA | 1/31/2004 |
| Larkspur | CA | 2/29/2004 |
| Contact: Barbara Bailey 301–594–4317 | | |
| Klamath Falls | OR | 12/31/2003 |

HEALTH CARE FOR THE HOMELESS

| City | State | Expiration date |
|---|---|---|
| Contact: Jack Egan 301–594–4339 | | |
| White Plains | NY | 11/30/2003 |
| Contact: Jerri Regan 301–594–4283 | | |
| Pompano Beach | FL | 1/31/2004 |
| Contact: Theresa Watkins-Bryant 301–594–4423 | | |
| Honolulu | HI | 10/31/2003 |
| Ventura | CA | 10/31/2003 |

SCHOOL-BASED HEALTH CENTERS

| City | State | Expiration date |
|---|---|---|
| Contact: Jack Egan 301–594–4339 | | |
| Middletown | CT | 6/30/2004 |
| Boston | MA | 8/31/2004 |
| New York | NY | 6/30/2004 |

SCHOOL-BASED HEALTH CENTERS—Continued

| City | State | Expiration date |
|---|---|---|
| Contact: Jerri Regan 301–594–4283 | | |
| Wilmington | NC | 6/30/2004 |
| St. Louis | MO | 1/31/2004 |

Dated: October 8, 2003.

**Elizabeth M. Duke,**

*Administrator.*

[FR Doc. 03–26337 Filed 10–17–03; 8:45 am]

BILLING CODE 4165–15–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

## Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent application listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

### Method and Device for Catheter-Based Repair of Cardiac Valves

Robert J. Lederman (NHLBI), U.S. Provisional Application No. 60/426,984 filed 15 Nov 2002 (DHHS Reference No. E–010–2003/0–US–01).

Licensing Contact: Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov.*

The invention provides a system and method for catheter-based repair of cardiac valves. The technique may permit non-surgical repair of regurgitant valves using percutaneous catheters in awake patients. The intervention is intended to discontinue/lessen regurgitation of the mitral valve and should provide a viable alternative to the conventional treatment with vasodilator medications and open heart surgery. The technology involves re-apposing of mitral valve leaflets by percutaneous annuloplasty delivering circumferential tensioning devices. Under appropriate imaging guidance (such as fluoroscopic MRI) a circumferential device trajectory is navigated through anatomic (coronary sinus) and non-anatomic spaces to deliver a circumferential tensioning device. As an adjunct, redundant or otherwise disrupted valvar tissue may be oversewn by catheter-based capture, alignment, and suture of valve leaflets. Provided are also designs of various catheters, systems that would be necessary to perform the repair of cardiac valves. Imaging methods, like fluoroscopic (real time MRI), could be used to assist the operator for placement and orientation purposes.

### Variable Curve Catheter

Robert J. Lederman, Parag Karmarkar (NHLBI), U.S. Provisional Application No. 60/426,542 filed 15 Nov 2002 (DHHS Reference No. E–035–2003/0–US–01).

Licensing Contact: Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov.*

The invention provides a deflectable tip guiding device, such as a catheter, that enables the operator to vary the radius of curvature of the tip of the catheter. This is a novel variation on the classic "fixed fulcrum" tip deflectors used in minimally invasive procedures in open surgical treatments. The described device would permit more comprehensive ability to navigate complex geometric pathways in patient's body and would enable better access to the target structures (*e.g.*, to all endomyocardial walls from a transaortic approach). The guiding device can be made compatible with imaging methods like MRI. The described technology can be used as a platform for a wide variety of interventional devices for delivery of drugs, cells, energy, or sutures through complex trajectories of the body.

### Recombinant Plasmids for Soluble Immunoreceptors

Peter Sun (NIAID), DHHS Reference No. E–305–2003/0.

Licensing Contact: Cristina Thalhammer-Reyero; 301/435–4507; *thalhamc@mail.nih.gov.*

Immunoreceptors initiate signals leading to the activation of immune system against invasion pathogens. A number of soluble receptors, representing the extracellular ligand binding domains of the immunoreceptors, have been expressed using a recombinant bacteria expression and reconstitution system. This set of 21 plasmids, which can be used as immunological research reagents or to develop diagnostic tools, comprise the following:

| Plasmid | Description |
|---|---|
| CD16–28b | Soluble CD16. |
| CD94 (S34)–30a | Soluble CD94 truncated at S34. |
| CD94 (E51)–30a | Soluble CD94 truncated at E51. |
| NKG2A (109R)–30a | Soluble NKG2A 109R construct. |
| NKG2A (117G)–30a | Soluble NKG2A 117G construct. |
| TBRII–30a | Soluble type II TGF–beta receptor. |
| C143–30a | Soluble KIR2DL2 receptor. |
| NKG2D–22b | Soluble NKG2D receptor. |
| ULBP–1–22–b | Soluble ULBP–1. |
| ULBP–2–22–b | Soluble ULBP–2. |
| ULBP–3–22b | Soluble ULBP–3. |
| HLA–E–30a | Soluble HLA–E heavy chain. |
| HLA–Cw3 | Soluble HLA–Cw3 heavy chain. |
| TREM–1–22b | Soluble TREM–1 receptor. |
| TREM–2–22b | Soluble TREM–2 receptor. |
| NKp30–22b | Soluble NKp30. |
| NKp46–22b | Soluble NKp46. |
| NKp44–22b | Soluble NKp44. |

| Plasmid | Description |
|---|---|
| Siglec-3-30a | Soluble Siglec-3. |
| Siglec-5-30a | Soluble Siglec-5. |
| Siglec-7-30a | Soluble Siglec-7. |

**Methods and Materials for Controlling Stem Cell and Cancer Cell Proliferation and Differentiation. ea /01)./**

Robert Tsai and Ronald McKay (NCI), U.S. Provisional Application No. 60/442,005 filed 22 Jan 2003 (DHHS Reference No. E-019-2003/0-US-01); U.S. Provisional Application No. 60/415,867 filed 02 Oct 2002 (DHHS Reference No. E-001-2003/0-US-01)

Licensing Contact: Norbert Pontzer; 301/435-5502; *np59n@nih.gov.*

This work describes a novel nucleolar mechanism that controls the cell-cycle progression in CNS stem cells and cancer cells. The inventors identified a novel peptide, nucleostemin, found in the nucleoli of CNS stem cells, embryonic stem cells, and several cancer cell lines and preferentially expressed by other stem cell-enriched populations. When stem cells differentiate, nucleostemin expression decreases rapidly prior to cell-cycle exit both in vitro and in vivo. Depletion or overexpression of nucleostemin reduces cell proliferation in CNS stem cells and transformed cells.

Nucleic acids encoding the polypeptide, vectors incorporating the nucleic acids, and host cells transfected with these nucleic acids are disclosed and claimed. The claimed invention includes methods for regulating cell differentiation, cell proliferation, or both using nucleostemin. Methods for inducing differentiation, inhibiting proliferation, and inducing senescence of a cell by altering the level of a nucleostemin polypeptide and related amino acid sequences are disclosed and claimed. Methods for screening for agents that affect proliferation, differentiation, or senescence of cells are also disclosed and claimed. Further information can be found in Genes Dev. 2002 Dec 1;16 (23):2991-3003.

Dated: October 7, 2003.

**Steven M. Ferguson,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 03-26357 Filed 10-17-03; 8:45 am]

BILLING CODE 4140-01-P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Clinical Trials Review Committee, June 23, 2003, 8 a.m. to June 24, 2003, 5 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on March 26, 2003, 68 FR 14671-14672.

The meeting will be held June 23, 2003 for one day only. The meeting is closed to the public.

Dated: October 9, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03-26361 Filed 10-17-03; 8:45 am]

BILLING CODE 4140-01-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Deafness and Other Communication Disorders; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, November 5, 2003, 8 a.m. to November 5, 2003, 5 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814, which was published in the **Federal Register** on September 29, 2003. 68 FR 55973.

The meeting will be held on November 17, 2003 at the Hyatt Regency Bethesda. The meeting is closed to the public.

Dated: October 9, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03-26356 Filed 10-17-03; 8:45 am]

BILLING CODE 4140-01-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Clinical Research.

*Date:* November 13, 2003.

*Time:* 7 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Courtyard By Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

*Contact Person:* Michael W. Edwards, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-8886, *edwardsm@extra.niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Regulatory Mechanisms in Intestinal Motility.

*Date:* November 16, 2003.

*Time:* 4:30 p.m. to 10 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Courtyard By Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

*Contact Person:* Michael W. Edwards, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-8886, *edwardsm@extra.niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Silvio O. Conte Digestive Diseases Research Core Centers.

*Date:* November 20-21, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites, 1300 Concourse Drive, Linthicum, MD 21090.

*Contact Person:* Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov*.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Studies of Pediatric Liver Transplantation.

*Date:* December 5, 2003.

*Time:* 2 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Paul A. Rushing, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov*.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Gastrointestinal Endocrinology Program Project.

*Date:* December 16, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Four Points Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Michele L. Barnard, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8898, *barnardm@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 9, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–26360 Filed 10–17–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Clinical Center; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Board of Governors of the Warren Magnuson Clinical Center.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Board of Governors of the Warren Grant Magnuson Clinical Center, Executive Committee.

*Date:* November 21, 2003.

*Time:* 9 a.m. to 12 p.m.

*Agenda:* Updates on organizational planning and budget issues.

*Place:* National Institutes of Health, Building 10, 10 Center Drive, Medical Board Room 2C116, Bethesda, MD 20892.

*Contact Person:* Maureen E Gormley, Executive Secretary, Warren Grant Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, Md 20892, (301) 496–2897.

Information is also available on the Institute's/Center's home page: *www.cc.nih.gov/*, where an agenda and any additional information for the meeting will be posted when available.

Dated: October 9, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–26359 Filed 10–17–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

### Recordation of Trade Name: "YOUPAL"

**ACTION:** Notice of application for recordation of trade name.

**SUMMARY:** Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "YOUPAL". The trade name is owned by Youpal International, Inc., an Arkansas corporation organized and created in the State of Arkansas, 6900 Cantrell Road, E6, Little Rock, Arkansas 72207.

The application states that the applicant is the importer, exporter and manufacturer of Titanium Folding Bicycles and Carbon Folding Bicycles. The applicant also states that the trade name "YOUPAL" is solely and exclusively owned and operated by Youpal International, Inc., and supervises the manufacturing process for three model (SFM585F; SFM820F; SEF468BBS), bicycles, including the design, the standards used, and the product's parts. The merchandise is manufactured in China.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**.

**DATES:** Comments must be received on or before December 19, 2003.

**ADDRESSES:** Written comments should be addressed to the Department of Homeland Security, Bureau of Customs and Border Protection, Attention: Office of Regulations & Rulings, Intellectual Property Rights Branch, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Gwendolyn D. Savoy, Intellectual Property Rights Branch, at (202) 572–8710.

Dated: October 10, 2003.

**George Frederick McCray,**

*Chief, Intellectual Property Rights Branch.*

[FR Doc. 03–26333 Filed 10–17–03; 8:45 am]

**BILLING CODE 4820–02–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### Assistance to Firefighters Fire Prevention and Safety Program

**AGENCY:** U.S. Fire Administration (USFA), Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security (DHS).

**ACTION:** Notice of availability of funds.

**SUMMARY:** FEMA gives notice of the availability of funds for Fiscal Year 2003 under the Assistance to Firefighters Fire Prevention and Safety Program (the Program) as authorized by the Federal Fire Prevention and Control Act of 1974. The Program will make up to $27,500,000 of the total appropriated amount of $745,125,000 available for fire prevention activities.

FEMA will fund fire prevention activities based on proposals that address the Program's priorities and maximize the benefits to be derived from the funds. FEMA is statutorily mandated to provide these funds to national, State and/or community organizations (including fire departments) that are recognized for their experience and expertise with respect to fire prevention or fire safety programs and activities. In selecting recipients, FEMA will give priority where practical to organizations that focus on prevention of fire or fire-related injuries to children.

**Authority:** 15 U.S.C. 2229; 44 CFR Part 152, 68 FR 12544 (Final Rule published March 14, 2003.)

**DATES:** Completed applications must be received online or postmarked by 5 p.m. EST November 14, 2003.

**FOR FURTHER INFORMATION CONTACT:** Brian Cowan, Chief, Grants Program Branch, USFA, FEMA, 500 C Street, SW., Room 330, Washington, DC 20472, 1–866–274–0960, or *usfagrants@fema.gov.*

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

The purpose of this notice is to advise of the availability of funds for carrying out fire prevention activities pursuant to the Federal Fire Prevention and Control Act of 1974, 15 U.S.C. 2229. Up to $27,500,000 will be available for this purpose. Under 15 U.S.C. 1229(b)(4), FEMA must use not less than 5 percent of funding to (1) make grants to fire departments to fund fire prevention programs and (2) make grants to or enter contracts or cooperative agreements with national, State, local, and community organizations for the purpose of carrying out fire prevention programming. This notice only addresses the latter use of funding; the former comprises the balance of the 5 percent and is being awarded through the Assistance to Firefighters competitive grant to fire departments, as explained in FEMA's March 14, 2003 notice of funds availability (68 FR 12553).

### B. Eligibility

National, State, local and community organizations (which may include fire departments as defined at 44 CFR 152.2) that are recognized for their experience and expertise with respect to fire prevention or fire safety programs and activities are eligible to apply. For the purposes of these Fire Prevention and Safety awards, we are acknowledging that fire departments are generally recognized as local organizations with experience and expertise in carrying out fire prevention activities and are therefore eligible to apply.

### C. Program Requirements

1. Recipients must agree that in the fiscal year for which assistance will be received, aggregate expenditures for fire prevention activities, exclusive of the amount of assistance received through this program, will be maintained at or above the average level of such expenditures in the two fiscal years preceding the fiscal year for which the assistance is received.

2. Recipients must agree to a matching cost share of non-Federal funds. Generally, recipients must agree to match with an amount of non-Federal funds equal to 30 percent of the total project cost. However, the match for recipients that may be characterized as community organizations whose mission serves populations of 50,000 or less shall be 10 percent of the total project cost. FEMA, in its discretion, will make this determination based upon the organization's primary target population as reflected in its bylaws and mission statement. For fire departments, FEMA will look at the population of the department's primary response area. The non-Federal match must be cash; "in-kind" contributions are not permitted.

3. Fire departments receiving assistance through the Program must provide information to the National Fire Incident Reporting System (NFIRS) for one year.

4. Grantees must submit semi-annual and final reports describing (i) how the assistance was used and (ii) the benefits derived from the funded activities.

5. Projects funded under this grant will generally have a one-year period of performance.

### D. Application Process

FEMA encourages all applicants to apply online using FEMA's electronic (e-grant) application process, although paper applications will also be accepted. The e-grant application incorporates data from all of FEMA's grant forms. The application will include questions requesting general information about the applicant as well as activity-specific questions for each activity that the applicant plans to implement with grant funds. Applicants will be asked to provide details concerning the various budget items necessary to accomplish their proposed projects. The application will include a program narrative in which the applicant must provide a detailed description of each planned project, experience in conducting prevention activities, and the benefits to be derived from the costs of the project. The narrative should not exceed 10 pages (double-spaced with one-inch margins and 12-point font). The narrative should also address the eligible activities, program priorities, identified risk analysis, program goals, and evaluation methodology. Completed narratives should address each of the following items:

1. General information such as the history and description of the applicant organization, the organization's capability to achieve proposed objectives and past successes achieving project goals, the organization's experience with fire and injury prevention issues, and the qualifications of the project manager and the primary team members.

2. A project overview which includes at least: a problem statement describing the issues to be addressed, project goals, and objectives, as well as the necessary tasks to achieve those goals and objectives; a description of what will be accomplished during the grant performance period; an explanation of how the project will address the stated problem; and a project description addressing the following questions as applicable:

a. Will this establish a new project, expand an existing project into new areas, or augment an existing fire prevention project?

b. What is the target audience? A USFA-identified target population(s) (children under the age of 14, seniors over the age of 65, and firefighters) or another high-risk population? Why are they the target audience?

c. Will this project establish a multi-organization partnership with other groups in the community? If so, describe how.

3. A list of project benchmarks, phases, or milestones.

4. A description of the method or procedure for project implementation.

5. A detailed explanation of the project budget (*i.e.*, all budget line items such as contracting personnel or equipment, etc.), including a cost-benefit assessment comparing the benefits to be realized with the costs of achieving those benefits.

6. An explanation of the means with which the project will be sustained, if it will continue beyond the grant period (typically one year).

7. A description of the methodology that will be used to assess, evaluate and identify results of the project.

Effective October 1, 2003, all grant applicants must obtain a DUNS number, (a unique nine-character identification number provided by the commercial company Dun & Bradstreet). There is no charge to obtain a DUNS number, and it is the applicant's responsibility to obtain one. Applicants are encouraged to apply for a DUNS number well in advance of the application period because it may take 14 business days to obtain the number online. Applicants can also call 1–800–333–0505 to apply. Applications that do not include a DUNS number are incomplete and cannot be considered for award. If applying using the online system, this field will be a mandatory entry and your application cannot be completed without it. If applying on paper, use the box entitled "Federal Identifier" on the SF 424, Application for Federal Assistance, to enter the DUNS number.

Completed applications must be received online or postmarked by 5 p.m. EST November 14, 2003. Paper applications are required to include a narrative addressing items D.1—8 above, and all of the following FEMA forms: 20–16 Assurances and Certifications, 20–20 Budget Information-Nonconstruction Programs, and SF 424 Request for Federal Assistance. These forms are available online at *www.fema.gov/ofm/grants2.shtm* or can be requested by calling 1–866–274–0960. Failure to submit all of the required forms will result in a disqualification of the paper application. The paper application should be mailed to AFG Program Office, 500 C Street, SW., Room 330, Washington, DC 20472. If an online application is submitted, applicants should not submit a supplemental paper application.

### E. Eligible Activities

Fire prevention and safety projects are the only eligible activities under the Program. Installation of sprinkler systems and fire alarm systems into existing structures shall be eligible for funding. Renovations to an existing facility are allowable only if the costs are not construction costs as defined in 44 CFR 152.2. This section was amended by the publication of a final rule on March 14, 2003 at 68 FR 12544. In order to be eligible, renovations must be essential to the successful completion of the grant scope of work. Construction projects are not eligible under the program. Changes or renovations to an existing structure that do not change the footprint or profile of the structure but exceed either $10,000 or 50 percent of the value of the structure, are also considered construction for the purposes of this grant program.

The following list includes examples of eligible initiatives under this program:

1. Projects that focus on distributing and installing smoke alarms and checking to ensure smoke alarms are operational.
2. Projects that focus on planning and practicing escape routes, or conducting home fire safety walkthroughs;
3. Fire prevention projects targeting high-risk audiences, including those:
   a. Enhancing national, State, or local efforts to reduce fires and burn injuries affecting children under 14 or seniors over 65;
   b. Targeting geographical areas with a higher incidence of fire-related deaths and injuries;
   c. Implementing projects that mitigate risk in urban cities or high-risk groups to include addressing culturally-sensitive materials or socio-economic challenges;
4. Projects that affect the entire community such as educating the public about residential sprinklers, promoting residential sprinklers, and demonstrating working models of residential sprinklers;
5. Projects that promote the adoption or awareness of building codes and enforcement, improve engineering or enact fire-related ordinances for new construction;
6. Projects that develop and implement national prevention initiatives;
7. Local or regional projects that address training personnel in the area of public education, code enforcement, and arson prevention.

Projects that address additional fire prevention and safety initiatives will be considered.

### F. Evaluation Criteria

FEMA will give priority to projects that focus on the prevention of injury to children from fire. Additionally, successful projects will have a high potential for achieving the overall goals of USFA, listed below. It is unlikely that projects that do not address these goals will be funded.

USFA Goals:

- To reduce the overall loss of life from fire by three percent per year.
- To establish comprehensive multi-hazard risk reduction plans led by or including the local fire service in 2,500 communities.
- To create the ability for communities to respond appropriately to emergent issues in a timely manner.

FEMA will use the below criteria in making funding decisions. Applications that closely meet all of the listed evaluation criteria will be more likely to receive favorable consideration. Federal and non-Federal experts will assist with the preliminary review of proposals and analysis as part of the funding decisions. Regardless of the proposed project, all applications will be evaluated on the degree to which they meet the criteria below. This list is not in order of priority.

- Use of an innovative project to address an identified risk or enhance traditional methodologies;
- Incorporation of partnerships that are established with public or private groups/agencies whose mission serves the population identified by the project;
- Targeting of geographical areas with a higher incidence of fire-related deaths and injuries;
- Presentation of a high benefit for the cost incurred and maximizing the level of funding that goes directly into the delivery of the project; *i.e.*, projects that include little or no overhead and administrative costs;
- Inclusion of sound reasoning regarding the determination of the target audience, measurable goals and project evaluation;
- Proposing a project that will be sustained beyond the grant performance period and has a greater potential for long-term benefits; and
- Illustration that the applicant has a successful record for timely project completion and performance in similar projects.

### G. Funding Limitations

Grant recipients or parties entering into cooperative agreements through the program may receive no more that $750,000 in any Federal fiscal year. Fire Departments that receive funding under the Assistance to Firefighters—competitive grant must consider this limitation, because the combined total for the grants is capped at $750,000.

### H. Contracts

FEMA may, in its discretion, enter into contracts for fire prevention activities in order to achieve overall program goals. These contracts may not be subject to the limitations and requirements set forth in this notice.

Dated: October 14, 2003.

**R. David Paulison,**

*Director of the Preparedness Division, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03–26408 Filed 10–17–03; 8:45 am]

BILLING CODE 6718–08–P

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## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## Loan Guaranty, Insurance and Interest Subsidy, 25 CFR Part 103

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of submission of information collection to the Office of Management and Budget.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is submitting the information collection titled 25 CFR part 103, Loan Guaranty, Insurance, and Interest Subsidy, OMB Control Number 1076–0020, for renewal. We are renewing the collection for Loan Guaranty, Insurance, and Interest Subsidy whose clearance expires October 31, 2003. Otherwise, the collection of this information would be prohibited.

**DATES:** Submit comments on or before November 19, 2003.

**ADDRESSES:** You may submit comments on the information collection to the Desk Officer for Department of the Interior at OMB, either by facsimile at (202) 395–6566, or you may send an e-mail to: *OIRA_DOCKET@ omb.eop.gov.*

Please send a copy of your comments to Ray Brown, Chief, Division of Financial Assistance, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, 1849 C St., NW., Mail Stop 2412–MIB, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** You may request further information or obtain copies of the information collection request submission from David Johnson, Solicitor, 1849 C Street, NW., Washington, DC 20240 or by telefacsimile at (202) 208–7419.

**SUPPLEMENTARY INFORMATION:** The purpose of the Loan Guaranty, Insurance, and Interest Subsidy Program, 25 U.S.C. 1481 *et seq.* and 25 U.S.C. 1511 *et seq.*, is to encourage private lending to individual Indians and organizations of Indians, by providing lenders with loan guaranties or loan insurance to reduce their potential risk. Lenders, borrowers, and the loan purpose all must qualify under Program terms. In addition, the Secretary of the Interior must be satisfied that there is a reasonable prospect that the loan will be repaid. BIA collects information under the proposed regulations to assure compliance with Program requirements. A request for comments on this information collection request appeared in the **Federal Register** on June 10, 2003 (68 FR 34640). No comments were received.

*Request for Comments:* The Bureau of Indian Affairs requests you to send your comments on this collection to the locations listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the Bureau of Indian Affairs location listed in the **ADDRESSES** section, room 2412, during the hours of 9 a.m. to 5 p.m. EST, Monday through Friday except for legal holidays. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comments. We will honor your request according to the requirements of the law. All comments from organizations or representatives will be available for review. We may withhold comments from review for other reasons.

*OMB Approval Number:* 1076–0020.

*Title:* 25 CFR 103, Loan Guaranty, Insurance, and Interest Subsidy.

*Brief Description of collection:* The Loan Guaranty, Insurance, and Interest Subsidy Program (Program) was established by the Act of April 12, 1974, as amended, 88 Stat. 79, 25 U.S.C. 1481 *et seq.* and 25 U.S.C. 1511 *et seq.* The Program has existed since 1974 and the regulations implementing it have existed since 1975, with significant revision in 2001. It is necessary to collect information from users of this program in order to determine eligibility and credit worthiness of Indian applicants for loans. Submission of this information is mandatory for respondent to receive or maintain a benefit.

*Type of review:* Renewal.

*Respondents:* Commercial banks.

*Number of Respondents:* 84.

*Estimated Time per Response:* ¼ hour to 2 hours.

*Frequency of Response:* As needed.

*Total Annual Responses:* 852.

*Total Annual Burden to Respondents:* 519 hours.

Dated: September 29, 2003.

**Aurene M. Martin,**

*Principal Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. 03–26407 Filed 10–17–03; 8:45 am]

BILLING CODE 4310–XN–P

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

### Notice of Public Meeting: Resource Advisory Council to the Lower Snake River District, Bureau of Land Management, U.S. Department of the Interior

**AGENCY:** Bureau of Land Management, U.S. Department of the Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Lower Snake River District Resource Advisory Council (RAC), will meet as indicated below.

**DATES:** The meeting will be held November 18, 2003, beginning 9 a.m. at the Bureau of Land Management, Lower Snake River District Office Sage Brush Conference Room, located at 3948 Development Ave, Boise, Idaho 83705. Public comment periods will be held after topics on the agenda. The meeting will adjourn at 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** MJ Byrne, Public Affairs Officer and RAC Coordinator, Lower Snake River District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384–3393.

**SUPPLEMENTARY INFORMATION:** The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in southwestern Idaho. At this meeting, the following topics will be discussed:

- Overview of American Indian statutes, regulations, and treaties, trust relationship, tribal resource rights, tribal sovereignty and governmental authority, Native American consultation and coordination—Douglas McConnaughey, Facilitator, Mediator, and Arbitrator;
- Subcommittee Reports
- Grouse Habitat Management, Off-Highway Vehicles (OHV) and Transportation Management, River Recreation and Resource Management Plans, and Fire and Fuels Management;
- Two Resource Management Plans under development in the District—update on progress during workshops for Alternatives development;
- OHV Update—
- Status of BLM Idaho's Strategic Plan—Terry Heslin
- Progress in OHV trails mapping and public outreach—Lower Snake

River District, Owyhee Field Office, Jim Schmid, Trails Specialist, LSRD–OFO;

- Idaho Department of Parks and Recreation (IDPR)—Trail Ranger Partnership Program—Rick Collignon, Director, IDPR;
- Idaho's Noxious Weed Program—Weed Awareness Campaign—Spring Workshops and Field trips—Brenda Waters, Noxious Weed Program Coordinator, Idaho State Department of Agriculture;
- Three Field Office Managers and District Fire Manager provide updates on current issues and planned activities in their field office and the District; and
- RAC review of Charter, work plan, priorities, and identify dates for 2004 meetings.

Agenda items may change due to changing circumstances. All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below. Expedited publication is requested to give the public adequate notice.

Dated: October 14, 2003.

**Howard Hedrick,**

*Associate District Manager.*

[FR Doc. 03–26363 Filed 10–17–03; 8:45 am]

BILLING CODE 4310–AG–P

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## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 731–TA–391–394, 396–397, 399 (Review) (Remand)]**

## Ball Bearings From France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom; Notice and Scheduling of Remand Proceedings

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The U.S. International Trade Commission (the Commission) hereby gives notice of the court-ordered remand of its five-year review in Investigation Nos. 731–TA–391–394, 396–397, and 399 (Review).

**EFFECTIVE DATE:** October 10, 2003.

**FOR FURTHER INFORMATION CONTACT:** Larry Reavis (Office 615–D) (205–3185) (*lreavis@usitc.gov*) or Robert Carpenter (Office 615–AA) (205–3160) (*rcarpenter@usitc.gov*). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

**SUPPLEMENTARY INFORMATION:**

### Reopening Record

In order to assist it in making its determination on remand, the Commission is reopening the record in this five-year review for the limited purpose of gathering evidence relevant to the subject of the importation and production of commodity-grade ball bearings 26 mm or less in outer diameter, and competition between such bearings from either imported or domestic sources during the period of review and the likelihood of such importation, production, or competition upon revocation. Any party wishing to submit information on this matter must do so by close of business on October 24, 2003. The Commission will provide interested parties with an opportunity to file comments on any new information received pertaining to that subject.

### Participation in the Proceedings

Only those persons who were interested parties to the five-year review (*i.e.*, persons listed on the Commission Secretary's service list) may participate in these remand proceedings.

### Written Submissions

Each party who is an interested party in this remand proceeding may submit one set of written comments to the Commission. These comments must be concise and must be limited specifically to commenting on the issue of the importation and domestic production of commodity-grade ball bearings 26 mm in outer diameter or less and competition between such bearings from various sources, and to any related new information obtained by the Commission during the remand proceedings. Any material in the interested parties' comments that does not address these limited issues will be stricken from the record. No new factual information may be included in such comments. Comments shall be submitted in a font of no smaller than 11-point (Times new roman) and shall be limited to no more than 5 double-spaced pages (inclusive of footnotes, tables, graphs, exhibits, appendices, etc.). These comments must be filed no later than the close of business on October 31, 2003.

All comments must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the five-year review must be served on all other parties to the five-year review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

### Limited Disclosure of BPI Under an Administrative Protective Order (APO) and BPI Service List

Information obtained during the remand proceedings will be released to parties under the APO in effect in the five-year review. Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the five-year review and in these remand proceedings available to additional authorized applicants, that are not covered under the original APO, provided that the application is made not later than seven (7) days after publication of this notice in the **Federal Register**. Applications must be filed for persons on the Judicial Protective Order in the related CIT case, but not covered under the original APO. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO in these remand proceedings.

**Authority:** This action is taken under the authority of the Tariff Act of 1930, title VII.

By order of the Commission.

Issued: October 14, 2003.

**Marilyn R. Abbott,**

*Secretary.*

[FR Doc. 03–26380 Filed 10–17–03; 8:45 am]

BILLING CODE 7020–02–P

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## DEPARTMENT OF JUSTICE

## Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day notice of information collection under review: Community Policing Development Application Packet.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until December 19, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mary Hyland, (202) 616–9418, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Community Policing Development Application Packet.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Office of Community Oriented Policing Services Form Number: 1103–0085.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, local, and Tribal law enforcement agencies, institutions of higher education, and/or non-profit organizations. Other: None Abstract: The information collected will be used by the COPS Office to determine grantee's eligibility for funding under Community Policing Development initiatives, which address current law enforcement/community needs and emerging law enforcement issues.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 200 responses. The estimated amount of time required for the average respondent to respond is: 8 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,800 hours annually.

If additional information is required contact: Brenda Dyer, Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, 601 D Street, NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: October 14, 2003.

**Brenda Dyer,**

*Deputy Clearance Officer, Department of Justice.*

[FR Doc. 03–26369 Filed 10–17–03; 8:45 am]

BILLING CODE 4410–AT–M

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## DEPARTMENT OF JUSTICE

### Office of Justice Programs

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day emergency notice of information collection under review: Reinstatement, with change, of a previously approved collection for which approval has expired; application for public safety officers' educational assistance.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by October 28, 2003. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulation Affairs, Attention: Department of Justice Desk Officer, (202) 395–5806, Washington, DC 20503. Comments are encouraged and will be accepted for 60 days until December 19, 2003.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Sharon Williams, via e-mail, *SharonW@ojp.usdoj.gov*, or via facsimile, (202) 307–0036.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**Overview of This Information**

(1) *Type of information collection:* Reinstatement, with Change, of a Previously Approved Collection for which Approval has Expired.

(2) *The title of the form/collection:* Application for Public Safety Officers' Educational Assistance.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: OJP Form Number 1240/20. Bureau of Justice Assistance, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: None. The agency requires the information requested on this application to determine if individuals are eligible to receive educational assistance through the

Public Safety Officers' Educational Assistance (PSOEA) Program, as established by the PSOEA Act of 1998 (Pub. L. 104–238). Respondents who complete the application may be spouses or eligible children of a public safety officer who was killed or permanently injured in the line of duty.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 150 respondents will complete the application in approximately 20 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with this application is 50 hours.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Planning and Policy Staff, Justice Management Division, United States Department of Justice, 601 D Street, NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: October 14, 2003.

**Brenda E. Dyer,**

*Department Deputy Clearance Officer, United States Department of Justice.*

[FR Doc. 03–26370 Filed 10–17–03; 8:45 am]

**BILLING CODE 4410–18–M**

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## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### Senior Executive Service Combined Performance Review Board

**AGENCY:** Federal Mine Safety and Health Review Commission.

**ACTION:** Notice of members of the Federal Mine Safety and Health Review Commission Combined Performance Review Board (PRB).

**SUMMARY:** Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the combined PRB for the Federal Mine Safety and Health Review Commission. The Board reviews the performance appraisals of career and non-career senior executives. The Board makes recommendations regarding proposed performance appraisals, ratings, bonuses and other appropriate personnel actions.

Composition of PRB: The Board shall consist of at least three voting members. In the case of an appraisal of a career appointee, more than half of the members shall consist of career appointees. The names and titles of the PRB members are as follows:

**Primary Members**

Frederick Phillips, Deputy Executive Director, Administrative Resource Center, Bureau of the Public DebtDebra L. Hines, Assistant Commissioner, Office of Public Debt Accounting, Bureau of the Public DebtCynthia Z. Springer, Assistant Commissioner, Office of Information Technology, Bureau of the Public Debt.

**Alternate Members**

None.

**DATES:** Membership is effective on October 20, 2003.

**FOR FURTHER INFORMATION CONTACT:** Richard L. Baker, Executive Director, Federal Mine Safety and Health Review Commission, Suite 9500, 601 New Jersey Avenue, NW., Washington, DC 20001, (202) 434–9911.

This notice does not meet the Federal Mine Safety and Health Review Commission's criteria for significant regulations.

Dated: October 10, 2003.

**Richard L. Baker,**

*Executive Director, Federal Mine Safety and Health Review Commission.*

[FR Doc. 03–26340 Filed 10–17–03; 8:45 am]

**BILLING CODE 2005–01–P**

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## NATIONAL CREDIT UNION ADMINISTRATION

### Sunshine Act; Notice of Meeting

**TIME AND DATE:** 10 a.m., Thursday, October 23, 2003.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Quarterly Insurance Fund Report.
2. Proposed Rule: Part 748 of NCUA Rules and Regulations, Guidance on Response Programs for Unauthorized Access to Member Information and Member Notice.
3. Interpretive Ruling and Policy Statement (IRPS) 03–3, Qualified Financial Contracts.
4. Direct Final Rule: Part 792, Subpart A of NCUA Rules and Regulations, Freedom of Information Act.

**RECESS:** 11:15 a.m.

**TIME AND DATE:** 11:30 a.m., Thursday, October 23, 2003.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Administrative Action under part 708 of NCUA's Rules and Regulations. Closed pursuant to Exemption (8).
2. Administrative Action under section 206 of the Federal Credit Union Act. Closed pursuant to Exemptions (8), 9(A)(ii), and 9(B).

**FOR FURTHER INFORMATION CONTACT:** Becky Baker, Secretary of the Board, Telephone: (703) 518–6304.

**Becky Baker,**

*Secretary of the Board.*

[FR Doc. 03–26565 Filed 10–16–03; 2:51 pm]

**BILLING CODE 7535–01–M**

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## NATIONAL SCIENCE FOUNDATION

### Notice of Permits Issued Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permits issued under the Antarctic Conservation of 1978, Pub. L. 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

**FOR FURTHER INFORMATION CONTACT:** Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

**SUPPLEMENTARY INFORMATION:** On August 13, 2003, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued on October 8, 2003 to Patrick Shore (2004–008).

**Nadene G. Kennedy,**

*Permit Officer.*

[FR Doc. 03–26383 Filed 10–17–03; 8:45 am]

**BILLING CODE 7555–01–M**

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## POSTAL RATE COMMISSION

### Briefings on Accounting Changes and Carrier Costs

**AGENCY:** Postal Rate Commission.

**ACTION:** Notice of public briefing.

**SUMMARY:** The Postal Rate Commission will host two briefings by the United States Postal Service in November and December. The first will cover certain accounting and reporting changes; the second will address a new carrier cost study. The briefings are open to the public. They will be held in the Postal Rate Commission's hearing room.

**DATES:** 1. November 20, 2003 (9:30 a.m.–11:30 a.m.)—accounting and reporting changes.

2. December 3, 2003 (10 a.m.–12)—carrier cost study.

**ADDRESSES:** Postal Rate Commission (hearing room), 1333 H Street, NW., Washington, DC 20268–0001, Suite 300.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, 202–789–6818.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service will present a public briefing on its new general ledger accounting system on November 20, 2003 at 9:30 a.m. in the Postal Rate Commission's hearing room. The Service began using this new system on October 1, 2003, and its introduction coincides with adoption of a postal fiscal year that is identical to the U.S. government's fiscal year. Accounting period reports will be replaced with calendar month financial reporting. The data from the general ledger system is the primary input into many of the Postal Service's annual reports, such as the Cost and Revenue Analysis report and the annual financial statements found in the Postmaster General's annual report. This system is also one of the primary sources for the development of the revenue requirement during rate filings.

The Service will present a second public briefing on December 3, 2003 at 10 a.m., also in the Commission's hearing room, on the new methodology the Service used to develop the segment 7 city carrier street time costs that were filed with the Commission on May 20, 2003 as part of the FY 2002 Cost Segments and Components report. The new methodology replaces the cost treatment that has been used by the Service since the 1980s. It is based on data collected in May and June 2002 and involves new cost components.

**Steven W. Williams,**

*Secretary.*

[FR Doc. 03–26406 Filed 10–17–03; 8:45 am]

**BILLING CODE 7710–FW–P**

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## RAILROAD RETIREMENT BOARD

### Proposed Collection; Comment Request

**SUMMARY:** In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

*Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

*Title and purpose of information collection:* Application and Claim for Sickness Insurance Benefits; OMB 3220–0039.

Under section 2 of the Railroad Unemployment Insurance Act (RUIA), sickness benefits are payable to qualified railroad employees who are unable to work because of illness or injury. In addition, sickness benefits are payable to qualified female employees if they are unable to work, or if working would be injurious, because of pregnancy, miscarriage or childbirth. Under Section 1(k) of the RUIA, a statement of sickness with respect to days of sickness of an employee is to be filed with the RRB within a 10-day period from the first day claimed as a day of sickness. The RRB's authority for requesting supplemental medical information is section 12(i) and 12(n) of the RUIA. The procedures for claiming sickness benefits and for the RRB to obtain supplemental medical information needed to determine a claimant's eligibility for such benefits are prescribed in 20 CFR part 335.

The forms used by the RRB to obtain information needed to determine eligibility for and the amount of sickness benefits due a claimant follows: Form SI–1a, Application for Sickness Benefits; Form SI–1b, Statement of Sickness; Form SI–3, Claim for Sickness Benefits; Form SI–7, Supplemental Doctor's Statement; Form SI–8, Verification of Medical Information; Form ID–7h, Non-Entitlement to Sickness Benefits and Information on Unemployment Benefits; Form ID–11a, Requesting Reason for Late Filing of Sickness Benefit and ID–11b, Notice of Insufficient Medical and Late Filing. Completion is required to obtain or retain benefits. One response is requested of each respondent.

The RRB proposes no changes to Forms(s) SI–1a, SI–1b, SI–8, ID–7h, ID–11a and ID–11b. Non burden impacting editorial and formatting changes are proposed to Form(s) SI–3 and SI–7.

*Estimated of Annual Respondent Burden:* The estimated annual respondent burden is as follows:

| Form #(s) | Annual responses | Time (min) | Burden (hrs) |
|---|---|---|---|
| SI–1a | 22,200 | 10 | 3,700 |
| SI–1b(Doctor) | 22,200 | 8 | 2,960 |
| SI–3 | 181,000 | 5 | 15,083 |
| SI–7 | 33,600 | 8 | 4,480 |
| SI–8 | 50 | 5 | 4 |
| ID–7H | 50 | 5 | 4 |
| ID–11A | 800 | 3 | 40 |
| ID–11B | 1000 | 3 | 50 |
| Total | 260,900 | | 26,321 |

*Additional Information or Comments:* To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

**Chuck Mierzwa,**

*Clearance Officer.*

[FR Doc. 03–26341 Filed 10–17–03; 8:45 am]

**BILLING CODE 7905–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release. No. IC–26207; 812–12971]**

## Hennion & Walsh, Inc., et al.; Notice of Application

October 14, 2003.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application under: (i) Section 6(c) of the Investment Company Act of 1940 ("Act") for exemptions from sections 14(a) and 19(a) of the Act and from rule 19b–1 thereunder; (ii) sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act; and (iii) section 12(d)(1)(J) of the Act for an exemption from section 12(d)(1)(F)(ii) of the Act.

**SUMMARY OF APPLICATION:** Applicants Hennion & Walsh, Inc. ("Sponsor"), Smart Trust, Equity Securities Trust, Symphony Series, and EST Symphony Trust, as well as any other registered unit investment trust ("UIT") for which the Sponsor serves as the sponsor in the future (collectively, "Trusts") and any presently outstanding or subsequently issued series of the Trusts (each, a "Trust Series") request an order: (a) Under section 12(d)(1)(J) of the Act to permit each Trust Series to offer and sell to the public units ("Units") with a sales load that exceeds the 1.5 % limit in section 12(d)(1)(F)(ii) of the Act; (b) under sections 6(c) and 17(b) for an exemption from section 17(a) of the Act to permit the Trust Series to invest in affiliated registered investment companies within the limits of section 12(d)(1)(F) of the Act; and (c) under section 6(c) of the Act for exemptions from sections 14(a) and 19(b) of the Act and rule 19b–1 under the Act to permit Units to be publicly offered without requiring the Sponsor to take for its own account or place with others $100,000 worth of Units, and to permit the Trust Series to distribute capital gains resulting from the sale of portfolio securities within a reasonable time after receipt.

**FILING DATES:** The application was filed on May 1, 2003 and amended on October 2, 2003.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 7, 2003 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants: Peter J. DeMarco, c/o Hennion & Walsh, Inc., 2002 Route 46, Waterview Plaza, Parisppany, New Jersey 07054.

**FOR FURTHER INFORMATION CONTACT:** Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714 or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

### Applicants' Representations

1. The Sponsor, a broker-dealer registered under the Securities Exchange Act of 1934, will serve as the sponsor for the Trusts.[1] Each Trust Series is or will be a UIT registered under the Act and organized under a trust indenture that incorporates or will incorporate by reference a master trust agreement between the Sponsor and a qualified bank as trustee ("Trustee"). Pursuant to the trust indenture, the Sponsor will deposit into each Trust Series shares of existing registered investment companies ("Funds"), or contracts and monies for the purchase of shares of the Funds. The Funds will be closed-end or open-end investment companies or UITs. Certain of the Funds are open-end investment companies or UITs that have received exemptive relief under the Act to sell their shares at negotiated prices on an exchange ("Exchange Traded Funds").

2. The purpose of each Trust Series is to provide retail investors (1) an investment with a professionally selected asset allocation model or investment theme based upon the Sponsor's assessment of the overall economic climate and financial markets, and (2) the opportunity for income and/or capital appreciation through a diversified fixed portfolio of Funds professionally selected by the Sponsor from the total population of available Funds within the various market sectors of the Sponsor's asset allocation model or consistent with the enunciated investment theme. Applicants anticipate that certain of the Funds selected may be advised and/or distributed by the Sponsor or one of its affiliates ("Affiliated Funds"). Applicants anticipate that most of the Funds selected will be unaffiliated with the Sponsor ("Unaffiliated Funds"). Applicants state that the Trust Series" investments in Affiliated Funds and Unaffiliated Funds will comply with section 12(d)(1)(F) in all respects except for the sales load restriction of section 12(d)(1)(F)(ii).

3. The only Funds that will be eligible for inclusion in a Trust Series are either no load Funds or Funds which, although they offer shares with a front-end sales charge to the public, agree to waive any otherwise applicable front-end sales load with respect to all shares sold or deposited in any Trust Series. Shares of each of the Funds (except closed-end Funds and Exchange Traded Funds), therefore, will be sold for deposit into any Trust Series at net asset value. Shares of closed-end Funds and Exchange Traded Funds will be purchased by a Trust Series at market prices. Investors in the Trust Series ("Unitholders") will pay a specified sales load to the Sponsor in connection with the purchase of their Units.

4. No evaluation fee will be charged with respect to determining the value of the Funds' shares that comprise the Trust Series' portfolio. The Trustee will receive service fees under a rule 12b–1 plan from certain Funds to compensate it for providing servicing and sub-accounting functions with respect to Fund shares held by a Trust Series. In such cases, the Trustee will reduce its regular fee to a Trust Series directly by the fees it receives from the Funds and rebate any excess fees it receives to the Trust Series. Any fees so rebated will be utilized by the Trust Series to absorb other bona fide Trust Series expenses. To the extent that these fees exceed the total Trust Series' expenses, the excess will be distributed along with other income earned by the Trust Series.

### Applicants' Legal Analysis

*A. Section 12(d)(1) of the Act*

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if those securities represent more than 3% of the

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[1] All existing Trusts that currently intend to rely on the requested order have been named as applicants. Any other existing or future Trust that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

acquired company's total outstanding voting stock, more than 5% of the acquiring company's total assets, or if the securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets.

2. Section 12(d)(1)(F) of the Act provides that section 12(d)(1) does not apply to an acquiring company if the company and its affiliated persons own no more than 3% of an acquired company's total outstanding securities, provided that the acquiring company does not impose a sales load of more than 1.5%. In addition, the section provides that no acquired company may be obligated to honor any acquiring company's redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote its acquired company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company.

3. A Trust Series will invest in Affiliated and Unaffiliated Funds in reliance on section 12(d)(1)(F) of the Act. If the requested relief is granted, the Trust Series will offer Units to the public with a sales load that exceeds the 1.5% limit in section 12(d)(1)(F)(ii).

4. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1), if and to the extent that such exemption is consistent with the public interest and the protection of investors.

5. Applicants have agreed, as a condition to the requested relief, that any sales charges and/or service fees with respect to Units of a Trust Series will not exceed the limits set forth in rule 2830 of the National Association of Securities Dealers, Inc. ("NASD") Conduct Rules applicable to a fund of funds. Applicants believe that it is appropriate to apply the NASD's rule to the proposed arrangement instead of the sales load limitation in section 12(d)(1)(F)(ii) because the proposed limit would cap the aggregate sales charges that may be imposed by a fund of funds. Applicants assert that the NASD's rule more accurately reflects today's regulatory environment with respect to the methods by which investment companies finance sales expenses.

6. Applicants state that, with respect to shares of closed-end Funds or Exchange Traded Funds held by a Trust Series, no front-end sales load, contingent deferred sales charges, rule 12b–1 fees, or other distribution fees or redemption fees will be charged in connection with the sale or purchase of Fund shares by a Trust Series. Applicants state that although the Trust Series likely will incur brokerage commissions in connection with its market purchases of shares of closed-end Funds or Exchange Traded Funds, these commissions will not differ from commissions otherwise incurred in connection with the purchase or sale of comparable securities.

7. Applicants also agree, as a condition to the requested relief, that each Trust Series will not invest in any underlying Fund which owns securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

### *B. Section 17(a) of the Act*

1. With regard to the Trust Series' investments in Affiliated Funds, applicants request relief from section 17(a) of the Act under sections 6(c) and 17(b). Section 17(a) of the Act generally prohibits an affiliated person, or an affiliated person of an affiliated person, of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include any person directly or indirectly controlling, controlled by, or under common control with the other person. Applicants submit that the Trust Series and Affiliated Funds may be deemed to be affiliated persons of one another by virtue of being under common control of the Sponsor. Applicants state that purchases and redemptions of shares of the Affiliated Funds by a Trust Series could be deemed to be principal transactions between affiliated persons under section 17(a).

2. Section 6(c) of the Act provides that the Commission may exempt persons or transactions from any provisions of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act provides that the Commission will exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Applicants state that shares of Affiliated Funds will be sold to the Trust Series at net asset value, or, in the case of closed-end Affiliated Funds, at market prices. As a result, applicants believe that the proposed terms and conditions of the Trust Series' transactions in Affiliated Fund shares, including the consideration to be paid or received, will be reasonable and fair and will not involve overreaching on the part of any person concerned. Furthermore, applicants state that the proposed transactions will be consistent with the policies of the Trust Series as recited in their registration statements.

### *C. Section 14(a) of the Act*

1. Section 14(a) of the Act requires in substance that a registered investment company have $100,000 of net worth prior to making a public offering. Applicants believe that each Trust Series will comply with this requirement because the Sponsor will deposit substantially more than $100,000 of Fund shares in each Trust Series. Applicants assert, however, that the Commission has interpreted section 14(a) as requiring that the initial capital investment in an investment company be made without any intention to dispose of the investment. Applicants state that, under this interpretation, a Trust Series would not satisfy section 14(a) because of the Sponsor's intention to sell all of the Units of the Trust Series.

2. Rule 14a–3 under the Act exempts UITs from section 14(a) if certain conditions are met, one of which is that the UIT invest only in "eligible trust securities," as defined in the rule. Applicants submit that the Trust Series cannot rely on the rule because Fund shares are not eligible trust securities. Consequently, applicants seek an exemption under section 6(c) from the net worth requirement of section 14(a) of the Act. Applicants state that the Trust Series and the Sponsor will comply in all respects with the requirements of rule 14a–3, except that the Trust Series will not restrict their portfolio investments to "eligible trust securities."

### *D. Section 19(b) of the Act*

Section 19(b) of the Act and rule 19b–1 under the Act provide that, except under limited circumstances, no registered investment company may distribute long-term gains more than once every twelve months. Rule 19b–1(c), under certain circumstances, excepts a UIT investing in "eligible trust securities" (as defined in rule 14a–3) from the requirements of rule 19b–1. Because the Trust Series do not limit their investments to "eligible trust securities," the Trust Series do not qualify for the exemption in paragraph (c) of rule 19b–1. Therefore, applicants request an exemption under section 6(c) from section 19(b) and rule 19b-1 to the extent necessary to permit capital gains earned in connection with the redemption and sale of Fund shares to be distributed to Unitholders along with the Trust Series' regular distributions. Applicants state that, in all other respects, the Trust Series will comply with section 19(b) and rule 19b–1. Applicants assert that the abuses that section 19(b) and rule 19b–1 were designed to prevent do not exist with regard to the Trust Series. Applicants state that any gains from the redemption or sale of Fund shares would be triggered by the need to meet Trust Series' expenses or by requests to redeem Units, events over which the Sponsor and the Trust Series have no control.

## Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each Trust Series will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).
2. Any sales charges and/or service fees (as those terms are defined in NASD Conduct Rule 2830) charged with respect to Units of a Trust Series will not exceed the limits set forth in NASD Conduct Rule 2830 applicable to a fund of funds (as defined in NASD Conduct Rule 2830).
3. No Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.
4. The Trust Series and the Sponsor will comply in all respects with the requirements of rule 14a–3, except that the Trust Series will not restrict their portfolio investments to "eligible trust securities."

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–26389 Filed 10–17–03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

## Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of October 20, 2003: A Closed Meeting will be held on Tuesday, October 21, 2003 at 2 p.m., and an Open Meeting will be held on Wednesday, October 22, 2003 at 10 a.m., in Room 1C30, the William O. Douglas Room.

Commissioner Campos, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(5), (7), (8), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Campos, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Tuesday, October 21, 2003 will be: Institution and settlement of administrative proceedings of an enforcement nature; Institution and settlement of injunctive actions; Formal orders of investigation; Regulatory matters regarding a financial institution; and Opinion.

The subject matter of the Open Meeting scheduled for Wednesday, October 22, 2003 will be:

1. The Commission will consider whether to propose new Rule 15a–5 under the Investment Company Act of 1940 ("Investment Company Act"). Proposed Rule 15a–5 would permit an investment adviser to manage an open-end investment company's ("fund") assets without approval by fund shareholders, under certain conditions. The Commission also will consider whether to amend Form N–1A under the Investment Company Act and the Securities Act of 1933. The recommended amendments would include a requirement that any fund operating under the exemption in proposed Rule 15a–5 disclose that investment advisers may be hired without shareholder approval.

For further information, please contact Adam B. Glazer at (202) 942–0690.

2. The Commission will consider whether to adopt amendments to Rule 10b–18 (the safe harbor rule regarding issuer repurchases) under the Securities Exchange Act of 1934 ("Exchange Act"), and amendments to Regulations S–K and S–B under the Exchange Act, and Exchange Act Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F (regarding foreign private issuers), and Form N–CSR under the Exchange Act and the Investment Company Act of 1940 that would require periodic disclosure of all issuer repurchases of equity securities, regardless of whether the repurchases are effected in accordance with Rule 10b–18.

For further information, please contact Joan Collopy or Elizabeth Sandoe at (202) 942–0772.

3. Proposed Regulation SHO.

The Commission will consider whether to propose for public comment new Regulation SHO regulating short sales under the Securities Exchange of 1934, which would replace current Rules 3b–3, 10a–1 and 10a–2. Among other things, Regulation SHO would institute a new uniform bid test, applicable to exchange-listed and Nasdaq National Market System securities, that would allow short sales to be effected at a price above the consolidated best bid. Regulation SHO would also suspend the operation of the proposed bid test for specified highly liquid securities on a two-year pilot basis. Regulation SHO would also require short sellers in all equity securities to locate securities to borrow before selling short, and add further requirements to address "naked" short selling.

The Commission will also consider simultaneously whether to propose for public comment amendments to Rule 105 of Regulation M, which addresses short sales prior to a public offering, to eliminate the shelf offering exception and to address transactions designed to evade the Rule.

*Commission Guidance on Rule 3b–3 and Married Put Transactions*

Finally, the Commission will also consider whether to publish simultaneously an interpretive release providing all market participants with guidance regarding the use of married put transactions when aggregating positions under Rule 3b–3 for determining compliance with Rule 10a–1 and Rule 105 of Regulation M.

For further information, please contact Kevin Campion or Greg Dumark at (202) 942–0772.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: October 15, 2003.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 03–26585 Filed 10–16–03; 3:53 pm]

BILLING CODE 8010–01–P

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48624; File No. SR–CSE–2003–06]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Cincinnati Stock Exchange To Amend Article IV of Its By-Laws Pertaining to Its Listing Standards

October 10, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 12, 2003 the Cincinnati Stock Exchange (“CSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article IV of its By-Laws pertaining to its listing standards, including the addition of requirements applicable to audit committees of listed companies. The text of the proposed rule change is set forth below. Text in brackets indicates material to be deleted, and text in italics indicates material to be added.[3]

* * * * *

By-Laws

**Article IV**

[Prohibitions or Limitations on Access to the Exchange or Member Services]

*Securities Listed on the Exchange*

Section 1. Listing of Securities

1.1. Applications

All applications for listing on the Exchange will be submitted to the Exchange's Secretary on a form prescribed by the Exchange.

1.2. Procedure

The Secretary of the Exchange shall refer such applications to the Exchange's [Listing]*Securities* Committee. In passing on applications, the [Listing]*Securities* Committee shall determine whether the applicant meets the requirements for listing and, in making such determination, the Committee shall adhere to the *following* procedures:[set forth in Section 6, paragraphs (c)-(e) of Article II of these By-Laws.]

*(a) Applications received by the Exchange's Secretary shall be referred to the Securities Committee and, if a majority of the Committee is satisfied that the applicant is qualified for listing pursuant to the provisions of this Article, the Committee shall promptly notify the Secretary of the Exchange of such determination, and the Secretary shall promptly notify, in writing, the applicant of the Committee's determination, and the applicant will be approved for listing on the Exchange.*

*(b) If a majority of the Securities Committee is not satisfied that the applicant is qualified for listing pursuant to the provisions of this Article, the Committee shall promptly notify the Secretary of the Exchange of such determination, and the Secretary shall promptly notify, in writing, the Board and the applicant of the grounds for denying listing. Within 30 days of such notification, the Board may reverse the determination of the Securities Committee that the applicant is not qualified for listing; provided, however, that if at the end of the 30-day period a majority of the Board has not specifically reversed the Committee's determination, the Secretary of the Exchange shall promptly notify the applicant, in writing, of the grounds for denying listing. If during the 30-day period a majority of the Board specifically determines to reverse the Securities Committee's determination to deny listing, the Board shall promptly notify the Secretary of the Exchange who shall promptly notify the applicant that the Board has granted the applicant's application for listing.*

*(c) In considering applications for listing, the Securities Committee, the Board and the Exchange's Secretary shall adhere to the following procedures:*

*(1) The Securities Committee shall act upon the application within 90 days of receipt of such application.*

*(2) Where a listing application is granted by the Board, the Secretary shall promptly notify the applicant.*

*(3) The applicant shall be afforded an opportunity to be heard on the denial of listing pursuant to the provisions of Exchange Rules governing adverse action.*

*(4) The applicant must satisfy the requirements of subsection 1.4 of this Article IV, including any portion of paragraphs (b) or (c) of Rule 10A–3 of the Act pertaining to audit committees, which cannot be exempted or otherwise waived other than as provided within the rules.*

1.3. Requirements

No security shall be listed on the Exchange unless the issuer thereof shall meet the following requirements:

[(1)](a) In the case of common stock have*:*

*(1)* net tangible assets of at least $2,000,000;

[(b) have]*(2)* at least 1000 recordholders of the issue for which trading privileges have been granted or are requested;

[(c) have]*(3)* outstanding at least 250,000 shares for which trading privileges have been granted or are requested exclusive of the holdings of officers and directors;

[(d) have]*(4)* demonstrated net earnings of $200,000 annually before taxes for two prior years excluding non-recurring income; *and*

[(e) have]*(5)* been actively engaged in business and have been so operating for at least three (3) consecutive years

[(2)(a)]*(b)* In the case of preferred stock[,]*:*

*(1)* [t]*T*he listing of issues is considered on a case by case basis, in light of the suitability of the issue for [continuous auction market ]trading *on the Exchange*. The Exchange, as a general rule, will not consider listing the convertible preferred stock of a company unless its common stock is also listed on the Exchange[, NYSE or AMEX], *another exchange that is registered pursuant to Sections 6 of the Act or a facility of a national securities association registered pursuant to Section 15A of the Act.*

([b]*2*) [Companies]*An issuer* applying for listing of a preferred stock [are]*is* expected to meet the following criteria:

(i) The [Company]*issuer* appears to be in a financial position sufficient to satisfactorily service the dividend requirements for the preferred stock and meets the requirements set forth in [P]*p*aragraph 1.3[.]([1]*a*) above.

(ii) In the case of an issuer whose common stock is [traded]*listed* on the CSE, [NYSE or AMEX,] *another exchange that is registered pursuant to Section 6 of the Act or a facility of a national securities association*

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The rule text as set forth herein includes several minor technical revisions that the Exchange has committed to correct by filing an amendment. Telephone conversation between Jennifer M. Lamie, CSE, and Ira L. Brandriss, Division of Market Regulation, Commission, on October 3, 2003.

*registered pursuant to Section 15A of the Act,* the following guidelines apply:

| | |
|---|---|
| Shares Publicly Held ..... | 100,000 |
| Aggregate Market Value/ Price ........................... | $2,000,000/$10 |

For issuers of preferred stock not listed as noted above, the Exchange has established different guidelines to ensure adequate public interest as follows:

| | |
|---|---|
| Preferred Shares Publicly Held .................... | 400,000 |
| Public Round-Lot Holders .............................. | 800 |
| Aggregate Market Value/ Price ........................... | $4,000,000/$10 |

(iii) The [CSE]*Exchange* will not list convertible preferred issues containing a provision which gives the company the right, at its discretion, to reduce the conversion price for periods of time or from time to time unless the company establishes a minimum period of ten business days within which such price reduction will be in effect.

[(3)(a)]*(c)* In the case of warrants[.]*:*

*(1)* at least 250,000 outstanding, exclusive of the holdings of officers and directors; *and*

([b]2) have a class of common stock that would otherwise be eligible for listing on the Exchange or is already listed on the Exchange.

[(4)(a)]*(d)* In [a]*the* case of bonds[.]*:*

*(1)* a principal amount outstanding of at least $2,000,000;

([b]*2*) have at least an aggregate market value of at least $2,000,000;

([c]*3*) have at least 250 recordholders and, in the case of convertible debt, a larger distribution may be required; *and*

([d]*4*) have a class of common stock that would otherwise be eligible for listing on the Exchange or is already listed on the Exchange.

[(5)(a)]*(e)* In the case of the listing of any security not otherwise covered by the criteria of the foregoing subsections *or in the Exchange Rules,* provided the issue is otherwise suited for trading, such issues will be evaluated for listing against the following criteria;

([b]*1*) *the* issuer[s] ha[ve]*s* assets in excess of $100 million and stockholders' equity of at least $10 million. In the case of an issuer [which]*that* is unable to satisfy the earnings criteria set forth in [subsection]*paragraph* [(1)](a), the Exchange generally will require the issuer to have the following:

(i) assets in excess of $200 million and stockholders' equity of at least $10 million; or

(ii) assets in excess of $100 million and stockholders' equity of at least $20 million;

([c]*2*) the issue have a minimum public distribution of one million trading units including a minimum of 400 holders, or if traded in thousand dollar denominations, a minimum of 100 holders;

([d]*3*) the issue have a principal amount/aggregate market value of not less than $20 million;

([e]*4*) where the instrument contains cash settlement provisions, settlement must be made in U.S. dollars; *and*

([f]*5*) where the instrument contains redemption provisions, the redemption price may not be below $3 per unit.

Prior to commencement of trading of securities admitted to listing under this subsection [5]*e,* the Exchange will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the membership providing guidance regarding member [firm ]compliance responsibilities when handling transactions in such securities.

([6]*f*) Limited Partnerships—No security issued in a limited partnership rollup transaction (as defined by Section 14(h) of the [Exchange ]Act), shall be eligible for listing unless:

([I]*1*) the rollup transaction was conducted in accordance with procedures designed to protect the rights of limited partners as provided in Section 6(b)(9) of the [Exchange ]Act, as it may from time to time be amended; and

([ii]*2*) a broker-dealer which is a member of a national securities association subject to Section 15A(b)(12) of the [Exchange ]Act participates in the rollup transaction.

The applicant shall further provide the Exchange with an opinion of counsel that the rollup transaction was conducted in accordance with the procedures established by such association.

1.4 Listing Standards Relating to Audit Committees

*(a) In addition to the requirements contained in subsection 1.3, each issuer must have an audit committee.* The Exchange shall not initially list or continue listing any securities of an issuer that is not in compliance with the requirements of this subsection 1.4 or any portion of paragraphs (b) or (c) of Rule 10A–3 of the Act pertaining to audit committees. In addition to the requirements of Rule 10A–3 of the Act:

*(1) Each audit committee shall consist of at least three directors, each of whom shall be financially literate, as such qualification is interpreted by the issuer's board of directors in its business judgment, or must become financially literate within a reasonable period of time after his or her appointment to the audit committee. At least one member of the audit committee must have accounting or related financial management expertise, as the issuer's board of directors interprets such qualification in its business judgment.*

*(2) The board of directors of each issuer must adopt and approve a formal written charter for its audit committee. The audit committee must review and reassess the adequacy of the audit committee charter on an annual basis. The charter must specify:*

*(i) the scope of the audit committee's responsibilities and how it carries out those responsibilities, including structure, processes, and membership requirements; and*

*(ii) that the audit committee is responsible for ensuring that the outside auditor submits on a periodic basis to the audit committee a formal written statement delineating all relationships between the outside auditor and the issuer and that the audit committee is responsible for actively engaging in a dialogue with the outside auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the outside auditor and for recommending that the issuer's board of directors take appropriate action in response to the outside auditor's report to satisfy itself of the outside auditor's independence.*

*(b) As part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each issuer should provide the Exchange written confirmation regarding:*

*(1) any determination that the issuer has made regarding the independence of its audit committee members;*

*(2) the financial literacy of the audit committee members;*

*(3) the determination that at least one of the audit committee members has accounting or related financial management expertise; and*

*(4) the annual review and reassessment of the adequacy of the audit committee charter.*

*(c) If a member of an issuer's audit committee ceases to be independent in accordance with the requirements of Rule 10A–3 for reasons outside the committee member's reasonable control, that person, with notice by the issuer to the Exchange, may remain an audit committee member of the issuer until the earlier of the next annual shareholders meeting of the issuer or one year from the occurrence of the event that caused the committee member to be no longer independent.*

*(d) For securities listed on the Exchange prior to [insert approval date], an issuer shall have until the earlier of its first annual shareholders meeting*

*after January 15, 2004, or October 31, 2004, to cure any defects that would be the basis for a prohibition from continued listing.*

*(e) An issuer must notify the Exchange promptly after an executive officer or the issuer becomes aware of any material noncompliance by the issuer with the requirements of this subsection 1.4 or Rule 10A–3 of the Act.*

*(f) In connection with a review of standards designed to ensure independence and strengthen corporate governance practices, the Exchange intends in the near future to adopt additional listing policies and requirements pertaining to issuer corporate governance, including standards for independence of board directors, independence and responsibilities of nominating, compensation and other board committees, codes of conduct, and shareholder approval of equity compensation plans. These additional policies and requirements will be reflected within the Exchange Rules.*

Section 2. Unlisted Trading Privileges

[No application shall be made to the Securities and Exchange Commission for the extension of unlisted trading privileges with respect to any security unless the issuer thereof shall meet the requirements for listing set forth in Section 1.3. of this Article IV. In the event that an issuer whose security has been the subject of a grant of unlisted trading privileges to the Exchange ceases to meet the requirements for listing set forth in Section 1.3. of this Article IV, the Exchange shall terminate such unlisted trading.] Notwithstanding the [foregoing]*requirements for listing set forth in Section 1.3 of this Article IV,* the Exchange may seek and continue unlisted trading privileges on any security *as to which unlisted trading privileges have been granted pursuant to Section 12(f) of the Act*[for which the primary trading market is the New York Stock Exchange or the American Stock Exchange].

Section 3 Delisting of Securities

3.1. Suspension and/or Delisting by Exchange

(a) The Board [of Trustees ]may suspend dealings in any issue admitted to trading on the Exchange.

(b) Whenever the Board [of Trustees ] determines that it no longer is appropriate for a security to continue to be traded on the Exchange, it may institute proceedings to delist such security. Any issuer or any other person aggrieved by such action may seek relief pursuant to the Exchange['s r]*R*ules governing adverse action.

(c) The securities of an issuer will be subject to suspension and/or withdrawal from listing and registration as a listed issue if any of the following conditions are found to exist:

(1) [F]*f*ailure to comply with the listing standards and agreements[.]*; or*

(2) [S]*s*ustained loss so that financial condition becomes so impaired that it is questionable to the Exchange whether the company can continue operations and/or meet its obligations as they mature.

Notwithstanding the foregoing, the Board [of Trustees ]may determine that the suspension or delisting of an issue is necessary for the protection of investors and the public interest.

3.2. Delisting by Issuer

A security, which in the opinion of the Board [of Trustees of the Exchange ]is eligible for continued listing, may be removed from [the ]list*ing* upon the request or application of the issuer provided that the issuer submits a certified copy of a resolution adopted by the [B]*b*oard of [D]*d*irectors of the issuer authorizing withdrawal from listing and registration and a statement setting forth in detail the reasons for the proposed withdrawal and the facts in support thereof.

The issuer may be required to submit the proposed withdrawal to the security holders for their vote at a meeting for which proxies are solicited provided the stock is not also listed on another *national securities* [E]*e*xchange *registered under Section 6 of the Act having similar requirements or on a facility of a national securities association registered under Section 15A of the Act* having similar requirements.

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Commission approved Rule 10A–3 under the Act,[4] with an effective date of April 25, 2003.[5] Rule 10A–3 under the Act[6] pertains to listing standards relating to audit committees and, among other things, requires each of the national securities exchanges and associations to adopt rules prohibiting the initial or continued listing of any security of an issuer that is not in compliance with the requirements of Rule 10A–3. Through this instant rule proposal, CSE seeks to incorporate the necessary rule language pertaining to Rule 10A–3 into its listing standards. In addition, CSE seeks to incorporate additional rule language pertaining to audit committee requirements for listed issuers in order to conform to recommendations made by the Blue Ribbon Committee on Improving Effectiveness of Corporate Audit Committees and rule changes adopted by other self-regulatory organizations. Finally, the Exchange is proposing to make certain other changes to Article IV of its By-Laws that are described below. CSE represents that these changes, in part, make the language of the various provisions uniform and consistent with the Exchange rules and practices.

In part, the proposed rule change specifies requirements for audit committees. First, proposed Subsection 1.4 of Article IV would require that, in order to qualify its securities for listing on the Exchange, an issuer must have an audit committee that complies with the requirements of Rule 10A–3 of the Act.[7] Proposed Subsection 1.4 goes on to specify that each audit committee must also consist of at least three members of the listed company's board of directors, each of whom must meet certain financial literacy requirements, and at least one of whom must possess certain accounting or related financial management expertise. CSE states that a board would be permitted to presume that a person who satisfies the definition of audit committee financial expert set out in Item 401(h) of Regulation S–K has accounting or related financial management expertise.

In addition to these committee member qualification requirements, the issuer's board of directors would be required to adopt and approve a formal written charter for its audit committee. The charter would be required, at a minimum, to specify the scope of the audit committee's responsibilities and how the committee carries out those responsibilities. The charter would also be required to specify that the audit committee is responsible for ensuring that the outside auditor submits on a periodic basis to the audit committee a formal written statement delineating all relationships between the outside auditor and the issuer, that the audit committee is responsible for actively engaging in a dialogue with the outside auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the outside auditor, and for recommending that the issuer's board of directors take appropriate action in response to the outside auditor's report to satisfy itself of the outside auditor's independence.

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[4] 17 CFR 240.10A–3.

[5] See Securities Act Release No. 8220, Securities Exchange Act Release No. 47654, and Investment Company Act Release No. 26001 (April 9, 2003), 68 FR 18788 (April 16, 2003).

[6] 17 CFR 240.10A–3.

[7] 17 CFR 240.10A–3.

As part of the initial listing process, when subsequent changes to the audit committee composition occur, and otherwise approximately once each year, each issuer would be required to provide the Exchange with written confirmation regarding any determinations made regarding the independence of its audit committee members, its compliance with the financial literacy and accounting or related financial management expertise requirements, and its annual review and reassessment of the adequacy of the audit committee charter. An issuer would also be required to notify the Exchange promptly after an executive officer or the issuer becomes aware of any material noncompliance by the issuer with the requirements of Subsection 1.4 of Article IV of CSE's By-Laws or Rule 10A–3 of the Act.[8]

Proposed Subsection 1.4 of Article IV of the By-Laws also contains provisions for opportunities to cure defects and compliance dates. If a member of an issuer's audit committee ceases to be independent in accordance with the requirements of Rule 10A–3 of the Act[9] for reasons outside the committee member's reasonable control, that person, with notice by the issuer to the Exchange, would be permitted to remain an audit committee member of the issuer until the earlier of the next annual shareholders meeting of the issuer or one year from the occurrence of the event that caused the committee member to be no longer independent. For securities listed on the Exchange prior to the approval of Subsection 1.4, an issuer would have until the earlier of its first annual shareholders meeting after January 15, 2004, or October 31, 2004, to cure any defects that would be the basis for a prohibition from continued listing.

In addition, the Exchange is conducting a review of its listing standards designed to strengthen the corporate governance practices of listed companies. In the course of that review, the Exchange intends in the near future to adopt additional listing policies and requirements pertaining to issuer corporate governance, including standards for independence of board directors, independence and responsibilities of nominating, compensation and other board committees, codes of conduct, and shareholder approval of equity-compensation plans. As indicated in paragraph (f) of proposed Subsection 1.4, these additional policies and requirements will be reflected within the Exchange Rules.

Finally, CSE is also proposing to make certain other changes to Article IV of its By-Laws. Specifically, the Exchange is seeking to:

1. Change the name of Article IV from "Prohibitions or Limitations on Access to the Exchange or Member Services" to "Securities Listed on the Exchange";
2. Change the name of the Exchange Committee that reviews listing applications from Listing Committee to Securities Committee in Section 1.2;
3. Include the application review procedures within the listing procedures set forth in Section 1.2 rather than cross-referencing the procedures contained in Article II;
4. Change the reference to suitability for "continuous auction market trading" in Subsection 1.3 to suitability for "trading on the Exchange". Replace references to "company" and "companies" with "issuer" and a reference to "CSE" with "Exchange". In addition, correct a reference to "traded" in paragraph (b)(2)(ii) to "listed';
5. Make reference to securities that are subject to listing criteria that is contained in the Exchange Rules as not being subject to the general listing requirements contained in paragraph (e) of Subsection 1.3;
6. Make changes to Section 2 to provide that the Exchange may extend unlisted trading privileges to any security for which unlisted trading privileges have been granted pursuant to Section 12(f) of the Act, not just securities listed on the NYSE and Amex;
7. Make changes to Subsection 3.2 to clarify that an issuer seeking to delist its securities may be required to submit the proposed withdrawal to the security holders for their vote at a meeting for which proxies are solicited provided the stock is not also listed on another national securities exchange having similar requirements or on a facility of a national securities association having similar requirements. Previously the text simply referenced other exchanges; and
8. Make certain other miscellaneous grammatical, punctuation and numbering changes throughout Article IV. Cross-references will be updated accordingly.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[10] in general, and furthers the objectives of section 6(b)(5) of the Act[11] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received in connection with the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

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[8] 17 CFR 240.10A–3.

[9] 17 CFR 240.10A–3.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CSE. All submissions should refer to file number SR–CSE–2003–06 and should be submitted by November 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–26390 Filed 10–17–03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48625; File No. SR–NASD–2003–152]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Reflecting the Delayed Implementation of Rule Changes Regarding Reporting of Transactions Conducted Through Electronic Communications Networks to the Automated Confirmation Transaction Service

October 10, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 7, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Pursuant to Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] Nasdaq has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposed rule change effective immediately upon filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq has delayed until October 27, 2003 the implementation of rule changes effected by SR–NASD–2003–98.[5] There is no proposed rule language.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this rule filing is to notify the Commission and other interested parties of the delay until October 27, 2003 of the implementation of the proposed rule change in SR–NASD–2003–98.[6] In that filing, Nasdaq amended the various NASD rules governing trade reporting to define with greater clarity the reporting obligations applicable to transactions executed through electronic communications networks ("ECNs") that are reported to the Automated Confirmation Transaction Service. Under the filing, the rule change was to be implemented thirty days after approval by the Commission (*i.e.*, on October 6, 2003). However, several ECNs have informed Nasdaq that they did not receive adequate notice of the rule change in order to meet the October 6, 2003 implementation date. Accordingly, Nasdaq is delaying the implementation date of SR–NASD–2003–98 for three weeks, until October 27, 2003. Nasdaq will inform market participants of the delay through a Head Trader Alert posted on *www.nasdaqtrader.com.*

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[7] in general, and with Section 15A(b)(6) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to protect investors and the public interest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[9] and Rule 19b–4(f)(1) thereunder because it constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule.[10] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* Securities Exchange Act Release No. 48442 (September 4, 2003), 68 FR 53766 (September 12, 2003) (SR–NASD–2003–98) (approval order); Securities Exchange Act Release No. 48239 (July 28, 2003), 68 FR 45870 (August 4, 2003) (SR–NASD–2003–98) (notice of filing).

[6] *Id.*

[7] 15 U.S.C. 78o–3.

[8] 15 U.S.C. 78o–3(b)(6).

[9] 15 U.S.C. 78s(b)(3)(A)(i).

[10] 17 CFR 240.19b–4(f)(1).

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change in consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD.

All submissions should refer to file number SR–NASD–2003–152 should be submitted by November 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–26352 Filed 10–17–03; 8:45 am]

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## SOCIAL SECURITY ADMINISTRATION

## Program: Cooperative Agreements for Benefits Planning, Assistance, and Outreach Projects; Program Announcement No. SSA–OESP–03–1

**AGENCY:** Social Security Administration.

**ACTION:** Announcement of the availability of fiscal year 2004 cooperative agreement funds and request for applications.

**SUMMARY:** The Social Security Administration (SSA) announces its intention to award competitively a cooperative agreement to continue a community-based benefits planning, assistance, and outreach project in the State of Wyoming. The purpose of this project is to disseminate accurate information to beneficiaries with disabilities (including transition-to-work aged youth) about work incentives programs and issues related to such programs, to enable them to make informed choices about work.

**DATES:** The closing date for receipt of cooperative agreement applications under this announcement is December 4, 2003.

Prospective applicants are also asked to submit, preferably by November 4, 2003, an e-mail, a fax, post card, or letter of intent that includes (1) the program announcement number (SSA–OESP–03–1) and title (Benefits Planning, Assistance, and Outreach Program); (2) the name of the agency or organization that is applying; and (3) the name, mailing address, e-mail address, telephone number, and fax number for the organization's contact person. The notice of intent is not required, is not binding, and does not enter into the review process of a subsequent application. The purpose of the notice of intent is to allow SSA staff to estimate the number of independent reviewers needed and to avoid potential conflicts of interest in the review. The notice of intent should be faxed to (410) 966–1278; mailed to Social Security Administration, Office of Employment Support Programs, Division of Employment Policy, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401; or e-mailed to *jenny.deboy@ssa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Send questions about this announcement to the following Internet e-mail address: *jenny.deboy@ssa.gov.* When sending in a question, reference program announcement number SSA–OESP–03–1 and the date of this announcement.

Although the Internet is the preferred method of communication, applicants who have questions about the program content of the application may also contact: Jennifer DeBoy, Program Analyst, or Natalie Funk, Team Leader, Social Security Administration, Office of Employment Support Programs, Division of Employment Policy, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. The telephone number for Jennifer DeBoy is (410) 965–8658; for Natalie Funk, (410) 965–0078. The fax number is (410) 966–1278.

To obtain an application kit, see the instructions under Part VI, Section A. Although the Internet is SSA's preferred method of communication, for information regarding the application package, you may also contact: Phyllis Y. Smith or Gary Stammer, Social Security Administration, Office of Acquisition and Grants, Grants Management Team, 1–E–4 Gwynn Oak Building, 1710 Gwynn Oak Avenue, Baltimore, Maryland 21207–5279. The telephone numbers are: Phyllis Y. Smith, (410) 965–9518, or Gary Stammer, (410) 965–9501. The fax number is (410) 966–9310.

**SUPPLEMENTARY INFORMATION:** Public Law 106–170 was enacted on December 17, 1999, to expand the availability of health care coverage for working individuals with disabilities, to establish a Ticket to Work and Self-Sufficiency Program in SSA to provide beneficiaries with disabilities meaningful opportunities to work, and to provide benefits planning and assistance services, and outreach to beneficiaries with disabilities, among other purposes. SSA must ensure that benefits planning, assistance, and outreach are available to all beneficiaries with disabilities nationally, on a statewide basis.

On May 31, 2000, and January 5, 2001, SSA made announcements of cooperative agreement funds and requested applications. SSA's intent was to establish benefits planning, assistance and outreach services in every State and U.S. Territory, and in the District of Columbia, and to ensure that services are available to all SSA beneficiaries with disabilities throughout each. The current awardee for the State of Wyoming has decided not to renew their cooperative agreement beyond December, 2003.

This announcement is to request applications for fiscal year (FY) 2004 funds to provide direct benefits planning, assistance and outreach services to all SSA disability beneficiaries in the State of Wyoming for the period January 1, 2004, to December 31, 2004. Funding after FY 2004 is contingent upon funding availability.

**Note:** SSA has awarded separate contracts to three organizations (Cornell University, Virginia Commonwealth University (VCU), and the University of Missouri-Columbia (UMO–C)) to provide technical assistance and training on SSA's programs and work incentives, Medicare and Medicaid, and on other Federal work incentives programs, to Benefits Planning, Assistance, and Outreach Program cooperative agreement awardees. The contractor for Wyoming is UMO–C: C. David Roberts, *RobertsC@missouri.edu,* (573) 882–3807.

SSA will conduct a pre-application seminar to provide interested applicants with guidance and technical assistance in preparing their applications. Information about where and when the seminar will be held will be on our Web site: *http://www.socialsecurity.gov/work/ServiceProviders/providers.html#Contract.*

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[11] 17 CFR 200.30–3(a)(12).

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## Part I. Program Description

### *A. Introduction*

Section 1149 of the Social Security Act, as added by section 121 of the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA), requires the Commissioner of Social Security (the Commissioner) to establish a community-based work incentives planning and assistance program. Under this program, the Commissioner is required to establish a competitive program of grants, cooperative agreements, or contracts to provide benefits planning and assistance. We have established a cooperative agreement program known as the Benefits Planning, Assistance, and Outreach (BPAO) Program to disseminate accurate information to beneficiaries with disabilities about work incentives programs and issues related to such programs.

### *B. Background*

Even though employment opportunities have increased due to technology, legislation, and changes in societal attitudes, only a small percentage of Social Security Disability Insurance (SSDI) and/or disabled or blind Supplemental Security Income (SSI) beneficiaries leave the rolls because of work activity. There are a number of reasons for this. First, beneficiaries of SSDI and SSI based on disability or blindness, by definition, have serious disabilities, which limit choices in employment. However, disability advocates report that many individuals with disabilities who receive public assistance want to work, or increase their work activity, and may be willing to attempt to work or increase work activity, with proper assistance and support. There is also evidence that many individuals with severe disabilities do work and do not rely on income supports.

Second, people with disabilities who want to work face significant barriers. Many advocates and people with disabilities contend that the fear of losing health care benefits is the largest impediment. Public health insurance and long-term care services are usually tied to income support programs such as SSDI, SSI, and Temporary Assistance for Needy Families (TANF). Employment-based health insurance is frequently not available to those with disabilities due to pre-existing condition clauses or exclusions of treatment for mental illness. Private insurance is often unaffordable for people with serious illnesses and chronic or long-term impairments, since they are charged much higher than average premiums.

Third, while the SSDI, SSI, Medicare and Medicaid programs all contain valuable work incentives provisions which can extend cash benefits and medical coverage, they are under-used and, often, poorly understood by beneficiaries and professionals alike. The complexity and nature of the work incentives, and the interrelationship of myriad Federal, State, and local programs on which beneficiaries rely, create uncertainty and fear. Beneficiaries are concerned that they may lose vital income supports and coverage for mental and physical health care if they attempt to work.

For example, many people with disabilities rely on a patchwork of financial supports that have different eligibility criteria and application procedures. The benefits derived from a number of these programs are means-tested. Increases in income can cause rent increases in Section 8 housing, loss of food stamps or public assistance payments. Many individuals who may be willing to risk the loss of cash benefits from TANF, SSDI or SSI cannot absorb the loss of housing subsidies and other supports.

Despite these barriers, many people with severe disabilities have managed to use existing services and work incentives to reach their goals of financial self-sufficiency, while retaining necessary supports. However, those who are successful in returning to work frequently report that the availability of a knowledgeable advocate made a difference in their ability to navigate complex program requirements and in their willingness to attempt to return to work. Further, the support of that advocate provided them a sense of security needed to maintain work activity. The projects funded under this cooperative agreement program are part of SSA's Employment Strategy for People with Disabilities to increase the number of beneficiaries who return to work and achieve self-sufficiency by delivering direct services to beneficiaries.

### *C. Purpose of the Benefits Planning, Assistance, and Outreach Program*

The purpose of the Benefits Planning, Assistance, and Outreach Program is to provide Statewide benefits planning and assistance, including information on the availability of protection and advocacy services, to all SSDI and SSI beneficiaries with disabilities, and to conduct ongoing outreach to those beneficiaries with disabilities (and to their families) who are potentially eligible to participate in State or Federal work incentives programs.

The Benefits Planning, Assistance, and Outreach Program is required by TWWIIA and is part of SSA's employment strategy for people with disabilities. One of SSA's goals in implementing TWWIIA is to help achieve a substantial increase in the number of beneficiaries who return to work and achieve self-sufficiency. In support of this goal, SSA is seeking well-qualified applicants to provide SSDI and SSI beneficiaries with benefits planning, assistance, and outreach. While other parts of SSA's employment strategy for people with disabilities provide direct employment services to help beneficiaries become employed or increase their level of employment, this program aims to improve beneficiaries' understanding of work options so that they may make more informed choices regarding work.

### *D. Benefits Planning, Assistance, and Outreach Program Goals*

The goal of the Benefits Planning, Assistance, and Outreach Program is to support SSA's overall employment strategy for persons with disabilities by providing benefits planning and assistance, and conducting outreach to beneficiaries with disabilities, about Federal, State, and local work incentives programs and related issues.

To assist SSA in assessing the scope and utility of outreach and information provided under this program, each project is required to:

1. Collect data pertaining to benefits planning and assistance, and outreach activities as described in Part IV, Section D, Management Information and Reporting; and
2. Cooperate with SSA in providing the information needed for a customer satisfaction survey on the quality of the benefits planning and assistance services being provided and for an assessment of the success of the Benefits Planning, Assistance, and Outreach Program.

SSA will evaluate the data in 1. above and the results of the customer satisfaction surveys to determine the extent to which the projects were effective in providing benefits planning and assistance services, and outreach. The effectiveness of the projects will be measured by the range of beneficiaries served and responses regarding the knowledge of SSA work incentives and utility of benefits planning and assistance services. Data to be collected will include information about:

- Beneficiaries who receive comprehensive, coordinated benefits planning and assistance services, and outreach;
- Beneficiaries' demographic characteristics;
- Beneficiaries' income support characteristics (including earnings and SSA and non-SSA benefits);
- Beneficiaries' non-income support characteristics (including access to public and private health care); and
- Beneficiaries' work and benefit related goals and strategies.

## Part II. Authority and Type of Awards

### *A. Statutory Authority and Catalog of Federal Domestic Assistance Number*

Legislative authority for this cooperative agreement program is in section 1149 of the Social Security Act (the Act), as established by section 121 of Public Law 106–170. The regulatory requirements that govern the administration of SSA awards are in the Code of Federal Regulations, title 20, parts 435 and 437 (as published in the May 27, 2003, **Federal Register** at 68 FR 28710 and 28727). Applicants are urged to review the requirements in the applicable regulations. This program is listed in the Catalog of Federal Domestic Assistance under Program No. 96.008, Social Security Administration—Benefits Planning, Assistance, and Outreach Program.

### *B. Type of Awards*

All awards made under this program are in the form of cooperative agreements. A cooperative agreement anticipates substantial involvement between SSA and the awardee during the performance of the project. Involvement will include collaboration or participation by SSA in the management of the activity as determined at the time of the award. For example, SSA will be involved in decisions involving strategy, hiring of personnel, deployment of resources, release of public information materials, quality assurance, and coordination of activities with other offices.

### *C. Number, Size, and Duration of Projects*

Section 1149(d) of the Act authorizes annual appropriations not to exceed $23 million for FYs 2000 through 2004. Actual funding availability during this period is subject to annual appropriation by Congress. SSA anticipates that the award under this announcement will be made by December 31, 2003.

SSA will award a cooperative agreement to a qualified entity in Wyoming based in part on the number of beneficiaries with disabilities in that State.

Subject to the availability of funds, SSA anticipates that $50,000 would be available to fund the Benefits Planning, Assistance and Outreach Program project in Wyoming in FY 2004. SSA may suspend or terminate any cooperative agreement in whole or in part at any time before the date of expiration, whenever it determines that the awardee has materially failed to comply with the terms and conditions of the cooperative agreement. SSA will promptly notify the awardee in writing of the determination and the reasons for suspension or termination together with the effective date.

### *D. Awardee Share of the Project Costs*

Awardees of SSA cooperative agreements are required to contribute a non-Federal match of at least 5 percent toward the cost of each project. The cost of the project is the sum of the Federal share (up to 95 percent) and the non-Federal share (at least 5 percent). For Wyoming, an entity that is awarded a cooperative agreement of $50,000 would need a non-Federal share of at least $2,631. The non-Federal share may be cash or in-kind (property or services) contributions.

## Part III. The Application Process

### *A. Eligible Applicants*

A cooperative agreement may be awarded to any State or local government, public or private organization, or nonprofit or for-profit organization that the Commissioner determines is qualified to provide benefits planning, assistance, and outreach to all SSDI and SSI beneficiaries with disabilities, within the targeted geographic area. Awardees may include Centers for Independent Living established under title VII of the Rehabilitation Act of 1973, protection and advocacy organizations, Native American tribal entities, client assistance programs established in accordance with section 112 of the Rehabilitation Act of 1973, State Developmental Disabilities Councils established in accordance with section 124 of the Developmental Disabilities Assistance and Bill of Rights Act, and State agencies administering the State program funded under part A of title IV of the Act. The Commissioner may also award a cooperative agreement to a State or local Workforce Investment Board, a Department of Labor (DOL) One-Stop Career Center System established under the Workforce Investment Act of 1998, or a State vocational rehabilitation agency.

SSA encourages applications from public or private agencies or organizations, including from local or divisional offices of larger or statewide agencies or organizations. Applications from local or divisional offices of larger entities, however, must demonstrate that the local or divisional office has authority to enter into cooperative agreements and to be ultimately responsible for funds.

**Note:** For-profit organizations may apply with the understanding that no cooperative agreement funds may be profit to an awardee of a cooperative agreement. Profit is considered as any amount in excess of the allowable costs of the cooperative agreement awardee. A for-profit organization is a corporation or other legal entity that is organized or operated for the profit or benefit of its shareholders or other owners and must be distinguishable or legally separable from that of an individual acting on his/her own behalf. Applications will not be accepted from applicants who do not meet the above eligibility criteria at the time of submission of applications.

Cooperative agreements may not be awarded to:

- Any individual;
- Social Security Administration Field Offices;
- Any State agency administering the State Medicaid program under title XIX of the Act;
- Any entity that the Commissioner determines would have a conflict of interest if the entity were to receive a cooperative agreement under the Benefits Planning, Assistance, and Outreach Program; or
- Any organization described in section 501(c)(4) of the Internal Revenue

Code of 1968 that engages in lobbying (in accordance with section 18 of the Lobbying Disclosure Act of 1995, 2 U.S.C. 1611).

**Note:** Any protection and advocacy organization must fully explain how it will ensure there will be no conflict of interest between providing benefits planning and assistance services and outreach, and delivering protection and advocacy services to beneficiaries. In particular, they must show how they will ensure full protection and advocacy services will be provided when the complaint is against the Benefits Specialist or organization. Also, any organization that applies to be an employment network under SSA's Ticket to Work and Self-Sufficiency Program must fully explain how it will ensure there will be no conflict of interest if it also receives a cooperative agreement to provide benefits planning, assistance, and outreach. This is especially important in the area of assisting beneficiaries with PASS plans or other work incentives which will enable them to keep receiving benefits, thus delaying, or preventing entirely, payments to the employment network.

### *B. Targeted Geographic Area/Population*

While SSA recognizes that not every SSDI or SSI beneficiary with a disability will access benefits planning, assistance, and outreach, it must be available to each via the project targeting Wyoming. Therefore, the awarded project must make those services available to all SSDI and SSI beneficiaries with disabilities within that geographic area. Because youth with disabilities is such an important population to target for those services, each project must make benefits planning, assistance, and outreach available to SSI recipients as young as age 14. In providing benefits planning, assistance, and outreach, projects must make concerted and aggressive efforts to address the needs of underserved individuals with disabilities from diverse ethnic and racial communities (*e.g.*, Native Americans, Vietnamese). In particular, applicants should show how they intend to do outreach in ways that ensure interaction with diverse communities.

Entities are encouraged to collaborate with other public and/or private organizations (*e.g.*, DOL One-Stop Career Center), through interagency agreements or other mechanisms, if necessary, to integrate services to beneficiaries with disabilities. Entities should also consider collaboration with other organizations to prepare an application for a cooperative agreement to provide benefits planning, assistance, and outreach to all beneficiaries within Wyoming.

An application developed jointly by more than one agency or organization must identify only one organization as the lead organization and official applicant. The other participating agencies and organizations can be included as co-applicants, subgrantees or subcontractors.

### *C. Application Process*

The cooperative agreement application process consists of a one-stage, full application. Independent reviewers will competitively review the application against the evaluation criteria specified in this announcement (*see* Part V).

### *D. Application Consideration*

Applications will initially be screened for relevance to this announcement. If judged irrelevant, the application will be returned to the applicant. Also, applications that do not meet the applicant eligibility criteria in Section A above will not be accepted.

Applications that are complete and conform to the requirements of this announcement, the instructions in Form SSA–96–BK, and the separate instructions for completing Part III, Program Narrative (of the SSA–96–BK), will be reviewed competitively against the evaluation criteria specified in Part V of this announcement and evaluated by Federal and non-Federal personnel. See Part VI for instructions on obtaining Form SSA–96–BK. The results of this review and evaluation will assist the Commissioner in making the award decision. Although the results of this review are a primary factor considered in making the decisions, the review score is not the only factor used. In selecting eligible applicants to be funded, consideration will be given to achieving statewide accessibility to benefits planning, assistance, and outreach.

The application requirements in Part IV are the minimum amount of required project information. Projects are responsible for collecting management information (MI) according to the guidelines provided, producing regular reports according to the guidelines provided, and producing a final report which analyzes the successes and/or failures of the methodology used to provide benefits planning, assistance, and outreach to SSDI and SSI beneficiaries, and others.

All projects must adhere to SSA's Privacy and Confidentiality Regulations (20 CFR part 401) for maintaining records of individuals, as well as provide specific safeguards surrounding beneficiary information sharing, paper/computer records/data, and other issues potentially arising from providing benefits planning, assistance, and outreach to SSDI and SSI beneficiaries with disabilities. Personal beneficiary data should be accessible to only project personnel by way of locked file cabinets, computer password protections, *etc.*

### *E. Application Approval*

A cooperative agreement award will be issued within the constraints of available Federal funds and at the discretion of SSA. The official award document is the "Notice of Cooperative Agreement Award." It will provide the amount of the award, the purpose of the award, the term of the agreement, the total project period for which support is contemplated, the amount of financial participation required, and any special terms and conditions of the cooperative agreement.

### *F. Costs*

Federal cooperative agreement funds may be used for allowable costs incurred by awardees in conducting direct benefits planning, assistance, and outreach services to SSA's beneficiaries with disabilities. These costs could include administrative and overall project management costs, within the limitations discussed earlier.

Federal cooperative agreement funds are not intended to cover costs that are reimbursable under an existing public or private program, such as social services, rehabilitation services, or education. No SSDI or SSI beneficiary can be charged for any service delivered under a Benefits Planning, Assistance, and Outreach Program cooperative agreement, including preparing a PASS. Benefits planning and assistance services are intended to be free and must be made accessible to all SSA beneficiaries with disabilities in the project's target geographical area. Project funds should not be used to create new benefits or extensions of existing benefits.

## Part IV. Program Requirements

### *A. General Requirements*

The cooperative agreement awardees shall:

1. Work with SSA's technical assistance and training contractor in arranging training for Benefits Specialists;
2. Provide a brief project description to the contractor;
3. Employ Benefits Specialists and have them attend an initial 5-day face-to-face training session within 90 days of award. SSA's technical assistance and training contractor will provide

technical assistance and training to projects about SSA's programs and work incentives (*e.g.*, trial-work period (TWP), extended period of eligibility (EPE), impairment-related work expenses (IRWE), Plan for Achieving Self-Support (PASS), 1619(a) and (b), and Medicaid buy-in provisions/Balanced Budget Act); Medicare and Medicaid; and on other Federal work incentives programs. The applicant is responsible for providing technical assistance and training to Benefits Specialists about State and local programs.

4. Have Benefits Specialists attend refresher/follow-up and new hire training sessions, as needed, and take part in the evaluation of training activities and the evaluation of ongoing training needs evaluation by the contractor.

5. Within 90 days after award, the applicant will ensure Benefits Specialists have completed training, have developed outreach plans and begun initial outreach, and are prepared to provide direct benefits planning and assistance services to all SSDI and SSI beneficiaries with disabilities within the targeted geographic area who are requesting these services;

6. Finalize the MI system data collection elements (as defined by SSA) and procedures with SSA and assure compatibility with the VCU data collection program within 60 days after award;

7. Develop and submit quarterly reports that contain MI to SSA, Office of Acquisition and Grants (OAG);

8. Develop and submit quarterly financial reports to SSA, OAG;

9. Provide a description of all planned changes to the project design for approval by SSA prior to implementation;

10. Cooperate with SSA in scheduling and conducting site visits;

11. Develop and maintain a collaborative working relationship with the local servicing Social Security office;

12. Implement an ongoing management and quality assurance process that uses MI data; and

13. Attend scheduled conferences, participate in panel and small group discussions, and make project presentations.

### *B. Description of Projects*

The project awardee shall:

- Provide direct individualized benefits planning and assistance, including information on the availability of protection and advocacy services, to beneficiaries with disabilities, including individuals participating in the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Act, the program established under section 1619(a) of the Act, and other programs that are designed to encourage disabled beneficiaries to work;
- Conduct ongoing outreach efforts to beneficiaries with disabilities (and to the families of such beneficiaries) who are potentially eligible to participate in Federal or State work incentives programs that are designed to assist beneficiaries with disabilities to work, by preparing and disseminating information and explaining such programs. In conducting benefits planning, assistance, and outreach activities, project awardees will work in cooperation with other Federal, State, and private agencies and nonprofit organizations that serve beneficiaries with disabilities, and with agencies and organizations that focus on vocational rehabilitation and work-related training and counseling, including DOL One-Stop Career Centers.

In order to be considered for an award, applicants must describe:

- Their understanding of benefits planning and assistance, including the benefits programs with which they have worked in the past;
- How they will notify all SSDI and SSI beneficiaries with disabilities in Wyoming about benefits planning and assistance and provide those services to beneficiaries;
- Their understanding of outreach, and how they will conduct outreach to all SSDI and SSI beneficiaries with disabilities (and their families) in Wyoming who are potentially eligible to participate in Federal or State work incentives programs designed to assist beneficiaries with disabilities to work, and, particularly, how the outreach strategies, information, and materials will be modified to seek out different ethnic and racial groups;
- The scope of the project; and
- How that project achieves the Benefits Planning, Assistance, and Outreach Program goals in Part I, Section D.

The applicants must also describe how they will address any special cultural requirements of populations (*e.g.*, Native Americans) within the targeted geographic area, as well as non-English speaking populations (*e.g.*, Vietnamese) and SSI recipients as young as age 14.

In providing benefits planning and assistance services, and conducting outreach, projects must be sensitive to issues such as cultural differences and non-English speaking populations within the areas they serve (*e.g.*, Native Americans, Vietnamese). Specifically, projects must address the needs of underserved individuals with disabilities from diverse ethnic and racial communities and show how they intend to provide outreach in ways that ensure interaction with diverse communities. (SSA awarded a contract to the University of Montana to provide technical assistance on Native American cultural and tribal considerations to Benefits Specialists in the Benefits Planning, Assistance, and Outreach program.)

Applicants must also provide information on:

- Collaborative relationships with relevant agencies, including SSA's field offices, and organizations (*e.g.*, Centers for Independent Living, DOL One-Stop Career Centers);
- Specific services and supports that will be involved in the project and their roles;
- Case management and monitoring systems and techniques to be used (*see http://www.ssa.gov/work/BPAO/bpao.html* for further information regarding an available case management system for Benefits Planning, Assistance, and Outreach projects);
- Methods of evaluating benefits planning, assistance, and outreach provided; and
- The MI and quality assurance process that will be used.

Applicants must also describe how Benefits Specialists will be trained on numerous supports which are often used by people with disabilities, such as long-term care, subsidized housing, paratransit, and food stamps; variations in benefits and services in Wyoming; Wyoming's work incentives programs; workers' compensation and unemployment insurance programs; vocational rehabilitation services; work-related training and counseling programs; and other community-based support programs designed to enable people with disabilities to work.

Applicants must also describe how Benefits Specialists will be trained to conduct outreach by providing information, guidance, and planning to beneficiaries with disabilities on the:

- Availability and interrelation of any Federal or State work incentives programs designed to assist beneficiaries with disabilities for which the individual may be eligible to participate;
- Adequacy of any health benefits coverage that may be offered by an employer of the individual and the extent to which other health benefits coverage may be available to the individual; and

- Availability of protection and advocacy services for beneficiaries with disabilities and how to access such services.

**Note:** The technical assistance and training contractor may provide technical assistance materials to enable project Benefits Specialists to get information about the subjects in the preceding paragraphs. However, each awardee shall be responsible for ensuring that Benefits Specialists are well-versed in these areas.

Applicants must describe any plans they have to collaborate or coordinate with public and private organizations to achieve and/or improve their project goals and submit evidence to SSA of these organizations' capabilities, and willingness to participate (*e.g.*, letters of intent, memoranda of understanding). Applicants should not request letters of intent or commitment from SSA field offices. SSA will assure field office cooperation.

Each applicant must describe the number of beneficiaries with disabilities it expects to serve. SSA records indicate there are approximately 11,500 beneficiaries in Wyoming.

**Note:** All SSDI and SSI beneficiaries (including SSI recipients as young as age 14) within the geographic area served by the project, must be able to access benefits planning, assistance, and outreach via the project.

The project may be part of a larger State initiative; *e.g.*, a DOL One-Stop Career Center, that serves other individuals with disabilities, such as TANF recipients; however, funds provided by SSA under the cooperative agreements cannot be used to serve people with disabilities who are not beneficiaries of SSDI and/or SSI.

### *C. Benefits Specialist Responsibilities and Competencies*

#### 1. Responsibilities

The cooperative agreement awardee shall select individuals who will act as Benefits Specialists. Benefits Specialists will provide work incentives planning and assistance directly to beneficiaries with disabilities; conduct outreach efforts to beneficiaries with disabilities (and their families), who are potentially eligible to participate in Federal or State work incentives programs designed to assist disabled beneficiaries to work; and work in cooperation with Federal, State, and private agencies and nonprofit organizations that serve beneficiaries with disabilities. Benefits Specialists will also provide information on the adequacy of health benefits coverage that may be offered by an employer of a beneficiary with a disability; the extent to which other health benefits coverage may be available to that beneficiary; and the availability of protection and advocacy services for beneficiaries with disabilities, and how to access such services.

*Benefits Planning.* Benefits planning requires an in-depth understanding of the current status of a beneficiary being served. Initial benefits planning will support a beneficiary over a period of several weeks to several months, concluding when the beneficiary has received guidance to support informed choices. Benefits Specialists will establish plans for beneficiaries with disabilities, and develop long-term supports that may be needed to ensure success. Following the initial benefits planning process, they will provide periodic, follow-up planning services to ensure that the information, analysis, and guidance are updated as new conditions (with regard to the applicable programs or to the individual's situation) arise.

To provide benefits planning services, Benefits Specialists will:

- Obtain and evaluate comprehensive information about a beneficiary with a disability on the following:

—Beneficiary background information,
—Disability,
—Employment and earnings,
—Resources,
—Federal and State benefits,
—Health insurance,
—Work expenses,
—Work incentives, and
—Service(s) and supports;

- Assess the potential impacts of employment and/or other changes on a beneficiary's Federal and State benefits eligibility and overall financial well-being;
- Provide information and assist the beneficiary in understanding and assessing the potential impacts of employment and/or other actions or changes on his/her life situation, and provide specific guidance regarding the affects of various work incentives;
- Develop a comprehensive framework of possible options available to a beneficiary and projected results for each as part of the career development and employment process; and
- Ensure confidentiality of all information provided.

*Benefits Assistance.* Benefits assistance involves the delivery of information and direct supports for the purpose of assisting a beneficiary in dealing with benefit issues and effectively managing benefits. Benefits assistance also involves providing information and referral and problem-solving services as needed. Benefits management services will generally build on previous planning and assistance services and include periodic updates of an individual's specific information, reassessment of benefit(s) and overall impacts, education and advisement, and additional planning for monitoring and managing benefits and work incentives.

To provide benefits assistance services, Benefits Specialists will:

- Provide time-limited direct assistance to a beneficiary in the development of a comprehensive, long-term benefits management plan to guide the effective monitoring and management of Federal and State benefits and work incentives. Specific components of the plan must address:

—Desired benefit and work outcomes,
—Related steps or activities necessary to achieve outcomes,
—Associated dates or time frames,
—Building on initial benefits planning efforts including information gathering, analysis and advisement, and

- Benefits/financial analysis (pre- and post-employment);
- Provide time-limited, intensive assistance to beneficiaries, their key stakeholders, and their support teams in making informed choices and establishing both employment-related goals as well as needed benefits management supports. Needed benefits assistance could include:

—How SSDI and SSI work incentives programs may lead to self-supporting employment by developing a PASS,
—Developing a PASS which can be used to obtain training, education, and entrepreneurial opportunities,
—How a PASS can be used to address some of the barriers to employment, such as obtaining a car for transportation needs, and
—The 1619(b) provisions and requirements;

- Advocate on behalf of a beneficiary with other agencies and programs, which requires in-person, telephone and/or written communication with the individual and other involved parties generally over a period of several weeks to several months;
- Provide time-limited follow-up assistance as needed to beneficiaries who have previously received benefits planning and /or other types of benefits assistance services and:

—Assist them and other involved parties to update information,
—Reassess impact of employment and other changes on benefits and work incentives, and
—Provide additional guidance on benefit options, issues and management strategies;

- Assist beneficiaries as needed to update benefits management plan;
- Provide information, referral, and problem-solving support;
- Provide ongoing, comprehensive, benefits monitoring and management assistance to beneficiaries who are likely to experience employment, benefits, or other changes that may dramatically affect their benefit(s) status, health care, or overall financial well being; and
- Provide long-term benefits management on a scheduled, continuous basis, allowing for the planning and provision of supports at regular checkpoints, as well as critical transition points in an individual's benefits, employment and overall situation.

*Outreach*. Outreach activities are ongoing, systematic efforts to inform individuals of available work incentives, as well as the services and supports available to enable them to access and benefit from those work incentives. Outreach efforts should be targeted directly to SSDI and SSI beneficiaries with disabilities, their families, and to advocacy groups and service provider agencies that have regular contact with them. Outreach activities should be directed toward and sensitive to the needs of individuals from diverse ethnic backgrounds, persons with English as their second language, as well as non-English speaking persons, individuals residing in highly urban or rural areas, and other traditionally underserved groups.

To conduct ongoing outreach, Benefits Specialists will:

- Prepare and disseminate information explaining Federal or State work incentives programs and their interrelationships; and
- Work in cooperation with other Federal, State, and private agencies and nonprofit organizations that serve beneficiaries with disabilities, and with agencies and organizations that focus on vocational rehabilitation and work-related training and counseling.

The Benefits Specialists will conduct outreach to SSDI and SSI beneficiaries with disabilities (and their families), who are potentially eligible to participate in Federal or State work incentives programs that are designed to assist beneficiaries with disabilities to work.

### 2. Competencies

Applicants must ensure that Benefits Specialists have the skills required to competently provide benefits planning and assistance services, and outreach. We prefer that cooperative agreement awardees use Benefits Specialists who have attained a bachelor's degree in a relevant field, or that they use Benefit Specialists with relevant experience. Benefit Specialists may possess a combination of education and experience if the experience provides the knowledge, skills and abilities to perform successfully the duties of the position.

Benefits Specialists should bring the following knowledge, skills, and abilities to the position:

- Basic math skills, with an emphasis on problem solving;
- Deductive ability with analytical thinking and creative problem solving skills;
- Acceptable interviewing skills;
- Ability to interpret Federal laws, regulations, and administrative code about public benefits;
- Communication skills (written and/or verbal);
- Knowledge of medical terminology and awareness of cultural and political issues pertaining to various populations and to various disabilities; and
- Basic computer skills.

Benefits Specialists will need to become proficient in the following knowledge, skills, and abilities:

- SSDI and SSI disability programs;
- Knowledge of all public benefits programs, including operations and inter-relationships;
- Translating technical information for lay individuals;
- Accessing information in a variety of ways (including the ability to be able to recognize when additional information is needed);
- Interpersonal skills (*e.g.*, recognize and help people manage anger and conflict, enjoy working with individuals);
- Counseling skills (ability to listen, evaluate alternatives, advise on potential cause of action);
- Knowledge of SSA field office structure and how to work with various work incentives coordinators (*e.g.*, PASS specialists, employment support representatives);
- Knowledge of the structure and design of public and private benefits systems and local community services; and
- Knowledge of ethics (*e.g.*, confidentiality, conflict of interest).

The applicant must clearly explain how it will ensure all individuals hired as Benefits Specialists will possess or acquire the relevant knowledge, skills and abilities. SSA has contracted with separate entities to provide technical assistance and training to cooperative agreement awardees on an ongoing basis about SSA's programs and work incentives, Medicare and Medicaid, and other Federal work incentives programs. Those entities are: Cornell University for SSA Regions I, II and V; Virginia Commonwealth University for Regions III, IV, VI, and IX; and the University of Missouri, Columbia for Regions VII, VIII (including Wyoming), and X. The applicant is responsible for providing technical assistance and training to Benefits Specialists about State and local programs.

### *D. Management Information and Reporting*

In addition to cooperating with the surveys outlined in Part I, Section D, entities must provide all collected data and report the results to SSA's Office of Acquisition and Grants, as described below.

Common data elements, as defined by SSA, will be collected through a data base designed and managed by VCU. The awardee and SSA will use the management information (MI) data to manage the project and to determine what additional resources or other approaches may be needed to improve the process. The data will also be valuable to SSA in its analysis of and future planning for the SSDI and SSI programs.

The Wyoming project must adhere to SSA's Privacy and Confidentiality Regulations (20 CFR part 401) for maintaining records of individuals, as well as provide specific safeguards surrounding beneficiary information sharing, paper/computer records/data, and other issues potentially arising from providing benefits planning, assistance, and outreach to SSDI and SSI beneficiaries with disabilities. Personal beneficiary data should be accessible only to project personnel by way of locked file cabinets, computer password protections, *etc.*

The Wyoming project shall collect specific data elements on their counselors and all SSA beneficiaries/recipients who receive BPAO services from the project. This data shall be entered by the project into the online BPAO National Data Entry System (see *http://www.vcu-barc.org/data.html* for additional information). For the purpose of providing MI to SSA in support of the implementation and management of the project, the project will collect, analyze, and summarize the data listed below:

Beneficiary Background Information

1. Beneficiary/recipient name (Last, First, Middle).
2. Date of birth.
3. Gender.
4. Special language or other considerations.
5. Mailing address.

6. Telephone number.
7. Social Security number.
8. Representative payee (RP) name (if applicable).
9. RP address
10. Current level of education
11. Whether pursuing education currently and at what level (*e.g.*, post secondary, continuing adult education, special education, vocational education)
12. Proposed educational goals
13. Primary diagnosis
14. Secondary diagnosis (if applicable)
15. Employer health care coverage at outset (if working)
16. Other health care coverage

### Employment Information (Current and Proposed Goal—Where Applicable)

1. Self-employed or employee
2. Type of work
3. Beginning date
4. Hours per week
5. Monthly gross earned income
6. Monthly net earned income
7. Work-related expenses

### Proposed Training Information

1. Work-related training/counseling program
2. Proposed other training

### Benefits (Current and Expected Changes if Employment Goals Are Reached)

1. SSDI
2. SSI
3. Concurrent (SSDI and SSI)
4. Medicare
5. Medicaid
6. Private Health Insurance
7. Subsidized housing or other rental subsidies
8. Food Stamps
9. General Assistance
10. Workers Compensation benefits
11. Unemployment Insurance benefits
12. Other Federal, State, or local supports, including TANF (specify)

### Incentives To Be Used

1. Trial-work period (TWP)
2. Extended period of eligibility (EPE)
3. Impairment-related work expenses (IRWE)
4. Plan for achieving self-support (PASS)
5. 1619(a)
6. 1619(b)
7. Medicaid buy-in provisions/ Balanced Budget Act
8. Blind Work Expense
9. Student Earned Income Exclusion
10. Subsidy Development
11. Extended Medicare

### Provisions To Be Used

1. Property Essential to Self-Support
2. Expedited Reinstatement of Benefits
3. Ticket to Work Program
4. Continuing Disability Review Protections
5. Section 301
6. Unsuccessful Work Attempt

### Services To Be Used

1. Vocational Rehabilitation services
2. Paratransit services
3. Protection and Advocacy services
4. Work-related training/counseling program
5. DOL One-Stop Career Center services
6. Transitioning youth services (from school to post-secondary education or to work)

### Monthly Benefits Planning, Assistance, and Outreach Activities Performed by Benefits Planning Organization

1. Number of SSDI/SSI beneficiaries (over age 18) requesting assistance (initial and repeat requests).
2. Number of SSDI/SSI beneficiaries (ages 14 to 18) requesting assistance (initial and repeat requests).
3. Number of new benefits management plans prepared.
4. Number of updated benefits management plans prepared.
5. Number of presentations given at forums, conferences, meetings, *etc.*

Additional information such as the time spent per recipient, the reason for service request, the level of service provided, and any anticipated employment status change of the beneficiary will also be reported by awardee. All data elements are to be collected in accordance with precise definitions to be provided by SSA as part of the application package. Adherence to such precise definitions is crucial to the comparability of the data across project sites.

The entities awarded a cooperative agreement under this notice shall submit quarterly progress reports to SSA, OAG. SSA expects that the project will need a period of time to begin providing services and collecting management information. Therefore, the first quarterly report shall include a description of the project, a status of data collection operations, actions that were taken, planned actions, and a description of how the project is addressing the needs of individuals with disabilities from diverse ethnic and racial communities, both in benefits planning and in carrying out outreach activities.

Subsequent reports shall provide: a status of the project, any problems or proposed changes in the project (*e.g.*, requests for technical assistance from contractor, interagency agreement change); specific information (baseline data/program statistics) required by SSA, including that listed above; a description of how the project is addressing the needs of individuals with disabilities from diverse ethnic and racial communities, both in benefits planning and in carrying out outreach activities; actions that were taken, and planned actions. The quarterly reports shall be submitted to SSA, OAG, within 30 days after the end of the quarter.

SSA personnel (SSA Project Officer and/or other staff) expect to visit this project at least once. The SSA Project Officer shall review site operations, including collection of management information, and evaluate how projects are finding ways to make benefits planning, assistance, and outreach activities more effective in achieving SSA's Benefits Planning, Assistance, and Outreach Program goals.

Staff members shall attend an initial training meeting that will include an orientation session by SSA, and subsequent scheduled conferences at SSA headquarters or alternate sites chosen by SSA. Those meetings will provide the awardee of the cooperative agreement with the opportunity to exchange information with SSA and other awardees.

## *E. Evaluation*

### Process Evaluation

The purpose of process evaluation is for SSA and the awardee to assess how the project functioned and how the process might be altered to provide more efficiently and/or successfully the services required under section 1149 of the Act. The process evaluation will require both data collection and qualitative observational evaluation through site visits and/or project reporting.

### Participant Experience

The goal of these cooperative agreements is the provision of services to enhance beneficiary awareness and understanding of SSA work incentives and thereby enhance beneficiaries'' ability to make informed choices regarding work. The goal is not to provide employment services. Nevertheless, SSA is clearly interested in identifying participant outcomes under the Benefits Planning, Assistance, and Outreach Program to determine the extent to which participants achieve their employment, financial, and health care goals. Therefore, SSA is requiring that cooperative agreement awardees collect data regarding the employment status, benefit status, and income of beneficiaries before providing services under these cooperative agreements.

SSA intends to use this information to support the sample selection for participants in the customer satisfaction survey. This will allow SSA to include the experiences and outcomes of a broad range of beneficiaries.

This project shall submit periodic reports (as described in Part IV, Section D, Management Information and Reporting) to SSA, OAG. Data and information that are used in preparing the reports can be used, for example, to improve the efficiency of the project's operations, use of staff, and linkages between the project and the programs for which benefits planning is needed to better meet the needs of target populations. In addition, the evaluation results will be disseminated to other projects to promote learning, program refinements, and facilitate partnership and achievement of project objectives. Timely comprehensive MI data also allows for cost accounting, which helps improve the efficiency of service approaches and may inform future policy decisions.

## Part V. Application Review Process and Evaluation Criteria

### *A. Screening Requirements*

All applications that meet the deadline will be screened to determine completeness and conformity to the requirements of this announcement. Complete and conforming applications will then be evaluated.

1. *Number of Copies:* The applicant must submit one original signed and dated application and a minimum of two copies. The submission of seven additional copies is optional and will expedite processing, but will not affect the evaluation or scoring of the application.

2. *Length:* The program narrative portion of the application (Part III of the SSA–96–BK) may not exceed 30 double-spaced pages (or 15 single-spaced pages) on one side of the paper only, using standard (8½″ × 11″) size paper, and 12-point font. Attachments that support the program narrative count towards the 30-page limit; resumes and letters of support do not count within the 30-page limit.

### *B. Evaluation Criteria*

Applications that pass the screening process will be independently reviewed by at least three individuals, who will evaluate and score the applications based on the evaluation criteria. There are four categories of criteria used to score applications: Capability; relevance/adequacy of program design; resources and management; and quality assurance plan. The total points possible for an application is 100, and sections are weighted as noted in the descriptions of criteria below.

Although the results from the independent panel reviews are the primary factor used in making funding decisions, they are not the sole basis for making awards. The Commissioner will consider other factors as well when making funding decisions. For instance, the need to assure the required geographic distribution of projects may take precedence over rankings/scores of the review panel.

Following are the evaluation criteria that SSA will use in reviewing all applications (relative weights are shown in parentheses):

#### 1. Capability (20 points)

The applicant's capability to deliver benefits planning and assistance services will be judged by:

- Description of how entity will test for Benefits Specialist competencies listed in Part IV and provide any needed training to ensure competencies will be maintained and/or enhanced; (8 points)
- Description of the proposed administration and organization of the project, including the existence of the necessary administrative resources to effectively carry out the project; and (7 points)
- Project Director's and key staff's documentation of experience and results of past projects of this nature (extra consideration may be given to applicants based on the quality and extent of their experience in return-to-work efforts for SSDI and SSI beneficiaries with disabilities). (5 points)

#### 2. Relevance/Adequacy of Project Design (30 points)

The adequacy of project design will be judged by:

- A description of the project operations, including how the project will work (*e.g.*, identification and notification of potential project participants about availability of benefits planning and assistance services, location for providing services, ability to travel to beneficiary, etc.) and the quality of the project design; (6 points)
- A concise and clear statement of the project goals and objectives; MI data to be collected; specification of data sources; including how they will interact with the VCU data base; and how quality assurance will be realized; (5 points)
- A description of how the project will address provision of benefits planning, assistance, and outreach to populations with special cultural or language requirements; (5 points)
- Evidence of collaboration with relevant agencies, including collocation within a DOL One-Stop Career Center organization, in providing benefits planning and assistance services; and extent and clarity of collaborative efforts with other organizations, including letters of intent or written assurances; (5 points)
- A description of how the project will address provision of benefits planning, assistance, and outreach to transition-to-work aged SSI youth; (4 points)
- Description of problems that may arise and how they will be resolved; *e.g.*, how dropouts and inadequate numbers of participants will be handled; and (3 points)
- Evidence of how the proposed approach will accomplish Benefits Planning, Assistance, and Outreach Program goals. (2 points)

#### 3. Resources and Management (30 points)

Resources and management will be judged by:

- Appropriateness of qualifications of the project personnel, as evidenced by training and experience indicating that they have the skills required to competently provide benefits planning and assistance services, and outreach; (8 points)
- Evidence of successful previous experience related to benefits planning, assistance, and outreach program; (4 points)
- Evidence that the applicant has a working knowledge of work incentives and the various programs available to beneficiaries with disabilities; (4 points)
- Evidence of adequate facilities (*e.g.*, collocation within a DOL One-Stop Career Center) and resources to deliver services; (4 points)
- Appropriateness of the case management and monitoring systems and techniques, including an MI system, quality assurance system, and a range of other monitoring and management options; (3 points)
- Extent and quality of project assurances that sufficient resources (including personnel, time, funds, and facilities) will be available to support services to beneficiaries; (3 points)
- Evidence that the applicant will meaningfully involve family members and other representatives of target groups, including advocates in the process of delivery services; and (2 points)
- Cost effectiveness, per client costs, and reasonableness of overall project

cost relative to planned services. (2 points)

4. Quality Assurance (20 points)

The applicant's quality assurance plan will be judged by:

- Extent to which training is accommodated and planned for to ensure that all Benefits Specialists maintain knowledge, skills, and abilities, and acquire more; (6 points)
- Extent to which the awardee proposes to use MI data to improve processes and ensure that all information given is accurate and pertinent; (4 points)
- Extent to which the proposed quality assurance plan complies with the requirements of SSA, in terms of data collection, reporting, and ensuring that only accurate information is provided to beneficiaries and others; (4 points)
- Extent to which the proposed staff demonstrates expertise in the area of benefits planning and assistance; and (4 points)
- The extent to which staff have experience collecting, protecting, and analyzing data on beneficiaries with disabilities to provide benefits planning and assistance services, and outreach. (2 points)

## Part VI. Instructions for Obtaining and Submitting Application

### *A. Availability of Forms*

The Internet is the primary means recommended for obtaining an application kit under this program announcement. An application kit containing all of the prescribed forms and instructions needed to apply for a cooperative agreement under this announcement may be obtained at the following Internet address: *http://www.socialsecurity.gov/oag/grants/ssagrant.htm*.

Although the Internet is SSA's preferred method of making application kits available, an application kit also may be obtained by writing to: Grants Management Team, Office of Operations Contracts and Grants, OAG, Social Security Administration, 1–E–4 Gwynn Oak Building, 1710 Gwynn Oak Avenue, Baltimore, Maryland 21207–5279.

Requests submitted by mail should include two return address labels. Also, please provide the name, title and telephone number of the individual to contact; and the organization's name, street address, city, State and ZIP Code.

To ensure receipt of the proper kit, please include program announcement number SSA–OESP–03–1 and the date of this announcement.

### *B. Checklist for a Complete Application*

The checklist below is a guide to ensure that the application package has been properly prepared.

—An original, signed and dated application plus at least two copies. Seven additional copies are optional but will expedite processing.

—The program narrative portion of the application (Part III of the SSA–96–BK) may not exceed thirty double-spaced pages (or fifteen single-spaced pages) on one side of the paper only, using standard (8½″ x 11″) size paper, and 12-point font. Attachments that support the program narrative count towards the 30-page limit; resumes and letters of support do not count in the limit.

—Attachments/Appendices, when included, should be used only to provide supporting documentation. Please do not include books or videotapes as they are not easily reproduced and are therefore inaccessible to reviewers.

—A complete application, which consists of the following items in this order:

(1) Part I (Face page)—Application for Federal Assistance (SF 424, REV 4–88);

(2) Table of Contents;

(3) Project Summary (not to exceed one page);

(4) Part II—Budget Information, Sections A through G (Form SSA–96–BK);

(5) Budget Justification (in Section B Budget Categories, explain how amounts were computed), including subcontract organization budgets;

(6) Part III—Application Narrative and Appendices;

(7) Part IV—Assurances;

(8) Additional Assurances and Certifications—regarding Lobbying and regarding Drug-Free Workplace; and

(9) Form SSA–3966–PC—acknowledgement of receipt of application (applicant's return address must be inserted on the form).

### *C. Guidelines for Application Submission*

All applications for the cooperative agreement project under this announcement must be submitted on the prescribed forms included in the application kit. The application shall be executed by an individual authorized to act for the applicant organization and to assume for the applicant organization the obligations imposed by the terms and conditions of the cooperative agreement award.

In item 11 of the Face Sheet (SF 424), the applicant must clearly indicate the application submitted is in response to this announcement (SSA–OESP–03–1). The applicant also is encouraged to select a SHORT descriptive project title.

Applications must be mailed or hand-delivered to: Grants Management Team, Office of Operations Contracts and Grants, OAG, DCFAM, Social Security Administration, Attention: SSA–OESP–03–1, 1–E–4 Gwynn Oak Building, 1710 Gwynn Oak Avenue, Baltimore, MD 21207–5279.

Hand-delivered applications are accepted between the hours of 8 a.m. and 5 p.m., Monday through Friday. An application will be considered as meeting the deadline if it is either:

1. Received on or before the deadline date at the above address; or

2. Mailed through the U.S. Postal Service or sent by commercial carrier on or before the deadline date and received in time to be considered during the competitive review and evaluation process. Packages must be postmarked by December 4, 2003. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier as evidence of timely mailing. Private-metered postmarks are not acceptable as proof of timely mailing.

Applications that do not meet the above criteria are considered late applications. SSA will not waive or extend the deadline for any application unless the deadline is waived or extended for all applications. SSA will notify each late applicant that its application will not be considered.

### Paperwork Reduction Act

This notice contains reporting requirements. However, the information is collected using form SSA–96–BK, Federal Assistance Application, which has the Office of Management and Budget clearance number 0960–0184.

Dated: October 9, 2003.

**Jo Anne B. Barnhart,**

*Commissioner.*

[FR Doc. 03–26381 Filed 10–17–03; 8:45 am]

BILLING CODE 4191–02–P

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## SOCIAL SECURITY ADMINISTRATION

**[Social Security Ruling, SSR 03–2p]**

## Titles II and XVI: Evaluating Cases Involving Reflex Sympathetic Dystrophy Syndrome/Complex Regional Pain Syndrome

**AGENCY:** Social Security Administration.

**ACTION:** Notice of Social Security Ruling.

**SUMMARY:** In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of Social Security

Ruling, SSR 03–2p. This Ruling explains the policies of the Social Security Administration for developing and evaluating title II and title XVI claims for disability on the basis of Reflex Sympathetic Dystrophy Syndrome (RSDS), also frequently known as Complex Regional Pain Syndrome, Type I (CRPS). These terms are synonymous and are used to describe a unique clinical syndrome that may develop following trauma. This syndrome is characterized by complaints of intense pain and typically includes signs of autonomic dysfunction.

**EFFECTIVE DATE:** October 20, 2003.

**FOR FURTHER INFORMATION CONTACT:** Carolyn Kiefer, Office of Disability Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–9104 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online, at *http://www.socialsecurity.gov.*

**SUPPLEMENTARY INFORMATION:** Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 402.35(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and policy interpretations of the law and regulations.

Although Social Security Rulings do not have the same force and effect as the statute or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 402.35(b)(1), and are relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security—Disability Insurance; 96.006 Supplemental Security Income)

Dated: October 8, 2003.

**Jo Anne B. Barnhart,**

*Commissioner of Social Security.*

## Policy Interpretation Ruling

## Titles II and XVI: Evaluating Cases Involving Reflex Sympathetic Dystrophy Syndrome/Complex Regional Pain Syndrome

*Purpose:* To explain the policies of the Social Security Administration for developing and evaluating title II and title XVI claims for disability on the basis of Reflex Sympathetic Dystrophy Syndrome (RSDS), also frequently known as Complex Regional Pain Syndrome, Type I (CRPS). These terms are synonymous and are used to describe a unique clinical syndrome that may develop following trauma. This syndrome is characterized by complaints of intense pain and typically includes signs of autonomic dysfunction.

*Citations (Authority):* Sections 216(i), 223(d), 1614(a)(3), 1614(a)(4) and 1614(c) of the Social Security Act (the Act), as amended; Regulations No. 4, subpart P, sections 404.1502, 404.1505, 404.1508–404.1509, 404.1511–404.1513, 404.1520, 404.1520a, 404.1521, 404.1523, 404.1526–404.1530, 404.1545–404.1546, 404.1560–404.1569a; and 404.1593–404.1594 and appendix 1; and Regulations No. 16, subpart I, sections 416.902, 416.905, 416.906, 416.908–416.909, 416.911–416.913, 416.920, 416.920a, 416.921, 416.923, 416.924, 416.924a–416.924c, 416.925, 416.926, 416.926a, 416.927–416.930, 416.945–416.946, 416.960–416.969a, 416.987, and 416.993–416.994a.

*Introduction:* RSDS/CRPS are terms used to describe a constellation of symptoms and signs that may occur following an injury to bone or soft tissue. The precipitating injury may be so minor that the individual does not even recall sustaining an injury. Other potential precipitants suggested by the medical literature include, but are not limited to, surgical procedures, drug exposure, stroke with hemiplegia, and cervical spondylosis.

### Policy Interpretation

### *What Is RSDS/CRPS?*

RSDS/CRPS is a chronic pain syndrome most often resulting from trauma to a single extremity. It can also result from diseases, surgery, or injury affecting other parts of the body. Even a minor injury can trigger RSDS/CRPS. The most common acute clinical manifestations include complaints of intense pain and findings indicative of autonomic dysfunction at the site of the precipitating trauma. Later, spontaneously occurring pain may be associated with abnormalities in the affected region involving the skin, subcutaneous tissue, and bone. It is characteristic of this syndrome that the degree of pain reported is out of proportion to the severity of the injury sustained by the individual. When left untreated, the signs and symptoms of the disorder may worsen over time.

Although the pathogenesis of this disorder (the precipitating mechanism(s) of the signs and symptoms characteristic of RSDS/CRPS) has not been defined, dysfunction of the sympathetic nervous system has been strongly implicated.

The sympathetic nervous system regulates the body's involuntary physiological responses to stressful stimuli. Sympathetic stimulation results in physiological changes that prepare the body to respond to a stressful stimulus by "fight or flight." The so-called "fight or flight" response is characterized by constriction of peripheral vasculature (blood vessels supplying skin), increase in heart rate and sweating, dilatation of bronchial tubes, dilatation of pupils, increase in level of alertness, and constriction of sphincter musculature.

Abnormal sympathetic nervous system function may produce inappropriate or exaggerated neural signals that may be misinterpreted as pain. In addition, abnormal sympathetic stimulation may produce changes in blood vessels, skin, musculature and bone. Early recognition of the syndrome and prompt treatment, ideally within 3 months of the first symptoms, provides the greatest opportunity for effective recovery.

### *How Does RSDS/CRPS Typically Present?*

RSDS/CRPS patients typically report persistent, burning, aching or searing pain that is initially localized to the site of the injury. The involved area usually has increased sensitivity to touch. The degree of reported pain is often out of proportion to the severity of the precipitating injury. Without appropriate treatment, the pain and associated atrophic skin and bone changes may spread to involve an entire limb. Cases have been reported to progress and spread to other limbs, or to remote parts of the body.

Clinical studies have demonstrated that when treatment is delayed, the signs and symptoms may progress and spread, resulting in long-term and even permanent physical and psychological problems. Some investigators have found that the signs and symptoms of

RSDS/CRPS persist longer than 6 months in 50 percent of cases, and may last for years in cases where treatment is not successful.

*What Are the Diagnostic Criteria for RSDS/CRPS?*

A diagnosis of RSDS/CRPS requires the presence of complaints of persistent, intense pain that results in impaired mobility of the affected region. The complaints of pain are associated with:

- Swelling;
- Autonomic instability—seen as changes in skin color or texture, changes in sweating (decreased or excessive sweating), skin temperature changes, or abnormal pilomotor erection (gooseflesh);
- Abnormal hair or nail growth (growth can be either too slow or too fast);
- Osteoporosis; or
- Involuntary movements of the affected region of the initial injury.

Progression of the clinical disorder is marked by worsening of a previously identified finding, or the manifestation of additional abnormal changes in the skin, nails, muscles, joints, ligaments, and bones of the affected region. Clinical progression does not necessarily correlate with specific timeframes. Efficacy of treatment must be judged on the basis of the treatment's effect on the pain and whether or not progressive changes continue in the tissues of the affected region.

Reported pain at the site of the injury may be followed by complaints of muscle pain, joint stiffness, restricted mobility, or abnormal hair and nail growth in the affected region. Further, signs of autonomic instability (changes in the color or temperature of the skin and frequent appearance of goose bumps) may develop in the affected region. Osteoporosis may be noted by appropriate medically acceptable imaging techniques. Complaints of pain can further intensify, and can be reported to spread to involve other extremities. Muscle atrophy and contractures can also develop. Persistent clinical progression resulting in muscle atrophy and contractures, or progression of complaints of pain to include other extremities or regions, in spite of appropriate diagnosis and treatment, hallmark a poor prognosis.

*How Is RSDS/CRPS Treated?*

Patient education and activity programs designed to increase limb mobility and promote use of the extremity or affected region during activities of daily living are considered the most important treatments for RSDS/CRPS. The medical literature has demonstrated that individuals affected by RSDS/CRPS have a better prognosis when they receive an early diagnosis and mobility is immediately encouraged. In some patients, it is necessary to inject a long-acting anesthetic to block sympathetic activity and reduce pain to allow the individual to increase the mobility of the affected region. Various analgesics, including narcotics and neurostimulators, may be used to minimize pain and promote the individual's ability to tolerate greater mobility.

A mental evaluation may be requested by treating or other medical sources to determine if any undiagnosed psychiatric disease is present that could potentially contribute to a reduced pain tolerance. It is important to recognize that such evaluations are not based on concern that RSDS/CRPS findings are imaginary or etiologically linked to psychiatric disease. The behavioral and cognitive effects of the medications used to treat pain need to be thoroughly considered in the evaluation of this syndrome.

Other types of medications may also be used to reduce pain. Anti-inflammatory preparations, psychotropic medications (for example, antidepressants), certain antiepileptic drugs, muscle relaxants, and drugs that produce generalized reduction in sympathetic outflow may be tried in an effort to reduce the signs and symptoms associated with RSDS/CRPS and improve the mobility of the affected region.

Patients who are noted to have a good response to local sympathetic blocks may be considered candidates for surgical sympathectomy. This procedure permanently disrupts the sympathetic innervation of the affected region. It involves destroying a sympathetic ganglion and must be performed by a physician who is an expert in this technique. This procedure is not without risk of post-surgical complications.

*What Is a Medically Determinable Impairment?*

Sections 216(i) and 1614(a)(3) of the Act define "disability"[1] as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment (or combination of impairments) which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.[2]

Sections 223(d)(3) and 1614(a)(3)(D) of the Act, and 20 CFR 404.1508 and 416.908, require that impairment result from anatomical, physiological, or psychological abnormalities that can be shown by medically acceptable clinical and laboratory diagnostic techniques. The Act and regulations further require that impairment be established by medical evidence that consists of signs, symptoms, and laboratory findings, and not only by an individual's statement of symptoms.

*How Is RSDS/CRPS Identified as a Medically Determinable Impairment?*

RSDS/CRPS constitutes a medically determinable impairment when it is documented by appropriate medical signs, symptoms, and laboratory findings, as discussed above. RSDS/CRPS may be the basis for a finding of "disability." Disability may not be established on the basis of an individual's statement of symptoms alone.

For purposes of Social Security disability evaluation, RSDS/CRPS can be established in the presence of persistent complaints of pain that are typically out of proportion to the severity of any documented precipitant and one or more of the following clinically documented signs in the affected region at any time following the documented precipitant:

- Swelling;
- Autonomic instability—seen as changes in skin color or texture, changes in sweating (decreased or excessive sweating), changes in skin temperature, and abnormal pilomotor erection (gooseflesh);
- Abnormal hair or nail growth (growth can be either too slow or too fast);
- Osteoporosis; or
- Involuntary movements of the affected region of the initial injury.

When longitudinal treatment records document persistent limiting pain in an area where one or more of these abnormal signs has been documented at some point in time since the date of the precipitating injury, disability adjudicators can reliably determine that RSDS/CRPS is present and constitutes a medically determinable impairment. It may be noted in the treatment records that these signs are not present continuously, or the signs may be present at one examination and not appear at another. Transient findings are characteristic of RSDS/CRPS, and do not affect a finding that a medically determinable impairment is present.

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[1] Except for statutory blindness.

[2] For individuals under age 18 claiming benefits under title XVI, disability will be established if the individual is suffering from a medically determinable physical or mental impairment (or combination of impairments) that results in "marked and severe functional limitations." See section 1614(a)(3)(C) of the Act and 20 CFR 416.906. However, for clarity, the following discussions refer only to claims of individuals claiming disability benefits under title II and individuals age 18 or older claiming disability benefits under title XVI. It should be understood that references in this Ruling to the ability to do substantial gainful activity, "RFC," and other terms and rules that are applicable only to title II disability claims and title XVI disability claims of individuals age 18 or older are also intended to refer to appropriate terms and rules applicable in determining disability for individuals under age 18 under title XVI.

### *How Is Medical Evidence of the Impairment Documented?*

In cases involving RSDS/CRPS, the documentation of medical signs or laboratory findings at some point in time in the clinical record since the date of the precipitating injury is critical in establishing the presence of a medically determinable impairment. In cases in which RSDS/CRPS is alleged, longitudinal clinical records reflecting ongoing medical evaluation and treatment from the individual's medical sources, especially treating sources, are extremely helpful in documenting the presence of any medical signs, symptoms and laboratory findings.

Generally, evidence for the 12-month period preceding the month of application should be obtained, unless there is reason to believe that development of an earlier period is necessary, the alleged onset of disability is less than 12 months before the date of the application, or a fully favorable determination can be made with less evidence.

If the adjudicator finds that the evidence is inadequate to determine whether the individual is disabled, he or she must first recontact the individual's treating or other medical source(s) to determine whether the additional information needed is readily available, in accordance with 20 CFR 404.1512 and 416.912. Only after the adjudicator determines that the information is not readily available from the individual's health care provider(s), or that the necessary information or clarification cannot be sought from the individual's health care provider(s), should the adjudicator proceed to arrange for a consultative examination(s) in accordance with 20 CFR 404.1519a and 416.919a. The type of consultative examination(s) purchased will depend on the nature of the individual's symptoms and the extent of the evidence already in the case record.

It should be noted that conflicting evidence in the medical record is not unusual in cases of RSDS due to the transitory nature of its objective findings and the complicated diagnostic process involved. Clarification of any such conflicts in the medical evidence should be sought first from the individual's treating or other medical sources.

Medical opinions from treating sources about the nature and severity of an individual's impairment(s) are entitled to deference and may be entitled to controlling weight. If we find that a treating source's medical opinion on the issue of the nature and severity of an individual's impairment(s) is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record, the adjudicator will give it controlling weight. (See SSR 96–2p, "Titles II and XVI: Giving Controlling Weight to Treating Source Medical Opinions," and SSR 96–5p, "Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner.")[3]

### *How Is the Duration and Severity of RSDS/CRPS Established?*

The signs and symptoms of RSDS/CRPS may remain stable over time, improve, or worsen. Documentation should, whenever appropriate, include a longitudinal clinical record containing detailed medical observations, treatment, the individual's response to treatment, complications of treatment, and a detailed description of how the impairment limits the individual's ability to function and perform or sustain work activity over time.

Chronic pain and many of the medications prescribed to treat it may affect an individual's ability to maintain attention and concentration, as well as adversely affect his or her cognition, mood, and behavior, and may even reduce motor reaction times. These factors can interfere with an individual's ability to sustain work activity over time, or preclude sustained work activity altogether. When evaluating duration and severity, as well as when evaluating RFC, the effects of chronic pain and the use of pain medications must be carefully considered.

When the alleged onset of disability secondary to RSDS/CRPS occurred less than 12 months before adjudication, the adjudicator must evaluate the available medical evidence and project the degree of impairment severity that is likely to exist at the end of 12 months. Information about treatment and response to treatment, as well as any medical source opinions about the individual's prognosis at the end of 12 months, are helpful in deciding whether the medically determinable impairment is expected to be of disabling severity for at least 12 consecutive months.

In those cases in which an individual is found disabled based on RSDS/CRPS, but medical improvement is anticipated, the adjudicator should schedule an appropriate medical reexamination date consistent with the information indicating the likelihood of medical improvement.

### *How Is RSDS/CRPS Evaluated?*

Claims in which the individual alleges RSDS/CRPS are adjudicated using the sequential evaluation process, just as for any other impairment. Because finding that RSDS/CRPS is a medically determinable impairment requires the presence of chronic pain and one or more clinically documented signs in the affected region, the adjudicator can reliably find that pain is an expected symptom in this disorder. Other symptoms, including such things as extreme sensitivity to touch or pressure, or abnormal sensations of heat or cold, can also be associated with this disorder. Given that a variety of symptoms can be associated with RSDS/CRPS, once the disorder has been established as a medically determinable impairment, the adjudicator must evaluate the intensity, persistence, and limiting effects of the individual's symptoms to determine the extent to which the symptoms limit the individual's ability to do basic work activities. For this purpose, whenever the individual's statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, the adjudicator must make a finding on the credibility of the individual's statements based on a consideration of the entire case record. This includes the medical signs and laboratory findings, the individual's own statements about the symptoms, any statements and other information provided by treating or examining physicians or psychologists and other persons about the symptoms and how they affect the individual, and any other relevant evidence in the case record. Although symptoms alone cannot be the basis for finding a medically determinable impairment, once the existence of a medically determinable impairment has been established, an individual's symptoms and the effect(s) of those symptoms on the individual's ability to function must be considered both in determining impairment severity and in assessing the individual's residual functional capacity (RFC), as appropriate. If the adjudicator finds that pain or other symptoms cause a limitation or restriction having more than a minimal effect on an individual's ability to perform basic work activities, a "severe" impairment must be found to exist. See SSR 96–3p, "Titles II and XVI: Considering Allegations of Pain and Other Symptoms in Determining Whether a Medically Determinable Impairment is Severe" and SSR 96–7p, "Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements."

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[3] A medical source opinion that an individual is "disabled" or "unable to work," has an impairment(s) that meets or equals the requirements of a listing, has a particular residual functional capacity (RFC), that concerns whether an individual's RFC prevents him or her from doing past relevant work, or that concerns the application of vocational factors, is an opinion on an issue reserved to the Commissioner. Every such opinion must still be considered in adjudicating a disability claim; however, the adjudicator will not give any special significance to such an opinion because of its source. See SSR 96–5p for an additional discussion of this issue.

Proceeding with the sequential evaluation process, when an individual is found to have a medically determinable impairment that is "severe," the adjudicator must next consider whether the individual's impairment(s) meets or equals the requirements of the Listing of Impairments contained in appendix 1, subpart P of 20 CFR part 404. Since RSDS/CRPS is not a listed impairment, an individual with RSDS/CRPS alone cannot be found to have an impairment that meets the requirements of a listed impairment. However, the specific findings in each case should be compared to any pertinent listing to determine whether medical equivalence may exist.[4] Psychological manifestations related to RSDS/CRPS should be evaluated under the mental disorders listings, and consideration should be given as to whether the individual's impairment(s) meets or equals the severity of a mental listing.

For those cases in which the individual's impairment(s) does not meet or equal the listings, an assessment of RFC must be made, and adjudication must proceed to the fourth and, if necessary, the fifth step of the sequential evaluation process. Again, in determining RFC, all of the individual's symptoms must be considered in deciding how such symptoms may affect functional capacities. Careful consideration must be given to the effects of pain and its treatment on an individual's capacity to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis. See SSR 96–7p, "Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements" and SSR 96–8p, "Titles II and XVI: "Assessing Residual Functional Capacity in Initial Claims."

Opinions from an individual's medical sources, especially treating sources, concerning the effect(s) of RSDS/CRPS on the individual's ability to function in a sustained manner in performing work activities, or in performing activities of daily living, are important in enabling adjudicators to draw conclusions about the severity of the impairment(s) and the individual's RFC. In this regard, any information a medical source is able to provide contrasting the individual's medical condition(s) and functional capacities since the alleged onset of RSDS/CRPS with the individual's status prior to the onset of RSDS/CRPS is helpful to the adjudicator in evaluating the individual's impairment(s) and the resulting functional consequences.

In cases involving RSDS/CRPS, third-party information, including evidence from medical practitioners who have provided services to the individual, and who may or may not be "acceptable medical sources," is often critical in deciding the individual's credibility. Information other than an individual's allegations and reports from the individual's treating sources helps to assess an individual's ability to function on a day-to-day basis and helps to depict the individual's capacities over a period of time, thus serving to establish a longitudinal picture of the individual's status. Such evidence includes, but is not limited to:

- Information from neighbors, friends, relatives, or clergy;
- Statements from such individuals as past employers, rehabilitation counselors, or teachers about the individual's impairment(s) and the effects of the impairment(s) on the individual's functioning in the work place, rehabilitation facility, or educational institution;
- Statements from other practitioners with knowledge of the individual, *e.g.*, nurse-practitioners, physicians' assistants, naturopaths, therapists, social workers, and chiropractors;
- Statements from other sources with knowledge of the individual's ability to function in daily activities; and
- The individual's own record (such as a diary, journal, or notes) of his or her own impairment(s) and its impact on function over time.

In accordance with SSR 96–7p, "Titles II and XVI: Evaluation of Symptoms In Disability Claims: Assessing The Credibility of An Individual's Statements," when additional information is needed to assess the credibility of the individual's statements about symptoms and their effects, the adjudicator must make every reasonable effort to obtain additional information that could shed light on the credibility of the individual's statements.

If the adjudicator determines that the individual's impairment(s) precludes the performance of past relevant work (or if there was no past relevant work), a finding must be made about the individual's ability to perform other work. The usual vocational considerations (see 20 CFR 404.1560–404.1569a and 416.960–416.969a) must be followed in determining the individual's ability to perform other work. See also SSR 96–8p, "Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims."

Many individuals with RSDS/CRPS are "younger individuals" ages 18 through 49 (see 20 CFR 404.1563 and 416.963). Age, education, and work experience are not usually considered to limit significantly the ability of individuals under age 50 to make an adjustment to other work, including unskilled sedentary work.[5] However, a finding of "disabled" is not precluded for those individuals under age 50 who do not meet all of the criteria of a specific rule and who do not have the ability to perform a full range of sedentary work. The conclusion about whether such individuals are disabled will depend primarily on the nature and extent of their functional limitations or restrictions. Thus, if it is determined that an individual is able to do less than the full range of sedentary work, refer to SSR 96–9p, "Titles II and XVI: Determining Capability to Do Other Work—Implications of a Residual Functional Capacity for Less Than a Full Range of Sedentary Work." As explained in that Ruling, whether the individual will be able to make an adjustment to other work requires adjudicative judgment regarding factors such as the type and extent of the individual's limitations or restrictions and the extent of the erosion of the occupational base for sedentary work.

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[4] In evaluating title XVI claims for disability benefits for individuals under age 18, consideration must be given to the possibility of finding functional equivalence based on the individual's impairment and related symptoms and their effects on whether the individual's impairment(s) results in marked and severe functional limitations.

[5] However, "younger individuals" age 45–49 who are unable to communicate in English or who are illiterate in English, whose past work was unskilled (or who had no past relevant work), or who have no transferable skills, and who are limited to a full range of sedentary work must be found disabled under rule 201.17 in Table No. 1 of appendix 2, of the Medical-Vocational Guidelines in 20 CFR part 404.

*Effective Date:* This Ruling is effective on the date of its publication in the **Federal Register**.

*Cross-References:* SSR 96–2p, "Titles II and XVI: Giving Controlling Weight to Treating Source Medical Opinions," SSR 96–3p, "Titles II and XVI: Considering Allegations of Pain and Other Symptoms in Determining Whether a Medically Determinable Impairment is Severe," SSR 96–5p, "Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner," SSR 96–7p, "Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements," SSR 96–8p, "Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims," and SSR 96–9p, "Titles II and XVI: Determining Capability to Do Other Work—Implications of a Residual Functional Capacity for Less Than a Full Range of Sedentary Work."

[FR Doc. 03–26332 Filed 10–17–03; 8:45 am]

**BILLING CODE 4910–02–U**

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## DEPARTMENT OF STATE

**[Public Notice 4515]**

## Bureau of Political-Military Affairs: Directorate of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

**EFFECTIVE DATE:** As shown on each of the seven letters.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter J. Berry, Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202 663–2700).

**SUPPLEMENTARY INFORMATION:** Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: October 3, 2003.

**Peter J. Berry,**

*Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.*

United States Department of State,
Washington, D.C. 20520
July 25, 2003.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of major defense equipment and defense articles in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the temporary export of one commercial communications satellite, plus ground maintenance, test and support equipment and secure communications equipment to International Waters in the Pacific Ocean for Sea Launch.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
*Assistant Secretary Legislative Affairs*

Enclosure:
Transmittal No. DDTC 075–03

The Honorable J. Dennis Hastert,
*Speaker of the House of Representatives.*

United States Department of State,
Washington, D.C. 20520
*www.state.gov*
September 3, 2003.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services and hardware to Algeria and the United Kingdom necessary for the development of a Command, Control, Communications, Computers, Information, Surveillance and Reconnaissance System for the Algerian Ministry of Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
*Assistant Secretary Legislative Affairs*

Enclosure:
Transmittal No. DDTC 078–03

The Honorable J. Dennis Hastert,
*Speaker of the House of Representatives.*

United States Department of State,
Washington, D.C. 20520
September 3, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles that are firearms controlled under category I of the United States Munitions List sold commercially under a contract in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 510 M–60E4 7.62 x 51mm machine guns and associated minor equipment to the Colombian Ministry of National Defense for use by the Colombian Army.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
*Assistant Secretary Legislative Affairs*

Enclosure:
Transmittal No. DTC 085–03

The Honorable J. Dennis Hastert,
*Speaker of the House of Representatives.*

United States Department of State,
Washington, D.C. 20520

September 3, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services, technical data and defense articles for the manufacture in Mexico of a ring laser gyro inertial sensor assembly and circuit card components.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

*Assistant Secretary, Legislative Affairs.*

Enclosure:

Transmittal No. DTC 087–03

The Honorable J. Dennis Hastert,

*Speaker of the House of Representatives.*

United States Department of State,
Washington, D.C. 20520

September 3, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense services, technical data and defense articles to Japan to support the manufacture, maintenance, and marketing of the AN/AAS–44 (JM) and TIFLIR–49(JM) Infrared Detecting Systems for the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

*Assistant Secretary, Legislative Affairs.*

Enclosure:

Transmittal No. DDTC 087–03

The Honorable J. Dennis Hastert,

*Speaker of the House of Representatives.*

United States Department of State,
Washington, D.C. 20520

September 3, 2003.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the manufacture in Denmark and The Netherlands of Optical Waveguide Chips for use as sensing devices for chemical and biological detection for the United States Government.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

*Assistant Secretary, Legislative Affairs.*

Enclosure:

Transmittal No. DTC 093–03

The Honorable J. Dennis Hastert,

*Speaker of the House of Representatives.*

United States Department of State,
Washington, D.C. 20520

September 10, 2003.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the transfer of technical data, assistance and manufacturing know-how to Japan necessary for the production, use, sale, repair, maintenance and overhaul of the F–4EJ Flight Director System for end-use by the Government of Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

*Assistant Secretary, Legislative Affairs.*

Enclosure:

Transmittal No. DTC 094–03

The Honorable J. Dennis Hastert,

*Speaker of the House of Representatives.*

[FR Doc. 03–26403 Filed 10–17–03; 8:45 am]

BILLING CODE 4710–25–P

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## DEPARTMENT OF STATE

**[Public Notice 4518]**

## Determination Pursuant to Section 1(b) of Executive Order 13224 Relating to Dhamat Houmet Daawa Salafia

Acting under the authority of section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13286 of July 2, 2002, and Executive Order 13284 of January 23, 2003, and in consultation with the Secretary of the Treasury, the Attorney General, and the Secretary of Homeland Security, I hereby determine that: Dhamat Houmet Daawa Salafia [also known as Group Protectors of Salafist Preaching; aka Houmat Ed Daawa Es Salifiya; aka Katibat El Ahoual; aka Protectors of the Salafist Predication; aka El-Ahoual Battalion; aka Katibat El Ahouel; aka Houmate Ed-Daawa Es-Salafia; aka the Horror Squadron; aka Djamaat Houmat Eddawa Essalafia; aka Djamaatt Houmat Ed Daawa Es Salafiya; aka Salafist Call Protectors; aka Djamaat Houmat Ed Daawa Es Salafiya; aka Houmate el Da'awaa es-Salafiyya; aka Protectors of the Salafist Call; aka Houmat ed-Daaoua es-Salafia; aka Group of Supporters of the Salafiste Trend; aka Group of Supporters of the Salafist Trend] has committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously," I determine that no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: October 10, 2003.

**Colin L. Powell,**

*Secretary of State, Department of State.*

[FR Doc. 03–26524 Filed 10–17–03; 5:00 pm]

BILLING CODE 4710–10–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## Commercial Space Transportation; Suborbital Rocket Launch

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** The FAA licenses launches of expendable and reusable launch vehicles (RLVs), including suborbital rockets, under regulations found in 14 CFR Ch. III, parts 400–450. The FAA is issuing this Notice to clarify the applicability of FAA licensing requirements to suborbital rocket launches, in general, and suborbital RLVs, in particular so that a vehicle operator can determine, in advance of consultation with the FAA, whether it

must obtain a launch license. Some suborbital RLVs currently under development use traditional aviation technology and components, including wings, for lift and glide capability, as well as rocket propulsion for thrust to maintain their trajectory. These vehicles may be termed "hybrid" in nature, because a single vehicle system uses aviation and aerospace technology during different portions of flight. This Notice advises an operator of a hybrid suborbital RLV that a proposed mission may require other FAA flight authorization, specifically an experimental airworthiness certificate (EAC), as a condition of a launch license, to operate in the National Airspace System (NAS).

**FOR FURTHER INFORMATION CONTACT:** Jay Garvin, AST–200, Manager, Licensing and Safety Division, Office of the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, U.S. Department of Transportation, 800 Independence Avenue, SW., Washington, DC 20591, (202) 385–4700; or David Hempe, AIR–100, Manager, Aircraft Certification Service, Office of the Associate Administrator for Regulation and Certification, Federal Aviation Administration, U.S. Department of Transportation, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–8235.

## Comments Invited

The FAA is not opening a docket for the receipt of comments; however, we welcome input from person interested in submitting views and information to the FAA regarding suborbital RLV missions and concepts. Please send them to the attention of Jay Garvin, AST–200, Manager, Licensing and Safety Division, Office of the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, U.S. Department of Transportation, Room 331, 800 Independence Avenue, SW., Washington, DC 20591.

**SUPPLEMENTARY INFORMATION:**

## Background

The Federal Aviation Administration (FAA) licenses the launch of a launch vehicle, reentry of a reentry vehicle and the operation of a launch or reentry site under authority granted to the Secretary of Transportation in the Commercial Space Launch Act of 1984, as amended (CSLA), codified in 49 U.S.C. Subtitle IX, chapter 701, and delegated to the FAA Administrator. Under the CSLA, a U.S. citizen must obtain authorization from the FAA to launch, reenter or operate a launch or reentry site anywhere in the world. Any person wishing to conduct commercial space transportation activities in the United States must also obtain FAA authorization to do so. FAA authorization for these activities is granted by a license issued by the FAA's Associate Administrator for Commercial Space Transportation (AST) to the vehicle or site operator. A license prescribes terms and conditions for conducting authorized activity. Requirements for obtaining and remaining in compliance with a license are located in 14 CFR Chapter III, parts 400–450. U.S. Government space activities, including launches the government carriers out for the Government are not subject to licensing by the FAA.

When the CSLA was enacted in 1984, only expendable launch vehicles (ELVs) and sounding rockets were available for private sector use, along with certain ballistic missiles adapted for commercial applications. A report prepared by the Senate Committee on Commerce, Science, and Transportation accompanying passage of the CSLA recognized that vehicle and space-related technologies would continue to evolve with commercialization of space access and assets and that the regulatory program would have to adapt. The Committee "recognizes that additional requirements may be necessary to meet the requirements and consideration of future launch technologies and activities and new classes payloads that presently do not exist." S. Rept. 98–656, "Commercial Space Launches, 98th Cong., 2d Sess., at pp. 11–12.

The Committee's observations in 1984 were borne out by the development of reentry capability for commercial use in the 1990s. Increasing emphasis on efficient and lower cost space access, combined with reentry capability, prompted a range of new launch vehicle concepts that would be fully or partially reusable. This new type of launch vehicle became known as a reusable launch vehicle or RLV, in contrast to conventional one-time use expendable launch vehicles or ELVs. In 1998, Congress amended the CSLA by adding reentry licensing authority for reentry vehicles, including RLVs, "to establish the appropriate legal framework to ensure public safety is protected while minimizing regulatory burden, delay or uncertainty that could inhibit commercial exploitation of reentry capabilities." H. Rep. 105–347, "Commercial Space Act of 1997," 105th Cong., 1st Sess., at p. 21. Reentry licensing would authorize the purposeful return of a reentry vehicle and any payload from Earth orbit or outer space to Earth. A reentry vehicle is one that is designed to return from Earth orbit or outer space to Earth substantially intact.

Although the FAA had licensing authority under the CSLA over suborbitally operated RLVs by virtue of its licensing authority over suborbital rocket launches, the addition of licensing authority for reentry activities and specific reference to RLVs in the 1998 amendments eliminated regulatory risk, and removed any investor doubt, that Congress did indeed intend the FAA to address through CSLA licensing the unique safety and policy issues that may result from launch and intact landing of a launch vehicle, whether or not the vehicle enters Earth orbit before returning for landing on Earth.

The FAA promptly issued licensing regulations to implement its newly added statutory authority over reentry activity and RLV missions in general. The FAA covered suborbitally operated RLVs in its rulemaking. Under the licensing requirements for RLV missions, a suborbitally operated RLV may follow either a ballistic or maneuverable trajectory. The FAA explained in its rulemaking a proposal that a "suborbital trajectory is a flight path that is not closed, whereas an orbit is a closed path. A suborbital trajectory may be ballistic, that is, acted on only by atmospheric drag and gravity, or it can be controlled by external forces and therefore maneuverable." *See* 64 FR 19626–19666, April 21, 1999, at p. 19630, fn. 1. The FAA proposed, and codified, a uniform measure of public safety risk for an RLV that is launched and subsequently returns from Earth orbit and one that is launched and operates in suborbital fashion, where maneuvered in its return trajectory or returning through ballistic flight. The final RLV mission licensing rule (14 CFR part 431), issued September 19, 2000, clarified that all RLV missions, whether orbital (consisting of launch and reentry) or suborbital (launch and intact landing) are covered by the rule although only those RLVs that return to Earth from outer space or Earth orbit may be considered to "reenter" under the statutory definition of "reenter; reentry." *See* "Final Rule, Commercial Space Transportation Reusable Launch Vehicle and Reentry Licensing Regulations," 65 FR 56618–56667, September 19, 2000.

Despite the efficient development of a comprehensive regulatory regime for RLVs, vehicle development slowed in the late 1990s, with the downturn in the Low Earth Orbit (LEO) satellite market. Recently, though, mounting demand for space tourism services has prompted renewed interest in commercial RLV possibilities. To spur entrepreneurial competition and development, the X-Prize Foundation promises a $10 million purse for the first qualifying contestant to successfully conduct two piloted flights of a privately financed and built vehicle, within a two-week timeframe, to a minimum altitude of 100 kilometers. Ultimately, RLV technology may provide trans-atmospheric high-speed flight around the globe, for rapid international travel.

The FAA issued reports for the years 1998–2001, surveying the various RLV concepts under development, publicly and privately, including announced X-Prize contestants. The reports are available and can be downloaded from the AST Web site: *http://ast.faa.gov.* A brief overview of vehicles featured in the various reports illustrates the range of RLV concepts, from single-stage-to-orbit vertical take-off models to multi-stage air-launched systems employing wing-generated lift to gain altitude before initiating rocket motors to generate thrust.

Some RLV concepts combine aviation and space technology so that they are essentially hybrid in nature. Some vehicles are hybrid because a single vehicle integrates characteristics of both flight technologies, employing them for different stages of flight. Others are hybrid because two vehicles, each capable of operating independently at some point during flight, are combined or joined, to form a launch system, *e.g.,* where one vehicle serves as a high altitude platform from which a second vehicle begins its flight.

RLV designers whose vehicles embody aircraft operating characteristics, in whole or in part, have expressed uncertainty about the type of regulatory regime that would cover flight operations, *i.e.,* whether a launch license or aircraft certification, such as an experimental airworthiness certificate (EAC), would be required for flight authorization. Some also question whether a test flight is a licensable event or requires only aircraft certification as the sole flight authorization, particularly where flight operations would be limited to high altitude atmospheric tests not bound for low Earth orbit or otherwise into outer space.

There is concern that uncertainty regarding the applicable regulatory regime may impede the ability of developers of hybrid suborbital RLVs to obtain the financing needed to take their concepts from the drawing board into flight testing. Concerns stem from not knowing, in advance of operation, whether suborbital flight would be regulated under the CSLA and the Commercial Space Transportation Regulations, 14 CFR Ch. III, as launch of an RLV that is a suborbital rocket, or under the Federal Aviation Regulations as civil aircraft that must satisfy airworthiness certification requirements. Although both regulatory regimes, launch licensing and aircraft certification, protect the health and safety of the uninvolved public, there are differences in the approval processes that may affect technical choices in terms of vehicle design and planned flight profiles, in addition to the perceived difference in cost of regulatory compliance.

At a July 24, 2003 joint congressional hearing on commercial human space flight, witnesses noted the uncertainty surrounding the appropriate flight authorization for a winged suborbital RLV. They urged Congress to reduce the regulatory risk facing potential investors by mandating an enabling regulatory framework for commercial suborbital human space flight with AST taking the lead in regulating the activity.

The FAA is issuing this Notice to eliminate uncertainty regarding the applicable regulatory regime for a suborbital RLV and suborbital rockets, in general. The Notice provides a technical demarcation between launch vehicles and aircraft so that the public, including vehicle developers, can determine in advance of consultation with the FAA whether a launch license or only aircraft certification is required to conduct flight operations.

### *Suborbital Rocket*

The Secretary of Transportation has authority to differentiate between civil aviation and launch of a launch vehicle, including a suborbital rocket. Authority under the CSLA to license suborbital rocket launches and other commercial space transportation activities was delegated to the FAA Administrator in 1995.[1] Licensing authority is exercised by AST, under a delegation from the FAA Administrator. Safety of air commerce and the National Airspace System (NAS) is regulated under separate statutory authority provided in 49 U.S.C. Subtitle VII, Part A, "Air Commerce and Safety."

A license under the CSLA is required to launch a suborbital rocket. The CSLA defines a "launch vehicle" to mean a vehicle built to operate in, or place a payload in, outer space, and a suborbital rocket. "Launch" means to place or try to place a launch vehicle or reentry vehicle and any payload from Earth—in a suborbital trajectory; in Earth orbit in outer space, or otherwise in outer space. 49 U.S.C. 70102. for a suborbital rocket, "launch" under the CSLA means placing a suborbital rocket on a suborbital trajectory.

This Notice informs the public of the criteria used by the FAA to differentiate civil aircraft subject to aircraft certification and operating standards for flight in airspace from a suborbital rocket launch subject to licensing under the CSLA. The FAA considers use of rocket propulsion for thrust, as opposed to wing-generated lift, in determining whether a vehicle that flies through airspace is a suborbital rocket under the CSLA, or an aircraft. Quite simply, a vehicle that relies principally upon rocket-propelled thrust to maintain its intended flight trajectory during powered flight is a launch vehicle, or rocket, subject to licensing under the CSLA unless exempt. A vehicle that relies chiefly upon lift generated by its wings in maintaining its intended course during powered flight is an aircraft subject to regulation under the Federal Aviation Regulations. A rocket-propelled civil aircraft that relies upon wing-borne lift for the majority of its powered flight is not a suborbital rocket requiring a license for operation. The "E–Z Rocket," flown by X–COR, is an example of a rocket-propelled aircraft.

To summarize, a suborbital rocket subject to CSLA licensing is a rocket-propelled vehicle intended for flight on a suborbital trajectory, whose thrust is greater than its lift for the majority of the powered portion of its flight.

The FAA rulemaking regarding RLV missions, concluded in 2000, addressed "suborbital trajectory" in the context of RLVs. The FAA regards a suborbital trajectory as the intentional flight path, or any portion of that flight path, of a launch vehicle or reentry vehicle, whose vacuum instantaneous impact point (IIP) does not leave the surface of the earth. The IIP of a launch vehicle is the projected impact point on Earth where the vehicle would land if its engines stop or where vehicle debris, in the event of failure and break-up, would land. The notion of a "vacuum" IIP reflects the absence of atmospheric effects in performing the IIP calculation. If the vacuum IIP never leaves the Earth's surface, the vehicle would not achieve Earth orbit and would therefore be on a suborbital trajectory.

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[1] Certain small-scale unmanned rocket launches have traditionally been subject to FAA flight authorization under 14 CFR part 101, and are not subject to licensing under the CSLA. FAA authority over those small recreational and hobby rockets was not affected by enactment of the CSLA, nor was delegation of CSLA licensing authority to the FAA Administrator intended to place launch vehicle licensing under 14 CFR part 101 or aircraft certification regulations.

The FAA relies upon thrust versus lift during powered flight in differentiating launch vehicles from aircraft because it provides a clear and objective point of demarcation that relies on technical distinctions grounded in the science of physics, not labels. Other options for differentiating launch vehicles from aircraft are not as well grounded in science or logic. For example, the FAA could point to the use of wings and classify all winged vehicles as aircraft that must satisfy airworthiness certification requirements; however, the Pegasus launch vehicle is a winged vehicle used to place payloads in Earth orbit and is subject to CSLA licensing. Similarly, the Space Shuttle has wings but is not regarded as an aircraft (nor is it subject to licensing because its operation is deemed to be by and for the Government and therefore exempt from the CSLA). The FAA could look to other traditional indicia of space flight, such as use of pressure suits or reaction control systems, but both are used for high altitude aircraft and therefore do not help us distinguish launch vehicles from aircraft. Altitude is also not an appropriate discriminator for launch vehicles and aircraft because some suborbital rockets, including sounding rockets, are not necessarily intended for launch into Earth orbit or outer space and because aircraft can be designed to operate at increasingly extreme altitudes above controlled airspace. Therefore, altitude does not offer an objective means of distinguishing suborbital launch vehicles from aircraft.

The FAA finds that flight physics provides a clear, certain and objective criteria the public can use in determining whether a vehicle requires a license from the FAA under the CSLA. Using the suborbital rocket criteria identified above, a prospective operator can determine whether it must contact AST and begin the pre-application consultation process required for a launch license.

*Licensing Requirements for Suborbital RLVs*

A launch license is issued consistent with public health and safety, safety of property, and U.S. national security and foreign policy interests, including international obligations. Upon satisfactory completion of the various reviews required under the Commercial Space Transportation Licensing Regulations, AST issues a license to an operator authorizing the mission; however, authorization is subject to operator compliance with license terms and conditions.

The FAA has an established regulatory framework governing launches of suborbital rockets, both expendable and reusable. Suborbital ELVs are regulated under license requirements contained in 14 CFR part 415.[2] Suborbital RLVs, including those that employ traditional aviation characteristics, such as wings and landing gear, are regulated under RLV mission licensing requirements contained in 14 CFR part 431.

Certain suborbital RLVs, described in this Notice as "hybrid," that employ aviation characteristics are also regulated under FAA aircraft regulations. Where operation of a launch vehicle includes operation of a civil aircraft for any portion of flight, an EAC may be required, in addition to a launch license, in order to obtain complete flight authorization for operation in the national airspace system. Where appropriate, obtaining and complying with an EAC under 14 CFR parts 21 and 91, with special operating conditions, would be made a condition of a suborbital RLV mission license. During pre-license application consultation, AST will refer an applicant proposing a hybrid suborbital RLV mission to the FAA's Aircraft Certification Service and Flight Standards Service to obtain the required certificate if the applicant has not already done so.

AST has issued an advisory circular (AC) regarding test flight launch licensing to illustrate acceptable means of satisfying safety requirements of 14 CFR part 431. Test flights may be a desirable means of validating performance capabilities of a new vehicle under increasingly demanding flight parameters. AC 431.35–3, "Licensing Test Flight RLV Missions," issued August 2002, explains how a license applicant can streamline its submissions under the safety requirements of part 431, when seeking authorization to conduct a series of suborbital RLV test flights that are subject to licensing under the CSLA.

Not all test flights will require licensing under the CSLA. A license will be required only for those vehicles that operate as a suborbital rocket and that are launched. In addition, the Commercial Space Transportation Licensing Regulations exempt from licensing certain low-powered rocket launches known as "amateur rocket activities." Test flights of a hybrid suborbital RLV that fit the definition of "amateur rocket activities" are not licensed by the FAA, although an EAC may be required. The term, "amateur rocket activities," is defined in 14 CFR 401.5. It means launch activities conducted at private sites that satisfy all three of the following characteristics:

- Powered by a motor(s) having a total impulse of 200,000 pound-seconds or less;
- Total burning or operating time of less than 15 seconds; and
- A ballistic coefficient—*i.e.*, gross weight in pounds divided by frontal area of rocket vehicle—less than 12 pounds per square inch.

The FAA also retains authority to waive for a particular applicant the requirement to obtain a license where the agency determines that the waiver is in the public interest and will not jeopardize public health and safety, the safety of property and U.S. national security and foreign policy interests.

Issued in Washington, DC, on October 14, 2003.

**Patricia Grace Smith,**

*Associate Administrator for Commercial Space Transportation.*

**Nicholas A. Sabatini,**

*Associate Administrator for Regulation and Certification.*

[FR Doc. 03–26373 Filed 10–15–03; 4:42 pm]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Mobile and Baldwin Counties, AL

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Mobile and Baldwin Counties, Alabama.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joe D. Wilkerson, Division Administrator, Federal Highway Administration, 500 Eastern Blvd., Suite 200, Montgomery, Alabama 36177, Telephone: (334) 223–7370.

**SUPPLEMENTARY INFORMATION:** The FHWA in cooperation with the Alabama Department of Transportation (ALDOT) will prepare an environment impact statement on a proposal to increase the capacity of Interstate Route 10 at Mobile by constructing a new six-lane bridge across the Mobile River at Mobile and widening the existing bridges across Mobile Bay from four to eight lanes.

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[2] AN FAA rulemaking is pending that would revise licensing and safety requirements for licensed ELV launches, including suborbital ELVs. *See* Docket No. FAA–2000, accessible through the Department of Transportation's electronic Docket Management System (DMS), for the most current rulemaking proposal and public comments. You can access the DMS using the following Web site: *http://dms.dot.gov.*

Interstate Route 10 now goes under the Mobile River in a four-lane tunnel and crosses Mobile Bay on two, two-lane bridges, each seven mile long bridges. Existing and predicted traffic volumes require that additional capacity on I–10 across the Mobile River and Mobile Bay be added. Currently, vehicles transporting flammables, corrosives, and explosives are prohibited from using the I–10 tunnel, which requires these hazardous materials to be transported along a circuitous route along a surface street, part of I–165, a bridge over the Mobile River, and a segment of a noncontrolled-access State route.

An Environmental Assessment (EA) has been prepared for the project which essentially evaluated a single alignment. The alignment evaluated in the EA emerged from a *Feasibility Study for a Mobile River I–10 Bridge,* which was completed in 1997 for the South Alabama Regional Planning Commission. The proposed design for the new bridge provides 190 feet of vertical clearance with a 1,250-foot span over the Mobile River ship channel.

Because of concerns relating to visual impacts of the bridge on historic properties, including a National Register Landmark structure (Old City Hall), it has been decided to prepare an EIS which will include reevaluation of all three alignments included in the feasibility study.

Alternatives under consideration are no build and adding capacity by constructing a six-lane bridge across the Mobile River, which will tie or merge with the existing I–10 bridges across Mobile Bay, and widening the current Mobile Bay bridges from four to eight lanes. Three build alternates were considered in a feasibility study performed for the project. All three alternates will be further evaluated in the development of the EIS.

The prior EA process included two public involvement meetings, meetings with local historic interests, resource agencies, a Bridge Aesthetic Design Workshop, a neighborhood workshop, and two public hearings. Early coordination letters were sent to resource agencies, tribes, and interested parties. The EA was also distributed to interested parties.

Cooperating agencies include the U.S. Coast Guard and U.S. Army Corps of Engineers.

New early coordination letters, two additional public involvement meetings, and two public hearings are proposed at this time. The existing, cooperating agencies will be requested to maintain that status for the EIS.

During the evaluation of effect on historic properties, an adverse effect was determined for several properties including the Old City Hall. Therefore, coordination with the Department of Interior, the Advisory Council on Historic Preservation, and the State Historic Preservation Officer (Alabama Historic Commission) is required. Also, the National Trust on Historic Preservation and the Mobile Historic Commission requested to be consulting parties during the EA process. That coordination will continue during the EIS process.

To ensure that the full range of issues related to this project are addressed and that all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Joe D. Wilkerson,**

*Division Administrator, Montgomery, Alabama.*

[FR Doc. 03–26342 Filed 10–17–03; 8:45 am]

BILLING CODE 4910–22–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Railroad Administration

## Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Federal Railroad Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking approval of the following information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

**DATES:** Comments must be received no later than December 19, 2003.

**ADDRESSES:** Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number 2130–New". Alternatively, comments may be transmitted via facsimile to (202) 493–6230 or (202) 493–6170, or E-mail to Mr. Brogan at *robert.brogan@fra.dot.gov*, or to Ms. Steward at *debra.steward@fra.dot.gov*. Please refer to the assigned OMB control number or collection title in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, Sec. 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of proposed new information collection activities that FRA will submit for clearance by OMB as required under the PRA:

*Title:* Work Schedules and Sleep Patterns of Maintenance of Way Employees.

*OMB Control Number:* 2130–New.

*Abstract:* In a continuing effort to improve rail safety and to reduce the number of injuries and fatalities to rail workers, FRA and the rail industry have recently focused on the issue of fatigue among train and engine crew personnel. Because railroading is an around-the-clock, seven-days-a-week operation and because a wide array of workers are needed both to operate and to maintain the nation's railroads, other crafts—besides train and engine crews—can also be subject to fatigue. The non-operating crafts, including locomotive and car repair, track maintenance, signal system maintenance and telecommunications, fall into this second category. FRA is proposing a study which will focus on maintenance of way employees, one of the non-operating railroad crafts. The project will be very similar in both method and scope to a current study focusing on railroad signalmen. To develop an understanding of the work schedule-related fatigue issues for maintenance of way employees, FRA proposes to undertake this study. The proposed study has two primary purposes: (1) It aims to document and characterize the work/rest schedules and sleep patterns of the maintenance of way employees; and (2) It intends to examine the relationship between these schedules and level of alertness/fatigue for the individuals who work these schedules. The intent is to report results in the aggregate, not by railroad. Subjective ratings from participants of their alertness/sleepiness on both work and non-work days will be an integral part of this study. The data will be collected through the use of a daily diary or log, as well as a brief background questionnaire for each participant. Analysis of the diary data will allow FRA to assess whether or not there are any work-related fatigue issues for maintenance of way employees.

*Form Number(s):* FRA F 6180.113; FRA F 6180.114.

*Affected Public:* Rail Workers.

*Respondent Universe:* 338 Maintenance of Way Employees.

*Frequency of Submission:* On occasion.

*Estimated Annual Burden:* 874 hours.

*Status:* Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**Authority:** 44 U.S.C. 3501–3520.

Issued in Washington, DC on October 14, 2003.

**Kathy A. Weiner,**

*Director, Office of Information Technology and Support Systems, Federal Railroad Administration.*

[FR Doc. 03–26377 Filed 10–17–03; 8:45 am]

BILLING CODE 4910–06–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Railroad Administration

## Petition for Waiver of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR), §§ 211.9 and 211.41 notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waiver of compliance from certain requirements of Federal railroad safety regulations. The individual petition is described below, including the parties seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

### Alaska Railroad Corporation

[Docket Number FRA–2003–15756]

The Alaska Railroad Corporation (ARRC) seeks a waiver of compliance from certain sections of 49 CFR parts 216, Special Notice and Emergency Order Procedures: Railroad Track, Locomotive and Equipment; 217, Railroad Operating Rules; 218, Railroad Operating Practices; 229, Railroad Locomotive Safety Standards; 233, Signal Systems Reporting Requirements; 235, Instructions Governing Applications for Approval of a Discontinuance or Material Modification of a Signal System or Relief from the Requirements of Part 236; 236, Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices, and Appliances; and 240, Qualification and Certification Of Locomotive Engineers, under § 211.51, Tests, to allow them to acquire, test, and implement technology designed to prevent train collisions, overspeed violations, and protect roadway workers. The program will enable ARRC to demonstrate and validate an integrated system provided by three vendors, Quantum Engineering, Inc. provider of the on-board equipment, Meteor Communications Corporation, provider of the communications backbone and wayside devices, and Engesis, provider of the computer-aided dispatching (CAD) system. This technology is referred to as a Collision Avoidance System (CAS).

#### *Petitioner's Justification*

The petitioner provided the following justification for relief:

CAS is a communications-based train control system designed to enhance safety by precisely managing the movements of locomotives, trains, and on-track equipment in real time. The CAS safety enhancements are achieved through a communications-based system that enforces movement authority and speed restrictions for CAS equipped trains.

The CAS integrates four segments to provide the enforcement: the location segment, the locomotive segment, the dispatcher system segment, and the communications segment. The location segment utilizes Global Position System (GPS) satellites to precisely determine the location of equipped locomotives and/or end of train devices using Differential GPS based location system. The dispatcher segment provides full support for train dispatching over the ARRC. The system is field proven, runs in logical modules, and is interfaced with satellite and radio technology. Communication among dispatchers and train crews is over a field proven communications segment, and is mainly by means of messages that are processed and converted into visual information. The dispatcher confirms or modifies the meet/pass locations and the system automatically incrementally generates and delivers the electronic enforcable authority and temporary speed limits for each train under CAS control. This information is delivered through the communications segment to the locomotive. Procedures are implemented to ensure the data received is complete and correct. Several modules within the locomotive segment manage authority limit enforcement, speed enforcement, switch monitoring, signal compliance and signal comparitor functionality, track integrity, and wayside detector monitoring and enforcement. Failsafe design dictates that an undelivered message will stop the train at the end of its active authority. The approaching locomotive interrogates wayside devices, including signals, and designated switches to ensure proper alignment and aspect for the route. The locomotive segment confirms the locomotive's location, via the location segment, and enforces movement and speed limits by monitoring the train's location and speed and applying the brakes to stop the train if necessary to prevent a violation. The crew is presented a graphical and textual view of the authorities, speed restrictions, and current location, and is alerted in advance to any upcoming restriction. Human reaction to the prompts issued by the system will prevent intervention by CAS. All on-board and dispatcher office information and human actions are recorded.

The CAS will be tested and demonstrated system wide on the ARRC in the State of Alaska on the subdivisions/branches shown in Table 1.

TABLE 1

| Subdivision/Branch | Length (miles) |
|---|---|
| Seward: Anchorage to Seward | 114.3 |
| Whittier: Portage to Whittier | 12.4 |
| Anchorage: Anchorage to Fairbanks | 356.0 |
| Anchorage Intl Airport Branch: Anchorage to End of Track | 2.45 |
| Palmer Branch: Matanuska to Palmer | 6.2 |
| Suntrana Branch: Healy to End of Track | 1.7 |
| Fairbanks Intl Airport Branch: Fairbanks to End of Track | 10.0 |
| Eielson Branch: Fairbanks to Eielson | 28.0 |
| Total | 531.05 |

The present methods of operation on the CAS territories are shown in Table 2.

TABLE 2

| Subdivision/Branch | CTC | CTC 2 main tracks | Non-ABS | Rest/yard limits |
|---|---|---|---|---|
| Seward: Anchorage to Seward | 4.8 | 0 | 106.1 | 3.4 |
| Whittier: Portage to Whittier | 2.7 | 0 | 5.6 | 4.1 |
| Anchorage: Anchorage to Fairbanks | 8.45 | 2.8 | 341.95 | 2.8 |
| Anchorage Intl Airport Branch | 0 | 0 | 0 | 2.45 |
| Palmer Branch: Matanuska to Palmer | 0 | 0 | 0 | 6.2 |
| Suntrana Branch: Healy to End of Track | 0 | 0 | 0 | 1.7 |
| Fairbanks Intl Airport Branch | 0 | 0 | 0 | 10.0 |
| Eielson Branch: Fairbanks to Eielson | 0 | 0 | 0 | 28.0 |
| Total (531.05 miles) | 15.95 | 2.8 | 453.65 | 58.65 |

The CAS production system will enforce the General Code of Operating Rules (GCOR) rules governing the movement of trains. Operating Rules changes required to support the CAS will be identified and documented during testing and evaluation.

The waiver is requested for a testing period commencing September, 2003, and extending to the conclusion of the test phase. The testing period will terminate December, 2005 unless AARC notifies FRA of an earlier termination date.

The following are the specific waiver requests and their justifications. References are to Chapter II, Subtitle B, Title 49 of the Code of Federal Regulations.

Section 216.13

Special notice for repairs—locomotive. During development, demonstration, and test, waiver is requested for CAS locomotives to the extent that non-operation of CAS equipment installed on-board, whether through malfunction or deactivation, shall not be construed as an unsafe condition requiring special notice for repairs. Waiver is also sought for non-CAS-equipped locomotives operating in the CAS test territory to the extent that the absence of CAS equipment on-board shall not be construed as an unsafe condition requiring special notice for repairs.

*Justification:* With or without CAS equipment operating on-board the controlling locomotive, a train remains subject to applicable railroad operating rules. CAS tests require flexibility in installing, removing, turning on, and turning off the on-board equipment. The initial CAS tests will equip only a small subset of locomotives operating in the pilot territory or test bed.

Section 217.9

Program of operational tests and inspections; recordkeeping. Waiver is requested exempting operation of CAS equipment and procedures from the requirements for operational tests, inspections, and associated recordkeeping during the test phase.

*Justification:* During the CAS test program procedures for using CAS equipment and functions will be refined and modified. Until such procedures are defined, they cannot be addressed in the GCOR.

Section 217.11

Program of instruction on operating rules; recordkeeping; and electronic recordkeeping. Waiver is requested exempting operation of CAS equipment and procedures from the requirements for instruction and associated record keeping during the test phase.

*Justification:* During the CAS test phase procedures for using CAS equipment and functions will be refined and modified. Until such procedures are defined, they cannot be addressed in the GCOR.

### Part 218

(Subpart D) Prohibition Against Tampering With Safety Devices. Waiver is requested exempting on-board CAS equipment from the requirements of §§ 218.51, 218.53, 218.55, 218.57, 218.59, and 218.61 to the extent that CAS equipment on-board a locomotive shall not be considered a "safety device" subject to the provisions of this subpart at any time during the test phase.

*Justification:* CAS tests require flexibility in installing, removing, turning on, and turning off the on-board equipment. ARRC requires the flexibility to permanently disable or remove CAS equipment in the event that a production system is not implemented.

### Section 229.7

Prohibited acts. Waiver is requested to the extent that CAS equipment on-board a locomotive shall not be considered "appurtenances" rendering the locomotive subject to the provisions of this section.

*Justification:* CAS tests require flexibility in installing, removing, turning on, and turning off the on-board equipment. ARRC requires the flexibility to temporarily or permanently disable on-board equipment. Whether or not the on-board CAS equipment is functioning, the train remains subject to the provisions of the rules governing the current methods of operation. CAS will be subject to the provisions of 49 CFR part 236, subparts A through G, and proposed Subpart H if promulgated, and therefore, should not be subject to part 229 in any fashion.

### Section 229.135

Event recorders. Waiver is requested to the extent that CAS equipment on-board a locomotive shall not be considered an "event recorder" subject to the provisions of this section.

*Justification:* CAS equipment by design will operate intermittently during the pilot program. CAS tests require flexibility in installing, removing, turning on, and turning off the on-board equipment. ARRC requires the flexibility to temporarily or permanently disable on-board CAS equipment.

### Section 233.9

Annual Reports. Waiver is requested exempting CAS operations in the test phase from the reporting requirements of this section.

*Justification:* ARRC recognizes that a CAS production system is subject to the provisions of this section, however, imposition of the requirements during the test phase would impose an unnecessary paperwork burden.

### Section 235.5

Changes requiring filing of application. Waiver is requested exempting the CAS from the filing requirements of this section during the test phase.

*Justification:* CAS tests require flexibility in installing, removing, turning on, and turning off the CAS equipment. ARRC requires the flexibility to permanently disable or remove CAS equipment in the event the production system is not implemented.

### Section 236.4

Interference with normal functioning of device. Waiver is requested to the extent that CAS equipment be excluded from this requirement during the test phase.

*Justification:* During the CAS test phase, the "normal functioning" will be identified, defined and redefined. CAS tests require flexibility in installing, removing, turning on, and turning off the CAS equipment. With or without CAS equipment on-board the controlling locomotive, the train remains subject to the provisions of the rules governing the existing methods of operation.

### Section 236.5

Design of control circuits on closed circuit principle. Waiver is requested excepting CAS equipment from the closed circuit design requirement.

*Justification:* CAS is composed of solid-state components that are software driven. Neither the hardware nor software can technically be designed to meet the provisions of this section. However, all safety-critical circuits external to the CAS equipment will be designed to meet this requirement.

### Section 236.11

Adjustment, repair, or replacement of component. Waiver is requested exempting CAS components on-board a locomotive from the requirements of this section during the test phase.

*Justification:* CAS tests require flexibility in installing, removing, modifying, turning on and turning off equipment. Failure of a CAS component during the test phase will not jeopardize the safety of train operations. With or without CAS equipment operating on-board the controlling locomotive, the train remains subject to the provisions of the rules governing the existing method of operation.

### Section 236.15

Timetable instructions. Waiver is requested exempting the CAS territory from the timetable designation requirement of this section during the CAS test phase.

*Justification:* The CAS test phase will consist of tests and demonstrations at undetermined intervals and identifying the test territory in the timetable as "CAS" (or some similar label) would be both premature and an unnecessary paperwork burden.

### Section 236.76

Tagging of wires and interference of wires or tags with signal apparatus. Waiver is requested exempting CAS equipment from the wire-tagging requirement.

*Justification:* CAS hardware consists of computers, computer peripherals, and communication devices. While the inapplicability of this section to circuit boards, connectors, and cables would appear obvious, waiver is sought for clarification.

### Section 236.101

Purpose of inspection and tests; removal from service of relay or device failing to meet test requirements. Waiver is requested exempting CAS equipment from the requirement for removal of failed equipment from service during the test phase.

*Justification:* CAS requires flexibility in installing, removing, turning on, and turning off the CAS equipment. With or without CAS equipment operating on-board, a train remains subject to the provisions of the rules governing the existing methods of operation.

### Section 236.109

Time releases, timing relays and timing devices. Waiver is requested exempting CAS equipment from the testing requirement of this section during the test phase.

*Justification:* The timing devices in CAS equipment are software-driven, have no moving parts, and are far more reliable than the devices for which this regulation was promulgated to address.

### Section 236.110

Results of tests. Waiver is requested exempting CAS tests from the record keeping requirements of this section.

*Justification:* During the CAS test phase, the types of tests needed to ensure appropriate levels of maintenance will be defined.

### Section 236.501

Forestalling device and speed control. Waiver is requested exempting CAS from the requirement for medium-speed restriction.

*Justification:* CAS receives input from the track database, bulletins, and signal system with regard to speed. In the event of a failure of the engineer to obey any restrictive speed CAS will enforce a stop.

### Section 236.511

Cab signals controlled in accordance with block conditions stopping distance in advance. Waiver is requested exempting the CAS on-board display from the cab-signal requirements of this section.

*Justification:* CAS is not an automatic cab signal system and will have no connection to a signal system. CAS will receive data radio input from the signal system and display the signal name that forms the basis for limits of authority that will be depicted on the display.

### Section 236.515

Visibility of cab signals. Waiver is requested exempting the CAS display from the visibility requirement of this section during the test phase.

*Justification:* The visibility requirements of this rule will be met in the CAS production system.

### Section 236.534

Entrance to equipped territory; requirements. Waiver is requested exempting CAS from the requirements of this section during the test phase.

*Justification:* CAS tests require flexibility in installing, removing, turning on, and turning off CAS equipment.

### Section 236.552

Insulation resistance; requirement. Waiver is requested exempting CAS equipment from the insulation resistance requirement of this section.

*Justification:* CAS equipment consists of computers, computer peripherals, and communications equipment. Insulation resistance tests could be damaging to such components.

### Section 236.553

Seal, where required. Waiver is requested exempting CAS from the seal requirement of this section.

*Justification:* The CAS will allow for manual disablement of on-board CAS functions and equipment through an on-board manual function. Use of the on-board cutout function will be electronically monitored and reported to the dispatcher as an alarm. The CAS tests require flexibility in installing, removing, turning on, and turning off CAS equipment.

### Section 236.566

Locomotive of each train operating in train stop, train control or cab signal territory; equipped. Waiver is requested to the extent that the equipped requirements in the section shall not apply to CAS during the test phase.

*Justification:* A small subset of locomotives operating in the test territory will be CAS equipped; the majority of trains will not be equipped. CAS tests require flexibility in installing, removing, turning on and turning off the on-board equipment. In any case, all CAS tests will be conducted under the provisions of the rules governing the existing methods of operation.

### Section 236.567

Restrictions imposed when device fails and/or is cut out enroute. Waiver is requested exempting CAS tests from the restrictions associated with device failure or cutout.

*Justification:* CAS tests require flexibility in installing, removing, turning on and turning off the on-board equipment. All CAS tests will be conducted under the provisions of the rules governing the existing methods of operation. A failure or deactivation of the CAS equipment will not jeopardize safety of train operations.

### Section 236.586

Daily or after trip test. Waiver is requested exempting CAS from the requirements of this section during the test phase.

*Justification:* During the CAS test phase, the requirements for a daily or after trip test, if necessary, will be defined. An objective is to perform this test without human intervention.

### Section 236.587

Departure test. Waiver is requested exempting CAS from the requirements of this section during the test phase.

*Justification:* During the CAS test phase, the requirements for a departure test will be defined. An objective is to perform this test without human intervention.

### Section 236.588

Periodic test. Waiver is requested exempting CAS from the requirements of this section during the test phase.

*Justification:* During the CAS test phase, the requirements for a departure test will be defined.

### Section 240.127

Criteria for examining skill performance. Waiver is requested exempting CAS from the testing requirements of this section during the test phase.

*Justification:* Criteria and procedures for CAS performance evaluation do not yet exist; they will be identified and defined during the CAS test phase.

### Section 240.129

Criteria for monitoring operational performance of certified engineers. Waiver is requested exempting CAS from the performance monitoring procedures during the test phase.

*Justification:* Criteria and procedures for CAS performance evaluation do not yet exist; they will be identified and defined during the test phase.

It is acknowledged for clarification that CAS, when fully operative during the test phase, will comply with the following regulations:

### Section 236.8

Operating characteristics of electromagnetic, electronic, or electrical apparatus. CAS computing equipment will comply with this regulation.

### Section 236.501

Forestalling device and speed control. CAS is designed to enforce maximum authorized speeds, speed restrictions, slow speed, and absolute stop. CAS will comply with § 236.501 except for paragraph (b)(2).

### Section 236.502

Automatic brake application, initiation by restrictive block conditions stopping distance in advance. CAS is designed to initiate an automatic brake application stopping distance in advance of the end of limits of authority; or the beginning of each speed restriction in the route.

### Section 236.503

Automatic brake application; initiation when predetermined rate of speed exceeded. CAS will comply with this regulation.

### Section 236.505

Proper operative relation between parts along roadway and parts on locomotive. CAS will function as intended under all conditions of speed, weather, oscillation, and shock. CAS will comply with this regulation.

### Section 236.506

Release of brakes after automatic application. After a CAS initiated brake application, brakes cannot be released until the train is stopped.

### Section 236.507

Brake application; full service. CAS will comply with this regulation.

### Section 236.508

Interference with application of brakes by means of brake valve. CAS equipment will not interfere with or impair the efficiency of the automatic or independent brake valves.

Section 236.509

Two or more locomotives coupled. CAS will be made operative only on the controlling locomotive; however, CAS tests that do not affect train operations may occur on the trailing locomotives.

Section 236.513

Audible indicator. The audible indicator for CAS will have a distinctive sound and be clearly audible under all operating conditions.

Section 236.516

Power supply. CAS equipment will have its own isolated power supply.

Section 236.565

Provision made for preventing operation of pneumatic brake-applying apparatus by double-heading cock; requirement. Operation of the double-heading cock (cutoff pilot valve) will not cut out CAS before the automatic brake is cut out.

Section 236.590

Pneumatic apparatus. Pneumatic apparatus will be inspected and cleaned as required.

Part 236, Subpart G

Definitions. As applicable except § 236.703 and § 236.805.

Interested parties are invited to participate in these proceedings by submitting written views, data or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2003–15756) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC 20590–0001. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.). At the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Issued in Washington, DC, on October 14, 2003.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 03–26374 Filed 10–17–03; 8:45 am]

BILLING CODE 4910–06–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Railroad Administration

## Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

### New Jersey Transit Corporation

*(Supplement to Waiver Petition Docket Number FRA–1999–6135)*

As a supplement to New Jersey Transit (NJ Transit) Corporation's Petition for Approval of Shared Use and Waiver of Certain Federal Railroad Administration Regulations (the Waiver was granted by the FRA on December 3, 1999 ), NJ Transit seeks permanent waiver of compliance from additional sections of Title 49 of the CFR for operation of its Southern New Jersey Light Rail Transit (SNJLRT) system. *See Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment*, 65 FR 42529 (July 10, 2000). *See also Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems*, 65 FR 42626 (July 10, 2000).

In this regard, NJ Transit has advanced the design and construction of the SNJLRT system towards implementation (Fall 2003) and in the process, has identified the following additional regulation from which it hereby seeks waiver: 49 CFR 238.231(h)(i) Braking System-SNJLRT vehicles are equipped with a passenger-accessible emergency brake handle that, when activated, initiates a full service brake application rather than an emergency brake application.

Since FRA has not yet completed its investigation of NJ Transit's petition, the agency takes no position at this time on the merits of NJ Transit's stated justifications. As part of FRA's review of the petition, the Federal Transit Administration will appoint a representative to advise FRA's Safety Board and that person will participate in the board's consideration of NJ Transit's waiver petition.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number 1999–6135) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received by November 10, 2003 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov*.

Issued in Washington, DC on October 14, 2003.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 03–26375 Filed 10–17–03; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

## Federal Railroad Administration

**[FRA Docket 2001–8622]**

## Wheeling & Lake Erie Railway Company Order

### Background

Pursuant to Part 235 of title 49 Code of Federal Regulations, the Wheeling & Lake Erie Railway Company (WLE) filed an application to discontinue and remove the traffic control system on its single main track and sidings between Spencer, Ohio, and Bellevue, Ohio. After hearing, and for the reasons discussed in its July 25, 2003 letter to WLE (letter), the Railroad Safety Board determined that it was appropriate to approve WLE's application, provided execution of the railroad's obligations under conditions placed on the approval can be ensured. Since certain of these obligations do not involve subject matters specifically regulated by FRA, FRA has made consent to entry of this order a further condition on approval of the discontinuance. WLE has consented to entry of the order.

### Authority

The Federal Railroad Safety Act of 1970, as codified, gives FRA extensive authority with which to enforce Federal railroad safety laws and regulations. Authority to enforce Federal railroad safety laws has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. 49 CFR 1.49. Railroads are subject to FRA's safety jurisdiction under the Federal railroad safety laws. 49 U.S.C. 20101, 20103.

### Order

Effective upon notification to the WLE that the conditions precedent to removal of the traffic control system have been fulfilled, the WLE shall be subject to the further continuing requirements:

1. WLE shall maintain in place and shall enforce bulletin orders and special instructions required under the conditions to the approval of the application.

2. All track currently signalized shall be subject to an annual internal rail flaw inspection in the same manner required for Class 4 track under 49 CFR 213.237.

3. Dragging equipment detectors shall be installed per the railroad's proposal in this docket at or near the following locations: West of Hartland West at Milepost 72; Townline Road at Milepost 69.5; Old State Road at Milepost 66.6; Benedict Avenue at Milepost 65.3; North West Street at Milepost 64.1; Halfway Road, east of Monroeville, Ohio, at Milepost 62.5; and Williams Road, west of Monroeville, Ohio, at Milepost 58.7. The existing hot box and dragging detector at Clarksfield at Milepost 77.7 shall be maintained. In addition, the hazard detector at Milepost 62.5 shall be required to be equipped to detect hot bearings. These detectors shall be maintained in good working order at all times and shall be promptly restored (without undue delay) in the case of unexpected failure.

4. Remote health monitoring shall be provided for the highway-rail crossing signals in Norwalk and Monroeville, Ohio, as per the railroad's proposal at the following locations: Townline Road at Milepost 69.5; Laylin Road at Milepost 68; Old State Road at Milepost 66.6; Conrwin and Pine Streets at Milepost 65.8; Woodlawn Avenue at Milepost 65.7; Benedict Avenue at Milepost 65.3; Newton and Jefferson Streets at Milepost 64.7; North Pleasant Street at Milepost 64.6; and North West Street at Milepost 64.1 in the Norwalk Area, also Main Street at Milepost 61.0; Ridge Street at Milepost 60.5; and Monroe Street at Milepost 60.2 in the Monroeville Area.

a. Implementation of this capability must provide effective immediate notification to the dispatcher of any false activation or activation failure detected.

b. If the dispatcher cannot immediately account for an alarm condition, the dispatcher shall instruct crews to reduce their speed to restricted speed within one-half mile of approaching the crossing and flag the crossing on both sides. Trains approaching a malfunctioning highway-rail crossing must proceed at restricted speed for one half mile in advance of the crossing and remain at restricted speed until the entire train is one-half mile past the highway-rail crossing.

These systems shall be maintained in working order thereafter and shall be repaired without undue delay in the case of unexpected failure.

5. Power operated switches that remain in this application area shall be maintained with a separate lock rod and separate point detector rod that will be attached to the switch and switch point separately.

6. Switches shall be upgraded to radio controlled operation per the railroad's proposal in this docket.

7. Derails currently installed at turnouts in the application area shall be maintained and utilized consistent with the WLE operating rules in effect as of the date of this letter unless the turnout is no longer needed and is removed.

Violation of this order is subject to civil penalty and other applicable sanctions as provided in 49 U.S.C. 21301 *et seq.*

Issued in Washington, DC on October 10, 2003.

**Allan Rutter,**

*Federal Railroad Administrator.*

[FR Doc. 03–26376 Filed 10–17–03; 8:45 am]

**BILLING CODE 4910–06–P**

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## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

**[STB Finance Docket No. 34411]**

## New Orleans & Gulf Coast Railway Company, Inc.—Lease Exemption—Union Pacific Railroad Company

New Orleans & Gulf Coast Railway Company, Inc. (NOGC), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from Union Pacific Railroad Company (UP) and operate approximately 11.52 miles of rail line. The line consists of 7.02-miles of UP's main line located between milepost 0.98 at Goldsboro, LA, and milepost 8.00 near Westwego, LA, and the 4.5-mile spur line known as the Hooper Spur located between Harvey Yard, at Harvey, LA, and the end of the spur at Bayou Street. NOGC certifies that its projected revenues as a result of this transaction will not result in NOGC becoming a Class II or Class I rail carrier, and further certifies that its projected annual revenues will not exceed $5 million.

NOGC indicates that it expects to consummate the transaction on or shortly after October 19, 2003.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34411, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, Suite 225, 1455 F St., NW., Washington, DC 20005.

Board decisions and notices are available on our website at *WWW.STB.DOT.GOV.*

Decided: October 10, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 03–26281 Filed 10–17–03; 8:45 am]

**BILLING CODE 4915–00–P**

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–167 (Sub–No. 1095X)]**

### Consolidated Rail Corporation—Abandonment Exemption—Lancaster and Chester Counties, PA

**AGENCY:** Surface Transportation Board, Department of Transportation.

**ACTION:** Notice responding to comments received on the October 2002 notice to the parties and requesting comments on an attached proposed draft memorandum of agreement.

**SUMMARY:** This Notice to the Parties responds to the comments received on the October 2002 Notice to the Parties in this rail line abandonment proceeding, discusses the possibility of trail use for the rail line right-of-way, describes and solicits comments on the attached proposed draft Memorandum of Agreement, and provides information for a public meeting to be held on November 19, 2003.

**DATES:** Comments are due by December 3, 2003.

**ADDRESS:** If you wish to file written comments regarding the attached proposed draft Memorandum of Agreement, please send an original and two copies to the Surface Transportation Board, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001, to the attention of Troy Brady. Please refer to Docket No. *AB-167 (Sub-No. 1095X)* in all correspondence addressed to the Board.

**FOR FURTHER INFORMATION CONTACT:** If you have questions regarding this Notice, you should contact Troy Brady, the environmental contact for this case, by phone at (202) 565–1643 or by fax at (202) 565–9000. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** On October 24, 2002, the Surface Transportation Board (Board) issued a Notice to the Parties (October 2002 Notice) in the above-titled rail abandonment proceeding. The October 2002 Notice set forth the background of the case, described the Board's reinitiation of the section 106 process of the National Historic Preservation Act (NHPA), 16 U.S.C. 470f, pursuant to the decision of the United States Court of Appeals for the Third Circuit in *Friends of the Atglen-Susquehanna Trail, Inc.* v. *Surface Transportation Bd.*, 252 F.3d 246 (3rd Cir. 2001) (*FAST*), and solicited comments on certain issues regarding this reinitiation. In response to the October 2002 Notice, the Board received 18 comment letters, as well as a letter replying to the comments of other parties, all of which were placed on the Board's Web site.

The Board's Section of Environmental Analysis (SEA) has reviewed the comments. Based on the information therein as well as ongoing consultations with the Advisory Council on Historic Preservation (ACHP), the Pennsylvania State Historic Preservation Officer (SHPO), and Norfolk Southern Railway Corporation (NS), SEA has developed a plan to complete the section 106 process for this proceeding. The ACHP, the SHPO, and NS have indicated their approval of SEA's plan, as well as their willingness to sign the attached proposed draft Memorandum of Agreement (MOA). Changes suggested pursuant to consulting party and public review and comment will be considered. Below, SEA (1) summarizes and responds to the comments, including those that favor converting this railroad right-of-way to interim trail use/rail banking pursuant to 16 U.S.C. 1247(d) (Trails Act), or a privately negotiated trail use agreement entered into after the abandonment is consummated, (2) discusses the remaining steps in the section 106 process for this case, assuming that trail use here is unsuccessful, and (3) describes the attached proposed draft Memorandum of Agreement (MOA) setting forth proposed section 106 mitigation. As discussed in more detail below, SEA has also scheduled a public meeting on this case and the proposed draft MOA and is providing a 45-day period for interested parties to file written comments on the proposed draft MOA.

#### I. Comment Summary and Response

*A. Historic Eligibility of the Enola Branch Rail Line*

*Comment.* NS states that it disagrees with the designation of the Keeper of the National Register of Historic Places (Keeper) that the entire line is historic.

*Response.* As explained in the October 2002 Notice, pursuant to the Keeper's determination, the ACHP regulations, and the court's holding in FAST, the entire line is historic. NS has not provided any compelling reasons that would undermine the conclusions of the Keeper, the ACHP, and the court.

*B. Clarification of the Length and Location of NS's Remaining Line*

*Comment.* NS's reply comments attempt to clarify the name, exact length and location of the rail line that is the subject of this proceeding. NS states that the proper name for the rail line was the Atglen and Susquehanna Branch, because the rail line runs from a location near Atglen, PA to a location near the Susquehanna River. According to NS, the notice of exemption Consolidated Rail Corporation (Conrail) filed in 1989 was for 66.5 miles of track, but only 33.9 miles of this is actual rail right-of-way. NS states that the rail line extends from Milepost 0.0 at CP "Park" in Parkesburg, PA to Milepost 33.9 near a connection with the Port Road Brach at CP "Port" in Manor Township, PA. The other 32.6 miles of track referred to in the notice of exemption refer to the second track of the double tracked rail line between approximately Milepost 1.1 and Milepost 33.7. Subsequently, NS has indicated that it will return to the use of the designation "Enola Branch" for this line in this proceeding because of Conrail's use of this name during the period that it operated the line and the long use of this name in this proceeding.

NS also states that it currently intends to retain the property between Milepost 27.0 at Safe Harbor, PA and Milepost 33.9 at Port, PA in connection with its operation of the Port Road Branch; and between Milepost 0.0 at Parkesburg, PA and Milepost 1.5 at Lenover, PA, except for Amtrak's bridge, for use as the Parkesburg Industrial Track. According to NS, no abandonment authority or exemption was necessary because these line segments will continue to be owned by NS and used for railroad purposes; only one of the two tracks will be removed. For the same reason, NS states that there will be no adverse effect on historic properties on these segments.

NS also states that Conrail sold the portion of the rail line between Milepost 1.5 at Lenover to Milepost 4.0 near the Chester County-Lancaster County line to Southeastern Pennsylvania Transportation Authority (SEPTA) in 1996. Thus, according to NS, the only portion of the rail line (if any) that is subject to this section 106 process is from about Milepost 4.0 in Chester County, PA (the end of a bridge over Noble Road and Octoraro Creek and about 50 yards of access to the bridge) to Milepost 27.0 at Safe Harbor, or approximately 23 miles of rail right-of-way.

*Response.* Conrail described the line to be abandoned in its 1989 notice of exemption filing as two parallel tracks of a double tracked line. According to Conrail, track number 1 extended 32.6 miles from Milepost 1.1 in Parkesburg to Milepost 33.7 in Manor Township. Track number 2 extended 33.9 miles from Milepost 0.0 in Parkesburg to Milepost 33.9 in Manor Township. Subsequent descriptions of the line mistakenly referred to the total length of the line to be abandoned as either 66.5 miles of track or 66.5 miles of rail line. SEA agrees with NS that the length of the line is the actual length of the right-of-way. Thus, the line originally at issue here extended 33.9 miles, from Milepost 0.0 in Parkesburg to Milepost 33.9 in Manor Township.[1]

Moreover, it now appears that Conrail sold the portion of the line between Milepost 1.5 to Milepost 4.0 to SEPTA in 1996, so that NS now retains ownership only of the line from Milepost 0.0 to Milepost 1.5 and from Milepost 4.0 to Milepost 33.9. As the court stated in *FAST*, "[i]f, on remand, the [Board] concludes that [NS] has disposed of some portion of the line, the [Board] will be without power to expand the historical condition to cover that property already sold." *See FAST* 252 F.3d at 262. Accordingly, this proceeding, pursuant to the court's remand, will be applicable to the NS-owned portions of the line from Mileposts 0.0 to 1.5 and Mileposts 4.0 to 33.9.

NS suggests that this proceeding does not apply to the line between approximately Mileposts 0.0 and 1.5, and between Mileposts 27.0 and 33.9 because NS intends to retain that portion of the Enola Branch as industrial track. However, NS never sought to dismiss its request for authority to abandon that track, and, under the court's remand, this proceeding includes that track.

### *C. The Possibility of Trail Use Here*

*Comment.* Friends of the Atglen-Susquehanna Trail, Inc. (FAST), the Pennsylvania Department of Conservation and Natural Resources (DCNR),[2] the County of Chester, the Historic Preservation Trust of Lancaster County, and certain individuals commented that interim trail use/rail banking would be appropriate here, which, if an agreement could be entered into, would result in preservation on any railbanked portions of the right-of-way for the duration of the interim trail use. In consultations, the SHPO indicated that, if the Trails Act remains available, and if a Trails Act agreement could be reached that would preserve the contributing resources on the rail line right-of-way, there would be no adverse effect on historic properties, thereby presumably mooting the need to continue with the mitigation stage of the section 106 process (development of an appropriate MOA).

*Comment.* NS has stated that it would consider a proposal for trail use that meets certain criteria. Specifically, NS states[3] that it would seriously consider any proposal for trail use that is made promptly so as not to delay the conclusion of this proceeding and that:

> (1) Does not result in the commitment of any additional railroad funds than are already committed to this project, (2) does not result in the commitment of any substantive amount of railroad time to the project, (3) does not result in any additional liability for the railroad, (4) does not result in any continuing responsibility to the project by the railroad after it has consummated that abandonment and conveyed the relevant segment of the [l]ine, (5) completely satisfies all of the [Townships of West Sadsbury, Sadsbury, Eden, Bart, Providence, Martic, and Conestoga (Townships)] and [Pennsylvania Department of Transportation (PennDOT)], and (6) is acceptable to the [Pennsylvania Public Utility Commission (PUC)] in substitution for its previous order.

NS also has indicated that it will honor the settlement agreements entered into by Conrail and approved by PUC. Specifically, Conrail entered into an agreement with the Townships under which it would convey segments of the abandoned line to the respective Township through which each segment passed; the Townships would assume future ownership and maintenance responsibility for the line and the crossing structures; Conrail would contribute an agreed sum of money to the Townships for the future maintenance of the crossing structures that are to remain in place; and certain other crossing structures deemed to constitute serious highway safety hazards would be removed by either Conrail or a specified Township. Conrail entered into a similar settlement agreement with PennDOT. *See* PUC Docket Nos. A–00111016 and C–00913256, *Board of Supervisors of Bart Township* v. *Consolidated Rail Corporation, Pennsylvania Department of Transportation, and Lancaster County, et al.*, October 9, 1997. NS has indicated that any agreement with a potential trail sponsor to use the right-of-way as a trail would have to be acceptable to the Townships and PennDOT.

*Response.* The Trails Act allows rail line that would otherwise be abandoned to be preserved (rail banked) and used in the interim as trails. *See Preseault* v. *ICC*, 494 U.S. 1 (1990). The trail sponsor must assume responsibility for any taxes on, and tort liability for, the property. 16 U.S.C. 1247(d). The Trails Act delays abandonment of a line (and any consequent reversion of rail easements to adjacent property owners) as a matter of law while the line is rail banked and interim trail use continues, and provides that the line may be reactivated for rail service at any time. *Id.* Alternatively, if the railroad owns the property in fee, a railroad can convert its property to trail use outside the auspices of the Trails Act after the abandonment is consummated. *See Hayfield N. R. Co.* v. *Chicago & North Western Transp. Co.*, 467 U.S. 622, 633–34 (1984) (Hayfield Northern) (following abandonment, rail right-of-way is like any other property).[4]

The Board's procedures for establishing interim trail use/rail banking on a rail line proposed for abandonment pursuant to 16 U.S.C. 1247(d) are detailed in the Board's regulations at 49 CFR 1152.29 and are separate from the section 106 process. Parties interested in pursuing interim trail use under the Trails Act for this proceeding would have to follow the Board's regulations to do so. Although trail use requests are normally due within 10 days after the date on which the notice of exemption is published in the **Federal Register** for notice of exemption abandonment proceedings, the Board generally accepts late-filed requests for interim trail use as long as it retains jurisdiction over the subject rail line in a particular proceeding. However, interim trail use under 16 U.S.C. 1247(d) is voluntary on the part of both the railroad and the potential trail sponsor,[5] and the Board cannot impose an interim trail use arrangement upon unwilling parties. Thus, while it is possible that interim trail use under the Trails Act could occur in this case on the portion of the line that NS still owns and controls[6]—if a potential trail sponsor files an interim trail use/rail banking request in accordance with 49 CFR 1152.29 during this remanded proceeding, NS agrees to negotiate with the potential trail sponsor, and the parties ultimately enter into a Trails Act arrangement—it would be inappropriate for the Board to force the parties to negotiate or to include a trail use condition as part of the section 106 mitigation measures for this proceeding.[7]

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[1] The October 2002 Notice incorrectly described the line as extending from Milepost 0.0 to Milepost 27.0.

[2] DCNR stated that the Lancaster County Commissioners have expressed interest in sponsoring a rail-to-trail project.

[3] *See* NS Reply Comments at 47.

[4] Just as with interim trail use under 16 U.S.C. 1247(d) there presumably would be no adverse effect on historic properties under a private trail arrangement that would preserve the contributing resources on the rail line right-of-way and the need to continue with the mitigation phase of the NHPA process could be mooted.

[5] A railroad is under no obligation either to negotiate concerning or enter into an interim trail use/rail banking arrangement. *See* 49 CFR 1152.29(b)(1); *Connecticut Trust for Historic Preservation* v. *ICC*, 841 F.2d 479, 482–483 (2d Cir. 1988); *National Wildlife Fed'n* v. *ICC*, 850 F.2d 694, 696 (D.C. Cir. 1988); *Washington State Dep't of Game* v. *ICC*, 829 F.2d 877, 879–82 (9th Cir. 1987).

### *D. Summary of Other Comments and SEA's Response*

Assuming that there is no agreement for trail use and that the mitigation phase of the section 106 process goes forward for the NS-owned portions of the line from Mileposts 0.0 to 1.5 and Mileposts 4.0 to 33.9, this section discusses the comments and responses received regarding section 106.

1. *Identification of additional consulting parties to the section 106 process. Comment.* FAST commented that SEA needs to make a greater effort to identify as many consulting parties as possible, and should include local community groups in the consultation process. FAST and other commenters requested that certain specific parties be included as consulting parties to the proceeding.

*Response.* Prior to issuing the October 2002 Notice and pursuant to the ACHP's regulations for implementing the section 106 process, 36 CFR 800.3(f), SEA consulted with the SHPO to identify possible consulting parties. SEA also conducted internet searches, contacted local government entities, and obtained updated addresses for parties that had been interested in earlier stages of the case. The Board then served the October 2002 Notice on 149 parties, placed the October 2002 Notice on the Board's Web site, and published the October 2002 Notice in the **Federal Register**, requesting comments and information on the identification of additional consulting parties. The Historic Preservation Trust of Lancaster County, Lancaster County Conservancy, Lancaster Farmland Trust, the Northeast Regional Field Office of the Rails-to-Trails Conservancy, PennDOT, and Southern End Community Association have requested to be granted official consulting party status. SEA agrees that these six parties should be consulting parties, and, based on the history of this proceeding, has also included FAST and the Townships as official consulting parties for this section 106 process. All of these parties will be invited to concur on the terms of the final MOA.

Furthermore, SEA has added the names of all additional parties identified by commenters to the service list for this proceeding,[8] and has updated the names of the elected officials on the service list. The service list now stands at 211 parties.[9] SEA believes that its efforts to identify consulting parties have been extensive.

All official consulting parties as well as all parties on the service list will receive a copy of the attached proposed draft MOA, an opportunity to provide written comments on the proposed draft MOA, and information on how to participate in a planned public meeting. Opportunities for public involvement are discussed in more detail below in Section II.

2. *Any need for further assessment of adverse effects on the line.*

*Comment.* PennDOT submitted comments stating that if any of the bridges on the line are individually eligible for inclusion in the National Register of Historic Places (National Register), then the effects of the proposed abandonment on the individually eligible bridges should be determined and taken into consideration when developing appropriate mitigation.

*Response.* As stated above and in the October 2002 Notice at 4–6, the Keeper has determined that the entire line is historic, including all sites and structures on the line. Therefore, SEA will treat the entire line as historic in accordance with the Keeper's determination and the ACHP regulations. Separate review of the bridges on the line is unnecessary because all bridges on the line will be treated as historic.

*Comment.* FAST commented that a current analysis of the historic and archeological resources, and a new environmental study of the environmental and physical characteristics of the line should be performed. FAST also recommended that a title search be undertaken and that the assessment of adverse effects should be extended to a continuation of the line in Cumberland and York Counties.

*Response.* Because SEA is considering the entire line to be historic, including all sites and structures on the line, conducting a survey of all the archeological and historic resources on the line before developing mitigation measures is unnecessary. However, a SEA staff member has driven by portions of the right-of-way and inspected the current physical condition of the line. As stated in the October 2002 Notice, the tracks and ties have mostly been removed, and though there is some overgrowth of vegetation in the area, the right-of-way on NS's line appears to be intact.[10] Additionally, because the tracks and ties have already been removed from much of the right-of-way, there is little chance that the abandonment will affect previously undisturbed ground or impact archeological sites.[11] However, after completion of the section 106 process and the conclusion of the abandonment proceeding before the Board, NS would be able to remove the structures on the line and any remaining track and ties, which could disturb previously undisturbed ground. As discussed in more detail in Section III, the proposed draft MOA contains provisions for protecting any potential archeological resources from unforeseen impacts.

In accordance with the National Environmental Policy Act (NEPA), the Board issued an Environmental Assessment for this proceeding in 1989. According to the Council on Environmental Quality's regulations for implementing the procedural provisions of NEPA, environmental analyses should be supplemented if "[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 CFR 1502.9(c). The NEPA review of this proceeding was completed long ago. No party has submitted any evidence indicating new circumstances or information that would warrant the undertaking of a supplemental environmental analysis at this late date. Furthermore, the court in *FAST* only remanded this proceeding to the Board to deal with procedural matters related to the historic review process under section 106. Therefore, SEA need not reconsider the adequacy of its NEPA review here.

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[6] *See* discussion above on pages 2–3

[7] NS has indicated that although it might agree to a proposal to use this right-of-way as a trail under the circumstances discussed above, it does not believe that issuance of a trail condition by the Board (a notice of interim trail use or NITU) would be appropriate here. If NS continues to take this position, any trail use would have to be by private arrangement of the parties following consummation of the abandonment and conclusion of the section 106 process.

[8] SEA was unable to locate the addresses of several of the additional organizations submitted by FAST. These organizations are: Town and Country Garden Club, Christiana Lions Club, Lancaster County Wildlife Center, the Lancaster Environmental Alliance, Octoraro Area Trail Society, Penn Manor Neighborhood of Girl Scouts, and a high school track and cross country club.

[9] The 51 potential consulting parties identified in the October 2002 Notice were primarily group entities or organizations. For some of these parties, multiple names were acquired and added to the service list for this proceeding. Therefore, the total number of 211 parties includes multiple individuals affiliated with the same organization, as well as individuals unaffiliated with any organization.

[10] In its reply comments, NS explains that portions of the line have been retained by NS and are still being used for industrial track use.

[11] NS has stated that it plans to remove a limited number of structures on the line, and that "little land will be disturbed by the removal of these structures which are mainly above ground." *See* NS Reply Comments at 61.

SEA does not believe that a title search need be undertaken as part of the section 106 process. The Board cannot compel post-abandonment use of a rail line for non-transportation purposes. *See Hayfield Northern*. Therefore, the ownership of the property after an abandonment is consummated is not affected by the Board's action and not part of the Board's section 106 review.

The Board cannot extend the assessment of adverse effects to areas in Cumberland and York Counties that are not on the line because this proceeding is necessarily limited to the rail line proposed for abandonment. *See Implementation of Environmental Laws*, 7 I.C.C.2d 807, 828–29 (1991).[12]

3. *Appropriate section 106 mitigation measures.* As stated in the October 2002 Notice at 6–7, the Board's ability to protect historic properties is very limited. Essentially, documentation of the historic resources (taking photographs or preparing a history) before they are altered or removed is the only form of nonconsensual mitigation that the Board can require. The Board does not have the power to force a railroad to sell (or donate) its property, or impose a restrictive covenant upon the railroad's transfer of its property, as a condition to obtaining abandonment authority. Any attempt to either preclude or force a railroad to sell (or donate) property for a non-rail purpose, as a condition to obtaining abandonment authority, would plainly constitute an unauthorized taking under the Fifth Amendment. *See Implementation of Environmental Laws*, 7 I.C.C.2d at 828–29, and cases cited therein.

The October 2002 Notice requested comment on appropriate historic preservation mitigation measures, including comments on the measures specified in a proposed draft MOA for this line developed earlier, and suggestions for additional or alternative measures, as well as information regarding the current condition of the rail line. As stated in the October 2002 Notice at 3, the earlier proposed draft MOA would have provided for photographic documentation of certain bridges, and the development of a public, interpretative display in the form of a 6–8 minute video outlining the history of the Enola Branch.

*Comment.* NS commented that it has complied with the terms of the earlier proposed draft MOA. NS states that the five bridges that the PUC has ordered to be removed for safety reasons have been recorded to state standards, and that NS has paid $15,437 to the Pennsylvania Railroad Museum to develop a video and exhibit of the rail line. NS states that the settlement agreement between Conrail and the Townships should also be considered a mitigation measure.

*Comment.* PennDOT states that mitigation should provide for documenting a sampling of the bridges rather than all of the bridges on the line. PennDOT also suggests that additional outreach and preservation should be conducted, such as publishing a more comprehensive history of the line and providing money to municipalities to take over the maintenance of as many bridges as possible.

*Response.* As discussed in more detail in Section III and the proposed draft MOA, the Board, the SHPO, and NS will work together to develop a list of appropriate representative structures to be documented. Documentation of these representative structures will serve to document the historic nature of the line as a whole. Moreover, NS will be required to conduct archival research and to consolidate all information—documentation and the results of the archival research—into one cohesive document to be archived at the SHPO's office. The mitigation in the proposed draft MOA constitutes a marked change from the first proposed draft MOA, which treated only six bridges as historic, not the line as a whole, and did not require archival research. As stated above, NS's settlement agreements with the Townships and with PennDOT provide for local maintenance of structures that would remain intact. However, because the Board's ability to impose mitigation for the protection of historic resources is limited, such agreements, if any, must be entered into voluntarily and are not within the scope of this section 106 process. As discussed in Section III below, SEA believes that the archival research discussed above and documentation of the line to Pennsylvania state standards[13] using representative structures on the Enola Branch is sufficient and that, given the mitigation that NS has already undertaken, a more comprehensive history of the line need not be prepared.[14]

4. *Methods or outlets for publicizing a proposed MOA. Comment.* Commenters recommend widespread notification and public participation in the section 106 process, including press releases and public meetings.

*Response.* To ensure widespread notice and opportunity for public participation the Board placed all comments received in response to the October 2002 Notice on the Board's Web site, and informed all interested parties of the availability of the comments on the Web site. SEA is sending this current Notice to the Parties (October 2003 Notice) to all 211 parties on the service list for this proceeding, as well as publishing the October 2003 Notice in the **Federal Register** and posting it on the Board's Web site. The Board has also issued a press release describing the contents of the October 2003 Notice.

As discussed in more detail below, SEA will accept written comments on the attached proposed draft MOA, and will also hold a public meeting before the close of the comment period to enable interested parties to provide oral comments. As a result, there will be ample opportunity for public participation and broad notice of the continuing section 106 process here.

*Comment.* PennDOT states that public input is required while developing the proposed draft MOA and before deciding how to resolve adverse effects of the undertaking, rather than after the proposed draft MOA is developed. PennDOT also states that the Board should provide the documentation regarding the section 106 process to the public in the manner set forth in 36 CFR 800.11(e).

*Response.* The October 2002 Notice provided members of the public with the opportunity to comment on all aspects of this proceeding, including ways to mitigate adverse effects. All comments received were placed on the Board's Web site, and the proposed draft MOA is also being distributed for public comment and placed on the Board's Web site. Moreover, as discussed in detail below, SEA will host a public meeting to receive additional public input on this proceeding in Quarryville, Pennsylvania on November 19, 2003. Thus, SEA believes that ample opportunity has been provided to the public to participate in the section 106 process here.

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[12] The Enola Branch rail line is part of a larger rail corridor that extends into Cumberland and Dauphin Counties. Although the proceeding before the Board and this section 106 process pertains only to the right-of-way described above in Section II(B), it should be noted that the SHPO has determined that the portions of the rail corridor in Cumberland and Dauphin Counties are eligible for listing in the National Register.

[13] Pennsylvania state standards are outlined in the guidance document titled "How To Complete the Pennsylvania Historic Resource Survey Form," available from the SHPO, and require the submission of a photo/site plan sheet, a data sheet, and a narrative sheet.

[14] As indicated above, NS has already paid to the Pennsylvania Railroad Museum $15,437 to fund an exhibit or video of the history of the Enola Branch.

Section 800.11(e) of 36 CFR outlines the documentation that must be made available to the public when an agency determines that an action will have an adverse effect on historic properties. SEA believes that all of the required documentation already has been prepared and made publicly available.[15]

5. *Other concerns.*

*Comment.* Several parties commented that they are concerned about public safety at the road crossings along the right-of-way of the line, and advocated bringing the section 106 process to a close as soon as possible. Commenters also state that the PUC issued an order addressing existing safety issues, which has been stayed pending the outcome of this section 106 process.

*Response.* SEA acknowledges the public safety concerns expressed by the commenters. SEA is working to complete the section 106 process as expeditiously as possible, pursuant to the relevant regulations and procedures.

*Comment.* FAST states that NS's plans regarding the line should be made known.

*Response.* In its reply comments at 50, NS directly responded to FAST's request to detail its plans regarding the line. SEA has made all comments received to date, including NS's reply comments, available to all on the Board's Web site. NS's response is as follows:

> [NS] now intends to retain that portion of the Line between Milepost 0.0 at Parkesburg, PA and Milepost 1.5 at Lenover, PA, except for Amtrak's bridge, for use as the Parkesburg Industrial Track. Conrail sold the Line between Milepost 1.5 at Lenover, PA and Milepost 4.0 near the Lancaster County/ Chester County Line to SEPTA. [NS] intends to honor the Settlement Agreements with PennDOT and the Townships pertaining to disposition of the Line between Milepost 4.0 near the county line and Milepost 27.0 near Safe Harbor, PA to the Townships and with respect to the bridges to be removed. [NS] intends to retain possession of the property between Milepost 27.0 near Safe Harbor, PA and Milepost 33.9 at Port, PA in connection with its operation of, and in order to protect, the Port Road Branch. It may retain or place excepted track on all or a portion of this Line.

*Comment.* FAST states that the PUC order approving the settlement agreement with the Townships conflicts with the section 106 process because the order does not include mitigation, does not incorporate the viewpoints of all the consulting parties, and was formulated prior to the issuance of the Keeper's determination and the court's decision. FAST states that NS should acknowledge that the order may need to be modified or vacated depending on the outcome of the section 106 process.

*Response.* The requirements of NHPA and the ACHP's regulations apply to the abandonment action pending before the Board. Post-abandonment use of the line's right-of-way is outside of the Board's jurisdiction. The settlement agreement is thus outside the Board's abandonment process, including section 106.

*Comment.* NS argues that the section 106 process does not apply to rail line abandonment proceedings, because rail abandonment proceedings and the railroad's post-abandonment activities are not Federal undertakings for the purposes of section 106 review, as specified at 16 U.S.C. 470w(7). NS argues that a project must be Federally funded in whole or in part to be considered a Federal undertaking, and notes that in notice of exemption proceedings, such as this abandonment, Federal funding is not involved. Furthermore, according to NS, in notices filed pursuant to a class exemption, the Board's responsibilities are ministerial in nature, because the exercise of the class exemption must be allowed so long as the statutory and regulatory criteria are met. NS also states that the Board's jurisdiction over a rail line ceases as soon as an abandonment is consummated, and that the Board cannot control a railroad's post-abandonment activities regarding the rail line, which is private property. Therefore, NS argues, the section 106 process causes unnecessary delay, and the Board should discontinue the section 106 process in this proceeding and in all other rail line abandonment proceedings.[16]

*Response.* It is well settled that section 106 of NHPA applies to all rail line abandonment proceedings. *See Implementation of Environmental Laws,* 7 I.C.C.2d at 826; *Illinois Commerce Comm'n* v. *ICC,* 848 F.2d 1246, 1260–61 (D.C. Cir. 1988) *cert. denied,* 488 U.S. 1004 (1989). Indeed, in *FAST,* the court specifically found that rail abandonment proceedings, including this particular notice of exemption proceeding, were subject to section 106. *See* 252 F.3d at 251. An undertaking for the purposes of NHPA clearly includes actions that require Federal approval, not simply those that are federally funded. The ACHP's regulations implementing NHPA define an undertaking covered by NHPA as embracing "a project, activity, or program * * * requiring a Federal permit, license or approval." *See* 36 CFR 800.16(y). A railroad must obtain Board authority under 49 U.S.C. 10903 or 49 U.S.C. 10502 to abandon a common carrier line of railroad such as the Enola Branch. Moreover, use of a class exemption for an abandonment can be revoked for a particular line, when the STB finds that regulation is necessary to carry out the national rail transportation policy. 49 U.S.C. 10502(d). Thus, section 106 applies to notice of exemption abandonment proceedings such as this abandonment.

*Comment.* FAST states that the comments provided by the SHPO and the ACHP on the October 2002 Notice prior to its issuance should be made public.

*Response.* The October 2002 Notice incorporated the comments that the SHPO and the ACHP provided. The written comments provided by the SHPO and the ACHP prior to the issuance of the October 2002 Notice have been placed in the public docket for this proceeding and thus are available to the public.

## II. Next Steps in the Section 106 Process

### *A. Public Meeting*

The Board will hold a public meeting to solicit oral comments on this case and the attached proposed draft MOA. The meeting will be held at the Hoffman Building, located at the Solanco Fair Ground in Quarryville, PA, on

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[15] Section 800.11(e) states that documentation of a finding of adverse effect "shall include: (1) A description of the undertaking specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary; (2) A description of the steps taken to identify historic properties; (3) A description of the affected historic properties, including information on the characteristics that qualify them for the National Register; (4) A description of the undertaking's effects on historic properties; (5) An explanation of why the criteria of adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects; and (6) Copies or summaries of any views provided by consulting parties and the public." Here, the October 2002 Notice described the undertaking, specified the area of potential effects, described the steps taken to identify historic properties, described the determination of eligibility of the line for inclusion on the National Register, and discussed the finding of adverse effect. As discussed above, all comments received in response to the October 2002 Notice have been made publicly available.

[16] NS has subsequently indicated that because this argument was raised in comments to the October 2002 Notice rather than a formal motion before the Board, it is not requesting a response from the Board on this matter at this time. SEA's response is provided here to clarify SEA's position on the section 106 process for this proceeding, and should not be construed as a formal Board response to NS's argument.

November 19, 2003 from 3 p.m. to 5 p.m. and from 6 p.m. to 8 p.m. SEA will give a brief presentation and interested parties may submit written comments or make oral comments. SEA will have a court reporter available at each session to ensure that oral comments are accurately captured. Both the afternoon and evening sessions will follow the same format and utilize the same agenda; it is not necessary to attend both sessions.

Persons wanting to speak at the public meeting are strongly urged to pre-register by calling (202) 565–1643 and providing their name, telephone number, the name of any group, business, or agency they are representing, if applicable, and whether they wish to speak at the afternoon or evening session. The deadline for pre-registration is November 7, 2003. Persons will be called to speak in the order in which they pre-registered. Those wishing to speak but that did not pre-register will be accommodated at each session as time allows. Those wishing to speak at both the afternoon and evening sessions will also be accommodated as time allows and after all others have had an opportunity to participate in the evening session. As SEA desires for as many persons as possible to participate and given that there will be a limited amount of time, all speakers are strongly encouraged to prepare summary oral comments, and submit detailed comments in writing. SEA also encourages groups of individuals with similar comments to designate a representative to speak for them.

*B. Final Memorandum of Agreement*

After the close of the 45-day comment period on the attached proposed draft MOA, SEA will review all written comments, as well as any oral comments received at the public meeting. If trail use is unsuccessful, SEA will then prepare a final MOA.

## III. Description of the Proposed Draft Memorandum of Agreement

Based on the comments received in the October 2002 Notice and in consultation with the ACHP, the SHPO, and NS, SEA has developed a proposed draft MOA for this proceeding, assuming that no agreement for trail use is reached. The proposed draft MOA briefly summarizes the background of this proceeding and then sets forth several stipulations. As discussed above, because imposition of any nonconsensual mitigation other than documentation would be an unauthorized taking under the Fifth Amendment, the mitigation measures in the proposed draft MOA are limited to documentation.

The SHPO, NS, and SEA are currently working together to develop a list of representative structures on the line. Documentation of these structures will serve to document the historic qualities of the line as a whole. The first stipulation of the draft MOA contains a provision requiring the list of representative structures to be completed prior to the commencement of any documentation efforts. The first stipulation also requires NS to document the NS-controlled portion of the rail line by documenting appropriate representative sites and structures on the line, to Pennsylvania state standards, as described in footnote 13. SEA believes that documentation to Pennsylvania state standards is appropriate in this proceeding. Previously, the SHPO, Conrail, and the Board had all agreed that documentation to Pennsylvania state standards was the appropriate level of documentation when formulating the previous proposed draft MOA for this proceeding, and SEA has received no new information to indicate that the level of documentation should now be different. In addition, the stipulation requires NS to conduct archival research and to consolidate all information—documentation and the results of the archival research—into one cohesive document to be archived at the SHPO's office.

Although the tracks and ties have already been removed from most of the right-of-way, the proposed draft MOA also sets forth provisions for the protection of unexpected discoveries of historic resources, including archeological resources, in the event that documentation efforts identify a potential for unanticipated effects on archeological sites or in the event that one or more archeological sites, any additional cultural resources, or human remains are discovered during any remaining salvage activities associated with the abandonment.

Date made available to the public: October 20, 2003.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

**Vernon A. Williams,**

*Secretary.*

## Attachment to STB Docket No. AB–167 (Sub-No. 1095X) Notice to the Parties—Memorandum of Agreement Among the Surface Transportation Board and the Advisory Council on Historic Preservation and the Pennsylvania Historical and Museum Commission and Norfolk Southern Railway Company Regarding Docket No. AB–167 (Sub-No. 1095X) Consolidated Rail Corporation—Abandonment Exemption—Lancaster and Chester Counties, Pennsylvania

*Whereas*, in 1989 Consolidated Rail Corporation (Conrail) filed a notice of exemption with the Interstate Commerce Commission (ICC)[1] pursuant to 49 CFR 1152.50 seeking an exemption from the requirements of 49 U.S.C. 10903 to abandon a segment of a line of railroad commonly known as the Enola Branch. The Enola Branch extends generally westward from Milepost 0.0 in Parkesburg, Chester County, PA to Milepost 33.9 at Port in Lancaster County, PA.[2] The Enola Branch passes through the Townships of Sadsbury, Bart, Eden, Providence, Martic, Conestoga, and Manor, and the Borough of Quarryville in Lancaster County, and the Township of West Sadsbury, the Borough of Atglen, and the City of Parkesburg in Chester County;

*Whereas*, the portions of the Enola Branch that are the subject of this Memorandum of Agreement are the portions between Mileposts 0.0 to 1.5 and between Mileposts 4.0 to 33.9.[3]

*Whereas*, the ICC issued a decision served February 22, 1990 allowing the abandonment subject to a condition, developed as a result of consultation with the Pennsylvania State Historic Preservation Officer (SHPO), that Conrail take no steps to alter the historic integrity of the bridges—the only properties on the Enola Branch that had been identified as potentially eligible for inclusion on the National Register of Historic Places (National Register)—until completion of the section 106 process of the National Historic Preservation Act (NHPA), 16 U.S.C. 470f;

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[1] The ICC Termination Act of 1995, Pub. L. 104–88, abolished the ICC and transferred certain rail functions, including the rail line abandonment functions at issue in this case, to the Surface Transportation Board (Board), effective January 1, 1996.

[2] Conrail described the Enola Branch in its 1989 notice of exemption filing as two parallel tracks of a double tracked line. Track number 1 extended 32.6 miles from Milepost 1.1 in Parkesburg to Milepost 33.7 in Manor Township. Track number 2 extended 33.9 miles from Milepost 0.0 in Parkesburg to Milepost 33.9 in Manor Township.

[3] Conrail sold the portion of the Enola Branch from Milepost 1.5 to Milepost 4.0 to the Southeastern Pennsylvania Transportation Authority in 1996. On June 23, 1997, Norfolk Southern Railway Company (NS) and CSX Transportation Inc. sought permission from the Board to acquire Conrail and to divide its assets between them. On July 23, 1998, the Board approved the Conrail Acquisition. *CSX Corp., et al.—Control—Conrail Inc., et al.*, 3 S.T.B 196 (1998). The Enola Branch property was allocated to Pennsylvania Line LLC, a subsidiary of Conrail, as part of the Conrail Acquisition transaction. NS operates the Pennsylvania Line LLC allocated assets under an operating agreement approved by the Board. This Memorandum of Agreement pertains to the NS-controlled portions of the Enola Branch.

*Whereas,* the purpose of the condition was to allow the ICC to work with consulting parties to develop a plan to avoid, minimize, or mitigate any adverse effects of the abandonment on the bridges. The development of a mitigation plan was held in abeyance, however, pending negotiations to transfer the Enola Branch for interim trail use/rail banking under 16 U.S.C. 1247(d) (Trails Act) or other public use under former 49 U.S.C. 10906 (now 49 U.S.C. 10905). When those negotiations proved unsuccessful,[4] the agency resumed the NHPA process;

*Whereas,* while the Board's Section of Environmental Analysis (SEA) was working through the steps of the NHPA process, Friends of the Atglen-Susquehanna Trail, Inc. (FAST) filed a petition with the Board to reopen the proceeding and broaden the NHPA condition so that it would apply to the entire Enola Branch;

*Whereas,* the Board denied FAST's request in a decision served October 2, 1997, and FAST filed a petition for reconsideration;

*Whereas,* the Board, in a decision served August 13, 1999, believing that the only part of the NHPA process that remained open was the development of mitigation for the bridges determined to be historic, denied FAST's petition for reconsideration of the 1997 decision and FAST then sought judicial review;

*Whereas,* in *Friends of the Atglen-Susquehanna Trail, Inc.* v. *Surface Transportation Bd.,* 252 F.3d 246 (3rd Cir. 2001), the United States Court of Appeals for the Third Circuit vacated the Board's 1997 and 1999 decisions and remanded the case back to the Board, ruling that the Board had failed to comply fully with the procedural requirements of the NHPA;

*Whereas,* SEA has reinitiated the section 106 historic review process pursuant to the court's remand and the procedural provisions of the NHPA;

*Whereas,* SEA has consulted with the Advisory Council on Historic Preservation (ACHP), the SHPO, and NS, and in two separate Notices to the Parties and a public meeting solicited comments from consulting parties and the public regarding the possibility of using the portions of the Enola Branch that are the subject of this Memorandum of Agreement for interim trail use/rail banking, and assuming that trail use is unsuccessful, completion of the mitigation phase of the section 106 process;

*Whereas,* based on the Keeper of the National Register's 1999 finding that the entire Enola Branch is eligible for inclusion in the National Register, and in consultation with the ACHP and the SHPO, SEA has determined that the entire Enola Branch is eligible for inclusion in the National Register;

*Whereas,* based on consultation with the ACHP and the SHPO and the public comments, SEA has determined that the abandonment at issue here would adversely affect the Enola Branch;

*Whereas,* NS already has paid to the Pennsylvania Railroad Museum $15,437 to fund an exhibit or video of the history of the Enola Branch;

*Whereas,* based on consultation with the ACHP, the SHPO, NS, and on all of the comments received from interested and official consulting parties, SEA has devised additional measures to mitigate the adverse effects on the Enola Branch that would be caused by the abandonment;

*Now Therefore,* the Board, the ACHP, the SHPO, and NS agree that the consummation of the abandonment of the Enola Branch shall be subject to the following stipulations to take into account and to mitigate the effect of the abandonment on historic properties.

## Stipulations

The Board shall ensure that the following measures are carried out. The Board may direct NS (and its contractor) to assist in fulfilling these stipulations or may use an independent third party contractor, working under SEA's supervision, direction and control, and at NS's expense, to assist in fulfilling these stipulations.

### I. Additional Documentation Requirements

NS shall retain a professional historian to prepare documentation and to conduct archival research of the history of the Enola Branch rail line (to include the segments of the Enola Branch from Milepost 0.0 to Milepost 1.5 and Milepost 4.0 to Milepost 33.9 and appropriate representative structures). The documentation shall be completed in accordance with the relevant state standards as specified by the SHPO and outlined in the guidance document titled "How To Complete The Pennsylvania Historic Resource Survey Form." The historian also shall prepare a written report discussing the methods and results of the archival research.[5] Prior to the commencement of documentation efforts, the Board, the SHPO, and NS shall work together to develop a list of representative structures on the Enola Branch. Documentation of these structures shall serve to document the historic qualities of the line as a whole.

Upon completion of the documentation and archival research, NS shall consolidate all information into one cohesive document and submit the document to the Board's Federal Preservation Officer (FPO) (the Chief of SEA), the ACHP, and the SHPO for review.

As provided in Pennsylvania state standards, this document shall include:

A. a Photo/Site Plan Sheet, which will contain: (1) Historic name of the property; (2) county; (3) non-color coded sketch maps or other non-color maps showing the location of the rail line; and (4) photographs of the representative structures;

B. a Data Sheet, which will describe the rail line, its historic function and current use, the representative structures, including, relevant historical and descriptive information such as the architectural classification, composition of the exterior materials, classification of the structural system, width, depth and height measurements, dates of construction and known significant changes or rebuilding, proposed disposition of the structures after abandonment, and, to the extent relevant information exists in railroad or local libraries, museums or archives, cultural affiliations, associated individuals or events, and names of builders or craftsmen who constructed the rail line;

C. a Narrative Sheet, which will include a physical description (a brief description of the current and historic physical appearance and condition of the rail line segments and all associated structures) and a historical narrative (a summary of the history and significance of the property);

In addition to the requirements of the Pennsylvania state recordation standards, the document shall also include:

A. a written report describing the methods and results of the archival research; and

B. copies of any relevant historical documents found pursuant to the archival research, as well as any available maps of the rail line and local area. The Board's FPO, the ACHP, and the SHPO shall have 30 days to review and comment on the draft document. At the end of the 30 day period, NS shall prepare a final version of the document, taking into consideration any comments received, and submit the final document to the Board, the ACHP, and the SHPO. NS shall also submit two (2) additional copies of the final document to the SHPO to be archived at the SHPO's office.

### II. Dispute Resolution

Disagreement and misunderstanding about how this Memorandum of Agreement is or is not being implemented shall be resolved in the following manner:

A. If the SHPO or NS should object in writing to the Board's FPO regarding any action carried out or proposed with respect to the undertaking or implementation of this Memorandum of Agreement, then the Board's FPO shall consult with the objecting party to resolve this objection. If after such consultation the Board's FPO determines that the objection cannot be resolved through consultation, then the Board's FPO shall forward all documentation relevant to the objection to the ACHP, including the Board's proposed response to the objection. Within 45 days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:

1. Provide the Board with a staff-level recommendation; or

2. Notify the Board that the objection will be referred for formal comment pursuant to 36 CFR 800, and proceed to refer the objection and comment.

B. The Board shall take into account any ACHP comment or recommendations in reaching a final decision regarding its response to an objection. The Board's responsibility to carry out all actions under the Memorandum of Agreement that are not the subjects of the objection shall remain unchanged.

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[4] The ICC terminated the trail use negotiation condition with respect to the Enola Branch in a decision served April 19, 1993.

[5] Archival research that is conducted from information or records supplied by or available at the railroad, the Pennsylvania Historical and Museum Commission, the Pennsylvania State Archives, the Lancaster County Historical Society, the Southern Lancaster Historical Society, the Chester County Historical Society, the Railroad Museum of Pennsylvania and the Pennsylvania Railroad Technical and Historical Society (as available) shall satisfy this requirement.

### III. Post Review Discovery

In the event that the professional historian identifies a potential for unanticipated effects on archeological sites during the implementation of this Memorandum of Agreement, NS shall notify the Board's FPO. The Board's FPO shall then consult with the SHPO to determine whether additional mitigation measures are necessary. If the Board's FPO and the SHPO determine that additional mitigation measures are required, all signatories shall consult to devise appropriate mitigation measures and amend the Memorandum of Agreement, pursuant to Part IV of this Memorandum of Agreement.

In the event that one or more archeological sites, any additional cultural resources, or human remains are discovered during NS's salvage activities, NS shall immediately cease all work and notify the Board's FPO. The Board's FPO shall then consult with the SHPO to determine whether additional mitigation measures are necessary. If the Board's FPO and the SHPO determine that additional mitigation measures are required, all signatories shall consult to devise appropriate mitigation measures and amend the Memorandum of Agreement, pursuant to Part IV of this Memorandum of Agreement.

Any additional mitigation developed shall be consistent with the provisions of the Pennsylvania Historic & Museum Commission's Policy on the Treatment of Human Remains adopted March 10, 1993, the Native American Graves Protection and Repatriation Act, and ACHP guidance documents, such as the ACHP's *Recommended Approach for Consultation on Recovery of Significant Information From Archaeological Sites.*

### IV. Amendment

Any Signatory to this Memorandum of Agreement may request that it be amended, whereupon the parties shall consult to consider the proposed amendment. 36 CFR part 800 shall govern the execution of any such amendment.

### V. Termination

A. If the terms of this Memorandum of Agreement have not been implemented within 1 year of the execution of this agreement, this Memorandum of Agreement shall be considered null and void, unless the parties agree to a written extension. In such an event, the Board shall notify the parties to this Memorandum of Agreement, and if NS chooses to continue with this undertaking, the Board shall re-initiate review of this undertaking in accordance with 36 CFR part 800.

B. Any signatory to the Memorandum of Agreement may terminate it by providing thirty (30) days notice to the other parties, provided that the parties shall consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the Board shall comply with 36 CFR 800 with regard to the review of the undertaking.

### VI. Scope of Agreement

This Memorandum of Agreement is limited in scope to the abandonment of the portions of Enola Branch from Milepost 0.0 to 1.5 and Milepost 4.0 to 33.9 and is entered into solely for that purpose. Execution and implementation of this Memorandum of Agreement by the Board, the ACHP, the SHPO, and NS evidences that the Board has afforded the ACHP an opportunity to comment on the project and its effects on historic properties, and has taken into account the effects of the undertaking on those properties, and has, therefore, satisfied its section 106 responsibilities for this undertaking.

### Signatories

Advisory Council on Historic Preservation

State Historic Preservation Officer
Pennsylvania Historical and Museum Commission, Bureau for Historic Preservation

Surface Transportation Board

Norfolk Southern Railway Company

### Concurring Parties

Friends of the Atglen-Susquehanna Trail

Historic Preservation Trust of Lancaster County

Lancaster County Conservancy

Lancaster Farmland Trust

Northeast Regional Field Office of the Rails-to-Trails Conservancy

Pennsylvania Department of Transportation

Southern End Community Association

Township of Bart

Township of Conestoga

Township of Eden

Township of Martic

Township of Providence

Township of Sadsbury

Township of West Sadsbury

[FR Doc. 03–26384 Filed 10–17–03; 8:45 am]

BILLING CODE 4915–00–P

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

[IA–54–90]

## Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–54–90 (TD 8459), Settlement Funds (§§ 1.468B–1, 1.468B–2, 1.468B–3, and 1.468B–5).

**DATES:** Written comments should be received on or before December 19, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Larnice Mack at (202) 622–3179, or *Larnice.Mack@irs.gov*, or Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Settlement Funds.

*OMB Number:* 1545–1299.

*Regulation Project Number:* IA–54–90.

*Abstract:* This regulation prescribes reporting requirements for settlement funds, which are funds established or approved by a governmental authority to resolve or satisfy certain liabilities, such as those involving tort or breach of contract. The regulation relates to the tax treatment of transfers to these funds, the taxation of income earned by the funds, and the tax treatment of distributions made by the funds.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals, business or other for-profit organizations, not for-profit institutions, farms and Federal, state, local or tribal governments.

*Estimated Number of Respondents:* 1,500.

*Estimated Time Per Respondent:* 2 hours, 22 minutes.

*Estimated Total Annual Burden Hours:* 3,542.

The following paragraph applies to all of the collections of 1information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 14, 2003.

**R. Joseph Durbala,**

*IRS Reports Clearance Officer.*

[FR Doc. 03–26415 Filed 10–17–03; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

### [FI–59–91]

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–59–91 (TD 8674), Debt Instructions With Original Issue Discount; Contingent Payment; Anti-Abuse Rule (§§ 1.1275–2, 1.1275–3, 1.1275–4, and 1.275–6).

**DATES:** Written comments should be received on or before December 19, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Larnice Mack at (202) 622–3179, or *Larnice.Mack@irs.gov*, or Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Desk Instruments With Original Issue Discount; Contingent Payments; Anti-Abuse Rule.

*OMB Number:* 1545–1450.

*Regulation Project Number:* FI–59–91.

*Abstract:* This regulation relates to the tax treatment of debt instruments that provide for one or more contingent payments. The regulation also treats a debt instrument and a related hedge as an integrated transaction. The regulation provides general rules, definitions, and reporting and recordkeeping requirements for contingent payment debt instruments and for integrated debt instruments.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, individuals, and state, local, or tribal governments.

*Estimated Number of Respondents:* 180,000.

*Estimated Time Per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 89,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 14, 2003.

**R. Joseph Durbala,**

*IRS Reports Clearance Officer.*

[FR Doc. 03–26416 Filed 10–17–03; 8:45 am]

BILLING CODE 4830–01–P

# Corrections

**Federal Register**
Vol. 68, No. 202
Monday October 20, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

**[CA087–DESIG; FRL–7568–3]**

### Clean Air Act Area Designations; California

*Correction*

In rule document 03–25136 beginning on page 57820 in the issue of Tuesday, October 7, 2003, make the following corrections:

**§ 81.305 [Corrected]**

1. On page 57822, in § 81.305, in the table titled "CALIFORNIA—CARBON MONOXIDE", under the column heading "Designated area", in the second line, "Basin Area Attainment" should read, "Basin Area".

2. On page 57823, in the same section, in the table, under the column heading "Designated area", in the second line, "South and Coast" should read, "South Coast".

[FR Doc. C3–25136 Filed 10–17–03; 8:45 am]

**BILLING CODE 1505–01–D**

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## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### 12 CFR Parts 506, 559, 562, and 563

**[No. 2003–50]**

**RIN 1550–AB55**

### Savings Associations—Transactions With Affiliates

*Correction*

In rule document 03–25217 beginning on page 57790 in the issue of Tuesday, October 7, 2003, make the following corrections:

1. On page 57790, in the document heading, correct the CFR parts affected to read as set forth above.

2. On page 57796, under the heading "**List of Subjects**," add the following CFR part in chronological order:

"*12 CFR Part 506*

Reporting and recordkeeping requirements."

3. On the same page, in the words of issuance paragraph, in the fourth line, "parts 559, 562" should read, "parts 506, 559, 562".

[FR Doc. C3–25217 Filed 10–17–03; 8:45 am]

**BILLING CODE 1505–01–D**

Federal Register

Monday,
October 20, 2003

## Part II

## Department of Defense

## General Services Administration

## National Aeronautics and Space Administration

48 CFR Chapter 1

**Federal Acquisition Regulations—Contract Bundling and Small Entity Compliance Guide; Final Rules**

## Small Business Adminstration

13 CFR Part 125

**Small Business Government Contracting Programs; Final Rule and Proposed Rule**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 2, 7, 8, 10, 16, 19, and 42**

**[FAC 2001–17; FAR Case 2002–029]**

**RIN 9000–AJ58**

## Federal Acquisition Regulation; Contract Bundling

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) governing contract bundling. Specifically, this final rule: Revises the definition of contract bundling to expressly include multiple award contract vehicles and task and delivery orders under such contract vehicles; mandates that procuring activities coordinate with the Small Business Specialist (SBS) proposed acquisition strategies or plans contemplating awards above specified dollar thresholds, and that the SBS notify the agency Office of Small and Disadvantaged Business Utilization (OSDBU) when those strategies include contract bundling that is unnecessary or unjustified; revises the threshold and documentation required for substantial bundling; and requires agency OSDBUs to perform certain oversight functions. These amendments are intended to implement a number of the recommendations included in an October 2002, Office of Management and Budget (OMB) report on contract bundling.

**DATES:** *Effective Date:* October 20, 2003.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501–0044. Please cite FAC 2001–17, FAR case 2002–029.

**SUPPLEMENTARY INFORMATION:**

### A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 68 FR 5138, January 31, 2003, to solicit comments on its proposal to implement several recommendations included in OMB's October 2002 report, entitled "Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business." (*See http://www.fac.gov*).

Contract bundling is defined in the Small Business Act as the consolidation of two or more procurement requirements for goods and services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is "unlikely to be suitable for award to a small business concern", 15 U.S.C. 632(o). The President's Small Business Agenda directed OMB to develop a strategy for unbundling contracts, as a means of expanding small business access to Federal procurements.

In response, the Office of Federal Procurement Policy (OFPP), within OMB, issued the October 2002 bundling report, providing a nine-point action plan to hold agencies accountable for eliminating unnecessary contract bundling and for mitigating the effects of necessary contract bundling.

The proposed rule detailed the changes to the FAR that would implement the five action items requiring regulatory amendments. In particular, the rule proposed to: (1) Revise the definition of bundling to expressly include multiple award contract vehicles and task and delivery orders under such contracts; (2) require procuring activities to coordinate with their SBS proposed acquisition strategies or plans contemplating awards above specified dollar thresholds and require the SBS to notify the agency OSDBU when those strategies include unnecessary and unjustified contract bundling; (3) reduce the threshold and revise the documentation required for substantial bundling; and (4) require agency OSDBUs to perform periodic oversight reviews of agency bundling activities.

The proposed rule invited the public to submit comments on the proposed amendments by April 1, 2003. In response to the proposed rule, 43 comment letters were received. Some respondents complained that a few of the proposed changes did not go far enough to curb contract bundling. Others, on the other hand, criticized some of the proposed changes for going too far with the bundling regulations.

The Councils considered all of the comments and recommendations in developing this final rule. The specific comments to each proposed amendment and the Councils' corresponding response are summarized as set forth below.

1. *Comments on Clarification of Bundling Definition.* Eleven comments were received on the proposal to implement the OMB bundling report recommendation to require bundling reviews for task and delivery order awards under multiple award contract vehicles. The proposed regulation adds new language (paragraph (3)) to the FAR part 2 definition of "bundling" that defines a "single contract" to include: (1) multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources; and (2) an order placed against an indefinite quantity contract under a Federal Supply Schedule contract; or task-order contract or delivery-order contract awarded by another agency (*i.e.*, Governmentwide acquisition contract or multiagency contract).

Some respondents suggested that any change in the definition of bundling (*e.g.*, to specifically include multiple award contracts and orders under multiple award contracts) is questionable. Another respondent wants expansion of the FAR case to include "consolidated contract procurements on IDIQ multiple award vehicles" so that small businesses will have more opportunities to compete.

One respondent believes that the scope of bundling is unclear and that a consistent definition must be agreed upon and supported by a cost-benefit analysis before proceeding. The Councils believe that a cost-benefit analysis is unnecessary and that the definition is clear and consistent by defining the type of contract actions that fall under the revised bundling definition. Two respondents oppose the definition of "single contract" particularly as it applies to Indefinite Delivery/Indefinite Quantity (ID/IQ) contracts for A–E services and recommends limiting the definition to those instances in which bundling under ID/IQ contracts for A–E services would replace two or more previous contracts with small business primes with one bundled contract on which it is unlikely that small businesses could be competitive as a prime contractor. The strategy of the proposed definition is intended to close loopholes that otherwise would allow certain types of acquisitions to escape effective review.

A number of respondents commented on the proposed definition of "single contract" and "order." One respondent commented that the definition did not fully implement OMB's bundling recommendation to close the loophole of bundling task and delivery order awards because it does not cover the orders an agency issues against its own multiple award contracts. This commenter pointed out that the new definition only covers the orders placed against GSA's Federal Supply Schedules, or against an indefinite quantity contract awarded by another agency and urged that the definition of contract bundling include orders placed against indefinite quantity, multiple award contracts awarded by any agency. The Councils do not agree that an agency's orders against its own contract should be subject to additional bundling reviews. The underlying multiple award contract of an agency is subject to the requirements for Small Business Specialist (SBS) and procurement center representative (PCR) review for contract bundling and small business participation. Unlike FSS orders, theoretically, the SBS and PCR reviews of an agency's proposed acquisition strategy or plan for its multiple award contract should encompass that agency's anticipated orders under that contract. Consequently, the agency's own orders presumably were part of the underlying PCR and SBS review. It would therefore be duplicative to require yet another bundling review of each individual order the agency places against its already reviewed multiple award contract. As a result, the Councils are not adopting this recommendation, particularly in light of the limited resources available to conduct the reviews.

Another respondent noted that the proposed definition of bundling is deficient because it does not cover "new work." New work is work that was never performed by contract before. Therefore, it was never part of a separate smaller contract, and so it is not bundled, by definition. Bundling is a concept which describes consolidation of prior contracts.

Two respondents believe that the definition should be broader to include "accretive bundling," which occurs when dissimilar tasks are added onto GWACs, ID/IQs, Schedules, and multiple award type contracts. The Councils disagree. FAR Subpart 19.2 requires that the Offices of Small and Disadvantaged Business Utilization (OSDBUs) work with the Small Business Administration's PCR to identify proposed solicitations that involve bundling. Further, FAR 19.202–1(e) requires the contracting officer to provide a copy of the proposed acquisition package to the PCR at least 30 days prior to the issuance of the solicitation if the proposed acquisition is for a bundled requirement. In particular, since FAR 19.202–1 requires procuring activities to submit acquisitions strategies above the established threshold to PCRs, strategies that contemplate orders that are above the threshold and that are not against an agency's own multiple award contract, would be subject to PCR review for bundling. Second, FAR 19.202–1 requires a procuring activity to submit a copy of a proposed acquisition strategy to the PCR, whenever that strategy involves a bundled requirement. Because the proposed definition in FAR Part 2 defines a bundled requirement to include certain task and delivery orders under another agency's contract, agencies would be required to submit such orders to PCRs for review, when the orders include bundling.

For the purposes of bundling, the proposed rule now defines a single contract to include orders placed against an indefinite quantity contract under a Federal Supply Schedule or a task-order contract or delivery-order contract awarded by another agency and requires strategy review when the estimated contract or order value reaches or exceeds the thresholds. After considering all of the comments on the proposed single contract definition within the meaning of bundling, the Councils believe that the amendment effectively implements OMB's recommendation to compel bundling reviews of task and delivery orders. The Councils are therefore adopting it as proposed.

2. *Comments on Requirement for Bundling Reviews.* The Councils received several comments concerning its proposal to add FAR 7.104(d)(1), requiring bundling reviews of proposed acquisition strategies or plans. As proposed, that section requires an agency to coordinate its acquisition strategy or plan with its SBS whenever the agency's contemplated strategy or plan contemplates award of a contract or order that exceeds the applicable agency threshold established and is not set-aside for small businesses. As previously stated, FAR 19.202–1(e) provides a minimum period of no later than 30 days before the issuance of the solicitation for the agency to coordinate its plan with the SBS. In addition, under FAR 7.104(d)(1), the SBS is required to notify the agency OSDBU if the proposed acquisition strategy or plan includes bundled requirements that the agency has not identified as bundled or includes unnecessary or unjustified bundling of requirements. Several commenters proposed exemptions for certain types of contracts (A–E services, Federal Supply Schedules). One commenter disagreed with applying contract bundling reviews to contracts (not orders) under GSA's Multiple Award Schedules (MAS) Program. The Councils disagree. Contract bundling has been applicable to GSA's Multiple Award Schedules Program since the FAR and SBA bundling regulations first became effective. This final rule specifically covers agency orders under the MAS program and provides more detailed review of various contract actions at agency-specific thresholds. The strategy is intended to close loopholes that otherwise would allow certain types of acquisitions to escape effective review.

Some respondents commented that the proposed rule adds additional burdens and would require additional resources or a reallocation of existing resources. Although agency reallocation of resources may be necessary, the Councils believe that this rule is in response to the President's Small Business Agenda and OMB's strategy for unbundling Federal contracts to increase Federal contracting opportunities for small businesses. The proposed rule provides for eliminating unnecessary contract bundling and mitigating the effects of necessary contract bundling and ensuring maximum compliance with current contract bundling laws by fully using the resources of the Small Business Administration and agency OSDBUs.

Some commenters suggested that OSDBUs should have authority to block an acquisition. That comment ignores existing regulations that would operate in tandem with proposed FAR 7.104(d)(2). The Councils believe this recommended change is unnecessary. Specifically, FAR 19.202–1(e)(4) and FAR 19.505 already provide the mechanism for resolving disagreements with agencies concerning contract bundling and small business participation in procurements. FAR 19.202–1(e)(4) requires the contracting officer to document the basis for the rejection and notify the PCR in accordance with 19.505 if the contracting officer rejects the PCR's recommendation, made in accordance with 19.402(c)(2). FAR 19.505 allows the PCR to appeal the contracting officer's rejection to the head of the contracting activity (or designee).

The proposed rule, specifically FAR 19.201 and FAR Subpart 19.4, encourages SBSs and OSDBUs to cooperate with PCRs in reviewing procurements and in identifying possible small business contracting opportunities. SBSs and OSDBUs therefore can work with PCRs in using the PCR appeal mechanism to challenge unnecessary and unjustified contract bundling.

Accordingly, the Councils believe that the proposed FAR 7.104(d)(2) properly balances the need for SBS reviews of acquisition strategies with the need for operational efficiency in the procurement process. In adopting FAR 7.104(d)(2), the Councils have made minor revisions. The first is a technical change to clarify that the proposed strategies include "acquisitions" meeting the dollar threshold. The second is the inclusion of additional language reinforcing the SBS's responsibility to assist in identifying alternative strategies when an acquisition plan involves substantial bundling.

3. *Comments on Acquisition Dollar Thresholds.* FAR 7.104(d)(2) establishes three agency-specific dollar thresholds that would trigger the bundling reviews required under FAR 7.104(d)(1). The three-tiered dollar threshold proposed is: $7 million or more for the Department of Defense (DoD); $5 million or more for the National Aeronautics and Space Administration (NASA), the Department of Energy (DoE) and the General Services Administration (GSA); and $2 million or more for all other agencies.

The Councils received numerous comments on FAR 7.104(d)(2). Several respondents suggested increasing the agency review thresholds by doubling or tripling them or raising the threshold as applied to a particular agency. A few respondents recommended lowering the thresholds, either for review of Federal Supply Schedule orders or as applied to a particular agency. Of these respondents, some believed that adopting different thresholds for different agencies would unnecessarily complicate the acquisition process. They recommended adoption of a single Governmentwide threshold that would apply to all agencies equally. One of these respondents suggested that the Councils consider keeping the threshold already provided in FAR 7.107(e) for documenting substantial bundling ($10 million). Another respondent indicated that close monitoring of DOD's procurement is essential to limiting the adverse impact of contract bundling on small businesses. Another commenter also believed that the three-tiered approach is too complicated. This commenter suggested one threshold of $1 million. The proposed dollar amounts of the thresholds are based on a comparative analysis of the number and size of the contracting actions of the major procuring activities. The objective of the tiered approach is two-fold: (1) to target those contracting actions for individual agencies that would most likely involve significant contract bundling as well as opportunities for small business contracting; and (2) to minimize the extent to which the bundling reviews would disrupt the procurement process of individual agencies. The Councils continue to believe that the proposed three-tiered threshold will best achieve those objectives. The Councils therefore decline to adopt the recommendations for a single Governmentwide threshold to trigger bundling reviews. The respondents' expressed diverse opinions as to the appropriate structure and amount of the thresholds were not persuasive enough to divert from the proposed range in the strategy (*i.e.*, $2 million, $5 million, and $7 million) or the proposed regulatory approach (three thresholds). The Councils are instead adopting the proposed threshold of $7 million for DoD, $5 million for NASA, DoE and GSA, and $2 million for all other agencies. These agency-specific levels will capture those procurements that would most likely involve contract bundling for individual agencies, will minimize the disruption to the procurement process, and will properly account for the limited resources and contracting personnel to conduct the bundling reviews.

One respondent recommended that the rule clearly state the basis for determining review levels on orders placed against GSA, NASA, and DoE contracts by other agencies with lower thresholds and recommends that the specific agency threshold apply to that agency regardless of whether another agency's contract is used. An agency's threshold applies to that agency regardless of whether another agency's contract is being used.

4. *Comments on Additional Requirements for Acquisitions Involving Bundling.* Two respondents disagreed with the proposed requirement to identify alternative strategies and recommended deleting that requirement. The Councils disagree. The proposed language is intended to require agencies to fully investigate all alternatives to bundling during the acquisition planning stage.

Several respondents did not agree with thresholds proposed for substantial bundling. However, these comments were not persuasive enough to divert from the proposed thresholds. The Councils recognize that lowering the threshold for "substantial bundling" would mean enlarging the number of procurements that would require the additional written justification under FAR 7.107. However, the Councils continue to believe that this change will simplify the application by using the same three-tiered dollar threshold to trigger the bundling reviews and the required supporting analysis for substantial bundling. Also, the changes in the requirement for written justifications are consistent with OMB's report recommendations relating to the identification of alternative acquisition strategies.

Finally, one respondent recommended that FAR 7.105 be changed to require any requirement previously procured be identified and an explanation given if it was satisfied by a separate smaller contract or order and is now planned for consolidation into contract or order. The Councils agree and have added the following language: "When the proposed acquisition strategy involves bundling, identify the incumbent contractors and contracts affected by the bundling".

5. *Comments on Part 8—Required Sources of Supplies and Services.* Three comments were received for this part. The first respondent believes that clarifying that FSS contracts must comply with bundled contracts is helpful but the proposed requirement at 19.202–1(e)(1)(iii) cited in 8.404(a)(1) is unnecessary. The Councils believe that this reference is appropriately placed and is necessary in Part 8 in order to advise those contracting officers utilizing Part 8 to know what is applicable and not applicable to orders placed against Federal Supply Schedules. The second respondent recommends caution in opening the Schedules program to mandatory compliance without considering the impact on meeting agency needs. The strategy of the definition is intended to include orders placed against the Schedules program in order to close loopholes that otherwise would allow acquisitions to escape effective review. Finally, the third respondent believes that federal statutes specifically provide that task and delivery orders issued under a Schedules contract satisfy statutory competition requirements. While FSS contracts meet the statutory competition requirements, the bundling statute is silent on orders placed against these contracts. Including Schedule orders in the definition of bundling will close loopholes that currently allow those orders to escape effective review.

6. *Comments on Part 16—Types of Contracts.* Two comments were received. The first respondent opposes the requirement in FAR 2.101 whereby the definition affects the contract and task order requirements in 16.505(a)(7) and believes it would be devastating to the Government's procurement of surveying and mapping services, disruptive to emergency response activities (*e.g.*, war efforts), and urges

that A–E services as defined in FAR Part 36 be exempt from these provisions. The Councils disagree. As previously stated, the strategy of the definition is intended to include orders to close loopholes that otherwise would escape effective review. The second respondent believes that the addition of FAR 16.505(a)(7)(iii) may conflict with statutory provisions. The Councils do not believe that this rule conflicts with statutory provisions but merely is intended as strategy to close loopholes that otherwise would allow certain types of acquisitions to escape effective review.

7. *Comments on Part 19—Small Business Programs, Subpart 19.2, Policies.* Two comments were received for FAR 19.201 General policy. Both respondents recommended including a timeframe for periodic reviews. The Councils adopted the recommendation and amended the language to require annual reviews rather than periodic reviews.

Three comments were received for FAR 19.202, Specific policies. The first respondent wants to ensure that OSDBU offices in all agencies have the necessary authority, resources, and independence to perform their function and wants to require written notification to agency OSDBUs early in the requisition stage of all GWAC and bundled proposals.

The second respondent recommends revisions to require the negotiation of two-part goals for contracts awarded to the various types of small business concerns, with agency specific goals set for prime contracts and subcontracts awarded to small business concerns and for the OSDBU, in performing assessments of contracts awarded to small business concerns, to identify and track the number of Federal contracting dollars going to the various small business categories. The Councils believe that this comment is outside the scope of this rule.

The third respondent questions the language "Agencies shall establish procedures including dollar thresholds for review of acquisitions" and questions who will decide the agency thresholds for review. These agency procedures would be issued as other agency regulations, orders, and procedures are, by the agency head or his designee. That person would decide what the agency review thresholds are. The FAR Council is adopting the proposed rule as final.

Three comments were received for FAR 19.202–1, Encouraging small business participation in acquisitions. The first respondent believes that additional language requiring the contracting officer to provide all information relative to the justification of contract bundling is inappropriate because release of information must be decided on a case-by-case basis in accordance with existing laws and regulations (*i.e.*, Procurement Integrity, FOIA, and the FAR) and may be in conflict with existing laws. The Councils believe that this requirement complies with the Procurement Integrity Act.

The second respondent comments that when the OSDBU directors undertake new responsibilities that the regulations further require an assessment of the impact and that they should also review the impact of any such decision on effective competition and on proven technical capabilities available in the marketplace. The final respondent suggests that the OSDBUs review and consider alternative strategies that maximize the use of small and mid-size firms in procurements. The Councils believe that with the additional responsibilities placed on OSDBUs with this rule, no additional responsibilities are necessary at this time.

8. *Comments on Subpart 42.15, Contractor Performance Information.* Eighteen respondents commented on the proposed revision to FAR 42.1502 that requires an assessment of agency contractor compliance with the goals identified in the small business subcontracting plan when the contract includes the clause at FAR 52.219–9, Small Business Subcontracting Plan. Although the comments applauded the intent of the proposed language added to FAR 42.1502, the majority of the comments indicated that it is insufficient to monitor and ensure compliance with subcontracting plans. The primary issues of the respondents were general comments pertaining to subcontracting plans and performance evaluations both of which are addressed as follows:

(a) *Comments on the Subcontracting Plans.* Four general comments were received regarding subcontracting plans. Two of the three respondents recommended that subcontracting plans include other information, such as a description of the nature of the work to be subcontracted and the efforts the offeror will make to ensure that small businesses have an equitable opportunity to compete for subcontracts. These requirements are already in FAR 19.704(a) and no further change is necessary. The third respondent recommended that the regulations mandate that PCRs share their compliance assessments with SBA's breakout PCRs, who are assigned to major contracting centers. This commenter also recommended that SBA develop a system to enable PCRs and breakout PCRs to submit their assessments to the cognizant contracting office. The fourth respondent recommended inserting a clause in each contract requiring a prime contractor to prove it has met its original subcontracting plan and requiring a prime's subcontracting partners to sign off on a joint statement of compliance before the prime gets paid.

(b) *Comments on Performance Evaluations.* Two respondents expressed the need for further guidance on evaluating compliance with subcontracting plans and a contractor's "good faith" efforts to achieve its small business goals. One of these two respondents further indicated that Government agencies should be required to "evaluate large businesses on the same basis and understanding of the small business subcontracting plan regulations." This respondent also complained that large businesses need additional guidance in completing commercial plans, which cover a commercial contractor's entire fiscal year and commercial production.

One respondent commented that performance evaluations are inadequate, penalties have never been assessed, and the proposed change does not link performance evaluations to the penalty. The FAR already provides for liquidated damages for noncompliance with subcontracting plans. Under FAR 19.705–7, a prime contractor is liable for such damages for failing to make a "good faith effort" to comply with its subcontracting plans. Since governing regulations already provide monetary consequences for noncompliance with subcontracting plans, the Councils are not adopting this recommendation. Another commenter recommended that large businesses that are awarded task and delivery orders under the Federal Supply Schedules should be subject to the requirement for subcontracting plans under 8(d) of the Small Business Act, 15 U.S.C. 637(d). The Councils agree that effective procedures to mitigate the effects of contract bundling on small businesses necessitates more stringent requirements for monitoring compliance with subcontracting plans to ensure that small businesses receive the maximum practical opportunity to participate as subcontractors in large Federal contracts. Many of the commenters recommended amendments that require further consideration to evaluate their likely effectiveness and impact on the procurement process. As a result, concurrent with publication of this FAR final rule, the Small Business Administration (SBA) is issuing a final rule to incorporate parallel changes in 13 CFR part 125. At the same time, SBA is issuing a proposed rule to provide more guidance on subcontracting, including guidelines for evaluating a company's good faith efforts to comply with subcontracting plan requirements. When the SBA proposed rule becomes final, the Councils will consider incorporating appropriate provisions in the FAR.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and is as follows:

#### Final Regulatory Flexibility Analysis

FAR Case 2002–029, Contract Bundling

This Final Regulatory Flexibility Analysis has been prepared consistent with the criteria of 5 U.S.C. 604.

1. Reasons for the final rule:

This rule amends the Federal Acquisition Regulation (FAR) to implement the recommendations of the Office of Management and Budget (OMB) in its report entitled "A Strategy for Increasing Opportunities for Small Business." The FAR changes will: (1) Clarify the definition of "bundling" to indicate it applies to orders placed against Federal Supply Schedules and another agency's Governmentwide Acquisition Contracts or Multi-agency Contracts when those orders otherwise meet the parameters of the definition; (2) require the small business specialist to coordinate on agency acquisition strategies at specified dollar thresholds and notify the agency Office of Small and Disadvantaged Business Utilization when those strategies include contract bundling that is unnecessary, unjustified, or not identified as such by the agency; (3) reduce the threshold for "substantial bundling"; (4) revise the documentation requirements for substantial bundling to include identification of alternative acquisition strategies that would result in the bundling of fewer requirements, along with justification for not choosing those alternatives; (5) require contracting officers to provide bundling justification documentation to the agency Office of Small and Disadvantaged Business Utilization when substantial bundling is involved; (6) require contractor performance evaluations to include an assessment of contractor compliance with small business subcontracting goals; and (7) require the Office of Small and Disadvantaged Utilization to be responsible for conducting annual reviews to assess agency contract bundling requirements and the extent to which small businesses are receiving a fair share of Federal procurements.

2. Objectives of and legal basis for this rule:

The objective of this final rule is to further the Administration's commitment of creating a Government strategy to increase Federal contracting opportunities for small business. In order to accomplish this commitment this final rule provides FAR coverage that implements the recommendations of the Office of Management and Budget (OMB) in its report entitled "A Strategy for Increasing Opportunities for Small Business."

3. Description of and estimate of the number of small entities to which the rule will apply, or an explanation if such estimate is not available:

The final rule will indirectly apply to all large and small entities that seek award of Federal contracts. The rule should have a positive economic impact on small prime contractors and subcontractors by providing more Federal contracting opportunities for small businesses. In the SBA's 2001 State of Small Business Report filed with the House and Senate Small Business Committees, SBA identified only four material bundling cases with a total value of $60 million for the first three quarters of Fiscal Year (FY) 2001. This represents 0.0004% of Federal contract dollar activity ($60 million divided by $150 billion for the first three quarters of the fiscal year). Based on FY 2001 data, the final rule will impact approximately $3 billion in orders placed against FSS contracts, Governmentwide acquisition contracts, and multiagency contracts. Applying the contract bundling estimate of 0.0004% to these unreviewed orders, SBA expects approximately $1 million will be identified as bundled. This rule establishes a three-tiered dollar threshold of $7 million for DOD, $5 million for NASA, DOE and GSA, and $2 million for all other civilian agencies. The dollar amount is based on a comparative analysis of the number and size of the contracting actions of the major procuring activities and is intended to target reviews of the contracting actions that would most likely involve contract bundling, without undue disruption to the acquisition process.

4. Description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The final rule imposes no reporting, recordkeeping, or other compliance requirements.

5. Relevant Federal rules that may duplicate, overlap, or conflict with the rule:

Simultaneously with the publication of this final rule, SBA is publishing its final rule on contract bundling to implement the required action items in OMB's October 2002 report, entitled "Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business." In some instances, SBA's final rule duplicates language in the FAR final rule.

6. Description of any significant alternatives to the final rule which accomplish the stated objectives of applicable statutes and which minimize the rule's economic impact on small entities.

Currently, there are no practical alternatives that will accomplish the objectives of this final rule.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Parts 2, 7, 8, 10, 16, 19, and 42

Government procurement.

Dated: October 16, 2003.

**Laura Auletta,**

*Director, Acquisition Policy Division.*

### Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–17 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001–17 is effective October 20, 2003.

Dated: October 9, 2003.

Deidre A. Lee,

*Director, Defense Procurement and Acquisition Policy.*

Dated: October 2, 2003.

David A. Drabkin,

*Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.*

Dated: October 2, 2003.

Tom Luedtke,

*Assistant Administrator for Procurement, National Aeronautics and Space Administration.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 7, 8, 10, 16, 19, and 42 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 7, 8, 10, 16, 19, and 42 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101(b)(2) in the definition "Bundling" by redesignating paragraph (3) as paragraph (4) and adding a new paragraph (3) to read as follows:

**2.101 Definitions.**

* * * * *

*Bundling* means—

* * * * *

(3) Single contract, as used in this definition, includes—

(i) Multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources (see FAR 16.504(c)); and

(ii) An order placed against an indefinite quantity contract under a—

(A) Federal Supply Schedule contract; or

(B) Task-order contract or delivery-order contract awarded by another agency (*i.e.*, Governmentwide acquisition contract or multi-agency contract).

* * * * *

## PART 7—ACQUISITION PLANNING

■ 3. Amend section 7.104 by adding paragraph (d) to read as follows:

**7.104 General procedures.**

* * * * *

(d)(1) The planner shall coordinate the acquisition plan or strategy with the cognizant small business specialist when the strategy contemplates an acquisition meeting the dollar amounts in paragraph (d)(2) of this section unless the contract or order is entirely reserved or set-aside for small business under part 19. The small business specialist shall notify the agency Office of Small and Disadvantaged Business Utilization if the strategy involves contract bundling that is unnecessary, unjustified, or not identified as bundled by the agency. If the strategy involves substantial bundling, the small business specialist shall assist in identifying alternative strategies that would reduce or minimize the scope of the bundling.

(2)(i) The strategy shall be coordinated with the cognizant small business specialist in accordance with paragraph (d)(1) of this section if the estimated contract or order value is—

(A) $7 million or more for the Department of Defense;

(B) $5 million or more for the National Aeronautics and Space Administration, the General Services Administration, and the Department of Energy; and

(C) $2 million or more for all other agencies.

(ii) If the strategy contemplates the award of multiple contracts or orders, the thresholds in paragraph (d)(2)(i) of this section apply to the cumulative maximum potential value, including options, of the contracts and orders.

■ 4. Amend section 7.105 in paragraph (b)(1) by adding a sentence after the third sentence to read as follows:

**7.105 Contents of written acquisition plans.**

* * * * *

(b)(1) * * * When the proposed acquisition strategy involves bundling, identify the incumbent contractors and contracts affected by the bundling. * * *

* * * * *

■ 5. Amend section 7.107 in the third sentence of paragraph (a) by removing "an agency" and adding "an agency or the Government" in its place; in paragraphs (b)(1), (b)(2), and (d) by removing the word "contract" and adding "contract or order" in its place; by revising the introductory text of paragraph (e), paragraphs (e)(4) and (e)(5); and by adding paragraph (e)(6) to read as follows:

**7.107 Additional requirements for acquisitions involving bundling.**

* * * * *

(e) Substantial bundling is any bundling that results in a contract or order that meets the dollar amounts specified in 7.104(d)(2). When the proposed acquisition strategy involves substantial bundling, the acquisition strategy must additionally—

* * * * *

(4) Specify actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract, or order, that may be awarded to meet the requirements;

(5) Include a specific determination that the anticipated benefits of the proposed bundled contract or order justify its use; and

(6) Identify alternative strategies that would reduce or minimize the scope of the bundling, and the rationale for not choosing those alternatives.

* * * * *

## PART 8—REQUIRED SOURCES OF SUPPLIES AND CONTRACTS

■ 6. Amend section 8.404 in the introductory text of paragraph (a)(1) by removing the period at the end of the first sentence and adding "and the requirement at 19.202–1(e)(1)(iii)." in its place; and revising paragraph (a)(2) to read as follows:

**8.404 Using schedules.**

(a) * * *

(2) Orders placed under a Federal Supply Schedule contract—

(i) Are not exempt from the development of acquisition plans (*see* subpart 7.1), and an information technology acquisition strategy (*see* part 39); and

(ii) Must comply with all FAR requirements for a bundled contract when the order meets the definition of "bundled contract" (*see* 2.101(b)).

## PART 10—MARKET RESEARCH

■ 7. Amend section 10.001 by revising the introductory text of paragraph (c)(2) to read as follows:

**10.001 Policy.**

* * * * *

(c) * * *

(2) At least 30 days before release of the solicitation or 30 days prior to placing an order without a solicitation—

* * * * *

## PART 16—TYPES OF CONTRACTS

■ 8. Amend section 16.505 by removing the word "and" from the end of paragraph (a)(7)(i); removing the period at the end of paragraph (a)(7)(ii) and adding "; and" in its place; and adding paragraph (a)(7)(iii) to read as follows:

**16.505 Ordering.**

(a) * * *

(7) * * *

(iii) Must comply with all FAR requirements for a bundled contract when the order meets the definition of "bundled contract" (*see* 2.101(b)).

* * * * *

## PART 19—SMALL BUSINESS PROGRAMS

■ 9. Amend section 19.201 by removing the period at the end of paragraph (d)(10) and adding a semicolon in its place; and adding paragraphs (d)(11) and (d)(12) to read as follows:

**19.201 General policy.**

* * * * *

(d) * * *

(11) Conduct annual reviews to assess the—

(i) Extent to which small businesses are receiving a fair share of Federal procurements, including contract opportunities under the programs administered under the Small Business Act;

(ii) Adequacy of contract bundling documentation and justifications; and

(iii) Actions taken to mitigate the effects of necessary and justified contract bundling on small businesses.

(12) Provide a copy of the assessment made under paragraph (d)(11) of this

section to the Agency Head and SBA Administrator.

* * * * *

■ 10. Amend section 19.202 by adding a new sentence after the first sentence to read as follows:

**19.202 Specific policies.**

* * * Agencies shall establish procedures including dollar thresholds for review of acquisitions by the Director or the Director's designee for the purpose of making these recommendations. * * *

■ 11. Amend section 19.202–1 by revising paragraph (e)(1)(iii) to read as follows:

**19.202–1 Encouraging small business participation in acquisitions.**

* * * * *

(e)(1) * * *

(iii) The proposed acquisition is for a bundled requirement. (*See* 10.001(c)(2)(i) for mandatory 30-day notice requirement to incumbent small business concerns.) The contracting officer shall provide all information relative to the justification of contract bundling, including the acquisition plan or strategy, and if the acquisition involves substantial bundling, the information identified in 7.107(e). When the acquisition involves substantial bundling, the contracting officer shall also provide the same information to the agency Office of Small and Disadvantaged Business Utilization.

* * * * *

## PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 12. Amend section 42.1502 by adding a new sentence to the end of paragraph (a) to read as follows:

**42.1502 Policy.**

(a) * * * These procedures shall require an assessment of contractor performance against, and efforts to achieve, the goals identified in the small business subcontracting plan when the contract includes the clause at 52.219–9, Small Business Subcontracting Plan.

* * * * *

[FR Doc. 03–26463 Filed 10–17–03; 8:45 am]

**BILLING CODE 6820–EP–P**

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Chapter 1

## Federal Acquisition Regulation; Small Entity Compliance Guide

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Small Entity Compliance Guide.

**SUMMARY:** This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2001–17 which amends the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 2001–17, which precedes this document. These documents are also available via the Internet at *http://www.arnet.gov/far.*

**FOR FURTHER INFORMATION CONTACT:** Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, General Services Administration, at (202) 501–0044.

### * Contract Bundling (FAR Case 2002–029)

This final rule implements the Office of Management and Budget's October 2002 report, entitled "Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business" which requires amendments to the Federal Acquisition Regulation (FAR) to implement the following action items: (1) Revise the definition of bundling to expressly include multiple award contract vehicles and task and delivery orders under such contracts; (2) require procuring activities to coordinate with their small business specialist (SBS) proposed acquisition strategies or plans contemplating awards above specified dollar thresholds and require the SBS to notify the agency Office of Small and Disadvantaged Utilization (OSDBU) when those strategies include unnecessary and unjustified contract bundling; (3) reduce the threshold and revise the documentation required for substantial bundling; and (4) require agency OSDBUs to perform periodic oversight reviews of agency bundling activities. To implement the action items, this final rule amends FAR Parts 2, 7, 8, 10, 16, 19, and 42.

Dated: October 16, 2003.

**Laura Auletta,**

*Director, Acquisition Policy Division.*

[FR Doc. 03–26464 Filed 10–17–03; 8:45 am]

**BILLING CODE 6820–EP–P**

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## SMALL BUSINESS ADMINISTRATION

## 13 CFR Part 125

## RIN 3245–AF07

## Small Business Government Contracting Programs

**AGENCY:** Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the U.S. Small Business Administration (SBA) regulations governing small business prime contracting assistance. Specifically, this final rule: revises the definition of contract bundling to expressly include multiple award contract vehicles and task and delivery orders under such contracting vehicles; mandates that procuring activities coordinate with the Small Business Specialist (SBS) on proposed acquisition strategies or plans contemplating awards above specified dollar thresholds, and that the SBS notify the agency's Office of Small and Disadvantaged Business Utilization (OSDBU) when those strategies include contract bundling that is unnecessary or unjustified; revises the threshold and documentation required for substantial bundling; and requires the agency's OSDBU to perform certain oversight functions. These amendments are intended to implement a number of the recommendations included in the October 2002 Office of Management and Budget (OMB) report entitled "Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business."

**DATES:** This rule is effective November 19, 2003.

**FOR FURTHER INFORMATION CONTACT:** Dean Koppel, Assistant Administrator, Office of Policy and Research, (202) 401–8150 or *dean.koppel@sba.gov.*

**SUPPLEMENTARY INFORMATION:**

## A. Background

On January 31, 2003, SBA published a proposed rule in the **Federal Register**, 68 FR 5134, to solicit comments on its proposal to implement several recommendations included in OMB's October 2002 report, entitled "Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business." *See http://www.acqnet.gov/Notes/contractbundlingreport.pdf* or *http://www.acqnet.gov/.*

Contract bundling is defined in the Small Business Act as the consolidation of two or more requirements for goods and services into a single procurement that is "unlikely to be suitable for award to a small business concern." 15 U.S.C. 632(o). The dramatic increase in the size of contracts in recent years has resulted in a significant reduction in the number of Federal contracting opportunities for small businesses. As a result, the President's Small Business Agenda directed OMB to develop a strategy for unbundling contracts as a means of expanding small business access to Federal procurements.

In response, the Office of Federal Procurement Policy (OFPP), within OMB, issued the October 2002 bundling report, providing a nine-point action plan to hold agencies accountable for eliminating unnecessary contract bundling and for mitigating the effects of necessary contract bundling. Five of the nine action items specifically called for regulatory implementation, while the remaining four contemplated other administrative initiatives involving OMB, SBA and agency OSDBUs. The specific action items necessitating regulatory implementation are: Action Item 3, which requires a clarification of the definition of contract bundling to require bundling reviews of task and delivery orders under multiple award contract vehicles; Action Item 4, which dictates bundling reviews of agency acquisitions above specific dollar thresholds; Action Item 5, which mandates the identification of alternative acquisition strategies and justification for bundled procurements above established thresholds; Action Item 6; which requires measures to strengthen compliance with subcontracting plans of large business prime contractors; and Action Item 7, which demands measures to facilitate small business teaming arrangements.

SBA's proposed rule published on January 31, 2003 (68 FR 5134) detailed the changes to the SBA's regulations that would implement the five action items requiring regulatory amendments. In particular, the rule proposed to: (1) Revise the definition of bundling to expressly include multiple award contract vehicles and task and delivery orders under such contracts; (2) require procuring activities to coordinate with their SBS proposed acquisition strategies or plans contemplating awards above specified dollar thresholds and require the SBS to notify the agency OSDBU when those strategies include unnecessary and unjustified contract bundling; (3) reduce the threshold and revise the documentation required for substantial bundling; and (4) require the agency's OSDBU to perform periodic oversight reviews of agency bundling activities.

The proposed rule invited the public to submit comments on the proposed amendments by April 1, 2003. By the end of the comment period, SBA had received a total of 26 timely comment letters from a variety of sources, consisting of one member of Congress; the Public Contract Law Section of the American Bar Association; two national women's organizations; five national trade organizations; six Federal agencies; and 11 firms and individuals from numerous industries.

The overwhelming majority of the 26 commenters supported the Administration's effort to address the problem of contract bundling. Some of the commenters, however, complained that a few of the proposed changes did not go far enough to curb contract bundling. Others, on the other hand, criticized some of the proposed changes for going too far to unbundle contracts.

SBA considered all of the comments and recommendations in developing this final rule. The specific comments to each proposed amendment and SBA's corresponding responses are set forth below.

## B. Section-by-Section Analysis of Comments

### *1. Comments on Requirement for Bundling Reviews*

SBA received six comments concerning its proposal to add a new § 125.2(b)(2), requiring bundling reviews of proposed acquisition strategies or plans. As proposed, that section requires an agency to coordinate its acquisition strategy or plan with its SBS whenever the agency's contemplated strategy or plan exceeds the applicable agency threshold established in the proposed § 125.2(b)(2)(i) (discussed below) and is not set-aside for small businesses. The proposed § 125.2(b)(2) provides a minimum period of no later than 30 days before the issuance of the solicitation, for the agency to coordinate its plan with the SBS. In addition, under the proposed § 125.2(b)(2), the SBS is required to notify the agency OSDBU if the proposed acquisition strategy or plan includes bundled requirements that the agency has not identified as bundled or includes unnecessary or unjustified bundling of requirements.

All six comments on the proposed § 125.2(b)(2) expressed support for the requirement for SBS bundling reviews. Three of those six comments recommended allowing the SBS more time to complete the bundling reviews. These three commenters believed that a notification timeframe of no later than 30 days prior to the issuance of the solicitation may be too late in the process for the SBS to influence the structure of the acquisition and assist in identifying small business sources. As an alternative, one of these three commenters recommended official SBS notification at the time the contracting officer is first notified of the requirement; the second suggested a provision precluding the contracting officer from finalizing the acquisition plan until the SBS completed the bundling review within a "limited number of days"; and the third recommended a minimum 40-day review period.

SBA has declined to adopt any of these recommendations because they would unduly burden the procurement process. The requirement for bundling reviews under the proposed § 125.2(b)(2) implicitly recognizes the need for SBS and OSDBU involvement in the acquisition process to facilitate greater participation of small businesses in Federal contracts. The necessity for their involvement in the process, however, must be balanced against the practical imperative for an operationally efficient Federal acquisition system. SBA does not believe that mandating a specific time that SBSs must receive the acquisition plan or strategy accommodates the unique planning processes of individual agencies and procurements. The proposed language in § 125.2(b)(2) for coordination "as early in the planning process as practicable, but no later than 30 days," affords the flexibility that the process dictates and also emphasizes the agency's obligation for early coordination.

The other commenters on the proposed § 125.2(b)(2) urged for a more stringent provision. Two commenters recommended that the section authorize OSDBUs to stop an acquisition if the OSDBU determines that it includes unnecessary or unjustified bundling. Still another commenter urged for a provision precluding all contract bundling, asserting that this was the only acquisition strategy that would benefit small businesses.

Like the other suggestions concerning this section, SBA believes that these recommendations also would unduly interfere with the operational efficiencies of the procurement process. Both governing law and OMB's October 2002 bundling report acknowledge that necessary and justified contract bundling may serve a useful purpose. SBA therefore has no authority to prohibit all bundled contracts, including those that are determined to be both necessary and justified.

In addition, the comment that OSDBUs should have authority to block an acquisition ignores existing regulations that would operate in tandem with proposed § 125.2(b)(2). Specifically, existing § 125.2(b)(6) already provides a mechanism for resolving disagreements with agencies concerning contract bundling and small business participation in procurements. Section 125.2(b)(6) authorizes Procurement Center Representatives (PCRs) to initiate an appeal to the head of the contracting activity when there is a disagreement concerning the bundling of a requirement or the suitability of an acquisition to be set aside for small business competition. The proposed rule, specifically § 125.2(b)(8) and § 125.2(d)(7)(ii), encouraged SBSs and OSDBUs to cooperate with PCRs in reviewing procurements and in identifying possible small business contracting opportunities. SBSs and OSDBUs therefore can work with PCRs in using the PCR appeal mechanism to challenge unnecessary and unjustified contract bundling.

Accordingly, SBA believes that the proposed § 125.2(b)(2) properly balances the need for SBS reviews of acquisition strategies, with the need for operational efficiency in the procurement process. In adopting § 125.2(b)(2), SBA has made three minor revisions. The first clarifies that the proposed strategies are for "acquisitions" that meet the applicable dollar threshold. The second revision adds language to reinforce the SBS's responsibility to assist in identifying alternative strategies when an acquisition plan involves substantial bundling. The third revision adds a new § 125.2(b)(2)(ii) to explain the application of the dollar thresholds to multiple award contracts and orders. The new § 125.2(b)(2)(ii) indicates that the thresholds provided in § 125.2(b)(2)(i) apply to the cumulative value of an acquisition strategy that contemplates multiple award contracts or orders, including options.

### *2. Comments on Acquisition Dollar Thresholds*

SBA specifically requested comments on the proposed § 125.2(b)(2)(i). That section establishes three separate agency-specific dollar thresholds that would trigger the bundling reviews required under § 125.2(b)(2) and the additional documentation and justification required for substantial bundling under § 125.2(d)(1)(v) (discussed below). The three-tier dollar threshold proposed was $7 million or more for the Department of Defense (DOD); $5 million or more for the National Aeronautics and Space Administration (NASA), the Department of Energy (DOE) and the General Services Administration (GSA); and $2 million or more for all other agencies.

SBA received nine comments on this proposal. Only one of the nine commenters objected to the adoption of any dollar threshold. That one objecting commenter believed that the imposition of thresholds for SBS bundling reviews would mean that contract bundling could occur below the established thresholds without review. This commenter asserted that focusing review on contracts above the threshold would somehow eliminate bundling reviews of smaller contracts and thereby reduce rather than increase contracting opportunities for small businesses.

This commenter misunderstands the purpose and application of the proposed thresholds under § 125.2(b)(2)(i). The proposed thresholds are not intended to relieve procuring officials of their existing responsibilities to justify contract bundling at any dollar threshold, and to mitigate the effects of necessary bundling. The existing § 125.2(b)(3), which implements 15 U.S.C. 644(a), requires procuring activities to provide a copy of all proposed bundled procurements, irrespective of amount, to the activity's PCR at least 30 days before the solicitation is issued. The proposed § 125.2(b)(2)(i) leaves that requirement in place, and focuses additional resources instead on reviewing higher-dollar valued procurements that will likely have an even greater adverse impact by foreclosing small business prime contract participation.

Proposed § 125.2(b)(2)(i) is intended to supplement and not replace current PCR reviews of procurement strategies. As a result, instead of reducing small business contracting opportunities as the objecting commenter asserts, proposed § 125.2(b)(2)(i) and related provisions will serve to expand small business access to Federal contracts by providing more reviews of those bundled procurements that possess the greatest potential to harm small businesses.

With the exception of that one objecting commenter, the remaining eight commenters on § 125.2(b)(2)(i) supported the adoption of dollar thresholds for SBS reviews, but expressed diverse opinions as to the appropriate structure and amount of the thresholds. One commented that the proposed three-tier approach and dollar amounts are reasonable, but further indicated that the Agency should be aware that substantial bundling may occur at levels below the threshold.

Two commenters recommended that SBA reduce the dollar amounts—one of these commenter failed to specify any alternative amount, while the other recommended the adoption of thresholds between $1 and $2 million.

Two other commenters recommend increasing the thresholds to an unspecified amount. Both of these commenters believed that higher thresholds would better accommodate the limited agency resources available to conduct bundling reviews and provide the additional justifications required for substantial bundling.

Two additional commenters believed that adopting different thresholds for different agencies would unnecessarily complicate the acquisition process. They recommended that SBA adopt a single government-wide threshold that would apply to all agencies equally. One of these two commenters suggested that SBA establish the government-wide threshold at $7 million. The other commenter urged that DOD be subject to the same dollar threshold as the other agencies. This commenter asserted that it is just as important for DOD to sustain its small business industrial base as it is for civilian agencies. This commenter further indicated that close monitoring of DOD's procurement is essential to limiting the adverse impact of contract bundling on small businesses.

Another commenter also believed that the three-tier approach is too complicated. This commenter suggested that SBA adopt one threshold of either $2 or $5 million for all agencies and a second threshold of greater than $5 million to trigger "additional requirements" for all agencies procurements above that amount.

As SBA explained in its preamble to the proposed rule published on January 31, 2003, the proposed dollar amounts of the thresholds are based on a comparative analysis of the number and size of the contracting actions of the major procuring activities. The objective of the tier approach is two-fold: (1) To target those contracting actions for individual agencies that would most likely involve contract bundling; and (2) to minimize the extent to which the bundling reviews would disrupt the procurement process of individual agencies.

SBA continues to believe that the proposed three-tier threshold will best achieve those objectives. SBA therefore declines to adopt the recommendations for a single government-wide threshold to trigger bundling reviews and the additional documentation requirements for substantial bundling (discussed below). SBA is instead adopting the proposed threshold of $7 million for DOD, $5 million for NASA, DOE and GSA, and $2 million for all other agencies. These agency-specific levels will capture those procurements that would most likely involve contract bundling for individual agencies, will minimize the disruption to the procurement process, and will properly account for the limited resources and contracting personnel to conduct the bundling reviews.

### 3. *Comments on Compliance With Subcontracting Plans*

The redesignated § 125.2(b)(6)(iii)(C) under the proposed rule clarifies the language of the former § 125.2(b)(5)(iii)(C) to make clear that as part of the responsibilities of PCRs to ensure that small business participation is maximized through subcontracting opportunities, PCRs may review an agency's oversight of its subcontracting programs, including the agency's overall and individual assessment of contractor compliance. The proposed § 125.2(b)(6)(iii)(C) contemplates a systemic review of an agency's general assessment of subcontracting plan compliance to facilitate greater consistency in agency oversight in the future.

SBA received 11 comments on this proposed clarification. Although the comments applauded the intent of proposed § 125.2(b)(6)(iii)(C), the majority of the comments indicated that it is insufficient to monitor and ensure compliance with subcontracting plans. Three commenters recommended the imposition of penalties or sanctions on large prime contractors for noncompliance with their small business subcontracting plans. The Federal Acquisition Regulation (FAR) already provides for liquidated damages for noncompliance with subcontracting plans. Under FAR section 19.750–7, a prime contractor is liable for such damages for failing to make a "good faith effort" to comply with its subcontracting plans. Since governing regulations already provide monetary consequences for noncompliance with subcontracting plans, SBA is not adopting this recommendation.

Continuing on the issue of compliance with subcontracting plans, one commenter suggested that SBA explore incentives that would reward large prime contractors that achieve their subcontracting goals. Along those lines, another commenter similarly recommended reinforcing prime contractor compliance with subcontracting plans by requiring the inclusion in all solicitations a past performance evaluation factor assessing subcontracting plan compliance. This commenter believed that such a mandatory source selection factor, in both bundled and non-bundled acquisitions alike, would encourage greater small business subcontracting awards. Additionally, because of the increase in task and delivery orders under multiple award contracts, the commenter also suggested that the regulations encourage the inclusion of a similar evaluation source selection criterion for task and delivery order awards.

Another commenter recommended that large businesses that are awarded task and delivery orders under GSA's Federal Supply Schedule (FSS) should be subject to the requirement for subcontracting plans under section 8(d) of the Small Business Act, 15 U.S.C. 637(d).

SBA agrees that a subcontracting plan compliance evaluation factor may serve as an effective incentive to encourage greater compliance with the plans. SBA is therefore adopting the proposed § 125.2(b)(6)(iii), with a new paragraph (D), recommending a separate evaluation factor of "significant weight" for achievements of subcontracting goals on previous contracts. SBA declines to make that evaluation factor mandatory or to extend it to task and delivery order awards at this time, since it has not yet determined the potential impact of such requirements.

Also, regarding the issue of SBA's review of subcontracting compliance, one commenter suggested that the regulations mandate that PCRs share their compliance assessments with SBA's breakout PCRs, who are assigned to major contracting centers. This commenter also recommended that SBA develop a system to enable PCRs and breakout PCRs to submit their assessments to the cognizant contracting officer.

Two commenters expressed the need for further guidance on evaluating compliance with subcontracting plans and a contractor's "good faith" efforts to achieve its small business goals. One of these two commenters further indicated that government agencies should be required to "evaluate large businesses on the same basis and understanding of the small business subcontracting plan regulations." This commenter also complained that large businesses need additional guidance in completing commercial plans, which cover a commercial contractor's entire fiscal year and commercial production.

Two additional commenters recommended that in addition to goals, subcontracting plans should include other information, such as a description of the nature of the work to be subcontracted and the efforts the offeror will make to ensure that small businesses have an equitable opportunity to compete for subcontracts.

Likewise, another commenter suggested that prime contractor subcontracting plans should be reviewed not only for the extent of small business participation, but also for the extent to which they generate "reasonable profit margins" for small businesses. This commenter explained that review of the small business profit margins is necessary because prime contractors often give the low margin, high revenue producing products to small businesses, and thereby achieve their percentage of participation but leave the small business with little profit. This commenter also recommended the collection and dissemination of best practices and strategies for maximizing small business prime and subcontract opportunities.

SBA agrees that effective procedures to mitigate the effects of contract bundling on small businesses necessitates more stringent requirements for monitoring compliance with subcontracting plans to ensure that small businesses receive the maximum practical opportunity to participate as subcontractors in large Federal contracts. Many of the commenters recommended amendments that require further consideration to evaluate their likely effectiveness and impact on the procurement process. As a result, SBA is proposing a separate rule, published elsewhere in this issue of the **Federal Register**, to address many of these comments and suggestions, including the suggestion for more guidance in determining good faith compliance.

Although published separately, that proposed rule addressing the comments on § 125.2(b)(6)(iii)(C), remains part of the Administration's initiative to implement OMB's October 2002 report on contract bundling. However, because the rule proposes additional changes to SBA's regulations that were not published for public comment as part of SBA's earlier January 31, 2003, proposed rule, SBA is publishing these proposed changes separately to solicit public comment before they become final.

*4. Comments on Requirement for PCR, SBS and OSDBU Cooperation*

SBA received four comments addressing proposed § 125.2(b)(8). This section reiterates the requirement for PCRs to work with SBSs and agency OSDBUs as early in the acquisition process as practicable, to identify acquisitions involving bundling and to increase small business prime contract participation. Several of the commenters requested additional language and guidance for developing and monitoring the utilization of small business teams.

Additionally, two of the commenters did not believe that the amendment sufficiently referenced joint ventures, teaming and mentor-protégé relationships as effective mechanisms for increasing small business access to Federal procurements. One of these commenters maintained that small business involvement in Federal procurements through subcontracting should be the exception rather than the rule. Another commenter suggested that small business teams should be based on "market driven strategies to develop the competitiveness of small firms in non-traditional areas of weakness."

SBA agrees that additional guidance on identifying and developing small business teams is necessary. Nonetheless, proposed § 125.2(b)(8) was not intended to provide such detailed guidance. The efforts to develop additional guidance are part of a separate administrative initiative to implement one of OMB's non-regulatory recommendations under Action Item 8 of its October 2002 bundling report. That item requires SBA to collect and disseminate best practices for maximizing small business opportunities. In implementing that recommendation, on January 23, 2003, SBA issued a memorandum to Senior Procurement Executives and OSDBU Directors, requesting proven strategies for increasing opportunities for small businesses. The memorandum invited the officials to submit to SBA's Office of Government Contracting no later than February 28, 2003, best practices for maximizing small business opportunities.

Once SBA completes its review of the agency submissions, it will publish a compilation of best practices, strategies and guidance for maximizing prime and subcontracting opportunities for small businesses. Since SBA will provide additional guidance on small business teams as part of this separate initiative, it will not include such guidance in this rulemaking action and is therefore adopting § 125.2(b)(8) as proposed.

*5. Comments on Clarification of Bundling Definition*

SBA received seven comments on its proposal to implement the OMB bundling report recommendation to require bundling reviews for task and delivery order awards under multiple award contract vehicles. The proposed regulations add new § 125.2(d)(1)(iii) to define a "single contract" to include: (1) an indefinite quantity contract awarded to two or more sources under a single solicitation for the same or similar supplies and services; and (2) an order under a FSS contract or a task or delivery order contract awarded by another agency. The proposed rule also adds new § 125.2(d)(1)(iv) defining an "order" as an order placed under a FSS contract or a task or delivery order contract awarded by another agency. The purpose of providing definitions of a "single contract" and an "order" is to clarify that task and delivery orders under multiple award contract vehicles are subject to the applicable requirements for bundling reviews and justifications.

The majority of the seven commenters expressed support for the proposed clarification. One commenter suggested that SBA clarify that the § 125.2(d)(1)(iii) definition of "single contract" is "for purposes of this subpart 125.2 only." Section 125.2(d)(1)(iii) already contains the qualifying statement "as used in this definition." SBA believes that language sufficiently clarifies that the definition of "single contract" is provided as part of the overall definition of contracting bundling. There is therefore no need for further clarifying language.

By far, the most common issue the commenters raised on the proposed definition of "single contract" and "order" was the type of multiple award contracts encompassed under the proposed definition. One commenter complained that the definition did not fully implement OMB's bundling recommendation to close the loophole of bundling task and delivery order awards because it does not cover the orders an agency issues against its own multiple award contracts. This commenter pointed out that the new definition only covers the orders placed against GSA's FSS, or against an indefinite quantity contract awarded by another agency. This commenter urged that the definition of contract bundling should include orders placed against indefinite quantity, multiple award contracts awarded by any agency.

Also on this issue, two other commenters indicated that the regulations should not exempt an agency's order against its own multiple award contract, since agencies may also bundle requirements when ordering against their own multiple award contracts.

SBA does not agree that an agency's orders against its own contract should be subject to bundling reviews. The underlying multiple award contract of an agency is subject to the requirements for SBS and PCR review for contract bundling and small business participation. Unlike FSS orders, theoretically, the SBS and PCR reviews of an agency's proposed acquisition strategy or plan for its multiple award contract should encompass that agency's anticipated orders under that contract. Consequently, the agency's own orders presumably were part of the underlying PCR and SBS review. It would therefore be duplicative to require yet another bundling review of each individual order the agency places against its already reviewed multiple award contract. As a result, SBA is not adopting this recommendation, particularly in light of the limited resources available to conduct the reviews.

Another commenter asserted that the proposed clarification under §§ 125.2(d)(1)(iii) and (iv) is "vague as to whether task or delivery orders added to existing contracts will be covered by the definition and reviewed, or whether only task or delivery orders over certain thresholds will be reviewed." Under the proposed definitions, task and delivery order awards under any indefinite quantity contract other than an agency's own multiple award contract, would be subject to SBS review under § 125.2(b)(2), if it is above the established threshold, and would be subject to review by the cognizant PCR under § 125.2(b)(3), if it involves bundling.

In particular, since § 125.2(b)(2) requires procuring activities to submit acquisitions strategies above the established threshold to SBSs, strategies that contemplate orders that are above the threshold and that are not against an agency's own multiple award contract, would be subject to SBS review for bundling. Second, § 125.2(b)(3) requires a procuring activity to submit a copy of a proposed acquisition strategy to the PCR, whenever that strategy involves a bundled requirement. Because §§ 125.2(d)(1)(iii) and (iv) define a bundled requirement to include certain task and delivery orders under another agency's contract, agencies would be required to submit such orders to PCRs for review, when the orders include bundling.

The final comment on proposed §§ 125.2(d)(1)(iii) and (iv) noted that the proposed definition of bundling is deficient because it does not cover "new work." Contrary to that commenter's assertion, nothing in the regulations exempts a new requirement from falling within the scope of the definition of contract bundling. The regulatory definition of "separate smaller contract" is based on the definition of that term under Section 3(o)(3) of the Small Business Act, 15 U.S.C. 632(o)(3). Like the statutory definition, § 125.2(d)(1)(ii) defines a "separate smaller contract" for purposes of a bundled contract, as one that "has previously been performed by one or more small business concerns or was suitable for award to one or more small business concerns." This definition does not mean that none of the individual requirements comprising the bundled acquisition can qualify as "new work." Instead, it requires that some portion of the bundled procurement must have been either performed or suitable for performance by a small business.

After considering all of the comments on proposed §§ 125.2(d)(1)(iii) and (iv), SBA believes that the amendment effectively implements OMB's recommendation to compel bundling reviews of task and delivery orders. SBA is therefore adopting the definition of "single contract" as proposed in § 125.2(d)(1)(iii), but is deleting the proposed definition of "order" under § 125.2(d)(1)(iv), as unnecessary.

### *6. Comments on Amendments Concerning "Substantial Bundling"*

In an effort to streamline the requirements for reviewing and justifying bundled requirements, this proposed rule provides new § 125.2(d)(1)(v) to replace the existing § 125.2(d)(1)(iii). This new section defines "substantial bundling" as any bundling that meets the dollar amounts specified in proposed § 125.2(b)(2)(i). The proposed rule also adds new § 125.2(d)(7)(i)(E), requiring that in the event of substantial bundling, the agency must identify the alternative strategies that would reduce or minimize the scope of the bundling and the rationale for not selecting those alternatives. The rule further proposed new § 125.2(d)(7)(ii), directing the procuring agency to provide the PCR and agency OSDBU a copy of the proposed acquisition strategy containing substantial bundling and the required analysis, at least 30 days prior to the release of a solicitation.

SBA received one comment on this proposal. This commenter objected to the amendments because the commenter believes that government acquisition professionals need additional training and support and because the change will increase the workload of contracting officers.

SBA recognizes that lowering the threshold for "substantial bundling" would mean enlarging the number of procurements that would require the additional written justification under § 125.2(d)(7). However, SBA continues to believe that this change will simplify the application of § 125.2(b)(2)(i) and § 125.2(d)(7), by using the same three-tier dollar threshold to trigger the bundling reviews and the required supporting analysis for substantial bundling. Also, the changes in the requirement for written justifications are consistent with OMB's report recommendations relating to the identification of alternative acquisition strategies. As a result, SBA is adopting these proposed amendments with one change. SBA renumbered § 125.2(d)(1)(v) as § 125.2(d)(1)(iv).

### *7. Comments on Requirement for Contract Bundling Report*

SBA received three comments on its proposal to add new § 125.2(e) to impose a new OSDBU oversight function. The proposed § 125.2(e) dictates that OSDBUs conduct periodic reviews to assess: (1) The extent to which small businesses are receiving their fair share of Federal procurements; (2) the adequacy of bundling documentation and justification; and (3) the adequacy of actions taken to mitigate the effects of necessary and justified contract bundling, including the agency's oversight of compliance with subcontracting plans. OSDBUs also would be required to submit a copy of their assessment to the Agency Head and SBA Administrator.

One commenter recommended that this section be amended to require that Federal agencies negotiate with SBA two-part goals for prime and subcontract awards to the various types of small businesses and that OSDBUs assess and track the awards to the various categories of small business concerns.

SBA declines to adopt this recommendation because there is already a process in place for negotiating small business goals. Section 15(j) of the Small Business Act, 15 U.S.C. 644(j), charges SBA with responsibility for negotiating small business goals with Federal agencies. Pursuant to those responsibilities, the SBA has issued Goaling Guidelines that provide policy direction for establishing annual goals, reporting procurement activity and submitting corrective action plans when the goals are not satisfied. *See http://sba.gov/GC.* Most recently, on July 23, 2003, SBA published a notice in the **Federal Register**, soliciting comments on proposed revisions to its Goaling Guidelines. 68 FR 43566. The proposed revisions clarify SBA's goaling policies and are designed to ensure that the process is transparent. The proposed Goaling Guidelines are posted on SBA's Web site at *http://www.sba.gov/GC/goals.* Accordingly, there is no need for SBA to revise § 125.2(e) to address SBA procedures for negotiating and monitoring goal achievements.

Another commenter suggested that SBA require annual OSDBU reviews rather than "periodic" reviews. This commenter also suggested that the OSDBU reviews encompass agency performance in the area of contracting with women and minority-owned small businesses.

SBA agrees that a requirement for "annual" reviews is much clearer than one for merely "periodic" reviews. Thus, SBA has incorporated that suggestion. SBA is not, however, adopting the second recommendation regarding the contents of the OSDBU reviews. The proposed § 125.2(e) already provides that the OSDBU review should address the extent to which small businesses are receiving their fair share of Federal procurement, which includes contracting with women and minority-owned small businesses. There is, therefore, no need to single out these two categories of small businesses in the section. For this reason, SBA has adopted § 125.2(e) as proposed, with the exception of changing the requirement for periodic review to reviews on an annual basis.

## C. Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

OMB has determined that this final rule is a significant regulatory action under Executive Order 12866. The rule implements the recommendations of the OMB report entitled "Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business." This rule is part of the President's initiative for small business growth.

For purposes of Executive Order 12988, SBA has drafted this proposed rule, to the extent practicable, in accordance with the standards set forth in section 3 of that Order.

For purposes of Executive Order 13132, SBA has determined that this proposed rule has no federalism implications warranting the preparation of a Federalism Assessment.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this proposed rule imposes no new reporting or recordkeeping requirements.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, requires that SBA publish a final regulatory flexibility analysis. According to the RFA, the analysis must include: (1) A statement of need for and objective of the rule; (2) a summary of significant issues raised by public comments in response to SBA's Initial Regulatory Flexibility Act (IRFA) and an assessment of issues and changes made as a result; (3) a description of and estimate of the number of small entities to which the rule applies; (4) a description of the reporting, recordkeeping and other compliance requirements and an estimate of the classes of small entities subject to the requirements and type of professional skill necessary for the preparation of the report or record; and (5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the objectives of applicable statutes and of the reasons the agency selected the alternative adopted in the rule.

*1. Reason for and Objective of the Rule*

The objective of this rule is to further the Administration's commitment to create a government strategy for unbundling Federal contracts to increase Federal contracting opportunities for small business. The rule will: (1) Revise the definition of "bundling" to apply to orders placed against Federal Supply Schedules, Government-wide Acquisition Contracts, and Multi-agency Contracts when those orders meet the definition; (2) require the SBS to coordinate agency acquisition strategies at specified dollar thresholds and notify the agency Office OSDBU when those strategies include unidentified or unjustified bundling; (3) reduce the threshold and revise the documentation required for "substantial bundling;" (4) require contracting officers to provide bundling justification documentation to the agency OSDBU when substantial bundling is involved; and (5) require agency OSDBUs to conduct annual reviews of agency efforts to maximize small business participation in procurements.

*2. Summary of Public Comments in Response to IRFA*

SBA received no comments on its IRFA.

*3. Estimate of the Number of Small Entities To Which Rule Applies*

This final rule will apply indirectly to all large and small entities that seek award of Federal contracts. The rule is expected to have a positive economic impact on small prime contractors and subcontractors by providing more Federal contracting opportunities for small businesses. In the SBA's 2001 State of Small Business Report filed with the House and Senate Small Business Committees, SBA identified only four material bundling cases with a total value of $60 million for the first three quarters of Fiscal Year (FY) 2001. This represents 0.0004% of Federal contract dollar activity ($60 million divided by $150 billion for the first three quarters of the fiscal year). Based on FY 2001 data, the final rule will impact approximately $3 billion in orders placed against FSS contracts, government-wide acquisition contracts, and multi-agency contracts. Applying the contract bundling estimate of 0.0004% to these un-reviewed orders, SBA expects approximately $1 million will be identified as bundled. This rule establishes a three-tier dollar threshold of $7 million for DOD, $5 million for NASA, DOE and GSA, and $2 million for all other civilian agencies. The dollar amount is based on a comparative analysis of the number and size of the contracting actions of the major procuring activities and is intended to target reviews of the contracting actions that would most likely involve contract bundling, without undue disruption to the acquisition process.

*4. Description of Reporting and Other Compliance Requirements*

This rule imposes no new reporting or recordkeeping requirements.

*5. Summary of Efforts to Minimize Significant Economic Impact*

In the preamble to this rule, SBA addressed the steps the Agency has taken to minimize significant adverse economic impact on small entities consistent with the objectives of applicable statutes and the reasons the Agency selected the alternatives adopted in this rule.

### List of Subjects in 13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small business, Technical assistance.

■ For the reasons set forth in the preamble, SBA amends 13 CFR part 125 as follows:

## PART 125—GOVERNMENT CONTRACTING PROGRAMS

■ 1. The authority citation for 13 CFR part 125 continues to read as follows:

**Authority:** 15 U.S.C. 634(b)(6), 637 and 644; 31 U.S.C. 9701 and 9702.

■ 2. Amend § 125.2 as follows:

■ a. By revising the heading of paragraph (b);

■ b. By revising paragraph (b)(1);

■ c. By redesignating paragraphs (b)(2) through (b)(7) as paragraphs (b)(3) through (b)(8);

■ d. By adding new paragraph (b)(2);

■ e. By revising redesignated paragraph (b)(3), introductory text, (b)(6)(iii), and (b)(8);

■ f. By revising paragraphs (d)(1)(iii), (d)(2)(i) and (ii), (d)(5)(i)(A) and (B) and (d)(7), and adding paragraph (d)(1)(iv); and

■ g. By adding paragraph (e).

The revisions and additions to § 125.2 read as follows:

### § 125.2 Prime contracting assistance.

* * * * *

(b) *Responsibilities in the acquisition planning process.* (1) SBA Procurement Center Representatives (PCRs) are generally located at Federal agencies and buying activities which have major contracting programs. PCRs are responsible for reviewing all acquisitions not set-aside for small businesses to determine whether a set-aside is appropriate and to identify alternative strategies to maximize the participation of small businesses in the procurement.

(2) As early in the acquisition planning process as practicable, but no later than 30 days before the issuance of a solicitation, or prior to placing an order without a solicitation, the procuring activity must coordinate with the procuring activity's Small Business Specialist (SBS) when the acquisition strategy contemplates an acquisition meeting the dollar amounts in paragraph (b)(2)(i) of this section, unless the contract or order is entirely reserved or set-aside for small business concerns as authorized under the Small Business Act. The SBS must notify the agency Office of Small and Disadvantaged Business Utilization (OSDBU) if the strategy or plan includes bundled requirements that the agency has not identified as bundled or includes unnecessary or unjustified bundling of requirements. If the strategy involves substantial bundling, the SBS shall assist in identifying alternative

strategies that would reduce or minimize the scope of the bundling.

(i) The procuring activity must coordinate the acquisition strategy with the cognizant SBS in accordance with paragraph (b)(2) of this section if the estimated acquisition, contract or order value is:

(A) $7 million or more for the Department of Defense;

(B) $5 million or more for the National Aeronautics and Space Administration, the General Services Administration, and the Department of Energy; and

(C) $2 million or more for all other agencies.

(ii) If the strategy contemplates multiple award contracts or multiple award orders under the Federal Supply Schedule or a task or delivery order contract awarded by another agency, the thresholds in paragraph (b)(2)(i) of this section apply to the cumulative estimated value of the multiple award contracts or orders, including options.

(3) A procuring activity must provide a copy of a proposed acquisition strategy (*e.g.*, Department of Defense Form 2579, or equivalent) to the applicable PCR (or to the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located if a PCR is not assigned to the procuring activity) at least 30 days prior to a solicitation's issuance whenever a proposed acquisition strategy:

* * * * *

(6) * * *

(iii) The PCR will also work to ensure that small business participation is maximized through teaming arrangements and subcontracting opportunities. This may include:

(A) Recommending that the solicitation and resultant contract specifically state the small business subcontracting goals, which are expected of the contractor awardee;

(B) Recommending that the small business subcontracting goals be based on total contract dollars instead of subcontract dollars;

(C) Reviewing an agency's oversight of its subcontracting program, including its overall and individual assessment of a contractor's compliance with its small business subcontracting plans. The PCR will furnish a copy of the information to the SBA Commercial Market Representative (CMR) servicing the contractor; and

(D) Recommending that a separate evaluation factor with significant weight is established for the extent to which offerors attained their subcontracting goals on previous contracts.

* * * * *

(8) PCRs will work with the cognizant SBS and agency OSDBU as early in the acquisition process as practicable to identify proposed solicitations that involve bundling, and with the agency acquisition officials to revise the acquisition strategies for such proposed solicitations, where appropriate, to increase the probability of participation by small businesses, including small business contract teams, as prime contractors. If small business participation as prime contractors appears unlikely, the SBS and PCR will facilitate small business participation as subcontractors or suppliers.

* * * * *

(d) * * *

(1) * * *

(iii) Single contract, as used in this definition, includes:

(A) Multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources; and

(B) An order placed against an indefinite quantity contract under a Federal Supply Schedule contract or a task or delivery order contract awarded by another agency (*i.e.*, Government-wide acquisition contract or multi-agency contract).

(iv) Substantial bundling means any bundling that meets the dollar amounts specified in paragraph (b)(2)(i) of this section.

(2) * * *

(i) Structure procurement requirements to facilitate competition by and among small business concerns, including small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women; and

(ii) Avoid unnecessary and unjustified bundling of contract requirements that inhibits or precludes small business participation in procurements as prime contractors.

* * * * *

(5) * * *

(i) * * *

(A) Benefits equivalent to 10 percent of the contract or order value (including options) where the contract or order value is $75 million or less; or

(B) Benefits equivalent to 5 percent of the contract or order value (including options) or $7.5 million, whichever is greater, where the contract or order value exceeds $75 million.

* * * * *

(7) Substantial bundling. (i) Where a proposed procurement strategy involves a substantial bundling of contract requirements, the procuring agency must, in the documentation of that strategy, include a determination that the anticipated benefits of the proposed bundled contract justify its use, and must include, at a minimum:

(A) The analysis for bundled requirements set forth in paragraph (d)(5)(i) of this section;

(B) An assessment of the specific impediments to participation by small business concerns as prime contractors that will result from the substantial bundling;

(C) Actions designed to maximize small business participation as prime contractors, including provisions that encourage small business teaming for the substantially bundled requirement;

(D) Actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract or contracts that may be awarded to meet the requirements; and

(E) The identification of the alternative strategies that would reduce or minimize the scope of the bundling, and the rationale for not choosing those alternatives (*i.e.*, consider the strategies under paragraphs (b)(6) (i) and (d) of this section).

(ii) At least 30 days prior to the solicitation release, the procuring activity shall provide the PCR and the agency OSDBU a copy of the proposed acquisition, including the analysis required by paragraph (d)(7) of this section, the acquisition plan, any bundling information required under paragraph (b)(3) of this section, and any other relevant information. The PCR and agency OSDBU or SBS, as applicable, shall work together to develop alternative acquisition strategies identified in paragraph (b)(6) of this section to enhance small business participation.

* * * * *

(e) *OSDBU Oversight Functions.* The Agency OSDBU must:

(1) Conduct annual reviews to assess the:

(i) Extent to which small businesses are receiving their fair share of Federal procurements, including contract opportunities under programs administered under the Small Business Act;

(ii) Adequacy of the bundling documentation and justification; and

(iii) Adequacy of actions taken to mitigate the effects of necessary and justified contract bundling on small businesses (*e.g.*, review agency oversight of prime contractor subcontracting plan compliance under the subcontracting program).

(2) Provide a copy of the assessment under paragraph (e)(1) of this section to the Agency Head and SBA Administrator.

Dated: October 3, 2003.

**Hector V. Barreto,**

*Administrator.*

[FR Doc. 03–26514 Filed 10–17–03; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

## 13 CFR Part 125

**RIN 3245–AF12**

## Small Business Government Contracting Programs

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule amends the U.S. Small Business Administration (SBA) regulations governing small business subcontracting to address several comments received in response to SBA's proposed rule on contract bundling. Specifically, this proposed rule provides a list of factors to consider in evaluating prime contractor's performance and good-faith efforts to achieve the requirements in its subcontracting plan. The proposed rule also authorizes the use of goals in subcontracting plans, and/or past performance in meeting such goals, as a factor in source selection when placing orders against Federal Supply Schedules, government-wide acquisition contracts, and multi-agency contracts.

In addition, this proposed rule implements statutory provisions and other administrative procedures relating to subcontracting goals and assistance. In particular, the proposed rule lists the various categories of small businesses that must be afforded maximum practicable subcontracting opportunities, and clarifies the responsibilities of prime contractors and SBA's Commercial Market Representatives (CMRs) under the subcontracting assistance program. The proposed rule also supplies guidance on Subcontracting Orientation and Assistance Reviews (SOAR), which CMRs perform to assist prime contractors to understand and comply with the requirements governing the small business subcontracting assistance program.

**DATES:** Comments must be received on or before December 19, 2003.

**ADDRESSES:** Send comments to Dean Koppel, Assistant Administrator, Office of Policy and Research, 409 Third St., SW., Mail Code: 6500, Washington, DC 20416, by e-mail to *dean.koppel@sba.gov,* or to *www.regulations.gov,* or by facsimile to (202) 205–6390.

**FOR FURTHER INFORMATION CONTACT:** Dean Koppel, Assistant Administrator, Office of Policy and Research, (202) 401–8150 or *dean.koppel@sba.gov.*

**SUPPLEMENTARY INFORMATION:**

### A. Background

On January 31, 2003, SBA published a proposed rule in the **Federal Register**, 67 FR 47244, to solicit comments on its proposal to implement several recommendations included in the Office of Management and Budget's October 2002 report, entitled "Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business." Several of the responding commenters identified the need for more guidance on evaluating large prime contractor performance and efforts to achieve subcontracting plans, including examples of what types of conduct constitute "good-faith" efforts to comply with subcontracting plans.

Under section 8(d)(4) of the Small Business Act (15 U.S.C. 637(d)(4)), large businesses awarded a Federal prime contract in excess of $500,000, or $1,000,000 for construction of a public facility, must submit a subcontracting plan to the contracting agency. The subcontracting plan must include dollar and percentage goals that reflect the maximum practicable utilization of small businesses in the performance of the contract as subcontractors or suppliers. A prime contractor that fails to make a good-faith effort to achieve the goals in its subcontracting plan can be found in material breach of contract and terminated for default or assessed liquidated damages. SBA and the Defense Contract Management Agency (DCMA) also evaluate good-faith efforts when they perform joint post-award compliance reviews of Department of Defense contractors. Contracting officers also consider a contractor's good-faith efforts to achieve its subcontracting goals as an important factor in determining whether the contractor deserves an acceptable past performance rating.

This proposed rule would provide more detailed guidance on assessing good-faith efforts in performance of subcontracting plans. In particular, the proposed rule provides specific examples of conduct demonstrating that a prime contractor has made a good-faith effort to comply with its subcontracting plan.

This proposed rule would also increase the dollar threshold above which prime contractors must notify unsuccessful offerors from $10,000 to $100,000. The proposed dollar threshold will conform to the Simplified Acquisition Threshold and will be in keeping with the Administration's efforts to make Government regulations more practical and less burdensome.

SBA is also proposing amendments to clarify the subcontracting assistance program and incorporate existing statutory requirements and administrative procedures currently used in administering the program. Further, this proposed rule reorganizes § 125.3 into identifiable substantive areas with new subsection headings for ease of use and clarity. None of these changes impose additional requirements or responsibilities on small or large businesses. The proposed amendments are simply intended to clarify existing responsibilities in carrying out the statutory mandate for small businesses to have the maximum practicable opportunity to participate in Federal contracting.

SBA invites comments on the proposed rule, particularly on the provisions concerning the determination of good-faith efforts.

### B. Section-by-Section Analysis

SBA proposes to amend § 125.3(a) to clarify that the purpose of the subcontracting assistance program is to provide maximum practicable subcontracting opportunities to small business concerns. The proposed § 125.3(a) specifies the various categories of small businesses that must be afforded the maximum practicable subcontracting opportunities under section 8(d) of the Small Business Act (15 U.S.C. 637(d)), including small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women. The proposed § 125.3(a) also makes clear that the subcontracting assistance program implements the requirement that large prime contractors provide subcontracting plans.

SBA proposes to amend § 125.3(b) to clarify the responsibilities of all prime contractors, as provided under section 8(d)(3) of the Small Business Act (15 U.S.C. 637(d)(3)). Section 8(d)(3) applies to "all contracts let by any Federal agency" that exceed the simplified acquisition threshold, that do not include work that will be performed entirely outside of the United States, and that are for services that are personal in nature. It requires all awardees of such prime contracts to carry out "the policy of the United States that small business concerns" have the "maximum practicable opportunity to participate" in the performance of contracts, including subcontracts for subsystems, assemblies,

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components, and related services for major systems.

In implementing that existing statutory requirement, the proposed § 125.3(b)(1) expressly requires that all prime contractors, including small business prime contractors, that receive the covered Federal contracts ensure that small business concerns have the maximum practicable opportunity to participate in the performance of the contract as subcontractors and suppliers, consistent with the efficient performance of the contract. SBA believes that the responsibility to maximize subcontracting opportunities for small businesses applies equally to all prime contractors that receive contracts above the simplified acquisition threshold. This provision does not, however, extend the requirement for subcontracting plans to small business concerns. As indicated in the proposed § 125.3(c), discussed below, the requirement for subcontracting plans applies only to large businesses that receive a contract or contract modification exceeding $500,000, or $1,000,000 in the case of construction of a public facility.

The proposed § 125.3(b)(2) lists examples of actions prime contractors may take to increase small business subcontracting opportunities. Two comments submitted in response to SBA's proposed bundling rule published in the **Federal Register** on January 31, 2003 (67 FR 47244), requested strategies for maximizing small business subcontracting opportunities. In response to those comments, the proposed § 125.3(b)(2) provides specific guidance to prime contractors on providing the maximum practicable subcontracting opportunities to small businesses.

The proposed guidance in § 125.3(b)(2) is not intended to impose additional burdens or responsibilities on small businesses or to operate as a basis for denying a small business a contract award. Instead, SBA intends that the proposed guidance provide suggested measures for ensuring small business subcontracting opportunities in procurements. As discussed below in connection with the proposed § 125.3(d), documentation that a large business performed the actions and strategies outlined in the proposed § 125.3(b)(2), may serve as evidence that the large business prime contractor made a good-faith effort to comply with its subcontracting plan.

SBA proposes to amend § 125.3(c) to address the additional responsibilities of large prime contractors selected for award of a contract or contract modification that exceeds $500,000, or $1,000,000 in the case of construction of a public facility. These responsibilities include the existing requirements for submitting subcontracting plans, providing timely subcontracting reports and for cooperating in compliance reviews. The proposed § 125.3(c)(1)(v), sets forth the pre-award written notification currently included in the existing § 125.3(a) of SBA's regulations. The current provision requires large prime contractors to provide pre-award written notification to unsuccessful small business offerors on all subcontracts over $10,000 for which a small business concern received a preference. Unlike that provision, the proposed § 125.3(c)(1)(v) requires such pre-award notification on all subcontracts over $100,000. This proposed increase in the dollar threshold from $10,000 to $100,000 conforms to the simplified acquisition threshold. It also is in keeping with the Administration's efforts to make Government regulations more practical and less burdensome on businesses.

The proposed § 125.3(c)(2) addresses commercial plans. This section makes clear that large prime contractors may use commercial plans for services as well as for products, as long as the product or service being procured meets the definition of a commercial item in 48 CFR 2.101.

SBA proposes to amend § 125.3(d) to address good-faith effort with respect to a large prime contractor's compliance with its subcontracting plan. Under section 8(d)(4)(f) of the Small Business Act (15 U.S.C. 637(d)(4)(f)), a contracting officer may assess liquidated damages against a large business that failed to make a good-faith effort to achieve the small business goals in its subcontracting plan. Several commenters on the SBA's January 31, 2003, proposed bundling rule requested guidance on evaluating a large prime contractor's good-faith efforts to achieve its small business goals. The proposed § 125.3(d) indicates that evidence of good-faith efforts includes supporting documentation that the contractor performed the actions described in the proposed § 125.3(b). The proposed § 125.3(d) further provides that evidence of good faith may also include supporting documentation that other contractors awarded contracts of similar scope, size or dollar value did not achieve or exceed the goals stated in their subcontracting plan, despite their good-faith efforts to do so.

SBA proposes to add a new § 125.3(e) to explain the role of SBA's CMRs, who perform a number of different activities to further the objectives of SBA's subcontracting assistance program. In 2002, the General Accounting Office conducted a study (GAO–03–54) on the role of the CMR. The Study, entitled "The Commercial Marketing Representatives Role Needs To Be Strategically Planned and Assessed" concluded that SBA should seek ways to strengthen the position of CMRs. One of the most important functions of CMRs is to assist prime contractors to understand and comply with the requirements of the subcontracting assistance program. Over time, SBA has found that it is preferable to familiarize a prime contractor with the requirements at the time it receives its first contract requiring a subcontracting plan, than to wait until the time of the compliance review. This avoids misunderstandings and other problems that may result in marginal and Unsatisfactory ratings.

SBA has developed the Subcontracting Orientation and Assistance Review (SOAR) to implement this concept. This proposal incorporates the SOAR into SBA's regulations. Section 125.3(e) describes the CMRs responsibilities in conducting SOARS to assist prime contractors in understanding and complying with the requirements under the subcontracting assistance program.

SBA also proposes to add a new § 125.3(f) to address SBA's approach to conducting compliance reviews of prime contractors with subcontracting plans. This section provides the procedures for conducting on-site compliance reviews and follow-up reviews and validation of the SF–295, Summary Subcontract Report, and SF–294, Subcontracting Report for Individual Contracts. The proposed § 125.3(f) further describes the existing rating process and the different procedures for conducting compliance reviews of prime contractors under a commercial plan. This section also indicates that SBA is authorized to enter into agreements with other Federal agencies and entities to conduct compliance reviews and otherwise further the objectives of the subcontracting program. SBA has entered into one such agreement with the Defense Contracts Management Agency under a Memorandum of Understanding dated May 9, 2003.

Finally, in response to comments to SBA's proposed bundling rule published on January 31, 2003 (68 FR 5134), SBA proposes to add a new § 125.3(g) to address the use of subcontracting plans as an evaluation factor. Several commenters urged that SBA explore incentives that would reward large prime contractors for their subcontracting opportunities and achievements. In response to those comments, the proposed § 125.3(g) authorizes contracting officials to use subcontracting plans as an evaluation factor in the award of task orders and delivery orders under Federal Supply Schedules, Government-wide acquisition contracts, and multi-agency contracts. Specifically, the section allows contracting officers to consider the proposed subcontracting goals for the specific requirement and the contractor's past performance in meeting its subcontracting goals in previous contracts.

### C. Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act

OMB has determined that this rule is a significant regulatory action under Executive Order 12866. The proposed rule revises the SBA regulation governing small business subcontracting assistance to define good-faith effort. For purposes of Executive Order 12988, SBA has drafted this proposed rule, to the extent practicable, in accordance with the standards set forth in section 3 of that Order. For purposes of Executive Order 13132, SBA has determined that this proposed rule has no federalism implications warranting the preparation of a Federalism Assessment. For purposes of the Paperwork Reduction Act, 44 U.S.C. ch. 35, SBA determines that this proposed rule imposes no new reporting or recordkeeping requirements.

SBA certifies that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. The proposed rule does not impose any new substantive responsibilities, nor does it require any new reporting or recordkeeping requirements. Instead, this proposed rule clarifies the existing statutory responsibilities under the subcontracting assistance program, including the responsibilities of prime contractors to maximize small business subcontracting opportunities. It also provides guidance to government officials in monitoring and determining the achievements of subcontracting goals. Accordingly, the proposed rule is primarily procedural in nature and therefore would not have a significant economic impact on small entities. As a result, no initial regulatory flexibility analysis is required under 5 U.S.C. 605(b).

### List of Subjects in 13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, and Technical assistance.

For the reasons set forth in the preamble, SBA proposes to amend 13 CFR part 125 as follows:

## PART 125—GOVERNMENT CONTRACTING PROGRAMS

1. The authority citation for 13 CFR part 125 continues to read as follows:

**Authority:** 15 U.S.C. 634(b)(6), 637 and 644; 31 U.S.C. 9701 and 9702.

2. Revise § 125.3 to read as follows:

### § 125.3 Subcontracting assistance.

(a) *General.* The purpose of the subcontracting assistance program is to provide the maximum practicable subcontracting opportunities for small business concerns, including small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women. The subcontracting assistance program implements section 8(d) of the Small Business Act, which includes the requirement that other-than-small firms awarded contracts that offer subcontracting possibilities by the Federal Government in excess of $500,000, or in excess of $1,000,000 for construction of a public facility, must submit a subcontracting plan to the contracting agency. The Federal Acquisition Regulation sets forth the requirements for subcontracting plans in 48 CFR 19.7, and the clause at 48 CFR 52.219–9.

(b) *Responsibilities of prime contractors.* (1) Prime contractors (including small business prime contractors) selected to receive a Federal contract that exceeds the simplified acquisition threshold, that will not be performed entirely outside of any state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, and that is not for services which are personal in nature, are responsible for ensuring that small business concerns have the maximum practicable opportunity to participate in the performance of the contract, including subcontracts for subsystems, assemblies, components, and related services for major systems, consistent with the efficient performance of the contract;

(2) Efforts to provide the maximum practicable subcontracting opportunities for small business concerns include:

(i) Breaking out contract work items into economically feasible units, as appropriate, to facilitate small business participation;

(ii) Conducting market research to identify small business subcontractors and suppliers through all reasonable means, such as performing on-line searches on SBA's PRO-Net, posting Notices of Sources Sought and/or Requests for Proposal on SBA's SUB-Net, and attending pre-bid conferences;

(iii) Soliciting small business concerns as early in the acquisition process as practicable to allow them sufficient time to submit a timely offer for the subcontract;

(iv) Providing interested small businesses with adequate and timely information about the plans, specifications, and requirements for performance of the prime contract to assist them in submitting a timely offer for the subcontract;

(v) Negotiating in good faith with interested small businesses;

(vi) Directing small businesses that need additional assistance to SBA;

(vii) Assisting interested small businesses in obtaining bonding, lines of credit, required insurance, necessary equipment, supplies, materials, or services; and

(viii) Utilizing the available services of small business associations; local, state, and Federal small business assistance offices; and other organizations.

(c) *Additional responsibilities of large prime contractors.* (1) In addition to the responsibilities provided in paragraph (b) of this section, a prime contractor selected for award of a contract or contract modification that exceeds $500,000, or $1,000,000 in the case of construction of a public facility, is responsible for:

(i) Submitting and negotiating before award an acceptable subcontracting plan that reflects maximum practicable utilization of small businesses in the performance of the contract as subcontractors or suppliers. A prime contractor may submit a commercial plan, described in paragraph (c)(2) of this section, instead of an individual subcontracting plan, when the product or service being furnished to the Government meets the definition of a commercial item under 48 CFR 2.101;

(ii) Making a good-faith effort to achieve the dollar and percentage goals and other elements in its subcontracting plan;

(iii) Submitting a timely, accurate, and complete SF–294, Subcontracting Report for Individual Contract, and SF–295, Summary Subcontract Report; or entering the same information into an electronic database approved by SBA;

(iv) Cooperating in the reviews of subcontracting plan compliance, including providing requested information and supporting documentation reflecting actual achievements and good-faith efforts to meet the goals and other elements in the subcontracting plan; and

(v) Providing pre-award written notification to unsuccessful small business offerors on all subcontracts over $100,000 for which a small business concern received a preference. The written notification must include the name and location of the apparent successful offeror and if the successful offeror is a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business.

(2) A commercial plan, also referred to as an annual plan or company-wide plan, is the preferred type of subcontracting plan for contractors furnishing commercial items. A commercial plan covers the offeror's fiscal year and applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line). Once approved, the plan remains in effect during the contractor's fiscal year for all Government contracts in effect during that period. The contracting officer of the agency that originally approved the commercial plan will exercise the functions of the contracting officer on behalf of all agencies that award contracts covered by the plan.

(3) The additional prime contractor responsibilities described in paragraph (c)(1) of this section do not apply if:

(i) The prime contractor is a small business concern;

(ii) The prime contract or contract modification is a personal services contract;

(iii) The prime contract or contract modification will be performed entirely outside of any state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; or

(iv) The modification is to a contract that did not originally contain the clause at 48 CFR 52.219–8, Utilization of Small Business Concerns (or equivalent prior clauses).

(d) *Determination of good-faith efforts.* Evidence that a large business prime contractor has made a good-faith effort to comply with its subcontracting plan or other subcontracting responsibilities includes supporting documentation that:

(1) The contractor performed the actions described in paragraph (b) of this section; or

(2) Other contractors awarded contracts of similar scope, size or dollar value have not achieved or exceeded the goals stated in their subcontracting plans, despite other evidence of their good-faith efforts to comply. The determination of the subcontracting plan compliance of other contractors may be based on available subcontracting past performance records and other information.

(e) *CMR Responsibilities.* Commercial Market Representatives (CMRs) are SBA's subcontracting specialists. CMRs are responsible for:

(1) Facilitating the matching of large prime contractors with small business concerns;

(2) Counseling large prime contractors on their responsibilities to maximize subcontracting opportunities for small business concerns;

(3) Instructing large prime contractors on identifying small business concerns by means of SBA's PRO-Net, SUB-Net, and other resources and tools;

(4) Counseling small business concerns on how to market themselves to large prime contractors;

(5) Maintaining a portfolio of large prime contractors and conducting Subcontracting Orientation and Assistance Reviews (SOAR). SOARs are conducted for the purpose of assisting prime contractors in understanding and complying with their small business subcontracting responsibilities, including developing subcontracting goals that reflect maximum practicable opportunity for small business; maintaining acceptable books and records; and periodically submitting reports to the Government; and

(6) Conducting periodic reviews, including compliance reviews in accordance with paragraph (f) of this section.

(f) *Compliance reviews.* (1) A prime contractor's performance under its subcontracting plan is evaluated by means of on-site compliance reviews and follow-up reviews. A compliance review is a surveillance review that determines a contractor's achievements in meeting the goals and other elements in its subcontracting plan for both open contracts and contracts completed during the previous twelve months. A follow-up review is done after a compliance review, generally within six to eight months, to determine if the contractor has implemented SBA's recommendations.

(2) All compliance reviews begin with a validation of the contractor's most recent SF–295, Summary Subcontract Report, and SF–294, Subcontracting Report for Individual Contracts, if applicable. The validation includes a review of the contractor's methodology for completing these reports and a sampling of specific documentation to substantiate small business status.

(3) Upon completion of the review and evaluation of a contractor's performance and efforts to achieve the requirements in its subcontracting plans, the contractor's performance will be assigned one of the following ratings: Outstanding, Highly Successful, Acceptable, Marginal, or Unsatisfactory. The factors listed in paragraph (c) of this section will be taken into consideration, where applicable, in determining the contractor's rating. However, a contractor may be found Unsatisfactory, regardless of other factors, if it cannot substantiate the claimed achievements under its subcontracting plan.

(4) Reviews and evaluations of contractors with commercial plans are identical to reviews and evaluations of other contractors, except that contractors with commercial subcontracting plans do not submit the SF–294, Subcontracting Report for Individual Contracts. Instead, goal achievement is determined by comparing the goals in the approved commercial subcontracting plan against the cumulative achievements on the SF–295, Summary Subcontract Report, for the same period. The same ratings criteria set forth in paragraph (f)(3) of this section apply to contractors with commercial plans.

(5) SBA is authorized to enter into agreements with other Federal agencies or entities to conduct compliance reviews and otherwise further the objectives of the subcontracting program. Copies of these agreements will be published on *www.sba.gov/GC.* SBA is the lead agency on all joint compliance reviews with other agencies.

(g) *Subcontracting consideration in source selection.* When an ordering agency anticipates placing an order or entering into a blanket purchase agreement against a Federal Supply Schedule, government-wide acquisition contract (GWAC), or multi-agency contract (MAC), the ordering agency may evaluate subcontracting as an important factor in its source selection process. This evaluation may include any of the following:

(1) The subcontracting to be performed on the specific requirement;

(2) The goals negotiated in the commercial plan, if applicable; and

(3) The contractor's past performance in meeting subcontracting goals in previous contracts.

Dated: October 8, 2003.

**Hector V. Barreto,**

*Administrator.*

[FR Doc. 03–26515 Filed 10–17–03; 8:45 am]

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# Federal Register

**Monday,**
**October 20, 2003**

## Part III

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# Presidential Documents

**Title 3—**

**The President**

**Notice of October 16, 2003**

## Continuation of the National Emergency With Respect to Significant Narcotics Traffickers Centered in Colombia

On October 21, 1995, by Executive Order 12978, the President declared a national emergency consistent with to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of significant narcotics traffickers centered in Colombia, and the extreme level of violence, corruption, and harm such actions cause in the United States and abroad.

The order blocks all property and interests in property that are in the United States or within the possession or control of United States persons or foreign persons listed in an annex to the order, as well as of foreign persons determined to play a significant role in international narcotics trafficking centered in Colombia. The order similarly blocks all property and interests in property of foreign persons determined to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the order, or persons determined to be owned or controlled by, or to act for or on behalf of, persons designated in or pursuant to the order. The order also prohibits any transaction or dealing by United States persons or within the United States in such property or interests in property.

Because the actions of significant narcotics traffickers centered in Colombia continue to threaten the national security, foreign policy, and economy of the United States and to cause an extreme level of violence, corruption, and harm in the United States and abroad, the national emergency declared on October 21, 1995, and the measures adopted pursuant thereto to deal with that emergency, must continue in effect beyond October 21, 2003. Therefore, consistent with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to significant narcotics traffickers centered in Colombia. This notice shall be published in the **Federal Register** and transmitted to the Congress.

THE WHITE HOUSE,
*October 16, 2003.*

[FR Doc. 03–26631
Filed 10–17–03; 10:53 am]
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT OCTOBER 20, 2003

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**Census Bureau**

- Foreign trade statistics:
  - Automated Export System; rough diamonds; mandatory filing for exports (reexports); published 10-20-03

**DEFENSE DEPARTMENT**

- Federal Acquisition Regulation (FAR):
  - Contract bundling; published 10-20-03

**ENERGY DEPARTMENT**

**Federal Energy Regulatory Commission**

- Electric utilities (Federal Power Act):
  - Generator interconnection agreements and procedures; standardization; published 8-19-03

**FEDERAL COMMUNICATIONS COMMISSION**

- Digital television stations; table of assignments:
  - Arkansas; published 9-9-03
  - Michigan; published 9-10-03
  - Montana; published 9-9-03
- Radio stations; table of assignments:
  - Arizona,; published 9-19-03
  - Georgia; published 9-19-03
  - Oklahoma; published 9-19-03
- Ration stations; table of assignments:
  - Georgia; published 9-19-03

**GENERAL SERVICES ADMINISTRATION**

- Federal Acquisition Regulation (FAR):
  - Contract bundling; published 10-20-03

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

- Animal drugs, feeds, and related products:
  - Sponsor name and address changes—
    - Cross Vetpharm Group, Ltd.; published 10-20-03

**MERIT SYSTEMS PROTECTION BOARD**

- Practice and procedure:
  - Electronic transactions; e-Appeal and e-Filing; published 10-20-03

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

- Federal Acquisition Regulation (FAR):
  - Contract bundling; published 10-20-03

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

- Airworthiness directives:
  - Burkhart Grob Luft-Und Raumfahrt GmbH & Co. LG; published 9-30-03
  - McDonnell Douglas; published 10-3-03
  - Stemme GmbH & Co.; published 10-9-03

## COMMENTS DUE NEXT WEEK

**ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**Historic Preservation, Advisory Council**

- Historic properties protection; comments due by 10-27-03; published 9-25-03 [FR 03-24202]

**AGRICULTURE DEPARTMENT**

**Agricultural Marketing Service**

- Cotton research and promotion order:
  - Program review; comments due by 10-27-03; published 8-26-03 [FR 03-21788]

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

- Exportation and importation of animals and animal products:
  - Ruminants; privately owned quarantine facilities standards; comments due by 10-27-03; published 8-28-03 [FR 03-21857]

**AGRICULTURE DEPARTMENT**

**Food and Nutrition Service**

- Food stamp and food distribution program:
  - Maximum excess shelter expense deduction; benefits adjustment; comments due by 10-28-03; published 8-29-03 [FR 03-22144]

**COMMERCE DEPARTMENT**

**Economic Analysis Bureau**

- International services surveys:
  - BE-15; annual survey of foreign direct investment in U.S.; comments due by 10-28-03; published 8-29-03 [FR 03-22074]
  - BE-85; quarterly survey of financial services transactions between U.S. financial services providers and unaffiliated foreign persons; comments due by 10-28-03; published 8-29-03 [FR 03-22140]

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

- Fishery conservation and management:
  - Northeastern United States fisheries—
    - Atlantic surfclam and ocean quahog; comments due by 10-27-03; published 9-25-03 [FR 03-24250]
  - West Coast States and Western Pacific fisheries—
    - Northern Mariana Islands Exclusive Economic Zone; bottomfish fishery resources; comments due by 10-27-03; published 9-23-03 [FR 03-24115]

**DEFENSE DEPARTMENT**

**Air Force Department**

- Privacy Act; implementation; comments due by 10-27-03; published 9-25-03 [FR 03-24058]

**DEFENSE DEPARTMENT**

- Federal Acquisition Regulation (FAR):
  - Share-in-savings contracting; comments due by 10-31-03; published 10-1-03 [FR 03-24855]
  - Unique contract and order identifier numbers; comments due by 10-31-03; published 10-1-03 [FR 03-24584]

**ENERGY DEPARTMENT**

**Federal Energy Regulatory Commission**

- Electric rate and corporate regulation filings:
  - Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

**ENVIRONMENTAL PROTECTION AGENCY**

- Air pollution control:
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    - Ohio; comments due by 10-30-03; published 9-30-03 [FR 03-24776]
- Air quality implementation plans; approval and promulgation; various States:
  - Arizona; comments due by 10-29-03; published 9-29-03 [FR 03-24557]
  - California; comments due by 10-29-03; published 9-29-03 [FR 03-24558]
  - Texas; comments due by 10-30-03; published 9-30-03 [FR 03-24553]
- Environmental statements; availability, etc.:
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    - Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]
- Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
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  - Flumioxazin; comments due by 10-27-03; published 8-27-03 [FR 03-21662]
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- Superfund program:
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    - National priorities list update; comments due by 10-27-03; published 10-7-03 [FR 03-25402]
- Water pollution control:
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**FARM CREDIT ADMINISTRATION**

- Farm credit system:
  - Farmers, ranchers and aquatic producers or harvesters; eligibility and scope of financing; comments due by 10-29-03; published 7-29-03 [FR 03-19208]

**FEDERAL COMMUNICATIONS COMMISSION**

- Digital television stations; table of assignments:

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**GENERAL SERVICES ADMINISTRATION**

Federal Acquisition Regulation (FAR):

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**HEALTH AND HUMAN SERVICES DEPARTMENT**

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**Reclamation Bureau**

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**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

Federal Acquisition Regulation (FAR):

Share-in-savings contracting; comments due by 10-31-03; published 10-1-03 [FR 03-24855]

Unique contract and order identifier numbers; comments due by 10-31-03; published 10-1-03 [FR 03-24584]

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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

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**H.R. 2152/P.L. 108–99**

To amend the Immigration and Nationality Act to extend for an additional 5 years the special immigrant religious worker program. (Oct. 15, 2003; 117 Stat. 1176)

**Last List October 15, 2003**

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## CFR CHECKLIST

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| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| **1, 2 (2** Reserved) | (869-050-00001-6) | 9.00 | [4]Jan. 1, 2003 |
| **3** (1997 Compilation and Parts 100 and 101) | (869-050-00002-4) | 32.00 | [1] Jan. 1, 2003 |
| **4** | (869-050-00003-2) | 9.50 | Jan. 1, 2003 |
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| 700-1199 | (869-050-00005-9) | 46.00 | Jan. 1, 2003 |
| 1200-End, 6 (6 Reserved) | (869-050-00006-7) | 58.00 | Jan. 1, 2003 |
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| 27-52 | (869-050-00008-3) | 47.00 | Jan. 1, 2003 |
| 53-209 | (869-050-00009-1) | 36.00 | Jan. 1, 2003 |
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| 400-699 | (869-050-00012-1) | 39.00 | Jan. 1, 2003 |
| 700-899 | (869-050-00013-0) | 42.00 | Jan. 1, 2003 |
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| 1940-1949 | (869-050-00019-9) | 47.00 | Jan. 1, 2003 |
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| **8** | (869-050-00022-9) | 58.00 | Jan. 1, 2003 |
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| **23** | (869-050-00071-7) | 44.00 | Apr. 1, 2003 |
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| §§ 1.301-1.400 | (869-050-00081-4) | 46.00 | Apr. 1, 2003 |
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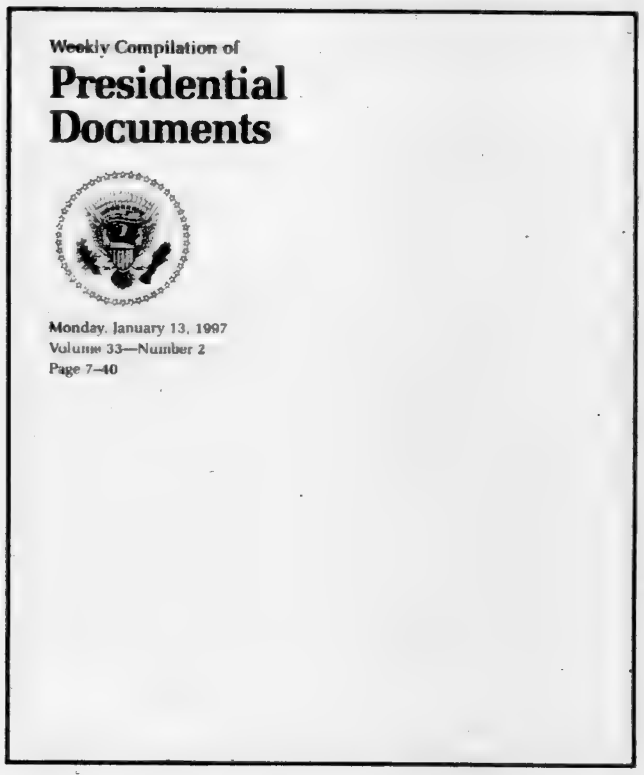
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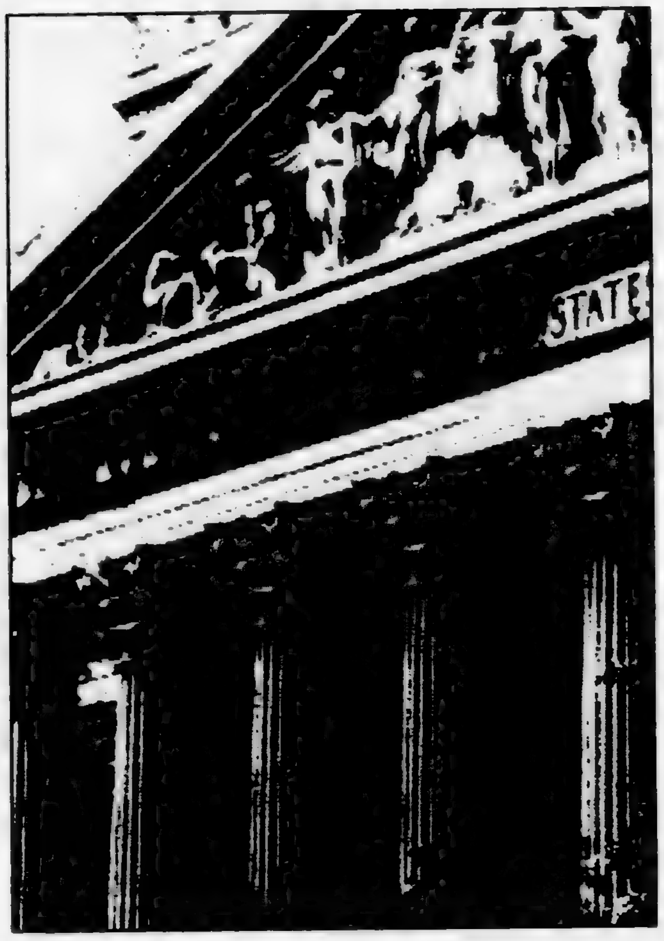

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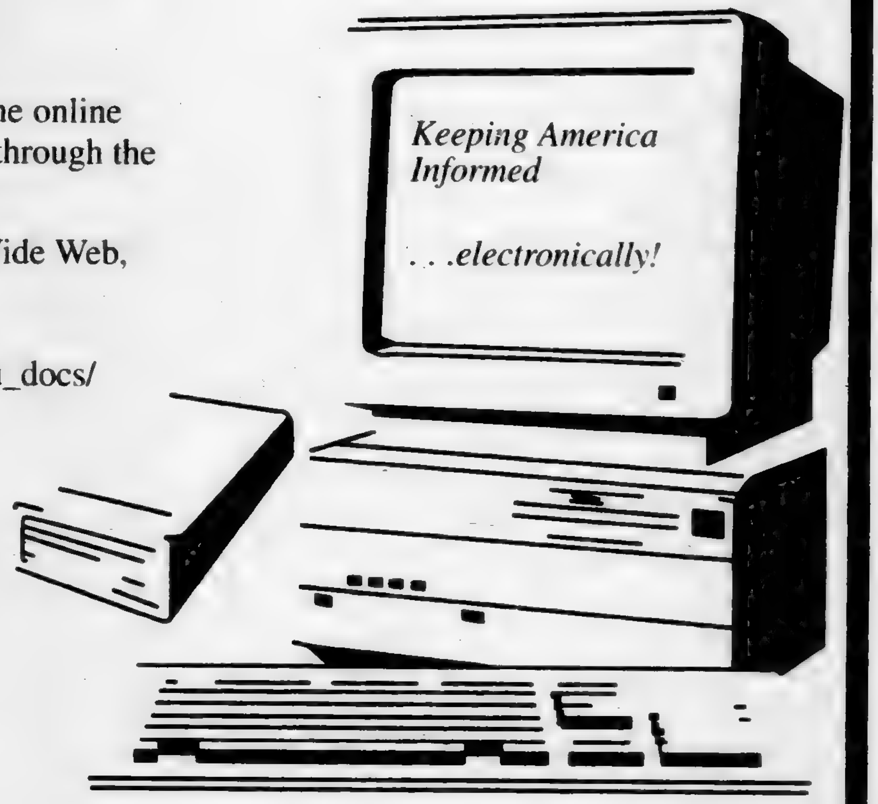

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 931

**[Docket No. FV03–931–1 FR]**

### Fresh Bartlett Pears Grown in Oregon and Washington; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the Northwest Fresh Bartlett Pear Marketing Committee (Committee) for the 2003–2004 and subsequent fiscal periods from $0.025 to $0.335 per 44-pound standard box or container equivalent of fresh Bartlett pears handled. The Committee locally administers the marketing order, which regulates the handling of fresh Bartlett pears grown in the States of Oregon and Washington. Authorization to assess fresh Bartlett pear handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** October 22, 2003.

**FOR FURTHER INFORMATION CONTACT:** Susan M. Hiller, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW., Third Avenue, Suite 385; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 147 and Order No. 931, both as amended (7 CFR part 931), regulating the handling of fresh Bartlett pears grown in the States of Oregon and Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Oregon and Washington handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable fresh Bartlett pears beginning on July 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2003–2004 and subsequent fiscal periods, from $0.025 to $0.335 per 44-pound standard box or container equivalent of fresh Bartlett pears grown in the States of Oregon and Washington.

The Oregon and Washington fresh Bartlett pear marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are growers and handlers of Oregon or Washington fresh Bartlett pears. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2001–2002 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 29, 2003, and unanimously recommended 2003–2004 expenditures of $1,122,250 and an assessment rate of $0.335 per 44-pound standard box or container equivalent of fresh Bartlett pears. In comparison, last year's budgeted expenditures were $77,612. The assessment rate of $0.335 is $0.31 higher than the rate previously in effect. The Committee recommended an increased assessment rate to establish market research and development projects to assist, improve, or promote the marketing, distribution, and consumption of pears. These projects will be executed through an agreement with Pear Bureau Northwest, which also oversees market development and promotion, including paid advertising, projects for the Winter Pear Control Committee, under Marketing Order No. 927 regulating the handling of winter pears grown in Oregon and Washington. The Bartlett pear projects for 2003–2004 include activities to enhance the consumption of pears in Latin America and South America, trade and consumer communications through website and newsletter releases, a domestic field staff program to distribute point of sale materials and conduct consumer samplings, and participation in food service and consumer shows to advance Bartletts as the first available USA pear variety. No paid advertising activities will be conducted.

These market development projects were previously administered by the Oregon Bartlett Pear Commission and the Washington State Fruit Commission. However, following an eight-month series of industry meetings, both state commissions recommended that the federal committee administer future Bartlett pear market development projects. Thus, with industry consensus in support of the action, the Committee, on May 29, 2003, unanimously recommended that it establish and administer future market development projects for the Bartlett pear industry.

The net effect to the Northwest Bartlett pear industry in transferring the market development projects from the State commissions to the Committee is negligible as indicated in the table below.

| | 2002–2003 | 2003–2004 | Net change |
|---|---|---|---|
| Oregon Bartlett Pear Commission | $0.34 | $.0275 | −$0.3125 |
| Washington State Fruit Commission | 0.332 | 0.022 | −0.31 |
| Northwest Fresh Bartlett Pear Marketing Committee | 0.025 | 0.335 | 0.31 |
| Oregon Total | 0.365 | 0.3625 | −0.0025 |
| Washington Total | 0.357 | 0.357 | 0.0 |

The major expenditures recommended by the Committee for the 2003–2004 year include $78,934 for expenses shared with Pear Bureau Northwest and the Winter Pear Control Committee (salaries, employee benefits, office rent, and similar administration expenses), $38,316 for unshared committee expenses (meetings, assessment collection fees paid to the Washington State Fruit Commission, fees paid to four grower/shipper organizations for collating information used in generating crop and quality reports, and contingency reserves), and $1,005,000 for market research and development expenses. Budgeted expenses for these items in 2002–2003 were $63,712, $13,900, and $0, respectively.

The assessment rate recommended by the Committee was determined by reviewing the historical market development expenses of other organizations and past expenses for the Committee. Commodity shipments for the 2003–2004 season are estimated at 3,350,000 standard boxes, which should provide $1,122,250 in assessment income. Income derived from handler assessments, along with miscellaneous income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently $16,997.14) will be kept within the maximum permitted by the order of approximately one fiscal year's operational expenses (§ 931.42).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2003–2004 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

## Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,500 growers of fresh Bartlett pears in the production area and approximately 40 handlers subject to regulation under the marketing order. Small agricultural growers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

According to the *Noncitrus Fruits and Nuts, 2002 Preliminary Summary* issued in January 2003 by the National Agricultural Statistics Service, the total farm gate value of fresh Bartlett pears in the regulated production area for 2002 was $34,782,000. Therefore, the 2002 average gross revenue for a fresh Bartlett pear grower in the regulated production area was $23,188. Further, based on Committee records and recent f.o.b. prices for fresh Bartlett pears, over 98 percent of the regulated handlers ship less than $5,000,000 worth of fresh Bartlett pears on an annual basis. Based on this information, it can be concluded that the majority of growers and handlers of fresh Bartlett pears in the States of Oregon and Washington may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2003–2004 and subsequent fiscal periods from $0.025 to $0.335 per 44-pound standard box or container equivalent of fresh Bartlett pears. The Committee unanimously recommended 2003–2004 expenditures of $1,122,250 and an assessment rate of $0.335 per 44-pound standard box or container equivalent. The assessment rate is $0.31 higher than the rate previously in effect. The quantity of assessable fresh Bartlett pears for the 2003–2004 season is estimated at 3,350,000 standard boxes. Thus, the $0.335 rate should provide $1,122,250 in assessment income. Income derived from handler assessments, along with miscellaneous income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses (§ 931.42).

The major expenditures recommended by the Committee for the 2003–2004 year include $78,934 for expenses shared with Pear Bureau Northwest and the Winter Pear Control Committee (salaries, employee benefits, office rent, and similar administration expenses), $38,316 for unshared committee expenses (meetings, assessment collection fees paid to the Washington State Fruit Commission, fees paid to four grower/handler organizations for collating information used in generating crop and quality reports, and contingency reserves), and $1,005,000 for market research and development expenses. Budgeted expenses for these items in 2002–2003 were $63,712, $13,900, and $0, respectively.

The increase in the assessment rate is necessary for the Committee to establish market research and development projects. These market development projects will be executed through an agreement with Pear Bureau Northwest, which also oversees the market development projects for the Winter Pear Control Committee, administering Marketing Order No. 927. The Bartlett pear projects for 2003–2004 include activities to enhance the consumption of pears in Latin America and South America, trade and consumer communications through website and newsletter releases, a domestic field staff program to distribute point of sale materials and conduct consumer samplings, and participation in food service and consumer shows to advance Bartletts as the first available USA pear variety. No paid advertising activities will be implemented.

These market development projects were previously administered by the Oregon Bartlett Pear Commission and the Washington State Fruit Commission. However, following an eight-month series of industry meetings, both state commissions recommended that the federal Committee administer future Bartlett pear market development projects. Thus, with industry consensus in support of the action, the Committee, on May 29, 2003, unanimously recommended that it establish and administer future market development projects for the Bartlett pear industry.

The net effect to the Northwest Bartlett pear industry in transferring the market development projects from the State commissions to the Committee is negligible as indicated in the table below.

| | 2002–2003 | 2003–2004 | Net change |
|---|---|---|---|
| Oregon Bartlett Pear Commission | $0.34 | $.0275 | −$0.3125 |
| Washington State Fruit Commission | 0.332 | 0.022 | −0.31 |
| Northwest Fresh Bartlett Pear Marketing Committee | 0.025 | 0.335 | 0.31 |
| Oregon Total | 0.365 | 0.3625 | −0.0025 |
| Washington Total | 0.357 | 0.357 | 0.0 |

A review of historical information and preliminary information pertaining to the upcoming season indicates that the grower price for the 2003–2004 season could range between $9.20 and $11.00 per standard box of fresh Bartlett pears. Therefore, the estimated assessment revenue for the 2003–2004 season as a percentage of total grower revenue could range between 3.6 and 3 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to growers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Oregon and Washington fresh Bartlett pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues discussed. Like all Committee meetings, the May 29, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Oregon or Washington fresh Bartlett pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on September 10, 2003. Copies of the proposed rule were also mailed or sent via facsimile to all fresh Bartlett pear handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 15-day comment period ending September 25, 2003, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2003–2004 fiscal period began on July 1, 2003, and the order requires that the rate of assessment for each fiscal period apply to all assessable fresh Bartlett pears handled during such fiscal period. In addition, the Committee needs sufficient funds to pay its expenses which are incurred on a continuous basis. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule and no comments were received.

### List of Subjects in 7 CFR Part 931

Marketing agreements, Pears, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 931 is amended as follows:

## PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

■ 1. The authority citation for 7 CFR part 931 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 931.231 is revised to read as follows:

**§ 931.231 Assessment rate.**

On and after July 1, 2003, an assessment rate of $0.335 per 44-pound standard box or container equivalent is established for fresh Bartlett pears grown in Oregon and Washington.

Dated: October 15, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03–26519 Filed 10–20–03; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–CE–46–AD; Amendment 39–13342; AD 2003–21–07]**

**RIN 2120–AA64**

## Airworthiness Directives; The Cessna Aircraft Company Model 525 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain The Cessna Aircraft Company (Cessna) Model 525 airplanes. This AD requires you to disengage the pitch trim circuit breaker and AP servo circuit breaker and then tie strap each of them to prevent them from being engaged. This AD is the result of analysis that reveals the potential for a single-wire shorting to 28 volts or a failure of a relay in the electric pitch trim system such that the relay contacts remain closed. We are issuing this AD to correct this single-point failure in the electric pitch trim system, which will result in a runaway pitch trim condition where the pilot could not disconnect using the control wheel autopilot/trim disconnect switch. Failure of the electric trim system would result in a large pitch mistrim and would cause excessive control forces that the pilot could not overcome.

**DATES:** This AD becomes effective on October 22, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of October 22, 2003.

We must receive any comments on this AD by December 15, 2003.

**ADDRESSES:** Use one of the following to submit comments on this AD:

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–46–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail:* 9–ACE–7–Docket@faa.gov. Comments sent electronically must contain "Docket No. 2003–CE–46–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this AD from The Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–6000; facsimile: (316) 517–8500.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–46–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dan Withers, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209, telephone: (316) 946–4196; facsimile: (316) 946–4107.

**SUPPLEMENTARY INFORMATION:**

*What events have caused this AD?* The FAA has received a report of an accident involving a Cessna Model 525 airplane where the pilot ditched the airplane in the water off the coast near Coupeville, Washington. The pilot reported a problem with the pitch trim system.

Although the final investigation by the National Transportation Safety Board (NTSB) is not complete, Cessna and FAA analysis reveals the potential for a single-wire shorting to 28 volts or a failure of a relay in the electric pitch trim system such that the relay contacts remain closed and also precludes disconnect of the pitch trim using the control wheel autopilot/trim disconnect switch.

*What are the consequences if the condition is not corrected?* Failure of the electric trim system would result in a large pitch mistrim and would cause excessive control forces that the pilot could not overcome.

*Is there service information that applies to this subject?* Cessna has issued Citation Alert Service Letter ASL525–27–02, dated October 10, 2003.

*What are the provisions of this service information?* The service bulletin includes (as well as other information) procedures for disengaging and tie strapping the pitch trim and autopilot servo circuit breakers.

### FAA's Determination and Requirements of the AD

*What has FAA decided?* We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design.

Since the unsafe condition described previously is likely to exist or develop on other Cessna Model 525 airplanes of the same type design, this AD is being issued to correct a single-point failure in the pitch trim system, which could result in a runaway pitch trim condition where that the pilot could not disconnect using the control wheel autopilot/trim disconnect switch. Failure of the electric trim system would result in a large pitch mistrim and would cause excessive control forces that the pilot could not overcome.

*What does this AD require?* This AD requires you to disengage the pitch trim circuit breaker and AP servo circuit breaker and then tie strap each of them to prevent them from being engaged.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included, in the rulemaking docket, a discussion of any information that may have influenced this action.

*How does the revision to 14 CFR part 39 affect this AD?* On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

### Compliance Time of This AD

*What would be the compliance time of this AD?* The compliance time of this AD is within 5 days or 10 hours time-in-service after October 22, 2003 (the effective date of this AD), whichever occurs first.

*Why is the compliance time of this AD presented in both hours TIS and calendar time?* The unsafe condition on these airplanes is not a result of the number of times the airplane is operated. The FAA is establishing the compliance time in both hours TIS and calendar time (with the prevalent being that which occurs first).

This would assure that the unsafe condition is addressed on both high-usage and low-usage airplanes within a reasonable time period without inadvertently grounding any of the affected airplanes.

## Comments Invited

*Will I have the opportunity to comment prior to the issuance of the rule?* This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–CE–46–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

## Regulatory Findings

*Will this AD impact various entities?* We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

*Will this AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–CE–46–AD" in your request.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 1. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**2003–21–07 The Cessna Aircraft Company:** Amendment 39–13342; Docket No. 2003–CE–46–AD.

### When Does This AD Become Effective?

(a) This AD becomes effective on October 22, 2003.

### Are Any Other ADs Affected by This Action?

(b) None.

### What Airplanes Are Affected by This AD?

(c) This AD affects Model 525 airplanes, serial numbers 525–0001, 525–0002, and 525–0004 through 525–0159, that are certificated in any category.

### What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of analysis that reveals the potential for a single-wire shorting to 28 volts or a failure of a relay in the electric pitch trim system such that the relay contacts remain closed. We are issuing this AD to correct this single-point failure in the electric pitch trim system, which will result in a runaway pitch trim condition where the pilot could not disconnect using the control wheel autopilot/trim disconnect switch. Failure of the electric trim system would result in a large pitch mistrim and would cause excessive control forces that the pilot could not overcome.

### What Must I Do To Address This Problem?

(e) To address this problem, you must accomplish the following:

| Actions | Compliance |
|---|---|
| (1) Disengage the PITCH TRIM circuit breaker located on the left circuit breaker panel. Install a tie strap (part number (P/N) MS3367–1–4 or equivalent part number) on the shaft of the PITCH TRIM circuit breaker to prevent the circuit breaker from being engaged. | Within 5 calendar days or 10 hours time-in-service after October 22, 2003 (the effective date of this AD), whichever occurs first. |
| (2) Disengage the AP SERVOS circuit breaker located in the right circuit breaker panel. Install a tie strap (P/N MS3367–1–4 or equivalent part number) on the shaft of the AP SERVOS circuit breaker to prevent the circuit breaker from being engaged. | Within 5 calendar days or 10 hours time-in-service after October 22, 2003 (the effective date of this AD), whichever occurs first. |
| (3) The Minimum Crew portion of Section II—Operating Limitations of the Airplane Flight Manual (AFM) provides information on applicable operating limitations with the autopilot inoperable. | Not Applicable. |
| (4) All affected airplanes were originally equipped with a P/N 6518351–3 or P/N 65138351–5 Trim PC Board Assembly. If a P/N 6518351–8 Trim PC Board Assembly is installed, contact the Wichita Aircraft Certification Office at the address in paragraph (f) of this AD to determine if the installed P/N 6518351–8 Trim PC board assembly is an alternative method of compliance to this AD. | Not Applicable. |
| (5) Cessna Citation Alert Service Letter ASL525–27–02, dated October 10, 2003, contains information related to this subject. | Not Applicable. |

**What About Alternative Methods of Compliance?**

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13. Send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Dan Withers, Aerospace Engineer, FAA, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209, telephone: (316) 946–4196; facsimile: (316) 946–4107.

**How Do I Get Copies of the Documents Referenced in This AD?**

(g) You may get copies of the document referenced in this AD from The Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–6000; facsimile: (316) 517–8500. You may view this document at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 10, 2003.

**James E. Jackson,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–26276 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### 14 CFR Part 97

**[Docket No. 30393; Amdt. No. 3080]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective October 21, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 21, 2003.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.
4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125), telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

**The Rule**

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

**Conclusion**

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on October 10, 2003.

**James J. Ballough,**

*Director, Flight Standards Service.*

### Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * *Effective Upon Publication*

| FDC date | State | City | Airport | FDC No. | Subject |
|---|---|---|---|---|---|
| 09/24/03 ....... | DC | Washington ...................... | Ronald Reagan Washington National ... | 3/9311 | VOR Rwy 15, Amdt 9B. |
| 09/25/03 ....... | DC | Washington ...................... | Ronald Reagan Washington National ... | 3/9357 | VOR Rwy 15, Amdt 9B. |
| 09/24/03 ....... | DC | Washington ...................... | Ronald Reagan Washington National ... | 3/9310 | VOR/DME or GPS Rwy 15, Amdt 1B. |
| 09/26/03 ....... | DC | Washington ...................... | Washington Dulles Intl ......................... | 3/9386 | ILS Rwy 1R (Cat II, III), Amdt 22. |

[FR Doc. 03–26307 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### 14 CFR Parts 119, 121 and 135

**[Docket No. FAA–2003–15571; Amendment Nos. 119–8, 121–290, and 135–83]**

**RIN 2120–AI00**

## DOD Commercial Air Carrier Evaluators

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This document makes a correction to the final rule published in the **Federal Register** on July 10, 2003 (68 FR 41214). That rule clarified existing regulations as they apply to Department of Defense (DOD) commercial air carrier evaluators.

**EFFECTIVE DATE:** This correction is effective on October 21, 2003.

**FOR FURTHER INFORMATION CONTACT:** Lt. Col. Tom Barrale, USAF, Department of Defense Air Mobility Command Liaison Officer to FAA Flight Standards Service, (202) 267–7088.

### Correction

In the final rule FR Doc. 03–17459 published on July 10, 2003, (68 FR 41214), make the following corrections:

On page 41214, in column 3, in the heading section of the rule at the bottom of the page, beginning on line 4 of the heading, correct "Amendment Nos. 119–8, 121–286, and 135–83" to read "Amendment Nos. 119–8, 121–290, and 135–83."

Issued in Washington, DC on October 3, 2003.

**Gary A. Michel,**

*Acting Assistant Chief Counsel for Regulations.*

[FR Doc. 03–26445 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

### 23 CFR Part 630

**[FHWA Docket No. FHWA–1997–2262; Formerly FHWA 95–10]**

**RIN 2125–AD59**

## Advance Construction of Federal-aid Projects

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FHWA amends its regulation for advance construction of Federal-aid projects by removing certain provisions that limit the approval of advance construction projects and that allow for the payment of bond interest cost. These provisions are no longer consistent with section 115 of title 23, United States Code (U.S.C.), due to technical amendments provided in the National Highway System Designation Act of 1995 (NHS Act) and the Transportation Equity Act for the 21st Century (TEA–21).

**EFFECTIVE DATE:** November 20, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mr. Max Inman, Federal-aid Financial Management Division, (202) 366–2853, or Mr. Steve Rochlis, Office of the Chief Counsel, (202) 366–1395, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service, (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.archives.gov* and the Government Printing Office's database at *http://www.access.gpo.gov/nara*.

**Background**

The FHWA published an interim final rule on part 630, subpart G on July 19, 1995, at 60 FR 36991. Interested persons were invited to submit comments to FHWA Docket No. 95–10. (The FHWA rearranged its docket system to accord with the electronic system adopted by the Department of Transportation in 1997. The FHWA Docket No. 95–10 was transferred and scanned as FHWA Docket No. 1997–2262.) On May 1, 2003 (68 FR 23239), the FHWA published a notice of proposed rulemaking (NPRM) proposing to remove certain provisions that limit the approval of advance construction projects and that allow for the payment of bond interest cost. Advance construction authority allows States to advance the construction of Federal-aid highway projects without obligating Federal funds apportioned or allocated to the States.

Section 115, title 23, U.S. Code, authorizes advance construction projects. After FHWA approval, States can initiate the construction of a Federal-aid highway project using State funds without obligating Federal funds. Later, the State can request that the project be converted to a regular Federal-aid project by obligating all or a portion of the Federal share, provided that Federal-aid funds and obligation authority are available. The Federal government is only committed to the State for the amount of Federal funds obligated.

Section 308 of the NHS Act (Pub. L. 104–59, 109 Stat. 568, November 28, 1995), which replaced section 115(d) of title 23, U.S.C., requires that advance construction projects be on the approved Statewide Transportation Improvement Program (STIP), instead of requiring that future year authorizations be in effect when the advance construction project is approved. The STIP is a financially constrained program that covers a period of at least three years. This change allows the States more flexibility in financing projects and developing financial plans, and provides an opportunity for States to begin construction earlier.

Pre-construction procedures are found at 23 CFR part 630. The limitations outlined in § 630.707 are no longer valid, and will be removed, due to the changes made to title 23, U.S.C., section 115(d) by the NHS Act.

Section 1226(a) of the TEA–21, Public Law 105–178, 112 Stat. 107 (1998), as amended by section 9003(a) of Public Law 105–206, 112 Stat. 838 (1998), revised 23 U.S.C. 115 by removing obsolete subsections relating to payment of bond interest on certain Interstate construction projects. Based on changes in the law relating to payment of bond interest on certain Interstate construction projects, the FHWA removes §§ 630.705(c) and (d), and 630.711.

**Discussion of Comments**

We received one comment to the docket from a private individual. The comment welcomed changes in giving States more flexibility in financing projects and developing financial plans which will allow projects to begin construction earlier; and agreed that the FHWA should remove §§ 630.705(c) and (d), and 630.711. The comment also listed other benefits of the rule change including better use of taxpayers' dollars and stimulating the economy. While the FHWA agrees with the comment, the primary reason for the rule change is to conform to revisions in the authorizing statute.

**Conclusion**

Since no comments were received opposing the language proposed in the NPRM, the FHWA is adopting the revisions proposed in the NPRM as final without change.

**Rulemaking Analyses and Notices**

*Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The FHWA has considered the impact of this final action and has determined that it is not a significant rulemaking action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. This action will not adversely affect, in a material way, any sector of the economy. In addition, this final rule will not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements or grants. This action amends current regulations governing the advance construction of Federal-aid projects based on changes in law. It is not anticipated that this action will affect the Federal funding allocated to the States.

*Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act [5 U.S.C. 601–612], the FHWA has evaluated the effects of this action rule on small entities. The FHWA believes that this action will not have a significant economic impact on a substantial number of small entities. States are not included in the definition of small entity set forth in 5 U.S.C. 601. Therefore, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

*Executive Order 13132 (Federalism)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined that this final rule will not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this final rule directly preempts any State law or regulation.

*Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

*Unfunded Mandates Reform Act of 1995*

This final action will not impose a Federal mandate resulting in the expenditure by State, local, tribal governments, in the aggregate, or by the sector, of $100 million or more in any year. (2 U.S.C. 1531 *et seq.*)

*Executive Order 12630 (Taking of Private Property)*

This action will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interface with Constitutionally Protected Property Rights.

*Executive Order 12988 (Civil Justice Reform)*

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

*Executive Order 13045 (Protection of Children)*

We have analyzed this final rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This action does not involve an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

*Paperwork Reduction Act*

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq*.

*National Environmental Policy Act*

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq*.) and has determined that this action will not have any effect on the quality of the environment. Therefore, an environmental impact statement is not required.

*Executive Order 13175 (Tribal Consultation)*

The FHWA has analyzed this action under Executive Order 13175, and believes that the final rule will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

*Executive Order 13211 (Energy Effects)*

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

*Regulation Identification Number*

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

**List of Subjects in 23 CFR Part 630**

Bonds, Government contracts, Grant programs, transportation, Highways and roads, Reporting and recordkeeping requirements.

Issued on: October 15, 2003.

**Mary E. Peters,**

*Federal Highway Administrator.*

■ In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations, as set forth below:

## PART 630—[AMENDED]

■ 1. The authority citation for part 630 continues to read as follows:

**Authority:** 23 U.S.C. 106, 109, 115, 315, 320, and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b).

## Subpart G—Advance Construction of Federal-Aid Projects [Amended]

### § 630.705 [Amended]

■ 2. In § 630.705, remove paragraphs (c) and (d).

### § 630.707 [Removed and Reserved]

■ 3. Remove and reserve § 630.707.

### § 630.711 [Removed]

■ 4. Remove § 630.711.

[FR Doc. 03–26557 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–22–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

## [CGD08–03–041]

## Drawbridge Operation Regulations; Lower Grand River (Alternate Route), Grosse Tete, LA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Grosse Tete Swing Span Highway Bridge across Lower Grand River (Alternate Route), mile 47.0, at Grosse Tete, Iberville Parish, LA. This deviation allows the bridge to remain closed to navigation at various times from November 3, 2003 through November 17, 2003. The deviation is necessary to perform rehabilitation and post-tensioning work on the drawbridge.

**DATES:** This deviation is effective from 9 a.m. on November 3, 2003 through 3 p.m. on November 17, 2003.

**ADDRESSES:** Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

**FOR FURTHER INFORMATION CONTACT:** David Frank, Bridge Administration Branch, telephone (504) 589–2965.

**SUPPLEMENTARY INFORMATION:** The Louisiana Department of Transportation and Development has requested a temporary deviation in order to perform rehabilitation and post-tensioning work on the swing span bridge across Lower Grand River (Alternate Route) at mile 47.0 at Grosse Tete, Iberville Parish, Louisiana. This maintenance is essential for the continued safe operation of the bridge. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 9 a.m. until 3 p.m., Monday through Friday from November 3, 2003 until November 17, 2003. The bridge will open for the passage of vessels from noon until 12:30 p.m. during the closure period. If the work is accomplished in a shorter period of time, the bridge will be returned to normal operation in accordance with Title 33, Code of Federal Regulations, Section 117.478(b). Notice of return to normal operations prior to November 17, 2003 will be published by Broadcast Notice to Mariners.

The swing span bridge has a vertical clearance of 2.5 feet above mean high water, elevation 9.0 feet Mean Sea Level and 11.5 feet above mean low water, elevation 0.0 Mean Sea Level in the closed-to-navigation position. Navigation at the site of the bridge consists mainly of tows with barges and some recreational craft. There are no commercial fishermen that transit the waterway at the bridge site. Based on prior experience, as well as coordination with waterway users, it has been determined that this closure will not have a significant effect on these vessels. The bridge normally opens to pass navigation an average of 490 times per month. In accordance with 33 CFR 117.478(b), the draw of the LA 77 bridge, mile 47.0 (Alternate Route) at Grosse Tete, opens on signal; except that, from about August 15 to about June 5 (the school year), the draw need not be opened from 6 a.m. to 8 a.m. and from 2:30 p.m. to 4:30 p.m., Monday through Friday, except Federal holidays. The draw opens on signal at any time for an emergency aboard a vessel. Alternate routes are available. Mariners may transit the area via the Mississippi River through the Harvey Canal lock or via the Atchafalaya River through the Old River lock.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 14, 2003.

**Marcus Redford,**

*Bridge Administrator.*

[FR Doc. 03–26556 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 162

### [CGD17–99–002]

### RIN 1625–AA01

## Anchorage Ground; Safety Zone; Speed Limit; Tongass Narrows and Ketchikan, AK

**AGENCY:** Coast Guard, DHS.

**ACTION:** Interim rule; reopen comment period.

**SUMMARY:** The Coast Guard is re-opening the comment period for its interim rule published in April 2000, prior to publishing the final rule. The interim rule created a seven-knot speed limit zone that is currently in effect. This rule also re-designated the safety zone in Ketchikan Harbor as an anchorage to reflect its actual use as an anchorage for large passenger vessels. Due to the length in time since the comment period for the interim rule closed, the Coast Guard is providing an additional opportunity for public comment.

**DATES:** Comments and related material must reach the Coast Guard on or before December 22, 2003.

**ADDRESSES:** You may mail comments and related material to the USCG Marine Safety Office Juneau, 2760 Sherwood Lane, Suite 2A, Juneau, Alaska 99801. USCG Marine Safety Office Juneau maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at USCG Marine Safety Office Juneau between 8 a.m. and 8 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Tyrone Jones, Senior Investigating Officer, USCG Marine Safety Office Juneau, Alaska, telephone (907) 463–2470.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking, [CGD17–99–002], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to USCG Marine Safety Office Juneau at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

### Regulatory History

On March 25, 1999, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Anchorage Ground; Safety Zone; Speed Limit; Tongass Narrows and Ketchikan, AK" in the **Federal Register** (64 FR 14414). On June 2, 1999, the Coast Guard published an interim rule in the **Federal Register** (64 FR 29554). A correction was issued on June 15, 1999 in the **Federal Register** (64 FR 32103).

On April 7, 2000, the Coast Guard published a second interim rule entitled "Anchorage Ground; Safety Zone; Speed Limit; Tongass Narrows and Ketchikan, AK" in the **Federal Register** (65 FR 18242). The comment period for this interim rule ended on October 31, 2000.

### Background and Purpose

The Interim Rule published in 1999 extended the seven-knot speed limit on Tongass Narrows northward to Tongass Narrows Buoy 9 in order to address the needs of floatplane traffic. Non-commercial open skiffs were exempt from the seven-knot speed limit to allow them to transit crowded areas of Tongass Narrows more quickly, thereby relieving congestion.

The Interim Rule also re-designated a safety zone in Ketchikan Harbor as an anchorage. Vessels transiting the anchorage other than those engaged in anchoring evolutions are required to proceed through the anchorage by the most direct route without delay or sudden course changes. The re-designation of the area reflected its actual use as an anchorage for large passenger vessels. The slow or erratic operation of small vessels in the former safety zone made it very difficult for large vessels to safely maneuver to and from anchor. The requirement that transiting vessels proceed through the anchorage directly, without delay or sudden course changes, made the final approach, anchoring, and departure of large passenger vessels, safer for the vessels involved.

In April, 2000, a second Interim Rule was published addressing concerns from the public. The Coast Guard revised the exemption to the seven-knot speed limit to include all small vessels of 23 feet or less, registered length. This change allowed an increased number of small vessels that create little wake to transit crowded areas of Tongass Narrows more quickly, thereby relieving congestion.

### Reopening the Comment Period

The comment period for the interim rule published in April 2000 ended October 31, 2000. In order to give the public a chance to make additional comments, the Coast Guard is reopening the comment period for this interim rule, prior to publishing a final rule. All comments must reach the public docket at the address found in **ADDRESSES** on or before December 22, 2003.

Dated: October 9, 2003.

**D.W. Ryan,**

*Captain, Coast Guard, Commander, Seventeenth Coast Guard District (Acting).*

[FR Doc. 03–26554 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–15–P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[COTP Western Alaska 03–003]**

**RIN 1625–AA00**

## Security Zone; Port of Anchorage, Knik Arm, AK

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary 1000-yard security zone in the navigable waters off the Port of Anchorage, Alaska. This security zone temporarily closes all navigable waters extending out from the Port of Anchorage. This action is necessary to protect the Port of Anchorage, vessels moored at the Port, and its personnel against sabotage or subversive acts.

**DATES:** This temporary final rule is effective from 12:01 p.m. on September 23, 2003 until 12:01 p.m. on March 23, 2004.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket (COTP Western Alaska 03–001) and are available for inspection or copying at Coast Guard Marine Safety Office Anchorage, AK between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Commander Robert Forgit, USCG Marine Safety Office Anchorage, at (907) 271–6700.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and that under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Port of Anchorage, Alaska recently experienced a terrorist threat of damage to the port and its personnel. We are immediately establishing this temporary security zone to protect the Port, the vessels within the Port, and its personnel from sabotage or subversive acts.

### Background and Purpose

In light of a recent terrorist threat to the Port of Anchorage, the Coast Guard is establishing a security zone on the navigable waters off the Port of Anchorage to safeguard the Port, the vessels within the Port, and its personnel from sabotage or subversive acts and incidents of a similar nature. This security zone prohibits movement within or entry into the specified area.

This rule establishes a temporary 1000-yard security zone in the navigable waters of Knik Arm off the Port of Anchorage, Alaska. This security zone is designed to permit the safe loading and unloading of vessels moored at the Port and to protect its personnel from possible sabotage, subversive acts or incidents of a similar nature.

### Discussion of Rule

The Coast Guard is establishing a temporary 1000-yard security zone in the navigable waters of Knik Arm off the Port of Anchorage. Specifically, the zone includes the waters of Knik Arm that are within an area bounded by a line drawn from a point located at 61°15.14′ North, 149°52.78′ West, then west to a point located at 61°15.14′ North, 149°53.84′ West, then south to a point located at 61°14.39′ North, 149°53.64′ West, then east to a point located at 61°13.94′ North, 149°53.55′ West; thence along the shoreline back to the beginning point. All cargo vessels scheduled to moor at the Port of Anchorage and that have submitted the required Advance Notice of Arrival will be allowed to transit the zone. All tow vessels contracted, specifically Cook Inlet Tug and Barge, to assist the vessels into the Port of Anchorage, may transit the security zone when actually assisting a vessel. The limited size of the zone is designed to minimize the impact on other vessels transiting to facilities near the Port of Anchorage.

### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12886, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). This finding is based on the limited size of the security zone which will have minimal, if any, impact on vessels transiting the waters of Knik Arm and to facilities near the Port of Anchorage.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit in the vicinity of the Port of Anchorage.

This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Marine traffic will still be able to transit through Knik Arm during the zone's activation. Additionally, vessels with cargo to load or unload at the Port of Anchorage will not be precluded from mooring at or getting underway from the Port. Tow vessels contracted to assist vessels will not be precluded from transiting the zone to assist vessels.

### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and

Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(g), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and Record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T17–017 to read as follows:

### § 165.T17–017 Security Zone: Port of Anchorage, Knik Arm, Alaska.

(a) *Location.* The following area is a security zone: All navigable waters within 1000-yards of the Port of Anchorage. Specifically, the zone includes the waters of Knik Arm that are within an area bounded by a line drawn from a point located at 61°15.14′ North, 149°52.78′ West; thence west to a point located at 61°15.14′ North, 149°53.84′ West; thence south to a point located at 61°14.39′ North, 149°53.64′ West; thence east to a point located at 61°13.94′ North, 149°53.55′ West; thence along the shoreline back to the beginning point.

(b) *Effective period.* This section is effective from 12:01 p.m., September 23, 2003 to 12:01 p.m., March 23, 2004.

(c) *Regulations.* (1) For the purpose of this section, the general regulations contained in 33 CFR 165.33 apply to all but the following vessels in the areas described in paragraph (a):

(i) Vessels scheduled to moor and offload or load cargo at the Port of Anchorage that have provided the Coast Guard with an Advance Notice of Arrival.

(ii) Tow vessels contracted, specifically Cook Inlet Tug and Barge, to assist vessels to the dock at the Port of Anchorage.

(2) All persons and vessels shall comply with the instructions of the Captain of the Port representative or the designated on-scene patrol personnel. These personnel are comprised of commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: September 23, 2003.

**Thomas D. Harrison,**

*Commander, Coast Guard, Acting Captain of the Port, Western Alaska.*

[FR Doc. 03–26555 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–15–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 52 and 81

[Docket # OR–02–002a; FRL–7568–7]

## Approval and Promulgation of Air Quality Implementation Plans; State of Oregon; Klamath Falls PM–10 Nonattainment Area Redesignation to Attainment and Designation of Area for Air Quality Planning Purposes

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** On November 4, 2002, the State of Oregon submitted a PM–10 maintenance plan for Klamath Falls to EPA for approval and concurrently requested that EPA redesignate the Klamath Falls nonattainment area to attainment for the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than ten micrometers (PM–10). In this action, EPA is approving the maintenance plan and redesignating the Klamath Falls PM–10 nonattainment area to attainment.

**DATES:** This direct final rule will be effective December 22, 2003, unless EPA receives adverse comments by November 20, 2003. If relevant adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Comments may be submitted either by mail or electronically. Written comments should be mailed to Steven K. Body, Office of Air Quality, (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. Electronic comments should be sent either to *r10.aircom@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in the **SUPPLEMENTARY INFORMATION** section, Part VII, General Information.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the United States Environmental Protection Agency, Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle, WA.

**FOR FURTHER INFORMATION CONTACT:** Steven K. Body, State and Tribal Programs Unit, Office of Air Quality, (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, Telephone number: (206) 553–0782, or e-mail address: *body.steve@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, wherever "we," "us," or "our" is used, we mean the EPA. Please note that if EPA receives relevant adverse comment on an amendment, paragraph or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of a relevant adverse comment.

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### I. What Is the Purpose of This Action?

EPA is approving the Klamath Falls PM–10 Maintenance Plan and redesignating the Klamath Falls PM–10 nonattainment area to attainment. Klamath Falls is a city in south central Oregon with a population of approximately 40,000. In the late 1980's Klamath Falls recorded some of the highest PM–10 concentrations in the country.

### II. Why Was Klamath Falls Designated Nonattainment?

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Under section 107(d)(1)(C) of the Clean Air Act (CAA), the Klamath Falls, Oregon, area was designated nonattainment for PM–10 by operation of law because the area had been designated a Group I planning area before November 15, 1990. Group I planning areas were identified on August 7, 1987. See 52 FR 29383. On October 31, 1990, EPA clarified the description of certain Group I planning areas, including the Klamath Falls area. See 55 FR 45799. These areas were called "initial PM–10 nonattainment areas." On March 15, 1991, EPA announced these areas and classified them as moderate PM–10 nonattainment areas. See 56 FR 11101.

### III. How Can a Nonattainment Area Be Redesignated to Attainment?

Nonattainment areas can be redesignated to attainment after the area has measured air quality data showing it has attained the NAAQS and when certain planning requirements are met. Section 107(d)(3)(E) of the CAA, and the General Preamble to Title I (57 FR 13498) provide the criteria for redesignation. These criteria are further clarified in a policy and guidance memorandum from John Calcagni, September 4, 1992, *Procedures for Processing Requests to Redesignate Areas to Attainment.* The criteria for redesignation are:

(1) The Administrator determines that the area has attained the relevant national ambient air quality standard;

(2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the Act;

(3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, applicable Federal air pollution control regulations, and other permanent and enforceable reductions;

(4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and

(5) the State containing the area has meets all requirements applicable to the area under section 110 and part D of the CAA.

Before an area can be redesignated to attainment, all applicable State Implementation Plan (SIP) elements must be fully approved. The following is a summary of EPA's analysis and conclusion regarding the maintenance plan of Klamath Falls and the State's redesignation request. Additional detail regarding EPA's review and analysis may be found in the technical support document which is located in the public docket for this action.

### IV. Did the State Follow Appropriate Administrative Procedures Before Submitting All the Relevant Material to EPA?

The CAA requires States to follow certain procedural requirements for submitting SIP revisions to EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted by the State after reasonable notice and public hearing. The State then submits the SIP revision to EPA.

The Oregon Department of Environmental Quality (ODEQ), which has regulatory authority for sources of air pollution in the Klamath Falls PM–10 nonattainment area, developed the PM–10 maintenance plan. On May 20, 2002, ODEQ notified the public of the public hearing on the plan in the *Herald and News*, Klamath Falls, Oregon. On June 25, 2002, ODEQ held the public hearing at the Klamath Falls City Hall, Council Chambers. On October 4, 2002, the State of Oregon adopted *A Plan for Maintaining the National Ambient Air Quality Standards for Particulate Matter (PM–10) In Klamath Falls Urban Growth Boundary Section 4.56 of the State Implementation Plan.* On November 4, 2002, the State submitted the redesignation request and maintenance plan to EPA.

The State meets the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA.

### V. Evaluation of the Redesignation Request and Maintenance Plan

#### *A. The Area Must Have Attained the PM–10 NAAQS*

Section 107(d)(3)(E)(i) of the CAA requires that the Administrator determine that the area has attained the applicable NAAQS. The primary 24-hour NAAQS for Particulate Matter with an aerodynamic diameter equal to or less than 10 micrometers (PM–10) is 150 micrograms per cubic meter (μg/m $^3$) for a 24-hour period (midnight to midnight), not to be exceeded more than once per year averaged over three calendar years. The annual NAAQS for PM–10 is 50 µg/m $^3$ annual arithmetic average, averaged over three calendar years. PM–10 in the ambient air is measured by a reference method based on 40 CFR part 50, appendix J. EPA considers an area as attaining the PM–10 NAAQS when all of the PM–10 monitors in the area have an exceedance rate of 1.0 or less averaged over three calendar years. (*See* 40 CFR 50.6 and 40 CFR part 50, appendix J.) In addition, the area must continue to show attainment through the date that EPA promulgates redesignation to attainment.

Oregon's redesignation request for the Klamath Falls PM–10 area is based on valid ambient air quality data. Ambient air quality monitoring data for calendar years 1992 through 2002 show there have been no exceedances of the PM–10 standard since 1992. These data were collected and analyzed as required (*see* 40 CFR 50.6 and 40 CFR part 50, appendix J) and have been stored in EPA's Air Quality System (AQS). These data have met minimum quality assurance requirements and have been certified by the State as being valid before being included in AQS. The Klamath Falls area has not violated the PM–10 standard since 1992 and continues to demonstrate attainment through calendar year 2002.

### *B. The Area Must Have Met All Applicable Requirements Under Section 110 and Part D*

Section 107(d)(3)(E)(v) of the CAA requires that an area must meet all applicable requirements under section 110 and Part D of the CAA. EPA interprets this to mean the State must meet all requirements that applied to the area prior to, and at the time of, the submission of a complete redesignation request. Below is a summary of how Oregon meets these requirements.

### *C. Clean Air Act (CAA) Section 110 Requirements*

On January 25, 1972, Oregon submitted the SIP to EPA. EPA approved the SIP on May 31, 1972. *See* 37 FR 10888. For purposes of redesignation, the Oregon SIP, including the Klamath Falls PM–10 SIP, were reviewed to ensure that the SIP satisfies the CAA requirements of section 110(a)(2). See 40 CFR 52.1970 for a complete listing of subsequent Oregon SIP submittals and EPA approvals.

### *D. Part D Requirements*

Part D provides general requirements applicable to all areas designated nonattainment. The general requirements are followed by a series of subparts specific to each pollutant. All PM–10 nonattainment areas must meet the applicable general provisions of subpart 1 (section 172) as well as the specific PM–10 provisions in subpart 4, "Additional Provisions for Particulate Matter Nonattainment Areas."

### *E. Section 172(c)(3)—Emissions Inventory*

Section 172(c)(3) of the CAA requires a comprehensive, accurate, current inventory of actual emissions from all sources in the Klamath Falls PM–10 nonattainment area.

Oregon included in the proposed Klamath Falls maintenance plan an emission inventory for calendar year 1996. This year corresponds to the year used in calculating the design value (discussed below) which is at a level well below the standard. This inventory thus represents emissions that are at a level to protect the standard. The inventory is comprehensive, accurate and current and meets the requirements of section 172(c)(3) of the CAA.

### *F. Section 172(c)(5)—New Source Review (NSR)*

The Clean Air Act Amendments of 1990 contained revisions to the new source review (NSR) program requirements for the construction and operation of new and modified major stationary sources located in nonattainment areas. The Act requires states to amend their SIPs to reflect these revisions, but does not require submittal of this element along with the other SIP elements. The Act established June 30, 1992 as the submittal date for the revised NSR programs. *See* section 189(a) of the Act. The General Preamble calls for states to implement their existing NSR programs during the interval preceding our formal approval of their revised NSR programs.

In Klamath Falls, the requirements of the Part D NSR program will be replaced by the Prevention of Significant Deterioration (PSD) program and the maintenance area NSR program upon the effective date of redesignation. The Oregon Department of Environmental Quality rules for new source review that meet both attainment and nonattainment area requirements (provisions of OAR Chapter 340, Divisions 200, 202, 209, 212, 216, 222, 224, 225, and 268), that were in effect on October 8, 2002, were approved on January 22, 2003, (68 FR 2953) as meeting the requirements of title I, parts C and D of the Clean Air Act.

Portions of Divisions 222, 224, and 225 were revised as part of the Grants Pass PM–10 Maintenance Plan and the Klamath Falls Maintenance Plan development effort. These rule revisions were approved by EPA on January 22, 2003 (68 FR 2953).

Section 0040(3)(b) of Division 204, effective October 8, 2002, is approved in this action. This section is revised to add Klamath Falls to the PM–10 Maintenance Area list.

### *G. Section 172(c)(7)—Compliance With CAA Section 110(a)(2): Air Quality Monitoring Requirements*

Once an area is redesignated, the state must continue to operate an appropriate air monitoring network in accord with 40 CFR part 58 to verify attainment status of the area.

The State of Oregon has operated a PM–10 monitor in the Klamath Falls area since 1987 at the Peterson School Site. In the proposed Klamath Falls maintenance plan, the State of Oregon commits to continued operation of the PM–10 monitoring station.

### *H. The Area Must Have a Fully Approved SIP Under Section 110(k) of the CAA*

States containing initial moderate PM–10 nonattainment areas were required to submit, by November 15, 1991, a nonattainment area plan that implemented reasonably available control measures (RACM) by December 10, 1993, and demonstrate whether it was practicable to attain the PM–10 NAAQS by December 31, 1994. In order to qualify for redesignation, the SIP for the area must be fully approved under section 110(k) of the Act, and must satisfy all requirements that apply to the area. Oregon's CAA part D initial PM–10 plan for the Klamath Falls PM–10 nonattainment area was submitted on November 15, 1991. The State submitted additional information and provisions on September 20, 1995. EPA approved the Klamath Falls PM–10 attainment plan on April 14, 1997. See 62 FR 18047. Thus, the area has a fully approved nonattainment area SIP.

### *I. The Area Must Show the Improvement in Air Quality Is Due to Permanent and Enforceable Emission Reductions*

Section 107(d)(3)(E)(iii) of the CAA provides that for an area to be redesignated to attainment, the Administrator must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, implementation of applicable Federal air pollutant control regulations, and other permanent and enforceable reductions.

The PM–10 emission reductions for the Klamath Falls area were achieved through a number of permanent and enforceable control measures including a mandatory woodstove certification program for all new stove sales, a mandatory woodstove and open burning ordinance, a ban on the sale and installation of uncertified woodstoves, and major source NSR. EPA approved these control measures as part of the part D SIP submittal on April 14, 1997. These control measures will continue into the maintenance period for the Klamath Falls area.

The State has demonstrated that the air quality improvements in the Klamath Falls area are the result of permanent enforceable emission reductions and are not the result of either economic trends or meteorology. EPA concludes that the modeling demonstration shows the area will meet the NAAQS even under the worst case meteorological conditions.

### *J. The Area Must Have a Fully Approved Maintenance Plan Under CAA Section 175A*

Section 107(d)(3)(E)(iv) of the CAA provides that for an area to be redesignated to attainment, the Administrator must have fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA. As described below, Oregon has complied with the core requirements necessary for an approved maintenance plan. Accordingly, today's action approves the maintenance plan for Klamath Falls, Oregon.

### *K. Emissions Inventory—Attainment Year*

The plan must contain an attainment year emissions inventory to identify the level of emissions in the area which is sufficient to attain the PM–10 NAAQS. This inventory is to be consistent with EPA's most recent guidance on emissions inventories for nonattainment areas available at the time and should represent emissions during the time period associated with the monitoring data showing attainment. The Klamath Falls maintenance plan contains an accurate, current, and comprehensive emission inventory for calendar year 1996. This year is consistent with the design value which was calculated for 1996.

### *L. Demonstration of Maintenance*

EPA policy contained in the September 4, 1992, Calcagni memo, requires that the maintenance plan contain the same level of air quality modeling to demonstrate maintenance that was used in the original attainment plan to demonstrate attainment. The Klamath Falls attainment plan approved by EPA on April 14, 1997, contained simple proportional modeling. This approach was acceptable because Klamath Falls is a simple air shed and residential wood combustion is a primary source of emissions contributing to the measured violations. EPA agreed with Oregon that simple proportional modeling of emissions from 1996 to the maintenance year of 2015 and the use of the 1996 design value would be an adequate approach for the maintenance demonstration. Oregon projected emissions for the Klamath Falls area to 2015 using appropriate growth factors for population and industrial growth. The increase in emissions from 1996 to 2015 was used to predict both worst case 24-hour PM–10 and annual PM–10 concentrations.

The 24-hour 1996 design value is 95.2 μg/m$^3$, based on measured air quality. The 1996 annual design value is 21.0 μg/m$^3$. Using the 1996 emission inventory, growth projections to 2015, and an additional 10% increment above the projected growth in motor vehicle emissions in 2015, the projected PM–10 levels will be 112.4 μg/m$^3$, worst case 24-hour concentration, and 25.3 μg/m$^3$, annual average concentration. These PM–10 concentrations are below the level of the 24-hour and annual standards and therefore maintenance is demonstrated.

### *M. Monitoring Network and Verification of Continued Attainment*

Continued ambient monitoring of an area is required over the maintenance period. Section 4.56.4.5 of the Klamath Falls maintenance plan provides for adequate ambient monitoring to be continued in the area for the maintenance period.

### *N. Contingency Plan*

Section 175A of the Act requires that a maintenance plan include contingency provisions, as necessary, to correct any violation of the NAAQS that occurs after redesignation. At a minimum, the contingency provisions must include a commitment that the State implement all measures contained in the nonattainment SIP prior to redesignation.

The Klamath Falls maintenance plan continues implementation of the control measures contained in the nonattainment area SIP, with the exception of the nonattainment area major new source review. Major new source review will continue through the PSD program. Thus, the State has met the minimum requirement.

In addition to the minimum requirements, the Klamath Falls maintenance plan contains a contingency plan that consists of two phases. Phase I is triggered if PM–10 concentrations equal or exceed 90% of the level of either the 24-hour or annual standards. Phase I would require a review of various residential and outdoor burning requirements and alternative burning practices. Phase 2 of the contingency plan would require the implementation of strategies identified in Phase I as well as nonattainment permitting requirements for all new or modified major sources.

### *O. Transportation Conformity*

Section 176(c)(2)(A) of the CAA requires regional transportation plans to be consistent with the motor vehicle emissions budget (MVEB) contained in the applicable air quality plans for the Klamath Falls area. Unless EPA receives adverse comments on the MVEB for Klamath Falls, the motor vehicle emissions budget is deemed adequate to maintain the PM–10 standards through the maintenance year of 2015. The Oregon Department of Transportation, and the U.S. Department of Transportation are required to use the MVEB in this maintenance plan for future transportation conformity determinations.

The MVEBs to protect for both the 24-hour and annual National Ambient Air Quality Standards for PM–10 are proposed for approval for Klamath Falls as follows:

KLAMATH FALLS PM$_{10}$ MOTOR VEHICLE EMISSIONS BUDGETS

[pounds per winter day]

| Year | 2000 | 2005 | 2010 | 2015 |
|---|---|---|---|---|
| MVEB ........ | 2949 | 3208 | 3466 | 3725 |

KLAMATH FALLS PM$_{10}$ MOTOR VEHICLE EMISSIONS BUDGETS

[tons per year]

| Year | 2000 | 2005 | 2010 | 2015 |
|---|---|---|---|---|
| MVEB ........ | 548 | 596 | 644 | 692 |

Note that MVEBs for intervening years must be interpolated. In the case of Klamath Falls both the 24-hour and annual budgets must be satisfied in order to find that transportation plans conform. The TSD summarizes how the MVEBs meets the adequacy criteria contained in the transportation conformity rule (40 CFR 93.118(e)(4)).

## VI. Final Action

EPA is approving the Klamath Falls PM–10 maintenance plan and redesignating the Klamath Falls, Oregon PM–10 nonattainment area to attainment.

## VII. General Information

### *A. How Can I Get Copies of This Document and Other Related Information?*

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office, under Docket number OR–02–002. The official public file consists of the documents specifically referenced in this action, and other information related to this action. The official public rulemaking file is available for public viewing at the Office of Air Quality, (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. EPA's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

2. Copies of the State submission and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the Oregon Department of Environmental Quality, 811 SW. Sixth Avenue, Portland, Oregon 97204–1390.

3. Electronic Access. You may access this **Federal Register** document electronically through the Regulations.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

### *B. How and To Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking OR–02–002" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

a. *E-mail.* You may send comments by electronic mail (e-mail) to *r10.aircom@epa.gov,* please including the text "Public comment on proposed rulemaking OR–02–002" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

b. *Regulations.gov.* You may use Regulations.gov as an alternative method to submit electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then select Environmental Protection Agency at the top of the page and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

c. *Disk or CD–ROM.* You may submit comments on a disk or CD–ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Steven K. Body, Office of Air Quality, (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. Please include the text "Public comment on proposed rulemaking OR–02–002" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Steven K. Body, Office of Air Quality, (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

### *C. How Should I Submit CBI to the EPA?*

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA to be CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is CBI). EPA will not disclose information so marked except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

### VIII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 22, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects

*40 CFR Part 52*

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

*40 CFR Part 81*

Air pollution control, National parks, Wilderness areas.

Dated: September 24, 2003.

**Ronald A. Kreizenbeck,**

*Acting Regional Administrator, Region 10.*

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

## PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart MM—Oregon

■ 2. Section 52.1970 is amended by adding paragraph (c)(140) to read as follows:

### § 52.1970 Identification of plan.

* * * * *

(c) * * *

(140) On November 4, 2002, the Oregon Department of Environmental Quality requested the redesignation of Klamath Falls to attainment for PM–10. The State's maintenance plan and the redesignation request meet the requirements of the Clean Air Act.

(i) Incorporation by reference.

(A) Oregon Administrative Rule 340–204–0040(3)(b) as effective October 8, 2002.

■ 3. Section 52.1973 is added to subpart MM to read as follows:

### § 52.1973 Approval of plans.

(a) Carbon Monoxide [Reserved]

(b) Lead. [Reserved]

(c) Nitrogen Dioxide. [Reserved]

(d) Ozone. [Reserved]

(e) Particulate Matter.

(1) EPA approves as a revision to the Oregon State Implementation Plan, the Klamath Falls PM–10 maintenance plan submitted to EPA on November 4, 2002.

(2) [Reserved]

(f) Sulfur Dioxide. [Reserved]

## PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

■ 2. In § 81.338, the table entitled "Oregon PM–10," the entry for Klamath Falls is revised to read as follows:

### § 81.338 Oregon.

* * * * *

OREGON—PM–10

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date | Type | Date | Type |
| * * * * * * * | | | | |
| Klamath Falls (the Urban Growth Boundary Area) | 12/22/03 | Attainment | | |
| * * * * * * * | | | | |

* * * * *

[FR Doc. 03–26540 Filed 10–20–03; 8:45 am]

BILLING CODE 6560–50–P

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## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

### 44 CFR Part 64

### [Docket No. FEMA–7817]

## Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

**EFFECTIVE DATES:** The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

**ADDRESSES:** If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

**FOR FURTHER INFORMATION CONTACT:** Mike Grimm, Mitigation Division, 500 C Street, SW.; Room 412, Washington, DC 20472, (202) 646–2878.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

*National Environmental Policy Act.* This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

*Regulatory Flexibility Act.* The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Paperwork Reduction Act.* This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

*Executive Order 12612, Federalism.* This rule involves no policies that have federalism implications under Executive

Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

*Executive Order 12778, Civil Justice Reform.* This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

### List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

## PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

### § 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in special flood hazard areas |
|---|---|---|---|---|
| **Region I** | | | | |
| Massachusetts: Scituate, Town of, Plymouth County. | 250282 | September 6, 1974, Emerg.; September 30, 1977, Reg.; October 16, 2003. | Oct. 16, 2003 | Oct 16, 2003. |
| **Region V** | | | | |
| Ohio: | | | | |
| Cheshire, Village of, Gallia County | 390186 | July 24, 1975, Emerg.; August 15, 1983, Reg.; October 16, 2003, Susp; | do* | Do. |
| Crown City, Village of, Gallia County | 390187 | April 22, 1983, Emerg.; July 5, 1983, Reg.; October 16, 2003, Susp | do | Do. |
| Gallia County, Unincorporated Areas | 390185 | March 2, 1977, Emerg.; September 29, 1989, Reg.; October 16, 2003, Susp | do | Do. |
| Gallipolis, City of, Gallia County | 390188 | February 14, 1977, Emerg.; July 5, 1983, Reg.; October 16, 2003, Susp | do | Do. |
| Rio Grande, Village of, Gallia County | 390879 | May 20, 1981, Emerg.; September 4, 1985, Reg.; October 16, 2003, Susp | do | Do. |
| Vinton, Village of, Gallia County | 390189 | February 6, 1979, Emerg.; October 16, 2003, Reg.; October 16, 2003, Susp | do | Do. |

*do = Ditto

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: October 10, 2003.

**Anthony S. Lowe,**

*Mitigation Division Director, Emergency Preparedness and Response Directorate.*

[FR Doc. 03–26454 Filed 10–20–03; 8:45 am]

BILLING CODE 6718–05–P

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

### [DA 03–2891]

## Radio Broadcasting Services; Various Locations

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment, 4 FCC Rcd 2413 (1989), and Amendment of the Commission's Rules to permit FM Channel and Class Modifications by Applications, 8 FCC Rcd 4735 (1993).

**DATES:** Effective October 21, 2003.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order*, adopted October 1, 2003, and released October 3, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail qualexint@aol.com.

### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

## PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, and 336.

■ 2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 264C1 and adding Channel 264B at Corning and by removing Channel 232A and adding Channel 232B1 at Jackson.

■ 3. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 268C and adding Channel 269C1 at Eagle and by removing Channel 269A and adding Channel 268C at Fort Morgan.

■ 4. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 263C3 and adding Channel 263C2 at Newberry.

■ 5. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 237C3 and adding Channel 236C3 at Orofino and by removing Channel 237C1 and adding Channel 237C at Sandpoint.

■ 6. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 239A and adding Channel 239C3 at South Fort Polk.

■ 7. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 257C1 and adding Channel 257C at Elma.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 03–26498 Filed 10–20–03; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 03–2892; MB Docket No. 03–14; RM–10629]**

### Radio Broadcasting Services; Fredericksburg and Mason, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** At the request of Jayson and Janice Fritz, this document substitutes Channel 289C3 for Channel 289C2 at Mason, Texas, reallots Channel 289C3 to Fredericksburg, Texas, and modifies the outstanding construction permit (File No. BPH–19960826MS) to specify operation on Channel 289C3 at Fredericksburg. *See* 68 FR 5860, published February 5, 2003. The reference coordinates for the Channel 289C3 allotment at Fredericksburg, Texas, are 30–23–37 and 99–01–05. With this action, the proceeding is terminated.

**DATES:** Effective November 17, 2003.

**FOR FURTHER INFORMATION CONTACT:** Robert Hayne, Mass Media Bureau (202) 418–2177.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order* in MB Docket No. 03–14, adopted September 10, 2003, and released September 12, 2003. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

### PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Fredericksburg, Channel 289C3 and by removing Channel 289C2 at Mason.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 03–26500 Filed 10–20–03; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 03–2908; MB Docket No. 03–143, RM–10726; MB Docket No. 03–146, RM–10728]**

### Radio Broadcasting Services; Cove, AR and Robert Lee, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Audio Division, at the request of Charles Crawford, allots Channel 232A at Cove, Arkansas, as the community's first local aural transmission service. *See* 68 FR 42663, July 18, 2003. Channel 232A can be allotted to Cove in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.9 kilometers (9.2 miles) southwest to avoid a short-spacing to the license site of Station KOLX, Channel 233C2, Barling, AR. The reference coordinates for Channel 232A at Cove are 34–22–17 North Latitude and 94–33–12 West Longitude. The Audio Division, at the request of Katherine Pyeatt, allots Channel 289A at Robert Lee, Texas, as the community's first local aural transmission service. *See* 68 FR 42663, July 18, 2003. Channel 289A can be allotted to Robert Lee in compliance with the Commission's minimum distance separation requirements, provided there is a site restriction of 14.3 kilometers (8.9 miles) north to avoid a short-spacing to the vacant allotment site of Channel 289C1, Ozona, Texas. The reference coordinates for Channel 289A at Robert Lee are 32–00–56 North Latitude and 100–26–20 West Longitude. Although concurrence has been requested for Channel 289A at Robert Lee, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: "Use of this allotment is subject to suspension, modification, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement or if specifically objected to by Mexico's Secretaria de Comunicaciones Y Transportes." Filing windows for Channel 232A at Cove, Arkansas and Channel 289A at Robert Lee, Texas will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

**DATES:** Effective November 17, 2003.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MB Docket Nos. 03–143 and 03–146, adopted October 1, 2003, and released October 3, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

### PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

■ 2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Cove, Channel 232A.

■ 3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Robert Lee, Channel 289A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 03–26501 Filed 10–20–03; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 03–2911; MB Docket No. 03–145, RM–10730]**

### Radio Broadcasting Services; Ridgecrest, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Audio Division, at the request of Dana J. Puopolo, allots Channel 229A to Ridgecrest, California, as the community's fourth FM commercial service. See 68 FR 42663, July 18, 2003. Channel 229A can be allotted to Ridgecrest, in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The reference coordinates for Channel 229A at Ridgecrest are 35–37–30 North Latitude and 117–40–12 West Longitude. A filing window for Channel 229A at Ridgecrest, California, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

**DATES:** Effective November 17, 2003.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order,* MB Docket No. 03–145, adopted October 1, 2003, and released October 3, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

### PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

■ 2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 229A at Ridgecrest.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 03–26502 Filed 10–20–03; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 03–2909; MB Docket No. 03–153, RM–10727; MB Docket No. 03–154, RM–10736]**

### Radio Broadcasting Services; Bangs, Texas and De Beque, Colorado

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Audio Division, at the request of Charles Crawford, allots Channel 250C3 at Bangs, Texas, as the community's first local aural transmission service. *See* 68 FR 42663, July 18, 2003. Channel 250C3 can be allotted to Bangs in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.9 kilometers (7.4 miles) west to avoid a short-spacing to the license sites of Station KATX, Channel 249A, Eastland, Texas and Station KBFB, Channel 250C, Dallas, Texas. The reference coordinates for Channel 250C3 at Bangs are 31–41–32 North Latitude and 99–15–17 West Longitude. Although concurrence has been requested for Channel 250C3 at Bangs, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: "Use of this allotment is subject to suspension, modification, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement or if specifically objected to by Mexico's Secretaria de Comunicaciones Y Transportes." The Audio Division, at the request of Garfield-Mesa County Line Broadcasters, allots Channel 275C3 at De Beque, Colorado, as the community's first local aural transmission service. *See* 68 FR 42663, July 18, 2003. Channel 275C3 can be allotted to De Beque in compliance with the Commission's minimum distance separation requirements, provided there is a site restriction of 7.1 kilometers (4.4 miles) northwest to avoid a short-spacing to the license site of Station KPRU, Channel 277C2, Delta, Colorado. The reference coordinates for Channel 275C3 at De Beque are 39–22–36 North Latitude and 108–16–33 West Longitude. Filing windows for Channel 250C3 at Bangs, Texas and Channel 275C3 at De Beque, Colorado will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

**DATES:** Effective November 17, 2003.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order,* MB Docket Nos. 03–153 and 03–154, adopted October 1, 2003, and released October 3, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

### PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

■ 2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding De Beque, Channel 275C3.

■ 3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Bangs, Channel 250C3.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 03–26503 Filed 10–20–03; 8:45 am]

BILLING CODE 6712–01–P

# Proposed Rules

Federal Register
Vol. 68, No. 203
Tuesday, October 21, 2003

**This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2001–NM–267–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to revise an existing airworthiness directive (AD), applicable to certain Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) series airplanes, that currently requires repetitive inspections to find cracks of a certain bulkhead web of the fuselage at certain locations, and repair if necessary. The actions specified by that AD are intended to prevent cracking in the pressure bulkhead at frame station (FS) 409.00, which could result in uncontrolled depressurization of the airplane and/or reduced structural integrity of the fuselage. This action would provide an optional terminating modification for certain airplanes. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by November 20, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–267–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–267–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

**FOR FURTHER INFORMATION CONTACT:** Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; telephone (516) 256–7512; fax (516) 568–2716.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–267–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–267–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

On November 10, 1997, the FAA issued AD 97–24–02, amendment 39–10209 (62 FR 61436, November 18, 1997), applicable to certain Bombardier Model CL–600–1A11, –2A12, and –2B16 series airplanes, to require repetitive inspections to find cracks of a certain bulkhead web of the fuselage at certain locations, and repair if necessary. That action was prompted by mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to detect and correct cracking in the pressure bulkhead at frame station (FS) 409.00, which could result in uncontrolled depressurization of the airplane and/or reduced structural integrity of the fuselage.

### Actions Since Issuance of Previous Rule

In the preamble to AD 97–24–02, we specified that we considered the requirements "interim action" and that the manufacturer was developing a modification to address the unsafe condition. That AD explained that we may consider further rulemaking if a modification is developed, approved, and available. The manufacturer now has developed such a modification, and we have determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

### Explanation of Relevant Service Information

Bombardier has issued Service Bulletin 600–0680 (for Model CL–600–1A11 (CL–600) series airplanes), Service Bulletin 601–0503 (for Model CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A/–3R) series airplanes), and Service Bulletin 604–53–006 (for Model CL–600–2B16 (CL–604) series airplanes), all dated November 30, 1999. The service bulletins describe procedures for modification of the pressure bulkhead at FS 409.00. The modification includes an eddy current inspection for cracking of the bulkhead; reinforcement of the pressure bulkhead frame; and a pressure test, leak test, operational test, and functional test of all systems.

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, classified these service bulletins as mandatory and issued Canadian airworthiness directive CF–1997–16R2, dated May 31, 2001, in order to ensure the continued airworthiness of these airplanes in Canada.

### FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. We have examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would revise AD 97–24–02 to continue to require repetitive inspections to find cracks of a certain bulkhead web of the fuselage at certain locations, and repair if necessary. For certain airplanes, this proposed AD also would provide for an optional terminating modification for the repetitive inspections. Consistent with the findings of TCCA, the proposed AD would allow repetitive inspections to continue in lieu of the terminating action. In making this determination, we considered that long-term continued operational safety in this case will be adequately ensured by repetitive inspections to detect cracking before it represents a hazard to the airplane. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

### Differences Between Proposed Rule and Service Bulletins/Canadian Airworthiness Directive

The Canadian airworthiness directive specifies reporting crack findings to the manufacturer; however, this proposed AD would not require such action.

The Accomplishment Instructions of the referenced service bulletins describe procedures for completing an Incorporation Notice. However, this proposed AD would not require such action.

In addition, although the service bulletins specify that operators may contact the manufacturer for disposition of certain repair conditions, this proposal would require operators to repair those conditions per a method approved by either the FAA or TCCA (or its delegated agent). In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair approved by either the FAA or TCCA would be acceptable for compliance with this proposed AD.

### Explanation of Change Made To Existing Requirements

We have changed all references to a "detailed visual inspection" in the existing AD to a "detailed inspection" in this action.

### Cost Impact

There are approximately 237 airplanes of U.S. registry that would be affected by this proposed AD.

The inspections that are required by AD 97–24–02 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $130 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

The optional terminating modification, if done, would take between 125 and 300 work hours per airplane, depending on the airplane configuration, at an average labor rate of $65 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, we estimate the cost of the modification to be between $8,125 and $19,500 per airplane.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–10209 (62 FR 61436, November 18, 1997), and by adding a new airworthiness directive (AD), to read as follows:

**Bombardier, Inc. (Formerly Canadair):** Docket 2001–NM–267–AD. Revises AD 97–24–02, Amendment 39–10209.

*Applicability:* Model CL–600–1A11 (CL–600) series airplanes, serial numbers 1004 through 1085 inclusive; Model CL–600–2A12 (CL–601) series airplanes, serial numbers 3001 through 3066 inclusive; Model CL–600–2B16 (CL–601–3A/–3R) series airplanes, serial numbers 5001 through 5194 inclusive; and Model CL–600–2B16 (CL–604) series airplanes, serial numbers 5301 through 5352 inclusive; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously. To prevent cracking in the pressure bulkhead at frame station (FS) 409.00, which could result in uncontrolled depressurization of the airplane and/or reduced structural integrity of the fuselage, accomplish the following:

**Restatement of Requirements of AD 97–24–02: Detailed Inspections/Repair**

(a) For Model CL–600–1A11 (CL–600) airplanes: Prior to the accumulation of 1,900 total landings, or within 100 landings after December 3, 1997 (the effective date of AD 97–24–02, amendment 39–10209), whichever occurs later, perform a detailed inspection to detect cracks at FS 409.00 of the bulkhead web (part number (P/N) 600–32014–71/–95/–105), in accordance with Canadair Challenger Service Bulletin 600–0679, dated September 12, 1997.

**Note 1:** For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If no crack is detected, repeat the detailed inspection thereafter at intervals not to exceed 600 landings.

(2) If any crack is detected and if all three of the conditions specified in paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) of this AD are met, within 600 landings or 12 months after the crack is detected, whichever occurs first, repair the crack in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Until the repair is accomplished, repeat the detailed inspection at intervals not to exceed 100 landings.

(i) No more than one crack exists at each corner radius, as specified in the service bulletin; and

(ii) No crack extends under the angles having P/N 600–32014–13 and P/N 600–32014–15 on the aft side of the bulkhead web; and

(iii) No crack exists in angles having P/N 600–32014–13 and P/N 600–32014–15 on the aft side of the bulkhead web.

(3) If any crack other than that identified in paragraph (a)(2) of this AD is detected, prior to further flight, repair it in accordance with a method approved by the Manager, New York ACO.

(b) For Model CL–600–2A12 (CL–601), CL–600–2B16 (CL–601–3A/–3R), and CL–600–2B16 (CL–604) series airplanes: Prior to the accumulation of 1,100 total landings, or within 100 landings after December 3, 1997, whichever occurs later, perform a detailed inspection to detect cracks at FS 409.00 of the bulkhead web (P/N 600–32014–105/–137), in accordance with Canadair Challenger Service Bulletin 601–0501, dated September 12, 1997 (for Model CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A/–3R) series airplanes); or Canadair Challenger Service Bulletin 604–53–007, dated September 30, 1997 (for Model CL–600–2B16 (CL–604) series airplanes); as applicable.

(1) If no crack is detected, repeat the detailed inspection thereafter at intervals not to exceed 600 landings.

(2) If any crack is detected and if all three of the conditions specified in paragraphs (b)(2)(i), (b)(2)(ii), and (b)(2)(iii) of this AD are met, within 600 landings or 12 months after the crack is detected, whichever occurs first, repair the crack in accordance with a method approved by the Manager, New York ACO. Until the repair is accomplished, repeat the detailed inspection at intervals not to exceed 100 landings.

(i) No more than one crack exists at each corner radius, as specified in the service bulletin; and

(ii) No crack extends under the angles having P/N 600–32014–113 and P/N 600–32014–115 on the aft side of the bulkhead web; and

(iii) No crack exists in angles having P/N 600–32014–113 and P/N 600–32014–115 on the aft side of the bulkhead web.

(3) If any crack other than that identified in paragraph (b)(2) of this AD is detected, prior to further flight, repair it in accordance with a method approved by the Manager, New York ACO.

**New Requirements of This AD: Optional Terminating Modification**

(c) For airplanes on which no crack has been found during accomplishment of any inspection required by AD 97–24–02; or on which the pressure bulkhead was not previously repaired: Modification of the pressure bulkhead at FS 409.00 (including inspection, installation of reinforcing material, and tests) by accomplishing all the actions specified in paragraphs 2.A. through 2.D. of the Accomplishment Instructions of Bombardier Service Bulletin 601–0503 (for Model CL–601 and CL–601–3A/–3R series airplanes), Service Bulletin 600–0680 (for Model CL–600 series airplanes), or Service Bulletin 604–53–006 (for Model CL–604 series airplanes); all dated November 30, 1999, per the applicable service bulletin, terminates the repetitive inspections required by this AD.

**Repair**

(d) If any crack is found during any inspection specified in paragraph (c) of this AD: Before further flight, repair in accordance with a method approved by the Manager, New York ACO; or Transport Canada Civil Aviation or its delegated agent.

**Alternative Methods of Compliance**

(e) In accordance with 14 CFR 39.19, the Manager, New York ACO, is authorized to approve alternative methods of compliance for this AD.

**Note 2:** The subject of this AD is addressed in Canadian airworthiness directive CF–1997–16R2, dated May 31, 2001.

Issued in Renton, Washington, on October 10, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–26469 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2003–16214; Airspace Docket No. 02–ANM–11]**

## Proposed Revision of Class E Airspace at Kalispell, MT

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposal would revise Class E airspace at Kalispell/Glacier Park International Airport, Kalispell, MT. Instrument Flight Rules (IFR) operations transitioning between Helena, MT, and Kalispell, MT, makes this proposal necessary. This additional airspace extending 1,200 feet or more above the surface of the earth is necessary to provide controlled airspace for the containment and safety of IFR flights transitioning between Helena, MT, and Kalispell/Glacier Park International Airport at Kalispell, MT.

**DATES:** Comments must be received on or before December 5, 2003.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number, FAA–2003–16214; Airspace Docket No. 03–ANM–11, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final dispositions in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone number 1 (800) 647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the Office of the Regional Air Traffic Division, Northwest Mountain Region, Federal Aviation Administration, Airspace Branch ANM–520, 1601 Lind Avenue, SW., Renton, WA 98055.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify Docket No. FAA–2003–16214; Airspace Docket 02–ANM–11, and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: "Comments to Airspace Docket No. FAA–2003–16214; Airspace Docket 02–ANM–11." the postcard will be date/time stamped and returned to the commenter.

### Availability of NPRM

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA, 98055. Communications must identify both document numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

### The Proposal

This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by adding additional Class E airspace at Kalispell, MT. This additional airspace extending 1,200 feet or more above the surface of the earth is necessary to provide additional controlled airspace for the containment and safety of IFR flights transitioning between Helena, MT, and Kalispell/Glacieer Park International Airport Kalispell, MT.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11013; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### §71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

*Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ANM MT E5 Kalispell, MT (Revised)**

Kalispell/Glacier Park International Airport, MT
[Lat. 48°18′41″ N., long. 114°15′19″ W.]

**Smith Lake Non Directional Beacon (NDB)**

[Lat. 48°05′30″ N., long. 114°27′41″ W.]

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Kalispell/Glacier Park International Airport, and within 4.8 miles each side of the 035° and 215° bearings from the Smith Lake NDB extending from the 7-mile radius to 10.5 miles southwest of the NDB; that airspace extending upward from 1,200 feet above the surface bounded by a line from lat. 47°30′00″ N., long. 112°37′30″ W.; to lat. 47°43′30″ N., long. lat. 112°37′30″ N., long. 48°07′30″ N., long. 113°30′00″ W to lat. 48°30′00″ N., long. 113°30′00″ W.; to lat. 48°30′00″ N., long. 116°03′35″ W to lat. 47°30′00″ N., long. 114°54′23″ W.; thence to point of origin; excluding Kalispell/Glacier Park International Airport Class D airspace, Class E2 airspace, and that airspace within Federal Airways airspace area.

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Issued in Seattle, Washington, on October 2, 2003.

**John L. Pipes,**

*Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.*

[FR Doc. 03–26560 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF COMMERCE

## Bureau of Industry and Security

### 15 CFR Chapter VII

**[Docket No. 031003247–3247–01]**

## Effects of Foreign Policy-Based Export Controls

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Request for comments on foreign policy-based export controls.

**SUMMARY:** The Bureau of Industry and Security (BIS) is reviewing the foreign policy-based export controls in the Export Administration Regulations to determine whether they should be modified, rescinded or extended. To

help make these determinations, BIS is seeking comments on how existing foreign policy-based export controls have affected exporters and the general public.

**DATES:** Comments must be received by November 21, 2003.

**ADDRESSES:** Written comments (three copies) should be sent to Sheila Quarterman, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044. Alternatively, comments may be e-mailed to Sheila Quarterman at *SQuarter@bis.doc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Joan Roberts, Director, Foreign Policy Controls Division, Bureau of Industry and Security, Telephone: (202) 482–4252. Copies of the current Annual Foreign Policy Report to the Congress are available at *http://www.bis.doc.gov/news/2003/ForeignPolicyReport/Default.htm* and copies may also be requested by calling the Office of Strategic Trade and Foreign Policy Controls.

**SUPPLEMENTARY INFORMATION:** The current foreign policy-based export controls maintained by the Bureau of Industry and Security (BIS) are set forth in the Export Administration Regulations (EAR), parts 742 (CCL Based Controls), 744 (End-User and End-Use Based Controls) and 746 (Embargoes and Special Country Controls). These controls apply to a range of countries, items and activities including: high performance computers (§ 742.12); certain general purpose microprocessors for "military end-uses" and "military end-users" (§ 744.17); significant items (SI): hot section technology for the development, production, or overhaul of commercial aircraft engines, components, and systems (§ 742.14); encryption items (§ 742.15 and § 744.9); crime control and detection commodities (§ 742.7); specially designed implements of torture (§ 742.11); certain firearms included within the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (§ 742.17); regional stability commodities and equipment (§ 742.6); equipment and related technical data used in the design, development, production, or use of missiles (§ 742.5 and § 744.3); chemical precursors and biological agents, associated equipment, technical data, and software related to the production of chemical and biological agents (§ 742.2 and § 744.4) and various chemicals included in those controlled pursuant to the Chemical Weapons Convention (§ 742.18); activities of U.S. persons in transactions related to missile technology or chemical or biological weapons proliferation in named countries (§ 744.6); nuclear propulsion (§ 744.5); aircraft and vessels (§ 744.7); embargoed countries (part 746); countries designated as supporters of acts of international terrorism (§§ 742.8, 742.9, 742.10, 742.19, 746.2, 746.3, 746.4, and 746.7); specified items intended for Libyan aircraft (§ 744.8); certain entities in Russia (§ 744.10); and individual terrorists and terrorist organizations (§§ 744.12, 744.13 and § 744.14). Attention is also given in this context to the controls on nuclear-related commodities and technology (§§ 742.3 and 744.2), which are, in part, implemented under section 309(c) of the Nuclear Non Proliferation Act.

Under the provisions of section 6 of the Export Administration Act of 1979, as amended (EAA), export controls maintained for foreign policy purposes require annual extension. Section 6 of the EAA requires a report to Congress when foreign policy-based export controls are extended. The EAA expired on August 20, 2001. Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2003 (68 FR 47833, August 11, 2003), continues the EAR and, to the extent permitted by law, the provisions of the EAA, in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000). The Department of Commerce, insofar as appropriate, is following the provisions of section 6 in reviewing foreign policy-based export controls, requesting public comments on such controls, and submitting a report to Congress.

In January 2003, the Secretary of Commerce, on the recommendation of the Secretary of State, extended for one year all foreign policy-based export controls then in effect.

To assure maximum public participation in the review process, comments are solicited on the extension or revision of the existing foreign policy-based export controls for another year. Among the criteria considered in determining whether to continue or revise U.S. foreign policy-based export controls are the following:

1. The likelihood that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods, software or technology proposed for such controls;

2. Whether the foreign policy purpose of such controls can be achieved through negotiations or other alternative means;

3. The compatibility of the controls with the foreign policy objectives of the United States and with overall United States policy toward the country subject to the controls;

4. Whether reaction of other countries to the extension of such controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to United States foreign policy interests;

5. The comparative benefits to U.S. foreign policy objectives versus the effect of the controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology; and

6. The ability of the United States to enforce the controls effectively.

BIS is particularly interested in the experience of individual exporters in complying with the proliferation controls, with emphasis on economic impact and specific instances of business lost to foreign competitors. BIS is also interested in industry information relating to the following:

1. Information on the effect of foreign policy-based export controls on sales of U.S. products to third countries (*i.e.*, those countries not targeted by sanctions), including the views of foreign purchasers or prospective customers regarding U.S. foreign policy-based export controls.

2. Information on controls maintained by U.S. trade partners. For example, to what extent do they have similar controls on goods and technology on a worldwide basis or to specific destinations?

3. Information on licensing policies or practices by our foreign trade partners which are similar to U.S. foreign policy-based export controls, including license review criteria, use of conditions, requirements for pre and post shipment verifications (preferably supported by examples of approvals, denials and foreign regulations).

4. Suggestions for revisions to foreign policy-based export controls that would (if there are any differences) bring them more into line with multilateral practice.

5. Comments or suggestions as to actions that would make multilateral controls more effective.

6. Information that illustrates the effect of foreign policy-based export controls on the trade or acquisitions by intended targets of the controls.

7. Data or other information as to the effect of foreign policy-based export controls on overall trade, either at the firm level or at the level of individual industrial sectors.

8. Suggestions as to how to measure the effect of foreign policy-based export controls on trade.

9. Information on the use of foreign policy-based export controls on targeted countries, entities, or individuals.

BIS is also interested in comments relating generally to the extension or revision of existing foreign policy-based export controls.

Parties submitting comments are asked to be as specific as possible. All comments received before the close of the comment period will be considered by BIS in reviewing the controls and developing the report to Congress.

All information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BIS requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

Copies of the public record concerning these regulations may be requested from: Bureau of Industry and Security, Office of Administration, U.S. Department of Commerce, Room 6883, 1401 Constitution Avenue, NW., Washington, DC 20230; (202) 482–0637. This component does not maintain a separate public inspection facility. Requesters should first view BIS's Web site (which can be reached through *http://www.bis.doc.gov*). If requesters cannot access BIS's Web site, please call the number above for assistance.

**Matthew S. Borman,**

*Acting Assistant Secretary for Export Administration.*

[FR Doc. 03–26564 Filed 10–20–03; 8:45 am]

BILLING CODE 3510–33–P

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## POSTAL SERVICE

## 39 CFR Part 111

## Sender-Identified Mail: Enhanced Requirement for Discount Rate Mailings

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise the *Domestic Mail Manual* (DMM) to require enhanced sender identification for all discount rate mailings.

**DATES:** Submit comments on or before November 20, 2003.

**ADDRESSES:** Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 1735 N. Lynn Street, Room 3025, Arlington, VA 22209–6038. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Postal Service Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor North, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Joel Walker, Mailing Standards, United States Postal Service, (703) 292–3648.

**SUPPLEMENTARY INFORMATION:** The Postal Service is proposing this enhanced requirement because sender identification of all discount rate mailings would serve as a tool in identifying the senders of a large portion of the mailstream. It could also facilitate investigations into the origin of suspicious mail.

As background, two congressional committees urged the Postal Service to explore the concept of sender identification, including "the feasibility of using unique, traceable identifiers applied by the creator of the mail piece." S. Rept. 107–212, p. 50; see also H. Rept. 107–575, p. 46. The President's Commission on the United States Postal Service recently recommended the use of sender identification for every piece of mail. "Embracing the Future," Report of the President's Commission on the United States Postal Service (July 31, 2003) pp. 147–8. Requiring sender-identification for discount rate mail is an initial step on the road to intelligent mail.

It should be noted that the pieces in most discount rate mailings already bear some evidence of the identity of the sender. The sender's identity usually can be determined via the postage payment method used by the mailer, since all discount rate mailings must have postage paid using permit imprints, precanceled stamps, or meter postage.

Except for a company permit imprint format, mailers who pay postage using regular permit imprints must display an indicia on each mailpiece that shows the permit imprint number and the city and state where the permit is held. Mailpieces bearing a company permit imprint (which do not require the indicia to show the permit imprint number and the city and state of issue) must display the sender's domestic return address on each mailpiece as stated in current DMM A010.4.3. Mailers who pay postage on their discount rate mailings using precanceled stamps also are required to display the sender's domestic return address on each mailpiece. For discount rate mailings that bear meter postage, the meter imprint or indicia on each mailpiece must contain information that can be used to identify the name and address of the meter license holder.

In this proposed rule, the Postal Service seeks to enhance mail security by requiring that all discount mail be "sender identified." Specifically, the Postal Service proposes revisions to the mailing standards in DMM E050, E110, E211, E610, and E710. The revision to DMM E050 would state that franked mail sent at discount rates would be considered sender-identified mail. The revisions to DMM E110, E211, E610, and E710 would require all discount rate mailings to meet a sender-identification requirement. Since many discount rate mailings already meet this requirement, the Postal Service proposal would have little impact on most discount rate mailers. However, it is likely that some discount rate mailers may need to change their current procedures to comply with the proposed sender-identification requirement. If the requirement is adopted, its effect would be slightly tighter requirements for identifying the sender of a discount rate mailing.

The proposed rule would further enhance existing requirements by specifically requiring that all discount rate mailings allow a reasonable means for identifying the sender of a mailpiece sent at a discount postage rate.

Under this proposal, sender-identified mail would include all mailpieces that are part of a First-Class Mail, Periodicals, Standard Mail, or Package Services mailing that is eligible for and claims any discounted postage rate. To be considered as sender-identified, each discount rate mailpiece would be required to meet one of the following requirements:

- Postage paid using a permit imprint or metered postage: If the permit imprint permit or meter license is not issued in the same name as that of the sender (*i.e.*, owner) of the mailpiece, one of the following requirements must be met:

(a) Each mailpiece must display a domestic return address that is the actual address of the sender (*i.e.*, owner) of the mailpiece such that it enables identification of the origin location or organization of the mailing.

(b) The permit imprint holder or meter licensee must maintain adequate records that indicate the actual name and address of the sender (*i.e.*, owner) of the mailpiece. The records must be retained for one year from the date of the mailing and must be made available to the U.S. Postal Inspection Service immediately upon request.

- Postage paid using precanceled stamps: Each mailpiece must bear a domestic return address. If the return address is not the address of the precanceled stamp permit holder, the party located at the return address shown on the mailpiece must maintain adequate records that indicate the actual name and address of the sender (*i.e.*, owner) of the mailpiece. The records must be retained for one year from the date of the mailing and must be made available to the U.S. Postal Inspection Service immediately upon request.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to the *Domestic Mail Manual*, incorporated by reference in the *Code of Federal Regulations*. See 39 CFR 111.1.

**List of Subjects in 39 CFR Part 111**

Postal Service.

## PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following sections of the *Domestic Mail Manual* (DMM) as set forth below:

### E Eligibility

### E000 Special Eligibility Standards

* * * * *

*E050 Official Mail (Franked)*

1.0 BASIC INFORMATION

* * * * *

*[Add new 1.8 specifying that franked mail meets the sender-identified requirement, to read as follows:]*

**1.8 Sender-Identified Mail Requirement**

Placement of the written or printed facsimile signature or other markings specified in Exhibit 1.1 meets the sender-identified requirement for discount rate franked mailings made under E100, E600, and E700.

* * * * *

### E100 First-Class Mail

### E110 Basic Standards

* * * * *

*[Renumber current 4.0 and 5.0 as new 5.0 and 6.0, respectively. Add new 4.0 to state the new requirements for sender-identified mail to read as follows:]*

4.0 SENDER-IDENTIFIED MAIL

**4.1 Requirement**

To be eligible for any First-Class Mail discount postage rates under E130 or E140, all mailpieces must identify the sender. Postage must be paid using a permit imprint, meter, or precanceled stamp. Sender-identified mail must meet the requirements in 4.2, 4.3, or 4.4.

**4.2 Permit Imprint Mailings**

If the permit imprint appearing on discount rate First-Class Mail pieces is not issued in the same name as that of the sender (*i.e.*, owner) of the mailpiece, one of the following requirements must be met:

a. Each mailpiece must display a domestic return address that is the actual address of the sender (*i.e.*, owner) of the mailpiece such that it enables identification of the origin location or organization of the mailing.

b. The permit imprint holder must maintain adequate records that indicate the actual name and address of the sender (*i.e.*, owner) of the mailpiece. The records must be retained for one year from the date of the mailing and must be made available to the U.S. Postal Inspection Service immediately upon request.

**4.3 Precanceled Stamp Mailings**

Each mailpiece bearing precanceled stamps and sent at a First-Class Mail discount postage rate must bear a domestic return address. If the return address is not the address of the precanceled stamp permit holder the party located at the return address shown on the mailpiece must maintain adequate records that indicate the actual name and address of the sender (*i.e.*, owner) of the mailpiece. The records must be retained for one year from the date of the mailing and must be made available to the U.S. Postal Inspection Service immediately upon request.

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### E200 Periodicals

*E210 Basic Standards*

*E211 All Periodicals*

* * * * *

*[Renumber current 1.4 as 1.5. Add new 1.4 to state the new requirements for sender-identified mail read as follows:]*

**1.4 Sender-Identified Mail Requirement**

To be eligible for any Periodicals discount postage rates under E217, E220, E230, E240, E250, E260, and E270, all mailpieces must identify the sender. A Periodicals publication that bears a properly prepared identification statement as required in E211 meets the sender-identified requirement.

* * * * *

### E600 Standard Mail

*E610 Basic Standards*

*[Renumber current 5.0 through 9.0 as 6.0 through 10.0 respectively. Add new 5.0 to state the new requirements for sender-identified mail to read as follows:]*

5.0 SENDER-IDENTIFIED MAIL

**5.1 Requirement**

To be eligible for claiming any Standard Mail discount postage rates under E620, E630, E640, E650, and E670, all mailpieces must identify the sender. Postage must be paid using a permit imprint, meter, or precanceled stamp. Sender-identified mail must meet the requirements in 5.2 or 5.3.

**5.2 Permit Imprint and Metered Mailings**

If the permit imprint or meter indicia appearing on discount rate Standard Mail pieces is not issued in the same name as that of the sender (*i.e.*, owner) of the mailpiece, one of the following requirements must be met:

a. Each mailpiece must display a domestic return address that is the actual address of the sender (*i.e.*, owner) of the mailpiece such that it enables identification of the origin location or organization of the mailing.

b. The permit imprint holder or meter licensee must maintain adequate records that indicate the actual name and address of the sender (*i.e.*, owner) of the mailpiece. The records must be retained for one year from the date of the mailing and must be made available to the U.S. Postal Inspection Service immediately upon request.

**5.3 Precanceled Stamp Mailings**

Each mailpiece bearing precanceled stamps and sent at a Standard Mail discount rate must bear a domestic return address. If the return address is not the address of the precanceled stamp permit holder, the party located at the return address shown on the mailpiece must maintain adequate records that indicate the actual name and address of the sender (*i.e.*, owner) of the mailpiece. The records must be retained for one year from the date of the mailing and must be made available to the U.S. Postal Inspection Service immediately upon request.

* * * * *

**E700 Package Services**

*E710 Basic Standards*

* * * * *

*[Renumber current 4.0 as 5.0. Add new 4.0 to state the new requirements for sender-identified mail to read as follows:]*

4.0 SENDER-IDENTIFIED MAIL

**4.1 Requirement**

To be eligible for any Package Services discount postage rates under E712, E713, E714, E751, E752, and E753, all mailpieces must identify the sender. Postage must be paid using a permit imprint, meter, or precanceled stamp. Sender-identified mail must meet the requirements in 4.2 or 4.3.

**4.2 Permit Imprint and Metered Mailings**

If the permit imprint or meter indicia appearing on discount postage rate Package Services mailpieces is not issued in the same name as that of the sender (*i.e.*, owner) of the mailpiece, one of the following requirements must be met:

a. Each mailpiece must display a domestic return address that is the actual address of the sender (*i.e.*, owner) of the mailpiece such that it enables identification of the origin location or organization of the mailing.

b. The permit imprint holder or meter licensee must maintain adequate records that indicate the actual name and address of the sender (*i.e.*, owner) of the mailpiece. The records must be retained for one year from the date of the mailing and must be made available to the U.S. Postal Inspection Service immediately upon request.

**4.3 Precanceled Stamp Mailings**

Each mailpiece bearing precanceled stamps and sent at a Package Services discount postage rate must bear a domestic return address. If the return address is not the address of the precanceled stamp permit holder, the party located at the return address shown on the mailpiece must maintain adequate records that indicate the actual name and address of the sender (*i.e.*, owner) of the mailpiece. The records must be retained for one year from the date of the mailing and must be made available to the U.S. Postal Inspection Service immediately upon request.

* * * * *

We will publish an appropriate amendment to 39 CFR 111 to reflect these changes if the proposal is adopted.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 03–26438 Filed 10–20–03; 8:45 am]

**BILLING CODE 7710–12–P**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Chapter I

**[FRL–7576–6]**

### Advisory Committee for Regulatory Negotiation Concerning All Appropriate Inquiry; Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of meeting of Negotiated Rulemaking Committee on All Appropriate Inquiry.

**SUMMARY:** The Environmental Protection Agency, as required by the Federal Advisory Committee Act (Pub. L. 92–463), is announcing the date and location of an upcoming meeting of the Negotiated Rulemaking Committee On All Appropriate Inquiry.

**DATES:** A meeting of the Negotiated Rulemaking Committee On All Appropriate Inquiry is scheduled for November 12 through November 14, 2003. The location for the meeting is provided below. Dates and locations of subsequent meetings will be announced in later notices.

**ADDRESSES:** The meeting will take place at the headquarters office of the National Association of Home Builders, 1201 15th Street, NW., Washington, DC 20005. The meeting is scheduled to begin at 8:30 a.m. and end at 4:30 p.m. on each day.

**FOR FURTHER INFORMATION CONTACT:** Persons needing further information should contact Patricia Overmeyer of EPA's Office of Brownfields Cleanup and Redevelopment, 1200 Pennsylvania Ave., NW., Mailcode 5105T, Washington, DC 20460, (202) 566–2774, or *overmeyer.patricia@epa.gov.* Information on the Negotiated Rulemaking Committee also can be found at *www.epa.gov/brownfields/regneg.htm.*

**SUPPLEMENTARY INFORMATION:** Under the Small Business Liability Relief and Brownfields Revitalization Act, EPA is required to develop standards and practices for carrying out all appropriate inquiry. The Federal Advisory Committee meeting is for the purpose of negotiating the contents of a proposed regulation setting federal standards and practices for conducting all appropriate inquiry. At its meeting on November 12, 13, and 14, 2003, the Committee's agenda will include a continuation of substantive deliberations on the proposed rulemaking including discussions on recommendations for proposed regulatory language for addressing each of the criteria established by Congress in the Small Business Liability Relief and Brownfields Revitalization Act amendments to CERCLA (101)(35)(B)(iii).

All meetings of the Negotiated Rulemaking Committee are open to the public. There is no requirement for advance registration for members of the public who wish to attend or make comments at the meeting. Opportunity for the general public to address the Committee will be provided starting at 2:30 p.m. on each day.

Dated: October 15, 2003.

**Thomas P. Dunne,**

*Associate Assistant Administrator, Office of Solid Waste and Emergency Response.*

[FR Doc. 03–26542 Filed 10–20–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 51

**[FRL–7576–8]**

**RIN 2060–AJ99**

### Proposed Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Reopening of public comment period.

**SUMMARY:** In this document, we are reopening the public comment period on the Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard (NAAQS or standard) that was published on June 2, 2003 (68 FR 32802) to solicit additional comment on alternative approaches for classifying ozone nonattainment areas, based on comments received during the comment period. The comment period on the proposed rule originally closed on August 1, 2003. Based on comments received on the proposed rule, we are reconsidering how to classify areas and are giving the public the opportunity to comment on two alternative strategies for classifying areas.

**DATES:** Comments must be received on or before November 5, 2003.

**ADDRESSES:** All comments should be submitted to Docket #OAR 2003–0079. When mailing documents, comments, or requests to the EPA Docket Center through the U.S. Postal Service, please use the following address: U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, NW., Mail Code: 6102T, Washington, DC 20460. To mail comments or documents through a courier service, the mailing address is: EPA Docket Center (Air Docket), U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room: B108; Mail Code: 6102T, Washington, DC 20460. The normal business hours are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Comments can be submitted to the address above, by fax (202) 566–1741, or by e-mail to *A-and-R-Docket@epa.gov*. The voice telephone number is (202) 566–1742. In addition, we have placed a variety of materials regarding implementation options on the Web site: *http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr*. While this Web site is not an exact duplicate of the Air Docket, we have placed materials that we have generated and materials that have been submitted in an electronic format on the Web site. We request that comments be submitted by e-mail to facilitate expeditious distribution within EPA and placement on the Web site.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Silvasi, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5666 or by e-mail at: *silvasi.john@epa.gov* or Ms. Denise Gerth, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5550 or by e-mail at: *gerth.denise@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. How Can I Get Copies of This Document and Other Related Information ?*

1. Docket. EPA has established an official public docket for this action under Docket ID Number OAR 2003–0079. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742).

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute and which, therefore, is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.A.1.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

### *B. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically*. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information

Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. 2003–0090. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. E-mail. Comments may be sent by electronic mail (e-mail) to *A-and-R-Docket@epa.gov*, Attention Docket ID No. 2003–0090. In addition, in order to expedite this process, please also sent your comments to both *silvasi.john@epa.gov* and *gerth.denise@epa.gov*. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.B.2 below. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. Send your comments to: Air and Radiation Docket, U.S. Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OAR 2003–0079.

3. By Hand Delivery or Courier. Deliver your comments to: Air and Radiation Docket, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room: B102, Washington, DC 20004, Attention Docket ID No. OAR 2003–0079. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.A.1.

4. By Facsimile. Fax your comments to: 202–566–1741, Attention Docket ID No. OAR 2003–0079.

### *C. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

## II. Background

On June 2, 2003 (68 FR 32802), we proposed options for implementing the 8-hour ozone NAAQS, including two different classification options. Classifications establish which requirements apply to individual nonattainment areas and the maximum timeframe for areas to attain. Option 1 would place all 8-hour ozone nonattainment areas into subpart 2 and would classify areas in accordance with table 1 in section 181 of the CAA as modified by EPA to reflect the 8-hour NAAQS. Option 2 would place areas that are designated nonattainment for the 8-hour ozone standard under subpart 1 or subpart 2 (of part D, title I) based on the area's 1-hour ozone design value. Areas placed under subpart 2 would be classified in accordance with table 1 in section 181 of the Clean Air Act (CAA) as modified by EPA to reflect the 8-hour NAAQS. (In general, subpart 1 contains less prescriptive requirements for air quality planning than does subpart 2.) We indicated a preference for classification option 2 because it would provide more flexibility to States and Tribes as they address their unique air quality problems.

We received many comments concerning the classification options we proposed. A number of commenters favored option 2, indicating that they believed it provided needed flexibility in implementing the standard. Other commenters favored option 1, indicating that they believed that the Supreme Court ruling established a preference for subpart 2 and, therefore, it was not appropriate to classify areas under subpart 1. Northeast States and some other States, as well as environmental organization commenters,[1] objected to allowing some areas to be subject to subpart 1, stating that the mandatory measures under subpart 2 helped reduce ozone concentrations and were a forcing function for more expeditious control. A number of other States outside the Northeast preferred that some areas be covered under subpart 1, because of the flexibility it provided to local areas to adopt controls that are appropriate for their area.

Several other commenters suggested new options or variants of option 2. There were two key concerns that seemed to be the basis for most of these comments. First, many commenters were concerned that under EPA's option 2, some areas classified under subpart 1 could have worse 8-hour air quality than areas classified under subpart 2.[2] Many of these commenters noted that it seemed inequitable to have areas with more significant air quality problems subject to less stringent planning obligations and more flexible attainment periods. Second, a number of commenters raised a concern that the distribution scheme under a modified Table 1 resulted in too many areas in the lower classifications. These commenters believed that the classification for many areas under this approach would not reflect the significance of the 8-hour ozone problem for these areas and therefore would not provide the appropriate amount of time needed for those areas to attain the standard.[3]

In considering the comments on this issue, we identified several suggestions that we believe deserve further consideration as they may address some of the above-noted concerns.[4] We are therefore re-opening the comment period for the limited purpose of accepting comment on the alternatives suggested in some of the comments. While we recognize that this action will delay by a brief period the issuance of the final rule to implement the 8-hour NAAQS, we believe that the comments submitted on classifications merit the consideration of new alternatives and the opportunity for the public to review and comment on these alternatives. Below, we provide a brief summary of several alternative approaches submitted in the comments and indicate the docket number of relevant comment documents so that any interested person can review those comments.[5] We then describe two specific approaches for incorporating some of these suggestions into a classification scheme for the 8-hour standard that, based on our initial review of the comments, seem the most promising for improving the implementation framework. While we are open to comment on any of the ideas suggested during the initial comment period, we are most interested in hearing comment on the concepts we have incorporated into the two alternative approaches we discuss below. We also provide comparisons of two alternatives with our previously proposed option 2 without the incentive feature. This does not imply that we have decided to not include the incentive feature, nor does it imply that we have decided not to adopt our proposed option 1. In addition, we may add to the docket additional material as it becomes available that relates to the two alternatives discussed below; readers should continue to check the electronic docket for any such material during the comment period.

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[1] *E.g.*, Clean Air Task Force, docket document OAR–2003–0079–0154; Environmental Defense, docket document OAR–2003–0079–0264, –0265, –0266; Massachusetts Department of Environmental Protection, docket document OAR–2003–0079–0267.

[2] *See e.g.*, Hunton and Williams LLP representing the Utility Air Regulatory Group (UARG), docket document OAR–2003–0079–0362; Northeast States for Coordinated Air Use Management, OAR–2003–0079–0315; Kansas City Power and Light (KCPL), docket document OAR–2003–0079–0185; FirstEnergy Corporation, docket document OAR–2003–0079–0218.

[3] *See e.g.*, South Coast Air Quality Management District, docket document OAR–2003–0079–0327; E.I. duPont de Nemours, Inc., docket document OAR–2003–0079–0246.

[4] We do not discuss all possible alternatives raised in the comments but rather the alternatives that we believe are most likely to improve the implementation framework.

*Sequential Implementation.* Several commenters contended that EPA does not have the authority to re-write the statute by modifying Table 1 in section 181(a) to reflect the 8-hour NAAQS (see *e.g.*, comments from Electronics Industries Alliance, docket document OAR–2003–0079–0156; and Advanced Micro Devices, Inc., docket document OAR–2003–0079–0139). These commenters suggested that EPA adopt a sequential implementation scheme under which areas that are meeting the 1-hour NAAQS but not the 8-hour NAAQS would be designated in April 2004 as not meeting the 8-hour NAAQS and begin implementation under subpart 1. Areas that are still violating the 1-hour NAAQS would continue to implement the 1-hour NAAQS under subpart 2 and would not be designated for the 8-hour NAAQS or begin implementing that standard until the area attains the 1-hour NAAQS. At the time an area is designated nonattainment for the 8-hour NAAQS, it would be classified under subpart 1 for that standard. Thus all areas would be classified under subpart 1 for the 8-hour NAAQS. This approach would eliminate the inequity issue by placing all 8-hour areas under subpart 1 and would allow more flexibility in setting attainment dates for areas although the maximum attainment period would be 10 years from designation. However, EPA believes that this approach conflicts with the Supreme Court's holding that the classification provisions of subpart 2 must apply for purposes of implementing the 8-hour NAAQS. See *Whitman* v. *ATA*, 121 S. Ct. 903, 917 (2001).

*Use 8-hour design values exclusively under Option 2.* Several commenters that supported option 2 recommended against using the 1-hour design value for determining which areas would be classified under subpart 1 and which would be classified under subpart 2. (*See e.g.*, UARG, docket document OAR–2003–0079–0362; Kansas City Power & Light, docket document OAR–2003–0079–0185; TXU Energy docket document OAR–2003–0079–0204.) These commenters suggested that it would be more logical and more consistent with the nature of the 8-hour standard for EPA instead to translate the lowest 1-hour design value threshold in Table 1 into an approximate 8-hour equivalent. (The original translation table we proposed appears at 68 FR 32812 (June 2, 2003).) They point to the record in the rulemaking which established the 8-hour NAAQS and suggest that the approximate 8-hour equivalent of the 0.12 ppm 1-hour NAAQS is 0.090 ppm. [*See*, for instance, statement in third column, section D of 62 FR 38858 (July 18, 1997).] They recommend that rather than translating the lower bound for marginal areas in Table 1 of section 181 to 0.080 ppm or 0.085 ppm, EPA should start it at 0.090 ppm or 0.091 ppm, which they believe reflects the 8-hour "equivalent" of the 1-hour NAAQS. Thus, this approach would result in 8-hour nonattainment areas with design values less than that lower bound being covered under subpart 1. This approach, unlike our June 2, 2003 proposal, would result in all subpart 1 areas having 8-hour design values (an indication of the magnitude of the ozone problem) that are lower than any area covered under subpart 2.

*Place all areas with a design value equivalent to "moderate" under subpart 2.* The American Lung Association (docket document OAR–2003–0079–0111) suggested that under Option 2, all areas with an 8-hour design value equivalent to moderate or above should be classified under subpart 2. Thus, an area that is meeting the 1-hour standard that would have been classified under subpart 1 under EPA's Option 2, based on its 8-hour design value, would instead be subject to subpart 2 if its 8-hour design value is equivalent to or greater than the design value for a moderate area under Table 1 of section 181 as modified to reflect 8-hour design values. This approach would eliminate much of the inequity that commenters believed could result if areas classified under subpart 1 have more significant 8-hour air quality problems than areas classified under subpart 2.

*Establish classifications that better reflect an area's 8-hour problem.* A variety of commenters were concerned that EPA's classification scheme places too many areas in the lower classifications.[6] The commenters stated that the classification options lead to classifications for some areas that do not reflect the significance of the 8-hour problem in those areas and do not reflect the time needed for those areas to attain. (*See, e.g.*, The American Petroleum Institute (API) docket document OAR–2003–0079–0281). They provided several suggestions for establishing a classification scheme that would classify areas in a way that better reflects their air quality problem. API provided 3 options while other commenters suggested alternatives similar to one or more of the alternatives suggested by API. (*See e.g.*, ExxonMobile Refining & Supply docket document OAR–2003–0079–0212; Clean Air Task Force[7] docket document OAR–2003–0079–0215; American Chemistry Council, docket document OAR–2003–0079–0217.)

API's suggested alternatives are as follows:

- Maintain a rebuttable presumption that an area's 1-hour classification would be retained under the 8-hour standard if the 1-hour classification was higher than the 8-hour classification.
- Translate the classification table using only one-half the percentage above the standard that each statutory classification threshold (or cutpoint) represents.[8] (These percentages are

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[5] We do not attempt to cite to all comments which may have raised a specific alternative; rather we try to cite examples of comments in which the alternatives were discussed.

[6] This comment was raised with respect to both Option 1 and Option 2.

[7] Their rationale was that more areas should be placed in higher classifications to ensure that they implement the mandatory control measures contemplated by Congress and have a specified rate of reduction out to their attainment date. However, they believed our rule should require all 8-hour nonattainment areas to be covered under subpart 2.

[8] The rationale for the 50 percent adjustment was that the 8-hour standard is more stringent than the 1-hour standard and that past air quality trends showed that 8-hour average ozone concentrations declined over the past 20 years at about half the rate that 1-hour averages declined. Thus, we would expect attainment for areas with 8-hour values a

Continued

shown in Table 2 of the proposed rule, 68 FR at 32812, and were the basis for translating the 1-hour ozone values in Table 1 of section 181 of the CAA into 8-hour ozone values.) For further description, see p. 13 of docket document OAR–2003–0079–0281.

- Use a distribution of classifications that mirrors more closely the distribution of areas in the original 1991 classifications.

While each of these alternatives would result in more areas being placed in higher classifications, EPA believes that the second alternative would more likely result in classifications that better reflect an area's 8-hour ozone problem.

3. *Alternative approaches for comment.* Based on these comments, we are reopening the comment period for consideration of two alternative approaches for classifying areas. The first one, Alternative A, would translate the classification table to 8-hour values beginning with an 8-hour design value that, to the extent possible, would be equivalent to the 1-hour design value of 0.121 ppm. This could be the value suggested in the comment (0.091) or some other value determined upon further analysis to be equivalent. The EPA is in the process of conducting additional analysis and will be placing the results of that analysis in the docket within a week of publication of this notice, where it will be available to anyone interested in reviewing it. This approach could then be combined with the suggestion of translating the classification table for the remaining thresholds using one-half of the percentage above the standard which each of the classification thresholds represents. This alternative approach would address the two key concerns identified by many commenters: (1) Ensuring that areas classified under subpart 1 have a less significant ozone problem than areas classified under subpart 2; and (2) shifting areas subject to subpart 2 into higher classifications that better reflect their 8-hour problem and the time it will take them to attain.

The second alternative approach, Alternative B, would address the issues of equity between subpart 1 and subpart 2 areas with a structure that is closer to that of our June 2, 2003 proposal. In order to provide sufficient time for attainment, and similar to Alternative A above, we would reduce the range of design values that comprise a classification (*e.g.*, the range of design values for marginal areas under Table 1 of section 181 is 0.121 up to 0.138, the range for moderate areas is 0.138 up to 0.160 and so on). Under this modified option 2 approach—

- Areas with 1-hour ozone design values of 0.121 ppm or greater would be covered under subpart 2 and would be classified with a revised classification table reflecting the 8-hour ozone NAAQS and starting at 0.085 ppm. The range for each classification would be determined by using 50 percent of the range in Table 1 of section 181.[9]
- Areas meeting both of the following criteria would also be covered under subpart 2:

—1-hour design value less than 0.121 ppm and

—8-hour design value representing a classification threshold of areas that have relatively high magnitude of an 8-hour ozone problem, for example 0.091 ppm or greater. (0.091 is the lower threshold for moderate areas.)

- All other areas with a 1-hour design value of less than 0.121 ppm would be covered under subpart 1.

This approach would significantly reduce the number of areas under subpart 1 that have an 8-hour design value greater than an area under subpart 2, but not to the extent of Alternative A above. In addition, it would place several areas in higher classifications, better reflecting the areas' air quality problems and the time the areas need to attain the 8-hour standard.

### *Effects of Alternatives A and B*

Table 1 below illustrates how a classification table (that would apply in place of Table 1 in section 181 of the CAA) could be structured for Alternatives A and B. Columns A through E appeared in the June 2, 2003 proposed rule. Column F presents 50 percent of the percentages of column D. Columns G and H present the classification thresholds that could apply for Alternatives A and B.

The June 2, 2003 proposed rule used hypothetical nonattainment areas for evaluation of different classification approaches. These were documented in the report cited in the June 2, 2003 notice [10] and relied on air quality data primarily from the 3-year period 1998 to 2000. To compare the effects of the differing alternatives, we have updated 8-hour design values based on air quality data from 2000 to 2002. We have developed a list of hypothetical areas using the 2000 to 2002 data following the same procedure for defining them as we did for the proposal.[11] The same cautionary statements that applied to the original list apply to this list.

Table 2 below provides a comparison between our proposed option 2 (without the incentive feature) (row A) and Alternatives A and B (rows B and C respectively); row D provides for reference the distribution of the original set of classifications of 1-hour nonattainment areas in 1991. It should be noted that under either alternative approach, compared with our June 2, 2003 preferred approach, fewer areas would be covered under subpart 1.

### *Other Possible Issues:*

### *1-hour Threshold to Distinguish Between Subpart 1 and Subpart 2 Coverage*

In our June 2, 2003, proposal, classification Option 2 relied on the lowest 1-hour design value in the Clean Air Act's classification table to

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certain percentage above the standard to take relatively more time to attain the 8-hour standard than areas with 1-hour values the same percentage above the 1-hour standard would take to attain the 1-hour standard.

[9] In the June 2, 2003 proposal, we calculated the range for each classification using the following formula: ((the level of the 8-hour standard 0.08) + (0.08 × (the percent the 1-hour threshold is above the 1-hour standard of 0.12)/100). Rather than using this formula to see the bottom threshold for the marginal classification, we set the threshold at 0.085, which is the lowest design value of any area that would be designated nonattainment for the 8-hour standard. (See discussion at 68 FR 32812, middle column and footnote 1 to Table 2 on same page.) If we apply the same formula using 50 percent of the percentage that the 1-hour threshold is above the 1-hour standard, the range of the marginal classification would shrink to one value, viz., 0.085 ppm, with the lower threshold for the moderate classification being 0.086 ppm. We believe such a result is not consistent with Congressional intent since it would give the marginal classification little or no meaning. Thus, for purposes of this option, we believe it makes sense to use 0.085ppm (the minimum exceeding value of the 8-hour standard), rather than 0.08 ppm (the level of the standard) for the calculation. Therefore, we used the following formula for establishing the classification ranges for this approach: (0.085 + (0.085 × (0.5 × (the percent the 1-hour threshold is above the 1-hour standard of 0.12))/100). As an indication of the difference this makes, there would only be 1 marginal area with the lower threshold for moderate areas being 0.086 ppm, compared to 10 marginal areas with the revised method we employed, where 0.091 would be the lower threshold for moderate areas; see Tables 1 and 2 below, which are described in the next section.

[10] Background Information Document, Hypothetical Nonattainment Areas for Purposes of Understanding the EPA Proposed Rule for Implementing the 8-hour Ozone National Ambient Air Quality Standard. Illustrative Analysis Based on 1998–2000 Data. U.S. Environmental Protection Agency, Office of Air and Radiation, Office of Air Quality Planning and Standards, Draft, April 2003. Available at: *http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr/*.

[11] REVISED: Background Information Document, Hypothetical Nonattainment Areas for Purposes of Understanding the EPA Proposed Rule for Implementing the 8-hour Ozone National Ambient Air Quality Standard in Relation to Re-Opened Comment Period. Illustrative Analysis Based on 2000–2002 Data. U.S. Environmental Protection Agency, Office of Air and Radiation, Office of Air Quality Planning and Standards, Draft, October 2003. Available at: *http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr/*.

determine which areas were required to be covered under subpart 2, viz., 0.121 ppm. Under our long-standing rounding conventions, values between 0.121 and 0.124 inclusive round down to 0.12, which is not an exceedance of the 1-hour standard. Several commenters[12] noted that the 0.121 ppm value does not represent an exceedance of the 1-hour standard due to our rounding conventions. They recommend that 0.125 ppm (which rounds to 0.13 ppm, an exceedance) be adopted as the cutpoint for determining whether an area must be covered under subpart 2. The likely practical effect would be to place a few additional areas under subpart 1. We are soliciting comment on this suggestion.

*Five Percent Adjustment Provision*

If we change our classification scheme to have a narrower range for each classification, we may need to modify the provisions for the 5 percent "reclassification" feature of section 181(a)(4) to reflect that change. The apparent intent of Congress was to allow States to request a different classification if an area's design value was within 5 percent of a higher or lower classification threshold. That was based on the original threshold values, which were certain percentages above the level of the 1-hour standard. Our June 2, 2003 proposal would have retained the original percentages for the classification table based on 8-hour average design values. If we adopt a classification table based on lower percentages above the standard, the adjustment feature might have to be modified to keep the same relative "window" of adjustment. For instance, using 100 percent of the percentages between the 1-hour design value thresholds, we would use a 5 percent adjustment, but using only 50 percent of those percentages, we may want to use only a 2.5 percent adjustment, since the thresholds themselves are half as large.

*Alternatives to a 50 Percent Adjustment*

As noted above, one option for addressing concerns that our proposed option 2 may not have provided classifications high enough to provide adequate time for some areas to attain the 8-hour standard was to use only half (50 percent) of the percentages above the 1-hour standard calculated for each of the classification thresholds. The commenters' rationale for the 50 percent adjustment was that the 8-hour standard is more stringent than the 1-hour standard and that past air quality trends information provided by the commenter for 11 metropolitan areas showed that, on average, 8-hour average ozone concentrations declined over the 1998–2002 period at about half the rate that 1-hour averages declined. Thus, we would expect attainment for areas with 8-hour values a certain percentage above the standard to take relatively more time to attain the 8-hour standard than areas with 1-hour values the same percentage above the 1-hour standard would take to attain the 1-hour standard. However, we could use another appropriate percentage that may be based on how soon areas are expected to attain the 8-hour standard based on measures that are currently in effect or are scheduled to go into effect. EPA is soliciting comments on other possible adjustments that may place areas in classifications that better reflect their 8-hour air quality problem and the time needed to attain.

**Authority:** 42 U.S.C. 7408; 42 U.S.C. 7410; 42 U.S.C. 7501–7511f; 42 U.S.C. 7601(a)(1).

Dated: October 15, 2003.

**Elizabeth Craig,**

*Acting Assistant Administrator for Air and Radiation.*

TABLE 1.—ALTERNATIVE CLASSIFICATIONS

[Table 1 of subpart 2 1-hour ozone classification table]

[Translation to 8-Hour Design Values]

| Area class | | CAA design value thresholds (1-hour ozone ppm) | Percent above 1-hour ozone NAAQS | Translated 8-hour design value thresholds (ppm ozone) using Col D (June 2, 2003 proposal) | 50% of col. D | Translated 8-hour design value thresholds (ppm ozone) w/50% of Col D starting with 0.091 * | Translated 8-hour design value thresholds (ppm ozone) w/50% of Col D starting with 0.085 ** |
|---|---|---|---|---|---|---|---|
| A | B | C | D | E | F | G | H |
| Marginal | from | 0.121 | | 0.085 | | 0.091 | 0.085 |
| | up to | 0.138 | 15 | 0.092 | 7.5 | 0.097 | 0.091 |
| Moderate | from | 0.138 | 15 | 0.092 | 7.5 | 0.097 | 0.091 |
| | up to | 0.16 | 33.333 | 0.107 | 16.6665 | 0.105 | 0.099 |
| Serious | from | 0.16 | 33.333 | 0.107 | 16.6665 | 0.105 | 0.099 |
| | up to | 0.18 | 50 | 0.120 | 25 | 0.113 | 0.106 |
| Severe-15 | from | 0.18 | 50 | 0.120 | 25 | 0.113 | 0.106 |
| | up to | 0.19 | 58.333 | 0.127 | 29.1665 | 0.116 | 0.110 |
| Severe-17 | from | 0.19 | 58.333 | 0.127 | 29.1665 | 0.116 | 0.110 |
| | up to | 0.28 | 133.333 | 0.187 | 66.6665 | 0.150 | 0.142 |
| Extreme | equal to or above. | 0.28 | 133.333 | 0.187 | 66.6665 | 0.150 | 0.142 |

* 0.09 + (0.09 × (col F/100))

** 0.085 + (0.085 × (col F/100))

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[12] *E.g.*, American Petroleum Institute, docket document OAR–2003–0079–0281; Michigan Chemistry Council, docket document OAR–2003–0079–0200.

TABLE 2.—CLASSIFICATION OPTIONS
[Counts of hypothetical nonattainment areas]
(2000–2002 data)

| | Subpart 2 | | | | | | Subpart 1 | |
|---|---|---|---|---|---|---|---|---|
| | Extreme | Severe-17 | Severe-15 | Serious | Moderate | Marginal | | Total |
| Option 2 as proposed 6/2/03 | 0 | 1 | 0 | 4 | 21 | 11 | 64 | 101 |
| Alternative A (8-hour-only design value option) | 0 | 1 | 2 | 5 | 12 | 26 | 55 | 101 |
| Alternative B (Modified Option 2) | 0 | 3 | 4 | 9 | 30 | 10 | 45 | 101 |
| Original 1991 Classifications * | 1 | 5 | 7 | 13 | 30 | 43 | 2 | 101 |

* Does not account for section 185A or incomplete data areas

[FR Doc. 03–26537 Filed 10–20–03; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

### [Docket # OR–02–002b; FRL–7568–8]

### Approval and Promulgation of Air Quality Implementation Plans; State of Oregon; Klamath Falls PM–10 Nonattainment Area Redesignation to Attainment and Designation of Areas for Air Quality Planning Purposes

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** On November 4, 2002, the State of Oregon submitted a PM–10 maintenance plan for Klamath Falls to EPA for approval and concurrently requested that EPA redesignate the Klamath Falls nonattainment area to attainment for the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than ten micrometers (PM–10). In this action, EPA is proposing to approve the maintenance plan and to redesignate the Klamath Falls PM–10 nonattainment area to attainment.

**DATES:** Comments on this proposed rule must be received in writing by November 20, 2003.

**ADDRESSES:** Comments may be submitted either by mail or electronically. Written comments should be mailed to Steven K. Body, Office of Air Quality, (OAQ–107), EPA Region 10, 1200 Sixth Ave., Seattle Washington 98101. Electronic comments should be sent either to *r10.aircom@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in the Direct Final Rule, **SUPPLEMENTARY INFORMATION** section, Part VII, General Information.

Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following office: United States Environmental Protection Agency, Region 10, Office of Air Quality, 1200 Sixth Ave., Seattle WA 98101.

**FOR FURTHER INFORMATION CONTACT:** Steven K. Body, Office of Air Quality, (OAQ–107), EPA Region 10, 1200 Sixth Ave., Seattle, WA 98101, (206) 553–0782, or *body.steve@epa.gov*.

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving the State's redesignation request and State Implementation Plan (SIP) revision, involving the maintenance plan, as a direct final rule without prior proposal because the Agency views the redesignation and SIP revision as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

For additional information see the direct final rule, of the same title, published in the rules section of this **Federal Register**.

Dated: September 24, 2003.

**Ronald A. Kreizenbeck,**

*Acting Regional Administrator, Region 10.*

[FR Doc. 03–26541 Filed 10–20–03; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 262 and 271

### [FRL–7575–8]

### Massachusetts: Proposed Final Authorization of State Hazardous Waste Management Program Revisions; Proposed State-Specific Modification to Federal Hazardous Waste Regulations; Proposed Extension of Site-Specific Regulations for New England Universities' Laboratories XL Project

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Today's action consists of three distinct but related proposals briefly characterized here and discussed in detail below in the supplementary information section of this action. First, the EPA proposes to grant final authorization to the Commonwealth of Massachusetts for revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The revisions consist of updated State regulations covering hazardous waste definitions and miscellaneous provisions, provisions for the identification and listing of hazardous wastes, and standards for hazardous waste generators, which correspond to RCRA Consolidated Checklists C1, C2 and C3, respectively. These State regulations are being updated to address most Federal RCRA requirements listed in Checklists C1, C2 and C3 through at least July 1, 1990. These State regulations have been determined by the EPA to meet the requirements for authorization (including equivalency) as set forth in the EPA's current regulations.

Second, the State regulations submitted for authorization also include comprehensive regulations governing hazardous wastes being recycled on-site by generators. Although these State regulations differ in several respects

from the Federal regulations and do not meet particular requirements for State authorization currently set forth in the EPA's regulations, the EPA has determined that the State regulations meet the RCRA statutory test of protecting human health and the environment. These Massachusetts regulations are at least as environmentally protective overall as the Federal program. Accordingly, the EPA is proposing to make a State-specific modification to the Federal hazardous waste regulations to enable the EPA to authorize these Massachusetts regulations, pursuant to a proposal for flexibility submitted by the Massachusetts Department of Environmental Protection (MADEP) under the program established by the Joint EPA/State Agreement to Pursue Regulatory Innovation between the EPA and the Environmental Council of States (ECOS program). The EPA is also proposing (as part of this same rulemaking) to then authorize these Massachusetts hazardous waste recyclable materials regulations.

Third, the EPA is proposing to extend the expiration date of site-specific regulations previously adopted by the EPA under the eXcellence and Leadership program (Project XL) allowing alternative RCRA generator requirements to be followed for laboratories at certain universities in Massachusetts (and Vermont). The EPA is also proposing (as part of this same rulemaking) to then authorize the Massachusetts regulations which track these EPA regulations. The EPA already has authorized the Vermont regulations which track these EPA regulations and expects to extend the authorization of the Vermont regulations through a separate rulemaking.

**DATES:** Comments on the proposed rule must be received on or before November 20, 2003. Comments submitted electronically will be considered timely submitted if they are received by 11:59 p.m. (Eastern time) on the deadline date. Commenters may request a public hearing by November 4, 2003. *See* **SUPPLEMENTARY INFORMATION** below for additional details.

**ADDRESSES:** Written comments (including requests for hearings) should be mailed to Robin Biscaia, Hazardous Waste Unit, EPA Region I, One Congress St., Suite 1100 (CHW), Boston, MA 02114–2023, or e-mailed to: *biscaia.robin@epa.gov.*

Dockets containing copies of the Commonwealth of Massachusetts' revision application, the materials which the EPA used in evaluating the revision, and materials relating to the proposed State-specific and site-specific Federal regulation changes, have been established at the following two locations: (i) Massachusetts Department of Environmental Protection Library, One Winter Street—2nd Floor, Boston, MA 02108, business hours Monday through Friday 9 a.m. to 5 p.m., tel: (617) 292–5802; and (ii) EPA Region I Library, One Congress Street—11th Floor, Boston, MA 02114–2023, business hours Monday through Thursday 10 a.m.—3 p.m., tel: (617) 918–1990. Records in these dockets are available for inspection and copying during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** Robin Biscaia, Hazardous Waste Unit, EPA Region I, One Congress St., Suite 1100 (CHW), Boston, MA 02114–2023, tel: (617) 918–1642, e-mail: *biscaia.robin@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Additional comment and hearing information.* Unless a hearing is scheduled, all comments must be submitted in writing, and must be received by the deadline set above. Commenters requesting a public hearing should specify the basis for their request. If the EPA determines pursuant to 40 CFR 25.4(d) that there is a sufficient reason to hold a public hearing, it will hold such a hearing prior to the close of the public comment period. The public comment period may then be extended to allow sufficient time to schedule and hold a hearing. If a public hearing is scheduled, the date, time and location will be available through a **Federal Register** notice, by contacting Ms. Robin Biscaia at the Region I office, and by individual notice to those persons on the mailing list of those interested in this matter. Persons wishing to be added to this mailing list should contact Ms. Robin Biscaia.

*Introduction.* In part I, below, this document will discuss the updated State RCRA regulations which are proposed to be authorized as a standard authorization under the current EPA regulations. In part II, below, this document will discuss the ECOS program proposal to make a State-specific change to the Federal regulations to allow authorization of the Massachusetts hazardous waste recyclable materials regulations, and the proposed resulting authorization of the recyclable materials regulations. In part III, below, this document will discuss the proposal to extend the expiration date of the New England Universities' Laboratories project XL regulations, and the proposed authorization of the Massachusetts project XL regulations. In part IV, below, this document will assess the effects of the proposed decisions, in accordance with various statutes and executive orders.

## I. Proposed Final Authorization of State Hazardous Waste Management Program Revisions; Standard Authorization

### *A. Why Are Revisions to State Programs Necessary?*

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal hazardous waste program changes, the States must revise their programs and apply for authorization of the revisions. Revisions to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must revise their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

### *B. What Has Massachusetts Previously Been Authorized for Under RCRA?*

The Commonwealth of Massachusetts initially received Final Authorization on January 24, 1985, effective February 7, 1985 (50 FR 3344), to implement its base hazardous waste management program. The authorized base program State regulations currently remain in effect and generally track Federal hazardous waste requirements through at least July 1, 1984. In addition, the EPA previously has authorized particular Massachusetts regulations which address several of the EPA requirements adopted after July 1, 1984. Specifically, on September 30, 1998, the EPA authorized Massachusetts to administer the Satellite Accumulation rule, effective November 30, 1998 (63 FR 52180). Also, on October 12, 1999, the EPA authorized Massachusetts to administer the Toxicity Characteristics rule (except with respect to Cathode Ray Tubes), and the Universal Waste rule, effective immediately (64 FR 55153). Finally, on November 15, 2000, the EPA granted interim authorization for Massachusetts to regulate Cathode Ray Tubes under the Toxicity Characteristics rule through January 1, 2003, effective immediately (65 FR 68915). This interim authorization subsequently was extended to run through January 1, 2006 (67 FR 66338, October 31, 2002).

### *C. What Decisions Is the EPA Proposing To Make in This Standard Authorization?*

The EPA is proposing to authorize Massachusetts regulations which will update the State's hazardous waste program. The proposed State regulations cover hazardous waste definitions and miscellaneous provisions, provisions for the identification and listing of hazardous wastes, and standards for hazardous waste generators, which correspond to RCRA Consolidated Checklists C1, C2 and C3, respectively. The State regulations are being updated to address most Federal RCRA requirements listed in Checklists C1, C2 and C3 through at least July 1, 1990. The EPA is proposing to authorize these changes. In addition to addressing requirements in Checklists C1, C2 and C3 not previously covered by authorized State regulations, the proposed State regulations make some changes to the previously authorized Satellite Accumulation, Universal Waste rule and Toxicity Characteristics rule regulations. The EPA also is proposing to authorize these changes. In addition, the proposed State regulations include some State initiated changes to previously authorized Base Program regulations (*i.e.*, changes made for reasons other than addressing new EPA requirements). The EPA also is proposing to authorize these changes insofar as they address hazardous waste definitions and miscellaneous provisions, provisions for the identification and listing of hazardous wastes, and standards for hazardous waste generators, and except as specified below. Finally, the proposed State regulations include provisions which track the 180 Day Accumulation Time rule for metal finishing industry waste water treatment sludges (F006) being recycled, adopted by the EPA on March 6, 2000 (65 FR 12397). The EPA also is proposing to authorize these provisions.

The specific RCRA program revisions for which the EPA proposes to authorize the Commonwealth of Massachusetts are listed in the table below. The Federal requirements in the table are identified by their checklist numbers and rule descriptions. The following abbreviation is used in defining analogous state authority: CMR = Code of Massachusetts Regulations. The citations in the table are to the CMR provisions as recently proposed to be adopted/amended by the MADEP in Massachusetts Register No. 983 (September 26, 2003). The EPA expects to authorize these provisions through a final Federal rule once they are adopted in final form by the MADEP through a final State rule, if the final State regulations are the same as the proposed State regulations. If the final State regulations are different from the proposed State regulations, the EPA expects to authorize them (without an additional round of public comment) if but only if the final regulations continue to meet standard authorization requirements and are a logical outgrowth of the proposed regulations.

| Description of Federal requirements and checklist reference numbers | Analogous State authority |
|---|---|
| **Consolidated Checklist 1** through July 1, 1990, covering base program requirements in 40 CFR part 260, and requirements in the following rule checklists included in part 260:<br>(5) National Uniform Manifest (definitions), 49 FR 10490, 3/20/84;<br>(11) Corrections to Test Methods Manual, 49 FR 47390, 12/4/84;<br>(13) Definition of Solid Waste, 50 FR 14216, 4/11/85 as amended on 8/20/85 at 50 FR 33541 (except for variance authorities, 40 CFR 260.30 through 40 CFR 260.33);<br>(23) Generators of 100 to 1000 kg Hazardous Waste (definitions), 51 FR 10146, 3/24/86;<br>(24) Financial Responsibility; Settlement Agreement (definitions), 51 FR 16422, 5/2/86;<br>(28) Standards for Hazardous Waste Storage and Treatment Tank Systems (definitions), 51 FR 25422, July 14, 1986 as amended on August 15, 1986 at 51 FR 29430;<br>(35) Revised Manual SW–846, Amended Incorporation by Reference (definitions), 52 FR 8072–8073, March 16, 1937;<br>(49) Identification and Listing of Hazardous Waste, Treatability Studies Sample Exemption (definition), 53 FR 27290, 7/19/88;<br>(67) Testing and Monitoring Activities, 54 FR 40260, 9/29/89;<br>(71) Mining Waste Exclusion II (definition), 55 FR 2322, 1/23/90. | 310 CMR 30.001–30.009; 30.010 (definitions), except for definitions relating to program elements not being authorized, namely "mixed waste," "municipal or industrial wastewater treatment facility permitted under M.G.L. c. 21, sec. 43" and definitions relating to used oil program; 30.011–30.030. |

| Description of Federal requirements and checklist reference numbers | Analogous State authority |
|---|---|
| **Consolidated Checklist 2** through July 1, 1990, covering base program requirements in 40 CFR part 261 and requirements in the following rule checklists included in part 261:<br>(4) Chlorinated Aliphatic Hydrocarbon Listing (F024), 49 FR 5308, 2/10/84;<br>(7) Warfarin and Zinc Phosphide Listing, 49 FR 19922, 5/10/84;<br>(8) Lime Stabilized Pickle Liquor Sludge, 49 FR 23284, 6/5/84;<br>(9) Household Waste, 49 FR 44978, 11/13/84;<br>(13) Definition of Solid Waste, 50 FR 614,1/4/85 as amended 4/11/85 at 50 FR 14216 and 8/20/85 at 50 FR 33541;<br>(14) Dioxin Waste Listing and Management Standards, 50 FR 1978, 1/14/85;<br>(17C) HSWA Codification Rule—Household Waste, 50 FR 28702, 7/15/85;<br>(17J) HSWA Codification Rule—Cement Kilns, 50 FR 28702, 7/15/85;<br>(18) Listing of TDI, TDA, DNT, 50 FR 42936, 10/23/85;<br>(20) Listing of Spent Solvents, 50 FR 53315, 12/31/85 as amended on 1/21/86 at 51 FR 2702;<br>(21) Listing of EDB Waste, 51 FR 5327, 2/13/86;<br>(22) Listing of Four Spent Solvents, 51 FR 6537, 2/25/86;<br>(23) Generators of 100 to 1000 kg hazardous waste, 51 FR 10146, 3/24/86;<br>(26) Listing of Spent Pickle Liquor, 51 FR 19320, 5/28/86 amended on 9/22/86 by 51 FR 33612 and on 8/3/87 by 52 FR 28697;<br>(28) Standards for Hazardous Waste Storage and Treatment Tank Systems, 51 FR 25422, 7/14/86 as amended on 8/15/86 at 51 FR 29430;<br>(29) Correction to Listing of Commercial Chemical Products and Appendix VIII, 51 FR 28296, 8/6/86 (superseded by Checklist 46, see below);<br>(31) Exports of Hazardous Waste, 51 FR 28664, 8/8/86;<br>(33) Listing of EBDC, 51 FR 37725, 10/24/86;<br>(37) Definition of Solid Waste, Technical Correction, 52 FR 21306, 6/5/87;<br>(41) Identification and Listing of Hazardous Waste, 52 FR 26012, 7/10/87;<br>(46) Technical Correction, Identification and Listing of Hazardous Waste, 53 FR 13382, 4/22/88;<br>(47) Identification and Listing of Hazardous Waste, Technical Correction (corrects CL 23);<br>(49) Identification and Listing of Hazardous Waste, Treatability Studies Sample Exemption, 53 FR 27290, 7/19/88;<br>(53) Identification and Listing of Hazardous Waste, and Designation, Reportable Quantities, and Notification, 53 FR 35412, 9/13/88;<br>(56) Identification and Listing of Hazardous Waste, Removal of Iron Dextran from the List of Hazardous Wastes, 53 FR 43878, 10/31/88;<br>(57) Identification and Listing of Hazardous Waste, Removal of Strontium Sulfide from the List of Hazardous Wastes, 53 FR 43881, 10/31/88;<br>(65) Mining Waste Exclusion I, 54 FR 36592,9/1/89;<br>(67) Testing and Monitoring Activities, 54 FR 40260, 9/29/89;<br>(68) Reportable Quantity Adjustment Methyl Bromide Production Wastes, 54 FR 41402, 10/6/89;<br>(69) Reportable Quantity Adjustment, 54 FR 50968, 12/11/89;<br>(71) Mining Waste Exclusion II, 55 FR 2322, 1/23/90;<br>(72) Modifications of F019 Listing, 55 FR 5340, 2/14/90;<br>(73) Testing and Monitoring Activities, Technical Corrections, 55 FR 8948, 3/9/90;<br>(75) Listing of 1,1-Dimethylhydrazine Production Wastes, 55 FR 18496, 5/2/90;<br>(76) Criteria for Listing Toxic Wastes, technical amendment, 55 FR 18726, 5/4/90. | 310 CMR 30.101–30.103; 30.104 (exemptions), except for 30.104(3)(d) (research study samples); 30.105–30.162; 30.353 (rules for very small quantity generators, being authorized in place of EPA conditional exemption in 40 CFR 261.5). |

| Description of Federal requirements and checklist reference numbers | Analogous State authority |
|---|---|
| **Consolidated Checklist 3** through July 1, 1990, covering base program requirements in 40 CFR part 262 and requirements in the following rule checklists included in part 262:<br>(1) Biennial Report, 48 FR 3977, 1/28/83;<br>(5) National Uniform Manifest, 49 FR 10490, 3/20/84;<br>(17D) HSWA Codification Rule, Waste Minimization, 50 FR 28702, 7/15/85;<br>(23) Generators of 100 to 1000 kg Hazardous Waste, 51 FR 10146, 3/24/86;<br>(28) Standards for Hazardous Waste Storage and Treatment Tank Systems, 51 FR 25422, 7/14/86 as amended on 8/15/86 at 51 FR 29430;<br>(31) Exports of Hazardous Waste, 51 FR 28664, 8/8/86;<br>(32) Standards for Generators, Waste Minimization Certifications, 51 FR 35190, 10/1/86;<br>(42) Exception Reporting for Small Quantity Generators of Hazardous Waste, 52 FR 35894, 9/23/87;<br>(48) Farmer Exemptions, Technical Corrections, 53 FR 27164, 7/19/88;<br>(58) Standards for Generators of Hazardous Waste, Manifest Renewal, 53 FR 45089, 11/8/88;<br>(71) Mining Waste Exclusion II, 55 FR 2322, as described in Part III 1/23/90 | 310 CMR 30.301–30.352 (rules for large and small quantitygenerators); revisions to 30.685(1) (referenced by generator regulations); 30.361 (international shipments); 30.061–30.064 (generator notifications/i.d. numbers).<br>**Note:** The Massachusetts "Class A" recycling regulations regarding generators doing on-site recycling also will be authorized, as described in Part II of this document. Special rules for certain university laboratories covered by the New England Universities' Laboratories XL project also will be authorized, as described in Part III of this document. |
| **RCRA Cluster X:** | |
| (184) Accumulation Time for Waste Water Treatment Sludges, 65 FR 12378, 3/8/00. | 310 CMR 30.340(5). |
| **Revisions to Previously Authorized Rules:** | |
| (12) Satellite Accumulation Rule, 49 FR 49568, 12/20/84; | 310 CMR 30.340(6), 30.351(5), 30.351(2)(b)(6.) and 30.353(2)(b)(6.).310 CMR 30.155 and 30.012 (updated incorporation by reference). |
| (119) Toxicity Characteristics Revision, TCLP Correction, 57 FR 55114, 11/24/92 as amended on 2/2/93 at 58 FR 6854. | |
| (142) Universal Waste Rule, 60 FR 25492, 5/11/95. | 310 CMR 30.1034(5)(c)(1.)(c.) (revised cross-reference). |

Following review of the proposed Massachusetts regulations, the EPA has determined that they are equivalent to, no less stringent than and consistent with the Federal program. The reasons for these determinations are set forth in the Administrative Docket, which is available for public review. Many of the proposed State regulations track Federal requirements virtually identically. Others differ from the Federal regulations in particular details, but have been determined by the EPA to be equivalent to the Federal regulations in providing the same (or greater) overall level of environmental protection with respect to each Federal requirement. The resolution of various issues relating to the proposed State regulations is recorded in an EPA Memorandum dated February 14, 2003 entitled "Comments on Proposed Massachusetts RCRA Regulations" and an EPA Memorandum dated March 31, 2003 entitled "Resolution of Issues Regarding Proposed Massachusetts RCRA Regulations."

Future updates of the State's regulations will need to address requirements covered by Checklists C1 through C3 adopted after July 1, 1990 and requirements covered by Checklists C4 through C10 adopted since July 1, 1984. The EPA has not reviewed and is not currently proposing to authorize changes the State may have made to Base Program regulations relating to Checklists C4—C10. (Note, Checklists C4 through C10 address EPA provisions found in 40 CFR parts 263, 264, 265, 266, 268, 270, 124 and 279). Also not covered in the current proposed authorization are some rules issued by the EPA before July 1, 1990 which apply in part to generators, namely the 1986 Radioactive Mixed Waste rule/interpretation, the various rules relating to Land Disposal Restrictions ("LDRs"), and the 1990 Organics Air Emissions rule ("AA" and "BB" rule). Also not covered in the current proposed authorization are sector-specific rules that the MADEP has adopted for printers, photo processors and dry cleaners under its Environmental Results Program ("ERP"). Although many sources in these sectors are subject to RCRA requirements, the MADEP has advised the EPA that the ERP regulations have not made any changes to the hazardous waste management requirements applicable to these sectors, and has not submitted the ERP regulations for authorization at this time. Also not covered in the current proposed authorization is the proposed State regulation at 310 CMR 30.104(3)(d) relating to research facilities. That proposed regulation relates to an exemption from full Treatment, Storage, Disposal Facility ("TSDF") requirements found at 310 CMR 30.864. The EPA will review that research facility provision (and the related exemption) when the MADEP submits updated regulations for TSDFs (Consolidated Checklists C5, C6 and C9). Also not covered in the current proposed authorization is the proposed State definition of "municipal or industrial wastewater treatment facility permitted under M.G.L. c. 21, sec. 43" in 310 CMR 30.010. That proposed definition relates to an exemption from full TSDF requirements found at 310 CMR 30.801(4). The EPA will review this definition (and the related exemption) when the MADEP submits updated regulations for TSDFs.

### *D. Where Are the Proposed State Rules Different From the Federal Rules?*

The most significant differences between the proposed State rules and the Federal rules are summarized below. It should be noted that this summary does not describe every difference, or every detail regarding the differences that are described. Members of the regulated community are advised to read the complete regulations to ensure that they understand all of the requirements with which they will need to comply.

### 1. More Stringent Provisions

There are aspects of the Massachusetts program which are more stringent than the Federal program. All of these more stringent requirements are or will become part of the federally enforceable RCRA program when authorized by the EPA, and must be complied with in addition to the State requirements which track the minimum Federal requirements. These more stringent requirements include the following:

- Massachusetts does not follow the EPA interpretation allowing Large Quantity Generators and Small Quantity Generators to conduct treatment without permits in accumulation tanks and containers.
- Massachusetts imposes various requirements regarding storage of hazardous wastes by generators which are more stringent than Federal requirements. For example, Massachusetts requires that labels on tanks and containers include identification of the hazardous wastes and the type of hazards associated with the wastes, as well as tracking the Federal requirement that the labels include the words "hazardous waste."
- In addition, Massachusetts specifies recordkeeping requirements to document compliance with requirements in some circumstances where the recordkeeping is not expressly required under the Federal regulations, *e.g.*, the keeping of an inspection log for container area inspections.
- Massachusetts imposes spill containment requirements for container areas (not just for tanks as in the Federal regulations), including a requirement that indoor containers be located on an impervious base and a requirement that outdoor containers have full secondary containment.
- Massachusetts requires security measures and posting of signs at hazardous waste storage areas, in addition to the labeling of individual tanks and containers as required by the Federal regulations.
- Massachusetts does not allow any storage of hazardous wastes in open tanks, whereas the Federal regulations allow such storage except when otherwise required by the 40 CFR parts 264 and 265, subpart CC hazardous air emission rules.
- Massachusetts specifies requirements for Very Small Quantity Generators ("VSQGs") (Federal Conditionally Exempt Small Quantity Generators) which go beyond the Federal requirements for conditional exemption. For example, Massachusetts specifies safe storage practices for VSQGs whereas the Federal regulations regarding tank and container storage apply only to Large Quantity Generators ("LQGs") and Small Quantity Generators ("SQGs").
- In addition, Massachusetts prohibits VSQGs from generating or accumulating any acutely hazardous wastes, whereas the Federal regulations allow such generators to accumulate up to one kilogram of such wastes.
- Finally, VSQG hazardous wastes may be sent to municipal solid waste landfills under the Federal program but not under the Massachusetts program.

### 2. Broader in Scope Provisions

There also are aspects of the Massachusetts program which are broader in scope than the Federal program. The State requirements which are broader in scope are not considered to be part of the Federally enforceable RCRA program. However, they are fully enforceable under State law and must be complied with by sources within Massachusetts. These broader in scope requirements include the following:

- As further discussed in part II, below, Massachusetts designates and regulates as hazardous many recyclable materials not regulated as hazardous wastes under the Federal RCRA program, in addition to regulating those hazardous recyclable materials that are regulated as hazardous wastes in the Federal program.
- Massachusetts regulates both Centers and Events which collect household hazardous wastes and VSQG hazardous wastes. In contrast, household hazardous wastes are not regulated as hazardous wastes under the Federal program even when collected at centers and events. In addition, under the Federal regulations, VSQG hazardous wastes may be sent to facilities authorized by the State to manage such wastes, but there are no Federal regulations specifying the standards to be followed at facilities which are centers and events.

### 3. Different but Equivalent Provisions

As noted in part I.C. above, there also are various Massachusetts regulations which differ from but have been determined to be equivalent to the Federal regulations. These State regulations which are different from but equivalent to the Federal regulations are or will become part of the Federally enforceable RCRA program when authorized by the EPA. These different but equivalent requirements include the following:

- The Massachusetts regulations regarding satellite storage allow more than one container in a satellite area (so long as there is only one container per waste stream) whereas the Federal regulations contemplate that there will be only one 55 gallon container in each satellite area. Unlike the Federal regulations, however, the State regulations impose requirements to ensure that multiple containers will be stored safely, including aisle spacing requirements, requirements for separation of containers with incompatible wastes and formal inspection requirements.
- The Massachusetts satellite storage regulations require containers to be moved from satellite areas to central storage areas within three days of a container being filled (whereas this three-day period begins to run under the Federal regulations only when more than 55 gallons has been accumulated in the satellite area), but the Massachusetts regulations also provide that the time allowed for storage in the central storage areas begins to run only when the container is moved to the central storage area or no later than three days after the container is filled. In contrast, under the Federal regulations, the time allowed for storage in central storage areas begins to run as soon as the container is required to be moved (*i.e.*, at the beginning of the three-day period).
- The Massachusetts regulations specify that while hazardous wastes placed into satellite storage must be counted when determining a generator's rate of generation, they need not be counted when determining the amount of hazardous waste stored on site (for purposes of determining whether a generator is a LQG, SQG or VSQG). In contrast, under the Federal regulations, wastes in satellite storage are counted both when determining a generator's rate of generation and when determining the amount of hazardous waste stored on site.
- The Massachusetts regulations contain the same exemption from hazardous waste requirements for certain chromium wastes as is found in the Federal regulations at 40 CFR 261.4(b)(6). However, under the EPA regulation, a generator seeking to claim the exemption for other than specifically listed waste streams must petition the EPA and obtain a determination that its particular wastes are exempt. In contrast, Massachusetts is proposing to allow a generator to make this determination for itself provided that the generator documents compliance with the criteria listed in the State (and Federal) regulations. Of course, a generator is responsible for making the correct determination, and the EPA encourages generators who

have any questions to seek guidance from the MADEP or EPA. Also, an exemption determination made by a generator under the Massachusetts regulations will apply only within Massachusetts. Petitions will need to be filed with any other authorized State to which shipments are made, or with the EPA if shipments are made to a non-authorized State.

- The Massachusetts regulations contain conditional exemptions for bulk scrap metal items as well as smaller particle scrap metal items being recycled, for whole used circuit boards as well as shredded circuit boards being recycled and for certain mixtures of water and unused gasoline being recycled. The Federal regulations similarly exempt these materials, but under sometimes different categories (*e.g.*, whole used circuit boards under the scrap metal category, certain mixtures of water and unused gasoline under the commercial chemical products category).
- Massachusetts allows VSQGs to conduct certain kinds of treatment on site without a permit. The exemption is limited to non-thermal treatment (typically neutralization) of wastes generated on site and is subject to a requirement that the treatment be conducted safely. The Massachusetts program operates somewhat similarly to the EPA interpretation allowing certain kinds of treatment in accumulation tanks and containers without permits, by LQGs and SQGs. However, Massachusetts allows treatment without permits only by VSQGs, whereas the EPA interpretation instead allows it by LQGs and SQGs. Also, the EPA interpretation allows treatment only within accumulation tanks and containers, whereas the Massachusetts regulation allows treatment in non-accumulation containers (*e.g.*, laboratory containers) at the site where the waste was generated, provided of course that this can be done safely.
- The Massachusetts regulations require that secondary containment systems for outdoor above-ground tanks must have a capacity at least equal to 110% of the volume of the largest tank. This requirement is designed to take the place of the Federal requirement (in 40 CFR 265.193(e)) that such containment systems must have a capacity at least equal to 100% of the volume of the largest tank plus sufficient capacity to contain precipitation from a 25 year, 24 hour storm. The Massachusetts regulations generally track the Federal requirements regarding secondary containment requirements for underground tanks. The Massachusetts regulations are being amended to require secondary containment for indoor above-ground tanks with a capacity at least equal to 100% of the volume of the largest tank (the Federal standard).
- The Massachusetts regulations specify standards for when tanks will be considered "empty." The EPA regulations specify such standards only for containers, while specifying that tanks must be decontaminated before being disposed or reused. It should be noted that the State's empty tank standard for non-acute wastes is more stringent than the State (and Federal) empty container standard, *i.e.*, it does not allow waste residues to be left in tanks. The State standards will operate similarly to the tank decontamination requirement in the Federal regulations, but the State regulations clarify that generators may be able to determine that tanks are "empty" based on knowledge of the waste (*e.g.*, knowledge that there has been appropriate thorough cleaning of the tanks), without needing to do TCLP testing in every case.

### *E. What Will Be the Effect of the Proposed Authorization Decision?*

The effect of the proposed authorization decision will be that entities in Massachusetts subject to RCRA will need to comply with the authorized State requirements instead of the Federal requirements, with respect to the matters covered by the authorized State requirements, in order to comply with RCRA. However, until the authorized Massachusetts program is brought fully up to date, there will continue to be a dual state/Federal RCRA program in Massachusetts. RCRA was amended by the Hazardous and Solid Waste Amendments ("HSWA") in 1984. Section 3006(g) of RCRA, 42 U.S.C. 6906(g), provides that when the EPA promulgates new regulatory requirements pursuant to HSWA, the EPA shall directly carry out these requirements in states authorized to administer the underlying hazardous waste program, until the states are authorized to administer these new requirements. The EPA has established various new regulatory requirements pursuant to HSWA which have not yet been authorized to be administered by Massachusetts. There also are various self-implementing requirements directly established by the HSWA statutory amendments themselves. Regulated entities must comply with these HSWA requirements as set out in the Federal regulations and statute in addition to authorized State program requirements. The HSWA requirements that will continue to be administered by the EPA in Massachusetts include all of the Land Disposal Restriction ("LDR") requirements set out in 40 CFR part 268 (including requirements adopted prior to July 1, 1990), the Corrective Action requirements referenced in 40 CFR 264.101, and the hazardous air emission standards set out in 40 CFR parts 264 and 265, subparts AA, BB and CC. A complete list of HSWA requirements is set out in 40 CFR 271.1, Tables 1 and 2.

With respect to TSDF permitting, Massachusetts will continue to issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits it has issued. The EPA also will continue to issue permits or portions of permits covering HSWA requirements for which Massachusetts is not authorized. In addition, the EPA will continue to implement the provisions of 40 CFR 264.1(f)(2) within Massachusetts. That provision specifies that TSDFs must comply with any standards promulgated by the EPA (HSWA or non-HSWA) after a State is authorized, until the State obtains authorization to issue permits covering such newly promulgated standards. The major effect of this provision in Massachusetts is that the EPA will remain responsible for issuing permits for Miscellaneous Units, since the EPA promulgated the Miscellaneous Unit standards in 40 CFR part 264, subpart X after the initial authorization of the Massachusetts base program, and since Massachusetts has not yet applied for and is not now being authorized to carry out these requirements.

Massachusetts is not authorized to carry out its hazardous waste program in Indian country within the State (land of the Wampanoag tribe). The proposed action will have no effect on Indian country. The EPA will continue to implement and administer the RCRA program in these lands.

The EPA is proposing to authorize but not codify the enumerated revisions to the Massachusetts program. Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. The EPA does this by referencing the authorized State rules in 40 CFR part 272. The EPA reserves the amendment of 40 CFR part 272, subpart W for the codification of the Massachusetts' program until a later date.

## II. Proposed State-Specific Modification to Federal Hazardous Waste Regulations, Pursuant to ECOS Program Proposal, To Enable EPA To Authorize Certain Portions of the Massachusetts Revisions; Proposed Resulting Authorization of Massachusetts Recyclable Materials Regulations

### *A. What Massachusetts Regulations Are Proposed To Be Authorized?*

In 1986, the MADEP adopted regulations to comprehensively regulate hazardous recyclable materials, under provisions separate from those governing hazardous wastes planned to be disposed. These regulations are found in 310 CMR 30.200. In the Federal RCRA program, some hazardous recyclable materials are not considered to be hazardous wastes and thus are exempt from hazardous waste regulation (*e.g.*, sludges and byproducts exhibiting a characteristic of hazardous waste and being reclaimed) whereas other hazardous recyclable materials are considered to be hazardous wastes and are subject to regulation including all of the usually applicable hazardous waste generator regulations (*e.g.*, spent materials, listed sludges and listed byproducts being reclaimed). In contrast, the State regulations cover virtually all hazardous recyclable materials under some level of regulation. However, based on the perceived level of risk, different recyclable materials are subject to different levels of regulation, from the least regulated Class A to the most regulated Class C.

Initially, the State's Class A regulations applied only to recyclable materials that are exempt from Federal regulation. Thus the State was not required to seek Federal authorization for these regulations. In 1995, however, the MADEP expanded the Class A category to include many recyclable materials that are recycled at the site of generation. Under the State regulations, these Class A recyclable materials must be recycled in a recycling system that is completely enclosed, but may be stored in tanks or containers prior to being recycled, without the entire storage to recycling process being completely enclosed. Thus the Class A regulations now apply to certain federally regulated hazardous wastes that are recycled on site by generators, namely those hazardous recyclable materials that are spent materials, listed sludges and listed byproducts, that are accumulated or stored on site before being recycled, and that are recycled through a process that does not meet all of the conditions for Federal exemption as a completely enclosed recycling process set out in 40 CFR 261.4(a)(8). In particular, the Class A regulations apply to Federally regulated recyclable materials currently being stored by about 136 generators with stand alone solvent stills/distillation units and to Federally regulated recyclable materials currently being stored by about 40 generators with stand alone silver recovery units.

The EPA is proposing to authorize the State's Class A regulations insofar as they apply to the storage of recyclable materials by generators with stand alone solvent stills/distillation units, generators with stand alone silver recovery units, and any other generators who may store Federally regulated recyclable materials subject to the Class A regulations in the future (*i.e.*, generators referenced by 310 CMR 30.212(10)). Once authorized, the Class A regulations will become part of the federally approved and enforceable State base program generator requirements.

It should be noted that the State is in the process of revising its Class A regulations (as part of its current update), and it is the proposed revised Class A regulations which the EPA is proposing to authorize. The EPA expects to authorize the final State regulations, once they are adopted, if they are the same as the proposed State regulations. If the final State regulations are different from the proposed State regulations, the EPA expects to authorize them (without an additional round of public comment) if but only if the final regulations continue to meet the RCRA statutory requirements and are a logical outgrowth of the proposed regulations.

The proposed authorization does not cover the Class A regulations insofar as they apply to the Federally exempt recyclable materials referenced by 310 CMR 30.212(1) through (7), as the regulation of these recyclable materials is beyond the scope of the Federal RCRA program. The authorization also will not cover the Class A regulations insofar as they apply to waste oil and specification used fuel oil as referenced by 310 CMR 30.212(8)–(9), since the MADEP has not yet applied to be authorized for the Federal RCRA Used Oil program (established in 40 CFR part 279). Finally, the authorization will not cover the State's Class B and Class C regulations, since the MADEP has not yet applied to be authorized for these regulations (which generally relate to off-site non-generator recycling).

### *B. Why Is the EPA Proposing To Make a Federal Regulation Change?*

The EPA has reviewed the Massachusetts Class A regulations and determined that they do not meet particular requirements for State authorization set out in the current EPA regulations. However, the EPA also has determined that the Massachusetts Class A regulations meet the RCRA statutory test of protecting human health and the environment and are at least as environmentally protective overall as the Federal program. Thus the EPA is proposing to make a State-specific Federal regulation change to allow authorization of the Massachusetts Class A regulations.

#### 1. Differences in the State Class A Regulations Which Preclude a Standard Authorization

In comparison with the EPA regulations applicable to storage of hazardous wastes by generators, the Class A regulations regarding storage of hazardous recyclable materials by generators differ with respect to various details. For example, under the Federal regulations, storage of hazardous wastes without TSDF permits by LQGs and SQGs generally is limited to 90 and 180 days, respectively. In contrast, the Class A regulations allow recyclable materials to be stored pending recycling so long as there is no "speculative accumulation." This typically allows storage times without TSDF permits of a year or longer. The EPA regulations on State authorization specify that, "[s]tate law must require [TSDF] permits for owners and operators of all hazardous waste management facilities required to obtain permits under 40 CFR part 270 * * *" 40 CFR 271.13(a). By allowing generator storage times without TSDF permits longer than the Federal regulations, the Class A regulations do not comply with this current EPA requirement for State authorization.

In addition, the Class A regulations impose requirements regarding storage of recyclable materials by generators which are quite different from the Federal regulations in 40 CFR part 262 regarding generator storage. In place of the Federal categories of LQG, SQG and CESQG (Massachusetts VSQG), the Class A regulations establish a dual status system. Generators are classified as LQGs or SQGs or VSQGs with respect to wastes to be shipped off-site based on the amount of such wastes to be shipped off-site. Generators are separately classified and regulated with respect to Class A recyclable materials based on the amounts of such materials (and are placed in either a merged LQG/SQG category or a VSQG category for that purpose). The resulting differences between the State and Federal regulations are fully described in a EPA memorandum dated July 8, 2002, entitled "Massachusetts RCRA Program Update: Issues Regarding Regulation of Recyclable Materials Reclaimed by Generators on Site." The differences include that the State does not count Class A recyclable materials in determining generator status (for wastes to be shipped off-site), resulting in some sources which would be LQGs under the Federal program instead being regulated in a lesser-regulated generator category. In addition, for sources which remain LQGs (notwithstanding the difference regarding counting), the usual LQG requirements regarding contingency planning and training do not apply to the parts of the generator's site handling the Class A hazardous recyclable materials. Rather, with respect to these recyclable materials, such generators are instead subject to the less formal and detailed Class A requirements regarding emergency planning and training.

The EPA is committed to reexamining the extent of flexibility that should be employed when reviewing State RCRA programs. In connection with another part of Massachusetts' ECOS program proposal, the EPA is creating a Work Group of EPA and State personnel to examine authorization issues. Without waiting for the results of this effort, the EPA nevertheless has employed some flexibility consistent with its current regulations in reviewing the Massachusetts RCRA program update, as indicated by its proposed approval of some Massachusetts provisions which differ from Federal provisions, discussed in part I.D. above. However, the differences between the Massachusetts Class A regulations and the EPA generator storage regulations are greater than those discussed in part I.D., and a standard authorization of the Class A regulations is precluded under the current EPA State authorization regulations by, for example, the difference regarding when TSDF permits are required. Thus the EPA is not proposing to approve the Massachusetts Class A regulations as a standard authorization.

### 2. Justification for Making a Change To the Federal Regulations To Allow the Authorization

The EPA is persuaded that it should make a State-specific regulation change to its Federal regulations to enable the authorization of the Class A regulations. The Massachusetts program comprehensively regulates hazardous wastes that are recycled on site by generators, and has operated successfully for many years. The State regulations contain incentives that encourage recycling (*e.g.*, lower fees for generators which recycle). In its ECOS project application, the MADEP reported that as of 1999, over 490,000 tons of wastes were recycled under its program, as opposed to 90,000 tons of hazardous wastes that were disposed. Basic requirements are in place in the State's recycling program, including the requirement to do waste determinations, the requirement to obtain hazardous waste i.d. numbers (except for VSQGs) and safe handling requirements. While less stringent with respect to certain details, the Massachusetts program is at least as stringent as the Federal program overall. In particular, the Massachusetts program regulates a broader universe of hazardous recyclable materials than are regulated in the Federal program. Even if the focus is limited to Federally regulated wastes, the Massachusetts program is as stringent as the Federal program overall. It regulates the recycling process itself as well as prior hazardous waste storage, unlike the Federal program which regulates only the storage. Finally, some of the State's more stringent storage requirements (described in Part I.D. above) have been applied to the storage of Class A materials, including additional labeling requirements and the prohibition of the use of open tanks.

Thus the Massachusetts Class A regulations meet the RCRA statutory test of protecting human health and the environment, and constitute an acceptable alternative approach (to regulating hazardous recyclable materials) to the approach currently set forth in the Federal regulations. In addition, the EPA recently announced that it is planning to propose a change to its regulations to revise the Federal RCRA regulatory requirements with respect to recyclable materials that remain in use in a continuous industrial process. 49 FR 11251 (March 13, 2002). This is a part of the EPA's response to the court's decision in *Association of Battery Recyclers* v. *EPA*, 208 F.3d 1047 (D.C.Cir. 2000) ("*ABR*"), which set aside a portion of an EPA regulation regarding mineral processing industry recyclable materials. If the EPA ultimately adopts a regulation exempting recyclable materials used in a continuous industrial process from Federal RCRA regulation, this exemption is likely to cover at least most Class A recyclable materials.

The EPA does not believe that in light of the *ABR* decision, it should determine now that all Class A materials are not subject to Federal regulation, and thus conclude that the Class A regulations create no authorization issues. Such a result is not compelled by the court's decision and would prejudge the EPA's anticipated general rulemaking process. However, the fact that the EPA is planning to move in the direction of reducing regulation regarding recyclable materials is an additional reason counseling in favor of authorizing the State's program regarding Class A recyclable materials under the authority of a special EPA regulation. As mentioned above, the State's Class A program has operated successfully for many years. Requiring the State to now change that program to track EPA requirements does not make sense in the particular circumstances, including the EPA's announced intention to soon change the requirements.

The EPA is proposing to make the State-specific change to its Federal regulations pursuant to a proposal for flexibility submitted by the MADEP under the ECOS program. Under the Joint EPA/State Agreement to Pursue Regulatory Innovation, the EPA agreed to entertain State proposals for flexibility in an agreement entered into between the EPA and the Environmental Council of States. *See* 63 FR 24784 (May 5, 1998). As specified in that agreement, the EPA may accept State proposals to follow alternative regulatory requirements when (as here) the alternative requirements provide at least an equivalent overall level of environmental protection as the standard EPA mandated requirements.

### *C. What Is the Proposed Regulation Change?*

The proposed change to the Federal regulations which will enable the EPA to grant the requested flexibility is set out at the end of this document. The EPA proposes to amend 40 CFR 262.10 to add a paragraph (k), which will specify that generators within Massachusetts may comply with the Class A regulations, when authorized, with respect to the recyclable materials and matters covered by the authorization, instead of complying with certain standard EPA regulations. The EPA proposes to have this new regulation take effect immediately upon its final promulgation. The EPA Administrator has delegated one-time authority to the Regional Administrator, EPA New England, to make this regulation change.

### *D. What Will Be the Effect of the Proposed Federal Regulation Change?*

The proposed change to the Federal regulations will enable the EPA to authorize the Massachusetts regulations, since the Federal regulations will specify that the State regulations contain acceptable alternative standards for Massachusetts. The State regulations will be equivalent to, consistent with and no less stringent than these acceptable alternative standards. Allowing the alternative standards is justified for the reasons discussed in part II.B, above. In particular, the EPA has determined that the alternative program is at least as stringent overall as the standard EPA RCRA program. The EPA believes that it has the authority to approve this alternative program under the RCRA statute.

However, the change to the Federal regulations will not itself result in any change to the legal requirements applicable to generators in Massachusetts. Rather, generators will become subject to the proposed revised Class A requirements under State law when they are adopted in final form by the MADEP. These requirements will in turn become part of the Federally enforceable RCRA program when they are authorized by the EPA. For the sake of efficiency, the EPA is proposing to both make the Federal regulation change and to authorize the State regulations in the rulemaking proposed today. Thus in this particular case, the EPA expects that the State requirements will become authorized and federally enforceable at the same time as the Federal regulation change.

Under section 3006 of RCRA, the EPA may authorize a qualified State to administer and enforce a hazardous waste program within the State. (*See* 40 CFR part 271 for the requirements for authorization). States with final authorization administer their own hazardous waste programs in lieu of the Federal program. Following authorization, the EPA continues to have independent enforcement authority under RCRA sections 3007, 3008, 3013 and 7003.

After authorization, Federal rules written under RCRA provisions which predate the Hazardous and Solid Waste Amendments of 1984 (HSWA) no longer apply in the authorized state. Rather, the authorized State regulations apply in lieu of such Federal requirements. In addition, new Federal requirements imposed by such rules do not take effect in an authorized state until the state adopts the requirements.

In contrast, under section 3006(g) of RCRA, new requirements and prohibitions imposed by HSWA take effect in authorized states at the same time that they take effect in non-authorized states. The EPA is directed to carry out HSWA requirements and prohibitions in authorized states until the state is granted authorization to do so.

This proposed rule, if finalized, would be promulgated pursuant to non-HSWA authority. Thus as explained above, the alternative standards contemplated by the rule will take effect in Massachusetts only when adopted by Massachusetts and will become Federally enforceable only when authorized by the EPA. Once they take effect, however, they will apply in lieu of the EPA program with respect to the recyclable materials and matters covered by the authorization. For example, generators storing solvents for recycling in stand alone stills/distillation units will be able to store such solvents without permits for more than the 90 or 180 days set out in the Federal regulations, so long as they do not engage in "speculative accumulation."

Of course, generators still will need to comply with any other applicable RCRA requirements in addition to the Class A requirements. For example, generators storing some wastes for recycling and other wastes for disposal will need to comply with the authorized State requirements regarding wastes being stored for disposal with respect to those other wastes. In addition, generators will need to comply with any applicable Federal requirements which are being directly implemented by the EPA within Massachusetts pursuant to HSWA, *i.e.*, all HSWA requirements for which the State has not yet been authorized.

In particular, the State has not yet been authorized for and the EPA is continuing to administer within Massachusetts the air emission standards for tanks and containers set out in 40 CFR part 265, subpart CC ("CC regulations"). These regulations are applicable to many large quantity generators storing solvents, among others. Following authorization of the Class A regulations, the EPA plans to administer and enforce these CC regulations within Massachusetts as follows. First, only generators which are classified as large quantity generators under the State regulations will be considered subject to the CC regulations. That is, the EPA will utilize the Massachusetts counting rules when administering the CC rule within Massachusetts. This will avoid generators needing to do two separate State and Federal status calculations. Second, however, any generators which are classified as large quantity generators under the State regulations with respect to any part of their site will be subject to the CC regulations throughout their sites. Large quantity generators storing solvents will need to comply with all applicable requirements imposed by the CC regulations, whether the solvents are being stored for disposal or recycling. That is, the EPA will not utilize the Massachusetts dual status concept when administering the CC rule within Massachusetts. The EPA expects that any generator which is a LQG will take the steps required under the CC rule to prevent hazardous air emissions, just as such generators are subject to all applicable Clean Air Act requirements whether they dispose of their wastes or recycle.

### *E. For How Long Will the Proposed Authorization Continue?*

Unlike the proposed authorization of the Labs XL project regulations discussed in Part III below, the proposed authorization of the Massachusetts ECOS project regulations will continue indefinitely. The EPA believes this is justified based on the long successful operation of the Massachusetts Class A program, *i.e.*, no further assessment is necessary prior to the permanent authorization of this RCRA program element. Of course, like any other authorized program element, the Massachusetts Class A program will be subject to EPA oversight and possible future revision. But absent future EPA action to modify or rescind the action, the authorization will continue.

If the EPA issues future final regulations changing the status of recyclable materials used in a continuous industrial process under Federal RCRA regulation, portions of the Massachusetts Class A program now proposed to be authorized could then become beyond the scope of Federal regulation. If and when any revised national regulations take effect, the EPA will then address, in connection with a later update of the Massachusetts RCRA program, the effect of the national regulations on the Massachusetts program.

## III. Proposed Extension of Site-Specific Regulations for New England Universities' Laboratories XL Project To Enable EPA To Authorize Certain Portions of the Massachusetts Revisions; Proposed Authorization of Massachusetts XL Project Regulations

### *A. What Is the New England Universities' Laboratories XL Project?*

Project XL—"eXcellence and Leadership" was announced in May 1995 as a part of the National Performance Review and the EPA's effort to reinvent environmental protection. *See* 60 FR 27282 (May 23, 1995). Project XL provides a limited number of private and public regulated entities an opportunity to develop pilot projects to provide regulatory flexibility that will result in environmental protection that is superior to what would be achieved through compliance with current standard regulations and reasonably anticipated future regulations.

One of the projects that has been approved under Project XL is the New England Universities' Laboratories project. A Project XL proposal that the EPA exercise flexibility under RCRA was developed for the University of Massachusetts—Boston, Boston, MA, Boston College, Chestnut Hill, MA, and the University of Vermont, Burlington, VT (the "participating universities"). A Final Project Agreement approving the proposal was signed by the EPA, the participating universities, the MADEP and the Vermont Department of Environmental Conservation, on September 28, 1999. Pursuant to that agreement, the participating universities have been allowed to comply with Environmental Management Plans (EMPs) covering their laboratories in place of certain standard requirements for hazardous waste generators, during a trial period. In order to allow this experiment, the EPA adopted special regulations during 1999 which are set forth in 40 CFR 262.10(j) and 40 CFR 262.100–108. *See* 64 FR 52380 (September 28, 1999) (final rulemaking) and 64 FR 40696 (July 27, 1999) (proposed rulemaking). The reasons for approving the special EPA regulations are fully set forth in those rulemaking notices and will not be repeated here. Like the special regulation discussed in part II above in connection with the proposed ECOS project, the special EPA regulations were designed to enable the EPA to authorize State regulations that are different from the standard EPA regulations. Also like the ECOS project, the actual implementation of the XL project requires the adoption, and Federal authorization, of State regulations.

Following the adoption of EPA's special Project XL regulations, both Massachusetts and Vermont adopted regulations setting alternative standards for laboratories at the participating universities. The Vermont regulations were authorized by the EPA and became part of the Federally enforceable Vermont RCRA program on October 26, 2000. *See* 65 FR 64164. The Massachusetts regulations are in effect under State law and now have been submitted to the EPA to be authorized as part of the current update of the Massachusetts RCRA program.

### *B. Why Is the EPA Proposing To Extend the Expiration Date of Its XL Project Regulations?*

The New England Universities' Laboratories XL project was initially planned to run for four years (September 1999 through September 2003). Thus the EPA project regulations currently have an expiration date of September 30, 2003. *See* 40 CFR 262.108.

The EPA conducted a mid-term evaluation of the project between September 2001 and September 2002. As set out in the mid-term evaluation report, the project has shown great success in some important areas: developing EMPs, training staff, increasing awareness, shifting attitudes and behaviors, improving the range of activities that determine compliance and emergency preparedness, and demonstrating that the environmental management system approach to managing laboratory waste is gaining hold and making progress. *See* Project in Excellence and Leadership: New England Universities' Laboratories Mid-Term Evaluation: Piloting Superior Environmental Performance in Labs, EPA 100–R–02–005 (September 2002), page 5. On the other hand, the project has not to date shown the expected successes in other areas such as chemical reuse and redistribution and pollution prevention. *Id.* The implementation of the EMPs proved to be complex, and took somewhat longer than anticipated, resulting in delays in aggressively focusing on reuse, redistribution and pollution prevention. However, efforts to encourage pollution prevention and "Green Chemistry" practices have begun to be more widely endorsed by faculty, and the EPA hopes and expects that they will bear fruit in the next several years.

Taking account of both the progress that has been made and the remaining issues, the EPA (with the concurrence of the MADEP and VTDEC) believes that the appropriate course of action is to extend the project's expiration date by three years, *i.e.*, to September 30, 2006. This will allow for a further period of evaluation, including a further test of whether the universities will succeed in their efforts to implement significant chemical reuse and redistribution and pollution prevention. In light of the success that has occurred in EMP development and implementation, the EPA believes that the continuation of this project should provide a superior level of environmental performance in comparison to an immediate return to standard RCRA regulation.

In addition, the EPA Office of Solid Waste currently is analyzing issues regarding the management of hazardous waste in laboratories, using a discussion group of EPA Headquarters and Regional personnel, which is expected to be followed by stakeholder meetings. This process may result in changes to the EPA requirements or the way the EPA interprets its requirements regarding laboratories. The proposed three-year extension of the New England Universities' Laboratories XL project will allow the three participating universities to continue to follow the alternative project requirements while the EPA considers whether to make changes in national policy. This will avoid those universities needing to terminate the project, prior to the EPA having a chance to consider whether standard RCRA requirements applicable to university laboratories should be changed. The continuation of the project also should provide information that is useful to the EPA as it analyzes the potential national impact of making changes regarding the management of hazardous waste in laboratories.

### *C. What Is the Proposed Federal Regulation Change?*

The proposed Federal regulation change will extend the expiration date in 40 CFR 262.108 from September 30, 2003 to September 30, 2006. The other special EPA regulations adopted to allow the implementation of the New England Universities' Laboratories XL project will stay the same. The proposed regulation change is set out at the end of this document. The EPA proposes to have this regulation change take effect immediately upon its promulgation. The EPA Administrator has delegated one-time authority to the Regional Administrator, EPA New England, to make this regulation change. Massachusetts and Vermont also are in the process of changing their State regulations to extend the expiration date of this XL project to September 30, 2006. The EPA and other signatories also are proposing to amend the Final Project Agreement for this XL project to extend the expiration date, with annual reporting obligations also being extended and all other provisions of the agreement remaining the same.

### *D. What Will Be the Effect of the Proposed Federal Regulation Change?*

The proposed change to the Federal regulations will enable the EPA to authorize the Massachusetts and Vermont regulations governing the New England Universities' Laboratories XL project through September 30, 2006. In Vermont's case, the State regulations already have been authorized through September 30, 2003, and the EPA expects to extend this authorization through September 30, 2006 in a separate rulemaking. In Massachusetts' case, the State regulations (310 CMR 30.354) have been submitted to the EPA to be authorized as part of this current update of the Massachusetts RCRA program. The EPA proposes to grant this authorization through September 30, 2006, following public comment, as part of this rulemaking, once the currently proposed updated Massachusetts RCRA regulations have been adopted in final form.

The different effects of authorization regarding HSWA and non-HSWA rules was discussed above in part II.D. The proposed extension to the Federal XL project regulation would be promulgated pursuant to non-HSWA authority. Thus the extension will take effect in Massachusetts only when adopted by Massachusetts and will become Federally enforceable only when the State regulations containing the extension are authorized by the EPA.

## IV. Statutory and Executive Order Reviews

The EPA has examined the cumulative effects of the proposed State authorization decisions discussed above, and the two proposals to make changes to the Federal regulations, and reached the conclusions set out below.

### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely effect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of these proposed actions will be significantly less than $100 million and because these proposed actions will not meet any of the other criteria specified in the Executive Order, it has been determined that this proposed rule is not a "significant regulatory action" under the terms of the Executive Order and is therefore not subject to OMB review.

### *B. Paperwork Reduction Act*

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or final rule. These proposed actions will authorize or enable the authorization of state requirements for the purpose of RCRA 3006 and will impose no additional requirements beyond those imposed by State law. Therefore, they will require no information collection activities subject to the Paperwork Reduction Act. In addition, no Federal reporting obligations have been established under the ECOS project. Rather, the EPA will monitor this project through its regular oversight of the Massachusetts RCRA program. Finally, the New England Universities' Laboratories XL project applies to only three universities, and any reporting obligations for nine or fewer sources are not subject to the Paperwork Reduction Act. Therefore no information collection request (ICR) will be submitted to OMB for review under the Paperwork Reduction Act.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking under the Administrative Procedure Act or other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

These actions authorize or enable the authorization of state requirements for the purpose of RCRA 3006 and impose no additional requirements beyond those imposed by state law. In addition, the two proposed Federal regulatory changes will increase regulatory flexibility, which should have a positive economic effect on small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, the impact of concern is any significant adverse economic impact, since the primary purpose of any regulatory flexibility analysis would be to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Accordingly, the EPA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Thus a regulatory flexibility analysis is not required to be prepared under that Act.

### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. In addition, before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments about the regulatory requirements, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the section 202 and 205 requirements do not apply to this proposed action because the proposed rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local or tribal governments and the private sector already exist under the State program, and the proposed actions will not impose any additional obligations on regulated entities. In fact, the EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector, by reducing the need for companies to comply with Federal requirements in addition to State requirements. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not cover duties arising from voluntary participation in a Federal program, such as Massachusett's voluntary decision to operate the RCRA program.

Because this action will authorize pre-existing requirements under state law and will not impose any additional enforceable duties beyond those required by state law, it also will not uniquely affect small governments, as described in section 203 of UMRA. Thus the requirements of section 203 that the EPA develop a small government agency plan will not apply to this rule.

### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." "Policies that have Federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The proposed actions will not have Federalism implications, as defined in the Executive Order, because they merely authorize (or enable the authorization of) state requirements as part of the State RCRA hazardous waste program, without altering the relationship or the distribution of power and responsibilities established by RCRA.

### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires the EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and the Indian tribes."

The proposed actions will not have tribal implications, as defined by the Executive Order, because they will have no direct effect on Indian lands. As noted in part I.E. above, Massachusetts is not authorized to administer the RCRA program in Indian country. Rather, the EPA directly administers the Federal RCRA program in Indian country within Massachusetts.

### *G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866. In addition, it does not concern environmental health or safety risks that the EPA has reason to believe may have a disproportionate effect on children.

As discussed in parts II and III above, the EPA has determined that the regulatory flexibility to be allowed by the two proposed Federal regulatory changes will not create health and safety risks. In any event, the particular RCRA program elements affected do not pose any disproportionate risks to children. As discussed in part I above, the standard authorization portion of this rule simply authorizes Massachusetts regulations which are equivalent to previously established Federal RCRA requirements. Authorizing State regulations which equivalently protect the environment, in place of Federal regulations, does not create any disproportionate risks to children.

### *H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This proposed rule is not subject to Executive Order 13211 because that Executive Order applies only to rules that are "significant" under Executive Order 12866, and this rule is not a significant regulatory action under Executive Order 12866.

### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule does not involve technical standards covered by voluntary consensus standards. In addition, under RCRA section 3006(b), the EPA grants a State's application for authorization as long as the State meets the criteria required under RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that satisfies the requirements of RCRA. Therefore, the EPA did not consider the use of any voluntary consensus standards in developing this rule.

## List of Subjects

*40 CFR Part 262*

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

*40 CFR Part 271*

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** The proposed Federal regulation changes will be made under the authority of the Resource Conservation and Recovery Act (RCRA) sections 2002 and 3002, 42 U.S.C. 6912 and 6922. The proposed authorizations of the Massachusetts revisions will be made under the authority of RCRA sections 2002 and 3006, 42 U.S.C. 6912 and 6926.

Dated: October 7, 2003.

**Ira W. Leighton,**

*Acting Regional Administrator, EPA New England.*

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for part 262 continues to read as follows:

**Authority:** 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

### Subpart A—General

2. Section 262.10 is amended by adding paragraph (k) to read as follows:

**§ 262.10 Purpose, scope and applicability.**

* * * * *

(k) Generators in the Commonwealth of Massachusetts may comply with the State regulations regarding Class A recyclable materials in 310 C.M.R. 30.200, when authorized by the EPA under 40 CFR part 271, with respect to those recyclable materials and matters covered by the authorization, instead of complying with the hazardous waste accumulation requirements of § 262.34, the reporting requirements of § 262.41, the storage facility operator requirements of 40 CFR parts 264 and 265 and the permitting requirements of 40 CFR part 270. Such generators must also comply with any other applicable requirements, including any applicable authorized State regulations governing hazardous wastes not being recycled and any applicable Federal requirements which are being directly implemented by the EPA within Massachusetts pursuant to the Hazardous and Solid Waste Amendments of 1984.

### Subpart J—University Laboratories XL Project—Laboratory Environmental Management Standard

3. Section 262.108 is revised to read as follows:

**§ 262.108 When will this subpart expire?**

This subpart will expire on September 30, 2006.

## PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

EPA proposes to grant Final authorization under part 271 to the Commonwealth of Massachusetts for revisions to its hazardous waste program under the Resource Conservation and Recovery Act.

[FR Doc. 03–26321 Filed 10–20–03; 8:45 am]

BILLING CODE 6560–50–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 46 CFR Part 4

**[USCG–2001–8773]**

**RIN 1625–AA27 (formerly 2115–AG07)**

# Marine Casualties and Investigations; Chemical Testing Following Serious Marine Incidents

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** The Coast Guard is reopening the comment period on the notice of proposed rulemaking for "Marine Casualties and Investigation; Chemical Testing Following Serious Marine Incidents" published in the **Federal Register** on February 28, 2003. Hurricane Isabel forced the closure of all Federal Government offices in the Washington, DC, metropolitan area and the public meeting scheduled for September 19, 2003, was not held. As a result of the limited number of participants who registered to attend that meeting, the Coast Guard has decided not to reschedule the meeting and is instead reopening the comment period to allow submission of additional comments to the docket.

**DATES:** Comments must reach the docket on or before November 20, 2003.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG–2001–8773 to the Docket Management Facility at the U.S. Department of Transportation (DOT). To avoid duplication, please use only one of the following methods:

(1) Web Site: *http://dms.dot.gov.*

(2) Federal eRulemaking Portal: *http://www.regulations.gov.*

(3) Mail: Docket Management Facility, DOT, 400 Seventh Street SW., Washington, DC 20590–0001.

(4) Fax: (202) 493–2251.

(5) Delivery: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

**FOR FURTHER INFORMATION CONTACT:** For questions on the proposed rule, call Mr. Robert C. Schoening, Drug and Alcohol Program Manager, telephone (202) 267–0684; or e-mail him at *Rschoening@comdt.uscg.mil.* For questions on viewing material in the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, DOT, telephone (202) 366–0271.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the DOT to use the Docket Management Facility even though the Coast Guard has recently transferred to DHS. Please see the DOT's statement on the Privacy Act three paragraphs below.

*Submitting comments:* If you submit a comment, please include your name and address, identify the docket number for this rulemaking [USCG–2001–8773], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period in developing the final rule.

*Viewing comments and documents:* To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, or the like). You may review the DOT's statement on the Privacy Act in the **Federal Register** published on April 11, 2000 [65 FR 19477], or you may visit *http://dms.dot.gov.*

### Regulatory History

On February 28, 2003, the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** [68 FR 9622] proposing changes to the alcohol testing requirements for commercial vessels following a serious marine incident.

On August 28, 2003, the Coast Guard published a notice in the **Federal Register** [68 FR 50992], announcing a public meeting and reopening the NPRM comment period.

### Background Information

The 1998 Coast Guard Authorization Act requires the Coast Guard to establish procedures ensuring alcohol testing is conducted within two hours of a serious marine casualty. The Coast Guard proposes to establish requirements for testing within the statutory time limits, to expand the existing requirements for commercial vessels to have alcohol testing devices on board, and to authorize the use of a wider variety of testing devices.

For further information, the public should review the NPRM published in the **Federal Register** [68 FR 9622], and for questions concerning that document contact Mr. Robert C. Schoening who is listed under **FOR FURTHER INFORMATION CONTACT.**

### Additional Comment Period

In response to seven comments to the NPRM requesting a public meeting, the Coast Guard had scheduled a public meeting for September 19, 2003. As a result of Hurricane Isabel forcing the closure of all Federal Government offices in the Washington, DC, metropolitan area, the public meeting was not held. In its notice, the Coast Guard had asked those planning to speak at the meeting to register by September 17, 2003.

By the close of business on September 17, 2003, nine persons had registered to attend the public meeting, with seven requesting to speak. Of the seven persons who originally submitted comments requesting a meeting, only two had registered to attend and to make a presentation.

As a result of the limited number of participants who registered to attend the meeting, the Coast Guard has decided not to reschedule the meeting and is, instead, reopening the comment period for an additional 30 days from the date of this notice.

This additional 30-day comment period should be adequate time for those who had planned to attend the public meeting to submit further comments to the docket.

Dated: October 14, 2003.

**Joseph J. Angelo,**

*Director of Standards, Marine Safety, Security & Environmental Protection.*

[FR Doc. 03–26512 Filed 10–20–03; 8:45 am]

**BILLING CODE 4910–15–P**

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 03–2910; MB Docket No. 03–208, RM–10793]**

### Radio Broadcasting Services; Arthur and Hazelton, ND

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Audio Division requests comments on a petition filed by Vision Media Incorporated proposing the substitution of Channel 280C1 for Channel 280C3 at Arthur, North Dakota, and the modification of Station KVMI(FM)'s license accordingly. To accommodate the upgrade, we also proposed the substitution of Channel 277C for vacant Channel 280C at Hazelton, North Dakota. Channel 280C1 can be substituted at Arthur in compliance with the Commission's minimum distance separation requirements with a site restriction of 48.5 kilometers (30.1 miles) northwest at petitioner's requested site. The coordinates for Channel 280C1 at Arthur are 47–19–35 North Latitude and 97–46–15 West Longitude. Additionally, Channel 277C can be substituted at Hazelton with a site restriction of 51.6 kilometers (32.0 miles) west at petitioner's requested modified site. The coordinates for Channel 277C at Hazelton are 46–22–06 North Latitude and 100–55–49 West Longitude. Since both Arthur and Hazelton are located within 320 kilometers (200 miles) of the U.S-Canadian border, concurrence of the Canadian government has been requested. In accordance with Section 1.420(g)(3) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 280C1 at Arthur, North Dakota.

**DATES:** Comments must be filed on or before November 24, 2003, reply comments on or before December 9, 2003.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Michael W. Richards, Esq., Fletcher, Heald & Hildreth, P.L.C., 1700 North 17th Street, 11th Floor, Arlington, Virginia 22209.

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–208, adopted October 1, 2003, and released October 3, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex, International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by removing Channel 280A [1] and adding Channel 280C1 at Arthur; and by removing Channel 280C and adding Channel 277C at Hazelton.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 03–26499 Filed 10–20–03; 8:45 am]

BILLING CODE 6712–01–P

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[1] The Audio Division granted a license application (BLH–20030303ACH) for Station KVMI on May 21, 2003 to specify operation on Channel 280C3 in lieu of Channel 280A.

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 660

[I.D. 101503D]

## Western Pacific Fishery Management Council; Public Hearings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public hearings.

**SUMMARY:** The Western Pacific Fishery Management Council (Council) will convene public hearings on the Draft Environmental Impact Statement (DEIS) for the Bottomfish and Groundfish Fisheries of the Western Pacific Region (Bottomfish FMP). The DEIS presents an overall picture of the environmental effects of the existing fishery activities as conducted under the Bottomfish FMP. In addition, the DEIS analyzes the biological, economic, and social impacts that would result from alternative regulatory regimes conducted under the FMP.

**DATES:** The public hearings will be conducted between October 21, 2003 and November 23, 2003 (see **SUPPLEMENTARY INFORMATION** for specific times, dates, and locations).

**ADDRESSES:** Written comments on the DEIS should be sent to Dr. Sam Pooley, Acting Regional Administrator, NMFS, Pacific Islands Regional Office, 1601 Kapiolani Blvd., Ste. 1110, Honolulu, HI 96814–4700 or via fax to (808)973–2941.

**FOR FURTHER INFORMATION CONTACT:** Kitty M. Simonds, Executive Director, WPFMC, at (808) 522–8220.

**SUPPLEMENTARY INFORMATION:**

### Dates, Times, and Locations of Public Hearings

1. Kauai, HI—Monday, October 27, 2003, from 7–9 p.m. at Chiefess Kamakahelei Middle School, 4431 Nuhou St., Lihue, Kauai 96766;

2. Maui, HI—Tuesday, October 28, 2003, from 7–9 p.m. at the Maui Beach Hotel, 170 Kaahumanu Ave., Kahului, Maui 96732;

3. Hilo, HI—Wednesday, October 29, 2003, from 7–9 p.m. at the University of Hawaii-Hilo Campus Center, 200 W. Kawaili St., Hilo, HI 96720.

4. Hawaii, HI—Thursday, October 30, 2003, from 7–9 p.m. at King Kamehameha Hotel, 75–5660 Plalani Rd., Kona, HI 96740;

5. American Samoa—Thursday, November 6, 2003, from 7–9 p.m. at the Department of Marine Resources and Wildlife Conference Room, Pago Pago, American Samoa 96799;

6. Oahu, HI—Thursday, November 13, 2003, from 7–9 p.m. at the Fisherman's Wharf, 1009 Ala Moana Blvd., Honolulu, HI 96814;

7. Saipan, CNMI—Wednesday, November 19, 2003 from 7–9 p.m. at the Pedro P. Tenorio Multipurpose Building, Susupe, CNMI 96950;

8. Agana (Hagatna), Guam—November 20, 2003 from 7–9 p.m. at the Guam Fishermen's Cooperative, Perez Marina, Hagatna, Guam 96932.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, Executive Director, WPFMC,(808) 522–8220 or (808)522–8226 (fax), at least 5 days prior to the meeting date.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: October 16, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03–26550 Filed 10–20–03; 8:45 am]

BILLING CODE 3510–22–S

# Notices

**Federal Register**

Vol. 68, No. 203

Tuesday, October 21, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting

**AGENCY:** Research, Education, and Economics, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, the United States Department of Agriculture announces a meeting of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

**DATES:** The National Agricultural Research, Extension, Education, and Economics Advisory Board will meet October 27–29, 2003.

The public may file written comments before or up to two weeks after the meeting with the contact person.

**ADDRESSES:** The meeting will take place at the Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001. Written comments from the public may be sent to the Contact Person identified in this notice at: The National Agricultural Research, Extension, Education, and Economics Advisory Board; Research, Education, and Economics Advisory Board Office, Room 344–A, Jamie L. Whitten Building, United States Department of Agriculture, STOP 2255, 1400 Independence Avenue, SW., Washington, DC 20250–2255.

**FOR FURTHER INFORMATION CONTACT:** Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board; telephone: (202) 720–3684; fax: (202) 720–6199; or e-mail: *dhanfman@csrees.usda.gov*.

**SUPPLEMENTARY INFORMATION:** On Monday, October 27, 2003, an orientation session for new Board members will be held from 8:30 a.m. to 10:30 a.m., and at 10:45 a.m. the full Advisory Board will convene for a brief session ending at noon. At noon, Board members will depart for field tours at the Beltsville Human Nutrition Research Center (Agricultural Research Service) and the Expanded Food and Nutrition Education Program (Cooperative Service Research, Education, and Extension Service). Tours, which will be open to the public, are scheduled from 12:45 p.m. to approximately 5 p.m. On Tuesday, October 28, 2003, an Advisory Board meeting and focus session, entitled "Food and Nutrition in Obesity Prevention: Implications for Research and Education," will begin at 8 a.m. and end at 5:30 p.m. An evening reception and program will be held from 6 p.m. to 7:30 p.m. On Wednesday, October 29, 2003, the focus session will reconvene at 8:30 a.m. and end at noon.

Done at Washington, DC this 10th day of October 2003.

**Joseph J. Jen,**

*Under Secretary, Research, Education, and Economics.*

[FR Doc. 03–26449 Filed 10–20–03; 8:45 am]

**BILLING CODE 3410–22–P**

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### Notice of the Research, Education, and Economics Task Force Meeting

**AGENCY:** Research, Education, and Economics, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a meeting of the Research, Education, and Economics Task Force.

**DATES:** The Research, Education, and Economics Task Force will meet on October 27, 2003.

The public may file written comments before or up to two weeks after the meeting with the contact person.

**ADDRESSES:** On October 27, the meeting will take place at the Holiday Inn—Washington on the Hill, 415 New Jersey Ave., NW., Washington, DC 20001.

Written comments from the public may be sent to the Contact Person identified in this notice at: The Research, Education, and Economics Task Force; Office of the Under Secretary, Room 214–W, Jamie L. Whitten Building, United States Department of Agriculture, 1400 Independence Ave., SW., Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Boots, Executive Director, Research, Education, and Economics Task Force; telephone: (202) 690–0826; fax: (202) 690–2842; or email: *katie.boots@usda.gov*.

**SUPPLEMENTARY INFORMATION:** On Monday, October 27, 2003, the Research, Education, and Economics Task Force will hold a general meeting at The Holiday Inn—Washington on the Hill. The Task Force will continue its evaluation of the merits of establishing one or more National Institutes focused on disciplines important to the progress of food and Agricultural science. In the morning there will be welcoming remarks made by the Chairman of the Task Force, Dr. William Danforth, Chancellor Emeritus, Vice Chairman, Board of Trustees, Washington University in St. Louis, as well as the USDA Under Secretary for Research, Education, and Economics (REE), Dr. Joseph J. Jen. Welcoming remarks will be followed by a discussion about plans for subsequent Task Force meetings; an account of consultations made since the July 31 Task Force meeting; examination of the scope of the REE Task Force Report; characteristics of what an NIH—like institute for agriculture would include; structuring support for such an institute; and preparation for the next Task Force meeting. The Task Force Meeting will adjourn on Monday, October 27 around 4 p.m. This meeting is open to the public. Due to a delay, this notice could not be published at least 15 days prior to the meeting date. The meeting will be held as scheduled because of the significant sacrifice rescheduling would require of Task Force members who have adjusted their schedules to accommodate the proposed meeting date. Written comments for the public record will be welcomed before and up to two weeks following the Task Force meeting (by close of business Monday, November 10, 2003).

All statements will become part of the official record of the Research, Education, and Economics Task Force and will be kept on file for public review in the Office of the Under

Secretary for Research, Education, and Economics.

Done at Washington, DC this 15th day of October 2003.

**Joseph J. Jen,**

*Under Secretary, Research, Education, and Economics.*

[FR Doc. 03–26523 Filed 10–20–03; 8:45 am]

**BILLING CODE 3401–03–P**

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## DEPARTMENT OF AGRICULTURE

### Agricultural Research Service

### Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

**AGENCY:** Agricultural Research Service, USDA.

**ACTION:** Notice of availability and intent.

**SUMMARY:** Notice is hereby given that the green cotyledon spring pea variety designated “Stirling” is available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to the Washington State University Research Foundation of Pullman, Washington, an exclusive license to this variety.

**DATES:** Comments must be received within ninety (90) calendar days of the date of publication of this Notice in the **Federal Register**.

**ADDRESSES:** Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1174, Beltsville, Maryland 20705–5131.

**FOR FURTHER INFORMATION CONTACT:** June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

**SUPPLEMENTARY INFORMATION:** The Federal Government's intellectual property rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as the Washington State University Research Foundation of Pullman, Washington, has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

**Michael D. Ruff,**

*Assistant Administrator.*

[FR Doc. 03–26522 Filed 10–20–03; 8:45 am]

**BILLING CODE 3410–03–P**

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## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### Notice of Request for Approval of a New Information Collection—Rate Quotation for Transportation Services

**AGENCY:** Commodity Credit Corporation (CCC), USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (PRA), the Commodity Credit Corporation is seeking approval from the Office of Management and Budget (OMB) to obtain freight rates to haul agricultural products for the Department of Agriculture.

This information collection will allow CCC to establish the lowest cost of movement, via Motor Carriers and Intermodal Marketing Companies (IMCs), to meet the transportation needs of CCC, for the transportation of commodities.

**DATES:** Comments on this notice must be received on or before December 22, 2003 to be assured consideration.

**ADDRESSES:** Comments concerning this notice should be addressed to Donna Ryles, Chief, Planning and Analysis Division, Kansas City Commodity Office, 6501 Beacon Drive, Kansas City, Missouri 64133–4676; telephone (816) 926–6509: e-mail: *dgryles@kcc.fsa.usda.gov.* Comments may be faxed to (816) 926–1648.

**SUPPLEMENTARY INFORMATION:**

*Title:* Rate Quotation for Transportation Services.

*OMB Control Number:* 0560–NEW.

*Type of Request:* New information collection.

*Abstract:* CCC, through the Kansas City Commodity Office (KCCO), solicits bids from approved Motor Carriers and Intermodal Marketing Companies for the purpose of providing transportation of agricultural commodities. Motor Carriers provide over the road trucking, and Intermodal Marketing Companies provide rail trailer-on-flatcar/container-on-flatcar (TOFC/COFC) service that CCC hires to meet program transportation needs. Motor Carriers and IMCs that offer rate quotations for transportation services to KCCO Export Operations Division (EOD) are required to complete and submit the KC–5, Rate Quotation for Transportation Services form. EOD is collecting information to establish the lowest cost of movement via Motor Carriers and IMCs to meet transportation needs of U.S. Department of Agriculture. EOD must ensure that Motor Carriers and IMCs providing the transportation service have both the willingness and the capacity to meet these needs.

*Estimate of Burden:* Public reporting burden for collecting information under this notice is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Respondents:* Motor Carriers and Intermodal Marketing Companies.

*Respondents:* 132.

*Estimated Number of Annual Responses per Respondent:* 41.

*Estimated Total Annual Burden on Respondents:* 1,353 hours.

*Proposed topics for comment include:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; or (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments regarding this information collection requirement may be directed to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Donna Ryles, Chief, Planning and Analysis Division, Kansas City Commodity Office, 6501 Beacon Drive, Kansas City, Missouri 64133–4676, telephone (816) 926–6509, fax (816) 926–1648. All comments will become a matter of public record.

Signed in Washington, DC, on October 8, 2003.

**Verle E. Lanier,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 03–26448 Filed 10–20–03; 8:45 am]

**BILLING CODE 3410–05–P**

## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

### Trade Adjustment Assistance for Farmers

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted a petition filed by the Georgia Shrimp Association, Darien, Georgia, for trade adjustment assistance. The group represents Georgia shrimpers of wild, ocean caught shrimp. The Administrator will determine within 40 days whether or not imports of shrimp contributed importantly to a decline in domestic producer prices of 20 percent or more during the marketing period beginning January 2002 and ending December 2002. If the determination is positive, all producers represented by the group will be eligible to apply to the Farm Service Agency for technical assistance at no cost and adjustment assistance payments.

**FOR FURTHER INFORMATION CONTACT:** Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, email: *trade.adjustment@fas.usda.gov*.

Dated: October 8, 2003.

**A. Ellen Terpstra,**

*Administrator, Foreign Agricultural Service.*

[FR Doc. 03–26521 Filed 10–20–03; 8:45 am]

BILLING CODE 3410–10–M

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## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

### Trade Adjustment Assistance for Farmers

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Notice

The Administrator, Foreign Agricultural Service (FAS), today accepted a petition filed by the Texas Shrimp Association, Arkansas Pass, Texas, for trade adjustment assistance. The group represents Texas shrimpers of gulf caught shrimp. The Administrator will determine within 40 days whether or not imports of shrimp contributed importantly to a decline in domestic producer prices of 20 percent or more during the marketing period beginning January 2002 and ending December 2002. If the determination is positive, all producers represented by the group will be eligible to apply to the Farm Service Agency for technical assistance at no cost and adjustment assistance payments.

**FOR FURTHER INFORMATION CONTACT:** Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, email: *trade.adjustment@fas.usda.gov*.

Dated: October 8, 2003.

**A. Ellen Terpstra,**

*Administrator, Foreign Agricultural Service.*

[FR Doc. 03–26520 Filed 10–20–03; 8:45 am]

BILLING CODE 3410–10–M

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## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Rhode Island Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4:30 pm on October 23, 2003, at the Tillinghast, Licht, Perkins, Smith & Cohen, LLP, 10 Weybosset Street—10th Floor, Providence, RI 02903. The purpose of the meeting is to prepare for the upcoming project, Present and Future of Racial Profiling in Rhode Island: Reviewing the Implementation of the Rhode Island Traffic Stops Act of 2000 and its Ramifications. The Committee will review and vote upon staff's draft project proposal and assign subcommittee members for various project tasks.

Persons desiring additional information, or planning a presentation to the Committee, should contact Marc Pentino of the Eastern Regional Office, (202) 376–7533 (TDD (202) 376–8116). Hearing-impaired persons who will attend the meeting and require there services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 1, 2003.

**Ivy L. Davis,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 03–26506 Filed 10–20–03; 8:45 am]

BILLING CODE 6335–01–P

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## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Dakota Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4 p.m. on Wednesday, November 5, 2003, at the Holiday Inn City Centre, 100 West 8th Street, Sioux Falls, South Dakota 57104. The purpose of the meeting is to discuss and formally vote on the proposed regional project "Confronting Discrimination in Reservation Border Town Communities." There will also be a briefing by experts on the status of research in the Criminal Justice System and Native Americans, as well as the impacts of "No Child Left Behind" in South Dakota.

Persons desiring additional information, or planning a presentation to the Committee, should contact, John Dulles, Director of the Rocky Mountain Regional Office, (303) 866–1040 (TDD (303) 866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 10, 2003.

**Ivy L. Davis,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 03–26505 Filed 10–20–03; 8:45 am]

BILLING CODE 6335–01–P

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## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Wyoming Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Wyoming Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 1 p.m. on Saturday, October 25, 2003, at the Best Western Hitching Post Inn, 1700 W. Lincolnway, Cheyenne, Wyoming 82001. The purpose of this meeting is to conduct a planning of future activities including the consideration of regional project. The meeting will also provide an update on progress of current project on the dropout rates of minority students in Wyoming Public Schools. The Committee will also hold briefing on Civil Rights in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact, John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington DC, October 14, 2003.

**Ivy L. Davis,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 03–26507 Filed 10–20–03; 8:45 am]

**BILLING CODE 6335–01–P**

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## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the emergency provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Institute of Standards and Technology (NIST).

*Title:* Advanced Technology Program (ATP).

*Form Number(s):* NIST–1262 and NIST–1263.

*OMB Approval Number:* 0693–0009.

*Type of Review:* Emergency submission.

*Burden Hours:* 27,125.

*Number of Respondents:* 1,425.

*Average Hours Per Response:* 25 hours for proposals and 5 hours for post award project surveys.

*Needs and Uses:* The ATP is a competitive cost sharing program designed to assist United States businesses pursue high-risk, enabling technologies with significant commercial/economic potential. The ATP provides multi-year funding through the use of cooperative agreements to single companies and to industry-led joint ventures. In order to participate, proposals must be submitted addressing the ATP selection criteria. The information is used to perform the requisite technical and business reviews of the proposals to determine if an award should be granted.

*Affected Public:* Business or other for-profit organizations, non-profit organizations, and individuals or households.

*Frequency:* Annually.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* Jacqueline Zeiher, (202) 395–4638.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent by November 20, 2003 to Jacqueline Zeiher, OMB Desk Officer, *Jzeiher@omb.eop.gov,* Fax Number (202) 395–5167.

Dated: October 15, 2003

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 03–26527 Filed 10–20–03; 8:45 am]

**BILLING CODE 3510–13–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

### Antidumping Proceedings--Treatment of Section 201 Duties and Countervailing Duties; Extension of Time for Rebuttal Comments

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of extension of time for rebuttal comments.

**SUMMARY:** On September 9, 2003, the Department of Commerce published a notice requesting comments on the appropriateness of deducting section 201 duties and countervailing duties from gross unit price in order to determine the applicable export price or constructed export price used in antidumping duty calculations. Comments were received by October 9, 2003. The Department is now extending the time for rebuttal comments to November 7, 2003.

**DATE:** To be assured consideration, rebuttal comments must be received no later than November 7, 2003.

**ADDRESSES:** Submit comments to James J. Jochum, Assistant Secretary for Import Administration, U.S. Department of Commerce, Central Records Unit, Room 1870, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230; Attention: Section 201 Duties.

**FOR FURTHER INFORMATION CONTACT:** Becky Erkul, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1277.

#### Background

On September 9, 2003, the Department of Commerce published a notice requesting comments on the appropriateness of deducting section 201 duties and countervailing duties from gross unit price in order to determine the applicable export price or constructed export price used in antidumping duty calculations. See, *Antidumping Proceedings: Treatment of Section 201 Duties and Countervailing Duties,* 68 FR 53104 (September 9, 2003). Comments were received by October 9, 2003. Due to the large number of comments received, the Department is extending the time for rebuttal comments to November 7, 2003.

#### Comments--Deadline, Format, and Number of Copies

Parties wishing to submit rebuttal comments should file a signed original and six copies of each set of rebuttal comments. All comments will be available for public inspection and photocopying in the Import Administration's Central Records Unit, Room B-099, between the hours of 8:30 a.m. and 5 p.m. on business days. Each person submitting a rebuttal comment should include the commenter's name and address, and give reasons for any recommendations. In order to ensure timely and complete distribution of comments, the Department recommends the submission of rebuttal comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted on a DOS formatted 3.5" diskette, Iomega Zip disk, or Compact Disc (CD-R or CD-RW).

Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Internet at the IA Web site at the following address: http://ia.ita.doc.gov/.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, email address webmaster__support@ita.doc.gov.

#### Hearing

After reviewing all comments and rebuttal comments, the Department will determine if a public hearing is warranted, and, if so, will announce a place and time for that hearing.

Dated: October 14, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–26536 Filed 10–20–03; 8:45 am]

**BILLING CODE 3510–DS–S**

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A-427-098]**

## Anhydrous Sodium Metasilicate from France: Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Results of Antidumping Duty Administrative Review.

**SUMMARY:** On July 28, 2003, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on anhydrous sodium metasilicate from France. The period of review is January 1, 2002, through December 31, 2002. This review covers imports of anhydrous sodium metasilicate from one producer/exporter, Rhodia HPCII. We provided interested parties with an opportunity to comment on the preliminary results of this review, but we received no comments.

Furthermore, the Department made no changes in its analysis following the publication of the preliminary results. Therefore, the final results of review are unchanged from those presented in the preliminary result of review.

**EFFECTIVE DATE:** October 21, 2003.

**FOR FURTHER INFORMATION CONTACT:** Susan Lehman or Richard Rimlinger, AD/CVD Enforcement Group I, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: 202–482–0180 or 202–482–4477, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 28, 2003, the Department of Commerce (the Department) published in the Federal Register the preliminary results of its administrative review of the antidumping duty order on anhydrous sodium metasilicate (ASM) from France. See *Anhydrous Sodium Metasilicate from France: Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 44283 (*Preliminary Results*). We invited parties to comment on the *Preliminary Results*, but we received no comments. We have now completed the administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

### Scope of Order

Imports covered by the review are shipments of ASM, a crystallized silicate which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. This merchandise is classified under *Harmonized Tariff Schedules of the United States* (HTSUS) item numbers 2839.11.00 and 2839.19.00. The HTSUS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

### Period of Review

The period of review is from January 1, 2002, through December 31, 2002.

### Facts Available

As discussed in detail in the *Preliminary Results*, we have determined to use facts otherwise available for Rhodia HPCII (Rhodia), which did not respond timely to our requests for information.

### Final Results of the Review

As a result of our determination that it is appropriate to apply adverse facts available to Rhodia, we determine that the weighted-average dumping margin of 60.00 percent exists for Rhodia for the period of January 1, 2002, through December 31, 2002. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of these final results of review. We will direct the U.S. Bureau of Customs and Border Protection (Customs) to assess the assessment rate against the entered customs values for the subject merchandise on each entry during the review period.

### Cash-Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for the consumption on or after publication, as provided by section 751(a)(1) of the Act: (1) the cash-deposit rate for Rhodia will be 60.00 percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash-deposit rate shall be 60.00 percent, the "all others" rate established in the LTFV investigation (45 FR 77498, November 24, 1980).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

### Notification of Interested Parties

This notice also serves as the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

Furthermore, pursuant to 19 CFR 351.402(f)(2), this notice serves as a final reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred an the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 771(i)(1) of the Act.

Dated: October 14, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–26535 Filed 10–20–03; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-549-813]

### Canned Pineapple Fruit From Thailand: Notice of Partial Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce (the Department) conducting an administrative review of the antidumping duty order on canned pineapple fruit (CPF) from Thailand for the period July 1, 2002, through June 30, 2003. We are now rescinding this review with respect to four companies for which the requests for an administrative review have been withdrawn.

**EFFECTIVE DATE:** October 21, 2003.

**FOR FURTHER INFORMATION CONTACT:** FOR FURTHER INFORMATION CONTACT: Marin Weaver or Charles Riggle,at (202) 482–2336 or (202) 482–0650, respectively; AD/CVD Enforcement, Office 5, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

#### Background

On July 2, 2003, the Department published a notice of opportunity to request the eighth administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 39511 (July 2, 2003). On July 30, 2003, in accordance with 19 CFR 351.213(b), Maui Pineapple Company and the International Longshoremen's and Warehousemen's Union (the petitioners) requested a review of eight producers/exporters of canned pineapple fruit. Also, between the dates of July 28, 2003, and July 31, 2003, four Thai producers requested a review on their own behalf, three of which also requested revocation. Taking into consideration the overlap in the aforementioned requests, the total number of companies currently under review is eight.

On August 22, 2003, the Department published a notice of initiation of this antidumping duty administrative review, covering the period July 1, 2002, through June 30, 2003, *see Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 50750. The initiation covered eight companies. On August 27, 2003, the petitioner withdrew its review request for four companies. None of these four companies had requested a review on its own behalf.

#### Partial Rescission of Antidumping Duty Administrative Review

Pursuant to 19 CFR 351.213 (d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation. Petitioners withdrew their requests for review within the 90 day time limit. Accordingly, the four companies for which the review will be rescinded are as follows: Thai Pineapple Canning Industry Corporation, The Prachuab Fruit Canning Company, Siam Fruit Canning (1988) Co., Ltd., and Malee Sampran Public Company Ltd.

Pursuant to Section 315.213(d)(1) of the Department's regulations, we are rescinding the administrative review with respect to each of the above-listed companies. The Department will issue appropriate assessment instructions to the U.S. Bureau of Customs and Border Protection within 15 days of publication of this notice.This notice is issued and published in accordance with section 751 of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: October 15, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–26532 Filed 10–20–03; 8:45 am]

BILLING CODE 3510–DS–S

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–570–849]

### Suspension Agreement on Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China; Termination of Suspension Agreement and Notice of Antidumping Duty Order

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Termination of the suspension agreement on certain cut-to-length carbon steel plate from the People's Republic of China ("China") and notice of antidumping duty order.

**SUMMARY:** On August 29, 2003, the Embassy of the People's Republic of China ("the Embassy") submitted a letter informally to the Department of Commerce ("the Department") announcing its intention to withdraw from the suspension agreement on Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China ("the Agreement"). On September 4, 2003, the letter was put on the public and official record in the Central Records Unit ("CRU") of the Department and interested parties were notified (*see Memo to the File: Interested Parties Notified of the Withdrawal by the Government of the People's Republic of China ("GOC") from the Suspension Agreement ("the Agreement") on Certain Carbon Cut-to-length Plate ("CTL plate") from China*, (December 10, 2003)). In accordance with Section XII of the Agreement, termination of the Agreement shall be effective 60 days after notice of termination of the Agreement is given to the Department. In 1997, the underlying investigation was continued following the signature of the Agreement, pursuant to section 734(g) of the Tariff Act of 1930, as amended ("the Act"), resulting in an affirmative determination of dumping and of material injury. Therefore, the Department is terminating the Agreement and issuing an antidumping duty order, effective November 3, 2003 (60 days from the official filing of the request for termination), and will direct suspension of liquidation to also begin on that date.

**EFFECTIVE DATE:** November 3, 2003.

**FOR FURTHER INFORMATION CONTACT:** Jean Kemp or Rachel Kreissl, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4037 or (202) 482–0409, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On October 24, 1997, the Department signed an agreement with the Government of the People's Republic of China ("GOC") suspending the antidumping investigation on CTL plate from China (*see Suspension of Antidumping Duty Investigation: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 62 FR 61773 (November 19, 1997)). In accordance with section 734(g) of the Act, on November 20, 1997, the Department published its final determination of sales at less than fair value in this case (*see Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 62 FR 61964 (November 20, 1997)), followed by an amended final on January 12, 1998 (*see Amended Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 63 FR 1821 (January 12, 1998)). On December 17, 1997, the International Trade Commission ("ITC") determined that an industry in the United States was materially injured by reason of imports of CTL plate from China that were being sold at less than fair value (*see Certain Carbon Steel Plate from China, Russia, South Africa, and Ukraine*, 62 FR 66128, Investigation No. 731–TA–753–756 (Final) Publication 3076; December 17, 1997)).

Although notice of the opportunity to request an administrative review was issued in November 1998, November 1999, October 2000, October 2001, and October 2002, no review was ever requested by either petitioners or respondents (*see Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review*, 63 FR 63287 (November 12, 1998)); *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review*, 64 FR 62167 (November 16, 1999)); *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review*, 65 FR 63057 (October 20, 2000); *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review*, 66 FR 49923 (October 1, 2001); and *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review*, 67 FR 61849 (October 2, 2002)).

On September 3, 2002, the Department initiated (*see Notice of Initiation of Five-Year ("Sunset") Reviews*, 67 FR 56268 (September 3, 2002)) and the ITC instituted (*see Institution of Five-year Reviews Concerning the Suspended Investigations on Cut-to-length (CTL) Carbon Steel Plate from China, Russia, South Africa, and Ukraine*, 67 FR 56311 (September 3, 2002)) a sunset review of the agreement, pursuant to section 751(c) of the Act. On December 9, 2002, the ITC determined to conduct full five-year reviews pursuant to section 751(c)(5) of the Act (*see Notice of Commission Determinations to Conduct Full Five-year Reviews Concerning the Antidumping Duty Orders on Cut-to-length Carbon Steel Plate from China, Russia, South Africa, and Ukraine*, 67 FR 77803 (December 19, 2002)). As a result of its review, on January 8, 2003, the Department determined that termination of the suspended investigation underlying the agreement would be likely to lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margin likely to prevail were the suspended investigation underlying the agreement terminated (*see Cut-to-Length Carbon Steel Plate From the People's Republic of China, the Russian Federation, and South Africa; Final Results of Expedited Sunset Review of Suspended Antidumping Duty Investigations*, 68 FR 1038 (January 8, 2003)).

On August 18, 2003, the ITC determined that termination of the suspended investigation on CTL plate from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Cut-to-Length Carbon Steel Plate From China, Russia, South Africa, and Ukraine*, 68 FR 52614; ITC Publication No. 3626 (September 4, 2003)). Pursuant to the ITC's affirmative determination in the five-year sunset review, the Department issued a notice of continuation on September 12, 2003, for the suspended investigation underlying the Agreement on CTL plate from China (*see Continuation of Suspended Antidumping Duty Investigations: Cut-to-length Carbon Steel Plate from the People's Republic of China, the Russian Federation, and Ukraine*).

On August 29, 2003, referencing Article XII of the Agreement, the Embassy of China in Washington, DC, submitted a facsimile request informing the Department that "the Chinese side has decided to withdraw from the Suspension Agreement on Cut-to-length Carbon Steel Plate, which will expire on October 30, 2003" (*see Memo to the File: Interested Parties Notified of the Withdrawal by the Government of the People's Republic of China ("GOC") from the Suspension Agreement ("the Agreement") on Certain Carbon Cut-to-length Plate ("CTL plate") from China*, (December 10, 2003)). On September 4, 2003, the letter was put on the public and official record in the Central Records Unit ("CRU") of the Department and interested parties were notified (*see Memo to the File: Interested Parties Notified of the Withdrawal by the Government of the People's Republic of China ("GOC") from the Suspension Agreement ("the Agreement") on Certain Carbon Cut-to-length Plate ("CTL plate") from China*, (December 10, 2003)).

## Scope of Agreement

The merchandise covered by this agreement is Certain Cut-to-length Carbon Steel Plate from the People's Republic of China. Included in this description is hot-rolled iron and non-alloy steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this Agreement are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this Agreement is dispositive. Specifically excluded from subject merchandise within the scope of this Agreement is grade X–70 steel plate.

## Termination of Suspended Investigation and Issuance of Antidumping Duty Order

Article XII of the Agreement states, in part:

"The Government of the People's Republic of China may terminate this Agreement at any time upon notice to the Department. Termination shall be effective 60 days after such notice is given to the Department. Upon termination at the request of MOFTEC, the provisions of Section 734(i) of the Act shall apply."

As noted above, the underlying investigation in this proceeding was continued pursuant to section 734(g) of the Act following the acceptance of the Agreement. As a result of the continued investigation, the Department made a final determination of dumping, and the ITC found material injury. Section 734(i)(1)(A) of the Act stipulates that the Department shall:

> Suspend liquidation under section 733(d)(2) of unliquidated entries of the merchandise made on the later of—
>
> (i) the date which is 90 days before the date of publication of the notice of suspension of liquidation, or
>
> (ii) the date on which the merchandise the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets the requirements of subsection (b) and (d) or (c) and (d), was first entered, or withdrawn from warehouse, for consumption. . . .

Furthermore, section 734(i)(1)(C) stipulates that the Department shall:

> If the investigation was completed under subsection (g), issue an antidumping duty order under section 736(a) effective with respect to entries of merchandise liquidation of which was suspended.

Finally, section 734(i)(1)(E) stipulates that the Department shall:

> Notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its actions under this paragraph.

The GOC's request for termination of the suspension agreement is effective November 3, 2003, which is the date the agreement will no longer meet the requirements of section 734(d) of the Act. Because the GOC is withdrawing its participation from the Agreement, the Department finds that suspension of the underlying investigation will no longer be in the public interest as of that date (*see* section 734(d)(1)). Therefore, the Department will direct the U.S. Bureau of Customs and Border Protection ("BCBP") to suspend liquidation of all entries of CTL plate from China effective November 3, 2003. Accordingly, pursuant to section 734(i)(1)(C) of the Act, the Department hereby issues an antidumping duty order effective November 3, 2003, which is 60 days from the official filing date of the termination request of the GOC.

## Antidumping Duty Order

In accordance with section 736(a)(1) of the Act, the Department will direct BCBP to assess, beginning on November 3, 2003, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise for all entries of CTL plate from China. These antidumping duties will be assessed on all unliquidated entries of CTL plate from China entered, or withdrawn from warehouse, for consumption on or after November 3, 2003.

We will instruct BCBP to require a cash deposit for each entry equal to the antidumping duty margins found in our amended final determination of January 12, 1998, as listed below. These suspension-of-liquidation instructions will remain in effect until further notice. The "China-Wide Rate" applies to all producers and exporters of subject CTL plate not specifically listed. The final weighted-average dumping margins are as follows:

| Manufacturer/Exporter | Weighted-average margin (percent) |
|---|---|
| Anshan (AISCO/Anshan International/Sincerely Asia Ltd) | 30.68 |
| Baoshan (Bao/Baoshan International Trade Corp/ Bao Steel Metals Trading Corp) | 30.51 |
| Liaoning | 17.33 |
| Shanghai Pudong | 38.16 |
| WISCO (Wuhan/International Economic and Trading Corp/Cheerwu Trader Ltd) | 128.59 |
| China-wide Rate | 128.59 |

This notice constitutes the antidumping duty order with respect to CTL plate from China. Interested parties may contact the Department's Central Records Unit, room B–099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This notice is published in accordance with sections 734(i) and 777(i) of the Act. This order is published in accordance with section 736(a) of the Act.

Dated: October 14, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–26530 Filed 10–20–03; 8:45 am]

BILLING CODE 3510–DS–P

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**(A-201-802)**

## Gray Portland Cement and Clinker From Mexico; Notice of Amended Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Amended Final Results of Antidumping Duty Administrative Review.

**SUMMARY:** On September 16, 2003, the Department of Commerce published the final results of administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers one manufacturer/exporter, CEMEX, S.A. de C.V., and its affiliate, GCC Cemento, S.A. de C.V. The period of review is August 1, 2001, through July 31, 2002.

As a result of our analysis of CEMEX's, GCCC's and the petitioner's comments, we are amending the final results of antidumping administrative review.

**EFFECTIVE DATE:** October 21, 2003.

**FOR FURTHER INFORMATION CONTACT:** Hermes Pinilla or Brian Ellman, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3477 or (202) 482–4852, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On September 16, 2003, the Department of Commerce (the Department) published in the **Federal Register** the final results of the administrative review of the antidumping duty order on gray portland cement and clinker from Mexico (68 FR 54203) (*Final Results*).

On September 17, 2003, CEMEX, GCCC, and the petitioner filed a timely allegation that the Department made ministerial errors in the *Final Results*. Specifically, CEMEX and GCCC alleged that (1) the Department's decision to apply adverse facts available to GCCC's further-manufactured cement sales is a ministerial error, (2) the Department's conclusion that GCCC's U.S. affiliate, Rio Grande Materials, Inc., was the only U.S. subsidiary that further-manufactured cement is a ministerial error, (3) the Department made a ministerial error with respect to the calculation of the per-unit cash-deposit rate, and (4) the Department made an ministerial error when it determined the duty-assessment rate by combining the antidumping duties due for sales by CEMEX and GCCC into one weighted-average rate. The petitioner alleged that the Department inadvertently subtracted GCCC's terminal-specific general and administrative expenses from the calculation of U.S. indirect selling expenses. On September 24, 2003, the petitioner and GCCC submitted rebuttal comments in reply to the ministerial-error allegations.

We have reviewed the calculations in the *Final Results* and find that there are two errors that constitute ministerial errors within the meaning of 19 CFR 351.224(f). We found several of CEMEX's and GCCC's allegations to involve methodological issues rather than ministerial errors and therefore we have not adjusted CEMEX's/GCCC's final antidumping duty margin based on those allegations. For a detailed analysis of the ministerial-error allegations and the Department's position on each, see Memorandum to Jeffrey May, Deputy Assistant Secretary for Import Administration, from Laurie Parkhill, Office Director, Group 1, Office 3, dated October 14, 2003.

Pursuant to section 751(h) of the Tariff Act of 1930, as amended (the Act), we have amended the *Final Results* by correcting the following errors: (1) the calculation of the per-unit cash-deposit amount and (2) the inclusion of GCCC's terminal-specific indirect selling expense in the calculation of U.S. indirect selling expenses. Correction of these errors changes the final antidumping duty margin from 79.81 percent to 80.75 percent and the per-unit cash-deposit amount from U.S. $61.60 per metric ton to U.S. $52.42 per metric ton. Consequently, we will issue amended cash-deposit instructions to the U.S. Customs and Border Protection (Customs) to reflect the amendment of the final results of review.

### Assessment Rates

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. As amended by this determination and in accordance with 19 CFR 351.212(b), we have calculated an exporter/importer-specific assessment rate. For the sales in the United States through the respondents' affiliated U.S. parties, we divided the total dumping margin for the reviewed sales by the total entered value of those reviewed sales. We will direct Customs to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of the entries during the review period (see 19 CFR 351.212(a)).

We are issuing and publishing this determination and notice in accordance with sections 751(h) and 777(i)(1) of the Act.

Dated: October 15, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–26531 Filed 10–20–03; 8:45 am]

BILLING CODE 3510–DS–S

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A-834-807]**

### Silicomanganese from Kazakhstan: Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**ACTION:** Notice of Rescission of the Antidumping Duty Administrative Review.

**SUMMARY:** On July 1, 2003, in response to a request made by Considar, an importer of the subject merchandise, the Department of Commerce ("Department") published a notice of initiation of an antidumping duty administrative review of silicomanganese from Kazakhstan, for the period of review ("POR") November 9, 2001 through April 30, 2003. Because Considar has withdrawn its request for review, and there were no other requests for review for this time period, the Department is rescinding this review in accordance with 19 CFR 351.213(d)(1).

**EFFECTIVE DATE:** October 21, 2003.

**FOR FURTHER INFORMATION CONTACT:** James C. Doyle, Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, D.C. 20230; telephone: 202–482–0159.

**SUPPLEMENTARY INFORMATION:**

### Background

On February 28, 2003, Considar, an exporter of the subject merchandise, requested that the Department conduct an administrative review of its sales for the period November 9, 2001 through April 30, 2003. Considar was the only interested party to request a review for this time period. On July 1, 2003, the Department published a notice of initiation of the antidumping administrative review of silicomanganese from Kazakhstan, in accordance with 19 CFR 351.221(c)(1)(i). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part*, 68 FR 39055 (July 1, 2003). On July 17, 2003, the Department amended the initiation notice. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part; Correction*, 68 FR 42373 (July 17, 2003). On September 29, 2003, Considar withdrew its request for review.

### Rescission of Review

Pursuant to the Department's regulations, the Department will rescind an administrative review "if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." *See* 19 CFR 351.213(d)(1). Considar, the only interested party to request an administrative review for this time period, withdrew its request for this review within the 90-day time limit; accordingly, we are rescinding the administrative review for the period November 9, 2001 through April 30, 2003, and will issue appropriate assessment instructions to the U.S. Bureau of Customs and Border Protection.

This notice serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation. This determination is issued in accordance with 19 CFR 351.213(d)(4) and section 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: October 14, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–26534 Filed 10–20–03; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–427–825, A–580–853, A–588–863]

### Wax and Wax/Resin Thermal Transfer Ribbons From France, Japan, and the Republic of Korea; Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of postponement of preliminary determinations in antidumping duty investigations.

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**SUMMARY:** The Department of Commerce is postponing the preliminary determinations in the antidumping duty investigations of wax and wax/resin thermal transfer ribbons from France, Japan and the Republic of Korea from November 6, 2003 until no later than December 16, 2003. These postponements are made pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended.

**EFFECTIVE DATE:** October 21, 2003

**FOR FURTHER INFORMATION CONTACT:** Mark Hoadley (France) at (202) 482–3148, Cheryl Werner (Japan) at (202) 482–3208, or Fred Baker (Republic of Korea) at (202) 482–2924, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

**SUPPLEMENTARY INFORMATION:**

#### Background

On June 27, 2003, the Department of Commerce (the Department) published a notice of initiation of these antidumping duty investigations covering the period from April 1, 2002 through March 31, 2003 (68 FR 38305). The notice of initiation stated that the Department would issue preliminary determinations no later than 140 days after the date of initiation. *See* 68 FR 38308. Presently, the preliminary determinations in these investigations are due on November 6, 2003.

#### Postponement of Preliminary Determinations

Pursuant to section 733(b)(1)(A) of the Act, the Department shall make a preliminary determination in an investigation of an antidumping duty order within 140 days after the date on which the Department initiates the investigation. The Act further provides, however, that the Department may extend the 140–day period to 190 days if the petitioner makes a timely request for an extension. On October 3, 2003, the petitioner made timely requests pursuant to 19 CFR 351.205(e) for 40–day postponements, pursuant to section 733(c)(1)(A) of the Act, of the preliminary determinations in these investigations. Petitioner stated that postponements of the preliminary determinations are necessary due to the complexity of the issues involved in these cases, such as model matching/product characteristics, and also the timing of the respondents' submissions and supplemental questionnaire responses.

Under section 733(c)(1)(A) of the Act, if the petitioner makes a timely request for an extension of the period within which the preliminary determination must be made under subsection (b)(1), then the Department may postpone making the preliminary determination under subsection (b)(1) until not later than the 190th day after the date on which the administering authority initiates an investigation. Therefore, in accordance with petitioner's requests for postponements, the Department is postponing the preliminary determinations in these investigations for 40 days for the reasons stated in petitioner's requests. These preliminary determinations will now be due no later than December 16, 2003.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f).

Dated: October 14, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–26533 Filed 10–20–03; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 090903C]

### Small Takes of Marine Mammals Incidental to Specified Activities; Oceanographic Survey in the Northwest Atlantic Ocean Near Bermuda

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of extension of comment deadline.

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**SUMMARY:** Under the Marine Mammal Protection Act (MMPA), on October 9, 2003, NMFS published a notice of receipt of an application for the harassment of marine mammals incidental to conducting an oceanographic survey in the Northwest Atlantic Ocean near Bermuda. By this document, NMFS announces an extension of the comment deadline.

**DATES:** Comments and information must be received no later than November 10, 2003.

**ADDRESSES:** Comments should be addressed to the Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226. A copy of the application may be obtained by writing to this address or by telephoning the contact listed here. Comments cannot be accepted if submitted via e-mail or the Internet.

**FOR FURTHER INFORMATION CONTACT:** Sarah C. Hagedorn, Office of Protected Resources, NMFS, (301) 713–2322, ext 117.

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

On October 9, 2003 (68 FR 58308), NMFS announced that it had received an application from the Lamont-Doherty Earth Observatory (LDEO) for an Incidental Harassment Authorization to take small numbers of marine mammals, by harassment, incidental to conducting an oceanographic survey in the Northwest Atlantic Ocean near Bermuda. Under the MMPA, NMFS requested comments on its proposal to issue an authorization to LDEO to incidentally take, by harassment, small numbers of several species of marine mammals for a limited period of time within the next year. By this document, NMFS extends the comment period on the application and its preliminary determination until November 10, 2003.

Dated: October 14, 2003.

**Donna Wieting,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 03–26548 Filed 10–20–03; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 092203D]

## Small Takes of Marine Mammals Incidental to Specified Activities; Oceanographic Surveys in the Southeast Caribbean Sea and Adjacent Atlantic Ocean

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of receipt of application and proposed incidental take authorization; request for comments.

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**SUMMARY:** NMFS has received an application from the Lamont-Doherty Earth Observatory (LDEO), a part of Columbia University, for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting oceanographic surveys in the Southeast Caribbean Sea and adjacent Atlantic Ocean. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to LDEO to incidentally take, by harassment, small numbers of several species of cetaceans and pinnipeds for a limited period of time within the next year.

**DATES:** Comments and information must be received no later than November 20, 2003.

**ADDRESSES:** Comments on the application should be addressed to the Acting Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here. Comments cannot be accepted if submitted via e-mail or the Internet.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Skrupky, Office of Protected Resources, NMFS, (301) 713–2322, ext 163.

**SUPPLEMENTARY INFORMATION:**

### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Under section 3(18)(A), the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

The term "Level A harassment" means harassment described in subparagraph (A)(i). The term "Level B harassment" means harassment described in subparagraph (A)(ii).

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

### Summary of Request

On August 7, 2003, NMFS received an application from LDEO for the taking, by harassment, of several species of marine mammals incidental to conducting a seismic survey program. As presently scheduled, a seismic survey will be conducted in the Southeast Caribbean Sea and Adjacent Atlantic Ocean. The Southeast Caribbean Sea and Atlantic Ocean cruise will be off the coast of Venezuela in an area extending from 59° to 71° W and 10° to 15° N from January 11, 2004 to February 21, 2004. The operations will partly take place in the Exclusive Economic Zones (EEZ) of several nations in the Southeast Caribbean (including Venezuela, Aruba, Bonaire, Curacao, Trinidad, and Tobago) as well as in international waters.

The purpose of the project is to obtain information on island arc movements and geometry which can be used to better understand the history and mechanical processes by which island arcs accrete to continents, deeply buried rocks are exhumed, and folded belts and different types of sedimentary basins form along oblique collision zones. The interplay of the crust and subcrustal lithosphere during arc accretion and metamorphic belt exhumation and subduction polarity reverses will be examined. In addition, the flow patterns of the sublithospheric mantle beneath the plate boundary and northern South America as a whole and beneath the right lateral shear zone between them will be examined.

### Description of the Activity

The seismic survey will involve two vessels which will conduct the seismic work. The source vessel, the *R/V Maurice Ewing*, will deploy an array of 20 airguns as an energy source, plus a 6–km (3.2 n.mi.) towed hydrophone streamer. A second vessel, the *R/V Seward Johnson*, will deploy and retrieve Ocean Bottom Seismometers (OBSs). As the airgun array is towed along the survey line, the towed hydrophone streamer or OBSs will receive the returning acoustic signals and transfer the data to the on-board processing system. Water depths within the study area range from approximately 15–6,000 m (49–19,685 ft). Most of the survey effort will take place in waters greater than 1,000 m (3,281 ft) deep, 2,031 km (1,097 n.mi.) will be surveyed in water depth ranging from 100–1,000 m (328–3,281 ft) deep, and a small portion of the survey effort will occur in shallow water less than 100 m (328 ft) deep.

The procedures to be used for the seismic study will be similar to those used during previous seismic surveys by LDEO in the equatorial Pacific Ocean (Carbotte *et al.*, 1998, 2000). The proposed seismic surveys will use conventional seismic methodology with a towed airgun array as the energy source, and a towed hydrophone streamer and/or OBSs as the receiver system. The OBSs will be deployed by the *Seward Johnson*. The energy to the airgun array is compressed air supplied by compressors on board the source vessel. In addition to the operations of the airgun array, a multibeam bathymetric sonar will be operated from the source vessel continuously throughout the entire cruise, and a lower-energy sub-bottom profiler will also be operated during most of the survey.

The *Seward Johnson* will have four deployments of OBSs, prior to the time when the *Maurice Ewing* conducts airgun operations in that area. After each line is shot, the *Seward Johnson* will retrieve the OBSs, download the data, and refurbish the units before redeploying the OBSs along the next line that will be shot. During the Southeast Caribbean cruise, there will be four deployments of OBSs, one deployment along each of the OBS lines. OBSs will also be deployed at two other locations near each line to fill data gaps between islands.

In addition, the ocean floor will be mapped with an Atlas Hydrosweep DS–2 multibeam 15.5–kHz bathymetric sonar, and a 3.5–kHz sub-bottom profiler will also be operated along with the multibeam sonar. Both of these sound sources will be operated simultaneously with the airgun array. For more information regarding the Atlas Hydrosweep DS–2 multibeam bathymetric sonar, please refer to previous **Federal Register** Notices (68 FR 44291, July 28, 2003, and 68 FR 17773, April 11, 2003).

During the airgun operations, the vessel will travel at 7.4–9.3 km/hr (4–5 knots), and seismic pulses will be emitted at intervals of 60–90 sec (OBS lines) and approximately 20 sec (MCS lines). The 20 sec spacing corresponds to a shot interval of about 50 m (164 ft). The 60–90 sec spacing along OBS lines is to minimize reverberation from previous shot noise during OBS data acquisition, and the exact spacing will depend on water depth. The 20–airgun array will include airguns ranging in chamber volume from 80 to 850 in3. These airguns will be spaced in an approximate rectangle of dimensions of 35 m (115 ft) across track by 9 m (30 ft) along track.

Along the selected lines, the OBSs will be positioned by the *Seward Johnson* prior to the time when the *Maurice Ewing* conducts airgun operations in that area. After each line is shot, the *Seward Johnson* will retrieve the OBSs, download the data, and refurbish the units before redeploying the OBSs along the next line that will be shot. During the Southeast Caribbean cruse, there will be four deployments of OBSs, one deployment along each of the OBS lines. OBSs will also be deployed at two other locations near each line to fill data gaps between islands.

When airgun operations with the 20–gun array commence after a period without airgun operations, the number of guns firing will be increased gradually ("ramped up," also described as a "soft start"). Operations will begin with the smallest gun in the array (80 in$^3$). Guns will be added in sequence such that the source level of the array will increase in steps not exceeding 6 dB per 5–min period over a total duration of approximately 25 minutes. Throughout the ramp-up procedure, the safety zone for the full 20–gun array will be maintained. Given the presence of the streamer and airgun array behind the vessel, the turning rate of the vessel with trailing streamer and array is no more than five degrees per minute, limiting the maneuverability of the vessel during operations.

Along with the airgun operations, two additional acoustical data acquisition systems will be operated during most or all of the cruise. The ocean floor will be mapped with an Atlas Hydrosweep DS–2 multibeam 15.5–kHz bathymetric sonar, and a 3.5–kHz sub-bottom profiler will also be operated along with the multibeam sonar. These sound sources are commonly operated from the *Maurice Ewing* simultaneous with the airgun array.

The Atlas Hydrosweep is mounted on the hull of the *Maurice Ewing*, and it operates in three modes, depending on the water depth. There is one shallow water mode and there are two deep-water modes: an Omni mode and a Rotational Directional Transmission mode (RDT). When water depth is less than 400 m (1312.3 ft), the source output is 210 dB re 1 μPa m rms and a single 1–millisec pulse or "ping" per second is transmitted, with a beamwidth of 2.67 degrees fore-aft and 90 degrees athwartship. The beamwidth is measured to the -3 dB point, as is usually quoted for sonars. The Omni mode is identical to the shallow-water mode except that the source output is 220 dB rms. The Omni mode is normally used only during start up. The RDT mode is normally used during deep-water operation and has a 237 dB rms source output. In the RDT mode, each "ping" consists of five successive transmissions, each ensonifying a beam that extends 2.67 degrees fore-aft and approximately 30 degrees in the cross-track direction. The five successive transmissions (segments) sweep from port to starboard with minor overlap, spanning and overall cross-track angular extent of about 140 degrees, with small gaps between the pulses for successive 30–degree segments. The total during of the "ping," including all five successive segments, varies with water depth, but is 1 millisec in water depths less than 500 m (1640.5 ft) and 10 millisec in the deepest water. For each segment, "ping" duration is 1/5th of these values or 2/5th for a receiver in the overlap area ensonified by two beam segments. The "ping" interval during RDT operations depends on water depth and varies from once per second in less than 500 m (1640.5 ft) water depth to once per 15 seconds in the deepest water.

The sub-bottom profiler is normally operated to provide information about the sedimentary features and the bottom topography that is simultaneously being mapped by the Hydrosweep. The energy from the sub-bottom profiler is directed downward by a 3.5 kHz transducer mounted in the hull of the *Maurice Ewing*. The output varies with water depth from 50 watts in shallow water to 800 watts in deep water. Pulse interval is 1 second but a common mode of operation is to broadcast five pulses at 1–s intervals followed by a 5–s pause.

Additional information on the airgun arrays, bathymetric sonars, and sub-bottom profiler specifications is contained in the application, which is available upon request (see **ADDRESSES**).

## Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Southeast Caribbean Sea and its associated marine mammals can be found in a number of documents referenced in the LDEO application as well as in the LDEO application itself, and is not repeated here. In the Southeast Caribbean Sea and adjacent Atlantic Ocean, 30 marine mammal species are known to occur within the proposed study areas. Six species are listed as endangered under the U.S. Endangered Species Act (ESA): sperm, humpback, sei, fin, and blue whales, as well as West Indian manatees. These species included in this application are the sperm whale (*Physeter macrocephalus*), pygmy sperm whale (*Kogia breviceps*), dwarf sperm whale (*Kogia sima*), Cuvier's beaked whale (*Ziphius cavirostris*), Gervais' beaked whale (*Mesoplodon europaeus*), Blainville's beaked whale (*Mesoplodon densirostris*), rough-toothed dolphin (*Steno bredanensis*), tucuxi (*Sotalia uviatilis*), bottlenose dolphin (*Tursiops truncatus*), Pantropical spotted dolphin (*Stenella attenuata*), Atlantic spotted dolphin (*Stenella frontalis*), spinner dolphin (*Stenella longirostris*), clymene dolphin (*Stenella clymene*), striped dolphin (*Stenella coeruleoalba*), long-beaked common dolphin (*Delphinus capensis*), Fraser's dolphin

(*Lagenodelphis hosei*), Risso's dolphin (*Grampus griseus*), melon-headed whale (*Peponocephala electra*), pygmy killer whale (*Feresa attenuata*), false killer whale (*Pseudorca crassidens*), killer whale (*Orcinus orca*), short-finned pilot whale (*Globicephala macrorhynchus*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), Bryde's whale (*Balaenoptera edeni*), sei whale (*Balaenoptera borealis*), fin whale (*Balaenoptera physalus*), and blue whale (*Balaenoptera musculus*). Also, one species of pinniped could potentially be encountered during the proposed seismic surveys. This includes the hooded seal (*Cystophora cristata*). Additional information on most of these species is available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html.*

## Potential Effects on Marine Mammals

The sound pressure fields for the 20–gun arrays has been modeled by LDEO, in relation to distance and direction from the airguns. Table 1 in the application (LDEO Caribbean 2003) shows the distances from the arrays where sound levels of ≥190, 180, 170, and 160 dB re 1 μPa (rms) are predicted to be received:

| *Airgun Array* | *Predicted RMS Radii in meters/ft* | | | |
|---|---|---|---|---|
| | 190 dB | 180 dB | 170 dB | 160 dB |
| 20 airguns | 275/902 | 900/2953 | 2600/8531 | 9000/29,529 |

The rms (root-mean-squared) pressure is an average over the pulse duration. The rms level of a seismic pulse is typically about 10 dB less than its peak level (Greene 1997; McCauley *et al.* 1998, 2000a). The safety radii will be verified prior to the Southeast Caribbean cruise, using data from an acoustical measurement study in deep water within the Gulf of Mexico, which took place from 27 May to 3 June 2003. The data will either confirm or be used to refine the safety radii to be used during this and future LDEO seismic studies.

Previous applications from LDEO have described similar actions. Past **Federal Register** notices for LDEO include July 28, 2003 (68 FR 44291), August 26, 2003 (68 FR 51240), September 12, 2003 (68 FR 53714), and September 17, 2003 (68 FR 54421). The **Federal Register** notice on April 14, 2003 (68 FR 17909) describes, in detail, the characteristics of the *Ewing's* acoustic sources and, in general, the anticipated effects on marine mammals including masking, disturbance, and potential hearing impairment and other physical effects. Possible effects of the sub-bottom profiler have been used in the projects described in the above notices. The LDEO Southeast Caribbean application also provides information on what is known about the effects on marine mammals of the types of seismic operations planned by LDEO.

### *Possible Effects of the Mid-Frequency Sonar Signals*

A multibeam bathymetric sonar (Atlas Hydrosweep DS–2, 15.5–kHz) will be operated from a source vessel at some times during the planned study. Sounds from the multibeam sonar are very short pulses, occurring for 1–10 msec once every 1 to 15 sec, depending on water depth. Most of the energy in the sound pulses emitted by this multibeam sonar is at high frequencies, centered at 15.5 kHz. The beam is narrow (2.67°) in fore-aft extent, and wide (140°) in the cross-track angles. A marine mammal at depth near the trackline would be in the main beam for only one or two of the five segments. Further information on mid-frequency sonar can be found in the application or in a previous **Federal Register** notice 68 FR 17909 (April 14, 2003).

### *Possible Effects of the Sub-bottom Profiler Signals*

Sound levels have not been measured for the sub-bottom profiler used by the *Maurice Ewing*, but Burgess and Lawson (2000) measured the sounds propagating more or less horizontally from a similar unit with similar source output (205 dB re 1 μPa-m). The 160 and 180 dB re 1 μPa (rms) radii, in the horizontal direction, were estimated to be near 20 m (66 ft) and 8 m (26 ft), respectively, from the source, as measured in 13 m (43 ft) water depth. The corresponding distances for an animal in the beam below the transducer would be greater, on the order of 180 m (591 ft) and 18 m (59 ft), assuming spherical spreading. Further information on the sub-bottom profiler can be found in the application as well as in a previous **Federal Register** notice (68 FR 44291, July 28, 2003).

### *Estimates of Take by Harassment for the Southeast Caribbean Sea Cruise*

All anticipated takes by harassment involve a temporary change in behavior. The mitigation measures to be applied will minimize the possibility of injurious takes. LDEO has calculated the "best estimates" for the numbers of animals that could be taken by level B harassment during the proposed seismic survey in the SE Caribbean Sea using data on marine mammal abundance from a previous survey region, as shown in the predicted RMS radii table.

These estimates are based on a consideration of the number of marine mammals that might be exposed to sound levels greater than 160 dB, which is currently used as the criterion for the onset of level B harassment, by operations with the 20–gun array planned to be used for the project. The anticipated radius of influence of the multibeam sonar is less than that for the airgun array. It is assumed that any marine mammals close enough to be affected by the multibeam sonar would already be affected by the airguns. Therefore, no additional allowance is included for animals that might be affected by the multibeam sonar.

Tables 4 and 5 in the application explain the corrected density estimates as well as the "best estimate" of the numbers of each species that would be exposed to seismic sounds greater than 160 dB.

According to the tables, the percentages of delphinidae that might be exposed to sound levels greater than 160 dB range from zero to 4.4 percent. Aside from the sperm whale, the physeterida and ziphiidae exposure percentages are zero. The percent of sperm whales that might be exposed is 0.4 percent. Except for the humpback and blue whales, the mysticetes and pinnipeds percent of exposure is zero. It is estimated that 1.7 percent of humpback whales and 1.0 percent of blue whales could be exposed to sound levels greater than 160 dB. The "best estimate" of the numbers of common, bottlenose, Atlantic spotted, and pantropical spotted dolphins that might be harassed (exposed to levels greater than 160 dB) are 1.9 percent, 4.4 percent, 2.6 percent, and 4.3 percent, respectively.

The 160 dB criterion is based on studies of baleen whales. Odontocete hearing at low frequencies is relatively insensitive and delphinids generally appear to be more tolerant of strong low-frequency sounds than are most baleen whales. As a result, significantly fewer odontocetes than estimated here are likely to be harassed by the proposed action.

Pinnipeds are not expected to be encountered in the SE Caribbean Sea and so the "best estimate" of the number that might be affected is zero. Although unlikely, a more conservative estimate of a maximum of five pinnipeds (most likely hooded seals) might be affected by a portion of the proposed survey in the SE Caribbean Sea. For further information regarding the estimated takes, refer to the LDEO Caribbean 2003 application.

*Conclusions- Effects on Cetaceans*

Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 8 km (4.3 nm) and occasionally as far as 30 km (16.2 nm) from the source vessel. Some bowhead whales avoided waters within 30 km (16.2 nm) of the seismic operation. However, reactions at such long distances appear to be atypical of other species of mysticetes and, even for bowheads, may only apply during migration.

Odontocete reactions to seismic pulses, or at least those of dolphins, are expected to extend to lesser distances than are those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen from seismic vessels. There are documented instances of dolphins approaching active seismic vessels. However, dolphins as well as some other types of odontocetes sometimes show avoidance responses and/or other changes in behavior when near operating seismic vessels.

Taking account of the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of the area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of "Level B harassment." In the cases of mysticetes, these reactions are expected to involve small numbers of individual cetaceans. The "best estimate" is that 377 humpback whales or about 1.7 percent of the North and South Atlantic populations will be exposed to sound levels greater than or equal to 160 dB re 1 μPa (rms). Acevedo and Smultea (1995) provide evidence that the North and South Atlantic populations overlap in their wintering areas. Similarly, only 52 sperm whales or approximately 0.4 percent of the North Atlantic sperm whale population would receive seismic sounds greater than or equal to 160 dB during the proposed survey in the SE Caribbean Sea.

The numbers of odontocetes that may be harassed by the proposed activities are small relative to the population sizes. A maximum of 2475, 2222, 1369, 867, and 564 common, bottlenose, Atlantic spotted, rough toothed, and pantropical spotted dolphins, respectively (the most abundant delphinids in the proposed survey area) are expected to be exposed to seismic sounds greater than or equal to 160 dB. This represents 1.9 to 4.4 percent of the North Atlantic populations of these species based on population estimates for these species. However, these dolphin species surveys have not been conducted for most of their range in the North Atlantic Ocean and adjacent waters. The true percentages of the populations that might be exposed to seismic sounds greater than or equal to 160 dB are much less than 1.9–4.4 percent. The population sizes and the 1.9 to 4.4 percent are based on a small fraction of their range and their actual population sizes are actually much larger. The true percentages of the populations that might be exposed to seismic sounds greater than 160 dB are therefore much less than 1.9 to 4.4 percent. In light of all of these factors, the potential takings by Level B harassment are expected to have no more than a negligible impact on the affected species or stocks.

Mitigation measures such as controlled speed, course alteration, look-outs, non-pursuit, ramp-ups, and power-downs when marine mammals are seen within defined ranges (See Mitigation) should further reduce short-term reactions to disturbance, and minimize any effects on hearing sensitivity.

*Conclusions- Effects on Pinnipeds*

Pinnipeds are not expected to be encountered during the proposed seismic survey in the SE Caribbean Sea. However, a more conservative estimate of a maximum of 5 pinnipeds may be affected by a portion of the proposed survey in the SE Caribbean Sea if they were encountered. If pinnipeds were encountered, the proposed seismic survey would have, at most, a short-term effect on their behavior and negligible impacts on the affected populations. Responses of pinnipeds to acoustic disturbance are variable, but usually quite limited. Effects are expected to be limited to short-term and localized behavioral changes falling within the MMPA definition of "Level B harassment."

**Mitigation**

Vessel-based observers will monitor marine mammals in the vicinity of the arrays. LDEO proposes to power-down the airguns if marine mammals are observed within the proposed safety radii, which will be verified prior to the southeast Caribbean cruise, using data from an acoustical measurement study in the Gulf of Mexico which took place May 27, 2003, through June 3, 2003. Also, LDEO proposes to use a ramp-up procedure when commencing operations using the 20–gun array. Ramp-up will begin with the smallest gun in the array (80 in$^3$), and guns will be added in a sequence such that the source level of the array will increase at a rate no greater than 6 dB per 5–minute period over a total duration of about 25 minutes. Refer to LDEO's application for more detailed information about the mitigation measures that are an integral part of the planned activity.

*Operational Mitigation*

The directional nature of the 20–airgun array to be used in this project is an important mitigating factor, resulting in lower sound levels at any given horizontal distance than would be expected at that distance if the source were omnidirectional with the stated nominal source level. Because the actual seismic source is a distributed sound source (20 guns) rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level.

The airguns comprising these arrays will be spread out horizontally, so that the energy from the arrays will be directed mostly downward. This directionality will result in reduced sound levels at any given horizontal distance than would be expected at that distance if the source were omnidirectional with the nominal source level.

*Marine Mammal Monitoring*

Vessel-based observers will monitor marine mammals near the seismic source vessel during all daytime airgun operations and during any nighttime start-ups of the airguns. During daylight, vessel-based observers will watch for marine mammals near the seismic vessel during periods with shooting (including ramp-ups), and for 30 minutes prior to the planned start of airgun operations after an extended shut-down. Observers will not be on duty during ongoing seismic operations at night; bridge personnel will watch for marine mammals during this period and will call for the airguns to be powered-down if marine mammals are observed in or about to enter the safety radii. If the airguns are ramped-up at night, two marine mammal observers will monitor marine mammals near the source vessel for 30 minutes prior to ramp-up using night vision devices.

*Proposed Safety Radii*

Received sound levels have been modeled for the 20–gun arrays. Based on the modeling, estimates of the 190-, 180-, 170- and 160–dB re 1 μPa (rms) distances for these arrays have been provided in the application. Airgun operations will be powered-down (or shut-down) immediately when cetaceans or pinnipeds are seen within or about to enter the appropriate 180–dB (rms) or 190–dB (rms) safety radius, respectively. These 180- and 190–dB criteria are consistent with guidelines for onset of level A harassment of cetaceans and pinnipeds by NMFS (2000) and other guidance by NMFS.

*Mitigation During Operations*

The following mitigation measures, as well as marine mammal monitoring, will be adopted during the proposed Mid-Atlantic seismic surveys, provided that doing so will not compromise operational safety requirements: (1) Speed or course alteration; (2) power-down procedures; (3) shut-down procedures; and (4) ramp-up procedures.

Airgun operations will be suspended when marine mammals are observed within, or about to enter, designated safety zones, where there is a possibility of Level A harassment.

**Course Alteration**

If a marine mammal is detected outside the appropriate safety radius and, based on its position and the relative motion, is likely to enter the safety radius, the vessel's speed and/or direct course will be changed in a manner that also minimizes the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety radius. If the mammal appears likely to enter the safety radius, further mitigative actions will be taken, i.e., either further course alterations or shutdown of the airguns.

**Power-down Procedures**

If a marine mammal is detected outside the safety radius but is likely to enter the safety radius, and if the vessel's course and/or speed cannot be changed to avoid having the marine mammal enter the safety radius, the airguns will be powered-down before the mammal is within the safety radius. Likewise, if a mammal is already within the safety zone when first detected, the airguns will be powered-down immediately. For the power-down procedure for the 20–gun array, one 80 in$^3$ airgun will be operated during the interruption of seismic survey. Airgun activity (after both power-down and shut-down procedures) will not resume until the marine mammal has cleared the safety zone. An animal will be considered to have cleared the safety zone if it is visually observed to have left the safety zone, or if it has not been seen within the zone for 15 min (small odontocetes, including delphinidae, and pinnipeds) or 30 min (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales).

**Shut-down Procedures**

If a marine mammal is detected close to the airgun array during a power-down, modeled safety radii for a single gun will be maintained. If the 20–gun array is used, the single gun that will be firing is 80 in3. Since no calibrations have been done to confirm the modeled safety radii for this single gun, conservative (1.5 times the safety radius) radii will be used: 54 m (177 ft) for cetaceans, and 20 m (66 ft) for pinnipeds. If a marine mammal is seen within the appropriate safety radius of the array when the air guns have already been powered-down, airgun operations will be shut-down.

**Ramp-up Procedure**

A "ramp-up" procedure will be followed when the airgun arrays begin operating after a specified duration without airgun operations. Under normal operational conditions (vessel speed 4 knots, or 7.4 km/hr), a ramp-up would be required after a power-down or shut-down period lasting about 8 minutes or longer if the Ewing was towing the 20–gun array. At 4 knots, the source vessel would travel 900 m (2953 ft) during an 8–minute period. If the towing speed is reduced to 3 knots or less, as sometimes required when maneuvering in shallow water, it is proposed that a ramp-up would be required after a "no shooting" period lasting 10 minutes or longer. At towing speeds not exceeding 3 knots, the source vessel would travel no more than 900 m (3117 ft) in 10 minutes. Based on the same calculation, a ramp-up procedure would be required after a 6 minute period if the speed of the source vessel was 5 knots.

Ramp-up will not occur if the safety radius has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime. If the safety radius has not been visible for that 30 minute period (e.g., during darkness or fog), ramp-up will not commence unless one airgun has been maintained during the interruption of seismic activity.

**Monitoring and Reporting**

LDEO proposes to conduct the following marine mammal monitoring of its 2003 SE Caribbean Sea seismic program.

*Vessel-based Visual Monitoring*

At least two observers will be based aboard the vessel. At least one experienced marine mammal observer will be on duty aboard the seismic vessel, and observers will be appointed by LDEO with NMFS concurrence. Observers will be on duty in shifts of duration no longer than 4 hours. The second observer will also be on watch part of the time, including the 30–minute periods preceding startup of the airguns and during ramp-ups. Use of two simultaneous observers will increase the proportion of the marine mammals present near the source vessel that are detected. LDEO bridge personnel additional to the dedicated marine mammal observers will also assist in detecting marine mammals and implementing mitigation requirements whenever possible (they will be given instruction on how to do so), especially during operations at night when designated observers will not be on duty.

The observer(s) will watch for marine mammals from the highest practical vantage point on the vessel, which is either the bridge or the flying bridge. On the bridge of the *Maurice Ewing*, the observer's eye level will be 11 m (36 ft) above sea level, allowing for good visibility within a 210° arc. If observers are station on the flying bridge, the eye level will be 14.4 m (47.2 ft) above sea level. The observer(s) systematically scan the area around the vessel with reticle binoculars (e.g., 7 X 50 Fujinon) and with the naked eye during the daytime. At night, night vision equipment will be available (ITT F500 Series Generation 3 binocular image intensifier or equivalent). Laser rangefinding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. If a marine mammal is seen well outside the safety radius, the vessel may be maneuvered to avoid having the mammal come within the safety radius (see Mitigation). When mammals are detected within or about to enter the designated safety radii, the airguns will be powered-down immediately. The observer(s) will continue to maintain watch to determine when the animal is outside the safety radius. If the airguns are powered-down, observers will continue to maintain watch to determine when the animal is outside the safety radius. Airgun operations will not resume until the animal is outside the safety radius or until the specified intervals (15 or 30 min) have passed without a resighting.

If ramp-up procedures must be performed at night, two observers will be on duty 30 minutes prior to the start of airgun operations and during the subsequent ramp-up procedures. Ramp-up procedures for the 20–gun array will not commence at night unless the seismic source has been maintained.

### Reporting

A report will be submitted to NMFS within 90 days after the end of the cruise. The end of the Caribbean cruise is predicted to occur on approximately 21 February 2004. The report will describe the operations that were conducted and the marine mammals that were detected. The report will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all monitoring tasks. The 90–day report will summarize the dates and locations of seismic operations, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential take of marine mammals by harassment or in other ways.

### Endangered Species Act (ESA)

Under section 7 of the ESA, NMFS has begun consultation on the proposed issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to the issuance of an IHA. LDEO has initiated consultation with the U.S. Fish and Wildlife Service on West Indian Manatees.

### National Environmental Policy Act (NEPA)

The NSF has prepared an EA for the Southeast Caribbean surveys. NMFS is reviewing this EA and will either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA. A copy of the NSF EA for this activity is available upon request (see **ADDRESSES**).

### Preliminary Conclusions

NMFS has preliminarily determined that the impact of conducting the seismic survey in the Southeast Caribbean Sea and Adjacent Atlantic Ocean, off the coast of Venezuela, will result, at worst, in a temporary modification in behavior by certain species of marine mammals. This activity is expected to result in no more than a negligible impact on the affected species or stocks.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of the mitigation measures mentioned in this document. In addition, the proposed seismic program is not expected to interfere with any subsistence hunts, since operations in the whaling and sealing areas will be limited.

### Proposed Authorization

NMFS proposes to issue an IHA to LDEO for conducting a seismic surveys in the Southeast Caribbean Sea and Adjacent Atlantic Ocean, off the coast of Venezuela, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of species or stocks for subsistence uses.

### Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: October 14, 2003.

**Donna Wieting,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Proposed Collection; Comment Request

**AGENCY:** Office of the Under Secretary of Defense (Personnel an Readiness), DoD.

**ACTION:** Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by December 22, 2003.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Military Community and Family Policy/Educational Opportunities Directorate), ATTN: Mr. Otto Thomas, 4000 Defense Pentagon, Washington, DC 20301–4000).

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed information collection or to obtain a copy of the proposed and associated collection instruments, please write to the above address or call at (703) 602–4949, ext. 160.

*Title, Associated Form, and OMB Control Number:* Department of Defense Public and Community Service (PACS) Program, DD Forms 2581 and 2581–1, OMB Number 0704–0324.

*Needs and Uses:* This information collection requirement is necessary to allow for the continued implementation of the Public and Community Service (PACS) Program. The PACS Program encourages eligible Service members to work in the public or community service arena upon separation from active duty. Employers with job openings in the public and community service arena will complete the one-time DD Form 2581, "Operation Transition Employer Registration," to register in the PACS employer database. The DD Form 2581 and allows PACS employers to post employment opportunities on the Operation Transition Bulletin Board (TBB). Employers hiring separated Service members under the Temporary Early Retirement ACT (TERA) are required to complete the DD Form 2581–1, "Public and Community Service Organization Validation" to be validated as a PACS employer. This validation allows TERA retirees, being hired by a PACS organization, to earn additional retirement credit needed towards gaining full retirement for 20 years of creditable service. Once the retiree reaches age 62 he/she will be compensated for retirement for 20 years of service. The information from the DD Form 2581–1 is also used by the Department of Defense to validate that the employer meets the criteria of a PACS organization.

*Affected Public:* Individuals or households; state, local, or tribal government, businesses or other for-profit, Federal government; not-for-profit institutions.

*Annual Burden Hours:* 2,870.

*Number of Respondents:* 287.

*Responses Per Respondent:* 1.

*Average Burden Per Response:* 10 minutes.

*Frequency:* On occasion.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

This information is needed to satisfy Public Law 101–510, the Defense Department's Fiscal Year 1991 Authorization Act, November 5, 1990, which directed the Secretary of Defense release to civilian employers, organizations and other appropriate entities, the names (and other pertinent information) of separating members of the Armed Forces, their spouses, and civilian employees who are seeking employment in the civilian sector. The collection is also required to satisfy Public Law 102–484, the Defense Department's Fiscal Year 1993 Authorization Act, October 23, 1992, which directed the Secretary of Defense to maintain a public and community service registry in which separating Service members would be encouraged to enter into employment in the public and community services arena. DD Form 2581, "Operation Transition Employer Registration," and DD Form 2581–1, "Public and Community Service Organization Validation," are used to support this effort.

Dated: October 14, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 03–26440 Filed 10–20–03; 8:45 am]

**BILLING CODE 5001–08–M**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all commenters received by November 20, 2003.

*Title, Form, and OMB Number:* Application for Trusteeship; DD Form 2827; OMB Number 0730–0013.

*Type of Request:* Extension.

*Number of Respondents:* 75.

*Annual Responses:* 75.

*Average Burden Per Response:* 15 minutes.

*Annual Burden Hours:* 18.75.

*Needs and Uses:* When members of the uniformed services are declared mentally incompetent, the need arises to have a trustee appointed to act on their behalf with regard to military pay matters. Individuals will complete this form to apply for appointment as a trustee on behalf of the member. The requirement to complete this form helps alleviate the opportunity for fraud, waste and abuse of government funds and member's benefits.

*Affected Public:* Individuals or households.

*Frequency:* On Occasion.

*Respondent's Obligation:* Required to Obtain or Retain Benefits.

*OMB Desk Officer:* Ms. Jacqueline Zeiher. Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Ms. Jacqueline Davis. Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: October 8, 2003.

**Patricia L. Toppings,**

*Alternative OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 03–26441 Filed 10–20–03; 8:45 am]

**BILLING CODE 5001–08–M**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (14 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by November 20, 2003.

*Title, Form, and OMB Number:* Trustee Report; DD Form 2826; OMB Number 01730–0012.

*Type of Request:* Extension.

*Number of Respondents:* 600.

*Responses Per Respondent:* 1.

*Annual Responses:* 600.

*Average Burden Per Response:* 30 minutes.

*Annual Burden Hours:* 300.

*Needs and Uses:* When members of the uniformed services are declared mentally incompetent, the need arises to have a trustee appointed to act on their behalf with regard to military pay matters. Trustees will complete this form to report the administration of the funds received on behalf of the member. The requirement to complete this form helps alleviate the opportunity for fraud, waste and abuse of government funds and member's benefits.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Ms. Jacqueline Zeiher. Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Ms Jacqueline Davis. Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, CA 22202–4302;.

Dated: October 8, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 03–26442 Filed 10–20–03; 8:45 am]

**BILLING CODE 5001–08–M**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0005]**

### Federal Acquisition Regulation; Information Collection; Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0005).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning architect-engineer and related services questionnaire for specific project (SF 255). The clearance currently expires October 31, 2003. However, a request was submitted to extend this clearance until January 2004.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before December 22, 2003.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW, Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Cecelia Davis, Acquisition Policy Division, GSA (202) 219–0202.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

Standard Form 255 is used by all Executive agencies to obtain information from architect-engineer (A–E) firms interested in a particular project. The information on the form is reviewed by a selection panel composed of professional people and assists the panel in selecting the most qualified A–E firm to perform the specific project. The form is designed to provide a uniform method for A–E firms to submit information on experience, personnel, capabilities of the A–E firm to perform, along with information on the consultants they expect to collaborate with on the specific project.

**B. Annual Reporting Burden**

*Respondents:* 5,000.

*Responses Per Respondent:* 4.

*Annual Responses:* 20,000.

*Hours Per Response:* 1.2.

*Total Burden Hours:* 24,000.

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0005, Architect-Engineer and Related Services Questionnaire for Specific Project (SF 255), in all correspondence.

Dated: October 15, 2003.

**Laura G. Auletta,**

*Director, Acquisition Policy Division.*

[FR Doc. 03–26443 Filed 10–20–03; 8:45 am]

**BILLING CODE 6820–EP–P**

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0004]**

### Federal Acquisition Regulation; Information Collection; Architect-Engineer and Related Services Questionnaire (SF 254)

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0004).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning architect-engineer and related services questionnaire (SF 254). The clearance currently expires on October 31, 2003. However, a request was submitted to extend this clearance until January 2004.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before December 22, 2003.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Cecelia Davis, Acquisition Policy Division, GSA (202) 219–0202.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

Standard Form 254 is used by all Executive agencies to obtain uniform information about a firm's experience in architect-engineering (A–E) projects. The form is submitted annually as required by 40 U.S.C. 541—544 by firms wishing to be considered for Government A–E contracts. The information obtained on this form is used to determine if a firm should be solicited for A–E projects.

**B. Annual Reporting Burden**

*Respondents:* 5,000.

*Responses Per Respondent:* 7.

*Total Responses:* 35,000.

*Hours Per Response:* 1.

*Total Burden Hours:* 35,000.

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0004, Architect-Engineer and Related Services Questionnaire (SF 254), in all correspondence.

Dated: October 15, 2003.

**Laura G. Auletta,**

*Director, Acquisition Policy Division.*

[FR Doc. 03–26444 Filed 10–20–03; 8:45 am]

BILLING CODE 6820–EP–P

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board

**AGENCY:** Department of Defense.

**ACTION:** Notice of advisory committee meetings.

**SUMMARY:** The Defense Science Board will meet in closed session on February 4–5, 2004; May 12–13, 2004; and October 20–21, 2004, at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board will discuss interim findings and recommendations resulting from ongoing Task Force activities. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture and homeland security.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: October 15, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 03–26491 Filed 10–20–03; 8:45 am]

BILLING CODE 5001–08–M

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board

**AGENCY:** Department of Defense.

**ACTION:** Notice of advisory committee meeting.

**SUMMARY:** The Defense Science Board Task Force on Technology Investment for the Defense Advanced Research Projects Agency (DARPA) on October 20–21, 2003, in Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will conduct a one-time evaluation of DARPA's current technology portfolio to confirm that DARPA has advanced research projects based on sound, proven scientific and technological foundations, practices and methods that are of high value to the Department of Defense's operational missions.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Due to critical mission requirements and the short timeframe to accomplish this review, there is insufficient time to provide timely notice required by Section 10(a)(2) of the Federal Advisory Committee Act and Subsection 101–6.1015(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR Part 101–6, which further requires publication at least 15 calendar days prior to the meeting.

Dated: October 10, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 03–26492 Filed 10–20–03; 8:45 am]

BILLING CODE 5001–08–M

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## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Proposed Collection; Comment Request

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Admissions announces the proposed reinstatement of a public information collection and seeks public comment on provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, unity, and clarity of the information to be collected; (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by November 20, 2003.

**ADDRESSES:** Written comments and recommendation on the proposed information collection should be sent to United States Air Force Academy, Office of Admissions, 2304 Cadet Drive, Suite 236, USAFA, CO 80840.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposed and associated collection instruments, please write to above address, or call the United States Air Force Academy, Office of Admissions, (719) 333–7291.

*Title, Associated Form, and OMB Number:* Air Force Academy Secondary School Transcript, USAF Form 148, OMB Number 0701–0066.

*Needs and Uses:* The information collection requirement is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 4,000.

*Number of Respondents:* 7,500.

*Responses per Respondent:* 1.

*Average Burden per Response:* 30 Minutes.

*Frequency:* 1.

**SUPPLEMENTARY INFORMATION:**

#### Summary of Information Collection

The information collected on this form is required by 10 U.S.C. 9346. The respondents are students who are applying for admission to the United States Air Force Academy. Each student's background and aptitude is reviewed to determine eligibility. If the information on this form is not collected, the individual cannot be considered for admittance to the Air Force Academy.

**Pamela Fitzgerald,**
*Air Force Federal Register Liaison Officer.*
[FR Doc. 03–26339 Filed 10–20–03; 8:45 am]
BILLING CODE 5001–05–P

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## DEPARTMENT OF DEFENSE

## Department of the Army

### Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. and Foreign Patents and Patent Applications Concerning Indolo [2,1-B] Quinazole-6,12-Dione Antimalarial Compounds and Methods of Treating Malaria

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR Part 404.6 and 404.7, announcement is made of the availability for licensing of inventions set forth in the following, related patent applications:

1. *Title:* Indolo [2,1-B] Quinazole-6, 12-Dione Antimalarial Compounds and Methods of Treating Malaria.
*U.S. Patent No.:* 6,531,487.
*Issued:* March 11, 2003.

2. *Title:* Indolo [2,1-B] Quinazole-6, 12-Dione Antimalarial Compounds and Methods.
*U.S. Patent No.:* 6,284,772.
*Issued:* September 28, 1999.

Foreign rights are also available. The United States Government, as represented by the Secretary of the Army, has rights in these inventions.

**ADDRESSES:** Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

**FOR FURTHER INFORMATION CONTACT:** For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Applications, (301) 619–6664, both at telefax (301) 619–5034.

**Luz D. Ortiz,**
*Army Federal Register Liaison Officer.*
[FR Doc. 03–26431 Filed 10–20–03; 8:45 am]
BILLING CODE 3710–08–M

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## DEPARTMENT OF DEFENSE

## Department of the Army

### Intent To Grant an Exclusive License

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(l)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license for the U.S. Patents listed below to New England Ropes, Inc. with its principal place of business at 848 Airport road, Fall River, Massachusetts 02720.

**DATES:** File written objections by November 5, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, Phone; (508) 233–4928 or e-mail: *Robert.Rosenkrans@natick.army.mil.*

**SUPPLEMENTARY INFORMATION:** The exclusive licenses will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The exclusive licenses may be granted, unless within fifteen (15) days from the date of this published notice, SBCCOM receives written evidence and argument to establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7 the following Titles, Patent Numbers, and Issue dates are provided:

1. *Title:* Harness for Human Wear; *Patent No.* 6, 189,651; *Issue Date:* February 20, 2001.

2. *Title:* Harness for Human Wear; *Patent No.* 5,857,540; *Issue Date:* January 12, 1999.

3. *Title:* Rappel Tool for Descent of a Load and Rappel Tool and Stirrup Assembly for Ascent Along a Rappel Rope; *Patent No.* 6,095,282; *Issue Date:* August 1, 2000.

4. *Title:* Rappel Rope Storage and Deployment System; *Patent No.* 5,868,219; *Issue Date:* February 9, 1999.

**Luz D. Ortiz,**
*Army Federal Register Liaison Officer.*
[FR Doc. 03–26432 Filed 10–20–03; 8:45 am]
BILLING CODE 3710–08–M

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## DEPARTMENT OF DEFENSE

## Department of the Army; Corps of Engineers

### Intent To Prepare a General Reevaluation Report and Draft Environmental Impact Statement for the Atlantic Coast of Maryland Shoreline Protection Project, Ocean City, MD

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice of intent.

**SUMMARY:** In accordance with the National Environmental Policy Act (NEPA), the Baltimore District, U.S. Army Corps of Engineers (USACE), will conduct a General Reevaluation Report (GRR) and Draft Environmental Impact Statement (DEIS) to evaluate new sand borrow areas for the continued beach replenishment at Ocean City, Maryland, and potential modifications to the existing project to better protect Ocean City at areas of high erosion.

The Atlantic Coast of Maryland Shoreline Protection Project, Ocean City, Maryland, is designed to provide coastal flood and erosion protection to Ocean City. As part of the project design, periodic renourishment and maintenance of the beach are required to maintain the design level of protection. Every four years, approximately 800,000 cubic yards of sand are required to renourish and maintain the beaches. The original feasibility report identified borrow areas that will be consumed within the next eight years (two beach renourishment cycles) or less, assuming no extreme storm events. Estimates show that approximately 10–12 million cubic yards of sand are needed to maintain the four-year cycles for the remaining project life. The District proposes to analyze, evaluate, and select the best site(s) for additional borrow material.

In addition, the project has experienced three persistent areas of erosion, or hot spots, that have required significant amounts of sand renourishment since the project's inception. These areas, centered on 32nd Street, 81st Street, and 146th Street have been examined in the past, and several potential cost-effective solutions were identified. The second purpose of this reevaluation study and resulting GRR is to analyze, evaluate, and select the best alternative to reduce maintenance costs for two of the three areas. The area at 146th Street has been addressed by the Corps' Philadelphia District's Fenwick Island, Delaware, Interim Feasibility Study—Final Integrated Feasibility Report and Environmental Impact Statement.

The study will be conducted in compliance with Section 404 and Section 401 of the Clean Water Act, Section 7 of the Endangered Species Act, the Clean Air Act, the U.S. Fish and Wildlife Coordination Act, Section 106 of the National Historic Preservation Act, Prime and Unique Farmlands, the Magnuson-Stevens Fishery Conservation and Management Act, and National Pollutant Discharge Elimination System Act. All appropriate documentation (*i.e.,* Section 7, Section 106 coordination letters, and public and agency comments) will be obtained and included as part of the Environmental Impact Statement (EIS).

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and DEIS can be addressed to Mr. Harold K. Clingerman, U.S. Army Corps of Engineers, ATTN: CENAB–PL–P, 10 South Howard Street, P.O. Box 1715, Baltimore, MD, 21203–1715, telephone 410–962–2650; e-mail address: *harold.k.clingerman@usace.army.mil*

**SUPPLEMENTARY INFORMATION:** 1. In September 1991 construction of the shoreline protection features of the project were essentially complete and the project was dedicated on October 30, 1991. The project consists of widening and raising the beach from 4th street to the Maryland-Delaware line (about 8.2 miles) and a 0.3 mile transition into Delaware, construction of a steel sheetpile bulkhead from 4th street to the north end of the boardwalk at 28th Street (about 1.5 miles), construction of a sand dune from the north end of the boardwalk to the Maryland-Delaware line (about 6.7 miles plus a 0.3 mile transition into Delaware), and project operation and maintenance (non-Federal cost). The long-term features of the project include monitoring and renourishment (cost shared 53%/47%) over an economic life of 50 years. Maintenance of the dune and berm above +6 feet NGVD is the financial responsibility of the non-Federal sponsor.

2. As part of the EIS process, recommendations of borrow areas and project modifications will be based on an evaluation of the probable impact of the proposed activity on the public interest. The decision will reflect the national concern for the protection and utilization of important resources. The benefit, which may reasonably be expected to accrue from the proposal, will be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered, among these are: Fish and wildlife resources; cultural resources; land use; water and air quality; hazardous, toxic, and radioactive substances; threatened and endangered species; regional geology; aesthetics; environmental justice; and the general needs and welfare of the public.

3. The DEIS for the GRR is expected for public release in late 2004.

**Wesley E. Coleman, Jr.,**

*Chief, Civil Project Development Branch.*

[FR Doc. 03–26434 Filed 10–20–03; 8:45 am]

BILLING CODE 3710–41–M

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## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Chief of Engineers Environmental Advisory Board; Meeting

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of open meeting.

**SUMMARY:** In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the forthcoming meeting. The meeting is open to the public.

*Name of Committee:* Chief of Engineers Environmental Advisory Board (EAB).

*Date:* November 6, 2003.

*Location:* Crowne Plaza Hotel—Old Mill, 655 N. 108 Avenue, Omaha, NE 68154, (402) 496–0850.

*Time:* 8:30 a.m. to 12 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Norman Edwards, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000; Ph: (202) 761–4559.

**SUPPLEMENTARY INFORMATION:** The Board advises the Chief of Engineers on environmental policy, identification and resolution of environmental issues and missions, and addressing challenges, problems and opportunities in an environmentally sustainable manner. The EAB will visit many locations on the Missouri River prior to the meeting to gain a better perspective of the issues of national significance associated with that river system. The public meeting, however, will focus on the generic issue of independent science review. The intent of this meeting is to present an opportunity for the Chief of Engineers to receive the views of his EAB. Time will be provided, however, for public comment. Each speaker will be limited to no more than three minutes in order to accommodate as many people as possible within the limited time available. If you wish to receive electronic notice of future meetings you may subscribe to a list server at: *http://www.usace.army.mil/inet/functions/cw/hot_topics/eab.htm.*

**Luz D. Ortiz,**

*Army Federal Register Liaison Officer.*

[FR Doc. 03–26433 Filed 10–20–03; 8:45 am]

BILLING CODE 3710–92–M

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## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before November 20, 2003.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 15, 2003.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

### Office of Elementary and Secondary Education

*Type of Review:* Extension.

*Title.* Reading First Annual Performance Report.

*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs (primary).

*Reporting and Recordkeeping Hour Burden:*

Responses: 55.
Burden Hours: 1,100.

*Abstract:* This Annual Performance Report will allow the Department of Education to collect information required by the Reading First statute.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2329. When you access the information collection, click on "Download Attachments "to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–26452 Filed 10–20–03; 8:45 am]

**BILLING CODE 4000–01–P**

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## DEPARTMENT OF ENERGY

### Certification of the Radiological Condition of the Ventron Site in Beverly, MA

**AGENCY:** Department of Energy.

**ACTION:** Notice of certification.

**SUMMARY:** The Department of Energy (DOE) has completed remedial actions to decontaminate the Ventron site in Beverly, Massachusetts. This property formerly was found to contain quantities of radioactive material from activities conducted for the Manhattan Engineer District (MED) (and its successor the Atomic Energy Commission (AEC)) from 1942 to 1948. Based on the analysis of all data collected, DOE has concluded that the property is in compliance with DOE radiological decontamination criteria and standards and that no radiological restrictions on the use of the property are required.

**ADDRESSES:** The certification docket is available at the following locations:

U.S. Department of Energy, Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee 37831.

Beverly Public Library, 32 Essex Street, Beverly, Massachusetts 01915.

**FOR FURTHER INFORMATION, CONTACT:** Donald Mackenzie, Health Physicist, U.S. Department of Energy, Ohio Office, Office of Site Closure, EM–31/Cloverleaf Building, 1000 Independence Avenue, SW., Washington, DC 20585–2040, Phone: (301) 903–7426, Fax: (301) 903–2385.

**SUPPLEMENTARY INFORMATION:** The U.S. DOE, Oak Ridge Operations Office (OR), Office of Environmental Management, has conducted remedial action at the Ventron site in Beverly, Massachusetts, under the Formerly Utilized Sites Remedial Action Program (FUSRAP). The objective of the program is to identify and remediate, or otherwise control, sites where residual radioactive contamination remains from activities carried out under contract to the MED/AEC during the early years of the nation's atomic energy program.

In October 1997, the Energy and Water Appropriations Act, 1998 transferred responsibility for management of FUSRAP to the U.S. Army Corps of Engineers (US ACE). Completion of the certification process was delayed pending preparation of a Memorandum of Understanding (MOU) between DOE and U.S. ACE with regard to completed, remediated sites such as the Ventron property. The MOU between the U.S. DOE and the U.S. ACE regarding Program Administration and Execution of the FUSRAP was signed by the parties in March 1999. Funding to proceed with the completion of DOE closure documentation for several FUSRAP sites, including the Ventron site, was obtained from U.S. ACE in late 2000. The closure documentation for these sites will document the cleanup and inform the public of their successful decontamination of radioactive contamination.

From 1942 to 1948, the Metal Hydrides Corporation (predecessor to the Ventron Corporation) conducted natural uranium processing operations under contract to the MED and its successor, the AEC. The MED/AEC contract operations at the Ventron site involved conversion of uranium oxide to uranium metal powder using calcium hydride. In a process used later at the facility, uranium oxide was reacted with hydrogen fluoride to produce uranium tetrafluoride, which was mixed with magnesium and heated to produce uranium metal. Other operations at the site involved recovery of uranium from scrap and turnings resulting from operations at a fuel fabrication plant in Hanford, Washington. Uranium-238 was identified as the primary contaminant of concern associated with MED/AEC activities. Two of the original buildings, which housed foundry facilities, were demolished between 1948 and 1950 (after completion of AEC surveying and decommissioning), and two other buildings (Buildings B and F) were erected at these locations. The remaining original buildings (Buildings A and A–1) contained furnaces, leaching facilities, a mixing room, a drying room, and analytical laboratories. The Alfa Building was used in later non-MED-related thorium operations, reportedly involving purification of thorium compounds. The primary radioactive contaminant resulting from this work was thorium-232.

In 1965, Metal Hydrides Corporation became the Ventron Corporation, which was acquired by the Thiokol Corporation in late 1976. In 1980, Ventron became a division of Morton Thiokol, Incorporated (renamed Morton International in 1990). The site was designated for remedial action under FUSRAP in 1986.

Site characterization was performed in 1992 using the Streamlined Approach for Environmental Restoration method, an expedited approach developed by DOE to quickly and efficiently conduct remedial investigations/feasibility studies at DOE facilities. This approach indicated several areas of contamination.

Primary radioactive contaminants were uranium-238, thorium-232, and radium-226. Residual radioactive contamination (primarily uranium) was identified in soil and in fill, material beneath four buildings, and elevated surface contamination was found in Buildings A and A–1. A Memorandum of Agreement (MOA) signed by DOE and Morton International in 1996 provided that FUSRAP would decontaminate all buildings containing radioactivity above DOE Order 5400.5 guidelines in effect at the time (whether of government or non-government origin) and that Morton would demolish the buildings.

Before remedial action began, the site was surveyed to delineate boundaries of radioactive contamination, supplement existing characterization information, and obtain radiological and chemical data needed to classify the waste generated during cleanup. Waste profile information was necessary to establish acceptability of the various waste streams at the Envirocare of Utah low-level radioactive waste disposal facility in Clive, Utah. Cleanup activities were conducted in full compliance with applicable Federal and State waste management and transportation requirements.

Radiological decontamination of the Ventron site by the DOE occurred in two phases: In September 1995, and from May 1996 to March 1997. Supplemental sampling of the site to verify the adequacy of radiological remediation was performed in July 1997.

In September 1995, the first phase of DOE remediation of site tidal flats (harbor) adjacent to the seawall began. During this first phase of remediation, a walkover was performed over the entire harbor down to the low-tide mark, and areas with elevated levels of radioactive materials were targeted for remediation. Elevated readings were found in three areas. Excavations were completed in the first two areas, and post-remedial action samples were collected. Excavation was halted in the third area because contamination in that area was too extensive to be removed by manual methods. During the second phase of the remedial action, this third area was remediated and post-remedial action samples were collected.

Pursuant to the MOA between DOE and Morton International, several onsite buildings were demolished and the crushed building rubble was sampled. Rubble meeting DOE guidelines contained in DOE Order 5400.5 was stockpiled and used as backfill along the seawall. Building slabs were surveyed and either decontaminated and left in place or removed and disposed of with other contaminated material.

Excavation of contaminated materials was the primary remedial action technique used at the Ventron site. Eleven discrete areas of the site were excavated and verified for compliance with radiological cleanup criteria. Excavations occurred beneath demolished buildings, in the northwest corner of the site, and in the harbor area.

Post-remedial action surveys conducted in 1996 and 1997 have demonstrated, and DOE has certified, that the subject property is in compliance with DOE radiological decontamination criteria and standards in effect at the conclusion of remedial action. These criteria and standards are established to protect members of the general public and occupants of the site and to ensure that reasonably foreseeable future use of the site will result in no radiological exposure above applicable guidelines. Accordingly, this property is released from the FUSRAP program. These findings are supported by the DOE's Certification Docket for the Remedial Action Performed at the Ventron site in Beverly, Massachusetts. DOE makes no representation regarding the condition of the site as a result of activities conducted subsequent to DOE's post-remedial action surveys.

The certification docket will be available for review between 9 a.m. and 4 p.m., Monday through Friday (except Federal holidays), in the DOE Public Reading Room located in Room 1E–190 of the Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. Copies of the certification docket will also be available in the DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee, 37831, and the Beverly Public Library, 32 Essex Street, Beverly, Massachusetts, 01915.

The DOE, through the Office Director, Ohio Office (EM–31), Deputy Assistant Secretary for Office of Site Closure (EM–30), the Assistant Secretary for the Office Environmental Management (EM), has issued the following statement:

**Statement of Certification: Ventron Site in Beverly, Massachusetts**

The DOE, Oak Ridge Operations Office (OR), Office of Environmental Management, Oak Ridge Reservation, Remediation Management Group, and the U.S. DOE Office of Environmental Management (EM), Office of Site Closure (EM–30), Ohio Office (EM–31), has reviewed and analyzed the radiological data obtained following remedial action at the Ventron site in Beverly, Massachusetts, (Deed Book 10091, Page 339, in the records of Essex County, Massachusetts). Based on the analysis of all data collected, including post-remedial action surveys, DOE certifies that any residual contamination remaining onsite at the time remedial actions were completed falls within DOE radiological decontamination criteria and standards for use of the property without radiological restrictions. This certification of compliance provides assurance that reasonably foreseeable future use of the site will result in no radiological exposure above DOE radiological criteria and standards for protecting members of the general public and occupants of the property.

Property owned by: Morton International, Incorporated, 123 North Wacker Drive, Chicago, Illinois, 60606.

Issued in Germantown, Maryland.

**Sally A. Robison,**

*Office Director, Ohio Office, Office of Site Closure.*

[FR Doc. 03–26517 Filed 10–20–03; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

### Energy Information Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Energy Information Administration (EIA), Department of Energy (DOE).

**ACTION:** Agency information collection activities: Submission for OMB review; comment request.

**SUMMARY:** The EIA has submitted the Petroleum Supply Reporting System surveys to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*).

**DATES:** Comments must be filed by November 20, 2003. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

**ADDRESSES:** Send comments to Bill Nickerson, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail (*William_Nickerson@omb.eop.gov*) is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at 202–395–7151 (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Herbert Miller. To ensure receipt of the comments by the due date, submission by FAX (202–287–1705) or e-mail (*herbert.miller@eia.doe.gov*) is recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Mr. Miller may be contacted by telephone at (202) 287–1711.

**SUPPLEMENTARY INFORMATION:** This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*, the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.*, new, revision, extension, or reinstatement); (5) response obligation (*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. The Petroleum Supply Reporting System includes the following surveys:

EIA–800, Weekly Refinery and Fractionator Report (previously Weekly Refinery Report),
EIA–801, Weekly Bulk Terminal Report,
EIA–802, Weekly Product Pipeline Report,
EIA–803, Weekly Crude Oil Stocks Report,
EIA–804, Weekly Imports Report,
EIA–810, Monthly Refinery Report,
EIA–811, Monthly Bulk Terminal Report,
EIA–812, Monthly Product Pipeline Report,
EIA–813, Monthly Crude Oil Report,
EIA–814, Monthly Imports Report,
EIA–816, Monthly Natural Gas Liquids Report,
EIA–817, Monthly Tanker and Barge Movement Report,
EIA–819, Monthly Oxygenate Report, (previously EIA–819M, Monthly Oxygenate Telephone Report), and
EIA–820, Annual Refinery Report.

**New Surveys Proposed**

EIA–805, Weekly Terminal Blenders Report
EIA–815, Monthly Terminal Blenders Report

2. Energy Information Administration.
3. OMB Number 1905–0165.
4. Revision.
5. Mandatory.

6. EIA's Petroleum Supply Reporting System collects information needed for determining the supply and disposition of crude oil, petroleum products, and natural gas liquids. The data are published by EIA and are used by public and private analysts. Respondents are operators of petroleum refineries, blending plants, bulk terminals, crude oil and product pipelines, natural gas plant facilities, tankers, barges, and oil importers.

7. Business or other for profit; Federal Government; and State, Local or Tribal Government.

8. 83,289 hours (2,590 respondents times 19.37 responses per year times 1.66 hours per response).

The Office of Oil and Gas has made minor modifications subsequent to those proposed in the FR notice for public comments. These additional changes are based upon comments received in response to the FR notice, along with changes in the industry.

These new changes are:

(1) EIA–819—delete the "isobutylene" category from the motor gasoline blending component production

(2) EIA–811—Add the category "unfinished oils" with the following subcategories:

a. Naphthas and Lighter
b. Kerosene and Light Gas Oils
c. Heavy Gas Oils
d. Residuum

(3) EIA–803 and EIA–813—Add a line for crude oil stocks at Cushing, Oklahoma

(4) EIA–811—Collect the volumes of ultra-low sulfur distillate fuel oil (15 ppm and under) downgraded at bulk terminals *by PAD District*. Downgraded volumes include motor vehicle diesel fuel that was designated as meeting the 15 ppm sulfur standard when it was produced or imported but was later commingled with motor vehicle diesel fuel meeting the 500 ppm sulfur standard. Downgrading of motor vehicle diesel fuel meeting the 15 ppm sulfur standard may occur because the fuel became mixed with higher-sulfur product in pipelines (*i.e.* pipeline interface/transmix) or because sulfur was picked up at other points in the petroleum distribution system (*e.g.* tanks, valves, manifolds) causing the fuel to exceed the 15 ppm sulfur standard.

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

**Statutory Authority:** Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13)(44 U.S.C. 3501 *et seq.*).

Issued in Washington, DC, October 15, 2003.

**Jay H. Casselberry,**

*Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.*

[FR Doc. 03–26518 Filed 10–20–03; 8:45 am]

BILLING CODE 6450–01–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[OAR–2003–0070; FRL–7574–8]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; the SunWise School Program, EPA ICR Number 1904.02, OMB Control Number 2060–0439

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on November 30, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before November 20, 2003.

**ADDRESSES:** Submit your comments, referencing docket ID number OAR–2003–0070, to (1) EPA online using EDOCKET (our preferred method), by email to *a-and-r-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kristin Kenausis, Office of Atmospheric Programs, Global Programs Division, Environmental Protection Agency, Mail Code 6205J, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–2289; fax number: (202) 565–2095; email address: *kenausis.kristin@epa.gov*.

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 21, 2003 (68 *FR* 27796), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OAR–2003–0070, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's Federal Register notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

*Title:* The SunWise School Program.

*Abstract:* The goal of the SunWise School Program is to teach children and their care givers how to protect themselves from overexposure to the sun. The SunWise School Program recognizes the challenge of measuring the progress and evaluating the effectiveness of an environmental and public health education program where the ultimate goal is to reduce risk and improve public health. Therefore, the continual and careful evaluation of program effectiveness through a variety of means, including data from pre- and post-intervention surveys, tracking and monitoring of classroom activities and school policies, and advisory board meetings, is necessary to monitor progress and refine the program. Surveys to be developed and administered include: (1) Student survey to identify current sun safety knowledge and behaviors among students; and (2) Teacher questionnaire for measuring their receptivity to the educational component of the Program. The data will be analyzed and results will indicate the Program's effect on participants' sun-protection attitudes and behaviors. In addition, educators are asked to fill out a registration form to receive a tool kit. Responses to the collection of information are voluntary. All responses to the collection of information remain anonymous and confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 10 minutes per response for the registration and 20 minutes per response for the two surveys. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Entities potentially affected by this action are elementary and middle school students and teachers.

*Estimated Number of Respondents:* 5,500.

*Frequency of Response:* Annually for teachers; semi-annually for students.

*Estimated Total Annual Hour Burden:* 1,833.

*Estimated Total Annual Cost:* $59,583, which includes $0 capital/startup and O&M costs and $59,583 labor costs.

*Changes in the Estimates:* There is an increase in the number of teachers who we predict will register for the program annually (from 1,000 to 3,000).

Dated: September 30, 2003.

**Doreen Sterling,**

*Acting Director, Collection Strategies Division.*

[FR Doc. 03–26543 Filed 10–20–03; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7576–9]**

## Science Advisory Board Staff Office; Change to an Earlier Meeting Notice: Advisory Council on Clean Air Compliance Analysis; Notification of Postponement of a Public Meeting and Public Teleconference for the Air Quality Modeling Subcommittee and Change in Date and Time for the Health Effects Subcommittee

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; correction.

**SUMMARY:** The Environmental Protection Agency, Science Advisory Board (SAB) Staff Office, published a document in the **Federal Register** (October 7, 2003, 68 FR 57890–57891) announcing a public meeting for the Council's Air Quality Modeling Subcommittee (AQMS) and several public teleconferences, including public teleconferences for the Council's Health Effects Subcommittee (HES) and the AQMS. The Staff Office is now announcing that the AQMS meeting and teleconference are postponed to a date and time to be identified and is also announcing a change in the date and time of the HES teleconference.

**DATES:** October 30, 2003. A public teleconference for the Health Effects Subcommittee (HES) will be held from 12 p.m. to 2 p.m. (Eastern Time).

**FOR FURTHER INFORMATION CONTACT:** Members of the public who wish to obtain the call-in number and access code to participate in the teleconference meeting may contact Ms. Sandra Friedman, EPA Science Advisory Board Staff Office, at telephone/voice mail: (202) 564–2526; or via e-mail at: *friedman.sandra@epa.gov*, or Ms. Delores Darden, EPA Science Advisory Board Staff Office at telephone/voice mail: (202) 564–2282; or via e-mail at *darden.delores@epa.gov.* Any member of the public wishing further information regarding the HES may contact Dr. Angela Nugent, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board (1400A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by telephone/voice mail at (202) 564–4562; or by e-mail at *nugent.angela@epa.gov.*

Dated: October 15, 2003.

**Vanessa T. Vu,**

*Director, Science Advisory Board Staff Office.*

[FR Doc. 03–26538 Filed 10–20–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7576–7]**

### Expert Peer Review of Natural Gas Supply Curves and Associated Assumptions as Used in the Integrated Planning Model (IPM); Notification of Panel Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA announces an expert peer review panel meeting on the natural gas supply curves and associated assumptions developed for EPA by ICF Consulting, Inc. for use in EPA applications of ICF's Integrated Planning Model (IPM). In accordance with provisions in EPA's Peer Review Handbook (EPA 100–B–00–001), the meeting is being conducted by a third party EPA contractor, Perrin Quarles Associates, Inc. The meeting of the peer review panel is open to the public. The public may submit written comments for review by EPA up to two weeks after the date of the meeting, and EPA will consider those comments in conjunction with the input from the peer review panel. Time permitting, there may be a limited opportunity for oral comments from the public before the panel at the end of the first day's session. General information about the IPM, the natural gas supply curves and associated assumptions, and the use of IPM by EPA can be found at *http://www.epa.gov/airmarkets/epa-ipm/.*

**DATES:** The peer review will be held in two sessions. The first, on October 23, 2003, will begin at 9 a.m. and conclude no later than 6 p.m. (eastern time), and the second, on October 24, 2003, will begin at 9 a.m. and conclude no later than 2 p.m. (eastern time).

**ADDRESSES:** The peer review will be held at the Phoenix Park Hotel, 520 North Capitol St., NW., Washington, DC. Written comments can be sent by mail to Mr. Brian Menard, Perrin Quarles Associates, Inc., 675 Peter Jefferson Parkway, Suite 200, Charlottesville, VA 22911 or by email to *bpm@pqa.com.*

**FOR FURTHER INFORMATION CONTACT:** Any member of the public who wishes to address the peer review panel during the public input period at the end of the first day's session should contact Mr. Brian Menard, Perrin Quarles Associates, Inc., at telephone: (434) 979–3700, or via e-mail at: *bpm@pqa.com* prior to the meeting. Written comments (preferably via email) should be sent to Mr. Menard within two weeks after the meeting. EPA will consider any comments received in that timeframe. Questions about the IPM and EPA's use of the IPM should be directed to Mr. Elliot Lieberman, EPA, at telephone/voice mail: (202) 564–9136, or via e-mail at: *Lieberman.Elliot@epa.gov.*

Dated: October 14, 2003.

**Sam Napolitano,**

*Acting Division Director, Clean Air Markets Division, Office of Atmospheric Programs.*

[FR Doc. 03–26539 Filed 10–20–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7576–5]**

### Crimson Resource Management—Administrative Complaint Consent Agreement and Final Order—Notice of Proposed Administrative Consent Agreement and Final Order Pursuant to Section 311(b)(6) of the Clean Water Act

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice, request for public comments.

**SUMMARY:** In accordance with section 311(b)(6)(C) of the Clean Water Act, ("CWA"), 33 U.S.C. 1321(b)(6)(C), notice is hereby given of a proposed Complaint, Consent Agreement and Final Order ("CCA/FO," Region 9 Docket No. OPA 9–2003–0003), which resolves penalties for alleged violations of sections 311(b)(3) and 311(j) of the CWA. The respondent to the CCA/FO is Crimson Resource Management Corp. Through the proposed CCA/FO, Crimson Resource Management Corp. will pay $30,000 to the Oil Spill Liability Trust Fund as a penalty for alleged violations involving the discharge of oil into waters of the United States, and the failure to prepare and maintain a Spill Prevention, Control and Countermeasure plan. The penalty included in this CCA/FO was calculated in accordance with the Agency's guidance document, Civil Penalty Policy for Section 311(b)(3) and section 311(j) of the Clean Water Act, dated August 21, 1998. For forty (40) days following the date of publication of this Notice, the Agency will receive written comments relating to the proposed CCA/FO. Any person who comments on the proposed CCA/FO shall be given notice of any hearing held and a reasonable opportunity to be heard and to present evidence. If no hearing is held regarding comments received, any person commenting on this proposed CCA/FO may, within 40 days after the issuance of the final order, petition the Agency to set aside the CCA/FO, as provided by section 311(b)(6)(C)(iii) of the CWA, 33 U.S.C. 1321(b)(6)(C)(iii).

**DATES:** Comments must be submitted on or before December 1, 2003.

**ADDRESSES:** The proposed CCA/FO may be obtained from Laurie Williams, telephone (415) 972–3867. Comments regarding the proposed CCA/FO should be addressed to Danielle Carr (ORC–1) at 75 Hawthorne Street, San Francisco, California 94105, and should reference Crimson Resource Management Corp. and Region 9 Docket No. OPA 9–2003–0007.

**FOR FURTHER INFORMATION CONTACT:** Laurie Williams (ORC–3), Office of Regional Counsel, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3867.

Dated: September 26, 2003.

**Keith Takata,**

*Director, Superfund Division, Region 9.*

[FR Doc. 03–26544 Filed 10–20–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7576–4]**

### Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding the Shapell Monteverde Partnership Plum Canyon Development Site, Proceeding Under Clean Water Act Section 309(g)(1), (2)(B) and 40 CFR 22.13(b)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the

Clean Water Act (the "Act"). EPA is also providing notice of opportunity to comment on the proposed assessment.

EPA is authorized under Section 309(g) of the Act, 33 U.S.C. 1319(g), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 309(g), any person who has violated Sections 301(a) or Section 308(a) of the Act, 33 U.S.C. 1311(a), 1318(a), including any person who has violated any permit condition or limitation, may be assessed a penalty in a "Class II" administrative penalty proceeding.

Class II proceedings under section 309(g) are conducted in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" ("Part 22"), 40 CFR part 22. The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in part 22. The deadline for submitting public comment on a proposed Class II order is forty (40) days after publication of this notice.

On September 30, 2003, EPA filed with Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1391, the following Administrative Complaint: *In the Matter of Shapell Monteverde Partnership, Plum Canyon Development Site, Docket No. CWA–9–2003–0005.* For the alleged violations set forth in the Administrative Complaint, EPA proposes to assess penalties of up to One Hundred Thirty-seven Thousand and Five Hundred Dollars ($137,500) for violations of NPDES Permit No. CAS000002 and Sections 301(a) and Section 308 of the Act, 33 U.S.C. 1311(a), 1318(a) at the Plum Canyon Development Site in Los Angeles County, California.

**FOR FURTHER INFORMATION CONTACT:** Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed assessment, or otherwise participate in the proceeding should contact Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1391. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the Respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to forty (40) days after the date of publication of this notice.

Dated: September 30, 2003.

**Alexis Strauss,**

*Director, Water Division.*

[FR Doc. 03–26545 Filed 10–20–03; 8:45 am]

**BILLING CODE 6560–50–M**

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## FARM CREDIT ADMINISTRATION

### Draft Strategic Plan for Fiscal Years 2004–2009

**AGENCY:** Farm Credit Administration.

**ACTION:** Notice of availability; request for comment.

**SUMMARY:** This notice announces the availability of the Farm Credit Administration's (FCA or agency) Draft Strategic Plan for Fiscal Years 2004–2009. The Government Performance and Results Act of 1993 requires that Federal agencies update their strategic plans at least every 3 years and, in doing so, solicit the views and suggestions of those entities potentially affected by or interested in the plan. Therefore, the agency is interested in receiving comments on our draft strategic plan.

**DATES:** Comments must be submitted by November 20, 2003.

**ADDRESSES:** The draft strategic plan is available on the agency's Web site at *http://www.fca.gov.* You can provide your comments to us electronically via e-mail at *info-line@fca.gov.* You can also send written comments or requests for a hard copy of the plan to the Farm Credit Administration, Office of the Chief Operating Officer, Attention: Strategic Plan Coordinator, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or by facsimile to (703) 790–5241.

**FOR FURTHER INFORMATION CONTACT:** Jeff Walker, Executive Assistant, Office of the Chief Operating Officer, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4271; TTY (703) 883–4056.

**SUPPLEMENTARY INFORMATION:** The Farm Credit Administration (FCA or agency) is charged by Congress, as established in title V of the Farm Credit Act of 1971, as amended, with the mandate of overseeing the agricultural Government-sponsored enterprises (GSEs) serving rural America. These include the Farm Credit System (System) and the Federal Agricultural Mortgage Corporation. FCA also has statutory responsibility to examine the National Consumer Cooperative Bank, a non-System entity operating as a federally chartered, privately owned banking corporation.

The Government Performance and Results Act of 1993 (GPRA) requires that each Federal agency establish a strategic plan that covers a period of not less than 5 years. It also mandates that these plans be updated and revised at least every 3 years. In accordance with GPRA, FCA issued its first strategic plan in 1997. A revised plan was approved in 2000. Thus, the Draft Strategic Plan for Fiscal Years 2004–2009 represents the second update to the agency's original strategic plan completed under GPRA. The draft strategic plan describes our mission, our strategic goals, and strategies to achieve those goals over the next 5 years.

The Draft Strategic Plan for Fiscal Years 2004–2009 is the culmination of an extensive outreach effort. The FCA Board began its work on this plan in April 2003 by initiating a series of strategic planning sessions to seek input from farmers, the Farm Credit Council and other Farm Credit System representatives, academics and economists, the American Bankers Association, the Independent Community Bankers of America, former FCA Board chairmen and FCA senior management. Subsequent planning sessions held by the Board and the Office of the Chief Operating Officer over the next several months were used to establish specific direction for formulation of the current draft. Senior management provided input throughout the drafting phase.

Having formulated a draft strategic plan, at this point FCA wants to return our product to our external public for review. We anticipate posting the final strategic plan on the Internet in December 2003.

Dated: October 16, 2003.

**Jeanette C. Brinkley,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 03–26497 Filed 10–20–03; 8:45 am]

**BILLING CODE 6705–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

October 7, 2003.

**SUMMARY:** The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before November 20, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kim A. Johnson, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3562 or via internet at *Kim_A._Johnson@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** OMB Control Number: 3060–0110.

*Title:* Application for Renewal of Broadcast Station License, FCC Form 303–S.

*Form Number:* FCC 303–S.

*Type of Review:* Revision of currently approved collection.

*Respondents:* Business or other for-profit entities; not-for-profit institutions.

*Number of Respondents:* 3,217.

*Estimated Time per Response:* 1.0 hours (avg.).

*Frequency of Response:* Reporting once every 8 years; third party disclosure.

*Total Annual Burden:* 5,271 hours.

*Total Annual Costs:* $1,567,401.

*Needs and Uses:* FCC Form 303–S is used in applying for renewal of a license for a commercial or non-commercial AM, FM, or TV broadcast station and FM translator, TV translator, or low power TV (LPTV), or low power FM broadcast station. It can also be use to seek the joint renewal of licenses for an FM or TV translator station and its co-owed primary FM, TV, or LPTV station. The FCC has recently made two new statutory changes—47 U.S.C. 312(g), which provides for automatic expiration of a license if the licensee does not broadcast ("goes silent") for twelve months; and 47 U.S.C. 309(k), which affects renewal standards and FCC violations. The Commission is also revising Form 303–S to make it a simpler and clearer form that shifts to a convenient certification-based approach to applicants. Furthermore, the Commission is changing this form in line with the release on November 20, 2002 of the Second Report and Order and FNPRM, *Review of the Commission's Broadcast and Cable Equal Employment Opportunities Rules and Policies,* MM Docket No. 98–204, FCC 02–303.

*OMB Number:* 3060–0342.

*Title:* Section 74.1284, Rebroadcasts.

*Form Number:* N/A.

*Type of Review:* Extension of currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 100.

*Estimated Time per Response:* 1 hour.

*Frequency of Response:* On occasion reporting requirement; Third party disclosure.

*Total annual burden:* 100 hours.

*Total annual costs:* $0.00.

*Needs and Uses:* 47 CFR section 74.1284 requires that the licensee of an FM translator station obtain prior consent from the primary FM broadcast station or other FM translator before rebroadcasting their programs. In addition, the licensee must notify the Commission of the call letters of each station rebroadcast and certify that written consent has been received from the licensee of that station whose programs are retransmitted. The FCC staff uses the data to update records and to assure compliance with FCC rules and regulations.

*OMB Control Number:* 3060–0331.

*Title:* Aeronautical Frequency Notification, FCC Form 321.

*Form Number:* FCC 321.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business and other for-profit entities; Not-for-profit institutions.

*Number of Respondents:* 1,855.

*Estimated Time per Response:* 40 minutes.

*Frequency of Response:* One-time and on occasion reporting requirements.

*Total Annual Burden:* 1,237 hours.

*Total Annual Costs:* $92,750.

*Needs and Uses:* On March 13, 2003, the Commission adopted a Report and Order (R&O), *Amendment of the Commission's Rules for Implementation of its Cable Operations and Licensing System (COALS) to Allow for Electronic Filing of Licensing Applications, Forms, Registrations and Notifications in the Multichannel Video and Cable Television Service and the Cable Television Relay Service,* FCC 03–55. This R&O provided for electronic filing and standardized information collections. Under 47 CFR section 76.1804 of the FCC rules, an MVPD must file FCC Form 321 prior to commencing operation in the aeronautical frequency bands at an average power level across a 25 kHz bandwidth in any 160 microsecond time period equal to or greater than $10^{-4}$ watts at any point in the cable distribution system. In addition, this form must be filed prior to transmitting on any new frequency or frequencies in the aeronautical radio frequency bands. This form will replace the requirement that an MVPD send a letter containing approximately the same information. It should reduce the burden on respondents by clarifying the exact information they need to send and by providing a consistent format for the information.

*OMB Control Number:* 3060–0611.

*Title:* Section 74.783, Station Identification.

*Form Number:* N/A.

*Type of Review:* Extension of currently approved collection.

*Respondents:* Business or other for-profit entities; State, Local or Tribal Government.

*Number of Respondents:* 400.

*Estimated Time per Response:* 0.166 hours.

*Total Annual Burden:* 66 hours.

*Total Annual Costs:* $0.00.

*Needs and Uses:* 47 CFR section 74.783(e) permits any low power television (LPTV) station to request a four-letter call sign after receiving its construction permit. All initial LPTV construction permits will continue to be issued with a five-character LPTV call sign. LPTV respondents are required to use the on-line electronic system. To enable these respondents to use this online system, the Commission eliminated the requirement that holders of LPTV construction permits submit with their call sign requests a certification that the station has been constructed, that physical construction is underway at the transmitter site, or that a firm equipment order has been placed. (All burden associated with call sign requests for the on-line reservation and authorization system are included in information collection 3060–0188.) 47 CFR 74.783(b) requires licensees of television translators whose station identification is made by the television station whose signals are being rebroadcast by the translator, must secure agreement with this television licensee to keep in its file, and available to FCC personnel, the translator's call letters and location, giving the name, address and telephone number of the licensee or service representative to be contacted in the event of malfunction of the translator.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03–26240 Filed 10–20–03; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

**[RM–10803; DA 03–3226]**

### Broadcasters' Service to Their Local Communities

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Federal Communications Commission will hold a Localism Task Force hearing in Charlotte, North Carolina, on October 22, 2003, on localism in the broadcast industry. The purpose of the hearing is to gather information from a variety of sources, including consumers, industry, and civic organizations on broadcasters' service to their local communities.

**DATES:** The hearing will be held on Wednesday, October 22, 2003, from 5:30 p.m. to 8:45 p.m.

**ADDRESSES:** The hearing will be held at the Charlotte-Mecklenberg Government Meeting Chamber, located at 600 East Fourth Street, Charlotte, NC 28203.

**FOR FURTHER INFORMATION CONTACT:** Eric Bash, 202–418–1188.

**SUPPLEMENTARY INFORMATION:** The Federal Communications Commission (FCC) will hold a Localism Task Force hearing on the subject of localism, to be held on October 22, 2003, in Charlotte, North Carolina. Several FCC Commissioners will preside. The hearing is open to the public, and seating will be available on a first-come, first-served basis. The purpose of the hearing is to gather information from consumers, industry, civic organizations, and others on broadcasters' service to their local communities. The Charlotte hearing will begin with a number of invited guests and panelists making brief introductory remarks. The Commissioners will then have an opportunity to ask the panelists questions or comment on the subject of localism, and the public will be afforded an opportunity to register their views.

2. Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Please include a description of the accommodation needed, providing as much detail as you can, as well as contact information in case additional information is needed. Please make your request as early as possible. Last minute requests will be accepted, but may be impossible to fulfill. Please send a request by e-mail to *fcc504@fcc.gov*, or call the Consumer & Governmental Affairs Bureau. For sign language interpreters, CART, and other reasonable accommodations, call 202–418–0530 (voice) or 202–418–0432 (TTY). For accessible format material (Braille, large print, electronic files, and audio format), call 202–418–0531 (voice) or 202–418–7365 (TTY).

3. The hearing will be recorded, and the record will be available to the public. The public may also file comments or other documents with the Commission. Filing instructions are provided at *http://hraunfoss.fcc.gov/edocs.public/attachmatch/DOC-239578A1.doc.*

Federal Communications Commission.

**Robert Ratcliffe,**

*Deputy Chief, Media Bureau.*

[FR Doc. 03–26617 Filed 10–20–03; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

### Media Security and Reliability Council

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, this notice advises interested persons of a meeting of the Media Security and Reliability Council (Council). The meeting will be held at the Federal Communications Commission in Washington, DC.

**DATES:** Tuesday, March 2, 2004 at 10 a.m. to 11:30 a.m.

**ADDRESSES:** Federal Communications Commission, 445 12th St., SW., Room TW–C305, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Barbara Kreisman at 202–418–1600 or TTY 202–418–7172.

**SUPPLEMENTARY INFORMATION:** The Council was established by the Federal Communications Commission to bring together leaders of the broadcast and multichannel video programming distribution industries and experts from consumer, public safety and other organizations to explore and recommend measures that would enhance the security and reliability of media facilities and services.

The Council will receive final reports and recommendations from its working groups. The Council may also discuss such other matters as come before it at the meeting.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. Admittance, however, will be limited to the seating available. The public may submit written comments before the meeting to Barbara Kreisman, the Commission's Designated Federal Officer for the Media Security and Reliability Council, by e-mail (*bkreisma@fcc.gov*) or U.S. mail (2–A666, 445 12th St., SW., Washington, DC 20554). Real Audio and streaming video access to the meeting will be available at *http://www.fcc.gov/.*

Federal Communications Commission.

**Barbara Kreisman,**

*Chief, Video Division, Media Bureau.*

[FR Doc. 03–26504 Filed 10–20–03; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 5, 2003.

**A. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Milton Allen Shields, III,* La Feria, Texas; to acquire an option to purchase shares of the outstanding common stock of Alamo Corporation of Texas, Alamo, Texas, and thereby indirectly acquire shares of Alamo Bank of Texas, Alamo, Texas.

Board of Governors of the Federal Reserve System, October 16, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–26552 Filed 10–20–03; 8:45 am]

BILLING CODE 6210–01–S

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## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 03-25676) published on page 58683 of the issue for Friday, October 10, 2003.

Under the Federal Reserve Bank of Dallas heading, the entry for Tradition Bancshares, Inc., Houston, Texas, is revised to read as follows:

**A. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Tradition Bancshares, Inc.,* Houston, Texas; to acquire 30.89 percent of the voting shares of Katy Bank, N.A., Katy, Texas.

Comments on this application must be received by November 3, 2003.

Board of Governors of the Federal Reserve System, October 15, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–26460 Filed 10–20–03; 8:45 am]

BILLING CODE 6210–01–S

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## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 14, 2003.

**A. Federal Reserve Bank of Cleveland** (Nadine W. Wallman, Assistant Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. *S&T Bancorp, Inc.,* Indiana, Pennsylvania; to acquire up to 9.9 percent of the voting shares of CBT Financial Corp., Clearfield, Pennsylvania, and thereby indirectly acquire voting shares of The Clearfield Bank and Trust Company, Clearfield, Pennsylvania.

Board of Governors of the Federal Reserve System, October 15, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–26461 Filed 10–20–03; 8:45 am]

BILLING CODE 6210–01–S

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## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 14, 2003.

**A. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *First Community Capital Corporation, Houston, Texas and First Community Capital Corporation of Delaware, Inc.,* Wilmington, Delaware; to acquire 100 percent of the voting shares of Grimes County Capital Corporation, Houston. Texas, and thereby indirectly acquire Community State Bank, Houston, Texas.

**B. Federal Reserve Bank of San Francisco** (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. *American Pacific Bancorp,* Portland, Oregon; to become a bank holding company by acquiring 100

percent of the voting shares of American Pacific Bank, Portland, Oregon.

Board of Governors of the Federal Reserve System, October 16, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–26551 Filed 10–20–03; 8:45 am]

**BILLING CODE 6210–01–S**

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## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Submission for OMB Review; Comment Request

**AGENCY:** Federal Trade Commission (FTC).

**ACTION:** Notice.

**SUMMARY:** The FTC has submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (PRA) information collection requirements contained in its Alternative Fuel Rule. The FTC is seeking public comments on the proposal to extend through November 30, 2006 the current PRA clearance for information collection requirements contained in the Rule. That clearance expires on November 30, 2003.

**DATES:** Comments must be filed by November 20, 2003.

**ADDRESSES:** Send written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580, or by e-mail to *afv@ftc.gov*, as prescribed below, and to: Records Management Center, ATTN: Desk Officer for the FTC, OMB, Room 10102 NEOB, fax#: 202/395–6566. The submissions should include the submitter's name, address, telephone number and, if available, FAX number and e-mail address. All submissions should be captioned "Alternative Fuel Rule Paperwork comment."

**FOR FURTHER INFORMATION CONTACT:** Requests for copies of the collection of information and supporting documentation should be addressed to Neil Blickman, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 601 New Jersey Ave., NW., Room NJ–2245, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** On August 6, 2003, the FTC sought comment on the information collection requirements associated with the Alternative Fuel Rule ("Rule"), 16 CFR Part 309 (Control Number: 3084–0094). See 68 FR 46640. No comments were received. Pursuant to the OMB regulations that implement the PRA (5 CFR Part 1320), the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Rule.

Comments from members of the public are invited, and may be filed with the Commission in either paper or electronic form. A public comment filed in paper form should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled "Confidential."[1] A public comment that does not contain any material for which confidential treatment is requested may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word), as part of or as an attachment to an email message sent to the following email box: *afv@ftc.gov*. Regardless of the form in which they are filed, all timely comments will be considered by the Commission, and will be available (with confidential material redacted) for public inspection and copying at the Commission's principal office and on the Commission Web site at *http://www.ftc.gov*. As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives, before placing those comments on the FTC web site.

The Rule, which implements the Energy Policy Act of 1992, Public Law 102–486, requires disclosure of specific information on labels posted on fuel dispensers for non-liquid alternative fuels and on labels on Alternative Fueled Vehicles (AFVs). To ensure the accuracy of these disclosures, the Rule also requires that sellers maintain records substantiating produce-specific disclosures they include on these labels.

*Burden statement:*

It is common practice for alternative fuel industry members to determine and monitor fuel ratings in the normal course of their business activities. This is because industry members must know and determine the fuel ratings of their products in order to monitor quality and to decide how to market them. "Burden" for PRA purposes is defined to exclude effort that would be expended regardless of any regulatory requirement. 5 CFR 1320.2(b)(2). Moreover, as originally anticipated when the Rule was promulgated in 1995, many of the information collection requirements and the originally-estimated hours were associated with one-time start up tasks of implementing standard systems and processes.

Other factors also limit the burden associated with the Rule. Certification may be a one-time event or require only infrequent revision. Disclosures on electric vehicle fuel dispensing systems may be useable for several years. (Label specifications were designed to produce labels to withstand the elements for several years.) Nonetheless, there is still some burden associated with posting labels. There also will be some minimal burden associated with new or revised certification of fuel ratings and recordkeeping. The burden on vehicle manufacturers is limited because only newly-manufactured vehicles will require label posting and manufacturers produce very few new models each year. Finally, there will be some burden, also minor, associated with recordkeeping requirements.

*Estimated total annual hours burden:* 2,100 total burden hours, rounded.

*Non-liquid alternative fuels:*

*Certification:* Staff estimates that the Rule's fuel rating certification requirements will affect approximately 550 industry members (compressed natural gas procedures and distributors and manufacturers of electric vehicle fuel dispensing systems) and consume approximately one hour each per year for a total of 550 hours.

*Recordkeeping:* Staff estimates that all 1,800 industry members will be subject to the Rule's recordkeeping requirements (associated with fuel rating certification) and that compliance will require approximately one-tenth hour each per year for a total of 180 hours.

*Labeling:* Staff estimates that labeling requirements will affect approximately nine of every ten industry members (or roughly 1,600 members), but that the number of annually affected members is only 320 because labels may remain effective for several years (staff assumes that in any given year approximately 20% of 1,600 industry members will need to replace their labels). Staff estimates that industry members require approximately one hour each per year for labeling their fuel dispensers for a total of 320 hours.

*Sub-total:* 1,050 hours (550 + 180 + 320).

*AFV manufacturers:*

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[1] FTC Rule 4.2(b), 16 CFR 4.2(d). The comment must also be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

*Recordkeeping:* Staff estimates that all 58 manufacturers will require 30 minutes to comply with the Rule's recordkeeping requirements for a total of 29 hours.

*Producing labels:* Staff estimates 2.5 hours as the average time required of manufacturers to produce labels for each of the five new AFV models introduced among them each year for a total of 12.5 hours.

*Posting labels:* Staff estimates 2 minutes as the average time to comply with the posting requirements for each of the approximately 30,000 new AFVs manufactured each year for a total of 1,000 hours.

*Sub-total:* Approximately 1,041 hours (29 + 12.5 + 1,000).

Thus, total burden for these industries combined is approximately 2,100 hours (1,050 + 1,041).

*Estimated labor costs:* $47,000, rounded.

Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. According to Bureau of Labor Statistics staff, the average compensation for producers and distributors in the fuel industry is $18.98 per hour and $8.56 per hour for service station employees; the average compensation for workers in the vehicle industry is $27.80 per hour.

*Non-liquid alternative fuels:*

*Certification and labeling:* Generally, all of the estimated hours except for recordkeeping will be performed by procedures and distributors of fuels. Thus, the associated labor costs would be $16,512.60 (870 hours × $18.98).

*Recordkeeping:* Only ⅙ of the total 180 hours will be performed by the producers and distributors of fuels; the other ⅚ is attributable to service station employees (⅙ = 30 hours × $18.98 = $569.40 + (⅚ = 150 hours × $8.56 = $1,284.00) = $1,853.40, for an estimated labor cost to the entire industry of $18,366.00.

*AFV manufacturers:*

The maximum labor cost to the entire industry is approximately $28,939.80 per year for recordkeeping and producing and posting labels (1,041 total hours × $27.80/hour).

Thus, estimated total labor cost for both industries for all paperwork requirements is $47,000 ($18,366.00 + $28,939.80) per year, rounded to the nearest thousand.

*Estimated annual non-labor cost burden:* $12,000, rounded.

*Non-liquid alternative fuels:*

Staff believes that there are no current start-up costs associated with the Rule, inasmuch as the Rule has been effective since 1995. Industry members, therefore, have in place the capital equipment and means necessary, especially to determine automotive fuel ratings and comply with the Rule. Industry members, however, incur the cost of procuring fuel dispenser and AFV labels to comply with the Rule. The estimated annual fuel labeling cost, based on estimates of 500 fuel dispensers (assumptions: an estimated 20% of 1,250 total retailers need to replace labels in any given year given an approximate five-year life of labels—i.e., 250 retailers—multiplied by an average of two dispensers per retailer) at thirty-eight cents for each label (per industry sources), is $190.00.

*AFV manufacturers:*

Here, too, staff believes that there are no current start-up costs associated with the Rule, for the same reasons as stated immediately above regarding the non-liquid alternative fuel industry. However, based on the labeling of an estimated 30,000 new and used AFVs each year at thirty-eight cents for each label (per industry sources), the annual AFV labeling cost is estimated to be $11,400.

Thus, estimated total annual non-labor cost burden associated with the Rule is $12,000 ($190.00 + $11,400.00), rounded to the nearest thousand.

**William E. Kovacic,**

*General Counsel.*

[FR Doc. 03–26494 Filed 10–20–03; 8:45 am]

BILLING CODE 6750–01–M

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## FEDERAL TRADE COMMISSION

### Delegation of Authority To Respond to Requests From Ireland's Office of the Director of Consumer Affairs

**AGENCY:** Federal Trade Commission.

**ACTION:** Delegation of authority.

**SUMMARY:** The Commission has delegated authority to the Associate Director for International Consumer Protection to respond to disclosure and other requests from Ireland's Office of the Director of Consumer Affairs pursuant to a memorandum of understanding with the Commission.

**EFFECTIVE DATE:** October 2, 2003.

**FOR FURTHER INFORMATION CONTACT:** Pablo Zylberglait, Legal Advisor for International Consumer Protection, International Division of Consumer Protection, (202) 326–3260, *pzylberglait@ftc.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is hereby given, pursuant to Reorganization Plan No. 4 of 1961, 26 FR 6191, that the Commission has delegated to the Associate Director for International Consumer Protection the authority to respond to disclosure and other requests from Ireland's Office of the Director of Consumer Affairs pursuant to a memorandum of understanding with the Commission about consumer protection information sharing and enforcement cooperation. This delegated authority does not apply to competition-related investigations. When exercising its authority under this delegation, staff may only disclose information regarding consumer protection investigations involving Ireland, and will require assurances of confidentiality from Ireland's Office of the Director of Consumer Affairs. Disclosures shall be made only to the extent consistent with current limitations on disclosure, including section 6(f) of the FTC Act, 15 U.S.C. 46(f), section 21 of the Act, 15 U.S.C. 57b–2, and Commission Rule 4.10(d), 16 CFR 4.10(d), and with the Commission's enforcement policies and other important interests. Where the subject matter of the information to be shared raises significant policy concerns, staff shall consult with the Commission before disclosing such information.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 03–26493 Filed 10–20–03; 8:45 am]

BILLING CODE 6750–01–M

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## GENERAL SERVICES ADMINISTRATION

### Public Buildings Service

**[Wildlife Order 185; 7–U–TX–1055]**

### Matagorda Island Lighthouse Reservation, Matagorda Island, TX Transfer of Property

Pursuant to section 2 of Public Law 537, 80th Congress, approved May 19, 1948 (16 U.S.C. 667c), notice is hereby given that:

1. The General Services Administration transferred 15.29 acres of land and improvements, identified as Matagorda Island Lighthouse Reservation, Matagorda Island, TX to the U.S. Fish and Wildlife Service, Department of the Interior by transfer letter dated May 30, 2000.

2. The above property was conveyed for wildlife conservation in accordance with the provisions of section 1 of Public Law 80–537 (16 U.S.C. 667b), as amended by Public Law 92–432.

Dated: September 22, 2003.

**Brian K. Polly,**

*Assistant Commissioner, Office of Property Disposal.*

[FR Doc. 03–26474 Filed 10–20–03; 8:45 am]

**BILLING CODE 6820–96–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 04010]**

### Programs To Improve the Health, Education, and Well-Being of Young People; Notice of Availability of Funds Amendment

A notice announcing the availability of fiscal year (FY) 2004 funds for cooperative agreements for Programs to Improve the Health, Education, and Well-Being of Young People was published in the **Federal Register** on October 8, 2003, Volume 68, Number 195, pages 58103–58110. The notice is amended as follows:

On page 58109, Column 3, Section I. "Other Requirements", section 3, Financial Status Report, delete "Within 90 days after the end of the entire two-year project period (by August 14, 2005) and replace with "Within 90 days after the end of the entire two-year project period (by August 14, 2006).

In addition, a summary of program announcement 04010, Programs to Improve the Health, Education, and Well-Being of Young People, was published in the **Federal Register** on October 7, 2003. This notice is amended as follows: On page 57998, column 1, delete Program Contact information. On page 57998, column 1, estimated project period, delete three years and replace with two years. Also on page 57998, column 1, project award date, delete March 15 and replace with May 15.

Dated: October 15, 2003.

**Edward Schultz,**

*Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 03–26473 Filed 10–20–03; 8:45 am]

**BILLING CODE 4163–18–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Procedures to Use Child Care and Development Fund (CCDF) for Construction or Major Renovation.

*OMB No.:* 0970–0160.

*Description:* The Child Care and Development Block Grant Act, as amended, allows Indian Tribes to use Child Care and Development Fund (CCDF) grant awards for construction and renovation of child care facilities. A tribal grantee must first request and receive approval from the Administration for Children and Families (ACF) before using CCDF funds for construction or major renovation. This information collection contains the statutorily-mandated uniform procedures for the solicitation and consideration of requests, including instructions for preparation of environmental assessments in conjunction with the National Environmental Policy Act. The proposed draft procedures update the procedures that were originally issued in August 1997 and first updated in February 2001. Respondents will be CCDF tribal grantees requesting to use CCDF funds for construction or major renovation.

*Respondents:* Tribal Child Care Lead Agencies acting on behalf of Tribal Governments.

Annual Burden Estimates:

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Construction & Renovation | 10 | 1 | 20 | 200 |

*Estimated Total Annual Burden Hours:* 200.

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *rsargis@acf.hhs.gov.*

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *lauren_wittenberg@omb.eop.gov.*

Dated: October 15, 2003.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 03–26513 Filed 10–20–03; 8:45 am]

**BILLING CODE 4184–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003N–0472]**

### Statement of Work for the Evaluation of First Cycle Review Performance; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Statement of Work for the Evaluation of First Cycle Review Performance." FDA requests comment on the document, which describes a study to evaluate issues associated with FDA's conduct of first cycle reviews of new drug applications (NDAs), biological license applications (BLAs), and efficacy supplements. FDA intends to award a contract to an independent expert consultant that would include, among other tasks, the performance of such a study. The document, as currently written, will be included in the Request for Proposal (RFP) as a sample statement of work. However, prior to actually assigning the task under the contract, FDA intends to finalize the statement of work after considering all received comments.

**DATES:** Submit written comments on the document by November 20, 2003.

**ADDRESSES:** Submit written requests for single copies of the document to First Cycle Review, Office of Planning (HFP–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Persons with access to the Internet may obtain the document at *http://www.fda.gov/cder/pdufa/default.htm*. Submit written comments on the document to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Carolyn L. Staples, Office of Planning (HFP–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5274.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a document entitled “Statement of Work for the Evaluation of First Cycle Review Performance.” FDA requests comment on the document, which describes a study to evaluate issues associated with FDA’s performance of first cycle reviews of NDAs, BLAs, and efficacy supplements.

On June 12, 2002, the President signed the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, which includes the Prescription Drug User Fee Amendments of 2002 (PDUFA III). In conjunction with the passage of PDUFA III, FDA agreed to certain performance goals and procedures that were described in an enclosure to a June 4, 2002, letter from the Secretary of Health and Human Services, Tommy Thompson, to Congress entitled “PDUFA Reauthorization Performance Goals and Procedures” (PDUFA Goals and Procedures). One of the goals relates to FDA’s performance of first cycle reviews of original NDAs, BLAs, and efficacy supplements (PDUFA Goals and Procedures, section 10). Specifically, FDA agreed to retain an independent expert consultant to undertake a study to evaluate issues associated with the agency’s conduct of first cycle reviews. The study is intended to assess the following: (1) Current first cycle review performance and any changes that occur after FDA publishes guidance on Good Review Management Principles (GRMPs), (2) the first cycle review history of all NDAs for new molecular entities and all BLAs during PDUFA III, and (3) the effectiveness of FDA’s staff training regarding GRMPs. FDA agreed to develop a statement of work for the study and to provide the public with an opportunity to review and comment on the statement of work before the study is implemented.

In accordance with one of the PDUFA goals, the document being made available for public comment today is the statement of work developed by FDA. FDA intends to award a contract that would include, among other tasks, the performance of the study. The document, as currently written, will be included in the RFP as a sample statement of work. However, the statement of work is not yet final. FDA will consider all comments received in finalizing the statement of work prior to assigning the task under the contract.

## II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written comments on the document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The document made available today and the received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 8, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–26446 Filed 10–20–03; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Substance Abuse and Mental Health Services Administration

## Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

*Proposed Project:* National Evaluation of the Comprehensive Community Mental Health Services for Children and Their Families Program, Phase Four—New—SAMHSA’s Center for Mental Health Services (CMHS) is conducting Phase IV of this national evaluation project among grantees newly funded in FY 2002 and 2003. The national evaluation of the Comprehensive Community Mental Health Services for Children and Their Families Program will collect data on child mental health outcomes, family life, and service system development and performance.

Data will be collected on 23 service systems, and approximately 5,281 children and families. Data collection for this evaluation will be conducted over a five-year period. The core of service system data will be collected every 18 months throughout the 5-year evaluation period, with a sustainability survey conducted in selected years. Service delivery and system variables of interest include the following: Maturity of system of care development, adherence to the system of care program model, and client service experience. The length of time that individual families will participate in the study ranges from 18 to 36 months depending on when they enter the evaluation.

Child and family outcomes of interest will be collected at intake and during subsequent follow-up sessions at six-month intervals. The outcome measures include the following: Child symptomatology and functioning, family functioning, material resources, and caregiver strain. In addition, an evidence-based treatment study will examine the relative impact of evidence-based treatments focused on substance use prevention within 2 systems of care. Time-limited studies addressing the cultural competence of services and the role of primary care providers in systems of care will be conducted at selected points during the evaluation period. Internet-based technology will be used for collecting data via Web-based surveys and for data entry and management. The average annual respondent burden is estimated below. The estimate reflects the average number of respondents in each respondent category, the average number of responses per respondent per year, the average length time it will take for each response, and the total average annual burden for each category of respondent, and for all categories of respondents combined.

| Respondent | Number of respondents | Number of responses/respondent | Average burden/response (hrs.) | Total average annual hours |
|---|---|---|---|---|
| Caregiver | 5281 | 1.016 | 2.066 | 11,086 |
| Youth | 3169 | 0.998 | 1.053 | 3,333 |
| Provider/Administrator | 483 | 0.453 | 2.594 | 568 |
| Total | | | | 14,987 |

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: October 14, 2003.

**Anna Marsh,**

*Acting Executive Officer, SAMHSA.*

[FR Doc. 03–26471 Filed 10–20–03; 8:45 am]

**BILLING CODE 4162–20–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[USCG 2003–16298]**

### Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Number 1625–0080

**AGENCY:** Coast Guard, DHS.

**ACTION:** Request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of one Information Collection Request (ICR). The ICR concerns surveys of customers' satisfaction. Before submitting the ICR to OMB, the Coast Guard is inviting comments.

**DATES:** Comments must reach the Coast Guard on or before December 22, 2003.

**ADDRESSES:** To make sure that your comments and related material do not enter the docket [USCG 2003–16298] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

(5) Electronically through Federal eRule Portal: *http://www.regulations.gov.*

The Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

**FOR FURTHER INFORMATION CONTACT:** Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; or Andrea M. Jenkins, Program Manager, U.S. Department of Transportation, 202–366–0271, for questions on the docket.

**SUPPLEMENTARY INFORMATION:**

### Public Participation and Request for Comments

We encourage you to participate in this request for comment by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov,* and they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. Please see DOT's paragraph on the "Privacy Act" below.

*Submitting comments:* If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2003–16298], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. This information collection report may change the estimated "information" burden based on the comments received.

*Viewing comments and documents:* To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 [65 FR 19477], or you may visit *http://dms.dot.gov.*

### Request for Comments

The Coast Guard encourages interested persons to submit comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2003–16298], and give the reasons for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

**Information Collection Request**

*Title:* Surveys of Customers' Satisfaction.

*OMB Control Number:* 1625–0080.

*Summary:* Executive Order 12862 authorizes the Coast Guard to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.

*Need:* Putting people first means ensuring that the Federal Government provides the highest-quality of service possible to the American people. Executive Order 12862 requires that all executive departments and agencies providing significant services directly to the public seek to meet established standards of customer service and (1) identify the customers who are, or should be, served by the agency and (2) survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.

*Respondents:* Recreational boaters, commercial mariners, industry groups, and State and local governments.

*Frequency:* On occasion.

*Burden:* The estimated burden is 5,000 hours a year.

Dated: October 10, 2003.

**Clifford I. Pearson,**

*Assistant Commandant for Command, Control, Communications, Computers and Information Technology.*

[FR Doc. 03–26511 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4707–N–09]

## Public Housing Assessment System (PHAS): Physical Condition Scoring Process and Financial Condition Scoring Process

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice advises public housing agencies (PHAs) and the public that HUD will extend the use of four elements that were part of the interim scoring processes for the Public Housing Assessment System (PHAS) Physical Condition Indicator. HUD adopted interim scoring processes for two of the four PHAS indicators "Physical Condition and Financial Condition—by notice published in the **Federal Register** on March 15, 2002, and described in notices published in the **Federal Register** on November 26, 2001. Except for the four elements that are being extended, the Physical Condition and Financial Condition Indicators for PHAs with fiscal years ending on and after September 30, 2003, will be scored in accordance with the Physical Condition Scoring Process notice published on June 28, 2000, and the Financial Condition Scoring Process notice published on December 21, 2000.

After consideration, the Department has determined not to implement the proposed rule for PHAS. The current PHAS is now fully operational and is providing complete and official assessment scores. Beginning with the fiscal year ending September 30, 2001, PHAs were scored under the four PHAS indicators, rather than issued an advisory score. Since that time, the Department has increased its PHAS-related quality assurance activities.

**FOR FURTHER INFORMATION CONTACT:** For further information contact the Office of Public and Indian Housing Real Estate Assessment Center (PIH–REAC), Attention: Wanda Funk, Department of Housing and Urban Development, 1280 Maryland Avenue, SW., Suite 800, Washington DC 20024; telephone the Technical Assistance Center at 1–888–245–4860 (this is a toll free number). Persons with hearing or speech impairments may access that number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On March 15, 2002 (67 FR 11844), HUD published a notice adopting PHAS interim scoring processes for PHAs with fiscal years ending September 30, 2001, December 31, 2001, March 31, 2002, June 30, 2002, and September 30, 2002. In that notice, HUD announced interim changes in the scoring methodology for two of the four PHAS assessment indicators: the Physical Condition Indicator and Financial Condition Indicator. Detailed information about the changes to the scoring processes was provided in notices published in the **Federal Register** on November 26, 2001. The Introduction notice is published at 66 FR 59080. The Physical Condition Scoring Process Interim Scoring notice is published at 66 FR 59084. The Financial Condition Scoring Process Interim Assessments notice is published at 66 FR 59126. A notice published in the **Federal Register** on August 30, 2002 (67 FR 55860), extended the interim scoring methodologies to apply to PHAs with fiscal years ending December 31, 2002, March 31, 2003 and June 30, 2003.

### II. Physical Condition Scoring Process and Financial Condition Scoring Process

At the time that the interim scoring processes were adopted on March 15, 2002, the Department advised that if an extension of the interim period were necessary, the Department would notify PHAs and the public by notice published in the **Federal Register**. The Department will extend the following four elements of the November 26, 2001 notice for PHAs with fiscal years ending on and after September 30, 2003:

1. The Item Weights and Criticality Levels, Appendix 1 to the Physical Condition Scoring Notice of November 26, 2001, 66 FR 59090–59102;
2. The Dictionary of Deficiency Definitions, Appendix 2 to the Physical Condition Scoring Notice of November 26, 2001, 66 FR 59102–59124;
3. The sampling weights for buildings explained in the section entitled "16. Examples of Sampling Weights for Buildings" of the November 26, 2001 notice, 66 FR 59088; and
4. As stated in the November 26, 2001 notice, 66 FR 59081, the overall PHAS Indicator #1 score will continue to determine the frequency of inspections of a PHA's portfolio. For PHAs whose PHAS Indicator #1 score is 24 or higher based on the 30 point score, physical inspections will be conducted every two years (subject to any changes made in further revisions to the rule or scoring notices). For PHAs whose PHAS Indicator #1 score is less than 24 based on the 30 point score, physical inspections will be conducted annually.

With respect to all other elements of the November 26, 2001 interim scoring methodologies, the Department has determined that an extension of the interim period is not necessary, and by this notice is notifying PHAs and the public that PHAs having fiscal years ending on and after September 30, 2003, the PHAS scores will be issued for effect based on the scoring notices published in the **Federal Register** prior to the publication of the November 26, 2001, notices. The prior Physical Condition Scoring Process notice was published on June 28, 2000 (65 FR 39988). The prior Financial Condition Scoring

Process notice was published on December 21, 2000 (65 FR 80686).

### III. Applicable Regulations and Notices

Itemized in the chart below are the applicable regulations and scoring process notices that, together with the four elements extended by this notice, govern the assessment and scoring of PHAs under the PHAS for PHAs with fiscal years ending September 30, 2003 and after.

| Item | Publication date | Federal Register Page No. |
|---|---|---|
| Public Housing Assessment System (PHAS) Amendments; Final Rule | January 11, 2000 | 65 FR 1738. |
| Public Housing Assessment System (PHAS): Technical Correction; Final Rule. | June 6, 2000 | 65 FR 36042. |
| Public Housing Assessment System Physical Condition Scoring Process; Notice. | June 28, 2000 | 65 FR 39988. |
| Public Housing Assessment System; Financial Condition Scoring Process; Notice. | December 21, 2000 | 65 FR 80686. |
| Public Housing Assessment System Management Operations Scoring Process for PHAs With Fiscal Years Ending On or After March 31, 2000; Notice. | June 28, 2000 | 65 FR 40028. |
| Public Housing Assessment System<br>Resident Service and Satisfaction Scoring Process; Notice. | June 28, 2000 | 65 FR 40034. |

Dated: October 10, 2003.

**Michael Liu,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 03–26475 Filed 10–20–03; 8:45 am]

**BILLING CODE 4210–33–P**

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

### Endangered and Threatened Wildlife and Plants; 90-day Finding for a Petition To List as Endangered or Threatened Wolverine in the Contiguous United States

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding for a petition to list the wolverine (Gulo gulo luscus) in the contiguous United States as threatened or endangered under the Endangered Species Act of 1973, as amended. We find the petition and additional information available in our files did not present substantial scientific or commercial information indicating that listing the wolverine in the contiguous United States may be warranted. We will not be initiating a further status review in response to this petition. We ask the public to submit to us any new information that becomes available concerning the status of or threats to this species. This information will help us monitor and encourage the conservation of this species.

**DATES:** The finding announced in this document was made on October 15, 2003. You may submit new information concerning this species for our consideration at any time.

**ADDRESSES:** Data, information, comments, or questions concerning this petition should be submitted to the Montana Ecological Services Field Office, U.S. Fish and Wildlife Service, 100 North Park Avenue, Suite 320, Helena, Montana 59601. The petition, finding, and supporting information are available for public inspection, by appointment, during normal business hours, at the above address. Submit new information, materials, comments, or questions concerning this species to the Service at the above address.

**FOR FURTHER INFORMATION CONTACT:** Lori Nordstrom, at the address given in the **ADDRESSES** section (telephone (406) 449–5225; facsimile (406) 449–5339; electronic mail *FW6_wolverine@fws.gov*).

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. We are to base this finding on all information available to us at the time we make the finding. To the maximum extent practicable, we must make this finding within 90 days of receiving the petition and publish a notice of the finding promptly in the **Federal Register**. Our standard for substantial information with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If the finding is that substantial information was presented, we are required to promptly begin a review of the status of the species, if one has not already been initiated, under our internal candidate assessment process.

On July 14, 2000, we received a petition dated July 11, 2000, submitted by the Biodiversity Legal Foundation, Predator Conservation Alliance, Defenders of Wildlife, Northwest Ecosystem Alliance, Friends of the Clearwater, and Superior Wilderness Action Network. The petition requests that we list the wolverine within the contiguous United States as a threatened or endangered species and designate critical habitat for the species.

On April 19, 1995, we published a notice of our finding that a previous petition submitted by the Predator Project (now named the Predator Conservation Alliance) and Biodiversity Legal Foundation to list the wolverine in the contiguous United States did not provide substantial information indicating that listing the wolverine in the contiguous United States may be warranted (60 FR 19567).

Since 1995, little new information on wolverine biology, distribution, habitat requirements, or possible threats has been published. The species is still considered one of the least understood medium carnivores. The only new research completed for the contiguous United States is that on wolverine ecology in Idaho (Copeland 1996; Magoun and Copeland 1998; Edelman and Copeland 1999), and a genetic study (Cegelski 2002). Banci (1994) is a compilation of existing wolverine information plus suggestions for research or management considerations. Additional research on wolverine ecology, current and historic distribution, population demographics, and habitat requirements is underway that should provide better information with which to understand the wolverine (Inman *et al.* 2002; J. Squires, Rocky Mountain Research Station, pers. comm. 2003; U.S. Forest Service, in litt. 2002).

The wolverine has a holarctic distribution. The currently accepted taxonomy classifies wolverines worldwide as a single species, *Gulo gulo.* Old and New World wolverines are divided into separate subspecies. Wolverines in the contiguous United States are a part of the New World subspecies, *G. g. luscus* (Kurten and Rausch 1959; Pasitschniak-Arts and Lariviere 1995). We follow this currently accepted taxonomic treatment, although in the past we recognized other taxonomic classifications for wolverine (September 18, 1985; 50 FR 37958).

The wolverine is the largest terrestrial member of the family *Mustelidae,* with adult males weighing 12 to 18 kilograms (kg) (26 to 40 pounds (lb)) and adult females weighing 8 to 12 kg (17 to 26 lb) (Banci 1994). It resembles a small bear with a bushy tail. It has a round, broad head; short, rounded ears; and small eyes. There are five toes on each foot, with curved and semiretractile claws used for digging and climbing (Banci 1994).

Wolverines are opportunistic feeders, consuming a variety of foods depending on availability. They primarily scavenge carrion, but also prey on small animals and birds and eat fruits, berries, and insects (Hornocker and Hash 1981; Wilson 1982; Hash 1987; Banci 1994). Wolverines have an excellent sense of smell, enabling them to find food beneath deep snow (Hornocker and Hash 1981).

Breeding generally occurs from late spring to early fall. Females undergo delayed implantation until the following winter to spring, when active gestation lasts from 30 to 40 days (Rausch and Pearson 1972). Litters are born between February and April, containing one to five kits, with two to three kits being the most common number (Hash 1987). Reproductive dens in Idaho were located in snow-covered boulder talus in subalpine cirque basins (Copeland 1996; Magoun and Copeland 1998).

Wolverines have large spatial requirements; the availability and distribution of food is likely the primary factor in determining wolverine movements and home range (Hornocker and Hash 1981; Banci 1994). Wolverines can travel long distances over rough terrain and deep snow, with adult males generally covering greater distances than females (Hornocker and Hash 1981; Banci 1994). Home ranges of wolverines are generally extremely large, but vary greatly depending on availability of food, gender, age, and differences in habitat. Home ranges of adult wolverines range from less than 100 square kilometers (km2) to over 900 km2 (38.5 square miles (mi2) to 348 mi2) (Banci 1994). Copeland (1996) found that annual home ranges of resident adult females in central Idaho averaged 384 km2 (148 mi2), while the annual home ranges of resident adult males averaged 1,522 km2 (588 mi2).

In North America, wolverines occur within a wide variety of habitats, primarily boreal forests, tundra, and western mountains throughout Alaska and Canada, with the southern portion of the wolverine range extending into the contiguous United States (Wilson 1982; Hash 1987; Banci 1994; Pasitschniak-Arts and Lariviere 1995). The specific range of the wolverine in the contiguous United States is not well understood, preventing us from accurately delineating the historic or current range using the information available to us at this time. The petitioners state that wolverine were trapped to near or complete extinction throughout its former range in the western states in the early 20th century. However, information from state and Federal wildife experts suggest the species has reoccupied its western range in recent years .

The current range in the contiguous United States is believed to include Idaho, Montana, Oregon, Washington, Wyoming, and possibly California (Banci 1994). Wolverines have recently been documented in Idaho (Copeland 1996), Montana (Inman *et al.* 2002; B. Giddings, Montana Department of Fish, Wildlife and Parks, pers. comm. 2003; J. Squires, pers. comm. 2003), Washington (Washington Department of Fish and Wildlife, in litt. 1998) and Wyoming (Inman *et al.* 2002). However, we do not know the extent of the historic range. Wolverines reportedly occurred in a number of other States historically, including Colorado, Maine, Michigan, Minnesota, New Hampshire, New York, North Dakota, Utah, and Wisconsin, suggesting a much wider range historically (Wilson 1982; Hash 1987; Pasitschniak-Arts and Lariviere 1995). The petitioners generally stated that wolverines have been extirpated from States in the Great Lakes, High Plains, and Northeast. But, as we found in 1995, the petition provides no information to confirm the reliability of these historic reports. Furthermore, without a better understanding of the habitat requirements of the wolverine, we cannot ascertain whether habitats in many States were capable of supporting wolverines historically, which would help us determine their historic range.

The wolverine naturally occurs in low densities (Hornocker and Hash 1981; Hash 1987; Banci 1994). Petitioners state that (1) wolverine range and numbers have decreased dramatically since Pre-Columbian times due to human activities and developments, and (2) wolverines currently number fewer than 1,000 animals across the lower 48 states.

However, Hornaker and Hash (1981) asserted stable populations on their study area in Montana, with high dispersal patterns maintaining the stability, rebounding from near extinction in Montana from 1920–1940 (Newby and Wright 1955).

Recent surveys in the west indicate that wolverines appear to be distributed in the montane regions of Idaho, Montana, Washington and Wyoming (Copeland 1996; Washington Department of Wildlife 1998; Inman *et al.* 2002; Giddings pers. comm. 2003; Squires pers. comm. 2003). So, despite scant population and abundance information, there are reports and surveys to suggest that wolverine may not be likely to become threatened in the foreseeable future in the lower 48 states. Wolverines are difficult and expensive to study and are rarely observed, so a lack of sightings does not necessarily mean that wolverines are not present (Banci 1994). There have been few, if any, surveys of wolverines in the contiguous United States that were designed to estimate population size at even a local scale. As a result, it is scientifically unsound to make an estimate of wolverine population size using currently available information, particularly for the entire contiguous United States.

Despite the limitations of available wolverine data, the petitioners provided their own estimation of the size of the wolverine population for the contiguous United States. They arrived at their estimate apparently by creating their own measure of local wolverine densities and extrapolating across what they determined to be the current range of wolverine. Given the lack of data on wolverine population densities even at a local level, using such preliminary information to estimate population size is inappropriate.

Based on what we know about wolverines (*i.e.*, they are found in low densities and have large home ranges), we expect wolverine population sizes to appear low when compared to other species with different population dynamics.

At this time, this lack of information prevents us from determining whether wolverines in the contiguous United States constitute a "distinct population segment" (DPS), which would make them eligible to be listed under the Act. Our Distinct Vertebrate Population Policy published in 1996 (61 FR 4722) specifies that we are to use two elements to assess whether a population segment under consideration for listing may be recognized as a DPS—(1) The population segment's discreteness from the remainder of the taxon to which it belongs; and (2) the significance of the population segment to the taxon to which it belongs. A taxon is the taxonomic group of animals to which the population belongs—in this case the subspecies *G. g. luscus*.

Under section 4(a) of the Act, we may list a species, subspecies, or DPS of vertebrate on the basis of any of five factors—(A) Destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; and (E) other man-made or natural factors affecting its continued existence. The petition asserts that wolverines are subject to threats primarily under Factors A, B, and D. The Service used information provided by the petitioners and available in its files to address these factors as follows.

Under Factor A, the petition asserts wolverines have been impacted by the loss of roadless areas due to logging practices. However, Banci (1994) stated that "the impacts of logging and associated activities on wolverines and wolverine habitat can only be surmised." Wolverines are generally associated with remote areas and require large expanses of land as refugia from human activities, especially during denning. Hornocker and Hash (1981) mentioned that wilderness or remote areas, with limited human activity, appear to be necessary for viable wolverine populations; however, they found no difference in wolverine densities between the wilderness and non-wilderness areas of the study, nor were there differences in their movement, habitat use, or behavior. The non-wilderness portion of the study area was mainly used by humans for logging and recreation (Hornocker and Hash 1981). Copeland (1996) also found wolverines in areas that were currently being logged.

The petitioners cite human disturbance of denning habitat, particularly snowmobile activity, as a threat to wolverines. New research indicates wolverines are sensitive to disturbance when they are denning. In two instances female wolverines moved their kits and abandoned their dens upon encountering researchers; the kits survived the move (Copeland 1996; Magoun and Copeland 1998). Copeland (1996) concluded that protection of natal denning habitat is important to the persistence of wolverine in Idaho. The petitioners provide general information that snowmobile activity is increasing and could expand into regions where wolverines occur, but there is a lack of information to determine the degree to which snowmobile activity may be increasing within wolverine denning habitat or what impact it may be having on wolverine populations.

The petitioners cite landscape fragmentation due to transportation corridors and associated developments as a threat to wolverines. The Service agrees that development is increasing throughout the contiguous United States; however, the level to which landscape fragmentation may be affecting wolverines and their ability to meet their habitat requirements is unknown because little is known about wolverine range and movement. Genetic differentiation among wolverine populations in Idaho, Montana, and Wyoming has been documented, suggesting some level of isolation among these populations possibly as a result of human-caused habitat fragmentation (Cegelski 2002). However, given the lack of understanding of wolverine habitat regarding factors affecting dispersal, all knowledge of possible causes of the genetic differences among these populations is speculative at this time.

Based on the foregoing discussion, we find that the petition does not present substantial information to indicate that habitat impacts threaten the continued existence of the wolverine in the contiguous United States.

Under Factor B, the petitioners cite trapping as a threat to wolverines in the contiguous United States. Over much of the wolverine distribution, trapping has been a primary factor in wolverine mortality (Banci 1994). Trapping is believed to have played a role in an apparent historic decline of wolverine in North America in the late 19th and early 20th centuries (Hash 1987). Today, within the contiguous United States, the only State where wolverine trapping is legal is Montana. Although this trapping season may be detrimental to local wolverine populations, it is not known whether trapping in Montana alone threatens the continued existence of the wolverine population in the contiguous United States. The petitioners also suggest incidental trapping and poisoning of wolverines as a threat, but provide no supporting information for this assertion.

Under Factor C, the petitioners mention predation by other large predators (*e.g.*, wolves) as a source of wolverine mortality. However, this is a natural event and is not considered a threat to the persistence of wolverines in the contiguous United States. There is no information on diseases that may impact wolverine populations.

Under Factor D, the petition cites a lack of Federal protection as a threat to wolverines because a major part of the wolverine's range falls upon lands managed by the U.S. Forest Service (USFS). The USFS has designated wolverines as a "sensitive species" in Regions 1, 2, 4, and 6, and "proposed sensitive" in Region 5. The Bureau of Land Management has determined wolverine to be "sensetive." Conservation efforts are planned for various Federal lands and the upcoming USFS report will help improve the scant information currently available.

It is not possible at this time to determine whether management actions threaten the continued existence of wolverines in the contiguous United States. The USFS is leading a cooperative effort with other Federal agencies, States, and Tribes to conduct research and studies for the development of a scientifically-based strategy for conserving wolverines (USFS, in litt. 2002). Initial work is focused on summarizing historic observation data in an effort to delineate historic and current range and habitat relationships. Ongoing research and surveys will examine wolverine ecology, population demographics, distribution, and habitat use with an emphasis on broad-scale movements and population connectivity.

Finally, under Factor E, the petitioners generally cite the wolverine's low reproductive rate, sensitivity during denning, and need for large areas of unfragmented range and habitat as factors making the wolverine vulnerable to extinction. These natural life history characteristics distinguish the wolverine from other medium-sized carnivores. However, reports and surveys of wolverine from Idaho, Montana, Wyoming, and Washington suggest some stability. It is important to collect more information on wolverine occurrence, distribution, and habitat requirements in addition to developing management measures to conserve the species.

In summary, we find that there is insufficient information in the petition or in our files on wolverine habitat requirements or range to determine whether destruction or modification of wolverine habitat and range is occurring to the extent that it affects the status of the wolverine. We also found insufficient evidence to indicate that the wolverine trapping season in Montana or incidental trapping or poisoning poses a threat to the wolverine population in the contiguous United States. The paucity of data on wolverine life history and habitat requirements leads us to conclude that there is insufficient evidence to determine if land and wildlife managers are failing to conserve wolverines. There also is insufficient data to determine whether human disturbance is negatively impacting wolverine populations on a scale that impacts the status of the species.

We anticipate that ongoing studies of wolverines and, in particular, a scientific assessment of wolverines in the contiguous United States being led by the USFS that should be available in 2004, will improve our understanding of this species in the contiguous United States.

We have reviewed the petition, information submitted by the petitioners, other pertinent literature, and information available in Service files. We find the petition does not present substantial information to indicate that petitioned action may be warranted. This finding is based on insufficient information to—(1) Determine whether the wolverine in the contiguous United States constitutes a DPS under the Act, (2) understand possible threats to the wolverine, or (3) determine whether or not the species is declining in the contiguous United States.

*References Cited:* A complete list of all references cited herein is available upon request from the Montana Field Office (*see* **ADDRESSES**).

*Author:* The primary authors of this document are Katrina Dixon and Lori Nordstrom, Montana Field Office, Helena, Montana.

**Authority:** The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 15, 2003.

**Marshall P. Jones, Jr.,**

*Director, Fish and Wildlife Service.*

[FR Doc. 03–26453 Filed 10–20–03; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Water Transfer Program for the San Joaquin River Exchange Contractors Water Authority, 2005 to 2014

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement/environmental impact report (EIS/EIR) and notice of scoping meeting.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation) and the San Joaquin River Exchange Contractors Water Authority (Exchange Contractors) propose to prepare a joint EIS/EIR for a 10-year water transfer program. The program would consist of the transfer of up to 130,000 acre-feet of substitute water (maximum of 80,000 acre-feet of developed water and a maximum of 50,000 acre-feet from land fallowing) from the Exchange Contractors to other Central Valley Project (CVP) contractors, to Reclamation for delivery to the San Joaquin Valley wetland habitat areas (wildlife refuges), and/or to Reclamation and/or the Department of Water Resources (DWR) for use by the CALFED Environmental Water Account (EWA) as replacement water for CVP contractors. Reclamation would approve and/or execute short-term and/or long-term temporary water transfers or agreements

**DATES:** A public scoping meeting will be held on November 18, 2003 at 6 p.m. in Los Banos, California.

Written comments on the scope of the EIS/EIR should be mailed to Mr. Bob Eckart at the address below by November 25, 2003.

**ADDRESSES:** The public scoping meeting will be held at the San Joaquin Exchange Contractors Board Room, 541 H Street, Los Banos, CA 93635.

Written comments on the scope of the EIS/EIR should be sent to Bureau of Reclamation, Mid-Pacific Region, Division of Environmental Affairs, Attention: Mr. Bob Eckart, 2800 Cottage Way, Sacramento, California 95825.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bob Eckart at the above address or by calling (916) 978–5051.

**SUPPLEMENTARY INFORMATION:** The objective of the proposed 10-year transfer program is the transfer of CVP water from the Exchange Contractors to:

- Other CVP contractors to meet demands of agriculture, municipal, and industrial uses,
- the Department of the Interior's Water Acquisition Program for delivery to the San Joaquin Valley Federal, state, and private wildlife refuges, and/or
- Reclamation or DWR for use by the CALFED EWA Program to benefit CVP operations by providing replacement water to CVP contractors.

The Exchange Contractor's proposed water transfer program would assist Reclamation in optimizing the use of limited existing water resources for agriculture, fish and wildlife resources, and municipal and industrial purposes. CVP water would be transferred to other CVP contractors to support the production of agricultural crops and livestock. Also, the Santa Clara Valley Water District is in need of short-term water supplies to support agriculture, municipal, and industrial uses in Santa Clara County. Reclamation's Water Acquisition Program needs additional water to provide the refuges with the increment between Level 2 and Level 4 water quantities for fish and wildlife habitat development. Reclamation or DWR may also need to acquire additional CVP water south of the Delta to replace water used for fish protection actions pursuant to CALFED's EWA Program (for the benefit of the CVP).

The water transfers would occur largely within the San Joaquin Valley of central California. The Exchange Contractors service area covers parts of Fresno, Madera, Merced, and Stanislaus counties. The agricultural water users that would benefit from the potential transfers are located in the counties of Stanislaus, San Joaquin, Merced, Madera, Fresno, San Benito, Santa Clara, Tulare, Kings, and Kern. The wetland habitat areas that may receive the water are located in Merced, Fresno, Kings, Tulare, and Kern counties. Water purchased for use by Reclamation or DWR for the EWA may be provided to CVP contractors in the West San Joaquin and San Felipe divisions to replace water bypassed at Tracy Pumping Plant pursuant to EWA fish protection actions.

Some of the resources potentially affected by transfers under the proposed 10-year transfer program include: surface water, groundwater, biological resources (vegetation, wildlife, and fisheries), land use (including agriculture), socioeconomics, Indian Trust Assets, and environmental justice.

It is Reclamation's practice to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home addresses from public disclosure, which we will honor to the extent allowable by law. There may also be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: September 19, 2003.

**Frank Michny,**

*Regional Environmental Officer, Mid-Pacific Region.*

[FR Doc. 03–26468 Filed 10–20–03; 8:45 am]

**BILLING CODE 4310–MN–P**

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## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day notice of information collection under review: Statement of process-marking of plastic explosives for the purpose of detection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until December 22, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gary Patterson, Public Safety Branch, 800 K Street NW., Suite 710, Washington, DC 20001.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Statement of Process-Marking of Plastic Explosives for the Purpose of Detection.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. The information contained in the statement of process is required to ensure compliance with the provisions of Pub. L. 104–132. This information will be used to ensure that plastic explosives contain a detection agent as required by law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 8 respondents will complete the required information in approximately 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are 16 estimated annual total burden hours associated with this collection.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW, Washington, DC 20530.

Dated: October 16, 2003.

**Brenda E. Dyer,**

*Deputy Clearance Officer, Department of Justice.*

[FR Doc. 03–26495 Filed 10–20–03; 8:45 am]

**BILLING CODE 4410–FY–P**

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## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

September 23, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316/this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Type of Review:* New collection.

*Agency:* Employment Standards Administration.

*Title:* The Secretary of Labor, Exemplary Voluntary Effort (EVE), and Exemplary Public Interest Contribution (EPIC) Awards.

*OMB Number:* 1215–0NEW.

*Affected Public:* Business or other for-profit and non-for-profit institutions.

*Frequency:* Annually.

*Type of Response:* Reporting.

*Number of Respondents:* 80.

*Annual Responses:* 80.

*Average Response Time:* Secretary of Labor Award—250 hours; EVE Award—120 hours; and EPIC Award—96 hours.

*Annual Burden Hours:* 37,280.

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $32.00.

*Description:* The Office of Federal Contract Compliance Programs (OFCCP) is responsible for the administration of the Secretary of Labors Opportunity Award, Exemplary Voluntary Effort (EVE), and Exemplary Public Interest Contribution (EPIC) Awards. These awards are presented annually to Federal contractors and non-profit organizations whose activities support the mission of the OFCCP. The recognition of Federal contractors who are in compliance with the OFCCP regulations and who work with community and public interest organizations sends a positive message throughout the U.S. Labor Force and business community. The information collected by the nomination process is necessary for determining which establishments should receive an award.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 03–26479 Filed 10–20–03; 8:45 am]

BILLING CODE 4510–CM–M

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## DEPARTMENT OF LABOR

## Employment Standards Administration

## Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Davis-Bacon and Related Act/Contract Work Hours and Safety Standards Act Reporting Requirements—Regulations, 29 CFR Part 5. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this notice.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before December 22, 2003.

**ADDRESSES:** Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, e-mail *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

**SUPPLEMENTARY INFORMATION:**

### I. Background

This regulation prescribes labor standards for federally financed and assisted construction contracts subject to the Davis-Bacon and Related Acts (DBRA), as well as labor standards for construction contracts subject to the Contract Work Hours and Safety Standards Act (CWHSSA). The Davis-Bacon Act provides that every contract subject to the Act must contain a provision (wage determination) stating the minimum wages and fringe benefits to be paid the various classes of laborers and mechanics employed on the contract. Any class of laborer or mechanic not listed in the wage determination which is to be employed under the contract shall be classified in conformance with the wage determination, and a report of the action shall be submitted through DOL for review and approval. Further, where a benefit plan is not of the conventional type described in the Act and/or common in the construction industry which is established under a customary fund or program, the regulation provides for contractors to request approval of unfunded fringe benefit plans. This information collection is currently approved for use through April 30, 2004.

### II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

### III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to ensure that federal contractors are in compliance with the Davis-Bacon and Related Acts (DBRA) as well as the Contract Work Hours and Safety Standards Act (CWHSSA).

*Type of Review:* Extension.

*Agency:* Employment Standards Administration.

*Title:* Davis-Bacon and Related Acts/Contract Work Hours and Safety Standards Act Reporting Requirements-Regulations, 29 CFR Part 5.

*OMB Number:* 1215–0140.

*Affected Public:* Business of other for-profit; Federal Government; State, local or tribal government.

| Requirement | Number of respondents | Number of responses | Estimated time per response | Burden hours |
|---|---|---|---|---|
| Conformance Report | 1,500 | 1,500 | 15 minutes | 375 |
| Unfunded Fringe Benefit Plans | 6 | 6 | 6 hours | 6 |
| Total | 1,506 | 1,506 | | 381 |

*Frequency:* On Occasion.

*Estimated Total Burden Hours:* 381.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 15, 2003.

**Bruce Bohanon,**

*Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.*

[FR Doc. 03-26480 Filed 10-20-03; 8:45 am]

BILLING CODE 4510-27-P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-52,710]

### Conso International Corp., Union, SC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 2, 2003, in response to a worker petition which was filed by a company official on behalf of workers at Conso International Corporation, Union, South Carolina (TA-W-52,710).

There is a duplicate petition in process for the same worker group (TA-W-52,722). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 15th day of September, 2003.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03-26481 Filed 10-20-03; 8:45 am]

BILLING CODE 4510-30-P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-50,546 and TA-W-50,546A]

### Emerson Tool Company, Paris, TN; Emerson Tool Company Headquarters, St. Louis, MO; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on January 15, 2003, applicable to workers of Emerson Tool Company, Paris, Tennessee. The notice was published in the **Federal Register** on February 6, 2003 (68 FR 6212).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of power tools.

The company reports that worker separations occurred at the Headquarters, St. Louis, Missouri location of the subject firm. Workers at the St. Louis, Missouri location provide administrative function services for the subject firm's production plant located in Paris, Tennessee.

Based on these findings, the Department is amending the certification to include workers of Emerson Tool Company, Headquarters, St. Louis, Missouri.

The intent of the Department's certification is to include all workers of Emerson Tool Company who were adversely affected by increased imports.

The amended notice applicable to TA-W-50,546 is hereby issued as follows:

> All workers of Emerson Tool Company, Paris, Tennessee (TA-W-50,546) and Emerson Tool Company, Headquarters, St Louis, Missouri (TA-W-50,546A), who became totally or partially separated from employment on or after January 10, 2002, through January 15, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 24th day of September 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03-26488 Filed 10-20-03; 8:45 am]

BILLING CODE 4510-30-P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-52,341]

### Firestone Tube Company Russellville, AR; Notice of Termination of Certification

This notice terminates the Certification Regarding Eligibility to Apply for Worker Adjustment Assistance issued by the Department on August 7, 2003, for all workers of Firestone Tube Company located in Russellville, Arkansas. The notice will soon be published in the **Federal Register**.

The Department, at the request of the State agency, reviewed the certification for workers of Firestone Tube Company, Russellville, Arkansas. Workers of the subject firm produce inner tubes.

The certification review shows that all workers of Firestone Tube Company, Russellville, Arkansas, are covered by an existing certification, TA-W-50,544, issued on July 30, 2003. All workers of the subject firm who became totally or partially separated from employment on or after January 7, 2002, through July 30, 2005, are eligible to apply for adjustment assistance.

Since the workers of Firestone Tube Company, Russellville, Arkansas, are covered by an existing certification, the continuation of this certification would serve no purpose and the certification has been terminated.

Signed in Washington, DC, this 18th day of August, 2003.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03-26485 Filed 10-20-03; 8:45 am]

BILLING CODE 4510-30-P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-52,644]

### Fisher Controls, a Division of Emerson Process Management, McKinney, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 21, 2003, in response to a petition filed by workers at Fisher Controls, a Division of Emerson Process Management, McKinney, Texas.

The petitioners have requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of September, 2003.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03-26483 Filed 10-20-03; 8:45 am]

BILLING CODE 4510-30-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–51,466]

### Fishing Vessel (F/V) Fawcett Point, State of Alaska Commercial Fisheries Entry, Commission Permit #S04K595562L Old Harbor, AK; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Fishing Vessel (F/V) Fawcett Point, State of Alaska Commercial Fisheries Entry Commission Permit #S04K595562L, Old Harbor, Alaska. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

*TA–W–51,466; Fisheries Entry Commission Permit State of Alaska Commercial Fishers Entry Commission Permit #S04K595562L, Old Harbor, Alaska (September 2, 2003)*

Signed at Washington, DC this 3rd day of October 2003.

**Timothy Sullivan,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 03–26486 Filed 10–20–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–52,629]

### General Binding Corporation, Boonville, MS; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 20, 2003, in response to a petition filed by a company official on behalf of workers at General Binding Corporation, Boonville, Mississippi.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 15th day of September, 2003.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–26484 Filed 10–20–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–50,576 et al.]

### Great Northern Paper Company, Inc., East Millinocket, ME; Including Employees of Great Northern Paper Company, Inc., Operating at Various Locations; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 3, 2003, applicable to workers of Great Northern Paper Company, Inc., East Millinocket, Maine. The notice was published in the **Federal Register** on February 24, 2003 (68 FR 8620).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations have occurred involving employees of the East Millinocket, Maine facility of Great Northern Paper Company, Inc. operating at various locations in the following states: Illinois, Wisconsin, Connecticut, Ohio, New Jersey and Alabama. These employees provide sales and marketing support function services for the production of directory paper at the East Millinocket, Maine location of the subject firm.

Based on these findings, the Department is amending this certification to include employees of the East Millinocket, Maine location of Great Northern Paper Company, Inc. operating at various locations in the following states: Illinois, Wisconsin, Connecticut, Ohio, New Jersey and Alabama.

The intent of the Department's certification is to include all workers of Great Northern Paper Company, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–50,576 is hereby issued as follows:

> All workers of Great Northern Paper Company, Inc., East Millinocket, Maine (TA–W–50,576), including employees of Great Northern Paper Company, Inc., East Millinocket, Maine operating at various locations in the following states: Illinois (TA–W–50,576A), Wisconsin (TA–W–50,576B), Connecticut (TA–W–50,576C), Ohio (TA–W–50,576D), New Jersey (TA–W–50,576E), and Alabama (TA–W–50,576F), who became totally or partially separated from employment on or after January 14, 2002, through February 3, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 3rd day of September 2003

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–26487 Filed 10–20–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–41,469 and TA–W–41,469B]

### Telect, Liberty Lake, WA, Including Employees of Telect Located in Florida; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 19, 2002, applicable to workers of Telect, Liberty Lake, Washington. The notice was published in the **Federal Register** on September 10, 2002 (67 FR 57453).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations have occurred involving employees of the Liberty Lake, Washington facility of Telect located in Florida. These employees provided sales function services and customer services for the production of fiber optic patchcords and pigtails at the Liberty Lake, Washington location of the subject firm.

Based on these findings, the Department is amending this certification to include employees of the Liberty Lake, Washington facility of Telect located in Florida.

The intent of the Department's certification is to include all workers of Telect who were adversely affected by increased imports.

The amended notice applicable to TA–W–41,469 is hereby issued as follows:

> All workers of Telect, Liberty Lake, Washington (TA–W–41,469), including

employees of Telect, Liberty Lake, Washington, located in Florida (TA–W–41,469B), who became totally or partially separated from employment on or after April 16, 2001, through August 19, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 10th day of September 2003.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–26489 Filed 10–20–03; 8:45 am]

**BILLING CODE 4510–30–P**

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## DEPARTMENT OF LABOR

## Employment and Training Administration

**[TA–W–52,690]**

## Zawick Manufacturing Co., Hellertown, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 27, 2003 in response to a worker petition which was filed by UNITE! on behalf of workers at Zawick Manufacturing Company, Hellertown, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 12th day of September, 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–26482 Filed 10–20–03; 8:45 am]

**BILLING CODE 4510–30–P**

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## DEPARTMENT OF LABOR

## Employment and Training Administration

**[NAFTA–06385]**

## Ameriphone, Inc., A Wholly Owned Subsidiary of Plantronics, Inc., Garden Grove, CA; Notice of Revised Determination on Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for a voluntary remand for further investigation in *Former Employees of Ameriphone, Inc.* v. *U.S. Secretary of Labor* (Court No. 03–00243).

The Department's initial denial of NAFTA-Transitional Adjustment Assistance (NAFTA–6385) for the workers of Ameriphone, Inc., a wholly owned subsidiary of Plantronics, Inc., Garden Grove, California (hereafter "Ameriphone"), was issued on September 11, 2002 and published in the **Federal Register** on September 27, 2002 (67 FR 61160). The denial was based on the finding that the workers at the subject facility did not produce an article as required by Section 250 of the Trade Act of 1974.

On March 10, 2003, the Department issued a Notice of Negative Determination Regarding Application for Reconsideration for NAFTA–6385 and published in the **Federal Register** on March 18, 2003 (68 FR 12938).

In the request for reconsideration, the petitioner alleged that the workers were engaged in the final phase of production (inspecting, testing and modifying products) as well as prototype design and production. In the reconsideration investigation, the Department found that the articulated functions constituted a negligible portion of the work performed at the subject facility and that the workers were, in fact, service providers.

On voluntary remand, the Department contacted the company and requested detailed information regarding the workers' functions at the subject facility. The newly obtained information revealed that workers at the subject facility were engaged in production. The new information also revealed that a significant portion of the production performed at the subject facility was shifted to Mexico impacting workers at the subject plant.

### Conclusion

After careful review of the additional facts obtained on remand, I conclude that a shift of production to Mexico of products like or directly competitive with those produced at the subject firm contributed importantly to the declines in sales or production and to the total or partial separation of workers of Ameriphone, Inc., Garden Grove, California. In accordance with the provisions of the Act, I make the following certification:

> All workers of Ameriphone, Inc., a wholly owned subsidiary of Plantronics, Inc., Garden Grove, California, who became totally or partially separated from employment on or after June 24, 2001 through two years of this certification, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 1st day of October 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–26490 Filed 10–20–03; 8:45 am]

**BILLING CODE 4510–30–P**

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## MARINE MAMMAL COMMISSION

## Advisory Committee on Anthropogenic Sound and Marine Mammals; Notice of Intent, Request for Comments and Nominations

**AGENCY:** Marine Mammal Commission.

**ACTION:** Notice of intent to charter the Advisory Committee on Anthropogenic Sound and Marine Mammals and request for comments and nominations.

**SUMMARY:** The Omnibus Appropriations Act of 2003 (Pub. L. 108–7) directs the Marine Mammal Commission to organize a series of national and international meetings concerning the impacts of sound on marine mammals and how these impacts may be addressed. To help meet this directive, the Commission is considering the establishment of the Advisory Committee on Anthropogenic Sound and Marine Mammals under the Federal Advisory Committee Act (FACA; Pub. L. 92–463). Committee members would participate in a policy dialogue to review available information, identify research needs, and recommend management actions and strategies.

The Commission is seeking comments regarding:

(1) The need for and desirability of establishing an advisory committee pursuant to FACA;

(2) The issues any such Committee should consider; and

(3) The affected individuals, interest groups, or stakeholders who should be represented.

The Commission is also seeking recommendations for possible Committee members who meet the qualifications specified below.

**DATES:** Comments on this notice of intent and recommendations for Committee members must be submitted in writing before November 5, 2003. The Commission intends to appoint Committee members in December 2003 so that the first Committee meeting can be convened in late January or early February 2004.

**ADDRESSES:** Written comments and recommendations should be submitted to Erin Vos, Project Manager for Sound-Related Meetings and Actions, Marine Mammal Commission, 4340 East-West Hwy., Rm. 905, Bethesda, MD 20814, e-mail: *evos@mmc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Erin Vos at the above address or e-mail, tel.: (301) 504–0087, or fax: (301) 504–0099; or visit the Commission Web site at *http://www.mmc.gov.*

**SUPPLEMENTARY INFORMATION:** The Commission is considering the establishment of the Advisory Committee on Anthropogenic Sound and Marine Mammals, which would undertake a policy dialogue to review available information, identify research needs, and recommend management actions and strategies. The Commission has contracted with a team of third-party neutral facilitators who will assess the feasibility of establishing the Committee and will examine options for the format of the dialogue. The Commission will make its final determination on the need for establishing a federal advisory committee after the facilitators submit their feasibility report in November 2003. If the Commission determines that it is necessary and desirable to proceed under the Federal Advisory Committee Act, the Commission, in consultation with the contracted facilitators, will select and appoint Committee members to represent the following stakeholder and interest groups:

- Entities whose activities introduce anthropogenic sounds into the marine environment, including the academic research community, industry (shipping, oil and gas exploration, etc.), and government agencies;
- Non-governmental organizations, including environmental groups;
- Scientists with pertinent expertise; and
- Government agencies that manage or otherwise affect marine mammals.

The Commission will seek a balanced representation among interested parties. Committee members will be expected to have a high level of interest or expertise concerning the impacts of sound on marine mammals and other components of the marine environment. Additional criteria considered when selecting Committee members may include:

- Ability to attend Committee meetings;
- Decision-making authority;
- Ability to represent a constituency and communicate effectively with constituents whose interests they represent;
- Experience in collaborative policy dialogue or negotiation; and
- Likelihood of being affected by the outcome.

Dated: October 15, 2003.

**David Cottingham,**

*Executive Director.*

[FR Doc. 03–26472 Filed 10–20–03; 8:45 am]

BILLING CODE 6820–31–M

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## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Privacy Act of 1974, as Amended; System of Records Notices

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice to add a new Privacy Act system of records and modify an existing system of records.

**SUMMARY:** The National Archives and Records Administration (NARA) proposes to add a system of records notice to its existing inventory of systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. In this notice, NARA publishes NARA 37—Order Online! (NARA Online Ordering System), for comment. NARA also proposes to expand coverage in one of its existing systems, NARA 25—Order Fulfillment and Accounting System Records (OFAS), to include transmittal data received from NARA Online! (NARA Online Ordering System). Last, an obsolete reference is deleted from Appendix B, which lists NARA's system managers.

**EFFECTIVE DATES:** The establishment of the new system NARA 37 and changes to the existing system NARA 25 will become effective without further notice on November 20, 2003, unless comments received on or before that date cause a contrary decision. If changes are made based on NARA's review of comments received, a new final notice will be published.

**ADDRESSES:** Send comments to the Privacy Act Officer, Office of General Counsel (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD, 20740–6001. You may fax your comments to 301–837–0293. You may also comment via the Internet to *comments@nara.gov.*

**FOR FURTHER INFORMATION CONTACT:** Ramona Branch Oliver, Privacy Act Officer, 301–837–2024 (voice) or 301–837–0293 (fax).

**SUPPLEMENTARY INFORMATION:** NARA last published a comprehensive set of Privacy Act system notices in the **Federal Register** on April 2, 2002 (67 FR 15592). NARA published two additional systems; NARA 35 and NARA 36, in the **Federal Register** on October 17, 2002 (67 FR 64142).

NARA is proposing to add NARA 37—Order Online! (NARA Online Ordering System) to its existing inventory of systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. NARA 37 covers persons who order NARA products (*e.g.* reproductions of NARA archival materials) online. NARA is also proposing to expand coverage in one of its existing systems, NARA 25—Order Fulfillment and Accounting System Records (OFAS), to include transmittal data received from NARA Online!

The notice for each of the two systems of records states the following:

- Name and the location of the record system;
- Authority for and manner of its operation;
- Categories of individuals that it covers;
- Types of records that it contains;
- Sources of information in these records;
- Proposed "routine uses" of each system of records; and
- Business address of the NARA official who will inform interested persons of the procedures they must follow to gain access to and correct records pertaining to themselves.

Last, a reference to an obsolete NARA unit is deleted from Appendix B, which lists NARA's systems managers. Appendix A, which identifies routine uses of NARA's systems of records, remains unchanged.

One of the purposes of the Privacy Act, as stated in section 2(b)(4) of the Act, is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies to disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information. NARA intends to follow these principles in transferring information to another agency or individual as a "routine use", including assurance that the information is relevant for the purposes for which it is transferred.

Dated: October 16, 2003.

**John W. Carlin,**

*Archivist of the United States.*

Accordingly, we are publishing the proposed new system of records notice NARA 37 and the revised system of records notice NARA 25 as follows:

### NARA 37

#### SYSTEM NAME:

Order Online! (NARA Online Ordering System).

#### SYSTEM LOCATION:

Order Online! is located in the data center at the National Archives and Records Administration in College Park, MD.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include researchers who order reproductions of NARA archival materials at *http://www.archives.gov.*

### CATEGORIES OF RECORDS IN THE SYSTEM:

Order Online records may include: user login data (*i.e.*, user ID and password; User Profile Data (*e.g.*, name, address, phone number); credit card payment data (*e.g.*, card type, card number, expiration date); reproduction order form data (*e.g.*, detailed information describing the requested archival record); and transaction data (*e.g.*, system-generated order identification information such as order number, order date, order type).

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2116(c), 2307 and 3504.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records maintained in the system are used only for order entry, order validation, order processing, payment processing, and order fulfillment. The public may use the Order Online! system to complete and submit a reproduction order to NARA. Each night, Order Online! submissions are sent to NARA's Order Fulfillment and Accounting System (OFAS–NARA 25) via an automated XML (extensible markup language) interface that operates within NARA's secure internal network.

Order Online! maintains profile data (*e.g.*, name, address, phone number) for researchers who initiate orders of reproductions. The profile data is used to automatically complete the payment and/or shipping address sections of the order form so that customers do not have to manually re-enter the information. Neither NARA nor its agents use Order Online! customer profile data for other purposes.

The routine use statements A, E, and F, described in Appendix A apply to this system of records. Appendix A was published in the **Federal Register** on April 2, 2002 (67 FR 15592).

### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

### STORAGE:

Electronic records.

### RETRIEVABILITY:

Information in the Order Online! records may be retrieved by the NARA customer using his or her user ID and password. Also, summary order data (order number, master number [OFAS order number]), status (*e.g.*, received, processing, shipped, cancelled) and submission date may be retrieved by the customer or the NARA customer service agent using the order number.

### SAFEGUARDS:

Access to the data center that houses the Order Online! system is restricted to approved systems administrators and, with the exception of a limited number of operations staff, is limited to normal business hours. Electronic records are accessible only on a "need to know basis" using controlled logins and passwords from terminals located in attended offices. Credit card information is compartmentalized so that it is available only to those NARA employees responsible for posting and billing credit card transactions. The National Archives at College Park has 24-hour security guards, controlled entrances, and electronic surveillance.

### RETENTION AND DISPOSAL:

Order Online! records are temporary records and are destroyed in accordance with the disposition instructions in the NARA records schedule contained in FILES 203, the NARA Files Maintenance and Records Disposition Manual. Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

### SYSTEM MANAGER(S) AND ADDRESS:

The system manager for Order Online! records is: Assistant Archivist for Records Services—Washington, DC (NW). The address for this location is listed in Appendix B following the NARA notices.

### NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records are to notify the NARA Privacy Act Officer at the address listed in Appendix B following the NARA notices.

### RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records are to submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

### CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

### RECORD SOURCE CATEGORIES:

Information in Order Online! records is obtained from NARA customers, employees or agents who are involved in the order process, and General Services Administration (GSA) employees who process refunds.

## NARA 25

### SYSTEM NAME:

Order Fulfillment and Accounting System Records (OFAS).

### SYSTEM LOCATION:

OFAS records are maintained in organizational units in the following Washington, DC, area locations:

- Office of Records Services—Washington, DC;
- Office of Presidential Libraries;
- Office of the Federal Register;
- Office of Regional Records Services; and
- National Archives Trust Fund Division.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include: researchers who order reproductions at Washington, DC, area and regional records services facilities or online at *www.archives.gov;* and customers who order NARA inventory items, such as microform and printed publications, mementos, and other specialty products from catalogues and other marketing publications.

### CATEGORIES OF RECORDS IN THE SYSTEM:

OFAS records may include: Catalogue order forms; other ordering forms; correspondence; copies of checks, money orders, credit card citations, and other remittances; invoices; and order and accounting information in the electronic system. These records may contain some or all of the following information about an individual: Name, address, telephone number, record(s) or item(s) ordered, and credit card or purchase order information. OFAS records also include user profile data, reproduction order form data, transaction data, and credit card payment data transmitted from Order Online! (NARA Online Ordering System—NARA 37) via an automated XML (extensible markup language) interface that operates within NARA's secure internal network.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2116(c) and 2307.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains OFAS records on individuals to: receive, maintain control of, and process orders for reproductions of archival records and other fee items; bill customers for orders; maintain payment records for orders; process refunds; and provide individuals information on other NARA products.

Customer order information may be initially disclosed to a NARA agent, a bank that collects and deposits payments in a lockbox specifically used for crediting order payments to the National Archives Trust Fund. NARA may disclose certain order information to contractors acting as NARA agents that make reproductions of archival records. NARA also may disclose information in OFAS records for the processing of customer refunds to the General Services Administration (GSA), which provides NARA's financial and accounting system under a cross-servicing agreement.

The routine use statements A, E, and F, described in Appendix A apply to this system of records. Appendix A was published in the **Federal Register** on April 2, 2002 (67 FR 15592).

### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

### STORAGE:

Paper and electronic records.

### RETRIEVABILITY:

Information in OFAS records may be retrieved by the name of the individual and/or the OFAS transaction number. The invoice number or zip code may also retrieve information in electronic records.

### SAFEGUARDS:

During business hours, paper records are maintained in areas accessible only to authorized NARA personnel. Electronic records are accessible via passwords from terminals located in attended offices. Credit card information is compartmentalized so that it is available only to those NARA employees responsible for posting and billing credit card transactions. After hours, buildings have security guards and/or doors are secured and all entrances are monitored by electronic surveillance equipment.

### RETENTION AND DISPOSAL:

OFAS records are temporary records and are destroyed in accordance with the disposition instructions in the NARA records schedule contained in FILES 203, the NARA Files Maintenance and Records Disposition Manual. Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

### SYSTEM MANAGER(S) AND ADDRESS:

The system manager for OFAS records is: Assistant Archivist for Administrative Services (NA). The address for this location is listed in Appendix B following the NARA Notices.

### NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records are to notify the NARA Privacy Act Officer at the address listed in Appendix B following the NARA notices.

### RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records are to submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

### CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

### RECORD SOURCE CATEGORIES:

Information in OFAS records is obtained from customers, NARA employees or agents who are involved in the order process, and GSA employees who process refunds.

## Appendix B

To inquire about your records or to gain access to your records, you should submit your request in writing to:

NARA Privacy Act Officer
Office of General Counsel (NGC)
National Archives at College Park
8601 Adelphi Road, Room
College Park, MD 20740–6001

If the system manager is the Assistant Archivist for Record Services—Washington, DC (NW), the records are located at the following address:

Office of Record Services—Washington, DC (NW)
National Archives at College Park
8601 Adelphi Road, Room 3400
College Park, MD 20740–6001

If the system manager is the director of a Presidential library, the records are located at the appropriate Presidential library, staff or project:

GEORGE BUSH LIBRARY
1000 George Bush Drive West
College Station, TX 77845

JIMMY CARTER LIBRARY
441 Freedom Parkway
Atlanta, GA 30307–1498

WILLIAM J. CLINTON PRESIDENTIAL MATERIALS PROJECT
1000 LaHarpe Boulevard
Little Rock, AR 72201

DWIGHT D. EISENHOWER LIBRARY
200 SE 4th Street
Abilene, KS 67410–2900

GERALD R. FORD LIBRARY
1000 Beal Avenue
Ann Arbor, MI 48109–2114

HERBERT HOOVER LIBRARY
210 Parkside Drive
P.O. Box 488
West Branch, IA 52358–0488

LYNDON B. JOHNSON LIBRARY
2313 Red River Street
Austin, TX 78705–5702

JOHN F. KENNEDY LIBRARY
Columbia Point
Boston, MA 02125–3398

NIXON PRESIDENTIAL MATERIALS STAFF
National Archives at College Park
8601 Adelphi Road
College Park, MD 20740–6001

RONALD REAGAN LIBRARY
40 Presidential Drive
Simi Valley, CA 93065–0600

FRANKLIN D. ROOSEVELT LIBRARY
4079 Albany Post Road
Hyde Park, NY 12538–1999

HARRY S. TRUMAN LIBRARY
500 West U.S. Highway 24
Independence, MO 64050–1798

OFFICE OF PRESIDENTIAL LIBRARIES
National Archives at College Park
8601 Adelphi Road
College Park, MD 20740–6001

If the system manager is the director of a regional records services facility, the records are located at the appropriate regional records services facility:

NARA's Pacific Alaska Region (Anchorage)
654 West Third Avenue
Anchorage, Alaska 99501–2145

NARA's Southeast Region (Atlanta)
1557 St. Joseph Avenue
East Point, Georgia 30344–2593

NARA's Northeast Region (Boston)
Frederick C. Murphy Federal Center
380 Trapelo Road
Waltham, Massachusetts 02452–6399

NARA's Great Lakes Region (Chicago)
7358 South Pulaski Road
Chicago, Illinois 60629–5898

NARA's Great Lakes Region (Dayton)
3150 Springboro Road
Dayton, Ohio 45439–1883

NARA's Rocky Mountain Region (Denver)
Bldg. 48, Denver Federal Center
West 6th Avenue and Kipling Street
Denver, Colorado 80225–0307

NARA's Southwest Region (Fort Worth)
501 West Felix Street, Building 1
Fort Worth, Texas 76115–3405

NARA's Central Plains Region (Kansas City)
2312 East Bannister Road
Kansas City, Missouri 64131–3

NARA's Pacific Region (Laguna Niguel, CA)
24000 Avila Road, 1st Floor, East Entrance
Laguna Niguel, California 92677–3497

NARA's Central Plains Region (Lee's Summit, MO)
200 Space Center Drive
Lee's Summit, Missouri 64064–1182

NARA's Northeast Region (New York City)
201 Varick Street
New York, New York 10014–4811

NARA's Mid Atlantic Region (Center City Philadelphia)
900 Market Street
Philadelphia, Pennsylvania 19107–4292

NARA's Mid Atlantic Region (Northeast Philadelphia)
14700 Townsend Road
Philadelphia, Pennsylvania 19154–1096

NARA's Northeast Region (Pittsfield, MA)
10 Conte Drive
Pittsfield, Massachusetts 01201–8230

NARA's Pacific Region (San Francisco)
1000 Commodore Drive
San Bruno, California 94066–2350

NARA's Pacific Alaska Region (Seattle)
6125 Sand Point Way NE
Seattle, Washington 98115–7999

National Personnel Records Center
Civilian Personnel Records
111 Winnebago Street
St. Louis, Missouri 63118–4126

National Personnel Records Center
Military Personnel Records
9700 Page Avenue
St. Louis, MO 63132–5100

Washington National Records Center (WNRC)
4205 Suitland Road,
Suitland, MD 20746–8001

If the system manager is the Director of the National Historical Publications and Records Commission (NHPRC), the records are located at the following address:

National Historical Publications and Records Commission (NHPRC)
National Archives and Records Administration
700 Pennsylvania Avenue, NW, Room 111
Washington, DC 20408–0001

If the system manager is the Director of the Policy and Communications Staff, the records are located at the following address:

Policy and Communications Staff (NPOL)
National Archives and Records Administration
8601 Adelphi Road, Room 4100
College Park, MD 20740–6001

If the system manager is the Assistant Archivist for Human Resources and Information Services, the records are located at the following address:

Office of Human Resources and Information Services (NH)
National Archives and Records Administration
8601 Adelphi Road, Room 4400
College Park, MD 20740

If the system manager is the Assistant Archivist for Administrative Services, the records are located at the following address:

Office of Administrative Services (NA)
National Archives and Records Administration
8601 Adelphi Road, Room 4200
College Park, MD 20740

If the system manager is the Director of the Federal Register, the records are located at the following address:

Office of the Federal Register (NF)
National Archives and Records Administration
700 Pennsylvania Avenue, NW
Washington, DC 20408–0001

If the system manager is the Inspector General, the records are located at the following address:

Office of the Inspector General (OIG)
National Archives and Records Administration
8601 Adelphi Road, Room 1300
College Park, MD 20740

If the system manager is the General Counsel, the records are located at the following address:

Office of the General Counsel (NGC)
National Archives and Records Administration
8601 Adelphi Road, Room 3110
College Park, MD 20740

[FR Doc. 03–26613 Filed 10–17–03; 9:17 am]

**BILLING CODE 7515–01–P**

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## THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Meetings of Humanities Panel

**AGENCY:** The National Endowment for the Humanities.

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:** Heather Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

**SUPPLEMENTARY INFORMATION:** The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* November 4, 2003.
*Time:* 9 a.m. to 5:30 p.m.
*Room:* 415.
*Program:* This meeting will review applications for United States History and Culture II, submitted to the Division of Preservation and Access at the July 15, 2003 deadline.

2. *Date:* November 7, 2003.
*Time:* 9 a.m. to 5:30 p.m.
*Room:* 415.
*Program:* This meeting will review applications for History of Science, submitted to the Division of Preservation and Access at the July 15, 2003 deadline.

3. *Date:* November 13, 2003.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 426.
*Program:* This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the September 16, 2003 deadline.

4. *Date:* November 14, 2003.
*Time:* 9 a.m. to 5:30 p.m.
*Room:* 415.
*Program:* This meeting will review applications for United States History and Culture III, submitted to the Division of Preservation and Access at the July 15, 2003 deadline.

5. *Date:* November 14, 2003.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 714.
*Program:* This meeting will review applications for Humanities Projects in Libraries and Archives/Special Projects, submitted to the Division of Public Programs at the September 16, 2003 deadline.

6. *Date:* November 21, 2003.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 426.
*Program:* This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the September 16, 2003 deadline.

7. *Date:* November 21, 2003.
*Time:* 9 a.m. to 5:30 p.m.
*Room:* 415.
*Program:* This meeting will review applications for Visual Arts, submitted to the Division of Preservation and Access at the July 15, 2003 deadline.

8. *Date:* November 24, 2003.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 415.
*Program:* This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the September 16, 2003 deadline.

**Heather Gottry,**
*Acting Advisory Committee Management Officer.*

[FR Doc. 03–26450 Filed 10–20–03; 8:45 am]

**BILLING CODE 7536–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–368]**

### Entergy Operations, Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Operations, Inc., to withdraw its January 29, 2003, application for proposed amendment to Facility Operating License No. NPF–6 for Arkansas Nuclear One, Unit No. 2, located in Pope County, Arkansas.

The proposed amendment would have revised the Technical Specifications pertaining to the spent fuel pool loading restrictions by redefining the regions, inserting Metamic poison panels in a portion of the spent fuel pool, and increasing the minimum boron concentration.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 18, 2003 (68 FR 12950). However, by letter dated August 26, 2003, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated January 29, 2003, and the licensee's letter dated August 26, 2003, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 15th day of October, 2003.

For the Nuclear Regulatory Commission.

**Thomas W. Alexion,**

*Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 03–26478 Filed 10–20–03; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

### Sunshine Act; Notice of Meeting

**AGENCY HOLDING THE MEETING:** Nuclear Regulatory Commission.

**DATES:** Weeks of October 20, 27, November 3, 10, 17, 24, 2003.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

*Week of October 20, 2003*

Thursday, October 23, 2003

10 a.m. Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360)

This meeting will be Webcast live at the Web address: *http://www.nrc.gov.*

*Week of October 27, 2003—Tentative*

Wednesday, October 29, 2003

9:30 a.m. Discussion of Security Issues (Closed—Ex. 1).

*Week of November 3, 2003—Tentative*

There are no meetings scheduled for the Week of November 3, 2003.

*Week of November 10, 2003—Tentative*

There are no meetings scheduled for the Week of November 10, 2003.

*Week of November 17, 2003—Tentative*

Thursday, November 20, 2003

12:45 p.m. Briefing on Threat Environment Assessment (Closed—Ex. 1).

*Week of November 24, 2003—Tentative*

There are no meetings scheduled for the Week of November 24, 2003.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Bamberoni (301) 415–1651.

* * * * *

**ADDITIONAL INFORMATION:** By a vote of 3–0 on October 14, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Pacific Gas & Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation); petitions for review of LBP–02–23 and LBP–03–11" be held on October 15, and on less than one week's notice to the public.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: October 16, 2003.

**D.L. Gamberoni,**

*Technical Coordinator, Office of the Secretary.*

[FR Doc. 03–26630 Filed 10–17–03; 10:32 am]

BILLING CODE 7590–01–M

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## NUCLEAR REGULATORY COMMISSION

### Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued a revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in its review of applications for permits and licenses, and data needed by the NRC staff in its review of applications for permits and licenses.

Revision 2 of Regulatory Guide 1.132, "Site Investigations for Foundations of Nuclear Power Plants," describes field investigations for determining the geological, engineering, and hydrogeological characteristics of a prospective plant site. It also provides guidance to licensees and applicants on developing geologic information on stratigraphy, lithology, and structure of the site.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555. Questions on the content of this guide may be directed to Mr. Y. Li, (301) 415–4141; e-mail *yxl1@nrc.gov.*

Regulatory guides are available for inspection or downloading at the NRC's

Web site at <*http://www.nrc.gov*> under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by e-mail to <*distribution@nrc.gov*>. Issued guides may also be purchased from the National Technical Information Service (NTIS) on a standing order basis. Details on this service may be obtained by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161; telephone 1–800–553–6847; <*http://www.ntis.gov/*>. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, MD this 2nd day of October 2003.

For the Nuclear Regulatory Commission.

**Ashok C. Thadani,**

*Director, Office of Nuclear Regulatory Research.*

[FR Doc. 03–26477 Filed 10–20–03; 8:45 am]

BILLING CODE 7590–01–P

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## OVERSEAS PRIVATE INVESTMENT CORPORATION

### October 30, 2003 Board of Directors Meeting; Sunshine Act Meeting

**TIME AND DATE:** Thursday, October 30, 2003, 1:30 p.m. (open portion) 1:45 p.m. (closed portion).

**PLACE:** Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

**STATUS:** Meeting open to the Public from 1:30 p.m. to 1:45 p.m. Closed portion will commence at 1:45 p.m (approx.).

**MATTERS TO BE CONSIDERED:**

1. President's report.
2. Approval of July 17, 2003 minutes (open portion).

**FURTHER MATTERS TO BE CONSIDERED:** (Closed to the Public 1:45 p.m.)

1. Finance project—Global.
2. Finance project—Global.
3. Finance project in South Africa.
4. Insurance project in Brazil.
5. Insurance project in Azerbaijan, Georgia & Turkey.
6. Approval of July 17, 2003 minutes (closed portion).
7. Approval of October 15, 2003 minutes (closed portion).
8. Pending major projects.
9. Reports.

**FOR FURTHER INFORMATION CONTACT:** Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: October 17, 2003.

**Connie M. Downs,**

*Corporate Secretary, Overseas Private Investment Corporation.*

[FR Doc. 03–26616 Filed 10–17–03; 9:53 am]

BILLING CODE 3210–01–M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–26208; File No. 812–12994]**

### COUNTRY Mutual Funds Trust, et al.

October 15, 2003.

**AGENCY:** The Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of Application for an Order of Exemption under Section 6(c) of the Investment Company Act of 1940, as amended ("1940 Act") from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder. *Applicants:* COUNTRY Mutual Funds Trust ("Trust") and COUNTRY Trust Bank ("CTB") (collectively, "Applicants").

**SUMMARY OF APPLICATION:** Applicants seek an order to permit shares of the Trust and shares of any other existing or future investment company that is designed to fund insurance products and for which CTB, or any of its affiliates, may serve as investment manager, investment adviser, subadviser, administrator, manager, principal underwriter or sponsor (the Trust and such other investment companies being hereinafter referred to, collectively, as "Insurance Trusts"), or permit shares of any current or future series of any Insurance Trust ("Insurance Fund"), to be sold to and held by: (1) Separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; (2) qualified pension and retirement plans outside of the separate account context ("Qualified Plans" or "Plans"); and (3) any investment manager to an Insurance Trust ("Manager") and affiliates thereof.

**FILING DATE:** The application was filed on July 30, 2003, and amended and restated on October 14, 2003.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on November 14, 2003 and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of the hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0690. Applicants, c/o Paul M. Harmon, General Counsel and Secretary, COUNTRY Trust Bank, 1705 N. Towanda Avenue, P.O. Box 2020, Bloomington, Illinois 61702–2020.

**FOR FURTHER INFORMATION CONTACT:** Alison White, Senior Counsel, or Lorna MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (202–942–8090).

### Applicants' Representations

1. The Trust is a Delaware business trust organized on August 13, 2000, and is registered as an open-end management investment company under the 1940 Act. The Trust consists of the following nine series: COUNTRY Growth Fund ("Growth Fund"), COUNTRY Balanced Fund ("Balanced Fund"), COUNTRY Tax Exempt Bond Fund ("Tax Exempt Bond Fund"), COUNTRY Short-Term Bond Fund ("Short-Term Bond Fund") and COUNTRY Bond Fund ("Bond Fund"), COUNTRY VP Growth Fund ("VP Growth Fund"), COUNTRY VP Balanced Fund ("VP Balanced Fund"), COUNTRY VP Short-Term Bond Fund ("VP Short-Term Bond Fund") and COUNTRY VP Bond Fund ("VP Bond Fund"). Additional series and classes of the Fund and additional Insurance Funds may be established in the future. Only the VP Growth Fund, VP Balanced Fund, VP Short-Term Bond Fund and VP Bond Fund constitute Insurance Funds for purposes of this Application.

2. CTB serves as the Trust's investment manager. CTB is registered as an investment adviser with the SEC under the Investment Advisers Act of 1940, as amended. Quasar Distributors, LLC ("Quasar"), a broker-dealer registered with the Commission and a member of the National Association of Securities Dealers, Inc., serves as the

distributor for the following series of the Trust: Growth Fund, Balanced Fund, Tax Exempt Bond Fund, Short-Term Bond Fund, and Bond Fund. COUNTRY Capital Management Company, a broker-dealer registered with the Commission and a member of the National Association of Securities Dealers, Inc., serves as the distributor for the following series of the Trust: VP Growth Fund, VP Balanced Fund, VP Short-Term Bond Fund, and VP Bond Fund.

3. The Insurance Trusts intend to offer shares of the Insurance Funds to (a) registered and unregistered separate accounts of affiliated and unaffiliated insurance companies in order to fund variable annuity contracts and variable life insurance contracts (collectively, "Separate Accounts"); (b) Qualified Plans; and (c) the Manager and its affiliates.

4. Insurance companies whose Separate Account(s) may now or in the future own shares of the Insurance Funds are referred to herein as "Participating Insurance Companies." The Participating Insurance Companies will establish their own Separate Accounts and design their own contracts. Each Participating Insurance Company will have the legal obligation to satisfy all applicable requirements under both state and federal law. It is anticipated that Participating Insurance Companies will rely on Rules 6e–2 and 6e–3(T), although some Participating Insurance Companies, in connection with variable life insurance contracts, may rely on individual exemptive orders as well.

5. The Insurance Trusts intend to offer shares of the Insurance Funds directly to Qualified Plans outside of the separate account context. Qualified Plans may choose any of the Insurance Funds that are offered as the sole investment under the Plan or as one of several investments. Plan participants may or may not be given an investment choice depending on the terms of the Plan itself. Shares of any of the Insurance Funds sold to such Qualified Plans would be held or deemed to be held by the trustee(s) of said Plans. Certain Qualified Plans, including Section 403(b)(7) Plans and Section 408(a) Plans, may vest voting rights in Plan participants instead of Plan trustees. Exercise of voting rights by participants in any such Qualified Plans, as opposed to the trustees of such Plans, cannot be mandated by the Applicants. Each Plan must be administered in accordance with the terms of the Plan and as determined by its trustee or trustees.

6. Shares of each Insurance Fund also may be offered to the Manager and its affiliates, in reliance on regulations issued by the Treasury Department (Treas. Reg. 1.817–5) that established diversification requirements for variable annuity and variable life insurance contracts ("Treasury Regulations"). Treasury Regulation 1.817–5(f)(3)(ii) permits such sales as long as the return on shares held by the Manager or its affiliates is computed in the same manner as for shares held by the Separate Accounts, and the Manager and its affiliates do not intend to sell to the public shares of the Insurance Fund that they hold. An additional restriction is imposed by the Treasury Regulations on sales to the Manager and its affiliates who may hold shares only in connection with the creation or management of the Insurance Fund. Applicants anticipate that sales in reliance on these provisions of the Treasury Regulations generally will be made to Manager and its affiliates and generally for the purpose of providing necessary capital required by Section 14(a) of the 1940 Act.

## Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder (including any comparable provisions of a permanent rule that replaces Rule 6e–3(T)), to the extent necessary to permit shares of each Insurance Fund to be offered and sold to, and held by: (a) Separate Accounts funding variable annuity contracts and scheduled premium and flexible premium variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; (b) Qualified Plans; and (c) any Manager to an Insurance Trust and affiliates thereof.

2. Section 6(c) authorizes the Commission to exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision or provisions of the 1940 Act and/or of any rule thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account organized as a unit investment trust ("Trust Account"), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted to a separate account by Rule 6e–2(b)(15) are available only where each registered management investment company underlying the Trust Account ("underlying fund") offers its shares "*exclusively* to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company * * *" (emphasis added). Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account of the same company or of any affiliated life insurance company. The use of a common underlying fund as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as "mixed funding." In addition, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The use of a common underlying fund as the underlying investment medium for variable life insurance separate accounts of one insurance company and separate accounts funding variable contracts of one or more unaffiliated life insurance companies is referred to herein as "shared funding." Moreover, because the relief under Rule 6e–2(b)(15) is available only where shares are offered exclusively to variable life insurance separate accounts, additional exemptive relief may be necessary if the shares of the Insurance Trusts are also to be sold to Qualified Plans or to the Manager and its affiliates.

4. In connection with the funding of flexible premium variable life insurance contracts issued through a Trust Account, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require "pass-through" voting with respect to an underlying fund's shares. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the

shares of one or more underlying funds which offer their shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company" (emphasis added). Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account, subject to certain conditions. However, Rule 6e–3(T) does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts) of unaffiliated life insurance companies. The relief provided by Rule 6e–3(T) is not relevant to the purchase of shares of the Insurance Trusts by Qualified Plans or by the Manager and its affiliates. However, because the relief granted by Rule 6e–3(T)(b)(15) is available only where shares of the underlying fund are offered exclusively to separate accounts, or to life insurers in connection with the operation of a separate account, additional exemptive relief may be necessary if the shares of the Insurance Trusts are also to be sold to Qualified Plans or to the Manager and its affiliates.

5. None of the relief provided for in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) relates to Qualified Plans, the Manager and its affiliates, or to an underlying fund's ability to sell its shares to such purchasers. It is only because some of the Separate Accounts that may invest in the Insurance Trusts may themselves be investment companies that rely upon Rules 6e–2 and 6e–3(T) and wish to continue to rely upon the relief provided in those Rules, that the Applicants are applying for the requested relief. If and when a material irreconcilable conflict arises in the context of the Application between the Separate Accounts or between Separate Accounts on the one hand and Qualified Plans or the Manager and its affiliates on the other hand, the Participating Insurance Companies, Qualified Plans and the Manager and its affiliates must take whatever steps are necessary to remedy or eliminate the conflict, including eliminating the Insurance Funds as eligible investment options. Applicants have concluded that investment by the Manager and its affiliates or the inclusion of Qualified Plans as eligible shareholders should not increase the risk of material irreconcilable conflicts among shareholders. However, Applicants further assert that even if a material irreconcilable conflict involving the Qualified Plans arose, the Qualified Plans, unlike the Separate Accounts, can simply redeem their shares and make alternative investments. By contrast, insurance companies cannot simply redeem their separate accounts out of one fund and invest in another. Time consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Applicants thus argue that allowing the Manager and its affiliates or Qualified Plans to invest directly in the Insurance Trusts should not increase the opportunity for conflicts of interest.

6. Applicants assert that the Treasury Regulations made it possible for shares of an investment company to be held by a Qualified Plan or the investment company's investment manager or its affiliates without adversely affecting the ability of shares in the same investment company to also be held by separate accounts of insurance companies in connection with their variable life insurance contracts. Section 817(h) of the Internal Revenue Code of 1986 ("Code") imposes certain diversification standards on the underlying assets of separate accounts funding variable annuity contracts and variable life contracts. In particular, the Code provides that such contracts shall not be treated as an annuity contract or life insurance contract for any period (and any subsequent period) for which the separate account investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. The Treasury Regulations provide that, in order to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Treasury Regulations also contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable annuity and variable life contracts (Treas. Reg. § 1.817–5(f)(3)(iii)).

7. Applicants also assert that the Treasury Regulations contain another exception that permits the investment manager of the investment company and certain companies related to the investment manager to hold shares of the investment company subject to certain conditions (Treas. Reg. § 1.817–5(f)(3)(ii)).

8. The promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Treasury Regulations which made it possible for shares of an investment company to be held by a Qualified Plan or the investment company's investment manager or its affiliates without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable life insurance contracts. Thus, the sale of shares of the same investment company to separate accounts through which variable life insurance contracts are issued, to Qualified Plans, or to the investment company's investment manager and its affiliates (collectively, "eligible shareholders") could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15), given the then-current tax law.

9. Paragraph (3) of Section 9(a) provides, among other things, that it is unlawful for any company to serve as investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (a)(2). Rule 6e–2(b)(15)(i) and (ii) and Rule 6e–3(T)(b)(15)(i) and (ii) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management investment company. The relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) permits the life insurer to serve as the underlying fund's investment manager or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) are participating in the management or administration of the Trust. The partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9 limits, in effect, the amount of

monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies in that organization. Applicants assert that it is also unnecessary to apply Section 9(a) of the 1940 Act to the many individuals employed by Participating Insurance Companies (or affiliated companies of Participating Insurance Companies) who do not directly participate in the administration or management of the Insurance Trusts. There is no regulatory purpose in extending the monitoring requirements to embrace a full application of Section 9(a)'s eligibility restrictions because of mixed funding or shared funding and sales to Qualified Plans. Those Participating Insurance Companies are not expected to play any role in the management or administration of the Insurance Trusts. Those individuals who participate in the management or administration of the Insurance Trusts will remain the same regardless of which separate accounts, insurance companies or Qualified Plans use the Insurance Trusts. Therefore, applying the monitoring requirements of Section 9(a) to the thousands of individuals employed by Participating Insurance Companies would not serve any regulatory purpose. Furthermore, the increased monitoring costs would reduce the net rates of return realized by contract owners and Plan participants. Moreover, the relief requested should not be affected by the sale of shares of the Insurance Funds to Qualified Plans or the Manager and its affiliates. The insulation of the Insurance Trusts from those individuals who are disqualified under the 1940 Act remains in place. Because Qualified Plans and the Manager and its affiliates are not investment companies and will not be deemed affiliates solely by virtue of their shareholdings, no additional relief is necessary.

10. Sections 13(a), 15(a), and 15(b) of the 1940 Act have been deemed by the Commission to require "pass-through" voting with respect to underlying fund shares held by a separate account. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide partial exemptions from those sections to permit the insurance company to disregard the voting instructions of its contract owners in certain limited circumstances. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A)(*1*) under the 1940 Act provide that the insurance company may disregard the voting instructions of its contract owners in connection with the voting of shares of an underlying fund if such instructions would require such shares to be voted to cause such underlying funds to make (or refrain from making) certain investments that would result in changes in the subclassification or investment objectives of such underlying funds or to approve or disapprove any contract between an underlying fund and its investment manager, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of such Rules). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) under the 1940 Act provide that the insurance company may disregard contract owners' voting instructions if the contract owners initiate any change in such underlying fund's investment policies, principal underwriter, or any investment manager (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of Rules 6e–2 and 6e–3(T)).

11. Rule 6e–2 recognizes that a variable life insurance contract is an insurance contract; it has important elements unique to insurance contracts; and it is subject to extensive state regulation of insurance. In adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Commission therefore deemed such exemptions necessary "to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer." In this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts; therefore, Rule 6e–3(T)'s corresponding provisions presumably were adopted in recognition of the same factors. State insurance regulators have much the same authority with respect to variable annuity separate accounts as they have with respect to variable life insurance separate accounts. Insurers generally assume both mortality and expense risks under variable annuity contracts. Therefore, variable annuity contracts pose some of the same kinds of risks to insurers as variable life insurance contracts. The Commission staff has not addressed the general issue of state insurance regulators' authority in the context of variable annuity contracts, and has not developed a single comprehensive exemptive rule for variable annuity contracts.

12. The Insurance Trusts' sale of shares of Insurance Funds to Qualified Plans or the Manager and its affiliates will not have any impact on the relief requested herein in this regard. Shares of the Insurance Funds sold to Qualified Plans would be held by the trustees of such Plans. The exercise of voting rights by Qualified Plans, whether by the trustees, by participants, by beneficiaries, or by investment managers engaged by the Plans, does not present the type of issues respecting the disregard of voting rights that are presented by variable life separate accounts. With respect to the Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Plan participants. Similarly, the Manager and its affiliates are not subject to any pass-through voting requirements. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans or the Manager and its affiliates.

13. Applicants assert that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different Participating Insurance Companies may be domiciled in different states does not create a significantly different or enlarged problem.

14. Applicants further assert that shared funding by unaffiliated

Participating Insurance Companies is, in this respect, no different than the use of the same investment company as the funding vehicle for affiliated Participating Insurance Companies, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act permit under various circumstances. Affiliated Participating Insurance Companies may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions discussed below are designed to safeguard against and provide procedures for resolving any adverse effects that differences among state regulatory requirements may produce.

15. Applicants assert that the right under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) of an insurance company to disregard contract owners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items and under certain specified conditions. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations. However, a particular Participating Insurance Company's disregard of voting instructions, nevertheless, could conflict with the majority of contract owner voting instructions. The Participating Insurance Company's action could arguably be different than the determination of all or some of the other Participating Insurance Companies (including affiliated insurers) that the contract owners' voting instructions should prevail, and could either preclude a majority vote approving the change or could represent a minority view. If the Participating Insurance Company's judgment represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at an Insurance Trust's election, to withdraw its separate account's investment in that Insurance Trust, and no charge or penalty would be imposed as a result of such withdrawal.

16. With respect to voting rights, it is possible to provide an equitable means of giving such voting rights to contract owners and to Qualified Plans and the Manager and its affiliates. The transfer agent(s) for the Insurance Funds will inform each shareholder, including each Separate Account, each Qualified Plan, and the Manager and its affiliates, of its share ownership, in an Insurance Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with the "pass-through" voting requirement. Investment by Qualified Plans in any Insurance Fund will similarly present no conflict. The likelihood that voting instructions of insurance company contract owners will ever be disregarded or the possible withdrawal referred to immediately above is extremely remote and this possibility will be known, through prospectus disclosure, to any Qualified Plan choosing to invest in an Insurance Fund. Moreover, even if a material irreconcilable conflict involving Qualified Plans arises, the Qualified Plans may simply redeem their shares and make alternative investments. Votes cast by the Qualified Plans, of course, cannot be disregarded but must be counted and given effect.

17. Applicants assert that there is no reason why the investment policies of an Insurance Fund would or should be materially different from what they would or should be if such Insurance Fund funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Each type of insurance product is designed as a long-term investment program. Similarly, the investment strategy of Qualified Plans (*i.e.*, long-term investment) coincides with that of variable contracts and should not increase the potential for conflicts. Each of the Insurance Funds will be managed to attempt to achieve its investment objective, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product or other investor. There is no reason to believe that different features of various types of contracts will lead to different investment policies for different types of variable contracts. The sale and ultimate success of all variable insurance products depends, at least in part, on satisfactory investment performance, which provides an incentive for the Participating Insurance Company to seek optimal investment performance.

18. Furthermore, Applicants assert that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. An underlying fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic justification for the growth of the Insurance Funds. In addition, permitting mixed and shared funding will facilitate the establishment of additional Insurance Funds serving diverse goals. The broader base of contract owners and shareholders can also be expected to provide economic justification for the creation of additional series of each Insurance Trust with a greater variety of investment objectives and policies.

19. Applicants note that Section 817(h) of the Code is the only section in the Code where separate accounts are discussed. Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5, which established diversification requirements for such portfolios, specifically permits, in paragraph (f)(3), among other things, "qualified pension or retirement plans" and separate accounts to share the same underlying management investment company. Therefore, neither the Code nor the Treasury Regulations thereunder present any inherent conflicts of interest if Qualified Plans, Separate Accounts and the Manager and its affiliates all invest in the same underlying fund.

20. Applicants assert that the ability of the Insurance Trusts to sell the respective shares of their Insurance Funds directly to Qualified Plans or the Manager and its affiliates does not create a "senior security," as such term is defined under Section 18(g) of the 1940 Act, with respect to any contract owner as opposed to a participant under a Qualified Plan or the Manager and its affiliates. As noted above, regardless of the rights and benefits of contract owners or Plan participants, the Separate Accounts, Qualified Plans and the Manager and its affiliates have rights only with respect to their respective shares of the Insurance Funds. They can only redeem such shares at net asset value. No shareholder of any of the Insurance Funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

21. Applicants have considered whether there are any conflicts between the contract owners of separate accounts and the participants under Qualified Plans, the Manager or its affiliates with respect to the state insurance commissioners' veto powers (direct with respect to variable life and indirect with respect to variable annuities) over investment objectives. The basic premise of shareholder voting is that not all shareholders agree with a particular proposal. This does not mean that there are any inherent conflicts of interest between shareholders. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem their separate accounts out of one fund and invest in another. Time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. On the other hand, the trustees of Qualified Plans can quickly make the decision to redeem and then implement the redemption of their Plans' shares from the Insurance Funds and reinvest in another funding vehicle without the same regulatory impediments, or, as is the case with most Qualified Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants have concluded that, even if there should arise issues where the interests of contract owners and Qualified Plans are in conflict, these issues can be resolved almost immediately in that the trustees of the Qualified Plans can, on their own, redeem shares out of the Insurance Funds. The Manager and its affiliates can similarly redeem their shares out of the Insurance Funds and make alternative investments at any time.

22. Applicants considered whether there is a potential for future conflicts of interests between Separate Accounts and Qualified Plans created by future changes in the tax laws. Applicants do not see any greater potential for material irreconcilable conflicts arising between the interest of participants under Qualified Plans and contract owners of Separate Accounts from possible future changes in the federal tax laws than that which already exists between variable annuity contract owners and variable life insurance contract owners.

23. Applicants assert that permitting an Insurance Trust to sell shares of its Insurance Funds to the Manager and its affiliates in compliance with Treas. Reg. 1.817–5 will enhance Insurance Trust management without raising significant concerns regarding material irreconcilable conflicts. Applicants assert that, unlike the circumstances of many investment companies that serve as underlying investment media for variable insurance products, the Insurance Trusts may be deemed to lack an insurance company "promoter" for purposes of Rule 14a–2 under the Act. It is anticipated that many other Insurance Trusts may lack an insurance company promoter. Accordingly, Applicants assert that such Insurance Trusts will be subject to the requirements of Section 14(a) of the 1940 Act, which generally requires that an investment company have a net worth of $100,000 upon making a public offering of its shares.

24. Applicants assert that given the conditions of Treas. Reg. 1.817–5(i)(3) and the harmony of interest between an Insurance Fund, on the one hand, and its Manager(s) and its affiliates, on the other, little incentive for overreaching exists. Applicants assert that such investments should not implicate the concerns discussed above regarding the creation of material irreconcilable conflicts. Instead, Applicants assert that permitting investment by the Manager and its affiliates will permit the orderly and efficient creation and operation of an Insurance Fund, and reduce the expense and uncertainty of using outside parties at the early stages of Insurance Fund operations.

25. Applicants assert that various factors have limited the number of insurance companies that offer variable contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments) and the lack of name recognition by the public of certain Participating Insurance Companies as investment experts. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own. Use of the Insurance Funds as a common investment medium for variable contracts and Qualified Plans would help alleviate these concerns, because Participating Insurance Companies and Qualified Plans will benefit not only from the investment and administrative expertise of CTB, or any other investment manager to an Insurance Fund, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Insurance Funds available for mixed and shared funding and permitting the purchase of Insurance Fund shares by Qualified Plans may encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation. Mixed and shared funding also may benefit variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Furthermore, granting the requested relief should result in an increased amount of assets available for investment by the Insurance Funds. This may benefit variable contract owners by promoting economies of scale, by reducing risk through greater diversification due to increased money in the Insurance Trusts, or by making the addition of new Insurance Funds more feasible.

26. Applicants submit that, regardless of the type of shareholder in any of the Insurance Funds, the investment advisers and subadvisers are or will be contractually obligated to manage each Insurance Fund solely and exclusively in accordance with that Insurance Fund's investment objectives and restrictions as well as with any guidelines established by the Board of Trustees of the Trust, or by the board of directors or trustees of any future Insurance Fund that is not a series of the Trust, as the case may be. With respect to each Insurance Fund, the investment advisers and subadvisers work with a pool of money and do not take into account the identity of the shareholders. Thus, any current or future Insurance Fund will be managed in the same manner as any other mutual fund.

### Applicants' Conditions

1. A majority of the Board of Trustees or Board of Directors ("Board") of each Insurance Trust shall consist of persons who are not "interested persons" of the Insurance Trust, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (a) For a period of 90 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor the respective Insurance Trust for the existence of any material irreconcilable conflict among and between the interests of the contract owners of all Separate Accounts, and of the Plan participants, Qualified Plans, and the

Manager or its affiliates investing in that Insurance Trust, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any Insurance Fund are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, Plan trustees, or Plan participants; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. Any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of an Insurance Trust, any Participating Insurance Company, and the Manager and its affiliates (collectively, "Participants") will report any potential or existing conflicts to the Board. Each of the Participants will be responsible for assisting the Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by each Qualified Plan that is a Participant to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participating Insurance Companies and Qualified Plans investing in an Insurance Trust under their agreements governing participation in the Insurance Trust, and such agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contract owners or, if applicable, Plan participants.

4. If it is determined by a majority of the Board of an Insurance Trust, or a majority of its disinterested trustees or directors, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Qualified Plans shall, at their expense or, at the discretion of a Manager to an Insurance Trust, at that Manager's expense, and to the extent reasonably practicable (as determined by a majority of the disinterested trustees or directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the relevant Insurance Trust or any series therein and reinvesting such assets in a different investment medium (including another Insurance Fund, if any); (b) in the case of Participating Insurance Companies, submitting the question of whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the Insurance Trust's election, to withdraw its Separate Account's investment in the Insurance Trust, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Insurance Trust, to withdraw its investment in the Insurance Trust, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Insurance Trust, and these responsibilities will be carried out with a view only to the interests of the contract owners or, as applicable, Plan participants.

For the purposes of this Condition (4), a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Insurance Trust or its Manager(s) be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this Condition (4) to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contract owners materially adversely affected by the material irreconcilable conflict. No Qualified Plan shall be required by this Condition (4) to establish a new funding medium for such Qualified Plan if (a) a majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer or (b) pursuant to governing Plan documents and applicable law, the Plan makes such decision without Plan participant vote.

5. The Board's determination of the existence of a material irreconcilable conflict and its implications shall be made known promptly in writing to all Participants.

6. Participating insurance companies will provide pass-through voting privileges to all variable contract owners whose contracts are funded through a registered separate account for so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners. However, as to variable contracts issued by unregistered Separate Accounts, pass-through voting privileges will be extended to contract owners to the extent granted by the issuing insurance company. Accordingly, such Participating Insurance Companies will vote shares of each Insurance Fund held in their registered separate accounts in a manner consistent with voting instructions timely received from such contract owners. Each Participating Insurance Company will vote shares of each Insurance Fund held in its registered Separate Accounts for which no timely voting instructions are received, as well as shares held by any such registered Separate Account, in the same proportion as those shares for which voting instructions are received. Participating insurance companies shall be responsible for assuring that each of their Separate Accounts investing in an Insurance Trust calculates voting privileges in a manner consistent with all other Participating Insurance

Companies. The obligation to vote an Insurance Trust's shares and to calculate voting privileges in a manner consistent with all other registered Separate Accounts investing in an Insurance Trust shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Insurance Trust. Each Plan will vote as required by applicable law and governing Plan documents.

7. An Insurance Trust will notify all Participating Insurance Companies and Qualified Plans that disclosure regarding potential risks of mixed and shared funding may be appropriate in prospectuses for any of the Separate Accounts and in Plan documents. Each Insurance Trust shall disclose in its prospectus that: (a) Shares of the Insurance Trust are offered to insurance company separate accounts which fund both variable annuity and variable life insurance contracts, and to Qualified Plans; (b) due to differences of tax treatment or other considerations, the interests of various contract owners participating in the Insurance Trust and the interests of Qualified Plans investing in the Insurance Trust might at some time be in conflict; and (c) the Board will monitor the Insurance Trust for any material conflicts and determine what action, if any, should be taken.

8. All reports received by the Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. If and to the extent Rule 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in this Application, then each Insurance Trust and/or the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

10. Each Insurance Trust will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of that Insurance Trust), and in particular each Insurance Trust will either provide for annual meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Trust is not one of the trusts described in Section 16(c) of the 1940 Act) as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Insurance Trust will act in accordance with the Commission's interpretation of the requirements of Section 16(a) of the 1940 Act with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

11. As long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners, the Manager and its affiliates will vote its shares in the same proportion as all contract owners having voting rights with respect to the relevant Insurance Trust; provided, however, that the Manager and its affiliates shall vote their shares in such other manner as may be required by the Commission or its staff.

12. The Participants shall at least annually submit to the Board of an Insurance Trust such reports, materials or data as the Board may reasonably request so that it may fully carry out the obligations imposed upon it by the conditions contained in the Application and said reports, materials and data shall be submitted more frequently, if deemed appropriate, by the Board. The obligations of a Participant to provide these reports, materials and data to the Board of the Insurance Trust when it so reasonably requests, shall be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in each Insurance Trust.

13. If a Qualified Plan should become an owner of 10% or more of the assets of an Insurance Fund, the Insurance Trust shall require such Plan to execute a participation agreement with such Insurance Trust which includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Insurance Fund.

14. Any shares of an Insurance Fund purchased by the Manager or its affiliates will be automatically redeemed if and when the Manager's investment management agreement terminates, and to the extent required by the applicable Treasury Regulations. Neither the Manager nor its affiliates will sell such shares of the Insurance Fund to the public.

15. A Participating Insurance Company, or any affiliate, will maintain at its home office, available to the Commission: (a) A list of its officers, directors and employees who participate directly in the management or administration of the Insurance Trusts or any variable annuity or variable life insurance separate account, organized as a unit investment trust, that invests in the Insurance Trusts and/or (b) a list of its agents who, as registered representatives, offer and sell the variable annuity and variable life contracts funded through such a Separate Account. These individuals will continue to be subject to the automatic disqualification provisions of Section 9(a).

## Conclusion

For the reasons and upon the facts summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–26447 Filed 10–20–03; 8:45 am]

BILLING CODE 8010–01–P

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## SMALL BUSINESS ADMINISTRATION

### Public Federal Regulatory Enforcement Fairness Roundtable; Region III Regulatory Fairness Board

The Small Business Administration Region III Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Roundtable on Thursday, October 30, 2003 at 8:30 a.m. at Annapolis City Council Chamber, City Hall, 2nd Floor, Duke of Gloucester Street, Annapolis, MD 21401, to provide small business owners and representatives of trade associations with an opportunity to share information concerning the federal regulatory enforcement and compliance environment.

Anyone wishing to attend or to make a presentation must contact Oliver J. Phillips in writing or by fax, in order to be put on the agenda. Oliver J. Phillips, Chief of Business Development, SBA Baltimore District Office, 10 S. Howard

Street, Suite 6220, Baltimore, MD 21201, phone (410) 962–6195 x337, fax (410) 962–1805, e-mail: *oliver.phillips@sba.gov*.

For more information, see our Web site at *http://www.sba.gov/ombudsman*.

Dated: October 10, 2003.

**Peter Sorum,**

*National Ombudsman (Acting).*

[FR Doc. 03–26462 Filed 10–20–03; 8:45 am]

**BILLING CODE 8025–01–P**

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## DEPARTMENT OF STATE

**[Public Notice 4517]**

## Bureau of Educational and Cultural Affairs Request for Grant Proposals: Eurasia Professional Exchanges and Training Program for Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, the Kyrgyz Republic, Moldova, Russia, Tajikistan, Ukraine and Uzbekistan

**SUMMARY:** The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs (the Bureau) invites applicants to submit proposals that encourage the growth of democratic institutions in Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, the Kyrgyz Republic, Moldova, Russia, Tajikistan, Ukraine, and Uzbekistan. For this competition, single country projects only are eligible for support. U.S.-based public and private non-profit organizations meeting the provisions described in Internal Revenue code section 26 U.S.C. 501(c)(3) may submit proposals that support international projects in the United States and overseas involving current or potential leaders.

**Important Note:** This Request for Grant Proposals contains language in the "Shipment and Deadline for Proposals" section that is significantly different from that used in the past. Please pay special attention to procedural changes as outlined.

Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Office of Citizen Exchanges or submitting proposals. Once the RFGP deadline has passed, Office of Citizen Exchanges staff may not discuss this competition with applicants until after the Bureau program and project review process has been completed.

*Announcement Title and Number:* All correspondence with the Bureau concerning this RFGP should reference the "Eurasia Professional Exchanges and Training Program" (PET) and number ECA/PE/C/EUR–04–33.

**FOR FURTHER INFORMATION CONTACT:** Interested organizations/institutions may contact the Office of Citizen Exchanges, Room 220, SA–44, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, Attention: Eurasia Professional Exchanges and Training Program, telephone number (202) 401–6884, fax number (202) 619–4350 to request a Solicitation Package. The Solicitation Package, which includes the Request for Grant Proposals (RFGP), the Proposal Submission Instructions (PSI) and the diversity statement, contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation.

For specific inquiries, please contact Bureau program officers by phone or e-mail: Kendra Davis (202) 619–5328 (*kldavis@pd.state.gov*); Henry Scott (202) 619–5327 (*hscott@pd.state.gov*); Michael George (202) 619–5330 (*mdgeorge@pd.state.gov*); Brent Beemer (202) 401–6887 (*bbeemer@pd.state.gov*). (Note: Please refer to the specific program theme under "Program Information" to identify which program officer you should contact.)

*To Download a Solicitation Package Via Internet:* The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs*. Please read all information before downloading.

*General Program Guidelines:* This competition is based on the premise that people-to-people exchanges encourage and strengthen democratic initiatives and nurture the social, political and economic development of societies. Exchanges and training programs supported by institutional grants from the Bureau should operate at two levels: They should enhance institutional partnerships, and they should offer practical information and experience to individuals and groups to assist them with their professional responsibilities. Strong proposals usually have the following characteristics:

- A proven track record of working in the proposed issue area and country;
- Experienced staff with language facility and a commitment by the staff to monitor projects locally to ensure implementation;
- A clear, convincing plan showing how permanent results will be accomplished as a result of the activity funded by the grant; and
- A post-grant plan that includes activities that will take place after the Bureau-funded grant has concluded. (See Review Criterion #5 below for more information on post-grant activities.)
- A detailed assessment of project needs and feasibility. Proposals that include costs or time for a needs assessment may be deemed less competitive.

Applicants should identify the local organizations and individuals in the counterpart country with whom they are proposing to collaborate and describe in detail previous cooperative programming and/or contacts. Specific information about the counterpart organizations' activities and accomplishments should be included in the section under "Institutional Capacity" (See Review Criterion # 2 below). Proposals should contain letters of support tailored to the proposed project from foreign-country partner organizations. Applicants should clearly outline in the narrative the foreign partner's role and responsibilities in project management and implementation.

Proposal narratives must clearly demonstrate an organization's commitment to consult closely with the designated program officer at Bureau of Educational and Cultural Affairs, and with Public Affairs Sections at U.S. Embassies. Proposal narratives must confirm that all materials developed for the project will acknowledge Bureau funding for the program as well as a commitment to invite representatives of the Embassy and/or Consulate to participate in various program sessions/site visits. Please note that this will be a formal requirement in all final grant awards.

### Suggested Program Designs

Bureau-supported exchanges may include internships; study tours; short-term, non-technical experiential learning; extended and intensive workshops; and seminars taking place in the United States or overseas. Examples of program activities include:

1. A U.S.-based program that includes: Orientation to program purposes and to U.S. society; study tour/site visits; professional internships/placements; interaction and dialogue; hands-on training; professional development; and action plan development. Proposals that include U.S.-based training will receive the highest priority.

2. Capacity-building/training-of-trainer (TOT) workshops to help participants to identify priorities, create work plans; strengthen professional and volunteer skills; share their experience with committed people within each country; and become active in a practical and valuable way.

3. Site visits by U.S. facilitators/experts to monitor projects in the region

and to provide additional training and consultations as needed.

Activities ineligible for support: The Office does not support proposals limited to conferences or seminars (*i.e.*, one to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only when they are a small part of a larger project in duration that is receiving Bureau funding from this competition. No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars overseas; nor is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States.

### Selection of Participants

All grant proposals should clearly describe the type of persons that will participate in the program as well as the participant selection process. For programs that include U.S. internships, applicants should submit letters of support from host institutions. In the selection of foreign participants, the Bureau and U.S. Embassies retain the right to review all participant nominations and to accept or refuse participants recommended by grantee institutions. When American participants are selected, grantee institutions must provide their names and brief biographical data to the Office of Citizen Exchanges. Priority in two-way exchange proposals will be given to foreign participants who have not previously traveled to the United States.

Programs must comply with J–1 visa regulations. Please refer to "Adherence with J–1 Visa Regulations" below.

### Program Data Requirements

Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. At a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place.

### Adherence to All Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the "Responsible Officer" for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving grants under this RFGP will be third parties "cooperating with or assisting the sponsor in the conduct of the sponsor's program." The actions of grantee program organizations shall be "imputed to the sponsor in evaluating the sponsor's compliance with" 22 CFR part 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should explicitly state in writing that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss its record of compliance with 22 CFR part 62 *et seq.*, including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

### Evaluation

In general, evaluation should occur throughout the project. The evaluation should incorporate an assessment of the program from a variety of perspectives. Specifically, project assessment efforts will focus on: (a) Determining if objectives are being met or have been met, (b) identifying any other related training needs, and (c) assessing if the project has effectively identified resources, advocates, and financial support for the sustainability of future projects. Informal evaluation through discussions and other sources of feedback will be carried out throughout the duration of the project. Formal evaluation must be conducted at the end of each component, should measure the impact of the activities and should obtain participants' feedback on the program content and administration. A detailed evaluation will be conducted at the conclusion of the project and a report will be submitted to the Department of State Bureau of Educational and Cultural Affairs. When possible, the evaluation should be conducted by an independent evaluator.

### Program Information

#### *Overview*

The Bureau welcomes proposals that respond directly to the themes and countries listed below. Given budgetary considerations, projects in countries and for themes other than those listed will not be eligible for consideration and will be ruled technically ineligible. The themes listed below are important to the Office of Citizen Exchanges, but no guarantee is made or implied that grants will be awarded in all categories.

For this competition, single country projects only are eligible for support. Multi-country projects are not eligible for this competition. In order to prevent duplication of effort, proposals should reflect an understanding of the work of international and USG agencies so that projects complement other exchange or assistance programs.

Two-way exchanges will be given the highest priority. Applicants should carefully review the following information in formulating proposals in Eurasian countries.

To be eligible for a grant award under this competition, the proposed professional training and exchange projects must address one of the following specific themes for single country projects:

Armenia—Women's Leadership.
Azerbaijan—Women's Leadership.
Belarus—Training and Internships for Media Professionals.
Georgia—Public Health Awareness.
Kazakhstan—Training for Media Professionals in Covering Social Issues.
Kyrgyz Republic—Tolerance.
Moldova—Anti-Corruption.
Russia—Intellectual Property Rights.
Russia—Role of a Free Press in a Modern Market Economy.

Tajikistan—Diplomatic Training.
Ukraine—Partnerships for Internet-based Media Outlets.
Ukraine—Tolerance.
Uzbekistan—Press Spokespersons Training.

**Women's Leadership**

*Single Country Project for Armenia*

Over the past decade, women's organizations in Armenia have emerged as a force for social change and democratic development. However, the low number of visible women leaders does not reflect the makeup of Armenian society. The Bureau is interested in proposals that will enhance women's participation in politics and promote their successful engagement in civil society by providing leadership training to aspiring women leaders, particularly those outside of Yerevan. Participants should include women who are politically active or who have leadership potential, including national and municipal officials. Programs would focus on developing management skills for organizational efficiency, building networks and coalitions, increasing visibility and effectiveness in the political sphere, and influencing decisions at all levels of government. Training should combine elements such as leadership fundamentals, the introduction or improvement of skills associated with campaign management, accountability to constituencies, voter outreach, networking, message development, working with the media, and fundraising. Proposals should emphasize government ethics issues and the importance of increasing public confidence in public institutions. Continuous communication, mentoring, and consultation between overseas participants and trainers/mentors should be described in detail and conducted throughout the life of the grant. Proposals must indicate a practical and sophisticated knowledge of the political and legislative environment in Armenia. Preference will be given to projects that do not exceed $150,000.

The contact for this topic is Michael George, (202) 619–5330, *mdgeorge@pd.state.gov.*

*Single Country Project for Azerbaijan*

Over the past decade, the number of women in leadership positions has increased in Azerbaijan. However, the low number of visible women leaders does not reflect the makeup of Azeri society. The Bureau is interested in proposals that will enhance women's participation in politics and promote their successful engagement in civil society by providing leadership training to aspiring women leaders, both inside and outside of Baku. Participants should include women who are politically active or who have leadership potential, including national and municipal officials. Programs would focus on developing management skills for organizational efficiency, building networks and coalitions particularly at the local and regional levels, increasing visibility and effectiveness in the political sphere, and influencing decisions at all levels of government. Training should combine elements such as leadership fundamentals, the introduction or improvement of skills associated with campaign management, accountability to constituencies, voter outreach, networking, message development, working with the media, and fundraising. Proposals should emphasize government ethics issues and the importance of increasing public confidence in public institutions. Continuous communication, mentoring, and consultation between overseas participants and trainers/mentors should be described in detail and conducted throughout the life of the grant. Proposals must indicate a practical and sophisticated knowledge of the political and legislative environment in Azerbaijan.

Preference will be given to projects that do not exceed $150,000.

The contact for this topic is Brent Beemer, (202) 401–6887, *bbeemer@pd.state.gov.*

**Training and Internships for Media Professionals From Belarus**

*Single Country Projects for Belarus Only*

ECA seeks proposals for programs that will provide training in Western-style journalism techniques and in effective business management for employees of independent media outlets in Belarus. Proposals must indicate a practical and sophisticated knowledge of the political and media environment in Belarus. Proposed activities should not duplicate the work done under recent or existing media training programs, but should complement those efforts. Proposals should include a U.S.-based training program for up to ten media professionals. (The Public Affairs Section in Minsk will select participants for this program; applicants should not propose participant recruitment or selection.) Participants may be reporters, editors, and/or media managers, and may be from broadcast and/or print media outlets. The U.S.-based component should begin with group orientation activities and meetings, followed by a hands-on internship component at an appropriate host U.S. media outlet. Applicants should identify those outlets willing to host Belarusian participants. Internships should be developed for small groups consisting of not more than three persons. In addition to the U.S.-based component, other training activities may take place in Poland or Ukraine. If proposed, activities in Poland or Ukraine should provide Belarusian participants the opportunity to meet with representatives of independent media outlets in those countries and to learn about their professional experiences and successes. Continuous activities, including mentoring and consultations between the Belarusian participants and their U.S.-based trainers/hosts and new colleagues in Ukraine or Poland, should be conducted throughout the life of the grant and described in detail.

For this program, ECA will assign State Department interpreters for the U.S.-based internship component. Therefore, applicants should budget funds in accordance with the guidelines provided in Point 3, "Interpreters," under the section of this RFGP that identifies allowable program costs, including those associated with using State Department interpreters.

Preference will be given to funding requests that do not exceed $150,000.

The contact for this theme is Henry Scott, (202) 619–5327, *hscott@pd.state.gov.*

**Public Health Awareness**

*Single Country Projects for Georgia Only*

The Bureau welcomes proposals that will focus on promoting health awareness among Georgian youth. The target audience should be organizations and individuals that work with young people. Proposals should focus on creative initiatives that will promote greater awareness of health problems common to Georgians aged 12–25, specifically, drug and alcohol abuse, HIV/AIDS and venereal disease, and cigarette smoking, and that will promote positive behaviors in a way that resonates with, rather than alienates, Georgian youth. Proposals should provide practical, hands-on training to media, NGO, education, or government professionals on how to promote good health habits, overcome social attitudes that contribute to the prevalence of unhealthy behaviors, and manage grassroots mobilization and advocacy. Formal medical education and the provision of healthcare services or medication are outside the purview of this theme and will not be accepted activities for funding.

Preference will be given to projects that do not exceed $150,000.

The contact for this program is Michael George, (202) 619–5330, *mdgeorge@pd.state.gov.*

**Training for Media Professionals in Covering Social Issues**

*Single Country Project for Kazakhstan Only*

ECA seeks proposals for programs that will provide training to media professionals from Kazakhstan on reporting on sensitive social issues. Proposals should include in-country and U.S.-based training activities for journalists and/or media outlet managers. Training should not duplicate the work done under recent or existing USG-sponsored programs, but should complement those efforts. Applicants should expect to work closely with the Public Affairs Sections of the U.S. Embassy to coordinate all activities, including participant selection. U.S-based activities should include an opening group orientation, lecture-style presentations from American trainers on targeted social issues, and interactive discussions with media professionals and experts on reporting on social issues in a civil society. Applicants should also propose meetings with advocacy groups and assistance organizations that work to address social issues. In-country activities may include workshops and seminars. These may be led by the participants themselves, or by U.S. trainers, or a combination of both. In addition to group training events, activities should take place throughout the grant period. Applicants should describe in detail these activities and how they will create and sustain long-term relationships between Kazakh participants and their U.S. colleagues. Such activities may include virtual mentoring and e-mail consultations between U.S.-based trainers/experts and participants.

Preference will be given to funding requests that do not exceed $150,000.

The contact for this theme is Kendra Davis, (202) 619–5328, *kldavis@pd.state.gov.*

**Tolerance**

*Single Country Projects for the Kyrgyz Republic Only*

ECA welcomes proposals that will focus on promoting constructive dialogue and the prevention or reduction of stereotyping, violence and hatred, particularly among youth, in the Nookat region of Osh Oblast in Kyrgyzstan. Projects may be designed and implemented through educational institutions, NGOs or other partners. Projects should build a valued working relationship between U.S. and overseas professionals and should develop, test and result in training or outreach programs that will continue after grant support concludes. Proposals should focus on after-school programs for youth, community activities and facilitating dialogue—among parents, teachers, Muslim and other religious leaders, professionals, community activists—in order to promote better understanding of the issues that contribute to intolerance as well as strategies to address them. The program should include substantive meetings with NGOs, U.S. experts on religions, clerics, faith-based organizations, representatives of local government, and others. Programming should also introduce the evolution of U.S. laws designed to protect and promote tolerance. Travel in both directions, including a hands-on, U.S.-based program with a train the trainer component, should be proposed. Continuous communication, mentoring, and consultations between overseas participants and trainers/mentors, should be described in detail and conducted throughout the life of the grant.

Preference will be given to projects that do not exceed $150,000.

The contact for this topic is Brent Beemer, (202) 401–6887, *bbeemer@pd.state.gov.*

**Anti-Corruption**

*Single Country Projects for Moldova Only*

In order to address the problem of corruption, the Moldovan government created the Center for Fighting Economic Crime and Corruption in June 2002. High-level government officials, including the President, have made statements against corruption in Moldovan society and have promised action. However, citizens have low expectations for government service and are generally inclined to view embezzlement, conflicts of interest, and bribe-taking at all levels as the norm or as something to be tolerated. ECA is looking for proposals that will build upon the preliminary efforts of the Moldovan government to fight corruption. Proposals should work with the Center for Fighting Economic Crime and Corruption and help it to establish itself as a leader in the anti-corruption efforts in Moldova. In addition, program proposals should take into account the anti-corruption activities of Transparency International in Moldova in order to prevent duplication. Programs should engage the Center's officials in relevant ethics issues, including the role of public ethics in a democratic society and ethics responsibilities for government officials. The proposed programs should include innovative ways the Center could address corruption at various levels through oversight, laws, policies, procedures and programming. Proposals should also include programming that will help the Center to increase public confidence in the government's efforts to begin combating corruption. Travel in both directions, including a hands-on, U.S.-based program with a train-the-trainer component, should be proposed. Continuous communication, mentoring and consultations between the Center and trainers/mentors, should be described in detail and conducted throughout the life of the grant. Close coordination with the U.S. Embassy in Chisinau will be essential to this project.

Preference will be given to projects that do not exceed $150,000.

The contact for this topic is Brent Beemer, (202) 401–6887, *bbeemer@pd.state.gov.*

**Intellectual Property Rights**

*Single Country Projects for Russia Only*

Proposals for this project should focus on intellectual property rights (IPR) in Russia, with a special concentration on copyright protection for films/videos, music recordings, and other artistic works subject to piracy. The sale of illegal copies of CDs, videos, and movies is common practice in Russia and is widely accepted by the public as routine. Government action has been insufficient and the Russian legal system has so far been unable to address the problem effectively. Applicants should propose a two-pronged approach that targets both the cultural community (artists, performers, producers and directors, among others) as well as judicial officials. Proposals should include programming that will encourage the participants to understand the nature of intellectual property rights and work collectively in fighting the piracy of their work in Russia. Trade associations, effective lobbying techniques, and legal approaches should be among topics that are covered. Programs should emphasize hands-on, practical activities, such as case studies and examples of court proceedings or litigation regarding copyright protection. Competitive proposals will also introduce participants to some new business models for artistic work that will help create a more legitimate market in Russia. Continuous communication, mentoring, and consultations between overseas participants and trainers/mentors, should be described in detail and conducted throughout the life of the grant. Proposals dealing with law enforcement or travel for law enforcement officials are outside the purview of this topic and will not be considered. Proposals must indicate a practical and sophisticated knowledge of the political and legislative environment in Russia.

Preference will be given to projects that do not exceed $150,000.

The contact for this topic is Henry Scott, (202) 619–5327, *hscott@pd.state.gov*.

**Role of Free Press in a Modern Market Economy**

*Single Country Projects for Russia Only*

In modern market economies, consumers and investors rely on a free press to alert them to opportunities, warn them of potential fraud, and inform them of the consequences of their purchases. In Russia, official pressure and sponsorship of news reports diminishes the media's value as a source of objective information. As a result, consumers and investors have difficulty making informed choices about contracts or other transactions, particularly in the absence of effective regulation. The Bureau is interested in proposals that would increase appreciation of a free, objective press among regional government officials in Russia. Proposals should target regional government leaders, either elected officials or civil servants or a combination of both, for participation in the program. Proposals should demonstrate the applicant's understanding of the importance that Russian regional governments place on economic development, and recruitment and training components should appeal to this priority.

Activities must include both a U.S.-based training program(s) and in-country activities. U.S.-based programs should include sessions to introduce participants to the role of the independent media in the U.S. and its relationship with the government. The U.S. program should include a combination of meetings, lectures, interactive sessions, visits to relevant institutions and organizations, and individual meetings. The Bureau encourages applicants to enlist experienced U.S. politicians in the stateside program who can emphasize the benefits of a free press to Russian officials in a credible manner. In-country activities may include workshops and seminars that complement the information and training presented to participants in the United States. Applicants must work closely with the Public Affairs Section in Moscow to coordinate all activities, including participant selection.

Preference will be given to projects that do not exceed $150,000.

The contact for this theme is Michael George, (202) 619–5330, *mdgeorge@pd.state.gov*.

**Diplomatic Training**

*Single Country Projects for Tajikistan Only*

The Bureau is seeking proposals that will offer training to representatives of Tajikistan's Ministry of Foreign Affairs (MFA). Programs will offer training and assistance to the Tajik MFA to help create a professional Tajik foreign service that can effectively represent the country abroad.

Tajik diplomats, including deputy chiefs of mission and other senior, mid-level and junior officials, should be trained in the essentials of foreign policy formulation and the functions of an embassy. Training will be based on courses offered to U.S. diplomats and will incorporate such practical and substantive themes as: International politics (including international organizations and lending institutions); the structure and operation of an embassy; professional ethics; management skills; analytical reporting; negotiation skills; media relations and public diplomacy; trade promotion; communication with the host government (including need for local language training); management of VIP visits; and other relevant topics.

The program should include in-country training as well as training in the United States. Program activity may incorporate training-of-trainers, workshops, internships and site visits and should reflect a practical understanding of the current political, economic and social climate in Tajikistan. Training should balance formal presentations, discussions and group exercises and should be targeted at diplomats with a wide range of experience, including some who are new to the profession. The Tajik MFA will nominate participants. The U.S. Embassy in Dushanbe will make final participant selection. Applicants are required to work closely with the Public Affairs Section in Dushanbe during all program planning and implementation. Language issues must also be addressed throughout the proposal.

The total funding available for Diplomatic Training in Tajikistan is $250,000.

The contact for this theme is Kendra Davis, (202) 619–5328, *kldavis@pd.state.gov*.

**Partnerships for Internet-Based Media Outlets**

*Single Country Projects for Ukraine Only*

While the importance of the Internet in Ukraine as a source of news and information is growing, Internet-based media outlets there still face significant challenges in terms of their legal status as "legitimate" media outlets and their level of journalistic and management expertise. In order for Internet-based outlets in Ukraine to survive, they need to become viable businesses, as well as credible sources of news and information. The Bureau is seeking proposals for programs that would foster long-term relationships between U.S. Internet-based media outlets and independent, Internet-based media outlets in Ukraine. Within the framework of these partnerships, Ukrainian media professionals would learn how their U.S. partners deal with issues such as management of operations, ethical concerns, and how to operate under existing U.S. legislation governing Internet activities.

Applicants should propose a minimum of two partnerships to be developed. Each Ukrainian media outlet should be matched with an appropriate U.S. media outlet for partnership activities. The names of potential outlets, both in the U.S. and Ukraine, should be provided. Applicants should explain how partnerships will be structured and what activities they will include. Applicants should propose a combination of trips to the U.S. for Ukrainian participants, trips to Ukraine for U.S. participants, and on-going activities and virtual interaction throughout the grant period. While U.S. visits for Ukrainian participants should include consultations, workshops, and interactive meetings, they may also include hands-on internships and/or job shadowing experiences that will build professional expertise and strengthen links between the two partners. Under program activities, applicants should address the following topics: Use of the Internet as a news tool; Web design for Internet-based news services; business and management practices for Internet-based management; journalistic ethics; and licensing and legal issues for Internet-based news outlets. The proposal should identify the individuals who will be responsible for the partnership at each U.S. media outlet, and should, wherever possible, identify personnel that will participate from both the U.S. and Ukrainian sides. For the visits to Ukraine, activities should focus on complementing those activities conducted in the U.S. and increasing the professional capacity of the Ukrainian participants and their colleagues who may not travel to the U.S. This aspect of the program should also strengthen the sustainable relationship between the two outlets.

Preference will be given to projects that do not exceed $150,000.

The contact for this theme is Kendra Davis, (202) 619–5328, *kldavis@pd.state.gov.*

### Tolerance

*Single Country Projects for Ukraine Only*

Proposals should focus on promoting constructive dialogue and reduction of stereotyping, violence and hatred among diverse groups. Projects should focus on minority communities such as the Tatars in Crimea or the Roma in other parts of Ukraine. Projects may be designed and implemented through media outlets, educational institutions, NGOs or other partners. Projects should build a valued working relationship between U.S. and overseas professionals and should develop, test, and result in a training program that can continue after grant support concludes. Proposals should address specific inter-communal conflicts and facilitate dialogue among teachers, professionals, journalists, community activists and local government officials in order to promote better understanding among parties in conflict. Programming should also introduce the evolution of U.S. laws designed to protect minority rights and promote tolerance. Projects should design and conduct a public awareness campaign to help dispel stereotypes and foster acceptance of cultural differences. Travel in both directions, including a hands-on, U.S.-based program with a train the trainer component, should be proposed. Continuous communication, mentoring, and consultations between overseas participants and trainers/mentors should be described in detail and conducted throughout the life of the grant.

Preference will be given to projects that do not exceed $150,000.

The contact for this theme is Kendra Davis, (202) 619–5328, *kldavis@pd.state.gov.*

### Press Spokespersons Training

*Single Country Projects for Uzbekistan Only*

ECA is interested in proposals that provide intensive, hands-on training to Uzbek national and government spokespersons as well as spokespersons from non-governmental entities. Proposals should focus on public affairs and public information as they are handled by government and non-governmental institutions. Program activities should cover such topics as how public affairs offices function in government; the importance of transparency in government; communicating openly with citizens and journalists; crisis communication; strategic planning; press office management; and the provision of accurate, timely information to the public.

Programs should consist of a Washington, DC, component, including meetings with the public affairs offices and spokespersons of federal agencies and departments, as well as shadowing experiences with state or local governments and non-governmental organizations. A train-the-trainers component should be included. In-country workshops should also be implemented, during which participants from the U.S. program will work as co-trainers and will reach out to a larger audience of governmental and non-governmental spokespersons from Uzbekistan. Media representatives may also participate in the in-country training program.

The Public Affairs Section (PAS) in Tashkent will be responsible for selecting participants through an open, merit-based process designed jointly by the grantee and PAS.

Preference will be given to projects that do not exceed $150,000.

The contact for this theme is Michael George, (202) 619–5330, *mdgeorge@pd.state.gov.*

### Central and Eastern Europe

Requests for grant proposals for the following countries will be announced in separate competitions: Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Poland, Romania, Serbia-Montenegro/Kosovo, Slovak Republic and Slovenia. Proposals involving Central and Eastern Europe WILL NOT be accepted under this competition, and if received, will be technically ineligible.

### Western Europe

Proposals involving Western Europe will not be accepted under this competition, and if received, will be technically ineligible.

### Budget Guidelines and Cost Sharing Requirements

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Applicants must submit a comprehensive budget for the entire program and must provide a summary budget as well as breakdowns reflecting both administrative and program budgets in the proposal. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Please refer to the Proposal Submission Instructions (PSI) for complete budget guidelines and formatting instructions.

Since Bureau grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support. Applicants are strongly encouraged to provide cost sharing to the fullest extent possible. State Department Review Panels will consider cost sharing seriously when valuating all proposals.

The following are deemed allowable program costs:

1. Travel. International and domestic airfare (per the "Fly America Act"), ground transportation, and visas for U.S. participants. (J–1 visas for Bureau-supported participants from Eurasia to travel to the U.S. are issued at no charge.)

2. Per Diem. For U.S.-based programming, organizations should use the published Federal per diem rates for individual U.S. cities. For activities in Eurasia, the Bureau strongly encourages applicants to budget realistic costs that reflect the local economy. Domestic per diem rates may be accessed at: *http://policyworks.gov/org/main/mt/homepage/mtt/perdiem/perd03d.html.* Foreign per diem rates can be accessed at: *http://www.state.gov/m/a/als/prdm/.*

3. Interpreters. For U.S.-based activities, applicants may hire their own locally-based interpreters or may ask the Bureau to assign U.S. Department of State interpreters. The Office of Citizen Exchanges strongly encourages applicants to use locally-hired interpreters. Typically, one interpreter is provided for every four visitors that require interpreting. When an applicant proposes to use State Department interpreters, the following expenses should be included in the budget: Published Federal per diem rates (both "lodging" and "M&IE"); "home-

program-home" transportation in the amount of $400 per interpreter; reimbursement for taxi fares; and cell phone usage at $10 per week. If the applicant uses State Department interpreters, salary expenses will be covered by the Bureau and should not be part of an applicant's proposed budget. Bureau funds can not support interpreters who accompany delegations from their home country or travel internationally.

4. Book and cultural allowance. Foreign participants are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. Interpreters should be reimbursed up to $150 for expenses when they escort participants to cultural events. U.S. program staff, trainers or participants are not eligible to receive these benefits.

5. Consultants. Consultants may be used to provide specialized expertise or to make presentations. Daily honoraria cannot exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal. Such subcontracts should detail the division of responsibilities and proposed costs. Subcontracts should be itemized in the budget.

6. Room rental. Room rental may not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop and translate materials for participants. The Bureau strongly discourages the use of automatic translation software for the preparation of training materials or any information distributed to the group of participants or network of organizations. Costs for high-quality translation of materials should be anticipated and included in the budget. Grantee organizations should expect to submit a copy of all program materials to the Bureau.

8. Equipment. Proposals may include limited costs to purchase equipment for Eurasia-based programming such as computers, fax machines and copy machines. Costs for furniture are not allowed. Equipment costs must be kept to a minimum.

9. Working meal. Only one working meal may be provided during the program. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one. Interpreters must be included as participants.

10. Return travel allowance. A return travel allowance of $70 for each foreign participant may be included in the budget. The allowance may be used for incidental expenses incurred during international travel.

11. Health Insurance. Foreign participants will be covered under the terms of a Bureau-sponsored health insurance policy. The premium is paid by the Bureau directly to the insurance company. Applicants are permitted to include costs for travel insurance for U.S. participants in the budget.

12. Wire transfer fees. When necessary, applicants may include costs to transfer funds to partner organizations overseas.

Grantees are urged to research applicable taxes that may be imposed by host governments on these transfers.

13. In-country travel costs for visa processing purposes. Given the new requirements associated with obtaining J–1 visas for Bureau-supported participants, applicants should include costs for participant and/or in-country partner travel and shipping to U.S. embassies or consulates for visa processing purposes, such as interviews and delivery/pick up of DS–2019 forms.

14. Administrative Costs. Costs necessary for the effective administration of the program may include salaries for grantee organization employees, benefits, and other direct and indirect costs per detailed instructions in the Application Package. While there is no rigid ratio of administrative to program costs, priority will be given to proposals whose administrative costs are less than twenty-five (25) per cent of the total requested from the Bureau. Proposals should show strong administrative cost-sharing contributions from the applicant, the in-country partner and other sources.

### New OMB Requirement

An OMB policy directive published in the **Federal Register** on Friday, June 27, 2003, requires that all organizations applying for Federal grants or cooperative agreements must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for all Federal grants or cooperative agreements on or after October 1, 2003. The complete OMB policy directive can be referenced at *http://www.whitehouse.gov/omb/fedreg/062703_grant_identifier.pdf*. Please also visit the ECA Web site at *http://exchanges.state.gov/education/rfgps/menu.htm* for additional information on how to comply with this new directive.

### Shipment and Deadline for Proposals

**Important Note:** The deadline for this competition is Friday, January 9, 2004. In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Applicants must follow all instructions in the Solicitation Package. The original and ten copies (total of 11 copies, secured with binder clips) of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/EUR–04–33, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the Public Affairs Sections at the U.S. embassies for their review.

### Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to, ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

### Review Process

Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Affairs Sections overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grants resides with the Bureau's Grants Officer.

### Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Program Planning and Ability to Achieve Program Objectives: Program objectives should be stated clearly and should reflect the applicant's expertise in the subject area and region. Objectives should respond to the priority topics in this announcement and should relate to the current conditions in the target countries. A detailed agenda and relevant work plan should explain how objectives will be achieved and should include a timetable for completion of major tasks. The substance of workshops, internships, seminars and/or consulting should be described in detail. Sample training schedules should be outlined. Responsibilities of in-country partners should be clearly described.

2. Institutional Capacity: The proposal should include (1) the U.S. institution's mission and date of establishment; (2) detailed information about the in-country partner institution's capacity and the history of the U.S. and in-country partnership; (3) an outline of prior awards—U.S. government and private support received for the target theme/region; and (4) descriptions of experienced staff members who will implement the program. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals. The proposal should reflect the institution's expertise in the subject area and knowledge of the conditions in the target country. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

3. Cost Effectiveness and Cost Sharing: Overhead and administrative costs in the proposal budget, including salaries, honoraria and subcontracts for services, should be kept to a minimum. Priority will be given to proposals whose administrative costs are less than twenty-five (25) per cent of the total funds requested from the Bureau. Applicants are strongly encouraged to cost share a portion of overhead and administrative expenses. Cost-sharing, including contributions from the applicant, the in-country partner, and other sources should be included in the budget request. Proposal budgets that do not provide cost-sharing will be deemed not competitive in this category.

4. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venues and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities). Applicants should refer to the Bureau's Diversity, Freedom and Democracy Guidelines in the Proposal Submission Instructions (PSI).

5. Evaluation: Proposals should include a detailed plan to monitor and evaluate the program. A draft survey questionnaire plus a description of a methodology that will link outcomes to original project objectives should be provided. Successful applicants will be expected to submit intermediate reports after each project component concludes or on a quarterly basis, whichever is less frequent.

6. Post-Grant Activities: Applicants should provide a plan to conduct activities after the Bureau-funded project has concluded in order to ensure that Bureau-supported programs are not isolated events. Funds for all post-grant activities must be in the form of contributions from the applicant or sources outside of the Bureau. Costs for these activities should not appear in the proposal budget, but should be outlined in the narrative.

**Authority:** Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." It is anticipated that funding for this competition will be made available from FY–2003 FREEDOM Support Act resources carried over into FY–2004 for obligation and new FY–2004 resources, pending the availability of funds.

### Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

### Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: October 15, 2003.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 03–26526 Filed 10–20–03; 8:45 am]

BILLING CODE 4710–05–P

## DEPARTMENT OF STATE

**[Public Notice 4516]**

## Bureau of Educational and Cultural Affairs Request for Grant Proposals: Internet Access and Training Program in the Caucasus, Central Asia and Russia

**SUMMARY:** The Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the Internet Access and Training Program (IATP) in the Caucasus, Central Asia and Russia. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 USC 501(c)(3) may submit proposals to oversee and carry out IATP operations, including the establishment of new IATP sites, the maintenance and enhancement of existing sites, the development of Internet outreach and educational projects, and engaging ECA alumni and other targeted groups in the IATP. All activities of the IATP will be undertaken in regular and consistent consultation with the Public Affairs Section (PAS) of the U.S. Embassy in each participating country. Applicants may submit proposals to implement the program in only one of the three regions, (Russia, Caucasus, Central Asia) or in two or all three regions. **IMPORTANT NOTE:** This Request for Grant Proposals contains language in the "Shipment and Deadline for Proposals" section that is significantly different from that used in the past. Please pay special attention to procedural changes as outlined.

### Program Information

*Overview*

The Internet Access and Training Program (IATP) was established in 1995 with funding from the FREEDOM Support Act (FSA) to multiply the U.S. Government's investment in exchanges by supporting and maintaining contact with the over 100,000 Eurasian alumni of U.S. Government-funded programs through a network of public Internet access sites in twelve countries of Eurasia. IATP centers extend the exchange experience and expand avenues of mutual understanding by continuing to engage alumni and other targeted groups in U.S. based programs and dialogues. In Eurasia, where Internet access and freedom of information is often restricted by economic and political factors, IATP public access Internet sites allow USG exchange alumni to maintain contact with their host institutions and colleagues in the United States and across their home region, as well as with U.S. government officials and U.S. exchange NGOs, while maintaining access to world wide information centers. They also serve as catalysts for alumni action by furthering the ability of alumni to introduce American values and practices into their home societies. The IATP centers train alumni in practical and meaningful uses of the Internet, including how to create a website, how to design distance learning courses, publish journals and use databases. Exchange alumni also design courses and lead training sessions at the centers to transfer their knowledge and skills to their home communities. IATP sites are most often located at public libraries and at universities that provide unrestricted access to USG exchange alumni and other key individuals, such as educators, NGO staff members and journalists.

The main components of this program for which grant funding is provided are:

1. Enhancement of existing IATP sites.
2. Maintenance of existing IATP sites.
3. Establishment of new IATP sites.
4. Outreach and educational activities at IATP sites.
5. Monitoring of IATP activities.
6. Evaluation of IATP activities, including the sustainability of open access to information and Internet training.

Subject to the availability of funds, it is anticipated that the grants will begin on or about May 1, 2004. The grant period should be fifteen to twenty-four months. Please refer to the Solicitation Package for further information.

### Budget Guidelines

All organizations applying under this competition must demonstrate in their proposal narrative a minimum of four years experience managing and conducting international exchange programs. Bureau grant guidelines require that organizations with less than four years of experience managing and conducting international exchange programs be limited to $60,000. Since the grant or grants under the competition will exceed the $60,000 ceiling, organizations with less than four years experience, per above, are not eligible to apply under this competition.

Applicants must submit a comprehensive budget for each program. ECA anticipates awarding $4,795,000 ($340,000 in Armenia, $420,000 in Azerbaijan, $345,000 in Georgia in the Caucasus; $380,000 in Kazakhstan, $345,000 in Kyrgyzstan, $445,000 in Tajikistan, $150,000 in Turkmenistan, $380,000 in Uzbekistan in Central Asia; $1,990,000 in Russia) to support the program and administrative costs required to implement this program. ECA encourages applicants to provide maximum levels of cost sharing and funding from private sources in support of its programs. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

### Announcement Title and Number

All correspondence with ECA concerning this RFGP should reference the above title and number *ECA/A/E/EUR-04-04*.

**FOR FURTHER INFORMATION CONTACT:** The Office of Academic Exchanges, ECA/A/E/EUR, Room 246, SA-44, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, tel. (202) 205-0525, fax (202) 260-7985, *exchanges@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify ECA Senior Program Manager Ilo-Mai Harding on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Department of State staff may not discuss this competition with applicants until the proposal review process has been completed.

### New OMB Requirement

An OMB policy directive published in the **Federal Register** on Friday, June 27, 2003, requires that all organizations applying for Federal grants or cooperative agreements must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for all Federal grants or cooperative agreements after October 1, 2003. The complete OMB policy directive can be referenced at *http://www.whitehouse.gov/omb/fedreg/062703_grant_identifier.pdf*. Please also visit the ECA Web site at *http://exchanges.state.gov/education/rfgps/menu/htm* for additional information on how to comply with this new directive.

### To Download a Solicitation Package via Internet

The Solicitation Package may be downloaded from ECA's Web site at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

### Shipment and Deadline for Proposals

**Important Note:** The deadline for this competition is Monday, December 8, 2003. In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Applicants must follow all instructions in the Solicitation Package. The original and eight (8) copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: *ECA/A/E/EUR–04–04,* Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicant must also submit the "Executive Summary" and "Proposal Narrative" section of the proposals in text (.txt) format on a PC-formatted disc. The Bureau will provide these files electronically to the Public Affairs Section at U.S. Embassies for their review.

### Diversity, Freedom and Democracy Guidelines

Pursuant to ECA's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," ECA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

### Adherence to All Regulations Governing the J Visa

For your information only:

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. The Grantee will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

### Review Process

ECA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package.

All eligible proposals will be reviewed by the program office, as well as by the Public Affairs Sections overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and ECA regulations and guidelines and forwarded to Department of State grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Acting Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with ECA's Grants Officer

### Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Development and Management:* The proposal should exhibit originality, substance, precision, innovation, and relevance to ECA's mission. Objectives should be reasonable, feasible and flexible. The proposal should clearly demonstrate how the grantee organization will meet the program's objectives. A relevant work plan should demonstrate substantive undertakings and logistical capacity. The work plan should adhere to the program overview and guidelines described above.

2. *Multiplier Effect/Impact:* The IATP should strengthen long-term mutual understanding, including maximum sharing of information and Internet expertise. The applicant organization should include ECA alumni as a resource for facilitating IATP outreach and education.

3. *Support of Diversity:* The proposal should demonstrate the grantee organization's commitment to promoting the awareness and understanding of diversity through geographic distribution of IATP sites and outreach to groups identified in consultation with PAS officers in each region.

4. *Institution's Record/Ability:* The proposal should demonstrate an institutional record of successful administration of Internet programs. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals.

5. *Project Evaluation:* The proposal should include a plan to evaluate the success of the IATP. ECA recommends that the proposal include a draft survey questionnaire or other technique, plus a description of methodologies that can be used to link outcomes to original project objectives. The applicant organization will be expected to submit periodic progress reports that elucidate the successes achieved, and obstacles encountered, by the IATP.

6. *Cost-Effectiveness and Cost Sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. The proposal should maximize cost sharing through other private sector support as well as institutional direct funding contributions.

7. *Follow-on and Sustainability:* The proposal should provide a plan for continued follow-on activity that ensures that ECA-supported programs are not isolated events, but have meaning and scope beyond the time the actual exchange took place. The proposal should address the feasibility of sustaining viable IATP sites and training seminars after ECA funding ends.

### Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided in part through the FREEDOM Support Act of 1992.

### Notice

The terms and conditions published in this RFGP are binding and may not be modified by any ECA representative. Explanatory information provided by ECA that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. ECA reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

### Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: October 15, 2003.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 03–26525 Filed 10–20–03; 8:45 am]

BILLING CODE 4710–05–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## Public Notice for Waiver of Aeronautical Land-Use Assurance, Manistee County Blacker Airport, Manistee, MI

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of intent of waiver with respect to land.

**SUMMARY:** The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the exchange of the airport property. The proposal consists of three parcels, Parcel 9 = 40.0 acres, Parcel 10 = 40.0 acres and Parcel 11 and 12 = 40.0 acres totaling approximately 120.0 acres. The land was originally purchased by the County with state/local funds in 1997/1998.

There are no impacts to the airport by allowing the airport to dispose of the property. The proposed land will be used to increase the Manistee River State Game Area by 44 acres or 58 percent. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the Federal Register on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the Federal Register 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

**DATES:** Comments must be received on or before November 20, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ms. Stephanie Swann, Program Manager, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–613, Metro Airport Center, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number: 734–229–2945/FAX Number: 734–229–2950. Documents reflecting this FAA action may be reviewed at this same location or at Manistee County/Blacker Airport, Manistee, Michigan.

**SUPPLEMENTARY INFORMATION:** Following is a legal description of the property located in the City of Manistee, County of Manistee, Michigan, and described as follows:

PARCEL 9: T22N, R16W, Sec. 34: NE 1/4 OF SW 1/4, 40 acres
PARCEL 10: T22N, R16W, Sec. 34: NW 1/4 of SE 1/4, 40 acres
PARCEL 11 & 12: T22N, R16W, Sec. 34: NE 1/4 OF SE 1/4, 40 acres

Issued in Romulus, Michigan on September 22, 2003.

**Irene R. Porter,**

*Manager, Detroit Airports District Office, FAA, Great Lakes Region.*

[FR Doc. 03–26561 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## Government/Industry Aeronautical Chartering Forum Meeting

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of changes in public meeting.

**SUMMARY:** This notice announces the cancellation of the Charting Group meeting associated with of the Federal Aviation Administration's Government/Industry Aeronautical Charting Forum (ACF). The Instrument Procedures Group will meet as originally planned.

**DATES:** The ACF is separated into two distinct groups. The Instrument Procedures Group will meet as planned October 20 and 21, 2003 from 9 a.m. to 4:30 p.m. The Chart Group meeting originally scheduled for October 22 and 23, 2003 from 9 a.m. to 4:30 p.m. is cancelled.

**ADDRESSES:** The meeting will be held at the FAA National Aeronautical Charting Office, AVN–500, 1325 East-West

Highway, Silver Spring, SSMC 2, Room 2358, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** For information relating to the Instrument Procedures Group, contact Thomas E. Schneider, Flight Procedures Standards Branch, AFS–420, 6500 South MacArthur Blvd., PO Box 25082, Oklahoma City, OK 73125; telephone (405) 954–5852; fax: (405) 954–2528. For information relating to the cancellation of the Charting Group meeting, contact Richard V. Powell, FAA, Air Traffic Airspace Management, ATA–100, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8790, fax: (202) 293–4266.

Issued in Washington, DC, on October 15, 2003.

**Richard V. Powell,**

*Chair, Government/Industry Aeronautical Charting Forum.*

[FR Doc. 03–26562 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–15–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Federal Transit Administration

### Environmental Impact Statement: Denver, Broomfield, Adams, Jefferson and Boulder Counties, CO

**AGENCY:** Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

**ACTION:** Notice of intent to prepare an Environmental Impact Statement.

**SUMMARY:** The FHWA and FTA are issuing this notice to advise the public that an Environmental Impact Statement and a Section 4(f) Evaluation (EIS/4(f)) will be prepared for transportation improvements in the City and County of Denver, City and County of Broomfield, Adams County, Jefferson County, Boulder County, the City of Westminster, City of Broomfield, Town of Superior, City of Louisville, and the City of Boulder, Colorado. Improvements will be considered generally between Boulder and Downtown Denver along the US 36 highway alignment, the Burlington Northern and Santa Fe (BNSF) rail line, SH 157 in Boulder and the area around the northern entry of SH 119 northeast of Boulder. The relationships of concurrent projects such as the Northwest Corridor EIS, the North I–25 EIS, the US36/US287 Interchange Environmental Assessment and the Denver Union Station Intermodal Master Plan EIS will also be considered.

The purpose of this notice is to notify interested individuals, organizations, and business entities, affected Native American Tribes, and Federal, State, and local governmental agencies of the intent to prepare an EIS/4(f) and to invite participation in the study. Transportation improvements are needed to meet current and future travel demands and to upgrade the transportation facilities in the corridor consistent with current standards and procedures.

**DATES:** Written comments on the scope of alternatives and impacts to be considered must be submitted by December 5, 2003 to Marion McCleary, Project Administrator, at the address below.

Project Scoping will be accomplished through coordination with affected parties, stakeholders, organizations, Federal, State, and local agencies; agency Scoping meetings; and through community outreach and public meetings in the project corridor. Meetings will be conducted as follows:

Agency and Public Scoping Meeting, Thursday, October 30, 2003; 7:30 a.m. to 9:30 a.m., Optional Corridor Tour: 9:30 a.m to 11:30 a.m., 4 Garden Center, Lower Level Conference Room, Broomfield, CO 80020.

Public Scoping Meetings, Wednesday, November 12, 2003, 4:30 p.m to 7:30 p.m., Boulder Public Library Auditorium, 1000 Canyon Boulevard, Boulder, Colorado.

Thursday, November 13, 2003, 4:30 p.m. to 7:30 p.m., Front Range Community College, Rocky Mountain Room, 3645 West 112th Avenue, Westminster, Colorado

Information on the time and place of the public Scoping meetings will be provided in the local newspapers and other media outlets.

**ADDRESSES:** Written comments on the scope of alternatives and impacts to be considered should be sent to: Marion McCleary, Project Administrator, US 36 Mobility Partnership, c/o URS Corporation, 1225 17th Street, Suite 200, Denver, CO 80202, 303–293–8080, Fax: 303–293–2110, E-mail: *marion_mccleary@urscorp.com*.

**FOR FURTHER INFORMATION CONTACT:**

- Shaun Cutting, Senior Operations Engineer, FHWA, Colorado Division, 555 Zang Street, Room 250, Lakewood, CO 80228, Telephone: (303) 969–6730 extension 369.
- Dave Beckhouse, Community Planner, FTA, 216 16th Street, Suite 650, Denver, CO, 80202, Telephone: (303) 844–4266.
- Jeff Wassenaar, Colorado Department of Transportation, Region 6, 3401 Quebec Street, Suite 800, Denver, CO, 80207, Telephone: (303) 370–2052 extension 219.
- Scott Weeks, Regional Transportation District, 1600 Blake Street, Denver, CO, 80202, Telephone: (303) 299–2221.

To ensure that a full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS/4(f) should be directed to Shaun Cutting or Dave Beckhouse at the addresses previously provided.

To be placed on the public mailing list to receive additional project information, contact Marion McCleary at the address previously provided.

**SUPPLEMENTARY INFORMATION:**

### I. Scoping of Project

The FHWA and FTA in cooperation with the Colorado Department of Transportation (CDOT) and the Regional Transportation District (RTD) will prepare an Environmental Impact Statement and Section 4(f) Evaluation (EIS/4(f)) for transportation improvements on the US 36 Corridor (the Corridor) between Boulder and the Interstate 25 (I–25)/US 36 Interchange and a transit connection between Denver Union Station and Boulder.

The EIS/4(f) will evaluate improvement alternatives and the No-Action alternative based on the Purpose and Need developed for the corridor. Alternatives will be developed through an extensive agency and community outreach process. A full range of potential alignments and corridors will be considered for both highway and transit alternatives. The US 36 Corridor EIS/4(f) evaluation will result in a decision about which transportation projects, if any, will be built to improve safety and address congestion in the Corridor.

### II. Description of Study Area and Project Need

The study area for the EIS/4(f) is generally along the alignments of US 36 from I–25 to Boulder, SH 157/Foothills Parkway from US 36 to SH 119, and along the BNSF Railroad line from downtown Denver to Boulder. The purpose of the proposed action is to decrease congestion, and improve safety, access, and mobility. Original construction of US 36 was initiated in 1951 and completed as a four-lane toll road. The cross section is still four lanes throughout most of the highway length today. During the same period, population and employment growth in the areas of the corridor have substantially increased travel demands for longer length trips.

**III. Alternatives To Be Considered**

The alternatives evaluated in the Draft EIS (DEIS) will include, but not be limited to, the alternatives developed in the previously completed US 36 Major Investment Study (MIS), June 2001. These alternatives consisted of Regional Rail on the BNSF alignment (also called Commuter Rail), Bus Rapid Transit (BRT) within the US 36 highway, High Occupancy Vehicle Lanes (HOV) on US 36, Roadway Widening on US 36 and possibly cross streets, Bikeway, Travel Demand Management (TDM), and Intelligent Transportation System (ITS) improvements and transportation management elements in a roughly 25-mile-long corridor, parallel to and including US 36, between downtown Denver and Boulder. The EIS/4(f) will evaluate the use and effects of toll and other user fee methods of finance on the alternatives and the expected travel demand response from such options.

The EIS/4(f) will also evaluate the appropriate end of line and associated facilities and connections into Downtown Denver to Union Station and in Boulder. As part of the transit evaluations, station locations will be studied and identified as appropriate.

The EIS/4(f) will also fully evaluate the No-Action Alternative as a basis of comparison among all alternatives. Other alternatives may be added as a result of scoping and agency coordination efforts.

**IV. Probable Effects/Potential Impacts for Analysis**

The EIS/4(f) will analyze social, economic, and environmental impacts of the various alternatives. Other major issues to be evaluated include air quality, noise, aesthetics, community cohesion impacts, and possible disruption of neighborhoods, businesses and commercial activities. The subjects and level of detail addressed in the EIS/4(f) will be consistent with the requirements of the joint FTA/FHWA environmental regulations (23 CFR part 771) and the Council on Environmental Quality regulations (40 CFR parts 1500–1508). Among other factors, the EIS/4(f) will evaluate the following:

- Transportation service including future corridor capacity
- Transit ridership and costs
- Traffic movements and changes and associated impacts to local facilities
- Community impacts such as land use, displacements, noise, neighborhood compatibility and aesthetics
- Resource impacts including impacts to historic and archeological resources, cultural resource impacts, natural resource impacts including air quality, wetlands, water quality and wildlife

The proposed impact assessment and evaluation will take into account both positive and negative impacts, direct and indirect impacts, short-term (during the construction period) and long term impacts, and site-specific as well as corridor wide impacts. Mitigation measures will be identified for any adverse environmental impacts that are identified.

Issued on: October 14, 2003.

**William C. Jones,**

*Division Administrator, Colorado Division, Federal Highway Administration, Lakewood, Colorado.*

**Lee O. Waddleton,**

*Regional Administrator, Federal Transit Administration, Denver, Colorado.*

[FR Doc. 03–26510 Filed 10–20–03; 8:45 am]

**BILLING CODE 4910–57–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Juneau, AK

**AGENCY:** Federal Highway Administration (FHWA), Alaska Department of Transportation and Public Facilities (ADOT&PF).

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public than an environmental impact statement will be prepared for a second crossing of the Gastineau Channel in Juneau, Alaska. Scoping meetings for the Juneau Second Channel Crossing project will be held in Juneau, Alaska during November 2003.

**FOR FURTHER INFORMATION CONTACT:** Tim Haugh, Environment/Right-of-Way Programs Manager, Federal Highway Administration, P.O. Box 21648, Juneau, Alaska 99802, (907) 586–7430.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Alaska Department of Transportation and Public Facilities (ADOT&PF) and the City and Borough of Juneau (CBJ), will prepare an EIS for a proposed second crossing of the Gastineau Channel in Juneau, Alaska. The proposed Juneau Second Channel Crossing project would involve a new crossing from mainland Juneau to Douglas Island. The project study area includes an approximate nine-mile segment of the Gastineau Channel, from the vicinity of Salmon Creek to the vicinity of the Mendenhall Peninsula/North Douglas Island. Alternatives would vary by location and would include different bridge types that are estimated to be from approximately 0.5 to 1.5 miles in length.

Alternatives have yet to be developed for the project. Any bridge crossing alternatives will meet the reasonable needs of navigation for the Gastineau Channel. The No-build alternative will remain a viable alternative throughout the EIS process. The Second Crossing is considered necessary to: meet the expressed planning intent of the CBJ to facilitate existing and planned development of the CBJ designated "New Growth Area" on West Douglas Island in accordance with the CBJ Comprehensive Plan; and to improve transportation network connectivity and access for emergency response.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in the proposal. A series of agency and public meetings will be held in Juneau, Alaska throughout the EIS study process. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be made available for public and agency review and comment prior to the public hearing. A formal agency scoping meeting and public scoping meetings are planned in Juneau, Alaska during November 2003.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on October 10, 2003.

**Tim A. Haugh,**

*Environment and Right-of-Way Programs Manager, Juneau, Alaska.*

[FR Doc. 03–26437 Filed 10–20–03; 8:45 am]

**BILLING CODE 4910–22–M**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket Number: MARAD 2003 16323]**

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel JUSTICE.

**SUMMARY:** As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16323 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

**DATES:** Submit comments on or before November 20, 2003.

**ADDRESSES:** Comments should refer to docket number MARAD–2003 16323. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel JUSTICE is:

*Intended Use:* "Passenger Charters."

*Geographic Region:* "Chesapeake Bay to Florida Coasts and Bahamas."

Dated: October 15, 2003.

By order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 03–26451 Filed 10–20–03; 8:45 am]

**BILLING CODE 4910–81–P**

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA 2002–13355; Notice 2]**

### Bridgestone/Firestone, Decision That Application for Determination That Noncompliance Is Inconsequential to Motor Vehicle Safety Is Moot

Bridgestone/Firestone has advised the National Highway Traffic Safety Administration (NHTSA) that it determined that approximately 4,700 P235/75R15 Dayton Timberline A/T tires do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New Pneumatic Tires." Pursuant to 49 U.S.C. 30118(d) and 30120(h), Bridgestone/Firestone has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on October 7, 2002, in the **Federal Register** (67 FR 62522). NHTSA received no comment on this application.

FMVSS No. 109, S4.3(b) and S4.3(c), require that each tire shall have permanently molded the maximum permissible inflation pressure and the maximum load rating of the tire, respectively. The Sao Paulo, Brazil plant produced noncompliant tires during weeks 40 through and including week 49 of the year 2001. The subject tires were mislabeled as "Extra Load." The actual markings on the subject tires are:

Max load 920 Kg (2028 lbs.) at 300 kPa (44 psi) max press, Extra Load

The correct markings should be:

Max load 920 Kg (2028 lbs.) at 300 kPa (44 psi) max press.

Bridgestone/Firestone believes that the noncompliance is inconsequential as it relates to motor vehicle safety for the following stated reasons: "First, the subject tires with the exception of the "Extra Load" marking meet all the requirements of 49 CFR Part (sic) 109. Second, the subject tires were tested by Bridgestone/Firestone and meet the requirements of high speed, endurance, strength, and bead unseat as defined in 49 CFR Part (sic) 109 for the "Extra Load" designation. Third, the subject tires as shipped from the manufacturing plant were identified by tire labels and article number as standard load. Thus, the potential for sale of these tires as "Extra Load" is very small."

This mislabeling does not constitute a noncompliance with FMVSS No. 109. The standard has no requirement that a tire be labeled with the words "extra load" even when it is designed to accommodate a greater load than a standard tire of the same size. The correct maximum load rating and the correct maximum inflation pressure are properly molded on the tires. These two values, along with other tire information such as tire size, are used by consumers in selecting replacement tires.

In consideration of the foregoing, NHTSA has decided that the tires in question do not exhibit a noncompliance with an FMVSS. Therefore, Bridgestone/Firestone's petition for an inconsequentiality exemption is moot.

**Authority:** (49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: October 14, 2003.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 03–26509 Filed 10–20–03; 8:45 am]

**BILLING CODE 4910–59–P**

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA 2003–14826; Notice 1]**

### Nissan North America, Inc., Receipt of Application for Decision of Inconsequential Noncompliance

Nissan North America (Nissan) has determined that the side marker lamps in approximately 302,000 model year 2002 and 2003 Nissan Altima vehicles do not meet certain requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, "Lamps, Reflective Devices and Associated Equipment.

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Nissan has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." A copy of this petition can be found in this docket.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

FMVSS 108 S5.1.1 specifies that each vehicle shall be equipped with certain lamps and reflective devices. Nissan stated that extensive testing demonstrates that the subject side marker lamps consistently meet the light intensity requirements at the required test points. However, Nissan determined that the front side marker lamps may not meet the requirement to sustain the light intensity when measured between two of the nine test points in a scan test. Nissan believes that the noncompliance of the side lamps does not affect its primary purpose, which is to be sufficiently visible to identify the front edge of the vehicle at night. Nissan stated that the reported noncompliance is inconsequential as it relates to motor vehicle safety.

Its petition may be read by visiting the above mentioned docket using the Docket Management System described below.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov*. Click on "Help" to obtain instructions for filing the document electronically.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: November 20, 2003.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: October 14, 2003.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 03–26508 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–59–P

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 34409]**

### Burlington Shortline Railroad, Inc., d/b/a Burlington Junction Railway—Lease and Operation Exemption—The Burlington Northern and Santa Fe Railway Company

Burlington Shortline Railroad, Inc., d/b/a/ Burlington Junction Railway (BJRY), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 *et seq.* to lease, from The Burlington Northern and Santa Fe Railway Company (BNSF), and operate two segments of rail line known as (1) the Marblehead line and (2) the Moorman Lead line. The Marblehead line extends approximately 5.13 miles from BNSF milepost 261.32 near Quincy, IL, to BNSF milepost 266.43 near Marblehead, IL. The Moorman Lead line extends 5,100 feet southwesterly from BNSF milepost 258.2 near Quincy.

Consummation of this transaction was expected to occur on or about October 4, 2003.

BJRY certifies that its projected annual revenues as a result of this transaction will not exceed $5 million and that the transaction will not result in the creation of a Class II or Class I rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34409, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, 1920 N Street, NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our Web site at "*http://www.stb.dot.gov*."

Decided: October 10, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 03–26289 Filed 10–20–03; 8:45 am]

BILLING CODE 4915–00–P

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 34413]**

### The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Elgin, Joliet & Eastern Railway Company

Pursuant to a written trackage rights agreement dated September 22, 2003, Elgin, Joliet & Eastern Railway Company has agreed to grant certain non-exclusive trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) between EJE milepost 1.6 at Joliet, IL, and EJE milepost 20.6 at Eola, IL, a distance of approximately 19 miles.

Although BNSF states that the transaction was scheduled to be consummated on October 7, 2003, the earliest the transaction could be consummated was October 8, 2003 (7 days after filing the notice).

The purpose of the trackage rights is to allow BNSF to operate more efficiently.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34413, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Michael E. Roper, The Burlington Northern and Santa Fe Railway Company, 2500 Lou Menk Drive, PO Box 961039, Fort Worth, TX 76161–0039.

Board decisions and notices are available on our Web site at "*http://www.stb.dot.gov*."

Decided: October 15, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 03–26496 Filed 10–20–03; 8:45 am]

BILLING CODE 4915–00–P

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## DEPARTMENT OF VETERANS AFFAIRS

### Medical Research Service Merit Review Committee, Notice of Meetings

The Department of Veterans Affairs gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that the subcommittees of the Medical Research Service Merit Review Committee will meet from 8 a.m. to 5 p.m. as indicated below:

| Subcommittee for | Date(s) | Location |
|---|---|---|
| Aging and Clinical Geriatrics | November 5, 2003 | Holiday Inn Central. |
| Clinical Research Program | November 17, 2003 | Marriott Residence Inn. |
| Immunology | November 18–19, 2003 | Marriott Residence Inn. |
| Endocrinology-A | November 20–21, 2003 | Marriott Residence Inn. |
| General Medical Science | November 24, 2003 | Governor's House. |
| Mental Health and Behav Sci | December 1–2, 2003 | Holiday Inn Central. |
| Surgery | December 8, 2003 | Governor's House. |
| Infectious Diseases | December 11–12, 2003 | Holiday Inn Central. |
| Endocrinology-B | December 18–19, 2003 | Holiday Inn Central. |

The addresses of the hotels are:

Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC.

Holiday Inn Central, 1501 Rhode Island Avenue, NW., Washington, DC.

Marriott Residence Inn (Thomas Circle), 1199 Vermont Avenue, NW., Washington, DC.

These subcommittee meetings are for the purpose of evaluating the scientific merit of research conducted in each specialty by Department of Veterans Affairs (VA) investigators working in VA Medical Centers and Clinics.

The subcommittee meetings will be open to the public for approximately one hour at the start of each meeting to discuss the general status of the program. The remaining portion of each subcommittee meeting will be closed to the public for the review, discussion, and evaluation of initial and renewal projects.

The closed portion of the meetings involves discussion, examination, reference to and oral review of site visits, staff and consultant critiques of research protocols and similar documents. During this portion of the subcommittee meetings, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which could significantly frustrate implementation of proposed agency action regarding such research projects.

As provided by subsection 10(d) of Public Law 92–453, as amended, closing portions of these subcommittee meetings is in accordance with 5 U.S.C., 552b(c)(6) and (9)(B). Those who plan to attend or would like to obtain a copy of minutes of the subcommittee meetings and rosters of the members of the subcommittees should contact LeRoy G. Frey, Ph.D., Chief, Program Review Division, Medical Research Service (121F), Department of Veterans Affairs, Washington, DC, (202) 408–3630.

Dated: October 10, 2003.

By Direction of the Secretary.

**E. Philip Riggin,**

*Committee Management Officer.*

[FR Doc. 03–26435 Filed 10–20–03; 8:45 am]

BILLING CODE 8320–01–M

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## DEPARTMENT OF VETERANS AFFAIRS

### Research and Development Cooperative Studies Evaluation Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Research and Development Cooperative Studies Evaluation Committee will be held at the Crystal Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington, VA 22202, on December 16 and 17, 2003. The sessions will be held on December 16 from 8 a.m. to 3:45 p.m. and December 17 from 7:30 a.m. to 2 p.m.

The Committee advises the Chief Research and Development Officer through the Director of the Cooperative Studies Program on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects.

On December 16, the Committee will review the following studies submitted: Efficacy of GM–CSF to Reduce Incidence and Duration of Mucositis Associated with Concomitant Chemoradiation Therapy in Head and Neck Cancer Patients; Integrating Practice Guidelines for Smoking Cessation into Mental Health Care for Post-Traumatic Stress Disorder; Risperidone Treatment for Refractory Combat-Related Post-Traumatic Stress Disorder; and A Randomized, Multicenter, Double-Blind, Placebo-Controlled Trial of DL-Alpha-tocopherol for the Treatment of Functional Decline in Outpatients with Alzheimer's Disease on Donepezil. On December 17, the Committee will review the study submitted on S-Adenosylmethionine Improves Survival in Alcoholic Cirrhosis.

The meeting will be open to the public December 16 from 8 a.m. to 8:30 a.m. to discuss the general status of the program. Those who plan to attend should contact Mrs. Karen Hood, Staff Assistant, Department of Veterans Affairs, Washington, DC, at (202) 254–0276. The meeting will be closed December 16 from 8:30 a.m. to 3:45 p.m. and December 17 from 7:30 a.m. to 2 p.m. That portion of the meeting involves committee business that falls within the scope of provisions set forth in section 10(d) of Public Law 92–463, as amended by sections 5(c) of Public Law 94–409, and 5 U.S.C. 552b(c)(6). During the closed session of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research proposals, and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: October 14, 2003.

By Direction of the Secretary.

**E. Philip Riggin,**

*Committee Management Officer.*

[FR Doc. 03–26436 Filed 10–20–03; 8:45 am]

BILLING CODE 8320–01–M

# Corrections

Federal Register
Vol. 68, No. 203
Tuesday, October 21, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

**14 CFR Part 39**

**[Docket No. 2002–NM–49–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

*Correction*

In proposed rule document 03–25978 beginning on page 53947 in the issue of Wednesday, October 15, 2003, make the following correction:

On page 59347, in the third column, in the **DATES** section, in the second line, "November 14, 2004" should read "November 14, 2003".

[FR Doc. C3–25978 Filed 10–20–03; 8:45 am]

**BILLING CODE 1505–01–D**

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

# Federal Register

Tuesday,
October 21, 2003

## Part II

## United States Sentencing Commission

Sentencing Guidelines for United States Courts; Notice

## UNITED STATES SENTENCING COMMISSION

## Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of (1) amendments to the sentencing guidelines made pursuant to the directive in section 401(m) of the PROTECT Act, Public Law 108–21; and (2) conforming amendments to the congressional amendments to the guidelines made directly by the PROTECT Act and effective on May 30, 2003.

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**SUMMARY:** Section 401(m) of the PROTECT Act requires the Commission, "[n]ot later than 180 days after the enactment of [the] Act" (*i.e.*, October 27, 2003) to "review the grounds of downward departure that are authorized by the sentencing guidelines, policy statements, and official commentary." Section 401(m) also requires the Commission to promulgate, pursuant to section 994 of title 28, United States Code, amendments that "ensure that the incidence of downward departures are substantially reduced," that authorize a downward departure of "not more than four levels if the Government files a motion for such departure pursuant to an early disposition program," and that make any conforming changes necessitated by the Act. Pursuant to section 401(m) of the Act and section 994 of title 28, United States Code, the Commission has promulgated amendments to the following: (1)(A) Chapter Five, Part K, including §§ 5K2.0 (Grounds for Departure), 5K2.10 (Victim's Conduct), 5K2.12 (Coercion and Duress), 5K1.13 (Diminished Capacity), and 5K2.20 (Aberrant Behavior), and the promulgation of a new policy statement, § 5K3.1 (Early Disposition Programs); (B) Chapter Five, Part H, including §§ 5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse; Gambling Addiction), 5H1.6 (Family Ties and Responsibilities), 5H1.7 (Role in the Offense), and 5H1.8 (Criminal History); (C) §§ 4A1.1 (Criminal History Category) and 4A1.3 (Departures Based on Inadequacy of Criminal History Category); (D) § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases); (E) Chapter One, Part A, including promulgation of a new guideline, § 1A1.1 (Authority); (F) § 6B1.2 (Standards for Acceptance of Plea Agreements); and (G) § 1B1.1 (Application Instructions); and (2) § 2A4.1 (Kidnapping, Abduction, Unlawful Restraint) in order to make conforming changes necessitated by the congressional amendments to the guidelines made directly by the PROTECT Act and effective on May 30, 2003.

Section 994(x) of title 28, United States Code, requires the Commission to comply with the notice and comment procedures set forth in 5 U.S.C. 553. Section 553 provides, however, a "good cause" exception to the general notice and comment requirements, including the requirement that notice of final agency action be published not later than 30 days before the effective date of that action, if the "agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b), (d)(3). The 180-day deadline noted in the previous paragraph with respect to promulgation of these amendments, the extensive nature of these amendments, and limited Commission resources made it impracticable to publish the amendments in the **Federal Register** within the otherwise applicable 30-day period. The Commission therefore had good cause not to publish these amendments within that time period.

**DATES:** The effective date for the amendments set forth in this notice is October 27, 2003.

**FOR FURTHER INFORMATION CONTACT:** Michael Courlander, Public Affairs Officer, 202–502–4590. The amendments set forth in this notice also may be accessed through the Commission's Web site at *http://www.ussc.gov*. The *Guidelines Manual* effective November 1, 2003, will incorporate the amendments set forth in this notice and may be accessed through the Commission's Web site as well. Please note that due to the timing of the promulgation of these amendments and the time required for publication of the *Guidelines Manual*, the Commission will be unable to distribute copies of the *Guidelines Manual* before November 1, 2003. They will be distributed as soon as practicable thereafter.

**SUPPLEMENTARY INFORMATION:** The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and generally submits guideline amendments to Congress pursuant to 28 U.S.C. 994(p) not later than the first day of May each year. Absent action of Congress to the contrary, submitted amendments become effective by operation of law on the date specified by the Commission (generally November 1 of the year in which the amendments are submitted to Congress).

**Authority:** 28 U.S.C. 994(a), (o), and (p); USSC Rule of Practice and Procedure 4.1.

**Diana E. Murphy,**

*Chair.*

1. Amendment: Section 5K2.0 is amended to read as follows:

"5K2.0. Grounds for Departure (Policy Statement)

(a) *Upward Departures in General and Downward Departures in Criminal Cases Other Than Child Crimes and Sexual Offenses.*—

(1) *In General.*—The sentencing court may depart from the applicable guideline range if—

(A) in the case of offenses other than child crimes and sexual offenses, the court finds, pursuant to 18 U.S.C. 3553(b)(1), that there exists an aggravating or mitigating circumstance; or

(B) in the case of child crimes and sexual offenses, the court finds, pursuant to 18 U.S.C. 3553(b)(2)(A)(i), that there exists an aggravating circumstance, of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that, in order to advance the objectives set forth in 18 U.S.C. 3553(a)(2), should result in a sentence different from that described.

(2) *Departures Based on Circumstances of a Kind not Adequately Taken into Consideration.*—

(A) *Identified Circumstances.*—This subpart (Chapter Five, Part K, Subpart 2 (Other Grounds for Departure)) identifies some of the circumstances that the Commission may have not adequately taken into consideration in determining the applicable guideline range (*e.g.*, as a specific offense characteristic or other adjustment). If any such circumstance is present in the case and has not adequately been taken into consideration in determining the applicable guideline range, a departure consistent with 18 U.S.C. 3553(b) and the provisions of this subpart may be warranted.

(B) *Unidentified Circumstances.*—A departure may be warranted in the exceptional case in which there is present a circumstance that the Commission has not identified in the guidelines but that nevertheless is relevant to determining the appropriate sentence.

(3) *Departures Based on Circumstances Present to a Degree not Adequately Taken into Consideration.*—A departure may be warranted in an exceptional case, even though the circumstance that forms the basis for the departure is taken into consideration in determining the guideline range, if the court determines that such circumstance is present in the offense to a degree substantially in excess of, or substantially below, that which ordinarily is involved in that kind of offense.

(4) *Departures Based on not Ordinarily Relevant Offender Characteristics and Other Circumstances.*—An offender characteristic or other circumstance identified in Chapter Five, Part H (Offender Characteristics) or elsewhere in the guidelines as not ordinarily relevant in determining whether a departure is warranted may be relevant to this determination only if such offender characteristic or other circumstance is present to an exceptional degree.

(b) *Downward Departures in Child Crimes and Sexual Offenses.*—Under 18 U.S.C. 3553(b)(2)(A)(ii), the sentencing court may impose a sentence below the range established by the applicable guidelines only if the court finds that there exists a mitigating circumstance of a kind, or to a degree, that—

(1) Has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued under section 994(a) of title 28, United States Code, taking account of any amendments to such sentencing guidelines or policy statements by act of Congress;

(2) Has not adequately been taken into consideration by the Sentencing Commission in formulating the guidelines; and

(3) Should result in a sentence different from that described.

The grounds enumerated in this Part K of Chapter Five are the sole grounds that have been affirmatively and specifically identified as a permissible ground of downward departure in these sentencing guidelines and policy statements. Thus, notwithstanding any other reference to authority to depart downward elsewhere in this Sentencing Manual, a ground of downward departure has not been affirmatively and specifically identified as a permissible ground of downward departure within the meaning of section 3553(b)(2) unless it is expressly enumerated in this Part K as a ground upon which a downward departure may be granted.

(c) *Limitation on Departures Based on Multiple Circumstances.*—The court may depart from the applicable guideline range based on a combination of two or more offender characteristics or other circumstances, none of which independently is sufficient to provide a basis for departure, only if—

(1) Such offender characteristics or other circumstances, taken together, make the case an exceptional one; and

(2) Each such offender characteristic or other circumstance is—

(A) present to a substantial degree; and

(B) identified in the guidelines as a permissible ground for departure, even if such offender characteristic or other circumstance is not ordinarily relevant to a determination of whether a departure is warranted.

(d) *Prohibited Departures.*—Notwithstanding subsections (a) and (b) of this policy statement, or any other provision in the guidelines, the court may not depart from the applicable guideline range based on any of the following circumstances:

(1) Any circumstance specifically prohibited as a ground for departure in §§ 5H1.10 (Race, Sex, National Origin, Creed, Religion, and Socio-Economic Status), 5H1.12 (Lack of Guidance as a Youth and Similar Circumstances), the third and last sentences of 5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse; Gambling Addiction), the last sentence of 5K2.12 (Coercion and Duress), and 5K2.19 (Post-Sentencing Rehabilitative Efforts).

(2) The defendant's acceptance of responsibility for the offense, which may be taken into account only under 3E1.1 (Acceptance of Responsibility).

(3) The defendant's aggravating or mitigating role in the offense, which may be taken into account only under § 3B1.1 (Aggravating Role) or § 3B1.2 (Mitigating Role), respectively.

(4) The defendant's decision, in and of itself, to plead guilty to the offense or to enter a plea agreement with respect to the offense (*i.e.*, a departure may not be based merely on the fact that the defendant decided to plead guilty or to enter into a plea agreement, but a departure may be based on justifiable, non-prohibited reasons as part of a sentence that is recommended, or agreed to, in the plea agreement and accepted by the court. *See* § 6B1.2 (Standards for Acceptance of Plea Agreement).

(5) The defendant's fulfillment of restitution obligations only to the extent required by law including the guidelines (*i.e.*, a departure may not be based on unexceptional efforts to remedy the harm caused by the offense).

(6) Any other circumstance specifically prohibited as a ground for departure in the guidelines.

(e) *Requirement of Specific Written Reasons for Departure.*—If the court departs from the applicable guideline range, it shall state, pursuant to 18 U.S.C. § 3553(c), its specific reasons for departure in open court at the time of sentencing and, with limited exception in the case of statements received in camera, shall state those reasons with specificity in the written judgment and commitment order.

**Commentary**

*Application Notes:*

1. *Definitions.*—For purposes of this policy statement:

'Circumstance' includes, as appropriate, an offender characteristic or any other offense factor.

'Depart', 'departure', 'downward departure', and 'upward departure' have the meaning given those terms in Application Note 1 of the Commentary to § 1B1.1 (Application Instructions).

2. *Scope of this Policy Statement.*—

(A) Departures Covered by this Policy Statement.—This policy statement covers departures from the applicable guideline range based on offense characteristics or offender characteristics of a kind, or to a degree, not adequately taken into consideration in determining that range. *See* 18 U.S.C. § 3553(b).

Subsection (a) of this policy statement applies to upward departures in all cases covered by the guidelines and to downward departures in all such cases except for downward departures in child crimes and sexual offenses.

Subsection (b) of this policy statement applies only to downward departures in child crimes and sexual offenses.

(B) *Departures Covered by Other Guidelines.*—This policy statement does not cover the following departures, which are addressed elsewhere in the guidelines: (i) Departures based on the defendant's criminal history (*see* Chapter Four (Criminal History and Criminal Livelihood), particularly § 4A1.3 (Departures Based on Inadequacy of Criminal History Category)); (ii) departures based on the defendant's substantial assistance to the authorities (*see* § 5K1.1 (Substantial Assistance to Authorities)); and (iii) departures based on early disposition programs (*see* § 5K3.1 (Early Disposition Programs)).

3. *Kinds and Expected Frequency of Departures under Subsection (a).*—As set forth in subsection (a), there generally are two kinds of departures

from the guidelines based on offense characteristics and/or offender characteristics: (A) departures based on circumstances of a kind not adequately taken into consideration in the guidelines; and (B) departures based on circumstances that are present to a degree not adequately taken into consideration in the guidelines.

(A) *Departures Based on Circumstances of a Kind Not Adequately Taken into Account in Guidelines.*—Subsection (a)(2) authorizes the court to depart if there exists an aggravating or a mitigating circumstance in a case under 18 U.S.C. 3553(b)(1), or an aggravating circumstance in a case under 18 U.S.C. 3553(b)(2)(A)(i), of a kind not adequately taken into consideration in the guidelines.

(i) *Identified Circumstances.*—This subpart (Chapter Five, Part K, Subpart 2) identifies several circumstances that the Commission may have not adequately taken into consideration in setting the offense level for certain cases. Offense guidelines in Chapter Two (Offense Conduct) and adjustments in Chapter Three (Adjustments) sometimes identify circumstances the Commission may have not adequately taken into consideration in setting the offense level for offenses covered by those guidelines. If the offense guideline in Chapter Two or an adjustment in Chapter Three does not adequately take that circumstance into consideration in setting the offense level for the offense, and only to the extent not adequately taken into consideration, a departure based on that circumstance may be warranted.

(ii) *Unidentified Circumstances.*—A case may involve circumstances, in addition to those identified by the guidelines, that have not adequately been taken into consideration by the Commission, and the presence of any such circumstance may warrant departure from the guidelines in that case. However, inasmuch as the Commission has continued to monitor and refine the guidelines since their inception to take into consideration relevant circumstances in sentencing, it is expected that departures based on such unidentified circumstances will occur rarely and only in exceptional cases.

(B) *Departures Based on Circumstances Present to a Degree Not Adequately Taken into Consideration in Guidelines.*—

(i) *In General.*—Subsection (a)(3) authorizes the court to depart if there exists an aggravating or a mitigating circumstance in a case under 18 U.S.C. 3553(b)(1), or an aggravating circumstance in a case under 18 U.S.C. 3553(b)(2)(A)(i), to a degree not adequately taken into consideration in the guidelines. However, inasmuch as the Commission has continued to monitor and refine the guidelines since their inception to determine the most appropriate weight to be accorded the mitigating and aggravating circumstances specified in the guidelines, it is expected that departures based on the weight accorded to any such circumstance will occur rarely and only in exceptional cases.

(ii) *Examples.*—As set forth in subsection (a)(3), if the applicable offense guideline and adjustments take into consideration a circumstance identified in this subpart, departure is warranted only if the circumstance is present to a degree substantially in excess of that which ordinarily is involved in the offense. Accordingly, a departure pursuant to § 5K2.7 for the disruption of a governmental function would have to be substantial to warrant departure from the guidelines when the applicable offense guideline is bribery or obstruction of justice. When the guideline covering the mailing of injurious articles is applicable, however, and the offense caused disruption of a governmental function, departure from the applicable guideline range more readily would be appropriate. Similarly, physical injury would not warrant departure from the guidelines when the robbery offense guideline is applicable because the robbery guideline includes a specific adjustment based on the extent of any injury. However, because the robbery guideline does not deal with injury to more than one victim, departure may be warranted if several persons were injured.

(C) *Departures Based on Circumstances Identified as Not Ordinarily Relevant.*—Because certain circumstances are specified in the guidelines as not ordinarily relevant to sentencing (see, *e.g.*, Chapter Five, Part H (Specific Offender Characteristics)), a departure based on any one of such circumstances should occur only in exceptional cases, and only if the circumstance is present in the case to an exceptional degree. If two or more of such circumstances each is present in the case to a substantial degree, however, and taken together make the case an exceptional one, the court may consider whether a departure would be warranted pursuant to subsection (c). Departures based on a combination of not ordinarily relevant circumstances that are present to a substantial degree should occur extremely rarely and only in exceptional cases.

In addition, as required by subsection (e), each circumstance forming the basis for a departure described in this subdivision shall be stated with specificity in the written judgment and commitment order.

4. *Downward Departures in Child Crimes and Sexual Offenses.*—

(A) *Definition.*—For purposes of this policy statement, the term child crimes and sexual offenses' means offenses under any of the following: 18 U.S.C. 1201 (involving a minor victim), 18 U.S.C. 1591, or chapter 71, 109A, 110, or 117 of title 18, United States Code.

(B) *Standard for Departure.*—

(i) *Requirement of Affirmative and Specific Identification of Departure Ground.*—The standard for a downward departure in child crimes and sexual offenses differs from the standard for other departures under this policy statement in that it includes a requirement, set forth in 18 U.S.C. 3553(b)(2)(A)(ii)(I) and subsection (b)(1) of this guideline, that any mitigating circumstance that forms the basis for such a downward departure be affirmatively and specifically identified as a ground for downward departure in this part (*i.e.*, Chapter Five, Part K).

(ii) *Application of Subsection (b)(2).*—The commentary in Application Note 3 of this policy statement, except for the commentary in Application Note 3(A)(ii) relating to unidentified circumstances, shall apply to the court's determination of whether a case meets the requirement, set forth in subsection 18 U.S.C. 3553(b)(2)(A)(ii)(II) and subsection (b)(2) of this policy statement, that the mitigating circumstance forming the basis for a downward departure in child crimes and sexual offenses be of kind, or to a degree, not adequately taken into consideration by the Commission.

5. *Departures Based on Plea Agreements.*—Subsection (d)(4) prohibits a downward departure based only on the defendant's decision, in and of itself, to plead guilty to the offense or to enter a plea agreement with respect to the offense. Even though a departure may not be based merely on the fact that the defendant agreed to plead guilty or enter a plea agreement, a departure may be based on justifiable, non-prohibited reasons for departure as part of a sentence that is recommended, or agreed to, in the plea agreement and accepted by the court. *See* § 6B1.2 (Standards for Acceptance of Plea Agreements). In cases in which the court departs based on such reasons as set forth in the plea agreement, the court must state the reasons for departure with specificity in the written judgment and commitment order, as required by subsection (e).

*Background:* This policy statement sets forth the standards for departing from the applicable guideline range based on offense and offender characteristics of a kind, or to a degree, not adequately considered by the Commission. Circumstances the Commission has determined are not ordinarily relevant to determining whether a departure is warranted or are prohibited as bases for departure are addressed in Chapter Five, Part H (Offender Characteristics) and in this policy statement. Other departures, such as those based on the defendant's criminal history, the defendant's substantial assistance to authorities, and early disposition programs, are addressed elsewhere in the guidelines.

As acknowledged by Congress in the Sentencing Reform Act and by the Commission when the first set of guidelines was promulgated, 'it is difficult to prescribe a single set of guidelines that encompasses the vast range of human conduct potentially relevant to a sentencing decision. (*See* Historical Note to § 1A1.1 (Authority)). Departures, therefore, perform an integral function in the sentencing guideline system. Departures permit courts to impose an appropriate sentence in the exceptional case in which mechanical application of the guidelines would fail to achieve the statutory purposes and goals of sentencing. Departures also help maintain 'sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices. 28 U.S.C. 991(b)(1)(B). By monitoring when courts depart from the guidelines and by analyzing their stated reasons for doing so, along with appellate cases reviewing these departures, the Commission can further refine the guidelines to specify more precisely when departures should and should not be permitted.

As reaffirmed in the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Act of 2003 (the PROTECT Act, Public Law 108–21), circumstances warranting departure should be rare. Departures were never intended to permit sentencing courts to substitute their policy judgments for those of Congress and the Sentencing Commission. Departure in such circumstances would produce unwarranted sentencing disparity, which the Sentencing Reform Act was designed to avoid.

In order for appellate courts to fulfill their statutory duties under 18 U.S.C. 3742 and for the Commission to fulfill its ongoing responsibility to refine the guidelines in light of information it receives on departures, it is essential that sentencing courts state with specificity the reasons for departure, as required by the PROTECT Act.

This policy statement, including its commentary, was substantially revised, effective October 27, 2003, in response to directives contained in the PROTECT Act, particularly the directive in section 401(m) of that Act to—

'(1) Review the grounds of downward departure that are authorized by the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission; and

(2) promulgate, pursuant to section 994 of title 28, United States Code—

(A) appropriate amendments to the sentencing guidelines, policy statements, and official commentary to ensure that the incidence of downward departures is substantially reduced;

(B) a policy statement authorizing a departure pursuant to an early disposition program; and

(C) any other conforming amendments to the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission necessitated by the Act, including a revision of * * * section 5K2.0'.

The substantial revision of this policy statement in response to the PROTECT Act was intended to refine the standards applicable to departures while giving due regard for concepts, such as the 'heartland', that have evolved in departure jurisprudence over time.

Section 401(b)(1) of the PROTECT Act directly amended this policy statement to add subsection (b), effective April 30, 2003.".

## Part II: Departures Under Chapter Five, Part H

The Introductory Commentary of Chapter 5, Part H, is amended to read as follows:

### Introductory Commentary

The following policy statements address the relevance of certain offender characteristics to the determination of whether a sentence should be outside the applicable guideline range and, in certain cases, to the determination of a sentence within the applicable guideline range. Under 28 U.S.C. 994(d), the Commission is directed to consider whether certain specific offender characteristics 'have any relevance to the nature, extent, place of service, or other incidents of an appropriate sentence' and to take them into account only to the extent they are determined to be relevant by the Commission.

The Commission has determined that certain circumstances are not ordinarily relevant to the determination of whether a sentence should be outside the applicable guideline range. Unless expressly stated, this does not mean that the Commission views such circumstances as necessarily inappropriate to the determination of the sentence within the applicable guideline range or to the determination of various other incidents of an appropriate sentence (*e.g.*, the appropriate conditions of probation or supervised release). Furthermore, although these circumstances are not ordinarily relevant to the determination of whether a sentence should be outside the applicable guideline range, they may be relevant to this determination in exceptional cases. They also may be relevant if a combination of such circumstances makes the case an exceptional one, but only if each such circumstance is identified as an affirmative ground for departure and is present in the case to a substantial degree. See § 5K2.0 (Grounds for Departure).

In addition, 28 U.S.C. 994(e) requires the Commission to assure that its guidelines and policy statements reflect the general inappropriateness of considering the defendant's education, vocational skills, employment record, and family ties and responsibilities in determining whether a term of imprisonment should be imposed or the length of a term of imprisonment.".

Section 5H1.4 is amended to read as follows:

"§ 5H1.4. Physical Condition, Including Drug or Alcohol Dependence or Abuse; Gambling Addiction (Policy Statement)

Physical condition or appearance, including physique, is not ordinarily relevant in determining whether a departure may be warranted. However, an extraordinary physical impairment may be a reason to depart downward; *e.g.*, in the case of a seriously infirm defendant, home detention may be as efficient as, and less costly than, imprisonment.

Drug or alcohol dependence or abuse is not a reason for a downward departure. Substance abuse is highly correlated to an increased propensity to commit crime. Due to this increased risk, it is highly recommended that a defendant who is incarcerated also be sentenced to supervised release with a requirement that the defendant participate in an appropriate substance abuse program (see § 5D1.3(d)(4)). If participation in a substance abuse program is required, the length of supervised release should take into account the length of time necessary for the supervisory body to judge the success of the program.

Similarly, where a defendant who is a substance abuser is sentenced to probation, it is strongly recommended that the conditions of probation contain a requirement that the defendant participate in an appropriate substance abuse program (see § 5B1.3(d)(4)).

Addiction to gambling is not a reason for a downward departure.".

Section 5H1.6 is amended to read as follows:

"5H1.6. Family Ties and Responsibilities (Policy Statement)

Family ties and responsibilities are not ordinarily relevant in determining whether a departure may be warranted.

Family responsibilities that are complied with may be relevant to the determination of the amount of restitution or fine.

**Commentary**

*Application Note:*

1. *Circumstances to Consider.*—

(A) *In General.*—In determining whether a departure is warranted under this policy statement, the court shall consider the following non-exhaustive list of circumstances:

(i) The seriousness of the offense.

(ii) The involvement in the offense, if any, of members of the defendant's family.

(iii) The danger, if any, to members of the defendant's family as a result of the offense.

(B) *Departures Based on Loss of Caretaking or Financial Support.*—A departure under this policy statement based on the loss of caretaking or financial support of the defendant's family requires, in addition to the court's consideration of the non-exhaustive list of circumstances in subdivision (A), the presence of the following circumstances:

(i) The defendant's service of a sentence within the applicable guideline range will cause a substantial, direct, and specific loss of essential caretaking, or essential financial support, to the defendant's family.

(ii) The loss of caretaking or financial support substantially exceeds the harm ordinarily incident to incarceration for a similarly situated defendant. For example, the fact that the defendant's family might incur some degree of financial hardship or suffer to some extent from the absence of a parent through incarceration is not in itself sufficient as a basis for departure because such hardship or suffering is of a sort ordinarily incident to incarceration.

(iii) The loss of caretaking or financial support is one for which no effective remedial or ameliorative programs reasonably are available, making the defendant's caretaking or financial support irreplaceable to the defendant's family.

(iv) The departure effectively will address the loss of caretaking or financial support.".

Section 5H1.7 is amended to read as follows:

"§ 5H1.7. Role in the Offense (Policy Statement)

A defendant's role in the offense is relevant in determining the applicable guideline range (see Chapter Three, Part B (Role in the Offense)) but is not a basis for departing from that range (see subsection (d) of § 5K2.0 (Grounds for Departures)).".

Section 5H1.8 is amended to read as follows:

"§ 5H1.8. Criminal History (Policy Statement)

A defendant's criminal history is relevant in determining the applicable criminal history category. See Chapter Four (Criminal History and Criminal Livelihood). For grounds of departure based on the defendant's criminal history, see § 4A1.3 (Departures Based on Inadequacy of Criminal History Category).".

**Part III. Other Departures Under Chapter Five, Part K**

Section § 5K2.10 is amended to read as follows:

"§ 5K2.10. Victim's Conduct (Policy Statement)

If the victim's wrongful conduct contributed significantly to provoking the offense behavior, the court may reduce the sentence below the guideline range to reflect the nature and circumstances of the offense. In deciding whether a sentence reduction is warranted, and the extent of such reduction, the court should consider the following:

(1) The size and strength of the victim, or other relevant physical characteristics, in comparison with those of the defendant.

(2) The persistence of the victim's conduct and any efforts by the defendant to prevent confrontation.

(3) The danger reasonably perceived by the defendant, including the victim's reputation for violence.

(4) The danger actually presented to the defendant by the victim.

(5) Any other relevant conduct by the victim that substantially contributed to the danger presented.

(6) The proportionality and reasonableness of the defendant's response to the victim's provocation.

Victim misconduct ordinarily would not be sufficient to warrant application of this provision in the context of offenses under Chapter Two, Part A, Subpart 3 (Criminal Sexual Abuse). In addition, this provision usually would not be relevant in the context of non-violent offenses. There may, however, be unusual circumstances in which substantial victim misconduct would warrant a reduced penalty in the case of a non-violent offense. For example, an extended course of provocation and harassment might lead a defendant to steal or destroy property in retaliation.".

Section 5K2.12 is amended to read as follows:

"§ 5K2.12. Coercion and Duress (Policy Statement)

If the defendant committed the offense because of serious coercion, blackmail or duress, under circumstances not amounting to a complete defense, the court may decrease the sentence below the applicable guideline range. The extent of the decrease ordinarily should depend on the reasonableness of the defendant's actions, on the proportionality of the defendant's actions to the seriousness of coercion, blackmail, or duress involved, and on the extent to which the conduct would have been less harmful under the circumstances as the defendant believed them to be. Ordinarily coercion will be sufficiently serious to warrant departure only when it involves a threat of physical injury, substantial damage to property or similar injury resulting from the unlawful action of a third party or from a natural emergency. Notwithstanding this policy statement, personal financial difficulties and economic pressures upon a trade or business do not warrant a downward departure.".

Section 5K2.13 is amended to read as follows:

"§ 5K2.13. Diminished Capacity (Policy Statement)

A sentence below the applicable guideline range may be warranted if (1) the defendant committed the offense while suffering from a significantly reduced mental capacity; and (2) the significantly reduced mental capacity contributed substantially to the commission of the offense. Similarly, if a departure is warranted under this policy statement, the extent of the departure should reflect the extent to which the reduced mental capacity contributed to the commission of the offense.

However, the court may not depart below the applicable guideline range if (1) the significantly reduced mental capacity was caused by the voluntary use of drugs or other intoxicants; (2) the facts and circumstances of the defendant's offense indicate a need to protect the public because the offense involved actual violence or a serious threat of violence; (3) the defendant's criminal history indicates a need to incarcerate the defendant to protect the public; or (4) the defendant has been convicted of an offense under chapter 71, 109A, 110, or 117, of title 18, United States Code.

**Commentary**

*Application Note:*

1. *For purposes of this policy statement—*

Significantly reduced mental capacity' means the defendant, although convicted, has a significantly impaired ability to (A) understand the wrongfulness of the behavior comprising the offense or to exercise the power of reason; or (B) control behavior that the defendant knows is wrongful.

*Background:* Section 401(b)(5) of Public Law 108–21 directly amended this policy statement to add subdivision (4), effective April 30, 2003.".

Section 5K2.20 is amended to read as follows:

"§ 5K2.20. Aberrant Behavior (Policy Statement)

(a) *In General.*—Except where a defendant is convicted of an offense involving a minor victim under section 1201, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, of title 18, United States Code, a downward departure may be warranted in an exceptional case if (1) the defendant's criminal conduct meets the requirements of subsection (b); and (2) the departure is not prohibited under subsection (c).

(b) *Requirements.*—The court may depart downward under this policy statement only if the defendant committed a single criminal occurrence or single criminal transaction that (1) was committed without significant planning; (2) was of limited duration; and (3) represents a marked deviation by the defendant from an otherwise law-abiding life.

(c) *Prohibitions Based on the Presence of Certain Circumstances.*—The court may not depart downward pursuant to this policy statement if any of the following circumstances are present:

(1) The offense involved serious bodily injury or death.

(2) The defendant discharged a firearm or otherwise used a firearm or a dangerous weapon.

(3) The instant offense of conviction is a serious drug trafficking offense.

(4) The defendant has either of the following: (A) more than one criminal history point, as determined under Chapter Four (Criminal History and Criminal Livelihood) before application of subsection (b) of 4A1.3 (Departures Based on Inadequacy of Criminal History Category); or (B) a prior federal or state felony conviction, or any other significant prior criminal behavior, regardless of whether the conviction or significant prior criminal behavior is countable under Chapter Four.

**Commentary**

*Application Notes:*

1. *Definitions.*—For purposes of this policy statement:

'Dangerous weapon,' 'firearm,' 'otherwise used,' and serious bodily injury' have the meaning given those terms in the Commentary to § 1B1.1 (Application Instructions).

'Serious drug trafficking offense' means any controlled substance offense under title 21, United States Code, other than simple possession under 21 U.S.C. 844, that provides for a mandatory minimum term of imprisonment of five years or greater, regardless of whether the defendant meets the criteria of 5C1.2 (Limitation on Applicability of Statutory Mandatory Minimum Sentences in Certain Cases).

2. *Repetitious or Significant, Planned Behavior.*—Repetitious or significant, planned behavior does not meet the requirements of subsection (b). For example, a fraud scheme generally would not meet such requirements because such a scheme usually involves repetitive acts, rather than a single occurrence or single criminal transaction, and significant planning.

3. *Other Circumstances to Consider.*—In determining whether the court should depart under this policy statement, the court may consider the defendant's (A) mental and emotional conditions; (B) employment record; (C) record of prior good works; (D) motivation for committing the offense; and (E) efforts to mitigate the effects of the offense.

Background: Section 401(b)(3) of Public Law 108–21 directly amended subsection (a) of this policy statement, effective April 30, 2003.".

**Part IV: Criminal History**

Section 4A1.3 is amended to read as follows:

"§ 4A1.3. Departures Based on Inadequacy of Criminal History Category (Policy Statement)

(a) *Upward Departures.*—

(1) *Standard for Upward Departure.*—If reliable information indicates that the defendant's criminal history category substantially under-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes, an upward departure may be warranted.

(2) *Types of Information Forming the Basis for Upward Departure.*—The information described in subsection (a) may include information concerning the following:

(A) Prior sentence(s) not used in computing the criminal history category (*e.g.*, sentences for foreign and tribal offenses).

(B) Prior sentence(s) of substantially more than one year imposed as a result of independent crimes committed on different occasions.

(C) Prior similar misconduct established by a civil adjudication or by a failure to comply with an administrative order.

(D) Whether the defendant was pending trial or sentencing on another charge at the time of the instant offense.

(E) Prior similar adult criminal conduct not resulting in a criminal conviction.

(3) *Prohibition.*—A prior arrest record itself shall not be considered for purposes of an upward departure under this policy statement.

(4) *Determination of Extent of Upward Departure.*—

(A) *In General.*—Except as provided in subdivision (B), the court shall determine the extent of a departure under this subsection by using, as a reference, the criminal history category applicable to defendants whose criminal history or likelihood to recidivate most closely resembles that of the defendant's.

(B) *Upward Departures from Category VI.*—In a case in which the court determines that the extent and nature of the defendant's criminal history, taken together, are sufficient to warrant an upward departure from Criminal History Category VI, the court should structure the departure by moving incrementally down the sentencing table to the next higher offense level in Criminal History Category VI until it finds a guideline range appropriate to the case.

(b) *Downward Departures.*—

(1) *Standard for Downward Departure.*—If reliable information indicates that the defendant's criminal history category substantially over-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes, a downward departure may be warranted.

(2) *Prohibitions.*—

(A) *Criminal History Category I.*—A departure below the lower limit of the applicable guideline range for Criminal History Category I is prohibited.

(B) *Armed Career Criminal and Repeat and Dangerous Sex Offender.*—A downward departure under this subsection is prohibited for (i) an armed career criminal within the meaning of § 4B1.4 (Armed Career Criminal); and (ii) a repeat and dangerous sex offender against minors within the meaning of § 4B1.5 (Repeat and Dangerous Sex Offender Against Minors).

(3) *Limitations.*—

(A) *Limitation on Extent of Downward Departure for Career Offender.*—The extent of a downward departure under this subsection for a career offender within the meaning of § 4B1.1 (Career Offender) may not exceed one criminal history category.

(B) *Limitation on Applicability of § 5C1.2 in Event of Downward Departure to Category I.*—A defendant whose criminal history category is Category I after receipt of a downward departure under this subsection does not meet the criterion of subsection (a)(1) of § 5C1.2 (Limitation on Applicability of Statutory Maximum Sentences in Certain Cases) if, before receipt of the downward departure, the defendant had more than one criminal history point under § 4A1.1 (Criminal History Category).

(c) *Written Specification of Basis for Departure.*—In departing from the otherwise applicable criminal history category under this policy statement, the court shall specify in writing the following:

(1) In the case of an upward departure, the specific reasons why the applicable criminal history category substantially under-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes.

(2) In the case of a downward departure, the specific reasons why the applicable criminal history category substantially over-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes.

**Commentary**

*Application Notes:*

1. *Definitions.*—For purposes of this policy statement, the terms 'depart', 'departure', 'downward departure', and 'upward departure' have the meaning given those terms in Application Note 1 of the Commentary to § 1B1.1 (Application Instructions).

2. *Upward Departures.*—

(A) *Examples.*—An upward departure from the defendant's criminal history category may be warranted based on any of the following circumstances:

(i) A previous foreign sentence for a serious offense.

(ii) Receipt of a prior consolidated sentence of ten years for a series of serious assaults.

(iii) A similar instance of large scale fraudulent misconduct established by an adjudication in a Securities and Exchange Commission enforcement proceeding.

(iv) Commission of the instant offense while on bail or pretrial release for another serious offense.

(B) *Upward Departures from Criminal History Category VI.*—In the case of an egregious, serious criminal record in which even the guideline range for Criminal History Category VI is not adequate to reflect the seriousness of the defendant's criminal history, a departure above the guideline range for a defendant with Criminal History Category VI may be warranted. In determining whether an upward departure from Criminal History Category VI is warranted, the court should consider that the nature of the prior offenses rather than simply their number is often more indicative of the seriousness of the defendant's criminal record. For example, a defendant with five prior sentences for very large-scale fraud offenses may have 15 criminal history points, within the range of points typical for Criminal History Category VI, yet have a substantially more serious criminal history overall because of the nature of the prior offenses.

3. *Downward Departures.*—A downward departure from the defendant's criminal history category may be warranted if, for example, the defendant had two minor misdemeanor convictions close to ten years prior to the instant offense and no other evidence of prior criminal behavior in the intervening period. A departure below the lower limit of the applicable guideline range for Criminal History Category I is prohibited under subsection (b)(2)(B), due to the fact that the lower limit of the guideline range for Criminal History Category I is set for a first offender with the lowest risk of recidivism.

*Background:* This policy statement recognizes that the criminal history score is unlikely to take into account all the variations in the seriousness of criminal history that may occur. For example, a defendant with an extensive record of serious, assaultive conduct who had received what might now be considered extremely lenient treatment in the past might have the same criminal history category as a defendant who had a record of less serious conduct. Yet, the first defendant's criminal history clearly may be more serious. This may be particularly true in the case of younger defendants (*e.g.*, defendants in their early twenties or younger) who are more likely to have received repeated lenient treatment, yet who may actually pose a greater risk of serious recidivism than older defendants. This policy statement authorizes the consideration of a departure from the guidelines in the limited circumstances where reliable information indicates that the criminal history category does not adequately reflect the seriousness of the defendant's criminal history or likelihood of recidivism, and provides guidance for the consideration of such departures.".

The Commentary to § 4A1.1 captioned "Background" is amended by striking "permits information about the significance or similarity of past conduct underlying prior convictions to be used as a basis for imposing a sentence outside the applicable guideline range." and inserting "authorizes the court to depart from the otherwise applicable criminal history category in certain circumstances.".

Section 5C1.2 is amended in subsection (a)(1) by inserting "before application of subsection (b) of 4A1.3 (Departures Based on Inadequacy of Criminal History Category)" after "guidelines".

The Commentary to § 5C1.2 captioned "Application Notes" is amended in Note 1 by inserting "before application of subsection (b) of § 4A1.3 (Departures Based on Inadequacy of Criminal History Category)" after "Category)".

**Part V: Early Disposition Programs**

Chapter 5, Part K, is amended by adding at the end the following:

- 3. *Early Disposition Programs*

§ 5K3.1. Early Disposition Programs (Policy Statement)

Upon motion of the Government, the court may depart downward not more than 4 levels pursuant to an early disposition program authorized by the Attorney General of the United States and the United States Attorney for the district in which the court resides.

**Commentary**

*Background:* This policy statement implements the directive to the Commission in section 401(m)(2)(B) of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (the PROTECT Act', Pub. L. 10821).".

**Part VI: Plea Agreements**

Section 6B1.2 is amended in subsection (a) by striking "[Rule 11(e)(1)(A)]" and inserting "(Rule 11(c)(1)(A))"

Section 6B1.2 is amended in subsection (b) by striking "[Rule 11(e)(1)(B)]" and inserting "(Rule 11(c)(1)(B))"; and by striking subdivision (2) and inserting the following:

"(2)(A) the recommended sentence departs from the applicable guideline range for justifiable reasons; and (B) those reasons are specifically set forth in writing in the statement of reasons or judgment and commitment order.".

Section 6B1.2 is amended in subsection (c) by striking "[Rule 11(e)(1)(C)]" and inserting "(Rule 11(c)(1)(C))"; and by striking subdivision (2) and inserting the following:

"(2)(A) the agreed sentence departs from the applicable guideline range for justifiable reasons; and (B) those reasons are specifically set forth in writing in the statement of reasons or judgment and commitment order.".

The Commentary to 6B1.2 is amended in the second paragraph by striking ". See generally Chapter 1, Part A, Subpart 4(b)(Departures)." and inserting "and those reasons are specifically set forth in writing in the statement of reasons or the judgment and commitment order. As set forth in subsection (d) of 5K2.0 (Grounds for Departure), however, the court may not depart below the applicable guideline range merely because of the defendant's decision to plead guilty to the offense or to enter a plea agreement with respect to the offense.".

The heading of Chapter One is amended to read as follow:

**Chapter One—Authority and General Application Principles".**

Chapter One, Part A, is amended to read as follows:

*Part A—Authority*

1A1.1. Authority

The guidelines, policy statements, and commentary set forth in this Guidelines Manual, including amendments thereto, are promulgated by the United States Sentencing Commission pursuant to: (1) Section 994(a) of title 28, United States Code; and (2) with respect to guidelines, policy statements, and commentary promulgated or amended pursuant to specific congressional directive, pursuant to the authority contained in that directive in addition to the authority under section 994(a) of title 28, United States Code.

**Commentary**

*Application Note:*

1. Historical Review of Original Introduction.—Part A of Chapter One originally was an introduction to the Guidelines Manual that explained a number of policy decisions made by the Commission when it promulgated the initial set of guidelines. This introduction was amended occasionally between 1987 and 2003. In 2003, as part of the Commission's implementation of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (the 'PROTECT Act', Pub. L. 108–21), the original introduction was transferred to the Historical Note at the end of this guideline. The Commission encourages the review of this material for context and historical purposes.

*Background:* The Sentencing Reform Act of 1984 changed the course of federal sentencing. Among other things, the Act created the United States Sentencing Commission as an independent agency in the Judicial Branch, and directed it to develop guidelines and policy statements for sentencing courts to use when sentencing offenders convicted of federal crimes. Moreover, it empowered the Commission with ongoing responsibilities to monitor the guidelines, submit to Congress appropriate modifications of the guidelines and recommended changes in criminal statutes, and establish education and research programs. The mandate rested on Congressional awareness that sentencing was a dynamic field that requires continuing review by an expert body to revise sentencing policies, in light of application experience, as new criminal statutes are enacted, and as more is learned about what motivates and controls criminal behavior.

*Historical Note:* Chapter One, Part A, as in effect on November 1, 1987, read as follows:

**Chapter One—Introduction and General Application Principles**

*Part A—Introduction*

1. Authority

The United States Sentencing Commission ('Commission') is an independent agency in the judicial branch composed of seven voting and two non-voting, ex officio members. Its principal purpose is to establish sentencing policies and practices for the federal criminal justice system that will assure the ends of justice by promulgating detailed guidelines prescribing the appropriate sentences for offenders convicted of federal crimes.

The guidelines and policy statements promulgated by the Commission are issued pursuant to Section 994(a) of Title 28, United States Code.

2. The Statutory Mission

The Comprehensive Crime Control Act of 1984 foresees guidelines that will further the basic purposes of criminal punishment, *i.e.*, deterring crime, incapacitating the offender, providing just punishment, and rehabilitating the offender. It delegates to the Commission broad authority to review and rationalize the federal sentencing process.

The statute contains many detailed instructions as to how this determination should be made, but the most important of them instructs the Commission to create categories of offense behavior and offender characteristics. An offense behavior category might consist, for example, of 'bank robbery/committed with a gun/$2500 taken.' An offender characteristic category might be 'offender with one prior conviction who was not sentenced to imprisonment.' The Commission is required to prescribe guideline ranges that specify an appropriate sentence for each class of convicted persons, to be determined by coordinating the offense behavior categories with the offender characteristic categories. The statute contemplates the guidelines will establish a range of sentences for every coordination of categories. Where the guidelines call for imprisonment, the range must be narrow: the maximum imprisonment cannot exceed the minimum by more than the greater of 25 percent or six months. 28 U.S.C. 994(b)(2).

The sentencing judge must select a sentence from within the guideline range. If, however, a particular case presents atypical features, the Act allows the judge to depart from the guidelines and sentence outside the range. In that case, the judge must specify reasons for departure. 18 U.S.C. 3553(b). If the court sentences within the guideline range, an appellate court may review the sentence to see if the guideline was correctly applied. If the judge departs from the guideline range, an appellate court may review the reasonableness of the departure. 18 U.S.C. 3742. The Act requires the offender to serve virtually all of any prison sentence imposed, for it abolishes parole and substantially restructures good behavior adjustments.

The law requires the Commission to send its initial guidelines to Congress by April 13, 1987, and under the present statute they take effect automatically on November 1, 1987. Public Law No. 98–473, 235, reprinted at 18 U.S.C. 3551. The Commission may submit guideline amendments each year to Congress between the beginning of a regular session and May 1. The amendments will take effect automatically 180 days after submission unless a law is enacted to the contrary. 28 U.S.C. 994(p).

The Commission, with the aid of its legal and research staff, considerable public testimony, and written commentary, has developed an initial set of guidelines which it now transmits to Congress. The Commission emphasizes, however, that it views the guideline-writing process as evolutionary. It expects, and the governing statute anticipates, that continuing research, experience, and analysis will result in modifications and revisions to the guidelines by submission of amendments to Congress. To this end, the Commission is established as a permanent agency to monitor sentencing practices in the federal courts throughout the nation.

3. The Basic Approach (Policy Statement)

To understand these guidelines and the rationale that underlies them, one must begin with the three objectives that Congress, in enacting the new sentencing law, sought to achieve. Its basic objective was to enhance the ability of the criminal justice system to reduce crime through an effective, fair sentencing system. To achieve this objective, Congress first sought honesty in sentencing. It sought to avoid the confusion and implicit deception that arises out of the present sentencing system which requires a judge to impose an indeterminate sentence that is automatically reduced in most cases by 'good time' credits. In addition, the parole commission is permitted to determine how much of the remainder of any prison sentence an offender actually will serve. This usually results in a substantial reduction in the effective length of the sentence imposed, with defendants often serving only about one-third of the sentence handed down by the court.

Second, Congress sought uniformity in sentencing by narrowing the wide disparity in sentences imposed by different federal courts for similar criminal conduct by similar offenders. Third, Congress sought proportionality in sentencing through a system that imposes appropriately different sentences for criminal conduct of different severity.

*Honesty is easy to achieve:* The abolition of parole makes the sentence imposed by the court the sentence the offender will serve. There is a tension, however, between the mandate of uniformity (treat similar cases alike) and the mandate of proportionality (treat different cases differently) which, like the historical tension between law and equity, makes it difficult to achieve both goals simultaneously. Perfect uniformity—sentencing every offender to five years—destroys proportionality. Having only a few simple categories of crimes would make the guidelines uniform and easy to administer, but might lump together offenses that are different in important respects. For example, a single category for robbery that lumps together armed and unarmed robberies, robberies with and without injuries, robberies of a few dollars and robberies of millions, is far too broad.

At the same time, a sentencing system tailored to fit every conceivable wrinkle of each case can become unworkable and seriously compromise the certainty of punishment and its deterrent effect. A bank robber with (or without) a gun, which the robber kept hidden (or brandished), might have frightened (or merely warned), injured seriously (or less seriously), tied up (or simply pushed) a guard, a teller or a customer, at night (or at noon), for a bad (or arguably less bad) motive, in an effort to obtain money for other crimes (or for other purposes), in the company of a few (or many) other robbers, for the first (or fourth) time that day, while sober (or under the influence of drugs or alcohol), and so forth.

The list of potentially relevant features of criminal behavior is long; the fact that they can occur in multiple combinations means that the list of possible permutations of factors is virtually endless. The appropriate relationships among these different factors are exceedingly difficult to establish, for they are often context specific. Sentencing courts do not treat the occurrence of a simple bruise identically in all cases, irrespective of whether that bruise occurred in the context of a bank robbery or in the context of a breach of peace. This is so, in part, because the risk that such a harm will occur differs depending on the underlying offense with which it is connected (and therefore may already be counted, to a different degree, in the punishment for the underlying offense); and also because, in part, the relationship between punishment and multiple harms is not simply additive. The relation varies, depending on how much other harm has occurred. (Thus, one cannot easily assign points for each kind of harm and simply add them up, irrespective of context and total amounts.)

The larger the number of subcategories, the greater the complexity that is created and the less workable the system. Moreover, the subcategories themselves, sometimes too broad and sometimes too narrow, will apply and interact in unforeseen ways to unforeseen situations, thus failing to cure the unfairness of a simple, broad category system. Finally, and perhaps most importantly, probation officers and courts, in applying a complex system of subcategories, would have to make a host of decisions about whether the underlying facts are sufficient to bring the case within a particular subcategory. The greater the number of decisions required and the greater their complexity, the greater the risk that different judges will apply the guidelines differently to situations that, in fact, are similar, thereby reintroducing the very disparity that the guidelines were designed to eliminate.

In view of the arguments, it is tempting to retreat to the simple, broad-category approach and to grant judges the discretion to select the proper point along a broad sentencing range. Obviously, however, granting such broad discretion risks correspondingly broad disparity in sentencing, for different courts may exercise their discretionary powers in different ways. That is to say, such an approach risks a return to the wide disparity that Congress established the Commission to limit.

In the end, there is no completely satisfying solution to this practical stalemate. The Commission has had to simply balance the comparative virtues and vices of broad, simple categorization and detailed, complex subcategorization, and within the constraints established by that balance, minimize the discretionary powers of the sentencing court. Any ultimate system will, to a degree, enjoy the benefits and suffer from the drawbacks of each approach.

A philosophical problem arose when the Commission attempted to reconcile the differing perceptions of the purposes of criminal punishment. Most observers of the criminal law agree that the ultimate aim of the law itself, and of punishment in particular, is the control of crime. Beyond this point, however, the consensus seems to break down. Some argue that appropriate punishment should be defined primarily on the basis of the moral principle of 'just deserts.' Under this principle, punishment should be scaled to the offender's culpability and the resulting harms. Thus, if a defendant is less culpable, the defendant deserves less punishment. Others argue that punishment should be imposed primarily on the basis of practical 'crime control' considerations. Defendants sentenced under this scheme should receive the punishment that most effectively lessens the likelihood of future crime, either by deterring others or incapacitating the defendant.

Adherents of these points of view have urged the Commission to choose between them, to accord one primacy over the other. Such a choice would be profoundly difficult. The relevant literature is vast, the arguments deep, and each point of view has much to be said in its favor. A clear-cut Commission decision in favor of one of these approaches would diminish the chance that the guidelines would find the widespread acceptance they need for effective implementation. As a practical matter, in most sentencing decisions both philosophies may prove consistent with the same result.

For now, the Commission has sought to solve both the practical and philosophical problems of developing a coherent sentencing system by taking an empirical approach that uses data estimating the existing sentencing system as a starting point. It has analyzed data drawn from 10,000 presentence investigations, crimes as distinguished in substantive criminal statutes, the United States Parole Commission's guidelines and resulting statistics, and data from other relevant sources, in order to determine which distinctions are important in present practice. After examination, the Commission has accepted, modified, or rationalized the more important of these distinctions.

This empirical approach has helped the Commission resolve its practical problem by defining a list of relevant distinctions that, although of considerable length, is short enough to create a manageable set of guidelines. Existing categories are relatively broad and omit many distinctions that some may believe important, yet they include most of the major distinctions that statutes and presentence data suggest make a significant difference in sentencing decisions. Important distinctions that are ignored in existing practice probably occur rarely. A sentencing judge may take this unusual case into account by departing from the guidelines.

The Commission's empirical approach has also helped resolve its philosophical dilemma. Those who adhere to a just deserts philosophy may concede that the lack of moral consensus might make it difficult to say exactly what punishment is deserved for a particular crime, specified in minute detail. Likewise, those who subscribe to a philosophy of crime control may acknowledge that the lack of sufficient, readily available data might make it difficult to say exactly what punishment will best prevent that crime. Both groups might therefore recognize the wisdom of looking to those distinctions that judges and legislators have, in fact, made over the course of time. These established distinctions are ones that the community believes, or has found over time, to be important from either a moral or crime-control perspective.

The Commission has not simply copied estimates of existing practice as revealed by the data (even though establishing offense values on this basis would help eliminate disparity, for the data represent averages). Rather, it has departed from the data at different points for various important reasons. Congressional statutes, for example, may suggest or require departure, as in the case of the new drug law that imposes increased and mandatory minimum sentences. In addition, the data may reveal inconsistencies in treatment, such as punishing economic crime less severely than other apparently equivalent behavior.

Despite these policy-oriented departures from present practice, the guidelines represent an approach that begins with, and builds upon, empirical data. The guidelines will not please those who wish the Commission to adopt a single philosophical theory and then work deductively to establish a simple and perfect set of categorizations and distinctions. The guidelines may prove acceptable, however, to those who seek more modest, incremental improvements in the status quo, who believe the best is often the enemy of the good, and who recognize that these initial guidelines are but the first step in an evolutionary process. After spending considerable time and resources exploring alternative approaches, the Commission has developed these guidelines as a practical effort toward the achievement of a more honest, uniform, equitable, and therefore effective, sentencing system.

### 4. The Guidelines' Resolution of Major Issues (Policy Statement)

The guideline-writing process has required the Commission to resolve a host of important policy questions, typically involving rather evenly balanced sets of competing considerations. As an aid to understanding the guidelines, this introduction will briefly discuss several of those issues. Commentary in the guidelines explains others.

(a) *Real Offense vs. Charge Offense Sentencing.*

One of the most important questions for the Commission to decide was whether to base sentences upon the actual conduct in which the defendant engaged regardless of the charges for which he was indicted or convicted ('real offense' sentencing), or upon the conduct that constitutes the elements of the offense with which the defendant was charged and of which he was convicted ('charge offense' sentencing). A bank robber, for example, might have used a gun, frightened bystanders, taken $50,000, injured a teller, refused to stop when ordered, and raced away damaging property during escape. A pure real offense system would sentence on the basis of all identifiable conduct. A pure charge offense system would overlook some of the harms that did not constitute statutory elements of the offenses of which the defendant was convicted.

The Commission initially sought to develop a real offense system. After all, the present sentencing system is, in a sense, a real offense system. The sentencing court (and the parole commission) take account of the conduct in which the defendant actually engaged, as determined in a presentence report, at the sentencing hearing, or before a parole commission hearing officer. The Commission's initial efforts in this direction, carried out in the spring and early summer of 1986, proved unproductive mostly for practical reasons. To make such a system work, even to formalize and rationalize the status quo, would have required the Commission to decide precisely which harms to take into account, how to add them up, and what kinds of procedures the courts should use to determine the presence or absence of disputed factual elements. The Commission found no practical way to combine and account for the large number of diverse harms arising in different circumstances; nor did it find a practical way to reconcile the need for a fair adjudicatory procedure with the need for a speedy sentencing process, given the potential existence of hosts of adjudicated real harm' facts in many typical cases. The effort proposed as a solution to these problems required the use of, for example, quadratic roots and other mathematical operations that the Commission considered too complex to be workable, and, in the Commission's view, risked return to wide disparity in practice.

The Commission therefore abandoned the effort to devise a 'pure' real offense system and instead experimented with a 'modified real offense system,' which it published for public comment in a September 1986 preliminary draft.

This version also foundered in several major respects on the rock of practicality. It was highly complex and its mechanical rules for adding harms (*e.g.*, bodily injury added the same punishment irrespective of context) threatened to work considerable unfairness. Ultimately, the Commission decided that it could not find a practical or fair and efficient way to implement either a pure or modified real offense system of the sort it originally wanted, and it abandoned that approach.

The Commission, in its January 1987 Revised Draft and the present guidelines, has moved closer to a 'charge offense' system. The system is not, however, pure; it has a number of real elements. For one thing, the hundreds of overlapping and duplicative statutory provisions that make up the federal criminal law have forced the Commission to write guidelines that are descriptive of generic conduct rather than tracking purely statutory language. For another, the guidelines, both through specific offense characteristics and adjustments, take account of a number of important, commonly occurring real offense elements such as role in the offense, the presence of a gun, or the amount of money actually taken.

Finally, it is important not to overstate the difference in practice between a real and a charge offense system. The federal criminal system, in practice, deals mostly with drug offenses, bank robberies and white collar crimes (such as fraud, embezzlement, and bribery). For the most part, the conduct that an indictment charges approximates the real and relevant conduct in which the offender actually engaged.

The Commission recognizes its system will not completely cure the problems of a real offense system. It may still be necessary, for example, for a court to determine some particular real facts that will make a difference to the sentence. Yet, the Commission believes that the instances of controversial facts will be far fewer; indeed, there will be few enough so that the court system will be able to devise fair procedures for their determination. *See United States* v. *Fatico,* 579 F.2d 707 (2d Cir. 1978) (permitting introduction of hearsay evidence at sentencing hearing under certain conditions), on remand, 458 F. Supp. 388 (E.D.N.Y. 1978), aff'd, 603 F.2d 1053 (2d Cir. 1979) (holding that the government need not prove facts at sentencing hearing beyond a reasonable doubt), cert. denied, 444 U.S. 1073 (1980).

The Commission also recognizes that a charge offense system has drawbacks of its own. One of the most important is its potential to turn over to the prosecutor the power to determine the sentence by increasing or decreasing the number (or content) of the counts in an indictment. Of course, the defendant's actual conduct (that which the prosecutor can prove in court) imposes a natural limit upon the prosecutor's ability to increase a defendant's sentence. Moreover, the Commission has written its rules for the treatment of multicount convictions with an eye toward eliminating unfair treatment that might flow from count manipulation. For example, the guidelines treat a three-count indictment, each count of which charges sale of 100 grams of heroin, or theft of $10,000, the same as a single-count indictment charging sale of 300 grams of heroin or theft of $30,000. Further, a sentencing court may control any inappropriate manipulation of the indictment through use of its power to depart from the specific guideline sentence. Finally, the Commission will closely monitor problems arising out of count manipulation and will make appropriate adjustments should they become necessary.

(b) *Departures.*

The new sentencing statute permits a court to depart from a guideline-specified sentence only when it finds 'an aggravating or mitigating circumstance * * * that was not adequately taken into consideration by the Sentencing Commission * * *'. 18 U.S.C. 3553(b). Thus, in principle, the Commission, by specifying that it had adequately considered a particular factor, could prevent a court from using it as grounds for departure. In this initial set of guidelines, however, the Commission does not so limit the courts' departure powers. The Commission intends the sentencing courts to treat each guideline as carving out a 'heartland,' a set of typical cases embodying the conduct that each guideline describes. When a court finds an atypical case, one to which a particular guideline linguistically applies but where conduct significantly differs from the norm, the court may consider whether a departure is warranted. Section 5H1.10 (Race, Sex, National Origin, Creed, Religion, Socio-Economic Status), the third sentence of 5H1.4, and the last sentence of § 5K2.12, list a few factors that the court cannot take into account as grounds for departure. With those specific exceptions, however, the Commission does not intend to limit the kinds of factors (whether or not mentioned anywhere else in the guidelines) that could constitute grounds for departure in an unusual case.

The Commission has adopted this departure policy for two basic reasons. First is the difficulty of foreseeing and capturing a single set of guidelines that encompasses the vast range of human conduct potentially relevant to a sentencing decision. The Commission also recognizes that in the initial set of guidelines it need not do so. The Commission is a permanent body, empowered by law to write and rewrite guidelines, with progressive changes, over many years. By monitoring when courts depart from the guidelines and by analyzing their stated reasons for doing so, the Commission, over time, will be able to create more accurate guidelines that specify precisely where departures should and should not be permitted.

Second, the Commission believes that despite the courts' legal freedom to depart from the guidelines, they will not do so very often. This is because the guidelines, offense by offense, seek to take account of those factors that the Commission's sentencing data indicate make a significant difference in sentencing at the present time. Thus, for example, where the presence of actual physical injury currently makes an important difference in final sentences, as in the case of robbery, assault, or arson, the guidelines specifically instruct the judge to use this factor to augment the sentence. Where the guidelines do not specify an augmentation or diminution, this is generally because the sentencing data do not permit the Commission, at this time, to conclude that the factor is empirically important in relation to the particular offense. Of course, a factor (say physical injury) may nonetheless sometimes occur in connection with a crime (such as fraud) where it does not often occur. If, however, as the data indicate, such occurrences are rare, they are precisely the type of events that the court's departure powers were designed to cover — unusual cases outside the range of the more typical offenses for which the guidelines were designed. Of course, the Commission recognizes that even its collection and analysis of 10,000 presentence reports are an imperfect source of data sentencing estimates. Rather than rely heavily at this time upon impressionistic accounts, however, the Commission believes it wiser to wait and collect additional data from our continuing monitoring process that may demonstrate how the guidelines work in practice before further modification.

It is important to note that the guidelines refer to three different kinds of departure. The first kind, which will most frequently be used, is in effect an interpolation between two adjacent, numerically oriented guideline rules. A specific offense characteristic, for example, might require an increase of four levels for serious bodily injury but two levels for bodily injury. Rather than requiring a court to force middle instances into either the serious' or the 'simple' category, the guideline commentary suggests that the court may interpolate and select a midpoint increase of three levels. The Commission has decided to call such an interpolation a 'departure' in light of the legal views that a guideline providing for a range of increases in offense levels may violate the statute's 25 percent rule (though others have presented contrary legal arguments). Since interpolations are technically departures, the courts will have to provide reasons for their selection, and it will be subject to review for 'reasonableness' on appeal. The Commission believes, however, that a simple reference by the court to the 'mid-category' nature of the facts will typically provide sufficient reason. It does not foresee serious practical problems arising out of the application of the appeal provisions to this form of departure.

The second kind involves instances in which the guidelines provide specific guidance for departure, by analogy or by other numerical or non-numerical suggestions. For example, the commentary to § 2G1.1 (Transportation for Prostitution), recommends a downward adjustment of eight levels where commercial purpose was not involved. The Commission intends such suggestions as policy guidance for the courts. The Commission expects that most departures will reflect the suggestions, and that the courts of appeals may prove more likely to find departures 'unreasonable' where they fall outside suggested levels.

A third kind of departure will remain unguided. It may rest upon grounds referred to in Chapter 5, Part H, or on grounds not mentioned in the guidelines. While Chapter 5, Part H lists factors that the Commission believes may constitute grounds for departure, those suggested grounds are not exhaustive. The Commission recognizes that there may be other grounds for departure that are not mentioned; it also believes there may be cases in which a departure outside suggested levels is warranted. In its view, however, such cases will be highly unusual.

(c) *Plea Agreements.*

Nearly ninety percent of all federal criminal cases involve guilty pleas, and many of these cases involve some form of plea agreement. Some commentators on early Commission guideline drafts have urged the Commission not to attempt any major reforms of the agreement process, on the grounds that any set of guidelines that threatens to radically change present practice also threatens to make the federal system unmanageable. Others, starting with the same facts, have argued that guidelines which fail to control and limit plea agreements would leave untouched a 'loophole' large enough to undo the good that sentencing guidelines may bring. Still other commentators make both sets of arguments.

The Commission has decided that these initial guidelines will not, in general, make significant changes in current plea agreement practices. The court will accept or reject any such agreements primarily in accordance with the rules set forth in Fed.R.Crim.P. 11(e). The Commission will collect data on the courts' plea practices and will analyze this information to determine when and why the courts accept or reject plea agreements. In light of this information and analysis, the Commission will seek to further regulate the plea agreement process as appropriate.

The Commission nonetheless expects the initial set of guidelines to have a positive, rationalizing impact upon plea agreements for two reasons. First, the guidelines create a clear, definite expectation in respect to the sentence that a court will impose if a trial takes place. Insofar as a prosecutor and defense attorney seek to agree about a likely sentence or range of sentences, they will no longer work in the dark. This fact alone should help to reduce irrationality in respect to actual sentencing outcomes. Second, the guidelines create a norm to which judges will likely refer when they decide whether, under Rule 11(e), to accept or to reject a plea agreement or recommendation. Since they will have before them the norm, the relevant factors (as disclosed in the plea agreement), and the reason for the agreement, they will find it easier than at present to determine whether there is sufficient reason to accept a plea agreement that departs from the norm.

*(d) Probation and Split Sentences.*

The statute provides that the guidelines are to 'reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense * * * 28 U.S.C. 994(j). Under present sentencing practice, courts sentence to probation an inappropriately high percentage of offenders guilty of certain economic crimes, such as theft, tax evasion, antitrust offenses, insider trading, fraud, and embezzlement, that in the Commission's view are 'serious.' If the guidelines were to permit courts to impose probation instead of prison in many or all such cases, the present sentences would continue to be ineffective.

The Commission's solution to this problem has been to write guidelines that classify as 'serious' (and therefore subject to mandatory prison sentences) many offenses for which probation is now frequently given. At the same time, the guidelines will permit the sentencing court to impose short prison terms in many such cases. The Commission's view is that the definite prospect of prison, though the term is short, will act as a significant deterrent to many of these crimes, particularly when compared with the status quo where probation, not prison, is the norm.

More specifically, the guidelines work as follows in respect to a first offender. For offense levels one through six, the sentencing court may elect to sentence the offender to probation (with or without confinement conditions) or to a prison term. For offense levels seven through ten, the court may substitute probation for a prison term, but the probation must include confinement conditions (community confinement or intermittent confinement). For offense levels eleven and twelve, the court must impose at least one half the minimum confinement sentence in the form of prison confinement, the remainder to be served on supervised release with a condition of community confinement. The Commission, of course, has not dealt with the single acts of aberrant behavior that still may justify probation at higher offense levels through departures.

(e) *Multi-Count Convictions.*

The Commission, like other sentencing commissions, has found it particularly difficult to develop rules for sentencing defendants convicted of multiple violations of law, each of which makes up a separate count in an indictment. The reason it is difficult is that when a defendant engages in conduct that causes several harms, each additional harm, even if it increases the extent to which punishment is warranted, does not necessarily warrant a proportionate increase in punishment. A defendant who assaults others during a fight, for example, may warrant more punishment if he injures ten people than if he injures one, but his conduct does not necessarily warrant ten times the punishment. If it did, many of the simplest offenses, for reasons that are often fortuitous, would lead to life sentences of imprisonment—sentences that neither 'just deserts' nor 'crime control' theories of punishment would find justified.

Several individual guidelines provide special instructions for increasing punishment when the conduct that is the subject of that count involves multiple occurrences or has caused several harms. The guidelines also provide general rules for aggravating punishment in light of multiple harms charged separately in separate counts. These rules may produce occasional anomalies, but normally they will permit an appropriate degree of aggravation of punishment when multiple offenses that are the subjects of separate counts take place.

These rules are set out in Chapter Three, Part D. They essentially provide: (1) When the conduct involves fungible items, *e.g.*, separate drug transactions or thefts of money, the amounts are added and the guidelines apply to the total amount. (2) When nonfungible harms are involved, the offense level for the most serious count is increased (according to a somewhat diminishing scale) to reflect the existence of other counts of conviction.

The rules have been written in order to minimize the possibility that an arbitrary casting of a single transaction into several counts will produce a longer sentence. In addition, the sentencing court will have adequate power to prevent such a result through departures where necessary to produce a mitigated sentence.

(f) *Regulatory Offenses.*

Regulatory statutes, though primarily civil in nature, sometimes contain criminal provisions in respect to particularly harmful activity. Such criminal provisions often describe not only substantive offenses, but also more technical, administratively-related offenses such as failure to keep accurate records or to provide requested information. These criminal statutes pose two problems. First, which criminal regulatory provisions should the Commission initially consider, and second, how should it treat technical or administratively-related criminal violations?

In respect to the first problem, the Commission found that it cannot comprehensively treat all regulatory violations in the initial set of guidelines. There are hundreds of such provisions scattered throughout the United States Code. To find all potential violations would involve examination of each individual federal regulation. Because of this practical difficulty, the Commission has sought to determine, with the assistance of the Department of Justice and several regulatory agencies, which criminal regulatory offenses are particularly important in light of the need for enforcement of the general regulatory scheme. The Commission has sought to treat these offenses in these initial guidelines. It will address the less common regulatory offenses in the future.

In respect to the second problem, the Commission has developed a system for treating technical recordkeeping and reporting offenses, dividing them into four categories.

First, in the simplest of cases, the offender may have failed to fill out a form intentionally, but without knowledge or intent that substantive harm would likely follow. He might fail, for example, to keep an accurate record of toxic substance transport, but that failure may not lead, nor be likely to lead, to the release or improper treatment of any toxic substance. Second, the same failure may be accompanied by a significant likelihood that substantive harm will occur; it may make a release of a toxic substance more likely. Third, the same failure may have led to substantive harm. Fourth, the failure may represent an effort to conceal a substantive harm that has occurred.

The structure of a typical guideline for a regulatory offense is as follows:

(1) The guideline provides a low base offense level (6) aimed at the first type of recordkeeping or reporting offense. It gives the court the legal authority to impose a punishment ranging from probation up to six months of imprisonment.

(2) Specific offense characteristics designed to reflect substantive offenses that do occur (in respect to some regulatory offenses), or that are likely to occur, increase the offense level.

(3) A specific offense characteristic also provides that a recordkeeping or reporting offense that conceals a substantive offense will be treated like the substantive offense.

The Commission views this structure as an initial effort. It may revise its approach in light of further experience and analysis of regulatory crimes.

(g) *Sentencing Ranges.*

In determining the appropriate sentencing ranges for each offense, the Commission began by estimating the average sentences now being served within each category. It also examined the sentence specified in congressional statutes, in the parole guidelines, and in other relevant, analogous sources. The Commission's forthcoming detailed report will contain a comparison between estimates of existing sentencing practices and sentences under the guidelines.

While the Commission has not considered itself bound by existing sentencing practice, it has not tried to develop an entirely new system of sentencing on the basis of theory alone. Guideline sentences in many instances will approximate existing practice, but adherence to the guidelines will help to eliminate wide disparity. For example, where a high percentage of persons now receive probation, a guideline may include one or more specific offense characteristics in an effort to distinguish those types of defendants who now receive probation from those who receive more severe sentences. In some instances, short sentences of incarceration for all offenders in a category have been substituted for a current sentencing practice of very wide variability in which some defendants receive probation while others receive several years in prison for the same offense. Moreover, inasmuch as those who currently plead guilty often receive lesser sentences, the guidelines also permit the court to impose lesser sentences on those defendants who accept responsibility and those who cooperate with the government.

The Commission has also examined its sentencing ranges in light of their likely impact upon prison population. Specific legislation, such as the new drug law and the career offender provisions of the sentencing law, require the Commission to promulgate rules that will lead to substantial prison population increases. These increases will occur irrespective of any guidelines. The guidelines themselves, insofar as they reflect policy decisions made by the Commission (rather than legislated mandatory minimum, or career offender, sentences), will lead to an increase in prison population that computer models, produced by the Commission and the Bureau of Prisons, estimate at approximately 10 percent, over a period of ten years.

(h) *The Sentencing Table.*

The Commission has established a sentencing table. For technical and practical reasons it has 43 levels. Each row in the table contains levels that overlap with the levels in the preceding and succeeding rows. By overlapping the levels, the table should discourage unnecessary litigation. Both prosecutor and defendant will realize that the difference between one level and another will not necessarily make a difference in the sentence that the judge imposes. Thus, little purpose will be served in protracted litigation trying to determine, for example, whether

$10,000 or $11,000 was obtained as a result of a fraud. At the same time, the rows work to increase a sentence proportionately. A change of 6 levels roughly doubles the sentence irrespective of the level at which one starts. The Commission, aware of the legal requirement that the maximum of any range cannot exceed the minimum by more than the greater of 25 percent or six months, also wishes to permit courts the greatest possible range for exercising discretion. The table overlaps offense levels meaningfully, works proportionately, and at the same time preserves the maximum degree of allowable discretion for the judge within each level.

Similarly, many of the individual guidelines refer to tables that correlate amounts of money with offense levels. These tables often have many, rather than a few levels. Again, the reason is to minimize the likelihood of unnecessary litigation. If a money table were to make only a few distinctions, each distinction would become more important and litigation as to which category an offender fell within would become more likely. Where a table has many smaller monetary distinctions, it minimizes the likelihood of litigation, for the importance of the precise amount of money involved is considerably less.

5. A Concluding Note

The Commission emphasizes that its approach in this initial set of guidelines is one of caution. It has examined the many hundreds of criminal statutes in the United States Code. It has begun with those that are the basis for a significant number of prosecutions. It has sought to place them in a rational order. It has developed additional distinctions relevant to the application of these provisions, and it has applied sentencing ranges to each resulting category. In doing so, it has relied upon estimates of existing sentencing practices as revealed by its own statistical analyses, based on summary reports of some 40,000 convictions, a sample of 10,000 augmented presentence reports, the parole guidelines and policy judgments.

The Commission recognizes that some will criticize this approach as overly cautious, as representing too little a departure from existing practice. Yet, it will cure wide disparity. The Commission is a permanent body that can amend the guidelines each year. Although the data available to it, like all data, are imperfect, experience with these guidelines will lead to additional information and provide a firm empirical basis for revision.

Finally, the guidelines will apply to approximately 90 percent of all cases in the federal courts. Because of time constraints and the nonexistence of statistical information, some offenses that occur infrequently are not considered in this initial set of guidelines. They will, however, be addressed in the near future. Their exclusion from this initial submission does not reflect any judgment about their seriousness. The Commission has also deferred promulgation of guidelines pertaining to fines, probation and other sanctions for organizational defendants, with the exception of antitrust violations. The Commission also expects to address this area in the near future.'.

**Amendments**

*1989 Amendments*

Amendment 67 amended Subpart 4(b) in the first sentence of the first paragraph by striking '* * * that was' and inserting 'of a kind, or to a degree,'; in the second sentence of the last paragraph by striking 'Part H' and inserting 'Part K (Departures)'; and in the third sentence of the last paragraph by striking 'Part H' and inserting 'Part K'.

Amendment 68 amended Subpart 4(b) in the first sentence of the fourth paragraph by striking 'three' and inserting 'two'; in the fourth paragraph by striking the second through eighth sentences as follows:

> 'The first kind, which will most frequently be used, is in effect an interpolation between two adjacent, numerically oriented guideline rules. A specific offense characteristic, for example, might require an increase of four levels for serious bodily injury but two levels for bodily injury. Rather than requiring a court to force middle instances into either the 'serious' or the 'simple' category, the guideline commentary suggests that the court may interpolate and select a midpoint increase of three levels. The Commission has decided to call such an interpolation a 'departure' in light of the legal views that a guideline providing for a range of increases in offense levels may violate the statute's 25 percent rule (though other have presented contrary legal arguments). Since interpolations are technically departures, the courts will have to provide reasons for their selection, and it will be subject to review for 'reasonableness' on appeal. The Commission believes, however, that a simple reference by the court to the 'mid-category' nature of the facts will typically provide sufficient reason. It does not foresee serious practical problems arising out of the application of the appeal provisions to this form of departure.';

in the first sentence of the fifth paragraph by striking 'second' and inserting 'first'; and in the first sentence of the sixth paragraph by striking 'third' and inserting 'second'.

*1990 Amendment*

Amendment 307 amended Subparts 2 through 5 to read as follows:

2. The Statutory Mission

The Sentencing Reform Act of 1984 (Title II of the Comprehensive Crime Control Act of 1984) provides for the development of guidelines that will further the basic purposes of criminal punishment: deterrence, incapacitation, just punishment, and rehabilitation. The Act delegates broad authority to the Commission to review and rationalize the federal sentencing process.

The Act contains detailed instructions as to how this determination should be made, the most important of which directs the Commission to create categories of offense behavior and offender characteristics. An offense behavior category might consist, for example, of 'bank robbery/committed with a gun/$2500 taken.' An offender characteristic category might be 'offender with one prior conviction not resulting in imprisonment.' The Commission is required to prescribe guideline ranges that specify an appropriate sentence for each class of convicted persons determined by coördinating the offense behavior categories with the offender characteristic categories. Where the guidelines call for imprisonment, the range must be narrow: The maximum of the range cannot exceed the minimum by more than the greater of 25 percent or six months. 28 U.S.C. 994(b)(2).

Pursuant to the Act, the sentencing court must select a sentence from within the guideline range. If, however, a particular case presents atypical features, the Act allows the court to depart from the guidelines and sentence outside the prescribed range. In that case, the court must specify reasons for departure. 18 U.S.C. 3553(b). If the court sentences within the guideline range, an appellate court may review the sentence to determine whether the guidelines were correctly applied. If the court departs from the guideline range, an appellate court may review the reasonableness of the departure. 18 U.S.C. 3742. The Act also abolishes parole, and substantially reduces and restructures good behavior adjustments.

The Commission's initial guidelines were submitted to Congress on April 13, 1987. After the prescribed period of Congressional review, the guidelines took effect on November 1, 1987, and apply to all offenses committed on or after that date. The Commission has the authority to submit guideline amendments each year to Congress between the beginning of a regular

Congressional session and May 1. Such amendments automatically take effect 180 days after submission unless a law is enacted to the contrary. 28 U.S.C. 994(p).

The initial sentencing guidelines and policy statements were developed after extensive hearings, deliberation, and consideration of substantial public comment. The Commission emphasizes, however, that it views the guideline-writing process as evolutionary. It expects, and the governing statute anticipates, that continuing research, experience, and analysis will result in modifications and revisions to the guidelines through submission of amendments to Congress. To this end, the Commission is established as a permanent agency to monitor sentencing practices in the federal courts.

3. The Basic Approach (Policy Statement)

To understand the guidelines and their underlying rationale, it is important to focus on the three objectives that Congress sought to achieve in enacting the Sentencing Reform Act of 1984. The Act's basic objective was to enhance the ability of the criminal justice system to combat crime through an effective, fair sentencing system. To achieve this end, Congress first sought honesty in sentencing. It sought to avoid the confusion and implicit deception that arose out of the pre-guidelines sentencing system which required the court to impose an indeterminate sentence of imprisonment and empowered the parole commission to determine how much of the sentence an offender actually would serve in prison. This practice usually resulted in a substantial reduction in the effective length of the sentence imposed, with defendants often serving only about one-third of the sentence imposed by the court.

Second, Congress sought reasonable uniformity in sentencing by narrowing the wide disparity in sentences imposed for similar criminal offenses committed by similar offenders. Third, Congress sought proportionality in sentencing through a system that imposes appropriately different sentences for criminal conduct of differing severity.

*Honesty is easy to achieve:* The abolition of parole makes the sentence imposed by the court the sentence the offender will serve, less approximately fifteen percent for good behavior. There is a tension, however, between the mandate of uniformity and the mandate of proportionality. Simple uniformity—sentencing every offender to five years—destroys proportionality. Having only a few simple categories of crimes would make the guidelines uniform and easy to administer, but might lump together offenses that are different in important respects. For example, a single category for robbery that included armed and unarmed robberies, robberies with and without injuries, robberies of a few dollars and robberies of millions, would be far too broad.

A sentencing system tailored to fit every conceivable wrinkle of each case would quickly become unworkable and seriously compromise the certainty of punishment and its deterrent effect. For example: a bank robber with (or without) a gun, which the robber kept hidden (or brandished), might have frightened (or merely warned), injured seriously (or less seriously), tied up (or simply pushed) a guard, teller, or customer, at night (or at noon), in an effort to obtain money for other crimes (or for other purposes), in the company of a few (or many) other robbers, for the first (or fourth) time.

The list of potentially relevant features of criminal behavior is long; the fact that they can occur in multiple combinations means that the list of possible permutations of factors is virtually endless. The appropriate relationships among these different factors are exceedingly difficult to establish, for they are often context specific. Sentencing courts do not treat the occurrence of a simple bruise identically in all cases, irrespective of whether that bruise occurred in the context of a bank robbery or in the context of a breach of peace. This is so, in part, because the risk that such a harm will occur differs depending on the underlying offense with which it is connected; and also because, in part, the relationship between punishment and multiple harms is not simply additive. The relation varies depending on how much other harm has occurred. Thus, it would not be proper to assign points for each kind of harm and simply add them up, irrespective of context and total amounts.

The larger the number of subcategories of offense and offender characteristics included in the guidelines, the greater the complexity and the less workable the system. Moreover, complex combinations of offense and offender characteristics would apply and interact in unforeseen ways to unforeseen situations, thus failing to cure the unfairness of a simple, broad category system. Finally, and perhaps most importantly, probation officers and courts, in applying a complex system having numerous subcategories, would be required to make a host of decisions regarding whether the underlying facts were sufficient to bring the case within a particular subcategory. The greater the number of decisions required and the greater their complexity, the greater the risk that different courts would apply the guidelines differently to situations that, in fact, are similar, thereby reintroducing the very disparity that the guidelines were designed to reduce.

In view of the arguments, it would have been tempting to retreat to the simple, broad category approach and to grant courts the discretion to select the proper point along a broad sentencing range. Granting such broad discretion, however, would have risked correspondingly broad disparity in sentencing, for different courts may exercise their discretionary powers in different ways. Such an approach would have risked a return to the wide disparity that Congress established the Commission to reduce and would have been contrary to the Commission's mandate set forth in the Sentencing Reform Act of 1984.

In the end, there was no completely satisfying solution to this problem. The Commission had to balance the comparative virtues and vices of broad, simple categorization and detailed, complex subcategorization, and within the constraints established by that balance, minimize the discretionary powers of the sentencing court. Any system will, to a degree, enjoy the benefits and suffer from the drawbacks of each approach.

A philosophical problem arose when the Commission attempted to reconcile the differing perceptions of the purposes of criminal punishment. Most observers of the criminal law agree that the ultimate aim of the law itself, and of punishment in particular, is the control of crime. Beyond this point, however, the consensus seems to break down. Some argue that appropriate punishment should be defined primarily on the basis of the principle of 'just desserts.' Under this principle, punishment should be scaled to the offender's culpability and the resulting harms. Others argue that punishment should be imposed primarily on the basis of practical 'crime control' considerations. This theory calls for sentences that most effectively lessen the likelihood of future crime, either by deterring others or incapacitating the defendant.

Adherents of each of these points of view urged the Commission to choose between them and accord one primacy over the other. As a practical matter, however, this choice was unnecessary because in most sentencing decisions the application of either philosophy will produce the same or similar results.

In its initial set of guidelines, the Commission sought to solve both the practical and philosophical problems of developing a coherent sentencing system by taking an empirical approach that used as a starting point data estimating pre-guidelines sentencing practice. It analyzed data drawn from 10,000 presentence investigations, the differing elements of various crimes as distinguished in substantive criminal statutes, the United States Parole Commission's guidelines and statistics, and data from other relevant sources in order to determine which distinctions were important in pre-guidelines practice. After consideration, the Commission accepted, modified, or rationalized these distinctions.

This empirical approach helped the Commission resolve its practical problem by defining a list of relevant distinctions that, although of considerable length, was short enough to create a manageable set of guidelines. Existing categories are relatively broad and omit distinctions that some may believe important, yet they include most of the major distinctions that statutes and data suggest made a significant difference in sentencing decisions. Relevant distinctions not reflected in the guidelines probably will occur rarely and sentencing courts may take such unusual cases into account by departing from the guidelines.

The Commission's empirical approach also helped resolve its philosophical dilemma. Those who adhere to a just desserts philosophy may concede that the lack of consensus might make it difficult to say exactly what punishment is deserved for a particular crime. Likewise, those who subscribe to a philosophy of crime control may acknowledge that the lack of sufficient data might make it difficult to determine exactly the punishment that will best prevent that crime. Both groups might therefore recognize the wisdom of looking to those distinctions that judges and legislators have, in fact, made over the course of time. These established distinctions are ones that the community believes, or has found over time, to be important from either a just desserts or crime control perspective.

The Commission did not simply copy estimates of pre-guidelines practice as revealed by the data, even though establishing offense values on this basis would help eliminate disparity because the data represent averages. Rather, it departed from the data at different points for various important reasons. Congressional statutes, for example, suggested or required departure, as in the case of the Anti-Drug Abuse Act of 1986 that imposed increased and mandatory minimum sentences. In addition, the data revealed inconsistencies in treatment, such as punishing economic crime less severely than other apparently equivalent behavior.

Despite these policy-oriented departures from pre-guidelines practice, the guidelines represent an approach that begins with, and builds upon, empirical data. The guidelines will not please those who wish the Commission to adopt a single philosophical theory and then work deductively to establish a simple and perfect set of categorizations and distinctions. The guidelines may prove acceptable, however, to those who seek more modest, incremental improvements in the status quo, who believe the best is often the enemy of the good, and who recognize that these guidelines are, as the Act contemplates, but the first step in an evolutionary process. After spending considerable time and resources exploring alternative approaches, the Commission developed these guidelines as a practical effort toward the achievement of a more honest, uniform, equitable, proportional, and therefore effective sentencing system.

### 4. The Guidelines' Resolution of Major Issues (Policy Statement)

The guideline-drafting process required the Commission to resolve a host of important policy questions typically involving rather evenly balanced sets of competing considerations. As an aid to understanding the guidelines, this introduction briefly discusses several of those issues; commentary in the guidelines explains others.

(a) *Real Offense vs. Charge Offense Sentencing.*

One of the most important questions for the Commission to decide was whether to base sentences upon the actual conduct in which the defendant engaged regardless of the charges for which he was indicted or convicted ('real offense' sentencing), or upon the conduct that constitutes the elements of the offense for which the defendant was charged and of which he was convicted ('charge offense' sentencing). A bank robber, for example, might have used a gun, frightened bystanders, taken $50,000, injured a teller, refused to stop when ordered, and raced away damaging property during his escape. A pure real offense system would sentence on the basis of all identifiable conduct. A pure charge offense system would overlook some of the harms that did not constitute statutory elements of the offenses of which the defendant was convicted.

The Commission initially sought to develop a pure real offense system. After all, the pre-guidelines sentencing system was, in a sense, this type of system. The sentencing court and the parole commission took account of the conduct in which the defendant actually engaged, as determined in a presentence report, at the sentencing hearing, or before a parole commission hearing officer. The Commission's initial efforts in this direction, carried out in the spring and early summer of 1986, proved unproductive, mostly for practical reasons. To make such a system work, even to formalize and rationalize the status quo, would have required the Commission to decide precisely which harms to take into account, how to add them up, and what kinds of procedures the courts should use to determine the presence or absence of disputed factual elements. The Commission found no practical way to combine and account for the large number of diverse harms arising in different circumstances; nor did it find a practical way to reconcile the need for a fair adjudicatory procedure with the need for a speedy sentencing process given the potential existence of hosts of adjudicated 'real harm' facts in many typical cases. The effort proposed as a solution to these problems required the use of, for example, quadratic roots and other mathematical operations that the Commission considered too complex to be workable. In the Commission's view, such a system risked return to wide disparity in sentencing practice.

In its initial set of guidelines submitted to Congress in April 1987, the Commission moved closer to a charge offense system. This system, however, does contain a significant number of real offense elements. For one thing, the hundreds of overlapping and duplicative statutory provisions that make up the federal criminal law forced the Commission to write guidelines that are descriptive of generic conduct rather than guidelines that track purely statutory language. For another, the guidelines take account of a number of important, commonly occurring real offense elements such as role in the offense, the presence of a gun, or the amount of money actually taken, through alternative base offense levels, specific offense characteristics, cross references, and adjustments.

The Commission recognized that a charge offense system has drawbacks of its own. One of the most important is the potential it affords prosecutors to influence sentences by increasing or decreasing the number of counts in an indictment. Of course, the defendant's actual conduct (that which the prosecutor can prove in court) imposes a natural limit upon the prosecutor's ability to increase a defendant's sentence. Moreover, the Commission has written its rules for the treatment of multicount convictions with an eye toward eliminating unfair treatment that might flow from count manipulation. For example, the guidelines treat a three-count indictment, each count of which charges sale of 100 grams of heroin or theft of $10,000, the same as a single-count indictment charging sale of 300 grams of heroin or theft of $30,000. Furthermore, a sentencing court may control any inappropriate manipulation of the indictment through use of its departure power. Finally, the Commission will closely monitor charging and plea agreement practices and will make appropriate adjustments should they become necessary.

(b) *Departures*.

The sentencing statute permits a court to depart from a guideline-specified sentence only when it finds 'an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described.' 18 U.S.C. 3553(b). The Commission intends the sentencing courts to treat each guideline as carving out a 'heartland,' a set of typical cases embodying the conduct that each guideline describes. When a court finds an atypical case, one to which a particular guideline linguistically applies but where conduct significantly differs from the norm, the court may consider whether a departure is warranted. Section 5H1.10 (Race, Sex, National Origin, Creed, Religion, and Socio-Economic Status), the third sentence of § 5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse), and the last sentence of § 5K2.12 (Coercion and Duress) list several factors that the court cannot take into account as grounds for departure. With those specific exceptions, however, the Commission does not intend to limit the kinds of factors, whether or not mentioned anywhere else in the guidelines, that could constitute grounds for departure in an unusual case.

The Commission has adopted this departure policy for two reasons. First, it is difficult to prescribe a single set of guidelines that encompasses the vast range of human conduct potentially relevant to a sentencing decision. The Commission also recognizes that the initial set of guidelines need not do so. The Commission is a permanent body, empowered by law to write and rewrite guidelines, with progressive changes, over many years. By monitoring when courts depart from the guidelines and by analyzing their stated reasons for doing so and court decisions with references thereto, the Commission, over time, will be able to refine the guidelines to specify more precisely when departures should and should not be permitted.

Second, the Commission believes that despite the courts' legal freedom to depart from the guidelines, they will not do so very often. This is because the guidelines, offense by offense, seek to take account of those factors that the Commission's data indicate made a significant difference in pre-guidelines sentencing practice. Thus, for example, where the presence of physical injury made an important difference in pre-guidelines sentencing practice (as in the case of robbery or assault), the guidelines specifically include this factor to enhance the sentence. Where the guidelines do not specify an augmentation or diminution, this is generally because the sentencing data did not permit the Commission to conclude that the factor was empirically important in relation to the particular offense. Of course, an important factor (*e.g.*, physical injury) may infrequently occur in connection with a particular crime (*e.g.*, fraud). Such rare occurrences are precisely the type of events that the courts' departure powers were designed to cover—unusual cases outside the range of the more typical offenses for which the guidelines were designed.

It is important to note that the guidelines refer to two different kinds of departure. The first involves instances in which the guidelines provide specific guidance for departure by analogy or by other numerical or non-numerical suggestions. For example, the Commentary to § 2G1.1 (Transportation for the Purpose of Prostitution or Prohibited Sexual Conduct) recommends a downward departure of eight levels where a commercial purpose was not involved. The Commission intends such suggestions as policy guidance for the courts. The Commission expects that most departures will reflect the suggestions and that the courts of appeals may prove more likely to find departures 'unreasonable' where they fall outside suggested levels.

A second type of departure will remain unguided. It may rest upon grounds referred to in Chapter Five, Part K (Departures) or on grounds not mentioned in the guidelines. While Chapter Five, Part K lists factors that the Commission believes may constitute grounds for departure, the list is not exhaustive. The Commission recognizes that there may be other grounds for departure that are not mentioned; it also believes there may be cases in which a departure outside suggested levels is warranted. In its view, however, such cases will be highly infrequent.

(c) *Plea Agreements*.

Nearly ninety percent of all federal criminal cases involve guilty pleas and many of these cases involve some form of plea agreement. Some commentators on early Commission guideline drafts urged the Commission not to attempt any major reforms of the plea agreement process on the grounds that any set of guidelines that threatened to change pre-guidelines practice radically also threatened to make the federal system unmanageable. Others argued that guidelines that failed to control and limit plea agreements would leave untouched a 'loophole' large enough to undo the good that sentencing guidelines would bring.

The Commission decided not to make major changes in plea agreement practices in the initial guidelines, but rather to provide guidance by issuing general policy statements concerning the acceptance of plea agreements in Chapter Six, Part B (Plea Agreements). The rules set forth in Fed. R. Crim. P. 11(e) govern the acceptance or rejection of such agreements. The Commission will collect data on the courts' plea practices and will analyze this information to determine when and why the courts accept or reject plea agreements and whether plea agreement practices are undermining the intent of the Sentencing Reform Act. In light of this information and analysis, the Commission will seek to further regulate the plea agreement process as appropriate. Importantly, if the policy statements relating to plea agreements are followed, circumvention of the Sentencing Reform Act and the guidelines should not occur.

The Commission expects the guidelines to have a positive, rationalizing impact upon plea agreements for two reasons. First, the guidelines create a clear, definite expectation in respect to the sentence that a court will impose if a trial takes place. In the event a prosecutor and defense attorney explore the possibility of a negotiated plea, they will no longer work in the dark. This fact alone should help to reduce irrationality in respect to actual sentencing outcomes. Second, the guidelines create a norm to which courts will likely refer when they decide whether, under Rule 11(e), to accept or to reject a plea agreement or recommendation.

(d) *Probation and Split Sentences.*

The statute provides that the guidelines are to reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense * * *.' 28 U.S.C. 994(j). Under pre-guidelines sentencing practice, courts sentenced to probation an inappropriately high percentage of offenders guilty of certain economic crimes, such as theft, tax evasion, antitrust offenses, insider trading, fraud, and embezzlement, that in the Commission's view are 'serious.'

The Commission's solution to this problem has been to write guidelines that classify as serious many offenses for which probation previously was frequently given and provide for at least a short period of imprisonment in such cases. The Commission concluded that the definite prospect of prison, even though the term may be short, will serve as a significant deterrent, particularly when compared with pre-guidelines practice where probation, not prison, was the norm.

More specifically, the guidelines work as follows in respect to a first offender. For offense levels one through six, the sentencing court may elect to sentence the offender to probation (with or without confinement conditions) or to a prison term. For offense levels seven through ten, the court may substitute probation for a prison term, but the probation must include confinement conditions (community confinement, intermittent confinement, or home detention). For offense levels eleven and twelve, the court must impose at least one-half the minimum confinement sentence in the form of prison confinement, the remainder to be served on supervised release with a condition of community confinement or home detention. The Commission, of course, has not dealt with the single acts of aberrant behavior that still may justify probation at higher offense levels through departures.

(e) *Multi-Count Convictions.*

The Commission, like several state sentencing commissions, has found it particularly difficult to develop guidelines for sentencing defendants convicted of multiple violations of law, each of which makes up a separate count in an indictment. The difficulty is that when a defendant engages in conduct that causes several harms, each additional harm, even if it increases the extent to which punishment is warranted, does not necessarily warrant a proportionate increase in punishment. A defendant who assaults others during a fight, for example, may warrant more punishment if he injures ten people than if he injures one, but his conduct does not necessarily warrant ten times the punishment. If it did, many of the simplest offenses, for reasons that are often fortuitous, would lead to sentences of life imprisonment—sentences that neither just deserts nor crime control theories of punishment would justify.

Several individual guidelines provide special instructions for increasing punishment when the conduct that is the subject of that count involves multiple occurrences or has caused several harms. The guidelines also provide general rules for aggravating punishment in light of multiple harms charged separately in separate counts. These rules may produce occasional anomalies, but normally they will permit an appropriate degree of aggravation of punishment for multiple offenses that are the subjects of separate counts.

These rules are set out in Chapter Three, Part D (Multiple Counts). They essentially provide: (1) When the conduct involves fungible items (*e.g.*, separate drug transactions or thefts of money), the amounts are added and the guidelines apply to the total amount; (2) when nonfungible harms are involved, the offense level for the most serious count is increased (according to a diminishing scale) to reflect the existence of other counts of conviction. The guidelines have been written in order to minimize the possibility that an arbitrary casting of a single transaction into several counts will produce a longer sentence. In addition, the sentencing court will have adequate power to prevent such a result through departures.

(f) *Regulatory Offenses.*

Regulatory statutes, though primarily civil in nature, sometimes contain criminal provisions in respect to particularly harmful activity. Such criminal provisions often describe not only substantive offenses, but also more technical, administratively-related offenses such as failure to keep accurate records or to provide requested information. These statutes pose two problems: first, which criminal regulatory provisions should the Commission initially consider, and second, how should it treat technical or administratively-related criminal violations?

In respect to the first problem, the Commission found that it could not comprehensively treat all regulatory violations in the initial set of guidelines. There are hundreds of such provisions scattered throughout the United States Code. To find all potential violations would involve examination of each individual federal regulation. Because of this practical difficulty, the Commission sought to determine, with the assistance of the Department of Justice and several regulatory agencies, which criminal regulatory offenses were particularly important in light of the need for enforcement of the general regulatory scheme. The Commission addressed these offenses in the initial guidelines.

In respect to the second problem, the Commission has developed a system for treating technical recordkeeping and reporting offenses that divides them into four categories. First, in the simplest of cases, the offender may have failed to fill out a form intentionally, but without knowledge or intent that substantive harm would likely follow. He might fail, for example, to keep an accurate record of toxic substance transport, but that failure may not lead, nor be likely to lead, to the release or improper handling of any toxic substance. Second, the same failure may be accompanied by a significant likelihood that substantive harm will occur; it may make a release of a toxic substance more likely. Third, the same failure may have led to substantive harm. Fourth, the failure may represent an effort to conceal a substantive harm that has occurred.

The structure of a typical guideline for a regulatory offense provides a low base offense level (*e.g.*, 6) aimed at the first type of recordkeeping or reporting offense. Specific offense characteristics designed to reflect substantive harms that do occur in respect to some regulatory offenses, or that are likely to occur, increase the offense level. A specific offense characteristic also provides that a recordkeeping or reporting offense that conceals a substantive offense will have the same offense level as the substantive offense.

(g) *Sentencing Ranges.*

In determining the appropriate sentencing ranges for each offense, the Commission estimated the average sentences served within each category under the pre-guidelines sentencing system. It also examined the sentences specified in federal statutes, in the parole guidelines, and in other relevant, analogous sources. The Commission's Supplementary Report on the Initial Sentencing Guidelines (1987) contains a comparison between estimates of pre-guidelines sentencing practice and sentences under the guidelines.

While the Commission has not considered itself bound by pre-guidelines sentencing practice, it has not attempted to develop an entirely new system of sentencing on the basis of theory alone. Guideline sentences, in many instances, will approximate average pre-guidelines practice and adherence to the guidelines will help to eliminate wide disparity. For example, where a high percentage of persons received probation under pre-guidelines practice, a guideline may include one or more specific offense characteristics in an effort to distinguish those types of defendants who received probation from those who received more severe sentences. In some instances, short sentences of incarceration for all offenders in a category have been substituted for a pre-guidelines sentencing practice of very wide variability in which some defendants received probation while others received several years in prison for the same offense. Moreover, inasmuch as those who pleaded guilty under pre-guidelines practice often received lesser sentences, the guidelines permit the court to impose lesser sentences on those defendants who accept responsibility for their misconduct. For defendants who provide substantial assistance to the government in the investigation or prosecution of others, a downward departure may be warranted.

The Commission has also examined its sentencing ranges in light of their likely impact upon prison population. Specific legislation, such as the Anti-Drug Abuse Act of 1986 and the career offender provisions of the Sentencing Reform Act of 1984 (28 U.S.C. 994(h)), required the Commission to promulgate guidelines that will lead to substantial prison population increases. These increases will occur irrespective of the guidelines. The guidelines themselves, insofar as they reflect policy decisions made by the Commission (rather than legislated mandatory minimum or career offender sentences), are projected to lead to an increase in prison population that computer models, produced by the Commission and the Bureau of Prisons in 1987, estimated at approximately 10 percent over a period of ten years.

(h) *The Sentencing Table.*

The Commission has established a sentencing table that for technical and practical reasons contains 43 levels. Each level in the table prescribes ranges that overlap with the ranges in the preceding and succeeding levels. By overlapping the ranges, the table should discourage unnecessary litigation. Both prosecution and defense will realize that the difference between one level and another will not necessarily make a difference in the sentence that the court imposes. Thus, little purpose will be served in protracted litigation trying to determine, for example, whether $10,000 or $11,000 was obtained as a result of a fraud. At the same time, the levels work to increase a sentence proportionately. A change of six levels roughly doubles the sentence irrespective of the level at which one starts. The guidelines, in keeping with the statutory requirement that the maximum of any range cannot exceed the minimum by more than the greater of 25 percent or six months (28 U.S.C. 994(b)(2)), permit courts to exercise the greatest permissible range of sentencing discretion. The table overlaps offense levels meaningfully, works proportionately, and at the same time preserves the maximum degree of allowable discretion for the court within each level.

Similarly, many of the individual guidelines refer to tables that correlate amounts of money with offense levels. These tables often have many rather than a few levels. Again, the reason is to minimize the likelihood of unnecessary litigation. If a money table were to make only a few distinctions, each distinction would become more important and litigation over which category an offender fell within would become more likely. Where a table has many small monetary distinctions, it minimizes the likelihood of litigation because the precise amount of money involved is of considerably less importance.

5. A Concluding Note

The Commission emphasizes that it drafted the initial guidelines with considerable caution. It examined the many hundreds of criminal statutes in the United States Code. It began with those that were the basis for a significant number of prosecutions and sought to place them in a rational order. It developed additional distinctions relevant to the application of these provisions and it applied sentencing ranges to each resulting category. In doing so, it relied upon pre-guidelines sentencing practice as revealed by its own statistical analyses based on summary reports of some 40,000 convictions, a sample of 10,000 augmented presentence reports, the parole guidelines, and policy judgments.

The Commission recognizes that some will criticize this approach as overly cautious, as representing too little a departure from pre-guidelines sentencing practice. Yet, it will cure wide disparity. The Commission is a permanent body that can amend the guidelines each year. Although the data available to it, like all data, are imperfect, experience with the guidelines will lead to additional information and provide a firm empirical basis for consideration of revisions.

Finally, the guidelines will apply to more than 90 percent of all felony and Class A misdemeanor cases in the federal courts. Because of time constraints and the nonexistence of statistical information, some offenses that occur infrequently are not considered in the guidelines. Their exclusion does not reflect any judgment regarding their seriousness and they will be addressed as the Commission refines the guidelines over time.'.

*1992 Amendment*

Amendment 466 amended Subpart 4(b) in the first paragraph by inserting '§ 5H1.12 (Lack of Guidance as a Youth and Similar Circumstances)' after '§ 5H1.10 (Race, Sex, National Origin, Creed, Religion, and Socio-Economic Status)'.

*1995 Amendment*

Amendment 534 amended Subpart 4(d) in the second sentence of the third paragraph by striking 'six' and inserting 'eight'; and in the third sentence of the third paragraph by striking "seven through" and inserting "nine and".

*1996 Amendment*

Amendment 538 amended Subpart 4(b) in the fourth paragraph by striking the third sentence as follows:

'§ For example, the Commentary to '§ 2G1.1 (Transportation for the Purpose of Prostitution or Prohibited Sexual Conduct) recommends a downward departure of eight levels where a commercial purpose was not involved.'.

*2000 Amendments*

Amendment 602 amended Subpart 4(b) in the fifth sentence of the first paragraph by striking 'and' before 'the last'; and by inserting, and '§ 5K2.19 (Post-Sentencing Rehabilitative Efforts)' after '(Coercion and Duress)'.

Amendment 603 amended Subpart 4(d) by adding an asterisk at the end of the last paragraph after the period; and by adding at the end the following footnote:

* **Note:** Although the Commission had not addressed 'single acts of aberrant behavior' at the time the Introduction to the Guidelines Manual originally was written, it subsequently addressed the issue in Amendment 603, effective November 1, 2000. (See Supplement to Appendix C, Amendment 603.)'.".

**Part VIII: Miscellaneous Amendments**

The Commentary to 1B1.1 captioned "Application Notes" is amended by striking Note 1 in its entirety and inserting the following:

"1. The following are definitions of terms that are used frequently in the guidelines and are of general applicability (except to the extent expressly modified in respect to a particular guideline or policy statement):

(A) 'Abducted' means that a victim was forced to accompany an offender to a different location. For example, a bank robber's forcing a bank teller from the bank into a getaway car would constitute an abduction.

(B) 'Bodily injury' means any significant injury; *e.g.*, an injury that is painful and obvious, or is of a type for which medical attention ordinarily would be sought.

(C) 'Brandished' with reference to a dangerous weapon (including a firearm) means that all or part of the weapon was displayed, or the presence of the weapon was otherwise made known to another person, in order to intimidate that person, regardless of whether the weapon was directly visible to that person. Accordingly, although the dangerous weapon does not have to be directly visible, the weapon must be present.

(D) 'Dangerous weapon' means (i) an instrument capable of inflicting death or serious bodily injury; or (ii) an object that is not an instrument capable of inflicting death or serious bodily injury but (I) closely resembles such an instrument; or (II) the defendant used the object in a manner that created the impression that the object was such an instrument (*e.g.* a defendant wrapped a hand in a towel during a bank robbery to create the appearance of a gun).

(E) 'Departure' means (i) for purposes other than those specified in subdivision (ii), imposition of a sentence outside the applicable guideline range or of a sentence that is otherwise different from the guideline sentence; and (iii) for purposes of 4A1.3 (Departures Based on Inadequacy of Criminal History Category), assignment of a criminal history category other than the otherwise applicable criminal history category, in order to effect a sentence outside the applicable guideline range. 'Depart' means grant a departure.

'Downward departure' means departure that effects a sentence less than a sentence that could be imposed under the applicable guideline range or a sentence that is otherwise less than the guideline sentence. 'Depart downward' means grant a downward departure.

'Upward departure' means departure that effects a sentence greater than a sentence that could be imposed under the applicable guideline range or a sentence that is otherwise greater than the guideline sentence. 'Depart upward' means grant an upward departure.

(F) 'Destructive device' means any article described in 26 U.S.C. 5845(f) (including an explosive, incendiary, or poison gas—(i) bomb, (ii) grenade, (iii) rocket having a propellant charge of more than four ounces, (iv) missile having an explosive or incendiary charge of more than one-quarter ounce, (v) mine, or (vi) device similar to any of the devices described in the preceding clauses).

(G) 'Firearm' means (i) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (ii) the frame or receiver of any such weapon; (iii) any firearm muffler or silencer; or (iv) any destructive device. A weapon, commonly known as a 'BB' or pellet gun, that uses air or carbon dioxide pressure to expel a projectile is a dangerous weapon but not a firearm.

(H) 'Offense' means the offense of conviction and all relevant conduct under § 1B1.3 (Relevant Conduct) unless a different meaning is specified or is otherwise clear from the context. The term 'instant' is used in connection with 'offense,' 'federal offense,' or 'offense of conviction,' as the case may be, to distinguish the violation for which the defendant is being sentenced from a prior or subsequent offense, or from an offense before another court (*e.g.*, an offense before a state court involving the same underlying conduct).

(I) 'Otherwise used' with reference to a dangerous weapon (including a firearm) means that the conduct did not amount to the discharge of a firearm but was more than brandishing, displaying, or possessing a firearm or other dangerous weapon.

(J) 'Permanent or life-threatening bodily injury' means injury involving a substantial risk of death; loss or substantial impairment of the function of a bodily member, organ, or mental faculty that is likely to be permanent; or an obvious disfigurement that is likely to be permanent. In the case of a kidnapping, for example, maltreatment to a life-threatening degree (*e.g.*, by denial of food or medical care) would constitute life-threatening bodily injury.

(K) 'Physically restrained' means the forcible restraint of the victim such as by being tied, bound, or locked up.

(L) 'Serious bodily injury' means injury involving extreme physical pain or the protracted impairment of a function of a bodily member, organ, or mental faculty; or requiring medical intervention such as surgery, hospitalization, or physical rehabilitation. In addition, 'serious bodily injury' is deemed to have occurred if the offense involved conduct constituting criminal sexual abuse under 18 U.S.C. 2241 or 2242 or any similar offense under state law.".

Section 2A4.1(a) is amended to read as follows:

"(a) *Base Offense Level: 32*".

Section 2A4.1(b)(4) is amended by striking subdivision (C) in its entirety.

Section 2A4.1(b)(5) is amended to read as follows:

"(5) If the victim was sexually exploited, increase by 6 levels.".

The Commentary to 2A4.1 captioned "Application Notes" is amended by striking Note 3 in its entirety; and by redesignating Notes 4 and 5 and Notes 3 and 4, respectively.

*Reason for Amendment:* This emergency amendment continues the Commission's work in the area of departures and implements the directive in section 401(m) of the "Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003" or "PROTECT Act," Public Law 108–21. The PROTECT Act was enacted on April 30, 2003, and directs the Commission, not later than 180 days after the enactment of the Act, to promulgate: (1) Appropriate amendments to the sentencing guidelines, policy statements, and official commentary to ensure that the incidence of downward departures is substantially reduced; (2) a policy statement authorizing a downward departure of not more than 4 levels if the Government files a motion for such departure pursuant to an early disposition program authorized by the Attorney General and the United States Attorney for the district in which the court resides ; (3) any other necessary conforming amendments, including a revision of paragraph 4(b) of Part A of Chapter One and a revision of § 5K2.0 (Grounds for Departure). The analysis underlying this amendment will be set forth more fully in a forthcoming report to Congress.

The Commission anticipates that this amendment will substantially reduce the incidence of downward departures by prohibiting several factors as grounds for departure, restricting the availability of certain departures, clarifying when certain departures are appropriate, and limiting the extent of departure permissible for certain offenders. The amendment also reduces the incidence of downward departures generally by restructuring departure provisions throughout the Guidelines Manual to track more closely both the statutory criteria for imposing a sentence outside the guideline sentencing range and the newly enacted statutory requirement that reasons for departure be stated with specificity in the written order of judgment and commitment. *See* 18 U.S.C. 3553 (Imposition of a sentence), 3742(e) (Review of a sentence). The Commission determined that requiring sentencing courts to document reasons for departure with greater specificity complements the findings required of sentencing courts by the PROTECT Act, increases the accountability of sentencing courts for departures by facilitating appellate review, and improves the Commission's ability to monitor departure decisions and refine the guidelines as necessary.

The eight-part amendment makes modifications to § 5K2.0 (Grounds for Departure), § 5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse; Gambling Addiction), § 5H1.6 (Family Ties and Responsibilities), § 5H1.7 (Role in the Offense), 5H1.8 (Criminal History), § 5K2.10 (Victim's Conduct), § 5K2.12 (Coercion and Duress), § 5K2.13 (Diminished Capacity), § 5K2.20 (Aberrant Behavior), § 4A1.3 (Departures Based on Inadequacy of Criminal History Category), and § 6B1.2 (Standards for Acceptance of Plea Agreements). The amendment also creates one new policy statement, § 5K3.1 (Early Disposition Programs), and one new guideline, § 1A1.1 (Authority), among other changes.

Part I of the amendment makes several significant modifications to § 5K2.0 (Grounds for Departure) to limit, and in certain circumstances, to prohibit downward departures. The amendment generally restructures § 5K2.0 to set forth more clearly the standards governing departures in order to facilitate and emphasize the analysis required of the court. The amendment does so by: (1) Integrating throughout the policy statement the statutory language of 18 U.S.C. 3553(b) and 3742(e), as amended by the PROTECT Act, which provide the statutory criteria for sentencing outside the guideline range; (2) adopting, when provided in the policy statement, a uniform qualitative description of the type of case in which a departure may be warranted, the "exceptional case"; (3) restating in the application notes and background commentary to § 5K2.0 longstanding commentary in the Guidelines Manual, which was reaffirmed by the PROTECT Act, that the frequency of departures under § 5K2.0 generally should be rare, and that certain types of departures under § 5K2.0 should be extremely rare; and (4) deleting certain language in the commentary taken from *Koon* v. *United States*, 518 U.S. 81 (1996) that effectively was overruled by the PROTECT Act.

Accordingly, § 5K2.0(a) sets forth the general governing principle that, in cases other than child crimes and sexual offenses, the sentencing court may depart if the court finds pursuant to 18 U.S.C. 3553(b)(1) that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission that, in order to advance the objectives set forth in 18 U.S.C. 3553(a)(2), should result in a sentence different from a sentence within the applicable guideline range.

The amendment also prohibits several grounds for departure, in addition to the departure prohibitions in § 5K2.0 for child crimes and sexual offenses enacted by the PROTECT Act, and other prohibitions elsewhere in the Guidelines Manual. The amendment creates a new subsection, § 5K2.0(d), that clearly lists the forbidden departure grounds. These include several longstanding prohibitions, as well as a number of new prohibitions added by the amendment, specifically: (1) The defendant's acceptance of responsibility; (2) the defendant's aggravating or mitigating role in the offense; (3) the defendant's decision, in itself, to plead guilty to the offense or to enter into a plea agreement with respect to the offense; and (4) the defendant's fulfillment of restitution only to the extent required by law, including the guidelines. The Commission determined that these circumstances are never appropriate grounds for departure.

The amendment also revises § 5K2.0 to restrict the availability of departures based on multiple circumstances, often referred to as a "combination of factors." The Commission determined that heightened criteria are appropriate for cases in which no single offender characteristic or other circumstance independently is sufficient to provide a basis for departure. Under § 5K2.0(c) a departure based on multiple circumstances can be based only on offender characteristics or other circumstances that are identified in the guidelines as permissible grounds for departure. Circumstances unmentioned in the guidelines, therefore, can no longer be used for a departure based on multiple circumstances pursuant to § 5K2.0(c). In addition, in order to support a departure based on a combination of circumstances, each offender characteristic or other circumstance must be present individually to a substantial degree and must make the case exceptional when considered together. Emphasizing the Commission's expectation as to the infrequency of such departures, the accompanying application note retains previously existing guidance and states that departures under § 5K2.0(c) based on a combination of not ordinarily relevant circumstances should occur extremely rarely.

In addition, the amendment clarifies when a departure may be based on a circumstance present to a degree not adequately taken into consideration. Section 5K2.0(a)(3) provides that a departure may be warranted in an exceptional case, even though the circumstance that forms the basis for the departure is taken into consideration, only if the court determines that such circumstance is present to a degree substantially different from that ordinarily involved in that kind of offense.

The amendment also modifies § 5K2.0 in two additional ways to underscore the need for courts to state with specificity their reasons for departure. First, § 5K2.0(e) provides that if the court departs, it shall state, pursuant to 18 U.S.C. 3553(c), as amended by the PROTECT Act, its specific reasons for departure in open court at the time of sentencing and, with limited exception in the case of statements received *in camera*, shall state those factors with specificity in the written judgment and commitment order. Second, Application Note 5 provides that in cases in which the court departs based on reasons set forth in a plea agreement, the court must state the reasons for departure with specificity in the written judgment and commitment order.

Part II of the amendment limits several departure provisions in Chapter Five, Part H (Specific Offender Characteristics). First, the amendment adds a prohibition to § 5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse; Gambling Addiction) against departures based on addiction to gambling and renames the policy statement accordingly. The Commission determined that addiction to gambling is never a relevant ground for departure.

Second, the amendment limits the availability of departures pursuant to § 5H1.6 (Family Ties and Responsibilities) by requiring the court to conduct certain more rigorous analyses. In determining whether a departure is warranted under this policy statement, a new application note instructs the court to consider the seriousness of the offense; the involvement in the offense, if any, of members of the defendant's family; and the danger, if any to members of the defendant's immediate family as a result of the offense.

In addition to considering those factors, the amendment further restricts family ties departures by adding an application note that establishes heightened criteria for departures based on loss of caretaking or financial support. In such cases, the court must find all of the following four circumstances: (1) That a sentence within the applicable guideline range will cause a substantial, direct, and specific loss of essential caretaking or essential financial support to the defendant's family; (2) that such loss exceeds the harm ordinarily incident to incarceration; (3) that there are no effective remedial or ameliorative programs reasonably available, making the defendant's caretaking or financial support irreplaceable to the defendant's family; and (4) that the departure effectively will address the loss of caretaking or financial support. The Commission determined that these heightened criteria are appropriate and necessary in order to distinguish hardship or suffering that is ordinarily incident to incarceration from that which is exceptional.

The amendment also eliminates community ties as a separate ground for departure and renames § 5H1.6 accordingly.

Third, the amendment makes conforming modifications to § 5H1.7 (Role in the Offense), reiterating that a defendant's role in the offense is not a basis for departure, and to § 5H1.8 (Criminal History), providing that the only grounds for departure based on the defendant's criminal history are set forth in § 4A1.3 (Departures Based on Inadequacy of Criminal History Category).

Part III of the amendment limits several departure provisions in Chapter Five, Part K (Departures). First, the amendment adds a factor to § 5K2.10 (Victim's Conduct) that the court should consider when determining whether a departure is warranted based on victim's conduct. The amendment provides that, in addition to five previously existing factors, the court should consider the proportionality and reasonableness of the defendant's response to the victim's provocation.

Second, the amendment adds a similar factor to § 5K2.12 (Coercion and Duress). The amendment provides that the extent of a departure based on coercion and duress ordinarily should depend on several considerations, including the proportionality of the defendant's actions to the seriousness of the coercion, blackmail, or duress involved.

Third, the amendment limits the availability of departures pursuant to § 5K2.13 (Diminished Capacity) by adding a causation element. The amendment provides that in order to receive a departure for diminished capacity, the significantly reduced mental capacity must have contributed substantially to the commission of the offense. The amendment similarly limits the extent of departure by stating that the extent of the departure should reflect the extent to which the reduced mental capacity contributed to the commission of the offense.

Fourth, the amendment significantly restructures § 5K2.20 (Aberrant Behavior) and further restricts the availability of departures based on aberrant behavior. The Commission promulgated § 5K2.20 effective November 1, 2000, in order to resolve a longstanding circuit conflict and more properly define when a departure based on aberrant behavior may be warranted. *See* Appendix C, amendment 603. A departure based on aberrant behavior may be warranted only if the defendant committed a single criminal occurrence or single criminal transaction that (1) was without significant planning; (2) was of limited duration; and (3) represents a marked deviation by the defendant from an otherwise law-abiding life.

The amendment provides greater emphasis to these strict requirements by moving them from an application note to the body of the policy statement. The amendment also gives the court greater guidance in applying these requirements with a new application note that clarifies that repetitious or significant, planned behavior does not meet the requirements for receiving a departure under § 5K2.20. A fraud scheme, for example, generally would be prohibited from receiving a departure pursuant to § 5K2.20 because such a scheme usually involves repetitive acts, rather than a single occurrence or single criminal transaction, as well as significant planning.

The amendment also further restricts the availability of departures based on aberrant behavior by adding several strict prohibitions to the list that has existed in § 5K2.20 since its initial promulgation. Prior to this amendment, § 5K2.20 prohibited the court from departing based on aberrant behavior if (1) The offense involved serious bodily injury or death; (2) the defendant discharged a firearm or otherwise used a firearm or a dangerous weapon; (3) the instant offense of conviction is a serious drug trafficking offense; (4) the defendant has more than one criminal history point, as determined under Chapter Four (Criminal History and Criminal Livelihood); or (5) the defendant has a prior federal, or state, felony conviction, regardless of whether the conviction is countable under Chapter Four.

The amendment gives greater prominence to those previously existing prohibitions and expands them in significant ways. The amendment eliminates defendants who have any significant prior criminal behavior from consideration for a departure pursuant to § 5K2.20, regardless of whether such behavior is countable under Chapter Four, and even if such behavior is not a state or federal felony. In addition, the amendment expands the class of drug trafficking defendants prohibited from consideration for a departure pursuant to § 5K2.20 by expanding the definition of "serious drug trafficking offense." Specifically, the amendment expands the definition of "serious drug trafficking offense" in the accompanying application note to include any controlled substance offense under title 21, United States Code, other than simple possession under 21 U.S.C. 844, that provides a mandatory minimum term of imprisonment of five years or greater, regardless of whether the defendant meets the criteria of § 5C1.2 (Limitation on Applicability of Statutory Mandatory Minimum Sentences in Certain Cases). Prior to this amendment, only drug trafficking defendants who were subject to such mandatory minimum penalties and who did not meet the criteria set forth in § 5C1.2 were precluded categorically from consideration for a departure under § 5K2.20.

Part IV of the amendment substantially restructures § 4A1.3 (Departures Based on Inadequacy of Criminal History Category) to set forth more clearly the standards governing departures based on criminal history, to prohibit and limit the extent of departures based on criminal history for certain offenders with significant criminal history, and to require written specification of the basis for a criminal history departure.

Section 4A1.3(a) provides that an upward departure may be warranted if reliable information indicates that the defendant's criminal history category substantially under-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes.

Section 4A1.3(a) also more clearly sets forth previously existing guidance regarding determination of the extent of an upward departure based on criminal history. Similarly, § 4A1.3(b) provides that a downward departure may be warranted if reliable information indicates that the defendant's criminal history category substantially over-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes.

The amendment, however, adds several prohibitions and limitations to the availability of downward departures based on criminal history. It prohibits a downward departure based on § 4A1.3(b) if the defendant is an armed career criminal within the meaning of § 4B1.3 (Armed Career Criminal) or a repeat and dangerous sex offender against minors within the meaning of § 4B1.5 (Repeat and Dangerous Sex Offender Against Minors). The Commission determined that such offenders should never receive a criminal history-based downward departure.

Section 4A1.3(b) reiterates the longstanding prohibition against a departure below the lower limit of the applicable guideline range for Criminal History Category I.

Section 4A1.3(b) also contains certain limitations on the extent of departure available under this provision. Specifically, a downward departure pursuant to this section for a career offender within the meaning of § 4B1.1 (Career Offender) may not exceed one criminal history category.

In addition, the amendment provides that a defendant whose criminal history category is Category I after receipt of a downward departure under § 4A1.3(b) does not meet the criterion of subsection (a)(1) of § 5C1.2 if, before receipt of the departure, the defendant had more than one criminal history point under § 4A1.1 (Criminal History Category). Thus, a departure to Category I cannot qualify an otherwise ineligible defendant for relief from an applicable mandatory minimum sentence under § 5C1.2, which is consistent with case law.

The amendment adds a new subsection, § 4A1.3(c), that requires the court, in departing based on criminal history, to set forth in writing the specific reasons why the applicable criminal history category under-represents or over-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes. This specificity requirement is consistent with the PROTECT Act and is intended to facilitate both the necessary statutory and guideline departure analysis, as well as to improve the Commission's ability to refine the criminal history guidelines in light of criminal history departure decisions.

The amendment also makes conforming modifications to § 4A1.1 and § 5C1.2.

Part V of the amendment implements the directive at section 401(m)(2)(B) of the PROTECT Act by adding a new policy statement at § 5K3.1 entitled Early Disposition Programs. The provision restates the language contained in the directive and provides that, upon motion of the Government, the court may depart downward not more than 4 levels pursuant to an early disposition program authorized by the Attorney General of the United States and the United States Attorney for the district in which the court resides. The Commission determined that implementing the directive in this manner is appropriate at this time, pending further study and monitoring of the implementation of early disposition programs.

Part VI of the amendment revises subsections (b) and (c) of § 6B1.2 (Standards for Acceptance of Plea Agreements) to require greater specificity in the sentencing documentation in a case involving a departure either recommended or agreed to in a Rule 11(c)(1)(B) or Rule 11(c)(1)(C) plea agreement. Specifically, if the court accepts such a plea agreement, and the recommended or agreed to sentence departs from the applicable guideline range for justifiable reasons, the amendment requires the court to set forth specifically those reasons in writing in the statement of reasons or judgment and commitment order. This specificity requirement is consistent with the PROTECT Act and is intended to facilitate the necessary statutory and guideline departure analysis, as well as to improve the Commission's ability to understand the underlying reasons for departures in cases involving plea agreements.

Part VII of the amendment creates a new guideline, 1A1.1 (Authority), that clearly sets forth the Commission's authority to promulgate guidelines, policy statements, and commentary and implements the Protect Act directive requiring conforming amendments to paragraph 4(b) of Part A of Chapter One. In addition, the amendment moves *in toto* Part A of Chapter One, as in effect on November 1, 1987, to the commentary as a historical note. Part A of Chapter One was an introduction to the Guidelines Manual that explained a number of policy decisions made by the Commission when it promulgated the initial set of guidelines. This introduction was amended occasionally between 1987 and 2003. The Commission determined that in order to preserve its historical significance and context, the introduction should be returned to its original form and placed in a historical note. The Commission encourages review of this material. The amendment also incorporates relevant portions of paragraph 4(b) of Part A of the former introduction regarding departures in the background commentary to § 5K2.0.

Part VII of the amendment amends § 1B1.1 (Application Instructions) to provide uniform definitions of departure, upward departure, and downward departure.

The amendment also makes technical amendments to § 2A4.1 (Kidnapping, Abduction, Unlawful Restraint).

This amendment complements other significant policy initiatives affecting sentencing, including the statutory changes in sentencing law and guideline changes directly made by the PROTECT Act, and recent policies implemented by the Department of Justice. The Commission believes that these general policy changes, working together, will substantially reduce the incidence of downward departures. In addition to the significant modifications made by this amendment, the Commission has identified several aspects of the guidelines affecting departures that it intends to continue studying during the current amendment cycle and beyond, including aberrant behavior, criminal history, immigration, early disposition, or "fast track," programs, and collateral consequences, among others.

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## Part III

## Department of Housing and Urban Development

**Notice of Funding Availability for Revitalization of Severely Distressed Public Housing; HOPE VI Revitalization and Demolition Grants, Fiscal Year 2003; Notice**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4861–N–01]**

## Notice of Funding Availability for Revitalization of Severely Distressed Public Housing; HOPE VI Revitalization and Demolition Grants, Fiscal Year 2003

**AGENCY:** Office of Public and Indian Housing, HUD.

**ACTION:** Notice of funding availability (NOFA).

**SUMMARY:** This NOFA announces the availability of $574 million for the HOPE VI Program. Of this amount, approximately $447.8 million in FY 2003 funds are available for the HOPE VI Revitalization Program and $40 million for the HOPE VI Demolition Program. The remaining funds will be made available for other purposes including Neighborhood Networks, technical assistance and Housing Choice Voucher Assistance.

### General Section

The General Section of the HOPE VI NOFA contains information that applies to both the HOPE VI Revitalization and Demolition Programs. Detailed information on the specific guidance for each of these programs is included in separate sections of this NOFA. Unless otherwise noted, citations refer to the General Section.

*I. Program Overview*

(A) Purpose of the Program. In accordance with section 24(a) of the United States Housing Act of 1937 (1937 Act), the purpose of HOPE VI Revitalization grants is to assist public housing agencies (PHAs) to:

(1) Improve the living environment for public housing residents of severely distressed public housing projects through the demolition, rehabilitation, reconfiguration, or replacement of obsolete public housing projects (or portions thereof);

(2) Revitalize sites (including remaining public housing dwelling units) on which such public housing projects are located and contribute to the improvement of the surrounding neighborhood;

(3) Provide housing that will avoid or decrease the concentration of very low-income families; and

(4) Build sustainable communities.

(B) Available Funds. Approximately $447.8 million for HOPE VI Revitalization grants and $40 million for HOPE VI Demolition grants, in accordance with Section II below.

(C) Eligible Applicants. Public Housing Authorities that have severely distressed housing in their inventory and are otherwise in conformance with the threshold requirements provided in Section III of this NOFA. PHAs that only administer Housing Choice Voucher (Section 8, HCV) Programs and Tribal PHAs and Tribally-Designated Housing Entities are not eligible to apply.

(D) Application Deadline. Revitalization grant applications are due on January 19, 2004, as described in Section III(B) of this NOFA. Demolition grant applications are due on February 18, 2004, as described in Section III(B) of this NOFA.

(E) Authority. (1) The funding authority for HOPE VI Revitalization and Demolition grants under this HOPE VI NOFA is provided by the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7, approved on February 20, 2003) under the heading "Revitalization of Severely Distressed Public Housing (HOPE VI)."

(2) The program authority for the HOPE VI Program is section 24 of the U.S. Housing Act of 1937 (42 U.S.C. 1437v), as amended by section 215 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 2003 (Pub. L. 108–7, approved February 22, 2003).

*II. Allocation of HOPE VI Funds*

| Type of assistance | Allocation of funds (approximate) | Funds available for award in this HOPE VI NOFA (approximate) |
|---|---|---|
| Revitalization Grants | $447,750,000 | $447,750,000 |
| Demolition Grants | 40,000,000 | 40,000,000 |
| Neighborhood Networks | 5,000,000 | |
| Technical Assistance | 6,250,000 | |
| Housing Choice Voucher Assistance | 75,000,000 | |
| Total | 574,000,000 | 487,750,000 |

(A) Revitalization Grants. Approximately $447.8 million of the FY 2003 HOPE VI appropriation has been allocated to fund HOPE VI Revitalization grants and will be awarded in accordance with this HOPE VI NOFA.

(B) Demolition Grants. Approximately $40 million of the FY 2003 HOPE VI appropriation has been allocated to fund HOPE VI Demolition grants and will be awarded in accordance with this HOPE VI NOFA.

(C) Neighborhood Networks. The FY 2003 appropriation for HOPE VI allocated $5 million for a Neighborhood Networks initiative for activities authorized in section 24(d)(1)(G) of the Act, which provides for the establishment and operation of computer centers in public housing for the purpose of enhancing the self-sufficiency, employability, and economic self-reliance of public housing residents by providing them with onsite computer access and training resources. The availability of these funds will be announced in a separate NOFA and, in accordance with the appropriation, they will be awarded to PHAs on a competitive basis. PHAs that receive HOPE VI Revitalization grant funds under this NOFA are required to establish Neighborhood Networks and may use funds awarded under this NOFA for this purpose.

(D) Technical Assistance. The FY 2003 appropriation for HOPE VI allocated $6.25 million to provide technical assistance and contract expertise in the HOPE VI program, to be provided directly or indirectly by grants, contracts, or cooperative agreements, including training and cost of necessary travel for participants in such training, by or to officials and employees of HUD and of PHAs, and to residents. The Office of Public Housing Investments will administer technical assistance funds.

(E) Housing Choice Voucher Assistance. The cost of Housing Choice Voucher (HCV) assistance that will be provided to FY 2003 HOPE VI Revitalization and Demolition grantees will come from the FY 2003 HOPE VI appropriation. Approximately $75 million will be allocated for such assistance. If this amount is more than the amount necessary, the remaining funds will be used for eligible activities under Section 24 of the Act and made available for obligation before September 30, 2004.

(1) If you anticipate that you will need HCV assistance in order to carry out necessary relocation in conjunction with proposed revitalization during FY 2004, your application must include the number of vouchers you will need, both in total and in FY 2004, and a HCV application.

(2) If you will need HCV assistance in fiscal years beyond FY 2004 for revitalization or demolition that is being carried out in phases, or if you have unused Housing Choice Vouchers that are available to be used for HOPE VI-related relocation in FY 2003 but will need more for subsequent years, you must request additional vouchers only as needed during the appropriate fiscal years.

(3) HCV assistance cannot be awarded or used to relocate residents from units that are to be demolished until HUD has approved those units for demolition.

(4) If you have previously received HCV assistance to relocate residents from the targeted severely distressed units, you may still apply for a HOPE VI Revitalization grant to physically replace those same units, or a HOPE VI Demolition Grant to demolish the units without replacement.

(5) You may request HCV assistance for the relocation of families who intend to move back to the site upon completion of the demolition and revitalization of the severely distressed project. Such families are not required to move back to the site if they prefer to keep the HCV assistance after revitalization activities are completed.

(6) You may request HCV assistance for all units covered under a HOPE VI Revitalization or Demolition application to relocate residents from units that will not be replaced with hard units.

(7) Housing Choice Vouchers are available as replacement units for all units that will be demolished, sold, or otherwise disposed of at the severely distressed project(s), minus the number of HOPE VI-eligible replacement units otherwise to be provided under section 24(d)(1)(J) in connection with said project.

(8) In accordance with Section III(D)(8) of the Revitalization Section of this NOFA, to the extent that you need Housing Choice Vouchers for relocation purposes in connection with HOPE VI grant funds under this NOFA, in an amount that exceeds the number of units to be demolished, sold, or otherwise disposed of at the severely distressed project, you should apply for Housing Choice Vouchers in accordance with the separate funding notices to be issued by HUD.

(9) You must have a 97 percent lease-up rate or budget authority utilization rate for your current voucher program in order not to have your requested number of relocation/replacement vouchers reduced by HUD.

(F) HUD will not use any funds from this HOPE VI NOFA to fund any non-selected HOPE VI Revitalization or Demolition applications submitted in previous years. Only applications submitted under this FY 2003 HOPE VI NOFA will be considered for funding.

### *III. Application Submission Information*

### (A) Applications

(1) The HOPE VI Revitalization application and the HOPE VI Demolition application are appended to this NOFA. Each provides explicit, specific instructions as to the format and contents of your HOPE VI application. Your application must conform to the requirements of this NOFA and follow the format described in the application. The applications are designed to guide you through the application process and ensure that your application addresses all of the requirements of this NOFA. Please note that if there is a discrepancy between information provided in the application and the information provided in the NOFA, the information in the NOFA prevails.

(2) The HOPE VI Revitalization application and the HOPE VI Demolition application will be available from the HOPE VI Web site at *www.hud.gov/hopevi* and the HUD home page at *www.hud.gov/grants*. They will not be made available in hardcopy form.

(3) Signatures. Unless otherwise indicated, the Executive Director of the applicant PHA, or his or her designate, must sign each form or certification, whether part of an Attachment or a Standard Certification. Signatures need not be original in the copy version(s) of the applications.

### (B) Application Submission Timeframes

(1) Revitalization Applications. Revitalization grant applications are due at HUD Headquarters on January 19, 2004.

(2) Demolition Applications. Demolition grant applications will only be accepted from January 5, 2004, through February 18, 2004. Applications received before January 5, 2004, will be returned to the applicant and will not be considered unless resubmitted on or after January 5, 2004, through February 18, 2004. Applications submitted outside of this timeframe will not be reviewed by HUD and will not be eligible for funding.

(3) These application deadlines are firm. Your application(s) must arrive at HUD by 5:15 p.m. on the due date. If you mail or give your application to an overnight carrier on the due date and it does not arrive by 5:15 p.m. on the due date, your application will not be considered. Submit your application early to avoid missing the deadline and being disqualified by unanticipated delays or other related problems.

### (C) Application Delivery

(1) Revitalization Applications. Send the original and one copy of your completed application to Mr. Milan Ozdinec, Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410–5000. Please make sure that you note the room number. The correct room number is very important to ensure that your application is not misdirected.

(2) Demolition Applications. Send the original of your completed application to Mr. Milan Ozdinec, Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410–5000. Please make sure that you note the room number.

(3) Applications Sent by Overnight Delivery. It is strongly recommended that you send your application by an overnight carrier, at least two days before the application due date. You may use only DHL, Falcon Carrier, FedEx, United Parcel Service (UPS), or the U.S. Postal Service (USPS), as they are the only carriers accepted into the HUD building without an escort. Delivery by these services must be made during HUD's Headquarters business hours, between 8:45 a.m. and 5:15 p.m., eastern time, Monday to Friday. If these companies do not serve your area, you must submit your application via USPS.

(4) Hand Carried Applications. Due to new security measures, HUD will no longer accept hand-carried applications.

(5) You must send one copy of your application (Revitalization and/or Demolition) to your HUD Field Office. The application sent to Headquarters will be the one that must meet the deadline. If the HUD Field Office receives an application on time, but the application is not received on time at Headquarters, it will not be considered.

(6) HUD will not accept for review and evaluation any applications sent by facsimile (fax). Also, do not submit resumes or videos.

(D) Technical Assistance

(1) Before the application due date, HUD staff will be available to provide you with general guidance and technical assistance. HUD staff, however, is not permitted to assist in preparing your application. If you have a question or need a clarification, you may call, fax, or write Mr. Milan Ozdinec, Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410–5000; telephone (202) 401–8812; fax (202) 401–2370 (these are not toll free numbers). Persons with hearing- or speech-impairments may access this telephone number via text telephone (TTY) by calling the toll-free Federal Information Relay Service at (800) 877–8339.

(2) Frequently asked questions, clarifications, any technical corrections to the NOFA, and all materials related to this NOFA will be posted to the HUD home page at *www.hud.gov/offices/adm/grants/otherhud.cfm*, and on the HOPE VI Web site at *www.hud.gov/hopevi*. Any technical corrections will also be published in the **Federal Register** and posted to the above Web sites. Applicants are responsible for monitoring these sites during the application preparation period.

*IV. Severe Distress of Targeted Public Housing*

(A) *Threshold. Severe Distress.* (1) The public housing project or building in a project targeted by a HOPE VI Revitalization or Demolition application must be severely distressed. In accordance with section 24(j)(2) of the 1937 Act, the term "severely distressed public housing" means a public housing project (or building in a project):

(a) That:

(i) Requires major redesign, reconstruction or redevelopment, or partial or total demolition, to correct serious deficiencies in the original design (including inappropriately high population density), deferred maintenance, physical deterioration or obsolescence of major systems, and other deficiencies in the physical plant of the project;

(ii) Is a significant contributing factor to the physical decline of, and disinvestment by public and private entities in, the surrounding neighborhood;

(iii) (A) Is occupied predominantly by families who are very low-income families with children, are unemployed, and dependent on various forms of public assistance; or (B) has high rates of vandalism and criminal activity (including drug-related criminal activity) in comparison to other housing in the area;

(iv) Cannot be revitalized through assistance under other programs, such as the Capital and Operating Funds Programs for public housing under the Act, or the programs under sections 9 and 14 of the 1937 Act (as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, approved October 21, 1998, referred to as the Public Housing Reform Act)), because of cost constraints and inadequacy of available amounts; and

(v) In the case of individual buildings, is in the Secretary's determination sufficiently separable from the remainder of the project of which the building is part to make use of the building feasible for purposes of section 24 of the 1937 Act; or

(b) That was a project described in Section IV(A)(1)(a) that has been legally vacated or demolished, but for which HUD has not yet provided replacement housing assistance (other than tenant-based assistance).

*V. Fair Housing and Equal Opportunity*

(A) *Threshold. Compliance with Fair Housing and Civil Rights Laws.* (1) All applicants and their subrecipients must comply with all Fair Housing and Civil Rights laws, statutes, regulations, and Executive Orders as enumerated in 24 CFR 5.105(a), as applicable.

(2) As of the HOPE VI application due date, if you:

(a) Have been charged with a systemic violation of the Fair Housing Act alleging ongoing discrimination;

(b) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an on-going pattern or practice of discrimination; or

(c) Have received a letter of non-compliance findings, identifying on-going or systemic noncompliance, under Title VI of the Civil Rights Act, section 504 of the Rehabilitation Act, or section 109 of the Housing and Community Development Act; and if the charge, lawsuit, or letter of findings has not been resolved to HUD's satisfaction before the application deadline stated in the NOFA, you may not apply for assistance under this NOFA. HUD will not rate and rank your application.

(3) HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of on-going discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings. Examples of actions that may be taken prior to the application deadline to resolve the charge, lawsuit, or letter of findings, include but are not limited to:

(a) A voluntary compliance agreement signed by all parties in response to the letter of findings;

(b) A HUD-approved conciliation agreement signed by all parties;

(c) A consent order or consent decree; or

(d) A judicial ruling or a HUD Administrative Law Judge's decision that exonerates the respondent of any allegations of discrimination.

(B) *Threshold. Desegregation Orders.* You must be in full compliance with any desegregation or other court order and Voluntary Compliance Agreements related to Fair Housing (*e.g.*, Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and section 504 of the Rehabilitation Act of 1973) that affects your public housing program and that is in effect on the date of application submission.

(C) *Additional Nondiscrimination Requirements.* You and your subrecipients must comply with:

(1) Title IX of the Education Amendments Act of 1972.

(2) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*)

(D) *Ensuring the Participation of Disadvantaged Firms.* The Department is committed to ensuring that small businesses, small disadvantaged businesses, minority firms, women's business enterprises, and labor surplus area firms (firms that pursue business development in areas designated as having high unemployment; see *http://www.uses.doleta.gov/lsa.asp* for more information) participate fully in HUD's direct contracting and in contracting opportunities generated by HUD grant funds. Too often, these businesses still experience difficulty accessing information and successfully bidding on Federal contracts. HUD regulations at 24 CFR 85.36(e) require recipients of assistance (grantees and subgrantees) to take all necessary affirmative steps in contracting for purchase of goods or services to assure that these disadvantaged firms are used when possible. Affirmative steps include:

(1) Placing disadvantaged firms on solicitation lists;

(2) Assuring that disadvantaged firms are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by disadvantaged firms;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by disadvantaged firms;

(5) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in Sections (1) through (5) above.

(E) HOPE VI grantees must comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Economic Opportunities for Low- and Very Low-Income Persons in Connection with Assisted Projects) and its implementing regulations at 24 CFR part 135. Information about section 3 can be found at HUD's section 3 Web site at *www.hud.gov/fhe/sec3over.html.*

### *VI. Grant Implementation Requirements*

(A) Conflict of Interest

(1) *Prohibition.* In addition to the conflict of interest requirements in 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of a Grantee and who exercises or has exercised any functions or responsibilities with respect to activities assisted under a HOPE VI Grant, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(2) *HUD-Approved Exception.*

(a) *Standard.* HUD may grant an exception to the prohibition in Section (1) above on a case-by-case basis when it determines that such an exception will serve to further the purposes of HOPE VI and its effective and efficient administration.

(b) *Procedure.* HUD will consider granting an exception only after the Grantee has provided a disclosure of the nature of the conflict, accompanied by:

(i) An assurance that there has been public disclosure of the conflict;

(ii) A description of how the public disclosure was made; and

(iii) An opinion of the Grantee's attorney that the interest for which the exception is sought does not violate state or local laws.

(c) *Consideration of Relevant Factors.* In determining whether to grant a requested exception under Section (b) above, HUD will consider the cumulative effect of the following factors, where applicable:

(i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the Revitalization Plan and/or Demolition Activities that would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the person affected is a member of a group or class intended to be the beneficiaries of the Revitalization Plan and/or Demolition Plan and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(iv) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process, with respect to the specific activity in question;

(v) Whether the interest or benefit was present before the affected person was in a position as described in Section (iii) above;

(vi) Whether undue hardship will result either to the Grantee or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(vii) Any other relevant considerations.

(B) *Written Code of Conduct.* Entities subject to 24 CFR parts 84 and 85 are required to develop and maintain a written code of conduct (see sections 84.42 and 85.36(b)(3)). Your Code of Conduct must: prohibit real and apparent conflicts of interest that may arise among officers, employees, or agents; prohibit the solicitation and acceptance of gifts or gratuities by your officers, employees, and agents for their personal benefit in excess of minimal value; and outline administrative and disciplinary actions available to remedy violations of such standards. If awarded assistance under this NOFA, you will be required, prior to entering into an agreement with HUD, to submit a copy of your Code of Conduct and describe the methods you will use to ensure that all officers, employees, and agents of your organization are aware of your Code of Conduct. Failure to meet the requirement for a Code of Conduct will prohibit you from receiving an award of funds from HUD.

(C) *OMB Circulars and Administrative Requirements.* You must comply with the following administrative requirements related to the expenditure of Federal funds. OMB Circulars can be found at *www.whitehouse.gov/omb/circulars/index.html.* Copies of the OMB Circulars may be obtained from EOP Publications, Room 2200, New Executive Office Building, Washington, DC 20503, telephone (202) 395–7332 (this is not a toll free number). The Code of Federal Regulations can be found at *www.access.gpo.gov/nara/cfr/index.html.*

(1) Administrative requirements applicable to PHAs are:

(a) 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments), as modified by 24 CFR 941 or successor part, subpart F, relating to the procurement of partners in mixed finance developments.

(b) OMB Circular A–87 (Cost Principles for State, Local, and Indian Tribal Governments);

(c) 24 CFR 85.26 (audit requirements).

(2) Administrative requirements applicable to non-profit organizations are:

(a) 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations);

(b) OMB Circular A–122 (Cost Principles for Non-Profit Organizations);

(c) 24 CFR 84.26 (audit requirements).

(3) Administrative requirements applicable to for profit organizations are:

(a) 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations);

(b) 48 CFR part 31 (contract cost principles and procedures);

(c) 24 CFR 84.26 (audit requirements).

(D) *Labor Standards.* The following standards must be implemented as appropriate in regards to HOPE VI grants.

(1) Labor Standards.

(a) Davis-Bacon wage rates apply to development of any public housing rental units or homeownership units developed with HOPE VI grant funds and to demolition followed by construction on the site. Davis-Bacon rates are "prevailing" minimum wage rates set by the Secretary of Labor that all laborers and mechanics employed in the development, including rehabilitation other than nonroutine maintenance of a public housing project must be paid, as set forth in a wage determination that must be obtained by the PHA prior to bidding on each construction contract. The wage determination and provisions requiring payment of these wage rates must be included in the construction contract.

(b) HUD-determined wage rates apply to:

(i) Operation (including nonroutine maintenance) of revitalized housing, and

(ii) Demolition followed only by filling in the site and establishing a lawn.

(2) Exclusions. Under section 12(b) of the 1937 Act, wage rate requirements do not apply to individuals who:

(a) Perform services for which they volunteered;

(b) Do not receive compensation for those services or are paid expenses, reasonable benefits, or a nominal fee for the services; and

(c) Are not otherwise employed in the work involved (24 CFR part 70).

(3) If other Federal programs are used in connection with your HOPE VI activities, labor standards requirements apply to the extent required by the other Federal programs on portions of the project that are not subject to Davis-Bacon rates under the 1937 Act.

(E) *Lead-Based Paint.* You must comply with lead-based paint evaluation and reduction requirements as provided for under the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*). You must also comply with regulations at 24 CFR part 35, 24 CFR 965.701, and 24 CFR 968.110(k), as they may be amended or revised from time to time. Unless otherwise provided, you will be responsible for lead-based paint evaluation and reduction activities. The National Lead Information Hotline is 1–800–424–5323.

(F) *Internet Access.* You must have access to the Internet and provide HUD with e-mail addresses of key staff and contact people.

### *VII. Environmental Review*

(A) *Environmental Review.* HUD notification that you have been selected to receive a HOPE VI grant constitutes only preliminary approval. Grant funds may not be released until the responsible entity completes an environmental review and you submit and obtain HUD approval of a request for release of funds and the responsible entity's environmental certification in accordance with 24 CFR part 58 and Section VII of this NOFA (or HUD has completed an environmental review under 24 CFR part 50 where HUD has determined to do the environmental review). Revitalization grantees are subject to additional requirements found at Section XVII of the Revitalization Section of this NOFA.

(B) If you are selected for funding and an environmental review has not been conducted on the targeted site, the responsible entity, as defined in 24 CFR 58.2(a)(7), must assume the environmental review responsibilities for projects being funded by HOPE VI. If you object to the responsible entity conducting the environmental review, on the basis of performance, timing, or compatibility of objectives, HUD will review the facts and determine who will perform the environmental review. At any time, HUD may reject the use of a responsible entity to conduct the environmental review in a particular case on the basis of performance, timing, or compatibility of objectives, or in accordance with 24 CFR 58.77(d)(1). If a responsible entity objects to performing an environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50. You must provide any documentation to the responsible entity (or HUD, where applicable) that is needed to perform the environmental review.

(C) If you are selected for funding, you must have a Phase I environmental site assessment completed in accordance with the American Society for Testing and Material (ASTM) Standards E 1527–900, as amended, for each affected site. A Phase I assessment is required whether the environmental review is completed under 24 CFR part 50 or 24 CFR part 58. The results of the Phase I assessment must be included in the documents that must be provided to the responsible entity (or HUD) for the environmental review. If the Phase I assessment recognizes environmental concerns or if the results are inconclusive, a Phase II environmental site assessment will be required.

(D) You may not undertake any actions with respect to the project that are choice-limiting or could have environmentally adverse effects, including demolishing, acquiring, rehabilitating, converting, leasing, repairing, or constructing property proposed to be assisted under this NOFA, and you may not commit or expend HUD or local funds for these activities, until HUD has approved a Request for Release of Funds following a responsible entity's environmental review under 24 CFR part 58, or until HUD has completed an environmental review and given approval for the action under 24 CFR part 50. In addition, you must carry out any mitigating/remedial measures required by the Responsible Entity (or HUD). If a remediation plan, where required, is not approved by HUD and a fully-funded contract with a qualified contractor licensed to perform the required type of remediation is not executed, HUD reserves the right to determine that the grant is in default.

(E) The costs of environmental reviews and hazard remediation are eligible costs under the HOPE VI Program.

(F) HUD's Environmental Web site is located at *http://hudstage.hud.gov/offices/cpd/energyenviron/environment/index.cfm*

### *VIII. Additional Governmental Requirements*

(A) The Catalog of Federal Domestic Assistance (CFDA) Number for HOPE VI is 14.866. The CFDA is a government-wide compendium of Federal programs, projects, services, and activities that provide assistance or benefits to the public.

(B) Environmental Impact. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Regulations Division, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

(C) Federalism. Executive Order 13132 prohibits, to the extent practicable and permitted by law, an agency from promulgating policies that have federalism implications and either impose substantial direct compliance costs on State and local governments and are not required by statute, or preempt State law, unless the relevant requirements of section 6 of the Executive Order are met. This NOFA does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

(D) Intergovernmental Review of Federal Programs. Executive Order 12372 was issued to foster intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of Federal financial assistance and direct Federal development. The Order allows each State to designate an entity to perform a State review function. The official listing of State Points of Contact (SPOC) for this review process can be found at: *www.whitehouse.gov/omb/grants/spoc.html.* States that are not listed on the Web site have chosen not to participate in the intergovernmental review process, and therefore do not have a SPOC. If you are located within one of those States, you may send applications directly to HUD. If your State has a SPOC, you should contact them to see if they are interested in reviewing your application prior to submission to HUD. Please make sure that you allow ample time for this review process when developing and submitting your application.

(E) Prohibition Against Lobbying Activities. You are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment), which prohibits recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. You are required to certify, using the certification found at Appendix A to 24 CFR part 87, that you will not, and have not, used appropriated funds for any prohibited lobbying activities. In addition, you must disclose, using Standard Form LLL, "Disclosure of Lobbying Activities" (SF LLL) any funds, other than federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, and congressional staff regarding specific grants or contracts. SF LLL is included in the HOPE VI Revitalization application and the Web sites listed in Section (III)(D)(2) of this NOFA. The Lobbying Disclosure Act of 1995 (Pub. L. 104–65), approved December 19, 1995, repealed section 112 of the HUD Reform Act, and requires all persons and entities who lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

(F) Documentation and Public Access Requirements. Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published a notice that also provides information on the implementation of section 102 (57 FR 1942). The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under this NOFA as follows:

(1) Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15.

(2) Disclosures. HUD will make available for public inspection all HOPE VI grant applications for five years beginning not less than 30 days following the grant award. Applications will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 5.

(3) Publication of Recipients of HUD Funding. HUD's regulations at 24 CFR 4.7 provide that HUD will publish a notice in the **Federal Register** to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to section 102(a) of the HUD Reform Act, and/or

(ii) Assistance that is provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(G) Section 103 of the HUD Reform Act. HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, subpart B, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4. Applicants or HUD employees who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.) HUD employees who have specific program questions should contact the appropriate field office counsel, or Headquarters counsel for the program to which the question pertains.

(H) Paperwork Reduction Act Statement. The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0208. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

(I) Delinquent Federal Debt. Consistent with the purpose and intent of 31 U.S.C. 3720B and 28 U.S.C. 3201(e), no award of Federal funds shall be made to an applicant who has an outstanding Federal debt until: (a) The delinquent account is paid in full; (b) a negotiated repayment schedule is established and at least one payment is received; or (c) other arrangements satisfactory to the Department of Housing and Urban Development are made prior to the deadline submission date.

(J) Pre-Award Accounting System Survey. HUD may arrange for a pre-award accounting system survey of the applicant's financial management system in cases where the recommended applicant has no prior Federal support, the applicant is considered a high risk based upon past performance or financial management findings. HUD will not make an award to any applicant who does not have a financial management system that meets Federal standards.

(K) False Statements. A false statement in an application is grounds for denial or termination of an award and possible punishment as provided in 18 U.S.C. 1001.

(L) Name Check Review Process. Applicants are subject to a name check review process. Name checks are intended to reveal matters that significantly reflect on the applicant's management and financial integrity, or if key individuals have been convicted or are presently facing criminal charges. If the name check reveals significant adverse findings that reflect on the business integrity or responsibility of the recipient and/or key individuals, HUD reserves the right to: (a) Deny funding or consider suspension/termination of an award immediately for cause; (b) require the removal of any key individual from association with management of and/or implementation of the award; and (c) make appropriate provisions or revisions with respect to the method of payment and/or financial reporting requirements.

(M) Executive Order 13202, Preservation of Open Competition and

**Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.** Compliance with HUD regulations at 24 CFR 5.108 implementing Executive Order 13202 is a condition of receipt of assistance under this NOFA. Subgrantees are considered recipients of financial assistance for purposes of § 5.108.

(N) Procurement of Recovered Materials. State agencies and agencies of a political subdivision of a state, including PHAs, that are using assistance under this NOFA for procurement, and any person contracting with such agency with respect to work performed under an assisted contract, must comply with the requirements of section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. In accordance with section 6002, these agencies and persons must procure items designated in guidelines of the Environmental Protection Agency at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the quantity acquired in the preceding fiscal year exceeded $10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(O) 31 U.S.C. 1552. In accordance with this statute, all FY 2003 HOPE VI funds must be expended by September 30, 2009. Any funds that are not expended by that date will be cancelled and recaptured by the Treasury, and thereafter will not be available for obligation or expenditure for any purpose.

Dated: October 14, 2003.

**Michael Liu,**

*Assistant Secretary for Public and Indian Housing.*

## HOPE VI Revitalization Grants Section

The Revitalization Grants Section of the HOPE VI NOFA contains information that applies to the HOPE VI Revitalization Program. Unless otherwise noted, citations refer to the HOPE VI Revitalization Grants Section.

### *I. Eligible Revitalization Activities*

HOPE VI Revitalization grants may be used for activities to carry out revitalization programs for severely distressed public housing in accordance with section 24(d) of the U.S. Housing Act of 1937 Act (1937 Act). Revitalization activities approved by HUD must be conducted in accordance with the requirements of this NOFA.

(A) Relocation, including reasonable moving expenses, for residents displaced as a result of the revitalization of the project. See section IX of this NOFA for relocation requirements.

(B) Demolition of dwelling units and nondwelling facilities, in whole or in part.

(1) Demolition is not a required element of a HOPE VI Revitalization Plan.

(2) You may not carry out, nor permit others to carry out, the demolition of the Project or any portion of the Project until HUD approves, in writing, one of the following:

(a) Information in your HOPE VI Revitalization Application, along with Supplemental Submissions requested by HUD after the award of the grant and a Request for Release of Funds submitted in accordance with 24 CFR part 58. Section 24(g) of the 1937 Act provides that severely distressed public housing demolished pursuant to a Revitalization Plan is not required to be approved by a demolition application under section 18 of the 1937 Act or regulations at 24 CFR part 970. If you do not receive a HOPE VI Revitalization grant, the information in your application will not be used to process a request for demolition;

(b) A demolition application under section 18 of the 1937 Act. While a section 18 approval is not required by HOPE VI demolition, you will not have to wait for demolition approval through your Supplemental Submissions, as described in section (a) above; or

(c) A Section 202 Mandatory Conversion Plan, in compliance with regulations at 24 CFR part 971 and other applicable HUD requirements, if the project is subject to Mandatory Conversion (Section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 Pub. L. 104–134, approved on April 26, 1996). A Mandatory Conversion Plan concerns the removal of a public housing project from a PHA's inventory.

(C) Disposition of a severely distressed public housing site, by sale or lease, in whole or in part, in accordance with section 18 of the 1937 Act and implementing regulations at 24 CFR part 970. A lease of one year or more that is not incident to the normal operation of a Project is considered to be a disposition that is subject to section 18 of the 1937 Act.

(D) Rehabilitation and physical improvement of public housing and/or community facilities primarily intended to facilitate the delivery of community and supportive services for residents of the Project and residents of off-site replacement housing, in accordance with 24 CFR 968.112(b), (d), (e), and (g)–(o) and 24 CFR 968.130 and 968.135(b) and (d) or successor regulations, as applicable.

(E) Development.

(1) For any standard (non-mixed finance) public housing development activity, (whether on-site reconstruction or off-site development), you must obtain HUD approval of a standard development proposal submitted under 24 CFR part 941 (or successor part).

(2) For mixed-finance housing development, you must obtain HUD approval of a Mixed Finance Proposal, submitted under 24 CFR part 941, subpart F (or successor part and subpart).

(3) For new construction of community facilities primarily intended to facilitate the delivery of community and supportive services for residents of the Project and residents of off-site replacement housing, you must comply with 24 CFR part 941 (or successor part). Information required for this activity must be included in either a Standard or Mixed Finance Development Proposal, as applicable.

(F) Homeownership Activities.

(1) For homeownership replacement units developed under a Revitalization Plan, you must obtain HUD approval of a homeownership proposal. The homeownership proposal must be consistent with the 80 percent of Area Median Income (AMI) limitations and any other applicable provisions under the 1937 Act. (HUD publishes AMI tables for each family size in each locality annually. The income limit tables can be found at *www.huduser.org/datasets/il/fmr01/index.html*). See Section XI(D) of this NOFA (mixed-income communities) for more information about homeownership housing. Your homeownership proposal must conform to either:

(a) Section 24(d)(1)(J) of the 1937 Act; or

(b) Section 32 of the 1937 Act (see 24 CFR 906). Additional information on this option may be found at: *www.hud.gov/offices/pih/centers/sac/homeownership*.

(2) Assistance may include:

(a) Downpayment or closing cost assistance;

(b) Provision of second mortgages; and/or

(c) Construction or permanent financing for new construction, acquisition, or rehabilitation costs related to homeownership replacement units.

(G) Acquisition.

(1) Rental Units. For acquisition of rental units in existing or new apartment buildings, single family subdivisions, etc., with or without rehabilitation, for use as public housing replacement units, you must submit a Development Proposal in accordance with CFR part 941.304 (conventional development) or 24 CFR 941.606 (mixed finance development).

(2) Land for Off-Site Replacement Units. For acquisition of land for public housing or homeownership development, you must comply with 24 CFR part 941 or successor part.

(3) Land for Economic Development-Related Activities.

(a) You may use HOPE VI grant funds to acquire land for economic development-related activities if those activities specifically promote the economic self-sufficiency of residents.

(b) With HUD approval, you may also use HOPE VI grant funds for limited infrastructure and site improvements associated with developing retail, commercial, or office facilities, such as rough grading and bringing utilities to (but not on) the site.

(c) You may not use HOPE VI grant funds to pay hard construction costs or to buy equipment for retail, commercial, or non-public housing office facilities.

(4) Acquisition Proposal. Before you may undertake acquisition activities with HOPE VI or other public housing funds, you must submit an acquisition proposal to HUD that meets the requirements of 24 CFR 941.303.

(H) Necessary management improvements, including transitional security activities.

(I) Reasonable costs for administration, planning, technical assistance, and fees and costs, as established by HUD guidance and policies regarding cost controls. These costs are limited to the costs of implementing the Revitalization Plan, as specifically approved by HUD, such as fees for architectural and engineering work, program management (if any), and reasonable legal fees. See Section III(C)(3) for soft development costs guidelines.

(J) Community and Supportive Services (CSS). The CSS Component of the HOPE VI Program encompasses all activities that are designed to promote upward mobility, self-sufficiency, and improved quality of life for the residents of the public housing project involved. The CSS Component is described in Section VIII of this NOFA.

(K) Leveraging other resources, including additional housing resources, supportive services, job creation, and other economic development uses on or near the project that will benefit future residents of the site.

*II. Summary of Threshold Requirements*

(A) The following are summary descriptions of threshold requirements that must be met in order for a HOPE VI Revitalization application to be considered for funding. These threshold requirements are described in more detail at the citations identified below. If the application fails to meet any one of these thresholds, HUD will not rate or rank the application, in accordance with Section XIV(B)(5) of this NOFA.

(B) Unless specifically stated that an item is curable, the threshold items in this Section II(B) are not subject to Section XIV(B)(3) of this NOFA regarding the correction of deficiencies.

(1) The applicant must qualify as an eligible applicant, as defined in Section IV(A)(1) of this NOFA.

(2) HUD must receive the application by the deadline date and time, in accordance with Section III(B) of the General Section of this NOFA.

(3) Standard certifications must be submitted in accordance with Section XIII(A)(4) of this NOFA. Deficiencies for this item are curable, in accordance with Section XIV(B)(3) of this NOFA.

(4) The application must include a certification by a third party professional that the proposed costs meet the requirements of Section III(C) of this NOFA. Deficiencies for this item are curable, in accordance with Section XIV(B)(3) of this NOFA.

(5) In accordance with Section III(D)(1) of this NOFA, each applicant may submit only one HOPE VI Revitalization application.

(6) If an application proposes to revitalize more than one severely distressed public housing project, those projects must meet the requirements of Section III(D)(3) of this NOFA.

(7) If an application proposes to revitalize a severely distressed scattered site project, the project must meet the requirements of Section III(D)(4) of this NOFA.

(8) An application may not request HOPE VI Revitalization grant funds to revitalize units that were funded by an existing HOPE VI Revitalization grant, in accordance with Section III(D)(6) of this NOFA.

(9) If an application proposes to use HOPE VI Revitalization funds to develop market rate units or affordable units which do not qualify as replacement units in accordance with Section III(D)(7) of this NOFA, the entire application will be disqualified.

(10) If applicable, the application must meet the requirements of separability, as described in Section III(D)(11) of this NOFA.

(11) If an applicant has been designated as troubled, it must meet the requirements of Section IV(A)(1) of this NOFA.

(12) An applicant must have obligated at least 90 percent of its FY 1999–2001 Capital Funds in accordance with Section IV(A)(2) of this NOFA.

(13) An applicant which has one or more existing HOPE VI Revitalization grants will be disqualified if it has an open Inspector General (IG) or General Accounting Office (GAO) audit finding related to the HOPE VI or Capital Fund Programs as of the application due date, in accordance with Section IV(A)(3) of this NOFA.

(14) An applicant must provide a signed certification that it has either initiated competitive procurement procedures to select a developer by the application deadline date or that it will act as its own developer, in accordance with Section IV(A)(4) of this NOFA. Deficiencies for this item are curable, in accordance with Section XIV(B)(3) of this NOFA.

(15) An application must include a program schedule that, at a minimum, reflects the timeliness of construction requirements of Section XVI(C) of this NOFA, in accordance with Section IV(C).

(16) An application must include a signed certification that the applicant or its procured property manager will implement the operation and management principles and policies in accordance with Section IV(A)(5) of this NOFA. Deficiencies for this item are curable, in accordance with Section XIV(B)(3) of this NOFA.

(17) An application must include a certification signed by an engineer or architect that the targeted public housing project meets the definition of severe physical distress in accordance with Section V(A) of this NOFA. Deficiencies for this item are curable, in accordance with Section XIV(B)(3) of this NOFA.

(18) An application must include commitments of resources in an amount that meets the match requirements of Section VI(A) of this NOFA.

(19) An application must include a certification by the applicant that a resident training session and public meetings were held in accordance with Section VII(A) of this NOFA. Deficiencies for this item are curable, in accordance with Section XIV(B)(3) of this NOFA.

(20) An application must include a certification that the applicant has

completed a HOPE VI Revitalization Relocation Plan and that the Relocation Plan is in compliance with the Uniform Relocation Act, as described in Section IX(D) of this NOFA. Deficiencies for this item are curable, in accordance with Section XIV(B)(3) of this NOFA.

(21) An applicant must be in compliance with Fair Housing and Civil Rights Laws, in accordance with Section V(A) of the General Section of this NOFA.

(22) An applicant must be in compliance with any desegregation or other court order related to Fair Housing, in accordance with Section V(B) of the General Section of this NOFA.

(23) If an application includes a proposal to develop off-site replacement housing, the application must include evidence of site control of the proposed off-site locations, in accordance with Section XI(B)(4) of this NOFA.

(24) If an application includes a proposal to develop market rate housing, it must include a preliminary market assessment letter, in accordance with Section XI(C) of this NOFA. Deficiencies for this item are curable, in accordance with Section XIV(B)(3) of this NOFA.

(25) If you are proposing to use off-site parcels of land for housing development or other uses that are currently zoned for a purpose different than the one proposed in your revitalization plan, your application must include a certification from the appropriate local official documenting that all required zoning approvals have been secured for such parcels, and/or the actual zoning approval document for the parcel(s), in accordance with Section XI(E) of this NOFA.

(26) An application must include a demonstration of the appropriateness of the proposal, in accordance with Section XII(A) of this NOFA.

(27) An application must include a certification that, if awarded funds under this NOFA, the Grantee will submit a copy of their Code of Conduct which will also describe the methods they will use to ensure that all officers, employees, and agents of their organization are aware of the Code of Conduct, in accordance with Section VI(B) of the General Section of this NOFA. This certification may be provided in the form of a letter.

(28) Consistent with the purpose and intent of 31 U.S.C. 3720B and 28 U.S.C. 3201(e), no award of Federal funds shall be made to an applicant who has an outstanding Federal debt in accordance with Section VIII(I) of the General Section of this NOFA. HUD will determine compliance with this threshold.

(29) An applicant must have a financial management system that meets Federal standards, in accordance with Section VIII(J) of the General Section of this NOFA. HUD will determine compliance with this threshold.

(30) Applicants are subject to a name check review process, in accordance with Section VIII(L) of the General Section of this NOFA. HUD will determine compliance with this threshold.

### *III. Revitalization Grant Limitations*

#### (A) Grant Amount Limitations

(1) The total amount you may request in your Revitalization application is limited to $20 million or the sum of the amounts in Section III(A)(2), whichever is lower.

(2) Total Development Cost (TDC). The "TDC Limit" refers to the maximum amount of HUD funding that HUD will approve for development of specific public housing units in a given location. The TDC limit applies only to the costs of development of public housing that are paid directly with HUD public housing funds; a PHA may exceed the TDC limit using non-public housing funds such as CDBG, HOME, low-income housing tax credit equity, etc. The HUD TDC Cost Tables are issued for each calendar year for the building type and bedroom distribution for the public housing replacement units. Use the TDC limits in effect at the time this HOPE VI NOFA is published when making your TDC calculations (24 CFR 941, final rule published in the **Federal Register** on December 10, 2002. The TDC final rule may be found in the **Federal Register**, Vol. 67, No. 237, 76096 and on the HOPE VI Web site).

(a) The total cost of development, including relocation costs, is limited to the sum of:

(i) HUD's TDC limits up to 100 percent of HUD's published TDC limits for the costs of demolition and new construction, multiplied by the number of HOPE VI public housing replacement units; and/or

(ii) 90 percent of the TDC limits, multiplied by the number of public housing units after substantial rehabilitation and reconfiguration.

(b) The TDC limit for a project is made up of the following components:

(i) Housing Cost Cap (HCC): HUD's published limit on the use of public housing funds for the cost of constructing the public housing units, which includes unit hard costs, builder's overhead and profit, utilities from the street, finish landscaping, and a hard cost contingency. Estimates should take into consideration the Davis-Bacon wage rate requirements as described in Section VI(D) of the General Section of this NOFA.

(ii) Community Renewal (CR): The balance of funds remaining within the project's TDC limit after the housing construction costs described in (i) above are subtracted from the TDC limit. This is the amount of public housing funds available to pay for PHA administration, planning, infrastructure and other site improvements, community and economic development facilities, acquisition, relocation, demolition, and remediation of units to be replaced on site, and all other development costs.

(3) CSS. You may request an amount up to 15 percent of the total HOPE VI grant to pay the costs of CSS activities, as described in Section VIII(B) of this NOFA. These costs are in addition to (*i.e.*, excluded from) the TDC calculation in Section (2) above.

(4) Demolition and Site Remediation Costs of Unreplaced On-site Units. You may request an amount necessary for demolition and site remediation costs of units that will not be replaced on-site. This cost is in addition to (*i.e.*, excluded from) the TDC calculation in Section (2) above.

(5) Extraordinary Site Costs.

(a) You may request a reasonable amount to pay extraordinary site costs, which are construction costs related to unusual pre-existing site conditions that are incurred, or anticipated to be incurred. If such costs are significantly greater than those typically required for similar construction, are verified by an independent, certified engineer or architect, and are approved by HUD, they may be excluded from the TDC calculation Section (2) above. Extraordinary site costs may be incurred in the remediation and demolition of existing property, as well as in the development of new and rehabilitated units. Examples of such costs include, but are not limited to: abatement of extraordinary environmental site hazards; removal or replacement of extensive underground utility systems; extensive rock and/or soil removal and replacement; removal of hazardous underground tanks; work to address unusual site conditions such as slopes, terraces, water catchments, lakes, *etc.*; and work to address flood plain and other environmental remediation issues. Costs to abate asbestos and lead-based paint from structures are normal demolition costs. Extraordinary measures to remove lead-based paint that has leached into the soil would constitute an extraordinary site cost.

(b) Extraordinary site costs must be justified and verified by a licensed engineer or architect who is not an employee of the housing authority or the city. The engineer or architect must provide his or her license number and State of registration. An Extraordinary Site Costs Certification is included in the HOPE VI application. If this certification is not included in the application after the cure period described in Section XIV(B)(3) of this NOFA, extraordinary site costs will not be allowed.

### (B) Other Application Limitations

You may not use HOPE VI Revitalization Grant funds to pay for any revitalization activities carried out on or before the date of the letter announcing the award of the HOPE VI Grant.

### (C) Hard and Soft Development Costs Guidelines

(1) Your projected hard development costs must be realistic, developed through the use of technically competent methodologies, including cost estimating services, and comparable to industry standards for the kind of construction to be performed in the proposed geographic area.

(2) Your cost estimates must represent an economically viable preliminary plan for designing, planning, and carrying out your proposed activities in accordance with local costs of labor, materials, and services.

(3) Your projected soft costs must be reasonable and comparable to industry standards. Upon award, soft costs will be subject to HUD's "Safe Harbor" cost control standards. These safe harbors provide specific limitations on such costs as developer's fees (between 9 and 12 percent), PHA administration/consultant cost (no more than 3 to 6 percent of the total project budget), contractor's fee (6 percent), overhead (2 percent), and general conditions (6 percent). HUD's Cost Control and Safe Harbor Standards can be found on the Grant Administration page of the HOPE VI Web site at *http://www.hud.gov/utilities/intercept.cfm?/offices/pih/programs/ph/hope6/grants/admin/safe_harbor.pdf*.

(4) *Threshold:* Your cost estimates must be certified to meet the standards of Sections (1) through (3) above by an independent cost estimator, architect, engineer, contractor, or other qualified third party professional.

(5) If you are eligible for funding, HUD will delete any unallowable items from your budget and may reduce your grant accordingly, except as provided in Section III(D)(7) of this NOFA.

### (D) Site and Unit Requirements.

(1) *Threshold:* One application. Each applicant may submit only one HOPE VI Revitalization application as described in this NOFA. If more than one application is submitted by a single applicant, all applications will be disqualified.

(2) *Threshold:* One Project. Except as provided in Sections III(D)(3) and (4) below, each application must target one severely distressed public housing project (*i.e.,* with one project number).

(3) *Threshold:* Contiguous Projects. Each application may request funds for more than one project if those projects are immediately adjacent to one another or within a quarter-mile of each other. If you include more than one project in your application, you must provide a map that clearly indicates that the projects are within a quarter-mile of each other. If HUD determines that they are not, your application will be ineligible for funding.

(4) *Threshold:* Scattered Site Projects. Your application may request funds to revitalize a scattered site public housing project. The sites targeted in an application proposing to revitalize scattered sites (regardless of whether the scattered sites are under multiple project numbers) must fall within an area with a one-mile radius. You may identify a larger site if you can show that all of the targeted scattered site units are located within the hard edges (*e.g.,* major highways, railroad tracks, lakeshore, *etc.*) of a neighborhood. If you propose to revitalize a project that extends beyond a one-mile radius or is otherwise beyond the hard edges of a neighborhood, your application will be ineligible for funding.

(5) Number of Units. You may request funds for as few or as many units as you wish in your application. HUD will review requests to revitalize projects with small numbers of units on an equal basis with those with large numbers of units.

(6) *Threshold:* Previously-funded Sites. You may submit a Revitalization application that targets a project that is being revitalized or replaced under an existing HOPE VI Revitalization grant. However, you may not apply for new HOPE VI Revitalization funds for units in that project that were funded by the existing HOPE VI Revitalization grant or other HUD funds, even if those funds are inadequate to pay the costs to revitalize or replace all of the targeted units. For example, if a project has 700 units and you were awarded a HOPE VI Revitalization grant or other HUD public housing funds to address 300 of those units, you may submit an FY 2003 HOPE VI Revitalization application to revitalize the remaining 400 units. You may *not* apply for funds to supplement work on the original 300 units. If you request funds to revitalize units or buildings that have been funded by an existing HOPE VI Grant or other HUD funds, your application will be ineligible for funding.

(7) *Threshold:* HOPE VI funds may not be used to develop market rate units or affordable housing units which do not qualify as public housing or homeownership replacement units.

(8) Replacement Units. Under this HOPE VI NOFA, a HOPE VI Replacement unit shall be deemed to be any combination of public housing rental units, eligible homeownership units under section 24(d)(1)(J) of the 1937 Act, and Housing Choice Voucher assistance that does not exceed the number of units demolished and/or disposed of at the targeted severely distressed public housing project.

(9) Access to Services. For both on-site and any off-site units, your overall Revitalization Plan must result in increased access to municipal services, jobs, mentoring opportunities, transportation, and educational facilities; *i.e.,* the physical plan and self-sufficiency strategy must be well integrated and strong linkages must be established with the appropriate Federal, State, and local agencies, non-profits, and the private sector to achieve such access.

(10) Universal Design. HUD encourages you to incorporate the principles of universal design in the construction or rehabilitation of housing, retail establishments, and community facilities, or when communicating with community residents at public meetings or events. Universal design is the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. The intent of universal design is to simplify life for everyone by making products, communications, and the built environment more usable by as many people as possible at little or no extra cost. Universal design benefits people of all ages and abilities. Examples include designing wider doorways, installing levers instead of doorknobs, and putting bathtub/shower grab bars in all units. Computers and telephones can also be set up in ways that enable as many residents as possible to use them. The Department has a publication that contains a number of ideas about how the principles of Universal Design can benefit persons with disabilities. To order a copy of *Strategies for Providing*

*Accessibility and Visitability for HOPE VI and Mixed Finance Homeownership,* go to the publications and resource page of the HOPE VI Web site at *http://www.huduser.org/publications/pubasst/strategies.html.*

(11) *Threshold.* Separability. In accordance with section 24(j)(2)(A)(v) of the 1937 Act, if you propose to target only a portion of a project for revitalization, you must:

(a) Demonstrate to HUD's satisfaction that the severely distressed public housing is sufficiently separable from the remainder of the project of which the building is part to make use of the building feasible for revitalization, and

(b) Demonstrate that the site plan and building designs of the revitalized portion will provide defensible space for the occupants of the revitalized building(s) and that the properties that remain will not have a negative influence on the revitalized buildings(s), either physically or socially. Separations may include a road, berm, catch basin, or other recognized neighborhood distinction.

*IV. Capacity*

(A) Thresholds

(1) *Threshold:* Troubled Status. If HUD has designated your housing authority as troubled pursuant to section 6(j)(2) of the 1937 Act, HUD's Troubled Agency Recovery Centers will use documents and information available to it to determine whether you qualify as an eligible applicant. In accordance with section 24(j) of the 1937 Act, the term "applicant" means:

(a) Any PHA that is not designated as "troubled" pursuant to section 6(j)(2) of the 1937 Act;

(b) Any PHA for which a private housing management agent has been selected, or a receiver has been appointed, pursuant to section 6(j)(3) of the 1937 Act; and

(c) Any PHA that is designated as "troubled" pursuant to section 6(j)(2) of the 1937 Act and that:

(i) Is designated as troubled principally for reasons that will not affect its capacity to carry out a revitalization program;

(ii) Is making substantial progress toward eliminating the deficiencies of the agency that resulted in its troubled status; or

(iii) Is otherwise determined by HUD to be capable of carrying out a revitalization program.

(2) *Threshold:* Obligation of Capital Funds. In order to be considered for funding, you must have obligated Capital Fund amounts (including the Comprehensive Improvement Assistance Program (CIAP) or Comprehensive Grant Program (CGP) in a timely manner. HUD will not consider any application from a PHA that failed to obligate 90 percent or more of its FY 1999, 2000, and 2001 Capital Funds by the applicable obligation deadlines, as required by section (9)(j) of the U.S. Housing Act of 1937, unless the Deputy Secretary has approved an extension. HUD will use LOCCS to determine compliance with the applicable obligation deadlines. Replacement Housing Factor funds are not excluded from the calculation of Capital Fund obligation rates, pursuant to 24 CFR 905.10(i), as they are part of the Capital Fund Program formula allocation. Some PHAs have executed Moving To Work (MTW) Agreements that exempt the PHA from the statutory Capital Fund obligation and expenditure deadlines. Accordingly, those PHAs will not be subject to this provision.

(3) *Threshold:* Performance of Existing HOPE VI Grantees. If an applicant has one or more existing HOPE VI Revitalization grants, the Department will disqualify such an applicant if the applicant has an open Inspector General (IG) or General Accounting Office (GAO) audit finding related to the HOPE VI or Capital Fund Programs as of the date the application is due to HUD.

(4) *Threshold:* Selection of Developer. In a departure from previous years, in order to be selected for funding, you must provide a signed certification that:

(a) You have initiated RFQ competitive procurement procedures in accordance with 24 CFR 85.36 and 23 CFR 941.602(d) (as applicable), but have not entered into a contract with a developer for your first phase of construction by the application due date. A developer is an entity contracted to develop (and possibly operate) a mixed finance development that includes public housing units, pursuant to 24 CFR part 941 subpart F, and contingent on a satisfactory environmental review under 24 CFR part 58 or part 50, under the terms of a HUD-approved proposal. A developer most often has an ownership interest in the entity that is established to own and operate the replacement units (*e.g.* as the General Partner of a Limited Partnership). It is not necessary to have executed a Master Development Agreement with the selected developer in order to meet the threshold. If you change developers after you are selected for funding, HUD reserves the right to rescind the grant; or

(b) You will act as your own developer for the proposed project. If you change your plan and procure an outside developer after you are selected for funding, HUD reserves the right to rescind the grant.

(5) *Threshold:* Operation and Management Principles and Policies.

(a) Authority. Any HOPE VI-funded activities at public housing projects are subject to statutory requirements applicable to public housing projects under the 1937 Act, other statutes, and the Annual Contributions Contract (ACC). Within such restrictions, HUD seeks innovative solutions to the long-standing problems of severely distressed public housing projects. You may request, for the revitalized project, a waiver of HUD regulations, subject to statutory limitations and a finding of good cause under 24 CFR 5.110 if the waiver will permit you to undertake measures that enhance the long-term viability of a project revitalized under this program. HUD will assess each request to determine whether good cause is established to grant the waiver.

(b) Requirements. HOPE VI Revitalization Grantees will be required to develop Management Agreements that describe their operation and management principles and policies for their public housing units. In your application, you must provide a certification that you will ensure that you and/or your procured property manager have complied (to the extent required) with the provisions of 24 CFR 966.3 in planning for the implementation of the operation and management principles and policies described below.

(i) Rewarding work and promoting family stability by promoting positive incentives such as income disregards and ceiling rents;

(ii) Instituting a system of local preferences adopted in response to local housing needs and priorities, *e.g.*, preferences for victims of domestic violence, residency preferences, disaster victims;

(iii) Encouraging self-sufficiency by including lease requirements that promote involvement in the resident association, performance of community service, participation in self-sufficiency activities, and transitioning from public housing;

(iv) Implementing site-based waiting lists for the redeveloped public housing and/or following project-based management principles;

(v) Instituting strict applicant screening requirements such as credit checks, references, home visits, and criminal records checks;

(vi) Strictly enforcing lease and eviction provisions;

(vii) Improving the safety and security of residents through the implementation of defensible space principles and the installation of physical security systems such as surveillance equipment, control engineering systems, *etc*;(viii) Enhancing on-going efforts to eliminate drugs and crime from neighborhoods through collaborative efforts with Federal, State, and local crime prevention programs and entities such as:

(A) Local law enforcement agencies;

(B) Your local United States Attorney;

(C) The Weed and Seed Program, if the targeted project is located in a designated Weed and Seed area. Operation Weed and Seed is a multi-agency strategy that "weeds out" violent crime, gang activity, drug use, and drug trafficking in targeted neighborhoods and then "seeds" the target area by restoring these neighborhoods through social and economic revitalization. Law enforcement activities constitute the "weed" portion of the program. Revitalization, which includes prevention, intervention, and treatment services as well as neighborhood restoration, constitutes the "seed" element. HUD has provided the Department of Justice with $10 million to fund Weed and Seed Strategies that fight crime and drugs in public, Indian, and federally assisted housing. For more information, see the Community and Safety and Conservation Web site at *www.hud.gov/offices/pih/divisions/cscd/*.

(B) Rating Factor: Capacity—20 Points Total

The term "your Team" includes your HOPE VI Coordinator (an individual designated by the PHA who may be a staff member or contractor), PHA staff who will be involved in HOPE VI grant administration, and developer partners, program managers, property managers, subcontractors, consultants, attorneys, financial consultants, and other entities or individuals identified and/or proposed to carry out program activities.

(1) *Development Capacity.*

(a) Capacity of Developer—6 Points.

(i) You will receive 6 Points if:

(A) Your Developer or other Team members have extensive, recent (within the last five years), and successful experience in planning, implementing, and managing physical development, financing, leveraging, and partnership activities that are comparable in character, scale, and complexity to your proposed revitalization activities;

(B) You propose development using low-income tax credits, and you, your Developer, or other Team members have relevant tax credit experience; and

(C) If homeownership, rent-to-own, cooperative ownership, or other major development components are proposed, you, your Developer, or other Team members have relevant, successful experience in development, sales, and/or conversion activities.

(ii) You will receive 4 Points if your Developer or other Team members have some but not extensive experience in the factors described above.

(iii) You will receive 0 Points if your Developer or other Team members do not have the experience described and the application does not demonstrate that it has the capacity to carry out your Revitalization Plan. You will also receive 0 Points if there is inadequate information in your application to rate this factor.

(b) Development Capacity of Applicant—6 Points.

(i) You will receive 6 Points if:

(A) You have identified potential gaps in your current staffing in relation to development activities, and you have plans to fill such gaps, internally or externally, in a timely manner in order to successfully implement your Revitalization Plan;

(B) You have demonstrated that physical development activities will proceed as promptly as possible following grant award, and you will be able to begin significant construction within 23 months of the award of the grant.

(C) *Threshold:* Your application must contain a program schedule that provides a feasible plan to meet the schedule requirements of Section XVI(C) of this NOFA, with no impediments such as litigation that would prevent timely startup. The program schedule must indicate the date on which the development proposal for each phase of the revitalization plan will be submitted to HUD.

(D) Your management experience and previous experience with development activities demonstrates that you have experience in overseeing large scale development, whether it be in-house or implemented by a private entity. In your application, you will describe the dollar amount and timeframe for completion of the project(s); and

(E) As of the HOPE VI Revitalization application due date, you do not have any outstanding Comprehensive Grant, Comprehensive Improvement Assistance Program, or Capital Fund Program IG audit findings. If you have such a finding, you cannot receive 6 Points.

(ii) You will receive 4 Points if you have had experience in managing large scale development in accordance with the factors above, but your experience has not been extensive and/or your project(s) were not completed within the timeframe originally established for the project.

(iii) You will receive 1 Point if your application indicates that you have had little experience in managing large-scale development projects. Or, you will receive 1 Point if you have experience described in (i) or (ii) above, but have an outstanding audit finding related to the Comprehensive Grant program, Comprehensive Improvement Assistance Program, or Capital Fund Program.

(iv) You will receive 0 Points if you do not demonstrate any experience in managing development activities, or if there is inadequate information in your application to rate this factor.

(2) *Capacity of Existing HOPE VI Revitalization Grantees.* This section applies only to applicants that have received HOPE VI Revitalization grants for fiscal years 1993–2000. If an applicant has more than one HOPE VI Revitalization grant, each will be rated separately, not averaged, and the highest deduction will be made. Applicants with HOPE VI Revitalization grants only from FY 2001 or FY 2002, or no existing HOPE VI Revitalization grants are not subject to this section. As indicated in the following tables, up to 5 Points will be deducted if a Grantee has failed to achieve adequate progress in relation to cumulative unit production goals. Production achievement numbers will be taken from the quarterly reporting system for the quarter most recently completed at the time the NOFA is published in the **Federal Register**.

| Percent of unit production completed | Points deducted |
|---|---|
| **Grants Awarded in FY 1993–1996** | |
| 95–100 | 0 |
| 90–94 | 1 |
| 85–89 | 2 |
| 80–84 | 3 |
| 75–79 | 4 |
| Less than 75 | 5 |
| **Grants Awarded in FY 1997** | |
| 90–100 | 0 |
| 80–89 | 1 |
| 75–79 | 2 |
| 70–74 | 3 |
| 65–69 | 4 |
| Less than 65 | 5 |
| **Grants Awarded in FY 1998** | |
| 80–100 | 0 |
| 70–79 | 1 |
| 60–69 | 2 |
| 50–59 | 3 |
| 40–49 | 4 |
| Less than 40 | 5 |

| Percent of unit production completed | Points deducted |
|---|---|
| **Grants Awarded in FY 1999** | |
| 60–100 | 0 |
| 50–59 | 1 |
| 40–49 | 2 |
| 30–39 | 3 |
| 20–29 | 4 |
| Less than 20 | 5 |
| **Grants Awarded in FY 2000** | |
| 25–100 | 0 |
| 20–24 | 1 |
| 15–19 | 2 |
| 10–14 | 3 |
| 5–9 | 4 |
| Less than 5 | 5 |

(3) CSS Program Capacity—3 Points. You can receive points for proper demonstration in your application of CSS Program capacity. See Section VIII(B) of this NOFA for detailed information on CSS activities.

(a) You will receive 2 Points if you demonstrate one of the following. If you fail to demonstrate one of the following, you will receive 0 points:

(i) If you propose to carry out your CSS Plan in-house and you have recent, successful experience in planning, implementing, and managing the types of CSS activities proposed in your application, or

(ii) If you propose that a member(s) of your Team will carry out your CSS Plan, that this procured Team member(s) has the qualifications and experience to plan, implement, manage, and coordinate the types of activities proposed, and/or that you have a plan for promptly hiring staff or procuring a Team member to do so.

(b) If you have an existing HOPE VI grant, you will receive 1 Point if you demonstrated that your proposed CSS Team will be adequate to implement a new program without weakening your existing Team. In doing so, you must describe how you plan to accommodate or expand capacity to support new or changing services. If you do not have an existing HOPE VI Revitalization grant, demonstrate how your current proposed CSS Team will be adequate to implement a new program without weakening your existing staffing structure. In doing so, you must describe how you plan to accommodate or expand capacity to support new or changing services.

(4) Property Management Capacity—4 Points.

(a) Property management activities may be the responsibility of the PHA or another member of the Team, which may include a separate entity that you have procured or will procure to carry out property management activities. In your application you will describe the number of units and the condition of the units currently managed by you or your property manager, your annual budget for those activities, and any awards or recognition that you or your property manager have received.

(b) Past Property Management Experience—3 Points.

(i) You will receive 3 Points if: You or your property manager currently has extensive knowledge and recent (within the last five years), successful experience in property management of the housing types included in your revitalization plan. This may include market rate rental housing, public housing, and/or other affordable housing, including rental units developed with low-income housing tax credit assistance. If your Revitalization Plan includes cooperatively-owned housing, rent-to-own units, or other types of managed housing, you must demonstrate recent, successful experience in the management of such housing by the relevant member(s) of your Team.

(ii) You will receive 1 Point if your application demonstrates that you or your property manager has some but not extensive experience of the kind required for your Revitalization Plan.

(iii) You will receive 0 Points if your application does not demonstrate that you or your property manager has the capacity to manage your proposed plan, or if there is inadequate information in your application to rate this factor.

(c) Property Management Plan—1 Point.

(i) You will receive 1 Point if your application provides a detailed description of the goals and plans of you or your property manager to administer the following elements:

—Property maintenance;
—Rent collection;
—MTCS reporting;
—Site-based management experience;
—Tenant grievances;
—Evictions;
—Occupancy rate;
—Unit turnaround;
—Preventive maintenance;
—Work order completion;
—Project-based budgeting;
—Management of Homeownership and rent-to-own programs; and
—Energy Audits.

(ii) You will receive 0 Points if there is insufficient information in your application to rate this factor.

(5) PHA Plan—1 Point.

(a) You will receive 1 Point if you demonstrate that you have incorporated the revitalization plan described in your application into your most recent PHA Plan (whether approved by HUD or pending approval). In order to qualify as "incorporated," your PHA Plan must indicate the intent to pursue a HOPE VI Revitalization grant and the public housing development for which it is targeted.

(b) You will receive 0 Points if you have not incorporated the revitalization plan described in your application into your PHA Plan, or if there is insufficient information in your application to rate this factor.

*V. Need*

(A) Threshold: Severe Distress

(1) The targeted public housing project or building in a project must be severely distressed. In accordance with Section 24(j)(2) of the 1937 Act, the term "severely distressed public housing" means a public housing project (or building in a project):

(a) That:

(i) Requires major redesign, reconstruction or redevelopment, or partial or total demolition, to correct serious deficiencies in the original design (including inappropriately high population density), deferred maintenance, physical deterioration or obsolescence of major systems, and other deficiencies in the physical plan of the project;

(ii) Is a significant contributing factor to the physical decline of, and disinvestment by public and private entities in, the surrounding neighborhood;

(iii) (A) Is occupied predominantly by families who are very low-income families with children, are unemployed, and dependent on various forms of public assistance; or (B) has high rates of vandalism and criminal activity (including drug-related criminal activity) in comparison to other housing in the area;

(iv) Cannot be revitalized through assistance under other programs, such as the Capital and Operating Funds Programs for public housing under the Act, or the programs under sections 9 and 14 of the 1937 Act (as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, approved October 21, 1998, referred to as the Public Housing Reform Act), because of cost constraints and inadequacy of available amounts; and

(v) In the case of individual buildings, is sufficiently separable from the remainder of the project of which the building is part to make use of the building feasible for revitalization; or

(b) That was a project described in section V(A)(1)(a) that has been legally vacated or demolished, but for which HUD has not yet provided replacement housing assistance (other than tenant-based assistance).

(2) For the purposes of this threshold, Replacement Housing Factor funds will not be considered as "replacement housing assistance."

(3) A severely distressed project that has been legally vacated or demolished (but for which HUD has not yet provided replacement housing assistance, other than tenant-based assistance) must have met the definition of physical distress as of the day the demolition application approval letter was dated by HUD.

(4) To meet the severe distress requirement, you must certify that the public housing project or building in a project targeted in your HOPE VI application meets the definition of severe distress provided in Section V(A)(1). You will make this certification by signing the HOPE VI Revitalization Grant Applicant Certifications. The certification form is included in the HOPE VI Application and is included as part of Appendix A to this HOPE VI NOFA.

(5) In order to certify to the severe physical distress described in Section V(A)(1)(a) of this NOFA, your application must include a certification that is signed by an engineer or architect licensed by a State licensing board. The license does not need to have been issued in the same State as the severely distressed project. The engineer or architect must include his or her license number and State of registration on the certification. The engineer or architect may not be an employee of the housing authority or the city.

(B) Rating Factor: Need—24 Points Total

(1) Need for Revitalization: Severe Physical Distress of the Public Housing Development—10 Points

HUD will evaluate the extent of the severe physical distress of the targeted public housing development. If the targeted units have already been demolished, HUD will evaluate your description of the extent of the severe physical distress of the site as of the day the demolition application was approved by HUD. You will receive Points for the following separate subfactors, as indicated.

(a) You will receive 2 Points if you demonstrate that there are major deficiencies in the project's infrastructure, roofs, electrical, plumbing, heating and cooling, mechanical systems, settlement, and/or other deficiencies in Housing Quality Standards.

(b) You will receive 2 Points if you demonstrate that there are poor soil conditions, inadequate drainage, deteriorated laterals and sewers, and/or inappropriate topography.

(c) You will receive 3 Points if you demonstrate that the project has at least 3 of the following major design deficiencies, including:

(i) Inappropriately high population density, room, and/or unit size and configurations;

(ii) Isolation;

(iii) Indefensible space;

(iv) Significant utility expenses caused by energy conservation deficiencies that may be documented by an energy audit; and/or

(v) Inaccessibility for persons with disabilities with regard to individual units, entrance ways, and/or common areas.

(d) You will receive 3 Points if you demonstrate that there are (or were, if the site is already demolished) levels of unmitigated lead-based paint, PCBs, mold, and/or asbestos that make the site or a portion of the site and its housing structures unsuitable for residential use.

(2) Need for Revitalization: Impact of the Severely Distressed Site on the Surrounding Neighborhood—3 Points

HUD will evaluate the extent to which the severely distressed public housing project is a significant contributing factor to the physical decline of, and disinvestment by, public and private entities in the surrounding neighborhood. In making this determination, HUD will evaluate your description of your narrative, crime statistics, photographs or renderings, socio-economic data, trends in property values, evidence of property deterioration and abandonment, evidence of underutilization of surrounding properties, and indications of neighborhood disinvestment.

(a) You will receive 3 Points if your narrative adequately demonstrates that the project has a significant impact on the surrounding neighborhood, as documented by each item listed above.

(b) You will receive 2 Points if your narrative demonstrates that the project has a moderate impact on the neighborhood, and/or only some of the items listed above are adequately documented.

(c) You will receive 0 Points if your narrative does not demonstrate that the project has an impact on the surrounding neighborhood, or there is inadequate information in your application to rate this factor.

(3) Need for Funding: Obligation of Capital Funds—8 Points

HUD will evaluate the extent to which you could undertake the proposed revitalization activities without a HOPE VI grant. Large amounts of available Capital Funds indicate that the revitalization could be carried out without a HOPE VI grant. HUD will use data from LOCCS available at the time of the grant application deadline date to determine the amount of unobligated FY 1999–2002 Capital Grant (including CIAP and CGP) funds currently available that could be used to carry out the proposed revitalization activities. Applicants must ensure that their obligation and expenditure information was updated in LOCCS prior to the application deadline. Replacement Housing Factor funds are not excluded from the calculation of Capital Fund obligation rates, pursuant to 24 CFR 905.10(i), as they are part of the Capital Fund Program formula allocation. Information provided in the application will not be considered, except in the case of some moving to work applicants, which are not required to enter obligations into LOCCS in accordance with their MTW agreements. Those PHAS must provide a certification of their obligation rate in their applications in order to receive any points for this rating factor.

(a) You will receive 8 Points if your unobligated Capital Funds balance is up to 20 percent of the amount of HOPE VI funds requested.

(b) You will receive 6 Points if your unobligated balance is 21–45 percent of the amount of HOPE VI funds requested.

(c) You will receive 4 Points if your unobligated balance is 46–70 percent of the amount of HOPE VI funds requested.

(d) You will receive 2 Points if your unobligated balance is 71 to 90 percent of the amount of HOPE VI funds requested.

(e) You will receive 0 Points if your unobligated balance is more than 90 percent of the amount of HOPE VI funds requested.

(4) Need for Affordable Accessible Housing in the Community—3 Points

The applicant must demonstrate the need for affordable housing in the community. For purposes of this competition, the need for affordable housing in the community will be measured by Housing Choice Voucher program utilization rates and public housing occupancy rates, excluding the public housing site targeted for revitalization. This information must be demonstrated and documented in your application, as described below and must be the most recent information available at the time of the application deadline. In figuring the Housing Choice Voucher utilization rate, provide the percentage of units under lease out of the total authorized. In figuring the public housing occupancy rate, provide the percentage of units occupied out of the total in your public housing inventory, not including the targeted public housing site. If you are a non-MTW site, you must use information consistent with the Section Eight Management Assessment Program (SEMAP) and/or the Public Housing Assessment System (PHAS) submissions. If you are an MTW site, and do not report into SEMAP and/or PHAS, you must demonstrate your utilization and/or occupancy rate using similar methods and information sources in order to earn points under this rating factor.

(a) You will receive 3 Points if :

(i) The utilization rate of your Housing Choice Voucher program is 97 percent or higher; and/or

(ii) The occupancy rate of your public housing inventory is 97 percent or higher.

(b) You will receive 2 Points if:

(i) The utilization rate of your Housing Choice Voucher program is between 95 and 96 percent; and/or

(ii) The occupancy rate of your public housing inventory is between 95 and 96 percent.

(c) You will receive 1 Point if:

(i) The utilization rate of your Housing Choice Voucher program is between 93 and 94 percent; and/or

(ii) The occupancy rate of your public housing inventory is between 93 and 94 percent.

(d) You will receive 0 Points if:

(i) The utilization rate of your Housing Choice Voucher program is less than 93 percent and/or

(ii) The occupancy rate of your public housing inventory is less than 93 percent.

### *VI. Match and Leveraging*

#### (A) Match Requirements

(1) Overall Match. In accordance with section 24(c) of the 1937 Act, if you are selected for funding, you must supplement your HOPE VI Revitalization grant with funds from other sources greater than or equal to 5 percent of the HOPE VI funds provided.

(2) Additional Community and Supportive Services (CSS) Match. In addition to supplemental amounts provided as Overall Match in accordance with Section (1) above, if you are selected for funding and propose to use more than 5 percent of your HOPE VI grant for CSS activities (you may use up to 15 percent of your grant for such activities), you must provide supplemental funds from sources other than HOPE VI, for the amount over 5 percent of the grant that you will use for CSS activities.

(3) In accordance with section 24(c) of the Act, for purposes of calculating the amount of matching funds required by Sections (1) and (2), you may include amounts from other Federal sources, any state or local government sources, any private contributions, the value of donated material or building, the value of any lease on a building, the value of the time and services contributed by volunteers, and the value of any other in-kind services or administrative costs provided.

(4) Matching funds must be directly applicable to the revitalization of the site and the transformation of the lives of residents.

(5) Grantees must provide matching funds which, combined with HOPE VI funds, will enable them to carry out revitalization activities, including CSS activities. Applicants must show firm commitments in the amounts required for match in their applications in order to be funded. Grantees will be required to show evidence that matching resources were actually received and used for their intended purposes through quarterly reports as the project proceeds. Sources of matching funds may be substituted after grant award, as long as the dollar requirement is met.

(6) Grantees must pursue and enforce any commitment (including commitments for services) obtained from any public or private entity for any contribution or commitment to the project or surrounding area that was used for leverage in their HOPE VI applications.

(7) *Threshold:* You must provide evidence that you have met your match requirements in the application. This means that the amount of Overall Match accepted by HUD must be at least 5 percent of the total grant. You must also meet the CSS Match Requirement (*i.e.*, you must provide supplemental funds from sources other than HOPE VI, for the amount over 5 percent of the grant that you will use for CSS activities). For example, a request for 15 percent of the grant for CSS would require that the amount of funds over that first 5 percent be matched dollar for dollar (*i.e.*, a 10 percent match of other CSS resources).

#### (B) Leverage

Although related to match, leverage is strictly a rating factor. Leverage consists of firm commitments of funds and other resources. HUD will rate your application based on the amount of funds and other resources that will be leveraged by the HOPE VI grant as a percentage of the amount of HOPE VI funds requested.

#### (C) Documentation for Development and CSS Resources

In your application, you will enter basic information about each resource on the appropriate resource summary form: Name of the organization providing the resource, the dollar value of the resource, and its proposed use.

(1) For each resource you list, you *must* provide a commitment document, such as a letter, memorandum of understanding, agreement to participate, city council resolution, or other evidence of the resource to be committed, which may be subject to the receipt of a HOPE VI Revitalization grant. An official of the organization legally authorized to make commitments on behalf of the organization must sign the commitment document.

(2) Each commitment document must include the dollar value and time duration of the commitment (*e.g.*, $10,000 will be provided each year for 4 years for a total commitment of $40,000). The dollar value must be consistent with the amount entered on the resource summary form. On the form you will also enter the page number of your application where the commitment document is located.

(3) Endorsements or general letters of support from organizations or vendors alone will not count as resources and should not be included in the application or on a Resources Summary Form.

(4) Each resource may be used for only one category: Development, CSS, Anticipatory, or Collateral, as described below. Any resource listed in more than one category will be disqualified from all categories.

(5) For CSS purposes, include only funds that will be newly generated for HOPE VI activities. HUD will not count any funds that have been provided routinely, such as TANF payments or funds that support ongoing CSS-type activities. However, if an existing service provider significantly increases the level of services provided at the site, the increased amount of funds may be counted.

(6) Even though an in-kind CSS contribution may count as a resource, it may not be appropriate to include on the sources and uses attachment. Each source on the sources and uses attachment must be matched by a specific and appropriate use. For example, donations of staff time may

not be used to offset costs for infrastructure.

(D) Types of Development Resources

HUD seeks to fund mixed-finance developments that use HOPE VI funds to leverage the maximum amount of other physical development funds, particularly from private sources, that will result in revitalized public housing, other types of assisted and market rate housing, and private retail and economic development. Types of resources that may be counted include:

(1) Private mortgage-secured loans and other debt. Note the term maturity expected and sources of repayment of all loans.

(a) Where there is both a construction loan and a permanent take-out loan, you must provide documentation of both, but only the value of the permanent loan will be counted as leverage.

(b) For privately financed homeownership construction loans, acceptable documentation of construction loans will be considered as leverage. Documentation of permanent financing is not required.

(c) If you have obtained a construction loan but not a permanent loan, the value of the acceptably documented construction loan will be counted as leverage.

(2) Insured loans.

(3) Donations and contributions.

(4) Housing trust funds.

(5) Net sales proceeds from a homeownership project. Downpayments from homebuyers may not be counted.

(6) Funds committed to build private sector housing in direct connection with the HOPE VI Revitalization Plan.

(7) Tax Increment Funding (TIF).

(8) Tax Exempt Bonds. Describe the use and term.

(9) Other Federal Funds. Other Federal sources may also include funds provided by HUD, except public housing funds, such as HOPE VI Revitalization funds, HOPE VI Demolition funds, Capital Fund Program funds, and proposals to use operating subsidy for debt service. Though these HUD public housing funds may not be counted for points under this NOFA, they can be used as part of your revitalization plan.

(10) Sale of Land. The value of land may be included as a development resource only if this value is a sales proceed. Absent a sales transaction, the value of land may not be counted.

(11) Donations of Land. Donations of land may be counted as a development resource, only if the donating entity owns the land to be donated. Donating entities may include a city, county, church, community organization, *etc.* The application must include documentation of this ownership, signed by the appropriate authorizing official.

(12) Low-Income Housing Tax Credits (LIHTC). Low-Income Tax Credits are authorized by section 42 of the IRS Code which allows investors to receive a credit against Federal tax owed in return for providing funds to developers to help build or renovate housing that will be rented only to lower-income households for a minimum period of years. There are two types of credits, both of which are available over a 10-year period: A 9 percent credit on construction/rehab costs, and a 4 percent credit on acquisition costs and all development costs financed partially with below-market Federal loans (*e.g.*, tax exempt bonds). Tax credits are generally reserved annually through State Housing Finance Agencies, a directory of which can be found at *http://www.ncsha.org/ncsha/public/statehfadirectory/index.htm.* Only tax credits that have been reserved for the project will be counted as development leveraging.

(a) If you propose to include LIHTC equity as a development resource for your first phase of development, your application must include a LIHTC reservation letter from your state or local Housing Finance Agency. This letter must constitute a firm commitment and can only be conditioned on the receipt of the HOPE VI grant.

(b) If you propose to include LIHTC equity as a development resource for phases of development other than your first phase, your application must include a reservation letter from your state or local Housing Finance Agency in order to have the tax credit amounts for future phases counted as development leveraging.

(c) Only LIHTC commitments that have been secured as of the application deadline will be considered for the scoring under section VI(H)(1).

(E) Sources of Development Resources

You must actively enlist other stakeholders who are vested in and can provide significant financial assistance to your revitalization effort. Sources of resources that can be used for leveraging may include:

(1) Public, private, and non-profit entities, including LIHTC purchasers;

(2) State and local Housing Finance Agencies;

(3) Local governments;

(4) The city's housing and/or redevelopment agency or other comparable agency. HUD will consider this to be a separate entity with which you are partnering if your PHA is also a redevelopment agency or otherwise has citywide responsibilities.

(a) You are strongly urged to seek a pledge of Community Development Block Grant (CDBG) funds for improvements to public infrastructure such as streets, water mains, etc. related to the revitalization effort. CDBG funds are awarded by HUD by formula to units of general local government and to states, which may then award a grant or loan to a PHA, a partnership, a non-profit organization, or other entity for revitalization activities, including loans to a project's for-profit partnership. More information about the CDBG Program can be found at *www.hud.gov/offices/cpd/index.cfm.*

(b) The city, county, or State may provide HOME funds to be used in conjunction with HOPE VI funds. The Home Investment Partnership Program provides housing funds that are distributed from HUD to units of general local governments and states. Funds may be used for new construction, rehabilitation, acquisition of standard housing, assistance to homebuyers, and tenant-based rental assistance. Current legislation allows HOME funds to be used in conjunction with HOPE VI funds, but they may not be used in conjunction with Public Housing Capital Funds under section 9(d) of the 1937 Act. Information about the HOME Program can be found at: *www.hud.gov/offices/cpd/affordablehousing/programs/home/index.cfm.*

(5) Foundations.

(6) Government Sponsored Enterprises such as the Federal Home Loan Bank, Fannie Mae, and Freddie Mac.

(7) HUD and other Federal agencies.

(8) Financial institutions, banks, or insurers.

(9) Other private funders.

(F) Types of CSS Resources

HUD seeks to fund mixed-finance developments that use HOPE VI funds to leverage the maximum amount of other resources to support CSS activities in order to ensure the successful transformation of the lives of residents and the sustainability of the revitalized public housing development. Leveraging scarce HOPE VI CSS funds with other funds and services is critical to the sustainability of CSS activities so that they will continue after the HOPE VI funds have been expended.

Commitments of funding or in-kind services related to the provision of CSS activities may be counted as CSS resources and towards the calculation of CSS leverage. Types of resources that may be counted include but are not limited to:

(a) Materials;
(b) A building;
(c) A lease on a building;
(d) Other infrastructure;
(e) Time and services contributed by volunteers;
(f) Staff salaries and benefits; and
(g) Supplies.
(h) See Section VIII(B) for other types of CSS resources.

Note that wages projected to be paid to residents through jobs, or projected benefits (*e.g.*, health/insurance/retirement benefits) related to those projected jobs, provided by CSS Partners will not be counted as leverage.

### (G) Sources of CSS Resources

In order to achieve quantifiable self-sufficiency results, you must form partnerships with organizations that are skilled in the delivery of services to residents of public housing and that can provide commitments of resources to support those services. You must actively enlist as partners other stakeholders who are vested in and can provide commitments of funds and in-kind services for the CSS portion of your revitalization effort. See Section VIII(C) for a list of the kinds of organizations, agencies, and other providers that may be used as sources of CSS resources.

### (H) Rating Factor: Leveraging—16 Points Total

(1) *Development Leveraging—7 Points.* For each commitment document, HUD will evaluate the strength of commitment and add the amounts that are acceptably documented. HUD will then calculate the ratio of the amount of HUD funds requested to the amount of funds that HUD deems acceptably documented. HUD will round figures to two decimal points, using standard rounding rules.

(a) You will receive 7 Points if the ratio of the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) to the dollar value of documented, committed development resources from other sources is 1:3 or higher.

(b) You will receive 6 Points if the ratio is between 1:2.50 and 1:2.99.

(c) You will receive 5 Points if the ratio is between 1:2.0 and 1:2.49.

(d) You will receive 4 Points if the ratio is between 1:1.50 and 1:1.99.

(e) You will receive 3 Points if the ratio is between 1:1.0 and 1:1.49.

(f) You will receive 2 Points if the ratio is between 1:0.50 and 1:0.99.

(g) You will receive 1 Point if the ratio is between 1:0.25 to 1:0.49.

(h) You will receive 0 Points if the ratio is less than 1:0.25, or there is inadequate information in your application to rate this factor.

(2) *CSS Leveraging—Amount of CSS Leveraged Resources—5 Points.* (a) You will receive 5 Points if the ratio of the amount of HOPE VI funds requested for CSS activities to the dollar value of documented, committed CSS resources leveraged from other sources is 1:4 or higher. If no HOPE VI funds are requested for CSS activities because all CSS funds will come from outside sources, all adequately-documented funds from such outside sources will be counted and you will receive 5 Points.

(b) You will receive 4 Points if the ratio is between 1:3.5 and 1:3.99.

(c) You will receive 3 Points if the ratio is between 1:3 and 1:3.49.

(d) You will receive 2 Points if the ratio is between 1:2.5 and 1:2.99.

(e) You will receive 1 Point if the ratio is between 1:2 and 1:2.49.

(f) You will receive 0 Points if the ratio is less than 1:2, or there is inadequate information in your application to rate this factor.

(3) Anticipatory Resources Leveraging—2 Points. Anticipatory Resources relate to activities that have taken place in the past and that were conducted in direct relation to a HOPE VI Revitalization grant. In many cases, PHAs, cities, or other entities may have carried out revitalization activities (including demolition) in previous years in anticipation of your receipt of a HOPE VI Revitalization grant. These expenditures, if documented, may be counted as leveraged anticipatory resources. They cannot duplicate any other type of resource and cannot be counted towards match.

(a) You will receive 2 Points if the ratio of the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) to the amount of your documented anticipatory resources is 1:0.1 or higher.

(b) You will receive 0 Points if the ratio of the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) to the amount of your documented anticipatory resources is less than 1:0.1.

(4) *Collateral Investment Leveraging—2 Points.* Collateral Investment includes physical redevelopment activities that are currently underway, or that have yet to begin but are projected to be completed before October 2008. It must be demonstrated that these activities will directly enhance the new HOPE VI community, but will occur whether or not a Revitalization grant is awarded and the public housing project is revitalized. This includes economic or other kinds of development activities that would have occurred with or without the anticipation of HOPE VI funds. These resources cannot duplicate any other type of resource and cannot be counted as match. The resources are subject to the same restrictions regarding documentation. Collateral investment resources are counted as leverage only and cannot be counted towards match. Examples of collateral investments include schools, libraries, subway or light rail stations, improved roads, day care facilities, and local medical facilities.

(a) You will receive 2 Points if the ratio of the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) to the amount of your documented collateral resources is 1:1.0 or higher.

(b) You will receive 0 Points if the ratio of the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) to the amount of your documented collateral resources is less than 1:1.0.

## *VII. Resident and Community Involvement*

### (A) Requirements and Thresholds

(1) General. You are required to involve residents and the broader community in the planning, proposed implementation, and management of your Revitalization Plan. HUD will evaluate the nature, extent, and quality of the resident and community outreach and involvement you have achieved by the time your application is submitted, as well as your plans for continued and/or additional outreach and involvement.

(2) Resident Training Session. You must conduct at least one training session for residents of the severely distressed project on the HOPE VI development process. HUD does not prescribe the content of this meeting.

(3) Public Meetings.

(a) You must conduct at least three public meetings with residents and the broader community, in order to involve them in a meaningful way in the process of developing the Revitalization Plan and preparing the application.

(b) During the course of the three meetings, you must address the following issues listed below (*i.e.*, all issues need not be addressed at each meeting):

(i) The HOPE VI planning and implementation process;

(ii) The proposed physical plan, including site and unit design, and whether the unit design is in compliance with Fair Housing Act and UFAS standards;

(iii) The extent of proposed demolition;

(iv) Planned community and supportive service activities;

(v) Other proposed revitalization activities;

(vi) Relocation issues, including relocation planning, mobility counseling, and maintaining the HOPE VI community planning process during the demolition and reconstruction phases where temporary relocation is involved;

(vii) Reoccupancy plans and policies, including site-based waiting lists; and

(viii) Section 3 and employment opportunities to be created as a result of redevelopment activities.

(4) All training sessions and meetings must be held in facilities that are accessible to persons with disabilities, provide services such as day care, transportation, and sign language interpreters as appropriate, and as practical and applicable, be conducted in English and the language(s) most appropriate for the community.

(5) The training session and each of the public meetings must be held after the publication date of this NOFA in the **Federal Register**; any training sessions or public meetings held before the NOFA publication date will not be counted for the purposes of this competition.

*Threshold:* In your application you must provide a signed certification that the above resident training session and public meetings were held and that the topics listed above were covered. The certification must include the dates of the training session and meetings. If, after the deficiency cure period, this certification is not properly included in your application, the application will be ineligible for funding.

(B) Rating Factor: Resident and Community Involvement—3 Points

You will receive 1 Point for each of the following criteria met in your application, which are over and above the threshold requirements listed in Section (A) above.

(1) You demonstrate that you have communicated regularly and significantly with affected residents and members of the surrounding community about the development of your Revitalization Plan by giving residents and community members information about your actions regarding the Revitalization Plan and providing a forum where residents and community members can contribute recommendations and opinions with regard to the development and implementation of the Revitalization Plan.

(2) You describe your efforts, past and proposed, to make appropriate HUD communications about HOPE VI available (*i.e.*, a copy of the NOFA, computer access to the HUD Web site, etc.).

(3) You describe your plans to provide affected residents with reasonable training on the general principles of development, technical assistance, and capacity building so that they may participate meaningfully in the development and implementation process.

*VIII. Community and Supportive Services*

(A) CSS Program Requirements

(1) Your CSS Team and Partners.

(a) The term "CSS Team" refers to PHA staff members and/or any consultants who will have the responsibility to design, implement, and manage your CSS Program.

(b) The term "CSS Partners" refers to the agencies and organizations that you will work with to provide supportive services for residents. A Partner could be a local service organization such as a Boys or Girls Club that donates its building and staff to the program, or an agency such as the local TANF agency that works with you to ensure that their services are coordinated and comprehensive.

(2) Maximum CSS grant amount. Consistent with section 24(j)(3) of the 1937 Act, you may use an amount up to 15 percent of the total HOPE VI Grant to pay the costs of CSS activities. You may spend additional sums on CSS activities using donations, other HUD funds made available for that purpose, or other PHA funds. See Section VI(A) of this NOFA for CSS grant matching requirements.

(3) CSS Endowment Trust. Consistent with section 24(d)(2) of the Act, you may deposit up to 15 percent of your HOPE VI grant (the maximum amount of the award allowable for CSS activities) into an Endowment Trust to provide CSS activities. In order to establish an Endowment Trust, you must first execute with HUD a HOPE VI Endowment Trust Addendum to the Grant Agreement. When reviewing your request to set up an Endowment Trust, HUD will take into consideration your ability to pay for current CSS activities with HOPE VI or other funds and the projected long-term sustainability of the Endowment Trust to carry out those activities.

(4) Subgrant Agreements. You may enter into subgrant agreements with non-profit or State or local governments for the performance of CSS activities in accordance with your approved CSS work plan.

(5) Neighborhood Networks. All FY 2003 Revitalization grantees will be required to establish Neighborhood Networks Centers. This program provides residents with on-site access to computer and training resources. HUD will make technical assistance available to each PHA where needed. Grantees may use HOPE VI funds to establish Neighborhood Networks. In addition, $5 million will be made available for Neighborhood Networks in accordance with Section II(C) of the General Section of this NOFA. More information on the requirements of the Neighborhood Networks Center Program is available on the Neighborhood Networks Web site at *www.hud.gov/nnw/nnwindex.html.*

(6) CSS activities must be consistent with State and local welfare reform requirements and goals.

(7) The objectives of your CSS Program must be results-oriented, with quantifiable goals and outcomes that can be used to measure progress and make changes in activities as necessary.

(8) CSS activities must be of an appropriate scale, type, and variety to meet the needs of all residents (including adults, youth ages 16 to 21, and children) of the severely distressed project, including residents remaining on-site, residents who will relocate permanently to other PHA units or Housing Choice Voucher-assisted housing, residents who will relocate temporarily during the construction phase, and new residents of the revitalized units.

(9) Non-public housing residents may also participate in CSS activities, as long as the primary participants in the activities are residents as described in Section (8) above.

(10) Your CSS activities must be coordinated with the efforts of other service providers in your locality, including non-profit organizations, educational institutions, and State and local programs.

(11) CSS activities must be well integrated with the physical development process, both in terms of timing and the provision of facilities to house on-site service and educational activities.

(12) CSS programs and services must last for the life of the grant and must be carefully planned so that they will be sustainable after the HOPE VI grant period ends.

(13) If selected, the Grantee is responsible for tracking and providing CSS programs and services to residents currently living on the targeted public

housing site and residents already relocated from the site. It is imperative that case management services begin immediately so that residents who will be relocated have time to participate in and benefit from CSS activities before leaving the site; and that residents who have already been relocated are able to participate in and benefit from CSS activities.

### (B) CSS Activities May Include, But Are Not Limited To

(1) Educational activities that promote learning and serve as the foundation for young people from infancy through high school graduation, helping them to succeed in academia and the professional world. Such activities, which include after school programs, mentoring, and tutoring, must be created with strong partnerships with public and private educational institutions.

(2) Adult educational activities, including remedial education, literacy training, tutoring for completion of secondary or post-secondary education, assistance in the attainment of certificates of high school equivalency, and English as a Second Language courses, as needed.

(3) Readiness and retention activities, which frequently are key to securing private sector commitments to the provision of jobs.

(4) Employment training activities that include results-based job training, preparation, counseling, development, placement, and follow-up assistance after job placement.

(5) Programs that provide entry-level, registered apprenticeships in construction, construction-related, maintenance, or other related activities. A registered apprenticeship program is a program which has been registered with either a State Apprenticeship Agency recognized by the Department of Labor's (DOL) Office of Apprenticeship Training, Employer and Labor Services (OATELS) or, if there is no recognized State agency, by OATELS. See also DOL regulations at 29 CFR part 29.

(6) Life skills training on topics such as parenting, consumer education, and family budgeting.

(7) Creation and operation of credit unions to serve residents, including capitalization and technical assistance to foster new credit unions on-site and to encourage existing community credit unions to expand their coverage to include on-site coverage.

(8) Homeownership counseling that is scheduled to begin promptly after grant award so that, to the maximum extent possible, qualified residents will be ready to purchase new homeownership units when they are completed. The Family Self-Sufficiency Program can also be used to promote homeownership, providing assistance with escrow accounts and counseling.

(9) Coordinating with health care services providers or providing on-site space for a health clinic, doctors, a wellness center, dentists, etc. that will primarily serve the public housing residents. HOPE VI funds may not be used to provide direct medical care to residents.

(10) Substance/alcohol abuse treatment and counseling.

(11) Activities that address domestic violence treatment and prevention.

(12) Child care services that provide sufficient hours of operation to facilitate parental access to education and job opportunities, serve appropriate age groups, and stimulate children to learn.

(13) Transportation, as necessary, to enable all family members to participate in available CSS activities and/or to commute to their places of employment.

(14) Entrepreneurship training and mentoring, with the goal of establishing resident-owned businesses.

### (C) CSS Partnerships and Resources

The following are the kinds of organizations and agencies that can provide you with in-kind, financial, and other types of resources necessary to carry out and sustain your CSS activities.

(1) Local Boards of Education, public libraries, local community colleges, institutions of higher learning, non-profit or for-profit educational institutions, and public/private mentoring programs that will lead to new or improved educational facilities and improved educational achievement of young people in the revitalized development, from birth through higher education.

(2) TANF agencies/welfare departments.

(3) Job development organizations that link private sector or non-profit employers with low-income prospective employees.

(4) Workforce Development Agencies.

(5) Organizations that provide residents with job readiness and retention training and support.

(6) Economic development agencies such as the Small Business Administration, which provide entrepreneurial training and small business development centers.

(7) National corporations, local businesses, and other large institutions such as hospitals that can commit to provide entry-level jobs. Employers may agree to train residents or commit to hire residents after they complete jobs preparedness or training programs that are provided by you, other partners, or the employer itself.

(8) Programs that integrate employment training, education, and counseling, and where creative partnerships with local boards of education, State charter schools, TANF, foundations, and private funding sources have been or could be established, such as:

(a) Youthbuild. HUD's Youthbuild Program provides grants to organizations that provide education and job training to young adults ages 16 to 24 who have dropped out of school. Participants spend half their time rehabilitating low-income housing and the other half in educational programs. Youthbuild provides a vehicle for achieving compliance with the objective of Section 3, as described in Section X(D)(2)(a) of this NOFA. More information on HUD's Youthbuild Program can be found at *www.hud.gov/progdesc/youthb.cfm.*

(b) Step-Up, an apprenticeship-based employment and training program that provides career potential for low-income persons by enabling them to work on construction projects that have certain prevailing wage requirements. Step-Up encourages work by offering apprenticeships through which low-income participants earn wages while learning skills on the job, supplemented by classroom-related instruction. Step-Up can also contribute to a PHA's effort to meet the requirements of Section 3. More information can be found at *www.hud.gov/progdesc/stepup.cfm.*

(9) Sources of capital such as foundations, banks, credit unions, and charitable, fraternal, and business organizations.

(10) Non-profit organizations such as the Girl Scouts and the Urban League, both of which have Memoranda of Agreement (MOA) with HUD. Copies of these MOAs can be found on the Community and Supportive Services page of the HOPE VI Web site at *www.hud.gov/hopevi.*

(11) Civil rights and fair housing organizations.

(12) Local area agencies on aging.

(13) Local agencies and organizations serving persons with disabilities.

(14) Non-profit organizations such as grassroots faith-based and other community-based organizations. HUD encourages you to partner or subgrant with non-profit organizations, including grassroots faith-based and other community-based organizations, to provide CSS activities. Such organizations have a strong history of providing vital community services such as job training, childcare,

relocation supportive services, youth programs, technology training, transportation, substance abuse programs, crime prevention, health services, assistance to the homeless and homelessness prevention, counseling individuals and families on fair housing rights, providing elderly housing opportunities, and homeownership and rental housing opportunities in the neighborhood of their choice. HUD believes that grassroots organizations, *e.g.* civic organizations, faith-communities, national and local self-help homeownership organizations, faith-based, and other community-based organizations should be more effectively used, and has placed a high priority on expanding opportunities for grassroots organizations to participate in developing solutions for their own neighborhoods. See HUD's Center for Faith-Based and Community Initiatives Web site at *www.hud.gov/offices/fbci/index.cfm*.

(a) HUD will consider an organization a "grassroots" organization if it is headquartered in the local community to which it provides services; and

(i) Has an annual social services budget of no more than $300,000. This cap includes only the portion of the organization's budget allocated to providing social services. It does not include other portions of the budget such as salaries and expenses; or

(ii) Has six or fewer full-time equivalent employees.

(b) Local affiliates of national organizations are not considered "grassroots."

### (D) Rating Factor: CSS Program—6 Points Total

In your application you will describe your CSS plan, including any plans to implement a CSS Endowment Trust. Each of the following subfactors will be rated separately.

(1) You will receive 2 Points if you demonstrate that you will be able to provide case management within 30 days from the date of grant award execution so that residents who will be relocated have time to participate and benefit from CSS activities before leaving the site.

(2) You will receive 2 Points if you have proposed a high quality, results-oriented CSS program that is based on a comprehensive case management system and enables residents affected by the revitalization plan to access, at a minimum, basic elements of education, job training, and other services that will assist them in transforming their lives and becoming self-sufficient.

(3) You will receive 1 Point if you provide letters from a variety of experienced organizations and service providers that represent strong relationships and commitments to participate in your CSS activities and accomplish your CSS goals of the program.

(4) You will receive 1 Point if your CSS Program has been developed in response to a rigorous resident needs identification process and directly responds to the identified needs.

## *IX. Relocation*

### (A) Definition

You must provide suitable, accessible, decent, safe, and sanitary housing for each family required to relocate as a result of revitalization activities under your Revitalization Plan. Any person (including individuals, partnerships, corporations or associations) who moves from real property or moves personal property from real property directly (1) because of a written notice to acquire real property in whole or in part, or (2) because of the acquisition of the real property, in whole or in part, for a HUD-assisted activity, is covered by Federal relocation statute and regulations. Specifically, this type of move is covered by the acquisition policies and procedures and the relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), and the implementing government-wide regulation at 49 CFR part 24, and CPD Notice 02–08, Guidance on the Applications of the URA and Real Property Acquisition Policies Act of 1970, as amended, in HOPE VI Projects. The relocation requirements of the URA and the government-wide regulations, as well as CPD Notice 02–08, cover any person who moves permanently from real property or moves personal property from real property directly because of acquisition, rehabilitation, or demolition for an activity undertaken with HUD assistance.

### (B) Relocation Guidelines

(1) The HOPE VI Relocation Plan is intended to ensure that PHAs adhere to the URA and that all residents who have been or will be temporarily or permanently relocated from the site are provided with CSS activities such as mobility counseling and direct assistance in locating housing.

(2) You are encouraged to involve HUD-approved housing counseling agencies, including faith-based, non-profit and/or other organizations, and/or individuals in the community to which relocatees choose to move, in order to ease the transition and minimize the impact on the neighborhood. HUD will view favorably innovative programs such as community mentors, support groups, and the like.

(3) If applicable, you are encouraged to work with surrounding jurisdictions to assure a smooth transition if residents choose to move from your jurisdiction to the surrounding area.

### (C) Standard Relocation Requirements

You must carry out relocation activities in compliance with a relocation plan that conforms to the following statutory and regulatory requirements, as applicable:

(1) Relocation or temporary relocation carried out as a result of rehabilitation under an approved Revitalization Plan is subject to the URA, the URA regulations at 24 CFR part 24, and regulations at 24 CFR 968.108 or successor part.

(2) Relocation carried out as a result of acquisition under an approved Revitalization Plan is subject to the URA and regulations at 24 CFR 941.207 or successor part.

(3) Relocation carried out as a result of disposition under an approved Revitalization Plan is subject to Section 18 of the 1937 Act, as amended.

(4) Relocation carried out as a result of demolition under an approved Revitalization plan is subject to the URA regulations at 24 CFR part 24.

### (D) Threshold: The HOPE VI Revitalization Relocation Plan.

Each applicant must complete a HOPE VI Relocation Plan. In your application, you must submit a certification that the HOPE VI Relocation Plan has been completed and that it conforms to the URA requirements as described in Section IX(C) above. If relocation was completed as of the application deadline (*i.e.*, the targeted public housing site is vacant), this threshold will be deemed to be satisfied. Rather than providing a certification that the HOPE VI Relocation Plan has been completed, a certification that the relocation was completed must be included in the application. This certification may be provided in the form of a letter.

### (E) Rating Factor: Relocation—5 Points Total

(1) You will receive 5 Points if you provide a certification that all of the residents of the targeted severely distressed public housing project have been relocated and tracked as of the HOPE VI Revitalization application due date. All residents must have been tracked in order to receive these 5 points. If you qualify for these 5 Points,

you are not eligible for any additional Points described below.

(2) You will receive 4 Points if you:

(a) Provide a certification that all of the residents of the targeted severely distressed public housing project have been relocated but you were unable to track all residents, as of the HOPE VI Revitalization application due date. You must describe the efforts undertaken to track residents and reasons why all residents were not tracked; or

(b) Describe in your application:

(i) An effective plan to track residents who have been or will be relocated from the targeted project; and

(ii) A comprehensive plan that will provide mobility counseling and direct assistance in locating housing to residents who choose Housing Choice Voucher assistance that will help them to fully understand the full range of housing opportunities available to them in neighborhoods throughout the jurisdiction and to find housing in non-poverty areas. You must provide a list of available units to persons with disabilities as required under 24 CFR 8.28(a)(3).

(3) You will receive 2 Points if you meet only one of the factors described in Section (2)(b) above.

(4) You will receive 0 Points if your application does not meet either of the factors described in Section (2)(b) above, or if there is inadequate information in the application to rate this factor.

### *X. Fair Housing and Equal Opportunity*

### (A) Housing and Services for Persons With Disabilities

(1) Accessibility Requirements. HOPE VI developments are subject to the accessibility requirements contained in several Federal laws. All applicable laws must be read together and followed. PIH Notice 2002–1, available at *http://www.hud.gov/offices/pih/publications/notices/02/pih2002–1.pdf*, and subsequent updates, provides an overview of all pertinent laws and implementing regulations pertaining to HOPE VI. All HOPE VI multifamily housing projects, whether they involve new construction and/or rehabilitation, are subject to the section 504 accessibility requirements described in 24 CFR part 8. See in particular, 24 CFR 8.20–8.24. In addition, under the Fair Housing Act, all new construction of covered multifamily buildings must contain certain features of accessible and adaptable design. Units covered are all those in elevator buildings with four or more units and all ground floor units in buildings without elevators. The relevant accessibility requirements are provided in HUD's FHEO Web site at *www.hud.gov/groups/fairhousing.cfm*.

(2) Specific Fair Housing requirements are:

(a) The Fair Housing Act (42 U.S.C. 3601–19) and regulations at 24 CFR part 100.

(b) The prohibitions against discrimination on the basis of disability, including requirements that multifamily housing projects comply with the Uniform Federal Accessibility Standards, and that you make reasonable accommodations to individuals with disabilities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations at 24 CFR part 8.

(c) Title II of the Americans with Disabilities Act (42 U.S.C 12101 *et seq.*) and its implementing regulations at 28 CFR part 35.

(d) The Architectural Barriers Act of 1968 (42 U.S.C. 4151) and the regulations at 24 CFR part 40.

### (B) Rating Factor: FHEO Disability Issues 4 Points Total

(1) Accessibility—2 Points.

(a) Over and above the accessibility requirements listed above, you will receive 2 Points if you describe a detailed plan to:

(i) Provide accessibility in homeownership units (*e.g.*, setting a goal of constructing a percentage of the homeownership units as accessible units for persons with mobility impairments; promising to work with prospective disabled buyers on modifications to be carried out at a buyer's request; exploring design alternatives that result in townhouses that are accessible to persons with disabilities);

(ii) Provide one-bedroom accessible rental units for single individuals with disabilities;

(iii) Provide for accessibility modifications, where necessary, to Housing Choice Voucher-assisted units of residents who relocate from the targeted project to private or other public housing due to revitalization activities. The Department has determined that the costs of such modifications are eligible costs under the HOPE VI program;

(iv) Where playgrounds are planned, propose ways to make them accessible to children with disabilities, over and above statutory and regulatory requirements; and

(v) Where possible, design units with accessible front entrances.

(b) You will receive 1 Point if your application describes a detailed plan to implement some of the accessibility priorities stated above, explaining why and how you will implement the identified accessibility priorities. (c) You will receive 0 Points if you fail to provide a description that meets the specifications above, or if there is inadequate information in your application to rate this factor.

(2) Universal Design—2 Points.

(a) You will receive 2 Points if you specifically describe:

(i) A plan to meet the adaptability standards adopted by HUD at 24 CFR 8.3 that apply to those units not otherwise covered by the accessibility requirements. Adaptability is the ability of certain elements of a dwelling unit, such as kitchen counters, sinks, and grab bars, to be added to, raised, lowered, or otherwise altered, to accommodate the needs of persons with or without disabilities, or to accommodate the needs of persons with different types or degrees of disability. For example, the wiring for visible emergency alarms may be installed so that a unit can be made ready for occupancy by a hearing-impaired person (For information on adaptability, see *www.hud.gov/offices/pih/programs/ph/hope6/pubs/glossary.pdf*); and

(ii) A plan to meet the visitability standards recommended by HUD that apply to units not otherwise covered by the accessibility requirements. Visitability standards allow a person with mobility impairments access into the home, but do not require that all features be made accessible. A visitable home also serves persons without disabilities, such as a mother pushing a stroller or a person delivering a large appliance. See *www.hud.gov/offices/pih/programs/ph/hope6/pubs/glossary.pdf* for information on visitability. The two standards of visitability are:

(i) At least one entrance at grade (no steps), approached by a sidewalk; and

(ii) The entrance door and all interior passage doors are at least 2 feet 10 inches wide, allowing 32 inches of clear passage space.

(b) You will receive 0 Points if your application does not adequately describe plans for (i) and (ii) as specified above, or if there is inadequate information in your application to rate this factor.

### (C) Fair Housing and Civil Rights Compliance

(1) *Threshold:* Compliance with Fair Housing and Civil Rights Laws. HUD will not consider your application for funding unless it complies with the threshold requirement described in Section V(A) of the General Section of this NOFA.

(2) *Threshold:* Desegregation Orders. HUD will not consider your application for funding unless it complies with the

threshold requirement described in Section V(B) of the General Section of this NOFA.

(3) Site and Neighborhood Standards for Replacement Housing. You must comply with the Fair Housing Act and Title VI of the Civil Rights Act of 1964, and regulations thereunder. In determining the location of any replacement housing, you must comply with either the site and neighborhood standards regulations at 24 CFR 941.202 (b–d) or with the standards outlined below.

(a) HOPE VI Goals Related to Site and Neighborhood Standards. You are expected to ensure that your revitalization plan will expand assisted housing opportunities in non-poor and non-minority neighborhoods and/or will accomplish substantial revitalization in the Project and its surrounding neighborhood. You are also expected to ensure that eligible households of all races and ethnic groups will have equal and meaningful access to the housing.

(b) Objectives in Selecting HUD-Assisted Sites. The fundamental goal of HUD's fair housing policy is to make full and free housing choice a reality. Housing choice requires that households of all races and ethnicity, or with disabilities, can freely decide the type of neighborhood where they wish to reside, that minority neighborhoods are no longer deprived of essential public and private resources, and that stable, racially-mixed neighborhoods are available as a meaningful choice for all. To make full and free housing choice a reality, sites for HUD-assisted housing investment should be selected so as to advance two complementary goals:

(i) Expand assisted housing opportunities in non-minority neighborhoods, opening up choices throughout the metropolitan area for all assisted households; and

(ii) Reinvest in minority neighborhoods, improving the quality and affordability of housing there to represent a real choice for assisted households.

(c) Compliance with Fair Housing Act and Title VI of the Civil Rights Act of 1964. You must comply with the Fair Housing Act and Title VI of the Civil Rights Act of 1964, and implementing regulations, in determining the location of any replacement housing.

(d) Grantee's Election of Requirements. You may, at your election, separately with regard to each site you propose, comply with the development regulations regarding Site and Neighborhood Standards (24 CFR 941.202 (b)–(d)), or with the Site and Neighborhood Standards contained in this Section.

(e) Replacement housing located on site or in the surrounding neighborhood. Replacement housing under HOPE VI that is located on the site of the existing project or in its surrounding neighborhood will not require independent approval under Site and Neighborhood Standards, since HUD will consider the scope and impact of the proposed revitalization to alleviate severely distressed conditions at the public housing project and its surrounding neighborhood in assessing the application to be funded under this NOFA.

(f) Off-Site Replacement Housing Located Outside of the Surrounding Neighborhood. Unless you demonstrate that there are already significant opportunities in the metropolitan area for assisted households to choose non-minority neighborhoods (or these opportunities are under development), HOPE VI replacement housing not covered by Section (e) above may not be located in an area of minority concentration (as defined in paragraph (g) below) without the prior approval of HUD. Such approval may be granted if you demonstrate to the satisfaction of HUD that:

(i) You have made determined and good faith efforts, and found it impossible with the resources available, to acquire an appropriate site(s) in an area not of minority concentration, or

(ii) The replacement housing, taking into consideration both the CSS activities or other revitalizing activities included in the Revitalization Plan, and any other revitalization activities in operation or firmly planned, will contribute to the stabilization or improvement of the neighborhood in which it is located, by addressing any serious deficits in services, safety, economic opportunity, educational opportunity, and housing stock.

(g) Area of Minority Concentration. The term "area of minority concentration" is any neighborhood in which:

(i) The percentage of households in a particular racial or ethnic minority group is at least 20 points higher than the percentage of that particular minority group for the housing market area; *i.e.*, the Metropolitan Statistical Area (MSA) in which the proposed housing is to be located; or

(ii) The neighborhood's total percentage minority is at least 20 points higher than the total percentage of all minorities for the MSA as a whole; or.

(iii) In the case of a metropolitan area, the neighborhood's total percentage of minority persons exceeds 50 percent of its population.

(4) Affirmatively Furthering Fair Housing. Section 808(e)(5) of the Fair Housing Act requires HUD to affirmatively further fair housing. HUD requires the same of its grant recipients. If you are a successful applicant, you will have a duty to affirmatively further fair housing opportunities for classes protected under the Fair Housing Act. Protected classes are:

(a) Race;
(b) Color;
(c) National origin;
(d) Religion;
(e) Sex;
(f) Disability; and
(g) Familial status.

### (D) Rating Factor: Fair Housing and Section 3—3 Points Total

(1) Fair Housing—2 Points.

(a) You will receive 2 Points if your application specifically describes:

(i) Your efforts to attract families from all segments of the population on a non-discriminatory basis and with a broad spectrum of incomes to the revitalized site through intensive affirmative marketing efforts and how these efforts contribute to the deconcentration of low-income neighborhoods;

(ii) Your efforts to target your marketing and outreach activities to those persons and groups least likely to know about these housing opportunities, in order to promote housing choice and opportunity throughout your jurisdiction and contribute to the deconcentration of both minority and low-income neighborhoods. In your application, you must describe how your outreach and marketing efforts will reach out to persons of different races and ethnic groups, families with or without children, persons with disabilities and able-bodied persons, and the elderly; and

(iii) The specific steps you plan to take through your proposed activities to affirmatively further fair housing. These steps can include, but are not limited to:

(A) Addressing impediments to fair housing choice relating to your operations;

(B) Working with local jurisdictions to implement their initiatives to affirmatively further fair housing;

(C) Implementing, in accordance with Departmental guidance, relocation plans that result in increased housing choice and opportunity for residents affected by HOPE VI revitalization activities funded under this NOFA;

(D) Implementing admissions and occupancy policies that are nondiscriminatory and help reduce racial and national origin concentrations; and

(E) Initiating other steps to remedy discrimination in housing and promote fair housing rights and fair housing choice.

(b) You will receive 1 Point if you address all of the above issues only in a general way.

(c) You will receive 0 Points if you do not address all of the above issues, or if there is insufficient information to rate this factor.

(2) Economic Opportunities for Low- and Very Low-Income Persons (Section 3)—1 Point.

(a) HOPE VI grantees must comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Economic Opportunities for Low- and Very Low-Income Persons in Connection with assisted Projects) and its implementing regulations at 24 CFR part 135. Information about Section 3 can be found at HUD's section 3 Web site at *www.hud.gov/fhe/sec3over.html*.

(b) You will receive 1 Point if you describe a feasible plan to implement Section 3 that not only meets the minimum requirements described in Section (a) above but also exceeds those requirements. Your plan must include your goals by age group, types of jobs and other opportunities to be provided, and plans for tracking and evaluation. Section 3 firms must be in place quickly so that residents are trained in time to take advantage of employment opportunities such as jobs and other contractual opportunities in the pre-development, demolition, and construction phases of the revitalization. Your section 3 plan must demonstrate that you will, to the greatest extent feasible, direct training, employment and other economic opportunities to:

(i) Low- and very low-income persons, particularly those who are recipients of government assistance for housing, and

(ii) Business concerns which provide economic opportunities to low- and very low-income persons.

(c) You will receive 0 Points if your plan to implement Section 3 does not meet the standards listed in Section (b) above, or if there is inadequate information in your application to rate this factor.

### *XI. Well-Functioning Communities—8 Points Total*

#### (A) Rating Factor: On-Site Housing—3 Points

Your proposed unit mix must be designed to achieve a well functioning community on the revitalized site. While it is up to you to determine the unit mix that is appropriate for your site, it is essential that this unit mix include a sufficient amount of public housing rental units. Reducing concentration in this context does not necessarily mean reducing density of housing units; a well-functioning, mixed-income housing community may actually have a higher density of units, but with a unit mix appropriate for the site's market conditions. For purposes of this section, "public housing rental units" mean rental units under the ACC. Homeownership units and lease-purchase units would not be counted. Units sold under section 32 are not considered as public housing rental units for this section.

(1) You will receive 3 Points if your application describes a unit mix that is more than 35 percent or more public housing rental units.

(2) You will receive 2 Points if your application describes a unit mix that is between 25 and 34 percent public housing rental units.

(3) You will receive 1 Point if your application describes a unit mix that is between 15 and 24 percent public housing rental units.

(4) You will receive 0 Points if your application describes a unit mix that is 14 percent or less, or if there is inadequate information in your application to rate this factor.

#### (B) Off-Site Housing—1 Point

(1) Although not required, you are encouraged to consider development of replacement housing in locations other than the original severely distressed site (*i.e.*, off-site housing). Locating off-site housing in neighborhoods with low levels of poverty and/or low concentrations of minorities will provide maximized housing alternatives for low-income residents who are currently on-site and assist the goal of creating desegregated, mixed-income communities. The effect on-site will be to assist in the deconcentration of low-income residents and increase the number of replacement units.

(2) Although it is acknowledged that off-site housing is not appropriate in some communities, if you do not propose to include off-site housing in your Revitalization Plan, you are not eligible to receive this Point.

(3) If you propose an off-site housing component in your application, you must be sure to include that component when you discuss other components (*e.g.* on-site housing, homeownership housing, etc.). Throughout your application, your unit counts and other numerical data must take into account the off-site component.

(4) *Threshold:* If you propose to develop off-site housing in any phase of your proposed revitalization plan, you MUST provide evidence in your application that you (not your developer) have site control of the property(ies). Evidence may include an option to purchase the property, a sales agreement, a land swap, or a deed. Evidence may not include a letter from the Mayor or other official, letters of support from members of the appropriate municipal entities, or a resolution evidencing the PHA's intent to exercise its power of eminent domain. Evidence of site control may only be made contingent upon the receipt of the HOPE VI grant, satisfactory compliance with the environmental review requirements in accordance with Section XVII of this NOFA, and the site and neighborhood standards in Section X(C)(3) of this NOFA. If you demonstrate site control through an option to purchase, the option must extend for at least 180 days after the application due date. If you propose to develop off-site housing and you do not provide acceptable site control, your entire application will be ineligible for funding.

(5) *Rating factor.* You will receive 1 Point if you propose to develop an off-site housing component(s) and document that: you have site control of the property(ies), that the site(s) meets all environmental review requirements, and that the site(s) meets site and neighborhood standards, in accordance with (4) above.

#### (C) Threshold: Market Rate Housing

If you include market rate housing in your Revitalization Plan, you must demonstrate that there is a demand for the housing units of the type, number, and size proposed in the location you have chosen. In your application you must provide a preliminary market assessment letter prepared by an independent, third party, credentialed market research firm, or professional that describes its assessment of the demand and associated pricing structure for the proposed residential units and any community facilities, economic development, and retail structures, based on the market and economic conditions of the project area. If, after the cure period, this letter is not included in your application, it will be ineligible for funding.

#### (D) Rating Factor: Homeownership Housing—4 Points

The Department has placed the highest priority on increasing homeownership opportunities for low- and moderate-income persons, persons with disabilities, the elderly, minorities, and families where English may be a second language. Too often these individuals and families are shut out of the housing market through no fault of their own. HUD encourages applicants to work aggressively to open up the realm of homeownership.

(1) Your application will receive 4 Points if you propose and describe a feasible, well-defined plan for homeownership. In your application, you will describe all of the following:

(a) The purpose of your homeownership program;

(b) The number of units planned and their location(s);

(c) A description and justification of the families that will be targeted for the program;

(d) The proposed source of your construction and permanent financing of the units; and

(e) A description of the homeownership counseling you will provide to prospective families, including such subjects as the homeownership process, housing in non-impacted areas, credit repair, budgeting, and home maintenance.

(2) You will receive 2 Points for this factor if you address in your description some but not all of the items listed under (1).

(3) You will receive 0 Points for this factor if you do not propose to include homeownership units in your Revitalization Plan, your proposed program is not feasible and/or well defined, or there is inadequate information in your application to rate this factor.

### (E) Threshold: Zoning Approval

If you are proposing to use off-site parcels of land for housing development or other uses that are currently zoned for a purpose different than the one proposed in your revitalization plan, your application must include a certification from the appropriate local official documenting that all required zoning approvals have been secured for such parcels, and/or the actual zoning approval document for the parcel(s). For example, if you propose to develop housing on land that is currently zoned as parkland or industrial land, you must provide evidence in the application that the zoning change has been secured to permit housing development.

### *XII. Soundness of Approach*

### (A) Threshold: Appropriateness of Proposal

In accordance with section 24(e)(1) of the 1937 Act, each application must demonstrate the appropriateness of the proposal in the context of the local housing market relative to other alternatives. You must briefly discuss other possible alternatives to your proposal and explain why your plan is more appropriate. This is a statutory requirement and an application threshold. Any deficiencies in your narrative may not be corrected after the application is submitted. Examples of alternative proposals may include:

(1) Rebuilding or rehabilitating an existing project or units at an off-site location that is in an isolated, non-residential, or otherwise inappropriate area;

(2) Proposing a range of incomes, housing types (rental, homeownership, market rate, public housing, townhouse, detached house, etc.), or costs which cannot be supported by a market analysis; and/or

(3) Proposing to use the land in a manner that is contrary to the goals of your agency.

### (B) Rating factor: Overall Quality of Plan—19 Points Total

(1) Quality and Consistency of the Application—2 Points.

Your application may receive between 0 and 2 points for its demonstration of quality and consistency. The information and strategies described in your application must be well organized, coherent, and internally consistent. Numbers and statistics in your narratives must be consistent with the information provided in the attachments. Also, the physical and CSS aspects of the application must be compatible and coordinated with each other. Pay particular attention to the data provided for:

—Types and numbers of units;
—Budgets;
—Other financial estimates, including sources and uses; and
—Numbers of residents affected.

(a) You will receive 2 points if your application demonstrates a high level of quality and consistency;

(b) You will receive 1 point if your application demonstrates a moderate level of quality and consistency;

(c) You will receive 0 points if your application fails to demonstrate an acceptable level of quality and consistency;

(2) *Appropriateness and Feasibility of the Plan—2 Points.* (a) You will receive 2 points if your Revitalization Plan demonstrates:

(i) Appropriateness and suitability, in the context of the community, market conditions, and other revitalization options, in accordance with XII(A);

(ii) Marketability, in the context of local conditions;

(iii) Financial feasibility, as demonstrated in the financial structure(s) proposed in the application.

(b) You will receive 1 Point if your application only moderately demonstrates the criteria of (2)(a)(i)–(iii) above.

(c) You will receive 0 Points if your application does not demonstrate the criteria of (2)(a)(i)–(iii) above.

(3) *Neighborhood Impact and Sustainability of the Plan—2 Points.* (a) You will receive 2 Points if your Revitalization Plan, including plans for retail, office, other economic development activities, as appropriate, will:

(i) Result in a revitalized site that will enhance the neighborhood in which the project is located;

(ii) Spur outside investment into the surrounding community;

(iii) Enhance economic opportunities for residents; and

(iv) Remove an impediment to continued redevelopment or start a community-wide revitalization process.

(b) You will receive 1 Point if your application demonstrates that your Revitalization Plan will have only a moderate effect on activities in the surrounding community, as described in (a)(i)–(iv) above.

(c) You will receive 0 Points if your application does not demonstrate that your Revitalization Plan will have an effect on the surrounding community, as described in (a)(i)–(iv) above, or if there is inadequate information in your application to rate this factor.

(4) *Project Readiness—7 Points.* HUD places top priority on projects that will be able to commence immediately after grant award. You will receive the following points for each applicable subfactor certified in your application.

(a) You will receive 2 Points if the targeted severely distressed public housing project is completely vacant.

(b) You will receive 2 Points if the targeted severely distressed public housing site is cleared.

(c) You will receive 1 Point if a Master Development Agreement has been developed and is ready to submit to HUD.

(d) You will receive 1 Point if your preliminary site design is complete.

(e) You will receive 1 Point if you have held 5 or more public planning sessions leading to resident acceptance of the Plan.

(5) *Design—3 Points.* HUD is seeking excellence in design. We urge you to carefully select your architects and/or planners, and to enlist local affiliates of national architectural and planning organizations such as the American Institute of Architects, the American

Society of Landscape Architects, the American Planning Association, the Congress for the New Urbanism, and/or the department of architecture at a local college or university to assist you in assessing qualifications of design professionals and/or participating on a selection panel that results in the procurement of excellent design services.

HUD encourages you to select a design team that is committed to a process in which residents, including young people and seniors, the broader community, and other stakeholders participate in designing the new community.

Your proposed site plan, new units, and other buildings must be designed to be compatible with and enrich the surrounding neighborhood. Local architecture and design elements and amenities should be incorporated into the new or rehabilitated homes so that the revitalized sites and structures will blend into the broader community and appeal to the market segments for which they are intended. Housing, community facilities, and economic development space must be well integrated. You must select members of your Team who have the ability to meet these requirements.

(a) You will receive 3 Points if your proposed site plan, new dwelling units, and buildings demonstrate that:

(i) You have proposed a site plan that is compact, pedestrian-friendly, with an interconnected network of streets and public open space;

(ii) Your proposed housing, community facilities, and economic development facilities are thoroughly integrated into the community through the use of local architectural tradition, building scale, grouping of buildings, and design elements; and

(iii) Your plan proposes appropriate enhancements of the natural environment.

(b) You will receive 1 Point if your proposed site plan, new dwelling units, and buildings demonstrate design that adequately addresses the elements above.

(c) You will receive 0 Points if your proposed design is perfunctory or otherwise does not address the above elements. You will also receive 0 Points if there is inadequate information in the application to rate this factor.

(6) *Evaluation—3 Points.* You are encouraged to work with your local university(ies), other institutions of learning, foundations, and/or others to evaluate the performance and impact of their HOPE VI Revitalization Plan over the life of the grant. The proposed methodology must measure success against goals you set at the outset of your revitalization activities. Evaluators must establish baselines and provide ongoing interim reports that will allow you to make changes as necessary as your project proceeds. Where possible, you are encouraged to form partnerships with Historically Black Colleges and Universities (HBCUs); Hispanic-Serving Institutions (HSIs); Community Outreach Partnership Centers (COPCs); the Alaskan Native/Native Hawaiian Institution Assisting Communities Program (as appropriate); and others in HUD's University Partnerships Program.

(a) You will receive 3 Points if your application includes a letter(s) from an institution(s) of higher learning, foundations, or other organization that specializes in research and evaluation that provides a commitment to work with you to evaluate your program and describes its proposed approach to carry out the evaluation if your application is selected for funding. The letter must provide the extent of the commitment and involvement, the extent to which you and the local institution of higher learning will cooperate, and the proposed approach. The commitment letter must address all of the following areas for evaluation:

(i) The impact of your HOPE VI effort on the lives of the residents;

(ii) The nature and extent of economic development generated in the community;

(iii) The effect of the revitalization effort on the surrounding community, including spillover revitalization activities, property values, etc.; and

(iv) Your success at integrating the physical and CSS aspects of your strategy.

(b) You will receive 0 Points if your application does not include a commitment letter that conforms to the specifications in paragraph (b) above.

### *XIII. Application Requirements*

#### (A) Application Components

(1) *Narrative Exhibits.* (a) The first part of your application will be comprised of narrative exhibits. Your narratives will respond to each rating factor in the NOFA and will also respond to threshold requirements. Among other things, your narratives must describe your overall planning activities, including but not limited to relocation, community and supportive services, and development issues.

(b) Each HOPE VI Revitalization application must contain no more than 100 pages of narrative exhibits. Any pages after the first 100 pages of narrative exhibits will not be reviewed. Although submitting pages in excess of the page limitations will not disqualify an application, HUD will not consider the information on any excess pages, which may result in a lower score or failure of a threshold. Text submitted at the request of HUD to correct a technical deficiency will not be counted in the 100 page limit.

(2) *Attachments.* (a) The second part of your application will be comprised of Attachments. These documents will also respond to the rating factors in the NOFA, as well as threshold requirements. They will include documents such as maps, photographs, letters of commitment, application data forms, and various certifications unique to HOPE VI Revitalization.

(b) Each HOPE VI Revitalization application must contain no more than 125 pages of attachments. Any pages after the first 125 pages of attachments will not be considered. Although submitting pages in excess of the page limit will not disqualify an application, HUD will not consider the information on any excess pages, which may result in a lower score or failure to meet a threshold.

(3) *Exceptions to Page Limits.* The documents listed below constitute the only exceptions and are not counted in the page limits listed in Sections (1)(b) and (2)(b) above:

(a) Additional pages submitted at the request of HUD in response to a technical deficiency.

(b) Attachments that provide documentation of commitments from resource providers or CSS providers.

(c) Attachments that provide documentation of site control and site acquisition in accordance with Section XI(B)(4) and (5).

(d) Narratives and Attachments, as relevant, required to be submitted only by existing HOPE VI Revitalization Grantees in accordance with Sections IV(A)(3) and IV(B)(2) of this NOFA (Capacity).

(e) Information required of MTW applicants only.

(4) *Standard Forms and Certifications.* The last part of your application will be comprised of standard certifications common to many HUD programs. Required forms are included in the HOPE VI Application and will be available electronically on the Web sites listed in Section III(D)(2) in the General Section of this NOFA. If you are requesting Housing Choice Voucher assistance as described in Section III(E) in the General Section of this NOFA, it must be placed in this Standard Forms and Certifications Section of your HOPE VI application. These forms must be placed at the back of the application, except for the Application for Federal Assistance (SF–

424) and the Acknowledgment of Application Receipt (HUD–2993), must be the first two pages of your application.

(B) Application Format

To speed the processing of your application, you are asked to follow these instructions when preparing your application:

(1) Double space your narrative pages. Single spaced pages will be counted as two pages.

(2) Use 8½ x 11 inch paper, one side only. Only the City map may be submitted on an 8½ by 14 sheet of paper. Larger pages will be counted as two pages.

(3) All margins should be 1 inch, but no smaller than ½ inch.

(4) Use at least an 11 Point font.

(5) Any pages marked with numbers and letters (*e.g.*, 75A, 75B, 75C) will be treated as separate pages.

(6) If a Section is not applicable, omit it; do not insert a page marked n/a.

(7) Mark each Exhibit and Attachment with an appropriate tab. No material on the tab will be considered for review purposes, although pictures are allowed.

(8) No more than one page of text may be placed on one sheet of paper; *i.e.*, you may not shrink pages to get two or more on a page.

(9) Do not format your narrative in columns. Pages with text in columns will be counted as two pages.

(10) The applications (copy and original) should be packaged in a 3-ring binder.

(C) Signatures

Unless otherwise indicated, the Executive Director of the applicant PHA, or his or her designate, must sign each form or certification, whether part of an Attachment or a Standard Certification. Signatures need not be original in the copy.

### *XIV. Revitalization Application Selection Process*

(A) Revitalization Grant Application Evaluation

(1) HUD's selection process is designed to ensure that HOPE VI Revitalization grants are awarded to eligible PHAs with the most meritorious applications.

(2) HUD will only rate HOPE VI Revitalization applications that have met the thresholds described in this HOPE VI NOFA.

(B) Threshold and Completeness Review

(1) Application Screening. HUD will screen each application to determine if it meets the threshold criteria listed in Section II of this NOFA.

(2) HUD will consider the information you submit by the application due date. After the application due date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information that you or any third party may want to provide.

(3) In order not to unreasonably exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application on a uniform basis for all applicants. After your application has been screened, HUD may contact you to clarify an item in your application or to give you an opportunity to correct a technical deficiency. HUD may not seek clarification of items or responses that would improve the substantive quality of your response to any rating factor. Examples of curable technical deficiencies include your failure to include a required certification or sign a document. If HUD identifies a technical deficiency, it will notify you by fax of the clarification or deficiency. You must submit information to cure the deficiency to HUD within 14 calendar days from the date of HUD notification. (If the due date falls on a Saturday, Sunday, or Federal holiday, your correction must be received by HUD on the following business day.) If the deficiency is not corrected within this time period, HUD will reject the application as incomplete and it will not be considered for funding.

(4) In order to evaluate Thresholds, HUD may also use internal information sources that will provide information regarding audit findings, the status of existing HOPE VI Revitalization grants obligation of Capital Funds, and other pertinent information. HUD will not consider external sources such as newspaper articles and letters to evaluate applications unless they are submitted in your application.

(5) Applications that do not meet every threshold will be deemed ineligible for funding and will not be rated.

(C) Preliminary Rating and Ranking

(1) Rating.

(a) HUD will preliminarily rate each eligible application, SOLELY on the basis of the rating factors described in this HOPE VI NOFA.

(b) When rating applications, HUD reviewers will not use any information included in any HOPE VI application submitted in a prior year.

(c) HUD will assign a preliminary score for each rating factor and a preliminary total score for each eligible application.

(d) The maximum number of Points for each Revitalization application is 108.

(2) Ranking.

(a) After preliminary review, applications will be ranked in score order.

(b) Applications will be deemed "competitive" if they have a preliminary score of 85 or above.

(c) Applications that do not have a preliminary score of at least 85 will not receive a final score and will not be eligible for funding.

(D) Final Panel Review

(1) A Final Review Panel made up of HUD staff will:

(a) Assess each competitive application, as defined in Section XIV(C) above;

(b) Assign the final score; and

(c) Recommend for selection the most highly-rated competitive applications, subject to the amount of available funding, in accordance with the allocation of funds described in Section II of the General Section of this NOFA.

(2) HUD reserves the right to make reductions in funding to delete ineligible items, with the exception of the prohibition to request funds for units that do not meet the requirements of replacement housing, in accordance with Section III(D)(8) of this NOFA.

(3) In accordance with the FY 2003 HOPE VI appropriation, HUD may not use HOPE VI funds to grant competitive advantage in awards to settle litigation or pay judgments.

(E) Tie Scores

If two or more applications have the same score and there are insufficient funds to select all of them, HUD will select for funding the application(s) with the highest score for Rating Factor XII, Overall Quality of the Plan. If a tie still remains, HUD will select for funding the application(s) with the highest score for Capacity, Rating Factor IV. HUD will select further tied applications with the highest score for Need, Rating Factor V.

(F) Transfer to Demolition Grants

If funds remain after all eligible HOPE VI Revitalization grant applications are funded and the amount remaining is inadequate to feasibly fund the next eligible Revitalization application, HUD reserves the right to:

(1) Reallocate unused funds to fund or supplement the next eligible HOPE VI Demolition grant application(s);

(2) Reallocate unused funds to the amount available for Housing Choice Voucher assistance, if necessary; and/or

(3) Carry over unused funds to the next fiscal year.

### *XV. Post Award Activities*

(A) Notification of Funding Decisions. The HUD Reform Act prohibits HUD from notifying you as to whether or not you have been selected to receive a Revitalization grant until it has announced all HOPE VI Revitalization grant recipients. If your Revitalization application has been found to be ineligible or if it did not receive enough Points to be funded, you will not be notified until the successful applicants have been notified. HUD will provide written notification to all HOPE VI applicants, whether or not they have been selected for funding.

(B) Applicant Debriefing. Each applicant will be provided a copy of the total score their application received, including the score received for each rating factor.

(C) Environmental Review. HUD notification that you have been selected to receive a HOPE VI grant constitutes only preliminary approval. Grant funds may not be released until the responsible entity completes an environmental review and you submit and obtain HUD approval of a request for release of funds and the responsible entity's environmental certification in accordance with Section XVII of this NOFA.

(D) Revitalization Grant Agreement. When you are selected to receive a Revitalization grant, HUD will send you a HOPE VI Revitalization Grant Agreement, which constitutes the contract between you and HUD to carry out and fund public housing revitalization activities. Both you and HUD will sign the cover sheet of the Grant Agreement. It is effective on the date of HUD's signature. The Grant Agreement differs from year to year. Past Revitalization Grant Agreements can be found on the HOPE VI Web site at *www.hud.gov/hopevi.*

(E) HOPE VI Endowment Trust Addendum to the Grant Agreement. This document must be executed between the Grantee and HUD in order for the Grantee to use CSS funds in accordance with Section VIII(A)(3) of this NOFA.

(F) Revitalization Plan. After HUD conducts a post-award review of your application and makes a visit to the site, you will be required to submit components of your Revitalization Plan to HUD, as provided in the HOPE VI Revitalization Grant Agreement. These components include, but are not limited to:

(1) Supplemental Submissions, including a HOPE VI Program Budget;

(2) A Community and Supportive Services work plan, in accordance with guidance provided by HUD;

(3) A standard or mixed-finance development proposal, as applicable;

(4) A demolition and/or disposition application, as applicable; and

(5) A homeownership proposal, as applicable.

### *XVI. Revitalization Grant Implementation Requirements*

(A) General Section Requirements. See the General Section of this NOFA for other Grant Implementation and Additional Governmental Requirements that you must implement.

(B) Quarterly Report. If you are selected for funding, you must submit a Quarterly Report to HUD.

(1) HUD will provide training and technical assistance on the filing and submitting of Quarterly Reports.

(2) Filing of Quarterly Reports is mandatory for all Grantees, and failure to do so within the required time frame will result in suspension of grant funds until the report is filed and approved by HUD.

(3) Grantees will be held to the milestones that are reported on the Quarterly Report Administrative and Compliance Checkpoints Report, as approved by HUD.

(4) Grantees must also report obligations and expenditures in LOCCS, or its successor system, on a quarterly basis.

(C) Timeliness of Construction. Grantees must proceed within a reasonable time frame, as indicated below. In determining reasonableness of such time frame, HUD will take into consideration those delays caused by factors beyond your control. These timeframes must be reflected in the form of a program schedule, in accordance with the threshold requirement at Section IV(C).

(1) Grantees must submit Supplemental Submissions within 90 days from the date of HUD's written request.

(2) Grantees must submit CSS work plans within 90 days from the execution of the Grant Agreement.

(3) All other required components of the Revitalization Plan and any other submissions not mentioned above must be submitted in accordance with the Quarterly Report Administrative and Compliance Checkpoints Report, as approved by HUD.

(4) Grantees must start construction within 12 months from the date of HUD's approval of the Supplemental Submissions as requested by HUD after grant award. This time period may not exceed 18 months from the date the Grant Agreement is executed.

(5) Grantees must submit the development proposal for the first phase of construction within 12 months of grant award. The program schedule must indicate the date on which the development proposal for each phase of the revitalization plan will be submitted to HUD.

(6) The closing of the first phase must take place within 15 months of grant award.

(7) Grantees must complete construction within 48 months from the date of HUD's approval of your Supplemental Submissions. This time period for completion may not exceed 54 months from the date the Grant Agreement is executed.

(8) In accordance with section 24(i) of the 1937 Act, if a Grantee does not proceed within a reasonable time frame, as described in Sections (B)(1) through (7) above, HUD shall withdraw any unobligated grant amounts. HUD shall redistribute any withdrawn amounts to one or more other applicants eligible for HOPE VI assistance or to one or more other entities capable of proceeding expeditiously in the same locality in carrying out the Revitalization Plan of the original Grantee.

(9) 31 U.S.C. 1552. In accordance with this statute, all FY 2003 HOPE VI funds must be expended by September 30, 2009. Any funds that are not expended by that date will be cancelled and recaptured by the Treasury, and thereafter will not be available for obligation or expenditure for any purpose.

(D) Building Standards. (1) Building Codes. All activities that include construction, rehabilitation, lead-based paint removal, and related activities must meet or exceed local building codes. You are encouraged to read the policy statement and Final Report of the HUD Review of Model Building Codes that identifies the variances between the design and construction requirements of the Fair Housing Act and several model building codes. That report can be found on the HUD Web site at *www.hud.gov/fhe/modelcodes.*

(2) Deconstruction. HUD encourages you to design programs that incorporate sustainable construction and demolition practices, such as the dismantling or "deconstruction" of public housing units, recycling demolition debris, and reusing salvage materials in new construction. "A Guide to Deconstruction" can be found at *www.hud.gov/deconstr.pdf.*

(3) PATH. HUD encourages you to use PATH technologies in the construction and delivery of replacement housing. PATH (Partnership for Advancing Technology in Housing) is a voluntary initiative that seeks to accelerate the creation and widespread use of

advanced technologies to radically improve the quality, durability, environmental performance, energy efficiency, and affordability of our Nation's housing.

(a) PATH's goal is to achieve dramatic improvement in the quality of American housing by the year 2010. PATH encourages leaders from the home building, product manufacturing, insurance and financial industries, and representatives from federal agencies dealing with housing issues to work together to spur housing design and construction innovations. PATH will provide technical support in design and cost analysis of advanced technologies to be incorporated in project construction.

(b) Applicants are encouraged to employ PATH technologies to exceed prevailing national building practices by:

(i) Reducing costs;
(ii) Improving durability;
(iii) Increasing energy efficiency;
(iv) Improving disaster resistance; and
(v) Reducing environmental impact.

(c) More information, the list of technologies, latest PATH Newsletter, results from field demonstrations, and PATH projects can be found at *www.pathnet.org*.

(4) Energy Efficiency.

(a) New construction must comply with the latest HUD-adopted Model Energy Code issued by the Council of American Building Officials.

(b) HUD encourages you to set higher standards for energy and water efficiency in HOPE VI new construction, which can achieve utility savings of 30 to 50 percent with minimal extra cost.

(c) You are encouraged to negotiate with your local utility company to obtain a lower rate. Utility rates and tax laws vary widely throughout the country. In some areas, PHAs are exempt or partially exempt from utility rate taxes. Some PHAs have paid unnecessarily high utility rates because they were billed at an incorrect rate classification.

(d) Local utility companies may be able to provide grant funds to assist in energy efficiency activities. States may also have programs that will assist in energy efficient building techniques.

(e) You must use new technologies that will conserve energy and decrease operating costs where cost effective. Examples of such technologies include:

(i) Geothermal heating and cooling;
(ii) Placement of buildings and size of eaves that take advantage of the directions of the sun throughout the year;
(iii) Photovoltaics (technologies that convert light into electrical power);
(iv) Extra insulation;
(v) Smart windows; and
(vi) Energy Star appliances.

(f) HUD's Energy Web site is located at *http://www.hudstage.hud.gov/offices/cpd/energyenviron/energy/index.cfm*

(E) Accessible Technology. The Rehabilitation Act Amendments of 1998 apply to all electronic information technology (EIT) used by a grantee for transmitting, receiving, using, or storing information to carry out the responsibilities of any federal grant awarded. It includes, but is not limited to, computers (hardware, software, word processing, e-mail, and web pages) facsimile machines, copiers, and telephones. When developing, procuring, maintaining or using EIT, grantees must ensure that the EIT allows:

(1) Employees with disabilities to have access to and use information and data that is comparable to the access and use of data by employees who do not have disabilities; and

(2) Members of the public with disabilities seeking information or service from a grantee must have access to and use of information and data that is comparable to the access and use of data by members of the public who do not have disabilities. If these standards impose an undue burden on a grantee, they may provide an alternative means to allow the individual to use the information and data. No grantee will be required to provide information services to a person with disabilities at any location other than the location at which the information services are generally provided.

### *XVII. Environmental Requirements*

(A) Environmental Review. (1) Environmental Review Requirements for the HOPE VI Program. Please see Section VII of the General Section of the NOFA for environmental review requirements for HOPE VI Grants.

(2) Additional Environmental Review Requirements for HOPE VI Revitalization Grants. (a) If the environmental review is completed before HUD approval of the HOPE VI Supplemental Submissions and you have submitted your Request for Release of Funds (RROF), the Supplemental Submissions approval letter shall state any conditions, modifications, prohibitions, etc. as a result of the environmental review, including the need for any further environmental review. You must carry out any mitigating/remedial measures required by HUD, or select an alternate eligible property, if permitted by HUD. If HUD does not approve the remediation plan and a fully funded contract with a qualified contractor licensed to perform the required type of remediation is not executed, HUD reserves the right to determine that the grant is in default.

(b) If the environmental review is not completed and/or you have not submitted the RROF before HUD approval of the Supplemental Submissions, the letter approving the Supplemental Submissions will instruct you to refrain from undertaking, obligating, or expending funds on physical activities or other choice-limiting actions, until HUD approves your RROF and the related certification of the responsible entity (or HUD has completed the environmental review). The Supplemental Submissions approval letter also will advise you that the approved Supplemental Submissions may be modified on the basis of the results of the environmental review.

(B) There must not be any environmental or public policy factors such as sewer moratoriums that would preclude development in the requested locality. Applicants will certify to this when signing the HOPE VI Revitalization Grant Application Certifications.

(C) Flood Insurance. In accordance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), your application may not propose to provide financial assistance for acquisition or construction (including rehabilitation) of properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(1) The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

(2) Where the community is participating in the National Flood Insurance Program, flood insurance is obtained as a condition of execution of a Grant Agreement and approval of any subsequent demolition or disposition application.

(D) Coastal Barrier Resources Act. In accordance with the Coastal Barrier Resources Act (16 U.S.C. 3501), your application may not target properties in the Coastal Barrier Resources System.

A

## HOPE VI Revitalization Grant Applicant Certifications

Acting on behalf of the Board of Commissioners of the Housing Authority listed below, as its Chairman, I approve the submission of the HOPE VI Revitalization application, of which this document is a part, and make the following certifications to and agreements with the Department of Housing and Urban Development (HUD) in connection with the application and implementation thereof:

1. The public housing project or building in a project targeted in this HOPE VI Revitalization grant application meets the definition of severe distress in accordance with section 24(j)(2) of the United States Housing Act of 1937 ("1937 Act").

2. The PHA has not received assistance from the Federal government, State, or unit of local government, or any agency or instrumentality, for the specific activities for which funding is requested in the HOPE VI Revitalization application.

3. The PHA does not have any litigation pending which would preclude timely startup of activities.

4. The PHA is in full compliance with any desegregation or other court order related to Fair Housing (*e.g.*, Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and section 504 of the Rehabilitation Act of 1973) that affects the PHA's public housing program and that is in effect on the date of application submission.

5. The PHA has returned any excess advances received during development or modernization, or amounts determined by HUD to constitute excess financing based on a HUD-approved Actual Development Cost Certificate (ADCC) or Actual Modernization Cost Certificate (AMCC), or that HUD has approved a payback plan.

6. There are no environmental factors, such as sewer moratoriums, precluding development in the requested locality.

7. In accordance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), the property targeted for acquisition or construction (including rehabilitation) is not located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(a) The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

(b) Where the community is participating in the National Flood Insurance Program, flood insurance is obtained as a condition of execution of a Grant Agreement and approval of any subsequent demolition or disposition application.

8. The application does not target properties in the Coastal Barrier Resources System, in accordance with the Coastal Barrier Resources Act (16 U.S.C. 3501).

If selected for HOPE VI Revitalization funding:

9. The PHA will comply with all policies, procedures, and requirements prescribed by HUD for the HOPE VI Program, including the implementation of HOPE VI revitalization activities, in a timely, efficient, and economical manner.

10. The PHA will not receive assistance from the federal government, state, or unit of local government, or any agency or instrumentality, for the specific activities funded by the HOPE VI Revitalization grant. The PHA has established controls to ensure that any activity funded by the HOPE VI Revitalization grant is not also funded by any other HUD program, thereby preventing duplicate funding of any activity.

11. The PHA will not provide to any development more assistance under the HOPE VI Revitalization grant than is necessary to provide affordable housing after taking into account other governmental assistance provided.

12. The PHA will supplement the aggregate amount of the HOPE VI Revitalization grant with funds from sources other than HOPE VI in an amount not less than 5 percent of the amount of the HOPE VI grant.

13. In addition to supplemental amounts provided in accordance with Certification 12 above, if the PHA uses more than 5 percent of the HOPE VI grant for the community and supportive services component, it will provide supplemental funds from sources other than HOPE VI, dollar for dollar, for the amount over 5 percent of the grant used for the community and supportive services component.

14. Disposition activity under the grant will be conducted in accordance with section 18 of the 1937 Act.

15. The PHA will carry out acquisition of land, or acquisition of off-site units with or without rehabilitation to be used as public housing, in accordance with 24 CFR part 941, or successor part.

16. The PHA will carry out major rehabilitation and other physical improvements of housing and non-dwelling facilities in accordance with 24 CFR 968.11 2(b), (d), (e), and (g)–(o), 24 CFR 968.130, and 24 CFR 968.135(b) and (d) or successor part.

17. The PHA will carry out construction of public housing rental replacement housing, both on-site and off-site, and community facilities, in accordance with 24 CFR part 941 or successor part, including mixed-finance development in accordance with subpart F.

18. The PHA will carry out replacement homeownership activities in conformance with the requirements of section 24(d)(1)(J), which may include a homeownership proposal under section 32 of the 1937 Act, the income limitations, and other applicable homeownership requirements of the 1937 Act.

19. The PHA will administer and operate public housing rental units in accordance with all requirements applicable to public housing, including the 1937 Act, HUD's implementing regulations thereunder, the ACC, the Mixed-Finance ACC Amendment (if applicable), and all other applicable Federal statutory, Executive Order, and regulatory requirements as such requirements may be amended from time to time.

20. The PHA will comply with:

(a) The Fair Housing Act (42 U.S.C. 3601–19) and regulations at 24 CFR part 100;

(b) The prohibitions against discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations at 24 CFR part 8);

(c) Title II of the Americans with Disabilities Act (42 U.S.C 12101 *et seq.*) and its implementing regulations at 28 CFR part 36;

(d) The Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151) and regulations at 24 CFR part 40).

(e) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and regulations at 24 CFR part 1.

(f) Executive Order 11063, issued November 20, 1962.

(g) The Age Discrimination Act of 1975 and the regulations at 24 CFR part 146.

21. The PHA will comply with regulations at 24 CFR 85.36(e) which require recipients of assistance (grantees and subgrantees) to take all necessary affirmative steps in contracting for purchase of goods or services to assure that small businesses, small disadvantaged businesses, minority firms, women's business enterprises, and labor surplus area firms are used when possible.

22. The PHA will comply with the requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) and its implementing regulation at 24 CFR part 135, including the reporting requirements of subpart E.

23. The PHA will comply with Davis-Bacon or HUD-determined prevailing wage rate requirements to the extent required under section 12 of the 1937 Act.

24. As applicable, the PHA will comply with the relocation assistance and real property acquisition requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and government-wide implementing regulations at 49 CFR part 24; relocation regulations at 24 CFR 968.108 or successor regulation (rehabilitation, temporary relocation); 24 CFR 941.207 or successor regulation (acquisition); section 18 of the 1937 Act as amended (disposition); and CPD Notice 02–08.

25. The PHA will comply with all HOPE VI requirements for reporting and providing access to records.

26. The PHA will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*) and is subject to 24 CFR part 35 and 24 CFR 965.701, as they may be amended from time to time, and section 968.110(k) or successor regulation.

27. The PHA will comply with the policies, guidelines, and requirements of OMB Circular A–87 (Cost Principles Applicable to Grants, Contracts, and Other Agreements with State and Local Governments).

28. The PHA will comply with 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments), as modified by 24 CFR 941 or successor part, subpart F, relating to the procurement of partners in mixed finance developments.

29. The PHA will keep records in accordance with 24 CFR 85.20 that facilitate an effective audit to determine compliance with program requirements, and comply with the audit requirements of 24 CFR 85.26.

30. The PHA will start construction within 12 months from the date of HUD's approval of the Supplemental Submissions as requested by HUD after grant award. This time period may not exceed 18 months from the date the Grant Agreement is executed.

31. The PHA will submit the development proposal for the first phase of construction within 12 months of grant award.

32. The PHA will complete construction within 48 months from the date of HUD's approval of the Supplemental Submissions. This time period for completion may not exceed 54 months from the date the Grant Agreement is executed.

33. All activities that include construction, rehabilitation, lead-based paint removal, and related activities will meet or exceed local building codes. New construction will comply with the latest HUD-adopted Model Energy Code issued by the Council of American Building Officials.

## HOPE VI Demolition Grants Section

The Demolition Grants Section of the HOPE VI NOFA contains information that applies to the HOPE VI Demolition Program. Unless otherwise noted, citations refer to the HOPE VI Demolition Grants Section.

### *I. Application Thresholds*

(A) Each required element of a HOPE VI Demolition grant application is a threshold requirement. Your application will not be eligible for funding unless each requirement listed in this NOFA is included in your application. HUD will give you the opportunity to submit any missing information up to the application deadline date, as provided in Section III(B) of the General Section.

### *II. Eligible Demolition Activities*

(A) Relocation for residents displaced as a result of the demolition of the project. This includes reasonable moving expenses as well as mobility counseling and other services to help displaced residents relocate. See Section V of this NOFA for relocation requirements.

(B) Demolition of dwelling units in buildings, in whole or in part, including the abatement of environmentally hazardous materials such as asbestos, in accordance with section 18 of the 1937 Act as amended.

(C) Demolition of nondwelling structures, if such demolition is directly related to the demolition of severely distressed dwelling units to be demolished with funds from the HOPE VI Demolition Grant.

(D) Restoration of the site to a "greenfield," a clean site by removing all demolished materials, filling in the site, and establishing a lawn. No additional improvements, such as constructing new curbs and gutters, installing playground equipment, installing permanent fences, or planting gardens, may be paid for with HOPE VI Demolition grant funds.

(E) In the case of partial demolition of a site, minimal site restoration after demolition and subsequent site improvements to benefit the remaining portion of the project in order to provide project accessibility or to make the site more marketable.

(F) Reasonable costs for administration, planning, technical assistance, and fees and costs that are deemed to be incremental costs of carrying out the demolition as specifically approved by HUD.

### *III. Application and Grant Limitations*

(A) *Application Limitations.* (1) You may submit up to ten HOPE VI Demolition grant applications that target a total of no more than 2,500 severely distressed public housing units.

(2) You may target units in only one public housing project (i.e., units that have the same project number) per application.

(3) You may submit more than one application targeting units in a single housing project.

(4) You may target as many or as few units per application as you wish, up to the overall 2,500 unit maximum.

(B) *Grant Limitations.* (1) *Demolition.* You may request up to $6,000 per unit for demolition and other eligible related costs. Demolition of streets, sidewalks, curbs, gutters, and driveways; removal of underground storage tanks and sewer lines; capping of utilities; restoration of the site; abatement of environmentally hazardous materials; and costs for administration, planning, technical assistance, fees, and permits are to be included in this figure.

(2) *Relocation.* You may request up to $3,000 in relocation costs for each unit that is occupied as of the date you submit your HOPE VI Demolition grant application.

(3) *Nondwelling Structures.*

(a) You may request reasonable amounts to pay for the demolition of significant nondwelling structures related to the demolition of dwelling units. These costs must be included as part of an application for funding of demolition of public housing units; you may not apply for them separately. Examples of such structures include community centers, heating plants, playgrounds, and management offices. These facilities must be under the Annual Contributions Contract.

(b) Such costs must be justified and verified by an engineer or architect licensed by his or her State licensing board who is not an employee of the housing authority or the city. The engineer or architect must provide his or her license number and State of registration. A Nondwelling Structures Cost Certification is included in the HOPE VI Demolition Grant Application.

(C) HUD recognizes that the HOPE VI grant may not cover the total costs of relocation, abatement, demolition, and site restoration in all cases and that you may have to provide additional funding from other sources.

(D) You may not use HOPE VI Demolition Grant funds to pay for any demolition or related activities carried out before the date of the letter announcing the award of the HOPE VI Demolition Grant.

### *IV. Statutory Requirements*

(A) *Severe Distress.* In accordance with Section IV of the General Section of this NOFA, the targeted public housing project or building in a project must be severely distressed.

(1) *Demonstration of Severe Distress.* Units will be considered severely distressed if:

(a) They are included in a HUD-approved Section 202 Mandatory Conversion Plan. The Section 202 Conversion Plan must be approved by HUD on or before the HOPE VI Demolition grant application due date;

(b)(i) They are included in a Section 202 Mandatory Conversion Plan that you have submitted to HUD on or before the HOPE VI Demolition grant application deadline date, or

(ii) They are, in HUD's sole determination under section 537(c) of QHWRA, subject to the removal requirements of 24 CFR part 971 and can be expected to be demolished in accordance with the time schedule required by Section VII(B) of this NOFA; or

(c) They are included in a HUD-approved application for demolition that was developed in accordance with section 18 of the 1937 Act, as amended ("section 18 demolition application").

(B) *Separability.* In accordance with section 24(j)(2)(A)(v) of the 1937 Act, if you propose to target only individual buildings of a project for demolition, you must:

(1) Demonstrate to HUD's satisfaction that the severely distressed public housing is sufficiently separated from the remainder of the project of which the building is part to make demolition of the building feasible, and

(2) Demonstrate that the plan for the demolished portion will provide defensible space for the occupants of the remaining building(s). Separations may include a road, berm, catch basin, or other recognized neighborhood distinction.

(C) *Appropriateness of Proposal.* In accordance with section 24(e)(1) of the 1937 Act, each application must demonstrate the appropriateness of the proposal in the context of the local housing market relative to other alternatives. You must briefly discuss other possible alternatives to your proposal, and explain why your plan is more appropriate.

### *V. Relocation*

(A) *General.* You must provide suitable, accessible, decent, safe, and sanitary housing for each family required to relocate as a result of demolition activities. CPD Notice 02–08, entitled "Guidance on the Application of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (URA), as Amended, in HOPE VI Projects," outlines the URA requirements and describes the framework for operating its relocation assistance activities connected with HOPE VI revitalization and demolition activities. Applicants should use this document as a guide for formulating and implementing their HOPE VI Relocation Plans.

(B) *Standard Relocation Requirements.* You must carry out relocation activities in compliance with a relocation plan that conforms to the following statutory and regulatory requirements, as applicable:

(1) Relocation as a result of demolition approved by a section 18 demolition application is subject to section 18 of the 1937 Act.

(2) Relocation as a result of demolition approved as part of a Section 202 Mandatory Conversion Plan is subject to the URA.

(C) *Relocation Guidelines.* (1) Each applicant requesting funds for relocation must first complete, as a condition for receipt of HOPE VI Demolition Grant funds, a HOPE VI Relocation Plan. You are encouraged to involve HUD-approved housing counseling agencies, including faith-based, non-profit and/or other organizations and/or individuals in the community to which relocatees choose to move, in order to ease the transition and minimize the impact on the neighborhood. If applicable, you are encouraged to work with surrounding jurisdictions to assure a smooth transition if residents choose to move from your jurisdiction to the surrounding area.

(2) No relocation costs incurred before the award of the HOPE VI Grant may be reimbursed.

### *VI. HOPE VI Demolition Grant Application Selection Process*

(A) *HOPE VI Demolition Grant Funding Categories.* HUD will select HOPE VI Demolition grant applications on a first-come, first-served basis, by an application's Priority Group and Ordinal. HOPE VI Demolition grant applications are not rated.

(1) *Eligible Units.* Severely distressed public housing units to be demolished with HOPE VI Demolition grant funds must meet one of the criteria in the description of priority groups below. Units identified for demolition in a previously awarded HOPE VI Revitalization grant are not eligible to apply for HOPE VI Demolition funding under this NOFA.

(2) *Priority Groups.* You must identify each HOPE VI Demolition grant application by its appropriate Priority Group, as described below. Each application must target units of a single Priority Group; *e.g.*, do not include Priority Group 1 units in the same application as Priority Group 2 units.

(a) *Priority Group 1.* Priority Group 1 applications target units included in an approved Section 202 Mandatory Conversion Plan. The Section 202 Conversion Plan must be approved by HUD on or before the HOPE VI Demolition grant application due date.

(b) *Priority Group 2.*

(i) Priority Group 2 applications:

a. Target units included in a Section 202 Mandatory Conversion Plan that you have submitted to HUD on or before the HOPE VI Demolition grant application deadline date, or

b. Target units that, in HUD's sole determination under section 537(c) of QHWRA, are subject to the removal requirements of 24 CFR part 971 and can be expected to be demolished in accordance with the time schedule required by Section VII(B) of this NOFA.

(ii) If you submit a HOPE VI Demolition grant application for units that are targeted in a Section 202 Mandatory Conversion Plan that was submitted under 24 CFR part 971 but not yet approved (Priority Group 2), and HUD subsequently approves the Conversion Plan before the HOPE VI Demolition grant application deadline date, you may revise your application and it will be reclassified as Priority Group 1. HUD will change the original Ordinal to the Ordinal corresponding to the date that the revision was received.

(iii) If you submit a Section 202 Mandatory Conversion Plan but HUD determines that the targeted project does not qualify for conversion under 24 CFR part 971, your HOPE VI Demolition grant application will not be eligible for funding. If you intend to submit a Priority 1 or 2 application, discuss the project with your Field Office to ensure that it qualifies under the standards of 24 CFR part 971.

(c) *Priority Group 3.* Priority Group 3 applications target units that are included in a HUD-approved application for demolition that was developed in accordance with section 18 of the 1937 Act, as amended ("section 18 demolition application").

(i) HUD must approve your section 18 demolition application on or before the HOPE VI Demolition grant application deadline. You are advised that in order to allow for sufficient time for a new section 18 demolition application to be processed, you should submit your section 18 demolition application to HUD's Special Applications Center (SAC) no later than November 10, 2003. If your section 18 demolition application does not meet the statutory requirements of section 18, including the requirement for HUD Field Office approval of the Interim or PHA Plan as required by 24 CFR part 903, HUD will not approve the section 18 demolition application and your HOPE VI Demolition grant application will not be eligible for funding.

(ii) If you have submitted a section 18 demolition application to the HUD Special Applications Center but it has not yet been approved by HUD when you submit your HOPE VI Demolition grant application, your HOPE VI application will not be considered complete and you will not receive a final Ordinal unless and until your section 18 demolition application is *approved* on or before the HOPE VI Demolition Grant Application deadline.

(iii) If your section 18 demolition application is approved by HUD on February 17, 2004, or February 18, 2004, only, you are not required to submit your approval letter to HUD, and HUD will deem the approval letter to have been submitted in the application. In such a case, if your application is otherwise complete, your Ordinal will be the date that HUD approves your section 18 demolition application.

(iv) If HUD has previously approved your section 18 demolition application but HUD later rescinded the approval, your section 18 demolition application will not be considered approved by HUD, and your HOPE VI Demolition grant application will not be eligible for funding.

(B) *Ordinals.* Upon receipt, HUD will assign each HOPE VI Demolition grant application an Ordinal (*i.e.*, ranking number) that reflects the date HUD Headquarters received the application. Ordinals correspond to business days, starting with the date HUD receives the first Demolition grant application and ending on the HOPE VI Demolition grant application deadline date. HUD will consider all applications received on the same date as received at the same time on that date, and those applications will all be assigned the same Ordinal.

(C) *Demolition Screening.* (1) HUD will screen the application to ensure that it meets each HOPE VI threshold criterion listed in this NOFA.

(2) If HUD determines that an application is not eligible (*e.g.*, the applicant is not a PHA, the units have already been demolished, *etc.*), HUD will not consider the application further and will notify the applicant that the application has been rejected.

(3) If HUD determines that an applicant is eligible but the application is incomplete, within approximately five business days of receipt of the application, HUD will contact the applicant in writing by fax (followed with a hard copy by mail) to request the missing information. Applicants whose applications HUD receives on the same date, and who have missing items, will be notified by HUD of their missing items on the same day to ensure that all applicants have the same number of days to provide the missing information.

**Please Note:** This provision means that the nearer to the deadline date you submit your application, the less time you will have to correct any deficiencies, and if HUD receives your application on the deadline date and there is a deficiency, that application will not be eligible for funding. You are advised to submit your application as soon as possible, in the event that HUD identifies a deficiency that you need to correct.

(4) If HUD determines that the information you submit in response to a notification of deficiency is correct and completes the application, HUD will add to the application's Ordinal the number of business days between notification of the deficiency and curing of the deficiency.

(5) If HUD determines that the information submitted does not make the application complete, HUD will notify you of the remaining deficiency. You will have the opportunity to submit information in response to notifications of deficiency until the HOPE VI Demolition grant application due date.

(6) If you do not submit the requested information by the HOPE VI Demolition grant deadline date, your application will be ineligible for funding.

(7) If a deficiency is cured on the same day the deficiency letter is sent, the application will add one Ordinal.

(D) *Funding.* HUD will award HOPE VI Demolition grants in the following order, based on fund availability.

(1) HUD will fund Priority Group 1 applications by Ordinal.

(2) If funds remain after HUD has funded all eligible Priority Group 1 applications, HUD will fund Priority Group 2 applications by Ordinal.

(3) If funds remain after HUD has funded all eligible Priority Group 2 applications, HUD will fund Priority Group 3 applications by Ordinal.

(4) At any stage, if there is more than one application with next Ordinal to be funded and there are insufficient funds to fund all of them, HUD will conduct a lottery among those applications to determine which application(s) will be funded.

(5) HUD reserves the right to partially fund the next eligible application if insufficient funds remain to fund the entire amount requested, and HUD determines that the funds available are adequate to carry out some significant demolition activities.

(6) If funds remain after all eligible HOPE VI Demolition grant applications have been funded or if the amount remaining is inadequate to feasibly fund the next eligible Demolition grant application, HUD reserves the right to:

(a) Reallocate unused funds to fund or supplement the next eligible HOPE VI Revitalization application(s), in rank order, or

(b) Carry over unused funds to the next fiscal year.

(E) *Notification of Funding Decisions.* Because the HOPE VI Demolition grants are awarded on a first-come, first-served basis, HUD reserves the right either to award funds to Priority Group 1 applications as soon as they are determined to be eligible for funding, or announce all awards after the HOPE VI Demolition grant application deadline date has passed. HUD will notify ineligible applicants of their ineligibility immediately after that determination has been made. HUD will provide written notification to all HOPE VI applicants, whether or not they have been selected for funding.

## *VII. Post Award Requirements*

(A) *Demolition Grant Agreement.* When you are selected to receive a Demolition grant, HUD will send you a HOPE VI Demolition Grant Agreement, which constitutes the contract between you and HUD to carry out and fund public housing demolition activities. Both you and HUD will sign the cover sheet of the Grant Agreement. You must sign the Grant Agreement within 90 days of receiving it. Failure to sign the Grant Agreement within 90 days may cause the Department to withdraw its award of funds. It is effective on the date of HUD's signature.

(B) *Timeliness of Demolition.* Grantees must proceed within a reasonable timeframe, as indicated below. HUD will take into consideration delays caused by factors beyond your control when enforcing this requirement or as otherwise approved by HUD to accommodate reasonable relocation and demolition schedules.

(1) You must begin the proposed demolition within six months of the date of Grant Agreement execution.

(2) You must complete the proposed demolition within two years of the date of Grant Agreement execution.

(3) In accordance with section 24(i) of the 1937 Act, if you do not proceed within a reasonable timeframe, in the determination of HUD, HUD shall withdraw any grant amounts that you have not obligated. HUD shall redistribute any withdrawn amounts to one or more other applicants eligible for HOPE VI assistance or to one or more other entities capable of proceeding expeditiously in the same locality in carrying out the activities of the original Grantee.

**BILLING CODE 4210-33-P**

U.S. Department of Housing
and Urban Development
Office of Public Housing Investments
Public and Indian Housing

OMB Approval No. 2577-0208
exp. 12/31/2004

# HOPE VI REVITALIZATION APPLICATION

## HOPE VI WEBSITE: www.hud.gov/hopevi

The public reporting burden for this collection of information for the HOPE VI Revitalization Program is estimated to average 190 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information and preparing the application package for submission to HUD.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions to reduce this burden, to the Reports Management Officer, Paperwork Reduction Project, to the Office of Information Technology, US. Department of Housing and Urban Development, Washington, DC 20410-3600. When providing comments, please refer to OMB Approval No. 2577-0208. HUD may not conduct and sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

The information submitted in response to the Notice of Funding Availability for the HOPE VI Program is subject to the disclosure requirements of the Department of Housing and Urban Development Reform Act of 1989 (Public Law 101-235, approved December 15, 1989, 42 U.S.C. 3545).

Warning: HUD will prosecute false claims and statements. Conviction may result in the imposition of criminal and civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

HUD Form 52860-A

## APPLICATION SUBMISSION INSTRUCTIONS

### A. Application Preparation

The preparation of an approvable HOPE VI Revitalization application is time-consuming and can involve significant costs. You are cautioned that only applications with strong showings of readiness, need, and capacity will be selected.

1. Your application must be complete and you must present all items in a manner that is succinct and clear. Respond to *every requirement and question posed.* Many applicants lose crucial points because they do not adequately respond to a question, because language is unclear, and/or because there are inconsistencies in numbers or data in different parts of the application.

2. If you have not already done so, you are advised to enter into a meaningful planning process with affected residents and the surrounding community to achieve a consensus plan at application submission. Take careful note of the Resident Training Session and Public Meeting requirements in the NOFA. Be sure to advertise and document those meetings carefully. Note that the Resident Training Session and all of the Public Meetings must be held after the NOFA publication date. You will receive additional points under the Readiness rating factor if you conduct additional meetings.

3. Immediately contact public, private, and nonprofit entities, agencies, and organizations from which you plan to obtain letters, materials, or documents. This includes service providers, banks, state housing finance agencies, and other sources of financial assistance.

4. Note the requirement of a certification of severe physical distress by an independent, certified engineer or architect. If you request funds to pay for extraordinary site costs, you will also need to have an independent certified engineer or architect justify and verify those costs.

5. Specific formatting instructions are provided in the NOFA itself, and will be strictly enforced.

6. If you are proposing a mixed-finance project, you should immediately obtain a copy of the Mixed Finance Guidebook by calling the Public Housing Clearinghouse at 800-955-2232. Be sure to ask for the Mixed Finance Guidebook (not the HOPE VI Grant Implementation Guidebook, which has been replaced by the HOPE VI website).

### B. Application Content and Organization. Provide application materials in the following order:

1. Acknowledgement of Application Receipt (HUD-2993). The very first page of your application is the Acknowledgement of Receipt form. Print or type your name and address inside the box provided. When HUD receives your application, this receipt will be detached from your application and mailed to you to indicate that your application was received. Please rely on this receipt and/or your overnight tracking number to determine whether your application was received. If you would like to have the receipt faxed to you, please include your fax number on the form.

2. Application for Federal Assistance (HUD-424). You must use a HUD-424, not an SF-424. The CFDA number for the HOPE VI Program is 14.866. This form is included in this HOPE VI Application. Please note that, because of the detailed financial

information contained within a HOPE VI application, you are not required to complete the Funding Matrix or any financial information on the 424.

3. Application Checklist. This list of Narrative Exhibits, Attachments, and Standard Certifications is designed both to assist you in ensuring that all required elements of an application are included, and to be used as a table of contents for your completed application. After you have completed your application, please enter the page numbers of the Narrative Exhibits and Attachments on this checklist.

4. The Narrative Exhibits constitute specific aspects of your Revitalization Plan and respond to the rating criteria in the HOPE VI Revitalization NOFA. The Narrative Exhibits make up the first part of the application. All narrative pages must be numbered sequentially and conform to the page number and format requirements of the NOFA.

5. Attachments must be located behind the Narrative Exhibits. Information in the Attachments may not substitute for information requested in a Narrative Exhibit. Attachments include photographs, maps, illustrations, Application Data Forms, letters committing financial support, etc. Videos and resumes are specifically prohibited. Fill out the Application Data Forms as completely as possible, using best estimates if necessary. Do not fill in fields blocked in gray. Be sure that all numbers and data throughout the Narrative Exhibits and Attachments are consistent.

6. Standard certifications and forms must be placed at the end of the application, in the order provided on the Application Checklist. Standard certifications and forms include the HOPE VI Revitalization Applicant Certifications (4 pages, to be signed by the Board Chair) and other HUD and Standard forms as identified below.

7. Unless otherwise noted, citations in the Revitalization Application instructions refer to citations in the Revitalization Grants section of the NOFA.

## REVITALIZATION APPLICATION CHECKLIST/TABLE OF CONTENTS

1. Acknowledgment of Application Receipt (HUD-2993)
2. Application for Federal Assistance (HUD-424)

| NARRATIVE EXHIBITS | | Page Number |
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| A.1 | Executive Summary | ________ |
| A.2 | Physical Plan | ________ |
| A.3 | Hazard Reduction | ________ |
| A.4 | Demolition | ________ |
| A.5 | Disposition | ________ |
| A.6 | Site Improvements | ________ |
| A.7 | Site Conditions | ________ |
| A.8 | Separability | ________ |
| A.9 | Proximity | ________ |
| **Exhibit B:** | **CAPACITY** | |
| B.1 | Obligation of Capital Funds (MTW only) | ________ |
| B.2 | Development Capacity of Developer | ________ |
| B.3 | Development Capacity of Applicant | ________ |
| B.4 | Capacity of Existing HOPE VI Revitalization Grantees | ________ |
| B.5 | CSS Program Capacity | ________ |
| B.6 | Property Management Capacity | ________ |
| B.7 | PHA Plan | ________ |
| **Exhibit C:** | **NEED** | |
| C.1 | Severe Physical Distress | ________ |
| C.2 | Impact on the Surrounding Neighborhood | ________ |
| C.3 | Obligation of Capital Funds (MTW only) | ________ |
| C.4 | Previously-Funded Sites | ________ |
| C.5 | Need for Affordable Housing in the Community | ________ |
| **Exhibit D:** | **RESIDENT AND COMMUNITY INVOLVEMENT** | |
| D.1 | Resident and Community Involvement | ________ |

| NARRATIVE EXHIBITS | | Page Number |
|---|---|---|
| **Exhibit E:** | **COMMUNITY AND SUPPORTIVE SERVICES** | |
| E.1 | Community and Supportive Services | ________ |
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| **Exhibit F:** | **RELOCATION** | |
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| G.3 | Fair Housing | ________ |
| G.4 | Section 3 | ________ |
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| H.1 | On Site Housing Unit Mix | ________ |
| H.2 | Off Site Housing | ________ |
| H.3 | Homeownership Housing | ________ |
| **Exhibit I:** | **OVERALL QUALITY OF PLAN** | |
| I.1 | Appropriateness of Proposal | ________ |
| I.2 | Appropriateness and Feasibility of the Plan | ________ |
| I.3 | Neighborhood Impact and Sustainability of the Plan | ________ |
| I.4 | Design | ________ |
| I.5 | Evaluation | ________ |

| ATTACHMENTS | |
|---|---|
| 1: Application Data Form: Cover Sheet | ________ |
| 2: Application Data Form: Existing Units, Occupancy, Vacancy | ________ |
| 3: Application Data Form: Relocation, Income, and Non-Dwelling Structures | ________ |
| 4. Application Data Form: Proposed Unit Mix Post-Revitalization | ________ |
| 5: Application Data Form: Units, Accessibility, Concentration | ________ |
| 6: Application Data Form: Self-Sufficiency | ________ |
| 7: Application Data Form: Sources and Uses | ________ |
| 8: HOPE VI Budget Form | ________ |
| 9: TDC/Grant Limitations Worksheet | ________ |

**NARRATIVE EXHIBITS** **Page Number**

10: Extraordinary Site Costs Certification ____________

11: Cost Certification ____________

12: City Map ____________

13: Developer Certification ____________

14: Property Management Certification ____________

15: Program Schedule ____________

16: Certification of Severe Physical Distress ____________

17: Photographs of the Severely Distressed Housing ____________

18: Neighborhood Conditions ____________

19: Physical Development Resources ____________

20: CSS Resources ____________

**ATTACHMENTS**

21: Anticipatory Resources ____________

22: Collateral Resources ____________

23: Resident Training and Public Meeting Certification ____________

24: Commitments with CSS Providers ____________

25: HOPE VI Revitalization Relocation Plan Certification ____________

26: Certification of Completed Relocation ____________

27: Documentation of Site Control for Off-Site Public Housing ____________

28: Documentation of Site Control, Environmental, & Neighborhood Standards ____________

29: Preliminary Market Assessment Letter ____________

30: Certification of Zoning Approval ____________

31: Project Readiness Certification ____________

32: Current Site Plan ____________

33: Photographs of Architecture in the Surrounding Community ____________

34: Conceptual Site Plan ____________

35: Conceptual Building Elevations ____________

36: Evaluation Commitment Letter(s) ____________

37: HOPE VI Revitalization Application Certifications ____________

38: Standard Forms and Certifications

- Applicant Assurances and Certifications (HUD-424-B)
- Standard Form LLL, as applicable, "Disclosure of Lobbying Activities"
- HUD-2880, "Applicant/Recipient Disclosure/Update Report
- HUD-52515, "Funding Application, Section 8 Tenant-Based Assistance Rental Certificate Program, Rental Voucher Program," as applicable

## EXHIBIT A: SUMMARY INFORMATION

A.1 Executive Summary. Provide an Executive Summary, not to exceed three pages. Describe your Revitalization Plan, as clearly and thoroughly as possible. Do not argue for the need for the HOPE VI grant, but explain what you would do if you received a grant. Briefly describe why the targeted project is severely distressed, provide the number of units, and indicate how many of the units are occupied. Describe specific plans for the revitalization of the site. Include income mix, basic features (such as restoration of streets), and any mixed use or non-housing components. If you are proposing off site replacement housing, provide the number and type of units and describe the off site locations. Describe any homeownership components included in your Plan, including numbers of units. Briefly summarize your plans for community and supportive services. State the amount of HOPE VI funds you are requesting, and list the other resources you will use for your mixed-finance development, briefly indicating the strength of those financial commitments. Identify whether you have procured a developer or whether you will act as your own developer.

A.2 Physical Plan. Describe your planned physical revitalization activities:

a. rehabilitation of severely distressed public housing units in accordance with Section I(D) of the NOFA.

b. development of public housing replacement rental housing, both on-site and off-site, in accordance with Section I(E) of the NOFA.

c. Indicate whether you plan to use PATH technologies in the construction of replacement housing, in accordance with Section XVI(D)(3) of the NOFA.

d. market rate housing units

e. units to be financed with low-income housing tax credits

f. replacement homeownership assistance for displaced public housing residents or other public housing-eligible low-income families, in accordance with Section I(F) of the NOFA. Also describe any market-rate homeownership units planned, sources and uses of funds. Describe the relationship between the HOPE VI activities and costs and the development of homeownership units, both public housing and market rate. If you are selected for funding, you will be required to submit a Homeownership Proposal.

g. Rehabilitation or new construction of community facilities primarily intended to facilitate the delivery of community and supportive services for residents of the targeted development and residents of off-site replacement housing. Describe the type and amount of such space and how the facilities will be used in CSS program delivery or other activities.

h. Land acquisition and infrastructure and site improvements associated with developing economic development facilities, in accordance with Section I(G)(3) of the NOFA. Note that HOPE VI grant funds may not be used to pay hard development costs or to buy equipment for retail or commercial facilities.

A.3 Hazard Reduction. For units to be rehabilitated or demolished, describe the extent of any required abatement of environmentally hazardous materials such as asbestos.

A.4 Demolition. Review Section I(B) of the NOFA. Describe your plans for demolition, including the buildings (dwelling and non-dwelling units) proposed to be demolished, the purpose of the demolition, and the use of the site after demolition. If the proposed demolition was previously approved as a Section 18 demolition application, state the date the Section 18 demolition application was submitted to HUD and the date it was approved by HUD. Indicate whether you plan to implement the concept of Deconstruction, as described in Section XVI(D)(2) of the NOFA.

A.5 Disposition. Review Section I(C) of the NOFA. Describe the extent of any planned disposition of any portion of the site. Cite the number of units or acreage to be disposed, the method of disposition (sale, lease, trade), and the status of any disposition application made to HUD.

A.6 Site Improvements. Describe any proposed on-site improvements, including infrastructure requirements, changes in streets, etc. Describe all public improvements needed to ensure the viability of the proposed project with a narrative description of the sources of funds available to carry out such improvements.

A.7 Site Conditions. Describe the conditions of the site to be used for replacement housing. Listing all potential contamination or danger sources (e.g. smells, fire heat, explosion and noise) that might be hazardous or cause discomfort to residents, PHA personnel, or construction workers. List potential danger sources, including commercial and industrial facilities, brownfields and other sites with potentially contaminated soil, commercial airports and military airfields. Note any facilities and/or activities within one mile of the proposed site.

A.8 Separability. Review Section III(D)(11) of the NOFA, and, if applicable, address the separability of the revitalized building(s).

A.9 Proximity. If applicable, describe how two contiguous projects meet the requirements of Section III(D)(3) of the NOFA, or how a scattered site project meets the requirements of Section III(D)(4) of the NOFA.

## EXHIBIT B: CAPACITY

B.1 Obligation of Capital Funds. If you are a Moving to Work participant and are not required to enter obligations into LOCCS, review Section IV(A)(2) of the NOFA and indicate the percentage of your FY 1999-2001 Capital Funds amounts you have obligated. If you are not a participant in MTW, HUD will assess your obligation of Capital Funds using information in accordance with Section IV(A)(2).

B.2 Development Capacity of Developer. Respond to Rating Factor IV(B)(1)(a) of the NOFA.

B.3 Development Capacity of Applicant. Respond to Rating Factor IV(B)(1)(b) of the NOFA.

B.4 Capacity of Existing HOPE VI Revitalization Grantees. This Rating Factor is found at Section IV(B)(2). To determine compliance with cumulative production goals for existing HOPE VI Revitalization grants, HUD will use information in the quarterly reporting system. This rating factor is only applied to PHAs with existing HOPE VI Revitalization grants from fiscal years 1993-2000.

B.5 CSS Program Capacity. Respond to Rating Factor IV(B)(3) of the NOFA.

B.6 Property Management Capacity. Respond to Rating Factor IV(B)(4) of the NOFA.

B.7 PHA Plan. Respond to Rating Factor IV(B)(5) of the NOFA.

**EXHIBIT C: NEED**

C.1 Severe Physical Distress. Respond to Rating Factor V(B)(1) of the NOFA.

C.2 Impact of the Severely Distressed Site on the Surrounding Neighborhood. Respond to Rating Factor V(B)(2) of the NOFA.

C.3 Obligation of Capital Funds - If you are a Moving to Work PHA participant and are not required to enter obligations into LOCCS, review Rating Factor V(B)(3) of the NOFA and provide the amount of your unobligated FY 1999-2002 Capital Grant funds. If you are not a participant in MTW, HUD will assess your obligation of Capital Funds using information in accordance with Section V(B)(3).

C.4 Previously-funded Sites. Review Section III(D)(6) of the NOFA.

C.5 Need for Affordable Housing in the Community. Respond to Rating Factor V(B)(4) of the NOFA.

**EXHIBIT D: RESIDENT AND COMMUNITY INVOLVEMENT**

D.1 Resident and Community Involvement. Respond to Rating Factor VII(B) of the NOFA.

**EXHIBIT E: COMMUNITY AND SUPPORTIVE SERVICES**

E.1 Community and Supportive Services. Review Section VIII(A) through (C) of the NOFA for information and requirements of CSS programs. Describe your CSS Plan, keeping in mind the elements of Rating Factor VIII(D) of the NOFA.

E.2 Endowment Trust. Review Section VIII(A)(3) of the NOFA. If you plan to place CSS funds in an Endowment Trust, state the dollar amount and percentage of the entire grant that you plan to place in the Trust.

**EXHIBIT F: RELOCATION**

F.1 Housing Choice Voucher Needs. Review Section IX of the NOFA. State the number of Housing Choice Vouchers that will be required for relocation if this HOPE VI application is approved, both in total and the number needed for FY 2004. Indicate the number of units and the bedroom breakout. As applicable, attach a Housing Choice Voucher application behind the Standard Forms tab of your application.

F.2 Relocation Plan. Respond to Rating Factor IX(E) of the NOFA. Refer to CPD Notice 02-08 for additional guidance.

**EXHIBIT G: FAIR HOUSING AND EQUAL OPPORTUNITY**

G.1 Accessibility: Respond to Rating Factor X(B)(1) of the NOFA.

G.2 Universal Design: Respond to Rating Factor X(B)(2) of the NOFA.

G.3 Fair Housing: Respond to Rating Factor X(D)(1) of the NOFA.

G.4 Section 3: Respond to Rating Factor X(D)(2) of the NOFA.

**EXHIBIT H: WELL-FUNCTIONING COMMUNITIES**

H.1 On Site Housing Unit Mix. Respond to Rating Factor XI(A) of the NOFA.

H.2 Off Site Housing. Respond to Rating Factor XI(B) of the NOFA.

H.3 Homeownership Housing. Respond to Rating Factor XI(D) of the NOFA.

**EXHIBIT I: OVERALL QUALITY OF PLAN**

I.1 Appropriateness of Proposal. Review Section XII(A) of the NOFA and demonstrate the appropriateness of your proposal in the context of the local housing market relative to other alternatives.

I.2 Appropriateness and Feasibility of the Plan. Respond to Rating Factor XII(B)(2).

I.3 Neighborhood Impact and Sustainability of the Plan. Respond to Rating Factor XII(B)(3) of the NOFA.

I.4 Design. Describe the features of your proposed design and respond to Rating Factor XII(B)(5) of the NOFA.

I.5 Evaluation. Respond to Rating Factor XII(B)(6) of the NOFA.

**ATTACHMENTS**

Attachment 1: Application Data Form: Cover Sheet

Attachment 2: Application Data Form: Existing Units, Occupancy, Vacancy

Attachment 3: Application Data Form: Relocation, Income, and Non-Dwelling Structures

Attachment 4: Application Data Form: Proposed Unit Mix Post-Revitalization

Attachment 5: Application Data Form: Planned Units, Accessibility, Concentration

Attachment 6: Application Data Form: Self-Sufficiency

Attachment 7: Application Data Form: Sources and Uses

Attachment 8: HOPE VI Budget Form. Provide the proposed HOPE VI budget on form HUD-52825-A, parts I and II. This form can be found in the HOPE VI website. Guidance on preparing a HOPE VI budget can be found on the Grant Administration page of the HOPE VI web site.

Attachment 9: TDC/Grant Limitations Worksheet. Review Section III(A)-(C) of the NOFA and complete this Total Development Cost/Grant Limitations Worksheet, as provided in this

Application. An electronic version of the worksheet in Excel is available on the HOPE VI web site.

Attachment 10: Extraordinary Site Costs Certification. If you request funds to pay for extraordinary site costs in accordance with Section III(A)(5)(b) of the NOFA, complete this Attachment 10, as provided in this Application Kit, and submit the required documentation indicated.

Attachment 11: Cost Certification. Provide a certification of cost estimates in accordance with Section III(C)(4) of the NOFA. This certification may be in the form of a letter.

Attachment 12: City Map. Provide a to-scale city map that clearly identify the following in the context of existing city streets, the central business district, other key city sites, and census tracts:

- the existing development;
- replacement neighborhoods, if available;
- off-site properties to be acquired, if any;
- the location of the Federally-designated Empowerment Zone or Enterprise Community (if applicable); and
- other useful information to place the project in the context of the city, county, or municipality and other revitalization activity underway or planned.

If you request funds for more than one project or for scattered site housing, the map must clearly show that the application meets the site and unit requirements of Sections III(D)(2) and/or (3) of the NOFA. Do not submit a foldout map. This is the only Attachment that may be submitted on 8-1/2" by 14" paper.

Attachment 13: Developer Certification. In accordance with Section IV(A)(4) of the NOFA, provide a certification that you have either procured a developer in accordance with the requirements set by HUD or that you will act as your own developer. This certification may be in the form of a letter.

Attachment 14: Property Management Certification. Provide a certification that you and/or your selected Property Manager will implement the operation and management principles and policies listed in Section IV(A)(5) of the NOFA. This certification may be in the form of a letter.

Attachment 15: Program Schedule. Review Section IV(B)(1)(b)(i)(C) of this NOFA and provide a program schedule accordingly.

Attachment 16: Certification of Severe Physical Distress. In accordance with Section V(A)(4) of the NOFA, an engineer or architect must complete Attachment 16, as provided in this NOFA. No backup documentation is required for this certification.

Attachment 17: Photographs of the Severely Distressed Housing. Review Rating Factor V(B)(1) of the NOFA and submit photographs of the targeted severely distressed public housing that illustrate the extent of physical distress.

Attachment 18: Neighborhood Conditions. Submit documentation described in Rating Factor V(B)(2) of the NOFA. Such documentation may include crime statistics, photographs or renderings, socio-economic data, trends in property values, evidence of property deterioration and abandonment, evidence of underutilization of surrounding properties, and other indications of neighborhood distress and/or disinvestment.

Attachment 19: Physical Development Resources. In accordance with Rating Factor VI(H)(1) of the NOFA, complete this Attachment 19, as provided in this application, by entering the dollar value of each resource that will be used for physical development. For each resource entered, you must submit backup documentation behind Attachment 19.

Attachment 20: CSS Resources. In accordance with Rating Factor VI(H)(2) of the NOFA, complete this Attachment 20, as provided in this Application, by entering the dollar value of all resources that will be used for CSS activities. For each resource entered, submit backup documentation behind Attachment 20.

Attachment 21: Anticipatory Resources. Complete Attachment 21, as provided in this Application, by entering the dollar value of all anticipatory resources as described in Rating Factor VI(H)(3). For each resource entered, submit backup documentation behind Attachment 21.

Attachment 22: Collateral Resources. Complete Attachment 22, as provided in this Application, by entering the dollar value of all collateral resources as described in Rating Factor IX(H)(4). For each resource entered, submit backup documentation behind Attachment 22.

Attachment 23: Resident Training and Public Meeting Certification Review Section VII(A) of the NOFA and complete Attachment 23, as provided in this application.

Attachment 24: Commitments with CSS Providers. In accordance with Section VIII(D)(3) of the NOFA, provide letters from CSS providers that have made commitments to participate in your CSS activities if you are awarded a HOPE VI Revitalization grant under the NOFA.

Attachment 25: HOPE VI Revitalization Relocation Plan Certification. In accordance with Section IX(D) of the NOFA, submit a certification that you have completed a HOPE VI Relocation Plan in conformance with the URA. This certification may be in the form of a letter. Refer to CPD Notice 02-08 for additional guidance, including a template. The HOPE VI Relocation Plan Guide should not be submitted; only the certification should be in the application. This Attachment is not applicable if the targeted project is vacant as of the application due date.

Attachment 26: Certification of Completed Relocation. If applicable, submit a certification in accordance with Section IX(E)(1) and (2)(a) of the NOFA and Section XII(B)(4)(a). You must include this certification if you are trying to evidence that your site was vacant at the time applications were due, in order to meet the threshold at IX(D). This certification may be in the form of a letter.

Attachment 27: Documentation of Site Control for Off-Site Public Housing. If applicable, provide evidence of site control for rental replacement units or land, in accordance with Section XI(B)(4) of the NOFA.

Attachment 28: Documentation of Site Control, Environmental, and Site & Neighborhood Standards. If applicable, provide a certification that the site(s) acquired for off-site public housing meet site control, environmental and site and neighborhood standards, as provided in Section XI(B)(5) of the NOFA. This certification may be in the form of a letter.

Attachment 29: Preliminary Market Assessment Letter. In accordance with Section XI(C) of the NOFA, if you include market rate housing, in your Revitalization Plan, you must demonstrate that there is a demand for the housing units of the type, number, and size proposed in the location you have chosen. In your application you must provide a preliminary market assessment letter prepared and signed by an independent, third party, credentialed market resource firm or professional that describes its assessment of the market for the proposed residential market rate units, and any community facilities, economic development, and retail structures.

Attachment 30: Certification of Zoning Approval. Respond to section XI(E) of the NOFA..

Attachment 31: Project Readiness Certification. Complete Attachment 31, as provided in this application, by indicating which of the items in Rating Factor XII(B)(4) of the NOFA have been completed.

Attachment 32: Current Site Plan, which shows the various buildings of the project and identifies which buildings are to be rehabilitated, demolished, or disposed of.

Attachment 33: Photographs of Architecture in the Surrounding Community. Provide photographs in conjunction with Rating Factor XII(B)(5) (Design) of the NOFA.

Attachment 34: Conceptual Site Plan, which indicates where proposed construction and rehabilitation activities will take place and any planned acquisition of adjacent property and/or buildings.

Attachment 35: Conceptual Building Elevations.

Attachment 36: Evaluation Commitment Letter(s). Review Section XII(B)(6) of the NOFA and provide the requested commitment letter(s) that addresses the indicated evaluation areas.

Attachment 37: HOPE VI Revitalization Applicant Certifications. These certifications (4 page document) must be signed by the Chairman of the Board of the PHA, NOT the Executive Director.

Attachment 38: Standard Forms and Certifications. The following Standard/HUD Forms should be placed in this order:

- Applicant Assurances and Certifications (HUD-424-B)
- Disclosure of Lobbying Activities (SF-LLL), as applicable
- Applicant/Recipient Disclosure/Update Report (HUD-2880)
- Funding Application, Section 8 Tenant-Based Assistance Rental Certificate Program, Rental Voucher Program (HUD-52515), as applicable

U.S. Department of Housing
and Urban Development
Office of Public Housing Investments
Public and Indian Housing

OMB Approval No. 2577-0208
exp. 12/31/2004

# HOPE VI DEMOLITION GRANT APPLICATION

## HOPE VI WEBSITE: www.hud.gov/hopevi

The public reporting burden for this collection of information for the HOPE VI Demolition Program is estimated to average 40 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, and preparing the application package for submission to HUD.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions to reduce this burden, to the Reports Management Officer, Paperwork Reduction Project, to the Office of Information Technology, US Department of Housing and Urban Development, Washington, DC 20410-3600. When providing comments, please refer to OMB Approval No. 2577-0208. HUD may not conduct and sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

The information submitted in response to the Notice of Funding Availability for the HOPE VI Program is subject to the disclosure requirements of the Department of Housing and Urban Development Reform Act of 1989 (Public Law 101-235, approved December 15, 1989, 42 U.S.C. 3545).

**Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

HUD Form 52860-A

## APPLICATION SUBMISSION INSTRUCTIONS

### A. Application Content and Organization.

1. The first page of your application is the **HOPE VI Demolition Application Checklist**.

    a. Use the left side of the Checklist to make sure that all elements of the application are included.

    b. HUD will use the right side of the Checklist to screen the application for completeness.

    **Please make sure that the HOPE VI Demolition Application Checklist is on the very top of your application**. No transmittal letter is requested.

2. The next page is the **HOPE VI Demolition Application Receipt** (HUD-2993-A). This form serves both as an acknowledgement that HUD received your application, but also as a fax transmittal for the checklist above if HUD has found deficiencies in your application.

    a. Print or type the name and address of the person that should receive the receipt in the box provided and provide all of the information requested above the line.

    b. HUD will record the date received, ordinal assigned, and application number.

    c. After HUD has screened the application for completeness, it will either:

        i. Fax the receipt to the fax number listed on the Receipt indicating that no deficiencies have been found, or

        ii. Fax the receipt to you with the HOPE VI Demolition Checklist and a letter, if necessary, indicating the missing documentation. HUD will not notify you of deficiencies by telephone. **It is very important that the fax number listed on the Application Receipt is correct so that it gets to the right person on your staff.**

3. The **Application for Federal Assistance (HUD-424)** and **Applicant Assurances and Certifications (HUD-424-B)** are the next pages of the application. You will find a copy of these in this HOPE VI Application and on the HOPE VI Website.

4. Attach **Exhibits A through G** next. Provide the narrative and attachments in the order presented. PLEASE DO NOT PROVIDE ANY INFORMATION THAT IS NOT REQUESTED IN THIS APPLICATION. Extraneous material hinders application review, does not improve an application, and may obscure important information. The HOPE VI Budget form needed for Exhibit E and the Housing

Choice Voucher (Section 8) application for Exhibit F can be found in this HOPE VI Application and on the HUD website.

## B. Application Format

To speed the processing of your application, please follow these instructions when assembling your package:

1. Use letter-sized paper (8 ½" x 11"), one side only.
2. Mark each Exhibit with an appropriately labeled tab.
3. Package the application as securely and simply as possible; do not use a three ring binder.
4. Two-hole punch the pages at the top with a 2-3/4" center.

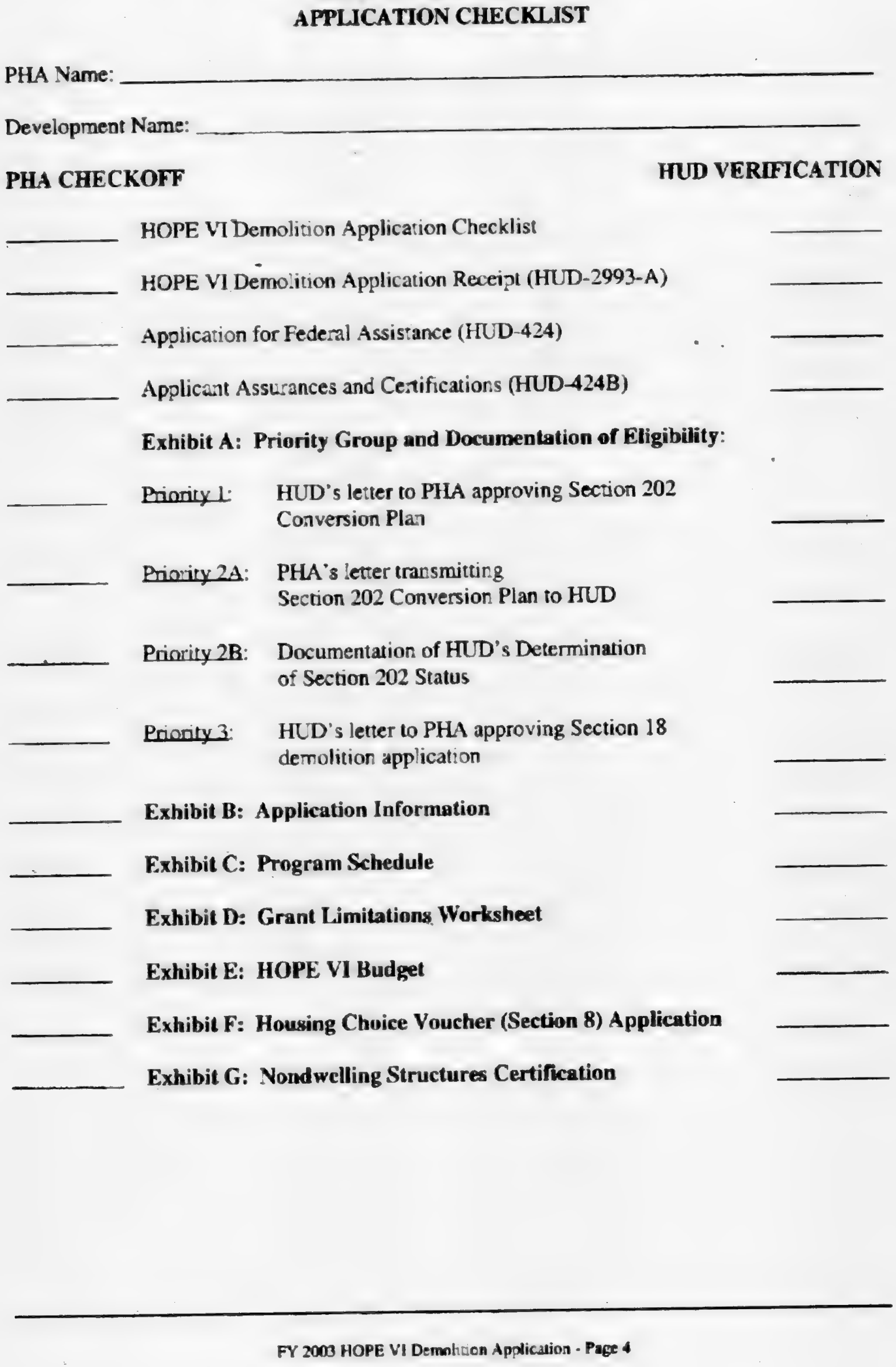

## HOPE VI DEMOLITION APPLICATION CHECKLIST

PHA Name: ____________________

Development Name: ____________________

| PHA CHECKOFF | | | HUD VERIFICATION |
|---|---|---|---|
| ______ | HOPE VI Demolition Application Checklist | | ______ |
| ______ | HOPE VI Demolition Application Receipt (HUD-2993-A) | | ______ |
| ______ | Application for Federal Assistance (HUD-424) | | ______ |
| ______ | Applicant Assurances and Certifications (HUD-424B) | | ______ |
| | **Exhibit A: Priority Group and Documentation of Eligibility**: | | |
| ______ | Priority 1: | HUD's letter to PHA approving Section 202 Conversion Plan | ______ |
| ______ | Priority 2A: | PHA's letter transmitting Section 202 Conversion Plan to HUD | ______ |
| ______ | Priority 2B: | Documentation of HUD's Determination of Section 202 Status | ______ |
| ______ | Priority 3: | HUD's letter to PHA approving Section 18 demolition application | ______ |
| ______ | **Exhibit B: Application Information** | | ______ |
| ______ | **Exhibit C: Program Schedule** | | ______ |
| ______ | **Exhibit D: Grant Limitations Worksheet** | | ______ |
| ______ | **Exhibit E: HOPE VI Budget** | | ______ |
| ______ | **Exhibit F: Housing Choice Voucher (Section 8) Application** | | ______ |
| ______ | **Exhibit G: Nondwelling Structures Certification** | | ______ |

## EXHIBIT A: PRIORITY GROUP AND DOCUMENTATION OF ELIGIBILITY

Indicate the Priority Group in which your application qualifies and submit the corresponding documentation of eligibility.

__________ Priority 1: Approved Section 202 Mandatory Conversion Plan

Submit your letter from HUD approving your Section 202 Mandatory Conversion Plan. See **Section VI (A)(2)(a)** of the Demolition section in this NOFA regarding Priority Group 1.

Priority 2: See **Section VI (A)(2)(b)** of the Demolition section in this NOFA regarding Priority Group 2.

__________ Priority 2(A): Submitted Section 202 Mandatory Conversion Plan.

Submit your letter to HUD transmitting your Section 202 Plan to HUD.

__________ Priority 2(B): HUD-Designated Section 202 Units

Submit evidence that the targeted units, in HUD's sole determination under section 537(c) of the Public Housing Reform Act of 1998, are subject to the removal requirements of 24 CFR part 971 and can be expected to be demolished in accordance with the time schedule required by Section VII (B) of the Demolition section in this NOFA.

__________ Priority 3: Approved Section 18 Demolition Application

Submit your letter from HUD approving your Section 18 Demolition Application. If HUD approves your demolition application on the **day before** or **on the application deadline date,** the requirement to provide evidence of approval will be considered to be met and you will not have to submit HUD's approval letter back to HUD. See **Section VI (A)(2)(c)** of the Demolition section in this NOFA regarding Priority Group 3.

## EXHIBIT B: APPLICATION INFORMATION

PHA Name: ______________________________

Development Name: ______________________________

Development Number: ______________

Date of Full Availability (DOFA): ______________

1. Describe the scope of the proposed demolition. For the project, provide the number of:
    a. Original dwelling units and buildings,
    b. Units previously demolished or disposed of, and
    c. Units proposed for demolition with funds from this HOPE VI Demolition Grant Application.

2. In the case of partial demolition of a site, describe any minimal site restoration that will take place after demolition and subsequent site improvements needed to benefit the remaining portion of the project in order to provide project accessibility or to make the site more marketable.

3. Describe any non-dwelling facilities to be demolished. Explain the relationship between the non-dwelling facilities and the dwelling units to be demolished, both in terms of proximity and use.

4. Demonstrate the appropriateness of your proposal in the context of the local housing market relative to other alternatives. This is a statutory threshold criterion. See **Section IV(C)** of the Demolition section in this NOFA.

5. Describe the proposed plan for the use of the site after demolition, and the resources that will be used to carry out that plan.

6. Provide the street address for each unit to be demolished, including ZIP Code.

## EXHIBIT C: PROGRAM SCHEDULE

Refer to Section VII (B) of the Demolition section in this NOFA. Provide a Program Schedule that clearly indicates that you will start demolition activity within six months from the date of Grant Agreement execution and complete the demolition within two years from the date of Grant Agreement execution. Assume a Grant Agreement execution date of May 1, 2004.

## EXHIBIT D: GRANT LIMITATIONS WORKSHEET

1. Demolition. Number of dwelling units approved for demolition:

   ________ x $6,000 $________

2. Relocation/Self-Sufficiency. Number of dwelling units approved for demolition that are **occupied** as of the date of the HOPE VI Demolition Application submission:

   ________ x $3,000 $________

3. Nondwelling Structures $________

4. Total allowable cost (1 + 2 + 3) $________

5. Total funds requested $________

## EXHIBIT E: HOPE VI BUDGET

1. Provide your proposed budget on Part I of the HOPE VI Budget Form (HUD-52825-A). A copy of the Budget form can be found in this HOPE VI Application and can be downloaded from the HOPE VI Website.

2. On Part II of the Budget:

   a. Provide a detailed itemization of the costs of all activities, including demolition, hazard abatement, site restoration, fees, and administrative costs. See Section V of the NOFA for eligible Demolition Grant activities.

   b. Differentiate between costs for dwelling units and nondwelling facilities.

   c. Itemize all costs budgeted for relocation activities.

## EXHIBIT F: HOUSING CHOICE VOUCHER (SECTION 8) APPLICATION

As applicable, provide the Housing Choice Voucher application. State the number of Housing Choice Vouchers that will be required for relocation in this HOPE VI application is approved, both in total and the number needed for FY 2004. Indicate the number of units and the bedroom breakout.

## EXHIBIT G: NONDWELLING STRUCTURES CERTIFICATION

I hereby certify that:

1. I am licensed as an engineer _______ or architect _______ (check one) by the licensing board for the state in which the public housing project identified below is located.

2. I am not an employee of the applicant public housing authority or unit of local government in which the public housing project identified below is located.

3. Costs to demolish significant nondwelling structures may be incurred in conjunction with the demolition of severely distressed public housing as part of a HOPE VI Demolition Grant Application. Examples of eligible demolition costs related to significant nondwelling structures include, but are not limited to, the demolition of heating plants, community buildings, or streets on the site of the severely distressed project.

4. I have reviewed the attached description and calculation of costs for the demolition of significant nondwelling structures related to the demolition of dwelling units at the site identified below, as requested by the applicant Housing Authority listed below, and affirm that those costs qualify as allowable nondwelling structures costs (as defined in Paragraph 3 above) and are justified and reasonable in light of my assessment of the site of the project and the proposed work to be completed.

Name: ____________________________________________________

Signature: ________________________________________________
Date

License number: ______________________ State of Registration: ___________

Applicant PHA: ____________________________________________

Development Name: ________________________________________

Required Attachment: Description of proposed demolition of nondwelling structures and itemized listing of costs.

Warning: HUD will prosecute false claims and statements. Conviction may result in the imposition of criminal and civil penalties. (18 U.S.C. 1001, 1010, 1012, 31 U.S.C. 3729, 3802)

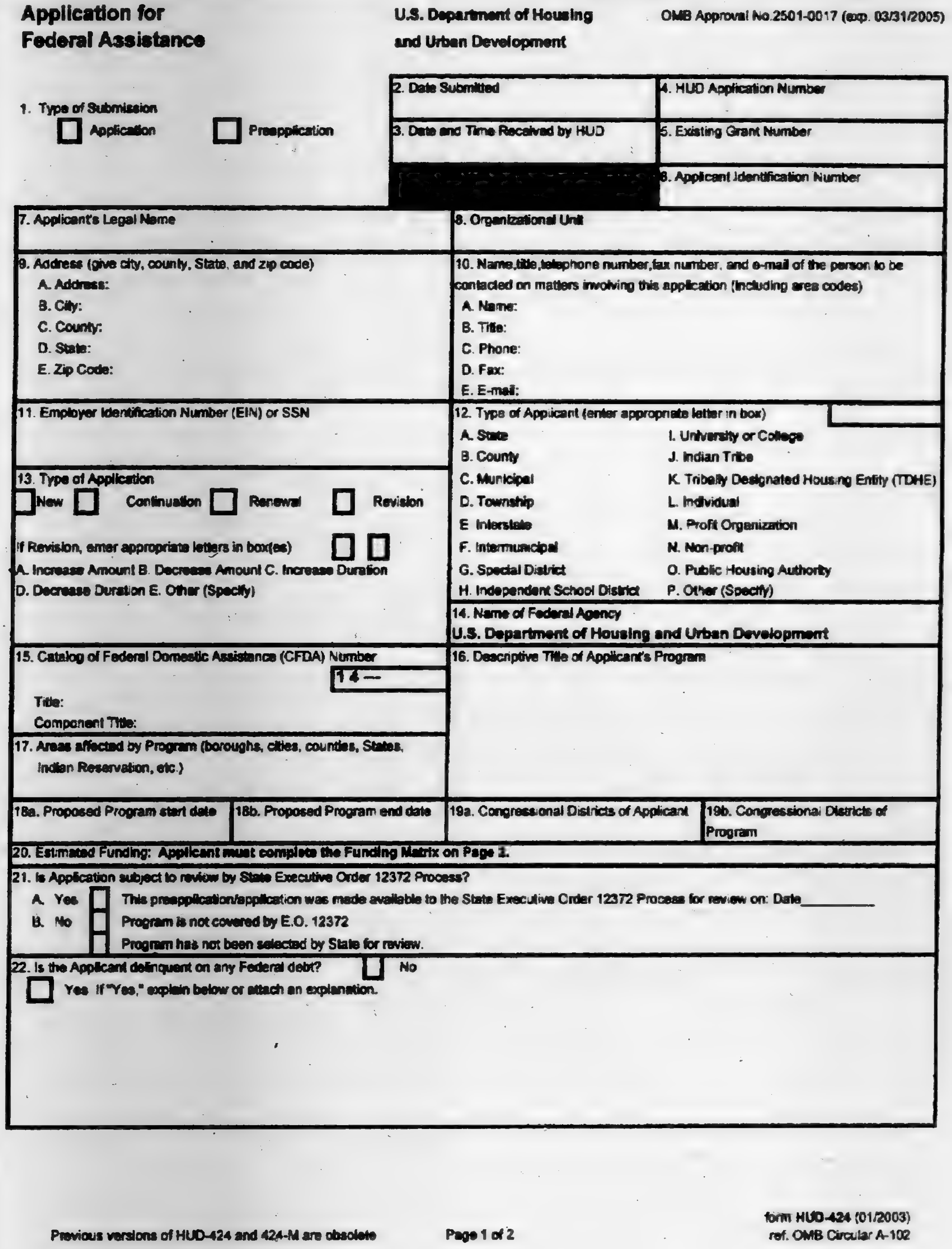

**Application for Federal Assistance**

**U.S. Department of Housing and Urban Development**

OMB Approval No.2501-0017 (exp. 03/31/2005)

1. Type of Submission

☐ Application ☐ Preapplication

| | |
|---|---|
| 2. Date Submitted | 4. HUD Application Number |
| 3. Date and Time Received by HUD | 5. Existing Grant Number |
| [redacted] | 6. Applicant Identification Number |
| 7. Applicant's Legal Name | 8. Organizational Unit |

9. Address (give city, county, State, and zip code)
A. Address:
B. City:
C. County:
D. State:
E. Zip Code:

10. Name,title,telephone number,fax number, and e-mail of the person to be contacted on matters involving this application (including area codes)
A. Name:
B. Title:
C. Phone:
D. Fax:
E. E-mail:

11. Employer Identification Number (EIN) or SSN

12. Type of Applicant (enter appropriate letter in box) ☐

| | |
|---|---|
| A. State | I. University or College |
| B. County | J. Indian Tribe |
| C. Municipal | K. Tribally Designated Housing Entity (TDHE) |
| D. Township | L. Individual |
| E. Interstate | M. Profit Organization |
| F. Intermunicipal | N. Non-profit |
| G. Special District | O. Public Housing Authority |
| H. Independent School District | P. Other (Specify) |

13. Type of Application

☐ New ☐ Continuation ☐ Renewal ☐ Revision

If Revision, enter appropriate letters in box(es) ☐ ☐

A. Increase Amount B. Decrease Amount C. Increase Duration
D. Decrease Duration E. Other (Specify)

14. Name of Federal Agency
**U.S. Department of Housing and Urban Development**

15. Catalog of Federal Domestic Assistance (CFDA) Number 14 —
Title:
Component Title:

16. Descriptive Title of Applicant's Program

17. Areas affected by Program (boroughs, cities, counties, States, Indian Reservation, etc.)

| | | | |
|---|---|---|---|
| 18a. Proposed Program start date | 18b. Proposed Program end date | 19a. Congressional Districts of Applicant | 19b. Congressional Districts of Program |

20. Estimated Funding: **Applicant must complete the Funding Matrix on Page 2.**

21. Is Application subject to review by State Executive Order 12372 Process?
A. Yes ☐ This preapplication/application was made available to the State Executive Order 12372 Process for review on: Date_________
B. No ☐ Program is not covered by E.O. 12372
☐ Program has not been selected by State for review.

22. Is the Applicant delinquent on any Federal debt? ☐ No
☐ Yes If "Yes," explain below or attach an explanation.

Previous versions of HUD-424 and 424-M are obsolete

Page 1 of 2

form HUD-424 (01/2003)
ref. OMB Circular A-102

## Funding Matrix

The applicant must provide the funding matrix shown below, listing each program for which HUD funding is being requested, and complete the certifications.

| Grant Program* | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income | Total |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | 0.00 |
| | | | | | | | | | 0.00 |
| | | | | | | | | | 0.00 |
| | | | | | | | | | 0.00 |
| | | | | | | | | | 0.00 |
| Grand Totals | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |

* For FHIPs, show both initiative and component

## Certifications

I certify, to the best of my knowledge and belief that no Federal appropriated funds have been paid, or will be paid, by or on behalf of the applicant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding of this Federal grant or its extension, renewal, amendment or modification. If funds other than Federal appropriated funds have or will be paid for influencing or attempting to influence the persons listed above, I shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying. I certify that I shall require all sub awards at all tiers (including sub-grants and contracts) to similarly certify and disclose accordingly.

Federally recognized Indian Tribes and tribally designated housing entities (TDHEs) established by Federally-recognized Indian tribes as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but State-recognized Indian tribes and TDHEs established under State law are not excluded from the statute's coverage.

This application incorporates the Assurances and Certifications (HUD-424B) attached to this application or renews and incorporates for the funding you are seeking the Assurances and Certifications currently on file with HUD. To the best of my knowledge and belief, all information in this application is true and correct and constitutes material representation of fact upon which HUD may rely in awarding the agreement.

| | |
|---|---|
| 23. Signature of Authorized Official | Name (printed) |
| Title | Date (mm/dd/yyyy) |

Previous versions of HUD-424 and 424-M are obsolete.

form HUD-424 (01/2003)
ref. OMB Circular A-102

## Instructions for the HUD-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This form must be used by applicants requesting funding from the Department of Housing and Urban Development. This application form HUD-424 incorporates the Assurances and Certifications (HUD-424-B). You may either (1) attach the Assurances and Certifications to the application or (2) renew the certifications that you previously made on behalf of your organization and submitted to HUD if the legal name of your organization has not changed and you were the authorized representative who signed the Assurances and Certifications.

### Item Number Instructions

1. Please indicate whether your application is for a formal application submission or a preliminary application (pre-application). HUD does not accept pre-applications for programs funded through the SuperNOFA.

2. Enter the date you are submitting your application to HUD.

3. This box will be completed by HUD. When received by HUD, your application will be stamped:

  (a) with a date; and

  (b) with the time received.

4. Leave Blank. This will be completed by the HUD program office receiving your application. When HUD accepts electronic applications for the grant program you are applying for, this number will be computer generated.

5. If your application is to renew or continue an existing grant, provide the existing grant number. If a new award, please leave blank.

6. Leave blank if you have not been provided a HUD ID number or user number. If you are a Public Housing Authority, enter your HUD issued Public Housing Authority ID number.

7. Enter the legal name of your organization applying for HUD funding.

8. Enter the name of the primary unit in your organization, if applicable, which will be responsible for the program.

9. Enter the complete address of your organization.

10. Enter the name, title, telephone number, fax number, and E-mail of the person to contact on matters related to your application.

11. Enter your organization's Employer Identification Number (EIN) as assigned by the Internal Revenue Service or if you are applying as an individual, your Social Security Number.

12. Choose from the list and enter the appropriate letter in the space provided. You must be an eligible applicant to apply for assistance. You must read the program information requirements to determine if you are a type of applicant that is eligible to apply for assistance under the program.

13. Enter the type of application you are submitting for funding consideration.

Check the appropriate box.

☐ "New" means you are applying for a new grant award.

☐ "Continuation" means you are requesting an extension of an existing award.

☐ "Renewal" means you are requesting funding for renewal of an existing grant. e.g Supportive Housing Program (SHP) or Shelter + Care grant.

☐ "Revision" means you are submitting a revision prior to the application due date in response to HUD's request for clarification or modification to your initial submission.

14. Pre-filed.

15. Enter the Catalog of Federal Domestic Assistance (CFDA) number and title and, if applicable, component title of the program.

16 Enter a brief description of your program and key activities.

17 Identify the location(s) where your activities will take place. If this is the entire state, enter "Entire State".

18a. Enter the proposed start date.

18b. Enter the proposed end date.

19a. List the Congressional District(s) where your organization is located.

19b List any Congressional District(s) where your program of activities or project sites will be located.

20. You must complete the funding matrix on page 2 of this form. Enter the following information:

**Grant Program:** The HUD funding program under which you are applying.

**HUD Share:** Please check the program requirements. Enter the amount of HUD funds you are requesting in your application.

**Applicant Match:** Enter the amount of funds or cash equivalent of in-kind contributions you are contributing to your project or program of activities.

**Other Federal Share:** Enter the amount of other Federal funds for your program of activities.

## Instructions for the HUD-424 (Continued)

**State Share:** Enter the amount of funds or cash equivalent of in-kind services the State is providing to your project or program of activities.

**Local/Tribal Share:** Enter the amount of funds or cash equivalent of in-kind services your local/tribal government is providing to your project or program of activities.

**Other:** Enter the amount of other sources of private, non-profit, or other funds or cash equivalent of in-kind services being provided to your project or program of activities.

**Program Income:** Enter the amount of program income you expect to generate over the life of your award.

**Total:** Please total all columns and fill in the amounts.

21. You should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 or check your application kit to determine whether the State Intergovernmental Review Process is required.

22. This question applies to your applicant organization, not the person signing as your organization's authorized representative. Categories of debt include disallowed costs that requires repayment to HUD.

23. To be signed by the authorized representative of your organization. A copy of your governing body's authorization for you to sign this application must be available in your organization's office.

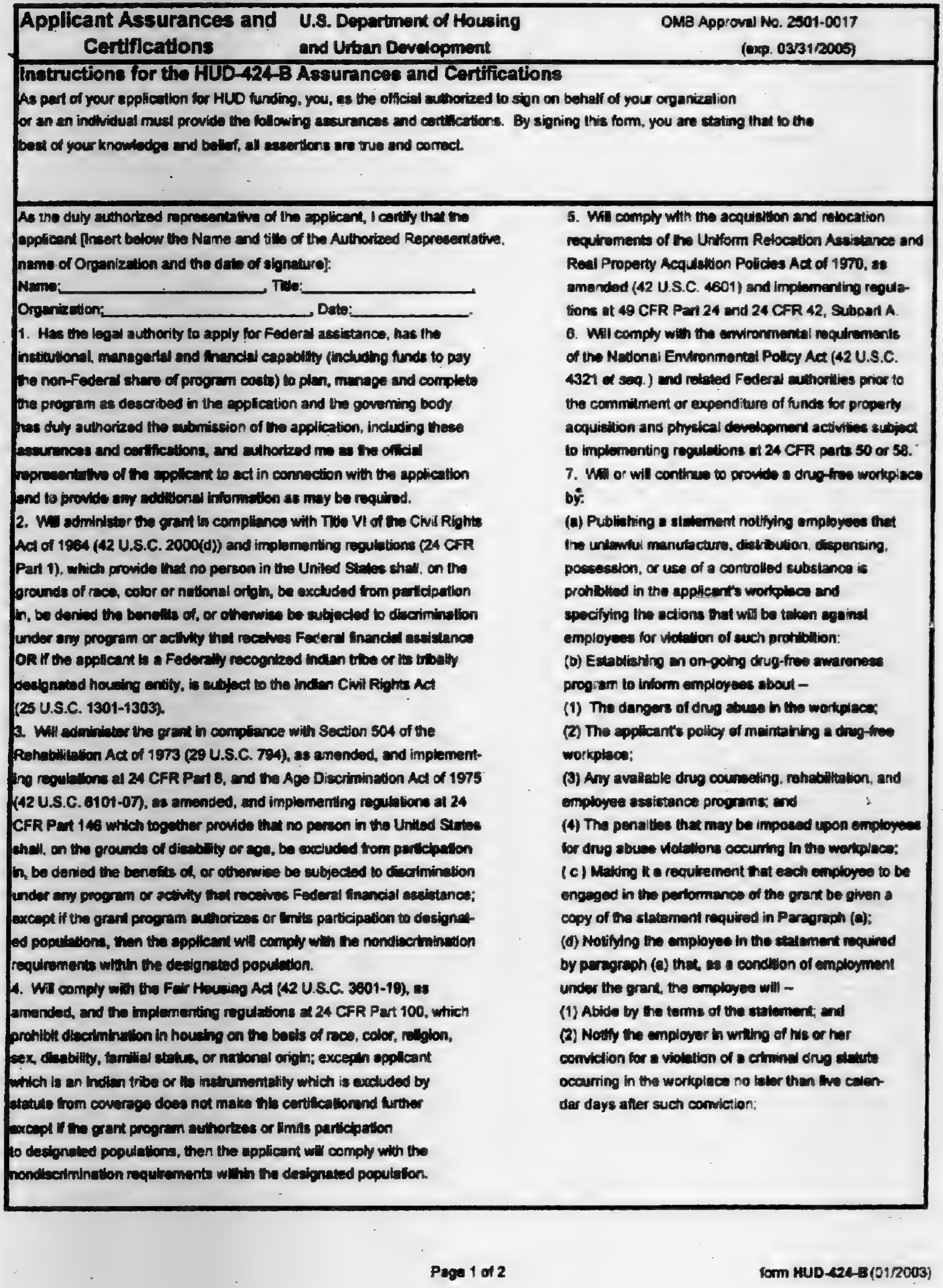

**Applicant Assurances and Certifications** | **U.S. Department of Housing and Urban Development** | OMB Approval No. 2501-0017 (exp. 03/31/2005)

## Instructions for the HUD-424-B Assurances and Certifications

As part of your application for HUD funding, you, as the official authorized to sign on behalf of your organization or an individual must provide the following assurances and certifications. By signing this form, you are stating that to the best of your knowledge and belief, all assertions are true and correct.

As the duly authorized representative of the applicant, I certify that the applicant [Insert below the Name and title of the Authorized Representative, name of Organization and the date of signature]:

Name:______________________, Title:____________________.

Organization:______________________, Date:______________.

1. Has the legal authority to apply for Federal assistance, has the institutional, managerial and financial capability (including funds to pay the non-Federal share of program costs) to plan, manage and complete the program as described in the application and the governing body has duly authorized the submission of the application, including these assurances and certifications, and authorized me as the official representative of the applicant to act in connection with the application and to provide any additional information as may be required.

2. Will administer the grant in compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) and implementing regulations (24 CFR Part 1), which provide that no person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance OR if the applicant is a Federally recognized Indian tribe or its tribally designated housing entity, is subject to the Indian Civil Rights Act (25 U.S.C. 1301-1303).

3. Will administer the grant in compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, and implementing regulations at 24 CFR Part 8, and the Age Discrimination Act of 1975 (42 U.S.C. 6101-07), as amended, and implementing regulations at 24 CFR Part 146 which together provide that no person in the United States shall, on the grounds of disability or age, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance; except if the grant program authorizes or limits participation to designated populations, then the applicant will comply with the nondiscrimination requirements within the designated population.

4. Will comply with the Fair Housing Act (42 U.S.C. 3601-19), as amended, and the implementing regulations at 24 CFR Part 100, which prohibit discrimination in housing on the basis of race, color, religion, sex, disability, familial status, or national origin; excepin applicant which is an Indian tribe or its instrumentality which is excluded by statute from coverage does not make this certificationand further except if the grant program authorizes or limits participation to designated populations, then the applicant will comply with the nondiscrimination requirements within the designated population.

5. Will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601) and implementing regulations at 49 CFR Part 24 and 24 CFR 42, Subpart A.

6. Will comply with the environmental requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and related Federal authorities prior to the commitment or expenditure of funds for property acquisition and physical development activities subject to implementing regulations at 24 CFR parts 50 or 58.

7. Will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the applicant's workplace and specifying the actions that will be taken against employees for violation of such prohibition:

(b) Establishing an on-going drug-free awareness program to inform employees about –

(1) The dangers of drug abuse in the workplace;

(2) The applicant's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

( c ) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required in Paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will –

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

Page 1 of 2 form HUD-424-B (01/2003)

## Applicant Assurances and Certifications (Continued)

U.S. Department of Housing and Urban Development

OMB Approval No. 2501-0017 (exp. 03/31/2005)

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee has worked, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), ( c), (d), (e), and (f).

(h). The applicant may insert in the space provided below the site(s) for the performance of work or may provide this information in connection with each application.

(i). Place of Performance (street address, city, county, state, zip code)

8. In accordance with 24 CFR Part 24, and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three year period preceding this proposal, been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

( c) Are not presently indicted for otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in the preceding paragraph of this certification; and

(d) Where the applicant is unable to certify to any of the statements in this certification, an explanation shall be attached.

(e) Will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transaction, " provided by the HUD without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

These certifications and assurances are material representations of the fact upon which HUD can rely when awarding a grant. If it is later determined that I, the applicant, knowingly made an erroneous certifications or assurance, I may be subject to criminal prosecution. HUD may also terminate the grant and take other available remedies.

# HOPE VI Budget
## Part I: Summary

**U.S. Department of Housing and Urban Development**
Office of Public and Indian Housing

OMB Approval No. 2577-0208 (exp. 12/31/2004)

Public Reporting Burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This information is necessary to provide details on the funds requested by Housing Authorities. The form displays the amount requested, broken down by budget line item, with each use explained on Part II. The requested information will be reviewed by HUD to determine if the amount requested is reasonable and whether the required percentages of capital and supportive services funds are met. Responses to the collection are required by the appropriation under which the HOPE VI grant was funded. The information collected does not lend itself to confidentiality.

HUD may not conduct or sponsor, and a person is not required to respond to collection of information unless it displays a currently valid OMB control number.

PHA Name

HOPE VI Grant Number

☐ Original HOPE VI Budget ☐ Revised HOPE VI Budget ☐ Predevelopment Budget

| Line No. | Summary by Budget Line Item | Capital Costs | Supportive Services Costs | Total Funds Requested | HUD Approved Funds |
|---|---|---|---|---|---|
| 1 | Total Non-HOPE VI Funds | | | | |
| 2 | 1408 Management Improvements | | | | |
| 3 | 1410 Administration | | | | |
| 4 | 1430 Fees and Costs | | | | |
| 5 | 1440 Site Acquisition | | | | |
| 6 | 1450 Site Improvement | | | | |
| 7 | 1460 Dwelling Structures | | | | |
| 8 | 1465 Dwelling Equipment—Nonexpendable | | | | |
| 9 | 1470 Nondwelling Structures | | | | |
| 10 | 1475 Nondwelling Equipment | | | | |
| 11 | 1485 Demolition | | | | |
| 12 | 1495 Relocation Cost | | | | |
| 13 | **Amount of HOPE VI Grant** (Sum of lines 2-12) | | | | |

Signature of PHA Executive Director

Date (mm/dd/yyyy)

**HUD Certification:** In approving this budget and providing assistance to a specific housing development(s), I hereby certify that the assistance will not be more than is necessary to make the assisted activity feasible after taking into account assistance from other government sources (24 CFR 12.50).

Signature of Authorized HUD Official

Date (mm/dd/yyyy)

Previous editions are obsolete

Page __ of __

form HUD-52825-A (12/96)
ref Handbook 7485.1

HA Name

## HOPE VI Budget
## Part II: Supporting Pages

| Work Item Number 1 | Budget Line Item Number 2 | Statement of Need 3 | Description of Proposed/Approved Action and Method of Accomplishment 4 | Individual Project Number 5 | Total Funds Requested 6 | HUD-Approved Funds 7 |
|---|---|---|---|---|---|---|
| | | | | | | |

Previous editions are obsolete

Page ___ of ___

form HUD-52825-A (12/96)
ref Handbook 7485.1

**Instructions for Preparation of Form HUD-52825-A,**

**HOPE VI Budget Submission:**

When requested by HUD, prepare a separate form HUD-52825-A (Parts I and II) for the HOPE VI program, describing the activities which are planned to be undertaken with the HOPE VI funds. Submit the original and two copies (or any lesser number of copies as specified by HUD) of this form to the HUD Field Office. On an as-needed basis, submit a revised form when the HUD-established threshold requires prior HUD approval to revise the HOPE VI Budget.

**Part I: Summary**

**HA Name** - Enter the name of the Housing Authority (HA).

**HOPE VI Grant Number** - Enter the unique HOPE VI Grant number assigned by HUD upon grant approval.

**FFY of Grant Approval** - Enter the Federal Fiscal Year (FFY) in which the HOPE VI grant is being approved/was approved. (last 2 digits of HOPE VI Grant Number).

**Type of Submission** - Check the appropriate box and indicate whether the submission is the Original HOPE VI Budget or a Revised HOPE VI Budget (and revision number).

**Total Funds Approved:**

**Line 1** - Enter the amount rounded to the nearest ten dollars, for all work that will be undertaken from non-HOPE VI funds. Enter zero if no work will be undertaken from non-HOPE VI funds.

**Lines 2 through 12** - For each line, enter the appropriate amount rounded to the nearest ten dollars, or zero if no work will be undertaken in a particular HOPE VI budget line item.

**Line 13** - Amount of HOPE VI Grant - Enter the sum of lines 2 through 12.

**Part II: Supporting Pages**

1. **Work Item Number** - Number each work item sequentially.
2. **Budget Line Item Number** - Enter the appropriated HOPE VI budget line item which corresponds to the work item described.
3. **Statement of Need**
4. **Description of Proposed/Approved Action and Method of Accomplishment** - For each HOPE VI budget line item listed, provide a statement of need and a description of all work items (physical or management, as applicable) that will be funded with HOPE VI funds, including management improvements, supportive services, administrative costs, equipment, etc. Enter the quantity of the work as a percentage or whole number, Describe administrative costs in sufficient detail to clearly identify items.
5. **Individual Project Number** - Enter the abbreviated (e.g., VA-36-1) of the development where the work items will be undertaken.
6. **Total Funds Requested** - For each work item and HA-wide activity described, enter the total funds requested. Where appropriate, add a reasonable contingency amount to each work item and indicate the percentage.

# Funding Application

Section 8 Tenant-Based Assistance
Rental Certificate Program
Rental Voucher Program

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(exp. 03/31/2004)

Send the original and two copies of this application form and attachments to the local HUD Field Office

Public reporting burden for this collection of information is estimated to average 1 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Eligible applicants (HAs) must submit this information when applying for grant funding for tenant-based housing assistance programs under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). HUD will use the information to evaluate an application based on selection criteria stated in the Notice of Funding Availability (NOFA). HUD will notify the HA of its approval/disapproval of the funding application. Responses are required to obtain a benefit from the Federal Government. The information requested does not lend itself to confidentiality.

Name and Mailing Address of the Housing Agency (HA) requesting housing assistance payments

Application/Project No. (HUD use only)

| Do you have an ACC with HUD | No | Yes | Date of Application | Legal Area of Operation<br>(area in which the HA has authority under State and local law to administer the program) |
|---|---|---|---|---|
| for Section 8 Certificates? | ☐ | ☐ | | |
| for Section 8 Vouchers? | ☐ | ☐ | | |

**A. Area(s) From Which Families To Be Assisted Will Be Drawn.**

| Locality (city, town, etc.) | County | Congressional District | Units |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

| **B. Proposed Assisted Dwelling Units.** (Complete this section based on the unit sizes of the applicants at the top of the waiting list) | Number of Dwelling Units by Bedroom Size | | | | | | | Total Dwelling Units |
|---|---|---|---|---|---|---|---|---|
| | 0-BR | 1-BR | 2-BR | 3-BR | 4-BR | 5-BR | 6+BR | |
| Certificates | | | | | | | | |
| Vouchers | | | | | | | | |

**C. Average Monthly Adjusted Income.** Complete this section based on actual incomes of current participants by unit size. Enter average monthly adjusted income for each program separately and only for the unit sizes requested in Section B.

| | 0-BR | 1-BR | 2-BR | 3-BR | 4-BR | 5-BR | 6+BR |
|---|---|---|---|---|---|---|---|
| Certificates | $ | $ | $ | $ | $ | $ | $ |
| Vouchers | $ | $ | $ | $ | $ | $ | $ |

**D. Need for Housing Assistance.** Demonstrate that the project requested in this application is responsive to the condition of the housing stock in the community and the housing assistance needs of low-income families residing in or expected to reside in the community. (If additional space is needed, add separate pages.)

**E. Housing Quality Standards (HQS).** (Check applicable box)

☐ HUD's HQS will be used with no modifications ☐ Attached for HUD approval are HQS acceptability criteria variations

**F. New HA Information.** Complete this section if HA currently does not administer a tenant-based certificate or voucher program.

Financial and Administrative Capability. Describe the experience of the HA in administering housing or other programs and provide any other relevant information which evidences present or potential management capability for the proposed rental assistance program. Submit this narrative on a separate page.

Qualification as an HA. Demonstrate that the applicant qualifies as an HA and is legally qualified and authorized to administer the funds applied for in this application. Submit the relevant enabling legislation and a supporting legal opinion.

**Note:** If this application is approved, the HA must submit for HUD approval a utility allowance schedule and budget documents.

**G. Certifications.** The following certifications are incorporated as a part of this application form. The signature on the last page of this application of the HA representative authorized to sign the application signifies compliance with the terms of these certifications.

**Equal Opportunity Certification**

The Housing Agency (HA) certifies that:

(1) The HA will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and regulations issued pursuant thereto (24 CFR Part 1) which state that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives financial assistance; and will take any measures necessary to effectuate this agreement.

(2) The HA will comply with the Fair Housing Act (42 U.S.C. 3601-19) and regulations issued pursuant thereto (24 CFR Part 100) which prohibit discrimination in housing on the basis of race, color, religion, sex, handicap, familial status, or national origin, and administer its programs and activities relating to housing in a manner to affirmatively further fair housing.

(3) The HA will comply with Executive Order 11063 on Equal Opportunity in Housing which prohibits discrimination because of race, color, creed, or national origin in housing and related facilities provided with Federal financial assistance and HUD regulations (24 CFR Part 107).

(4) The HA will comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations issued pursuant thereto (24 CFR Part 8) which state that no otherwise qualified individual with handicaps in the United States shall solely by reason of the handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(5) The HA will comply with the provisions of the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and regulations issued pursuant thereto (24 CFR Part 146) which state that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under a program or activity receiving Federal financial assistance.

(6) The Housing Agency will comply with the provisions of Title II of the Americans with Disabilities Act (42 U.S.C. 12131) and regulations issued pursuant thereto (28 CFR Part 35) which state that subject to the provisions of Title II, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity.

The following provisions apply only to housing assisted with Project-Based Certificates:

(7) The HA will comply with Executive Order 11246 and all regulations pursuant thereto (41 CFR Chapter 60-1) which state that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal contracts and shall take affirmative action to ensure equal employment opportunity.

(8) The HA will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) and regulations issued pursuant thereto (24 CFR Part 135), which require that, to the greatest extent feasible, opportunities for training and employment be given to low-income persons residing within the unit of local government for metropolitan area (or non-metropolitan county) in which the project is located.

**Certification Regarding Lobbying**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

**Certification Regarding Drug-Free Workplace Requirements**

Instructions for Drug-Free Workplace Requirements Certification:

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

4. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

5. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph three).

6. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

**Controlled substance** means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

**Conviction** means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

**Criminal drug statute** means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

**Employee** means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All *direct charge* employees; (ii) All *indirect charge* employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees or subrecipients or subcontractors in covered workplaces).

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, State, zip code)

Check ☐ if there are workplaces on file that are not identified here.

**Housing Agency Signature**

| | | |
|---|---|---|
| Signature of HA Representative | Print or Type Name of Signatory | |
| | Phone No. | Date |

# Acknowledgment of Application Receipt

**U.S. Department of Housing and Urban Development**

Type or clearly print the Applicant's name and full address in the space below.

(fold line)

Type or clearly print the following information:

Name of the Federal Program to which the applicant is applying: ______________________

**To Be Completed by HUD**

☐ HUD received your application by the deadline and will consider it for funding. In accordance with Section 103 of the Department of Housing and Urban Development Reform Act of 1989, no information will be released by HUD regarding the relative standing of any applicant until funding announcements are made. However, you may be contacted by HUD after initial screening to permit you to correct certain application deficiencies.

☐ HUD did not receive your application by the deadline; therefore, your application will not receive further consideration. Your application is:

- ☐ Enclosed
- ☐ Being sent under separate cover

Processor's Name ______________________

Date of Receipt ____________

form HUD-2993 (2/99)

**HOPE VI Revitalization**
**Application Data Form**

**U.S. Department of Housing**
**and Urban Development**
**Office of Public and Indian Housing**

Public Reporting Burden for this collection of information is estimated to average 80 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Response to this collection of information is mandatory to obtain a benefit. The information requested does not lead itself to confidentiality. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number.

## Attachment 1: *Application Data Form: Cover Sheet*

*Existing Development Name(s):* ______________________________

***Applicant Information*** *PHA Number:* ______________

*PHA Name:* ______________________________

*PHA Mailing Address:* ______________________________

*City, State, Zip:* ______________ *Main Telephone:* ______________

*PHA Executive Director:* ______________ *Telephone:* ________ *Fax:* ________

*Email Address:* ______________

*HOPE VI Coordinator:* ______________ *Telephone:* ________ *Fax:* ________

*Email Address:* ______________

*HOPE VI Developer (if any):* ______________ *Telephone:* ________ *Fax:* ________

*HOPE VI Developer Contact:* ______________ *Email Address:* ______________

*Program Manager (if any):* ______________ *Telephone:* ________ *Fax:* ________

*Email Address:* ______________

*Additional Partner:* ______________ *Functional Title:* ______________

*Additional Partner:* ______________ *Functional Title:* ______________

*Street Address, City, State, Zip:* ______________________________

*Existing Project Number(s):* ______________ *Neighborhood/ Area of town:* ______________

*New Development Name (if any):* ______________________________

*Mixed Income Proposed?* ___*Yes/No*___ *Mixed Finance Proposed?* ___*Yes/No*___

***Data Summary***

| | *Existing* | *Post-Revitalization* |
|---|---|---|
| *Number of replacement public housing units (on/off-site, including Affordable Lease/Purchase, Affordable Fee Simple Homeownership and Second Mortgage Only--excluding rehabilitated units)* | ▨ | |
| *Number of non-public housing, subsidized units (on/off-site, including homeownership)* | ▨ | |
| *Number of market-rate units (no income restrictions)* | ▨ | |
| *Number of other units* | ▨ | |
| TOTAL NUMBER OF POST-DEVELOPMENT UNITS | ▨ | |
| | | |
| *Number of units to be rehabilitated (excluding acquisition with rehab)* | ▨ | |
| *Number of newly constructed on-site units (including acquisition with rehab)* | ▨ | |
| *Number of newly constructed off-site units (including acquisition with rehab)* | ▨ | |
| | | |
| *Number of occupied units (at time of application)* | | ▨ |
| *Number of vacant units (at time of application)* | | ▨ |

# Attachment 2: *Application Data Form: Existing Units, Occupancy, and Vacancy*

### Existing Housing Units at Time of Grant Application

| *Building Type* | *Size* | *Number Occupied* | *Number Vacant* | *Total Units* | *Converted to Non-Dwelling* | *Demo Planned* |
|---|---|---|---|---|---|---|
| Row | 0 BR | | | | | |
| | 1 BR | | | | | |
| | 2 BR | | | | | |
| | 3 BR | | | | | |
| | 4 BR | | | | | |
| | 5 BR | | | | | |
| | 6 BR | | | | | |
| | **Total** | | | | | |
| Detached/ Semi-Detached | 0 BR | | | | | |
| | 1 BR | | | | | |
| | 2 BR | | | | | |
| | 3 BR | | | | | |
| | 4 BR | | | | | |
| | 5 BR | | | | | |
| | 6 BR | | | | | |
| | **Total** | | | | | |
| Walkup | 0 BR | | | | | |
| | 1 BR | | | | | |
| | 2 BR | | | | | |
| | 3 BR | | | | | |
| | 4 BR | | | | | |
| | 5 BR | | | | | |
| | 6 BR | | | | | |
| | **Total** | | | | | |
| Elevator | 0 BR | | | | | |
| | 1 BR | | | | | |
| | 2 BR | | | | | |
| | 3 BR | | | | | |
| | 4 BR | | | | | |
| | 5 BR | | | | | |
| | 6 BR | | | | | |
| | **Total** | | | | | |
| Grand Total | | | | | | |

# Attachment 3: *Application Data Form: Relocation, Income, and Non-Dwelling Structures*

***Relocation/Occupancy***

| ***Relocation Strategy*** | **Planned** |
|---|---|
| *Original households to be provided Section 8 certificates/vouchers* | |
| *Original households to be moved within public housing (on and off-site)* | |
| *Original households to move to non-assisted housing/unknown* | |
| *Total* | |

***Number of Section 8 certificates/vouchers requested/received from HUD for this project:***

| **Requested** | **Received** |
|---|---|
| | |

***Number of occupied units at time of grant application:*** ______

***Projected number of occupied units at time of demolition application approval:*** ______

| ***Returning Households*** | **Planned** |
|---|---|
| *Number of original households estimated to return to revitalized HOPE VI units (both on-site and off-site):* | |
| *Number of these households to be housed in new construction* | |

| ***Household Income*** | **Existing** | **Post Development** |
|---|---|---|
| *Average income (as percentage of Median) of public housing residents in development* | | |
| *Average income (as percentage of Median) of otherwise subsidized residents in neighborhood* | | |
| *Average income (as percentage of Median) of market-rate residents in the neighborhood* | | |
| ***Resident Profile (not mutually exclusive)*** | | |
| *Total number of residents* | | |
| *Number of children 6-18 years of age* | | |
| *Number of senior citizens* | | |
| *Number of individuals with disabilities* | | |

| ***Non-Dwelling Structure Summary*** | | | | |
|---|---|---|---|---|
| *Proposed non-dwelling structures (please describe, including type of facility and whether proposing new construction or rehabilitation)* | *New or Rehab* | *Square Footage* | *Total Cost* | *Cost per Sq. Ft.* |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

## Attachment 4: *Application Data Form: Proposed Unit Mix Post-Revitalization*

*New Construction (Include any acquisition w/rehab)* *Rehabilitation*

| *Row: New* | | | | | | *Row: Rehabilitation* | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Size | Sq. Ft. | ACC Units* | Non-ACC Units** | HOPE VI and/or PH funded HO | Other Home-Ownership | Size | Sq. Ft. | ACC Units* | Non-ACC Units** | HOPE VI and/or PH funded HO | Other Home-Ownership |
| **0 BR** | | | | | | **0 BR** | | | | | |
| **1 BR** | | | | | | **1 BR** | | | | | |
| **2 BR** | | | | | | **2 BR** | | | | | |
| **3 BR** | | | | | | **3 BR** | | | | | |
| **4 BR** | | | | | | **4 BR** | | | | | |
| **5 BR** | | | | | | **5 BR** | | | | | |
| **6 BR** | | | | | | **6 BR** | | | | | |
| *Total* | ▨ | | | | | *Total* | ▨ | | | | |

| *Detached/Semi-detached: New* | | | | | | *Detached/Semi-detached: Rehabilitation* | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Size | Sq. Ft. | ACC Units* | Non-ACC Units** | HOPE VI and/or PH funded HO | Other Home-Ownership | Size | Sq. Ft. | ACC Units* | Non-ACC Units** | HOPE VI and/or PH funded HO | Other Home-Ownership |
| **0 BR** | | | | | | **0 BR** | | | | | |
| **1 BR** | | | | | | **1 BR** | | | | | |
| **2 BR** | | | | | | **2 BR** | | | | | |
| **3 BR** | | | | | | **3 BR** | | | | | |
| **4 BR** | | | | | | **4 BR** | | | | | |
| **5 BR** | | | | | | **5 BR** | | | | | |
| **6 BR** | | | | | | **6 BR** | | | | | |
| *Total* | ▨ | | | | | *Total* | ▨ | | | | |

| *Walkups: New* | | | | | | *Walkups: Rehabilitation* | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Size | Sq. Ft. | ACC Units* | Non-ACC Units** | HOPE VI and/or PH funded HO | Other Home-Ownership | Size | Sq. Ft. | ACC Units* | Non-ACC Units** | HOPE VI and/or PH funded HO | Other Home-Ownership |
| **0 BR** | | | | | | **0 BR** | | | | | |
| **1 BR** | | | | | | **1 BR** | | | | | |
| **2 BR** | | | | | | **2 BR** | | | | | |
| **3 BR** | | | | | | **3 BR** | | | | | |
| **4 BR** | | | | | | **4 BR** | | | | | |
| **5 BR** | | | | | | **5 BR** | | | | | |
| **6 BR** | | | | | | **6 BR** | | | | | |
| *Total* | ▨ | | | | | *Total* | ▨ | | | | |

| *Elevator: New* | | | | | | *Elevator: Rehabilitation* | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Size | Sq. Ft. | ACC Units* | Non-ACC Units** | HOPE VI and/or PH funded HO | Other Home-Ownership | Size | Sq. Ft. | ACC Units* | Non-ACC Units** | HOPE VI and/or PH funded HO | Other Home-Ownership |
| **0 BR** | | | | | | **0 BR** | | | | | |
| **1 BR** | | | | | | **1 BR** | | | | | |
| **2 BR** | | | | | | **2 BR** | | | | | |
| **3 BR** | | | | | | **3 BR** | | | | | |
| **4 BR** | | | | | | **4 BR** | | | | | |
| **5 BR** | | | | | | **5 BR** | | | | | |
| **6 BR** | | | | | | **6 BR** | | | | | |
| *Total* | ▨ | | | | | *Total* | ▨ | | | | |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Grand Total | ▨ | | | | | Grand Total | ▨ | | | | |

* ACC units include PH rental, PH/LIHTC, and Affordable Lease/Purchase with HOPE VI and/or PH funds.

** Non-ACC units have no PH or HOPE VI funds and will not be under ACC.

## Attachment 5: *Application Data Form: Units, Accessibility, and Concentration*

Planned Units

| Rental Units: ACC | | | | | | | |
|---|---|---|---|---|---|---|---|
| PH Only | | PH/LIHTC | | PH/Other | | Total ACC | |
| On-Site | Off-Site | On-Site | Off-Site | On-Site | Off-Site | On-Site | Off-Site |
| | | | | | | | |

| Rental Units: Non-ACC | | | | | | | |
|---|---|---|---|---|---|---|---|
| LIHTC | | CDBG, HOME, or other subsidy | | No Income Restrictions | | Total Non-ACC | |
| On-Site | Off-Site | On-Site | Off-Site | On-Site | Off-Site | On-Site | Off-Site |
| | | | | | | | |

| Homeownership Units | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Affordable Lease/Purchase th HOPE VI and/or PH fund | | Affordable Fee Simple Homeownership vith HOPE VI and/or PH funds | | Second Mortgage Only with HOPE VI and/or PH funds | | Homeownership with other subsidies (No HOPE VI or PH funds) | | Market Rate Homeownership (No subsidies) | | Total Homeownership | |
| On-Site | Off-Site | On-Site | Off-Site | On-Site | Off-Site | On-Site | Off-Site | On-Site | Off-Site | On-Site | Off-Site |
| | | | | | | | | | | | |

| Other Units (operating subsidy only, etc) | | | | | | | |
|---|---|---|---|---|---|---|---|
| Type: | | Type: | | Type: | | Total Other Units | |
| On-Site | Off-Site | On-Site | Off-Site | On-Site | Off-Site | On-Site | Off-Site |
| | | | | | | | |

| Grand Total | |
|---|---|
| On-Site | Off-Site |
| | |

Grand Total - All Units ________

Accessibility

| New Construction | Rental Units (including Lease/Purchase) % of Category | Homeownership Units % of Category | Total % of Category |
|---|---|---|---|
| Mobility-Impaired (wheelchair) | | | |
| Hearing-Impaired | | | |
| Sight-Impaired | | | |
| Visitability | | | |

| Rehabilitation | Rental Units (including Lease/Purchase) % of Category | Homeownership Units % of Category | Total % of Category |
|---|---|---|---|
| Mobility-Impaired (wheelchair) | | | |
| Hearing-Impaired | | | |
| Sight-Impaired | | | |
| Visitability | | | |

Concentration

| | Pre-Development | Post-Development |
|---|---|---|
| Density of on-site development (units per acre) | | |
| Percent of very low income households in the development (30% of median or below) | | |

## Attachment 6: *Application Data Form: Self-Sufficiency, Page 1*

NOTE: If property is vacant, describe previous residents.

| | During Last 12 Months | At Time of Application | At Grant Award | Projected One Year after Grant Award | Projected Two Years after Grant Award | Projected at Close of Grant |
|---|---|---|---|---|---|---|
| **A. Graduation from Public Assistance** | | | | | | |
| Number of households whose primary monthly source of income is: | | | | | | |
| Wages/Salary | ▨ | | | | | |
| TANF | ▨ | | | | | |
| Other | ▨ | | | | | |
| **B. Employment/Obstacles to Employment** | | | | | | |
| Number of TANF participants enrolled in job training programs | | ▨ | | | | |
| Number of non-TANF participants enrolled in job training programs | | ▨ | | | | |
| Number of unemployed residents placed in: | | | | | | |
| Section 3 jobs | | ▨ | | | | |
| Non-Section 3 jobs | | ▨ | | | | |
| **C. Economic Development** | | | | | | |
| Number of resident-owned businesses | ▨ | | | | | |
| **D. Section 3** | | | | | | |
| Dollar amount of HOPE VI contracts going to Section 3 firms | | ▨ | | | | |
| **E. Education** | | | | | | |
| Number of residents without a high school diploma or G.E.D. | ▨ | | | | | |
| Number of residents with a high school diploma, G.E.D., or higher degree | ▨ | | | | | |
| **F. Homeownership** | | | | | | |
| Number of residents in homeownership counseling | | ▨ | | | | |
| **G. Case Management** | | | | | | |
| If you have a Family Supportive Services program: | | | | | | |
| Number of residents enrolled in FSS program | ▨ | | | | | |
| Dollar amount in escrow accounts | ▨ | | | | | |
| **H. Youth Programs** | | | | | | |
| Number of youth participating in youth programs | | ▨ | | | | |
| Number of children participating in day care programs | | ▨ | | | | |
| **I. Health** | | | | | | |
| Number of partnerships with healthcare agencies (e.g., clinics, hospitals, universities) | ▨ | | | | | |
| **J. Transportation** | | | | | | |
| Number of residents who use public transportation to get to work or services | ▨ | | | | | |

# Attachment 6: *Application Data Form: Self-Sufficiency, Page 2*

**K. Self-Sufficiency Projected Spending**

| Planned Spending | HOPE VI Funds | Other Funds | Total |
|---|---|---|---|
| Day Care | | | |
| Health Care | | | |
| Education | | | |
| Job Training | | | |
| Business Development Training | | | |
| Case Management | | | |
| Other (specify) | | | |
| Other (specify) | | | |
| Other (specify) | | | |
| Other (specify) | | | |
| Other (specify) | | | |
| Other (specify) | | | |

| | | | |
|---|---|---|---|
| TOTAL | | | |

**L. Self-Sufficiency: Programs and Partners**

| *List of Self-Sufficiency (CSS) Programs* | *List of Self-Sufficiency Partners* |
|---|---|
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |

## Attachment 7: *Application Data Form: Sources and Uses, Page 1*

| Uses ($)* | HOPE VI Uses ($) | + | Non-HOPE VI Uses ($) | = | Total |
|---|---|---|---|---|---|
| **Administration** | | | | | |
| Administration | | | | | |
| **Management Improvements** | | | | | |
| Management Improvements - Dev | | | | | |
| Management Improvements - CSS | | | | | |
| **Acquisition** | | | | | |
| Site Acquisition | | | | | |
| Building Acquisition, Turnkey | | | | | |
| Building Acquisition, Rehabilitation | | | | | |
| Building Acquisition, Non-Dwelling | | | | | |
| **Building Remediation/Demolition** | | | | | |
| Remediation, Dwelling Units | | | | | |
| Demolition, Dwelling Units | | | | | |
| Remediation, Non-Dwelling Units | | | | | |
| Demolition, Non-Dwelling Units | | | | | |
| Demolition, Other | | | | | |
| **Site Improvements** | | | | | |
| Site Remediation | | | | | |
| Site Infrastructure | | | | | |
| Off-site Improvements | | | | | |
| **Construction** | | | | | |
| Dwelling Structures - Hard Costs | | | | | |
| Non-Dwelling - Hard Costs | | | | | |
| General Requirements | | | | | |
| Builder's Profit | | | | | |
| Builder's Overhead | | | | | |
| Bond Premium | | | | | |
| Hard Cost Contingency | | | | | |
| **Equipment** | | | | | |
| Dwelling Equipment | | | | | |
| Non-Dwelling Equipment | | | | | |
| **Professional Fees/Consultant Services** | | | | | |
| Program Management Services | | | | | |
| Architectural | | | | | |
| Engineering | | | | | |
| Construction Management Services | | | | | |
| Appraisal | | | | | |
| Environmental | | | | | |
| Market Study | | | | | |
| Historic Preservation Documentation | | | | | |
| Other | | | | | |
| **Legal** | | | | | |
| Organizational | | | | | |
| Syndication | | | | | |
| PHA Outside Counsel | | | | | |
| Other | | | | | |
| **Tax Credit** | | | | | |
| Accounting | | | | | |
| Tax Credit Application | | | | | |
| Tax Credit Monitoring Fee | | | | | |
| Consultant | | | | | |
| Other | | | | | |
| **Page 1 Total** | $ | | $ | | $ |

## Attachment 7: *Application Data Form: Sources and Uses, Page 2*

| Uses ($)* | HOPE VI Uses ($) | + | Non-HOPE VI Uses ($) | = | Total |
|---|---|---|---|---|---|
| **Other Development Costs (Soft Costs)** | | | | | |
| Accounting Fees | | | | | |
| Financing Fees | | | | | |
| Permit Fees | | | | | |
| Title/Recording/Settlement Fees | | | | | |
| Real Estate Taxes During Construction | | | | | |
| Insurance During Construction | | | | | |
| Interest During Construction | | | | | |
| Bridge Loan Interest | | | | | |
| Marking/Rent-up Expenses | | | | | |
| Initial Operating Deficit | | | | | |
| Soft Cost Contingency | | | | | |
| Other | | | | | |
| **Relocation** | | | | | |
| Relocation Costs | | | | | |
| **Developer Fee** | | | | | |
| Developer Fee | | | | | |
| **Reserves** | | | | | |
| Operating Reserve | | | | | |
| Other Reserves | | | | | |
| **Page 2 Total** | | | | | |
| **GRAND TOTAL USES:** | | | | | |
| | $ | | $ | | $ |
| | $ | | $ | | $ |

**Total Uses** $

| Sources ($) | |
|---|---|
| **HUD Funds** | |
| HOPE VI Revitalization | |
| PH Capital Fund | |
| Modernization | |
| PH Development | |
| MROP | |
| HOPE VI Demolition Grant | |
| **Other HUD Funds** | |
| HOME | |
| CDBG | |
| Other | |
| **Total HUD Funds** | $ |
| **Non-HUD Public Funds** | |
| State Funds | |
| Local Funds (Non PHA) | |
| PHA Funds | |
| Other Funds | |
| Describe Other | |
| **Total Non-HUD Public Funds** | $ |
| **Private Funds** | |
| Tax Exempt Bonds | |
| Taxable Bonds | |
| Private LIHTC | |
| Other Equity | |
| Homebuyer Down Payment | |
| Donations/Grants | |
| Private Lender | |
| Other | |
| Describe Other: | |
| **Total Private Funds** | $ |
| **Total Sources** | $ |

## Attachment 9:

## TDC/Grant Limitations Worksheet

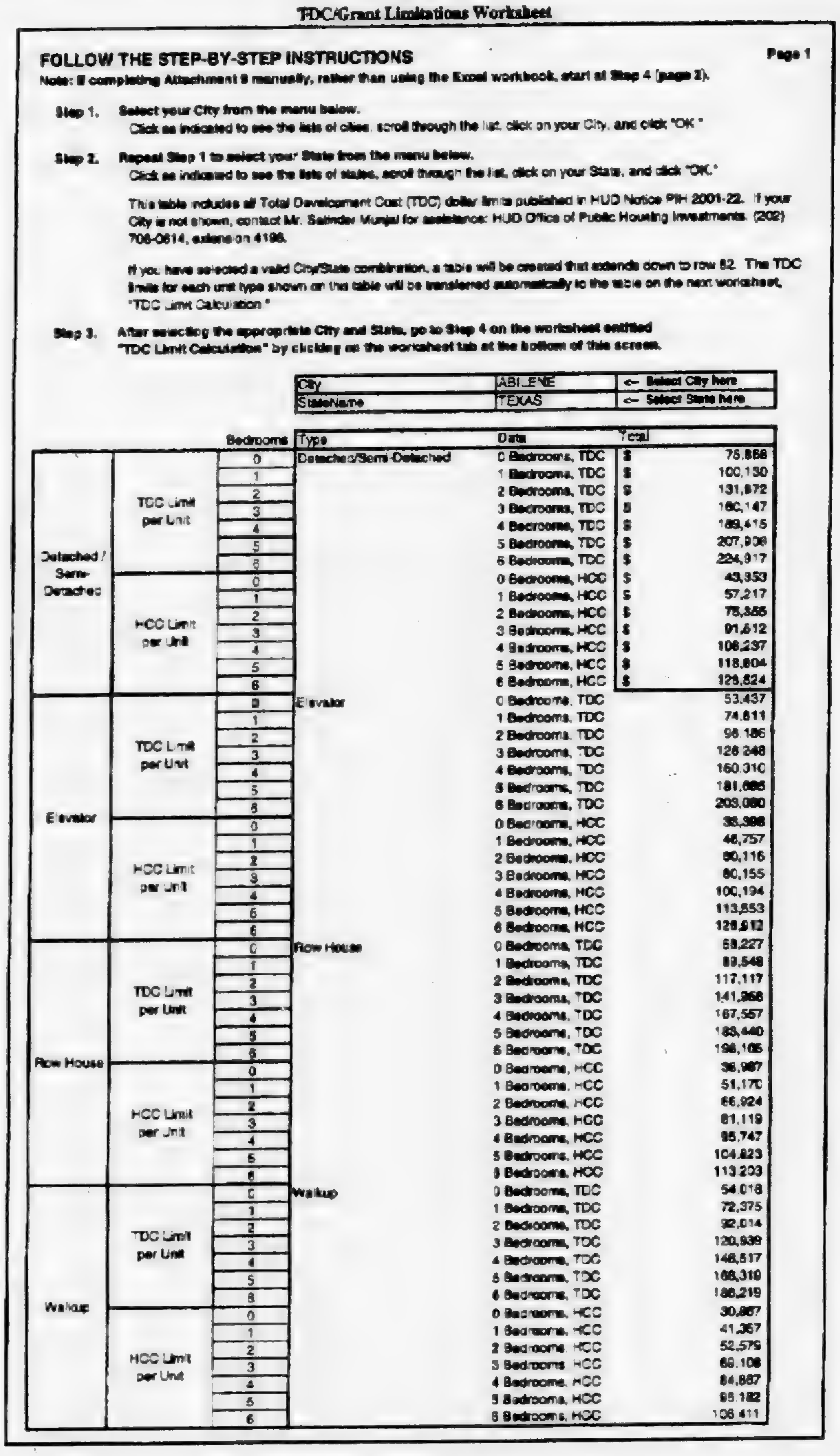

**FOLLOW THE STEP-BY-STEP INSTRUCTIONS** Page 1

**Note: If completing Attachment 8 manually, rather than using the Excel workbook, start at Step 4 (page 2).**

**Step 1. Select your City from the menu below.**
Click as indicated to see the lists of cities, scroll through the list, click on your City, and click "OK."

**Step 2. Repeat Step 1 to select your State from the menu below.**
Click as indicated to see the lists of states, scroll through the list, click on your State, and click "OK."

This table includes all Total Development Cost (TDC) dollar limits published in HUD Notice PIH 2001-22. If your City is not shown, contact Mr. Satinder Munjal for assistance: HUD Office of Public Housing Investments, (202) 708-0614, extension 4196.

If you have selected a valid City/State combination, a table will be created that extends down to row 82. The TDC limits for each unit type shown on this table will be transferred automatically to the table on the next worksheet, "TDC Limit Calculation."

**Step 3. After selecting the appropriate City and State, go to Step 4 on the worksheet entitled "TDC Limit Calculation" by clicking on the worksheet tab at the bottom of this screen.**

| | | |
|---|---|---|
| City | ABILENE | <- Select City here |
| StateName | TEXAS | <- Select State here |

| | | Bedrooms | Type | Data | Total |
|---|---|---|---|---|---|
| Detached / Semi-Detached | TDC Limit per Unit | 0 | Detached/Semi-Detached | 0 Bedrooms, TDC | $ 75,868 |
| | | 1 | | 1 Bedrooms, TDC | $ 100,130 |
| | | 2 | | 2 Bedrooms, TDC | $ 131,872 |
| | | 3 | | 3 Bedrooms, TDC | $ 160,147 |
| | | 4 | | 4 Bedrooms, TDC | $ 189,415 |
| | | 5 | | 5 Bedrooms, TDC | $ 207,908 |
| | | 6 | | 6 Bedrooms, TDC | $ 224,917 |
| | HCC Limit per Unit | 0 | | 0 Bedrooms, HCC | $ 43,353 |
| | | 1 | | 1 Bedrooms, HCC | $ 57,217 |
| | | 2 | | 2 Bedrooms, HCC | $ 75,365 |
| | | 3 | | 3 Bedrooms, HCC | $ 91,612 |
| | | 4 | | 4 Bedrooms, HCC | $ 108,237 |
| | | 5 | | 5 Bedrooms, HCC | $ 118,804 |
| | | 6 | | 6 Bedrooms, HCC | $ 129,824 |
| Elevator | TDC Limit per Unit | 0 | Elevator | 0 Bedrooms, TDC | 53,437 |
| | | 1 | | 1 Bedrooms, TDC | 74,811 |
| | | 2 | | 2 Bedrooms, TDC | 98,186 |
| | | 3 | | 3 Bedrooms, TDC | 128,248 |
| | | 4 | | 4 Bedrooms, TDC | 160,310 |
| | | 5 | | 5 Bedrooms, TDC | 181,686 |
| | | 6 | | 6 Bedrooms, TDC | 203,060 |
| | HCC Limit per Unit | 0 | | 0 Bedrooms, HCC | 35,398 |
| | | 1 | | 1 Bedrooms, HCC | 46,757 |
| | | 2 | | 2 Bedrooms, HCC | 60,116 |
| | | 3 | | 3 Bedrooms, HCC | 80,155 |
| | | 4 | | 4 Bedrooms, HCC | 100,194 |
| | | 5 | | 5 Bedrooms, HCC | 113,553 |
| | | 6 | | 6 Bedrooms, HCC | 128,912 |
| Row House | TDC Limit per Unit | 0 | Row House | 0 Bedrooms, TDC | 68,227 |
| | | 1 | | 1 Bedrooms, TDC | 89,548 |
| | | 2 | | 2 Bedrooms, TDC | 117,117 |
| | | 3 | | 3 Bedrooms, TDC | 141,868 |
| | | 4 | | 4 Bedrooms, TDC | 167,557 |
| | | 5 | | 5 Bedrooms, TDC | 183,440 |
| | | 6 | | 6 Bedrooms, TDC | 196,105 |
| | HCC Limit per Unit | 0 | | 0 Bedrooms, HCC | 38,987 |
| | | 1 | | 1 Bedrooms, HCC | 51,170 |
| | | 2 | | 2 Bedrooms, HCC | 66,924 |
| | | 3 | | 3 Bedrooms, HCC | 81,119 |
| | | 4 | | 4 Bedrooms, HCC | 95,747 |
| | | 5 | | 5 Bedrooms, HCC | 104,823 |
| | | 6 | | 6 Bedrooms, HCC | 113,203 |
| Walkup | TDC Limit per Unit | 0 | Walkup | 0 Bedrooms, TDC | 54,018 |
| | | 1 | | 1 Bedrooms, TDC | 72,375 |
| | | 2 | | 2 Bedrooms, TDC | 92,014 |
| | | 3 | | 3 Bedrooms, TDC | 120,939 |
| | | 4 | | 4 Bedrooms, TDC | 148,517 |
| | | 5 | | 5 Bedrooms, TDC | 168,319 |
| | | 6 | | 6 Bedrooms, TDC | 186,219 |
| | HCC Limit per Unit | 0 | | 0 Bedrooms, HCC | 30,867 |
| | | 1 | | 1 Bedrooms, HCC | 41,357 |
| | | 2 | | 2 Bedrooms, HCC | 52,579 |
| | | 3 | | 3 Bedrooms, HCC | 69,108 |
| | | 4 | | 4 Bedrooms, HCC | 84,887 |
| | | 5 | | 5 Bedrooms, HCC | 95,182 |
| | | 6 | | 6 Bedrooms, HCC | 106,411 |

## Attachment 9:
## TDC/Grant Limitations Worksheet

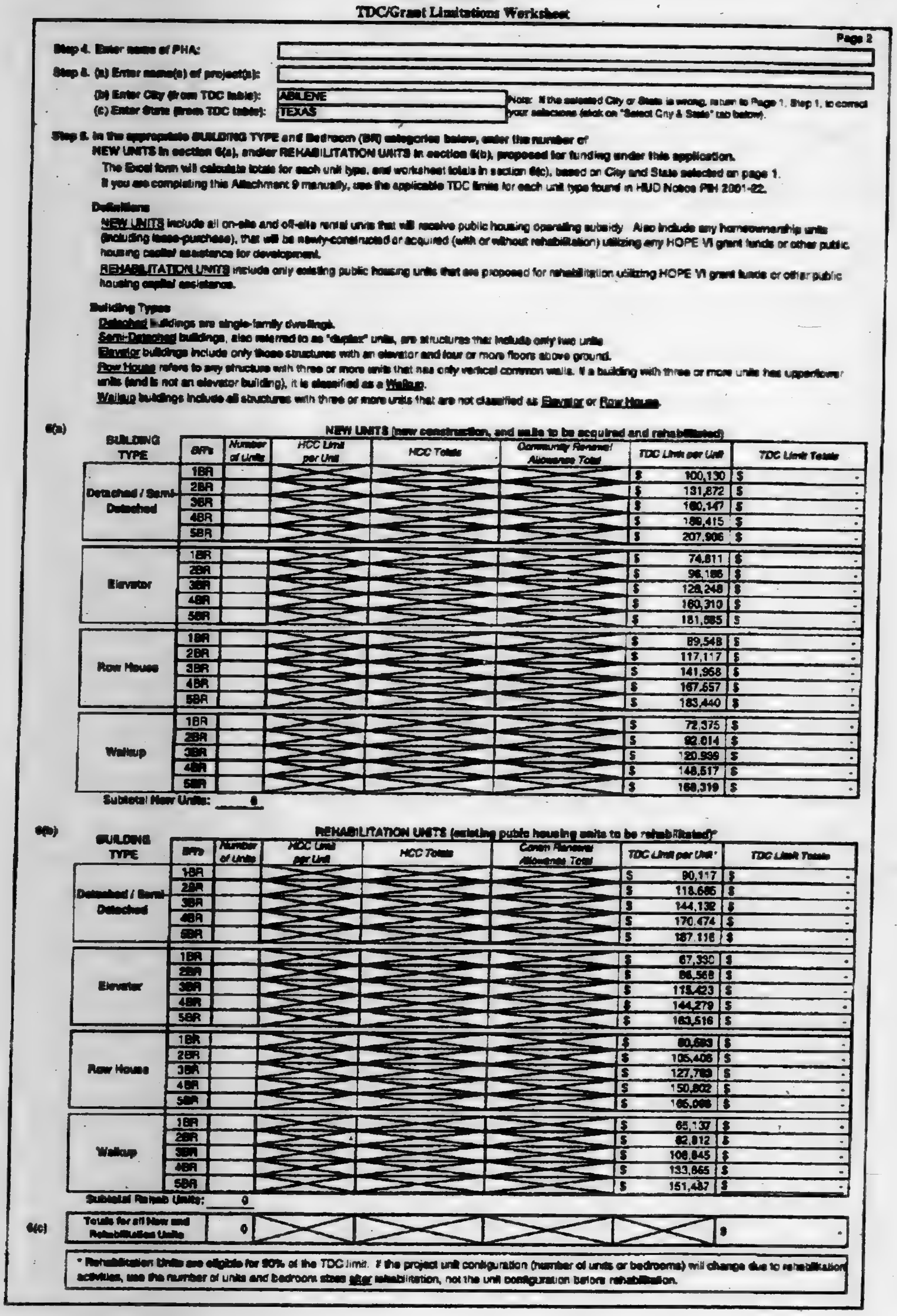

Page 2

**Step 4. Enter name of PHA:**

**Step 5. (a) Enter name(s) of project(s):**

**(b) Enter City (from TDC table):** ABILENE

**(c) Enter State (from TDC table):** TEXAS

Note: If the selected City or State is wrong, return to Page 1, Step 1, to correct your selections (click on "Select City & State" tab below).

**Step 6. In the appropriate BUILDING TYPE and Bedroom (BR) categories below, enter the number of NEW UNITS in section 6(a), and/or REHABILITATION UNITS in section 6(b), proposed for funding under this application.**

The Excel form will calculate totals for each unit type, and worksheet totals in section 6(c), based on City and State selected on page 1.

If you are completing this Attachment 9 manually, use the applicable TDC limits for each unit type found in HUD Notice PIH 2001-22.

**Definitions**

NEW UNITS include all on-site and off-site rental units that will receive public housing operating subsidy. Also include any homeownership units (including lease-purchase), that will be newly-constructed or acquired (with or without rehabilitation) utilizing any HOPE VI grant funds or other public housing capital assistance for development.

REHABILITATION UNITS include only existing public housing units that are proposed for rehabilitation utilizing HOPE VI grant funds or other public housing capital assistance.

**Building Types**

Detached buildings are single-family dwellings.

Semi-Detached buildings, also referred to as "duplex" units, are structures that include only two units.

Elevator buildings include only those structures with an elevator and four or more floors above ground.

Row House refers to any structure with three or more units that has only vertical common walls. If a building with three or more units has upper/lower units (and is not an elevator building), it is classified as a Walkup.

Walkup buildings include all structures with three or more units that are not classified as Elevator or Row House.

6(a) **NEW UNITS (new construction, and units to be acquired and rehabilitated)**

| BUILDING TYPE | BR's | Number of Units | HCC Limit per Unit | HCC Totals | Community Renewal Allowance Total | TDC Limit per Unit | TDC Limit Totals |
|---|---|---|---|---|---|---|---|
| Detached / Semi-Detached | 1BR | | | | | $ 100,130 | $ - |
| | 2BR | | | | | $ 131,872 | $ - |
| | 3BR | | | | | $ 160,147 | $ - |
| | 4BR | | | | | $ 189,415 | $ - |
| | 5BR | | | | | $ 207,906 | $ - |
| Elevator | 1BR | | | | | $ 74,811 | $ - |
| | 2BR | | | | | $ 96,186 | $ - |
| | 3BR | | | | | $ 128,248 | $ - |
| | 4BR | | | | | $ 160,310 | $ - |
| | 5BR | | | | | $ 181,685 | $ - |
| Row House | 1BR | | | | | $ 89,548 | $ - |
| | 2BR | | | | | $ 117,117 | $ - |
| | 3BR | | | | | $ 141,958 | $ - |
| | 4BR | | | | | $ 167,557 | $ - |
| | 5BR | | | | | $ 183,440 | $ - |
| Walkup | 1BR | | | | | $ 72,375 | $ - |
| | 2BR | | | | | $ 92,014 | $ - |
| | 3BR | | | | | $ 120,939 | $ - |
| | 4BR | | | | | $ 148,517 | $ - |
| | 5BR | | | | | $ 168,319 | $ - |

Subtotal New Units: 0

6(b) **REHABILITATION UNITS (existing public housing units to be rehabilitated)***

| BUILDING TYPE | BR's | Number of Units | HCC Limit per Unit | HCC Totals | Comm Renewal Allowance Total | TDC Limit per Unit* | TDC Limit Totals |
|---|---|---|---|---|---|---|---|
| Detached / Semi-Detached | 1BR | | | | | $ 90,117 | $ - |
| | 2BR | | | | | $ 118,685 | $ - |
| | 3BR | | | | | $ 144,132 | $ - |
| | 4BR | | | | | $ 170,474 | $ - |
| | 5BR | | | | | $ 187,116 | $ - |
| Elevator | 1BR | | | | | $ 67,330 | $ - |
| | 2BR | | | | | $ 86,568 | $ - |
| | 3BR | | | | | $ 115,423 | $ - |
| | 4BR | | | | | $ 144,279 | $ - |
| | 5BR | | | | | $ 163,516 | $ - |
| Row House | 1BR | | | | | $ 80,593 | $ - |
| | 2BR | | | | | $ 105,405 | $ - |
| | 3BR | | | | | $ 127,789 | $ - |
| | 4BR | | | | | $ 150,802 | $ - |
| | 5BR | | | | | $ 165,096 | $ - |
| Walkup | 1BR | | | | | $ 65,137 | $ - |
| | 2BR | | | | | $ 82,812 | $ - |
| | 3BR | | | | | $ 108,845 | $ - |
| | 4BR | | | | | $ 133,665 | $ - |
| | 5BR | | | | | $ 151,487 | $ - |

Subtotal Rehab Units: 0

6(c)

| | | | | | | |
|---|---|---|---|---|---|---|
| Totals for all New and Rehabilitation Units | 0 | | | | | $ - |

* Rehabilitation Units are eligible for 90% of the TDC limit. If the project unit configuration (number of units or bedrooms) will change due to rehabilitation activities, use the number of units and bedroom sizes after rehabilitation, not the unit configuration before rehabilitation.

## Attachment 9:
## TDC/Grant Limitations Worksheet

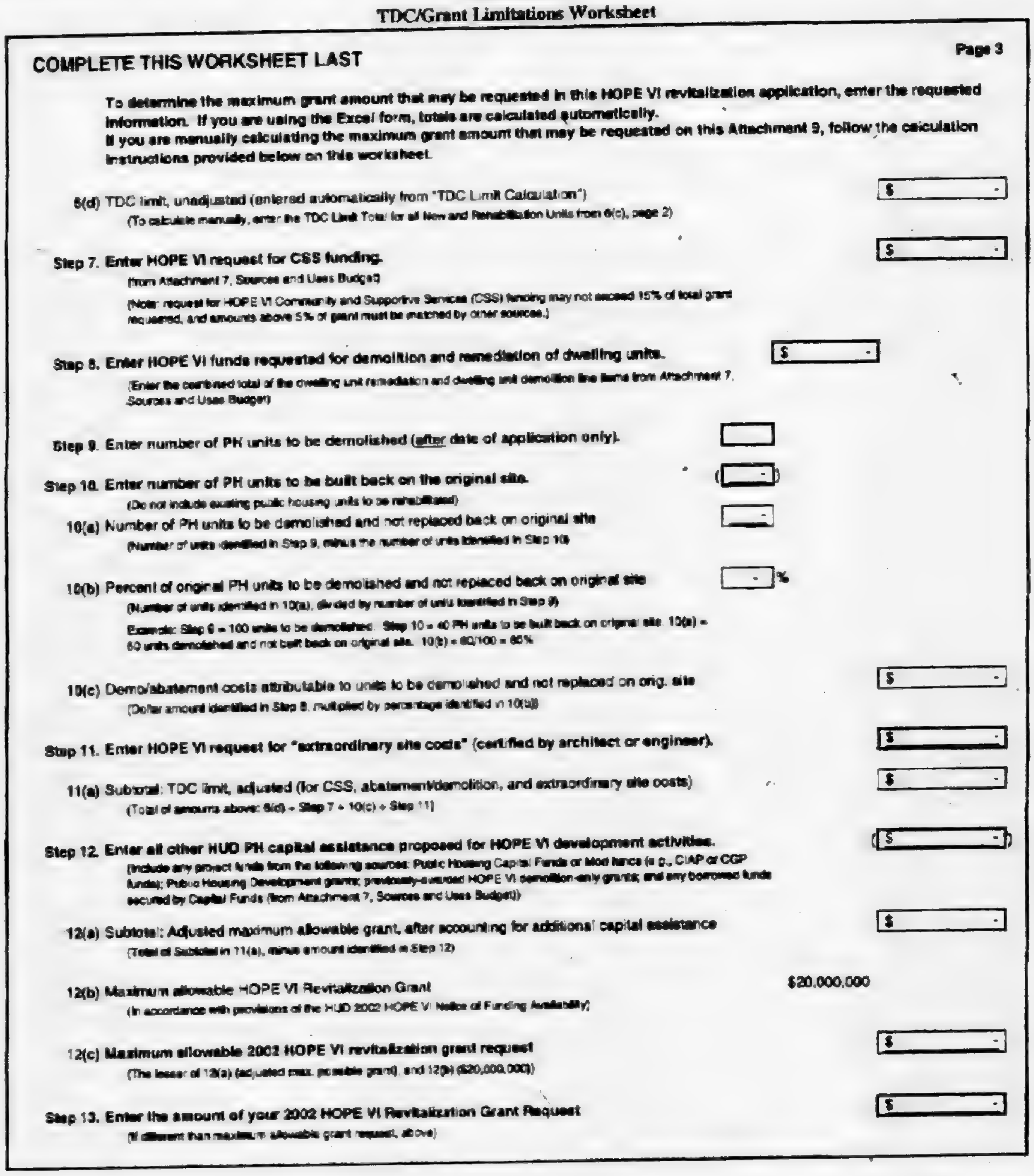

**COMPLETE THIS WORKSHEET LAST**

Page 3

**To determine the maximum grant amount that may be requested in this HOPE VI revitalization application, enter the requested information. If you are using the Excel form, totals are calculated automatically.**
**If you are manually calculating the maximum grant amount that may be requested on this Attachment 9, follow the calculation instructions provided below on this worksheet.**

6(d) TDC limit, unadjusted (entered automatically from "TDC Limit Calculation") $ -
(To calculate manually, enter the TDC Limit Total for all New and Rehabilitation Units from 6(c), page 2)

Step 7. **Enter HOPE VI request for CSS funding.** $ -
(from Attachment 7, Sources and Uses Budget)
(Note: request for HOPE VI Community and Supportive Services (CSS) funding may not exceed 15% of total grant requested, and amounts above 5% of grant must be matched by other sources.)

Step 8. **Enter HOPE VI funds requested for demolition and remediation of dwelling units.** $ -
(Enter the combined total of the dwelling unit remediation and dwelling unit demolition line items from Attachment 7, Sources and Uses Budget)

Step 9. **Enter number of PH units to be demolished (after date of application only).** ☐

Step 10. **Enter number of PH units to be built back on the original site.** ( - )
(Do not include existing public housing units to be rehabilitated)

10(a) Number of PH units to be demolished and not replaced back on original site -
(Number of units identified in Step 9, minus the number of units identified in Step 10)

10(b) Percent of original PH units to be demolished and not replaced back on original site - %
(Number of units identified in 10(a), divided by number of units identified in Step 9)
Example: Step 9 = 100 units to be demolished. Step 10 = 40 PH units to be built back on original site. 10(a) = 60 units demolished and not built back on original site. 10(b) = 60/100 = 60%

10(c) Demo/abatement costs attributable to units to be demolished and not replaced on orig. site $ -
(Dollar amount identified in Step 8, multiplied by percentage identified in 10(b))

Step 11. **Enter HOPE VI request for "extraordinary site costs" (certified by architect or engineer).** $ -

11(a) Subtotal: TDC limit, adjusted (for CSS, abatement/demolition, and extraordinary site costs) $ -
(Total of amounts above: 6(d) + Step 7 + 10(c) + Step 11)

Step 12. **Enter all other HUD PH capital assistance proposed for HOPE VI development activities.** ($ -)
(Include any project funds from the following sources: Public Housing Capital Funds or Mod funds (e.g., CIAP or CGP funds); Public Housing Development grants; previously-awarded HOPE VI demolition-only grants; and any borrowed funds secured by Capital Funds (from Attachment 7, Sources and Uses Budget))

12(a) **Subtotal: Adjusted maximum allowable grant, after accounting for additional capital assistance** $ -
(Total of Subtotal in 11(a), minus amount identified in Step 12)

12(b) Maximum allowable HOPE VI Revitalization Grant $20,000,000
(In accordance with provisions of the HUD 2002 HOPE VI Notice of Funding Availability)

12(c) **Maximum allowable 2002 HOPE VI revitalization grant request** $ -
(The lesser of 12(a) (adjusted max. possible grant), and 12(b) ($20,000,000))

Step 13. **Enter the amount of your 2002 HOPE VI Revitalization Grant Request** $ -
(If different than maximum allowable grant request, above)

## ATTACHMENT 10: EXTRAORDINARY SITE COSTS CERTIFICATION

I hereby certify that:

1. I am a licensed engineer _______ architect _______ (check one).
2. I am not an employee of the applicant public housing authority or unit of local government in which the public housing project identified below is located.
3. Extraordinary site costs may be incurred in the revitalization and demolition of existing property, as well as in the development of new and rehabilitated units. Examples of such costs include, but are not limited to: abatement of extraordinary environmental site hazards; removal or replacement of extensive underground utility systems; extensive rock and/or soil removal and replacement; removal of hazardous underground tanks; work to address unusual site conditions such as slopes, terraces, water catchments, lakes, etc.; and work to address flood plain and other environmental remediation issues. Costs to abate asbestos and lead-based paint should be included in normal demolition costs where such items are found within the structures themselves. An example of extraordinary lead-based paint would be where the lead has leached into the soil and extraordinary measures are needed to remove the lead.
4. I have reviewed the attached description of the extraordinary site costs requested by the applicant Housing Authority identified below, and affirm that these costs qualify as extraordinary site costs (as that term is defined in Paragraph 3 above) and that the costs are justified and reasonable in light of my assessment of the site of the severely distressed project and the work proposed to be completed at that site.

Name: ______________________________________________

Signature: ___________________________________________
Date

License number: ________________ State of Registration: ____________

Applicant PHA: _________________________________________

Development Name: ____________________________________

Required Attachment: Description and itemized listing of extraordinary site costs.

Warning: HUD will prosecute false claims and statements. Conviction may result in the imposition of criminal and civil penalties. (18 U.S.C. 1001, 1010, 1012, 31 U.S.C. 3729, 3802)

## ATTACHMENT 16: CERTIFICATION OF SEVERE PHYSICAL DISTRESS

I hereby certify that:

1. I am a licensed engineer _______ architect _______ (check one).

2. I am not an employee of the applicant public housing authority or unit of local government in which the public housing project identified below is located.

3. The public housing development listed below meets (in the manner described in either subparagraph (A) or (B) below) the following definition of severe physical distress:

   *Requires major redesign, reconstruction or redevelopment, or partial or total demolition, to correct serious deficiencies in the original (including inappropriately high population density), deferred maintenance, physical deterioration or obsolescence of major systems, and other deficiencies in the physical plant of the project*

check one:

A. _______ The development currently meets the above definition of severe physical distress; or

B. _______ The development has been legally demolished and HUD has not yet provided replacement housing assistance, other than tenant-based assistance, for the demolished units. However, the development satisfied the definition of severe physical distress (as defined above) as of the day the demolition was approved by HUD.

Name: ________________________________________________

Signature: ____________________________________________
Date

License number: ____________________ State of Registration: _____________

Applicant PHA: ________________________________________

Development Name: ____________________________________

Warning: HUD will prosecute false claims and statements. Conviction may result in the imposition of criminal and civil penalties. (18 U.S.C. 1001, 1010, 1012, 31 U.S.C. 3729, 3802)

# Attachment 19: *Physical Development Resources*

List all funds that will be used for Physical Development only. For each resource you list, you must provide a commitment document behind this Attachment that meets the standards described in the match and leveraging section of the NOFA. The amounts listed on this form must be consistent with the amounts listed on Attachment 7 (Sources & Uses) and the amounts in each resource commitment document.

| **Source of Resource** | **Dollar Value of Resource** | **Page # of Commitment Document** | **HUD Use Only Amount Approved** |
|---|---|---|---|
| | $ | | $ |
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| **Page Total** | $ | | $ |

Page ____ of ____

# Attachment 20: *Community and Supportive Services Resources*

List all funds or services that will be used for Community and Supportive Services only. For each resource you list, you must provide a commitment document behind this attachment that meets the standards described the match and leveraging section of the NOFA. The amounts listed on this form must be consistent with the amounts listed on Attachment 7 (Sources & Uses) and the amounts in each resource commitment document.

| **Source of CSS Resource** | **Dollar Value of Resource** | **Page # of Commitment Document** | **HUD Use Only Amount Approved** |
|---|---|---|---|
| | $ | | $ |
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Page ____ of ____

# Attachment 21: *Anticipatory Resources*

List any anticipatory resources as described in the NOFA. For each resource, attach a letter certifying the expenditures incurred. Anticipatory resources cannot be counted as match and cannot be listed on Attachments 19, 20, or 22.

| Source of Anticipatory Resource | Dollar Value of Resource | Page # of Commitment Document | HUD Use Only Amount Approved |
|---|---|---|---|
| | $ | | $ |
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Page ____ of ____

# Attachment 22: *Collateral Investment Resources*

List any funds or services that will be used for Collateral Investments only, as described in the NOFA. For each resource you list, attach a letter verifying the value of the collateral investment by the appropriate official (not the PHA). Collateral investment resources cannot be counted as match and cannot be listed on Attachments 19, 20, or 21.

| **Source of Collateral Investment Resource** | **Dollar Value of Resource** | **Page # of Commitment Document** | **HUD Use Only Amount Approved** |
|---|---|---|---|
| | $ | | $ |
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| **Page Total** | $ | | $ |

Page ____ of ____

## ATTACHMENT 23: RESIDENT TRAINING AND PUBLIC MEETING CERTIFICATION

I hereby certify, on behalf of the Public Housing Authority identified below, that a Resident Training Session on the HOPE VI development process was held in accordance with the requirements of Section VII(A)(2) of the HOPE VI NOFA.

Date of HOPE VI Resident Training Session: ______________________________

I hereby certify, on behalf of the Public Housing Authority identified below, that at least three Public Meetings were held in accordance with the requirements of Section VII(A)(3) of the HOPE VI NOFA.

Dates of Public Meetings:

#1______________________________________________

#2______________________________________________

#3______________________________________________

#4______________________________________________

#5______________________________________________

Name of Executive Director: ___________________________________

Signature: ___________________________________________________
Date

Name of PHA: _______________________________________________

Development Name: ___________________________________________

Warning: HUD will prosecute false claims and statements. Conviction may result in the imposition of criminal and civil penalties. (18 U.S.C. 1001, 1010, 1012, 31 U.S.C. 3729, 3802)

# ATTACHMENT 31: PROJECT READINESS

I hereby certify, on behalf of the Public Housing Authority identified below, that the activities checked below have been completed in accordance with Section XII(B)(4) of the NOFA.

_____ The targeted severely distressed public housing project is completely vacant.

_____ The targeted severely distressed public housing site is cleared.

_____ A Master Development Agreement has been developed and is ready to submit to HUD.

_____ The preliminary site design is complete.

_____ The PHA has held 5 or more public planning sessions (including resident training sessions and public meetings) leading to resident acceptance of the Plan. No more than three of these meetings may be the same as those certified to in Attachment 23. The dates of those meetings are as follows:

#1_______________________________

#2_______________________________

#3_______________________________

#4_______________________________

#5_______________________________

Name of Executive Director: _______________________

Signature: _______________________________
Date

Name of PHA: _______________________________

Development Name: _______________________________

Warning: HUD will prosecute false claims and statements. Conviction may result in the imposition of criminal and civil penalties. (18 U.S.C. 1001, 1010, 1012, 31 U.S.C. 3729, 3802)

## HOPE VI REVITALIZATION
## APPLICANT CERTIFICATIONS

Acting on behalf of the Board of Commissioners of the Housing Authority listed below, as its Chairman, I approve the submission of the HOPE VI Revitalization application of which this document is a part and make the following certifications to and agreements with the Department of Housing and Urban Development (HUD) in connection with the application and implementation thereof:

1. The public housing project or building in a project targeted in this HOPE VI Revitalization grant application meets the definition of severe distress in accordance with Section 24(j)(2) of the United States Housing Act of 1937 ("1937Act").

2. The PHA has not received assistance from the Federal government, State, or unit of local government, or any agency or instrumentality, for the specific activities for which funding is requested in the HOPE VI Revitalization application.

3. The PHA does not have any litigation pending which would preclude timely startup of activities.

4. The PHA is in full compliance with any desegregation or other court order related to Fair Housing (e.g., Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and Section 504 of the Rehabilitation Act of 1973) that affects the PHA's public housing program and that is in effect on the date of application submission.

5. The PHA has returned any excess advances received during development or modernization, or amounts determined by HUD to constitute excess financing based on a HUD-approved Actual Development Cost Certificate (ADCC) or Actual Modernization Cost Certificate (AMCC), or that HUD has approved a pay-back plan.

6. There are no environmental factors, such as sewer moratoriums, precluding development in the requested locality.

7. In accordance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128), the property targeted for acquisition or construction (including rehabilitation) is not located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(a) The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

(b) Where the community is participating in the National Flood Insurance Program, flood insurance is obtained as a condition of execution of a Grant Agreement and approval of any subsequent demolition or disposition application.

8. The application does not target properties in the Coastal Barrier Resources System, in accordance with the Coastal Barrier Resources Act (16 U.S.C. 3501).

If selected for HOPE VI Revitalization funding:

9. The PHA will comply with all policies, procedures, and requirements prescribed by HUD for the HOPE VI Program, including the implementation of HOPE VI revitalization activities, in a timely, efficient, and economical manner.

10. The PHA will not receive assistance from the Federal government, State, or unit of local government, or any agency or instrumentality, for the specific activities funded by the HOPE VI Revitalization grant. The PHA has established controls to ensure that any activity funded by the HOPE VI Revitalization grant is not also funded by any other HUD program, thereby preventing duplicate funding of any activity.

11. The PHA will not provide to any development more assistance under the HOPE VI Revitalization grant than is necessary to provide affordable housing after taking into account other governmental assistance provided.

12. The PHA will supplement the aggregate amount of the HOPE VI Revitalization grant with funds from sources other than HOPE VI in an amount not less than 5 percent of the amount of HOPE VI grant.

13. In addition to supplemental amounts provided in accordance with Certification 12 above, if the PHA uses more than 5 percent of the HOPE VI grant for the community and supportive services component, it will provide supplemental funds from sources other than HOPE VI, dollar for dollar, for the amount over 5 percent of the grant used for the community and supportive services component.

14. Disposition activity under the grant will be conducted in accordance with Section 18 of the 1937 Act.

15. The PHA will carry out acquisition of land, or acquisition of off-site units with or without rehabilitation to be used as public housing, in accordance with 24 CFR part 941, or successor part.

16. The PHA will carry out major rehabilitation and other physical improvements of housing and non-dwelling facilities in accordance with 24 CFR 968.11 2(b), (d), (e), and (g)-(o), 24 CFR 968.130, and 24 CFR 968.135(b) and (d) or successor part.

17. The PHA will carry out construction of public housing rental replacement housing, both on-site and off-site, and community facilities, in accordance with 24 CFR part 941 or successor part, including mixed-finance development in accordance with subpart F.

18. The PHA will carry out replacement homeownership activities in conformance with the requirements of section 24(d)(1)(J), which may include a homeownership proposal under Section 32 of the 1937 Act, the income limitations, and other applicable homeownership requirements of the 1937 Act.

19. The PHA will administer and operate public housing rental units in accordance with all requirements applicable to public housing, including the 1937 Act, HUD's implementing regulations thereunder, the ACC, the Mixed-Finance ACC Amendment (if applicable), and all other applicable Federal statutory, Executive Order, and regulatory requirements as such requirements may be amended from time to time.

20. The PHA will comply with:

(a) The Fair Housing Act (42 U.S.C. 3601-19) and regulations at 24 CFR part 100;

(b) The prohibitions against discrimination on the basis of disability under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations at 24 CFR part 8);

(c) Title II of the Americans with Disabilities Act (42 U.S.C 12101 et seq.) and its implementing regulations at 28 CFR part 36;

(d) The Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151) and regulations at 24 CFR part 40).

21. The PHA will comply with regulations at 24 CFR 85.36(e) which require recipients of assistance (grantees and subgrantees) to take all necessary affirmative steps in contracting for purchase of goods or services to assure that small businesses, small disadvantaged businesses, minority firms, women's business enterprises, and labor surplus area firms are used when possible.

22. The PHA will comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) and its implementing regulation at 24 CFR part 135, including the reporting requirements of subpart E.

23. The PHA will comply with Davis-Bacon or HUD-determined prevailing wage rate requirements to the extent required under Section 12 of the 1937 Act.

24. As applicable, the PHA will comply with the relocation assistance and real property acquisition requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and government-wide implementing regulations at 49 CFR part 24; relocation regulations at 24 CFR 968.108 or successor regulation (rehabilitation, temporary relocation); 24 CFR 941.207 or successor regulation (acquisition); and Section 18 of the 1937 Act as amended (disposition).

25. The PHA will comply with all HOPE VI requirements for reporting and providing access to records.

26. The PHA will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, et seq.) and is subject to 24 CFR part 35 and 24 CFR 965.701, as they may be amended from time to time, and Section 968.110(k) or successor regulation.

27. The PHA will comply with the policies, guidelines, and requirements of OMB Circular A-87 (Cost Principles Applicable to Grants, Contracts, and Other Agreements with State and Local Governments).

28. The PHA will comply with 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments), as modified by 24 CFR 941 or successor part, subpart F, relating to the procurement of partners in mixed finance developments.

29. The PHA will keep records in accordance with 24 CFR 85.20 that facilitate an effective audit to determine compliance with program requirements, and comply with the audit requirements of 24 CFR 85.26.

30. The PHA will start construction within 12 months from the date of HUD's approval of the Supplemental Submissions as requested by HUD after grant award. This time period may not exceed 18 months from the date the Grant Agreement is executed.

31. The PHA will submit the development proposal for the first phase of construction within 12 months of grant award.

32. The PHA will complete construction within 48 months from the date of HUD's approval of the Supplemental Submissions. This time period for completion may not exceed 54 months from the date the Grant Agreement is executed.

33. All activities that include construction, rehabilitation, lead-based paint removal, and related activities will meet or exceed local building codes. New construction will comply with the latest HUD-adopted Model Energy Code issued by the Council of American Building Officials.

Name of Housing Authority: ______________________

Attested By: Board Chairman's Name ______________________

Board Chairman's Signature: ______________________

Date: ______________________

Warning: HUD will prosecute false claims and statements. Conviction may result in the imposition of criminal and civil penalties. (18 U.S.C. 1001,1010,1012, 32 U.S.C. 3729,3802)

## DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

Approved by OMB
0348-0046

| | | |
|---|---|---|
| **1. Type of Federal Action:**<br>☐ a. contract<br>b. grant<br>c. cooperative agreement<br>d. loan<br>e. loan guarantee<br>f. loan insurance | **2. Status of Federal Action:**<br>☐ a. bid/offer/application<br>b. initial award<br>c. post-award | **3. Report Type:**<br>☐ a. initial filing<br>b. material change<br>**For Material Change Only:**<br>year ________ quarter ________<br>date of last report ____________ |

| | |
|---|---|
| **4. Name and Address of Reporting Entity:**<br>☐ **Prime** ☐ **Subawardee**<br>Tier ______, *if known*:<br>**Congressional District**, *if known*: | **5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:**<br>**Congressional District**, *if known*: |
| **6. Federal Department/Agency:** | **7. Federal Program Name/Description:**<br>CFDA Number, *if applicable*: ____________ |
| **8. Federal Action Number**, *if known*: | **9. Award Amount**, *if known*:<br>**$** |
| **10. a. Name and Address of Lobbying Registrant** (*if individual, last name, first name, MI*): | **b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*): |
| **11.** Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure. | Signature: __________________<br>Print Name: __________________<br>Title: __________________<br>Telephone No.: ____________ Date: ________ |
| **Federal Use Only:** | Authorized for Local Reproduction<br>Standard Form LLL (Rev. 7-97) |

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

# Applicant/Recipient Disclosure/Update Report

**U.S. Department of Housing and Urban Development**

OMB Approval No. 2510-0011 (exp. 06/30/2003)

**Instructions.** (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 2.)

## Applicant/Recipient Information

**Indicate whether this is an Initial Report** ☐ **or an Update Report** ☐

| | |
|---|---|
| 1. Applicant/Recipient Name, Address, and Phone (include area code):<br>( ) - | 2. Social Security Number or Employer ID Number:<br>- - |
| 3. HUD Program Name | 4. Amount of HUD Assistance Requested/Received |

5. State the name and location (street address, City and State) of the project or activity:

## Part I Threshold Determinations

1. Are you applying for assistance for a specific project or activity? These terms do not include formula grants, such as public housing operating subsidy or CDBG block grants. (For further information see 24 CFR Sec. 4.3).
☐ Yes ☐ No

2. Have you received or do you expect to receive assistance within the jurisdiction of the Department (HUD), involving the project or activity in this application, in excess of $200,000 during this fiscal year (Oct. 1 - Sep. 30)? For further information, see 24 CFR Sec. 4.9
☐ Yes ☐ No.

**If you answered "No" to either question 1 or 2, Stop!** You do not need to complete the remainder of this form.
***However,*** you must sign the certification at the end of the report.

## Part II Other Government Assistance Provided or Requested / Expected Sources and Use of Funds.

Such assistance includes, but is not limited to, any grant, loan, subsidy, guarantee, insurance, payment, credit, or tax benefit.

| Department/State/Local Agency Name and Address | Type of Assistance | Amount Requested/Provided | Expected Uses of the Funds |
|---|---|---|---|
| | | | |
| | | | |

(Note: Use Additional pages if necessary.)

## Part III Interested Parties.

You must disclose:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

| Alphabetical list of all persons with a reportable financial interest in the project or activity (For individuals, give the last name first) | Social Security No. or Employee ID No. | Type of Participation in Project/Activity | Financial Interest in Project/Activity ($ and %) |
|---|---|---|---|
| | | | |

(Note. Use Additional pages if necessary.)

## Certification

**Warning:** If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosures of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.
I certify that this information is true and complete.

| | |
|---|---|
| Signature:<br>x | Date: (mm/dd/yyyy) |

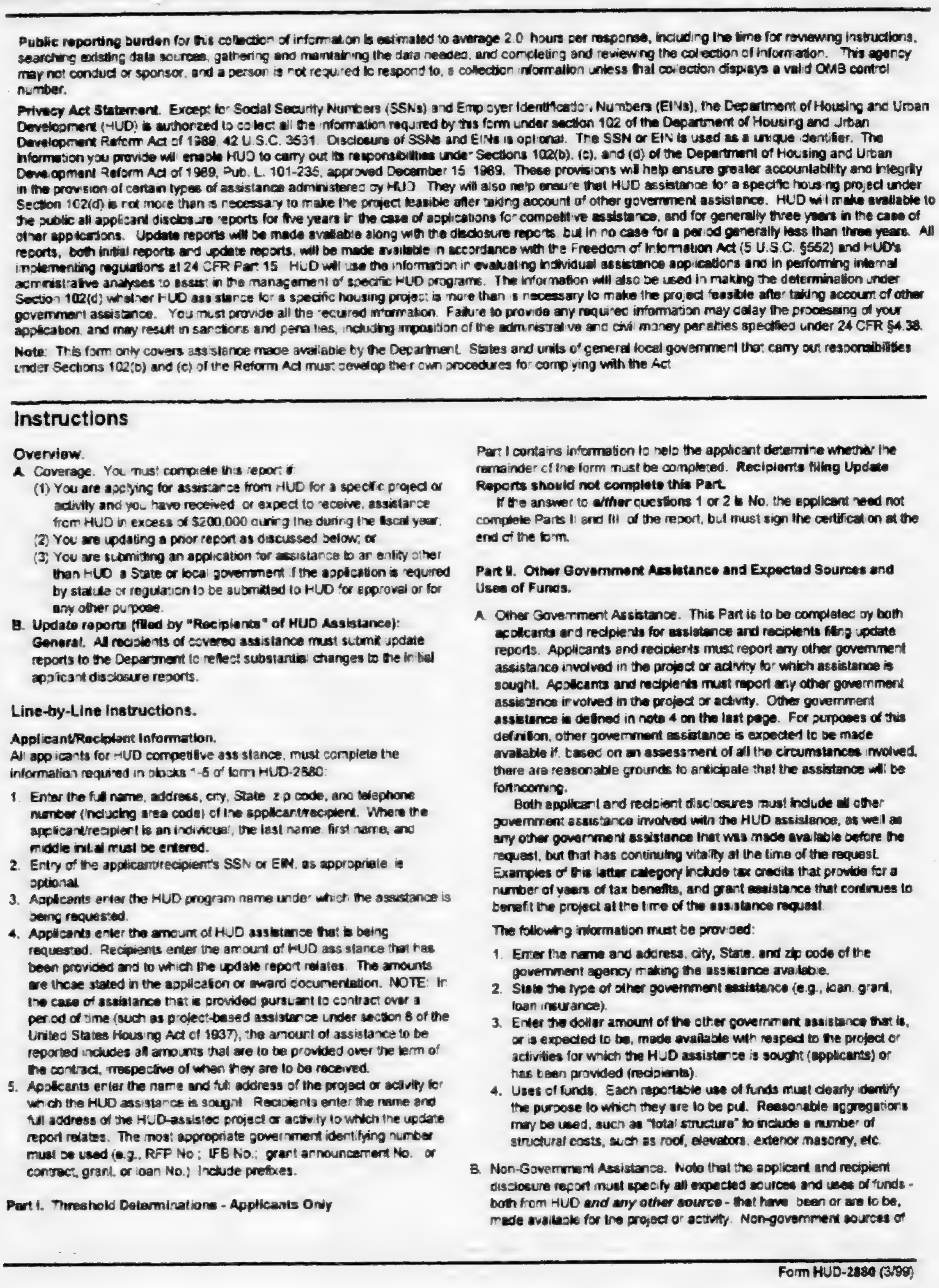

**Public reporting burden** for this collection of information is estimated to average 2.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collection displays a valid OMB control number.

**Privacy Act Statement.** Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §4.38.

**Note:** This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

## Instructions

### Overview.

**A.** Coverage. You must complete this report if:

(1) You are applying for assistance from HUD for a specific project or activity and you have received, or expect to receive, assistance from HUD in excess of $200,000 during the during the fiscal year;

(2) You are updating a prior report as discussed below; or

(3) You are submitting an application for assistance to an entity other than HUD, a State or local government if the application is required by statute or regulation to be submitted to HUD for approval or for any other purpose.

**B. Update reports (filed by "Recipients" of HUD Assistance): General.** All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

### Line-by-Line Instructions.

**Applicant/Recipient Information.**
All applicants for HUD competitive assistance, must complete the information required in blocks 1-5 of form HUD-2880:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered.
2. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.
3. Applicants enter the HUD program name under which the assistance is being requested.
4. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.
5. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

**Part I. Threshold Determinations - Applicants Only**

Part I contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

If the answer to *either* questions 1 or 2 is No, the applicant need not complete Parts II and III of the report, but must sign the certification at the end of the form.

**Part II. Other Government Assistance and Expected Sources and Uses of Funds.**

A. Other Government Assistance. This Part is to be completed by both applicants and recipients for assistance and recipients filing update reports. Applicants and recipients must report any other government assistance involved in the project or activity for which assistance is sought. Applicants and recipients must report any other government assistance involved in the project or activity. Other government assistance is defined in note 4 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available.
2. State the type of other government assistance (e.g., loan, grant, loan insurance).
3. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).
4. Uses of funds. Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, elevators, exterior masonry, etc.

B. Non-Government Assistance. Note that the applicant and recipient disclosure report must specify all expected sources and uses of funds - both from HUD *and any other source* - that have been or are to be, made available for the project or activity. Non-government sources of

funds typically include (but are not limited to) foundations and private contributors.

**Part III. Interested Parties.**

This Part is to be completed by both applicants and recipients filing update reports. Applicants must provide information on:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).
   Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses. If the person is an entity, the listing must include the full name and address of the entity as well as the CEO. Please list all names alphabetically.
2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.
3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).
4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

**Note** that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

**Notes:**

1. All citations are to 24 CFR Part 4, which was published in the Federal Register. [April 1, 1996, at 53 Fed. Reg. 14448.]
2. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Fed. Acquisition Regulation (FAR) (48 CFR Chapter 1).
3. See 24 CFR §4.9 for detailed guidance on how the threshold is calculated.
4. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is or is expected to be made, available with respect to the project or activities for which the assistance is sought.
5. For the purpose of this form and 24 CFR Part 4, "person" means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

## HOPE VI Demolition Grant Application Receipt

**U.S. Department of Housing and Urban Development**

Type or clearly print the Applicant's name and full address in the space below.

(fold line)

HA Code ☐☐-☐☐☐

PHA Fax Number ☐☐☐-☐☐☐-☐☐☐☐

Development Name ______________________

Amount Requested $ ☐☐,☐☐☐,☐☐☐

**To Be Completed by HUD**

☐ HUD received your application by the deadline.

Date received (mm/dd/yyyy) ______________

Ordinal ______________

Application Number ______________

☐ Your application has been screened and no deficiencies have been identified.

☐ Your application has been screened and a deficiency has been identified. Please see the attached letter and/or checklist.

☐ HUD did not receive your application by the deadline; therefore, your application will not receive further consideration.

form HUD-2993-A (02/2001)

[FR Doc. 03–26476 Filed 10–16–03; 12:46 pm]

**BILLING CODE 4210–33–C**

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## Part IV

# The President

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# Presidential Documents

**Title 3—**

**The President**

**Presidential Determination No. 2003–39 of September 16, 2003**

## Classified Information Concerning the Air Force's Operating Location Near Groom Lake, Nevada

**Memorandum for the Administrator of the Environmental Protection Agency [and] the Secretary of the Air Force**

I find that it is in the paramount interest of the United States to exempt the United States Air Force's operating location near Groom Lake, Nevada, the subject of litigation in *Kasza v. Browner* (D. Nev. CV–S–94–795–PMP) and *Frost v. Perry* (D. Nev. CV–S–94–714–PMP), from any applicable requirement for the disclosure to unauthorized persons of classified information concerning that operating location. Therefore, pursuant to 42 U.S.C. 6961(a), I hereby exempt the Air Force's operating location near Groom Lake, Nevada, from any Federal, State, interstate or local provision respecting control and abatement of solid waste or hazardous waste disposal that would require the disclosure of classified information concerning the operating location to any unauthorized person. This exemption shall be effective for the full one-year statutory period.

Nothing herein is intended to: (a) imply that in the absence of such a Presidential exemption, the Resource Conservation and Recovery Act (RCRA) or any other provision of law permits or requires disclosure of classified information to unauthorized persons; or (b) limit the applicability or enforcement of any requirement of law applicable to the Air Force's operating location near Groom Lake, Nevada, except those provisions, if any, that would require the disclosure of classified information.

The Secretary of the Air Force is authorized and directed to publish this determination in the **Federal Register**.

THE WHITE HOUSE,
*Washington, September 16, 2003.*

[FR Doc. 03–26704
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## REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT OCTOBER 21, 2003

**ENVIRONMENTAL PROTECTION AGENCY**

- Superfund program:
  - National oil and hazardous substances contingency plan—
    - National priorities list update; published 8-22-03

**FEDERAL COMMUNICATIONS COMMISSION**

- Radio stations; table of assignments:
  - Various States; published 10-21-03

**SECURITIES AND EXCHANGE COMMISSION**

- Practice and procedure:
  - Filing fee acount rule adoption; published 8-22-03

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

- Air carrier certification and operations:
  - DOD commercial air carrier evaluators; credentials
    - Correction; published 10-21-03
- Airworthiness directives:
  - Boeing; published 10-6-03
  - Cessna; published 10-17-03
- Standard instrument approach procedures; published 10-21-03

**TRANSPORTATION DEPARTMENT**

**Federal Highway Administration**

- Grants:
  - Operation of motor vehicles by intoxicated persons; withholding of Federal-aid highway funds; published 8-22-03

**TRANSPORTATION DEPARTMENT**

**National Highway Traffic Safety Administration**

- Grants:
  - Operation of motor vehicles by intoxicated persons; withholding of Federal-aid highway funds; published 8-22-03

## COMMENTS DUE NEXT WEEK

**ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**Historic Preservation, Advisory Council**

- Historic properties protection; comments due by 10-27-03; published 9-25-03 [FR 03-24202]

**AGRICULTURE DEPARTMENT**

**Agricultural Marketing Service**

- Cotton research and promotion order:
  - Program review; comments due by 10-27-03; published 8-26-03 [FR 03-21788]

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

- Exportation and importation of animals and animal products:
  - Ruminants; privately owned quarantine facilities standards; comments due by 10-27-03; published 8-28-03 [FR 03-21857]

**AGRICULTURE DEPARTMENT**

**Food and Nutrition Service**

- Food stamp and food distribution program:
  - Maximum excess shelter expense deduction; benefits adjustment; comments due by 10-28-03; published 8-29-03 [FR 03-22144]

**COMMERCE DEPARTMENT**

**Economic Analysis Bureau**

- International services surveys:
  - BE-15; annual survey of foreign direct investment in U.S.; comments due by 10-28-03; published 8-29-03 [FR 03-22074]
  - BE-85; quarterly survey of financial services transactions between U.S. financial services providers and unaffiliated foreign persons; comments due by 10-28-03; published 8-29-03 [FR 03-22140]

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

- Fishery conservation and management:
  - Northeastern United States fisheries—
    - Atlantic surfclam and ocean quahog; comments due by 10-27-03; published 9-25-03 [FR 03-24250]
  - West Coast States and Western Pacific fisheries—
    - Northern Mariana Islands Exclusive Economic Zone; bottomfish fishery resources; comments due by 10-27-03; published 9-23-03 [FR 03-24115]

**DEFENSE DEPARTMENT**

**Air Force Department**

- Privacy Act; implementation; comments due by 10-27-03; published 9-25-03 [FR 03-24058]

**DEFENSE DEPARTMENT**

- Federal Acquisition Regulation (FAR):
  - Share-in-savings contracting; comments due by 10-31-03; published 10-1-03 [FR 03-24855]
  - Unique contract and order identifier numbers; comments due by 10-31-03; published 10-1-03 [FR 03-24584]

**ENERGY DEPARTMENT**

**Federal Energy Regulatory Commission**

- Electric rate and corporate regulation filings:
  - Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24813]

**ENVIRONMENTAL PROTECTION AGENCY**

- Air pollution control:
  - State operating permit programs—
    - Ohio; comments due by 10-30-03; published 9-30-03 [FR 03-24776]
- Air quality implementation plans; approval and promulgation; various States:
  - Arizona; comments due by 10-29-03; published 9-29-03 [FR 03-24557]
  - California; comments due by 10-29-03; published 9-29-03 [FR 03-24558]
  - Texas; comments due by 10-30-03; published 9-30-03 [FR 03-24553]
- Environmental statements; availability, etc.:
  - Coastal nonpoint pollution control program—
    - Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]
- Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
  - Diflubenzuron; comments due by 10-27-03; published 8-27-03 [FR 03-21935]
  - Flumioxazin; comments due by 10-27-03; published 8-27-03 [FR 03-21662]
  - Thiamethoxam; comments due by 10-27-03; published 8-27-03 [FR 03-21783]
- Superfund program:
  - National oil and hazardous substances contingency plan—
    - National priorities list update; comments due by 10-27-03; published 9-26-03 [FR 03-24410]
    - National priorities list update; comments due by 10-27-03; published 10-7-03 [FR 03-25402]
- Water pollution control:
  - Ocean dumping; site designations—
    - Long Island Sound, CT; comments due by 10-27-03; published 9-12-03 [FR 03-22645]

**FARM CREDIT ADMINISTRATION**

- Farm credit system:
  - Farmers, ranchers and aquatic producers or harvesters; eligibility and scope of financing; comments due by 10-29-03; published 7-29-03 [FR 03-19208]

**FEDERAL COMMUNICATIONS COMMISSION**

- Digital television stations; table of assignments:
  - New Mexico; comments due by 10-27-03; published 9-17-03 [FR 03-23631]
- Radio stations; table of assignments:
  - Illinois; comments due by 10-30-03; published 10-2-03 [FR 03-24940]
  - Indiana; comments due by 10-27-03; published 10-2-03 [FR 03-24939]
  - Texas; comments due by 10-30-03; published 9-19-03 [FR 03-23926]

**GENERAL SERVICES ADMINISTRATION**

- Federal Acquisition Regulation (FAR):
  - Share-in-savings contracting; comments due by 10-31-

03; published 10-1-03 [FR 03-24855]

Unique contract and order identifier numbers; comments due by 10-31-03; published 10-1-03 [FR 03-24584]

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Centers for Medicare & Medicaid Services**

Medicaid:

Outpatient prescription drugs coverage; rebate agreements with manufacturers; price recalculations time limitation and recordkeeping requirements; comments due by 10-28-03; published 8-29-03 [FR 03-21548]

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Biological products:

Blood and blood components, including source plasma; labeling and storage requirements; revisions; comments due by 10-28-03; published 7-30-03 [FR 03-19289]

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Health Resources and Services Administration**

Smallpox Compensation Program:

Smallpox vaccine injury table; comments due by 10-27-03; published 8-27-03 [FR 03-21906]

**HOMELAND SECURITY DEPARTMENT**

**Coast Guard**

Drawbridge operations:

Florida; comments due by 11-1-03; published 10-6-03 [FR 03-25047]

Pollution:

Mandatory ballast water management program for U.S. waters; comments due by 10-28-03; published 7-30-03 [FR 03-19373]

**INTERIOR DEPARTMENT**

**Reclamation Bureau**

Environmental statements; availability, etc.:

Colorado River management; interim water storage guidelines; comments due by 10-30-03; published 9-30-03 [FR 03-24674]

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

Federal Acquisition Regulation (FAR):

Share-in-savings contracting; comments due by 10-31-03; published 10-1-03 [FR 03-24855]

Unique contract and order identifier numbers; comments due by 10-31-03; published 10-1-03 [FR 03-24584]

**SMALL BUSINESS ADMINISTRATION**

Business loans:

Guarantee fees and ongoing services fees paid by participating loan program lenders; comments due by 10-31-03; published 10-1-03 [FR 03-24728]

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:

Airbus; comments due by 10-29-03; published 9-29-03 [FR 03-24487]

BAE Systems (Operations) Ltd.; comments due by 10-27-03; published 9-25-03 [FR 03-24286]

Boeing; comments due by 10-27-03; published 9-10-03 [FR 03-22992]

Burkhart Grob Luft-Und Raumfahrt GmbH & Co. LG; comments due by 10-31-03; published 9-30-03 [FR 03-24283]

Eurocopter France; comments due by 10-27-03; published 8-28-03 [FR 03-21520]

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**TRANSPORTATION DEPARTMENT**

**Research and Special Programs Administration**

Hazardous materials:

Hazardous materials transportation—

DOT specification cylinders; maintenance, requalification, repair, and use requirements; comments due by 10-27-03; published 9-26-03 [FR 03-24354]

**TREASURY DEPARTMENT**

**Internal Revenue Service**

Income taxes:

Credit for increasing research activities; comments due by 10-27-03; published 7-29-03 [FR 03-17870]

Securities in an S corporation; prohibited allocations; cross-reference; comments due by 10-27-03; published 8-28-03 [FR 03-21965]

Variable annuity, endowment, and life insurance contracts; diversification requirements; comments due by 10-28-03; published 7-30-03 [FR 03-19367]

Procedure and administration:

Designated or related summonses; effect on period of limitations, etc.; comments due by 10-29-03; published 7-31-03 [FR 03-19537]

**VETERANS AFFAIRS DEPARTMENT**

Grants:

Homeless Providers Grant and Per Diem Program

Religious organizations; proper use of funds; comments due by 10-30-03; published 9-30-03 [FR 03-24320]

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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

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**H.R. 2152/P.L. 108–99**

To amend the Immigration and Nationality Act to extend for an additional 5 years the special immigrant religious worker program. (Oct. 15, 2003; 117 Stat. 1176)

**Last List October 15, 2003**

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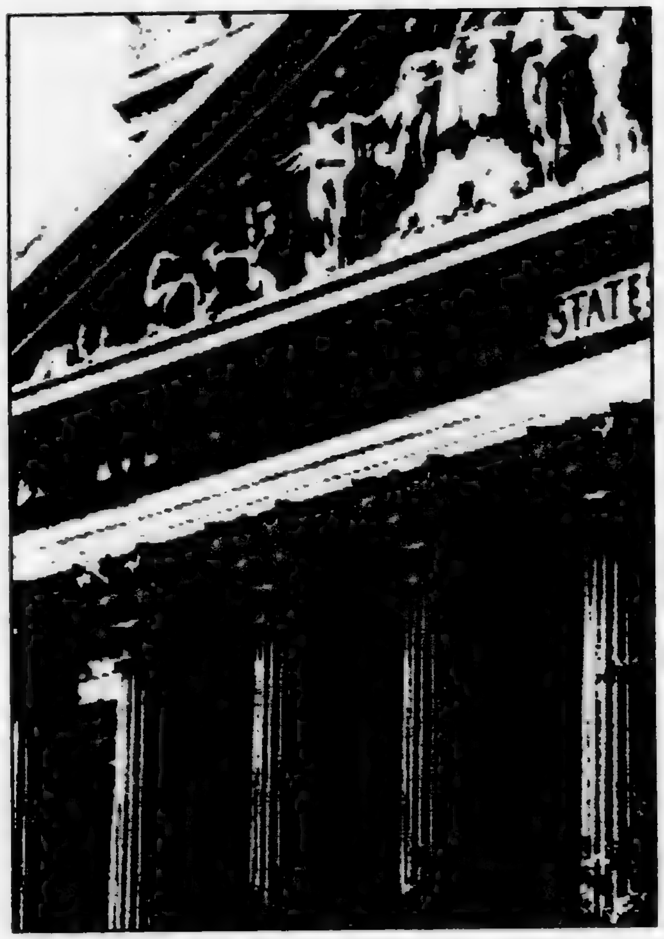

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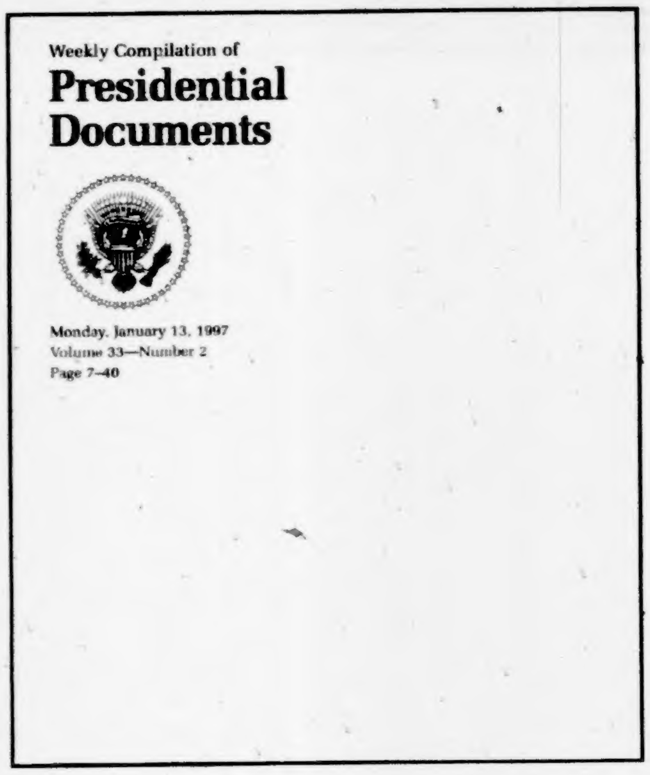

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